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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG83

Prevailing Rate Systems; Technical Corrections and Clarifications

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to correct and clarify certain matters relating primarily to pay administration under the Federal Wage System. This rule corrects errors and eliminates ambiguities in the administration of the system.

EFFECTIVE DATE: January 8, 1996..

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On July 14, 1995, OPM published a proposed rule to correct and clarify matters relating primarily to pay administration under the Federal Wage System. The purpose is to correct errors and eliminate ambiguities in the administration of the system. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Subpart B—Prevailing Rate Determinations

2. Section 532.241 is amended by revising paragraph (a)(1) to read as follows:

§ 532.241 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate for each appropriated fund survey job having at least 10 unweighed matches and for each nonappropriated fund job having at least 5 unweighed matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.235 and 532.247 and the establishment weight.

* * * * *

3. In § 532.267, paragraph (c)(1) is revised to read as follows:

§ 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

* * * * *

(c) * * *

(1) Surveys shall, at a minimum, include the air transportation and electronics industries in SIC's 3571, 3572, 3575, 3577, 3663, 3669, 3672, 3674, 3679, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

* * * * *

Subpart D—Pay Administration

4. In § 532.401, the definition of *Change to a lower grade* is removed, a new definition for *Change to lower grade* is added, and the definition of *Promotion* is revised to read as follows:

§ 532.401 Definitions.

* * * * *

Change to lower grade means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a lower grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WL to WG) with a lower representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a lower representative rate under a prevailing rate schedule.

* * * * *

Promotion means a change in the position of an employee who, while continuously employed—

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position in a higher grade of the same type prevailing rate schedule, whether in the same or different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WG to WL) with a higher representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a higher representative rate under a prevailing rate schedule.

* * * * *

5. In § 532.405, paragraph (d) is added to read as follows:

§ 532.405 Use of highest previous rate.

* * * * *

(d) The highest previous rate may be based upon a rate of pay received during a temporary promotion, so long as the temporary promotion is for a period of not less than 1 year. This limitation does not apply upon permanent placement in a position at the same or higher grade.

6. In § 532.415, paragraph (c) is revised to read as follows:

§ 532.415 Application of new or revised wage schedules.

* * * * *

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the steps of the employee's grade on an old wage schedule shall be adjusted upward to the newly adjusted rate for the same numerical step of the grade whenever

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there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

[FR Doc. 95–29700 Filed 12–06–95; 8:45 am]
BILLING CODE 6325–01–M

APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1900

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff)

AGENCY: Appalachian Regional Commission (ARC or Agency).

ACTION: Final rule.

SUMMARY: The Appalachian Regional Commission is issuing as a final rule regulations for the officers and employees of the Agency's Federal staff which repeal its superseded employee standards of conduct and cross-reference the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations (Regulations) issued by the Office of Government Ethics (OGE).

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Paul Land, Counsel to the Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington DC 20235, 202–884–7660.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE published Standards of Ethical Conduct for Employees of the Executive Branch. The Standards, which are codified at 5 CFR part 2635, became effective on February 3, 1993. They established uniform ethical conduct standards applicable to all executive branch personnel and hence are applicable to ARC Federal employees. On April 7, 1993, OGE also published the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations which are applicable to all executive branch employees. The Financial Disclosure Regulations, which are codified at 5 CFR part 2634, took effect upon publication except for the rules on confidential disclosure which became effective on October 5, 1992. These Regulations are also applicable to ARC Federal employees. As a result of the implementation by OGE of the Standards of Conduct and Financial Disclosure Regulations for executive branch personnel, on the effective date of this final rule, the Agency's regulations on employee Responsibilities and Conduct, 5 CFR part 1900, will be amended to remove sections 1900.735–101 through 1900.735–108 and add a new section 1900.100 to provide a cross-reference to the Executive Branch Standards and Financial Disclosure Regulations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the Appalachian Regional Commission finds good cause exists for waiving the general notice of proposed rulemaking as to this final rule. The notice is being waived because this rulemaking relating to ARC Federal employees concerns matters of agency organization, practice and procedure. Further, it is in the public interest that the final rule, which repeals superseded ARC regulations and promulgates a cross-reference to the currently effective branch-wide Standards and Financial Disclosure Regulations, become effective upon publication in the **Federal Register.**

Executive Order 12866

In promulgating this final regulation, the Appalachian Regional Commission adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any event deemed "significant" thereunder.

Regulatory Flexibility Act

The Appalachian Regional Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only ARC Federal employees.

Paperwork Reduction Act

The Appalachian Regional Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 1900

Conflict of interests, Government employees.

Approved: November 30, 1995.

Jesse L. White, Jr.,

Federal Co-Chairman, Appalachian Regional Commission.

For the reasons set forth in the preamble, the Appalachian Regional Commission is revising part 1900 of title 5 of the Code of Federal Regulations to read as follows:

PART 1900—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301, 40 U.S.C. App. 106.

Section 1900.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Officers and employees of the Appalachian Regional Commission Federal Staff are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 3635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–29884 Filed 12–6–95; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Services, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The purposes of these changes are: To eliminate the potential for certain conflicts of interest; to keep the costs of the Public Law 480, title I program as low as possible; to insure that all persons seeking to participate in supplying and shipping commodities financed under Public Law 480, title I, receive fair and equitable treatment; and to reflect a reorganization of administrative functions within the Department of Agriculture.

EFFECTIVE DATE: See **SUPPLEMENTARY INFORMATION** for compliance requirements.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4549 South Building, 14th and Independence SW., Washington, D.C. 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule regulates certain activities of shipping agents in the Department's foreign assistance activities, the limitations imposed should not adversely impact upon the volume of business handled by any particular small business entity. A copy of this final rule has been submitted to the General Counsel, Small Business Administration.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

The Secretary of Agriculture implements title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). This function is delegated to the General Sales Manager, Foreign Agricultural Service. On November 12, 1992, the Foreign Agricultural Service (FAS) published a proposed rule (57 FR 53607) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under title I, Public Law 480. Corrections to the proposed rule were published November 27, 1992 (57 FR 56406).

Comments suggesting revisions to the proposed rule are discussed below, except those that were outside the scope of the proposed rule or of an editorial nature. FAS has made minor editorial changes and other changes to respond to some of the comments received, and to reflect the redesignation of certain offices within the Department of Agriculture involved in the administration of the title I, Public Law 480 program.

Discussion of Comments

Ocean Transportation-Related Services. The proposed rule would have prohibited a shipping agent from providing expediting services to a vessel owner at discharge ports. FAS proposed this change in order to eliminate the potential for a conflict of interest that might arise if a shipping agent representing a charterer were also to receive a fee from the vessel owner to expedite discharge operations, with the result that the agent might show favoritism to the owner in subsequent freight solicitations.

The comments received stressed that the rule would eliminate a possible source of revenue for shipping agent firms, with greater impact on small businesses, and could thereby reduce the number of shipping agents participating in the title I, Public Law 480 program.

FAS will not adopt this aspect of the proposed rule because any adverse impact upon the operations of the title I, Public Law 480 program from the hypothesized conflict of interest is speculative and, therefore, would not justify the harmful effect on competition and smaller businesses. Because the title I program requires strict competitive bidding procedures in the procurement of freight, there is little potential for favoritism in the vessel selection process.

Affiliates. The proposed rule would have expanded the current definition of "affiliate" to include two legal entities that are owned or controlled by the same legal entity. Currently, a firm cannot be a shipping agent during the same fiscal year in which it, or its affiliate, provides ocean transportation-related services. If the definition of affiliate were expanded as proposed, presumably more firms would be subject to this prohibition. The proposal was intended to prevent a participant from selecting a firm as shipping agent because that firm could offer ocean transportation-related services at a discount.

One comment argued that there was no reason to be concerned because an independent but indirectly affiliated company acting as a title I shipping agent could not derive inappropriate benefits from a related entity providing wholly different services with respect to, for example, title III shipments. This comment also recommended CCC return to the practice of determining conflicts of interest on a "transaction-by-transaction" basis, an approach followed prior to the Food, Agriculture, Conservation, and Trade Act of 1990. Two comments noted that the proposed expansion of the definition of affiliate would eliminate from competition any multinational freight forwarder, including at least one firm currently active as a shipping agent.

FAS has determined not to expand the affiliate definition in this rule because it may, in fact, hinder operations under other assistance programs. Although it is theoretically possible, for example, that a firm providing inland transportation services overseas could influence selection of its "affiliated" shipping agent through the prospect of discounted services, we have no reason to believe this has taken place. Thus, there is no empirical basis to justify expanding the definition of "affiliates," especially where to do so would reduce the number of firms able to provide ocean transportation-related services in other programs, such as titles II and III of Public Law 480, or would reduce the number of firms from which participants may select a shipping agent.

Section 407(c)(4) of Public Law 480 requires that CCC analyze the potential for conflict of interest over the term of a fiscal year, rather than on a transaction-by-transaction basis. Therefore, returning to the transaction-by-transaction basis is not an option available to CCC.

Another comment proposed that FAS expand the definition of affiliate to cover all situations where two legal entities are owned by the same individuals and operate from the same offices using the same employees.

Although FAS is not adopting a rule that would automatically consider two firms in this situation as affiliates, FAS will investigate questionable situations to determine if two firms may legally be considered as one firm or if one firm may be considered as the *alter ego* of an officer or director of another company when applying the existing affiliation rules. We also note that the existing "affiliate" definition includes firms with common officers or directors or investments between firms and these

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factors would likely encompass the situation suggested by the comment.

Subcontractors of A.I.D. Freight Agents. One comment argued that subcontractors of freight agents employed by the Agency for International Development (A.I.D.) should be eligible to act as title I shipping agents because section 407(d)(3) of Public Law 480 did not specifically refer to subcontractors; and that to preclude such subcontractors from participating as title I, Public Law 480 shipping agents would be an unwarranted extension of the statute.

The proposed rule specifically precluding subcontractors of freight agents employed by A.I.D. from acting as shipping agents under title I, Public Law 480 is a codification of FAS's prior interpretation of the scope of section 407(d)(3). See 47 FR 53609. This interpretation, concurred in by A.I.D., is reasonable given the subcontractor's active involvement in arranging ocean transportation.

No Competitive Advantage. The proposed rule included a prohibition against shipping agents affording competitive advantage to any particular supplier of commodities or ocean transportation. One comment suggested the rule should prohibit limiting competition among suppliers of commodities or ocean transportation by artificially or unreasonably restricting the quantity purchased or size of vessel which can be offered. Such a specific prohibition is unnecessary because FAS reviews each proposed commodity and freight invitation for bids to eliminate any restrictions that cannot be justified as furthering the purposes of the title I program.

A second comment contended that the proposed rule was too broad and prohibited a prudent business person from maintaining regular contact with others in the business and unduly limited the exchange of information that could benefit an importing country in planning its purchases. The comment further questioned whether FAS could effectively enforce the prohibition.

This comment misinterpreted the proposed rule. The rule does not prohibit a shipping agent from gathering information, such as price trends or crop quality, from trade sources and passing the information to its principal. Nor does it prevent an agent from pursuing normal business contacts. The rule simply highlights an important aspect of the fair and impartial performance of an agent's duties. FAS will request investigations of alleged violations of this regulation; the agent may be suspended or debarred from the program if violations are established.

Independent Contractors. The proposed rule required that an independent contractor hired by a shipping agent to perform functions of a shipping agent must furnish to FAS the same information and documentation as the agent. One comment stated that this rule was too loosely drafted and encompassed certain unintended relationships; *i.e.*, a shipping agent may hire "independent contractors" to perform any of a number of services.

FAS disagrees and has adopted the proposed rule as written because it clearly specifies that the requirement applies only to persons hired by a shipping agent "to perform functions of a shipping agent." This very narrow category of persons should be subject to the same standards as the shipping agent itself to prevent evasion of the regulations.

Payment or Other Benefit. The proposed rule prohibited participants from receiving certain enumerated benefits, such as office space, equipment, and travel expenses, from the agents they selected. This was intended to make it more likely that participants would select agents on merit and to eliminate the possibility that participants might favor larger companies, which could more easily afford to offer these benefits. One comment, submitted by a small firm, objected to this provision because it would prevent a participant from financing trips to the United States by potential buyers, thus stifling an important opportunity for market development. The commentor recommended that the rule permit certain payments, such as reasonable travel expenses directly related to the procurement of commodities.

FAS will not adopt the rule as proposed because improper actions or payments made in connection with the selection of a shipping agent would already be prohibited by the Foreign Corrupt Practices Act. Also, while the efficient operation of the title I, Public Law 480 program would suffer from incompetent agents, FAS cannot conclude that the payment of benefits which are consistent with existing law results in the use of incompetent agents.

CCC will, however, change the current rule by prohibiting "payments, kickbacks, or other illegal benefits" in connection with the agent's selection so that the rule, consistent with other existing laws, clearly encompasses any corrupt financial payment to a country in connection with the agent's selection. This adequately protects CCC's financial interest in the program.

Limitation on Brokerage Payments. The proposed rule would have capped a shipping agent's commission at ⅔ of the maximum total commission which CCC can finance (2.5% of the value paid for freight) in order to allow for a commission to a shipping broker under the cap. A number of comments from shipping agents stated that such a cap would drive some shipping agent firms out of business; would not reduce freight rates; and would not have any effect on the decision of vessel owners whether to use a ships broker in offering a vessel. Other comments, primarily from ships brokers, urged that FAS change the rule to limit the shipping agent's commission to 1.25% (one-half of the maximum commission which CCC can finance) even if the vessel owner does not use a ships broker in the transaction.

The comments suggest that any reduction in freight rates as a result of a cap on shipping agents' commissions is unlikely. Absent this benefit to the program, FAS does not see any need to change the current regulations because we have not identified any adverse impact on the program from the existing regulation.

Contracts Required. FAS proposed to require that suppliers of ocean transportation furnish, if requested by FAS, copies of relevant lightening, stevedoring and bagging contracts, whether or not CCC financed ocean freight or ocean freight differential in connection with the voyage. Since the final rule no longer contains the limitations on commissions and affiliates that were published in the proposed rule, this requirement will apply only when CCC is financing a portion of the ocean freight. FAS has revised the final rule to clarify that it is the supplier of ocean transportation which must provide these contracts, if requested by CCC. USDA will not delay issuance of the commodity supplier's copy of the Form CCC–106 pending receipts of the contracts. FAS will use this information in monitoring compliance with the supplier reporting requirements contained in § 17.12 of the regulations.

However, CCC will require, as proposed, that, when CCC finances any part of the ocean freight, the participant or its agent must provide copies of liner booking notes to USDA before USDA releases Form CCC–106. This will also continue to be the practice with respect to copies of charter parties.

Non-Reversible Laydays and Despatch. Currently, CCC shares despatch with the participant and laydays are reversible. The proposed rule provided that CCC would share despatch earnings at the load port with the commodity supplier thereby encouraging quicker loading and lower freight rates. Comments suggested that CCC should not share in any despatch since it is not involved in loading and discharge operations. These comments also suggested that the vessel operator should pay despatch to the commodity supplier at loading and to the charterer at discharge, pointing out that such a change would more closely reflect commercial practices and possibly expedite vessel operations.

CCC agrees with these comments. Accordingly, the few rule eliminates CCC's sharing in any despatch earnings. With this change, title I procedures in this regard will follow those of the title III, Public Law 480 program administered by A.I.D.

Several other changes to the rule follow from this change. There is no longer any need for CCC to delay payment of the final 5 percent of the ocean freight or ocean freight differential pending completion of demurrage/despatch calculations. Therefore, the final rule also provides that 100% of the ocean freight or ocean freight differential is payable when the vessel and cargo arrive at the first port of discharge, and, in the event of a force majeure, 100% of the freight will be payable. Further, the amount of security that CCC will require before it advances payments for ocean freight or ocean freight differential is increased from 95% to 100% to reflect the increased freight payable on arrival. Participants and vessel owners should recognize that, because CCC will not share in despatch, CCC will not be responsible for resolving disputes involving calculation of laytime or payment of demurrage or despatch.

The final rule adopts non-reversible laydays to reflect the fact that different parties will be sharing in despatch at load and discharge. Several comments noted that a change to non-reversible laydays would disadvantage importing countries because these countries may be more likely to owe demurrage if they cannot offset time lost at discharge against time gained at loading. FAS proposed this change in order to reflect commercial practices in the shipping trade that would benefit title I, Public Law 480 by reducing freight rates. Countries which can turn vessels around quickly at the discharge port will benefit by retaining the entire despatch earned.

Commodity Letters of Credit. The proposed change in § 17.15(h)(1) addressed a specific situation that occurred under the tile I program. Suppliers of ocean transportation under title I have issued bills of lading containing a provision noting a lien on the cargo if they have loaded commodities before they have been advised that an acceptable freight letter of credit has been opened to their benefit. This has unfairly delayed commodity suppliers from receiving payment from the bank because letters of credit typically contain a documentary requirement for a "clean bill of lading." This practice, if allowed to continue, could have increased program costs by placing an unreasonable burden on commodity suppliers. The final rule adopts the proposal to specifically require that commodity letters of credit allow for payment even if the bill of lading states that the vessel owner has a lien on the cargo. The vessel owner may include such a statement on bills of lading and, of course, may refuse to load and may claim detention if there is no freight letter of credit.

Miscellaneous Change to Supplier Reporting Requirements. The proposed rule also added, as a clarification, a list of specific items that must be reported to CCC pursuant to section 17.12 of the regulations. This section implements section 407(b) of Public Law 480. In reviewing this matter, FAS has determined that it would also be helpful to the trade to specify that suppliers must also report payments to foreign governments or their agencies. While FAS has interpreted the current regulations to require reports of payments to foreign government agencies (because they fall within the class of persons included in the term "representative of the importer or participant"), FAS believes that this interpretation should be reflected in the regulations. Therefore, the final rule amends § 17.12 of the regulations by specifying that suppliers must also report payment of commissions, fees or other compensation to the participant, or any agency of the participant.

Effective Date

The provisions of this rule shall apply to contracts entered into under purchase authorizations issued on or after January 8, 1996 and to USDA acceptance of nominations of shipping agents received after January 8, 1996 covering services provided during U.S. fiscal year 1996 (October 1, 1995–September 30, 1996) and each U.S. fiscal year thereafter.

Paperwork Reduction Act

Most reporting and recordkeeping requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0005 to this information collection. Reporting and recordkeeping requirements in this final rule that have not been previously approved by OMB are not effective until approved by OMB.

List of Subjects in 7 CFR Part 17

Agricultural commodities; exports; finance; maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 7 U.S.C. 1701–1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

2. The zip codes "20250–1000" is revised to read "20250–1033" each time it appears in §§ 17.1(f), 17.7(c)(4)(i), 17.10(b)(5), 17.14(c)(2) and paragraphs (B)(6)(a) and (F)(4)(a) in Appendix A.

3. Section 17.2 is amended by removing definitions of "ASCS" and "ASCS offices" in paragraph (a) and adding definitions of "FSA" and "FSA offices" in alphabetical order, and by adding definitions of "expediting services," "ocean transportation brokerage," and "ocean transportation-related services" in paragraph (c) to read as follows:

§ 17.2 Definitions of terms. * * *

(a) *Terms relating to the United States, its agencies and officials.*

* * * * *

"FSA" means the Farm Service Agency, U.S. Department of Agriculture.

"FSA offices" means the FSA offices listed in § 17.21 and any other offices or agencies which may succeed to the functions of these offices.

* * * * *

(c) *Other terms.*

* * * * *

Expediting services means services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

* * * * *

Ocean transportation brokerage means services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services means furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at

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load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

* * * * *

4. Part 17 is provided by revising the term "ASCS" to read "FSA" wherever it appears.

5. Section 17.5 is amended by changing the term "Assistant General Sales Manager" to read "Deputy Administrator, Export Credits" in paragraph (a)(1), (d)(1) and (2), (e), and (g)(1) and (2), removing and reserving paragraph (a)(3), revising paragraph (a)(4), adding a new paragraph (a)(5), adding "section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985," after "any title of the Act," in paragraphs (b)(2) and (3), revising paragraphs (c)(7) and (8), and revising the last sentence of paragraph (d)(2) to read as follows:

§ 17.5 Agents for the participant or importer.

(a) *General.*

* * * * *

(3) [Reserved]

(4) A freight agent employed by the Agency for International Development under titles II and III and is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(5) A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

* * * * *

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, the following information or documentation as may be applicable:

* * * * *

(7) For USDA acceptance of a nomination covering services provided during U.S. fiscal year 1996 (October 1–September 30) and each U.S. fiscal year thereafter, a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer. (See also § 17.8(c)(8), which prohibits address commissions or payments); and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.*

* * * * *

(2) * * * USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraph (c)(7) of this section.

* * * * *

6. The address of the Kansas City FSA Commodity Office is revised to read "U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141–6205" in §§ 17.7(c)(4)(iii), 17.14(c)(1), and paragraphs (V)(1), (6) and (10) and paragraphs (W)(1), (6) and (10) in Appendix A.

7. Section 17.7 is amended by adding the following text at the end of paragraph (c)(6):

§ 17.7 Eligibility of suppliers and selling agents.

* * * * *

(c) *Commodity suppliers (approval).*

* * *

* * * * *

(6) * * * Such performance security shall be in addition to the amount of the standard performance security required of all offerors in the Invitation for Bids. This additional performance security shall conform to the requirements in the Invitation for Bids for the performance security, and may be combined with the standard performance security into a single performance security. Upon successful completion of one or more contracts by the supplier, CCC may remove the requirement for the additional performance security.

§ 17.10 [Amended]

* * * * *

8. Section 17.10 is amended by revising the telephone number to read "(202) 720–5780" in paragraph (a) introductory text and in paragraph (b)(5).

9. Section 17.12 is amended by revising paragraph (a), and revising the last sentence of paragraph (c) to read as follows:

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act, and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential with respect thereto is financed by CCC, shall report to the General Sales Manager any commission, fee or other compensation of any kind which in connection with the supplying of such commodities or vessels is paid or to be paid by the supplier to any agent, broker, consultant or other representative of the importer or participant; to the participant; or to any agency, including a corporation owned or controlled by the importer or participant, to which the supplier furnishes such commodities or vessels. This includes, but is not limited to, payments to such entities for services such as lightening, stevedoring, discharging, and bagging if such services are included in the ocean freight contract as being for the account of the vessel owner; freight commissions; address commissions; bank commissions; inward freight commissions; agency fees; consular fees; stevedoring overtime; brokerage fees; dispatcher's fees; outport agent's services; freight forwarding fees; supervision fees and payments for expediting services.

(3) Suppliers shall report any such payment delivered to an agent, broker, or other representative of the importer or importing country even if the payment is not designated for the agent.

* * * * *

(c) *Reporting.* * * * Suppliers shall submit reports to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250–1001.

* * * * *

10. Section 17.14 is amended by revising the introductory text of paragraph (d), removing the first sentence of the introductory text in paragraph (e), revising paragraph (e)(3), revising "95 percent" to read "100 percent" in the first sentence of paragraph (e)(4) and removing the second and third sentences of paragraph (e)(4), removing paragraph (e)(5) and redesignating paragraph (e)(6) as (e)(5), removing paragraph (k)(8), revising the heading of paragraph (l) revising paragraphs (l) (1) and (2), removing and reserving paragraphs (l) (3) and (4), revising paragraphs (l) (5) and (6), revising "95 percent" to read "100 percent" in the second sentence of paragraph (l)(7) and the first sentence of paragraph (l)(8), removing the second and third sentences of paragraph (l)(8), revising paragraph (m), and removing and reserving paragraph (n) to read as follows:

§ 17.14 Ocean transportation.

* * * * *

(d) *Advice of vessel approval.* USDA will give written approval of charters and liner bookings on Form CCC–106, Advice of Vessel Approval. The Form CCC–106 will state whether the vessel is approved as a dry cargo liner, dry bulk carrier, or tanker, and whether CCC will finance any part of the ocean freight. If CCC agrees to finance any portion of the ocean freight, the importing country or its agent shall forward a copy of the charter party or liner booking note immediately after execution to the Director, P.L. 480 Operations Division, FAS (or the Director, Kansas City FSA Commodity Office, for cotton), for review and approval prior to issuance of Form CCC–106–2, CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging contracts for any voyage for which CCC finances ocean freight or ocean freight differential. USDA will issue Form CCC–106, Advice of Vessel Approval, as follows:

* * * * *

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.*

* * * * *

(3) The ocean freight is earned and that 100 percent thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(7) of this section results in the loss of part of the vessel's cargo, 100 percent of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

* * * * *

(1) *Reimbursement for ocean freight or ocean freight differential separately financed.* (1) When the Form CCC–106 states that a notice of arrival is not required, CCC will reimburse 100 percent of the ocean freight or ocean freight differential, as appropriate, upon presentation of required documents.

(2) When the Form CCC–106 states that a notice of arrival is required, CCC will reimburse up to 100 percent of the ocean freight or ocean freight differential, as appropriate, before the vessel arrives at the first port of discharge if the supplier has furnished CCC, as security, a letter of credit, acceptable in amount and form to CCC and issued by a U.S. bank.

(3) [Reserved]

(4) [Reserved]

(5) The amount of security required by CCC under paragraph (2) of this section may be computed as follows: 100 percent of the ocean freight or ocean freight differential, as appropriate, on the basis of either:

(i) The tonnage stated in the charter party (without tolerance), if the supplier does not furnish to CCC a copy of the ocean bill of lading, or

(ii) The tonnage shown on the ocean bill of lading, times the ocean freight rate or ocean freight differential rate, as appropriate, shown on the related Form CCC–106, if the supplier furnishes to CCC a copy of the ocean bill of lading.

(6) On receipt of an acceptable letter of credit, the Controller will waive the notice of arrival requirement established by § 17.18(d)(2).

* * * * *

(m) *Demurrage/Despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) [Reserved]

* * * * *

11. Section 17.15 is amended by revising the first sentence of paragraph (h)(1) to read as follows:

§ 17.15 Letter of commitment method of financing.

* * * * *

(h) *Issuance of letters of credit.* * * *

(1) *General.* The application or request for, and any agreement relating to, any letter of credit issued, confirmed, or advised in connection with a letter of commitment to a banking institution, may contain such provisions as the approved applicant and the banking institution may agree on, and the approved applicant and the banking institution may agree to any extension of the life of, or any other modification of, or variation from, the provisions of any such letter of credit: *Provided,* That such provisions and any such extension, modification or variance shall be in no respect inconsistent with or contrary to the provisions of the letter of commitment; in the event of any such inconsistency or conflict, the provisions of the letter of commitment shall prevail with respect to CCC financing: *And provided further,* That when a letter of credit provides for acceptance of time drafts, such letter of credit (or application therefor) shall specify that the discount and acceptance fees shall be for the account of the importer: *And provided further,* That commodity letters of credit must allow payment to the commodity supplier even if the bill of lading states that the vessel owner has placed a lien on the cargo. * * *

* * * * *

§ 17.18 [Amended]

12. Section 17.18 is amended by removing paragraph (d)(6) and redesignating paragraph (d)(7) as (d)(6).

13. Section 17.21 is revised to read as follows:

§ 17.21 FSA Offices.

(a) Kansas City Commodity Office, FSA, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(b) Financial Management Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

14. Section 17.22 is revised to read as follows:

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§ 17.22 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

§ 17.23 [Removed]

15. Section 17.23 is removed.

Signed at Washington, DC on August 22, 1995.

Christopher E. Goldthait,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 95–29527 Filed 12–6–95; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Marketing Service

7 CFR Part 52

[FV–95–328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the existing U.S. standards for frozen okra to remove references to trimmed pods. This change will allow producers of frozen okra the option to pack whole and cut okra without trimming. Also, a conforming change is made to language in the standards removing the reference to "apparent untrimmed pods." This change enables the frozen okra industry to produce frozen okra more efficiently and better meet market needs.

DATES: Effective December 7, 1995. Comments received by January 8, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–4693. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the United States Standards for Grades of Frozen Okra (7 CFR Part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1622, 1624), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

The Department is issuing this rule in conformance with Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challange to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96–354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The American Frozen Food Institute (AFFI) has petitioned for emergency relief from a requirement in the United States frozen okra standards. AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States. The frozen okra industry requested that USDA revise the grade standards for frozen okra so that producers of frozen okra will have the option to pack whole and cut okra without trimming and still meet the requirements of the United States Standards for Grades of Okra. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards for frozen okra in contract requirements.

When the United States grade standards were first issued, okra was cut by hand. With the advent of mechanical harvesting, the techniques of harvesting have changed. Also processing equipment, including electronic sorters, has improved the quality such that the frozen okra industry can control quality more effectively without extensive handling.

Moreover, AFFI stated in its petition to revise the standards that since the frozen okra standards were last revised in 1969, new varieties have been established which leave the stems edible and tender when harvested with pods of the desirable length for freezing. AFFI noted that all other forms of whole okra including fresh, pickled, etc., are marketed untrimmed. AFFI also stated that the cost associated with trimming frozen whole okra was approximately $.0625 per pound of okra. Based on 1994 United States production of 65,114,000 pounds of frozen okra sold, trimming okra costs U.S. processors of frozen okra approximately $4,069,625 each year. AFFI claimed that in the time it takes to revise the frozen okra standard through ordinary channels, frozen okra processors could incur costs of more than $8 million.

Based on all the information received, USDA is changing the grade standards by amending the product description in §§ 52.1511 and 52.1512, Styles, in the United States Standards for Grades of Frozen Okra. Also, in § 52.1517(c)(5)(i), "apparent untrimmed pods" is removed from the standards as a defect since it no longer applies.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen okra.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the **Federal Register** because the harvesting season for okra has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, may reduce costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received within the comment period prior to finalizing this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS[1]

Subpart—United States Standards for Grades of Frozen Okra

1. The authority citation for Part 52 continues to read as follows:

Authority: 7 U.S.C. 1622–1624.

2. § 52.1511 is revised to read as follows:

§ 52.1511 Product description.

Frozen okra is the product prepared from clean, sound, succulent, and edible fresh pods of the okra plant (Hibiscus esculentus) of the green variety. The product may or may not be trimmed, is properly prepared and properly processed, and is then frozen and stored at temperatures necessary for preservation.

§ 52.1512 [Amended]

3. In § 52.1512, paragraph (a) immediately following the words "consists of trimmed" the words ", or untrimmed" are added and in paragraph (b) the words ", or untrimmed" are added after the words "is trimmed".

§ 52.1517 [Amended]

4. § 52.1517 is amended by removing paragraph (c)(5)(i) and redesignating paragraphs (c)(5)(ii) through (c)(5)(vi) as paragraphs (c)(5)(i) through (c)(5)(v), respectively.

Dated: December 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29790 Filed 12–06–95; 8:45 am]

BILLING CODE 3410–02–P

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

7 CFR Part 52

[FV–95–329]

United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the existing U.S. grade standards for Frozen Field Peas and Frozen Black-Eye Peas and removes the color attributes requirements for frozen black-eye peas and frozen cream peas to have "obvious green color". This change allows producers of frozen field peas and frozen black-eye peas the option to pack black-eye peas and cream peas without the requirement that these peas have an "obvious green color". The requirement for obvious green colored peas has forced changes in current harvesting practices and required that food processors supplement their pack with imported peas, of similar varieties, in order to meet the "Grade A" color requirement. Removing the requirement for green color resolves this issue for the industry since crops are harvested later in the season under current harvesting practices. This revision enables the frozen food industry to produce frozen black-eye peas and frozen field peas more efficiently.

DATES: Effective December 7, 1995. Comments received by January 8, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, PO Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, PO Box 96456, Washington, DC 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas (7 CFR part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1622, 1624), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The American Frozen Food Institute (AFFI) has petitioned for emergency relief from a requirement in the United States grade standards for frozen field peas and frozen black-eye peas. AFFI is a trade association representing over 560 food industry companies that accounts for over 90 percent of frozen food production in the United States. The frozen food industry requested USDA revise the grade standards to bring it in line with current harvesting and marketing practices. This would give economic relief to the frozen field pea and black-eye pea industry.

The U.S. grade standards are voluntary standards. However, there is widespread use of the standards in contracts.

When these grade standards were promulgated in 1976, it included a "Grade A" color requirement for frozen black-eye peas and cream peas that approximately 14 percent of these type peas have an obvious green color. This requirement was applicable when hand harvesting techniques forced growers to harvest their crops earlier in the growing season which allowed for a high percentage of immature peas. Today, modern mechanical harvesting techniques allow growers to harvest these types of peas with more mature pods that are easily shelled.

The requirement for these types of peas to have an obvious green color has caused undue economic stress on the industry. Frozen field pea and black-eye pea processors must purchase imported, hand-harvested peas and blend them with domestic crops to meet the "Grade A" color requirement. AFFI estimates that 10 million pounds of imported peas must be purchased by U.S. processors per year at an approximate annual cost of more than $2 million.

Based on all the information received, USDA is amending Section 52.1669 in the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas by removing the color attributes requirements for frozen black-eye peas and frozen cream peas from the text and Table III of this section.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

This change is expected to facilitate marketing of frozen field peas and frozen black-eye peas.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the **Federal Register** because, the harvesting season for field peas and black-eye peas has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, also reduces costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received within the comment period prior to finalizing this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to amend 7 CFR part 52 to read as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS[1]

Subpart—United States Standards for Grades of Frozen Black-eye Peas and Frozen Field Peas

1. The authority citation for Part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622–1624.

2. In § 52.1669, paragraphs (a), (b), and Table III in paragraph (c) are revised to read as follows:

§ 52.1669 Classification of color and grade compliance.

(a) *General.* The requirement for "color attributes" is applicable for Grade A classification only. "Color attributes" do not apply to units of black-eye peas, cream peas, or units of "snaps" in the style of "frozen peas with snaps."

(b) *Color attributes.* "Color attributes" are defined as follows:

(1) "Crowder peas." Each unit with a color that is characteristic of very young peas.

(2) "Field peas" and "mixed types." Each unit with a color that is characteristic of very young peas.

(c) * * *

TABLE III.—COLOR ATTRIBUTES

Absolute limit (AL)	Minimum number permitted	
	73	119
Number of sample units	Field peas, and mixed types	Crowder peas
1	84	133
2	175	276
3	268	421
4	362	566
5	456	712
6	551	859
7	646	1006
8	741	1153
9	837	1148
10	932	1596
11	1028	1596
12	1124	1744
13	1220	1892
14	1315	2040
15	1411	2188
16	1508	2336
17	1604	2485
18	1700	2633
19	1796	2782
20	1892	2930

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

TABLE III.—COLOR ATTRIBUTES—Continued

Absolute limit (AL)	Minimum number permitted	
	73	119
Number of sample units	Field peas, and mixed types	Crowder peas
21	1989	3079
Acceptable quality Level (AQL)[1]	14.0	21.50

[1] Based on an average count of 1400 units for "White Acre" peas and 700 units for all other types per 10 ounce package.

Dated: December 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29791 Filed 12–6–95; 8:45 am]

BILLING CODE 3410–02–P

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB43

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Small Grains, Cotton, Extra Long Staple Cotton, Sunflower Seed and Coarse Grains Crop Insurance Provisions, applicable beginning with the 1996 crop year for spring planted crops with contract change dates on or after the effective date of this rule, by revising prevented planting coverage. The intended effect of this regulation is to expand prevented planting benefits available under the various policies being amended.

DATES: The effective date of this rule is November 30, 1995. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996.

ADDRESSES: For information collection comments submission, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the

Cost-Benefit Analysis and Regulatory Flexibility Analysis to the General Crop Insurance Regulations; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations for implementation of the prevented planting provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for Small Grains is July 1, 1998; Coarse Grains, Cotton, Extra Long Staple Cotton and Sunflower Seed is March 1, 1999; Hybrid Seed is October 1, 1997; Hybrid Sorghum Seed is May 1, 2000; and Rice is August 29, 1998.

This rule has been determined to be "economically significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Cost-Benefit Analysis is completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected Treasury costs of these changes are expected to range between $2.1 and $20.8 million. Added costs are due to higher reimbursements to reinsured companies and for premium subsidies for producers. The estimates assume the majority of producers will decline the coverage for the substitute crop, opting instead for a reduced premium on the intended crop. Nationwide, premium rates will increase 6 to 7 percent for the added coverage. As examples of monetary impacts, this means an average increase in the producer paid premium of 20–25 cents per acre for wheat in the Northern Plains; 30 cents for corn in Iowa; and 60–90 cents per acre for upland cotton. However, the premium rate increases will not be uniform. Instead, the highest risk areas (such as lowlands along rivers and similar conditions) can expect greater increases in premium to cover the added risk. Producers who farm such lands are expected to be the primary group that will retain this added coverage and elect to pay the additional premium. The changes to the prevented planting rules will provide producers with added assistance in extreme weather conditions in a manner that maintains the actuarial integrity of the Federal crop insurance program.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through February 28, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). Public comments are due by January 8, 1996.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Hybrid Seed Crop Insurance Regulations and Common Crop Insurance Regulations." The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting insurance options that apply to specific crops or specific areas in which a crop is produced. Potential respondents to this information collection are growers of crops that are eligible for Federal Crop Insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,750,015 respondents. The total annual burden on the public for this information collection is 2,668,750 hours. The total annual burden has increased from the 1995 requirements to reflect the paperwork burden on the reinsured companies.

Comments were invited on the information collection requirements during the proposed rule stage. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 8, 1996, on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Information Management Branch, Consolidated Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

The amount of work required of the insurance companies and FSA offices delivering the policies and the procedures therein may increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. Therefore, this action has been reviewed under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and a Regulatory Flexibility Analysis is available to interested persons at the address listed above.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal requirements of the National Appeals Division under

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Public Law 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule a producer who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates on or after the effective date of this rule, will be eligible to: (1) Receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop after the 10th day after the final planting date for the intended crop (10th day after the latest final planting date for each specific crop insured under the Small Grains Crop Provisions) and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer.

By this rule, the prevented planting provisions will also: (1) Allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required from 3 days after the final planting date, or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4) allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without affecting prevented planting benefits.

On Wednesday, November 8, 1995, FCIC published a proposed rule in the **Federal Register** at 60 FR 56257 to revise prevented planting coverage under various policies. Following publication of that proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. A total of 14 comments were received: 3 from Regional Service Offices; 5 from reinsured companies; 4 from crop insurance trade associations; 1 from a grower association; and 1 from a congressional office. The comments received and FCIC responses are as follows:

Comment: One comment received from the crop insurance industry indicated that the proposed changes for 1996 are less than timely, as 1996 training and marketing activities have already begun for the crops affected by the proposed rule. The comment recommends that FCIC move to process the final rule as soon as practical to minimize confusion in the 1996 crop year.

Response: FCIC agrees that the 1996 prevented planting regulations need to be published and implemented as quickly as possible.

Comment: Two comments received from the crop insurance industry recommended that whatever the final prevented planting provisions are, they should stand for the crop year without further change.

Response: FCIC agrees with the comment and is committed to limit changes unless deemed essential.

Comment: One comment received from the FSA stated that canola crop provisions need to be included and amended to conform to the 1996 prevented planting changes since the canola policy has prevented planting provisions.

Response: FCIC disagrees because canola is a pilot policy that has not been published in the **Federal Register**. No change will be made.

Comment: One comment received from the crop insurance industry noted that the term "Consolidated Farm Service Agency" is used in the provisions and that the term used should now be "Farm Service Agency."

Response: FCIC agrees and has made the necessary changes.

Comment: One comment received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act.

Response: The Office of General Counsel approved FCIC's proposed regulation for legal sufficiency. The short comment period was necessary due to pressure to provide an adequate program to producers by the applicable contract change dates. FCIC believes that adequate time was given for the public to comment, based on the number and length of comments received.

Comment: One comment received from the crop insurance industry indicated that administrative costs and errors and omission exposure will increase at the point of sale to the extent the provisions must be explained adequately.

Response: FCIC agrees that the provisions must be clearly communicated to avoid the exposures indicated in the comment. FCIC is making every effort to provide the new provisions as early as possible to allow adequate time for training, etc.

Comment: Four comments received from the crop insurance industry indicated the need to allow modification of the already approved 1996 Standard Reinsurance Agreement to recognize the increased administrative and underwriting costs associated with the increased benefits and potential adverse selection associated with this rule. This modification, in the form of an optional amendment, would allow the reinsured company the option of assigning policies with prevented planting losses to FCIC or to pre-designate that such policies will fall to a different fund and/or have a different retention percentage than that designated in the reinsured company's plan of operation. In addition, one of the comments proposes that provisions regarding excess loss adjustment expense that are being considered for the 1995 crop year be adopted for the 1996 Standard Reinsurance Agreement. One comment indicates that the proposal may be characterized as implementing into the subject policies the prevented planting benefits that were administratively adopted during the 1995 crop year, and that the changes made in 1995 appear to have significantly increased administrative and underwriting costs. One comment stated that reinsured companies must be provided with a means under the Standard Reinsurance Agreement to either cede the entire premium and losses associated with prevented planting to FCIC or to cede the premium and losses to a risk fund other than that in which the rest of a policy is placed. Until the adequacy of the rating can be tested, FCIC must bear all or substantially all of the risk of loss

(and any gain) associated with these policies if a company is unwilling or unable to. One comment stated that FCIC has failed to minimize moral hazard and has proposed a program that it expects will be adversely selected against and will therefore damage the integrity and actuarial soundness of the crop insurance program. Without providing private insured companies with a means to cede the increased risk associated with the proposed provisions entirely or almost entirely to FCIC, the proposed rule would force private companies to bear losses due to programmatic decisions which they had no control over.

Response: FCIC has promulgated premium rates that reflect the 1996 prevented planting provisions; thus, FCIC is not compelled to provided additional options to select among reinsurance funds or assume all the risk associated with the program change. Promulgation of premium rates prior to publication of this final rule was permissible because the actuarial material also contained the premium rate that would be used if this rule were not made final. The additional excess loss adjustment expenses provided for the 1995 crop year were made to offset the expense of loss adjustments when the Company had to re-open completed claims, and to clear a considerable number of notices of loss to determine if payable prevented planting claims existed. It was also expected that additional expense was incurred to re-train agents and loss adjusters on the prevented planting changes and loss procedures. FCIC believes that administrative expense reimbursement and excess loss adjustment expense provided under the Standard Reinsurance Agreement effective for the 1996 reinsurance year are adequate to cover such expenses for the 1996 crop year.

Comment: One comment received from the insurance industry indicated concern over whether enough premium differential is included in the prevented planting rates to adequately cover prevented planting payments on so called 0/92 acres. The comment indicated that providing both guaranteed deficiency payments and prevented planting payments invites policyholders to make an economic decision not to plant, and that these decisions will adversely impact the insurer. The comment indicated reservation over whether enough rate could be charged to counter this adverse selection opportunity.

Response: Guaranteed deficiency payments such as under the so called 0/92 and 50/92 programs are independent of crop insurance payments. Therefore, the risk of insurance against prevented planting should be unaffected. However, farm management decisions can be and should be made based on economics. The 0/92 and 50/92 benefits already have a significant influence on producer reaction. There now is a moral hazard that a producer may be influenced to collect a prevented planting payment in addition to the 0/92 or 50/92 payment; however, the extent of the moral hazard is unknown. That moral hazard is greatly influenced by the assessment of the 0/92 and 50/92 program in any given year. For example, if the guaranteed deficiency payments are decreased or expected to decrease, then the 0/92 and 50/92 program payments are also minimized and the moral hazard for additional prevented planting payments are likely to disappear. The reverse is also true if the guaranteed deficiency payments are expected to increase. Therefore, the moral hazard can only be approximated by adding an additional rate to counter the expected adverse selection potential of the dual payments. County rates were increased based on the probability that some additional losses will accrue given the influence of the so called 0/92 or 50/92 program.

Comment: One comment received from the legal counsel of a reinsured company indicated an inconsistency with the coverage provided and the Federal Crop Insurance Reform Act of 1994 (the "Reform Act"). The Reform Act indicates that for CAT coverage a prevented planting benefit will be paid only if a producer is unable to plant another crop. Current crop provisions and the proposed provisions provide a prevented planting benefit if a producer is prevented from planting the insured crop and elects not to plant a substitute crop.

Response: FCIC agrees that this issue must be analyzed and modifications made if found necessary. However, the comment is not germane to this rule because it applies to regulations already in place.

Comment: One comment received from the legal counsel of a reinsured company states that the proposed provisions are in conflict with section 506(o) of the Federal Crop Insurance Act (the "Act") which directs FCIC "to take such actions as are necessary to improve the actuarial soundness of the Federal multiperil crop insurance coverage." Reasons cited include: (1) Increased moral hazard, particularly if market prices (and/or yields) are expected to be low and net returns for a substitute crop or 0–50/92 benefits are expected to be high; (2) elimination of provisions that required prevented planting acreage to be prorated to all units that could have been planted to the insured crop; and (3) the addition of provisions that provide prevented planting benefits for producers who follow a double-cropping practice without sufficient premium to offset the risk.

Response: In addition to maintaining an actuarially sound insurance program, FCIC is mandated to maintain fair and effective coverage for agricultural producers. FCIC must also make the administration of its programs efficient and practical. Virtually all insurance providers have indicated that previous provisions requiring proration of eligible acreage were complex, unmanageable, and not fair to producers in many cases. Producers have been eligible to collect deficiency payments on planted acres and certain prevented planting acreage. There is no justification for denying those benefits when producers are eligible for crop insurance benefits provided premium rates reflect the increased risk of loss. FCIC has developed premium rates for prevented planting based on sound rating principles, including those prevented planting situations that may develop in double-cropping areas. If data is available indicating that rates are insufficient to offset the risk, FCIC requests submission of such data so that it can be reviewed and any necessary changes can be made.

Comment: One comment received from a commodity group and one comment received from the crop insurance industry stated that they have concerns about projected premium increases. They request that producers have the option of excluding prevented planting coverage in its entirety. Producers need to be able to assess the rate increase before purchasing crop insurance coverage to see if prevented planting coverage is economically feasible for them. They stated that the projected average cost increase is 6–8 percent and in some high rate areas may be as much as 20 percent. Producers cannot afford another premium increase.

Response: Prevented planting coverage was made an integral part of the policy following the 1993 crop year to lessen the need for ad hoc disaster assistance for growers who were prevented from planting. If allowed to opt out of the coverage, FCIC believes that large numbers of growers would exclude the coverage. This assessment is based on the experience of 1993. This would result in a great deal of pressure either to institute insurance coverage after a loss has occurred or a great deal

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of pressure for some other form of financial assistance.

Comment: One comment received from members of the House of Representatives of the United States Congress stated that most of West Texas has been given a large multiperil rate increase on cotton that producers simply cannot afford. They have been informed that some counties have suffered as much as a 20 percent rate increase for 1996. They stated that the provisions suggest that the primary benefits account for a 6–7 percent rate increase even if the secondary coverage is rejected. The impact analysis estimates the majority of producers will decline the coverage for the alternate crop, opting instead for a reduced premium on the intended crop. They stated that the prevented planting benefits appear to account for at least 13 percent of the 20 percent rate increase. They feel the prevented planting provisions should be modified to allow producers to reject all prevented planting coverage in return for an additional reduction in premium in the amount of the 6–7 percent FCIC claims the primary coverage for prevented planting is worth. They stated that producers cannot afford a premium increase to pay for prevented planting coverage they do not need. In 1995, West Texas experienced a rate increase that was largely absorbed by a 30–42.5 percent increase in subsidy payments. The 1996 rate increase will be borne by producers alone. This increase is an unnecessary burden on the agricultural community.

Response: The rate increase not associated with the 1996 prevented planting program change is necessary to make the cotton crop insurance program actuarially sound. Primary prevented planting benefits account for only 0.2 percent to 0.4 percentage points of premium rate. Therefore, growers opting out of the primary prevented planting coverage would receive a very small credit. FCIC believes that basic prevented planting coverage should remain an integral part of the policy to ensure growers are covered in the event that prevented planting occurs (also see response to comment above).

Comment: Seven comments received from the crop insurance industry and one comment received from FSA recommended amending the definition of prevented planting because: (1) The definition includes reference to "most producers in the surrounding area" and the term "most" is not defined. As a result there is no way to apply the definition to any particular policyholder when there is a dispute over whether or not planting was actually prevented; (2) The day after the final planting date, a producer could plant a substitute crop and receive a prevented planting benefit; and (3) The provisions must require prevented planting conditions to have to exist through the whole late planting period before any prevented planting payment is due because: (a) Prevented planting should never have been allowed for producers who quit planting by the final planting date and made no effort to plant within the late planting period; (b) allowing the producer to declare prevented planting on the day after the final planting date defeats the purpose of the late planting provision and submits the program to unwarranted risk; (c) the producer may not plant an alternative crop or enter into 0/92 until after the late planting period has expired for the original crop and still collect a prevented planting payment (with the obvious requirement that weather conditions continue to prevent planting in the late planting period); (d) the prevented planting payment payable when an alternative crop is planted must be reduced from that level available if no alternative crop is planted; (e) in no circumstance could the producer switch to an alternative crop prior to the end of the late planting period and still collect a prevented planting payment (they would be free to plant whatever crop they wanted at any time, they just should not expect to collect a prevented planting payment on the original crop if they do not go through the late planting period of the original crop); and (f) moral hazards and abuse are created when producers are allowed to collect a substitute crop immediately after the final planting date. In most cases producers will plant the crop into the late planting period as a normal practice, but now we have created a disincentive to do so.

Response: FCIC agrees that a more definitive term than "most" should be used and has replaced it with the term "majority" to reflect that more than 50 percent of the producers must have been prevented from planting.

This definition was designed to accommodate extremely varied production areas and farming practices; including those in which growers do not plant after the final planting date and those in which growers often do plant a crop within the late planting period. Some farming areas have relatively short growing seasons which make the prospect of a successful crop doubtful if planted much beyond the final planting date. Other areas have much longer growing seasons and often allow a successful crop to be grown even if planted after the final planting date. In both long and short growing areas, some farming practices, such as the production of silage, allow a grower to plant after the final planting date and still produce an acceptable crop. Changing the definition to require that prevented planting conditions must have existed through the end of the late planting period before any prevented planting coverage would be provided would not accommodate growers who normally do not plant after the final planting date.

FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC has amended these regulations to specify that prevented planting coverage will not be provided when a producer, prevented from planting the initially intended crop, plants a substitute crop within ten days after the final planting date for the initially intended crop.

Comment: One comment received from the crop insurance industry suggested that FCIC's actuaries re-evaluate: (1) When the late planting period should start (i.e., final planting date); (2) whether the late planting period should be shortened; and (3) whether or not eligibility for a prevented planting payment should trigger at the time that shortened period is exhausted.

Response: These evaluations are on-going. FCIC requests that any person who has data affecting these matters make it available for consideration.

Comment: One comment received from a commodity group stated that they oppose the lower percentage level of insurance guarantee proposed for prevented planted cotton compared to other commodities. They contend the criteria that should be used to determine coverage for prevented planting should be applied consistently among commodities.

Response: Data used by FCIC to determine prevented planting benefits indicated cotton producers incur a larger percentage of total production costs after planting than do producers of corn and other grain crops. Additional post-plant costs incurred by cotton producers include those for pest control and the costs associated with the ginning and handling of cotton. Therefore, no change will be made. FCIC is willing to work with producer groups and other interested parties to review existing data to revise levels of benefits when analyses indicate it is necessary.

Comment: One comment received from the crop insurance industry recommended increasing the standard

prevented planting payment from the current 50 percent to 60 percent.

Response: The prevented planting payment of 50 percent adequately compensates the producer for the loss of production, taking into consideration cost, not incurred. FCIC has discovered that increasing the standard prevented planting payment reduces the incentive for producers to plant the intended crop by the end of the late planting period when it is possible and increases the cost to the program. Therefore, FCIC will not change the standard prevented planting payment.

Comment: One comment received from counsel for a reinsured company on behalf of the crop insurance industry stated that the Reform Act contains a provision that allows a reduction in the benefit amount paid to a producer to reflect out-of-pocket expenses not incurred by a producer as a result of not planting, growing, or harvesting the crop for which a prevented claim is made. The comment indicates that this proposed rule is silent regarding this requirement for limited and additional coverage, but that FCIC is required by the Reform Act to include this provision for CAT coverage.

Response: Prior to enactment of the Reform Act, prevented planting production guarantees for all coverages and crops were at least 50 percent lower than the guarantee for a timely planted crop to avoid compensating producers in excess of their actual losses and provide actuarially sound coverage. This has not changed.

Comment: One comment received from the crop insurance industry stated that the inclusion of drought as an insurable peril and lack of any firm definitions or procedural guidelines subjects the Company and FCIC to abuse and fraud.

Response: FCIC does not believe that inclusion of drought as an insurable peril substantially subjects the company and FCIC to abuse and fraud. The burden is on the producer to prove that drought prevented a producer from planting. Further, the Soil Conservation and Extension Services have advised producers on occasion not to plant because it was so dry that planting the ground could result in severe wind erosion. The rule also requires a majority of producers to be affected by the cause of loss.

Comment: One comment received from the crop insurance industry recommended that in an effort to increase the incentive to plant the original crop as opposed to simply collecting insurance and farm program benefits, it might be advisable to consider reducing the late planting period from 25 to 20 days, with the reductions in guarantees over the 20 days totalling 25 percent, to leave the person with a guarantee equal to 75 percent of their original level—(i.e. 1 percent per day for the first 10 days and 1.5 percent per day for the second 10 days).

Response: Under the current formula, the production guarantee is reduced only 1 percent for each of the first ten days and 2 percent for days 11–25. FCIC believes this formula provides adequate incentive for producers to plant crops early in the late planting period to keep their insurance production guarantee at the highest level possible. Changing the length of the late planting period and the percents of reduction could result in over insurance and increased crop insurance indemnities. Therefore, no change will be made.

Comment: One comment received from FSA recommended that acreage that is planted to the insured crop after the late planting period be designated as late planted with a 50 percent reduction in guarantee. They stated that it is very confusing to have this acreage designated as prevented planting.

Response: If acreage is prevented from being planted through the late planting period due to an insurable cause of loss, and is planted to the insured crop after the late planting period, the acreage will receive a 50 percent reduction in guarantee and must be reported as prevented planting acreage. This information is needed by FCIC for analytical purposes in reviewing crop insurance premium rates. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended that the cover crop planted on prevented planting acres could only be hayed or grazed by the producer's own livestock. The producer could not sell hay or charge others to let livestock graze.

Response: FCIC disagrees because it increases costs, is administratively difficult to enforce, and is contrary to legislative directives to simplify procedures. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry indicated that the "background" section of the proposal indicates that prevented planting acreage may be planted to a conserving use cover crop that may be hayed and grazed without limitation, but that the actual policy language indicates only that a cover crop not for harvest may be planted. The comment suggests modifying the policy language to indicate that haying and grazing is permissible if this is the intent.

Response: Paragraph 12(a)(3)(i) of the Hybrid Sorghum Seed Endorsement states that prevented planting coverage is available "if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed * * *" This provision is also contained in a similar location in the proposed regulations for other crop policies. Therefore, no change is required. However, the "background" section will be amended to reflect that a conserving use cover crop may be hayed or grazed without affecting prevented planting benefits.

Comment: One comment received from FSA stated that under the provision allowing for a production guarantee of 50 percent (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton and rice) of the timely planted guarantee, prevented planting compensation should not be allowed when the cover crop is hayed or grazed because the producer is receiving a benefit from that crop.

Response: FCIC agrees that some value is gained when a cover crop is hayed or grazed. However, this benefit is of limited value in comparison with the income that would be gained if the intended crop could have been planted. In addition, the feed value obtained varies widely and may be negligible in some situations. It is FCIC's opinion that the administrative costs associated with keeping track of the disposition of feed production outweigh any benefit that could be derived.

Comment: Eleven comments received from FSA and the crop insurance industry recommended eliminating the provision which provides a prevented planting guarantee equal to 25 percent of the production guarantee for timely planted acres (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop for harvest. The following reasons were given: (1) This protection was not intended or mandated by the Reform Act; (2) the previous disaster programs never provided this type of protection; (3) there is no budget to cover the subsidy or administrative expense for this protection; (4) the indemnity would be paid even if the substitute crop provided more economic value than the intended crop that was prevented from planting; (5) the moral risk is high; (6) there has been little demand for this kind of protection from producers, insurance companies or agents and if, or when, the demand occurs a "pilot program" should be developed and

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implemented; (7) if a plan like this is offered it should be offered as a separate policy without government subsidy and delivered by the private insurance industry without any cost to the government; (8) the premium for the 25 percent protection (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) has been increased as much as 30 percent in some counties. This protection should be offered as an option or a separate endorsement that does not affect the cost of the basic protection or require the producer to sign an exclusion; (9) the rating varies within a state from 5 percent to 30 percent for no apparent reason; (10) it puts extreme pressure on the final planting date. For example, producers contemplating switching from corn to soybeans would normally plant whenever they thought they were better off with a normal soybean yield versus a reduced corn yield, but now some producers will want to wait until the final planting date for corn so they can have the prevented planting guarantee when planting a substitute crop; (11) intended acres are very hard to administer; (12) every crop could potentially show one crop as prevented planting with a substitute crop planted (i.e. a producer could report prevented planting corn with planted soybeans on field A and prevented planting soybeans with planted corn on field B when the producers intentions were to plant half of the fields to soybeans and half to corn); (13) it encourages producers to manipulate the program to the detriment of the American taxpayer; (14) acreage on which the producer is able to plant a crop for harvest is not acreage that is prevented from being planted; (15) the definition of "indemnity" in the Basic Insurance Principles states, "For insurance purposes, it means that the producer is restored to approximately the same position from an economic standpoint that was occupied before the loss occurred. * * * Never, under any circumstances, would a gain be permitted." Under this provision, a gain is almost a given; (16) a producer would not plant two crops on the same acreage in the same crop year, except for a producer who normally double crops. That is unfair to producers in areas without excessive moisture who plant only one crop and may receive an indemnity on only that crop, not an additional 25 percent on an imaginary crop; (17) any time a producer can opt out of automatic coverage, adverse selection is assured; (18) the more endorsements, options, and exclusions that are added to a policy, the greater the likelihood of producers being unaware of all of their policy provisions and obligations which increases the appeals, litigation cases, agent error and omissions occurrences, and Congressional referrals; (19) the rate increases and factors that were used are inaccurate; (20) factors used to decrease premium if a producer opts out of this coverage are excessive; (21) the prevented planting provisions must increase the incentive to plant the original crop and decrease any incentive to simply not plant and collect insurance benefits; (22) adverse selection will also occur as producers will be able to opt out of prevented planting for a reduced charge; and (23) the most recent GAO report addresses the inadequacy of the current premium rates and that the programs rate structure was undermined when the Department provided more benefits in 1995 under the prevented planting provision and, if history is any indication, then premium rates will remain inadequate.

Response: FCIC understands the concerns of the crop insurance industry, government employees, and others. Although the Reform Act did not mandate this protection, FCIC's decision to develop the proposed regulations for prevented planting was based on broad policy concerns that had to be considered along with actuarial concerns.

When the present prevented planting provisions were developed for the 1994 crop year, FCIC knew that changes would be needed in future years as experience was gained. Many producers were prevented from planting in the 1995 crop year and voiced discontent with those provisions. It was concluded that there was an inconsistency in coverage that resulted in three different levels of claims payments for producers similarly affected by excessive moisture. Specifically, producers who planted an insured crop that failed were eligible for crop insurance indemnities for a loss in production; producers who were prevented from planting an insured crop and did not plant a subsequent crop were eligible for a crop insurance prevented planting payments, but producers who were prevented from planting an insured crop and planted a substitute crop were not eligible for any crop insurance payments. FCIC believes that this third group should be eligible for crop insurance payments to make them whole.

To maintain actuarial integrity 1996 crop insurance premium rates were recalculated to reflect the prevented planting coverage changes. FCIC believes the coverage changes merely give producers another insurance choice when they are prevented from planting their initially intended crops. FCIC agrees producers should be encouraged to plant their initially intended crop after the final planting date when it is practical to do so. Therefore, FCIC is amending this regulation so that when Producers are prevented from planting their initially intended crop and plant a substitute crop within ten days after the final planting date for the initially intended crop, a prevented planting production guarantee will not be provided for such acreage. In addition, FCIC believes producers will make every effort to plant the crop of the greatest economic value as soon as possible. It would make little sense to delay planting to receive the 25 percent prevented planting payment and run the risk of not getting any crop planted. FCIC believes this amendment will help maintain the actuarial soundness of the prevented planting coverage.

The proposed regulations do not provide the option to delete the primary prevented planting coverage. They do provide producers the option of declining eligibility for a prevented planting production guarantee when a substitute crop is planted. Producers may wish to delete this coverage in return for a reduction in the premium they are required to pay. Based on the forgoing reasons, no change will be made.

Comment: One comment received from the crop insurance industry suggested that the option to receive prevented planting benefits and plant a substitute crop should be continuous until cancelled and should only be completed for producers who want the additional coverage, not for producers declining the coverage.

Response: FCIC has determined that all producers should have complete prevented planting coverage unless they elect to exclude such coverage when a substitute crop is planted for harvest. Experience in 1993 indicates that most producers were unaware of the availability of prevented planting coverage when it was a separately purchased coverage. Therefore, no change will be made.

Comment: One comment received from counsel of a reinsured company stated that the policy provisions should be amended to read, "Proof that you had the inputs available to plant and produce a crop other than a crop you planted the past year or a crop that is part of a regular rotation of the acres planted and for which you had insurance with the expectation of at least producing * * *."

Response: FCIC does not agree. The intent of prevented planting coverage is to provide coverage for the intended crop for the current crop year. FCIC does not intend to interfere with producers' responses to market signals. Therefore, no change will be made.

Comment: Two comments received from the crop insurance industry expressed concern regarding how insurers will police provisions dealing with a substitute crop and recommended clarifying the following issues in the final rule. The comments state that it is difficult if not impossible to determine the crop and acreage originally intended to be planted and that the provisions will provide an opportunity for producers to claim prevented planting on acreage originally intended to be planted to a substitute crop. One of the comments further questioned whether a minor oilseed crop planted by a grower participating in the so called 0/92 program would be considered a substitute crop or not.

Response: The acreage reporting provisions rely on the producer to indicate the specific acreage and crop that were prevented from being planted. On the surface these provisions would indicate a significant vulnerability, especially with regard to the substitute crop provisions. However, other provisions, including those that limit maximum eligible acreage and those that reduce eligible acreage by the amount of any timely and late planted acreage substantially reduce this vulnerability. For example, if a producer indicates acreage is prevented from being planted to corn and plants grain sorghum as a substitute crop, any other acreage planted to corn on the farm would reduce the amount of corn acreage eligible for a prevented planting production guarantee. Likewise, the acreage planted to grain sorghum would reduce the amount of any grain sorghum acreage that may have originally been eligible to receive a prevented planting production guarantee. Other provisions that give the insurer the right to require a producer to provide proof that the inputs were available to plant and produce the crop will also reduce vulnerabilities that might otherwise be associated with this coverage. A minor oilseed crop may be considered a substitute crop if it is planted after the originally intended crop was prevented from being planted. Growers qualifying for prevented planting coverage in this situation may qualify for the so called 0/92 program if the minor oilseed can be planted as a substitute crop under that program. Participation in the so called 0/92 program is not required to be eligible for crop insurance prevented planting benefits.

Comment: One comment received from the crop insurance industry expresses concern that the wording that advises the producer of the choice to exclude prevented planting coverage is not prominent enough in the policy. The comment also suggests, concurrent with the final rule, that guidelines meeting Standard Reinsurance Agreement requirements be issued addressing the form "approved by us" that is required to opt out of prevented planting coverage when a substitute crop is planted.

Response: Provisions indicating a producer's choice to exclude this coverage are contained in appropriate locations within the policy. On or before the sales closing date for the intended crop, a producer may "opt out" of prevented planting coverage when a substitute crop is planted by entering the appropriate option code on the crop insurance application or contract change form.

Comment: One comment received from the crop insurance industry and one comment received from FSA stated that the provision that requires a producer to provide proof that they had the inputs available to plant and produce a crop adds complication to the loss adjustment process and likely adds little to the ability to determine the producer's intent. If the provision is not eliminated, one of the comments recommends issuance, concurrent with the final rule, of procedure addressing what constitutes proof that the inputs were available.

Response: Proof that the producer had the available inputes is not mandatory in all cases. Such proof should be required when producers are claiming they are prevented from planting a crop which they have never historically planted or there are other suspicious circumstances. Procedure is being drafted in the loss adjustment handbooks to include what constitutes such proof. Therefore, no change is necessary.

Comment: One comment received from FSA indicated that they did not understand why producers would request deleting the prevented planting provisions from a policy.

Response: The producers would not have the option of deleting the prevented planting provisions from the policy, instead they would be allowed only to exclude eligibility for that portion of the prevented planting coverage available when a substitute crop is planted in return for a reduction in the premium rate attributed to such coverage.

Comment: One comment received from FSA stated that it seems pointless to add a requirement for producers to provide proof that they had inputs available to plant and produce the intended crop because seed and chemical receipts are too easily obtained by persons willing to manipulate FCIC's procedures.

Response: FCIC disagrees with the comment. Falsifying such records could subject the producer, seed or chemical distributor to criminal or civil sanctions. Further, inputs such as seed and chemical receipts verify the intentions to plant and produce the insured crop. The producer who provides false documentation is, of course, open to substantial criminal and civil liability. Failure to produce this evidence when requested is cause for FCIC to deny prevented planting coverage. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended deletion of the extended insurance period provisions for carry-over insureds. The comment indicated that the current sales closing date of March 15 in an area with normal planting times during April and May makes the likelihood of a prevented planting cause prior to March 15 very remote. If the provision is not deleted, it was recommended that the provision be clarified to address whether or not buying up from the CAT level for 1996 falls under the first year or the subsequent year provisions.

Response: The Reform Act requires prevented planting coverage be provided for the period between the sales closing date of the previous crop year and the sales closing date of the current crop year. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended that acreage of hybrid seed crops (and any other crop grown under a contract) eligible for prevented planting coverage be limited to the same number of acres under contract for the crop year.

Response: FCIC agrees with the comment and has revised the hybrid corn and hybrid sorghum seed crop provisions accordingly.

Comment: One comment received from the crop insurance industry recommended clarification of provisions that limit the eligible acreage to the number of acres planted to the insured crop during the previous crop year. Specifically, the comment asked if this provision means the number of acres the producer planted the previous year or the number of acres planted on the land in question; and what happens if the

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land changes hands from one year to the next or the producer farms different land from one year to the next.

Response: FCIC agrees that the provision may be interpreted incorrectly. The intent is to limit eligible acreage within a FSA farm serial number to the total number of acres planted to the insured crop on the FSA farm serial number the previous crop year unless we agree to a greater number. The crop provisions have been clarified accordingly.

Comment: One comment received from the crop insurance industry and two comments received from FSA question how the insurance provider was to agree in writing to insure eligible acreage. They also recommended that procedure be issued, concurrently with the final rule, to indicate the parameters and required elements of an "agreement in writing" to increase the number of acres that would be eligible for prevented planting coverage.

Response: Presently, it is up to the insurance provider to develop a process by which they agree in writing when the producer requests to increase their eligible prevented planting acreage. FCIC agrees that further instructions are needed and will incorporate such instructions into the 1996 Catastrophic Risk Protection Handbook and the Crop Insurance Handbook.

Comment: One comment received from the crop insurance industry recommended adding language to provisions regarding determination of eligible acreage that limits the eligible acreage to that indicated on a "report of intended acreage." The comment further suggests that language be added to indicate that such report meets the criteria for the agreement in writing that is necessary to exceed the printed policy limitations for eligible acreage.

Response: FCIC does not require nor prohibit the use of a "report of intended acreage." However, coverage and premium are based on the actual acreage report filed by the producer, not the report of intended acreage. Therefore, no change is made. FCIC will consider the use of the "report of intended acreage" as an "agreement in writing" to exceed the printed policy limitations for eligible acreage.

Comment: One comment received from the crop insurance industry stated that reference to the final planting date in the paragraph which states, "prevented planting coverage will not be provided for any acreage * * * that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit" must be clarified. They did not understand if it applied to the final planting date for the planted crop or the final planting date for the other crop which the producer wants to declare as prevented planting.

Response: In FCIC's opinion, this provision does not require clarification. This provision requires information regarding inputs only for the originally intended crop. Therefore, no change is made.

Comment: One comment received from the crop insurance industry recommended deletion of the provision that states "Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report." The comment suggests replacing this provision with the following: "Any acreage you report that does not qualify for prevented planting will be deleted from your acreage report."

Response: FCIC disagrees with the comment. The recommended replacement language that states "does not qualify for prevented planting" is not specific enough regarding the eligible acres for prevented planting. Producers need to understand that acreage deleted from the acreage report consists of both the acreage in excess of the number of acres eligible for prevented planting coverage and acres in excess of the number of eligible acres physically located in a unit.

Comment: One comment received from FSA suggested that if the "Freedom to Farm" concept is adopted and the producer is not restricted to a required number of acres of a crop, it will be difficult to believe the acreage reported as "intended to be planted."

Response: At this time legislative changes in the farm bill are uncertain and it would be premature for FCIC to make changes based on assumptions. FCIC will make the necessary changes based on the law ultimately enacted. The restriction with regard to prior year's planted acreage continues regardless of changes in acreage bases.

Comment: One comment received from FSA stated that the following phrase "acreage that is less than 20 acres or 20 percent of the acreage in the unit will be considered intended to be planted to the insured crop planted on the adjoining acreage, unless you can show that you had the inputs available to plant and produce another insured crop on the acreage before the final planting date," will allow prevented planting coverage on less than 20 acres or 20 percent of the acreage in the unit if a producer could prove he was going to plant that to another crop. This scenario is unlikely and we are just allowing a loophole for producers to get prevented planting coverage on their potholes.

Response: The proposed provisions state that, "Prevented planting coverage will not be provided for any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less * * *" was intended to be used only to verify the crop intended to be planted on the acreage. For example, assume that a producer has one section of land comprised of three separate adjacent fields. The first field consists of the east ⅓ of the section (100 insurable acres), the second field consists of the central ⅓ of the section (100 acres of which 85 acres are not insurable), and the third field consists of the west ⅓ of the section (100 insurable acres). If the producer planted corn on the first and the third fields and is prevented from planting the 15 insurable acres in the second (middle/adjacent) field, the 15 acres will be considered to have been intended to be planted to corn, unless the producer can show that inputs were available to plant and produce another crop on those 15 acres. If inputs are not available for another crop, the 15 acres would not be eligible for prevented planting because at least 20 acres in the unit were not prevented from planting.

Comment: One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(D) of the Coarse Grains Provisions) to read: On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four crop years;

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that the language should be modified (subsection 13(d)(4)(iv)(E) of the Coarse Grains Provisions) to read: On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on such acreage in the same crop year (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that it is currently impossible to monitor the requirement that all acreage prevented from being planted be reported, especially when it is small acreage and production from planted acreage will likely exceed the combined guarantee. If this reporting requirement is retained, guidelines must be established to be able to enforce and possibly penalize, if not reported completely. Now may be the time to initiate reporting of intended acreage to be planted the following year at the same time that production is reported for the current crop year.

Response: FCIC agrees that this potential exists and will continue to monitor this problem and to work on a solution. However, no change will be made at this time.

Comment: One comment received from FSA suggested deleting the following sentence because it is repetitious, "If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received."

Response: FCIC disagrees that the provision is repetitious. For CAT policies only, this provision specifically disallows more than one prevented planting benefit per acre for a crop year regardless of a past history of double cropping. It also prohibits a prevented planting production guarantee on acreage if another crop is planted for the insured crop year. Both of these benefits may be provided in certain situations under limited and additional coverage. Therefore, no change is made.

Comment: One comment received from an attorney on behalf of the crop insurance industry indicated that allowing both a so called 0/92 or 50/92 payment and a crop insurance prevented planting benefit is contrary to law. The comment states that the interim rule allowing both payments (published at 60 FR 35832 (July 12, 1995)) was a move back to ad hoc disaster payments.

Response: The so called 0/92 and 50/92 payments are not payments for prevented planting. Producers do not have to have been prevented from planting to collect 0/92 or 50/92 payments. Payments under these programs are intended to compensate producers for price deficiencies (i.e. the difference between the target price and the market price. Since payments under the 0/92 and 50/92 programs are available for producers with crop failure, it would be inconsistent to deny the same benefit to producers who are prevented from planting.

Comment: One comment received from the crop insurance industry suggested that additional definitions and clarifications need to be made that spell out the qualifications for double-cropped acreage such as what proof is needed and how many years of records are needed. Otherwise, they recommend excluding double cropped acreage.

Response: The prevented planting provisions specify that the producer must provide adequate records of acreage and production that show the acreage has been double-cropped for each of the last four years. Therefore, no change is necessary.

Comment: Two comments received from the crop insurance industry regarding allowing prevented planting payments on double-crop situations stated that: (1) It will generate additional prevented planting claims on acreage that would otherwise not be double-cropped. If these provisions are retained, "adequate records of acreage and production in each of the last four years" must be clearly defined to assure that the specific acreage has a definite history of double-cropping; and (2) two prevented planting payments in double cropping situations may add unwanted incentives to encourage the farming of fragile and marginal lands in more arid regions.

Response: FCIC does not believe that additional claims will be made for acreage that would not normally be double-cropped. The crop provisions clearly indicate that records of both acreage and production for the previous four crop years must be provided to qualify for benefits for more than one crop in a crop year. This provision should discourage claims on acreage that has not been double-cropped in the past. FCIC does not believe this benefit will encourage tillage of fragile and marginal lands in more arid regions. Growers will not double-crop this land for four consecutive years to qualify for prevented planting benefits in the fifth year.

So that these policy changes can take effect beginning with 1996 spring-planted crops, good cause is shown to make this rule effective immediately upon filing with the **Federal Register** and without the 30-day period required by the Administrative Procedure's Act to avoid the pressures on FCIC to make changes after the contract change date as a result of a large number of producers being prevented from planting such as occurred during the 1995 crop year which resulted in confusion among producers, insurance companies, and FSA with respect to the program changes and increased losses.

Prevented planting changes to these policies were made by interim rule for the 1995 crop year. Experience with those modifications require certain changes which have been made by this rule. However, the present policy effective for crop year 1995 fall-planted crops and scheduled to be effective for 1996 spring-planted crops do not adequately protect the producer who suffers a prevented planting loss. The contract change date for 1996 spring-planted crops is November 30, 1995, and this rule must be effective for those crops. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

List of Subjects

7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Reporting and recordkeeping requirements, Rice.

7 CFR Part 443

Crop insurance, Hybrid seed, Reporting and recordkeeping requirements.

7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements, Small grains, Cotton, ELS cotton, Sunflower seed and coarse grains.

Final Rule

In this document, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates on or after November 30, 1995.

Accordingly, 7 CFR parts 401, 443, and 457 are amended as follows:

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PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 401.109 is amended by revising paragraphs 12(a)(3); 12(b), and 12(d) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty-five percent (25%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

§ 401.109 [Amended].

3. Section 401.109 is amended by revising paragraph 13(o) to read as follows:

* * * * *

13. Meaning of Terms

* * * * *

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

4. Section 401.120 is amended by revising paragraphs 10(a)(3), 10(b), and 10(d) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

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(B) The number of acres planted to rice on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

5. Section 401.120 is amended by revising paragraph 11(h) to read as follows:

* * * * *

11. Meaning of Terms

* * * * *

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

PART 443—[AMENDED]

6. The authority citation for 7 CFR part 443 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

7. Section 443.7(d) is amended by revising paragraphs 17(a)(3), 17(b), and 17(d) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty percent (20%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

* * * * *

8. Section 443.7(d) is amended by revising paragraph 18(w) to read as follows:

* * * * *

18. Meaning of Terms

* * * * *

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

PART 457—[AMENDED]

9. The authority citation for 7 CFR part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

10. Section 457.101 is amended by revising paragraph 1(p) of the Small Grains Crop Provisions to read as follows:

§ 457.101 Small Grains Crop Insurance.

* * * * *

1. Definitions

* * * * *

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

11. Section 457.101 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented

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from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the latest final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the latest final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the latest final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

12. Section 457.104 is amended by revising paragraph 1(n) of the Cotton Crop Provisions to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

13. Section 457.104 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to cotton on the FSA Farm Serial Number during the previous crop year; or

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(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

14. Section 457.105 is amended by revising paragraph 1(l) of the ELS Cotton Crop Provisions to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

15. Section 457.105 is amended by revising paragraphs 12(a)(2) and 12 (b) through (h) to read as follows:

* * * * *

12. Prevented Planting

(a) * * *

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(i) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton on the FSA Farm Serial Number during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year;

(v) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(2)(i) of this section, or a substitute crop allowed in paragraph (a)(2)(ii) of this section);

(vi) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(h) Late planting provisions are not available under these crop provisions.

* * * * *

16. Section 457.108 is amended by revising paragraph 1(l) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

17. Section 457.108 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

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(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12 (c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

* * * * *

18. Section 457.113 is amended by revising paragraph 1(n) of the Coarse Grains Crop Provisions to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

* * * * *

19. Section 457.113 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii)).)

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if

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you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

Done in Washington, DC, on November 27, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–29606 Filed 11–30–95; 4:56 pm]

BILLING CODE 3410–08–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 129CE, Special Condition 23–ACE–84]

Special Conditions; Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes modified by Elliott Aviation Technical Products Development, Inc., Moline, Illinois. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 7, 1995. Comments must be received on or before January 8, 1996.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 129CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 129CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 129CE." The postcard will be date stamped and returned to the commenter.

Background

On September 7, 1995, Elliott Aviation Technical Products Development, Inc., P.O. Box 100, Quad City Airport, Moline, IL 61266–0100, made an application to the FAA for a supplemental type certificate (STC) for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes is given in Type Certification Data Sheet No. A24CE plus the following: § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Elliott Aviation Technical Products Development, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions required that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396. September 30, 1991), and the Beech Models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication

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in the Federal Register. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Models 200, 200C, 200CT, 200T, B200, B200C, B200CT, B200T, 300, 300LW, B300, and B300C airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on November 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29869 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 24, 146 and 151

[T.D. 95–89]

Technical Amendments to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes various minor technical changes and corrections to the Customs Regulations, in accordance with Customs policy of periodically reviewing its regulations to ensure that they are current.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: For part 151: William Kotlowy, Cargo Control, (202–927–1364).

For parts 19, 24 and 146: Marcus Sircus, Trade Compliance, (202–927–0510).

SUPPLEMENTARY INFORMATION:

Background

The technical amendments summarized below are made with respect to parts 19, 24, 146 and 151, Customs Regulations (19 CFR parts 19, 24, 146 and 151).

Discussion of Changes

1. The warehouse fee suspension authorized in § 9501 of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 58c(e)(6)(C)(ii)) is recognized by eliminating the references to this fee contained in §§ 19.2(a), 19.3(a), 19.17(a) and 24.21(b)(2), Customs Regulations (19 CFR 19.2(a), 19.3(a), 19.17(a) and 24.21(b)(2)). It is noted that § 19.5, which provided for the assessment of a fee to establish, alter or relocate a bonded warehouse, and for an annual operation fee with respect thereto, was previously removed from the Customs Regulations (see T.D. 92–81, 57 FR 37692, 37697 (August 20, 1992) and 60 FR 42431 (August 16, 1995)).

2. Furthermore, the foreign trade zone fee suspension also authorized in section 9501 of the Omnibus Budget Reconciliation Act of 1987 (see 19 U.S.C. 58c(e)(6)(C)(i)) is acknowledged by removing and reserving § 146.5, Customs Regulations (19 CFR 146.5), which required the assessment of an activation fee and an annual fee in relation to a zone. In addition, the references to this fee appearing in §§ 146.6(b)(1), 146.7(a) and (b), and 146.82(a)(6) are likewise deleted, with these provisions being amended as appropriate.

3.a. Generally, imported merchandise may not be opened, examined or inspected until it has been entered under some form of entry for consumption or warehouse. Exceptions to this general requirement are set forth in § 151.4, Customs Regulations (19 CFR 151.4).

In particular, § 151.4(c)(2), under the conditions prescribed therein, permits an operation not amounting to a manufacture to be performed in connection with imported merchandise entered or withdrawn for transportation under bond or for exportation, provided that the permitted operation is approved by both the applicable Customs field office and the Commissioner of Customs. Customs has since decided, however, that this approval authority may simply remain at the field office level. To implement this change of policy, § 151.4(c)(2) is amended by removing the reference to the Commissioner of Customs. By simplifying the approval procedure as described, this amendment confers a benefit upon both the importing public as well as Customs itself.

3.b. Section 151.5(c) requires that the Government be reimbursed for the compensation and other expenses of the Customs officer who must supervise a permitted operation under § 151.4(b) and (c). It is stated that such compensation would be computed in accordance with § 19.5(b), Customs Regulations (19 CFR 19.5(b)). However, pursuant to T.D. 82–204, 47 FR 49355, 49365, 49374–49375 (November 1, 1982), the procedure for computing the charges for reimbursable Customs services then contained in § 19.5, including the compensation of Customs officers as detailed in § 19.5(b), was transferred to § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)). See also the Notice of Proposed Rulemaking in this matter, 47 FR 9225, 9231 (March 4, 1982). (As previously noted, § 19.5, due to the warehouse fee suspension, was later removed from the Customs Regulations in its entirety.)

Accordingly, § 151.5(c) is amended by removing the reference to "§ 19.5(b)" and inserting in place thereof a reference to "§ 24.17(d)".

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the amendments merely conform to existing law or regulation, or simplify an administrative procedure resulting in a benefit to the importing public as noted above, notice and public procedure in this case are inapplicable and unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the aforesaid requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Nor do these amendments result in a "significant regulatory action" under E.O. 12866.

Drafting Information: The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 24

Accounting, Canada, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

19 CFR Part 151

Examination, Sampling and testing of merchandise.

Amendments to the Regulations

Parts 19, 24, 146 and 151, Customs Regulations (19 CFR parts 19, 24, 146 and 151), are amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 19.2 [Amended]

2. Section 19.2(a) is amended by removing its second sentence and its last sentence.

§ 19.3 [Amended]

3. Section 19.3(a) is amended by removing its last sentence.

§ 19.3 [Amended]

4. Section 19.17(a) is amended by removing the phrase ", accompanied by the fee to establish a warehouse as prescribed by § 19.5".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 261, 267, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

§ 24.21 [Amended]

2. Section 24.21(b)(2) is removed and reserved.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 continues to read as follows, and the specific authority for § 146.5 is removed:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 146.5 [Amended]

§ 146.6 [Amended]

2. Sections 146.5 and 146.6(b)(1) are removed and reserved.

§ 146.7 [Amended]

3. Section 146.7(a) is amended by removing from its second sentence the phrase, "the fee required in § 146.5 and".

4. Section 146.7(b) is amended by removing its last sentence.

§ 146.82 [Amended]

5. Section 146.82(a)(6) is removed and reserved.

PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE

1. The general authority citation for part 151, and the specific authority for subpart A, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

* * * * *

§ 151.4 [Amended]

2. Section 151.4(c)(2) is amended by removing the word "both", and by removing the phrase "and the Commissioner of Customs", where appearing therein.

§ 151.5 [Amended]

3. Section 151.5(c) is amended by removing the reference to "§ 19.5(b)", and by adding in place thereof, "§ 24.17(d)".

George J. Weise,

Commissioner of Customs.

Approved: November 6, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–29844 Filed 12–6–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 60

[AG Order No. 2000–95]

Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Rule 41(h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request the issuance of search warrants. This rule adds special agents to the Office of Investigations of the Office of Inspector General of the newly created Social Administration to the list of federal law enforcement agencies and officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure. This rule also adds special agents of the Office of Inspector General of the Department of Health and Human Services to the list of law enforcement officers authorized to request the issuance of a search warrant.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Terry R. Lord, Acting Chief, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202–514–1026) (not a toll-free number).

SUPPLEMENTARY INFORMATION: Previous authorizations by the Attorney General under Rule 41(h) were made by Order No. 510–73 (38 FR 7244, March 19, 1973), as amended by Order No. 521–73 (38 FR 18389, July 10, 1973), Order No. 826–79 (44 FR 21785, April 12, 1979), Order No. 844–79 (44 FR 46459, August 8, 1979), Order No. 960–81 (46 FR 52360, October 27, 1981), Order No. 1026–83 (48 FR 37377, August 18, 1983), Order No. 1137–86 (51 FR 22282, June 19, 1986), Order No. 1143–86 (51 FR 26878, July 28, 1986), Order No. 1188–87 (52 FR 19137, May 21, 1987), Order No. 1327–89 (54 FR 9430, March 7, 1989), and Order No. 1344–89 (54 FR 20123, May 10, 1989).

The Social Security Independence and Program Improvement Act of 1994, Public Law 103–296, removes the Social Security Administration (SSA) from its historical position as a component of the Department of Health and Human Services (HHS), and establishes SSA as an independent agency effective March

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31, 1995. The Act provides that there will be an Inspector General in SSA, appointed in accordance with the Inspector General Act of 1978, as amended (5 U.S.C. App.3). Appropriate personnel from the HHS Office of Inspector General transferred to SSA to staff the new OIG. Ongoing investigations pertaining to programs and operations of SSA also were transferred.

Since 1979, the Office of Inspector General of the Department of Health and Human Services has been designated as among the agencies with law enforcement officers authorized to request the issuance of search warrants under 28 CFR Part 60. To make this authority explicit, this rule amends § 60.2 of 28 CFR Part 60 by designating special agents of the Office of Inspector General of the former parent agency, the Department of Health and Human Services (§ 60.2(q)), and adding special agents of the Office of Investigations of the Office of Inspector General of the newly-created Social Security Administration (new § 60.2(p)). It also adds the Office of Investigations of the Office of Inspector General, Social Security Administration as new § 60.3(a)(18). The Office of Investigations, Office of Inspector General, Department of Health and Human Services will continue to be separately designated in § 60.3(a)(3).

Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable. This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. It has been determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

This rule will not have a substantial direct impact upon the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 60

Law enforcement officers, Search warrants.

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 60 of Chapter I of Title 28, Code of Federal Regulations is hereby amended as follows:

PART 60—AUTHORIZATION OF FEDERAL LAW ENFORCEMENT OFFICERS TO REQUEST THE ISSUANCE OF A SEARCH WARRANT

1. The authority citation for Part 60 is revised to read as follows:

Authority: Rule 41(h), Fed. R. Crim. P (18 U.S.C. appendix).

2. Section 60.2 is amended by adding paragraphs (p) and (q), to read as follows:

§ 60.2 Authorized categories.

* * * * *

(p) Any special agent of the Office of Inspector General, Social Security Administration.

(q) Any special agent of the Office of Inspector General, Department of Health and Human Services.

3. Section 60.3 is amended by adding a new paragraph (a)(18) to read as follows:

§ 60.3 Agencies with authorized personnel.

* * * * *

(a) * * *

(18) Social Security Administration, Office of Inspector General

* * * * *

Dated: November 28, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–29490 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–209]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the "Kentucky program" under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to the Kentucky Administration Regulations (KAR) pertaining to outcrop barrier pillars at 405 KAR 16:010 and 405 KAR 18:010. The amendment is intended to provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982 **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1994, (Administrative Record No. KY–1305) Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Kentucky is revising 405 KAR 16:010 pertaining to surface mining activities affecting outcrop barrier pillars and 405 KAR 18:010 pertaining to underground mining activities affecting outcrop barrier pillars.

OSM announced receipt of the proposed amendment in the September 6, 1994, **Federal Register** (59 FR 46013), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1994.

By letter dated January 11, 1995 (Administrative Record No. KY–1332), Kentucky proposed additional revisions to 405 KAR 16:010 and 405 KAR 18:010. Based upon the additional revisions to the proposed program amendment submitted by Kentucky, OSM reopened the public comment period in the February 17, 1995, **Federal Register** (60 FR 9314) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on March 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes.

A. 405 KAR 16:010—General Provisions/Surface Mines

Kentucky proposes to revise 405 KAR 16:010 to add provisions for the protection of unmined barriers of coal left by underground mining. At new section (8), Kentucky is prohibiting the removal of coal from an unmined barrier of coal left by an underground mine where the underground workings dip toward and approach the land surface, unless the Natural Resources and Environmental Protection Cabinet (Cabinet) has otherwise approved the removal. The Cabinet shall approve the removal if all other applicable requirements of 405 KAR Chapters 7–24 and KRS Chapter 350 are met and at least one of the following conditions is met: (a) The removal will not adversely affect the stability of the unmined barrier of coal; (b) the removal will completely eliminate or significantly reduce underground workings; (c) the removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings; (d) the removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of ground or surface water resulting from the existing underground workings; or (e) the unmined barrier of coal is not necessary to protect the health or safety of the public or to protect the quantity or quality of ground or surface water.

Kentucky's intent behind this regulation is to reduce the occurrences of a "blowout," which is a rapid release to the land of a large volume of water impounded in underground mine workings. (Administrative Record No. KY–1305.) While there is no Federal counterpart to the Kentucky regulation, the regulation's intent is not inconsistent with section 102 of SMCRA which established SMCRA to protect, *inter alia*, society and the environment from the adverse effects of surface coal mining operations. Therefore, the Director finds the proposed regulation at 405 KAR 16:010, section (8) not inconsistent with SMCRA and the Federal regulations.

B. 405 KAR 18:010—General Provisions/Underground Mines

Kentucky proposes to revise 405 KAR 18:010 to add provisions for protection against the sudden release of water accumulated in underground workings to the land surface. At new section (6), Kentucky is requiring that, except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The Cabinet shall waive this requirement if it determines that the proposed operation meets the applicable requirements of 405 KAR Chapters 7–24 and KRS 350 and either of the following provisions: (a) The applicant has demonstrated in the permit application to the satisfaction of the Cabinet, based upon the geologic and hydrologic conditions in the permit area, that accumulation of water in the under ground workings cannot be reasonably expected to occur; or (b) adequate measures to prevent accumulation of water in the underground workings have been included in the permit application and have been approved by the Cabinet. Kentucky is also requiring that if an unmined barrier of coal is required, it shall be of sufficient width to prevent failure and sudden release of water accumulated in underground workings to land surface. The Cabinet may determine, on a case-by-case basis, the width of the unmined barrier of coal. The width shall not be less than that given by the formula: W = 50 + H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the unmined barrier of coal. The Cabinet may approve a width less than the minimum indicated by the formula if the applicant has demonstrated in the permit application to the Cabinet's satisfaction that the lesser width will achieve the purpose of this regulation.

While there is no direct Federal counterpart to the Kentucky regulation, the Director finds as more fully stated in the previous finding that the proposed regulation at section (6) of 18:010 to not be consistent with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on August 2, 1994. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

The Director reopened the public comment period and provided an opportunity for a public hearing on the revised amendment submitted on January 11, 1995. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One public comment was received. The Kentucky Resources Council, Inc. generally supported the amendment but recommended that the outcrop barrier width potentially be increased based on site-specific data to prevent the discharge of water through any existing fractures and bedding planes to prevent surface instability and slides. The Director notes that Kentucky may determine, on a case-by-case basis, the width of the outcrop barrier needed to prevent the discharge of water. Kentucky, in its October 14, 1994, Statement of Consideration stated that the width may be potentially increased if Kentucky deems it necessary.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment submitted on August 2, 1994, and revised on January 11, 1995, from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Department of the Interior, Fish and Wildlife Service and the Bureau of Mines, and the U.S. Department of Agriculture, Forest Service, concurred without comment.

The U.S. Department of the Interior, Bureau of Land Management, commented that leaving outcrop barriers in place serves a useful purpose but where feasible, drifts should be located updip to prevent drainage from improperly sealed openings. It cited a situation in West Virginia where a blowout occurred which created acid mine drainage. Kentucky's proposed regulations at 405 KAR 16:010 and 18:010 both require that before an unmined coal barrier is removed, the operation must meet all applicable requirements of 405 KAR Chapters 7–24. Section 8(1) of 405 KAR 18:060 allows gravity discharges of water, except for those drift mines subject to section 8(2), if the discharge complies with the performance standards and any

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additional KPDES permit requirements. Section 8(2) of 405 KAR 18:060 requires that the entries and accesses of drift mines used after May 18, 1982, must be located to prevent any gravity discharge from the mine when it is located in acid or iron producing coal seams. Therefore, Kentucky's regulations are designed to prevent acid mine drainage from occurring in the situation described by the commenter.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) had three comments concerning 405 KAR 16:010 section 8. Its first comment was that the phrase "unmined barrier of coal left by an underground mine" be replaced with "outcrop barrier" to add specificity to the proposed revisions. It was also concerned that a misinterpretation of the term "unmined barrier of coal left by an underground mine" could mean that barrier pillars could be left in place as operations retreat from mining causing stress in the overlying strata. Its second comment was that the method of mining be specified. Finally, MSHA was concerned about subsection (2)(b) of 405 KAR 16:010 section 8, which allows the removal of the barrier if the removal will completely eliminate or significantly reduce existing underground workings. It was concerned that subsection (2)(b) could allow the removal of the outcrop barrier even if it caused the collapse of the overlying strata. It recommended that if the removal of the barrier is done by augering or highwall mining then an adequate amount of the barrier should be left in place to support the highwall during mining because the overburden would cave in after the barrier was removed, thereby increasing the hazard of highwall collapse to miners.

In response to the first comment, the Director finds the meaning of the term "unmined barrier of coal left by an underground mine" sufficiently clear from the context of its use in the proposed regulation because it specifically refers to those underground workings that dip toward and approach the land surface. Also any concern about the retention of barrier pillars during the retreat phase of mining is misplaced. The removal of barrier pillars during the retreat phase of mining occurs during underground mining. Chapter 16 applies to surface coal mining operations. In response to the second comment, the Director again notes that Chapter 16 of Title 405 of the Kentucky Regulations only applies to surface coal mining operations. Therefore, no clarification is necessary since Chapter 16 deals exclusively with surface activities.

Finally, the Director disagrees with MSHA's concerns that section 8(2)(b) may create a hazard to miners. Kentucky's statute at KRS 350.028(5) prevents the Kentucky SMCRA from superseding, amending, modifying or repealing the Federal Coal Mine Health and Safety Act of 1969 and its amendments. In addition, to eliminate or significantly reduce the existing underground workings the coal pillars and outcrop barrier would have to be removed. Augering and highwall mining could not be used to remove coal pillars left in the underground workings and it could only remove a portion of the coal outcrop barrier. Remining would be the method of surface mining used to eliminate or significantly reduce the existing underground workings, not augering or highwall mining. To completely eliminate or significantly reduce underground workings by surface mining methods, the operator must remine the area which includes removing the overburden (thus eliminating the possibility of a collapsing highwall) and then mining by conventional strip mining methods.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On August 11, 1994, OSM solicited EPA's concurrence with the proposed amendment. On August 25, 1994, EPA gave its written concurrence (Administrative Record No. KY–1310).

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Kentucky on August 2, 1994, and revised on January 11, 1995.

The Federal regulations at 30 CFR Part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding paragraph (zz) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(zz) Revisions to the following rules, as submitted to OSM on August 2, 1994, and revised on January 11, 1995, are approved effective December 7, 1995:

405 KAR 16:010

Sections 1, 6, 7, and 8 General Provisions/ Surface Mines

405 KAR 18:010

Sections 4, 5, and 6 General Provisions/ Underground Mines

[FR Doc. 95–29876 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH80–2–7241; FRL–5340–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, in final, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon ozone nonattainment areas as revisions to the Ohio State Implementation Plan (SIP). The emissions inventories were submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions for the year 1990. The Ohio ozone nonattainment areas covered by this rulemaking are Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties).

EFFECTIVE DATE: This action will be effective January 8, 1996.

ADDRESSEES: Copies of the State submittal and USEPA's analysis of it are available for inspection at the following location (it is recommended you contact William Jones at (312) 886–6058 before visiting the Region 5 office): J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Engineer, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(1) of the Clean Air Act Amendments of 1990 (Act) requires States with ozone nonattainment areas to submit a comprehensive, accurate and current inventory of actual ozone precursor emissions (which includes volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO)) for each ozone nonattainment area by November 15, 1992. This inventory must include anthropogenic base-year (1990) emissions from stationary point, area, non-road mobile, and on-road mobile sources, as well as biogenic (naturally occurring) sources in all ozone nonattainment areas. The emissions inventory must be based on conditions that exist during the peak ozone season (generally the period when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard—NAAQS). Ohio's annual ozone season is from April 1 to October 31 of each year.

II. Criteria for Evaluating Ozone Emissions Inventories

Guidance for preparing and reviewing the emission inventories is provided in the following USEPA guidance documents or memoranda: "State Implementation Plans; General Preamble for the Implementation of Title I of the Act," (Preamble) as published in the April 16, 1992 **Federal Register** (57 FR 13498); "Emission Inventory Requirements for Ozone State Implementation Plans," (EPA–450/4–91–010) dated March 1991; a memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, entitled "Public Hearing Requirements for the 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas," dated September 29, 1992; "Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II," (EPA–450/4–91–016 and EPA–450/4–91–014) (Procedures; Volumes I and II) dated May 1991; and "Procedures for Emissions Inventories Preparation, Volume IV: Mobile Sources," (EPA–450/4–81–026d) (Procedures; Volume IV) dated 1992.

As a primary tool for the review of the quality of emission inventories, the USEPA has also developed three levels (I, II, and III) of emission inventories checklists. The Level I and II checklists are used to determine that all required components of the base-year emission inventory and associated documentation are present. These reviews also evaluate the level of quality of the associated documentation and the data provided by the State and assess whether the emission estimates were developed according to the USEPA guidance. The Level III review evaluates crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of the ten critical aspects would lead to disapproval of the emissions inventory submittal.

Detailed Level I and II review procedures can be found in the USEPA guidance document entitled "Quality Review Guidelines for 1990 Base Year Emissions Inventories," (Quality Review) (EPA–454/R–92–007) dated August 1992. Level III criteria were attached to a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Emission Inventory Issue," dated June 24, 1993. The Level I, II, and III checklists used in reviewing this emissions inventory submittal are attached to a USEPA technical support document dated October 3, 1995.

III. State Submittal

On March 15, 1994, the Ohio Environmental Protection Agency (OEPA) submitted a revision to the ozone portion of Ohio's SIP which consisted of the 1990 base-year ozone emissions inventory for the following

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ozone nonattainment areas in Ohio: Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain, Columbus, Dayton-Springfield, Toledo and Youngstown-Warren-Sharon. The USEPA has completed its review of the emissions inventories submitted for the Canton (which includes Stark County), Cincinnati-Hamilton (which includes Butler, Clermont, Hamilton and Warren Counties), Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties) and Youngstown-Warren-Sharon (which includes Mahoning and Trumbull Counties) ozone nonattainment areas. Revisions to the March 1994 submittal were submitted on June 8 and August 18, 1995 for these areas. These revisions addressed deficiencies highlighted in USEPA's proposed rulemaking. The 1990 base-year emissions inventories submitted for the Toledo and Dayton-Springfield were approved in a rulemaking published in the **Federal Register** on March 22, 1995 (60 FR 15053). The emissions inventory submitted for the Columbus area will be addressed in a separate rulemaking.

Inventory Preparation Plan/Quality Assurance Plan

All States were required to submit an Inventory Preparation Plan (IPP) to USEPA for review and approval by October 1, 1991. The IPP documents the procedures utilized in the development of an emissions inventory and contains the quality assurance and quality control plan (QA/QC). On March 19, 1992, the State of Ohio submitted a final ozone emissions IPP. On April 15, 1992, USEPA informed the State that the IPP was not approvable at the time. Subsequently, USEPA has worked with the State to correct deficiencies in the IPP. With the March 1994 SIP revision request, the State submitted documentation of how the emissions inventory was prepared, as well as a quality assurance report for the point, area, and mobile source portions of the emissions inventory. The USEPA finds that this documentation and quality assurance report are acceptable to meet the requirements of an IPP.

Point Source Emissions Inventory

For each nonattainment area, the State submitted a point source emissions inventory of all facilities that emit at least 10 tons per year (tpy) of VOC, or 100 tpy NO_X or CO. The State also included sources that emit 100 tpy of VOC, CO, or NO_X located in a 25-mile boundary surrounding each nonattainment area. The point source emissions inventory contains general facility information, number of sources, production schedules and related emissions for each source, emissions limitation, control efficiency and rule effectiveness (RE), as applicable, and total emissions on an annual and daily ozone season basis.

The following methods were employed by the State to identify sources to be included in the 1990 base-year emissions inventory: The 1989 records for plants in the Emissions Inventory System (EIS) were checked and plants meeting the VOC, CO or NO_X criteria were revised with 1990 emissions data; the air permit records were reviewed for plants that are candidates for inclusion in the point source inventory; and current industrial directories and the Toxic Release Information System (TRIS) database were checked for additional point source emissions. For facilities in the point source inventory, the State acquired the emissions data by means of the following: Mail surveys; plant inspections; telephone calls; and air permit files.

The USEPA reviewed the point source emissions data by cross referencing the point source inventory to the following sources: (1) USEPA's guidance document entitled "Major CO, NO_2, and VOC Sources in the 25–Mile Boundary Around Ozone Nonattainment Areas, Volume I: Classified Ozone Nonattainment Areas," (EPA–450/4–92–005a) February 1992; a 1990 TRIS Retrieval; and a 1990 Aerometric Information Retrieval Systems (AIRS) Facility Subsystem—Emission to Compliance Comparison Report.

Where a source was governed by a regulation or a control device, the emissions limit was stated. A RE factor was then applied in the determination of emissions. In accordance with USEPA guidance, a standard RE factor of 80 percent was utilized, unless otherwise justified.

Area Source Emissions Inventory

Area source emissions were calculated using State-specific data as well as USEPA guidance documents and technical memoranda developed for various categories. The State utilized emission factors from Procedures; Volumes I and IV, and AP–42 and provided necessary documentation. The following area source categories were included in the emissions inventory: Gasoline loading and distribution, dry cleaning, degreasing, architectural surface coatings, traffic markings, automobile refinishing, graphic arts, cutback asphalt, pesticide application, commercial/consumer solvents, bakeries, waste management practices (landfills), leaking underground storage tanks, incineration of solid waste, stationary fossil fuel combustion, and fires (structural, open burn, etc.). Vehicle refueling emissions were included as part of the mobile source emissions inventory.

The area source inventory was reviewed utilizing USEPA's guidance documents, and the Level I and II checklists, to ensure that all source categories and their related emissions (and emission factors) were included in the area source emissions inventory. Seasonal adjustments, rule effectiveness, and rule penetration factors were applied as indicated in the State submittal.

On-Road Mobile Source Emissions Inventory

Development of Emission Factors

In the development of the mobile source emissions inventory, the State utilized USEPA's mobile source emissions model, Mobile 5a, for the determination of emissions factors for eight vehicle types and twelve roadway types. Hard-copy documentation of the input and output files are provided in the State's submittal. Where available, the State-specific inputs were utilized in the development of the input files for Mobile 5a.

Development of Vehicle Miles Travelled (VMT)

Canton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon Areas: The 1990 VMT for each roadway type was developed by the Ohio Department of Transportation (ODOT). ODOT maintains data on each section of highway in the State of Ohio. VMT were developed by the State Road Inventory System and reported through the Highway Performance Monitoring System (HPMS) to the Federal Highway Administration (FHWA).

Each roadway section daily VMT (dVMT) is computed as the annual average daily traffic (AADT) for that section times the length of the section. The county DVMT is the sum of the DVMT for each highway functional classifications in the county. The total dVMTs are then summed as a statewide total. The statewide totals are then compared by functional class to the 1990 HPMS submittal. For those classifications were traffic counts are available for all or nearly all their sections, the totals were essentially the same. For those with more off-systems roads, the resulting totals were larger than the HPMS's submittal value (as expected). Correction factors were computed from the two sets of totals and applied to the individual cells.

ODOT used permanent and portable vehicle classification equipment to develop the vehicle mix by functional classification of highway. Traficomp III vehicle classification equipment are used to support the HPMS data collection effort. A software program called OHIO CONVERT formats vehicle classification data into the FHWA Vehicle Classification categories.

Cincinnati-Hamilton Area: For the Cincinnati-Hamilton area, the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) was responsible for the development of the mobile source emissions inventory. OKI developed this inventory for the Ohio and Kentucky portions of the interstate nonattainment area. OKI utilized the OKI Travel Demand Model to estimate the traffic volume on each roadway segment and an OKI utility program to which calculates the loaded speed, VMT and emissions for each roadway segment.

The OKI travel demand model is a computerized travel demand forecasting model for the entire interstate nonattainment area. The model uses a four phase sequential travel demand forecasting process of trip generation, distribution modal choice and assignment. The OKI Travel Demand Model is composed of TRANPLAN programs and Fortran programs written by OKI.

The model takes zonal demographic data and the transportation network as inputs and produces estimated traffic volumes on each roadway segment in the network. Traffic zones are the analysis units in the model. The OKI region is divided into 909 zones. The output of the model is a loaded highway network which contains information for each link such as initial speed, capacity, distance, functional class district number area type and forecasted traffic.

Off-Road Mobile Source Emissions Inventory

Canton, Cincinnati-Hamilton and Youngstown-Warren-Sharon Areas: The State developed emissions estimates for the following off-road categories according to USEPA guidance: Aircraft, railroad locomotives, recreational boating, off road motorcycles, agricultural equipment, construction equipment, industrial equipment, and lawn and garden equipment. Documentation was provided as to the sources of emissions factors utilized and were submitted in the area source emissions inventory portion of the submittal.

Cleveland-Akron-Lorain Area: The State utilized emissions estimates for non-road emissions developed by the Office of Mobile Sources (OMS - USEPA) in October 1992, in accordance with USEPA requirements for the Cleveland-Akron-Lorain off-road mobile source emissions inventory. These OMS emissions estimates are provided for off-road diesel engines, as well as two-stroke and four-stroke gasoline engines, including off-road motorcycles, construction equipment, farm equipment, lawn and garden equipment, industrial equipment, and recreational vessels. In addition, the State included in the off-road mobile source inventory emissions from aircraft, railroads, and commercial vessels, which are not included in the OMS data. These estimates were developed using emissions factors from AP–42 and activity factors gathered from various sources.

The off-road mobile source inventory was reviewed utilizing the Level I and II checklists and USEPA's guidance documents to ensure that all source categories and their related emissions factors were included in the off-road mobile source emissions inventory.

Biogenic Emissions Inventory

The State of Ohio developed the naturally occurring (biogenic) emissions for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon areas according to a USEPA's guidance document entitled "User's Guide to the Personal Computer Version of the Biogenic Emissions Inventory System (PC-BEIS)," (EPA–450/4–91–017) dated July 1991. Meteorological data utilized in PC-BEIS was collected in accordance with USEPA guidance. The ten warmest days from the period between 1988 to 1990 with the highest hourly peak ozone concentrations in each ozone nonattainment areas was collected and reviewed. As required by USEPA guidance, the corresponding ozone concentration to the fourth highest daily maximum temperature for each nonattainment area was selected and utilized in the model. The State provided hard copy documentation as to the meteorological inputs utilized and PC-BEIS output files for the biogenic emissions inventory for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon nonattainment areas.

IV. Approval of the Emissions Inventories

In a letter addressed to Robert Hodanbosi, Chief, Division of Air Pollution Control, OEPA, dated March 23, 1995, USEPA provided comments on the 1990 base-year ozone emissions inventories submitted for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon areas. These comments addressed corrections that would be needed before the inventories could be finally approved.

In a letter dated June 8, 1995, the State of Ohio provided a response to comments on the area, on-road and off-road mobile, and biogenic source emissions. The USEPA has reviewed these responses and finds that the State has satisfied the Agency's comments and that the emissions inventory for the area, on-road mobile, non-road mobile, and biogenic sources is approvable.

At the time of the proposed rulemaking, the State had not responded to the point source emissions inventory comments that were stated in the March 23, 1995, letter (these comments addressed possible facilities that may be required to be included in the point source emissions inventory). The USEPA proposed to approve the State's point source emissions inventory contingent upon the State's response (and completion of USEPA's review) to the point source emissions comments.

In a letter dated August 18, 1995, the State of Ohio provided a response to comments on the point source emissions inventory. The USEPA has reviewed these responses and finds that the State has satisfied the Agency's comments and that the emissions inventory for point sources is approvable.

V. Summary of Ozone Emissions Inventory

The following summary indicates the emissions inventories for an average ozone summer weekday for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain and Youngstown-Warren-Sharon ozone nonattainment areas. The emissions are stated in tons per ozone season weekday:

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CANTON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_x
Point Sources	12.36	40.17	6.74
Area Sources	18.93	1.54	0.98
On-Road Mobile Sources	31.66	188.59	16.24
Off-Road Mobile Sources	23.72	63.00	15.89
Biogenic Sources	36.66	.....	.....
Totals	123.33	293.30	39.85

CINCINNATI-HAMILTON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_x
Point Sources	70.43	88.79	280.67
Area Sources	64.48	5.41	2.29
On-Road Mobile Sources	125.84	793.16	130.68
Off-Road Mobile Sources	37.37	274.57	34.45
Biogenic Sources	109.04	.....	.....
Totals	407.16	1161.93	448.09

CLEVELAND-AKRON-LORAIN OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_x
Point Sources	82.22	208.69	245.59
Area Sources	120.86	12.64	9.54
On-Road Mobile Sources	248.37	1402.01	176.58
Off-Road Mobile Sources	80.19	808.32	70.92
Biogenic Sources	195.37	.....	.....
Totals	727.01	2431.66	502.63

YOUNGSTOWN-WARREN-SHARON OZONE NONATTAINMENT AREA

[Tons per day]

Source type	VOC	CO	NO_x
Point Sources	16.71	18.74	23.25
Area Sources	27.80	13.02	7.00
On-Road Mobile Sources	48.98	293.54	29.87
Off-Road Mobile Sources	13.48	87.88	10.99
Biogenic Sources	50.26	.....	.....
Totals	157.23	413.18	71.11

VI. Proposed Rulemaking Action and Solicitation of Public Comment

On July 10, 1995, USEPA published a rulemaking proposing to approve the emissions inventories submitted by the State of Ohio for the Canton, Cincinnati-Hamilton, Cleveland-Akron-Lorain, and Youngstown-Warren-Sharon ozone nonattainment areas (refer to 60 FR 35535). No comments were submitted to USEPA on this proposed action. Also, the proposed rulemaking discussed the use of a letter notice procedure for final approval of this SIP revision. The USEPA has decided to take final action through the **Federal Register** and not use the letter notice procedure for this action.

VII. Final Action

The USEPA is approving, in final, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties) ozone nonattainment areas. These emissions inventories were submitted as revision to Ohio's State Implementation Plan.

VIII. General Provisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

IX. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Approval of Ohio's emissions inventories does not impose any new requirements on small entities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (v) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(v) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for the Canton (Stark County); Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties) areas.

[FR Doc. 95–29755 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[Region II Docket No. 146, NJ23–1–7243(a); FRL–5322–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 9, 1995, the New Jersey Department of Environmental Protection (NJDEP) submitted requests to redesignate the Camden County nonattainment area and nine not-classified areas from nonattainment to attainment for carbon monoxide (CO). Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the New Jersey requests because they meet the redesignation requirements set forth in the CAA, which include the submittal of maintenance plans.

In addition, EPA is approving two related State Implementation Plan (SIP) submissions by NJDEP. On November 15, 1992, NJDEP submitted a final 1990 base year emission inventory for CO emissions. This includes emissions data for the entire State for all sources of CO in New Jersey's CO nonattainment areas. NJDEP also submitted contingency measures in the event the State fails to maintain the national ambient air quality standards for CO or if its vehicle miles travelled forecast is exceeded. In this action, EPA is approving New Jersey's CO emissions inventory submission and contingency measures.

EFFECTIVE DATES: This final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William S. Baker, Chief, Air Programs Branch,

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Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866, (212)637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Camden County was designated nonattainment for CO under the provisions of sections 186 and 187 of the CAA. Because the area had a design value of 11.6 parts per million based on 1988 and 1989 data, the area was classified moderate. [See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, section 81.331.] This design value was based on ambient CO data recorded in the City of Philadelphia, which is in the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (CMSA). For moderate CO nonattainment areas, the CAA requires that air quality must attain the National Ambient Air Quality Standard (NAAQS) by December 31, 1995. The last exceedance of the CO NAAQS in Camden County occurred in 1989.

In addition, nine areas were designated as not-classified nonattainment under section 107(d)(1)(C) of the CAA. Three of these not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. Five of the not-classified areas, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville, are located in the New York-Northern New Jersey-Long Island (NY–NJ–LI) CMSA. The remaining not-classified area is the City of Atlantic City, which is not contained within a CMSA. The oxygenated gasoline requirements applicable to each of these areas depend upon its location in the State. These requirements are discussed in section III.5 of this notice.

The nine areas were considered "not-classified" because air quality data collected during the period 1988 and 1989 showed that the NAAQS were met or because the data were not available. In those instances where air quality was no longer being monitored, concentrations measured in prior years had fallen well below the CO NAAQS.

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on September 28, 1995, the State of New Jersey submitted CO redesignation requests and maintenance plans for Camden County and the nine not-classified areas. This submittal contained evidence that public hearings were held on September 8, 1995.

II. Evaluation Criteria

Section 107(d)(3)(E) of the CAA provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the CAA.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

EPA has determined that the information received from the NJDEP constitutes complete redesignation requests under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

Additionally, the New Jersey redesignation requests for Camden County and the nine not-classified areas meet the five requirements of section 107(d)(3)(E), noted earlier. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

New Jersey has quality-assured CO ambient air monitoring data showing that Camden County and the nine not-classified areas have met the CO NAAQS. These requests are based on an analysis of quality-assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. CO monitoring data from calendar year 1990 through calendar year 1994 shows that no violations of the CO NAAQS have occurred. Camden County and the nine not-classified areas have complete quality assured data showing no more than one exceedance of the NAAQS per year over the most recent two complete years of data (1993 and 1994). In fact, the nine not-classified areas have not violated the NAAQS since 1987. In addition, the most recent ambient CO data for calendar year 1995 shows no exceedances of the NAAQS to date in Camden County or in the nine not-classified areas. EPA finds that all of these areas have met the first statutory criterion for attainment of the CO NAAQS (40 CFR 50.9 and appendix C).

Furthermore, air quality data for the Philadelphia portion of the Philadelphia-Wilmington-Trenton CMSA shows that the remainder of the nonattainment area has met the CO NAAQS since 1990. Therefore, air quality in the entire CMSA has been meeting the CO standards since 1990.

2. Fully Approved SIP Under Section 110(k) of the CAA

New Jersey's September 28, 1995 CO SIP revision is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of New Jersey's redesignation request. The 1990 CAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for Camden County and the nine not-classified areas include the preparation of a 1990 emission inventory with periodic updates and the development of contingency measures. Each of these requirements added by the 1990 CAA are discussed in greater detail below.

A. Part D New Source Review Requirements

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by New Jersey as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. New Jersey has not relied on a NSR program for CO sources to maintain attainment. Because Camden County and nine not-classified areas are being redesignated to attainment by this action, New Jersey's Prevention of Significant Deterioration requirements will be applicable to new or modified sources in Camden County and the nine not-classified areas.

B. Emission Inventory

New Jersey submitted a CO base year inventory for the entire State to EPA on November 15, 1992. On November 21, 1994, New Jersey submitted a technical update to the CO emission inventory for Bergen, Essex, Hudson, Passaic, and Union Counties. On September 28, 1995, New Jersey updated the CO emission inventory for the Camden County moderate nonattainment area and nine not classified nonattainment areas. These inventories are required under section 187(a)(1) of the CAA.

New Jersey's base year inventory used a three month CO season of November 1990 through February 1991. The inventory included emissions estimates from stationary point, stationary area, on-road mobile, and nonroad mobile sources of CO. These emission estimates were prepared in accordance with EPA guidance.

Table A presents a summary of the CO peak season daily emissions estimates in tons per winter day for Camden County and the nine not classified areas. Table B presents a summary of the CO peak season daily emissions estimates in tons per winter day for the remaining nonattainment areas in the State.

TABLE A.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment Area	1990 Base year CO emission inventory (tons per day)	2007 Projected CO emission inventory (tons per day)
City of Atlantic City	98	80
City of Burlington	225	200
Borough of Freehold	245	205
City of Morristown	251	192
Borough of Penns Grove (part)	47	37
City of Perth Amboy	320	279
Borough of Somerville	135	113
City of Toms River	145	142
City of Trenton	154	135
Total for Not Classified Areas	1620	1383
Camden County	252	218
Total for Camden County	252	218

TABLE B.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment area	1990 Base year CO emission inventory (tons per day)
Bergen County	506
Essex County	377
Hudson County	222
Passaic County	303
Union County	273
Total for Northern Nonattainment Counties	1681

Section 110(k) of the CAA contains provisions regarding emission inventory submittals. The EPA has determined that New Jersey's 1990 base year CO emissions inventory submitted on November 15, 1992 and updated on November 21, 1994 and September 28, 1995, meets these requirements. For further details, the reader is referred to the Technical Support Document, which is available for review at the addresses provided previously.

C. Contingency Measures

Under section 187(a)(3) of the CAA, the State is required to include adopted contingency measures in the event the State fails to attain the national ambient air quality standards by the required date or if the vehicle miles travelled forecast is exceeded beyond the allowable limit as defined in the January, 1992 guidance document, "Section 187 VMT Forecasting and Tracking Guidance."

EPA is approving New Jersey's transportation control measures (TCMs) with these redesignation requests. These TCMs cover three major program areas: Traffic flow improvements, park & ride lots, and increased ridesharing. The State included its employee commute options (ECO) program as an additional contingency measure. EPA will be taking action on New Jersey's ECO program submittal as a requirement of the State's ozone SIP in a separate **Federal Register** notice since there are specific requirements an ECO program must meet in order to be approved as part of an ozone SIP, but not as a contingency measure in a CO SIP.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

New Jersey has implemented a number of measures to control motor vehicle CO emissions. Emission reductions achieved through the implementation of these control measures are enforceable. These measures include the Federal Motor Vehicle Control Program, Federal reformulated gasoline, New Jersey's pre-1990 modifications to its inspection and maintenance (I/M) program, and local transportation control measures.

The State of New Jersey has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed Camden County to attain the NAAQS since 1990 and the nine not-classified areas to attain since 1986.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of New Jersey's maintenance plans for Camden County and the nine not-classified areas because EPA finds that New Jersey's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

As previously noted, on November 15, 1992, the State of New Jersey submitted a comprehensive inventory of CO emissions for Camden County and the nine not-classified areas. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. Although the 1990 inventory can be considered representative of attainment conditions because the NAAQS were not violated during 1990, New Jersey established CO emissions for the redesignation year, 1995, as well as a forecast for the year 2007 in its redesignation request. These estimates were derived from the State's 1990 emissions inventory and assumptions

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about economic and vehicle miles travelled growth.

B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2007. These projected inventories were prepared in accordance with EPA guidance. The projections in Table A show that future CO emissions are not expected to exceed the level of emissions in the base year after the benefits of the Federal Motor Vehicle Control Program, reformulated gasoline and pre-1990 basic I/M program are taken into consideration. It should be noted that the NJDEP demonstrated that Camden County and the nine not-classified areas will maintain the CO standard without the need for an oxygenated fuels program.

As a result of this projection, New Jersey took into account the effects of growth due to economic activities and population on stationary and off-highway sources.

C. Monitoring Network

New Jersey has committed to continue to operate its existing air monitoring network and quality assurance program in accordance with 40 CFR part 58 to ensure the development of complete and accurate emission inventory and air monitoring data.

D. Verification of Continued Attainment

Continued attainment of the CO NAAQS in Camden County and the nine not-classified areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submit periodic inventories of CO emissions every three years beginning in 1996 and continuing at least through 2007.

E. Contingency Plan

The level of CO emissions in Camden County and the nine not-classified areas will largely determine their ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS based upon some unforeseeable condition. In order to meet this challenge, the CAA requires states to develop contingency measures to offset these conditions.

New Jersey will be using an enhanced I/M program as its contingency measure. New Jersey is implementing enhanced I/M to meet other requirements of the CAA and it has the additional benefit of reducing CO emissions. However, New Jersey will not wait for a triggering mechanism before implementing this measure. Instead, the State will implement this program as quickly as is practicable. Operation of this program is expected to begin in 1996.

5. Meeting Applicable Requirements of Section 110 and Part D

In section III.2. of this notice EPA sets forth the basis for its conclusion that New Jersey has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA. EPA notes that section 110 also requires that states include in their SIPs, where applicable, oxygenated gasoline programs. EPA has concluded that Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP because the entire Philadelphia-Wilmington-Trenton CMSA is in fact attaining the CO NAAQS. In addition, for redesignation purposes, an oxygenated gasoline program does not have to be a part of the applicable SIP for the nine not classified nonattainment areas.

Camden County

The Camden County low moderate nonattainment area had a CO design value greater than 9.5 parts per million at the time of the enactment of the Clean Air Act Amendments of 1990 and thus was originally required to have an oxygenated gasoline program by November 1, 1992 as a part of the SIP for this area. In this notice, however, EPA is finding that the entire Philadelphia-Camden nonattainment area is currently attaining the CO NAAQS (See section III.1). Under a new interpretation of section 211(m)(6) discussed in this section, once EPA determines that a CO nonattainment area is actually attaining the CO NAAQS and that the area demonstrates it does not need oxygenated gasoline to maintain the NAAQS, section 211(m) no longer requires the submittal of a SIP revision for the area embodying an oxygenated gasoline program so long as the area continues to maintain the standard. Thus, because EPA finds that the Philadelphia-Camden nonattainment area is actually attaining the NAAQS and that Camden County has demonstrated that it does not need oxygenated gasoline for maintenance, Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP. As a consequence, Camden County may be redesignated notwithstanding the lack of a section 211(m) oxygenated gasoline program since such a program is not an applicable requirement for purposes of evaluating the redesignation request for Camden County pursuant to section 107(d)(3)(E).

In this notice, EPA is refining its previous interpretation of when section 211(m) requires a state to include an oxygenated gasoline program in its SIP. Section 211(m)(1) requires states with nonattainment areas with a design value of at least 9.5 ppm to submit a SIP revision containing oxygenated gasoline requirements. Section 211(m)(6), however, states: "*Nothing in this subsection shall be interpreted as requiring* an oxygenated gasoline program *in an area which is in attainment* for CO, except that in a CO area which is redesignated as attainment for CO, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard * * *" (emphasis added).

Previously, EPA has looked to an area's designation as nonattainment to determine whether oxygenated gasoline is required. However, section 211(m)(6) refers specifically to an area "which is in attainment," not to one which is designated attainment. EPA interprets this language to mean that as soon as EPA determines that an entire nonattainment area is actually in attainment, even prior to redesignation, section 211(m) no longer requires an oxygenated gasoline program for that area.

This interpretation is based on the plain language of the statute and is supported by the general CAA structure for applying provisions for SIP requirements to nonattainment areas. Section 211(m)(6) provides that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area that is "in attainment;" it does not state that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area "designated attainment." The two issues are distinct, however. Whether an area is "in attainment" depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area), whereas an area's designation as attainment or nonattainment depends on other factors as well as its own air quality. [See section 107(d)(1) and (d)(3)(E).] Congress has drawn distinctions between the issue of whether an area has attained the standard and its designation as attainment. [See, e.g., section 107(d)(3)(E) (attainment of the standard is one of several criteria for being redesignated attainment); section 182(f) (NO_x RACT requirements may be waived for nonattainment areas if it is determined that NO_x reductions would not contribute to attainment of the standard).]

Moreover, this interpretation is a reasonable reading that gives section 211(m)(6) legal effect. Section 175A states that nonattainment area requirements continue in force and effect until an area is redesignated to attainment; by implication, once the area is redesignated, the requirements no longer apply except as needed for maintenance or as contingency measures. Section 211(m)(6) would be a redundant restatement of this principle if it meant only that redesignated areas were no longer subject to oxygenated gasoline requirements. Furthermore, EPA notes that provisions such as section 211(m)(6) are not reflected in other nonattainment area provisions, such as the inspection/maintenance requirements, further supporting EPA's interpretation.

The effects of this interpretation of section 211(m) are limited in several respects. Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also, the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required for any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard. In addition, as this interpretation is based on the language of section 211(m)(6), it does not extend beyond the oxygenated gasoline requirements to other CAA SIP requirements.

The Nine Not Classified Areas

For various reasons, none of the nine not-classified nonattainment areas being redesignated to attainment in today's notice are required to have an oxygenated gasoline program in their approved SIP in order to be redesignated. None of the areas had a CO design value of 9.5 parts per million or greater and, therefore, none of the nine areas would have been required to have an oxygenated gasoline program. However, oxygenated gasoline programs had been required in eight of these nine areas because they are located in a CMSA containing a moderate CO nonattainment area in which section 211(m) required a program. The ninth area, Atlantic City, was and is not required to have an oxygenated fuel program in its SIP nor is it a part of a CMSA where the program is required.

Three of the not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. While these areas had once been required to have an oxygenated gasoline program due to their location in the same CMSA as the Camden Area, as the Camden Area is no longer required to have a program, they are also no longer required to have a program.

EPA is proceeding with the redesignation of the remaining five not-classified nonattainment areas in the NY-NJ-LI CMSA notwithstanding the lack of an approved SIP requiring the sale of oxygenated fuels in these five areas. These areas are, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville. EPA believes that these five areas satisfy the requirement of section 107(d)(3)(E) of the CAA in that they have a fully-approved SIP meeting all of the section 110 and Part D requirements applicable to the area. The reasons for this view are based on a combination of factors.

The requirements of section 211(m) concerning the sale of oxygenated gasoline in the NY-NJ-LI CMSA do not apply to the five not-classified areas by virtue of their own classification, designation or design value. Rather, oxygenated fuel is required to be sold in these areas because they are located within a CMSA containing a moderate CO nonattainment area with a design value of greater than 9.5 parts per million.

The requirements concerning the sale of oxygenated fuels in areas that are located within a CMSA in which a CO nonattainment area with a design value of 9.5 parts per million or greater exist regardless of the designation or classification of those areas as attainment, nonattainment or not-classified. Thus, the applicability of the requirements concerning the sale of oxygenated fuels in the five not-classified areas will not be affected by the redesignation of those areas to attainment. Furthermore, the State of New Jersey remains subject to a requirement to submit a SIP revision requiring the sale of oxygenated fuel in the New Jersey portion of the NY-NJ-LI CMSA because nonattaining areas of the CMSA remain subject to the section 211(m) requirements.

For purposes of applying the provisions of section 107(d)(3)(E) concerning requirements applicable to an area seeking redesignation, EPA believes it reasonable and appropriate to view the oxygenated fuel requirements of section 211(m) as applying only to an area within a CMSA whose design value triggered the applicability of the program, but not to the peripheral areas within the same CMSA that are subjected to the program by virtue of their location within that CMSA. Nonetheless, the redesignation to attainment of the five not-classified areas located in the NY-NJ-LI CMSA will not remove the mandate that the State is required to submit a SIP revision to implement an oxygenated fuel program throughout the CMSA.

IV. Final Action

EPA is approving the Camden County and nine not-classified CO maintenance plans because they meet the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the requests for redesignating Camden County and the nine not-classified areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving New Jersey's 1990 base year CO emissions inventory and contingency measures.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective February 5, 1996 unless, by January 8, 1996, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no

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adverse comments are received, the public is advised that this rule will be effective in 60 days. [See 47 FR 27073 and 59 FR 24059.]

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 187 of the CAA. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities. [See 46 FR 8709.]

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(l) of the CAA, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: October 24, 1995.

William J. Muszynski,

Deputy Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(57) The redesignation and maintenance plan for Camden County and the Nine not-classified areas (the City of Trenton, the City of Burlington, the Borough of Penns Grove (part), the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River, the Borough of Somerville, and the City of Atlantic City) submitted by the New Jersey Department of Environmental Protection on September 28, 1995, as part of the New Jersey SIP. The 1990 Baseline CO Emission Inventory for the State of New Jersey was submitted on November 15, 1992 and a Technical Update was submitted on November 21, 1994.

(i) Incorporation by reference.

(A) "New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County," section 5.f, effective date September 28, 1995.

(B) "New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas," section 5.f, effective date September 28, 1995.

(ii) Additional material.

(A) "New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County" with appendices, September 28, 1995.

(B) "New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas" with appendices, September 28, 1995.

3. Section 52.1582 is amended by redesignating paragraph (d) to (d)(1) and adding new paragraph (d)(2) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(d) * * *

(d)(2) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the 1990 Clean Air Act Amendments has been satisfied for the entire State. The inventory was submitted on November 15, 1992 and amended on September 28, 1995 by the New Jersey Department of Environmental Protection as a revision to the carbon monoxide State Implementation Plan.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.331, the table for "New Jersey-Carbon Monoxide" is amended by revising the entry for Camden County to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlantic City Area:				
Atlantic County (part) The City of Atlantic City	February 5, 1996	Attainment.		
Burlington Area:				
Burlington County (part) City of Burlington	February 5, 1996	Attainment.		
Freehold Area:				
Monmouth County (part) Borough of Freehold	February 5, 1996	Attainment.		
Morristown Area:				
Morris County (part) City of Morristown	February 5, 1996	Attainment.		
New York-N. New Jersey-Long Island Area:				
Bergen County		Nonattainment		Moderate > 12.7ppm.
Essex County		Nonattainment		Moderate > 12.7ppm.
Hudson County		Nonattainment		Moderate > 12.7ppm.
Passaic County (part):				
City of Clifton		Nonattainment		Moderate > 12.7ppm.
City of Patterson		Nonattainment		Moderate > 12.7ppm.
City of Passaic		Nonattainment		Moderate > 12.7ppm.
Union County		Nonattainment		Moderate > 12.7ppm.
Penns Grove Area:				
Salem County (part) Borough of Penns Grove. Those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 & 607.	February 5, 1996	Attainment.		
Perth Amboy Area:				
Middlesex County (part) City of Perth Amboy	February 5, 1996	Attainment.		
Philadelphia-Camden County Area:				
Camden County	February 5, 1996	Attainment.		
Somerville Area:				
Somerset County (part) Borough of Somerville	February 5, 1996	Attainment.		
Toms River Area:				
Ocean County (part) City of Toms River	February 5, 1996	Attainment.		
Trenton Area:				
Mercer County (part) City of Trenton	February 5, 1996	Attainment.		
AQCR 043 NJ NY Connecticut Interstate (Remainder of)		Unclassifiable/ Attainment.		
Middlesex County (part) area outside of Perth Amboy. Monmouth County (part) area outside of Freehold. Morris County (part) area outside of Morristown. Passaic County (part) area outside Clifton, Patterson, and Passaic. Somerset County (part) area outside of Somerville.				
AQCR 045 Metro. Philadelphia Interstate (Remainder of)		Unclassifiable/ Attainment.		
Burlington County (part) Area outside Burlington. Gloucester County. Mercer County (part) Area outside Trenton. Salem County (part) Area outside Penns Grove Area.				
AQCR 150 New Jersey Intrastate		Unclassifiable/ Attainment.		
Atlantic County (part) Area outside Atlantic City. Cape May County. Cumberland County. Ocean County (part) Area outside Toms River.				
AQCR 151 NE PA—Upper Delaware Valley		Unclassifiable/ Attainment.		
Hunterdon County. Sussex County.				

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NEW JERSEY—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Warren County.				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–29818 Filed 12–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FL63–1–7143a; FRL–5340–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida Change in National Policy Regarding Applicability of Conformity Requirements to Redesignation Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 7, 1995, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a maintenance plan and a request to redesignate the Tampa area from marginal nonattainment to attainment for ozone (O_3). The Tampa O_3 nonattainment area consists of Hillsborough and Pinellas Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data are available to warrant such revisions and the CAA redesignation requirements are satisfied. In this action, EPA is approving Florida's request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is also approving the 1990 base year emission inventory for the Tampa area.

DATES: This action will be effective February 5, 1996, unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.
Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.
Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.
Pinellas County Department of Environmental Management, Division of Air Quality, 300 S. Garden Avenue, Clearwater, Florida 34616.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215. Reference file FL63–1–7143a.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the O_3 national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Tampa-St. Petersburg-Clearwater area (Tampa), comprised of Hillsborough and Pinellas Counties, was designated under section 107 of the 1977 Act as nonattainment with respect to the O_3 NAAQS on March 3, 1978. [43 FR 8964, 40 CFR 81.310] In accordance with section 110 of the 1977 Act, the State submitted a part D O_3 SIP on April 30, 1979, which was supplemented on August 27, 1979, and January 23, 1980, which EPA conditionally approved on March 18, 1980, and fully approved on May 14, 1981, as meeting the requirements of section 110 and part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments). [Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q] The nonattainment designation of Tampa was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified as marginal for O_3 according to section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.310).

Tampa more recently has ambient monitoring data that show no violations of the O_3 NAAQS, during the period 1990 through 1994. In addition, there have been no exceedances reported for the 1995 O_3 season. Therefore, in an effort to comply with the 1990 Amendments and to ensure continued attainment of the NAAQS, Florida submitted an O_3 maintenance SIP for the Tampa area on February 7, 1995, and also requested redesignation of the area to attainment with respect to the O_3 NAAQS.

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must meet all relevant requirements under section 110 and part D of the CAA;
3. The area must have a fully approved SIP under section 110(k) of the CAA;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

The Florida redesignation request for the Tampa area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the O_3 NAAQS

The Florida request is based on an analysis of quality assured O_3 air quality data which is relevant to the maintenance plan and to the redesignation request. The ambient O_3 data for the calendar years 1990 through 1992 shows an exceedance rate of less than 1.0 per year of the O_3 NAAQS in the Tampa area. (See 40 CFR 50.9 and Appendix H). In addition, there have been no ambient air exceedances in 1993, 1994 or to date in 1995 for O_3. Because the Tampa area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Tampa area has met the first statutory criterion of attainment of the O_3 NAAQS. Florida has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

On May 14, 1981, EPA fully approved Florida's SIP for the Tampa area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act (46 FR 26640). The 1990 Amendments, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the state has met all requirements that applied to the subject area prior to the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable at those later dates (see section 175A(c)) and, if the redesignation is disapproved, the state remains obligated to fulfill those requirements.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Tampa SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Tampa may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Tampa area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.530). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is subject to requirements of subpart 2 of part D.

B.1. Subpart 1 of part D—Section 172(c) Plan Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. EPA had not determined that these requirements were applicable to classified O_3 nonattainment areas on or before February 7, 1995, the date that the State of Florida submitted a complete redesignation request for the Tampa area. Therefore, the State was not required to meet these requirements for purposes of redesignation. EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement was not applicable to the Tampa redesignation. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures (RACM) beyond what may already be required in the SIP are no longer necessary.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (in this action) of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. See memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). However, the State of Florida does have a fully approved part D NSR rule.

Finally, for purposes of redesignation, the Tampa SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, EPA believes the SIP satisfies all of those requirements.

B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Florida is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, the State of Florida is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by

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December 1, 1994. The conformity rules for Florida have not yet been approved.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity (58 FR 62188) and general conformity (58 FR 63214) rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, with this notice, EPA is modifying its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing an ozone redesignation request. Under this new policy, for the reasons just discussed, EPA believes that the ozone redesignation request for the Tampa area may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

B.3. Subpart 2 of Part D—Section 182(a) Requirements

The CAA was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. The Tampa area was designated as marginal O_3 nonattainment (See 40 CFR 81.310). Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. On November 16, 1992, FDEP submitted an emission inventory for the Tampa area. This notice is approving the base year inventory for the Tampa area.

(2) Reasonably Available Control Technology (RACT)

To be redesignated, all SIP revisions required by section 182(a)(2)(A) and 182(b)(2) concerning RACT requirements must have been submitted to EPA and fully approved. Florida has met all RACT requirements.

(3) Emissions Statements

Section 182(a)(3) of the CAA required a SIP submission by November 15, 1992, to require stationary sources of NO_X and VOCs to provide statements of actual emissions. Florida submitted an annual emissions statement SIP revision on November 13, 1992. This revision was approved in the **Federal Register** on August 4, 1994.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the 1990 Amendments, EPA has determined that the Tampa area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the Florida SIP control strategy for the Tampa nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are VOC RACT regulations, the Federal Motor Vehicle Control Program (FMVCP), and lower Reid Vapor Pressure (RVP). VOC emissions from stage I sources were reduced by 40% in 1990 due to VOC RACT. The FMVCP reduced VOC emissions from motor vehicles by 14.2% from 1988 to 1990. The reduction in RVP from 10.8 psi in 1988 to 9.0 psi in 1990 has reduced summertime VOC mobile source emissions by 30.8%.

In association with its emission inventory discussed below, the State of Florida has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient O_3 levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Florida's maintenance plan for the Tampa area because EPA finds that Florida's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of Florida submitted comprehensive inventories of VOC, NO_X, and CO emissions from the Tampa area. The inventories include biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. EPA is approving the 1990 base year inventory in this document.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the NEDS format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the base year and projected maintenance year inventories. EPA's TSD contains more in-depth details regarding the base year inventory for the Tampa area.

VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	16.59	24.52	25.16	25.86	26.64
Stationary Area	101.00	104.61	109.44	114.34	120.13
On-Road Mobile	166.12	90.96	67.97	64.73	57.43
Non-Road Mobile	51.41	55.36	57.56	59.76	62.56
Biogenics	97.89	97.89	97.89	97.89	97.89
Total	433.01	373.07	378.02	382.59	394.67

NO_x EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	319.76	336.02	317.83	320.02	336.84
Stationary Area	9.96	10.67	11.08	11.48	12.08
On-Road Mobile	121.47	109.89	114.00	111.80	113.25
Non-Road Mobile	41.60	44.61	47.01	49.40	52.61
Total	492.79	501.19	489.92	492.70	516.78

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990
Stationary Point	33.49
Stationary Area	16.35
On-Road Mobile	942.60
Non-Road Mobile	365.54
Total	1357.99

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 base year out to 2005, with interim years of 1994, 1997, and 2000. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC emissions are expected to decrease 38.34 tons or 8.85% from the level of the base year inventory during this time period. The NO_X emissions do show a slight increase of 23.99 tons or 4.87% from 1990 to 2005, but the State has demonstrated as discussed below that the projected increases will not adversely affect the maintenance of the O_3 NAAQS.

The Empirical Kinetics Modeling Approach (EKMA) was used to demonstrate the impact of NO_X emission increases on maximum O_3 formation. The EKMA analysis showed that the projected future mix of emissions will not cause a violation of the NAAQS. EPA EKMA guidance documents were used in developing model inputs. The model was run using 1988 meteorological conditions and monitored O_3, NO_X and nonmethane organic compound (NMOC) concentration data for May 16, 1988, June 3, 1988, and June 23, 1988, and was run in the EKMA calculate mode. These days had observed O_3 maximum concentrations of 0.118, 0.113, and 0.115 parts per million (ppm) respectively. The monitored NMOC/NO_X ratios of 6.876, 6.298, and 5.180 were used as input. The EKMA predicted a minimum decrease in O_3 concentration of 1.5% from 1990 to 2005.

The model output indicated a continual decrease in the maximum model-predicted O_3 with each increase in NO_X emissions over the 1990 base case inventory. Additionally, the modeling indicated that the mix of emissions as indicated in the 2005 inventory (11.4% VOC reductions and 4.8% NO_X increase over the 1990 inventory) produced lower O_3 levels than the base case. Thus, the analysis indicates that, not withstanding the projected increase in NO_X emissions, the Tampa area should continue to maintain the standard throughout the maintenance period.

C. Contingency Plan

The level of VOC emissions in the Tampa area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Florida has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as reinstatement of NSR, less volatile or reformulated gasoline, expansion of control strategies to adjacent counties for VOC and/or NO_X and to new CTG categories, or an

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enhanced vehicle emissions inspection program. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

D. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this action, EPA is approving the Tampa area O_3 maintenance plan submitted on February 7, 1995, because it meets the requirements of section 175A. In addition, the Agency is approving the request and redesignating the Tampa nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving the 1990 base year emissions inventory for the Tampa area submitted on November 16, 1992. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 5, 1996, unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 5, 1996.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NOX emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct.1976); 42 U.S.C. sections 7410 (a)(2) and 7410 (k)(3).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(89) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(89) The maintenance plan for Tampa, Florida, submitted by the Florida Department of Environmental Protection on February 7, 1995.

(i) Incorporation by reference. Tampa Redesignation Request and Attainment/ Maintenance Plan for the Tampa Bay Florida Ozone Nonattainment Area including Emissions Inventory Summary and Projections adopted on November 16, 1994.

(ii) Other material. None.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.310 the "Florida-Ozone" table is amended by removing the entry for "Tampa-St. Petersburg-Clearwater Area;" and by adding entries for Hillsborough and Pinellas Counties in alphabetical order; and by revising the entry "Rest of State" to read "Statewide."

§ 81.310 Florida.

* * * * *

FLORIDA-OZONE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/ Attainment		
Hillsborough County	February 5, 1996.			
Pinellas County	February 5, 1996.			

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–29817 Filed 12–6–95; 8:45 am]

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40 CFR Part 70

[AD–FRL–5341–7]

Clean Air Act Interim Approval of Operating Permits Program; San Diego Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District (San Diego or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. In addition, today's action promulgates direct final approval of San Diego's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA SD–95–1–OPS) during normal business hours at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years

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after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing interim approval of the operating permit program submitted by San Diego should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 5, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until February 9, 1998. During this interim approval period, San Diego is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If San Diego fails to submit a complete corrective program for full approval by August 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If San Diego then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that San Diego has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves San Diego's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date San Diego has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if San Diego has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for San Diego upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of San Diego's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA-SD–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

San Diego's title V program was submitted by the California Air Resources Board (CARB) on April 22, 1994 and found to be complete on June 9, 1994. On April 4, 1995, the District amended the regulatory portion of its submittal. On October 10, 1995, EPA received from CARB, on behalf of the District, a revised fee program and an updated program description. Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in San Diego's submittal. The San Diego submission does contain a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. An implementation agreement is currently being developed between San Diego and EPA.

2. Regulations and Program Implementation

San Diego's title V implementing regulation, District Regulation XIV, was first adopted on January 18, 1994. After preliminary review of Regulation XIV, EPA identified numerous regulatory deficiencies and communicated the potential disapproval issues to San Diego in letters dated September 6, 1994 and December 13, 1994. In response, San Diego revised Regulation XIV. The amended regulation was adopted on March 7, 1995 and submitted to EPA by CARB, on behalf of the District, on April 4, 1995. San Diego's program description was also revised to reflect the changes made to Regulation XIV. EPA is therefore evaluating and acting on the March 7, 1995 version of Regulation XIV.

San Diego's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

San Diego submitted an extensive list of insignificant activities that the District determined to be insignificant based on having "relatively low potential to emit" (Regulation XIV, Appendix A). While the potential to emit criterion is an acceptable mechanism for identifying insignificant units, the District did not provide emissions level cut-offs for many of the listed units. For instance, Regulation XIV, Appendix A(p)(17) exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, would be subject to applicable requirements and could not be considered insignificant. EPA believes that in order to have fully approvable insignificant activities provisions, the listed units should not confuse the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement.

For interim approval, EPA is relying on several rules in Regulation XIV that affect the scope and usage of insignificant activities. Specifically, Rule 1401(a) ensures that the District's permit exemption rule, Rule 11, will not interfere with title V applicability determinations. Similarly, Rule 1401(b)(4) ensures that emissions from insignificant units will be included in all title V applicability determinations. In addition, Rules 1411, 1414(f)(1), 1414(f)(3)(iii) (A)&(B), 1414(f)(4) and the application "Completeness Criteria" guidance document require the permit application to include all information necessary to determine whether and how an applicable requirement applies at a source, regardless if a unit qualifies as insignificant. Finally, Rules 1401(b)(4) and 1401(c)(24) prohibit activities that are subject to an applicable requirement (other than two specified generic facility-wide requirements) from qualifying as an insignificant activity. For full approval, San Diego must revise its list of insignificant activities for title V permitting as discussed in section II.B.1.5. of this notice.

b. Variances

San Diego's Hearing Board has the authority to issue variances from requirements imposed by State and local law. *See* California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that "[t]he variance process is not part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

c. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and San Diego has not defined "prompt" in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

d. Temporary Authorization

San Diego's title V regulation provides for the issuance of a "temporary authorization" which allows a source to operate without an operating permit. Temporary authorizations are not required by part 70, but they exist in San Diego's title V program in order to maintain consistency with the District's existing local permitting program. San Diego structured its temporary authorization mechanism to ensure that the issuance of temporary authorizations would not interfere with any of the requirements established under part 70. Specifically, temporary authorizations may only be issued to sources that have met the requirements of section 112(g) or the preconstruction permitting requirements under parts C or D of title I; i.e., the same scope of sources that do not have to submit applications for title V permits or title V permit modifications until 12 months after commencing operation (section 70.5(a)(1)(ii)). Furthermore, possession of a temporary authorization does not affect a source's obligation to submit a title V permit application, and the temporary authorization expires on the date that a complete title V permit application is due.

e. Enhanced New Source Review

San Diego's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to San Diego's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change.

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f. Applicability

EPA found during its review of the San Diego title V program that the District's applicability provisions are consistent with part 70 and fully approvable, but that there is atypical language which warrants a brief discussion in this notice. First, the requirement to count fugitive hazardous air pollutant emissions in major source determinations is contained in the definition of "potential to emit" rather than the definition of "major stationary source." The term "potential to emit" is used to define "major stationary source." (See Regulation XIV, Rules 1401(c)(25) and (36).)

Second, a broad applicability exemption for all non-major stationary sources (Rule 1401(b)(1)) appears at first glance to be in conflict with the part 70 requirement to permit non-major affected sources and solid waste incineration units subject to section 129(e) of the Act (section 70.3(b)). However, San Diego's regulation provides that the applicability exemptions in Rule 1401(b)(1) apply only when referenced in the applicability section (Rule 1401(a)(2) and (3)); i.e., to non-major sources subject to sections 111 or 112 of the Act. (See Regulation XIV, Rule 1401(a)(2–4).) San Diego's program description confirms this reading (section III.B.1.b., p.2). In any case, if EPA completes a rulemaking that would require a non-major source to obtain a title V permit, the non-major stationary source exemption would not apply for that source (Rule 1401(b)(1)).

g. Federally Mandated New Source Review

In order to have an approvable title V program, permits must assure compliance with all federal applicable requirements. The part 70 definition of "applicable requirement" includes "any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;" (section 70.2, definition of "applicable requirement," subsection (2)) i.e., major and minor new source review and prevention of significant deterioration requirements.

Rather than citing parts C or D of title I, San Diego's definition of "federally enforceable requirement" states that requirements imposed by "federally mandated new source review" or prevention of significant deterioration regulations are applicable requirements. The use of the term "federally mandated new source review" is unclear. Under San Diego's definition, "federally mandated new source review" is linked to "emission thresholds specified in federal law or in the approved State Implementation Plan (SIP)." (See Regulation XIV, Rule 1401(c)(19).) The District has a SIP-approved minor new source review program that is triggered by *any emissions increase*, which could be construed as an emissions threshold of zero, and therefore all NSR, major and minor, is federally mandated. (See Regulation II, Rule 10(a).) Yet, San Diego has contended that minor NSR is not always federally mandated, leaving the term "federally mandated new source review" subject to conflicting interpretations.

The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V. However, San Diego's program is approvable for an interim period because the District's approved SIP contains a minor new source review program, and San Diego's definition of "federally enforceable requirement" also includes "[a]ny standard or other requirement provided for in the State Implementation Plan" (Regulation XIV, Rule 1401(c)(18)(i)). Rules 10 and 21 of San Diego's portion of the California SIP constitute the District's minor (and major) NSR program. (See June 22, 1994 letter from Richard Smith, San Diego Air Pollution Control District, to Ron Friesen, California Air Resources Board.) Since Rules 10 and 21 are in San Diego's SIP, the requirement to obtain, and the specific conditions of, a minor NSR permit are federally enforceable.

EPA has discussed this interim approach with San Diego, and the District agrees that SIP-approved Rules 10 and 21 provide for a federally enforceable minor NSR program. However, EPA and San Diego disagree about whether Rule 21 extends federal enforceability to all terms and conditions of minor NSR permits. EPA believes that, until San Diego's SIP is revised to state otherwise, Rule 21 makes all terms and conditions of minor NSR permits federally enforceable. San Diego believes that minor NSR permit terms that do not originate from the SIP or other federal law or regulations are not made federally enforceable by Rule 21. As an interim solution until San Diego's SIP is revised or this disagreement is resolved, the District has agreed to designate in the part 70 permit certain minor NSR permit terms as "District-only minor NSR" and stipulate that those terms so listed will be reviewed and, as necessary, be deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit).

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

San Diego has opted to make a presumptive minimum fee demonstration. The District's fees are based on the actual direct and indirect costs of evaluating and issuing a title V permit. In addition to employing a cost recovery approach, the District will charge an initial title V permit application fee of $2,200 per permitted source (Rule 40, Section (s)). San Diego estimates an average implementation cost, and hence fees, of $320,000 per year for the first 5 years of the program. The presumptive minimum is calculated at $309,300 per year by multiplying an estimated 10,000 tons of pollutants emitted each year in San Diego by the CPI adjusted presumptive dollar amount of $30.93. San Diego will therefore be collecting fees in an amount that exceeds the presumptive minimum.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

San Diego has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow San Diego to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Authority for Title IV Implementation

On March 7, 1995, San Diego incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Rule 1412 of Regulation XIV and submitted to EPA on April 4, 1995.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District, on April 22, 1994 and amended on April 4, 1995 and October 10, 1995. Areas in which San Diego's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for San Diego's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Part 70 requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification. Rule 1401(c)(43), definition of "Significant Permit Modification," must be revised accordingly. (*See* section 70.7(e)(4).)

(3) San Diego's treatment of affected state notification is unclear in the program submittal. Part 70 requires that air permitting authorities provide notice to all affected states of all proposed permits, minor and significant permit modifications, and renewals (section 70.8(b)(1)). The term "affected state" is defined in section 70.2 as a contiguous state whose air quality may be affected or a state within 50 miles of a permitted source. EPA is also undergoing a rulemaking action that will allow Native American lands to be treated as a state. (See 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).)

San Diego's program does not define "affected state," and it does not specify any affected state notification procedures. It does provide, however, the requirement to notify affected states in the case of minor or significant permit modifications. In addition, San Diego has indicated that it currently has cooperative permitting agreements with Native American tribes.

EPA is not concerned about the notice deficiencies with respect to states that border California because of San Diego's coastal location. On the other hand, in order to receive full approval on this issue, San Diego's program must ensure that Native American tribes will be adequately notified and consulted once such tribes apply for treatment as affected states. If San Diego's existing cooperative permitting practices meet the affected state notification requirements set out in section 70.8(b), the District may submit them to EPA for incorporation into its title V program to satisfy the affected state notice requirements. As an alternative to up-front adoption of affected state notice provisions or incorporation of existing practices, EPA will accept a commitment from San Diego to: (1) Initiate rule revisions upon notification from EPA that an affected tribe has applied for state status; and (2) provide affected state notice to tribes upon a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules.

(4) Revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to active status if there are 3 years or more remaining on the term of its 5-year permit. (See section 70.7(f)(1)(i).)

(5) Remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. (See sections 70.4(b)(2) and 70.5(c).)

(6) Remove the reference to Rules 1401 (j) and (k) in Rule 1401(i). This reference to minor and significant permit modifications in the provisions for administrative permit amendments could be read to be inconsistent with the definition of "significant permit modification" (Rule 1401(c)(43)), which correctly defaults unspecified changes to the significant permit modification process. In addition, the phrase "These shall include the following" in the administrative permit amendment section (Rule 1410(i)) creates ambiguity about whether the list of administrative permit amendments is exhaustive or open ended. Because part 70, section 70.7(d)(vi) requires that administrative permit amendments be specifically approved as part of the title V program, the word "include" in the above phrase must also be removed.

(7) The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, San Diego is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of San Diego's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within San Diego's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), San Diego must be able to implement section 112(g) during the period between promulgation of the

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federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of San Diego's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by San Diego of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR part 63.91 of San Diego's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, San Diego will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between San Diego and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of San Diego's submittal and other information relied upon for this direct final action is contained in docket number CA-SD-95-1-OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (x) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following district program was submitted by the California Air Resources Board on behalf of:

(x) *San Diego Air Pollution Control District*: submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996.

* * * * *

[FR Doc. 95-29836 Filed 12-06-95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 70

[AD-FRL-5341-9]

Clean Air Act Interim Approval of Operating Permits Program; Mariposa Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board (CARB), on behalf of the Mariposa Air Pollution Control District (Mariposa or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. In addition, today's action promulgates direct final approval of Mariposa's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA-MA-95-1-OPS) during normal business hours at the following location: Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew (telephone 415/744-1170), Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing interim approval of the operating permit program submitted by Mariposa should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 5, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until February 9, 1998. During this interim approval period, Mariposa is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Mariposa fails to submit a complete corrective program for full approval by August 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If Mariposa then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Mariposa has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Mariposa has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Mariposa's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Mariposa has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Mariposa has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Mariposa has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Mariposa upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of Mariposa's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA-MA-95-1-OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

Mariposa's title V program was submitted by the California Air Resources Board (CARB) on March 8, 1995 and found to be complete on May 25, 1995. Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Mariposa's submittal. The Mariposa submission does contain a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. EPA will wait to develop an implementation agreement between Mariposa and EPA until the District has title V sources.

2. Regulations and Program Implementation

Mariposa's title V implementing regulation, District Regulation X, was adopted on February 28, 1995. The District used the CARB model rule, and Regulation X is almost identical to the other smaller districts in California. EPA has granted interim approval to 23 of these smaller districts to date, and a detailed discussion of the issues in these programs can be found in 60 FR 21720, published on May 3, 1995.

Mariposa's title V implementing regulations substantially meet the

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requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities and complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index ("CPI"), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

Mariposa does not currently have any title V sources. The District has adopted a fee rule that would charge the presumptive minimum to any title V source that locates in the District, or to any source to which title V becomes applicable.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

Mariposa has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow Mariposa to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz and located in the docket.

b. Authority for Title IV Implementation

Mariposa has no title V sources at this time, and therefore has no Phase I or Phase II acid rain sources. The District has not submitted a complete acid rain program, due to its lack of sources. If, in the future, title V sources locate in the District, or if title V should become applicable to any existing sources, Mariposa will need to provide the same commitment that EPA is requiring of other Districts that do not have a complete acid rain program. This commitment will be to expeditiously adopt the appropriate regulatory authority, if and when it becomes necessary to issue a title IV permit to any new or existing source in the District that becomes subject to, or wants to opt into, the acid rain program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the Mariposa Air Pollution Control District, on March 8, 1995. Areas in which Mariposa's program is deficient and requires corrective action prior to full approval are as follows:

(1) Provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, the District may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

(2) Revise the exemption list in Rule 402 (Exemptions to Rule 401) to remove the general exemption for agricultural production sources or to restrict the exemptions to non-title V sources.

(3) Revise the application content requirements in Rule 1006 so that any compliance schedule required by the rule for a source not in compliance must resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by § 70.5 (c)(4)(iii)(C) rather than simply a schedule of compliance approved by the District's hearing board.

(4) Revise the application content requirements in Rule 1006 to clarify that all reports and other documents submitted in the permit application must be certified by the responsible official as required by § 70.5 (d) and to provide the full text of the responsible official's certification in § 70.5 (d).

(5) Provide in Rule 1004 a permit application deadline for sources that become subject to the District's part 70 rule after the rule's effectiveness date for reasons other than commencing operation. This deadline cannot be any later than 12 months after the source becomes subject to the rule as required by § 70.5 (a)(1).

(6) Revise the permit issuance procedures in Rule 1005 to provide for notifying the EPA and affected States in writing of any refusal by the District to accept all recommendations for the proposed permit that the Affected State submitted during the public/Affected State review period as required by § 70.8 (b)(2).

(7) Incorporate in Rule 1005 provisions citing the right of the public to petition EPA under § 70.8 (d) after the expiration of the EPA's 45-day review period and prohibiting the District from issuing a permit, if it has not already done so, until the EPA's objections in response to the petition are resolved as required by § 70.8 (d).

(8) Revise Rule 1005 to provide for public notice of permitting actions by other means if necessary to assure adequate notice to the affected public as required by § 70.7 (h)(1).

(9) Revise the permit content requirements in Rule 1006 to clarify that all reports and other documents required by the permit must be certified by a responsible official as required by § 70.6 (c)(1) and to provide the full text of the responsible official's certification in § 70.5 (d).

(10) Revise the permit content requirements in Rule 1006 to require that any compliance schedule for a source not in compliance must resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the hearing board to which the source is subject as required by §§ 70.6 (c)(3) and 70.5 (c)(8)(iii)(C).

(11) Revise the permit content requirements in Rule 1006 to require the submission of compliance certifications more frequently than annually if a more frequent period is specified in the applicable requirement or by the District as required by § 70.6 (c)(5)(i).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, Mariposa is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of Mariposa's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within Mariposa's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Mariposa must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of Mariposa's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Mariposa of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR part 63.91 of Mariposa's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, Mariposa will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between Mariposa and EPA, which will be negotiated at the time when the District has title V sources. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of Mariposa's submittal and other information relied upon for this direct final action is contained in docket number CA-MA–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: November 13, 1995.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

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PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (n) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following district program was submitted by the California Air Resources Board on behalf of:

(n) *Mariposa Air Pollution Control District:* submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996.

* * * * *

[FR Doc. 95–29834 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No 1; Amdt. 1–274]

Organization and Delegation of Powers and Duties; Transfer of Delegations from the Director of Commercial Space Transportation to the Administrator of the Federal Aviation Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of Commercial Space Transportation (OCST) is being transferred from the Office of the Secretary to the Federal Aviation Administration. Accordingly, the Secretary's delegation of authority for the functions under the Department's commercial space transportation program is being transferred from the Director of Commercial Space Transportation to the Administrator of the Federal Aviation Administration. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's commercial space transportation program is being transferred from the Office of the Secretary to the Federal Aviation Administration. This rule amends the delegations to reflect the transfer.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Because the date of the transfer of responsibility for the commercial space transportation program is November 16, 1995, that is the effective date of this rule.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.4 is amended by removing "and" at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and adding "; and" in its place, and by adding a new paragraph (c)(8) to read as follows:

§ 1.4 General responsibilities.

* * * * *

(c) * * *

(8) Promulgating and enforcing regulations on all safety matters relating to commercial launch activities.

* * * * *

§ 1.22 [Amended]

3. Section 1.22(a) is amended by removing the words "the Office of Commercial Space Transportation;".

§ 1.23 [Amended]

4. Section 1.23(n) is removed and reserved.

5. Section 1.47 is amended by adding paragraphs (u), (v), and (w) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(u) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) (3 CFR, 1984 Comp., p. 163) relating to commercial expendable launch vehicle activities.

(v) Carry out the functions vested in the Secretary by 49 U.S.C. Subtitle IX.

(w) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102–588, 106 Stat 5119, November 4, 1992).

§ 1.68 [Removed and reserved]

6. Section 1.68 is removed and reserved.

Issued at Washington, DC, this 23rd day of October, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–29867 Filed 12–6–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950725190–5257–02; I.D. 120195A]

Coral and Coral Reefs of the Gulf of Mexico; Wild Live Rock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the fishery for wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico. This action is necessary to prevent exceeding the quota for 1995.

EFFECTIVE DATE: Effective 12:01 a.m., December 5, 1995 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: Live rock in the EEZ is managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Section 638.26(d)(1) established a quota of 500,000 lb (226,796 kg) for the fishing year that began January 1, 1995. Section 638.26(d)(2) requires the Assistant Administrator for Fisheries, NOAA (AA), to close the wild live rock fishery in the Gulf EEZ when the quota is reached, or is projected to be reached.

The AA has determined that the quota will be reached on December 4, 1995. Accordingly, the wild live rock fishery in the Gulf EEZ is closed effective 12:01 a.m., local time, December 5, 1995, and will not reopen until January 1, 1996. During the closure, wild live rock may not be harvested or possessed in the Gulf EEZ, and the purchase, barter, trade, or sale of wild live rock in or from the Gulf EEZ is prohibited. The latter prohibition does not apply to wild live rock that was harvested prior to December 5, 1995.

Classification

This action is required by 50 CFR 638.26(d) and is exempt from review under E.O. 12866.

Dated: December 1, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–29774 Filed 12–1–95; 4:55 pm]

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Proposed Rules

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0903]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update provides guidance mainly on issues relating to reverse mortgages and mortgages bearing rates above a certain percentage or fees above a certain amount. It also addresses issues of general interest, such as the treatment of debt cancellation contracts and a card issuer's responsibilities when a cardholder asserts a claim or defense relating to a merchant dispute.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0903, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane Jensen Gell or Obrea O. Poindexter, Staff Attorneys; for Subparts A, C and E (closed-end credit, reverse mortgages, and mortgages bearing rates or fees above a certain percentage or amount), Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of Telecommunications Device for the Deaf (TDD) only, please contact Dorthea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. It also imposes limitations on some credit transactions secured by a consumer's principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). The Board also has an official staff commentary (12 CFR part 226 (Supp. I)) that interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. It is updated periodically to address significant questions that arise, and is a substitute for individual staff interpretations. The Board expects to adopt amendments in final form in March 1996 with compliance optional until October 1, 1996, the effective date for mandatory compliance.

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, impose new disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The amendments also impose new disclosure requirements for reverse mortgage transactions, which provide advances primarily to elderly homeowners and rely principally on the home's value for repayment. In large measure, the proposed commentary incorporates the supplementary information accompanying that rulemaking, and addresses other issues that have arisen since the publication of the final rule.

The Congress recently amended TILA provisions concerning finance charge disclosures for home mortgage loans. The Truth in Lending Act Amendments of 1995 ("1995 Act," Public Law 104–29, 109 Stat. 271) clarify the treatment of several fees typically associated with real estate-related lending, and revise tolerances for finance charge calculations for loans secured by real estate or dwellings. The statutory amendments, which were enacted in response to a number of lawsuits, also address consumer remedies for creditors' past and future disclosure violations. The 1995 Act became effective immediately for provisions relating to tolerances, past and future liability, and the exclusion of certain closing costs from the finance charge calculation. The statutory amendments that exclude certain real estate related closing costs from the finance charge generally codify interpretations previously issued by the Board, and no further revisions to the commentary are contemplated at this time..

Another statutory provision categorizes all brokers fees paid by the consumer to the broker (or to the creditor for delivery to the broker) as finance charges; this provision will become effective 60 days after the Board issues a final rule or no later than 12 months after enactment of the amendments to the act. It is anticipated that the Board will issue a proposed amendment to Regulation Z addressing brokers fees during the first quarter of 1996, and will make any changes to the commentary relating to the treatment of brokers fees as part of that rulemaking.

II. Proposed Commentary

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition

Proposed comment 4(a)–8 addresses the treatment of fees charged in connection with debt cancellation agreements. In the case of motor vehicle loans, debt cancellation agreements (sometimes referred to as "gap" agreements) offer protection to consumers in the event the vehicle is stolen or destroyed and the motor vehicle insurance proceeds are insufficient to extinguish the debt. Under these agreements, in return for a fee paid, the consumer is not held liable for the remaining balance due on the loan. Other types of agreements may provide for debt cancellation if the borrower dies or becomes disabled. In some states, debt cancellation agreements may be regulated as or otherwise considered insurance contracts.

The Board has received questions from creditors about the proper treatment of fees for debt cancellation agreements. Section 226.4(d) allows a creditor to exclude optional credit life and certain property insurance premiums from the finance charge if the creditor meets certain conditions, including disclosure of the premium. Some creditors believe that debt cancellation fees should uniformly be treated as § 226.4(d) insurance premiums under the regulation. These creditors generally believe that the fees for optional debt cancellation contracts should be excluded from the finance charge. An alternative view is that the fees may be treated as insurance premiums only if the contract is considered insurance under state law.

Proposed comment 4(a)–8 follows the state law analysis. The proposed comment provides that if a debt cancellation agreement is regulated as or considered insurance under state law, the fee may be excludable from the finance charge in accordance with the rules in § 226.4(d). That is, under the proposed comment the fee may be excludable if the insurance is properly characterized as credit life, accident, health or loss-of-income insurance as specified in § 226.4(d)(1), or as insurance against loss of or damage to property, or against liability arising out of the ownership or use of property as specified in § 226.4(d)(2). Insurance protecting the creditor against credit loss is a finance charge. (See § 226.4(b)(5) and accompanying commentary.)

If state law does not regulate or consider the agreement to be insurance, then the general rules in § 226.4(a) apply. Under § 226.4(a), debt cancellation fees paid to a creditor are treated as finance charges because they are charged by the creditor as an incident to the extension of credit and, although optional, the fees are not of a type payable in a comparable cash transaction.

4(d) Insurance

Comment 4(d)–5 would be revised to clarify that insurance is deemed to be required—and the premiums treated and disclosed as finance charges—when a consumer has several alternatives to fulfill a condition to a credit extension, one of which is to purchase insurance from the creditor and the consumer elects that option. For example, where, as a condition to obtaining a credit card, a consumer must purchase a life insurance policy from the creditor, assign an existing policy, or pledge another form of security, such as a certificate of deposit, if the consumer purchases the insurance from the creditor, the premiums are finance charges.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Comment 6(b)–1 would be revised to state that a membership fee to join an organization is an "other charge" if the primary benefit of membership is the opportunity to apply for a credit card and other benefits are incidental. For example, if an organization offers, in addition to the opportunity for a credit card account, only minor benefits such as a newsletter and a member information hotline, a fee to join the organization should be disclosed as an "other charge."

Section 226.12—Special Credit Card Rules

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

12(c)(2) Adverse Credit Reports Prohibited

Proposed comment 12(c)(2)–2 provides guidance on when a card issuer may consider a dispute settled for purposes of reporting an amount in dispute as delinquent. Until the card issuer conducts a reasonable investigation, the disputed amount may not be collected or reported as delinquent.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Comment 14(c)–10 would provide guidance on calculating the APR on periodic statements when a transaction occurs at the end of one cycle, but is posted to the account in a subsequent cycle, such as when a cardholder obtains a cash advance (for which there is a transaction fee) on the last day of a billing cycle and the transaction is posted to the cardholder's account on the second day of the following cycle. The transaction (and fee, if applicable) are included on the statement reflecting the cycle in which the transaction posted, and the proposed comment clarifies how creditors calculate the APR to reflect the delay in posting.

Subpart C—Closed-end Credit

Section 17—General Disclosure Requirements

17(c) Basis of Disclosure and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)–10 would be revised to clarify that if a contract for a variable rate transaction provides for a delay in the implementation of changes to an index value, the creditor may use any index value in effect during the delay period. For example, if a contract specifies that rate changes are based on the index value in effect 45 days before the change date, the creditor may use any index value in effect within that 45-day delay period.

Proposed comment 17(c)(1)–18 addresses pawn transactions. There has been some confusion about the coverage and compliance of pawn transactions under the TILA. The comment clarifies how some of the items required to be disclosed under § 226.18 such as the amount financed, the finance charge, and the percentage should be disclosed. Disclosure of these transactions under the open-end credit provisions is not addressed based on the belief that typically pawn transactions are not open-end credit transactions.

Section 18—Content of Disclosures

18(c) Itemization of Amount Financed

Paragraph 18(c)(1)(iii)

Proposed comment 18(c)(1)(iii)–2 concerns the treatment of certain charges known as "upcharges" that creditors may sometimes add to a fee charged by a third party for services such as maintenance and service contracts on automobiles. The comment, which only applies in cases where a creditor charges the same amount of an upcharge in both cash and credit transactions, offers flexibility in how creditors can choose to itemize and disclose the amount charged for the service (including the amount of the upcharge). The treatment of these fees for purposes of disclosures under the TILA does not govern the imposition or amount of such upcharges.

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Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings

The Board has been asked whether certain actions constitute adding a variable-rate feature for purposes of this section. Comment 20(a)–3 would be revised to clarify that changing the index on a variable-rate transaction is not adding a variable-rate feature, nor is substituting an index for one that no longer exists.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of Disclosures

31(c)(1) Disclosures for Certain Closed-end Home Mortgages

Numerous creditors have suggested that the rule for furnishing disclosures should be deemed to be satisfied as long as the creditor places the disclosures in the mail three days prior to consummation. The word "furnish" for purposes of § 226.32 disclosures has the same meaning as "deliver" for the other disclosure requirements of Regulation Z. Accordingly, proposed comment 31(c)(1)–1 clarifies that disclosures are furnished, or delivered, when received by the consumer, not when mailed by the creditor.

Proposed comment 31(c)(1)–2 clarifies that creditors may rely on the definition of "business days" in comment 2(a)(6)–2 for purposes of complying with the timing requirements for furnishing disclosures under this section.

31(c)(1)(i) Change in Terms

Proposed comment 31(c)(1)(i)–1 clarifies that a creditor must provide new § 226.32(c) disclosures if a change in terms (whether in the formal written agreement or otherwise, such as an oral agreement affecting the amount of a fee required to be paid at closing) makes the previously provided disclosures inaccurate.

31(c)(1)(iii) Consumer's Waiver of Waiting Period Before Consummation

Proposed comment 31(c)(1)(iii)–1 provides guidance on circumstances in which the consumer may modify or waive the right to the three-day waiting period to meet bona fide personal financial emergencies. Generally, whether a bona fide personal financial emergency exists is a matter to be decided between the parties. The provisions in comments 23(e)–1 and 34(e)–2 apply to this section. For example, a consumer's waiver does not automatically insulate the creditor from liability for failing to provide the three-day waiting period.

31(c)(2) Disclosures for Reverse Mortgages

Proposed comment 31(c)(2)–1 clarifies the definition of "business day" for purposes of providing reverse mortgage disclosures to consumers.

31(d) Basis of Disclosures and Use of Estimates

Section 226.31(d) mirrors the provisions in § 226.5(c) and § 226.17(c), and allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. Proposed comment 31(d)–1 clarifies that when a disclosure required by § 226.32 is marked as an estimate and becomes inaccurate due to a change in terms that occurs before consummation, new disclosures must be provided.

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

Paragraph 32(a)(1)(i)

Proposed comment 32(a)(1)(i)–1 clarifies when an application is received, for purposes of determining which Treasury securities yield should be used to compare the APR. Proposed comment 32(a)(1)(i)–2 provides guidance on comparing loan maturities to yields on Treasury securities, for purposes of determining whether a mortgage loan is covered by § 226.32. Proposed comment 32(a)(1)(i)–3 clarifies rules for calculating the APR for variable-rate, discount, premium, or stepped-rate loans.

Proposed comment 32(a)(1)(i)–4 clarifies which Treasury security to use for the APR test, and where the yields on these securities can be found. Creditors may request the Board statistical release H–15 by calling (202) 452–3245. Treasury security yields are also available from the Federal Reserve Bank of New York by calling (212) 720–6619.

Paragraph 32(a)(1)(ii)

Creditors must follow the rules in § 226.32 if, in part, the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to adjust the $400 amount, based on the annual percentage change in the Consumer Price Index as reported on June 1, effective January 1 of the following year. The Board anticipates that adjustments to the $400 dollar figure will be published each yearend and incorporated into the commentary the following spring.

Paragraph 32(b)(1)

Paragraph 32(b)(1)(i)

Comment 32(b)(1)(i)–1 clarifies the scope of items defined as finance charges under § 226.4 that are considered "points and fees."

Paragraph 32(b)(1)(ii)

Proposed comment 32(b)(1)(ii)–1 addresses the treatment of mortgage brokers fees. Section 226.32(b)(1) defines "points and fees" to include all finance charges (except interest or the time-price differential), as well as all compensation paid to mortgage brokers. Accordingly, compensation paid to a mortgage broker must be included as "points and fees" even if the amount is not disclosed as a finance charge.

Section 32(b)(1)(ii) at the time it was issued was interpreted to include all mortgage broker fees that are required to be disclosed under the Real Estate Settlement Procedures Act. Under that interpretation, amounts paid by creditors to mortgage brokers would be included, as are amounts paid by consumers. Upon further analysis, a narrower interpretation is being proposed. Proposed comment 32(b)(1)(ii)–1 states that for purposes of the "points and fees" test, only mortgage broker fees paid by the consumer are included in the calculation. The comment further clarifies that mortgage broker fees should not be double counted; that is, where such fees are included in the finance charge, they are already included as "points and fees" under § 226.32(b)(1)(i) and should not be counted again under § 226.32(b)(1)(ii).

32(c)(3) Regular payment

Proposed comment 32(c)(3)–1 clarifies that the regulation contemplates the disclosure of monthly or other regularly scheduled periodic payments, such as bimonthy or quarterly. The comment also clarifies that there must be at least two payments, and they must be in an amount and occur at such intervals that the payments fully amortize the loan. For the amount of the payment, proposed comment 32(c)(3)–2 clarifies that creditors may rely on § 226.18(g) for guidance.

32(c)(4) Variable-rate

Proposed comment 32(c)(4)–1 provides additional guidance on calculating "worst-case" payment examples when the transaction has more than one payment stream.

32(d) Limitations

32(d)(1)(i) Balloon Payment

The statute and regulation prohibit the use of balloon payments for mortgages covered by § 226.32 that have a term of less than five years. For such loans, the repayment schedule must fully amortize the outstanding principal balance through "regular periodic payments." The proposed comment provides guidance on the definition of "regular periodic payments."

32(d)(2) Negative Amortization

Proposed comment 32(d)(2)–1 clarifies that the prohibition against including negative amortization in a mortgage covered by § 226.32 does not extend to increases in the principal balance unrelated to the payment schedule, such as an increase related to the purchase of force-placed insurance.

32(d)(4) Increased Interest Rate

Proposed comment 32(d)(4)–1 clarifies that a rate increase in a variable-rate transaction is not prohibited by the act or regulation, even if the rate increases after the consumer has defaulted on the obligation.

32(d)(5) Rebates

Section 226.32(d)(5) restricts how creditors may calculate refunds of interest when a mortgage loan subject to this section is accelerated due to a consumer's default. The proposed comment clarifies that this restriction applies to refunds of interest only, and not to refunds of other items such as origination fees or points. In addition, the proposed comment clarifies that the refund calculation includes odd-days interest, regardless of when it is paid.

32(d)(7) Prepayment Penalty Exception

Proposed comment 32(d)(7)–1 provides guidance on calculating a consumer's debt-to-income ratio. Proposed comment 32(d)(7)–2 clarifies that verification of employment satisfies the regulation's requirement that the creditor obtain "payment records for employment income."

32(e) Prohibited Acts and Practices

32(e)(1) Repayment Ability

For mortgage loans subject to § 226.32, the regulation prohibits creditors from engaging in a pattern or practice of extending such credit based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. Proposed comment 32(e)(1)–1 provides guidance on determining the consumer's repayment ability. The comment clarifies that creditors may rely on the same information provided by the consumer in connection with § 226.32(d)(7), or other information, including information about unverified income.

Section 226.33—Requirements for Reverse Mortgages

The U.S. Department of Housing and Urban Development (HUD) has modified its software regarding reverse mortgages originated under the Home Equity Conversion Mortgage (HECM) program to conform with the requirements and the terminology used for reverse mortgages under Regulation Z and the appendices to the regulation. (The HECM program has been temporarily suspended, pending the reauthorization of funding by the Congress.) For example, HUD's software now allows creditors to use the initial interest rate, rather than the "expected interest rate," in calculating the total annual loan cost rate for a variable-rate transaction. Although creditors may find HUD's software helpful in meeting the disclosure requirements under Regulation Z, they should first take steps to verify the accuracy of the software, including any instructions, before using it. Neither HUD nor the Board provides a "safe harbor" to creditors regarding use of this software.

33(a) Definition

Proposed comment 33(a)–1 addresses an implication relative to the definition of a reverse mortgage transaction under the regulation. If a transaction structured as a reverse mortgage loan is a recourse transaction (that is, one that imposes personal liability on the consumer for the difference between the loan balance at maturity and the value of the property), it is not a reverse mortgage under § 226.33. Thus, if the transaction is also closed-end, and the annual percentage rate or the points and fees assessed in the transaction exceed those specified in § 226.32(a)(1), the transaction is covered by § 226.32. Such transactions may not generally contain a balloon payment or negative amortization (both of which are found in reverse mortgages by definition). Open-end credit plans are exempt from the provisions of § 226.32(a).

33(c)(2) Payments to Consumer

Proposed comment 33(c)(2)–1 provides guidance where the legal obligation of a reverse mortgage transaction includes a benefit, such as a "death benefit," in which a payment to the consumer's estate (or a credit to the outstanding loan balance) will be made upon the occurrence of an event (for example, the consumer's death within a certain period of time).

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0903, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, along with an original document in paper form, commenters are encouraged to submit their comments on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806, 15 U.S.C. 1604 and 1637(c)(5).

2. In supplement I to Part 226, under section 226.4—Finance Charge, the following amendments would be made:

1. Under *4(a) Definition.*, a new paragraph 8. would be added; and

2. Under *4(d) Insurance.*, paragraph 5. would be revised.

The additions and revisions read as follows:

Supplement I—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.4—Finance Charge

4(a) Definition.

* * * * *

►8. *Treatment of Debt Cancellation Agreements.* Some creditors may require debt cancellation agreements while others may offer them as an option. In the case of motor

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vehicle loans, these agreements, sometimes referred to as "gap" agreements, offer protection to consumers if the vehicle is stolen or destroyed and the motor vehicle insurance proceeds are insufficient to extinguish the debt. In return for a fee, the consumer will not be held liable for the remaining balance due on the loan. Other types of agreements provide for debt cancellation if the borrower dies or becomes disabled. In some states these agreements are regulated as or otherwise considered insurance under state law.

i. *Insurance.* If the agreement is regulated as or considered insurance under state law, the fee paid by the consumer may be excludable from the finance charge if it meets the requirements in § 226.4(d). Insurance protecting the creditor against credit loss, however, is a finance charge under § 226.4(b)(5).

ii. *Other.* If the agreement is not considered insurance under state law, debt cancellation fees paid to the creditor, whether required or optional, are incident to the extension of credit and must be disclosed as a finance charge. An optional debt cancellation fee paid to a third-party is a finance charge only to the extent that the third-party shares the fee with the creditor. If a creditor cannot determine whether state law considers the agreement insurance, the fees must be treated as if the agreement is not insurance.◄

* * * * *

Paragraph 4(d).

* * * * *

5. *Required credit life insurance.* Credit life, accident, health, or loss-of-income insurance must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance is in fact required or optional is a factual question. If the insurance is required, the premiums must be included in the finance charge, whether the insurance is purchased from the creditor or from a third party. If the ►consumer is required to elect one of several options—such as◄ [only option the creditor gives the consumer is] to purchase credit life insurance from the creditor►,◄ [or to] assign an existing life insurance policy, ► or pledge security such as a certificate of deposit,◄ and the consumer purchases the credit life insurance, the premium must be included in the finance charge. [If the consumer assigns a preexisting policy instead, no premium is included in the finance charge. ►The security interest would be disclosed under § 226.6(c) or § 226.18(m).◄ See the commentary to § 226.4(b) (7) and (8).)

* * * * *

3. In supplement I to part 226, under *section 226.6—Initial Disclosure Statement, under 6(b) Other charges.*, paragraph 1.v. would be revised to read as follows:

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

1. * * *

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an "other charge," even if membership is required to apply for credit. ►For the fee to be excluded from disclosure as an "other charge," however, the package of services must have some substantive purpose other than access to the credit feature. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered are incidental to the credit feature, the membership fee is an "other charge."◄

* * * * *

4. In supplement I to part 226, under *Section 226.12—Special Credit Card Provisions*, under *12(c)(2) Adverse credit reports prohibited.*, new paragraph 2. would be added to read as follows:

* * * * *

Section 226.12—Special Credit Card Provisions

* * * * *

12(c)(2) Adverse credit reports prohibited.

* * * * *

►2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. In conducting an investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically consider a dispute settled due to the cardholder's failure or refusal to comply with a particular request.◄

* * * * *

5. In supplement I to Part 226, under *Section 226.14—Determination of Annual Percentage Rate*, under *14(c) Annual percentage rate for periodic statements.*, a new paragraph 10. would be added to read as follows:

* * * * *

Section 226.14—Determination of Annual Percentage Rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

►10. *Transactions at end of billing cycle.* The annual percentage rate reflects transactions and charges imposed during the billing cycle. However, a transaction that occurs at the end of a billing cycle may be impracticable to post until the following cycle, such as a cash advance that occurs on the last day of a billing cycle. The transaction is posted to the account in the following cycle. In this case, the annual percentage rate shall be calculate as follows for the billing cycle in which the transaction and charges are posted:

i. The denominator shall be calculated as if the transaction occurred on the first day of the billing cycle, and

ii. The numerator shall include the amount of the transaction charge plus all finance charges derived from the application of the periodic rate to the amount of the transaction (including all charges from a prior cycle).◄

* * * * *

6. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements*, under *Paragraph 17(c)(1).*, paragraph 10. would be revised and a new paragraph 18. would be added to read as follows:

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

* * * * *

10. *Discounted and premium variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

►i.◄ When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use ►any◄ [the] index value in effect ►during the 45 day period◄ [not more than 45 days] before consummation in calculating a composite annual percentage rate.

►ii.◄ The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

►iii.◄ If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

►iv.◄ Because these transactions involve irregular payment amounts, an annual

percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

►v.◄ Examples of discounted variable-rate transactions include:

►A.◄ A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

►B.◄ Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76 and the total of payments $365,234.76.

►C.◄ Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.84, 12 payments of $999.58, and 312 payments of $1,070.04. The finance charge should be $277,040.60, and the total of payments $377,040.60.

►D.◄ This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

* * * * *

►18. *Pawn Transactions.* For a transaction in which a consumer pledges or sells an item to a creditor in return for a sum of money, and retains the right to redeem the item for a greater sum (the redemption price) within a specified period of time:

i. The amount financed is the initial sum paid to the consumer.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price.

iii. The term of the transaction, for calculating the annual percentage rate, is the specified period of time agreed to by the creditor and the consumer.◄

* * * * *

7. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, under *Paragraph 18(c)(1)(iii).*, a new paragraph 2. would be added to read as follows:

* * * * *

Section 226.18—Content of Disclosures

* * * * *

Paragraph 18(c)(1)(iii).

* * * * *

►2. *Creditor-imposed charges added to amounts paid to others.* A creditor that offers an item for sale in both cash and credit transactions sometimes adds an amount (often referred to as an "upcharge") to a fee charged to a consumer by a third party for a service (such as for a maintenance or service contract) that is payable in an equal amount in both types of transactions, and retains that amount. At its option, the creditor may list the total charge (including the portion retained by it) as an amount paid to others, or it may choose to reflect the amounts in the manner in which they were actually paid to or retained by the appropriate parties.◄

* * * * *

8. In Supplement I to Part 226, under *Section 226.20 Subsequent Disclosure Requirements*, under *Paragraph 20(a) Refinancings.*, paragraph 3. would be revised to read as follows:

* * * * *

Section 226.20—Subsequent Disclosure Requirements

Paragraph 20(a) Refinancings.

* * * * *

3. *Variable-rate.*

►i.◄ If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. ►For example, no new disclosures are required when the variable-rate feature is invoked on a renewable balloon-payment mortgage that was previously disclosed as a variable-rate transaction.◄ [For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked. However, even]

►ii. Even◄ if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

►A.◄ Increases the rate based on a variable-rate feature that was not previously disclosed, or

►B.◄ Adds a variable-rate feature to the obligation. ►A creditor does not add a variable-rate feature by changing the index of a variable-rate transaction or substituting a new index for one that no longer exists.

iii.◄ If either of ►the above◄ [these] two events occur in a transaction secured by a principal dwelling with a term longer than one year, the disclosures required under § 226.19(b) also must be given at that time.

* * * * *

9. In Supplement I to Part 226, a new *Subpart E—Special Rules for Certain Home Mortgage Transactions* would be added as follows:

* * * * *

►Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of disclosure.

Paragraph 31(c)(1) Disclosures for certain closed-end home mortgages.

1. *Furnishing disclosures.* Disclosures are considered furnished when received by the consumer.

2. *Pre-consummation waiting period.* A creditor must furnish the special disclosures at least three business days prior to consummation. For purposes of § 226.32, "business day" means every calendar day except Sundays and federal legal holidays. For example, if disclosures are provided on Friday, consummation could occur any time on Tuesday, the third business day following receipt of disclosures.

Paragraph 31(c)(1)(i) Change in terms.

1. *Redisclosure required.* Creditors must provide new disclosures if the regular payment or any other disclosure required by § 226.32(c) becomes inaccurate.

Paragraph 31(c)(1)(ii) Telephone disclosures.

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three calendar days prior to consummation.

Paragraph 31(c)(1)(iii) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to the three-day waiting period only after receiving the disclosures required by § 226.32 and only if the circumstances meet the criteria for establishing a bona fide personal financial emergency in § 226.23(e). Whether these criteria are met are determined by the facts surrounding individual situations. The impending sale of the consumer's home at foreclosure is one example of a bona fide personal financial emergency. Each consumer entitled to the three-day waiting period must sign a written statement for the waiver to be effective.

Paragraph 31(c)(2) Disclosures for reverse mortgages.

1. *Business days.* For purposes of providing reverse mortgage disclosures, "business day" means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

2. *Open-end plans.* Disclosures for open-end reverse mortgages must be provided three business days before the first transaction under the plan (see § 226.5(b)(1)).

31(d) Basis of disclosures and use of estimates.

1. *Redisclosure.* When a disclosure required by § 226.32 is based on and labeled as an estimate and becomes inaccurate due to a change in terms that occurs before consummation, new disclosures must be provided.

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Paragraph 32(a)(1)(i).

1. *Application date.* An application is deemed received when it reaches the creditor in any of the ways applications are normally transmitted. (See § 226.19(a).) For example, if a borrower applies for a 10-year loan on September 30 and the creditor counteroffers with a 7-year loan on October 10, the creditor must measure the annual percentage rate against the appropriate Treasury security yield as of August 15. An application transmitted through an intermediary agent or broker is received when it reaches the creditor, rather than when it reaches the agent or broker.

2. *When fifteenth not a business day.* If the 15th day of the month immediately preceding the application date is not a business day, the creditor must use the yield as of the business day immediately preceding the 15th.

3. *Calculating annual percentage rates for variable-rate loans and discount loans.* Creditors must use the rules set out in the commentary to § 226.17(c)(1) in calculating the annual percentage rate for variable-rate loans (assume the rate in effect at the time of disclosure remains unchanged) and for discount, premium, and stepped-rate transactions (which must reflect composite annual percentage rates).

4. *Treasury securities.* To determine the yield on a Treasury security for the annual percentage rate test, creditors may use the Board's Selected Interest Rates (statistical release H–15) or the actual auction results. Treasury auctions are held at regular intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers, and are also available from Federal Reserve Banks. Creditors must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a creditor must compare the annual percentage rate to Treasury securities with either seven-year or ten-year maturities, the annual percentage rate for an eight-year loan is compared with securities that have a seven-year maturity; the annual percentage rate for a nine-year loan is compared with securities that have a ten-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two yields.

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. For example, if a consumer borrows $10,000, finances a $300 fee for a creditor-conducted appraisal, and pays $400 in points at closing, the amount financed according to § 226.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii). It is deducted from the amount financed under § 226.18(b) ($9,900) to derive a total loan amount of $9,600. If the $300 appraisal fee is paid in cash at closing, the $300 is included in the points and fees calculation. However, because it is not financed by the creditor, the $300 fee is not part of the amount financed under § 226.18(b) ($10,000, in this case). The total loan amount is $9,600 ($10,000, less $400 in prepaid finance charges).

32(b) Definitions.

Paragraph 32(b)(1)(i).

1. *General.* Items defined as finance charges under § 226.4(a) and 226.(4)(b) are included under this paragraph as a component of the total "points and fees." Items excluded from the finance charge under other provisions of § 226.4 are not included in the calculation under this paragraph 32(b)(1)(i), although the fee may be included in "points and fees" under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii).

Paragraph 32(b)(1)(ii).

1. *Mortgage broker fees.* In determining "points and fees" for purposes of this section, compensation paid by a consumer to a mortgage broker (directly or through the creditor for delivery to the broker) is included in the calculation whether or not the amount is disclosed as a finance charge. Mortgage broker fees that are not paid by the consumer are not included. Broker fees already included in the calculation as finance charges under § 226.32(b)(1)(i) need not be counted again under § 226.32(b)(1)(ii).

2. *Example.* Section 226.32(b)(1)(iii) defines "points and fees" to include all items listed in § 226.4(c)(7), other than amounts held for future payment of taxes. An item listed in § 226.4(c)(7) may be excluded from the "points and fees" calculation, however, if the charge is reasonable, the creditor receives no direct or indirect compensation from the charge, and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the points and fees calculation (assuming no compensation is paid to the creditor). A fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

32(c) Disclosures.

1. *Format.* The disclosures must be clear and conspicuous but need not be in any particular type size or typeface, nor presented in any particular manner. For example, the disclosures need not be a part of the mortgage.

Paragraph 32(c)(3) Regular payment.

1. *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. If the loan has two payment streams, the regular payment for each must be disclosed.

2. *Discount and premium rates.* In disclosing the regular payment, creditors may rely on the rules set forth in § 226.18(g). In discounted or premium variable rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: "Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower."

Paragraph 32(c)(4) Variable-rate.

1. *Calculating "worst-case" payment example.* Creditors may rely on instructions in § 226.19(b)(2)(x) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by § 226.19(b)(2)(x)). The creditor must provide a maximum payment for each payment stream, where a payment schedule provides for more than one payment stream and more than one maximum payment amount is possible.

32(d) Limitations.

Paragraph 32(d)(1)(i) Balloon payment.

1. *Regular periodic payments.* The repayment schedule for a § 226.32 mortgage loan with a term of less than five years must fully amortize the outstanding principal balance through "regular periodic payments." A payment is a "regular periodic payment" if it is not more than twice the amount of other payments.

Paragraph 32(d)(2) Negative amortization.

1. *Negative amortization.* The prohibition against negative amortization in a mortgage covered by § 226.32 does not preclude increases in the principal balance that result from events unrelated to the payment schedule, such as when a consumer fails to obtain property insurance and the creditor purchases and adds the premium to the consumer's principal balance.

Paragraph 32(d)(4) Increased interest rate.

1. *Variable-rate transactions.* The limitation on interest rate increases does not apply to rate increases resulting from index changes in a variable-rate transaction, even if the increase occurs after default by the consumer.

Paragraph 32(d)(5) Rebates.

1. *Calculation of refunds.* The limitation applies only to refunds of interest and not to any other charges that are considered finance charges under § 226.4 (for example, points and fees paid at closing). The calculation of the refund of interest includes odd-days interest, whether paid at or after consummation.

Paragraph 32(d)(6) Prepayment penalties.

1. *State law.* If using the actuarial method defined by applicable state law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors must use the state law definition in determining if a refund is a prepayment penalty under § 226.32(d)(6).

32(d)(7) Prepayment penalty exception.

Paragraph 32(d)(7)(iii).

1. *Calculating debt-to-income ratio.* "Debt" does not include amounts paid by the borrower in cash at closing or amounts from the loan proceeds that directly repay an existing debt. Creditors may consider combined debt-to-income ratios for transactions involving joint applicants.

2. *Verification.* Verification of employment satisfies the requirement for payment records for employment income.

32(e) Prohibited acts and practices.

Paragraph 32(e)(1) Repayment ability.

1. *Determining repayment ability.* The information provided to the creditor in connection with § 226.32(d)(7) may be used to show that the creditor considered the consumer's income and obligations before extending the credit. Any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of a mortgage covered by § 226.32. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare. The creditor also may use unverified income, so long as the creditor has a reasonable basis for believing that the income exists.

Paragraph 32(e)(2) Home-Improvement Contracts.

Paragraph 32(e)(2)(i).

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

Paragraph 32(e)(3) Notice to Assignee.

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to this section must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition.

1. *Nonrecourse transaction.* A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under § 226.32(a)(1), the transaction is subject to all the requirements of § 226.32, including the limitations concerning balloon payments and negative amortization.

Paragraph 33(a)(2).

1. *Default.* Default is not defined by the regulation, but rather by the legal obligation between the parties and state or other law.

2. *Definite term or maturity date.* To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some state laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. Such a provision in an obligation does not violate the definition of a reverse mortgage transaction if the maturity date or term or repayment required by state law would in no case operate to cause maturity prior to the occurrence of any of the events recognized in the regulation. For example, a provision that allows a reverse mortgage loan to become due and payable only after the consumer's death, transfer, or cessation of occupancy, *or* after a specified term, but which automatically extends the term for consecutive periods as long as none of the other events has occurred would meet the definition of a reverse mortgage transaction.

33(c) Projected total cost of credit.

Paragraph 33(c)(1) Costs to consumer.

1. *Costs and charges to consumer—relation to finance charge.* All costs and charges to the consumer that are incurred in a reverse mortgage transaction are included in the projected total cost of credit, and thus in the total annual loan cost rates, whether or not the cost or charge is a finance charge under § 226.4 of the regulation.

2. *Annuity costs.* As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments. The amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party, or whether the purchase is mandatory or voluntary.

3. *Disposition costs excluded.* Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see the definition of Val_0 in appendix K to the regulation to determine the effect certain disposition costs may have on the total annual loan cost rates.)

Paragraph 33(c)(2) Payments to consumer.

1. *Payments upon a specified event.* The projected total cost of credit should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a "death benefit" payable if the consumer's death occurs within a certain period of time). Thus, the table of total annual loan cost rates required under § 226.33(b)(2) would not reflect such payments. At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable total annual loan cost rate, and state in the body of the note, apart from the table, the assumption upon which the total annual loan cost is made and any different rate that would apply if the contingent benefit were paid.

Paragraph 33(c)(3) Additional creditor compensation.

1. *Shared appreciation or equity.* Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the total cost of a reverse mortgage loan. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the projected total cost of credit.

Paragraph 33(c)(4) Limitations on consumer liability.

1. *In general.* Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the projected total cost of credit. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following contractual provisions are limitations on the consumer's liability that must be included in the projected total cost of credit:

i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

2. *Uniform assumption for "net proceeds" recourse limitations.* If the legal obligation between the parties does not specify a percentage for the "net proceeds" liability of the consumer, for purposes of the disclosures required by § 226.33, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price (see the definition of the Val_0 symbol under appendix K(b)(6)).◄

* * * * *

10. In Supplement I to Part 226, a new *Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions* and a new *Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates* would be added to read as follows:

* * * * *

►Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transactions

1. *General.* The calculation of total annual loan cost rates under appendix K is based on the principles set and the estimation or "iteration" procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special

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nature of reverse mortgage transactions. Special definitions and instructions are included where appropriate.

(b) Instructions and equations for the total annual loan cost rate.

(b)(5) Number of unit-periods between two given dates.

1. *Assumption as to when transaction begins.* The computation of the total annual loan cost rate is based on the assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. Therefore, fractional unit-periods (as used under appendix J for calculating annual percentage rates) are not used.

(b)(9) Assumption for discretionary cash advances.

1. *Amount of credit.* Creditors should compute the total annual loan cost rates for transactions involving discretionary cash advances by assuming that 50 percent of the initial amount of the credit available under the transaction is advanced at closing or, in an open-end transaction, when the consumer becomes obligated under the plan. (For the purposes of this assumption, the initial amount of the credit is the principle loan amount less any costs to the consumer under section 226.33(c)(1).)

(b)(10) Assumption for variable-rate reverse mortgage transactions.

1. *Initial discount or premium rate.* Where a variable-rate reverse mortgage transaction includes an initial discount or premium rate, the creditor should apply the same rules for calculating the total annual loan cost rate as are applied when calculating the annual percentage rate for a loan with an initial discount or premium rate (see the commentary to § 226.17(c)).

(d) Reverse mortgage model form and sample form.

(d)(2) Sample form.

1. *General.* The "clear and conspicuous" standard for reverse mortgage disclosures does not require disclosures to be printed in any particular type size. Disclosures may be made on more than one page, and use both the front and the reverse sides, so long as the pages constitute an integrated document.

Appendix L—Assumed Loan Periods for Computations of Total Annual Loan Cost Rates

1. *General.* The life expectancy figures used in this appendix are those found in the U.S. Decennial Life Tables for women, as rounded to the nearest whole year and as published by the U.S. Department of Health and Human Services. The figures contained in this appendix must be used by creditors for all consumers (men and women). This appendix will be revised periodically by the Board to incorporate revisions to the figures made in the Decennial Tables.◀

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-29711 Filed 12-6-95; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-ANE-03]

Airworthiness Directives; Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() Metal Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers, that currently restricts operators from continuously operating the propeller at engine speeds from 2,150 to 2,350 revolutions per minute (RPM). This action would remove propellers installed on certain additional Textron Lycoming O-360 series reciprocating engines with solid crankshafts from this requirement, and update the referenced Sensenich Propeller Company Inc. service bulletin to the latest revision. Reworking of all affected propeller models remains a requirement of the proposed AD, regardless of engine installation. This proposal is prompted by inquiries concerning tachometer red arc restrictions on certain Textron Lycoming O-360 series reciprocating engines with solid crankshafts. The actions specified by the proposed AD are intended to prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft.

DATES: Comments must be received by February 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-ANE-03, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Sensenich Propeller Manufacturing Company Inc., 519 Airport Road, Lititz, PA 17543; telephone (717) 569-0435, fax (717) 560-3725. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256-7505, fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-ANE-03." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-ANE-03, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On May 6, 1969, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 69-09-03, Amendment 39-761 (34 FR 7371, May 7, 1969), applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers. Revision 1, Amendment 39-808 (34 FR 12563, August 1, 1969); and Revision 2, Amendment 39-1102 (35 FR 17030, November 5, 1970), were subsequently issued. That AD restricts operators from continuously operating the propeller at engine speeds from 2,150 to 2,350 revolutions per minute (RPM) and requires reworking the propeller by reducing blade thickness and stiffness. That action was prompted by reports of propeller blade tip failures due to continuous operation in an RPM range of relatively high vibration stresses aggravated by impact-related mechanical damage such as cuts, nicks, and dents. That condition, if not corrected, could result in propeller blade tip fatigue failure, which can result in loss of control of the aircraft.

Since the issuance of that AD, the FAA has received numerous inquiries from the field concerning tachometer red arc restrictions on certain Textron Lycoming O-360 series reciprocating engines with solid crankshafts that are identified by suffixes having a digit "4" or higher in the second position, e.g. A4AD, A4M, etc. The FAA has determined that these additional engines, with solid crankshafts, have vibration characteristics that closely approximate engines to which the current AD does not apply, and can therefore also be removed from the AD's applicability and requirement for tachometer restriction. Contrary to the requirements of AD 69-09-03 R2, this AD would require reworking all affected propellers, regardless of engine installation.

When propeller blade reworking is accomplished, the resulting reduction in blade thickness and stiffness reduces blade second order-first mode peak resonance RPM to lower values. The reworked propeller (later adopted in production) is marked with the letter "K."

The FAA has reviewed and approved the technical contents of Sensenich Propeller Service Bulletin (SB) No. R-13, dated April 11, 1969, that describes avoiding continuous operation between 2150 and 2350 RPM; and Sensenich Propeller SB No. R-14A, dated November 15, 1994, that describes reworking the propeller by reducing blade thickness and stiffness in order to avoid propeller blade tip failures.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 69-09-03 R2 to remove from the AD's applicability propellers installed on certain Textron Lycoming O-360 series reciprocating engines with solid crankshafts that are identified by suffixes having a digit "4" or higher in the second position, e.g. A4A, A4G, etc., and from the tachometer restriction, and update the referenced Sensenich Propeller SB No. R-14 to R-14A, dated November 15, 1994.

There are approximately 100 propellers of the affected design that may not have been modified to the "K" standard in the worldwide fleet. The FAA estimates that 50 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,500. However, since this proposed rule further restricts the applicability by exempting propellers installed on certain Textron Lycoming engine models from the tachometer restriction, there is a potential overall cost savings of $4,395,000, if all the affected Sensenich propellers are installed on the newly exempted engines.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-1102 (35 FR 17030, November 5, 1970), and by adding a new airworthiness directive, to read as follows:

Sensenich Propeller Manufacturing Company Inc.: Docket No. 95-ANE-03. Revises AD 69-09-03, Amendment 39-1102.

Applicability: Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M7EMMS, 76EM8, and 76EM8S() metal propellers. Paragraphs (a) and (b) of this airworthiness directive (AD) do not apply to those propellers installed on the following solid crankshaft Textron Lycoming O-360 series reciprocating engines: O-360-A4A, -A4D, -A4G, -A4J, -A4K, -A4M, -A4N, -A4P, and -A5AD, or additional engines identified by suffixes having a digit "4" or higher in the second position. These propellers are installed on but not limited to the following aircraft: Piper PA-28-180, PA-28-181, American General Aircraft Holding Co. Inc. (formerly Gulfstream American) AA-5 series, Beech B23 and C23, Cessna 172Q, Avions Pierre Robin R-3000/160, and aircraft modified under various Supplemental Type Certificates (STC's).

Note: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft, accomplish the following:

(a) Commencing with the next flight after the effective date of this AD, do not operate the engine in continuous operation between 2,150 and 2,350 RPM.

(b) Within the next 25 hours time in service (TIS) after the effective date of this AD, mark engine tachometer with a red arc from 2150 RPM to 2350 RPM, in accordance with Sensenich Propeller Service Bulletin (SB) No. R-13, dated April 11, 1969.

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(c) For propellers with 500 or more total hours TIS, or unknown TIS on the effective date of this AD, inspect, and rework or replace, as necessary, within the next 50 hours TIS after the effective date of this AD, in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994.

(d) For propellers with less than 500 total hours TIS on the effective date of this AD, inspect, and rework or replace, as necessary, prior to accumulating 550 total hours TIS, in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994.

(e) Mark with a suffix letter "K" propellers that have been inspected, reworked, or replaced in accordance with Sensenich Propeller SB No. R–14A, dated November 15, 1994, and found satisfactory. New production propellers include change "K" or subsequent changes.

(f) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 28, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–29843 Filed 12–6–95; 8:45 am]

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14 CFR Part 39

[Docket No. 90–CE–59–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–26–05, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes: repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 80–26–05, and would require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529–32) or approved hinges and angles made of steel as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent separation of the inboard MLG door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations.

DATES: Comments must be received on or before February 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–CE–59–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 80–26–05, Amendment 39–3994, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 80–26–05 currently requires the following on Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes:

—Repetitively inspecting the main landing gear (MLG) inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle. Accomplishment of the inspections required by AD 80–26–05 is in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980; and

—Allowing for the provision of installing inboard door hinges and attachment angles made of steel as terminating action for the repetitive inspections.

Piper SB No. 682, dated July 24, 1980, references a new improved door hinge assembly, part number (P/N) 47529–32, which, when incorporated, provides terminating action for the repetitive inspections of the MLG inboard door hinge and attachment angles. Piper SB No. 682 contains procedures for incorporating this new improved door hinge assembly.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short- interval inspections required by AD 80–26–05, and to prevent separation of a MLG door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes of the same type design, the proposed AD would supersede AD 80–26–05 with a new AD that would (1) retain the requirement of repetitively inspecting the MLG inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529–32) or FAA-approved hinges and angles made of steel as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 682, dated July 24, 1980.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,664 per airplane ($416 per assembly ×4 assemblies per airplane). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,367,232 or $1,784 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that hinge assemblies have been distributed to equip approximately 400 (1,600 separate assemblies) of the affected airplanes. Assuming that 400 of the affected airplanes have four of these hinge assemblies incorporated, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $713,600 from $4,367,232 to $3,653,632.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 2,048 affected airplanes (2,448 affected airplanes—400 airplanes) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 800 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 8 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 4 to 8 years before the proposed modification would be mandatory.

The FAA established the 800 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined in this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators "within the next 800 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 8 years to allow low-usage airplanes time to accumulate the 800 hours after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31, PA31–325, PA31–350, PA31P, PA31T1, and PA31T airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR. 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the

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Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–26–05, Amendment 39- 3994, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–59–AD. Supersedes AD 80–26–05, Amendment 39–3994.

Applicability: The following model and serial number airplanes, certificated in any category, that are not equipped with Piper part number (P/N) 47529–32 door hinge assemblies or FAA-approved inboard door hinges and attachment angles made of steel at all four hinge assembly locations:

Models	Serial Nos.
PA31 and PA31–325	31–2 through 31–8012077.
PA31–350	31–5001 through 31–8052168.
PA31P	31P–3 through 31P–7730012.
PA–31T1	31T–7804001 through 31T–8004040.
PA–31T	31T–7400002 through 31T–8020076.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent separation of a main landing gear (MLG) door from the airplane caused by a cracked inboard door hinge or attachment angle, which, if not detected and corrected, could result in the MLG jamming and loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–26–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (c) or (d) of this AD is incorporated, inspect (using dye penetrant methods) the MLG inboard door hinges and attachment angles for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 682, dated July 24, 1980.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, incorporate a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or install FAA-approved hinges and angles made of steel.

(d) Within the next 800 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, incorporate a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or install FAA-approved hinges and angles made of steel in all four hinge assembly locations.

(e) Incorporating a Piper P/N 47529–32 MLG inboard door hinge and attachment angle assembly or installing FAA-approved hinges and angles made of steel in all four assembly locations as required by paragraphs (c) and (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 3: Alternative methods of compliance approved in accordance with AD 80–26–05 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 54106.

(i) This amendment supersedes AD 80–26–05, Amendment 39–3994.

Issued in Kansas City, Missouri, on December 1, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29858 Filed 12–6–95; 8:45 am]

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14 CFR Part 39

[Docket No. 90–CE–62–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 88–05–05, which currently requires the following on certain The New Piper Aircraft, Inc. (Piper) PA31, PA31P, and PA31T series airplanes: repetitively inspecting both the left and right main landing gear (MLG) forward sidebrace, and replacing any cracked MLG forward sidebrace. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 88–05–05, and would require incorporating both a left and right MLG forward sidebrace of improved design as terminating action for the repetitive inspection requirement. The actions specified in the proposed AD are intended to prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–CE–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 88–05–05, Amendment 39–5861, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 88–05–05 currently requires the following on certain Piper PA31, PA31P, and PA31T series airplanes:

—Repetitively inspecting both the left and right main landing gear (MLG) forward sidebrace for cracks, and replacing any cracked MLG forward sidebrace stud. Accomplishment of the inspections required by AD 88–05–05 is in accordance with Piper Service Bulletin (SB) No. 845A, dated October 9, 1987; and

—Allowing for the provision of replacing both the left and right MLG forward sidebrace with a part of improved design, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable. This installation is accomplished in accordance with the applicable maintenance manual.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 88–05–05, and to prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA31, PA31P, and PA31T series airplanes of the same type design, the proposed AD would supersede AD 88–05–05 with a new AD that would (1) retain the requirement of repetitively inspecting both the left and right MLG forward sidebrace for cracks, and replacing any cracked MLG forward sidebrace; and (2) require replacing both the left and right MLG forward sidebrace with a part of improved design, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as terminating action for the repetitive inspections. Accomplishment of the proposed inspections would be in accordance with Piper SB No. 845A, dated October 9, 1987. The improved MLG forward sidebrace installations would be accomplished in accordance

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with the applicable maintenance manual.

The FAA estimates that 2,384 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per airplane (2 MLG forward sidebraces per airplane at approximately $500 per sidebrace). Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $3,528,320 or $1,480 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed replacement.

Piper has informed the FAA that parts have been distributed to owners/operators to equip 2,123 of the affected airplanes (4,246 MLG forward sidebraces of improved design). Assuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed replacement upon U.S. owners operators of the affected airplanes would be reduced by $3,142,040 from $3,528,320 to $386,280.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 261 affected airplanes (2,384 affected airplanes—2,123 airplanes with a set of parts distributed) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 1,200 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 7 to 12 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 6 to 12 years before the proposed replacement would be mandatory.

The FAA established the 1,200 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators "within the next 1,200 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper PA31, PA31P, and PA31T series airplanes (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 12 years to allow low-usage airplanes time to accumulate the 1,200 hours TIS after the effective date of the AD. The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper PA31, PA31P, and PA31T series airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR. 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 88–05–05, Amendment 39–5861, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–62–AD. Supersedes AD 88–05–05, Amendment 39–5861.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have left and right main landing gear (MLG) forward sidebraces of improved design installed, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right).

Models	Serial Nos.
PA31, PA31–300, and PA31–325	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–2 through 31P–7730012.

Models	Serial Nos.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003 and 31T–1104004 through 31T–1104017,
PA31T2	31T–8166001 through 31T–8166076 and 31T–1166001 through 31T–1166008.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 88–05–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (c) or (d) of this AD is incorporated, inspect (using dye penetrant methods) both the left and right MLG sidebrace for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 845A, dated October 9, 1987.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, replace the cracked MLG sidebrace with a part of improved design, P/N 85165–02 (left) or 85165–03 (right) or P/N 85166–02 (left) or 85166–03 (right), as applicable. Accomplish this replacement in accordance with the applicable maintenance manual.

(d) Within the next 1,200 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, replace both the left and right MLG side brace with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable. Accomplish these replacements in accordance with the applicable maintenance manual.

(e) Installing both the left and right MLG side brace with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as required by paragraph (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 3: Alternative methods of compliance approved in accordance with AD 88–05–05 (superseded by this AD) are not considered approved for this AD.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 88–05–05, Amendment 39–5861.

Issued in Kansas City, Missouri, on December 1, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29859 Filed 12–6–95; 8:45 am]

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14 CFR Part 39

[Docket No. 90–CE–63–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31, PA31–300, PA31–325, and PA31–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–14–06, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes: repetitively inspecting the outboard flap tracks, wing rib flanges, and the rear spar web at Wing Station (WS) 147.5 on each wing, and modifying the area at WS 147.5 on both wings if any cracks are found as terminating action for the repetitive inspection requirement. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the current repetitive inspections contained in AD 80–14–06, and would require modifying the area at WS 147.5 on both wings as terminating action for the repetitive inspections. The actions specified in the proposed AD are intended to prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not

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detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before February 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that relates to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–CE–63–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Piper Models PA31–350 and PA31T3 airplanes. Assisting the FAA in this review were (1) The New Piper Aircraft, Inc.; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 80–14–06, Amendment 39–3805, as one that should be superseded with a new AD that would require a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 80–14–06 currently requires the following on Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes:

—Repetitively inspecting the outboard flap tracks, wing rib flanges, and the rear spar web at Wing Station (WS) 147.5 on each wing and modifying the area at WS 147.5 on both wings if any cracks are found as terminating action for the repetitive inspection requirement; and

—Allowing for the provision of modifying the area at WS 147.5 on both wings as terminating action for the repetitive inspection requirement.

Piper Service Bulletin (SB) No. 647A, dated November 24, 1980, references Kit 763 986, which, when incorporated, provides a modification of the area at WS 147.5 on both wings that would eliminate the need for the repetitive inspection requirement of AD 80–14–06. Kit 763 986 also contains procedures for incorporating this modification.

Based on its aging commuter-class aircraft policy and after reviewing all available information related to this subject including the referenced service information, the FAA has determined that AD action should be taken to eliminate the repetitive short- interval inspections required by AD 80–14–06, and to prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes of the same type design, the proposed AD would supersede AD 80–14–06 with a new AD that would (1) retain the requirement of repetitively inspecting the outboard flap track, wing rib flanges, and the rear wing web at WS 147.5, and, if any cracks are found, modifying the area of WS 147.5 by incorporating Piper Kit 763 986 as terminating action for the repetitive inspection requirement; and (2) require incorporating Piper Kit 763 986 at a specified hours TIS time-period for airplanes where no cracks were found during the inspections as terminating action for the repetitive inspection requirement. Accomplishment of the proposed modification would be in accordance with the instructions included with Piper Kit 763 986, as referenced in Piper SB No. 647A, dated November 24, 1980.

The FAA estimates that 2,906 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $468 per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $6,590,808 or $2,268 per airplane.

Piper has informed the FAA that parts have been distributed to enough owners/operators to equip 234 of the affected airplanes. Assuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed AD upon U.S. owners operators of the affected airplanes would be reduced by $530,712 from $6,590,808 to $6,060,096.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 2,672 affected airplanes (2,906 airplanes—234 sets of parts distributed) that would be affected by the proposed AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

The proposed AD would allow 1,000 hours time-in- service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 6 to 10 months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory.

The FAA established the 1,000 hours TIS modification compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is proposing to mandate the modification for all operators "within the next 1,000 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet varies from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on a Piper Model PA31, PA31–300, PA31–325, or PA31–350 airplane (such as 5,000 hours TIS) would impose an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 10 years to allow low-usage airplanes time to accumulate the "1,000 hours after the effective date of the AD." The FAA has determined that the compliance time of the proposed rule provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–14–06, Amendment 39–3805, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Docket No. 90–CE–63–AD. Supersedes AD 80–14–06, Amendment 39–3805.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have Piper Kit 763 986 incorporated in the area of Wing Station (WS) 147.5:

Models	Serial Nos.
PA31 and PA31–300	31–2 through 31–8012010.
PA31–325	31–7512006 through 31–8012010.
PA31–350	31–5001 through 31–8052025.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–14–06), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (b) or (c) of this AD is incorporated, inspect the

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outboard flap tracks, wing rib flanges, and the rear spar web on both wings in the area of WS 147.5 by accomplishing the following:

(1) Lower the flaps to 40 degrees.

(2) Inspect the attachment of the flap track rib to the rear spar on the inboard and outboard sides of the flap track using 10-power magnification.

(3) Remove the rectangular access plate from the bottom wing skin. The rectangular access plate is located forward of the wing spar at WS 153.

(4) Inspect the WS 147.5 rib attachment angle using 10-power magnification.

Note 2: The 100-hour TIS repetitive inspection interval was established to coincide with regularly scheduled maintenance.

(b) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, incorporate Piper Kit 763 986 in accordance with the instructions included with this kit, as referenced in Piper Service Bulletin (SB) No. 647A, dated November 24, 1980.

(c) Within the next 1,000 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (b) of this AD, incorporate Piper Kit 763 986 in the area of WS 147.5. Accomplish this action in accordance with the instructions included with this kit, as referenced in Piper SB No. 647A, dated November 24, 1980.

(d) Incorporating Piper Kit 763 986 as required by paragraphs (b) and (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 4: Alternative methods of compliance approved in accordance with AD 80–14–06 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 80–14–06, Amendment 39–3805.

Issued in Kansas City, Missouri, on December 1, 1995.

John E. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29860 Filed 12–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–42]

Proposed Amendment of Class E Airspace; Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Phoenix, AZ to provide additional controlled airspace for aircraft arriving at Phoenix Sky Harbor International Airport. The intended effect of this proposal is to improve service to the users and reduce controller workload.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530 Docket No. 95–AWP–42, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace, Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposal rulemaking by submitting such written data, views, are arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–42." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after their closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Phoenix, AZ. The intended effect of this proposal is to provide additional controlled airspace for aircraft arriving at Phoenix Sky Harbor International Airport, Phoenix, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this proposal rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Phoenix Sky Harbor International Airport, AZ [Revised]

Phoenix Sky Harbor International Airport, Phoenix, AZ
(Lat. 33°26'10" N, long. 112°00'34" W)
Williams Gateway Airport, AZ
(Lat. 33°18'28" N, long. 111°39'19" W)
Luke AFB, AZ
(Lat. 33°32'06" N, long. 111°22'59" W)

That airspace extending upward from 700 feet above the surface within a 17.4-mile radius of Luke AFB and within a 17.4-mile radius of Williams Gateway Airport and within 2 parallel tangent lines connecting the two 17.4-mile radius circles, and that airspace northwest of Phoenix Sky Harbor International Airport bounded by a line beginning at lat. 33°59'00" N, long. 112°38'03" W; to lat. 33°49'24" N, long. 112°25'34" W, thence counterclockwise via the 17.4-mile radius of Luke AFB to lat. 33°42'00" N, long. 112°40'00" W; to lat. 33°44'00" N, long. 112°45'03" W; to lat. 33°55'00" N, long. 112°45'03" W, to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°10'00" N, long. 112°39'03" W; to lat. 34°10'00" N, long. 111°30'03" W; to lat. 34°00'00" N, long. 110°52'02" W; to lat. 32°33'00" N, long. 110°52'02" W; to lat. 32°33'00" N, long. 112°00'02" W; to lat. 32°51'00" N, long. 112°37'03" W; to lat. 32°51'00" N, long. 113°00'03" W; to lat. 33°19'00" N, long. 113°00'03" W; to lat. 33°19'00" N, long. 113°10'03" W; to lat. 34°00'00" N, long. 113°10'03" W; to lat. 34°00'00" N, long. 112°52'03" W, thence to the point of beginning. That airspace extending upward from 5,500 feet MSL west of Phoenix Sky Harbor International Airport bounded on the north by the south edge of V–16, on the east by the west boundary of the 1,200 foot portion of the Class E airspace area; on the south by the north edge of V–66 and on the west by long. 114°00'03" W, excluding that airspace within Restricted Areas R–2308A, R–2308B, R–2308C, and R–2307. That airspace extending upward from 7,000 MSL bounded on the north by lat. 34°00'00" N, on the east by long. 113°10'03" W; on the south by the north edge of V–16 and on the west by long. 114°00'03" W. That airspace extending upward from 9,500 feet MSL bounded on the north by the south edge of V–12, on the east by the west edge of V–327, on the south and southeast by the north and northwest boundary of the 1,200 foot portion of the Class E airspace area, and on the southwest by a line extending from lat. 34°08'48" N, long. 112°40'37" W, to the point of intersection on long. 113°10'03" W, and on the south edge of V–12. That airspace extending upward from 10,500 feet MSL bounded on the north by the south edge of V–12/264, on the southeast by the northwest edge of V–567 and on the west by the east edge of V–327. That airspace extending upward from 10,500 feet MSL bounded on the northwest by the southeast edge of V–567, on the southeast by the northwest edge of V–95 and on the south by the north boundary of the 1,200 foot portion of the Class E airspace area.

* * * * *

Issued in Los Angeles, California, on November 27, 1995.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–29871 Filed 12–6–95; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AE21

When You Are A Full-Time Elementary Or Secondary School Student

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We propose to revise our rule on full-time elementary or secondary school students to include students enrolled in home schooling or independent study programs authorized by State or local law, e.g., political subdivision, tribal government, or the District of Columbia. The current rule covers only students in traditional institutional educational settings; however, many States (or other jurisdictions) provide for home schooling and independent study programs considered equivalent to traditional schools. We also propose to clearly show that nonpayment provisions apply to certain prisoners and certain other inmates of publicly funded institutions who otherwise would meet student benefit requirements. In addition, we propose to remove outdated rules on student benefits relating to months before August 1982.

DATES: To be sure that your comments are considered, we must receive them no later than February 5, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov", or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

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SUPPLEMENTARY INFORMATION

Background

The Social Security Amendments of 1965, Public Law 89–97, section 306, defined a full-time student as "an individual who is in full-time attendance as a student at an educational institution." An "educational institution" was defined as "(i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a non-accredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited * * *." This definition of an educational institution was chosen by Congress, as explained in the Senate report, "to establish that the institution the child attends is a bona fide school." (See S. Rep. No. 404, 89th Cong., 1st Sess., reprinted in 1965 U.S. Code Cong. & Admin. News 1943, 2036–37.)

The Senate report also stated: "The committee believes that a child over age 18 who is attending school full-time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefit at age 18." Ibid. We understand this to mean that the committee believed that full-time students attending class are less likely to be able to support themselves through employment than are part-time or correspondence students.

The Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, section 2210, replaced the term "educational institution" and its definition with the requirement that the student be in full-time attendance at an "elementary or secondary school," which is defined as a "school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located." (See section 202(d)(7)(C)(i) of the Social Security Act (the Act) as amended.) The purpose of this amendment was to eliminate child's insurance benefits in the case of children age 18 or older who attend postsecondary schools. Section 2210 also eliminated child's insurance benefits for children in elementary or secondary school after they attained age 19. (See S. Rep. No. 139, 97th Cong., 1st Sess. 427, reprinted in 1981 U.S. Code Cong. & Admin. News 396, 693.)

Present Policy

Child's insurance benefits under sections 202(d)(6) and (7) of the Act usually terminate when the child attains age 18. However, there is an exception that allows for continuation of entitlement to child's benefits for persons age 18 until attainment of age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act defines a full-time elementary or secondary school student as "an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved * * *."

Section 404.367 of our current regulations states, in pertinent part:

* * * You are a full-time elementary or secondary school student if you meet all the following conditions:

(a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

Proposed Policy

Current regulations do not provide guidance on alternative education programs covered under the laws of the State (or other jurisdiction) in which a student resides. Before the development of such programs, our policy had been in keeping with the traditional definition of educational institutions. Such traditional institutional-type schools include public, private, and religious schools. Except for the two specific exceptions noted in the regulations, we also consistently have required that the student be scheduled to attend school for at least 20 hours per week to be considered a full-time student.

Because most States (or other jurisdictions) have begun providing for education based on alternative education methods, we evaluated cases involving home schooling or independent study programs on an individual basis. This evaluation has provided sufficient information to formulate these proposed regulations.

Many States or other jurisdictions have laws recognizing home schooling. Home schooling is an educational program in which the student is generally taught within the home by a parent/teacher. The State or other jurisdiction specifies the requirements that must be met and the procedures that must be followed in these situations. There must be a parent or other home school teacher participating in the home school instruction. This participation may be in the form of actual instruction, answering questions, administering tests, keeping attendance records, etc. The student must be carrying a course load that is considered full-time using the same standards and practices used for full-time day students in the traditional setting, as determined under the law of the State or other jurisdiction in which the student resides.

The child's home schooling teacher must submit evidence that legal requirements for home schooling are met. Depending on these requirements, this evidence might include a copy of the certificate of intent that is filed with the local school or school district, documentation that State-mandated tests were taken, a list of the courses being taught, and a copy of the attendance log or chart.

Also, some States or other jurisdictions authorize the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. An independent study course could (but need not) include instruction in the student's home or elsewhere outside the classroom. The study program is conducted in accordance with written policies and rules. It is coordinated, evaluated, and under the supervision of an employee of the school district or county office of education who has been certified to act as a home teacher. Independent study programs which involve instruction and supervision by a teacher employed by the school (or local school district) include written agreements for each independent study student specifying, among other things, the duration of the agreement and a statement of the number of course credits to be earned by the pupil upon completion. The effect of the written agreement is to extend the educational setting beyond the traditional classroom. It is a situation similar to those students who are in school-approved work-study programs that extend the educational setting.

We therefore propose to revise § 404.367 to include students enrolled in home schooling or independent study programs authorized by State (or other jurisdiction) laws. The student must be carrying a course load considered to be full-time under the standards and practices used for day students who are in full-time attendance at traditional educational institutions. Students in these types of situations include a wide range of individuals. For example, home schooling students may be in that situation for religious reasons or because the parents do not agree with the local school curriculum.

Students in independent study programs may include those individuals who cannot take advantage of the traditional school setting, such as hard-to-keep-in-school students (unable to adjust or delinquents), single mothers, or expectant mothers. All students—those in traditional programs and those in alternative programs—who work are subject to the annual earnings test.

A home schooling program must meet the requirements set forth by the State (or other jurisdiction). An independent study program organized in accordance with the State (or other jurisdiction) requirements must be coordinated, evaluated and supervised by an employee of the school district or county office of education and must comply with the policies of the school district or county office of education. To be entitled to child's insurance benefits as a student, an individual enrolled in either type of program must meet both the Federal and the State (or other jurisdiction) full-time attendance (FTA) requirements.

When determining FTA, the home schooling teacher will be the certifying school official for FTA purposes. In independent study situations, the school teacher/official supervising the performance of the student under the written agreement between the school and the student will be the certifying official for FTA.

When determining the number of hours spent in school attendance for an approved independent study program, we will combine the number of agreed upon hours spent in independent study with the number of hours in actual school attendance. The course load must be equivalent to that of a student in the school's full-time day program.

We will continue to exclude from eligibility those individuals who are enrolled solely in correspondence courses. We do not believe that such courses satisfy the definition of an elementary or secondary school in the Act, and usually they would not meet State (or other jurisdiction) requirements.

We also propose to revise § 404.367 to clearly show that section 202(x) of the Act, regarding nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions, applies to those individuals who otherwise meet student benefit requirements. Section 202(x) is applicable to those who otherwise would qualify for benefits under section 202(d)(7)(A) of the Act.

Further, we propose to remove § 404.369 since it applies only to child's benefits for full-time students for months before August 1982. This section has not been applicable for over 10 years and there is no longer a need to retain it. Sections that refer to § 404.369 (i.e., §§ 404.350–404.353) will be revised to remove such references.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security— Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart D of part 404 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.350 is amended by revising paragraph (a)(5) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) * * *

(5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367.

* * * * * *

3. Section 404.351 is amended by revising paragraph (a) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * * *

(a) The first month in which you qualify as a full-time student. (See § 404.367.)

* * * * * *

4. Section 404.352 is amended by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * * *

(b) * * *

(1) * * * If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 19.

* * *

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5. Section 404.353 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.353 Child's benefit amounts.

(a) * * * The amount of your monthly benefit may change as explained in § 404.304.

* * * * *

6. Section 404.367 is amended by revising the first sentence of the introductory text; revising paragraphs (a) and (b); redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; adding paragraph (c); and, revising paragraph (f) to read as follows:

§ 404.367 When you are a "full-time elementary or secondary school student".

You may be eligible for child's benefits if you are a full-time elementary or secondary school student. * * *

(a) You attend a school which provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located. Participation in the following programs also meets the requirements of this paragraph:

(1) You are instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which you reside; or

(2) You are in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which you reside which is administered by the local school or school district/jurisdiction;

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and you are carrying a subject load which is considered full-time for day students under the institution's standards and practices. If you are in a home schooling program as described in paragraph (a)(1) of this section, you must be carrying a subject load which is considered full-time for day students under standards and practices set by the State or other jurisdiction in which you reside;

(c) To be considered in full-time attendance, your scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraph (c)(1) or (c)(2) of this section applies. If you are in an independent study program as described in paragraph (a)(2) of this section, your number of hours spent in school attendance are determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. You may still be considered in full-time attendance if your scheduled rate of attendance is below 20 hours per week if we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school;

* * * * *

(f) You are not subject to the provisions in § 404.468 for nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions.

§ 404.3691 [Removed]

7. Section 404.369 is removed.

[FR Doc. 95–29534 Filed 12–6–95; 8:45 am]
BILLING CODE 4190–25–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[SPATS No. HO–003–FOR]

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Hopi Tribe AMLR plan (hereinafter, the "Hopi Tribe plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions of and additions to the Hopi Tribe plan pertaining to the purpose of the plan; eligible lands and water subsequent to certification; coordination with other programs; land acquisition, management, and disposal; reclamation on private land and rights of entry; public participation; organization of the Hopi Tribe; personnel staffing policies; purchasing policies, procurement procedures, and accounting systems; economic conditions on the Hopi Reservation; a description of flora and fauna at abandoned mine sites; the Hopi Tribe's authority to administer its plan, as amended in the absence of a specific statute; changing the name of the designated agency; and affirmation that the manual for purchasing policies and procedures manual is in accordance with the Office of Management and Budget's (OMB) Common Rule. Additionally, the Hopi Tribe is proposing numerous editorial and recodification changes. The amendment is intended to revise the Hopi Tribe plan to meet the requirements of and incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. m.s.t., January 8, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., December 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Donna J. Griffin at the address listed below.

Copies of the Hopi Tribe plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Donna J. Griffin, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Norman Honie, Abandoned Mine Land Program Director, Office of Mining and Minerals, Department of Natural Resources, The Hopi Tribe, P.O. Box 123, Kykotsmovi, AZ 86039

FOR FURTHER INFORMATION CONTACT: Donna J. Griffin, Telephone: (505) 248–5070.

SUPPLEMENTARY INFORMATION:

I. Background on the Hopi Tribe Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan. General background information on the Hopi Tribe plan, including the Secretary's findings and the disposition of comments, can be found in the June 28, 1988, **Federal Register** (53 FR 24262). Subsequent actions concerning the Hopi Tribe's plan and plan amendments can be found at 30 CFR 756.14(a).

II. Proposed Amendment

By letter dated November 2, 1995, the Hopi Tribe submitted a proposed amendment to its plan (administrative record No. HO–148) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). The Hopi Tribe submitted the proposed amendment at its own initiative and in response to a September 26, 1994, letter (administrative record No. HO–145.1) that OSM sent to the Hopi Tribe in accordance with 30 CFR 884.15(b). The provisions of the Hopi Tribe plan that the Hopi Tribe proposes to revise and/or add are: the "Table of Contents;" a preface to the amended reclamation plan; a list of addenda and errata; the Chairman's letter of designation and Hopi Tribe resolution; the General Counsel's opinion on the authority of the Hopi Tribe to conduct an AMLR program; Part I, purpose of the Hopi Tribe plan; Part II, eligible lands and water subsequent to certification; Part III, coordination of the Hopi AMLR Program with other programs; Part IV, land acquisition, management, and disposal; Part V, reclamation on private land; Part VI, rights of entry; Part VII, Hopi Department of Natural Resources (DNR) policy on public participation; Part VIII, organization of the Hopi Tribe; Part IX, personnel staffing policies; Part X, purchasing policies and procurement procedures; Part XI, accounting systems and management accounting; Part XII, economic conditions on the Hopi Reservation; and Part XIII, a description of flora and fauna at abandoned mine sites.

Specifically, the Hopi Tribe proposes to:

(1) revise the "Table of Contents" to reflect the proposed recodification changes and include a list of appendices;

(2) add a new part called "Preface to Amended Reclamation Plan" that provides an explanation of the Hopi AMLR Program goals and objectives and describes eligible projects and their priorities;

(3) add a cover page for the "List of Addenda and Errata" and revise the "List of Figures" to retitle "Figure 4" and delete "Figure 5;"

(4) add new cover pages for the "Chairman's Letter of Designation and Hopi Tribe Resolution" and "Opinion of Legal Counsel" and delete the cover pages titled "Section 884.13(a)" and "Section 884.413(b);"

(5) redesignate Section 884.13(c)(1) as Part "I" and revise this part to include in the purpose of Hopi Tribe plan provisions that (a) allow for the protection and replacement of water supplies and protection, repair, replacement, construction, or enhancement of public facilities adversely affected by mining and processing practices, (b) provide that the "Director" shall be to the "Director of the Hopi Office of Mining and Mineral Resources (OMMR)" or his designee within the OMMR or in the Hopi AMLR Program and that the "OMMR is an office within the DNR, and oversees operations of the Hopi Abandoned Mine Land Program," and (c) reclamation priorities similar to those allowed at section 403 of SMCRA, and provide for deletion of language concerning the allocation of funds collected annually for purposes of the Hopi AMLR Program;

(6) redesignate Section 884.13(c)(2) as Part "II;" retitle this part as "Eligible Lands and Water Subsequent to Certification;" add language (a) consistent with the requirements of the Federal regulations at 30 CFR 874.12 for eligible coal lands and water, 30 CFR 874.16 for contractor responsibility, 30 CFR Part 875 for noncoal reclamation, and 30 CFR 886.23 for reports and (b) to provide for the construction of public facilities in villages impacted by mining activities on Hopi Indian lands as provided in sections 411 (e) and (f) of SMCRA and include a description of needs and proposed construction and activities; and delete (a) "Table 1, Comprehensive/Problem Evaluation Matrix" and (b) language concerning filling voids and sealing tunnels and evaluating and ranking reclamation projects;

(7) redesignate Section 884.13(c)(3) as Part "III";

(8) redesignate Section 884.13(c)(4) as Part "IV;" revise the procedures concerning the acquisition of lands to (a) include lands adversely affected by "coal and noncoal mining" practices and (b) add new language to require that the Hopi AMLR Program shall obtain "from a qualified appraiser a valuation" of the fair market value of all land to be acquired and that the fair market value of the land "shall consider the principle of the best and highest use" of the land as adversely affected by past mining and that such "valuation of fair market value shall be approved by the Hopi Tribal council;" revise the language concerning purchases by (a) deleting the provision that allows affected lands to be acquired with monies from the abandoned mine land (AML) fund if approved by the OSM Field Office Director and the Hopi Tribal Council and such acquisition meets the requirements of OSM's regulations, (b) replacing it with new language requiring that "the Tribe may acquire land and water under this section if approved in advance by OSM based on written findings made by OSM in accordance with the provisions of 30 CFR 879.11, and as approved by the Hopi Tribal Council," and (c) deleting the requirement that "improvements to the land may be acquired if such interest is necessary to the reclamation work planned or the post reclamation use of the land;"

(9) redesignate § 884.13 (c)(5) as Part "V" and revise the language of this part to include a reference to "the General Allotment Act of 1887"(25 U.S.C.A. 331 *et seq.*);

(10) redesignate § 884.13(c)(6) as Part "VI" and delete language concerning emergency entry and the requirement that "if written notice cannot be obtained for the purposes of emergency reclamation and if notice cannot be given prior to entry, notice will be given to the landholders as soon after entry as practical;"

(11) redesignate § 884.13(c)(7) as Part "VII" and add language clarifying procedures concerning public participation in the development of the Hopi Tribe plan and listing the 1991 and 1992 public meetings held in connection with the Hopi Tribe's certification of completion of reclamation of all known coal-related problems and to review projects and needs relevant to sections 411(e) and (f) of SMCRA;

(12) redesignate § 884.13(d)(1) as Part "VIII" and add language to (a) provide that the Hopi Tribal Council on "December 07, 1987, passed Resolution H–03–88," which designates DNR as the agency responsible for implementing the Hopi Tribe plan, (b) reference "the Chairman's Letter of Designation and Hopi Tribe Resolution section of this plan," and (c) reference "Figure 4," which presents "the relationship of the DNR to others in the Tribal organizatidn;"

(13) redesignate § 884.13(d)(2) as Part "IX" and add references to the Tribe's "Personnel Policies and Procedures Manual," "The Civil Rights Act of 1964," and "The Rehabilitation Act of 1973;"

(14) redesignate § 884.13(d)(3) as Part "X" and add references to the "Purchasing Policies and Procedures Manual," which was adopted by the Tribe by Executive Action dated April 15, 1978, and OMB's "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" dated March 11, 1988, which is also known as "the Common Rule;"

(15) redesignate § 884.13(d)(4) as Part "XI" and add references to "The Hopi Tribe Financial Policies and Procedures

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Manual," which was adopted by Tribal Council Resolution H–102–82 on August 9, 1982, and the "Standards for Audit of Governmental Organizations, Program Activities, and Functions," which provides standards for the performance of audits;

(16) delete the following sections in their entirety: (a) "Section 884.13(e)(1), Eligible Lands and Water," and provide for its replacement at Part II, Eligible Lands and Waters Subsequent to Certification, (b) "Section 884.13(e)(2), Problem Descriptions," and provide that current problems and needs are described in Part II, Section H of the Hopi Tribe plan, and (c) "Section 884.13(e)(3), Problem Abatement Proposals," and provide that current proposals are described in Part II, Section H of the Hopi Tribe plan;

(17) redesignate Section 884.13(f)(1) as Part "XII;" add language to provide that (a) the "[o]riginal text of this part, Economic Conditions on the Hopi Reservation, is replaced in its entirety by the FY 1993–1995 Annual OEDP [Overall Economic Development Plan] Report * * *," (b) the "[c]urrent economic conditions on the Hopi Reservation are discussed in the following Annual OEDP Report," and (c) "[t]he figures included in the OEDP Report also provide data on economic and socioeconomic conditions on the Hopi Reservation, and reveal the importance of coal mining and the minerals industry to the reservation economic base and the tribal government revenue system;" and attach the referenced report to the Hopi Tribe plan;

(18) delete "Section 884.13(f)(2), Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation," in its entirety;

(19) redesignate Section 884.13(f)(3) as part "XIII";

(20) provide as "Appendix 1" the "Constitution and By-Laws of the Hopi Tribe," which was approved December 19, 1936, and amended on August 1, 1969, February 14, 1980, and December 7, 1993;

(21) provide cover pages for Appendices 2 through 12 and change the title of Appendix 7 from "Hopi Tribe Resolution H–93–80" to "Hopi Tribe Resolution H–93–80 and Subsequent Correspondence to the Bureau of Census;" and

(24) numerous minor editorial and grammatical revisions and recodification changes.

The Hopi Tribe also proposes adding the following items to its plan: (1) a memorandum dated May 18, 1995, from the Hopi Tribe's Assistant General Counsel affirming the authority of the Tribe's AMLR Program to administer the Hopi Tribe plan as amended in the absence of any AMLR statute; (2) Hopi Tribal Resolution H–134–89 that provides documentation of the Tribe's action changing the name of the Office of Natural Resources to the Department of Natural Resources; and (3) a memorandum dated August 31, 1995, from the Tribe's Office of Financial Management that affirms that the Hopi Tribe "Purchasing Policies and Procedures Manual" is in accordance with OMB's Common Rule.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Hopi Tribe plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., December 22, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: November 29, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–29877 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; show cause orders and patterns of violations involving violations of water quality effluent standards; and award of costs and expenses including attorney's fees. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.s.t. January 8, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t., on December 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, CO 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–676) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*).

Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to (1) the condition of Colorado's program approval at 30 CFR 906.11(mm) and (2) the requirement that Colorado amend its program at 30 CFR 906.16(a).

Colorado proposes for the following provisions of 2 CCR 407–2, Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining:

Revisions at Rule 1.03.1(1)(a) to clarify that Colorado's responsibility for the regulation of surface coal mining and reclamation operations and coal exploration includes, among other things, approval or disapproval of revisions and renewals of existing permits;

Recodification of existing Rule 1.04(1) as Rule 1.04(1a), and addition at Rule 1.04(1) of a definition for "Abandoned site" to identify (1) those sites which could have a decreased frequency of inspection under proposed Rule 5.0202(8) and (2) the enforcement provisions applicable to sites which meet the conditions of the definition;

Addition at Rule 1.04(31a) of a definition for "Current assets" to mean "cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business;"

Addition at Rule 1.04(31b) of a definition for "Current liabilities" to mean "obligations which are reasonably expected to be paid or liquidated within

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one year or within the normal operating cycle of the business;"

Addition at Rule 1.04(47a) of a definition for "Fixed assets" to mean "plants and equipment, but does not include land or coal in place;"

Revision at Rule 1.04(71a) of the definition for "Net worth" to mean "total assets minus total liabilities and is equivalent to owners' equity;"

Addition at Rule 1.04(83b) of a definition for "Parent corporation" to mean "a corporation which owns or controls the applicant;"

Revision at Rule 1.04(89) of the definition for "Permit area" to require that the area "be identified through a complete and detailed legal description" as required by Rule 2.03.6;

Revision at Rule 1.04(92) of the definition for "Person" to clarify that it applies to listed entities conduction "surface coal mining and reclamation operations outside Indian lands;"

Addition at Rule 1.04(116) of a definition for "Self-bond" to mean "an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety;"

Addition at Rule 1.04(135a) of a definition for "Tangible net worth" to mean "net worth minus intangibles such as goodwill and rights to patents or royalties;"

Recodification of existing Rule 2.02.7, concerning public availability of information, as Rule 2.02.8 and (1) addition of Rule 2.02.7(1), which requires that persons who intend to commercially use or sell coal extracted during coal exploration operations to first obtain a permit to conduct a surface coal mining operation, and (2) addition of Rule 2.02.7(2) which provides that no such permit need be obtained if the applicant demonstrates as set forth in the rule that such sale or commercial use of the extracted coal would be for testing purposes only;

Revision of Rule 2.03.3(8) to require that an applicant file three, rather than five, reproducible copies of the complete permit application with original signatures;

Revision of Rule 2.03.4(10), concerning information required by Rules 2.03.4 and 2.03.5, to delete the requirement that the information be submitted "on a form approved by the Board;"

Revision of Rule 2.03.6(1) to require that each permit application contain a "complete and detailed legal description of all lands within the proposed permit boundary," and clarification that it also contain a "statement as to" whether the right upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area is the subject of pending litigation;

Revision of Rule 2.07.3(2), concerning public notice of a proposed surface coal mining operation, to clarify that the rule applies not only to applications for a new permit but also to applications for a permit revision, a technical revision, or a renewal of an existing permit;

Revision of Rules 2.07.3(2) (e) and (f), concerning proposed permits in which, respectively, either the affected area would be within 100 feet of the outside right-of-way of a public road or the applicant seeks relocation or closure of a public road, to add the requirement that the public notice for the permit application include a "statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice;"

Revision of Rules 2.07.3(3)(a) and (3)(a)(iii) to clarify that Colorado will, upon receipt of a complete application for a "technical revision," issue written notification of where a copy of the application may be "inspected" rather than "submitted;"

Revision of Rule 2.07.3(4)(a), concerning the requirement that the applicant make a copy of his or her complete application, excluding confidential information, available for the public to inspect or copy, to clarify that the rule applies to an application for a technical revision;

Revision of Rule 2.07.4(2), concerning the procedures applicable to Colorado's proposed decision, to clarify that the rule applies to decisions on applications for a permit, permit revision, or permit renewal;

Revision of Rule 2.07.4(3)(b) to state that if Colorado approves the granting of a permit, the permit will be issued "upon filing and approval of the performance bond pursuant to 2.07.4(2)(e);"

Revision of Rule 2.07.4(3)(c), concerning Colorado's issue and implementation of a proposed decision on an application package as final, to require that no permit shall be issued until the applicant has filed a performance bond that has been approved;

Addition at Rule 2.07.5(2)(c), concerning public availability of information in permit applications and information required by Rules 2.07.5(1) (b) and (c) to be kept confidential, of the requirement that information requested to be held as confidential shall not be made publicly available until after the notice and opportunity to be heard is afforded both persons seeking disclosure and those persons opposing disclosure of information and such information is determined by Colorado not to be confidential, proprietary information;

Revision of Rule 2.07.6(2), concerning criteria for permit approval, to clarify that the rule applies to an application for a permit revision;

Revision of Rules 2.07.6(2)(d) and 2(d)(iii)(E), concerning the findings that must be made by Colorado prior to approval of an application for a permit or a permit revision, to clarify that the rules apply to the area affected by the proposed surface coal mining operations rather than to the proposed operation or proposed permit area;

Revision of Rules 2.07.6(2)(d)(iv) (A) through (C), concerning proposals to either relocate or close public roads, or to allow the affected area to be within 100 feet of a public road, to require that Colorado, or the appropriate public road authority designated as the responsible agency by Colorado, (1) provide opportunity for a public hearing and public notice if a hearing is requested and (2) if a hearing is held, make a written finding within 30 days of the close of the hearing as to whether the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.6(2)(d)(iv)(D), to require, whether a public hearing is held or not, that no affected area shall be allowed within 100 feet of the outside right-of-way line of a public road, nor may a public road be relocated or closed, unless the applicant has obtained all necessary approval of the authority with jurisdiction over the public road, and that Colorado or the public road authority has made a written finding that the interests of the public and the affected landowners will be protected;

Revision of Rule 2.07.7, concerning conditions of each permit issued by Colorado, to add at Rules 2.07.7 (6), (7), (8), and (9), conditions requiring that a permittee shall, respectively, (1) conduct operations only on lands specifically designated as the permit area and contain areas disturbed and affected within the boundaries authorized on permit application maps for the term of the permit and on areas subject to a performance bond; (2) conduct all operations only as described in the approved application, except as otherwise directed by Colorado in the permit; (3) comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of Colorado's rules; and (4) maintain continuous, uninterrupted bond coverage in adequate amount;

Revision of Rule 2.08.4 to clarify by reorganization of Rules 2.08.4 (1) through (3) the types of permitting modifications pertinent to, respectively, permit revisions, technical revisions, and minor revisions, and to state at Rule 2.08.4(4) that the operator may not implement any permit revision, technical revision, or minor revision prior to obtaining final approval;

Deletion of Rule 2.08.4(1)(c), which provided allowance for a permit revision in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued;

Recodification of existing Rules 2.08.4 (4) and (5) as Rules 2.08.4 (5) and (6), and revision of Rule 2.08.4(6)(b)(i) to specify that availability of the informal conference process need not be included in the newspaper advertisement for a technical revision;

Addition to Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period on technical revision applications;

Recodification of existing Rule 2.08.4(6)(b)(ii) as Rule 2.08.4(6)(b)(iii) and revision of it to delete the statement that the "requirements of the State Administrative Procedure Act shall not apply to the conduct of the public hearing" provided for by the rule;

Revision of Rule 2.08.6(4)(a), concerning findings made upon permit transfer, sale, or assignment of rights, to correctly cite the reference to Rule 2.07.6(2)(h);

Revision of Rule 3.02.4(1)(c) to provide for a self-bond as an acceptable form of performance bond;

Revision of Rule 3.02.4(2)(e) to identify at (1) Rule 3.02.4(2)(e)(i) the conditions for a self-bond that must be met by the applicant or its corporate guarantor; (2) Rule 3.02.4(2)(e)(ii) the terms of a corporate guarantee for an applicant's self-bond based on a parent corporate guarantor; (3) Rule 3.02.4(2)(e)(iii) the terms of a nonparent corporate guarantee for an applicant's self-bond based on any corporate guarantor; (4) Rule 3.02.4(2)(e)(iv) the percent net worth of the applicant, parent corporate guarantor, or nonparent corporate guarantor necessary to support the total amount of the outstanding and proposed self-bonds; (5) Rule 3.02.4(2)(e)(v) the terms of an indemnity agreement if Colorado accepts an applicant's self-bond; (6) Rule 3.02.4(2)(e)(vi) the right of Colorado to require updated information within 90 days after the close of each fiscal year following the issuance of a self-bond or corporate guarantee; and (7) Rule 3.02.4(2)(e)(vii) the requirement that if at any time during the period when a self-bond is posted, the certain financial conditions of the applicant, parent or nonparent corporate guarantors change, the permittee shall notify Colorado immediately and shall within 90 days post an alternate form of bond in the same amount of the self-bond and that the provisions of Rule 3.02.4(2)(b)(v) shall apply should the permittee fail to do so;

Addition of Rule 3.03.1(5) to specify terms for release of bond liability on areas associated with temporary drainage and sediment control facilities and clarify that the bond liability period does not restart when sediment control facilities are removed and reclaimed;

Addition of Rule 3.03.3 to provide for termination of jurisdiction over a reclaimed site of a completed surface coal mining and reclamation operation;

Recodification of Rules 4.02.2(2)(a) and (b) to add paragraph (c) which requires that the name, address, and telephone number of the Colorado Division of Minerals and Geology be included on mine identification signs which are posted at the entrance to mine sites;

Revision of Rules 4.03.1(d) and 4.03.2(1)(f) to require a showing that a road meets the performance standards of Rules 4.03.1 and 4.03.2, respectively, rather than an engineer's construction or reconstruction certification for haul and access roads not within the disturbed area for which the construction or reconstruction was complete prior to August 1, 1995;

Revision of Rule 4.05.2(7), concerning discharges of water from areas disturbed by surface coal mining and reclamation operations, to reference the Environmental Protection Agency effluent limitations at 40 CFR Part 434;

Revision of Rule 4.08.3(2)(b)(i) to remove the provision forbidding a blasting area in excess of 300 acres;

Revision of Rule 4.11.3, concerning coal mine waste returned to underground mine workings, to reference Rule 2.05.3(9);

Revision of Rule 5.02.2(4)(b) to clarify that an inactive site is one for which at least 85, rather than 100, percent of the performance bond has been released;

Addition of Rule 5.02.2(8) to allow for a decreased inspection frequency on abandoned sites which would be subject to public notice and opportunity for comment and based on assessment of earthen structures, erosion and sediment control, proximity to occupied dwellings, schools and other public or commercial buildings, the degree of stability of reclaimed and/or unreclaimed areas, and the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate;

Revision of Rule 5.02.5(1) to allow any person believing that a violation of "the Act, the rules, or the permit, or if imminent danger or harm exists" to request an inspection, and revision of Rule 5.02.5(1)(a) to set forth specific time frames in which the inspection is to be conducted;

Addition of Rules 5.03.2(1)(e) and 5.03.2(2)(h), concerning cessation orders and notices of violation, to allow Colorado to refrain from issuing a cessation order or a notice of violation for a violation at an abandoned site, if abatement of the violation is required under any previously issued order or notice;

Revision of Rule 5.03.2(3) to allow Colorado to refrain from issuing a failure-to-abate cessation order for failure to abate a violation or failure to accomplish an interim step, if the operation is an abandoned site;

Revision of Rules 5.03.3.1 (1)(a), (2)(a) (i) and (ii), and (2)(b), concerning show cause orders and patterns of violations, to incorporate notices of violation issued by the Colorado Department of Health, Water Quality Control Division (which cite a one day exceedance of EPA's effluent standards referenced in Rule 4.05.2) into Colorado's pattern of violation and show cause process;

Revision of Rule 5.03.6, concerning costs, expenses, and attorney's fees, to include wording in the introductory paragraph specifying that any sum awarded for costs and expenses may include those costs and expenses incurred in seeking the award; and

Addition of Rule 5.03.6(4)(e) to provide that appropriate costs and expenses including attorney's fees may be awarded from Colorado to "any person, other than a permittee or his representative, who initiates or participates in any administrative proceeding under the Act, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues."

Colorado also proposes minor editorial revisions at Rule 2.07.7(1), concerning permit conditions; Rule 2.08.6(2)(b)(iii), concerning transfer, assignment, or sale of permit rights; and Rule 4.08.4(10), concerning the table

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showing the maximum peak particle velocity in blasting operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Division will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 22, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representative to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–29875 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. 146, SIPTRAX NJ23–1–7243(b); FRL–5322–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request made by the New Jersey Department of Environmental Protection (NJDEP) to redesignate Camden County and nine not-classified areas, which includes the City of Atlantic City, the City of Burlington, the Borough of Freehold, the City of Morristown, the Borough of Penns Grove (part), the City of Perth Amboy, the Borough of Somerville, the City of Toms River, and the City of Trenton, from nonattainment to attainment for carbon monoxide (CO). EPA's determination to approve New Jersey's request is based on the fact that New Jersey demonstrates compliance with the requirements of section 107(d)(3)(E) of the Clean Air Act (CAA) for redesignation. EPA is also proposing to approve the Camden County and the nine not-classified CO maintenance plans submitted by NJDEP because EPA finds that New Jersey's submittal meets the requirements of section 175(A) of the CAA. In addition, EPA is proposing approval of New Jersey's 1990 base year CO emissions inventory for Camden County and the nine not-classified areas. In the Final Rules Section of this **Federal Register**, EPA is approving New Jersey's redesignation request, maintenance plan, and emission inventory as identified therein, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before January 8, 1996.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York, 10007–1866.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library 16th Floor, 290 Broadway, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 24, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95–29819 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FL83–1–7143b;FRL–5340–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of redesignating the Tampa Florida ozone O_3 nonattainment area to attainment. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by January 8, 1996.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.

Pinellas County Department of Environmental Management, Division of Air Quality, 300 S. Garden Avenue, Clearwater, Florida 34616.

FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext. 4215. Reference file FL63–1–7143b.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–29824 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5341–8]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Mariposa Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the Mariposa Air Pollution Control District (Mariposa or District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of Mariposa's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this **Federal Register**, EPA is promulgating interim approval of Mariposa's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all

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public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 8, 1996.

ADDRESSES: Written comments on this action should be addressed to: Sara Bartholomew, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew (telephone 415/744–1170), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 13, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–29835 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5341–6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; San Diego Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the San Diego Air Pollution Control District (San Diego or District) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of San Diego's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this **Federal Register**, EPA is promulgating interim approval of San Diego's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 8, 1996.

ADDRESSES: Written comments on this action should be addressed to: Celia Bloomfield, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–29837 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[SW-FRL–5342–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Bethlehem Steel Corporation ("BSC"), Lackawanna, New York, to exclude (or "delist"), on a one-time basis, certain solid wastes contained in a landfill from being listed hazardous wastes. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that BSC's petitioned waste will not adversely affect human health and the environment. This action responds to BSC's petition to delist these wastes on a "generator-specific" basis from the hazardous waste lists. If the proposed decision is finalized, the petitioned waste will not be subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

The Agency is also proposing the use of a fate and transport model (the "EPACML" model) to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. Specifically, EPA proposes to use this model to predict the concentration of hazardous constituents that may be released from the petitioned waste into groundwater if the petitioned waste is delisted and then disposed of in a Subtitle D landfill.

DATES: EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 22, 1996. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Hazardous Waste Identification Division, Office of Solid Waste, whose address appears below, by December 22, 1995. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (Mail Code 5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to James Kent, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–95–B5EP–FFFFF".

Requests for a hearing should be addressed to the Director, Hazardous Waste Identification Division, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (703) 603–9230 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 *FR* 7628). The Agency plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a hazardous waste listed as K060. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11 (a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See §§ 260.22 (a) and (d). The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for BSC's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated groundwater. Therefore, the Agency is proposing to use a particular fate and transport model (the "EPACML" model) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of BSC's petitioned waste on human health and the environment.

Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of

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RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, the generator may well choose to either send the delisted waste off site immediately, or eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because BSC is seeking a delisting for waste managed on-site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying groundwater. Ground-water monitoring data collected from BSC's monitoring wells will help characterize the potential impact (if any) of the disposal of BSC's waste on human health and the environment.

The Agency provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

II. Disposition of Delisting Petition Bethlehem Steel Corporation, Lackawanna, New York

A. Petition for Exclusion

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, was engaged in primary metal-making and coke-making operations prior to 1983. BSC petitioned the Agency to exclude, on a one-time basis, the waste contained in an on-site landfill, presently listed as EPA Hazardous Waste No. K060—"Ammonia still lime sludge from coking operations". The listed constituents of concern for EPA Hazardous Waste No. K060 are cyanide, naphthalene, phenolic compounds, and arsenic. BSC refers to this landfill as Hazardous Waste Management Unit No. 2 (HWM–2). Although only a portion of the waste in the landfill is the ammonia still lime sludge, the entire volume of waste is considered to be a listed waste in accordance with § 261.3(a)(2)(iv) (*i.e.*, the mixture rule). The mixture of listed ammonia still lime sludge and solid waste contained in HWM–2 is the subject of this petition.

BSC petitioned the Agency to exclude its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the mixture of ammonia still lime sludge and solid waste is not hazardous because the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms. BSC also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of BSC's petition.

B. Background

On July 18, 1984, BSC petitioned the Agency to exclude the waste contained in its on-site landfill identified as HWM–2, and subsequently provided additional information. After evaluating the petition, the Agency proposed to deny BSC's petition to exclude the waste contained in HWM–2 on April 7, 1989 (see 54 FR 14101). The Agency's evaluation of the petition, which used the "VHS" fate and transport model and the analytical data provided by BSC, indicated that the petitioned waste exhibited significant concentrations of leachable lead and benzo(a)pyrene. Furthermore, the Agency considered the sampling and analysis program conducted in support of the petition to be incomplete. Moreover, groundwater monitoring data collected from wells monitoring this on-site landfill indicated that the landfill may have been adversely impacting groundwater quality at the site. The Agency received public comments on the April 7, 1989 proposed decision between April and June 1989. On January 29, 1990, the Agency re-opened the comment period to enable public review of information supporting the proposed delisting health-based level for benzo(a)pyrene (see 55 *FR* 2847). The Agency published a final denial, including responses to public comments, in the **Federal Register** on August 26, 1991 (see 56 *FR* 41944). On October 30, 1991, BSC petitioned the U.S. Court of Appeals for the District of Columbia Circuit to overturn EPA's denial decision. Subsequently, BSC agreed to stay this litigation for a re-evaluation by EPA using a new fate and transport model (EPACML) and updated health-based levels, and on November 17, 1992 submitted extensive supplemental waste characterization and groundwater monitoring data. After reviewing the new data in conjunction with the existing petition information, the Agency now believes that the petitioned waste is eligible for an exclusion based on the current evaluation criteria. Therefore, the Agency hereby proposes to withdraw its final denial decision and to grant BSC's petition. The Agency's decision to re-evaluate BSC's petition was based on additional waste characterization and groundwater data that was collected subsequent to the publication of the final denial decision. The Agency's re-evaluation of BSC's petitioned waste contained in the HWM–2 landfill is the subject of today's proposal.

In support of its petition, BSC submitted: (1) detailed descriptions and schematics of its manufacturing process; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name materials that might be expected to have contributed to the waste; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, antimony, nickel, thallium, and cyanide; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; SW–846, Method 1311) for the eight TC metals, antimony, nickel, and thallium; (5) results from the EP leachate procedure for the eight TC metals, nickel, and cyanide; (6) results from total constituent analyses for sulfide and reactive sulfide; (7) results from total oil and grease analyses; (8) results from characteristics testing for ignitability, corrosivity, and reactivity; (9) results from total constituent analyses for 70 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); (10) results from the TCLP analyses for 63 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); and (11) groundwater monitoring data collected from wells monitoring the on-site landfill.

BSC conducted primary metal-making and coke-making operations during the period the ammonia still lime sludge was generated. In October 1983, BSC discontinued its primary metal-making operations and modified its coking processes so that the ammonia still lime sludge was no longer generated. (BSC now uses sodium hydroxide as the strong base at the ammonia still rather than lime slurry, and therefore ammonia still lime sludge is no longer generated.)

BSC's steel-making process involved refining molten iron with oxygen, flux (*i.e.*, dolomite or lime), and alloying materials in a basic oxygen furnace to produce carbon steels. BSC's iron-making process involved smelting of iron-bearing materials (*i.e.*, iron ore, sinter, and scrap) with coke, flux (*i.e.*, dolomite and lime), and preheated air in blast furnaces. The blast furnace slurry disposed of in BSC's landfill originated from the water scrubbing of blast furnace gas. According to BSC, blast furnace sludge has not been produced since the final removal of sludge from the thickener in November 1983.

Coke-making involves the destructive distillation of bituminous coal in coke ovens. Volatile matter evolves during the coking process (including the moisture content of the coal) and leaves the ovens through coke oven gas off-takes. This hot coke oven gas is cooled by spraying it with recycled flushing liquor consisting of a weak ammonia liquor (WAL) solution. As the coke oven gas is cooled, water and tar are condensed. The tar fraction is separated from the aqueous WAL in a decanter. The majority of the WAL is recycled back to the coke oven gas cooling process as flushing liquor. Any excess WAL is processed by solvent extraction to recover phenol or sodium phenolate. The excess WAL then is processed by steam stripping to release aqueous ammonia into the gas phase in an ammonia still. In the upper portion of the still, free ammonia is stripped by steam (at temperatures of about 100 °C) and ammonia vapor rising from the lower portion. In the lower portion of the still, fixed ammonia compounds are dissociated by adjusting the pH with lime slurry and then injecting steam. The spent ammonia still lime slurry is drawn off the bottom and discharged to one of two settling basins. The sludge that settles out in these basins (*i.e.*, ammonia still lime sludge) is subsequently placed in the on-site landfill.

As stated previously, BSC disposed of its ammonia still lime sludge in its on-site HWM–2 landfill with other solid wastes between 1969 and November of 1983. BSC is not currently disposing of wastes in this landfill. Based on available records, BSC estimates that approximately two percent of the waste placed in the landfill is ammonia still lime sludge. The most significant wastes that were disposed of in the landfill include: blast furnace thickener sludge, basic oxygen furnace thickener sludge, sinter plant sludge, sludges generated from the treatment of wastewaters from a cold rolling mill, a steel pickling operation, and a hot-dip galvanizing line, and dredging spoils (from Smokes Creek). Only the ammonia still lime sludge is a listed hazardous waste.

BSC's preliminary sampling demonstration included data on ten samples collected from the landfill in January 1984. A detailed description of procedures used to collect three of these samples was not provided and is not available. For the remaining seven samples, BSC divided the landfill into four sections and randomly selected a partial core sample (*i.e.*, two-foot core samples were taken as opposed to full-depth core samples) from each of the four sections, two partial core samples from the central portion of the landfill, and an additional partial core sample from the southeast section. A grab sample was then taken from each of these seven core samples, resulting in seven grab samples. The three samples for which sampling procedure descriptions were not provided were analyzed for total constituent (*i.e.*, mass of a particular constituent per mass of waste) and extraction procedure (EP) leachable (*i.e.*, mass of a particular constituent per unit volume of extract) concentrations of arsenic, cyanide, naphthalene, and phenolic compounds. The extraction procedure used in these analyses, however, was not equivalent with the procedure described in SW–846 Method 1310 and therefore these data were not considered in the evaluation of BSC's petition. (For a more detailed description of the extraction procedure used by BSC, see the RCRA public docket for today's notice.) The remaining seven grab samples were analyzed (using the EP) for leachable concentrations of the eight TC metals, nickel, cyanide, and sulfide; and the characteristics of corrosivity and reactivity.

BSC collected a second set of samples during April 1984. To collect these samples, BSC divided the landfill into six sections of approximately equal size. Within each section, six discrete samples were taken at random depths from evenly spaced boring locations. The samples then were composited, by section, to form six representative samples, one composite per section. These six composite samples were analyzed for total constituent concentrations of the eight TC metals, nickel, cyanide, benzene, benzo(a)pyrene, naphthalene, phenolic compounds, and tetrachloroethylene. In addition, these six composite samples were analyzed (using the EP) for leachable concentrations of the eight TC metals, nickel, and cyanide; total oil and grease content; and the characteristic of ignitability.

At EPA's request, BSC conducted additional sampling and testing of the central portion of the landfill in February of 1985. Specifically, BSC collected approximately ten two-foot long core samples from six locations within the central portion of the landfill. For each location, grab samples were taken from each of the core samples (approximately ten) and composited. These six composite samples were analyzed for total constituent and leachable concentrations (using the EP) of the eight TC metals (excluding mercury, selenium, and silver), nickel, and cyanide. In addition, these six composite samples were analyzed for total constituent concentrations of sulfide, benzene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, and phenolic compounds; and total oil and grease content.

In its comments to the Agency's April 7, 1989 proposed denial of its petition, BSC submitted the analytical results of an additional sampling event. In September 1988, four full-depth core samples were obtained from the landfill and were composited to form one composite sample. This sample was analyzed using the TCLP to quantify leachable concentrations of the TC contaminants listed in § 261.24 (excluding the pesticides/herbicides) and thirteen other organic constituents.

In June 1992, following the publication of the final denial notice for

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BSC's petition in the **Federal Register** (see 56 FR 41944; August 26, 1991), BSC conducted additional sampling and testing of its petitioned waste. BSC established a uniform grid over the landfill dividing the landfill into seventeen sections, each 100 feet by 100 feet. Within each grid section a second uniform grid of 10-foot intervals was established for the selection of the individual boring locations. Alternating 10,000 square foot grid sections were selected for sampling. BSC used a random number table to select five boring locations within each 10,000 square foot grid section. This resulted in the selection of eight grid sections to yield eight composite samples of the material in the landfill, with each composite representative of five full-core sample aliquots from each grid section. These eight composite samples were analyzed for total constituent concentrations of 83 toxicants of potential concern [1] (including the eight TC metals). These eight composite samples were also analyzed for TCLP leachate concentrations of the toxicants of potential concern (excluding cyanide and polychlorinated biphenyls (PCBs)); and total oil and grease.

BSC claims that the analytical data obtained from the four sampling events that occurred from April 1984 through June 1992 are representative of any variation in the constituent concentrations in the petitioned waste. BSC believes that the data from the preliminary grab samples obtained in January 1984 are not representative of the entire waste volume contained in the landfill. BSC also believes that it has addressed the Agency's concern regarding the number of samples collected and the target analyses, as originally noted by the Agency in the April 7, 1989 proposal to deny BSC's petition. Specifically, in that proposal the Agency noted that, based on the dimensions of the landfill containing the petitioned waste, BSC should have collected at least one sample for every 10,000 square foot section of the landfill. BSC's original estimate of the areal extent of the landfill was 5.3 acres; however, as discussed later in today's notice, BSC has demonstrated through detailed calculations (discussed later in today's notice) that a better estimate of the landfill area is 3.5 acres. Therefore, based on this revised estimate, BSC should have collected at least 15 composite samples. Since the April 1989 proposal, BSC has conducted additional sampling of the waste, bringing the total number of composite samples to 21, including 8 composite samples collected in June 1992 that have been analyzed for total constituent concentrations of 70 volatile organic and semivolatile organic constituents. The Agency believes, based on its re-evaluation of BSC's petition, that the combined results of BSC's sampling events are sufficient to characterize any variation in the constituent concentrations in the petitioned waste.

BSC also submitted ground-water monitoring information collected from wells monitoring the landfill to demonstrate that the petitioned waste was not adversely impacting ground-water quality. The ground-water monitoring information submitted by BSC, and more recent data received from State and EPA Regional authorities, included: (1) Well location information; (2) boring logs and well construction information for each well; (3) water levels and water level contour maps; and (4) results of the analysis of ground-water samples.

C. Agency Analysis

BSC used SW–846 Methods 7060 through 7760 (January 1984, April 1984, and February 1985 samples) to quantify the total constituent concentrations of the eight TC metals and nickel. BSC used SW–846 Method 6010 (June 1992 samples) to quantify the total constituent concentrations of the eight TC metals (with the exception of mercury and selenium, for which BSC used SW–846 Methods 7471 and 7740, respectively), nickel, antimony, and thallium. "Methods for Chemical Analysis of Water and Wastes" Method 335.2 (April 1984 samples), SW–846 Method 9010 (February 1985 samples) and SW–846 Method 9012 (June 1992 samples) were used to quantify total cyanide concentrations in the petitioned waste. SW–846 Method 9030 (February 1985 samples) was used to quantify total sulfide levels in the petitioned waste. SW–846 Method 7.3.4.1 (June 1992 samples) was used to quantify reactive sulfide levels in the petitioned waste. SW–846 Method 1310 (samples prior to 1988) was used to determine the leachable concentrations of the eight TC metals, nickel, and cyanide. BSC prepared a toxicity characteristic leachate (according to the procedure in 51 FR 21685, June 13, 1986) to determine the leachable concentrations of the eight TC metals in the September 1988 sample. SW–846 Method 1311 was used to determine the leachable concentrations of the eight TC metals, nickel, antimony, and thallium in the June 1992 samples. Table 1 presents the maximum reported, and 95% Upper Confidence Limit (UCL) total constituent concentrations of the eight TC metals listed in § 261.24, nickel, antimony, thallium, cyanide, and sulfide. Table 1 also identifies the number of samples in which each constituent was detected. Table 2 presents the maximum reported, and 95% UCL EP leachate and TCLP leachate concentrations of the eight TC metals listed in § 261.24, nickel, antimony, thallium, and cyanide. (Analysis for leachable concentrations of sulfide or reactive sulfide is not necessary because the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.)

TABLE 1.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) INORGANIC CONSTITUENTS

Constituents	Total Concentrations (mg/kg)		Number of Samples in which detected/total number of samples
	Maximum [1]	95% UCL [2]	
Antimony	<12	<12	0/5
Arsenic	16.2	10.3	12/23
Barium	1,660	791	13/20
Cadmium	3.3	2.1	12/20
Chromium	172	100	20/20
Lead	7,520	2,810	20/20

[1] BSC chose to analyze waste samples for these constituents because they were: (1) identified by EPA during previous actions concerning this petition as constituents of regulatory concern, or (2) identified as constituents that reasonably may be expected to be potentially present in the petitioned waste, based on the processes from which the waste components were derived.

TABLE 1.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) INORGANIC CONSTITUENTS—Continued

Constituents	Total Concentrations (mg/kg)		Number of Samples in which detected/total number of samples
	Maximum [1]	95% UCL [2]	
Mercury	0.268	0.16	8/14
Nickel	64.6	30.6	12/20
Selenium	2.6	2.2	5/14
Silver	3.0	2.1	5/14
Thallium	43	32.6	5/8
Cyanide (total)	43.1	36.0	20/23
Reactive Sulfide	140	130.0	7/8

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest detected concentrations of each inorganic constituent found in any sample of the petitioned waste, and, if not detected, the highest detection limit. These levels do not necessarily represent the specific levels found in one sample.
[2] 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples. The average was calculated by considering nondetectable measurements to be measurements at the detection limits, except for arsenic, for which high detection limits (<100 mg/kg) for eight samples were not included.

TABLE 2.—EP/TCLP LEACHATE CONCENTRATIONS (MG/L) INORGANIC CONSTITUENTS

Constituents	EP/TCLP Leachate Concentrations (mg/l)			
	Maximum [1]		95% UCL [2]	
	EP	TCLP	EP	TCLP
Antimony	NA	<0.06	NA	<0.06
Arsenic	0.034	<0.3	0.016	0.16
Barium	1.48	0.7	0.85	0.54
Cadmium	0.015	<0.005	0.005	<0.005
Chromium	0.144	0.023	0.034	0.024
Lead	1.61	0.11	0.37	0.059
Mercury	0.0007	<0.005	0.0004	<0.002
Nickel	0.59	0.21	0.28	0.15
Selenium	0.008	<0.3	0.003	<0.15
Silver	<0.001	<0.01	<0.001	<0.01
Thallium	NA	[3] <0.3	NA	<0.17
Cyanide (total)	0.06	[4] 2.1	0.03	NA

<Denotes that the constituent was not detected at the detection limit specified in the table.
NA: Not analyzed.
[1] These levels represent the highest detected concentrations of the inorganic constituents found in any extract of samples of the petitioned waste, and, if not detected, the highest detection limit. These levels do not necessarily represent the specific levels found in one sample.
[2] 95% Upper Confidence Limit (UCL) is the estimated upper 95 percent confidence interval for the average of sample concentrations based on the Student-t distribution applied to random samples. The average was calculated by considering non-detectable measurements to be measurements at the detection limits.
[3] Three samples (including a duplicate) analyzed for thallium had a detection limit of 0.3 mg/l. Seven additional samples (including a duplicate) analyzed for thallium had a detection limit of 0.01 mg/l.
[4] Calculated from the maximum detected total cyanide concentration of 43.1 mg/kg by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

BSC also performed the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312) on samples from June 1992 to further examine leachable lead levels. The SPLP is similar to the TCLP, except that the extraction fluid is a solution of dilute mineral acid (pH 4.2), rather than the concentrated solution of acetic acid used in the TCLP. EPA has used the SPLP to simulate the effect of acidic rainfall on the mobility of waste constituents (*e.g.*, see 54 *FR* 15316; April 17, 1989). BSC claims that the SPLP is more representative of realistic leaching conditions at the current site of the waste in the on-site landfill. Lead was not detected (<0.003 mg/l) in any of the ten composite samples (8 samples and 2 replicates) from the June 1992 sampling event using the SPLP procedure.

The detection limits in Tables 1 and 2 (and Tables 3 and 4 that follow) represent the lowest concentrations quantifiable by BSC when using the appropriate analytical methods to analyze the petitioned waste.

Using "Standard Methods for the Examination of Water and Wastewater (14th edition)" Method 502.D (April 1984 samples) and SW–846 Method 9071 (February 1985 and June 1992 samples), BSC determined that the maximum oil and grease content of the petitioned waste was 0.93 percent; therefore, the EP and the TCLP analyses did not have to be modified in accordance with the Oily Waste Extraction Procedure (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard EP or TCLP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330 for the Oily Waste Extraction Procedure. On the basis of test results provided by BSC, pursuant to § 260.22, none of the samples analyzed exhibited the characteristics of

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ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

BSC used unreferenced gas chromatographic/mass spectrometric (GC/MS) methods (April 1984 samples) to quantify total constituent concentrations of benzene, benzo(a)pyrene, and tetrachloroethylene. "Methods for Chemical Analysis of Water and Waste," Method 420.1 (April 1984 samples) was used to quantify phenol levels. SW–846 Method 8.86 (April 1984 samples) was used to quantify naphthalene concentrations. BSC used unreferenced SW–846 Methods (February 1985 samples) to quantify the total constituent concentrations of benzene, benzo(a)pyrene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)-pyrene, naphthalene, and phenols. BSC used SW–846 Methods 8240 and 8270 (June 1992 samples) to quantify total constituent concentrations of volatile organic and semivolatile organic compounds, respectively. BSC prepared a toxicity characteristic leachate (according to the procedure in 51 FR 21685, June 13, 1986) to determine the leachable concentrations of volatile organic and semivolatile organic compounds in the September 1988 sample. BSC used SW–846 Method 1311 in conjunction with Methods 8240 and 8270 to determine the leachable concentrations of volatile organic and semivolatile organic compounds in the June 1992 samples.

Table 3 presents the maximum reported (or estimated) total constituent concentrations for hazardous organic constituents detected in the petitioned waste. Table 4 presents the maximum reported and estimated TCLP leachate concentrations for hazardous organic constituents detected in extracts of samples of the petitioned waste. Average values (and 95% UCLs) were not calculated because the number of samples for most organic constituents were limited, and most yielded nondetectable constituent levels at varying detection limits. Furthermore, most constituents that were detected were found at levels below quantitation limits and are reported as "estimated" values. Tables 3 and 4 also identify the number of samples in which each constituent was detected. The total constituent concentrations of benzo(a)pyrene, naphthalene, and phenol in the six composite samples collected in April 1984 were presented in the petition on a dry weight basis. Because, for delisting purposes, the Agency evaluates wastes in their as-disposed condition, the concentrations of these three constituents were recalculated in Table 3 on a wet weight basis using percent solids data to account for the water that is normally present in the waste. (For further detail, see the RCRA public docket for today's notice.)

TABLE 3.—TOTAL CONSTITUENT CONCENTRATIONS (MG/KG) DETECTED ORGANIC CONSTITUENTS

Constituents	Total Concentrations (mg/kg)	
	Maximum [1]	Number of samples in which detected/total number of samples
Benzo(a)-anthracene	[2] 0.44	2/8
Benzo(a)pyrene [3]	0.69	6/20
Chrysene	[2] 0.6	2/8
1,1–Dichloroethane	[2] 0.0075	1/8
Ethyl benzene	1.3	2/8
Fluoranthene	[2] 1.3	3/8
Indeno(1,2,3-cd)-pyrene	[2] 0.53	1/14
Methyl ethyl ketone	[2] 0.085	3/8
Naphthalene [3]	[2] 0.87	15/23
Phenanthrene	[2] 2.0	5/8
Phenol [3]	0.26	12/20
Pyrene	[2] 1.5	5/8
Toluene	[2] 0.0065	2/8
Xylenes	5	5/8

[1] These levels represent the highest concentration of each organic constituent found in any sample of the petitioned waste. These levels do not necessarily represent the specific levels found in one sample.
[2] These constituents were detected, but below quantitation limits; estimated values are given.
[3] BSC's petition reported benzo(a)pyrene, naphthalene, and phenol concentrations for samples collected in April 1984 on a dry weight basis. Tabulated values are on a wet weight basis.

TABLE 4.—TCLP Leachate Concentrations (mg/l) Detected Organic Constituents

Constituents	TCLP Leachate Concentrations (mg/l) Maximum [1]
Ethyl benzene	0.035
Methylene chloride [2]	.085
Naphthalene	[3] .013
Phenol	[3] .029
Toluene	.011
1,1,1–Trichloroethane	.006

TABLE 4.—TCLP Leachate Concentrations (mg/l) Detected Organic Constituents—Continued

Constituents	TCLP Leachate Concentrations (mg/l) Maximum [1]
Xylenes	[3] .085

[1] These levels represent the highest concentration of each organic constituent found in any extract of samples of the petitioned waste. These levels do not necessarily represent the specific levels found in one sample.
[2] Found in blanks for some samples.
[3] Concentrations estimated at less than the detection limit were reported and are included as maximum concentrations.

In its original petition, BSC submitted a signed certification stating that the landfill contained approximately 170,000 cubic yards of waste that had been accumulated for 14 years (1969 through November 1983). In the November 1992 supplemental information submittal, BSC claimed that this previous estimate of the volume of the landfill was not accurate. BSC stated that the initial estimate was based upon

an area of 5.3 acres and an average depth of 20 feet. BSC's recalculation of the volume of the landfill is based upon an area of 153,240 square feet (approximately 3.5 acres) and an average depth of 21.7 feet. In addition, BSC's recalculation takes into account the side slope of the landfill, assuming a conservative side slope of 1:1 (vertical to horizontal). BSC submitted a surveyor's report of the area to support its revised estimate of waste volume. BSC stated that the original surface area estimate was based on the outside edge of the roads surrounding the landfill (approximately 5 acres) rather than on the edge of the waste surface outline (approximately 3.5 acres). BSC stated that the best estimate of the volume of waste contained in the landfill is approximately 110,000 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BSC's modified estimate of 110,000 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for BSC's mixture of ammonia still lime sludge and solid wastes and decided, based on the information provided in the petition, that disposal in a Subtitle D landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated groundwater. The Agency, therefore, evaluated BSC's petitioned waste using the EPA's Composite Model for Landfills (EPACML), as modified for delisting evaluations, which predicts the potential for groundwater contamination from wastes that are landfilled. The EPACML model is more sophisticated than the VHS model used previously by the Agency for evaluating BSC's petitioned waste. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, the modifications made for delisting, and the benefits of replacing the VHS model with the EPACML model for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste.

The Agency requests public comments on its use of the EPACML model as applied to the evaluation of BSC's waste. EPA will consider all comments on the validity of the EPACML model and its appropriateness for use here to evaluate the potential for groundwater contamination if BSC's petitioned wastes are disposed of in any Subtitle D landfill.

For the evaluation of BSC's petitioned waste, the Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract of samples of BSC's petitioned waste. The Agency's evaluation, using BSC's estimated waste volume of 110,000 cubic yards and the maximum and 95% UCL leachate concentrations (see Table 2), generated the compliance-point concentrations for the constituents of concern as shown in Table 5. (See docket for this rule for details in the use of the EPACML in evaluating BSC's waste).

The Agency did not evaluate the mobility of antimony, silver and thallium from BSC's petitioned waste because they were not detected in the leachate extracts using the appropriate SW–846 analytical test methods and adequate detection limits (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts for RCRA delistings if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency believes it is reasonable to assume that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L) LANDFILL WASTE

Constituents	Compliance-Point Concen.		Levels of regulatory concern [3]
	Maximum [1]	95% UCL [2]	
Arsenic	0.00071	0.0033	0.05
Barium	.031	.018	2.0
Cadmium	.00031	.00010	.005
Chromium	.0030	.00071	.1
Lead	.034	.0077	.015
Mercury	.000015	.0000083	.002
Nickel	.012	.0058	.1
Selenium	.00017	.000063	.05
Cyanide	.044	.00063	.2

[1] Using the maximum EP or TCLP leachate level from Table 2, whichever is greater, and based on a DAF of 48 calculated using the EPACML for one time volume of 110,000 cubic yards
[2] Using the 95% UCL level from EP or TCLP data, from Table 2, whichever is greater, and based on a DAF of 48 calculated using the EPACML for one-time volume of 110,000 cubic yards.
[3] See "Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR § 260.20 and § 260.22", December 1994, located in the RCRA public docket.

The petitioned waste exhibited maximum and 95% UCL arsenic, barium, cadmium, chromium, mercury, nickel, selenium, and cyanide levels at the compliance point below the health-based levels used in delisting decision-

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making. The Agency's evaluation of the extract data indicated that two grab samples of the petitioned waste contained leachable concentrations of lead at the compliance point above the health-based level of 0.015 mg/l used in delisting decision-making. These two grab samples were collected in January 1984 during a preliminary sampling effort. However, since this sampling event, BSC has provided analytical results quantifying leachable lead concentrations in 21 additional composite samples, including nine samples that were analyzed using the TCLP. Table 6 presents a summary of all the leachable lead data for BSC's petitioned waste.

TABLE 6.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (MG/L) LANDFILL WASTE

Sampling date	Leachable lead concentration	Extraction method
January 1984 (grab samples)	0.426	EP
	0.08	EP
	0.97	EP
	0.474	EP
	0.052	EP
	0.045	EP
	1.61	EP
April 1984 (composite samples)	<0.01	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	0.04	EP
February 1985 (composite samples)	<0.01	EP
	0.013	EP
	<0.01	EP
	<0.01	EP
	<0.01	EP
	0.041	EP
September 1988 (composite samples)	0.05	TCLP
June 1992 (composite samples)	0.004	TCLP
	0.048	TCLP
	[1]0.074	TCLP
	<0.003	TCLP
	0.003	TCLP
	0.004	TCLP
	[1]0.021	TCLP
	0.110	TCLP

<Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Concentration is average of duplicate samples.

For a number of reasons, the Agency believes that BSC's June 1992 sampling and analysis program provides a compelling demonstration that the higher leachable lead concentrations observed in the January 1984 sampling event do not truly represent the leachable lead concentrations in the petitioned waste. First, BSC used a different protocol to sample the petitioned waste in January 1984. Samples collected during January 1984 were simply partial core samples taken from sections of the landfill; whereas, samples collected during the later sampling events, particularly the June 1992 event, were collected and composited according to guidance typically given to petitioners. In the early stages of its review of BSC's petition, EPA raised questions concerning the differences between leachable lead data from samples collected in January 1984 and samples collected in April 1984. BSC conducted its February 1985 sampling program in response to the Agency's request to collect additional, full-core composite samples of the central portion of the landfill in order to provide more information about leachable lead concentrations in the petitioned waste. Leachable lead data from BSC's February 1985 composite sampling program, and subsequent composite sampling programs in September 1988 and June 1992, expanded the data set to a total of 28 data values, 21 of which correspond to composite samples. As shown in Table 6, the maximum leachable lead concentration for the subset of preliminary grab samples (1.61 mg/l) is significantly greater than the maximum leachable lead concentration for the subset of composite samples (0.11 mg/l). The Agency notes that even the *average* leachable lead concentration of the subset of preliminary grab samples (calculated to be 0.52 mg/l) is significantly greater than the maximum leachable lead concentration of the subset of composite samples (*i.e.*, 0.11 mg/l). Therefore, the Agency believes the preliminary grab samples may not be truly representative of the leachable lead concentrations in the petitioned waste.

Second, samples of BSC's petitioned waste collected in the two later sampling events (September 1988 and June 1992) were subjected to the TCLP, rather than the EP. As of September 25, 1990 the Agency adopted the TCLP as a replacement for and improvement upon the EP in its hazardous waste regulatory program. Thus, the Agency now requires that petitioners provide TCLP data rather than EP data in support of their petitions. The Agency believes that the maximum leachable lead concentration for the subset of samples analyzed using the TCLP (reported to be 0.11 mg/l) will be more representative of the potential mobility of lead from BSC's petitioned waste than the earlier EP results. When the maximum TCLP level for lead (0.11 mg/l) is input to the EPACML, this yields a compliance point concentration (0.0022 mg/l) well below the level of concern (0.015 mg/l). Therefore, the TCLP data clearly indicates that leachable lead levels are not a concern in BSC's waste.

Finally, the Agency calculated the average of the leachable lead data in Table 6 for the EP and TCLP data sets, disregarding whether the samples were collected using grab or compositing methods. The 95% UCL values (as shown in Table 2) are 0.37 mg/l for the EP data, and 0.059 mg/l for the TCLP data. When input into the EPACML, these values would yield compliance point concentrations of 0.0077 mg/l and 0.0012 mg/l, respectively, for the EP and TCLP data. Averaging all the EP and TCLP data yields a 95% UCL of 0.26 mg.l, which would lead to a compliance point concentration of 0.0054 mg/l. Thus, no matter how the data are averaged, the 95% UCL well compliance point would still be below the level of concern (0.015 mg/l). Therefore, for these reasons, the Agency believes that leachable lead concentrations in the petitioned waste would not cause this waste to be considered a hazardous waste for Subtitle C purposes and are not of concern.

As reported in Table 1, the maximum concentration of total cyanide in the petitioned waste is 43.1 mg/kg. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed 43.1 mg/kg. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 mg/kg. See "Interim Agency Thresholds for Toxic Gas Generation", July 12, 1985, internal Agency Memorandum in the RCRA public docket. Furthermore, the maximum reported level of reactive sulfide in BSC's waste is 140 mg/kg. This concentration is below the Agency's interim standard of 500 mg/kg. See the "Interim Agency Thresholds for Toxic Gas Generation" document cited above. Therefore, reactive cyanide and sulfide levels in BSC's petitioned waste would not cause this waste to be considered a hazardous waste for Subtitle C purposes and are not of concern.

The Agency also evaluated the mobility of the hazardous organic constituents detected in the extract of samples of BSC's petitioned waste using the EPACML. The Agency used the maximum reported leachate concentrations (see Table 4) and BSC's estimate of 110,000 cubic yards of accumulated waste as inputs in the EPACML in order to assess the potential impacts of these constituents upon the groundwater. The calculated compliance-point concentrations for the seven organic constituents detected in sample extracts are presented in Table 7.

TABLE 7.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L) LANDFILL WASTE

Constituents	Maximum compliance-point constituents [1]	Levels of regulatory concern [2]
Ethyl benzene	0.00075	0.7
Methylene chloride	0.0018	0.005
Naphthalene	0.00027	1.0
Phenol	0.00058	20.0
Toluene	0.00023	1
1,1,1–Trichloroethane	0.00013	0.2
Xylene	0.0018	10

[1] Based on an estimated waste volume of 110,000 cubic yards in the landfill, the EPACML model calculated a dilution/attenuation factor of 48.
[2] See "Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR § 260.20 and § 260.22", December 1994, located in the RCRA public docket.

The Agency believes that two of the seven constituents may not truly be present in the TCLP extract of BSC's waste. Methylene chloride is a common laboratory contaminant that also was observed in blanks for some of the samples. Furthermore, methylene chloride was not detected in any of the samples analyzed for total constituent levels. Similarly, 1,1,1 trichloroethane was not found in the total constituent analysis, and was detected only once out of eight samples in the TCLP analysis at a level (0.006 mg/l) close to the detection limit (0.005 mg/l). However, the Agency evaluated the reported maximum concentration for these two constituents to examine their potential risk. For all organics detected, the compliance point concentration (using maximum TCLP data in Table 7) are below the Agency's health-based level of concern.

The Agency did not evaluate the mobility of the remaining hazardous organic constituents from BSC's petitioned waste because they were not detected in the TCLP extracts using the appropriate SW–846 analytical test methods (see Table 4). As stated previously, for RCRA delistings, the Agency does not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

The Agency concluded after reviewing BSC's processes that no other hazardous constituents, other than those tested for, are likely to be present in BSC's petitioned waste. The Agency notes that, in its April 1989 proposal to deny BSC's petition, it concluded that BSC had failed to provide sufficient justification that the waste does not contain additional hazardous constituents. In particular, BSC had attempted to demonstrate, using an approach that relied on analyzing waste samples for a limited set of "indicator" parameters, that hazardous constituents were not present in the waste at levels of concern. The Agency believed that this original demonstration was inadequate for a number of reasons (see 54 FR 14101, April 7, 1989). As described previously in today's notice, BSC conducted additional sampling of the waste in June 1992, specifically analyzing samples for total constituent concentrations of 70 volatile organic and semivolatile organic constituents. Based on a re-evaluation of BSC's petition, including the new analytical results from the June 1992 sampling event, the Agency believes that no other hazardous constituents are likely to be present in BSC's petitioned waste. In addition, on the basis of test results and information provided by BSC, pursuant to § 260.22, the Agency concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

The Agency also re-evaluated groundwater monitoring data available for BSC's landfill, including data for groundwater samples collected from March 1985 through July 1992. The concentrations of all constituents monitored in the groundwater were detected in downgradient wells at concentrations below delisting health-based levels, except for lead, benzene, bis(2-ethylhexyl)phthalate, 1,1-dichloroethane, and 2,4,6-trichlorophenol. During this monitoring period, these constituents were detected at concentrations above delisting health-based levels in at least one upgradient well.

In its re-evaluation of the groundwater monitoring data, the Agency conducted statistical analyses for lead, bis(2-ethylhexyl)phthalate, 2,4,6-trichlorophenol, and 1,1-dichloroethane to determine if downgradient well concentrations statistically exceeded background well concentrations (see the docket for today's proposed rule). Based on the results of these analyses, the Agency concluded for the delisting evaluation that the downgradient concentrations of lead, bis(2-ethylhexyl)phthalate, 1,1-dichloroethane, and 2,4,6-trichlorophenol are not significantly greater than background well concentrations. For this reason, the

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Agency believes that the petitioned waste is unlikely to be the source of the detected groundwater contamination.

The Agency also considered the significance of hexachlorobenzene, which was detected in the groundwater at one downgradient well during one round of sampling. This hexachlorobenzene concentration was reported as an estimated value (rather than an actual detected value) of 0.012 mg/l, based on a detection limit of 0.050 mg/l. However, hexachlorobenzene has not been reported as detected in any wells monitoring the HWM–2 landfill during any other round of analysis throughout the monitoring history of the area. Furthermore, this constituent was not detected in the petitioned waste, based on total constituent analyses of eight samples and TCLP leachate analyses of nine samples. The Agency, therefore, believes that hexachlorobenzene is not present at levels of concern for delisting.

The Agency evaluated BSC's demonstration that benzene detected in the downgradient wells actually originated from a source other than the petitioned waste. BSC's demonstration included an evaluation of each waste type placed in the HWM–2 landfill. BSC presented information to show that, based on the nature of the processes from which the components of the petitioned waste were generated (*i.e.*, ammonia still lime sludge, blast furnace thickener sludge, basic oxygen furnace thickener sludge, sinter plant sludge, cold rolling mill wastewater treatment sludge, and dredging spoils from Smokes Creek), benzene is not expected to be present in the petitioned waste at levels of concern. Specifically, BSC provided information concerning benzene concentrations in each of the individual waste components placed in the landfill. This information included: (1) Descriptions of the processes generating the blast furnace sludge, basic oxygen furnace sludge, and ammonia still lime sludge, (2) results from the analysis of extracts of samples of each of the individual waste components, and (3) results from the analysis of raw wastewaters from which these waste components originated. (A summary of the analytical results quantifying the concentrations of benzene in the individual waste components of the landfill is contained in the docket).

The information provided by BSC supports its claim that benzene is not expected to be present in the petitioned waste at levels of concern. In addition, the Agency notes that benzene has not been detected in total constituent analyses of 20 samples of the petitioned waste, nor in leaching analyses of nine samples of the petitioned waste. Finally, three solid waste management units (designated as acid tar pits), which have received a large quantity of waste materials known to contain high concentrations of benzene (up to 29,000 mg/kg), are located approximately 1,600 feet upgradient of the downgradient wells monitoring the landfill containing the petitioned waste. In addition to a detailed characterization study of these tar pits, BSC provided calculations of the average groundwater velocity to demonstrate that contaminants released from these tar pits could have reached monitoring wells in the HWM–2 landfill area. For these reasons, the Agency believes that BSC's assertion regarding a potential upgradient source of benzene, other than the petitioned waste, is valid.

As mentioned earlier in this notice, the Agency also received more recent groundwater monitoring data from State and EPA Regional authorities. Such additional data were received in late 1993 and 1994, after the Agency had performed its statistical analyses of the data collected from March 1985 through July 1992 (as submitted by BSC in its petition and supplemental information). The Agency concluded that it is not necessary to perform further statistical analyses to incorporate the more recent data. The earlier data (March 1985 to July 1992) were sufficient for the Agency to conduct statistical analyses, and to conclude that the contaminants of concern were not released from the landfill containing the petitioned waste (*i.e.*, the existing groundwater contamination at the site is not attributable to the petitioned waste). In addition, based on the Agency's preliminary review of the more recent data, it appears that those data would not lead to any significant change in estimated constituent concentrations that would affect the earlier evaluation. The Agency, therefore, believes there is no need to devote additional Agency time and resources, which are scarce, to conducting further statistical analyses to include the additional groundwater monitoring data. The Agency has placed the groundwater monitoring data received from State and EPA Regional authorities in the RCRA public docket for today's notice for public comment.

During its evaluation of BSC's petition, the Agency also considered the potential impact of the petitioned waste via nongroundwater routes. With regard to airborne dispersal of waste, the Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from BSC's petitioned waste. (A description of the Agency's assessment of the potential impact of airborne dispersal of BSC's waste is presented in the RCRA public docket for today's final rule.)

The Agency also considered the potential impact of the petitioned waste via a surface water route. The Agency believes that contaminant structures at municipal solid waste landfills can effectively control surface water runoff, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, if the waste were to remain on-site, the HWM–2 landfill containing the petitioned waste is currently surrounded by a continuous berm that precludes runoff from the unit. Therefore, any significant future releases of contaminants from the petitioned waste at its current location via a surface water route are highly unlikely. If such surface water releases should occur, any releases and the HWM–2 unit are subject to the corrective action provisions of RCRA. In fact, if BSC's waste in the HWM–2 unit were delisted, the unit would remain a solid waste management unit under RCRA, and would be closed in accordance with an approved New York State plan.

While some contamination of surface water is possible through runoff from a waste disposal area (*i.e.*, storm water), the Agency believes that the dissolved concentrations of any hazardous constituents in the runoff will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic medium used for extraction in the TCLP. The Agency also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur.

In addition, any transported contaminants would be further diluted in the receiving water body. Significant releases to surface water due to erosion of undissolved particulates in runoff are also unlikely, due to the controls noted above. Nevertheless, the Agency evaluated the potential hazards resulting from releases from a landfill to a nearby stream, as well as possible releases from the current landfill located on-site and adjacent to Lake Erie. The results of these evaluations indicate that BSC's waste would not present a threat to human health or the environment.

(See the docket to today's rule for a description of this analysis).

E. Conclusion

The Agency believes that BSC has demonstrated that the waste contained in its on-site landfill is not hazardous for Subtitle C purposes. The Agency believes that the sampling procedures used by BSC were adequate, and that the samples collected from the landfill are representative of the waste contained in the landfill.

The Agency, therefore, is proposing to withdraw its original denial of BSC's petition, and is proposing that BSC's petitioned waste be delisted as non-hazardous and thus not subject to regulation under RCRA Subtitle C. The Agency proposes to grant an exclusion to Bethlehem Steel Corporation's Lackawanna, New York, facility for its mixture of ammonia still lime sludge and solid waste described in its petition as EPA Hazardous Waste No. K060 and contained in its on-site HWM–2 landfill. The Agency's decision to exclude this waste is based on process descriptions, results from the analysis of samples of the petitioned waste, and results from the analysis of groundwater monitoring data available for BSC's landfill. If the proposed rule becomes effective, the waste contained in the HWM–2 landfill would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270. Although management of the wastes covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal and State solid waste management regulations.

III. Limited Effect of Federal Exclusion

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BSC must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this proposed rule would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this proposed rule would not be a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96–511, 44 U.S.C 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them

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on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and Recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 6, 1995.

Michael H. Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bethlehem Steel Corporation	Lackawanna, New York	Ammonia still lime sludge (EPA Hazardous Waste No. K060) and other solid waste generated from primary metal-making and coking operations. This is a one-time exclusion for approximately 110,000 cubic yards of waste contained in the on-site landfill referred to as HWM-2. This exclusion was published on [insert date of final rule].

[FR Doc. 95–29897 Filed 12–6–95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 95–007 Correction]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to FAR case 95–007, Responsibility Determinations, published at 60 FR 55960, November 3, 1995. The correction reflects the changes implemented by Federal Acquisition Circular 90–32, FAR case 94–790, Acquisition of Commercial Items, Item III.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite correction to FAR case 95–007.

Correction

PART 9—CONTRACTOR QUALIFICATIONS

In proposed rule document 95–27294 on page 55960 in the issue of Friday, November 3, 1995, in the third column, under amendatory instruction 3, the revised text should read as follows:

9.106–1 Conditions of preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

Dated: December 1, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95–29773 Filed 12–6–95; 8:45 am]

BILLING CODE 6820–EP–M

Notices

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Research, Education, and Economics, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee.
Date: January 19, 1996.
Time: 9:00 a.m. to approximately 5:00 p.m.
Place: Club Room, Westpark Hotel, 1900 North Fort Myer Drive, Arlington (Rosslyn), Virginia 22209.
Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.
Comments: The public may file written comments before or after the meeting with the contact person specified below.
Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Under Secretary for Research, Education, and Economics with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The items to be considered at this meeting include the implementation of performance standards for research with genetically modified aquatic organisms and the scope of biological risk assessment research programs.
Contact Persons: Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research, Education, and Extension Service, Department of Agriculture, Room 3868, South Building, 14th and Independence Avenue S.W., Washington, D.C. 20250–0904, phone (202) 720–5853.

Done at Washington, D.C., this 27th day of November, 1995.

Karl N. Stauber,

Under Secretary, Research, Education, and Economics.

[FR Doc. 95–29868 Filed 12–06–95; 8:45 am]

BILLING CODE 3410–22–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release: Correction

AGENCY: Assassination Records Review Board.

ACTION: Notice of Formal Determinations: Correction.

SUMMARY: The Assassination Records Review Board (Review Board) met on November 13, and November 14, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). The Review Board published a notice document in the Monday, December 4, 1995, **Federal Register**, reflecting those determinations. In that notice document 95–29389 beginning on page 62066, make the following corrections:

On page 62066, in the third column of the FBI documents table, make the following corrections:

Record identification No.	Previously published information	Corrected information
124–10058–10403	0, 1, Postponed in Full, 2017	0, 1, Postponed in Part, 2017.
124–10243–10078	0, 1, Postponed in Full, 2017	0, 1 Postponed in Part, 2017.

Dated: December 4, 1995.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 95–29825 Filed 12–06–95; 8:45 am]

BILLING CODE 6820–TD–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 951127279–5279–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivables to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases, and accounts receivable balances for 1995, and year-end inventories for 1994 and 1995. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1995 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide,

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with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 21, 1995.

Bryant Benton,

Acting Deputy Director, Bureau of the Census.

[FR Doc. 95–29866 Filed 12–06–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–427–009]

Large Power Transformers from France; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the antidumping duty administrative review; large power transformers from France.

SUMMARY: On May 2, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on large power transformers (LPTs) from France. The review covers one manufacturer/exporter and the period June 1, 1993 through May 31, 1994.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department published in the **Federal Register** an antidumping finding on LPTs from France on June 14, 1972 (37 FR 11772). On June 7, 1994, we published in the **Federal Register** (59 FR 29411) a notice of opportunity to request an administrative review of the antidumping finding on LPTs from France covering the period June 1, 1993 through May 31, 1994.

In accordance with 19 CFR 353.22(a), Jeumont Schneider Transformateurs (JST) requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on July 15, 1994 (59 FR 36160).

On May 2, 1995, the Department published the preliminary results in the **Federal Register** (60 FR 21499). The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of LPTs; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of transformers, JST, and the period June 1, 1993, through May 31, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from JST and petitioner, ABB Power T&D Co. Inc. We received rebuttal briefs from JST and petitioner.

Comment 1: Petitioner argues that the dumping margin should be calculated in U.S. dollars, and that the Department's regulations require conversion of foreign currency into U.S. dollars based on the exchange rate prevailing on the date of sale. Petitioner cites 19 CFR 353.60(a) (1994), which states that the Department is to convert "a foreign currency into the equivalent amount of United States currency at the rates in effect on the dates described in * * * 353.50." Petitioner also cites 19 CFR 353.50, arguing that this section indicates the time for calculating constructed value, and thus determining the currency conversion rate, is the date of sale.

Petitioner argues that the Department, in calculating constructed value and making adjustments to U.S. price and foreign market value, improperly converted several costs JST incurred in U.S. dollars into French francs. Petitioner argues that the instructions in the Department's questionnaire clearly state that JST was to report its expenses in the currency in which those expenses were incurred. Petitioner further argues that the U.S. Department of Commerce, International Trade Administration, Antidumping Manual instructs the Department to convert any expenses not incurred in U.S. dollars into their dollar-denominated equivalent. Petitioner states that the Department's regulations prescribe the rate to be used to accomplish this conversion under 19 CFR 353.60(a).

JST argues that neither the antidumping statute nor the Department's regulations require that dumping analysis be dollar-denominated. JST argues that section 772 of the Tariff Act defines U.S. price, but does not state that U.S. price is to be a dollar-denominated price, and thus no statutory provision compels, or addresses, the question of whether the Department must convert prices or costs stated in foreign currency into U.S. dollars. JST further argues that 19 CFR 353.60(a) similarly prescribes a method for converting foreign currency into dollars, but does not require dollar-denominated calculations.

JST argues that a calculation of U.S. price in a foreign currency is unusual, but not unlawful, and that, given the facts of this case, a French franc-denominated analysis is the best way of determining the degree to which either of JST's U.S. sales was sold at less than foreign market value. JST argues that the methodology is consistent with the basic rule that governs the Department's antidumping analysis, *i.e.*, that a foreign producer's U.S. price and foreign market value are to be determined using data in the books and records of that producer, kept in the normal course of trade, as long as such data do not distort the producer's actual prices or costs.

Department's Position: We disagree with both parties, in part. There is no requirement, in either the statute or the regulations, that the dumping margin be calculated in U.S. dollars. Nevertheless, when certain elements of the dumping calculation were paid in U.S. dollars, and other elements in a foreign currency or currencies, it is the Department's longstanding practice to convert foreign currency amounts into U.S. dollars before calculating dumping margins, in accordance with the rates established in 19 CFR 353.60(a). In this case, prices were set, and paid, in U.S. dollars. Therefore, for these final results, we have used the U.S. dollar price paid by the U.S. customer as the basis of U.S. price, and converted expenses incurred in French francs to U.S. dollars on the date of the U.S. sale. We have used the date of sale, *i.e.*, the date on which the terms of the sale were set, as the date on which we have converted all foreign currency transactions.

Comment 2: Petitioner claims that the use of JST's exchange rate guarantees in calculating a dumping margin is not in accordance with law. Petitioner argues that the Court of International Trade has held that gains from exchange contracts cannot be used to increase U.S. price, and at best a respondent may treat those gains or expenses solely as indirect selling expenses on its U.S. sales. Petitioner cites *Thyssen Stahl AG* v. *United States*, Slip Op. 95–78 (Ct. Int'l Trade April 27, 1995) (*Thyssen*), where the court reversed the Department's determination to treat gains from an exchange rate contract as a circumstance-of-sale adjustment. Petitioner states that the court noted that the antidumping statute did not provide for such an adjustment and the Department's implementing regulations "did not contemplate currency hedging," and that the court rejected the respondent's theory that the antidumping law is designed to compare a respondent's overall return or profit between its U.S. and foreign market sales. Petitioner notes that, instead, the court in *Thyssen* held that exchange rate gains and losses could be considered indirect selling expenses.

Petitioner notes that the *Thyssen* court relied heavily on *Torrington Co.* v. *United States*, 832 F.Supp. 379, 391–92 (Ct. Int'l Trade 1993) (*Torrington*), in which the court reversed the Department's adjustment to U.S. price to take into account a currency guarantee.

JST states that the petitioner has misread the *Torrington* and *Thyssen* decisions. JST argues that the court's finding in *Torrington* was clearly limited to the conclusion that the respondent's currency hedging expenses were not directly related to the specific sales under review. JST argues that the court similarly found that Thyssen had failed to demonstrate the requisite direct relationship to the U.S. sales under consideration. JST concludes that neither the *Torrington* nor the *Thyssen* decision limits the Department's ability to treat any difference between JST's transaction-specific exchange rate guarantees and the exchange rate on the date of sale as a direct selling credit for which an adjustment to foreign market value must be made.

JST argues that the production and sale of LPTs varies from most other merchandise that is subject to antidumping orders. JST explains that producers bid to supply transformers more than a year before the transformers will be delivered. Because the bid is a firm commitment to supply a high-cost transformer at a specific price, JST states that it always arranges for a project-specific exchange rate guarantee before it bids on a contract to supply an LPT to a U.S. customer. JST states that the transaction-specific exchange rate guarantees that it secured on its review-period sales to the United States are different from general currency hedges. JST argues that the exchange rate guarantees at issue transform JST's review-period sales to the United States into French franc-denominated sales against which the company could control the French franc costs that it incurred during the design, production, test and delivery cycle. JST states that the Department verified that JST maintains detailed transaction-specific French franc-denominated accounts for both the revenues and costs associated with each of its LPT sales. JST argues that a standard dumping calculation based on dollar-denominated U.S. sales would grossly distort the Department's antidumping analysis if the currency conversion were at a rate that differed significantly from the guaranteed rate of exchange that JST secured for each of its U.S. sales, because it would understate the amount actually expected and received by JST. JST cites to the Uruguay Round Agreements Act, Statement of Administrative Action at 172, to argue that it is current Department practice, where a company demonstrates that a sale of foreign currency on forward markets is directly linked to a particular export sale, to use the rate of exchange in the forward currency sale agreement.

JST argues that, if the Department decides to treat its exports as dollar-denominated sales and decides to convert the French franc-denominated constructed value to dollars at the Federal Reserve exchange rate in effect on the date of sale, the Department must make an adjustment to foreign market value for direct selling credit. JST argues that the result of the credit adjustment is the same as treating the transaction as a foreign currency sale at the guaranteed exchange rate.

Department's Position: We disagree with both parties, in part. The court's decisions in *Thyssen* and *Torrington* do not disallow the use of a circumstance-of-sale adjustment in this case. The court in both *Thyssen* and *Torrington* stated that the respondents could not link the sales in question to specific exchange rate guarantee contracts. The facts of this case differ because there is a specific guarantee for each sale to the United States. JST has placed on the record evidence that there was an exchange rate guarantee directly associated with each of its sales to the United States. (See JST's questionnaire response at tabs A–2 and B–2.) At verification, we examined the price in the contract in U.S. dollars, the price the customer paid in U.S. dollars, and the amount JST received from its bank in French francs. (See verification exhibit Sales-4.) While the price to be paid in U.S. dollars by the customer remained constant, JST used an exchange rate guarantee to secure a certain exchange rate for each of its sales. Because the price paid by the customer was set and paid in U.S. dollars, for these final results we have used the price paid in U.S. dollars for purposes of calculating U.S. price. Because of the gain JST earned on these U.S. sales due to exchange rate guarantees, which were directly linked to specific sales of LPTs, we have made a circumstance-of-sale adjustment to foreign market value to account for that gain.

Comment 3: Petitioner argues that the Department understated JST's profit on its home market sales. Petitioner argues that JST improperly excluded data from a certain type of transformer from its home market sales and the Department based its home market profit calculation on the data that excluded transformers of this type. Petitioner states that the transformers in question are within the scope of the finding and JST has provided no scope-related information to explain why this type of transformer should be excluded.

JST stated that the home market and the U.S. sales of LPTs, other than the

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type in question, were sold and manufactured, and the revenue associated with them was booked, on a comparable time frame, normally a year or more after the "sale" was made. JST states the sales of the transformer type in question were not only sold, but were manufactured and delivered five years before the review period. JST argues that the profit realized on these sales has nothing to do with market conditions at any time during the period in which the LPTs under review were sold, manufactured or delivered.

Department's Position: We agree with JST. The profit the Department calculates for constructed value should be based on the profit the respondent experiences on comparable sales reasonably contemporaneous to the sales of subject merchandise under review. The transformers excluded from the profit calculation were sold significantly before the sales to the United States. Although the profit was realized during the period of review, the market conditions and expected return on those sales are not relevant to the market conditions during the time the LPT sales under review were made, because so much time had elapsed since the sale of the home market LPTs in question. Therefore, we are continuing to exclude the data on the transformers in question in our profit calculation.

Comment 4: Petitioner argues that JST understated the actual amount of its pre-bid expenses for purposes of calculating cost of manufacture. Petitioner points out that JST calculated its pre-bid expenses by taking its total annual pre-bid expenses and allocating those expenses on a per-unit basis across all its sales for that year. Petitioner questions whether the denominator is accurate, given that at verification the Department found that JST had misreported the number of LPTs sold during the period of review. Petitioner also questions whether the pre-bid expenses for each of the units are identical across markets and asserts that, because JST's sales in its home market are far more regular than its export sales, it is possible that JST could have no pre-bid expenses for its home market sales. Petitioner contends that the best method for allocating these pre-bid expenses is on the basis of design hours. Petitioner argues that, because the export units are custom-designed, they would require more design hours, and thus likely more costs, to develop a bid.

JST contends that it properly reported, and the Department properly calculated, pre-bid expense. JST contends that at verification the Department reviewed the quantity of transformers that it produced during each year involved in the review period (*i.e.*, 1992, 1993, and 1994), and that these data were provided in JST's "final test" log for each calendar year, which reconciled with JST's annual financial statements. JST further contends that even though there were problems with the sales volume and value data, there is no reason to question the validity of the final test data which were verified and used to allocate pre-bid expenses.

JST asserts that petitioner misunderstands the pre-bid expenses that it incurs. JST states that it incurs in the aggregate more pre-bid expenses on business that it loses than on business that it wins, and that each transformer that is sold must absorb an allocated portion of total pre-bid expenses, including those on failed bids. Regarding petitioner's assertion that pre-bid expenses should be allocated based on design costs incurred after the bid has been won, JST argues that petitioner ignores the "bid-but-not-won" problem, and assumes a correlation between design costs or transformer size and pre-bid expenses where none exists.

Department's Position: We disagree in part with both petitioner and JST. As petitioner noted, at verification we encountered considerable difficulties in verifying JST's sales volume and value. However, as stated in the verification report, JST allocated its pre-bid expenses based on the number of units tested during the year, a figure we did verify, finding no discrepancies. The sales volume and value data differ from the testing report data. The sales volume and value data cover only subject merchandise sold during the period of review, while the testing reports cover all transformers which were completed during the years during which the subject merchandise was produced.

We agree with petitioner that pre-bid expenses might not be identical across markets. However, there is insufficient data on the record to determine whether more pre-bid expenses are incurred on home market or export sales. We disagree with petitioner that allocating by design hours would most accurately capture pre-bid expense, because there is not a clear correlation between design hours and pre-bid expense. As we found at verification, pre-bid expenses include other expenses associated with bids (*see* Verification Report at p. 15), and, therefore, are not necessarily incurred relative to design hours. Furthermore, as JST pointed out, a substantial portion of its pre-bid expenses are incurred for failed bids, and must be allocated to other LPTS. Because there is no correlation between pre-bid expenses and sales, we have determined that the most reasonable way to allocate pre-bid expenses is on the cost of sales, since it avoids distortions which could be created by allocating pre-bid expenses on number of units or design hours.

Comment 5: JST argues that, in calculating the profit ratio on home market sales, the Department understated the cost of manufacture incurred by JST on its home market sales because it did not include pre-bid expenses associated with these sales. As a result, JST claims, the Department overstated the profit ratio on its home market sales, which in turn led to an overstatement of profit for constructed value. JST states that, in its normal accounting, it treats pre-bid expenses as an indirect selling expense. However, in submitting costs for the LPTs sold in the United States, JST treated pre-bid expenses as a cost of manufacture in accordance with Department practice. JST argues there must be a consistency between the way cost of manufacture is calculated for U.S. sales and for home market sales, and that pre-bid expenses should therefore be included in the home market cost of manufacture. JST argues that the Department should allocate pre-bid expenses on a per unit basis.

Petitioner states that JST has failed to submit sufficient information to make the adjustment to cost of manufacture for home market pre-bid expenses for purposes of the profit calculation. Petitioner argues that the suggested adjustment to pre-bid expenses implies that pre-bid expenses for home market and export sales are the same. Petitioner states that pre-bid expenses also include "exchange rate guaranty premiums," which would be incurred only on export sales. Petitioner claims that, because JST did not provide export-related pre-bid expenses separately from home market-related pre-bid expenses, an accurate calculation of home market pre-bid expenses cannot be made.

Department's Position: JST's comment indicates a misunderstanding of the Department's calculation of profit. The Department calculates profit for constructed value by multiplying the cost of production (cost of manufacture plus selling, general, and administrative expenses (SG&A)) of the U.S. sale by a ratio of home market profit to the cost of production of home market sales. The home market SG&A includes indirect selling expenses, which is where JST normally includes pre-bid expenses. However, for the preliminary results we inadvertently did not include an amount for pre-bid expense in either cost of manufacture or SG&A expenses for purposes of our profit calculation. We do agree that, in order not to overstate profit, we must include an amount for pre-bid expense in home market cost of production. As noted in our response to Comment 4, above, JST did not provide sufficient information to differentiate between home market-related and export-related pre-bid expenses. Therefore, we have allocated pre-bid expense to home market cost of manufacture based on cost of sales.

Comment 6: Petitioner contends that the Department made an error in calculating JST's credit expense. Petitioner states that the Department based JST's credit expense on the time between the invoice date and payment date and that this is inconsistent with Department practice of using the time period between shipment date and payment date.

Department's Position: We agree with the petitioner, and have recalculated the credit expense for the LPT sales to the United States to reflect the time period between shipment and payment.

Comment 7: Petitioner asserts that the use of JST's economic report to derive the cost of materials for Sale 1 understates cost of materials for this unit since this report may not reconcile exactly to the cost accounting system. Petitioner argues the Department should derive a cost of materials figure using the total cost of materials from the cost accounting system.

JST argues that it keeps economic reports for each transformer, while the cost accounting system is specific to individual orders, which may include costs for more than one transformer. JST argues that, when the accounting records for an order do not provide the detailed costs for each transformer covered by the order, the detail is available from the economic reports. JST argues that the economic report does in fact reconcile to the cost accounting system "to within very few French francs." JST argues the information it supplied to the Department yields a fully reconciled materials cost. JST states that the differences in materials cost between the economic report and the cost accounting system were explained during verification.

Department's Position: We agree with JST. During the verification, we examined the economic report and its relationship to the cost accounting system. We determined that using the economic report was the most reasonable method of deriving the cost of materials for this sale because the economic report is transformer-specific, and the differences between costs reflected in the economic report and the actual material costs for the specific transformer were minimal. (For further details, *see* proprietary memorandum to the file dated June 30, 1995.)

Comment 8: JST argues that the Department did not correct an error regarding JST's calculation of home market cost of sales, which was discovered at verification. As a result, JST asserts that the actual manufacturing cost incurred on home market sales is understated, thereby causing the calculation of profit to be overstated. JST argues that the verification report mistakenly notes that the error did not affect JST's cost of home market sales.

Petitioner contends that JST's claim for an adjustment to home market cost of sales for this additional expense should be rejected. Petitioner argues that there is no information about this expense on the record. Petitioner argues that, without such information, the Department cannot legally determine that the expense relates to home market sales. Petitioner also argues that this information was untimely submitted.

Department's Position: We agree with JST. At verification we asked JST to show us how it had arrived at the figures used in its profit calculation. In response to our request, JST prepared a worksheet showing how the figures in its questionnaire responses traced to the cost system. JST stated that, after it made adjustments for depreciation and labor, and excluded a certain type of transformer, it arrived at a figure different from what it had reported in the questionnaire response. It showed the amount of this difference on the profit worksheet, labeling it as an "Other Adjustment." Therefore, while we noted in the verification report that the "Other Adjustment" amount "should have been an expense," it is more accurate to characterize the amount as a correction of an error in the response. Correction of such errors can be the result of verification and is not untimely information as the petitioner asserts.

As explained in the verification report, we verified the total home market costs and adjustments to those costs, as presented on the home market profit worksheet at verification. (*See* verification exhibit cost-18.) We were satisfied as to the accuracy of the corrected cost of sales calculation, as shown on the home market profit worksheet. Therefore, we have accepted respondent's correction of its original calculation of cost of sales.

Comment 9: Petitioner argues that JST has not demonstrated that its related-party purchases have been made at arm's length, and as a result the Department should rely on best information otherwise available (BIA) to derive the cost of materials for JST's related-party materials purchases. Petitioner notes that at verification the Department reviewed JST's related-party purchases of two parts for one of its sales. Petitioner argues that, for the first of these parts, the Department compared related-party prices with price quotations from other companies, but JST did not demonstrate that the parts shown on these quotations met specifications similar to those of the part purchased from the related party. Petitioner also points out that the second part had been purchased from a party also related to JST. Petitioner states that the Department should use, as BIA, the ratio of all of JST's purchases from related parties to total purchases, multiplied by the total cost of materials, with an added amount for profit. For profit, petitioner suggests the Department use the percentage petitioner calculated for JST's home market profit.

JST contends that its purchases of components from related parties were made at arm's length. With regard to the first part, JST argues that petitioner has produced no information to cast any doubt that this part was not purchased at arm's length, and that petitioner's claim that this part may be different from those purchased from unrelated suppliers is only speculation. With regard to the second part, JST contends that the purchase is insignificant. JST argues that the evidence that is available supports an "arm's-length" conclusion, and there is no reason to believe that the price paid was not an arm's-length price.

Department's Position: We agree with JST. At verification we examined two parts purchased by JST from related parties. With regard to the first part we examined detailed price quotations from JST's suppliers, which clearly showed that the part had been purchased at arm's length. We agree with petitioner that the comparison parts were not identical; however, we found that the parts from related and unrelated suppliers were comparable for purposes of the arm's length test. With regard to the second part, because custom work was done on the part in question, thereby making a benchmark unavailable, we could not determine whether the part was sold at arm's length. However, we found this part to be of insignificant value. Therefore, because JST demonstrated that either the sale of the part was made at arm's length, or the value was insignificant, we find that the purchase prices for both of these parts are suitable for use in our calculation of the foreign market value. (See Antifiction Bearings (Other Than

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Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10925, February 28, 1995.)

Comment 10: Petitioner states that the Department should reject JST's home market direct warranty expense claim and treat warranty as an indirect selling expense. Petitioner cites the verification report, which states that JST calculated its reported home market warranty expense claim based on its warranty experience for both subject and non-subject merchandise. Petitioner argues that, because warranty expenses can vary significantly by product, JST's warranty expense allocation methodology may result in the overstatement of the company's actual home market LPT warranty expense.

JST argues that, at verification, the Department was given detailed warranty expense information by year and by transformer type. JST states that it did report actual warranty expenses incurred on the subject merchandise and distinguished warranty expenses incurred on LPTs sold in the home market from warranty expenses sold on exports.

Department's Position: JST reported warranty expense on home market sales which included both subject and non-subject merchandise. At verification, we were able to separate warranty expense into three categories: subject merchandise, non-subject merchandise, and export sales. We agree with petitioner that we should calculate warranties based only on subject merchandise. We disagree with petitioner that warranty expense should be considered an indirect selling expense because, as we found at verification, warranty expenses are associated with specific sales. We have thus recalculated warranty expense on home market subject merchandise and have continued to treat it as a direct selling expense adjustment to foreign market value.

Comment 11: Petitioner argues that JST improperly allocated shared production expenses for 1993 by allocating a portion of these expenses to off-site production labor hours.

JST stated that, because its off-site production was LPT-related, it properly allocated shared production expenses.

Department's Position: We agree with JST. Shared production expenses for 1993 were properly allocated to all its production because (1) the off-site production performed by JST was LPT-related, and (2) of the nature of the shared production expenses. (See proprietary memorandum to the file dated June 30, 1995.)

Comment 12: Petitioner argues that the Department improperly included insurance in SG&A, rather than treating it as a movement charge on JST's U.S. sales.

JST states that the insurance associated with freight was included in JST's movement charges, and that the general insurance covering plant and inventory was included in the SG&A charge that JST reported in its questionnaire response. JST asserts that the Department properly included both sets of insurance costs in its preliminary dumping calculation.

Department's Position: We agree with JST. At verification, in our examination of JST's internal cost sheets, which listed all of JST's expenses, we found that insurance had not been specifically listed. In our examination of freight documents, we found that the freight companies that JST used for shipping transformers to the United States included, in their charges, amounts for insurance. Therefore, JST properly reported freight insurance as a movement expense. In our examination of insurance reported as SG&A, we found that JST had been charged an amount for all its sales in the year we used to calculate SG&A. Based on the above information, we conclude that JST has properly reported insurance as a movement expense or an SG&A expense, depending on the nature of the insurance.

Comment 13: Petitioner states that the Department correctly determined that only two entries were covered by this administrative review. Petitioner notes that during the period of review two JST units entered into the United States; however, JST requested the Department review a third unit which JST sold during the period of review. Petitioner argues that, while the Department has based certain administrative reviews on sales rather than entries, it has not mixed entry- and sale-based analyses in the same review, nor has it varied its methodology from review to review. Petitioner also notes that, at verification, the Department found that several important components of the margin calculation for this third sale could not be quantified because they had not yet been incurred. Petitioner contends that for its final results the Department should reaffirm its decision to exclude this unit from this review.

Department's Position: We agree that this sale should not be included in this administrative review. At verification we examined this sale in detail; however, we could not verify receipt of payment for the transformer, or payment of movement expenses and commissions. In addition, we found that material cost could change due to adjustments that had not yet been made to materials removed from stock. Further, our general practice, in purchase price situations, is to review sales corresponding to shipments or entries made during the period of review. We have, therefore, not included this sale in our analysis.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Jeumont Schneider Transformateurs	06/01/93–05/31/94	1.50

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of LPTs from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 24 percent, the rate established in the first notice of final results of administrative review published by the Department (47 FR 10268, March 10, 1982). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 30, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–29887 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. The classes or kinds of merchandise covered by these orders are ball bearings and cylindrical roller bearings. The reviews cover 3 manufacturers/exporters. The period of review (the POR) is May 1, 1993, through April 30, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

Davina Hashmi (Meter), Michael Rausher (FAG), Thomas Schauer (SKF), Michael Rill, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings (BBs) and cylindrical roller bearings (CRBs) and parts thereof from Italy. On June 22, 1994, and July 15, 1994, in accordance with 19 CFR 353.22(c) (1994), we initiated administrative reviews of those orders for the period May 1, 1993, through April 30, 1994 (59 FR 32180 and 59 FR 36160). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 60 FR 10959 (February 28, 1995). The HTS item numbers are provided for

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convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FAG Italia S.p.A	BBs, CRBs.
Meter, S.p.A	BBs.
SKF Industrie S.p.A	BBs, CRBs.

United States Price

In calculating United States price (USP), the Department used purchase price or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included June 27–July 3, 1993, July 4–10, 1993, October 10–16, 1993, November 7–13, 1993, February 13–19, 1994, and April 24–30, 1994. We reviewed all purchase price sales transactions during the POR because there were few purchase price sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from purchase price and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

With respect to subject merchandise to which value was added in the United States prior to sale to unrelated U.S. customers, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings which are otherwise subject to the order that are imported into the United States and incorporated into nonbearing products by or for the exporter, and which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States are not subject to the assessment of antidumping duties (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991). In Roller Chain, Other Than Bicycle, from Japan 48 FR 51801 (November 14, 1983), roller chain, which was subject to an antidumping duty finding, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first products sold by the exporter to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess antidumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home markets were viable for all companies and all classes or kinds of merchandise pursuant to 19 C.F.R. 353.48. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, June, July, October, and November of 1993, and February, April, and May of 1994.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (i.e., was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for the home market sales. Where the absolute value of the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, i.e., that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise pursuant to 773(a)(4)(C) of the Tariff Act, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 C.F.R. 353.56. For comparisons to purchase price sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in purchase price and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and purchase price sales, we adjusted FMV for taxes consistent with our change in practice as stated above.

We used sales to related customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the 1991–1992 administrative reviews, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that there were not substantial quantities of that model sold below cost and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of that model were sold below cost and excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and used CV (see Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (1991)).

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold (see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64729 (December 9, 1993)).

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade" within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period of time. As a result, we disregarded below-cost sales when the conditions described above were met.

In accordance with sections 773(a)(1) and 773(b)(2) of the Tariff Act, we used CV as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit, and packing. To calculate CV we used: (1) Actual general expenses or the statutory

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minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 C.F.R. 353.56 for differences in circumstances of sale. For comparisons to purchase price sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in purchase price and ESP calculations. For comparisons involving ESP transactions, we made further deductions for CV for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 C.F.R. 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1993, through April 30, 1994 to be:

Company	BBs	CRBs
FAG	2.23	0.00
Meter	3.75	(1)
SKF	3.28	(2)

[1] No review requested.
[2] Order partially revoked with respect to this company.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

	Date	Time	Room No.
General issues.	Jan. 22, 1996.	10 a.m.	1412
Italy	Jan. 22, 1996.	2 p.m.	1412

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General issues.	Jan. 8, 1996	Jan. 16, 1996
Italy	Jan. 8, 1996	Jan. 16, 1996

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

In some cases such as purchase price situations, the respondent does not know the entered value of the merchandise. Then, we will either calculate an approximate entered value or we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. See AFBs I at 31694. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins; *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991–92 administrative reviews of these orders (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: November 30, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–29888 Filed 12–6–95; 8:45 am]

BILLING CODE 3510-DS-P

[A–427–801, A–428–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke order.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings, cylindrical roller bearings, and spherical plain bearings. The reviews cover 64 manufacturers/exporters. The period of review (the POR) is May 1, 1993, through April 30, 1994. Although we initiated reviews for four other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. We intend to terminate the reviews for five other exporters because the Department has preliminarily determined that these exporters are not an appropriate subject of review, as discussed below. We also intend to revoke the order with respect to ball bearings from Thailand based on our preliminary determination that the only known producer of ball bearings, NMB/Pelmec, has had a three-year period of no sales at less than foreign market value (FMV).

Finally, we have preliminarily determined that sales have been made below FMV by various companies subject to these reviews. If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (AVIAC, SNFA, SNR), Davina Hashmi (INA), Hermes Pinilla (Technofan), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), or Michael Rill.

Germany

Kris Campbell (Cross-Trade, Delta, EXTA Aussenhandel), Chip Hayes (NTN Kugellagerfabrik), Andrea Chu (SNR), Davina Hashmi (INA), Hermes Pinilla (Hepa Walzlager, Schaumloffel), Matthew Rosenbaum (Fichtel & Sachs, Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), Thomas Schauer (FAG), Michael Rill, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo, NSK, ITOCHU, Godo Kogyo, Santest Co.), Joseph Fargo (Naniwa Kogyo, Nankai Seiko, TOK Bearing Co.), Chip Hayes (Mitsubishi, Nachi, NTN), Lyn Johnson (Takeshita, Marubeni, I&OC, Kongo Colmet, Sanken Trading, Taikoyo Sangyo), Michael Panfeld (IKS, Nissho-Iwai, NPBS, Origin Electric), Michael Rausher (Mihasi, Inc., Sanko Co., Tomen), Mark Ross (Asahi Seiko, Minamiguchi, Nichimen, Nichinan Sangyo, Nihon K.J., Shima Trading, Sumitomo, Toei Buhin), Thomas Schauer (Matsuo Bearing Co., Nippon Thompson Co., Phoenix International, THK Co., Tsubakimoto PP), or Richard Rimlinger.

Singapore

Michael Rausher (NMB/Pelmec) or Richard Rimlinger.

Sweden

Matthew Rosenbaum (SKF) or Michael Rill.

Thailand

Michael Rausher (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Hermes Pinilla (Barden/FAG, Normalair-Garrett, NSK/RHP), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs) and parts thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Sweden and the U.K.; and BBs from Singapore and Thailand. On June 22, 1994, and July 15, 1994, in accordance with 19 C.F.R. 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1993, through April 30, 1994 (59 FR 32180 and 59 FR 36160). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these

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products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.50.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995). The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FRANCE	
AVIAC	All.
Franke & Heydrich KG	BBs.
Hoesch Rothe Erde AG	BBs.
INA Roulements S.A	All.
Rollix Defontaine, S.A	BBs.
SKF (including all relevant affiliates).	All.
SNFA	BBs, CRBs.
Societe Nouvelle Roulements (SNR).	BBs, CRBs.
TECNOFAN	All.
GERMANY	
Cross-Trade GmbH	All.
Delta Export GmbH	All.
EXTA Aussenhandel GmbH	All.
FAG Kugelfischer Georg Schaefer KGaA (FAG).	All.
Fichtel & Sachs AG	BBs.
Franke & Heydrich KG	BBs.
Hepa Walziager GmbH	All.
Hoesch Rothe Erde AG	BBs.
INA Walziager Schaeffler KG (INA).	All.
NTN Kugellagerfabrik (Deutschland) GmbH (NTN).	BBs.
Rollix & Defontaine, S.A	BBs.
Schaumloffel Technia GmbH	All.
SKF GmbH	All.
SNR Roulements	BBs, CRBs.
JAPAN	
Asahi Seiko	All.
Godo Kogyo Co. Ltd	All.
I & OC of Japan Co. Ltd	All.
ITOCHU	All.
Izumoto Seiko Co., Ltd	All.
Kongo Colmet Mfg. Co., Ltd	All.
Koyo Seiko Co., Ltd	All.
Maruberi	All.
Matsuo Bearing Co., Ltd	All.
Mihasi, Inc	All.
Minamiguchi Bearing Mfg. Co	All.
Nachi-Fujikoshi Corp.	BBs, CRBs.
Naniwa Kogyo Co., Ltd	All.
Nankai Seiko Co., Ltd	All.
Nichinan Sangyo Co., Ltd	All.
Nichimen	All.
Nihon K.J	All.
Nippon Pillow Block Sales Company, Ltd (NPBS).	BBs.
NSK Ltd (formerly Nippon Seiko K.K.).	All.
Nippon Thompson Co., Ltd	All.
Nissho-Iwai	All.
NTN Corp.	All.
Origin Electric Co., Ltd	All.
Sanken Trading Co., Ltd	All.
Sanko Co., Ltd	All.
Santest Co., Ltd	All.
Taikoyo Sangyo Co., Ltd	All.
Takeshita Seiko Co., Ltd	BBs.
THK Co., Ltd	All.
Toei Buhin Co., Ltd	All.
TOK Bearing Co., Ltd	All.
Tomen	All.
Tsubakimoto Precision Products Co., Ltd. (Tsubakimoto).	BBs.
SINGAPORE	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd. (NMB/Pelmec).	BBs.
SWEEDEN	
SKF Sverige BBs,	CRBs.
THAILAND	
NMB Thai Ltd./Pelmec Thai Ltd. (NMB/Pelmec).	BBs.
UNITED KINGDOM	
Barden Corp	BBs, CRBs.
FAG (U.K.) Ltd	BBs, CRBs.
NSK Bearings Europe, Ltd./ RHP Bearings.	BBs, CRBs.

Subsequent to the publication of our initiation notice, we received timely withdrawals of all review requests for ABG–SEMCA (France), BMW (Germany), Fujino Iron Works (Japan) and Normalair-Garrett (U.K.), and for Tsubakimoto Precision Products Co., Ltd. (Japan) with respect to CRBs and SPBs only. Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies in accordance with 19 CFR 353.22(a)(5).

In addition, we initiated reviews for Mitsubishi, Mitsui, Phoenix International, Shima Trading and Sumitomo with respect to subject merchandise from Japan. Subsequent to initiation, however, all five firms informed us that although they are resellers of Japanese-made bearings, all of their suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, these firms are not resellers as defined in 19 CFR 353.2(s) because their sales cannot be used to calculate the U.S. price. Therefore, we are preliminarily terminating the reviews with respect to Mitsubishi, Mitsui, Phoenix International, Shima Trading and Sumitomo.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of the best information available (BIA) is appropriate for certain firms. Section 353.37(b) of our regulations provides that we may take into account whether a party refuses to provide information in determining what is the best information available. For purposes of these reviews and in accordance with our practice, we have used the most adverse BIA—generally the highest rate for any company for the class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39728 (July 26, 1993), and *Empresa Nacional Siderurgica* v. *United States*, Slip Op. 95–33 (CIT March 6, 1995)).

Cross-Trade GmbH, INA France, Naniwa Kogyo, Nichimen, Nissho Iwai, Origin Electric, Sanken Trading, SNFA, Taikoyo Sangyo, THK Co., TOK Bearing Co., and Tomen failed to respond to the Department's questionnaire. Therefore, we have applied first-tier BIA, which is the highest rate ever found for each relevant class or kind of merchandise and country of origin.

Furthermore, Asahi Seiko provided only invoices with respect to SPBs and Nippon Thompson failed to provide information on its sales of CRBs. Therefore, both firms received the highest rate ever found for these classes or kinds of merchandise from Japan.

Minamiguchi provided a response to Section A of the Department's questionnaire. However, the company was notified through a deficiency letter that the questionnaire response was improperly filed. In response, Minamiguchi requested Japanese translations of all documents that the Department served it. That request was rejected and the company did not make any further attempts to respond to the Department's deficiency letter, nor did the company respond to any other sections of the Department's questionnaire. Therefore, we determined them to be uncooperative and have applied first-tier BIA, which is the highest rate ever found for each relevant class or kind of merchandise from Japan (for more information on the use of BIA for Japanese companies, see the November 29, 1995, Decision memo).

Finally, NPBS and INA Germany cooperated fully with our requests for information and agreed to undergo verification. However, at verification, we discovered that both firms had failed to report relevant sales and expense data or could not adequately substantiate important information.

With respect to NPBS, the Department was not satisfied with the completeness of the home market database. Specifically, NPBS failed to report certain sales in its home market sales database, including sales to its largest customer for a 12-month period. Also, NPBS failed to properly report quantity adjustments for selected sales. Moreover, the Department was not satisfied with the completeness of the U.S. database. Specifically, NPBS failed to explain why it did not include certain sales in its U.S. sales database. There were additional discrepancies regarding adjustments to sales price. Specifically, NPBS failed to include all loans in its calculation of short-term interest rate in the home market. Finally, NPBS failed to report several categories of freight expenses related to sales in the United States (Verification reports on NPBS, March 22, 1995, and March 24, 1995).

With respect to INA, the Department was not satisfied that INA had reported completely and accurately all of its U.S. sales. At verification, INA was not able to reconcile its financial statements to the response, nor was INA able to support the accuracy of sales of subject merchandise reported during the POR (Verification Report on INA Bearing Company, June 15, 1995). Furthermore, INA could not explain why a sale of subject merchandise was not reported in its response. While the Department was not able to verify that INA reported all of its sales of subject merchandise, INA did cooperate with the Department's requests for information and agreed to undergo verification. As a result, the Department is assigning a second-tier BIA rate to INA (Use of Best Information Available memo, May 22, 1995).

Since both firms attempted to cooperate, we have applied second-tier BIA, which is their highest previous rates, in this case the "all others" rate from the LTFV investigation for NPBS (BBs) and INA Germany (CRBs). For BBs for INA Germany, the highest rate ever calculated was for the second review (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)).

Intent To Revoke

NMB/Pelmec submitted a request, in accordance with 19 C.F.R. 353.25(b), to revoke the order covering ball bearings from Thailand with respect to NMB/Pelmec's sales of this merchandise.

In accordance with 19 C.F.R. 353.25(a)(2)(iii), this request was accompanied by certifications from the firm that it had not sold the relevant class or kind of merchandise at less than FMV for a three-year period including this review period, and would not do so in the future. NMB/Pelmec also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to this order, if the Department concludes under 19 C.F.R. 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than FMV.

In the two prior reviews of this order, we determined that NMB/Pelmec did not sell BBs from Thailand at less than FMV. The Department conducted a verification of NMB/Pelmec's response for this period of review. In this review, we preliminarily determine that NMB/Pelmec has not sold BBs at less than FMV, which will satisfy the three-year period of no sales at less than FMV. Therefore, we intend to revoke the order with respect BBs from Thailand, based on our preliminary determination that NMB/Pelmec is the only known producer of BBs, if these preliminary findings are affirmed in our final results.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included June 27–July 3, 1993, July 4–10, 1993, October 10–16, 1993, November 7–13, 1993, February 13–19, 1994, and April 24–30, 1994. We reviewed all PP sales transactions during the POR because there were few PP sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts, and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

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In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

With respect to subject merchandise to which value was added in the United States prior to sale to unrelated U.S. customers, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings which are otherwise subject to the order that are imported into the United States and incorporated into nonbearing products by or for the exporter, and which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States are not subject to the assessment of antidumping duties (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991) (AFBs I)). In Roller Chain, Other Than Bicycle, from Japan 48 FR 51801 (November 14, 1983), roller chain, which was subject to an antidumping duty finding, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first products sold by the exporter to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess antidumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home markets were viable for all companies and all classes or kinds of merchandise pursuant to 19 C.F.R. 353.48. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, June, July, October, and November of 1993, and February, April, and May of 1994.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for the home market sales. Where the absolute value of the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise pursuant to 773(a)(4)(C) of the Tariff Act, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and PP sales, we adjusted FMV for taxes consistent with our change in practice as stated above.

We used sales to related customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in prior administrative reviews, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that there were not substantial quantities of that model sold below cost and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of that model were sold below cost and excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and used CV (see Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (1991)).

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold (see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64729 (December 9, 1993)).

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade" within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period of time. As a result, we disregarded below-cost sales when the conditions described above were met.

In accordance with sections 773(a)(1) and 773(b)(2) of the Tariff Act, we used CV as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit, and packing. To calculate CV we used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 C.F.R. 353.56 for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions from CV for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 C.F.R. 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1993, through April 30, 1994 to be:

Company	BBs	CRBs	SPBs
FRANCE			
AVIAC	5.18	(2)	(2)
Franke & Heydrich	166.42	(3)	(3)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	66.42	18.37	42.79
Rollix Defontaine	(2)	(3)	(3)
SKF	3.77	(2)	19.33
SNFA	66.42	18.37	(3)
SNR	0.73	2.08	(3)
TECNOFAN	14.59	(2)	(2)
GERMANY			
Cross-Trade GmbH	132.25	76.27	118.98
Delta Export GmbH	(2)	(2)	(2)

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Company	BBs	CRBs	SPBs
EXTA Aussenhandel GmbH	68.89	55.85	114.52
FAG	12.47	10.79	2.09
Fichtel & Sachs	19.60	(3)	(3)
Franke & Heydrich	[1] 132.25	(3)	(3)
Hepa Wetzlager GmbH	(2)	(2)	(2)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	31.29	52.43	(2)
NTN	12.57	(3)	(3)
Rollix & Defontaine	(2)	(3)	(3)
Schaumloffel Technik GmbH	(2)	(2)	(2)
SKF	38.18	16.61	16.03
SNR	4.44	6.05	(3)
JAPAN			
Asahi Seiko	1.60	(2)	92.00
Godo Kogyo	(2)	(2)	(2)
I & OC	(2)	(2)	(2)
ITOCHU	(2)	(2)	(2)
Izumoto Seiko	2.28	(2)	(2)
Kongo Colmet	(2)	(2)	(2)
Koyo Seiko	14.89	5.53	[1] 0.00
Marubeni	(2)	(2)	(2)
Matsuo Bearing	(2)	(2)	(2)
Mihasi	(2)	(2)	(2)
Minamiguchi Bearing	106.61	51.82	92.00
Nachi-Fujikoshi	13.79	9.72	(3)
Naniwa Kogyo	106.61	51.82	92.00
Nankai Seiko	18.46	(2)	(2)
Nichinan Sangyo	(2)	(2)	(2)
Nichimen	106.61	51.82	92.00
Nibon K.J.	(2)	(2)	(2)
NPBS	45.83	(3)	(3)
NSK Ltd.	20.39	16.27	(2)
Nippon Thompson	10.16	51.82	59.63
Nissho-Iwai	106.61	51.82	92.00
NTN	13.69	12.78	35.43
Origin Electric	106.61	51.82	92.00
Sanken Trading	106.61	51.82	92.00
Sanko	(2)	(2)	(2)
Santest	(2)	(2)	(2)
Taikoyo Sangyo	106.61	51.82	92.00
Takeshita Seiko	0.89	(3)	(3)
THK	106.61	51.82	92.00
Toei Buhin	(2)	(2)	(2)
TOK Bearing	106.61	51.82	92.00
Tomen	106.61	51.82	92.00
Tsubakimoto	7.77	(3)	(3)
SINGAPORE			
NMB/Pelmec	4.32	(3)	(3)
SWEDEN			
SKF	33.74	24.51	(3)
THAILAND			
NMB/Pelmec	0.18	(3)	(3)
UNITED KINGDOM			
Barden/FAG	1.49	[1] 8.22	(3)
NSK/RHP	17.26	19.36	(3)

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

	Date	Time	Room No.
General issues	Jan. 22, 1996.	10 a.m.	1412
Thailand	Jan. 23, 1996.	10 a.m.	1412
Singapore	Jan. 23, 1996.	10 a.m.	1412
Germany	Jan. 23, 1996.	1 p.m.	1412
Japan	Jan. 24, 1996.	10 a.m.	1412
United Kingdom	Jan. 24, 1996.	1 p.m.	1412
France	Jan. 25 1996.	10 a.m.	1412
Sweden	Jan. 25, 1996.	1 p.m.	1412

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General issues	Jan. 8, 1996	Jan. 15, 1996.
Thailand	Jan. 9, 1996	Jan. 17, 1996.
Singapore	Jan. 9, 1996	Jan. 17, 1996.
Germany	Jan. 9, 1996	Jan. 17, 1996.
Japan	Jan. 10, 1996.	Jan. 18, 1996.
U.K.	Jan. 10, 1996.	Jan. 18, 1996.
France	Jan. 11, 1996.	Jan. 19, 1996.
Sweden	Jan. 11, 1996.	Jan. 19, 1996.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

In some cases, such as PP situations, the respondent does not know the entered value of the merchandise. Then, we will either calculate an approximate entered value or we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. See *AFBs I* at 31694. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the LTFV. As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: November 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29889 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–006]

Color Television Receivers from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On July 1, 1988, the Department of Commerce (the Department) published the final results of the third administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (53 FR 24975). The review covered the period April 1, 1985, through March 31, 1986. On September 19, 1994, the Court of International Trade (CIT) issued an order (Slip Op. 94–146) remanding to the Department the final results of the third administrative review of Samsung Electronics Co., Ltd. (Samsung). On March 13, 1995, the CIT affirmed the Department's redetermination (Slip Op. 95–38). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the third administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1985 through March 31, 1986.

Amended Final Results of Review

The CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) re-classify SYPM credit rebates as direct selling expenses, (3) reconsider our classification of warranty-related fees to outside service agents as indirect selling expenses, (4) reconsider the use of best information available (BIA) to determine freight allowance discounts, and (5) reconsider the adjustment for free merchandise and parts. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1985 through March 31, 1986:

Manufacturer/exporter	Percent margin
Samsung	0.27

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29890 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–006]

Color Television Receivers From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On November 14, 1986, the Department of Commerce (the Department) published the final results of the second administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (51 FR 41365). The review covered the period April 25, 1984, through March 31, 1985. On September 16, 1994, the Court of International Trade (CIT) issued an

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order (Slip Op. 94–144) remanding to the Department the final results of the second administrative review of Samsung Electronics Co., Ltd. (Samsung). On March 15, 1995, the CIT affirmed the Department's redetermination (Slip Op. 95–45). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the second administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 25, 1984 through March 31, 1985.

Amended Final Results of Review

The CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) determine whether certain sales qualify as purchase price or exporter's sale price (ESP) transactions, and (3) adjust ESP for commissions and indirect selling expenses. As to Samsung's claimed circumstance-of-sale (COS) adjustments to foreign market value (FMV), the Department was directed to: (1) re-classify SYPM credit rebates and volume rebates as direct selling expenses, and (2) reconsider the classification of replacement parts and forwarding charges. The CIT also instructed the Department to correct clerical errors in its computer program. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 25, 1984 through March 31, 1985:

Manufacturer/exporter	Percent margin
Samsung	1.18

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29891 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On June 27, 1990, the Department of Commerce (the Department) published the final results of the fourth administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (55 FR 26225). The review covered the period April 1, 1986, through March 31, 1987. On September 21, 1994, the Court of International Trade (CIT) remanded to the Department for redetermination the final results of the fourth administrative review of Samsung Electronics Co., Ltd. (Samsung) (Slip Op. 94–148). On January 30, 1995, the Department submitted to the CIT the final results of redetermination. On March 15, 1995, the CIT issued a second order (Slip Op. 95–46) remanding to the Department the January 30, 1995, final results of redetermination. On April 14, 1995, the Department submitted a second final results of redetermination to the CIT. On May 31, 1995, the CIT affirmed the Department's second redetermination (Slip Op. 95–100). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the fourth administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1986 through March 31, 1987.

Amended Final Results of Review

On September 21, 1994, the CIT ordered the Department to: (1) Recalculate the value-added tax (VAT) adjustment according to its new methodology, (2) treat bad debt expenses as direct selling expenses if the data warrant an adjustment, (3) reconsider its treatment of home market warranty expenses, (4) consider home market inventory carrying cost information, and (5) reconsider the imputation of expenses in determining the amount of value added for exporter's sales price (ESP) adjustment purposes.

On January 30, 1995, the Department submitted to the CIT the final results of redetermination of the fourth administrative review.

On March 15, 1995, the CIT issued a second order remanding to the Department the January 30, 1995, final results of redetermination. In its opinion, the CIT ordered the Department to treat home market warranty expenses as direct selling expenses for the purposes of the circumstance-of-sale adjustment. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1986 through March 31, 1987:

Manufacturer/exporter	Percent margin
Samsung	0.29

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29892 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On March 27, 1991, the Department of Commerce (the Department) published the final results of the fifth administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (56 FR 12701). The review covered the period April 1, 1987, through March 31, 1988. On September 21, 1994, the Court of International Trade (CIT) remanded to the Department for redetermination the final results of the fifth administrative review of Samsung Electronics Co., Ltd. (Samsung)(Slip Op. 94–149). On January 30, 1995, the Department submitted to the CIT the final results of redetermination. On March 16, 1995, the CIT issued a second order (Slip Op. 95–48) remanding to the Department the January 30, 1995, final results of redetermination. On April 14, 1995, the Department submitted a second final results of redetermination to the CIT. On May 31, 1995, the CIT affirmed the Department's second redetermination (Slip Op. 95–101). Since the CIT's ruling was not appealed, and the CIT's decision affirming our redetermination has therefore become final and conclusive, we are amending our final results of the fifth administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1987 through March 31, 1988.

Amended Final Results of Review

On September 21, 1994, the CIT ordered the Department to: (1) Recalculate the value added tax (VAT) adjustment according to its new methodology, (2) treat bad debt as a direct selling expense if sufficient data exists, (3) reconsider its treatment of home market warranty expenses, and (4) reconsider the classification of forwarding expenses. On January 30, 1995, the Department submitted to the CIT the final results of redetermination of the fifth administrative review.

On March 16, 1995, the CIT issued a second order remanding to the Department the January 30, 1995, final results of redetermination. In its opinion, the CIT ordered the Department to treat home market warranty expenses as direct selling expenses for the purposes of the circumstance-of-sale adjustment. As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1987 through March 31, 1988:

Manufacturer/exporter	Percent margin
Samsung	0.10

Because the CIT's decision affirming our redetermination has become final and conclusive, the Department will order the immediate lifting of the suspension of liquidation and instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)(1994)) and 19 CFR 353.28(c).

Dated: November 21, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–29893 Filed 12–6–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Solicitation of Business Development Center Applications for Oklahoma City and San Diego

AGENCY: Minority Business Development Agency, Commerce.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Center (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Proper Identification Is Required for Entrance Into Any Federal Building

DATES: The closing date for applications for each MBDC is listed below:

ADDRESSES: Completed application packages should be submitted on or before the closing date to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The following are MBDCs for which applications are solicited:

1. *MBDC Application:* Oklahoma City. *Metropolitan Area Serviced:* Oklahoma City, Oklahoma.

Award Number: 08–10–96001–01.

Closing Date for Applications: January 8, 1996.

For Further Information and an Application Package, Contact: Demetrice Jenkins, (214) 767–8001.

Pre-APPLICATION Conference: December 22, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

Cost of Performance Information: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1996 to April 30, 1997, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

2. *MBDC Application:* San Diego. *Metropolitan Area Serviced:* San Diego, California.

Award Number: 09–10–96003–01.

Closing Date for Applications: January 8, 1996.

For Further Information and An Application Package, Contact: Steven Saho, (415) 744–3001.

Pre-Application Conference: December 28, 1995—call the San Francisco Regional Office for time and location:(415) 744–3001.

Cost of Performance Information: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1996 to April 30, 1997, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,969 in non-federal (cost-sharing) contributions for a total project cost of $333,125. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

Standard Paragraphs—The following information and requirements are applicable to the above-listed MBDCs.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition; the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, *"Nonprocurement Debarment and Suspension—and the related section of the certification form prescribed above applies.*

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: December 1, 1995.

Donald L. Powers

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–29885 Filed 12–06–95; 8:45 am]

BILLING CODE 3510–21–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

December 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward, carryover and special swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17332, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

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implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 4, 1995, you are directed to amend the March 30, 1995 directive to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
336/636	429,346 dozen.
338/339	1,083,807 dozen.
340/640	1,254,819 dozen.
341/641	1,243,498 dozen of which not more than 521,158 dozen shall be in Category 341.
347/348	471,823 dozen.
350/650	104,018 dozen.
351/651	254,028 dozen.
445/446	33,945 dozen.
638/639	429,759 dozen.
645/646	214,277 dozen.
647/648	1,384,138 dozen of which not more than 1,011,957 dozen shall be in Category 647–K [2] and not more than 1,011,957 dozen shall be in Category 648–K [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–29886 Filed 12–06–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Assumption of Lead Responsibility for an Environmental Impact Statement Evaluating Container Systems for the Management of Spent Nuclear Fuel

SUMMARY: The Department of the Navy (Navy) announces its plan to assume lead responsibility for preparation of an Environmental Impact Statement (EIS) evaluating container systems for the management of naval spent nuclear fuel. This EIS (previously titled Environmental Impact Statement for a Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel) was being prepared by the Department of Energy (DOE), with the Navy participating as a cooperating agency, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, in accordance with the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). DOE is halting its proposal to fabricate and deploy a multi-purpose canister based system and the Office of Civilian Radioactive Waste Management will cease preparation of the multi-purpose canister EIS which was to include both civilian and naval spent nuclear fuel. DOE will be a cooperating agency in the preparation of the EIS for naval spent nuclear fuel.

SUPPLEMENTARY INFORMATION: On October 24, 1994, the DOE published in the **Federal Register** (59 FR 53442) a Notice of Intent to prepare an EIS for a multi-purpose canister system for the management of civilian spent nuclear fuel. Under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*), DOE is responsible for disposal of civilian spent nuclear fuel and high-level radioactive waste in a geologic repository. DOE is also responsible for any monitored retrievable storage prior to disposal, and transportation of civilian spent nuclear fuel in connection with disposal or storage. As part of carrying out these responsibilities, DOE was in the process of evaluating in an EIS the environmental impacts of fabricating and deploying a standardized container system to enable storage, transportation, and possible disposal of spent nuclear fuel.

During the scoping process for the multi-purpose canister EIS, the scope of the EIS was broadened, based on a comment by the Navy, to include naval spent nuclear fuel. In addition to its responsibility for civilian spent nuclear fuel, the DOE is also responsible for the management of spent nuclear fuel derived from atomic energy defense activities, including that from the Naval Nuclear Propulsion Program (42 U.S.C. 2121(a)(3)). Since naval spent nuclear fuel is rugged, well characterized, and compatible with standardized container system technology, DOE determined that naval spent fuel should be included in the EIS. This determination was announced in the Implementation Plan issued by DOE in August 1995 under DOE's NEPA regulations. The availability of the Implementation Plan was announced in the **Federal Register** on August 30, 1995 (60 FR 45147).

DOE has advised the Navy that because of insufficient funding in Congress' recent fiscal year 1996 appropriation to the DOE Office of Civilian Radioactive Waste Management, DOE at the present time is halting its proposal to fabricate and deploy a multi-purpose canister based system. As a result, DOE will cease preparation of the Environmental Impact Statement for a Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel.

The Navy has decided that it will proceed with that part of the multi-purpose canister EIS covering naval spent nuclear fuel. This will be done by the Navy becoming the lead agency for the EIS. DOE will participate as a cooperating agency since naval spent nuclear fuel is managed at DOE facilities. Unlike civilian spent nuclear fuel which is stored in plants throughout the country, all naval spent nuclear fuel, after removal from the reactor, is shipped to one place, the Idaho National Engineering Laboratory (INEL), for examination and temporary storage as set forth in the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement and in the associated Record of Decision issued June 1, 1995. Therefore, the container system EIS evaluations for the storage and transportation of naval spent nuclear fuel at INEL will make use of information specific to that location.

The range of alternatives being considered in the EIS will not change. Thus, the EIS does not need to go through another scoping process as a result of only covering naval spent nuclear fuel. The six container system alternatives being considered are:

(1) No-Action Alternative—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository using the M–140 transportation cask. Prior to shipment to a repository, naval spent nuclear fuel would be stored at INEL in water pools or dry containers, then loaded into M–140 transportation casks. At the repository, the naval spent fuel would be unloaded from the M–140 transportation casks and placed in a geologic repository's surface facilities for loading into disposal containers. Following unloading, the M–140 transportation casks would be returned to INEL for reuse.

(2) Multi-Purpose Canister Alternative—Use of 125-ton multi-purpose canisters currently being designed under a DOE contract for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of bare spent nuclear fuel. In addition to the sealed metal canisters, specialized casks or overpacks would be required for different stages of the process, such as intra-site transfer, dry storage, inter-site transportation, and disposal.

(3) Current Technology/ Supplemented by High Capacity Rail Alternative—Use of existing M–140 transportation casks, but with redesigned internal structures to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required.

(4) Transportable Storage Cask Alternative—Use of existing, commercially available casks for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository. At the repository, the naval spent fuel would be unloaded from the casks and placed in a geologic repository's surface facilities for loading into disposal containers. The unloaded transportable storage casks could be returned to INEL for further storage and transport.

(5) Dual-Purpose Canister Alternative—Use of an existing, commercially available canister and overpack system for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository. At the repository, the naval spent fuel would be unloaded from the canisters and placed in a geologic repository's surface facilities for loading into disposal containers.

(6) Small Multi-Purpose Canister Alternative—Use of smaller, 75-ton, multi-purpose canisters currently being designed under a DOE contract rather than the 125-ton multi-purpose canisters.

The Draft EIS will not contain a preferred alternative. Instead, the Navy will use public comments on the Draft EIS to help identify a preferred alternative for the Final EIS. Consistent with this approach, the subject EIS is being renamed as "The Department of the Navy Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel."

DATES: The Navy plans to issue the Draft EIS by about April 30, 1996. Issuance of the Draft EIS will be announced in the **Federal Register**. A 45 day comment period will be provided following issuance of the Draft EIS. Public hearings will be held during the 45 day comment period. The locations and dates of these public hearings will be announced in the **Federal Register** when the Draft EIS is issued. The Navy plans to issue the final EIS by November 30, 1996, and plans to issue a Record of Decision by December 31, 1996.

ADDRESSES: To receive a copy of the Draft EIS, please provide your address to: Argonne National Laboratory, EAD, Building 900, Mail Stop 1, 9700 South Cass Avenue, Argonne, IL 60439, ATTN: Naval Spent Fuel Container System EIS.

FOR FURTHER INFORMATION CONTACT: For further information on this EIS please contact: Mr. William Knoll of the Naval Nuclear Propulsion Program at Department of the Navy, Code NAVSEA 08U, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, Telephone: 703–602–8229.

Dated: December 1, 1995.

B. DeMars,

Admiral, USN, Director, Naval Nuclear Propulsion Program.

[FR Doc. 95–29862 Filed 12–6–95; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Availability of Inventions for Licensing; Government Owned Inventions

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217- 5660 and must include the application serial number or Navy case Number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR, OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696- 4001.

Patent Application Serial No. 08/342,451: MOBILE SAFETY STRUCTURE FOR CONTAINMENT AND HANDLING OF HAZARDOUS MATERIALS; filed November 14, 1994;

Patent Application Serial No. 08/514/888: AMMUNITION CARTRIDGE WITH REDUCED PROPELLANT CHARGE; filed August 14, 1995;

Patent Application Serial No. 08/514/570: COMBINATION PIN FOR ATTACHING TRIGGER ASSEMBLY AND SAFING SMALL ARM: filed August 14, 1995;

Patent Application Serial No. 08/514,576: SINGLE SPRING BOLT LOCK AND CARTRIDGE EJECTOR; filed August 14, 1995;

Patent Application Serial No. 08/514,573: SPOTTING ROUND BORE ALIGNMENT MECHANISM FOR ROCKET LAUNCHER; filed August 14, 1995;

Patent Application Serial No. 08/514,883: SINGLE TRIGGER DUAL FIRING MECHANISM; filed August 14, 1995;

Patent Application Serial No. 08/514,884: BREECH BOLT AND LOCK ASSEMBLY; filed August 14, 1995;

Patent Application Serial No. 08/514,885: COMBINATION OPTICAL AND IRON SIGHT SYSTEM FOR ROCKET LAUNCHER; filed August 14, 1995;

Design Patent Application Serial No. 29/042,682: IMPROVED SHOULDER-FIRED WEAPON; filed August 14, 1995;

Patent Application Serial No. 08/514,575: SHOULDER-LAUNCHED MULTIPLE-PURPOSE ASSAULT WEAPON; filed August 14, 1995;

Patent Application Serial No. 08/375,997: LIQUID CRYSTAL COMPOSITION AND ALIGNMENT LAYER; filed January 20, 1995; and

Patent Application entitled: QUANTITATIVE MOBILITY SPECTRUM ANALYSIS OF MAGNETIC FIELD-DEPENDENT HALL AND RESISTIVITY DATA; filed October 4, 1995, Navy Case No. 77,263.

Dated: November 27, 1995.

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–29863 Filed 12–6–95; 8:45 am]

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DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education publishes this notice of an altered system of records (18–11–0026) for Debarment and Suspension Proceedings under Executive Order 12549 and the Drug-Free Workplace Act and the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4. The purpose of this notice is to notify the public of an expansion in scope of the system of records managed by the Grants and Contracts Service (GCS) to include procurement, as well as nonprocurement and Drug-Free Workplace Act actions. Currently, the Grants and Contracts Service maintains records regarding debarment and suspension proceedings against individuals who are involved in nonprocurement transactions related to programs administered by the Department. This notice also makes technical changes regarding the addition of a third system manager and system location, and also regarding the change of a system manager.

DATES: Comments on the routine uses in this system of records, as applied to individuals debarred and suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4, must be submitted by January 8, 1996. The Department filed a report on the altered system of records with the Chairman of the House Committee on Government Reform and Oversight, the Chairman of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 4, 1995. This change will become effective after the 30 day period for OMB review which expires on January 3, 1996, unless OMB gives specific notice within the 30 days that the system is not approved for implementation or requests an additional 10 days for OMB review. The Department will publish any changes to the routine uses that result from the comments.

FOR FURTHER INFORMATION CONTACT: Cathy Girouard, Grants and Contracts Service, Office of the Chief Financial Officer, U.S. Department of Education, 600 Independence Avenue, SW (Room 3636, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–5341. Telephone: (202) 708–8529. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On November 28, 1988, the Department of Education published in the **Federal Register** (53 FR 47855) a notice of a new system of records for Debarment and Suspension Proceedings Under Executive Order (E.O.) 12549. That notice was amended on January 22, 1990, to add an additional system manager (55 FR 2131); and amended again on March 7, 1990, to expand its scope to cover debarment and suspension proceedings under the Drug-Free Workplace Act (55 FR 8168).

The Privacy Act of 1974 requires the Department to publish in the **Federal Register** a notice of an altered system of records (See 5 U.S.C. 552a(e)(4)). This notice of an altered system of records notifies the public that the Department is expanding the scope of the system of records to include procurement, as well as nonprocurement and Drug-Free Workplace Act actions.

This notice also adds a third official authorized to maintain records regarding debarment and suspension proceedings against individuals and makes other technical changes.

The Office of Inspector General (OIG) is now responsible for proposing debarments and issuing suspensions if the action is against a certified public accountant (CPA) or CPA firm that audits, or is likely to audit, an educational institution receiving funds under a program administered by the Department of Education. As a result, the official in the Office of Inspector General who is responsible for issuing these notices is now responsible for maintaining records regarding these actions.

The Office of Postsecondary Education (OPE) continues to be responsible for initiating all debarment and suspension actions against institutions of higher education, lenders, and guarantee agencies and their principals. The OPE official responsible for maintaining records regarding OPE initiated actions (the system manager) is changed from the Assistant Secretary for Postsecondary Education to the Director, Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education.

The Grants and Contracts Service continues to be responsible under E.O. 12549 for initiating debarment/suspension actions against individuals who are involved in nonprocurement transactions related to programs administered by the Department and individuals who violate the Drug-Free Workplace Act. Grants and Contracts Service will also be responsible for maintaining records regarding actions under the Federal Acquisition Regulation (FAR), 48 CFR subpart 9.4—Debarment, Suspension, and Ineligibility.

Direct access to this system of records is restricted to authorized agency staff in the performance of their official duties.

The Chief Financial Officer has updated the routine uses for this system of records and seeks comments on the revised routine uses. However, to ensure clarity of purpose and as a service to the reader, this notice is being published in its entirety.

Dated: December 4, 1995.

Donald R. Wurtz,

Chief Financial Officer.

The Chief Financial Officer revises the system of records notice to read as follows:

18–11–0026

SYSTEM NAME:

Debarment and Suspension Proceedings under Executive Order (E.O.) 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulation

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

For records regarding actions under E.O. 12549 against individuals who are involved in nonprocurement transactions related to Department of Education programs, actions under the Drug-Free Workplace Act, and actions under the FAR 9.4: Grants and Contracts Service, Office of the Chief Financial Officer, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3636, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–4700.

For records regarding actions under E.O. 12549 against an individual certified public accountant or principals of a CPA firm: Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, (Room 4022, Switzer Building, 330 C Street, SW) Washington, DC 20202–1510.

For records regarding actions under E.O. 12549 against principals of institutions of higher education, principals of lenders, or principals of guarantee agencies: Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3916, GSA Regional Office Building 3, 7th & D Streets, SW) Washington, DC 20202–5341.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended. Principals are officers, directors, owners, partners, key employees, or other persons who have a critical influence on or substantive control over a covered transaction, whether or not employed by a participant. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1).

Individuals receiving grants subject to requirements under the Drug-Free Workplace Act.

Individual contractors undergoing debarment or suspension proceedings and contractors that have been debarred or suspended. Contractors covered by this system of records are individuals that directly or indirectly submit offers for or are awarded, or may reasonably be expected to submit offers for or be awarded, a government contract, or who conduct business, or may reasonably be expected to conduct business with the Department as an agent or representative of another contractor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents including written referrals, communications between the Department and the respondent, intra-agency and inter-agency communications regarding proposed or completed debarments or suspensions, and a record of any findings from debarment or suspension proceedings against individuals under E.O. 12549, the Drug-Free Workplace Act, and the FAR 9.4.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12549, Debarment and Suspension; Sections 5151–5160 of the Drug-Free Workplace Act; and the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4, Debarment, Suspension, and Ineligibility; Public Law 103–355, sec. 2455.

PURPOSE(S):

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Department of Education (ED) debarment and suspension regulations, Drug-Free Workplace regulations, and the FAR; make decisions regarding debarments and suspensions; and ensure that other Federal agencies give effect to debarment or suspension decisions rendered by ED.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose a record for the following purposes:

(a) *Litigation Disclosure.*

(1) In the event that one of the parties listed below is involved in litigation, or has an interest in litigation, ED may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) ED, or any component of the Department; or

(ii) Any ED employee in his or her official capacity; or

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of ED in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where ED determines that the litigation is likely to affect the Department or any of its components.

(2) *Disclosure to the Department of Justice.* If ED determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED may disclose those records as a routine use to the Department of Justice.

(3) *Administrative Disclosures.* If ED determines that disclosure of certain records to an adjudicative body before which ED is authorized to appear, individual or entity designated by ED or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purposes for which the records were collected, ED may disclose those records as a routine use to the adjudicative body, individual or entity.

(4) *Opposing counsels, representatives and witnesses.* If ED determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, ED may disclose those records as a routine use to the counsel, representative or witness.

(b) *Disclosure to the General Services Administration.* The Department makes information contained in this system of records available to the General Services Administration for inclusion in the *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.*

(c) *Disclosure to the Public.* The Department provides information to persons inquiring about individuals who have been debarred or suspended by ED as necessary to enforce debarment and suspension actions.

(d) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(e) *FOIA Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(f) *Contract Disclosure.* If ED contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, ED may disclose the records as a routine use to those employees. Before entering such a contract, ED shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(g) *Research Disclosure.* Where the appropriate official of ED determines that an individual or organization is qualified to carry out specific research, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act safeguards with respect to such records.

(h) *Congressional Member Disclosure.* ED may disclose information from this system of records to a congressional office from the record of an individual

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in response to an inquiry from the Congressional office made at the written request of that individual; the Member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders in locked file cabinets.

RETRIEVABILITY:

The records are indexed by the names of the individuals.

SAFEGUARDS:

All physical access to the site where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee badge. Files are kept in locked file cabinets. Immediate access to these records is restricted to authorized staff.

RETENTION AND DISPOSAL:

Pending disposal, Debarment and Suspension records are retained at the system location. The Department will retain and dispose of the records in accordance with General Records Schedule 22, item 2, which states that the cut-off date for Debarment and Suspension records is the end of the fiscal year in which the case is closed. The records are destroyed eight years after the cut-off date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3600, GSA Regional Office Building 3, SW), Washington, DC 20202–0498.

Assistant Inspector General for Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, (Room 4022, Switzer Building, 330 C Street, SW), Washington, DC 20202–1510.

Director, Compliance and Enforcement Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Room 3919, GSA Regional Office Building 3, SW), Washington, DC 20202–0498.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must provide the system manager his or her name, date of birth and social security number. Requests for notification about an individual record must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure. Requests for access to an individual's record must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5. Consistent with 5 U.S.C. 552a(e)(5), ED retains the discretion not to disclose records to an individual during the course of a debarment or suspension proceeding against the individual.

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department of Education Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Department employees involved in the management of grants and contracts, and other organizations or persons that may have relevant information regarding participants and their principals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–29856 Filed 12–7–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–079]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Carrier Corporation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–079) granting a Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Carrier's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Carrier has been granted a Waiver for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These

test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Carrier filed a "Petition for Waiver," dated June 28, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on August 23, 1995, Carrier's petition and solicited comments, data and information respecting the petition. 60 FR 43785, August 23, 1995. Carrier also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on August 14, 1995. 60 FR 43785, August 23, 1995.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Carrier Petition. The FTC did not have any objections to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Carrier requests the allowance to test using a 45-second blower time delay when testing its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces. Carrier states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 0.6 percent point, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Carrier indicates that it is unable to take advantage of any of these exceptions for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

Since the blower controls incorporated on the Carrier furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Carrier 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces. Accordingly, with regard to testing the 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces, today's Decision and Order exempts Carrier from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Carrier Corporation. (Case No. F–079) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Carrier Corporation, shall be permitted to test its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Carrier Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces manufactured by Carrier Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials

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submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the

Carrier Corporation on August 14, 1995. 60 FR 43785, August 23, 1995 (Case No. F–079).

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29715 Filed 12–06–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–078]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver from the Furnace Test Procedure to York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–078) granting a Waiver to York International (York) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting York's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its P2UR and PBLU lines of condensing furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, York has been granted a Waiver for its P2UR and PBLU lines of condensing furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: York International.

[Case No. F–078]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

York filed a "Petition for Waiver," dated June 26, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on August 28,1995, York's petition and solicited comments, data and information respecting the petition. 60 FR 44481, August 28, 1995. York also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on August 20, 1995. 60 FR 44481, August 28, 1995.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the York Petition. The FTC did not have any objections to the issuance of the waiver to York.

Assertions and Determinations

York's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. York requests the allowance to test using a 30-second blower time delay when testing its P2UR, and PBLU lines of condensing furnaces. York states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 1.5 percent points, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. York indicates that it is unable to take advantage of any of these exceptions for its P2UR and PBLU lines of condensing furnaces.

Since the blower controls incorporated on the York furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the York P2UR and PBLU lines of condensing furnaces. Accordingly, with regard to testing the P2UR and PBLU lines of condensing furnaces, today's Decision and Order exempts York from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The "Petition for Waiver" filed by York International. (Case No. F–078) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, York International, shall be permitted to test its P2UR and PBLU lines of condensing furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, York International shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the P2UR and PBLU lines of condensing furnaces manufactured by York International.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the York International on August 20, 1995. 60 FR 44481, August 28, 1995 (Case No. F–078).

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29716 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–080]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Trane Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–080) granting a Waiver to Trane Company (Trane) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Trane's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Trane has been granted a Waiver for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: Trane Company.

[Case No. F–080]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10

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CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Trane filed a "Petition for Waiver," dated August 11, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on October 13,1995, Trane's Petition and solicited comments, data and information respecting the Petition. 60 FR 53354, October 13, 1995. Trane also filed an "Application for Interim Waiver" under section 430.27(g), which DOE granted on September 28, 1995. 60 FR 53354, October 13, 1995.

No comments were received concerning either the "Petition for Waiver" or the "Application for Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Trane Petition. The FTC did not have any objections to the issuance of the waiver to Trane.

Assertions and Determinations

Trane's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Trane requests the allowance to test using a 45-second blower time delay when testing its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces. Trane states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 1.0 percentage point, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Trane indicates that it is unable to take advantage of any of these exceptions for its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces.

Since the blower controls incorporated on the Trane furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Trane Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces. Accordingly, with regard to testing the Trane Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces, today's Decision and Order exempts Trane from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered That:

(1) The "Petition for Waiver" filed by Trane Company. (Case No. F–080) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Trane Company, shall be permitted to test its Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Trane Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the Models TUD-C/AUD-C, TDD-C/ADD-C, TUD-R/AUD-R, TDD-R/ADD-R, TUD-R-V/AUD-R-V, TDD-R-V/ADD-R-V, TUY-R-V/AUY-R-V, and TDY-R-V/ADY-R-V central furnaces manufactured by Trane Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted the Trane Company on September 28, 1995. 60 FR 53354, October 13, 1995 (Case No. F–080).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29717 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–081]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–081) granting a Waiver to York International (York) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting York's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, York has been granted a Waiver for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy, Office of Energy Efficiency and Renewable Energy

In the Matter of: York International.

[Case No. F–081]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

York filed a "Petition for Waiver," dated August 8, 1995, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on October 13, 1995, York's Petition and solicited comments, data and information respecting the Petition. 60 FR 53358, October 13, 1995. York also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on September 28, 1995. 60 FR 53358, October 13, 1995.

No comments were received concerning either the "Petition for Waiver" or the "Application for Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the York Petition. The FTC did not have any objections to the issuance of the waiver to York.

Assertions and Determinations

York's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. York requests the allowance to test using a 30-second blower time delay when testing its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units. York states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an overall furnace AFUE improvement of approximately 0.4 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. York indicates that it is unable to take advantage of any of these

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exceptions for its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units.

Since the blower controls incorporated on the York furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current test procedure provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the York D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units. Accordingly, with regard to testing the D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units, today's Decision and Order exempts York from the existing test procedure provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The "Petition for Waiver" filed by York International. (Case No. F–081) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, York International, shall be permitted to test its D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, York International shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the D1NA, DAYA, D1NH, and DAYH lines of induced draft outdoor package units manufactured by York International.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective November 29, 1995, this Waiver supersedes the Interim Waiver granted York International on September 28, 1995. 60 FR 53358, October 13, 1995 (Case No. F–081).

Issued In Washington, DC, on November 29, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–29718 Filed 12–6–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. GT96–33–000]

Tennessee Gas Pipeline Company; Notice of Refund Report

December 1, 1995.

Take notice that on November 2, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report pursuant to the Commission's February 22, 1995, order issued in Docket No. RP95–124–000.

Tennessee states that it has refunded to its customers the Gas Research Institute's (GRI) refunds to Tennessee of the GRI's 1994 overcollections from Tennessee. Tennessee states that it is allocating the $71,448.00 refund from GRI on a pro rata basis to firm transportation customers that received nondiscounted service during 1994, based on each such customer's share of GRI rate adjustment payments to Tennessee during 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29704 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–87–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

December 1, 1995.

Take notice that on November 28, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–87–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point meter station for the City of Tallahassee (Tallahassee) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a delivery point meter station in Leon County, Florida, near mile post 431.0 on FGT's 24-inch mainline, to accommodate FGT's transportation and delivery of natural gas to Tallahassee on a self-implementing basis under FGT's blanket transportation certificate. The proposed delivery capacity at this meter station would be 60 MMBtu per hour and 1,000 MMBtu per day at a pressure of 60 psig. FGT states that Tallahassee would reimburse FGT for the total cost of the proposed construction which is estimated to be $114,000.

FGT states that the operation of the proposed new meter station would not increase FGT's contractual gas deliveries to Tallahassee under the existing firm and interruptible gas transportation service agreements and would have no impact on FGT's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29795 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–51–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1995.

Take notice that on November 28, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1996.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.202 of the Commission's Regulations, is to implement Rate Schedule GPS for Gas Parking Service on Panhandle's system pursuant to Panhandle's blanket authority under Part 284 of the Commission's Regulations to supplement existing services provided under Panhandle's Rate Schedules FT, EFT, SCT, IT, EIT, IOS, IIOS, WS, PS, IWS, FS, GDS and TBS.

Panhandle states that it is proposing to make this service available to satisfy the requirements of shippers whose circumstances warrant the deferral for a brief time of the delivery of gas received and who desire to avoid imbalance penalties. At the present time Panhandle does not offer a Parking service.

Panhandle states that it has gained experience operating its system under Order No. 636 and believes there is a need in the marketplace for this Parking service. The proposed service under Rate Schedule GPS will facilitate the temporary needs of shippers serving markets on Panhandle's system and will assist in managing supply for producers, aggregators and pooling shippers.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and all interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29796 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–70–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

December 1, 1995.

Take notice that on November 15, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–70–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point to Sun Company, Inc. (Sun) in Philadelphia County, Pennsylvania, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a delivery point to Sun in order to provide up to 50,000 dth/d of interruptible transportation service to Sun at a cost of $835,390 to be reimbursed by Sun.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29797 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–170–014]

Texas Eastern Transmission Corporation; Notice of Filing of Refund Proposal and Request To Terminate Proceedings

December 1, 1995.

Take notice that on November 21, 1995, Texas Eastern Transmission Corporation (Texas Eastern) filed a report of an agreement and refund proposal with Columbia Gas Transmission Corporation (Columbia) to resolve the issues and disputes in RP85–170 and the related appeals pending before the United States Court of Appeals for the District of Columbia Circuit (*Panhandle Eastern* v *FERC* No. 94–1727). Under the agreement Texas Eastern will refund to Columbia a principal amount of $11,948,555.73, $1,440,000 in interest for the period prior to 10/1/94, and additional interest

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on the principal amount for the period 10/1/94 to the date of the refund.

Texas Eastern states Columbia and Texas Eastern have filed with the United States Court of Appeals to withdraw their pending appeals cited above. It is the intent of Texas Eastern (as agreed to by Columbia) to refund to Columbia the settlement amount within 10 days of the later of (a) the date of this report and (b) the date the order of the United States Court of Appeals for the District of Columbia Circuit granting Columbia's and Texas Eastern's request to withdraw their appeals is final.

Texas Eastern and Columbia request that the Commission issue an order accepting the refund proposal and terminating the proceedings in Docket No. RP85–170, conditioned, as necessary, upon an order of the United States Court of Appeals for the District of Columbia granting the motions to withdraw the appeals of the orders issued in Docket No. RP85–170.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29798 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–85–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

December 1, 1995.

Take notice that on November 28, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1995:

Title Sheet
First Revised Sheet No. 2
First Revised Sheet No. 8
First Revised Sheet No. 252
Original Sheet No. 256
Original Sheet No. 257
Original Sheet No. 258
Original Sheet No. 259
Original Sheet No. 260

MRT states that the purpose of this filing is to comply with the Commission's new regulations issued in Order No. 582 which requires a pipeline to provide an Index of Customers in their FERC Gas Tariff if it is not in compliance with the electronic reporting requirements of Sections 284.106 and 284.223. MRT states that it is also submitting a revised Title Page reflecting the addition of a telephone and fax number, and Fifth Revised Sheet No. 8 correcting an erroneous footnote reference.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protect the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to § 154.210 of the Commission's Regulations, all such motions and protests should be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29799 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–35–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 1, 1995.

Take notice that on November 22, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 22, 1995:

Ninth Revised Sheet No. 827
Eighth Revised Sheet No. 828
Tenth Revised Sheet No. 829
Eleventh Revised Sheet No. 830
Tenth Revised Sheet No. 831
Twelfth Revised Sheet No. 832
Thirteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29801 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–88–000]

CNG Transmission Corporation; Notice of Application

December 1, 1995.

Take notice that on November 28, 1995, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–88–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon excess capacity established through operations at the Johnsonburg M&R Station, in excess of 3.2 Mmcf/Day, and permission to install flow control devices necessary to ensure the desired level of operation of the facility, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT states that the Johnsonburg M&R Station, located in Elk County, Pennsylvania, was initially constructed to serve as a delivery point to Hanley and Bird, Inc. (Hanley), CNGT's former requirement sales service customer. CNGT states that at this time, a single industrial customer, Willamette Industries, Inc. is served by the deliveries through Hanley's facility at this point.

CNGT states that since it restructured services to Hanley through its Order No. 636 proceeding in Docket No. RS92–14, deliveries through the Johnsonburg facility have, from time to time, exceeded 10.0 Mmcf/Day. CNGT states that, although it is unable to identify a certificated level of operation for the M&R Station, it has determined that the M&R Station cannot sustain operations at this level consistent with sound engineering principles. CNGT states that it has determined that reasonable flow rates through a facility of this size should accommodate daily deliveries up to 3.2 Mmcf. Therefore, by this application, CNGT seeks authorization to abandon the incremental capacity that may have been established by recent operation at the Johnsonburg M&R Station at levels in excess of 3.2 Mmcf/Day.

In addition, CNGT states that upon abandonment of the excess capacity, as requested herein, CNGT will install flow control devices to restrict throughput at this station to no more than 3.2 Mmcf/Day. CNGT states that it does not believe that case-specific authorization is required for installation of the flow control devices; however, should the Commission deem such authorization appropriate, CNGT also hereby requests permission to install the flow control devices as required to ensure the desired level of operation of the facility.

CNGT states that no long-term firm service obligations will be affected by the proposed abandonment of operations in excess of 3.2 Mmcf/Day through the Johnsonburg M&R Station. CNGT states that as of November 1, 1995, CNGT's firm service obligation to Hanley at the Johnsonburg M&R Station has been reduced to a Maximum Daily Delivery Obligation of 2.0 Mmcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29802 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Intent To Prepare an Environmental Assessment, Conduct Site Visit, Solicit Interventions, Protests, and Written Scoping Comments

December 1, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor license (less than 5MW)
b. Project No. 11060–001
c. Date filed: December 9, 1993
d. Applicant: J.M. Miller Enterprises, Inc.
e. Name of Project: Sahko Hydroelectric Project
f. Location: In the Kastelu drainage area about 0.5 miles from the confluence with the Snake River in Twin Falls County, Idaho, near the town of Filer.
g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r)
h. Applicant Contact:
Donald W. Block, P.E., J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, ID 833301, (208) 733–2414
Tracy Ahrens, J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, ID 833301, (208) 733–2414.
i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842
j. Deadline for filing protests, motions to intervene and written scoping comments: February 12, 1996
k. Status of Environmental Analysis: The application is not ready of environmental analysis at this time—see attached paragraph D8
l. Intent to Prepare and Environmental Assessment and Invitation for Written Scoping Comments: The Commission staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act. In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings: Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on Wednesday, January 10, 1996, at 7:00 pm, at Filer High School, Highway 30, Filer, Idaho. A scoping meeting oriented towards the agencies will be held on Thursday, January 11, 1996 at 9:00 am, at the Filer City Hall, Council Chambers, 300 Main Street, Filer, ID 83328.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document will also be available at the scoping meetings.

Site Visit: A site visit to the proposed Sahko Hydroelectric Project is planned for January 10, 1996. Those who wish to attend should plan to meet at 8:00 am at the J–U–B Engineers, Inc. Twin Falls Office, 800 Falls Ave., Twin Falls, ID. If you plan to attend, contact Mr. Tracy Ahrens by January 9, 1996, at (208) 733–2414 for directions or additional details.

Objectives: At the scoping meetings the staff will: (1) identify preliminary issues related to the proposed project; (2) identify issues that are not important do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be

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analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures: The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the formal record of the Commission's proceedings on the Sahko Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, until February 12, 1996.

All written correspondence should clearly show the following caption on the first page: Sahko Hydroelectric Project, FERC No. 11060–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. All entities commenting on this scoping document must file an original and eight copies of the comments with the Secretary of the Commission.

Any questions regarding this notice may be directed to Ms. Deborah Frazier-Stutely, Environmental Coordinator, FERC, at (202) 219–2842.

m. Description of Project: The proposed project would consist of: (1) a 12-foot-high, 12-foot-wide, 80-foot-long earthfill sediment collection embankment with a crest at elevation 3,397 feet mean sea level (msl), containing a broadcrest weir, a 4-foot-high, 14-foot-wide overflow spillway, and a bypass pipe; (2) a 500-foot-long bypass ditch to be used during maintenance; (3) a 12-foot-high, 12-foot-wide, 110-foot-long earthfill intake embankment with a crest at elevation 3,394.5 feet msl, containing a concrete overflow spillway, an 8-foot-wide box shaped intake structure, and bypass pipe; (4) two unnamed springs; (5) a 24-inch-diameter, 1,950-foot-long partially buried steel penstock with a butterfly valve; (6) a 25-foot-wide, 50-foot-long masonry block powerhouse containing one pelton turbine and generating unit with an installed capacity of 500 Kw; (7) a 6-foot-wide, 3-foot-high, 30-foot-long rock rip-rap tailrace, discharging project flows into the Snake River; (8) a switchyard; (9) a 2,000-foot-long, 34.5-Kv transmission line tying into an Idaho Power Company line; and (10) related facilities.

The proposed project would operate run-of-ditch, where the project will use whatever flows enter the sediment impoundment as either irrigation waste flows or as emanating from the two unnamed springs on the applicant's property, and would generate about 1,178,000 kilowatthours of energy annually.

n. Purpose of Project: Project power will be sold to a local utility.

o. This notice also consists of the following standard paragraphs: A2, A9, B1, D8

p. Available Locations of Applications: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's Regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29800 Filed 12–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–4]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. Pursuant to new requirements under the Paperwork Reduction Act, a notice was published in the Federal Register on August 29, 1995 announcing the renewal of this ICR and requesting comment on the renewal.

DATES: Comments must be submitted on or before January 8, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1617.02.

SUPPLEMENTARY INFORMATION:

Title: Surviving of Motor Vehicle Air Conditioners.

OMB Control No: 2060–0247.

EPA ICER No: 1617.02.

This is a request for an extension of a currently approved collection. Within the next few months, EPA intends to propose and finalize an amendment to the regulations implementing section 609. This amendment will, pursuant to a statutory mandate, establish standards for the recycling of any refrigerant in a motor vehicle air conditioner that substitutes for a class I or class II(ie., CFC or HCFC) refrigerant. This amendment will not affect the current recordkeeping or reporting requirements under section 609.

Abstract: In 1992, EPA developed regulations under Section 609 of the Clean Air Act Amendment of 1990 (Act) for the recycling of CFC's in motor vehicle air conditioners. These regulations were published in 57 FR 31240, and are codified at 40 CFR Subpart B (§ 82.30 *et seq.*). The reasons the information is being collected, the way the information is to be used, and whether the requirements are mandatory, voluntary, or required to obtain a benefit, are described below. The ICR renewal will not include any burden for third-party or public disclosures not previously reviewed and approved by OMB.

Technician training and certification. According to Section 609(b)(4) of the Act, automotive technicians are required to be certified in the proper use of recycling equipment for servicing motor vehicle air conditioners. Certification programs must meet EPA standards. The Stratospheric Protection Division requires that certification programs send their training and testing materials to EPA for approval. The information requested is used by the Stratospheric Protection Division to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians in addition to proper and valid certification.

Approved independent standards testing organizations. In addition, Section 609(b) (2)(A) of the Act requires independent laboratory testing of recycling equipment to be certified by EPA. The Stratospheric Protection Division requires independent laboratories to submit an application that proves their general capacity to certify equipment to meet the Society of Automotive Engineers (SAE) J standards for recycled refrigerant. The information requested is used by the Stratospheric Protection division to approve independent laboratories that can assure and industry accepted standard of quality in recycling and recovery equipment.

Substantially identical equipment. Section 609(b)(2)(B) of the Act allows equipment that was purchased before the proposal of the regulations to be approved by EPA if it is substantially identical to equipment that has been certified by an EPA approved independent laboratory. This measure is designed to incorporate or "grandfather" older equipment that has not been submitted to an independent laboratory for testing. The equipment manufacturer or owners may submit the following to the Stratospheric Protection Division: an application and supporting documents that includes process flow sheets, a list of equipment components and any other information that would indicate that the equipment is capable of recovering and/or cleaning the refrigerant to standards set forth in the appropriate appendix to the regulations. The information provided allows EPA to determine if the equipment is substantially identical to certified equipment.

Certification, reporting and recordkeeping. To facilitate enforcement under Section 609, EPA has developed several recordkeeping requirements. The information is used by the Stratospheric Protection Division to verify compliance with Section 609 of the Act. First, an establishment that owns recover-only equipment must maintain records of the name and address of the facility that is reclaiming its refrigerant. Second, any person who owns approved refrigerant recovery or recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified technicians. Last, any person who sells or distributes refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only and must indicate the purchaser's name and business address.

In addition, section 609(d)(3)–(4) of the Act requires that by January 1, 1992, all entities that service motor vehicle air containers for consideration must have acquired approved refrigerant recycling equipment. The establishment must have submitted to the Administrator on a one-time basis a certificate that provides the following information: the name of the equipment owner, the address of the service establishment where the equipment will be used, and the make, model, year, and serial number of the equipment. Note that this reporting requirement is contained in the statute itself and was not developed by EPA.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on August 29, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .13 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

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information; and transmit or otherwise disclose the information.

Affected entities: Entities affected by this action are new and used motor vehicle dealers, gasoline service stations, truck rental and leasing facilities without drivers, passenger car rental facilities, top, body, upholstery repair and paint shops, general automotive repair shops, and automotive repair shops not elsewhere classified. Clean Air Act Section 609 automotive air-conditioning technician certification programs, and approved independent standards testing organizations, will also be affected.

Estimated No. of Respondents: 16,039.

Estimated Total Annual Burden on Respondents: 8,923 hours.

Frequency of Collection: Most requirements require collection on a one-time only basis.

This renewal shows a significant reduction in burden from the original information collection request. This reduction is due primarily to revisions in the estimates of the number of service facilities that must complete certifications for the equipment they have purchased. EPA estimates that over 250,000 pieces of equipment have been purchased in the United States. As a result, the Agency estimates that no more than 10,000 existing facilities, plus 4,000 new facilities, will need to complete the certification forms in any year. In addition, the reduction in burden hours from the original ICR is due in part to a revision in the estimate of the time it takes for a service facility manager to fill out the certification form. EPA believes that the original estimate of one half-hour was inaccurate. This time was halved, from one half-hour to one quarter-hour. Certain other changes to the ICR have been made in order to reflect the current size of the sectors affected by the ICR. For example, there are now approximately 25 organizations that certify automotive service technicians to work with recover/recycle equipment. This revised number of organizations is reflected in the cost and burden hour totals.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1617.02 and OMB Control No. 2060–0247 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: November 28, 1995.

Joseph Retzer,

Director, Information Division.

[FR Doc. 95–29840 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5341–2]

Request for Comments: Preaward Compliance Review Report for all Applicants Requesting Federal Financial Assistance, Agency Information Collection Activities up for Renewal (OMB Control Number 2090–0014)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before February 5, 1996.

ADDRESSES: Office of Civil Rights, USEPA Waterside Mall (WSM), 401 M Street, SW., Washington, DC 20460.

Interested parties may receive a copy without charge by writing to this address or by calling Mary St. Peter at (202)260–4967.

FOR FURTHER INFORMATION CONTACT: Mary St. Peter: phone (202) 260–4967: fax (202) 260–4580.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are grant and loan applicants, generally state and local governments, universities, etc., who must complete a simple form with the requested data.

Title: Preaward Compliance Review Report, EPA form 4700–4, OMB Control Number 2090–0014, expiration date 1/31/96.

Abstract: The information request and gathering is part of the requirement of 40 CFR Part 7, "Nondiscrimination in Program Receiving Federal Assistance from the Environmental Protection Agency", at 40 CFR § 7.80. The regulation implements statutes which prohibit discrimination on the bases of race, color, national origin, sex and handicap. This information is also required, in part, by the Department of Justice regulations, 28 CFR 42.406 and 28 CFR 42.407. The information is collected on a short form from grant and loan applicants as part of the application. The EPA Director of Civil Rights manages the data collection through a regional component or delegated state, both of whom also carry out the data analysis and make the recommendation on the respondent's ability to meet the requirements of the regulation, as well as the respondent's current compliance with the regulation. The information and analysis is of sufficient value for the Director to determine whether the applicant is in compliance with the regulation. Analysis of the data allows EPA to determine:

(1) Whether there appears to be discrimination in the provision of program or activity services between the minority and non-minority population. This allows EPA to determine whether any action is necessary by it before the award of the grant or loan.

(2) Whether the respondent is designing grant or loan financed facilities to be accessible to handicapped individuals or whether a regulatory exemption is applicable. This allows EPA to determine whether design changes are necessary prior to the award of the grant or loan, which can save the respondent a significant amount of money, e.g., ensuring a facility is accessible to the handicapped is much less costly if this requirement is included in the design rather than after construction has begun.

(3) Whether the respondent receives or has applied for financial assistance from other Federal agencies. This information allows EPA to canvass these other agencies to avoid conducting duplicate compliance audits, reviews, or complaint investigations and is a reduction of burden on respondents. Responses to the collection of information are required to obtain a grant or loan and are kept on file by the state distributing the funds.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 40 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The form is part of the grant or loan application package. The information currently exists in the respondent operation. The data collected on this form is compiled and reported from the applicant's existing information. The information as gathered and reported on the form specifically applies to the grant or loan application. The only burden experienced by the respondent is that of completing the form. Our past experience has shown that it requires one half-hour to complete the form. The form is usually completed by the applicant's packager or a clerk assistant. The average salary range of the combined or single individual is $30,000.00 per year. Our information comes from direct experience in carrying out the task. Therefore the capital cost would be $0 and the labor for ½ hour would be $14.41 per year. At approximately 4,000 recipients per year, the total cost would be $28,820.00. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 13, 1995.

Dan Rondeau,

Director, Office of Civil Rights.

[FR Doc. 95–29841 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5342–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 8, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1633.09.

SUPPLEMENTARY INFORMATION:

Title: Acid Rain Program (OMB Control No. 2060–0258; EPA ICR No. 1633.09). This is a request for extension of a currently approved collection.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve and small diesel refinery program, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with No_X permitting requirements. Most of this information collection is mandatory under 40 CFR Parts 72–78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR Part 73, Subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/13/95 (FRL–5258–2).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 273 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 849.

Estimated Number of Respondents: 849.

Frequency of Response: Varies by task.

Estimated Total Annual Hour Burden: 2,839,120 hours.

Estimated Total Annualized Cost Burden: $44,660,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1633.09 and OMB Control No. 2060–0258 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: November 22,1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–29894 Filed 12–6–95; 8;45 am]

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[FRL–5342–4]

Acid Rain Program; Status of State Acid Rain Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Title IV of the Clean Air Act requires EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under titles IV and V of the Act, state and local permitting authorities develop and administer acid rain programs as part of their title V operating permits programs. The purpose of this notice is to (1) provide a status report on the progress of specific state and local permitting authorities in establishing regulatory authority to issue acid rain permits, (2) describe in general terms the degree to which state and local permitting authorities can currently take part in acid rain permit issuance given the current status of their title V programs and (3) to identify which permitting authorities should receive Phase II acid rain permit applications (due January 1, 1996) from designated representatives of affected sources. This notice is for informational purposes only and does not supplant any other Federal Register notices under title V.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA, Acid Rain Division (6204J), 401 M St., SW, Washington, DC 20460, (202) 233–0077.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the Acid Rain Division issued guidance describing the extent to which permitting authorities could participate in the acid rain permit issuance process given the status of their title V programs, including the acid rain portion. The guidance outlined criteria by which acid rain permitting authorities are grouped into one of three categories, 'A,' 'B,' or 'C.'

Category A permitting authorities have EPA-approved title V programs with acid rain regulations that are sufficient for issuing Phase II acid rain permits covering sulfur dioxide. Such permits must be issued no later than December 31, 1997.

Category B permitting authorities have not yet received final EPA approval of their title V programs and acid rain regulations, and so cannot yet issue acid rain permits. However, they have sufficient regulatory authority to perform completeness reviews and process Phase II acid rain permits up to issuance of draft permits. Most category B permitting authorities are expected to receive final EPA approval of their title V programs and their acid rain regulations sometime in 1996. If, as anticipated, their title V programs and acid rain regulations are approved by January 1, 1997, they will be the permitting authorities for issuing acid rain permits to sources within their respective jurisdictions.

Category C permitting authorities have also not yet received EPA approval of their title V programs, but have not yet established a sufficient degree of regulatory authority, e.g., because they lack final title V and acid rain regulations or because their title V programs have been rejected. Category C permitting authorities will issue the Phase II acid rain permits if their title V programs and acid rain regulations are approved by January 1, 1997. If not, then EPA intends to begin to take steps to issue the initial Phase II acid rain permits.

The designated representatives of affected sources within the jurisdiction of permitting authorities in categories A or B should submit the original Phase II acid rain permit application and all required copies to the appropriate state or local permitting authority. The application should not be submitted to EPA. The designated representatives of affected sources with state or local permitting authorities in category C must submit the original Phase II acid rain permit application and 1 copy to the appropriate EPA Regional office and two copies to their respective state or local permitting authority.

The status of state and local acid rain programs is noted on a document updated weekly on EPA's Technology Transfer Network (TTN) and is available for downloading under the "Clean Air Act," "Title IV," "Policy and Guidance," subdirectories, entitled "ARDGUID.WPF."

As of November 15, 1995, the status of state and local permitting authorities with regard to acid rain is as follows:

Region 1

Category A: None
Category B: Massachusetts, New Hampshire, Rhode Island, Vermont
Category C: Connecticut, Maine

Region 2

Category A: None
Category B: New Jersey
Category C: New York

Region 3

Category A: West Virginia
Category B: Delaware, Maryland, Pennsylvania, Washington D.C.
Category C: Virginia

Region 4

Category A: Florida, South Carolina
Category B: Alabama (including the city of Huntsville and Jefferson Co.), Georgia, Kentucky (including Jefferson and Memphis-Shelby Cos.), Mississippi, North Carolina (including Western North Carolina), Tennessee (including Chattanooga-Hamilton, Knox, and Nashville-Davidson Cos.)
Category C: None

Region 5

Category A: Illinois, Indiana, Minnesota, Wisconsin
Category B: Michigan, Ohio
Category C: None

Region 6

Category A: Arkansas, Louisiana, New Mexico (including the city of Albuquerque)
Category B: Oklahoma, Texas
Category C: None

Region 7

Category A: Iowa, Nebraska (including Lincoln-Lancaster and Omaha-Douglas Cos.)
Category B: Kansas, Missouri
Category C: None

Region 8

Category A: North Dakota, South Dakota, Utah
Category B: Colorado, Montana, Wyoming
Category C: None

Region 9

Category A: Bay Area, Imperial Co., Monterey Bay, North Coast (all in California), Clark Co. (in Nevada)
Category B: Arizona (including Maricopa, Pima, and Pinal Cos.) Mojave Desert, San Diego Co., San Luis Obispo Co., South Coast, Ventura Co. (all in California), Nevada
Category C: None

Region 10

Category A: Oregon, Washington (including Northwest, Olympic, Puget Sound, Southwest, Spokane, Benton-Franklin, and Yakima)
Category B: Idaho
Category C: None

Dated: November 21, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–29895 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00149A; FRL–4969–5]

Guidance on Acquisition of Environmentally Preferable Products and Services; Solicitation of Comments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the Federal Register of September 29, 1995, EPA announced a proposed general guidance designed to assist Executive agencies with indentification and acquisition of environmentally preferable products. The document also solicited comments from all interested parties on the proposed guidance. EPA has received requests from several organizations to extend the comment period. Notice is hereby given that the comment period originally scheduled to close on November 28, 1995, is extended until December 28, 1995.

DATES: All written comments must be received on or before December 28, 1995.

ADDRESSES: Written comments must be submitted in triplicate and identified with docket number OPPTS–00149 to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–00149. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed guidance may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: Danielle Fuligni, Environmental Protection Agency, Office of Pollution Prevention and Toxics (7409), 401 M St., SW., Washington, DC 20460. Telephone number: 202–260–4172, e-mail: fuligni.danielle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A record has been established for this document under docket number "OPPTS–00149" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection.

Dated: November 20, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–29833 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00180; FRL–4969–7]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $5 million in fiscal year 1996 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The purpose of this program is to support State, Tribal, and regional programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under Unit IV. of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately $40 million have been awarded to over 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989.

In November 1990, the Pollution Prevention Act of 1990, (the Act) (Pub. L. 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction (pollution prevention) as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

In addition to pollution prevention being source reduction, EPA further defines pollution prevention as the use of other practices, that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorized EPA to establish a national source reduction clearinghouse, expands EPA's authorities to collect data to better track

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source reduction activities, and requires EPA to report periodically to Congress on progress in implementing the Act.

II. Availability of FY 96 Funds

With this publication, EPA is announcing the availability of approximately $5 million in grant/cooperative agreement funds for FY 1996. The Agency has delegated grant making authority to the EPA Regional offices which formally transfers the decisionmaking and awarding process for the PPIS grants to the Regions. Regional offices have responsibility for the solicitation of interest, screening of proposals, and the actual selection of awards. This eighth round of awards reflects a more direct and active Regional role in determining FY 96 awards. PPIS grant guidance will be developed separately by each Regional program and will be provided to all applicants along with any supplemental information the Regions may wish to provide. However, in addition to Regional Guidelines, all applicants must address the national requirements listed under Unit III.3. of this document. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

III. Eligibility

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally recognized Indian tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance.* The number assigned to the PPIS program is 66.708 (formerly 66.900). Organizations receiving pollution prevention grant funds are required to match dollar for dollar all Federal funds.

For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services and/or third party contributions.

2. *Eligible activities.* In general, the purpose of the PPIS grant program is to support the establishment and expansion of State, Regional, Tribal, or local multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State-or-Region-wide and where appropriate, seek to address State environmental priority areas. States might focus on, for example:

a. Developing measures to determine progress in pollution prevention.

b. Developing multimedia pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

c. Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

d. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

3. *Measuring pollution prevention progress.* Fiscal year 1996 marks the 8th year of funding for the PPIS grant program. This cycle of awards also emphasizes EPA's efforts to assist States in developing and implementing measurement systems to track the progress of the PPIS funds in promoting pollution prevention. EPA believes that, like a business, State pollution prevention programs need to strive for continuous improvement. Although the effectiveness of certain pollution prevention activities are inherently easier to measure than others, the measurement focus of this year's cycle does not target any specific pollution prevention activity as a priority. Rather, EPA believes that the State pollution prevention programs are in the best position to determine which approaches to pollution prevention are most critical to the State. EPA believes that in order to highlight the effectiveness of the PPIS grant program, a measurement component is essential to document continuous improvement. Applicants must address measurement by including at least one of the two mandatory components listed below. Proposals that do not address one of these national criteria in the narrative of the grant application will not be considered eligible for funding. The proposal must:

A. Include a comprehensive plan that describes both the types of pollution prevention activities that the State program will pursue and a method for quantifying pollution reductions achieved by these activities. In addition, the plan should include a component that: (1) Measures the effectiveness of the identified activities in reducing pollution. (2) Evaluates the measurement methodology, identifying areas of success and problems encountered.

B. Include a pollution prevention measurement methodology that develops tools to be adopted by pollution prevention assistance provider(s) in evaluating their program(s). The proposal must identify which organization(s)/program(s) the measurement tools are being developed for. The measurement methodology should include, but need not be limited to: a method for identification of measurement needs; an evaluation of measurement methodologies and approaches; a system for matching identified needs with measurement methodologies and approaches; and the application of a selected methodology or approach. Proposals accepted for review under this program must qualify as pollution prevention as defined by EPA.

4. *Program management.* Awards for FY 96 funds will be managed through the EPA Regional Offices.

5. *Contact.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under Unit IV. of this document to obtain specific instructions and guidance for submitting proposals.

IV. Regional Pollution Prevention Contacts

Abby Swaine/Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg, Rm. 2203, Boston, MA 02203, (617) 565-4523/1155 (CT, MA, ME, NH, RI, VT)

Janet Sapadin (2-OPM-PPI), US EPA Region 2, 290 Broadway, 26th floor, New York, NY 10007-1866, (212) 637-3584 (NJ, NY, PR, VI)

Jeff Burke (3ES43), US EPA Region 3, 841 Chestnut Bldg., Philadelphia PA 19107, (215) 597-8327 (DC, DE, MD, PA, VA, WV)

Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347-3555, x6894 (AL, FL, GA, KY, MS, NC, SC, TN)

Phil Kaplan (HRP-8J), US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604-3590, (312) 353-4669 (IL, IN, MI, MN, OH, WI)

Linda Thompson (6EN-XP), US EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202, (214) 665-6568 (AR, LA, NM, OK, TX)

Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551-7315 (IA, KS, MO, NE)

Linda Walters (8PM-SIPO), US EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202-2405, (303) 312-6392 (CO, MT, ND, SD, UT, WY)

Eileen Sheehan/Bill Wilson (H-I-B), US EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744-2190/2192 (AZ, CA, GU, HI, CNMI, RP, AS)

Carolyn Gangmark, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553-4072 (AK, ID, OR, WA)

Dated: November 27, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95-29832 Filed 12-6-95; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5340-6]

Superfund Program; Revised Model De Minimis Contributor Consent Decree and Administrative Order on Consent

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is publishing today the revised "Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree" and the revised "Model CERCLA Section 122(g)(4) *De Minimis* Contributor Administrative Order on Consent." These models, developed by the Agency and the U.S. Department of Justice, supersede the "Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent" issued on October 19, 1987, and published at 52 FR 43,393 (November 12, 1987). They are designed as guidance for Agency and Department staff when negotiating CERCLA Section 122(g)(1)(A) *de minimis* contributor settlements. The Agency is publishing the models in their entirety, along with the September 29, 1995 joint memorandum of the EPA and the U.S. Department of Justice announcing their issuance, to inform affected members of the public of their existence and content.

FOR FURTHER INFORMATION CONTACT: Janice C. Linett, Mail Code 2272, Office of Enforcement and Compliance Assurance, Regional Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-7116.

Dated: October 26, 1995.

Susan Brown,

Acting Director, Office of Site Remediation Enforcement.

September 29, 1995.

MEMORANDUM

SUBJECT: Issuance of Revised "Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree and Administrative Order on Consent"

FROM: Jerry Clifford, Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, Bruce S. Gelber, Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice

TO: Regional Counsel, Regions I–X, Regional Waste Management Division Directors, Regions I–X, Financial Management Officers, Regions I–X, Assistant Chiefs, Environmental Enforcement Section

We are pleased to issue the revised "Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree" and the revised "Model CERCLA Section 122(g)(4) *De Minimis* Contributor Administrative Order on Consent." These models supersede the "Interim Model CERCLA Section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent" issued on October 19, 1987, and published at 52 Fed. Reg. 43,393 (1987). They represent the latest thinking on CERCLA Section 122(g)(1)(A) *de minimis* contributor settlements and are the product of years of experience gained in administering the *de minimis* settlement provisions of CERCLA. These revised models are needed to implement the early *de minimis* expedited settlement pilots that are part of the Superfund Administrative Reforms initiative and will provide valuable tools in fostering *de minimis* settlements in general.

These models are to be used as guidance by EPA and DOJ staff when negotiating *de minimis* contributor settlements. We encourage our staffs to adhere to them as closely as possible so as to conform with current settlement practices and procedures. We believe use of the models will help expedite negotiation of *de minimis* settlements, increase fairness and national consistency, and streamline review and approval of *de minimis* consent decrees and consent orders. When seeking approval of any settlement based upon one of these models, staff should identify any significant deviation from the relevant model and the basis for the departure. For DOJ staff, these models are available electronically on the Section's work product directory, EESINDEX, as N:\NET\SS52\UDD\EESINDEX\CERMODEL\122G4.CD or 122G4.AOC.

We would like to thank all EPA and DOJ staff who assisted in the development of these models. If you have any questions about the models, please contact Janice Linett of the Regional Support Division (RSD) at (703) 978-3057 or Tom Mariani of the Environmental Enforcement Section (EES) at (202) 514-4620. The EPA Regions may address questions about case-specific matters to the RSD attorney assigned to the case. DOJ staff should direct questions about case-specific matters to their senior attorneys or Assistant Chief or to Tom Mariani, Joe Hurley, or Mike Goodstein, EES' *de minimis* settlement coordinators.

Attachments

cc: Lawrence E. Starfield, Acting Associate General Counsel, Solid Waste and Emergency Response Division
Stephen D. Luftig, Director, Office of Emergency and Remedial Response
Jack L. Shipley, Director, Financial Management Division
Letitia Grishaw, Chief, Environmental Defense Section

United States Environmental Protection Agency and United States Department of Justice Model Cercla Section 122(g)(4) De Minimis Contributor Consent Decree and Administrative Order on Consent

These models and any internal procedures adopted for their implementation and use are intended as guidance for employees of the U.S. Department of Justice and U.S. Environmental Protection Agency. They do not constitute rulemaking by the Department or Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The

Department or Agency may take action at variance with these models or their internal implementing procedures.

Model Cercla Section 122(g)(4) De MinimisContributor Consent Decree

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Model Cercla Section 122(G)(4) De Minimis Contributor Consent Decree

In the United States District Court for the District of [_____] [_____] Division [1]

United States of America, Plaintiff, v. [Defendants] Defendants.

[Civil Action No. _____]

Judge _____

Consent Decree

[Note: If the complaint includes causes of action which are not resolved by this consent decree or names defendants who are not signatories to this consent decree, the title should be "Partial Consent Decree."]

I. Background

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to [[insert causes of action and relief sought, e.g., "Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding the cleanup of the [insert site name] in [insert City, County, State] ("Site"), and recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site"]].

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

[Note: Insert brief description of response actions undertaken at the site to date by EPA or private parties, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any previous settlements for performance of work or recovery of costs. Note whether further response action is planned.]

C. The Regional Administrator of EPA, Region _____, or his/her delegatee, has determined the following:

1. prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1);

2. the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is [insert either "$_____" or "between $_____ and $_____"]; and

3. the amount of hazardous substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). This is because [[insert volume and toxicity criteria used to qualify as a *de minimis* party under this consent decree, *e.g.*: "the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed [insert either "_____% of the hazardous substances at the Site," or "_____ pounds/gallons of materials containing hazardous substances,"] and the hazardous substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site."]]

[Note: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each settling defendant, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]

D. The Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

E. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

Therefore, with the consent of the Parties to this Consent Decree, it is ordered, adjudged, and decreed:

II. Jurisdiction

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345 and 42 U.S.C. 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. Parties Bound

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. Statement of Purpose

[Note: As drafted, this Statement of Purpose assumes that all settling defendants are making a cash payment, which includes a premium amount, in exchange for a full-and final settlement with the United States for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all settling defendants because, *e.g.*, it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that it is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of "matters addressed" in the Contribution Protection provision.]

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a [substantial] number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Settling Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5).

V. Definitions

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. 9607(a).[2]

g. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

h. "Parties" shall mean the United States and the Settling Defendants.

i. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. 9601(25).

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

k. "Settling Defendants" shall mean those persons, corporations or other entities listed in Appendix A.

l. "Site" shall mean the _____ Superfund Site, encompassing approximately _____ acres, located at [insert address or description of location] in [insert City, County, State] and [insert either "depicted more clearly on the map attached as Appendix B" or "designated by the following property description: _____."]

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. Payment

5. Within 30 days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA Hazardous Substance Superfund [insert either "the amount set forth below" or "the amount set forth in Appendix C to this Consent Decree"].

6. Each Settling Defendant's payment includes an amount for: (a) Past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, "(c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based."]

[Note: If some settling defendants are paying a premium and some are not, Paragraph 6 will need to be redrafted to indicate that there are both premium and non-premium settling defendants.]

7. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and DOJ Case Number _____ and shall be sent to: EPA Superfund.

[Insert Regional Superfund lockbox number and address]

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to: Chief, Environmental Enforcement Section, United States Department of Justice, DJ No. _____, P.O. Box 7611, Washington, D.C. 20044–7611.

[Insert name and address of Regional Financial Management Officer and any other receiving officials at EPA or DOJ]

[Note on Requiring one Collective Payment: If the settlement involves a large number of settling defendants, it may be appropriate to include alternative instructions under which the settling defendants are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 7. In such event, the cost of the trust or escrow account may be funded from interest earned by the account or through other appropriate means.]

[Note on use of Special Account payments: Payments made under Paragraph 7 may be placed in the Hazardous Substance Superfund to offset the United States' past response costs at the site, or may be placed in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a "reimbursable account") to be retained and used for future response action at the site. If the negotiating team believes that a site-specific special account is appropriate, the consent decree should include clear instructions indicating which portion of the payment is to be placed in the Hazardous Substance Superfund to defray the United States' past costs and which portion of the payment is to be retained in a special account for future response action at the site. The instructions must include that any funds remaining in the special account after completion of the response action will be transferred to the Hazardous Substance Superfund. Sample instructions to be included at the end of Paragraph 7 are as follows (the address for payment stated in Paragraph 7 is correct for both Trust Fund and special account payments and should not be amended):

"Of the total amount to be paid pursuant to this Consent Decree, ['$_____' or '_____%'] shall be deposited in the EPA Hazardous Substance Superfund as

[1] Follow local rules for caption format.

[2] The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260–6465.

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reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['$ _____' or '_____%' or 'the remainder'] shall be deposited in the [Insert Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the [Insert Site Name] Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund."]]

VII. Failure To Make Payment

9. If any Settling Defendant fails to make full payment within the time required by Paragraph 5, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

VIII. Certification of Settling Defendant

10. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e) [insert, if applicable, "and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927"].

IX. Covenant Not To Sue by United States

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States[3] covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973,][4] relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: (a) The satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. Reservations of Rights by United States

12. The covenant not to sue by the United States set forth in Paragraph 11 does not pertain to any matters other than those expressly specified in Paragraph 11. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

a. Liability for failure to meet a requirement of this Consent Decree;

b. Criminal liability;

c. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;[5] or

d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Section I, Paragraph C(3), *e.g.*, "Settling Defendant contributed greater than _____% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site"]; or

[Note: The cost overrun reopener in Paragraph 13(b) below should only be included with respect to any settling defendant who is not paying a premium in lieu of this reopener.]

[[b. total response costs at or in connection with the Site exceed $_____ [insert dollar amount of cost ceiling]].

[[Note: If some settling defendants are paying a premium in lieu of the cost overrun reopener and some are not, insert: "This Paragraph 13(b) shall not apply to those Settling Defendants identified [insert "in Paragraph _____" or "in Appendix _____"] who have elected to pay a premium amount pursuant to Paragraphs 5 and 6.]]

XI. Covenant not to Sue by Settling Defendants

14. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of

[3] If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

[4] Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

[5] The natural resource damages reservation in Paragraph 12(c) must be included unless the Federal Natural Resource Trustee[s] has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substance at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee[s] of the negotiations and encourage the Trustee[s] to participate in the negotiations.

CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response activities at the Site;[6] and

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.[7]

15. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site[8] pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 and 9613.

XII. Effect of Settlement/Contribution Protection

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 11.

19. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are [all response actions taken and to be taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.][9]

XIII. Retention of Jurisdiction

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. Integration/Appendices

21. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

"Appendix A" is [the list of Settling Defendants].

"Appendix B" is [the map of the Site].

"Appendix C" is [the payment schedule].

[Note: List any additional appendices.]

XV. Public Comment

22. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVI. Effective Date

23. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 22.

XVII. Signatories/Service

24. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or [his/her] delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

25. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

26. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

27. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until 30 days after the United States withdraws or withholds its consent pursuant to Section XV (Public Comment) or the Court declines to enter this Consent Decree.

So order this _____ day of _____, 19_____.

_____

United States District Judge

[6] If the consent decree does not resolve settling defendants' liability for the site as a whole, the scope of Paragraph 14(b) and (c) may be narrowed to conform to the scope of the United States' covenant not to sue. For example, if the consent decree resolves settling defendants' liability for defined "Past Response Costs" and for a defined "Operable Unit I," Paragraph 14(b) and (c) could be limited to "any claim arising out of response actions at the Site for which the Past Response Costs were incurred and any claim arising out of Operable Unit I."

[7] The settlement should, wherever possible, release or resolve any claims by settling defendants against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

[8] If the consent decree does not resolve settling defendants' liability for the site as a whole, the scope of settling defendants' covenant not to sue each other may be narrowed so as to conform to the scope of the United States' covenant.

[9] This definition of "matters addressed" assumes that this consent decree is designed to resolve fully settling defendants' liability at the site. If the intended resolution of liability is narrower in scope, then the definition of "matters addressed" will need to be narrowed.

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The Undersigned Parties enter into this Consent Decree in the matter of [insert case name and civil action number], relating to the [insert site name and location]:

For the United States of America

Date: _____

_____

[Name]

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530

_____

[Name]

United States Attorney, [Address]

_____

[Name]

Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611

_____

[Name]

Regional Administrator, Region [ ], U.S. Environmental Protection Agency.

[Address]

_____

[Name]

Assistant Regional Counsel, U.S. Environmental Protection Agency.

[Address]

The Undersigned Party enters into this Consent Decree in the matter of [insert case name and civil action number], relating to the _____ Superfund Site.

FOR DEFENDANT [ ]

Date: _____

_____

[Names and address of Defendant's signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

Model CERCLA Section 122(g)(4) De Minimis Contributor, Administrative Order on Consent

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Model CERCLA Section 122(g)(4) De Minimis Contributor, Administrative Order on Consent

[U.S. EPA Docket No. _____]

In the Matter of: [Insert Site Name and Location], Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9622(g)(4).

I. Jurisdiction

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E [insert reference to Regional redelegation, if any].

2. This Administrative Order on Consent is issued to the persons, corporations, or other entities identified in Appendix A ("Respondents"). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

II. Statement of Purpose

[Note: As drafted, this Statement of Purpose assumes that all respondents are making a cash payment, which includes a premium amount, in exchange for a full and final settlement with EPA for all civil liability under CERCLA Sections 106 and 107 with respect to the site as a whole. This Statement of Purpose will need to be amended if the settlement is of narrower scope with respect to some or all respondents because, e.g., it relates to only one operable unit, or it includes a reservation of rights for cost overruns. When using this or any other Statement of Purpose, be sure that the provision is consistent with the Covenant Not to Sue, the Reservations of Rights, and the definition of "matters addressed" in the Contribution Protection provision.]

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 6922(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a [substantial] number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5).

III. Definitions

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

b. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).[1]

g. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.

h. "Parties" shall mean EPA and the Respondents.

i. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix A.

j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. 9601(25).

k. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

l. "Site" shall mean the _____ Superfund Site, encompassing approximately _____ acres, located [insert address or description of location] in [insert City, County, State] and [insert either "depicted more clearly on the map attached as Appendix B" or "designated by the following property description: _____."]

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

6. [In one or more paragraphs, insert site name, location, description, NPL status and brief statement of historical hazardous substance activity at the site.]

7. Hazardous substances have been or are threatened to be released at or from the Site.

[Note: Additional information about specific hazardous substances present on- or off-site may be included.]

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. 9604, and will undertake response actions in the future.

[Note: Insert brief description of response actions undertaken at the site to date by EPA or private parties, noting whether a removal, RI/FS or ROD(s) have been completed. Describe briefly any prior settlements for performance of work at the site. Note whether further response action is planned.]

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

[Note: The dollar amount of costs incurred as of a specific date should be included. Describe briefly any previous cost recovery settlements under which any of these costs have been reimbursed to EPA by site PRPs.]

10. [Identify each respondent and its relationship to the site. If respondents are numerous, state generally that "Each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent."]

11. [[In one or more paragraphs, present in summary fashion the factual basis for EPA's determination in Section V below that the amount of hazardous substances contributed to the site by each respondent and the toxic or other hazardous effects of the substances contributed to the site by each respondent are minimal in comparison to other hazardous substances at the site. The language will vary depending upon the criteria established for the particular settlement. An example follows:

"The amount of hazardous substances contributed to the Site by each Respondent does not exceed [insert either "_____% of the hazardous substances at the Site," or "_____ pounds/gallons of materials containing hazardous substances,"] and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site."]]

[Note: Where practicable, an attachment listing the volume and general nature of the hazardous substances contributed to the site by each respondent, to the extent available, may be included as an appendix. The total estimated volume of hazardous substances at the site should be noted on the attachment, if one is used.]

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is [insert either "$_____" or "between $_____ and $_____"]. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of this total amount.

[Note: The dollar figure inserted should include the total response costs incurred to date as well as the Agency's projection of the total response costs to be incurred during completion of the remedial action at the site. The response cost estimate should include United States and private party costs.]

V. Determinations

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The [insert site name] site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

b. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

c. Each Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

[Note: If Attorney General approval is not required for this settlement because total past and projected response costs of the United States at the site are not expected to exceed $500,000, insert the following Paragraph 13(i).]

[1] The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260–6485.

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[i. The total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.]

VI. Order

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby agreed to and ordered:

VII. Payment

15. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the EPA Hazardous Substance Superfund [insert either: "the amount set forth below" or "the amount set forth in Appendix C to this Consent Order"].

16. Each Respondent's payment includes an amount for: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and [insert, if a premium is included in the settlement, "(c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondents' payments are based."]

[Note: If some respondents are paying a premium and some are not, Paragraph 16 will need to be redrafted to indicate that there are both premium and non-premium settling respondents.]

17. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and the EPA docket number for this action, and shall be sent to:

EPA Superfund
[Insert Regional Superfund lockbox number and address]

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

[Insert name and address of Regional Attorney and/or Remedial Project Manager]

[Note on Requiring One Collective Payment: If the settlement involves a large number of respondents, it may be appropriate to include alternative instructions under which the respondents are to establish a short-term trust or escrow account to receive their individual payments and to make one collective payment to the Superfund at the address noted in Paragraph 17. In such event, the cost or the trust or escrow account may be funded from interest earned by the account or through other appropriate means.]

[Note on Use of Special Account Payments: Payments made under Paragraph 17 may be placed in the Hazardous Substance Superfund to offset the United States' past response costs at the site, or may be placed in a site-specific special account within the Hazardous Substance Superfund (more accurately referred to as a "reimbursable account") to be retained and used for future response action at the site. If the negotiating team believes that a site-specific special account is appropriate, the consent order should include clear instructions indicating which portion of the payment is to be placed in the Hazardous Substance Superfund to defray the United States' past costs and which portion of the payment is to be retained in a special account for future response action at the site. The instructions must include that any funds remaining in the special account after completion of the response action will be transferred to the Hazardous Substance Superfund. Sample instructions to be included at the end of Paragraph 17 are as follows (the address for payment stated in Paragraph 17 is correct for both Hazardous Substance Superfund and special account payments and should not be amended):

"Of the total amount to be paid pursuant to this Consent Order, ['$_____' or '_____%'] shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for response costs incurred at or in connection with the Site as of [insert date] by the EPA Hazardous Substance Superfund, and ['$_____' or '_____%' or 'the remainder'] shall be deposited in the [Insert Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the [Insert Site Name] Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund."

VIII. Failure to Make Payment

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

IX. Certification of Respondent

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e) [insert, if applicable ", and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927"].

X. Covenant Not to Sue by United States

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States[2] covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, [and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973,][3] relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by Respondent of all obligations under this Consent

[2] If any agency other than EPA or DOJ, such as Coast Guard or Federal Emergency Management Agency, has or may incur response costs at the site, such costs must either be addressed in the settlement or must be excluded from the scope of the covenant not to sue.

[3] Note that when a RCRA Section 7003 covenant is included, Section 7003(d) of RCRA requires EPA to provide an opportunity for a public meeting in the affected area.

Order; and (b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents and does not extend to any other person.

XI. Reservations of Rights by United States

22. The covenant not to sue by the United States set forth in Paragraph 21 does not pertain to any matters other than those expressly specified in Paragraph 21. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to:

a. liability for failure to meet a requirement of this Consent Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;[4] or

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because [insert volume and toxicity criteria from Paragraph 11 of the Statement of Facts, *e.g.*, "such Respondent contributed greater than _____% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site"]; or

[Note: The cost overrun reopener in Paragraph 23(b) below should only be included with respect to any respondent who is not paying a premium in lieu of this reopener.]

[b. total response costs at or in connection with the Site exceed $_____ [insert dollar amount of cost ceiling].

[Note: If some respondents are paying a premium in lieu of the cost overrun reopener and some are not, insert: "This Paragraph 23(b) shall not apply to those Respondents identified [insert "in Paragraph _____" or "in Appendix _____"] who have elected to pay a premium pursuant to Paragraphs 15 and 16."]

XII. Covenant not to Sue by Respondents

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site;[5] and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.[6]

25. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

[4] This natural resource damage reservation must be included unless the Federal Natural Resource Trustee(s) has/have agreed to a covenant not to sue pursuant to Section 122(j)(2) of CERCLA. In accordance with Section 122(j)(1) of CERCLA, where the release or threatened release of any hazardous substances at the site may have resulted in damages to natural resources under the trusteeship of the United States, the Region should notify the Federal Natural Resource Trustee(s) of the negotiations and encourage the Trustee(s) to participate in the negotiations.

[5] If the consent order does not resolve respondents' liability for the site as a whole, the scope of Paragraph 24 (b) and (c) may be narrowed to conform to the scope of EPA's covenant not to sue. For example, if the consent order resolves respondents' liability for defined "Past Response Costs" and for a defined "Operable Unit I," Paragraph 24 (b) and (c) could be limited to "any claim arising out of response actions at the Site for which the Past Response Costs were incurred and any claim arising out of Operable Unit I."

[6] The settlement should, wherever possible, release or resolve any claims by respondents against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

26. Respondents covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site[7] pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613.

XIII. Effect of Settlement/Contribution Protection

27. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 21.

29. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are [all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.][8]

XIV. Parties Bound

30. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their [heirs,]

[7] If the consent order does not resolve respondents' liability for the site as a whole, the scope of respondents' covenant not to sue each other may be narrowed so as to conform to the scope of the United States' covenant.

[8] This definition of "matters addressed" assumes that this consent order is designed to resolve fully respondents' liability at the site. If the intended resolution of liability is narrower in scope, then the definition of "matters addressed" will need to be narrowed.

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successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

XV. Integration/Appendices

31. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is [the list of Respondents].
"Appendix B" is [the map of the Site].
"Appendix C" is [the payment schedule].

[Note: List any additional appendices.]

XVI. Public Comment

32. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. Attorney General Approval

[Note: This Section should be used if Attorney General approval is required for this settlement because total past and projected response costs at the site will exceed $500,000, excluding interest. The Region should consult with DOJ during the negotiations process and should obtain written DOJ approval of the settlement before publishing notice of the proposed consent order in the **Federal Register** pursuant to Section 122(i) of CERCLA. The Region should discuss with DOJ any significant comments received during the public comment period. If the Region believes that the consent order should be modified based upon public comment, the Region should discuss with the DOJ attorney assigned to the case whether the proposed change will require formal re-approval by DOJ.]

33. The Attorney General or [his/her] designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVIII. Effective Date

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.*

It is so agreed and ordered:

U.S. Environmental Protection Agency

By: _____

[Name] _____

[Date] _____

Regional Administrator, Region _____

[Note: If the Regional Administrator has redelegated authority to enter into *de minimis* settlements, insert name and title of delegated official.]

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of [insert U.S. EPA docket number], relating to the [insert site name and location]:

For Respondent:

[Name] _____

[Address] _____

By: _____

[Name] _____

[Date] _____

[FR Doc. 95–29746 Filed 12–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

The Mitsubishi Bank, Limited; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company also has given notice under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal to acquire the non-banking subsidiaries can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Limited*, Tokyo, Japan; to merge with The Bank of Tokyo, Ltd., Tokyo, Japan, and thereby indirectly acquire The Bank of Tokyo Trust Company, New York, New York, The Chicago-Tokyo Bank, Chicago, Illinois, and Union Bank, San Francisco, California.

In connection with this application, Applicant also has applied to acquire BOT Securities, Inc., New York, New York, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1), providing investment or financial advice, pursuant to § 225.25(b)(4),providing brokerage services separately and in combination with investment advisory services, pursuant to § 225.25(b)(15), underwriting and dealing in bank-eligible securities, pursuant to § 225.25(b)(16), providing general information and statistical forecasting with respect to foreign exchange markets, pursuant to § 225.25(b)(17), acting as a futures commission merchant, pursuant to § 225.25(b)(18), and trading for its own account in certain foreign exchange spot, forward, futures, and options transactions, *The Bank of Tokyo, Ltd.*, 76 Fed. Res. Bull. 654 (1990), and BOT Financial Corp., Boston, Massachusetts, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1), acting as investment or financial advisor, pursuant to § 225.25(b)(4), leasing services, pursuant to § 225.25(b)(5), and providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

In connection with this application, Union Bank, San Francisco, California, will become a bank holding company by acquiring 100 percent of the voting shares of BanCal Tri-State Corporation, San Francisco, California, and thereby indirectly acquire The Bank of California, N.A., San Francisco, California. The Bank of California will acquire the banking assets and assume the liabilities of Union Bank and Union Bank will cease to be an insured institution.

In connection with this proposal, The Mitsubishi Bank Ltd. and Union Bank have applied to acquire UB Investment Services, Inc., Los Angeles, California, and thereby engage in investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and acting as riskless principal, pursuant to *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989); Bankers Commercial Corporation, San Diego, California, UB Leasing, Inc., Los Angeles, California, and Unionbanc Leasing Corp., Los Angeles, California, and thereby engage in making, acquiring or servicing loans, pursuant to § 225.25(b)(1); acting as investment or financial advisor, pursuant to § 225.25(b)(4); and leasing services, pursuant to § 225.25(b)(5), and providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y; Stanco Properties, Inc., San Francisco, California, and thereby engage in escrow and custodial services, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and UB Mortgage Corp., San Francisco, California, and thereby engage in acting as trustee under deeds of trust, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29820 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–F

Southern National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation*, Winston-Salem, North Carolina; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Central and Southern Holding Company*, Milledgeville, Georgia; to engage *de novo* in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Applicant will charter an interim thrift, Central and Southern of North Georgia, Greensboro, Georgia, which will be merged with Applicant's existing subsidiary, Central and Southern Bank of Greensboro.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado Business Bankshares, Inc.*, Denver, Colorado; to engage *de novo* through its subsidiary, Colorado Business Leasing, Inc., Denver, Colorado, in leasing personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29821 Filed 12–6–95; 8:45 am]

BILLING CODE 6210–01–F

Wells Fargo & Company; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-28984) published on page 58627 of the issue for Tuesday, November 28, 1995.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, is revised to read as follows:

1. *Wells Fargo & Company* San Francisco, California; to acquire at least 50.1 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of Alaska, N.A., Anchorage, Alaska; First Interstate Bank of Arizona, N.A., Phoenix, Arizona; First Interstate Bank of California, Los Angeles, California; First Interstate Bank of Denver, N.A., Denver, Colorado; First Interstate Bank of Englewood, N.A., Englewood, Colorado; First Interstate Bank of Idaho, N.A., Boise, Idaho; First Interstate Bank of Montana, N.A., Kalispell, Montana; First Interstate Bank of Nevada, N.A., Las Vegas, Nevada; First Interstate Bank of New Mexico, N.A., Santa Fe, New Mexico; First Interstate Bank of Oregon, N.A., Portland, Oregon; First Interstate Bank of Texas, N.A., Houston, Texas; First Interstate Bank of Utah, N.A., Salt Lake City, Utah; First Interstate Bank of Washington, N.A., Seattle, Washington; First Interstate Bank of Wyoming, N.A.,

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Casper, Wyoming; First Interstate Bank, Ltd., Los Angeles, California; and First Interstate Central Bank, Calabasas, California.

Wells Fargo & Company San Francisco, California; to acquire First Interstate Resource Finance Associates, Newport Beach, California, and thereby engage in making, servicing, and acquiring loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, Liberty Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y, and Star System, Inc., California, and thereby engage in data transmission services through an electronic fund transfer network, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by December 22, 1995.

Board of Governors of the Federal Reserve System, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-29822 Filed 12-6-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of November, 1995. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since November 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205-3598 PHONE: (202) 401-9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the **Federal Register** (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of November, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of November, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

TYPE: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657-3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*.

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657-2367.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657-2367.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657-2367.

Project Title: Connecticut—A Fair Chance—Modification.

Description: Proposed modifications would: establish time limits; disregard earnings for time-limited recipients up to poverty level; reduce benefit increase for additional children by one-half; require minor parents to live with adult; change redetermination, verification, and reporting requirements; provide employer tax credits for hiring AFDC recipients; require biometric identification as condition of eligibility for unit; establish two-tier payment system for new residents; simplify and conform AFDC and Food Stamp rules on resources; allow 24 weeks of job search without child care guarantee; change good cause criteria regarding participation; change JOBS sanctions; apply uniform sanction policy for JOBS, child support, and voluntary quits; extend transitional Medicaid to two years; provide transitional child care while income below 75% of state median; limit the application period for transitional child care to 6 months after leaving AFDC; establish fee for child care for AFDC recipients; serve non-custodial parents under JOBS.

Date Received: 8/10/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Nancy Wiggett, (203) 424-5329.

Project Title: Georgia—Jobs First Project.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.

Date Received: 7/5/94.

Type: AFDC.

Current Status: Pending (not previously published).

Contact Person: Nancy Meszaros, (404) 657-3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586-5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.

Date Received: 7/18/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785-3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Faith Spencer, (913) 296-0775.

Project Title: Louisiana—Individual Responsibility Project.

Description: Statewide, would limit AFDC benefits to 24 months out of a 60 month period for able-bodied recipients with extensions where the individual has been actively seeking employment, where job availability is unfavorable, where the individual loses a job for factors unrelated to his job performance, or where the individual requires up to one year to complete employment related education or training; require each child to attend school and be immunized or the child will be removed from the budget group; and applies a full family sanction where the parent has declined or refused an opportunity for full-time employment, without good cause.

Date Received: 9/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Sammy Guillory, (504) 342-4089.

Project Title: Maine—Welfare to Work Program.

Description: Statewide, would require caretaker relatives to sign a family contract; require participation in parenting classes and health care services; provide one-time vendor payments in lieu of AFDC for the purpose of obtaining/retaining employment; provide voucher payments to both married and unmarried minor parents; limit JOBS exemptions; expand eligibility for Transitional Medicaid and Child Care and replace sliding-scale fees with flat-rate fees; reduce Transitional Medicaid reporting requirements; disregard entire value of one vehicle; and apply any federal savings to the JOBS program services. In selected sites, implement ASPIRE-Plus, a subsidized employment program, would cash out food stamps, divert AFDC benefits and pass through all child support collected to families who participate in ASPIRE-Plus.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Susan Dustin, (207) 287-3104.

Project Title: Mississippi—A New Direction Demonstration Program—Amendment.

Description: Requests amendments to the Work First Component (operating in Adams, Harrison, Hinds, Jones, Lee and Washington counties) of the Mississippi New Direction Demonstration Project which would: provide transitional Medicaid and child care to AFDC families even if they have not received AFDC for at least three months; and permit JOBS sanctions to be imposed for exempt clients that volunteer for JOBS and then drop out without good cause.

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Date Received: 11/30/95.
Type: Combined AFDC/Medicaid.
Current Status: New.
Contact Person: Larry Temple, (601) 359–4476.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.
Description: AFDC applicants and recipients would have the first $200 plus ⅓ the remaining earned income disregarded.
Date Received: 9/20/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Hampshire—New Hampshire Employment Program and Family Assistance Program.
Description: Statewide, would replace AFDC with Employment Program administered by both Employment Security Agency and Family Assistance Program; require job search and other employment-related activities for first 26 weeks of receipt followed by work-related activities for 26 weeks; eliminate JOBS target group funding requirement and change JOBS reporting requirements; require recipients attending post-secondary or part-time vocational training to participate in work-related activities; eliminate JOBS services priority for volunteers; establish limits for provision of transportation and other JOBS services based on activity and local conditions; eliminate remoteness as exemption from JOBS; require non-custodial parents to participate in JOBS; increase earned income disregard to 50%; eliminate AFDC–UP eligibility requirements; allow transitional case management for up to one year; raise resource limit to $2,000 and exclude one vehicle and life insurance policies; pass through child support directly to family; take SSI income into account in determining eligibility/payment; eliminate conciliation and apply JOBS sanction of 50% of AFDC benefits for three months followed by no payment for three months, allowing option to increase initial sanction up to 100%; exempt pregnant women from JOBS only during third trimester; for minor parents cases, include in assistance unit any parent or sibling living in the home; eliminate gross income test; disregard educational grants; allow emergency assistance for families with employment-related barriers; allow State to eliminate the certificate option for child care and development block grant funds and use of these funds for capital improvement; eliminate ceiling on At Risk Child Care funds; provide that FFP for AFDC not be reduced during life of demonstration; fund computer system modifications at 80% FFP; require pregnant recipients to cooperate with child support; require that AFDC apply for Medicaid as a unit and not individually; eliminate requirement of receipt of AFDC for 3 of last 6 months in order to receive transitional Medicaid; and allow State to require that some individuals be assigned to a managed care program; substitute outcome measures for JOBS participation rates; change participation requirements for parents with children under 6, UP recipients and minors; establish a medical deduction; increase the sanction for non-cooperation with child support; exempt individuals with significant employment barriers from JOBS; treat lump sum income and all real property, except a home, as a resource; and use 20% of gross earned income as a Medicaid disregard. Also contains various Food Stamp waivers.
Date Received: 9/18/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: New Hampshire—New Hampshire Employment Program.
Description: In three pilot sites, would require work after 6 months of AFDC receipt; eliminate the exemption from JOBS for women in the second trimester of pregnancy; eliminate the JOBS exemption for caretaker of a child under 3 but not less than 1 year of age; replace the earned income disregard of $90 and $30 and ⅓ with a 50% disregard which is not time-limited; raise the resource limit for recipients to $2,000; disregard full value of one vehicle per adult for applicants and recipients; apply a full family sanction voluntarily quitting a job or refusing to accept a job; apply a sanction of reducing the payment standard by 30% for one month for failure to comply with JOBS in the first instance, by 60% in the second instance for one month, and in the third instance apply a full-family sanction for three months or until compliance; and require non-custodial parents to participate in JOBS.
Date Received: 10/6/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: North Carolina—Work First Program.
Description: Statewide would eliminate increase in AFDC benefits resulting from a birth of a child, limit JOBS exemptions, require a self-sufficiency contract, and limit AFDC receipt to 24 cumulative months. Families who reach the time limit could not reapply for 3 years. The contract would require: Cooperation with child support; child immunizations and medical check-ups; school attendance; and that teen parents live with a parent/adult and graduate from high school. Failure to sign the contract would result in denial of the AFDC application. Failure to comply would result in the loss of the adult's AFDC benefits and (starting with the second sanction) Medicaid coverage for a minimum of: 3 months for the first sanction, 3 months for the second, 6 months for the third, and 3 years for the fourth. The State would offer new applicants a one-time payment in lieu of AFDC; expand AFDC–UP eligibility; raise the resource limit to $3,000 and the vehicle asset limit to $5,000 for AFDC and Food Stamps; and provide for automatic food stamps eligibility for AFDC-eligible families.
Date Received: 9/20/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: North Carolina—Cabarrus County Work Over Welfare Demonstration Project.Description: In Cabarrus County, would require AFDC and Food Stamps applicants and recipients, with exemptions, to sign an agreement to participate in employment and training for up to 40 hours per week; would divert AFDC and Food Stamps benefits to private employers to supplement wages; and would disregard those wages for AFDC, Food Stamps, and Medicaid eligibility (for NPA participants). Also, would extend the $30 and ⅓ disregard to 2 years for unsubsidized earnings. Individuals who not comply would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) according to the following schedule: first, until compliance; second: for a minimum of 4 months; and third and subsequently: for a minimum of 8 months. Adults who do not sign an agreement would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) until they sign.
Date Received: 10/5/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: Ohio—Ohio First.
Description: Statewide, would replace current earned income disregards with $250 and ½ for twelve months for recipients; eliminate the work history requirement for married parents in AFDC-UP cases; eliminate 100-hour rule for AFDC-UP; disregard of stepparent

income for four months; increase the vehicle asset limit; use established vacancies for subsidized employment slots; require applicant job search as a condition of family eligibility; maintain food stamp benefit levels when the AFDC benefit is reduced as a result of sanction; impose progressive sanctions for noncompliance with JOBS leading to whole family sanctions; establish that failure to comply with JOBS equates to failure to comply with work program requirements under the Food Stamp Program; limit AFDC eligibility to 36 months out of any 60 month period, unless exempt; allow the IV-D agency to determine good cause for noncooperation with Child Support Enforcement; change penalty for failure to cooperate with Child Support provisions to include a whole family sanction if the failure continues for two years; change penalty for fraud to include ineligibility for all assistance unit members until payments received fraudulently have been repaid; require development and signing of a self-sufficiency contract as a condition of eligibility for the assistance unit; require pregnant women receiving Medicaid to participate in substance abuse screening as part of prenatal care; implement sanctions for failure to cooperate with substance abuse screening leading to whole family sanctions.
Date Received: 10/27/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Joel Rabb, (614) 466–3196.

Project Title: Oklahoma—Untitled.
Description: In four pilots conducted in five counties each, would (1) extend transitional child care to up to 24 months; (2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; (3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and (4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.
Date Received: 10/27/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Raymond Haddock, (405) 521–3076.

Project Title: Oregon—Oregon Option.
Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC-UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redeterminations; modify the rules for potential liability under EBT.
Date Received: 7/10/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.
Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.
Date Received: 8/8/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.
Description: Would increase automobile asset limit to $9000.
Date Received: 11/12/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program
Description: In 7 sites, would require school attendance as condition of eligibility.
Date Received: 9/12/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.
Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.
Date Received: 12/29/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.
Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC–UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.
Date Received: 6/12/95.
Type: AFDC.
Current Status: Pending.

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Contact Person: Linda Martin (804) 737–6010.

Project Title: Texas—Achieving Change for Texans.

Description: Statewide, would implement requirement for a personal responsibility agreement which addresses issues such as child support cooperation, early medical screening for children, work requirements, drug and alcohol abuse, school attendance, and parenting skills training; would limit the caretaker exemption from employment services, disregard the earned income and resources from earnings of a child, set resource limits which promote independence from AFDC, eliminate work history and 100-hour rules for otherwise eligible two-parent families. In Bexar County would time-limit AFDC benefits to 12, 24, and 36 months depending on education and job experience, with extensions of the time-limit based on severe personal hardship, or in cases where the State could not provide supportive services, or the where the local economy was in such state that the recipient could not reasonably be expected to find employment, if State funds are available to continue assistance. Transitional Medicaid and child care services would be provided to individuals who exhaust their time-limited cash benefits. In two metropolitan statistical areas establish Individual Development Accounts to promote the transition to independence from AFDC, through allowable account deductions for education, business start-up costs and the like. In Fort Bend County would allow at recipient option, one-time AFDC cash emergency assistance payments of $1,000 in lieu of ongoing regular AFDC payments with prohibition from applying for regular AFDC for a period of 12 months from date of receipt. In Dallas-Fort Worth would require electronic imaging (fingerprinting combined with photographic identification).

Date Received: 10/6/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Kent Gummerman, (512) 438–3743.

Project Title: Utah—Untitled.

Description: Statewide, would exclude the value of a vehicle for AFDC recipient families, including those also receiving Food Stamps. Would not apply to initial eligibility determination.

Date Received: 10/3/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Bill Biggs, (801) 538–4337.

III. Listing of Approved Proposals since November 1, 1995

None.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: December 1, 1995.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 95–29823 Filed 12–6–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Health Care Policy and Research

Availability of Draft Clinical Practice Guideline on Smoking Cessation for Pre-Publication Review

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) announces the availability of a draft AHCPR-sponsored clinical practice guideline on smoking cessation for pre-publication review. This guideline is being produced by a multidisciplinary private-sector panel of experts convened by AHCPR. The expert panel will not respond to individual comments but will consider all comments in determining revisions to the guideline. Individuals interested in obtaining a copy of the draft guideline for review must agree not to disclose its content to the public prior to its publication by AHCPR.

DATES: Comments must be postmarked by January 4, 1996.

SUPPLEMENTARY INFORMATION: The Agency for Health Care Policy and Research is responsible for the development of clinical practice guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. The AHCPR facilitates the development of guidelines by establishing private-sector panels who are responsible for their content.

A private-sector panel of health care experts and consumers was formed in May, 1994 to develop a clinical practice guideline to improve the effectiveness of smoking cessation activities. A public meeting was also held in November, 1994 for the panel to receive comments and information relevant to development of the guideline. The panel has reviewed and synthesized the literature on this topic and drafted a set of conclusions and recommendations based on the best available scientific data and expert judgment.

A draft of these conclusions and recommendations is now undergoing peer review by a substantial number of individuals and groups who are knowledgeable about smoking cessation programs and related activities. With this notice, the panel and AHCPR are also making the draft guideline available to any person who wishes to review and comment on it, so long as the person agrees to honor the confidentiality of this draft (as specified below).

After review of all comments received, the panel will revise the draft guideline and prepare the clinical practice guideline on smoking cessation.

Potential reviewers should note that AHCPR may disclose the names of the guideline reviewers at the same time the guideline is published. The AHCPR may also release the review comments after the guideline is published. However, the comments will not be attributed to specific reviewers.

Confidentiality Statement for Reviewers

During the review process, and until published by AHCPR, the guideline is confidential. It may not be quoted, distributed, or copied without the prior written consent of the panel chair.

All requests for the draft guideline must include the following confidentiality statement signed by the requestor:

In order to protect the integrity of the panel's deliberative process and its final product, I agree that: I will not release, publicly present, publish, have published, or otherwise disseminate any portion of the draft Smoking Cessation guideline.

Signature _____

Date _____

Affiliation _____

Name (printed or typed) _____

Request for Draft Guideline

To receive a copy of the draft guideline, requests must include: Requestor's name; Affiliation (business or organization); Address (including zip code); Telephone and Fax numbers; Signed confidentiality statement; and Information on reviewer's computer resources, if applicable, (needed to ascertain ability to use a computerized program for guideline review).

Written requests, together with the signed confidentiality statement, should be mailed to: Cheryl Campbell, Panel Manager; Technical Resources International, Inc. (TRI), 3202 Tower Oaks Boulevard, Rockville, Maryland 20852–4200. (Fax number: (301) 231–6377.) If faxing the request, the original signed confidentiality statement must also be mailed.

Automated review process: A computerized guideline review process, supported by AHCPR, enables comments to be entered on a specially formatted diskette. A diskette will be furnished, with instructions, to those requesting the draft guideline. To facilitate the review process, it is recommended that reviewers use the computer diskette to record their comments. Reviewers who do not use a diskette will be asked to provide typewritten comments.

Requests for a copy of the draft guideline should include the following information regarding the computer system to be used for reviewing the guideline: Type of computer: IBM/compatible or Macintosh; and if IBM/compatible: the size of disk drive (3.5" or 5.25").

For technical assistance or questions regarding computer resources, call the Guideline Review Technical Support at (301) 231–5250 ext. 100 and ask for Ms. Cheryl Campbell.

FOR ADDITIONAL INFORMATION: Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," (AHCPR Publication No. 93–0023) dated August 1993.

This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call toll-free: 1–800–358–9295.

Dated: December 1, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–29865 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95E–0300]

Determination of Regulatory Review Period for Purposes of Patent Extension; CELLCEPT®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CELLCEPT® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CELLCEPT® (mycophenolate mofetil). CELLCEPT® is indicated for the prophylaxis of organ rejection in patients receiving allogeneic renal transplants. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CELLCEPT® (U.S. Patent No. 4,753,935) from Syntex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CELLCEPT® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CELLCEPT® is 2,479 days. Of this time, 2,304 days occurred during the testing phase of the regulatory review period, while 175 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 21, 1988. The applicant claims June 24, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 21, 1988, which was 30 days after FDA receipt of IND 31,747 on June 21, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357):* November 10, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for CELLCEPT® (NDA 50–722) was initially submitted on November 10, 1994.

3. *The date the application was approved:* May 3, 1995. FDA has verified the applicant's claim that NDA 50–722 was approved on May 3, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 824 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the

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applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29768 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0298]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZINECARD™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZINECARD™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZINECARD™ (dexrazoxane). ZINECARD™ is indicated for reducing the incidence and severity of cardiomyopathy associated with doxorubicin administration in women with metastatic breast cancer who have received a cumulative doxorubicin dose of 300 milligrams per square meter and who, in their physician's opinion, would benefit from continuing therapy with doxorubicin. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZINECARD™ (U.S. Patent No. 4,275,063) from British Technology Group Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 5, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZINECARD™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZINECARD™ is 2,748 days. Of this time, 1,546 days occurred during the testing phase of the regulatory review period, while 1,202 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 18, 1987. The applicant claims September 25, 1987, as the date the investigational new drug application (IND) for ZINECARD™ (IND 30,617) became effective. However, FDA records indicate that the agency received IND 30,617 on September 22, 1987. IND 30,617 was placed on clinical hold on October 22, 1987, and was removed from hold on November 18, 1987. The date IND 30,617 was removed from hold, November 18, 1987, is the IND effective date.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 10, 1992. The applicant claims February 7, 1992, as the date the new drug application (NDA) for ZINECARD™ (NDA 20–212) was initially submitted. However, FDA records indicate that FDA received NDA 20–212 on February 10, 1992, making February 10, 1992, the beginning of the NDA regulatory review period.

3. *The date the application was approved*: May 26, 1995. FDA has verified the applicant's claim that NDA 20–212 was approved on May 26, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29769 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0183]

Determination of Regulatory Review Period for Purposes of Patent Extension; CPI® Ventak® P2 AICD System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CPI® Ventak® P2 AICD System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device CPI® Ventak® P2 AICD System. CPI® Ventak® P2 AICD System is indicated for the treatment of patients with ventricular fibrillation and/or ventricular tachyarrhythmia who are at high risk of sudden cardiac death. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CPI® Ventak® P2 AICD System (U.S. Patent No. Re. 34,879) from Cardiac Pacemakers, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of CPI® Ventak® P2 AICD System represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CPI® Ventak® P2 AICD System is 1,178 days. Of this time, 620 days occurred during the testing phase of the regulatory review period, while 558 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 20, 1991. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective on December 20, 1991.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: August 30, 1993. FDA has verified the applicant's claim that the premarket approval application (PMA) for CPI® Ventak® P2 AICD Systems (PMA P930035) was initially submitted on August 30, 1993.

3. *The date the application was approved*: March 10, 1995. FDA has verified the applicant's claim that PMA P930035 was approved on March 10, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 363 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29766 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

Grassroots Regulatory Partnership Meeting; Southeast Region, New Orleans and Nashville Districts; Seafood Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Office of the Southeast Region,

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New Orleans and Nashville Districts, and Center for Food Safety and Applied Nutrition) is announcing a free public meeting as a followup to a meeting held in April 1995. The New Orleans and Nashville Offices of FDA will meet with interested persons in the States of Alabama, Louisiana, Mississippi, and Tennessee to address specific issues of concern to the seafood processing industry, other stakeholders, and FDA. Because the Interstate Shellfish Sanitation Conference addressed the issue of *Vibrio vulnificus* in raw oysters, this meeting will not cover that issue. Any other seafood issue will be open for discussion. The agency is holding this meeting to promote the President's initiative for a partnership approach between front-line regulators and the people affected by the work of regulatory agencies, and to create local partnerships.

DATES: The public meeting will be held on Friday, January 19, 1996, from 10 a.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Grand Casino Hotel Gulfport, 3305 West Beach Blvd., Gulfport, MS 39501, 601–870–7770 or 1–800–354–2450.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, FDA Nashville District, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372, FAX 615–781–5383.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 20, 1995 (60 FR 19753), FDA announced that a series of Grassroots Regulatory Partnership Meetings would be held. This document announces a followup meeting to the one held on April 25, 1995, in Atlanta, GA. Those persons interested in attending this public meeting should FAX or send their registration, and comments or questions desired to be addressed to the meeting to the above contact person by January 5, 1996. There is no registration fee for this meeting. However, due to space limitations, early registration is required. The goal of this meeting is to listen to concerns and ideas of the regulated seafood industry and other stakeholders, and to identify possible next steps for the agency.

Dated: December 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29767 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0311]

Determination of Regulatory Review Period for Purposes of Patent Extension; VALTREX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VALTREX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VALTREX® (valacyclovir hydrochloride). VALTREX® is indicated for the treatment of herpes zoster (shingles) in immunocompetent adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VALTREX® (U.S. Patent No. 4,957,924) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 5, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VALTREX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VALTREX® is 1,907 days. Of this time, 1,541 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: April 5, 1990. The applicant claims March 6, 1990, as the date the investigational new drug application (IND) became effective. The applicant claims that FDA waived the 30-day post-submission review period and the effective date of the IND relates back to the date of submission, March 6, 1990. According to FDA records, a safety meeting was held on March 23, 1990, for IND 34,526. The meeting is held within 30 days of receipt of an IND to determine its safety in humans. At the meeting it was agreed by the reviewing disciplines that the study was reasonably safe to proceed. There is no record of any waiver for this IND. If a waiver had been issued, there would have been no need to have the safety review meeting. Therefore, the correct IND effective date for IND 34,526 is April 5, 1990, 30 days after agency receipt of IND 34,526.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 23, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for VALTREX® (NDA 20–487) was initially submitted on June 23, 1994.

3. *The date the human drug was approved*: June 23, 1995. FDA has verified the applicant's claim that NDA 20–487 was approved on June 23, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,052 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29809 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0302]

Determination of Regulatory Review Period for Purposes of Patent Extension; ULTANE™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ULTANE™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brain J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ULTANE™ (sevoflurane). ULTANE™ is indicated for induction and maintenance of general anesthesia in adult and pediatric patients for inpatient and outpatient surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ULTANE™ (U.S. Patent No. 4,250,334) from Baxter International, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ULTANE™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ULTANE™ is 3,418 days. Of this time, 3,086 days occurred during the testing phase of the regulatory review period, while 332 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: January 29, 1986. The applicant claims January 10, 1986, as the date the investigational new drug (IND) became effective. However, FDA records indicate that the correct IND effective date was January 29, 1985, which was 30 days after FDA receipt of IND 27,645 on December 30, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 11, 1994. The applicant claims July 8, 1994, as the date the new drug application (NDA) for ULTANE™ (NDA 20–478) was initially submitted. However, FDA records indicate that the applicant submitted NDA 20–478 on July 8, 1994, and the agency received the NDA on July 11, 1994, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: June 7, 1995. FDA has verified the applicant's claim that NDA 20–478 was approved on June 7, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 5, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore,

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any interested person may petition FDA, on or before June 5, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–29808 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Health Education Assistance Loan (HEAL) Program Physician's Certification of Borrower's Total and Permanent Disability Form—New—This form, completed by the HEAL borrower, the borrower's physician, and the holder of the loan, is used to certify that the HEAL borrower meets the total and permanent disability provisions. The PHS will use this form to obtain precise information about the disability claim which includes the following: (1) The borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, (2) pertinent information supplied by the certifying physician, (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in a disability claim not being honored.

Type of respondent	Number of respondents	Responses per respondent	Average burden per response	Total burden (hours)
Borrower	42	1.0	0.08	3
Physician	42	1.0	2.75	116
Lender	35	1.2	0.17	7

Estimated Total Annual Burden: 126 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 1, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination

[FR Doc. 95–29810 Filed 12–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 36 U.S.C. 207 or pursuant to 42 U.S.C. 241 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Licensing information for the technologies referenced below may be obtained by contacting Stephen Finley, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 215; fax 301/402–0220).

cDNA Sequence of a Clone Encoding Arylalkylamine N-acetyltransferase

Klein et al. (NICHD)

[DHHS Reference No. E–161–95/0]

and

Human Gene Encoding Serotonin N-acetyltransferase

Klein et al. (NICHD)

[DHHS Reference No. E–222–95/0]

The identification of an arylalkylamine N-acetyltransferase (AA–NAT) mRNA in the brain and the cloning of ovine and human cDNAs encoding for the pineal enzyme serotonin N-acetyltransferase. These findings open a new area of research—the importance of AA–NAT in the regulation of brain serotonin and the development of drugs which raise serotonin levels by inhibiting this enzyme. This enzyme is the rate-controlling step in the conversion of serotonin to melatonin. The hormone melatonin has been linked to controlling circadian rhythms. Development of regulators of the synthesis of the hormone melatonin may be the preferred route to controlling seasonal reproduction cycles or sleep cycles of vertebrates. Activators of the serotonin N-acetyltransferase may be beneficial to induce or enhance the quality of sleep at night. Inhibitors of serotonin N-acetyltransferase may lead to drugs that stimulate the levels of alertness and physical activity or delay the onset of fatigue. Licenses for the cDNAs encoding for this enzyme or the production of the enzyme are available.

Dated: November 20, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–29761 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institutes on Aging, Thursday, February 1, and Friday, February 2, 1996, to be held at the National Institutes of health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 1, from 8:00 a.m. to 3:00 p.m. for a status report by the Director, NIA; a review of NIA Programs; a report on the Working Group on Program; a report on the Minority Task Force Meeting; and a discussion of program policies and issues, recent legislation, and other items of interest.

The meeting will be open again on Friday, February 2, from 8:00 a.m. until adjournment for a report on the Advisory Committee to the Director, NIH; a report by the Director, National Institute of Neurological Disorders and Stroke; and a review of NIA Programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on Thursday, February 1, from 3:00 p.m. to adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29757 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby give of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 25–26, 1996, Building 45, Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on January 25, and from 8:30 a.m. to 10:30 a.m. on January 26, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 25 from 8:30 a.m. to 11 a.m., and on January 26, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Services, National Institutes of Health, Natcher Building, Rooms 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Rooms 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29758 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 29–31, 1996. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31C. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the National Institutes of Health, Natcher Building, Bethesda, Maryland.

The meeting of the full Council will be open to the public on January 29 in Conference Room 6 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include an update on reinvention activities, a presentation on emerging microbes and a report on recommendations of the NIAID, Program Announcement Working Group.

On January 30 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in conference rooms 8 and 6 respectively. The meeting of the

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NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until recess on January 30, and from 8 a.m. until adjournment on January 31. The subcommittee will meet in the Executive Board Conference Room at the Natcher Building.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8 a.m. until approximately 1 p.m. on January 29, in conference rooms 7, 8 and 6 respectively. The meeting of the full Council will be closed from 3:30 p.m. until recess on January 29 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–295759 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 23–24, 1996, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 22 in Conference Room B, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on January 23 and from 9 a.m. to adjournment on January 24 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on January 22 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on January 23 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applicants. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: December 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29760 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Science Education; Notice of Meeting

Notice is hereby given that the Office of Science Education (OSE), Office of the Director, National Institutes of Health (NIH), will hold a public meeting on December 11, 1995, from 8:30 a.m. to 4:30 p.m., at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814. This meeting has been rescheduled from November 20, 1995, as published in the November 15, 1995, **Federal Register.**

The purpose of this meeting is to give members of the public who are interested in the development of the NIH Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP) an opportunity to express their views on how that program should be implemented. The UGSP is authorized under Public Law 103–43, U.S. Public Health Service Act Section 487D. The UGSP will offer full-time undergraduate students enrolled or accepted for enrollment at accredited institutions of higher education, who are from disadvantaged backgrounds, scholarships of up to $20,000 per year, to pursue academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient must serve at least 10 consecutive weeks of service as an employee at the NIH, and, within 60 days after obtaining the educational degree involved, the individual must begin serving full-time as an employee of the NIH. The service commitment will be one year of service for each academic year of support as outlined at U.S. Public Health Service Act Section 487D(c).

Consultants to the OSE will be present to discuss the development of the UGSP. The information collected from these consultants, as well as any information collected from the public, will be used to assist the OSE to identify issues and strategies in the development of the UGSP.

This meeting is open to the public. However, attendance will be limited by seat availability. Information to be offered at the public meeting should be confined to comments relating to the recruitment and retention of disadvantaged students for the UGSP, and the indicators of success for careers in biomedical research. If an individual is representing an organization, only one representative may present oral comments. Each speaker will be permitted 3–5 minutes for his/her presentation.

Oral presenters and interested individuals wishing to provide only written statements must send a copy of such oral comments to the attention of Ms. Muriel Levin, EEI, 66 Canal Center Plaza, Suite 200, Alexandria, VA 22314–1538, 703–683–4915 (FAX) mlevin@eeialex.com (e-mail). Correspondence must be received by EEI no later than 5:00 p.m. (EST) on Monday, December 4, 1995. The order of presentations during the meeting will be determined by the date and time letters of intent are received by EEI.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Kristin Kiser, NIH/OS/OSE, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–6424 (not a toll-free number), 301–480–5481 (FAX) kk10b@nih.gov (e-mail) in advance of 5:00 p.m., December 4, 1995.

For additional information, contact Marc S. Horowitz, J.D., Director, NIH Undergraduate Scholarship Program, Office of Science Education, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–5666 (not a toll-free number), 301–480–5481 (FAX), mh18k@nih.gov (e-mail).

Dated: November 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–29762 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 48518, September 19, 1995) is amended to reflect the reorganization of the Office of the Director, National Institute of Allergy and Infectious Diseases (OD/NIAID) (HNM). The reorganization consists of the following: (1) Establish the Office of Clinical Research (HNM1B) in the Office of the Director. This reorganization will enable the NIAID to better fulfill its mission by restructuring the OD/NIAID to better integrate related program areas and streamline operations.

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *Office of the Director (HNM1)*, insert the following:

Office of Clinical Research (HNM1B). (1) Is responsible for developing, implementing, and evaluating policies and practices related to the conduct of human subjects research within NIAID, (2) advises the Director, NIAID, on the portfolio of clinical research conducted and sponsored by NIAID and reviews research protocols for relevance to the mission of the Institute, priority to meet the needs of the public health of the nation, ethics in human use, and appropriateness of scientific design, (3) manages NIAID's clinical research program carried out in the Clinical Center, NIH, (4) oversees the activities of the NIAID Institutional Review Board, (5) corresponds with other government agencies, organizations, and the public to provide timely and relevant information on the clinical research programs of NIAID, and (6) promotes interaction between intramural and extramural investigators, particularly with regard to collaboration on clinical research conducted at the Clinical Center, NIH.

Dated: November 19, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–29764 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 46621, September 7, 1995), is amended to reflect the reorganization of the National Institute of Environmental Health Sciences (NIEHS) (HNV), National Institutes of Health (NIH). This reorganization will realign functions within the Office of the Director (HNV1): (1) Establish the Office of the Deputy Director (HNV18); (2) abolish the Office of Occupational Health and Technical Services (HNV13) and the Office of Computer Technology and Services (HNV16); and (3) revise the functional statement of the Office of Communications (HNV14). This reorganization will promote the highest level of research in environmental health sciences and will facilitate the most efficient and effective use of resources.

Section HN–B, Organization and Functions, is amended as follows:

(1) Under the *Office of the Director (HNV1)*, insert the following:

Office of the Deputy Director (HNV18)

(1) Assists the Director in the formulation and implementation of plans and policies necessary to carry out the NIEHS mission; (2) oversees the management of the Executive Secretariat; (3) and oversees the management of the Health and Safety Branch.

(2) Under the *Office of the Director (HNV1)*, delete the titles *Office of Occupational Health and Technical Services (HNV13* and *Office of Computer Technology and Services (HNV16)* and corresponding functional statements in their entirety.

(3) Under the *Office of Communications (HNV14)*, delete the functional statement in its entirety and insert the following:

Advises the Director and other senior Institute staff members on the effective interpretation and utilization of Institute-conducted and -supported research findings in a broad program of scientific and health reporting for targeted audiences. Plans, directs, and coordinates (1) internal and external communications, (2) Environmental Health Perspectives, and (3) library and information services.

Delegations of Authority Statement. All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: November 19, 1995

Harold Varmus,

Director, NIH.

[FR Doc. 95–29763 Filed 12–6–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3646–N–05]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

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soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4240, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

This Notice also lists the following information:

Title of Proposal: Administrative Use Agreement for Proceeds of Sales of Homeownership Projects.

OMB Control Number, if applicable: 2577–0172

Description of the need for the information and proposed use: This form will be used by Housing Agencies (HAs) to enter into this contractual Agreement by providing certain information to HUD that describes how proceeds from the sale of homeownership units will be used. HUD needs this information to monitor fund usage.

Agency form numbers, if applicable: HUD–53010–T

Members of affected public: State, Local or Tribal Government Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,650 respondents, annually, 20 average hours per response, 34,600 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 30, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–29827 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3917–N–34]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1684 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for Property Appraisal and Commitment/ Direct Endorsement Statement of Appraised Value.

OMB Control Number: 2502–0111.

Description of the need for the information and the proposed use: Section 203 of the National Housing Act (Pub. L. 479, 48 Stat. 1256, 12 U.S.C. 1701 *et seq.*) authorizes the Secretary of the Department of Housing and Urban Development (HUD) to insure mortgages on application by an approved mortgagee for an appraisal and commitment/Direct Endorsement statement of appraised value on a designated property.

Agency form numbers: HUD–92800.

Members of affected public: Mortgagees.

An estimation of the total numbers of hours needed to prepare the information is 275,000 number of respondents is 1,100,000 frequency response is dependent on the occasion of the application process.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–29828 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–33]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for payment for labels, mobile home monthly production report, refunds due manufacturer, and adjustment report.

OMB Control Number: 2502–0233.

Description of the need for the information and the proposed use: Section 620 of the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5419) authorizes the Secretary of the Department of Housing and Urban Development to establish and impose on manufacturers, dealers and distributors of manufactured housing such reasonable fees as may be necessary to offset the expense incurred by the Secretary in conducting inspections required by the Act.

Agency form numbers: Not applicable.

Members of affected public: Mortgagees.

An estimation of the total numbers of hours needed to prepare the information collection is 5,480, number of respondents is 10,298, frequency response is bi-monthly, and the response is 0.47 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 95–29829 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3911–N–03]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1515. The Telecommunication Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), approved December 15, 1989) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from July 1, 1995 through September 30, 1995.

1. The Professional Investment & Financial Group; San Gabriel, California

ACTION: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $1,000; and revision of the advertising used by the company in its HUD–FHA Title I program activities to comply with HUD–FHA requirements.

CAUSE: Use of misleading advertising by the company in connection with the HUD–FHA Title I property improvement loan program.

2. Washington Credit Union; Lynwood, Washington

ACTION: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $5,000, and corrective action to assure compliance with HUD–FHA requirements.

CAUSE: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program requirements that included: failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to comply with dealer approval requirements; failure to report borrowers' uncompleted property improvements; inaccurate completion certificates; and failure to resolve a borrower complaint against a dealer.

3. World Wide Credit Corporation; San Diego, California

ACTION: Settlement Agreement that includes indemnification to HUD–FHA for any claim losses in connection with 10 improperly originated Title I loans; implementation of a Quality Control Plan; and payment to the Department of a civil money penalty in the amount of $1,500.

CAUSE: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program

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requirements that included: failure to document borrowers source of funds required for loan fees and closing costs; advising borrowers that loan fees may be deducted from loan proceeds; improperly advising borrowers to obtain gift letters; and omitting the loan disbursement date on the Note.

4. PNC Mortgage Corp. of America; Vernon Hills, Illinois

ACTION: Settlement Agreement that includes a payment to the Department of $182,180; and an independent CPA review of the company's HUD–FHA insurance claims submissions covering a six-month period to determine if claims are timely submitted to HUD–FHA.

CAUSE: Review by HUD's contractor of the company's HUD–FHA insurance claim submissions citing violations of HUD–FHA requirements including: untimely submissions of insurance claims; and incorrect dates on claim forms.

5. Carl I. Brown & Company; Kansas City, Missouri

ACTION: Settlement Agreement that includes payment to the Department of $75,000; payment of a civil money penalty in the amount of $30,000; and corrective action by the company to assure compliance with HUD–FHA requirements.

CAUSE: Review by HUD's contractor of the company's single family mortgage insurance claims submissions and loan servicing procedures that disclosed violations of HUD–FHA requirements. The violations included: overpayment by HUD of expenses paid; payment for preservation and protection work not performed; overpayment for tax refunds; improperly prepared claims submissions; inadequate quality control; improper disposition of mortgagor escrow surpluses; and inadequate servicing of defaulted loans.

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–29805 Filed 12–6–95; 8:45 am]

BILLING CODE 4210–27–P

Office of the General Counsel

[Docket No. FR–3950–N–03]

Notice of Application—Foreclosure Commissioners; Announcement of OMB Approval Number

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of application—foreclosure commissioners; Announcement of OMB approval number.

SUMMARY: On November 27, 1995 (60 FR 58442), the Department published in the **Federal Register**, a notice that requested applications from parties who seek approval to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994 (the "Act"), 12 U.S.C. 3751–3768. The document indicated that information collection requirements contained in the notice had been submitted to the Office of Management and Budget for emergency review and approval under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and that when approved, the OMB control number would be announced by separate notice in the **Federal Register**.

The purpose of this document is to announce the OMB approval number for the November 27, 1995 notice.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–1272. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the control number approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for the Notice of Application—Foreclosure Commissioners, published in the **Federal Register** on November 27, 1995 at 60 FR 58442, is 2510–0012. This approval number expires on February 29, 1996. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: December 1, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–29804 Filed 12–06–95; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1020–00]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils.

These councils provide advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Under Section 309 of FLPMA the Secretary has selected 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council will reflect a balanced membership representative of the various interests concerned with the management of public lands and users of the public lands.

The position to be filled on the Northwest Resource Advisory Council is from Group 1—holders of federal grazing permits; representatives of energy and mining development; timber industry; off-road vehicle use and developed recreation. The positions on the Front Range Resource Advisory Council which are being filled are from two of the three general interest groups: Group 1—holders of federal grazing permits; representatives of energy and mining development; timber industry; off-road vehicle use and developed recreation. Group 3—state, county, or local elected officials; employees of state agencies responsible for management of natural resources, land, or water; representatives of Indian tribes; academicians involved in natural sciences; and public at large.

Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office by December 30, 1995.

ADDRESSES: For more information and a Nomination/Background Information Form contact the appropriate BLM office: Northwest Resource Advisory Council—Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506. Or call Lynda Boody, Telephone (970) 244–3066; TDD (970) 244–3011.

Front Range Resource Advisory Council—Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212. Or call Ken Smith, Telephone (719) 275–0631; TDD (719) 275–4346.

Completed Nomination/Background Forms should be returned to the same addressed listed above.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Dennis R. Sparks,

District Manager.

[FR Doc. 95–29846 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Land Management

[MT–960–1430–00; MTM–83716]

Public Notice—Jurisdiction Transfer, Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Montana, Miles City District, Interior.

ACTION: Public notice.

SUMMARY: This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of "Parcel #1" which includes the surface and mineral estate of 373.70 acres, more or less, of public lands; the public mineral estate of 1,683.78 acres, more or less; the public coal estate of 7,771.43 acres, more or less; and the public coal and oil and gas estate of 44.14 acres, more or less, from the Bureau of Land Management (BLM) to the United States of America, Bureau of Indian Affairs (BIA) in Trust for the Crow Indian Tribe (TRIBE).

EFFECTIVE DATE: November 29, 1994.

FOR FURTHER INFORMATION CONTACT: District Manager, Bureau of Land Management, 111 Garryowen Road, Miles City, Montana 59301, 406–232–4331.

SUPPLEMENTARY INFORMATION: Sec. 5(a)(1) of Public Law 103–444 (108 Stat. 4635), The Crow Boundary Settlement Act of 1994 (Act), provided that the BLM shall transfer to the BIA, in trust for the TRIBE, all rights, titles and interests the United States may have in and to all of the undisposed surface land, coal, oil, gas, coal methane and other minerals within Parcel No. 1 as described below, with all of the rights, easements and appurtenances pertaining to those lands and minerals.

The TRIBE and the BIA have agreed to accept the transfer subject to the terms and conditions of the existing oil and gas leases, grazing leases, and right-of-way.

Pursuant to the same Act of Congress, "Nothing in this Act or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any right, title, or interest of any person or entity in any land, coal, oil, gas, coal methane, or mineral within parcel number 1 that is based on the 1891 survey line, except for the specific rights that are vested in the United States for the sole use and benefit of the Crow Tribe pursuant to subparagraphs (B) through (D) of paragraph (1)."

A cadastral survey review was completed to enable platting and development of legal descriptions.

Subject to valid existing rights and the terms of the Memorandum of Agreement dated October 30, 1995, jurisdiction of the surface and mineral estates for the following described lands have been transferred to the Bureau of Indian Affairs in Trust for the Crow Indian Tribe, effective November 29, 1994:

Federal Surface and all Minerals

T. 6 S., R. 38 E., P.M.M.	
Section 24, lot 4	9.96
Section 25, lot 1	9.83
T. 7 S., R. 38 E., P.M.M.	
Section 25, lots 1, 2, 3, 4	26.08
T. 9 S., R. 38 E., P.M.M.	
Section 13, lot 8;	15.68
*Section 13, lot 15;	1.73
Section 36, lots 1, 4, 5, 8;	163.12
*Section 36, lots 9, 12, 13	7.71
T. 10 S., R. 38 E., P.M.M.	
Section 1, lot 7	41.39
T. 7 S., R. 39 E., P.M.M.	
Section 30, lot 1;	32.46
Section 31, lots 3, 4	65.74

Consisting of 373.70 acres, more or less, in Big Horn Co., MT.

Federal All Minerals Estate

(Private Surface, Federal All Minerals Estate)

	Acres
T. 6 S., R. 38 E., P.M.M.	
Sec. 1, lots 1, 2, 5, SE¼SE¼;	103.22
Sec. 13, lots 2, 3, SE¼NE¼, E½SE¼;	141.24
Sec. 25, lots 2, 3, 4	28.61
T. 7 S., R. 38 E., P.M.M.	
Sec. 1, lots 1, 2, 3;	57.59
Sec. 12, lots 1, 2, 3, 4, E½E½	192.40
T. 8 S., R. 38 E., P.M.M.	
Sec. 2, lots 1, 2, 6, 7, 10, SE¼NE¼, E½SE¼;	316.73
Sec. 11, lot 1, NE¼NE¼, SE¼SE¼;	117.60
*Sec. 12, lot 8;	0.82
Sec. 13, E½NW¼;	80.00
*Sec. 13, lots 2, 3;	0.32
Sec. 23, lots 4, 5;	51.52
Sec. 25, N½NW¼, S½SW¼;	160.00
*Sec. 25, lots 2, 7.	1.12
T. 10 S., R. 38 E., P.M.M.	
Sec. 1, lot 1;	37.87
*Sec. 1, lot 10.	2.57
T. 6 S., R. 39 E., P.M.M.	
Sec. 6, lot 3;	40.11
*Sec. 6, lot 9;	31.30
Sec. 31, lot 4, SE¼SW¼	71.86
T. 7 S., R. 39 E., P.M.M.	
Sec. 6, SE¼NW¼;	40.00
*Sec. 6, lot 13;	31.20
Sec. 7, lot 1;	31.87
Sec. 18, NE¼NW¼;	40.00
*Sec. 18, lot 6;	31.88
*Sec. 30, lots 10, 11.	72.72

Consisting of 1,683.78 acres, more or less, in Big Horn Co., MT.

Federal Coal Estate

(Private Surface, Federal Coal Estate)

	Acres
T. 6 S., R. 38 E., P.M.M.	
Sec. 1, lots 3, 4, SE¼NE¼, NE¼SE¼;	103.22
Sec. 12, lots 1, 2, 3, 4, E½E½;	204.52
Sec. 13, lots 1, 4, NE¼NE¼;	61.24
Sec. 24, lots 1, 2, 3, E½E½;	190.64
Sec. 25, E½E½.	160.00
T. 7 S., R. 38 E., P.M.M.	
Sec. 1, lots 4, 5, SE¼NE¼, E½SE¼;	136.99
Sec. 13, lots 1, 2, 3, 4, E½E½;	190.32
Sec. 24, lots 1, 2, E½NE¼;	94.34
Sec. 25, E½E½.	160.00
T. 8 S., R. 38 E., P.M.M.	
Sec. 1, lot 3, 4, S½NW¼, N½SW¼, SW¼SW¼;	290.48
*Sec. 1, lots 6, 7, 10, 11, 13;	40.73
Sec. 11, lots 4, 5, 8, SE¼NE¼, NE¼SE¼;	182.37
Sec. 12, W½NW¼, SE¼NW¼, SW¼;	280.00
*Sec. 12, lots 2, 4, 5, 9;	40.09
Sec. 13, W½NW¼, SW¼;	240.00
*Sec. 13, lots 6, 7;	0.64
Sec. 14, lots 1, 4, 5, 6;	178.51
Sec. 23, lots 1, 8;	51.52
Sec. 24, W½;	320.00
*Sec. 24, lots 2, 3, 6, 7;	1.72
Sec. 25, S½NW¼, N½SW¼;	160.00

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Federal Coal Estate—Continued

*Sec. 25, lots 3, 8;	1.13
Sec. 26, lots 1, 4	34.55
T. 9 S., R. 38 E., P.M.M.	
Sec. 1, lots 7, 8, 11, SE¼NW¼, E½SW¼;	222.15
*Sec. 1, lots 13, 14;	2.53
Sec. 12, lots 1, 4, 5, 8, E½W½;	261.16
*Sec. 12, lots 10, 11, 14, 15;	5.41
Sec. 13, lots 1, 4, 5, E½W½;	216.08
*Sec. 13, lots 10, 11, 14;	5.10
Sec. 24, lot 1;	54.20
*Sec. 24, lots 10, 11, 14, 15;	7.32
Sec. 25, lots 1, 4, 5, 8;	184.96
*Sec. 25, lots 10, 11, 14, 15.	8.64
T. 8 S., R. 39 E., P.M.M.	
Sec. 6, lots 4, 5, 6, 7, SE¼NW¼, E½SW¼;	242.51
*Sec. 6, lots 10, 13, 14;	93.48
Sec. 7, lots 1, 3, 4, NE¼NW¼, E½SW¼;	213.03
*Sec. 7, lots 6, 8, 9;	93.15
Sec. 18, lots 1, 2, 3, 4, E½W½;	285.04
*Sec. 18, lots 6, 7, 10, 11;	122.01
Sec. 19, lots 1, 2, 4, E½NW¼, SE¼SW¼;	214.04
*Sec. 19, lots 6, 7, 9;	87.80
Sec. 30, lots 1, 2, 3, 4, E½W½;	286.16
*Sec. 30, lots 6, 7, 10, 11;	115.03
Sec. 31, lots 1, 2, E½NW¼;	143.48
*Sec. 31, lots 6, 7.	59.17
T. 7 S., R. 39 E., P.M.M.	
Sec. 6, lots 3, 4, 5, 6, 7, E½SW¼;	247.35
*Sec. 6, lots 9, 10, 14;	93.41
Sec. 7, lots 2, 3, 4, E½W½;	255.80
*Sec. 7, lots 6, 7, 10, 11;	126.07
Sec. 18, lots 1, 2, 3, 4, SE¼NW¼;	168.36
*Sec. 18, lots 7, 10, 11;	99.64
Sec. 19, lots 1, 2, E½NW¼;	144.43
*Sec. 19, lots 6, 7;	62.95
Sec. 30, SE¼NW¼, E½SW¼;	120.00
*Sec. 30, lots 6, 7;	72.72
Sec. 31, lot 2, E½W½;	192.73
*Sec. 31, lots 6, 7, 10, 11.	142.62

Consisting of 7,771.43 acres, more or less, in Big Horn Co., MT.

Federal Coal and Oil and Gas Estate

(Private Surface, Federal Coal and Oil & Gas Estate)

	Acres
T. 8 S., R. 38 E., P.M.M.	
Sec. 26, lots 5, 8;	24.26
Sec. 35, lots 1, 4, 5, 8.	19.88

Consisting of 44.14 acres, more or less, in Big Horn Co., MT.

*These descriptions are taken from supplemental plats approved on September 1, 1995, and October 18, 1995, by the Chief Cadastral Surveyor, Montana State Office, Bureau of Land Management.

Darrel Pistorius,

Acting District Manager.

[FR Doc. 95–29845 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–DN–P

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the third meeting of the Arizona Resource Advisory Council. The meeting will be held January 4–5, 1996 beginning at 8:30 a.m. in the New Mexico Room at the Bureau of Land Management's National Training Center, 9828 N. 31st Avenue, Phoenix Arizona 85051. The agenda items to be covered at this meeting include review of previous meeting minutes, standard and guidelines work group report, update on Arizona Preservation Initiative, discussion of recreation travel, tourism, and public relations working group, presentation of Lower Gila Resource Management Plan Phoenix District, and public comment period which will take place at 3:30 p.m. January 4, 1996, and 11:30 a.m. January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Clinton Oke, Bureau of Land Management, Arizona State Office, 3707 N. 7th St., Phoenix Arizona 85014, (602) 650–0512.

Phillip D. Moralend,

Acting Deputy State Director Resources Planning, Use and Protection Division.

[FR Doc. 95–29863 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–930–02–1320–00]

New Mexico; San Juan River Regional Coal Team (RCT) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT Meeting.

SUMMARY: The San Juan River RCT will meet to amend and renew the Charter because the latest RCT Charter expired on October 5, 1994. The RCT will expand to include Navajo Nation voting membership, as approved at the last meeting. The RCT will also discuss current activities and future development plans on Federal coal lands in New Mexico and southwest Colorado, including the status of coal Preference Right Lease Applications (PRLA's) and PRLA terminations. The public is invited to attend.

DATES: The RCT will meet at 9:00 a.m. on Friday, January 26, 1996.

ADDRESSES: The meeting will be held in the 2nd Floor Meeting Room of the BLM State Office at, 1474 Rodeo Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Jim Olsen at the Bureau of Land Management, New Mexico State Office, Land and Minerals Support Team (92113), P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7455.

SUPPLEMENTARY INFORMATION: The RCT will consider information from the public in making decisions at this meeting. Those who wish to be scheduled to speak at the meeting or introduce additional topics for discussion should provide written copies of their remarks or suggestions to Jim Olsen, Bureau of Land Management, at the above address by Tuesday, January 16, 1996. Written materials will be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Annual BLM Coal Market/Industry Interest Assessment
4. Current Activity and Production on Existing Leases
   a. New Mexico
   b. Colorado
6. Navajo Nation voting representation on the RCT
7. Indian Coal Issues
8. RCT Chapter Renewal
9. Public Comment
10. Scheduling of Next Meeting
11. Adjourn

Dated: November 22, 1995.

Rich Whitley,

Acting Chairman, San Juan River Regional Coal Team.

[FR Doc. 95–29848 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[CO–030–06–1610–00–1784]

Southwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Colorado Resource Advisory Council will meet on Thursday, January 11, 1996, at the Anasazi Heritage Center near Dolores, Colorado.

DATES: The meeting is scheduled for Thursday, January 11, 1996.

ADDRESSES: For further information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone (970) 249–7791; TDD (970)–249–4639.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin at 9:00 a.m. at the Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado.

The agenda, which includes a tour of the Heritage Center, will focus on the development of standards for rangeland health and guidelines for livestock grazing.

All resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for the Council meeting will be maintained in the Montrose District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: November 29, 1995.

Mark W. Stiles,

District Manager.

[FR Doc. 95–29849 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–026–1020–01]

Notice of Resource Advisory Council Meeting

November 29, 1995.

AGENCY: Bureau of Land Management, Susanville Resource Advisory Council Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 95–579 (FLPMA) that the Bureau of Land Management's Susanville Resource Advisory Council will meet Friday and Saturday, January 26 and 27, 1996, in the Bureau of Land Management Office at 705 Hall Street in Susanville, California. The January 26 session will convene at 10 a.m. at the BLM wild horse and burro corrals in Litchfield, CA, for a field tour of livestock grazing allotments and other public land areas. The tour will return to Susanville at about 4:30 p.m. The January 27 meeting will begin at 9 a.m. in the conference room at 705 Hall Street. Items to be discussed include the council's work on regional rangeland standards and guidelines, council coordination with subgroups and other Resource Advisory Councils, and council organizational business. The council will hear updates from BLM resource area managers, and hear a progress report on the East Lassen Plan.

The meeting is open to the public, and public comments will be taken from 1 to 2 p.m. Saturday, January. 27. Depending on the number of persons wishing to speak, a time limit may be imposed.

Summary meeting minutes will be maintained at the Susanville BLM Office, 705 Hall Street, Susanville, CA.

For further information, contact: Jeff Fontana (916) 257–5381.

Linda D. Hansen

Eagle Lake Resource Area Manager.

[FR Doc. 95–29850 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–40–P

[ID–060–1610–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater Districts Resource Advisory Council (RAC) on Thursday, January 18 and Friday, January 19, 1996 in Coeur d'Alene, Idaho. The meeting will be held at the Bureau of Land Management office at 1808 North Third Street in Coeur d'Alene.

The agenda for the two day meeting includes a one day training session for RAC members on team building, presentations by BLM personnel on rangeland ecology and possible standards and guidelines, election of officers and other administrative issues.

DATES: The RAC will meet on January 18, 1996 from 9:00 a.m. to 4:30 p.m. and on Friday, January 19, 1996 from 8:30 a.m. to 4:30 p.m. The public may address the Council during the public comment period on January 19, 1996 starting at 1:30 p.m.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with management of public lands. The Council's responsibilities include providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State and regional standards for ecological health and guidelines for grazing.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208) 769–5004.

Dated: November 28, 1995.

Jenifer Arnold,

Acting District Manager.

[FR Doc. 95–29851 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–GG–M

[NM–931–06–1210–00 (806)]

Reestablishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Roswell District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of reestablishment of visitor restrictions for designated Recreation sites, Special Recreation Management Areas and other public lands in the Roswell District, New Mexico.

SUMMARY: The Roswell District Bureau of Land Management (BLM), is reestablishing visitor restrictions for use of those public lands within the Roswell District, New Mexico under the New Mexico State Director's Signature. The previous visitor restrictions were published in the **Federal Register** Vol. 60, No. 90, on May 10, 1995, and signed by the Roswell District Manager. The only correction to the previous document is a date change pertaining to entering the following listed caves within the Roswell District. Fort Stanton, Torgac, Torgac Annex, Crocket, Crystal, Big-Eared Cave, Bathole, Malpais Madness, Tres Ninos and Feather Cave will be closed from November 1 to April 15 due to Bat hibernation. These visitor restrictions are necessary for the management of actions, activities and use of public lands, including those which are acquired or conveyed to the BLM.

EFFECTIVE DATE: December 7, 1995.

ADDRESSES: Any suggestions or inquiries should be addressed to the District Manager, Roswell District Office, 1717 West 2nd, Roswell, New Mexico 88201, Telephone: (505) 627–0272, during normal business hours (7:45 a.m. to 4:30 p.m., MST) at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Happel, Natural Resource Specialist, BLM, Roswell District Office, 1717 West 2nd Roswell, New Mexico 88201, Telephone: (505) 627–0203.

SPECIFIC COMMENTS: A proposed "establishment of visitor restrictions for

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designated recreation sites, special recreation management areas, and other public lands in the Roswell District, New Mexico" was published in the **Federal Register** on January 24, 1995, (60 FR No. 15) and provided for a 30-day public comment period that ended February 23, 1995. One letter was received from Gun Owners of America, which contained numerous specific comments. One of the comments urged the BLM to extend the public comment period to 60 days. The BLM Roswell District believes that a 30-day public comment period was adequate for this notice. Another comment stated that the rule as it is related to firearms is vague and will infringe upon Second Amendment rights of law abiding citizens. The BLM Roswell District believes the notice adequately describes firearms under the definition of a weapon. Another comment stated the rule would unduly interfere with the right of self defense. The BLM Roswell District believes that under State law, self defense of one's life would not preclude a person from protecting themselves. Another comment stated the rule would require someone to get a written permit (in advance) in order to discharge a firearm within ½ mile of a developed recreation site. Based on this comment, the BLM Roswell District has changed the wording on the visitor restriction of discharge of firearms from ½ mile to 150 yards. This change corresponds with State law and other Federal agencies providing for public safety. Another comment stated the regulation does not contain a clear definition of what a developed recreation site and area is. The BLM Roswell District believes that a "developed recreation site and area" has been adequately described in the Definitions and in the proposed **Federal Register** notice. The definition is also described in the Code of Federal Regulations 43 CFR 8360.0–5(C). Another comment recommended that the regulation be redrafted and tightened to focus on conduct which poses a danger. It goes on to state that the rule would restrict the discharge of firearms in recreation areas. The BLM, under rules of Conduct of Federal Regulations 43 CFR 8365.2–5 (A)., states on developed recreation sites and areas, unless otherwise authorized, "No person shall: (a) discharge or use firearms, other weapons or fireworks". Another comment objected to the breadth of the conditions under which use of a firearm is banned, such as long guns being broken down or otherwise rendered inoperable and should be stored out-of-site. The BLM Roswell District has shortened the wording to read: "Using weapons in violation of State laws within developed campsites or picnic areas". Another comment stated that the commentator is concerned that if an individual uses a firearm while being attacked they would be arrested. The BLM Roswell District believes that self protection of one's life is established by State laws and that this restriction would not preclude a person from protecting his/her life.

SUMMARY: The proposed restrictions are necessary for the management of actions, activities, and use on public lands, including those which are acquired or conveyed to the BLM. The making of Rules of Conduct is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public lands, the user is required to follow certain restrictions designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience. This notice supersedes previous notices published in the **Federal Register** on January 22, 1991, (Vol. 56, No. 14), and correction to Supplementary Rules No. 2. February 1, 1991, Vol. 56, No. 28, establishing Supplementary Rules for Designated Recreation Sites; Special Recreation Management Areas and Other Public Lands in New Mexico. More specifically, the purpose falls into the following categories:

• Implementation of Management Plans—Certain prohibited activities have been recommended as Restrictions for designated recreation sites and Special Recreation Management Areas (SRMA's). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of Rules of Conduct Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the Carlsbad Resource Management Plan, the Roswell Management Framework Plan or Recreation Management Plan for the specific areas.

• Mitigation of User Conflict—Certain other visitor restrictions are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come-first-served basis. This will prevent people from monopolizing the use of limited developed camping space.

Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is recommended to minimize the noise and nuisance factors that such activities represent in developed recreation sites.

• Public Health and Safety—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. Toilet structures may be permitted by the authorized officer on a case-by-case basis and only when appropriate State and local permits have been obtained. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within 150 yards of developed sites. Recreational shooters will be encouraged to use public land where such shooting and restrictions do not apply and this use does not significantly conflict with other uses.

• Complementary rules—Some restrictions, such as parking or camping near water sources, are recommended to compliment those of State and local agencies. Because these restrictions provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these restrictions are deemed necessary.

Definition: As used in these visitor restrictions, the term:

—*SRMA* means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that certain structures or capital improvements primarily used for recreation purposes by the public. Development may very from limited development for protection of the resources and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public lands* means any lands, interest in lands, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public lands and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specific with no intend to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Visitor Restrictions—All Public Lands: In addition to regulations contained in 43 CFR 8365.1, the following visitor restrictions apply to all public lands, including those lands acquired or conveyed to the BLM and related waters. The following are prohibited unless authorized by written permit:

Sanitation

• To construct or maintain any pit toilet facility.

• The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets, except at facilities provided for that purpose.

• To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or restroom water faucet unless such water source is designated for that purpose.

Occupancy and Use

• To camp or occupy any site on public lands or any approved location, including those in developed recreation areas and sites or SRMA's, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14th day of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.

• To park any motor vehicle for longer than 30 minutes, or camping within 300 yards of any spring, man-made water hole, water well, or watering tank used by wildlife or domestic stock.

• To dispose of any burning or smoldering material except at sites or facilities provided for that purpose.

• Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),

2. Fuelwood or firewood, either green or standing deadwood or,

3. Live plants (except for consumption, medicinal purposes, study or personal collection).

• Removing or transporting any mineral resources including, but not limited to, rock, sand, gravel, and minerals on or from public lands without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.

• Collection or removal of any natural resource, including wood for campfires, where such restrictions are posted.

• Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.

• Violation of the terms, stipulations, or conditions of any permit or use authorization.

• Failure to show a permit or use authorization to any BLM employee upon request.

• Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.

• Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

• Operation of an off-rode vehicle without full-time use of an approved spark arrester and muffler.

• Failure to display the required State off-road vehicle registration.

• Lubricating or repairing any vehicle, except repairs necessitated by emergency.

• Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,

2. Interfere with other authorized users or uses,

3. Obstruct or impede normal or emergency traffic movement,

4. Interfere with or impede administrative activities,

5. Interfere with the parking of other vehicles, or

6. Endanger property or any person.

Public Health and Safety

• Possession or use of fireworks.

• Leaving a campfire unattended, or failing to completely extinguish a fire after use.

• The sale or gift of an alcoholic beverage to a person under 21 years of age.

• The possession of an alcoholic beverage by a person under 21 years of age.

• Ignite or burn any material containing or producing toxic or hazardous material.

• Carrying of concealed weapons.

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State and Local Laws

• Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

VISITOR RESTRICTIONS—DEVELOPED RECREATION SITES/AREAS AND SPECIAL RECREATION MANAGEMENT AREAS: In addition to the regulations contained in 43 CFR 8356.1, 8365.2 and those listed above, the following visitor restrictions will be applied in accordance with 43 CFR 8365.2: The following activities are prohibited unless authorized by written permit:

• Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.

• Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.

• Reserving camping space, except at group facilities. Camping space is available on a first-come-first-serve basis.

• Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period no person shall create noise which disturbs other visitors.

• More than two motorized vehicles and/or 10 individuals at any one approved site not designated for group use or parking area. Groups exceeding these limits must use a group site or additional designated sites.

• Vehicles off of existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.

• To park in or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.

• Posting or distribution of any signs, posters, printed material, or commercial advertisements.

• The discharge of firearms or other weapons, hunting and trapping within 150 years of developed recreation sites and areas.

• Using weapons in violation of State law within developed campsites or picnic areas.

• Disposing of any waste or grey water except where facilities are provided.

• Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

• Gathering or collecting woody plants or any other natural resources, minerals, cultural, or historical artifacts that require permits.

• cutting or gathering of green trees or their parts or removal of down or standing dead wood for any purpose.

• Not adhering to fire danger ratings issued by government.

• Entering the following caves from November 1 to April 15 of each year: Fort Stanton, Torgac, Torgac Annex, Crockett, Crystal, Big-Eared Cave, Bat Hole, Malpais Madness, Tres Ninos and Feather. Only personnel engaged in authorized scientific bat studies, census, monitoring, and emergencies will be allowed to enter caves during this time, due to bat hibernation.

• Entering a cave without each person wearing a safety helmet (hard hat) with chin strap and at least three sources of light.

• Annoying or disturbing bats at any time.

List of Developed Recreation Sites/Areas and Special Recreation Management Areas

1. Valley of Fires Recreation Area (Roswell Resource Area).

T. 7 S., R. 10 E.,
Sec. 29, 30.

2. Fort Stanton SRMA (Roswell Resource Area).

T. 9, 10 S., R. 14, 15 E.

3. Mescalero Sands North Dune SRMA (Roswell Resource Area).

T. 10 S., R. 30 E.,
Sec. 34, 35.

4. Cave SRMA's—McKittrick Hill, Lost, Fence Canyon, Manhole, Yellowjacket/Lair, Chosa Draw, Mudgetts, Honest Injun, KFF Caverns, Fort Stanton Cave, Torgac Cave, and Crockett's Cave.

5. Dark Canyon SRMA (Carlsbad Resource Area).

T. 24 S., R. 23, 24E.

6. Lonesome Ridge SRMA (Carlsbad Resource Area).

T. 26 S., R. 22E.,
Sec. 19–21, 29–31.

7. Pecos River Canyon Complex (Carlsbad Resource Area).

T. 24, 25., R. 29, 30E.

8. Guadalupe Escarpment Scenic Area (Carlsbad Resource Area).

T. 23–26 S., R. 22–26 E.

9. Alkali Lake Off-road Vehicle Area (Carlsbad Resource Area).

T. 21 S., R. 27 E.,
Sec. 4, 5, 9.

10. Hackberry Lake Off-road Vehicle Area (Carlsbad Resource Area).

T. 18–20 S., R. 30, 31 E.

11. Pecos River Corridor (Carlsbad Resource area).

T. 22 S., R. 27 E., river section to
T. 26 S., R. 29 E.

12. Coen Draw SRMA (Carlsbad Resource Area).

T. 25 S., R. 25 E.,
Sec. 20–22, 27–29, 33.

13. Overflow Wetlands (Roswell Resource Area).

T. 11, 12 S., R. 25, 26 E.

SUPPLEMENTARY INFORMATION: The New Mexico State Director is reestablishing these visitor restrictions, which are necessary for the protection of persons, property, and public lands and resources currently under the Bureau's administration within the Roswell District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6. These Visitor Restrictions apply to all persons using public lands. Violations of these restrictions are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Exceptions to the following visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Dated: November 20, 1995.

William C. Calkins,

State Director.

[FR Doc. 95–29852 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[ES–960–1420–00; ES–47708, Group 155, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in Lake Michigan, Township 30 North, Range 28 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 11, 1996. The survey was made at the request of the Deputy State Director, Resources Planning, Use and Protection, Eastern States, Bureau of Land Management.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 11, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: November 30, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–29853 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–923–1430–01; WYW 134662]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposed to withdraw 1,020 acres of public land in Fremont County, to protect the habitat of the small rockcress, *Aravis pusilla*. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before March 6, 1995.

ADDRESS: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, (307) 775–6124.

SUPPLEMENTARY INFORMATION: On November 8, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 29 N., R. 101 W.,
Sec. 26, S½NW¼, S½;
Sec. 27, E½SW¼NE¼, SE¼NE¼, E½W½SE¼, E½SE¼;
Sec. 35, N½, N½N½SW¼, N½SE¼.

The area described contains approximately 1,020 acres in Fremont County.

The purpose of the proposed withdrawal is to protect the habitat of the small rockcress, *Arabis pusilla*, a plant species proposed as Threatened and Endangered by the U.S. Fish and Wildlife Service. The Pine Creek area at South Pass is the only known location for this species in the world.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register**, at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Alan K. Kesterke,

Associate State Director.

[FR Doc. 95–29861 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 155—Extension

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to extend post-sale evaluation period for Western Gulf of Mexico Lease Sale 155.

SUMMARY: The furlough of workers of the Minerals Management Service (MMS) delayed the evaluation of bids from Lease Sale 155 in the Western Gulf of Mexico. This notice extends by 9 days the post-sale evaluation period for Western Gulf of Mexico Lease Sale 155. The extra time will allow MMS personnel to properly evaluate bids.

DATES: The post-sale evaluation period ends on December 20, 1995.

FOR FURTHER INFORMATION CONTACT: John Mirabella or Kumkum Ray, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: On August 11, 1995, MMS published a lease sale notice in the **Federal Register** (60 FR 41105) announcing a lease sale in the Western Gulf of Mexico with bid openings on September 13, 1995. On November 14, 1995, during the evaluation of the bids received from the lease sale, MMS experienced a 6-day shutdown of all but essential work of the agency. This shutdown broke the continuity of the work of evaluating bids and delayed the evaluation process. MMS is extending the evaluation period to allow personnel to properly evaluate the bids received. MMS will complete the evaluation of all bids received for this sale by December 20, 1995.

Dated: December 4, 1995.

Thomas M. Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–29839 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 31, 1995, and published in the **Federal Register** on June 8, 1995, (60 FR 30318), Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Dihydromorphine (9145)	I

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	Schedule
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer filed a request for a hearing with respect to amphetamine and methamphetamine. The requesting party subsequently submitted a letter dated August 29, 1995, withdrawing their request for a hearing. On September 1, 1995, an order terminating the proceedings was issued by Administrative Law Judge Mary Ellen Bittner. Another registered manufacturer filed a comment requesting that the firm's application to manufacture meperidine be denied because there is no need for Radian to register as a third domestic manufacturer of meperidine and that Radian must show it can maintain adequate safeguards against the theft and diversion of meperidine. In regards to this comment, the firm, which has been approved as a manufacturer of meperidine for previous applications, has been subject to periodic in-depth investigations by DEA to evaluate the firm's fitness as a DEA registrant. Additionally, in response to this recent application, the firm was inspected by DEA and found to have adequate safeguards to prevent the theft or diversion of meperidine. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 29, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–29772 Filed 12–6–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–23]

Prince George Daniels, D.D.S.; Denial of Application

On January 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Prince George Daniels, D.D.S., (Respondent) of San Jose, California, notifying him of an opportunity to show cause as to why DEA should not deny his pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) Between December 2, 1982 and February 3, 1983, [the Respondent] issued four prescriptions for Didrex, a Schedule III controlled substance, to two undercover individuals[,] and these prescriptions were not issued for a legitimate medical purpose in the usual course of [his] professional practice.

(2) On June 7, 1983, in the Municipal Court, Santa Clara County Judicial Circuit, State of California, [the Respondent] pled no contest to two counts of prescribing controlled substances to a person not under [his] treatment for a pathology in violation of California Health and Safety Code [Section] 11154 and one count of practicing unauthorized medicine in violation of California Business and Professions Code [Section] 2052.

(3) On January 7, 1985, the Board of Dental Examiners, Department of Consumer Affairs, State of California (Dental Board), suspended [the Respondent's] state dental license for one year, but stayed this suspension pending the successful completion of three years probation.

(4) On or about May 1, 1986, [the Respondent] arranged for the sale of cocaine to an undercover DEA agent. Furthermore, [he] made arrangements for other individuals to forcibly take the cocaine from the DEA undercover agent after [he] sold him the cocaine.

(5) On January 3, 1987 [the Respondent's] previous DEA number, AD6665838, expired [,] and [he] did not submit a renewal application for that number. Thereafter [his] DEA number was retired from DEA registration.

(6) On August 14, 1987, in the United States District Court, District of Northern California, [the Respondent] pled guilty to one count of conspiracy to deliver cocaine in violation of 21 U.S.C. 841 and 846 and to one count of possession of cocaine in violation of 21 U.S.C. 841. On October 2, 1987, [the Respondent was] sentenced to three years imprisonment.

(7) On August 22, 1988, the Dental Board terminated [the Respondent's] probation and revoked [his] state dental license. Effective January 10, 1990, the Dental Board restored [his] state dental license but placed [his] license on a three year probationary term.

On March 9, 1994, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California, on November 9, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, the Government offered the stipulated testimony of two witnesses and introduced various documentary exhibits, and the Respondent, represented by counsel, testified, called three witnesses, and introduced several documentary exhibits. After the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 30, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to his decision, and on March 9, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the opinion and recommended ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent received his license to practice dentistry in California in 1975. Further, the Respondent previously held a DEA Certificate of Registration, AD6665838, which expired on June 30, 1986, and which the Respondent did not renew but let lapse. However, on November 12, 1992, the Respondent submitted an Application for Registration under the Controlled Substances Act of 1970, as a practitioner for handling controlled substances in Schedules II through V.

On December 2, 1982, the Respondent issued a prescription for Didrex to an undercover police officer (Officer). The parties stipulated that Didrex (benzphetamine) is a Schedule III non-narcotic stimulant, and has been a Schedule III controlled substance since 1973. The Officer received dental work and then requested the Didrex prescription, purportedly for weight control. The Respondent testified that, although he "didn't know that much about Didrex," he issued the prescriptions based upon the Agent's representation that her doctor had previously prescribed Didrex, and upon a pharmacist's representation that he would fill the prescription. On December 21, 1982, the Respondent authorized a Didrex refill, and on January 4, 1983, he indicated that he would authorize an additional refill. The Respondent was arrested shortly after he prescribed the Didrex, and on June 7, 1983, in a California State court, he pled *nolo contendere* to two counts of violation of California Health and Safety Code Section 11154 by prescribing a controlled substance to a person not under his treatment for a pathology, and a violation of Business and Professions Code Section 2052 for the unauthorized practice of medicine. Based on the facts underlying his *nolo contendere* plea, the California Board of Dental Examiners suspended the Respondent's dental certificate for one year in January 1985, but the suspension was stayed in favor of a three-year probationary period with various conditions.

In April 1986, a DEA Special Agent was introduced to the Respondent's brother as a potential cocaine purchaser. In stipulated testimony, an Agent who had monitored the cocaine transaction noted that after negotiations, the undercover Agent on the scene arranged to buy two kilograms of cocaine from the Respondent's brother. On May 1, 1986, this Agent and the Respondent's brother met at the Respondent's dental clinic, the Respondent showed them into his office, locked the office door, and directed his brother to give the Agent a cardboard box containing two cellophane bags, each filled with a white powdery substance. The Respondent then gave a note to the Agent which represented the contents of the two bags, 1,667 grams of cocaine, and the price for both bags, $61,679.00. The Agent asked why two kilograms of cocaine were not tendered as originally agreed, and the Respondent explained and stated that the rest of the cocaine could probably be obtained later that day. The Respondent also indicated that after May 17th, he could obtain up to three kilograms of cocaine from his source if given four days' notice. While still in the Respondent's office, the Respondent explained that he expected $250 for his part in the cocaine transaction, and when the Agent expressed his opinion that $250 seemed to be a low payment, the Respondent replied that he was doing "a favor for a favor." Upon leaving the dental clinic, the Agent arrested the Respondent and his brother.

On May 7, 1986, the Respondent was indicted in the United States District Court for the Northern District of California on one count of conspiring to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. 846. He was also indicted on one count of unlawfully distributing 1,667 grams of cocaine in violation of 21 U.S.C. 841(a)(1). On October 2, 1987, the Respondent pled guilty to both counts. He was sentenced to three years' imprisonment on each count, the sentences were ordered to run concurrently, and he was fined $100.00. The Respondent served approximately 16 to 18 months in prison from late 1987 until March 1989, when he was released to a half-way house. He was discharged from his sentence on August 25, 1989.

Effective August 22, 1988, the California Board of Dental Examiners (Dental Board) revoked the Respondent's dental license based on the cocaine-related convictions. The Dental Board also noted that the Respondent's conduct resulted in a violation of the probationary period that it had imposed after the Didrex incident. On January 10, 1990, the Dental Board reinstated the Respondent's dental license subject to various conditions, and by letter dated February 24, 1993, the Dental Board informed the Respondent as follows: "Our records show that you have fully complied with the terms of your probationary order. Therefore, all the rights and privileges associated with your dental license have been restored." The Respondent testified that since his release from prison in March 1989, he has had no negative encounters with law enforcement agencies.

At the hearing before Judge Tenney, the Respondent testified about the cocaine transaction, indicating that he never had sold drugs with his brother until the May 1, 1986 incident, and that his involvement then was minimal. He stated that his brother sought his help "to get out of a jam," and that his brother hinted that the transaction would involve cocaine. The Respondent explained that "all I did was read a note, and that's all I had intended to do * * *. I wasn't sure what I was supposed to do." He testified that he never received any money for his part in the cocaine transaction, nor that there were ever any arrangements to pay him. Further, as to answers he gave to agents who had questioned him about his source for the cocaine, the Respondent testified before Judge Tenney that he had "made up" the names of cocaine suppliers and deliverers. The Respondent also testified that he had "made up the story" he gave the agents after his arrest concerning a "plan" to rob the Agent of the cocaine after he had paid for it. Finally, he stated that he "was involved with something [he] shouldn't have been involved in. Right, wrong [,] or indifferent, didn't matter. I should not have been involved with the selling of drugs, as a dentist or as a person * * *."

The Respondent provided extensive information concerning his rehabilitative efforts, including his involvement with Christian workshops, his studies to become a minister during his prison time for the cocaine convictions, his involvement since 1990 with the Morris Cerullo World Evangelists in visiting prisons and evangelizing, his monetary contributions to narcotics programs, his devotion of approximately 12 hours per week working with street gangs and prisoners, his additional ministry work, such as teaching English to Spanish, Vietnamese, and Cambodian people, providing food and clothing to the needy, and his work with the Kenneth Hagen Ministry, the Roberts Ministry, the American Fellowship Church, and various other ministries and religious organizations. The Respondent testified that he had recently visited China, Singapore, Malaysia, and Mexico, to "share[] the gospel," and that while in Malaysia, he had donated his dental services.

While the Respondent was incarcerated, Dr. Lloyd Dickey, and his son, Dr. Leonel Dickey, continued operating the Respondent's practice. After the Respondent's dental license was reinstated in January 1990, the Respondent returned to that practice. Currently Dr. Leonel Dickey continues to assist the Respondent several times per week. The Respondent treats a diverse ethnic population, primarily individuals of Mexican or Vietnamese descent, and currently treats patients who have private insurance, although he devotes about 10 percent of his

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practice to providing free treatment to poor individuals. He testified that he could not treat "MediCal" patients at the present time because he does not have a DEA Certificate of Registration. Also, the Respondent stated that he performs a variety of dental work, the Respondent stated that he performs a variety of dental work, but that he can only perform extractions or root canals when Dr. Leonel Dickey was available in case the patient needed controlled substances for relief from pain. The Respondent stated that his inability to prescribe controlled substances prohibited him from maximizing his patient load, inhibited his earning potential, and prevented him from giving his patients full and complete treatment. Further, in some cases, he is required to refer his patients to other dentists because his inability to prescribed controlled pain medications.

Both the Respondent and Dr. Dickey testified that controlled substances were not stored at the office, but that when a patient required pain medication, Dr. Dickey wrote a prescription. However, the Respondent testified that if he was granted a DEA Certificate of Registration, he will would not want to store any controlled substances at his office.

Dr. Leonel Dickey, a dentist licensed to practice in California since 1979, testified that he had known the Respondent since the early 1970's, but that they had lost tough from 1974 until approximately 1987. He also stated that the Respondent had informed him of "[p]roblems he ran into with the law" when he asked him to cover for his practice while he was incarcerated. Based upon his experiences of working with the Respondent since 1990, Dr. Dickey expressed the opinion that the Respondent was a very competent dentist. He also testified that the Respondent provided free dental work to a portion of his patients, but that without a DEA Certificate of Registration, it was difficult for the Respondent to ease the discomfort level of his patients. He also attested to the Respondent's involvement in Christian ministries. Dr. Dickey also stated that he had no "hesitations" about the Respondent receiving a DEA registration, and that he had seen no evidence of "any kind of unusual activity" that would suggest that the Respondent was untrustworthy or incompetent. However, he testified that he had very little knowledge about the details of the Respondent's convictions for selling cocaine, and that he was unfamiliar with the Respondent's problems with Didrex in 1982 and 1983.

Dr. Lloyd Dickey, an experienced Doctor of Dental Surgery since 1947, testified that he had know the Respondent since approximately 1971, and that he regarded him as "a son." He stated that he believed the Respondent should be granted a DEA registration, for it would benefit his patients. However, he testified that he was not very familiar with the Respondent's cocaine charges, having heard only "street gossip" about the incidents. Dr. Dickey was more familiar with the Respondent's problems with Didrex, because he had testified on the Respondent's behalf before the Dental Board.

Finally, Reverend Kevin West, who holds a Doctor of Divinity degree, testified that he had met the Respondent in late 1989, and that they had decided to form a ministry together, which was incorporated in 1991. The ministry consists of Bible studies, Alcoholics Anonymous/Narcotics Anonymous meetings, and general acts of "[ministry] to the local people at a local church." Reverend West stated that he had observed the Respondent closely, and he attested to the Respondent's ordination as a minister, his work as Reverend West's associate pastor, his visits to prisons, his work with gang members, and various other good deeds performed by the Respondent. He opined that the Respondent was "definitely * * * rehabilitated." However, Reverend West testified that, prior to the hearing before Judge Tenney, he had heard only limited information about the Respondent's involvement with cocaine in May of 1986, and that he was totally unaware of the Didrex prescription problems.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. See *Richard J. Lanham, M.D.*, 57 FR 40,475 (1992); *Henry J. Schwarz, Jr., M.D.*, 54 FR 16,422 (1989).

In this case, although the Government argued that it had established a *prima facie* case under all five factors, the Deputy Administrator agrees with Judge Tenney, and finds that a *prima facie* case has only been established under factors 2 through 5. As to factor one, "recommendation of the appropriate State licensing board," the Dental Board restored all rights and privileges associated with the Respondent's dental license in 1993. Since the record contains no adverse recommendations from the "appropriate State licensing board or professional disciplinary authority," the Deputy Administrator agrees with Judge Tenney and finds that the Government has not established a *prima facie* case under factor one.

As to factor two, "the applicant's experience in dispensing * * * controlled substances," the Deputy Administrator again agrees with Judge Tenney that the Government has established a *prima facie* case under factor two. First, the evidence of the 1982 Didrex prescriptions demonstrated that the Respondent, lacking familiarity with that substance's characteristics, prescribed Didrex to a patient merely at her request, without a legitimate medical purpose, and outside the regular course of his practice. Further, the evidence of the Respondent's participation in May 1986, in the distribution of cocaine and in a conspiracy to distribute cocaine, contributed to the establishment of the Government's case under factor two.

The Deputy Administrator also agrees with Judge Tenny's finding that the Government established a *prima facie* case under factors three and four, "the applicant's conviction record under Federal or State laws relating to the * * * distribution * * * of controlled substances," and "[c]ompliance with applicable State, Federal * * * laws relating to controlled substances," for the Respondent had pled *nolo contendere* to State charges involving Didrex, a controlled substance, and he had pled guilty to two Federal charges involving the distribution of cocaine. Further, the Respondent's conduct underlying these two convictions demonstrate his participation in illegal activities, thus violating applicable State and Federal laws relating to controlled substances.

Finally, the Deputy Administrator agrees with Judge Tenney's finding as to the relevancy of the Respondent's testimony before him concerning the cocaine incident and factor five, "other conduct which may threaten the public health or safety." Specifically, the Deputy Administrator finds that the Respondent's lack of candor in his 1994 testimony as to the full extent of his involvement in the cocaine incident creates concern about his future conduct. The record discloses that the Respondent was quite involved in the cocaine distribution and conspiracy; as evidenced by the stipulated testimony of the undercover Agent involved first-hand in the incident, and by the fact that the Respondent pled guilty to the charges of conspiracy to distribute cocaine and unlawfully distributing cocaine. His failure to take responsibility for his past misconduct causes concern about his commitment to protecting the "public health and safety" in the future, should he be granted a DEA Certificate of Registration.

However, the Government's establishment of its case does not end the inquiry, for the Respondent has submitted extensive evidence of his rehabilitative efforts. The issue then becomes whether the Respondent has offered sufficient proof of rehabilitation to mitigate the egregious conduct established by the Government, such that the DEA can now find that granting the Respondent's application for a Certificate of Registration would be consistent with the "public interest." See *Shatz* v. *United States Dept. of Justice*, 873 F.2d 1089, 1091 (8th Cir. 1989) (holding that, in a case such as this, the Respondent has the burden to prove rehabilitation).

Again, the Deputy Administrator agrees with Judge Tenny's findings as to the weight to be given the Respondent's rehabilitative evidence, for the Respondent's evidence concerning his rehabilitative efforts, to include his commitment to performing good deeds through a variety of Christian ministries, was credible. However, the Respondent's November 1994 testimony concerning his conduct surrounding the May 1, 1986, cocaine transaction was indeed troubling, for despite the plea and conviction, the Respondent continued to minimize his involvement and resulting responsibility for the conspiracy and cocaine distribution incidents. As Judge Tenny noted, "the Respondent's inability to be completely candid at the hearing causes sufficient doubt as to whether he is fully rehabilitated." Further, the Deputy Administrator also notes the lack of evidence of continuing education relevant to controlled substances, evidence which would have been helpful in light of the Respondent's experience in prescribing Didrex without understanding its characteristics.

Therefore, the preponderance of the evidence supports denial of the Respondent's application at this time. If the Respondent reapplies and submits evidence of his continuing rehabilitative efforts, such as evidence of completion of educational courses at least partially focused upon the handling of controlled substances, then his application may receive more favorable consideration. See, e.g., *Shatz*, 873 F.2d at 1092 (suggesting that "careful consideration" be given to any future application for registration, and in particular, to "any additional evidence in support of [a] claim of rehabilitation"); *Sokoloff* v. *Saxbe*, 501 F.2d 571, 576 (2d Cir. 1974) (stating that "permanent revocation" of a DEA Certificate of Registration may be "unduly harsh")

Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at this time. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 21 C.F.R. 0.100(b) and 0.104, hereby orders that the Respondent's application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective January 8, 1996.

Dated: November 30, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-29771 Filed 12-6-95; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 93-39]

William F. Skinner, M.D., Continuation of Registration

On April 5, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William F. Skinner, M.D., (Respondent) of Santa Monica, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS7287534, under 21 U.S.C. 824(a)(4), and deny any pending applications under 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) During the period April 1987 through November 1988, the Respondent prescribed, administered, and dispensed excessive amounts of controlled substances to a single patient, including Demerol, Dilaudid, Xanax, Ativan, Percodan, Tylenol with Codeine, Valium, Percocet, Methadone, and Doriden, without a legitimate medical purpose and while not acting in the usual course of professional practice; and

(2) During the same time period, the Respondent prescribed narcotic drugs to the same narcotic dependent patient for the purpose of maintenance treatment, and engaged in detoxification treatment of the patient without holding a separate DEA registration to conduct a narcotic treatment program.

On April 27, 1993, the Respondent, through counsel, filed a timely request for a hearing. On February 23, 1994, the case was consolidated for hearing with *Michael S. Gottlieb, M.D.*, Docket No. 93-53, and *Michael J. Roth, M.D.*, Docket No. 94-10. Following prehearing procedures, a hearing was held in Los Angeles, California, on March 29-30 and May 10-12, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On October 17, 1994, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, finding that Respondent's registration was not inconsistent with the public interest, and recommending that no action be taken against Respondent, Dr. Skinner. On November 8, 1994, the Government filed exceptions to Judge Tenney's opinion, and on December 7, 1994, the Respondent filed his response to the Government's exceptions. On December 12, 1994, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the filings of the parties and the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the opinion and recommended ruling of Judge Tenney, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is licensed to practice as a physician in the State of California, and that he had served as the medical director of the St. John's Hospital Chemical Dependency Center from 1981

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to 1990. He is registered with the DEA as a practitioner authorized to handle controlled substances in Schedule II through V.

The DEA's allegations concern the Respondent's treatment of one patient, "Patient A", from March 1986 through October 1988. During this time period, Patient A had a number of significant physical conditions which caused pain, including pressure on the nerves from cervical degenerative joint disease; degenerative osteoarthritis of the lumbar vertebrae above a previous area where fusion surgery had been performed; spinal stenosis which occurs when the spinal canal narrows, at times putting pressure on a nerve with pain and muscle spasms; severe temporal mandibular joint degenerative disease; compression fracture of the patient's spine at L–1 and L–2; and trochanteric bursitis of the hip. Also during this time period, Patient A had a series of accidents which caused her acute pain: An automobile accident in which she was a passenger, resulting in a whiplash injury to her neck; an accident resulting in a knee injury; a fall down a spiral staircase, resulting in back strain; and a fall on a marble floor, resulting in a compression fracture of her spine. The record contains no evidence that drug intoxication caused any of these accidents.

During the time period of March 1986 through October 1988, the Government contended that the Respondent prescribed controlled substances to Patient A for other than a legitimate medical purpose and not in the usual course of his professional practice. Beginning March 20, 1986, the Respondent prescribed Demerol to Patient A. Demerol is a brand name for a medication containing meperidine hydrochloride, a Schedule II controlled substance. During the remainder of 1986, the Respondent prescribed Demerol and Percodan or Percocet, and occasionally he prescribed other Schedule II substances, such as Dilaudid, Doriden, and Tuinal. For example, from May 13 through December 26, 1986, the Respondent prescribed 1,604 tablets of Percodan or Percocet, and from March 20 through December 28, 1986, he prescribed approximately 30,000 milligrams of Demerol. This prescription practice continued into 1987 and 1988. However, also as a part of his prescription pattern, the Respondent tapered the amount of narcotics prescribed after the incidents of acute pain following the injuries suffered as a result of the various accidents. Dr. Smith, Dr. Ling, and Dr. Margoles testified that such tapering was within the usual course of professional practice.

Also throughout this time period, the Respondent used various non-narcotic methods of treating Patient A's pain. Specifically, he ordered bed rest, traction, hot packs, ultrasound, steroids, biofeedback, massage, electrocane, a cervical collar, facet blocks, physical therapy, acupuncture, and non-narcotic drugs. The Respondent also referred Patient A to numerous specialists, including Dr. Dodge, a neurosurgeon, Dr. Horacek, an orthopedic surgeon, and Dr. Woods, a neurologist.

However, Dr. Skinner was the primary treating physician for Patient A, and his treatment records were included in the record of this case. The medical records recounted the Respondent's observations, examination results, and the prescriptions issued as a result of his house calls to Patient A. Further, the medical records also contain hospital test results, hospital admission, treatment and discharge records, and consultation reports. For example, the medical records show that Patient A was hospitalized during this time period. On July 26, 1988, following a CAT scan, Dr. Joyce issued a report, writing that Patient A had a mild compression fracture at L1, mild stenosis at L2–3, moderate stenosis at L3–4, and a post-posterior bony fusion from L4 to the sacrum. Patient A was discharged on August 18, 1988. Again on September 29, 1988, Patient A was admitted to the hospital by Dr. Skinner, and she was discharged on October 4, 1988, with a diagnosis of a compression fracture, osteoporosis, and congenital scoliosis. On October 17, 1988, Patient A was again admitted with a complaint of severe left leg pain, and on October 23, 1988, she was discharged with the diagnosis of acute back pain secondary compression fracture of L1, acute lumbosacral spinal sprain and strain secondary to severe osteoarthritis at L2–3 with neuroforaminal narrowing, sciatica (resolved) and osteoporosis with high risk of possible spontaneous hip fracture.

Further, as Judge Tenney noted, "[t]here is a 'debate' or difference of opinion between those [physicians who] specialized in addiction medicine and those in pain management regarding the use of narcotics for the treatment of severe pain." He also noted that Dr. Smith and Dr. Ling, the Government expert witnesses, were primarily experts in addiction medicine, and Dr. Margoles and Dr. Brechner, the Respondent's expert witnesses, were primarily experts in pain management. Dr. Smith and Dr. Margoles agreed that there exists a difference of opinion within the medical community as to the appropriate level of prescribing of controlled substances for the treatment of chronic pain patients. Also significant is the fact that the opinions of Dr. Brechner, Dr. Dodge, Dr. Horacek, and Dr. Woods were supported by either their personal examination, treatment, or both, of Patient A during the relevant time period, whereas the opinions of Dr. Smith and Dr. Ling were based upon their review of Patient A's treatment records and prescription documentation.

Initially, the Government presented evidence from expert witnesses who had concluded that Patient A was addicted to controlled substances, and that the Respondent had prescribed medications to Patient A to maintain her addiction. On March 3, 1990, Dr. Smith wrote in a report for the District Attorney: "[the] spectrum of medications [prescribed to Patient A] was not justified by the medical pathology and, in fact, the medications caused the patient far more harm than benefit. The dosage of medication was clearly excessive and the duration over the several month period as outlined in the medical records was both excessive and not justified by the medical pathology." He concluded that "[a]s a result of this analysis it is my opinion then, that Dr. Skinner and his colleagues were not prescribing a narcotic medication primarily for the management of pain but, in fact, were maintaining her addiction." During the hearing before Judge Tenney, Dr. Smith, after reviewing the quantities of controlled substances prescribed on selected dates, testified that those quantities were excessive in light of the standard therapeutic dosage. He then restated the conclusion he had reached in his 1990 letter to the District Attorney.

Based upon his review of Patient A's treatment record and relevant pharmacy records, Dr. Ling, a medical expert in the areas of neurology, psychiatry, addiction, and pain medicine, opined that the Respondent's prescribing practices did not meet the standard of care of the average practitioner with experience in the field of chemical dependency. He also testified that, in 1988, the standard of care was not to prescribe a large amount of narcotics, for such practice could result in the patient's developing a tolerance to controlled substances. He testified: "You'd be treating the tolerance. You'd be treating addiction, you're no longer treating the [diagnosed medical condition]."

Both Dr. Smith and Dr. Ling concluded that Patient A was an addict who was opiate dependent and benzodiazipine dependent. However, Dr. Ling also testified that he believed a drug dependent patient was entitled to treatment for pain, that Patient A was in pain, and that the Respondent was treating her in good faith.

The Respondent presented evidence from consulting physicians who had concluded that Patient A was not an addict, but that she was dependent upon controlled substances for treatment of her chronic and sometimes acute pain. Specifically, Dr. Margoles, a medical expert in pain management, testified, after having reviewed Patient A's medical history and having interviewed her twice, that throughout the years 1986 to 1988, Patient A had experienced intractable pain as a result of numerous medical problems and degenerative changes. He concluded that Patient A was a chronic pain patient, as opposed to an opioid abuser, and that she sought and was given medications to control her pain, not for euphoria. He found that, although Patient A had received an increase in amounts of opioids prescribed for her use, such an increase had resulted from the severity of her pain, not from addiction. He testified: "It was obvious that the medication was being used to keep her going in her professional career." He also summarized the distinction between the use of pain medication to enable a patient with pain to function, and the use of narcotics to simply maintain an addict, as follows: "the chronic pain patient * * * [is] goal oriented, they're working, they're functioning. They've got something in mind, they've got a goal. They're working, they've got a job. Narcotic maintenance is usually, as far as I'm concerned, * * * just keeping a person * * * from going through withdrawal symptoms." Also, he noted that there was no evidence in Patient A's records of abstinent syndrome, clinical or laboratory evidence of toxicity, nor evidence that she had sought drugs in order to obtain euphoria. Dr. Margoles testified that the lack of toxicity evidence meant that the "patient obviously tolerated the medication that she had, that was used in her case, and evidently benefitted her [,] and [that] she had no toxic side effects * * * no slurred speech, inability to have cognitive speech, straight speaking."

Finally, Dr. Margoles noted that in the 1980's, guidelines were established in prescribing controlled substances for chronic conditions. These guidelines were indorsed by various medical and legal groups, to include the California Board of Medical Quality Assurance and the California Bureau of Narcotic Enforcement. Dr. Margoles testified that the Respondent's prescribing to Patient A met these standards.

The Respondent also presented an affidavit from Dr. Dodge, a consulting neurosurgeon involved with the treatment of Patient A from 1986 through 1988, who wrote:

> In my opinion, although the amounts of drugs were large compared to the average patient, they were necessary in order to treat the patient's pain. Although the patient clearly had a drug dependence problem, I do not believe the pain was controllable by other means besides narcotics. The amounts of narcotics tended to increase at the time of the acute events * * *. Dr. Skinner and the other physicians responsible for her care always attempted to minimize the amounts of drugs that she took and sought to detoxify her from those drugs when the acute phase of pain and muscle spasm from the injuries passed.
>
> In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient.

Further, is an affidavit, Dr. Woods, a neurologist who treated Patient A from January 1987 to January 1988, made similar observations as Dr. Dodge, and concluded: "In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient, in that the drugs were prescribed to control the patient's pain not to maintain her addiction."

As to the legitimacy of the quantities of the controlled substances prescribed, Dr. Brechner, a medical expert in the field of pain management and anesthesiology, testified that in 1988, he was consulted concerning an aspect of Patient A's treatment, for he had performed a facet block procedure to aid in the diagnosis of the source of Patient A's back pain. In the course of performing that procedure, he administered narcotic analgesics, observing that Patient A had "an extraordinary tolerance to narcotics, even when potentiated with the tranquilizers." Dr. Brechner also noted that Patient A suffered from severe chronic pain and from periods of acute, intractable pain. Dr. Brechner concluded that Patient A had received narcotics prescribed in amounts that were "extraordinary compared to the average patient," because of her extreme tolerance for narcotics, and that she needed the narcotics in the amounts prescribed in order to control her pain. He testified that prescribing the narcotics in lower doses was not effective, and thus, she was not "over-dosed." Also, Dr. Brechner testified that alternative means of treatment were tried to control Patient A's pain, but that he did not believe such treatment was effective alone in treating the pain resulting from her acute pain-inducing incidents, such as the automobile accident or the fall down the stairway. Finally, Dr. Brechner testified that the doctors treating Patient A prescribed narcotics for a legitimate medical purpose, to treat her pain, and not to maintain her condition as an addict.

Also, the Respondent testified that he had begun treating Patient A at the request of Dr. Roth in 1983. Dr. Skinner testified extensively about the acute pain incidents experienced by Patient A through 1988, the consulting physicians' diagnoses resulting from these incidents, and the various narcotic and non-narcotic treatment regimen implemented to control her pain. He also stated that there was no evidence that drug intoxication caused any of Patient A's acute events, and that he had made an extra effort to insure her lack of toxicity throughout his treatment of her. Further, Dr. Skinner testified that all narcotics were either administered in the hospital or under the supervision of a private duty nurse selected by him from the nursing staff of the Chemical Dependency Center at Saint John's Hospital, and that the nurses were familiar with Patient A's case, her tolerances, and with treating patients who had Patient A's type of problems. As a result of his treatment of Patient A, Dr. Skinner concluded that she was not an addict: "She did not demonstrate typical findings of addiction behavior * * * never did she evidence toxicity, never did she evidence any abstinence withdrawal syndrome, and never did she evidence, while under my care at home or in the hospitals, any evidence of street-like drug seeking behavior." He also stated that, given Patient A's medical condition, he did not believe that he over-prescribed controlled substances to her. Further, he testified that in prescribing medications to Patient A, he would taper her off the medicines to try to control her tolerance levels. He strongly denied prescribing controlled substances to Patient A to maintain an addiction, stating: "if it [is] your contention that I was maintaining an addict, what motive would I possibly have for that? It's against all the training that I have; it's against everything that I have done in treating chemical dependency patients."

Also, as to the Respondent's recordkeeping practices, he testified that he was aware that tabloid newspapers would pay clerks at the hospital to copy celebrity patient records, such as Patient A's, and to send the records to the tabloids. Therefore, the Respondent stated he was careful in his records to document conditions and prescriptions

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made to Patient A, while remaining in compliance with federal laws of confidentiality.

As to his future practice, the Respondent stated that if he encountered a medically complex patient similar to Patient A, he would refer that patient to a chronic pain management specialist. He also testified concerning his current practice and the need for his DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a)(4) and 823(f), the Deputy Administrator may revoke or suspend the Respondent's DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor two, the Respondent's "experience in dispensing * * * controlled substances," and factor four, the Respondent's compliance with "Federal, State, or local law," the Government contends that during March 1986 through October 1988, the Respondent prescribed controlled substances in the treatment of Patient A not for a legitimate medical purpose and not in the usual course of his professional practice, in violation of State and Federal law. Specifically, the Government argues that controlled substances were prescribed to Patient A during these periods to maintain her addiction, and that the amount of narcotics prescribed far exceeded what Patient A needed for pain relief.

An "addict" is defined in 21 U.S.C. 802(1) as "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to [one's] addiction." There was no dispute that very high does of narcotic analgesics were administered to Patient A, but the evidence also demonstrated that she had a high tolerance to the controlled substances and required this dosage to effectively treat her pain. Patient A's medical records and the statements and testimony of medical experts established that Patient A had several injuries and was plausibly experiencing severe and chronic pain.

Further, the evidence did not adequately establish that Patient A was an "addict." No evidence was presented to show that Patient A had acted to "endanger the public morals, health, safety, or welfare," or that she had a compulsion to use drugs, had lost control over the drugs, or that she continued to use the drugs in spite of adverse consequences. Also, medical testimony was presented to establish that, although considered, there was no evidence of abstinent syndrome, slurred speech, inability to have cognitive speech, nor clinical or laboratory evidence of toxicity. However, there was expert testimony to establish that use of the controlled substances helped Patient A to function and participate in her professional activities in spite of chronic pain. Although the Respondent did not deny that Patient A had experienced chemical dependency for the control of her pain, he did testify that he was not prescribing controlled substances to Patient A to maintain an addiction, for she had not presented any addictive behavior to him. Therefore, the Deputy Administrator concurs with Judge Tenney's finding that the "preponderance of the evidence demonstrates that although Patient A was prescribed a large amount of controlled substances, these were prescribed by Dr. Skinner for a legitimate medical purpose and in the usual course of his professional practice."

The Government also asserted that the Respondent's practices violated California Health and Safety Code Sections 11153 and 11154. Pursuant to Section 11153(a), a "prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice," and a prescription issued "for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment * * * but for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use" would not be a legal prescription pursuant to this section. Section 11154 provides in relevant part that "[e]xcept in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person * * * which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance * * * ."

The Respondent asserted that he had prescribed controlled substances to Patient A in good faith, and that such prescribing was an absolute defense to an allegation of violation of these State law provisions. Dr. Ling testified that he accepted that the Respondent believed Patient A was in pain, and that he was treating her in good faith. Dr. Margoles also testified to the Respondent's good faith treatment of Patient A.

The Deputy Administrator agrees with the conclusion of Judge Tenney, that the Respondent did not violate these State code provisions. See *People* v. *Lonergan*, 219 Cal. App. 3d 82, 90 (1990) (acting in "good faith," as defined by California Health and Safety Code 11210, exempts a physician from criminal liability under the provision of 11153). In response to the Government's exceptions relevant to the standard applicable in this administrative proceeding, the Deputy Administrator also finds that the preponderance of the evidence was against a finding that Patient A was an "addict", and supports the conclusion that the Respondent had prescribed controlled substances to Patient A for a legitimate medical purpose, treating her pain, while acting in the usual course of his professional practice. Thus, the evidence does not support a finding that the Respondent violated the cited State law.

Next, the Government asserted that from April 1987 through November 1988, the Respondent performed detoxification or maintenance treatment of a narcotic drug-dependent patient without obtaining a registration for that purpose, in violation of Federal law. Pursuant to 21 U.S.C. 802(30), "detoxification treatment" is—

> the dispensing for a period not in excess of one hundred and eighty days of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

Further, the statute defines "maintenance treatment" as the dispensing, "for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs." 21 U.S.C. 802(29). However, the applicable implementing regulation states in pertinent part:

> This section is not intended to impose any limitations on a physician * * * to administer or dispense narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or * * * to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

21 CFR 1306.07(c).

The preponderance of the evidence supports a finding that the Respondent was tapering the drugs prescribed to Patient A after acute pain resolved. Dr. Ling, as well as others, testified that such tapering would be appropriate under such circumstances. Further, the record does not establish that Patient A experienced "adverse physiological or psychological effects incident to withdrawal" nor that, in fact, Patient A exhibited behavior consistent with the finding that she was an "addict." Therefore, the Deputy Administrator agrees with Judge Tenney, that the "Respondent made a reasonable effort to manage the patient's intractable pain and limit the patient's use of controlled substances in terms of treatment of [Patient A's] other medical conditions, and did not prescribe controlled substances to her primarily to wean her from dependence on narcotic analgesics." Thus, the Respondent was not maintaining Patient A's addiction nor detoxifying Patient A without a prior registration.

Finally, the Government argued that from March 1986 through October 1988, the Respondent failed to keep adequate medical records of his treatment of Patient A, and thus, his prescriptions were not issued for a legitimate medical purpose nor in the usual course of professional practice in violation of 21 CFR 1306.04, and California Health and Safety Code Sections 11168, 11190, and 11191. Yet the Government failed to cite to any specific inadequacies of the Respondent's records in either their proposed findings of fact or in the exceptions filed to the Administrative Law Judge's recommended decision.

Pursuant to 21 CFR 1304.03(c), a "registered individual practitioner is not required to keep records of controlled substances in Schedules II, III, IV, and V which are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment of an individual." Further, a "registered individual practitioner is not required to keep records of controlled substances listed in [Schedules II through V] which are administered in the lawful course of professional practice unless the practitioner regularly engaged in the dispensing or administering of controlled substances and charges patients, either separately or together with charges for other professional services, for substances so dispensed or administered." 21 CFR 1304.03(d). Here, the Respondent prescribed controlled substances to Patient A, but the record does not indicate that he "regularly dispensed" those substances to her nor that he prescribed them "in the course of maintenance or detoxification treatment." The Deputy Administrator thus agrees with Judge Tenney's conclusion that "the Government failed to prove that Respondent kept inadequate records. No violation of the Federal statute is found."

As for violations of State law, California Health and Safety Code Section 11190 provides that a practitioner who issues a prescription of a controlled substance classified in Schedule II must make a record for each transaction which shows the name and address of the patient, the date of the transaction, the "character, including the name and strength, and quantity of controlled substances involved", and the pathology and purpose for which the prescription was issued. The Government did not cite to any specific instances where the Respondent failed to provide this required information. Thus, after reviewing the record, the Deputy Administrator agrees with Judge Tenney's conclusion that the "DEA did not prove that there were recordkeeping violations by a preponderance of the evidence."

As to factor five, "such other conduct which may threaten the public health and safety," the Government argued that the Respondent's pattern of prescribing to Patient A caused a threat to the public health and safety. As Judge Tenney noted, this is an unusual case for it involved the Respondent's prescribing practices for a single patient, and no evidence was provided to show a pattern of excessive prescribing to any other patients. Further, as to that single patient, the Deputy Administrator concurs with Judge Tenney's finding that the "overriding purpose of [the] Respondent's prescribing practices was the treatment of Patient A's pain," a legitimate medical purpose. In the balance, the Deputy Administrator finds that it is in the public interest for the Respondent to retain his DEA Certificate of Registration.

However, the Deputy Administrator notes with concern the large quantities of controlled substances prescribed to Patient A over an extended period of time. Yet the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. Given this dispute, the Deputy Administrator is reluctant to conclude that the Respondent's prescribing of controlled substances to Patient A lacked a legitimate medical purpose or was outside the usual course of professional practice. It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law. Here, the preponderance of the evidence established that the Respondent so acted.

Therefore, the Deputy Administrator finds that the public interest is best served by taking no action with respect to the continued registration of the Respondent. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 21 CFR 0.100(b) and 0.104, hereby orders DEA Certificate of Registration AS7287534, issued to William F. Skinner, M.D., be, and it hereby is, continued, and that any pending applications be, and they hereby are, granted. This order is effective January 8, 1996.

Dated: November 30, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-29770 Filed 12-6-95; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

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SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 22, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–95–2). Background records and input and source documents for applied human nutrition projects.

2. Department of Energy, Superconducting Super Collider Project Office (N1–434–95–4). Administrative, routine facilities, and interim construction records associated with the Superconducting Super Collider Project.

3. Department of Health and Human Services, Indian Health Service (N1–513–94–1). Comprehensive schedule of major electronic data systems.

4. Department of the Interior, Bureau of Reclamation (N1–115–94–5). General administrative records pertaining to economics, repayment, and water sales and rights.

5. Department of the Interior, Bureau of Reclamation (N1–115–94–6). General administrative records pertaining to land operations and realty functions.

6. Department of Justice, Immigration and Naturalization Service (N1–85–96–1). Service Center receipt files.

7. Department of State, Bureau of Economic and Business Affairs (N1–59–94–36). Duplicative records maintained in all bureau offices.

8. Department of State, Bureau of Diplomatic Security (N1–59–94–43). Routine, facilitative, and duplicative records. Policy records are scheduled as permanent.

9. The Administrative Conference of the United States (N1–451–96–1). Unrecoverable electronic roster and unidentified/uncaptioned still photographs.

10. Board of Governors of the Federal Reserve System (N1–82–95–1). Comprehensive schedule for the Federal Open Market Committee.

11. Bureau of Alcohol, Tobacco, and Firearms (N1–436–96–1). Requisition requests for firearms explosives forms.

12. Pension Benefit Guaranty Corporation (N1–465–94–1). Special project or task force case files that are non-precedent in nature.

13. Tennessee Valley Authority (N1–142–93–13). Reduction in retention period for employee rehabilitation case files.

14. Tennessee Valley Authority (N1–142–93–17). Employee service surveys and suggestions.

15. Tennessee Valley Authority (N1–142–95–2). Heavy equipment contract files.

16. Tennessee Valley Authority (N1–142–95–7). Oscillogram and transient recorder record created in monitoring power generation equipment and facilities.

Dated: November 28, 1995.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 95–29854 Filed 12–6–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Challenge and Advancement Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference of the Challenge and Advancement Advisory Panel (Design Review Section) to the National Council on the Arts will occur from 1 p.m. to 3 p.m. on December 12, 1995 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman on June 22, 1995 these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabiné, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 1, 1995.

Yvonne M. Sabiné,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–29793 Filed 12–6–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming NSF Clearance Officer of (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the propose collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send Comments to Herman Fleming, Clearance Officer, National Science Foundation 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by December 20, 1995.

Proposed Project: Fastlane Baseline Data Collection.

Abstract: Information will be collected from faculty and administration at 21 colleges and universities. The purpose of the data collection is to establish baseline measures of applicant burden and customer perceptions about the NSF and Federal grant application process. The baseline measures will be used in future years to measures the effect of Fastland (NSF's electronic proposal preparation system) and will provide customer input to the system design. The data will also be used by NIH and the Department of Energy for similar purposes.

Respondents/Burden hours: 320 respondents (16 individuals at 20 institutions) will be interviewed for about one-hour each.

Dated: November 30, 1995.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 95–29811 Filed 12–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Exemption

In the Matter of: Nebraska Public Power District (Cooper Nuclear Station).

I.

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46, which authorizes operation of the Cooper Nuclear Station (CNS) at power levels not in excess of 2381 megawatts thermal. The facility consists of a boiling water reactor at the licensee's site in Nemaha County, Nebraska. The operating license provides, among other things, that CNS is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

The licensee requested, in its application dated May 13, 1994, an exemption from the pressure test requirements of Section III.D.2(b)(ii) of Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors," to 10 CFR Part 50 (Appendix J to 10 CFR Part 50). The staff discussed the details of the proposed exemption with the licensee in a telephone conference call on September 28, 1995. The proposed exemption would allow the licensee to leak test the personnel air lock at CNS at a test pressure less than P_a (the calculated peak containment internal pressure resulting from the containment design basis accident), under certain conditions. The reduced pressure test of the air lock would be conducted as the first of two tests during a restart from refueling or cold shutdown, prior to entry into an operational mode requiring containment leaktight integrity by the CNS Technical Specifications (TSs). As stated in CNS TS 4.7.A.2.f.5, for periodic leakage testing of the personnel air lock, P_a is 58 psig and the reduced test pressure is 3 psig.

This leakage test is part of the Type B tests required by Appendix J to 10 CFR Part 50 to verify containment integrity. Because an air lock allows entry into the containment and is part of the containment pressure boundary, excessive leakage through the air lock could compromise containment integrity. The air lock consists of an inner and outer door and the leakage test is performed by pressurizing the space between the doors.

Section III.D.2 of Appendix J to 10 CFR Part 50 specifies the required periodic retest schedule for Type B tests, including testing of air locks. Pursuant to Section III.D.2(b)(ii), licensees are required to leakage test air locks, opened during periods when containment integrity is not required by the TSs, at the end of such periods. This section applies to testing of air locks during restart from refueling or cold shutdown because the CNS TSs do not require containment integrity for either of these operational modes. This section states that the air lock test shall be performed at a pressure that is not less than P_a.

The proposed exemption is concerned with Section III.D.2(b)(ii); however, there are two other sections in Appendix J which have requirements on testing air locks. Section III.D.2(b)(i) requires an air lock test every 6 months at a test pressure of P_a and Section III.D.2(b)(iii) requires a test every 3 days when the air lock is used during a period when containment integrity is required by the TSs. The latter section requires the test pressure to be P_a, or the test pressure specified in the TSs, which for CNS is specified as 3 psig in TS 4.7.A.2.f.5.

The licensee stated in its application that it currently tests the personnel air lock twice during the restart of the plant for power operation from refueling or cold shutdown: (1) Prior to the reactor being taken critical, or the reactor water temperature being above 100°C (212°F), and (2) after the last entry into containment for leak inspection during restart. The time between the two tests is about 24 to 48 hours, and the second test is at low reactor power prior to entry into the run mode, the full power mode of operation.

The first test is in accordance with Section III.D.2(b)(ii) and is performed at the conclusion of the period when containment integrity is not required by the TSs. This test is conducted prior to entry into an operational mode requiring containment integrity. The second test is in accordance with Section III.D.2(b)(iii) and is performed at 3-day intervals while the air lock is being used when containment integrity is required. As stated above, in accordance with this section, the second test could be conducted at a test pressure of 3 psig at CNS, because this pressure is stated in TS 4.7.A.2.f.5. However, because the licensee also performs the second test to meet the 6-month interval requirement in Section III.D.2(b)(i), the second test is conducted at P_a.

The proposed exemption would not change the number of air lock tests for the restart to power operation for CNS, the manner in which the second test is

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conducted, the time when the tests would be run, nor the acceptance criteria for the tests. The proposed exemption also would not change the requirements of Section III.D.2(b)(i) regarding the 6-month periodic test of the air lock at P_a, nor the existing CNS safety limits, safety settings, power operations, or effluent limits.

III.

Pursuant to 10 CFR 50.12(a), "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and for which special circumstances identified in 50.12(a)(2) are present.

The licensee is proposing to conduct the first air lock test during restart at a test pressure of 3 psig, which is less than P_a, which is not presently allowed by Section III.D.2(b)(ii). The air lock leakage measured at the reduced test pressure would be extrapolated to a value consistent with P_a, then that value would be compared to the acceptance criteria in Appendix J for Type B tests to confirm that containment integrity is verified. If containment integrity is verified, the measured air lock leakage is considered acceptable.

For CNS, by testing the air lock at reduced pressure of 3 psig, a strongback (structural bracing) would not have to be installed on the inner air lock door. During the test, the space between the inner and outer doors is pressurized. The strongback is needed when the test pressure is P_a because the pressure exerted on the inner door during the test is in a direction opposite to the pressure on the inner door during an accident, and the test pressure is sufficiently high to damage the inner door without the strongback. The reduced pressure test is conducted at a pressure low enough such that the strongback is not needed to protect the inner door.

When no maintenance or repairs have been performed on the air lock that could affect its sealing capability and the periodic 6-month test at P_a has been performed successfully, there is no reason to expect the air lock to leak excessively because it has been opened during a plant shutdown or refueling outage. When the air lock is tested at a pressure less than P_a in preparation for restart from refueling or cold shutdown, the air lock would have been successfully tested at P_a within the previous six months.

Accordingly, the Commission concludes that the licensee's proposed exemption to conduct the first air lock test during the restart from refueling or cold shutdown (when the air lock was opened while containment integrity was not required by the TSs) at the reduced pressure of 3 psig in CNS TS 4.7.A.2.f.5 is acceptable, provided no maintenance or repairs have been performed on the air lock which would affect its sealing capability since the last 6-month test required by Section III.D.2(b)(i) of Appendix J. Section III.D.2(b)(i) requires a test of the air lock at not less than P_a every 6 months since the initial fuel loading and this requirement is not being changed by this exemption. If maintenance or repairs have been performed on the air lock affecting its sealing capability since the last 6-month test, the first test prior to entering a condition which requires containment integrity must meet the test pressure requirements of Section III.D.2(b)(ii) and be conducted at a test pressure not less than P_a.

Although the licensee conducts the second air lock test during restart at P_a to meet Section III.D.2(b)(i) and thus begin the 6-month interval for air lock tests during the power operating cycle, this exemption does not require that the second test be conducted at P_a. The entry into an operational mode which requires containment integrity by the TSs must be based on an assurance that the containment has such integrity. This assurance can not rely on a test to be conducted hours or days in the future after the operational mode has been entered, unless the proper test can only be conducted after entering the operational mode (i.e., the proper conditions for the test do not exist in the prior mode). An air lock test at P_a could be conducted before entering the operational mode requiring containment integrity and has been conducted in this manner in the past at CNS. Therefore, in approving this exemption to allow the first air lock test during restart to be conducted at the reduced test pressure of 3 psig, the staff does not rely on the second test being conducted at P_a. The method used to correlate the reduced pressure leakage rates to the full pressure leakage rates shall be in accordance with the NRC staff's safety evaluation and the Franklin Research Center technical evaluation report enclosed with the exemption of September 3, 1982.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have been identified in the licensee's application dated May 13, 1994. The purpose of Appendix J to 10 CFR Part 50 is to ensure that the containment leaktight integrity can be verified periodically throughout the service lifetime of the containment (including the air lock) so as to maintain containment leakage within the limits specified in the design basis accident analyses that were part of the basis for licensing CNS. The proposed alternative test method is sufficient to achieve the underlying purpose of the regulation in that it provides adequate assurance of the leaktight integrity of the air lock, and thus of the containment.

Consequently, the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

IV.

Based on the findings and conclusions above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee in its letter dated May 13, 1994, is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and has present special circumstances which are identified in 50.12(a)(2). The Commission hereby grants to the licensee an exemption from the requirements in Section III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, to allow reduced pressure testing of the personnel airlock in accordance with TS 4.7.A.2.f.5, prior to entry into operational modes requiring containment integrity, provided there has been no maintenance or repair of the air lock that could affect its sealing capability since the last 6-month test of the air lock.

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on November 6, 1995 (60 FR 57250).

For further details with respect to this action, see the licensee's request for exemption dated May 13, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the Auburn Public Library, 118 15th Street, Auburn, NE 68305.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of November 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29812 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–219]

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The proposed amendment would amend paragraph 2.C.(5) of Facility Operating License DPR–16 to eliminate the administrative process associated with obtaining separate NRC approvals for reviewing inspection results and obtaining restart authorization prior to the end of each refueling outage. In addition, the phrase "once per 24 months" has been changed to "per refueling outage."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 26, 1995,

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which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 30th day of November 1995.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29813 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237, 50–249, 50–254, 50–265, 50–373, and 50–374]

Commonwealth Edison Company and Midamerican Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–19, DRP–25, DRP–29, DRP–30, NPF–11, and NPF–18 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois, Quad Cities Nuclear Power Station, Units 1 and 2, located in Dixon County, Illinois, and LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would change the technical specifications of these plants to incorporate 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors", Option B.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

10 CFR 50, Appendix J has been amended to include provisions regarding performance-based leakage testing requirements (Option B). Option B allows plants with satisfactory Integrated Leak Rate Testing (ILRT) performance history to reduce the Type A testing frequency from three tests in ten years to one test in ten years. For Type B and Type C tests, Option B allows plants to reduce testing frequency based on the leak rate test history of each component. In addition, Option B establishes controls to ensure continued satisfactory performance of the affected penetrations during the extended testing interval. To be consistent with the requirements of Option B to 10 CFR 50, Appendix J, ComEd proposes to include appropriate changes to the Technical Specifications that incorporate the necessary revisions associated with Option B of 10 CFR 50, Appendix J.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified by Option B to 10 CFR 50, Appendix J. The proposed changes are consistent with the current plant safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments to current Technical Specification requirements, but are based on the requirements specified by Option B to 10 CFR 50, Appendix J. Any such changes are consistent with the current plant safety analyses and have been determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters associated with containment integrity remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems affecting the leak rate integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence; therefore, the probability of any accident previously evaluated is not increased by this proposed amendment which incorporates the requirements of Option B to 10 CFR 50, Appendix J. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendments to any such systems that affect the leak rate integrity are consistent with the current requirements specified within the Technical Specifications. The proposed changes to any Technical Specification limiting condition for operation or surveillance requirement maintain an equivalent level of reliability and availability for all affected systems. Therefore, the proposed amendment does not increase the consequences of any accident previously evaluated as the probability of the affected systems associated with leak rate integrity, from performing their intended function, is unaffected by the proposed limiting conditions for operation or surveillance requirements.

There is no change to the consequences of an accident previously evaluated because maintaining leakage within the analyzed limit assumed for any associated accident analyses does not adversely affect either the on-site or off-site dose consequences resulting from an accident. In addition, containment leakage is not an accident initiator. As such, there is no adverse impact on the probability of accident initiators. Thus, there is no significant increase in the probability of any previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Option B of 10 CFR 50, Appendix J specifies, in part, that a Type A test which measures both the containment system overall integrated leakage rate at the containment pressure and system alignments assumed during a large break loss of coolant accident (LOCA), and demonstrates the capability of the primary containment to withstand an internal pressure load, may be conducted at a periodic interval based on the performance of the overall containment system. The acceptable leakage rates are specified in the plant's Technical Specifications. For Type B and Type C tests, intervals are proposed for establishment based on the performance history of each component. Acceptance criteria for each component is based upon demonstration that the sum leakage rates at design basis pressure conditions for applicable penetrations, is within the limit specified in the Technical Specifications.

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified in Option B to 10 CFR 50, Appendix J. The proposed changes are consistent with the current plant safety analyses. Some minor curtailments of current Technical Specification requirements, associated with containment integrity are based on generic guidance or similarly approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the testing of components at the station; however, these are in accordance with the current plant safety analyses, and provide for appropriate testing or surveillance that are consistent with Option B to 10 CFR part 50, Appendix J. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current plant safety analyses.

The proposed amendment has been reviewed for acceptability at the stations considering similarity of system or component design affecting containment integrity. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect corresponding changes associated with Option B to 10 CFR part 50, Appendix J and improvements in technique or frequency of leak rate testing performance. The proposed changes maintain at least the present level of operability of any such system that affects plant containment integrity. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that affect plant leak rate integrity related to the proposed amendment, are not assumed in any plant safety analysis to initiate any accident sequence. In addition, the proposed surveillance requirements for any such affected systems are consistent with the current requirements specified within the Technical Specifications and are consistent with the requirements of Option B to 10 CFR part 50, Appendix J. The proposed surveillance requirements maintain an equivalent level of reliability and availability of all affected systems and therefore, does not increase the consequences of any previously, evaluated accident. As such, the probability of the affected systems, associated with leak rate test integrity, from performing their intended function, is unaffected by the proposed limiting conditions for operation and surveillance requirements.

(3) Involve a significant reduction in the margin of safety because:

The provisions specified in Option B to 10 CFR part 50 Appendix J allows changes to Type A, Type B and Type C test intervals based upon the performance of past leak rate tests. The effect of extending containment leakage rate testing intervals is a corresponding increase in the likelihood of containment leakage.

The degree to which intervals can be extended is a direct function on the potential effect on existing plant safety margins and the public health and safety that can occur due to an increased likelihood of containment leakage.

Changing Appendix J test intervals from those currently provided in the Technical Specification to those provided for in 10 CFR part 50, Appendix J, Option B, slightly increases the risk associated with Type A, Type B, and Type C specific accident sequences. Historical data suggests that increasing the Type C test interval can slightly increase the associated risk; however, this is compensated by the corresponding risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. In addition, when considering the total integrated risk which includes all analyzed accident sequences, the risk associated with increasing test intervals is negligible.

ComEd proposes to revise the Technical Specifications to be consistent with those provisions specified in Option B of 10 CFR part 50, Appendix J. The proposed changes are consistent with current plant safety analyses. In addition, these proposed changes do not involve revisions to the design of the station. As such, the proposed individual changes will maintain the same level of reliability of the equipment associated with containment integrity, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting plant leak rate integrity, will remain within their acceptance limits. Therefore, the proposed changes provide continued assurance of the leakage integrity of the containment without adversely affecting the public health and safety and as such, will not significantly reduce existing plant safety margins.

The proposed amendment to the Technical Specifications implements present requirements, or the requirements in accordance with the guidelines set forth in Option B to 10 CFR part 50, Appendix J. The proposed changes have been evaluated and found to be acceptable for use at the stations based on system design, safety analysis requirements, and operational performance. Since the proposed changes are based on NRC accepted provisions that are applicable at the stations and maintain necessary levels of system or component reliability affecting plant containment integrity, the proposed changes do not involve a significant reduction in the margin of safety.

The performance-based approach to leakage rate testing concludes that the impact on public health and safety due to revised testing intervals is negligible. The proposed amendment for the stations will not reduce the availability of systems associated with containment integrity when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois for Dresden Station, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois for LaSalle County Station, and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities Station. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

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As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 14, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois for the Dresden Station, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois for LaSalle County Station, and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities Station.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29814 Filed 12–06–95; 8:45 am]

BILLING CODE 7590–01–P

Application for a License to Import Nuclear Waste

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, Date of application, Date received, Application number	Description of material		End use	Country of origin
	Material type	Total quantity		
Nuclear Sources & Services, Inc. Sept. 22, 1995 Oct. 18, 1995 IW001	Low-level radioactive waste ...	940 cu. ft. (over 5 yr.)	Management and Disposal	Mexico.

Dated this 28th day of November 1995 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 95–29816 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–M

Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, Date of application, Date received, Application number	Description of material		End use	Country of destination
	Material type	Total quantity		
Poco Graphite, Inc ..... Nov. 6, 1995 Nov. 13, 1995 XMAT0391	Nuclear Grade Graphite	1,200,000 Kilograms (over 5 yr.).	Non-Nuclear Commercial Products.	So. Korea

Dated this 28th day of November 1995 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 95–29815 Filed 12–6–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1082; Docket No. A96–7

Twin Brooks, South Dakota 57269 (Josephine Lambrechts, Petitioner): Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued December 1, 1995.

Docket Number: A96–7.

Name of Affected Post Office: Twin Brooks, South Dakota 57269.

Name(s) of Petitioner(s): Josephine Lambrechts.

Type of Determination: Closing

Date of Filing of Appeal Papers: November 24, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by December 8, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 24, 1995—Filing of Appeal letter
December 1, 1995—Commission Notice and Order of Filing of Appeal

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December 19, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
December 29, 1995—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
January 18, 1996—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
February 2, 1996—Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
February 9, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
March 23, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–29789 Filed 12–06–95; 8:45 am]
BILLING CODE 7715–FW–P

[Order No. 1091; Docket No. A96–6]

Clarkia, Idaho 83812; (Jennie Carlen, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: December 1, 1995

Docket Number: A96–6
Name of Affected Post Office: Clarkia, Idaho 83812.
Name(s) of Petitioner(s): Jennie Carlen, et al.
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: November 24, 1995.
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by December 8, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,
Secretary.

Appendix

November 24, 1995—Filing of Appeal letter
December 1, 1995—Commission Notice and Order of Filing of Appeal
December 19, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
December 29, 1995—Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
January 18, 1996—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
February 2, 1996—Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
February 9, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
March 23, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–29788 Filed 12–7–95; 8:45 am]
BILLING CODE 7715–FW–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.
ACTION: Notice of amendment and addition of new routine use for an existing system of records.

SUMMARY: This document publishes notice of modifications to Privacy Act system of records USPS 050.005, Finance Records—Accounts Receivable Files. The proposed modifications add a new routine use and restore an earlier removal from the description of the categories of individuals covered by the system.

The routine use allows disclosure of limited information to a Postal Service permit holder or presenter of a bulk mailing when the customer on whose behalf the mailing was made has submitted a nonsufficient funds check for payment of postage. The categories of individuals segment is amended to restore the previously removed category of customers whose checks are returned by the bank.

This notice complies with subsection (e)(11) of the Privacy Act, which requires agencies to publish advance notice of any new use of information in a system of records.

DATES: Any interested party may submit written comments on the proposed amendments and addition. This proposal will become effective without further notice on January 16, 1996, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: Privacy Act system of records USPS 050.005, Finance Records—Accounts Receivable Files, contains records used to facilitate the collection of debts owed to the Postal Service. It is proposed that the system be amended to add routine use No. 8 and to replace in the categories of individuals segment the category of customers whose checks are returned by the bank.

Proposed routine use No. 8 permits the Postal Service to disclose to a permit holder or presenter of a mailing information concerning a nonsufficient funds check used by the permit holder or presenter to pay postage for a customer on whose behalf a mailing was made. When a permit holder or presenter of a mailing submits a mailing to the Postal Service, the mailing may have been prepared for an individual or organization other than the permit holder or presenter. In such cases, the permit holder or presenter of the mailing may, for payment of postage, submit the check of the individual or organization for which the mailing is prepared. Currently, the Postal Service pursues collection for nonsufficient funds checks directly from the permit holder or presenter of the mailing. Under a new policy, the Postal Service will pursue collection for nonsufficient funds check directly from the check writer. Post offices may then refuse to accept further check payment of postage and fees by that check writer. For that transaction and future transactions, it might be necessary to disclose to the permit holder or presenter of the mailing that the individual or organization for whom the mailing was made has submitted a check for nonsufficient funds. New routine use No. 8 permits such disclosure.

The proposed routine use is compatible with the purpose for collecting the information, that is, facilitating debt collection and preventing the future acceptance of bad checks from repeat offenders. Because the disclosures allowed by this routine use will enable the Postal Service to protect itself from bad-check writers, the routine use is clearly compatible with the purpose of USPS Privacy Act system 050.005.

The categories of individuals segment of the system notice formerly included the language "customers whose checks are returned by the bank." That language, intended to cover records that include existing local lists of such customers, was removed in an administrative error. This notice restores the language.

All records within USPS Privacy Act system 050.005 continue to be kept in a secured environment, with automated data processing (ADP) physical and administrative security and technical software applied to data on computer media. Paper records are kept in a secured area of the post office and are made available internally on an official need-to-know basis. Contractors who maintain data collected by USPS Privacy Act system 050.005 are subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 050.005 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43666–43667) and was amended in the **Federal Register** on December 22, 1994 (59 FR 66061–66062). The Postal Service proposes amending USPS Privacy Act system 050.005 as shown below.

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable Files, 050.005.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ] Postal Service debtors such as the following: Contractors who fail either to provide equipment, supplies, or services to the Postal Service as agreed or to purchase property from the Postal Service as agreed; customers who have written checks returned by the bank; payees of money orders who make an erroneous payment, improper payment, or overpayment; employees or former employees who make an erroneous payment, improper payment, or overpayment; employees, former employees, or private parties who lose or damage Postal Service property through carelessness, negligence, or malice.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[CHANGE TO READ] Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

[ADD THE FOLLOWING]

8. Disclosure of information about postal customers who write nonsufficient funds checks for postal services may be made to the permit holder or presenter of a mailing being made on the customer's behalf. Disclosure is limited to the identity of the customer, the date of the mailing, and the date and amount of the check.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 95–29756 Filed 12–6–95; 8:45 am]
BILLING CODE 7715–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21560; File No. 812–9660]

Connecticut General Life Insurance Company, et al.

November 30, 1995.

AGENCY: Securities and Exchange Commission ("SEC") or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Connecticut General Life Insurance Company ("CG Life"), CG Variable Life Insurance Separate Account A ("Separate Account"), and CIGNA Financial Advisors, Inc. ("CFA").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4) thereunder.

SUMMARY OF APPLICATION: Applicants request an order permitting the Separate Account and any separate accounts established in the future by CG Life to support certain group variable universal life insurance contracts to deduct from premium payments received an amount that is reasonably related to the increased federal tax burden of CG Life resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on July 12, 1995. An amended and restated application was filed on October 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o Michael Berenson, Esq., Jorden Burt Berenson & Johnson LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management) at (202) 272–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. CG Life, a stock life insurance company organized in Connecticut, is an indirect wholly-owned subsidiary of CIGNA Corporation ("CIGNA").

2. The Separate Account was established by CG Life under the laws of the state of Connecticut, and is registered as a unit investment trust

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under the 1940 Act. The assets of the Separate Account are owned by CG Life, but are held separately from the other assets of CG Life and are not chargeable with liabilities incurred in any other business operation of CG Life. The income, capital gains and capital losses incurred on the assets of the Separate Account are credited to or charged against the assets of the Separate Account, without regard to the income, capital gains or capital losses arising out of any other business CG Life may conduct.

3. The Separate Account consists of a number of subaccounts, each of which invests exclusively in the shares of one of seven investment portfolios of four investment companies (the "Funds") registered under the 1940 Act. The number and identity of available Funds and investment portfolios may change from time to time.

4. In the future, the Board of Directors of CG Life may establish additional separate accounts (the "Future Accounts") which may serve as funding vehicles for group variable universal life insurance contracts issued by CG Life. The Future Accounts will be organized as unit investment trusts and will file registration statements under the Securities Act of 1933 and under the 1940 Act.

5. CFA will serve as the distributor and principal underwriter of certain group variable universal life insurance contracts (the "Contracts") and any group variable universal life insurance contracts made available in the future (the "Future Contracts") through the Separate Account or Future Accounts. CFA is a wholly-owned subsidiary of CG Life. CFA is registered under the Securities Exchange Act of 1934 as a broker-dealer, and under the Investment Advisers Act of 1940 as an investment adviser. CFA is a member of the National Association of Securities Dealers.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof. Section 848 changed the federal income taxation of life insurance companies by requiring them to capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

7. The amount of expenses that must be capitalized and amortized under Section 848 generally is determined with reference to premiums for certain categories of life insurance and other contracts ("specified contracts"). More specifically, an amount of expenses equal to a percentage of the current year's net premiums (*i.e.*, gross premiums minus return premiums and reinsurance premiums) must be capitalized and amortized for each specified contract. The percentage varies, depending on the type of specified contract in question, in accordance with a schedule set forth in Section 848.

8. The effect of Section 858 is to accelerate the realization of income from insurance contracts covered by that Section and, accordingly, the payment of taxes on the income generated by those contracts.

9. The Contracts and any Future Contracts to which a charge for the federal tax burden related to deferred acquisition costs (the "tax burden charge") will be applied are/will be among the specified contracts. They fall/will fall into the category of life insurance contracts under Section 848 for which 2.05% of the net premiums received must be capitalized and amortized.

10. The increased tax burden resulting from the application of Section 848 may be quantified as follows. For each $10,000 of net premiums received by CG Life under the Contracts in a given year, CG Life may capitalize $2.05 (*i.e.*, 205% of $10,000). $10.25 of that $205 may be deducted in the current year, leaving $194.75 (*i.e.*, $205 minus $10.25) subject to taxation at the corporate tax rate of 35 percent. This works out to an increase in tax for the current year of $68.16 (*i.e.*, 0.35 x $194.75) This increased federal income tax burden will be partially offset by deductions allowed during the next ten years as a result of amortizing the remainder of the $205—$20.50 in each of the following nine years, and $10.25 in year ten.

11. To the extent the capital must be used by CG Life to satisfy its increased tax burden under Section 848, such profits are not available to CG Life for investment. CG Life submits that the cost of capital used to satisfy its increased federal income tax burden under Section 848 is, in essence, its after tax rate of return on capital. Because CG Life seeks an after tax rate of return of 15% on its invested capital,[1] CG Life submits that a discount rate of 15% is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above.

12. Using a corporate tax rate of 35 percent, and assuming a discount rate of 15 percent, the present value of the federal income tax effect of the increased deductions allowable in the following ten years is $35.12. Because this amount partially offsets the increased tax burden, Section 848 imposes an increased tax burden on CG Life equal to a present value of $33.04 (*i.e.*, $68.16 minus $35.12) for each $10,000 of net premiums received under the Contracts.

13 CG Life does not incur incremental federal income tax when it passes on state premium taxes to contract owners because state premium taxes are deductible when computing federal income taxes. In contrast, federal income taxes are *not* tax-deductible when computing an insurer's federal income taxes. Therefore, to offset fully the impact of Section 848, CG Life must impose an additional charge that would make it whole not only for the $33.04 additional federal income tax burden attributable to section 848, but also for the tax on the additional $33.04 itself. This additional charge can be computed by dividing $33.04 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $50.83 for each $10,000 of net premiums, or 0.51% of net premiums.

14. Based on its prior experience, CG Life expects that all of its current and future deductions will be fully taken. CG Life submits that a charge of 0.5% of net premium payments would reimburse it for the impact of Section 848 (as currently written) on its federal tax liabilities. CG Life represents that a 0.5% charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to CG Life of the amortization permitted by Section 848 and the use by CG Life of a discount rate of 15% (which is equivalent to its cost of capital) in computing the future deductions resulting from such amortization.

15. CG Life asserts that it may choose to increase the 0.5% charge if future changes in, or interpretations of, Section 848 or any successor or related provisions result in a further increased tax burden resulting from the receipt of premiums. Such an increase could result from, among other things, a change in the federal corporate income tax rate, a change in the 2.05% figure, or a change in the amortization period.

[1] In determining the after tax rate of return used in arriving at this discount rate, CG Life considered a number of factors including: the cost of capital incurred by its parent, CIGNA; market interest rates; inflation; and the market's perception of how well CIGNA is doing.

As of December 31, 1994, 81% of the capital of CIGNA consisted of equity, with the remainder long-term debt. CIGNA's cost of capital can be determined using the proportions of financing components (i.e., debt and equity) to calculate a weighted average cost of capital. As of August 1995, the average current yield to maturity of CIGNA's outstanding long-term debt issues was 7.67 percent. Using a corporate tax rate of 35 percent, the after tax cost of debt for CG Life is 4.98 percent. An estimate for the cost of equity capital for CIGNA—computed by using the Capital Asset Pricing Model—is 15.8 percent. Using these component costs of capital and their related proportions, the weighted average cost of capital for CIGNA is 13.7% (i.e., [(0.19 × 0.0498) + (0.81 × 0.158)]).

The remaining factors (e.g., interest rates, inflation, and the market's perception of how well CIGNA is doing) are unpredictable and can fluctuate widely over long periods of time, causing the cost of capital to vary at any given time. Taking these factors into account, as well as the analysis above, CG Life has concluded that the 15% cost of capital is appropriate and reasonable to use in calculating the tax burden charge.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit Applicants to deduct form premium pavements received in connection with the Contracts and Future Contracts an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than "sale load" for the purposes of Section 27 of th3 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Sections 27(a)(1) and 27(h)(1), in effect, limit sales load on periodic payment plan certificates to 9% of total payments.

4. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts and any Future Contracts. For example, subject to certain conditions, Rule 6e–3(T)(b)(13)(iii) provides exemptions from Section 27(c)(2) that include permitting the payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity."

5. Rule 6e–(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payment made during the period over the sum of certain specified charges and adjustments, including "[a] deduction for and approximately equal to state premium taxes." Applicants submit that the proposed tax burden charge is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's federal tax burden attributable to premiums received under the Contracts and any Future Contracts.

6. Applicants represent that the requested exemptions from Rule 6e–3(T)(c)(4)(v) are necessary in connection with Applicants' reliance on certain provisions of Rule 6e–(T)(b)(13), particularly on subparagraph (b)(13)(i), which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) if they meet the Rule's alternative limitations on "sales load," as defined in Rule 6e–3(T)(c)(4). Depending on the load structure of a particular contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Applicants acknowledge that a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rule 6e–3(T)(c)(4). Nevertheless, Applicants submit that there is no public policy reason for treating such increased federal tax burden as "sales load."

7. Applicants assert that the public policy which underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments a sales load would in no way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred in this conclusion by excluding deductions for state premium taxes from the Rule 6e–3(T)(c)(4) definition of "sales load."

8. Applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the Commission's intent in adopting Rule 6e–3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in Rule 6e–3(T)(b)(13)(i). Applicants submit that Rule 6e–3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

9. Applicants assert that the language of Section 2(a)(35) suggests that the only charges or deductions intended to fall within the definition of "sales load" are those that are "properly chargeable to sales or promotional activities." Because the proposed tax burden charge will be used to pay costs attributable to CG Life's federal tax liabilities, and such costs are not properly chargeable to sales or promotional activities, Applicants submit that not treating the proposed tax burden charge as sales load is consistent with the purposes intended by the policies of the 1940 Act.

10. Applicants further assert that Section 2(a)(35) excludes from the definition of "sales load" under the 1940 Act deductions from premiums for "issue taxes." Applicants submit that the exclusion of charges for expenses attributable to federal taxes from sales load (as defined in Section 2(a)(35)) is consistent with the policies of the 1940 Act. By extension, Applicants submit, it is equally consistent to exclude such charges, including the proposed tax burden charge, from the definition of "sales load" in Rule 6e–3(T)(c)(4).

11. For these reasons, Applicants assert that deducting a charge from variable life insurance contract premium payments for an insurer's tax burdens attributable to its receipt of such payments, and excluding that charge from sales load, is consistent with the policies of the 1940 Act. Applicants submit that this is because such a deduction is an appropriate charge related to the insurer's tax burden attributable to the premium payments received.

12. Applicants seek the relief requested with respect to Contracts and Future Contracts which may be issued by CG Life. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Future

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Contract to be issued. Such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

13. Applicants assert that the standards of Section 6(c) of the 1940 Act are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. Applicants submit that the requested relief would promote competitiveness in the variable life insurance market by eliminating the need for CG Life to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing efficient use of its resources. Applicants further submit that the delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of CG Life to take full advantage of business opportunities as they arise. Moreover, if CG Life were required to seek exemptive relief repeatedly with respect to the issues addressed in this application, investors would not receive any benefit or additional protection thereby, and might be disadvantaged as a result of increased overhead expenses for CG Life.

Conditions for Relief

Applicants agree to comply with the following conditions for relief.

1. CG Life will monitor the tax burden imposed on it, and undertakes to reduce the tax burden charge to the extent of any significant decrease in tax burden.

2. The registration statement for any Contracts and Future Contracts under which a tax burden charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to CG Life's increase federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

3. The registration statement for any Contracts and Future Contracts under which a tax burden charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return used in calculating such charge, and the relationship of that charge to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder—to permit the deduction of 0.5% of premium payments under the Contracts and any Future Contracts—would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, by delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29830 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21559; File No. 812–9706]

PaineWebber Life Insurance Company, et al.

November 30, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: PaineWebber Life Insurance Company ("PaineWebber Life"), and PaineWebber Variable Annuity Account (the "Account").

RELEVANT 1940 ACT SECTIONS: Approval requested under Section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the Balanced Portfolio ("BP") of the PaineWebber Series Trust ("Trust") for the shares of the Asset Allocation Portfolio ("AAP") of the Trust.

FILING DATE: The application was filed on August 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Mr. Richard J. Tucker, PaineWebber Life Insurance Company, 1200 Harbor Boulevard, Weehawken, New Jersey 07087.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PaineWebber Life is a stock life insurance company organized under California law in 1956. PaineWebber Holdings, Inc., a wholly-owned subsidiary of PaineWebber Group, Inc., owns 100 percent of the stock of PaineWebber Life. The Account, established by PaineWebber Life to fund variable annuity contracts ("Contracts") on December 31, 1992, pursuant to California law, is registered with the Commission as a unit investment trust. The assets of the Account are divided among ten investment divisions ("Divisions"), each of which invests in shares of one of the ten designated portfolios of the Trust, including the BP and AAP, each with its own investment objectives and investment portfolio. The Trust is an open-end diversified management investment company registered under the 1940 Act.[1] Mitchell Hutchins Asset Management, Inc. ("Mitchell Hutchins"), a registered investment adviser under the Investment Advisers Act of 1940, is the investment adviser and administrator for the Trust.

2. PaineWebber Incorporated ("PWI"), a wholly-owned subsidiary of PaineWebber Group, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., acts as principal underwriter for the Contracts.

3. The BP seeks total return while preserving capital by investing in equity securities and by investing no less than 25% of its assets in fixed income securities. The BP pays its investment adviser an annual fee of .75% of average daily net assets. The total assets of the BP as of December 31, 1994, were approximately $12 million. The AAP seeks to provide a high total return with low volatility by allocating investments among equity securities, long- and mid-term debt securities and money market instruments. The AAP pays its investment adviser an annual fee of .75% of average daily net assets as compensation for its services. The total assets of the AAP as of December 31, 1994, were approximately $23.3 million.

4. On July 20, 1995, the Board of Trustees of the Trust ("Board") approved both changing the name and the investment policies of the AAP. The changes will cause the AAP to operate more as a balanced fund in that it would invest in a combination of equity securities, investment grade debt obligations and money market instruments. The AAP name will be changed to the "Balanced Portfolio."

5. Also on July 20, 1995, the Board determined that it was in the best interest of the shareholders of the BP to terminate the sale of shares of that Portfolio, effective July 21, 1995. The Board based its decision on (a) the minimal assets of BP after almost three years of operations; (b) disproportionately high expenses; (c) the investment adviser's indication that the small size of the Portfolio, partially the result of the Portfolio being offered to only one separate account, makes it difficult to make appropriate investment decisions and comply with the diversification requirements applicable to variable insurance products under section 817(h) of the Internal Revenue Code ("Code"); and (d) PaineWebber Life's assertion that because the investment objectives and policies of the BP and the AAP, as recently changed by the Board, are substantially similar, the two Portfolios basically compete for the same investment goals of Contract purchasers. PaineWebber Life was notified of the Board's determination and discontinued accepting premium payments in the Balanced Division.

6. PaineWebber Life proposes that shares of the AAP be substituted for the shares of the BP now held by the Account's Balanced Division. The substitution would be effected at net asset value so that the dollar value of the amount invested in shares of the BP would be the same as the amount invested in shares of the AAP after the substitution. Contract owners will be able to direct their interests in the BP among the remaining eight Portfolios of the Trust ("Remaining Portfolios") if they do not want to move their interests to the AAP.

7. On the date of the substitution, the per share values of each of the Portfolios will be determined in the normal course of business. The shares underlying the contract values in the BP will be redeemed by PaineWebber Life and the net asset values applied to purchase shares of the AAP at net asset value. The investment securities held by the BP will be disposed of and any expense incurred in disposing of the investment securities and effecting substitution will be shared by PaineWebber Life and Mitchell Hutchins. There will be no change in the amount of the Contract owner's cash value as a result of the substitution.

8. The Contracts reserve to PaineWebber Life the right to replace the shares of the Trust held by the Separate Account with shares of another series or another registered investment company, subject to Commission approval. Contract owners were notified that shares of the BP were no longer available as an investment option for purchase or transfer under the Contracts and that PaineWebber Life intended to file this application with the SEC seeking an Order permitting it to effectuate the proposed substitution. Contract owners with allocation instructions on file with PaineWebber Life that currently direct net premiums to the BP have been notified of the discontinuance of the BP as an investment option.

9. Upon receipt of SEC approval of the proposed substitution, Contract owners with Contract values in the BP will be provided a form with which they can elect to transfer their Contract values to one or more of the Remaining Portfolios. Contract owners will be advised that the AAP has an investment objective most similar to the BP in which the Contract owner has values invested. If no instructions are received within 30 days after notice of the request to elect, Contract values in the BP will be transferred automatically to the AAP.

10. The Contracts provide Contract owners the right to transfer part or all of the Contract value from one allocation option to one or more of the remaining options. The Contracts also provide that each transfer in excess of 12 in a calendar year is subject to a $10 charge, which has been waived by PaineWebber Life until further notice. The substitution of the shares of one or more of the Remaining Portfolios for shares of the BP will not be considered a "transfer" for the purpose of the above limitation. Contract owners will not be subject to any charges or costs for the substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits the depositor or trustee of a registered unit investment trust holding the security of a single issuer from substituting another security for such security unless the Commission has approved the substitution. Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Contract owners will not be subject to any additional fees or charges as a result of the substitution. The substitution will not affect any benefits, rights or Contract values under the Contracts nor will it affect the purchase payment dates under the Contracts used in determining the early withdrawal charge. Contract owners will be given notice of the substitution and an opportunity to allocate existing Contract values among the eight Remaining Portfolios as they wish.

3. Since the Account can no longer purchase shares of the BP, with normal redemptions the BP is expected to shrink rapidly. Applicants state that because of the relatively minor amount of total net assets in the BP, the fact that only one separate account had been investing in the BP when the sale of shares was terminated, and the resulting expense level and investment limitations, PaineWebber Life believes investment in the BP is no longer appropriate. Applicants contend that combining the assets of the BP and AAP, and the investment in the Portfolio by three separate accounts, should enhance its asset growth abilities.

4. Applicants state that the diminishing amount of assets in the BP makes it difficult for the investment adviser to make appropriate investments for the Portfolio that will meet the Code's requirement for diversification. Failure to meet the diversification requirement could result in the entire Contract being currently taxable, not just that portion of the Contract that is invested in the non-complying Portfolio. Applicants state that it was determined that it was more important to the interests and the benefit of Contract owners to preserve the tax status enjoyed by Contract owners than to maintain the Portfolio which is no longer available for additional purchase. Applicants also contend that the minimal amount of total net assets available for investment and the termination of the sale of shares diminishes investment opportunities and handicaps Mitchell Hutchins in its

[1] The Trust was established in November 1986 to function as the underlying investment medium for the separate account of an otherwise unaffiliated insurance company and subsequently of a separate account of an affiliate of that insurance company. Those two separate accounts, together with the Account, are the only separate accounts invested in the Trust. The unaffiliated insurance company separate accounts hold shares in all the Portfolios of the Trust except the BP, Fixed Income and Aggressive Growth Portfolios.

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ability to invest in potentially advantageous securities.

5. Applicants state that expenses incurred by the BP have remained relatively high, and a large portion of the BP's expenses is fixed. Applicants represent that the lack of substantial assets in the BP results in high operating expenses that are borne by the Contract owners. The BP's 1994 actual expenses of 1.56% of average total net assets were higher than expenses of 1.03% of average total net assets for the AAP. Applicants contend that in comparing the expenses of the BP and AAP, the asset base of the BP and the increasing asset base of the AAP is a relevant consideration. Applicants assert that the increase in total assets of the AAP resulting from the substitution should result in a lessening of its overall expenses.

6. Applicants state that the AAP offers Contract owners investments compatible with the objectives of Contract owners investing in the BP. Applicants state that management of PaineWebber Life, in consultation with Mitchell Hutchins, studied the investment objectives, policies and restrictions of each of the Remaining Portfolios to form an opinion as to which of the Remaining Portfolios appeared most closely identified with the investment intent of a Contract owner invested in the BP. It was concluded that a Contract owner who had Contract values invested in the BP was primarily interested in a Portfolios with an objective of a stable return while preserving capital. The investment objective of the AAP is to seek a high total return with low volatility, and the recent revision of the investment policies of the BP led to the conclusion that the AAP most closely suits the investment intent of the Contract owner who now has Contract values invested in the BP.

Applicants' Conclusion

For the reasons discussed above, applicants submit that the proposed substitution of shares of the AAP for shares of the BP is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29831 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No IC–21562; File No. 812–9794]

Stagecoach Funds, Inc., et al.; Notice of Application

December 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Stagecoach Funds, Inc. ("Stagecoach Funds"), Stagecoach Inc., Stagecoach Trust, Overland Express Funds, Inc. ("Overland"), Life & Annuity Trust ("Annuity Trust"), Master Investment Portfolio ("MIP"), Master Investment Trust ("MIT"), Managed Series Investment Trust ("MSIT") (collectively, the "Companies"), Wells Fargo Bank, N.A. ("Wells Fargo"), and The Nikko Building Co., Ltd. ("Nikko Building").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit Wells Fargo and Nikko Building to sell their interests in Wells Fargo Nikko Investment Advisors ("WFNIA"), the sub-adviser to certain of the series offered by the Companies, to Barclays Bank PLC ("Barclays"). Without the requested exemption, the Companies would have to reconstitute their boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on October 4, 1995, and amended on December 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Companies, 111 Center Street, Little Rock, Arkansas 72201; Wells Fargo, 420 Montgomery Street, San Francisco, California 94105; Nikko Building, 3–1 Marunouchi, 3-Chrome, Chiyoda-Ku, Tokyo 100, Japan.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Companies are open-end management investment companies registered under the Act, each of which currently offers several series.[1] Wells Fargo, a wholly-owned subsidiary of Wells Fargo & Co., currently serves as investment adviser to each series of the Companies (including the master portfolios in which feeder funds invest, but not the feeder funds themselves).

2. WFNIA is a California general partnership owned 50 percent by Wells Fargo Investment Advisors ("WF Advisors"), a wholly-owned subsidiary of Wells Fargo, and 50 percent by The Nikko Building U.S.A., Inc., a wholly-owned subsidiary of Nikko Building. WFNIA currently serves as sub-adviser to 15 of the 40 active series (the "Sub-Advised Series") offered by the Companies. As of June 30, 1995, the Sub-Advised Series had approximately $3 billion in assets under management, which represented less than 27% of the aggregate assets under management in all active series of the Companies, and approximately 1.6% of the approximately $183 billion in assets that WFNIA had under management.

3. On June 21, 1995, Wells Fargo, Nikko Building, and certain of their affiliates entered into a purchase and assumption agreement (the "Agreement") with Barclays to sell their interests in WFNIA for an aggregate price of approximately $443 million, subject to various adjustments at the time of closing (the "Transaction"). As part of the purchase price, the Agreement also provides for Barclays to make monthly payments to Wells Fargo and its affiliated sellers of .15 percent of the aggregate value of the interests held by retail shareholders of Stagecoach Trust in the LifePath Master Portfolios of MIP ("Installment Payments"), subject to certain continuity conditions.

[1] Certain series of Stagecoach Inc., Stagecoach Trust and Overland are feeder funds in a master/feeder structure and currently invest substantially all of their assets in corresponding master portfolios of MIP, MIT or MSIT.

4. Barclays has indicated an intention to reorganize WFNIA into WF Advisors (which also is being sold to Barclays), which then would be re-named BZW Global Investors. Alternatively, Barclays may maintain WFNIA as a separate subsidiary or combine it with the quantitative group of BZW Asset Management ("BZWAM"), the international management arm of Barclays. Upon completion of the Transaction, BZWAM and WFNIA (or its successor) will have, on a combined basis, approximately $289 billion of assets under management, of which approximately $3 billion, or approximately 1.1%, will represent assets of the Sub-Advised Series. Applicants state that WFNIA or its successor will continue to operate with WFNIA's current management, investment professionals, and resources essentially intact, and that WFNIA or its successor will continue to provide investment advisory services at least comparable to those currently provided by WFNIA to the Sub-Advised Series.

5. The Transaction will result in a "change in control" of WFNIA under the Act. As required by section 15(a)(4) of the Act, the current sub-advisory agreements will terminate upon their assignment. Applicants anticipate that, except as described below, WFNIA or its successor will, subject to the receipt of all necessary board and shareholder approvals and the complete satisfaction of other conditions to the closing of the Transaction, continue to act as sub-adviser to the Sub-Advised Series pursuant to new sub-advisory agreements (the "Proposed Sub-Advisory Agreements"). The Proposed Sub-Advisory Agreements will be identical in all material respects, including the respective fee levels, to the current sub-advisory agreements.

6. Applicants contemplate that WFNIA or its successor will, upon consummation of the Transaction, enter into advisory agreements (the "Proposed Advisory Agreements") with respect to nine of the fifteen Sub-Advised Series, pursuant to which WFNIA or its successor will become the primary investment adviser to such series. Wells Fargo has agreed to resign as primary adviser to these series primarily in recognition of an expectation that, following consummation of the Transaction, these series will be marketed largely through sales channels associated with Barclays. The Proposed Advisory Agreements will be identical in all material respects, including the fee levels, to the current advisory agreements with Wells Fargo. The Proposed Advisory Agreements and the Proposed Sub-Advisory Agreements are referred to as the "Proposed Agreements." In accordance with the requirements of section 15(c) of the Act, each Company's board of directors, including the directors who are not interested persons of the Companies, considered and unanimously approved the Proposed Agreements at a special meeting held on October 10, 1995, after careful consideration of all material elements of the Transaction, including the Installment Payment agreement.[2] Proxy materials have been mailed to shareholders, and shareholder meetings will be convened in early December. The closing of the Transaction is currently scheduled for December 27, 1995, but is subject to a variety of conditions, including the receipt of various regulatory approvals.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75 percent of the board of an investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. In addition, section 2(a)(19)(B)(iii) defines an interested person of an investment adviser to include anyone who has any interest in any security issued by the investment adviser or by a controlling person thereof.

2. The board of directors of each Company is comprised of the same seven individuals. Four of the seven directors of each Company may be considered interested persons of either the predecessor or successor adviser of the Company. Two of these directors are officers of a registered broker-dealer, and another is a limited partner of a government securities dealer. As such, these three directors are affiliated persons of a broker or dealer (the "Broker-Affiliated Directors"), and interested persons of both the predecessor and successor advisers of the Companies.[3] Another director is a shareholder of Wells Fargo & Co., the parent of Wells Fargo, and therefore is an interested person of the predecessor adviser of the Companies. The three remaining directors are not interested persons of either the Companies or the predecessor or successor adviser. Because four of the seven directors of the Companies are interested persons of the predecessor and successor advisers, absent an exemption, applicants would be unable to comply with the requirements of section 15(f)(1)(A).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants believe that the requested exemption is necessary or appropriate in the public interest. Applicants submit that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where a fund's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser or another party to the transaction, and the adviser has a material economic motivation to influence the interested directors. Applicants argue that no such circumstances exist with respect to the Broker-Affiliated Directors and the Transaction. Although the Broker-Affiliated Directors are technically interested persons of Wells Fargo and WFNIA or its successor (the "Advisers"), these directors and the broker-dealers with which they are affiliated are not affiliated persons of the Advisers within the meaning of section 2(a)(3) of the Act, nor are they

[2] Presentations relating to the Transaction were made to the board of directors at three separate board meetings. All of the non-interested directors attended and actively participated in all of these meetings, as did counsel for the non-interested directors and counsel to the Companies. Extensive written materials were provided to the directors in advance of the October 10 in-person meetings at which the new advisory arrangements were approved, and extensive deliberations occurred at these meetings.

[3] The exemption provided by rule 2a19–1 is not available with respect to the two directors who are officers of a broker-dealer because the broker-dealer serves as placement agent or distributor to the Companies (the "Distributor"). The exemption provided by rule 2a19–1 is not available with respect to the director who is a limited partner of a government securities dealer because the dealer engages in government securities transactions with the broker-dealer, as well as with Wells Fargo and Barclays, all of which fall within the definition of "complex" in the rule. Accordingly, this director does not meet the condition specified in the rule.

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controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser, and the broker-dealers do not share any common directors, officers, or employees with the Advisers. Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Sub-Advised Series prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Sub-Advised Series.

5. Applicants believe that the requested exemption is consistent with the protection of investors. WFNIA or its successor will continue to offer services at least comparable to those currently performed by WFNIA, and will be supported by the resources of one of the largest international financial services corporations. WFNIA or its successor will continue operations with WFNIA's current management, investment professionals, and resources remaining essentially intact. The services that WFNIA or its successor will perform under the Proposed Sub-Advisory Agreements will be identical in all material respects to the services currently performed by WFNIA, and the fee levels for such services will remain the same. Finally, applicants state that each series will continue to be subject to all other provisions of the Act designed to protect the interests of investors, including section 15(f)(1)(B), and all four interested directors will continue to be treated as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A).

6. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on a fund. Applicants argue that the SEC should exercise this flexibility in situations such as the proposed Transaction. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of investment company shareholders will be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Transaction is structured to protect the interests of the shareholders of each Sub-Advised Series and that shareholders will benefit from the requested exemption.

Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the following condition:

If within three years of the completion of the Transaction, it becomes necessary to replace any director, that director will be replaced by a director who is not an interested person of Wells Fargo Bank, WFNIA, or its successor within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank, WFNIA, or its successor.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29916 Filed 12–4–95; 3:57 pm]

BILLING CODE 8010–01–M

[Release No. 34–36542; International Series No. 898; File No. S7–8–90]

Order Approving Proposed Amendment to the Options Price Reporting Authority's National Market System Plan for the Purpose of Updating the Current Fee Structure and Eliminating the Use of Separate News Service Agreements

November 30, 1995.

On April 25, 1995, the Options Price Reporting Authority ("OPRA")[1] filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 ("Exchange Act")[3] a proposed amendment to its National Market System Plan ("OPRA Plan") for the purpose of updating the current fee structure and eliminating the use of separate news service agreements. Notice of the proposed amendment was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] The Commission received 220 comment letters. For the reasons discussed below, the Commission is approving the proposed amendment.

I. Description

OPRA proposes to establish a new redistribution fee of $1800 per month that will be payable by every vendor that redistributes options market information to nay person, whether on a current or delayed basis. The redistribution fee, however, will not apply to a vendor whose redistribution of options information is limited solely to "historical" information.[6] With the introduction of the redistribution fee, the amendment eliminates the vendor and news service pass-through fee, previously $2800.[7] Further, OPRA proposes to reduce the direct access change from $2800 to $900 per month.[8]

In addition to restructuring its fees, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA will categorize news services as vendor and will seek to have news services sign vendor agreements. OPRA also is proposing to make conforming changes to the OPRA Plan.

II. Summary of Comments

As noted above, the Commission received 220 comments letters regarding the proposal. Most comments were submitted by suers of delayed data, primarily small investors who expressed concern about the impact the redistribution fee will have on their owns fees. While some commenters did not object to existing and proposed OPRA fee for real-time data, virtually all commenters opposed the proposed redistribution fee as it applies to delayed data. The commenters claimed that the proposal will set a bad precedent that will lead other markets also to charge for delayed data.

Many commenters expressed a belief that all market information should be available to the public at no charge. Some equated market data to a form of advertising for which markets should not charge consumers. These commenters argues that the Commission should ensure the availability and accessibility of market information; that even a small increase in fees will force them to give up access to delayed data services; and that reduced access to market data will reduce trading activity by same investors. These commetners argued, therefore, that the proposal will reduce overall market liquidity.

Some commenters claimed that the proposal discriminates against he small investor because real-time data, while far more useful than delayed data, in their view is not affordable to the average investor. They argued that the effect of the redistribution fee on vendors of delayed data will be to price the small investor our of the information market altogether.

A few commenters challenged whether the exchanges have a proprietary interest in quote or transaction data. They claimed that OPRA should not be entitled to charge for information that OPRA does not own. One commenter claimed that while the manner in which the information is displayed may be protected under copyright laws, OPRA has no exclusive right to the information itself.[9]

OPRA responded to these comments in a letter dated August 1, 1995.[10] In its letter, OPRA stated that the Exchange Act contemplates the recovery of a portion of the costs of operating and maintaining exchange markets through fair, reasonable and nondiscriminatory fees for access to securities market information, and that the proposal is consistent with these standards. OPRA claimed that the fair allocation of costs among all persons that derive a commercial benefit from options market information will help level the playing field for all users of market data by eliminating an unintended subsidy for redistributors of less useful delayed data at the expense of more useful current information. OPRA noted that the proposal would not establish fees for end users of market data. Instead, the redistribution fee would apply to vendors. OPRA acknowledged, however, that vendors of securities market information most often pass their costs on the customers. Nevertheless, in OPRA's views, the proposal would more fairly allocate distribution fees and would reduce fees payable by some vendors. OPRA stated that the proposal would reduce fees payable by vendors that receive direct access to OPRA data from $2800 (current direct access charge) to $2700 per month (the $900 direct access change plus the $1800 redistribution fee). Further, fees payable by vendors whose access includes indirect access to real-time and delayed data will be reduced from $2800 (the current pass-through fee) to $1800 per month (redistribution fee). Only vendors whose access is limited to indirect access to delayed data would be subject to higher fees (an increase from zero to $1800 per month).

OPRA argued that most, if not all end-users will benefit from the proposed fee changes, assuming vendors of real-time data pass on their savings to real-time and delayed data subscribers. OPRA claimed that even customers of an indirect access vendor whose business is exclusively delayed data distribution should not see any significant increase in vendor charges. For example, OPRA stated that is such a vendor has 1,000 subscribers, the vendor would have to increase the subscriber charge by only $1.80 per month in order to receive the entire redistribution fee. In addition, OPRA claimed that the proposal would not impose any fee on redistributors or end-users of "historical" information, facilitating the affordability and availability of market data for long-term monitoring and analysis. OPRA also noted that it provides several methods by which an individual investor may access real-time data at a low cost.[11]

III. Discussion

Section 11A of the Exchange Act sets forth the standards under which the Commission must consider whether to approve fees proposed by exclusive securities information processors ("SIPs"), such as the pending OPRA proposal. Among other things, the proposal must assure that exchange members, brokers, dealers, SIPs, and investors would be able to obtain information with respect to quotations for and transactions in securities published or distributed by any self-regulatory organization or SIP on terms that are not unfair, unreasonable, or unreasonably discriminatory.[12]

The Commission believes that the proposed fee changes satisfy the standards set forth by Congress with regard to the permissible terms for access to market information and, therefore, believes that the proposed fees are consistent with the Exchange Act. In this case, the proposal represents a reduction in fees for several vendors; the delayed data fees do not appear unfairly to restrict access to market information; and the reduction in fees for access to current information will further other statutory goals. In addition, historical price information, such as is used for academic and analytical purposes, will continue to be available exclusive of OPRA fees.[13]

In 1978, the Commission stated that three sections of the Exchange Act directly relate to the terms upon which securities information is obtained: (1) The standards set forth in Section 11A(b)(3) governing the registration of SIPSs; (2) the standards set forth in Section 11A(b)(5) for review of prohibitions or limitations on access to services of registered SIPS; and (3) the standards set forth in the Commission's rule-making authority under Section 11A(c).[14] The Commission found that these sections permit a registered SIP to impose terms of access on vendors, including access fees.[15] The Commission also noted that the ability to impose such terms is subject to Commission review as to fairness and reasonableness, and may be limited by the Commission's adoption of a rule specifically prohibiting the terms or fees as being unfair, unreasonable or unreasonably discriminatory.[16]

The Commission also has addressed the issue of whether, pursuant to a joint industry plan, charges for the retransmission, on a current and continuing basis, of consolidated market data are permissible.[17] The Commission

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[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection dissemination of last sale and quotation information options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Stock Exchange ("PSE"); and the Philadelphia Stock Exchange ("PHLX").

[2] 17 CFR 240.11Aa3–2.

[3] 15 .S.C. 78K-1.

[4] Securities Exchange Act Release No. 35604 (June 5, 1995).

[5] 60 FR 30005 (June 12, 1995).

[6] Under the proposal, information becomes "historical" upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

[7] This $2800 monthly fee currently is payable by every vendor and news service that receives options information from another vendor on a current basis.

[8] Currently, the direct access charge is payable by every vendor, subscriber or news service that has been authorized by OPRA to receive options information via the consolidated high-speed service from OPRA's Processor.

[9] See Letter from Carl Hendrix, to Jonathan G. Katz, Secretary, SEC (June 27, 1995).

[10] See Letter from Michael L. Meyer, Schiff Hardin & Waite, Attorney for OPRA, to David Oestreicher, Attorney Division of Market Regulation, SEC (August 1, 1995).

[11] For example, OPRA excludes non-professional subscribes from its real-time data subscriber fees. Instead, OPRA charges that vendor at $2.00 per month fee for each non-professional subscriber that receives real-time data from the vendor. Further, OPRA imposes no fees on end users of telephone dial-up services. Vendors of such services, however, are charged a port-based fee.

[12] 15 U.S.C. 78k–1; S. Rep. No 75, 94th Cong, 1st Sess. 9–12 (1975) ("Senate Report").

[13] The Commission understands the concerns of commenters, including the potential consequences of fee increases. As a related matter, the Commission believes that user comment on proposed OPRA fees could be even more effective if sought prior to filing such fees with the Commission. The Commission encourages OPRA to solicit comment on fee proposals before filing those proposals for Commission review.

[14] See Securities Exchange Act Release No. 15372 (November 29, 1978) ("OPRA Order").

[15] *Id.*

[16] *Id.* To date, the Commission has not exercised its rulemaking authority under Section 11A(c) of the Exchange Act with respect to the fees charged by registered SIPs.

[17] See Securities Exchange Act Release No. 17161 (September 24, 1980) (Order approving proposed amendment to the Consolidated Tape Plan).

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found a proposed Consolidated Tape Association retransmission fee consistent with the Exchange Act.[19]

In addition, the appropriate scope of fees was addressed in a denial of access petition filed by Instinet against the National Association of Securities Dealers, Inc. ("NASD").[19] The NASD attempted to impose certain vendor and subscriber fees on the quotation information (referred to as the National Quotation Data Service) sought by Instinet. In its review of the denial of access petition, the Commission noted that in a situation where a monopolistic supplier of market information is in direct competition with vendors in providing such information, there is the potential for the supplier to erect barriers to entry by charging higher fees to vendors of competing information services.[20] The Commission determined, therefore, that because Instinet sought to distribute certain quotation information in competition with the NASD, an exclusive processor of that information, the NASD's proposed fees were required to be cost-based to ensure neutrality and reasonableness of the vendor and subscriber fees.[21]

OPRA's proposal will encourage the use of real-time data by reducing the OPRA fees charged to vendors of real-time data. The Commission believes that investment decisions should be based on the most accurate, up-to-date information available. Thus, this proposal marks a step toward making real-time data more accessible to a greater number of market information users. Recent technological innovations have further enhanced the feasibility of providing easy access to real-time market data to a larger segment of the investor community. The Commission encourages OPRA to utilize these new technologies to encourage additional steps to promote the use of real-time information on a fair, reasonable and non-discriminatory basis.

The Commission recognizes that not all subscribers can afford regular real-time service and, as noted by some commenters, not all subscribers believe their use of market data justifies the cost of such service (even assuming that real-time vendors pass on their savings to their subscribers). As to these subscribers, there is a continued need for access to affordable delayed data. One adverse consequence of the fee restructuring will be to increase the costs to vendors of delayed data which, in turn, may result in a modest increase in the cost of delayed data to subscribers. The Commission has long been committed to protecting the public's right of access to market information and believes that any modest increase in costs to subscribers of delayed data under OPRA's proposed fee restructuring will not act as a barrier to fair and reasonable access to information for those subscribers. Competition among technology and information providers continues to thrive. Over the past few years, individual inventors have enjoyed unprecedented access to market data through varied media, including CNN, CNBC, satellite services, on-line computer services, the World Wide Web, and the Internet. The Commission believes that those innovations will continue to facilitate the fair and reasonable distribution of delayed data even though redistributors of delayed options data will be required to pay a redistribution fee.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[22] that the amendment (S7–8–90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–29775 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[19] *Id.* See also 17 CFR 240.11Aa3–1(d) (relating to retransmission of transaction reports or last sale data); 17 CFR 240.11Aa3–1(e) (permitting the imposition of reasonable, uniform charges for the distribution of transaction reports or last sale data).

[19] Securities Exchange Act release No. 20874 (April 17, 1984) ("Instinet case").

[20] *Id.* at 40–41.

[21] *Id.* Although the fee restructuring proposal is not cost-based in the sense described in the Instinet case, the purpose of the restructured fee schedule is fundamentally different. OPRA's proposal is designed to reallocate costs fairly and equitably among all persons that derive a commercial benefit from the information obtained from exchange markets. Because ORPA is not in direct competition with the vendors that will be subject to the redistribution fee, the analysis applied in the Instinet case is not strictly applicable. Although OPRA's posture with respect to the vendors that will be effected by the redistribution fee is different than the relationship between the NASD and Instinet, the Commission continues to have the duty to ensure that OPRA's fees satisfy applicable standards.

[22] 15 U.S.C. 78k–1(a)(3)(B).

[23] 17 CFR 240.30–3(a)(29).

[Release No. 34–36539; International Series Release No. 886; File No. SR–Phlx–95–47]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Japanese Yen Quote Spread Parameters

November 30, 1995.

I. Introduction

On August 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to widen the quote spread parameters applicable to Japanese yen options. The proposed rule change was published for comment in the **Federal Register** on September 21, 1995.[3] No comments were received on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Phlx seeks to widen the quotation spread parameters (bid/ask differentials) applicable to Japanese yen options in light of the increased volatility and value of the underlying currency, the Japanese yen.[4] The Exchange proposes to change the parameters in Rule 1014(c)(ii) and Floor Procedure Advice ("Advice") F–6, Option Quote Parameters, from $.000004, $.000006, and $.000008 to $.000006, $.000009, and $.000012. Under the proposal, the new quote spread parameters will be reflected in Rule 1014 as follows: no more than $.000006 between the bid and the offer for each option contract for which the bid is $.000040 or less; no more than $.000009 where the bid is more than $.000040 but does not exceed $.000160; and no more than $.000012 where the bid is more than $.000160.

In its proposal, the Phlx notes that as the yen spot value has risen, the spreads between the bid and the offer in the spot price also have risen. For example, a spot market of 101.50 (bid)–.60 (ask) yen in January 1995 represented $.009852–.009842 in American terms, which is ten "ticks" wide. Comparatively, a spot market of 85.10–.20 yen in May 1995 represented $.011751–.011737, which is 14 ticks wide. Similarly, the Exchange states that the spreads in Japanese yen futures and forward contracts also have widened.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032.

[4] Option quote parameters govern the width of market quotations, establishing the maximum widths between the bid and the offer for an option contract.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[5] that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest by providing a more efficient and competitive market for foreign currency options.

The Commission believes that the recent significant rise in the value of the yen in relation to the U.S. dollar justifies amending the present applicable quote spread parameters. As the Japanese yen spot value (in relation to the U.S. dollar) has increased, the U.S. dollar value of each yen option contract likewise has increased. However, the quote spread parameters have not previously been adjusted to account for this movement. Setting Japanese yen option quote spread parameters as proposed by the Phlx should continue to facilitate tightly quoted markets without impairing Phlx market makers' ability to provide market depth and liquidity. In addition, the new quote spread parameters should allow the Phlx and Phlx Japanese yen option market makers to compete more effectively with similar over-the-counter-based products.

Finally, the Commission notes that under Phlx Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," Japanese yen market makers are required to maintain a fair and orderly market and are not permitted to enter into transactions or make bids or offers that are inconsistent with such obligations. Accordingly, the Commission expects the Phlx to monitor trading in Japanese yen options affected by the proposal to ensure that there is adequate market activity in those series and to ensure that market makers are meeting their obligations to maintain fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–95–47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29776 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–36535; File No. SR–AMEX–95–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Transactions in Currency Warrants by Registered Options Traders

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On September 26, 1995, the Amex filed Amendment No. 1 ("Amendment No. 1") to the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Commentary .12 to Amex Rule 111 (Restrictions on Registered Traders), Commentary .14 to Rule 114 (Registered Equity Market Makers) and Commentary .10 to Rule 958 (Options Transactions of Registered Traders) to provide that proprietary transactions on the Floor in currency warrants shall be governed by, and affected in accordance with, Rule 958. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to amend Commentary .12 to Rule 111 (Restrictions on Registered Traders), Commentary .14 to Rule 114 (Registered Equity Market Makers) and Commentary .10 to Rule 958 (Options Transactions of Registered Traders) to provide that proprietary transactions on the Amex Floor in currency warrants, shall be governed by, and effected in accordance with, Rule 958.

In 1992, the Exchange amended its rules to permit regular members to register as a Registered Trader under Rule 958 to engage in supplemental market making activity in stock index warrants and certain other non-options derivative products.[2] The Exchange enacted these changes to conform its rules to those of other markets, and to provide additional liquidity to the market for the Exchange's Portfolio Depositary Receipts and LOR SuperUnits. Due to the limited purpose of the 1992 rule changes, the Exchange did not seek at that time to extend this treatment to the trading of listed currency warrants by ROTs.

At present, currency warrants are traded on the Floor by Registered Equity Market Makers ("REMMs") under the Exchange's equity trading rules, pursuant to the provisions of Rule 114 (which includes applicable provisions of Rule 111). Under the proposed rule changes, regular members wishing to engage in supplemental market making activity in currency warrants may register as Registered Traders under Rule 958, and would trade for their own account in such securities pursuant to the provisions of that Rule.

In contrast to REMMs trading pursuant to Rules 111 and 114, Rule 958 imposes continuous affirmative market making obligations upon Registered Traders.[3] In recognition of this, such

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] See Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Stephen M. Youhn, SEC, dated Sept. 26, 1995. The amendment renumbers two rule provisions that were misstated in the original filing.

[2] See Securities Exchange Act Release No. 30768 (June 2, 1992). A Registered Trader under Rule 958 is also referred to as a Registered Options Trader ("ROT").

[3] Moreover, due to the derivative pricing of currency warrants, the Exchange believes it is

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market makers are designated as Specialists on the Exchange for all purposes under the Act (See Rule 958, Commentary .01), and are entitled to good faith market maker margin with respect to transactions on the Floor in those assigned securities. The Exchange anticipates that application of Rule 958 requirements to supplemental Exchange market makers will encourage additional competing market maker activity in currency warrants, thereby enhancing liquidity in such securities, and eliminate an anomalous regulatory disparity between currency warrant and stock index warrant trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishers its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

inappropriate to apply the stabilization requirements applicable to REMMs to market maker transactions in currency warrants.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-38 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29777 Filed 12-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36536; File No. SR-NASD-95-48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Non-Member Subscriber Deposits for Nasdaq Level 2/3 Service and Equipment

November 30, 1995.

I. Introduction

On October 11, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise the non-member subscriber deposit requirements contained in Part VIII, Paragraph G.1. and 2. of Schedule D to the NASD By-Laws.[3] The proposed rule change reflects increased charges for the provision of telecommunications services and equipment and broadens the language to encompass the various fees associated with these services and equipment.

Notice of the proposed rule change appeared in the **Federal Register** on October 26, 1995.[4] No comment letters were received on the proposal. The Commission is approving the proposed rule change.

II. Description of Proposal

The proposed rule change reflects increased charges for the provision of telecommunications services underlying Nasdaq Workstation II service, and clarifies the various component functions encompassed within the circuit installation fee so that the true nature of the charge is made clear to new subscribers. These requirements would pertain only to new subscribers or existing subscribers that have defaulted on the payment of their charges.

This proposed rule change applies to subscribers who are not NASD members. A companion filing, which applies the proposed rule change to member subscribers, was filed separately for immediate effectiveness.[5]

The NASD represents that the subscriber deposit requirement helps hedge against uncollected balances owed by firms for Level 2/3 or Nasdaq Workstation equipment. The subscriber deposit in part represents actual expenses incurred by The Nasdaq Stock Market, Inc. as obligations to telecommunications providers.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with sections 15A(b)(5),[6] 15A(b)(6),[7] and 15A(b)(9)[8] of the Act. Pursuant to sections 15A (b)(5) and (b)(6), the proposed rule change equitably allocates the fees between NASD members and non-NASD members. Because both members and non-members are subject to the same fee schedules and arrangements, there is no unfair discrimination between member and non-member subscribers. Pursuant to section 15A(b)(9), the proposed rule change does not impose any unnecessary or inappropriate burden on competition, but reflects an attempt to update a rule that contains provisions that are no longer applicable because they do not adequately represent current market practices or pricing. In light of the technological advancements in the telecommunications area, increased costs are commensurate with providing current and potential subscribers with access to the various communications services and equipment. However, the schedule of NASD charges for services and equipment is based on a per unit cost; therefore, members and non-members are subject to the same charges. Thus, the revision in subscriber deposit requirements does not impose any unnecessary or inappropriate burdens on competition.

IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with sections 15A(b)(5), 15A(b)(6), and 15A(b)(9).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR-NASD-95-48) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29778 Filed 12-06-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36534; File No. SR-CBOE-95-65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Joint Account Participant Trading in Equity Options

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its policy regarding joint account participation in equity options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise that provision of the Exchange's policy governing joint account participant trading in equity options that currently prohibits the simultaneous representation in a trading crowd by more than one member of a joint account.[1] Under the proposed regulatory circular, a joint account may be simultaneously represented in a trading crowd but only by participants trading in-person. All other provisions of the current regulatory circular would remain unchanged, including a prohibition against orders being entered in the crowd via a floor broker when a joint account participant is trading in the crowd in-person. This change in policy is also reflected in a deletion of one sentence and the addition of another from paragraph (a)(ii) of Rule 8.16, RAES Eligibility in Equity Options.

There are two reasons why the Exchange has determined to propose this change, which has been recommended by the Exchange's Equity Floor Procedure Committee. First, the change will make the policy governing joint account trading in equity options more consistent with the current policy governing index option trading, where multiple representation of orders for the same joint account is permitted by participants in the joint account trading in-person at the trading post, or by floor brokers representing the orders at the post.[2] The policy proposed for equity options is more restrictive, in that it would only permit joint representation by participants trading in-person, and would not permit multiple representation of orders for the same joint account if one or more of the orders is represented by a floor broker. The policy for index options reflects that, as a practical matter, floor broker representation is often required in index option trading crowds, where special trading practices and procedures have been adopted to deal with the special needs of these very large crowds. Since a trader from another crowd may be unfamiliar with these practices, he may need to use the services of a floor broker who is regularly present at the index crowd and who understands its trading practices. Smaller equity option trading posts do not present the same practical need for the services of floor brokers, which is why the proposed policy permitting joint account representation at equity option posts is limited to in-person representation of orders by market-makers.

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[4] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Commission also received a separate, yet identical proposed rule change relating to member subscriber deposits for Nasdaq Level 2/3 service and equipment which became effective upon receipt by the Commission pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because it established or changed a due, fee or other charge imposed by the NASD on its members. Securities Exchange Act Release No. 36396 (October 20, 1995), 60 FR 54896.

[4] Securities Exchange Act Release No. 36397 (October 20, 1995), 60 FR 54897.

[5] *See supra* note 3.

[6] Section 15A(b)(5) requires the Commission to determine that a registered national securities association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

[7] Section 15A(b)(6) requires the Commission to determine that a registered national securities association's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the NASD.

[8] Section 15A(b)(9) requires the Commission to determine that a registered national securities association's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12).

[1] This policy is set forth in Regulatory Circular RG 93-50, which is a reissuance of RG 91-66, submitted for immediate effectiveness as File No. SR-CBOE-91-48, noticed in Securities Exchange Act Release No. 30334 (February 4, 1992), 57 FR 4900 (February 10, 1992).

[2] See Regulatory Circular RG 95-64, which is a reissuance of Regulatory Circular RG 91-57, approved in Securities Exchange Act Release No. 31174 (September 10, 1992), 57 FR 42789 (September 16, 1992).

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A second reason why the Exchange has chosen to institute this policy is to ensure that member organizations that choose to employ a joint account for their Exchange trading, rather than using individual market-maker accounts, are not disadvantaged in participating in trades vis-a-vis those member organizations that do employ individual market-maker accounts. Some member organizations choose to have their various market-makers trade in a joint account so that the member organization's positions can be more easily monitored and managed. Under the current equity policy regarding joint accounts, however, these member organizations would only be able to be represented by one joint account participant in a trading crowd at one time. On the other hand, the member organization using the individual market-maker accounts would be able to be represented by each market-maker's individual account. The proposed change would eliminate the disadvantage currently suffered by member organizations using joint account structures.

In addition to the regulatory circular, one sentence will be deleted and another added from Rule 8.16(a)(ii). This rule currently prohibits more than one joint account participant from using the joint account for trading on RAES in a particular option class unless the Exchange's Market Performance Committee ("MPC") provides an exemption. However, because any joint account participant trading in-person would be entitled to participate on the same side of a trade with his fellow joint account participants in the same trading crowd as a result of the proposed regulatory circular, the Exchange believes it is appropriate to no longer require an exemption from the MPC to have more than one participant use the joint account for trading on RAES. In any event, to participate on RAES, a member must be present in the trading crowd.

The Exchange represents that by eliminating a distinction that currently exists between member organizations that manage their positions differently, the proposed rule change furthers the objectives of Section 6(b) of the Act in general and Section 6(b)(5) in particular by providing rules that perfect the mechanisms of a free and open market and that protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–65 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29779 Filed 12–6–95; 8:45 am]

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[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–36539; International Series Release No. 884; File No. SR–Amex–95–44]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Equity Linked Term Notes on Non-U.S. Securities

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107B of the Amex Company Guide to provide alternate criteria for the listing and trading of certain hybrid debt securities whose value is linked to the performance of a non-U.S. company which is traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 20, 1993 and December 13, 1993, the Commission approved amendments to Section 107 of the Amex Company Guide to provide for the listing and trading of Equity Linked Term Notes ("ELNs").[3] ELNs are intermediate term (two to seven years), non-convertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. and non-U.S. companies.

In August 1994, the Exchange amended Section 107B of the Amex Company Guide to permit the listing and trading of ELNs linked to actively traded non-U.S. companies which are traded in the U.S. market as sponsored American Depositary Shares, ordinary shares or otherwise ("non-U.S. securities"), provided that (1) the Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security trades; or (2) the trading volume of the non-U.S. security in the U.S. market represents at least 50% of the world-wide trading volume in the non-U.S. security ("50% Test").[4]

The Exchange now proposes to amend its ELNs on non-U.S. security listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; and (2) adding new criteria for the listing of ELNs on non-U.S. securities, based on the daily trading volume in the U.S. Specifically, the Exchange proposes to revise the 50% Test so that trading in non-U.S. securities and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. market volume for the purpose of determining whether the 50% Test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% Test.

In addition, the Exchange proposes to add an alternate set of criteria under which the Exchange may list ELNs on non-U.S. securities ("Daily Trading Volume Standard"). The new standard will permit the Exchange to list ELNs on non-U.S. securities if all of the following conditions are satisfied: (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market or in any market with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for an ELN listing; (2) the average daily trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for an ELN listing is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six months preceding the date of selection of the non-U.S. security for an ELN listing.

The Exchange believes that the alternate criteria is appropriate in that it limits the listing of ELNs linked to non-U.S. securities to those that have both a significant amount of U.S. market trading volume and a substantial volume of trading covered by a comprehensive/effective surveillance sharing agreement, which gives the Exchange the ability to inquire into potential trading problems or irregularities in a market place that serves as a significant price discovery market for the non-U.S. security. Thus, the proposed requirement of observable, high trading volumes, should ameliorate any regulatory concern regarding investor protection and, at the same time, allow investors to trade ELNs linked to more non-U.S. securities.

The Exchange also believes that the proposed amendment will benefit investors by expanding the number of non-U.S. securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange believes that it is appropriate to now include additional non-U.S. securities within the existing regulatory framework because of the significant level of U.S. investor interest in both U.S. and non-U.S. highly capitalized and actively traded reporting companies.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–Amex–95–44 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29780 Filed 12–6–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release Nos. 32345 (May 20, 1993), 58 FR 30833 (May 27, 1993), and 33328 (December 13, 1993), 58 FR 66041 (December 20, 1993).

[4] See Securities Exchange Act Release No. 34549 (August 18, 1994), 59 FR 43673 (August 25, 1994).

[5] 17 CFR 200.30–3(a)(12).

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[Release No. 34-36537; File Nos. SR-Amex-95-46; and SR-PSE-95-30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 15, 1995, the American Stock Exchange, Inc. ("Amex"); and on November 16, 1995, the Pacific Stock Exchange, Inc. ("PSE") (each individually referred to as an "Exchange" and both collectively referred to as "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared by the self-regulatory organizations.[2] The Commission is approving the proposals on an accelerated basis.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend their rules to increase the position and exercise limits[3] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts.[4] The Commission has approved identical proposal by the Philadelphia Stock Exchange, Inc. ("PHLX") and by the Chicago Board Options Exchange, Inc. ("CBOE").[5]

The texts of the proposed rule changes are available at the offices of the Exchanges, and at the Commission.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchanges propose to amend their rules to increase the position and exercise limits for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts. The Exchanges note that the Commission has approved identical proposals by the PHLX and the CBOE.[6]

Currently, the Exchanges' rules establish 5,500, 7,500, and 10,500 contract levels as position limits for industry index options. The Exchanges propose to increase these limits to 6,000, 9,000, and 12,000 contracts, respectively. Under the Exchanges' rules, exercise limits correspond to position limits.

The Exchanges note that the current position and exercise limits have been in place since 1993[7] and that there have been no further increases in position limits for narrow-based index options since that time, despite appreciable growth in index options trading. According to the Amex, there has been a notable increase in narrow-based index option trading since 1993. Specifically, the Amex states that through October 31, 1995, narrow-based index option volume has increased 79% over all of 1994.

In addition, the Exchanges believe that the proposed increases are reasonable and consistent with the gradual, evolutionary approach adopted previously by the Commission and the options exchanges when increasing position and exercise limits.[8] Accordingly, the Exchanges propose a 9% increase for the lowest tier (5,000 to 6,000 contracts); a 20% increase for the middle level position limit (from 7,500 to 9,000 contracts); and a 15% increase in the highest level (from 10,500 contracts to 12,000 contracts).

The Exchanges also believe that the proposed increases are required by traders and investors to meet their investment needs. In this regard, the Exchanges believe that the current position limit levels create difficulties for investors in narrow-based index options, especially those institutional investors who own large portfolios of the component securities and who wish to use the options markets to hedge those portfolios. The Exchanges propose to raise the position and exercise limits for narrow-based index options to accommodate the liquidity and hedging needs of large investors and the institutions that compete to facilitate the trading interests of the large investors.

Finally, the Exchanges believe that the proposed limits of 6,000, 9,000, and 12,000 contracts will increase the depth and liquidity of the market for industry index options without causing any market disruption. The Exchanges represent that they will continue to monitor and surveill for manipulation and violations of the position and exercise limits. Specifically, the Amex states that it will use monitoring systems currently in place to detect and deter attempted manipulative activity and other trading abuses through the use of illegal positions by market participants. The PSE states that it will monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and that the proposed limits will not diminish the surveillance function in this regard.

The Exchanges believe that the proposals to increase narrow-based index option position limits are consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices. The Amex also believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The PSE also believes that the proposal is designed to protect investors and the public interest.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. As noted above, the Commission has previously approved identical proposals submitted by the PHLX and the CBOE.[9]

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[10] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the Exchanges have stated that they believe that the proposals will increase the depth and liquidity or the market for industry index options without causing any market disruption. In addition, the Exchanges represent that they will continue to conduct surveillance for manipulation and other trading abuses.

The Commission notes that the proposals, while increasing the applicable position and exercise limits for narrow-based index options, continue to reflect the unique characteristics of each index option and maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. Limits of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchanges to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchanges are warranted. The Commission recognizes that there are no ideal limits in the sense the options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[11]

The Commission notes that the Exchanges have had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increases in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Exchanges have indicated that they will continue to conduct surveillance for manipulation. The Commission believes that the Exchanges' surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.

For the foregoing reasons, the Commission finds that the proposals to increase the position and exercise limits

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] On November 27, 1995, the PSE amended its proposal to submit its filing pursuant to Section 19(b)(2) under the Act and to request accelerated effectiveness of the proposal. See Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Office of Market Supervision, Division of Market Regulation, Commission, dated November 27, 1995 ("Amendment No. 1").

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] The Amex's position and exercise limits for industry index options are provided in Amex Rules 904C, "Position Limits," and 905C, "Exercise Limits." The PSE's position and exercise limits for industry index options are provided in PSE Rules 7.6, "Position Limits for Index Options," and 7.7, "Exercise Limits." Under the Exchanges' rules, the current position limits for industry index options are as follows: (1) 5,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; (2) 7,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for more than 20% of the index value or that any five underlying stocks accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or (3) 10,500 contracts if the Exchange determines that the conditions requiring the establishment of a lower limit have not occurred.

[5] See Securities Exchange Act Release Nos. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (order approving File No. SR-PHLX-95-16) ("PHLX Approval Order"); and 36439 (October 31, 1995), 60 FR 56075 (November 6, 1995) (order approving File No. SR-CBOE-95-56) ("CBOE Approval Order").

[6] *Id.*

[7] See Securities Exchange Act Release Nos. 33282 (December 3, 1993), 58 FR 65218 (December 13, 1993) (order approving File No. SR-PSE-93-38); and 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR-Amex-93-27).

[8] According to the PSE, the most recent position limit changes in 1993 represented changes of 38% (from 4,000 to 5,500 contracts); 25% (from 6,000 to 7,500 contracts); and 31% (from 8,000 to 10,500 contracts).

[9] See PHLX and CBOE Approval Orders, *supra* note 5.

[10] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[11] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

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for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, are consistent with the requirements of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As noted above, the Commission has previously approved identical proposals submitted by the PHLX and the CBOE.[12] The PHLX's proposals was published for the full notice and comment period and the Commission received no comments on the PHLX's proposal. The Exchanges' proposals raise no new regulatory issues. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule changes on an accelerated basis. In addition, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the PSE's proposal on an accelerated basis so that both proposals may become effective simultaneously.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by December 28, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule changes (SR–Amex–95–45 and SR–PSE–95–30) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29781 Filed 12–6–95; 8:45 am]

BILLING CODE 8010–01–M

[12] See PHLX and CBOE Approval Orders, *supra* note 5.

[13] 15 U.S.C. 78f(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36531; File No. SR–CHX–95–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Listing Standards

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 8, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXVIII of the Exchange's Rules to modify the Exchange's listing standards and create two tiers of listings.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The North American Securities Administration Association ("NASAA")[1] has endorsed certain listing standards as sufficient to warrant a state's granting exchange-listed securities a listing exemption from registration. The CHX proposes to modify its own listing standards to comply with those endorsed by NASAA and adopted by other stock exchanges.[2]

The CHX proposes changes to its Rules regarding the quantitative requirements for issuers and issues, qualitative requirements for issuers (*e.g.*, corporate governance standards), and maintenance criteria for issues. In no case do the proposed changes decrease current CHX standards.

NASAA has entered into a Memorandum of Understanding ("MOU") with the Philadelphia Stock Exchange ("Phlx")[3] and the Pacific Stock Exchange ("PSE").[4] Those memoranda set out standards that NASAA recognizes as sufficient to warrant listing exemptions from state blue sky requirements. The proposed rules establish listing standards that are essentially identical to the standards set out in those two NASAA MOUs. Although the CHX is in the process of reaching a similar MOU with NASAA, the CHX's new listing standards are specifically designed to satisfy the listing standards endorsed by NASAA.

Other exchanges have established two tiers of listing requirements. In general, Tier I listing standards are quantitatively and qualitatively higher (*i.e.*, more restrictive and demanding) than Tier II listing standards.

The CHX does not currently have a two-tier structure for listings but proposes to create a two-tiered structure. Both Tier I and Tier II listed issues will be traded pursuant to identical auction rules, but otherwise the two tiers will differ in several ways.

[1] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[2] See, e.g., Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994) (approving a Philadelphia Stock Exchange rule change adopting NASAA endorsed standards); Securities Exchange Act Release No. 34420 (July 22, 1994), 59 FR 38998 (Aug. 1, 1994) (approving a Pacific Stock Exchange rule change adopting NASAA endorsed standards).

[3] The Memorandum of Understanding was approved by NASAA and Phlx on October 12, 1994.

[4] The Memorandum of Understanding was approved by NASAA and the PSE on October 12, 1994.

The new, higher standards proposed by the CHX will constitute requirements for a new Tier I listing. The Tier I requirements for a CHX listing will be identical in all material respects with the requirements of the NASAA MOUs. The current standards of the CHX will constitute the listing requirements for the new CHX Tier II listing. The NASAA MOUs do not address Tier II standards.

Tier I issuers and issues will have to meet the corporate governance and disclosure standards endorsed by NASAA MOUs. These include newly specific requirements for disclosure of reports filed with federal regulatory bodies; specific requirements for shareholder approval for certain corporate actions involving the sale or issuance of stock; and specific voting rights provisions forbidding corporate actions that have a disparate impact on holders of stock. The CHX currently has strict corporate governance and disclosure requirements, which will remain in place for Tier II issuers and issues.

The CHX will identify and distinguish at all times which securities are listed pursuant to Tier I and Tier II standards. If a Tier I listed security fails to satisfy Tier I maintenance standards for continued listing, the issue will be removed from Tier I listing. If it meets Tier II standards, it will thereupon be listed on Tier II. If it does not meet Tier II standards, it will be delisted. Moreover, if a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the CHX will recognize that security as a Tier I issue. The CHX believes that adopting two tiers of listing standards will provide flexibility for the CHX in pursuing various listing objectives beneficial to CHX members and the public.

The CHX has chosen to adopt NASAA's MOU standards as criteria for its new Tier I because the CHX views those standards as carefully crafted to provide an extremely high level of investor and shareholder protection. For the same reason, the CHX proposes for Tier I to adopt also NASAA's substantial corporate governance standards, including requirements for independent directors, audit committees, shareholder quorums, common stock voting rights, and conflict of interest provisions. The CHX's current rules already address many of these same issues, but for Tier I the CHX proposes to adopt all of NASAA's suggested standards.

Tier I standards must be satisfied by all issuers on a continuing basis. Moreover, CHX standards for Tier I initial and maintenance listing are both mandatory and non-waivable.

Tier I Standards

With regard to common stock, Rule 8(a) replicates the NASAA MOUs' numerical criteria applicable to original listing determinations in every aspect including net tangible assets, numbers of shareholders and shares publicly held, pre-tax and net earnings, and stock price.

In Rule 8(b), the CHX proposes to also offer alternate listing standards for common stock issues. The proposed standards are identical to those endorsed by NASAA. The CHX offers the alternate standards because there are certain smaller companies that either due to the nature of their business or the amount of resources committed by the company to research and development, would not meet the standards in Rule 8(a) but nevertheless deserve Tier I status. Thus, those types of companies may be approved for listing under Tier I if they satisfy the alternate listing criteria.

Rule 8(c), in conformance with the NASAA MOUs, provides standards for initial public offerings approved for listing on the CHX. Such offerings must be underwritten on a "firm commitment" basis and must meet the CHX's listing standards within a 30-day grace period after completion of the offering.

With regard to preferred stock, Rule 9 provides the Tier I original listing criteria. Preferred stock issuers must satisfy the same net tangible assets and net earnings criteria applicable to issuers of common stock. The ability of the issuers to service the dividend requirements for preferred stock will also be evaluated. The requirements will differ for number of shares publicly held and aggregate market value depending on whether the issuer has common stock listed. Where the common stock is listed on the CHX, New York Stock Exchange ("NYSE"), or American Stock Exchange ("Amex"), at least 100,000 shares of preferred stock must be publicly held with an aggregate market value of at least $2 million dollars. Where the common stock is not so listed, at least 400,000 shares of preferred stock must be publicly held with an aggregate market value of at least $4 million. Differentiating on this basis reflects the CHX's belief that companies whose securities are publicly traded have a more significant investor following and a greater demonstrated ability to raise necessary capital while meeting the contingent payment obligations associated with preferred stock and, as described below, bond and debentures. In either case, a share of preferred stock must have a minimum closing bid price of $10 to be eligible for listing.

Listing of bonds and debentures under Tier I will be governed by Rule 10. In addition to evaluating issuers according to the same net tangible assets and earnings standards applicable to equity issuers, the CHX will also evaluate the ability of these issuers to satisfy the interest and principal payments of bonds and debentures as they become due. As above, the required aggregate market value and number of public beneficial holders varies depending on whether the issuer's common stock is listed and traded on either the CHX, Amex or NYSE. Additionally, the CHX will require municipal bonds to meet higher standards than other bonds.

Issuers seeking listing of warrants under Tier I must satisfy the criteria of Rule 11. The CHX will set standards with regard to public distribution, and it will not list warrants unless the security underlying the warrant is already listed or will be listed concurrently with the warrants on Tier I.

Rule 12 provides criteria for contingent value rights ("CVRs"). The CHX will set standards for CVRs with regard to aggregate market value, public distribution, net tangible assets, and maturity date. CVR issuers must meet the net tangible assets and earnings requirements for issuers of stock listed on the Exchange, and the CVRs to be listed must have been approved for listed on another national securities exchange. Finally, Rule 13 contains criteria applicable to new and innovative products that do not fall within Rules 8–12 but otherwise have the financial qualifications to be listed and are suitable for auction market trading.

The CHX's maintenance requirements for Tier I securities duplicate those found in the NASAA MOU with the PSE. Rules 14–17 set forth those maintenance requirements for each type of issue. The CHX will initiate delisting procedures against any issue that fails to meet the maintenance requirements on a continuing basis.

Tier II Standards

Rule 18 sets forth the CHX's proposed Tier II standards. Tier II standards will allow companies that may not be large enough to list under Tier I the opportunity to have their securities traded in an auction market, thereby increasing liquidity and issuer access to the investment community.

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The CHX's proposed Tier II standards are essentially identical to the current CHX standards applicable to all listed issues, except that index warrants and contingent value rights will no longer be listed under Tier II.

Miscellaneous

The CHX does not propose to materially change its admissions procedures or its delisting procedures.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest. The proposal also is consistent with Section 11A of the Act in that approval of the Tier I standards will aid in the development of the national market system by enhancing competition for equity listings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–26 and should be submitted by December 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36533; File Nos. SR–PHILADEP–95–09; SR–MSTC–95–09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Modifying Procedures to Enable Compliance With Confirmation Disclosure Requirements Through the Use of the Institutional Delivery System

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 24, 1995, and on October 27, 1995, respectively, the Philadelphia Depository Trust Company ("PHILADEP") and the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP and MSTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

PHILADEP and MSTC propose to make additions to their respective procedures[2] to enable their participants using the Institutional Delivery ("ID") system for generating confirmations for customer transactions to comply with certain disclosure requirements of Rule 10b–10 under the Act.[3]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, PHILADEP and MSTC included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. PHILADEP and MSTC have prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

In 1994, the Commission adopted amendments to Rule 10b–10.[5] Subsequently, the Division of Market Regulation issued a no-action letter to the Public Securities Association ("PSA") on behalf of its members and all other brokers and dealers temporarily exempting them from certain disclosure requirements of paragraphs (a)(7), (a)(8), and (a)(9) of Rule 20b–10 until November 1, 1995.[6]

The purpose of these proposed rule changes is to enable PHILADEP and MSTC participants using the ID system for generating confirmations for customer transactions to comply with the following three disclosure requirements upon the expiration of the temporary exemption on November 1, 1995.

[2] While MSTC does not have specific written ID procedures, the MST System Flash newsletter is sent to MSTC participants to update them on, among other things, ID system changes. The newsletter is kept on record at MSTC and is used by MSTC as its participant procedures.

[3] 17 CFR 240.10b–10 (1994).

[4] The Commission has modified the text of the summaries prepared by PHILADEP and MSTC.

[5] For a complete discussion of the amendments, refer to Securities Exchange Act Release No. 34982 (November 10, 1994), 59 FR 59612.

[6] Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to George P. Miller, Esq., Vice President and Associate General Counsel, PSA (September 29, 1995).

(1) The amended rule reburies broker-dealers to disclose that they are not members of the Securities Investor Protection Corporation ("SIPC") if, in fact, they are not so affiliated. These broker-dealers may make such disclosures by noting "[Name of broker-dealer] is not a member of SIPC" in the Special Instructions field of trade data submitted to the ID system. PHILADEP's and MSTC's proposed rule changes add to their respective procedures the method by which broker-dealers indicate that they are not SIPC members.

(2) In the case of a private debt security, the amended rule requires broker-dealers to disclose if the security is not rated by a nationally recognized statistical rating organization. A broker-dealer using the ID system can disclose that fact by entering "Not Rated" or "N/R" in the Special Instructions field. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a statement of the meaning of the codes "Not Rated" or "N/R."

(3) The amended rule requires broker-dealers to disclose that the yield for asset-backed securities that are continuously subject to prepayment may vary depending upon the rate of prepayments. Upon written request from their customers, broker-dealers will provide certain information concerning the factors that affect these securities' yield. A broker-dealer using the ID System can enter one of several acronyms in the Security Type field identifying the security as one of several types of securities that meet the rule's definition of asset-backed security. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a provision designating several acronyms that when placed in the Security Type field will denote that the security meets the Rule 10b–10 definition of an asset-backed security.

PHILADEP and MSTC believe the proposed rule changes are consistent with the requirements of Section 17A(B)(3)(F)[7] of the Act and the rules and regulations thereunder applicable to PHILADEP and MSTC because the proposed rule changes will facilitate the confirmation of transactions through the use of the ID system in compliance with the additional requirements of Rule 10b–10 and in conjunction with the expiration date of the temporary exemption on November 1, 1995.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

B. Self-Regulatory Organizations' Statements on Burden on Competition

PHILADEP and MSTC believe these procedural modifications will not impose a burden on competition.

Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

PHILADEP and MSTC have neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i)[8] of the Act and pursuant to Rule 19b–4(e)(4)[9] promulgated thereunder because the proposals constitute changes in existing services of registered clearing agencies that do not adversely affect the safeguarding of securities or funds in the custody or control of those clearing agencies or for which they are responsible and do not significantly affect the respective rights or obligations of the clearing agencies or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule changes that are filed with the Commission, and all written communications concerning the proposed rule changes between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the respective filings will also be available for inspection and copying at the principal offices of PHILADEP and MSTC. All submissions should refer to File Nos. SR–PHILADEP–95–09 and SR–MSTC–95–09 and should be submitted by December 28, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[9] 17 CFR 240.19b–4(e)(4) (1994).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36541; File No. SR–Amex–95–25]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Updates to the Exchange's Company Guide

November 30, 1995.

I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update various sections of its Company Guide. On September 28, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 10, 1995.[4] No comments were received on the proposal.

II. Description of the Proposal

The Exchange has proposed amendments to several sections of the Amex Company Guide in order to conform it with recent changes to comparable New York Stock Exchange ("NYSE") sections, to update certain sections that contain provisions that are no longer applicable, and to clarify certain obligations contained in the rules. As described more fully below, the Exchange proposes to amend sections of its Company Guide that pertain to preferred stock, warrants, conflicts of interest, original and annual listing fees, the listing resolution, "backdoor" listings, fractional shares, the listing agreement, interim reports,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Glen Barrentine, Senior Counsel/Team Leader, SEC (Sept. 28, 1995).

[4] Securities Exchange Act Release No. 36326 (Oct. 3, 1995), 60 FR 52713.

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legending requirements, and delisting standards.

A. Preferred Stock

The Exchange proposes to amend Section 103 to make it clear that the numerical guidelines contained in this section concerning aggregate market value and price per share only apply to publicly held shares. The Exchange also proposes to amend Section 103 of the Company Guide to provide that the Amex will not consider listing any issue of convertible preferred stock unless the underlying security is subject to real-time last sale reporting. Currently, as a general rule, convertible preferred stock may be listed on the Exchange only if the underlying security is listed on either the Amex or the NYSE. The Exchange believes this restriction is no longer necessary because it was adopted at a time when only the Amex and the NYSE provided last sale reporting information. Now, however, other markets disseminate such information.[5]

B. Warrants

In order to simplify the listing process, the Exchange proposes to consolidate all of its listing guidelines concerning warrants into Section 105, add a paragraph to Section 105 that requires an issuer to provide the Amex with two months advance notice of any extension of the expiration date of a warrant issue, delete Section 508 of the Company Guide[6] and incorporate it into Section 105, and amend Section 105 to reference the guidelines contained in Section 902 of the Company Guide.[7]

C. Conflicts of Interest

The Exchange proposes to delete the clause in Section 120 of the Company Guide that authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflict of interest situation. The Exchange believes this provision is obsolete because audit committees[8] are responsible for reviewing transactions presenting potential conflicts of interest and, in practice, the Exchange no longer utilizes these special agreements. Moreover, the Exchange notes that the NYSE did away with a similar provision some time ago.[9]

D. Original and Annual Listing Fees

Currently, Section 140 of the Company Guide specifies the original listing fee for more than one million shares and the fee for less than one million shares, but does not specify the fee for exactly one million shares. The Exchange proposes to correct this oversight by making it clear that the fee for exactly one million shares is $10,000. The Exchange also proposes to make it clear that, according to Section 141 of the Company Guide, the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

E. Opinion of Counsel

The Exchange proposes to delete from Section 213 of the Company Guide the requirement that the opinion of counsel address a prospect company's qualification to conduct business in jurisdictions other than that of its state of incorporation. In support of this, the Exchange cites an ABA sponsored study of third-party legal opinions that states that an opinion concerning a corporation's qualification to do business in jurisdictions other than that of incorporation is generally not cost effective or necessary.[10] In addition, the Exchange notes that the NYSE does not have a similar requirement.

F. Listing Resolution

The Exchange proposes to delete from Sections 213 and 330 the requirement that a prospect company's Board of Directors provide the Exchange with a listing resolution authorizing the filing of the listing application. The Exchange believes this requirement does not serve any significant purpose and, essentially, is ceremonial in nature.

G. "Backdoor" Listings

Currently, the literal language of Section 341 of the Company Guide indicates that the surviving entity of a backdoor listing[11] transaction must meet the Exchange's original listing guidelines in all respects. The Exchange states, however, that it has been its longstanding practice to evaluate a backdoor listing on the same basis that an original listing is reviewed. Among other things, this allows the Exchange to exercise its discretion to approve a backdoor listing even though the company does not meet all of the Exchange's numerical guidelines.[12] The Exchange proposes to make this section consistent with the Exchange's practice.

H. Fractional Shares

Very often when a company issues a stock dividend, the issuer must settle fractional share interests. The Exchange's current practice is to require those companies that do not choose to settle such interests with a cash payment to round up to a full share in payment for the fractional amount. The Exchange reasons that if the issuer were to round down, the shareholder would be deprived of assets due him or her. The Exchange proposes to make this requirement explicit by inserting it into Section 507 of the Company Guide.

I. Listing Agreement

In its present form, the Exchange's listing agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these obligations also are contained in various sections of the Company Guide. In order to eliminate redundancies and avoid confusion, the Exchange proposes to move to the Company Guide those provisions that currently are contained in the listing agreement, but are not contained in the Company Guide. In addition, the Exchange proposes to amend its listing agreement to simply state that the issuer agrees to comply with all of the Exchange's rules, policies, and procedures that apply to listed companies.

J. Interim Reports

The Exchange proposes to amend Section 623 of the Company Guide to advise companies that when they choose to mail interim reports to shareholders, they should send the reports to both the record holders and the beneficial owners. The Exchange believes this change strikes an appropriate balance between the benefit of mailing these reports to both the record holders and the beneficial owners against the high cost of mandating such action. In support of this rule change, the Exchange notes that the NYSE previously made a similar change to its rules.[13]

K. Legending Requirements

Currently, Section 980 of the Company Guide requires that listed securities issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933[14] bear a legend specifying that sale or transfer restrictions apply to such securities. The Exchange proposes to delete this requirement. The Exchange states issuers have complained that the Exchange requirement may be unnecessary and, in some instances, more restrictive than the applicable laws. In addition, the Amex notes that the NYSE does not impose an independent legending requirement on its listed companies.

L. Delisting Standards

Because more brokerage firms are holding securities for their customers in "street name," and fewer customers are demanding physical delivery of their securities,[15] the proportion of beneficial holders to record holders has increased dramatically in recent years. Accordingly, companies are less likely to meet the Exchange's maintenance standards concerning the total number of round lot shareholders of record. As a result, certain companies that have well over 300 round lot beneficial shareholders could be subject to delisting proceedings.[16] In order to address this situation, the Exchange proposes to amend Section 1003 of the Company Guide to refer to "public shareholders"[17] instead of "shareholders of record."

[5] The Exchange also notes that such a change would be consistent with Section 104 of the Company Guide because this section permits the listing of convertible bonds and debentures so long as the underlying issue into which the bond or debenture is convertible is subject to last sale reporting. See Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 56 FR 51958.

[6] Under certain circumstances, this section requires warrants to be split in the same proportion as the underlying common stock.

[7] Section 902 contains guidelines that are applicable to redeemable (callable) issues.

[8] The Exchange requires every listed company to establish and maintain an audit committee that, at the very least, is composed of a majority of independent directors. Amex Company Guide section 121.

[9] Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR-NYSE-83-11).

[10] See American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law*, 47 Bus. Law. 167 (Nov. 1991).

[11] The Exchange defines a "backdoor" listing as any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Amex Company Guide section 341.

[12] Similarly, the fact that an issuer meets the numerical guidelines does not necessarily mean that its application will be approved.

[13] Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR-NYSE-94-42).

[14] 15 U.S.C. 77e.

[15] This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. *See* Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24–26 (May 1992) (recommending the reduction in use of physical certificates).

[16] Section 1003 of the Company Guide provides, in pertinent part, that the Exchange normally will consider delisting a security "if the total number of round lot shareholders of record is less than 300 * * *." (Emphasis added).

[17] This term would include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (*i.e.*, 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes to make conforming changes to sections 102, 103, 105, 106, 107, 110, and 118.

III. Discussion

The Commission has reviewed the Amex's proposed rule changes carefully and concludes that these proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the amendments contained in this proposal are consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public; and are not designed to permit unfair discrimination between issuers.

The Commission supports the Amex's efforts to continue to review the form and substance of its listed company regulations in response to changes in market structure and eliminate requirements that no longer serve a meaningful regulatory purpose. In this regard, the changes to the listing process, such as eliminating the requirement for a Board resolution authorizing the submission of a listing application, should make the listing process easier for issuers without raising any regulatory concerns. The Commission also believes the proposed rule changes should be helpful in updating the Amex's listed company rules, should facilitate transactions in securities, should clarify certain obligations contained in the rules and, in general, further the purposes of the Act. Finally, although the Commission has certain concerns regarding the amendments to backdoor listings, delisting standards, and convertible preferred stock, for the reasons discussed below, we believe these provisions should be approved.

First, according to the Amex, the changes to the backdoor listing standards will provide the Exchange with the same flexibility it currently has in evaluating original listing applications. Although the Commission is approving the Exchange's more liberal language concerning backdoor listings, we believe that, as a general matter, listed companies should meet the Exchange's numerical and other listing guidelines. To the extent certain flexibility in applying listing standards may occasionally be needed, the Commission expects the Exchange to exercise its discretion conservatively when granting an exception to these standards. Moreover, when the Exchange chooses to make an exception to its stated listing standards, the Commission expects the Exchange to have procedures in place that adequately document and provide sufficient analysis as to why it is making such an exception and which factors it considered pertinent.

Second, the proposed amendment to the Exchange's delisting standards concerning the total number of round lot shareholders is a reasonable response to changing market conditions. In approving this amendment, however, the Commission understands the Exchange will have certain procedures in place to verify the total number of round lot beneficial holders. In this regard, the Exchange has represented to the Commission that if Item 5 of a listed company's Form 10K reflects that there are less than 300 record holders, the Corporate Relations Manager assigned to this company will ask the company to provide confirmation of the number of beneficial holders.[19] The Commission believes these procedures will help ensure that listed companies continue to meet the minimum shareholder requirements for continued listing.

Finally, in approving the changes to Section 103 that would permit the listing of convertible preferred stock where the underlying security is subject to real-time last sale reporting, the Commission expects the Amex, where appropriate, to ensure that the underlying security is generally consistent with the Exchange's common stock listing guidelines. This would be particularly expected in cases where the convertible preferred could act as a surrogate for trading in the underlying common stock (*i.e.*, the preferred stock is structured in a way to trade as a surrogate for the common stock and represents a substantial portion of the outstanding underlying common stock).

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[20] that the amended proposed rule change (SR-Amex-95-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jonathan G. Katz,

Secretary.

[FR Doc. 95-29784 Filed 12-6-95; 8:45 am]

BILLING CODE 8010-01-M

[18] 15 U.S.C. 78f(b)(5).

[19] See Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Amex, to Glen Barrentine, Senior Counsel, SEC (Oct. 16, 1995).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30-3(a)(12).

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: 49 U.S.C. 5334(g), [formerly called Section 12(k) of The Federal Transit Act], permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the city of Philadelphia intends to transfer vacant parcels of land located in the block bounded by 8th, 9th, Callowhill and Vine Streets, in Philadelphia, Pennsylvania.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Philadelphia Regional Office of its interest, by January 8, 1996.

ADDRESSES: Interested parties should notify the Regional Office by writing to Mr. Sheldon A. Kinbar, Regional Administrator, Federal Transit Administration, 1760 Market Street, Room 500, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Margaret Tornello, Transportation Program Specialist, Region 3, at 215/656–6900 or Ann Catlin, Real Estate Specialist, Office of Program Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

49 U.S.C. 5334(g) Determinations

(A) the asset will remain in public use for not less than 5 years after the date of the transfer the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(g) [formerly referenced as Section 12(k) of the Federal Transit Act, now codified]. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g)(1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

Vacant parcels of land in the block bounded by 8th, 9th, Callowhill and Vine Streets, Philadelphia, Pennsylvania. This land is located over the Center City Commuter Tunnel with certain construction restrictions.

Issued on: December 4, 1995.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 95–29872 Filed 12–06–95; 8:45 am]

BILLING CODE 4910–57–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Request for Recommendations

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice.

SUMMARY: Request for recommendations for potential projects to mitigate the impacts on fish, wildlife and recreation resources from the construction and operation of Federal reclamation projects in Utah. Selected projects will be incorporated into the Utah Reclamation Mitigation and Conservation Commission five-year plan.

DATES: Recommendations will be accepted no later than 5:00 p.m. on Tuesday, January 2, 1996.

ADDRESSES: One original and two copies of each recommendation should be submitted to: Planning Manager, Utah Reclamation Mitigation and Conservation Commission, 111 East Broadway, Suite 310, Salt Lake City, Utah 84111–5225.

FOR FURTHER INFORMATION CONTACT: Joan Degiorgio, Telephone (801) 524–3146; Facsimile (801) 524–3148.

SUPPLEMENTARY INFORMATION: The Utah Reclamation Mitigation and Conservation Commission was established to coordinate the implementation of mitigation and conservation provisions of Titles II, III and IV of the Central Utah Project Completion Act. Section 301(g) of the Act requires the Commission to develop and adopt a plan that will identify projects to be implemented over a five year period that will mitigate and conserve fish, wildlife, and recreation resources. A Planning Rule was adopted by the Commission on August 21, 1995, and published in the **Federal Register** on September 25, 1995. The Planning Rule outlines the planning process and identifies decision factors to be used by the Commission to evaluate and select proposals. On October 3, 1995, notice was sent to Federal and State fish, wildlife, recreation, and water management agencies, Indian tribes, county and municipal entities and interested publics within Utah requesting recommendations to implement the mitigation and conservation measures authorized in the Act.

Authority: Pub. L. 102–575, 106 Stat. 4600, 4625, October 30, 1992.

Michael C. Weland,

Executive Director.

[FR Doc. 95–29855 Filed 12–6–95; 8:45 am]

BILLING CODE 4310–05–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 235
Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: December 13, 1995; 9:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, S.W., Room 3360, Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c) (1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C) 552b. (c)(9) (B)). In addition, part of the discussion will relate solely to the internal personnel rules and practices, and personnel, of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b. (c) (2) and (6).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: December 5, 1995.

David W Burke.

Chairman.

[FR Doc. 95–29980 Filed 12–5–95; 1:35 pm]

BILLING CODE 8155–01–M

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, December 15, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 6, 1995 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- "Race Relations and Equal Education Opportunities at Proviso West High School" (Illinois)
- "Civil Rights Issues in Maine: A Briefing Summary of Hate Crimes, Racial Tensions, and Migrant/Immigrant Workers" (Maine)
- "Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity" (Michigan)
- "Equality Issues in South Dakota Women's Employment" (South Dakota)
- "Racial and Ethnic Tensions in Florida" (Florida)

VI. State Advisory Committee Appointments for Montana, Oregon, and Utah
VII. Discussion of Commission Subpoena Power
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: December 5, 1995.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 95–29998 Filed 12–5–95; 3:23 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 7, 1995.

PLACE: 1155 21st St., NW., Washington, DC Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules on minimum financial requirements, prepayment of subordinate debt and gross collection of Exchange-set martin for omnibus accounts.

Final and proposed amendments to Commission Rule 3.34 concerning ethics training.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29951 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m., Thursday, December 21, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 95–29952 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 29, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29953 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 22, 1995.

PLACE: 1155 21st St., NW., Washington, DC 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 95–29954 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, December 15, 1995.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29955 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 8, 1995.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–29956 Filed 12–5–95; 1:35 pm]

BILLING CODE 6351–01–M

Corrections

Federal Register

Vol. 60, No. 235

Thursday, December 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 93-133, FCC 95-447]

Maritime Communications

Correction

In rule document 95–28826 beginning on page 58243, in the issue of Monday, November 27, 1995, make the following correction:

§80.1065 [Corrected]

On page 58245, in the second column, in §80.1065 (b)(5)(iii), in the second line, "§8.933." should read "§80.933.".

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR-3960-N-01]

Notice of Request for Cooperative Agreement Applications for the Community Renaissance Fellows Program

Correction

In notice document 95–29228 beginning on page 61634 in the issue of Thursday, November 30, 1995, make the following correction:

On page 61634, in the second column, under **FOR FURTHER INFORMATION CONTACT**, the last line should read "Jane__R.__Karadbil@hud.gov".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Herman E. Walker, Jr., M.D.; Revocation of Registration

Correction

In notice document 95–24949, beginning on page 52705, in the issue of Tuesday, October 10, 1995, make the following correction:

On page 52707, in the second column, the second paragraph, the last line, "832" should read "823."

BILLING CODE 1505–01–D

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Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9 and 63

[AD–FRL–5336–2]

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and test method.

SUMMARY: This final rule promulgates standards that limit the emissions of hazardous air pollutants (HAP) from existing and new wood furniture manufacturing operations located at major sources. These final standards implement Section 112(d) of the Clean Air Act (CAA), as amended, which require the Administrator to regulate emissions of HAP listed in Section 112(b) of the CAA. The intent of the standards is to protect the public by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality-related health and environmental impacts, and energy requirements.

Many wood furniture manufacturing facilities are major sources of HAP emissions. Individual facilities can emit more than 23 megagrams per year (Mg/yr) (25 tons per year (tons/yr)) of organic HAP, including toluene, xylene, methanol, methyl ethyl ketone, methyl isobutyl ketone, glycol ethers, and formaldehyde. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation and blood cell, heart, liver, and kidney damage, as well as reproductive effects. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status, (e.g., the presence of pre-existing disease), and lifestyle.

The EPA is also finalizing Method 311 with the standards. Method 311 will be used to assist in demonstrating compliance with the emission limitations.

DATES: This regulation is effective December 7, 1995.

Judicial Review. Under Section 307(b)(1) of the CAA, judicial review of national emission standards for hazardous air pollutants (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES:

Docket: Docket No. A–93–10, containing information considered by the EPA in developing the promulgated NESHAP for wood furniture manufacturing operations, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA Air and Radiation Docket and Information Center, Room M1500, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document: A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations-Background Information for Final Standards" (EPA–453/R–95–018B). The BID contains a summary of changes made to the standards since proposal, public comments made on the proposed wood furniture manufacturing standard, and the EPA responses to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar of the Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0283.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. The Standards
II. Summary of Impacts
III. Significant Changes to the Proposed Standards
A. Public Participation
B. Comments on the Proposed Standards
C. Significant Changes
D. Other Issues
IV. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act
E. Unfunded Mandates Act

I. The Standards

The affected source for the promulgated standards is each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. The promulgated standards include emission limits on the finishing materials and contact adhesives used by the wood furniture industry and work practice standards to reduce emissions from all sources of HAP emissions. To allow owners and operators flexibility in meeting the emission limits, the promulgated standards include multiple options for complying with the limits. A summary of the emission limits and compliance options is presented in Table 1. A summary of the work practice standards is presented in Table 2.

The promulgated standards include methods for affected sources to demonstrate both initial and continuous compliance with both the emission limits and work practice standards. The majority of affected sources will demonstrate compliance through recordkeeping. Affected sources that use a control device to meet the emission limits must monitor the performance of the control device.

TABLE 1.—SUMMARY OF EMISSION LIMITS

Emission point	Existing source	New source
Finishing operations:		
(a) Achieve a weighted average VHAP content across all coatings (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied);	[a]1.0	[a]0.8
(b) Use compliant finishing materials (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied);		
—Stains	[a]1.0	[a]1.0
—washcoats	[a][b]1.0	[a][b]0.8
—sealers	[a]1.0	[a]0.8
—topcoats	[a]1.0	[a]0.8
—basecoats	[a][b]1.0	[a][b]0.8
—enamels	[a][b]1.0	[a][b]0.8
—thinners (maximum % HAP allowable); or	10.0	10.0
(c) As an alternative, use control device; or	[c]1.0	[c]0.8
(d) Use any combination of (a), (b), and (c)	1.0	0.8
Cleaning operations:		
Strippable spray booth material (maximum VOC content, kg VOC/kg solids [lb VOC/lb solids])	0.8	0.8
Contact adhesives:		
(a) Use compliant contact adhesives (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied) based on following criteria:		
i. For aerosol adhesives, and for contact adhesives applied to nonporous substrates	[d]NA	[d]NA
ii. For foam adhesives used in products that meet flammability requirements	1.8	0.2
iii. For all other contact adhesives (including foam adhesives used in products that do not meet flammability requirements); or	1.0	0.2
(b) Use a control device	[c]1.0	[c]0.2

[a] The limits refer to the VHAP content of the coating, as applied.
[b] Washcoats, basecoats, and enamels must comply with the limits presented in this table if they are purchased premade, that is, if they are not formulated onsite by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials, i.e., those that meet the limits specified in this table, and thinners containing no more than 3.0 percent HAP by weight.
[c] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.8 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.
[d] There is no limit on the VHAP content of these adhesives.
[e] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.2 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.

TABLE 2.—SUMMARY OF WORK PRACTICE STANDARDS[a]

Emission source	Work practice
Finishing Operations	
Transfer equipment leaks	Develop written inspection and maintenance plan to address and prevent leaks. The plan must identify a minimum inspection frequency of 1/month.
Storage containers, including mixing equipment.	When such containers are used for HAP or HAP-containing materials, keep covered when not in use.
Application equipment	Discontinue use of air spray guns.[b]
Finishing materials	Demonstrate that usage of HAP of potential concern have not increased except as allowed by proposed standards; document in the formulation assessment plan.
Cleaning Operations	
Gun/line cleaning	—Collect cleaning solvent into a closed container. —Cover all containers associated with cleaning when not in use.
Spray booth cleaning	Do not use solvents except as allowed by the rule.
Washoff/general cleaning	—Do not use chemicals that are listed in Table 4 of the rule in concentrations subject to MSDS reporting, as required by OSHA. —Keep washoff tank covered when not in use. —Minimize dripping by tilting and/or rotating part to drain as much solvent as possible and allowing sufficient dry time. —Maintain a log of the quantity and type of solvent used for washoff and cleaning, as well as the quantity of waste solvent shipped offsite, and the fate of this waste (recycling or disposal). —Maintain a log of the number of pieces washed off, and the reason for the wash off.
Miscellaneous	
Operator training	All operators shall be trained on proper application, cleanup, and equipment use. The training program shall be written and retained onsite.
Implementation plan	Develop a plan to implement these work practice standards and maintain onsite.

[a] The work practice standards apply to both existing and new major sources.
[b] Air guns will be allowed only in the following instances:
—when they are used in conjunction with coatings that emit less than 1.0 kg VOC per kg of solids used;

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—touchup and repair under limited conditions;
—when spray is automated;
—when add-on controls are employed;
—if the cumulative application is less than 5 percent of the total gallons of coating applied; or
—if the permitting agency determines that it is economically or technically infeasible to use other application technologies.

Existing affected sources that emit less than 50 tons of HAP in 1996 must comply with the promulgated standards by December 7, 1996. Existing affected sources that emit 50 tons or more of HAP in 1996 must comply with the promulgated standards by November 21, 1997. Existing area sources that become major sources are required to comply within one year after becoming a major source.

New affected sources must comply with the promulgated standards by December 7, 1995 or upon startup, whichever is later. New area sources that become major sources are required to comply with the promulgated standards immediately upon becoming a major source.

II. Summary of Impacts

These standards will reduce nationwide emissions of HAP from wood furniture manufacturing operations by approximately 29,759 Mg/yr (32,795 tons/yr). While the emission limits do not require the use of lower-VOC materials, the work practice standards should reduce the use of VOC containing materials and, therefore, VOC emissions. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

The implementation of this regulation is expected to result in nationwide annualized costs for existing wood furniture manufacturing operations of $15.3 million with a cost effectiveness of $513/Mg ($466/ton). Industry-wide capital costs resulting from the promulgated standards is expected to be approximately $7.0 million.

III. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed in the **Federal Register** on December 6, 1994 (59 FR 62652). The preamble to the proposed standards discussed the availability of the regulatory text. Public comments were solicited at the time of proposal, and copies of the regulatory text were distributed to interested parties. Electronic versions of the proposed preamble and regulation were made available to interested parties via the TTN (see **ADDRESSES** section of this preamble).

The preamble to the proposed standards provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period for the proposed standards was originally December 6, 1994 to February 21, 1995. Upon request from interested parties the comment period on the proposed standards was extended to March 21, 1995, and the comment period on Method 311 was extended to April 21, 1995. In all, 50 comment letters were received. The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 50 commenters, composed mainly of States, trade organizations, coating manufacturers, and wood furniture manufacturers. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments. The comments have been divided into the following areas:

1. Applicability;
2. Definitions;
3. Selection of MACT;
4. Emission limits;
5. Work practice requirements;
6. Reporting and recordkeeping requirements;
7. Monitoring requirements;
8. Format of the standard;
9. Compliance provisions and dates;
10. Test Methods; and
11. Miscellaneous.

C. Significant Changes

Several changes have been made since the proposal of these standards. Some of the changes are substantive, while many changes were made to clarify portions of the rule that were unclear to the commenters. A summary of the major changes is presented below.

1. Addition of Category for Incidental Furniture Manufacturers

The EPA received several comments from facilities that manufacture small quantities of furniture at their facility, primarily for onsite use. For example, a large laboratory facility may have a small shop onsite for manufacturing specialized pieces of laboratory furniture. Many army and navy bases have small woodworking shops onsite. The cutoff for finishing material usage included in the proposed standards did not exclude these sources from the standards, because they are major sources due to emissions from other operations. The majority of these commenters indicated that they were concerned about all of the work practice standards and the recordkeeping and reporting requirements associated with the proposed standards. They indicated that the environmental benefit of regulating their facilities under this subpart would be minimal.

The promulgated standards include a category of manufacturers known as incidental furniture manufacturers. An incidental furniture manufacturer is defined in the promulgated standards as "a major source that is primarily engaged in the manufacture of products other than wood furniture or wood furniture components and that uses no more than 100 gallons per month of finishing material or adhesives in the manufacture of wood furniture or wood furniture components." Because the promulgated standard regulates the amount of coating these facilities can use and still be considered incidental furniture manufacturers, emissions from wood furniture manufacturing operations at these facilities will be minimal. The EPA agrees with the commenters that the environmental benefit associated with regulating these facilities would be minimal. Therefore, in the promulgated standards, these facilities are exempted from the standard. However, these facilities will have to maintain records of coating and adhesive usage to demonstrate they are incidental wood furniture manufacturers.

2. Additional Mechanism for Exempting Smaller Sources From the Standards

The proposed standards established applicability cutoffs based on total material usage. Sources using no more than 250 gallons per month, or 3,000 gallons per rolling 12-month period, of finishing materials, adhesives, cleaning solvents, and washoff solvents, including materials used for operations other than wood furniture manufacturing, were automatically exempted from the regulation as long as they maintained records demonstrating they were below the cutoffs.

In the final rule, these provisions are modified to ensure that they can serve the purpose of exempting a facility from the standard by limiting its potential to emit HAP to area source levels. A facility that otherwise would be a major source can, at the option of the owner or operator, become an area source exempt from other provisions of the rule by meeting the usage limits and associated criteria. The usage limits ensure that the facility's potential and actual emissions of HAP are below the major source thresholds of 10 tons of a single HAP or 25 tons of a combination of HAP. (The EPA expects that the usage limits will keep actual emissions from most facilities substantially below the major thresholds.)

To qualify as an area source under these provisions, at least 90 percent of annual HAP emissions from the plant site must come from finishing materials, adhesives, cleaning solvents, and washoff solvents. If the plant site has sources of HAP emissions other than these materials, the owner or operator must keep any records necessary to demonstrate that the facility meets the 90 percent criterion.

A facility may exceed the users limits and still remain an area source exempt from the standard if, before exceeding the limit, the facility obtains other limits that keep its potential to emit HAP below the major threshold. Otherwise, a facility that exceeds the usage limits becomes a major source and thereafter must comply with the standard starting with the applicable compliance date in the rule. These provisions prevent facilities from vacillating between area-source and major-source status while evading major source requirements. Also, these provisions make it possible from a legal standpoint to consider the usage cutoff levels as limiting a source's potential to emit HAP.

The EPA also requested comment on other mechanisms that could be used to exempt smaller sources from the regulation. Unless such a mechanism is provided in the standards or by State and local permitting authorities, many of these smaller facilities will have to enter the Title V permitting process in order to obtain a Federally enforceable limitation on their potential to emit. This would impose a substantial burden on many smaller facilities and on the State and local permitting agencies.

In response to the EPA request for comment, several commenters indicated that a reasonable mechanism to exempt these sources would be to establish an applicability cutoff based on total emissions of HAP materials, instead of material usage in gallons. The EPA has included such a mechanism in the promulgated standards, again structured as an optional way for facilities to limit their potential to emit. Facilities that otherwise would be major sources are considered area sources if they meet the limits and criteria in the rule. To qualify, a facility must use materials containing no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period or no more than 11.4 Mg (12.5 tons) of any combination of HAP per rolling 12-month period, including materials from source categories other than wood furniture. Also, at least 90 percent of their plantwide emissions per rolling 12-month period need to be associated with the manufacture of wood furniture or wood furniture components. These sources need to maintain records that demonstrate that annual emissions do not exceed these levels, including monthly usage records for all finishing, gluing, cleaning, and washoff materials; certified product data sheets for these materials; and any other records necessary to document emissions from source categories other than wood furniture.

3. Inclusion of Custom Cabinet Manufacturers Operating Under Standard Industrial Classification (SIC) Code 5712

Under the proposed standards, sources under any of nine SIC codes were considered wood furniture manufacturers. The SIC codes included 2434, which includes manufacturers of kitchen cabinets. However, one commenter pointed out that manufacturers of custom kitchen cabinets are included in SIC Code 5712. The commenter felt that the operations at these sources were not significantly different than those operating under SIC Code 2434 and that these sources should also be subject to the standards. The EPA agrees with the commenter, and the promulgated standards include custom kitchen cabinet manufacturers operating under SIC Code 5712.

4. Inclusion of Definitions for Wood Furniture and Wood Furniture Component

Two commenters requested that the EPA include definitions for "wood furniture" and "wood furniture component" in the rule. The EPA agrees that these definitions will help clarify which sources are subject to the rule and has included these definitions in the final rule.

5. Change in Title of the Formulation Assessment Plan

Because the formulation assessment plan only applies to VHAP of potential concern that are present in finishing materials, one commenter suggested that the title be changed to formulation assessment plan for finishing operations. The EPA agrees that this clarifies the scope of the formulation assessment plan and in the final rule the title is changed to Formulation Assessment plan for Finishing Operations.

6. Timeframe for Submitting Initial Notification

Several commenters requested that the date for submission of the initial notification be extended. One commenter requested that the date for submittal of the initial notification be extended to 270 days and two commenters requested that the date be extended to 180 days. The EPA agrees with the commenters and has extended the date for submittal of the initial notification to 270 days after the effective date of the final rule.

7. Compliance Options

The proposed rule allowed facilities to use one of four methods to demonstrate compliance with the standard: compliant coatings, averaging, an add-on control device, or a combination of compliant coatings and an add-on control device. The proposed rule did not allow facilities to use a combination of an add-on control device and averaging. One commenter pointed out that this should also be a compliance option. In some facilities, emissions from only one or two finishing lines will be directed to the control device. The emission reductions from these lines will typically be much greater than the reductions required for a facility using compliant coatings. These facilities would like to be allowed to average these "overcontrolled" finishing lines with uncontrolled lines. The EPA believes this is consistent with the regulatory negotiation agreement and with the CAA, both of which state that a facility should be able to use any compliance method that they can demonstrate achieves an equivalent level of reductions. Therefore, the EPA has included this compliance option in the final rule.

8. Guidelines for Determining Capture Efficiency

Since the wood furniture NESHAP was proposed, the EPA has released additional guidance on determining capture efficiency. This guidance allows facilities to use any method of

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determining the capture efficiency of a control system as long as the data generated from the method meets one of two sets of criteria. These criteria are known as the data quality objective (DQO) approach and the lower confidence limit (LCL) approach. As one commenter requested, this new guidance has been included in the final rule.

9. Clarification of Compliance Dates

Under the proposed rule, the compliance date for sources emitting less than 50 tons of HAP per year is three years after the effective date of the rule. For sources emitting more than 50 tons of HAP per year, the compliance date is November 21, 1997. As one commenter pointed out, however, the proposed rule did not include guidance as to which year's emissions should be used to determine the compliance date for a facility. In the final rule, 1996 is identified as the baseline year for determining a facility's compliance date. If a facility's emissions in 1996 are less than 50 tons of HAP then the compliance date for that facility is December 7, 1998. If the facility's emissions are 50 tons of HAP or more in 1996 then the compliance date for the facility is November 21, 1997.

10. Clarification of Definitions and Emission Limits for Adhesives

Several commenters requested clarification of some of the definitions related to adhesives and also clarification as to which adhesives are subject to the emission limits. One commenter indicated they did not believe adhesives should be considered coatings. The EPA agrees and has changed the definition of coating so that it no longer includes adhesives. The definition of adhesive was also changed to clarify that adhesives should not be considered coatings or finishing materials under this subpart.

Several commenters also indicated that the rule should more accurately reflect that contact adhesives are the only types of adhesives that are subject to an emission limit under this subpart. Several changes have been made in the definitions, § 63.801, and in the summary of emission limits, § 63.802, that should clarify this issue.

D. Other Issues

During the EPA work group review of the final rule, two of the EPA offices represented on the work group indicated they had issues that they believed needed to be addressed in the preamble. Both EPA offices recognized that this rule was developed under a regulatory negotiation approach, and they both indicated that they did not want these issues to impact negatively on the consensus achieved during the regulatory negotiation. These issues are addressed in the following paragraphs.

The EPA Office of Research and Development (ORD) expressed concern about the differential use of toxicity information in the regulation. In particular, the ORD was concerned about the prohibition of Class A and B_1/B_2 carcinogens in cleaning and washoff solvents. The ORD was concerned that this prohibition implies that these pollutants are "worse" than other HAP, which may cause serious chronic health effects and/or life-threatening acute effects. Concern was also expressed that the regulation draws a line between pollutants with "B" and "C" designations, when the scientific evidence may not support such a clear distinction. Because this regulation was developed through a negotiation process, ORD agreed to include this provision in the final regulation. However, it is important to emphasize that the decision to include such a provision in this specific rulemaking does not represent a generic policy decision on the use of weight-of-evidence designations.

The second issue, which was raised by the Office of Pollution Prevention and Toxics (OPPT), was also addressed in the preamble to the proposed rule. The preamble to the proposed rule stressed that urea-formaldehyde resins, which are used extensively in gluing operations in the wood furniture and are a source of formaldehyde emissions, are not subject to an emission limit under this regulation. During the development of the regulation, the EPA, working closely with urea-formaldehyde resin manufacturers and the wood furniture industry, decided that it would be more appropriate to regulate emissions from these adhesives under the NESHAP for plywood and particleboard manufacturing. The OPPT has agreed with this approach, but they indicated that the preamble to the final rule should reiterate the EPA intention to regulate these adhesives under a future rulemaking. Therefore, while the EPA is not regulating emissions from urea-formaldehyde resins at wood furniture manufacturing facilities under this rulemaking, emissions from these resins will be regulated under the NESHAP for plywood and particleboard manufacturing.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. The docket is a dynamic file; material is added throughout the rulemaking process. The docketing system is intended to allow members of the public to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0324.

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the CAA. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Part 2, subpart B—Confidentiality of Business Information.

The total annual reporting and recordkeeping burden for this collection averaged over the first three years is estimated to be 140,603 hours per year. The average burden, per respondent, is 187 hours per year. The rule requires an initial one-time notification from each respondent and subsequent reports/notification would have to be submitted semiannually. There would be an estimated 750 respondents to the collection requirements. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the EPA need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St. SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW; Washington, DC 20503; marked "Attention: Desk Officer for EPA." Include the OMB control number in any correspondence.

C. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA is required to judge whether a regulation is "significant" and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be performed. The EPA analysis of these impacts was presented in the preamble to the proposed rule (59 FR 62652), and a copy of the Economic Impact Regulatory Flexibility Analysis is included in the docket. The final rule includes no changes that will be deleterious to small businesses.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is required, Section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Parts 9 and 63

Environmental Protection, Air Pollution Control, Hazardous Substances, Wood Furniture Manufacturing, Reporting and Recordkeeping Requirements.

Dated: November 14, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 135–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j; 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21234, 3 CFR, 1971–1975, Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding in numerical order a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
63–806–63–807	2060–0324

* * * * *

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Part 63 is amended by adding subpart JJ to read as follows:

Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations

Sec.

63.800 Applicability.
63.801 Definitions.
63.802 Emission limits.
63.803 Work practice standards.
63.804 Compliance procedures and monitoring requirements.
63.805 Performance test methods.
63.806 Recordkeeping requirements.
63.807 Reporting requirements.
63.808 Delegation of authority.
63.809–63.819 [Reserved].

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Tables to Subpart JJ

Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations

§ 63.800 Applicability.

(a) The affected source to which this subpart applies is each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source as defined in 40 CFR part 63.2. The owner or operator of a source that meets the criteria for an incidental furniture manufacturer shall maintain purchase or usage records demonstrating the source meets the criteria specified in § 63.801 of this subpart, but the source shall not be subject to any other provisions of this subpart.

(b) A source that complies with the limits and criteria specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section is an area source for the purposes of this subpart and is not subject to any other provision of this rule, provided that: in the case of parargraphs (b)(1) and (b)(2), finishing materials, adhesives, cleaning solvents and washoff solvents account for at least 90 percent of annual HAP emissions at the plant site, and if the plant site has HAP emissions that do not originate from the listed materials, the owner or operator keeps any records necessary to demonstrate that the 90 percent criterion is met. A source that initially relies on the limits and criteria specified in paragraphs (b)(1), (b)(2), and (b)(3) to become an area source, but subsequently exceeds the relevant limit (without first obtaining and complying with other limits that keep its potential to emit hazardous air pollutants below major source levels), becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date in § 63.800. Nothing in this paragraph (b) is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(1) The owner or operator of the source uses no more than 250 gallons per month, for every month, of coating, gluing, cleaning, and washoff materials at the source, including materials used for source categories other than wood furniture (surface coating), but excluding materials used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining motor vehicles operated by the facility, or the use of toxic chemicals contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion). The owner or operator shall maintain records of the total gallons of coating, gluing, cleaning, and washoff materials used each month, and upon request submit such records to the Administrator. These records shall be maintained for five years.

(2) The owner or operator of the source uses no more than 3,000 gallons per rolling 12-month period, for every 12-month period, of coating, gluing, cleaning, and washoff materials at the source, including materials used for source categories other than wood furniture (surface coating), but excluding materials used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining motor vehicles operated by the facility, or the use of toxic chemicals contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion). A rolling 12-month period includes the previous 12 months of operation. The owner or operator of the source shall maintain records of the total gallons of coating, gluing, cleaning, and washoff materials used each month and the total gallons used each previous month, and upon request submit such records to the Administrator. Because records are needed over the previous set of 12 months, the owner or operator shall keep monthly records beginning no less than one year before the compliance date specified in § 63.800(e). Records shall be maintained for five years.

(3) The source uses materials containing no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period or no more than 11.4 Mg (12.5 tons) of any combination of HAP per rolling 12-month period, including materials from source categories other than wood furniture; and at least 90 percent of the plantwide emissions per rolling 12-month period are associated with the manufacture of wood furniture or wood furniture components. The owner or operator shall maintain records that demonstrate that annual emissions do not exceed these levels, including monthly usage records for all finishing, gluing, cleaning, and washoff materials; certified product data sheets for these materials; and any other records necessary to document emissions from source categories other than wood furniture and upon request submit such records to the Administrator. These records shall be maintained for five years.

(c) This subpart does not apply to research or laboratory facilities as defined in § 63.801.

(d) Owners or operators of affected sources shall also comply with the requirements of subpart A of this part (General Provisions), according to the applicability of subpart A to such sources, as identified in Table 1 of this subpart.

(e) The compliance date for existing affected sources that emit less than 50 tons per year of HAP in 1996 is December 7, 1998. The compliance date for existing affected sources that emit 50 tons or more of hazardous air pollutants in 1996 is November 21, 1997. The owner or operator of an existing area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart one year after becoming a major source.

(f) New affected sources must comply with the provisions of this standard immediately upon startup or by December 7, 1995, whichever is later. New area sources that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(g) Reconstructed affected sources are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment (e.g., incinerators, carbon adsorbers, etc.) are not considered in determining whether the facility has been reconstructed, unless the control equipment is required as part of the process (e.g., product recovery). Additionally, the costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs. For example, an affected source may convert to waterborne coatings to meet the requirements of this subpart. At most facilities, this conversion will require the replacement of existing storage tanks, mix equipment, and transfer lines. The cost of replacing the equipment is not considered in determining whether the facility has been reconstructed.

§ 63.801 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A (General Provisions) of this part.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Under this subpart, adhesives shall not be considered coatings or finishing materials. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto or in an inert substrate shall not be considered adhesives under this subpart.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

Aerosol adhesive means an adhesive that is dispensed from a pressurized container as a suspension of fine solid or liquid particles in gas.

Affected source means a wood furniture manufacturing facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source as defined in 40 CFR part 63.2, excluding sources that meet the criteria established in § 63.800(a), (b) and (c) of this subpart.

Alternative method means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Administrator's satisfaction to, in specific cases, produce results adequate for a determination of compliance.

As applied means the HAP and solids content of the coating or contact adhesive that is actually used for coating or gluing the substrate. It includes the contribution of materials used for in-house dilution of the coating or contact adhesive.

Basecoat means a coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials, and is usually topcoated for protection.

Baseline conditions means the conditions that exist prior to an affected source implementing controls, such as a control system.

Building enclosure means a building housing a process that meets the requirements of a temporary total enclosure. The EPA Method 204E is used to identify all emission points from the building enclosure and to determine which emission points must be tested. For additional information see *Guidelines for Determining Capture Efficiency*, January 1994. Docket No. A–93–10, Item No. IV–B–1.

Capture device means a hood, enclosed room, floor sweep, or other means of collecting solvent emissions or other pollutants into a duct so that the pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.

Capture efficiency means the fraction of all organic vapors generated by a process that are directed to a control device.

Certified product data sheet (CPDS) means documentation furnished by coating or adhesive suppliers or an outside laboratory that provides the HAP content of a finishing material, contact adhesive, or solvent, by percent weight, measured using the EPA Method 311 (as promulgated in this subpart), or an equivalent or alternative method (or formulation data if the coating meets the criteria specified in § 63.805(a)); the solids content of a finishing material or contact adhesive by percent weight, determined using data from the EPA Method 24, or an alternative or equivalent method (or formulation data if the coating meets the criteria specified in § 63.805(a)); and the density, measured by EPA Method 24 or an alternative or equivalent method. Therefore, the reportable HAP content should represent the maximum aggregate emissions potential of the finishing material, adhesive, or solvent in concentrations greater than or equal to 1.0 percent by weight or 0.1 percent for HAP that are carcinogens, as defined by the Occupational Safety and Health Administration Hazard Communication Standard (29 CFR part 1910), as formulated. The purpose of the CPDS is to assist the affected source in demonstrating compliance with the emission limitations presented in § 63.802.

(Note: Because the optimum analytical conditions under EPA Method 311 vary by coating, the coating or adhesive supplier may also choose to include on the CPDS the optimum analytical conditions for analysis of the coating, adhesive, or solvent using EPA Method 311. Such information may include, but not be limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.)

Cleaning operations means operations in which organic solvent is used to remove coating materials or adhesives from equipment used in wood furniture manufacturing operations.

Coating means a protective, decorative, or functional film applied in a thin layer to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

Coating application station means the part of a coating operation where the coating is applied, e.g., a spray booth.

Coating operation means those activities in which a coating is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

Coating solids (or solids) means the part of the coating which remains after the coating is dried or cured; solids content is determined using data from the EPA Method 24, or an equivalent or alternative method.

Compliant coating/contact adhesive means a finishing material, contact adhesive, or strippable booth coating that meets the emission limits specified in Table 3 of this subpart.

Contact adhesive means an adhesive that is applied to two substrates, dried, and mated under only enough pressure to result in good contact. The bond is immediate and sufficiently strong to hold pieces together without further clamping, pressure, or airing.

Continuous coater means a finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor. Finishing materials that are not transferred to the part are recycled to a reservoir. Several types of application methods can be used with a continuous coater including spraying, curtain coating, roll coating, dip coating, and flow coating.

Continuous compliance means that the affected source is meeting the emission limitations and other requirements of the rule at all times and is fulfilling all monitoring and recordkeeping provisions of the rule in order to demonstrate compliance.

Control device means any equipment that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Includes, but is not limited to, incinerators, carbon adsorbers, and condensers.

Control device efficiency means the ratio of the pollutant released by a control device and the pollutant introduced to the control device.

Control system means the combination of capture and control devices used to reduce emissions to the atmosphere.

Conventional air spray means a spray coating method in which the coating is atomized by mixing it with compressed air and applied at an air pressure greater than 10 pounds per square inch (gauge) at the point of atomization. Airless and air assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not considered conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece.

Data quality objective (DQO) approach means a set of approval

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criteria that must be met so that data from an alternative test method can be used in determining the capture efficiency of a control system. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Day means a period of 24 consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.

Disposed offsite means sending used organic solvent or coatings outside of the facility boundaries for disposal.

Emission means the release or discharge, whether directly or indirectly, of HAP into the ambient air.

Enamel means a coat of colored material, usually opaque, that is applied as a protective topcoat over a basecoat, primer, or previously applied enamel coats. In some cases, another finishing material may be applied as a topcoat over the enamel.

Equipment leak means emissions of volatile hazardous air pollutants from pumps, valves, flanges, or other equipment used to transfer or apply coatings, adhesives, or organic solvents.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specific conditions.

Finishing material means a coating used in the wood furniture industry. Such materials include, but are not limited to, stains, basecoats, washcoats, enamels, sealers, and topcoats.

Finishing operation means those operations in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

Foam adhesive means a contact adhesive used for gluing foam to fabric, foam to foam, and fabric to wood.

Gluing operation means those operations in which adhesives are used to join components, for example, to apply a laminate to a wood substrate or foam to fabric.

Incidental wood furniture manufacturer means a major source that is primarily engaged in the manufacture of products other than wood furniture or wood furniture components and that uses no more than 100 gallons per month of finishing material or adhesives in the manufacture of wood furniture or wood furniture components.

Incinerator means, for the purposes of this industry, an enclosed combustion device that thermally oxidizes volatile organic compounds to CO and CO_2. This term does not include devices that burn municipal or hazardous waste material.

Janitorial maintenance means the upkeep of equipment or building structures that is not directly related to the manufacturing process, for example, cleaning of restroom facilities.

Lower confidence limit (LCL) approach means a set of approval criteria that must be met so that data from an alternative test method can be used in determining the capture efficiency of a control system. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Material safety data sheet (MSDS) means the documentation required for hazardous chemicals by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR Part 1910) for a solvent, cleaning material, contact adhesive, coating, or other material that identifies select reportable hazardous ingredients of the material, safety and health considerations, and handling procedures.

Noncompliant coating/contact adhesive means a finishing material, contact adhesive, or strippable booth coating that has a VHAP content (VOC content for the strippable booth coating) greater than the emission limitation presented in Table 3 of this subpart.

Nonporous substrate means a surface that is impermeable to liquids. Examples include metal, rigid plastic, flexible vinyl, and rubber.

Normally closed container means a container that is closed unless an operator is actively engaged in activities such as emptying or filling the container.

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit.

Organic solvent means a volatile organic liquid that is used for dissolving or dispersing constituents in a coating or contact adhesive, adjusting the viscosity of a coating or contact adhesive, or cleaning equipment. When used in a coating or contact adhesive, the organic solvent evaporates during drying and does not become a part of the dried film.

Overall control efficiency means the efficiency of a control system, calculated as the product of the capture and control device efficiencies, expressed as a percentage.

Permanent total enclosure means a permanently installed enclosure that completely surrounds a source of emissions such that all emissions are captured and contained for discharge through a control device. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Recycled onsite means the reuse of an organic solvent in a process other than cleaning or washoff.

Reference method means any method of sampling and analyzing for an air pollutant that is published in Appendix A of 40 CFR part 60.

Research or laboratory facility means any stationary source whose primary purpose is to conduct research and development to develop new processes and products where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Responsible official has the meaning given to it in 40 CFR part 70, State Operating Permit Programs (Title V permits).

Sealer means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Special purpose finishing materials that are used in some finishing systems to optimize aesthetics are not sealers.

Solvent means a liquid used in a coating or contact adhesive to dissolve or disperse constituents and/or to adjust viscosity. It evaporates during drying and does not become a part of the dried film.

Stain means any color coat having a solids content by weight of no more than 8.0 percent that is applied in single or multiple coats directly to the substrate. It includes, but is not limited to, nongrain raising stains, equalizer stains, prestains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

Storage containers means vessels or tanks, including mix equipment, used to hold finishing, gluing, cleaning, or washoff materials.

Strippable spray booth material means a coating that:

(1) Is applied to a spray booth wall to provide a protective film to receive overspray during finishing operations;

(2) That is subsequently peeled off and disposed; and

(3) By achieving (1) and (2), reduces or eliminates the need to use organic solvents to clean spray booth walls.

Substrate means the surface onto which a coating or contact adhesive is applied (or into which a coating or contact adhesive is impregnated).

Temporary total enclosure means an enclosure that meets the requirements of § 63.805(e)(1) (i) through (iv) and is not permanent, but constructed only to measure the capture efficiency of pollutants emitted from a given source. Additionally, any exhaust point from the enclosure shall be at least four equivalent duct or hood diameters from each natural draft opening. For additional information, see *Guidelines for Determining Capture Efficiency*, January 1994. (Docket No. A–93–10, Item No. IV–B–1).

Thinner means a volatile liquid that is used to dilute coatings or contact adhesives (to reduce viscosity, color strength, and solids, or to modify drying conditions).

Topcoat means the last film-building finishing material that is applied in a finishing system.

Touchup and repair means the application of finishing materials to cover minor finishing imperfections.

VHAP means any volatile hazardous air pollutant listed in Table 2 to Subpart JJ.

VHAP of potential concern means any VHAP from the nonthreshold, high concern, or unrankable list in Table b of this subpart.

Volatile organic compound (VOC) means any organic compound which participates in atmospheric photochemical reactions, that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity. A VOC may be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under any rule. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, the owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. For a list of compounds that the Administrator has designated as having negligible photochemical reactivity, refer to 40 CFR part 51.10.

Washcoat means a transparent special purpose finishing material having a solids content by weight of 12.0 percent by weight or less. Washcoats are applied over initial stains to protect, to control color, and to stiffen the wood fibers in order to aid sanding.

Washoff operations means those operations in which organic solvent is used to remove coating from wood furniture or a wood furniture component.

Wood furniture means any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

Wood furniture component means any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops.

Wood furniture manufacturing operations means the finishing, gluing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

(b) The nomenclature used in this subpart has the following meaning:

(1) A_k = the area of each natural draft opening (k) in a total enclosure, in square meters.

(2) C_c=the VHAP content of a finishing material (c), in kilograms of volatile hazardous air pollutants per kilogram of coating solids (kg VHAP/kg solids), as supplied. Also given in pounds of volatile hazardous air pollutants per pound of coating solids (lb VHAP/lb solids).

(3) C_{aj}=the concentration of VHAP in gas stream (j) exiting the control device, in parts per million by volume.

(4) C_{ai}=the concentration of VHAP in gas stream (i) entering the control device, in parts per million by volume.

(5) C_{ai}=the concentration of VHAP in gas stream (i) entering the control device from the affected source, in parts per million by volume.

(6) C_{ak}=the concentration of VHAP in uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source, in parts per million by volume.

(7) E=the emission limit achieved by an emission point or a set of emission points, in kg VHAP/kg solids (lb VHAP/lb solids).

(8) F=the control device efficiency, expressed as a fraction.

(9) FV=the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

(10) G=the VHAP content of a contact adhesive, in kg VHAP/kg solids (lb VHAP/lb solids), as applied.

(11) M=the mass of solids in finishing material used monthly, kg solids/month (lb solids/month).

(12) N=the capture efficiency, expressed as a fraction.

(13) Q_{Aj}=the volumetric flow rate of gas stream (j) exiting the control device, in dry standard cubic meters per hour.

(14) Q_{bi}=the volumetric flow rate of gas stream (i) entering the control device, in dry standard cubic meters per hour.

(15) Q_{di}=the volumetric flow rate of gas stream (i) entering the control device from the emission point, in dry standard cubic meters per hour.

(16) Q_{fk}=the volumetric flow rate of uncontrolled gas stream (k) emitted directly to the atmosphere from the emission point, in dry standard cubic meters per hour.

(17) Q_{mi}=the volumetric flow rate of gas stream (i) entering the total enclosure through a forced makeup air duct, in standard cubic meters per hour (wet basis).

(18) $Q_{out\ j}$=the volumetric flow rate of gas stream (j) exiting the total enclosure through an exhaust duct or hood, in standard cubic meters per hour (wet basis).

(19) R=the overall efficiency of the control system, expressed as a percentage.

(20) S=the VHAP content of a solvent, expressed as a weight fraction, added to finishing materials.

(21) W=the amount of solvent, in kilograms (pounds), added to finishing materials during the monthly averaging period.

(22) ac=after the control system is installed and operated.

(23) bc=before control.

§ 63.802 Emission limits.

(a) Each owner or operator of an existing affected source subject to this subpart shall:

(1) Limit VHAP emissions from finishing operations by meeting the emission limitations for existing sources presented in Table 3 of this subpart, using any of the compliance methods in § 63.804(a). To determine VHAP emissions from a finishing material containing formaldehyde or styrene, the owner or operator of the affected source shall use the methods presented in § 63.803(l)(2) for determining styrene and formaldehyde usage.

(2) Limit VHAP emissions from contact adhesives by achieving a VHAP limit for contact adhesives based on the following criteria:

(i) For foam adhesives (contact adhesives used for upholstery operations) used in products that meet the upholstered seating flammability requirements of California Technical Bulletin 116, 117, or 133, the Business and Institutional Furniture Manufacturers Association's (BIFMA's) X5.7, UFAC flammability testing, or any similar requirements from local, State, or Federal fire regulatory agencies, the VHAP content of the adhesive shall not

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exceed 1.8 kg VHAP/kg solids (1.8 lb VHAP/lb solids), as applied; or

(ii) For all other contact adhesives (including foam adhesives used in products that do not meet the standards presented in paragraph (a)(2)(i) of this section, but excluding aerosol adhesives and excluding contact adhesives applied to nonporous substrates, the VHAP content of the adhesive shall not exceed 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied.

(3) Limit HAP emissions from strippable spray booth coatings by using coatings that contain no more than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied.

(b) Each owner or operator of a new affected source subject to this subpart shall:

(1) Limit VHAP emissions from finishing operations by meeting the emission limitations for new sources presented in Table 3 of this subpart using any of the compliance methods in § 63.804(d). To determine VHAP emissions from a finishing material containing formaldehyde or styrene, the owner or operator of the affected source shall use the methods presented in § 63.803(l)(2) for determining styrene and formaldehyde usage.

(2) Limit VHAP emissions from contact adhesives by achieving a VHAP limit for contact adhesives, excluding aerosol adhesives and excluding contact adhesives applied to nonporous substrates, of no greater than 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied, using either of the compliance methods in § 63.804(e).

(3) Limit HAP emissions from strippable spray booth coatings by using coatings that contain no more than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied.

§ 63.803 Work practice standards.

(a) *Work practice implementation plan.* Each owner or operator of an affected source subject to this subpart shall prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the work practice standards presented in paragraphs (b) through (l) of this section. The plan shall be developed no more than 60 days after the compliance date. The written work practice implementation plan shall be available for inspection by the Administrator upon request. If the Administrator determines that the work practice implementation plan does not adequately address each of the topics specified in paragraphs (b) through (l) of this section or that the plan does not include sufficient mechanisms for ensuring that the work practice standards are being implemented, the Administrator may require the affected source to modify the plan. Revisions or modifications to the plan do not require a revision of the source's Title V permit.

(b) *Operator training course.* Each owner or operator of an affected source shall train all new and existing personnel, including contract personnel, who are involved in finishing, gluing, cleaning, and washoff operations, use of manufacturing equipment, or implementation of the requirements of this subpart. All new personnel, those hired after the compliance date of the standard, shall be trained upon hiring. All existing personnel, those hired before the compliance date of the standard, shall be trained within six months of the compliance date of the standard. All personnel shall be given refresher training annually. The affected source shall maintain a copy of the training program with the work practice implementation plan. The training program shall include, at a minimum, the following:

(1) A list of all current personnel by name and job description that are required to be trained;

(2) An outline of the subjects to be covered in the initial and refresher training for each position or group of personnel;

(3) Lesson plans for courses to be given at the initial and the annual refresher training that include, at a minimum, appropriate application techniques, appropriate cleaning and washoff procedures, appropriate equipment setup and adjustment to minimize finishing material usage and overspray, and appropriate management of cleanup wastes; and

(4) A description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion.

(c) *Inspection and maintenance plan.* Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan that specifies:

(1) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply coatings, adhesives, or organic solvents;

(2) An inspection schedule;

(3) Methods for documenting the date and results of each inspection and any repairs that were made;

(4) The timeframe between identifying the leak and making the repair, which adheres, at a minimum, to the following schedule:

(i) A first attempt at repair (e.g., tightening of packing glands) shall be made no later than five calendar days after the leak is detected; and

(ii) Final repairs shall be made within 15 calendar days after the leak is detected, unless the leaking equipment is to be replaced by a new purchase, in which case repairs shall be completed within three months.

(d) *Cleaning and washoff solvent accounting system.* Each owner or operator of an affected source shall develop an organic solvent accounting form to record:

(1) The quantity and type of organic solvent used each month for washoff and cleaning, as defined in § 63.801 of this subpart;

(2) The number of pieces washed off, and the reason for the washoff; and

(3) The quantity of spent solvent generated from each washoff and cleaning operation each month, and whether it is recycled onsite or disposed offsite.

(e) *Chemical composition of cleaning and washoff solvents.* Each owner or operator of an affected source shall not use cleaning or washoff solvents that contain any of the pollutants listed in Table 4 to this subpart, in concentrations subject to MSDS reporting as required by OSHA.

(f) *Spray booth cleaning.* Each owner or operator of an affected source shall not use compounds containing more than 8.0 percent by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is the spray booth coating or other protective material used to cover the booth is being replaced, the affected source shall use no more than 1.0 gallon of organic solvent per booth to prepare the surface of the booth prior to applying the booth coating.

(g) *Storage requirements.* Each owner or operator of an affected source shall use normally closed containers for storing finishing, gluing, cleaning, and washoff materials.

(h) *Application equipment requirements.* Each owner or operator of an affected source shall use conventional air spray guns to apply finishing materials only under any of the following circumstances:

(1) To apply finishing materials that have a VOC content no greater than 1.0 lb VOC/lb solids, as applied;

(2) For touchup and repair under the following conditions:

(i) The touchup and repair occurs after completion of the finishing operation; or

(ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons.

(3) When spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;

(4) When emissions from the finishing application station are directed to a control device;

(5) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0 percent of the total gallons of finishing material used during that semiannual period; or

(6) The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology.

The affected source shall demonstrate technical or economic infeasibility by submitting to the Administrator a videotape, a technical report, or other documentation that supports the affected source's claim of technical or economic infeasibility. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(i) *Line cleaning.* Each owner or operator of an affected source shall pump or drain all organic solvent used for line cleaning into a normally closed container.

(j) *Gun cleaning.* Each owner or operator of an affected source shall collect all organic solvent used to clean spray guns into a normally closed container.

(k) *Washoff operations.* Each owner or operator of an affected source shall control emissions from washoff operations by:

(1) Using normally closed tanks for washoff; and

(2) Minimizing dripping by tilting or rotating the part to drain as much solvent as possible.

(l) *Formulation assessment plan for finishing operations.* Each owner or operator of an affected source shall prepare and maintain with the work practice implementation plan a formulation assessment plan that:

(1) Identifies VHAP from the list presented in Table 5 of this subpart that are being used in finishing operations by the affected source;

(2) Establishes a baseline level of usage by the affected source, for each VHAP identified in paragraph (l)(1) of this section. The baseline usage level shall be the highest annual usage from 1994, 1995, or 1996, for each VHAP identified in paragraph (l)(1) of this section. For formaldehyde, the baseline level of usage shall be based on the amount of free formaldehyde present in the finishing material when it is applied. For styrene, the baseline level of usage shall be an estimate of unreacted styrene, which shall be calculated by multiplying the amount of styrene monomer in the finishing material, when it is applied, by a factor of 0.16. Sources using a control device to reduce emissions may adjust their usage based on the overall control efficiency of the control system, which is determined using the equation in § 63.805 (d) or (e).

(3) Tracks the annual usage of each VHAP identified in (l)(1) by the affected source that is present in amounts subject to MSDS reporting as required by OSHA.

(4) If, after November 1998, the annual usage of the VHAP identified in paragraph (l)(1) exceeds its baseline level, then the owner or operator of the affected source shall provide a written notification to the permitting authority that describes the amount of the increase and explains the reasons for exceedance of the baseline level. The following explanations would relieve the owner or operator from further action, unless the affected source is not in compliance with any State regulations or requirements for that VHAP:

(i) The exceedance is no more than 15.0 percent above the baseline level;

(ii) Usage of the VHAP is below the de minimis level presented in Table 5 of this subpart for that VHAP (sources using a control device to reduce emissions may adjust their usage based on the overall control efficiency of the control system, which is determined using the procedures in § 63.805 (d) or (e);

(iii) The affected source is in compliance with its State's air toxic regulations or guidelines for the VHAP; or

(iv) The source of the pollutant is a finishing material with a VOC content of no more than 1.0 kg VOC/kg solids (1.0 lb VOC/lb solids), as applied.

(5) If none of the above explanations are the reason for the increase, the owner or operator shall confer with the permitting authority to discuss the reason for the increase and whether there are practical and reasonable technology-based solutions for reducing the usage. The evaluation of whether a technology is reasonable and practical shall be based on cost, quality, and marketability of the product, whether the technology is being used successfully by other wood furniture manufacturing operations, or other criteria mutually agreed upon by the permitting authority and owner or operator. If there are no practical and reasonable solutions, the facility need take no further action. If there are solutions, the owner or operator shall develop a plan to reduce usage of the pollutant to the extent feasible. The plan shall address the approach to be used to reduce emissions, a timetable for implementing the plan, and a schedule for submitting notification of progress.

(6) If after November 1998, an affected source uses a VHAP of potential concern for which a baseline level has not been previously established, then the baseline level shall be established as the de minimis level, based on 70 year exposure levels and data provided in the proposed rulemaking pursuant to Section 112(g) of the CAA, for that pollutant. A list of VHAP of potential concern is provided in Table 6 of this subpart. If usage of the VHAP of potential concern exceeds the de minimis level, then the affected source shall provide an explanation to the permitting authority that documents the reason for exceedance of the de minimis level. If the explanation is not one of those listed in paragraphs (l)(4)(i) through (l)(4)(iv), the affected source shall follow the procedures established in (l)(5).

§ 63.804 Compliance procedures and monitoring requirements.

(a) The owner or operator of an existing affected source subject to § 63.802(a)(1) shall comply with those provisions using any of the methods presented in § 63.804 (a)(1) through (a)(4).

(1) Calculate the average VHAP content for all finishing materials used at the facility using Equation 1, and maintain a value of E no greater than 1.0;

$$E=(M_{c1}C_{c1} + M_{c2}C_{c2} + * * * + M_{cn}C_{cn} + S_1W_1 + S_2W_2 + * * * S_nW_n)/(M_{c1} + M_{c2} + * * * + M_{cn}) \quad \text{Equation 1}$$

(2) Use compliant finishing materials according to the following criteria:

(i) Demonstrate that each stain, sealer, and topcoat has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0

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percent VHAP by weight by maintaining certified product data sheets for each coating and thinner;

(ii) Demonstrate that each washcoat, basecoat, and enamel that is purchased pre-made, that is, it is not formulated onsite by thinning another finishing material, has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight by maintaining certified product data sheets for each coating and thinner; and

(iii) Demonstrate that each washcoat, basecoat, and enamel that is formulated at the affected source is formulated using a finishing material containing no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent VHAP by weight.

(3) Use a control system with an overall control efficiency (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

$$R=[(E_{bc}-E_{ac})/E_{bc}](100) \quad \text{Equation 2}$$

The value of E_{bc} in Equation 2 shall be calculated using Equation 1; or

(4) Use any combination of an averaging approach, as described in paragraph (a)(1) of this section, compliant finishing materials, as described in paragraph (a)(2) of this section, and a control system, as described in paragraph (a)(3) of this section.

(b) The owner or operator of an affected source subject to § 63.802(a)(2)(i) shall comply with the provisions by using compliant foam adhesives with a VHAP content no greater than 1.8 kg VHAP/kg solids (1.8 lb VHAP/lb solids), as applied.

(c) The owner or operator of an affected source subject to § 63.802(a)(2)(ii) shall comply with those provisions by using either of the methods presented in § 63.804 (c)(1) and (c)(2).

(1) Use compliant contact adhesives with a VHAP content no greater than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; or

(2) Use a control system with an overall control efficiency (R) such that the value of G_{ac} is no greater than 1.0.

$$R=[(G_{bc}-G_{ac})/G_{bc}](100) \quad \text{Equation 3}$$

(d) The owner or operator of a new affected source subject to § 63.802(b)(1) may comply with those provisions by using any of the following methods:

(1) Calculate the average VHAP content across all finishing materials used at the facility using Equation 1, and maintain a value of E no greater than 0.8;

(2) Use compliant finishing materials according to the following criteria:

(i) Demonstrate that each sealer and topcoat has a VHAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, each stain has a VHAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight;

(ii) Demonstrate that each washcoat, basecoat, and enamel that is purchased pre-made, that is, it is not formulated onsite by thinning another finishing material, has a VHAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, and each thinner contains no more than 10.0 percent VHAP by weight; and

(iii) Demonstrate that each washcoat, basecoat, and enamel that is formulated onsite is formulated using a finishing material containing no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent HAP by weight.

(3) Use a control system with an overall control efficiency (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

$$R=[(E_{bc}-E_{ac})/E_{bc}](100) \quad \text{Equation 4}$$

The value of E_{bc} in Equation 4 shall be calculated using Equation 1; or

(4) Use any combination of an averaging approach, as described in (d)(1), compliant finishing materials, as described in (d)(2), and a control system, as described in (d)(3).

(e) The owner or operator of a new affected source subject to § 63.802(b)(2) shall comply with the provisions using either of the following methods:

(1) Use compliant contact adhesives with a VHAP content no greater than 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied; or

(2) Use a control system with an overall control efficiency (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

(f) *Initial compliance.* (1) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(1) or (d)(1) shall submit the results of the averaging calculation (Equation 1) for the first month with the initial compliance status report required by § 63.807(b). The first month's calculation shall include data for the entire month in which the compliance date falls. For example, if the source's compliance date is November 21, 1997, the averaging calculation shall include data from November 1, 1997 to November 30, 1997.

(2) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(2) or (d)(2) shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant stains, washcoats, sealers, topcoats, basecoats, enamels, and thinners, as applicable, are being used by the affected source.

(3) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that are complying through the procedures established in § 63.804 (a)(2) or (d)(2) and are applying coatings using continuous coaters shall demonstrate initial compliance by:

(i) Submitting an initial compliance status report, as required by § 63.807(b), stating that compliant coatings, as determined by the VHAP content of the coating in the reservoir and the VHAP content as calculated from records, and compliant thinners are being used; or

(ii) Submitting an initial compliance status report, as required by § 63.807(b), stating that compliant coatings, as determined by the VHAP content of the coating in the reservoir, are being used; the viscosity of the coating in the reservoir is being monitored; and compliant thinners are being used. The affected source shall also submit data that demonstrate that viscosity is an appropriate parameter for demonstrating compliance.

(4) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(3) or (d)(3) shall demonstrate initial compliance by:

(i) Submitting a monitoring plan that identifies each operating parameter to be monitored for the capture device and discusses why each parameter is appropriate for demonstrating continuous compliance;

(ii) Conducting an initial performance test as required under § 63.7 using the procedures and test methods listed in § 63.7 and § 63.805 (c) and (d) or (e);

(iii) Calculating the overall control efficiency (R) following the procedures in § 63.805 (d) or (e); and

(iv) Determining those operating conditions critical to determining compliance and establishing one or more operating parameters that will ensure compliance with the standard.

(A) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter.

(B) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and downstream of the catalyst bed shall be the operating parameter.

(C) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters.

(D) For compliance with a carbon adsorber, the operating parameters shall be the total regeneration mass stream flow for each regeneration cycle and the carbon bed temperature after each regeneration, or the concentration level of organic compounds exiting the adsorber, unless the owner or operator requests and receives approval from the Administrator to establish other operating parameters.

(E) For compliance with a control device not listed in this section, one or more operating parameter values shall be established using the procedures identified in § 63.804(g)(4)(vi).

(v) Owners or operators complying with § 63.804(f)(4) shall calculate each site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the three test runs required by § 63.805(c)(1).

(5) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2) or (b)(2) that comply through the procedures established in § 63.804 (b), (c)(1), or (e)(1), shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant contact adhesives are being used by the affected source.

(6) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2)(ii) or (b)(2) that comply through the procedures established in § 63.804 (c)(2) or (e)(2), shall demonstrate initial compliance by:

(i) Submitting a monitoring plan that identifies each operating parameter to be monitored for the capture device and discusses why each parameter is appropriate for demonstrating continuous compliance;

(ii) Conducting an initial performance test as required under § 63.7 using the procedures and test methods listed in § 63.7 and § 63.805 (c) and (d) or (e);

(iii) Calculating the overall control efficiency (R) following the procedures in § 63.805 (d) or (e); and

(iv) Determining those operating conditions critical to determining compliance and establishing one or more operating parameters that will ensure compliance with the standard.

(A) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter.

(B) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and downstream of the catalyst bed shall be the operating parameter.

(C) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters.

(v) Owners or operators complying with § 63.804(f)(6) shall calculate each site-specific operating parameter value as the arithmetic average of the maximum or minimum operating values as appropriate, that demonstrate compliance with the standards, during the three test runs required by § 63.805(c)(1).

(7) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(3) or (b)(3) shall submit an initial compliance status report, as required by § 63.807(b), stating that compliant strippable spray booth coatings are being used by the affected source.

(8) Owners or operators of an affected source subject to the work practice standards in § 63.803 shall submit an initial compliance status report, as required by § 63.807(b), stating that the work practice implementation plan has been developed and procedures have been established for implementing the provisions of the plan.

(g) *Continuous compliance demonstrations.* (1) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(1) or (d)(1) shall demonstrate continuous compliance by submitting the results of the averaging calculation (Equation 1) for each month within that semiannual period and submitting a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that the value of (E), as calculated by Equation 1, is no greater than 1.0 for existing sources or 0.8 for new sources. An affected source is in violation of the standard if E is greater than 1.0 for existing sources or 0.8 for new sources for any month. A violation of the monthly average is a separate violation of the standard for each day of operation during the month, unless the affected source can demonstrate through records that the violation of the monthly average can be attributed to a particular day or days during the period.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(2) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(2) or (d)(2) shall demonstrate continuous compliance by using compliant coatings and thinners, maintaining records that demonstrate the coatings and thinners are compliant, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant stains, washcoats, sealers, topcoats, basecoats, enamels, and thinners, as applicable, have been used each day in the semiannual reporting period or should otherwise identify the periods of noncompliance and the reasons for noncompliance. An affected source is in violation of the standard whenever a noncompliant coating, as demonstrated by records or by a sample of the coating, is used.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(3) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that are complying through the procedures established in § 63.804 (a)(2) or (d)(2) and are applying coatings using continuous coaters shall demonstrate continuous compliance by following the procedures in paragraph (g)(3) (i) or (ii) of this section.

(i) Using compliant coatings, as determined by the VHAP content of the coating in the reservoir and the VHAP content as calculated from records, using compliant thinners, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(A) The compliance certification shall state that compliant coatings have been used each day in the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance. An affected source is in violation of the standard whenever a noncompliant coating, as determined by records or by a sample of the coating, is used. Use of a noncompliant coating is a separate violation for each day the noncompliant coating is used.

(B) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(ii) Using compliant coatings, as determined by the VHAP content of the

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coating in the reservoir, using compliant thinners, maintaining a viscosity of the coating in the reservoir that is no less than the viscosity of the initial coating by monitoring the viscosity with a viscosity meter or by testing the viscosity of the initial coating and retesting the coating in the reservoir each time solvent is added, maintaining records of solvent additions, and submitting a compliance certification with the semiannual report required by § 63.807(c).

(A) The compliance certification shall state that compliant coatings, as determined by the VHAP content of the coating in the reservoir, have been used each day in the semiannual reporting period. Additionally, the certification shall state that the viscosity of the coating in the reservoir has not been less than the viscosity of the initial coating, that is, the coating that is initially mixed and placed in the reservoir, for any day in the semiannual reporting period.

(B) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(C) An affected source is in violation of the standard when a sample of the as-applied coating exceeds the applicable limit established in § 63.804 (a)(2) or (d)(2), as determined using EPA Method 311, or the viscosity of the coating in the reservoir is less than the viscosity of the initial coating.

(4) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(1) or (b)(1) that comply through the procedures established in § 63.804 (a)(3) or (d)(3) shall demonstrate continuous compliance by installing, calibrating, maintaining, and operating the appropriate monitoring equipment according to manufacturer's specifications. The owner or operator shall also submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.807(d) and § 63.10(e) of subpart A.

(i) Where a capture/control device is used, a device to monitor each site-specific operating parameter established in accordance with § 63.804(f)(6)(i) is required.

(ii) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(A) Where a thermal incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(B) Where a catalytic incinerator equipped with a fixed catalyst bed is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(C) Where a catalytic incinerator equipped with a fluidized catalyst bed is used, a temperature monitoring device shall be installed in the gas stream immediately before the bed. In addition, a pressure monitoring device shall be installed to determine the pressure drop across the catalyst bed. The pressure drop shall be measured monthly at a constant flow rate.

(iii) Where a carbon adsorber is used one of the following is required:

(A) An integrating stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, having an accuracy of ±1 percent of the temperature being monitored or ±0.5 °C, whichever is greater, and capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle;

(B) An organic monitoring device, equipped with a continuous recorder, to indicate the concentration level of organic compounds exiting the carbon adsorber; or

(C) Any other monitoring device that has been approved by the Administrator in accordance with § 63.804(f)(4)(iv)(D).

(iv) Owners or operators of an affected source shall not operate the capture or control device at a daily average value greater than or less than (as appropriate) the operating parameter values. The daily average value shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(v) Owners or operators of an affected source that are complying through the use of a catalytic incinerator equipped with a fluidized catalyst bed shall maintain a constant pressure drop, measured monthly, across the catalyst bed.

(vi) An owner or operator who uses a control device not listed in § 63.804(f)(4) shall submit, for the Administrator's approval, a description of the device, test data verifying performance, and appropriate site-specific operating parameters that will be monitored to demonstrate continuous compliance with the standard.

(5) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2) (i) or (ii) or (b)(2) that comply through the procedures established in § 63.804 (b), (c)(1), or (e)(1), shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant contact and/or foam adhesives have been used each day in the semiannual reporting period, or should otherwise identify each day noncompliant contact and/or foam adhesives were used. Each day a noncompliant contact or foam adhesive is used is a single violation of the standard.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(6) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(2)(ii) or (b)(2) that comply through the procedures established in § 63.804 (c)(2) or (e)(2), shall demonstrate continuous compliance by installing, calibrating, maintaining, and operating the appropriate monitoring equipment according to the manufacturer's specifications. The owner or operator shall also submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.807(d) and § 63.10(e) of subpart A of this part.

(i) Where a capture/control device is used, a device to monitor each site-specific operating parameter established in accordance with § 63.804(f)(6)(i) is required.

(ii) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(A) Where a thermal incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(B) Where a catalytic incinerator equipped with a fixed catalyst bed is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(C) Where a catalytic incinerator equipped with a fluidized catalyst bed is used, a temperature monitoring device shall be installed in the gas stream immediately before the bed. In addition, a pressure monitoring device shall be installed to measure the pressure drop across the catalyst bed. The pressure drop shall be measured monthly at a constant flow rate.

(iii) Where a carbon adsorber is used one of the following is required:

(A) An integrating stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, having an accuracy of ±1 percent of the temperature being monitored or ±0.5 °C, whichever is greater, and capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle;

(B) An organic monitoring device, equipped with a continuous recorder, to indicate the concentration level of organic compounds exiting the carbon adsorber; or

(C) Any other monitoring device that has been approved by the Administrator in accordance with § 63.804(f)(4)(iv)(D).

(iv) Owners or operators of an affected source shall not operate the capture or control device at a daily average value greater than or less than (as appropriate) the operating parameter values. The daily average value shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(v) Owners or operators of an affected source that are complying through the use of a catalytic incinerator equipped with a fluidized catalyst bed shall maintain a constant pressure drop, measured monthly, across the catalyst bed.

(vi) An owner or operator using a control device not listed in this section shall submit to the Administrator a description of the device, test data verifying the performance of the device, and appropriate operating parameter values that will be monitored to demonstrate continuous compliance with the standard. Compliance using this device is subject to the Administrator's approval.

(7) Owners or operators of an affected source subject to the provisions of § 63.802 (a)(3) or (b)(3) shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that compliant strippable spray booth coatings have been used each day in the semiannual reporting period, or should otherwise identify each day noncompliant materials were used. Each day a noncompliant strippable booth coating is used is a single violation of the standard.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

(8) Owners or operators of an affected source subject to the work practice standards in § 63.803 shall submit a compliance certification with the semiannual report required by § 63.807(c).

(i) The compliance certification shall state that the work practice implementation plan is being followed, or should otherwise identify the provisions of the plan that have not been implemented and each day the provisions were not implemented. During any period of time that an owner or operator is required to implement the provisions of the plan, each failure to implement an obligation under the plan during any particular day is a violation.

(ii) The compliance certification shall be signed by a responsible official of the company that owns or operates the affected source.

§ 63.805 Performance test methods.

(a) The EPA Method 311 of Appendix A of part 63 shall be used in conjunction with formulation data to determine the VHAP content of the liquid coating. Formulation data shall be used to identify VHAP present in the coating. The EPA Method 311 shall then be used to quantify those VHAP identified through formulation data. The EPA Method 311 shall not be used to quantify HAP such as styrene and formaldehyde that are emitted during the cure. The EPA Method 24 (40 CFR part 60, Appendix A) shall be used to determine the solids content by weight and the density of coatings. If it is demonstrated to the satisfaction of the Administrator that a coating does not release VOC or HAP byproducts during the cure, for example, all VOC and HAP present in the coating is solvent, then batch formulation information shall be accepted. The owner or operator of an affected source may request approval from the Administrator to use an alternative method for determining the VHAP content of the coating. In the event of any inconsistency between the EPA Method 24 or Method 311 test data and a facility's formulation data, that is, if the EPA Method 24/311 value is higher, the EPA Method 24/311 test shall govern unless after consultation, a regulated source could demonstrate to the satisfaction of the enforcement agency that the formulation data were correct. Sampling procedures shall follow the guidelines presented in "Standard Procedures for Collection of Coating and Ink Samples for VOC Content Analysis by Reference Method 24 and Reference Method 24A," EPA–340/1–91–010. (Docket No. A–93–10, Item No. IV–A–1).

(b) Owners or operators demonstrating compliance in accordance with § 63.804 (f)(4) or (f)(6) and § 63.804 (g)(4) or (g)(6), or complying with any of the other emission limits of § 63.802 by operating a capture or control device shall determine the overall control efficiency of the control system (R) as the product of the capture and control device efficiency, using the test methods cited in § 63.805(c) and the procedures in § 63.805 (d) or (e).

(c) When an initial compliance demonstration is required by § 63.804 (f)(4) or (f)(6) of this subpart, the procedures in paragraphs (c)(1) through (c)(6) of this section shall be used in determining initial compliance with the provisions of this subpart.

(1) The EPA Method 18 (40 CFR part 60, Appendix A) shall be used to determine the HAP concentration of gaseous air streams. The test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(2) The EPA Method 1 or 1A (40 CFR part 60, Appendix A) shall be used for sample and velocity traverses.

(3) The EPA Method 2, 2A, 2C, or 2D (40 CFR part 60, Appendix A) shall be used to measure velocity and volumetric flow rates.

(4) The EPA Method 3 (40 CFR part 60, appendix A) shall be used to analyze the exhaust gases.

(5) The EPA Method 4 (40 CFR part 60, Appendix A) shall be used to measure the moisture in the stack gas.

(6) The EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

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(d) Each owner or operator of an affected source demonstrating compliance in accordance with § 63.804 (f)(4) or (f)(6) shall perform a gaseous emission test using the following procedures:

(1) Construct the overall HAP emission reduction system so that all volumetric flow rates and total HAP emissions can be accurately determined by the applicable test methods specified in § 63.805(c) (1) through (6);

(2) Determine capture efficiency from the affected emission point(s) by capturing, venting, and measuring all HAP emissions from the affected emission point(s). During a performance test, the owner or operator shall isolate affected emission point(s) located in an area with other nonaffected gaseous emission sources from all other gaseous emission point(s) by any of the following methods:

(i) Build a temporary total enclosure (see § 63.801) around the affected emission point(s); or

(ii) Use the building that houses the process as the enclosure (see § 63.801);

(iii) Use any alternative protocol and test method provided they meet either the requirements of the data quality objective (DQO) approach or the lower confidence level (LCL) approach (see § 63.801);

(iv) Shut down all nonaffected HAP emission point(s) and continue to exhaust fugitive emissions from the affected emission point(s) through any building ventilation system and other room exhausts such as drying ovens. All exhaust air must be vented through stacks suitable for testing; or

(v) Use another methodology approved by the Administrator provided it complies with the EPA criteria for acceptance under part 63, appendix A, Method 301.

(3) Operate the control device with all affected emission points that will subsequently be delivered to the control device connected and operating at maximum production rate;

(4) Determine the efficiency (F) of the control device using the following equation:

$$F = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{p} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi} C_{bi}} \quad \text{(Equation 5)}$$

(5) Determine the efficiency (N) of the capture system using the following equation:

$$N = \frac{\sum_{i=1}^{n} Q_{di} C_{di}}{\sum_{i=1}^{n} Q_{di} C_{di} + \sum_{k=1}^{p} Q_{fk} C_{fk}} \quad \text{(Equation 6)}$$

(6) For each affected source complying with § 63.802(a)(1) in accordance with § 63.804(a)(3), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

(7) For each new affected source complying with § 63.802(b)(1) in accordance with § 63.804(d)(3), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

(8) For each affected source complying with § 63.802(a)(2)(ii) in accordance with § 63.804(c)(2), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 1.0.

(9) For each new affected source complying with § 63.802(b)(2) in accordance with § 63.804(e)(2), compliance is demonstrated if the product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

(e) An alternative method to the compliance method in § 63.805(d) is the installation of a permanent total enclosure around the affected emission point(s). A permanent total enclosure presents prima facia evidence that all HAP emissions from the affected emission point(s) are directed to the control device. Each affected source that complies using a permanent total enclosure shall:

(1) Demonstrate that the total enclosure meets the requirements in paragraphs (e)(1) (i) through (iv). The owner or operator of an enclosure that does not meet these requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. The enclosure shall be considered a total enclosure if it is demonstrated to the satisfaction of the Administrator that all HAP emissions from the affected emission point(s) are contained and vented to the control device. The requirements for automatic approval are as follows:

(i) The total area of all natural draft openings shall not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(ii) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening;

(iii) The average inward face velocity (FV) across all natural draft openings shall be a minimum of 3,600 meters per hour as determined by the following procedures:

(A) All forced makeup air ducts and all exhaust ducts are constructed so that the volumetric flow rate in each can be accurately determined by the test methods specified in § 63.805 (c)(2) and (3). Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(B) Determine FV by the following equation:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\,j} - \sum_{i=1}^{p} Q_{in\,i}}{\sum_{k=1}^{q} A_k} \quad \text{(Equation 7)}$$

(iv) All access doors and windows whose areas are not included as natural draft openings and are not included in the calculation of FV shall be closed during routine operation of the process.

(2) Determine the control device efficiency using Equation (5), and the test methods and procedures specified in § 63.805 (c)(1) through (6).

(3) For each affected source complying with § 63.802(a)(1) in accordance with § 63.804(a)(3), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 2 is no greater than 1.0.

(4) For each new affected source complying with § 63.802(b)(1) in accordance with § 63.804(d)(3), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N = 1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of E_{ac} in Equation 4 is no greater than 0.8.

(5) For each affected source complying with § 63.802(a)(2)(ii) in accordance with § 63.804(c)(2), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 1.0.

(6) For each new affected source complying with § 63.802(b)(2) in accordance with § 63.804(e)(2), compliance is demonstrated if:

(i) The installation of a permanent total enclosure is demonstrated (N=1);

(ii) The value of F is determined from Equation (5); and

(iii) The product of (F×N)(100) yields a value (R) such that the value of G_{ac} in Equation 3 is no greater than 0.2.

§ 63.806 Recordkeeping requirements.

(a) The owner or operator of an affected source subject to this subpart shall fulfill all recordkeeping requirements of § 63.10 of subpart A, according to the applicability criteria in § 63.800(d) of this subpart.

(b) The owner or operator of an affected source subject to the emission limits in § 63.802 of this subpart shall maintain records of the following:

(1) A certified product data sheet for each finishing material, thinner, contact adhesive, and strippable spray booth coating subject to the emission limits in § 63.802; and

(2) The VHAP content, in kg VHAP/kg solids (lb VHAP/lb solids), as applied, of each finishing material and contact adhesive subject to the emission limits in § 63.802; and

(3) The VOC content, in kg VOC/kg solids (lb VOC/lb solids), as applied, of each strippable booth coating subject to the emission limits in § 63.802 (a)(3) or (b)(3).

(c) The owner or operator of an affected source following the compliance method in § 63.804 (a)(1) or (d)(1) shall maintain copies of the averaging calculation for each month following the compliance date, as well as the data on the quantity of coatings and thinners used that is necessary to support the calculation of E in Equation 1.

(d) The owner or operator of an effected source following the compliance procedures of § 63.804 (f)(3)(ii) and (g)(3)(ii) shall maintain the records required by § 63.806(b) as well as records of the following:

(1) Solvent and coating additions to the continuous coater reservoir;

(2) Viscosity measurements; and

(3) Data demonstrating that viscosity is an appropriate parameter for demonstrating compliance.

(e) The owner or operator of an affected source subject to the work practice standards in § 63.803 of this subpart shall maintain onsite the work practice implementation plan and all records associated with fulfilling the requirements of that plan, including, but not limited to:

(1) Records demonstrating that the operator training program required by § 63.803(b) is in place;

(2) Records collected in accordance with the inspection and maintenance plan required by § 63.803(c);

(3) Records associated with the cleaning solvent accounting system required by § 63.803(d);

(4) Records associated with the limitation on the use of conventional air spray guns showing total finishing material usage and the percentage of finishing materials applied with conventional air spray guns for each semiannual period as required by § 63.803(h)(5).

(5) Records associated with the formulation assessment plan required by § 63.803(l); and

(6) Copies of documentation such as logs developed to demonstrate that the other provisions of the work practice implementation plan are followed.

(f) The owner or operator of an affected source following the compliance method of § 63.804 (f)(4) or (g)(4) shall maintain copies of the calculations demonstrating that the overall control efficiency (R) of the control system results in the value of E_{ac} required by Equations 2 or 4, records of the operating parameter values, and copies of the semiannual compliance reports required by § 63.807(d).

(g) The owner or operator of an affected source following the compliance method of § 63.804 (f)(6) or (g)(6), shall maintain copies of the calculations demonstrating that the overall control efficiency (R) of the control system results in the applicable value of G_{ac} calculated using Equation 3, records of the operating parameter values, and copies of the semiannual compliance reports required by § 63.807(d).

(h) The owner or operator of an affected source subject to the emission limits in § 63.802 and following the compliance provisions of § 63.804(f) (1), (2), (3), (5), (7) and (8) and § 63.804(g) (1), (2), (3), (5), (7), and (8) shall maintain records of the compliance certifications submitted in accordance with § 63.807(c) for each semiannual period following the compliance date.

(i) The owner or operator of an affected source shall maintain records of all other information submitted with the compliance status report required by § 63.9(h) and § 63.807(b) and the semiannual reports required by § 63.807(c).

(j) The owner or operator of an affected source shall maintain all records in accordance with the requirements of § 63.10(b)(1).

§ 63.807 Reporting requirements.

(a) The owner or operator of an affected source subject to this subpart

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shall fulfill all reporting requirements of § 63.7 through § 63.10 of subpart A (General Provisions) according to the applicability criteria in § 63.800(d) of this subpart.

(b) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(f) (1), (2), (3), (5), (7) and (8) shall submit the compliance status report required by § 63.9(h) of subpart A (General Provisions) no later than 60 days after the compliance date. The report shall include the information required by § 63.804(f) (1), (2), (3), (5), (7), and (8) of this subpart.

(c) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(g) (1), (2), (3), (5), (7), and (8) shall submit a report covering the previous 6 months of wood furniture manufacturing operations:

(1) The first report shall be submitted 30 calendar days after the end of the first 6-month period following the compliance date.

(2) Subsequent reports shall be submitted 30 calendar days after the end of each 6-month period following the first report.

(3) The semiannual reports shall include the information required by § 63.804(g) (1), (2), (3), (5), (7), and (8), a statement of whether the affected source was in compliance or noncompliance, and, if the affected source was in noncompliance, the measures taken to bring the affected source into compliance.

(4) The frequency of the reports required by paragraph (c) of this section shall not be reduced from semiannually regardless of the history of the owner's or operator's compliance status.

(d) The owner or operator of an affected source demonstrating compliance in accordance with § 63.804(g) (4) and (6) of this subpart shall submit the excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e) of subpart A. The report shall include the monitored operating parameter values required by § 63.804(g) (4) and (6). If the source experiences excess emissions, the report shall be submitted quarterly for at least 1 year after the excess emissions occur and until a request to reduce reporting frequency is approved, as indicated in § 63.10(e)(3)(C). If no excess emissions occur, the report shall be submitted semiannually.

(e) The owner or operator of an affected source required to provide a written notification under § 63.803(1)(4) shall include in the notification one or more statements that explains the reasons for the usage increase. The notification shall be submitted no later than 30 calendar days after the end of the annual period in which the usage increase occurred.

§ 63.808 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under § 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.804(f)(4)(iv) (D) and (E), § 63.804(g)(4)(iii)(C), § 63.804(g)(4)(vi), § 63.804(g)(6)(vi), § 63.805(a), § 63.805(d)(2)(V), and § 63.805(e)(1) shall not be delegated to any State.

§§ 63.809–63.819 [Reserved]

Tables to Subpart JJ to Part 63

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ	Comment
63.1(a)	Yes	
63.1(b)(1)	No	Subpart JJ specifies applicability.
63.1(b)(2)	Yes	
63.1(b)(3)	Yes	
63.1(c)(1)	No	Subpart JJ specifies applicability.
63.1(c)(2)	No	Area sources are not subject to subpart JJ.
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	
63.1(e)	Yes	
63.2	Yes	Additional terms are defined in 63.801(a) of subpart JJ. When overlap between subparts A and JJ occurs, subpart JJ takes precedence.
63.3	Yes	Other units used in subpart JJ are defined in 63.801(b).
63.4	Yes	
63.5	Yes	
63.6(a)	Yes	
63.6(b)(1)	Yes	
63.6(b)(2)	Yes	
63.6(b)(3)	Yes	
63.6(b)(4)	No	May apply when standards are proposed under Section 112(f) of the CAA.
63.6(b)(5)	Yes	
63.6(b)(7)	Yes	
63.6(c)(1)	Yes	
63.6(c)(2)	No	
63.6(c)(5)	Yes	
63.6(e)(1)	Yes	
63.6(e)(2)	Yes	
63.6(e)(3)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.6(f)(1)	No	Affected sources complying through the procedures specified in 63.804 (a)(1), (a)(2), (b), (c)(1), (d)(1), (d)(2), (e)(1), and (e)(2) are subject to the emission standards at all times, including periods of startup, shutdown, and malfunction.
63.6(f)(2)	Yes	
63.6(f)(3)	Yes	
63.6(g)	Yes	
63.6(h)	No.	
63.6 (i)(1)–(i)(3)	Yes	
63.6(j)(4)(i)	Yes	

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ—Continued

Reference	Applies to subpart JJ	Comment
63.6(i)(4)(ii)	No.	
63.6 (i)(5)–(j)(14)	Yes	
63.6(j)(16)	Yes	
63.6(j)	Yes	
63.7	Yes	Applies only to affected sources using a control device to comply with the rule.
63.8	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(a)	Yes	
63.9(b)	Yes	Existing sources are required to submit initial notification report within 270 days of the effective date.
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(f)	No	
63.9(g)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.9(h)	Yes	63.9(h)(2)(ii) applies only to affected sources using a control device to comply with the rule.
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(b)(3)	Yes	
63.10(c)	Yes	
63.10(d)(1)	Yes	
63.10(d)(2)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(d)(3)	No	
63.10(d)(4)	Yes	
63.10(d)(5)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(e)	Yes	Applies only to affected sources using a control device to comply with the rule.
63.10(f)	Yes	
63.11	No	
63.12–63.15	Yes	

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2-Acetylaminofluorine	53963
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(2-ethylhexyl) phthalate (DEHP)	117817
Bis(chloromethyl) ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Cresols (isomers and mixture)	1319773
o-Cresol	95487
m-Cresol	108394
p-Cresol	106445
Cumene	98828
2,4-D (2,4-Dichlorophenoxyacetic acid, including salts and esters)	94757
DDE (1,1-Dichloro-2,2-bis (p-chlorophenyl) ethylene)	72559
Diazomethane	334883
Dibenzofuran	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene	106467
3,3'-Dichlorobenzidine	91941
Dichloroethyl ether (Bis (2-chloroethyl) ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Dimethylaniline	121697
Diethyl sulfate	64675
3,3'-Dimethoxybenzidine	119904
4-Dimethylaminoazobenzene	60117
3,3'-Dimethylbenzidine	119937
Dimethylcarbamoyl chloride	79447
N,N-Dimethylformamide	68122
1,1-Dimethylhydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2-Epoxybutane	106887
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylenethiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers	0
Hexachlorobenzene	118741
Hexachloro-1,3-butadiene	87683
Hexachloroethane	67721
Hexamethylene-1,6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933

TABLE 2.—LIST OF VOLATILE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name	CAS No.
Methylhydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
4,4'-Methylenabis (2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
4,4'-Methylenediphenyl diisocyanate (MDI)	101688
4,4'-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
2-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Aroclors)	1336363
Polycyclic Organic Matter[b]	0
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluenediamine	95807
Toluene-2,4-diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixture)	1330207
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

[a] Includes mono- and di-ethers of ethylene glycol, diethylene glycols and triethylene glycol; R-$(OCH_2CH_2)_n$RR-OR where:
n = 1, 2, or 3,
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH_2CH_2)_n$-OH. Polymers are excluded from the glycol category.

[b] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

TABLE 3.—SUMMARY OF EMISSION LIMITS

Emission point	Existing source	New source
Finishing Operations:		
(a) Achieve a weighted average VHAP content across all coatings (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied	[a]1.0	[a]0.8
(b) Use compliant finishing materials (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied):		
—stains	[a]1.0	[a]1.0
—washcoats	[a,b]1.0	[a,b]0.8
—sealers	[a]1.0	[a]0.8
—topcoats	[a]1.0	[a]0.8
—basecoats	[a,b]1.0	[a,b]0.8
—enamels	[a,b]1.0	[a,b]0.8
—thinners (maximum % HAP allowable); or	10.0	10.0
(c) As an alternative, use control device; or	[c]1.0	[c]0.8
(d) Use any combination of (a), (b), and (c)	1.0	0.8
Cleaning Operations:		
Strippeable spray booth material (maximum VOC content, kg VOC/kg solids [lb VOC/lb solids])	0.8	0.8
Contact Adhesives:		
(a) Use compliant contact adhesives (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied) based on following criteria:		
i. For aerosol adhesives, and for contact adhesives applied to nonporous substrates	[d]NA	[d]NA
ii. For foam adhesives used in products that meet flammability requirements	1.8	0.2
iii. For all other contact adhesives (including foam adhesives used in products that do not meet flammability requirements); or	1.0	0.2
(b) Use a control device	[e]1.0	[e]0.2

[a] The limits refer to the VHAP content of the coating, as applied.
[b] Washcoats, basecoats, and enamels must comply with the limits presented in this table if they are purchased premade, that is, if they are not formulated onsite by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials, i.e., those that meet the limits specified in this table, and thinners containing no more than 3.0 percent HAP by weight.
[c] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.8 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.
[d] There is no limit on the VHAP content of these adhesives.
[e] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.2 kilogram) of VHAP being emitted from the affected emission source per kilogram of solids used.

TABLE 4.—POLLUTANTS EXCLUDED FROM USE IN CLEANING AND WASHOFF SOLVENTS

Chemical name	CAS No.
4-Aminobiphenyl	92671
Styrene oxide	96093
Diethyl sulfate	64675
N-Nitrosomorpholine	59892
Dimethyl formamide	68122
Hexamethylphosphoramide	680319
Acetamide	60355
4,4'-Methylenedianiline	101779
o-Anisidine	90040
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
Beryllium salts	
Benzidine	92875
N-Nitroso-N-methylurea	684935
Bis(chloromethyl)ether	542881
Dimethyl carbamoyl chloride	79447
Chromium compounds (hexavalent)	
1,2-Propylenimine (2-Methyl aziridine)	75558
Arsenic and inorganic arsenic compounds	99999904
Hydrazine	302012
1,1-Dimethyl hydrazine	57147
Beryllium compounds	7440417
1,2-Dibromo-3-chloropropane	96128
N-Nitrosodimethylamine	62759
Cadmium compounds	
Benzo (a) pyrene	50328
Polychlorinated biphenyls (Aroclors)	1336363
Heptachlor	76448
3,3'-Dimethyl benzidine	119937
Nickel subsulfide	12035722
Acrylamide	79061
Hexachlorobenzene	118741
Chlordane	57749
1,3-Propane sultone	1120714
1,3-Butadiene	106990
Nickel refinery dust	
2-Acetylaminoflourine	53963
3,3'-Dichlorobenzidine	53963
Lindane (hexachlorcyclohexane, gamma)	58899
2,4-Toluene diamine	95807
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
1,2-Diphenylhydrazine	122667
Toxaphene (chlorinated camphene)	8001352
2,4-Dinitrotoluene	121142
3,3'-Dimethoxybenzidine	119904
Formaldehyde	50000
4,4'-Methylene bis(2-chloroaniline)	101144
Acrylonitrile	107131
Ethylene dibromide(1,2-Dibromoethane)	106934
DDE (1,1-p-chlorophenyl 1-2 dichloroethylene)	72559
Chlorobenzilate	510156
Dichlorvos	62737
Vinyl chloride	75014
Coke Oven Emissions	99999906
Ethylene oxide	75218
Ethylene thiourea	96457
Vinyl bromide (bromoethene)	593602
Selenium sulfide (mono and di)	7488564
Chloroform	67663
Pentachlorophenol	87865
Ethyl carbamate (Urethane)	51796
Ethylene dichloride (1,2-Dichloroethane)	107062
Propylene dichloride (1,2-Dichloropropane)	78875
Carbon tetrachloride	56235
Benzene	71432
Methyl hydrazine	60344
Ethyl acrylate	140885
Propylene oxide	75569
Aniline	62533
1,4-Dichlorobenzene(p)	106467
2,4,6-Trichlorophenol	88062
Bis(2-ethylhexyl)phthalate (DEHP)	117817
o-Toluidine	95534
Propoxur	114261
Trichloroethylene	79016
1,4-Dioxane (1,4-Diethyleneoxide)	123911
Acetaldehyde	75070
Bromoform	75252
Captan	133062
Epichlorohydrin	106898
Methylene chloride (Dichloromethane)	75092
Tetrachloroethylene (Perchloroethylene)	127184
Dibenz (ah) anthracene	53703
Chrysene	218019
Dimethyl aminoazobenzene	60117
Benzo (a) anthracene	56553
Benzo (b) fluoranthene	205992
Antimony trioxide	1309644
2-Nitropropane	79469
1,3-Dichloropropene	542756
7, 12-Dimethylbenz(a)anthracene	57976
Benz(c)acridine	225514
Indeno(1,2,3-cd)pyrene	193395
1,2:7,8-Dibenzopyrene	189559

TABLE 5.—LIST OF VHAP OF POTENTIAL CONCERN IDENTIFIED BY INDUSTRY

Chemical	CAS No.	EPA de minimis, tons/yr
Dimethyl formamide	68122	1.0
Formaldehyde	50000	0.2
Methylene chloride	75092	4.0
2-Nitropropane	79469	1.0
Isophorone	78591	0.7
Styrene monomer	1000425	1.0
Phenol	108952	0.1
Diethanolamine	11422	5.0
2-Methoxyethanol	109864	10.0
2-Ethoxyethyl acetate	111159	5.0

TABLE 6.—VHAP OF POTENTIAL CONCERN

CAS No.	Chemical name
"Nonthreshold" Pollutants	
92671	4-Aminobiphenyl.
96093	Styrene oxide.
64675	Diethyl sulfate.
59892	N-Nitrosomorpholine.
68122	Dimethyl formamide.
80319	Hexamethylphosphoramide.
60355	Acetamide.
101779	4,4'-Methylenedianiline.
90040	o-Anisidine.
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxindioxin.
92875	Benzidine.
684935	N-Nitroso-N-methylurea.
542881	Bis(chloromethyl)ether.
79447	Dimethyl carbamoyl chloride.
75558	1,2-Propylenimine (2-Methyl azinidine).
57147	1,1-Dimethyl hydrazine.
96128	1,2-Dibromo-3-chloropropane.
62759	N-Nitrosodimethylamine.
50328	Benzo (a) pyrene.
1336363	Polychlorinated biphenyls (Aroclors).
76448	Heptachlor.
119937	3,3'-Dimethyl benzidine.
79061	Acrylamide.
118741	Hexachlorobenzene.
57749	Chlordane.
1120714	1,3-Propane sultone.
106990	1,3-Butadiene.
53963	2-Acetylaminoflourine.
53963	3,3'-Dichlorobenzidine.
58899	Lindane (hexachlorcyclohexane, gamma).
95807	2,4-Toluene diamine.
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether).
122667	1,2 - Diphenylhydrazine.
8001352	Toxaphene (chlorinated camphene).
121142	2,4-Dinitrotoluene.
119904	3,3'-Dimethoxybenzidine.
50000	Formaldehyde.
101144	4,4'-Methylene bis(2-chloroaniline).
107131	Acrylonitrile.
106934	Ethylene dibromide(1,2-Dibromoethane).
72559	DDE (1,1-p-chlorophenyl 1-2 dichloroethylene).
510156	Chlorobenziate.
62737	Dichlorvos.
75014	Vinyl chloride.
75218	Ethylene oxide.
96457	Ethylene thiourea.
593602	Vinyl bromide (bromoethene).
67663	Chloroform.
87865	Pentachlorophenol.
51796	Ethyl carbamate (Urethane).
107062	Ethylene dichloride (1,2-Dichloroethane).
78875	Propylene dichloride (1,2-Dichloropropane).
56235	Carbon tetrachloride.
71432	Benzene.
140885	Ethyl acrylate.
75569	Propylene oxide.
62533	Aniline.
106467	1,4-Dichlorobenzene(p).
88062	2,4,6-Trichlorophenol.
117817	Bis(2-ethylhexyl)phthalate (DEHP).
95534	o-Toluidine.
114261	Propoxur.

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TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name
79016	Trichloroethylene.
123911	1,4-Dioxane (1,4-Diethyleneoxide).
75070	Acetaldehyde.
75252	Bromoform.
133062	Captan.
106898	Epichlorohydrin.
75092	Methylene chloride (Dichloromethane).
127184	Tetrachloroethylene (Perchloroethylene).
53703	Dibenz (ah) anthracene.
218019	Chrysene.
60117	Dimethyl aminoazobenzene.
56553	Benzo (a) anthracene.
205992	Benzo (b) fluoranthene.
79469	2-Nitropropane.
542756	1,3-Dichloropropene.
57976	7, 12-Dimethylbenz(a)anthracene.
225514	Benz(c)acridine.
193395	Indeno(1,2,3-cd)pyrene.
189559	1,2:7,8-Dibenzopyrene.
79345	1,1,2,2-Tetrachloroethane.
91225	Quinoline.
75354	Vinylidene chloride (1,1-Dichloroethylene).
87683	Hexachlorobutadiene.
82688	Pentachloronitrobenzene (Quintobenzene).
78591	Isophorone.
79005	1,1,2-Trichloroethane.
74873	Methyl chloride (Chloromethane).
67721	Hexachloroethane.
1582098	Trifluralin.
1319773	Cresols/Cresylic acid (isomers and mixture).
108394	m-Cresol.
75343	Ethylidene dichloride (1,1-Dichloroethane).
95487	o-Cresol.
106445	p-Cresol.
74884	Methyl iodide (Iodomethane).
100425	Styrene[a].
107051	Allyl chloride.
334883	Diazomethane.
95954	2,4,5 – Trichlorophenol.
133904	Chloramben.
106887	1,2 - Epoxybutane.
108054	Vinyl acetate.
126998	Chloroprene.
123319	Hydroquinone.
92933	4-Nitrobiphenyl

"High-Concern" Pollutants

56382	Parathion.
13463393	Nickel Carbonyl.
60344	Methyl hydrazine.
75218	Ethylene oxide.
151564	Ethylene imine.
77781	Dimethyl sulfate.
107302	Chloromethyl methyl ether.
57578	beta-Propiolactone.
100447	Benzyl chloride.
98077	Benzotrichloride.
107028	Acrolein.
584849	2,4 - Toluene diisocyanate.
75741	Tetramethyl lead.
78002	Tetraethyl lead.

TABLE 6.—VHAP OF POTENTIAL CONCERN—Continued

CAS No.	Chemical name
12108133	Methylcyclopentadienyl manganese.
624839	Methyl isocyanate.
77474	Hexachlorocyclopentadiene.
62207765	Fluorine.
10210681	Cobalt carbonyl.
79118	Chloroacetic acid.
534521	4,6-Dinitro-o-cresol, and salts.
101688	Methylene diphenyl diisocyanate.
108952	Phenol.
62384	Mercury, (acetato-o) phenyl.
98862	Acetophenone.
108316	Maleic anhydride.
532274	2-Chloroacetophenone.
51285	2,4-Dinitrophenol.
108864	2-Methyoxy ethanol.
98953	Nitrobenzene.
74839	Methyl bromide (Bromomethane).
75150	Carbon disulfide.
121697	N,N-Dimethylaniline.

"Unrankable" Pollutants

106514	Quinone.
123386	Propionaldehyde.
120809	Catechol.
85449	Phthalic anhydride.
463581	Carbonyl sulfide.
132649	Dibenzofurans.
100027	4-Nitrophenol.
540841	2,2,4-Trimethylpentane.
11422	Diethanolamine.
822060	Hexamethylene-1,6-diisocyanate
	Glycol ethers[b]
	Polycyclic organic matter[c]

[a] = Currently an EPA weight of evidence classification is under review.

[a] The EPA does not currently have an official weight-of-evidence classification for styrene. For purposes of this rule, styrene is treated as a "nonthreshold" pollutant. (See data report form in appendix A of the hazard ranking technical background.document.)

[b] Except for 2-ethoxy ethanol, ethylene glycol monobutyl ether, and 2-methoxy ethanol.

[c] Except for benzo(b)fluoranthene, benzo(a)anthracene, benzo(a)pyrene, 7,12-dimethylbenz(a)anthracene, benz(c)acridine, chrysene, dibenz(ah) anthracene, 1,2:7,8-dibenzopyrene, indeno(1,2,3-cd)pyrene, but including dioxins and furans.

3. Appendix A of part 63 is amended by adding Method 311 to read as follows:

Appendix A to Part 63—Test Methods

Method 311—Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph

1. Scope and Application

1.1 Applicability. This method is applicable for determination of most compounds designated by the U.S. Environmental Protection Agency as volatile hazardous air pollutants (HAP's) (See Reference 1) that are contained in paints and coatings. Styrene, ethyl acrylate, and methyl methacrylate can be measured by ASTM D 4827–93 or ASTM D 4747–87. Formaldehyde can be measured by ASTM PS 9–94 or ASTM D 1979–91. Toluene diisocyanate can be measured in urethane prepolymers by ASTM D 3432–89. Method 311 applies only to those volatile HAP's which are added to the coating when it is manufactured, not to those which may form as the coating cures (reaction products or cure volatiles). A separate or modified test procedure must be used to measure these reaction products or cure volatiles in order to determine the total volatile HAP emissions from a coating. Cure volatiles are a significant component of the total HAP content of some coatings. The term "coating" used in this method shall be understood to mean paints and coatings.

1.2 Principle. The method uses the principle of gas chromatographic separation and quantification using a detector that responds to concentration differences. Because there are many potential analytical systems or sets of operating conditions that may represent useable methods for determining the concentrations of the compounds cited in Section 1.1 in the applicable matrices, all systems that employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the prescribed quality control, calibration, and method performance requirements are met. Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

2. Summary of Method

Whole coating is added to dimethylformamide and a suitable internal standard compound is added. An aliquot of the sample mixture is injected onto a chromatographic column containing a stationary phase that separates the analytes from each other and from other volatile compounds contained in the sample. The concentrations of the analytes are determined by comparing the detector responses for the sample to the responses obtained using known concentrations of the analytes.

3. Definitions [Reserved]

4. Interferences

4.1 Coating samples of unknown composition may contain the compound used as the internal standard. Whether or not this is the case may be determined by following the procedures of Section 11 and deleting the addition of the internal standard specified in Section 11.5.3. If necessary, a different internal standard may be used.

4.2 The GC column and operating conditions developed for one coating formulation may not ensure adequate resolution of target analytes for other coating formulations. Some formulations may contain nontarget analytes that coelute with target analytes. If there is any doubt about the identification or resolution of any gas chromatograph (GC) peak, it may be necessary to analyze the sample using a different GC column or different GC operating conditions.

4.3 Cross-contamination may occur whenever high-level and low-level samples are analyzed sequentially. The order of sample analyses specified in Section 11.7 is designed to minimize this problem.

4.4 Cross-contamination may also occur if the devices used to transfer coating during the sample preparation process or for injecting the sample into the GC are not adequately cleaned between uses. All such devices should be cleaned with acetone or other suitable solvent and checked for plugs or cracks before and after each use.

5. Safety

5.1 Many solvents used in coatings are hazardous. Precautions should be taken to avoid unnecessary inhalation and skin or eye contact. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations in regards to the performance of this test method.

5.2 Dimethylformamide is harmful if inhaled or absorbed through the skin. The user should obtain relevant health and safety information from the manufacturer. Dimethylformamide should be used only with adequate ventilation. Avoid contact with skin, eyes, and clothing. In case of contact, immediately flush skin or eyes with plenty of water for at least 15 minutes. If eyes are affected, consult a physician. Remove and wash contaminated clothing before reuse.

5.3 User's manuals for the gas chromatograph and other related equipment should be consulted for specific precautions to be taken related to their use.

6. Equipment and Supplies

Note: Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

6.1 Sample Collection.

6.1.1 Sampling Containers. Dual-seal sampling containers, four to eight fluid ounce capacity, should be used to collect the samples. Glass sample bottles or plastic containers with volatile organic compound (VOC) impermeable walls must be used for corrosive substances (e.g., etch primers and certain coating catalysts such as methyl ethyl ketone (MEK) peroxide). Sample containers, caps, and inner seal liners must be inert to the compounds in the sample and must be selected on a case-by-case basis.

6.1.1.1 Other routine sampling supplies needed include waterproof marking pens, tubing, scrappers/spatulas, clean rags, paper towels, cooler/ice, long handle tongs, and mixing/stirring paddles.

6.1.2 Personal safety equipment needed includes eye protection, respiratory protection, a hard hat, gloves, steel toe shoes, etc.

6.1.3 Shipping supplies needed include shipping boxes, packing material, shipping labels, strapping tape, etc.

6.1.4 Data recording forms and labels needed include coating data sheets and sample can labels.

Note: The actual requirements will depend upon the conditions existing at the source sampled.

6.2 Laboratory Equipment and Supplies.

6.2.1 Gas Chromatograph (GC). Any instrument equipped with a flame ionization detector and capable of being temperature programmed may be used. Optionally, other types of detectors (e.g., a mass spectrometer), and any necessary interfaces, may be used provided that the detector system yields an appropriate and reproducible response to the analytes in the injected sample. Autosampler injection may be used, if available.

6.2.2 Recorder. If available, an electronic data station or integrator may be used to record the gas chromatogram and associated data. If a strip chart recorder is used, it must meet the following criteria: A 1 to 10 millivolt (mV) linear response with a full scale response time of 2 seconds or less and a maximum noise level of ±0.03 percent of full scale. Other types of recorders may be used as appropriate to the specific detector installed provided that the recorder has a full scale response time of 2 seconds or less and a maximum noise level of ±0.03 percent of full scale.

6.2.3 Column. The column must be constructed of materials that do not react with components of the sample (e.g., fused silica, stainless steel, glass). The column should be of appropriate physical dimensions (e.g., length, internal diameter) and contain sufficient suitable stationary phase to allow separation of the analytes. DB–5, DB-Wax, and FFAP columns are commonly used for paint analysis; however, it is the responsibility of each analyst to select appropriate columns and stationary phases.

6.2.4 Tube and Tube Fittings. Supplies to connect the GC and gas cylinders.

6.2.5 Pressure Regulators. Devices used to regulate the pressure between gas cylinders and the GC.

6.2.6 Flow Meter. A device used to determine the carrier gas flow rate through the GC. Either a digital flow meter or a soap film bubble meter may be used to measure gas flow rates.

6.2.7 Septa. Seals on the GC injection port through which liquid or gas samples can be injected using a syringe.

6.2.8 Liquid Charging Devices. Devices used to inject samples into the GC such as clean and graduated 1, 5, and 10 microliter (µl) capacity syringes.

6.2.9 Vials. Containers that can be sealed with a septum in which samples may be prepared or stored. The recommended size is 25 ml capacity. Mininert® valves have been found satisfactory and are available from Pierce Chemical Company, Rockford, Illinois.

6.2.10 Balance. Device used to determine the weights of standards and samples. An analytical balance capable of accurately weighing to 0.0001 g is required.

7. Reagents and Standards

7.1 Purity of Reagents. Reagent grade chemicals shall be used in all tests. Unless otherwise specified, all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Other grades may be used provided it is first ascertained that the reagent is of sufficient purity to permit its use without lessening the accuracy of determination.

7.2 Carrier Gas. Helium carrier gas shall have a purity of 99.995 percent or higher. High purity nitrogen may also be used. Other carrier gases that are appropriate for the column system and analyte may also be used. Ultra-high purity grade hydrogen gas and zero-grade air shall be used for the flame ionization detector.

7.3 Dimethylformamide (DMF). Solvent for all standards and samples. Some other suitable solvent may be used if DMF is not compatible with the sample or coelutes with a target analyte.

Note: DMF may coelute with ethylbenzene or p-xylene under the conditions described in the note under Section 6.2.3.

7.4 Internal Standard Materials. The internal standard material is used in the quantitation of the analytes for this method. It shall be gas chromatography spectrophotometric quality or, if this grade is not available, the highest quality available. Obtain the assay for the internal standard material and maintain at that purity during use. The recommended internal standard material is 1-propanol; however, selection of an appropriate internal standard material for the particular coating and GC conditions used is the responsibility of each analyst.

7.5 Reference Standard Materials. The reference standard materials are the chemicals cited in Section 1.1 which are of known identity and purity and which are used to assist in the identification and quantification of the analytes of this method. They shall be the highest quality available. Obtain the assays for the reference standard materials and maintain at those purities during use.

7.6 Stock Reference Standards. Stock reference standards are dilutions of the reference standard materials that may be used on a daily basis to prepare calibration standards, calibration check standards, and quality control check standards. Stock reference standards may be prepared from the reference standard materials or purchased as certified solutions.

7.6.1 Stock reference standards should be prepared in dimethylformamide for each analyte expected in the coating samples to be analyzed. The concentrations of analytes in the stock reference standards are not specified but must be adequate to prepare the calibration standards required in the method. A stock reference standard may contain more than one analyte provided all analytes are chemically compatible and no analytes coelute. The actual concentrations prepared must be known to within 0.1 percent (e.g., 0.1000 ± 0.0001 g/g solution). The following procedure is suggested. Place about 35 ml of dimethylformamide into a tared ground-glass stoppered 50 ml volumetric flask. Weigh the flask to the nearest 0.1 mg. Add 12.5 g of the reference standard material and reweigh the flask. Dilute to volume with dimethylformamide and reweigh. Stopper the

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flask and mix the contents by inverting the flask several times. Calculate the concentration in grams per gram of solution from the net gain in weights, correcting for the assayed purity of the reference standard material.

Note: Although a glass-stoppered volumetric flask is convenient, any suitable glass container may be used because stock reference standards are prepared by weight.

7.6.2 Transfer the stock reference standard solution into one or more Teflon-sealed screw-cap bottles. Store, with minimal headspace, at −10°C to 0°C and protect from light.

7.6.3 Prepare fresh stock reference standards every six months, or sooner if analysis results from daily calibration check standards indicate a problem. Fresh stock reference standards for very volatile HAP's may have to be prepared more frequently.

7.7 Calibration Standards. Calibration standards are used to determine the response of the detector to known amounts of reference material. Calibration standards must be prepared at a minimum of three concentration levels from the stock reference standards (see Section 7.6). Prepare the calibration standards in dimethylformamide (see Section 7.3). The lowest concentration standard should contain a concentration of analyte equivalent either to a concentration of no more than 0.01% of the analyte in a coating or to a concentration that is lower than the actual concentration of the analyte in the coating, whichever concentration is higher. The highest concentration standard should contain a concentration of analyte equivalent to slightly more than the highest concentration expected for the analyte in a coating. The remaining calibration standard should contain a concentration of analyte roughly at the midpoint of the range defined by the lowest and highest concentration calibration standards. The concentration range of the standards should thus correspond to the expected range of analyte concentrations in the prepared coating samples (see Section 11.5). Each calibration standard should contain each analyte for detection by this method expected in the actual coating samples (e.g., some or all of the compounds listed in Section 1.1 may be included). Each calibration standard should also contain an appropriate amount of internal standard material (response for the internal standard material is within 25 to 75 percent of full scale on the attenuation setting for the particular reference standard concentration level). Calibration Standards should be stored for 1 week only in sealed vials with minimal headspace. If the stock reference standards were prepared as specified in Section 7.6, the calibration standards may be prepared by either weighing each addition of the stock reference standard or by adding known volumes of the stock reference standard and calculating the mass of the standard reference material added. Alternative 1 (Section 7.7.1) specifies the procedure to be followed when the stock reference standard is added by volume. Alternative 2 (Section 7.7.2) specifies the procedure to be followed when the stock reference standard is added by weight.

Note: To assist with determining the appropriate amount of internal standard to add, as required here and in other sections of this method, the analyst may find it advantageous to prepare a curve showing the area response versus the amount of internal standard injected into the GC.

7.7.1 Preparation Alternative 1. Determine the amount of each stock reference standard and dimethylformamide solvent needed to prepare approximately 25 ml of the specific calibration concentration level desired. To a tared 25 ml vial that can be sealed with a crimp-on or Mininert® valve, add the total amount of dimethylformamide calculated to be needed. As quickly as practical, add the calculated amount of each stock reference standard using new pipets (or pipet tips) for each stock reference standard. Reweigh the vial and seal it. Using the known weights of the standard reference materials per ml in the stock reference standards, the volumes added, and the total weight of all reagents added to the vial, calculate the weight percent of each standard reference material in the calibration standard prepared. Repeat this process for each calibration standard to be prepared.

7.7.2 Preparation Alternative 2. Determine the amount of each stock reference standard and dimethylformamide solvent needed to prepare approximately 25 ml of the specific calibration concentration level desired. To a tared 25 ml vial that can be sealed with a crimp-on or Mininert® valve, add the total amount of dimethylformamide calculated to be needed. As quickly as practical, add the calculated amount of a stock reference standard using a new pipet (or pipet tip) and reweigh the vial. Repeat this process for each stock reference standard to be added. Seal the vial after obtaining the final weight. Using the known weight percents of the standard reference materials in the stock reference standards, the weights of the stock reference standards added, and the total weight of all reagents added to the vial, calculate the weight percent of each standard reference material in the calibration standard prepared. Repeat this process for each calibration standard to be prepared.

8. Sample Collection, Preservation, Transport, and Storage

8.1 Copies of material safety data sheets (MSDS's) for each sample should be obtained prior to sampling. The MSDS's contain information on the ingredients, and physical and chemical properties data. The MSDS's also contain recommendations for proper handling or required safety precautions. Certified product data sheets (CPDS) may also include information relevant to the analysis of the coating sample including, but not limited to, separation column, oven temperature, carrier gas, injection port temperature, extraction solvent, and internal standard.

8.2 A copy of the blender's worksheet can be requested to obtain data on the exact coating being sampled. A blank coating data sheet form (see Section 18) may also be used. The manufacturer's formulation information from the product data sheet should also be obtained.

8.3 Prior to sample collection, thoroughly mix the coating to ensure that a representative, homogeneous sample is obtained. It is preferred that this be accomplished using a coating can shaker or similar device; however, when necessary, this may be accomplished using mechanical agitation or circulation systems.

8.3.1 Water-thinned coatings tend to incorporate or entrain air bubbles if stirred too vigorously; mix these types of coatings slowly and only as long as necessary to homogenize.

8.3.2 Each component of multicomponent coatings that harden when mixed must be sampled separately. The component mix ratios must be obtained at the facility at the time of sampling and submitted to the analytical laboratory.

8.4 Sample Collection. Samples must be collected in a manner that prevents or minimizes loss of volatile components and that does not contaminate the coating reservoir. A suggested procedure is as follows. Select a sample collection container which has a capacity at least 25 percent greater than the container in which the sample is to be transported. Make sure both sample containers are clean and dry. Using clean, long-handled tongs, turn the sample collection container upside down and lower it into the coating reservoir. The mouth of the sample collection container should be at approximately the midpoint of the reservoir (do not take the sample from the top surface). Turn the sample collection container over and slowly bring it to the top of the coating reservoir. Rapidly pour the collected coating into the sample container, filling it completely. It is important to fill the sample container completely to avoid any loss of volatiles due to volatilization into the headspace. Return any unused coating to the reservoir or dispose as appropriate.

Note: If a company requests a set of samples for its own analysis, a separate set of samples, using new sample containers, should be taken at the same time.

8.5 Once the sample is collected, place the sample container on a firm surface and insert the inner seal in the container by placing the seal inside the rim of the container, inverting a screw cap, and pressing down on the screw cap which will evenly force the inner seal into the container for a tight fit. Using clean towels or rags, remove all residual coating material from the outside of the sample container after inserting the inner seal. Screw the cap onto the container.

8.5.1 Affix a sample label (see Section 16) clearly identifying the sample, date collected, and person collecting the sample.

8.5.2 Prepare the sample for transportation to the laboratory. The sample should be maintained at the coating's recommended storage temperature specified on the Material Safety Data Sheet, or, if no temperature is specified, the sample should be maintained within the range of 5°C to 38°C.

8.9 The shipping container should adhere to U.S. Department of Transportation specification DOT 12–B. Coating samples are considered hazardous materials; appropriate shipping procedures should be followed.

9. Quality Control

9.1 Laboratories using this method should operate a formal quality control program. The minimum requirements of the program should consist of an initial demonstration of laboratory capability and an ongoing analysis of blanks and quality control samples to evaluate and document quality data. The laboratory must maintain records to document the quality of the data generated. When results indicate atypical method performance, a quality control check standard (see Section 9.4) must be analyzed to confirm that the measurements were performed in an in-control mode of operation.

9.2 Before processing any samples, the analyst must demonstrate, through analysis of a reagent blank, that there are no interferences from the analytical system, glassware, and reagents that would bias the sample analysis results. Each time a set of analytical samples is processed or there is a change in reagents, a reagent blank should be processed as a safeguard against chronic laboratory contamination. The blank samples should be carried through all stages of the sample preparation and measurement steps.

9.3 Required instrument quality control parameters are found in the following sections:

9.3.1 Baseline stability must be demonstrated to be ≤5 percent of full scale using the procedures given in Section 10.1.

9.3.2 The GC calibration is not valid unless the retention time (RT) for each analyte at each concentration is within ±0.05 min of the retention time measured for that analyte in the stock standard.

9.3.3 The retention time (RT) of any sample analyte must be within ±0.05 min of the average RT of the analyte in the calibration standards for the analyte to be considered tentatively identified.

9.3.4 The GC system must be calibrated as specified in Section 10.2.

9.3.5 A one-point daily calibration check must be performed as specified in Section 10.3.

9.4 To establish the ability to generate results having acceptable accuracy and precision, the analyst must perform the following operations.

9.4.1 Prepare a quality control check standard (QCCS) containing each analyte expected in the coating samples at a concentration expected to result in a response between 25 percent and 75 percent of the limits of the calibration curve when the sample is prepared as described in Section 11.5. The QCCS may be prepared from reference standard materials or purchased as certified solutions. If prepared in the laboratory, the QCCS must be prepared independently from the calibration standards.

9.4.2 Analyze three aliquots of the QCCS according to the method beginning in Section 11.5.3 and calculate the weight percent of each analyte using Equation 1, Section 12.

9.4.3 Calculate the mean weight percent ($\bar{X}$) for each analyte from the three results obtained in Section 9.4.2.

9.4.4 Calculate the percent accuracy for each analyte using the known concentrations (Ti) in the QCCS using Equation 3, Section 12.

9.4.5 Calculate the percent relative standard deviation (percent RSD) for each analyte using Equation 7, Section 12, substituting the appropriate values for the relative response factors (RRF's) in said equation.

9.4.6 If the percent accuracy (Section 9.4.4) for all analytes is within the range 90 percent to 110 percent and the percent RSD (Section 9.4.5) for all analytes is ≤20 percent, system performance is acceptable and sample analysis may begin. If these criteria are not met for any analyte, then system performance is not acceptable for that analyte and the test must be repeated for those analytes only. Repeated failures indicate a general problem with the measurement system that must be located and corrected. In this case, the entire test, beginning at Section 9.4.1, must be repeated after the problem is corrected.

9.5 Great care must be exercised to maintain the integrity of all standards. It is recommended that all standards be stored at −10 °C to 0 °C in screw-cap amber glass bottles with Teflon liners.

9.6 Unless otherwise specified, all weights are to be recorded within 0.1 mg.

10. Calibration and Standardization.

10.1 Column Baseline Drift. Before each calibration and series of determinations and before the daily calibration check, condition the column using procedures developed by the laboratory or as specified by the column supplier. Operate the GC at initial (i.e., before sample injection) conditions on the lowest attenuation to be used during sample analysis. Adjust the recorder pen to zero on the chart and obtain a baseline for at least one minute. Initiate the GC operating cycle that would be used for sample analysis. On the recorder chart, mark the pen position at the end of the simulated sample analysis cycle. Baseline drift is defined as the absolute difference in the pen positions at the beginning and end of the cycle in the direction perpendicular to the chart movement. Calculate the percent baseline drift by dividing the baseline drift by the chart width representing full-scale deflection and multiply the result by 100.

10.2 Calibration of GC. Bring all stock standards and calibration standards to room temperature while establishing the GC at the determined operating conditions.

10.2.1 Retention Times (RT's) for Individual Compounds.

Note: The procedures of this subsection are required only for the initial calibration. However, it is good laboratory practice to follow these procedures for some or all analytes before each calibration. The procedures were written for chromatograms output to a strip chart recorder. More modern instruments (e.g., integrators and electronic data stations) determine and print out or display retention times automatically.

The RT for each analyte should be determined before calibration. This provides a positive identification for each peak observed from the calibration standards. Inject an appropriate volume (see **Note** in Section 11.5.2) of one of the stock reference standards into the gas chromatograph and record on the chart the pen position at the time of the injection (see Section 7.6.1). Dilute an aliquot of the stock reference standard as required in dimethylformamide to achieve a concentration that will result in an on-scale response. Operate the gas chromatograph according to the determined procedures. Select the peak(s) that correspond to the analyte(s) (and internal standard, if used) and measure the retention time(s). If a chart recorder is used, measure the distance(s) on the chart from the injection point to the peak maxima. These distances, divided by the chart speed, are defined as the RT's of the analytes in question. Repeat this process for each of the stock reference standard solutions.

Note: If gas chromatography with mass spectrometer detection (GC–MS) is used, a stock reference standard may contain a group of analytes, provided all analytes are adequately separated during the analysis. Mass spectral library matching can be used to identify the analyte associated with each peak in the gas chromatogram. The retention time for the analyte then becomes the retention time of its peak in the chromatogram.

10.2.2 Calibration. The GC must be calibrated using a minimum of three concentration levels of each potential analyte. (See Section 7.7 for instructions on preparation of the calibration standards.) Beginning with the lowest concentration level calibration standard, carry out the analysis procedure as described beginning in Section 11.7. Repeat the procedure for each progressively higher concentration level until all calibration standards have been analyzed.

10.2.2.1 Calculate the RT's for the internal standard and for each analyte in the calibration standards at each concentration level as described in Section 10.2.1. The RT's for the internal standard must not vary by more than 0.10 minutes. Identify each analyte by comparison of the RT's for peak maxima to the RT's determined in Section 10.2.1.

10.2.2.2 Compare the retention times (RT's) for each potential analyte in the calibration standards for each concentration level to the retention times determined in Section 10.2.1. The calibration is not valid unless all RT's for all analytes meet the criteria given in Section 9.3.2.

10.2.2.3 Tabulate the area responses and the concentrations for the internal standard and each analyte in the calibration standards. Calculate the response factor for the internal standard (RF_{is}) and the response factor for each compound relative to the internal standard (RRF) for each concentration level using Equations 5 and 6, Section 12.

10.2.2.4 Using the RRF's from the calibration, calculate the percent relative standard deviation (percent RSD) for each analyte in the calibration standard using Equation 7, Section 12. The percent RSD for each individual calibration analyte must be *less* than 15 percent. This criterion must be met in order for the calibration to be valid. If the criterion is met, the mean RRF's determined above are to be used until the next calibration.

10.3 Daily Calibration Checks. The calibration curve (Section 10.2.2) must be checked and verified at least once each day that samples are analyzed. This is

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accomplished by analyzing a calibration standard that is at a concentration near the midpoint of the working range and performing the checks in Sections 10.3.1, 10.3.2, and 10.3.3.

10.3.1 For each analyte in the calibration standard, calculate the percent difference in the RRF from the last calibration using Equation 8, Section 12. If the percent difference for each calibration analyte is less than 10 percent, the last calibration curve is assumed to be valid. If the percent difference for any analyte is greater than 5 percent, the analyst should consider this a warning limit. If the percent difference for any one calibration analyte exceeds 10 percent, corrective action must be taken. If no source of the problem can be determined after corrective action has been taken, a new three-point (minimum) calibration must be generated. This criterion must be met before quantitative analysis begins.

10.3.2 If the RF_{is} for the internal standard changes by more than ±20 percent from the last daily calibration check, the system must be inspected for malfunctions and corrections made as appropriate.

10.3.3 The retention times for the internal standard and all calibration check analytes must be evaluated. If the retention time for the internal standard or for any calibration check analyte changes by more than 0.10 min from the last calibration, the system must be inspected for malfunctions and corrections made as required.

11. Procedure

11.1 All samples and standards must be allowed to warm to room temperature before analysis. Observe the given order of ingredient addition to minimize loss of volatiles.

11.2 Bring the GC system to the determined operating conditions and condition the column as described in Section 10.1.

Note: The temperature of the injection port may be an especially critical parameter. Information about the proper temperature may be found on the CPDS.

11.3 Perform the daily calibration checks as described in Section 10.3. Samples are not to be analyzed until the criteria in Section 10.3 are met.

11.4 Place the as-received coating sample on a paint shaker, or similar device, and shake the sample for a minimum of 5 minutes to achieve homogenization.

11.5 **Note:** The steps in this section must be performed rapidly and without interruption to avoid loss of volatile organics. These steps must be performed in a laboratory hood free from solvent vapors. All weights must be recorded to the nearest 0.1 mg.

11.5.1 Add 16 g of dimethylformamide to each of two tared vials (A and B) capable of being septum sealed.

11.5.2 To each vial add a weight of coating that will result in the response for the major constituent being in the upper half of the linear range of the calibration curve.

Note: The magnitude of the response obviously depends on the amount of sample injected into the GC as specified in Section 11.8. This volume must be the same as used for preparation of the calibration curve, otherwise shifts in compound retention times may occur. If a sample is prepared that results in a response outside the limits of the calibration curve, new samples must be prepared; changing the volume injected to bring the response within the calibration curve limits is not permitted.

11.5.3 Add a weight of internal standard to each vial (A and B) that will result in the response for the internal standard being between 25 percent and 75 percent of the linear range of the calibration curve.

11.5.4 Seal the vials with crimp-on or Mininert® septum seals.

11.6 Shake the vials containing the prepared coating samples for 60 seconds. Allow the vials to stand undisturbed for ten minutes. If solids have not settled out on the bottom after 10 minutes, then centrifuge at 1,000 rpm for 5 minutes. The analyst also has the option of injecting the sample without allowing the solids to settle.

11.7 Analyses should be conducted in the following order: daily calibration check sample, method blank, up to 10 injections from sample vials (*i.e.*, one injection each from up to five pairs of vials, which corresponds to analysis of 5 coating samples).

11.8 Inject the prescribed volume of supernatant from the calibration check sample, the method blank, and the sample vials onto the chromatographic column and record the chromatograms while operating the system under the specified operating conditions.

Note: The analyst has the option of injecting the unseparated sample.

12. Data Analysis and Calculations

12.1 Qualitative Analysis. An analyte (e.g., those cited in Section 1.1) is considered tentatively identified if two criteria are satisfied: (1) elution of the sample analyte within ±0.05 min of the average GC retention time of the same analyte in the calibration standard; and (2) either (a) confirmation of the identity of the compound by spectral matching on a gas chromatograph equipped with a mass selective detector or (b) elution of the sample analyte within ±0.05 min of the average GC retention time of the same analyte in the calibration standard analyzed on a dissimilar GC column.

12.1.1 The RT of the sample analyte must meet the criteria specified in Section 9.3.3.

12.1.2 When doubt exists as to the identification of a peak or the resolution of two or more components possibly comprising one peak, additional confirmatory techniques (listed in Section 12.1) must be used.

12.2 Quantitative Analysis. When an analyte has been identified, the quantification of that compound will be based on the internal standard technique.

12.2.1 A single analysis consists of one injection from each of two sample vials (A and B) prepared using the same coating. Calculate the concentration of each identified analyte in the sample as follows:

$$HAP_{wt\%} = 100 \times \frac{(A_x)(W_{is})}{(A_{is})(\overline{RRF_x})(W_x)} \quad \text{Eq. (1)}$$

where:

$HAP_{wt\%}$ = weight percent of the analyte in coating.
A_x = Area response of the analyte in the sample.
W_{is} = Weight of internal standard added to sample, g.
A_{is} = Area response of the internal standard in the sample.
$\overline{RRF_x}$ = Mean relative response factor for the analyte in the calibration standards.
W_x = Weight of coating added to the sample solution, g.

12.2.2 Report results for duplicate analysis (sample vials A and B) without correction.

12.3 Precision Data. Calculate the percent difference between the measured concentrations of each analyte in vials A and B as follows.

12.3.1 Calculate the weight percent of the analyte in each of the two sample vials as described in Section 12.2.1.

12.3.2 Calculate the percent difference for each analyte as:

$$\%Dif_i = 100 \times \frac{|A_i - B_i|}{\frac{(A_i + B_i)}{2}} \quad \text{Eq. (2)}$$

where A_i and B_i are the measured concentrations of the analyte in vials A and B.

12.4 Calculate the percent accuracy for analytes in the QCCS (See Section 9.4) as follows:

$$\%\ Accuracy_x = 100 \times \frac{\overline{X}_x}{T_x} \quad \text{Eq. (3)}$$

where X_x is the mean measured value and T_x is the known true value of the analyte in the QCCS.

12.5 Obtain retention times (RT's) from data station or integrator or, for chromatograms from a chart recorder, calculate the RT's for analytes in the calibration standards (See Section 10.2.2.2) as follows:

$$RT = \frac{\text{Distance from injection to peak maximum}}{\text{Recorder chart speed}} \quad \text{Eq. (4)}$$

12.6 Calculate the response factor for the internal standard (See Section 10.2.2.3) as follows:

$$RF_{is} = \frac{A_{is}}{C_{is}} \quad \text{Eq. (5)}$$

where:

A_{is} = Area response of the internal standard.
C_{is} = Weight percent of the internal standard.

12.7 Calculate the relative response factors for analytes in the calibration standards (See Section 10.2.2.3) as follows:

where:

$$RRF_x = \frac{A_x}{RF_{is}\ C_x} \quad \text{Eq. (6)}$$

RRF_x = Relative response factor for an individual analyte.

A_x = Area response of the analyte being measured.
C_x = Weight percent of the analyte being measured.

12.8 Calculate the percent relative standard deviation of the relative response factors for analytes in the calibration standards (See Section 10.2.2.4) as follows:

$$\%RSD = 100 \times \frac{\sqrt{\sum_{i=1}^{n} \left(RRF_x - \overline{RRF_x}\right)^2}}{\frac{n-1}{\overline{RRF_x}}} \quad \text{Eq. (7)}$$

where:

n = Number of calibration concentration levels used for an analyte.
RRF_x = Individual RRF for an analyte.
$\overline{RRF_x}$ = Mean of all RRF's for an analyte.

12.9 Calculate the percent difference in the relative response factors between the calibration curve and the daily calibration checks (See Section 10.3) as follows:

$$\%\ Difference = \frac{\left|\overline{RRF_x} - RRF_c\right|}{\overline{RRF_x}} \times 100 \quad \text{Eq. (8)}$$

where:

$\overline{RRF}$ = mean relative response factor from last calibration.
RRF = relative response factor from calibration check standard.

13. *Measurement of Reaction Byproducts That are HAP. [Reserved]*
14. *Method Performance. [Reserved]*
15. *Pollution Prevention. [Reserved]*
16. *Waste Management*

16.1 The coating samples and laboratory standards and reagents may contain compounds which require management as hazardous waste. It is the laboratory's responsibility to ensure all wastes are managed in accordance with all applicable laws and regulations.

16.2 To avoid excessive laboratory waste, obtain only enough sample for laboratory analysis.

16.3 It is recommended that discarded waste coating solids, used rags, used paper towels, and other nonglass or nonsharp waste materials be placed in a plastic bag before disposal. A separate container, designated "For Sharp Objects Only," is recommended for collection of discarded glassware and other sharp-edge items used in the laboratory. It is recommended that unused or excess samples and reagents be placed in a solvent-resistant plastic or metal container with a lid or cover designed for flammable liquids. This container should not be stored in the area where analytical work is performed. It is recommended that a record be kept of all compounds placed in the container for identification of the contents upon disposal.

17. References

1. Clean Air Act Amendments, Public Law 101–549, Titles I–XI, November, 1990.
2. Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromotograph. ASTM Designation D3792–79.
3. Standard Practice for Sampling Liquid Paints and Related Pigment Coatings. ASTM Designation D3925–81.
4. Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. ASTM Designation D4457–85.
5. Standard Test Method for Determining the Unreacted Monomer Content of Latexes Using Capillary Column Gas Chromatography. ASTM Designation D4827–93.
6. Standard Test Method for Determining Unreacted Monomer Content of Latexes Using Gas-Liquid Chrematography. ASTM Designation D 4747–87.
7. Method 301—"Field Validation of Pollutant Measurement Methods from Various Waste Media," 40 CFR 63, Appendix A.
8. "Reagent Chemicals, American Chemical Society Specifications," American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see "Reagent Chemicals and Standards" by Joseph Rosin, D. Van Nostrand Co., Inc., New York, NY and the "United States Pharmacopeia."

18. Tables, Diagrams, Flowcharts, and Validation Data

Agency: _____
Inspector: _____
Date/Time: _____
Sample ID#: _____
Source ID: _____
Coating Name/Type: _____
Plant Witness: _____
Type Analysis Required: _____
Special Handling: _____

Sample Container Label

Coating Data
Date: _____
Source: _____

Data	Sample ID No.	Sample ID No.
Coating:		
Supplier Name		
Name and Color of Coating		
Type of Coating (primer, clearcoat, etc.)		
Identification Number for Coating		
Coating Density (lbs/gal)		
Total Volatiles Content (wt percent)		
Water Content (wt percent)		
Exempt Solvents Content (wt percent)		
VOC Content (wt percent)		
Solids Content (vol percent)		
Diluent Properties:		
Name.		
Identification Number		
Diluent Solvent Density (lbs/gal)		
VOC Content (wt percent)		
Water Content (wt percent)		
Exempt Solvent Content (wt percent)		
Diluent/Solvent Ratio (gal diluent solvent/gal coating)		

Stock Reference Standard
Name of Reference Material: _____
Supplier Name: _____
Lot Number: _____
Purity: _____
Name of Solvent Material: *Dimethylformamide* _____
Supplier Name: _____
Lot Number: _____
Purity: _____
Date Prepared: _____
Prepared By: _____
Notebook/page no.: _____

PREPARATION INFORMATION
1. Weight Empty Flask ..... _____,g
2. Weight Plus DMF ..... _____,g

PREPARATION INFORMATION—Continued
3. Weight Plus Reference Material. _____,g
4. Weight After Made to Volume. _____,g
5. Weight DMF (lines 2–1+3–4). _____,g
6. Weight Ref. Material (lines 3–2). _____,g
7. Corrected Weight of Reference Material (line 6 times purity). _____,g
8. Fraction Reference Material in Standard (Line 7 ÷ Line 5) soln. _____,g/g
9. Total Volume of Standard Solution. _____, ml
10. Weight Reference Material per ml of Solution (Line 7 ÷ Line 9). _____,g/ml

PREPARATION INFORMATION—Continued
Laboratory ID No. for this Standard. _____
Expiration Date for this Standard. _____

CALIBRATION STANDARD
Date Prepared: _____
Date Expires: _____
Prepared By: _____
Notebook/page: _____
Calibration Standard Identification No.: _____

Final Weight Flask Plus Reagents. _____, g
Weight Empty Flask ..... _____, g
Total Weight Of Reagents . _____, g

Analyte name[a]	Stock reference standard ID No.	Amount of stock reference standard added (by volume or by weight)				Calculated weight analyte added, g	Weight percent analyte in calibration standard[b]
		Volume added, ml	Amount in standard, g/ml	Weight added, g	Amount in standard, g/g soln		

[a] Include internal standard(s).
[b] Weight percent = weight analyte added ÷ total weight of reagents.

Quality Control Check Standard
Date Prepared: _____
Date Expires: _____
Prepared By: _____

Notebook/page: _____
Quality Control Check Standard Identification No.: _____

PREPARATION INFORMATION
Final Weight Flask Plus Reagents. _____,g
Weight Empty Flask ..... _____,g
Total Weight Of Reagents . _____,g

Analyte name[a]	Stock reference standard ID No.	Amount of stock reference standard added (by volume or by weight)				Calculated weight analyte added, g	Weight percent analyte in QCC standard[b]
		Volume added, ml	Amount in standard, g/ml	Weight added, g	Amount in standard, g/g soln		

[a] Include internal Standard(s).
[b] Weight percent=weight analyte added ÷ total weight of reagents.

Quality Control Check Standard Analysis
Date OCCS Analyzed: _____
OCCS Identification No. _____

Analyst: _____
QCC Expiration Date: _____

ANALYSIS RESULTS

Analyte	Weight percent determined			Mean Wt percent	Percent accuracx	Percent RSD	Meets criteria in Section 9.4.6	
	Run 1	Run 2	Run 3				Percent accuracy	Percent RSD

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Calibration of Gas Chromatograph Calibrated By: _____
Calibration Date: _____

PART 1.—RETENTION TIMES FOR INDIVIDUAL ANALYTES

Analyte	Stock standard ID No.	Recorder chart speed		Distance from injection point to peak maximum		Retention time, minutes [a]
		Inches/min.	cm/min.	Inches	Centimeters	

[a] Retention time=distance to peak maxima÷chart speed.

CALIBRATION OF GAS CHROMATOGRAPH Calibrated By: _____
Calibration Date: _____

PART 2.—ANALYSIS OF CALIBRATION STANDARDS

Analyte	Calib. STD ID No.	Calib. STD ID No.	Calib. STD ID No.
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Name:			
Conc. in STD			
Area Response			
RT			
Internal Standard Name:			
Conc. in STD			
Area Response			
RT			

Calibration of Gas Chromatograph Calibrated By: _____
Calibration Date: _____

PART 3.—DATA ANALYSIS FOR CALIBRATION STANDARDS

Analyte	Calib. STD ID	Calib. STD ID	Calib. STD ID	Mean	percent RSD of RF	Is RT within ±0.05 min of RT for stock? (Y/N)	Is percent RSD <30% (Y/N)
Name:							
RT							
RF							
Name:							
RT							
RF							
Name:							
RT							
RF							
Name:							
RT							
RF							
Name:							
RT							
RF							
Name:							
RT							
RF							
Name:							
RT							
RF							

Daily Calibration Check
Date: _____

Analyst: _____
Calibration Check Standard ID No.: _____

Expiration Date: _____

Analyte	Retention Time (RT)			Response Factor (RF)		
	Last	This	Difference [a]	Last	This	Difference [b]

[a] Retention time (RT) change (difference) must be less than ±0.10 minutes.
[b] Response factor (RF) change (difference) must be less than 20 percent for each analyte and for the internal standard.

Sample Analysis
Vial A ID No.: _____
Vial B ID No.: _____

Analyzed By: _____
Date: _____

Sample preparation information	Vial A (g)	Vial B (g)
Measured:		
wt empty vial		
wt plus DMF		
wt plus sample		
wt plus internal standard		
Calculated:		
wt DMF		
wt sample		
wt internal standard		

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ANALYSIS RESULTS: DUPLICATE SAMPLES

Analyte	Area response		RF	Wt percent in sample		
	Vial A	Vial B		Vial A	Vial B	Average
Internal Standard						

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Part III

Department of Labor

Office of Labor-Management Programs

29 CFR Part 215
Guidelines, Section 5333(b), Federal Transit Law; Final Rule

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DEPARTMENT OF LABOR

Office of Labor-Management Programs

29 CFR Part 215

RIN 1294–AA14

Guidelines, Section 5333(b), Federal Transit Law

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Final guidelines.

SUMMARY: The Federal Transit law, Title 49 U.S.C., Chapter 53, provides, in general, at Section 5333(b) (commonly referred to as "Section 13(c)", that, as a condition of certain Federal financial assistance by the Department of Transportation's Federal Transit Administration (FTA) in financing mass transportation systems, fair and equitable arrangements must be made, as determined by the Department of Labor (the Department), to protect the interests of employees affected by such assistance. In conjunction with the Department's role in making such determinations, the Department is providing information concerning its procedures for processing applications for assistance under the Federal Transit Law, and certification by the Department of acceptable protective arrangements.

DATES: These Guidelines become effective January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5411, Washington, DC 20210, (202) 219–4473.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5333(b) of the Federal Transit law requires that arrangements be made to protect certain rights of mass transit employees affected by grants of Federal funds for the acquisition, improvement, or operation of a transit system. These rights include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. In administering this program, the Department notifies relevant unions, if any, in the area of the proposed project and provides the grant applicant and the affected union(s) an opportunity to develop the terms and conditions of the protections. The Department provides technical and mediation assistance to the parties during the negotiations. These new guidelines replace guidelines which have been in effect since May 1, 1978.

The Department's Office of Labor-Management Programs' Notice of Proposed Rulemaking (NPRM), issued June 29, 1995 (FR Vol. 60, No. 125, pg. 34072), proposed to change the procedures for certifying employee protective arrangements which are required as a condition of assistance under the Federal Transit law, in order to expedite the process and make it more predictable to the parties.

Approximately 85% of the Department's certifications in the past five years have been issued within 90 days of the date they were received from FTA. The processing time for the remaining 15%, however, has been less predictable. The Department's objective in revising its procedures is to enhance the efficiency and predictability of the certification process for *all* transit grant applications while assuring that the required employee protections are in place. Where comments were submitted which supported this objective, the guidelines have been revised, as appropriate, to reflect the comments, and are discussed under Section II, Summary and Discussion of Comments.

Numerous comments were submitted which relate in a general way to the Department's administration of this employee protection program. The guidelines were said to contain loopholes which would undermine the effort to establish and meet deadlines for certification, create new legal standards resulting in a more arbitrary and time-consuming process, and establish protections and confer authority on the Department which exceed the statute.

The Department has carefully reviewed the new guidelines with these comments very much in mind to assure that its appropriate statutory mandate will be fulfilled, without creating unnecessary "loopholes" or legal standards which would result in a more arbitrary or time consuming process. Because the statute itself requires the Department to exercise discretion and flexibility in determining what is fair and equitable, the guidelines must also provide an appropriate level of flexibility. Where appropriate, the guidelines have been changed to reflect these concerns and in other instances, where no change was deemed necessary, the specific points raised are also discussed in Section II, Summary and Discussion of Comments.

The Department has also made a minor adjustment of a technical nature to § 215.2. This section, which addresses the required documentation to be included in the grant application, has been modified to reflect that the content of the grant application is as determined by the FTA. The Department is not requesting any information for processing of the grant that is not required by the FTA.

The new guidelines differ from the previous guidelines and the Department's practice by establishing strict time frames for the certification of protections in a more expeditious and predictable manner. The procedures established by these guidelines will assure that the required protections can be certified, within sixty days after the initiation of processing by the Department, permitting the release of the Federal transit grant funds.

The new guidelines continue to encourage local negotiations or discussions for the development of employee protection terms. The guidelines, in recognition of the fact that there are some states where bargaining is prohibited for public employees, allow for "discussion" where necessary to satisfy the Federal Transit law in a manner that does not violate state or local law.

The guidelines also eliminate referral of applications when the grant is for routine replacement of equipment and/or facilities of like kind and character. In cases where referral to the unions is appropriate, the referral will include the intended terms of certification. The parties will be given 15 days from the date of the referral to submit objections, if any, to the referral terms. The Department will Determine within 10 days thereafter whether objections are sufficient. Should the Department find that the objections are not sufficient, the Department will issue its certification on the terms specified in the referral. When objections are found to be sufficient, negotiations may proceed and the Department may provide technical and mediatory assistance where appropriate. In the event the protections cannot be agreed to within 60 days from the original referral date, the Department will issue an interim certification, permitting the release of Federal transit grant funds. In the event that the parties are still not able to resolve their differences within 60 days after the Department has issued the interim certification, the Department will set forth the protective terms in a final certification.

Finally, it seems clear from the comments received that several parties are concerned about and wish to discuss and resolve a number of substantive issues relating to this program. While this is an important matter, these are procedural guidelines and thus not the appropriate forum for the resolution of such substantive rather than procedural issues. The Department's policies on substantive issues are generally addressed through certifications and are discussed in the Department's determination letters.

II. Summary and Discussion of the Comments

Twenty comments were submitted and considered, including one from a private individual.

Two comments were received from the following public transit authorities and planning organizations:

—Northern Illinois Regional Transportation Authority
—Metropolitan Transit Commission, Oakland, CA

Twelve comments were received from the following public transit providers:

—Central Arkansas Transit Authority
—New York City Department of Transportation
—Metropolitan Transit Authority, New York, NY
—Triangle Transit Authority, Research Triangle Park, NC
—Public Works Office/Transit, Johnson County KS
—StarTran, Lincoln, NE
—Washington Metropolitan Area Transit Authority
—Los Angeles County Metropolitan Transit Authority
—Regional Transportation Commission, Clark County, NV
—New Jersey Transit Corporation
—North County Transit District, Oceanside, CA
—Metropolitan Atlanta Rapid Transit Authority

One comment was received from a state department of transportation:

—State of Michigan, Department of Transportation

Three labor organizations provided comments:

—Amalgamated Transit Union
—Transportation Trades Department, AFL-CIO
—Transport Workers Union of America

Finally, one public transit association provided comments:

—American Public Transit Association

The Department has carefully reviewed and considered all of the comments in developing these guidelines. The following provides a summary of the comments and the Department's response.

A. Definition of "Irreparable Harm"

One comment indicated that the safeguard against irreparable harm to employees in § 215.3(d)(8) pending completion of the special dispute resolution process is an essential protection which should be included in the guidelines. Others, however, suggested that the language concerning irreparable harm would add a new substantive protection under section 5333(b), which they view as providing a "remedial scheme to provide compensation" when employees are affected by a project.

Section 5333(b), requires more than providing compensation for impacts upon employees. It is also intended to minimize the impact of Federal projects on employees. The restriction against causing "irreparable harm" in § 215.3(d)(8), however, is limited solely to any action which would "result in irreparable harm to employees *if such action concerns matters subject to the steps set forth* in paragraph (e) of this section." (Emphasis added.) In specifying that no action may be taken which would result in irreparable harm, the Department intends for the recipient of funds to be able to take any necessary action that will not irreparably harm employees while allowing a project to move forward. The minimal restriction would remain in effect only until final terms and conditions are determined and certified.

B. Definition of "Material Effect"

The § 215.3(b)(1) provision with respect to "material effect" states that the procedural requirements of § 215.3(b)(2) through § 215.3(h) will not apply "absent a potentially material effect on employees." One comment indicated that the phrase "material effect on employees" should be limited in its scope to material adverse effects on employees so that if a project for routine replacement of equipment and/or facilities of like kind and character has a positive effect on employees, no referral would be required. Impacts, however, may be viewed by some individuals as positive while others view the same effect as contrary to their interests. Therefore, no adjustment need be made to accommodate this concern.

One comment noted that "[i]t is not clear whether the substantive determination of materiality (material effect on employees) is to be a subjective judgment of the Department or a legal determination based on specific standards or precedents." The Department, however, will consult with FTA, where necessary, and will determine which projects have a "potentially material effect on employees" based on available applicable precedent and policy.

C. Definition of the Phrase "Where Circumstances So Warrant"

Several comments were made indicating that the phrase "where circumstances so warrant" in § 215.3(h) enables the Department to retain the right to withhold certification at its discretion. One saw this as an expansion of the language of the law which would give the Department "veto authority over the release of grant funds." The Department intends the phrase "where circumstances so warrant" to mean that certification will not be issued where circumstances inconsistent with the statute prevent the Department from certifying. For instance, in a situation involving the Metropolitan Atlanta Rapid Transit Authority (MARTA) in Georgia, the Department was unable to certify grants for a short time because state law prohibited MARTA from providing the requisite protections. Accordingly, given that at least one comment indicated this is an expansion of the current law, the Department will clarify the intent of this language by amending § 215.3(h) of the guidelines to read: "Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved."

D. Definition of "Sufficient" as Applied to Objections to Certification

In § 215.3(d)(2)(i), the guidelines provide that the Department will "determine whether the objections raised are sufficient" when one party objects to terms and conditions proposed by the Department as the basis for certification of a project. In § 215.3(d)(3), the guidelines set forth the criteria which the Department will consider in determining whether an objection will be considered sufficient.

Comments indicated concern that the transit agencies would not be given the same opportunity as would be provided to the employees to object to the referred terms and conditions, citing as an example where it believed that existing protections include provisions that are no longer legally required or that are burdensome. Such objections, if raised by the transit agencies, would require the Department to make a determination as to whether they are sufficient. The definition does not favor either party over the other.

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Another comment indicated that, in order to avoid challenges as to whether legal or factual circumstances have changed, the Department should modify § 215.3(d)(3) so that it will consider an objection to be sufficient when: (ii) the objection "concerns legal or factual issues relating to the terms proposed to be certified that *may* materially affect the rights or interests of employees." The current proposed language requires that the Department consider an objection to be sufficient when: (ii) the objection concerns changes in legal or factual circumstances that materially affect the rights or interests of employees.

In response to this comment, the Department has determined that there is a need to clarify § 215.3(d)(3)(ii) and accordingly we have added the word "may" before "materially affect."

E. Definition of the Term "Appropriate" in § 215.3(b)(3)

One comment noted that this section sets forth procedures where there is a new applicant or where the previous arrangements are "not appropriate to the current projects" without providing guidance as to what would be considered "appropriate." This section further specifies that the Department will refer such grants to the parties based on terms and conditions similar to either the Model Agreement for operating projects or the Special Warranty for capital projects.

There are several situations in which it would not be appropriate to refer a project on the basis of previously certified arrangements. It is not possible to anticipate all the factual circumstances where the current terms would no longer be appropriate. However, referral on the basis of existing arrangements is not appropriate in a situation where the Department is aware that the terms and conditions of the existing arrangements do not satisfy the conditions of the statute in the circumstances presented, perhaps because of a change in the state law or a change in the manner in which the transit system is operated (*e.g.*, the public body decides to operate services previously provided through a management company drawing into question how specific protections required by the statute will be provided). Another situation might be one in which the parties have, for instance, negotiated a capital agreement, but have not developed an agreement for application to operating assistance projects.

F. Standards for Operating and Capital Grants Where Protections Do Not Already Exist

One comment noted that the "Model Agreement was developed to provide a template for parties who wished to use it, but was never intended to be a 'standard' or 'default' option." It was further suggested that the details of the protective arrangements should be largely left to the parties. Another comment noted that the proposed § 215.3(b)(3)(i) references "terms and conditions similar to those of the Model Agreement," and questioned which "similar" terms and conditions would be specified by the Department. Other questions included: Will the parties be given the opportunity to negotiate? Will the Department abrogate a party's right to withdraw from the Model Agreement?

Although the Model Agreement was not originally developed for application to all operating assistance grants, the agreement has been certified as meeting the requirements of the statute, and is applied with the agreement of the parties in the majority of operating assistance projects. The Department intends to expedite the certification process by basing its initial referral of operating assistance grants on terms and conditions similar to those of the Model Agreement when no other existing arrangement is applicable. As with referrals for applicants with previously certified arrangements, the parties will have 15 days from the date of the referral and notification letters to submit objections to the referred terms. The parties will be afforded the opportunity to negotiate alternative terms if the Department determines an objection to be sufficient in accordance with § 215.3(d)(3).

The Department will not "abrogate" the right of any party to withdraw from the Model Agreement in a timely manner. However, if a party withdraws from the Model Agreement, referral of the next operating project involving that party, in accordance with § 215.3(b)(3)(i), will be based on terms and conditions "similar" to the Model Agreement because there will be no previously certified arrangements "appropriate to the current project." The parties will then need to negotiate terms and conditions, under the procedures and timeframes outlined in the guidelines, to substitute for those which they object to from the Model Agreement.

Another comment suggested that, in order to make the standards for protections required under capital grants and operating grants conform with each other, § 215.3(b)(3)(i) should be redrafted to require that for operating grants, the terms and conditions will be based on arrangements no less protective than those of the Model Agreement. The Department has concluded that such consistency could more appropriately be obtained by including language in § 215.3(b)(3)(ii), which indicates that "for capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311." This language affords the Department greater latitude in incorporating the language of prior Departmental determinations into referrals.

One comment noted that "one of the paragraphs ((b)(3)(ii)) cited as being applicable to (b)(1) projects specifically states that it applies to grants other than those referenced in (b)(1)." We have deleted the phrase "other than those for replacement equipment or facilities referenced in paragraph (b)(1) of this section," from § 215.3(b)(3)(ii) to clarify that the Special Warranty will be used for new applicants which apply for routine replacement of equipment and/or facilities of like kind and character.

Comments also questioned using the Special Warranty as the basis for certification of capital grants. As with the Model Agreement, the Special Warranty has been previously certified by the Department as meeting the requirements of the statute and will serve as a starting point for the parties to develop protections should sufficient objections be submitted to the proposed terms. This will expedite the processing of section 5333(b) certifications while continuing to ensure the right of the parties to negotiate appropriate protective arrangements.

G. Interim Certifications Under § 215.3(d)(7)

Several comments noted that the court has held that the Department does not have the statutory authority to issue conditional certifications. These comments suggest that the proposed interim certification would be a conditional certification. The conditional certifications rejected by the courts in *Amalgamated Transit Union* v. *Donovan*, 767 F.2d 939 (D.C. Cir. 1985), however, were not statutorily sufficient because they did not ensure that all requirements of the statute were satisfied prior to certification. In those instances, the Department had issued certifications which were lacking mandatory terms and conditions. The interim certification provided for in these guidelines will fully satisfy the requirements of the statute based upon the information available at the time of certification. Because the terms of an interim certification will meet all the requirements of the statute, the interim certification does not constitute a "conditional" certification.

Other comments suggested that the receipt of Federal funds may affect a transit system's ability to later challenge different certification arrangements if such are subsequently imposed on it by the Department or that a system may prefer not to accept an interim certification because different arrangements could later be imposed. In the Department's view, the vast majority of applicants will benefit from the expedited certification procedure. The interim certification allows the transit authority to execute its grant contract with the FTA, thus avoiding, in certain instances, a potential lapse of funds. Moreover, the applicants will be aware of the disputed issues and thus be able to judge any potential liability if a project is implemented and the Department imposes language in the final certification that differs from that in the interim certification. In any event, under the guidelines, final certification will be issued within 60 days of the interim certification, thus limiting any period of uncertainty for transit systems.

H. Time Limits Under § 215.3(d)(1) for the Parties To Submit Objections

Several comments indicated support for the Department's "progress towards procedural reform" and noted that strict time limits for processing and issuance of certifications "would truly expedite the grant application and approval process for many grantees. Still others commented that "the proposed changes are consistent with the basic purposes of 13(c)."

Comments also suggested that there should be consequences if the Department or the parties fail to act within established timeframes. The Department recognizes the need to ensure compliance with the deadlines established in these guidelines. Funding cannot be released in the absence of a certification that employee protections are in place since the statute mandates the Department's certification as a precondition to the release of Federal funds.

If objections by the parties are not timely, the Department will proceed with certification on the basis proposed in the referral. To accommodate objections from multiple parties, however, the Department has made a technical correction to § 215.3(d)(2) to indicate that a determination regarding the sufficiency of objections will be made within 10 days of the date for submitting objections.

I. Procedures Under § 215.3(b)(1) for Routine Replacement of Equipment and/or Facilities of Like Kind and Character Exempting These From Referral

Section 215.3(b)(1) of the proposed guidelines specifies that grants for routine replacement of equipment and/or facilities of like kind and character will be certified without a referral to labor organizations absent a potentially material effect on employees. Several comments were made in support of this proposal. One comment indicated that eliminating the referral of applications for grants for routine replacement of equipment and/or facilities "would benefit our agency immediately if approved and implemented."

One comment "strongly object[ed] to exempting capital grants for routine replacement of equipment of like kind and character and/or facilities of like kind and character from the modified procedural requirements." The comment requested that this exclusion be removed from the final guidelines and that routine replacement grants be processed under the modified grant procedures applicable to all other projects.

Three comments indicated that the proposed guidelines failed to establish a procedure for the parties to provide positions on the issue of "material effect on employees" to the Department and, also, that the proposed guidelines did not establish a time frame for the Department's determination of whether a referral would be made.

It is not necessary for labor organizations to receive referrals of grants for "routine replacement" projects. In instances where no referral is made, the Department will apply existing protective arrangements which have been deemed satisfactory for similar projects in the past. For new applicants seeking "routine replacement" capital items, the Department will apply protections based upon the Special Warranty. The Department will only proceed with a certification in such instances where all capital items are clearly "routine replacement" items of like kind and character. The Department will consult with the FTA if necessary to determine whether a grant includes only routine replacement items.

No opportunity has been provided in the guidelines for input from the parties with regard to any "potentially material effect" on employees. However, where there is routine replacement of capital items, which will be used in the same locations and in the same manner as the original capital items, it is unlikely that there will be an impact upon employees which would not be covered by the existing protective arrangements.

Routinely seeking input on this issue from the parties in advance of the Department's determination would require nearly as much time as a routine referral. Should the Department deem it necessary, however, the Department could seek the input of the parties on the issue of "potentially material effect."

It is not necessary for the guidelines to include a time frame for the Department's determination of whether a referral would be made. FTA is responsible for identifying in its transmittal to the Department that a grant application is for the purpose of purchasing routine replacement equipment and/or facilities of like kind and character. If the information in the grant application is sufficient for the Department to concur in this designation, the Department will promptly proceed with its certification, absent a finding of "potentially material effect" pursuant to § 215.3(b)(1). If the information in the grant application does not support a conclusion that the project is for routine replacement equipment and/or facilities of like kind and character, the Department will refer the project to the appropriate parties in accordance with the procedures in § 215.3(b) within 5 days of receipt from the FTA.

For information purposes only, applications for "routine replacement" items will continue to be transmitted to the labor organizations representing employees in the service area of the projects.

J. Procedures for Protective Arrangements as to States That Pass Through Funds to Subrecipients

Two comments indicate that the Department has previously introduced policies and procedures for processing of statewide grant applications which are not reflected in its earlier guidelines. They further suggest that procedures recently developed by the Department for processing of grants to States which pass through funds to subrecipients, particularly to small urban and rural recipients, be reflected in the new guidelines in a separate section. In response to these comments, the Department has determined that it would be appropriate to add a new § 215.3(a)(3) to clarify that protections generally will be provided by the subrecipients which receive funds through a State administrative agency.

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Accordingly, the following section has been added:

215.3(a)(3) If an application involves a grant to a state administrative agency which will pass through assistance to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions. These procedures are not applicable to grants under section 5311.

It was also suggested that the Department should automatically certify section 5309 (formerly section 3) projects for rural providers on the basis of the Special Warranty. Under the guidelines, referrals for rural providers receiving funds under section 5309 will be based upon terms and conditions similar to those of the Special Warranty, unless there are previously certified arrangements which have been applied to the section 5309 projects. However, although the guidelines at § 215.3(b)(3)(iii) indicated that referrals for projects under section 5311 (formerly section 18) will be made on the basis of the Special Warranty, the Department will amend the proposed guidelines to continue to provide for automatic certification of applications pursuant to section 5311 for rural providers.

K. Procedure for Dispute Resolution to Determine Terms and Conditions of Final Certifications, § 215.3(e)(4)

One comment stated that "[t]he regulations explicitly decline to establish the manner of dispute resolution by the Department of Labor." Another indicated that § 215.3(e)(4) appears to give the Department the authority to utilize alternative methods of dispute resolution, noting that the statute does not allow the Department to delegate this authority to a third party. Section 215.3(e)(4) specifically reserves to the Department the sole authority to render the final determination. The statute does not mandate that the Department use a specific dispute resolution procedure.

L. Protections for Employees Not Represented by a Labor Organization

One comment indicated that § 215.4 improperly expands the protections afforded to employees not represented by a labor organization by affording such employees "the same protections" as those afforded to employees represented by a labor organization rather than "substantially the same protections."

The concerns raised by this comment that rights have been expanded have been clarified by amending the language in § 215.4(b) to eliminate any reference to the terms and conditions authorized in § 215.3(b). Instead, § 215.4(b) will provide, as in the prior guidelines, that the protective terms and conditions in the letter of certification will be set forth by the Department. There is no expansion of rights provided in these guidelines.

M. Procedures for Processing Amendatory Grant Applications

One comment suggested that "[t]he special processing exemption for 'amendatory applications' in § 215.3(c) as amplified in § 215.5 should be eliminated in its entirety." It argued that, since all grants are subject to only a 15 day review period for the purpose of filing any objections, and any grant amendment which revises a project in only "immaterial respects" would not give rise to an objection considered sufficient under the new procedures, turnaround is expedited and employee representatives should have the opportunity "to provide their views within the narrow time frame specified to ensure that the agency is fully informed regarding the potential effects of each project."

The automatic certification of amendatory grants is limited to those where changes are immaterial. If there is a change in the scope of a project, amendatory grants should not and will not be processed under this expedited procedure. The revised procedures for processing other grants should not give rise to new procedures for processing of amendatory grants containing immaterial changes which would have the potential for delaying their approval. Thus, the suggested changes to the proposed guidelines are not necessary.

N. Other Comments

1. One comment suggested that the proposed guidelines be withdrawn because they appear to draw substantial content from union proposed reforms. Another comment indicated that the "proposed rule has been undertaken without the input of the transit industry" and that State and local public body transit systems were not involved in the development of the NPRM. Several comments suggested that the regulations be withdrawn and that the rulemaking process be undertaken with greater consideration for the procedures set forth in Executive Order 12866 which "provides that interested parties should be involved prior to issuance of a proposed rule." The Department's decision to provide 30 days rather than 60 days for a comment period was also raised.

The Department developed language based on concepts favored by both unions and transit management. As demonstrated by the numerous comments received from interested parties from across the country, the rulemaking process in this instance has afforded all the interested parties with ample opportunity to provide comments and input on the procedural issues which are the subject of these guidelines.

2. One comment noted that the Department may view these procedures as "guidelines" rather than "rules." The comment further notes that "rules are binding on parties, including Federal agencies, and subject to specific rulemaking procedures; in contrast, "guidelines" are generally considered informal in nature and presumably are not binding on parties." There is no statutory authority to issue regulations under section 5333(b). The guidelines, however, are intended to be binding in administering this employee protection program.

3. Numerous comments addressed administrative processes followed by the Department and raised matters concerning the Administrative Procedures Act. It was suggested that procedural safeguards against what the parties characterize as "*ex parte* contacts" with labor representatives in pending matters should be addressed in the guidelines. Similarly, comments proposed that the guidelines address how final decisions on disputed issues would be made available under § 215.3(e)(5) and address the matter of the procedural ability to have access to and to rely on matters previously ruled upon by the Department. Finally, comments indicated that the proposed guidelines did not require the Department to "articulate the underlying legal rationale for its decisions" nor did they provide for meaningful judicial review for parties who receive an adverse ruling from the Department.

The Department does not believe that it is appropriate to restrict contacts with individual parties in the processing of certifications of employee protections. In processing FTA grant applications, the Department's role includes providing technical and mediatory assistance to the parties. As contemplated by the legislative history, the efforts of the Department are directed toward facilitating an agreement between the transit authority and the union in order to ensure that the requirements of the statute are satisfied. During mediation the Department's representative may discuss issues separately with each party, suggest bases for settlement in an effort to resolve the dispute, and respond to requests for technical assistance. If the parties do not reach an agreement and the Department must make a determination of the terms and conditions upon which a certification will be based, the standard for communications with the parties shifts to a more formal process, where outstanding issues are specified and schedules for briefs and counterbriefs are committed to written instructions. No exploration of options or issues occurs at this time absent the initiation or consent of the other party.

Under the guidelines, the Department will take steps pursuant to § 215.3(e)(5) to assure the parties' access to the final decisions it renders on disputed issues. The Department will continue to send copies of its final decisions to the FTA and the affected applicant and labor organizations. Similarly, the guidelines address the matter of access to Departmental decisions by making available the Department's final determinations on disputed issues. In fact, during efforts to facilitate agreement, these decisions are regularly provided to parties involved in negotiations when their negotiations have addressed related subjects.

The parties will continue to be able to rely on previously issued determinations to the extent that circumstances are similar to those in the prior determinations. Certifications will continue to be developed on a case by case basis to ensure that protections are statutorily sufficient in the circumstances presented by the specific project and under any applicable state law.

In establishing "fair and equitable" protections under the statute in those circumstances where the parties are unable to reach agreement, the Department provides the underlying rationale for the terms and conditions upon which certification is based. The Department will continue to provide the rationale in these cases to explain the basis of its decisions to the parties and to facilitate other parties' efforts to reach agreement in cases where the circumstances are comparable. In addition, judicial review of the Department's certification is available to the parties. See, *e.g., Amalgamated Transit Union* v. *Donovan*, 767 F.2d 939 (D.C. Cir. 1985).

4. One comment indicated that the guidelines do not define whether the "days" referred to in the various deadlines means calendar or business days. The Department intends for the term "days" to refer to calendar days. When a deadline expires on a date that is not a business day, the deadline will then be considered to be the next business day.

5. One comment suggests that, to minimize legal expenses, the briefing schedule, if one is adopted, should be shortened and a one-step process instituted rather than requiring reply briefs. The guidelines at § 215.3(e)(3) provide for some flexibility in determining the briefing schedule. In the past, the Department has typically provided up to 30 days for briefs and for reply briefs, which were routinely required, up to 10 days. The proposed guidelines specify "*no more than* twenty (20) days for opening briefs and *no more than* ten (10) days for reply briefs, *when the Department deems reply briefs to be beneficial.*" (Emphasis added.) The guidelines, therefore, already provide for an expedited process which the Department can accelerate when appropriate. The guidelines balance the need for an expedited process with the need for a full disclosure of pertinent information to facilitate the determination process.

6. One comment requested that the Department address the procedures for processing claims determinations under the statute. This is not an appropriate issue to be addressed under these guidelines. These are procedural guidelines and thus not the appropriate forum for resolution of such issues.

III. Administrative Notices

A. Executive Order 12866

These guidelines have been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that these guidelines are not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Signed at Washington, DC this ——— day of ————————, 1995.

Charles L. Smith,

Deputy Assistant Secretary.

Accordingly, 29 CFR Chapter II is amended by revising Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.

215.1 Purpose.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 The Model Agreement.
215.7 The Speciality Warranty.
215.8 Department of Labor contact.

Authority: Secretary's Order No. 2–93, 58 FR 42578, August 10, 1993.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

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§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The Federal Transit Administration will provide the Department with the information necessary to enable the Department to certify the project.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation/discussion, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(3) If an application involves a grant to a state administrative agency which will pass assistance through to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions. These procedures are not applicable to grants under section 5311.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in §§ 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in §§215.3(b)(2) or 215.3(b)(3)(ii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) for operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) for capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation/discussion within the timeframes designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under paragraph 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations/discussions during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of the date for submitting objections, the Department of Labor will:

(i) Determine whether the objections raised are sufficient; and

(ii) Take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit Administration for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administration.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations/discussions, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate/discuss expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations/discussions if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation/discussion period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administration within five (5) days after the end of the negotiation/discussion period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to §§ 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administration pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Department will issue a final certification to the Federal Transit Administration no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Department will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate/discuss over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Department.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administration.

(h) Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of § 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 The Special Warranty.

The Special Warranty mentioned in paragraph (b)(3)(ii) of § 215.3 refers to the protective arrangements developed for application to the small urban and rural program under section 5311 of the Federal Transit statute. The warranty arrangement represents the understandings of the Department of Labor and the Department of Transportation, reached in May 1979, with respect to the protections to be applied for such grants. The Special Warranty provides fair and equitable arrangements to protect the interests of employees and meets the requirements of 49 U.S.C. 5333(b).

§ 215.8 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Statutory Programs, U.S. Department of Labor, Suite N5411, 200 Constitution Avenue, NW., Washington, DC 20210; phone number 202–219–4473. (Secretary's Order 2–93, 58 FR 42578, August 10, 1993.)

[FR Doc. 95–29752 Filed 12–6–95; 8:45 am]

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Part IV

Department of Agriculture

Agricultural Marketing Service
Office of Transportation

7 CFR Parts 29, 60, 81, et al.
Removal of Selected Regulations; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 60, 81, 99, 100, 101, and 202

Office of Transportation

7 CFR Part 3305

[Docket Number TB–95–17]

Removal of Selected Regulations

AGENCY: Agricultural Marketing Service and Office of Transportation, USDA.

ACTION: Final rule.

SUMMARY: This rule will remove several miscellaneous regulations covering a number of agricultural commodities and services (cotton, tobacco, fresh and processed fruits and vegetables, meats and meat products, eggs, and poultry products). They represent an accumulation of regulations which were originally enacted to administer specific programs and which, upon review, have either been found to be obsolete, no longer are administered by the Agricultural Marketing Service (AMS), or duplicate existing regulations. This action will eliminate recurring Code of Federal Regulations (CFR) printing costs.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree 202–205–0235.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have preemptive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionally burdened.

Since this action is administrative in nature, the Administrator of AMS determined that this action will have no significant economic impact on small entities because the changes remove obsolete and duplicative material.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the provisions to be amended have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

The Secretary of Agriculture is authorized under various statutes to develop and establish efficient marketing methods and practices of agricultural commodities. This has usually been accomplished by promulgating and codifying regulations in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have out paced the revision of regulations. As a result, industry and the marketplace have been in some instances burdened with outdated and unnecessary regulatory language. The President's regulatory review initiative has provided an impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden. To meet this initiative, any regulations currently listed in the CFR which could be maintained and administered under the authorities of the AMS are being removed from the CFR and incorporated into AMS directives. Additionally, any regulations which are deemed outdated and which should be abolished, will be removed and considered obsolete once removed from the CFR. This rule eliminates selected regulations which encompass approximately 24 pages of the CFR.

The regulations at 7 CFR part 60 and 7 CFR 29.131 describe procedures for subscribing to printed Market News Reports. These sections are being eliminated because sufficient authority already exists in current statues and information for obtaining such publications by mail is readily available through a variety of public sources.

The regulations at 7 CFR part 81 Section 32 Diversion Programs describe procedures to administer the Fresh Apples Diversion Program for 1988 crop apples. This part is being eliminated because the program is no longer in existence.

The regulations at part 99, Statistical Science Program; part 100, National Laboratory Accreditation Program; concerning laboratory services, statistical science support, and Part 101, Pesticide Data Program will be removed because they are either reserved or contain only informational text.

The regulations at 7 CFR part 202, subpart B, Rules applicable to Cease and Desist Proceedings; relate to rules of practice for administering the Federal Seed Act (FSA). This part is being eliminated because 7 CFR 1.130, *Rules of Practice Governing Formal Adjudicatory Procedures*, is now used in enforcing the FSA.

The regulations at 7 CFR part 3305 describe the organization and functions of the Office of Transportation and the methods by which the public may obtain information about the Office. This part is being eliminated because the Office of Transportation was abolished January 1, 1991.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedures prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) The sections being removed are either duplicative unnecessary or obsolete, (2) removal will not alter any aspect of an existing program; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 60

Government publications, Market news reports, Subscription fees.

7 CFR Part 81

Animal feeds, Apples, Grant programs—agriculture, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 99

Agricultural commodities, Statistics.

7 CFR Part 100

Agricultural commodities, Statistics

7 CFR Part 101

Agricultural commodities, Laboratories.

7 CFR Part 202

Administrative practice and procedure, Advertising, Agricultural commodities, Imports, Labeling, Seeds, Vegetables.

7 CFR Part 3305

Freedom of information, Organization and functions.

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for 7 CFR part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.13 [Removed and reserved]

2. In part 29, subpart B, § 29.131 is removed and reserved.

PARTS 60, 81, 99, 100, 101, and—[REMOVED AND RESERVED]

PART 202—[AMENDED]

§ 202.10—202.29 (Subpart B) [Removed and reserved]

1. Accordingly, under the authority of 7 U.S.C. 1621–1627, 2242a and 4403, 7 CFR Parts 60, 81, 99, 100, 101, 202 (subpart B), are removed and reserved.

PART 3305—[REMOVED AND RESERVED]

1. For the reasons set forth in the preamble and under the authority of 5 U.S.C. 552, part 3305 is removed and reserved.

Dated: December 1, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–29792 Filed 12–06–95; 8:45 am]

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Part V

The President

Proclamation 6855—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1995

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Presidential Documents

Title 3—

The President

Proclamation 6855 of December 5, 1995

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1995

By the President of the United States of America

A Proclamation

More than 200 years ago, America's founders adopted the Bill of Rights to ensure the protection of our individual liberties. Enshrined in our Constitution are the fundamental guarantees to freedom of conscience, religion, expression, and association, as well as the rights to due process and a fair trial. Our Nation was formed on the principle that the protection and promotion of these rights are essential to a free and democratic society.

Peoples throughout the world look to the United States for leadership on human rights. In the aftermath of the Holocaust and the devastation of two world wars, our country led the international effort toward adoption of the Universal Declaration of Human Rights. For the nearly 50 years since December 10, 1948, this document has served as the standard for internationally accepted behavior by nations toward their citizens.

This year, our work to promote peace in areas of conflict and to support human rights, democracy, and the rule of law have continued to make a difference around the globe. Most recently, our efforts to foster a settlement to the terrible conflict in Bosnia resulted in an agreement that contains clear protections for human rights and humanitarian principles.

In Bosnia, and throughout the world, we have paid special attention to the most vulnerable victims of abuse—women and children. At the Fourth World Conference on Women in September of this year, the First Lady underscored our commitment to defending the rights of women and families, and we have undertaken a range of initiatives to raise awareness of child exploitation, to oppose child labor, and to assist young victims of war.

We live in an era of great advances for freedom and democracy. Yet, sadly, it also remains a time of ongoing suffering and hardship in many countries. As a Nation long committed to promoting individual rights and human dignity, let us continue our efforts to ensure that people in all regions of the globe enjoy the same freedoms and basic human rights that have always made America great.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1995, as Human Rights Day, December 15, 1995, as Bill of Rights Day, and December 10 through December 16, 1995, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate programs, ceremonies, and activities that demonstrate our national commitment to the Constitution and the promotion of human rights for all people.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William Jefferson

[FR Doc. 95-30014
Filed 12-5-95; 4:35 pm]
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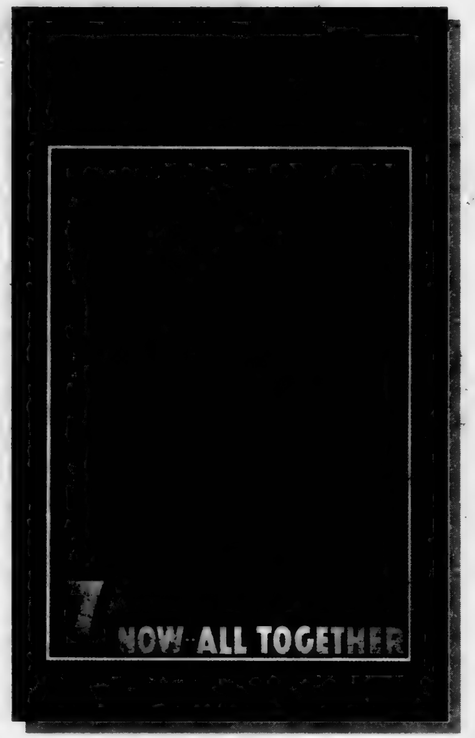
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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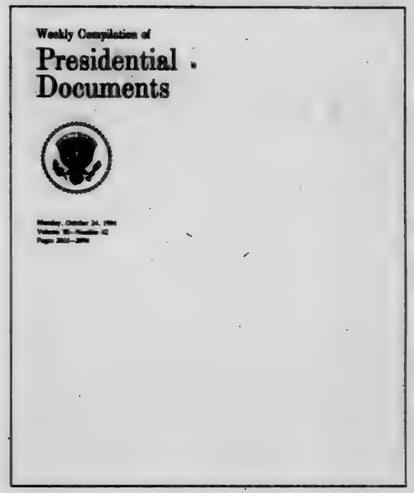
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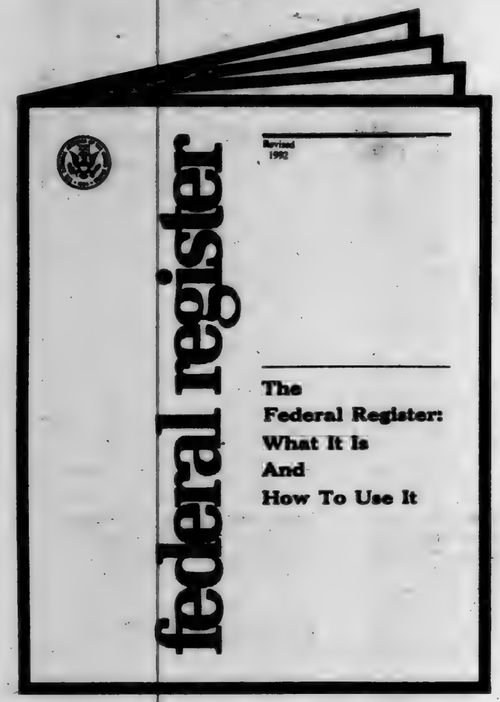
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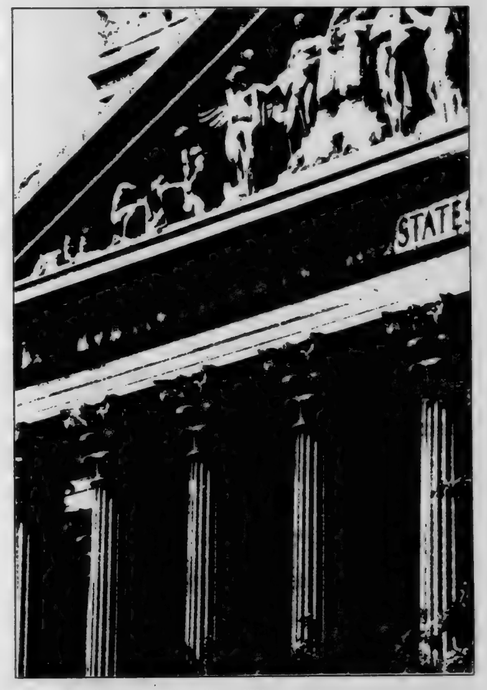
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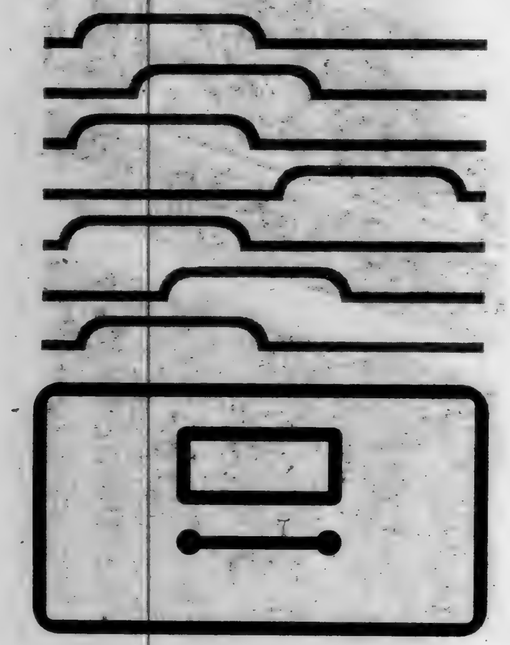
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Executive Order 12981 of December 5, 1995

Administration of Export Controls

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*) ("the Act"), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994, and continued on August 15, 1995, I, WILLIAM J. CLINTON, President of the United States of America, find that it is necessary for the procedures set forth below to apply to export license applications submitted under the Act and the Export Administration Regulations (15 C.F.R. Part 730 *et. seq.*) ("the Regulations") or under any renewal of, or successor to, the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et. seq.*) ("the Export Administration Act"), and the Regulations. Accordingly, it is hereby ordered as follows:

Section 1. *License Review.* To the extent permitted by law and consistent with Executive Order No. 12924 of August 19, 1994, the power, authority, and discretion conferred upon the Secretary of Commerce ("the Secretary") under the Export Administration Act to require, review, and make final determinations with regard to export licenses, documentation, and other forms of information submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations, with the power of successive redelegation, shall continue. The Departments of State, Defense, and Energy, and the Arms Control and Disarmament Agency each shall have the authority to review any export license application submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations. The Secretary may refer license applications to other United States Government departments or agencies for review as appropriate. In the event that a department or agency determines that certain types of applications need not be referred to it, such department or agency shall notify the Department of Commerce as to the specific types of such applications that it does not wish to review. All departments or agencies shall promptly respond, on a case-by-case basis, to requests from other departments or agencies for historical information relating to past license applications.

Sec. 2. *Determinations.* (a) All license applications submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, shall be resolved or referred to the President no later than 90 calendar days after registration of the completed license application.

(b) The following actions related to processing a license application submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations shall not be counted in calculating the time periods prescribed in this order:

(1) *Agreement of the Applicant.* Delays upon which the Secretary and the applicant mutually agree.

(2) *Prelicense Checks.* Prelicense checks through government channels that may be required to establish the identity and reliability of the recipient of items controlled under the Act and the Regulations or any renewal of,

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or successor to, the Export Administration Act and the Regulations, provided that:

(A) the need for such prelicense check is established by the Secretary, or by another department or agency if the request for prelicense check is made by such department or agency;

(B) the Secretary requests the prelicense check within 5 days of the determination that it is necessary; and

(C) the Secretary completes the analysis of the result of the prelicense check within 5 days.

(3) *Requests for Government-To-Government Assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, when failure to obtain such assurances would result in rejection of the application, provided that:

(A) the request for such assurances is sent to the Secretary of State within 5 days of the determination that the assurances are required;

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) the license is issued within 5 days of the Secretary's receipt of the requested assurances. Whenever such prelicense checks and assurances are not requested within the time periods set forth above, they must be accomplished within the time periods established by this section.

(4) *Multilateral Reviews.* Multilateral review of a license application as provided for under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, as long as multilateral review is required by the relevant multilateral regime.

(5) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant multilateral regime or bilateral arrangement as a precondition for approving a license.

Sec. 3. *Initial Processing.* Within 9 days of registration of any license application, the Secretary shall, as appropriate:

(a) request additional information from the applicant. The time required for the applicant to supply the additional information shall not be counted in calculating the time periods prescribed in this section.

(b) refer the application and pertinent information to agencies or departments as stipulated in section 1 of this order, and forward to the agencies any relevant information submitted by the applicant that could not be reduced to electronic form.

(c) assure that the stated classification on the application is correct; return the application if a license is not required; and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intention to deny the application.

Sec. 4. *Department or Agency Review.* (a) Each reviewing department or agency shall specify to the Secretary, within 10 days of receipt of a referral as specified in subsection 3(b), any information not in the application that would be required to make a determination, and the Secretary shall promptly request such information from the applicant. If, after receipt of the information so specified or other new information, a reviewing department or agency concludes that additional information would be required to make a determination, it shall promptly specify that additional information to the Secretary, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by the reviewing department or agency and the date the information is received by the reviewing department or agency shall not be counted in calculating the time periods prescribed in this order. Such information specified by reviewing departments or agencies is in addition to any information that may be requested by the Department of Commerce on its own initiative during the first 9 days after registration of an application.

(b) Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application. As appropriate, such recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. A recommendation that the Secretary deny a license shall include a statement of the reasons for such recommendation that are consistent with the provisions of the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations and shall cite both the statutory and the regulatory bases for the recommendation to deny. A department or agency that fails to provide a recommendation within 30 days with a statement of reasons and the statutory and regulatory bases shall be deemed to have no objection to the decision of the Secretary.

Sec. 5. *Interagency Dispute Resolution.* (a) *Committees.* (1)(A) *Export Administration Review Board.* The Export Administration Review Board ("the Board"), which was established by Executive Order No. 11533 of June 4, 1970, and continued in Executive Order No. 12002 of July 7, 1977, is hereby continued. The Board shall have as its members, the Secretary, who shall be Chair of the Board, the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of the Arms Control and Disarmament Agency. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be nonvoting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any member department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the departments or agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(B) The Secretary may, from time to time, refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, the domestic economy, and concerns about the proliferation of armaments, weapons of mass destruction, missile delivery systems, and advanced conventional weapons and shall make recommendations thereon to the Secretary.

(2) *Advisory Committee on Export Policy.* An Advisory Committee on Export Policy ("ACEP") is established and shall have as its members the Assistant Secretary of Commerce for Export Administration, who shall be Chair of the ACEP, and Assistant Secretary-level representatives of the Departments of State, Defense, and Energy, and the Arms Control and Disarmament Agency. Appropriate representatives of the Joint Chiefs of Staff and of the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the ACEP. Representatives of the departments or agencies shall be the appropriate Assistant Secretary or equivalent (or appropriate acting Assistant Secretary or equivalent in lieu of the Assistant Secretary or equivalent) of the concerned department or agency, or appropriate Deputy Assistant Secretary or equivalent (or the appropriate acting Deputy Assistant Secretary or equivalent in lieu of the Deputy Assistant Secretary or equivalent) of the concerned department or agency. Regardless of the department or agency representative's rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent of such department or agency. The ACEP may invite Assistant Secretary-level representa-

tives of other United States Government departments or agencies, other than the departments and agencies represented by the ACEP members, to participate in the activities of the ACEP when matters of interest to such departments or agencies are under consideration.

(3)(A) *Operating Committee.* An Operating Committee ("OC") of the ACEP is established. The Secretary shall appoint its Chair, who shall also serve as Executive Secretary of the ACEP. Its other members shall be representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy, and the Arms Control and Disarmament Agency. The appropriate representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the OC. The OC may invite representatives of other United States Government departments or agencies, other than the departments and agencies represented by the OC members, to participate in the activities of the OC when matters of interest to such departments or agencies are under consideration.

(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision will be final.

(b) *Resolution Procedures.* (1) If any department or agency disagrees with a licensing determination of the Department of Commerce made through the OC, it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same period of time, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

(2) The Board shall review all departments' and agencies' information and recommendations, and such other export control matters as may be appropriate. The Secretary shall inform the reviewing departments and agencies of the majority vote of the Board within 11 days from the date of receiving notice of appeal. Within 5 days of the decision, any department or agency dissenting from the majority vote decision of the Board may appeal the decision by submitting a letter from the head of the dissenting department or agency to the President. In the absence of a timely appeal, the majority vote decision of the Board shall be final.

Sec. 6. The license review process in this order shall take effect beginning with those license applications registered by the Secretary 60 days after the date of this order and shall continue in effect to the extent not inconsistent with any renewal of the Export Administration Act, or with any successor to that Act.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
December 5, 1995.

[FR Doc. 95-30106
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Rules and Regulations

Federal Register
Vol. 60, No. 236
Friday, December 8, 1995

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG40

Federal Employees Health Benefits Program; HMO Plan Applications

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to clarify the policy under which it invites applications from comprehensive medical plans (CMP's), commonly referred to as Health Maintenance Organizations (HMO's), to participate in the Federal Employees Health Benefits (FEHB) Program. This clarification is necessary in order to ensure that OPM and the CMP's (HMO's) are providing the best possible service to FEHB enrollees.

EFFECTIVE DATE: February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Faith M. Hannon, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 5, 1994, OPM published an interim regulation in the **Federal Register** (59 FR 62283) to clarify the policy under which it invites applications from comprehensive medical plans (CMP's), commonly referred to as Health Maintenance Organizations (HMO's), to participate in the FEHB Program. OPM made a determination not to invite new plan applications, with a limited exception, for contract year 1996. In addition, OPM decided neither to accept benefit change proposals from plans already in the FEHB Program nor to print new plan brochures or a comparison guide for contract year 1996.

OPM received 15 written comments and numerous phone calls concerning the regulation. All of the commenters objected that OPM did not give HMO's sufficient notice of its determination not to accept applications and benefit change proposals for the 1996 contract year. Among other issues, they contended that many HMO's had already expended a substantial amount of time preparing applications or developing plan benefit designs and that OPM's decision, therefore, caused them undue hardship. In addition, some commenters disagreed with OPM's position that this regulation clarified existing policy and that the Director of OPM had authority to determine when plan applications would be accepted.

After careful consideration of the comments received, OPM concluded that its time frames had, in fact, been too compressed to allow for a thorough review of all the consequences of the decision not to accept applications and that it had not allowed sufficient time for comments. As a result, OPM decided to accept applications and benefit change proposals for contract year 1996 and to provide the public with a longer comment period.

Therefore, OPM published a notice in the **Federal Register** on March 13, 1995, (60 FR 13491), which stated that OPM would accept applications from new HMO's for participation in the FEHB Program, and benefit change proposals from plans currently participating, for contract year 1996. In this notice, OPM extended the deadline for submission of the completed applications from January 31 to March 31, 1995, and allowed for a second extension if OPM requested additional information from the applicants. OPM also published the clarification of the policy under which it invites applications from HMO's as a proposed regulation in the **Federal Register**, (60 FR 15074), on March 22, 1995. This issuance was in response to those commenters who objected to the length of the comment period of the interim regulation and other alleged publication technicalities under the Administrative Procedure Act (APA).

OPM received seven written responses to the proposed regulation. The primary issues mentioned by most commenters were that closing the FEHB Program for an unlimited period of time would limit health plan choices for Federal employees, and would restrict competition within the FEHB Program. Both features are considered to be hallmarks of the Program. Some commenters also opined that this regulation contravenes OPM's obligation to contract with federally qualified HMO's and the related HMO dual choice mandate. These comments may have originated from a misunderstanding of the extent of the regulation. It was never OPM's intention to close the FEHB Program to new HMO's for unlimited periods of time. Because this misconception appears to be widespread, the final rule states that it is OPM's intention to accept new HMO applications on an annual basis except in those rare instances when the Director decides it is not in the best interest of the Federal enrollees and the FEHB Program. If this should occur, sufficient advance notice would be given to the HMO industry, i.e., an entry in the **Federal Register** at least seven months prior to the date applications would be due for the contract year for which applications will not be accepted, allowing for a comment period of sixty days. Generally, there is eleven months lead time between when applications are due on January 31, and the start of the contract year for which the applications are being accepted.

Several commenters stated that it is their belief that the Federal Employees Health Benefits Act (FEHBA) does not grant the Director of OPM the authority to determine when it is beneficial to the FEHB Program to accept applications from HMO's for participation in the Program. It was, and is, the conclusion of OPM that the Director has always had this authority and that this regulation simply clarifies the policy under which this authority is administered. The final rule states this conclusion.

Many commenters offered to assist OPM in streamlining the application process so that OPM might utilize its resources in the most effective way to benefit Program enrollees. OPM is appreciative of these offers and is working closely with representatives of the industry and other knowledgeable organizations to improve the application process.

This Final Rule is also updating the mailing address of the Office of Insurance Programs listed in the final sentence of § 890.203(a)(5).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities

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because they primarily affect OPM's administrative procedures.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; Subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.203, paragraphs (a)(1) and (a)(2), and the last sentence in paragraph (a)(5) are revised to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) *New plan applications.* (1) The Director of OPM shall consider applications to participate in the FEHB Program from comprehensive medical plans (CMP's) at his or her discretion. CMP's are automatically invited to submit applications annually to participate in the FEHB Program unless otherwise notified by OPM. If the Director should determine that it is not beneficial to the enrollees and the Program to consider applications for a specific contract year, OPM will publish a notice with a 60 day comment period in the **Federal Register** no less than 7 months prior to the date applications would be due for the specific contract year for which applications will not be accepted.

(2) When applications are considered, CMP's should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31, or another date specified by OPM, of the year preceding the contract year for which applications are being accepted. Plans must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year for which applications are being accepted. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year for which applications are being accepted in order to be considered for participation in that contract year. OPM may make counter-proposals at any time.

* * * * *

(5) * * * The extent of the data and documentation to be submitted by a plan so qualified by HHS, as well as by a non-qualified plan, for a particular review cycle may be obtained by writing directly to the Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, Washington, DC 20415.

* * * * *

[FR Doc. 95–29882 Filed 12–7–95; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 95–072–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by reducing the designation of Wisconsin from an accredited-free State to an accredited-free (suspended) State. We have determined that Wisconsin no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as an accredited-free (suspended) State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

DATES: Interim rule effective December 8, 1995. Consideration will be given only to comments received on or before February 6, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–072–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–072–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle and bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States, accredited-free (suspended) States, or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is incorporated by reference into the regulations.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States.

An accredited-free (suspended) State is defined as a State with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State. A State with accredited-free (suspended) status is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. However, if tuberculosis is detected in two or more herds in the State within 48 months, the State's accredited-free status is revoked.

Before publication of this interim rule, Wisconsin was designated in § 77.1 of the regulations as an accredited-free State. However, because tuberculosis has recently been confirmed in one herd within the State, the Administrator has determined that Wisconsin no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as an accredited-free (suspended) State. Therefore, we are amending the regulations by removing Wisconsin from the list of accredited-free States in § 77.1 and adding it to the list of accredited-free (suspended) States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Wisconsin as an accredited-free (suspended) State. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Wisconsin has approximately 61,000 cattle herds containing 3.85 million cattle and bison. An estimated 98 percent of these herds are owned by small businesses. Changing the status of Wisconsin may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in a small detrimental economic impact on some small entities. We anticipate that this action will not have a significant effect on marketing patterns in Wisconsin and will therefore not have a significant effect on those small entities affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Accredited-free state*, paragraph (2) is amended by removing "Wisconsin,".

3. In § 77.1, in the definition for *Accredited-free (suspended) State*, paragraph (2) is amended by removing "None" and adding "Wisconsin" in its place.

Done in Washington, DC, this 21st day of November 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–30017 Filed 12–7–95; 8:45 am]

BILLING CODE 3410–34–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Requirements for Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Revocation of rules.

SUMMARY: The Commission revokes two labeling rules applicable to bicycles introduced into interstate commerce between May 11, 1976, and May 11, 1978. The Commission is revoking these rules because no bicycles offered for sale at this time are subject to their requirements.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, extension 2216.

SUPPLEMENTARY INFORMATION:

A. Background

In 1976, the Commission published regulations prescribing safety requirements for bicycles under the authority of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*), to become effective on May 11, 1976. (See the **Federal Register** notice of January 28, 1976; 41 FR 4144.) These regulations are codified at 16 CFR Part 1512, and include requirements for the design, performance, and labeling of bicycles.

The regulations are applicable to bicycles introduced into interstate commerce on and after May 11, 1976. Bicycles introduced into interstate commerce before that date are not subject to their requirements. Consequently, on the effective date of the regulations, bicycles introduced into interstate commerce before May 11, 1976, could be sold without violating the regulations or the FHSA.

B. Issuance of Temporary Labeling Requirements

To help consumers identify bicycles manufactured to comply with the regulations, the Commission included a requirement in the regulations that bicycles introduced into interstate

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commerce from May 11, 1976, through May 11, 1978, had to be labeled with a hang tag or other removable label stating: "Meets U.S. Consumer Product Safety Commission Regulations for Bicycles." See section 1512.19(d) of the regulations. Section 1512.19(d) specifies minimum dimensions for the label and the height of the lettering of the required statement.

After the effective date of the bicycle regulations, the Commission issued a statement of policy and interpretation to allow minor variations in the size of the hang tags or labels required by section 1512.19(d). See the **Federal Register** of May 27, 1978. The statement of policy and interpretation is codified as 16 CFR 1512.50.

C. Revocation

No bicycles introduced into commerce now or in the future are or will be subject to the labeling rule and policy statement codified at 16 CFR 1512.19(d) and 1512.50. For this reason, the Commission is revoking that rule and policy statement.

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to publish a notice of proposed rulemaking and provide opportunity for public comment before issuing or revoking a regulation. However, the APA provides at 5 U.S.C. 553(b)(B) that the requirement for a notice of proposed rulemaking is not applicable when the agency finds for good cause that notice of proposed rulemaking and public participation are "impracticable, unnecessary, or contrary to the public interest."

The Commission finds for good cause that notice of proposed rulemaking and public participation are unnecessary. As noted, labeling under 16 CFR 1512.19(d) and 1512.50 was required only for bicycles introduced into commerce from May 11, 1976, to May 11, 1978. The rules being revoked have no effect on the rights or duties of any persons who manufacture, sell, or purchase bicycles at this time. Providing notice of proposed rulemaking and opportunity for submission of written comments on the proposal would be a meaningless procedure in this case.

The APA also requires at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date unless the agency finds for good cause that such delay is not needed. Again, no bicycles offered for sale now or in the future are or will be subject to the rules being revoked. Therefore, the Commission finds for good cause that a delayed effective date is unnecessary, and this revocation shall become effective immediately.

D. Conclusion

Therefore, under the authority of section 553 of the Administrative Procedure Act and sections 2 and 3 of the Federal Hazardous Substances Act, the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter C, Part 1512 to read as follows:

PART 1512—[AMENDED]

1. The authority for Part 1512 continues to read as follows:

Authority: Sec. 2(f)1(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262).

§ 1512.19 [Removed and Reserved]

§ 1512.50 [Removed and Reserved]

2. Sections 1512.19(d) and 1512.50 are removed and reserved effective December 8, 1995.

Dated: December 4, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–29898 Filed 12–7–95; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA21–1–5882a; A–1–FRL–5342–1]

Approval and Promulgation of Air Quality Plans; Virginia; Withdrawal of Final Rule Pertaining to VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: On September 27, 1995, EPA published approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (60 FR 49767) pertaining to amendments to Virginia's major source volatile organic compound (VOC) reasonably available control technology (RACT) requirements, applicable in the Richmond ozone nonattainment area and the Virginia portion of the Washington, DC ozone nonattainment area. This action was published without prior proposal because EPA anticipated no adverse comments. Because EPA received adverse comments on this action, EPA is removing the amendments made by the September 27, 1995 final rule pertaining to VOC RACT requirements in Virginia.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On September 27, 1995, EPA published approval of a SIP revision pertained to amendments to Virginia's major source VOC RACT requirements (60 FR 49767). The intended effect of this action was to approve the submitted amendments to Virginia's major source VOC RACT requirements because they strengthen Virginia's SIP. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (60 FR 49767).

A proposed rule pertaining to the same amendments to Virginia's VOC RACT requirements was also published in the **Federal Register** on September 27, 1995 (60 FR 49813). EPA announced that the final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 49767). The final action would be withdrawn by publishing a document announcing withdrawal of the final rulemaking action. EPA received adverse comment within the prescribed comment period. Therefore, EPA is removing the amendments made by the September 27, 1995 final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: November 3, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

For the reasons set out in the preamble, 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

§ 52.2420 [Amended]

2. Section 52.2420 is amended by removing paragraph (c)(106).

[FR Doc. 95–29927 Filed 12–07–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[FRL–5343–5]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial stay and reconsideration.

SUMMARY: Today's action provided in this document announces a partial 3-month stay of the December 14, 1995 compliance date for certain provisions of the December 14, 1994 "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)". The December 14, 1995 compliance date for leak detection and repair provisions and initial notifications is stayed for existing facilities until March 7, 1996. The EPA is issuing this stay pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule during reconsideration.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd at (919) 541–5397, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1994 (59 FR 64303), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** a rule, "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. Among the promulgated requirements for existing sources under this rule are the requirements that existing sources institute an equipment leak program and provide an initial notification of regulatory status and use of a screening equation before December 15, 1995 (40 CFR 63.424(e) and 40 CFR 63.428(a), (i)(1), and (j)(1)).

Whether a bulk gasoline terminal or pipeline breakout station is a major source or at a site that is a major source is determined by a site's "potential to emit considering controls." CAA 112(a), 42 U.S.C. 7412(a). In the Gasoline Distribution NESHAP, the EPA promulgated two mechanisms for determining major source status that are specific to this rule: first, the NESHAP included equations for determining potential emissions from terminals and breakout stations based on the HAP content of gasoline, gasoline throughput, and emission rates from equipment used to handle gasoline; and second, the NESHAP allowed for case-by-case review or "emissions inventory" of a site's emissions. 40 CFR § 63.420. The equations could be used only by bulk terminals and pipeline breakout stations that were at sites that had no other sources of HAPs. Other facilities would be able to establish potential to emit either by an emissions inventory or by using other means (outside the rule) that are generally available to sources under Subpart A of part 63, the General Provisions, and related guidance.

The American Petroleum Institute (API) submitted to the EPA a petition for reconsideration (API Petition) of provisions of the Gasoline Distribution NESHAP affecting how bulk gasoline terminals and pipeline breakout stations may establish "area source" status (i.e., non-major source status), including the timing and method of obtaining potential to emit limits. Several developments since the promulgation of the Gasoline Distribution NESHAP have led the EPA to stay this compliance date to respond to the petition for reconsideration. In particular, as discussed in the **Federal Register** notice (60 FR 56133, November 7, 1995) proposing amendments of the compliance dates for the initial notification and the equipment leak detection provisions of the NESHAP, new information indicates that many sources that were assumed to be area sources may be unable to use the mechanisms for establishing area source status under the rule. The EPA is currently reconsidering certain provisions in the Gasoline Distribution NESHAP by collecting and considering comments on the November 7, 1995 proposal. The EPA plans to take final action on the proposed rule prior to the end of the stay announced in today's notice. The information being considered during this reconsideration of the Gasoline Distribution NESHAP is contained in Docket No. A–92–38 (See 40 FR 56133).

When the EPA promulgated the Gasoline Distribution NESHAP, the EPA anticipated that about 75 percent of all gasoline bulk teminals and pipeline breakout stations would be able to establish area source status before the first compliance date of this rule. Therefore, today's stay will apply to all existing sources.

II. Issuance of Stay

The EPA hereby issues a 3-month (from today's date) administrative stay of the December 14, 1995 compliance date (40 CFR 63.424(e) and 40 CFR 63.428(a), (i)(1), and (j)(1)) in the Gasoline Distribution NESHAP. The December 14, 1995 compliance date is stayed to until March 7, 1996. The EPA is reconsidering the compliance date in the rule and, following notice and comment procedures under section 307(d) of the Clean Air Act, will take appropriate action.

III. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the Gasoline Distribution NESHAP and its associated compliance periods announced in this notice are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for 3-months to consider a request for reconsideration. Reconsideration is appropriate if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule. The grounds for reconsideration of this rule arose after the public comment period. The timing of when potential to emit limits have to be in place, the types of acceptable methods for limiting potential to emit, and the scope of the emissions equations only became apparent subsequent to the comment period on the rule. Therefore, EPA is staying the effectiveness of the rule for 3 months in order to allow time to reconsider this issue.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact of a substantial number of small business entities.

Dated: November 27, 1995.

Carol M. Browner,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 63, subpart R, is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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Authority: 42 U.S.C. 7401 et seq.

2. Section 63.420 is amended by adding paragraph (j) to read as follows:

§ 63.420 Applicability.

* * * * *

(j) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the December 14, 1995 compliance date for existing facilities in § 63.424(e) and § 63.428(a), (j)(1), and (j)(1) of this subpart is stayed from December 8, 1995, to March 7, 1996.

[FR Doc. 95–29992 Filed 12–7–95; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 70

[AD–FRL–5345–5]

Clean Air Act Final Interim Approval of Operating Permits Program; Washington

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval and notice of correction.

SUMMARY: EPA is repromulgating final interim approval of one element of the State of Washington's title V air operating permits program. On November 9, 1994, EPA granted interim approval to Washington's operating permits program. 59 FR 55813 (November 9, 1994). One of the bases for granting Washington's program interim rather than full approval was that EPA determined that Washington's exemption for "insignificant emission units" exceeded the exemption authorized for such units under the Clean Air Act. A coalition of industries filed a petition for review of EPA's decision to condition full approval on changes to Washington's treatment of insignificant emission units. Upon EPA's request for a voluntary remand, the Court remanded this interim approval issue to EPA for reconsideration. EPA continues to believe that Washington has impermissibly expanded the exemption for insignificant emission units and therefore again conditions full approval of the Washington operating permits program on changes to Washington's treatment of insignificant emission units.

EPA is also approving a change to the jurisdiction of the Benton County Clean Air Authority.

Finally, EPA is correcting the date for expiration of the interim approval and the due date of the required submission addressing the interim approval issues.

EFFECTIVE DATE: January 8, 1996.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the address indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, 1200 Sixth Avenue, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Previous Action on Washington's Program

Washington submitted its operating permits program to EPA in November 1993. In November 1994, EPA granted interim approval to Washington's program and conditioned full approval on, among other things, revisions to Washington's regulations pertaining to the treatment of insignificant emission units (IEUs).[1] *See* 59 FR 55813 (November 9, 1994). On January 9, 1995, the Western States Petroleum Association, Northwest Pulp & Paper Association, Aluminum Company of America, Columbia Aluminum Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Vanalco Inc. (collectively, "Petitioners") filed a petition with the United States Court of Appeals for the Ninth Circuit seeking review of the conditions in EPA's final interim approval of Washington's operating permits program. *Western States Petroleum Association, et al.* v. *EPA, et al.*, No. 95–70034 (9th Cir., Jan. 6, 1995). In their petition and subsequent brief, Petitioners claimed that EPA had exceeded its authority in requiring Washington to revise its IEU rules as a condition of full approval and that this condition was arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with the law. Petitioners' brief clarified that Petitioners were challenging only EPA's requirement that Washington revise its IEU rules to obtain full approval and did not challenge any of the four other conditions for full approval. The State of Washington filed a brief as intervenor in the matter.

In reviewing the issue, EPA determined that the Petitioners and the State of Washington had raised a substantial question concerning EPA's interpretation of the IEU provisions of part 70 and the specific regulatory revisions EPA had ordered the State to make to its IEU rules as a condition of full approval. EPA therefore moved the Court on May 23, 1995, to vacate and remand to EPA those portions of EPA's final interim approval of Washington's operating permits program concerning IEUs. The Court granted EPA's motion on July 7, 1995.

Following the Court's order, EPA again reviewed the part 70 regulations and Washington's IEU provisions and, on September 28, 1995, again proposed interim approval of the State's program (60 FR 50166). EPA explained in the proposal that EPA continued to believe that Washington's IEU provisions did not comport with the requirements of part 70 with respect to permit content because the State's regulations expressly excluded IEUs subject to generally applicable requirements of the Washington State Implementation Plan (SIP) from all the requirements of 40 CFR 70.6, except for the requirement to include in the permit all applicable requirements. EPA also expressed its concern that the State's definition of IEU excluded, perhaps unintentionally, IEUs from certain permit application requirements that apply to IEUs and possibly from even title V applicability determinations.

During the public comment period on the September 1995 proposal, EPA received comments from the Petitioners, the State of Washington, Department of Ecology ("State" or "Ecology"), and the Boeing Corporation, an aerospace manufacturing concern with major operations in Washington State (collectively, the "commenters"). The commenters addressed only EPA's proposed interim approval of the Washington IEU program. No comments were received regarding the change in jurisdiction of Benton County Clean Air Authority or the correction of the expiration date for interim approval.

EPA has carefully reviewed the comments and continues to believe that the Washington IEU program must be revised as a condition of full approval. As discussed in more detail below, EPA grants deference to the State's interpretation of its IEU regulations, and is therefore satisfied, based on the State's interpretation, that the State's IEU regulations meet the requirements of part 70 with respect to permit applications and title V applicability. The problems with the permit content requirements of section 70.6 which EPA addressed in the September 1995 proposal, however, arise not from a difference of opinion as to the interpretation of Washington's regulations, but instead from a difference of opinion as to the plain meaning and intent of the part 70 regulations themselves. EPA continues to believe that part 70 does not exempt IEUs subject to applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of 40 CFR 70.6(a)(1), (a)(3) and (c). Because Washington's title V program expressly excludes IEUs subject to generally applicable requirements from these requirements of section 70.6, EPA continues to believe that the Washington IEU regulations do not qualify for full approval.

II. Final Action and Implications

A. Response to Comments

As discussed above, the comments addressed only EPA's proposed interim approval of Washington's IEU regulations.

1. Permit Content

As the State of Washington and Petitioners concede, the Washington program expressly exempts IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of section 70.6.[2] *See* WAC 173–401–200(16), 173–401–530(2)(c) and 173–401–530(2)(d). Instead, for IEUs subject to generally applicable requirements of the Washington SIP, the Washington program requires only that the permit contain the generally applicable requirements that apply to such IEUs. WAC 173–401–530(2)(b). The commenters argue that the language and intent of the part 70 regulations allow such an exemption from the permit content requirements of section 70.6 for IEUs. EPA disagrees.

The commenters acknowledge that there is no reference in 40 CFR 70.6 to IEUs. They argue, however, that this fact "in no way undermines the authority granted to states in section 70.5 to exempt insignificant emission units from permit program requirements." Section 70.5, however, does not exempt IEUs from "permit program requirements" in general, but instead exempts IEUs only from certain permit application requirements. There is *nothing* in the language of section 70.5 or elsewhere in the part 70 regulations to support the commenters' argument that, because a State may exempt IEUs from certain permit application requirements in section 70.5, a State may also exempt IEUs from certain permit content requirements in section 70.6.

The commenters' reliance on EPA's inherent power to exempt emission units with *de minimis* emissions from certain permit content requirements is also misplaced. EPA did indeed rely on *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1980), to exempt IEUs from certain permit application requirements in section 70.5. *See* 57 FR 32250, 32273 (July 21, 1992). Whether EPA could have relied on this same authority to exempt IEUs from certain permit content requirements in section 70.6, however, is irrelevant at this point. As stated above, nothing in the language of the part 70 regulations themselves or in the preamble to the proposed or final part 70 regulations supports the commenters' argument that the limited exemption in certain permit application requirements in section 70.5 also extends to the permit content requirements of section 70.6. The commenters' concern appears to be with the part 70 regulations themselves, that is, the failure of the part 70 regulations to exempt IEUs subject to applicable requirements from certain permit content requirements of section 70.6. The time for raising such an issue has long since past.

Unable to point to any language in the part 70 regulations supporting their interpretation, the commenters rely on "logic." The commenters first argue that "it is entirely illogical for EPA to specifically exempt these IEUs from the application and then attempt to regulate these same IEUs in the final permit." The commenters go on to state that EPA's decision undermines the broad purpose of part 70's IEU program exemption. The commenters appear to misunderstand the purpose and scope of the part 70 program for insignificant emissions units and activities. In promulgating section 70.5(c), EPA crafted a limited exemption regarding the *information* required in part 70 permit applications. Notwithstanding this general exemption from certain permit application requirements, section 70.5(c) requires that an application "may not omit information needed to determine the applicability of, or to impose, any applicable requirement." This means that when information is needed in an application to determine whether substantive requirements apply to an IEU, even this limited exemption to the permit application requirements provided in section 70.5 falls away.

In a similar vein is the comment that not allowing IEU's to be exempted from permit content requirements "essentially obliterates the exemption." EPA disagrees. An emission unit that is not exempted from the application must be addressed in accordance with section 70.5(c)(3), which among other things requires a physical description of the emissions points, information about the emissions, raw materials and production rate, and any air pollution control equipment. EPA therefore sees no basis for the argument that extension of the IEU exemption to the permit content requirements of section 70.6 is necessary in order to give meaning to the IEU exemption.

The commenters also argue that "If insignificant emission units are not entirely exempted from the monitoring, recordkeeping, reporting and certification requirements of a permit, both sources and permitting agencies will be forced to expend substantial

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[1] For the purpose of this action, "IEU" refers to activities and emission units that are defined as insignificant under WAC 173–401–200(16) and 173–401–530, when used in discussing Washington's program, and refers to the generic concept under part 70, when used in discussing the requirements of part 70.

[2] This includes the requirement to include "gapfilling" testing, monitoring, recordkeeping and reporting requirements for IEUs, as required by 40 CFR 70.6(a)(3)(i), (ii) and (iii); compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the generally applicable requirements for subject IEUs, as required by 40 CFR 70.6(c)(1); compliance certification for IEUs, as required by 40 CFR 70.6(c)(5); and, for IEUs not in compliance, a compliance schedule and progress reports, as required by 40 CFR 70.6(c)(3) and (4).

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resources without compensating environmental benefit." As an initial matter, EPA again points out that this concern challenges the part 70 regulations themselves and should have been raised following final promulgation of the part 70 regulations. Such concerns are untimely when raised in the context of EPA's action on Washington's title V program. In any event, EPA disagrees that applying the testing monitoring, recordkeeping, reporting, and compliance certification requirements of section 70.6 to IEUs with applicable requirements will be unduly burdensome or result in no compensating environmental benefit.

The commenters imply that requiring the provisions of section 70.6 to be met with respect to IEUs subject to applicable requirements will result in unnecessary paperwork. As EPA discussed in its September 1995 proposal on this action, part 70 allows States flexibility in tailoring the amount and quality of information required in the permit application, and the rigor of compliance requirements in the permit, to the type of emission unit and applicable requirement in question. *See* 60 FR 50170; *See also White Paper for Streamlined Development of Part 70 Permit Applications*, from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to EPA Regional Air Directors (July 10, 1995). The requirement to include in a permit testing, monitoring, recordkeeping, reporting, and compliance certification *sufficient to assure compliance* with the terms and conditions of the permit does not require the permit to impose the same level of rigor with respect to emission units that do not require extensive testing or monitoring in order to assure compliance with the applicable requirements as it does with respect to emission units that do require extensive testing or monitoring because of their potential to violate emission limitations or other requirements under normal operating conditions. As provided for in 40 CFR 70.6(a)(3)(B), recordkeeping may be used to provide reliable data that are representative of the source's compliance with the permit. For example, records showing the use of natural gas as the fuel for combustion sources would, in most cases, provide reliable data for a certification of compliance with sulfur dioxide emission limits.

The burden of ensuring that a permit meets the requirements of section 70.6 can also be significantly minimized by using standard permit terms to address testing, monitoring, recordkeeping, reporting, compliance and compliance certification requirements for common generally applicable requirements that apply to IEUs. Permits could, for example, contain a chart summarizing the monitoring, recordkeeping, and reporting requirements that would form the basis for compliance certifications for the generally applicable requirements for IEUs.

In the September 1995 proposal on this action, EPA pointed to the Oregon operating permits program as an example of a program that had effectively implemented the requirements of section 70.6 for IEUs. The Oregon program received interim approval effective January 3, 1995, (59 FR 61820 (December 2, 1994)),[3] one month after Washington's program first received final interim approval. Since that time, Oregon permitting authorities have received complete title V permit applications from over 86 sources, have issued 12 final title V permits and have submitted to EPA an additional 5 proposed title V permits. As discussed in the September 1995 proposal on this action, Oregon has used standard permit terms in its title V permits to address generally applicable requirements for IEUs as well as the associated testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements for such IEUs. *See* 60 FR 50170–50171. Based on EPA's review of public comments on the 5 proposed and 12 final permits issued to date, Oregon sources have not objected to the permit terms relating to IEUs.

EPA is committed to issuing additional guidance to aid State and local permitting authorities in drafting permits which comply with the permit content requirements of section 70.6. EPA intends to issue such guidance with respect to IEUs with applicable requirements within the next several months. This guidance will address such things as streamlining the permit by using general conditions which apply to categories of IEUs; appropriate monitoring, recordkeeping and reporting requirements for IEUs; and the appropriate level of information (i.e., reasonable inquiry) upon which compliance certifications would be based.

One commenter on the Washington title V program has stated, without any substantiation, that "a comparison of title V applications for similar sources in the two states reveals that Oregon applications were several times larger than those prepared in Washington, with the difference attributable to emissions units making up one or two percent of the source's total emissions." Although EPA has to date received only 16 permit applications from title V sources in Washington, a comparison of five Washington title V applications to Oregon title V applications for sources with the same SIC codes does not substantiate the commenter's claim. Although the Oregon permit applications that EPA reviewed were generally one-and-one-half times larger than their Washington counterparts, two of the five Washington applications contained more pages addressing IEUs and facility-wide applicable requirements than did their Oregon counterparts and one had the same number of pages. More importantly, none of these 10 permit applications for Washington and Oregon contained any significant number of pages addressing IEUs. The IEU-related portions of the Oregon applications ranged from 5 to 25 pages and the IEU-related portions of the Washington applications ranged from 3 to 19 pages. As indicated by the sample Oregon permit which was included in the docket for the proposal on this action, and the accompanying application for the permit which EPA has added to the docket, only 8 of the 165 pages of the permit application are devoted to IEUs, which includes three pages of checklists for categorically exempt IEUs, one page of brief descriptions/equations addressing aggregate insignificant IEUs, two pages listing facility-wide applicable requirements, and two pages listing compliance methods for the facility-wide applicable requirements. Note as well that not even two of the 27 pages of the Oregon permit for this source are devoted to IEUs. Any difference in the size of Oregon and Washington title V permit applications appears to be attributable to the difference in the forms required to be submitted for emission units other than IEUs and other differences in the Oregon and Washington air programs, such as the unique plant site emissions limit (PSEL) provisions of Oregon's rules. In short, Oregon permitting authorities and sources do not appear to be awash in the avalanche of paperwork for IEUs predicted by the commenters.

EPA also vigorously disagrees that requiring permits to address the testing, monitoring, reporting, recordkeeping, compliance, and compliance certification requirements of section 70.6 for IEUs will have little or no environmental benefit. For example, the Washington IEU program lists "vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls and separate exhaust are provided" as "categorically exempt" IEUs if they are subject to no applicable requirements other than the generally applicable requirements of the Washington SIP. WAC 173–401–532(9) and 173–401–530(2)(a). EPA has received a title V application from one Washington facility which lists "furnace building roof monitor and other vents, doorways" as collectively emitting 922 tons of particulate per year. The application also indicates that these emission points are subject only to the generally applicable opacity limit (WAC 173–400–040(1)), grain loading standard (WAC 173–400–060), and sulfur dioxide standard (WAC 173–400–040(6)) in the Washington SIP. Based on the description provided in the application, EPA believes that these emission units would qualify as IEUs under WAC 173–401–532(9) and 173–401–530(2)(a). The application indicates that these emissions units are not in compliance with the State's opacity limit. Washington's current regulations would require that the title V permit for this source contain the generally applicable requirements that apply to these IEUs, but would exempt them from any other requirements of section 70.6, including the requirement to submit an annual compliance certification. The environmental benefit of requiring the title V permit for such a source to include an appropriate level of testing, monitoring, recordkeeping, and reporting, and to require annual certification of the compliance status of these IEUs, should be obvious. Requiring IEUs to be addressed in the permit puts the burden on sources to ensure that they are in compliance with the applicable requirements, rather than on permitting authorities to document that such sources are out of compliance. This shift in responsibility for ensuring compliance is one of the major objectives of the title V program.

The commenters final comment on the permit content issue is that, in finding that Washington's IEU regulations fail to meet the permit content requirements of section 70.6, EPA is holding the Washington program to a different standard than the agency has applied to other States. The commenters can point to no instance, however, in which EPA has given approval to an IEU program which expressly exempts IEUs from some or all permit content requirements, as does the Washington program. Instead, the commenters' argument appears to be that EPA has approved State programs that exempt or require only the summary listing of IEUs in permit applications and that, "Because the [IEU] units are not listed in the permit application there is a clear inference to sources, and the tacit understanding by the permitting agencies that IEUs are not included in the operating permit." This is not the case.

EPA has approved State title V programs that exempt or allow sources to omit IEUs from or merely list IEUs in the permit application, but only if the States have shown to EPA's satisfaction that their programs meet the two minimum requirements of section 70.5(c) for the treatment of IEUs in permit applications. First, insignificant activities which are exempt because of size or production rate must be listed in the permit application. Second, the permit application may not omit information needed to determine the applicability of, or to impose, any applicable requirement or any required fee.[4] EPA also required the State of Washington to satisfy these requirements as a condition of full approval of its IEU provisions and, as discussed below, EPA now finds that Washington has satisfied these requirements for permit applications.

But, contrary to the commenters' assertion, EPA has also required, as a condition for full approval of a State's IEU program, that the State ensure that permits issued for such sources comply with the requirements of section 70.6 with respect to all IEUs subject to applicable requirements. EPA disagrees with the inference drawn by the commenters, namely, that other State programs might be interpreted to exempt IEU's from permit content requirements because the State programs have provided sources relief from certain permit application requirements. Such an inference is not reasonable or appropriate given the fact that there is no language in the State program regulations cited by the commenters which contain or suggest an exemption from the permit content requirements and given the fact that the federal regulation under which the State programs have been approved does not allow for this result. Indeed, for obvious reasons, EPA's approval of these programs has been based on the assumption that State program regulations will be interpreted in the same way that EPA has interpreted part 70. That is, where the State program does not specifically exempt IEU's from permit content requirements, EPA has assumed that no such exemption will be inferred. Where EPA has been concerned that a State program could be interpreted to provide an exemption from permit content requirements for IEUs subject to applicable requirements, EPA has clarified its expectation in the **Federal Register** notice acting on such programs that the permitting authorities must ensure that all permits issued "assure compliance with all applicable requirements at the time of permit issuance." *See* 60 FR 32603, 32608 (June 23, 1995); 60 FR 44799, 44801 (August 29, 1995). If, during implementation of such programs, permits are issued which do not comply with the requirements of section 70.6 with respect to IEUs subject to applicable requirements, EPA would consider this grounds for objecting to individual permits, 40 CFR 70.8(c)(1), as well as grounds for withdrawing approval of such State programs, 40 CFR 70.10(c)(1)(ii)(B).

In summary, the commenters can point to no instance in which EPA has approved a State program which expressly exempts IEUs with applicable requirements from the permit content requirements of section 70.6. Moreover, the commenters can point to no action on the part of EPA which has expressly or implicitly condoned a tacit exemption from the permit content requirements for such IEUs. EPA's decision to grant interim rather than full approval to the Washington IEU regulations for failing to comply with the requirements of section 70.6 is fully consistent with EPA's actions on other State IEU programs.

2. Permit Application Requirements

The commenters also objected to EPA's proposed finding that the Washington regulations fail to meet the requirements of section 70.5 for permit applications with respect to IEUs. The basis of EPA's position was that WAC 173–401–200(16) appears to specifically exempt activities and units deemed insignificant under WAC 173–401–530 from all of Washington's permit program requirements, except as provided in WAC 173–401–530. WAC 173–401–530, however, does not include all of the requirements of section 70.5 which a State must meet with respect to IEUs, most importantly, the requirement of section 70.5(c) that a permit application may not omit information needed to determine the applicability or to impose any

[3] Oregon's IEU provisions received full approval when EPA granted the Oregon title V program final interim approval, *see* 59 FR 61820 (December 2, 1994), and the entire Oregon title V program has now received final full approval. *See* 60 FR 50106 (September 28, 1995).

[4] The Wisconsin program does not specifically contain this requirement. As EPA clarified in its technical support document supporting EPA's approval of the Wisconsin program, however, because the State very narrowly defined IEUs and required that all IEUs be listed in the application, the Wisconsin program met the requirements of section 70.5(c).

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applicable requirement or to evaluate any required fee (the "applicable requirements gatekeeper").[3] WAC 173–401–530 also does not incorporate the requirement that all applications be certified as to truth, accuracy and completeness, which is contained in WAC 173–401–500(2)(c) and 173–401–520. Another problem noted by EPA was the fact that WAC 173–401–500(7) could be interpreted as allowing a permit application to be deemed complete even if the source had not provided the information in the permit application required by Washington's regulations for IEUs.

The commenters, including the State of Washington, responded that EPA was taking an overly broad interpretation of the exclusion contained in WAC 173–401–200(16), thereby giving other provisions of Washington's IEU regulations no effect. Upon further review and based on the State's interpretation of its regulations, EPA finds that the Washington IEU provisions meet the requirements of section 70.5(c).

The definition of IEU at WAC 173–401–200(16) does appear to exclude IEUs from all requirements except those contained in WAC 173–401–530. Certain other requirements of Washington's regulations for title V permit applications, however, specifically refer to IEUs. Importantly, WAC 173–401–510, which sets forth the permit application requirements for all sources in Washington, specifically refers to IEUs by stating:

> Information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units shall be included in the application. However, an application may not omit information need to determine the applicability of, or to impose, any applicable requirement or to evaluate the fee amount required under the permitting authority's schedule.

WAC 173–401–510(1). The State has argued that this provision would be nullified if WAC 173–401–200(16) was interpreted to exempt IEUs from those provisions outside of WAC 173–401–530 that specifically refer to IEUs, such as 173–401–510(1). The State has assured EPA that this was not its intent. Instead, the State has stated that the "applicable requirements gatekeeper" of WAC 173–401–510(1) was specifically included to limit the statements in WAC 173–401–200(16) and 173–401–510(1) that IEUs are not subject to the permit program requirements, including the application requirements, except as provided by WAC 173–401–530.

In response to the EPA's concern with respect to the requirement to certify the truth, accuracy and completeness of the permit application, the commenters state that "Statements in a Washington operating permit application, including those regarding IEUs made in accordance with WAC 173–401–530, are plainly subject to the certification requirements of WAC 173–401–500(7)(c)." The State further argues that the State's standard permit application form requires certification of all information in the application and that if a source attempted to limit its certification with respect to IEUs, the State would view the application incomplete.

In response to EPA's concern that the criteria for determining completeness in WAC 173–401–500(7) could be interpreted to allow an application to be deemed complete even if it omits all required information on IEUs, the commenters again point out that the specific provisions in WAC 173–401–510(1) and –500(4) require an application to include necessary information regarding IEUs to be complete and that interpreting WAC 173–401–200(16) to vitiate those provisions would render the specific references to IEUs in WAC 173–401–500 and 173–401–510 meaningless.

Although EPA believes the interrelationship among the various provisions in Washington's regulations for IEUs is far from clear, EPA is willing to grant deference to the State's interpretation of its own rules. Accordingly, EPA now finds that Washington's program fully meets the requirements of 40 CFR 70.5 regarding permit applications. Because the State will need to revise its title V rules to get full title V approval, EPA strongly encourages the State to revise its IEU provisions to clarify the relationship among WAC 173–401–200(16), 173–401–500, 173–401–510, 173–401–520 and 173–401–530. EPA will also pay close attention during program implementation to permit applications and proposed permits to ensure that the Washington rules are implemented consistently with the State's assertions.

3. Applicability Determinations

A final concern raised by EPA was that State law could be interpreted so as to exclude emissions from IEUs in the calculation of a source's potential to emit for purposes of determining whether the source was a major source and thereby subject to Washington's title V program in the first instance. Again, EPA's concern hinged on the extent of the exemption in WAC 173–401–200(16). The commenters responded by pointing out that the definition of "insignificant activity" or "insignificant emission unit" requires the unit or activity to be "located at a chapter 401 source" before it can qualify as insignificant and thus be exempted from certain permit program requirements. The commenters argue that this requires that a source first be determined to be a major source before any emission unit can be deemed insignificant, thus requiring all emissions, including emissions from IEUs, to be considered when determining if a source is a major source.

Again, EPA is willing to grant deference to the State's interpretation of its own rules and finds that this provision complies with the requirements of 40 CFR Part 70. EPA will also pay close attention to applicability determinations during program implementation to ensure that the Washington rules are implemented consistently with the State's assertions.

B. Interim Approval Action

EPA is promulgating interim approval of Washington's regulations addressing IEUs. Ecology must make the following revisions to its IEU provisions as a condition of full approval:

(5) Revise WAC 173–401–200(16) (Definition of "insignificant activity" and "insignificant emissions unit"); WAC 173–401–530 (Insignificant emission units); WAC 173–401–532 (Categorically exempt insignificant emission units); and WAC 173–401–533 (Units and activities defined as insignificant based on size or production rate) to ensure that permits contain all applicable requirements and meet all permit content requirements of 40 CFR 70.6 for all emission units, even for IEUs.

This requirement replaces Condition 5 under the heading "Ecology" in section II.B. of EPA's November 9, 1994, **Federal Register** notice granting final interim approval of the Washington operating permits program. *See* 59 FR 55818. Note that this action in no way affects the changes necessary to address all other interim approval issues identified in the November 9, 1994 **Federal Register** notice. In other words, as a condition of full approval, Washington must also correct the four other deficiencies in its program identified in the November 9, 1994, notice and the other Washington permitting authorities must correct all deficiencies in their respective programs identified in the November 9, 1994, notice. *See* 59 FR 55818–55819.

EPA is also approving as a program revision the transfer of title V permitting and enforcement authority for sources in Franklin County to the Washington Department of Ecology.

Finally, EPA is correcting the dates in 40 CFR Part 70, Appendix A for expiration of the interim approval of the Washington State and local operating permits programs from November 9, 1996, to December 9, 1996, and is correcting the date by which the State is required to submit a corrective program from May 9, 1996, to June 9, 1996.

C. Effective Date of Interim Approval

This action does not change the time period for the initial interim approval, which is December 9, 1996. During this ongoing interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Washington. Permits issued under the Washington program have full standing with respect to part 70. In addition, the 1-year deadline for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications began upon the effective date of interim approval, which in this case was December 9, 1994.

If the State of Washington were to fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval (by June 9, 1996) EPA would start an 18-month clock for mandatory sanctions. If the State of Washington were then to fail to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State of Washington had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator were to find a lack of good faith on the part of the State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In any case, if, 6 months after application of the first sanction, the State of Washington still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following expiration of final interim approval, EPA were to disapprove the State of Washington's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State or Washington had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In all cases, if, 6 months after EPA applied the first sanction, the State of Washington had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permit's program for that State upon expiration of interim approval.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this proposed action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Final Interim Approval of the part 70 operating permits program for the Washington Department of Ecology, the Washington Energy Facility Site Evaluation Council, the Benton County Clean Air Authority, the Northwest Air Pollution Authority, the Olympic Air Pollution Control Authority, the Puget Sound Air Pollution Control Agency, the Spokane County Air Pollution Control Authority, the Southwest Air Pollution Control Authority, and the Yakima County Clean Air Authority.

Dated: November 15, 1995.

Chuck Clarke,

Regional Administrator.

PART 70—[AMENDED]

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

[3] Although, in the September 1993 proposal on this action, EPA did not specifically discuss the applicable requirements gatekeeper as one of the examples where the Washington program fails to satisfy the requirements of part 70 with respect to permit applications, the opening sentence of the discussion in the proposal on permit applications clearly expressed EPA's concern that the exemption in WAC 173–401–200(16) appeared to extend to the gatekeeper itself, which is contained in WAC 173–401–510(1). *See* 60 FR 50169.

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1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 70 is amended by revising the Washington paragraph of Appendix A as follows:

Appendix A—Approval Status of State and Local Operating Permits Programs

* * * * *

Washington

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993 and amended on September 29, 1994 and April 12, 1995; effective on December 9, 1994; interim approval expires December 9, 1996.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires December 9, 1996.

* * * * *

[FR Doc. 95–29994 Filed 12–7–95; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 60, No. 236
Friday, December 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 250

RIN 0584–AB55

Food Assistance in Disaster and Distress Situations

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the provisions of the Food Distribution Program Regulations that relate to food assistance provided in response to Presidentially declared disasters and emergencies and in other situations of distress. The proposals contained in this rule address: (1) Simultaneous issuance of commodities and food stamps in a disaster; (2) distribution of commodities to households in situations of distress; (3) authorization for providing commodity assistance; (4) reporting requirements; and (5) the replacement of commodities. In addition, revised definitions are being proposed which encompass the definitions contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These revisions will help ensure that commodity assistance is made available to victims of disasters and to those in situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program.

DATES: To be assured of consideration, comments must be postmarked on or before February 6, 1996.

ADDRESSES: Comments should be sent to: Lillie Ragan, Section Head, Household Programs Section, Policy and Program Development Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. Comments in response to this rule may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan at the above address or telephone (703) 305–2661.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments and individuals who might apply for disaster or distress commodity benefits. To the extent that county or other local governments assist in the distribution of commodities at a disaster or distress feeding site, they would also be affected.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Information Collection

This proposed rule contains information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB). As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), FCS has submitted a copy of this proposed rule to OMB for review of these information collection requirements. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens.

Title: Commodity Assistance to Households in Disasters and Situations of Distress.

Description: In instances when the Food Stamp Program is in operation and commodities are being made available for distribution to households, this proposed rule increases the reporting and recordkeeping burden by requiring the collection of the following minimal information from each household receiving commodities during Presidentially declared disasters and other situations of distress: (1) name of one household member; (2) address; (3) number of persons in the household; and (4) a signed statement of assurance that the household is not receiving food stamp benefits. Such information is necessary in that it can be used by local organizations involved in the distribution of commodities to determine if a household is receiving food stamp benefits, thus significantly reducing the possibility of both food stamp and commodity assistance being provided to households simultaneously.

The reporting and recordkeeping requirements identified below have been submitted to OMB for approval and are not effective until such approval is obtained. The new information collection requirements will not become effective until OMB has assigned a control number. Current reporting and recordkeeping requirements for disaster assistance were approved under Control Number 0584–0037.

Description of Respondents: Relief organizations, households receiving commodities for home consumption in Presidentially declared disasters and other situations of distress when the situation warrants.

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FOOD ASSISTANCE IN DISASTER AND DISTRESS SITUATIONS DESCRIPTION OF RESPONDENT'S ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section 7 CFR part	Annual Number respondents	Annual frequency response	Average burden per hours	Annual burden
7 CFR 250.43:				
Previous	0	0	0	0
Proposed	1000	1	.020	20
7 CFR 250.44:				
Previous	0	0	0	0
Proposed	1000	1	.020	20

Total Previous Burden Hours: 0; Total Proposed Burden Hours: 66; Total Difference: +66.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Background

On October 13, 1994, the President signed the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354. One of the provisions of the Act eliminated the Food and Nutrition Service (FNS) and replaced it with the Food and Consumer Service (FCS). Therefore, references to FNS throughout this proposed rule have been changed to FCS. References to FNS in the remainder of 7 CFR Part 250 will be changed through rulemaking at a later date.

The Department makes commodities available for use in providing food assistance to victims of disasters and emergencies, and to those in situations of distress, in accordance with authority contained in several statutes. Donated commodities are made available for use in providing food assistance to victims of Presidentially declared disasters and emergencies in accordance with the provisions contained in sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (DREAA). DREAA was formerly known as "The Disaster Relief Act of 1974." It was amended and its title changed to DREAA by Public Law 100–707 (November 23, 1988), the Disaster Relief and Emergency Assistance Amendments of 1988.

Donated commodities are made available for use in non-Presidentially declared emergencies (i.e., situations of distress) in accordance with section 32 of the Act of August 24, 1935, section 416 of the Agricultural Act of 1949, and section 4(a) of the Agriculture and Consumer Protection Act of 1973.

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FCS and distributing agencies with regard to the distribution of donated commodities during a disaster or emergency, and in situations of distress.

As discussed in detail below, some proposals contained in this proposed rule reflect amendments which have been made to the authorizing legislation. This proposed rule also includes regulatory changes recommended by the Task Force for Disaster Preparedness established by the Department of Agriculture (USDA or Department) in response to issues which arose in the course of providing food assistance to victims of several disasters and other types of emergencies in the past several years. The Task Force was comprised of representatives from USDA, the Federal Emergency Management Agency (FEMA), private national organizations such as the Red Cross, and State and local agencies. One of the objectives of the Task Force was to identify current Federal disaster policies that are in need of revision. Regulatory amendments embodying Task Force recommendations are proposed in this rule under the discretionary authority granted to the Secretary by section 32 of the Act of August 24, 1935, section 416 of the Agricultural Act of 1949, and the DREAA. The discretionary changes are part of the Department's effort to ensure that commodity assistance is made available to victims of disasters, emergencies and situations of distress in the most efficient and effective manner possible while maintaining the integrity of the program.

Definitions

Section 250.3 of the current regulations contains definitions of "Emergency" and "Major Disaster" derived from the Disaster Relief Act of 1974 (now "DREAA"). Pub. L. 100–707 amended the Disaster Relief Act of 1974 to revise these definitions.

The DREAA defines "Emergency" as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States."

A "Major Disaster" is defined under the DREAA as "any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the DREAA to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby."

The majority of the general public is not familiar with the specific terms contained in the DREAA (i.e. "Emergency" and "Major Disaster"). Furthermore, this rulemaking establishes no distinctions between the situations these terms represent regarding types of benefits or procedures for authorizing, utilizing, reporting on utilization of, or replacing commodities. Therefore, this rule proposes to: (1) add to Section 250.3 the term "Disaster," which would incorporate the definitions of "Emergency" and "Major Disaster" contained in the DREAA; and (2) delete the terms "Emergency" and "Major Disaster" currently contained in Section 250.3. These proposed revisions would not impact on program operations or benefits in any way.

The key distinction between disasters and situations of distress with regard to food assistance is whether a Presidential declaration is made. However, there is no definition of "Situation of Distress" under Section 250.3 of the current regulations to make this distinction immediately clear.

Therefore, this rule also proposes to amend Section 250.3 to add a definition for "Situation of Distress." Under this proposal, a "Situation of Distress" is defined as "(1) a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of a State distributing agency, warrants the use of USDA commodities for congregate feeding; and (2) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution." This proposed definition will: (1) clarify that a situation of distress lacks a Presidential declaration; and (2) clearly identify those situations in which State distributing agencies can independently initiate USDA commodity assistance, on the one hand, and those in which prior approval by FCS is required.

Reference to the Disaster Relief Act of 1974

The Disaster Relief Act of 1974 is referenced in Sections 250.43(a) and 250.43(e) of the current regulations. Following publication of the regulations, the Disaster Relief Act of 1974 was amended and renamed the DREAA. Therefore, this rule proposes to amend Section 250.43(e) to remove the outdated reference and replace it with a reference to the DREAA, and proposes to remove all reference to any statutory authority in Section 250.43(a) since such reference is unnecessary.

Distribution of Commodities to Households in Presidentially Declared Disaster Areas

This section of the preamble addresses "disasters," the proposed definition for which encompasses only situations in which a Presidential declaration has been issued. "Situations of distress," proposed to be defined as situations lacking a Presidential declaration, are discussed later in this preamble.

On August 19, 1985, an overall revision of Part 250 was published as a proposed rule in the **Federal Register** (50 FR 33470). Section 250.43 of the proposed rule limited the distribution of commodities to households residing in areas served by the Food Stamp Program to those instances in which commercial channels of trade have been disrupted due to a major disaster or emergency.

Approval of requests to make commodities available for distribution to households was made contingent upon commercial channels of trade having been disrupted because it is in these circumstances that households would have no way of using food stamps. Thus, such a contingency would ensure that commodity and food stamp assistance would not be provided in any area simultaneously, thereby eliminating any possibility of households receiving dual benefits.

In general, commenters on the proposed rule of August 1985 opposed limiting the distribution of commodities to households in this manner. However, the interim rule published in the **Federal Register** on June 3, 1988, (53 FR 20416) retained the provision as proposed on the premise that in instances in which commercial channels of trade are intact, nutritional needs of disaster victims can be met through the Food Stamp Program.

Since implementation of the interim rule, several disasters have occurred in response to which the Department provided food assistance. This experience, and recommendations of the Task Force for Disaster Preparedness, have led the Department to reevaluate the current regulatory provisions. While the Department still believes that the Food Stamp Program should be the primary food assistance program for disaster victims whenever commercial channels of trade are intact, it also acknowledges that there are instances in which such facilities remain in operation yet are inaccessible to some disaster victims. For example, where roads have been heavily damaged or flooded, some individuals residing in households in that area may not be able to reach food stamp certification offices or local grocery stores. They may, however, have access to emergency commodity distribution sites strategically located in response to the specific situation.

Therefore, in accordance with the discretionary authority provided under the DREAA, to facilitate reasonable access to food assistance for all disaster victims, this rule proposes to amend Section 250.43 of the current regulations to establish FCS's authority to permit distribution of commodities to households regardless of whether commercial channels of trade have been disrupted or the Food Stamp Program is in operation in instances in which such distributions are warranted. However, the Department believes that most disaster situations will not warrant the simultaneous operation of the Food Stamp Program and a household commodity distribution program in the same area.

Submission of Requests

Section 250.43(c) of the current regulations requires that distributing agencies submit requests to the appropriate FCS Regional Office (FCSRO) for approval prior to making commodities available for distribution to households. However, the process for approving such requests has not been clearly understood.

While the regulations require submission of such requests to the appropriate FCSRO, the requests are forwarded to FCS Headquarters for actual approval. In an effort to eliminate any confusion regarding the approval process, this rule proposes to revise Section 250.43(c) to require that requests be submitted to the FCSRO for forwarding to FCS for approval. Since the FCSRO is typically very close to or on the scene of a disaster, the FCSRO will be expected to submit a recommendation to FCS along with the application for use in making appropriate determinations. In addition, this rule proposes to revise this section to clarify the information currently required to be submitted as part of such requests.

This rule also proposes to apply information requirements established under current rules for approval to make household distributions in situations when commercial channels of trade have been disrupted to situations in which commercial channels are intact. The proposal would also establish additional requirements in both types of situations. In addition to the information distributing agencies are currently required to submit when requesting approval for the distribution of commodities to households, requests would be required to include, at a minimum, the following information: (1) An explanation as to why the distribution of commodities to households is warranted; (2) identification of the specific area(s) included in the request; (3) a statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and (4) a description of the

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system that will be implemented to prevent dual participation.

Submission of such information is necessary in order for FCS to determine if the situation warrants the simultaneous distribution of food stamps and commodities and to ensure that the State has a viable system to prevent dual benefits from being provided to households.

Collection of Household Information

While various forms have been developed by States for use in collecting household data, current regulations contain no provisions concerning the collection of information from households for the receipt of donated foods during a disaster. Under the provisions contained in this proposed rule, food stamp benefits can be issued and commodities distributed for home consumption in areas where it has been determined by the Department that the situation warrants such simultaneous operations. However, the Department is concerned that in such instances food stamp benefits and commodities may be provided to the same household simultaneously. In an effort to ensure that information necessary to prevent the issuance of dual benefits and for establishing and pursuing claims action is available, this rule proposes to amend section 250.43(c) to require that organizations distributing donated foods to households in areas where the Food Stamp Program is in operation obtain, at a minimum, the name of the household member applying for assistance, number of members in the household, and the household's address. Such information must be recorded in whatever format the State deems appropriate.

In addition to providing the above information, organizations distributing donated foods to households would be required to obtain a signed statement of assurance from the adult member of the household applying for benefits to the effect that the household: (1) Is in need of food assistance as a result of the disaster; (2) understands that misrepresentation of need and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both; (3) is not residing in a shelter which provides food assistance; and (4) is not receiving food stamp assistance. While the intent of this signed statement is to prevent applicants from receiving duplicative food assistance benefits, it should be reasonably interpreted in the context of the individual case. For example, a household which applies for commodity assistance en route from a shelter where food assistance was provided to reoccupy its permanent residence should not be considered to be "residing in a shelter." The signing of such statements will ensure that households understand the conditions under which the food assistance is being provided. Such statements will also provide further support for pursuing a claim against a household in instances in which both food stamp and commodity assistance were provided. Under the proposal, all signed statements must be provided to the distributing agency unless the organization distributing the commodities is an agency of the State. At the discretion of the distributing agency, non-State agencies may be assigned responsibility of retaining such statements rather than forwarding them to the State.

In instances when it is determined that claims action against a household is warranted due to the receipt of both food stamp and commodity assistance, the Department intends to pursue such action through establishment of a claim against the household for the value of the food stamps issued. This course of action is preferred since the recordkeeping requirements that would have to be imposed on a disaster organization to ensure availability of information necessary to establish a claim for the value of commodities would be significant, while recording the value of the food stamp benefit provided is already required and much less time consuming.

There have been instances in past years in which other Federal agencies have been involved in providing food assistance to disaster victims with USDA commodities. Questions were raised as to whether these agencies were subject to the requirements set forth for disaster situations. In instances in which it has been determined that the collection of certain information is necessary and the regulations contain information collection requirements, all organizations, regardless of the type, must comply with the requirements. This proposed rule will clarify that any entity, including Federal, State, and local agencies, involved in the distribution of USDA commodities must comply with all such regulatory requirements. In addition, this proposed rule will clarify that State and Federal agencies can act as a disaster organization in providing food assistance during disasters and situations of distress.

Replacement of Commodities

Section 250.43(g) of the current regulations states that USDA commodities used from the State's inventory for a major disaster or emergency will be replaced by FCS to the extent that foods are available.

Section 413(h) of the DREAA authorizes the use of funds under section 32 of the Act of August 24, 1935, to purchase food necessary to provide adequate supplies for use in a major disaster or emergency. This rule proposes to amend paragraph (g) of Section 250.43 to reflect the statutory authority. This change will guarantee that USDA commodities used by a State for disaster assistance are replaced, provided that a timely request is submitted by the distributing agency.

Use of Commodities in Situations of Distress

The primary difference between a disaster and a situation of distress, with regard to USDA food assistance, is that a situation of distress is not of a magnitude to warrant an emergency or disaster declaration by the President. This section of the preamble addresses only such situations of distress.

Section 250.44 of the current regulations permits, upon approval by the Secretary, the distribution of donated foods to organizations for use in preparing meals in situations in which the need for food assistance cannot be met through other provisions of Part 250 regulations. Prior to the overall revision of Part 250, which was published as an interim rule in the **Federal Register** on June 3, 1988, (53 FR 20416), the regulations also permitted the Department to authorize distribution of commodities to households in all such situations. In drafting the overall revision, the Department decided to delete those provisions relative to household distribution in situations of distress on the premise that food assistance to households can be provided through the Food Stamp Program.

Since implementation of the interim rule, the Department has determined that the Food Stamp Program may not be able to meet the nutritional needs of all affected households in situations of distress. For example, it may not be possible for some households to obtain food stamp benefits due to certain eligibility requirements, such as resource limits on the value of vehicles, or citizenship. In addition, there may be instances in which certain areas are hard hit by a non-Presidentially declared disaster (i.e., situation of distress) and using food stamps is not feasible because commercial channels of trade in those particular areas are disrupted.

Therefore, to ensure that food assistance can be made available to households in these types of situations, this rule proposes to revise Section 250.44 to reinstate the Department's authority to permit the distribution of commodities to households in situations of distress. This discretionary authority is afforded the Secretary under section 416 of the Agricultural Act of 1949, and section 32 of the Act of August 24, 1935.

Section 250.44 is being revised instead of Section 250.43, which sets forth provisions relative to disasters, in order to clarify and underscore the different treatment of Presidentially declared "disasters," on the one hand, and "situations of distress," on the other.

Submission of Requests

Section 250.44 of the current regulations requires that all requests for the donation of commodities for use in situations of distress be submitted for approval by the Secretary.

This rule proposes to revise Section 250.44 to delegate the authority for approving requests for the donation of commodities for use in congregate feeding to the distributing agency in instances in which the need for such assistance meets the conditions of paragraph (1) of the definition of "Situation of Distress" set forth in Section 250.3. Those instances include "a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster." This delegation of authority is consistent with the delegation of authority contained in Section 250.43 for the use of commodities for congregate feeding in Presidentially declared disasters. While the Department recognizes that instances other than those included above may warrant the donation of commodities for use in preparing congregate meals, such donations should be limited to those situations where it can be determined that other traditional Federal or State assistance programs cannot meet the needs of individuals who have been adversely affected by the situation. Thus, in an effort to ensure consistency in such determinations, Section 250.44 of this rule proposes to require that requests for the donation of commodities for use in preparing congregate meals in instances when the situation of distress does not fit the above criteria be submitted for approval by FCS. Approval by FCS, instead of by the Secretary, will facilitate expeditious handling of requests, while still maintaining an appropriate level of oversight.

Section 250.44(c)(2) of this rule also proposes to require that requests for the donation of commodities for distribution to households in situations of distress, regardless of the type of situation, be submitted for approval by FCS. The proposal would require this level of approval in an effort to ensure that: (1) Such distributions are limited to situations that warrant this type of assistance; and (2) households will not be receiving food stamp and commodity assistance simultaneously.

As discussed in the Definitions section earlier in this preamble, for purposes of clarification, this rule also proposes to specify the above-described approval authorities for congregate feeding and household distribution, respectively, in the definition of "Situation of Distress" contained in Section 250.3.

This rule also proposes to amend Section 250.44 to require that organizations requesting the donation of commodities for use in congregate meal service for victims of situations of distress provide the following information to the distributing agency: (1) A description of the distress situation; (2) number of people requiring meals; (3) period of time for which the donations are being requested; and (4) quantity and types of food needed. In addition, information on the number and location of sites providing meals will be provided as sites are established.

It is imperative that this information be provided so that FCS and the distributing agency are able to determine if: (1) The donation of commodities is warranted; (2) the amount and types of commodities requested are appropriate for the situation; and (3) there is sufficient food in inventory within the State to meet the needs of the organizations. When the distributing agency has approved requests for the donation of commodities for congregate feeding in accordance with the delegation of authority prescribed above, it must forward this information to the appropriate FCSRO.

This rule proposes to revise Section 250.44 to require that requests to FCS for permission to distribute commodities to households contain, at a minimum, the following information: (1) A description of the situation; (2) an explanation as to why such distributions are warranted; (3) period of time for which the request is being made; (4) identification of the specific area(s) included in the request; (5) number of households expected to participate; (6) quantity and types of food needed; (7) a statement of assurance that both food stamp and commodity assistance will not be provided to individual households simultaneously; and (8) a description of the system that will be implemented to prevent dual participation in the Food Stamp Program and the commodity household distribution program. In addition, information relative to the number and location of distribution sites must be provided to FCS as sites are established.

Collection of Household Information

Section 250.44 is also revised in this proposed rule to require that any entity, including Federal, State, and local agencies, involved in the distribution of USDA commodities comply with the requirements contained in Section 250.43(c) of this proposed rule regarding the collection and submission of information (i.e., household information, and statements of assurance). As with Presidentially declared disasters, this information will be used to ensure that such distributions are warranted and to enhance program accountability.

Submission of Form FNS–292

This rule proposes to incorporate in Section 250.44 a requirement that distributing agencies submit a summary report to the FCSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief, within 30 days following termination of the distribution period. This requirement is being incorporated to ensure timely reporting, strengthen program accountability, and facilitate timely replacement of State inventories of USDA commodities in instances in which replacement commodities are available.

Thirty-Day Restriction

Section 250.44 of the current regulations limits the distribution of commodities in situations of distress to a period of 30 days. However, it is the opinion of the Department that some situations of distress may warrant a longer distribution period. Thus, this rule proposes to amend Section 250.44 to permit the distribution of commodities for longer periods of time when the situation warrants. In instances in which the distributing agency approves the distribution of commodities for use in preparing congregate meals, such approval may be granted for a period not to exceed 30 days. Should the distributing agency determine that the situation warrants a longer distribution period, the distributing agency must submit a request to justify an extension to FCS for

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approval. These provisions will afford FCS increased flexibility in responding to situations of distress, and at the same time assure that the use of USDA commodities in these situations is warranted.

In addition, this rule proposes to clarify in Section 250.44 that the determination as to the appropriate period of time for which commodities will be made available would be subject to revision as developing circumstances dictate. In instances when the distributing agency extends the distributions within the 30-day period discussed above, it must notify the FCSRO of such extensions. Submission of this information to the FCSRO is necessary to facilitate accurate replacement of USDA commodities, as discussed below.

Replacement of Commodities

Section 250.44 of the current regulations does not contain provisions relative to the replacement of the USDA commodities that States use to provide assistance during a situation of distress. USDA has limited funding to purchase commodities for use in providing food assistance in situations of distress, and can also donate for this use commodities purchased under price-support and surplus removal authorities. Therefore, USDA commodities that are used from the State's inventory for a situation of distress will be replaced at the request of the distributing agency to the extent that inventories of price-support and surplus-removal commodities permit. This rule proposes to amend Section 250.44 to include this replacement policy. In addition, to ensure timely submission of requests for replacement, this rule proposes to incorporate a requirement that such requests be submitted within 30 days following termination of the distributions.

The attached chart has been included in this preamble to assist readers in understanding the basic provisions set forth in this proposed rule.

	Disaster	Situation of distress
Definition	(1) any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the U.S., which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the DREAA to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby; or (2) any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the U.S.	(1) a hurricane, tornado, storm; flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and (2) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

Food assistance authorized	Congregate feeding	Household distribution	Congregate feeding	Household distribution
Approval authority	State distributing agency.	FCS HQ	If distress situation in accordance with (1) in above definition, State distributing agency; Otherwise, FCS HQ.	FCS HQ.
Applicable sections of regulations.	250.43(b)	250.43(c)	250.44(b)	250.44(c).
Household information required.	None	Name; Address; Number in Household; Assurance Statement re: need and dual participation in food stamps; Signature (in instances when the Food Stamp Program is in operation).	None	Name; Address; Number in Household; Assurance Statement re: need and dual participation in food stamps; Signature (in instances when the Food Stamp Program is in operation).
Replacement of USDA commodities.	Yes	Yes	To the extent available	To the extent available.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indian, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is proposed to be amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612 note, 612c note, 1431, 1431b, 1431e, 1431 note, 1446e–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In Section 250.3:

a. The definitions of *Emergency* and *Major Disaster* are removed; and

b. definitions of *Disaster* and *Situation of Distress* are added in alphabetical order.

The additions read as follows:

§ 250.3 Definitions.

* * * * *

Disaster means:

(a) any natural catastrophe (including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief and Emergency Assistance Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby; or

(b) any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

* * * * *

Situation of Distress means:

(a) a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other natural catastrophe not declared by the President to be an emergency or disaster, but which, in the judgment of the distributing agency, warrants the use of USDA commodities for congregate feeding; and

(b) any other situation not declared by the President to be an emergency or disaster, but which, in the judgment of FCS, warrants the use of USDA commodities for congregate feeding or household distribution.

* * * * *

3. Section 250.43 is revised to read as follows:

§ 250.43 Disaster Food Assistance.

(a) *Organizational eligibility.* In instances in which the President has declared a disaster and FCS has determined that, as a result of the disaster, low-income households are unable to purchase adequate amounts of nutritious food, disaster organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to disaster victims. Applications submitted for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this Part.

(b) *Congregate meal service.* (1) *Approval authority and duration.* Distributing agencies may review and approve applications submitted by disaster organizations for the donation of foods for use in preparing congregate meals for disaster victims. Distributing agencies also shall determine the length of such donations, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate. Following approval of a request for donated foods, the distributing agency shall make appropriate donated foods available from any source within the State to the disaster organization(s) and within 24 hours of approving the application shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO.

(2) *Applications.* Disaster organizations shall submit applications for the receipt and distribution of donated foods for use in providing congregate meal service to the distributing agency. Applications shall, to the extent possible, include the following information.

(i) Description of disaster or emergency situation;

(ii) Number of people requiring meals;

(iii) Period of time for which commodities are requested; and

(iv) Quantity and types of food needed for congregate meal service.

In addition, organizations shall report the number and location of sites providing congregate meal service as sites are established.

(c) *Household distribution.* (1) *Approval authority and duration.* Distributing agencies shall submit applications for the distribution of donated foods to households to the appropriate FCSRO for submission to FCS for approval. FCS will determine the length of time such donations will be made, taking into consideration the magnitude of the situation, and may extend the duration of such donations as developing circumstances dictate.

(2) *Applications.* Disaster organizations shall submit applications for the receipt and distribution of donated foods to households to the distributing agency. Applications shall, to the extent possible, include the following information:

(i) Description of disaster or emergency situation;

(ii) Identification of the specific area(s) included in the request;

(iii) Number of households affected;

(iv) Explanation as to why the distribution of commodities to households is warranted;

(v) Anticipated distribution period;

(vi) Method of distribution available;

(vii) Quantity and types of food needed for distribution;

(viii) Statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and

(ix) Description of the system that will be implemented to prevent dual participation.

Information on the number and location of sites where commodities are to be distributed shall be provided as sites are established.

(3) *Collection of household information.* In instances in which the Food Stamp Program is in operation, any entity (i.e. Federal, State, or local) distributing donated foods to households shall, at a minimum, collect the information listed below in a format prescribed by the distributing agency. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this Part, *except* that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) is in need of food assistance;

(B) understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;

(C) is not residing in a shelter which provides food assistance; and

(D) is not receiving food stamp assistance.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible disaster organizations based on the caseload factor information provided by the disaster organizations.

(e) *Types of donated foods authorized for donation.* Disaster organizations providing food assistance under this Section are eligible to receive donated foods under section 416, section 32, section 709, section 4(a), and sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181–82).

(f) *Summary report.* Within 30 days following termination of the disaster assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FNS–

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292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* The distributing agency shall request, in writing to the FCSRO, the replacement of foods used for disaster assistance within 30 days following termination of the assistance. FCS will replace donated foods used from State and/or local inventories for disaster assistance in instances when a request for replacement is submitted within the required 30 days or sufficient justification exists to waive the 30-day requirement.

4. Section 250.44 is revised to read as follows:

§ 250.44 Food Assistance in Situations of Distress.

(a) *Organizational eligibility.* In situations of distress in which needs for food assistance cannot be met under other provisions of this Part, organizations (including agencies of State and Federal government) may be eligible to receive donated foods for congregate meal service or household distribution to victims of the situation of distress. Applications submitted for the receipt and distribution of donated foods in accordance with paragraphs (b)(2) and (c)(2) of this section shall be initially submitted in writing if circumstances permit and, if not, confirmed in writing in a timely manner. Both the applications and the written approval for the use of USDA commodities shall be maintained in accordance with the recordkeeping requirements of this Part.

(b) *Congregate meal service.* (1) *Approval authority and duration.* Distributing agencies may review and approve applications for the donation of foods for use in preparing congregate meals for a period not to exceed 30 days for victims of situations of distress in instances in which the need for such assistance meets the conditions of paragraph (a) of the definition of *Situation of Distress* in Section 250.3. Following approval of a request, distributing agencies shall report the information listed in paragraph (b)(2) of this section to the appropriate FCSRO within 24 hours. In instances when the distributing agency extends the distribution period initially approved up to the 30-day limit, it shall notify the FCSRO of such extensions. Distributing agencies shall request approval from FCS, via the appropriate FCSRO, for donations to exceed 30 days. Applications for the donation of foods for congregate meals in instances other than those that meet the criteria in paragraph (a) of the definition of *Situation of Distress* in Section 250.3 shall be forwarded by the distributing agency to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of such donations, taking into consideration the magnitude of the situation. Determinations as to the length of donations may be revised as developing circumstances dictate.

(2) *Applications.* (i) Organizations shall submit applications for the receipt and distribution of donated foods for use in providing congregate meal service to the distributing agency. Applications shall, to the extent possible, include the following information:

(A) Description of the situation of distress;

(B) Number of people requiring meals and congregate meal service period; and

(C) Quantity and types of food needed.

(ii) In addition, information on the number and location of sites providing meals shall be submitted as sites are established.

(c) *Household distribution.* (1) *Approval authority and duration.* Applications for the donation of foods for distribution to households shall be forwarded by the distributing agency to the appropriate FCSRO for submission to FCS for approval. FCS will determine the duration of the donations, taking into consideration the magnitude of the situation. Such determinations may be revised as developing circumstances dictate.

(2) *Applications.* Organizations shall submit applications for the receipt and distribution of donated foods to households to the distributing agency. The distributing agency shall review and submit applications to the appropriate FCSRO. Applications shall, to the extent possible, include the following information:

(i) Description of the situation of distress;

(ii) Explanation as to why the distribution of commodities to households is warranted;

(iii) Identification of the specific area(s) included in the request;

(iv) Anticipated distribution period;

(v) Number of households expected to participate;

(vi) Quantity and types of food needed for distribution;

(vii) Statement of assurance that simultaneous food stamp and commodity assistance will not be provided to individual households; and

(viii) Description of the system that will be implemented to prevent dual participation.

In addition, information on the number and location of sites shall be provided as sites are established.

(3) *Collection of household information.* In a format prescribed by the distributing agency, any entity (i.e. Federal, State, or local) distributing donated foods to households in an area where the Food Stamp Program is in operation shall, at a minimum, collect the information listed below. Such information shall be forwarded to the distributing agency and maintained by the distributing agency in accordance with the recordkeeping requirements contained in this Part, *except* that such information may, at the discretion of the distributing agency, be maintained by the organization distributing commodities if such organization is an agency of the State government.

(i) Name of household member applying for assistance;

(ii) Address;

(iii) Number of household members; and

(iv) Statement signed by the household certifying that the household:

(A) is in need of food assistance;

(B) understands that misrepresentation of need, and the sale or exchange of the donated food are prohibited and could result in a fine, imprisonment, or both;

(C) is not residing in a shelter which provides food assistance; and

(D) is not receiving food stamp assistance.

(d) *Quantities and value of donated foods.* The distributing agency shall make donated foods available to eligible organizations based on the caseload factor information provided by the organizations.

(e) *Types of donated foods authorized for donation.* Organizations providing food assistance in situations of distress are eligible to receive donated foods under section 416, section 32, section 709, and section 4(a).

(f) *Summary report.* Within 30 days following termination of the assistance, the distributing agency shall provide a summary report to the appropriate FCSRO using Form FNS–292, Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

(g) *Replacement.* The distributing agency shall request, in writing to the FCSRO, the replacement of foods used for a situation of distress within 30 days following termination of the assistance. FCS will replace donated foods used from State and/or local inventories for situations of distress to the extent that foods are available.

Dated: November 28, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–29923 Filed 12–7–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AEA–12]

Proposed Establishment of Class E2 Airspace; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E2 airspace designated as a surface area for Greenbrier Valley Airport, Lewisburg, West Virginia. The airport has a VOR or GPS–A (circling) Standard Instrument Approach Procedure (SIAP), an NDB or GPS RWY 4 SIAP and an ILS RWY 4 SIAP. Class E2 airspace would be established to accommodate these SIAPs and for instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before January 29, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–12, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specially invited on the overall regulatory, aeronautical, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AEA–12". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the rule. The rule contained in this notice may be changed in the light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering amending part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace, designated as a surface area for an airport, at Lewisburg, WV, to accommodate current SIAPs and for IFR operations at the Greenbrier Valley Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Class E2 airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995. The Class E airspace designation listed in this document would be published subsequently in the Order. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AEA WV E2 Lewisburg, WV [New]

Greenbrier Valley Airport, WV
(lat. 37°51'30" N, long. 80°23'58" W)
Bushi NDB (LOM)
(lat. 37°46'56" N., long. 80°28'06" W)

Within a 4-mile radius of Greenbrier Valley Airport. This Class E area is effective during the specific dates and times established in advance by a Notice To Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 30, 1995.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 95–29965 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. FR-3780-N-03]

RIN 2502-AG40

Mortgage Broker Fee Disclosure Rule: Notice of Establishment of Negotiated Rulemaking Advisory Committee and of First Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of establishment of a negotiated rulemaking advisory committee and of first meeting.

SUMMARY: The Department is announcing the establishment of a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act (FACA). The first objective of the committee would be to determine whether or not the amount and nature of indirect payments to mortgage brokers and certain other mortgage originators (retail lenders) should be disclosed to consumers. Second, the committee will seek to resolve whether the Real Estate Settlement Procedures Act (RESPA) permits volume-based compensation from wholesale lenders, entities that purchase mortgage loans, to mortgage brokers and, if such compensation is found permissible, whether and how the compensation should be disclosed. The committee consists of representatives with a definable stake in the outcome of a proposed rule. A charter for the committee has been approved pursuant to the FACA, Executive Order 12838, and the implementing regulations. This notice also announces the time and place of the first committee meeting, which will be open to the public.

DATES: The first meeting of the committee will take place December 13–14, 1995, and will be open to the public. On Wednesday, December 13, the meeting will start at 9:30 a.m. and run until completion; on Thursday, December 14, the meeting will start at 9:00 a.m. and run until approximately 1:00 p.m. If participants and the facilitator agree, the second day of the meeting may be extended beyond the projected completion time of 1:00 p.m.

ADDRESSES: The first meeting of the committee will be held in Courtroom A of the International Trade Commission Building, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement Unit, Department of Housing and Urban Development, Room 5241, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–4560, or on e-mail through Internet at drwilliamson@hud.gov. The TDD number for persons who are hearing- or speech-impaired is (202) 708–4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1995 (60 FR 54794), HUD published a notice of intent to establish a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule to discuss the treatment under RESPA, including disclosure requirements, of indirect payments to retail lenders and of volume-based compensation to mortgage brokers. The October 25 notice also announced that the first meeting of the committee could be held in late 1995, if the charter for the committee was approved. Subsequent to the publication of the October 25 notice, the charter for the committee was approved pursuant to the FACA, Executive Order 12838, and the implementing regulations at 41 CFR 101–6.1007. Because the Department noted the tentative schedule for the first meeting in the October 25 notice and wants to commence the negotiating process quickly, the first meeting has been scheduled for December 13–14, 1995. Members of the committee have been contacted directly by the Department about this schedule.

The October 25 notice requested comment concerning the proposed membership of the Committee. After review of the comments and for the reasons stated in the notice of intent, the Department has determined that establishing a negotiated rulemaking advisory committee on this subject is necessary and in the public interest.

The Department received eight comments on the October 25 notice. Six of the eight commenters requested that a member of their organization be included in the negotiating committee.

Specifically, four commenters suggested that lenders who concentrate on other mortgage products, such as home equity loans, B and C loans, and reverse mortgages, should be included. These commenters were the American Financial Services Association, the National Home Equity Mortgage Association, the Title One Home Improvement Lenders Association, and Transamerica HomeFirst, a reverse mortgage lender. In order to keep the negotiated rulemaking body manageable and balanced, the Department concluded that with the addition of the American Financial Services Association, the most diverse of these organizations, the interests of junior lien and reverse mortgage lenders would be adequately represented. Moreover, the American Financial Services Association has indicated that it would itself consult with other affected organizations.

Two additional national industry groups requested membership. HUD has determined that these organizations should be added to the committee because they represented types of lending institutions that are not already adequately represented on the committee: the Independent Bankers Association of America represents community banks and the National Association of Federal Credit Unions represents Federal credit unions.

All those who expressed interest in participating in the negotiated rulemaking committee are reminded that meetings of the committee are open to the public.

Facilitator

As stated in the October 25 notice, the Honorable Alan W. Heifetz, Chief Administrative Law Judge, will be the facilitator for the Committee.

Substantive Issues for Negotiation

The issues identified in the convening report were identified and discussed in the October 25 notice and in a proposed rule on this same subject recently published by the Department (60 FR 47650, September 13, 1995). The Department received approximately 800 comments on the proposed rule; these comments are available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. The comments also will be made available to the members of the committee for their consideration as they are negotiating a new proposed rule.

Committee Membership

Including the members added in response to comments received on the October 25 notice, the members of the committee will include:

National Industry Groups

- Paul Reid, President, American Home Funding, Richmond, VA, President-Elect, Mortgage Bankers Association of America, 1125 15th Street, NW., Washington, DC 20005–2766
- Kay Kinney, Executive Vice President, National Association of Mortgage Brokers, 1735 N. Lynn Street, Suite 950, Arlington, VA 22209
- John Rasmus, Esq., Senior Federal Administrative Counsel/Manager, Agency Relations, American Bankers Association, 1120 Connecticut Avenue, NW., Washington, DC 20036
- Glen Gimble, Esq., Program Manager and Counsel, Real Estate Lending Compliance, America's Community Bankers, 900 19th Street, NW., Washington, DC 20006
- Roy DeLoach, Policy Representative, Business Issues, National Association of Realtors, 700 11th Street, NW., Washington, DC 20001–4507
- Sue Johnson, President and Executive Director, RESPRO, 1800 M Street, NW., Suite 900 South, Washington, DC 20036
- David Goldberg, The Mortgage Capitol Group, Senior Vice President, Administration, PHH Mortgage Services Corporation, 6000 Atrium Way, Mt. Laurel, NJ 08054
- Thomas J. Sheehan, Chairman, IBAA Bank Operations Committee, Independent Bankers Association of America, One Thomas Circle, NW., Suite 950, Washington, DC 20005–5802
- Brian McDonnell, Senior Executive Vice-President, of Navy Federal Credit Union, National Association of Federal Credit Unions, P.O. Box 3769, Washington, DC 20007
- Robert E. McKew, Vice President and General Counsel, American Financial Services Association, 919 18th Street, NW., Washington, DC 20006

Consumer Groups

- Robert Creamer, Citizen Action, 68 East Wacker Place, Chicago, IL 60601
- William J. Brennan, Jr., Esq., (Member, Board of Directors, National Association of Consumer Advocates), Home Defense Program of the Atlanta Legal Aid Society, 340 West Ponce De Leon Avenue, Decatur, Georgia 30030
- Nina Simon, Esq., Jean Davis, Esq., Legal Counsel for the Elderly, American Association of Retired Persons, 601 E Street, N.W., Washington, D.C. 20049

State Organizations

- Craig Jordan, Esq., Assistant Attorney General for the State of Texas, Consumer Affairs Division, 714 Jackson Street, Suite 800, Dallas, Texas 75202
- Daniel Muccia, President, American Association of Residential Mortgage Regulators and Deputy Superintendent of Banks, State of New York Banking Department, Two Rector Street, New York, New York 10006

Government-Sponsored Enterprises

- Jim Newell, Esq., Associate General Counsel, Federal Home Loan Mortgage Corporation, 8200 Jones Branch Drive, McLean, VA 22102–3107
- JoAnn Carpenter, Esq., Vice President and Deputy General Counsel, Federal National Mortgage Association, 3900 Wisconsin Ave., N.W., Washington, D.C. 20016–2899

Federal Government

- Designated Federal Officer: Sarah X. Rosen, Esq., Special Assistant to the Assistant Secretary for Housing, Room 9100, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 708–3600

Schedule

HUD will hold the first meeting of the committee on December 13–14, 1995. On Wednesday, December 13, the meeting will start at 9:30 a.m. and run until completion; on Thursday, December 14, the meeting will start at 9:00 a.m. and run until approximately 1:00 p.m. If participants and the facilitator agree, the second day of the meeting may be extended beyond the projected completion time of 1:00 p.m. The location of the meeting will be Courtroom A of the International Trade Commission Building, 500 E Street, S.W., Washington, D.C. 20436. The purpose of the meeting will be to orient members to the negotiated rulemaking (reg-neg) process, establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and begin to address the issues. This meeting is open to the public.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register** if time permits.

To prevent delays that might postpone timely issuance of a proposed rule, HUD intends to terminate the committee's activities if it does not reach consensus within 5 months of the first meeting. The process may end earlier if the facilitator believes that sufficient progress cannot be made or that an impasse has developed that cannot be resolved.

Authority: 42 U.S.C. 1437g, 3535(d).

Dated: December 5, 1995.

Stephanie A. Smith,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 95–30067 Filed 12–6–95; 1:38 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0075–92]

RIN 1545–AR31

Definition of Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to the definitions of subpart F income and foreign personal holding company income of a controlled foreign corporation and the allocation of deficits for purposes of computing the deemed-paid foreign tax credit.

DATES: The public hearing is being held on Thursday, January 4, 1996, beginning at 10:00 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** on Thursday, September 7, 1995 (60 FR 46548), announced that a public hearing relating to proposed regulations under sections 952, 954(c), and 960 of the Internal Revenue Code will be held Thursday, January 4, 1996, beginning at 10:00 a.m. in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC and that requests

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to speak and outlines of oral comments should be received by Tuesday, June 21, 1994.

The location of the public hearing has changed. The hearing is being held in room 2615 on Thursday, January 4, 1996, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should be received by Thursday, December 14, 1995. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95-29033 Filed 12-7-95; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Elementary-Secondary Staff Information Report EEO-5

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) has voted to discontinue the requirement for filing he Elementary-Secondary Staff Information Report EEO-5 for individual schools and annexes within school systems or districts. This proposed rule amends the school filing requirement in subpart M of 29 CFR Part 1602. The recordkeeping requirements for elementary and secondary public school systems and districts, including individual schools and annexes, remain unchanged. This action is being taken in the interest of streamlining the survey process and reducing the burden on respondents, while maintaining sufficient data to meet the EEOC's program needs. The change is planned to become effective beginning with the 1996 EEO-5 survey.

DATES: Written comments on this proposed rule must be submitted on or before February 6, 1996.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4077 (TDD). (These are not toll-free numbers.) Copies of comments submitted by the public will be available for review at the EEOC's library, Room 6502, 1801 L Street, NW., Washington, DC between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, at (202) 663-4958 (voice) or (202) 663-7063 (TDD).

SUPPLEMENTARY INFORMATION: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of employers. Elementary and secondary public school systems and districts have been required to submit EEO-5 reports to the EEOC since 1974 (biennially in even numbered years since 1982). Two types of EEO-5 reports have been used: EEOC Form 168A, covering the entire public school system or district; and EEOC Form 168B, covering each individual school and annex within the system or district.

EEO-5 data are used by the EEOC to investigate charges of employment discrimination against elementary and secondary public school systems and districts. The data are used to support EEOC decisions and conciliations, and in systemic program activities. The data also enhance the Commission's ability to perform research, analysis, technical assistance, and public education. In addition, data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. EEO-5 data also are shared with approximately 23 state and 56 local Fair Employment Practice Agencies.

On October 5, 1995, the EEOC voted to discontinue the EEO-5 Report 168B for individual schools and annexes. The primary reason for the discontinuance of the reporting requirement for individual schools is to reduce the reporting burden on respondents and to streamline the collection of information required for enforcement purposes. The recordkeeping requirements of subpart L of 29 CFR 1602, however, remain in effect and unchanged.

Paperwork Reduction Act

This action will result in a reduced expense and reporting burden for school systems and districts as required under the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(1). The reporting burden for this collection is based upon an average estimate per response and takes into consideration the large number of school systems and districts that submit their reports on diskettes or magnetic tapes. Burden hours for any particular school system or district may differ from this average estimate depending on the accessibility of information and the degree of automation. The burden estimate includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information. Public comments on the accuracy of the burden estimates as well as suggestions for further reducing the burden are welcome. The EEOC has encouraged and will continue to encourage the use of magnetic media (diskettes, computer tapes, etc.) as a means of submitting information on the EEO-5 report.

(1) Type of review: Extension (Discontinuance of individual school reports).

(2) Agency: Equal Employment Opportunity Commission.

(3) Title: Elementary-Secondary Staff Information (EEO-5).

(4) OMB Number: 0346-0003.

(5) Frequency: Biennially.

(6) Affected Public: State and Local Government.

(7) Number of Respondents: 5,000.

(8) Estimated Time Per Respondent: 5 Hours during a survey year.

(9) Total Burden Hours: 25,000 Hours.

The Office of Management and Budget (OMB) approval of the current EEO-5 collection of information, OMB Control Number 0346-0003, will expire on January 31, 1996. In order to comply with new information collection clearance procedures that OMB has instituted pursuant to the act, set forth at 29 CFR 1320.8, .9, and .11, the EEOC has obtained a 90 day extension of the current OMB collection approval in which to notice the proposed change in the EEO-5 collection and also to notice the extension.

Pursuant to 29 CFR 1320.8(d)(1), the EEOC solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the EEOC's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the EEOC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Regulatory Flexibility Act

The Commission certifies pursuant to 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act, Pub. L. No. 96-354, that this proposed change will not result in significant impact on small employers or other entities because the change involves elimination of reporting requirements, and that a regulatory flexibility analysis therefore is not required. The Commission hereby publishes this proposed rule for public information and comment. The rule appears below.

List of Subjects in 29 CFR Part 1602

Reporting and recordkeeping requirements.

Dated: November 30, 1995.

For the Commission.

Gilbert F. Casellas,

Chairman.

Accordingly, it is proposed to amend 29 CFR Part 1602 as follows:

1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e-8, 2000e-12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117.

§ 1602.41 [Amended]

2. Section 1602.41 is amended as follows:

(a) In the introductory text, in the first sentence, delete the phrase "and individual schools within such systems or district".

(b) In the concluding text, in the first sentence, delete the phrase, ", or the individual school which is the subject of the report, where more convenient,"

3. Section 1602.43 is revised to read as follows:

§ 1602.43 Commission's remedy for school systems' or districts' failure to file report.

Any school system or district failing or refusing to file report EEO-5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

4. Section 1602.44 is revised to read as follows:

§ 1602.44 School systems' or districts' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system or district may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

[FR Doc. 95-29552 Filed 12-7-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250, 251, and 256

RIN 1010-AB92

Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would establish a deadline of 2 years for all Outer Continental Shelf (OCS) oil and gas and sulphur lessees to bring their bond coverage into compliance with the new levels of coverage established in 1993; clarify MMS's position that assignees, assignors, and co-lessees are jointly and severally liable for compliance with OCS oil and gas and sulphur leases; establish a regulatory framework for lease-specific abandonment accounts and acceptance of a third-party guarantee; and update the bond coverage required of right-of-way holders and Geological and Geophysical (G&G) exploration permittees. These changes are needed to reduce the risk of default by an underfunded company operating a lease or holding a right-of-way.

DATES: Comments must be received or postmarked no later than March 7, 1996 to be considered in this rulemaking.

ADDRESSES: Written comments must be mailed or hand-carried to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070-4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Engineering and Technology Division, telephone (703) 787-1609.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR Part 250, Subpart G, Abandonment of Wells, Subpart I, Platforms and Structures, and Subpart J, Pipelines and Pipeline Rights-of-Way, specify that OCS lessees, right-of-way holders, and G&G exploration permittees are liable for all end-of-lease financial obligations including unpaid royalties; costs of well plugging and abandonment; removal of pipe, equipment, platform(s), and facilities; and clearance of obstructions to other uses of the sea. The levels of bond coverage required by the regulations do not limit the obligations of OCS oil and gas or sulphur lessees, holders of an OCS pipeline right-of-way, or exploration permittees conducting deep stratigraphic tests.

The transfer of OCS leases from large producing companies to smaller producers, some of which are marginally financed, has increased the risk that the responsible party will not be able to satisfy end-of-lease obligations.

The MMS continues to investigate ways to provide more flexibility to lessees in meeting bonding requirements. For example, MMS has allowed third-party guarantees and escrow accounts as alternatives to traditional bonds. These methods would be specifically addressed in regulations to facilitate their use. The MMS encourages lessees to suggest other alternatives to traditional bonds. The regulations provide flexibility to the Regional Director to consider alternate forms of surety.

Oil and Gas and Sulphur Lease Bond Coverage Requirements: To reduce the number of cases of underfunded liabilities, MMS published revised rules on August 27, 1993 (58 FR 45255), increasing the bond coverage required for OCS oil and gas or sulphur leases.

The MMS is phasing in the increases in the minimum levels of bond coverage as part of the process of reviewing requests for approval of lease assignments, Exploration Plans (EP), Development and Production Plans

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(DPP), or Development Operations Coordination Documents (DOCD). The 1993 regulation replaced the requirement for a $50,000 bond for oil and gas and sulphur lessees with requirements based upon the drilling or production stage of a lease as follows:

State of development	Lease bond	Areawide bond
Issuance of lease	$50,000	$300,000
EP approval	200,000	1,000,000
DPP and DOCD approval	500,000	3,000,000

This proposed rule would require lessees not already in compliance with the higher bond levels to submit and maintain the higher lease or areawide bonds within 2 years of the promulgation of a final rule.

Assignors, Assignees, and Co-Lessees Liable for Compliance: When the designated operator is unable to meet end-of-lease obligations, MMS will require any or all of the lessees to bring the lease into compliance. If there is no lessee able to perform, MMS will require the prior lessee(s) to perform these functions.

Relationship Between these Regulations and The Liability Regulations Published by MMS's Royalty Management Program: This proposed rule clarifies MMS's position with respect to the liability of assignees, assignors, and lessees (record title owners) for the plugging and abandonment of wells, removal of platforms and other facilities, and clearance of well and platform locations. These obligations are joint and several in nature. The obligations are not divisible, and a degree of residual liability is attached (i.e., an assignor may be required to perform lease and well abandonment and clearance obligations when an assignee refuses or is unable to carry out any or all of these responsibilities).

The indivisible nature of these obligations distinguishes them from the royalty and other payment obligations addressed in the regulations proposed for modification by the notice of proposed rulemaking (NPR) published on June 9, 1995, by MMS's Royalty Management Program (RMP) (60 FR 30492). The provisions of that NPR would establish liability for the payment of royalty due on Federal and Indian leases and establish responsibility to pay and report royalty and other payments.

The RMP's NPR dated June 9, 1995, proposes that royalty and other payment obligations be treated as divisible according to the division of the record title interests in a lease and proposes that a record title owner's (lessee's) liability for the payment of royalty and other payments be proportionate to percentage of the record title interest owned. That NPR also points out that lease obligations such as leasehold and well abandonment and reclamation are not divisible.

Neither of these NPR's address against whom MMS will take enforcement action if MMS discovers noncompliance either in payments due or required leases abandonment and reclamation activities. In every instance, MMS retains the discretion to determine which person to pursue. Once the lease has been brought into compliance, the person MMS takes enforcement action against could seek contributions from other liable persons.

While these proposed rule should make it easier to determine who the liable parties are, it is not MMS's intention that these rules govern the relationship or liabilities between and among the affected parties other than MMS.

Means for Financing Abandonment and Clearance Obligations: Since no revenues are being generated from a lease at the time lease wells are to be plugged and abandoned, platforms are to be removed, and the seafloor cleared of obstructions, MMS wants assurances that OCS lessees establish some means of funding their end-of-lease obligations.

Similarly, no revenues are generated by pipeline operations at the time the right-of-way holder is called upon to remove all platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in compliance with MMS regulations. The MMS wants assurances that holders of OCS pipeline right-of-way grants provide some means of funding their right-of-way abandonment obligations.

Supplemental bonds: The MMS's Regional Directors may require OCS lessees, on a case-by-case basis. To provide additional security in the form of a supplemental bond or bonds or an increase in the amount of coverage under an existing bond. The additional security is required when the Regional director deems it necessary to ensure that the lessee or its guarantor will be able to comply with all end-of-lease obligations. The Regional Director will also consider the added liability created when new leases are added to an existing areawide bond.

The proposed rule would increase the level of bond coverage for G&G exploration permittees drilling a deep stratigraphic test well and would provide authority for MMS's Regional Directors to require right-of-way holders and G&G exploration permittees, on a case-by-case basis, to post additional bonds or other security in the form of a supplemental bond or bonds or an increase in the amount of coverage under an existing bond. These changes recognize that the current bonding requirements found in §§ 250.159(b) and 251.6–4 are inadequate and also recognize the variation in costs associated with the abandonment of deep stratigraphic test wells and pipelines constructed on OCS right-of-ways.

Lease-Specific Abandonment Accounts and Third-Party Guarantee: Proposed § 256.56, Lease-specific abandonment accounts, and § 256.57, Third-party guarantee, would establish specific regulatory authority under which MMS's Regional Director may approve these alternate methods for funding end-of-lease abandonment obligations. Regional Directors already accept lease-specific abandonment accounts. A third-party guarantee or a supplemental bond may cover specific obligations, such as plugging and abandonment of specified leases or wells. However, the Regional Director's approval will depend on how well the combination of all bonds and guarantees is able to ensure that the lessee will meet all obligations.

Section-by-Section Discussion

Part 250—Oil and Gas and Sulphur Operations in the OCS

Section 250.110 General Requirements

Current rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." The rule at § 250.110 of subpart G, Abandonment of Wells, is being amended to clarify existing requirements that when a well is drilled, a platform or other facility is installed, or an obstruction is created, the lessee's obligation accrues to properly plug and abandon the wellbore, remove the platform or other facility, and clear the ocean of obstructions in accordance with procedures specified in subpart G of 30 CFR part 250. When an assignment occurs, the assignor continues to have residual liability should the assignee fail to fully perform obligations that accrued before assignment with respect to wells and structures in existence at the time of the assignment.

The clarification also provides that when there are several responsible lessees, they are jointly and severally liable for end-of-lease obligations.

Section 250.159, General requirements for a pipeline right-of-way grant, would be modified to add a

provision under which the Regional Director could require the holder of a right-of-way to submit and maintain additional security in the form of a supplemental bond or bonds or by increasing the amount of coverage provided under an existing surety bond.

Part 251—G&G Explorations of the OCS

Section 251.6–4, Bonds, would be modified to increase the bond coverage required to $200,00 for drilling a deep stratigraphic test well unless an areawide bond is maintained. A provision would be added under which the Regional Director could require a permittee under a G&G Exploration permit to submit and maintain additional security in the form of a supplemental bond or bonds or by increasing the amount of coverage provided under an existing surety bond. Compliance with the increased amount of bond coverage would be required for all permits granted after the effective date of a final rule.

Part 256—Leasing of Sulphur or Oil and Gas in the OCS

Subpart I—Bonding

Section 256.52 Requirement to File a Bond

Proposed § 256.52, Requirement to file a bond (current § 256.58, Acceptable bonds/alternate security instruments), expands upon the provisions of § 256.58 and establishes the bonding requirements for lessees. This section establishes the time at which a bond must be provided and recognizes alternate methods that a Regional Director may approve for providing additional security.

Proposed § 256.52(d) expands upon the provisions of current § 256.58(d) with regard to the results of a payment of a claim in the face amount of the surety.

Proposed § 256.52(f) expands upon the provisions of current § 256.58(f) with regard to the responsibility of the lessee to monitor the value of U.S. Department of the Treasury (U.S. Treasury) instruments provided to MMS and to submit additional U.S. Treasury instruments if the value of the instruments previously provided falls below the level of bond required.

In § 256.52, new paragraph (i) requires the lessee to give notice and to cease operations if the lease ceases to be in compliance with bonding requirements. Paragraph (i) also authorizes the Regional Director to allow continued operations when ceasing operations would pose a danger to the environment or to the producing reservoir but with all proceeds being paid into lease abandonment accounts.

Section 256.53 Additional Bonds

Proposed § 256.53, Additional bonds (existing § 256.61, Additional bonds), expands the provisions of current § 256.61 to establish a deadline (2 years after promulgation of a final rule) for lessees of existing leases to provide the required increased amounts of bond coverage.

Proposed § 256.53(d) modifies the generic criteria used by the Regional Director to assess the ability of a lessee to carry out its present and future financial obligations and the need for supplemental bond.

Proposed § 256.53(e) would expand § 256.61 to establish regulatory provisions for determining the amount of additional bond coverage to be required.

Section 256.54 Bond Form

Section 256.59, Form of bond, would be renumbered and renamed § 256.54, Bond form. New § 256.54 establishes certain required terms of surety bonds including a requirement that the bond be noncancellable.

Proposed § 256.54(d)(3) authorizes the submission of U.S. Treasury securities in lieu of surety bond, in accordance with 31 U.S.C. 9303. It specifies that the lessee using such Treasury securities shall also submit authorization for the Regional Director to sell such securities upon the lessee's default on its lease obligations.

The MMS is concerned that, should the lessee file for bankruptcy and MMS merely have a security interest in the Treasury securities, it will not be able to obtain prompt access to funds to provide for remediation of leaking wells and or other critical environmental problems. In that event, the Treasury bills or notes will not give MMS the same assurance of timely performance of lease obligations that a surety bond provides. Accordingly, MMS is exploring with the Department of the Treasury alternative procedures under which the lessee would transfer title to its book-entry Treasury bills to MMS or a third-party escrow agent, so that the bills would not be property of the bankruptcy estate in the event of insolvency. The MMS requests comments on its alternative approach which it may adopt in the final version of this rule.

Section 256.55 General Terms and Conditions of Bond

Proposed new § 256.55 would establish general terms and conditions of a bond and includes language which specifies that bonds are to be payable to the MMS Regional Director and conditioned upon compliance with *all* terms and conditions of the OCS oil and gas or sulphur leases and governing regulations. Lessees or sureties may propose alternate forms of bond for the Director's approval but should submit therewith an opinion of qualified counsel that the proposed bond form provides security equivalent to that of the standard MMS bond forms.

Proposed § 256.55(d) adds a requirement that the lessee give prompt notice to the Regional Director of any action alleging the insolvency or bankruptcy of the surety or alleging any matter which could result in suspension or revocation of the surety's charter or license to do business.

Section 256.56 Lease-Specific Abandonment Accounts

Proposed new § 256.56, Lease-specific abandonment accounts, establishes regulatory guidance for the establishment of lease-specific abandonment accounts in addition to the Treasury pledge accounts currently established to permit lessees to fund end-of-lease abandonment and clearance costs through scheduled payments into a lease-specific escrow account dedicated to lease abandonment and cleanup.

Section 256.57 Third-Party Guarantee

The third-party guarantee provisions of proposed § 256.57 would establish a regulatory framework for identifying some of the criteria that the Regional Director would use to approve a third-party guarantee of a lessee's compliance with its lease obligations and for establishing how MMS will obtain needed information.

Section 256.58 Termination of the Period of Liability and Cancellation of a Bond

Proposed new § 256.58(a) provides for termination of the period of liability under a bond and allows the Regional Director to permit a lessee to replace existing bonds with other forms of security that provide equivalent protection. Replacement of a bond pursuant to § 256.58(b) would conditionally release the existing bond.

Section 256.59 Forfeiture of Bonds and/or Other Securities

Proposed new § 256.59 specifies that if a lessee refuses or is unable to comply

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with lease terms or if the lessee defaults on the conditions under which a bond and other security was accepted, the Regional Director will take action to forfeit all or part of a bond or other security.

Section 256.62 Assignment of Leases or Interests Therein

Under the proposed rulemaking, § 256.62 would be modified to clarify and make explicit existing authority that—

(1) The approval of a lease assignment is subject to the lessee furnishing bond coverage pursuant to the revised bonding requirements.

(2) Having a lease assignment become effective any date other than the first day of the lease month following the filing of documents is at the discretion of the Regional Director.

(3) Approval of an assignment by the Regional Director does not relieve the assignor of accrued lease obligations if the assignee subsequently fails to perform.

(4) Approval of an assignment will not be given until the assignee submits an acceptable level of surety coverage.

(5) When the lessee is not the sole lessee, the Regional Director will look first to the designated operator to perform lease obligations, but all lessees are jointly and severally liable for their performance.

(6) The assignee assumes a responsibility to remedy all existing environmental problems on the tract and to properly abandon all wells and reclaim the lease site.

Section 256.64 Requirements for Filing Transfers

Under the proposed rulemaking, § 256.64 would be modified to clarify that—

(1) Neither the transfer of operating rights, nor the creation of a sublease(s), releases the lessee from performance of any obligation under any lease or under any regulation.

(2) The lessee(s) are jointly and severally liable with sublessees and operating rights owners (to the extent of their interests) for the performance of each obligation under the lease and under the governing regulations with each party holding an interest at the time the obligation was accruing.

The provisions of these proposed rules have been designed to meet the objectives to: (1) ensure lessee's financial capability to perform lease obligations, (2) protect the environment from threat of harm which might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations on a lease, (3) achieve a reasonable degree of protection at a minimum increase in costs to the lessee or lease operator, and (4) select a method of attaining these goals which impact equitably on all parties who would be affected.

The MMS does not have authorized funds available to use to correct a noncompliance or default when the cost of corrective action exceeds the funds available under a forfeited bond and other security.

Author: This document was prepared by Gerald D. Rhodes, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12866

This proposed rule is not a significant rule under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this proposed rule will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in offshore exploration, development, and production activities including pipeline transportation across the OCS are not considered small due to the technical expertise, financial resources, and experience necessary to safely conduct such activities in an environmentally responsible manner.

Paperwork Reduction Act

This proposed rule does not contain new information collection requirements which require approval by the Office of Management and Budget (OMB). The information collection requirements in 30 CFR part 256 are approved by OMB under approval No. 1010–0006.

Takings Implication Assessment

The DOI certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environment Impact Statement is not required.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: September 5, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, MMS proposes to amend 30 CFR parts 250, 251, and 256 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 is revised to read as follows:

Authority: 43 U.S.C. 1334.

2. In § 250.110, the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 250.110 General requirements.

* * * * *

(b) The obligations to plug and abandon wellbores, remove platforms or other facilities, and to clear the ocean of obstructions accrue when the well is drilled, the platform or other facility is installed, or the obstruction is created and continue until the requirements of subpart G are fully accomplished. These obligations are the joint and several responsibility of all lessees.

3. In § 250.159, paragraph (b)(1) is revised to read as follows:

§ 250.159 General requirements for a pipeline right-of-way grant.

* * * * *

(b) (1) When applying for a right-of-way grant, the applicant or the right-of-way holder shall provide the surety bonds described in this section in addition to the bonds required of a lessee in 30 CFR part 256.

(i) Each applicant or holder of a right-of-way shall furnish the Regional Supervisor a $300,000 corporate surety bond conditioned on compliance with the terms of all right-of-way grants held by the applicant in the Outer Continental Shelf (OCS) area in which the right-of-way is located.

(ii) If the Regional Director determines that a surety bond in excess of $300,000 is necessary to cover the costs and liabilities of compliance with the terms of the right-of-way, he/she may require the applicant or the holder of the right-of-way to submit additional security in the form of a supplemental bond or an increase in the amount of the existing surety bond.

* * * * *

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

4. The authority citation for part 251 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.

5. Section 251.6–4 is revised to read as follows:

§ 251.6–4 Bonds.

(a) Before the Minerals Management Service (MMS) will issue a permit authorizing the drilling of a deep stratigraphic test well, the applicant must either:

(1) Furnish MMS a bond of not less than $200,000 conditioned on compliance with the terms of the permit; or

(2) Maintain with or furnish to MMS a $1 million bond conditioned on compliance with the terms of the permit issued to him/her for the area of the OCS where the applicant proposes to drill a deep stratigraphic test.

(b) If the Regional Director determines that security in excess of $1 million is needed, he/she may require the permittee to provide additional security in the form of a supplemental bond or bonds or an increase in the amount of the existing surety bond.

(c) The Director of MMS may require the submission of a bond before authorizing shallow test drilling.

(d) Any bond furnished shall be on a form approved or prescribed by the Director, MMS.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

6. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.

7. Section 256.58 is redesignated as § 256.52.

8. Newly designated § 256.52 is amended by revising the heading and paragraphs (a), (c), (d), (f), and (g); and by adding a new paragraph (i) to read as follows:

§ 256.52 Requirement to file a bond.

(a) Before an oil and gas or sulphur lease will be issued the successful bidder must:

(1) Furnish the Regional Director a $50,000 lease surety bond, conditioned on compliance with all the terms and conditions of the lease;

(2) Maintain or furnish a $300,000 areawide bond, issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the bidder in the OCS for the area in which the lease to be issued is situated;

(3) Maintain or furnish an areawide bond under § 256.53 (a)(2) or (b)(2) of this part; or

(4) Furnish a substitute security instrument in accordance with paragraphs (f) and (g) of this section.

* * * * *

(c) The lessee shall maintain a separate areawide surety bond as required by paragraph (a) of this section for each of the areas identified in paragraph (b) of this section.

(1) If the Regional Director approves, the lessee may substitute for its bond either:

(i) An operator's bond in the same amount as the lease bond required under paragraph (a); or

(ii) Alternate security instruments as provided in paragraphs (f) and (g) of this section.

(2) The lessee(s)' substitution of an operator's bond or an alternate form of security for its bond does not relieve the lessee(s) of its (their) obligation to comply with all the terms and conditions of the lease.

(d) If a default causes the surety or other guarantor to pay the United States any indebtedness under a lease secured by a bond or alternate form of security, the face amount of the bond or alternate form of security and the surety's liability will be reduced by the amount of the payment.

* * * * *

(f) U.S. Department of the Treasury (Treasury) securities (U.S. Bonds or Notes) may be submitted in lieu of a bond, provided the Treasury instrument or legal tender submitted is negotiable at the time of submission for an amount of cash equal to the value of the required bond. The entity submitting Treasury instruments under this paragraph is responsible for monitoring the value of those instruments. If the value of those instruments falls below the level of bond required, the entity must submit additional Treasury instruments or legal tender to raise the value of the securities held by MMS to the value of the required bond.

(g) As provided in § 256.54, the Regional Director may accept alternate types of security instruments in lieu of the surety bonds required by this section if he/she determines that the interests of the Government are protected to the same extent that these interests would be protected by the required surety bond.

* * * * *

(i) Any time that a lease is not in compliance with bonding requirements of this subpart, the Regional Director will notify the lessee in writing and specify a reasonable period, not to exceed 90 days, to post an adequate bond.

(1) If an adequate bond or other guarantee is not provided by the end of the period allowed, the lessee shall cease mineral production, unless the Regional Director authorizes continued production from the lease to avoid premature lease abandonment or damage to the environment or to the producing reservoir(s).

(2) The lessee shall immediately begin preparation for lease abandonment and clearance and shall submit to the Regional Director its plans for paying outstanding royalty underpayments and for meeting all regulatory and lease requirements.

(3) Mineral production shall not resume until the Regional Director determines that an adequate bond has been posted or other guarantee provided.

(4) When the Regional Director authorizes continued production under this section, the net proceeds from that production, less the royalties paid to the United States, shall be paid into one or more lease-specific abandonment accounts approved by the Regional Director.

9. Section 256.61 is redesignated as § 256.53; paragraphs (a)(1), (b)(1), and (d) are revised; and paragraphs (a) introductory text, (b) introductory text, (e), (f), and (g) are added to read as follows:

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§ 256.53 Additional bonds.

(a) Activities under an Exploration Plan (EP).

(1) When submitting a proposed EP, when submitting a proposed assignment of a lease with an approved EP, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a $200,000 surety bond issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of the EP or assignment shall be conditioned upon receipt of a $200,000 lease surety bond, unless the Regional Director authorizes the submission of the $200,000 lease exploration bond after the submission of the EP but before approval of drilling activities under the EP. This bond coverage may be provided by increasing the bond coverage provided in § 256.52(a) of this part.

(2) * * *

(b) Operations under a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD).

(1) When submitting a proposed DPP or DOCD, when submitting a proposed assignment of a lease with an approved DPP or DOCD, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a $500,000 surety issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of a DPP, a DOCD, or an assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a $500,000 lease surety bond, unless the Regional Director authorizes the submission of the $500,000 lease development bond after the submission of the DPP or DOCD, but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage provided under paragraph (a) of this section.

(2) * * *

* * * * *

(d) The Regional Director may require additional security (i.e., security over and above the amounts prescribed in §§ 256.52(a) and 256.53 (a) and (b) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond when he/she determines that additional security is necessary to cover royalty due the Government, penalties and interest assessed against the lessee, and/or costs and liabilities of the lessee for regulatory compliance. The Regional Director shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations as demonstrated by factors such as:

(1) Financial capacity substantially in excess of existing and anticipated lease and other obligations (e.g., costs of well abandonment and platform removal, amount of underpaid royalties, and penalties and interest assessed by the Government), as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

(2) Projected financial strength as evidenced by existing OCS production and proven reserves of future production valued significantly in excess of existing and future lease obligations;

(3) Business stability as evidenced by 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;

(4) Reliability in meeting obligations as evidenced by:

(i) Credit rating; or

(ii) Trade references including names and addresses of other lessees, drilling contractors, and suppliers with whom lessee has dealt; and

(5) Record of compliance with laws, regulations, and lease terms.

(e) The amount of the bond shall be sufficient to ensure the compliance with all lease terms and conditions, including any outstanding underpayment of royalty and cumulative end-of-lease obligations to abandon wells, remove platforms and facilities, and clear the seafloor in the event of default. The Regional Director will determine the amount of supplemental bond required based on an analysis conducted by MMS. The lessee may submit data for consideration by MMS.

(f) The Regional Director may adjust the amount of supplemental bond or deposit required and the terms for the acceptance of the lessee's bond if the liability for outstanding underpaid royalties and end-of-lease abandonment and clearance either increases or decreases. The Regional Director shall:

(1) Notify the lessee and the surety of any proposed adjustment to the amount of bond required; and

(2) Give the lessee an opportunity to submit written or oral comment on the adjustment.

(g) A lessee may request a reduction of the amount of supplemental bond required by submitting to the Regional Director evidence demonstrating that the projected royalties and costs of end-of-lease abandonment and clearance of the seafloor are less than the specified bond coverage.

10. Section 256.59 is redesignated as § 256.54 and revised to read as follows:

§ 256.54 Bond form.

(a) All bonds must be on a form or in a form approved by the Director. Bonds submitted after November 26, 1993, must be issued by a qualified surety certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, D.C. 20227.

(b) A surety bond must be executed by the lessee and a qualified surety.

(c) Surety bonds must be noncancellable.

(d) Lease bonds must be:

(1) A surety bond;

(2) A lease-specific abandonment account in accordance with § 256.56;

(3) United States Treasury securities negotiable for an amount equal to the amount of bond required, accompanied by a conveyance of full authority to the Secretary to sell the securities in case of default;

(4) A combination of these security methods; or

(5) Another form of security approved by the Regional Director.

11. Sections 256.55, 256.56, 256.57, 256.58, and 256.59 are added to read as follows:

§ 256.55 General terms and conditions of bond.

(a) The Regional Director shall determine the amount of the lease bond as provided in §§ 256.52 and 256.53 of this part.

(b) A lease bond must be payable to MMS.

(c) A lease bond shall be conditioned upon compliance with all the terms and conditions of the lease and governing regulations.

(d) Lessees must notify the Regional Director of any action filed alleging the insolvency or bankruptcy of the lessee, a surety company, or a third-party guarantor. The lessee shall notify the Regional Director within 72 hours of any such action filed or within 72 hours of learning of an action that involves a company other than the lessee. Lease bonds must require the surety to provide this information to the lessee and directly to MMS.

(e) Upon the incapacity of a surety company by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the lessee is deemed to be without bond coverage

and must promptly notify the Regional Director.

§ 256.56 Lease-specific abandonment accounts.

(a) The Regional Director may authorize the lessee or guarantor to supplement its bond(s) by establishing a lease(s)-specific abandonment account in one or more federally insured accounts made payable upon demand to the Regional Director. The total security, including the lease-specific abandonment account(s), shall not be less than the amount required to meet outstanding underpayments of royalty and lessee's end-of-lease abandonment and clearance obligations.

(b) Any interest paid on an abandonment account shall be retained in the account unless the Regional Director approves the payment of the interest to the lessee or guarantor.

(c) When authorized by the Regional Director, U.S. Treasury obligations may be substituted for payments into an abandonment account.

(d) An individual abandonment account shall not contain more than $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e) The Regional Director may require the lessee to make an overriding royalty or production payment into an escrow account. The required overriding royalty or payment out of production may be associated with production from a lease(s) other than the lease(s) bonded through the escrow account.

§ 256.57 Third-party guarantee.

(a) The Regional Director may accept a third party's written guarantee as surety for a lessee's lease obligations, following a review of:

(1) The period of time that the guarantor has been in continuous operation as a business entity;

(i) Continuous operation is the time that business was conducted immediately preceding the posting of a guarantee.

(ii) Continuous operation excludes periods of interruption in operations that were beyond the guarantor's control and that do not affect the guarantor's likelihood of remaining in business during lease exploration, development, production, abandonment, and clearance operations.

(2) Financial information available in the public record or submitted by the guarantor, on its own initiative, in sufficient detail to show to the Regional Director's satisfaction that the guarantor is qualified based on:

(i) The guarantor's current rating for its most recent bond issuance by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The guarantor's net worth taking into account liabilities under this and other guarantees.

(iii) The guarantor's ratio of current assets to current liabilities taking into account liabilities under this and other guarantees; and

(iv) The guarantor's unencumbered fixed assets in the United States.

(3) When the information required by paragraph (2) is not publicly available, the guarantor may submit the information voluntarily. If this is done, the guarantor must update the information annually within 90 days of the end of the fiscal year or as otherwise approved by the Regional Director. The information should include:

(i) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformance with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements, with no adverse opinion;

(ii) Financial statements, certified to be correct by the guarantor's financial officer, for completed quarters in the current fiscal year; and

(iii) Additional information, certified to be correct by the guarantor's financial officer, as requested by the Regional Director.

(b) The terms of a third-party guarantee shall provide for the following:

(1) If the lessee fails to comply with any governing lease term, the guarantor shall take corrective actions or be liable under the indemnity agreement to provide funds to the Regional Director sufficient to complete the required corrective action.

(2) If the guarantor wishes to terminate the period of liability under a third-party guarantee it must:

(i) Notify the Regional Director and the lessee at least 90 days before the proposed termination date; and

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of its guarantee.

(3) The lessee must obtain a suitable replacement security instrument before the proposed termination date or if no activities have taken place on the lease(s) for which the guarantee was approved, before any activities take place.

(c) The total amount of all outstanding and proposed guarantees by the guarantor must not exceed 25 percent of that guarantor's unencumbered net worth in the United States.

(d) If the Regional Director approves a third-party guarantee, the guarantor must submit an indemnity agreement.

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the guarantor, and shall bind each jointly and severally.

(2) Two corporate officers who are authorized to bind their corporation must sign the indemnity agreement.

(3) The guarantor must provide the Regional Director copies of:

(i) The authorization of the signatory officials to bind the corporation;

(ii) An affidavit certifying that the agreement is valid under all applicable laws; and

(iii) The corporate authorization, demonstrating that the corporation can guarantee the obligation and execute the indemnity agreement.

(4) if the third-party guarantor is a partnership, joint venture, or syndicate, the agreement shall:

(i) Bind each partner or party who has a beneficial interest, directly or indirectly, in the guarantor; and

(ii) Provide that, if the third-party guarantee is forfeited, each partner or party shall be jointly and severally liable for compliance with all terms and conditions of the lease(s).

(5) Pursuant to § 256.59 of this chapter, the guarantor shall bring the lease into compliance or pay the Regional Director the amount necessary to bring the lease into compliance. The indemnity agreement, upon default by the lessee or operator, shall operate as a judgment against those parties liable under the indemnity agreement.

(e) If during the life a third-party guarantee the guarantor no longer meets the criteria of paragraphs (a)(3) and (c) of this section, the lessee must:

(i) Notify the Regional Director immediately; and

(ii) Bring the lease into compliance with the requirements of this subpart within 90 days.

§ 256.58 Termination of the period of liability and cancellation of a bond.

(a) The Regional Director shall terminate the period of liability under a bond upon the request of the surety and demand a replacement bond of equivalent amount from the lessee. The termination of the period of liability under a bond does not constitute release of the bond. The surety continues to be responsible for all obligations and liabilities accruing before the effective date of the termination of the period of liability.

(b) The Regional Director will cancel or release a bond as to obligations that

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accrued before the cancellation only upon:

(1) Being furnished a replacement bond in which the surety agrees to assume all outstanding liabilities under the bond to be cancelled, in an amount equal to or greater than the amount of the bond to be cancelled; or

(2) The determination that all outstanding obligations have been fulfilled. Such cancellation shall be by a written instrument that subjects the bond to automatic reinstatement, as if no cancellation had occurred, if at any time within 6 years of such cancellation:

(i) Any payment made by the principal(s) is rescinded or must be restored due to insolvency, bankruptcy, reorganization, or receivership; or

(ii) The principal's representation to MMS that it has paid its financial obligations or performed the other obligations of the lease in accordance with MMS specifications is materially false at the time of cancellation.

(c) Failure of the lessee to replace a deficient bond could result in penalties under subpart N of part 250 of this Title or suspension of production or other operations in accordance with § 250.10.

§ 256.60 Forfeiture of bonds and/or other securities.

(a) If a lessee refuses or is unable to comply with lease terms or defaults on the conditions under which a bond, third-party guarantee, and/or other form of security was accepted, the Regional Director shall:

(1) Notify in writing the lessee, third-party guarantor, and any surety on the bond or other form of guarantee of the determination to call or forfeit all or part of the bond or guarantee, the reasons for the forfeiture, and the amount to be forfeited. The amount shall be based on the estimated total cost of correcting the lessee's noncompliance or default.

(2) Advise the lessee, third-party guarantor, and any surety that they can avoid forfeiture by:

(i) Agreeing to correct the noncompliance or default and demonstrating that they have the ability to do so; or

(ii) Agreeing that the surety will complete actions required for compliance in accordance with a schedule that meets the conditions of the lease and governing regulations if the surety can demonstrate the ability to carry out the action required.

(b) If there is a default, the Regional Director may cause the forfeiture of any and all bonds or other security deposited on condition of compliance with all the terms and conditions of the lease or leases.

(c) If forfeiture of the bond or security is required by this section, the Regional Director shall:

(1) Collect the forfeited amount, and

(2) Use funds collected from bond or security forfeiture to correct the noncompliance or default.

(d) If the amount forfeited is insufficient to pay for the full cost of corrective actions:

(1) the lessee(s) and any third-party guarantor(s) are jointly and severally liable for the remaining costs of obtaining full compliance with the terms and conditions of the lease, and

(2) The Regional Director may take or authorize required corrective action to obtain full compliance and may recover from the lessee(s) and any third-party guarantor(s) all costs in excess of the amount forfeited.

(3) If the amount of bond or security forfeited exceeds the total costs of the corrective actions required to obtain compliance, the Regional Director shall return the excess amount to the party from whom it was collected.

12. In § 256.62, paragraphs (a), (d), and (e) are revised, and paragraph (f) is added to read as follows:

§ 256.62 Assignment of leases or interests therein.

(a) Subject to the approval of the Regional Director and the furnishing of bond coverage pursuant to the requirements of subpart I of this part, leases, or any undivided interests therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 256.35(b) of this part to hold a lease.

* * * * *

(d) The assignor is liable for all obligations under the lease accruing before the approval of the lease assignment. Approval of the assignment by the Regional Director does not relieve the assignor of accrued lease obligations which the assignee subsequently fails to perform.

(e) After the Regional Director approves a lease assignment, the assignee is liable for all obligations under the lease and must comply with all regulations issued under the Act. The assignee must remedy all existing environmental problems on the tract, properly abandon all wells, and reclaim the lease site in accordance with part 250, subpart G. Before MMS approves an assignment, the assignee must submit acceptable bond coverage as required by §§ 256.52 and 256.53 of this part.

(f) Where there is more than one lessee, the lessees are jointly and severally responsible for performing the obligations of the lease, unless provided otherwise in these regulations. The Regional Director will look to the designated operator to perform lessee obligations under any lease and under any regulations in this chapter. Should the operator fail or be unable to perform any obligation of the lessee(s), the Regional Director will require any or all the lessee(s) to bring the lease into compliance. If there is no lessee able to perform, the Regional Director will require prior lessees to bring the lease into compliance to the extent that the obligation accrued before assignment.

13. In § 256.64, paragraphs (a)(1), (c), and (g) are revised to read as follows:

§ 256.64 Requirements for filing transfers.

(a) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and record title interests, shall be submitted in duplicate to the Regional Director for approval within 90 days from the date of final execution. Instruments of transfer shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto.

(1) Neither the transfer of operating rights or creation of a sublease(s) releases the lessee from any obligation under the lease or regulations.

(2) The assignment of record title interests does not release the lessee from any accrued obligation under any lease or regulations.

(3) Carried working interests, overriding royalty interests, or payments out of production may be created or transferred without filing an approval.

* * * * *

(c) Where an assignment is of all the lease title interest in a lease or creates a segregated lease, the assignee must furnish a bond in the amount prescribed in §§ 256.52 and 256.53 of this part. Where an assignment is of less than all the lease title and the assignment does not create separate leases, the assignee, if the assignment provides and the surety consents, may become a joint principal on the bond with the assignor.

* * * * *

(g) Each obligation under any lease and under the regulations in this part binds the heirs, executors, administrators, successors, and assignees of the lessee. Except as otherwise provided in the regulations in this chapter, the lessee(s) (and to the extent of their interests, sublessees and operating rights owners) are jointly and severally liable for the performance of each obligation under the lease and

under the governing regulations with each prior lessee and operating rights owner holding an interest when the obligation was accruing.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA7–1–5542; FRL–5343–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, Environmental Protection Agency (EPA) invites public comment on its proposed granting of a temporary waiver of the attainment date for the Wallula, Washington particulate nonattainment area. This is based on EPA's review of the State implementation plan (SIP) revision submitted by the State of Washington for the purpose of bringing about attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for a geographic area referred to as Wallula, Washington due on November 15, 1991.

DATES: Comments on this proposed action must be postmarked by January 8, 1996.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Air Programs Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittals and other information supporting this proposed action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Office of Air, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the State of Washington Department of Ecology, 4450 Third Ave. SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air (AT–082), US Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

The Wallula, Washington, area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, by operation of law upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991) (official designation codified at 40 CFR 81.348). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Washington moderate PM–10 SIP for the Wallula nonattainment area, EPA is proposing to apply its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a date later than November 15, 1991. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also were to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–44).

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). For PM–10 nonattainment areas Section 188(f), Waivers for Certain Areas, can apply as well.

In this action, EPA is proposing to grant a temporary waiver of the attainment date for the Wallula nonattainment area. Discussion of EPA's requirements for a temporary waiver are detailed in 59 FR 41998–42017 (August 16, 1994). In this guidance EPA provides certain flexibility for areas where the significance of anthropogenic and nonanthropogenic sources is unknown. The Washington Department of Ecology (Ecology) has presented preliminary data, based on a crude emission inventory of eastern Washington, indicating that nonanthropogenic sources may be significant in the Wallula situation. EPA

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

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proposes to accept this preliminary information and grant a temporary waiver of the moderate area attainment date to allow Ecology and EPA to evaluate further the Wallula nonattainment area. Once the evaluation is completed, and/or the temporary waiver expires, EPA will make a final determination on the plan for the Wallula nonattainment area, including the applicability of a permanent waiver for the area.

The preliminary information presented by Ecology to date indicates that windblown dust from both anthropogenic and nonanthropogenic sources are impacting the Columbia Plateau geographic area which includes most of eastern Washington as well as northern Idaho and northeastern Oregon. In addition, the primary sources causing exceedences of the PM–10 standard may be many miles outside of the currently designated nonattainment areas in the Columbia Plateau region. Additional monitoring has been initiated in the region to evaluate further the extent of the problem. Extensive analysis is being done to distinguish anthropogenic sources from nonanthropogenic sources.

If granted, the proposed temporary waiver will extend the attainment date to December 31, 1997. The temporary three-year waiver will provide Ecology and EPA sufficient time to determine conclusively the significance of anthropogenic and nonanthropogenic PM–10 sources that are impacting the area. As required in the EPA guidance, Ecology and EPA are proceeding under a written agreement which sets out the protocol for both technical analysis (emission inventory, emission factor development, dispersion modeling, receptor modeling, etc.) and evaluation of alternative control measures, including Best Available Control Measures. The activities required under the protocol are generally referred to as the Columbia Plateau PM–10 Project funded by EPA, Ecology and USDA. Cooperating agencies include USDA's Agricultural Research Service and Natural Resources Conservation Service, as well as several local conservation districts, Washington State University the University of Idaho, and others. Once the technical information from this project is finalized, EPA will determine if a permanent waiver of the attainment date is appropriate for the Wallula area or if the area should be reclassified as a serious PM–10 nonattainment area.

The temporary waiver of the attainment date, if finalized by EPA, will defer approval/disapproval actions on several otherwise required elements of the moderate area plan for Wallula. The submission of the attainment demonstration, emission inventory, and contingency measures will be deferred. EPA will take final action on these elements after the analysis is completed and/or the expiration of the temporary waiver along with a decision on the eligibility of the area for a permanent waiver. EPA's reasoning for this approach is described in more detail under the various SIP element headings of this notice.

The Wallula plan was submitted to EPA on November 15, 1991. Ecology also submitted additional information on May 18, 1993 which further described the control measures being implemented in the area (letter from Joseph R. Williams to Jim McCormick, forwarding a report titled, "Addendum to the State Implementation Plan for the Wallula PM–10 Nonattainment Area, Reasonably Available Control Measure Analysis", undated). Additional information describing the status of the control measures and forwarding an analysis of windblown dust in the area was submitted on June 23, 1994 (letter from Joseph R. Williams to Jim McCormick). In a June 1, 1995, letter Ecology provided information on allowable emissions. Finally, Ecology forwarded a revised emission inventory for point sources within the nonattainment area on September 6, 1995 (letter from Joseph R. Williams to Michael A. Bussell).

EPA is proposing to approve the exclusion from precursor controls as described in part II. 5 below. EPA invites public comment on the proposed action described in this section.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

Ecology held a public hearing to receive public comment on the Wallula implementation plan on October 23, 1991. WDOE adopted the implementation plan for the area on November 14, 1991 and the plan was submitted to EPA on November 15, 1991. The SIP submittal was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. A letter dated May 5, 1992, was forwarded to the WDOE indicating the completeness of the submittal and the next steps to be taken in the review process.

2. PM–10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of the emissions inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain) the emissions inventory must be received with the demonstration (see 57 FR 13539).

In the 1991 plan Ecology submitted an emissions inventory of estimated actual emissions for the base year of 1990 and the attainment year of 1994, and the 3-year maintenance year of 1997. Ecology sent a letter to EPA on September 6, 1995, partially amending that 1991 inventory. The amended inventory adds an additional point source and revises emission from one area source. EPA considers the changes as minor and they do not significantly impact the overall inventory for the area. Based on the 1995 letter the base year (1990) inventory the major source of particulate matter impacting the area was wind blown dust (98%, an average of 1,553,334 kilograms/day). The remainder of the emission inventory included point sources (less that 1%, 693 kilograms/day) and other area sources (less than 1%, 1215 kilograms/day).

A report titled "An Analysis of the Impact of Biogenic PM–10 Sources on the Spokane PM–10 Nonattainment Area", prepared by the Washington State Department of Ecology, February 1992, presents the most recent

[3] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

information on the emission sources in the Columbia Plateau region of eastern Washington (which includes both the Spokane and Wallula nonattainment areas). The report attempts to determine gross annual emissions from anthropogenic and nonanthropogenic sources of PM–10. Preliminary information is presented indicating that about 40% of the annual emissions in eastern Washington are from anthropogenic sources and 60% from nonanthropogenic sources. No attempt was made to estimate the highest 24-hour emissions which, depending on the location, is expected to vary greatly. As discussed previously, the emission inventory information suggests, but does not conclusively show, that nonanthropogenic sources contribute significantly to the Wallula nonattainment area.

The emissions inventory estimating actual emissions generally appears to be accurate and comprehensive consistent with the requirements of section 172(c)(3) of the Clean Air Act and national guidance.[4] Although, recent information from studies being conducted in eastern Washington indicate that the emission factors used for wind blown dust in the SIP revision are probably inappropriate, EPA thinks that the assumptions were the best available at the time the plan was prepared. The Columbia Plateau PM–10 Project will include the development of emission factors specifically for eastern Washington and preparation of regional emission inventories that will be used to update the Wallula plan.

One additional emission inventory issue relates to the actual and allowable emissions from stack sources. Ecology used highest actuals in the 1991 SIP submission. For one of the point sources, a papermill, allowable emissions are much greater (by a factor of 9) from the actual emissions used in the plan. However, by using the higher allowable emission estimates submitted in the September 6, 1995, letter, the papermill still only represents less than 1% of the emission inventory.

EPA proposes to take no approval or disapproval action on the emission inventory at this time. EPA is requiring, as well as participating in, the development of a detailed emission inventory as part of the Columbia Plateau project. When completed the detailed emission inventory will be used to supplement the current one.

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

The current Wallula emission inventory identified wind blown dust as the dominant contributor of PM–10 emissions. There are two principal sources of windblown dust: Undisturbed land and agricultural fields. Ecology submitted an analysis of RACM for agricultural sources of PM–10 based on soil conservation measures required by the federal government's implementation of the United States Department of Agriculture's (USDA) Food Security Act (FSA) of 1985, in the Wallula nonattainment area and surrounding areas. EPA Title I preamble guidance suggests states "rely upon the soil conservation requirements (e.g. conservation plans, conservation reserve) of the Food Security Act to reduce emissions from agricultural operations" (see 57 FR 18072).

EPA proposes to accept Ecology's RACM analysis and concludes that RACM is being applied to agricultural sources not only in the nonattainment area but throughout the region surrounding Wallula. Ecology did not evaluate the application of reasonable controls on undisturbed lands. This analysis will be accomplished as part of the Columbia Plateau PM–10 Project.

The 1991 SIP revision contained a commitment from Ecology to adopt provisions of the FSA into state regulation. Ecology has not developed such a regulation. EPA proposes to determine that Ecology need not develop, adopt and submit state regulations that accomplish the same results as the current federal law and regulations. Such action would be unnecessary since the federal government (USDA) has the primary responsibility for implementation, and enforcement, of provisions of the FSA.

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable (and would not constitute RACM) to require the implementation of potentially available control measures. 57 FR 13540. Further, EPA has indicated that for some sources in areas which demonstrate attainment, RACM does not require the implementation of otherwise available control measures that are not "reasonably" available because their implementation would not expedite attainment (See 57 FR 13543).

In the Wallula situation, RACM for agricultural windblown dust is necessary and all other sources combined do not meet the de minimus guidance for requiring RACM. Even though not required under PM–10 SIP development guidance, Ecology did justify that RACM (including RACT) requirements were being met for two additional sources in the Wallula nonattainment area. Boise Cascade paper mill and the Simplot Feeders Limited Partnership cattle feedlot were evaluated by Ecology and found to be implementing RACM.

The only major (greater than 100 tons per year) stationary source facility within the nonattainment area, the Boise Cascade paper mill, was evaluated in the 1991 SIP submittal. Ecology concluded and documented that RACT is being applied to all stack sources in the facility. The SIP revision does not include any additional control of stack emissions. However, Ecology's RACT analysis did note that one unpaved road needed paving to meet RACT for fugitive dust sources within the facility. Ecology's June 23, 1994 letter documented that the road was paved, thus meeting the final RACT requirement. EPA proposes to accept Ecology's determination and considers the papermill to be at RACT.

The second source, the cattle feedlot, was determined by Ecology as meeting RACM in the 1991 SIP submittal. In 1992, new owners of the feedlot implemented an additional dust abatement measure, a sprinkler system to further reduce fugitive emissions. EPA proposes to accept Ecology's determination of RACM being applied at the feedlot.

EPA is proposing to grant a temporary waiver of the attainment date to December 31, 1997, which will allow Ecology and EPA to determine conclusively the significance of anthropogenic and nonanthropogenic sources impacting Wallula. This action does not relieve the area from the requirement to implement RACM. In the Wallula situation EPA thinks the significant source, as well as the two less significant sources, of PM–10 in the area have been reasonably controlled. Thus, EPA thinks it would be unreasonable to require other smaller sources of PM–10 in the area to implement potentially available control measures or technology. Further, EPA believes implementation of such additional controls in this area would not expedite attainment.

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A more detailed discussion of the individual source contributions, their associated control measures and an explanation as to why certain available control measures were not implemented, can be found in the TSD. EPA has reviewed the State's explanation and associated documentation and is proposing to conclude that it adequately justifies the control measures to be implemented.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, if the State does not submit a demonstration of attainment, the State must show that attainment by December 31, 1994 is impracticable (section 189(a)(1)(B)(ii).

In the 1991, Wallula SIP submission, Ecology demonstrated attainment of the annual and 24-hour PM–10 standards by 1994. The SIP utilized simple rollback modeling for the demonstration. As with the emission inventory discussion above, EPA finds the attainment evaluation is inadequate. The emission inventory does not adequately document the anthropogenic and nonanthropogenic mix in the dominant emission source, windblown dust. However, since EPA is proposing to grant a temporary, three year, waiver of the attainment date, the approval or disapproval of the attainment demonstration will be deferred until after expiration of the temporary waiver. EPA proposes to make a final decision on the attainment status and classification of the area soon after the temporary waiver expires on December 31, 1997. The alternative decisions include reclassifying the area to a serious PM–10 nonattainment area or granting the area a permanent waiver. EPA invites comments on this approach.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42).

Ecology submitted the emission inventory for PM–10 from the one major stationary source and several small sources. Due to the small contribution of stationary sources to the Wallula nonattainment area, EPA believes that stationary sources of precursors provide an insignificant contribution to the Wallula, Washington, ambient PM–10 concentration and EPA is proposing to grant the area an exclusion from PM–10 precursor control requirements authorized under section 189(e) of the act. Note that while EPA is proposing to make a general finding for this area, this proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three (3) years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

As stated earlier, EPA is proposing to grant a temporary waiver of the attainment date for the Wallula area. If granted, the area would not be required to meet RFP because in 1998 EPA would determine if the area would receive a permanent waiver or be reclassified to serious.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by Ecology and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

WDOE's control measures and regulations for control of Particulate Matter, which are contained in the SIP, are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion including, for example, fugitive emissions from agricultural sources. The SIP provides that the affected activities will be controlled throughout the entire nonattainment area.

The SIP requires that all the applicable SIP provisions be implemented by December 10, 1993 (section 189(a)(1)(C). In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information document (TSD).

The TSD contains further information on enforceability requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; malfunction provisions; excess emission provisions; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements. Ecology has the primary responsibility for implementing the measures in the plan. Ecology has compliance inspectors and EPA considers the staffing level adequate to assure that the RACM provision in the Wallula attainment plan are fully implemented. As a necessary adjunct of its enforcement program, Ecology also has broad powers to adopt rules and regulations, issue orders, require access to records and information, and receive and disburse funds.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–44). These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. Since the action proposed in this **Federal Register** notice allows for a temporary extension of the attainment date, EPA proposes to take no action on the contingency measures until after the temporary waiver has elapsed and EPA has determined the eligibility of the area for a permanent waiver.

III. Implications of Today's Action

EPA is proposing to grant a temporary waiver of the December 31, 1994, attainment date to December 31, 1997. If granted, the Washington Department of Ecology will proceed with determining the significance of anthropogenic and nonanthropogenic sources impacting the Wallula PM–10 nonattainment area. When Ecology has completed its analysis, and/or the temporary waiver expires, EPA will make a final determination of the status of the Wallula nonattainment area. EPA is proposing to approve the control measures submitted by Ecology as meeting RACM and as having been fully implemented by December 10, 1993. Finally, EPA is also proposing to grant an exclusion from precursor control requirements as described in part II. 5 of this notice.

IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the beginning of this notice, EPA will consider any comments postmarked by January 8, 1996.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 7, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–29895 Filed 12–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 15

Federal Acquisition Regulation; Contracting by Negotiation (FAR Part 15 Rewrite)

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement, in concert with the Federal Acquisition Regulations Council, is sponsoring an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 15, Contracting by Negotiation. The intent is to make Part 15 easier to understand and to eliminate policies, procedures, or requirements that impose unnecessary burdens on contractors or contracting officers. Regulatory requirements that are not required by statute, required to ensure adequately standardized government business practices, or required to protect the public interest will be considered for elimination. Innovative means of simplifying the procurement process and enhancing its efficiency will be considered for incorporation into the regulation. The rewrite team will use a number of fora to facilitate the exchange of ideas and information. Comments are solicited from both government and industry personnel, and notices of public meetings will be published in the **Federal Register**. To initiate the rewrite effort, interested parties are invited to present statements or provide suggestions on how to improve FAR Part 15 at a public meeting.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below from 1 p.m. to 3 p.m., Eastern standard time, on January 23, 1996.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the address below on or before January 16, 1996.

ADDRESSES: *Public Meeting:* The location of the public meeting is the General Services Administration auditorium, 18th and F Streets NW., Washington, D.C. 20405. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion should contact the Part 15 Rewrite Committee Chair, Ms. Melissa

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Rider, DAR Council, Attn: IMD 3D139, PDUSD (A&T) DP/DAR, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, telephone (703) 602–0131. FAX (703) 602–0350.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–29909 Filed 12–7–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 60, No. 236

Friday, December 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

December 4, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Program.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Knight Industries is in violation of the requirements set forth for participation in the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on December 4, 1995, to deny Knight Industries the right to participate in the Special Access Program, for a period of one year, from December 4, 1995 through December 3, 1996.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1988; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 58 FR 41245, published on August 3, 1993.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Knight Industries is in violation of the requirements for participation in the Special Access Program.

Effective on December 4, 1995, you are directed to prohibit Knight Industries from further participation in the Special Access Program, for a period of one year, from December 4, 1995 through December 3, 1996. For the period December 4, 1995 through December 3, 1996, goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access Program will not be accepted. In addition, for the period December 4, 1995 through December 3, 1996, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for Knight Industries.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–29996 Filed 12–7–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 8, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 16 and October 6, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 31706 and 52388) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance, Nogales Border Station (West), Nogales, Arizona

Mailroom Operation, Internal Revenue Service, 300 North Los Angeles Street, Los Angeles, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29959 Filed 12–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

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ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 8, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services, Social Security Administration, Great Lakes Program Service Center, Chicago, Illinois, NPA: Lester & Rosalie ANIXTER CENTER, Chicago, Illinois

Grounds Maintenance, Base Command, Building 2750, Burger King, Building 6006, Edwards Air Force Base, California, NPA: Desert Haven Enterprises, Inc., Lancaster, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29958 Filed 12–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 8, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 50558) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service before the notice of proposed rulemaking was published in the **Federal Register**. Some of these comments were transmitted to the Committee by a Member of Congress. The Committee initially was asked to add janitorial services at a group of buildings to the Procurement List, but the request was revised to include only the Ariel Rios Building to minimize the impact on the current contractor.

Despite the limitation, the contractor continued to claim that the proposed addition would have a severe impact on the company. The contractor claimed that the percentage of contract revenues it would lose on its award for the remaining buildings exceeds a "rule of thumb" percentage beyond which the Committee will consider impact to be severe. The contractor also indicated that it has been a continuous supplier of building maintenance at various Government sites and is thus more dependent on such sales to the Government. The contractor claimed that the remaining buildings in the group would soon be closing for extensive renovations, so the limitation of the Procurement List addition to the one building would not lessen the impact on the contractor.

The Committee's criteria on permissible impact on a current contractor for a Procurement List addition, at 41 CFR 51–2.4(a)(4), look at the impact on the total sales of a company, not the percentage of revenue for a particular contract. The Committee has no "rule of thumb" for total sales percentage, as impact determinations are made on the facts of each situation. In this situation, the percentage of sales which the contractor will lose is well below the percentage cited as the "rule of thumb" level and, even when consideration is given to the contractor's dependence on Government sales, does not reach a level which would be considered severe adverse impact. In addition, the contracting activity has informed the Committee that the other two buildings in the group will not close for renovation until April and December 1997, respectively, later than the contractor contended, which should give the contractor ample time to develop other business to replace business temporarily lost to the renovations.

The contractor also claimed that addition of the services at the Ariel Rios Building does not meet the legislative intent of the Committee's statute, the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46–48c, in regard to the labor operations to be performed. According to the contractor, the JWOD Act requires that 75 percent of the total labor operations to be performed in providing these services must be done by people with a severe disability.

The contractor has misconstrued the labor requirement in the JWOD Act. In order to qualify for participation in the JWOD Program, a nonprofit agency employing people with severe disabilities must employ such people for not less than 75 percent of the overall total of direct labor performed on commodities and services which the nonprofit agency provides, whether or not these commodities or services are provided to the Government under the JWOD Program. 41 U.S.C. 48b(4)(C). There is no statutory requirement for a specific percentage of direct labor on a JWOD contract, although it is anticipated that the designated nonprofit agency performing the services at the Ariel Rios Building will reach a 75 percent disabled direct labor level on that contract. Addition of these services to the Procurement List will thus create substantial work for people with disabilities, and is not a "front" for

awarding a contract to people without disabilities as the contractor contended. The statutory definition of direct labor, at 41 U.S.C. 48b(5), excludes activities such as supervision, administration, inspection and shipping, which are considered indirect labor by the Committee and not counted in assessing direct labor ratios.

The contractor also contended that the Committee has abused its authority to the disadvantage of small businesses and the competitive process of Government contracting. While the JWOD Program's share of Government contracts has grown in recent years, it is still only a very small part of total Government contracting, and is dwarfed by the share of Government contracts which goes to small businesses. The contractor's claim that the JWOD Program has permitted abuses of the competitive contracting process is based on the contractor's just-discussed misunderstanding of the JWOD Act's direct labor requirement, and is thus without foundation.

The contractor also attempted, in its comments relayed by a Member of Congress, to characterize the JWOD Act as requiring only that a Government agency give "priority consideration" to purchasing JWOD commodities and services, with the mandatory nature of such procurements coming only from a Committee regulation. However, the mandate comes directly from the JWOD Act, at 41 U.S.C. 48, which requires Government agencies intending to procure commodities or services on the Procurement List to buy them from a JWOD nonprofit agency, unless they are not available or are commodities available from Federal Prison Industries.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is a suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, Ariel Rios Federal Building, 12th & Pennsylvania Avenue, NW, Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–29957 Filed 12–7–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG96–20–000, et al.]

China U.S. Power Partners I, Ltd., et al.; Electric Rate and Corporate Regulation Filings

December 1, 1995.

Take notice that the following filings have been made with the Commission:

1. China U.S. Power Partners I, Ltd.

[Docket No. EG96–20–000]

On November 20, 1995, China U.S. Power Partners I, Ltd. ("CUPPI"), with its principal office at Church Street, Clarendon House, Hamilton HM11, Bermuda filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CUPPI is a limited liability company organized under the laws of Bermuda. CUPPI will be engaged indirectly through an Affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in owning, or both owning and operating a proposed coal-fired electric generating facility consisting of two electric generating units, each with a net rating of approximately 300,000 kilowatts to be located in the People's Republic of China and to engage in project development activities with respect thereto.

Comment date: December 21, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Cenergy, Inc.

[Docket No. ER94–1402–002]

Take notice that on November 9, 1995, Cenergy, Inc. (Cenergy) tendered for filing a letter supporting Cenergy's position in the above-referenced docket.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Mock Resources, Inc.

[Docket No. ER95–300–004]

Take notice that on November 15, 1995, Mock Resources, Inc. tendered for filing an amendment to its October 30, 1995 quarterly report filed in the above-reference docket.

4. Commonwealth Edison Company

[Docket No. ER95–901–000]

Take notice that on November 13, 1995, Commonwealth Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1694–000]

Take notice that on October 20, 1995, Consolidated Edison Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Greenwich Energy Partners, L.P.

[Docket No. ER96–116–000]

Take notice that on November 16, 1995, Greenwich Energy Partners, L.P. tendered for filing an amendment in the above-referenced docket.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Texas Utilities Electric Company

[Docket No. ER96–267–000]

Take notice that on November 2, 1995, Texas Utilities Electric Company (TU) tendered for filing three executed transmission service agreements (TSA's) with LG&E Power Marketing, Inc., Enron Power Marketing, Inc., and Electric Clearinghouse, Inc. for certain Economy Energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests effective dates for the TSA's that will permit them to become effective on or before the service commencement date under each of the three TSA's. Accordingly, TU Electric

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seeks waiver of the Commission's notice requirements. Copies of the filing were served on LG&E Power Marketing, Inc., Enron Power Marketing, Inc., and Electric Clearinghouse, Inc., as well as the Public Utility Commission of Texas.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Columbus Southern Power Company

[Docket No. ER96–340–000]

Take notice that on November 14, 1995, Columbus Southern Power Company tendered for filing a Notice of Cancellation of FERC Rate Schedule Nos. 13 and 38.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Company

[Docket No. ER96–364–000]

Take notice that on November 15, 1995, Kentucky Utilities Company tendered for filing information on transactions that occurred during July 1, 1995 through October 31, 1995, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER96–368–000]

Take notice that on November 15, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission two Service Agreements (the Agreements) between PP&L and American Municipal Power—Ohio (AMP-Ohio), dated November 1, 1995; and (2) Northeast Utilities Service Company, dated November 8, 1995.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1995), PP&L requests the Commission to make the Agreement effective as of the date of execution of each, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER96–85–000]

Take notice that on November 21, 1995 and November 28, 1995, Florida Power Corporation tendered for filing amendments in the above-referenced dockets.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. The Washington Water Power Company

[Docket No. ER96–367–000]

Take notice that on November 15, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Agreement for the sale of up to 130,000 megawatt hours of energy during the period January 15 through April 15 for each of the years 1996 and 1997 to the City of Seattle, Washington.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–368–000]

Take notice that on November 15, 1995, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Industrial Energy Applications, Inc. for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER96–369–000]

Take notice that on November 15, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Koch Power Services Inc. FPL requests an effective date of November 16, 1995.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER96–370–000]

Take notice that on November 15, 1995, Maine Public Service Company (Maine Public) tendered for filing an unexecuted Transmission Service Agreement for Network Service for Houlton Water Company under Maine Public's Transmission and Ancillary Services Tariff.

Maine Public has requested that the service agreement become effective on January 1, 1996 and requests waiver of the Commission's regulations regarding filing.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Cleveland Electric Illuminating Company

[Docket No. ER96–371–000]

Take notice that on November 15, 1995, Cleveland Electric Illuminating Company (CEI), tendered for filing its proposed FERC Tariff No. ____ under which it is proposing to sell capacity and energy to eligible purchasers for resale under competitive market conditions and Electric Power Sales Agreements between CEI and each of the following power marketers that desire to purchase power and energy from CEI at non-cost-based rates: A. Catex Vitol Electric, L.L.C., B. Citizens Lehman Power Sales, C. Enron Power Marketing, Inc., D. Louis Dreyfus Electric Power Inc.

CEI proposes to make the Tariff and each of the accompanying Electric Power Sales Agreements effective as of January 16, 1995.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Southern California Edison Company

[Docket No. ER96–385–000]

Take notice that on November 17, 1995, Southern California Edison Company (Edison), tendered for filing a Letter Agreement (Letter Agreement) with the City of Banning (Banning). The Letter Agreement modifies the Rated Capacity and Minimum Take Obligation referenced in the Supplemental Agreement to the 1990 Integrated Operations Agreement for the integration of Banning's entitlement in San Juan Unit 3, Commission Rate Schedule No. 248.28.

Edison requests an effective date of January 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER96–386–000]

Take notice that on November 17, 1995, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to National Fuel Resources, Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20925 Filed 12–07–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–342–000, et al. ER96–342–000, et al.]

Electric Rate and Corporate Regulation Filings

November 30, 1995.

Take notice that the following filings have been made with the Commission:

1. Seagull Power Services, Inc.

[Docket No. ER96–342–000]

Take notice that on November 13, 1995, Seagull Power Services, Inc. (SPS), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective January 7, 1996.

SPS intends to engage in electric power and energy transmissions as a marketer and a broker. In transactions where SPS sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither SPS nor any of its affiliates are in the business of generating, transmitting, or distributing electric power. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER96–343–000]

Take notice that on November 13, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Energy Services, Inc. and Delhi Energy Services, Inc. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provides non-firm transmission service under their Transmission Service Tariff.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER96–344–000]

Take notice that on November 13, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Associated Power Services, Inc. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Indeck Pepperell Power Associates, Inc.

[Docket No. ER96–345–000]

Take notice that on November 13, 1995, pursuant to Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission), 18 CFR 385.205, 385.207, Indeck Pepperell, Inc. (Indeck Pepperell) filed a petition for waivers, blanket approvals and an order approving its Rate Schedule No. 1, to be effective within 60 days of the date of filing or on the date of the Commission's Acceptance Letter, whichever is earlier.

Indeck Pepperell intends to sell energy and capacity from the Indeck Pepperell 38 MW combined-cycle cogeneration facility located in Pepperell, Massachusetts. The rates charged by Indeck Pepperell will be mutually agreed upon by the parties to each particular transaction.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER96–347–000]

Take notice that on November 14, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Industrial Energy Applications, Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Industrial Energy Applications, Inc.* pursuant to the tariff, and for the sale of capacity and energy by *Industrial Energy Applications, Inc.* to WestPlains Energy-Kansas pursuant to *Industrial Energy Applications, Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Industrial Energy Applications, Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER96–348–000]

Take notice that on November 14, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division,

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Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Industrial Energy Applications, Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Industrial Energy Applications, Inc.* pursuant to the tariff, and for the sale of capacity and energy by *Industrial Energy Applications, Inc.* to Missouri Public Service pursuant to *Industrial Energy Applications, Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Industrial Energy Applications, Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER96–349–000]

Take notice that on November 14, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Tennessee Valley Authority*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Tennessee Valley Authority* pursuant to the tariff, and for the sale of capacity and energy by Tennessee Valley Authority to Missouri Public Service.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER96–350–000]

Take notice that on November 14, 1995, Idaho Power Company, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a copy of its proposed FERC Electric Tariff, Original Volume No. 3 (Point-to-Point Transmission Service Tariff) and its proposed FERC Electric Tariff, Original Volume No. 4 (Network Integration Transmission Service Tariff).

Idaho Power Company requests that an effective date of February 1, 1996 be assigned to the Tariff.

Copies of this filing were supplied to the Idaho Public Utility Commission, the Public Utility Commission of Oregon, the Wyoming Public Utility Commission, and the Nevada Public Utility Commission.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER96–351–000]

Take notice that on November 14, 1995, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and MidCon Power Services Corp. (MidCon). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules has been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 15, 1995. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER96–352–000]

Take notice that on November 14, 1995, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Koch Power Services Inc. (Koch). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules has been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 15, 1995. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER96–353–000]

Take notice that on November 14, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated October 1, 1995, to the Interconnection Agreement, dated June 1, 1994 between Louis Dreyfus Electric Power, Inc. (Dreyfus) and PSI.

The First Supplemental Agreement revises the definitions for Emission Allowances and provides for Cinergy Services to act as agent for PSI. The following Exhibit has also been revised:

B Power Sales by Cinergy

Cinergy and Dreyfus have requested an effective date of December 1, 1995.

Copies of the filing were served on Louis Dreyfus Electric Power, Inc., the Connecticut Dept. of Public Utility Control, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER96–355–000]

Take notice that on November 14, 1995 Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly, the Companies) submitted a Transmission Service Agreement, dated October 30, 1995, establishing Coastal Electric Services Company (CES) as a customer under the terms of the ERCOT Interpool Transmission Service Tariff.

The Companies request an effective date of November 15, 1995, for the service agreement. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of the filing were served upon CES and the Public Utility Commission of Texas.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER96–356–000]

Take notice that on November 14, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly, the Companies) submitted a Transmission Service Agreement, dated October 30, 1995, establishing Coastal Electric Services Company (CES) as a customer under the terms of the ERCOT Coordination Transmission Service Tariff.

The Companies request an effective date of November 15, 1995, for the service agreement. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing have been served upon CES and the Public Utility Commission of Texas.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER96–357–000]

Take notice that on November 14, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (jointly, the Companies) submitted a Transmission Service Agreement, dated October 30, 1995, establishing Coastal Electric Services Company (CES) as a customer under the terms of the Companies' SPP Interpool Transmission Service Tariff.

The Companies request an effective date of November 15, 1995, for the Service Agreement. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon CES, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Oklahoma Corporation Commission.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Energy Resource Management Corporation

[Docket No. ER96–358–000]

Take notice that on November 14, 1995, Energy Resource Management Corporation (ERM), tendered for filing pursuant to 18 CFR 35.12, an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1.

ERM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ERM purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, ERM will be functioning as a marketer. In ERM's marketing transactions, ERM proposes to charge rates mutually agreed upon by the Parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where ERM does not take title to the electric power and/or energy, ERM will be limited to the role of a broker and charge a fee for its services. ERM is not in the business of producing or transmitting electric power. ERM does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed upon prices. Rate Schedule No. 1 also provides that no sales may be made to affiliate.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. CMEX Energy, Inc.; Global Petroleum Corp.

[Docket No. ER96–359–000]

Take notice that on November 3, 1995, CMEX Energy, Inc. (CMEX) tendered for filing pursuant to 18 CFR 35.15 a notice of withdrawal of its FERC Electric Rate Schedule No. 1, effective no later than sixty (60) days from the date of filing. CMEX is canceling its rate schedule so that Global Petroleum Corp. (Global) can take over its electric power marketing business. Global, in turn, tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Global intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Global sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Global is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Kentucky Utilities Company

[Docket No. ER96–363–000]

Take notice that on November 13, 1995, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and KOCH Power Services, Inc. under its TS Tariff. KU requests an effective date of October 13, 1995.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER96–365–000]

Take notice that on November 15, 1995, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and Industrial Energy Applications, Inc. under its TS Tariff. KU requests an effective date of October 20, 1995.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29912 Filed 12–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11372–001 Illinois]

Thomas J. Collins and Andrew Blystra; Notice of Surrender of Preliminary Permit

December 4, 1995.

Take notice that Thomas J. Collins and Andrew Blystra, permittee for the Oregon Project No. 11372, located on the Rock River in Ogle County, Illinois, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 27, 1993, and would have expired on March 31, 1996. The permittee states that the project would be economically infeasible.

The permittee filed the request on November 21, 1995, and the preliminary permit for Project No. 11372 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29913 Filed 12–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96-1589-000 and EL96-17-000]

Citizens Utilities Company; Notice of Initiation of Proceeding and Refund Effective Date

December 5, 1995.

Take notice that on November 30, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96-17-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96-17-000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29947 Filed 12-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER95-1638-000]

PacifiCorp; Notice of Filing

December 4, 1995.

Take notice that on November 8, 1995 and November 14, 1995 Black Hills Power & Light Company tendered for filing amendments in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29948 Filed 12-7-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-99-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

December 4, 1995.

Take notice that on November 30, 1995, Transcontinental Gas Pipe Line Corporation ("Transco"), P.O. Box 1396, Houston, Texas 77251, filed in the above an abbreviated application pursuant to Section 7(c) and Section 7(b) of the Natural Gas Act and the Regulations of the Federal Energy Regulatory Commission ("Commission") for (1) a certificate of public convenience and necessity authorizing certain Tombigbee River replacement crossings and certain interconnections at that location for downstream delivery of gas to an industrial plant, and (2) an order permitting and approving the abandonment of existing facilities at the same location. For the reasons described herein, Transco requests a certificate and construction clearance by January 8, 1996.

Transco states that it has four pipelines across the Tombigbee River in Alabama 30-inch diameter Main Line A, 30-inch diameter Main Line B, 36-inch diameter Main Line C and 42-inch diameter Main Line D. This river crossing is 29.03 miles east of the location where Transco's system crosses the Mississippi-Alabama state line. At this location, the Tombigbee River forms the boundary between Choctaw and Marengo Counties, Alabama. Transco states that all gas produced onshore and offshore, Texas and Louisiana, onshore Mississippi and the Mobile Bay offshore Alabama area which moves on Transco's system to Transco's markets in the Deep South, Atlantic Seaboard and eastern markets flows through this Tombigbee River crossing.

Transco states that because of chronic mass erosion of the river banks, Main Line C is exposed and subject to potential physical damage from boat and barge traffic. Main Line D is not yet exposed, but Transco is concerned that it will become exposed because of the continuing bank erosion.

Transco states that it cannot perform these replacements pursuant to Section 2.55(b) of the Regulations because of the Commission's clarification of Section 2.55(b) in the order issued on May 12, 1994 in Arkla Energy Resources Company, Docket No. CP91-2089-000 (67 FERC ¶ 61,173) (replacements outsides of existing right-of-way cannot be performed pursuant to Section 2.55(b)). Transco states that it is imperative that Transco complete the new crossings soon to ensure that gas from the production areas described above is able to flow to Transco's markets. Transco states that it proposes to install approximately 2,000 feet of new 36-inch diameter Main Line C by horizontal directional drilling under the Tombigbee River, at the location of its existing pipeline crossings of the Tombigbee River.[1] The alignment of the new Main Line C will parallel Main Line B (installed in 1991 by horizontal directional drilling) with a spacing of approximately 75 feet to the south of Main Line B. Approximately 950 feet of 36-inch diameter pipe will be conventionally installed by trenching from the entrance and exit of the bore and tied in to existing Main Line C.

Transco states that it also proposes to install approximately 2,300 feet of new 42-inch diameter Main Line D by horizontal directional drilling under the Tombigbee River. Approximately 500 feet of 42-inch diameter pipe will be conventionally installed from the entrance and exit of the bore and tied in to existing Main Line D. The alignment of the Main Line D will parallel the new Main Line C with a spacing of approximately 75 feet to the south of Main Line C.

Transco states that the proposed replacements will restore the long-term integrity of Transco's transmission system at the Tombigbee River crossings. Since 36-inch and 42-inch diameter crossings are being replaced by identical 36-inch and 42-inch diameter crossings, system capacity across the Tombigbee River will remain unchanged at 33,639,606 MCFD. The existing shallow, conventionally installed Main Lines C and D at this location will be retired—portions by removal and portions in place.

The cost of installation of new Main Line C is estimated to be $2,029,007, and the cost of installation of new Main Line D is estimated to be $2,925,170.

It is stated that Transco needs to replace Main Line C as soon as possible because of its vulnerable condition. Coming quickly thereafter, Transco plans to replace Main Line D beginning in May 1996 because of Transco's concern that its condition could rapidly worsen.

Transco states that issuance of a certificate to Transco and construction clearance by January 8 is justified for two reasons: (1) the above-described need for security of gas service to Transco's market areas, and (2) the de minimis impact on the environment of the crossing project (as described below). With respect to the environment, Transco states that the following are the significant points:

1. On the east side of the river (where the drilling rig will be set up) temporary work space will occupy 8.82 acres. Of this east side work space only 0.54 acre is presently forested (0.25 acres is forested wetland). The remainder of the work space on the east side is located either on existing permanent right-of-way or in a cultivated field, both of which have previously been cleared.

On the west side of the river (where crossing segment fabrication and pre-testing will occur) temporary work space will occupy 22.94 acres. Of this west side work space only 3.12 acres is presently forested (2.56 acres is forested wetland). The remainder of the work space on the west side is located either on existing permanent right-of-way or in a cultivated field, both of which have previously been cleared.

In summary, areas requiring additional clearing for the installation of Main Lines C and D are relatively minor. Of these additional cleared areas only 3.66 acres are forested and of those only 2.81 acres are forested wetland.

2. Clearance has been received with respect to endangered/threatened species from the U.S. Fish and Wildlife Service. The Alabama Natural Heritage Program provided Transco with a list of candidate and protected species within the general area of the project. Transco evaluated this list in the context of the project to ensure that the project will not impact these species; the evaluation verified that the project will not impact these species.

3. Clearance has been received from the Alabama State Historical Preservation Officer ("SHPO") with respect to cultural resources related to the project area. There is a known archaeological site on the east bank of the Tombigbee River to the north of the project area that will not be impacted by this project; thus, the SHPO has no concern with regard to this site. Transco has contacted several Native American groups. Transco states that it does not consider in situ replacement a practical option because such conventional replacement would be subject to the same erosive forces of the river.

4. Transco states that the proposed installation and removals will improve the visual or aesthetic value of the river banks at the Tombigbee River crossing by allowing native revegetation and dynamics of the river to control the natural succession of the banks at the crossing. Transco will implement measures to restore and stabilize the construction work spaces and abandoned rights-of-way.

Therefore, Transco states that in view of (1) the essential need for the Tombigbee River crossings to be able to move gas from Transco's production areas to Transco's market areas, and (2) the de minimis environmental impact of such project, Transco requests the Commission to issue a certificate and construction clearance by January 8, 1996 so that security of the Tombigbee River crossings can be assured as soon as possible. By this application, Transco also seeks authorization to abandon in place and by removal the portions of its Main Lines C and D at the Tombigbee River which will be replaced. Gas transmission across the Tombigbee River will be unaffected by these abandonments. The cost of the Line C removal work is estimated to be $140,000. The cost of the Line D removal work is estimated to be $201,540.

It is further stated that on the west bank at the location of the Tombigbee River crossings, Transco has interconnections on Main Lines C and D that enable gas to flow into a meter and regulator (M&R) station for downstream delivery to a plant owned by American Can Company ("American Can"), which is north of the crossings on the west bank. As a result of the replacements of Lines C and D, as above described, a reconfiguration of the American Can interconnections will be necessary. One new interconnection with the M&R station will involve conventional installation of approximately 1,200 feet of 4-inch diameter pipe from the M&R station west to a tap on the new segment of Line C. This will effectuate delivery of gas from of Line C to the M&R station. A second new interconnection will involve conventional installation of approximately 30 feet of 4-inch diameter pipe from a new tap on Line D to a tee near the western terminus of the above-described 1,200-foot 4-inch line. This will effectuate delivery of gas from Line D to the M&R station.

The estimated cost of installation of the 1,200-foot line is $154,718. The estimated cost of installation of the 30-foot line is $83,924.

By this application, Transco also seeks authorization to abandon by removal the interconnections between existing Main Lines C and D and the M&R station. Gas supply to the American Can plant will be unaffected by these abandonments. The estimated cost of removal of the interconnection between Main Line C and the M&R station is $5,000. The estimated cost of removal of the interconnection between Main Line D and the M&R station is $12,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the procedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29915 Filed 12-7-95; 8:45 am]

BILLING CODE 6717-01-M

[1] Transco states that directionally drilled pipelines under rivers are significantly more secure than the older pipelines which are installed by way of trenching the river bed. The 36-inch and 42-inch pipeline crossings will be at an approximate depth of 45 feet beneath the Tombigbee River navigation channel.

[Docket No. CP96-10-001]

Transwestern Pipeline Company; Notice of Amendment to Application

December 4, 1995.

Take notice that on November 29, 1995, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251-1188 filed an amendment (Amendment) to its original application in Docket No. CP96-10-000, which was filed pursuant to Section 7(c) of the Natural Gas Act, the purpose of which is to conform Transwestern's application to the following: (1) The Purchase and Sale Agreement and Ownership and Operating Agreement executed November 3, 1995 between Transwestern and Northwest Pipeline Corporation (Northwest); and (2) Northwest's application for abandonment authorization filed on

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November 13, 1995 in Docket No. CP96-60-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that on September 22, 1995, Transwestern and Northwest executed a Letter of Intent (LOI) providing for the purchase by Transwestern and the sale by Northwest of a 77.7 percent ownership interest in Northwest's south-end mainline extension facilities extending from the Ignacio Compressor Station near Ignacio, Colorado to the Blanco Hub near Bloomfield, New Mexico (the La Plata Facilities). It is stated that the LOI provides that the exact level of interest and capacity was subject to change in order to permit Northwest to serve changes in receipt and delivery points which were made by Northwest's customers as of October 20, 1995.

Transwestern states that in its application, Northwest would retain 24,000 Dth/d of south flow delivery capacity, but Transwestern did not specify a specific amount of north flow delivery capacity which would be retained by Northwest. It is stated that in the Sales Agreement, Northwest and Transwestern agreed that Northwest would retain 23,811 Dth/d of south flow delivery capacity and 212,788 Dth/d of north flow delivery capacity, subject to adjustment to reflect in-kind fuel reimbursement. Under the terms of the Sales Agreement, Transwestern will acquire all capacity on the facilities not specifically retained by Northwest, which will include approximataly 276,300 Dth/d of north to south capacity through the La Plata A compressor. Inasmuch as Transwestern's application listed such figure as 276,000 Dth/d, Transwestern amends that figure to reflect that it will hold 276,300 Dth/d of north to south capacity through the La Plata A compressor.

In the text of its application, Transwestern stated that it would take assignment of seven firm transportation contracts subscribing a total of 201,000 Dth/d of capacity. However, since the actual capacity subscribed under the seven firm contracts to be assigned is 201,900 Dth/d, Transwestern proposes to amend the application to reflect the actual figure.

Transwestern states that its application reflected a total estimated purchase price of $21 million, which included Transwestern's payment of a portion of the cost of certain necessary modifications to be constructed prior to closing. The application stated that the total cost of such modifications was $4.9 million. It is stated that in the Sales Agreement, the list of modifications was amended, which resulted in a reduction in the total cost to construct such facilities from $4.9 million to $3.9 million. In addition, it is stated that the Sales Agreement contains minor revisions to the property description and net book value contemplated by the LOI, which in turn also affected the purchase price.

In addition, under the Sales Agreement, Transwestern is also required to reimburse Northwest for 77.7 percent of the reasonable cost incurred by Northwest prior to closing to overhaul the La Plata A compressor station, with Transwestern's cost not to exceed $300,000. Transwestern states that such cost is to be added to the purchase price to be paid by Transwestern at closing for the La Plata Facilities.

Transwestern contends that the Sales Agreement further obligates Transwestern to pay 100 percent of the cost for Northwest to install, prior to closing, a regulator at the interconnection of the La Plata Facilities at El Paso-Blanco. It is stated that the regulator will become a part of the La Plata facilities to be acquired by Transwestern at closing, but is not included as part of the necessary modification. Transwestern states that the total cost for such regulator is estimated to be $346,000.

Transwestern also seeks to have the application amended to reflect the revised estimated purchase cost of $20.6 million. In addition, Transwestern states that the depreciation expense and other taxes have been reduced to reflect the lower purchase price for the La Plata Facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 26, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29914 Filed 12-7-95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5343-4]

Agency Information Collection Activities Under OMB Review; Approval of State Coastal Nonpoint Pollution Control Programs Under CZARA Section 6217

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the extension for the currently approved Information Collection Request (ICR) for the Approval of State Coastal Nonpoint Pollution Control Programs under CZARA Section 6217 described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR extension describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before January 8, 1996, to Sandy Farmer, Mail Code 2136, Regulatory Management Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1569.03.

SUPPLEMENTARY INFORMATION: *Title:* Approval of State Coastal Nonpoint Pollution Control Programs under CZARA Section 6217 (OMB Control No. 2040-0153; EPA ICR No. 1569.03). This is a request for extension of a currently approved collection.

Abstract: The Program Development and Approval Guidance implements Section 6217 of the 1990 Coastal Zone Management Act Reauthorization Amendments. The guidance requires 24 coastal States and 5 coastal Territories with approved Coastal Zone Management Programs to submit Coastal Nonpoint Programs to EPA and NOAA for joint review in July 1995. This one-time submittal will be used to determine if States and Territories receiving Clean Water Act Section 319 and Coastal Zone Management Act Section 306 Federal grants will face reductions.

The original Information Collection Request estimated that the reporting burden to develop coastal nonpoint programs under the Program Development and Approval Guidance would average 1,874 hours per response (29 respondents), including the time for reviewing instruction, searching existing data sources, completing and reviewing the information, and preparing the final report. Based on initial reviews of many of the Coastal Nonpoint Programs that have been submitted for review, EPA and NOAA anticipate that many programs are likely to receive conditional approvals. These conditional approvals may require States and Territories to submit additional information at a later date prior to receiving final program approval. The extension for the currently approved ICR will allow States to complete development of their programs and submit their programs to EPA and NOAA for final program approval by fulfilling any conditions that the Federal agencies place on final program approval.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/27/95 (60 FR 49833).

Burden Statement: Because the coastal States and Territories have completed a substantial majority of their program development at this time, EPA estimates that the remaining reporting burden will be approximately 20 percent of the original burden estimate, or an average of approximately 375 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Coastal States and Territories.

Estimated Number of Respondents: 29.

Frequency of Response: Once for each affected program element.

Estimated Total Annual Hour Burden: 3,625 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1569.03 and OMB Control No. 2040-0153 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M St., SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: December 5, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95-29993 Filed 12-7-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5339-9]

Agency Information Collection Activities up for Renewal; New Source Performance Standards for Subparts Db, Ea, EE, H, VV, L and Y

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before February 6, 1996.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance. People interested in getting copies of or making comments about any of these ICRs may contact the Office of Compliance, Mail Code: 2224A, 401 M Street SW., Washington, DC 20460. This information may also be acquired electronically through the Enviroene Bulletin Board, 703-908-2092 or the Enviroene WWW/Internet Address, http//wastenot.inel.gov./envirosense/. All responses and comments will be collected regularly from Enviroene.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick (202) 564-7054, for NSPS Subpart Db; Joyce Chandler at (202) 564-7073, for NSPS Subpart Ea; Gregory R. Waldrip, (202) 564-7024, or via e-mail (/ waldrip>gregory@epamail.epa.gov), for NSPS Subpart EE; Tracy Back, (202) 564-7076, facsimile number (202) 564-0009, for NSPS Subpart H; Marcia Mia at (202) 564-7042, for NSPS Subpart VV, facsimile number (202) 564-0037; Maria Malave at (202) 564-7027 or via e-mail (malave.maria@epamail.epa.gov.), for NESHAP Subpart L; Rafael Sanchez at (202) 564-7028 or via e-mail (sanchez.rafael@epamail.epa.gov.) for NESHAP Subpart Y; and Ted Coopwood at (202) 564-7058, for NESHAP Subparts L and Y. Unless otherwise indicated above, the facsimile number for all contacts is (202) 564-0050.

NSPS Subpart Db Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart Db, or each steam generating unit that commences construction, modification or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million BTU/hour).

Title: NSPS Subpart Db: Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, OMB number 2060-0072, expires April 30, 1996.

Abstract: Owners and operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup;

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notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

An owner or operator subject to the NO_x standard who seeks to demonstrate compliance with these standards through the monitoring of steam generating unit operating conditions under the provisions of § 60.48b(g)(2) shall submit to the Administrator for approval a plan that identifies the operating conditions to be monitored under § 60.48b(g)(2) and the records to be maintained under § 60.49b(j). The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day, and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for each calendar quarter. For affected facilities that combust residual oil, the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter.

For facilities subject to the opacity standard of the regulation, the owner or operator shall maintain records of opacity. The owner or operator subject to the NO_x standards of the regulation shall maintain records for each steam generating unit operating day. The owner or operator of selected facilities are required to submit excess emission reports for any calendar quarter during which there are excess emissions from the affected facility. In periods where there are no excess emission reports, a semiannual report must be submitted stating that no excess emissions occurred during the semiannual period. The owner or operator of any affected facility subject to the continuous monitoring requirements for nitrogen oxides under § 60.48(b) shall submit a quarterly report containing information recorded in accordance with § 60.49b(i). The owner or operator of any affected facility subject to the sulfur dioxide standards under § 60.42b shall submit written reports to the Administrator for every calendar quarter in accordance with § 60.49b(j). For each affected facility subject to the compliance and performance testing requirements of § 60.45b, certain information must be reported to the Administrator. Quarterly reporting of emission data is appropriate for Subpart Db sources due to their large emissions of sulfur dioxide, nitrogen oxides, and particulates.

For each affected facility subject to the sulfur dioxide standards under § 60.42b for which the minimum amount of data required under § 60.47b(f) were not obtained during a calendar quarter, certain information must be reported to the Administrator. If a percent removal efficiency by fuel pretreatment is used to determine the overall percent reduction under § 60.45b, the owner or operator of the affected facility shall submit a signed statement with the quarterly report containing certain information.

The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator selected information regarding fuel nitrogen content and emission tests on a quarterly basis. The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier which certify that the oil meets the definition of distillate oil as defined in § 60.41b.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. Both the quarterly reports and semiannual reports (where appropriate) are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1992 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

This estimate is based on the assumption that there would be 58 new affected facilities each year and that there were approximately 464 sources in existence for the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart Db are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (330 person-hours), 24-hour test for gas units (250 person-hours). It is assumed that 20% of tests are repeated due to failure. The burden for demonstration of continuous emission monitoring system (CEMS) is: 150 person-hours for SO_2, 100 person-hours for PM, 350 person-hours for NO_x. Repeat demonstration of CEMS is: 150 person-hours for SO_2, 100 person-hours for PM, 350 person-hours for NO_x. Annual compliance tests for NO_x are estimated at 250 person-hours. Appendix F annual accuracy test estimates are: 148 person-hours for SO_2, and 146 person-hours for NO_x. Appendix F quarterly audit estimates for SO_2 are: 125 person-hours for in situ, 36 person-hours for extractive, and for Appendix F quarterly audit, NO_x: for in situ (125 person-hours), for extractive (36 person-hours) (*Assume that 25% of units have an in situ CEMS*). Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (2 person-hours), Monitoring plan (4 person-hours), Notification of initial performance test: for SO_2 (2 person-hours), for PM (2 person-hours), for NO_x (2 person-hours), Report of initial performance test: for SO_2 (16 person-hours), for NO_x (16 person-hours), Notification of CMS demonstration: for SO_2 (2 person-hours), for PM (2 person-hours), for NO_x (2 person-hours), Quarterly reports for SO_2 (16 person-hours), Quarterly reports for PM: excess (16 person-hours), no excess (8 person-hours), Quarterly reports for NO_x: CEMS compliance (16 person-hours), excess (16 person-hours), no excess (8 person-hours), Appendix F quarterly reports: for SO_2 (11 person-hours), for NO_x (11 person-hours). Recordkeeping requirements include the following: Maintaining records of startup, shutdown, malfunction (1.5 person-hours), Maintaining records of all measurements (1.5 person-hours). Records must be kept for a period of two years.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart Ea Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to the NSPS Subpart Ea, Municipal Waste Combustors (MWCs) with the exceptions listed in 40 CFR Part 60.50a (c), (d) and (g). The Subpart Ea standards of 40 CFR Part 60 apply to MWC's units with a capacity greater than 225 megagrams per day (250 tons/day) of municipal solid waste or refuse-derived fuel, for which construction, modification, or reconstruction commenced between December 20, 1989 and September 20, 1994. MWC's that are constructed, modified, or reconstructed after September 20, 1994 will be subject to the NSPS Subpart Eb.

Title: NSPS Subpart Ea, Municipal Waste Combustors, OMB number 2060–0210, expires May 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.50a, Subpart Ea, New Source Performance Standards for Municipal Waste Combustors. Owners or operators of units subject to Subpart Ea must provide the EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this Subpart must install continuous monitoring systems (CMS) to monitor specified operating parameters to ensure that good combustion practices are implemented on a continuous basis. Owners or operators must submit quarterly and annual compliance reports. The notifications and reports enable the EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained, and to schedule inspections. This information notifies the Agency when a source becomes subject to the regulations and informs the Agency of the source's compliance status when it begins operation. Later the quarterly and annual reports apprise the Agency of the sources' compliance status. The operating parameters specified for the continuous monitoring systems (CMS) ensure that good combustion practices are implemented on a continuous basis.

In the Administrator's judgement, emissions of the MWC metals, the MWC organics, the MWC acid gases, and nitrogen oxides cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111.

The control of emissions of MWC metals, MWC organics, MWC acid gases and nitrogen oxides requires not only the correct installation, operation, and maintenance of the equipment, but also properly trained supervisors and equipment operators.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each to the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act.

The estimate was based on the assumption that there would be no new facilities since any MWC's constructed, modified, or reconstruction after September 20, 1994 would be subject to Subpart Eb not Subpart Ea and that there are an average of 70 sources in existence for the three years covered by the ICR. It is estimated that take: 51,352 person-hours to fill out quarterly and annual reports (assuming 20% of the sources will have at least one quarter with excess emissions) and 22,424 person-hours to enter information for records, for employee review of operation manual, and reading reporting requirements.

The average burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 73,776 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average burden to industry over the next three years of the ICR is estimated to be $2,253,119.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

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information; and transmit or otherwise disclose the information.

NSPS Subpart EE Supplementary Information

Affected entities: Entities potentially affected by this action are each metal furniture surface coating operation in which organic coatings are applied and for which construction, modification or reconstruction commenced after the date of proposal, November 28, 1980. A surface coating operation includes the coating application station(s), flash-off area, and curing oven.

Title: NSPS for Metal Furniture Surface Coating (Subpart EE)—Information Requirements; OMB No.: 2060–1006; Expiration date: April 30, 1998.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, of any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review, and, if appropriate revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions form the metal furniture surface coating industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of VOC emissions from metal furniture surface coating operations requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions from the coating of metal furniture surfaces result from the application and curing or drying of organic coatings on the surface of each metal furniture part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

Information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor effective operation of the capture system and control devices, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for no exceedances of the monitoring parameters provides a good indication of a source's compliance status.

The information collected from record keeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. In order to ensure compliance with these standards, adequate record keeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semi-annually.

Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to achieve compliance with the NSPS.

The following table documents the computation of individual burdens for each of the record keeping and reporting requirements applicable to the industry. The individual burdens are expressed under standardized headings believed to be consistent with the concept of burden under the Paperwork Reduction Act. Where appropriate, specific tasks and major assumptions have been identified.

Source Data and Information Requirements—Surface Coating of Metal Furniture (NSPS Subpart EE)

Requirement	*Regulatory Reference*
Notification of construction or reconstruction	40 CFR 60.7(a)(1)
Notification of anticipated date of initial startup	40 CFR 60.7(a)(2)
Notification of actual date of initial startup	40 CFR 60.7(a)(3)
Notification of physical or operational change	40 CFR 60.7(a)(4)
Notification of date of demonstration of continuous monitoring system (N/A)	40 CFR 60.7(a)(5)
Maintain records of startups, shutdowns, malfunctions, periods where continuous monitoring system is inoperative	40 CFR 60.7(b)
Maintain continuous monitoring system and performance test records	40 CFR 60.7(d)
Report of initial performance test	40 CFR 60.8(a), 60.315(a)
Install, calibrate, maintain, and operate temperature monitoring device	40 CFR 60.314(a)
Install equipment necessary to determine volume of VOC solvent recovered	40 CFR 60.314(b)
Identify and record periods of low incinerator temperature	40 CFR 60.315(b)(2), (b)(3)
Identify and record excess emissions	40 CFR 60.315(b)(1)
Maintain daily records of incinerator combustion temperature, or amounts of solvent recovered	40 CFR 60.315

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The burden has been estimated at 60 hours for performance testing. Notification of construction/modification, anticipated start-up, initial performance test, actual performance test date, no excess emissions, size cut offs exceeded are estimated to take two hours. Reports of monitoring exceedances and periods of noncompliance are estimated to require 16 hours. Notification of actual start-up is estimated to require one hour. An hourly wage of $14.50 plus 110 percent overhead costs, which equals $30.45 has been used in the previous ICR. Other assumptions include; total of 30 lines constructed per year, 20 percent of initial performance tests must be repeated due to failure, 80 percent of lines report no excess emission semiannually (.8 x 705 = 564), no lines projecting application of less than 3,842 liters of coating are expected to exceed the cutoff in the next three years, one occurrence of startup, shutdown or malfunction per week (50 weeks per year), and operating parameters are recorded 350 days per year.

Burden Statement: The individual burdens for each of the record keeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from standard estimates based on EPA's experience with other standards. The average annual burden to industry over the next three years from these record keeping and reporting requirements is estimated at 128,213 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $3,904,086. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart H Supplementary Information

Affected entities: are those plants that produce sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

Title: NSPS Subpart H, Sulfuric Acid Plants, OMB number 2060–0041, expires June 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.80, Subpart H, New Source Performance Standards for Sulfuric Acid Plants. This information notifies the Agency when a source becomes subject to the regulations, and informs the Agency that the source is in compliance when it begins operation. The Agency is informed of the sources' compliance status by semiannual reports. The calibration and maintenance requirements aid in a source remaining in compliance.

In the Administrator's judgement, SO_2 and acid mist emissions from the manufacture of sulfuric acid cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of SO_2 and acid mist requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. Sulfur dioxide and acid mist emissions from sulfuric acid plants result from the burning of sulfur or sulfur-bearing feedstocks to form SO_2, catalytic oxidation of SO_2 to SO_3, and absorption of SO_2 in a strong acid stream. These standards rely on the capture of SO_2 and acid mist by venting to a control device.

Owners or operators of Sulfuric Acid Plants subject to NSPS are required to make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous emission monitoring system (CEMS); notification of the date of the initial performance test; and the results of the initial performance test. After the initial recordkeeping and reporting requirements, semiannual reports are required if there has been an exceedance of control device operating parameters.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notification, reports and records are required, in general, of all sources subject to NSPS.

Four new facilities are estimated to become subject to NSPS Subpart H annually.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The current ICR estimates the total annual burden to industry to be $675,478.44. This is based on a total average annual burden of 22,183.2 person hours for 94 respondents with an average wage of $14.55 per hour and 110% overhead. The burden is greatest for facilities in their first year of operation. The burden in the first year for reporting requirements is estimated to be 455.80 hours per facility. The burden for future years is greatly reduced because the initial notifications and initial performance tests are not required in subsequent years. The estimated burden for record keeping requirements for subsequent years per respondent is 140 person hours. This estimate includes the time to enter information regarding

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records of operating parameters and calculations/record of conversion factors.

The following is a breakdown of burden used in the ICR. The estimated burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operation changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of CMS. The ICR uses 300 burden hours for the initial performance test. It is assumed that 20% of all affected facilities will have to repeat performance tests. The ICR uses four hours for performing the Reference Method 9 Test. It is estimated that performance of Reference Method 9 Test will occur 1.2 times per facility a year. The ICR uses 40 hours to write an excess emission reports—it is assumed this will take place twice a year.

The recordkeeping burden is estimated to be 0.25 hours to enter information regarding records of operating parameters. It is assumed this will take place 350 times a year per facility. The burden to enter information regarding calculation/record of conversion factors is 0.5 hours. It is assumed this will take place 1,050 times a year per facility.

NSPS Subpart VV Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to Subpart VV, VOC Equipment Leaks in the Synthetic Organic Chemicals Manufacturing Industry with the exceptions listed in 40 CFR Part 60.480(d).

Title: NSPS Subpart VV, VOC Equipment Leaks in the SOCMI, OMB number 2060–0012, expires May 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.480, Subpart VV, VOC Equipment Leaks in the SOCMI. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources ability to identify and eliminate leaking equipment. The standards apply to specific pieces of equipment contained within a process unit in the SOCMI, including pumps in light liquid service, compressors, pressure relief devices in gas/vapor, light or heavy liquid service, sampling connection systems, open-ended valves or lines, valves in gas/vapor and light liquid service, pumps and valves in heavy liquid service, and flanges and other connectors.

In the Administrator's judgement, VOC emissions from equipment leaks in the SOCMI cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 11 of the Clean Air Act.

The owners or operators of the affected facilities described must make the following one time only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual date of startup, notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies (in this case, VOC), notification of the initial performance test, and the results of the performance test. The only regular report required by this Subpart is a semiannual excess emissions summary.

Owners or operator are also required to maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of an affected facility, or malfunctions of the air pollution control device. These notifications, reports and records are required, in general, of all sources subject to the NSPS.

Recordkeeping requirements specific to equipment leaks in the SOCMI support the facility's leak detection and repair program and include identification of leaking equipment; a log of leaking equipment; a log of information relating to the closed vent systems and control devices; a log identifying all equipment subject to the standards; a log of valves designated as difficult-to-monitor or unsafe-to-monitor; a log of valves complying with skip period leak detection and repair alternative standard; a log of criterion established which indicates a failure of the seal system, barrier system, or both for each barrier fluid system; dates of compliance tests and results; and for determining exemptions, an analysis of design capacity of affected sources or demonstration that the equipment is not in VOC service and a statement listing the feed or raw materials and products.

Reporting requirements specific to equipment leaks in the SOCMI consist of an initial semiannual report including process unit identification and number of valves, pumps and compressors subject to the standards. All semiannual reports are to include process unit identification, number of components leaking and not repaired, dates of process unit shutdowns, and revisions to items submitted in initial semiannual report. The source is also required to notify the Administrator of the election to use an alternative standard for valves ninety days before implementing the provision.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act.

The estimate was based on the assumption that there would be 166 new affected facilities each year and that there would be an annual average of 1909 affected facilities over each of the next three years covered by the ICR. For the new sources, it was estimated that it would take: 166 person hours to read the instructions, 9562 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 1304 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 15,272 person hours to fill out semiannual reports and 152,720 person hours to enter information for records of operating parameters.

The annual average burden to industry for the three year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 179,104 person hours. The respondents costs were calculated on the basis of $14.50 per hour plus 100% overhead. The total annual burden to industry is estimated at $5,453,716.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third party burden is associated with this ICR.

NESHAP Subparts L and Y Supplementary Information

Affected entities: Entities potentially affected by this action are coke by-product recovery plants (NESHAP Subpart L) and storage vessels that store benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, ASTM D 835–85 for Refined Benzene-535 and ASTM D 4734–87 for Refined Benzene–545 (NESHAP Subpart Y), which are codified as separate subparts under 40 CFR, Part 61.

Title: National Emission Standards for Hazardous Air Pollutants, Benzene Emissions from Benzene Storage Vessels, and Coke Byproduct Recovery Plants; OMB No. 2060–0185, expiration date: 6/30/96.

Abstract: The EPA is charged under Section 112 of the Clean Air Act, as amended, with establishing emission standards for hazardous air pollutants. These standards are to be set at a level which provides an ample margin of safety to protect the public health. On June 8, 1977, EPA determined that benzene presents a significant carcinogenic risk to human health and is, therefore, a hazardous air pollutant requiring regulation. In addition, Section 114(a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this act to: (1) Establish and maintain such records, (2) make such reports, (3) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (4) provide such other, information, as he may reasonably be required.

National Emission Standards for Benzene Emissions from Coke By-product Recovery Plants were proposed by EPA on June 6, 1984 (49 FR 23522). At that time, an information collection request was submitted (ICR number 1080). The proposed standards were reconsidered by EPA in light of the U.S. Court of Appeals vinyl chloride decision [*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146, D.C. (1987)]. Other benzene-related actions including maleic anhydride, ethylbenzene/styrene, benzene storage vessels, and equipment leaks were also reviewed by EPA following the vinyl chloride court decision. The Agency proposed four different approaches to regulating these benzene source categories in a manner consistent with the vinyl chloride court decision (53 FR 28496, July 28, 1988). Regulations proposed for maleic anhydride and ethylbenzene/styrene were not promulgated and therefore have been dropped from this information collection statement. The coke by-product recovery plants rule was promulgated September 14, 1989 (54 FR 38044) and amended September 19, 1991 (56 FR 47406).

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Benzene Emissions from Benzene Storage Vessels were proposed in 1980 and withdrawn by EPA on June 6, 1984 (49 FR 23558). On August 3, 1984, the Natural Resources Defense Council (NRDC) filed a petition in the U.S. Court of Appeals, seeking review of the EPA's storage withdrawal and other benzene rulemakings. (*Natural Resources Defense Council Inc.* v. *Thomas*, No. 84–1387) (referred to as Benzene). In light of the U. S. Court of Appeals Vinyl Chloride decision (*Natural Resources Defense Council. Inc.* v. *EPA*, 824 F.2d 1146, D.C. Cir., July 28, 1987), EPA requested a voluntary remand in Benzene to reconsider its June 6, 1984, rulemakings. In an order dated December 8, 1987, the court approved the EPA's voluntary remand and established a schedule under which EPA must propose its action on reconsideration within 180 days of the order. In June 1988, EPA received a 45-day extension. The benzene storage vessels rule was promulgated on September 14, 1989 (54 FR 38077) as 40 CFR Part 61 Subpart Y.

Subpart L: Coke By-Product Recovery Plants

A national emission standard for hazardous air pollutants (NESHAP) was proposed under Section 112 for coke by-product recovery plants, a benzene source category, on June 6, 1984 (49 FR 23522), reproposed on July 28, 1988 (53 FR 28496), and was promulgated on September 14, 1989.

The control requirements for coke by-product recovery plants require that organic vapors be recovered and routed via closedvent system (no detectable emissions) to a control device that achieves a 95 percent or greater destruction efficiency. The affected equipment must not exceed a specified level of equipment leaks, either through a concentration standard, or in the case of valves, a percent of total valves standard is optional. The control of emissions of benzene from recovery plants requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of benzene from recovery plants covered by this regulation are the result of leaking equipment.

The standards require initial notification reports with respect to construction, emissions tests, and startup. The standards also require reports on initial performance tests and emissions tests results.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check that pollution control devices are properly installed and operated and the standards are being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved. The regular reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The information generated by the monitoring, recordkeeping and reporting requirements described above is used by the Agency to ensure that facilities affected by the NESHAP continue to operate the control equipment used to achieve compliance. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of benzene. Information is recorded in such sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is

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used to monitor fugitive emissions directly, and to ensure effective operation of the vapor-collection system and control device, thus ensuring continuous compliance with the indications of a source's continuing compliance status. The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. Records and reports also are necessary to enable EPA to identify plants that may not understand the workings of the standard or that may not be in compliance with the standard. Based on reported information, EPA can decide how many plant inspections would be needed, which plants should be inspected, and what records or processes should be inspected at the plant. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act, owners or operators of the affected facilities described must make the following one-time-only notices or reports: notification of anticipated startup, notification of actual startup, notification of construction or modification, initial compliance report, notification of emission test, report following an emission test, notification of a monitoring system performance test, and report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Reporting requirements specific to benzene coke by-product recovery plants, Subpart L, include a semiannual report by affected facilities. The semiannual reports include results of leak monitoring and performance tests. Respondents also are required to submit semiannual reports of measurements for sources subject to a no detectable emissions limit and semiannual reports summarizing the results of the leak detection and repair program implemented at the plant. One report would incorporate information for both process equipment and fugitive sources. These reports would include information such as number of leaks that occurred, the number that could not be repaired, the general reasons for unsuccessful or delay of repair, and the results of performance tests conducted during the reporting period.

Monitoring, recordkeeping and reporting requirements specific to benzene coke by-product recovery plants for leak detection and repair of fugitive emission sources are those provisions specified under 40 CFR 61, NESHAP Subpart V. The Subpart V regulations for equipment leaks were approved by the Office of Management and Budget (OMB) under control number 2060–0068. The only difference in the equipment leak requirements of Subpart V and this regulation relates to exhausters. Exhausters are subject to quarterly monitoring requirements. However, quarterly monitoring is not required if the exhauster is equipped with a seal system that has a barrier fluid, the exhauster seal is loaded and vented to a control device, or a leakless exhauster is used. Exhausters are subject to the same recordkeeping and reporting provisions as other equipment subject to Subpart V.

The added control amendment to the coke-by-product plant benzene NESHAP is based on a settlement agreement pursuant to a petition to review the benzene NESHAP by the American Coke and Coal Chemicals Institute (ACCCI). The recordkeeping and reporting requirements contained in this rule are consistent with those described in the agreement.

The owner or operator choosing to use one of the alternative control technologies (i.e., a carbon absorber or a vapor incinerator) would be required to record for the life of the control device, the design of the control device, the sources which it is intended to control, and a plan for the operation, maintenance and action needed to correct problems. Such a record would assist the owner or operator to operate the device properly throughout its life and would also assist the enforcement personnel in determining, when reviewing records that indicate problems with the control device, whether the device had been properly maintained and appropriate corrective action had been taken. The owner or operator would be required to record the results of each test for determining compliance with the standard. Also required to be recorded would be any data that provide reference values for parameters that are important to monitoring, such as temperature of the firebox in a vapor incinerator and the benzene concentration at the inlet to a carbon adsorber. Some of these data are gathered during the compliance test, others separately (e.g., the demonstrated bed life of a carbon adsorber).

These records would be required to be kept for at least two years, or until the next compliance test (or time that the parameter reference value is determined), whichever is longer. Finally, the results of monitoring the control device would be required to be recorded for at least 2 years. The records would include any periods when the boundaries established for the monitored parameters were exceeded and the action taken to correct the problem that led to the exceedance.

The alternative control options require reporting in addition to recordkeeping. The General Provisions require reporting of compliance tests. This would be submitted each time a compliance test is performed. The rule requires compliance tests to be done initially and at the request of EPA (not at predetermined intervals). In addition, the rule requires reporting of exceedances of the monitored parameters, with a brief description of the corrective action taken. Included would be exceedances of the operating requirements such as if the source were not vented to a fresh carbon bed before the maximum concentration point was exceeded on the spent bed. The reports are required quarterly. When semiannual reports under Subpart L are due, the information for the quarterly report should be submitted as part of the semiannual report. If there were no exceedances during a quarter in which no semiannual report was due, reporting for that quarter could be skipped and a notation to that effect included in the next report. The reason that quarterly reports are required for these control devices is because the monitoring is generally continuous and therefore provides a continuous record of problems with operation and maintenance of the device. Because of the hazardous nature of benzene, it is important that enforcement personnel are alerted to plants that are having problems with their control device and are potentially in violation of the standards. The enforcement personnel can then move quickly to make sure the problem area is corrected.

Any owner or operator subject to the provisions of this part shall maintain an up-to-date file of monitoring and recordings, and retain them for at least two years following. Records of equipment and process design are kept permanently.

These data would include information necessary to administer the program (such as source identification number, percent by weight benzene in the process s fluid, type of fugitive emission source) as well as data gathered relating directly to leak detection and repair (such as leak dates and repair methods). Respondents using gas-blanketing systems, closed-vent systems, and control devices are required to maintain records of schematics, design specifications, piping and instrumentation diagrams, and other information related to changes in design or operation. Other records are required for sources which may be designated for no detectable emissions or as unsafe or difficult to monitor.

All reports are sent to the delegated State or Local authority. If there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

Data obtained by Agency personnel from records maintained by the respondents during periodic visits are tabulated and published for internal Agency use in compliance and enforcement programs.

Information contained in the report is entered into the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS) which is operated and maintained by EPA' s Office of Air Quality Planning and Standards. The AFS is EPA's database for the collection, maintenance and retrieval of compliance data and annual emission inventory data for over 100,000 industrial and government facilities. EPA uses AFS for tracking compliance and enforcement by Local and State regulatory agencies, EPA Regional Offices and Headquarters. EPA personnel can edit, store, retrieve and analyze the data via personal computer terminals.

Burden Statement: For Subpart L, the Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where it was appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. The 1993 ICR review was the first since promulgation of the rule and consolidated the added control options promulgated in September 1991.

For Subpart L, the majority of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates were derived from standard estimates based on EPA's experience with other standards. For the purpose of the 1993 ICR burden analysis it was assumed that no sources choose to comply with the percent-allowable leaks nor skip period reporting. Thus, the burden analysis was based on a most burdensome case scenario for reporting and recordkeeping.

Recordkeeping and reporting requirements are an ongoing burden associated with this ICR. The 1993 ICR estimated a nationwide annualized cost to respondents for recordkeeping and reporting requirements of $215,678 over a 3-year period. The respondent burden was estimated at 7,083 person-hours per year. This estimate was based upon a cost of $14.50 per hour plus an overhead rate of 110 percent, for a total cost of $30.45 per hour.

The following is a breakdown of burden used in the 1993 ICR for Subpart L. It was assumed that 36 sources were subject to the standard and no additional sources per year will become subject to the standard over the past three years. The ICR allocated 224.5 hours *per respondent* for implementing the activities required to meet the recordkeeping and reporting requirements. Specifically, 132 hours were allocated for filing and maintaining records, 4 hours for conducting Method 21 tests during the year, 57.5 hours for creating the information for reporting and 31 hours for writing the report.

Subpart Y: Benzene Storage Vessels

Respondents are all owners or operators of benzene storage vessels. It is estimated that 126 existing plants are subject to the standard. All owners and operators of new or reconstructed plants would also have to respond.

In the General Provisions of 40 CFR Part 61 applicable to storage vessels, require up to four separate one time-only reports for each owner or operator: notification of construction or reconstruction, initial source report, notification of physical/operational changes, notification of anticipated and actual startup. The initial source report is the only one of these reports that would be required from existing sources under the standard.

Certain records and reports are necessary to assist EPA and State agencies to which enforcement has been delegated in determining compliance with the standard.

An initial emissions test is not required because conducting an emission test is not feasible. Therefore, the format of the standard is that of an equipment standard. Owners or operators of vessels equipped with the specified controls are required to submit, along with the notifications required by the General Provisions, a report that describes the control equipment used to comply with the regulation. Thereafter, an annual visual inspection is required of the primary seal of internal floating roof vessels (IFR's) (in cases where no secondary seal is present). An annual seal gap measurement of the secondary seal system on external floating roof vessels (EFR's) is required. The following inspections are required every five years: (1) internal inspection of seal system on IFR's equipped with primary and secondary seals in situations where the owner or operator has decided to forego the annual visual inspection; and (2) measurement of gaps between the tank wall and primary seal on EFR's. An internal inspection in which the tank is emptied and degassed is required at least every 10 years for IFR's.

Another control option allowed is for owners or operators to equip vessels with closed-vent systems and 95-percent efficient control devices. It is expected that very few, if any, vessels will be equipped with these systems; however, owners or operators of vessels with such systems are required to submit, for the Administrator's approval, an operating plan describing system design specifications and an operation, maintenance, and inspection plan for the system. In the event the owner or operator has installed a flare, a report showing compliance with visible emission provisions shall be furnished to the Administrator. For closed-vent systems with control devices, quarterly reports are required informing the Administrator of each occurrence that results in excess emissions. Annual reports of the results of these inspections and seal gap measurements are required. These reports shall identify each storage vessel that is determined to be out of compliance with the standard, the nature of the defects, and the date the vessel was emptied or the repair was made. The owner or operator shall keep copies of all reports and records resulting from these inspections for two years.

The owner or operator of each benzene storage vessel shall, for the life of the source, keep readily accessible records showing the dimension of the vessel and an analysis showing the capacity of the storage vessel. For each vessel with a closed vent system and 95-percent efficient control device, records of the operating plan shall be kept for the life of the control device. Records of monitored parameters and maintenance shall be kept for two years.

Burden Statement: For Subpart Y, EPA estimated the nationwide annualized cost to respondents at a $47,045/yr over a 3-year period. The respondent burden is estimated at 1,545 person-hours/yr. Respondent costs are estimated based on a cost of $14.50 per hour, and on an overhead rate of 110 percent (for a total cost per hour of $30.45). The annual reporting burden is estimated at a $39,372/yr over a 3-year period. The number of responses per year is estimated to be 162. The number of responses per respondent is estimated to be five. The total annual responses are estimated to be 810. The number of hours per response per year is estimated

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to be four. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

* * * * *

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the contacts listed above.

Dated: November 24, 1995.

Rick Colbert,

Acting Director, Office of Compliance.

[FR Doc. 95–29739 Filed 12–7–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5231–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 27, 1995 Through December 01, 1995 Pursuant to 40 CFR 1500.9.

EIS No. 950552, FINAL EIS, USA, MA, Army Material Technology Laboratory Reuse and Disposal, Implementation, Town of Watertown, Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: January 08, 1996, Contact: James Davidson (703) 274–5510.

EIS No. 950553, DRAFT EIS, NAS, International Space Station, Assembly and Operation, Space Station Freedom (SSF), Due: January 22, 1996, Contact: David F. Ruszczyk (713) 244–7756.

EIS No. 950554, DRAFT EIS, DOE, WA, Plutonium Finishing Plant (PFP) Stabilization, To Safely Reduced Radiation Exposure to Workers and the Environment, Hanford Site, Richland, Benton County, WA, Due: January 23, 1996, Contact: Ben F. Burton (509) 946–3609.

EIS No. 950555, DRAFT EIS, FRC, WA, Condit Hydroelectric Project (FERC No. 2342–005), Relicensing, White Salmon River, Klickitat and Skamania Counties, WA, Due: January 22, 1996, Contact: John Blair (202) 219–2845.

EIS No. 950556, DRAFT EIS, AFS, WA, Snoqualmie Pass Adaptive Management Area Plan, Implementation, Wenatchee and Mt. Bake-Snoqualmie National Forests, Cle Elum and North Bend Ranger Districts, Kittitas and King Counties, WA, Due: January 31, 1996, Contact: Floyd Rogalski (509) 674–4411.

EIS No. 950557, DRAFT EIS, FRC, ME, Lower Androscoggin River Basin Hydroelectric Project, Gulf Island Deer Rips Project (FERC No. 2283–005) and Marcal Project (FERC No. 11482–000) Relicensing and Licensing, Androscoggin County, ME, Due: January 22, 1996, Contact: Alan Creamer (202) 219–0635.

EIS No. 950558, DRAFT EIS, GSA, CO, National Oceanic and Atmospheric Administration (NOAA) Consolidation of Facilities; National Institute of Standards and Technology (NIST) to Upgrade Facilities and National Telecommunications and Information Administration (NITA) to Implement Master Site Development Plan, Site Specific, 325 Broadway Campus, Boulder County, CO, Due: January 22, 1996, Contact: Sharon Malloy (303) 236–7131.

EIS No. 950559, FINAL EIS, MMS, AL, TX, MS, LA, 1996 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 157 (March 1996) and No. 161 (August 1996), Lease Offerings, Offshore coastal counties and parishes of AL, MS, LA and TX, Due: January 08, 1996, Contact: Archie P. Melancon (703) 787–5471.

EIS No. 950560, DRAFT EIS, FRC, WI, Flambeau River Hydroelectric Projects, Big Falls (FERC No. 2930), Thornapple (FERC No. 2475), Upper (FERC No. 2640), Lower (FERC No. 2421), Pixley (FERC No. 2395) and Crowley (FERC No. 2473), Relicensing, WI, Due: January 22, 1996, Contact: Frank Karwoski (202) 219–2782.

EIS No. 950561, FINAL EIS, NOA, Atlantic Mackerel, Squid and Butterfish Fisheries, Fishery Management Plan, Amendment No. 5, Implementation, Exclusive Economic Zone (EEZ) off the US Atlantic Coast, Due: January 23, 1996, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 950562, DRAFT EIS, FHW, WI, US 10 Highway Improvements, WI–13 and US 10 in Marshfield to WI–54 and US 10 in Waupaca, Funding and COE Section 404 Permit, Wood, Portage and Waupaca Counties, WI, Due: January 22, 1996, Contact: Wesley Shemwell (608) 829–7500.

EIS No. 950563, DRAFT EIS, FHW, CA, CA–101/Cuesta Grade Highway Improvements, 1.1 Miles north of Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA, Due: March 08, 1996, Contact: John R. Schultz (916) 498–5041.

EIS No. 950564, DRAFT EIS, COE, WA, Resource Investments Landfill Facility Construction, COE Section 404 Permit Issuance, Pierce County, WA, Due: January 22, 1996, Contact: Jim Green (206) 764–6906.

Dated: December 04, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–29983 Filed 12–7–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

December 4, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0028.

Title: Application for Authorization of the Auxiliary Broadcast Services.

Form No.: FCC 313.

Type of Review: Reinstatement without change of previously approved collection for which approval has expired.

Respondents: Businesses or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 1,500.

Estimated Time Per Response: 5.166 hours.

Total Annual Burden: 7,749 hours.

Needs and Uses: FCC Form 313 is used by permitees or licensees of AM, FM and TV Broadcast Stations and eligible networks when applying for remote pickup, aural microwave, television microwave, and other auxiliary broadcast stations. Data is used by FCC staff to determine if proposal meets statutory requirements and to ensure that interference will not occur.

OMB Approval No.: 3060–0298.

Title: Section 76.601.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 14,673.

Estimated Time Per Response: 19.4 hours.

Total Annual Burden: 285,084 hours.

Needs and Uses: Section 76.601 requires that every cable system operator maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) require cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. This collection is being revised to request approval for the third party disclosure in section 76.601(d) requiring local franchise authorities to notify the cable operators who will be alled third days to come in compliance with any preceived signal quality problems which need to be corrected.

OMB Approval No.: 3060–0520.

Title: Section 90.127(e) Submission and filing of applications.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit; Not-for-profit-institutions; State, Local or Tribal Governments.

Number of Respondents: 109,200.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 9,100 hours.

Needs and Uses: Section 90.127(e) requires licensees to report the number of mobiles and pagers when license is modified or renewed. This information is used for frequency coordination and licensing.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–29899 Filed 12–7–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 550 17th Street, NW., Room H–11027, Washington, DC 20429. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims.

Citytrust, #4382
Bridgeport, Connecticut

Dated: December 4, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–29979 Filed 12–7–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Proposed Agency Information Collection Activity; Request for Public Comment

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Authority is soliciting public comments on the proposed information collection requirement described below, prior to submission of the proposal to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act.

DATES: Comments due: February 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Solly Thomas, Executive Director, Federal Labor Relations Authority, 607 14th St., NW., Room 420, Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Director of

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Program Development, Office of the General Counsel, 202–482–6680 ext. 205. A copy of the proposed information collection requirement can be examined at the Office of the General Counsel, 607 14th St., NW., Suite 210, Washington, DC 20424.

SUPPLEMENTARY INFORMATION: The Authority will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35 as amended).

This Notice solicits comments from members of the public and affected agencies concerning the proposed collection of information. The comments will be used to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Authority, including whether the information will have practical utility; (2) evaluate the accuracy of the Authority's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond.

This Notice also lists the following information:

Title of Proposal: Petition Form.

Description of the Need for the Information and Proposed Use: The information to be collected by the petition form is required for the Authority to be able to process and decide representation issues arising under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101 to 7135. The information collected on the petition form is to be used to enable Authority staff employees to contact affected parties in representation case proceedings, and to enable staff employees to take the necessary steps to begin the processing of the petition. The petition form will be provided to members of the public who request the form from the Authority's regional offices, to enable those members of the public to initiate a representation case proceeding before the Authority. The petition form is filed with an appropriate Authority regional office.

The petition form includes questions to the filer concerning the issues raised by the petition and the results the petitioner seeks as a consequence of filing the petition; a description of the collective bargaining unit affected by the petition, including employees who would be included or excluded from the unit; the showing of employee interest expressed as a per cent of the unit affected that supports the petition; the names, addresses, and telephone numbers of the representatives of the union(s), agency(ies), and activity(ies) affected by the petition; the date of recognition or certification of the exclusive bargaining representative, if any, of any unit affected by the petition; and a declaration by the filer of the petition as to the truth of the statements made in the petition.

Members of the Affected Public: Federal employees representing Federal agencies in their capacity as employer, Federal employees and employees of labor organizations that are representing those labor organizations, and Federal employees in their individual capacities, are the members of the public who may file the representation form.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection: It should normally take a party no longer than one hour to complete a petition form for filing with the Authority. In FY 1995, 498 representation forms were filed with the Authority.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chap. 35, as amended.

Dated: December 5, 1995.

Sally Thomas,

Executive Director, Federal Labor Relations Authority.

FR Doc. No. 95–29997 Filed 12–7–95; 8:45am

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011223–011.

Title: Transpacific Stabilization Agreement.

Parties: A.P. Moller-Maersk Line, American President Lines, Ltd., Evergreen Marine Corp. (Taiwan) Ltd., Hapag-Lloyd Aktiengesellschaft, Hanjin Shipping Co., Ltd., Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nedlloyd Lines B.V., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Yangming Marine Transport Corp.

Synopsis: The proposed amendment clarifies Article 5—Agreement Authority to state that the members have the authority to discuss and agree upon charges and conditions, rates, and rate levels concerning cargo or service contracts. It also makes other nonsubstantive changes to the Agreement.

Agreement No.: 202–011375–022.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line AB, P&O Containers Limited, Sea-Land Service, Inc., Hapag-Lloyd AG, Nedlloyd Lijnen BV, A.P. Moller-Maersk Line, Cho Yang Shipping Co. Ltd., Mediterranean Shipping Company, S.A., DSR-Senator Lines, Polish Ocean Lines, Orient Overseas Container Line (UK) Ltd., Transportacion Maritima Mexicana, S.A., de C.V., Neptune Orient Lines Ltd., Nippon Yusen Kaisha, Tecomar S.A. de C.V., Hanjin Shipping Co., Ltd, Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment permits the parties to establish the terms of an arrangement to promote and facilitate the interchange of empty containers between them and to establish a computerized reporting system on container imbalances.

Dated: December 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–29963 Filed 12–7–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 657

Name: Spartan Overseas Shipping Corp.
Address: 181 South Franklin Ave., Valley Stream, NY 11581
Date Revoked: November 1, 1995
Reason: Surrendered license voluntarily.

License Number: 3382
Name: W.I.D.E. Corporation
Address: 850 Center Drive, Elizabeth, NJ 07201
Date Revoked: November 5, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2097
Name: Concept Cargo, Inc.
Address: 8269–8287 N.W. 54th Street, Miami, FL 33166
Date Revoked: November 20, 1995
Reason: Surrendered license voluntarily.

License Number: 2825
Name: Henry L. Rosich dba Rosich Forwarding Company
Address: 409 Warren Boulevard, Broomall, PA 19008
Date Revoked: November 20, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–29928 Filed 12–7–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Scotland Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 2, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Scotland Bancorp, Inc., Laurinburg, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Scotland Savings Bank, SSB, Laurinburg, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bank, St. Petersburg, Florida. **Comments regarding this notice should be received not later than December 22, 1995.**

Board of Governors of the Federal Reserve System, December 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–29931 Filed 12–07–95; 8:45 am]

BILLING CODE 6210–01–F

Southern National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Winston-Salem, North Carolina; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. South Plains Financial, Inc., Lubbock, Texas; to engage *de novo* through its subsidiary, South Plains Financial Services, Inc., Lubbock, Texas, in providing for others, data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), pursuant to § 225.25(b)(7) of the Board's Regulation Y, and in performing real estate and personal property appraisals, including tangible and intangible personal property, pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will take place in the state of Texas.

Board of Governors of the Federal Reserve System, December 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–29932 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of

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the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in January 1996.

The meeting of the SAMHSA National Advisory Council will include discussions concerning SAMHSA's Reauthorization; update on SAMHSA's demonstration program; SAMHSA's Managed Care Initiative, including the role of SAMHSA in developing mental health and substance abuse standards for managed care facilities; report on the Performance Partnership Development Process and Regional Meetings; and a report on the Co-Occurring Meeting. In addition various constituency organizations will be describing their collaborative efforts around the development of performance measures and outcomes monitoring, and exemplary community based programs will be describing their efforts to prevent and treat mental and addictive disorders. Finally, there will be status reports by the Council's work groups on Health Care Reform and Children's Services. Attendance by the public will be limited to space available.

The meeting will also include the review, discussion and evaluation of contract proposals. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.

Meeting Date: January 22, 1996.

Place: Omni-Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC 20008.

Open: January 22, 1996, 9:00 a.m. to 4:30 p.m.

Closed: January 22, 1996, 5:00 p.m. to 6:00 p.m.

Contact: Tolan Vaughn, Room 12C–15, Parklawn Building, telephone (301) 443–4640 and FAX (301) 443–1450.

Dated: December 4, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–29934 Filed 12–7–95; 8:45 am]

BILLING CODE 4160–20–P

Food and Drug Administration

[Docket No. 95N–0371]

Interim Definition and Elimination of Lot-by-Lot Release For Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an interim definition for well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. FDA is also announcing that FDA is eliminating lot-by-lot release for licensed well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. After approval, manufacturers of such products are no longer requested to submit samples and protocols for individual lots of products to the Center for Biologics Evaluation and Research (CBER) for routine lot-by-lot release. Manufacturers may begin distributing products affected by this policy after notification by CBER and without awaiting approval of a supplement to their product license applications. This notice is intended to reduce unnecessary burdens for industry without diminishing public health protection.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Regarding lot release: Jerome A. Donlon, Center for Biologics Evaluation and Research (HFM–200), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2200.

Regarding the definition of a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology product: Jean M. Olson, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: This notice is being issued in accordance with the principles set forth in Executive Order 12866. Executive Order 12866 directs Federal agencies to implement measures that will reform and streamline the regulatory process to avoid unnecessary regulatory burdens. In the November 1995 "Reinventing the Regulation of Drugs Made from Biotechnology" report, the President and Vice President announced a series of regulatory reform initiatives, including FDA's intention to issue a notice eliminating lot-by-lot release for licensed well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. FDA made a commitment to issue the notice within 30 days of the report.

Elimination of Lot-by-Lot Release

Biologics have traditionally been complex mixtures of substances produced primarily from living organisms, and have been difficult to characterize by precise tests. They include vaccines, products made from human or animal blood, and other products made from a variety of materials. Because of the inherent variability of these products, each individual lot of most biological products has been subject to evaluation and testing by CBER prior to release.

Under § 610.2 (21 CFR 610.2), the Director of CBER may require, at any time, that samples of a licensed product, protocols, and test results be submitted to CBER for official release. FDA has invoked lot-by-lot release to help ensure that products continue to meet established standards before they are distributed.

Historically, lot-by-lot release has served an important role in the regulation of biotechnology products and has prevented the distribution of unacceptable lots. However, greater control has been achieved by manufacturers over the production of biotechnology products through in-process controls, process validation, and advances in analytical techniques. For well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products, as defined below, FDA has found that once a company has demonstrated its ability to consistently produce acceptable lots, and has procedures in place that will prevent the release of lots that do not meet release specifications, it is not necessary for FDA to verify that each manufactured lot is acceptable for release.

Accordingly, as provided under § 610.2, the Director of CBER is no longer requiring that manufacturers of well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products submit samples and protocols to CBER. FDA will continue to monitor companies' compliance with the requirement in § 610.1 (21 CFR 610.1) that they assay each lot and release only those lots that meet release specifications.

FDA intends to revise the guidance entitled, "Guidance on Alternatives to Lot Release for Licensed Biological Products," (58 FR 38771, July 20, 1993) to reflect the new procedures. Manufacturers who do not receive a letter, but think that one of their licensed products meets the interim definition, may contact Jerome A. Donlon (address above).

Eliminating FDA lot-by-lot release should not compromise the safety, purity, or potency of licensed well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. Because of process validation and current in-process controls and testing for these products, identity, purity, and potency can be controlled and measured. In addition, the in-process and end-product release specifications can be validated for these products. Therefore, submission of lot release samples and protocols are no longer viewed by FDA as essential to the ongoing assurance of safety for these products.

Eliminating lot-by-lot release for these products furthers FDA's harmonization of its regulation of well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products between CBER and the Center for Drug Evaluation and Research.

Manufacturers are still required under § 610.1 to test each lot and release only those that meet release specifications. During inspections, FDA will monitor compliance with those requirements. Manufacturers continue to be required to maintain adequate records and retention samples under 21 CFR 211.170 and 211.180.

Interim Definition

FDA has prepared the following interim definition for a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology product:

A chemical entity(ies) whose identity, purity, impurities, potency, and quantity can be determined and controlled.

Identity:

a. *Recombinant DNA Biotechnology Products*

The primary structure is known (i.e., amino acid sequence), and

The secondary structure is known (e.g., disulfide linkage), and

Post-translational modifications are known (e.g., glycosylation), or

b. *Monoclonal Antibodies*

The identity can be determined by rigorous physicochemical and immunochemical characterization without fully knowing its chemical structure.

Purity and impurities:

The purity is quantifiable.

The impurities are quantifiable, and identified if feasible.

Potency and quantity:

The biological activity is measurable.

The quantity is measurable.

Well-characterized therapeutic recombinant DNA-derived or monoclonal antibody biotechnology products require proper raw material controls, process validation and controls, and sensitive and validated test methods and specifications. FDA intends to use the definition to determine which products may be exempted from lot-by-lot release and to help determine which products may be eligible for other regulatory initiatives directed at well-characterized biotechnology products.

FDA invites comments on its proposed definition for well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. In particular, FDA invites comments on whether the proposed definition for well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products should be expanded to include other categories of products that would be considered to be well-characterized and should be categorically exempted from lot-by-lot release.

In the **Federal Register** of October 25, 1995 (60 FR 54695), FDA announced that it is sponsoring a public scientific workshop on December 11 through 13, 1995. At the workshop participants will be asked to refine the definition of a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology product as set forth above. After considering the information presented at the workshop, FDA may modify the interim definition given above. Manufacturers of well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products affected by this change in policy will be notified by letter.

CBER does not intend for this notice to be comprehensive. If a manufacturer has questions concerning application of this policy to one of its licensed products or the interim definition, it can discuss the matter with CBER. Although the interim definition for well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products in this notice is not binding on either FDA or manufacturers of biological products and does not create or confer any rights for or on any person, it does represent the agency's current thinking on that definition.

Dated: December 4, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29960 Filed 12–5–95; 2:43 pm]

BILLING CODE 4160–01–F

[Docket No. 93N–371W]

Prescription Drug Product Labeling; Public Patient Education Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public patient education workshop to discuss methods and criteria for developing and evaluating prescription drug information for patients. The purpose of this workshop is to obtain views and opinions concerning the criteria for useful patient information, and is part of FDA's ongoing initiative to improve the distribution of adequate and useful prescription drug information to patients. FDA encourages health professionals, consumer groups, industry, academicians, other experts in the field, and interested parties to participate in the workshop. FDA also invites the designers of primary information systems, which produce either written information or computer programs that generate prescription drug patient information, to display their systems for educational purposes.

DATES: The public patient education workshop will be held on January 9 and 10, 1996, from 8:30 a.m. to 5 p.m. Submit registration notices for participants by December 26, 1995. Submit registration notices for designers of information systems by December 19, 1995. Submit written comments by January 31, 1996.

ADDRESSES: The public patient education workshop will be held at the National Institutes of Health, Natcher Auditorium, 9000 Rockville Pike, Rockville, MD. Pre-registration for workshop participants is encouraged, although not required, in order to facilitate logistical planning of the

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breakout discussion groups. There is no registration fee for this workshop. Registration forms can be obtained by calling 301–443–5470 or writing to the Office of Health Affairs, ATTN: Patient Education Workshop, Food and Drug Administration (HFY–40), 5600 Fishers Lane, Rockville, MD 20857. Submit written views or comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The designers of information systems should call the contact person (address below) for registration information. A more detailed agenda and written presentations will be placed in the docket, identified with the docket number found in brackets in the heading of this document, at the Dockets Management Branch, and will be available for review between 9 a.m. and 4 p.m., Monday through Friday. A transcript of the general sessions of the workshop will be available for review or purchase (10 cents per page) at the Dockets Management Branch approximately 5 business days after the meeting. The breakout sessions will not be transcribed.

FOR FURTHER INFORMATION CONTACT: Thomas J. McGinnis, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 24, 1995 (60 FR 44182), FDA published a proposed rule which, if finalized, is intended to increase the dissemination of useful written prescription drug information to patients who receive prescription drugs on an outpatient basis. The agency believes that such information must be widely distributed and be of sufficient quality to promote the proper use of prescription drugs. The agency proposed goals (performance standards) that would define acceptable levels of information distribution and quality. To meet the performance standard for distribution of patient information, the agency proposed that by the year 2000, at least 75 percent of people receiving new prescriptions receive useful written information. This goal was adapted from the Public Health Service's "Healthy People 2000" report. In addition, the agency proposed that by the year 2006, at least 95 percent of the people who receive new prescriptions receive useful written information.

FDA proposed to periodically evaluate and report on the achievement of the goals. If the goals are not met in the specified timeframes, FDA proposed to either: (1) Implement a mandatory comprehensive medication guide program, or (2) seek public comment on whether the comprehensive program should be implemented, or whether, and what, other steps should be taken to meet the patient information goals.

In the Federal Register of August 24, 1995, the agency proposed the following seven specific components for determining whether patient information is useful: Scientific accuracy, consistency with a standard format, nonpromotional tone and content, specificity, comprehensiveness, understandable language, and legibility. The agency defined these components of usefulness, as well as criteria that could be used to judge these components, and invited comments on their appropriateness. The agency also stated that it would hold a public meeting for interested parties to provide recommendations and rationale for evaluating usefulness of written information.

The agency will hold a public patient education workshop to discuss the methods and criteria for developing and evaluating the usefulness of written information. The patient education workshop will be designed to obtain recommendations from the public about the criteria that should be applied to help ensure that written information provided to patients is "useful."

The patient education workshop will be comprised of both formal presentations and open breakout discussion periods. Any interested person may attend and participate in the discussions. The workshop will include general sessions with presentations from FDA, health professional groups, consumer groups, the pharmaceutical industry, academicians, and parties with legal and regulatory expertise. The agency also intends to hold breakout sessions throughout the 2-day workshop to obtain broad participation and input from workshop attendees.

FDA believes that it would be helpful for workshop participants (including FDA staff) to learn about the design of current patient information systems, in particular, programs that generate drug-specific patient information. The agency invites the designers of primary information systems (not the customizers of systems for retail outlets) to display their systems at the workshop for educational purposes only. No sales or solicitations may be made by exhibitors at the workshop site. Due to space limitations, FDA may be forced to limit the number of systems on display. In doing so, FDA would seek to permit display of the most representative/comprehensive systems available for patient information. However, the agency invites all interested persons to submit their views, comments, and descriptions of computer programs to the Dockets Management Branch (address above).

The agency notes that the comment period for the proposed rule that published in the Federal Register of August 24, 1995, has recently been extended until December 22, 1995 (60 FR 58025, November 24, 1995). Because this workshop will occur after the comment period has closed, the agency will accept additional comments to the proposed rule on the specific issues raised at the workshop. These comments will be considered as part of the agency's deliberations regarding further action on this rulemaking. For this limited purpose, written comments may be submitted to the Dockets Management Branch (address above) until January 31, 1996. Comments are to be identified with the docket number found in brackets in the heading of this document.

A summary of the workshop will be included in a subsequent Federal Register notice related to this prescription drug labeling initiative.

Dated: December 1, 1995.

William K. Hubbard,

Associate Commissioner for Policy.

[FR Doc. 95–29003 Filed 12–7–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 11, 1995.

Time: 11 a.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–1000.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30080 Filed 12–7–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR–3817–N–36]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jean Lin, Social Science Analyst, Office of Policy Development and Research—telephone (202) 708–0574 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: The Survey of Habitat for Humanity Homebuyers and Affiliates

Description of the need for the information and proposed use: The information is being collected to examine the homeownership process and homeownership impacts on the individuals and community participating in the Habitat for Humanity International program. This study will: (1) describe the role of Habitat in assisting low-income families achieve homeownership; (2) describe the program experience of homeowners; (3) examine the changes in the quality of life of participants as a result of homeownership; and (4) assess the benefits of homeownership for low-income families.

This is being done to assist the Department in formulating its national homeownership strategy for expanding homeownership opportunities and improving the quality of life for low-income families.

Members of affected public: Homeowners of the Habitat for Humanity program: 100 homeowners will be individually surveyed and 200 homeowners will be participating in exit surveys from focus groups.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected by one-time in-person interviews with 100 homeowners. These interviews will last an average of one hour. Two hundred homeowners will participate in exit interviews from focus groups. Exit surveys will last an average of ten minutes. This means a total of 134 hours of response for the information collection.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 29, 1995.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 95–29981 Filed 12–7–95; 8:45 am]

BILLING CODE 4210–62–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–05]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

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homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 24789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: December 1, 1995.

Jacquie M. Lewing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/08/95

Suitable/Available Properties

Buildings (by State)

Virginia

Bristol U.S. Army Reserve Ctr.
180 Piedmont Avenue
Bristol Co: Washington VA 24201–
Landholding Agency: Army
Property Number: 219440317
Status: Underutilized
Comment: 13,460 sq. ft., 2-story plus basement, brick structure, presence of asbestos, needs some rehab. (Property was published incorrectly on 10/13/95

Unsuitable Properties

Buildings (by State)

Connecticut

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419540004
Status: Excess
Reason: Secured Area

Ohio

Fernald Env. Mgmt. Project
7400 Willey Road
Fernald Co: Hamilton OH 45030–
Landholding Agency: Energy
Property Number: 419540005
Status: Unutilized
Reason: Other
Comment: contamination
Mound—Guard Post
Mound Road
Miamisburg Co: Montgomery OH 45343–
Landholding Agency: Energy
Property Number: 419540006
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material.

[FR Doc. 95–29803 Filed 12–7–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of the Public Comment Period—Availability of an Environmental Assessment and Receipt of an Application for a Residential Project Called Pineda Crossing/Windover Farms, Located in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of the public comment period.

SUMMARY: The Fish and Wildlife Service gives notice that the public comment period on the environmental assessment/habitat conservation plan for the Pineda Crossing/Windover Farms projects (Applicant) application for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) is being extended. The Applicant has been assigned permit number PRT–808474. The original 30-day comment period was to end on/about December 15, 1995 (FR 60:57247–48). In the intervening period, the Fish and Wildlife Service was forced to cease operations due to the lapse in Congressional appropriations during the period of November 14 through 19. The Fish and Wildlife Service was unable to expeditiously respond to the public requesting the documentation announced in the original **Federal Register** notice. The Fish and Wildlife Service is therefore extending the formal public comment period to allow opportunity for public review and submittal of comments.

DATES: The public comment period for this proposal, which originally closed on December 15, 1995, is now extended until December 26, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–*808474* in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker (RCW) is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees used by a breeding group is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature, fire-maintained, ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest populations occur on federally owned lands such as military installations and national forests. Continued development of the two tracts may result in death of, or harm to, any remaining RCWs through the loss of nesting and foraging habitat. The Service's EA outlines two alternatives in response to this application. The first alternative is a no-action alternative, which would result in the Service's denial of the request for incidental take. The second alternative is to accept the application as sufficient and issue an incidental take permit. Under Alternative 2, the applicants' HCP proposes to offset the anticipated level of incidental take, by implementing the following mitigation/minimization measures, including providing adequate funding to ensure their success:

1. For Pineda Crossing, temporary restrictions on construction activities at the project site will continue during the proposed period of 3 to 5 years of reproductive monitoring and translocations. This will provide temporary foraging, nesting, and roosting habitat. Construction within RCW habitat will not occur until translocations success is noted at the mitigation site or for 3 years, whichever comes first. If young birds are not available for 3 years, the HCP period will be extended to 5 years.

2. Three new cluster sites will be created at the Hal Scott Preserve in Orange County. Each cluster site will con-sist of three completed cavities and two start holes. New cavities will be caged and inspected for 6 months for sap leakage. Any trees leaking sap will not be opened for use by RCW.

3. Annual monitoring of nesting and roosting activity will be conducted at the project sites. During nesting season, weekly visits to occupied cavity trees will be conducted.

4. At Windover Farms, the single male RCW will be relocated to the newly created clusters at Hal Scott Preserve, along with a young female from Pineda Crossing (if available), or from the Big Econlockhatchee population, of which the RCWs occupying Hal Scott are a part.

5. The young birds from Pineda Crossing will be translocated to the newly created clusters at Hal Scott Preserve. Weekly visits will be conducted to the mitigation site once a week for 1 month after translocation to inspect the cavity and the surrounding area for the presence of these birds. Checks of the cluster sites will also be made four times during the following nesting season to monitor reproductive status and success.

6. Young birds from the surrounding population in the Big Econ River area will be used, if necessary, to augment these created cluster sites during years of no reproduction on the Pineda Crossing site.

7. At the mitigation site, inspections will be conducted in the fall and winter to locate the roost sites.

Dated: December 1, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–29941 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction and Operation of a Residential and Commercial Development in Wimberely, Hays County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Douglas J. Barclay (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–808691. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of 164 acres of residential and commercial development in Wimberely, Hays County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 8, 1996.

ADDRESSES: Persons wishing to review the application and EA/HCP may obtain a copy by contacting Joseph E. Johnston or Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection during normal business hours (9 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Acting Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–808691 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Douglas J. Barclay plans to construct and operate residential and commercial development on 164 acres in Wimberely, Hays County, Texas. This action will eliminate the habitat for one to two pairs of golden-cheeked warblers.

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The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by purchasing 20 acres of mitigation credit from the Nature Conservancy of Texas,Inc. to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–29944 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the American Burying Beetle by Weyerhaeuser Company for Timber Harvesting and Management in Little River County, AR, and McCurtain County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Weyerhaeuser Company (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act), as amended. The permit would authorize the take of the American Burying Beetle (*Nicrophorus americanus*), an endangered species, in Little River County, Arkansas, and McCurtain County, Oklahoma, for a period of 35 years. The proposed incidental take would result from normal forestry and other operational and management practices performed on the Applicant's lands.

The Service also announces the availability of a habitat conservation plan (HCP) and environmental assessment (EA). The Applicant's HCP describes conservation measures that will be taken to minimize and mitigate coincidentally with incidental take of the American burying beetle (ABB) by undertaking a research program into the long-term conservation needs of the affected species and by limiting certain ground-disturbing activities. Reporting and amendment procedures are included to ensure that the Applicant's management activities may continue to consider the latest scientific information pertaining to distribution and habitat requirements of the ABB and to address unforeseen circumstances. The EA prepared by the Service describes the environmental consequences of issuing or denying the incidental take permit. As stated in the EA, the Service proposes to issue the requested permit. This proposal is based on a preliminary determination that the Applicant has satisfied the requirements for permit issuance and that the HCP provides conservation benefits to the ABB that exceed the impact of the expected level of incidental take. Copies of the EA and HCP may be obtained by making a written request to the Regional Office [See **ADDRESSES** below]. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before January 8, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Requests for the documents must be in writing to be processed. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jackson, Mississippi, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–809072 in such comments:

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia (404–679–7110, fax 404–679–7081)

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (601–965–4900, fax 601–965–4340)

FOR FURTHER INFORMATION CONTACT: Will McDearman, Jackson, Mississippi Field Office or Rick Gooch at the Atlanta, Georgia Regional Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act, and implementing regulations, prohibits the take of RCWs. Take, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of an otherwise lawful activity.

This application for incidental taking is associated with a three-way land exchange proposed in Arkansas and Oklahoma. It involves the Applicant, the Service, and the Forest Service. The proposed exchange was formulated in consultation with State and local interests. The Applicant's openness to the proposal is based on its interest in consolidating ownership and obtaining land and timber more strategically located to its sawmills. Additionally, some of its existing lands with their associated non-timber values are better suited for public ownership and management. The Applicant and the two Federal agencies believe the proposed exchange satisfies the desire to place these lands in public ownership and better aligns the highest and best land uses with landowner interest and objectives.

The land exchange is approximately a 4 to 1 ratio, with the Applicant contributing the larger share. The Applicant will transfer approximately 150,000 acres to the Federal government. About 100,000 acres of this lies in southeast Oklahoma around Broken Bow Lake and near the McCurtain County Wilderness Area, a site operated by the Oklahoma Department of Wildlife Conservation. Other acreage consists of sites totalling approximately 25,000 acres near areas of strong public interest including Lake Ouachita, Little Missouri Wild and Scenic River, Glover River, Lower Mountain Fork River, Flatside Wilderness Area and other parts of the Ouachita National Forest. The Applicant will also transfer some 25,000 acres of nationally significant wetland habitat to the Service to be incorporated into the existing Cossatot National Wildlife Refuge to be managed for public benefits associated with wetland flora and fauna.

The Applicant will acquire approximately 40,000 acres from the Federal government, including 27,000 acres of the Tiak Ranger District of the Ouachita National Forest in McCurtain County, Oklahoma. The remaining acreage is in smaller, scattered tracts in Garland, Yell and Perry Counties, Arkansas. As a result of the land exchange described above, the Applicant will obtain ownership of land with known populations of ABB. The ABB is known to occur on or near the Tiak Ranger District, a substantial portion of which is to be received by the Applicant in the land exchange. This species is a carrion beetle, family Silphidae, and is also called the giant carrion beetle. It is the largest member of a guild of beetles that breed and rear their young on vertebrate carcasses. Like other burying beetles, the ABB is a highly social species that provides biparental care to its young. Once widely distributed throughout Eastern North America, this species is believed to have disappeared from most of its historic range. Very little is known about the life history of the species, including how forest structures affect population dynamics.

Potential taking incidental to the Applicant's proposed land management activities is largely associated with forest management in the permit area. There are, however, a variety of other potential effects associated with ownership and management which could also result in an incidental taking of the ABB. The following forest and land management activities are included for permit coverage: (1) Timber harvest, logging decks and pushout roads for access; (2) Site preparation activities; (3) tree planting; (4) thinning and pruning of trees; (5) pesticide use and prescribed burning; (6) food plot creation and other wildlife management activities; (7) leasing, exploration, and mining of minerals, oils, gas, and other natural resources; (8) right of way, road easements, and pipelines; (9) livestock grazing and fencing; (10) pond construction and maintenance; (11) road construction and maintenance; (12) fire lanes and helicopter pads; (13) hunting/recreational use activities; and, (14) miscellaneous activities which may cause minor ground disturbances. To address the effects of these activities on the ABB, the Applicant proposes to initiate a strategy which focuses on addressing research and management needs of the ABB on a landscape scale. This includes a baseline survey of ABB abundance and distribution, a research and monitoring program, restrictions on pesticide use, limiting ground disturbance activities during certain periods of the year, and an adaptive management approach to forest practices that incorporates new information on the ABB's needs and requirements as elucidated by the aforementioned research/monitoring plan. The Applicant will provide funding for the HCP over its 35-year life.

The EA considers the environmental consequences of several alternatives; issue the requested permit as conditioned by the HCP, issue a permit predicated on a different mitigation/minimization strategy for the ABB, or take no action (deny permit). The Service finds the greatest conservation benefits accompany the HCP and proposed permit. The Service's proposed alternative is to issue the requested incidental take permit, based upon the submitted HCP. The principal environmental consequence of permit issuance, in the Service's assessment, is to sustain or enhance the status of the ABB, via implementation and funding the mitigation and minimization measures as outlined above.

Dated: December 1, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–29942 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction and Operation of a Mixed Use and Residential Development in Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: P–WB Joint Venture (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act. The Applicant has been assigned permit number PRT–808694. The requested permit, which is for a period of 10 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave ground beetle (*Rhadine persephone*), and Bone Cave harvestman (*Texella reyesi*). The proposed take would occur as a result of the construction and operation of 138 acres of mixed use and residential development in Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by January 8, 1996.

ADDRESS: Persons wishing to review the application or the EA/HCP may obtain a copy by contacting Joseph E. Johnston or Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection during normal business hours (9 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Acting Field Supervisor, Ecological Field Office, Texas (see **ADDRESS** above). Please refer to permit number PRT–808694 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler and cave invertebrates. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: P–WB Joint Venture plans to construct and operate 138 acres of mixed use and residential development on 333 acres in Austin, Travis County, Texas. This action will eliminate the habitat for 13 pairs of golden-cheeked warblers. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by preserving 135 acres of golden-cheeked warbler habitat and the preservation and maintenance of 52 acres with 5 caves containing the Tooth Cave ground beetle and the Bone Cave harvestman for the conservation of the golden-cheeked warbler and the cave invertebrates.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–29943 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–912–06–0777–52]

Meeting of the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Utah.

SUMMARY: The Utah Resource Advisory Council will meet on January 5–6, 1996 at the Howard Johnson Hotel, Salt Lake Conference Room, 122 West South Temple, Salt Lake City, Utah. Council members will meet from 9 a.m. to 5 p.m. on Friday, January 5. The entire first day will be devoted to a training session on rangeland ecology. The Council will reconvene at 8 a.m. on Saturday, January 6. A discussion of the planning process to develop standards and guidelines will be the primary topic the second day. A public comment, period where members of the public may address the Council, is scheduled for 12:00 noon on the 6th. The meeting will conclude at 1 p.m. All sessions of the

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Utah Resource Advisory Council meeting are open to the public.

FOR FURTHER INFORMATION CONTACT: Don Banks, Utah State Office, Bureau of Land Management, 324 S. State St., Suite 300, Salt Lake City, UT 84111; phone (801) 539–4021.

Dated: December 1, 1995.

G. William Lamb,

Utah BLM State Director.

FR Doc. 95–29940 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–04–1430–01; U–74782]

Leasing of Public Land Washington County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice involves a long term lease on public land in Utah. The lease is intended to resolve a long-standing agriculture trespass and would be offered non-competitively to the current user.

DATE: Comments should be received by January 8, 1996.

ADDRESS: Comments should be sent to the Area Manager, Dixie Resource Area, 345 East Riverside Drive, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Realty Specialist, (801) 673–4654 ext. 274.

SUPPLEMENTARY INFORMATION: The following described public land is being proposed for a long term agriculture lease:

Salt Lake Meridian

T. 40 S., R. 17 W.,
Sec. 29, SE¼NE¼; (portion of)
containing approximately 6.7 acres.

The area is currently being used as irrigated pasture and has been used as such for a number of years. The issuance of the lease would terminate a long-standing trespass. The proposed lease would be issued non-competitively to the adjacent land owner. Application for the lease will be accepted upon completion of the comment period. The lease would be issued for not less than fair market rental, and the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing the lease and for monitoring operation, maintenance, and rehabilitation of the facilities authorized. The reimbursement of costs shall be in accordance with 43 CFR 2920.6.

For a period of 30 days from the date of this notice, interested parties may submit comments to the Area Manager, Dixie Resource Area, address noted above. Any adverse comments will be evaluated by the Area Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any objections, this Notice of Realty Action will become the final determination of the Bureau of Land Management.

James D. Crisp,

Area Manager.

[FR Doc. 95–29911 Filed 12–7–95; 8:45 am]

BILLING CODE 4310–DQ–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–32 (Sub-No. 76X)]

Boston and Maine Corporation—Abandonment Exemption—In Middlesex County, MA

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR part 1152, Subpart F—*Exempt Abandonments* to abandon a portion of railroad known as the Tewksbury Branch line, between milepost 0.75 and milepost 1.92, a distance of approximately 1.17 miles, in Tewksbury, Middlesex County, MA. The proposed consummation date of the abandonment is January 8, 1996.

B&M has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 6, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John R. Nadolny, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 12, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30007 Filed 12–7–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 10, 1995, and published in the **Federal Register** on August 17, 1995, (60 FR 42905), Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. DEA has determined that the registration of Dupont Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 29, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 95–29961 Filed 12–7–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 10, 1995, and published in the **Federal Register** on August 17, 1995, (60 FR 42905), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

No comments or objections have been reached. DEA has determined that the registration of Noramco of Deleware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 29, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–29962 Filed 12–7–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

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Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

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Connecticut
CT950001 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)
New York
NY950033 (Feb. 10, 1995)

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Maryland
MD950001 (Feb. 10, 1995)
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MD950040 (Feb. 10, 1995)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of December 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–29649 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–31,317; TA–W–31,317A; TA–W–31,317B]

Barrow Manufacturing Corporation, Dahlonega, Georgia, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 6, 1995, applicable to all workers of Barrow Manufacturing Corporation located in Dahlonega, Georgia. The notice was published in the Federal Register on October 27, 1995 (60 FR 55064).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Based on new information received by the company, the Department is amending the certification to cover the workers at the subject firm's Statham and Winder, Georgia locations. The workers at Barrow's Statham, Georgia location, scheduled to close before January 1, 1996, produce men's and boys' dress and casual slacks and men's and boys' jeans. The Barrow's workers located in Winder, Georgia perform cutting, shipping, and administrative functions for Barrow's Georgia manufacturing operations.

The intent of the Department's certification is to include all workers of Barrow Manufacturing Corporation who were adversely affected by increased imports of apparel.

The amended notice applicable to TA–W–31,317 is hereby issued as follows:

"All workers of Barrow Manufacturing Corporation, Dahlonega, Georgia (TA–W–31,317); Statham, Georgia (TA–W–31,317A); and Winder, Georgia (TA–W–31,317B) who became totally or partially separated from employment on or after July 27, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 22nd day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–29973 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,075 and 075A]

Gentek Building Products, Incorporated, Woodbridge, NJ, and Gentek Building Products, Incorporated; Franklin Park, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 1995, applicable to all workers of Gentek Building Products, Incorporated, located in Woodbridge, New Jersey. The notice was published in the Federal Register on June 21, 1995 (60 FR 32346).

The Department reviewed the certification for workers at the subject firm. New information received from the company shows that worker separations will occur at Gentek's Franklin Park, Illinois production facility. The workers produce aluminum and vinyl siding. Based on this new information, the Department is amending the certification to cover workers of the subject firm in Franklin Park, Illinois.

The intent of the Department's certification is to include all workers of Gentek Building Products, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,075 is hereby issued as follows:

"All workers of Gentek Building Products, Incorporated, Woodbridge, New Jersey (TA–W–31,075), and Franklin Park, Illinois (TA–W–31,075A) who became totally or partially separated from employment on or after March 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 22nd day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–29971 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,454; TA–W–31,454A]

Oxford Industries, Inc., Oxford Shirtings Division, Alamo, Georgia, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 13, 1995, applicable to all workers of Oxford Industries, Inc., Oxford Shirtings Division located in Alamo, Georgia. The notice was published in the Federal Register on October 27, 1995 (60 FR 55064).

At the request of the company, the Department reviewed the subject certification. Based on new information received by the company, the Department is amending the certification to cover the workers at the subject firm's Lanier Clothes production facility in Bowman, Georgia. Shutdown operations will begin in December 1995. The workers produce men's pants.

The intent of the Department's certification is to include all workers of Oxford Industries, Inc. who were adversely affected by increase imports of apparel.

The amended notice applicable to TA–W–31,454 is hereby issued as follows:

"All workers of Oxford Industries, Inc., Oxford Shirtings Division, Alamo, Georgia (TA–W–31,454) engaged in employment related to the production of men's dress shirts, and all workers of Oxford Industries, Inc., Lanier Clothes, Bowman, Georgia (TA–W–31,454A) who became totally or partially separated from employment on or after September 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 22nd day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–29974 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,079]

Picker International, Inc., Cleveland, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 30, 1995, applicable to all workers of Picker International, Inc., engaged in employment related to the production of medical imaging equipment in Cleveland, Ohio. The notice was published in the Federal Register on July 19, 1995 (60 FR 37083).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce medical imaging equipment. New findings show that the support workers (sales, service and administrative) of the subject firm, located in various States, should have been included. The intent of the Department's certification is to include all workers of Picker International, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,079 is hereby issued as follows:

"All workers of Picker International, Inc., Cleveland, Ohio, and at various field offices listed below, engaged in employment related to the production of medical imaging equipment who became totally or partially separated from employment on or after May 13, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,079A	Alabama
TA–W–31,079B	Arizona
TA–W–31,079C	California
TA–W–31,079D	Colorado
TA–W–31,079E	Florida
TA–W–31,079F	Georgia
TA–W–31,079G	Illinois
TA–W–31,079H	Indiana
TA–W–31,079I	Iowa
TA–W–31,079J	Kansas
TA–W–31,079K	Louisiana
TA–W–31,079L	Maryland
TA–W–31,079M	Massachusetts
TA–W–31,079N	Michigan
TA–W–31,079O	Missouri
TA–W–31,079P	Montana
TA–W–31,079Q	New Jersey
TA–W–31,079R	New York
TA–W–31,079S	North Carolina
TA–W–31,079T	Oregon
TA–W–31,079U	South Carolina
TA–W–31,079V	Texas
TA–W–31,079W	Virginia
TA–W–31,079X	Washington
TA–W–31,079Y	West Virginia
TA–W–31,079Z	Wyoming."

Signed at Washington, DC this 27th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–29976 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–30–M

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[TA-W-31,267 and 267A]

Woolrich, Incorporated, Alliance, NE; and Woolrich, Incorporated, Ailey, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1995, applicable to all workers of Woolrich, Incorporated located in Alliance, Nebraska. The notice was published in the Federal Register on August 24, 1995 (60 FR 44079).

The Department reviewed the certification for workers at the subject firm. New information received from the company shows that worker separations will occur at Woolrich's Ailey, Georgia sewing facility. The workers produce ladies' and men's outerwear and sportswear. Based on this new information, the Department is amending the certification to cover workers of the subject firm in Ailey, Georgia.

The intent of the Department's certification is to include all workers of Woolrich, Incorporated who were adversely affected by increased imports of apparel.

The amended notice applicable to TA-W-31,267 is hereby issued as follows:

"All workers of Woolrich, Incorporated, Alliance, Nebraska (TA-W-31,267), and Ailey, Georgia (TA-W-31,267A) who became totally or partially separated from employment on or after July 12, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 27th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-29975 Filed 12-7-95; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00868]

Gentek Building Products, Inc., Franklin Park, Illinois; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on October 25, 1995 in response to a petition filed by a company representative on behalf of workers at Gentek Building Products, Inc. located in Franklin Park, Illinois.

The investigation revealed that on May 9, 1995, workers of Gentek Building Products, Inc. located in Woodbridge, New Jersey were certified eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974. On November 28, 1995 an amendment was made to NAFTA-00414 to include all workers of Gentek Building Products, Inc. located in Franklin Park, Illinois. Because the subject workers have been included in the amendment certification of NAFTA-00414, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of February 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-29969 Filed 12-7-95; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00414 and 00414A]

Gentek Building Products, Inc., Woodbridge, NJ and Gentek Building Products, Inc., Franklin Park, IL; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 9, 1995, applicable to all workers at Gentek Building Products, Inc. located in Woodbridge, New Jersey.

New information received from the company shows that worker separations will take place at Gentek's Franklin Park, Illinois production facility. The layoffs are the result of a shift in production to the subject firm's Canadian plant. The Department is amending the certification to include the Franklin Park workers.

The intent of the Department's certification is to include all workers of Gentek Building Products, Inc. who are adversely affected by increased imports.

The amended notice applicable to NAFTA-00414 is hereby issued as follows:

"All workers of Gentek Building Products, Inc., Woodbridge, New Jersey (NAFTA-00414), and Franklin Park, Illinois (NAFTA-00414A) who became totally or partially separated from employment on or after March 29, 1994 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 28th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-29970 Filed 12-7-95; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00622; NAFTA-00622C]

Samax II, Inc., Eggleston, Virginia, et al.; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 25, 1995, applicable to all workers of Samax II, Inc. located in Eggleston, Virginia. The notice was published in the Federal Register on November 9, 1995 (60 FR 56620).

New information received from petitioners shows that worker separations have occurred at Pacemaker Togs, Inc., in New York, New York, the parent company of Samax. The workers at Pacemaker Togs provide support services for the Samax plants.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. Accordingly, the Department is amending the certification to include the workers of the parent company, Pacemaker Togs, Inc., New York, New York.

The amended notice applicable to NAFTA-00622 is hereby issued as follows:

"All workers of Samax II, Eggleston, Virginia (NAFTA-00622); and Pacemaker Togs, Inc., New York, New York (NAFTA-00622C) who became totally or partially separated from employment on or after September 21, 1994 are eligible to apply for NAFTA-TAA Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 22nd day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-29972 Filed 12-7-95; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs

Construction Contractors—Affirmative Action Requirements: Rescission of Reporting Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice.

SUMMARY: As part of its regulatory reform efforts, the Department of Labor is reviewing reporting requirements placed on the public. The Office of Federal Contract Compliance Programs (OFCCP) has determined, as part of its review, that the present routine submission by covered construction contractors of the Monthly Employment Utilization Report (CC-257) is no longer necessary.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, OFCCP, 202-219-9430 (voice), 1-800-326-2577 (TDD). Copies of this Notice, including copies in alternative formats, may be obtained by calling OFCCP at 202-219-9430 (voice) or 1-800-326-2577 (TDD). The alternative formats available are: Large print, electronic file on computer disk, and audio-tape.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 11246 (Sections 202, 203, and 301), the equal opportunity clause included in non-exempt Government contracts and federally assisted construction contracts requires contractors to furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor (41 CFR 60-1.4(a)(5), (b)(5)). Also, non-exempt Federal construction contracts and subcontracts, and federally assisted construction contracts and subcontracts include the Standard Federal Equal Employment Opportunity Construction Contract Specifications (41 CFR 60-4.3). These specifications require construction contractors and subcontractors to submit any reports relating to the provisions of the regulations as may be required by the Government (41 CFR 60-4.3(a)(14)).

For many years, the reports routinely required of construction contractors by OFCCP have taken the form of the Monthly Employment Utilization Report (CC-257). Covered construction contractors have been required to record on this form the total hours worked by all construction employees and the number of hours worked by minority and female employees by construction trade, on construction projects in a specific area. The CC-257s are sent monthly to the OFCCP Area Office with jurisdiction over the location where the contractor's payroll records are kept.

The requirement to file the CC-257, however, has had only limited application. The report has been required only of approximately one-third of the covered construction contractors every month. Briefly, only construction work performed in geographic areas covered by minority goals under a hometown or imposed plan, as listed in the Federal Register in 1978, are required to report. (45 FR 65750; 43 FR 19473, App. B) Approximately 35,000 reports are filed each month.

The ongoing review of regulatory requirements and the identification of existing paperwork requirements which can be eliminated without significantly affecting compliance with the Executive Order has resulted in the decision to no longer require the routine preparation and submission of the CC-257. Eliminating these monthly reports will relieve the affected construction contractors of an estimated 419,000 burden hours per year currently calculated under the Paperwork Reduction Act (44 U.S.C. 3501) (OMB control number 1215-0163). Also, ending this collection of information will permit OFCCP to utilize its limited resources more efficiently.

It is important to note, however, that the Executive Order and regulations cited above continue to authorize the Secretary of Labor to require reporting from contractors subject to the regulations. It is anticipated that such reporting, generally, will be associated with instances involving the resolution of violations of the regulations and as otherwise deemed appropriate to further the purposes of the Executive Order. (For example, during the term of a construction mega project.)

Therefore, upon publication of this Notice, the routine monthly compilation and submission of the form CC-257 is no longer required from construction contractors: *Provided*, that any contractor or subcontractor required to submit such reports pursuant to an extant agreement with OFCCP shall continue to do so for the duration of the agreement.

Signed at Washington, D.C., this 17th day of November 1995.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 95-29978 Filed 12-7-95; 8:45 am]

BILLING CODE 4510-27-M

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Multiple Worksite Report and Report of Federal Employment and Wages

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "Multiple Worksite Report." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before February 6, 1996.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212.

FOR FURTHER INFORMATION CONTACT: Ms. Kurz on 202-606-7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ES-202 Program is a Federal/State cooperative effort which compiles monthly employment and quarterly wage data. These data are collected from State Quarterly Contribution Reports submitted to State Employment Security Agencies (SESAs) by employers subject to State Unemployment Insurance (UI) laws. The ES-202 Report, produced for

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each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the Unemployment Compensation for Federal Employees (UCFE) Program are also included in each State report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the Bureau of Labor Statistics (BLS) which then summarizes these macro-level data to produce totals for the States and the Nation. The ES–202 Report provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

As part of the ES–202 Program, the States also send micro-level employment and wages data, supplemented with the names and addresses of employers, to BLS. These States' data are used to create a BLS sampling frame, known as the Business Establishment List. This file represents one of the best sources of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The Business Establishment List includes the individual employer employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the UCFE program.

For employers having only a single physical location (worksite) in the State and, thus, operating under a single assigned industrial and geographical code, the data from the States' UI accounting file are sufficient for statistical purposes. Such data, however, are inadequate for statistical purposes for those employers having multiple establishments or engaged in different industrial activities within the State. In such cases, the employer's Quarterly Contributions Report may reflect only Statewide employment and wages and is not disaggregated by establishment or worksite. Although this level of data is sufficient for many purposes of the UI Program, more detailed information is required to create a sampling frame and meet the needs of several ongoing Federal/State statistical programs. As a result of the Multiple Worksite Report, improved establishment business identification data elements have been incorporated into and maintained on the Business Establishment List. Establishment identification data elements in the Business Establishment List include a physical location address, secondary name (division, trade name, subsidiary, etc.), and reporting unit description (store number, plant name or number, etc.) for each worksite of multi-establishment employers.

Employers with more than one establishment reporting under the same U.I. account number within a State are requested to complete the Multiple Worksite Report if the sum of the employment in all of their secondary establishments is 10 or greater. The primary worksite is defined as the establishment with the greatest number of employees. Upon receipt of the first Multiple Worksite Report form, each employer is requested to supply business location identification information. Thereafter, this reported information is computer-printed on the Multiple Worksite Report each quarter. The employer is requested to verify the accuracy of this business identification information and provide only the employment and wages for each worksite for that quarter. By using a standardized form, the reporting burden on many large employers, especially those engaged in multiple economic activities at various locations across numerous States, has been reduced.

Comparable to the Multiple Worksite Report, the function of the Report of Federal Employment and Wages is to collect employment and wage data for each installation of a federal agency. The Report of Federal Employment and Wage aids in the development and maintenance of business identification information by installation. The Report of Federal Employment and Wages was modeled after the Multiple Worksite Report and is used only to collect data from Federal agencies covered by the UCFE program.

II. Current Actions

No other standardized report is available to collect current establishment-level employment and wages data by SESAs for statistical purposes each quarter. Also, no other standardized report currently is available to collect installation-level Federal employment and wages data by SESAs for statistical purposes.

The Bureau of Labor Statistics has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The Bureau also established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the Multiple Worksite Report collection process. Employers who complete the Multiple Worksite Report for multi-location businesses can now submit employment and wages information on any electronic medium (tape, cartridge, diskette, or computer-to-computer) directly to the data collection center, in lieu of each State agency. The data collection center then distributes the appropriate data to each State.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and Report of Federal Employment and Wages (RFEW).

OMB Number: 1220–0134.

Frequency: Quarterly.

Affected Public: Business or other for-profit institutions, not for-profit institutions, Federal Government, and State, local or tribunal government.

Number of Respondents: 117,911.

Estimated Time Per Response: 22.2 minutes.

Total Burden Hours: 174,508 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of December, 1995.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 95–29977 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–24–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–108, Exemption Application No. D–09973, et al.]

Grant of Individual Exemptions; Kay Alden, Inc. Money Purchase Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kay Alden, Inc. Money Purchase Plan (the Plan), Located in Chicago, Illinois; Exemption

[Prohibited Transaction Exemption 95–108; Exemption Application No. D–09973]

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase of real property (the Purchase) by the Plan from Mr. Vernon Nelson (Nelson), a party in interest with respect to the Plan provided that: (a) The Purchase is a one time transaction for cash; (b) the Plan will pay no more than fair market value for the Property, as determined by an independent qualified real estate appraiser at the time of the transaction; (c) the fair market value of the Property represents no more than 25% of the value of the Plan's assets; (d) the Plan's interests with respect to the Purchase are represented by two independent fiduciaries; (e) the Plan will pay no fees or commissions associated with the Purchase; and (f) all terms and conditions of the Purchase are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 17, 1995 at 60 FR 53805.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Rea Magnet Wire Company, Inc. Employees' Retirement Savings Plan and Rea Magnet Wire Company, Inc. Union Employees' Retirement Savings Plan (together, the Plans) Located in Fort Wayne, Indiana; Exemption

[Prohibited Transaction Exemption 95–109; Exemption Application Nos. D–10075 and D–10076]

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Rea Magnet Wire Company, Inc. (Rea), a party in interest with respect to the Plans, provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) the Plans will receive no less than the fair market value of the GICs as of the date of the sale; and c) the purchase price will be not less than the GICs' accumulated book values at their maturity date (defined as total deposits plus interest accrued but unpaid at the GICs' stated rates of interest through the date of maturity, less withdrawals) plus interest from the date of maturity through the date of the sale at the rate then being earned under the Plans' "GIC/Stable Value Fund".

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 1995 at 60 FR 49426.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan of NEBCO, Inc. Located in Lincoln, Nebraska; Exemption

[Prohibited Transaction Exemption 95–110; Exemption Application No. D–10096]

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by NEBCO, Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the Extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 6, 1995, at 60 FR 52419.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan of Constructors, Inc. (the Plan) Located in Lincoln, Nebraska; Exemption

[Prohibited Transaction Exemption 95–111; Exemption Application No. D–10097]

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Constructors, Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to

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the Plan than those which the Plan would receive in arm's length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the Extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 6, 1995, at 60 FR 52421.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Universal Surety Company Profit Sharing Plan (the Plan) Located in Lincoln, Nebraska; Exemption

[Prohibited Transaction Exemption 95–112; Exemption Application No. D–10096]

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Universal Surety Company (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the Extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 6, 1995, at 60 FR 52422.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Constructors, Inc. 401(k) Plan (the Plan) Located in Lincoln, Nebraska; Exemption

[Prohibited Transaction Exemption 95–113; Exemption Application No. D–10099]

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Constructors, Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the Extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 6, 1995, at 60 FR 52424.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 5th day of December, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–29085 Filed 12–7–95; 8:45 am]

BILLING CODE 4510–29–P

[Application Nos. D–09969 and D–09970]

Proposed Exemptions; Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager) Located in Atlanta, GA; Proposed Exemption

[Application Nos. D–09969 and D–09970]

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transaction

If the exemption is granted, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust; collectively, the Trusts), to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This proposed exemption is conditioned upon the requirements set forth below in Section II.

Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of $50 million and no Trust has invested more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:

(1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.

(2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.

(3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.

(4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates.

(f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.

(g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,

(1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.

(2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.

(3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) An "affiliate" of the Investment Manager includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative of, or partner of any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "Independent Fiduciary" is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

Summary of Facts and Representations

1. Wachovia Corporation (Wachovia) is a Southeastern interstate bank holding company maintaining dual headquarters in Winston-Salem, North Carolina and Atlanta, Georgia. The Investment Manager is one of Wachovia's principal banking subsidiaries. As of December 31, 1994, the Investment Manager had 493 branches in 206 cities and 3 states.

2. The American Telephone & Telegraph Company (AT&T), a New York corporation, and BellSouth Corporation (BellSouth), a Georgia corporation, provide telecommunication services. AT&T, whose headquarters are in New York, New York, primarily provides long distance telephone communication services. BellSouth, one of the seven regional telephone companies that was divested from AT&T in 1984 as part of the Department of Justice's antitrust settlement with AT&T, is located in Atlanta, Georgia and provides a wide array of telecommunication services, including mobile communications and advertising services.

3. The AT&T Trust covers active management and nonmanagement employees of AT&T as well as retirees throughout the United States. The AT&T Trust is comprised of the AT&T Management Pension Plan (the AT&T Management Plan) and the AT&T Nonmanagement Pension Plan (the AT&T Nonmanagement Plan). As of December 31, 1993, the participant and asset breakdown of these Plans were as follows:

AT&T Trust	Participants	Net asset value
Management Plan	180,491	$20,024,695,000
Nonmanagement Plan	262,237	18,210,547,000
Totals	442,728	$38,235,242,000

The AT&T Trust has six trustees. They are Citibank, N.A.; Chase Manhattan Bank, N.A.; Northern Trust Company; Bankers Trust Company; Mellon Bank, N.A.; and State Street Bank & Trust Company.

4. The BellSouth Trust covers active employees and retirees of BellSouth. The BellSouth Trust is comprised of the BellSouth Personal Retirement Account Pension Plan (the BellSouth PRA Plan), which covers management employees, the BellSouth Corporation Pension Plan (the BellSouth Pension Plan), which covers union employees, and the Retirement Pension Plan of Stephens Graphics, Inc. (the Stephens Plan), which covers management employees. In addition to covering active employees of BellSouth, all three plans include retirees. The retirees reside in all states comprising the United States. The active employees reside in Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, North Carolina and South Carolina.

As of December 31, 1993, the participant and asset breakdown of the BellSouth Trust were as follows:

BellSouth Trust	Participants	Net asset value
PRA Plan	43,669	$6,084,663,690
Pension Plan	91,797	7,065,931,097
Stephens Plan	248	24,011,213
Totals	135,714	$13,154,606,000

The Investment Manager serves as the trustee of the BellSouth Trust.

5. On January 1, 1985, AT&T and the First National Bank of Atlanta, predecessor in interest to the Investment Manager, entered into an investment management agreement (the AT&T Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the AT&T Trust. Similarly, on September 20, 1990, BellSouth Corporation entered into an investment management agreement (the BellSouth Agreement) whereby the Investment Manager agreed to serve as investment manager with respect to a portion of the assets held in the BellSouth Trust. The decision by AT&T and BellSouth to enter into the Agreements with the Investment Manager was made by fiduciaries of the Trusts who are independent of the Investment Manager following written disclosure of all of the relevant facts and information concerning the purpose, structure and operation of Timberland including the proposed fee arrangements described herein and their probable effect on the management of the assets of the Trusts.[2]

6. As contemplated by both the AT&T Agreement and the BellSouth Agreement, Timberland is a special purpose corporation with a projected duration of 7 years.[3] Timberland was formed in 1990 for the purpose of holding title to timberland investments made on behalf of the AT&T Trust and the BellSouth Trust. The stock of Timberland is owned in equal shares by the Trusts. The assets of the Trusts that are invested in Timberland have been placed in an account which is referred to herein as the "Timberland Account."[4] As of June 21, 1994, the Timberland Account had total assets of $100,000,000.

7. Timberland holds title to the underlying land and timber on properties located in the States of Arkansas, Mississippi, Florida, Georgia, North Carolina, South Carolina, Michigan, Alabama and Louisiana. Such forest properties are primarily "mature" in that they predominately consist of sawtimber-aized trees that can be converted into lumber. Timberland also holds a fewer number of acres on which smaller trees are grown. Some of these smaller trees are merchantable as pulpwood while the remainder are premerchantable in that they have not yet attained sufficient size to have any marketable value.

8. Effective October 15, 1990, Timberland entered into an investment management agreement with the Investment Manager (the Timberland Agreement). The Timberland Agreement was contemplated by both the BellSouth Agreement and the AT&T Agreement and is intended to ensure that the Timberland would bear directly on the investment management fees for the Investment Manager's services to the corporation. The Timberland Agreement is designed to reflect the operative provisions of the BellSouth and AT&T Agreements as they pertain to timberland investments.

9. Pursuant to the Timberland Agreement, the Investment Manager has full discretion and authority to purchase, sell convey or transfer timberland properties. To date, the Investment Manager has not incurred any debt in connection with the timberland properties. According to the applicants, it is not contemplated that such debt will ever be incurred.

The Investment Manager is also empowered to establish an overall plan for the management of timberland properties. In this regard, day-to-day management of the timber is performed by independent consulting foresters or their subcontractors who are retained on a per diem basis by the Investment Manager. Some of the duties performed by the consulting foresters include the construction and maintenance of firelines, timber stand improvement, inspection for and control of forest insects and disease, site preparation and planting, boundary line marking and maintenance and estimation of forest inventory.

10. Prior to the purchase of a property, the Investment Manager has the underlying bare land value and timber value independently appraised, along with an inventory of the volume of timber on the property, including estimates of the growth rates of the various species and timber products present on the property. At the end of each calendar quarter, the Investment Manager determines the closing market valuation of the timberland assets (excluding any then pending trades, accruals and cash) as of the end of that period. The Investment Manager derives the current volume of timber, net of growth and removals (sales and harvests), based on the independently arrived at growth rates. The Investment Manager retains the services of the independent consulting foresters licensed to do business in states in which the timber in question is located to provide estimates of the per unit value of the various timber species and products on each tract of timberland in which Timberland has an interest.

As an additional method of valuation, the Investment Manager utilizes the services of Timber Mart South, a price reporting service which regularly quotes per unit market prices for timber products in conjunction with the information provided by the consulting foresters to establish a range of unit values of those areas. The Investment Manager may also use its own judgment to determine the appropriate unit values applicable to current volumes, employing the independently established ranges of values and thus arriving at closing market values for each timberland property in which Timberland has an interest.

In addition to quarterly valuations, the Investment Manager will have the underlying land value (bare land value) reappraised every three years by independent, state-certified appraisers. The purpose of these appraisals is to assist the Investment Manager in deciding whether to liquidate a tract of timberland. Further, the Investment Manager will have the timber inventory of Timberland appraised every five years by independent, registered consulting foresters to determine timber volume and growth rates.

The Investment Manager will select the independent, registered foresters referred to above based upon their prior satisfactory performance or their professional reputations as ascertained from knowledgeable sources within the industry. The consultants on timber value will be chosen on the basis of their reputations for reliability within the timber industry.

11. As compensation for its services under the Timberland Agreement, the Investment Manager is entitled to receive an investment management fee (the Management Fee). Initially, the Management Fee was paid quarterly in arrears at the annual rate of $600,000. The first payment was made at the conclusion of the calendar quarter which included October 2, 1990. Over the next 11 quarters, Management Fee payments continued to be calculated at this rate until September 30, 1993 when a final payment was made to the Investment Manager.

Commencing in December 1993, the twelfth full quarter, the Management Fee is being paid quarterly in arrears in accordance with the following Annual Fee Schedule:

Annual fee schedule	
First $100 Million	0.60%

[2] With respect to the proposed Incentive Fee, section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide adequate oversight of the investment manager during the course of the arrangement.

[3] Although Timberland is currently structured as a corporation, the parties may, for tax reasons, decide to change that form to, or make additional timberland investments through, a partnership. The ownership interest in the partnership would be unchanged, i.e., BellSouth and AT&T would each retain a 50 percent ownership interest in the new entity. Furthermore, any change in the form of ownership would only occur if agreed to by BellSouth, AT&T and the Investment Manager.

[4] The applicants are assuming, for purposes of this exemption, that the assets of the Trusts that have been invested in Timberland are "plan assets" within the meaning of 29 CFR 2510.3–101. Although the applicants represent that they have considered whether Timberland qualifies as a "real estate operating company" within the meaning of 29 CFR 2510.3–101(e), they are unable to conclude that Timberland can qualify primarily due to the absence of direct authority on whether the activities associated with timberland management are real estate management activities as contemplated by the regulatory definition of "real estate operating company."

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Annual fee schedule	
Next $200 Million	0.50%
Next $300 Million	0.40%
Balance	0.30%

Such fee is being computed on the basis of the closing market value of timberland assets as of the end of each calendar quarter based on independent appraisals of timber volume and bare land.[5]

12. In addition to the Management Fee, the Investment Manager is entitled to receive an Incentive Fee upon the complete liquidation of the Trusts' Timberland Account provided the Trusts recover distributions equal to their initial investments. Liquidation of the Trusts' Timberland Account is to be completed by October 2, 1997. This is also the "termination date" for Timberland.[6]

The intent of the Incentive Fee is to induce the Investment Manager to liquidate the assets of the Timberland Account in a manner that maximizes the return to the Trusts. However, market conditions at the time of the liquidation will dictate the pattern governing the sale of assets in the Timberland Account as well as the sales price of such assets. To the extent that the Investment Manager can exercise discretion regarding the timing or the amount of the Incentive Fee, the applicants recognize that a violation of the prohibited transaction rules may occur. Accordingly, the applicants request an administrative exemption from the Department.

The Incentive Fee is a one-time fee that will be based on the annual, real internal rate of return (the IRR) achieved on the assets of Timberland. The IRR is the periodic rate at which an investment of a given size grows to a terminal value of a given size. The IRR is determined by the interaction of three variables—(a) the percentage gain in net asset value of the Timberland Account, (b) the time over which the gain is achieved, and (c) the rate of inflation.[7]

13. The proposed Incentive Fee payment would be based upon the IRR achieved on Timberland's assets consisting of a capital commitment (the Capital Commitment) of $100 million or other amount as mutually agreed to by the Trusts and the Investment Manager. Such amount will be net of all fees, expenses, income taxes and debt and calculated in accordance with the Timberland Account Incentive Fee Payment Schedule which sets forth various IRRs (which begin at 1 percent and have no limit) and incentive Fee payments (which are capped at $10.5 million) applicable to the IRRs.

Basically, the Incentive Fee Payment Schedule provides that for each 0.1 percent increase in the IRR, the Incentive Fee is increased by the dollar amount of the prior increment plus $500. For example, to determine the Incentive Fee earned with respect to an IRR of 3 percent, the incremental difference between the Incentive Fee earned with respect to an IRR of 2.8 and 2.9 percent must be determined initially. This difference, as reflected in the Incentive Fee Payment Schedule, is $11,750 ($137,750 minus $126,000). Thus, the Incentive Fee for achieving an IRR of 3 percent would be $150,000 according to the Incentive Fee Payment Schedule ($137,750 plus $11,750 plus $500).

According to the applicant, the parties agreed to this formula for determining the Incentive Fee after considerable negotiation based on the understanding that each 0.1 percent increase in the IRR would be more difficult to achieve. In other words, increasing the IRR from 2.8 percent to 2.9 percent is more difficult than increasing it from 1.8 percent to 1.9 percent. Therefore, the Incentive Fee is designed to encourage this extra effort.

14. For purposes of computing the Incentive Fee, when calculating the IRR, any distributions made from the Timberland Account by the Investment Manager prior to October 2, 1994 and not recalled to fund additional timberland investments, will be subtracted from the cash flow used to determine the IRR. Also, any portion of the Capital Commitment not called prior to October 1, 1994 will cause the Incentive Fee payment amounts to be reduced by the same proportion as the ratio of uncalled capital to the Capital Commitment. All capital distributed to the Trusts from which said capital is contributed must be recalled prior to any additional portion of the Capital Commitment being called.[8]

15. The Incentive Fee is payable to the Investment Manager upon the termination of Timberland (i.e., October 2, 1997). However, if the Investment Manager resigns or is removed for any reason prior to October 2, 1997 by either AT&T, BellSouth or by both Trusts, the Trusts may appoint a successor Investment Manager to complete the liquidation of the Timberland Account. In this event, the Incentive Fee will calculated, but it will not be paid to the former Investment Manager until the Timberland Account is completely liquidated (i.e., by October 2, 1997). The actual fee that is paid to the former Investment Manager will be the *lesser* of:

(a) An amount based on the IRR achieved from the inception of the Timberland Account to completion of the liquidation of such account;

(b) An amount based on the IRR achieved from the inception of the Timberland Account to the effective date of the former Investment Manager's removal or resignation, which shall be determined based upon the assumption that the liquidation proceeds are distributed to the Trusts on the termination date of the former Investment Manager in an amount equal to the independently appraised value of the property of Timberland as of such termination date (net of all fees, expenses and taxes); or

(c) An amount based upon the Alternative Fee described in the preceding footnote. Under such circumstances, the Alternative Fee will be computed through the date of the Investment Manager's resignation or removal.

For purposes of calculating the Incentive Fee, if the Investment Manager is removed or resigns prior to the complete liquidation of the Timberland Account, any required appraisal will be performed by an independent appraiser approved by both the Trusts and the Investment Manager. The independent appraiser will determine the fair market value of the properties in the Timberland Account by assuming the orderly liquidation of said properties, normal expenses of liquidation and income tax liabilities based on an estimate prepared by an independent certified public accounting firm approved by both the Trusts and the Investment Manager.

16. The following examples illustrate the manner in which the Incentive Fee would be calculated in four hypothetical situations:

• *Example 1.*

Assume that Timberland has a life of 7 years and that the Trusts invest a total of $100 million in Timberland. At the end of year 7, the sales price of timber plus land, net of all expenses, is $207,620,000. Assume also that the rate of inflation is 0%. The IRR for this investment can be calculated directly because there is a single cash outflow of $100,000,000 and a single cash inflow of $207,620,000. The calculation is as follows: [($207,620,000/$109,000,000)$^{1/7}$ − 1]×100=11%

Once the IRR is calculated, the Incentive Fee that will be paid by the Trusts can be determined from the Incentive Fee Payment Schedule which has been reproduced, in part, as follows:

Annual real IRR (> or =)	Incentive fee payment
10.8%	$2,646,000
10.9%	2,697,750
11.0%	2,750,000

Thus, the total Incentive Fee that will be paid by the Trusts to the Investment Manager based upon an IRR of 11% is $2,750,000.

The above IRR is both a *nominal* and a *real* rate because inflation was assumed to be 0%. If inflation is positive, however, the nominal IRR will be greater than the real IRR. With positive inflation as measured by the CPI, the nominal IRR must be adjusted for inflation and the Incentive Fee calculated on the basis of the adjusted or real IRR. This is done in Example 2.

• *Example 2.*

Same as Example 1, except now assume inflation occurred at a 4% annual rate over the life of the Trusts' investment in Timberland.

To determine the real IRR, the 11% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: 1.11/1.04=1.0673=6.73%.

Once the real IRR is computed, the Incentive Fee that will be paid by Trusts can be determined by referring to the Incentive Fee Payment Schedule which has been reproduced, in part, as follows:

Annual real IRR (> or =)	Incentive fee payment
6.6%	$924,000
6.7%	954,750
6.8%	986,000

Thus, the total Incentive Fee that will be paid by the Trusts to the Investment Manager based upon a real IRR of 6.73% is $954,750.

• *Example 3.*

Assume the Trusts give the Investment Manager $100 million to invest in Timberland and that the Investment Manager increases the investment amount to $170 million (which is the fair market value determined by independent appraisals), net of expenses, by the end of 4 years. Assume also that the Investment Manager resigns and is replaced by a new Investment Manager. Assume further that the rate of inflation over the 4 year period is 4% annually.

The nominal IRR can be computed directly because there is one cash inflow and one cash outflow: [($170,000,000/$100,000,000)$^{1/4}$ − 1]×100=14.19%. To determine the real IRR, the 14.19% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: 1.1419/1.04=1.0979=9.79%.

From the Incentive Fee Payment Schedule, the Trusts would pay the former Investment Manager an Incentive Fee of $2,109,750 based upon a real IRR of 9.79%.

Annual real IRR (> or =)	Incentive fee payment
9.6%	$2,054,000
9.7%	2,109,750
9.8%	2,156,000

However, the actual fee paid to the former Investment Manager would be the lowest of (a) $2,109,750, (b) the Alternative Fee or (c) an Incentive Fee determined by reference to the IRR achieved through the complete liquidation of Timberland (including investment results achieved by the successor Investment Manager).

Example 4 demonstrates how poor performance by a successor Investment Manager can reduce the actual payment made to the former Investment Manager.

• *Example 4.*

Same as Example 3, assuming further that the successor Investment Manager continues for a year and that all of Timberland's assets are liquidated in one transaction at the end of that period. During the extra year, the fair market value of Timberland remains at $170 million and the rate of inflation remains at 4 percent.

The nominal IRR can be computed as follows: [($170,000,000/$100,000,000)$^{1/5}$ − 1]×100=11.20%.

To determine the real IRR, the 11.20% nominal IRR must be adjusted for 4% inflation. This figure is calculated by dividing the nominal IRR by the CPI: 1.112/1.04=6.92%.

From the Incentive Fee Payment Schedule, shown in part below, the former Investment Manager would be entitled to an Incentive Fee of $1,017,750 based on a real IRR of 6.92 percent.

Annual real IRR (> or =)	Incentive fee payment
6.8%	$986,000
6.9%	1,017,750
7.0%	1,050,000

Since this Incentive Fee is lower than the Incentive Fee based on independent appraisals (see Example 3), the Trusts would pay the former Investment Manager the lower of this fee or the Alternative Fee.

17. The Investment Manager will provide the Trusts with quarterly unaudited financial statements prepared by Price Waterhouse & Company (Price Waterhouse). In addition, the Investment Manager will provide the Trusts with annual audited financial statements, also prepared by Price Waterhouse. These documents will generally be issued within thirty days following their preparation.

18. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, has been approved in writing by a fiduciary who is independent of the Investment Manager and its affiliates.

(b) Each Trust participating in Timberland has total assets that are in excess of $50 million and no Trust may invest more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, will remain at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary received offering materials which disclose all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) The Investment Manager will make periodic written disclosures to the Trusts with respect to the financial condition of Timberland and the fees paid to the Investment Manager.

(f) The total fees paid to the Investment Manager will constitute no more than reasonable compensation.

(g) The Incentive Fee will be payable to the Investment Manager upon the complete liquidation of the Timberland Account and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account, the Trusts will appoint a successor Investment Manager to effect the liquidation of such account. Under such circumstances, the Incentive Fee will not be paid to the former Investment Manager until the Timberland Account is fully liquidated and if paid, such Incentive Fee must be

[5] The applicants represent that the Management Fee is statutorily exempt under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such fee is statutorily exempt under section 408(b)(2) of the Act.

[6] Initially, October 2, 1997 was the expected "termination date" for Timberland, subject to an extension for two additional years. However, no reinvestments in Timberland are currently being made and proceeds from the disposition of properties are being distributed to the Trusts as the proceeds are collected. It is not anticipated that further reinvestments will occur. Thus, absent agreement by the parties that changes in the investment climate warrant further investment, Timberland will cease to operate when its present holdings have been disposed of. Although the rate of disposition of these holdings will depend on prevailing market conditions, the current expectation is that liquidation will be completed by October 2, 1997.

[7] For purposes of calculating the IRR, the rate of inflation used will be defined as the "Consumer Price Index-U, United States, all items (1982–84 = 100)" (the CPI) currently prepared and published by the Department's Bureau of Labor Statistics.

[8] If the requested exemption is not granted, the Timberland Agreement provides for the payment, to the Investment Manager, of an alternative fee (the Alternative Fee) (in addition to the Management Fee) upon the termination of Timberland. The Alternative Fee is based upon the value of the assets that are under the control of the Investment Manager. The Alternative Fee consists of (a) the payment of $100,000 for each of the first twelve quarters of the Timberland investment and (b) for the remaining period prior to complete liquidation of Timberland removal), an amount equal to a fixed percentage of the closing market value of timberland assets as of the end of each calendar quarter. The applicants represent that the Alternative Fee would be covered by section 408(b)(2) of the Act and the regulations promulgated thereunder (see 29 CFR 2550.408b–2). However, the Department expresses no opinion herein on whether the payment of such fee would satisfy the conditions of section 408(b)(2) of the Act.

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represent the lowest of three fee amounts.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 30 days of the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a statement informing interested persons of their right to comment on and/or to request a hearing with respect thereto. The notice will be provided to all active employees of AT&T and BellSouth by posting. Mailed notice will be given to AT&T and BellSouth union representatives, plan administrators and representatives of retirees. Comments to the Department are due within 60 days of the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 5th day of December, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–29984 Filed 12–07–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–111]

Notice of Prospective Patent License

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that MicroMed Systems Ltd., Co., Houston, TX 77019, has requested an exclusive license to practice the inventions protected by U.S. Patent Application Numbers 08/153,595 entitled "ROTARY BLOOD PUMP" and U.S. Patent Application No. 08/451,709 entitled "ROTARY BLOOD PUMP," which were respectively filed November 10, 1993 and May 26, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483–1003.

Dated: December 1, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–29939 Filed 12–7–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by GPU Nuclear Corporation (the licensee) to withdraw its May 20, 1994, application for an amendment to Facility Operating License No. DPR–50, issued to the licensee for operation of the Three Mile Island Nuclear Station, Unit No. 2, located in Dauphin County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on June 14, 1994 (59 FR 30821).

The purpose of the licensee's amendment request was to revise the Technical Specifications to raise the limit on maximum control rod drop time and was requested only for the duration of operating cycle 10, which was concluded on September 8, 1995.

Subsequently the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 20, 1994, and (2) the staff's letter dated November 14, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 30th day of November 1995.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29938 Filed 12–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–244]

R. E. Ginna Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18, issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise the Ginna Station Technical Specifications (TSs) to implement the amended regulation 10 CFR Part 50; Appendix J, Option B (new rule), to provide a performance based option for leakage-rate testing of containment.

The proposed amendment would revise the current TSs (CTSs) and License, Item 2.D, which contains four exemptions to 10 CFR Part 50, Appendix J, Option A, which are proposed to be removed:

a. Exemption from Section III.A.4(a) with respect to the maximum allowable leakage rate for reduced pressure tests;

b. Exemption from Section III.B.1 with respect to the acceptable technique for performing local Type B leakage rate tests;

c. Exemption from Section III.D.1 for scheduling of containment integrated leakage rate tests with respect to the 10-year inservice inspection (ISI); and

d. Exemption from Section III.D.2 with respect to the testing interval of containment airlocks.

The proposed amendment would implement Option B as part of the implementation of the improved standard TSs (ISTSs) which are currently undergoing NRC staff review (submittal of May 26, 1995).

The amendment proposes to add a specific reference to Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program" in the Administrative Controls section of the Ginna Station TSs. No exceptions to the regulatory guide, nor the documents which are endorsed by the regulatory guide, are being requested. The licensee does not propose to deviate from methods approved by the Commission and endorsed in a regulatory guide.

The amendment proposes that a detailed performance-based leakage-test program will be available for NRC inspection upon implementation of the ISTSs for the Ginna Station.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Ginna Station Technical Specifications [* * *] have been evaluated with respect to 10 CFR 50.92(c) and shown to not involve a significant hazards consideration as described below. This evaluation is organized into the 4 categories [* * *].

C.1 Evaluation of More Restrictive Changes

The more restrictive changes [* * *] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes provide more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure that process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes do impose different requirements. However, these changes are consistent with assumptions made in the safety analysis and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The imposition of more restrictive requirements either has no impact or increases the margin of plant safety. Each change in this category is, by definition, providing additional restrictions to enhance plant safety. The change maintains requirements within safety analyses and licensing bases. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the above information, it has been determined that the proposed administrative changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

C.2 Evaluation of Less Restrictive Changes

The less restrictive changes [* * *] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are all consistent with NRC requirements and guidance for implementation of Option B. Based on industry and NRC evaluations performed in support of developing Option B, these changes potentially result in a minor increase in the consequences of an accident previously evaluated due to the increased testing intervals. However, the proposed changes do not result in an increase in the core damage frequency since the containment system is used for mitigation purposes only. The changes are also expected to result in increased attention on components with poor leakage test history as part of the performance-based nature of Option B such that the marginally increased consequences from the expanded testing intervals may be further reduced or negated. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) nor alter the function of the containment system. The changes only provide for additional time between tests and revised acceptance and testing criteria for leakage tests which remain consistent with the accident analysis bases. Thus, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes do

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not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. Instead, the changes are expected to result in an increased focus on components demonstrating poor leakage test history without excessive testing of components which continue to demonstrate good test history. Therefore, these changes do not involve a significant reduction in a margin of safety.

Based upon the above, it has been determined that the proposed less restrictive changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

C.3 Evaluation of Administrative Changes

The administrative changes [* * *] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes involve either: (1) the relocation of requirements within the Technical Specifications to support consolidation of similar requirements, (2) the reformatting or rewording of the existing Technical Specifications to provide consistency with 10 CFR [Part] 50, Appendix J, Option B or NRC implementing guidance, or (3) minor changes to the Technical Specifications such that the changes do not involve any technical nature. As such, these changes are administrative in nature and does not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the changes do not impact any safety analysis assumptions. These changes are administrative in nature. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

Based upon the above information, it has been determined that the proposed administrative changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

C.4 Evaluation of Removed or Deleted Requirements

The removed or deleted requirements discussed in Section B.4 do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes only involve the removal or deletion of requirements which are duplicated in 10 CFR [Part] 50, Appendix J, Option B, Regulatory Guide [RG] 1.163 as referenced in the Technical Specifications, or NEI [Nuclear Energy Institute] 94–01 and ANSI/ANS 56.8–1994 (as endorsed by RG 1.163). As such, this change is not technical in nature and does not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the deleted requirements are still retained in other regulatory documents that cannot be changed without prior NRC review and approval. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

Based upon the above information, it has been determined that the proposed changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh, Director, Project Directorate I–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Winston and Strawn, 1400 L St. NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 27, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

Allen R. Johnson,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29937 Filed 12–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–277 AND 50–278]

PECO Energy Company; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to the PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendments would revise the minimum allowable control rod scram accumulator pressure and charging water header pressure from a value of 955 psig to a value of 940 psig.

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Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because control rod scram accumulator pressure and charging water header pressure ≥ 940 psig has been determined to be adequate to ensure a complete reactor scram occurs within the time limits assumed in the safety analyses. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not alter the plant configuration (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The CRD hydraulic system will continue to be operated within its design basis parameters. The proposed changes do not allow plant operation in any mode that is not already evaluated in the SAR. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not impact safety analysis assumptions or the ability of the CRD hydraulic system to perform its design function. The proposed minimum allowable control rod scram accumulator pressure is consistent with the pressure recommended in SIL 429R1. The proposed changes assure that a complete reactor scram occurs within the time limits assumed in the safety analyses. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I-2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 4th day of December 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29936 Filed 12–7–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 25–49]

Notice of Intention to Request Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of a revised information collection, RI 25–49, Verification of Adult Student Enrollment Status, is used to verify that adult students are entitled to payments, OPM needs to know that a full-time enrollment has been maintained.

We estimate 10,000 RI 25–49 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@ mail.opm.gov

DATES: Comments on this proposal should be received on or before February 6, 1996.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–29880 Filed 12–7–95; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Update of Existing Notices of Systems of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of updated system notices.

SUMMARY: The Office of Personnel Management (OPM) has conducted a comprehensive review of all Internal and Central Privacy Act systems of records. This notice publishes updates to the Internal and Central systems of records, last published in complete form in April 1993. This notice proposes the adoption of a "Prefatory Statement of Routine Uses for OPM's Internal and Central Systems of Records."

DATES: The proposed non-substantive changes will be effective without further notice on January 8, 1996. The proposed substantive changes will be effective January 17, 1996, unless comments are received that result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Mr. Robert Huley, Office of Information Technology, 1900 E Street NW., Room 5415, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huley at (202) 418–3200.

SUPPLEMENTARY INFORMATION: OPM last published its Internal and Central

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system notices in complete form April 12, 1993 (58 FR 19153). Since that time there have been two new Internal and one new Central system notices published: OPM/Internal–12, Telephone Call Record Detail Records (58 FR 47002, effective 11/2/93); OPM/Internal–13, Parking Program Records (59 FR 64439, effective 1/13/95); and OPM/Central–14, Debarment or Suspension Records of Federal Employees Health Benefits Program (FEHBP) (60 FR 39194, effective 8/31/95).

This update is meant to conform to the review requirements as set by the Office of Management and Budget Circular A–130, Appendix I, for system notices. Changes have been made to several notices to more accurately describe the contents of the system of records. Due to OPM's recent reorganization, the system location, manager, and address information has been changed for each system notice.

The adoption of a "Prefatory Statement" format will allow OPM to publish certain established repetitive routine uses for Internal and Central systems of records only once, in the interests of simplicity, economy, and to avoid redundancy. Each Internal and Central system notice will make reference to the routine uses of the prefatory statement applicable to that notice, and will print in full any routine uses unique to that specific system of records. Each system notice has been revised as necessary to reflect the use of the Prefatory Statement.

Following is a brief description of changes to system notices:

OPM/INTERNAL–1, Defense Mobilization Emergency Cadre Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/INTERNAL–2, Negotiated Grievance Procedure Records—changed to reflect adoption of Prefatory Statement and agency reorganization. Records are no longer maintained in regional offices, so references to regional locations have been deleted.

OPM/INTERNAL–3, Security Officer Control Files—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/INTERNAL–4, Health Program Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/INTERNAL–5, Pay, Leave and Travel Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/INTERNAL–6, Appeal and Administrative Review Records—changed to reflect adoption of Prefatory Statement and agency reorganization. Records are no longer maintained in regional offices, so references to regional locations have been deleted.

OPM/INTERNAL–7, Complaints and Inquiries Records—changed to reflect adoption of Prefatory Statement and agency reorganization. Records are no longer maintained in regional offices, so references to regional locations have been deleted.

OPM/INTERNAL–8, Employee Counseling Services Program Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/INTERNAL–9, Employee Locator Card Files. Location of records has been updated to indicate records are also maintained in service centers.

OPM/INTERNAL–10, Motor Vehicle Operator and Accident Report Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The title has been changed to specify the maintenance of Motor Vehicle Operator "Authorization" records, and changes have been made throughout the system notice to clarify what authorization and report records are maintained where, for what purpose, and how to access them.

OPM/INTERNAL–11, Administrative Grievance Records—changed to reflect adoption of Prefatory Statement and agency reorganization. Records are no longer maintained in regional offices, so references to regional locations have been deleted.

OPM/INTERNAL–12, Telephone Call Detail Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The category of individuals covered has been expanded to cover individuals who make as well as receive calls. The storage entry has been updated to reflect that data may be stored on optical media.

OPM/INTERNAL–13, Parking Program Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records—changed to reflect adoption of Prefatory Statement and agency reorganization. Routine uses that duplicate conditions of disclosure specified in the Privacy Act have been removed (no new routine uses have been added), organizational titles updated, and the routine uses covering release of data from the Retirement Master Annuity File to Federal and State government agencies have been combined.

OPM/CENTRAL–2, Complaints and Inquiries Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–3, Reserved—no action.

OPM/CENTRAL–4, Inspector General Investigations Case Files—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–6, Administrative Law Judge Application Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–7, Litigation and Claims Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The description of categories of records included in the system has been expanded to include garnishment documents. The purpose has been amended to note that the records are maintained to settle administrative claims brought against OPM employees as well as OPM (the agency).

OPM/CENTRAL–8, Privacy Act/Freedom of Information Act (PA/FOIA) Case Records—changed to reflect adoption of Prefatory Statement and agency reorganization.

OPM/CENTRAL–9, Personnel Investigations Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The listing of authorities has been updated to delete Title 22, U.S.C., section 1434, which has been repealed. Disposal information has been updated to indicate that records are shredded or recycled instead of being burned.

OPM/CENTRAL–10, Directory of Federal Executive Institute Alumni—changed to reflect adoption of Prefatory Statement and agency reorganization. This system of records is being renamed "Federal Executive Institute Program Participant Records," and the categories of records, purpose, and record source entries are being updated to reflect this change in emphasis. The policies and practices of storage entries have been updated to be more accurate.

OPM/CENTRAL–11, Presidential Management Intern Program Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The entry on records retention is being revised to be more specific about retention periods.

OPM/CENTRAL–12, Reserved—no action.

OPM/CENTRAL–13, Executive Personnel Records—changed to reflect adoption of Prefatory Statement and agency reorganization. The system notice has been revised throughout to be more accurate in terms of individuals covered, information included, and purpose of the system. The listing of authorities has been updated. The retention entry is revised to conform to indicate National Archives and Records Administration is reviewing a proposed disposition schedule change.

OPM/CENTRAL–14, Debarment or Suspension Records for Federal Employees Health Benefits Program (FEHBP)—changed to reflect adoption of Prefatory Statement. The required altered system report has been submitted to the Office of Management and Budget and Congress.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Prefatory Statement of Routine Uses for OPM's Internal and Central Systems of Records

Certain established routine uses have been found to be applicable to the majority of OPM's Internal and Central systems of records. These repetitive routine uses will be published in their entirety once, in this Prefatory Statement. Each Internal and Central system notice will note which of these routine uses are applicable to that notice, and will also include the full text of any routine uses unique to that system of records.

1. For Law Enforcement Purposes—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. For Certain Disclosures to Other Federal Agencies—To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. For Congressional Inquiry—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. For Judicial/Administrative Proceedings—To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. For National Archives and Records Administration—To disclose information to the National Archives and Records Administration for use in records management inspections.

6. Within OPM for Statistical/Analytical Studies—By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

7. For Litigation—To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

8. For the Merit Systems Protection Board—To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

9. For the Equal Employment Opportunity Commission—To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

10. For the Federal Labor Relations Authority—To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

11. For Non-Federal Personnel—To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

OPM/INTERNAL–1

SYSTEM LOCATION:

Change "Administration Group" to read "Office of Contracting and Administrative Services."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry (introduction and subparagraphs), insert: Routine uses 1, and 3 through 8, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. There are no system unique routine uses.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Administration Group" to read "Office of Contracting and Administrative Services."

OPM/INTERNAL–2

SYSTEM LOCATION:

Delete current entry, insert: Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

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Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. By the Department of Labor in carrying out its function regarding labor-management relations in the Federal service.

b. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose information to any source from which additional information is requested in the course of resolving a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director for Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

NOTIFICATION PROCEDURE:

Delete first paragraph, insert:

Individuals who file a grievance under a negotiated procedure are aware of that fact and have been provided access to the record. They may, however, contact the indicated system manager regarding the existence of such records about them. Individuals must furnish the following information for their records to be located and identified:

RECORDS ACCESS PROCEDURE:

Delete first paragraph, insert:

Individuals who file a grievance under a negotiated procedure are aware of that fact and have been provided access to the record. However, after the grievance has been closed, an individual may request access to the official copy of the grievance records by writing the indicated system manager. Individuals must furnish the following information for their records to be located and identified:

CONTESTING RECORD PROCEDURE:

Delete second paragraph, insert:

Individuals wishing to request amendment of their records to correct factual errors should contact the indicated system manager. Individuals must furnish the following information for their records to be located and identified:

OPM/INTERNAL–3

SYSTEM LOCATION:

Change "Administration Group" to read "Office of Contracting and Administrative Services." Change "regional" to read "field service."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, 3, 5, and 6 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request in connection with the issuance of a security clearance or the conducting of a security or suitability investigation of an individual, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

b. To disclose information to the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearance, to enable OPM employees to have access to classified data or areas where their official duties require such access.

SYSTEM MANAGER AND ADDRESS:

Delete current entry, insert: Chief, Security Services, Office of Contracting and Administrative Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001, for central office employees. Field Service Office Directors for field service office employees.

OPM/INTERNAL–4

SYSTEM LOCATION:

Change "Associate Director for Administration" to read "Health Unit, Office of Contracting and Administrative Services."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 3, 4, and 7 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

Note: Disclosure of these records beyond officials of OPM having a bona fide need for them or to the person to whom they pertain, is rarely made, as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations 42 CFR part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of OPM policy, afforded the same degree of confidentiality and are generally not disclosed.

SYSTEM MANAGER(S) AND LOCATION:

Change "Administration Group" to read "Office of Contracting and Administrative Services."

OPM/INTERNAL–5

SYSTEM LOCATION:

Change "Office of Procurement and Administrative Services, Administration Group" to read "Office of Contracting and Administrative Services."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. By the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

b. By the Department of the Treasury to issue checks and U.S. Savings Bonds.

c. By State offices of unemployment compensation with survivor annuity or health benefits claims or records reconciliations.

d. By Federal Employee's Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

e. To disclose information to the Internal Revenue Service and State and local tax authorities.

f. To provide officials of labor organizations recognized under 5 U.S.C. Chapter 71 with information as to the identity of OPM employees contributing union dues each pay period and the amount of dues withheld from each contributor.

g. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose information to any source from which additional information is requested relevant to an OPM determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

i. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

j. To disclose, annually, pay data to the Social Security Administration and the Department of the Treasury as required.

k. To disclose information to a Federal agency or Congressional inquiry from which additional or statistical information is requested relevant to the OPM Fare Subsidy Program.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director of Procurement and Administrative Services, Administration Group" to read "Director, Office of Contracting and Administrative Services."

OPM/INTERNAL–6

SYSTEM LOCATION:

Delete current entry, insert: Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

b. To disclose information to any source from which additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

SYSTEM MANAGER(S) AND ADDRESSES:

Change "Assistant Director, Office of Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

NOTIFICATION PROCEDURE:

Delete first paragraph, insert:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the records. They may, however, contact the system manager indicated regarding the existence of such records about them. They must furnish the following information for their records to be located and identified:

RECORD ACCESS PROCEDURE:

Delete first paragraph, insert:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the records. After the action has been closed, however, an individual may request access to the official copy of an appeal or administrative review procedure by contacting the system manager indicated. Individuals must provide the following information for their records to be located and identified:

CONTESTING RECORD PROCEDURE:

Delete second paragraph, insert:

Individuals wishing to request amendment of their records to correct factual errors should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified:

OPM/INTERNAL–7

SYSTEM LOCATION:

Delete current entry, insert: Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine use listed below is specific to this system of records only:

To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an OPM decision concerning the individual employee, e.g., on the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the issuance of a license, grant, or other benefit.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director for Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

NOTIFICATION PROCEDURE:

Delete first paragraph, insert:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

RECORD ACCESS PROCEDURE:

Delete first paragraph, insert:

OPM employees wishing to request access to their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

CONTESTING RECORD PROCEDURE:

Delete first paragraph, insert:

OPM employees wishing to request amendment of their records should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified:

OPM/INTERNAL–8

SYSTEM LOCATION:

Change "Office of Personnel, Administration Group" to read "Office of Human Resources and EEO."

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director for Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

OPM/INTERNAL–9

SYSTEM LOCATION:

Delete current entry, insert: Personnel and administrative offices of the Office

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of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001, and OPM field service offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. There are no routine uses unique to this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director for Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

NOTIFICATION PROCEDURE:

Delete first paragraph, insert:

OPM employees wishing to inquire whether this system contains information about them should contact the appropriate management official where employed. Individuals must furnish the following information for their records to be located and identified:

RECORD ACCESS PROCEDURE:

Delete first paragraph, insert:

OPM employees wishing to request access to their records should contact the appropriate OPM management official where employed. Individuals must furnish the following information for their records to be located and identified:

CONTESTING RECORD PROCEDURE:

Delete first paragraph, insert:

OPM employees may amend information in these records at any time by resubmitting updating information. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the appropriate management official where employed. Individuals must furnish the following information for their records to be located and identified:

OPM/INTERNAL–10

SYSTEM LOCATION:

Delete current entry, insert: Office of Contracting and Administrative Services; Investigations Service; and the Office of the General Counsel; Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete current entry; insert:

The system contains document related to the authorization of an individual to operate a Government motor vehicle; and reports, correspondence, and fiscal documents concerning automobile accidents occurring in a Government-owned, leased, or rented vehicle or in a privately-owned vehicle while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS AND AMENDMENTS:

Revise current entry by adding "chapter." 28 U.S.C. Chapter 171.

PURPOSE:

Delete current entry; insert:

These records serve to document supervisor's verification of employee's license to operate a Government motor vehicle; authorization to use Government-owned, leased, or rented motor vehicle or privately-owned vehicle to conduct official business; and information regarding motor vehicle accidents, including reports and related documents that may be used in settlement of claims and litigation resulting from an accident involving a Government-owned, leased, or rented motor vehicle or privately-owned vehicle used by employees to conduct official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry; insert:

Routines uses 1, and 3 through 7, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information any source from which additional information is requested (to extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), when necessary to obtain information relevant to an office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a grant or other benefit.

b. To disclose accident report record information to officials of labor organizations recognized under the Chapter 71, title 5, U.S.C. when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the award of a contract, license, grant, or other benefit.

d. To disclose information to the General Services Administration about accidents involving Government owned or leased automobiles.

e. To disclose information to insurance carriers about accidents involving privately-owned vehicles.

RETENTION AND DISPOSAL:

In first sentence change "Motor vehicle operator records" to read "Motor vehicle operator authorization records."

SYSTEM MANAGER(S) AND ADDRESS:

Delete current entry, insert:

Motor vehicle operator authorization records:

Director, Office of Contracting and Administrative Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001, or the Director of the appropriate field service office.

Accident report records: For reports involving employees of the Investigations Service with judgements under $2,500: Associate Director, Investigations Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

For reports involving employees of Field Service Offices with no personal injury, and judgements under $2,500: Appropriate Field Service Office Director.

For reports involving other OPM employees, or of employees of the Investigations Service involving judgements over $2,500: Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE

Delete first paragraph, insert:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager as indicated under SYSTEM MANAGER AND ADDRESS.

RECORD ACCESS PROCEDURE:

Delete first paragraph, insert:

Individuals wishing to request access to records about them should contact the appropriate system manager as indicated under SYSTEM MANAGER AND ADDRESS.

CONTESTING RECORD PROCEDURE:

Delete first paragraph, insert:

Individuals wishing to request amendment of their records should contact the appropriate system manager

as indicated under SYSTEM MANAGER AND ADDRESS.

RECORD SOURCE CATEGORIES:

Delete current subparagraph e, insert:

e. Officials of OPM.

OPM/INTERNAL–11

SYSTEM LOCATION:

Delete current entry, insert:

Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine use listed below is specific to this system of records only:

To disclose information to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

SYSTEM MANAGER(S) AND ADDRESSES:

Change "Assistant Director for Personnel, Administration Group" to read "Director, Office of Human Resources and EEO."

NOTIFICATION PROCEDURE:

Delete first paragraph, insert:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the personnel office regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

RECORDS ACCESS PROCEDURE:

Delete first paragraph, insert:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. After the action has been closed, however, an individuals may request access to the official copy of the grievance file by contacting the personnel office. Individuals must furnish the following information for their records to be located and identified:

CONTESTING RECORD PROCEDURE:

Delete second paragraph, insert:

Individuals wishing to request amendment of their records to correct factual errors should contact the personnel office. Individuals must furnish the following information for their records to be located and identified:

OPM/INTERNAL–12

SYSTEM LOCATION:

Change "Office of Information Resources Management, Administration Group" to read "Office of Information Technology."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are assigned OPM telephone numbers or are authorized to use OPM telephone services, and persons who make or receive calls billed to OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 7, and 11, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. By OPM employees or other persons to determine their individual responsibility for telephone calls.

b. By another Federal agency or a telecommunications company providing telephone services to permit servicing the account.

c. By appropriate OPM employees to assist in the planning and effective management of OPM telephone services, and to determine that OPM telephone services are being used in an efficient and economical manner.

d. By auditors, investigators, and other employees authorized by the Inspector General, pursuant to sections 4 and 6 of the Inspector General Act of 1978.

STORAGE:

OPM stores records on magnetic media, optical media, and on paper.

SYSTEM MANAGER(S) AND ADDRESSES:

Delete current entry, insert:

Chief, Plans and Policies Division, Office of Information Technology, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

OPM/INTERNAL–13

SYSTEM LOCATION:

Change "Office of Procurement and Administrative Services, Administration Group" to read "Office of Contracting and Administrative Services."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, 3 through 7, and 11, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information to the Internal Revenue Service and State and local tax authorities.

b. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose information in computer matching activities, including comparison of parking records with other Federal agencies, and for the purpose of assigning tax liabilities related to the fringe benefit accrual value of parking.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director of Procurement and Administrative Services, Administration Group" to read "Director, Office of Contracting and Administrative Services."

OPM/CENTRAL–1

SYSTEM LOCATION:

Change "Associate Director for Retirement and Insurance" to read "Associate Director, Retirement and Insurance Service."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under OPM's or the recipients's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers' Compensation Programs; Department of Veterans Affairs Pension Benefit Program; Social Security Administration's Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian

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employee retirement programs (other than the CSR or FER system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency;

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program, Social Security Numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or OPM Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under

(1) Medical examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose information to any source from which additional information is requested relevant to OPM determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

l. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular NO. A–19.

m. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

n. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

o. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 et seq. as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h) or 8465.

p. To disclose to a Federal agency, in response to its request, information in connection with the hiring, retention, separation, or retirement of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; the classification of a job; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that OPM determines that the information is relevant and necessary to the requesting party's decision on the matter.

q. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuities entered pursuant to section 1705 of Pub. L. 97–35 or 5 U.S.C. 8469 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k) or 8469.

r. To disclose to the Social Security Administration the Social Security Numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

s. To disclose information contained in the Retirement Annuity Master File; including the name, Social Security Number, date of birth, sex, OPM's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting Federal agencies and States to help eliminate fraud and abuse in the benefit programs administered by the Federal agencies and States (and those States to local governments) and to collect debts and overpayments owed to the Federal Government, and to State governments and their components.

t. To disclose to a Federal agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his or her designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, Social Security Number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

u. To disclose information contained in the Retirement Annuity Master File, upon written request, to state tax administration agencies, for the express purpose of ensuring compliance with state tax obligations by persons receiving benefits under the Civil Retirement System or the Federal Employees Retirement System, and to prevent fraud and abuse, but only the following data elements: Name, correspondence address, date of birth, sex, Social Security Account Number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

v. To disclose information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation.

w. To disclose to a former spouse when necessary to explain how that former spouse's benefit under 5 U.S.C. 8341(h), 8345 (j), 8445, or 8467 was computed.

x. To disclose to a Federal or State agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal agency, state or local agency, or by a financial institution or similar institution.

y. To disclose to a health plan participating in the Federal Employees Health Benefits Program (FEHBP) and to an FEHBP enrollee or covered family member or an enrollee or covered family member's authorized representative, in connection with the review of a disputed claim for health benefits, from information maintained within this system of records, the decision of OPM regarding the disputed claim review.

z. To disclose to a State or local government, or private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application as representative payee for an annuitant or survivor annuitant who is mentally incompetent or under other legal disability.

aa. To disclose on request to a spouse or dependent child (or court-appointed guardian thereof) of a CSR or FER system annuitant or an annuitant of any other Federal retirement system enrolled in the Federal Employees Health Benefits Program whether the annuitant has changed from a self-and-family to a self-only health benefits enrollment.

bb. To the Defense Manpower Data Center, Department of Defense, and the U.S. Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Office of Personnel Management in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

cc. To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the Office of Personnel Management as a creditor has a claim against that person.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Associate Director for Retirement and Insurance" to read "Associate Director, Retirement and Insurance Service."

OPM/CENTRAL–2

SYSTEM LOCATION:

Change "Agency Compliance and Evaluation, Personnel Systems and Oversight Group" to read "Office of Merit Systems Oversight and Effectiveness."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, 3 through 5, and 7 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

b. To disclose information to any source from which additional information is requested in the course of adjudicating an appeal or complaint, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry, insert: Associate Director, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURES:

In first paragraph change "regional office" to read "field service office" wherever it appears.

RECORD ACCESS PROCEDURE:

In first paragraph change "regional office" to read "field service office."

OPM/CENTRAL–4

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, 3 through 5, and 7 through 10, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government having an interest in the individual for employment purposes, including a security clearance or access determination, and the need to evaluate qualifications, suitability, and loyalty to the United States Government.

b. To designated officers and employees of agencies, offices, and judicial branches of the Federal Government when such agency, office, or establishment conducts an investigation of the individual for granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

d. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

OPM/CENTRAL–5

SYSTEM LOCATION:

Change "Human Resources Development Group" to read "Office of Merit Systems Oversight and Effectiveness." In second sentence change "regional offices" to read "field service offices."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 6 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine use listed below is specific to this system of records only:

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To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an OPM decision regarding possible termination of assignment.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Human Resources Development Group" to read "Office of Merit Systems Oversight and Effectiveness."

OPM/CENTRAL–6

SYSTEM LOCATION:

Change "Assistant Director, Office of Administrative Law Judges, Career Entry Group" to read "Administrative Law Judges Office, Employment Service."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To refer applicants to Federal agencies for employment consideration for Administrative Law Judge positions.

b. To refer current and former Administrative Law Judges to Federal agencies for consideration for detail, transfer, reassignment, reinstatement, or reemployment, as applicable.

c. To disclose information to any source (e.g., references, employers, educational institutions or applicant/appellant review panel members) from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

SYSTEM MANAGER(S) AND ADDRESS:

Change "Assistant Director, Office of Administrative Law Judges, Career Entry Group" to read "Director, Administrative Law Judges Office, Employment Service."

OPM/CENTRAL–7

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete current entry; insert:

This system includes the following kinds of records: Garnishment documents; administrative appeals; investigative reports; retirement records; official personnel records; documentation of litigation including complaints, answers, motions, briefs, orders, and decisions; claims and supporting documentation submitted under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act, together with correspondence and records of settlement; and final administrative and judicial determinations.

PURPOSE:

Delete current entry; insert:

These records are maintained to defend OPM against lawsuits and to settle administrative claims brought against OPM or OPM employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To any source where necessary to obtain information relevant to an OPM decision or action involved in one of the purposes for maintenance of the system.

b. To the insurance carrier of an employee, or a claimant against OPM under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act in order to determine the proper assignment of any liability.

OPM/CENTRAL–8

SYSTEM LOCATION:

Change "regional and area offices" to read "field service offices."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, and 3 through 10, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

b. To disclose information to an agency, subject to law, rule, or regulation enforced by OPM, having been found in violation of such law, rule or regulation, in order to achieve compliance with OPM instructions.

c. To disclose information to Federal agencies (e.g., Department of Justice) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence, for use by OPM in making required determinations under the Freedom of Information Act of the Privacy Act of 1974.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), where necessary to obtain information relevant to an OPM decision concerning a Privacy or Freedom of Information Act request.

e. To disclose to the Federal agency involved, an OPM decision on an appeal from an initial denial of a request involving OPM-controlled records.

SYSTEM MANAGER(S) AND ADDRESS:

Change "appropriate Regional Director" to read "appropriate Field Service Office Director."

OPM/CENTRAL–9

SYSTEM LOCATION:

In subparagraph a., change "Investigations Group" to read "Investigations Service."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete current subparagraph c, insert:

c. Title 22, U.S.C., sections 2519 and 2585.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 4 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, local, tribal, foreign, or other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To provide information to a congressional office from the records of an individuals in response to an inquiry from the congressional office made at the request of that individual. However, the investigative file, or parts thereof, will only be released to a congressional office if OPM receives a notarized authorization or signed statement under 28 U.S.C. 1746 from the subject of the investigation.

i. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

j. To disclose information to contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, or job for the Federal Government.

RETENTION AND DISPOSAL:

Delete current subparagraph b, insert:

b. Hard copy records are destroyed by shredding and recycling, and computerized records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESSES:

Delete current entry, insert: Associate Director Investigations Service, Office of Personnel Management, PO Box 886, Washington, DC 20044–0886.

OPM/CENTRAL–10

SYSTEM NAME:

Delete current entry, insert: Federal Executive Institute Program Participant Records.

SYSTEM LOCATION:

Change zip code from 22901 to 22903–4899.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change "attended long term programs" to read "attended programs."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete current entry; insert:

This system contains information supplied by the sponsoring agency and the program participant, including application and consent forms, supporting correspondence, class rosters and directories. The records contain the name, position title, office address and telephone number, FEI program attended, and, with the approval of the individual, home address and telephone number of program participants.

PURPOSE:

Delete current entry; insert:

The records are used by FEI staff to administer the program, to promote program participant interaction, and by FEI program participants to maintain contact with other participants. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose information to Federal agencies to assist them in planning for executive development programs.

b. To provide information to the FEI Alumni Association for the purpose of mailing association materials to an alumni's home or business address.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete current entry, insert:

Records are maintained in hard copy and automated form.

SAFEGUARDS:

Delete current entry; insert:

Records kept by FEI officials are maintained in a secured area with access limited to those authorized personnel at FEI whose duties require access. Distribution of information is limited to FEI program participants and specified recipients. In addition:

a. At the request of the individual, his or her home address and telephone number will not be released; and

b. At the request of the employing agency, information relating to the individual's status (i.e., position title) will not be released.

RETENTION AND DISPOSAL:

Delete current entry; insert:

A new records schedule is in the process of being approved by the National Archives and Records Administration, to provide for destruction of application files after a maximum of 3 years, and the destruction of consent forms after five years. The automated data base of participant information will be destroyed when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESSES:

Change "Registrar" to read "Director, Office of Executive Resources." Change zip code from "22901" to "22903–4899."

NOTIFICATION PROCEDURE:

Delete current entry; insert:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following for their records to be located and identified:

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a. Name.
b. Agency.
c. FEI program attended and dates.

RECORD ACCESS PROCEDURES:

Delete current entry; insert:

Individuals wishing to request access to their records should contact the system manager. Individuals must furnish the following for their records to be located and identified:

a. Name.
b. Agency.
c. FEI program attended and dates.

RECORD SOURCE CATEGORIES:

Add new subparagraph b as follows:

b. Employing agency.

OPM/CENTRAL–11

SYSTEM LOCATION:

Change "Human Resources Development Group" to read "Workforce Training Service."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete current entry, insert:

Routine uses 1, 3, 4, and 7 through 10 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To refer candidates to Federal agencies for employment consideration.

b. To refer candidates to State and local governments, congressional offices, international organizations, and other public offices with permission of the candidates, for the purpose of employment consideration.

c. To refer interns for consideration for reassignment and promotion within the employing agencies.

d. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

e. To request information from a Federal, State, or local agency maintaining civil, criminal, or other information relevant to an agency decision concerning the hiring or retention of a candidate.

f. To provide an educational institution with information on an appointment of a recent graduate to a Federal position at a certain grade level.

SYSTEM MANAGER(S) AND ADDRESSES:

Change "Director, Human Resources Development Group" to read "Associate Director, Workforce Training Service."

OPM/CENTRAL–12 [Reserved]

OPM/CENTRAL–13

SYSTEM LOCATION:

Delete current entry, insert: Office of Executive Resources, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete current entry; insert:

Current and former appointees in the Senior Executive Service; current and former incumbents of Executive Schedule, Scientific and Professional research and development, Senior Level, Board of Contract Appeals, and similar positions; former incumbents of General Schedule 16–18 positions; and participants in and graduates of OPM-approved agency Senior Executive candidate development programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Delete current entry; insert:

a. Demographic, appointment, and assignment information (e.g., name, office address, date of birth, Social Security Number, sex, race and ethnic designation, titles of positions, pay rates, and types of appointments).

c. Delete current entry; insert:

c. Determinations on nominees for Meritorious and Distinguished Presidential Rank awards.

e. Delete current entry; insert:

e. Information on performance of executives (e.g., performance ratings, performance awards, and incentive awards).

h. Delete current entry; insert:

h. Information concerning the reason(s) why an individual leaves an executive position (e.g., retired, resigned, to enter private industry, to work for a State government, or removed during probation or after because of performance).

i. Delete current entry; insert:

i. Information about the recruitment of individuals for executive positions (e.g., recruited from another Federal agency or from outside the Federal service).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete current entry; insert:

5 U.S.C. Sections 2101 through 2103; 3104; 3131 through 3136; 3324; 3325; 3391 through 3397; 3591 through 3598; 4311 through 4315; 4507; 5108; 5381 through 5385; 5407; 5752 through 5754; and 7541 through 7543.

PURPOSE:

a. Delete current entry; insert:

a. Assist OPM in carrying out its responsibilities under title 5, U.S. Code, and OPM rules and regulations promulgated thereunder, including the allocation and establishment of SES, Senior Level, and Scientific and Professional research and development positions; development of qualification standards for SES positions, establishment and operation of one or more qualifications review boards, establishment of programs to develop candidates for and incumbents of executive positions, and development of performance appraisal systems.

c. Delete entry; insert:

c. Provide data used in policy formulation, program planning and administration, research studies, and required reports regarding the Governmentwide executive program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 5, and 7 through 11, of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To identify and refer qualified current or former Federal employees to Federal agencies for executive vacancies.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment considerations.

c. To provide an employing agency with extracts from the records of that agency's employees in the system.

d. To provide information required in the annual report to Congress mandated by 5 U.S.C. 3135 and elsewhere, regarding positions in the SES and the incumbents of these positions.

e. By OPM to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

g. To provide information to the White House on executives with noncareer appointments in the Senior Executive Service, in positions formerly in the General Schedule filled by noncareer executive assignments, in excepted positions paid at Executive Schedule pay rates, and in positions in the Senior Level pay system or other pay systems equivalent to those described which are filled by Presidential appointment or excepted from the competitive service because they are of a confidential or policy-determining character.

RETENTION AND DISPOSAL:

Delete current entry; insert:

Records are retained for varying lengths of time, in accordance with disposition schedules approved by NARA. Disposal of manual records is by shredding or burning, electronic databases are erased.

SYSTEM MANAGER(S) AND ADDRESSES:

Delete current entry, insert: Director, Office of Executive Resources, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

OPM/CENTRAL–14

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 11 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose records to appropriate Federal, State and local agencies if necessary and relevant to administering Federal financial or nonfinancial assistance programs or benefits.

b. To disclose records for performance of a Federal duty to a State or local agency, or financial institution.

c. To disclose information on excluded health care providers to other persons involved in or affected by the action.

d. To disclose information to agencies or organizations that license, certify, regulate, investigate, or prosecute persons or organizations that provide health-related services or items to determine possible disqualifying actions, practices, or conditions.

[FR Doc. 95–29879 Filed 12–7–95; 8:45 am]

BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

[Order No. 1093; Docket No. A96–8]

Sedan, Minnesota 56380 (Robert C. Hawn, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued December 4, 1995.

Docket Number: A96–8.

Name of Affected Post Office: Sedan, Minnesota 56380.

Name(s) of Petitioner(s): Robert C. Hawn.

Type of Determination: Closing.

Date of Filing of Appeal Papers: November 29, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by December 14, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 29 1995—Filing of Appeal letter
December 4, 1995—Commission Notice and Order of Filing of Appeal
December 26, 1995—Last day of filing of petitions to intervene [*see* 39 CFR § 3001.111(b)]
January 3, 1995—Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115 (a) and (b)]
January 23, 1996—Postal Service's Answering Brief [see 39 CFR § 3001.115(c)]
February 7, 1996—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]
February 14, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116]
March 28, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–29926 Filed 12–7–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36543; File No. SR–CSE–95–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to Including Within the Exchange's Minor Rule Plan Rule 4.2 Which Deals with the Furnishing of Records to the Exchange

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its Minor Rule Violation Plan[1] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby amends Rule 8.14 regarding the imposition of fines for minor violations. The text of the proposed rule change is as follows (new text is italicized; deleted text is bracketed):

Rule 8.14 Imposition of Fines for Minor Violation(s) of Rule Interpretations and Policies: .01

(d) Rule 4.1, *Rule 4.2* and Interpretation, thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 8.14[2] authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500, on any member, member organizations, or registered or non-registered employee of a member organization for a minor violation of certain specified Exchange rules.[3]

The purpose of the Rule 8.14 procedure is to improve the Exchange's ability to efficiently meet its statutory enforcement responsibilities by establishing a program for the imposition of fines for minor violations of Exchange Rules and by designating certain specified Rule violations as minor Rule violations.[4] In File No. SR–CSE–88–1,[5] which initially set forth the provisions and procedures of Rule 8.14, the Exchange indicated that it would periodically prepare and announce to its members and member organizations a revised list of Exchange Rules for violation of which the Exchange may impose fines pursuant to Rule 8.14, as well as the fines that may be imposed for such violation.

The Exchange is presently adding Rule 4.2[6] to the list of rules subject to possible imposition of fines under Rule 8.14 procedures. The purpose of the proposed Rule Change is to clarify that Exchange Rule 4.2 is a part of the Exchange's Minor Rule Violation Rule. Exchange Rule 4.2 deals with the furnishing of information to the Exchange upon request. Rule 4.2 is not currently included in the specific list of Rules to which the Minor Rule Plan applies, however, the text listed under Rule 4.1 which is noted therein, addresses the requirements of Rule 4.2 as well as Rule 4.1. The Exchange believes that the specific inclusion of Rule 4.2 will make it clear to members that the Minor Rule Plan provisions apply to it.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(6) of the Act[7] in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–95–09 and should be submitted by December 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29922 Filed 12–7–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 8.14 was approved by the Commission on September 1, 1988. *See* Securities Exchange Act Release No. 26053 (September 1, 1988), 53 FR 34851 (September 8, 1988) (order approving File No. SR–CSE–88–1). A subsequent addition of a rule to the Rule 8.14 Violations List was made in Securities Exchange Act Release No. 27609 (January 11, 1990), 55 FR 1758 (January 18, 1990) (order approving File No. SR–CSE–89–6).

[3] CSE Rule 8.14, entitled Imposition of Fines for Minor Violation(s) of Rules, contains a list of minor rule violations as to which the Exchange may impose such fines. Although the CSE's Board of Trustees makes the initial determination of whether a CSE rule violation is "minor" for purposes of CSE Rule 8.14, this determination is subject to Commission approval pursuant to Section 19(d)(1) of the Act and paragraph (c)(2) of Rule 19d–1 under the Act. *See* Release No. 26053 n.8, *supra* note 2.

[4] *Id.*

[5] *Id.*

[6] CSE rule 4.2 provides that "every member shall furnish to the Exchange, upon request and in a time and manner required by the Exchange, current copies of any financial information filed with the Commission, as well as any records, files or financial information pertaining to transactions executed on or through the Exchange. Further, the Exchange shall be allowed access, at any time, to the books and records of the member in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange."

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[Release No. 34–36540; File No. SR–MBS–95–09]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Requesting Permanent Approval of the Electronic Pool Notification Service

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 3, 1995, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–95–09) as described in Items I and II below, which Items have been prepared primarily by MBS. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requests permanent approval of the rules that set forth and establish the Electronic Pool Notification ("EPN") service. The Commission previously approved on a temporary basis through November 30, 1995, a proposed rule change that added Articles VI, VII, VIII, IX, and X to MBS's rules to establish the EPN service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBS included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Summaries of the most significant aspects of such statements are set forth in sections A, B, and C below.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to request permanent approval of the rules that set forth and establish the EPN service. EPN was developed by MBS in response to a Public Securities Association ("PSA") initiative to automate the pool notification process with the ultimate goal of supplementing and/or replacing the manually intensive telephone and fax environment. EPN is an electronic, post-trade communication system for mortgage-backed securities.[4] EPN provides an electronic communications network through which EPN users can quickly and efficiently transmit mortgage-backed securities pool allocation information regarding deliveries of securities for settlement. EPN was designed for use by organizations actively engaged in the allocation and notification process associated with mortgage-backed securities and derivative securities. EPN user firms may be acting as principal to the underlying trade activity or as agent on behalf of another EPN user in a fully disclosed capacity.[5]

An EPN message will be required to contain (1) the lot sequence of "good delivery millions" (*i.e.*, the number of million dollar lots delivered in accordance with PSA guidelines), (2) a pool number that references a specific pool of mortgages, (3) the principal amount at date of issue, (4) the coupon rate, and (5) a termination code. In addition, an EPN message may contain, among other things, additional information such as the maturity date, CUSIP number, current outstanding principal amount, an MBS trade number, internal control number, and interest accrued.

MBS decided that a complete stand-alone set of rules for EPN was preferable to trying to integrate the EPN rules into existing MBS rules. As a result, many of the EPN rules mirror the language of existing MBS rules in order to make the provisions of those rules applicable to the EPN service. There has been an attempt to use the same terms and definitions that MBS uses in its current rules wherever possible. However, the EPN rules do differ from existing MBS rules in several respects. The EPN rules define new terms specifically related to EPN. Another change from existing MBS rules concerns who can become an EPN user. Because EPN is essentially a sophisticated e-mail/database system that does not involve traditional clearance or settlement functions, the risk to MBS from defaulting EPN users is limited to nonpayment of fees. As a result, the standards for applicants to become EPN users are significantly less demanding than the standards for applicants that wish to become full participants of MBS. It is anticipated that some applicants that do not qualify as full participants of MBS will still qualify to become EPN users. The EPN rules also provide for an EPN user fund. The EPN user fund will be similar in purpose to the existing MBS participants fund, but because the risk to MBS is limited to nonpayment of fees, the EPN user fund will be smaller.

MBS believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will have an impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other

No written comments relating to the proposed rule change have been solicited or received. MBS will notify the Commission of any written comments received by MBS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MBS's proposal to establish the EPN service on a permanent basis is consistent with this obligation.

One reason the Commission previously approved the EPN service only on a temporary basis was EPN's lack of a disaster recovery program. During the temporary approval period, MSB established and thoroughly tested the EPN service's disaster recovery program. Because the EPN disaster

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35009 (November 25, 1994), 59 FR 61913 [File No. SR–MBS–94–02] (order temporarily approving proposed rule change).

[3] The Commission has modified the text of the summaries prepared by MBS.

[4] The number of securities eligible for the EPN service will be greater than those eligible for the comparison and clearing service at MBS. All mortgage-backed securities eligible for comparison and clearing at MBS will be eligible for the EPN service. In addition, securities which are not eligible for comparison and clearing because of lack of volume or inability to be valued will be eligible for the EPN service.

[5] MBS commenced the EPN service on a pilot basis in February 1995. During September 1995, EPN users processed 6,936 messages comprised of 56,224 pools with a current face value of approximately $58 billion. Currently there are fourteen EPN users.

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

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recovery program has operated successfully during its testing, MBS has decided to request permanent approval of the EPN service.

Prior to the establishment of the EPN service, participants in the mortgage-backed securities market had to manually telephone or fax pool information to other participants. Historically, billions of dollars of fails occurred because sellers were not able to communicate with buyers because of telephone and fax limitations (*e.g.*, busy signals preventing the exchange of information). The Commission is permanently approving the rules for the EPN service because it believes that replacing a manually intensive communication system with an electronic communication system should help to significantly reduce the number of fails in the mortgage-backed securities market by making the notification process more efficient and more reliable. Furthermore, MBS has demonstrated that the disaster recovery program for the EPN service is capable of ensuring the continuity of critical EPN business operations in the event the primary computer operations become unavailable to EPN users.[8]

MBS has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The temporary approval period for the EPN service will expire on November 30, 1995. The Commission finds good cause to grant accelerated approval of the proposal because the EPN service has operated successfully since its implementation and because the Commission did not receive any comment letters during the comment period before it granted temporary approval or during the temporary approval period and because the Commission does not expect to receive any during the current comment period. Furthermore, accelerated approval will allow the EPN service to continue operating without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to file number SR–MBS–95–09 and should be submitted by December 29, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBS–95–09) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29921 Filed 12–7–95; 8:45 am]

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[8] On September 27, 1995, staff of the Division of Market Regulation met with MBS to discuss the disaster recovery program developed for the EPN service. The staff also reviewed and assessed documentation related to the management and operation of the disaster recovery system and conducted an examination of the primary data center.

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36547; File No. SR–NSCC–95–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Arrangements Between the National Securities Clearing Corporation and Chicago Stock Exchange, Incorporated Relating to a Decision by Chicago Stock Exchange, Incorporated to Withdraw From the Clearance and Settlement, Securities Depository, and Branch Receive Businesses

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 24, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–95–15) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Chicago Stock Exchange, Incorporated ("CHX") to withdraw from the clearance and settlement, securities depository, and branch receive businesses. Parties to the proposed arrangements are The Depository Trust Company ("DTC"), CHX, Midwest Securities Trust Company ("MSTC"), NSCC, Midwest Clearing Corporation ("MCC") and Securities Trust Company of New Jersey ("STC/NJ").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has announced that it is closing its clearance and settlement and securities depository facilities in order to focus its resources on the operations of the exchange. CHX has determined to take this step in response to recommendations by industry users to eliminate redundant facilities and thereby reduce the costs of processing securities transactions. The proposed arrangements will assist in achieving these objectives while affording qualified sole MCC participants an opportunity to become NSCC participants and transfer their continuous net settlement positions to NSCC. NSCC's primary purpose for entering into the proposed arrangements at this time is to facilitate the industry's planned conversion to same-day funds settlement.[4] Additionally, the proposal will result in substantial savings for NSCC participants and the securities industry as a whole.

Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.[5] Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, DTC and NSCC have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. DTC's and NSCC's efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York, and NSCC's plans have been monitored by the staffs of these regulatory bodies.[6] Under the conversion plan, all issues currently settling in next-day funds will be converted to settlement in same-day funds settlement on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996.

Where there are interfaces among the securities clearing corporations, same-day funds settlement exposes each clearing corporations, same-day funds settlement exposes each clearing corporation to settle its net payment obligation because of a failure by one of the participants of such other clearing corporation to settle with it or because such other clearing corporation is experiencing a major systems problem. These risks cannot be entirely avoided with existing and available risk management controls. CHX's withdrawal from the securities clearing corporation business will eliminate the exposure of NSCC and its participants to the payment system risks associated with the NSCC–MCC interface. Also, the interests of MCC participants can be provided for in an orderly manner that will help assure their successful integration in the process of converting to same-day funds settlement.

The proposed arrangement should result in substantial savings for NSCC participants and the securities industry. In connection with this proposal, former sole MCC participants may become NSCC participants if they qualify. An increase in the number of NSCC participants will result in higher NSCC transaction volumes thereby reducing the per-unit service costs that must be recovered through participant service fees. Moreover, interclearing corporation interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both NSCC and MCC in operating an interface would be eliminated.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because the proposed arrangements will facilitate the industry's conversion to sameday funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. The proposal will provide qualified sole MCC participants. The proposal will provide qualified sole MCC participants with access to NSCC's facilities and will be implemented consistently with the safeguarding of securities and funds in NSCC's custody and control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes the proposed arrangements would impose no burden on competition. Securities clearing corporations registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the business in which industry members compete with one another. Operating a securities clearing corporation requires a substantial and continuing investment in infrastructure, including telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost clearance services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced, thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–95–

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] STC/NJ is a subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

[5] The term "next-day funds" refers to payment by means of certified check that is for value on the following day.

[6] In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it believes that the overall conversion to a same-day funds settlement system will help reduce systemic risk by eliminating overnight credit risk. The same-day funds settlement system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets. Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

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15 and should be submitted by December 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29917 Filed 12-7-95; 8:45 am]

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[Release No. 34-36549; File No. SR-NASD-95-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NAqcess System and Accompanying Rules of Fair Practice

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, attached as Exhibit A is the full text of a series of proposed rule changes by the NASD and The Nasdaq Stock Market, Inc. ("Nasdaq") regarding the operation of The Nasdaq Stock Market's NAqcess system, a new system that offers nationwide limit order protection and price improvement[2] over the dealer quotation of small-sized customer orders. The "Rules of Operation and Procedures for NAqcess" ("NAqcess Rules") will replace in its entirety the "Rules of Practice and Procedures for the Small Order Execution System" ("SOES Rules"), which the NASD proposes to withdraw simultaneously with the new system becoming operational. The NAqcess system rules package attached in Exhibit A is new and accordingly has not been italicized. The NASD is also proposing several new Interpretations and a new Rule in its Rules of Fair Practice to afford individual investors the opportunity to determine whether their orders are to be handled in NAqcess and to provide customer limit orders held in NAqcess or elsewhere with enhanced price protection (Exhibit B). The NASD is also proposing conforming modifications to the NASD Manual, including the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") and Schedule D to the NASD By-Laws (and all other places in the Manual that refer to SOES) to delete references to SOES and/or the SOES Rules and to replace those references with NAqcess and/or the NAqcess Rules, as appropriate. These references may be found in the ACT Rules, Section (c)(2); in Schedule D, Part V, Section (1)(f), Section (7)(a), Section (8)(c), and Section (9); and Schedule D, Part XI, Section (2)(e)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The NASD and The Nasdaq Stock Market, Inc. are proposing rules of operation and procedure and companion rules for a new service that provides investors market-wide price protection of their limit orders, the opportunity to obtain price improvement over the dealer quotation in buying and selling Nasdaq stocks, and increased access to the Nasdaq market. The new facility, to be named NAqcess and operated by The Nasdaq Stock Market, will permit significant opportunity for investors in Nasdaq securities to enter limit orders inside the Nasdaq dealer quotation and enhance the opportunity for such investors to receive executions between the best dealer bid and offer without such orders interacting with market makers. The limit orders at the top of the NAqcess limit order file that are the same as or better than the best dealer quotations will be included in the inside market for The Nasdaq Stock Market, thereby providing new levels of transparency, increased price efficiency, and greater investor protection. Further, the companion rule and Interpretations accompanying the new system will provide retail customers with enhanced price protection of their limit orders, a significant expansion over current limit order protection afforded to customers in the Nasdaq market. Finally, NAqcess will provide customers that choose to enter market orders into the system with the opportunity to obtain price improvement over the dealer quotation through interaction with customer limit orders in the NAqcess file and will provide a prompt, cost-effective execution at the best price available in the market at any particular point in time.

NAqcess and the accompanying new Rules of Fair Practice provide multiple benefits to retail investors that were heretofore unavailable to such investors. A key feature of NAqcess that is a significant enhancement over current practices in Nasdaq is the ability of investors to have limit orders placed in a central file where they can interact directly with other customer limit orders and market orders entered into the system. Under a proposed new Interpretation to Article III, Section 1 of the Rules of Fair Practice, a customer may instruct its broker-dealer to enter the customer's limit order or market order into NAqcess. Moreover, NAqcess will provide increased transparency of the best priced limit orders in NAqcess because Nasdaq will incorporate into the Nasdaq inside market limit orders that are priced the same as or better than the best dealer bid and offer displayed in Nasdaq, and their aggregate sizes in a particular security. This increased transparency will enhance the Nasdaq price discovery process. NAqcess will match incoming limit and market orders against limit orders resident in the NAqcess file so as to permit customer orders to interact directly with each other without the participation of a market maker. The interaction of customer orders offers such orders an opportunity for price improvement over the dealer quotation and increases the likelihood that public limit orders will be executed on a more timely basis.

The companion rules and Interpretations regarding price protection in Nasdaq will also significantly enhance the protection of customer limit orders whether they are held in NAqcess or stored in a member firm's limit order file. Under a newly proposed rule, NASD member firms, whether acting as principal or agent, will not be permitted to execute an order at a price inferior to any limit order(s) in the NAqcess limit order file that the member firm is able to view, without satisfying the viewable limit order(s). An "inferior price" means an execution price that is lower than a buy limit order or higher than a sell limit order. In addition, if a member firm holds a customer limit order outside of NAqcess, a new Interpretation to Article III, Section 1 of the Rules of Fair Practice would require the member firm that holds the limit order to provide the customer with price protection that is equivalent to that which the limit order would have received if it had been entered into the NAqcess file. The concept of equivalent price protection is further explained below.

Aside from these major regulatory enhancements that provide for major changes in order handling and protection in The Nasdaq Stock Market, the NAqcess system itself represents a significant improvement over the current methodology for the handling of small investor orders. NAqcess, as noted, will permit interaction of small customer limit and market orders within the dealer spread and thus permit such orders to obtain significant opportunities for price improvement over the dealer quotation.

This new order delivery and execution system will replace SOES, the NASD's current system for the handling of small customer orders. Because SOES is an automated, quote-based execution system, it does not offer the opportunity for price improvement over the dealer quotation of small customer orders. Moreover, the proposed NAqcess system addresses the queuing concerns that were raised in connection with the previously proposed N—Prove system. NAqcess will distribute non-directed market orders that can not be immediately matched against NAqcess limit orders to available market makers at the inside market as the orders are presented. A market maker will provide such order an automated execution at the inside if the market maker presented with the order does not manually decline the order within a 20-second period because the market maker (consistent with SEC Rule 11Ac1–1)[3] has already effected, or is in the process of effecting an execution in the security and is in the process of updating its quotation. This approach eliminates the single-threaded distribution mechanism proposed in Notice To Members 95–20 and permits rapid distribution of orders to market makers as the orders are received.[4]

NAqcess and its companion rules represent a significant enhancement to the treatment of investor orders in The Nasdaq Stock Market. The entire proposal, when taken together with other recent enhancements to the Nasdaq trading environment, such as the Limit Order Protection Interpretation[5] and the Short Sale Rule,[6] demonstrates the significant strides that the NASD and The Nasdaq Stock Market have taken to provide increased protection of investors while continuing to preserve the benefits that its competitive dealer market structure currently provides. Individual investors seeking price improvement over the dealer quotation will be afforded a transparent mechanism to obtain greater opportunities for price improvement over the dealer quotation without market maker interaction. Moreover, through the accompanying rules, NAqcess will provide such limit orders with increased market-wide price protection. Individual investors seeking rapid execution of small market orders at the best available price will continue to be able to obtain executions promptly, while Nasdaq market makers will be permitted the opportunity to interact with such orders in a manner consistent with SEC rules and in a manner similar to market order handling in exchange markets. By permitting market makers to continue the operation of their own internal execution systems, the NASD will maintain the ability of dealers to provide liquidity and competitive mechanisms to handle customer orders.

2. NAqcess Operations

The proposed NAqcess system will provide the following:

A. *Scope of System.* NAqcess will be available for all Nasdaq issues. It will completely replace SOES which will operate until the effective date for operation of NAqcess and will be discontinued as of that date. NAqcess participation will be mandatory for market makers in all National Market securities. NAqcess participation for SmallCap market makers will be voluntary, as is SOES participation today for such market makers.

B. *Order Entry Requirements.* Agency orders may be entered into NAqcess only by member firms on behalf of customers. "Customers" are defined to

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[7] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Commission Note: The NASD's use of the term "price improvement" in this proposal differs from the use of the term in recent Commission releases. Specifically, the Commission has used the term when referring to the opportunity to receive a price that is superior to best bid or offer. See, e.g., 17 CFR 11Ac1–3(a)(2); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994) at text accompanying n. 12. The NASD's use of the term in this proposal, on the other hand, refers to the opportunity to receive a price that is better than the best market maker quotation, which may not be the best bid or offer to the extent NAqcess limit orders are included. In its recent rule proposal concerning the obligations of market makers executing customer orders, the Commission asked for comment on whether automated systems that include the possibility of the interaction of market orders with limit orders should be deemed to satisfy the proposal's requirement that market orders be provided with an opportunity for price improvement. Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52702 (Oct. 10, 1995).

[3] 17 CFR 240.11Ac1–1 (1995).

[4] The NASD believes that significant queues in excess of those currently experienced under SOES today will not occur under the new proposal. First, if the limit order file for a security has depth, market orders will immediately execute against limit orders without any delay. Because each order when received is immediately distributed to the next available market maker, the large majority of orders will be executed within 20 seconds of distribution. Even if an order is declined by a market maker at one price level, an event that the NASD believes will not be frequent, the declined order will be automatically executed without the possibility of rejection immediately upon presentation at the next price level. All of these techniques mean that it will be rare for an order not to be executed within a 20 to 40-second period after processing.

For example, assume that five market orders are entered into NAqcess at one second apart from each other and there are five market makers in the stock at the inside. Each order when received will be immediately distributed to the next market maker. Thus, order one at second one is distributed immediately to market maker one, while order two at second two is sent to market maker two immediately, and so on through order five. In most circumstances, each market maker will not decline the order within 20 seconds, and thus, each order would be executed within 20 seconds of processing. If any one of these orders were declined, the order would wait for the next available market maker for re-presentation. If that market maker remained at the same price level as that when the order was originally presented, the order would be subject to a further 20-second reaction period. In the unlikely event it was declined again, the order would be presented again for execution. If that presentation occurred at a new price level, it would be immediately executed at the new price level.

If order entry firms enter more orders than there are market makers at the inside, the queue for such orders would be the same as today in SOES when orders must be queued while waiting for a market maker to update its quotation after a SOES execution. Consequently, the NASD believes that queuing under this proposal does not represent a significant threat to prompt market order execution much different from current queuing. It should be noted as well, that market orders of eligible size entered into NAqcess are guaranteed an execution. Such execution may be effected against a customer order or a dealer's quote. Thus, in response to concerns raised in some comment letters the NASD received in response to Notice to Members 95–20 and 95–60, NAqcess will provide guaranteed executions to investors entering eligible market orders. Accordingly, the NASD believes that those comment letters from individual investors that allege that NAqcess will deprive them of an automatic execution are mistaken. Of course, it should be noted that not even in SOES is a market order guaranteed an execution at the price observed at the time the order was entered. Similarly, under NAqcess no such guarantee is extended to an investor.

[5] Securities Exchange Act Release Nos. 35751 (May 22, 1995), 60 FR 27997 (May 26, 1995) and 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[6] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

exclude any broker, dealer, person associated with a member, or a member of the immediate family of a person associated with a member. Because the purpose of the system is to provide small retail customers with access to The Nasdaq Stock Market, member firms, with one limited exception,[7] are not permitted to enter proprietary orders.[8] As explained in more detail elow, customers may request that appropriately sized limit and market orders be entered into NAqcess, and if so requested, member firms must honor the customer's request.[9]

Customers may request the entry of limit orders up to 1,000 shares in National Market and SmallCap issues, except for the Nasdaq 100 issues, in which case limit orders up to 3,000 shares may be entered. This represents a difference from the original proposal[10] of 3,000 shares for all National Market issues.[11] The issue of size eligibility for limit orders generated significant comment in response to the two Notices.[12] Many commenters believed that because NAqcess is intended to provide small retail customers with limit order protection, the initial approach should reflect more closely that the average retail order size is well under 1,000 shares. For example, the Security Traders Association ("STA") noted that the experience of STA members was that the typical retail customer order size averaged well-less than 1,000.[13] It was also noted by commenters that it could reduce the potential for investor confusion if NAqcess established a standard for limit orders that was consistent with market order size, 1,000 shares. Commenters also noted that NAqcess could potentially significantly impact market maker participation, particularly in less active securities. As a result, they suggested that the NAqcess order size should be set at lower levels at least until the NASD had thoroughly evaluated the impact of the system on market liquidity.

While the NASD believes that NAqcess will have overall a posttive effect on market quality, we believe that it is prudent in this start-up period to commence NAqcess limit order size eligibility at 1,000 shares for most securities. However, limit orders up to 3,000 shares would be eligible for NAqcess for those securities that comprise the Nasdaq 100 Index. The NASD believes that this higher eligibility level is appropriate because the securities comprising the Nasdaq 100 have high levels of volume, greater market maker participation and significant market liquidity and therefore are less likely to be adversely impacted by the proposal. Because of the significant changes that NAqcess may bring to The Nasdaq Stock Market, the NASD believes that it is appropriate to commence the operation of the system with a smaller limit order size than originally proposed to permit market makers and investors to adjust to the new trading environment. The NASD proposes to monitor the limit order size requirement carefully in the initial eighteen months of NAqcess operation and may choose to expand the eligible size of limit orders, if experience demonstrates such expansion to have merit.

Market orders in National Market issues may be 1,000, 500 or 200 shares depending upon tier size determination to be made in the same manner as done in SOES today.[14] Similarly, market orders in SmallCap issues will be tiered at 500 shares or less as done in SOES today.[15]

Customers may choose to enter "marketable limit orders." A marketable limit order is a limit order that is priced at the time of entry at the current inside market or better on the opposite side of the market, i.e., a marketable limit order to buy is equal to or higher than the current inside offer, while a marketable limit order to sell is equal to or lower than the inside bid. For example, if the current inside market is 20 bid and 20¼ asked, the entry of limit orders to sell priced at 20 or 19⅞ would be considered marketable limit orders. Marketable limit orders will be treated as market orders. Thus, if a firm enters a customer limit order to sell at 20 at the time the inside bid is 20, the limit order will be passed over the limit order file and if no match occurs, it will be treated as a market order and executed as discussed above in the market order handling section. If such marketable limit order, however, is greater than 1,000 shares in a Nasdaq 100 security, the marketable limit order will be returned to the order entry firm for handling outside of NAqcess, without matching against the inside market whether the inside consists of a dealer quote, limit order(s), or an aggregation thereof.

Neither a limit order nor a market order may be split up to meet the size parameters of NAqcess. The NASD will examine order handling practices of

[7] The only exception to the proprietary order prohibition is an order designated by a market maker as a "marker order." A marker order is a principal order entered by a market maker in a transaction that is functionally the equivalent of a riskless principal transaction. The firm may place a principal account limit order in the NAqcess file, and if an execution is obtained, immediately pass along the benefit of such execution to a retail customer order it holds in its own file. Because the order is part of a principal transaction for the benefit of the retail customer, the NASD believes that it is appropriate to permit this limited exception to the prohibition of proprietary orders in NAqcess. The NASD will require member firms entering such orders to mark their order tickets accordingly, and will examine a firm's trading activities carefully to determine that such proprietary orders are being effected for the purposes of engaging in a riskless principal-like transaction. Marker orders, however, may not be placed with respect to customer limit orders held by the firm that exceed the permitted maximum limit order size.

[8] Member firms will be permitted, however, to enter so-called "takeout" orders for their own account or on behalf of a customer. A takeout order is an order that results in an immediate automatic execution of a limit order or orders in the NAqcess limit order file at the limit order price(s). There is no size limitation on the takeout order. Thus, if the NAqcess file displays limit orders at a price with an aggregate size of 15,500 shares, a single takeout order of 15,000 shares may be entered and executed. Similarly, a firm may enter a takeout order to immediately execute multiple limit orders at multiple prices in the NAqcess file. When there are multiple limit orders being taken out, each limit order will execute at each limit order's price.

[9] *See infra* Section II(A)3.A of this proposal.

[10] NASD Special Notice to Members 95–20 (Mar. 21, 1995).

[11] All SmallCap issues have a limit order size of 1,000 shares.

[12] NASD Special Notice to Members 95–20 (Mar. 21, 1995) and 95–60 (July 27, 1995).

[13] See letter from John Gieses, Chairman, and John Watson, President, STA (Apr. 28, 1995).

[14] Under SOES Rules, the tier sizes of 1,000, 500 and 200 shares were determined by reference to the average daily non-block volume of a security, among other things. Thus, for example, if an issue had an average daily non-block volume of 3,000 or more shares, it could qualify for a tier size of 1,000 shares.

[15] The same concept will apply with respect to NAqcess maximum market order sizes, except that the NASD has determined to use a slightly higher average daily non-block volume of 6,000 shares. The NASD has chosen this higher level because it better reflects trading patterns consistent with the increased overall volume in Nasdaq securities.

[16] The NASD will permit market makers to establish minimum exposure limits that are equal to the maximum market order size. In addition, NAqcess will contain an automated update feature that will automatically change the market maker's quotation by a minimum increment set by the market maker after the market maker has executed a trade at a price level and has exhausted its minimum exposure limit through system executions. The NASD believes that these aspects of NAqcess are critical to an effective operation that permits a market maker to manage its risk capital, and is consistent with the SEC firm quote rule as applied to all other registered markets. The minimum exposure limit is set at the same size as the minimum quote size in Nasdaq. Under the SEC Firm Quote Rule (Rule 11Ac1–1(c)), a broker-dealer is entitled to change its quotation within a reasonable period of time after it has completed a trade at its published price. Accordingly, the NASD believes that these aspects of NAqcess are consistent with SEC and NASD rules and provide retail investors with the same access to dealer quotations as are available in any other registered marketplace.

order entry firms to determine compliance with this requirement.[16]

C. *Display of Limit Orders.* To enhance the transparency of The Nasdaq Stock Market and to assist in the price discovery process, the NASD will provide for the display of limit orders entered into NAqcess. There will be two separate approaches to the display: a consolidated inside market display and the Full File Display.

1. *Inside Market Display.* In a significant revision to Nasdaq's methodology for calculating the inside market for Nasdaq securities, The Nasdaq Stock Market will include in the Nasdaq inside market NAqcess limit orders, and their aggregate sizes, that are priced the same as or better than the best dealer bid and offer.[17] Thus, in Nasdaq the inside market will consist of a single display of the best priced quotes or limit orders, as the case may be. The inside market will be calculated in the following manner. If the best limit order(s) to buy (sell) in NAqcess is (are) better than the best Nasdaq market maker bid (offer) displayed in Nasdaq and such limit order(s) is (are) 100 shares or more, it (they) will be included in the Nasdaq inside market and disseminated as the inside bid (offer), together with the aggregate size of such order(s) and a unique indicator to denote that the inside market is represented by a NAqcess limit order or orders, rather than a quotation of a Nasdaq market maker or UTP exchange quotation. If there are multiple limit orders at the best price, aggregate size will be displayed and execution of such orders will occur on a time priority basis as explained below.

If the best-priced NAqcess limit order(s) is (are) equal to the inside dealer quotation, the limit order size will be reflected in the aggregate size of the quotation. That is, if there is a limit order to buy 500 shares at the same price as a 1,000 share dealer bid quotation, and both are the best bids reflected in Nasdaq, the aggregated size displayed as the best Nasdaq bid will reflect a size of 1,500 shares with a special indicator to denote that such size is an aggregation of a dealer quote and any limit order(s) at that price. Priority for execution will depend upon the general limit order priority rules, *i.e.*, if the limit order is received prior to the market maker quotation, it will be entitled to priority for execution purposes.[18]

The inclusion of NAqcess limit orders in the Nasdaq inside market represents a significant enhancement to The Nasdaq Stock Market. Consolidation of NAqcess orders into the Nasdaq inside quotation is the best means to communicate clearly to all investors in Nasdaq the true market for such securities at any particular point in time. The consolidation of best-priced limit orders with the best dealer bid and offer in Nasdaq provides the best level of transparency and aids in the price discovery process.

Although this represents a change from the original NAqcess proposal,[19] the NASD believes that the display of this consolidated information maintains the advantages of a competing dealer market while permitting an expansion in information available to investors.[20] The new inside quotation display will clearly identify when aggregated customer limit orders are represented in the inside market display. Accordingly, market participants will be able to ascertain when the inside quotation represents a customer limit order and when it represents a market maker whose quotation may signify that it is available to effect a significantly larger sized transaction. In this way, the NASD believes that transparency of customer orders may be enhanced while the integrity of the dealer quotation is preserved.

2. *Full File Display.* The full file display for a particular security will be made available on a query basis over Nasdaq Workstations only to Nasdaq market makers in that security. The NASD believes that, as with other U.S. market centers, display of the entire limit order file should be reserved to market makers in a particular security to assist in price discovery and to provide the market maker with an incentive to provide liquidity by risking its capital. In fact, no U.S. exchange registered with the SEC publicly disseminates any display (full or partial) of a limit order book maintained by an exchange specialist. Because of the accompanying rules described below that the NASD has proposed, customer limit orders in the file will be protected to a large extent, from inferior executions.

D. *Order Processing.* The NAqcess system will provide significant improvements over the current SOES system in the way that customer limit orders and market orders will be handled. NAqcess will attempt to match all incoming orders, limit or market, directed or non-directed, against limit orders already resident in NAqcess on a price and time priority basis.[21] If a match is found, the orders will be automatically executed against each other without the participation of a market maker. For example, assume the current inside market for a security is 20–20½ and customers enter into NAqcess a 1,000 share limit order to buy at 20⅛ and a 1,000 share limit order to sell at 20⅜. The new inside market will become 20⅛–20⅜. If a customer thereafter enters a 1,000 share limit order to sell at 20⅛, the incoming limit order to sell will match against the 1,000 share limit order to buy on the NAqcess file at 20⅛ and will be executed against that order. If a

[16] In this regard, the NASD notes that order entry firms may enter agency orders only. The rules continue in effect the definition of agency orders as found in the current SOES Rules and the new rules carry forward the existing principles regarding the aggregation of orders based on a single investment decision entered by an order entry firm. Orders entered by an order entry firm within any five minute period in accounts controlled by associated person or public customers, acting alone or in concert with other associated persons or public customers are presumed to be based on a single investment decision. In connection with this rule, the NASD notes that it will examine carefully the entry of computer-generated orders to determine whether such orders are based upon a single investment decision.

[17] This is a change from the approach originally proposed in Special Notice To Members 95–20 and 95–60. In the original NAqcess approach to the display of NAqcess limit orders, the NASD proposed to provide two separate displays of prices: the inside dealer quotation (*i.e.*, the best-priced bids and offers of Nasdaq market makers and UTP exchanges displayed in the Nasdaq market) and the top of the NAqcess limit order file (*i.e.*, the best-priced limit orders to buy and sell and their aggregate sizes). Such displays would have been separate and side-by-side. Under this new proposal, the NASD will maintain a Top of the File display on its Nasdaq Workstations, as well as include the best priced limit orders to buy and sell in the Nasdaq inside market display.

[18] Rules regarding calculation of the excess spread will not include NAqcess limit orders for purposes of determining compliance with those Rules. *See NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(d), CCH ¶ 1819.

[19] NASD Special Notice to Members 95–60 (July 27, 1995).

[20] One commenter specifically noted that a consolidated display of the best priced limit orders in the Nasdaq inside market was a better approach than maintaining separate displays, especially since member best execution obligations would be determined by reference to the best prices displayed by Nasdaq, whether such prices were dealer quotes or limit orders in NAqcess. *See* Lehman Bros. (Sept. 12, 1995). In addition, several vendors expressed technological concerns regarding separate displays. *See* letters from ADP (Aug. 16, 1995) and Telekurs (Aug. 14, 1995).

[21] NAqcess will match only round lots and round lot portions of mixed lot orders. Odd lot limit orders will not be matched. Odd lots are orders less than 100 shares. Odd lot limit orders will not be displayed in the inside quotation; however, odd lot limit orders will be displayed in the full file display. If an odd-lot order is executable *i.e.*, if it is a market order or an executable limit order, it will be automatically executed at the applicable inside dealer quotation. If it is a directed order, it is executed against the directed market maker. If it is a non-directed order, it will be executed automatically without any decline capability against the next available market maker at the inside dealer quotation. If the odd-lot order is a limit order that is not executable at time of entry, it will remain in the file until the inside dealer quotation moves to match the odd-lot price.

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customer next sends in a market order to buy in NAqcess, the market order will match against the limit order to sell at 20⅜, rather than the dealer offer of 20½, and thus, the market order will be automatically executed immediately at 20⅜. In both cases, the orders received price improvement over the dealer quotation and immediate execution without the participation of a market maker.

If, in the scenario set forth above, the second limit order to sell is priced at 20 instead of 20⅛, the execution price would be 20⅛, the price of the limit order to buy because such order was entered into the system earlier than the second limit order to sell.

The system will only execute such matches when the execution prices would be equal to or better than the inside market. Nevertheless, limit orders priced away from the inside market, *i.e.*, limit orders to sell priced higher than the inside offer and limit orders to buy priced lower than the inside bid, will be stored in the NAqcess file. When the inside market moves to a price so that the limit order is equal to or better than the inside dealer quotation, such limit orders will be consolidated into the Nasdaq inside market and the limit order will become eligible for matching as described in this section.

When a limit order in the NAqcess file is priced the same as the inside market, the time priority of the limit order compared with the best dealer quotation will govern which price interacts first with incoming orders in NAqcess. The NASD believes that this approach is a well-understood and reasonable means for determining the interaction of such orders and provides a further incentive to market makers to provide liquidity and narrow spreads.

If no limit orders reside in the NAqcess file, market orders will be immediately assigned and distributed to market makers at the inside market. This rapid distribution should minimize the potential for queues that the original proposal found in Notice To Members 95–20 could have caused. After an order is distributed to a market maker, the market maker will be permitted a 20-second period within which it may decline a non-directed order if such action is consistent with the exceptions to the SEC's firm quote rule, Rule 11Ac1–1.[22] In other words, the market maker is permitted to decline the NAqcess order if the market maker, immediately before the presentation of the NAqcess order: (a) effected or was in the process of effecting a trade, and (b) was in the process of updating its quotation to reflect that previous transaction. When a NAqcess order is declined by a market maker, the declined order is presented to the next available market maker. If that market maker is at the same price as the market maker that originally declined the order, the second market maker also has a 20-second period to react to the order. If the second time the order would be presented, the inside market has moved to a different price level, it is automatically executed without any decline capability. For example, four market makers are at the inside bid of 20. Three market orders to sell are entered into NAqcess when there are no limit orders to buy at 20 or better. Each market order is immediately distributed to one of the three market makers. Because the first market maker had completed a trade by telephone and was about to change its quotation, the first market order is declined by the first market maker. That order is redistributed to the fourth market maker still quoting a price of 20. The fourth market maker has 20 seconds to interact with the order. If, however, there were only three market makers at 20, and all market makers had updated their quotations to reflect a price of 19⅞, the declined order would be immediately executed at 19⅞ against the first available market maker without any decline capability.

The NASD is developing an automated surveillance capability to monitor on a real-time basis whether an order was properly declined. The NASD believes that this capability is crucial to engendering investor confidence in the firmness of Nasdaq market maker quotations and should alleviate any concerns regarding "backing away" questions. The NASD notes that the 15-second decline feature was criticized in the context of the N•Prove proposal.[23] The NASD believes that this proposal to develop a real-time automated surveillance capability should alleviate any concerns about the "decline" capability. The NASD will undertake strong disciplinary measures against any firm that displays a pattern and practice of improper order declines.

Order entry firms have two alternatives in entering NAqcess orders—they may direct the order to a particular market maker with whom they have established a direct order arrangement, or they may enter a non-directed order. In either circumstance, market orders and marketable limit orders will first pass over the limit order file to obtain a match before execution against a market maker. If an order is directed pursuant to a valid agreement between the order entry firm and the market maker, the market maker may not decline the order.

E. *Opening Procedures.* NAqcess will have special opening procedures that are consistent with the opportunities for order matching and price improvement over the dealer quotation provided intra-day by NAqcess.

NAqcess's operating hours are from 9:30 a.m. to 4:00 p.m. (EST). However, limit orders may be entered and stored in NAqcess from 4:00 p.m. to 6:00 p.m. and limit and market orders may be entered from 8:30 a.m. to 9:28 a.m. At 9:28 a.m., no further orders for opening purposes will be accepted.[24] At 9:30 a.m., Nasdaq will rank all limit orders stored as of 9:28 a.m. according to price and time of entry. To the extent orders are available, the system will then match the best-priced sell limit orders against the best-priced buy limit orders in the file that are within the best dealer bid and offer as determined at 9:30 a.m. When all available limit order matches are effected, any remaining limit orders within the inside dealer quote at 9:30 a.m. will be matched against market orders stored as of 9:28 a.m. and will be executed at such limit order prices. Any remaining orders will be subject to the normal intra-day, order distribution and execution procedures. It should be noted that this opening procedure will not create a single, unitary price for all orders in NAqcess. The individual prices of each match will be reported. Thus, assuming the dealer quotation is 20–20½, if the file contains two limit orders to buy at 20⅛, each for 1,000 shares, and there are also three 1,000 share limit orders to sell at 20⅛, two 1,000 share limit orders to sell at 20¼, and 4,000 shares to buy at the market, the system will execute as follows: the first two in time priority of the three 1,000 shares sell limit orders at 20⅛ will be matched against the two 20⅛ 1,000 share buy limit orders. The first 3,000 shares to buy at the market will be matched against the remaining limit orders to sell, with the first market order in time receiving an execution of 20⅛ and two 1,000 share market orders next in time receiving executions of 20¼. The remaining 1,000 share market order will be executed against the dealer quote according to the normal post-opening execution algorithm.

[22] While the total time period between order entry and Nasdaq receipt of the decline is 20 seconds, the system has been designed to provide market makers with a full 15-second period in which to react to an order. The rule itself references a 15-second period in which the market maker must react. Five seconds of the 20-second period is designed to accommodate communications between Nasdaq systems and the market maker. Thus, the NASD has purposefully designed a 5-second period to accommodate the transmission of messages between the NASD host computer and member firm presentation devices. This five-second period addresses the potential delays of 3.75 seconds that may occur in broadcasting a message from the host to a workstation, and the .775 seconds that could occur in transmitting a decline message from the presentation device to the host. (It should be noted that such time periods arise in the context of the current configuration of the proposed system. Development of alternative methods of processing could increase the total time delays.) In examining the potential length of time that a message could consume in transmission from the host to the presentation device and back again, the NASD determined that market makers would be at a significant time disadvantage in that a market maker could lose up to 33% of its already limited reaction period. In this context, then, the NASD believes that it is appropriate to recognize the inherent delays of computer-to-computer data exchange, and provide additional time to account for such delays.

[23] *See* Securities Exchange Act Release No. 35275 (Jan. 23, 1995), 60 FR 6327 (Feb. 1, 1995).

[24] Orders entered from 9:28 a.m. to 9:30 a.m. will be stored and handled after the opening in line with ordinary matching and handling procedures described above.

3. Rules of Fair Practice

The NASD is also proposing in conjunction with NAqcess three major changes to the Rules of Fair Practice. Under the proposed new rule and Interpretations, the treatment of limit orders will be significantly changed to promote price protection of such orders throughout The Nasdaq Stock Market. These proposed rule changes provide greatly enhanced limit order treatment over current practices. Together with existing limit order protections already in place (*i.e.*, the so-called "Manning" rule), the new proposals provide investors placing limit orders with significantly enhanced protections against limit order trade-throughs throughout The Nasdaq Stock Market.

A. *Customer Order Handling.* The NASD is proposing a new Interpretation under Article III, Section 1 of the Rules of Fair Practice. Under the proposal, if a customer requests that his or her order be entered into NAqcess, the member firm must do so. While the Interpretation permits a firm to charge for such services and to recommend the use of its own execution system, the member is not permitted to discriminate against customers that choose NAqcess over an internal system by imposing unfair commissions or charges. The proposed Interpretation covers both market and limit orders.

B. *Price Protection.* The NASD is also proposing a new rule in the Rules of Fair Practice that would prohibit a member firm, whether acting as a principal or as an agent, from executing any order at a price inferior to any limit orders that the firm is able to see in the NAqcess limit order file.[25] An inferior price means an execution price that is lower than a buy limit order or higher than a sell limit order that a member firm is able to see in the NAqcess limit order file. This prohibition means that limit orders in the NAqcess file will not be traded through elsewhere in Nasdaq in most circumstances. A member firm's activity with respect to protecting NAqcess limit orders must be consistent with its best execution obligations to its own customers. When a firm acts as principal in filling a NAqcess limit order when it is in possession of an executable customer market order on the other side of the market, it should pass on the benefit of the NAqcess trade to the customer order. If the firm in receipt of the market order is acting as agent for its own customer's order, its best execution obligation would mean that it should select the appropriate market for execution, which could be NAqcess.

The price protection obligation is related to the ability of the firm to view the orders in the limit order file. Thus, under the proposal's current configuration, limit orders at the top of the file and included in the inside market calculation must be protected by all member firms. Under NAqcess system rules, limit orders ranked below the top of the file are viewable only by market makers in the particular security. Accordingly, market makers in a particular security would be obligated to protect all limit orders in that security in the NAqcess file from inferior executions that they may engage in.[26] Thus, if a market maker in a security sought to execute a 1,000 share trade at 20, when the NAqcess file displayed limit orders to buy at 20⅛ and 20¼, the market maker would be required to either execute the limit orders first or contemporaneously, depending on the size of the limit orders in NAqcess.[27]

The NASD believes it important to explain for the purposes of the price protection rule and the Interpretation regarding equivalent price protection for limit orders held outside of NAqcess, that the protectible price that generates a firm's obligation to provide price protection is the price reported for last sale reporting purposes. Some confusion has occurred regarding limit orders trading at an "inferior price," especially in the context of internal sales credits. If the execution price reported via ACT for Schedule D transaction reporting purposes includes an internal sales credit that will be provided to a sales representative at the firm, the price that triggers the member firm's obligation to protect a limit order is the reported price. The internal sales credit included in the reported price has no effect on the obligation to protect the NAqcess limit order.[28]

C. *Equivalent Price Protection.* As noted earlier, the NASD, to encourage competition and to enhance the liquidity of The Nasdaq Stock Market, has determined that market makers should continue to be permitted to operate their own internal execution systems and to handle limit orders outside of NAqcess. However, the NASD also believes it is important to provide limit orders held outside of NAqcess with price protection substantially equivalent to that which NAqcess orders would have. Accordingly, the NASD has proposed an Interpretation to Article III, Section 1 of the Rules of Fair Practice

[25] It should be noted that placement of a customer limit order in the NAqcess file does not relieve a member firm of its obligation under the Limit Order Protection Interpretation of Article III, Section 1 of the Rules of Fair Practice that prohibits a member firm from trading ahead of a customer limit order it has been entrusted with. Under the so-called "Manning" Interpretation, if a member firm holding a customer limit order, whether from its own customer or as a result of a member-to-member order, places that order into NAqcess, the member firm is nevertheless prohibited from trading at the same price or at an inferior price to the customer order. Thus, while the newly proposed price protection rules speak in terms of protecting NAqcess orders from inferior priced transactions, if the NAqcess order is the firm's customer's order or a member-to-member order it placed in NAqcess, the firm may not trade at the same price without protecting that order.

[26] In today's environment, market makers are involved in approximately 83% of all Nasdaq trades. Consequently, it is likely that in a large majority of trades when NAqcess is operational, a market maker will be involved, and thus, orders away from the top of the file typically will be protected as well as the top of the file.

[27] The NASD will interpret the price protection rule to not apply to member firms that operate passively-priced crossing systems, such as POSIT and Instinet's Crossing Network. Generally speaking, such systems execute prices at the dealer quotation spread midpoint and would not likely trade through a NAqcess order. Members that believe that they operate systems that could qualify for this exemption should submit a request for exemption to the NASD.

The proposed rule would apply, however, to ordinary broker-dealer trading systems such as Instinet's regular trading session. Because many such trades could occur at prices that could be inferior to limit orders in NAqcess, the NASD believes it appropriate that such NASD member firms should protect NAqcess customer limit orders as would any other registered broker-dealer member firm. Orders placed in SelectNet that trade through NAqcess are also subject to the price protection rule.

[28] See NASD Special Notices To Members 95–43 (July 27, 1995) and 95–67 (Mar. 21, 1995) for a more detailed discussion of the proper means for protecting customer limit orders when firms are dealing at net prices. The same concepts apply in the context of protecting system limit orders.

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that provides substance to the term equivalent price protection.[29]

First, a member firm holding a protectible customer limit order[30] outside of NAqcess must provide such order with print protection, if any transaction at a price inferior to the customer limit order occurs.[31] Thus, any firm holding a protectible customer limit order is required to contemporaneously execute, up to the size of the reported transaction, the customer limit order at the limit order price if an inferior-priced execution is reported in that security. "Contemporaneously" means within approximately 60 seconds of the trade report. For example, firms A and B each hold 1,000 share customer limit orders to buy priced at 20⅛. A 1,000 share trade is reported at 20. Both firms A and B are obligated to execute their limit orders at 20⅛ within 60 seconds of the trade report. If the triggering trade report had been 500 shares at 20, each firm owed its customers executions of at least 500 shares at 20⅛.

Next, if the firm holds a protectible customer limit order at a price that would match a limit order in the NAqcess file, the firm must either execute its limit order or send its limit order to NAqcess for matching. "Matching" means that the NAqcess limit order is the same price or lower than the firm's customer's limit order to buy or higher than the limit order to sell.

The same matching would be required if the firm holds offsetting limit orders within its own file. If the firm holds a limit order to sell at 20¼ and accepts a limit order to buy at 20¼ or higher, the firm must execute the two orders against each other. Finally, if the firm holds a limit order that is priced equal to or better than the inside market in Nasdaq, and if the firm accepts a customer market order for automated execution at the inside market, the firm must first match the market order against the limit order before it can execute the market order for its own account.

4. NAqcess Proposal—Consistent With Securities Exchange Act

The proposed NAqcess system and the accompanying proposed rule changes in the Rules of Fair Practice propose significant structural changes in The Nasdaq Stock Market that greatly benefit investors in their handling of limit orders, price improvement over the dealer quotation, and rapid execution of orders. It is important to note that no previous proposal for a Nasdaq order handling and execution system has been so interrelated with such significant changes to rules that provide price protection across the Nasdaq market. The two developments—a new system with advanced order matching features and greater transparency along with the dramatic changes to price protection of orders in and outside the system—must be considered as a part of a fully integrated approach to the handling of retail customer orders. Together, they permit retail investors greater opportunity to participate directly in the market through the use of limit orders and substantially increase their ability to receive executions between the best dealer bid and offer. Further, the NASD believes that the approach to changes in The Nasdaq Stock Market proposed in this rule filing helps to guarantee investor protection and fairness to all market participants, while still allowing the market makers to operate in a competitive dealer market. The enhanced price discovery features, the transparency of limit orders, and the interaction of limit orders and market orders should add to the liquidity, efficiency and immediacy of Nasdaq's competing dealer market structure.

Accordingly, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) requires the NASD to formulate rules governing the quality of fair and informative quotations. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure economically efficient execution of securities transactions. The fundamental purpose of NAqcess is to assist investors in achieving prompt, efficient executions of their small orders and to provide an opportunity for price improvement over the dealer quotation within an automated execution environment. The integrity and efficiency of Nasdaq for public investors and market-making participants is critical and the NASD believes that NAqcess will provide benefits to both constituencies. The design of NAqcess is not anti-competitive as it treats all non-directed orders uniformly; to the extent that directed orders are distinguished, by entering into such arrangements with known customers, market makers effectively waive the protections offered by the system.

The new proposals are also fully consistent with the significant national market system objectives contained in Section 11A of the Act. The NAqcess national limit order facility would advance these objectives by offering efficient execution of investors' small orders, by maintaining market maker participation through the automated delivery of orders with the ability to reject those orders if trades have already occurred, and by offering the opportunity for price improvement over the dealer quotation to orders both inside and outside of the NAqcess system. The system's functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, without depriving market makers of legitimate exceptions from the firmness requirements contained in Rule 11Ac1–1. In sum, the NASD believes that the entire proposal set forth herein significantly advances the goals of investor protection and greater access to The Nasdaq Stock Market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments are discussed above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In particular, the Commission requests general comments concerning the NASD's proposal and whether it is consistent with the Act. In addition, the Commission invites interested persons to address the following specific issues:

(1) The Commission recently proposed rules concerning order execution obligations.[32] Among other things, the Commission's proposal generally would: (a) require Nasdaq market makers to display in their quotations (1) customer limit orders priced better than the market maker's current quotation, or (2) the size of a customer limit order that equals the current inside bid or offer; and (b) require that market makers offer market orders for certain securities an opportunity for price improvement over the current national best bid or offer. The Commission seeks comment on whether the NASD's proposal is consistent with the Commission's proposal and with the goals set forth in the Commission's release;

(2) The NASD's proposal would eliminate SOES and does not include the immediate automatic execution feature for market orders currently available in SOES. In light of historical concern about the accessibility of market maker quotations,[33] the Commission seeks comment on the possible effects this change could have on the Nasdaq market and retail investors;

(3) The SOES Rules provide a market maker a five-minute period within which to update its quotation or reestablish its exposure limit after its exposure limit has been exhausted. Further, the current operation of SOES allows for a market maker to elect to use an automated quotation update feature which, generally, changes, by a prespecified increment, the market maker's quotation after its SOES exposure limit is exhausted. The NASD's NAqcess proposal would continue both of these features. In light of the automated quotation update feature and the lack of immediate automatic execution that would occur under NAqcess, the Commission seeks comment on whether there is a continuing need for the five-minute grace period;

(4) The NASD proposes to modify the methodology for calculating the inside Nasdaq market to include both dealer quotations and NAqcess limit orders. If a NAqcess limit order equals or improves the best market maker quotation, it will be included in the Nasdaq inside market and disseminated as the inside quotation, including the aggregate size of all orders at that price. Further, the NASD proposes to use a unique indicator to denote when the inside market is represented by a NAqcess limit order, rather than a dealer or UTP exchange quotation. The Commission requests comment on whether using an indicator for a NAqcess limit order is appropriate;

(5) As discussed above in the NASD's proposal, priority of NAqcess executions when the best bid or offer consists of both a market maker quotation and a NAqcess limit order would be based on time priority. For example, if the inside bid consists of two market makers' bids and a NAqcess limit order, and the market makers' bids were received before the NAqcess limit order, the first two incoming market orders would be delivered to the market makers and subject to potential rejection within 20 seconds, rather than delivered to the limit order for immediate automatic execution. The Commission seeks comment on whether limit orders priced equal to the inside dealer quote should be given priority over market maker quotations, the implications of such a rule, and the relative costs and benefits of such a rule, particularly given that orders against market makers are delayed for 20 seconds but are executed immediately if matched with NAqcess limit orders;

(6) The proposal would limit the maximum order size for market orders to 1,000 shares (depending on certain trading characteristics of the security). For limit orders, the maximum order size would be 1,000 shares for all securities, except for limit orders in Nasdaq 100 securities for which the maximum limit order size would be 3,000 shares. The Commission seeks comment on the appropriate maximum order size for NAqcess limit orders, and whether different thresholds should be established for different Nasdaq securities. Further, the Commission notes that the Commission's recent proposal concerning order execution obligations generally would require display of limit orders of 10,000 shares or less; the Commission requests comment on the interaction between this aspect of the Commission's proposal and the NASD's proposal;

(7) The proposed NAqcess rules would limit access to the system to agency orders entered by member firms on behalf of public customers. Generally, the proposal would exclude: (a) accounts of persons associated with any member firm, and (b) the immediate family of any person associated with a member. The Commission is interested in commenters' views on the appropriateness of these exclusions. Specifically, the Commission requests comment on: (a) whether proprietary market and limit orders should be allowed or, alternatively, whether only proprietary limit orders should be allowed; (b) whether orders from the immediate family of members should be permitted; and (c) whether orders from non-member broker-dealers (*e.g.*, options market makers and UTP specialists) to member broker-dealers should be permitted;

(8) Under the proposal, any firm holding a protectible customer limit order would be required to execute contemporaneously (*i.e.*, within 60 seconds of the trade report), up to the size of the reported transaction, the customer limit order at the limit order price if an inferior-priced execution is reported in that security. The Commission requests comment on the appropriateness of this time period;

(9) The NASD's proposal includes Rules of Fair Practice that generally would prohibit a member from trading at a price inferior to a viewable NAqcess limit order and require that orders held outside of NAqcess be provided price protection substantially equivalent to that which NAqcess orders would have.

[29] The equivalent price protection interpretation would not apply to continuous trading systems, such as that operated by Instinet, because such customers are generally sophisticated and have deliberately opted to trade in an alternative trading system. Such customers are institutions and broker-dealers that seek other advantages in trading in these alternative systems. Because of their sophistication, these customers believe they do not need the broker-dealer operating the system to provide equivalent price protection. Accordingly, the NASD will provide an exemption from the interpretation to brokers operating such systems if they seek an exemption.

[30] A "protectible" order is a customer order of a size that would be eligible for entry into NAqcess. Accordingly, the interpretation requirements do not extend to customer limit orders that are larger than 1,000 shares (or larger than 3,000 shares for Nasdaq 100 securities).

[31] A member's obligation to provide print protection will not be triggered by a trade report that has a special modifier, such as .SLD or otherwise, appended to it. Because such modifiers indicate the trade being reported is out of sequence or was executed under special conditions, such trade reports should not require an execution of a limit order. The NASD will closely monitor member's usage of spec...l trade reporting modifiers to ensure that firms to not use such modifiers as a vehicle to avoid print protection obligations under the new rule.

[32] Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52791 (Oct. 10, 1995).

[33] Division of Market Regulation, SEC, The October 1987 Market Break 9–19 (1988).

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Under the proposal, for each security, only market makers in that security will be able to see the full limit order file; all other members are limited to viewing the top of the file. The Commission requests comment on whether there should be an exception to the NASD's price protection rule for block trades. In addition, the Commission requests comment on whether full file display of the NAqcess limit order file should be broadened and, if so, to what extent; and

(10) The Commission requests comment on whether the NASD's proposal, and in particular the amendments to the Rules of Fair Practice, would result in any burdens on competition, and if so, the extent of such burdens and whether they are necessary and appropriate in furtherance of the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-95-42 and should be submitted by January 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Secretary.

Exhibit A—Rules of Operation and Procedures for the NAqcess System

I. Definitions

The terms used in this Section shall have the same meaning as those defined in the Association's By-Laws and Rules of Fair Practice, unless otherwise specified.

A. The term "NAqcess" shall mean the limit order and market order delivery and execution system owned and operated by The Nasdaq Stock Market, Inc. (a wholly owned subsidiary of the National Association of Securities Dealers, Inc.).

B. The term "NAqcess participant" shall mean either a market maker or order entry firm registered for participation in NAqcess.

C. The term "NAqcess eligible security" shall mean any Nasdaq National Market or Nasdaq SmallCap equity security.

D. The term "open quote" shall mean a market maker's quotation price and size (up to its designated exposure limit) in an eligible security against which orders may be executed through the NAqcess system during normal market hours, as specified by the NASD. For the purposes of these Rules, a market maker has a "closed quote" when its exposure limit in NAqcess has been exhausted or it has been deemed "closed" pursuant to Section IV. A. 9 below.

E. The term "NAqcess market maker" shall mean a member of the Association that is registered as a Nasdaq market maker pursuant to the requirements of Schedule D to the NASD By-Laws and as a market maker in one or more NAqcess eligible securities.

F. The term "NAqcess order entry firm" shall mean a member of the Association that is registered as an order entry firm for participating in NAqcess which permits the firm to enter agency orders of limited size for delivery to and execution against NAqcess market makers and customer limit orders in NAqcess that are included in the inside market.

G. The term "agency order" shall mean an order from a public customer that is entered by the NAqcess order entry firm or NAqcess market maker on an agency basis.

An order will not be considered an agency order if it is for any account of a person associated with any member firm or any account controlled by such an associated person. An order will not be considered an agency order if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into NAqcess.

H. The term "directed order" shall mean an order entered into NAqcess and directed to a particular NAqcess market maker or an order entered by a NAqcess market maker that is self-directed. Each market maker has the ability to select order entry firms from which it will accept directed orders.

I. The term "non-directed order" shall mean an order entered into NAqcess and not directed to any particular market maker, or a directed order that has been directed to a market maker that has not identified the order entry firm as one from which it will accept directed orders, or a directed order sent to a firm that is not registered as a market maker in that security.

J. The term "limit order" shall mean an order entered into NAqcess that is a priced order.

K. The term "marketable limit order" shall mean a limit order that, at the time it is entered into NAqcess, if it is a limit order to buy, is priced at the current inside offer or higher, or if it is a limit order to sell, is priced at the inside bid or lower.

L. The term "executable limit order" shall mean a limit order that, at the time a limit order, market order, or marketable limit order on the opposite side of the market is entered, is either included in the inside market or is equal in price to the inside market and has time priority over other limit orders or dealer quotations included in the inside market.

M. The term "marker order" shall mean a limit order for a market maker's principal account that is a part of a contemporaneously executed transaction that the firm is engaged in for the benefit of one or more customers.

N. The term "takeout order" shall mean an order entered by an NASD member firm, acting as principal or as agent, that executes against NAqcess limit orders viewable by that firm.

O. The term "inside market" shall mean the best dealer bid, UTP exchange bid, or NAqcess limit order(s) to buy and the best dealer offer, UTP exchange offer or NAqcess limit order(s) to sell, as the case may be, displayed by Nasdaq.

P. The term "UTP exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq securities.

Q. The term "matched or crossed file" shall mean the entry of: (1) a bid quotation by a market maker equal to or greater than a limit order to sell resident in the NAqcess file in the same security; or (2) an offer quotation by a market maker equal to or less than a limit order to buy resident in the NAqcess file in the same security.

R. The term "maximum market order size" shall mean the maximum size of individual market orders for a NAqcess eligible security that may be entered into or executed through NAqcess. The maximum market order size for each security shall be advertised in the system and published from time to time by the Association. In establishing the maximum market order size for each Nasdaq National Market security, the Association generally will give consideration to the average daily non-block volume, bid price, and number of market makers for each security. Maximum market order size for Nasdaq National Market securities shall be 200, 500 or 1,000 shares, depending upon the trading characteristics of the securities.[1] These sizes may be adjusted on an issue by issue basis, depending upon trading characteristics of the issue and other relevant factors as determined by the Association. Maximum market order size for Nasdaq SmallCap securities shall be 500 shares.

S. The term "maximum limit order size" shall mean the maximum size of a limit order for a security that may be entered into or matched through NAqcess. The maximum limit order size for Nasdaq National Market securities shall be 1,000 shares for each tier of Nasdaq National Market securities, except for the securities that comprise the Nasdaq 100 Index,[2] which shall have a maximum limit order size of 3,000 shares. Maximum limit order size for Nasdaq SmallCap securities shall be 1,000 shares.

T. The term "exposure limit" shall mean the number of shares of a NAqcess eligible security specified by a NAqcess market maker that it is willing to have executed for its account by orders entered into NAqcess on either side of the market.

U. The term "minimum exposure limit" for a security shall mean an exposure limit equal to the maximum market order size for that security.

V. The term "automated quotation update facility" shall mean the facility in the NAqcess system that allows the system to automatically refresh a market maker's quotation in any security that the market maker designates when the market maker's exposure limit has been exhausted. The facility will update: (1) either the bid or the offer side of the quote using a quotation interval designated by the market maker, depending upon the side of the market on which the execution has occurred and refresh the market maker's exposure limit; or (2) close the market maker's quote for five minutes, within which time the market maker shall update its quote or be placed in a suspended state for 20 days.

W. The term "Automated Confirmation Transaction service" ("ACT"), for purposes of the NAqcess rules, shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which accommodates trade reporting of transactions executed through NAqcess and submits locked-in trades to clearing.

II. NAqcess Participant Registration

A. All members participating in NAqcess shall register and be authorized as NAqcess market makers and/or order entry firms. Registration as a NAqcess participant shall be conditioned upon the member's initial and continuing compliance with the following requirements: (1) membership in a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which NAqcess compared trades may be settled; or entry into a correspondent clearing arrangement with another member that clears trades through such clearing agency; (2) registration as a market maker (if applicable) in Nasdaq pursuant to Schedule D of the NASD By-Laws and compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission; (3) maintenance of the physical security of the equipment located on the premises of the member to prevent the unauthorized entry of orders or other data into NAqcess or Nasdaq; and (4) acceptance and settlement of each trade for which it is responsible that is executed through the facilities of the NAqcess service, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NAqcess trades by the clearing member on the regularly scheduled settlement date.

B. Upon effectiveness of the member's registration to participate in NAqcess, participants may commence activity within NAqcess for entry and/or execution of orders, as applicable, and their obligations as established in this rule will commence.

C. Pursuant to Schedule D to the NASD By-Laws, participation as a NAqcess market maker is required for any Nasdaq market maker registered to make a market in a Nasdaq National Market security. A market maker in a Nasdaq SmallCap security may withdraw from and reenter NAqcess at any time, and without limitations, during the operating hours of the service.

D. Each NAqcess participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

III. Operating Hours of NAqcess

The operating hours of NAqcess will be the normal market hours specified for The Nasdaq Stock Market.

IV. Participant Obligations in NAqcess

A. Market Makers

1. A NAqcess market maker shall commence participation in NAqcess by initially contacting the Market Operation Center to obtain authorization for market making in particular Nasdaq securities and identifying those terminals on which the NAqcess trade information is to be displayed. Thereafter, on-line registration on a security-by-security basis is permissible, consistent with the requirements of Schedule D to the NASD By-Laws.

2. Participation as a NAqcess market maker obligates the firm, upon presentation of a market order or marketable limit order through the service, to execute such order as provided in Section V. A. 5. below. NAqcess market makers are not permitted to decline orders directed to the firm pursuant to a directed order arrangement acknowledged by the market maker. The system will transmit to the market maker on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

3. For each NAqcess eligible security in which a market maker is registered, the market maker shall enter into NAqcess its exposure limit. For a Nasdaq National Market security, that limit shall be any amount equal to or larger than the minimum exposure limit for the particular security. If no exposure limit is entered for a Nasdaq National Market security, the firm's exposure limit will be either the default size selected by the particular market maker or the minimum exposure limit. "Default size" shall mean an exposure limit greater than the minimum exposure limit that may be selected by a market maker for individual securities or for all securities in which it makes a market.

4. A NAqcess market maker may elect to use the automated quotation update

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[34] 17 CFR 200.30-3(a)(12).

[1] The applicable maximum market order size for each Nasdaq National Market security is determined generally by the following criteria:

(i) a 1,000 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 6,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

(ii) a 500 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 2,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers; and

(iii) a 200 share maximum market order size shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 2,000 shares a day, a bid price of less than or equal to $250, and that have two or more market makers.

[2] The Nasdaq 100 Index is an index comprised of many of the largest capitalized issues quoted in the Nasdaq National Market. The securities that make up the Nasdaq 100 are changed from time to time and The Nasdaq Stock Market publishes notice of such changes as they occur.

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facility in one or more securities in which it is registered. The facility will update the market maker's quotation automatically by a quotation interval designated by the market maker, once its exposure limit in the security has been exhausted. The facility will update the market maker's quotation in either the bid or the offer side of the market by the interval designated and will reestablish the market maker's displayed size and either the default size or the minimum exposure limit; or the facility will close the market maker quote for five minutes.

5. Matched or crossed file. If a market maker's quotation change matches or crosses a limit order residing in the NAqcess limit order file, the system will automatically provide a notification to the market maker that informs the market maker of its obligation to protect all limit orders residing in the NAqcess file that would be affected by the quotation change. If the market maker enters the matching or crossing quotation change after this notification, limit orders in the file for the particular security will be automatically executed against the matching or crossing market maker, provided however, that if the number of shares in the limit order file that would be matched or crossed is greater than five times the maximum market order size for that particular security, or if the quotation change matches and crosses multiple price levels, the quotation change will be rejected. To effect such quotation change, the market maker first must manually enter a takeout order for the affected orders in the file prior to re-entering its quotation update.

6. The market maker may terminate its obligation by keyboard withdrawal from NAqcess at any time. However, the market maker has the specific obligation to monitor its status in NAqcess to assure that a withdrawal has in fact occurred. Except as otherwise permitted by Section 70 of the Uniform Practice Code regarding the Association's authority to declare clearly erroneous transactions void, ("UPC Section 70"), any transaction occurring prior to the effectiveness of the withdrawal may remain the responsibility of the market maker. In the case of a Nasdaq SmallCap security, a market maker whose exposure limit is exhausted will be deemed to have withdrawn from NAqcess and may reenter at any time. In the case of a Nasdaq National Market security, a market maker whose exposure limit is exhausted will have a closed quote in Nasdaq and NAqcess and will be permitted a standard grace period of five minutes within which to take action to restore its exposure limit, if the market maker has not authorized use of the automated quotation update facility. A market maker that fails to renew its exposure limit in a Nasdaq National Market security within the allotted time will be deemed to have withdrawn as a market maker. Except as provided in subsection 7 below, a market maker that withdraws from a Nasdaq National Market security may not re-register in NAqcess as a market maker in that security for twenty (20) business days.

7. Notwithstanding the provisions of subsection 6 above, (i) a market maker that obtains an excused withdrawal pursuant to Part V of Schedule D to the NASD By-Laws prior to withdrawing from NAqcess may reenter NAqcess according to the conditions of its withdrawal; and (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NAqcess for Nasdaq National Market securities, may reenter NAqcess after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements, provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Schedule D and these rules.

8. In the event that a malfunction in the market maker's equipment occurs rendering on-line communications with the NAqcess service inoperable, the NAqcess market maker is obligated to immediately contact the Market Operations Center by telephone to request a closed quote status from NAqcess. For Nasdaq securities, such request must be made pursuant to the requirements of Part V, Schedule D to the NASD By-Laws. If the closed quote status is granted, Market Operations personnel will enter such status notification into NAqcess from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under UPC Section 70, the NAqcess market maker may continue to be obligated for any transaction executed prior to the effectiveness of its closed quote.

B. Order Entry

1. Only market and limit agency orders may be entered in NAqcess by the NAqcess order entry firm through either its Nasdaq Workstation or computer interface. The system will transmit to the order entry firm on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution. NAqcess market makers may enter limit agency orders in NAqcess for any NAqcess eligible security, but may not enter agency market orders or marketable limit orders in securities in which they make markets, unless such orders are self-directed. As a limited exception to the prohibition of the entry of proprietary orders into NAqcess, NAqcess market makers may place marker orders into NAqcess. The benefit of any such marker order execution must be passed immediately to one or more customer limit orders held by the firm placing the marker order. Marker orders may not be placed with respect to customer limit orders held by the firm that exceed the maximum limit order size permitted by these rules.

2. NAqcess will accept both market and limit agency orders of appropriate size for execution. Agency orders may be directed to a specific NAqcess market maker, self-directed by the NAqcess market maker, or may be non-directed, thereby resulting in execution against the next available NAqcess market maker. If an order is directed to a market maker by an order entry firm from which it has not agreed to accept direct orders, the order will be executed on a non-directed basis.

3. Only agency orders no larger than the maximum market and limit order sizes may be entered by a NAqcess order entry firm into NAqcess for execution against an NAqcess market maker or against an executable limit order. Orders in excess of the maximum order sizes may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into NAqcess. All orders based on a single investment decision that are entered by a NAqcess order entry firm for accounts under the control of associated persons or public customers, whether acting alone or in concert with other associated persons or public customers, shall be deemed to constitute a single order and shall be aggregated for determining compliance with the maximum order size limits. Orders entered by the NAqcess order entry firm within any five-minute period in accounts controlled by associated persons or public customers, acting alone or in concert with other associated persons or public customers, shall be presumed to be based on a single investment decision. An associated person or customer shall be deemed to control an account if the account is his or her personal account or an account in which he or she has a beneficial interest; the person exercises discretion over the account; the person has been granted a power of attorney over the account; or the account is the account of an immediate family member as that term is defined in the Board of Governors Interpretation on Free-Riding and Withholding, Article III, Section 1 of the NASD Rules of Fair Practice.

4. No order will be considered an agency order from a public customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. No order will be considered an agency order from a public customer if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into NAqcess.

5. No member or person associated with a member shall utilize NAqcess for the execution of agency orders in a SmallCap security in which the member is a Nasdaq market maker but is not a NAqcess market maker.

6. NAqcess will accept the following types of agency orders during normal market hours: (a) day orders; (b) good-till-canceled ("GTC"); and (c) good till date ("GTD").

V. Execution of NAqcess Orders

A. General Execution Procedures: Orders in Nasdaq equity securities entered into NAqcess may be directed or non-directed. Non-directed market orders and non-directed marketable limit orders will be processed according to the procedures established below. Non-directed odd-lot orders that are market orders or marketable limit orders will be automatically executed in NAqcess against the next available market maker at the inside market and execution reports will be delivered to the order entry firm and the market maker.

1. *Entry of Limit Orders:* Limit orders may be entered into NAqcess by order entry firms and by market makers up to the maximum limit order size allowed for a particular security. Limit orders priced away from the Nasdaq inside bid or offer (as the case may be) as well as limit orders consolidated in the inside market will be stored in the NAqcess limit order file. Limit orders in securities priced at $10 or more shall be priced in increments of an eighth or more; limit orders in securities that are priced at under $10 may be placed in increments of a sixteenth or less depending upon the dealer quotation increments permitted.

2. *Display of NAqcess Limit Orders:* (a) Consolidated Display of Limit Orders In Inside Market: If a NAqcess limit order to buy or sell for 100 shares or more is better than the best dealer bid or offer, the limit order to buy or sell will be displayed in the Nasdaq inside market. Such display will contain the limit order price, size (which shall be aggregated if two or more limit orders are at the same best price) and an indicator to note that the inside market consists of a limit order rather than a market maker or UTP exchange quotation. If a NAqcess limit order of 100 shares or more is at the same price as the best dealer bid or offer, the size displayed in the inside market will be an aggregation of any same-priced limit orders and a single dealer quote at the best price.

(b) Full Limit Order File Display: All Nasdaq market makers in a particular security may request via Nasdaq Workstations a display of all limit orders in such security entered in the NAqcess limit order file. Such displays will be available on a query basis only to a registered market maker in a particular security.

3. *Execution of Limit Orders:* A limit order that matches or crosses a limit order on the opposite side of the market will be automatically executed against the matching or crossing order when such orders are at the inside market or better, and have priority over the dealer quotation. The priority rules for limit order interaction shall be that orders that are best in price shall be executed against each other first. If two or more orders are at the same price on the same side of the market, then the order that was received first in time shall be accorded priority over other orders at the same price. Limit orders that cross each other in price shall be executed at the price of the order that entered the file first. A limit order matches a limit order on the file when: the limit orders are consolidated in the inside market on Nasdaq; are on opposite sides of the market; and are equal in price. A limit order crosses a limit order on the file when: both limit orders are either consolidated in the inside market or better than the inside market; are on opposite sides of the market from each other; and the subsequent limit order is at a superior price to the existing limit order (i.e., the sell (buy) limit order is priced below (above) a limit order to buy (sell)). Execution of limit orders will occur up to the size of the initial limit order or the subsequent limit order, whichever is smaller, and without the participation of a market maker. The unexecuted balance of a limit order is entered into the NAqcess file for subsequent matching, unless such balance is less than 100 shares, in which case the balance is automatically executed against the next available market maker, if equal to the inside quotation. If there is a limit order at the same price as the best dealer quotation (i.e., if a limit order to buy is the same as the best dealer bid, or a limit order to sell is the same as the best dealer offer), the order or quote that has time priority shall be matched against the incoming limit order.

4. *Takeouts of Limit Orders:* Any NASD member firm, acting as principal or as agent, may enter into NAqcess an order or orders that execute(s) any limit order(s) consolidated in the inside market or otherwise displayed in the NAqcess limit order file. Such orders shall be known as "takeout" orders. A takeout order may be for any size up to the aggregate amount of shares displayed in the NAqcess limit order file at a particular price. Takeout orders must be executed against limit orders on the opposite side of the market in order of price and time. A firm entering a takeout order for limit orders at multiple prices may enter a single takeout order at a price either at or above or below the NAqcess limit orders, as the case may be, and each limit order will be executed at each such price. Takeout orders do not reduce a firm's exposure limit.

5. *Entry and Execution of Market Orders:* (a) Market orders up to the maximum market order size for NAqcess eligible security may be entered into NAqcess. If at the time a market order is entered into NAqcess there is a limit order on the opposite side of the market that resides in the NAqcess limit order file and is reflected in the inside market as the best bid or offer, the incoming market order will be automatically executed against the limit order at the limit order price without the participation of a market maker. If a market order is not fully executed against the limit order file, the balance of such market order will be treated as any other market order as set forth in subparagraph (b) below, provided that if the balance of the market order is odd-lot size, the balance will be automatically executed against the next available market maker at the inside quotation. If there is a limit order consolidated in the inside market at the same price as a dealer bid or offer (i.e., if a limit order to buy is the same as the best dealer bid, or a limit order to sell is the same as the best dealer offer), the order or quote that has time priority

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shall be matched against the incoming market order.

(b) If there is no limit order residing in NAqcess that has been consolidated in the inside market on the opposite side of the market from the market order, each market order will be assigned to a market maker at the inside market and will be executed against the next available market maker at the current inside market after a display period of 15-seconds. The market maker to which a market order is displayed may decline the market order within the 15-second period if the market maker has contemporaneously executed another transaction and is in the process of updating its quotation pursuant to SEC Rule 11Ac1–1. If a market order or a marketable limit order is declined by a market maker, the order is returned to the system for distribution to the next available market maker. If that market maker is at the same price level as the first market maker who declined the order, the second market maker has 15 seconds to react to the order. If the originally declined order is re-presented to a market maker at a price level different from its original presentation(s), the order is automatically executed at that price level without any market maker ability to decline.

(c) If the NAqcess limit order file does not have any executable limit orders at the time a directed market order is entered, directed market orders will be automatically executed against the directed order market maker without a 15-second decline capability. Directed limit orders that are not matched by incoming limit or market orders will be automatically executed against the directed order market maker when the inside market is changed to match the directed limit order price. Directed odd-lot orders (orders of less than 100 shares) that are market orders or marketable limit orders also will be automatically executed against the directed order market maker. Non-directed odd-lot orders that are market orders or marketable limit orders will be automatically executed against the next available market maker at the current inside market. An odd-lot limit orders that is not executable at time of entry will be stored and executed against the best dealer bid or offer, as the case may be, when such quotation reaches the limit order price.

6. *Entry and Execution of A Marketable Limit Order:* Marketable limit orders that meet the maximum market order size requirements will be accepted and treated as market orders. Marketable limit orders greater than the maximum market order size will be returned to the order entry firm for handling outside of NAqcess.

7. *NAqcess Opening Procedures:* NAqcess will permit the entry of limit orders and market orders outside of normal market hours, except that market orders will not be accepted between 4:00 and 6:00 p.m. Orders entered at such times will not be executed but will be stored for matching and execution at the next market opening. NAqcess permits the entry of such orders between 4:01 p.m. to 6:00 p.m. and 8:00 a.m. to 9:28 a.m. (Orders entered from 9:28 to 9:30 will be stored and handled according to normal market procedures after the opening procedures are concluded.)

Matching and execution at the NAqcess opening will occur according to the following procedures:

At 9:28 a.m., NAqcess will stop accepting orders for execution in the NAqcess file for opening purposes. At 9:30 a.m., NAqcess will commence execution procedures for opening orders in NAqcess by first ranking and matching limit orders in NAqcess in sequence of the highest price buy order against the lowest price sell order. When all available limit orders are matched and executed, market orders on a time priority basis will be matched and executed against any remaining limit orders in the NAqcess file within the inside quotation at the limit order price(s). Any remaining market limit orders will be stored in the NAqcess file. Any remaining orders will be subject to normal order execution processes.

VI. Clearance and Settlement

All transactions executed in NAqcess shall be transmitted to the National Securities Clearing Corporation to be cleared and settled through a registered clearing agency using a continuous net settlement system.

VII. Obligation to Honor System Trades

If a trade reported by a NAqcess participant, or clearing member acting on its behalf, is reported by NAqcess to clearing at the close of any trading day, or shown by the activity reports generated by NAqcess as constituting a side of a NAqcess trade, such NAqcess participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

VIII. Compliance With Procedures and Rules

Failure of a NAqcess participant or person associated with a NAqcess participant to comply with any of the rules or requirements of NAqcess may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. No member shall effect a NAqcess transaction for the account of a customer, or for its own account, indirectly or through the offices of a third party, for the purpose of avoiding the application of these rules. Members are precluded from doing indirectly what is directly prohibited by these rules. All entries in NAqcess shall be made in accordance with the procedures and requirements set forth in the NAqcess User Guide. Failure by a NAqcess participant to comply with any of the rules or requirements applicable to NAqcess shall subject such NAqcess participant to censure, fine, suspension or revocation of its registration as a NAqcess market maker and/or order entry firm or any other fitting penalty under the Rules of Fair Practice of the Association.

IX. Termination of NAqcess Service

The Association may, upon notice, terminate NAqcess service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the NAqcess service or the Association, or fails to pay promptly for services rendered.

Exhibit B—Interpretations Related to Member Firm Responsibilities Regarding Orders in NAqcess

In its efforts to maximize the protection of investors and to enhance the quality of the marketplace, the NASD and The Nasdaq Stock Market, Inc. have developed a nationwide limit order protection, price improvement, and market order handling facility of The Nasdaq Stock Market. This nationwide facility is herein referred to as "NAqcess".

The NASD Board of Governors is issuing these Interpretations to the Rules of Fair Practice to provide: (1) Customers the right to have their orders entered and protected in NAqcess; and (2) member firm provision of equivalent protection for limit orders held in a member firm's proprietary limit order system. These Interpretations are based upon a member firm's obligation to provide best execution to customer orders under Article III, Section 1 of the Rules of Fair Practice and a member firm's obligations in dealing with customers as principal or agent to buy and sell at fair prices and charge reasonable commissions or service charges under Article III, Section 4 of the Rules of Fair Practice. Accordingly, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to violate the following provisions:

1. Member Firm Obligation Regarding Investors' Directions on Order Handling

NAqcess will provide individual investors with significant opportunities to achieve limit order protection and price improvement. The NASD recognizes that member firms operating as market makers also operate trading systems which offer significant protection and execution opportunities for customer limit orders. Accordingly, nothing herein is intended to limit a member's ability to recommend use of its own or another member firm's proprietary system for handling limit and market orders where equivalent protection is afforded. In light of the significant benefits offered to customers by the NAqcess system, however, members must abide by the directions of its customers who request that the firm enter their orders in NAqcess.

Further, nothing in this Interpretation requires a member firm to accept any or all customer limit orders. Member firms accepting limit orders that are placed in NAqcess or otherwise may charge fair and reasonable commissions, commission equivalents, or service charges for such handling, provided that such commissions, commission equivalents, or service charges do not violate Article III, Section 4 of the Rules of Fair Practice. In no event, however, shall a member impose any fee or charge that effectively operates as a disincentive to the entry of orders in the nationwide facility and thereby interferes with the investor's ability to choose order handling alternatives.

2. Equivalent Protection for Orders Held Outside of NAqcess

As a further adjunct to a member firm's best execution obligations, the NASD Board of Governors has interpreted Article III, Section 1 of the Rules of Fair Practice to require member firms that do not enter customer limit orders into NAqcess, but hold such protectible orders in their own proprietary system, to provide such orders with price protection at least equivalent in substance to that which the order would have received had the order been entered into NAqcess. For the purposes of this Interpretation, a "protectible limit order" shall mean a limit order that meets the maximum limit-order size criteria as set forth in the Rules of Operation and Procedure for NAqcess at Section I.S. For the purposes of this Interpretation, equivalent price protection shall mean:

A. Print Protection

If a transaction in a Nasdaq security is reported via the Automated Confirmation Transaction Service ("ACT") at a price inferior to the price of customer limit order(s) that the firm is holding (*i.e.*, if the reported price is a price lower than a buy limit order or higher than a sell limit order being held by the firm), the firm holding the limit order(s) is required on a contemporaneous basis to execute the limit order(s) at the limit price(s) up to the size of the reported transaction.

B. Matching Limit Orders

If the firm holds a customer buy (sell) limit order in its proprietary limit order file and that limit order matches a sell (buy) limit order in NAqcess, the firm holding the limit order must either provide its customer with an immediate execution at the limit order price or must immediately direct the order to NAqcess. A limit order held by a firm would match a limit order in NAqcess when the limit order in NAqcess is at the same price or is priced lower than the firm's customer's limit order to buy or higher than the firm's customer limit order to sell ("offsetting limit orders").

C. Matching Limit Order Interaction Within A Firm's File

If the firm holds two or more offsetting customer limit orders within its own proprietary file, the firm must execute the offsetting limit orders.

D. Interaction Between Limit and Market Orders Held Within A Firm's File

While holding a customer limit order that is priced equal to or better than the best bid or offer in the security disseminated in Nasdaq, if a firm accepts customer market orders for automated execution against the best bid or offer in the security disseminated in Nasdaq, the firm, pursuant to its obligation set forth in the Interpretation to the Rules of Fair Practice, Article III, Section 1, (the so-called "Manning Interpretation"), must first permit the market orders to execute against any applicable limit orders it holds before the firm may execute the market orders for its own account.

E. Examples of Equivalent Protection

The NASD Board of Governors has provided the following examples to further explain a member firm's equivalent protection obligation for orders held outside of NAqcess:

Print Protection The best dealer bid and offer in Nasdaq ("the inside price") is 20 bid–20¼ offer. Firm ABCD holds a customer limit order of 1,000 shares to buy at 20⅛ in its own proprietary file. Firm MNOP reports a transaction in the subject security via ACT, disseminating a price of 20⅛ for 500 shares. Contemporaneous with the dissemination of the trade report, firm ABCD is required to provide an execution of its customer limit order for at least 500 shares at 20⅛.

Matching Limit Orders The inside price is 20 bid–20¼ offer. NAqcess is displaying a 1,000 share customer limit order to buy at 20⅛ for customer X. Firm ABCD thereafter receives from customer Y a 1,000 share limit order to sell at 20⅛ that the firm ABCD retains for handling outside of NAqcess. Upon receipt of the limit order, firm ABCD must execute customer Y's limit order for 1,000 shares at 20⅛.

Matching Limit Order Interaction Within A Firm's File. The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20⅛. Firm ABCD thereafter receives a customer limit order to sell 1,000 shares at 20⅛. Firm ABCD must match the orders and execute the trade.

Interaction Between Limit and Market Orders Held Within A Firm's File. The inside price is the same as above. Firm ABCD holds a customer limit order to buy 1,000 shares at 20⅛. Firm ABCD thereafter receives a customer market order to sell 1,000 shares. Firm ABCD must match the two orders and execute the trade at 20⅛. Similarly, if the limit order to buy were priced at 20, the firm would have to execute the market order against the limit order at 20.

Price Protection for NAqcess Limit Orders, Rules of Fair Practice, Article III, Section [XX]

No member firm shall execute an order as principal or as agent at a price inferior to any limit order(s) viewable in NAqcess to the member firm, provided however, that a member firm executing a transaction that is larger than the limit order(s) viewable in NAqcess at an inferior price must contemporaneously satisfy the limit order(s) viewable in NAqcess. An "inferior price" means an execution price that is lower than a buy limit order or higher than a sell limit order that is viewable in NAqcess. The term "limit orders viewable in NAqcess" shall mean those orders that the member firm is able to view either as consolidated in the Nasdaq inside market or as reflected in the Full Limit Order File Display as the firm is

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authorized to view under the Rules of Operation and Procedure.

[FR Doc. 95-29950 Filed 12-7-95; 8:45 am]

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[Rel. No. IC-21581; File No. 812-9655]

American Skandia Life Assurance Corporation, et al.

December 1, 1995.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1) ("Account B—Class 1"), American Skandia Life Assurance Corporation Variable Account B (Class 2) ("Account B—Class 2"), and American Skandia Marketing, Inc. ("ASM").

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 17(a), 17(b), 17(d) and 26(b) of the 1940 Act and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of approval under Section 26(b) of the 1940 Act and exemptions from Sections 6(c), 17(a), 17(b), 17(d) of the 1940 Act and Rule 17d–1 thereunder. The requested order would exempt Applicants from those Sections of the 1940 Act and the Rule set out above to the extent necessary to permit certain underlying mutual funds of the separate account to be substituted for certain other underlying mutual funds.

FILING DATE: The application was filed on May 2, 1995 and amended on November 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, NW., Washington, DC 20549. Applicants: John T. Buckley, Esq., Werner & Kennedy 1633 Broadway, New York, New York 10019 and American Skandia Life Assurance Corporation, c/o Jeffrey M. Ulness, Esq., One Corporate Drive, Shelton, CT 06484.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Brenda D. Sneed, Chief (Office of Insurance Products), Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. ASLAC, the depositor of both Account B—Class 1 and Account B—Class 2 (collectively, the "Separate Account"), is a stock life insurance company organized under the laws of the State of Connecticut and wholly-owned by American Skandia Investment Holding Corporation ("ASIHC"), which is an indirect wholly-owned subsidiary of Skandia Insurance Company Ltd., a corporation organized under the laws of the Kingdom of Sweden.

2. ASM, the underwriter of variable annuity contracts issued through the Separate Account and offered by ASLAC, is registered with the SEC and is a member of the NASD. ASM is 100% owned by ASIHC.

3. The Separate Account is a separate account of ASLAC, and is registered under the 1940 Act as a unit investment trust. ASLAC established the Separate Account to the purpose of funding certain flexible purchase payment deferred variable annuity contracts (the "Contracts"). Account B—Class 1 subaccounts each invest exclusively in one of the corresponding portfolios of six open-end management investment companies. The following five Contracts are funded, through the sub-accounts of Account B—Class 1: American Skandia Advisors Plan ("ASAP") [32];[1] ASAP II [21];[2] the LifeVest Personal Security Annuity ("PSA") [32]; the Alliance Capital Navigator Annuity ("Alliance Navigator") [15]; and the StageCoach Variable Annuity ("StageCoach") [8] (collectively, the "Class 1 Contracts").

Account B—Class 2 sub-accounts each invest exclusively in one of the corresponding portfolios of six open-end management investment companies. ASLAC currently offers two Contracts that invest in Account B—Class 2: the Wrap Fee Contracts ("Wrap Fee") [42].

4. Under the Contracts affected by the proposed substitutions, six open-end management investment companies currently offer shares of several of their portfolios to the Separate Account: The Alger American Fund ("Alger Fund"); Alliance Variable Products Series Fund, Inc. ("AVP"); Neuberger & Berman Advisers Management Trust ("AMT"); American Skandia Trust ("AST"); and Scudder Variable Life Investment Fund ("Scudder"). In addition, six portfolios of the Janus Aspen Series ("Janus") are offered to Account B—Class 2 but not Account B—Class 1. All such investment companies in which the Separate Account invest are collectively referred to as "Underlying Funds."

5. The proposed substitutions would result in a reduction in variable investment options and corresponding portfolios available as follows. ASAP and PSA would be reduced to 21 (a reduction of 11 each) and Wrap Fee would be reduced to 21 (a reduction of 21). Applicants state that funding such varied products through a consolidated fund structure will aid in the growth of the Underlying Funds resulting in lower operating costs through economies of scale. Applicants further state that regardless of whether one Contract achieves more popularity or appeal, or is no longer marketed by ASLAC, the interests of Contract owners will be protected by like underlying portfolios of all ASLAC nonproprietary variable annuities.

6. Of the Underlying Funds, only AST is affiliated with ASLAC or the Separate Account. None of the Underlying Funds, their investment managers, or underwriters are affiliated with ASLAC, the Separate Account or AST through any corporate ownership.

7. Applicants state that in the registration statements filed by the Separate Account, ASLAC expressly reserved the right both on its own behalf and on behalf of the Separate Account to eliminate sub-accounts, combine two or more sub-accounts, or substitute one or more Underlying Funds for others in which its sub-accounts are invested.

8. ASLAC, on its own behalf and on behalf of the Separate Account, proposes to effect the following substitutions of shares of the following portfolios (the "Transferee Portfolios") for shares of other portfolios (the "Transferor Portfolios") (collectively, the "Substitution(s)"): (i) the AST Phoenix Balanced Asset Portfolio will be substituted for the Alger Balanced, Alliance Total Return, AMT Balanced, Scudder Balanced, and Janus Aspen Balanced Portfolios; (ii) The Lord Abbett Growth & Income Portfolio (AST) will be substituted for the Alger Income & Growth and Alliance Growth & Income Portfolios; (iii) the Seligman Henderson International Equity Portfolio (AST) will be substituted for the Alliance International, Scudder International, and Janus Aspen Worldwide Growth Portfolios; (iv) the Alger Growth Portfolio will be substituted for the Alliance Premier Growth, AST Phoenix Capital Growth, AST Eagle Growth Equity, Scudder Capital Growth, and the Janus Aspen Aggressive Growth Portfolios; (v) the PIMCO Limited Maturity Bond Portfolio (AST) will be substituted for the Alliance Short-Term Multi-Market, Alliance U.S. Government/High Grade Securities, AMT Limited Maturity Bond, and Janus Short-Term Bond Portfolios; (vi) the AMT Partners Portfolio will be substituted for the AMT Growth Portfolio; (vii) the PIMCO Total Return Bond Portfolio (AST) will be substituted for the Scudder Bond and Janus Aspen Flexible Income Portfolios; and, (viii) the JanCap Growth Portfolio (AST) will be substituted for the Janus Aspen Growth Portfolio. Applicants note that allocations to the Alliance Fund Transferor Portfolios available under Separate Account Contracts will be substituted, except for those amounts allocated under the Alliance Navigator Contract (Account B—Class 1). Allocations under the Alliance Navigator Contract will remain unaffected by the Substitutions.

9. The Substitution process will include two periods during which Contract owners may make cost free transfers to the remaining portfolios of their choice. The first free transfer period will start prior to the "Automatic Selection Date." The Automatic Selection Date is the date ASLAC will schedule the Substitutions to occur. Such date will be as soon as practicable following the issuance of an order by the SEC. Moreover, any transfers of account value from any of the Transferor Portfolios from May 1, 1995 (the date the relevant Contract prospectuses reflected the proposed Substitutions), will not be counted toward the twelve free transfers permitted under relevant Contracts.

10. For several months prior to the Automatic Selection Date, and in all cases since May 1, 1995, relevant Contract prospectuses reflected the Substitutions. Such registration statements as in effect as of May 1, 1995 for ASAP, PSA and Wrap Fee also contain information of the investment policies of the Transferee Portfolios.

11. The first free transfer period will start before the Automatic Selection Date. Within approximately five days after the Applicant's notice of application appearing in the **Federal Register**, ASLAC will mail a written notice to all Contract owners who, as of the date the notice of application appears in the **Federal Register**, have allocations in any Transferor Portfolio. The notice will contain information as to the Substitutions and will provide instructions regarding the ability of Contract owners to make transfers of account value out of any Transferor Portfolio without transfer fees or similar charges, and without such transfer being counted as a free transfer. After notice is mailed and up until the Automatic Selection Date, any Contract owner making an allocation or transfer (*i.e.*, new money) to any Transferor Portfolio during the first free transfer period will be sent a similar notice with their confirmation statement (the "Affected Contract owners").

12. As of the Automatic Selection Date, allocations or transfers to a Transferor Portfolio will automatically be allocated to the corresponding Transferee Portfolio. No Transferor portfolio will accept additional premium payments (*i.e.*, new money) on or after the Automatic Selection Date.

13. On the Automatic Selection Date, all account values allocated to each Transferor Portfolio, if any, will be transferred to the corresponding Transferee Portfolio ("Automatic Selection Option"). Applicants state that the Automatic Selection Options (which may only occur if Contract owners do not give timely instructions during the first free transfer period) are temporary in character because Contract owners can always exercise their own judgment as to the most appropriate alternative investment. Applicants also state that Affected Contract owners will have an additional free transfer period after the Automatic Selection Date. No sales load deductions will be made in connection with any transfers among the portfolios because of the Substitutions or otherwise. Contract owners who have not annuitized may at any time, before or after the Substitutions, transfer their account value to any of the other portfolios offered under their respective Contracts.

14. The second free transfer period will start after the Automatic Selection Date. For thirty (30) calendar days, or if the thirtieth day is not a business day then the following business day after the Automatic Selection Date, Affected Contract owners may transfer account values out of the Transferee Portfolios to any other available portfolios without transfer fees or similar charges and without transfer being counted as a free transfer. Within five (5) days of the Automatic Selection Date, ASLAC will send Affected Contract owners written notice of the Substitution identifying units of the Transferee Portfolios. ASLAC will include in this notice information regarding the second free transfer period. Applicants state that if Affected Contract owners have telephone transfer privileges, telephone instructions will be accepted during both free transfer periods.

15. Applicants anticipate that some or all Substitutions may be effected partly for cash and partly for securities as a partial redemption "in-kind" at the net asset values of the portfolios (such transfer will be in conformity with Sections 22(c) and 22(g) of the 1940 Act and Rule 22c–1 thereunder). The transfers will be effected by selling the securities of the applicable Transferor Portfolios and applying the proceeds to the purchase price of securities issued by the Transferee Portfolios selected by Contract owners. At all times all contract values will remain unchanged, no fees or charges will be incurred, all Contract owner rights will be unaffected, and ASLAC's obligations under any Contract will not be altered in any way because of the Substitutions.

16. To the extent "in-kind" redemptions are not utilized, Applicants anticipate that Transferor Portfolios will incur brokerage fees and expenses to the extent not assumed by Applicants, or the adviser or sub-adviser of the Transferee Portfolios in connection with the redemption of shares of the affected Transferor Portfolios.

Applicants state that they will effect the redemptions "in-kind" to the extent consistent with investment objectives and applicable diversification requirements. ASLAC states that it will establish procedures to ensure that "in-kind" redemptions will be effected in a fair and equitable manner from the perspective of the Separate Account, the Transferor Portfolios, and other separate accounts which currently invest in the Transferor Portfolios, and other separate accounts which currently invest in the Transferor Portfolios. These procedures will provide that: (i) the Transferor Portfolio investment adviser identify prior to the effective date of the Substitutions the securities to be included in the "in-kind" transfer; and (ii) the investment adviser to the Transferee Portfolio reviews and agrees to accept the securities so identified as payment for the purchase of Transferee Portfolio shares. The valuation of "in-kind" transfers will be on a basis consistent with the valuation

[1] The numbers in brackets denote the number of portfolios which are currently available under the Contracts.

[2] ASAP II, the Alliance Navigator and the Stagecoach Contracts will not be subject to the proposed substitutions.

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procedures of the applicable Transferor and Transferee Portfolios.

17. ASLAC or the investment adviser of the Transferee Portfolio will assume the transfer and custodial expenses and legal and accounting fees of the Substitutions, and Contract owners will not incur any fees or charges as a result of the transfer of account value from any portfolio. The Substitutions will not increase Contract and Separate Account fees and charges after the Substitutions. In addition, Applicants state that the Substitutions have been designed to avoid any adverse federal income tax impact on Contract owners.

18. Following the Substitutions, the sub-accounts which invest in the Transferor Portfolios will be terminated.

Applicants' Legal Analysis

Request for an Order Pursuant to Section 26(b) of the 1940 Act

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

2. Section 26(b) protects the expectation of investors in a UIT that the UIT will accumulate shares of a particular issuer. The Section also prevents unscrutinized security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust (holding the shares of one issuer) from substituting the shares of another issuer for those shares, unless the Commission approves the Substitutions.

3. Applicants represent that the purposes, terms, and conditions of the Substitutions will not entail any of the abuses that Section 26(b) is designed to prevent for the following reasons:

a. The proposed Substitutions are for shares of the Transferee Portfolios with investment objectives of the corresponding Transferor Portfolios so as to provide a means for Contract owners to continue their current investment goals and risk expectations.

b. The proposed Automatic Selection Options will be only temporary because Contract owners may always exercise their own judgment as to the most appropriate alternative investment vehicles. No sales load deductions will be made in connection with any transfers among the portfolios by reason of the Substitutions. After the Substitutions, the Affected Contracts would still offer a broad array of variable investment options and Contract owners who have not annuitized may at any time transfer their account value to any of the other portfolios offered under their respective Contracts.

c. the transactions effecting the proposed Substitutions including the redemption of Transferor Portfolio shares and the purchase of Transferee Portfolio shares will be effected at net asset value in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.

d. The anticipated utilization of "in-kind" redemptions by the Transferor Portfolios for the purchase by the Separate Account of Transferee Portfolio shares, in conformity with Section 22(g) of the 1940 Act, may reduce transaction costs of the Substitutions.

e. ASLAC or the Transferee Portfolio investment adviser will assume various expenses and transaction costs relating to the Substitutions, including custodial and transfer fees incurred by use of any "in kind" redemptions, and legal and accounting fees.

f. The Substitutions will not alter or affect the insurance benefits provided by ASLAC to Contract owners or the terms or obligations under the terms of the Contracts.

g. The Substitutions are designed to avoid any adverse effects upon the tax benefits available to Contract owners; the Substitutions are designed not to give rise to any current federal income tax to Contract owners.

h. The Substitutions are expected to confer economic benefits by virtue of the enhanced asset size of the Transferee Portfolios.

4. Applicants state that under the circumstances it is in the best interest of Contract owners to proceed with the Substitutions. The Substitutions are appropriate because the overall investment objectives of the Transferee Portfolios are similar and their investment objectives are compatible to the Transferor Portfolios.

5. Applicants also represent that total fees and expenses as a percentage of net assets for the Transferee Portfolios are expected to decrease through economies of scale caused by the anticipated increase in asset size and the increased similarity of available portfolios in applicable Contracts as a result of the Substitutions.

Request for Order Pursuant to Section 6(c) and 17(b) of the 1940 Act

6. Applicants seek an exemption from Section 17(a) through both Sections 17(b) and 6(c) of the 1940 Act because Section 17(b) permits the Commission to exempt a single "proposed transaction" whereas Section 6(c) enables the Commission to exempt a series of transactions.

7. Under certain circumstances, Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person of the persons described above from purchasing any security or other property from such registered investment company.

8. Applicants state that since the Substitutions may be deemed to involve one or more purchases or sales of securities between and among affiliated persons, the Substitutions may involve transactions prohibited by Section 17(a) of the 1940 Act. Applicants also state that the Substitutions may not be exempt from Section 17 of the 1940 Act pursuant to Rule 17a–7 thereunder, since the affiliations among some of the parties do not arise solely through having common investment advisers, common directors and/or common officers.

9. Section 17(b) authorizes the SEC to issue an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) the proposed transaction is fair and reasonable and does not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicant represent that the terms of the Substitutions are consistent with the standard for relief described in Section 17(b) of the 1940 Act.

10. The Substitutions will be effected at the net asset value of the securities involved. ASLAC or the adviser of the Transferee Portfolios will bear those expenses associated with the transfers. The Substitutions and transfers of securities are consistent with the policies of each investment company involved and of the 1940 Act.

11. As a condition to the granting of an order of exemption under Section 17(b), Applicants represent that they will company with the conditions set forth in Rule 17a–7 except for sub-paragraph (a), which requires that the transaction be "for no consideration other than cash payment." Although the consideration in some cases will be "securities" and not cash, Applicants state that these transactions are in substance the type of transactions currently exempted by Rule 17a–7.

12. Applicants further state that the terms of the Substitutions and the transfer of the securities meet all the requirements of Section 17(b) and represent that for the terms of the Substitutions and transfers of securities are reasonable and fair and do not involve overreaching on the part of any person concerned.

13. Applicants also represent that with respect to the "in-kind" portion of the Substitutions established procedures will guard against inappropriate or unfair exchanges.

14. Since Applicants may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under Section 2(a)(3) of the 1940 Act the Substitutions may be deemed to entail one or more purchases or sales of securities or property between Applicants. Accordingly, Applicants believe that the Substitutions may require an order exempting the transactions prohibited under Sections 17(a)(1) and 17(a)(2) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

15. Rule 17a–7 under the 1940 Act exempts from the prohibitions of Section 17(a) a purchase or sale transaction between registered investment companies or separate series of registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors and/or common officers, subject to certain specified conditions. As the affiliation among the Applicants, however, does not arise solely by reason of having common investment advisors, directors, and/or officers, and redemption by the Transferor Portfolios may involve redemptions of securities "in-kind" rather than for cash, the Substitutions likely would not satisfy the technical requirements of Rule 17a–7. Nonetheless, Applicants represent that the Substitutions will comply with the underlying intent of Rule 17a–7 in all respects for the following reasons. First, although the Substitutions would involve partial redemption of securities "in-kind" rather than the "all-cash," as required under subsection (a) of Rule 17a–7, such transactions likely would be less amenable to self-dealing than corresponding "all-cash" transactions. Moreover, redemptions in kind would reduce brokerage commissions or other remuneration ordinarily paid in connection with securities transactions. Second, because the Substitutions will be effected at the independent current market price and are consistent with the policies of each of the Transferor and the Transferee Portfolios, the Substitutions would comply with both the technical requirements and underlying intent of subsections (b) and (c) of the Rule. Third, to the extent consistent with investment objectives and applicable diversification requirements, Applicants will effect redemption "in-kind" to reduce any brokerage commissions or other remuneration usually paid in connection with securities transactions, as contemplated by subsection (d) of the Rule. Finally, because the Substitutions would occur only once, the formal written compliance procedure required under subsections (e) and (f) of the Rule would prove inapplicable.

Request for Order Pursuant to Section 6(c) and Rule 17d–1 of the 1940 Act

16. Section 17(d) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, from effecting any transaction in which such registered investment company, or a company controlled by such registered investment company, is a joint participant with such person, in contravention of Commission rules designed to limit or prevent participation by the registered investment company "on a basis different from or less advantageous than" that of the affiliated person. Rule 17d–1(a) prohibits any of the persons described above, acting as principal, from participating in, or effecting "any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered investment company, or a company controlled by such registered company, is a participant" unless the Commission has approved the joint enterprise, arrangement or plan.

17. Applicants state that they may be deemed to be affiliated persons of each other under Section 2(a)(3) of the 1940 Act, and that the Substitutions will involve transactions that may be deemed to implicate Section 17(d) of the 1940 Act and Rule 17d–1 thereunder.

18. The simultaneous purchase and sale transactions involve a number of registered investment companies, and each such purchase and sale transaction is dependent on the other. Each transaction therefore may be deemed to be in connection with a joint arrangement within the contemplation of Section 17(d) of the 1940 Act and Rule 17d–1 thereunder. Applicants request an order pursuant to Section 6(c) and Rule 17d–1 to eliminate any question of compliance with Section 17(d) and Rule 17d–1.

19. Rule 17d–1 provides for the Commission to grant an order upon request. In passing upon such request, the Commission is to consider whether the participation of the management investment companies is consistent with the provisions, policies and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

20. Section 6(c) of the 1940 Act provides that the Commission may grant an order exempting persons and transactions from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For all the reasons stated herein, Applicants submit that the Substitutions are consistent with the provisions, policies and purposes of the 1940 Act and that the participation of each of the parties to the Substitutions will be on an equal basis and consistent with their respective participation in the Substitutions, and is consistent with the provisions, policies and purposes of the 1940 Act.

21. Based on the foregoing, Applicants represent that the Substitutions and the related transactions meet all the requirements of Section 6(c) of the 1940 Act and Rule 17d–1 thereunder, and are consistent with applicable precedent, and request that an order of exemption from Section 17(d) and approval pursuant to Section 6(c) and Rule 17d–1 be granted.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 35–26420]

Filing Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 1, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7287)

Eastern Utilities Associates ("EUA"), a registered holding, and its wholly owned nonutility subsidiary company, EUA Cogenex, Corp. ("Cogenex"), both at P.O. 2333, Boston, Massachusetts 02107, have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(c), 12(f), and 13(b) of the Act and rules 42, 45, 87, 90, and 91 thereunder.

By prior order in this proceeding dated December 19, 1986, the Commission authorized EUA to acquire Cogenex (HCAR Release No. 24273). Subsequent orders of the Commission authorized Cogenex to engage in additional activities and removed restrictions on the amount of revenues Cogenex could receive from customers outside New England (*see, e.g.*, HCAR Release Nos. 26232 (Feb. 15, 1995), 26135 (Sept. 30, 1994), 25982 (Jan. 28, 1994), and 25636 (Sept. 17, 1992)).[1]

Cogenex designs, finances, installs and maintains energy conservation systems. Cogenex provides energy management services ("EMS") directly to institutional commercial, industrial and governmental customers to reduce their energy costs and consumption. Cogenex employs energy efficiency technology and equipment in its EMS program through building automation, lighting modifications, boiler replacement, and other heat recovery methods to reduce electrical energy and fuel consumption and related energy costs of its customers. Cogenex earns fees for these services primarily through shared savings agreements under which Cogenex is paid a portion of the customers' energy savings.

Cogenex also participates in demand side management ("DSM") programs sponsored by electric utilities as a means to decrease base load and peak demand on the utilities' systems. In DSM programs, Cogenex provides EMS services to the utility's customers to reduce their energy demands. The utility pays Cogenex based on the reduction in demand, and Cogenex may also receive a portion of the customer's savings.

Cogenex now proposes to provide services relating to the furnishing and conservation of water to the types of customers to whom it furnishes EMS services. Cogenex proposes to provide such water services packaged with its EMS services or on a stand-alone basis.

American Electric Power Company, Inc., et al. (70–8307)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Energy Services, Inc. ("AEPES") (collectively, "Applicants"), both at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 54, 87, 90, and 91 thereunder.

AEPES is engaged in the business of selling management, technical and training expertise both to certain AEP affiliates and to non-affiliates. AEPES requests authorization to make financial and/or technical contributions to assist research and development efforts of non-affiliated entities. As a result of such contributions, AEPES may receive a license to use and/or a right to sublicense intellectual property developed by those entities ("Non-Affiliate Intellectual Property"). If AEPES became entitled to receive an equity interest in a non-affiliated entity to which such contributions were made, AEPES would sell the interest to an affiliate, AEP Investments, Inc., at its fair market value, subject to the receipt of any required regulatory approvals.

AEPES is also engaged in, among other things, the business of selling or otherwise providing access to intellectual property developed by AEP affiliates for their own use. Currently, AEPES pays to any such affiliate in perpetuity a certain portion of the revenues realized from any disposition of such intellectual property. Specifically, AEPES pays the affiliate (a) 70% of the revenues from the intellectual property until the affiliate recovers its direct costs of making the property available and (b) 20% of such revenues thereafter. Additionally, AEPES makes intellectual property it develops available to AEP affiliates without charge, except for actual expenses incurred by AEPES in connection with making such intellectual property so available.

AEP and AEPES propose that, if AEPES disposes of intellectual property developed by an affiliate for its own use and which such affiliate retains a right to use, AEPES would pay that affiliate an amount equal to the costs the affiliate directly incurred in making the property available to AEPES. For dispositions by AEPES of intellectual property developed by an AEP affiliate for its own use, but which that affiliate no longer would be able to use, AEPES would continue to reimburse that affiliate an amount equal to the affiliate's development costs. If an AEP affiliate developed intellectual property not for its own use but for use by AEPES, AEPES would also pay that affiliate an amount equal to the affiliate's development costs. AEPES additionally proposes that any disposition on Non-Affiliate Intellectual Property to an AEP affiliate would be at cost. Any intellectual property developed by AEPES would be made available to AEP affiliates at the direct cost of making such property available.

Also, AEPES requests authority to provide or broker financing to customers in connection with and to support the sale of goods or provision of services through direct loan, installment purchase, operating or finance lease arrangements (including sublease arrangements) or loan guarantees. Interest on loans and imputed interest on lease payments will be at prevailing market rates. The obligations will have terms of one to thirty years and be secured or unsecured. AEPES also may assign obligations acquired from customers to banks or other financial institutions with or without recourse.

In addition, AEP is authorized through December 31, 1995 to guarantee debt of AEPES to third parties in an amount not to exceed a total of $51,000,000. AEP proposes to extend this authority through December 31, 1998.

[1] Cogenex announced on September 28, 1995, that it was discontinuing one of its principal business segments involving small self-generation projects.

Public Service Company of Oklahoma (70–8711)

Public Service Company of Oklahoma ("PSOK"), located at 212 East 6th Street, Tulsa, Oklahoma 74119–1212, a wholly-owned public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

PSOK requests authorization to make equity and debt investments totaling $3,500,000 in four Oklahoma limited liability companies, RIKA Management Company, L.L.C ("RIKA"), Universal Power Products Company, L.L.C ("Universal"), Automated Substation Development Company, L.L.C ("Automated") and RC Training, L.L.C, (Training") (collectively, the "RIKA Companies"), engaged in the development and commercialization of computer automation technology for the electric power industry.

The predecessor to the RIKA Companies, Relay Concepts, Inc. ("Relay"), reorganized its corporate structure into the four limited liability RIKA Companies referred to above on July 17, 1995. As a consequence of this reorganization, the RIKA Companies will acquire Relay's three existing lines of business:

(1) relay testing software,[2] (2) electrical substation automation systems,[3] and (3) personnel training services.[4] The RIKA Companies will derive substantially all of their revenues from the development and commercialization of software that enhances the efficiency of substation operation and maintenance, and from the sale of training courses relating to all phases of automated testing and maintenance systems as well as on-site training and consulting services. Universal will be the primary marketing and sales arm of the RIKA Companies. Automated will be a research and development company, with no sales or support function, and will license Universal to market and sell the products it develops. Training will develop, market and operate training programs as a separate business. RIFA will provide management oversight and administrative support and control of the RIKA Operating Companies. RIKA will charge each of the RIKA Operating Companies for all direct and allocated costs plus a management fee equal to 5% of all cost billings.

On July 17, 1995, PSOK and RIKA entered into a Software Application Development Agreement ("Development Agreement") pursuant to which the RIKA Companies will develop certain substation automation software applications for PSOK ("Software").[5] Under the Development Agreement, PSOK and RIKA each have, with certain limitations, a perpetual, non-exclusive and unrestricted license to use, modify, sublicense, sell or otherwise transfer the Software. Notwithstanding its rights under the Development Agreement, PSOK states that it does not intend to license the Software to non-affiliates and is not requesting authority from this Commission to engage in such activity. PSOK further states that its right to license the Software to third parties will be terminated upon consummation of the transactions, described below, for which it is seeking authorization (see footnote 5). Inconsideration for RIKA's services under the Development Agreement, PSOK has agreed to pay RIKA up to $3,050,000 to be made available to RIKA in periodic installments, commencing upon the execution of the Development Agreement and continuing through March 31, 1996. As of October 30, 1995, PSOK had paid RIKA $1,500,000 of this amount.

Subject to approval of the investments by the Commission, the Development Agreement calls for PSOK and RIKA to execute a Member Agreement ("Member Agreement") in accordance with which the $3,050,000 payable to RIKA under the Development Agreement to fund development of the Software would be converted into a $750,000 capital contribution to Automated and a loan to RIKA of up to $2,300,000. PSOK would also make a $450,000 capital contribution to Universal.[6] Like the original $3,050,000, the money for this additional $450,000 investment would come from internally generated funds. In return, PSOK would receive RIKA's promissory note ("Promissory Note"), 50% of RIKA's outstanding units of membership,[7] 71% of Automated's outstanding units of membership,[8] 48% of Universal's outstanding units of membership, and 48% of Training's outstanding units of membership.

Absent an event of default ("Event of Default") as defined in the Member Agreement, PSOK would hold 4% of the voting rights of each of the RIKA Companies and have the right to designate one of the two managers of RIKA.[9] Upon the occurrence of an Event of Default, RIKA would hold one hundred percent (100%) of the voting rights of Universal, Automated and Training, the holder of a majority of the

[2] Relay developed a protective relay testing software package, known as Ultratest, which is the first automated relay testing software capable of communicating with and controlling the testing instruments made by most major relay manufacturers.

[3] Relay had begun the definition phase of a substation automation project that will combine off-the-shelf hardware with specially developed software to provide improved substation communications, maintenance support and testing.

[4] Relay established a training facility named Power Industry Learning Center ("PILC"). Located in Phoenix, Arizona, PILC will provide training to electric utility personnel relating to automated systems for relays, substations and other electric utility facilities as well as certain basic courses in electric generating and distribution systems. At present, all of the formal training programs developed by PILC relate to products developed by the RIKA companies.

[5] PSOK notes that PSOK or a device manufacturer could develop the Software independently, but states that development by RIKA assures a more widely acceptable product. It suggests that software developed by PSOK would only be suitable for the devices currently in use in the CSW system and that a device manufacturer would have difficulty getting the proprietary protocols of a competitor.

[6] The Member Agreement would also memorialize the respective rights and obligations of PSOK and the RIKA Companies regarding the development of the Software and the management of the businesses in which the RIKA Companies are engaged or intend to engage. Among other things, it would assure PSOK of the right to purchase a non-exclusive license to use the Software under the same terms and conditions as the license RIKA will offer to non-affiliated utilities. Such license would be a perpetual, unrestricted license to use and modify the Software at a fee no greater than the fee RIKA will pay Automated for the right to market the Software to non-affiliated utilities, and would result in the termination of PSOK's right to license the Software to third parties.

[7] Equity in a limited liability company is represented by units of membership rather than shares of company stock, and holders of the units are referred to as members rather than shareholders. An Oklahoma limited liability company is controlled by managers rather than by a board of directors.

[8] After payment in full of the Promissory Note, PSOK's membership interest in Automated will be reduced from 71% to 48%.

[9] Management of each of the RIKA Companies would be vested in two managers, who, in the case of the RIKA Companies other than RIKA, would be elected by majority vote of the voting rights of the members of such RIKA Company at an annual or special meeting called for that purpose.

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voting rights of RIKA would be entitled to designate both managers of RIKA, and the voting rights of RIKA would be apportioned among the members of RIKA so that the voting rights held by PSOK on the one hand, and the other RIKA members on the other hand, would be in proportion to the amounts of principal and interest then outstanding under the Promissory Note and any RIKA promissory notes held by the other RIKA members, respectively.[10]

Mississippi Power Company (70–8737)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(d) of the Act and rules 44, 53, and 54 thereunder.

Mississippi proposes to incur obligations, from time to time on or before December 31, 2002, in connection with the issuance and sale by public instrumentalities of one or more series of pollution control revenue bonds ("Revenue Bonds") in an aggregate principal amount of up to $75 million.

The Revenue Bonds will be issued for the financing or refinancing of the costs of certain air and water pollution control facilities and sewage and solid waste disposal facilities at one or more of Mississippi's electric generating plants or other facilities located in various counties. It is proposed that each such county or appropriate public body or instrumentality ("County") will issue its Revenue Bonds to finance or refinance the costs of the acquisitions, construction, installation and equipping of said facilities at the plant or other facility located in its jurisdiction ("Project").

The Revenue Bonds will mature from one to 40 years from the first day of the months in which they are initially issued and may, if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Mississippi proposes to enter into a Loan or Installment Sale Agreement with the County ("Agreement") pursuant to each issue of the Revenue Bonds, and Mississippi may issue a Note therefor, or the County will undertake to purchase and sell the related Project to Mississippi. The proceeds from the sale of the Revenue Bonds will be deposited with a trustee ("Trustee") under an indenture to be entered into between the County and such Trustee ("Trust Indenture"), pursuant to which such Revenue Bonds are to be issued and secured, and will be applied by Mississippi to payment of the cost of construction of the Project or to refund outstanding pollution control revenue obligations.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Mississippi to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Mississippi also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Mississippi also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Mississippi's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Mississippi and Bankers Trust Company, as successor trustee, as supplemented and amended ("Mortgage"), Mississippi may determine to secure its obligations under the Note and/or Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds"). The aggregate principal amount of the Collateral Bonds would be equal to either: (1) the principal amount of the Revenue Bonds; or (2) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds, Mississippi may: (1) cause an irrevocable letter of credit ("Letter of Credit") to be delivered to the Trustee; and/or (2) cause an insurance company to issue a policy ("Policy") guaranteeing the payment of the Revenue Bonds. In the event that either the Letter of Credit is delivered to the Trustee or the Policy is issued, Mississippi may also convey to the County a subordinated security interest in the Project or other property of Mississippi as further security for Mississippi's obligations under the Agreement and/or the Note. However, in the event that Mississippi is unable or determines not to issue the Collateral Bonds, deliver the Letter of Credit to the Trustee or cause the Policy to be issued, it proposes that it may guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

Mississippi also proposes to issue and sell, at any time on or before December 31, 2002: (1) one or more series of its (a) first mortgage bonds ("Bonds"), having a maturity of more than 40 years and (b) one or more series of preferred stock ("Preferred") in an aggregate of up to $400 million in any combination thereof.

The Bonds will be issued pursuant to the Mortgage, as to be further supplemented, and sold for the best price obtainable, but for a price to Mississippi of not less than 98% nor more than 101¾% of the principal amount thereof, plus accrued interest (if any), which may be an adjustable interest rate determined on a periodic basis, or a fixed interest rate. The Bonds and/or the Preferred may be subject to a mandatory or optional cash sinking fund. Mississippi may enhance the marketability of the Bonds by purchasing an insurance policy to guarantee the payment when due of the Bonds.

Mississippi seeks authority to deviate from the provisions of the Commission's Statement of Policy Regarding First Mortgage Bonds and Preferred Stock (HCAR Nos. 13105 and 13106, February 16, 1956, as amended by HCAR Nos. 16369 and 16758, May 8, 1969 and June 22, 1970, respectively) with respect to the issuance of the Bonds and Preferred.

Indiana Michigan Power Company et al. (70–8747)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric public utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company ("Blackhawk"), c/o American Electric Power Service Corporation, 161 West Main Street, Lancaster, Ohio 43130, a coal-mining subsidiary of I&M, have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

By order dated September 20, 1985 (HCAR No. 23834), the Commission authorized I&M and Blackhawk to enter into transactions to implement a settlement agreement, executed on January 9, 1985 by AEP, its associate companies and the staff of the Federal Energy Regulatory Commission ("FERC") ("Settlement Agreement"), concerning certain coal mining properties located in Carbon County, Utah, including coal reserves located west of the Price River, together with existing surface facilities located east of the Price River for processing, handling and shipping coal ("Western Reserves"). The Settlement Agreement was intended to dispose of all issues remaining to be resolved in an investigation by FERC of the coal procurement and pricing policies of AEP and its associate companies.

By subsequent order dated May 1, 1986 (HCAR No. 24080), the Commission authorized Blackhawk to transfer its coal mining operations with respect to the Western Reserves to Castle Gate Coal Company ("Castle Gate") and Meadowlark, Utah, Inc. ("Meadowlark"), subsidiaries of AMAX, Inc. ("AMAX"). This transfer was accomplished by means of a set of transactions involving leases, subleases, conveyances and assignments with respect to the various surface interests, fee coal, coal preparation facilities, federal and state leases, structures, equipment, permits and water rights associated with the Western Reserves.

Subsequent to May 30, 1986, Castle Gate merged into its affiliate, Amax Coal Company ("Amax Coal"); Meadowlark changed its name to Amax Land Company ("Amax Land"); and AMAX merged into Cyprus Amax Minerals Company ("CyprusAmax").

Blackhawk, Amax Land and Amax Coal now propose to amend the Lease Transaction Agreement to provide for the exercise by Amax Land and Amax Coal of the purchase options for four of the leases entered into pursuant to this authority prior to the end of the initial terms of the leases. The four leases will be terminated, Amax Land and/or Amax Coal will take title to all of the properties and/or equipment being leased under the four leases. In lieu of the obligation to make the remaining quarterly lease payments, as partial consideration for the purchase, Amax Land and Amax Coal will execute promissory notes in the same amounts and at the same dates as the remaining lease payments under the four leases. The notes will be guaranteed by Cyprus-Amax. Payment of the consideration for the purchase of the properties will be in the form of $5,700,000 in cash at closing and four promissory notes, totalling approximately $31.4 million. The promissory notes will be secured initially by a mortgage and security interest in the properties transferred.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29918 Filed 12–7–95; 8:45 am]

BILLING CODE 8010–01–M

[10] PSOK states that, under certain circumstances following an Event of Default, PSOK could possibly obtain a majority of the voting rights of RIKA and/or be in a position to direct the management and affairs of one or more of the RIKA Companies.

[Rel. No. IC–21563; 811–8432]

Smith Breeden Institutional Short Duration U.S. Government Fund; Notice of Application

December 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Breeden Institutional Short Duration U.S. Government Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

FILING DATES: The application was filed on August 22, 1995 and amended on November 2, 1995.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 100 Europa Drive, Suite 200, Chapel Hill, North Carolina, 27514.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Law Clerk, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 8, 1991, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on February 24, 1992, and the initial public offering commenced on February 25, 1992.

2. On March 1, 1995, applicant's Board of Trustees (the "Board") unanimously determined through a consent action that the continuation of applicant was no longer in the best interest of applicant or its shareholders. The Board determined that applicant's shareholders would be better served by a liquidation of applicant's assets. Applicant is the master fund in a master-feeder arrangement. The master-feeder arrangement was chosen initially to allow flexibility in distribution. The structure allowed applicant to be sold to institutional investors while the Smith Breeden Short Duration U.S. Government Series (the "Short Series"), the feeder fund, was sold to retail investors. This two-tier structure created redundancies in expenses. As a result, the Board concluded that the master-feeder structure was no longer the most economically viable alternative over the long term. The Board consented to a plan of liquidation whereby the assets of applicant would be distributed in cash or in-kind to applicant's shareholders in complete liquidation of applicant. Shareholder approval of the liquidation was not required under the terms of applicant's declaration of trust, and thus no shareholder authorization was obtained in connection with the liquidation. Applicant did notify shareholders of the plan of liquidation in the form of a letter signed by a majority of the Board and sent to the shareholders March 15, 1995.

3. On March 31, 1995, immediately prior to the liquidation, applicant had a total of 22,190,030 shares of beneficial interest outstanding. At such time, applicant's net asset value was $221,304,914.56 in the aggregate and $9.97 per share.

4. On March 31, 1995, applicant liquidated all of its assets. Applicant transferred cash in the amount of $2,905,338.41 to its minority shareholders, who held 291,315.48 shares immediately prior to the

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liquidation. Each minority shareholder received $9.97 per share, which was equivalent to the per share net asset value of such shares on such date. Also on March 31, 1995, applicant transferred all of its other assets to its majority shareholder, the Short Series, which held 21,898,714.52 shares immediately prior to the liquidation. The fair market value of the assets received by the Short Series was $218,399,576.24. The Short Series received $9.97 per share, which was equivalent to the per share net asset value of such shares on such date.

5. The Short Series assumed all liabilities of applicant, an amount equal to $121,844,321. All expenses incurred in connection with the liquidation, which amounted to approximately $5,000 in legal fees, were paid by the Short Series. Smith Breeden Associates, Inc., applicant's investment adviser, paid applicant the balance of unamortized organizational expenses as of March 31, 1995, an amount equal to $17,869.24.

6. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is neither engaged nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant will file appropriate certificates of liquidation with the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29919 Filed 12–7–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on December 1, 1995, the following information collections have been proposed or will require extension of the current OMB approvals:

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed below.) SSA Reports Clearance Officer: Charlotte S. Whitenight.

1. *Inquiry to File An SSI Child's Application—0960–NEW.* The information collected on the form will be used by the Social Security Administration to document the earliest possible filing date and to determine potential eligibility for SSI child's benefits. The respondents are claimants for SSI benefits.

Number of Respondents: 2,100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 350 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: December 1, 1995.

Charlotte Whitenight,

Reports Clearance Officer Social Security Administration.

[FR Doc. 95–29935 Filed 12–7–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–95–021]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 1 p.m. on Thursday, January 18, 1996.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Recording Secretary, Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The tentative agenda for the meeting will consists of the following items:

(1) Review of the Houston Ship Channel 2000 report.

(2) Report from the Waterways Subcommittee.

(3) Report from the Navigation Subcommittee.

(4) Various Coast Guard aid to navigation improvement initiatives and waterway analysis studies.

(5) Updates from the U.S. Army Corps on various waterway improvement projects.

Dated: November 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–29968 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–95–022]

Houston/Galveston Navigation Safety Advisory Committee; Navigation Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee will meet to discuss various navigation safety matters affecting navigation in the Houston/Galveston port area.

DATES: The meeting will be held from 9:30 am. to 11 a.m., on Thursday, January 4, 1996.

ADDRESSES: The meeting will be held at the Blackthorn Memorial, U.S. Coast Guard Base Galveston, 1 Ferry Road, Galveston, TX 77553.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Recording Secretary, Commander, Eighth Coast Guard

District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting will consist of discussion of previous recommendations and presentation of new items for consideration.

Dated: November 22, 1995.

R.C. North,

Rear Admiral U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 95–29966 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–95–023]

Houston/Galveston Navigation Safety Advisory Committee; Waterways Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Waterways Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee will meet to discuss various navigation safety matters affecting the waterways of the Houston/Galveston area.

DATES: The meeting will be held from 11 a.m. to 1 p.m., on Thursday, January 4, 1996.

ADDRESSES: The meeting will be held at the Blackthorn Memorial, U.S. Coast Guard Base Galveston, 1 Ferry Road, Galveston, TX, 77553.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Recording Secretary, Commander, Eighth Coast Guard District (oan), room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting will consist of discussion of previous recommendations and presentation of new items for consideration.

Dated: November 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 95–29967 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on January 3–4, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review Rewrite of Changes Made at Last Plenary Meeting; (6) Assignment of Tasks; (7) Other Business; (8) Date and Place of Next Meeting.

Attedance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 4, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–29964 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–95–9) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Tioga Central Railroad (TIOC)

(Waiver Petition Docket Number RSGM–95–9)

The TIOC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for five locomotives and seven passenger cars. The TIOC has relocated their tourist passenger operation from Owego, New York, to Wellsboro, Pennsylvania. The train operates on the former Consolidated Rail Corporation Corning Secondary line from Wellsboro, Pennsylvania, to a point south of the Gang Mills Yard in New York. The railroad states the route is very rural with a few small hamlets along the way. Vandalism has been minimal since relocating.

Anthracite Railroads Historical Society, Incorporated (ATRW)

(Waiver Petition Docket Number RSGM–95–10)

The ATRW seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for two locomotives. Locomotives CRP 56 and 57 were built by EMD in 1948. The railroad states that

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the locomotives are equipped with FRA glazing in the windshields but the original safety glass has been retained in other locations for historical purposes. The locomotives are used primarily in excursion passenger service but will be used in very limited freight service. The ATRW operates on the Southern Railroad of New Jersey.

West Jersey Railroad (WJ)

(Waiver Petition Docket Number RSGM–95–11)

The WJ seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, WJ 7803, an ALCO model RS–3 road switcher built in 1952, will be operated on 15 miles of track between Hartford and Paw Paw, Michigan. The area is very rural and not subject to vandalism.

Decatur Junction Railway Company (DT)

(Waiver Petition Docket Number RSGM–95–12)

The DT seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, WJ 7804, an ALCO model RS–3 road switcher built in 1952, was formerly used on the West Jersey Railroad in Salem, New Jersey. The locomotive will be operated on 15.4 miles of track between Cisco and Green's Switch, Decatur, Illinois, and 16.6 miles between Elwin and Assumption, Illinois. The area is rural farm country. The DT has trackage rights on the Illinois Central Railroad between Elwin and Green's Switch and operate over this area no more than one or two times per week.

Vandalia Railroad Company (VRRC)

(Waiver Petition Docket Number RSGM–95–13)

The VRRC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, number 56, is an ALCO Model T–6 switcher. Waiver RSGM 94–21 was recently granted to the West Jersey Railroad for operation of this locomotive at Salem, New Jersey. The locomotive has now been moved to the affiliated VRRC. The locomotive will be operated over approximately 2.54 miles of track at Vandalia, Illinois. This is a small rural farming community with very little vandalism.

Massachusetts Central Railroad Corporation (MCER)

(Waiver Petition Docket Number RSGM–95–14)

The MCER seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, number 4243, is an ALCO road switcher. The MCER operates on approximately 24.8 miles of track between Palmer and South Barre, Massachusetts, and 2.6 miles on the Bondsville Branch between Forest Lake Junction and Bondsville, Massachusetts. The railroad states there have been no incidents of broken glass due to vandalism.

Florida Central Railroad (FCEN)

(Waiver Petition Docket Number RSGM–95–15)

The FCEN seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for four passenger cars. The cars were recently acquired from the New Georgia Railroad. The cars will be operated four to five times per week in excursion or dinner train service.

Southeastern Pennsylvania Transportation Authority (SEPTA)

(Waiver Petition Docket Number H–95–5)

The SEPTA is seeking a five year test waiver of compliance from Section 229.29(a) of the Railroad Locomotive Safety Standards, (Title 49 CFR Part 229) for 33 electric MU locomotives. SEPTA is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 24 months to 60 months on 8 test cars equipped with 26–R Brake Equipment and 25 test cars with PS–68 Brake Equipment. The test cars represent approximately 10 percent of their fleet of 304 electric MU locomotives. SEPTA states that the condition of the brake equipment at the two year overhaul indicates the maintenance cycle could be increased.

The test locomotives would be selected from those due COT&S at the inception of the test. Each test car will be so identified and its computer work report will show the test status. Major valvular components will be sealed so that tampering or changes can be detected. Monitoring will consist of a weekly check of road failure reports and computer work order records as well as any special failure reports, and a check at each periodic inspection to ensure that the original test components are intact. The test locomotives will be run beyond their two year COT&S cycle with one 26–R and two PS–68 locomotives being overhauled at three and four year intervals after their last overhaul. Each valve will be tested prior to a tear down inspection which will be witnessed by SEPTA's project manager, manufacturer's representatives and FRA. Failed components will be analyzed to determine if the failure could have been prevented by a two year COT&S period. Final analysis of the data will be used to determine if the COT&S cycle can be extended.

Issued in Washington, DC on December 4, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–29929 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3367

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, between milepost 337.1, near Chariton, Iowa, and milepost 310.0, near Halpin, Iowa, on the Northern Corridor, Galesburg Division, Ottumwa Subdivision; consisting of the discontinuance and removal of 18 automatic signals and installation of 34 automatic signals.

The reason given for the proposed changes is to respace signals associated with the installation of electronic coded track circuits.

BS–AP–No. 3368

Applicant: CSX Transportation, Incorporated, Mr. D. G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the traffic control system, on the single siding, between Demmler, milepost PLY11.6 and Riverton, milepost PLY14.3, Pennsylvania, Cumberland Division, Pittsburgh Subdivision; consisting of the discontinuance and removal of the electric locks from four hand-operated switches, and establish Rule 105 for the method of operation on the siding.

The reason given for the proposed changes is to eliminate signal system no longer needed for present day operation.

BS–AP–No. 3369

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system on the single main track, between milepost 310.0, near Neosho, Missouri, and milepost 345.0 near Afton, Oklahoma, on the Southern Corridor, Springfield Division, Monett Subdivision, consisting of the discontinuance and removal of 15 automatic signals, the discontinuance and removal of 2 absolute signals, and the installation of 20 automatic signals.

The reason given for the proposed changes is to respace signals associated with the installation of electronic coded track circuits.

Rules Standards & Instructions Application (RS&I-AP)-No. 1098

Applicants: Union Pacific Railroad Company, Chicago and NorthWestern Transportation Company, Mr. A.L. Shoener, Executive Vice President Operations, 1416 Dodge Street, Room 1206, Omaha, Nebraska 68179.

The Union Pacific Railroad Company and Chicago and NorthWestern Transportation Company (CNW) jointly seek relief from the requirements of Section 236.566 (49 CFR, 236.566) of the Rules, Standard and Instructions to the extent that they be allowed to operate non-equipped automatic cab signal/automatic train stop (ACS/ATS) locomotives, in unit coal train service, between Lake Bluff, milepost 30.2 and Waukegan, milepost 35.9, Wisconsin, on the Kenosha Subdivision of the former CNW, in ACS/ATS territory.

Applicant's justification for relief: To eliminate train delay, additional operating costs, and reduced locomotive utilization on the limited fleet of ATS equipped locomotives.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 4, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–29930 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 95–64; Notice 2]

Decision That Nonconforming 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective December 8, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 26, 1995 (60 FR 49661) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–140 is the vehicle eligibility number assigned to vehicles admissible under this decision.

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Final Decision

Accordingly, on the basis of the forgoing, NHTSA hereby decides that 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 (Model ID 129.067) passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1993 Mercedes-Benz 500SL and 1994 and 1995 SL500 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 4, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–29900 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–75; Notice 2]

Decision That Nonconforming 1990 Mercedes-Benz 560SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1,990 Mercedes-Benz 560SEC passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Mercedes-Benz 560SEC passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Mercedes-Benz 560SEC), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective December 8, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–007) petitioned NHTSA to decide whether 1990 Mercedes-Benz 560SEC passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 26, 1995 (60 FR 49663) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–141 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Mercedes-Benz 560SEC (Model ID 126.045) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes-Benz 560SEC originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 4, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–29902 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–75; Notice 2]

Decision That Nonconforming 1989 Nissan Maxima Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1989 Nissan Maxima passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989 Nissan Maxima passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as comply with the safety standards (the U.S.-certified version of the 1989 Nissan Maxima), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective December 8, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Liphardt & Associates of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to decide whether 1989 Nissan Maxima passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 12, 1995 (60 FR 47426) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–138 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1989 Nissan Maxima not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Nissan Maxima originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 4, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–29901 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–59–M

Maritime Administration

[Docket S–829]

Mormac Marine Transport, Inc.; Notice of Application for Written Permission Under Section 805(a) of the Merchant Marine Act, 1936, as Amended

Mormac Marine Transport, Inc. (Transport) by letter of November 22, 1995, requests, pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act) and Article II–13 of Operating-Differential Subsidy Agreements (ODSA) MA/MSB–295(a), (b), and (c), written permission to expand the scope of domestic operations permitted under the ODSA Contract MA/MSB–295 to include the management and operation of the vessels POTOMAC TRADER, DELAWARE TRADER, and CHESAPEAKE TRADER (Vessels) for Attransco, Inc. (Attransco), pursuant to a management agreement to be entered into between Mormac Marine Enterprises (Mormac) and Attransco.

Mormac and Transport are owned by Mormac Marine Group, Inc. (Parent). Transport, Mormac and the Parent have common ownership as well as common directors and officers.

Transport states that pursuant to a management agreement to be entered into between Attransco and Mormac, Mormac will become the manager of the Vessels. The Vessels, Transport continues, will be used in the Jones Act trade in essentially the same manner as is currently the case. Transport explains that since the Vessels will essentially continue their current services as they have been used by Attransco, the management of the Vessels by Mormac will not result in any change in competitive conditions for U.S.-flag vessels providing service in the Jones Act trade. Transport further explains that it and Mormac are entirely separate corporate entities that will maintain separate and discreet accounts so there will be no issue of subsidy leakage. Furthermore, Transport continues, the only benefit which Mormac will receive in respect of the operation of the Vessels will be a management fee, and all other benefits of operations will redound to Attransco.

In Transport's views, no U.S.-flag competitor of the Vessels will be subject to any changed circumstances or unfair competition as a result of the change in management of the Vessels, nor will the operation of the Vessels by an affiliate of Transport be prejudicial to the purposes and policies of the Act.

In summary, Transport requests that the scope of domestic operations permitted under ODSA Contracts MA/MSB–295 (a), (b), and (c) be modified to incorporate the management and operation of the Vessels and requests approval for common ownership, officers and directors of Mormac and Transport.

Finally, Transport advises that Mormac will assume management responsibilities of the Vessels on January 1, 1996.

The application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest (within the meaning of section 805(a)) in Transport's request and desiring to submit comments concerning the request must by 5:00 pm on December 15, 1995, file written comments in triplicate with the Secretary, Maritime Administration, together with a petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) would result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.805 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: December 6, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–30031 Filed 12–7–95; 8:45 am]

BILLING CODE 4910–81–P

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Notice of Extension of Due Dates and Availability of Supplemental Information for Notices of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program and the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of extension of due dates and availability of supplemental information for notices of funds availability inviting applications.

SUMMARY: This notice extends the application due date for the Bank Enterprise Award ("BEA") Program to January 16, 1996 and for the Community Development Financial Institutions ("CDFI") Program to January 22, 1996 from the dates indicated in the NOFAs published on October 19, 1995 inviting applications for the CDFI or BEA programs. This notice also announces the availability and distribution of supplemental information to assist potential applicants in completing the applications for these two programs.

DATES: This notice extends the application due date from December 15, 1995 to January 16, 1996 for the BEA Program and from December 22, 1995 to January 22, 1996 for the CDFI Program. The deadline for receipt of an application is 4 p.m. Eastern Standard Time on the respective due date. An application received after the specified date and time will not be accepted and will be returned to the sender. Applications sent by FAX will not be accepted.

ADDRESSES: An application and supplemental information may be obtained from the office of the Community Development Financial Institutions Fund (the "Fund") listed below or by telephone at (202) 622–8662. (This is not a toll free number.) An application must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room 5116, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room 5116, Washington, DC 20220; (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On October 19, 1995 the Department of the Treasury published a NOFA for the CDFI Program (60 FR 54136) and a separate NOFA for the BEA Program (60 FR 54140). The CDFI Program NOFA announced the availability of up to $31 million for program awards and gave an application deadline of December 22, 1995. The BEA Program NOFA announced the availability of up to $15.5 million for program awards and gave an application due date of December 15, 1995. In response to numerous requests by potential applicants, this notice extends the application due dates to January 16, 1996 for the BEA Program and January 22, 1996 for the CDFI Program. In addition, the Fund has prepared supplemental information to assist potential applicants in completing the required application materials. This information will be mailed to all those who attended a workshop announced in the NOFAs published on October 19, 1995 and to those on the Fund's mailing list, which includes those who have requested an application from the Fund. Others may request a copy of this information by contacting the Fund.

Authority: 12 U.S.C. 4703, 4717; Chapter X, Pub.L. 104–19, 109 Stat. 237; 12 CFR 1805.700.

Dated: December 5, 1995.

Kirsten S. May,

Director, Community Development Financial Institutions Fund.

[FR Doc. 95–29982 Filed 12–7–95; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Special Medical Advisory Group has been renewed for a 2-year period beginning November 9, 1995, through November 9, 1997.

Dated: November 29, 1995.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–29924 Filed 12–7–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 236

Friday, December 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:30 a.m.–2:00 p.m.

PLACE: ADF Headquarters.

DATES: Tuesday, December 12, 1995.

STATUS: Open.

Agenda

11:30 a.m.—Lunch
12:00 noon—Chairman's Report
12:15 p.m.—President's Report
1:00 p.m.—Other

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 95–30077 Filed 12–6–95; 1:42 pm]

BILLING CODE 6116–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, December 13, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed recommendations regarding the Federal Reserve Board's affirmative action policy. (This item was originally announced for a closed meeting on December 6, 1995.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30044 Filed 12–6–95; 10:39 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Subpart A of Regulation S (Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records) regarding reimbursement of certain costs incurred by financial institutions.

Discussion Agenda

2. Proposed policy statement describing how interest rate risk will be measured and evaluated for supervisory purposes (proposed earlier for public comment; Docket No. R–0802).
3. Proposed 1996 Federal Reserve Bank budgets.
4. Cost of Federal Reserve notes in 1996.
5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30045 Filed 12–6–95; 10:39 am]

BILLING CODE 6210–01–P

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATUS: Open.

MEETING: Meeting of the U.S. National Commission on Libraries and Information Science (NCLIS).

DATE AND TIME:

December 14, 1995—10:10 a.m.–4:45 p.m.

December 15, 1995—9:00 a.m.–2:30 p.m.

PLACE: Room SH–708, Hart Senate Office Building (HSOB), Second St. and Constitution Ave., N.E., Washington, DC.

MATTERS TO BE DISCUSSED:

Administrative matters
Status reports on FY 1996 appropriations and continuing resolution(s)
Status report and discussion of NCLIS involvement with Library Services and Technology Act
Status report on other Congressional initiatives related to libraries and information services
Status report on NCLIS projects, FY 1995
Strategic planning mini-retreat led by NCLIS Committee on Information Policies

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: November 30, 1995.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 95–30029 Filed 12–6–95; 8:45 am]

BILLING CODE 7527–01–M

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federal register

Friday
December 8, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, et al.
Medicare Program; Physician Fee Schedule for Calendar Year 1996; Payment Policies and Relative Value Unit Adjustments; Final Rule and Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, 411, 412, 413, 414, 415, 417, and 489

[BPD–827–FC]

RIN 0938–AG06

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule revises various policies affecting payment for physician services including Medicare payment for physician services in teaching settings, the relative value units (RVUs) for certain existing procedure codes, and establishes interim RVUs for new and revised procedure codes. The rule also includes the final revised 1996 geographic practice cost indices.

The rule redesignates current regulations on teaching hospitals, on the services of physicians to providers, on the services of physicians in providers, and on the services of interns and residents. This redesignation consolidates related rules affecting a specific audience in a separate part and, thereby, makes them easier to use.

DATES: *Effective Date:* This final rule is effective January 1, 1996, except part 415 which is effective July 1, 1996.

Comment Date: We will accept comments on interim RVUs for new or revised procedure codes identified in Addendum C. Comments will be considered if we receive them at the appropriate addresses, as provided below, no later than 5 p.m., February 6, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–827–FC, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201,
or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–827–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Rm. 10235, New Executive Office Bldg., Washington, DC 20530.

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify stock number 069–001–00090–4 and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

Copies of the source files for this document can also be purchased on high density 3.5 inch personal computer diskettes for $20.00. Send your request to: Superintendent of Documents, Attention: Electronic Products, P.O. Box 37082, Washington, DC 20013–7082. Enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders for the diskettes can also be placed by calling (202) 512–1530 or by faxing to (202) 512–1262. The file format on the diskettes is comma delimited ASCII, Lotus 123, and WordPerfect 5.1.

FOR FURTHER INFORMATION CONTACT: Shana Olshan, (410) 786–5714 (for all issues except those related to physician services in teaching settings). William Morse, (410) 786–4520 (for issues related to physician services in teaching settings).

SUPPLEMENTARY INFORMATION: In this final rule, we provide background on the statutory authority for and development of the physician fee schedule. We also explain in detail the process by which certain interim work RVUs are reviewed and, in some cases, revised.

Section 1848(c)(2)(B) of the Social Security Act (the Act) provides that adjustments in RVUs resulting from an annual review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. Thus, the statute allows a $20 million tolerance for increasing or reducing total expenditures under the physician fee schedule. We have determined that net increases because of changes in RVUs for codes reviewed as part of a refinement process, the addition of new codes to the fee schedule, and the revisions in payment policies would have added to projected expenditures in calendar year 1996 by approximately $140 million. Therefore, it is necessary to adjust the physician fee schedule conversion factors (CFs). We have made the adjustments in such a manner as to achieve budget neutrality as we were best able to estimate. As a result, the total projected expenditures from the revised fee schedule are estimated to be the same as they would have been had we not changed the RVUs for any individual codes or added new codes to the fee schedule. We have adjusted all CFs by a uniform adjustment factor of 0.9964, which results in a uniform reduction of 0.36 percent to the CFs for all services.

The CF is a national value that converts RVUs into payment amounts. There are three separate CFs: one for surgical services, one for primary care services, and one for nonsurgical services other than primary care. The CFs are updated annually.

Anesthesia services are paid differently from other physicians' services under the fee schedule. Payment for anesthesia services is based on base unit RVUs that are assigned to each service and on time units that can vary by procedure. The base and time units are multiplied by an anesthesia-specific CF, not the CFs used for surgical, nonsurgical, or primary care services.

This final rule also contains the second half of the revisions to the geographic practice cost indices (GPCIs). Section 1848(e)(1)(c) of the Act requires that the GPCIs be reviewed and, if necessary, revised at least every 3 years. The first review was required by 1995. The first-half of the revision was implemented in 1995. The second half, published in Addendum D, is effective January 1, 1996.

Addenda to this rule provide the following information:

Addendum A—Explanation and Use of Addenda B through E.
Addendum B—1996 Relative Value Units and Related Information Used in Determining Medicare Payments for 1996.
Addendum C—Codes with Interim Relative Value Units.
Addendum D—1996 Geographic Practice Cost Indices by Medicare Carrier and Locality.
Addendum E—Procedure Codes Subject to the Site-of-Service Differential.

The RVUs and revisions to payment policies in this final rule apply to physicians' services furnished on or after January 1, 1996.

For those codes identified in Addendum C of this final rule as new or revised codes, the RVUs and update indicators are considered to be interim as they have not been published before this final rule. Therefore, we will accept comments on these interim RVUs and update indicators if they are received no later than 5 p.m. February 6, 1996. The RVUs for the remaining codes are final.

To assist readers in referencing sections contained in this final rule, we are providing the following table of contents. Some of the issues discussed in this final rule affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

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Addendum E—Procedure Codes Subject to the Site-of-Service Differential

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

ASC Ambulatory surgical center
CF Conversion factor
CFR Code of Federal Regulations
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1994, copyrighted by the American Medical Association] DEFRA Deficit Reduction Act
EKG Electrocardiogram
GPCI Geographic Practice Cost Index
GME Graduate Medical Education
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
OBRA Omnibus Budget Reconciliation Act
ORA Omnibus Reconciliation Act
RUC [American Medical Association Specialty Society] Relative [Value] Update Committee
RVU Relative Value Unit
TEFRA Tax Equity and Fiscal Responsibility Act

I. Background

A. Legislative Requirements

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(e)(1)(c) of the Act requires us to review and, if necessary, adjust the geographic practice cost indices at least every 3 years. This section of the Act also requires us to phase in the adjustment over 2 years and implement only one half of any

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adjustment if more than 1 year has elapsed since the last geographic practice cost index revision. The geographic practice cost indices were first implemented in 1992 and were not reviewed until 1994. We implemented one half of the adjustment in 1995 and will implement the second half of the adjustment in 1996.

The Act requires that payments vary among fee schedule areas according to geographic indices. In general, the fee schedule areas that existed under the prior reasonable charge system were retained under the fee schedule. A detailed discussion of fee schedule areas can be found in the June 5, 1991 proposed rule (56 FR 25832) and in the November 25, 1991 final rule (56 FR 59514). We are required by section 1848(e)(1)(A) of the Act to develop separate indices to measure relative cost differences among fee schedule areas compared to the national average for each of the three fee schedule components. While requiring that the practice expense geographic practice cost indices and malpractice geographic practice cost indices reflect the full relative cost differences, the Act requires that the work indices reflect only one-quarter of the relative cost differences compared to the national average.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991, (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. The updates to the RVUs and fee schedule policies follow:

- November 25, 1992, as a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, as a final rule with comment period (58 FR 63626) announcing revised payment policies and RVUs for 1994. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor values, fee schedule payment areas, and payment policies and RVUs for 1995. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.

Prior Federal Register Documents

The information in this final rule with comment period updates information in the following **Federal Register** documents:

- June 5, 1991, proposed rule entitled "Fee Schedule for Physicians' Services" (56 FR 25792).
- November 25, 1991, final rule entitled "Fee Schedule for Physicians' Services" (56 FR 59502).
- September 15, 1992, correction notice for the 1992 fee schedule (57 FR 42491).
- November 25, 1992, final notice with comment period entitled "Fee Schedule for Physicians' Services for CY 1993" (57 FR 55914).
- June 7, 1993, correction notice for the 1993 fee schedule (58 FR 31964).
- July 14, 1993, proposed rule entitled "Revisions to Payment Policies Under the Physician Fee Schedule" (58 FR 37994).
- December 2, 1993, final rule with comment period entitled "Revisions to Payment Policies and Adjustments to the Relative Value Units under the Physician Fee Schedule for Calendar Year 1994" (58 FR 63626). (There were two correction notices published for the 1994 physician fee schedule (July 15, 1994, 59 FR 36069) and (August 4, 1994, 59 FR 39828).)
- June 24, 1994, proposed rule entitled "Refinements to Geographic Adjustment Factor Values and Other Policies Under the Physician Fee Schedule" (58 FR 32754).
- December 8, 1994, final rule with comment period entitled "Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5–Year Refinement of RVUs" (59 FR 63410). (There were two correction notices published for the 1995 physician fee schedule (January 3, 1995, 60 FR 46) and (July 18, 1995, 60 FR 36733).)
- July 26, 1995, proposed rule entitled "Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1996 (60 FR 38400).

This final rule would affect the regulations set forth at 42 CFR part 400, which consists of an introduction to, and definitions for, the Medicare and Medicaid programs; part 405, which encompasses regulations on Federal health insurance for the aged and disabled; part 410, which consists of regulations on supplementary medical insurance benefits; part 414, which covers regulations on payment for Part B medical and other health services; and new part 415, which contains regulations on services of physicians in providers, supervising physicians in teaching settings, and residents in certain settings. We are making technical and conforming amendments to parts 411, 412, 413, 417, and 489.

C. Components of the Fee Schedule Payment Amounts

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor for each physician fee schedule area; and (3) a nationally uniform conversion factor for the service. There are three conversion factors (CFs)—one for surgical services, one for nonsurgical services, and one for primary care services. The conversion factors convert the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense; and (3) an RVU for malpractice expense. For each of these components of the fee schedule there is a geographic practice cost index for each fee schedule area. The geographic practice cost indices reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

$$\text{Payment}=[(\text{RVU}_{\text{work}} \times \text{GPCI}_{\text{work}}) + (\text{RVU}_{\text{practice expense}} \times \text{GPCI}_{\text{practice expense}}) + (\text{RVU}_{\text{malpractice}} \times \text{GPCI}_{\text{malpractice}})] \times \text{CF}$$

The conversion factors for calendar year 1996 appear in Addendum A. The RVUs for calendar year 1996 are in Addendum B. The GPCIs are in Addendum D.

Section 1848(e) of the Act requires the Secretary to develop geographic adjustment factors for all physician fee schedule areas. The total geographic adjustment factor for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. Thus, the geographic practice cost indices reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. In accordance with the law, however, the geographic adjustment factor for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average.

For the first year of the fee schedule, the law required a base-year CF that was budget-neutral relative to 1991 estimated expenditures. The Secretary is required to recommend to the Congress updates to the CFs by April 15 of each year as part of the Medicare volume performance standards and annual fee schedule update process. The Congress may choose to enact the Secretary's recommendation, enact another update amount, or not act at all. If the Congress does not act, the annual fee schedule update is set according to a "default" mechanism in the law. Under this mechanism, the update will equal the Medicare Economic Index adjusted by the amount actual expenditures for the second previous fiscal year (FY) were greater or less than the performance standard rate of increase for that FY. (The Medicare Economic Index is a physician input price index, in which the annual percent changes for the direct-labor price component are adjusted by an annual percent change in a 10-year moving average index of labor productivity in the nonfarm business sector.) The Medicare volume performance standard for FY 1996 and the physician fee schedule update for CY 1996 are published elsewhere in this **Federal Register** issue as a final notice (BPD–828–FN).

D. Summary of the Development of the Relative Value Units

1. Work Relative Value Units

Approximately 7,500 codes represent services included in the physician fee schedule. The work RVUs established for the implementation of the fee schedule in January 1992 were developed with extensive input from the physician community. The original work RVUs for most codes were developed by a research team at the Harvard School of Public Health in a cooperative agreement with us. In constructing the vignettes for the original RVUs, Harvard worked with panels of expert physicians and obtained input from physicians from numerous specialties.

The RVUs for radiology services are based on the American College of Radiology (ACR) relative value scale, which we integrated into the overall physician fee schedule. The RVUs for anesthesia services are based on RVUs from a uniform relative value guide. We established a separate CF for anesthesia services because we continue to recognize time as a factor in determining payment for these services.

Proposed RVUs for services were published in a proposed rule in the **Federal Register** on June 5, 1991 (56 FR 25792). We responded to the comments in the November 1991 final rule. Since many of the RVUs were published for the first time in the final rule, we considered the RVUs to be interim during the first year of the fee schedule and gave the public 120 days to comment on all work RVUs. In response to the final rule, we received comments on approximately 1,000 services. We responded to those comments and listed the new RVUs in the November 1992 notice for the 1993 fee schedule for physicians' services. We considered these RVUs to be final and did not request comments on them.

The November 1992 notice (57 FR 55914) also discussed the process used to establish work RVUs for codes that were new or revised in 1993. The RVUs for these codes, which were listed in Addendum C of the November 1992 notice, were considered interim in 1993 and open to comment through January 26, 1993.

We responded to comments received on RVUs listed in Addendum C of the November 1992 notice (57 FR 56152) in the December 1993 final rule (58 FR 63647) for the 1994 physician fee schedule. The December 1993 final rule discussed the process used to establish RVUs for codes that were new or revised for 1994. The RVUs for these codes, which are listed in Addendum C of the December 1993 final rule (58 FR 63842), were considered interim in 1994 and open to comment through January 31, 1994. We proposed RVUs for some non-Medicare and carrier-priced codes in our June 1994 proposed rule (59 FR 32760). Codes listed in Table 1 of the June 1994 proposed rule were open to comment. These comments, in addition to comments on RVUs published as interim in the December 1993 final rule were addressed in the December 1994 final rule (59 FR 63432). In addition, the December 1994 final rule discussed the process used to establish RVUs for codes that were new or revised for 1995. Interim RVUs for new or revised procedure codes were open to comment. Comments were also accepted on all RVUs considered under the 5-year refinement process. The comment period closed on February 6, 1995.

2. Practice Expense and Malpractice Expense Relative Value Units

Section 1848(c)(2)(C) of the Act requires that the practice expense and malpractice expense RVUs equal the product of the base allowed charges and the practice expense and malpractice percentages for the service. Base allowed charges are defined as the national average allowed charges for the service furnished during 1991, as estimated using the most recent data available. For most services, we used 1989 charge data "aged" to reflect the 1991 payment rules, since those were the most recent data available for the 1992 fee schedule.

If charge data were unavailable or insufficient, we imputed the practice expense and malpractice expense RVUs from the work RVUs. For example, if a procedure has work RVUs of 6.00, and the specialty practice cost percentages for the specialty furnishing the service is 60 percent work, 30 percent practice expense, and 10 percent malpractice expense, then the total RVUs would be 10.00 (6.00/.60), the practice expense RVUs would be 3.00 (10 × .30), and the malpractice expense RVUs would be 1.00 (10 × .10).

II. Specific Proposals for Calendar Year 1996 and Responses to Public Comments

In response to the publication of the July 26, 1995 proposed rule, we received approximately 9,500 comments. We received comments from individual physicians and health care workers and professional associations and societies. The majority of the comments addressed two proposals: (1) Revising Medicare payment for physician services in teaching settings; and (2) paying for only one interpretation of an electrocardiogram or an x-ray procedure furnished to an emergency room patient except in unusual circumstances.

The proposed rule discussed policies that affect the number of RVUs on which payment for certain services would be based. Any changes implemented through this final rule are subject to the $20 million limitation on annual adjustments as contained in section 1848(c)(2)(B) of the Act.

After reviewing the comments and determining the policies we will implement, we have estimated the costs and savings of these policies and added those costs and savings to the estimated costs associated with any other changes in RVUs for 1996, including RVU changes necessitated by the 1995 CPT coding changes. We discuss in detail the effects of these changes in the Regulatory Impact Analysis (section IX).

In the July 1995 proposed rule (60 FR 38416), we invited public comments on a proposal to calculate the Medicare volume performance standard for fiscal year 1996 and all future years based on estimates of the average volume and intensity growth specific to each category of physician service. We are

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responding to the comments we received on this issue in the final notice entitled "Physician Fee Schedule Update for Calendar Year 1996 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1996 (HPD–828–FN) published elsewhere in this Federal Register issue.

For the convenience of the reader, the headings for the policy issues in sections II, III, and IV, for the most part, correspond to the headings used in the July 1995 proposed rule. More detailed background information for each issue can be found in the July 1995 proposed rule (60 FR 38400).

A. Budget-Neutrality Adjustments for Relative Value Units

We make annual adjustments to RVUs for the physician fee schedule to reflect changes in CPT codes and changes in estimated physician work. The statute requires that these revisions may not change physician expenditures by more than $20 million compared to estimated expenditures that would have occurred if the RVU adjustments had not been made. In the past, we have made an adjustment across all RVUs in the physician fee schedule to maintain this statutorily-mandated budget neutrality.

We recognize that many other payers, including several Medicaid programs, use the Medicare physician fee schedule. To reduce the number of system changes required by the annual revisions to the physician fee schedule, we proposed to apply these budget-neutrality adjustments to the physician fee schedule conversion factors (CFs) rather than across all RVUs.

The impact of this proposal on payment amounts would be minimal (slight differences could be caused by rounding). This alternative approach would be administratively simpler for Medicare and other payers that base payment on the Medicare RVUs, including many State Medicaid programs. In addition, this change would provide for consistent RVUs from year to year (for those codes with no other changes), thus making it easier to analyze payment and policy changes.

Comment: An overwhelming majority of commenters strongly supported our decision to apply the annual budget-neutrality adjustments to the physician fee schedule CFs rather than across all RVUs, beginning with the publication of this final rule in the Federal Register; however, a few commenters suggested that we apply this change retroactively by converting all RVUs, which were altered for budget-neutrality reasons, back to their original 1992 levels.

Response: For the sake of administrative simplicity, we will not readjust RVUs from periods before the current period. In addition, we believe that retroactively adjusting the RVUs would cause unnecessary programming costs for those who electronically maintain systems containing the RVU data.

Comment: A few commenters suggested the use of a separate budget-neutrality factor rather than the adjustment of the physician fee schedule CFs to achieve budget neutrality. They stated that private payers who use the Medicare fee schedule CFs would then be able to decide whether to apply the budget neutrality adjustment. This particularly could be an issue for any adjustments needed for the five-year review of all work RVUs, depending on the magnitude of the adjustments.

Response: We prefer to adjust the existing CFs rather than add an additional factor to adjust for budget neutrality. Because we explicitly identify the magnitude of the annual budget-neutrality adjustment, other payers can decide whether to apply the adjustment to their CFs. However, we may reconsider this issue in the future for issues such as the 5-year review of RVUs or congressional action.

Final Decision: Beginning with the publication of this final rule, we will apply annual budget-neutrality adjustments to physician fee schedule CFs rather than across all RVUs. However, if the Congress explicitly sets a conversion factor at a fixed dollar amount for a given year, we will consider establishing a separate budget-neutrality adjustor.

B. Bundled Services

1. Hydration Therapy and Chemotherapy

We proposed not paying separately for hydration therapy infusion (CPT codes 90780 and 90781) when billed on the same day as chemotherapy infusion, CPT codes (96410, 96412, and 96414). Frequently, hydration therapy and chemotherapy are performed at the same time. We believe paying for both would be duplicative. We would continue to pay separately for both the hydration therapy solution and the chemotherapy drug. This reflects a policy change that is not explicitly addressed in our regulations.

Comment: Commenters objected to our proposal stating that the administration of saline for hydration therapy infusion at the same time as chemotherapy infusion requires significant additional work and supplies.

Response: We disagree. The saline and the chemotherapy drug are usually administered through the same port or site. In some cases, the solutions may even be mixed. We see no significant additional work or expense involved in these cases, and we believe that paying separately for hydration therapy infusion administered at the same time as chemotherapy infusion represents duplicate payment.

Comment: A commenter agreed with our proposal stating that the same access port or site is used for administering the chemotherapy drug and the hydration therapy solution. The commenter requested clarification as to whether the policy would apply to other drugs, such as antiemetics and corticosteroids, which are often administered with chemotherapy and, like hydration therapy, billed using CPT codes 90780 and 90781. The commenter suggested that a logical extension of our proposal is to cover the administration of these drugs as well as hydration therapy.

Response: We agree with this comment. CPT codes 90780 and 90781 for the administration of saline or drugs such as antiemetics and corticosteriods will not be paid separately when furnished at the same time as CPT codes 96410, 96412, and 96414 for chemotherapy infusion. However, we will pay separately for the drugs.

Comment: Most commenters agreed that for any given segment of time it would be duplicative to pay for both chemotherapy infusion and hydration therapy infusion. These commenters noted that the course of treatment for many chemotherapy drugs, for example, cisplatin, ifosmamide, and methotrexate, require hydration therapy or the infusion of an antiemetic on the same day, but either before or after the chemotherapy. The commenters believed that in these cases, the work is not duplicative, and they should be allowed to bill for the infusion of the saline or antiemetic.

Response: We agree. We are revising our proposal to allow payment for hydration therapy or the infusion of an antiemetic or other nonchemotherapy drug on the same day as chemotherapy infusion when the nonchemotherapy drug is administered sequentially rather than at the same time as the chemotherapy infusion.

Final Decision: We will not pay for the infusion of saline, an antiemetic, or any other nonchemotherapy drug under CPT codes 90780 and 90781 when these drugs are administered at the same time as chemotherapy infusion (CPT codes 96410, 96412, or 96414). However, we will pay for the infusion of saline, antiemetics, or any other nonchemotherapy drug under CPT codes 90780 and 90781 when these drugs are administered on the same day but sequentially to rather than at the same time as chemotherapy infusion, under CPT codes 96410, 96412, and 96414. Physicians should use the new modifier "–GB" to indicate when CPT codes 90780 and 90781 are provided sequentially rather than contemporaneously with CPT codes 96410, 96412, and 96414.

This policy change is not explicitly addressed in our regulations.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

At present, we allow separate payment for CPT codes 90825 and 90887. However, we believe that the activities described by these codes are generally performed as part of the prework and postwork of other physician services. The RVUs for psychiatric services (CPT codes 90801 and 90835 through 90857) include the prework and postwork activities described by CPT codes 90825 and 90887. Thus, continuing to allow separate payment for these codes, in addition to payment for other psychiatric services, results in duplicate payments and is inconsistent with our policy for other services.

Counseling of the family is part of the work of all other evaluation and management services. Medicare has a long-standing policy of covering these services if they relate to the management of the beneficiary's problems and not to the problems of the family member. We believe it is appropriate to bundle covered family counseling procedures into the other psychiatric codes so that our policy is consistent with our policy on services furnished by other physician specialties.

Therefore, we proposed to change the status indicator for CPT codes 90825 and 90887 to "B" to show that payment for these codes is bundled into the payment for another service, and separate payment would not be allowed. We proposed to implement this change in a budget-neutral manner by redistributing the RVUs for CPT codes 90825 and 90887 across the following psychiatric codes: 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857.

Comment: Several commenters questioned our claim that the work involved in CPT codes 90825 and 90887 is a fundamental element of the pre- and postwork of other physician or other psychiatric services, stating that medical psychotherapy is a specific procedure, distinct from evaluation and management, and that these procedures (CPT codes 90825 and 90887) are characteristically excluded from psychotherapy. Some commenters believed this payment change would be inherently unfair to providers who furnish services under CPT codes 90825 and 90887.

Response: In addressing the concern that CPT codes 90825 and 90887 are excluded from psychotherapy and represent distinct and different services, we note that in the CPT chapter on Psychiatry, General Clinical Psychiatric Diagnostic or Evaluative Interview Procedures, CPT code 90801 (Psychiatric Interview) refers to both communication with family or other sources, as well as the ordering and medical interpretation of laboratory or other medical diagnostic studies. Further, the definition includes the history and the exchange of information with family members and other informants. Additionally, the final report by Harvard researchers ("Refinement of the Development of a Resource-Based Relative Value Scale for Psychiatrist Services; National Institute of Mental Health Contract No. 278–87–0024") defines physician work as encompassing work while with the patient and work before and after the service, defined as reviewing records as well as communicating with the patient, the patient's family, and other professionals. We believe these definitions clearly indicate that the evaluation of other records and family counseling fall within the scope of medical psychotherapy and, thus, do not represent distinct services. Therefore, we believe it is appropriate to bundle payment for these services.

Comment: Several commenters specifically addressed CPT code 90887. One commenter agreed that the services encompassed by CPT code 90825 are usually performed as part of the pre- and postwork for other physician services, but expressed concern this was not true for CPT code 90887, which is typically the exclusive service being furnished. Another commenter questioned the redistribution of the RVUs for CPT code 90887. The commenter believed that if, as stated, family counseling is part of the postwork of evaluation and management services, the RVUs for this service should be distributed across all evaluation and management codes, not just the psychiatric codes.

Response: Family counseling must be related to the patient. The fact that this service occurs on different days or times does not preclude it from being part of the pre- and postwork. Although we recognize that the services described by CPT code 90887 may be provided on different dates of service from when the patient received psychiatric service, they are still considered part of the postwork service associated with that code. We note, also, that the evaluation and management services cannot be billed by clinical psychologists and, thus, have been included in other service codes.

If the RVUs for CPT code 90887 were distributed across all evaluation and management codes as well as the psychiatric codes for this service, the impact would be negligible. That is, the amount to be distributed is not of sufficient magnitude to have any noticeable effect.

Comment: One commenter requested that we also consider changing the status indicator for CPT code 90862 (Pharmacologic management) to "B" because, according to the commenter, pharmacological management is part of evaluation and management services.

Response: Separate payment for pharmacological management is not permitted on the same day as psychotherapy as this service is already included in the codes for psychotherapy. To distinguish services to Medicare beneficiaries for the sole purpose of drug management from those that include some psychotherapy, HCFA developed HCPCS code M0064. This code is defined as a brief office visit for the sole purpose of monitoring or changing drug prescriptions used in the treatment of mental, psychoneurotic, and personality disorders.

Comment: According to one commenter, since the original survey of psychiatric work conducted by Harvard researchers, managed care has increased. With the rise in managed care, there is a decrease in mental health benefits. Therefore, the patients that psychiatrists treat, especially in the fee-for-service setting, are much more complex. The commenter believed this additional work is not currently included in the RVUs for psychiatric services. In addition, this commenter has found that psychiatrists are spending a greater amount of time responding to review requests, developing treatment plans for managed care, managing and supervising nonphysician mental health providers, and documenting and coding work.

Response: Section 1848(c)(2)(B) of the Act requires that all RVUs be reviewed not less frequently than every 5 years to account for changes in medical practice, coding changes, new data, and new procedures. Thus, the issues of psychiatric work time, as well as the

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issue of psychiatric services delivered in a managed care setting, will be addressed as part of the 5-year review process.

Final Decision: We will bundle the payment for CPT codes 90825 and 90887 into the payment for other psychiatric services. Therefore, separate payment for CPT codes 90825 and 90887 is not allowed.

This policy change is not explicitly addressed in our regulations.

3. Fitting of Spectacles

We proposed to cease paying separately for the fitting of glasses and low vision systems. The payment for the fitting of spectacles is included in the payment for the spectacles in the same way that payment for other prosthetic fitting services is included in the payment for the prosthetic device.

We proposed to assign a "B" status indicator to CPT codes 92352, 92353, 92354, 92355, 92358, and 92371 to indicate that the services are covered under Medicare but that payment for them is bundled into the payment for the spectacles. We proposed to implement this in a budget-neutral manner by redistributing the current RVUs for these services across all RVUs.

This reflects a policy change that is not explicitly addressed in our regulations.

Comment: A commenter believed that these fitting services should continue to be paid separately because of the time and expertise required to fit glasses for aphakic patients and low vision aids.

Response: The fitting of spectacles is covered under section 1861(s)(8) of the Act. Services under this section are not included in the definition of physician services as defined in section 1848(j)(3) of the Act and are not payable under the physician fee schedule. Although we have been allowing payment, the fitting of spectacles is included in the payment for the spectacles in the same way that payment for other prosthetic fitting services are included in the payment for the device. Under the current system, duplicate payment has been made for the aforementioned procedure codes.

Final Decision: We will no longer pay separately for CPT codes 92352, 92353, 92354, 92355, 92358, and 92371. Beginning January 1, 1996, these codes will be assigned a "B" status indicator to indicate that the services are covered under Medicare, but payment for them is bundled into the payment for the spectacles.

This policy change is not explicitly addressed in our regulations.

C. X-Rays and Electrocardiograms Taken in the Emergency Room

We proposed to pay for the x-ray and/or electrocardiogram (EKG) interpretation that contributes to the diagnosis or treatment of the patient in the emergency room. We will pay for only one x-ray and/or EKG interpretation except under unusual circumstances.

Comment: The comments from radiologists opposed every aspect of the proposal. The primary point raised by virtually all of these commenters was that, by training and experience, they were more qualified than emergency physicians or other nonradiologists to furnish these interpretations. Some radiologists commented that we should require board certification as a requirement to bill for the interpretation of x-rays.

Response: In paying for physicians' services under the Act, we are charged with determining the following:

- Is the service covered under Medicare?
- Is the service reasonable and necessary for the individual beneficiary?
- Is the physician licensed to perform the service in the State in which it is furnished?

In the case of a licensed physician who has furnished a covered service (that is not payable through another code) to a Medicare beneficiary in an emergency room, it is not readily apparent to us upon what basis the claim can be denied. There is no portion of the Act upon which to base a decision that only board-certified radiologists can furnish x-ray interpretations or board-certified cardiologists can furnish EKG interpretations. (Where the Congress has determined that there should be special qualifications in order to furnish a service, as in the case of mammography, a provision was made in the statute.) Our proposed policy for x-ray and EKG interpretation is consistent with how we generally treat other physician services.

Comment: Emergency room physicians supported the direction of the proposal but requested clarification of the proposal including its effect on payments for second interpretations. Many commended us for proposing to change the existing policy but criticized the agency for not going far enough. Several emergency physicians commented that it was unethical for us to withhold compensation from physicians who make life-saving decisions every day based on x-ray and EKG interpretations.

Response: Our proposal addressed situations in which both the emergency physician and the radiologist/cardiologist billed for the same interpretation. It is that situation in which a determination needs to be made of which interpretation contributed to the diagnosis and treatment of the individual patient. If an emergency physician does not bill for the interpretation, there would be no change from existing policy. We would like to stress that if the only bill received is from the radiologist or cardiologist, it is paid on the same basis as current claims.

Comment: We received relatively few comments from physicians and other entities specializing in cardiology procedures. Their comments focused on the cardiologists' greater qualifications to interpret EKGs based on their training and experience.

Response: The discussion above about the qualifications of the interpreting radiologist would also apply here. The situation with EKGs is somewhat different than with x-rays because section 13514 of OBRA 1993, Public Law 103–66, enacted August 10, 1993, requires us to make separate payment for EKG interpretations and to exclude the RVUs for EKG interpretations from the RVUs for visits and consultations, making the EKG portion of the current policy as set forth in section 2020G of the Medicare Carriers Manual obsolete.

Comment: We proposed that the radiologist or cardiologist should be paid for the interpretation when it is performed contemporaneously with the diagnosis and treatment of the emergency room patient. This standard would be met if an interpretation were initially conveyed to the treating physician verbally. Nearly all commenters seemed to be troubled by the use of the term "contemporaneous" and requested clarification of the term. Some radiologists indicated that their interpretation is furnished contemporaneously if it is provided timely, which commenters variously defined as 12–24 hours. Other radiologists indicated that there are teleradiology hook-ups to radiologists, homes which should satisfy the need for contemporaneous interpretations. Several emergency room specialists indicated that the circumstances under which a radiologist or cardiologist furnishes a contemporaneous interpretation as discussed in the proposal should be clarified. They expressed concern that the provision of a verbal interpretation by the specialist to the emergency room physician could be used to circumvent the stated intention to pay for the interpretation used in the diagnosis and treatment of the beneficiary.

Response: When we used the term contemporaneous, we meant that the interpretation of the procedure by the radiologist or cardiologist and the diagnosis and treatment of the beneficiary by the physician in the emergency room occur at the same time, as opposed to an interpretation performed hours or days after the beneficiary is sent home. While the argument that the carrier should pay for any interpretation furnished timely sounds reasonable, it does not reflect the realities of claims processing. It would be impossible for a reviewer to make an assessment in every individual case as to whether the second interpretation was furnished "timely." In situations in which both physicians bill for the interpretation, the question to be resolved is whether the radiologist or cardiologist performed the interpretation in time to be used in the diagnosis and treatment of the patient. As set forth in the proposal, we believe that in any case in which the radiologist or cardiologist furnishes the interpretation (a written interpretation or a verbal interpretation that will be written later), the emergency room physician should not bill for the interpretation, and the carrier should pay for the claim submitted by the radiologist or cardiologist. The comments we received from the emergency room physicians did not seem to be requesting payment for interpretations furnished under these conditions. We agree that an interpretation furnished via teleradiology meets the requirement when the interpretation is used in the diagnosis and treatment of the patient.

Comment: Several commenters indicated that emergency room physicians without formal training in interpreting computerized axial tomography (CT) scans will miss subtle changes which could lead to permanent injuries to patients. They also stated that there were problems with the application of the proposal to other diagnostic procedures such as mammography, ultrasound, and upper and lower gastrointestinal series.

Response: This proposal applies only to x-ray procedures and EKGs furnished in emergency rooms.

Comment: Many radiologists indicated that the proposal will increase the Medicare program costs "tremendously" because of the potential for self-referral abuse. The commenters believed that physicians who see patients in the emergency room will order unnecessary tests if they know that they will be able to bill for the interpretations of these tests.

Response: We would be interested in reviewing any evidence the radiologists have that emergency room physicians order additional tests that are not medically necessary when they are permitted to bill for x-ray and EKG interpretations. We are also interested in any suggestions we might offer to the carriers on how to identify such unnecessary testing. We will address any self referral prohibitions within our Stark regulations.

Comment: Several radiologists pointed out that a proper interpretation does not really mean a "check" or a few words on the chart, but requires a full written report.

Response: We agree completely. The requirement for a written report of the interpretation of an x-ray or EKG is an integral part of our proposal. We would point out that less extensive "reviews" by emergency room physicians are not separately billable because payment for such reviews is included in the payment for the evaluation and management services rendered in an emergency room.

Comment: Many radiologists commented that, while some emergency medicine specialists are very proficient at reading trauma films, they lack the necessary training to identify subtle changes. For example, a patient is brought into the emergency room with chest trauma. The commenter indicated that the emergency physician would identify the broken ribs but miss a lung tumor. Several other commenters were concerned that a missed early diagnosis could result from an interpretation performed by a nonradiologist emergency room physician while a radiologist would review the total film rather than just the area of clinical concern.

Response: It seems to us that the major purpose of the emergency room x-ray in this instance would be to diagnose the degree of chest trauma. However, in this circumstance, if the emergency physician billed for the interpretation and a radiologist made an additional finding of a lung tumor, it would be appropriate for the carrier to pay for both interpretations.

Comment: One radiologist indicated that all too often the emergency room preliminary interpretation is made by a nurse or medical student and the films are never reviewed by a staff emergency room physician.

Response: It is difficult to see how such an observation relates to our proposal. A physician could not provide a written interpretation of an x-ray unless he or she personally viewed it. A written report of interpretation is an integral part of our proposal.

Comment: Many commenters objected to the hospital playing a role in determining which physician should bill for the interpretation of these procedures. The following comments were received:

- Hospitals are not capable of making such determinations.
- It would be in the financial interest of the hospital for the interpretation to be paid to those physicians who order the most tests.
- The medical staff is usually a legally separate and independent body from the hospital, and hospitals have no authority to become involved in such matters.
- Such decisions should be left to peer review.
- Hospitals should be encouraged to ensure that the billed interpretation is the one upon which treatment is based.
- The concept of a hospital making a policy decision as to which physician should get paid for interpretations will be a regulatory nightmare and the time and money carriers will have to expend to monitor the situations will be enormous. However, one emergency room physician commented that he hoped the proposal would encourage radiologists and cardiologists to furnish these interpretations in a more timely fashion.

Response: In developing our proposal, we considered requiring hospitals to notify their local carrier of the identity of the physician who would be performing these interpretations for their patients. We determined that such a requirement would have had an effect as indicated by one of the commenters and that our authority to impose such a requirement was questionable. However, under our proposal, we suggested that hospitals act to ensure that only one interpretation is billed. (Hospitals could do this now; we are not mandating an additional duty.) If a carrier receives only one claim, there will be no problem. The problem will arise when hospitals do not take action and the carrier receives two claims for each interpretation and then must make a determination about which claim to pay. It seems reasonable to us for hospitals to work with their medical staffs to establish guidelines for the billing of x-ray and EKG interpretations for emergency room patients.

Comment: Some commenters expressed concern about the effect of the proposal on small, rural hospitals in which there are an insufficient number of radiologists to cover the emergency room 24 hours a day. It was pointed out that many of these hospitals either go without any service at all and ship films to radiologists for interpretation or

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receive direct radiologist's services on an infrequent basis each week. One commenter indicated that consideration should be given to the size of the hospital, the definition of what constitutes an emergency room, and the availability of radiologic services.

Response: Since our proposal is limited to emergency room services, if a hospital does not have an emergency room and no claims with a place of service indicator of emergency room are received, there does not appear to be a problem. Likewise, if there is an emergency room in a hospital but no emergency room physician bills for an interpretation of the test, there is also no problem. We indicated in our proposal that if a carrier receives only one claim for a reasonable and necessary interpretation of an x-ray or EKG, it would pay the claim, generally without further development.

Comment: One commenter indicated that the proposal was inappropriate because emergency room physicians are thankful that radiologists will interpret the overnight x-rays the next morning in view of the harried circumstances under which services are furnished in the emergency room.

Response: Our proposal does not require emergency room physicians to bill for these interpretations. If the emergency room physicians do not bill for these interpretations, the radiologist and cardiologist may continue to be paid for the interpretations. Our proposal has no effect on situations in which the emergency physician does not wish to bill for the interpretation.

Comment: A carrier medical director expressed concern that it will be impossible to determine from a claim whether the emergency physician has submitted written documentation of the x-ray or EKG interpretation for the medical record. The carrier medical director went on to indicate that encouraging hospitals to exercise their authority to ensure that only one claim for interpretation is received will not work and recommended that the current policy should be maintained.

Response: By submitting a claim for the interpretation of an x-ray or EKG, the emergency room physician is stating that he or she has prepared a written interpretation of the procedure for inclusion in the patient's medical record. We do not agree that the current manual policy works well since it became partially obsolete by the physician fee schedule.

Comment: Another carrier medical director indicated that the requirement for a written report be strengthened to indicate that Medicare is requiring a separately written report which meets the hospital's requirement for an official report.

Response: We agree and will include such a written report requirement in the revised manual instructions.

Comment: Some emergency room physicians commented that they should be paid for the x-ray and EKG interpretation in almost every case since it is they who furnish the real-time service.

Response: We believe that our proposal is a better approach. There is no question that the cardiologist or radiologist should be paid for the interpretation when that physician furnishes the service in time to be used in the diagnosis and treatment of the patient. Further, we believe that there are physicians who work in emergency rooms who prefer to defer to a cardiologist or radiologist for the final interpretation and do not wish to prepare written reports or bill for interpretations. However, our proposal provides for payment when the emergency room physician provides a written interpretation that contributed to the diagnosis and treatment of the patient.

Comment: One commenter indicated that, in their community hospital, the radiologist is summoned at the time of the initial diagnosis and treatment for the most serious cases, whereas, for less urgent examinations, the formal interpretation is made the following morning. The commenter went on to say that the issue should be the responsiveness of the radiologist when his or her input will affect care, and that having x-rays read by nonradiologists is moving in the wrong direction.

Response: As indicated previously, interpretations by radiologists used for the diagnosis and treatment of the patient would be payable.

Comment: A few commenters suggested that the appropriate approach is to split the fee for the interpretation between the radiologist and the ER physician.

Response: We do not believe that this would be a workable approach since the carrier would not know when or if it would receive the second claim.

Comment: Radiologists made the following additional comments:

- The majority of carrier medical directors do not support the proposal.
- The changes do not reflect the findings of the July 1993 report of the Department of Health and Human Services, Office of Inspector General, entitled "Medicare's Reimbursement for Interpretations of Hospital Emergency Room X-Rays."

Response: We did present the proposal to a committee of carrier medical directors during a monthly conference call on operational issues and the views were mixed. The major impression we drew from their comments was that they were most concerned with enforcement issues. We will continue to seek the guidance of the carrier medical directors and other interested parties in developing instructions to implement this policy.

The recommendation of the OIG report was to pay for reinterpretations of x-rays only when attending physicians specifically request a second physician's interpretation in order to render appropriate medical care before the patient is discharged. Any other reinterpretation of the attending physician's original interpretation should be treated and reimbursed as part of the hospital's quality assurance program.

Using 1990 data, the OIG projected savings of $20.4 million based on a cessation on payments for radiologists' interpretations of x-rays if its recommendation were implemented. We believe that the OIG recommendation would result in no payment for interpretations of these services in many cases; therefore, we reject that portion of the recommendation. In other words, we believe that one physician should be paid for the interpretation of an x-ray.

Comment: One commenter suggested that the solution to this problem be developed through the CPT system. The commenter suggested that we propose separate codes for the emergent reading of the test and a second, different code for the over-read. This commenter and some others indicated that payment for these interpretations be evenly divided between the two codes.

Response: The commenter may want to refer this proposal to the CPT Editorial Panel.

Final Decision: We are adopting the policy as set forth in the proposed rule for services furnished on or after January 1, 1996.

Listed below are the elements of our policy.

- The carrier will pay separately for only one interpretation of an EKG or x-ray procedure furnished to an emergency room patient. However, there is a provision for payment of second interpretation under unusual circumstances such as a questionable finding for which the physician performing the initial interpretation believes another physician's expertise is needed.
- The professional component of a diagnostic procedure furnished to a beneficiary in a hospital includes an interpretation and written report for inclusion in the beneficiary's medical record maintained by the hospital. We have placed this requirement in the radiology section of the regulations on services of physicians in providers at § 405.554(a). (Under the recodification, this section becomes 415.120(a)).
- We distinguish between an "interpretation and report" of an x-ray or an EKG procedure and a "review" of the procedure. An interpretation and report of the procedure is separately payable by the carrier. A review of the findings of these procedures, without a written report, does not meet the conditions for separate payment of the service since the review is already included in the emergency room visit payment.
- In the case of multiple bills for the same interpretation and report, we will instruct the carriers to adopt the following procedures:
  + Cease consideration of physician specialty in deciding which interpretation and report to pay regardless of when the service is performed.
  + Pay for the interpretation and report that directly contributed to the diagnosis and treatment of the individual patient.
  + Pay for the interpretation billed by the cardiologist or radiologist if the interpretation of the procedure is performed at the same time as the diagnosis and treatment of the beneficiary. (This interpretation may be a verbal report conveyed to the treating physician that will be written in a report at a later time.)
- We will minimize the carrier's need to make decisions about which claim to pay when multiple claims for the interpretation and report of the same procedure are received by—
  + Encouraging hospitals to work with their medical staffs to ensure that only one claim per interpretation is submitted;
  + Advising hospitals that if they allow a physician to perform and bill for a medically necessary service (the interpretation and report) in an emergency room and permit another physician to perform and bill for the same service, the Medicare carrier will not pay two claims;
  + Advising hospitals that the Medicare carrier may determine that the hospital's "official interpretation" is for quality control and liability purposes only and is a service to the hospital rather than to an individual beneficiary; and
  + Advising hospitals that Medicare fiscal intermediaries consider costs incurred for quality control activities in determining payments to hospitals.
- When the Medicare carrier receives only one claim for an interpretation and the procedure is reasonable and necessary, the carrier will pay the claim. We will presume that the one service billed was a service to the individual beneficiary and not a quality control measure.

Manual instructions to the carriers will be issued as soon as possible.

This policy change is not explicitly addressed in our regulations.

D. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers

We proposed extending the site-of-service payment differential to services on the ambulatory surgical center (ASC) covered list of procedures that are predominantly performed in an office setting. We see no reason for exempting these procedures from the site-of-service payment differential. The practice expense RVUs duplicate many of the overhead expenses included in the ASC facility and hospital payment rates. As such, when a service is provided in an ASC or a hospital, the physician does not bear the same level of practice costs as when the same service is furnished in the office. Therefore, in § 414.32 ("Determining payments for certain physician services furnished in facility settings"), we proposed to modify in paragraph (d) ("Services excluded from the reduction") the subordinate paragraph (d)(2), which would have the effect of applying the site-of-service payment differential to ASC services. The payment differential does not apply to procedures performed in an ASC that are not on the ASC list because no facility payment is made.

Comment: Many commenters stated that the Act provides that procedures included on the ASC list, by definition, are not office-based procedures. Commenters indicated that we had concluded in previously published regulations on ASCs that certain procedures, such as cystoscopies, prostate biopsies, and skin lesion excisions, are not office-based procedures.

Response: Historically, the ASC list included only procedures that were performed less than half of the time in an office setting. Consequently, the ASC list and the site-of-service payment differential lists were mutually exclusive. Over time, many procedures shifted from being performed predominately in ASCs to being performed predominately in offices. However, in many cases the procedures were retained on the ASC list because we were persuaded by arguments that while the procedure may usually be done in an office, there were circumstances justifying using an ASC. Therefore, the two lists are no longer mutually exclusive. Retention of certain procedures on the ASC list does not imply that they cannot appropriately be performed in an office. In fact, the only procedures proposed for addition to the site-of-service differential payment list are those that are performed in an office setting the majority of the time.

Comment: Several commenters questioned the accuracy of data or indicated that they could not fully evaluate the proposals because we did not publish data on which the site-of-service list is based. Some stated we should use clinically-based criteria instead of purely objective, arithmetic data.

Many commenters indicated that many of the procedures added to the site-of-service differential list were inappropriate and unlikely to be office-based procedures because they are extraordinarily complicated procedures, require anesthesia or sophisticated equipment, or need to be evaluated on a case by case basis. Several commenters believed the list to be arbitrary and unfair. Others indicated that physicians should not be punished for selecting the medically appropriate site for certain procedures on the list. One commenter agreed that we should encourage physicians to perform procedures in an office when it is safe and effective.

Another commenter stated that we should pay urologists for supplies and a small facility fee to shift procedures to the less costly office setting.

Some commenters stated that because nasal/sinus endoscopy codes were added to the ASC list effective January 1, 1994 the site-of-service data are likely to be skewed toward the physician's office setting. Other commenters stated the CPT description for breast biopsy (CPT code 19100) was recently changed to include only core needle aspiration while fine needle aspiration is now reported using code CPT code 88170. One commenter agreed that breast biopsy should be on the list. Other commenters argued that the data do not distinguish between techniques employed. Many commenters indicated that the policy does not account for gender differences. For example, cystoscopies performed on males are more difficult and painful and are inappropriate for an office setting.

Response: According to our data, the procedures on the site-of-service payment differential list are performed in a physician's office more than 50 percent of the time. Inclusion of procedures on the list is not intended to

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reflect a judgment regarding the appropriateness of the site where the service is performed or to encourage performance of procedures in the less costly office setting or to create a financial disincentive for the physician to select the most appropriate site. Inclusion on this list merely recognizes where the service is being furnished the majority of the time. We recognize that although the majority of the procedures we proposed to add to the site-of-service list are performed in a physician's office, the ASC setting is sometimes appropriate. That is the reason they remain on the ASC list. It is not the purpose of this policy to dictate where a physician should perform the service. The policy reflects the lower practice costs incurred by physicians when these services are performed in an ASC or a hospital.

Comment: One commenter objected to including urodynamic evaluation CPT codes 51725, 51726, and 51772 on the site-of-service payment differential list. Another commenter provided information demonstrating that 21 other proposed procedures should not be on the list because more recent data indicate that the procedures are not performed in the office more than 50 percent of the time.

Response: We agree with the comment that urodynamic evaluation codes do not belong on the list and have removed CPT codes 51725, 51726, 51772, and 51785 from the list. We also agree with the comment that some of the proposed procedures are not performed in the office setting more than 50 percent of the time based on the most current data available. Therefore, we have removed the following CPT codes from the list: 13150, 14020, 14060, 15740, 21208, 21440, 23066, 28645, 28030, 28043, 28092, 28261, 40510, 41805, 42408, 46230, 46610, 63600, 64420, 65270, and 67921.

Comment: Some commenters stated that the site-of-service payment differential should not apply to services furnished in an ASC for which no facility payment is made. Another commenter said that many ASCs are considered extensions of a physician's office, not a free-standing facility, and physicians are responsible for ASC overhead.

Response: We agree with these comments. Therefore, we have clarified the proposal to state that when a service that is not on the ASC list is performed in an ASC, the site-of-service payment differential does not apply. In this case, we view the ASC as an extension of the physician's office and, for purposes of this provision, view this as an office service.

Comment: Some commenters said that there is no difference in practice costs between the office setting and the ASC. In some cases, costs may be higher in the ASC because of more complicated cases, the delivery of anesthesia services, and physician travel costs. Other commenters said it is unjustified to conclude that there is no office overhead for physicians performing procedures in another setting.

Some commenters recommended that we make no changes to the site-of-service payment differential before the implementation of resource-based practice expense RVUs in 1998. One commenter requested that we suspend the site-of-service payment differential altogether. Others recommended increasing practice expense payments for procedures performed in the office to discourage physicians from using hospital ASCs. Other commenters said we should exempt codes that are reduced by the interim practice expense reduction of OBRA 1993.

Response: The site-of-service payment differential is a long established policy that aims to avoid duplicate payments for overhead while, at the same time, recognizes that some office overhead is incurred when physicians perform procedures outside the office setting. For this reason, the practice expense RVUs are reduced by only 50 percent. While we will implement resource-based practice expense RVUs in 1998, we see no reason to postpone applying the payment differential to ASCs until then. The site-of-service policy currently applies to both inpatient and outpatient hospital settings. We see no justification for continuing to exempt services provided in ASCs.

Section 13513 of OBRA 1993 provided for reductions in practice expense RVUs for services for which practice expense RVUs exceeded 128 percent of the work RVUs and that are performed less than 75 percent of the time in an office setting. This reduction was based on the Congress' determination that practice expense RVUs were too high for some procedures. This reduction is independent of the long standing site-of-service payment differential.

Comment: Many commenters stated that the proposal would result in reduced quality of care. Other commenters said it did not encourage placement of patients in the most appropriate and cost-effective setting to address the patient's medical needs. Several commenters indicated that since we have determined that the proposed procedures are appropriate for ASCs based on medical review and patient safety outcome data, it would be inconsistent to apply the site-of-service payment differential.

Some commenters indicated that many of the proposed procedures cannot be performed safely in an office. They indicated that offices are not certified to meet the same standards of care or health care outcomes as ASCs, which are generally safer places to perform procedures. They believed the proposal creates a disincentive for physicians to use ASCs even when it is in the patient's best interest to do so. Other commenters said procedures are performed in an ASC because of patient choice or for a patient's safety and comfort. They believed that paying less for the most complicated cases will discourage doctors from doing such cases, thereby creating serious access problems for patients.

Response: We disagree that application of the site-of-service payment differential will penalize a physician who has valid clinical reasons for performing a procedure in an ASC. Rather, we believe the payment differential will appropriately reflect that the physician incurs fewer costs when furnishing service in an ASC. We believe that physicians consider the welfare of the beneficiary in selecting the appropriate site to perform the service. We do not believe that physicians will make inappropriate decisions regarding the health and well being of their patients because of a reduction in their payment.

Comment: Many commenters said that the proposal will encourage physicians to buy costly equipment for their offices, such as that required for urologic and arthroscopic procedures, which most do not have.

Response: We believe the payment differential is incentive neutral with regard to selecting a practice site. That is, we do not believe that the payment differential will induce physicians to purchase additional equipment to enable them to furnish services in the office.

Comment: One commenter stated that a large number of procedures proposed for addition to the site-of-service list were originally exempt from the list because they were performed less than 50 percent of the time in a physician's office. Therefore, the practice expense values already reflect the costs of furnishing the procedures outside the office setting.

Response: Physicians shift the place of service for procedures from the hospital setting to the office setting for various reasons. Two reasons are (1) that advances in technology, technique, or other factors make it now feasible to do many services in the office setting that historically were furnished in a hospital setting; and (2) physicians believe that it is cost-effective and efficient to shift the place of service. We believe that the direct costs of providing the service (staff, supplies, equipment, and space) are reflected in the practice expense relative values based on the predominant place of service. Therefore, we believe it is appropriate to apply the site-of-service reduction to these services when they are performed in a setting where we make a payment for the direct costs of providing the service; for example, hospitals and ASCs. However, this issue will be further examined as part of the development of practice expense RVUs for 1998.

Comment: Several commenters misunderstood the proposal. Some implied that we were proposing a reduction in the ASC facility payment rate or reducing payments for office based procedures. One objected to applying the site-of-service payment differential to the hospital setting. One commenter was not convinced the proposal will save money.

Several comments concerned issues not covered under this proposal, for example, objections to removing certain codes from the ASC approved list and requests that particular codes be added or deleted from the ASC list. Another commenter suggested that new criteria are needed for procedures on the ASC list. Another thought we were proposing removing the codes from the ASC list.

Response: The proposal does not affect ASC facility payment rates or physician payments for procedures performed in an office setting. The site-of-service payment differential already applies to the hospital outpatient setting. The proposal is budget neutral and is not intended to reduce Medicare payments. The proposal does not revise procedures on the approved ASC list.

Final Decision: We will extend the site-of-service payment differential to office-based services on the ASC list if those services are performed in an ASC or in a hospital setting. However, when a service that is not on the ASC list is performed in an ASC, the site-of-service payment differential will not apply. The site-of-service list for 1996 appears in Addendum E of this final rule. All additions to the list are identified by an asterisk.

E. Services of Teaching Physicians

1. General Background

Our July 26, 1995 proposed rule (60 FR 38405) discussed Medicare payment for those services furnished under graduate medical education (GME) programs that are not payable through the mechanisms established for direct GME costs by section 1886(h) of the Act. Section 1886(h) addresses Medicare payments to hospitals and hospital-based providers for the costs of approved GME programs in medicine, osteopathy, dentistry, and podiatry. Those costs include residents' salaries and fringe benefits, physician compensation costs for GME program activities that are not payable on a fee schedule basis, and other GME program costs.

Medicare intermediary expenditures under section 1886(h) of the Act for fiscal year 1996 are estimated to be approximately $1.9 billion. In addition, under section 1886(d)(5)(B) of the Act, Medicare makes additional payments to teaching hospitals under the prospective payment system for the higher indirect operating costs hospitals incur by having GME programs. (These are costs other than direct GME costs.) Medicare indirect GME payments for fiscal year 1996 are estimated to be approximately $4.9 billion. Medicare also supports GME programs in teaching hospitals through billings for the services of attending physicians who involve residents in the care of their patients. The amount of Medicare expenditures for these services is not known since attending physicians are not required to distinguish between services they personally furnish and those they furnish as attending physicians in claims submitted to the Part B carriers.

Our proposal addressed services of teaching physicians that are payable on a fee schedule basis, services of residents in settings that are not payable under section 1886(h), and services of moonlighting residents. In addition, the proposed rule addressed, but did not substantially change, existing rules on related issues on Medicare payments for the services of residents in approved GME programs furnished in certain freestanding skilled nursing facilities and home health agencies, and services of residents who are not in approved GME programs. We referred to the section 1886(h) mechanisms to distinguish between that payment methodology and other payment mechanisms.

Title XVIII of the Act provides separate coverage and payment bases for provider services and physician services. Under Medicare, provider services, such as inpatient hospital services and skilled nursing facility services, are covered under Hospital Insurance (Part A) and are paid from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B) and are paid from the Part B Trust Fund. Provider services are paid on a prospective payment, reasonable cost, or other payment mechanism through Medicare contractors called "fiscal intermediaries." Physician services and other "medical and other health services," as defined in section 1861(s) of the Act, are generally paid under Part B through Medicare contractors called "carriers." To administer the Medicare program, we must distinguish clearly between provider services and physician services to determine the appropriate payment methodology and the appropriate Trust Fund that is liable for payment.

As discussed in the proposed rule, in part 405 ("Federal Health Insurance for the Aged and Disabled"), subpart D ("Principles of Reimbursement for Services by Hospital-Based Physicians"), current regulations beginning with § 405.480 set forth the basic principles regarding payment for services of physicians who practice in providers. Additional principles applicable to payment for physician services in teaching hospitals appeared in subpart E ("Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians") in §§ 405.520 and 405.521. Principles applicable to services of interns and residents appeared in §§ 405.522 through 405.525. Sections 405.465 and 405.466 addressed the payment methodology for teaching hospitals that elect reasonable cost payments for physician services. (See sections 1832(a)(2)(B)(i)(II) and 1861(b)(7) of the Act.) Since the publication of those regulations, the Congress enacted a series of legislative changes that affected payments for these services, and we proposed to revise the regulations to conform to those statutory changes and to clarify current policy.

Section 948 of the Omnibus Reconciliation Act of 1980 (ORA 1980) (Pub. L. 96–499), enacted on December 5, 1980, as amended by section 2307 of the Deficit Reduction Act of 1984 (DEFRA 1984) (Pub. L. 98–369), enacted on July 18, 1984, addressed payments for physician services in teaching settings. (See section 1842(b)(7) of the Act.) Another pertinent legislative change, section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA 1982) (Pub. L. 97–248), enacted on September 3, 1982, added a new section 1887 to the Act. That legislation dealt explicitly with distinguishing between the professional services physicians furnish to individual patients in a provider and services physicians furnish to the provider itself. While section 1887 of the Act does not

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specifically address teaching physicians or GME issues, it is consistent with Medicare policy on classifying the activities in which physicians in teaching hospitals are engaged.

We published a final rule with comment period in the Federal Register on March 2, 1983 (48 FR 8902), which implemented the provisions of section 1887 of the Act. That final rule revised the regulations that govern Medicare payment for services of physicians who practice in providers such as hospitals, skilled nursing facilities, and comprehensive outpatient rehabilitation facilities. As a part of that final rule, we revised §§ 405.480 through 405.482, removed §§ 405.483 through 405.488, and added new §§ 405.550 through 405.557. Those regulations—

- Set forth basic criteria for distinguishing those physician services furnished in providers that are payable by Part B carriers as physician services to individual patients from those services that are payable by fiscal intermediaries as physician services to the provider itself;
- Set limits on the amounts payable on a reasonable cost basis to providers for physician services to the provider; and
- Established more specific criteria for determining the basis and amount of payment for physician services in the specialties of anesthesiology, radiology, and pathology.

In the preamble to the March 1983 final rule (48 FR 8906), we stated that because of problems related to applying portions of the revised regulations to teaching hospitals and to implement sections 1842(b)(6) and 1861(b)(7) of the Act for physician payment (as amended by section 948 of ORA 1980), we planned to publish, in a separate document, proposed regulations that would establish special rules governing payment for services of physicians in teaching hospitals. Those rules would have superseded §§ 405.520 and 405.521 if they became effective. Subsequently, however, the Congress passed DEFRA 1984, which further amended section 1842(b)(6) of the Act and redesignated it as section 1842(b)(7).

Another statutory change that affected payments to teaching hospitals was section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), enacted on April 7, 1986, as amended by section 9314 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), enacted on October 21, 1986, which added a new section 1886(h) to the Act. Section 1886(h) of the Act revised the method of calculating Medicare payment for the direct costs of approved GME activities such as residents' salaries and fringe benefits, from reasonable cost payment to payments based on hospital-specific per-resident amounts multiplied by the number of full-time equivalent residents working in the hospital during a hospital's cost reporting period.

A major change in the Medicare payment rules for physician services in general was enacted as part of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Pub. L. 101–239), enacted on December 19, 1989, which added section 1848 to the Act. Section 1848 replaced the reasonable charge payment mechanism with a fee schedule for physician services. The Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Pub. L. 101–508), enacted on November 5, 1990, contained several modifications and clarifications to the OBRA 1989 provisions that established the physician fee schedule.

2. Payment for Physician Services Furnished in Teaching Settings

a. Current Practices

In our proposed rule (60 FR 38406), we stated that of the nearly 7,000 hospitals that participate in Medicare, approximately 1,200 have GME programs that are approved for residency training by the appropriate accrediting organization. (We used the term "residents" in the preamble of the proposed rule to include residents, interns, and fellows who are in formally organized and approved GME programs.)

For hospital cost reporting periods beginning on or after July 1, 1985, the costs of residents' compensation (representing payment for the residents' services), certain physician compensation costs related to GME programs, and other GME program costs are payable based on hospital-specific per-resident amounts as described in § 413.86, in accordance with section 1886(h) of the Act. Physician compensation costs for administrative and supervisory services unrelated to the GME program or other approved educational activities are payable as operating costs through diagnosis-related group payments under the prospective payment system for inpatient services and on a reasonable cost basis for inpatient services in hospitals excluded from the prospective payment system and for outpatient services.

In the case of those few teaching hospitals that elect reasonable cost payments for physician direct medical and surgical services under section 1861(b)(7) of the Act instead of billing for services to Medicare beneficiaries on a fee-for-service basis, the election and payment mechanisms described in former §§ 405.465 and 405.466 were set forth in the proposed rule in new § 415.160 and in redesignated §§ 415.162 and 415.164.

Practices vary widely among and within teaching hospitals with respect to the degree of physician involvement in the care of patients. In some cases, teaching physicians personally direct residents in furnishing patient care services. In others, residents assume a greater degree of responsibility for the care patients receive, and the teaching physicians exercise only general control over the residents' activities.

b. Statutory and Other Developments Pertaining to Teaching Physician Services

(1) Original Medicare Law and Regulations

As originally enacted, title XVIII of the Act excluded the services of physicians, interns, and residents from the definition of "inpatient hospital services," except for the services of interns and residents in approved training programs. The services of residents in an approved program of a hospital with which a skilled nursing facility has a transfer agreement are included in the definition of "extended care services" and in the definition of "home health services" in the case of a home health agency that is affiliated with or under common control of a hospital having the program. These provisions established the costs of approved GME programs for provider services payable by intermediaries on a reasonable cost basis. The Act did not include special rules for payment of physician services in teaching hospitals.

At the time of the publication of the proposed rule, under §§ 405.520 and 405.521 for teaching physician services, and §§ 405.522 through 405.525 for residents' services, a physician in a teaching setting was considered the attending physician for a Medicare patient, and thereby qualified for Part B payment, only if he or she furnished "personal and identifiable direction" to the interns and residents who provided the actual services to the patient. Before January 1, 1992, Part B physician services were paid under the reasonable charge payment system. As of January 1, 1992, these physician services are paid under the physician fee schedule set forth in part 414 (56 FR 59502).

Although former § 405.521(b) listed examples that illustrated the types of responsibilities attending physicians typically carry out, the list was not exhaustive. In individual cases, it might be difficult to determine, by referring to § 405.521, whether a physician in a teaching setting is the "attending physician" for a Medicare patient. It might be necessary for the carrier to review hospital charts to see if the attending physician requirements were met; however, the involvement of the teaching physician in individual services was often unclear from a review of the charts.

It became apparent, shortly after the former §§ 405.520 and 405.521 were issued, that some Medicare carriers were paying charges for physician services in some teaching hospitals, even though interns and residents were primarily responsible for the care of the patients. The physicians who were billing for these services were often assuming only limited responsibility for the medical management of the patients' treatment. It also became clear that some physicians were submitting charges for services furnished to Medicare patients even though non-Medicare patients were not billed for similar services, and patients generally were not obligated to pay for those physician services.

In April 1969, those problems led to the issuance of Intermediary Letter 372, which set forth specific conditions that physicians in teaching settings were required to meet to be considered attending physicians and, thus, qualify to charge the carrier for services in which they involved residents. It also specified how carriers were required to determine the reasonable charges for these services. Although Intermediary Letter 372, which was still in effect at the time of the publication of the proposed rule, provided guidance to Medicare carriers and intermediaries on payment for these services, it was not applied uniformly by all Medicare carriers.

(2) 1972 Amendments

On October 30, 1972, the Congress amended the Act to provide rules on payment for physician services (as distinguished from the services of interns and residents) furnished in teaching hospitals. Section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(b) of the Act to require that Medicare treat those services as hospital services and pay for them on a reasonable cost basis, except under certain specific circumstances. Section 227 also made certain incentives available to hospitals that elected to be paid for physician services on a reasonable cost basis.

In subsequent legislation (section 15 of Pub. L. 93–233, enacted on December 31, 1973, and section 7 of the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292), enacted on June 13, 1978), the Congress deferred implementation of all provisions of section 227 of the 1972 amendments except for the incentives to elect reasonable cost payment for physician direct medical and surgical services. The cost reimbursement provisions were implemented through former § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). The statutory provisions for which the Congress deferred implementation were eventually replaced by new provisions passed by the Congress in ORA 1980. ORA 1980 reaffirmed, but did not otherwise affect, the provisions of section 227 of the 1972 amendments authorizing cost reimbursement incentives.

(3) ORA 1980

Section 948 of ORA 1980 made several important changes in the sections of the Medicare statute that address payment for physician services in teaching hospitals. Specifically, section 948—

- Repealed the provisions of the 1972 Amendments that required Medicare to pay for those services (with certain exceptions) on a reasonable cost basis;
- Amended section 1861(b) of the Act to allow hospitals with approved teaching programs to elect to be paid on a reasonable cost basis for physician direct medical and surgical services furnished to their Medicare patients and for the supervision of interns and residents in the care of individual patients if all physicians in the hospital agree not to bill charges for their services furnished to Medicare patients; and
- Added section 1842(b)(6) of the Act (now section 1842(b)(7)) to specify the conditions that must be met to permit payment under Part B for physician services in teaching hospitals that do not elect cost reimbursement, and to provide special payment rules for determining the customary charges applicable in this situation.

In the Conference Report accompanying ORA 1980 (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)), the Conference Committee stated that its intention was to permit payment for physician services in a teaching hospital on a reasonable charge basis only if the physician is the patient's "attending physician." The conferees also endorsed the attending physician criteria in Intermediary Letter 372.

The Conference Report further stated that "[t]he conferees intend (without precluding reasonable changes in the future) that in determining the amount payable on a charge basis under Medicare Part B for services of physicians in teaching hospitals, the policies contained in Intermediary Letter 372 should be generally followed where these are not inconsistent with the provisions of the conference agreement." *Ibid. p. 146.*

(4) DEFRA 1984

Subsequently, section 2307(a) of DEFRA 1984 further amended section 1842(b)(7) of the Act concerning conditions for payment for physician services furnished in teaching hospitals that do not elect cost reimbursement. Section 2307(a) was later amended by sections 3(b) (5) and (6) of the DEFRA Technical Amendments (Public Law 98–617), enacted on November 8, 1984. As revised, section 1842(b)(7) of the Act (which was redesignated from section 1842(b)(6) of the Act by section 2306 of DEFRA '84) provided that—

- The customary charge of a physician qualifying as a teaching physician is set no lower than 85 percent of the prevailing charge paid for similar services in the same locality; and
- If all the teaching physicians in a teaching hospital agree to accept assignment for all the services they furnish to Medicare patients in that hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

(5) 1989 Proposed Rule

On February 7, 1989, we published a proposed rule that would have implemented the teaching physician payment provisions of both ORA 1980 and DEFRA 1984 (54 FR 5946). In that document, we proposed the following changes relating to teaching physicians:

- Revise the regulations governing the conditions under which Medicare payment is made for the services of physicians in teaching settings and implement a special methodology for determining customary charges for the services of teaching physicians.
- Revise the regulations governing Medicare payment to providers for compensation paid to physicians who furnish services that are of general benefit to patients in the provider.

That proposed rule was never published in final because legislation enacted in 1989 and 1990 that mandated the implementation of the Medicare physician fee schedule had the effect of replacing the payment methodology of the proposed rule.

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3. Payments for Supervising Physicians in Teaching Settings and for Residents in Certain Settings

In our July 28, 1995 proposed rule, we proposed to revise the regulations because of the substantial changes that have taken place in the way Medicare payments for physician services are determined (that is, the replacement of the reasonable charge system with the physician fee schedule); the length of time since the publication of the February 1989 proposed rule; and our decision to propose to replace the attending physician criteria of the February 1989 proposed rule. The details of the attending physician policy had been set forth earlier in Intermediary Letter 372, published in April 1969.

We proposed to change the attending physician criteria from those of Intermediary Letter 372 to make the criteria more flexible in terms of the individual teaching physician who may serve as the responsible physician for a particular service while ensuring that a teaching physician is present during at least some portion of each service payable by the carrier. We also proposed rules based on other Medicare policies that had been in effect for years but had never been explicitly addressed in the regulations.

a. Distinction Between Teaching Hospital and Teaching Setting

We proposed to distinguish between "teaching hospital" and "teaching setting," because the former is more directly related to intermediary payments, and the latter (although defined in terms of intermediary payments) is more directly related to carrier payments. We proposed to define "teaching hospital" as a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry. We proposed to define "teaching setting" as a provider or freestanding setting for which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86 (hospitals, hospital-based providers, and settings, including nonprovider settings, meeting the requirements for residents in § 413.86(f)(1)(iii)), or on a reasonable cost basis under the provisions of § 409.28 or § 409.40(f) for residents' services furnished in freestanding skilled nursing facilities or home health agencies, respectively.

b. Statutory Requirements for Payment in Teaching Hospitals Not Electing Reasonable Costs for Physician Services to Individual Patients

Section 1842(b)(7) of the Act is generally premised on the use of customary charges, that is, the reasonable charge system, as the basis for Medicare payments for the services of physicians in teaching hospitals. Section 1848 of the Act, however, established the physician fee schedule as the payment methodology for physician services furnished beginning January 1, 1992 without any exception for physician services furnished in teaching settings. Therefore, we based the policies in the July 28, 1995 proposed rule on principles established in legislation on payment for physician services generally under the physician fee schedule, on payment for physician services furnished in providers, and on payment to hospitals for GME programs. With regard to payment to hospitals for GME programs, the proposal addressed activities associated with GME programs that were not payable through fiscal intermediary payment mechanisms.

c. Intermediary Letter 372 Attending Physician Criteria

The Intermediary Letter 372 attending physician criteria and related policy were developed by Medicare in 1969 as a means of documenting the involvement of teaching physicians in patient care services furnished in teaching hospitals and have been controversial ever since. It was recognized then and now that residents must furnish patient care services to develop their skills as physicians or other types of practitioners. The "attending physician" policy was developed as a mechanism to make Part B fee schedule payments for services in which residents were involved. The main requirement of the policy was that there would be a single attending physician who personally examined the beneficiary within a reasonable time after admission, confirmed the diagnosis and course of treatment, and was continuously involved in the care of the beneficiary throughout the stay. The attending physician policy as set forth in Intermediary Letter 372 and related issuances specifically stated that the attending physician had to be present when a major surgical procedure or a complex or dangerous medical procedure was performed, but was vague, perhaps necessarily, on the matter of the presence of the physician during other occasions of inpatient service. There was less ambiguity with regard to hospital outpatients. Part A Intermediary Letter No. 70–7/Part B Intermediary Letter No. 70–2 (issued in January 1970), a question-and-answer on Intermediary Letter 372, indicated that the supervising physician must either personally perform the service or function as the attending physician and be present while a service is being furnished (question 14).

Medicare carriers were directed to periodically review the hospital charts for verification of the establishment of attending physician relationships and their involvement in individual services. If the chart did not substantiate a sufficient level of involvement in the care furnished, the teaching physician role was seen as supervisory in nature, rather than as an attending physician, even though the teaching physician may have had legal responsibility for the care furnished to the patient. Consequently, the fiscal intermediary for the hospital would pay Medicare's share of the salary costs of the teaching physician attributable to the supervision of residents, but the Medicare carrier would not make payment for the physician services on the basis of reasonable charges.

We believe, after years of working experience with the Intermediary Letter 372 attending physician policy, that we should replace it. The amount of postpayment review necessary to verify the establishment and continuity of the attending physician relationship from patient charts had become impractical given reductions in contractor budgets and was inconsistent with more recent congressional action. While the Congress endorsed the attending physician policy in the Conference Report accompanying ORA 1980, the Intermediary Letter 372 policy might be viewed as not entirely consistent with the payment mechanism enacted in OBRA '86 under section 1886(h) of the Act for payment of direct GME costs in teaching hospitals. For example, Intermediary Letter 372 indicated that, if a physician was not an attending physician but supervised a resident who furnished a service, the costs of the physician services were payable by the intermediary. Under section 1886(h) of the Act, if a service was determined not to be an attending physician service billable under Part B, the service could not become a provider service for purposes of additional payments made under Part A since the GME payments were prospectively determined amounts that could not be adjusted based on the individual circumstances of the delivery of individual services. Further, allocation agreements between physicians and hospitals identifying the various activities in which the physicians were involved for purposes of determining the appropriate payment amounts had no effect on GME payments in an individual hospital cost reporting period. The costs that were allocated during the GME base period were carried forward regardless of changes in the physician activities.

Moreover, the Intermediary Letter 372 policy left it to individual carriers to determine coverage of the services based on customary practices in the area or on the competence of individual residents. For example, a sentence in Intermediary Letter 372.A. reads as follows:

> If the supervising physician was present at surgery, and the surgery was performed by a resident acting under his close supervision and instruction, he would not be the attending surgeon unless it were customary in the community for such services to be performed in a similar fashion to private patients who pay for services rendered by a private physician.

While this policy might have been appropriate 30 years ago in the early days of Medicare, we stated in our proposed rule (60 FR 38409) that we believe it is inappropriate to base the determination of whether a carrier will pay several thousand dollars or zero dollars for a surgical procedure on this standard, which could result in a wide disparity of policy from area to area regarding when payment is made.

Another problem with the Intermediary Letter 372 policy was reliance on a single physician to be the attending physician for the beneficiary throughout the inpatient stay. The only exception permitting an attending physician relationship for only a portion of a stay was if the portion was a distinct segment of the patient's course of treatment, such as the postoperative period. Another example from Intermediary Letter 372 reads as follows:

> A group of physicians share the teaching and supervision of the house staff on a rotating basis. Each physician sees patients every third day as he makes rounds. No physician can be held to be one of these patients' attending physician for any portion of the hospital care although consultations and other services they personally perform for the patient might be covered.

We stated in our proposed rule (60 FR 38409) that we believe that this emphasis on a single teaching physician serving as the attending physician through the stay was no longer necessary, and that we should provide teaching hospitals and GME programs with flexibility in the determination of the responsible teaching physician in an individual case. We no longer believe the Intermediary Letter 372 requirement that a single physician be recognized by the beneficiary as his or her personal physician through a period of hospitalization reflects current realities. Further, the existing attending physician regulation might operate at cross-purposes with managed care arrangements that often employ treatment teams.

The Intermediary Letter 372 requirements for continuity of care might be difficult for carriers to verify from reviews of medical records, might be interpreted in different ways by different carriers, and might be counterproductive and burdensome in the delivery of services to the patient. We believe the proposed policy would address potential sources of misunderstanding and abuse that have been longstanding Medicare program concerns. For example, Intermediary Letter 372 required the attending physician to personally examine the patient, review the history and record of test results, etc. From discussions with carrier medical directors, it is our understanding that some carriers considered the requirements to be met if the teaching physician first saw the patient 1 or 2 days after admission. In those situations, the carrier might pay for an admission history and physical performed by a resident on Saturday while the teaching physician did not actually see and examine the patient until Monday. Other carriers would maintain that, to pay for the admission history and physical as an attending physician, the teaching physician would have to see the patient on the day the service was performed.

We believe that the most important consideration should be the presence of the teaching physician during the key portion of the service or procedure being furnished by the resident, and that requiring both an attending physician relationship and the presence of that same physician during every billable service is no longer warranted. Thus, under our proposal, carriers would no longer pay for services such as admission evaluation and management services unless a teaching physician was present during the key portion of the service.

d. Carrier Payment for Services of Teaching Physicians—General

We proposed to eliminate the Intermediary Letter 372 attending physician criteria from the determination of whether payment should be made for the services of physicians in teaching settings. We recognize that the term "attending physician" is used in academic medicine to denote the responsible physician, and we believe that hospitals and GME programs should be free to designate any physician to be the attending physician of the patients in the teaching setting. We proposed to require the following conditions for services of teaching physicians (physicians who involve residents in the care of their patients) in both inpatient and outpatient settings to be payable under the physician fee schedule:

- A teaching physician (a physician other than a resident or fellow in an approved program) must be present for a key portion of the time during the performance of the service for which payment is sought.
- In the case of surgery or a dangerous or complex procedure, the teaching physician must be present during all critical portions of the procedure and must be immediately available to furnish services during the entire service or procedure. We specified that the teaching physician presence requirement is not met when the presence of a teaching physician is required in two places for concurrent major surgeries. The operative notes must indicate when the teaching physician presence in individual procedures began and ended. In the case of procedures, such as an endoscopy, in which a body area, rather than a representation, is viewed, we would not make payment if the teaching physician was not present during the viewing. A discussion of the findings with a resident would not be sufficient. The situation is contrasted with a diagnostic procedure, such as an x-ray, in which the physician would not be expected to be present during the performance of a test and could bill for an interpretation by reviewing the film with the resident (or by performing an independent interpretation).
- In the case of services such as evaluation and management services (for example, visits and consultations), for which there are several levels of service available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service if the service had been fully furnished by the teaching physician. In other words, if the medical decision-making in an individual service is highly complex to an inexperienced resident, but straightforward to the teaching physician, payment is made at the lower payment level reflecting the involvement of the teaching physician in the service. We intend to promote flexibility and leave the decision to the teaching physician as to whether the teaching physician should perform hands-on care, in addition to the care furnished by the resident in the presence of the teaching physician.

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However, in the case of both hospital inpatient and outpatient evaluation and management services, the teaching physician must be present during the key portion of the visit.

• The presence of the physician during the service or procedure must be documented in the medical records.

The proposal eliminated the Intermediary Letter 372 requirement that the attending physician personally examine the patient and left the decision to the teaching physician as to whether he or she should perform an examination in addition to the resident's examination based on medical and risk management considerations rather than Medicare payment rules. For example, a beneficiary might be admitted to the hospital on a Saturday and be examined by a resident in the presence of a teaching physician on duty at the time. On Monday, another teaching physician might be designated to be the attending physician in the case. Under the proposal to eliminate the Intermediary Letter 372 attending physician criteria, the services of both teaching physicians in this example would be payable (as long as distinct services are furnished).

Under our proposal, we clarified that services of teaching physicians that involve the supervision of residents in the care of individual patients are payable under the physician fee schedule only if the teaching physician is present during the key portion of the service. If a teaching physician is engaged in such activities as discussions of the patient's treatment with a resident but is not present during any portion of the session with the patient, we believe that the supervisory service furnished is a teaching service as distinguished from a physician service to an individual patient.

We believe that this clarification is consistent with existing policy. Part A Intermediary Letter No. 70–7/Part B Intermediary Letter No. 70–2, issued in January 1970, contained a series of questions and answers about the attending physician policy set forth in Intermediary Letter No. 372. Question 14 of that issuance addressed services furnished in emergency rooms and outpatient departments and states the following:

Q. Intermediary letter No. 372 states, "An emergency room supervising physician may not customarily be considered to be the attending physician of patients cared for by the house staff, etc." Is this also true in the hospital's outpatient department?

A. Yes, because an attending physician relationship is not normally established with anyone other than the treating physician in an outpatient department. If the Part B bills are submitted for services performed by a physician in either the emergency room or in any part of the outpatient department, the hospital records should clearly indicate either that: the supervising physician *personally* performed the service; or he functioned as the patient's attending physician and was present at the furnishing of the service for which payment is claimed.

At the same time we were concerned about the integrity of the Medicare payment process, we recognized that application of this policy to the reimbursement of teaching physicians in family practice residency programs raised special concerns about the viability of these programs. Family practice residency programs are different from other programs because training occurs primarily in an outpatient setting, known as a family practice center. In these centers, residents are assigned a panel of patients for whom they will provide care throughout their 3 years of training. While teaching physicians supervise this care and, indeed, are present during the actual furnishing of services in some circumstances (most notably with first year residents and for more complex patient cases), a general requirement that teaching physicians be physically present during all visits to the family practice center would undermine the development of this physician/patient relationship. This requirement also would be incompatible with the way family practice centers are organized and staffed and could require the hiring of additional teaching physicians when the faculty are already in short supply.

We stated in our July 26, 1995 proposed rule (60 FR 38410) that we would be willing to develop a special rule for paying teaching family physicians that takes into account the unique nature of these training programs while clarifying the appropriate level of involvement of the teaching physician in patient care in family practice centers. We invited comments on the structure and content of such a rule, or a legislative proposal, along with any supportive data. We also invited comments on whether and how such a rule might be applied to other primary care training programs.

e. Special Treatment—Psychintric Services

During the period in which we were developing the February 1989 proposed rule, we met with representatives of psychiatric GME programs who indicated that it was inappropriate for a physician other than the treating resident to be viewed by psychiatric patients as their physician. In psychiatric programs, the teaching physician may observe a resident's treatment of patients only through one-way mirrors or video equipment. We accepted this position and proposed that, with respect to psychiatric services (including evaluation and management services) furnished under an approved psychiatric GME program, the teaching physician would be considered to be "present" during each visit for which payment is sought as long as the teaching physician observes the visit through visual devices and meets with the patient after the visit.

f. Physician Services Furnished to Renal Dialysis Patients in Teaching Hospitals

Effective for services furnished on or after August 1, 1983, Medicare pays for physician services to end-stage renal disease patients on the basis of the physician monthly capitation payment method described in § 414.314. This payment method generally applies to renal-related physician services furnished to outpatient maintenance dialysis patients, regardless of where the services are furnished (that is, in an independent end-stage renal disease facility, a hospital-based end-stage renal disease facility, or in the patient's home). Physician services furnished to end-stage renal disease patients on or after August 7, 1990 may also be paid on the basis of the initial method as described in § 414.313. We would continue application of these physician payment methods to teaching hospitals with end-stage renal disease facilities. We would not impose any special medical record documentation requirements solely because the end-stage renal disease facility is based in a teaching hospital.

Physician fee schedule payments for covered physician services furnished to inpatients in a hospital by a physician who elects not to continue to receive payment on a monthly capitation basis through the period of the inpatient stay, or who is paid based on the initial method, would be determined according to the rules described in proposed § 415.170. Physicians would have to either personally furnish the services, or furnish the services as a teaching physician as described in proposed § 415.172.

g. Special Criteria for Anesthesia Services and Interpretation of Diagnostic Tests

Special criteria for anesthesia services involving residents appear in § 415.178. In the case of diagnostic radiology and other diagnostic tests, we make payment for the interpretation if the physician either personally performs the interpretation or reviews the resident's interpretation.

h. Services of Residents

We proposed to incorporate into the regulations longstanding Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services. These policies are in operating instructions and other issuances.

Generally, the services of residents in approved GME programs furnished in hospitals and hospital-based providers are payable through the direct GME payment methodology in § 413.86. For hospital cost reporting periods beginning on or after July 1, 1985, a teaching hospital is entitled to include residents working in the hospital and hospital-based providers in the full-time equivalency count used to compute direct GME payments. These payments are based on per-resident amounts reflecting GME costs incurred during a base period and updated by the Consumer Price Index. Further, effective July 1, 1987, under the conditions set forth in § 413.86(f)(1)(iii), a teaching hospital may elect to enter into a written agreement with another entity for the purpose of including the time spent by residents in furnishing patient care services in a setting outside the hospital in the hospital's full-time equivalency count of residents for GME purposes. The agreement must specify that the hospital compensate the resident for the services in the nonhospital setting. When an agreement is in effect, the teaching setting guidelines of proposed §§ 415.170 through 415.184 would apply to services in which physicians involve residents in the nonhospital setting. The services of residents in these settings are payable as hospital services rather than physician services. We stated that proposed § 415.200 would replace current § 405.522.

Current § 405.523 addressed payment for the services of residents who are not in approved programs. The section was applicable to the services of a physician employed by a hospital who is authorized to practice only in a hospital setting and to residents in an unapproved program. We proposed to replace this rule with new § 415.202. The proposed rule incorporated the policy currently in section 404.1.B of the Provider Reimbursement Manual (HCFA Pub. 15–1), which provides that only the costs of the residents' services are allowable as Part B costs, and that other costs, such as teaching costs, of an unapproved program are not allowable.

Current § 405.524 ("Interns' and residents' services outside the hospital") provided for reasonable cost payments for the services of residents in freestanding skilled nursing facilities and home health agencies. We proposed to rename this section to clarify that its scope is limited to these types of providers and to include it with only minor changes into a new § 415.204.

We proposed to establish a new § 415.206 to address payment issues relating to the services of residents in nonprovider settings, such as freestanding clinics that are not part of a hospital. Paragraph (a) addresses situations when a teaching hospital and another entity have entered into a written agreement under which the time the residents spend in patient care activities in these nonhospital settings is included in the hospital's full-time equivalency count used to compute direct GME payments. If an agreement is in force, the carrier would make payments for teaching physician and other physician services under the rules in §§ 415.170 through 415.190.

If a nonprovider entity, such as a freestanding family practice or multispecialty clinic, does not enter into this type of agreement for residency training with a teaching hospital, the payment mechanism in proposed § 415.206(b) would apply in the case of services furnished by certain residents. We modified the policy on Part B billings for services furnished by licensed residents in the late 1970's in an action designed to enhance the ability of primary care residency programs to finance their training activities outside the teaching hospital setting. We revised the Medicare Carriers Manual (HCFA Pub. 14–3) to cover residents' services furnished in a setting that is not part of a hospital as physician services if the resident was fully licensed to practice by the State in which the service was performed. This policy applies whether or not the residents are functioning within the scope of their approved GME program. Under these circumstances, the resident is functioning in the capacity of a physician, and the teaching physician guidelines do not apply.

Additionally, the services of residents practicing in freestanding federally qualified health centers and rural health clinics who meet the requirements of proposed § 415.206(b) would be eligible for payment under the payment methodology for federally qualified health centers. (We would make payments for residents' services in a hospital-based entity under the provisions of § 413.86 for direct GME payments.) We proposed to allow freestanding federally qualified health centers and rural health clinics to include the costs of a service performed by a resident meeting those requirements as an allowable cost on the entity's cost report. We proposed to amend § 405.2468(b)(1), which sets forth allowable costs for federally qualified health centers and rural health clinic services, to recognize these costs. Further, a resident is considered to be a physician as defined in revised § 405.2401(b) for the purpose of determining payments to the federally qualified health centers and rural health clinics. Consistent with the payment method for federally qualified health centers and rural health clinics, payments for services furnished by residents in federally qualified health centers and rural health clinics would be paid under § 405.2462 rather than under the physician fee schedule. In other words, services of the resident would be treated in exactly the same manner as services of other physicians who are not residents in the federally qualified health center or rural health clinic. We believe that recognizing the costs of these residents in federally qualified health centers and rural health clinic settings would create more uniformity in the way these costs are treated by the Medicare program.

We proposed to establish a new § 415.208 to address carrier payments for the services of "moonlighting" residents. Paragraph (a) defines these services as referring to services that licensed residents perform that are outside the scope of an approved GME program. Paragraph (b) reflects the policy set forth in section 2020.8.C. of the Medicare Carriers Manual under which carriers may pay under the physician fee schedule for the services of moonlighting residents in the outpatient department or emergency department of a hospital in which they have their training program if there is a contract between the resident and the hospital indicating that the following criteria are met:

• The services are identifiable physician services and meet the criteria in § 415.102(a) (formerly § 405.550(b)).

• The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the services are performed.

• The services can be separately identified from those services that are required as part of the approved GME program.

Paragraph (c) indicates that the moonlighting services of a resident furnished outside the scope of an approved GME program in a hospital or other setting that does not participate in

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the GME program are payable as physician services under the physician fee schedule.

i. Redesignation of Regulations on Teaching Hospitals, Teaching Physicians, and Physicians Who Practice in Providers

As a part of this rulemaking process, we proposed to redesignate the regulations currently set forth in §§ 405.465 and 405.466, 405.480 through 405.482, 405.522 through 405.524, 405.550, 405.551, 405.554, 405.556, and 405.580 into a new part 415, along with the new regulations proposed in this rule. The redesignation is part of our continuing effort to improve the overall organization of title 42 of the Code of Federal Regulations and, in this case, specifically, the organization of the regulations on teaching hospitals, teaching physicians, and physicians who practice in providers.

Except as indicated below, we proposed only technical changes to conform cross-references, and no substantive changes were included. We proposed to remove §§ 405.520 and 405.521 because the applicable rules for payment of services are obsolete. We also proposed to remove the chart for payment to interns and residents in § 405.525 as obsolete. In addition, we proposed to remove § 405.552 because the applicable payment rules for anesthesia services are set forth in § 414.46. The proposed deletion of § 405.552 was an error; we are redesignating this section as § 415.110.

We intended the redesignation to make these regulations easier to use. Following is a distribution table that indicates the new section numbers that will result from the redesignation or the removal of the section:

DISTRIBUTION TABLE

Old section	New section
405.465	415.162
405.466	415.164
405.480	415.55
405.481	415.60
405.482	415.70
405.520	Removed.
405.521	Removed.
405.522	415.200
405.523	415.202
405.524	415.204
405.525	Removed.
405.550	415.100, 415.102
405.551	415.105
405.552	415.110
405.554	415.120
405.556	415.130
405.580	415.190

Following is a derivation table that shows the origin of each section of the new material:

DERIVATION TABLE

New section	Old section
415.1	
415.50	
415.55	405.480
415.60	405.481
415.70	405.482
415.100, 415.102	405.550
415.105	405.551
415.110	405.552
415.120	405.554
415.130	405.556
415.150	
415.152	
415.160	
415.162	405.465
415.164	405.466
415.170	
415.172	
415.174	
415.176	
415.178	
415.180	
415.184	
415.190	405.580
415.200	405.522
415.202	405.523
415.204	405.524
415.206	
415.208	

4. Public Comments on the Teaching Physician Proposal in the Proposed Rule and Our Responses

We received several thousand comments on the teaching physician proposal in our July 26, 1995 proposed rule. Almost all of the comments came from medical schools, residency programs, and other entities that bill for physicians' services in teaching hospitals and GME programs. The comments and our responses to them follow.

Comment: Most commenters argued that the requirement of teaching physician presence during individual services was a significant departure from the current practice, and that a teaching setting would need a great deal of time to implement the requirement. They requested a delay in the effective date of any new policy. They believed that January 1 would be a particular problem since it falls in the middle of the cost reporting period for most teaching hospitals.

Response: We do not believe that the physical presence requirement is a significant departure from current practice. Instead, as we have indicated in the proposed rule and in this final rule, the proposed rule requiring physical presence clarifies current policy. Under the criteria in Intermediary Letter 372, Part B payment should be made only when a supervising physician either personally performed the service or functioned as the attending physician and was present while the service was furnished. It has always been our intent that, at a minimum, a teaching physician must be present during a service furnished by an intern or resident in order for the teaching physician to receive Part B payment.

We proposed to clarify our policy because it has not been enforced consistently across carriers. More specifically, we have learned that some teaching physicians are billing Medicare and receiving Part B payment for services even when the service is performed by an intern or resident outside the presence of the teaching physician and the teaching physician has minimal involvement, or no involvement, in the service. Under the physician fee schedule, payment amounts are intended to reflect the amount of resources required for a particular service, and we believe a teaching physician should not receive a resource-based fee schedule amount when the physician has expended little or no resources with respect to the service. It would be particularly inequitable to make a resource-based payment to some teaching physicians when other teaching physicians receive no payment because a carrier is properly applying the physical presence requirement in Intermediary Letter 372.

Thus, the proposed rule would clarify the physical presence requirement reflected in Intermediary Letter 372. At the same time, the proposed rule increases flexibility for billing. The criteria in Intermediary Letter 372 were premised in part on the notion that the same physician served as the attending physician throughout the entire inpatient stay; therefore, only that physician could bill Medicare Part B. Accordingly, under Intermediary Letter 372, if a patient receives a service from the attending physician soon after admission, and receives services from other physicians during the course of the inpatient stay, the other physicians cannot bill Medicare Part B for services furnished by a resident. The proposed rule deletes the requirement of a single attending physician, and allows more than one teaching physician to receive Medicare Part B payment with respect to a particular inpatient stay.

Although the physical presence requirement merely clarifies current policy, we are nevertheless willing to delay the effective date of the provisions of this final rule concerning teaching physicians until July 1, 1996 to give our contractors adequate time to educate all affected parties. This delay will apply to all provisions of the regulation concerning teaching physicians, including those that state the new policies relating to the elimination of the single attending physician requirement and the exception for residency programs in certain centers.

Comment: One commenter stated that section 948 of the Omnibus Reconciliation Act of 1980, as amended by section 2307 of the Deficit Reduction Act of 1984, requires only that—

> The physician renders sufficient personal and identifiable physicians' services to the patient and exercises full, personal control over the management of the portion of the case for which payment is sought.

The commenter believed that these legislative provisions contain no physician presence requirement and questioned our authority to change 25 years of policy without a Congressional mandate to do so.

Response: We believe that the physical presence requirement is entirely consistent with our statutory authority. Under section 1887 of the Act, we are authorized to establish criteria to distinguish between services furnished for an individual patient, which may be paid for by carriers as physician services, and services that are furnished for the general benefit to patients in a hospital, which are paid for by intermediaries.

In addition, we do not view the proposed policy as inconsistent with the statutory provision cited by the commenter. In the first place, we note that section 1842(b)(7) of the Act is largely premised on the use of charges as a basis for payment, and the charge-based system for physicians' services has been superseded by the enactment of the physician fee schedule. Nevertheless, the requirements stated in that section are not in conflict with the physical presence requirement. Section 1842(b)(7) provides that Part B payment may not be made for the services of teaching physicians unless, among other things, "The physician renders *sufficient personal and identifiable services to the patient* and exercises full personal control over the management of the portion of the case for which payment is sought." (Emphasis added.)

We believe we have ample authority under these provisions, as well as section 1848 of the Act, to determine the circumstances under which a teaching physician has performed a service for a patient, and thus has furnished a "physician's service" that warrants Part B payment under the physician fee schedule. Currently, despite the criteria in Intermediary Letter 372, many teaching physicians are billing Medicare and receiving Part B payment in situations when they have minimal, if any, involvement in the care of an individual patient. For example, the teaching physician may have medical and legal responsibility for the care a resident furnishes to a patient but may never actually see the patient after admission to the hospital. We believe it is inappropriate to make Part B payment in these cases, particularly because the amount of payment is resource-based.

Of course, it is often difficult, and quite time-consuming, to determine when a physician is "sufficiently involved" in a particular patient care service so that Part B payment is warranted. As indicated in the proposed rule (60 FR 38409), the amount of postpayment review necessary to verify the involvement of teaching physicians in the care of individual patients would be enormous, and the use of scarce carrier resources in that effort would be impractical. Therefore, consistent with our authority to establish standards for determining when a service is furnished *for a patient*, as a general matter we believe the most appropriate and feasible manner to determine when Part B payment may be made is to require that the teaching physician must be present for the service for which payment is sought. The physical presence requirement identifies situations when the teaching physician is sufficiently involved in the service, and at the same time it provides a standard that can be readily documented and verified.

Comment: One commenter argued that, under the proposed rule, teaching physicians would not be reimbursed in any manner under Medicare for certain teaching activities that were previously paid for under Part B. According to the commenter, Part A payment reflects base year costs that include only teaching physician costs related to the administration of the teaching program, and "Teaching physician time was not allocable to Part A if attributable to patient care, whether the service was personally performed by the physician, or furnished in the context of the attending physician relationship." The commenter argued that teaching activities related to services to individual patients could not be included in base year costs and thus would never be reimbursed under Part A. The commenter concluded that, under the physical presence requirement, teaching activities related to the care of individual patients would not be reimbursed under either Part A or Part B.

Response: We believe the policies reflected in this final rule fairly reimburse hospitals and physicians for the activities of teaching physicians. As we have indicated, currently many teaching physicians are billing Medicare and receiving Part B payment even when they have little or no involvement in a service furnished by an intern or resident. We believe it is not appropriate for teaching physicians to receive physician fee schedule payment in these situations as if the teaching physician had personally performed the service, particularly since fee schedule payments are intended to reflect the amount of resources expended by the physician. In order to address this problem, and to ensure that Part B payment is made only when the situation warrants, this final rule clarifies the physical presence requirement reflected in Intermediary Letter 372. We believe the requirement is reasonable and necessary because it ensures that Part B payment is made only when a teaching physician is sufficiently involved in the service and does so in a manner that can be readily documented.

We recognize that there may be some inherent tension between policies for carrier payments under Part B and policies for intermediary payments under Part A or Part B. If a service or activity is payable under Medicare, and it is not payable under Part B, then presumably the service or activity is encompassed in the Part A payment. Therefore, any "change" in (or clarification of) Part B policy may, at least arguably, implicate Part A policy. The commenter argued that, despite this relationship between Part A and Part B, under the proposed policies, some services might not be reimbursed at all under Medicare.

We believe that the commenter's arguments are misguided. We note initially that, as a general matter, payment for the costs of direct GME under Part A, like any system that uses base year costs, necessarily reflects conditions in the base year, and any number of conditions might change after the base year (these changes might benefit or hurt the hospital). However, the use of base years for purposes of making these Part A payments is required by statute. We do not believe we should necessarily perpetuate inappropriate payments under Part B simply because payments under Part A cannot be adjusted.

Moreover, and more significantly, we believe that the policies reflected in this final rule taken as a whole reasonably reconcile any tension that there might be between Part A payment policies and

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Part B payment policies. The commenter seemed to suggest that, in conducting the Part A base year audits, the agency excluded all costs associated with teaching activities that were related to patient care. This suggestion, however, is incorrect. Indeed, as the commenter acknowledged, time spent supervising residents in patient care was allocable to Part A under the audits if there was no attending physician relationship. Furthermore, although the commenter also asserted that 100 percent of a physician's time was allocable to Part B "in the absence of appropriate documentation," it follows that time spent supervising residents could have been allocated to Part A if the hospital or the physician provided appropriate documentation. Thus, contrary to the commenter's suggestion, teaching activities related to patient care were, or could have been, included in the Part A base year costs. We believe we should not perpetuate inappropriate Part B policies simply because hospitals and physicians failed to properly claim or document Part A costs in the base year.

The commenter also indicated that, under the proposed rule, certain teaching activities would not be reimbursed under Part B even though they were reimbursed under Part B previously (incorrectly or otherwise). This might relate to activities such as discussions about patient charts with a resident when the teaching physician was not present during the visit itself. The commenter stated that, in the proposed rule, we claimed incorrectly that lost Part B revenues could be collected through Part A. Contrary to the commenter's suggestion, we did not mean to suggest that services that were previously, but no longer, paid for under Part B would be paid for through increased payments under Part A. Rather, we meant to indicate that, at times in the past, improper payments may have been made.

We believe that our policies adequately reimburse hospitals and teaching physicians for the activities of teaching physicians. First, the services of the interns or residents themselves are payable under separate mechanisms. Thus, to the extent that services are provided by interns and residents who are largely unsupervised, Medicare pays for the direct costs of those services through GME payments. Second, consistent with the criteria in Intermediary Letter 372, the teaching physician may receive Part B payment as long as the physician is present for the service. Finally, we are providing further flexibility for billing in this final rule, so that services may now be paid for under Part B even though the same services could *not* previously be properly billed to Part B; specifically, under this final rule, more than one teaching physician may bill Part B with respect to a particular hospital inpatient stay, whereas under Intermediary Letter 372, only a single attending physician could properly bill Part B.

In short, hospitals and physicians will not, as alleged, be systematically underreimbursed under the policies reflected in this final rule. The Part A payment encompasses costs of supervising residents that were (or could have been) properly allocated and substantiated for the base year. Teaching physicians may continue to receive Part B payment under the physical presence requirement reflected in Intermediary Letter 372. And Part B payment may now be made under circumstances in which payment could not properly be made under Intermediary Letter 372.

Comment: Many commenters believed that we developed the teaching physician proposal because we had concluded that beneficiaries in teaching hospitals receive substandard care when the teaching physician is not present during the service or procedure.

Response: The policy was not intended to specifically address quality concerns. Rather, the policy addresses payment issues, in particular, identifying when it is appropriate to make Medicare Part B payment to teaching physicians who oversee the services of interns and residents.

It is important to distinguish between the services of interns and residents and the services of teaching physicians. Medicare fiscal intermediaries pay teaching hospitals for the services of interns and residents. Those services are described in sections 1861(b) and 1832(a) of the Act and are paid under the methodology established by section 1886(h) of the Act. Thus, the fiscal intermediaries are already paying teaching hospitals for services furnished to beneficiaries by residents. The graduate medical education costs payable through the section 1886(h) methodology also encompass any costs associated with the supervisory services of teaching physicians that were appropriately allocated during the base period for that methodology (fiscal year 1984).

Particularly in light of these other payments, we believe that, if we are to pay a fee to another physician who is medically responsible for the services the resident is furnishing to the beneficiary, it is entirely appropriate to require as a condition of payment that the supervising physician furnish a direct, personal physician service to the beneficiary. This is the basis for the payment of physician services under Medicare. If the resident has personally furnished the service to the beneficiary and the intermediary is paying the teaching hospital for Medicare's share of the services performed by the resident, we believe it is appropriate not to pay a full fee to a supervising physician who was not present when the service was furnished. Furthermore, the Medicare beneficiary is responsible for a 20 percent coinsurance amount for that physician's services as well as any deductible liability. We believe it is fully consistent with a resource-based fee schedule that the physician in whose name the service is billed furnishes a service to the beneficiary.

Comment: Many commenters stated that residency programs cannot afford to furnish services to Medicare beneficiaries without Medicare payment.

Response: Medicare fiscal intermediaries pay approximately $7 billion annually in direct and indirect medical expenses to teaching hospitals for the costs associated with approved GME programs.

Comment: Some commenters expressed concern about the term "key portion" in determining when the teaching physician should be present. They stated that it is often difficult to define the key portion of a service or procedure. Many commenters expressed their concern with the lack of a clear definition of what constitutes the key portion of every service or procedure. Many other commenters contended that the key portion of the teaching physician's services takes place during the teaching physician's discussions of the case with the resident before and after a visit or procedures. This argument was made by physicians in both medical and surgical specialties.

Response: We proposed the concept of the key portion of a service or procedure to provide flexibility and to avoid requiring the presence of the teaching physician for the duration of every service or procedure billed in his or her name. Many of the commenters expressed the view that the key portion—and the most meaningful portion—of the teaching physician's service to the beneficiary actually takes place in the absence of the beneficiary. We do not agree with this interpretation of key portion because it blurs the distinction between teaching oversight and actually furnishing an identifiable service to the beneficiary.

While we recognize the concern that it may be difficult to determine the key portion for a particular service, this concept is necessarily general because it is not feasible to define the key portion for each and every billable service. In order to provide guidance, we stated some general guidelines in the proposed rule. Thus, in the case of surgical, high-risk, or other complex procedures, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. In the case of surgery, the teaching physician's presence is not required during opening and closing of the surgical field. In the case of procedures performed through an endoscope, the teaching physician must be present during the entire viewing.

In the case of evaluation and management services, the teaching physician must be present during the portion of the service that determines the level of service billed. The factors to be considered are complexity of medical decision-making, extent of history obtained, and extent of examination performed. We believe that the teaching physician should have considerable discretion in determining the key portion of the service, and we do not anticipate that carriers will deny claims submitted based on this discretion, as long as the claims are documented and in accord with our guidelines. If the teaching physician believes that a key portion of an entire evaluation and management service cannot be identified, the teaching physician should be present for the entire service.

We plan to address this matter further in carrier manual instructions.

Comment: Some commenters objected to the requirement of the proposed rule that the teaching physician be present during the viewing portion of a procedure such as an endoscopy. The commenters believed that the presence of the physician should be determined by the teaching physician based on the competence of the resident.

Response: In those situations, we believe that the carrier should pay for the interpretation of the viewed area by the teaching physician rather than by the resident. As indicated earlier, the viewing by the resident is not payable as a physician service; this service by the resident is paid under direct GME.

Comment: The majority of the commenters identified themselves as representatives of family practice residency programs. The commenters made the following points:

- Many appreciated the preamble language of the proposed rule indicating our willingness to consider adopting special rules for family practice programs.
- Many claimed that hospitals and health care delivery systems would cease residency training for family practice programs if the proposal went into effect without an exception.
- In a family practice program, the resident is the primary care-giver, and the faculty physician sees the patient only in a consultative role.
- It is beneficial for family practice residents to see patients alone in order to learn medical decision-making and to recognize their own limitations.
- A resident cannot be educated in the art and practice of medicine without unsupervised patient contact; the proposed policy would interfere with the development of a resident's bedside manner.
- One family practice resident objected to the low levels of fee payments for his services under Medicare and Medicaid.
- The teaching physician presence requirement intrudes upon the relationship between the resident and the patient and, in the view of some, would cause Medicare beneficiaries to lose confidence in the competence of their resident physician.
- The requirement would necessitate the hiring of more teaching physicians and inhibit the ability to finance family practice programs through patient care billings.
- In many cases, the presence of the teaching physician is superfluous.
- The proposal does not adequately recognize the way medicine is practiced in this country.
- The family practice teaching physician is responsible for supervising four or more residents and medical students who are seeing patients simultaneously. Since the teaching physician must remain with the medical students during patient care visits, he or she does not have time to be involved in services furnished by the residents.
- The family practice preceptors are responsible for signing the medical records after the residents have dictated their entries which, in the view of some, guarantees mandatory supervision for each and every visit.
- Some residents are experienced physicians who have been in private practice for years and are in the residency program only to obtain board certification. The proposal does not adequately address those residents.
- If the proposed policy is implemented, family practice clinics will refuse to treat Medicare beneficiaries. Thus, the beneficiaries will be forced to go to medical assistance clinics.
- The proposal would put the resident in the position of being a clerk rather than a physician.
- Care furnished in family practice programs is more cost-effective than care furnished in established practices; therefore, total Medicare costs are lower when services are provided by these programs.
- The physician presence requirement would inhibit the ability of family practice clinics to compete with managed care programs in the community.

In addition, the American Academy of Family Practice proposed a specific limited exception to the physician presence requirement that we have adopted in large part as set forth below.

Response: As we have discussed, we believe the physical presence requirement is necessary and appropriate as a general rule to ensure that Part B payment is not made when a teaching physician does not furnish a service for a patient; we also believe that hospitals and teaching physicians generally can, as a practical matter, reasonably meet the presence requirement and that Part B payment will be made as appropriate for the services and activities of teaching physicians. At the same time, we believe that, if the nature of a residency program is fundamentally incompatible with a physical presence requirement, it may be appropriate to make Part B payment if the teaching physicians satisfy certain conditions that demonstrate that they are sufficiently involved in the care of individual patients to warrant Medicare Part B payment. As reflected in the proposed rule, we believe a requirement of physical presence would be inherently incompatible with the nature of family practice residency programs, and thus unfairly deny reimbursement for the activities of teaching physicians in these programs and endanger the financial viability of these programs. Because of these considerations, we proposed a limited exception for family practice residency programs.

In light of the comments, we have concluded that an exception should not be limited to family practice programs, but instead should apply to any program that satisfies certain specified criteria. The criteria are designed to capture those residency programs with requirements that are incompatible with a physical presence requirement. Thus, in this final rule, we have decided to establish an exception to the physician presence requirement for certain evaluation and management services furnished in certain centers within the context of certain types of residency

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training programs. The exception is set forth in a new § 415.174 of this final rule.

Under the exception, carriers may make physician fee schedule payment for reasonable and necessary low to mid-level evaluation and management services when furnished by a resident without the presence of a teaching physician if all of the following conditions are met:

• Services must be furnished in a center located in the outpatient department of a hospital or another ambulatory care entity in which the time spent by residents in patient care activities is included in determining intermediary payments to a hospital under § 413.86.

• Any resident furnishing the service without the presence of a teaching physician must have completed more than 6 months of an approved residency program. The center is responsible for furnishing this information to the carrier. The family practice groups recommended the 6-month requirement, and we believe it is an appropriate safeguard.

• The teaching physician may not supervise more than four residents at any given time and must direct the care from such proximity as to constitute immediate availability. The teaching physician must—

+ Have no other responsibilities at the time of the service for which payment is sought;

+ Assume management responsibility for those beneficiaries seen by the residents;

+ Ensure that the services furnished are appropriate;

+ Review with each resident during or immediately after each visit, the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies; and

+ Document the extent of his or her own participation in the review and direction of the services furnished to each beneficiary.

• The patients seen must be an identifiable group of individuals who consider the center to be the continuing source of their health care and in which services are furnished by residents under the medical direction of teaching physicians. The residents must generally follow the same group of patients throughout the course of their residency program. We are not requiring that the teaching physicians remain the same over any period of time.

• The range of services furnished by residents includes:

+ Acute care for undifferentiated problems or chronic care for ongoing conditions.

+ Coordination of care furnished by other physicians and providers.

+ Comprehensive care not limited by organ system, diagnosis, or gender.

We believe that the types of GME programs most likely to qualify for this exception include: family practice and some programs in general internal medicine, geriatrics, and pediatrics.

• The center must be located in a setting in which the resident's time is included in the full-time equivalency count used by the intermediary to make direct GME payments to a hospital for services of residents in that setting. In a freestanding setting in which residents are not counted for the purpose of making these payments, the services of licensed residents are already covered as physician services.

This exception to the teaching physician presence applies only to specific low- and mid-level evaluation and management codes for office or other outpatient visits for both new and established patients. The established patient codes to which the exception applies are CPT codes 99211, 99212, and 99213 (and their successor codes). New patient codes to which the exception applies are CPT codes 99201, 99202, and 99203 (and their successor codes). The teaching physician must be present for higher level evaluation and management codes and all invasive procedures.

In paragraph (b) of new § 415.174, we clarify that the exception may not be construed as providing a basis for the coverage of otherwise noncovered services under Medicare, such as routine physical checkups. Further, this special treatment for certain training situations does not apply to services involving medical school students. A service furnished by a medical school student is a noncovered service under Medicare even if the teaching physician is in the room. We will publish further instructions on the new policy in the Medicare Carriers Manual.

Comment: Some commenters who represent physician specialty organizations stated that they were opposed to any exception to the physician presence requirement if it was limited to a particular specialty. They believed that the same rules on physician presence should apply to all specialties. Some commenters indicated that special treatment for family practice programs "devalued" the importance of residency training in other programs. Many commenters argued that any special treatment given to family practice programs should apply to their programs as well. These include psychiatry, physical medicine, internal medicine, and obstetrics-gynecology. For example, several commenters believed that psychiatric residency programs should be given the same special treatment in the final rule as might be afforded to family practice programs. Some indicated that the costs of purchasing video equipment or one-way mirrors would be too great.

Response: The exception we are establishing at new § 415.174 is not limited to family practice programs; it applies to the indicated evaluation and management codes when furnished under the specified conditions. We are continuing to provide an additional, special exception for psychiatric programs in § 415.184 as originally proposed.

Comment: Some commenters indicated that their family practice clinics are not under the sponsorship of a hospital, and that their programs do not receive Medicare funds from a hospital for the time the resident is in the clinic.

Response: If the family practice clinic is freestanding (that is, not part of a hospital) and the residents are not included in any hospital's full-time equivalent count of residents, the services of licensed residents are payable under the physician fee schedule on the same basis as any other physician's services. This longstanding policy applies regardless of whether or not the resident's services are furnished within the scope of an approved GME training program.

Comment: Several commenters expressed concern that the same residents for whom we are requiring the presence of a teaching physician are not supervised by a teaching physician when they "moonlight" outside of their training programs.

Response: We recognize moonlighting situations and addressed the subject in the proposed rule. When licensed residents moonlight outside of their training program, Medicare pays for their services as physician services. Medicare does not pay a teaching hospital for these services through the direct GME payment mechanism or through the indirect medical education payment mechanism. In other words, in moonlighting situations, the Medicare program pays for the service only once.

Comment: One organization supported the proposed rule on "moonlighting residents" but sought clarification as to the impact of the proposal on inpatient services. Another commenter sought clarification of the policy when a licensed resident moonlights in another teaching hospital.

Response: The proposal reflects longstanding policy outlined in section 2020.8 of the Medicare Carriers Manual.

The policy does not encompass Medicare payment for moonlighting services furnished to inpatients in the hospital in which the resident has his or her program since we believe these services are virtually indistinguishable from the services the resident furnishes within the scope of the training program. However, when a licensed resident moonlights in another teaching hospital, the carrier must be furnished sufficient information to be sure that the moonlighting resident is not being included in the residency count (used to determine direct and indirect medical education payments) of either hospital for the period of time in question. Moreover, in this final rule, we are revising proposed § 415.202 ("Services of residents not in approved GME programs") (formerly § 405.523) to clarify that, when an intern or resident is in an approved GME program at one hospital and is concurrently furnishing moonlighting services in another hospital that lacks an approved GME program, the services in the second hospital may be reimbursed only pursuant to 42 CFR part 414 or section 2109 of the Provider Reimbursement Manual.

Comment: Some commenters suggested that we should discard the current proposal and implement the "philosophy" of teaching physician immediate availability rather than presence as proposed in the February 7, 1989 proposed rule.

Response: The exception that we have added to the policy we are adopting is consistent with the philosophy to which the commenters referred.

Comment: Some commenters stated that documentation of a teaching physician's presence during a procedure would add costs to an already burdensome, bureaucratic process.

Response: The policy we are adopting cannot be enforced without some documentation of the presence of the teaching physician during procedures and the personal involvement of the teaching physician in evaluation and management services.

Comment: A few physician specialty organizations supported the proposal. In addition, a few physicians stated that the physician presence requirements reflected their standard practice. Some commenters representing surgeons stated that, while they generally supported the physician presence proposal, they objected to the requirement that the surgeons have to indicate in their operative notes when their presence began and ended since the anesthesiologist and nurses already record this information. Many other commenters objected to any restriction in the involvement of teaching surgeons in concurrent cases. Some commenters believed that third or fourth year residents were capable of performing surgical procedures with the teaching physician in the operating suite rather than in the operating room.

Response: As we stated in the proposed rule, the notation in the nurse's notes is sufficient documentation of the teaching physician's presence during surgical procedures. There is no requirement that the teaching physician personally record the information if it duplicates information available elsewhere. If the teaching physician believes the third or fourth year resident is capable of performing surgical procedures without supervision, the teaching physician should not bill Part B for the surgical services furnished by the resident.

Comment: One commenter recommended that the teaching physician be able to indicate the following general statement on all records:

I have interviewed and examined the patient, and I agree with the history and physical findings as recorded by Dr. (Resident) in his/her note of (date).

The commenter believed that this would clarify that the physician participated in the care of the patient, but not require that he or she spend valuable time repeating all of the documentation already present in the record.

Response: This statement, by itself, would not be sufficient for Part B payment if the physician was not present during the service. If the physician was present, it is not necessary for the teaching physician to repeat all of the documentation entered into the medical records by the resident. The teaching physician may countersign the resident's entries and enter additional notes as necessary to indicate his or her involvement in the service. We will address these matters in more detail in manual instructions.

Comment: One commenter believed that we should pay teaching physicians under case management CPT codes 99361 through 99373 and care plan oversight codes (CPT codes 99375 and 99376). These services include care team conferences and telephone calls for consultation or medical management with other health care professionals. In addition, the commenter suggested that we undertake a demonstration project to test the feasibility and cost-effectiveness of these payments with the goal of implementing a budget-neutral policy for the payments. The same commenter also suggested a policy under which the teaching physician could bill Medicare for each visit if the physician were present to observe every third visit furnished by the resident to the patient.

Response: Medicare does not allow separate payment for the case management codes. We consider case management services to be included in the prework and postwork of the evaluation and management codes. The suggestion seems to be a way of removing the teaching physician further from the actual performance of the service, and we do not support this outcome.

Comment: Under current policy in § 414.46(c)(1)(iii), if a teaching anesthesiologist is involved in concurrent cases, the medical direction payment rules apply, and a reduced allowance is recognized for the physician service in each concurrent case. Commenters argued that this standard is inconsistent with the standard for teaching surgical services. They indicated their understanding that the teaching surgeon can be involved in concurrent procedures and receive a full allowance for each surgical procedure.

Response: We intend to apply the physician presence standard for both surgical and anesthesia teaching services and have revised § 415.178 ("Anesthesia services") accordingly. Under the policy we are adopting, while we require the teaching surgeon's presence during the critical portion of the service, we do not require the surgeon's presence during the opening and closing of the patient. However, during this period, the teaching surgeon may not be involved in surgical services for other patients since this would preclude his or her return to the original case. We believe that this policy is analogous to the teaching anesthesiologist policy under which, in order to receive an unreduced fee, the anesthesiologist must be present during all critical portions of the procedure and immediately available to furnish services during the entire procedure.

Comment: A carrier medical director commented that there should be a national standard on documentation of what the teaching physician actually does. The carrier medical director believed that physicians in nonteaching settings have to provide considerably more documentation than a counter-signature, and that the teaching physician should make a brief notation documenting his or her involvement in support of the level of evaluation and management code billed.

Response: We plan to address this matter in billing instructions to implement the new policy.

Final decision: We are going forward with the policy we proposed but have

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included an exception to the teaching physician presence requirement for certain evaluation and management services furnished in certain centers within the context of certain types of residency training programs. The new exception is found in § 415.174 ("Exception: Evaluation and management services furnished in certain centers"). The effective date of the regulations concerning teaching physicians will be July 1, 1996.

F. Unspecified Physical and Occupational Therapy Services (HCFA Common Procedure Coding System Codes M0005 Through M0008 and H5300)

We proposed to eliminate HCFA Common Procedure Coding System (HCPCS) codes M0005 through M0008 and H5300 and to redistribute the RVUs to the codes in the physical medicine section of the CPT (CPT codes 97010 through 97799). This policy change requires a single way of reporting and paying for a service for which there are now two ways to report. We proposed no change regarding what services may be covered, only as to how covered services would be billed and paid.

Comment: All the comments we received expressed agreement with our proposal to eliminate the HCPCS codes M0005 through M0008 and H5300. The commenters stated that these services can be accurately reported using the new and revised physical medicine and rehabilitation codes in the CPT. They considered the decision to delete these codes to be appropriate and long overdue. The commenters cited the opportunity for unnecessary duplications of service codes and the misuse or overuse of the "M" codes in billing by physical therapists to support eliminating the HCPCS codes.

However, some commenters were concerned that carriers might be reluctant to follow billing rules under the CPT for occupational and physical therapists in the same manner as is accepted for physicians. One commenter had encountered problems in the past with carrier refusals to accept the range of codes allowed under the scope of practice, to allow payment for both physical therapy and occupational therapy services required by the same patient, or to reimburse for more than one code per visit. Another commenter questioned whether occupational therapists in independent practice could report the full range of codes or if some codes were appropriate only to physical therapists in independent practice. The commenter also observed that some procedures can be considered either a physical therapy service or an occupational therapy service based solely on the specialty of the provider performing the service. Because of the coding flexibility, a beneficiary who has met his or her outpatient limit for physical therapy can continue to receive some of the same services under the occupational therapy outpatient limit if the service is furnished by an occupational therapist and vice versa.

Response: Physical therapy and occupational therapy services required by the same patient are permitted, as is payment for more than one code per visit, subject to statutory requirements and limitations. That is, the provider of a service must be qualified within the State's scope of practice to furnish the service. According to § 410.60 ("Outpatient physical therapy services: Conditions."), the services must be furnished under a written plan of treatment established by the physician or therapist caring for the patient. The services also must be medically necessary and reasonable for the diagnosis or treatment of an illness or injury, as mandated by section 1862(a) of the Act. Occupational and physical therapy services furnished to the same patient on the same day would necessitate two separate treatment plans, two separate physician orders, and both must be medically necessary.

The current Medicare coding limitations apply when both physical therapists and occupational therapists furnish services to the same patient. Specifically, we do not allow separate payment for CPT code 97250 (Myofascial release/soft tissue mobilization, one or more regions) for the same patient, on the same date of service as CPT codes 97265 (Joint mobilization), 97260 (Manipulation (cervical, thoracic, lumbosacral, sacroiliac, hand, wrist) (separate procedure)), or 97261 (each additional area) because these services overlap. Because of the duplication of services represented by the codes for manual manipulation (CPT codes 97260 and 97261), soft tissue mobilization (CPT code 97250), joint mobilization (CPT code 97265), or osteopathic manipulation (CPT codes 98925 through 98929), we do not permit separate payment if any of these codes are reported for the same patient, on the same date of service. Aside from these limitations, there is nothing that precludes the payment for both physical therapy and occupational therapy services for the same patient on the same date of service.

The full range of CPT codes 97010 through 97799 may be reported by occupational therapists in independent practice as well as by physical therapists in independent practice if the service is within the scope of practice. We have no national payment policy that prevents occupational therapists in independent practice from billing and being paid for any CPT code that describes a service they furnish that may be covered. We do not allow payment for evaluation and management services billed by physical therapists in independent practice and occupational therapists in independent practice because the work RVUs for these services include work that they are not trained to perform (for example, evaluation for and prescription of drug therapy and evaluation for and prescription of surgical or other therapy). Otherwise, occupational therapists in independent practice may bill using any CPT code the carrier determines describes the covered services, not just the codes in the physical medicine section of the CPT.

It follows, therefore, that the same procedure code may be used to bill for an occupational therapy service or a physical therapy service. The covered outpatient limit applies to both specialties individually.

Comment: We were requested to clarify whether carriers allow payment for therapists' bills submitted under the physician fee schedule in the same manner as physicians' bills for similar services.

Response: Section 1848(j)(3) of the Act defines physicians' services to include outpatient physical therapy and occupational therapy for physician fee schedule payment and, therefore, bills of physical therapists and occupational therapists in independent practice are treated in the same manner as bills of a physician for covered services.

Comment: We received one comment asking if RVUs will be established for CPT codes 97545 and 97546, which are currently carrier priced.

Response: We reviewed the RUC recommendations and decided to defer assigning RVUs for these codes until there is a better definition of the services. It is unclear whether the time specified in the codes (CPT 97545, work hardening/conditioning, initial 2 hours and CPT code 97546, each additional hour) describes the time of the patient or the practitioner. It is our belief that it is possible for physical therapists in independent practice to do work hardening for four patients simultaneously, rotating from patient to patient located within the same room. Moreover, we believe that there is more work (that is, higher intensity and one-on-one attention) in the first 2 or more hours of service, not the initial 2 hours of care in a given day, as these codes are defined. We believe that the intensity and amount of work drops off quickly in the process and that it would be impossible to value the services correctly under its current definition.

Comment: As noted in the proposed rule, the Health Care Professional Advisory Committee will be considering the creation of evaluation and management codes for physical therapists in independent practice and occupational therapists in independent practice. One commenter expressed hope that these codes would be developed by 1997.

Response: We anticipate these codes will be developed for use in 1997.

Final Decision: We will eliminate HCPCS codes M0005 through M0008 and H5300 and redistribute the RVUs across CPT codes 97010 through 97799. This policy change is not explicitly addressed in our regulations.

G. Transportation in Connection with Furnishing Diagnostic Tests

The general physician fee schedule policy regarding additional payments for travel expenses is that travel is included in the practice expense RVUs for a service. However, we have not specifically applied that policy to the transportation of equipment used to perform diagnostic tests. In the absence of specific instructions from us, separate payment for the transportation of diagnostic equipment has been at the Medicare carriers' discretion. We proposed to standardize payment for transportation of diagnostic equipment by applying the general physician fee schedule policy regarding payment for travel expenses to transportation services except in some cases of transporting portable x-ray and EKG equipment.

The exceptions are based on longstanding specific instructions. In the case of x-ray services furnished by approved suppliers, section 1861(s)(3) of the Act establishes the coverage of diagnostic x-rays furnished in a place of residence used as the patient's home. Although the Congress did not explicitly so state, we determined that, because there were increased costs associated with transporting the x-ray equipment to the beneficiary, the Congress intended for us to pay an additional amount for the transportation service. Thus, we established codes for use in billing for a transportation component of these services. Nothing in our proposal affects the payment of a transportation component in connection with the x-ray procedures furnished by approved portable x-ray suppliers listed in section 2070.4.C of the Medicare Carriers Manual.

We later added the taking of an EKG tracing to the list of services approved suppliers of portable x-ray services may furnish (section 2070.4.F of the Medicare Carriers Manual) and established HCPCS code R0076 to pay for the transportation of EKG equipment. Under our proposal, we would continue to pay for the transportation of EKG equipment by approved suppliers of portable x-ray equipment although we did clarify that the policy applied only to standard EKG procedures described by CPT code 93005 (or CPT code 93000 if the interpretation is billed with the tracing).

Many Medicare carriers have limited the use of HCPCS code R0076 to approved portable x-ray suppliers, but some Medicare carriers permit other types of entities, such as independent physiological laboratories to use the code. Section 2070.1.G of the Medicare Carriers Manual provides for the coverage of an EKG tracing by an independent laboratory in the following situations:

- In a home if the beneficiary is a homebound patient.
- In an institution used as a place of residence if the patient is confined to the facility and the facility does not have on-duty personnel qualified to perform the service.

Under our proposal, we would remove the requirement that the beneficiary be confined to his or her home or to an institution for the EKG tracing to be a covered service since this requirement does not apply to EKG tracings taken by portable x-ray suppliers.

For all other types of diagnostic tests payable under the physician fee schedule, Medicare carriers would pay for the transportation of equipment only on a "by report" basis under CPT code 99082 if a physician submits documentation to justify the "very unusual" travel set forth in section 15026 of the Medicare Carriers Manual.

Comment: One commenter, representing a mobile independent physiological laboratory, indicated that the laboratory currently furnished several types of diagnostic procedures to patients in various settings without any separate payment for transportation. The commenter appreciated the fact that, under the proposal, the laboratory would now receive a transportation payment for CPT code 93005 (a 12-lead EKG) and suggested that the exceptions to the transportation payment proposal be extended to include CPT code 93225 (holter monitoring) and HCPCS code G0005 (patient activated event recording procedures). The commenter suggested that HCPCS code R0076 be revised to specifically include the transportation of holter monitoring and patient activated event recorder equipment to patients upon physician order.

Response: We were not seeking to expand the list of services independent physiological laboratories may furnish for which carriers will make separate transportation payments. Since the law does not provide for coverage of any diagnostic tests payable under the physician fee schedule furnished to beneficiaries in their place of residence other than x-ray services furnished under conditions we have approved, we will not provide for transportation payments in connection with other diagnostic tests furnished by independent physiological laboratories.

Under our proposal, Medicare carriers would make transportation payments under HCPCS code R0076 in connection with standard EKG procedures (CPT code 93005) furnished by an independent physiological laboratory when the coverage conditions of section 2070.5 of the Medicare Carriers Manual are met. We made this exception to the general policy on transportation of diagnostic equipment because of the longstanding nature of the Medicare Carriers Manual policy on furnishing EKGs to patients in their residences or in nursing homes by "independent" laboratories. We have some concerns about making this exception because it is our understanding that some Medicare carriers are not currently making such payments. However, we anticipate that this additional cost will be offset, to some degree, nationally by the discontinuation of transportation payments to independent physiological laboratories for other types of diagnostic tests that Medicare carriers may currently allow. In addition, we are modifying our proposal in that we are maintaining section 2070.1.G of the Medicare Carriers Manual regarding the homebound status of the beneficiary receiving the service.

Comment: A carrier medical director questioned why the proposal did not address whether the diagnostic procedure itself was payable when furnished by an independent physiological laboratory in settings such as a nursing home and whether we were suggesting that such procedures should not be done in nursing homes. The commenter noted that it would be useful for us to establish a list of "physiological" tests that can be furnished by an independent physiological laboratory.

Response: Our proposal does not address the coverage for procedures

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furnished by independent physiological laboratories. In the absence of a national policy on the payment for the services, the coverage for independent physiological laboratory services remains within the authority of the carrier and must be consistent with any applicable State or local laws.

Comment: A national organization of suppliers of portable x-ray services commented that portable x-ray suppliers should be the only entities paid under the physician fee schedule who may bill for transportation of diagnostic equipment under HCPCS codes R0070, R0075, and R0076.

Response: Under the policy we are adopting, approved suppliers of portable x-ray services are the only entities who may bill HCPCS codes R0070 and R0075 under the physician fee schedule. Portable x-ray suppliers and independent physiological laboratories may bill HCPCS code R0076 for the transportation of EKG equipment used to furnish standard EKGs (CPT codes 93000 and 93005).

Comment: A national organization whose membership includes primary care physicians opposed the proposal because it would adversely affect the availability of portable diagnostic equipment for small hospitals and for patients in home care and skilled nursing facilities. The commenter noted that it was not in the best interest of patient care to force patients to travel to medical facilities outside their communities to receive the testing and that Medicare carriers should ensure that transportation payments do not exceed transportation costs.

Response: We believe there is no problem with respect to the transportation of diagnostic equipment to small hospitals. The hospital must purchase the service "under arrangements" if the service is provided to its patients. When a hospital purchases services "under arrangement," it assumes responsibility for the service furnished, and Medicare intermediary payment is made for this service through one of several payment mechanisms applicable to payment for hospital services.

Comment: Several commenters indicated that home and facility bound patients would benefit from expended coverage of portable ultrasound services. One commenter indicated that these services offer the patient a top quality examination while eliminating the trauma and expense of an ambulance ride and emergency room stay. The commenter requested a mobile ultrasound transport code and a mobile ultrasound set-up code.

Response: Our proposal does not affect the furnishing of these procedures in homes or facilities; it merely affects any additional payment for the transportation of the diagnostic equipment. We can find no basis in the statute to support separate payments for the transportation of the equipment used to furnish these services.

Comment: A national physicians' organization recommended we establish a list of diagnostic services for which transportation payment will be made. It suggested the list include transportation of diagnostic equipment used to perform the following:

- Frozen section diagnosis in hospitals and other facilities in which surgery is provided.
- Therapeutic apheresis furnished to patients in sites where the equipment is not available.

Response: The frozen section diagnostic equipment should be purchased "under arrangement" by the hospital and is payable through Medicare intermediary payment mechanisms. Therapeutic apheresis services are outside the scope of this proposal, which only relates to diagnostic tests.

Comment: We received several comments requesting the following:

- The definition of an independent physiological laboratory be extended to include diagnostic and screening mammograms furnished by certified facilities.
- Transportation payments be made to mobile facilities providing mammography services.
- Diagnostic and screening mammography services be added to the list of covered portable x-ray services.

Response: As indicated in an earlier response, the coverage of services furnished by independent physiological laboratories is beyond the scope of this proposal. Furthermore, the Congress has placed the authority for setting standards for entities furnishing both diagnostic and screening mammograms with the Food and Drug Administration. If an independent physiological laboratory were to receive certification from the Food and Drug Administration, it may furnish these services to Medicare beneficiaries.

Under the policy we are adopting, the only service furnished by an independent physiological laboratory for which a separate transportation payment may be made is a standard EKG.

Under our proposal, we were not planning to make any changes in the services an approved supplier of portable x-ray services may furnish; however, the commenter has made a good point about mammography services. Under the changes made to section 1861(s)(3) of the Act by section 145(b) of the Social Security Act Amendments of 1994, Public Law 103-432, enacted on October 31, 1994, we believe that the Congress has added diagnostic mammography as part of the portable x-ray benefit. We will issue instructions to Medicare carriers regarding payments (including transportation payments) for mammograms furnished by approved portable x-ray suppliers.

Final Decision: We are adopting the proposal to preclude separate payment for the transportation of diagnostic equipment except under the following circumstances:

- Transportation services billed under HCPCS codes R0070, R0075, or R0076 in connection with services furnished by approved suppliers of portable x-ray services as set forth in section 2070.4 of the Medicare Carriers Manual.
- Transportation services billed by an independent physiological laboratory under HCPCS code R0076 in connection with the provision of the CPT codes 93000 or 93005 (a 12-lead EKG with interpretation and report or a 12-lead EKG, tracing only, without interpretation and report, respectively) furnished under the conditions set forth in section 2070.1.G. of the Medicare Carriers Manual.
- Transportation services billed on a "by report" basis under CPT code 99082 (unusual travel) if a physician submits documentation to justify "very unusual" travel as set forth in section 15026 of the Medicare Carriers Manual.

Payment for expenses associated with the transportation of diagnostic equipment under conditions that do not meet any of the above criteria is included in the practice expense RVUs assigned to the service or procedure and is not separately payable. In addition, we plan to develop a proposal related to the transportation of EKG equipment furnished by any supplier as part of next year's physician fee schedule regulation.

H. Maxillofacial Prosthetic Services

We proposed to eliminate the carrier-priced status and establish RVUs for maxillofacial prosthetic services effective for services performed on or after January 1, 1996. We proposed RVUs for CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021.

The work RVUs that we proposed were developed by the American Academy of Maxillofacial Prosthetics. We believe they appropriately represent the work involved in these procedures.

Because the CPT codes were introduced in 1991 and the HCPCS codes in 1995, we have little or no charge data on which to base practice expense and malpractice expense RVUs in accordance with section 1848(c)(2)(C) of the Act. Therefore, we imputed the practice expense and malpractice expense RVUs from the work RVUs based on the practice cost shares provided by the American Association of Oral and Maxillofacial Surgeons. Those shares are 54.7 percent for practice expense and 4.4 percent for malpractice expense.

Comment: We received numerous comments in response to the RVUs assigned to maxillofacial prosthetic services. Although there was some support for eliminating the carrier-priced status of these services and at least one commenter expressed appreciation of the work RVUs, the commenters were unanimous in objecting to our use of the American Association of Oral and Maxillofacial Surgeons' practice cost shares. These commenters stated that the practice and malpractice expenses for the sub-specialty of maxillofacial prosthetics differ substantially from those of maxillofacial surgery, primarily due to increased laboratory, supply, and maxillofacial material costs. The commenters believed that the RVUs imputed for practice expense are too low and should be between 65 and 70 percent to accurately reflect the practice expenses incurred by the prosthodontist. According to the commenters, the RVUs we proposed for malpractice expense are too high and should be in the range of 1 percent to 3.5 percent of the total RVUs.

Because maxillofacial prosthodontic practice expenses include laboratory charges (including precious metals and impression materials) that are rarely seen in oral and maxillofacial surgery and include significantly higher practice expenses, the commenters requested that we revise the RVUs for maxillofacial prosthetic procedures to account for the higher practice cost shares.

Response: In the absence of charge data, we use the best available data to impute practice expense and malpractice expense RVUs. Maxillofacial surgery represented the specialty for which we had available data that used comparable survey methods. We note, also, that we are currently working on a resource-based practice expense study and, as part of this effort, hope to have more definitive data in the future. At that time, we will reevaluate all maxillofacial practice expense RVUs.

Final Decision: We are recommending no additional modifications to the RVUs for maxillofacial codes at this time. The proposed RVUs for CPT codes 21079 through 21087 are accepted as final. HCPCS code G0020 has been replaced by new CPT code 21076, and G0021 has been replaced by new CPT code 21077. Because these new CPT codes describe the same services as the HCPCS codes, the assigned RVUs will not change. Therefore, the proposed relative values for G0020 and G0021 are accepted as final but are assigned to CPT codes 21076 and 21077, respectively. G0020 and G0021 are deleted effective January 1, 1996. All RVUs for oral maxillofacial prosthetic services are published in Addendum B.

I. Coverage of Mammography Services

Based on recommendations from the Food and Drug Administration, the National Cancer Institute, and a carrier medical directors' workgroup, we proposed to revise the definitions of "diagnostic" and "screening" mammography in § 410.34 to make them consistent with previous Medicare coverage policy regarding "diagnostic" mammography and with the way these terms are used in general clinical practice in the United States. Specifically, we proposed to expand the definition of "diagnostic" mammography in § 410.34(a)(1) to include as candidates for this service asymptomatic men or women who have a personal history of biopsy-proven breast disease. However, we proposed to retain the substance of the present definition of "screening" mammography in § 410.34(a)(2) so that patients with a personal history of breast disease can be considered candidates for the "screening" examination, if the woman's attending physician determines that this is appropriate.

Comment: One commenter indicated that, because of the overlap in the definitions for "screening" and "diagnostic" mammograms, the proposal would lead to allowing almost every mammogram furnished to a Medicare beneficiary to be covered as a diagnostic mammogram, thereby increasing Medicare costs for mammograms.

Response: We do not believe the revised definitions will significantly increase the total number of diagnostic mammography services furnished. Information from the Medicare carriers indicates that most asymptomatic patients with a personal history of biopsy-proven breast disease are already receiving diagnostic mammograms rather than screening mammograms. This final rule is consistent with general clinical practice in the United States and falls within the parameters of Medicare statutory coverage for diagnostic and screening mammograms.

Comment: Two commenters recommended that we clarify the term "a personal history of biopsy-proven breast disease." One commenter assumed that both benign (for example, fibroadenomas) and malignant neoplasms would fall in that category. The other commenter suggested that we make a distinction between "a personal history of breast cancer" and "a personal history of biopsy-proven breast disease."

Response: We agree that this point needs to be clarified. The intent of the proposal was to include both benign and malignant neoplasms within the meaning of the term "a personal history of biopsy-proven breast disease." Breast diseases, including both benign and malignant neoplasms, that require a biopsy and subsequently demonstrate a pathologic process, establish a history of biopsy-proven breast disease. In the final rule, we are clarifying this by revising the term "a personal history of biopsy-proven breast disease" to read "a personal history of breast cancer or a personal history of biopsy-proven benign breast disease."

Comment: One commenter expressed the opinion that the term "fibrocystic disease" referred to in the preamble of the proposed rule should be more appropriately referenced as "fibrocystic changes."

Response: The terms "fibrocystic disease" and "fibrocystic changes" are often used synonymously. We agree that, in our discussion of this subject in the preamble to the proposed rule, the preferred term is "fibrocystic changes."

Comment: One commenter suggested that the proposal should be revised to include, as candidates for diagnostic mammography, women who have a family history of breast disease (within one generation).

Response: While there is a growing consensus among clinicians and mammography experts that family history is an important etiologic factor that places women at high risk of developing breast cancer, and thus eligible for screening mammography at frequent intervals, the data are not sufficiently definitive at present to consider these women to be candidates for diagnostic mammography.

Comment: One commenter suggested that we discuss whether women who have tested positive for any of the recently identified breast cancer genes, such as BRCA1, should be considered to have a personal history of breast cancer

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within the meaning of this term in the regulations.

Response: As we stated in the final rule concerning Medicare coverage of screening mammography that was published in the Federal Register on September 30, 1994 (59 FR 49826), the term "a personal history of breast cancer" in § 410.34(b)(4) of the regulations was intended to mean that there is documented evidence in the women's medical record that she has tested positive for breast cancer. While the development of screening tests in this area is promising, we do not believe that the inclusion of these tests as specific criteria for coverage of screening mammograms is warranted at this time. However, as new information becomes available, we will reconsider this issue.

Final Decision: We are adopting our proposal to revise the definitions of the terms diagnostic and screening mammography in § 410.34. As requested by several commenters, we are clarifying the final regulations text by revising the term "a personal history of biopsy-proven breast disease" to read "a personal history of breast cancer or a personal history of biopsy-proven benign breast disease."

III. Anesthesia Issues

A. Modifier Units for Anesthesia Services

In the January 26, 1989 proposed rule (54 FR 3794) and the August 7, 1990 final rule implementing the uniform relative value guide for physician anesthesia services, we stated our national policy that Medicare carriers cannot recognize payments for anesthesia modifiers. Anesthesia modifiers represent additional units charged by physicians because of the patient's advanced age, poor physical health status, or unusual circumstances including the performance of anesthesia under emergency circumstances or anesthesia complicated by the use of controlled hypotension.

For the 3 years preceding the physician fee schedule, Medicare carriers had uniformly implemented the policy of not allowing modifier units in determining payment for physician anesthesia services.

The physician fee schedule legislation required us to use the uniform relative value guide to the extent feasible and to make any necessary adjustments to the anesthesia CF. In the November 1991 final rule (56 FR 59504) to implement the physician fee schedule, we stated that we were continuing to use the uniform relative value guide to determine payment for physician anesthesia services under the physician fee schedule. Since it was the established uniform practice for Medicare carriers not to recognize modifier units, we believed it was sufficient to write the regulations to explain only those elements that the Medicare carrier would recognize in calculating anesthesia payments, namely anesthesia base and time units. Thus, in the final rule to implement the physician fee schedule, we did not include specific regulatory language prohibiting anesthesia modifier units.

Some administrative law judges have interpreted the absence of language expressly prohibiting the use of modifier units under the physician fee schedule to mean that modifier units can be allowed. This is clearly an incorrect interpretation of our regulations, and we have chosen to clarify this matter by including a specific reference in the regulations stating that modifier units are not allowed. We have revised § 414.46 to reflect this policy. Because this clarification of the regulations is an interpretive change, the law does not require prior notice and comment. However, we will accept comments on this change in the regulations.

B. Issue for Change in Calendar Year 1996—Two Anesthesia Providers Involved in One Procedure

As a result of the revised payment methodology for the anesthesia care team established by section 13516 of OBRA 1993, we proposed to apply the medical direction payment policy to the single procedure involving both the physician and the certified registered nurse anesthetist. Thus, in § 414.46 we proposed to revise paragraphs (c) and (d) to state that, in this situation, the payment allowance for the medical direction service of the physician and the medically directed service of the certified registered nurse anesthetist or the anesthesiologist assistant is based on the specified percentage of the payment allowance in § 414.46(d)(3). In addition, we proposed that in 1996 and later years, this payment allowance is equal to 50 percent of the allowance for personally performed procedures.

We proposed to implement this policy on January 1, 1996. At that time, the change in policy will be done in a budget-neutral manner.

Comment: Commenters referred to those complicated anesthesia cases when it may be medically necessary for two anesthesia care providers to be involved. The anesthesia providers could be an anesthesiologist and a certified registered nurse anesthetist or two anesthesiologists. They asked whether we would permit full payment for each of these providers or subject these providers to the new proposal in which case each provider would receive only 50 percent of the allowance recognized for the anesthesia case personally performed by a single anesthesiologist.

Response: We are not changing the current policy under which the Medicare carriers can, on the basis of medical necessity, recognize full payment for the services of each of two anesthesia providers if both providers are needed in a single anesthesia case. Thus, the Medicare carriers can continue, based on medical necessity, to allow full payment for the service furnished by each anesthesia provider in a single case.

Comment: A commenter offered an alternative proposal that would achieve budget neutrality but allow implementation beginning in 1996. Under the commenter's proposal, which would take effect in 1996, the payment allowance for both the certified registered nurse anesthetist and the anesthesiologist involved in the single case would be 50 percent of the allowance recognized for the single anesthesiologist.

Response: The law recognizes that an anesthesia service is either personally performed by a physician (or nonmedically directed certified registered nurse anesthetist) or the case is medically directed. We have implemented the medical direction policy as applying only to two, three, or four concurrent procedures. Therefore, we deemed the case involving both the anesthesiologist and the certified registered nurse anesthetist to be personally performed by the physician. In the July 26, 1995 proposed rule, we proposed to modify the definition of medical direction to include a single procedure in addition to concurrent procedures. The statutory provisions governing medical direction provide that, in 1996, the payment allowance for both the certified registered nurse anesthetist and the physician are equal to 55 percent of the single anesthesiologist payment allowance. Thus, there is no direct authority in the law to recognize a payment allowance that is 50 percent of the single anesthesiologist payment allowance for both the certified registered nurse anesthetist and the physician.

Final Decision: We will apply the medical direction payment policy to the single procedure involving both the physician and the certified registered nurse anesthetist. We will implement this policy on January 1, 1996. At that time, the change in policy will be done in a budget-neutral manner.

IV. Refinement of Relative Value Units for Calendar Year 1996 and Responses to Public Comments on Interim Relative Value Units for 1995

A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units

Section IV.B. of this final rule describes the methodology used to review the comments received on the relative value units (RVUs) for physician work and the process used to establish RVUs for new and revised CPT codes. (The CPT, which is published annually by the American Medical Association, is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians.) Changes to codes on the physician fee schedule reflected in Addendum B are effective for services furnished beginning January 1, 1996.

B. Process for Establishing Work Relative Value Units for the 1996 Fee Schedule

Our December 8, 1994 final rule on the 1995 physician fee schedule (59 FR 63410) announced the final RVUs for Medicare payment for existing procedure codes under the physician fee schedule and interim RVUs for new and revised codes. The RVUs contained in the rule apply to physician services furnished beginning January 1, 1995. We announced that we would accept comments on interim RVUs for new or revised codes. We announced that we considered the RVUs for the remaining codes to be subject to public comment under the 5-year refinement process. In this section, we summarize the refinements to the interim work RVUs that have occurred since publication of the December 1994 final rule and our establishment of the work RVUs for new and revised codes for the 1996 fee schedule.

1. Work Relative Value Unit Refinements of Interim and Related Relative Value Units

a. Methodology (Includes Table 1—Work Relative Value Unit Refinements of Interim and Related Relative Value Units).

Although the RVUs in the December 1994 final rule were used to calculate 1995 payment amounts, we considered the RVUs for the new or revised codes to be interim. We accepted comments for a period of 60 days. We received approximately 100 substantive comments from 24 specialty societies on approximately 83 CPT codes with interim RVUs.

Only comments received on codes listed in Addendum C of the December 1994 final rule were considered this year. We will consider comments we received on other codes under the 5-year refinement process. We convened a multispecialty panel of physicians to assist us in the review of the comments with certain exceptions. The comments that we did not submit to panel review are discussed at the end of this section. The panel was moderated by our medical staff and consisted of the following groups:

- A clinician representing each of the specialties most identified with the procedures in question. Each specialist on the panel was nominated by the specialty society that submitted the comments. Eleven specialty societies, including primary care, were represented on the panel.
- Primary care clinicians nominated by the American Academy of Family Physicians, the American Society of Internal Medicine, the American College of Physicians, and the American Academy of Pediatrics.
- Carrier medical directors.

After eliminating the codes with final RVUs and certain codes that are discussed at the end of this section, we submitted comments on 18 codes for evaluation by the panel. The panel discussed the work involved in each procedure under review in comparison to the work associated with other services on the fee schedule. We had assembled a set of reference services and asked specialty societies to compare clinical aspects of the work of services they believed were incorrectly valued to one or more of the reference services. In compiling the set, we attempted to include: (1) Services that are commonly performed whose work RVUs are not controversial; (2) services that span the entire spectrum from the easiest to the most difficult; and (3) at least three services performed by each of the major specialties so that each specialty would be represented. The set listed approximately 120 services. Panelists were encouraged to make comparisons to reference services.

The intent of the panel process was to capture each participant's independent judgment based on the discussion and his or her clinical experience. Following each discussion, each participant rated the work for the procedure. Ratings were individual and confidential, and there was no attempt to achieve consensus among the panel members.

We then analyzed the ratings based on a presumption that the final rule RVUs were correct. To overcome this presumption, the inaccuracy of the interim RVUs had to be apparent to the broad range of physicians participating in each panel.

Ratings of work were analyzed for consistency among the groups represented on each panel. In general terms, we used statistical tests to determine whether there was enough agreement among the groups of the panel and whether the agreed-upon RVUs were significantly different from the interim RVUs published in Addendum C of the December 1994 final rule. We did not modify the RVUs unless there was clear indication for a change. If there was agreement across groups for change, but the groups did not agree on what the new RVUs should be, we eliminated the outlier group and looked for agreement among the two remaining groups as the basis for new RVUs. We used the same methodology in analyzing the ratings that we used in the refinement process for the 1993 fee schedule. The statistical tests were described in detail in the November 25, 1992 final notice (57 FR 55938).

Our decision to convene multispecialty panels of physicians and to apply the statistical tests described above was based on our need to balance the interests of those who commented on the work RVUs against the redistributive effects that would occur in other specialties, particularly the potential adverse effect on primary care services. Of the 18 codes reviewed by our multispecialty panel, all of the requests were for increased values.

We also received comments on RVUs that were interim for 1995 but which we did not submit to the panel for review for a variety of reasons. These comments and our decisions on those comments are discussed in further detail in section VI.B.1.c. of this final rule. Of the 44 interim work RVUs that were reviewed, approximately 41 percent were increased, and approximately 59 percent were not changed.

Table 1—Work Relative Value Unit Refinements of Interim Relative Value Units

Table 1 lists the interim and related codes reviewed during the 1995 refinement process described in this section. This table includes the following information:

- *CPT code.* This is the CPT code for a service.
- *Modifier.* A "26" in this column indicates that the RVUs are for the professional component of the code.
- *Description.* This is an abbreviated version of the narrative description of the code.

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• *1995 work RVUs.* The work RVUs that appeared in the December 1994 rule are shown for each reviewed code.

• *Requested work RVUs.* This column identifies the work RVUs requested by commenters. We received more than one comment on some codes, and, in a few of these cases, the commenters requested different RVUs. The table lists the highest requested RVUs. For some codes, we received recommendations for an increase or decrease but no specific RVU recommendations.

• *1996 work RVUs.* This column contains the final RVUs for physician work.

• *Basis for decision.* This column indicates whether:

—The recommendations of the refinement panel were the basis upon which we determined that the interim work RVUs published in the December 1994 final rule should be retained (indicator 1);

—A new value emerged from our analysis of the refinement panel ratings (indicator 2); or

—A new or retained value emerged from some other source (indicator 3). Codes with an indicator of 3 are discussed following Table 1, in section VI.B.1.c.

—New or retained values emerged through a combination of the panel ratings and code descriptor interpretation (indicator 4). Codes with an indicator of 4 are discussed following Table 1, in section VI.B.1.b.

TABLE 1.—WORK RVU REFINEMENTS OF INTERIM AND RELATED RVUS

CPT*	Mod	Description	1995 work RVU	Requested work RVU	1996 work RVU	Basis for decision
11977		Removal/reinsert contra cap	2.52	3.30	3.30	3
19367		Breast reconstruction	24.73	28.50	24.73	3
20955		Microvascular fibula graft	37.58	43.00	37.58	3
25337		Reconstruct ulna/radioulna	9.10	9.50	9.50	3
25830		Fusion radioulnar jnt/ulna	9.10	9.50	9.50	3
26560		Repair hand deformity	15.81	17.71	17.71	3
29445		Apply rigid leg cast	1.78	0.57	1.78	3
31276		Sinus surgical endoscopy	7.42	8.85	8.85	3
37209		Exchange arterial catheter	1.48	3.66	2.27	2
41822		Excision of gum lesion	2.26	4.20	2.26	1
41823		Excision of gum lesion	3.15	4.60	3.15	1
41828		Excision of gum lesion	1.26	4.44	3.04	2
41830		Removal of gum tissue	1.12	5.00	3.30	2
43842		Gastroplasty for obesity	13.76	17.47	13.76	3
43843		Gastroplasty for obesity	13.76	17.47	13.76	3
43846		Gastric bypass for obesity	17.84	20.87	17.84	3
43847		Gastric bypass for obesity	19.87	23.24	19.87	3
43848		Revision gastroplasty	22.10	24.75	22.10	3
52647		Laser surgery of prostate	7.42	11.51	9.84	2
52648		Laser surgery of prostate	8.65	11.51	10.69	2
59856		Abortion	4.75	5.80	5.80	3
64820		Remove sympathetic nerves	9.10	10.00	10.00	3
76093	26	Magnetic image, breast	1.83	1.94	1.63	1
76094	26	Magnetic image, both breasts	1.83	1.94	1.63	1
76936	26	Echo guide for artery repair	1.31	2.64	1.99	2
90849		Special family therapy	0.59	0.78	0.58	3
90918		ESRD related services, month	9.77	13.27	11.18	4
90919		ESRD related services, month	7.13	9.13	8.54	4
90920		ESRD related services, month	5.86	8.64	7.27	4
90921		ESRD related services, month	3.06	5.06	4.47	4
92587	26	Evoked auditory test	0.13	1.40	0.13	3
92588	26	Evoked auditory test	0.36	1.70	0.36	3
93350	26	Echo exam of heart	0.78	Increase	0.78	3
93990	26	Doppler flow testing	0.25	1.18	0.25	1
95812	26	Electroencephalogram (EEG)	1.06	1.75	1.08	4
95813	26	Electroencephalogram (EEG)	1.73	2.50	1.73	4
96913		Photochemotherapy, UV–A or B	0.00	Increase	0.00	3
97124		Massage therapy	0.35	Decrease	0.35	3
97265		Joint mobilization	0.45	Decrease	0.45	3
99354		Prolonged service, office	1.51	2.33	1.51	3
99355		Prolonged service, office	1.51	1.20	1.51	3
99356		Prolonged service, inpatient	1.44	3.00	1.44	3
99357		Prolonged service, inpatient	1.44	1.50	1.44	3
99375		Care plan oversight/30–60	1.06	2.65	1.73	2

b. Discussion of codes reviewed by the panel for which clarification of the description of the service is required.

For several of the codes reviewed by the refinement panel, it was necessary to reach agreement on the meaning of the codes before individual ratings of work could be provided. In the following paragraphs, we summarize the

* All CPT codes and descriptors copyright 1995 American Medical Association.

panel's understanding of the nature and extent of the services included in the codes for which extensive discussion was required.

End-stage renal disease services, per full month (CPT codes 90918 through 90921).

Before rating the work of CPT codes 90918 through 90921, the refinement panel discussed the definition of the monthly capitation payment and the list of services included in and excluded from the monthly capitation payment that was developed by the Renal Physicians Association and presented to the RUC and the refinement panel. The refinement panel also reviewed HCFA regulations regarding the monthly capitation payment and agreed to rate the work of the codes based on the following definition and list of services included in and excluded from the monthly capitation payment.

The monthly capitation payment for maintenance dialysis is defined as a comprehensive monthly payment that covers all physician services associated with the continuing medical management of a maintenance dialysis patient.

The following physician services are included in the monthly capitation payment:

• Assessment and determination of the need for outpatient chronic dialysis therapy.

• Assessment of the need for a specified diet and the need for nutritional supplementation for the control of chronic renal failure. Specification of the quantity of total protein, high biologic protein, sodium, potassium, and amount of fluids to be allowed during a given time period. For diabetic patients with chronic renal failure, the prescription usually includes specification of the number of calories in the diet.

• Assessment of which mode(s) of chronic dialysis (types of hemodialysis or peritoneal dialysis) are suitable for a given patient and recommendation of the type(s) of therapy for a given patient.

• Assessment and determination of which type of dialysis access is best suited for a given patient and arrangement for creation of dialysis access.

• Assessment of whether the patient meets preliminary criteria as a renal transplant candidate and presentation of this assessment to the patient and family.

• Prescription of the parameters of intradialytic management. For chronic hemodialysis therapies, this includes the type of dialysis access, the type and amount of anticoagulant to be employed, blood flow rates, dialysate flow rate, ultrafiltration rate, dialysate temperature, type of dialysate (acetate versus bicarbonate) and composition of the electrolytes in the dialysate, size of hemodialyzer (surface area) and composition of the dialyzer membrane (conventional versus high flux), duration and frequency of treatments, the type and frequency of measuring indices of clearance, and intradialytic medications to be administered. For chronic peritoneal dialysis therapies, this includes the type of peritoneal dialysis, the volume of dialysate, concentration of dextrose in the dialysate electrolyte composition of the dialysate, duration of each exchange, and addition of medication to the dialysate, such as heparin, and the type and frequency of measuring indices of clearance. For diabetics, the quantity of insulin to be added to each exchange is prescribed.

• Assessment of whether the patient has significant renal failure-related anemia, determination of the etiology(ies) for the anemia based on diagnostic tests, and prescription of therapy for correction of the anemia, such as vitamins, oral or parenteral iron, and hormonal therapy such as erythropoietin.

• Assessment of whether the patient has hyperparathyroidism and/or renal osteodystrophy secondary to chronic renal failure and prescription of appropriate therapy, such as calcium and phosphate binders for control of hyperphosphatemia. Based upon assessment of parahormone levels, serum calcium levels, and evaluation for the presence of metabolic bone disease, the physician determines whether oral or parenteral therapy with vitamin D or its analogs is indicated, and prescribes the appropriate therapy. Based upon assessment and diagnosis of aluminum bone disease, the physician may prescribe specific chelation therapy with deferoxamine and the use of hemoperfusion for removal of aluminum and the chelator.

• Assessment of whether the patient has dialysis-related arthropathy or neuropathy and adjustment of the patient's prescription accordingly. Referral of the patient for any additional needed specialist evaluation and management of these end-organ problems.

• Assessment of whether the patient has fluid overload resulting from renal failure and establishment of an estimated "ideal (dry) weight." The physician determines the need for fluid removal independent of the dialysis prescription and implements these measures when indicated.

• Determination of the need for and prescription of anti-hypertensive medications and their timing relative to dialysis when the patient is hypertensive in spite of correction of fluid overload.

• Periodic review of the dialysis records to ascertain whether the patient is receiving the prescribed amount of dialysis and ordering of indices of clearance, such as urea kinetics, in order to ascertain whether the dialysis prescription is producing adequate dialysis. If the indices of clearance suggest that the prescription requires alteration, the physician orders changes in the hemodialysis prescription, such as blood flow rate, dialyzer surface area, dialysis frequency, and/or dialysis duration (length of treatment). For peritoneal dialysis patients, the physician may order changes in the volume of dialysate, dextrose concentration of the dialysate, and duration of the exchanges.

• Periodic visits to the patient during dialysis to ascertain whether the dialysis is working well and whether the patient is tolerating the procedure well (physiologically and psychologically). During these visits, the physician determines whether alteration in any aspect of a given patient's prescription is indicated, such as changes in the estimate of the patient's dry weight. Review of the treatment with the nurse or technician performing the therapy is also included. The frequency of these visits will vary depending upon the patient's medical status, complicating conditions, and other determinants.

• Performance of periodic physical assessments, based upon the patient's clinical stability, in order to determine the necessity for alterations in various aspects of the patient's prescription. Similarly, the physician reviews the results of periodic laboratory testing in order to determine the need for alterations in the patient's prescription, such as changes in the amount and timing of phosphate binders or dose of erythropoietin.

• Periodic assessment of the adequacy and function of the patient's dialysis access.

• Assessment of patients on peritoneal dialysis for evidence of peritonitis and the ordering of appropriate tests and antibiotic therapy.

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• Periodic review and update of the patient's short-term and long-term care plans with staff.

• Coordination and direction of the care of patients by other professional staff, such as dieticians and social workers.

• Certification of the need for items and services such as durable medical equipment and home health care services. Care plan oversight services described by CPT code 99375 also are included in the monthly capitation payment and may not be separately reported.

The following physician services are excluded from the monthly capitation payment:

• Surgical services such as—
—Temporary hemodialysis catheter placement.
—Permanent hemodialysis catheter placement.
—Temporary peritoneal dialysis catheter placement.
—Permanent peritoneal dialysis catheter placement.
—Repair of existing dialysis accesses.
—Placement of catheter(s) for thrombolytic therapy.
—Thrombolytic therapy (systemic, regional, or access catheter only; hemodialysis or peritoneal dialysis).
—Thrombectomy of clotted cannula.
—Arthrocentesis.
—Bone marrow aspiration.
—Bone marrow biopsy.

• Interpretation of tests that have a professional component such as:
—Electrocardiograms (12 lead, Holter monitor, stress tests, etc.).
—Echocardiograms.
—24-hour blood pressure monitor.
—Nerve conduction velocity and electromyography studies.
—Flow doppler studies.
—Bone densitometry studies.
—Biopsies.
—Spirometry and complete pulmonary function tests.

• Complete evaluation for renal transplantation. While the physician assessment of whether the patient meets preliminary criteria as a renal transplant candidate is included under the monthly capitation payment, the complete evaluation for renal transplantation is excluded from the monthly capitation payment.

• Evaluation of potential living transplant donors.

• The training of patients to perform home hemodialysis, self hemodialysis, and the various forms of self peritoneal dialysis.

• Non-renal related physician's services. These services may be furnished by the physician providing renal care or by another physician. They may not be incidental to services furnished during a dialysis session or office visit necessitated by the renal condition. For example, the medical management of diabetes mellitus that is not related to the dialysis or furnished during a dialysis session is excluded.

• Covered physician services furnished to hospital inpatients, including services related to inpatient dialysis, by a physician who elects not to continue to receive the monthly capitation payment during the period of inpatient stay. In these cases, the physician receives a prorated portion of the monthly capitation payment for that month.

• All physician services that antedate the initiation of outpatient dialysis.

While the refinement panel agreed to rate the work of the monthly capitation payment codes based on the above definitions, it was unable to reach consensus on whether the interpretation of all tests that have a professional component should be included in or excluded from the monthly capitation payment. Because the American Medical Association Specialty Society Relative Value Update Committee (RUC) recommendations were based on the Renal Physicians Association's definition, which excludes test interpretations from the monthly capitation payment, it was decided to rate the physician work based on an assumption that the physician work associated with test interpretations was excluded from the monthly capitation payment and included in other codes that would be reported separately. It was also agreed that the Renal Physicians Association and HCFA would examine current utilization data and that HCFA would consider bundling the work of test interpretations into the monthly capitation payment. This would lead to adding additional RVUs to the RVUs that emerged from the panel ratings. The RVUs that emerged from the statistical tests of the refinement panel were 4.45.

Subsequent to the refinement panel, we analyzed utilization data on test interpretations provided to end-stage renal disease patients by monthly capitation payment physicians. In general, most physicians who are paid under the monthly capitation payment method do not separately bill for test interpretations. Based on our analysis, we have bundled the work RVUs of the test interpretations listed below into the monthly capitation payment:

• Bone mineral density studies (CPT codes 76070, 76075, 78350, and 78351).

• Non-invasive vascular diagnostic studies of hemodialysis access (CPT codes 93925, 93926, 93930, 93931, and 93990).

• Nerve conduction studies (CPT codes 95900, 95903, 95904, 95925, 95926, 95927, 95934, 95935, and 95936).

• Electromyography studies (CPT codes 95860, 95861, 95863, 95864, 95867, 95868, 95869, and 95872).

In performing our analysis, we took into account the fact that the coding for the four categories of services listed above has changed in the past 2 years. Thus, while we used all of the most current utilization data, the specific codes listed may be new, revised or deleted from CPT 1996. When the physician receiving the monthly capitation payment payment performs the services listed above, we will not make separate payment. However, these and other medically necessary services that are included or bundled into the monthly capitation payment are separately payable when furnished by physicians other than the monthly capitation payment physician.

The bundling of these services leads to the addition of 0.02 RVUs to the refinement panel rating of 4.45 RVUs to result in the assignment of 4.47 RVUs. Medically necessary services that are included or bundled into the monthly capitation payment are separately payable when furnished by physicians other than the monthly capitation payment physician.

We next increased the RVUs of the pediatric monthly capitation payment CPT codes (90918 through 90920) to maintain the relationship of adult to pediatric services that we established in last year's final rule. This led to the assignment of 11.18 RVUs to CPT code 90918, 8.54 RVUs to CPT code 90919, and 7.27 RVUs to CPT code 90920.

Electroencephalogram Codes

Before rating the work of CPT codes 95812 and 95813 (electroencephalogram (EEG) extended monitoring), the panel discussed extensively the work involved in EEG monitoring compared to other EEG and electrodiagnostic services on the fee schedule. Subsequent to the panel meeting, the American Academy of Neurology provided us with the following written definitions and clinical vignettes to clarify the types of services that should be coded using nine

common EEG diagnostic codes by comparing and contrasting them. The panel members discussed these definitions of the EEG services before they rated the work of extended EEG monitoring.

Extended EEG; up to one hour (CPT code 95812).

EEG recording is conducted for 45 to 60 minutes. Hyperventilation, photic stimulation and/or oral sedation may be used. The physician reviews in detail the entire 45-to-60 minute record (270 to 360 pages of standard EEG paper).

The following is a vignette for CPT code 95812: A 35-year-old woman experiences episodic loss of consciousness. Differential diagnosis includes syncope and several types of seizure disorder. The EEG is extended because the EEG technologist detected no epileptic abnormalities during the first 20 to 30 minutes of recording, and the physician had requested a longer recording if needed to find abnormalities. Bursts of epileptic abnormalities are finally detected at 55 minutes into the recording. This helps make the diagnosis of a seizure disorder. The type of epileptic abnormalities seen on the EEG guides the diagnosis and choice of medications.

Extended EEG; greater than one hour (CPT code 95813).

EEG recording is conducted continuously for more than 1 hour. Hyperventilation, photic stimulation and/or oral sedation may be used. The recording is continued until the events sought are obtained, if possible. Typical recording time is 2 to 3 hours. The physician reviews the entire recording in detail (typically equal to 360 to 1,000-plus pages of standard EEG paper). The entire continuous EEG recording is also interpreted for additional diagnostic information.

The following is a vignette for CPT code 95813: A 55-year-old woman is comatose in the intensive care unit with multiple medical problems and is having repeated episodes of movements possibly representing epileptic seizures. Continuous EEG recording is performed for 3 hours, including recording during two of her episodes. Four additional subclinical ictal events were also detected on the EEG beyond the two events noted by the nurses. Events are determined to be epileptic seizures, and a treatment plan is developed accordingly.

Awake EEG (CPT code 95816).

The test is conducted with the patient awake. The patient often becomes drowsy or may briefly fall asleep, but the test is not run deliberately to obtain sleep. Hyperventilation and/or photic stimulation are usually obtained. The minimum recording time is 20 minutes. The typical recording time is 20 to 25 minutes. The physician reads in detail the entire 20-to-25 minute record (120 to 150 pages of standard EEG paper).

The following is a vignette for CPT code 95816: A 60-year-old man complains of memory and other cognitive impairment. Differential diagnosis includes dementia and depression. EEG seeks objective evidence of organic impairment supporting a diagnosis of a dementia.

EEG awake and asleep (CPT code 95819).

Sleep is deliberately sought during the EEG record to identify specific epileptic abnormalities. The patient may be sleep-deprived before the recording or given sedative medication to induce sleep. The recording continues until at least 5 minutes of Stage 2 sleep is obtained. During the awake portion of the recording, hyperventilation and/or photic stimulation are usually obtained. The minimum recording time is 20 minutes. The typical recording time is 30 to 35 minutes. The physician reads in detail the entire 30-to-35 minute record (180 to 210 pages of standard EEG paper).

The following is a vignette for CPT code 95819: A 25-year-old woman experiences recent onset of lapses of consciousness. The differential diagnosis includes syncope and several types of seizure disorders. A test is conducted to look for evidence of a seizure disorder and to help specify which type of seizure disorder.

EEG; sleep only (CPT code 95822).

The EEG is conducted with the patient asleep, stuporous, or comatose. Little or no awake EEG is recorded. Hyperventilation and photic stimulation are generally not performed. Stuporous or comatose patients may be stimulated by the technologist to attempt to induce state changes. The minimum recording time is 20 minutes. The typical recording time is 20 to 30 minutes. The physician reads in detail the entire 20 to 30 minute record (120 to 180 pages of standard EEG paper).

The following is a vignette for CPT code 95822: A 45-year-old man is comatose after a head injury. An EEG is performed to assess the depth of the coma, assist in assessing prognosis, and evaluate for epileptic discharges or focal cerebral abnormality.

EEG; all night sleep only (CPT code 95827).

Prolonged EEG recording is performed by leaving equipment at the hospital bedside. The recording may or may not be continuous. If not continuous, the recording is done periodically as needed. The minimum time the EEG is at the bedside is 8 hours. The physician scans the hours-long records, reading in detail selected or specific portions. The minimum amount of the EEG actually reviewed in detail is 20 minutes of recording (120 pages of standard EEG paper). The typical amount reviewed in detail is 30 to 40 minutes.

The following is a vignette for CPT code 95827: A 3-year-old boy is comatose from near-drowning. The patient is in a therapeutic barbiturate coma. The EEG is used to titrate the amount of barbiturate to keep the EEG in burst-suppression. Incidental observations are made of any epileptic discharges or focal features. The EEG is kept at the intensive care unit bedside for 3 days. Each day, 50 to 90 minutes of EEG are printed, of which 20 to 30 minutes (120 to 180 pages of standard EEG paper) are reviewed in detail, and other pages are scanned for relevant events.

Electrocorticography (CPT code 95829).

The EEG is recorded in the operating room from electrodes applied directly to the surgically exposed cerebral cortex. Many separate recording sites are used. While it is being recorded in the operating room, the EEG is interpreted by the EEG physician, who is present in the operating room for 60 minutes or more. The EEG physician uses the EEG features for determining the extent of surgical resection of the cerebral cortex. During this 60 minutes, 30 to 60 minutes of EEG recording (minimum 20 minutes) are made from various cortical recording sites.

The following is a vignette for CPT code 95829: A 25-year-old man, disabled by medically refractory epileptic seizures, undergoes a craniotomy to resect a portion of his temporal lobe. The EEG physician interprets the record in the operating room. Electrocorticography is used to define the extent of epileptic spiking and slowing, and the resection is tailored to include regions of electrically identified pathology. Follow-up recording is made to check for any remaining epileptic spiking after resection.

Ambulatory EEG monitoring (CPT code 95950).

The EEG is recorded onto a long-term storage medium such as magnetic disc

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or tape, using a small portable recorder. The patient is free to take this home, returning to the laboratory one or several days later. The recording is continuous for 24 hours per day. The patient, family, and friends write notes about clinical events. The recorded EEG is scanned to find these or other events of clinical interest. Around the time of each clinical event of interest, 5 to 10 minutes of the EEG is reviewed in detail. The EEG is also surveyed for other EEG findings of clinical importance.

The following is a vignette for CPT code 95950: A 12-year-old boy has episodes of staring or daydreaming, possibly representing nonconvulsive seizures. Previous routine EEG recording was normal. Ambulatory EEG is conducted to search for signs of epileptic abnormality. During 2 days of ambulatory monitoring, 6 clinical daydreaming events are noted by the family. These demonstrate petit mal seizures, as do 10 additional events not noted by the family but found on EEG review. A treatment plan is developed accordingly.

Video EEG long-term monitoring (CPT code 95951).

This daily procedure is used when video and EEG are continuously recorded for several days. Continuous videotaping of the patient's behavior is made simultaneously with the EEG. Monitoring is usually conducted in a specialized inpatient epilepsy evaluation and monitoring unit, with the patient's antiepileptic medications reduced or withdrawn to induce epileptic seizures. The physician reviews the EEG and videotapes recorded before, during, and after each captured epileptic seizure. Typically, several seizures may occur each day. In some patients, no seizures may occur for several days, whereas other patients may have more than a dozen seizures per day. Randomly selected recorded segments are also chosen for review and comparison to look for subclinical seizures and isolated epileptic EEG discharges. Monitoring generally is continued until at least 5 seizures are captured to characterize and to localize the abnormality. The exact number of seizures needed varies with the specific clinical circumstances and the nature of EEG findings.

The following is vignette number one for CPT code 95951: A 25-year-old man has become totally disabled as a result of frequent medically refractory epileptic seizures. Long-term video EEG monitoring for 4 days captures 6 seizures and localizes the ictal onset sufficiently to refer the patient for surgical excision of the epileptic area. Localization for surgical excision is based primarily on this EEG localization. After eventual surgical excision, the patient becomes seizure-free, stops medication, and is no longer disabled.

The following is vignette number two for CPT code 95951: A 9-year-old boy has frequent seizures not controlled by medication, during some of which he abruptly falls to the ground. Because of the falls, he has lacerated his scalp on several occasions, requiring trips to the emergency room for x-rays, sutures, and antibiotic treatment. His physicians are considering corpus callosum section, but some of the clinical data suggest that the seizures may be originating from a more localized area of one frontal lobe. Forty seizures are recorded in 2 days, some of which appear to originate from this region. Analysis of the recordings indicates, however, that the majority do not, and he undergoes callosal section. Following callosal section, he no longer has "falling seizures" and no longer needs to wear a helmet for protection. He does continue to have focal seizures of one arm.

We have finalized the interim RVUs for the EEG CPT codes; we have not changed any of the interim RVUs for these codes. However, we have clarified the descriptors for the CPT codes for the services. We have assigned 1.08 RVUs to CPT code 95812, 1.73 RVUs to CPT code 95813, 1.08 RVUs to CPT code 95816, 1.08 RVUs to CPT code 95819, 1.08 RVUs to CPT code 95822, 1.08 RVUs to CPT code 95827, 6.21 RVUs to CPT code 95829, 1.51 RVUs to CPT code 95950, and 3.80 RVUs to CPT code 95951.

c. Discussion of codes not reviewed by the panel.

Codes listed in Table 1 with a basis of decision of "3" fall into several categories. For most of these codes, we received comments that were not considered by the multispecialty refinement panel for a variety of reasons. Those codes and our rationale for the final work RVUs we have established for the codes are discussed below.

Removal with reinsertion, Implantable contraceptive capsules (CPT code 11977).

Comment: A commenter stated that we erred in rejecting the RUC recommendation of 3.30 RVUs for CPT code 11977. The commenter recommended that "Removal with reinsertion" should be assigned the full value of both CPT code 11975 (Insertion, implantable contraceptive capsules) and CPT code 11976 (Removal, implantable contraceptive capsules). Typically, the new capsules are inserted at a different site than the one from which the old capsules were removed, thus requiring a second incision and closure. In addition, the amount of preservice and postservice work associated with reinsertion is similar to the preservice and postservice work for the original insertion. The physician must ascertain that the patient has not undergone changes in health status or experienced side effects that would make her an unsuitable candidate for this contraceptive method and must instruct her about follow-up care and potential complications.

Response: We agree with the comment and have assigned 3.30 RVUs to CPT code 11977, as recommended.

Breast reconstruction with a TRAM flap (CPT code 19367).

Comment: A commenter recommended that the RVUs of CPT code 19367 be increased from 24.73 to a minimum 28.50 RVUs. The commenter stated that breast reconstruction is similar to facial fracture surgeries and that in comparison to CPT code 21159 (Le Forte III), with 40.99 RVUs, a TRAM flap reconstruction is a much larger procedure.

Response: We disagree with this comment that we believe may have been based on a misunderstanding of CPT code 21159. This code is used to report reconstruction of the midface. It is not used to report the repair of facial fractures. When compared to the RVUs of codes for the open repair of a facial fracture, for example, CPT code 21432, which is assigned 8.05 RVUs, the RVUs of the breast reconstruction code are much higher. The 24.73 interim RVUs, which were based on a RUC recommendation, will be made final.

Microvascular fibula graft (CPT code 20955).

Comment: A commenter recommended 43.00 RVUs for this procedure, which was described as a very delicate, labor-intensive procedure particularly for mandible reconstruction, multiple osteotomies, and plate and wire fixation. The commenter stated that the work and postoperative care can be compared to twice that of a breast reconstruction with a TRAM flap (CPT code 19367), with 24.73 RVUs. Because of the nature of this delicate procedure, the risks for malpractice are greater than for any other bone procedure. These risks include complications such as foot drop, sensory loss of the lower extremity, complications related to skin graft healing, chronic pain, and wound closure.

Response: We agree this is a complex procedure as confirmed by our acceptance of a RUC recommendation of 38.00 RVUs (see Table 4, "American Medical Association RUC Recommendations and HCFA's Decisions," in our December 8, 1994 final rule with comment period (60 FR 63441)). We do not believe, however, the arguments presented warrant an increase to 43.00 RVUs, which would be nearly 3.00 RVUs higher than the reference code for repair of a thoracoabdominal aortic aneurysm with graft (CPT code 33877) valued at 40.29 RVUs. We have retained 38.00 RVUs for CPT code 20955 (37.58 RVUs after adjustment for budget neutrality).

Reconstruction for stabilization of unstable distal ulna or distal radioulnar joint (CPT code 25337).

Comment: A commenter disagreed with our decision to value new CPT code 25337 at 9.10 RVUs instead of 9.50 RVUs as the RUC recommended. The commenter stated that the preservice and postservice work is quite similar between the new code and the reference service, CPT code 25312. The commenter also stated the intraservice work requires more skill, effort, and time because the new code may involve a two-tendon transfer with two skin incisions, hence, a larger surgical exposure. The potential of injury to the ulnar nerve is high. Confirmation of an accurate reduction of the distal ulna requires an intraoperative x-ray, and, frequently, internal fixation with K-wires. Tunnels must be drilled into bone to allow passage of the tendons.

Response: We agree with the comment and have assigned 9.50 RVUs to CPT code 25337, as recommended.

Distal radioulnar joint arthrodesis and segmental resection of ulna (Sauve-Kapandji procedure) (CPT code 25830).

Comment: A commenter stated that the work of CPT code 25830 is equal to the work of CPT code 25337 (Distal radioulnar tenodesis) and recommended that 9.50 RVUs are the most appropriate RVUs for both codes. The commenter also stated that the RUC accepted CPT code 25390 (Osteoplasty, radius or ulna; shortening), with 9.96 RVUs, as a reference service for new CPT code 25830. This reference service involves excising a carefully measured segment of ulna followed by internal fixation using a plate and screws. Preoperative work is somewhat greater than the work in new CPT code 25830. New CPT code 25830 is similar to the reference service in that a small segment of ulna is excised and then fused to the adjacent radius using pins or screws. Plates are not used and the amount of excised ulna is less critical. For these clinical reasons, the commenter recommended 9.50 RVUs for CPT code 25830.

Response: We agree with the comment and have assigned 9.50 RVUs to CPT code 25830, as recommended.

Repair of cleft hand (CPT code 26580).

Comment: A commenter disagreed with our decision to value CPT code 26580 at 15.99 RVUs (15.81 RVUs rescaled) instead of 17.71 RVUs, as the RUC recommended (see Table 4 of our December 8, 1994 final rule with comment period (60 FR 63441)). The commenter objected to the use of CPT code 28360 (Repair of a cleft foot) as the reference service. The commenter argued that the choice of this code as a reference service was inappropriate because of its clinical dissimilarity to the revised code. The commenter stated that CPT code 26590 (Repair macrodactylia), with 17.63 RVUs, is a more appropriate reference service. This code deals with a congenital anomaly of the digits of the hand requiring exacting microsurgical reconstruction of soft tissue, nerves, and bone in an infant. Revised CPT code 26580 requires metacarpal alignment by soft tissue dissection or metacarpal osteotomy requiring internal fixation, reconstruction of the deep transverse metacarpal ligament, and a thumb re-alignment to allow opposition. Mobilization of skin flaps may be necessary to achieve skin closure. This is a microsurgical procedure performed in infants, with an amount of work similar to the work involved in CPT code 26590. For these clinical reasons, the commenter recommended that revised CPT code 26580 should have 17.71 RVUs.

Response: We agree with the comment and have assigned 17.71 RVUs to CPT code 26580, as recommended.

Application of rigid total contact leg cast (CPT code 29445).

Comment: A commenter stated that this service is overvalued compared to the application of an Unna boot (CPT code 29580), with 0.57 RVUs.

Response: We disagree that this service is overvalued. The application of a rigid total contact leg cast (CPT code 29445) involves more work than the application of an Unna boot because it requires the physician to custom make and fabricate the walking surface for each cast. The patient is usually diabetic with a grade 1 or 2 foot ulcer. The use of casts by these patients is risky because they are at risk of developing additional ulcers. Therefore, a great deal of time is spent ensuring that the cast will fit properly. Unlike Unna boots or other casts, total contact casts are always performed personally by a physician who must hold the foot in place while applying the cast.

Nasal/sinus endoscopy, surgical with frontal sinus exploration, with or without removal of tissue from frontal sinus (CPT code 31276).

Comment: A commenter objected to the assigned 7.42 RVUs and requested an increase to 8.85 RVUs. The commenter presented the following description of the procedure. This procedure is performed around the middle turbinate anterior attachment in the frontal recess at 90 degrees to the line of sight. It requires the use of 70 and 30 degree telescopes, small-angled forceps, curettes, and hooks. It requires an exhaustive knowledge of frontal recess anatomy, very delicate technique, removal of tiny bone fragments, preservation of mucoes, and a dry field. It is very tedious and time-consuming. The commenter believed that the overall intensity and time is significantly greater for the endoscopic frontal sinustomy than either a total ethmoidectomy (CPT code 31255), with 6.96 RVUs, or an external frontal sinusotomy (CPT code 31075), with 8.85 RVUs.

Response: We agree with the comment and have assigned 8.85 RVUs to CPT code 31276, as recommended.

Gastroplasties and gastric bypass for obesity (CPT codes 43842, 43843, 43846, 43847, and 43848).

Comment: A commenter requested a re-evaluation of the entire family of codes because of a lack of representation of bariatric surgeons in the original resource-based relative value scale process. The commenter stated that the modest increase in the RVUs we assigned to these procedures still left a deficit valuation of approximately 27 percent for CPT codes 43842 and 43843, 17 percent for CPT codes 43846 and 43847, and 12 percent for CPT code 43848.

Response: We have not revised the interim RVUs because we do not believe the commenter made a compelling argument for change. We also disagree that the increases in RVUs assigned to

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these codes were modest. As we discussed in Table 6 of our December 8, 1994 final rule (59 FR 63444), the increases were as follows: CPT code 43842 from 11.99 RVUs to 13.91 RVUs; CPT code 43843 from 11.99 RVUs to 13.91 RVUs; CPT code 43846 from 12.90 RVUs to 18.04 RVUs; CPT code 43847 from 14.72 RVUs to 20.09 RVUs; and, CPT code 43848 from 15.00 RVUs to 22.35 RVUs. When the RVUs were adjusted for budget neutrality, the RVUs were as follows: CPT code 43842, assigned 13.76 RVUs; CPT code 43843, assigned 13.76 RVUs; CPT code 43846, assigned 17.84 RVUs; CPT code 43847, assigned 19.87 RVUs; and, CPT code 43848 assigned 22.10 RVUs. We believe that further increases would create rank order anomalies with other abdominal surgical procedures on the physician fee schedule.

Induced abortion, by one or more vaginal suppositories (eg, prostaglandin) with or without cervical dilation (eg, laminaria), including hospital admission and visits (CPT code 59855).

Comment: A commenter recommended that we assign the RUC-recommended 5.80 RVUs to CPT code 59855. The commenter believed that our rationale for lowering the work RVUs to 4.80 (4.75 rescaled) was "the physician work in placing suppositories is less than the work in an amnioinjection, regardless of the number of suppositories needed" and that CPT code 59855 requires less physician work than CPT code 59850 (Induced abortion by amnioinjection). The commenter stated that while it is true that the procedural work associated with placing suppositories is less than the procedural work associated with amnioinjection, placement of the suppositories or performance of the amnioinjection is only one element of the total work of each of these services. Use of prostaglandin suppositories typically results in more side effects that the physician must manage over a period of time that is longer than that associated with the amnioinjection, increasing the amount of evaluation and management work for CPT code 59855. Overall, CPT code 59856 requires a greater amount of physician work than CPT code 59850.

Response: We agree with the comment and have assigned 5.80 RVUs to CPT code 59855, as recommended.

Sympathectomy, digital arteries (CPT code 64820).

Comment: A commenter disagreed with our decision to value CPT code 64820 at 9.20 RVUs (9.10 RVUs rescaled) instead of 10.00 RVUs as the RUC recommended. The commenter objected to our determination that the work involved in new CPT code 64820 is approximately the same as the repair of a blood vessel of the hand or finger (CPT code 35207). The commenter stated that the work on the two vessels involved in a digital sympathectomy is not similar to the anastomosis of a single vessel and offered the following explanation. CPT code 35207 involves the repair of a single injured vessel through an existing skin laceration. CPT code 35207 has less preservice and intraservice work than new CPT code 64820. Digital sympathectomy is performed in individuals with vasospastic disease of the hand and severe ischemic pain frequently with ulceration of the finger tip. Two vessels are always treated through an extensile palmer incision on the radial and ulnar side of a digit. Using an operating microscope and jeweler's forceps, a tedious removal of the adventitia is performed for a distance of 1.5 to 2.0 centimeters. Extraordinary care must be taken to avoid perforating the vessel. Damaging the vessel's media or intima will cause thrombosis and possible gangrene of the finger. Considering the clinical circumstances regarding the patient indications and actual intraservice work, digital sympathectomy represents a greater intensity of work than CPT code 35207, as measured by increased mental effort and judgment, greater technical skill, and considerably more psychological stress. Postservice work is similar for both codes, however, with an average of four office visits after the procedure. For these clinical reasons, the commenter recommended that new CPT code 64820 should have 10.00 RVUs.

Response: We agree with the comment and have assigned 10.00 RVUs to CPT code 64820, as recommended.

Multiple-family group medical psychotherapy (CPT code 90849).

Comment: A commenter recommended increases for all psychiatric services in response to our request for comments as part of the 5-year refinement of RVUs under the physician fee schedule. Included in that comment was a recommendation to increase the RVUs for CPT code 90849 from 0.59 to 0.78 to maintain the relative value with the recommended increases for the other psychiatric codes.

Response: The RVUs assigned to this code were based on a 1994 RUC recommendation that we accepted. We have not increased the RVUs this year because we believe it is an issue for the 5-year refinement. We will consider the recommended RVUs as part of that process. In the meantime, we will maintain the assigned 0.59 RVUs.

Evoked osteoacoustic emissions testing (CPT codes 92587 and 92588).

Comment: A commenter recommended that we provide a ten-fold increase in the RVUs for these audiology services to "properly compensate for the training, effort, and time necessary to diagnose hearing loss and related disorders."

Response: We have not accepted this comment because it did not provide enough clinical information about the nature of the work to warrant a reconsideration of the interim RVUs.

Stress echocardiography (CPT code 93350).

Comment: A commenter expressed concern about the decrease in RVUs for this service.

Response: The decrease in RVUs for stress echocardiography occurred as a result of a change in CPT reporting instructions that now direct the user to report the appropriate stress testing code from the 93015 through 93018 series in addition to CPT code 93350. The sum of the RVUs for these services is equal to the RVUs that were assigned to CPT code 93350 in the past when it was the only code used to report stress echocardiography.

Photochemotherapy (Goeckerman and/or PUVA) for severe photoresponsive dermatoses requiring at least four to eight hours of care under direct supervision of the physician (includes application of medication and dressings) (CPT code 96913).

Comment: A commenter objected to our decision not to assign physician work RVUs to this service. The commenter stated that with the availability of psoriasis day treatment centers, much Goeckerman therapy is now practical in a day treatment program but that it is very different from a simple office visit. The commenter argued that there is considerable professional judgment involved and there is also an extraordinary quantity of nursing time involved since the patient is typically in a day treatment center for 6 hours or more a day. The treatment requires bathing, scale removal, twice daily application of tar over the total body surface, shampoos, scale removal from scalp, ultraviolet light, and typically anthralin as well. The treatment is extremely time-consuming because the medication must be put on each individual spot while avoiding normal skin.

Response: We have not revised our decision regarding this code. We have not assigned any work RVUs to this service because the commenter did not persuade us that photochemotherapy requires any physician work beyond that already described by existing evaluation and management codes. We have assigned practice expense and malpractice expense RVUs based on historic charges for this code so that it will no longer be carrier-priced. We have categorized this service as an "incident to" code, which means that it is covered incident to a physician's service when it is furnished by auxiliary personnel employed by the physician and working under his or her direct supervision. Payment may not be made for this service when it is furnished to hospital inpatients or patients in a hospital outpatient department. Physicians may bill for evaluation and management services in those settings.

Joint mobilization and massage (CPT codes 97124 and 97265).

Comment: One commenter stated that these codes may be overvalued relative to osteopathic manipulative treatment (CPT codes 98925 through 98929) and evaluation and management services.

Response: The interim RVUs we proposed for these codes were based on our acceptance of recommendations we received from the RUC Health Care Professionals Advisory Committee Review Board last year. The history and functions of this board are described below.

In 1992 the American Medical Association recommended that a Health Care Professionals Advisory Committee be established to expand the CPT Editorial Panel and the RUC processes to all groups legally required to use the CPT to report their services. Organizations representing physician assistants, nurses, occupational and physical therapists, optometrists, podiatrists, psychologists, social workers, audiologists and speech pathologists were invited to nominate representatives to the CPT and RUC Health Care Professionals Advisory Committee. The CPT Health Care Professionals Advisory Committee was created to foster participation in and solicit comments from these professional organizations in coding changes affecting their members, while the RUC Health Care Professionals Advisory Committee was formed to allow participation in development of RVUs for new and revised codes within their scope of practice.

To further facilitate the decision-making process on issues of concern to both medical doctors (MDs) and doctors of osteopathy (DOs) and non-MDs and non-DOs, CPT and RUC Health Care Professionals Advisory Committee Review Boards were also formed. The review boards bring MDs and DOs and non-MDs and non-DOs together to discuss coding issues and RVU proposals. The RUC Health Care Professionals Advisory Committee Review Board comprises all nine members of the current RUC Health Care Professionals Advisory Committee and three RUC members. For codes used only or predominantly by non-MDs and non-DOs, the RUC Health Care Professionals Advisory Committee Review Board replaces the RUC as the body responsible for developing recommendations for HCFA.

We have decided to maintain the RVUs for joint mobilization (CPT code 97265), with 0.45 RVUs, and massage (CPT code 97124), with 0.35 RVUs, as interim RVUs on the 1996 fee schedule so that we will have additional time to re-evaluate them. While we agree that these services appropriately are compared to other therapeutic procedures in the physical medicine section of CPT, our review of them in light of the comment causes us to believe that the interim RVUs we assigned to the therapeutic procedures services may have been too high relative to other services on the fee schedule, for example, osteopathic manipulative treatments and evaluation and management services.

While we acknowledge that we accepted last year's recommendations of the RUC Health Care Professionals Advisory Committee Review Board, we now plan to refer these and all other physical medicine and rehabilitation codes (CPT codes 97010 through 97770) back to the RUC Health Care Professionals Advisory Committee Review Board for its reconsideration. We also will notify the RUC of our concerns. In addition, we seek public comments on this issue.

Prolonged physician services (CPT codes 99354 through 99357).

Comment: A commenter provided extensive arguments for an increase in the RVUs of these codes based on the premise that we have underestimated the time involved in furnishing these services. Because the RVUs for evaluation and management services are related to the time specified in the CPT codes, the commenter believed that the selection of the appropriate level of service should be based solely on the time spent providing the service. For example, a consultation (CPT code 99253) typically assumes a 55-minute time segment. The commenter stated that if less time is spent, the consultation would be coded at a lower level as CPT code 99252 or 99251. The commenter believed that the correct key references for these prolonged physician services are CPT codes 99245 (Office consultation) and 99255 (Hospital inpatient consultation) because the times specified in those codes correspond to the times specified in the prolonged services codes.

Response: We have decided not to accept this comment, which we believe is based, in part, on a misunderstanding of the relationship of the typical times associated with the evaluation and management codes and the RVUs assigned to the codes. While it is true that time is a key predictor of work, it is not true that physicians are required to report their evaluation and management services based solely on the amount of time spent furnishing the service. CPT codes 99354 and 99356 both describe the "first hour" of prolonged services. This terminology in the code does not require that an entire hour of service be furnished in order for the code to be used. In fact, the CPT directs the reader to use the code to report 30 to 74 minutes of prolonged services. In our discussion of these codes in the December 8, 1994 **Federal Register** (59 FR 63437 through 63440), we indicated that we did not expect that the typical use of the code would be to report an hour of service. We assigned RVUs that are equivalent to 40 minutes of face-to-face or floor time.

Finally, for those specialties with very prolonged encounters, we have assigned the same RVUS to the "each additional 30 minutes" codes (CPT codes 99355 and 99357) that we assigned to the "first hour" codes. This actually represents an increase above the recommended RVUs we received from the RUC for CPT codes 99355 and 99357. We believe the final RVUs for the prolonged service codes appropriately recognize the work associated with very prolonged services.

2. Establishment of Interim Work Relative Value Units for New and Revised Codes for 1996

a. Methodology (Includes Table 2—American Medical Association Specialty Society Relative Value Update

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Committee Recommendations and HCFA's Decisions).

The major aspect of establishing work RVUs for 1996 was related to the assignment of interim RVUs for all new and revised CPT codes. As described in our November 1992 notice on the 1993 fee schedule (57 FR 55938), we established a process, based on recommendations received from the RUC, for establishing interim RVUs for new and revised codes.

The RUC was formed in November 1991 and grew out of a series of discussions between the American Medical Association and the major national medical specialty societies. The RUC is comprised of 25 members; 22 are representatives of major specialty societies. The remaining members represent the American Medical Association, the American Osteopathic Association, and the CPT Editorial Panel. The work of the RUC is supported by the RUC Advisory Committee made up of representatives of 65 specialty societies in the American Medical Association House of Delegates. The RUC used a small group survey method to produce work RVUs that were voted on by the RUC, with a two-thirds vote required for acceptance. The RUC then submitted to us those accepted RVUs as recommended values.

We received work RVU recommendations for approximately 140 new and revised codes from the RUC. We also received RUC recommendations for base units for two anesthesia codes, CPT codes 00520 (Anesthesia, closed chest procedures) and 00540 (Anesthesia, chest procedure) and have accepted the recommendations of 6.00 and 13.00 base units, respectively. Physician panels consisting of carrier medical directors and our staff reviewed the RUC recommendations by comparing them to our reference set or to other comparable services on the fee schedule for which work RVUs had been established previously, or to both of these criteria. The panels also considered the relationships among the new and revised codes for which we received the RUC recommendations. We agreed with a majority of the relationships reflected in the RUC values. In some cases when we agreed with the RUC relationships, we revised the RVUs recommended by the RUC in order to achieve work neutrality within families of codes. For example, if CPT revised an existing code by splitting it into two or more new codes, we took into account the RVUs assigned to the existing code and the expected utilization of the split codes in such a way that the coding change would not lead to an overall increase in RVUs associated with services previously described by a single code. For approximately 90 percent of the RUC recommendations, proposed RVUs were accepted or increased, and for approximately 10 percent, RVUs were decreased.

We also received two recommendations from specialty societies and four recommendations from the Health Care Professionals Advisory Committee for new or revised codes for which the RUC did not provide a recommendation. The specialty society recommendations were also reviewed by the physician panels. All of the proposed RVUs of the specialty society recommendations were accepted. All of the proposed RVUs of the Health Care Professionals Advisory Committee recommendations were decreased.

Table 2 is a listing of those codes that will be new or revised in 1996 for which we received recommended work RVUs. This table includes the following information:

- A "#" identifies a new code for 1996.
- *CPT code.* This is the CPT code for a service.
- *Modifier.* A "26" in this column indicates that the RVUs are for the professional component of the code.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *RUC-recommended work RVUs.* This column identifies the work RVUs recommended by the RUC. If no recommendation was received from the RUC, this column shows "no rec."
- *Health Care Professionals Advisory Committee (HCPAC) recommendations.* This column identifies work RVUs recommended by the Health Care Professionals Advisory Committee.
- *Specialty-recommended RVUs.* This column identifies work RVUs recommended by a specialty society.
- *HCFA decision.* This column indicates whether we agreed with the RUC recommendation ("agreed"); we established work RVUs that are higher than the RUC recommendation ("increased"); or we established work RVUs that were less than the RUC recommendation ("decreased"). Codes for which we did not accept the RUC recommendation are discussed in greater detail following Table 2. A discussion follows the table in section VI.B.2.b. An (a) in the column indicates that RVUs were not assigned.
- *HCFA value.* This column contains the 1996 RVUs for physician work.

This table includes only those codes that were reviewed by the full RUC or for which we received a recommendation from a specialty society or Health Care Professionals Advisory Committee.

TABLE 2.—AMA RUC RECOMMENDATIONS AND HCFA'S DECISIONS

CPT*	Mod	Description	RUC recommendations	HCPAC recommendations	Specialty recommendations	HCFA decision	1996 work RVUs
17110		Destruction of skin lesions	0.55			Agreed	0.55
#20100		Explore wound, neck	9.50			Agreed	9.50
#20101		Explore wound, chest	3.00			Agreed	3.00
#20102		Explore wound, abdomen	3.68			Agreed	3.68
#20103		Explore wound, extremity	4.95			Agreed	4.95
#20930		Spinal bone allograft	0.00			Agreed	0.00
#20931		Spinal bone allograft	1.81			Agreed	1.81
#20936		Spinal bone autograft	0.00			Agreed	0.00
#20937		Spinal bone autograft	2.79			Agreed	2.79
#20938		Spinal bone autograft	3.02			Agreed	3.02
#21076		Prepare face/oral prosthesis			12.54	Agreed	12.54
#21077		Prepare face/oral prosthesis			31.54	Agreed	31.54
#21141		Reconstruct midface, lefort	16.92			Agreed	16.92
#21142		Reconstruct midface, lefort	17.58			Agreed	17.58

* All CPT codes and descriptions copyright 1995 American Medical Association.
• No work RVUs assumed.

TABLE 2.—AMA RUC RECOMMENDATIONS AND HCFA'S DECISIONS—Continued

CPT*	Mod	Description	RUC recommendations	HCPAC recommendations	Specialty recommendations	HCFA decision	1996 work RVUs
#21143		Reconstruct midface, lefort	18.30			Agreed	18.30
21145		Reconstruct midface, lefort	18.92			Agreed	18.92
21146		Reconstruct midface, lefort	19.58			Agreed	19.58
21147		Reconstruct midface, lefort	20.30			Agreed	20.30
22100		Remove part of neck vertebra	9.05			Agreed	9.05
22101		Remove part, thorax vertebra	9.00			Agreed	9.00
22102		Remove part, lumbar vertebra	9.00			Agreed	9.00
#22103		Remove extra spine segment	2.34			Agreed	2.34
22110		Remove part of neck vertebra	11.59			Agreed	11.59
22112		Remove part, thorax vertebra	11.59			Agreed	11.59
22114		Remove part, lumbar vertebra	11.59			Agreed	11.59
#22116		Remove extra spine segment	2.32			Agreed	2.32
22210		Revision of neck spine	22.51			Agreed	22.51
22212		Revision of thorax spine	18.14			Agreed	18.14
22214		Revision of lumbar spine	18.14			Agreed	18.14
#22216		Revise, extra spine segment	6.04			Agreed	6.04
22220		Revision of neck spine	20.15			Agreed	20.15
22222		Revision of thorax spine	20.15			Agreed	20.15
22224		Revision of lumbar spine	20.15			Agreed	20.15
#22226		Revise, extra spine segment	6.04			Agreed	6.04
22305		Treat spine process fracture	1.86			Agreed	1.86
22310		Treat spine fracture	1.86			Agreed	1.86
22315		Treat spine fracture	8.36			Agreed	8.36
22325		Repair of spine fracture	17.19			Agreed	17.19
22326		Repair neck spine fracture	18.43			Agreed	18.43
22327		Repair thorax spine fracture	17.56			Agreed	17.56
#22328		Repair each add spine fx	4.61			Agreed	4.61
22548		Neck spine fusion	24.08			Agreed	24.08
22554		Neck spine fusion	17.24			Agreed	17.24
22556		Thorax spine fusion	22.27			Agreed	22.27
22558		Lumbar spine fusion	21.22			Agreed	21.22
22585		Additional spinal fusion	5.53			Agreed	5.53
22590		Spine & skull spinal fusion	19.50			Agreed	19.50
22595		Neck spinal fusion	18.19			Agreed	18.19
22600		Neck spine fusion	14.74			Agreed	14.74
22610		Thorax spine fusion	14.62			Agreed	14.62
22612		Lumbar spine fusion	20.19			Agreed	20.19
#22614		Spine fusion, extra segment	5.44			Agreed	5.44
22630		Lumbar spine fusion	20.03			Agreed	20.03
#22632		Spine fusion, extra segment	5.23			Agreed	5.23
22800		Fusion of spine	16.92			Agreed	16.92
22802		Fusion of spine	29.74			Agreed	29.74
#22804		Fusion of spine	35.00			Agreed	35.00
#22808		Fusion of spine	25.00			Agreed	25.00
22810		Fusion of spine	29.00			Agreed	29.00
22812		Fusion of spine	31.00			Agreed	31.00
22830		Exploration of spinal fusion	10.22			Agreed	10.22
22840		Insert spine fixation device	6.27			Agreed	6.27
#22841		Insert spine fixation device	0.00			Agreed	0.00
#22842		Insert spine fixation device	7.19			Agreed	7.19
#22843		Insert spine fixation device	8.97			Agreed	8.97
#22844		Insert spine fixation device	10.96			Agreed	10.96
22845		Insert spine fixation device	5.98			Agreed	5.98
#22846		Insert spine fixation device	8.28			Agreed	8.28
#22847		Insert spine fixation device	9.20			Agreed	9.20
#22848		Insert pelvic fixation device	6.00			Agreed	6.00
#22851		Apply spine prosth device	6.71			Agreed	6.71
32095		Biopsy through chest wall	7.13			Agreed	7.13
#32501		Repair bronchus (add-on)	4.69			Agreed	4.69
#33253		Reconstruct atria	30.00			Agreed	30.00
#33924		Remove pulmonary shunt	5.50			Agreed	5.50
#38231		Stem cell collection	1.74			Decreased	1.50
38240		Bone marrow/stem transplant	2.24			Agreed	2.24
38241		Bone marrow/stem transplant	2.24			Agreed	2.24
47350		Repair liver wound	11.29			Agreed	11.29
47360		Repair liver wound	15.34			Agreed	15.34
#47361		Repair liver wound	28.00			Agreed	28.00
#47362		Repair liver wound	10.00			Agreed	10.00

* All CPT codes and descriptions copyright 1995 American Medical Association.
• No work RVUs assumed.

TABLE 2.—AMA RUC RECOMMENDATIONS AND HCFA'S DECISIONS—Continued

CPT*	Mod	Description	RUC recommendations	HCPAC recommendations	Specialty recommendations	HCFA decision	1996 work RVUs
49000		Exploration of abdomen	8.99			Agreed	8.99
49002		Reopening of abdomen	9.40			Agreed	9.40
49010		Exploration behind abdomen	11.19			Agreed	11.19
55859		Percut/needle insert, pros	14.00			Decreased	8.29
56343		Laparoscopic salpingostomy	6.96			Agreed	6.96
56344		Laparoscopic fimbrioplasty	7.16			Agreed	7.16
57284		Repair paravaginal defect	12.10			Agreed	12.10
59610		Vbac delivery	22.63			Decreased	22.55
59612		Vbac delivery only	15.00			Decreased	14.84
59614		Vbac care after delivery	16.00			Decreased	15.96
59618		Attempted vbac delivery	25.03			Increased	25.23
59620		Attempted vbac delivery only	16.75			Increased	16.95
59622		Attempted vbac after care	17.94			Increased	18.11
62274		Inject spinal anesthetic	1.78			Agreed	1.78
62288		Injection into spinal canal	1.74			Agreed	1.74
#62350		Implant spinal catheter	6.25			Agreed	6.25
#62351		Implant spinal catheter	9.25			Agreed	9.25
#62355		Remove spinal canal catheter	4.80			Agreed	4.80
#62360		Insert spine infusion device	2.00			Agreed	2.00
#62361		Implant spine infusion pump	4.80			Agreed	4.80
#62362		Implant spine infusion pump	6.29			Agreed	6.29
#62365		Remove spine infusion device	4.77			Agreed	4.77
#62367	26	Analyze spine infusion pump	0.48			Agreed	0.48
#62368	26	Analyze spine infusion pump	0.75			Agreed	0.75
67107		Repair detached retina	13.99			Agreed	13.99
67108		Repair detached retina	19.90			Agreed	19.90
67112		Re-repair detached retina	16.15			Agreed	16.15
#76965	26	Echo guidance radiotherapy	1.34			Agreed	1.34
#78459	26	Heart muscle imaging (PET)	1.88			Agreed	1.88
#78810	26	Tumor imaging (PET)	1.93			Agreed	1.93
#90922		ESRD related services, day	0.44			Decreased	0.37
#90923		Esrd related services, day	0.30			Decreased	0.26
#90924		Esrd related services, day	0.22			Increased	0.24
#90925		Esrd related services, day	0.17			Decreased	0.15
92506		Speech & hearing evaluation	0.86			Agreed	0.86
92507		Speech/hearing therapy	0.52			Agreed	0.52
92508		Speech/hearing therapy	0.26			Agreed	0.26
#92510		Rehab for ear implant	1.50			Agreed	1.50
92516		Facial nerve function test	0.43			Agreed	0.43
#92525		Oral function evaluation	1.61			Decreased	1.13
#92526		Oral function therapy	0.64			Decreased	0.52
92548	26	Sinusoidal rotational test	0.29			Agreed	0.29
#92579		Visual audiometry (vra)				(a)	
#92597		Oral speech device eval	1.50			Decreased	1.11
#92598		Modify oral speech device	0.99			Decreased	0.73
#92987		Revision of mitral valve	20.69			Agreed	20.69
95872	26	Muscle test, one fiber	1.50			Agreed	1.50
95900	26	Motor nerve conduction test	0.42			Agreed	0.42
#95903	26	Motor nerve conduction test	0.60			Agreed	0.60
95904	26	Sense nerve conduction test	0.34			Agreed	0.34
95925	26	Somatosensory testing	0.81			Decreased	0.54
#95926	26	Somatosensory testing	0.81			Decreased	0.54
#95927	26	Somatosensory testing	0.81			Decreased	0.54
#95930	26	Visual evoked potential test	0.35			Agreed	0.35
#95934	26	'H' reflex test	0.51			Agreed	0.51
#95936	26	'H' reflex test	0.55			Agreed	0.55
97116		Gait training therapy	0.40			Agreed	0.40
#97535		Self care mngment training		0.45		Decreased	0.33
#97537		Community/work reintegration		0.45		Decreased	0.33
#97542		Wheelchair mngement training		0.45		Decreased	0.25
#97703		Prosthetic checkout		0.45		Decreased	0.25
99238		Hospital discharge day	1.06			Agreed	1.06
#99239		Hospital discharge day	1.75			Agreed	1.75
#99435		Hospital NB discharge day	1.50			Agreed	1.50

* All CPT codes and descriptions copyright 1995 American Medical Association.
(a) No work RVUs assigned.

b. Discussion of codes for which the recommendations were not accepted or for which clarification of the code is necessary.

The following is a summary of our rationale for not accepting particular recommendations. It is arranged by type of service in CPT code order. We have included in this section a clarification of the intended use of one family of codes for which we accepted the RUC recommendations. This summary refers only to work RVUs.

Exploration of penetrating wounds (CPT codes 20100 through 20103).

We accepted the RUC recommendations for these codes but are concerned that they could be inappropriately used to report the repair of wounds. Therefore, we are providing a clarification of the codes based on the language that will be included in CPT 1996.

These codes are used to report the treatment of wounds resulting from penetrating trauma that require surgical exploration and enlargement of the wound, extension of dissection (to determine penetration), debridement, removal of foreign body(s), ligation or coagulation of minor subcutaneous and/or muscular blood vessel(s), of the subcutaneous tissue, muscle fascia, and/or muscle. If a repair is done to major blood vessel(s) requiring thoracotomy or laparotomy, those specific code(s) would supersede the use of CPT codes 20100 through 20103. These codes should not be used to report simple, intermediate, or complex repair of wound(s) that do not require enlargement of the wound, extension of dissection, etc., as stated above.

Blood-derived peripheral stem cell harvesting for transplantation, per collection (CPT code 38231).

The RUC recommended 1.74 RVUs based on its determination that the work is equivalent to the work of CPT code 36520 (Therapeutic apheresis). We believe that the work associated with this procedure is less than that for CPT code 36520 in that the patients are less ill and the risk of complications is much less. In addition, patients require less physician monitoring, and the procedure is more likely to be performed on an outpatient basis. We believe the work is comparable to a level-5 evaluation and management service (CPT code 99215), which is assigned 1.50 RVUs.

However, as with therapeutic apheresis, we do not permit payment for both harvesting and certain evaluation and management codes on the same date. Specifically, we do not allow separate payment for CPT codes 99211 through 99215 (Established patient office or other outpatient visits), 99231 through 99233 (Subsequent hospital care), and 99261 through 99263 (Follow-up inpatient consultations) on the same date that CPT code 38231 (Stem cell harvesting) is furnished because it would allow duplicate payment for the evaluation and management service. Physicians furnishing stem cell harvesting services may choose to bill for the appropriate evaluation and management visit or consultation code indicating the level of services furnished rather than billing for the stem cell harvesting. This will permit physicians to be paid for the level of service furnished.

Separate payment will be allowed for physician services furnished to establish the required vascular access if performed by the physician and if the criteria for payment under the appropriate CPT code are satisfied. We will also allow separate billing for CPT codes 99221 through 99223 (Initial hospital visit), CPT codes 99241 through 99245 and 99251 through 99255 (Initial consultations), and CPT code 99238 (Hospital discharge service) when billed on the same date as CPT code 38231 (Stem cell harvesting) because the work associated with these evaluation and management services is not included in work RVUs assigned to the stem cell harvesting. These policies are consistent with the policies for therapeutic apheresis that were established for the 1995 fee schedule.

Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy (CPT code 55859).

We received a RUC recommendation of 14.00 RVUs based upon the use of CPT code 61770 (Stereotactic localization, any method, including burr hole(s) with insertion of catheter(s) for brachytherapy) as a reference procedure. We believe that these RVUs are too high and disagree with the RUC's use of CPT code 61770 as a reference procedure; we view that procedure as requiring greater technical skill, mental effort, and judgment. The recommended 14.00 RVUs are higher than the RVUs assigned to CPT code 55860 (Exposure of prostate, any approach, for insertion of radioactive substance), which is assigned 13.33 RVUs. This is an open surgical procedure with significantly more postprocedure work than CPT code 55859, which can be performed on an outpatient basis.

The placement of needles or catheters into the prostate is performed under ultrasonic guidance, and the guidance is separately reported by new CPT code 76965 for which we accepted the RUC recommendation of 1.34 RVUs. In addition, CPT also directs separate reporting of the interstitial radioelement application (CPT codes 77776 through 77778). CPT code 77778 (Interstitial radioelement application, complex) is the code most likely to be reported. We assigned 10.46 RVUs to this code. Thus, a physician performing all aspects of this procedure would report all three codes with 25.80 total RVUs if we accepted the RUC recommendation of 14.00 for code 55859.

We believe it is possible that urologists responding to the surveyed vignette may have misunderstood that this code is used to report only the placement of the needles or catheters into the prostate and that they inadvertently included in their estimates of work the separately reported work of ultrasonic guidance and application of the radioelements.

We believe that a more appropriate reference procedure than a neurosurgical procedure would be another prostate procedure that can be performed on an outpatient basis. We selected CPT code 55700 (Biopsy, prostate; needle or punch, single or multiple, any approach), which is assigned 1.57 RVUs. Because of the increased intraoperative time and complexity as well as the increased surgical risk associated with CPT code 55859, we have increased the RVUs four-fold to 6.28 RVUs. In addition we added 2.01 RVUs, the RVUs assigned to CPT code 52000, to reflect the added work of the cystoscopy. This addition results is the assignment of 8.29 RVUs for CPT code 55859.

Vaginal birth after cesarean (CPT codes 59610, 59612, 59614, 59618, 59620, and 59622).

The CPT has added a new section to the 1996 edition for "delivery after previous cesarean delivery." Included in this section are six new codes that are used to report the services furnished to patients who have had a previous cesarean delivery and who present with the expectation of a vaginal delivery. If the patient has a successful vaginal delivery after a previous cesarean delivery (VBAC), then either CPT code 59610, 59612, or 59614 is reported. If the attempt is unsuccessful and another cesarean delivery is carried out, either

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CPT code 59618, 59620, or 59622 is reported. The RUC-recommended RVUs for all six codes that added varying increments of work to the RVUs of the six existing codes that are used to report routine vaginal and cesarean deliveries. The following table includes the RVUs for the six existing codes, the RUC recommendations for the six new VBAC codes and the difference in RVUs for each of the six pairs.

Existing delivery code	RVUs of existing delivery code	Corresponding new VBAC code	RUC-Recommended RVUs for new VBAC code	RVU difference	HCFA RVUs
59400	20.99	59610	22.63	1.64	22.55
59409	13.28	59612	15.00	1.72	14.84
59410	14.44	59614	16.00	1.56	15.96
59510	23.67	59618	25.03	1.36	25.23
59514	15.39	59620	16.75	1.36	16.95
59515	16.55	59622	17.94	1.39	18.11

While we accept the RUC conclusion that VBAC services entail more physician work and that the existing delivery codes are appropriate reference points, we disagree with the variable and small differences in work from one code to the next. We believe the increased stress, mental effort, and judgment associated with VBAC is the same regardless of the particular delivery service furnished. Therefore, we are adding 1.56 RVUs (the median RVUs of the above differences) to each of the existing delivery codes. This results in the interim RVUs identified in the last column of the table as "HCFA RVUs."

End-stage renal disease services, per day (CPT codes 90922 through 90925).

CPT 1996 will include four codes for the reporting of end-stage renal disease services on a per day rather than per month basis. We did not accept the RUC recommendations for these codes that were based on the RUC's recommendations for the monthly codes (CPT codes 90918 through 90921). As discussed in section VI.B.1.b. of this final rule, new RVUs emerged from the refinement panel ratings for these codes. We calculated work RVUs for the four "per day" end-stage renal disease codes by dividing the RVUs of the "per full month" codes by 30. This led to the assignment of 0.37 RVUs to CPT code 90922, 0.28 RVUs to CPT code 90923, 0.24 RVUs to CPT code 90924, and 0.15 RVUs to CPT code 90925.

Evaluation of swallowing and oral function for feeding (CPT code 92525).

The RUC made its recommendation of 1.61 RVUs based on a clinical vignette of an inpatient whose evaluation included a barium swallow. The RUC lowered the specialty's recommendation to better account for the times when the barium swallow might not be done. We believe the RVUs recommended, which are between the RVUs of a level-3 inpatient consultation (CPT code 99253), with 1.56 RVUs, and a level-4 inpatient consultation (CPT code 99254) with 2.27 RVUs, are too high. While we believe that the intraservice work determined by the survey for the vignette may be reasonable, we do not believe that the surveyed vignette represented a typical patient.

Our data suggest that this procedure, which was formerly reported by CPT code 92506, is performed primarily in the physician's office. We took into consideration that the procedure is currently reported using CPT code 92506, which is assigned 0.86 RVUs. We then took into account that the barium swallow is probably included in at least 50 percent of the cases and that the evaluation of the barium swallow is an integral part of the procedure. Therefore, we added half the value of CPT code 74230 (Swallowing function, pharynx and/or esophagus, with cineradiography and/or video), which is assigned 0.54 RVUs to the 0.86 RVUs for CPT code 92506 resulting in an assignment of 1.13 RVUs to CPT code 92525. These RVUs are slightly higher than the RVUs of CPT code 99242, which is the code for a level-2 office consultation, the components of which include an expanded problem-focused history, an expanded problem-focused examination, and straightforward medical decision making.

Treatment of swallowing dysfunction and/or oral function for feeding (CPT code 92526).

The RUC recommended 0.64 RVUs based on a clinical vignette of an inpatient similar to the patient described in the vignette used for CPT code 92525 described above. Our data suggest that this procedure, which is currently reported using CPT code 92507, also is performed primarily in physicians' offices. Because we believe the surveyed vignette does not describe a typical patient, we reduced the RUC recommendation for CPT code 92526 to 0.52 RVUs, which are the same RVUs as those for CPT code 92507 (Speech, language or hearing therapy, with continuing medical supervision; individual). These RVUs are slightly less than the RVUs assigned to a mid-level office visit (CPT code 99213), with 0.55 RVUs, which typically requires 15 minutes of face-to-face time with a physician.

Visual reinforcement audiometry (VRA) (CPT code 92579).

The RUC made no recommendation for RVUs for this procedure. As with most of the audiologic function tests, we do not believe this service requires performance by a physician. Consequently, we have not assigned physician work RVUs to this code. However, we have assigned 0.69 practice expense RVUs and 0.07 malpractice expense RVUs.

Evaluation for use and/or fitting of voice prosthetic or augmentative/alternative communication device to supplement oral speech (CPT code 92597).

The RUC recommended 1.50 RVUs. We believe the recommended RVUs are too high because they are comparable to the highest level established patient office visit, CPT code 99215, the components of which include a comprehensive history, a comprehensive examination, and medical decision-making of high complexity. We do not believe the work of these two services is comparable. Rather, we believe the work associated with CPT code 92597 is slightly less than the work associated with a level-3 new patient office visit (CPT code 99203) with 1.14 RVUs and a level-2 inpatient consultation (CPT code 99252) with 1.13 RVUs. Therefore, we have assigned 1.11 RVUs to CPT code 92597.

Modification of voice prosthetic or augmentative/alternative communication device to supplement oral speech (CPT code 92598).

The RUC recommended 0.99 RVUs, which are higher than the RVUs assigned to a level-4 established patient office visit (CPT code 99214), with 0.94 RVUs. We believe that the recommendation is too high. However, we believe that the relative relationship between this service and CPT code 92597, as established by the RUC, should be maintained. Thus, we calculated the interim RVUs by multiplying the recommended 0.99 RVUs by 74 percent (0.99×1.11/1.5) representing the percentage of the RUC-recommended RVUs, which we accepted for the preceding code. This calculation results in 0.73 interim RVUs for CPT code 92598.

Short-latency somatosensory evoked potential studies, stimulation of any/all peripheral nerves or skin sites, recording from the central nervous system (CPT codes 95925 through 95927).

The existing code for the reporting of somatosensory testing is CPT code 95925. The descriptor in CPT 1995 is "Somatosensory testing (e.g., cerebral evoked potentials), one or more nerves." CPT revised existing CPT code 95925 by splitting it into three codes (95925, 95926, and 95927), which will be used to report testing of the upper limbs, lower limbs, and trunk or head, respectively. Currently, 0.81 RVUs are assigned to CPT code 95925. The RUC viewed the coding change as editorial and recommended 0.81 RVUs for each of these codes. While we agree that the same RVUs should be assigned to the three codes, we have not accepted the specific recommendation of 0.81 RVUs because we do not view it as an editorial change. We believe that the RUC failed to take account of the fact that some patients will require testing of both the upper and lower limbs during an encounter and that, under the existing code, only one unit of service can be reported regardless of the number of nerves tested because the descriptor specifies "one or more nerves." We estimate that the cases previously reported with CPT code 95925 will be reported under the new and revised codes as follows: About 50 percent will be reported with revised CPT code 95925; about 50 percent will be reported as new CPT code 95926; about 1 percent will be reported as CPT code 95927; and 50 percent of all testing will involve both CPT codes 95925 and 95926 during the same encounter. Using these estimates, we adjusted the RVUs for the three codes so that the total number of RVUs under the new codes will be the same as the total number of RVUs under the old codes. This results in a decrease of the RUC's recommendation of 0.81 RVUs for each of the codes to 0.54 RVUs for each of the codes.

ADDITIONAL CODES

CPT code	Description
97535	Self care/home management training (eg, activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in use of adaptive equipment) direct one on one contact by provider, each 15 minutes.
97537	Community/work reintegration, training (eg, shopping, transportation, money management, avocational activities and/or work environment/modification analysis, work task analysis), direct one on one contact by provider, each 15 minutes.
97542	Wheelchair management/propulsion training, each 15 minutes.
97703	Checkout for orthotic/prosthetic use, established patient, each 15 minutes.

The RUC Health Care Professionals Advisory Committee Review Board recommended 0.45 RVUs for each of these services on the basis of their comparability to other physical medicine codes, for example, CPT code 97110 (Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility). While we agree that these new services appropriately are compared to other therapeutic procedures, our review of the new services causes us to believe that the interim RVUs we assigned to the therapeutic procedures services may have been too high relative to other services on the fee schedule, for example, evaluation and management services.

We have decided to maintain the interim RVUs for the physical medicine and rehabilitation codes (CPT codes 97010 through 97770) as interim RVUs on the 1996 fee schedule so that we will have additional time to re-evaluate them. While we acknowledge that we accepted last year's recommendations of the Health Care Professionals Advisory Committee Review Board to assign 0.45 RVUs to CPT code 97110 and several other of the therapeutic procedures, we now plan to refer these codes back to the RUC Health Care Professionals Advisory Committee Review Board for its reconsideration, and we will notify the RUC of our concerns. In addition, we seek public comments on this issue.

For new CPT codes 97535 and 97537, we believe the recommended 0.45 RVUs are too high. Since they are currently reported using CPT code 97540 (Training in activities of daily living (self care skills and/or daily life management skills); initial 30 minutes, each visit), which has 0.44 RVUs, we divided the RVUs for CPT code 97540 by 2 to arrive at RVUs for 15 minutes and added 50 percent to account for the prework and postwork inherent in the service. This results in 0.33 RVUs for CPT codes 97535 and 97537.

For new CPT codes 97542 and 97703, we believe the recommended 0.45 RVUs are too high. We believe these services are comparable to attended modality services such as manual electrical stimulation (CPT code 97032), with 0.25 RVUs. Therefore, we have assigned 0.25 RVUs to both CPT codes 97542 and 97703.

CPT code	Description
99238	Hospital discharge day management; 30 minutes or less.
99239	Hospital discharge day management; more than 30 minutes.

We agreed with the RUC recommendation of 1.06 RVUs for CPT code 99238 and 1.75 RVUs for CPT code 99239. The reporting of CPT code 99239 must be supported by documentation in the patient's medical record of the time spent by the physician furnishing the service as well as documentation of the actual services furnished. Time spent by individuals other than the physician should not be considered in selecting the appropriate hospital discharge day management code.

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CPT code	Description
99411	Preventive medicine counseling and/or risk factor reduction intervention(s) provided to individuals in a group setting (separate procedure); approximately 30 minutes.
99412	Preventive medicine counseling and/or risk factor reduction intervention(s) provided to individuals in a group setting (separate procedure); approximately 60 minutes.

We agreed with the RUC recommendations of 0.15 RVUs for CPT code 99411 and 0.25 RVUs for CPT code 99412. While these services are not covered by Medicare, we believe it is important to state the assumptions we made in agreeing with the RUC-recommended RVUs. The intent of the codes is to represent an interactive service between the patient and the physician. We expect that the interaction will be documented in each patient's individual medical record. In addition, since the RVUs are based on physician work, the codes should not be reported unless they are personally performed by a physician; they should not be used to report group preventive medicine counseling furnished by anyone other than a physician. Nor is the service to be reported if it is furnished in a place of service other than the physician's office. Finally, the assigned RVUs are based on a group of two to five persons for CPT code 99411 and a group of two to six persons for CPT code 99412. Preventive medicine furnished to groups larger than these should be reported using code 99249 which is for the reporting of preventive medicine services not listed in CPT.

c. Temporary alpha-numeric HCFA Common Procedure Coding System codes.

For the 1996 Medicare fee schedule for physicians services, we have established several new alpha-numeric HCFA Common Procedure Coding System (HCPCS) codes for the reporting of certain new services that are not clearly described by existing CPT codes. In this section, we discuss our rationale for establishing the codes as well as the basis of the interim RVUs we have assigned to them. We view these codes as temporary since we will be referring them to the CPT Editorial Panel for possible inclusion in future editions of the CPT.

Measurement of post-voiding residual urine and/or bladder capacity by ultrasound (HCPCS code G0050).

Measurement of postvoiding residual (PVR) urine and/or bladder capacity can be done by simple diagnostic catheterization. It can also be done by ultrasound using either traditional sonographic equipment or smaller less expensive equipment whose capacity is limited only to bladder volume determination. When done by catheterization, CPT code 53670, with 0.74 RVUs, is reported. When done by ultrasound, CPT code 76857, pelvic echography, with 1.65 RVUs, is reported whether done using traditional equipment or the smaller bladder scan. There is presently no separate CPT code for a bladder scan only. Both individual carriers and a manufacturer of bladder scanning devices have recommended that we establish a separate code to distinguish bladder scans from general pelvic scans because they believe that payment for CPT code 76857 is too high for only a bladder scan to determine PVR. We agree with this recommendation and are issuing the new HCPCS code G0050.

HCPCS code	Work RVUs	Practice RVUs	Malpractice RVUs	Total RVUs
G0050	0.00	0.81	0.05	0.86

We believe that this bladder scan performs the same function as a simple diagnostic catheterization but without the risk of infection. To recognize the slightly higher equipment costs, we have established interim total RVUs for bladder scan of 0.86, or about 0.12 RVUs higher than for catheterization. We have not assigned physician work RVUs for a bladder scan. We expect that the scan will be performed after a physician has examined the patient and determined the medical necessity for a bladder scan. Physician interpretation of the scan is included in the associated evaluation and management service.

Lung volume reduction surgery (reduction pneumoplasty) eg, lung shaving, lung contouring, unilateral or bilateral (HCPCS code G0061).

Lung volume reduction surgery, also termed reduction pneumoplasty, lung shaving, or lung contouring is a procedure performed to improve pulmonary function in patients with severe emphysema. Medicare has not established that the procedure is reasonable and necessary for the diagnosis or treatment of illness or injury. Therefore, we have excluded this procedure from coverage under the provisions of section 1862(a)(1)(A) of the Act.

Although we have assigned a noncoverage indicator of "N" to this code, we are providing interim RVUs for those who look to the Medicare fee schedule for information on the relative value of all physicians services including those not covered by Medicare.

We believe the procedure is most often being reported as wedge resection(s) of the lung using CPT code 32500, which has 13.10 work RVUs. Based on discussions with carrier medical directors, we believe that lung volume reduction surgery is more difficult than wedge resection(s). After considering existing CPT codes for other pulmonary procedures, we have assigned 17.62 RVUs on an interim basis to HCPCS code G0061. These are the same RVUs assigned to total pulmonary decortication (CPT code 32220), which we believe is similar to lung reduction surgery in terms of physician work.

V. Issues for Discussion

A. Five-Year Refinement of Relative Value Units

Section 1848(c)(2)(B)(i) of the Act requires that we review all RVUs no less often than every 5 years. Since we implemented the physician fee schedule effective for services furnished beginning January 1, 1992, we have initiated the 5-year refinement of RVUs that will be effective for services furnished beginning January 1, 1997.

All work RVUs included in the December 1994 final rule (59 FR 63617) were subject to comment. During the comment period, which closed on February 6, 1995, we received approximately 500 public comments on approximately 1,100 procedure codes. After review by our medical staff, we forwarded comments on approximately 700 CPT codes for consideration by the American Medical Association/Specialty Society Relative Value Update Committee (RUC).

After a thorough review of the RUC recommendations, we will announce any proposed changes to the work RVUs in the **Federal Register** in early 1996 and provide an opportunity for the public to comment before we finalize the changes.

B. Resource-Based Practice Expense Relative Value Units

With the exception of anesthesia services, physician services and other diagnostic services paid under the physician fee schedule have practice expense and malpractice expense RVUs. Payments for practice expense RVUs account for approximately 42 percent of physician fee schedule payments.

The practice expense RVUs are derived from historical allowed charge data. The common criticism is that the practice expense RVUs are not truly resource-based because they are not based on resource costs.

Section 121 of the Social Security Act Amendments of 1994, Public Law 103–432, enacted on October 31, 1994, requires the Secretary to develop a methodology for a resource-based system for determining practice expense RVUs for each physician service. In developing the methodology, the Secretary must consider the staff, equipment, and supplies used in the provision of medical and surgical services in various settings. The Secretary must report to the Congress on the methodology by June 30, 1996. The new payment methodology is effective for services furnished in 1998. There is no transition provision for these services.

We awarded a contract to Abt Associates in March 1995. Abt will develop a uniform database that can be used to support a number of analytical methods (for example, microcosting or economic cost functions) to estimate practice expense per service. Abt will also provide us with both direct and indirect practice expense estimates for all services paid under the physician fee schedule. We expect that these estimates will vary based on the site where the service is furnished. For example, the practice expense for a physician service furnished in the hospital outpatient department will differ from the practice expense for the same service performed in the physician's office.

As we pointed out in our July 26, 1995 proposed rule (60 FR 38400), Abt will use information from two separate processes to generate practice expense RVUs for physician services (60 FR 38417). Through the use of Clinical Practice Expert Panels, Abt will estimate the expenses, including the cost of clinical labor, supplies, and medical equipment for specific physician services. The Clinical Practice Expert Panels will also consider whether additional items, such as the cost of administrative services, can be directly assigned to individual services. The remaining expenses for physician services will be calculated from the information obtained through the practice expense survey.

Practice Expense Survey

Abt will obtain physician practice specific information through a practice expense survey. Abt expects to receive responses from approximately 3,000 practices.

The survey instrument was sent to the Office of the Secretary in the Department of Health and Human Services on August 7, 1995. Under current procedures, the Department has a 60-day period to review this survey. After Departmental clearance, the survey is sent to the Office of Management and Budget where it will undergo a 60-day clearance process. Under the current schedule, the earliest clearance on the survey will be in early December.

We expect that Abt will send the survey to individual practices starting in January 1996. Abt estimates that it will take approximately 7 months for its staff to mail the survey, to compile the completed responses, and to assemble the data into a database.

As we stated in the July 26, 1995 proposed rule, one of the main objectives of the practice expense survey will be to collect indirect practice expenses so that these expenses can be related to individual CPT procedure codes.

Clinical Practice Expert Panels

We furnished Abt with a list of all the codes in the Medicare physician fee schedule database for which practice expense RVUs are to be estimated. As a starting point, Abt used a classification system that is a hybrid of the Ambulatory Patient Groups system developed by 3M and the Berenson-Eggers-Holahan (Urban Institute) system to group the codes into similar families of codes. The objective was to sort the codes into families that are clinically related and have relatively comparable direct costs. This system was reviewed by our medical staff, clinical consultants, and the Clinical Practice Expert Panel Technical Expert Group, the advisory group for the overall design of the project.

At a HCFA-sponsored public meeting on August 18, 1995, a draft copy of this classification system was provided to various specialty groups. These groups were given the opportunity to review the families of codes and the Clinical Practice Expert Panel to which the family was assigned and to suggest one or more reference codes for each family. Abt considered these comments in the development of the final classification system.

At this time, Abt has grouped the codes into 199 families. These families have been assigned to 15 Clinical Practice Expert Panels. Each Clinical Practice Expert Panel is generally assigned between 6 to 25 families. A goal is to keep the number of service families per Clinical Practice Expert Panel manageable.

Each Clinical Practice Expert Panel will be composed of up to 15 members. Clinical Practice Expert Panel membership is not restricted to practicing physicians. Clinical Practice Expert Panel members can be practice managers and nonphysician clinicians who are knowledgeable about physician practice expenses. There will be a primary care physician and surgeon on every Clinical Practice Expert Panel. The remainder of the Clinical Practice Expert Panel members will be composed of the primary providers of the services in the Clinical Practice Expert Panel families.

The Clinical Practice Expert Panel is to reach consensus on the detailed direct inputs for one reference procedure per family. The following four criteria were established to guide the selection process of the reference procedure:

- The service should be commonly performed.
- The service should have a mid-range level of resource usage relative to the other codes in the family.
- The service should be a code whose definition or coding application has not changed in the last several years.
- The variation across physicians in the way the service is performed should be minimal.

A Clinical Practice Expert Panel Technical Expert Group meeting was held on September 7 and 8, 1995. The Clinical Practice Expert Panel Technical Expert Group devoted its attention to

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the following topics: service family composition including criteria; reference procedures per family; composition of the Clinical Practice Expert Panel; and the process for conducting the Clinical Practice Expert Panels, in particular, the worksheets to be completed.

Future Scheduled Activities

A mock Clinical Practice Expert Panel meeting will be held in January 1996. The purpose of the mock Clinical Practice Expert Panel meeting is to pre-test the Clinical Practice Expert Panel process and worksheets.

The first series of Clinical Practice Expert Panel meetings will be conducted beginning in late January 1996. Before the Clinical Practice Expert Panel meetings, each Clinical Practice Expert Panel member (and if it so chooses, specialty group) will complete the worksheets on the resource costs of reference procedures. Abt will compile these data and provide summary information to each Clinical Practice Expert Panel member. The Clinical Practice Expert Panel members will use a consensus approach to estimate the direct inputs for the reference services.

The second series of Clinical Practice Expert Panel meetings will be conducted in the spring of 1996. The Clinical Practice Expert Panel members will use an extrapolation process to estimate the direct costs of the other nonreference procedures in the same family.

Data collection on the practice expense survey will be completed by June 1996. Abt will deliver data files by August 1, 1996. We expect to award multiple contracts to analyze the data. Abt's report on the analysis of the data is due by September 1996.

We expect to publish the proposed rule in the **Federal Register** in the spring of 1997 and the final rule in the fall of 1997. We will implement the resource-based practice expense RVUs beginning January 1, 1998.

As we also stated in the July 26, 1995 proposed rule, this discussion of our efforts to implement the requirement in the statute to develop a resource-based relative value scale is for informational purposes and is not a formal proposal. We were not soliciting comments on the proposal. While we did receive several comments, we are not providing a summary of these comments nor responses to them because it was not a formal proposal. We will, however, consider the comments.

C. Case Management in a Fee-for-Service System

In the July 26, 1995 proposed rule, we solicited information, recommendations, and suggestions from the public on how we might apply case management to the Medicare fee-for-service system. While the comments we received addressed the issues we raised in the proposed rule, we are now seeking comments on some additional issues.

We are currently interested in paying physicians for the management of patients with specific diagnoses. We believe that physicians often provide extensive case management to patients with certain chronic conditions and that these management activities may maintain or improve health status. We are interested in learning more about which patients would benefit from this case management.

We are also exploring various managed care options within the Medicare fee-for-service system. We are interested in receiving public comment about the appropriateness and feasibility of creating periodic capitated payments for comprehensive management of medical cases.

Our intent at this time is to solicit information, recommendations, and suggestions from the public on how we might create a capitated payment for case management. We are particularly interested in the following:

- What types of patients would benefit from extensive case management? We are considering developing bundled payments for physician services furnished to patients with dementia and one or more co-morbidities, diabetes, hypertension, or congestive heart failure. We are seeking comments on these and other types of patients who would benefit from case management. Any information about the types of services that should be included in a bundled payment for care of these patients and data on the prevalence of a given medical condition or combination of conditions in the Medicare population would be appreciated.
- What is an appropriate periodicity for a capitated payment? There is precedent in the Medicare program for monthly and weekly capitated payments. (Medicare pays on a monthly basis for physician services associated with the continuing medical management of a maintenance dialysis patient and has a weekly radiation therapy management payment.) Do other schedules such as quarterly or semiannually make more sense for identifiable groups of patients?

VI. Provisions of the Final Rule

The provisions of this final rule, for the most part, restate the provisions of the July 1995 proposed rule. This section includes the following changes from the proposed rule:

- Adds a new statutory basis section in § 405.500 for subpart E ("Criteria for Determining Reasonable Charges") in part 405 and also revises the authority citation for subpart E.
- Redesignates § 405.552 ("Conditions for payment: Anesthesiology services") as § 415.110.
- Adds a statutory basis section in § 405.2400 for subpart X ("Health Clinic and Federally Qualified Health Center Services") of part 405 and also revises the authority citation for subpart X.
- Revises § 405.2468 ("Allowable costs") to expand the definition of physician services in rural health clinics and Federally qualified health centers to include services of residents as defined in § 415.152 ("Definitions") who meet the requirements in § 415.206(b) (concerning physician fee schedule payment for services of residents in nonprovider settings).
- Revises § 414.30 ("Conversion factor update") to incorporate a change regarding the downward adjustment to the conversion factor required by section 13511 of OBRA 1993.
- Revises § 414.32 ("Determining payments for certain physicians' services furnished in facility settings") to state that when a service which is not on the ASC list is performed in an ASC, the site-of-service payment differential does not apply.
- Removes the urodynamic evaluation CPT codes 51725, 51726, 51772, 51785, and CPT codes 13150, 14020, 14060, 15740, 21208, 21440, 23066, 26645, 28030, 28043, 28092, 28261, 40510, 41805, 42408, 46220, 46610, 63600, 64420, 65270, and 67921 from the site-of-service payment differential list as proposed.
- Revises § 414.46 ("Additional rules for payment of anesthesia services") to state that anesthesia CPT modifier units are not allowed for Medicare payment.
- Moves the "Scope" paragraph (a) in § 415.100 of subpart C ("Part B Carrier Payments for Physician Services to Beneficiaries in Providers") of part 415 in the proposed rule into a separate § 415.100. Redesignates the remaining paragraphs in proposed rule § 415.100 as § 415.102 ("Conditions for fee schedule payment for physician services to beneficiaries in providers").
- Creates a limited exception to the teaching physician presence requirement for certain residency programs in new § 415.174 ("Exception: Evaluation and management services furnished in certain centers").

In addition, the final rule differs from the proposed rule in that we have revised our proposed payment policy related to hydration therapy and chemotherapy as a result of public comments. We will allow separate payment for hydration therapy or the infusion of antiemetics or other nonchemotherapy drug on the same date of service as chemotherapy infusion only when the nonchemotherapy drug is administered sequentially rather than at the same time as the chemotherapy infusion. However, as we proposed, we will not pay for hydration therapy when administered at the same time as chemotherapy infusion.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

The following sections of this document contain information collection requirements as described below:

The information collection requirements in § 415.60 ("Allocation of physician compensation costs"), in paragraph (f)(1), concern determination and payment of allowable physician compensation costs. The requirements also concern the amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not paid under either Part A or Part B of Medicare; and assurance that the compensation is reasonable in terms of the time devoted to these services. The information collection requirements in § 415.60(g) concern recordkeeping requirements for allocation of physician compensation costs. They also concern time records used to allocate physician compensation, information on which the physician compensation allocation is based, and retention of this information for a 4-year period after the end of each cost reporting period to which the allocation applies. Respondents that will provide the information are 7,091 hospitals, 10,630 freestanding skilled nursing facilities, and 258 freestanding comprehensive outpatient rehabilitation facilities. The respondents will provide the information in Exhibits 2 through 4 on Form HCFA–339, "Provider Cost Report Reimbursement Questionnaire."

The information collection requirements in § 415.130 ("Conditions for payment: Physician pathology services"), paragraph (b)(3), concern a written narrative report included in the beneficiary's medical record for clinical consultation pathology services. The services must be requested by the beneficiary's attending physician, relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the beneficiary, and require the exercise of medical judgment by the consultant physicians. Respondents who will provide the information are physicians furnishing clinical consultation pathology services.

The information collection requirements in § 415.162 ("Determining payment for physician services furnished to beneficiaries in teaching hospitals") concern the apportionment of compensation in the case of teaching hospitals electing cost reimbursement for direct medical and surgical services furnished by physicians to beneficiaries and supervision of interns and residents furnishing care to beneficiaries in a teaching hospital. Respondents that will provide the information are 40 cost election teaching hospitals. The respondents will provide the information on Supplemental Worksheet, Part I and Part II, of Form HCFA–2552–92.

The information collection requirements in § 415.172 ("Physician fee schedule payment for services of teaching physicians"), paragraph (b), concern documentation in the medical records that the teaching physician was present at the time the service was furnished, and, in the case of evaluation and management services, personal documentation by the teaching physician in the medical records of his or her participation in the service. The information collection requirements also concern, in the case of surgical, high-risk, or other complex procedures, the presence of the teaching physician during all critical portions of the procedure and immediate availability to furnish services during the entire service or procedure. In the case of surgery, the teaching physician's presence is not required during opening and closing of the surgical field. In the case of procedures performed through an endoscope, the teaching physician must be present during the entire viewing. In the case of evaluation and management services, the teaching physician must be present during the portion of the service that determines the level of service billed. Respondents who will provide this information are physicians, residents, or nurses; however, in the case of evaluation and management services, the teaching physician must personally document in the medical records his or her participation in the service.

The information collection requirements in § 415.174 ("Exception: Evaluation and management services furnished in certain centers"), paragraph (a)(3)(v), concern documentation of the extent of the teaching physician's participation in the review and direction of the services furnished to each beneficiary in an outpatient department of a hospital or another ambulatory care entity. The information collection requirements concern the conditions under which carriers will make physician fee schedule payment for certain evaluation and management services of lower and mid-level complexity furnished by a resident without the presence of a teaching physician. Respondents who will provide this information are teaching physicians.

The information collection requirements in § 415.178 ("Anesthesia services"), paragraph (b), concern

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documentation of the teaching physician's presence or participation in the administration of the anesthesia and a preoperative and postoperative visit by the teaching physician. The teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. The teaching physician cannot receive an unreduced fee if he or she performs services involving other patients during the period the anesthesia resident is furnishing services in a single case. Respondents who will provide this information are teaching physicians.

The information collection requirements in § 415.180 ("Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests"), paragraph (b), concern documentation that the teaching physician personally performed the interpretation or reviewed the resident's interpretation with the resident. Physician fee schedule payment will be made in those situations. Respondents who will provide this information are teaching physicians.

The table below indicates the annual number of responses for each regulation section in this final rule containing information collection requirements, the average burden per response in minutes or hours, and the total annual burden hours.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual No. of responses	Annual frequency	Average burden per response	Annual burden hours
415.60	17,979	1	11 hours	197,769
415.130	9,273	1	3 minutes	464
415.162	40	1	2 hours	80
415.172	3,200,232	1	1 minute	53,337
415.174	1,237,516	1	1 minute	20,625
415.178	106,819	1	1 minute	1,780
415.180	1,000,107	1	1 minute	16,668

The information collection requirements were approved by OMB for §§ 415.60 and 415.162 as §§ 405.481 and 405.485, respectively, under OMB control number 0938–0301 and expire August 31, 1996.

We have submitted a copy of this final rule with comment period to OMB for its review of the information collection requirements in §§ 415.130, 415.172, 415.174, 415.178, and 415.180. These requirements are not effective until they have been approved by OMB. A document will be published in the **Federal Register** when OMB approval is obtained.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should send them to the Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850 and to the Office of Management and Budget official whose name appears in the **ADDRESSES** section of this preamble.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all physicians are considered to be small entities.

This final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, we are preparing a regulatory flexibility analysis because the provisions of this rule are expected to have varying effects on the distribution of Medicare physician payments across specialties and across geographic areas. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries will be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services will be affected to the extent that they are paid by private insurers that choose to use the RVUs. However, with few exceptions, we expect that the impact on individual medical practitioners will be limited.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

B. Budget-Neutrality Adjustment

Section 1848(c)(2)(B) of the Act requires that adjustments to RVUs in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. We refer to this as the budget-neutrality adjustment.

In past years, we have made this adjustment across all RVUs. This year, as we proposed, we are making this adjustment on the conversion factors instead of the RVUs. This alternative approach is administratively simpler, and it facilitates policy and data analysis of RVUs. It does not significantly affect the final payments that are made to physicians because any changes to payments will be the result of rounding and will be minimal.

The issues discussed in sections IX.C. through IX.K. will have no impact on Medicare program expenditures because the effects of these changes have been neutralized in the calculation of the conversion factors for 1996.

We have estimated the net increase in program costs in calendar year 1996 resulting from the adjustments to RVUs and revisions in payment policies to be approximately $140 million. This is a net figure in that savings from the reductions in RVUs for some services partially offset the cost associated with increases in the RVUs for other services. This figure requires a reduction of 0.36 percent in the conversion factors for all services to comply with the statutory limitation on increases in expenditures. Although a $20 million tolerance is permitted under the law, this 0.36 percent reduction to all conversion factors is designed to approximate budget neutrality as closely as possible, without creating any increase or decrease in expenditures as a result of RVU adjustments or revisions in payment policies.

C. Bundled Services

1. Hydration Therapy and Chemotherapy

Bundling of payment for CPT codes 90780 and 90781, (Therapeutic infusions except for chemotherapy) into CPT codes 96410, 96412, and 96414 (Chemotherapy infusion), when nonchemotherapy drugs are infused at the same time as chemotherapy drugs means that in some cases, physicians will no longer be paid for CPT codes 90780 and 90781. However, our policy will allow physicians to continue to be paid for CPT codes 90780 and 90781 when done on the same day as CPT codes 96410, 96412, and 96414 if the nonchemotherapy drugs are infused sequentially rather than contemporaneously with the chemotherapy drugs. We are unable to determine from our existing data which portion of billings for CPT codes 90780 and 90781 that are currently furnished on the same day as CPT codes 96410, 96412, and 96414 are for sequential or contemporaneous services. Therefore, at this time, we are unable to estimate the impact of this policy. We expect that the impact will be minor.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

Bundling of payment for CPT codes 90825 and 90887 into the payment for other psychiatric codes means that physicians who are currently billing for, and receiving separate payment for, these services may no longer do so. Because we believe that the services described by CPT codes 90825 and 90887 are captured in the prework and postwork of other psychiatric services, we will implement this change in policy by redistributing the RVUs for CPT codes 90825 and 90887 equally into the following psychiatric procedure codes: CPT codes 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857. We estimate that this change will increase the RVUs for the latter codes by approximately 0.7 percent.

3. Fitting of Spectacles

We will cease making separate payment under the physician fee schedule for fitting of spectacles and low vision systems (CPT codes 92352 through 92358 and 92371) beginning January 1, 1996. Payment for these services is already included in the payment for the prosthetic device. We will redistribute the payment currently made for these CPT codes across all physician services, which is what would have occurred had we not included these fees when the fee schedule was created. Because the total payment for spectacle fitting services is relatively low (approximately $2.5 million in calendar year 1994) compared to the total payment for all physician services, we believe the impact on RVUs for all physician services is negligible.

Virtually all of the providers who have been billing for the fitting of spectacles as a professional service have been optometrists. Under this revised policy, they are no longer able to bill separately for this service. The effect on individual optometrists will depend upon the amount of their income derived from billing for spectacle fitting services.

D. X-Rays and Electrocardiograms Taken in the Emergency Room

Under policy issued in 1981, the interpretation of an x-ray or EKG furnished to an emergency room patient by a radiologist or cardiologist, respectively, "almost always" constituted a covered Part B service payable by the carrier, regardless of whether the test results had been previously used in the diagnosis and treatment of the patient by a physician in the emergency room and regardless of when the specialist furnished the interpretation. A study completed by the Office of Inspector General of the Department of Health and Human Services, dated July 1993, recommended that we change this policy to indicate that the second interpretation is generally a quality control service to be taken into account by intermediaries in determining hospital reasonable costs. Further, we understand that some carriers are currently paying both the emergency room physician and the radiologist or cardiologist for the interpretation of the same x-ray or EKG.

We will pay for only one interpretation of an x-ray or EKG furnished to an emergency room patient except under unusual circumstances. In situations in which both the emergency room physician and the radiologist or cardiologist bill for the interpretation, we will instruct the carriers to pay for the interpretation used in the diagnosis and treatment of the patient. We will consider the second interpretation to be a quality control service. Under this policy, we will reduce the incidence of carriers' paying twice for an interpretation, but we have no estimate of the number of duplicate payments that will be eliminated. We believe that the specialists will be affected primarily. If hospitals want to ensure that their specialists are paid for these interpretations, they can make arrangements to preclude the emergency room physician from billing for the same service.

E. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers

We are extending the site-of-service payment limit to office-based services if those services are performed in an ambulatory surgical center, effective for services furnished beginning January 1, 1996. We are adding 126 procedure codes to the list. Were it not for budget-neutrality adjustments, we estimate that these additions would result in a $24.6 million reduction in 1996 Medicare payments.

F. Services of Teaching Physicians

This change removes the single attending physician criteria for hospital patients. It allows and promotes supervision of the care by physician group practices. We believe allowing for more than one teaching physician per beneficiary inpatient stay will result in negligible additional cost, but the lack of any data prevents us from quantifying the effects of this change. In addition, this rule will incorporate longstanding Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services.

We will require the physical presence of a teaching physician during the key portion of the service in order for the teaching physician to receive Part B physician fee schedule payment for the service. Details regarding the physical

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presence of a teaching physician during different types of services and procedures are discussed in section II.F. of this preamble. Although we lack specific data, we believe that the provisions of this part of the final rule have no budgetary effect because we believe that the potential costs are offset by the potential savings.

G. Unspecified Physical and Occupational Therapy Services (HCFA Common Procedure Coding System Codes M0005 Through M0008 and H5300)

We are eliminating HCPCS codes M0005 through M0008 and H5300 and redistributing the RVUs to codes in the physical medicine and rehabilitation section of the CPT (codes 97010 through 97799). The codes we are deleting are general codes that do not describe adequately the service being furnished. Their use precludes effective review necessary to ensure that the services being paid are covered by Medicare. In 1995, the American Medical Association revised the CPT codes in the Physical Medicine and Rehabilitation section of the CPT to better reflect the provision of physical and occupational therapy services.

We believe that each unit of service currently billed under the codes we are deleting will be billed under a CPT or HCPCS code and that the total amount of Medicare payment for physical medicine services will not change significantly as a result of the elimination of these codes. Therefore, we believe there will be no additional costs or savings as a result of this change in billing. Since the original codes were not descriptive, we had no way of comparing payments. However, we believe that we are eliminating potential manipulation of payment and are improving the data collected by requiring practitioners to use the more specific codes when billing for these services.

H. Transportation in Connection With Furnishing Diagnostic Tests

Under the policy adopted in this final rule, we are restricting the discretion of carriers to make separate payments for the transportation of diagnostic testing equipment. Effective for services furnished beginning January 1, 1996, the general policy is that separate transportation payments will be made only in connection with the following services:

- X-ray and standard EKG services furnished by an approved portable x-ray supplier; and
- Standard EKG services furnished by an independent physiological laboratory under special conditions.

For all other types of diagnostic tests payable under the physician fee schedule, travel expenses are considered to be "bundled" into the payment for the procedure, and Medicare carriers will pay for the transportation of equipment only on a "by report" basis under CPT code 99082 if a physician submits documentation to justify the "very unusual" travel as set forth in section 15026 of the Medicare Carriers' Manual.

We are unable to assess the impact of this new national policy because carriers have had such varying payment policies on this issue. We had thought that this might be a significant policy change since we had received many inquiries on the subject in recent years; however, we received fewer than 10 comments on this policy as set forth in the proposed rule, and we now conclude that the national impact of the new policy will not be significant. There will likely be an impact on payments to independent physiological laboratories in some areas in which transportation payments were made before January 1, but it is not possible to assess these reductions from the comments received.

I. Maxillofacial Prosthetic Services

We are establishing national RVUs for these services and, therefore, are discontinuing pricing by individual carriers, effective January 1, 1996. We estimate that total expenditures for CPT codes 21079 through 21087 and codes G0020 and G0021 (replaced by CPT codes 21076 and 20177 in 1996), based on the RVUs will be approximately $2.4 million in calendar year 1996. The 1994 Medicare expenditures for these codes under the carrier pricing methodology were approximately $1.5 million which, if updated for 1995, would be approximately $1.6 million. Thus, we estimate an increase of approximately $800,000 for these codes. However, total expenditures for physician services will not increase because we are implementing this change in a budget-neutral manner in accordance with section 1848(c)(2)(B)(ii) of the Act.

These services are furnished most frequently by oral surgeons (dentists only) and by maxillofacial surgeons. Because we estimate that the total expenditures for these services will increase slightly, we expect that, in general, the physicians who perform and bill for these procedures will realize an increase in payment. However, in some areas, the payment amounts based on national RVUs may be lower than those calculated by the local carrier.

J. Coverage of Mammography Services

We are expanding the definition of "diagnostic" mammography to include as candidates for this service asymptomatic men or women who have a personal history of breast cancer or a personal history of biopsy-proven benign breast disease. We do not believe this change will result in a significant increase in the total number of mammography services because information from carriers indicates that most asymptomatic patients in these categories are already receiving diagnostic mammography services.

K. Two Anesthesia Providers Involved in One Procedure

We will apply the medical direction payment policy to the single procedure involving both the physician and the CRNA. We will not implement this policy until January 1, 1998, at which time the proposal will be budget-neutral. In 1998, the allowance for the medically-directed CRNA service and the medical-direction service of the anesthesiologist will be equivalent to 50 percent of the allowance recognized for the service personally performed by the anesthesiologist alone. Thus, payment for both services will be no different than what would be allowed for the anesthesia service personally performed by the anesthesiologist.

Although this proposal is budget-neutral, total payments to anesthesiologists will decrease slightly and payments to the CRNAs' employers will increase slightly. We cannot quantify the amount of the losses to the anesthesiologists or the gains to the CRNAs' employers. However, anesthesiologists can lessen their losses by actually personally performing as many of these services as possible and receiving the same allowance they would have in the absence of this new policy.

L. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule will have little direct effect on payments to rural hospitals since this rule will change only payments made to physicians and certain other practitioners under Part B of the Medicare program and will not change payments to hospitals under Part A. We do not believe the changes will have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

Under the authority of 42 U.S.C. 1302 and 1395hh, 42 CFR chapter IV is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

A. Part 400 is amended as set forth below:

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. In § 400.202, the introductory text is republished and the definition of *GME* is added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

* * * * *

GME stands for graduate medical education.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. Part 405 is amended as set forth below:

Subpart D—[Removed and Reserved]

1. Subpart D, consisting of §§ 405.465 through 405.482, is removed and reserved.

2. Subpart E is amended as set forth below:

a. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

b. The heading for subpart E is revised to read as follows:

Subpart E—Criteria for Determining Reasonable Charges

c. A new § 405.500 is added to read as follows:

§ 405.500 Basis.

Subpart E is based on the provisions of the following sections of the Act: Section 1814(b) provides for Part A payment on the basis of the lesser of a provider's reasonable costs or customary charges. Section 1832 establishes the scope of benefits provided under the Part B supplementary medical insurance program. Section 1833(a) sets forth the amounts of payment for supplementary medical insurance services on the basis of the lesser of a provider's reasonable costs or customary charges. Section 1834(a) specifies how payments are made for the purchase or rental of new and used durable medical equipment for Medicare beneficiaries. Section 1834(b) provides for payment for radiologist services on a fee schedule basis. Section 1834(c) provides for payments and standards for screening mammography. Section 1842(b) sets forth the provisions for a carrier to enter into a contract with the Secretary and to make determinations with respect to Part B claims. Section 1842(h) sets forth the requirements for a physician or supplier to voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. Section 1842(i) sets forth the provisions for the payment of Part B claims. Section 1848 establishes a fee schedule for payment of physician services. Section 1861(b) sets forth the inpatient hospital services covered by the Medicare program. Section 1861(s) sets forth medical and other health services covered by the Medicare program. Section 1861(v) sets forth the general authority under which HCFA may establish limits on provider costs recognized as reasonable in determining Medicare program payments. Section 1861(aa) sets forth the rural health clinic services and Federally qualified health center services covered by the Medicare program. Section 1861(jj) defines the term "covered osteoporosis drug." Section 1862(a)(14) lists services that are excluded from coverage. Section 1866(a) specifies the terms for provider agreements. Section 1881 authorizes special rules for the coverage of and payment for services furnished to patients with end-stage renal disease. Section 1886 sets forth the requirements for payment to hospitals for inpatient hospital services. Section 1887 sets forth

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requirements for payment of provider-based physicians and payment under certain percentage arrangements. Section 1889 provides for Medicare and Medigap information by telephone.

§ 405.501 [Amended]

d. In § 405.501, the following changes are made:

i. Paragraphs (c) and (d) are removed, and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d), respectively.

ii. In newly redesignated paragraph (c), the phrase "§§ 405.480 through 405.482 and §§ 405.550 through 405.557" is removed, and the phrase "§§ 415.55 through 415.70 and §§ 415.100 through 415.130 of this chapter" is added in its place.

iii. In newly redesignated paragraph (d), the words "For services furnished on or after January 1, 1989, payment" are removed, and the word "Payment" is added in their place.

§§ 405.520–405.525 [Removed]

e. Sections 405.520 through 405.525 are removed.

Subpart F—[Removed and Reserved]

3. Subpart F, consisting of §§ 405.550 through 405.580, is removed and reserved.

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

4. Subpart X is amended as set forth below:

a. The authority citation for subpart X is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

b. A new § 405.2400 is added to read as follows:

§ 405.2400 Basis.

Subpart X is based on the provisions of the following sections of the Act: Section 1833 sets forth the amounts of payment for supplementary medical insurance services. Section 1861(aa) sets forth the rural health clinic services and Federally qualified health center services covered by the Medicare program.

c. In § 405.2401, paragraph (b), the introductory text is republished, and the definition for physician is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise:

* * * * *

Physician means the following:

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed.

(2) Within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor. (See section 1861(r) of the Act for specific limitations.)

(3) A resident (including residents as defined in § 415.152 of this chapter who meet the requirements in § 415.206(b) of this chapter for payment under the physician fee schedule).

* * * * *

d. In § 405.2468, the introductory text of paragraph (b) is republished, and paragraph (b)(1) is revised to read as follows:

§ 405.2468 Allowable costs.

* * * * *

(b) *Typical rural health clinic and Federally qualified health center costs.* The following types and items of cost are included in allowable costs to the extent that they are covered and reasonable:

(1) Compensation for the services of physicians, (including residents as defined in § 415.152 of this chapter who meet the requirements in § 415.206(b) of this chapter for payment under the physician fee schedule), physician assistants, nurse practitioners, nurse midwives, specialized nurse practitioners, visiting nurses, qualified clinical psychologists, and clinical social workers employed by the clinic or center.

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

C. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.34 is amended by republishing the introductory text to paragraph (a) and revising paragraphs (a)(1), (a)(2), and (d) to read as follows:

§ 410.34 Mammography services: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a man or woman with signs or symptoms of breast disease, or a personal history of breast cancer, or a personal history of biopsy-proven benign breast disease, and includes a physician's interpretation of the results of the procedure.

(2) *Screening mammography* means a radiologic procedure furnished to a woman without signs or symptoms of breast disease, for the purpose of early detection of breast cancer, and includes a physician's interpretation of the results of the procedure.

* * * * *

(d) *Limitations on coverage of screening mammography services.* The following limitations apply to coverage of screening mammography services as described in paragraph (a)(2) of this section:

(1) The service must be, at a minimum a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of each breast.

(2) Payment may not be made for screening mammography performed on a woman under age 35.

(3) Payment may be made for only 1 screening mammography performed on a woman over age 34, but under age 40.

(4) For a woman over age 39, but under age 50, the following limitations apply:

(i) Payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed if the woman has—

(A) A personal history of breast cancer;

(B) A personal history of biopsy-proven benign breast disease;

(C) A mother, sister, or daughter who has had breast cancer; or

(D) Not given birth before age 30.

(ii) If the woman does not meet the conditions described in paragraph (d)(4)(i) of this section, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

(5) For a woman over age 49, but under age 65, payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed.

(6) For a woman over age 64, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

D. Part 414 is amended as set forth below:

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. In § 414.2, the following definitions are added alphabetically:

§ 414.2 Definitions.

AA stands for anesthesiologist assistant.

* * * * *

CRNA stands for certified registered nurse anesthetist.

* * * * *

3. In § 414.28, the introductory text is republished, and paragraph (b) is revised to read as follows:

§ 414.28 Conversion factors.

HCFA establishes CFs in accordance with section 1848(d) of the Act.

* * * * *

(b) *Subsequent CFs.* For calendar years 1993 through 1995, the CF for each year is equal to the CF for the previous year, adjusted in accordance with § 414.30. Beginning January 1, 1996, the CF for each calendar year may be further adjusted so that adjustments to the fee schedule in accordance with section 1848(c)(2)(B)(ii) of the Act do not cause total expenditures under the fee schedule to differ by more than $20 million from the amount that would have been spent if these adjustments had not been made.

4. In § 414.30, the introductory text to the section and the introductory text to paragraph (b) are republished, paragraph (b)(2) is revised, and paragraph (c) is added to read as follows:

§ 414.30 Conversion factor update.

Unless Congress acts in accordance with section 1848(d)(3) of the Act—

* * * * *

(b) *Downward adjustment.* The downward adjustment may not exceed the following:

* * * * *

(2) For CY 1994, 2.5 percentage points.

* * * * *

(c) For CYs 1995 and thereafter, 5 percentage points.

5. In § 414.32, the introductory text to paragraph (d) is republished and paragraph (d)(2) is revised to read as follows:

§ 414.32 Determining payments for certain physician services furnished in facility settings.

* * * * *

(d) *Services excluded from the reduction.* The reduction established under this section does not apply to the following:

* * * * *

(2) Surgical services not on the ambulatory surgical center covered list of procedures published under § 416.65(c) of this chapter when furnished in an ambulatory surgical center.

* * * * *

§ 414.46 [Amended]

6. In § 414.46, the following changes are made:

a. The word "procedure" in paragraph (g) is removed, and the word "service" is added in its place. The word "procedures" in paragraphs (a)(1), (e) and (g) is removed, and the word "services" is added in its place.

b. Paragraphs (b), (c), and (d) are revised to read as follows:

§ 414.46 Additional rules for payment of anesthesia services.

* * * * *

(b) *Determination of payment amount—Basic rule.* For anesthesia services performed, medically directed, or medically supervised by a physician, HCFA pays the lesser of the actual charge or the anesthesia fee schedule amount.

(1) The physician fee schedule amount for an anesthesia service is based on the product of the allowable base and time units and an anesthesia-specific CF.

(2) The allowable base units are determined by the uniform relative value guide based on the 1988 American Society of Anesthesiologists' Relative Value Guide except that the number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units. The uniform base units are identified in program operating instructions.

(3) Modifier units are not allowed. Modifier units include additional units charged by a physician or a CRNA for patient health status, risk, age, or unusual circumstances.

(c) *Physician personally performs the anesthesia procedure.*

(1) HCFA considers an anesthesia service to be personally performed under any of the following circumstances:

(i) The physician performs the entire anesthesia service alone.

(ii) The physician establishes an attending physician relationship in one or two concurrent cases involving an intern or resident and the service was furnished before January 1, 1994.

(iii) The physician establishes an attending physician relationship in one case involving an intern or resident and the service was furnished on or after January 1, 1994 but prior to January 1, 1996. For services on or after January 1, 1996, the physician must be the teaching physician as defined in §§ 415.170 through 415.184 of this chapter.

(iv) The physician and the CRNA or AA are involved in a single case and the services of each are found to be medically necessary.

(v) The physician is continuously involved in a single case involving a student nurse anesthetist.

(vi) The physician is continuously involved in a single case involving a CRNA or AA and the service was furnished prior to January 1, 1998.

(2) HCFA determines the fee schedule amount for an anesthesia service personally performed by a physician on the basis of an anesthesia-specific fee schedule CF and unreduced base units and anesthesia time units. One anesthesia time unit is equivalent to 15 minutes of anesthesia time, and fractions of a 15-minute period are recognized as fractions of an anesthesia time unit.

(d) *Anesthesia services medically directed by a physician.* (1) HCFA considers an anesthesia service to be medically directed by a physician if:

(i) The physician performs the activities described in § 415.110 of this chapter.

(ii) The physician directs qualified individuals involved in two, three, or four concurrent cases.

(iii) Medical direction can occur for a single case furnished on or after January 1, 1998 if the physician performs the activities described in § 415.110 of this

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chapter and medically directs a single CRNA or AA.

(2) The rules for medical direction differ for certain time periods depending on the nature of the qualified individual who is directed by the physician. If more than two procedures are directed on or after January 1, 1994, the qualified individuals could be AAs, CRNAs, interns, or residents. The medical direction rules apply to student nurse anesthetists only if the physician directs two concurrent cases, each of which involves a student nurse anesthetist or the physician directs one case involving a student nurse anesthetist and the other involving a CRNA, AA, intern, or resident.

(3) Payment for medical direction is based on a specific percentage of the payment allowance recognized for the anesthesia service personally performed by a physician alone. The following percentages apply for the years specified:

(i) CY 1994—60 percent of the payment allowance for personally performed procedures.

(ii) CY 1995—57.5 percent of the payment allowance for personally performed services.

(iii) CY 1996—55 percent of the payment allowance for personally performed services.

(iv) CY 1997—52.5 percent of the payment allowance for personally performed services.

(v) CY 1998 and thereafter—50 percent of the payment allowance for personally performed services.

* * * * *

7. Section 414.60 is revised to read as follows:

§ 414.60 Payment for the services of CRNAs.

(a) *Basis for payment.* Beginning with CY 1994—

(1) The allowance for an anesthesia service furnished by a medically directed CRNA is based on a fixed percentage of the allowance recognized for the anesthesia service personally performed by the physician alone, as specified in § 414.46(d)(3); and

(2) The CF for an anesthesia service furnished by a CRNA not directed by a physician may not exceed the CF for a service personally performed by a physician.

(b) *To whom payment may be made.* Payment for an anesthesia service furnished by a CRNA may be made to the CRNA or to any individual or entity (such as a hospital, rural primary care hospital, physician, group practice, or ambulatory surgical center) with which the CRNA has an employment or contract relationship that provides for payment to be made to the individual or entity.

(c) *Condition for payment.* Payment for the services of a CRNA may be made only on an assignment related basis, and any assignment accepted by a CRNA is binding on any other person presenting a claim or request for payment for the service.

Subpart H—[Removed and Reserved]

8. Subpart H, consisting of §§ 414.450 through 414.453, is removed and reserved.

E. A new part 415 is added to read as follows:

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

Subpart A—General Provisions

Sec.

415.1 Basis and scope.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

415.50 Scope.
415.55 General payment rules.
415.60 Allocation of physician compensation costs.
415.70 Limits on compensation for physician services in providers.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

415.100 Scope.
415.102 Conditions for fee schedule payment for physician services to beneficiaries in providers.
415.105 Amounts of payment for physician services to beneficiaries in providers.
415.110 Conditions for payment: Anesthesiology services.
415.120 Conditions for payment: Radiology services.
415.130 Conditions for payment: Physician pathology services.

Subpart D—Physician Services in Teaching Settings

415.150 Scope.
415.152 Definitions.
415.160 Election of reasonable cost payment for direct medical and surgical services of physicians in teaching hospitals: General provisions.
415.162 Determining payment for physician services furnished to beneficiaries in teaching hospitals.
415.164 Payment to a fund.
415.170 Conditions for payment on a fee schedule basis for physician services in a teaching setting.
415.172 Physician fee schedule payment for services of teaching physicians.
415.174 Exception: Evaluation and management services furnished in certain centers.
415.176 Renal dialysis services.
415.178 Anesthesia services.
415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.
415.184 Psychiatric services.
415.190 Conditions of payment: Assistants at surgery in teaching hospitals.

Subpart E—Services of Residents

415.200 Services of residents in approved GME programs.
415.202 Services of residents not in approved GME programs.
415.204 Services of residents in skilled nursing facilities and home health agencies.
415.206 Services of residents in nonprovider settings.
415.208 Services of moonlighting residents.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 415.1 Basis and scope.

(a) *Basis.* This part is based on the provisions of the following sections of the Act: Section 1848 establishes a fee schedule for payment for physician services. Section 1861(q) specifies what is included in the term "physician services" covered under Medicare. Section 1862(a)(14) sets forth the exclusion of nonphysician services furnished to hospital patients under Part B of Medicare. Section 1886(d)(5)(B) provides for a payment adjustment under the prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983, to account for the indirect costs of medical education. Section 1886(h) establishes the methodology for Medicare payment of the cost of direct GME activities.

(b) *Scope.* This part sets forth rules for fiscal intermediary payments to providers for physician services, Part B carrier payments for physician services to beneficiaries in providers, physician services in teaching settings, and services of residents.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

§ 415.50 Scope.

This subpart sets forth rules for payment by fiscal intermediaries to providers for services furnished by physicians. Payment for covered services is made either under the prospective payment system (PPS) to PPS-participating providers in accordance with part 412 of this chapter or under the reasonable cost method to non-PPS participating providers in accordance with part 413 of this chapter.

§ 415.55 General payment rules.

(a) *Allowable costs.* Except as specified otherwise in §§ 413.102 of this chapter (concerning compensation of owners), 415.60 (concerning allocation of physician compensation costs), and 415.162 (concerning payment for physician services furnished to beneficiaries in teaching hospitals), costs a provider incurs for services of physicians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 415.102(a) regarding fee schedule payment for services of physicians to a beneficiary in a provider.

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms and the services of standby surgical team physicians.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

(4) The costs incurred by the provider for the services meet the requirements in § 413.9 of this chapter regarding costs related to patient care.

(5) The costs do not include supervision of interns and residents unless the provider elects reasonable cost payment as specified in § 415.160, or any other costs incurred in connection with an approved GME program that are payable under § 413.86 of this chapter.

(b) *Allocation of allowable costs.* The provider must follow the rules in § 415.60 regarding allocation of physician compensation costs to determine its costs of services.

(c) *Limits on allowable costs.* The intermediary must apply the limits on compensation set forth in § 415.70 to determine its payments to a provider for the costs of services.

§ 415.60 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, *physician compensation costs* means monetary payments, fringe benefits, deferred compensation, and any other items of value (excluding office space or billing and collection services) that a provider or other organization furnishes a physician in return for the physician services. Other organizations are entities related to the provider within the meaning of § 413.17 of this chapter or entities that furnish services for the provider under arrangements within the meaning of the Act.

(b) *General rule.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among—

(1) Physician services to the provider (as described in § 415.55);

(2) Physician services to patients (as described in § 415.102); and

(3) Activities of the physician, such as funded research, that are not paid under either Part A or Part B of Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to payable physician services to the provider (as described in § 415.55) are allowable costs to the provider under this subpart.

(d) *Allocation of all compensation to services to the provider.* Generally, the total physician compensation received by a physician is allocated among all services furnished by the physician, unless—

(1) The provider certifies that the compensation is attributable solely to the physician services furnished to the provider; and

(2) The physician bills all patients for the physician services he or she furnishes to them and personally receives the payment from or on behalf of the patients. If returned directly or indirectly to the provider or an organization related to the provider within the meaning of § 413.17 of this chapter, these payments are not compensation for physician services furnished to the provider.

(e) *Assumed allocation of all compensation to beneficiary services.* If the provider and physician agree to accept the assumed allocation of all the physician services to direct services to beneficiaries as described under § 415.102(a), HCFA does not require a written allocation agreement between the physician and the provider.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary pays the provider for these costs only if—

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not payable under either Part A or Part B of Medicare; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary assumes, for purposes of determining reasonable costs of the provider, that 100 percent of the physician compensation cost is allocated to services to beneficiaries as specified in paragraph (b)(2) of this section.

(g) *Recordkeeping requirements.* Except for services furnished in accordance with the assumed allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must meet all of the following requirements:

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier.

(2) Report the information on which the physician compensation allocation is based to the intermediary or the carrier on an annual basis and promptly notify the intermediary or carrier of any revisions to the compensation allocation.

(3) Retain each physician compensation allocation, and the information on which it is based, for at least 4 years after the end of each cost reporting period to which the allocation applies.

§ 415.70 Limits on compensation for physician services in providers.

(a) *Principle and scope.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, HCFA establishes reasonable compensation equivalency limits on the amount of compensation paid to physicians by providers. These limits are applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 415.55(a).

(2) Limits established under this section do not apply to costs of physician compensation attributable to furnishing inpatient hospital services that are paid for under the prospective

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payment system implemented under part 412 of this chapter or to costs of physician compensation attributable to approved GME programs that are payable under § 413.86 of this chapter.

(3) Compensation that a physician receives for activities that may not be paid for under either Part A or Part B of Medicare is not considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA establishes a methodology for determining annual reasonable compensation equivalency limits and, to the extent possible, considers average physician incomes by specialty and type of location using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment is based on the level established by the limits.

(d) *Adjustment of the limits.* The intermediary may adjust limits established under paragraph (b) of this section to account for costs incurred by the physician or the provider related to malpractice insurance, professional memberships, and continuing medical education.

(1) For the costs of membership in professional societies and continuing medical education, the intermediary may adjust the limit by the lesser of—

(i) The actual cost incurred by the provider or the physician for these activities; or

(ii) Five percent of the appropriate limit.

(2) For the cost of malpractice expenses incurred by either the provider or the physician, the intermediary may adjust the reasonable compensation equivalency limit by the cost of the malpractice insurance expense related to the physician service furnished to patients in providers.

(e) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits.

(f) *Notification of changes in methodologies and payment limits.* (1) Before the start of a cost reporting period to which limits established under this section will be applied, HCFA publishes a notice in the **Federal Register** that sets forth the amount of the limits and explains how it calculated the limits.

(2) If HCFA proposes to revise the methodology for establishing payment limits under this section, HCFA publishes a notice, with opportunity for public comment, in the **Federal Register**. The notice explains the proposed basis and methodology for setting limits, specifies the limits that would result, and states the date of implementation of the limits.

(3) If HCFA updates limits by applying the most recent economic index data without revising the limit methodology, HCFA publishes the revised limits in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

§ 415.100 Scope.

This subpart implements section 1887(a)(1)(A) of the Act by providing general conditions that must be met in order for services furnished by physicians to beneficiaries in providers to be paid for on the basis of the physician fee schedule under part 414 of this chapter. Section 415.102 sets forth the conditions for fee schedule payment for physician services to beneficiaries in providers. Section 415.105 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 415.120 and 415.130 set forth additional conditions for payment for physician services in the specialties of radiology and pathology (laboratory services).

§ 415.102 Conditions for fee schedule payment for physician services to beneficiaries in providers.

(a) *General rule.* If the physician furnishes services to beneficiaries in providers, the carrier pays on a fee schedule basis provided the following requirements are met:

(1) The services are personally furnished for an individual beneficiary by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual beneficiary.

(3) The services ordinarily require performance by a physician.

(4) In the case of radiology or laboratory services, the additional requirements in § 415.120 or § 415.130, respectively, are met.

(b) *Exception.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (a) of this section, but are related to beneficiary care furnished by the provider, the intermediary pays for those services, if otherwise covered. The intermediary follows the rules in §§ 415.55 and 415.60 for payment on the basis of reasonable cost or PPS, as appropriate.

(c) *Effect of billing charges for physician services to a provider.*

(1) If a physician furnishes services that may be paid under the reasonable cost rules in § 415.55 or § 415.60, and paid by the intermediary, or would be paid under those rules except for the PPS rules in part 412 of this chapter, and under the payment rules for GME established by § 413.86 of this chapter, neither the provider nor the physician may seek payment from the carrier, beneficiary, or another insurer.

(2) If a physician furnishes services to an individual beneficiary that do not meet the applicable conditions in §§ 415.120 (concerning conditions for payment for radiology services) and 415.130 (concerning conditions for payment for physician pathology services), the carrier does not pay on a fee schedule basis.

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary or another insurer for physician services furnished to the provider, as described in § 415.55(a), HCFA considers the provider to which the services are furnished to have violated its provider participation agreement, and may terminate that agreement. See part 489 of this chapter for rules governing provider agreements.

(d) *Effect of physician assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, and the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services, the following rules apply:

(1) If the conditions set forth in paragraph (a) of this section are met, the carrier pays for the physician services under the physician fee schedule in part 414 of this chapter.

(2) To the extent the provider incurs a cost payable on a reasonable cost basis under part 413 of this chapter, the intermediary pays the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supplies, equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as being related to the provider within the meaning of § 413.17 of this chapter (concerning cost to related organizations).

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 415.105 Amounts of payment for physician services to beneficiaries in providers.

(a) *General rule.* The carrier determines amounts of payment for physician services to beneficiaries in providers in accordance with the general rules governing the physician fee schedule payment in part 414 of this chapter, except as provided in paragraph (b) of this section.

(b) *Application in certain settings*—(1) *Teaching hospitals.* The carrier applies the rules in subpart D of this part (concerning physician services in teaching settings), in addition to those in this section, in determining whether fee schedule payment should be made for physician services to individual beneficiaries in a teaching hospital.

(2) *Hospital-based ESRD facilities.* The carrier applies §§ 414.310 through 414.314 of this chapter, which set forth determination of reasonable charges under the ESRD program, to determine the amount of payment for physician services furnished to individual beneficiaries in a hospital-based ESRD facility approved under part 405 subpart U.

§ 415.110 Conditions for payment: Anesthesiology services.

(a) *Services furnished directly or concurrently.* The carrier pays a physician for anesthesia services furnished to patients in a provider on a fee schedule basis only if the services meet the conditions in § 415.102(a) and the following additional conditions:

(1) For each patient, the physician—

(i) Performs a pre-anesthetic examination and evaluation;

(ii) Prescribes the anesthesia plan;

(iii) Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;

(iv) Ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual as defined in program operating instructions;

(v) Monitors the course of anesthesia administration at frequent intervals;

(vi) Remains physically present and available for immediate diagnosis and treatment of emergencies; and

(vii) Provides indicated post-anesthesia care.

(2) The physician performs the procedure personally or directs no more than four anesthesia procedures concurrently and does not perform any other services while he or she is directing the concurrent procedures.

(b) *Supervision of more than four procedures concurrently.* If a physician is involved in furnishing more than four procedures concurrently, or is performing other services while directing the concurrent procedures, the concurrent anesthesia services are physician services to the provider in which the procedures are performed. In these cases, the physician is not required to meet the criteria of paragraphs (a)(1) (iii) and (vii) of this section personally, but must ensure that a qualified individual performs any procedure in which the physician does not personally participate. In these cases, the intermediary pays for the services under the rules in §§ 415.55 and 415.60 on reasonable cost payment for physician services to providers or under the rules in part 412 of this chapter for payment under the prospective payment system.

§ 415.120 Conditions for payment: Radiology services.

(a) *Services to beneficiaries.* The carrier pays for radiology services furnished by a physician to a beneficiary on a fee schedule basis only if the services meet the conditions for fee schedule payment in § 415.102(a) and are identifiable, direct, and discrete diagnostic or therapeutic services furnished to an individual beneficiary, such as interpretation of x-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures. The carrier pays for interpretations only if there is a written report prepared for inclusion in the patient's medical record maintained by the hospital.

(b) *Services to providers.* The carrier does not pay on a fee schedule basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the x-ray films or other items that are interpreted by the radiologist. However, the intermediary pays the provider for these services in accordance with § 415.55 for provider costs; § 415.102(d)(2) for costs incurred by a physician, such as under a lease or concession agreement; or part 412 of this chapter for payment under PPS.

§ 415.130 Conditions for payment: Physician pathology services.

(a) *Physician pathology services.* The carrier pays for pathology services furnished by a physician to an individual beneficiary on a fee schedule basis only if the services meet the conditions for payment in § 415.102(a) and are one of the following services:

(1) Surgical pathology services.

(2) Specific cytopathology, hematology, and blood banking services that have been identified to require performance by a physician and are listed in program operating instructions.

(3) Clinical consultation services that meet the requirements in paragraph (b) of this section.

(4) Clinical laboratory interpretative services that meet the requirements of paragraphs (b)(1), (b)(3), and (b)(4) of this section and that are specifically listed in program operating instructions.

(b) *Clinical consultation services.* For purposes of this section, clinical consultation services must meet the following requirements:

(1) Be requested by the beneficiary's attending physician.

(2) Relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the beneficiary.

(3) Result in a written narrative report included in the beneficiary's medical record.

(4) Require the exercise of medical judgment by the consultant physician.

(c) *Physician pathology services furnished by an independent laboratory.* Laboratory services, including the technical component of a service, furnished to a hospital inpatient or outpatient by an independent laboratory are paid on a fee schedule basis under this subpart only if they are physician pathology services as described in paragraph (a) of this section.

Subpart D—Physician Services in Teaching Settings

§ 415.150 Scope.

This subpart sets forth the rules governing payment for the services of physicians in teaching settings and the criteria for determining whether the payments are made as one of the following:

(a) Services to the hospital under the reasonable cost election in §§ 415.160 through 415.164.

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(b) Provider services through the direct GME payment mechanism in § 413.86 of this chapter.

(c) Physician services to beneficiaries under the physician fee schedule as set forth in part 414 of this chapter.

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means a residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

Direct medical and surgical services means services to individual beneficiaries that are either personally furnished by a physician or furnished by a resident under the supervision of a physician in a teaching hospital making the cost election described in §§ 415.160 through 415.162.

Nonprovider setting means a setting other than a hospital, skilled nursing facility, home health agency, or comprehensive outpatient rehabilitation facility in which residents furnish services. These include, but are not limited to, family practice or multispecialty clinics and physician offices.

Resident means one of the following:

(1) An individual who participates in an approved GME program, including programs in osteopathy, dentistry, and podiatry.

(2) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, for example, individuals with temporary or restricted licenses, or unlicensed graduates of foreign medical schools. For purposes of this subpart, the term *resident* is synonymous with the terms *intern* and *fellow*.

Teaching hospital means a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry.

Teaching physician means a physician (other than another resident) who involves residents in the care of his or her patients.

Teaching setting means any provider, hospital-based provider, or nonprovider settings in which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86, or on a reasonable-cost basis under the provisions of § 409.26 or § 409.40(f) for resident services furnished in skilled nursing facilities or home health agencies, respectively.

§ 415.160 Election of reasonable cost payment for direct medical and surgical services of physicians in teaching hospitals: General provisions.

(a) *Scope.* A teaching hospital may elect to receive payment on a reasonable cost basis for the direct medical and surgical services of its physicians in lieu of fee schedule payments that might otherwise be made for these services.

(b) *Conditions.* A teaching hospital may elect to receive these payments only if—

(1) The hospital notifies its intermediary in writing of the election and meets the conditions of either paragraph (b)(2) or paragraph (b)(3) of this section;

(2) All physicians who furnish services to Medicare beneficiaries in the hospital agree not to bill charges for these services; or

(3) All physicians who furnish services to Medicare beneficiaries in the hospital are employees of the hospital and, as a condition of employment, are precluded from billing for these services.

(c) *Effect of election.* If a teaching hospital elects to receive reasonable cost payment for physician direct medical and surgical services furnished to beneficiaries—

(1) Those services and the supervision of interns and residents furnishing care to individual beneficiaries are covered as hospital services, and

(2) The intermediary pays the hospital for those services on a reasonable cost basis under the rules in § 415.162. (Payment for other physician compensation costs related to approved GME programs is made as described in § 413.86 of this chapter.)

(d) *Election declined.* If the teaching hospital does not make this election, payment is made—

(1) For physician services furnished to beneficiaries on a fee schedule basis as described in part 414 subject to the rules in this subpart, and

(2) For the supervision of interns and residents as described in § 413.86.

§ 415.162 Determining payment for physician services furnished to beneficiaries in teaching hospitals.

(a) *General rule.* Payments for direct medical and surgical services of physicians furnished to beneficiaries and supervision of interns and residents furnishing care to beneficiaries is made by Medicare on the basis of reasonable cost if the hospital exercises the election as provided for in § 415.160. If this election is made, the following occurs:

(1) Physician services furnished to beneficiaries and supervision of interns and residents furnishing care to beneficiaries are paid on a reasonable-cost basis, as provided for in paragraph (b) of this section.

(2) Payment for certain medical school costs may be made as provided for in paragraph (c) of this section.

(3) Payments for services donated by volunteer physicians to beneficiaries are made to a fund designated by the organized medical staff of the teaching hospital or medical school as provided for in paragraph (d) of this section.

(b) *Reasonable cost of physician services and supervision of interns and residents.*

(1) Physician services furnished to beneficiaries and supervision of interns and residents furnishing care to beneficiaries in a teaching hospital are payable as provider services on a reasonable-cost basis.

(2) For purposes of this paragraph, *reasonable cost* is defined as the direct salary paid to these physicians, plus applicable fringe benefits.

(3) The costs must be allocated to the services as provided by paragraph (j) of this section and apportioned to program beneficiaries as provided by paragraph (g) of this section.

(4) Other allowable costs incurred by the provider related to the services described in this paragraph are payable subject to the requirements applicable to all other provider services.

(c) *Reasonable costs for the services furnished by a medical school or related organization in a hospital.* An amount is payable to the hospital by HCFA under the Medicare program provided that the costs would be payable if incurred directly by the hospital rather than under the arrangement. The amount must not be in excess of the reasonable costs (as defined in paragraphs (c)(1) and (c)(2) of this section) incurred by a teaching hospital for services furnished by a medical school or organization as described in § 413.17 of this chapter for certain costs to the medical school (or a related organization) in furnishing services in the hospital.

(1) *Reasonable costs of physician services.*

(i) *When the medical school and the hospital are related organizations.* If the medical school (or organization related to the medical school) and the hospital are related by common ownership or control as described in § 413.17 of this chapter—

(A) The costs of these services are allowable costs to the hospital under the provisions of § 413.17 of this chapter; and

(B) The reimbursable costs to the hospital are determined under the provisions of this section in the same manner as the costs incurred for physicians on the hospital staff and without regard to payments made to the medical school by the hospital.

(ii) *When the medical school and the hospital are not related organizations.*

(A) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school for the costs of those services furnished to all patients, payment is made by Medicare to the hospital for the reasonable cost incurred by the hospital for its payments to the medical school for services furnished to beneficiaries.

(B) Costs incurred under an arrangement must be allocated to the full range of services furnished to the hospital by the medical school physicians on the same basis as provided for under paragraph (j) of this section, and costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided for under paragraph (g) of this section.

(C) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school only for the costs of those services furnished to beneficiaries, costs of the medical school not to exceed 105 percent of the sum of physician direct salaries, applicable fringe benefits, employer's portion of FICA taxes, Federal and State unemployment taxes, and workmen's compensation paid by the medical school or an organization related to the medical school may be recognized as allowable costs of the medical school.

(D) These allowable medical school costs must be allocated to the full range of services furnished by the physicians of the medical school or organization related as provided by paragraph (j) of this section.

(E) Costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided by paragraph (g) of this section.

(2) *Reasonable costs of other than direct medical and surgical services.* These costs are determined in accordance with paragraph (c)(1) of this section except that—

(i) If the hospital makes payment to the medical school for other than direct medical and surgical services furnished to beneficiaries and supervision of interns and residents furnishing care to beneficiaries, these payments are subject to the required cost-finding and apportionment methods applicable to the cost of other hospital services (except for direct medical and surgical services furnished to beneficiaries); or

(ii) If the hospital makes payment to the medical school only for these services furnished to beneficiaries, the cost of these services is not subject to cost-finding and apportionment as otherwise provided by this subpart, and the reasonable cost paid by Medicare must be determined on the basis of the health insurance ratio(s) used in the apportionment of all other provider costs (excluding physician direct medical and surgical services furnished to beneficiaries) applied to the allowable medical school costs incurred by the medical school for the services furnished to all patients of the hospital.

(d) *"Salary equivalent" payments for direct medical and surgical services furnished by physicians on the voluntary staff of the hospital.*

(1) HCFA makes payments under the Medicare program to a fund as defined in § 415.164 for direct medical and surgical services furnished to beneficiaries on a regularly scheduled basis by physicians on the unpaid voluntary medical staff of the hospital (or medical school under arrangement with the hospital).

(i) These payments represent compensation for contributed medical staff time which, if not contributed, would have to be obtained through employed staff on a payable basis.

(ii) Payments for volunteer services are determined by applying to the regularly scheduled contributed time an hourly rate not to exceed the equivalent of the average direct salary (exclusive of fringe benefits) paid to all full-time, salaried physicians (other than interns and residents) on the hospital staff or, if the number of full-time salaried physicians is minimal in absolute terms or in relation to the number of physicians on the voluntary staff, to physicians at like institutions in the area.

(iii) This "salary equivalent" is a single hourly rate covering all physicians regardless of specialty and is applied to the actual regularly scheduled time contributed by the physicians in furnishing direct medical and surgical services to beneficiaries including supervision of interns and residents in that care.

(iv) A physician who receives any compensation from the hospital or a medical school related to the hospital by common ownership or control (within the meaning of § 413.17 of this chapter) for direct medical and surgical services furnished to any patient in the hospital is not considered an unpaid voluntary physician for purposes of this paragraph.

(v) If, however, a physician receives compensation from the hospital or related medical school or organization only for services that are other than direct medical and surgical services, a salary equivalent payment for the physician's regularly scheduled direct medical and surgical services to beneficiaries in the hospital may be imputed. However, the sum of the imputed value for volunteer services and the physician's actual compensation from the hospital and the related medical school (or organization) may not exceed the amount that would have been imputed if all of the physician's hospital and medical school services (compensated and volunteer) had been volunteer services, or paid at the rate of $30,000 per year, whichever is less.

(2) The following examples illustrate how the allowable imputed value for volunteer services is determined. In each example, it has been assumed that the average salary equivalent hourly rate is equal to the hourly rate for the individual physician's compensated services.

Example No: 1. Dr. Jones received $3,000 a year from Hospital X for services other than direct medical services to all patients, for example, utilization review and administrative services. Dr. Jones also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000 for the cost reporting period. The full imputed value of Dr. Jones' volunteer direct medical services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($3,000) does not exceed $30,000.

Example No: 2. Dr. Smith received $25,000 from Hospital X for services as a department head in a teaching hospital. Dr. Smith also voluntarily furnished direct medical services to beneficiaries. The imputed value of the

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volunteer services amounted to $10,000. Only $5,000 of the imputed value of volunteer services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($25,000) exceeds the $30,000 maximum amount allowable for all of Dr. Smith's services.

Computation:

Maximum amount allowable for all services performed by Dr. Smith for purposes of this computation	$30,000
Less compensation received from Hospital X for other than direct medical services to individual patients	$25,000
Allowable amount of imputed value for the volunteer services furnished by Dr. Smith	$5,000

Example No. 3. Dr. Brown is not compensated by Hospital X for any services furnished in the hospital. Dr. Brown voluntarily furnished direct surgical services to beneficiaries for a period of 6 months, and the imputed value of these services amounted to $20,000. The allowable amount of the imputed value for volunteer services furnished by Dr. Brown would be limited to $15,000 ($30,000 x 6/12).

(3) The amount of the imputed value for volunteer services applicable to beneficiaries and payable to a fund is determined in accordance with the aggregate per diem method described in paragraph (g) of this section.

(4) Medicare payments to a fund must be used by the fund solely for improvement of care of hospital patients or for educational or charitable purposes (which may include but are not limited to medical and other scientific research).

(i) No personal financial gain, either direct or indirect, from benefits of the fund may inure to any of the hospital staff physicians, medical school faculty, or physicians for whom Medicare imputes costs for purposes of payment into the fund.

(ii) Expenses met from contributions made to the hospital from a fund are not included as a reimbursable cost when expended by the hospital, and depreciation expense is not allowed with respect to equipment or facilities donated to the hospital by a fund or purchased by the hospital from monies in a fund.

(e) *Requirements for payment*—(1) *Physicians on the hospital staff.* The requirements under which the costs of physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries are the same as those applicable to the cost of all other covered provider services except that the costs of these services are separately determined as provided by this section and are not subject to cost-finding as described in § 413.24 of this chapter.

(2) *Physicians on the medical school faculty.* Payment is made to a hospital for the costs of services of physicians on the medical school faculty, provided that if the medical school is not related to the hospital (within the meaning of § 413.17 of this chapter, concerning cost to related organizations), the hospital does not make payment to the medical school for services furnished to all patients and the following requirements are met: If the hospital makes payment to the medical school for services furnished to all patients, these requirements do not apply. (See paragraph (c)(1)(ii) of this section.)

(i) There is a written agreement between the hospital and the medical school or organization, specifying the types and extent of services to be furnished by the medical school and specifying that the hospital must pay to the medical school an amount at least equal to the reasonable cost (as defined in paragraph (c) of this section) of furnishing the services to beneficiaries.

(ii) The costs are paid to the medical school by the hospital no later than the date on which the cost report covering the period in which the services were furnished is due to HCFA.

(iii) Payment for the services furnished under an arrangement would have been made to the hospital had the services been furnished directly by the hospital.

(3) *Physicians on the voluntary staff of the hospital (or medical school under arrangement with the hospital).* If the conditions for payment to a fund outlined in § 415.164 are met, payments are made on a "salary equivalent" basis (as defined in paragraph (d) of this section) to a fund.

(f) *Requirements for payment for medical school faculty services other than physician direct medical and surgical services.* If the requirements for payment for physician direct medical and surgical services furnished to beneficiaries in a teaching hospital described in paragraph (e) of this section are met, payment is made to a hospital for the costs of medical school faculty services other than physician direct medical and surgical services furnished in a teaching hospital.

(g) *Aggregate per diem methods of apportionment*—(1) *For the costs of physician direct medical and surgical services.* The cost of physician direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined on the basis of an average cost per diem as defined in paragraph (h)(1) of this section for physician direct medical and surgical services to all patients (see §§ 415.172 through 415.184) for each of the following categories of physicians:

(i) Physicians on the hospital staff.

(ii) Physicians on the medical school faculty.

(2) *For the imputed value of physician volunteer direct medical and surgical services.* The imputed value of physician direct medical and surgical services furnished to beneficiaries in a teaching hospital is determined on the basis of an average per diem, as defined in paragraph (h)(1) of this section, for physician direct medical and surgical services to all patients except that the average per diem is derived from the imputed value of the physician volunteer direct medical and surgical services furnished to all patients.

(h) *Definitions.* (1) *Average cost per diem for physician direct medical and surgical services (including supervision of interns and residents) furnished in a teaching hospital to patients in each category of physician services described in paragraph (g)(1) of this section* means the amount computed by dividing total reasonable costs of these services in each category by the sum of—

(i) Inpatient days (as defined in paragraph (h)(2) of this section); and

(ii) Outpatient visit days (as defined in paragraph (h)(3) of this section).

(2) *Inpatient days* are determined by counting the day of admission as 3.5 days and each day after a patient's day of admission, except the day of discharge, as 1 day.

(3) *Outpatient visit days* are determined by counting only one visit day for each calendar day that a patient visits an outpatient department or multiple outpatient departments.

(i) *Application.* (1) The following illustrates how apportionment based on the aggregate per diem method for costs of physician direct medical and surgical services furnished in a teaching hospital to patients is determined.

Teaching Hospital Y

Statistical and financial data:	
Total inpatient days as defined in paragraph (h)(2) of this section and outpatient visit days as defined in paragraph (h)(3) of this section	75,000
Total inpatient Part A days	20,000
Total inpatient Part B days where Part A coverage is not available	1,000
Total outpatient Part B visit days	5,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the hospital staff as determined in accordance with paragraph (i) of this section	$1,500,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the medical school faculty as determined in accordance with paragraph (i) of this section	$1,650,000
Computation of cost applicable to program for physicians on the hospital staff:	
Average cost per diem for direct medical and surgical services to patients by physicians on the hospital staff: $1,500,000 ÷ 75,000 = $20 per diem.	
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $20 per diem × 20,000	$400,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000	$20,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $20 per diem × 5,000	$100,000
Computation of cost applicable to program for physicians on the medical school faculty:	
Average cost per diem for direct medical and surgical services to patients by physicians on the medical school faculty: $1,650,000 ÷ 75,000 = $22 per diem.	
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $22 per diem × 20,000	$440,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000	$22,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $22 per diem × 5,000	$110,000

(2) The following illustrates how the imputed value of physician volunteer direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined.

Example: The physicians on the medical staff of Teaching Hospital Y donated a total of 5,000 hours in furnishing direct medical and surgical services to patients of the hospital during a cost reporting period and did not receive any compensation from either the hospital or the medical school. Also, the imputed value for any physician volunteer services did not exceed the rate of $30,000 per year per physician.

Statistical and financial data:	
Total salaries paid to the full-time salaried physicians by the hospital (excluding interns and residents)	$800,000
Total physicians who were paid for an average of 40 hours per week or 2,080 (52 weeks x 40 hours per week) hours per year	20
Average hourly rate equivalent: $800,000 ÷ 41,600 (2,080 × 20)	$19.23
Computation of total imputed value of physician volunteer services applicable to all patients:	
(Total donated hours × average hourly rate equivalent): 5,000 × $19.23	$96,150
Total inpatient days (as defined in paragraph (h)(2) of this section) and outpatient visit days (as defined in paragraph (h)(3) of this section)	75,000
Total inpatient Part A days	20,000
Total inpatient Part B days if Part A coverage is not available	1,000
Total outpatient Part B visit days	5,000
Computation of imputed value of physician volunteer direct medical and surgical services furnished to Medicare beneficiaries:	
Average per diem for physician direct medical and surgical services to all patients: $96,150 ÷ 75,000 = $1.28 per diem	
Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $1.28 per diem × 20,000	$25,600
Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $1.28 per diem × 1,000	$1,280
Imputed value of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $1.28 per diem × 5,000	$6,400
Total	$33,280

(j) *Allocation of compensation paid to physicians in a teaching hospital.*

(1) In determining reasonable cost under this section, the compensation paid by a teaching hospital, or a medical school or related organization under arrangement with the hospital, to physicians in a teaching hospital must be allocated to the full range of services implicit in the physician compensation arrangements. (However, see paragraph (d) of this section for the computation of the "salary equivalent" payments for volunteer services furnished to patients.)

(2) This allocation must be made and must be capable of substantiation on the basis of the proportion of each physician's time spent in furnishing each type of service to the hospital or medical school.

§ 415.164 Payment to a fund.

(a) *General rules.* Payment for certain voluntary services by physicians in teaching hospitals (as these services are described in § 415.160) is made on a salary equivalent basis (as described in § 415.162(d)) subject to the conditions and limitations contained in parts 405 and 413 of this chapter and this part 415, to a single fund (as defined in paragraph (b) of this section) designated by the organized medical staff of the hospital (or, if the services are furnished in the hospital by the faculty of a medical school, to a fund as may be designated by the faculty), if the following conditions are met:

(1) The hospital (or medical school furnishing the services under arrangement with the hospital) incurs no actual cost in furnishing the services.

(2) The hospital has an agreement with HCFA under part 489 of this chapter.

(3) The intermediary, or HCFA as appropriate, has received written assurances that—

(i) The payment is used solely for the improvement of care of hospital patients or for educational or charitable purposes; and

(ii) Neither the individuals who are furnished the services nor any other persons are charged for the services (and if charged, provision is made for the return of any monies incorrectly collected).

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(b) *Definition of a fund.* For purposes of paragraph (a) of this section, a *fund* is an organization that meets either of the following requirements:

(1) The organization has and retains exemption, as a governmental entity or under section 501(c)(3) of the Internal Revenue Code (nonprofit educational, charitable, and similar organizations), from Federal taxation.

(2) The organization is an organization of physicians who, under the terms of their employment by an entity that meets the requirements of paragraph (b)(1) of this section, are required to turn over to that entity all income that the physician organization derives from the physician services.

(c) *Status of a fund.* A fund approved for payment under paragraph (a) of this section has all the rights and responsibilities of a provider under Medicare except that it does not enter into an agreement with HCFA under part 489 of this chapter.

§ 415.170 Conditions for payment on a fee schedule basis for physician services in a teaching setting.

Services meeting the conditions for payment in § 415.102(a) furnished in teaching settings are payable under the physician fee schedule if—

(a) The services are personally furnished by a physician who is not a resident; or

(b) The services are furnished by a resident in the presence of a teaching physician except as provided in § 415.172 (concerning physician fee schedule payment for services of teaching physicians), § 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), § 415.176 (concerning renal dialysis services), and § 415.184 (concerning psychiatric services), as applicable.

§ 415.172 Physician fee schedule payment for services of teaching physicians.

(a) *General rule.* If a resident participates in a service furnished in a teaching setting, physician fee schedule payment is made only if a teaching physician is present during the key portion of any service or procedure for which payment is sought.

(1) In the case of surgical, high-risk, or other complex procedures, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure.

(i) In the case of surgery, the teaching physician's presence is not required during opening and closing of the surgical field.

(ii) In the case of procedures performed through an endoscope, the teaching physician must be present during the entire viewing.

(2) In the case of evaluation and management services, the teaching physician must be present during the portion of the service that determines the level of service billed. (However, in the case of evaluation and management services furnished in hospital outpatient departments and certain other ambulatory settings, the requirements of § 415.174 apply.)

(b) *Documentation.* Except for services furnished as set forth in §§ 415.174 (concerning an exception for services furnished in hospital outpatient and certain other ambulatory settings), 415.176 (concerning renal dialysis services), and 415.184 (concerning psychiatric services), the medical records must document the teaching physician was present at the time the service is furnished. The presence of the teaching physician during procedures may be demonstrated by the notes in the medical records made by a physician, resident, or nurse. In the case of evaluation and management procedures, the teaching physician must personally document his or her participation in the service in the medical records.

(c) *Payment level.* In the case of services such as evaluation and management for which there are several levels of service codes available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service when fully furnished by the teaching physician.

§ 415.174 Exception: Evaluation and management services furnished in certain centers.

(a) In the case of certain evaluation and management codes of lower and mid-level complexity (as specified by HCFA in program instructions), carriers may make physician fee schedule payment for a service furnished by a resident without the presence of a teaching physician. For the exception to apply, all of the following conditions must be met:

(1) The services must be furnished in a center that is located in an outpatient department of a hospital or another ambulatory care entity in which the time spent by residents in patient care activities is included in determining intermediary payments to a hospital under § 413.86.

(2) Any resident furnishing the service without the presence of a teaching physician must have completed more than 6 months of an approved residency program.

(3) The teaching physician must not direct the care of more than four residents at any given time and must direct the care from such proximity as to constitute immediate availability. The teaching physician must—

(i) Have no other responsibilities at the time;

(ii) Assume management responsibility for those beneficiaries seen by the residents;

(iii) Ensure that the services furnished are appropriate;

(iv) Review with each resident during or immediately after each visit, the beneficiary's medical history, physical examination, diagnosis, and record of tests and therapies; and

(v) Document the extent of the teaching physician's participation in the review and direction of the services furnished to each beneficiary.

(4) The range of services furnished by residents in the center includes all of the following:

(i) Acute care for undifferentiated problems or chronic care for ongoing conditions.

(ii) Coordination of care furnished by other physicians and providers.

(iii) Comprehensive care not limited by organ system, diagnosis, or gender.

(5) The patients seen must be an identifiable group of individuals who consider the center to be the continuing source of their health care and in which services are furnished by residents under the medical direction of teaching physicians.

(b) Nothing in paragraph (a) of this section may be construed as providing a basis for the coverage of services not determined to be covered under Medicare, such as routine physical checkups.

§ 415.176 Renal dialysis services.

In the case of renal dialysis services, physicians who are not paid under the physician monthly capitation payment method (as described in § 414.314 of this chapter) must meet the requirements of §§ 415.170 and 415.172 (concerning physician fee schedule payment for services of teaching physicians).

§ 415.178 Anesthesia services.

(a) *General rule.* An unreduced physician fee schedule payment may be made if a physician is involved in a single anesthesia procedure involving an anesthesia resident. In the case of anesthesia services, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. The teaching physician cannot receive an unreduced fee if he or she performs services involving other patients during the period the anesthesia resident is furnishing services in a single case. For additional rules for payment of anesthesia services involving residents, see § 414.46(c)(1)(iii)).

(b) *Documentation.* Documentation must indicate the physician's presence or participation in the administration of the anesthesia and a preoperative and postoperative visit by the physician.

§ 415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.

(a) *General rule.* Physician fee schedule payment is made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed or reviewed by a physician other than a resident.

(b) *Documentation.* Documentation must indicate that the physician personally performed the interpretation or reviewed the resident's interpretation with the resident.

§ 415.184 Psychiatric services.

To qualify for physician fee schedule payment for psychiatric services furnished under an approved GME program, the physician must meet the requirements of §§ 415.170 and 415.172, including documentation, except that the requirement for the presence of the teaching physician during the service in which a resident is involved may be met by observation of the service by use of a one-way mirror, video equipment, or similar device.

§ 415.190 Conditions of payment: Assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a fee schedule basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(7)(D)(I) of the Act and applies only to hospitals with an approved GME residency program. Except as specified in paragraph (c) of this section, fee schedule payment is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A resident in a training program relating to the specialty required for the surgery available to serve as an assistant at surgery.

(b) *Definition. Assistant at surgery* means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(c) *Conditions for payment for assistants at surgery.* Payment on a fee schedule basis is made for the services of an assistant at surgery in a teaching hospital only if the services meet one of the following conditions:

(1) Are required as a result of exceptional medical circumstances.

(2) Are complex medical procedures performed by a team of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

(3) Constitute concurrent medical care relating to a medical condition that requires the presence of, and active care by, a physician of another specialty during surgery.

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery, and the primary surgeon does not use interns and residents in the surgical procedures that the surgeon performs (including preoperative and postoperative care).

(5) Are not related to a surgical procedure for which HCFA determines that assistants are used less than 5 percent of the time.

Subpart E—Services of Residents

§ 415.200 Services of residents in approved GME programs.

(a) *General rules.* Services furnished in hospitals by residents in approved GME programs are specifically excluded from being paid as "physician services" defined in § 414.2 of this chapter and are payable as hospital services. This exclusion applies whether or not the resident is licensed to practice under the laws of the State in which he or she performs the service. The payment methodology for services of residents in hospitals and hospital-based providers is set forth in § 413.86 of this chapter.

(b) *Exception.* For low and mid-level evaluation and management services furnished under certain conditions in centers located in hospital outpatient departments and other ambulatory settings, see § 415.174.

(c) *Definitions.* See § 415.152 for definitions of terms used in this subpart E.

§ 415.202 Services of residents not in approved GME programs.

(a) *General rules.* For services of a physician employed by a hospital who is authorized to practice only in a hospital setting and for the services of a resident who is not in any approved GME program, payment is made to the hospital on a Part B reasonable cost basis regardless of whether the services are furnished to hospital inpatients or outpatients.

(b) *Payment.* For services described in paragraph (a) of this section, payment is made under Part B by reducing the reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount. No payment is made for other costs of unapproved programs, such as administrative costs related to teaching activities of physicians.

§ 415.204 Services of residents in skilled nursing facilities and home health agencies.

(a) *Medicare Part A payment.* Payment is made under Medicare Part A for interns' and residents' services furnished in the following settings that meet the specified requirements:

(1) *Skilled nursing facility.* Payment to a participating skilled nursing facility may include the cost of services of an intern or resident who is in an approved GME program in a hospital with which the skilled nursing facility has a transfer agreement that provides, in part, for the transfer of patients and the interchange of medical records.

(2) *Home health agency.* A participating home health agency may receive payment for the cost of the services of an intern or resident who is under an approved GME program of a hospital with which the home health agency is affiliated or under common control if these services are furnished as part of the home health visits for a Medicare beneficiary. (Nevertheless, see § 413.86 of this chapter for the costs of approved GME programs in hospital-based providers.)

(b) *Medicare Part B payment.* Medical services of a resident of a hospital that are furnished by a skilled nursing facility or home health agency are paid under Medicare Part B if payment is not provided under Medicare Part A. Payment is made under Part B for a resident's services by reducing the

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reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount.

§ 415.206 Services of residents in nonprovider settings.

Patient care activities of residents in approved GME programs that are furnished in nonprovider settings are payable in one of the following two ways:

(a) *Direct GME payments.* If the conditions in § 413.86(f)(1)(iii) regarding patient care activities and training of residents are met, the time residents spend in nonprovider settings such as clinics, nursing facilities, and physician offices in connection with approved GME programs is included in determining the number of full-time equivalency residents in the calculation of a teaching hospital's resident count. The teaching physician rules on carrier payments in §§ 415.170 through 415.184 apply in these teaching settings.

(b) *Physician fee schedule.* (1) Services furnished by a resident in a nonprovider setting are covered as physician services and payable under the physician fee schedule if the following requirements are met:

(i) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the service is performed.

(ii) The time spent in patient care activities in the nonprovider setting is not included in a teaching hospital's full-time equivalency resident count for the purpose of direct GME payments.

(2) Payment may be made regardless of whether a resident is functioning within the scope of his or her GME program in the nonprovider setting.

(3) If fee schedule payment is made for the resident's services in a nonprovider setting, payment must not be made for the services of a teaching physician.

(4) The carrier must apply the physician fee schedule payment rules set forth in subpart A of part 414 of this chapter to payments for services furnished by a resident in a nonprovider setting.

§ 415.208 Services of moonlighting residents.

(a) *Definition.* For purposes of this section, the term *services of moonlighting residents* refers to services that licensed residents perform that are outside the scope of an approved GME program.

(b) *Services in GME program hospitals.* (1) The services of residents to inpatients of hospitals in which the residents have their approved GME program are not covered as physician services and are payable under § 413.86 regarding direct GME payments.

(2) Services of residents that are not related to their approved GME programs and are performed in an outpatient department or emergency department of a hospital in which they have their training program are covered as physician services and payable under the physician fee schedule if all of the following criteria are met:

(i) The services are identifiable physician services and meet the conditions for payment of physician services to beneficiaries in providers in § 415.102(a).

(ii) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

(iii) The services performed can be separately identified from those services that are required as part of the approved GME program.

(3) If the criteria specified in paragraph (b)(2) of this section are met, the services of the moonlighting resident are considered to have been furnished by the individual in his or her capacity as a physician, rather than in the capacity of a resident. The carrier must review the contracts and agreements for these services to ensure compliance with the criteria specified in paragraph (b)(2) of this section.

(4) No payment is made for services of a "teaching physician" associated with moonlighting services, and the time spent furnishing these services is not included in the teaching hospital's full-time equivalency count for the indirect GME payment (§ 412.105 of this chapter) and for the direct GME payment (§ 413.86 of this chapter).

(c) *Other settings.* Moonlighting services of a licensed resident in an approved GME program furnished outside the scope of that program in a hospital or other setting that does not participate in the approved GME program are payable under the physician fee schedule as set forth in § 415.206(b)(1).

F. Technical Amendments

PART 400—[AMENDED]

1. In § 400.310, the following changes are made:

a. The entries for §§ 405.481 and 405.552 are removed.

b. The table is amended by adding the following entries:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
. . . . .	
415.60	0938–0301
415.162	0938–0301
. . . . .	

PART 405—[AMENDED]

§ 405.502 [Amended]

2. In § 405.502(a)(10), the phrase "§ 405.580(c)(2) or (3)" is removed, and the phrase "§ 415.190(c)(2) or (c)(3) of this chapter" is added in its place.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.15 [Amended]

4. In § 411.15(m)(2)(i), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

5. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i-4, 1395hh, and 1395ww).

§ 412.50 [Amended]

6. In § 412.50, the following changes are made:

a. In paragraph (a), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

b. In paragraph (b), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

§ 412.71 [Amended]

7. In § 412.71(c)(1)(i), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

§ 412.105 [Amended]

8. In § 412.105(g)(1)(i)(A), "§ 405.522(a)" is removed, and "§ 415.200(a)" is added in its place.

PART 413—[AMENDED]

9. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.5 [Amended]

10. In § 413.5(c)(9), the phrase "(as described in § 405.465 of this chapter) where elected as provided for in § 405.521 of this chapter." is removed, and the phrase "(as described in § 415.162 of this chapter) if elected as provided for in § 415.160 of this chapter." is added in its place.

§ 413.13 [Amended]

11. In § 413.13(g)(1)(i), the phrase "§§ 405.480 through 405.482" is removed, and the phrase "§§ 415.55 through 415.70" is added in its place.

§ 413.80 [Amended]

12. In § 413.80(h), the phrase ", as described in § 414.450 of this chapter," is removed.

§ 413.86 [Amended]

13. In § 413.86, the following changes are made:

a. In paragraph (b), in the definition of "Approved medical residency program" in paragraph (1), "§ 405.522(a)" is removed, and "§ 415.200(a)" is added in its place.

b. In paragraph (g)(1)(ii), "§ 405.522(a)" is removed, and "§ 415.200(a)" is added in its place.

§ 413.174 [Amended]

14. In § 413.174(b)(4)(iv), the phrase "§§ 405.465 through 405.482" is removed, and the phrase "§§ 415.55 through 415.70, § 415.162, and § 415.164" is added in its place.

PART 414—[AMENDED]

§ 414.58 [Amended]

15. In § 414.58, the following changes are made:

a. In paragraph (a), the phrase "§§ 405.550 through 405.580" is removed, and the phrase "§§ 415.100 through 415.130, and § 415.190" is added in its place.

b. In paragraph (b), the phrase "§ 405.465 of this chapter if the hospital exercises the election described in § 405.521(c)(2) of this chapter" is removed, and the phrase "§ 415.162 of this chapter if the hospital exercises the election described in § 415.160 of this chapter" is added in its place.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

16. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

§ 417.554 [Amended]

17. In § 417.554, the phrase "§ 405.480, part 412 of this chapter, and §§ 413.55 and 413.24" is removed, and the phrase "part 412, §§ 413.24, 413.55, and 415.55" is added in its place.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

18. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 489.20 [Amended]

19. In § 489.20(d)(1), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

§ 489.21 [Amended]

20. In § 489.21(f), "§ 405.550(b)" is removed, and "§ 415.102(a)" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 1, 1995.

Donna E. Shalala,

Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addenda B Through E

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physician services furnished in 1995. Addendum B contains the RVUs for work, practice expense, and malpractice expense, and other information for all services included in the physician fee schedule. Addendum C provides interim RVUs and related information for codes that are subject to comment. Each code listed in Addendum C is also included in Addendum B. Further explanations of the information in these addenda are provided at the beginning of each addendum.

To compute a fee schedule amount according to the formula provided in the final rule, use the RVUs listed in Addendum B and the GPCIs for 1996 listed in Addendum D of this final rule. In applying the formula, use the appropriate CF: For services designated as surgical, use a CF of $40.7986. For primary care services, use a CF of $35.4173. For other nonsurgical services, use a CF of $34.6293.

Addendum D lists the GPCIs for 1996.

Addendum E lists the procedure codes subject to the site-of-service differential.

Addendum B—1996 Relative Value Units and Related Information Used in Determining Medicare Payments for 1996

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysician services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier –26) for the service. If there is a PC and a TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier –26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A = Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B = Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C = Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D = Deleted code. These codes are deleted effective with the beginning of the calendar year.

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E = Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

H = Deleted modifier. This code had TC and PC components in 1995. For 1996, these components are deleted.

N = Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P = Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician service and is furnished on the same day as a physician service, payment for it is bundled into the payment for the physician service to which it is incident (an example is an elastic bandage furnished by a physician incident to a physician service).

—If the item or service is covered as other than incident to a physician service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R = Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T = Injections. There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these services are bundled into the service(s) for which payment is made.

X = Exclusion by law. These codes represent an item or service that is not within the definition of "physician services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule. (Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 1996. Codes that are not used for Medicare payment are identified with a "9."

6. *Practice expense RVUs.* These are the RVUs for the practice expense for the service for 1996. Codes that are subject to the OBRA 1993 practice expense reduction are identified by an asterisk in this column.

7. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 1996.

8. *Total RVUs.* This is the sum of the work, practice expense, and malpractice expense RVUs for 1996.

9. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). An explanation of the alpha codes follows:

MMM = The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1996 Physicians' Current Procedural Terminology for specific definitions.

XXX = The global concept does not apply.

YYY = The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ = The code is part of another service and falls within the global period for the other service.

10. *Update indicator.* This column indicates whether the update for surgical procedures, primary care services, or other nonsurgical services applies to the CPT/HCPCS code in column 1. A "0" appears in this field for codes that are deleted in 1996 or are not paid under the physician fee schedule. A "P" in this column indicates that the update and CF for primary care services applies to this code. An "N" in this column indicates that the update and CF for other nonsurgical services applies to this code. An "S" in this column indicates that the separate update and CF for surgical procedures applies.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
10040		A	Acne surgery of skin abscess	1.34	0.32	0.03	1.69	010	S
10060		A	Drainage of skin abscess	1.12	0.44	0.04	1.60	010	S
10061		A	Drainage of skin abscess	2.48	0.64	0.06	3.18	010	S
10080		A	Drainage of pilonidal cyst	1.62	0.50	0.05	2.17	010	N
10081		A	Drainage of pilonidal cyst	2.40	1.11	0.16	3.67	010	S
10120		A	Remove foreign body	1.19	0.46	0.05	1.70	010	S
10121		A	Remove foreign body	2.64	1.00	0.12	3.76	010	S
10140		A	Drainage of hematoma/fluid	1.48	0.48	0.05	2.01	010	S
10160		A	Puncture drainage of lesion	1.15	0.38	0.05	1.58	010	S
10180		A	Complex drainage, wound	2.20	1.05	0.18	3.43	010	S
11000		A	Surgical cleansing of skin	0.91	0.40	0.04	1.35	000	S
11001		A	Additional cleansing of skin	0.45	0.26	0.02	0.73	ZZZ	S
11040		A	Surgical cleansing, abrasion	0.50	0.40	0.04	0.94	000	S
11041		A	Surgical cleansing of skin	0.82	0.56	0.06	1.44	000	S
11042		A	Cleansing of skin/tissue	1.12	0.65	0.08	1.85	000	S
11043		A	Cleansing of tissue/muscle	1.83	1.81	0.34	3.98	010	S
11044		A	Cleansing tissue/muscle/bone	2.28	2.82	0.49	5.59	010	S
11050		A	Trim skin lesion	0.43	0.37	0.03	0.83	000	S
11051		A	Trim 2 to 4 skin lesions	0.66	0.50	0.05	1.21	000	S
11052		A	Trim over 4 skin lesions	0.86	0.41	0.04	1.31	000	S
11100		A	Biopsy of skin lesion	0.61	0.51	0.04	1.36	000	S
11101		A	Biopsy, each added lesion	0.41	0.29	0.02	0.72	ZZZ	S
11200		A	Removal of skin tags	0.69	0.43	0.04	1.16	010	S
11201		A	Removal of added skin tags	0.26	0.17	0.02	0.45	ZZZ	S
11300		A	Shave skin lesion	0.51	0.53	0.05	1.09	000	S
11301		A	Shave skin lesion	0.85	0.67	0.06	1.58	000	S

[1] All CPT codes and descriptors copyright 1995 American Medical Association.
[2] Copyright 1994 American Dental Association. All rights reserved (D0110–D9999).
[3] 9 Indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
11302		A	Shave skin lesion	1.05	0.89	0.09	2.03	000	S
11303		A	Shave skin lesion	1.24	1.36	0.17	2.77	000	S
11305		A	Shave skin lesion	0.67	0.52	0.05	1.24	000	S
11306		A	Shave skin lesion	0.99	0.71	0.07	1.77	000	S
11307		A	Shave skin lesion	1.14	0.94	0.10	2.18	000	S
11308		A	Shave skin lesion	1.41	1.40	0.17	2.98	000	S
11310		A	Shave skin lesion	0.73	0.69	0.06	1.48	000	S
11311		A	Shave skin lesion	1.05	0.85	0.08	1.98	000	S
11312		A	Shave skin lesion	1.20	1.12	0.11	2.43	000	S
11313		A	Shave skin lesion	1.82	1.49	0.15	3.26	000	S
11400		A	Removal of skin lesion	0.86	0.53	0.05	1.44	010	S
11401		A	Removal of skin lesion	1.27	0.67	0.06	2.00	010	S
11402		A	Removal of skin lesion	1.56	0.89	0.09	2.54	010	S
11403		A	Removal of skin lesion	1.87	1.17	0.13	3.17	010	S
11404		A	Removal of skin lesion	2.15	1.38	0.17	3.70	010	S
11406		A	Removal of skin lesion	2.71	1.88	0.33	4.92	010	S
11420		A	Removal of skin lesion	1.01	0.52	0.05	1.58	010	S
11421		A	Removal of skin lesion	1.48	0.71	0.07	2.26	010	S
11422		A	Removal of skin lesion	1.71	0.94	0.10	2.75	010	S
11423		A	Removal of skin lesion	2.12	1.31	0.15	3.58	010	S
11424		A	Removal of skin lesion	2.57	1.39	0.16	4.12	010	S
11426		A	Removal of skin lesion	3.73	1.83	0.29	5.85	010	S
11440		A	Removal of skin lesion	1.10	0.69	0.06	1.85	010	S
11441		A	Removal of skin lesion	1.56	0.85	0.08	2.49	010	S
11442		A	Removal of skin lesion	1.82	1.12	0.11	3.05	010	S
11443		A	Removal of skin lesion	2.44	1.45	0.15	4.04	010	S
11444		A	Removal of skin lesion	3.37	1.47	0.14	4.98	010	S
11446		A	Removal of skin lesion	4.44	1.78	0.18	6.40	010	S
11450		A	Removal, sweat gland lesion	2.58	2.68	0.44	5.70	090	S
11451		A	Removal, sweat gland lesion	3.60	2.90	0.46	7.16	090	S
11462		A	Removal, sweat gland lesion	2.36	2.41	0.36	5.13	090	S
11463		A	Removal, sweat gland lesion	3.80	2.00	0.34	6.14	090	S
11470		A	Removal, sweat gland lesion	3.10	2.78	0.45	6.33	090	S
11471		A	Removal, sweat gland lesion	4.26	2.46	0.48	7.20	090	S
11600		A	Removal of skin lesion	1.36	1.13	0.10	2.59	010	S
11601		A	Removal of skin lesion	1.88	1.39	0.12	3.39	010	S
11602		A	Removal of skin lesion	2.04	1.82	0.16	4.02	010	S
11603		A	Removal of skin lesion	2.30	2.25	0.21	4.76	010	S
11604		A	Removal of skin lesion	2.53	2.59	0.26	5.38	010	S
11606		A	Removal of skin lesion	3.38	3.11	0.49	6.98	010	S
11620		A	Removal of skin lesion	1.29	1.34	0.12	2.75	010	S
11621		A	Removal of skin lesion	1.92	1.75	0.16	3.83	010	S
11622		A	Removal of skin lesion	2.29	2.20	0.19	4.68	010	S
11623		A	Removal of skin lesion	2.88	2.58	0.25	5.71	010	S
11624		A	Removal of skin lesion	3.38	3.21	0.32	6.91	010	S
11626		A	Removal of skin lesion	4.20	3.41	0.51	8.12	010	S
11640		A	Removal of skin lesion	1.48	1.65	0.15	3.28	010	S
11641		A	Removal of skin lesion	2.39	2.09	0.18	4.66	010	S
11642		A	Removal of skin lesion	2.88	2.57	0.23	5.68	010	S
11643		A	Removal of skin lesion	3.45	3.01	0.28	6.74	010	S
11644		A	Removal of skin lesion	4.50	3.51	0.33	8.34	010	S
11646		A	Removal of skin lesion	5.85	4.32	0.60	10.77	010	S
11700		A	Scraping of 1–5 nails	0.32	0.32	0.03	0.67	000	S
11701		A	Scraping of additional nails	0.23	0.23	0.02	0.48	ZZZ	S
11710		A	Scraping of 1–5 nails	0.32	0.32	0.03	0.67	000	S
11711		A	Scraping of additional nails	0.20	0.19	0.02	0.41	ZZZ	S
11730		A	Removal of nail plate	1.13	0.45	0.04	1.62	000	S
11731		A	Removal of second nail plate	0.55	0.51	0.05	1.11	ZZZ	S
11732		A	Remove additional nail plate	0.38	0.25	0.02	0.65	ZZZ	S
11740		A	Drain blood from under nail	0.37	0.39	0.04	0.80	000	S
11750		A	Removal of nail bed	1.66	2.10	0.19	3.95	010	S
11752		A	Remove nail bed/finger tip	2.37	2.82	0.36	5.55	010	S
11755		A	Biopsy, nail unit	1.31	0.99	0.12	2.42	000	S
11760		A	Reconstruction of nail bed	1.53	0.93	0.09	2.55	010	S
11762		A	Reconstruction of nail bed	2.84	2.57	0.24	5.65	010	S
11765		A	Excision of nail fold, toe	0.64	0.51	0.05	1.20	010	S

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[3] 9 Indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
11770		A	Removal of pilonidal lesion	2.56	2.67	0.44	5.67	010	S
11771		A	Removal of pilonidal lesion	5.15	4.52	0.92	10.59	090	S
11772		A	Removal of pilonidal lesion	6.36	4.82	1.01	12.19	090	S
11900		A	Injection into skin lesions	0.52	0.25	0.02	0.79	000	S
11901		A	Added skin lesions injection	0.80	0.41	0.03	1.24	000	S
11920		R	Correct skin color defects	1.61	1.18	0.23	3.02	000	S
11921		R	Correct skin color defects	1.93	1.40	0.28	3.61	000	S
11922		R	Correct skin color defects	0.49	0.36	0.07	0.92	ZZZ	S
11950		R	Therapy for contour defects	0.84	1.19	0.11	2.14	000	S
11951		R	Therapy for contour defects	1.19	1.19	0.11	2.49	000	S
11952		R	Therapy for contour defects	1.69	1.19	0.11	2.99	000	S
11954		R	Therapy for contour defects	1.85	1.19	0.11	3.15	000	S
11960		A	Insert tissue expander(s)	6.04	*7.73	1.48	15.25	090	S
11970		A	Replace tissue expander	6.65	*8.51	1.61	16.77	090	S
11971		A	Remove tissue expander(s)	1.51	*2.30	0.82	4.63	090	S
11975		N	Insert contraceptive cap	#1.48	1.06	0.25	2.79	XXX	0
11976		R	Removal of contraceptive cap	1.78	1.28	0.30	3.36	XXX	N
11977		N	Removal/reinsert contra cap	#3.30	2.36	0.55	6.21	XXX	0
12001		A	Repair superficial wound(s)	1.85	0.57	0.05	2.27	010	N
12002		A	Repair superficial wound(s)	1.81	0.79	0.07	2.67	010	N
12004		A	Repair superficial wound(s)	2.19	1.14	0.10	3.43	010	N
12005		A	Repair superficial wound(s)	2.81	1.47	0.14	4.42	010	N
12006		A	Repair superficial wound(s)	3.52	1.78	0.19	5.59	010	N
12007		A	Repair superficial wound(s)	4.07	1.80	0.19	6.06	010	S
12011		A	Repair superficial wound(s)	1.71	0.74	0.06	2.51	010	N
12013		A	Repair superficial wound(s)	1.94	1.03	0.08	3.05	010	N
12014		A	Repair superficial wound(s)	2.41	1.19	0.10	3.70	010	N
12015		A	Repair superficial wound(s)	3.14	1.62	0.14	4.90	010	N
12016		A	Repair superficial wound(s)	3.88	2.26	0.19	6.33	010	N
12017		A	Repair superficial wound(s)	4.66	3.36	0.31	8.33	010	N
12018		A	Repair superficial wound(s)	5.48	5.15	0.48	11.11	010	S
12020		A	Closure of split wound	2.57	1.19	0.18	3.94	010	S
12021		A	Closure of split wound	1.79	0.62	0.11	2.52	010	S
12031		A	Layer closure of wound(s)	2.10	0.72	0.07	2.89	010	S
12032		A	Layer closure of wound(s)	2.42	1.05	0.10	3.57	010	S
12034		A	Layer closure of wound(s)	2.87	1.47	0.15	4.49	010	S
12035		A	Layer closure of wound(s)	3.38	1.92	0.23	5.53	010	S
12036		A	Layer closure of wound(s)	4.00	2.32	0.37	6.69	010	S
12037		A	Layer closure of wound(s)	4.62	3.09	0.48	8.19	010	S
12041		A	Layer closure of wound(s)	2.32	0.84	0.08	3.24	010	N
12042		A	Layer closure of wound(s)	2.69	1.17	0.12	3.98	010	N
12044		A	Layer closure of wound(s)	3.09	1.62	0.17	4.88	010	N
12045		A	Layer closure of wound(s)	3.59	2.13	0.23	5.95	010	N
12046		A	Layer closure of wound(s)	4.20	2.62	0.37	7.39	010	S
12047		A	Layer closure of wound(s)	4.60	4.02	0.56	9.18	010	N
12051		A	Layer closure of wound(s)	2.42	1.01	0.10	3.53	010	S
12052		A	Layer closure of wound(s)	2.72	1.47	0.14	4.33	010	S
12053		A	Layer closure of wound(s)	3.07	1.76	0.17	5.00	010	S
12054		A	Layer closure of wound(s)	3.41	2.60	0.25	6.26	010	S
12055		A	Layer closure of wound(s)	4.38	3.24	0.37	7.99	010	S
12056		A	Layer closure of wound(s)	5.19	4.74	0.52	10.45	010	S
12057		A	Layer closure of wound(s)	5.91	5.57	0.48	11.96	010	S
13100		A	Repair of wound or lesion	3.07	1.14	0.13	4.34	010	S
13101		A	Repair of wound or lesion	3.87	2.08	0.21	6.16	010	S
13120		A	Repair of wound or lesion	3.25	1.35	0.17	4.77	010	S
13121		A	Repair of wound or lesion	4.28	2.65	0.33	7.26	010	S
13131		A	Repair of wound or lesion	3.74	1.98	0.23	5.95	010	S
13132		A	Repair of wound or lesion	4.21	4.57	0.44	9.22	010	S
13150		A	Repair of wound or lesion	3.76	1.76	0.23	5.75	010	S
13151		A	Repair of wound or lesion	4.40	2.45	0.35	7.20	010	S
13152		A	Repair of wound or lesion	6.28	5.13	0.68	12.09	010	S
13160		A	Late closure of wound	9.53	3.33	0.58	13.44	090	S
13300		A	Repair of wound or lesion	5.11	5.71	0.86	11.68	010	S
14000		A	Skin tissue rearrangement	5.43	3.41	0.38	9.22	090	S
14001		A	Skin tissue rearrangement	7.78	4.75	0.76	13.29	090	S
14020		A	Skin tissue rearrangement	6.08	4.90	0.49	11.47	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
14021		A	Skin tissue rearrangement	9.37	6.21	0.94	16.52	090	S
14040		A	Skin tissue rearrangement	7.18	6.77	0.65	14.60	090	S
14041		A	Skin tissue rearrangement	10.74	7.88	1.02	19.64	090	S
14060		A	Skin tissue rearrangement	8.05	7.75	1.04	16.84	090	S
14061		A	Skin tissue rearrangement	11.42	10.49	1.27	23.18	090	S
14300		A	Skin tissue rearrangement	10.76	11.31	1.84	23.91	090	S
14350		A	Skin tissue rearrangement	9.05	6.07	1.05	16.17	090	S
15000		A	Skin graft procedure	1.95	*2.49	0.53	4.97	ZZZ	S
15050		A	Skin pinch graft procedure	3.90	1.79	0.30	5.99	090	S
15100		A	Skin split graft procedure	8.05	4.54	0.89	13.48	090	S
15101		A	Skin split graft procedure	1.72	1.59	0.33	3.64	ZZZ	S
15120		A	Skin split graft procedure	9.14	6.05	0.94	16.13	090	S
15121		A	Skin split graft procedure	2.67	2.91	0.53	6.11	ZZZ	S
15200		A	Skin full graft procedure	7.46	4.13	0.69	12.28	090	S
15201		A	Skin full graft procedure	1.32	*1.68	0.50	3.50	ZZZ	S
15220		A	Skin full graft procedure	7.42	4.84	0.85	13.11	090	S
15221		A	Skin full graft procedure	1.19	*1.59	0.50	3.28	ZZZ	S
15240		A	Skin full graft procedure	8.30	6.10	1.03	15.43	090	S
15241		A	Skin full graft procedure	1.85	*2.38	0.58	4.82	ZZZ	S
15260		A	Skin full graft procedure	9.56	7.46	0.99	18.01	090	S
15261		A	Skin full graft procedure	2.23	*2.85	0.60	5.68	ZZZ	S
15350		A	Skin homograft procedure	3.89	2.15	0.42	6.46	090	S
15400		A	Skin heterograft procedure	4.91	1.06	0.17	6.14	090	S
15570		A	Form skin pedicle flap	3.75	*5.50	2.08	11.33	090	S
15572		A	Form skin pedicle flap	3.80	*5.38	1.86	11.04	090	S
15574		A	Form skin pedicle flap	3.85	*5.40	1.66	10.91	090	S
15576		A	Form skin pedicle flap	4.27	3.12	0.60	7.99	090	S
15580		A	Attach skin pedicle graft	3.30	*4.31	1.30	8.91	090	S
15600		A	Skin graft procedure	1.70	*2.51	0.88	5.09	090	S
15610		A	Skin graft procedure	2.21	*2.82	0.80	5.83	090	S
15620		A	Skin graft procedure	2.69	*3.44	0.86	6.99	090	S
15625		A	Skin graft procedure	1.81	*2.41	0.78	5.00	090	S
15630		A	Skin graft procedure	3.02	*3.86	0.90	7.78	090	S
15650		A	Transfer skin pedicle flap	3.61	*4.62	0.93	9.16	090	S
15732		A	Muscle-skin graft, head/neck	12.10	*15.48	3.46	31.04	090	S
15734		A	Muscle-skin graft, trunk	16.52	19.01	3.24	38.77	090	S
15736		A	Muscle-skin graft, arm	15.26	16.21	3.02	34.49	090	S
15738		A	Muscle-skin graft, leg	10.07	*12.89	3.29	26.25	090	S
15740		A	Island pedicle flap graft	9.45	10.39	1.62	21.46	090	S
15750		A	Neurovascular pedicle graft	10.61	11.96	2.03	24.60	090	S
15755		A	Microvascular flap graft	28.33	30.09	5.33	63.75	090	S
15760		A	Composite skin graft	8.28	7.29	1.11	16.68	090	S
15770		A	Derma-fat-fascia graft	6.85	7.46	0.95	15.26	090	S
15775		R	Hair transplant punch grafts	3.96	2.88	0.56	7.40	000	S
15776		R	Hair transplant punch grafts	5.54	4.03	0.79	10.36	000	S
15780		A	Abrasion treatment of skin	6.73	1.53	0.13	8.39	090	S
15781		A	Abrasion treatment of skin	4.67	3.77	0.39	8.83	090	S
15782		A	Abrasion treatment of skin	4.19	1.19	0.13	5.51	090	S
15783		A	Abrasion treatment of skin	4.16	1.85	0.19	6.20	090	S
15786		A	Abrasion treatment of lesion	1.98	0.62	0.06	2.66	010	S
15787		A	Abrasion, added skin lesions	0.33	0.23	0.03	0.59	ZZZ	S
15788		R	Chemical peel, face, epiderm	1.96	1.48	0.12	3.56	090	S
15789		R	Chemical peel, face, dermal	4.69	1.48	0.12	6.29	090	S
15792		R	Chemical peel, nonfacial	1.73	0.50	0.05	2.28	090	S
15793		A	Chemical peel, nonfacial	3.51	0.50	0.05	4.06	090	S
15810		A	Salabrasion	4.49	3.80	0.29	8.58	090	S
15811		A	Salabrasion	5.14	3.74	0.73	9.61	090	S
15819		A	Plastic surgery, neck	8.87	8.01	0.87	17.75	090	S
15820		A	Revision of lower eyelid	4.80	*6.14	0.64	11.58	090	S
15821		A	Revision of lower eyelid	5.37	*6.87	0.68	12.92	090	S
15822		A	Revision of upper eyelid	4.27	*5.47	0.56	10.30	090	S
15823		A	Revision of upper eyelid	6.65	7.71	0.61	14.97	090	S
15824		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	XXX	S
15825		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	XXX	S
15826		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	XXX	S
15828		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	XXX	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
15829		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	XXX	S
15831		A	Excise excessive skin tissue	11.66	9.84	2.01	23.51	090	S
15832		A	Excise excessive skin tissue	10.97	8.29	1.33	20.59	090	S
15833		A	Excise excessive skin tissue	10.02	6.22	1.12	17.36	090	S
15834		A	Excise excessive skin tissue	10.16	7.18	1.22	18.56	090	S
15835		A	Excise excessive skin tissue	10.96	7.00	1.22	19.20	090	S
15836		A	Excise excessive skin tissue	8.83	5.80	1.10	15.73	090	S
15837		A	Excise excessive skin tissue	8.08	5.97	0.85	14.90	090	S
15838		A	Excise excessive skin tissue	6.78	5.88	0.73	13.39	090	S
15839		A	Excise excessive skin tissue	8.92	2.44	0.46	11.82	090	S
15840		A	Graft for face nerve palsy	12.26	15.54	2.26	30.06	090	S
15841		A	Graft for face nerve palsy	21.53	16.87	2.76	41.16	090	S
15842		A	Graft for face nerve palsy	35.98	29.00	2.68	67.66	090	S
15845		A	Skin and muscle repair, face	11.80	*15.10	2.54	29.44	090	S
15850		B	Removal of sutures	#0.78	0.36	0.04	1.18	XXX	0
15851		A	Removal of sutures	0.86	0.30	0.03	1.19	000	N
15852		A	Dressing change, not for burn	0.86	0.44	0.07	1.37	000	N
15860		A	Test for blood flow in graft	1.95	1.35	0.25	3.55	000	S
15876		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX	S
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX	S
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX	S
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX	S
15920		A	Removal of tail bone ulcer	7.37	2.95	0.63	10.95	090	S
15922		A	Removal of tail bone ulcer	9.17	5.98	1.19	16.34	090	S
15931		A	Remove sacrum pressure sore	8.13	2.93	0.55	11.61	090	S
15933		A	Remove sacrum pressure sore	9.64	6.92	1.43	17.99	090	S
15934		A	Remove sacrum pressure sore	11.40	7.46	1.50	20.36	090	S
15935		A	Remove sacrum pressure sore	13.05	11.24	2.27	26.56	090	S
15936		A	Remove sacrum pressure sore	11.31	10.27	2.05	23.63	090	S
15937		A	Remove sacrum pressure sore	12.98	13.47	2.67	29.12	090	S
15940		A	Removal of pressure sore	8.19	3.55	0.73	12.47	090	S
15941		A	Removal of pressure sore	10.15	7.05	1.39	18.59	090	S
15944		A	Removal of pressure sore	10.18	9.26	1.82	21.26	090	S
15945		A	Removal of pressure sore	11.32	11.14	2.09	24.55	090	S
15946		A	Removal of pressure sore	19.81	16.61	3.24	39.66	090	S
15950		A	Remove thigh pressure sore	6.79	3.01	0.58	10.38	090	S
15951		A	Remove thigh pressure sore	9.57	7.65	1.58	18.80	090	S
15952		A	Remove thigh pressure sore	10.18	7.13	1.37	18.68	090	S
15953		A	Remove thigh pressure sore	11.39	9.08	1.87	22.34	090	S
15956		A	Remove thigh pressure sore	13.93	17.17	3.39	34.49	090	S
15958		A	Remove thigh pressure sore	13.89	*17.77	3.76	35.42	090	S
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	YYY	S
16000		A	Initial treatment of burn(s)	0.89	0.35	0.03	1.27	000	N
16010		A	Treatment of burn(s)	0.87	0.32	0.03	1.22	000	N
16015		A	Treatment of burn(s)	2.35	2.04	0.38	4.77	000	S
16020		A	Treatment of burn(s)	0.80	0.34	0.03	1.17	000	N
16025		A	Treatment of burn(s)	1.85	0.45	0.05	2.35	000	S
16030		A	Treatment of burn(s)	2.08	0.52	0.08	2.68	000	S
16035		A	Incision of burn scab	4.53	1.88	0.34	6.75	090	S
16040		A	Burn wound excision	1.02	*1.56	0.53	3.11	000	S
16041		A	Burn wound excision	2.70	3.16	0.53	6.39	000	S
16042		A	Burn wound excision	2.35	*3.02	0.53	5.90	000	S
17000		A	Destroy benign/premal lesion	0.64	0.42	0.03	1.09	010	S
17001		A	Destruction of add'l lesions	0.19	0.19	0.02	0.40	ZZZ	S
17002		A	Destruction of add'l lesions	0.19	0.10	0.01	0.30	ZZZ	S
17010		A	Destruction skin lesion(s)	1.01	0.48	0.04	1.53	010	S
17100		A	Destruction of skin lesion	0.53	0.37	0.03	0.93	010	S
17101		A	Destruction of 2nd lesion	0.11	0.18	0.02	0.31	ZZZ	S
17102		A	Destruction of add'l lesions	0.11	0.08	0.01	0.20	ZZZ	S
17104		A	Destruction of skin lesions	2.01	0.07	0.01	2.09	010	S
17105		A	Destruction of skin lesions	0.76	0.31	0.03	1.10	010	S
17106		A	Destruction of skin lesions	4.54	1.93	0.18	6.65	090	S
17107		A	Destruction of skin lesions	9.06	3.70	0.39	13.15	090	S
17108		A	Destruction of skin lesions	13.10	9.32	0.69	23.11	090	S
17110		A	Destruction of skin lesions	0.55	0.40	0.03	0.98	010	S
17200		A	Electrocautery of skin tags	0.59	0.41	0.04	1.04	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
17201		A	Electrocautery added lesions	0.38	0.15	0.01	0.54	ZZZ	S
17250		A	Chemical cautery, tissue	0.50	0.34	0.04	0.88	000	S
17260		A	Destruction of skin lesions	0.86	1.13	0.10	2.09	010	S
17261		A	Destruction of skin lesions	1.12	1.39	0.12	2.63	010	S
17262		A	Destruction of skin lesions	1.53	1.82	0.16	3.51	010	S
17263		A	Destruction of skin lesions	1.74	2.25	0.21	4.20	010	S
17264		A	Destruction of skin lesions	1.89	2.59	0.26	4.74	010	S
17266		A	Destruction of skin lesions	2.29	3.11	0.49	5.89	010	S
17270		A	Destruction of skin lesions	1.27	1.34	0.12	2.73	010	S
17271		A	Destruction of skin lesions	1.44	1.75	0.16	3.35	010	S
17272		A	Destruction of skin lesions	1.72	2.20	0.19	4.11	010	S
17273		A	Destruction of skin lesions	2.00	2.58	0.25	4.83	010	S
17274		A	Destruction of skin lesions	2.54	3.21	0.32	6.07	010	S
17276		A	Destruction of skin lesions	3.15	3.41	0.51	7.07	010	S
17280		A	Destruction of skin lesions	1.12	1.65	0.15	2.92	010	S
17281		A	Destruction of skin lesions	1.67	2.09	0.18	3.94	010	S
17282		A	Destruction of skin lesions	1.99	2.57	0.23	4.79	010	S
17283		A	Destruction of skin lesions	2.59	3.01	0.28	5.88	010	S
17284		A	Destruction of skin lesions	3.16	3.51	0.33	7.00	010	S
17286		A	Destruction of skin lesions	4.39	4.32	0.60	9.31	010	S
17304		A	Chemosurgery of skin lesion	7.60	4.02	0.31	11.93	000	S
17305		A	2nd stage chemosurgery	2.85	2.26	0.17	5.28	000	S
17306		A	3rd stage chemosurgery	2.85	1.40	0.11	4.36	000	S
17307		A	Followup skin lesion therapy	2.85	1.47	0.12	4.44	000	S
17310		A	Extensive skin chemosurgery	0.95	0.13	0.01	1.09	000	S
17340		A	Cryotherapy of skin	0.73	0.28	0.02	1.03	010	S
17360		A	Skin peel therapy	1.40	0.27	0.02	1.69	010	S
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	XXX	S
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	YYY	S
19000		A	Drainage of breast lesion	0.64	0.38	0.07	1.29	000	S
19001		A	Drain added breast lesion	0.42	0.24	0.05	0.71	ZZZ	S
19020		A	Incision of breast lesion	3.37	1.40	0.28	5.05	090	S
19030		A	Injection for breast x-ray	1.53	0.49	0.04	2.06	000	N
19100		A	Biopsy of breast	1.27	0.64	0.13	2.04	000	S
19101		A	Biopsy of breast	3.13	2.34	0.45	5.92	010	S
19110		A	Nipple exploration	4.15	2.46	0.51	7.12	090	S
19112		A	Excise breast duct fistula	3.52	2.34	0.35	6.21	090	S
19120		A	Removal of breast lesion	4.84	2.90	0.60	8.34	090	S
19125		A	Excision, breast lesion	5.85	2.90	0.60	9.35	090	S
19126		A	Excision, add'l breast lesion	2.93	1.45	0.31	4.69	ZZZ	S
19140		A	Removal of breast tissue	4.90	4.29	0.91	10.10	090	S
19160		A	Removal of breast tissue	6.65	4.13	0.88	11.66	090	S
19162		A	Remove breast tissue, nodes	12.81	9.38	1.96	24.15	090	S
19180		A	Removal of breast	8.15	5.61	1.17	14.93	090	S
19182		A	Removal of breast	7.28	6.07	1.27	14.62	090	S
19200		A	Removal of breast	14.23	10.22	2.15	26.60	090	S
19220		A	Removal of breast	14.23	10.73	2.38	27.34	090	S
19240		A	Removal of breast	14.71	9.44	1.99	26.14	090	S
19260		A	Removal of chest wall lesion	13.91	5.05	1.04	20.00	090	S
19271		A	Revision of chest wall	17.07	13.95	2.77	33.79	090	S
19272		A	Extensive chest wall surgery	19.47	12.60	2.56	34.63	090	S
19290		A	Place needle wire, breast	1.27	0.44	0.07	1.78	000	S
19291		A	Place needle wire, breast	0.63	0.25	0.04	0.92	ZZZ	S
19318		A	Suspension of breast	10.07	12.84	2.43	25.34	090	S
19318		A	Reduction of large breast	11.08	*14.18	3.23	28.49	090	S
19324		A	Enlarge breast	5.55	3.29	0.67	9.51	090	S
19325		A	Enlarge breast with implant	8.05	5.87	1.13	15.05	090	S
19328		A	Removal of breast implant	5.32	3.76	0.73	9.81	090	S
19330		A	Removal of implant material	7.18	3.88	0.75	11.81	090	S
19340		A	Immediate breast prosthesis	6.33	*8.10	2.06	16.49	ZZZ	S
19342		A	Delayed breast prosthesis	10.64	10.81	2.03	23.48	090	S
19350		A	Breast reconstruction	8.21	7.08	1.38	16.67	090	S
19355		A	Correct inverted nipple(s)	7.27	4.93	1.00	13.20	090	S
19357		A	Breast reconstruction	16.72	12.15	2.37	31.24	090	S
19361		A	Breast reconstruction	17.82	20.13	3.88	41.83	090	S
19364		A	Breast reconstruction	27.60	16.68	3.58	47.86	090	S

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
19366		A	Breast reconstruction	19.84	16.40	3.18	39.42	090	S
19367		A	Breast reconstruction	24.73	20.13	3.88	48.74	090	S
19368		A	Breast reconstruction	31.15	20.13	3.88	55.16	090	S
19369		A	Breast reconstruction	28.68	20.13	3.88	52.69	090	S
19370		A	Surgery of breast capsule	7.59	6.17	1.19	14.95	090	S
19371		A	Removal of breast capsule	8.84	7.91	1.54	18.29	090	S
19380		A	Revise breast reconstruction	8.63	8.11	1.57	18.31	090	S
19396		A	Design custom breast implant	2.17	1.57	0.31	4.05	000	S
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	YYY	S
20000		A	Incision of abscess	1.85	0.85	0.08	2.78	010	S
20005		A	Incision of deep abscess	3.02	1.83	0.28	5.13	010	S
20100		A	Explore wound, neck	9.50	4.97	1.16	15.63	010	S
20101		A	Explore wound, chest	3.00	1.57	0.37	4.94	010	S
20102		A	Explore wound, abdomen	3.68	1.92	0.45	6.05	010	S
20103		A	Explore wound, extremity	4.95	2.59	0.60	8.14	010	S
20200		A	Muscle biopsy	1.46	1.12	0.18	2.76	000	S
20205		A	Deep muscle biopsy	2.35	1.88	0.33	4.56	000	S
20206		A	Needle biopsy, muscle	0.99	0.96	0.14	2.09	000	S
20220		A	Bone biopsy, trocar/needle	1.27	1.31	0.09	2.67	000	N
20225		A	Bone biopsy, trocar/needle	1.87	*2.39	0.28	4.54	000	N
20240		A	Bone biopsy, excisional	3.07	1.88	0.18	5.13	010	S
20245		A	Bone biopsy, excisional	3.68	3.58	0.44	7.70	010	S
20250		A	Open bone biopsy	4.63	5.07	0.76	10.46	010	S
20251		A	Open bone biopsy	5.16	5.84	0.92	11.92	010	S
20500		A	Injection of sinus tract	1.18	0.36	0.04	1.58	010	N
20501		A	Inject sinus tract for x-ray	0.76	0.30	0.02	1.08	000	N
20520		A	Removal of foreign body	1.80	0.71	0.06	2.59	010	S
20525		A	Removal of foreign body	3.23	2.23	0.33	5.79	010	S
20550		A	Inj tendon/ligament/cyst	0.86	0.38	0.04	1.28	000	N
20600		A	Drain/inject joint/bursa	0.66	0.47	0.05	1.18	000	S
20605		A	Drain/inject joint/bursa	0.68	0.45	0.05	1.18	000	S
20610		A	Drain/inject joint/bursa	0.79	0.45	0.05	1.29	000	N
20615		A	Treatment of bone cyst	2.23	0.49	0.06	2.78	010	N
20650		A	Insert and remove bone pin	2.07	1.08	0.14	3.29	010	S
20660		A	Apply, remove fixation device	2.51	1.56	0.21	4.28	000	S
20661		A	Application of head brace	4.27	3.82	0.65	8.74	090	S
20662		A	Application of pelvis brace	5.52	6.54	1.03	13.09	090	S
20663		A	Application of thigh brace	4.88	4.64	0.76	10.28	090	S
20665		A	Removal of fixation device	1.26	0.50	0.07	1.83	010	S
20670		A	Removal of support implant	1.69	0.74	0.11	2.54	010	S
20680		A	Removal of support implant	3.25	3.33	0.51	7.09	090	S
20690		A	Apply bone fixation device	3.52	3.66	0.58	7.76	ZZZ	S
20692		A	Apply bone fixation device	6.41	5.51	0.89	12.81	ZZZ	S
20693		A	Adjust bone fixation device	5.42	2.49	0.42	8.33	090	S
20694		A	Remove bone fixation device	3.81	2.60	0.41	6.82	090	S
20802		A	Replantation, arm, complete	39.56	37.72	6.17	83.45	090	S
20804		D	Replantation, arm, partial	0.00	0.00	0.00	0.00	090	S
20805		A	Replant forearm, complete	48.41	46.17	7.56	102.14	090	S
20806		D	Replantation, forearm, partial	0.00	0.00	0.00	0.00	090	S
20808		A	Replantation, hand, complete	60.19	57.40	9.40	126.99	090	S
20812		D	Replantation, hand, partial	0.00	0.00	0.00	0.00	090	S
20816		A	Replantation digit, complete	29.67	28.30	4.63	62.60	090	S
20820		D	Replantation, digit, partial	0.00	0.00	0.00	0.00	090	S
20822		A	Replantation digit, complete	24.53	23.39	3.83	51.75	090	S
20823		D	Replantation, digit, partial	0.00	0.00	0.00	0.00	090	S
20824		A	Replantation thumb, complete	29.67	28.30	4.63	62.60	090	S
20826		D	Replantation, thumb, partial	0.00	0.00	0.00	0.00	090	S
20827		A	Replantation thumb, complete	25.22	24.05	3.94	53.21	090	S
20828		D	Replantation, thumb, partial	0.00	0.00	0.00	0.00	090	S
20832		D	Replantation, leg, complete	0.00	0.00	0.00	0.00	090	S
20834		D	Replantation, leg, partial	0.00	0.00	0.00	0.00	090	S
20836		A	Replantation, foot, complete	39.56	37.72	6.17	83.45	090	S
20840		D	Replantation, foot, partial	0.00	0.00	0.00	0.00	090	S
20900		A	Removal of bone for graft	5.03	2.80	0.45	8.28	090	S
20902		A	Removal of bone for graft	6.74	4.95	0.80	12.49	090	S
20910		A	Remove cartilage for graft	5.03	0.79	0.09	5.91	090	S

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[3] # Indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
20912		A	Remove cartilage for graft	5.04	4.52	0.64	11.30	090	S
20920		A	Removal of fascia for graft	4.87	3.93	0.50	9.30	090	S
20922		A	Removal of fascia for graft	5.04	4.39	0.71	11.14	090	S
20924		A	Removal of tendon for graft	6.04	5.45	0.85	12.34	090	S
20926		A	Removal of tissue for graft	5.03	2.59	0.39	8.01	090	S
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	XXX	0
20931		A	Spinal bone allograft	1.81	1.73	0.28	3.82	ZZZ	S
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	XXX	0
20937		A	Spinal bone autograft	2.79	2.66	0.44	5.89	ZZZ	S
20938		A	Spinal bone autograft	3.02	2.88	0.47	6.37	ZZZ	S
20950		A	Record fluid pressure, muscle	1.26	1.09	0.17	2.52	000	S
20955		A	Microvascular fibula graft	37.58	35.84	5.87	79.29	090	S
20960		C	Microvascular rib graft	0.00	0.00	0.00	0.00	090	S
20962		C	Microvascular bone graft	0.00	0.00	0.00	0.00	090	S
20969		A	Bone-skin graft	42.08	40.13	6.57	88.78	090	S
20970		A	Bone-skin graft, pelvis	41.22	39.31	6.44	86.97	090	S
20971		C	Bone-skin graft, rib	0.00	0.00	0.00	0.00	090	S
20972		A	Bone-skin graft, metatarsal	41.54	39.61	6.49	87.64	090	S
20973		A	Bone-skin graft, great toe	44.31	42.25	6.91	93.47	090	S
20974		A	Electrical bone stimulation	0.62	3.42	0.53	4.57	ZZZ	S
20975		A	Electrical bone stimulation	2.60	*3.33	0.56	6.49	ZZZ	S
20999		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	YYY	S
21010		A	Incision of jaw joint	9.06	10.24	0.93	20.23	090	S
21015		A	Resection of facial tumor	4.94	*6.32	1.13	12.39	090	S
21025		A	Excision of bone, lower jaw	5.03	4.14	0.38	9.55	090	S
21026		A	Excision of facial bone(s)	4.53	3.14	0.28	7.95	090	S
21029		A	Contour of face bone lesion	7.21	*9.23	0.78	17.22	090	S
21030		A	Removal of face bone lesion	7.05	3.35	0.29	10.69	090	S
21031		A	Remove exostosis, mandible	2.01	3.68	0.32	6.01	090	S
21032		A	Remove exostosis, maxilla	4.27	3.88	0.35	8.50	090	S
21034		A	Removal of face bone lesion	15.11	6.98	0.89	22.98	090	S
21040		A	Removal of jaw bone lesion	2.01	2.76	0.24	5.01	090	S
21041		A	Removal of jaw bone lesion	5.03	5.76	0.50	11.29	090	S
21044		A	Removal of jaw bone lesion	11.08	9.55	1.11	21.74	090	S
21045		A	Extensive jaw surgery	15.11	13.83	1.58	30.52	090	S
21050		A	Removal of jaw joint	10.07	12.33	1.08	23.48	090	S
21060		A	Remove jaw joint cartilage	9.56	11.59	1.04	22.19	090	S
21070		A	Remove coronoid process	7.66	6.81	0.82	15.29	090	S
21076		A	Prepare face/oral prosthesis	12.54	16.77	1.35	30.66	010	S
21077		A	Prepare face/oral prosthesis	31.54	42.18	3.39	77.11	090	S
21079		A	Prepare face/oral prosthesis	20.88	27.93	2.25	51.06	090	S
21080		A	Prepare face/oral prosthesis	23.46	31.38	2.52	57.36	090	S
21081		A	Prepare face/oral prosthesis	21.38	28.59	2.30	52.27	090	S
21082		A	Prepare face/oral prosthesis	19.50	26.08	2.10	47.68	090	S
21083		A	Prepare face/oral prosthesis	18.04	24.13	1.94	44.11	090	S
21084		A	Prepare face/oral prosthesis	21.04	28.14	2.28	51.46	090	S
21085		A	Prepare face/oral prosthesis	8.41	11.25	0.90	20.56	010	S
21086		A	Prepare face/oral prosthesis	23.29	31.15	2.51	56.95	090	S
21087		A	Prepare face/oral prosthesis	23.29	31.15	2.51	56.95	090	S
21088		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	090	S
21089		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	090	S
21100		A	Maxillofacial fixation	4.04	1.06	0.11	5.21	090	S
21110		A	Interdental fixation	5.03	5.53	0.46	11.02	090	S
21116		A	Injection, jaw joint x-ray	0.81	0.73	0.06	1.60	000	S
21120		A	Reconstruction of chin	4.75	3.59	0.42	8.76	090	S
21121		A	Reconstruction of chin	7.46	5.65	0.66	13.77	090	S
21122		A	Reconstruction of chin	8.21	6.23	0.73	15.17	090	S
21123		A	Reconstruction of chin	10.74	8.14	0.95	19.83	090	S
21125		A	Augmentation lower jaw bone	6.22	4.72	0.54	11.48	090	S
21127		A	Augmentation lower jaw bone	10.43	7.91	0.92	19.26	090	S
21137		A	Reduction of forehead	9.40	7.11	0.83	17.34	090	S
21138		A	Reduction of forehead	11.72	8.86	1.04	21.62	090	S
21139		A	Reduction of forehead	14.06	10.64	1.25	25.95	090	S
21141		A	Reconstruct midface, lefort	16.92	14.34	1.68	32.94	090	S
21142		A	Reconstruct midface, lefort	17.58	14.84	1.74	34.16	090	S
21143		A	Reconstruct midface, lefort	18.30	15.40	1.81	35.51	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
21144		D	Reconstruct midface, lefort	0.00	0.00	0.00	0.00	090	S
21145		A	Reconstruct midface, lefort	16.92	14.34	1.88	34.94	090	S
21146		A	Reconstruct midface, lefort	19.58	14.84	1.74	36.16	090	S
21147		A	Reconstruct midface, lefort	20.30	15.40	1.81	37.51	090	S
21150		A	Reconstruct midface, lefort	24.41	18.46	2.17	45.04	090	S
21151		A	Reconstruct midface, lefort	27.34	20.68	2.42	50.44	090	S
21154		A	Reconstruct midface, lefort	29.28	22.15	2.59	54.02	090	S
21155		A	Reconstruct midface, lefort	33.19	25.11	2.94	61.24	090	S
21159		A	Reconstruct midface, lefort	40.99	31.02	3.63	75.64	090	S
21160		A	Reconstruct midface, lefort	44.90	33.96	3.98	82.84	090	S
21172		A	Reconstruct orbit/forehead	26.84	20.30	2.37	49.51	090	S
21175		A	Reconstruct orbit/forehead	32.21	24.37	2.85	59.43	090	S
21179		A	Reconstruct entire forehead	21.47	16.24	1.90	39.61	090	S
21180		A	Reconstruct entire forehead	24.41	18.46	2.17	45.04	090	S
21181		A	Contour cranial bone lesion	9.40	7.11	0.83	17.34	090	S
21182		A	Reconstruct cranial bone	31.23	23.63	2.77	57.63	090	S
21183		A	Reconstruct cranial bone	34.17	25.85	3.03	63.05	090	S
21184		A	Reconstruct cranial bone	37.10	28.06	3.28	68.44	090	S
21188		A	Reconstruction of midface	21.47	16.24	1.90	39.61	090	S
21193		A	Reconstruct lower jaw bone	16.23	12.31	1.44	29.98	090	S
21194		A	Reconstruct lower jaw bone	18.81	14.26	1.67	34.74	090	S
21195		A	Reconstruct lower jaw bone	16.27	12.34	1.44	30.05	090	S
21196		A	Reconstruct lower jaw bone	17.94	13.61	1.58	33.13	090	S
21198		A	Reconstruct lower jaw bone	13.36	14.82	1.74	29.92	090	S
21206		A	Reconstruct upper jaw bone	13.36	10.14	1.19	24.69	090	S
21208		A	Augmentation of facial bones	9.56	11.26	1.07	21.89	090	S
21209		A	Reduction of facial bones	6.28	4.59	0.76	11.63	090	S
21210		A	Face bone graft	9.56	*12.24	1.29	23.09	090	S
21215		A	Lower jaw bone graft	10.07	*12.89	1.42	24.38	090	S
21230		A	Rib cartilage graft	10.07	10.37	1.69	22.13	090	S
21235		A	Ear cartilage graft	6.28	*8.04	1.09	15.41	090	S
21240		A	Reconstruction of jaw joint	13.10	*16.77	2.09	31.96	090	S
21242		A	Reconstruction of jaw joint	12.10	*15.55	2.25	29.90	090	S
21243		A	Reconstruction of jaw joint	16.98	14.40	1.68	35.06	090	S
21244		A	Reconstruction of lower jaw	11.08	*14.18	1.93	27.19	090	S
21245		A	Reconstruction of jaw	11.08	11.47	1.31	23.86	090	S
21246		A	Reconstruction of jaw	11.85	8.83	1.04	21.52	090	S
21247		A	Reconstruct lower jaw bone	21.15	*27.08	2.27	50.50	090	S
21248		A	Reconstruction of jaw	11.08	*14.18	1.75	27.01	090	S
21249		A	Reconstruction of jaw	17.12	*29.10	3.29	43.51	090	S
21255		A	Reconstruct lower jaw bone	15.83	*20.00	1.68	37.31	090	S
21256		A	Reconstruction of orbit	15.13	*19.36	1.63	36.12	090	S
21260		A	Revise eye sockets	15.44	*19.76	1.66	36.86	090	S
21261		A	Revise eye sockets	29.43	17.78	1.65	48.86	090	S
21263		A	Revise eye sockets	26.56	*34.00	2.86	63.42	090	S
21267		A	Revise eye sockets	17.56	14.61	2.13	34.40	090	S
21268		A	Revise eye sockets	22.88	15.35	3.13	41.36	090	S
21270		A	Augmentation cheek bone	12.10	9.60	1.41	23.11	090	S
21275		A	Revision orbitofacial bones	10.50	8.95	1.26	20.71	090	S
21280		A	Revision of eyelid	5.84	7.19	0.61	13.44	090	S
21282		A	Revision of eyelid	3.26	*4.52	0.79	8.57	090	S
21295		A	Revision of jaw muscle/bone	1.43	0.96	0.13	2.52	090	S
21296		A	Revision of jaw muscle/bone	3.97	3.52	0.22	7.81	090	S
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	YYY	S
21300		A	Treatment of skull fracture	0.72	*0.92	0.11	1.75	000	S
21310		A	Treatment of nose fracture	0.58	*0.75	0.09	1.42	000	N
21315		A	Treatment of nose fracture	1.41	1.81	0.21	3.43	010	S
21320		A	Treatment of nose fracture	1.82	*2.33	0.34	4.49	010	S
21325		A	Repair of nose fracture	3.52	4.09	0.52	8.13	090	S
21330		A	Repair of nose fracture	5.03	*6.45	0.86	12.34	090	S
21336		A	Repair of nose fracture	8.05	*10.31	1.56	19.92	090	S
21336		A	Repair nasal septal fracture	5.35	4.09	0.52	9.96	090	S
21337		A	Repair nasal septal fracture	2.52	2.82	0.38	5.72	090	S
21338		A	Repair nasoethmoid fracture	6.04	5.01	0.68	11.71	090	S
21339		A	Repair nasoethmoid fracture	7.56	7.09	0.70	15.35	090	S
21340		A	Repair of nose fracture	10.07	8.91	1.04	20.02	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
21343		A	Repair of sinus fracture	12.10	9.17	1.08	22.35	090	S
21344		A	Repair of sinus fracture	18.43	9.17	1.08	28.68	090	S
21345		A	Repair of nose/jaw fracture	7.63	7.90	0.81	16.34	090	S
21346		A	Repair of nose/jaw fracture	9.92	9.40	1.04	20.36	090	S
21347		A	Repair of nose/jaw fracture	11.86	10.36	1.36	23.58	090	S
21348		A	Repair of nose/jaw fracture	15.60	11.34	2.22	29.16	090	S
21355		A	Repair cheek bone fracture	3.52	1.56	0.17	5.25	010	S
21356		A	Repair cheek bone fracture	3.88	*4.96	0.89	9.73	010	S
21360		A	Repair cheek bone fracture	6.04	7.28	0.89	14.21	090	S
21365		A	Repair cheek bone fracture	13.97	12.35	1.63	27.95	090	S
21366		A	Repair cheek bone fracture	16.61	12.08	2.36	31.05	090	S
21385		A	Repair eye socket fracture	8.56	9.59	1.13	19.28	090	S
21386		A	Repair eye socket fracture	8.56	9.07	1.25	18.88	090	S
21387		A	Repair eye socket fracture	9.07	7.45	0.96	17.48	090	S
21390		A	Repair eye socket fracture	9.47	11.89	1.37	22.73	090	S
21395		A	Repair eye socket fracture	11.85	9.63	1.37	22.85	090	S
21400		A	Treat eye socket fracture	1.31	*1.67	0.17	3.15	090	N
21401		A	Repair eye socket fracture	3.05	2.58	0.32	5.95	090	S
21406		A	Repair eye socket fracture	6.55	5.21	0.74	12.50	090	S
21407		A	Repair eye socket fracture	8.05	7.09	0.78	15.92	090	S
21408		A	Repair eye socket fracture	11.57	8.49	0.99	21.05	090	S
21421		A	Treat mouth roof fracture	4.80	*6.14	0.62	11.56	090	S
21422		A	Repair mouth roof fracture	7.78	9.80	1.19	18.77	090	S
21423		A	Repair mouth roof fracture	9.72	9.80	1.19	20.71	090	S
21431		A	Treat craniofacial fracture	6.59	6.02	0.71	13.32	090	S
21432		A	Repair craniofacial fracture	8.05	6.76	0.84	15.65	090	S
21433		A	Repair craniofacial fracture	23.69	17.96	2.10	43.75	090	S
21435		A	Repair craniofacial fracture	16.12	13.25	1.88	31.25	090	S
21436		A	Repair craniofacial fracture	26.21	14.65	2.08	42.94	090	S
21440		A	Repair dental ridge fracture	2.52	3.07	0.28	5.87	090	S
21445		A	Repair dental ridge fracture	5.03	6.11	0.56	11.70	090	S
21450		A	Treat lower jaw fracture	2.78	2.84	0.26	5.88	090	S
21451		A	Treat lower jaw fracture	4.55	*5.83	0.74	11.12	090	S
21452		A	Treat lower jaw fracture	1.85	1.39	0.17	3.41	090	S
21453		A	Treat lower jaw fracture	5.18	*6.64	0.55	12.37	090	S
21454		A	Treat lower jaw fracture	6.04	*8.19	1.42	15.65	090	S
21461		A	Repair lower jaw fracture	7.56	*9.67	1.30	18.53	090	S
21462		A	Repair lower jaw fracture	9.15	*11.71	1.34	22.20	090	S
21465		A	Repair lower jaw fracture	11.13	8.44	0.99	20.56	090	S
21470		A	Repair lower jaw fracture	14.19	17.13	1.74	33.06	090	S
21480		A	Reset dislocated jaw	0.61	*0.78	0.09	1.48	000	S
21485		A	Reset dislocated jaw	3.73	2.19	0.20	6.12	090	S
21490		A	Repair dislocated jaw	11.08	6.31	0.52	17.91	090	S
21493		A	Treat hyoid bone fracture	1.19	*1.52	0.13	2.84	090	S
21494		A	Repair hyoid bone fracture	5.87	*7.52	0.63	14.02	090	S
21495		A	Repair hyoid bone fracture	5.32	4.82	0.51	10.65	090	S
21497		A	Interdental wiring	3.61	3.97	0.38	7.96	090	S
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	YYY	S
21501		A	Drain neck/chest lesion	3.52	1.82	0.26	5.60	090	S
21502		A	Drain chest lesion	6.44	4.22	0.75	11.41	090	S
21510		A	Drainage of bone lesion	5.03	3.82	0.50	9.35	090	S
21550		A	Biopsy of neck/chest	2.01	0.85	0.12	2.98	010	S
21555		A	Remove lesion neck/chest	4.09	1.60	0.25	5.94	090	S
21556		A	Remove lesion neck/chest	5.28	3.80	0.64	9.72	090	S
21557		A	Remove tumor, neck or chest	8.56	8.50	1.41	18.47	090	S
21600		A	Partial removal of rib	6.27	4.50	0.88	11.65	090	S
21610		A	Partial removal of rib	8.54	5.17	0.76	14.47	090	S
21615		A	Removal of rib	9.03	10.13	1.96	21.12	090	S
21616		A	Removal of rib and nerves	11.11	7.26	1.50	19.87	090	S
21620		A	Partial removal of sternum	6.04	6.85	1.23	14.12	090	S
21627		A	Sternal debridement	6.06	5.03	0.90	11.99	090	S
21630		A	Extensive sternum surgery	15.77	12.89	2.40	31.06	090	S
21632		A	Extensive sternum surgery	16.62	11.54	2.22	30.38	090	S
21700		A	Revision of neck muscle	5.84	4.16	0.50	10.50	090	S
21705		A	Revision of neck muscle/rib	9.03	4.85	0.96	14.84	090	S
21720		A	Revision of neck muscle	5.44	3.84	0.52	9.80	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
21725		A	Revision of neck muscle	6.55	4.84	0.74	12.13	090	S
21740		A	Reconstruction of sternum	15.42	8.99	1.64	26.05	090	S
21750		A	Repair of sternum separation	10.07	7.33	1.43	18.83	090	S
21800		A	Treatment of rib fracture	0.91	0.77	0.07	1.75	090	N
21805		A	Treatment of rib fracture	2.62	1.35	0.17	4.14	090	S
21810		A	Treatment of rib fracture(s)	6.68	7.33	0.81	14.82	090	N
21820		A	Treat sternum fracture	1.20	1.36	0.17	2.73	090	S
21825		A	Repair sternum fracture	6.82	6.90	1.12	14.84	090	S
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	YYY	S
21920		A	Biopsy soft tissue of back	2.01	0.79	0.11	2.91	010	S
21925		A	Biopsy soft tissue of back	4.23	1.95	0.32	6.50	090	S
21930		A	Remove lesion, back or flank	6.55	2.72	0.49	9.76	090	S
21935		A	Remove tumor of back	17.12	6.59	1.30	25.01	090	S
22100		A	Remove part of neck vertebra	9.05	7.84	1.09	17.78	090	S
22101		A	Remove part, thorax vertebra	9.00	8.01	1.38	18.39	090	S
22102		A	Remove part, lumbar vertebra	9.00	4.50	0.67	14.17	090	S
22103		A	Remove extra spine segment	2.34	2.23	0.37	4.94	ZZZ	S
22105		D	Remove part of neck vertebra	0.00	0.00	0.00	0.00	090	S
22106		D	Remove part, thorax vertebra	0.00	0.00	0.00	0.00	090	S
22107		D	Remove part, lumbar vertebra	0.00	0.00	0.00	0.00	090	S
22110		A	Remove part of neck vertebra	11.59	9.72	1.64	22.95	090	S
22112		A	Remove part, thorax vertebra	11.59	9.90	1.63	23.12	090	S
22114		A	Remove part, lumbar vertebra	11.59	7.25	1.17	20.01	090	S
22116		A	Remove extra spine segment	2.32	2.21	0.36	4.89	ZZZ	S
22140		D	Reconstruct neck spine	0.00	0.00	0.00	0.00	090	S
22141		D	Reconstruct thorax spine	0.00	0.00	0.00	0.00	090	S
22142		D	Reconstruct lumbar spine	0.00	0.00	0.00	0.00	090	S
22145		D	Reconstruct vertebra(e)	0.00	0.00	0.00	0.00	ZZZ	S
22146		D	Harvesting bone graft	0.00	0.00	0.00	0.00	ZZZ	S
22150		D	Reconstruct neck spine	0.00	0.00	0.00	0.00	090	S
22151		D	Reconstruct thorax spine	0.00	0.00	0.00	0.00	090	S
22152		D	Reconstruct lumbar spine	0.00	0.00	0.00	0.00	090	S
22210		A	Revision of neck spine	22.51	13.83	2.43	38.77	090	S
22212		A	Revision of thorax spine	18.14	17.29	2.83	38.26	090	S
22214		A	Revision of lumber spine	18.14	15.11	2.68	35.93	090	S
22216		A	Revise, extra spine segment	5.04	5.07	0.89	12.00	ZZZ	S
22220		A	Revision of neck spine	20.15	16.84	2.63	39.42	090	S
22222		A	Revision of thorax spine	20.15	13.61	1.58	35.34	090	S
22224		A	Revision of lumber spine	20.15	14.66	2.66	37.49	090	S
22226		A	Revise, extra spine segment	5.04	5.07	0.89	12.00	ZZZ	S
22230		D	Additional revision of spine	0.00	0.00	0.00	0.00	ZZZ	S
22305		A	Treat spine process fracture	1.86	*2.38	0.37	4.61	090	S
22310		A	Treat spine fracture	1.86	*2.52	0.69	5.07	090	S
22315		A	Treat spine fracture	8.38	5.51	0.86	14.73	090	S
22325		A	Repair of spine fracture	17.19	8.32	1.34	26.85	090	S
22326		A	Repair neck spine fracture	18.43	15.93	2.74	37.10	090	S
22327		A	Repair thorax spine fracture	17.56	15.95	2.35	35.86	090	S
22328		A	Repair each add spine fx	4.61	4.40	0.72	9.73	ZZZ	S
22505		A	Manipulation of spine	1.77	1.31	0.17	3.25	010	N
22548		A	Neck spine fusion	24.08	22.74	3.82	50.64	090	S
22554		A	Neck spine fusion	17.24	19.81	3.52	40.57	090	S
22556		A	Thorax spine fusion	22.27	21.66	3.58	47.53	090	S
22558		A	Lumber spine fusion	21.22	20.17	3.38	44.77	090	S
22585		A	Additional spinal fusion	5.53	5.40	0.93	11.86	ZZZ	S
22590		A	Spine & skull spinal fusion	19.50	21.57	3.44	44.51	090	S
22595		A	Neck spinal fusion	18.19	22.46	3.87	44.52	090	S
22600		A	Neck spine fusion	14.74	19.36	3.32	37.42	090	S
22610		A	Thorax spine fusion	14.62	17.87	2.75	35.24	090	S
22612		A	Lumber spine fusion	20.19	20.60	3.33	44.12	090	S
22614		A	Spine fusion, extra segment	5.44	5.65	0.92	13.01	ZZZ	S
22625		D	Lumber spine fusion	0.00	0.00	0.00	0.00	090	S
22630		A	Lumbar spine fusion	20.03	18.44	3.15	41.62	090	S
22632		A	Spine fusion, extra segment	5.23	4.99	0.82	11.04	ZZZ	S
22650		D	Additional spinal fusion	0.00	0.00	0.00	0.00	ZZZ	S
22800		A	Fusion of spine	16.92	*21.66	3.58	42.16	090	S
22802		A	Fusion of spine	29.74	28.32	4.61	62.67	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
22804		A	Fusion of spine	35.00	28.32	4.61	67.93	090	S
22808		A	Fusion of spine	25.00	18.41	3.15	46.56	090	S
22810		A	Fusion of spine	29.00	18.41	3.15	50.56	090	S
22812		A	Fusion of spine	31.00	25.93	4.24	61.17	090	S
22820		D	Harvesting of bone	0.00	0.00	0.00	0.00	ZZZ	S
22830		A	Exploration of spinal fusion	10.22	*13.07	2.18	25.47	090	S
22840		A	Insert spine fixation device	6.27	5.98	0.98	13.23	ZZZ	S
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	XXX	0
22842		A	Insert spine fixation device	7.19	6.86	1.12	15.17	ZZZ	S
22843		A	Insert spine fixation device	8.97	8.55	1.40	18.92	ZZZ	S
22844		A	Insert spine fixation device	10.96	10.45	1.71	23.12	ZZZ	S
22845		A	Insert spine fixation device	5.98	5.70	0.93	12.61	ZZZ	S
22846		A	Insert spine fixation device	8.28	7.90	1.29	17.47	ZZZ	S
22847		A	Insert spine fixation device	9.20	8.77	1.44	19.41	ZZZ	S
22848		A	Insert pelvic fixation device	6.00	5.72	0.94	12.66	ZZZ	S
22849		A	Reinsert spinal fixation	12.86	11.76	1.97	26.59	090	S
22850		A	Remove spine fixation device	8.98	9.17	1.50	19.65	090	S
22851		A	Apply spine prosth device	6.71	6.40	1.05	14.16	ZZZ	S
22852		A	Remove spine fixation device	8.40	9.80	1.57	19.77	090	S
22855		A	Remove spine fixation device	9.10	7.46	1.25	17.81	090	S
22899		C	Spine surgery procedure	0.00	0.00	0.00	0.00	YYY	S
22900		A	Remove abdominal wall lesion	5.56	3.03	0.60	10.19	090	S
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	YYY	S
23000		A	Removal of calcium deposits	4.12	3.24	0.47	7.83	090	S
23020		A	Release shoulder joint	5.25	7.27	1.09	18.61	090	S
23030		A	Drain shoulder lesion	3.16	2.16	0.35	5.67	010	S
23031		A	Drain shoulder bursa	2.69	0.50	0.05	3.24	010	S
23035		A	Drain shoulder bone lesion	7.80	6.22	1.04	15.06	090	S
23040		A	Exploratory shoulder surgery	8.39	9.27	1.47	19.13	090	S
23044		A	Exploratory shoulder surgery	8.40	6.91	1.18	14.49	090	S
23065		A	Biopsy shoulder tissues	2.24	0.66	0.09	2.99	010	S
23066		A	Biopsy shoulder tissues	4.01	1.18	0.10	5.29	090	S
23075		A	Removal of shoulder lesion	2.34	1.68	0.29	4.31	010	S
23076		A	Removal of shoulder lesion	7.12	3.54	0.65	11.31	090	S
23077		A	Remove tumor of shoulder	14.65	7.38	1.38	23.41	090	S
23100		A	Biopsy of shoulder joint	5.63	*7.20	1.24	14.07	090	S
23101		A	Shoulder joint surgery	5.21	*6.68	1.21	13.10	090	S
23105		A	Remove shoulder joint lining	7.74	*9.91	1.73	19.38	090	S
23106		A	Incision of collarbone joint	5.56	4.75	0.80	11.11	090	S
23107		A	Explore, treat shoulder joint	8.13	9.59	1.60	19.32	090	S
23120		A	Partial removal, collar bone	6.65	4.61	0.74	12.00	090	S
23125		A	Removal of collarbone	8.90	8.49	1.27	18.66	090	S
23130		A	Partial removal, shoulder bone	7.10	7.05	1.14	15.29	090	S
23140		A	Removal of bone lesion	6.43	4.16	0.73	11.32	090	S
23145		A	Removal of bone lesion	8.54	6.13	1.33	16.00	090	S
23146		A	Removal of bone lesion	7.34	5.23	1.01	13.58	090	S
23150		A	Removal of humerus lesion	7.80	6.64	1.01	15.45	090	S
23155		A	Removal of humerus lesion	9.58	8.80	1.37	19.75	090	S
23156		A	Removal of humerus lesion	8.00	7.64	1.25	16.89	090	S
23170		A	Remove collarbone lesion	6.27	4.81	0.78	11.86	090	S
23172		A	Remove shoulder blade lesion	6.24	5.16	0.73	12.13	090	S
23174		A	Remove humerus lesion	8.71	8.55	1.21	18.47	090	S
23180		A	Remove collar bone lesion	7.82	4.30	0.67	12.79	090	S
23182		A	Remove shoulder blade lesion	7.44	6.57	1.13	15.14	090	S
23184		A	Remove humerus lesion	8.61	8.83	1.48	18.92	090	S
23190		A	Partial removal of scapula	6.78	6.07	0.98	13.83	090	S
23195		A	Removal of head of humerus	9.00	8.91	1.45	19.36	090	S
23200		A	Removal of collar bone	11.05	9.17	1.26	21.48	090	S
23210		A	Removal of shoulderblade	11.39	9.01	1.41	21.81	090	S
23220		A	Partial removal of humerus	13.31	12.05	2.03	27.39	090	S
23221		A	Partial removal of humerus	16.62	18.13	1.19	35.94	090	S
23222		A	Partial removal of humerus	16.64	15.02	2.30	33.96	090	S
23330		A	Remove shoulder foreign body	1.80	0.55	0.07	2.42	010	S
23331		A	Remove shoulder foreign body	6.89	2.26	0.38	9.53	090	S
23332		A	Remove shoulder foreign body	10.59	9.72	1.57	21.88	090	S
23350		A	Injection for shoulder x-ray	1.00	0.52	0.05	1.57	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
23395		A	Muscle transfer, shoulder/arm	12.42	11.13	1.84	25.39	090	S
23397		A	Muscle transfers	15.23	13.97	2.34	31.54	090	S
23400		A	Fixation of shoulder blade	12.96	9.84	1.66	24.46	090	S
23405		A	Incision of tendon & muscle	7.97	7.49	0.99	16.45	090	S
23406		A	Incise tendon(s) & muscle(s)	10.33	9.41	1.58	21.32	090	S
23410		A	Repair of tendon(s)	11.90	10.94	1.75	24.59	090	S
23412		A	Repair of tendon(s)	12.69	13.37	2.16	28.22	090	S
23415		A	Release of shoulder ligament	9.51	5.18	0.83	15.52	090	S
23420		A	Repair of shoulder	12.60	14.68	2.34	29.62	090	S
23430		A	Repair biceps tendon	9.56	7.34	1.19	18.09	090	S
23440		A	Removal/transplant tendon	10.08	7.17	1.17	18.42	090	S
23450		A	Repair shoulder capsule	12.85	12.75	2.04	27.64	090	S
23455		A	Repair shoulder capsule	13.82	15.56	2.50	31.88	090	S
23460		A	Repair shoulder capsule	14.66	14.07	2.24	30.97	090	S
23462		A	Repair shoulder capsule	14.62	15.13	2.48	32.23	090	S
23465		A	Repair shoulder capsule	15.14	14.15	2.27	31.56	090	S
23466		A	Repair shoulder capsule	13.65	16.53	2.67	32.85	090	S
23470		A	Reconstruct shoulder joint	16.12	16.76	2.65	35.53	090	S
23472		A	Reconstruct shoulder joint	16.09	*20.60	4.89	41.58	090	S
23480		A	Revision of collarbone	10.56	5.59	1.02	18.17	090	S
23485		A	Revision of collarbone	12.68	11.35	1.87	25.90	090	S
23490		A	Reinforce clavicle	11.31	9.98	0.80	22.09	090	S
23491		A	Reinforce shoulder bones	13.63	12.70	2.11	28.44	090	S
23500		A	Treat clavicle fracture	1.95	1.65	0.21	3.81	090	S
23505		A	Treat clavicle fracture	3.54	2.57	0.38	6.49	090	S
23515		A	Repair clavicle fracture	7.01	6.93	1.12	15.06	090	S
23520		A	Treat clavicle dislocation	2.03	1.38	0.19	3.60	090	S
23525		A	Treat clavicle dislocation	3.40	1.98	0.27	5.65	090	S
23530		A	Repair clavicle dislocation	7.02	6.58	0.91	14.51	090	S
23532		A	Repair clavicle dislocation	7.59	7.23	1.19	16.01	090	S
23540		A	Treat clavicle dislocation	2.10	1.55	0.19	3.84	090	S
23545		A	Treat clavicle dislocation	3.07	1.98	0.29	5.34	090	S
23550		A	Repair clavicle dislocation	6.65	*6.51	1.46	16.62	090	S
23552		A	Repair clavicle dislocation	7.83	7.29	1.17	16.29	090	S
23570		A	Treat shoulderblade fracture	2.10	1.70	0.25	4.05	090	S
23575		A	Treat shoulderblade fracture	3.88	2.75	0.43	7.06	090	S
23585		A	Repair scapula fracture	8.41	7.70	1.29	17.40	090	S
23600		A	Treat humerus fracture	2.75	2.90	0.43	6.08	090	S
23605		A	Treat humerus fracture	4.56	4.76	0.76	10.08	090	S
23615		A	Repair humerus fracture	8.38	*10.72	1.78	20.88	090	S
23616		A	Repair humerus fracture	19.88	22.32	3.54	45.74	090	S
23620		A	Treat humerus fracture	2.25	*2.88	0.46	5.59	090	S
23625		A	Treat humerus fracture	3.64	3.82	0.60	8.06	090	S
23630		A	Repair humerus fracture	6.89	8.82	1.40	17.11	090	S
23650		A	Treat shoulder dislocation	3.24	2.10	0.24	5.58	090	S
23655		A	Treat shoulder dislocation	4.26	2.93	0.44	7.63	090	S
23660		A	Repair shoulder dislocation	7.09	9.07	1.40	17.56	090	S
23665		A	Treat dislocation/fracture	4.16	3.35	0.51	8.02	090	S
23670		A	Repair dislocation/fracture	7.44	*9.52	1.85	18.81	090	S
23675		A	Treat dislocation/fracture	5.80	3.93	0.61	10.14	090	S
23680		A	Repair dislocation/fracture	9.44	*12.09	2.13	23.66	090	S
23700		A	Fixation of shoulder	2.47	2.09	0.34	4.90	010	S
23800		A	Fusion of shoulder joint	13.32	16.35	2.63	32.30	090	S
23802		A	Fusion of shoulder joint	14.67	14.07	2.24	30.98	090	S
23900		A	Amputation of arm & girdle	18.40	12.57	2.40	33.37	090	S
23920		A	Amputation at shoulder joint	13.60	13.85	2.54	29.99	090	S
23921		A	Amputation follow-up surgery	5.03	4.27	0.74	10.04	090	S
23929		C	Shoulder surgery procedure	0.00	0.00	0.00	0.00	YYY	S
23930		A	Drainage of arm lesion	2.78	1.61	0.24	4.63	010	S
23931		A	Drainage of arm bursa	1.63	0.75	0.11	2.49	010	S
23935		A	Drain arm/elbow bone lesion	5.56	4.69	0.78	11.03	090	S
24000		A	Exploratory elbow surgery	5.32	*6.81	1.44	13.57	090	S
24006		A	Release elbow joint	8.70	7.14	1.17	17.01	090	S
24065		A	Biopsy arm/elbow soft tissue	2.03	0.79	0.10	2.92	010	S
24066		A	Biopsy arm/elbow soft tissue	4.95	2.71	0.41	8.07	090	S
24075		A	Remove arm/elbow lesion	3.79	1.98	0.35	6.12	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
24076		A	Remove arm/elbow lesion	5.01	3.68	0.67	10.36	090	S
24077		A	Remove tumor of arm/elbow	11.18	9.79	1.87	22.84	090	S
24100		A	Biopsy elbow joint lining	4.67	4.23	0.69	9.59	090	S
24101		A	Explore/treat elbow joint	5.84	*7.47	1.41	14.72	090	S
24102		A	Remove elbow joint lining	7.57	*9.68	1.81	19.06	090	S
24105		A	Removal of elbow bursa	3.43	3.77	0.63	7.83	090	S
24110		A	Remove humerus lesion	7.08	7.69	1.22	15.99	090	S
24115		A	Remove/graft bone lesion	8.88	7.68	1.33	17.89	090	S
24116		A	Remove/graft bone lesion	11.13	9.72	1.47	22.32	090	S
24120		A	Remove elbow lesion	6.36	6.02	0.98	13.36	090	S
24125		A	Remove/graft bone lesion	7.40	5.79	0.61	13.80	090	S
24126		A	Remove/graft bone lesion	7.76	7.40	1.21	16.37	090	S
24130		A	Removal of head of radius	5.96	6.72	1.08	13.76	090	S
24134		A	Removal of arm bone lesion	8.98	8.69	1.24	18.91	090	S
24136		A	Remove radius bone lesion	7.33	8.78	0.92	17.03	090	S
24138		A	Remove elbow bone lesion	7.36	6.39	1.06	14.81	090	S
24140		A	Partial removal of arm bone	8.56	8.77	1.45	18.78	090	S
24145		A	Partial removal of radius	7.12	6.38	1.03	14.53	090	S
24147		A	Partial removal of elbow	7.00	6.61	1.08	14.69	090	S
24150		A	Extensive humerus surgery	12.43	14.06	2.24	28.75	090	S
24151		A	Extensive humerus surgery	14.65	13.83	2.11	30.59	090	S
24152		A	Extensive radius surgery	9.51	6.80	1.16	17.47	090	S
24153		A	Extensive radius surgery	10.96	10.44	1.71	23.11	090	S
24155		A	Removal of elbow joint	11.11	10.75	1.72	23.58	090	S
24160		A	Remove elbow joint implant	7.43	4.84	0.80	13.07	090	S
24164		A	Remove radius head implant	5.79	5.53	0.90	12.22	090	S
24200		A	Removal of arm foreign body	1.71	0.56	0.06	2.33	010	N
24201		A	Removal of arm foreign body	4.30	3.06	0.49	7.85	090	S
24220		A	Injection for elbow x-ray	1.31	0.51	0.05	1.87	000	N
24301		A	Muscle/tendon transfer	9.78	7.90	1.23	18.91	090	S
24305		A	Arm tendon lengthening	7.16	3.08	0.29	10.53	090	S
24310		A	Revision of arm tendon	5.72	2.95	0.48	9.15	090	S
24320		A	Repair of arm tendon	10.01	9.20	1.29	20.50	090	S
24330		A	Revision of arm muscles	9.16	8.74	1.43	19.35	090	S
24331		A	Revision of arm muscles	10.10	9.62	1.57	21.29	090	S
24340		A	Repair of bicepe tendon	7.58	7.00	1.13	15.71	090	S
24342		A	Repair of ruptured tendon	10.13	10.38	1.76	22.27	090	S
24350		A	Repair of tennis elbow	5.05	4.23	0.69	9.97	090	S
24351		A	Repair of tennis elbow	5.73	4.57	0.73	11.03	090	S
24352		A	Repair of tennis elbow	6.14	5.69	0.93	12.76	090	S
24354		A	Repair of tennis elbow	6.19	5.61	0.94	12.74	090	S
24356		A	Revision of tennis elbow	6.39	7.28	1.18	14.85	090	S
24360		A	Reconstruct elbow joint	11.76	*15.05	2.47	29.28	090	S
24361		A	Reconstruct elbow joint	13.50	13.13	2.00	28.63	090	S
24362		A	Reconstruct elbow joint	14.41	13.14	0.80	28.35	090	S
24363		A	Replace elbow joint	17.66	*22.61	4.13	44.40	090	S
24365		A	Reconstruct head of radius	7.93	7.52	1.19	16.64	090	S
24366		A	Reconstruct head of radius	8.67	11.05	1.80	21.52	090	S
24400		A	Revision of humerus	10.55	8.43	1.37	20.35	090	S
24410		A	Revision of humerus	14.28	14.04	2.06	30.38	090	S
24420		A	Revision of humerus	12.90	12.30	2.01	27.21	090	S
24430		A	Repair of humerus	12.26	14.66	2.34	29.26	090	S
24435		A	Repair humerus with graft	12.19	*15.61	2.84	30.64	090	S
24470		A	Revision of elbow joint	8.32	7.92	1.30	17.54	090	S
24495		A	Decompression of forearm	7.59	5.75	1.10	14.44	090	S
24498		A	Reinforce humerus	11.30	10.37	1.62	23.29	090	S
24500		A	Treat humerus fracture	3.01	2.54	0.36	5.91	090	S
24505		A	Treat humerus fracture	4.83	4.50	0.71	10.04	090	S
24515		A	Repair humerus fracture	10.92	9.65	1.54	22.11	090	S
24516		A	Repair humerus fracture	10.92	9.65	1.54	22.11	090	S
24530		A	Treat humerus fracture	3.30	2.73	0.42	6.45	090	S
24535		A	Treat humerus fracture	6.51	4.85	0.78	12.14	090	S
24538		A	Treat humerus fracture	8.85	7.98	1.26	18.09	090	S
24545		A	Repair humerus fracture	9.65	9.97	1.59	21.21	090	S
24546		A	Repair humerus fracture	14.66	9.97	1.59	26.22	090	S
24560		A	Treat humerus fracture	2.62	2.16	0.30	5.08	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
24565		A	Treat humerus fracture	5.22	3.45	0.54	9.21	090	S
24566		A	Treat humerus fracture	7.17	6.06	0.96	14.19	090	S
24575		A	Repair humerus fracture	9.91	7.79	1.24	18.94	090	S
24576		A	Treat humerus fracture	2.66	2.16	0.33	5.15	090	S
24577		A	Treat humerus fracture	5.45	4.00	0.61	10.06	090	S
24579		A	Repair humerus fracture	10.85	8.37	1.35	20.57	090	S
24582		A	Treat humerus fracture	7.83	5.62	1.06	15.51	090	S
24586		A	Repair elbow fracture	14.37	14.72	2.36	31.45	090	S
24587		A	Repair elbow fracture	14.26	13.72	2.17	30.15	090	S
24600		A	Treat elbow dislocation	4.08	1.95	0.26	6.29	090	S
24605		A	Treat elbow dislocation	5.08	2.29	0.37	7.74	090	S
24615		A	Repair elbow dislocation	8.76	9.29	1.48	19.53	090	S
24620		A	Treat elbow fracture	6.62	3.78	0.57	10.97	090	S
24635		A	Repair elbow fracture	12.42	11.06	1.78	25.26	090	S
24640		A	Treat elbow dislocation	1.15	1.01	0.08	2.24	010	N
24650		A	Treat radius fracture	2.01	2.25	0.33	4.59	090	S
24655		A	Treat radius fracture	4.17	3.01	0.45	7.63	090	S
24665		A	Repair radius fracture	7.69	7.13	1.14	15.96	090	S
24666		A	Repair radius fracture	8.87	10.27	1.60	20.74	090	S
24670		A	Treatment of ulna fracture	2.39	1.95	0.27	4.61	090	S
24675		A	Treatment of ulna fracture	4.52	3.51	0.54	8.57	090	S
24685		A	Repair ulna fracture	8.34	8.40	1.34	18.08	090	S
24800		A	Fusion of elbow joint	10.75	10.59	1.55	22.89	090	S
24802		A	Fusion/graft of elbow joint	12.79	12.18	1.99	26.96	090	S
24900		A	Amputation of upper arm	8.76	7.68	1.39	17.83	090	S
24920		A	Amputation of upper arm	8.69	6.76	1.19	16.66	090	S
24925		A	Amputation follow-up surgery	6.61	6.27	0.75	13.63	090	S
24930		A	Amputation follow-up surgery	9.40	8.16	1.17	18.73	090	S
24931		A	Amputate upper arm & implant	11.71	11.17	1.84	24.72	090	S
24935		A	Revision of amputation	14.37	13.70	2.24	30.31	090	S
24940		C	Revision of upper arm	0.00	0.00	0.00	0.00	090	S
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	YYY	S
25000		A	Incision of tendon sheath	3.20	3.94	0.62	7.76	090	S
25020		A	Decompression of forearm	5.55	4.35	0.77	10.67	090	S
25023		A	Decompression of forearm	11.80	5.44	0.94	18.18	090	S
25028		A	Drainage of forearm lesion	4.88	2.06	0.36	7.30	090	S
25031		A	Drainage of forearm bursa	3.90	0.66	0.09	4.65	090	S
25035		A	Treat forearm bone lesion	6.83	6.30	1.01	14.14	090	S
25040		A	Explore/treat wrist joint	6.61	5.69	0.90	13.20	090	S
25065		A	Biopsy forearm soft tissues	2.39	0.75	0.09	3.23	010	S
25066		A	Biopsy forearm soft tissues	3.87	1.54	0.22	5.63	090	S
25075		A	Removal of forearm lesion	3.61	2.19	0.37	6.17	090	S
25076		A	Removal of forearm lesion	4.77	3.77	0.67	9.21	090	S
25077		A	Remove tumor, forearm/wrist	9.25	8.48	1.67	19.40	090	S
25085		A	Incision of wrist capsule	5.13	4.62	0.71	10.46	090	S
25100		A	Biopsy of wrist joint	3.66	*4.69	0.79	9.14	090	S
25101		A	Explore/treat wrist joint	4.43	5.61	0.98	11.02	090	S
25105		A	Remove wrist joint lining	5.58	*7.11	1.19	13.86	090	S
25107		A	Remove wrist joint cartilage	5.89	5.28	0.89	12.06	090	S
25110		A	Remove wrist tendon lesion	3.79	2.80	0.48	7.05	090	S
25111		A	Remove wrist tendon lesion	3.24	3.22	0.55	7.01	090	S
25112		A	Raremove wrist tendon lesion	4.38	3.72	0.66	8.76	090	S
25115		A	Remove wrist/forearm lesion	6.25	7.14	1.23	14.63	090	S
25116		A	Remove wrist/forearm lesion	6.44	8.17	1.38	15.99	090	S
25118		A	Excise wrist tendon sheath	4.11	*5.26	1.02	10.39	090	S
25119		A	Partial removal of ulna	5.64	*7.22	1.32	14.18	090	S
25120		A	Removal of forearm lesion	5.70	6.53	1.14	13.37	090	S
25125		A	Remove/graft forearm lesion	7.06	6.84	1.04	14.94	090	S
25126		A	Remove/graft forearm lesion	7.13	6.80	1.12	15.05	090	S
25130		A	Removal of wrist lesion	5.08	4.21	0.67	9.96	090	S
25135		A	Remove & graft wrist lesion	6.58	5.46	0.97	13.01	090	S
25136		A	Remove & graft wrist lesion	5.68	4.74	0.85	11.27	090	S
25145		A	Remove forearm bone lesion	5.97	5.95	0.75	12.67	090	S
25150		A	Partial removal of ulna	6.56	6.67	1.12	14.35	090	S
25151		A	Partial removal of radius	6.86	5.75	1.02	13.63	090	S
25170		A	Extensive forearm surgery	10.45	9.79	1.51	21.75	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
25210		A	Removal of wrist bone	5.55	4.88	0.80	11.23	090	S
25215		A	Removal of wrist bones	7.40	5.68	1.42	17.50	090	S
25230		A	Partial removal of radius	4.86	5.57	0.85	11.28	090	S
25240		A	Partial removal of ulna	4.91	5.30	0.86	11.07	090	S
25246		A	Injection for wrist x-ray	1.45	0.50	0.05	2.00	000	N
25248		A	Remove forearm foreign body	4.96	2.18	0.37	7.51	090	S
25250		A	Removal of wrist prosthesis	6.31	5.63	0.91	12.85	090	S
25251		A	Removal of wrist prosthesis	9.08	8.25	1.39	18.72	090	S
25260		A	Repair forearm tendon/muscle	7.33	4.61	0.78	12.72	090	S
25263		A	Repair forearm tendon/muscle	7.37	5.77	1.03	14.17	090	S
25265		A	Repair forearm tendon/muscle	9.54	7.93	1.41	18.88	090	S
25270		A	Repair forearm tendon/muscle	5.71	3.36	0.55	9.62	090	S
25272		A	Repair forearm tendon/muscle	5.75	3.44	0.54	10.73	090	S
25274		A	Repair forearm tendon/muscle	8.44	6.62	1.13	16.19	090	S
25280		A	Revise wrist/forearm tendon	6.82	4.22	0.69	11.73	090	S
25290		A	Incise wrist/forearm tendon	5.03	2.47	0.41	7.91	090	S
25295		A	Release wrist/forearm tendon	6.26	3.05	0.52	9.83	090	S
25300		A	Fusion of tendons at wrist	8.46	7.36	1.19	17.01	090	S
25301		A	Fusion of tendons at wrist	6.09	6.77	1.18	16.04	090	S
25310		A	Transplant forearm tendon	7.68	7.14	1.17	15.99	090	S
25312		A	Transplant forearm tendon	9.08	7.63	1.31	18.02	090	S
25315		A	Revise palsy hand tendon(s)	9.45	8.06	1.34	18.85	090	S
25316		A	Revise palsy hand tendon(s)	11.49	10.58	1.78	23.85	090	S
25320		A	Repair/revise wrist joint	9.89	8.60	1.45	19.94	090	S
25330		A	Revise wrist joint	10.85	9.23	1.50	21.58	090	S
25331		A	Revise wrist joint	12.60	14.66	2.40	29.66	090	S
25332		A	Revise wrist joint	10.83	9.98	1.61	22.42	090	S
25335		A	Realignment of hand	12.11	11.41	1.56	25.08	090	S
25337		A	Reconstruct ulna/radioulnar	9.50	8.60	1.45	19.55	090	S
25350		A	Revision of radius	8.23	7.61	1.26	17.10	090	S
25355		A	Revision of radius	9.55	9.12	1.49	20.16	090	S
25360		A	Revision of ulna	7.85	6.41	0.99	15.28	090	S
25365		A	Revise radius & ulna	11.63	10.31	1.57	23.51	090	S
25370		A	Revise radius or ulna	12.34	11.76	1.92	26.02	090	S
25375		A	Revise radius & ulna	12.27	13.38	0.87	26.52	090	S
25390		A	Shorten radius/ulna	9.85	8.82	1.50	20.17	090	S
25391		A	Lengthen radius/ulna	12.75	11.25	1.93	25.93	090	S
25392		A	Shorten radius & ulna	13.05	12.44	2.04	27.53	090	S
25393		A	Lengthen radius & ulna	14.90	14.21	2.32	31.43	090	S
25400		A	Repair radius or ulna	10.30	10.78	1.75	22.83	090	S
25405		A	Repair/graft radius or ulna	13.48	12.42	2.02	27.92	090	S
25415		A	Repair radius & ulna	12.64	11.42	1.92	25.98	090	S
25420		A	Repair/graft radius & ulna	15.34	14.70	2.28	32.32	090	S
25425		A	Repair/graft radius or ulna	12.44	12.02	1.87	26.33	090	S
25426		A	Repair/graft radius & ulna	14.92	11.72	2.13	28.77	090	S
25440		A	Repair/graft wrist bone	9.95	9.05	1.50	20.50	090	S
25441		A	Reconstruct wrist joint	12.26	11.36	1.89	25.51	090	S
25442		A	Reconstruct wrist joint	10.34	7.06	1.22	18.62	090	S
25443		A	Reconstruct wrist joint	9.88	9.38	1.52	20.78	090	S
25444		A	Reconstruct wrist joint	10.64	10.14	1.66	22.44	090	S
25445		A	Reconstruct wrist joint	9.27	10.36	1.72	21.35	090	S
25446		A	Wrist replacement	15.52	*19.86	3.49	38.87	090	S
25447		A	Repair wrist joint(s)	9.86	9.65	1.56	21.07	090	S
25449		A	Remove wrist joint implant	13.78	7.84	1.16	22.78	090	S
25450		A	Revision of wrist joint	7.67	7.31	1.19	16.17	090	S
25455		A	Revision of wrist joint	9.15	8.71	1.42	19.28	090	S
25490		A	Reinforce radius	9.12	8.69	1.42	19.23	090	S
25491		A	Reinforce ulna	9.54	9.10	1.49	20.13	090	S
25492		A	Reinforce radius and ulna	11.75	11.20	1.84	24.79	090	S
25500		A	Treat fracture of radius	2.30	2.33	0.29	4.92	090	S
25505		A	Treat fracture of radius	4.96	3.57	0.51	9.04	090	S
25515		A	Repair fracture of radius	8.63	7.63	1.22	17.48	090	S
25520		A	Repair fracture of radius	6.01	5.74	0.94	12.69	090	S
25525		A	Repair fracture of radius	11.69	11.15	1.83	24.67	090	S
25526		A	Repair fracture of radius	12.43	11.85	1.94	26.22	090	S
25530		A	Treat fracture of ulna	1.94	2.44	0.35	4.73	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
25535		A	Treat fracture of ulna	4.91	3.57	0.54	9.02	090	S
25545		A	Repair fracture of ulna	8.35	7.58	1.20	17.13	090	S
25550		A	Treat fracture radius & ulna	2.29	2.27	0.27	4.83	090	S
25565		A	Treat fracture radius & ulna	5.29	4.56	0.70	10.55	090	S
25574		A	Treat fracture radius & ulna	6.03	*7.72	1.73	15.48	090	S
25575		A	Repair fracture radius/ulna	9.47	10.70	1.73	21.90	090	S
25600		A	Treat fracture radius/ulna	2.48	2.84	0.42	5.74	090	S
25605		A	Treat fracture radius/ulna	5.36	3.95	0.61	9.92	090	S
25611		A	Repair fracture radius/ulna	7.11	6.01	0.97	14.09	090	S
25620		A	Repair fracture radius/ulna	8.15	7.13	1.14	16.42	090	S
25622		A	Treat wrist bone fracture	2.43	2.28	0.33	5.04	090	S
25624		A	Treat wrist bone fracture	4.28	3.67	0.57	8.52	090	S
25628		A	Repair wrist bone fracture	7.81	7.13	1.16	16.10	090	S
25630		A	Treat wrist bone fracture	2.73	2.19	0.30	5.22	090	S
25635		A	Treat wrist bone fracture	4.16	3.36	0.50	8.02	090	S
25645		A	Repair wrist bone fracture	6.85	6.68	0.95	14.48	090	S
25650		A	Repair wrist bone fracture	2.87	2.66	0.36	5.89	090	S
25660		A	Treat wrist dislocation	4.53	1.82	0.26	6.61	090	S
25670		A	Repair wrist dislocation	7.52	7.08	1.12	15.72	090	S
25675		A	Treat wrist dislocation	4.44	2.28	0.34	7.06	090	S
25676		A	Repair wrist dislocation	7.55	7.32	1.11	15.98	090	S
25680		A	Treat wrist fracture	5.63	2.44	0.36	8.43	090	S
25685		A	Repair wrist fracture	9.23	8.79	1.44	19.46	090	S
25690		A	Treat wrist dislocation	5.16	4.89	0.73	10.78	090	S
25695		A	Repair wrist dislocation	7.94	7.04	1.17	16.15	090	S
25800		A	Fusion of wrist joint	9.21	10.94	1.80	21.95	090	S
25805		A	Fusion/graft of wrist joint	10.57	12.85	2.09	25.51	090	S
25810		A	Fusion/graft of wrist joint	9.79	*12.53	2.06	24.38	090	S
25820		A	Fusion of hand bones	7.14	8.91	1.48	17.53	090	S
25825		A	Fusion hand bones with graft	8.60	*11.02	1.99	21.61	090	S
25830		A	Fusion radioulnar jnt/ulna	9.50	8.60	1.45	19.55	090	S
25900		A	Amputation of forearm	8.15	7.08	1.31	16.54	090	S
25905		A	Amputation of forearm	8.40	7.11	1.15	16.66	090	S
25907		A	Amputation follow-up surgery	7.27	5.74	1.00	14.01	090	S
25909		A	Amputation follow-up surgery	8.37	5.55	1.06	14.98	090	S
25915		A	Amputation of forearm	16.61	15.83	2.59	35.03	090	S
25920		A	Amputate hand at wrist	8.09	7.00	1.20	16.29	090	S
25922		A	Amputate hand at wrist	6.96	5.55	1.02	13.53	090	S
25924		A	Amputation follow-up surgery	7.87	7.50	1.22	16.59	090	S
25927		A	Amputation of hand	8.27	6.29	1.22	15.78	090	S
25929		A	Amputation follow-up surgery	7.13	4.74	0.96	12.83	090	S
25931		A	Amputation follow-up surgery	7.35	4.54	0.90	12.79	090	S
25999		C	Forearm or wrist surgery	0.00	0.00	0.00	0.00	YYY	S
26010		A	Drainage of finger abscess	1.49	0.48	0.05	2.02	010	N
26011		A	Drainage of finger abscess	2.14	1.54	0.24	3.92	010	S
26020		A	Drain hand tendon sheath	4.01	3.72	0.63	8.36	090	S
26025		A	Drainage of palm bursa	4.32	4.51	0.76	9.59	090	S
26030		A	Drainage of palm bursa(s)	5.36	5.73	0.98	12.07	090	S
26034		A	Treat hand bone lesion	5.59	4.23	0.71	10.53	090	S
26035		A	Decompress fingers/hand	8.38	5.17	0.86	14.41	090	S
26037		A	Decompress fingers/hand	6.68	6.37	1.05	14.10	090	S
26040		A	Release palm contracture	3.09	2.86	0.49	6.44	090	S
26045		A	Release palm contracture	5.27	4.83	0.81	10.91	090	S
26055		A	Incise finger tendon sheath	2.56	*3.28	0.56	6.40	090	S
26060		A	Incision of finger tendon	2.71	1.13	0.17	4.01	090	S
26070		A	Explore/treat hand joint	3.34	2.76	0.42	6.52	090	S
26075		A	Explore/treat finger joint	3.44	3.78	0.62	7.84	090	S
26080		A	Explore/treat finger joint	3.78	3.14	0.51	7.43	090	S
26100		A	Biopsy hand joint lining	3.54	2.99	0.45	6.98	090	S
26105		A	Biopsy finger joint lining	3.58	4.17	0.67	8.42	090	S
26110		A	Biopsy finger joint lining	3.40	2.93	0.50	6.83	090	S
26115		A	Removal of hand lesion	3.68	2.01	0.34	6.03	090	S
26116		A	Removal of hand lesion	5.19	3.71	0.62	9.52	090	S
26117		A	Remove tumor, hand/finger	8.24	5.07	0.91	14.22	090	S
26121		A	Release palm contracture	7.34	*9.40	1.61	18.35	090	S
26123		A	Release palm contracture	8.64	9.10	1.53	19.27	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
26125		A	Release palm contracture	4.61	2.62	0.45	7.88	ZZZ	S
26130		A	Remove wrist joint lining	5.13	5.01	0.86	11.00	090	S
26135		A	Revise finger joint, each	6.67	4.86	0.82	12.35	090	S
26140		A	Revise finger joint, each	5.88	4.40	0.75	11.03	090	S
26145		A	Tendon excision, palm/finger	6.03	4.71	0.80	11.54	090	S
26160		A	Remove tendon sheath lesion	3.00	2.32	0.40	5.72	090	S
26170		A	Removal of palm tendon, each	4.62	2.83	0.45	7.90	090	S
26180		A	Removal of finger tendon	5.00	4.01	0.71	9.72	090	S
26200		A	Remove hand bone lesion	5.25	4.48	0.72	10.45	090	S
26205		A	Remove/graft bone lesion	7.24	6.40	1.03	14.67	090	S
26210		A	Removal of finger lesion	4.97	3.90	0.64	9.51	090	S
26215		A	Remove/graft finger lesion	6.81	5.55	0.94	13.30	090	S
26230		A	Partial removal of hand bone	5.96	4.26	0.69	10.91	090	S
26235		A	Partial removal, finger bone	5.82	4.17	0.71	10.70	090	S
26236		A	Partial removal, finger bone	4.95	3.86	0.66	9.47	090	S
26250		A	Extensive hand surgery	7.26	6.00	1.07	14.33	090	S
26255		A	Extensive hand surgery	11.66	8.94	1.54	22.14	090	S
26260		A	Extensive finger surgery	6.74	5.73	0.97	13.44	090	S
26261		A	Extensive finger surgery	8.54	7.70	1.31	17.55	090	S
26262		A	Partial removal of finger	5.41	4.75	0.76	10.92	090	S
26320		A	Removal of implant from hand	3.74	3.54	0.57	7.85	090	S
26350		A	Repair finger/hand tendon	5.76	5.74	0.99	12.49	090	S
26352		A	Repair/graft hand tendon	7.26	6.60	1.10	14.96	090	S
26356		A	Repair finger/hand tendon	7.05	7.21	1.24	15.50	090	S
26357		A	Repair finger/hand tendon	8.16	6.56	1.19	15.93	090	S
26358		A	Repair/graft hand tendon	8.59	7.40	1.27	17.36	090	S
26370		A	Repair finger/hand tendon	6.71	6.71	1.13	14.55	090	S
26372		A	Repair/graft hand tendon	8.27	6.39	1.15	15.81	090	S
26373		A	Repair finger/hand tendon	7.67	6.85	1.11	15.63	090	S
26390		A	Revise hand/finger tendon	8.73	7.95	1.23	17.91	090	S
26392		A	Repair/graft hand tendon	9.77	8.61	1.26	19.64	090	S
26410		A	Repair hand tendon	4.37	3.29	0.51	8.17	090	S
26412		A	Repair/graft hand tendon	5.91	6.01	0.97	12.89	090	S
26415		A	Excision, hand/finger tendon	8.05	6.75	0.90	15.70	090	S
26416		A	Graft hand or finger tendon	9.06	8.64	1.41	19.11	090	S
26418		A	Repair finger tendon	4.02	3.58	0.59	8.19	090	S
26420		A	Repair/graft finger tendon	6.37	5.68	0.96	13.01	090	S
26426		A	Repair finger/hand tendon	5.86	6.31	1.07	13.24	090	S
26428		A	Repair/graft finger tendon	6.90	5.50	1.00	13.40	090	S
26432		A	Repair finger tendon	3.87	3.15	0.51	7.53	090	S
26433		A	Repair finger tendon	4.41	3.94	0.66	9.01	090	S
26434		A	Repair/graft finger tendon	5.80	4.95	0.84	11.59	090	S
26437		A	Realignment of tendons	5.53	4.05	0.68	10.26	090	S
26440		A	Release palm/finger tendon	4.76	3.57	0.59	8.92	090	S
26442		A	Release palm & finger tendon	6.10	3.37	0.59	10.06	090	S
26445		A	Release hand/finger tendon	4.16	3.25	0.54	7.95	090	S
26449		A	Release forearm/hand tendon	5.39	5.57	0.96	12.92	090	S
26450		A	Incision of palm tendon	3.54	2.28	0.36	6.18	090	S
26455		A	Incision of finger tendon	3.51	1.89	0.33	5.73	090	S
26460		A	Incise hand/finger tendon	3.33	1.72	0.30	5.35	090	S
26471		A	Fusion of finger tendons	5.55	4.15	0.67	10.37	090	S
26474		A	Fusion of finger tendons	5.14	4.61	0.75	10.50	090	S
26476		A	Tendon lengthening	5.00	2.89	0.27	8.16	090	S
26477		A	Tendon shortening	4.97	3.99	0.73	9.69	090	S
26478		A	Lengthening of hand tendon	5.62	4.30	0.72	10.64	090	S
26479		A	Shortening of hand tendon	5.56	5.29	0.86	11.71	090	S
26480		A	Transplant hand tendon	6.49	6.53	1.11	14.13	090	S
26483		A	Transplant/graft hand tendon	7.87	8.50	1.40	17.77	090	S
26485		A	Transplant palm tendon	7.28	6.50	1.06	14.86	090	S
26489		A	Transplant/graft palm tendon	9.00	3.40	0.51	12.91	090	S
26490		A	Revise thumb tendon	7.99	7.80	1.28	17.07	090	S
26492		A	Tendon transfer with graft	9.17	8.75	1.21	19.13	090	S
26494		A	Hand tendon/muscle transfer	8.05	7.28	1.23	16.56	090	S
26496		A	Revise thumb tendon	9.17	8.73	1.53	19.43	090	S
26497		A	Finger tendon transfer	9.15	8.02	1.38	18.55	090	S
26498		A	Finger tendon transfer	13.55	11.78	2.04	27.37	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
26499		A	Revision of finger	8.56	7.75	1.25	17.56	090	S
26500		A	Hand tendon reconstruction	5.67	3.49	0.60	9.76	090	S
26502		A	Hand tendon reconstruction	6.74	5.27	0.95	12.96	090	S
26504		A	Hand tendon reconstruction	7.05	6.72	1.11	14.88	090	S
26508		A	Release thumb contracture	5.81	4.15	0.72	10.48	090	S
26510		A	Thumb tendon transfer	5.03	4.15	0.68	9.86	090	S
26516		A	Fusion of knuckle joint	6.75	4.16	0.67	11.58	090	S
26517		A	Fusion of knuckle joints	8.34	7.07	1.23	16.64	090	S
26518		A	Fusion of knuckle joints	8.53	6.51	1.22	16.26	090	S
26520		A	Release knuckle contracture	5.01	4.48	0.71	10.20	090	S
26525		A	Release finger contracture	5.04	3.64	0.62	9.30	090	S
26530		A	Revise knuckle joint	6.38	5.16	0.85	12.39	090	S
26531		A	Revise knuckle with implant	7.57	6.65	1.11	15.33	090	S
26535		A	Revise finger joint	4.95	4.84	0.58	10.37	090	S
26536		A	Revise/implant finger joint	6.06	7.21	1.19	14.46	090	S
26540		A	Repair hand joint	6.03	6.84	1.12	13.79	090	S
26541		A	Repair hand joint with graft	8.20	8.94	1.47	18.61	090	S
26542		A	Repair hand joint with graft	6.38	5.67	0.97	13.02	090	S
26545		A	Reconstruct finger joint	6.50	5.27	0.94	12.71	090	S
26548		A	Reconstruct finger joint	7.61	5.79	1.00	14.40	090	S
26550		A	Construct thumb replacement	20.77	19.81	3.24	43.82	090	S
26552		C	Construct thumb replacement	0.00	0.00	0.00	0.00	090	S
26555		A	Positional change of finger	16.16	15.41	2.52	34.09	090	S
26557		C	Construct finger replacement	0.00	0.00	0.00	0.00	090	S
26558		C	Added finger surgery	0.00	0.00	0.00	0.00	090	S
26559		C	Added finger surgery	0.00	0.00	0.00	0.00	090	S
26560		A	Repair of web finger	5.23	4.65	0.66	10.54	090	S
26561		A	Repair of web finger	10.50	8.89	1.56	20.95	090	S
26562		A	Repair of web finger	9.23	10.97	0.82	21.02	090	S
26565		A	Correct metacarpal flaw	6.45	5.82	0.85	13.12	090	S
26567		A	Correct finger deformity	6.53	4.26	0.67	11.48	090	S
26568		A	Lengthen metacarpal/finger	8.66	8.45	1.06	18.17	090	S
26580		A	Repair hand deformity	17.71	16.89	2.76	37.36	090	S
26585		A	Repair finger deformity	13.58	12.95	2.12	28.65	090	S
26587		C	Reconstruct extra finger	0.00	0.00	0.00	0.00	090	S
26590		A	Repair finger deformity	17.44	16.63	2.72	36.79	090	S
26591		A	Repair muscles of hand	2.90	2.29	0.39	5.58	090	S
26593		A	Release muscles of hand	4.89	4.12	0.70	9.71	090	S
26596		A	Excision constricting tissue	8.64	8.24	1.35	18.23	090	S
26597		A	Release of scar contracture	9.37	8.02	1.37	18.76	090	S
26600		A	Treat metacarpal fracture	1.81	1.54	0.22	3.57	090	S
26605		A	Treat metacarpal fracture	2.67	2.29	0.36	5.32	090	S
26607		A	Treat metacarpal fracture	5.12	3.55	0.57	9.24	090	S
26608		A	Treat metacarpal fracture	5.12	3.55	0.57	9.24	090	S
26615		A	Repair metacarpal fracture	5.18	4.87	0.80	10.85	090	S
26641		A	Treat thumb dislocation	3.74	1.11	0.14	4.99	090	S
26645		A	Treat thumb fracture	4.23	2.20	0.33	6.76	090	S
26650		A	Repair thumb fracture	5.49	4.01	0.64	10.14	090	S
26665		A	Repair thumb fracture	7.14	6.39	1.09	14.62	090	S
26670		A	Treat hand dislocation	3.54	0.96	0.10	4.60	090	S
26675		A	Treat hand dislocation	4.44	4.34	0.60	9.38	090	S
26676		A	Pin hand dislocation	5.29	4.86	0.67	10.82	090	S
26685		A	Repair hand dislocation	6.54	5.76	0.91	13.21	090	S
26686		A	Repair hand dislocation	7.48	6.31	1.04	14.83	090	S
26700		A	Treat knuckle dislocation	3.54	0.88	0.10	4.52	090	S
26705		A	Treat knuckle dislocation	3.99	1.78	0.27	6.04	090	S
26706		A	Pin knuckle dislocation	4.92	4.68	0.75	10.35	090	S
26715		A	Repair knuckle dislocation	5.48	4.13	0.86	10.27	090	S
26720		A	Treat finger fracture, each	1.56	1.10	0.15	2.81	090	S
26725		A	Treat finger fracture, each	3.18	1.54	0.23	4.95	090	S
26727		A	Treat finger fracture, each	4.92	2.45	0.38	7.75	090	S
26735		A	Repair finger fracture, each	5.72	3.73	0.61	10.06	090	S
26740		A	Treat finger fracture, each	1.61	1.16	0.16	3.13	090	S
26742		A	Treat finger fracture, each	3.70	1.98	0.32	6.00	090	S
26746		A	Repair finger fracture, each	5.55	4.75	0.80	11.10	090	S
26750		A	Treat finger fracture, each	1.60	0.83	0.10	2.53	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
26755		A	Treat finger fracture, each	2.97	1.08	0.15	4.20	090	S
26756		A	Pin finger fracture, each	4.19	1.90	0.33	6.42	090	S
26765		A	Repair finger fracture, each	4.04	2.66	0.45	7.15	090	S
26770		A	Treat finger dislocation	2.89	0.76	0.08	3.73	090	S
26775		A	Treat finger dislocation	3.51	1.13	0.17	4.81	090	S
26776		A	Pin finger dislocation	4.80	2.08	0.35	7.03	090	S
26785		A	Repair finger dislocation	4.08	2.97	0.48	7.53	090	S
26820		A	Thumb fusion with graft	7.84	6.65	1.05	15.54	090	S
26841		A	Fusion of thumb	6.79	6.17	1.00	13.96	090	S
26842		A	Thumb fusion with graft	7.75	8.58	1.37	17.70	090	S
26843		A	Fusion of hand joint	7.21	5.37	1.10	14.68	090	S
26844		A	Fusion/graft of hand joint	8.24	7.35	1.19	16.78	090	S
26850		A	Fusion of knuckle	6.57	4.63	0.76	11.96	090	S
26852		A	Fusion of knuckle with graft	7.97	5.72	1.00	14.69	090	S
26860		A	Fusion of finger joint	4.49	4.30	0.68	9.47	090	S
26861		A	Fusion of finger joint, added	1.74	*2.23	0.43	4.40	ZZZ	S
26862		A	Fusion/graft of finger joint	7.06	5.16	0.85	13.07	090	S
26863		A	Fuse/graft added joint	3.90	3.37	0.57	7.84	ZZZ	S
26910		A	Amputate metacarpal bone	7.18	5.16	0.93	13.27	090	S
26951		A	Amputation of finger/thumb	4.41	2.87	0.49	7.77	090	S
26952		A	Amputation of finger/thumb	5.02	4.00	0.69	10.71	090	S
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	YYY	S
26990		A	Drainage of pelvis lesion	6.78	3.10	0.51	10.37	090	S
26991		A	Drainage of pelvis bursa	6.05	1.81	0.29	8.15	090	S
26992		A	Drainage of bone lesion	13.97	6.38	1.05	21.40	090	S
27000		A	Incision of hip tendon	5.27	1.85	0.24	7.36	090	S
27001		A	Incision of hip tendon	7.70	2.34	0.38	10.42	090	S
27003		A	Incision of hip tendon	5.53	6.77	1.08	14.38	090	S
27005		A	Incision of hip tendon	9.00	3.37	0.54	12.91	090	S
27006		A	Incision of hip tendons	9.50	4.64	0.77	14.91	090	S
27025		A	Incision of hip/thigh fascia	10.16	6.12	1.02	17.30	090	S
27030		A	Drainage of hip joint	12.09	11.42	1.86	25.37	090	S
27033		A	Exploration of hip joint	12.38	11.52	1.85	25.75	090	S
27035		A	Denervation of hip joint	15.72	11.86	2.21	29.79	090	S
27040		A	Biopsy of soft tissues	3.26	0.72	0.11	4.09	010	N
27041		A	Biopsy of soft tissues	9.36	2.67	0.44	12.47	090	S
27047		A	Remove hip/pelvis lesion	7.16	1.89	0.32	9.37	090	S
27048		A	Remove hip/pelvis lesion	5.70	4.33	0.82	10.85	090	S
27049		A	Remove tumor, hip/pelvis	12.52	10.14	1.87	24.53	090	S
27050		A	Biopsy of sacroiliac joint	3.73	*4.78	0.90	9.41	090	S
27052		A	Biopsy of hip joint	5.45	*6.97	1.59	14.01	090	S
27054		A	Removal of hip joint lining	7.60	*9.72	2.26	19.58	090	S
27060		A	Removal of ischial bursa	4.73	3.93	0.68	9.34	090	S
27062		A	Remove femur lesion/bursa	4.74	4.23	0.70	9.67	090	S
27065		A	Removal of hip bone lesion	4.96	5.59	0.90	11.47	090	S
27066		A	Removal of hip bone lesion	9.17	7.90	1.30	18.37	090	S
27067		A	Remove/graft hip bone lesion	12.64	11.63	1.93	26.20	090	S
27070		A	Partial removal of hip bone	9.58	7.41	1.21	18.20	090	S
27071		A	Partial removal of hip bone	10.23	8.50	1.45	20.18	090	S
27075		A	Extensive hip surgery	15.85	13.54	2.32	31.71	090	S
27076		A	Extensive hip surgery	17.93	16.37	2.61	36.91	090	S
27077		A	Extensive hip surgery	21.29	18.98	3.24	43.51	090	S
27078		A	Extensive hip surgery	11.86	9.20	1.67	22.73	090	S
27079		A	Extensive hip surgery	12.11	8.64	1.66	22.41	090	S
27080		A	Removal of tail bone	5.63	4.78	0.87	11.28	090	S
27086		A	Remove hip foreign body	1.82	0.58	0.07	2.47	010	S
27087		A	Remove hip foreign body	8.01	3.62	0.60	12.23	090	S
27090		A	Removal of hip prosthesis	12.00	9.09	1.46	22.55	090	S
27091		A	Removal of hip prosthesis	20.48	19.81	3.16	43.45	090	S
27093		A	Injection for hip x-ray	1.30	0.82	0.11	2.23	000	S
27095		A	Injection for hip x-ray	1.50	0.93	0.13	2.56	000	N
27097		A	Revision of hip tendon	8.08	7.71	1.26	17.05	090	S
27098		A	Transfer tendon to pelvis	8.08	7.71	1.26	17.05	090	S
27100		A	Transfer of abdominal muscle	10.57	7.58	1.42	19.67	090	S
27105		A	Transfer of spinal muscle	11.26	5.89	1.36	18.51	090	S
27110		A	Transfer of iliopsoas muscle	12.49	10.61	1.86	24.96	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs 4	Malpractice RVUs	Total	Global period	Update
27111		A	Transfer of iliopsoas muscle	11.44	11.63	1.65	24.72	090	S
27120		A	Reconstruction of hip socket	16.43	18.10	2.95	37.48	090	S
27122		A	Reconstruction of hip socket	13.56	*17.36	2.94	33.86	090	S
27125		A	Partial hip replacement	13.21	*16.91	3.01	33.13	090	S
27130		A	Total hip replacement	18.68	*23.91	4.58	47.17	090	S
27132		A	Total hip replacement	21.44	*27.44	5.09	53.97	090	S
27134		A	Revise hip joint replacement	24.54	*31.41	5.96	61.91	090	S
27137		A	Revise hip joint replacement	18.67	*23.90	4.82	47.39	090	S
27138		A	Revise hip joint replacement	18.93	*24.23	4.58	47.74	090	S
27140		A	Transplant of femur ridge	11.43	11.05	1.71	24.19	090	S
27145		A	Incision of hip bone	13.72	10.88	1.35	25.95	090	S
27147		A	Revision of hip bone	17.58	16.97	2.76	37.31	090	S
27151		A	Incision of hip bones	18.58	17.71	2.90	39.19	090	S
27158		A	Revision of hip bones	20.16	18.32	3.08	41.56	090	S
27158		A	Revision of pelvis	18.10	14.42	2.64	35.16	090	S
27161		A	Incision of neck of femur	15.20	14.31	2.31	31.82	090	S
27165		A	Incision/fixation of femur	16.20	16.76	2.63	35.59	090	S
27170		A	Repair/graft femur head/neck	14.90	16.41	2.65	33.96	090	S
27175		A	Treat slipped epiphysis	7.24	1.18	0.18	8.60	090	S
27176		A	Treat slipped epiphysis	10.89	10.39	1.70	22.98	090	S
27177		A	Repair slipped epiphysis	13.76	12.39	2.05	28.20	090	S
27178		A	Repair slipped epiphysis	10.76	10.48	1.55	22.77	090	S
27179		A	Revise head/neck of femur	11.69	11.15	1.83	24.67	090	S
27181		A	Repair slipped epiphysis	13.80	13.14	2.16	29.10	090	S
27185		A	Revision of femur epiphysis	8.30	2.77	0.87	11.94	090	S
27187		A	Reinforce hip bones	12.57	*16.09	2.76	31.42	090	S
27193		A	Treat pelvic ring fracture	4.64	2.41	0.39	7.44	090	S
27194		A	Treat pelvic ring fracture	8.73	3.90	0.50	13.13	090	S
27200		A	Treat tail bone fracture	1.76	1.49	0.17	3.42	090	S
27202		A	Repair tail bone fracture	6.52	6.15	0.89	13.56	090	S
27215		A	Pelvic fracture(s) treatment	9.39	*12.02	2.33	23.74	090	S
27216		A	Treat pelvic ring fracture	14.20	4.30	0.66	19.16	090	S
27217		A	Treat pelvic ring fracture	13.19	14.55	2.33	30.07	090	S
27218		A	Treat pelvic ring fracture	18.83	14.55	2.33	35.71	090	S
27220		A	Treat hip socket fracture	5.26	4.25	0.64	10.16	090	S
27222		A	Treat hip socket fracture	10.95	6.37	1.03	18.35	090	S
27226		A	Treat hip wall fracture	13.93	15.78	2.52	32.23	090	S
27227		A	Treat hip fracture(s)	15.39	*19.70	3.20	38.29	090	S
27228		A	Treat hip fracture(s)	17.90	19.95	3.20	41.05	090	S
27230		A	Treat fracture of thigh	4.95	3.30	0.41	8.66	090	S
27232		A	Treat fracture of thigh	9.32	8.98	1.46	19.76	090	S
27235		A	Repair of thigh fracture	11.02	*14.10	2.60	27.72	090	S
27236		A	Repair of thigh fracture	14.14	*16.91	2.71	33.76	090	S
27238		A	Treatment of thigh fracture	5.06	4.91	0.71	10.68	090	S
27240		A	Treatment of thigh fracture	10.86	9.70	1.53	22.09	090	S
27244		A	Repair of thigh fracture	14.35	16.30	2.62	33.27	090	S
27245		A	Repair of thigh fracture	18.72	16.30	2.62	37.64	090	S
27246		A	Treatment of thigh fracture	4.36	3.87	0.60	8.83	090	S
27248		A	Repair of thigh fracture	9.73	*12.46	2.11	24.30	090	S
27250		A	Treat hip dislocation	6.31	3.19	0.45	9.95	090	S
27252		A	Treat hip dislocation	9.47	4.34	0.68	14.49	090	S
27253		A	Repair of hip dislocation	11.98	13.14	2.11	27.23	090	S
27254		A	Repair of hip dislocation	17.29	13.47	2.27	33.03	090	S
27256		A	Treatment of hip dislocation	3.72	1.88	0.31	5.91	010	S
27257		A	Treatment of hip dislocation	4.82	4.62	0.73	10.17	010	S
27258		A	Repair of hip dislocation	14.40	13.73	2.25	30.38	090	S
27259		A	Repair of hip dislocation	18.03	17.20	2.82	38.05	090	S
27265		A	Treatment of hip dislocation	5.58	3.46	0.54	9.58	090	S
27266		A	Treatment of hip dislocation	7.73	4.45	0.71	12.89	090	S
27275		A	Manipulation of hip joint	2.00	1.88	0.30	4.18	010	S
27280		A	Fusion of sacroiliac joint	11.81	10.06	1.77	23.64	090	S
27282		A	Fusion of pubic bones	10.57	9.01	1.69	21.27	090	S
27284		A	Fusion of hip joint	15.62	14.50	2.40	32.52	090	S
27286		A	Fusion of hip joint	15.65	15.20	2.26	33.11	090	S
27290		A	Amputation of leg at hip	21.68	25.40	4.70	51.78	090	S
27295		A	Amputation of leg at hip	17.32	16.54	2.95	36.81	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs 4	Malpractice RVUs	Total	Global period	Update
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	YYY	S
27301		A	Drain thigh/knee lesion	5.96	2.46	0.40	8.82	090	S
27303		A	Drainage of bone lesion	7.69	5.86	0.96	14.51	090	S
27305		A	Incise thigh tendon & fascia	5.42	3.80	0.68	9.90	090	S
27306		A	Incision of thigh tendon	4.27	1.99	0.32	6.58	090	S
27307		A	Incision of thigh tendons	5.30	3.01	0.48	8.79	090	S
27310		A	Exploration of knee joint	8.26	9.60	1.51	19.37	090	S
27315		A	Partial removal, thigh nerve	6.51	5.38	0.96	12.85	090	S
27320		A	Partial removal, thigh nerve	5.90	5.16	0.73	11.81	090	S
27323		A	Biopsy thigh soft tissues	2.67	0.91	0.13	3.71	010	S
27324		A	Biopsy thigh soft tissues	4.53	2.63	0.45	7.61	090	S
27327		A	Removal of thigh lesion	4.32	2.29	0.40	7.01	090	S
27328		A	Removal of thigh lesion	5.31	4.07	0.73	10.11	090	S
27329		A	Remove tumor, thigh/knee	11.74	11.69	2.14	25.57	090	S
27330		A	Biopsy knee joint lining	4.71	*5.02	1.19	11.92	090	S
27331		A	Explore/treat knee joint	5.51	*7.05	1.49	14.05	090	S
27332		A	Removal of knee cartilage	7.85	*10.05	1.73	19.63	090	S
27333		A	Removal of knee cartilage	6.81	*9.01	2.52	18.34	090	S
27334		A	Remove knee joint lining	7.95	*10.18	1.77	19.90	090	S
27335		A	Remove knee joint lining	9.19	*11.76	2.05	23.00	090	S
27340		A	Removal of kneecap bursa	3.92	3.85	0.62	8.39	090	S
27345		A	Removal of knee cyst	5.63	5.63	0.95	12.21	090	S
27350		A	Removal of kneecap	7.42	*9.49	1.54	18.45	090	S
27355		A	Remove femur lesion	7.06	7.58	1.23	15.87	090	S
27356		A	Remove femur lesion/graft	8.50	8.20	1.34	18.14	090	S
27357		A	Remove femur lesion/graft	9.53	8.80	1.43	19.86	090	S
27358		A	Remove femur lesion/fixation	4.74	4.55	0.72	10.01	ZZZ	S
27360		A	Partial removal leg bone(s)	9.23	8.56	1.40	19.19	090	S
27365		A	Extensive leg surgery	13.84	13.94	2.43	30.21	090	S
27370		A	Injection for knee x-ray	0.96	0.80	0.05	1.61	000	N
27372		A	Removal of foreign body	4.81	3.42	0.54	8.77	090	S
27380		A	Repair of kneecap tendon	6.63	7.94	1.29	15.86	090	S
27381		A	Repair/graft kneecap tendon	9.66	11.27	1.82	22.75	090	S
27385		A	Repair of thigh muscle	7.17	8.84	1.42	17.43	090	S
27386		A	Repair/graft of thigh muscle	9.72	*12.44	2.02	24.18	090	S
27390		A	Incision of thigh tendon	4.89	4.36	0.71	9.96	090	S
27391		A	Incision of thigh tendons	5.67	5.42	0.90	12.99	090	S
27392		A	Incision of thigh tendons	8.52	7.67	1.28	17.47	090	S
27393		A	Lengthening of thigh tendon	5.95	5.67	0.93	12.55	090	S
27394		A	Lengthening of thigh tendons	7.97	5.73	0.94	14.64	090	S
27395		A	Lengthening of thigh tendons	10.96	10.48	1.65	23.09	090	S
27396		A	Transplant of thigh tendon	7.33	7.06	1.11	15.50	090	S
27397		A	Transplants of thigh tendons	9.33	8.88	1.45	19.66	090	S
27400		A	Revise thigh muscles/tendons	8.47	7.89	1.24	17.60	090	S
27403		A	Repair of knee cartilage	7.80	8.79	1.44	18.03	090	S
27405		A	Repair of knee ligament	7.97	10.17	1.67	19.81	090	S
27407		A	Repair of knee ligament	9.44	8.87	1.42	19.73	090	S
27409		A	Repair of knee ligaments	11.80	*15.10	2.48	29.38	090	S
27418		A	Repair degenerated kneecap	9.82	12.23	1.85	23.90	090	S
27420		A	Revision of unstable kneecap	9.15	10.99	1.74	21.88	090	S
27422		A	Revision of unstable kneecap	9.10	11.45	1.83	22.38	090	S
27424		A	Revision/removal of kneecap	9.13	*11.68	1.89	22.70	090	S
27425		A	Lateral retinacular release	5.04	*6.46	1.08	12.58	090	S
27427		A	Reconstruction, knee	8.68	*11.12	2.25	22.05	090	S
27428		A	Reconstruction, knee	10.68	*13.67	2.71	27.06	090	S
27429		A	Reconstruction, knee	11.86	11.27	1.83	24.96	090	S
27430		A	Revision of thigh muscles	8.92	9.36	1.50	19.78	090	S
27435		A	Incision of knee joint	8.74	7.03	1.13	16.90	090	S
27437		A	Revise kneecap	7.74	*9.91	1.55	19.20	090	S
27438		A	Revise kneecap with implant	10.29	13.13	2.14	25.56	090	S
27440		A	Revision of knee joint	9.49	11.83	2.10	23.42	090	S
27441		A	Revision of knee joint	9.81	9.14	1.51	20.46	090	S
27442		A	Revision of knee joint	11.14	*14.25	3.05	28.44	090	S
27443		A	Revision of knee joint	10.18	*13.03	3.34	26.55	090	S
27445		A	Revision of knee joint	16.39	*20.98	4.21	41.58	090	S
27446		A	Revision of knee joint	15.03	*19.25	3.87	38.15	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
27447		A	Total knee replacement	19.69	*25.20	4.95	49.84	090	S
27448		A	Incision of thigh	10.25	12.87	2.09	25.21	090	S
27450		A	Incision of thigh	13.08	14.84	2.36	30.28	090	S
27454		A	Realignment of thigh bone	12.26	*15.70	2.82	30.78	090	S
27455		A	Realignment of knee	12.01	12.01	1.95	25.97	090	S
27457		A	Realignment of knee	12.60	13.30	2.14	28.04	090	S
27465		A	Shortening of thigh bone	12.84	12.24	2.00	27.08	090	S
27466		A	Lengthening of thigh bone	15.08	13.43	2.27	30.78	090	S
27468		A	Shorten/lengthen thighs	17.65	16.84	2.75	37.24	090	S
27470		A	Repair of thigh	14.82	16.67	2.60	34.09	090	S
27472		A	Repair/graft of thigh	16.40	19.87	3.16	39.43	090	S
27475		A	Surgery to stop leg growth	8.11	7.74	1.27	17.12	090	S
27477		A	Surgery to stop leg growth	9.32	*11.93	2.57	23.82	090	S
27479		A	Surgery to stop leg growth	12.18	11.63	1.89	25.70	090	S
27485		A	Surgery to stop leg growth	8.31	7.91	1.30	17.52	090	S
27486		A	Revise knee joint replace	16.63	*21.28	4.26	42.17	090	S
27487		A	Revise knee joint replace	21.69	*27.76	5.97	55.42	090	S
27488		A	Removal of knee prosthesis	14.48	16.16	2.58	33.22	090	S
27495		A	Reinforce thigh	14.26	17.53	2.82	34.71	090	S
27496		A	Decompression of thigh/knee	4.75	4.53	0.74	10.02	090	S
27497		A	Decompression of thigh/knee	5.81	5.55	0.91	12.27	090	S
27498		A	Decompression of thigh/knee	6.63	6.32	1.04	13.99	090	S
27499		A	Decompression of thigh/knee	7.64	7.28	1.19	16.11	090	S
27500		A	Treatment of thigh fracture	5.29	5.41	0.82	11.52	090	S
27501		A	Treatment of thigh fracture	5.29	5.41	0.82	11.52	090	S
27502		A	Treatment of thigh fracture	9.51	7.67	1.21	18.39	090	S
27503		A	Treatment of thigh fracture	9.51	7.67	1.21	18.39	090	S
27506		A	Repair of thigh fracture	15.93	16.02	2.56	34.51	090	S
27507		A	Treatment of thigh fracture	12.85	16.02	2.56	31.43	090	S
27508		A	Treatment of thigh fracture	5.21	4.22	0.65	10.08	090	S
27509		A	Treatment of thigh fracture	6.77	4.22	0.65	11.64	090	S
27510		A	Treatment of thigh fracture	8.19	6.82	1.09	16.10	090	S
27511		A	Treatment of thigh fracture	12.50	*16.00	2.56	31.06	090	S
27513		A	Treatment of thigh fracture	16.78	16.02	2.56	35.36	090	S
27514		A	Repair of thigh fracture	15.96	15.76	2.53	34.27	090	S
27516		A	Repair of thigh growth plate	4.92	4.82	0.71	10.45	090	S
27517		A	Repair of thigh growth plate	8.20	7.82	1.28	17.30	090	S
27519		A	Repair of thigh growth plate	13.82	12.68	2.05	28.55	090	S
27520		A	Treat kneecap fracture	2.68	3.04	0.45	6.17	090	S
27524		A	Repair of kneecap fracture	9.38	10.34	1.65	21.37	090	S
27530		A	Treatment of knee fracture	3.23	3.40	0.51	7.14	090	S
27532		A	Treatment of knee fracture	6.81	5.68	0.91	13.40	090	S
27535		A	Treatment of knee fracture	10.36	11.69	1.88	23.93	090	S
27536		A	Repair of knee fracture	14.51	11.69	1.88	28.08	090	S
27538		A	Treat knee fracture(s)	4.64	3.37	0.51	8.52	090	S
27540		A	Repair of knee fracture	12.38	10.95	1.74	25.07	090	S
27550		A	Treat knee dislocation	5.53	2.57	0.36	8.46	090	S
27552		A	Treat knee dislocation	7.39	3.43	0.53	11.35	090	S
27556		A	Repair of knee dislocation	13.47	12.46	1.95	27.90	090	S
27557		A	Repair of knee dislocation	15.80	14.60	2.43	32.83	090	S
27558		A	Repair of knee dislocation	16.75	14.60	2.43	33.78	090	S
27560		A	Treat kneecap dislocation	3.64	1.43	0.16	5.23	090	S
27562		A	Treat kneecap dislocation	5.48	5.18	0.76	11.42	090	S
27566		A	Repair kneecap dislocation	11.48	10.58	1.67	23.73	090	S
27570		A	Fixation of knee joint	1.69	1.72	0.28	3.69	010	S
27580		A	Fusion of knee	12.26	*15.70	2.56	30.52	090	S
27590		A	Amputate leg at thigh	10.24	9.11	1.60	21.15	090	S
27591		A	Amputate leg at thigh	11.09	11.77	2.11	24.97	090	S
27592		A	Amputate leg at thigh	8.75	8.11	1.61	18.47	090	S
27594		A	Amputation follow-up surgery	6.30	3.55	0.58	10.63	090	S
27596		A	Amputation follow-up surgery	9.63	7.37	1.42	18.42	090	S
27598		A	Amputate lower leg at knee	9.56	10.04	1.78	21.38	090	S
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	YYY	S
27600		A	Decompression of lower leg	5.02	3.39	0.64	9.05	090	S
27601		A	Decompression of lower leg	4.98	3.38	0.67	9.03	090	S
27602		A	Decompression of lower leg	6.63	4.05	0.77	11.45	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
27603		A	Drain lower leg lesion	4.41	2.38	0.41	7.20	090	S
27604		A	Drain lower leg bursa	4.23	1.02	0.14	5.39	090	S
27605		A	Incision of achilles tendon	2.82	1.18	0.14	4.14	010	S
27606		A	Incision of achilles tendon	3.87	2.12	0.35	6.34	010	S
27607		A	Treat lower leg bone lesion	7.05	6.01	0.98	14.04	090	S
27610		A	Explore/treat ankle joint	7.27	7.43	1.13	15.83	090	S
27612		A	Exploration of ankle joint	6.23	*7.97	1.30	15.50	090	S
27613		A	Biopsy lower leg soft tissue	2.12	0.67	0.10	2.89	010	S
27614		A	Biopsy lower leg soft tissue	5.29	2.26	0.38	7.93	090	S
27615		A	Remove tumor, lower leg	11.79	8.23	1.42	21.44	090	S
27618		A	Remove lower leg lesion	4.94	2.10	0.32	7.36	090	S
27619		A	Remove lower leg lesion	7.98	4.13	0.67	12.78	090	S
27620		A	Explore, treat ankle joint	5.69	6.03	0.96	12.68	090	S
27625		A	Remove ankle joint lining	7.88	8.71	1.27	17.86	090	S
27626		A	Remove ankle joint lining	8.49	*10.86	1.25	20.60	090	S
27630		A	Removal of tendon lesion	4.65	3.10	0.46	8.21	090	S
27635		A	Remove lower leg bone lesion	7.29	8.04	1.27	16.60	090	S
27637		A	Remove/graft leg bone lesion	9.14	8.47	1.40	19.01	090	S
27638		A	Remove/graft leg bone lesion	9.89	9.15	1.52	20.56	090	S
27640		A	Partial removal of tibia	10.21	9.81	1.57	21.59	090	S
27641		A	Partial removal of fibula	8.36	7.13	1.18	16.67	090	S
27645		A	Extensive lower leg surgery	13.14	11.64	1.98	26.76	090	S
27646		A	Extensive lower leg surgery	11.69	10.75	1.71	24.15	090	S
27647		A	Extensive ankle/heel surgery	11.21	9.95	1.35	22.51	090	S
27648		A	Injection for ankle x-ray	0.96	0.52	0.05	1.53	000	N
27650		A	Repair achilles tendon	9.07	8.98	1.41	19.46	090	S
27652		A	Repair/graft achilles tendon	9.62	10.41	1.56	21.59	090	S
27654		A	Repair of achilles tendon	9.34	10.93	1.65	21.92	090	S
27656		A	Repair leg fascia defect	4.31	3.18	0.54	8.03	090	S
27658		A	Repair of leg tendon, each	4.61	4.02	0.60	9.23	090	S
27659		A	Repair of leg tendon, each	6.26	5.57	0.86	13.01	090	S
27664		A	Repair of leg tendon, each	4.33	3.41	0.52	8.26	090	S
27665		A	Repair of leg tendon, each	5.11	4.95	0.76	10.82	090	S
27675		A	Repair lower leg tendons	6.78	6.40	0.94	14.12	090	S
27676		A	Repair lower leg tendons	7.87	7.56	1.14	16.57	090	S
27680		A	Release of lower leg tendon	5.37	4.12	0.61	10.10	090	S
27681		A	Release of lower leg tendons	6.36	5.97	0.86	13.19	090	S
27685		A	Revision of lower leg tendon	6.08	3.83	0.41	10.32	090	S
27686		A	Revise lower leg tendons	6.93	6.56	0.90	14.39	090	S
27687		A	Revision of calf tendon	5.84	5.45	0.76	12.05	090	S
27690		A	Revise lower leg tendon	8.09	6.74	0.88	15.71	090	S
27691		A	Revise lower leg tendon	9.25	7.89	1.23	18.37	090	S
27692		A	Revise additional leg tendon	1.87	2.03	0.29	4.19	ZZZ	S
27695		A	Repair of ankle ligament	6.09	*7.79	1.32	15.20	090	S
27696		A	Repair of ankle ligaments	7.72	7.06	1.16	15.94	090	S
27698		A	Repair of ankle ligament	8.87	*11.35	1.86	22.08	090	S
27700		A	Revision of ankle joint	8.67	*11.11	1.51	21.29	090	S
27702		A	Reconstruct ankle joint	12.64	*16.18	3.99	32.81	090	S
27703		A	Reconstruction, ankle joint	14.49	13.82	2.25	30.56	090	S
27704		A	Removal of ankle implant	7.20	5.84	0.95	14.02	090	S
27705		A	Incision of tibia	9.63	10.74	1.76	22.13	090	S
27707		A	Incision of fibula	3.71	*4.75	0.79	9.25	090	S
27709		A	Incision of tibia & fibula	9.14	*11.70	2.14	22.98	090	S
27712		A	Realignment of lower leg	11.81	10.99	1.63	24.43	090	S
27715		A	Revision of lower leg	12.97	12.61	1.88	27.46	090	S
27720		A	Repair of tibia	10.95	13.97	2.25	27.17	090	S
27722		A	Repair/graft of tibia	10.92	10.50	1.64	23.06	090	S
27724		A	Repair/graft of tibia	12.11	*15.50	2.87	30.48	090	S
27725		A	Repair of lower leg	11.04	10.43	1.53	23.00	090	S
27727		A	Repair of lower leg	12.89	9.38	1.84	24.11	090	S
27730		A	Repair of tibia epiphysis	6.68	3.59	0.84	11.31	090	S
27732		A	Repair of fibula epiphysis	5.06	4.84	0.79	10.69	090	S
27734		A	Repair lower leg epiphyses	7.89	7.54	1.23	16.66	090	S
27740		A	Repair of leg epiphyses	8.75	8.36	1.36	18.47	090	S
27742		A	Repair of leg epiphyses	9.72	9.29	1.52	20.53	090	S
27745		A	Reinforce tibia	9.39	8.97	1.39	19.75	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
27750		A	Treatment of tibia fracture	2.90	3.45	0.50	6.85	090	S
27752		A	Treatment of tibia fracture	5.16	5.09	0.81	11.06	090	S
27756		A	Repair of tibia fracture	5.84	*7.48	1.70	15.02	090	S
27758		A	Repair of tibia fracture	10.51	*13.46	2.22	26.19	090	S
27759		A	Repair of tibia fracture	12.60	13.74	2.22	28.56	090	S
27760		A	Treatment of ankle fracture	2.81	2.58	0.37	5.76	090	S
27762		A	Treatment of ankle fracture	4.80	3.36	0.50	8.66	090	S
27766		A	Repair of ankle fracture	7.61	7.87	1.25	16.74	090	S
27780		A	Treatment of fibula fracture	2.47	1.97	0.26	4.70	090	S
27781		A	Treatment of fibula fracture	4.20	3.29	0.49	7.98	090	S
27784		A	Repair of fibula fracture	6.45	5.59	0.87	12.91	090	S
27786		A	Treatment of ankle fracture	2.66	2.52	0.38	5.56	090	S
27788		A	Treatment of ankle fracture	4.25	3.27	0.50	8.02	090	S
27792		A	Repair of ankle fracture	7.04	7.38	1.17	15.59	090	S
27808		A	Treatment of ankle fracture	2.63	2.79	0.39	5.81	090	S
27810		A	Treatment of ankle fracture	4.82	5.05	0.80	10.67	090	S
27814		A	Repair of ankle fracture	9.87	10.00	1.60	21.47	090	S
27816		A	Treatment of ankle fracture	2.71	*3.47	0.55	6.73	090	S
27818		A	Treatment of ankle fracture	5.08	*6.51	1.06	12.65	090	S
27822		A	Repair of ankle fracture	8.38	*10.73	1.88	21.00	090	S
27823		A	Repair of ankle fracture	10.90	12.79	2.05	25.74	090	S
27824		A	Treat lower leg fracture	2.71	*3.47	0.55	6.73	090	S
27825		A	Treat lower leg fracture	5.08	*6.51	1.06	12.65	090	S
27826		A	Treat lower leg fracture	7.43	*9.50	1.88	18.81	090	S
27827		A	Treat lower leg fracture	9.90	11.71	1.88	23.49	090	S
27828		A	Treat lower leg fracture	12.33	12.79	2.05	27.17	090	S
27829		A	Treat lower leg joint	4.87	*5.23	1.37	12.47	090	S
27830		A	Treat lower leg dislocation	3.50	3.25	0.46	7.21	090	S
27831		A	Treat lower leg dislocation	4.27	3.98	0.59	8.84	090	S
27832		A	Repair lower leg dislocation	5.96	5.70	0.89	12.55	090	S
27840		A	Treat ankle dislocation	4.27	1.87	0.21	6.35	090	S
27842		A	Treat ankle dislocation	5.72	2.22	0.34	8.28	090	S
27846		A	Repair ankle dislocation	9.04	8.59	1.37	19.00	090	S
27848		A	Repair ankle dislocation	10.45	8.36	1.32	20.13	090	S
27860		A	Fixation of ankle joint	2.29	1.39	0.23	3.91	010	S
27870		A	Fusion of ankle joint	10.42	*13.34	2.22	25.98	090	S
27871		A	Fusion of tibiofibular joint	6.55	7.79	1.21	17.55	090	S
27880		A	Amputation of lower leg	10.69	8.36	1.80	20.85	090	S
27881		A	Amputation of lower leg	10.89	10.82	1.87	23.58	090	S
27882		A	Amputation of lower leg	7.80	7.36	1.42	16.58	090	S
27884		A	Amputation follow-up surgery	7.40	3.37	0.61	11.38	090	S
27888		A	Amputation follow-up surgery	8.35	7.17	1.34	16.86	090	S
27886		A	Amputation of foot at ankle	8.70	9.49	1.65	19.84	090	S
27889		A	Amputation of foot at ankle	8.82	8.43	1.55	18.80	090	S
27892		A	Decompression of leg	6.03	3.39	0.64	10.06	090	S
27893		A	Decompression of leg	5.99	3.38	0.67	10.04	090	S
27894		A	Decompression of leg	7.64	4.05	0.77	12.46	090	S
27899		C	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	YYY	S
28001		A	Drainage of bursa of foot	2.68	0.62	0.05	3.25	010	S
28002		A	Treatment of foot infection	3.76	2.25	0.33	6.34	010	S
28003		A	Treatment of foot infection	7.49	3.50	0.59	11.58	090	S
28005		A	Treat foot bone lesion	7.65	4.08	0.61	12.34	090	S
28008		A	Incision of foot fascia	4.19	2.68	0.29	7.16	090	S
28010		A	Incision of toe tendon	2.97	3.62	0.33	6.92	090	S
28011		A	Incision of toe tendons	3.99	1.77	0.19	5.95	090	S
28020		A	Exploration of a foot joint	4.75	4.40	0.56	9.71	090	S
28022		A	Exploration of a foot joint	4.41	2.74	0.31	7.46	090	S
28024		A	Exploration of a toe joint	4.12	2.39	0.24	6.75	090	S
28030		A	Removal of foot nerve	5.78	3.93	0.42	10.13	090	S
28035		A	Decompression of tibia nerve	4.83	*6.18	0.90	11.91	090	S
28043		A	Excision of foot lesion	3.41	1.73	0.20	5.34	090	S
28045		A	Excision of foot lesion	4.46	3.99	0.46	8.91	090	S
28046		A	Resection of tumor, foot	9.41	5.35	0.79	15.55	090	S
28050		A	Biopsy of foot joint lining	3.99	3.84	0.53	8.36	090	S
28052		A	Biopsy of foot joint lining	3.70	3.82	0.43	7.95	090	S
28054		A	Biopsy of toe joint lining	3.21	2.24	0.28	5.73	090	S

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
28060		A	Partial removal foot fascia	5.05	4.22	0.53	9.80	090	S
28062		A	Removal of foot fascia	6.23	7.06	0.86	14.15	090	S
28070		A	Removal of foot joint lining	4.73	4.46	0.48	9.68	090	S
28072		A	Removal of foot joint lining	4.32	3.21	0.42	7.95	090	S
28080		A	Removal of foot lesion	3.18	*4.07	0.45	7.70	090	S
28086		A	Excise foot tendon sheath	4.52	3.12	0.46	8.10	090	S
28088		A	Excise foot tendon sheath	3.62	3.62	0.40	7.64	090	S
28090		A	Removal of foot lesion	4.26	3.02	0.29	7.57	090	S
28092		A	Removal of toe lesions	3.49	2.03	0.25	5.77	090	S
28100		A	Removal of ankle/heel lesion	5.37	4.58	0.56	10.51	090	S
28102		A	Remove/graft foot lesion	7.31	6.84	0.85	15.00	090	S
28103		A	Remove/graft foot lesion	6.10	5.61	0.69	12.40	090	S
28104		A	Removal of foot lesion	4.86	4.33	0.49	9.68	090	S
28106		A	Remove/graft foot lesion	6.74	6.42	0.79	13.95	090	S
28107		A	Remove/graft foot lesion	5.16	4.86	0.48	10.50	090	S
28108		A	Removal of toe lesions	4.01	4.20	0.38	8.59	090	S
28110		A	Part removal of metatarsal	3.82	3.48	0.39	7.69	090	S
28111		A	Part removal of metatarsal	4.64	5.04	0.65	10.33	090	S
28112		A	Part removal of metatarsal	4.23	3.96	0.45	8.64	090	S
28113		A	Part removal of metatarsal	4.09	4.44	0.48	9.01	090	S
28114		A	Removal of metatarsal heads	7.16	*9.17	1.42	17.75	090	S
28116		A	Revision of foot	6.17	5.48	0.57	12.22	090	S
28118		A	Removal of heel bone	5.56	5.71	0.66	11.93	090	S
28119		A	Removal of heel spur	5.10	5.44	0.57	11.11	090	S
28120		A	Part removal of ankle/heel	4.81	5.04	0.67	10.52	090	S
28122		A	Partial removal of foot bone	6.62	4.48	0.54	11.64	090	S
28124		A	Partial removal of toe	4.39	4.11	0.37	8.87	090	S
28126		A	Partial removal of toe	3.39	3.98	0.36	7.73	090	S
28130		A	Removal of ankle bone	7.33	7.03	0.88	15.24	090	S
28140		A	Removal of metatarsal	5.45	4.93	0.62	12.00	090	S
28150		A	Removal of toe	3.83	3.29	0.38	7.50	090	S
28153		A	Partial removal of toe	3.40	3.99	0.36	7.75	090	S
28160		A	Partial removal of toe	3.59	4.12	0.38	8.09	090	S
28171		A	Extensive foot surgery	8.98	7.99	0.88	17.85	090	S
28173		A	Extensive foot surgery	8.18	5.74	0.74	14.66	090	S
28175		A	Extensive foot surgery	5.59	5.38	0.58	11.55	090	S
28190		A	Removal of foot foreign body	1.91	0.52	0.05	2.48	010	S
28192		A	Removal of foot foreign body	4.49	1.95	0.24	6.68	090	S
28193		A	Removal of foot foreign body	5.44	2.38	0.30	8.12	090	S
28200		A	Repair of foot tendon	4.45	5.06	0.50	10.01	090	S
28202		A	Repair/graft of foot tendon	6.38	5.82	0.77	12.97	090	S
28208		A	Repair of foot tendon	4.11	2.81	0.28	7.20	090	S
28210		A	Repair/graft of foot tendon	5.95	5.60	0.60	12.15	090	S
28220		A	Release of foot tendon	4.27	3.87	0.43	8.57	090	S
28222		A	Release of foot tendons	5.36	6.40	0.63	12.39	090	S
28225		A	Release of foot tendon	3.42	2.37	0.25	6.04	090	S
28226		A	Release of foot tendons	4.27	3.38	0.40	8.05	090	S
28230		A	Incision of foot tendon(s)	4.00	2.43	0.22	6.65	090	S
28232		A	Incision of toe tendon	3.26	1.60	0.15	5.01	090	S
28234		A	Incision of foot tendon	3.19	1.53	0.14	4.86	090	S
28236		D	Transfer of foot tendon	0.00	0.00	0.00	0.00	090	S
28238		A	Revision of foot tendon	7.27	7.23	0.85	15.35	090	S
28240		A	Release of big toe	4.12	2.13	0.23	6.48	090	S
28250		A	Revision of foot fascia	5.66	4.46	0.50	10.62	090	S
28260		A	Release of midfoot joint	7.50	4.43	0.48	12.41	090	S
28261		A	Revision of foot tendon	8.92	5.91	0.58	15.41	090	S
28262		A	Revision of foot and ankle	12.19	11.91	1.44	25.54	090	S
28264		A	Release of midfoot joint	9.80	9.56	1.17	20.53	090	S
28270		A	Release of foot contracture	4.58	2.63	0.23	7.44	090	S
28272		A	Release of toe joint, each	3.67	2.04	0.18	5.89	090	S
28280		A	Fusion of toes	4.93	2.22	0.30	7.45	090	S
28285		A	Repair of hammertoe	4.41	4.37	0.39	9.17	090	S
28286		A	Repair of hammertoe	4.41	3.58	0.38	8.37	090	S
28288		A	Partial removal of foot bone	3.73	3.75	0.43	7.91	090	S
28290		A	Correction of bunion	5.37	5.36	0.63	11.36	090	S
28292		A	Correction of bunion	5.24	7.05	0.74	14.03	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
28290		A	Correction of bunion	8.25	9.55	0.98	18.78	090	S
28292		A	Correction of bunion	8.14	9.16	0.86	18.16	090	S
28296		A	Correction of bunion	8.89	8.81	0.98	18.48	090	S
28297		A	Correction of bunion	8.69	9.02	1.05	18.76	090	S
28298		A	Correction of bunion	7.52	8.89	0.79	17.20	090	S
28299		A	Correction of bunion	8.46	10.14	1.08	19.68	090	S
28300		A	Incision of heel bone	9.12	6.52	0.79	16.43	090	S
28302		A	Incision of ankle bone	9.13	8.89	1.12	19.14	090	S
28304		A	Incision of midfoot bones	8.87	6.44	0.70	15.81	090	S
28305		A	Incise/graft midfoot bones	9.99	9.85	1.03	20.87	090	S
28306		A	Incision of metatarsal	5.71	4.57	0.47	10.75	090	S
28307		A	Incision of metatarsal	6.04	5.87	0.76	12.67	090	S
28308		A	Incision of metatarsal	5.09	5.71	0.50	11.30	090	S
28309		A	Incision of metatarsals	8.83	6.87	1.00	16.70	090	S
28310		A	Revision of big toe	5.06	4.17	0.42	9.65	090	S
28312		A	Revision of toe	4.29	4.56	0.45	9.30	090	S
28313		A	Repair deformity of toe	4.75	2.57	0.31	7.63	090	S
28315		A	Removal of sesamoid bone	4.60	4.24	0.41	9.25	090	S
28320		A	Repair of foot bones	8.76	8.69	1.03	18.48	090	S
28322		A	Repair of metatarsals	8.03	4.67	0.52	13.22	090	S
28340		A	Resect enlarged toe tissue	6.58	6.34	0.91	13.83	090	S
28341		A	Resect enlarged toe	7.86	7.66	0.96	16.48	090	S
28344		A	Repair extra toe(s)	3.89	3.70	0.60	8.19	090	S
28345		A	Repair webbed toe(s)	5.52	5.34	0.73	11.59	090	S
28360		A	Reconstruct cleft foot	12.49	11.91	1.95	26.35	090	S
28400		A	Treatment of heel fracture	2.01	2.57	0.40	4.98	090	S
28405		A	Treatment of heel fracture	4.28	3.90	0.58	8.76	090	S
28406		A	Treatment of heel fracture	5.82	5.09	0.93	12.84	090	S
28415		A	Repair of heel fracture	13.26	9.02	1.39	23.69	090	S
28420		A	Repair/graft heel fracture	15.80	10.89	1.63	28.32	090	S
28430		A	Treatment of ankle fracture	1.96	2.45	0.35	4.76	090	S
28435		A	Treatment of ankle fracture	3.25	3.36	0.50	7.11	090	S
28436		A	Treatment of ankle fracture	4.40	4.19	0.68	9.27	090	S
28445		A	Repair of ankle fracture	8.78	8.80	1.40	18.98	090	S
28450		A	Treat midfoot fracture, each	1.77	1.87	0.25	3.89	090	S
28455		A	Treat midfoot fracture, each	2.94	2.54	0.34	5.82	090	S
28456		A	Repair midfoot fracture	2.39	2.27	0.38	5.04	090	S
28465		A	Repair midfoot fracture, each	6.55	5.54	0.81	12.90	090	S
28470		A	Treat metatarsal fracture	1.76	1.80	0.23	3.79	090	S
28475		A	Treat metatarsal fracture	2.74	2.34	0.30	5.38	090	S
28476		A	Repair metatarsal fracture	3.15	3.37	0.45	6.97	090	S
28485		A	Repair metatarsal fracture	5.31	4.68	0.60	10.59	090	S
28490		A	Treat big toe fracture	1.01	0.90	0.10	2.01	090	S
28495		A	Treat big toe fracture	1.48	1.12	0.13	2.73	090	S
28496		A	Repair big toe fracture	2.18	2.07	0.31	4.56	090	S
28505		A	Repair big toe fracture	3.55	2.99	0.43	6.97	090	S
28510		A	Treatment of toe fracture	1.01	0.89	0.09	1.99	090	S
28515		A	Treatment of toe fracture	1.36	1.12	0.11	2.59	090	S
28525		A	Repair of toe fracture	3.08	2.06	0.29	5.43	090	S
28530		A	Treat sesamoid bone fracture	1.01	1.00	0.10	2.11	090	S
28531		A	Treat sesamoid bone fracture	2.01	1.91	0.32	4.24	090	S
28540		A	Treat foot dislocation	1.89	0.60	0.06	2.55	090	S
28545		A	Treat foot dislocation	2.19	1.31	0.14	3.64	090	S
28546		A	Treat foot dislocation	2.89	2.74	0.45	6.08	090	S
28555		A	Repair foot dislocation	5.84	5.58	0.73	12.15	090	S
28570		A	Treat foot dislocation	1.56	1.59	0.17	3.32	090	S
28575		A	Treat foot dislocation	2.91	2.77	0.42	6.10	090	S
28576		A	Treat foot dislocation	3.75	2.77	0.42	6.94	090	S
28585		A	Repair foot dislocation	7.46	4.96	0.55	12.97	090	S
28600		A	Treat foot dislocation	1.76	0.68	0.08	2.52	090	S
28605		A	Treat foot dislocation	2.42	2.26	0.34	5.02	090	S
28606		A	Treat foot dislocation	4.48	3.49	0.55	8.52	090	S
28615		A	Repair foot dislocation	5.12	4.96	0.78	10.86	090	S
28630		A	Treat toe dislocation	1.65	1.03	0.11	2.79	010	S
28635		A	Treat toe dislocation	1.86	1.45	0.18	3.49	010	S
28636		A	Treat toe dislocation	2.67	2.56	0.42	5.65	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
28645		A	Repair toe dislocation	3.96	3.24	0.38	7.58	090	S
28660		A	Treat toe dislocation	1.18	0.63	0.06	1.87	010	S
28665		A	Treat toe dislocation	1.87	0.98	0.11	2.96	010	S
28666		A	Treat toe dislocation	2.56	2.44	0.40	5.40	010	S
28675		A	Repair of toe dislocation	2.68	3.00	0.41	6.09	090	S
28705		A	Fusion of foot bones	14.23	15.11	2.35	31.69	090	S
28715		A	Fusion of foot bones	12.18	12.33	1.89	26.40	090	S
28725		A	Fusion of foot bones	10.86	9.44	1.44	21.74	090	S
28730		A	Fusion of foot bones	9.91	9.00	1.33	20.24	090	S
28735		A	Fusion of foot bones	10.07	9.76	1.37	21.20	090	S
28737		A	Revision of foot bones	8.89	8.87	1.13	18.89	090	S
28740		A	Fusion of foot bones	6.20	5.14	0.72	12.06	090	S
28750		A	Fusion of big toe joint	4.77	5.32	0.82	10.91	090	S
28755		A	Fusion of big toe joint	4.48	3.69	0.45	8.62	090	S
28760		A	Fusion of big toe joint	5.47	5.40	0.65	11.52	090	S
28800		A	Amputation of midfoot	7.37	6.85	1.19	15.21	090	S
28805		A	Amputation thru metatarsal	7.55	6.32	1.21	15.08	090	S
28810		A	Amputation toe & metatarsal	5.53	3.91	0.75	10.19	090	S
28820		A	Amputation of toe	3.56	2.58	0.45	6.60	090	S
28825		A	Partial amputation of toe	3.13	2.40	0.41	5.94	090	S
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	YYY	S
29000		A	Application of body cast	2.25	1.85	0.21	4.31	000	S
29010		A	Application of body cast	2.06	2.33	0.34	4.73	000	S
29015		A	Application of body cast	2.41	2.33	0.33	5.07	000	S
29020		A	Application of body cast	2.11	1.82	0.23	4.16	000	S
29025		A	Application of body cast	2.40	0.75	0.14	3.29	000	S
29035		A	Application of body cast	1.77	1.95	0.32	4.04	000	S
29040		A	Application of body cast	2.22	2.02	0.30	4.54	000	S
29044		A	Application of body cast	2.12	2.09	0.34	4.55	000	S
29046		A	Application of body cast	2.41	2.23	0.36	5.00	000	S
29049		A	Application of shoulder cast	0.89	0.42	0.06	1.37	000	S
29055		A	Application of shoulder cast	1.78	1.20	0.17	3.15	000	S
29058		A	Application of shoulder cast	1.31	0.65	0.09	2.05	000	S
29065		A	Application of long arm cast	0.87	0.80	0.13	1.80	000	S
29075		A	Application of forearm cast	0.77	0.61	0.10	1.48	000	S
29085		A	Apply hand/wrist cast	0.87	0.50	0.08	1.45	000	S
29105		A	Apply long arm splint	0.87	0.50	0.08	1.45	000	S
29125		A	Apply forearm splint	0.59	0.37	0.05	1.01	000	S
29126		A	Apply forearm splint	0.77	0.40	0.06	1.23	000	S
29130		A	Application of finger splint	0.50	0.17	0.02	0.69	000	S
29131		A	Application of finger splint	0.55	0.39	0.06	1.00	000	S
29200		A	Strapping of chest	0.65	0.27	0.03	0.95	000	N
29220		A	Strapping of low back	0.64	0.38	0.05	1.07	000	S
29240		A	Strapping of shoulder	0.71	0.27	0.03	1.01	000	S
29260		A	Strapping of elbow or wrist	0.55	0.23	0.03	0.81	000	S
29280		A	Strapping of hand or finger	0.51	0.21	0.02	0.74	000	S
29305		A	Application of hip cast	2.03	1.88	0.31	4.22	000	S
29325		A	Application of hip casts	2.32	1.94	0.28	4.54	000	S
29345		A	Application of long leg cast	1.40	1.02	0.16	2.58	000	S
29355		A	Application of long leg cast	1.53	1.10	0.17	2.80	000	S
29358		A	Apply long leg cast brace	1.43	*1.84	0.33	3.60	000	S
29365		A	Application of long leg cast	1.18	0.86	0.14	2.18	000	S
29405		A	Apply short leg cast	0.86	0.79	0.12	1.77	000	S
29425		A	Apply short leg cast	1.01	0.97	0.14	2.12	000	S
29435		A	Apply short leg cast	1.18	1.18	0.18	2.54	000	S
29440		A	Addition of walker to cast	0.57	0.23	0.03	0.83	000	S
29445		A	Apply rigid leg cast	1.78	1.70	0.28	3.76	000	S
29450		A	Application of leg cast	1.02	0.39	0.04	1.45	000	S
29505		A	Application long leg splint	0.69	0.57	0.07	1.33	000	S
29515		A	Application lower leg splint	0.73	0.47	0.06	1.26	000	S
29520		A	Strapping of hip	0.54	0.36	0.03	0.93	000	S
29530		A	Strapping of knee	0.57	0.35	0.05	0.97	000	S
29540		A	Strapping of ankle	0.51	0.30	0.03	0.84	000	S
29550		A	Strapping of toes	0.47	0.28	0.03	0.78	000	S
29580		A	Application of paste boot	0.57	0.79	0.04	1.40	000	S
29590		A	Application of foot splint	0.76	0.28	0.03	1.07	000	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
29700		A	Removal/revision of cast	0.88	0.32	0.05	1.25	000	S
29705		A	Removal/revision of cast	1.12	0.35	0.05	1.52	000	S
29710		A	Removal/revision of cast	1.34	0.45	0.07	1.86	000	S
29715		A	Removal/revision of cast	0.94	0.86	0.12	1.92	000	S
29720		A	Repair of body cast	0.68	0.23	0.04	0.95	000	S
29730		A	Windowing of cast	0.75	0.26	0.04	1.05	000	S
29740		A	Wedging of cast	1.12	0.38	0.06	1.56	000	S
29750		A	Wedging of clubfoot cast	1.26	0.50	0.07	1.83	000	S
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	YYY	S
29800		A	Jaw arthroscopy/surgery	5.28	4.01	0.46	9.75	090	S
29804		A	Jaw arthroscopy/surgery	7.99	*10.23	1.46	19.68	090	S
29815		A	Shoulder arthroscopy	5.74	4.84	0.76	11.34	090	S
29819		A	Shoulder arthroscopy/surgery	7.33	*9.38	1.73	18.44	090	S
29820		A	Shoulder arthroscopy/surgery	5.81	*5.72	1.73	17.26	090	S
29821		A	Shoulder arthroscopy/surgery	7.43	*9.50	2.13	19.06	090	S
29822		A	Shoulder arthroscopy/surgery	7.14	*9.14	1.74	18.02	090	S
29823		A	Shoulder arthroscopy/surgery	7.86	*10.07	2.32	20.25	090	S
29825		A	Shoulder arthroscopy/surgery	7.33	*9.38	2.05	18.76	090	S
29826		A	Shoulder arthroscopy/surgery	8.70	*11.14	2.31	22.15	090	S
29830		A	Elbow arthroscopy	5.69	5.32	0.83	11.78	090	S
29834		A	Elbow arthroscopy/surgery	6.13	5.84	0.96	12.93	090	S
29835		A	Elbow arthroscopy/surgery	6.33	6.03	0.99	13.35	090	S
29836		A	Elbow arthroscopy/surgery	7.37	7.03	1.15	15.55	090	S
29837		A	Elbow arthroscopy/surgery	6.72	6.40	1.06	14.18	090	S
29838		A	Elbow arthroscopy/surgery	7.42	7.05	1.14	15.61	090	S
29840		A	Wrist arthroscopy	5.39	3.29	0.54	9.22	090	S
29843		A	Wrist arthroscopy/surgery	5.86	5.60	0.91	12.37	090	S
29844		A	Wrist arthroscopy/surgery	6.22	5.59	0.95	12.76	090	S
29845		A	Wrist arthroscopy/surgery	7.34	7.00	1.15	15.49	090	S
29846		A	Wrist arthroscopy/surgery	6.60	*8.45	2.20	17.25	090	S
29847		A	Wrist arthroscopy/surgery	6.93	6.78	0.97	14.68	090	S
29848		A	Wrist arthroscopy/surgery	4.04	3.85	0.62	8.51	090	S
29850		A	Knee arthroscopy/surgery	7.96	*10.19	1.74	19.89	090	S
29851		A	Knee arthroscopy/surgery	12.38	10.95	1.74	25.07	090	S
29855		A	Tibial arthroscopy/surgery	9.48	11.69	1.88	23.05	090	S
29856		A	Tibial arthroscopy/surgery	13.26	11.69	1.88	26.85	090	S
29870		A	Knee arthroscopy, diagnostic	4.94	4.02	0.64	9.60	090	S
29871		A	Knee arthroscopy/drainage	6.29	6.77	0.96	14.02	090	S
29874		A	Knee arthroscopy/surgery	6.79	*8.69	1.52	17.00	090	S
29875		A	Knee arthroscopy/surgery	6.16	*7.88	1.61	15.65	090	S
29876		A	Knee arthroscopy/surgery	7.51	*9.61	1.95	19.07	090	S
29877		A	Knee arthroscopy/surgery	7.05	*9.03	1.81	17.89	090	S
29879		A	Knee arthroscopy/surgery	7.63	*9.76	2.19	19.58	090	S
29880		A	Knee arthroscopy/surgery	8.09	*10.35	2.22	20.66	090	S
29881		A	Knee arthroscopy/surgery	7.46	*9.54	1.82	18.82	090	S
29882		A	Knee arthroscopy/surgery	8.24	*10.54	1.90	20.68	090	S
29883		A	Knee arthroscopy/surgery	9.00	*11.52	2.80	23.32	090	S
29884		A	Knee arthroscopy/surgery	5.92	*8.86	1.56	17.34	090	S
29885		A	Knee arthroscopy/surgery	8.63	8.23	1.35	18.21	090	S
29886		A	Knee arthroscopy/surgery	7.13	6.80	1.12	15.05	090	S
29887		A	Knee arthroscopy/surgery	8.58	10.52	1.71	20.81	090	S
29888		A	Knee arthroscopy/surgery	13.28	*17.00	3.18	33.46	090	S
29889		A	Knee arthroscopy/surgery	10.76	10.26	1.68	22.70	090	S
29894		A	Ankle arthroscopy/surgery	6.95	*8.90	1.47	17.32	090	S
29895		A	Ankle arthroscopy/surgery	6.73	*8.60	1.51	16.84	090	S
29897		A	Ankle arthroscopy/surgery	6.92	*8.96	1.77	17.55	090	S
29898		A	Ankle arthroscopy/surgery	8.03	*10.28	1.91	20.22	090	S
29909		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	YYY	S
30000		A	Drainage of nose lesion	1.38	0.58	0.05	2.01	010	S
30020		A	Drainage of nose lesion	1.38	0.60	0.06	2.04	010	S
30100		A	Intranasal biopsy	0.94	0.69	0.08	1.71	000	S
30110		A	Removal of nose polyp(s)	1.58	1.29	0.14	3.01	010	S
30115		A	Removal of nose polyp(s)	4.25	2.81	0.30	7.36	090	S
30117		A	Removal of intranasal lesion	3.06	2.84	0.31	6.21	090	S
30118		A	Removal of intranasal lesion	9.23	8.01	0.92	18.16	090	S
30120		A	Revision of nose	5.14	*6.59	1.00	12.73	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
30124		A	Removal of nose lesion	3.00	1.34	0.16	4.50	090	S
30125		A	Removal of nose lesion	6.79	5.55	0.73	13.07	090	S
30130		A	Removal of turbinate bones	3.17	1.67	0.17	5.01	090	S
30140		A	Removal of turbinate bones	3.28	3.04	0.34	6.66	090	S
30150		A	Partial removal of nose	8.48	7.92	1.07	17.47	090	S
30160		A	Removal of nose	8.92	*11.42	1.73	22.07	090	S
30200		A	Injection treatment of nose	0.78	0.37	0.04	1.19	000	S
30210		A	Nasal sinus therapy	1.03	0.26	0.03	1.32	010	S
30220		A	Insert nasal septal button	1.49	1.51	0.16	3.16	010	S
30300		A	Remove nasal foreign body	0.99	0.46	0.05	1.50	010	S
30310		A	Remove nasal foreign body	1.91	1.62	0.18	3.71	010	S
30320		A	Remove nasal foreign body	4.39	4.29	0.43	9.11	090	S
30400		R	Reconstruction of nose	9.24	9.97	1.36	20.57	090	S
30410		R	Reconstruction of nose	12.39	14.54	2.01	28.94	090	S
30420		R	Reconstruction of nose	15.40	17.78	2.22	35.40	090	S
30430		R	Revision of nose	6.73	6.09	0.66	13.48	090	S
30435		R	Revision of nose	11.23	10.17	1.10	22.50	090	S
30450		R	Revision of nose	18.06	11.24	0.91	30.21	090	S
30460		A	Revision of nose	9.48	8.58	0.93	18.99	090	S
30462		A	Revision of nose	18.98	17.16	1.87	38.01	090	S
30520		A	Repair of nasal septum	5.55	*7.10	0.96	13.61	090	S
30540		A	Repair nasal defect	7.46	6.63	0.70	14.79	090	S
30545		A	Repair nasal defect	10.89	10.83	0.93	22.65	090	S
30560		A	Release of nasal adhesions	1.21	0.55	0.06	1.82	010	S
30580		A	Repair upper jaw fistula	6.49	6.24	0.57	13.30	090	S
30600		A	Repair mouth/nose fistula	5.87	3.77	0.36	10.00	090	S
30620		A	Intranasal reconstruction	5.55	*7.10	1.10	13.75	090	S
30630		A	Repair nasal septum defect	6.83	6.24	0.71	13.78	090	S
30801		A	Cauterization inner nose	1.02	0.47	0.05	1.54	010	S
30802		A	Cauterization inner nose	1.98	0.94	0.11	3.03	010	S
30901		A	Control of nosebleed	1.21	0.56	0.06	1.83	000	S
30903		A	Control of nosebleed	1.54	0.85	0.08	2.47	000	S
30905		A	Control of nosebleed	1.97	1.79	0.17	3.93	000	S
30906		A	Repeat control of nosebleed	2.45	1.08	0.11	3.64	000	S
30915		A	Ligation nasal sinus artery	5.72	4.95	0.52	12.19	090	S
30920		A	Ligation upper jaw artery	7.46	*9.54	1.32	18.32	090	S
30930		A	Therapy fracture of nose	1.21	0.71	0.08	2.00	010	S
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	YYY	N
31000		A	Irrigation maxillary sinus	1.10	0.43	0.05	1.58	010	S
31002		A	Irrigation sphenoid sinus	1.86	0.46	0.05	2.37	010	S
31020		A	Exploration maxillary sinus	2.81	2.66	0.29	5.76	090	S
31030		A	Exploration maxillary sinus	5.60	*7.16	0.86	13.62	090	S
31032		A	Explore sinus, remove polype	6.22	*7.96	0.99	15.17	090	S
31040		A	Exploration behind upper jaw	8.83	7.98	0.86	17.67	090	S
31050		A	Exploration sphenoid sinus	5.07	5.96	0.64	11.67	090	S
31051		A	Sphenoid sinus surgery	6.85	8.12	0.85	15.82	090	S
31070		A	Exploration of frontal sinus	4.04	4.69	0.50	9.23	090	S
31075		A	Exploration of frontal sinus	8.57	10.51	1.10	20.18	090	S
31080		A	Removal of frontal sinus	10.73	9.21	1.12	21.06	090	S
31081		A	Removal of frontal sinus	11.93	10.32	1.30	23.55	090	S
31084		A	Removal of frontal sinus	12.69	14.79	1.62	29.10	090	S
31085		A	Removal of frontal sinus	13.38	15.65	1.76	30.79	090	S
31086		A	Removal of frontal sinus	11.96	10.87	1.15	24.00	090	S
31087		A	Removal of frontal sinus	12.14	10.39	1.33	23.86	090	S
31090		A	Exploration of sinuses	8.65	*11.32	2.12	22.09	090	S
31200		A	Removal of ethmoid sinus	4.68	4.62	0.48	9.78	090	S
31201		A	Removal of ethmoid sinus	7.91	7.01	0.75	15.67	090	S
31205		A	Removal of ethmoid sinus	9.65	8.03	0.81	18.49	090	S
31225		A	Removal of upper jaw	15.19	*19.44	2.37	37.00	090	S
31230		A	Removal of upper jaw	21.06	21.74	2.48	45.28	090	S
31231		A	Nasal endoscopy, dx	1.10	1.37	0.15	2.62	000	S
31233		A	Nasal/sinus endoscopy, dx	2.18	*2.79	0.31	5.28	000	S
31235		A	Nasal/sinus endoscopy, dx	2.64	2.39	0.26	5.29	000	S
31237		A	Nasal/sinus endoscopy, surg	2.98	3.37	0.37	6.72	000	S
31238		A	Nasal/sinus endoscopy, surg	3.26	*4.17	0.45	7.88	000	S
31239		A	Nasal/sinus endoscopy, surg	6.50	*10.88	1.18	20.56	010	S

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
31240		A	Nasal/sinus endoscopy, surg	2.61	*3.34	0.37	6.32	000	S
31254		A	Revision of ethmoid sinus	4.65	*5.95	0.69	11.29	000	S
31255		A	Removal of ethmoid sinus	6.96	*8.91	1.14	17.01	000	S
31256		A	Exploration maxillary sinus	3.29	3.77	0.41	7.47	000	S
31267		A	Endoscopy, maxillary sinus	5.46	5.23	0.81	11.50	000	S
31276		A	Sinus surgical endoscopy	8.85	6.72	0.73	16.30	000	S
31287		A	Nasal/sinus endoscopy, surg	3.92	*5.01	0.65	9.58	000	S
31288		A	Nasal/sinus endoscopy, surg	4.56	*5.86	0.78	11.22	000	S
31290		A	Nasal/sinus endoscopy, surg	12.87	*16.47	1.80	31.14	010	S
31291		A	Nasal/sinus endoscopy, surg	13.52	*17.31	1.88	32.71	010	S
31292		A	Nasal/sinus endoscopy, surg	10.45	*13.38	1.45	25.28	010	S
31293		A	Nasal/sinus endoscopy, surg	11.43	*14.64	1.59	27.66	010	S
31294		A	Nasal/sinus endoscopy, surg	13.06	*16.72	1.83	31.61	010	S
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	YYY	S
31300		A	Removal of larynx lesion	13.28	11.58	1.28	26.14	090	S
31320		A	Diagnostic incision larynx	4.54	3.87	0.48	8.89	090	S
31360		A	Removal of larynx	15.19	19.36	2.19	36.74	090	S
31365		A	Removal of larynx	21.83	27.14	3.10	52.07	090	S
31367		A	Partial removal of larynx	18.98	17.22	1.88	38.08	090	S
31368		A	Partial removal of larynx	23.72	26.76	3.06	53.54	090	S
31370		A	Partial removal of larynx	18.50	17.18	1.88	37.56	090	S
31375		A	Partial removal of larynx	18.50	14.84	1.56	34.90	090	S
31380		A	Partial removal of larynx	18.50	17.27	1.88	37.65	090	S
31382		A	Partial removal of larynx	18.50	16.06	1.78	36.34	090	S
31390		A	Removal of larynx & pharynx	21.15	*27.08	4.05	52.28	090	S
31395		A	Reconstruct larynx & pharynx	26.19	*33.52	4.42	64.13	090	S
31400		A	Revision of larynx	9.06	7.81	0.91	17.78	090	S
31420		A	Removal of epiglottis	9.06	8.08	0.84	17.98	090	S
31500		A	Insert emergency airway	2.33	1.14	0.14	3.61	000	N
31502		A	Change of windpipe airway	0.65	0.58	0.07	1.30	000	S
31505		A	Diagnostic laryngoscopy	0.61	0.43	0.05	1.09	000	S
31510		A	Laryngoscopy with biopsy	1.92	0.55	0.07	2.54	000	S
31511		A	Remove foreign body, larynx	2.16	0.96	0.10	3.22	000	S
31512		A	Removal of larynx lesion	2.07	1.79	0.20	4.06	000	S
31513		A	Injection into vocal cord	2.10	*2.68	0.38	5.16	000	S
31515		A	Laryngoscopy for aspiration	1.80	1.13	0.14	3.07	000	S
31520		A	Diagnostic laryngoscopy	2.56	1.64	0.18	4.38	000	S
31525		A	Diagnostic laryngoscopy	2.63	2.20	0.23	5.06	000	S
31526		A	Diagnostic laryngoscopy	2.57	*3.29	0.38	6.24	000	S
31527		A	Laryngoscopy for treatment	3.27	2.99	0.30	6.56	000	S
31528		A	Laryngoscopy and dilatation	2.37	2.65	0.30	5.33	000	S
31529		A	Laryngoscopy and dilatation	2.68	2.46	0.25	5.39	000	S
31530		A	Operative laryngoscopy	3.39	3.63	0.39	7.41	000	S
31531		A	Operative laryngoscopy	3.73	*4.78	0.60	9.11	000	S
31535		A	Operative laryngoscopy	3.16	4.01	0.45	7.62	000	S
31536		A	Operative laryngoscopy	3.17	*4.06	0.59	7.82	000	S
31540		A	Operative laryngoscopy	4.13	*5.29	0.61	10.03	000	S
31541		A	Operative laryngoscopy	3.56	*4.56	0.75	8.87	000	S
31560		A	Operative laryngoscopy	5.46	4.99	0.51	10.96	000	S
31561		A	Operative laryngoscopy	4.90	*6.27	1.08	12.25	000	S
31570		A	Laryngoscopy with injection	3.87	*4.95	0.60	9.42	000	S
31571		A	Laryngoscopy with injection	3.52	*4.51	0.69	8.72	000	S
31575		A	Diagnostic laryngoscopy	1.10	1.56	0.17	2.83	000	S
31576		A	Laryngoscopy with biopsy	1.97	*2.52	0.33	4.82	000	S
31577		A	Remove foreign body, larynx	2.47	*3.16	0.37	6.00	000	S
31578		A	Removal of larynx lesion	2.84	*3.63	0.48	6.95	000	S
31579		A	Diagnostic laryngoscopy	2.26	2.33	0.26	4.85	000	S
31580		A	Revision of larynx	11.01	*14.09	1.63	26.73	090	S
31582		A	Revision of larynx	19.73	17.87	1.94	39.54	090	S
31584		A	Repair of larynx fracture	18.50	12.72	1.34	32.56	090	S
31585		A	Repair of larynx fracture	4.40	3.77	0.40	8.57	090	S
31586		A	Repair of larynx fracture	7.24	6.55	0.71	14.50	090	S
31587		A	Revision of larynx	7.98	7.21	0.79	15.98	090	S
31588		A	Revision of larynx	11.82	10.70	1.16	23.68	090	S
31590		A	Reinnervate larynx	6.36	5.76	0.62	12.74	090	S
31595		A	Larynx nerve surgery	7.58	6.84	0.74	15.16	090	S

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
31599		C	Larynx surgery procedure	0.00	0.00	0.00	0.00	YYY	S
31600		A	Incision of windpipe	3.62	4.04	0.65	8.31	000	S
31601		A	Incision of windpipe	4.45	5.03	0.66	10.14	000	S
31603		A	Incision of windpipe	4.15	4.23	0.66	9.04	000	S
31605		A	Incision of windpipe	3.58	4.19	0.50	8.27	000	S
31610		A	Incision of windpipe	7.87	6.67	0.92	15.46	090	S
31611		A	Surgery/speech prosthesis	5.03	*6.45	1.04	12.52	090	S
31612		A	Puncture/clear windpipe	0.91	1.17	0.12	2.20	000	S
31613		A	Repair windpipe opening	4.24	2.21	0.28	6.73	090	S
31614		A	Repair windpipe opening	6.11	6.74	0.73	13.58	090	S
31615		A	Visualization of windpipe	2.09	1.95	0.22	4.26	000	S
31622		A	Diagnostic bronchoscopy	2.80	3.57	0.34	6.71	000	N
31625		A	Bronchoscopy with biopsy	3.37	3.83	0.35	7.55	000	N
31628		A	Bronchoscopy with biopsy	3.81	*4.88	0.38	9.07	000	N
31629		A	Bronchoscopy with biopsy	3.37	*4.31	0.34	8.02	000	N
31630		A	Bronchoscopy with repair	3.82	3.72	0.50	8.04	000	S
31631		A	Bronchoscopy with dilation	4.37	3.94	0.48	8.79	000	N
31635		A	Remove foreign body, airway	3.68	4.53	0.53	8.74	000	S
31640		A	Bronchoscopy & remove lesion	4.94	5.02	0.67	10.63	000	S
31641		A	Bronchoscopy, treat blockage	5.03	*6.45	0.85	12.33	000	N
31645		A	Bronchoscopy, clear airways	3.16	3.62	0.30	7.08	000	N
31646		A	Bronchoscopy, reclear airways	2.72	3.06	0.27	6.05	000	N
31656		A	Bronchoscopy, inject for x-ray	2.17	*2.77	0.31	5.25	000	N
31700		A	Insertion of airway catheter	1.34	1.38	0.17	2.89	000	N
31708		A	Instill airway contrast dye	1.41	0.77	0.09	2.27	000	N
31710		A	Insertion of airway catheter	1.30	0.90	0.12	2.32	000	N
31715		A	Injection for bronchus x-ray	1.11	0.48	0.04	1.63	000	N
31717		A	Bronchial brush biopsy	2.12	0.73	0.06	2.91	000	N
31720		A	Clearance of airways	1.06	0.74	0.09	1.89	000	N
31725		A	Clearance of airways	1.96	1.41	0.15	3.52	000	N
31730		A	Intro windpipe wire/tube	2.85	2.47	0.23	5.55	000	N
31750		A	Repair of windpipe	9.05	8.88	1.09	19.02	090	S
31755		A	Repair of windpipe	14.69	13.30	1.44	29.43	090	S
31760		A	Repair of windpipe	20.89	10.92	2.55	34.36	090	S
31766		A	Reconstruction of windpipe	28.82	18.40	1.12	48.34	090	S
31770		A	Repair/graft of bronchus	21.15	15.07	2.08	38.30	090	S
31775		A	Reconstruct bronchus	22.15	16.37	1.92	40.44	090	S
31780		A	Reconstruct windpipe	16.14	17.33	2.08	35.55	090	S
31781		A	Reconstruct windpipe	22.22	16.86	1.96	41.04	090	S
31785		A	Remove windpipe lesion	16.14	8.92	1.17	26.23	090	S
31786		A	Remove windpipe lesion	22.54	13.30	2.24	38.08	090	S
31800		A	Repair of windpipe injury	6.77	4.90	0.76	12.43	090	S
31805		A	Repair of windpipe injury	12.59	9.82	1.41	23.82	090	S
31820		A	Closure of windpipe lesion	4.10	3.58	0.46	8.14	090	S
31825		A	Repair of windpipe defect	6.31	5.00	0.58	11.89	090	S
31830		A	Revise windpipe scar	4.26	3.66	0.42	8.34	090	S
31899		C	Airways surgical procedure	0.00	0.00	0.00	0.00	YYY	S
32000		A	Drainage of chest	1.54	0.90	0.08	2.52	000	N
32002		A	Treatment of collapsed lung	2.19	1.34	0.22	3.75	000	N
32005		A	Treat lung lining chemically	2.19	1.09	0.15	3.43	000	S
32020		A	Insertion of chest tube	3.98	2.63	0.43	7.04	000	S
32035		A	Exploration of chest	5.55	5.76	1.25	14.56	090	S
32036		A	Exploration of chest	7.56	7.13	1.32	16.01	090	S
32095		A	Biopsy through chest wall	7.13	8.25	1.45	16.83	090	S
32100		A	Exploration/biopsy of chest	10.07	11.24	2.10	23.41	090	S
32110		A	Explore/repair chest	11.76	11.51	2.01	25.28	090	S
32120		A	Re-exploration of chest	9.62	9.45	1.72	20.79	090	S
32124		A	Explore chest, free adhesions	10.93	10.94	2.21	24.08	090	S
32140		A	Removal of lung lesion(s)	12.14	12.37	2.42	26.93	090	S
32141		A	Remove/treat lung lesions	12.14	13.42	2.53	28.09	090	S
32150		A	Removal of lung lesion(s)	12.42	10.34	2.01	24.77	090	S
32151		A	Remove lung foreign body	12.42	9.15	1.37	22.94	090	S
32160		A	Open chest heart massage	7.13	*9.13	1.52	17.78	090	S
32200		A	Drainage of lung lesion	13.10	6.89	0.93	20.92	090	S
32215		A	Treat chest lining	10.07	7.62	1.28	18.97	090	S
32220		A	Release of lung	17.62	15.81	3.01	36.44	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
32225		A	Partial release of lung	12.10	11.84	2.28	26.22	090	S
32310		A	Removal of chest lining	12.05	11.84	2.10	25.79	090	S
32320		A	Free/remove chest lining	19.15	18.10	3.40	40.65	090	S
32400		A	Needle biopsy chest lining	1.76	1.48	0.12	3.36	000	N
32402		A	Open biopsy chest lining	5.55	7.58	1.34	15.47	090	S
32405		A	Biopsy, lung or mediastinum	1.93	2.12	0.18	4.23	000	N
32420		A	Puncture/clear lung	2.18	1.50	0.13	3.81	000	N
32440		A	Removal of lung	19.15	18.58	3.55	41.26	090	S
32442		A	Sleeve pneumonectomy	24.68	17.94	3.50	46.12	090	S
32445		A	Removal of lung	23.37	20.46	3.88	47.71	090	S
32480		A	Partial removal of lung	16.84	17.15	3.23	37.22	090	S
32482		A	Bilobectomy	18.54	17.15	3.23	38.92	090	S
32484		A	Segmentectomy	19.52	17.15	3.23	39.90	090	S
32485		D	Partial removal of lung	0.00	0.00	0.00	0.00	090	S
32486		A	Sleeve lobectomy	22.75	16.54	3.23	42.52	090	S
32488		A	Completion pneumonectomy	24.41	17.74	3.46	45.61	090	S
32500		A	Partial removal of lung	13.10	13.47	2.56	29.13	090	S
32501		A	Repair bronchus (add-on)	4.69	4.31	0.70	9.70	ZZZ	S
32520		A	Remove lung & revise chest	19.42	20.67	3.93	44.02	090	S
32522		A	Remove lung & revise chest	21.94	21.90	4.19	48.03	090	S
32525		A	Remove lung & revise chest	24.33	23.50	4.61	52.44	090	S
32540		A	Removal of lung lesion	13.31	11.67	2.05	27.03	090	S
32601		A	Thoracoscopy, diagnostic	5.46	3.47	0.57	9.50	000	S
32602		A	Thoracoscopy, diagnostic	5.96	3.87	0.64	10.47	000	S
32603		A	Thoracoscopy, diagnostic	7.81	3.47	0.57	11.85	000	S
32604		A	Thoracoscopy, diagnostic	8.78	3.87	0.64	13.29	000	S
32605		A	Thoracoscopy, diagnostic	6.93	3.47	0.57	10.97	000	S
32606		A	Thoracoscopy, diagnostic	8.40	3.87	0.64	12.91	000	S
32650		A	Thoracoscopy, surgical	10.07	7.82	1.28	18.97	090	S
32651		A	Thoracoscopy, surgical	12.10	11.84	2.28	26.22	090	S
32652		A	Thoracoscopy, surgical	17.62	15.81	3.01	36.44	090	S
32653		A	Thoracoscopy, surgical	12.42	10.34	2.01	24.77	090	S
32654		A	Thoracoscopy, surgical	11.76	11.51	2.01	25.28	090	S
32655		A	Thoracoscopy, surgical	12.42	13.42	2.53	28.37	090	S
32656		A	Thoracoscopy, surgical	12.10	13.36	2.36	27.82	090	S
32657		A	Thoracoscopy, surgical	13.10	13.47	2.56	29.13	090	S
32658		A	Thoracoscopy, surgical	11.08	13.26	2.52	26.86	090	S
32659		A	Thoracoscopy, surgical	10.91	*13.96	2.61	27.48	090	S
32660		A	Thoracoscopy, surgical	16.62	19.93	3.56	40.11	090	S
32661		A	Thoracoscopy, surgical	12.70	9.25	1.47	23.42	090	S
32662		A	Thoracoscopy, surgical	15.76	14.55	2.74	33.05	090	S
32663		A	Thoracoscopy, surgical	17.43	17.15	3.23	37.81	090	S
32664		A	Thoracoscopy, surgical	13.65	10.55	2.04	26.24	090	S
32665		A	Thoracoscopy, surgical	14.73	14.33	2.64	31.70	090	S
32800		A	Repair lung hernia	12.10	8.26	1.56	21.96	090	S
32810		A	Close chest after drainage	11.59	6.50	1.19	19.28	090	S
32815		A	Close bronchial fistula	21.36	15.22	2.62	39.20	090	S
32820		A	Reconstruct injured chest	19.78	19.01	3.24	42.03	090	S
32850		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	XXX	0
32851		A	Lung transplant, single	35.14	25.55	4.99	65.68	090	S
32852		A	Lung transplant w/bypass	38.11	27.71	5.41	71.23	090	S
32853		A	Lung transplant, double	43.93	31.94	6.24	82.11	090	S
32854		A	Lung transplant w/bypass	46.90	34.10	6.67	87.67	090	S
32900		A	Removal of rib(s)	18.14	8.47	1.63	28.24	090	S
32905		A	Revise & repair chest wall	19.15	12.74	2.60	34.49	090	S
32906		A	Revise & repair chest wall	25.17	15.42	2.92	43.51	090	S
32940		A	Revision of lung	18.14	11.37	1.75	31.26	090	S
32960		A	Therapeutic pneumothorax	1.84	0.93	0.13	2.90	000	N
32999		C	Chest surgery procedure	0.00	0.00	0.00	0.00	YYY	S
33010		A	Drainage of heart sac	2.24	1.54	0.14	3.92	000	N
33011		A	Repeat drainage of heart sac	2.24	1.11	0.12	3.47	000	N
33015		A	Incision of heart sac	5.64	4.26	0.62	10.52	090	S
33020		A	Incision of heart sac	11.08	13.26	2.52	26.86	090	S
33025		A	Incision of heart sac	10.91	*13.96	2.61	27.48	090	S
33030		A	Partial removal of heart sac	16.62	21.02	3.92	41.56	090	S
33031		A	Partial removal of heart sac	19.64	13.25	2.50	35.39	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
33050		A	Removal of heart sac lesion	12.70	9.25	1.47	23.42	090	S
33120		A	Removal of heart lesion	22.57	*28.89	5.17	56.63	090	S
33130		A	Removal of heart lesion	19.53	13.50	2.22	35.25	090	S
33200		A	Insertion of heart pacemaker	11.08	12.27	1.90	25.25	090	S
33201		A	Insertion of heart pacemaker	8.93	11.19	1.67	21.79	090	S
33206		A	Insertion of heart pacemaker	6.04	*7.73	1.34	15.11	090	S
33207		A	Insertion of heart pacemaker	7.28	9.01	1.33	17.62	090	S
33208		A	Insertion of heart pacemaker	7.28	*9.50	1.54	18.32	090	N
33210		A	Insertion of heart electrode	3.30	3.30	0.27	6.87	000	N
33211		A	Insertion of heart electrode	3.40	3.30	0.27	6.97	000	N
33212		A	Insertion of pulse generator	5.21	5.38	0.88	11.47	090	S
33213		A	Insertion of pulse generator	6.15	5.38	0.88	12.41	090	N
33214		A	Upgrade of pacemaker system	7.43	5.40	1.06	13.89	090	N
33216		A	Revision implanted electrode	5.07	5.02	0.55	10.64	090	N
33217		A	Insert/revise electrode	5.43	5.02	0.55	11.00	090	N
33218		A	Repair pacemaker electrodes	5.02	4.59	0.62	10.23	090	S
33220		A	Repair pacemaker electrode	5.10	4.59	0.62	10.31	090	N
33222		A	Pacemaker aicd pocket	4.59	5.70	1.01	11.30	090	S
33223		A	Pacemaker aicd pocket	6.14	5.70	1.01	12.85	090	S
33233		A	Removal of pacemaker system	2.97	2.64	0.05	5.66	090	N
33234		A	Removal of pacemaker system	8.69	4.74	0.38	13.81	090	S
33235		A	Removal pacemaker electrode	9.93	5.21	0.55	15.69	090	N
33236		A	Remove electrode/thoracotomy	11.71	3.98	0.62	16.31	090	S
33237		A	Remove electrode/thoracotomy	12.69	9.60	1.13	23.42	090	S
33238		A	Remove electrode/thoracotomy	14.15	10.29	2.01	26.45	090	S
33240		A	Insert/replace pulse gener	7.20	5.38	0.88	13.46	090	S
33241		A	Remove pulse generator only	2.97	2.16	0.43	5.56	090	S
33242		A	Repair pulse generator/leads	5.85	*7.50	1.54	14.89	090	S
33243		A	Remove generator/thoracotomy	21.47	9.02	1.54	32.03	090	S
33244		A	Remove generator	8.34	9.02	1.54	18.90	090	S
33245		A	Implant heart defibrillator	12.57	*16.09	2.36	31.02	090	S
33246		A	Implant heart defibrillator	19.28	20.79	3.19	43.26	090	S
33247		A	Insert/replace leads	9.76	*12.49	2.36	24.61	090	N
33249		A	Insert/replace leads/gener	12.83	*16.42	3.19	32.44	090	S
33250		A	Ablate heart dysrhythm focus	19.54	11.56	0.86	31.96	090	S
33251		A	Ablate heart dysrhythm focus	22.57	16.41	3.21	42.19	090	S
33253		A	Reconstruct atria	30.00	21.81	4.26	56.07	090	S
33260		D	Ablate heart dysrhythm focus	0.00	0.00	0.00	0.00	090	S
33261		A	Ablate heart dysrhythm focus	22.57	13.96	2.73	39.26	090	S
33300		A	Repair of heart wound	16.19	14.36	2.60	33.15	090	S
33305		A	Repair of heart wound	19.22	17.40	3.07	39.69	090	S
33310		A	Exploratory heart surgery	17.12	11.28	1.93	30.33	090	S
33315		A	Exploratory heart surgery	20.15	14.48	2.57	37.20	090	S
33320		A	Repair major blood vessel(s)	15.39	14.14	2.51	32.04	090	S
33321		A	Repair major vessel	18.74	21.75	3.61	44.10	090	S
33322		A	Repair major blood vessel(s)	18.40	21.75	3.61	43.76	090	S
33330		A	Insert major vessel graft	19.15	12.67	1.93	33.75	090	S
33332		A	Insert major vessel graft	22.50	15.07	2.39	39.96	090	S
33335		A	Insert major vessel graft	27.66	15.07	2.39	45.12	090	S
33350		D	Repair major blood vessel(s)	0.00	0.00	0.00	0.00	090	S
33400		A	Repair of aortic valve	23.16	26.21	2.83	52.20	090	S
33401		A	Valvuloplasty, open	22.45	26.21	2.83	51.49	090	S
33403		A	Valvuloplasty, w/cp bypass	23.43	26.21	2.83	52.47	090	S
33404		A	Prepare heart-aorta conduit	26.62	31.25	5.59	63.46	090	S
33405		A	Replacement of aortic valve	28.47	30.48	5.33	64.28	090	S
33406		A	Replacement, aortic valve	31.23	38.65	7.45	77.33	090	S
33411		A	Replacement of aortic valve	30.37	38.65	7.45	76.47	090	S
33412		A	Replacement of aortic valve	32.26	38.65	7.45	78.36	090	S
33413		A	Replacement, aortic valve	34.17	41.09	7.23	82.49	090	S
33414		A	Repair, aortic valve	29.28	38.65	7.45	75.38	090	S
33415		A	Revision, subvalvular tissue	25.02	30.48	5.33	60.83	090	S
33416		A	Revise ventricle muscle	28.20	28.14	4.99	61.33	090	S
33417		A	Repair of aortic valve	27.34	34.71	6.18	68.23	090	S
33420		A	Revision of mitral valve	20.69	19.82	2.45	42.96	090	S
33422		A	Revision of mitral valve	23.72	*30.35	6.45	60.52	090	S
33425		A	Repair of mitral valve	25.57	31.27	5.42	62.26	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
33426		A	Repair of mitral valve	26.07	31.96	5.80	63.83	090	S
33427		A	Repair of mitral valve	32.07	34.71	6.30	73.08	090	S
33430		A	Replacement of mitral valve	29.42	34.85	6.11	70.38	090	S
33460		A	Revision of tricuspid valve	21.60	26.07	4.73	52.40	090	S
33463		A	Valvuloplasty, tricuspid	24.16	32.67	5.95	62.78	090	S
33464		A	Valvuloplasty, tricuspid	25.67	32.67	5.95	64.49	090	S
33465		A	Replace tricuspid valve	26.57	32.67	5.95	65.19	090	S
33468		A	Revision of tricuspid valve	28.20	34.71	6.30	69.21	090	S
33470		A	Revision of pulmonary valve	19.52	19.82	2.45	41.79	090	S
33471		A	Valvotomy, pulmonary valve	21.13	26.21	2.83	50.17	090	S
33472		A	Revision of pulmonary valve	20.91	*28.70	2.83	52.44	090	S
33474		A	Revision of pulmonary valve	20.91	*28.70	2.83	52.44	090	S
33475		A	Replacement, pulmonary valve	27.34	34.85	6.11	68.30	090	S
33476		A	Revision of heart chamber	24.41	28.14	4.99	57.54	090	S
33478		A	Revision of heart chamber	25.38	31.27	5.42	62.07	090	S
33500		A	Repair heart vessel fistula	23.91	29.55	5.20	58.66	090	S
33501		A	Repair heart vessel fistula	16.14	14.14	2.51	32.79	090	S
33502		A	Coronary artery correction	19.80	14.14	2.51	36.45	090	S
33503		A	Coronary artery graft	20.15	29.55	5.20	54.90	090	S
33504		A	Coronary artery graft	23.16	29.55	5.20	57.91	090	S
33505		A	Repair artery w/tunnel	25.38	34.24	6.03	65.65	090	S
33508		A	Repair artery, translocation	25.38	34.24	6.03	65.65	090	S
33510		A	CABG, vein, single	23.29	29.55	5.20	58.04	090	S
33511		A	CABG, vein, two	25.57	32.44	5.71	63.72	090	S
33512		A	CABG, vein, three	27.84	35.33	6.22	69.39	090	S
33513		A	CABG, vein, four	30.12	36.21	6.73	75.06	090	S
33514		A	CABG, vein, five	32.39	41.09	7.23	80.71	090	S
33516		A	CABG, vein, six+	34.66	43.97	7.74	86.37	090	S
33517		A	CABG, artery-vein, single	2.27	2.89	0.50	5.66	090	S
33518		A	CABG, artery-vein, two	4.55	5.77	1.02	11.34	090	S
33519		A	CABG, artery-vein, three	6.82	8.65	1.52	16.99	090	S
33521		A	CABG, artery-vein, four	9.10	11.54	2.03	22.67	090	S
33522		A	CABG, artery-vein, five	11.37	14.43	2.54	28.34	090	S
33523		A	CABG, artery-vein, six+	13.65	17.32	3.05	34.02	090	S
33530		A	Coronary artery, bypass/reop	5.86	*7.51	2.18	15.55	ZZZ	S
33533		A	CABG, arterial, single	24.00	30.45	5.36	59.81	090	S
33534		A	CABG, arterial, two	26.99	34.24	6.03	67.26	090	S
33535		A	CABG, arterial, three	29.98	38.03	6.70	74.71	090	S
33536		A	CABG, arterial, four+	32.96	41.82	7.37	82.15	090	S
33542		A	Removal of heart lesion	26.57	30.73	5.53	62.83	090	S
33545		A	Repair of heart damage	33.96	34.92	6.28	75.16	090	S
33572		A	Open coronary endarterectomy	4.45	3.23	0.63	8.31	ZZZ	S
33600		A	Closure of valve	28.31	34.85	6.11	69.27	090	S
33602		A	Closure of valve	27.34	30.48	5.33	63.15	090	S
33606		A	Anastomosis/artery-aorta	29.28	38.65	7.45	75.38	090	S
33608		A	Repair anomaly w/conduit	30.02	38.65	7.45	76.12	090	S
33610		A	Repair by enlargement	29.28	38.65	7.45	75.38	090	S
33611		A	Repair double ventricle	31.23	38.65	7.45	77.33	090	S
33612		A	Repair double ventricle	32.06	38.65	7.45	78.16	090	S
33615		A	Repair (simple fontan)	30.50	38.65	7.45	76.60	090	S
33617		A	Repair by modified fontan	32.21	38.65	7.45	78.31	090	S
33619		A	Repair single ventricle	35.39	44.30	8.04	87.73	090	S
33641		A	Repair heart septum defect	19.93	*25.51	4.87	50.31	090	S
33645		A	Revision of heart veins	22.78	27.61	4.87	55.26	090	S
33647		A	Repair heart septum defects	27.44	34.92	6.28	68.64	090	S
33660		A	Repair of heart defects	24.41	31.27	5.42	61.10	090	S
33665		A	Repair of heart defects	27.34	31.27	5.42	64.03	090	S
33670		A	Repair of heart chambers	31.23	38.65	7.45	77.33	090	S
33681		A	Repair heart septum defect	26.36	34.92	6.28	67.56	090	S
33684		A	Repair heart septum defect	28.31	34.92	6.28	69.51	090	S
33688		A	Repair heart septum defect	29.28	34.92	6.28	70.48	090	S
33690		A	Reinforce pulmonary artery	18.31	22.10	4.29	44.70	090	S
33692		A	Repair of heart defects	29.28	38.65	7.45	75.38	090	S
33694		A	Repair of heart defects	30.26	38.65	7.45	76.36	090	S
33696		D	Repair of heart defects	0.00	0.00	0.00	0.00	090	S
33697		A	Repair of heart defects	32.21	38.65	7.45	78.31	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
33698		D	Repair of heart defects	0.00	0.00	0.00	0.00	090	S
33702		A	Repair of heart defects	25.38	30.48	5.33	61.19	090	S
33710		A	Repair of heart defects	28.35	34.92	6.28	69.55	090	S
33720		A	Repair of heart defect	25.38	30.48	5.33	61.19	090	S
33722		A	Repair of heart defect	27.34	30.48	5.33	63.15	090	S
33730		A	Repair heart-vein defect(s)	29.89	38.65	7.45	75.99	090	S
33732		A	Repair heart-vein defect	27.09	31.27	5.42	63.78	090	S
33735		A	Revision of heart chamber	19.97	25.69	4.87	50.53	090	S
33736		A	Revision of heart chamber	22.45	25.69	4.87	53.01	090	S
33737		A	Revision of heart chamber	20.50	25.69	4.87	51.06	090	S
33750		A	Major vessel shunt	20.15	22.10	4.29	46.54	090	S
33755		A	Major vessel shunt	20.50	22.10	4.29	46.89	090	S
33762		A	Major vessel shunt	20.50	22.10	4.29	46.89	090	S
33764		A	Major vessel shunt & graft	20.50	22.10	4.29	46.89	090	S
33766		A	Major vessel shunt	21.47	22.10	4.29	47.86	090	S
33767		A	Atrial septectomy/septostomy	23.43	25.69	4.87	53.99	090	S
33770		A	Repair great vessels defect	31.96	38.65	7.45	78.06	090	S
33771		A	Repair great vessels defect	33.19	38.65	7.45	79.29	090	S
33774		A	Repair great vessels defect	29.28	31.27	5.42	65.97	090	S
33775		A	Repair great vessels defect	30.50	31.27	5.42	67.19	090	S
33776		A	Repair great vessels defect	32.21	34.92	6.26	73.41	090	S
33777		A	Repair great vessels defect	31.73	31.27	5.42	68.42	090	S
33778		A	Repair great vessels defect	34.17	41.82	7.37	83.36	090	S
33779		A	Repair great vessels defect	34.41	41.82	7.37	83.60	090	S
33780		A	Repair great vessels defect	35.14	41.82	7.37	84.33	090	S
33781		A	Repair great vessels defect	34.65	41.82	7.37	83.84	090	S
33786		A	Repair arterial trunk	33.19	38.65	7.45	79.29	090	S
33788		A	Revision of pulmonary artery	25.38	29.55	5.20	60.13	090	S
33800		A	Aortic suspension	15.18	14.14	2.51	31.83	090	S
33802		A	Repair vessel defect	16.60	22.10	4.29	42.99	090	S
33803		A	Repair vessel defect	18.54	22.10	4.29	44.93	090	S
33813		A	Repair septal defect	19.52	22.10	4.29	45.91	090	S
33814		A	Repair septal defect	24.41	30.48	5.33	60.22	090	S
33820		A	Revise major vessel	15.62	22.10	4.29	42.01	090	S
33822		A	Revise major vessel	16.60	22.10	4.29	42.99	090	S
33824		A	Revise major vessel	18.54	22.10	4.29	44.93	090	S
33840		A	Remove aorta constriction	19.52	31.25	5.59	56.36	090	S
33845		A	Remove aorta constriction	20.99	31.25	5.59	57.83	090	S
33851		A	Remove aorta constriction	20.01	31.25	5.59	56.85	090	S
33852		A	Repair septal defect	22.45	31.25	5.59	59.29	090	S
33853		A	Repair septal defect	30.26	38.65	7.45	76.36	090	S
33860		A	Ascending aorta graft	31.23	34.71	6.18	72.12	090	S
33861		A	Ascending aorta graft	33.19	34.71	6.18	74.08	090	S
33863		A	Ascending aorta graft	35.14	34.71	6.18	76.03	090	S
33870		A	Transverse aortic arch graft	37.74	44.30	8.04	90.08	090	S
33875		A	Thoracic aorta graft	26.94	31.25	5.59	63.78	090	S
33877		A	Thoracoabdominal graft	40.29	44.11	8.38	92.78	090	S
33910		A	Remove lung artery emboli	21.86	14.65	2.77	39.28	090	S
33915		A	Remove lung artery emboli	18.84	12.02	2.22	33.08	090	S
33916		A	Surgery of great vessel	24.17	17.57	3.43	45.17	090	S
33917		A	Repair pulmonary artery	23.43	34.71	6.30	64.44	090	S
33918		A	Repair pulmonary atresia	25.38	29.55	5.20	60.13	090	S
33919		A	Repair pulmonary atresia	31.11	38.65	7.45	77.21	090	S
33920		A	Repair pulmonary atresia	30.75	38.65	7.45	76.85	090	S
33922		A	Transect pulmonary artery	22.45	26.21	2.83	51.49	090	S
33924		A	Remove pulmonary shunt	5.50	4.00	0.78	10.28	ZZZ	S
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	XXX	0
33935		R	Transplantation, heart/lung	56.87	77.57	13.54	147.98	090	S
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	XXX	0
33945		R	Transplantation of heart	39.56	64.80	11.05	115.41	090	S
33960		A	External circulation assist	19.36	7.01	0.94	27.31	XXX	S
33961		A	External circulation assist	10.93	7.01	0.94	18.88	XXX	S
33970		A	Aortic circulation assist	8.05	7.54	1.00	16.59	000	S
33971		A	Aortic circulation assist	4.04	*5.16	0.91	10.11	090	S
33973		A	Insert balloon device	9.76	7.54	1.00	18.30	000	S
33974		A	Remove intra-aortic balloon	12.69	5.56	0.91	19.16	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
33975		A	Implant ventricular device	19.52	14.19	2.77	36.48	090	S
33976		A	Implant ventricular device	26.60	19.33	3.78	49.71	090	S
33977		A	Remove ventricular device	17.08	12.41	2.43	31.92	090	S
33978		A	Remove ventricular device	19.52	14.19	2.77	36.48	090	S
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	YYY	S
34001		A	Removal of artery clot	11.69	9.58	1.87	23.14	090	S
34051		A	Removal of artery clot	13.62	8.81	1.59	24.02	090	S
34101		A	Removal of artery clot	8.73	8.34	1.71	18.78	090	S
34111		A	Removal of arm artery clot	7.18	7.59	1.59	16.36	090	S
34151		A	Removal of artery clot	15.23	11.96	2.39	29.58	090	S
34201		A	Removal of artery clot	8.04	8.90	1.78	18.72	090	S
34203		A	Removal of leg artery clot	11.06	8.63	1.72	21.41	090	S
34401		A	Removal of vein clot	11.64	8.07	1.39	21.10	090	S
34421		A	Removal of vein clot	8.89	7.45	1.51	17.85	090	S
34451		A	Removal of vein clot	13.13	10.69	2.14	25.96	090	S
34471		A	Removal of vein clot	9.12	3.51	0.55	13.18	090	S
34490		A	Removal of vein clot	6.51	7.27	1.54	15.32	090	S
34501		A	Repair valve, femoral vein	9.71	7.35	0.86	17.92	090	S
34502		A	Reconstruct, vena cava	25.55	18.65	3.64	47.94	090	S
34510		A	Transposition of vein valve	11.75	8.89	1.04	21.68	090	S
34520		A	Cross-over vein graft	12.33	9.33	1.09	22.75	090	S
34530		A	Leg vein fusion	16.33	12.35	1.44	30.12	090	S
35001		A	Repair defect of artery	18.14	15.90	3.18	37.22	090	S
35002		A	Repair artery rupture, neck	19.43	12.64	2.41	34.48	090	S
35005		A	Repair defect of artery	16.62	10.28	2.19	29.09	090	S
35011		A	Repair defect of artery	10.43	*13.35	2.76	26.54	090	S
35013		A	Repair artery rupture, arm	15.96	14.70	3.03	33.69	090	S
35021		A	Repair defect of artery	17.62	18.13	3.06	38.81	090	S
35022		A	Repair artery rupture, chest	21.15	14.78	2.80	38.73	090	S
35045		A	Repair defect of arm artery	9.98	12.35	2.50	24.83	090	S
35081		A	Repair defect of artery	22.15	21.45	4.18	47.78	090	S
35082		A	Repair artery rupture, aorta	28.82	22.91	4.59	56.32	090	S
35091		A	Repair defect of artery	28.10	22.67	4.25	55.02	090	S
35092		A	Repair artery rupture, aorta	36.06	26.27	5.21	67.54	090	S
35102		A	Repair defect of artery	23.44	22.15	4.32	49.91	090	S
35103		A	Repair artery rupture, groin	31.31	26.16	5.21	62.68	090	S
35111		A	Repair defect of artery	15.12	17.60	3.70	36.42	090	S
35112		A	Repair artery rupture,spleen	17.38	10.45	2.22	30.05	090	S
35121		A	Repair defect of artery	24.58	19.12	3.66	47.46	090	S
35122		A	Repair artery rupture, belly	32.08	17.92	3.96	53.96	090	S
35131		A	Repair defect of artery	17.00	15.88	3.15	36.03	090	S
35132		A	Repair artery rupture, groin	20.40	18.68	3.58	42.66	090	S
35141		A	Repair defect of artery	13.28	14.70	2.88	30.86	090	S
35142		A	Repair artery rupture, thigh	14.62	16.10	3.24	33.96	090	S
35151		A	Repair defect of artery	15.76	15.36	2.94	34.06	090	S
35152		A	Repair artery rupture, knee	15.46	9.27	1.95	26.68	090	S
35161		A	Repair defect of artery	17.45	15.88	3.15	36.48	090	S
35162		A	Repair artery rupture	18.45	18.68	3.58	40.71	090	S
35180		A	Repair blood vessel lesion	12.16	7.37	1.48	21.01	090	S
35182		A	Repair blood vessel lesion	16.12	10.65	1.61	28.38	090	S
35184		A	Repair blood vessel lesion	10.79	9.73	1.96	22.48	090	S
35188		A	Repair blood vessel lesion	13.10	8.11	1.59	22.80	090	S
35189		A	Repair blood vessel lesion	17.12	11.33	2.21	30.66	090	S
35190		A	Repair blood vessel lesion	11.79	10.34	2.14	24.27	090	S
35201		A	Repair blood vessel lesion	8.90	10.07	1.94	20.91	090	S
35206		A	Repair blood vessel lesion	8.49	10.15	2.03	20.67	090	S
35207		A	Repair blood vessel lesion	9.06	10.80	1.93	21.79	090	S
35211		A	Repair blood vessel lesion	20.15	13.38	2.59	36.12	090	S
35216		A	Repair blood vessel lesion	17.12	10.68	2.08	29.88	090	S
35221		A	Repair blood vessel lesion	15.11	11.09	2.20	28.40	090	S
35226		A	Repair blood vessel lesion	8.17	10.28	1.95	20.40	090	S
35231		A	Repair blood vessel lesion	10.76	*13.78	2.91	27.45	090	S
35236		A	Repair blood vessel lesion	9.39	*12.02	2.56	23.97	090	S
35241		A	Repair blood vessel lesion	21.15	13.49	2.60	37.24	090	S
35246		A	Repair blood vessel lesion	18.14	16.95	2.15	37.24	090	S
35251		A	Repair blood vessel lesion	16.12	9.59	1.88	27.59	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
35256		A	Repair blood vessel lesion	10.14	12.40	2.39	24.93	090	S
35261		A	Repair blood vessel lesion	10.39	13.16	2.66	26.21	090	S
35266		A	Repair blood vessel lesion	9.06	*11.59	2.41	23.06	090	S
35271		A	Repair blood vessel lesion	20.15	12.53	2.56	35.24	090	S
35276		A	Repair blood vessel lesion	17.12	10.85	2.26	30.23	090	S
35281		A	Repair blood vessel lesion	15.11	17.28	3.37	35.76	090	S
35286		A	Repair blood vessel lesion	10.78	11.71	2.33	24.82	090	S
35301		A	Rechanneling of artery	15.95	14.46	2.81	33.22	090	S
35311		A	Rechanneling of artery	22.61	22.06	4.61	49.28	090	S
35321		A	Rechanneling of artery	11.08	12.96	2.69	26.73	090	S
35331		A	Rechanneling of artery	22.15	13.34	2.66	38.15	090	S
35341		A	Rechanneling of artery	23.67	17.37	3.53	44.57	090	S
35351		A	Rechanneling of artery	19.15	14.95	2.97	37.07	090	S
35355		A	Rechanneling of artery	15.11	15.42	2.99	33.52	090	S
35361		A	Rechanneling of artery	22.15	19.37	3.88	45.40	090	S
35363		A	Rechanneling of artery	23.16	22.77	4.40	50.33	090	S
35371		A	Rechanneling of artery	10.49	12.51	2.50	25.50	090	S
35372		A	Rechanneling of artery	12.28	11.20	2.28	25.76	090	S
35381		A	Rechanneling of artery	14.50	13.67	2.71	30.88	090	S
35390		A	Reoperation, carotid	3.19	1.67	0.39	5.25	ZZZ	S
35450		A	Repair arterial blockage	10.07	*12.89	1.38	24.34	000	N
35452		A	Repair arterial blockage	*6.91	4.35	0.61	11.87	000	S
35454		A	Repair arterial blockage	6.04	*7.73	1.53	15.30	000	S
35456		A	Repair arterial blockage	7.35	*9.41	1.69	18.45	000	S
35458		A	Repair arterial blockage	9.49	10.13	1.83	21.45	000	S
35459		A	Repair arterial blockage	8.63	10.39	1.69	20.71	000	S
35460		A	Repair venous blockage	6.04	3.16	0.74	9.94	000	S
35470		A	Repair arterial blockage	8.63	10.39	1.69	20.71	000	N
35471		A	Repair arterial blockage	10.07	*12.89	1.38	24.34	000	N
35472		A	Repair arterial blockage	6.91	3.61	0.85	11.37	000	N
35473		A	Repair arterial blockage	6.04	*7.73	1.53	15.30	000	N
35474		A	Repair arterial blockage	7.36	*9.42	1.69	18.47	000	N
35475		R	Repair arterial blockage	9.49	10.13	1.83	21.45	000	N
35476		A	Repair venous blockage	6.04	3.16	0.74	9.94	000	N
35480		A	Atherectomy, open	11.06	13.43	1.38	25.89	000	S
35481		A	Atherectomy, open	7.61	4.35	0.61	12.57	000	S
35482		A	Atherectomy, open	6.65	*8.51	1.53	16.69	000	S
35483		A	Atherectomy, open	8.10	*10.36	1.69	20.15	000	S
35484		A	Atherectomy, open	10.44	10.13	1.83	22.40	000	S
35485		A	Atherectomy, open	9.49	4.52	1.06	15.07	000	S
35490		A	Atherectomy, percutaneous	11.08	13.43	1.38	25.89	000	N
35491		A	Atherectomy, percutaneous	7.61	4.35	0.61	12.57	000	N
35492		A	Atherectomy, percutaneous	6.65	*8.51	1.53	16.69	000	N
35493		A	Atherectomy, percutaneous	8.10	*10.36	1.69	20.15	000	N
35494		A	Atherectomy, percutaneous	10.44	10.13	1.83	22.40	000	N
35495		A	Atherectomy, percutaneous	9.49	4.52	1.06	15.07	000	N
35501		A	Artery bypass graft	18.23	19.35	3.49	41.07	090	S
35506		A	Artery bypass graft	18.23	19.17	3.64	41.04	090	S
35507		A	Artery bypass graft	18.23	17.92	3.61	39.76	090	S
35508		A	Artery bypass graft	17.21	18.11	3.43	38.75	090	S
35509		A	Artery bypass graft	16.70	18.90	3.92	39.52	090	S
35511		A	Artery bypass graft	15.39	10.40	1.92	27.71	090	S
35515		A	Artery bypass graft	17.21	11.25	2.01	30.47	090	S
35516		A	Artery bypass graft	14.88	17.37	3.54	35.79	090	S
35518		A	Artery bypass graft	14.05	17.47	3.38	34.90	090	S
35521		A	Artery bypass graft	14.80	17.53	3.34	35.67	090	S
35526		A	Artery bypass graft	18.63	12.95	2.44	34.02	090	S
35531		A	Artery bypass graft	24.17	20.25	3.90	48.32	090	S
35533		A	Artery bypass graft	19.15	21.04	4.43	44.62	090	S
35536		A	Artery bypass graft	21.65	21.37	4.17	47.19	090	S
35541		A	Artery bypass graft	24.17	19.55	3.65	47.37	090	S
35546		A	Artery bypass graft	24.17	21.39	4.26	49.82	090	S
35548		A	Artery bypass graft	20.13	19.55	3.65	43.33	090	S
35549		A	Artery bypass graft	21.91	21.39	4.26	47.56	090	S
35551		A	Artery bypass graft	25.17	19.25	3.87	48.29	090	S
35556		A	Artery bypass graft	15.47	18.71	3.71	37.89	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
35558		A	Artery bypass graft	12.82	*16.41	3.23	32.46	090	S
35560		A	Artery bypass graft	22.12	20.22	3.93	46.27	090	S
35563		A	Artery bypass graft	13.83	8.32	1.70	23.85	090	S
35565		A	Artery bypass graft	13.83	*17.69	3.51	35.03	090	S
35566		A	Artery bypass graft	20.21	20.62	4.08	44.91	090	S
35571		A	Artery bypass graft	16.56	19.36	3.87	39.89	090	S
35582		A	Vein bypass graft	25.69	23.74	4.89	54.32	090	S
35583		A	Vein bypass graft	16.97	*20.44	4.13	40.54	090	S
35585		A	Vein bypass graft	19.05	22.95	4.63	46.63	090	S
35587		A	Vein bypass graft	17.07	21.51	4.13	42.71	090	S
35601		A	Artery bypass graft	16.19	18.83	3.33	38.35	090	S
35606		A	Artery bypass graft	17.40	17.55	3.51	38.46	090	S
35612		A	Artery bypass graft	14.39	16.75	3.30	34.44	090	S
35616		A	Artery bypass graft	14.39	16.79	3.42	34.60	090	S
35621		A	Artery bypass graft	13.23	*16.94	3.80	33.97	090	S
35623		A	Bypass graft, not vein	15.42	8.06	1.88	25.36	090	S
35626		A	Artery bypass graft	22.26	20.51	4.08	46.85	090	S
35631		A	Artery bypass graft	23.16	17.87	3.57	44.60	090	S
35636		A	Artery bypass graft	21.15	13.50	2.45	37.10	090	S
35641		A	Artery bypass graft	22.67	20.56	4.08	47.31	090	S
35642		A	Artery bypass graft	16.70	10.33	2.20	29.23	090	S
35645		A	Artery bypass graft	16.19	11.15	2.05	29.39	090	S
35646		A	Artery bypass graft	24.00	23.78	4.73	52.51	090	S
35650		A	Artery bypass graft	13.05	*16.71	3.56	33.32	090	S
35651		A	Artery bypass graft	23.67	24.09	4.69	52.45	090	S
35654		A	Artery bypass graft	17.62	22.10	4.42	44.14	090	S
35656		A	Artery bypass graft	13.86	*17.73	3.60	35.19	090	S
35661		A	Artery bypass graft	11.81	*15.11	3.30	30.22	090	S
35663		A	Artery bypass graft	12.82	*16.41	3.80	33.03	090	S
35665		A	Artery bypass graft	14.05	17.79	3.57	35.41	090	S
35666		A	Artery bypass graft	15.97	20.06	4.00	40.03	090	S
35671		A	Artery bypass graft	12.18	*15.60	4.08	31.86	090	S
35681		A	Artery bypass graft	8.05	*10.42	3.52	21.99	ZZZ	S
35691		A	Arterial transposition	16.70	19.62	3.81	40.13	090	S
35693		A	Arterial transposition	14.01	9.40	1.91	25.32	090	S
35694		A	Arterial transposition	17.81	9.33	2.17	29.31	090	S
35695		A	Arterial transposition	17.81	9.33	2.17	29.31	090	S
35700		A	Reoperation, bypass graft	3.08	1.61	0.38	5.07	ZZZ	S
35701		A	Exploration, carotid artery	4.54	*5.82	1.25	11.61	090	S
35721		A	Exploration, femoral artery	4.54	5.56	1.11	11.21	090	S
35741		A	Exploration popliteal artery	4.54	5.73	1.15	11.42	090	S
35761		A	Exploration of artery/vein	4.54	5.81	1.14	11.49	090	S
35800		A	Explore neck vessels	6.04	5.28	0.97	12.29	090	S
35820		A	Explore chest vessels	11.84	7.92	1.43	20.99	090	S
35840		A	Explore abdominal vessels	8.63	7.23	1.44	17.30	090	S
35860		A	Explore limb vessels	4.54	5.81	1.15	11.50	090	S
35870		A	Repair vessel graft defect	20.35	10.64	2.47	33.46	090	S
35875		A	Removal of clot in graft	9.07	8.21	1.65	18.93	090	S
35876		A	Removal of clot in graft	12.91	8.21	1.65	22.77	090	S
35901		A	Excision, graft, neck	7.25	7.18	1.46	15.89	090	S
35903		A	Excision, graft, extremity	8.63	7.18	1.46	17.27	090	S
35905		A	Excision, graft, thorax	16.89	7.18	1.46	25.53	090	S
35907		A	Excision, graft, abdomen	17.68	7.18	1.46	26.32	090	S
36000		A	Place needle in vein	0.18	*0.24	0.04	0.46	XXX	N
36005		A	Injection, venography	0.95	0.47	0.04	1.46	000	N
36010		A	Place catheter in vein	2.43	2.11	0.31	4.85	XXX	N
36011		A	Place catheter in vein	3.14	1.90	0.22	5.26	XXX	N
36012		A	Place catheter in vein	3.52	2.67	0.32	6.51	XXX	N
36013		A	Place catheter in artery	2.52	2.11	0.31	4.94	XXX	N
36014		A	Place catheter in artery	3.02	2.28	0.27	5.57	XXX	N
36015		A	Place catheter in artery	3.52	2.67	0.32	6.51	XXX	N
36100		A	Establish access to artery	3.02	2.59	0.32	5.93	XXX	N
36120		A	Establish access to artery	2.01	2.32	0.30	4.63	XXX	N
36140		A	Establish access to artery	2.01	1.41	0.24	3.66	XXX	N
36145		A	Artery to vein shunt	2.01	*2.57	0.49	5.07	XXX	N
36160		A	Establish access to aorta	2.52	2.32	0.35	5.19	XXX	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
36200		A	Place catheter in aorta	3.02	2.73	0.28	6.03	XXX	N
36215		A	Place catheter in artery	4.47	2.78	0.23	7.48	XXX	N
36216		A	Place catheter in artery	5.28	3.29	0.27	8.84	XXX	N
36217		A	Place catheter in artery	6.30	3.92	0.32	10.54	XXX	N
36218		A	Place catheter in artery	1.01	0.62	0.05	1.68	XXX	N
36245		A	Place catheter in artery	5.07	3.15	0.26	8.48	XXX	N
36246		A	Place catheter in artery	5.28	3.29	0.27	8.84	XXX	N
36247		A	Place catheter in artery	6.30	3.92	0.32	10.54	XXX	N
36248		A	Place catheter in artery	1.01	0.62	0.05	1.68	XXX	N
36260		A	Insertion of infusion pump	9.27	6.74	1.41	17.42	090	S
36261		A	Revision of infusion pump	5.04	2.23	0.42	7.69	090	S
36262		A	Removal of infusion pump	3.70	1.93	0.40	6.03	090	S
36299		C	Vessel injection procedure	0.00	0.00	0.00	0.00	YYY	N
36400		A	Drawing blood	0.18	0.09	0.01	0.28	XXX	N
36405		A	Drawing blood	0.18	0.45	0.03	0.66	XXX	N
36406		A	Drawing blood	0.18	0.16	0.01	0.35	XXX	S
36410		A	Drawing blood	0.18	0.22	0.02	0.42	XXX	N
36415		G	Drawing blood	0.00	0.00	0.00	0.00	XXX	0
36420		A	Establish access to vein	1.01	0.51	0.05	1.57	XXX	N
36425		A	Establish access to vein	0.76	0.08	0.01	0.85	XXX	N
36430		A	Blood transfusion service	0.00	0.96	0.07	1.03	XXX	N
36440		A	Blood transfusion service	1.03	0.94	0.07	2.04	XXX	S
36450		A	Exchange transfusion service	2.23	1.88	0.18	4.29	XXX	N
36455		A	Exchange transfusion service	2.43	2.27	0.22	4.92	XXX	N
36460		A	Transfusion service, fetal	6.59	4.71	1.09	12.39	XXX	N
36468		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	XXX	S
36469		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	XXX	S
36470		A	Injection therapy of vein	1.02	0.27	0.04	1.33	010	S
36471		A	Injection therapy of veins	1.49	0.39	0.05	1.93	010	S
36481		A	Insertion of catheter, vein	5.99	5.30	0.61	12.90	000	S
36488		A	Insertion of catheter, vein	1.35	0.97	0.14	2.46	000	N
36489		A	Insertion of catheter, vein	1.22	1.12	0.17	2.51	000	N
36490		A	Insertion of catheter, vein	1.67	1.36	0.20	3.25	000	N
36491		A	Insertion of catheter, vein	1.43	1.71	0.32	3.46	000	N
36493		A	Repositioning of cvc	1.21	0.63	0.16	2.00	000	N
36500		A	Insertion of catheter, vein	3.52	0.08	0.01	3.61	000	N
36510		A	Insertion of catheter, vein	1.09	0.34	0.02	1.45	000	N
36520		A	Plasma and/or cell exchange	1.74	1.92	0.12	3.78	000	N
36522		A	Photopheresis	1.67	*2.48	0.37	4.52	000	S
36530		R	Insertion of infusion pump	4.83	4.82	1.02	10.67	010	S
36531		R	Revision of infusion pump	4.80	4.37	0.27	9.44	010	S
36532		R	Removal of infusion pump	3.23	1.77	0.37	5.37	010	S
36533		A	Insertion of access port	3.82	4.29	0.85	8.96	010	S
36534		A	Revision of access port	3.79	3.46	0.21	7.46	010	S
36535		A	Removal of access port	2.22	1.81	0.38	4.41	010	S
36600		A	Withdrawal of arterial blood	0.32	0.28	0.02	0.62	XXX	N
36620		A	Insertion catheter, artery	1.15	0.66	0.14	1.95	000	N
36625		A	Insertion catheter, artery	2.11	0.86	0.18	3.15	000	N
36640		A	Insertion catheter, artery	2.10	2.32	0.40	4.82	000	N
36660		A	Insertion catheter, artery	1.40	0.49	0.04	1.93	000	N
36680		A	Insert needle, bone cavity	1.20	1.24	0.10	2.54	000	N
36800		A	Insertion of cannula	2.43	2.22	0.28	4.93	000	N
36810		A	Insertion of cannula	3.97	4.85	0.74	9.56	000	S
36815		A	Insertion of cannula	2.62	*3.35	0.70	6.67	000	S
36821		A	Artery-vein fusion	8.39	7.24	1.46	17.09	090	S
36822		A	Insertion of cannula(s)	5.03	5.60	0.77	11.40	090	S
36825		A	Artery-vein graft	9.36	11.20	2.21	22.77	090	S
36830		A	Artery-vein graft	7.78	*9.96	2.36	20.10	090	S
36832		A	Revise artery-vein fistula	5.84	*7.48	2.38	15.70	090	S
36834		A	Repair A-V aneurysm	9.32	7.80	1.66	18.78	090	S
36835		A	Artery to vein shunt	6.54	3.42	0.79	10.75	090	S
36860		A	Cannula declotting	2.01	2.57	0.43	5.01	000	N
36861		A	Cannula declotting	2.52	*3.22	1.01	6.75	000	S
37140		A	Revision of circulation	22.15	16.29	3.34	41.78	090	S
37145		A	Revision of circulation	23.16	17.13	1.72	42.01	090	S
37160		A	Revision of circulation	20.15	17.74	3.79	41.68	090	S

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
37160		A	Revision of circulation	23.16	14.19	2.76	40.11	090	S
37161		A	Splice spleen/kidney veins	25.17	16.41	3.52	45.10	090	S
37200		A	Transcatheter biopsy	4.56	1.59	0.13	6.28	000	N
37201		A	Transcatheter therapy infuse	7.25	5.50	0.64	13.39	000	N
37202		A	Transcatheter therapy infuse	5.88	4.30	0.50	10.48	000	N
37203		A	Transcatheter retrieval	5.03	3.82	0.45	9.30	000	N
37204		A	Transcatheter occlusion	18.14	13.76	1.60	33.50	000	N
37205		A	Transcatheter stent	8.28	5.16	0.42	13.86	000	S
37206		A	Transcatheter stent	4.13	2.58	0.21	6.92	ZZZ	S
37207		A	Transcatheter stent	8.28	5.16	0.42	13.86	000	S
37208		A	Transcatheter stent	4.13	2.58	0.21	6.92	ZZZ	S
37209		A	Exchange arterial catheter	2.27	1.41	0.11	3.79	000	N
37565		A	Ligation of neck vein	3.90	3.79	0.74	8.43	090	S
37600		A	Ligation of neck artery	3.90	*4.98	0.80	9.68	090	S
37605		A	Ligation of neck artery	4.63	5.56	1.04	11.23	090	S
37606		A	Ligation of neck artery	4.63	*5.92	0.72	11.27	090	S
37607		A	Ligation of fistula	5.84	3.06	0.71	9.61	090	S
37609		A	Temporal artery procedure	2.27	2.22	0.38	4.87	010	S
37615		A	Ligation of neck artery	4.39	*5.62	1.11	11.12	090	S
37616		A	Ligation of chest artery	14.89	4.21	0.83	19.73	090	S
37617		A	Ligation of abdomen artery	14.19	8.00	1.54	23.73	090	S
37618		A	Ligation of extremity artery	3.90	*4.98	1.06	9.94	090	S
37620		A	Revision of major vein	9.24	8.81	1.48	19.53	090	S
37650		A	Revision of major vein	4.39	4.02	0.52	8.93	090	S
37660		A	Revision of major vein	9.85	5.75	1.07	16.47	090	S
37700		A	Revise leg vein	3.52	3.64	0.73	7.89	090	S
37720		A	Removal of leg vein	5.22	5.11	1.04	11.37	090	S
37730		A	Removal of leg veins	6.63	6.95	1.40	14.98	090	S
37735		A	Removal of leg veins/lesion	9.90	8.34	1.68	19.92	090	S
37760		A	Revision of leg veins	9.90	7.48	1.52	18.90	090	S
37780		A	Revision of leg vein	3.52	1.89	0.35	5.76	090	S
37785		A	Revise secondary varicocity	3.56	0.98	0.18	4.72	090	S
37788		A	Revascularization, penis	21.33	15.14	1.48	37.95	090	S
37790		A	Penile venous occlusion	8.02	5.70	0.55	14.27	090	S
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	YYY	S
38100		A	Removal of spleen, total	11.99	8.55	1.81	22.35	090	S
38101		A	Removal of spleen, partial	12.59	6.99	1.51	21.09	090	S
38102		A	Removal of spleen, total	4.80	2.51	0.58	7.89	ZZZ	S
38115		A	Repair of ruptured spleen	12.59	7.64	1.49	21.72	090	S
38200		A	Injection for spleen x-ray	2.64	1.71	0.15	4.50	000	S
38230		A	Bone marrow collection	3.16	2.78	0.21	6.15	010	N
38231		A	Stem cell collection	1.50	1.37	0.08	2.95	000	N
38240		A	Bone marrow/stem transplant	2.24	2.08	0.14	4.46	XXX	N
38241		A	Bone marrow/stem transplant	2.24	2.04	0.13	4.41	XXX	N
38300		A	Drainage lymph node lesion	1.46	0.58	0.10	2.16	010	S
38305		A	Drainage lymph node lesion	4.24	1.96	0.36	6.56	090	S
38308		A	Incision of lymph channels	4.55	3.37	0.45	8.37	090	S
38380		A	Thoracic duct procedure	6.53	4.44	0.76	11.73	090	S
38381		A	Thoracic duct procedure	12.10	7.56	1.50	21.16	090	S
38382		A	Thoracic duct procedure	9.24	4.84	1.13	15.21	090	S
38500		A	Biopsy/removal, lymph node(s)	2.83	1.59	0.31	4.73	010	S
38505		A	Needle biopsy, lymph node(s)	1.14	1.12	0.17	2.43	000	S
38510		A	Biopsy/removal, lymph node(s)	3.90	2.54	0.45	6.89	090	S
38520		A	Biopsy/removal, lymph node(s)	4.86	2.99	0.56	8.41	090	S
38525		A	Biopsy/removal, lymph node(s)	4.37	2.59	0.53	7.49	090	S
38530		A	Biopsy/removal, lymph node(s)	5.82	3.17	0.65	9.64	090	S
38542		A	Explore deep node(s), neck	5.41	4.26	0.59	10.26	090	S
38550		A	Removal neck/armpit lesion	5.42	3.23	0.63	10.28	090	S
38555		A	Removal neck/armpit lesion	13.05	7.27	1.38	21.70	090	S
38562		A	Removal, pelvic lymph nodes	9.65	6.88	1.20	17.73	090	S
38564		A	Removal, abdomen lymph nodes	10.00	7.39	1.51	18.90	090	S
38700		A	Removal of lymph nodes, neck	7.56	9.64	1.31	18.51	090	S
38720		A	Removal of lymph nodes, neck	12.29	*15.73	2.04	30.06	090	S
38724		A	Removal of lymph nodes, neck	13.22	14.36	2.00	29.58	090	S
38740		A	Remove armpit lymph nodes	6.28	4.72	1.00	12.00	090	S
38745		A	Remove armpits lymph nodes	8.08	8.28	1.76	18.12	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
38746		A	Remove thoracic lymph nodes	4.39	2.29	0.53	7.21	ZZZ	S
38747		A	Remove abdominal lymph nodes	4.89	2.56	0.59	8.04	ZZZ	S
38760		A	Remove groin lymph nodes	5.19	6.63	1.35	16.17	090	S
38765		A	Remove groin lymph nodes	14.98	12.67	2.42	30.07	090	S
38770		A	Remove pelvis lymph nodes	12.10	15.40	1.73	29.23	090	S
38780		A	Remove abdomen lymph nodes	15.17	16.06	3.13	34.36	090	S
38790		A	Injection for lymphatic xray	1.29	*1.64	0.19	3.12	000	N
38794		A	Access thoracic lymph duct	4.05	2.84	0.38	7.27	090	S
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	YYY	S
39000		A	Exploration of chest	5.03	6.05	1.08	12.16	090	S
39010		A	Exploration of chest	10.78	11.46	2.08	24.32	090	S
39200		A	Removal chest lesion	12.40	11.58	2.14	26.12	090	S
39220		A	Removal chest lesion	16.16	14.94	2.83	33.93	090	S
39400		A	Visualization of chest	5.11	5.12	0.95	11.18	010	S
39499		C	Chest procedure	0.00	0.00	0.00	0.00	YYY	S
39501		A	Repair diaphragm laceration	12.10	10.66	2.10	24.86	090	S
39502		A	Repair paraesophageal hernia	15.18	11.93	2.45	29.56	090	S
39503		A	Repair of diaphragm hernia	33.22	25.18	2.94	61.34	090	S
39520		A	Repair of diaphragm hernia	15.18	12.53	2.46	30.17	090	S
39530		A	Repair of diaphragm hernia	14.22	14.06	2.71	30.99	090	S
39531		A	Repair of diaphragm hernia	15.23	10.00	1.80	27.03	090	S
39540		A	Repair of diaphragm hernia	12.10	11.98	2.51	26.59	090	S
39541		A	Repair of diaphragm hernia	13.10	12.16	2.37	27.63	090	S
39545		A	Revision of diaphragm	12.10	7.90	1.31	21.31	090	S
39599		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	YYY	S
40490		A	Biopsy of lip	1.22	0.74	0.07	2.03	000	S
40500		A	Partial excision of lip	4.08	*5.23	0.94	10.25	090	S
40510		A	Partial excision of lip	4.57	*5.84	0.83	11.24	090	S
40520		A	Partial excision of lip	4.54	4.50	0.68	9.72	090	S
40525		A	Reconstruct lip with flap	7.26	*9.30	1.43	17.99	090	S
40527		A	Reconstruct lip with flap	8.71	*11.16	1.65	21.52	090	S
40530		A	Partial removal of lip	5.14	5.10	0.74	10.98	090	S
40650		A	Repair lip	3.49	*4.47	0.65	8.61	090	S
40652		A	Repair lip	4.08	*5.23	0.79	10.10	090	S
40654		A	Repair lip	5.13	*6.57	1.00	12.70	090	S
40700		A	Repair cleft lip/nasal	12.04	8.46	1.28	21.78	090	S
40701		A	Repair cleft lip/nasal	15.10	*19.33	1.62	36.05	090	S
40702		A	Repair cleft lip/nasal	12.34	9.37	1.10	22.81	090	S
40720		A	Repair cleft lip/nasal	12.91	9.59	1.79	24.29	090	S
40761		A	Repair cleft lip/nasal	14.00	10.84	1.74	26.58	090	S
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	YYY	S
40800		A	Drainage of mouth lesion	1.12	0.74	0.07	1.93	010	S
40801		A	Drainage of mouth lesion	2.48	1.70	0.16	4.34	010	S
40804		A	Removal foreign body, mouth	1.19	0.58	0.06	1.83	010	S
40805		A	Removal foreign body, mouth	2.64	2.50	0.30	5.44	010	S
40806		A	Incision of lip fold	0.31	0.36	0.03	0.70	000	S
40808		A	Biopsy of mouth lesion	0.91	0.76	0.08	1.75	010	S
40810		A	Excision of mouth lesion	1.26	1.18	0.11	2.55	010	S
40812		A	Excise/repair mouth lesion	2.26	1.50	0.14	3.90	010	S
40814		A	Excise/repair mouth lesion	3.27	3.23	0.32	6.82	090	S
40816		A	Excision of mouth lesion	3.52	3.22	0.33	7.07	090	S
40818		A	Excise oral mucosa for graft	2.26	2.25	0.20	4.71	090	S
40819		A	Excise lip or cheek fold	2.26	1.23	0.14	3.63	090	S
40820		A	Treatment of mouth lesion	1.23	0.53	0.06	1.82	010	S
40830		A	Repair mouth laceration	1.71	0.67	0.07	2.45	010	S
40831		A	Repair mouth laceration	2.41	1.94	0.21	4.56	010	S
40840		R	Reconstruction of mouth	8.31	6.28	0.73	15.32	090	S
40842		R	Reconstruction of mouth	8.31	6.28	0.73	15.32	090	S
40843		R	Reconstruction of mouth	11.63	8.80	1.03	21.46	090	S
40844		R	Reconstruction of mouth	15.37	11.63	1.36	28.36	090	S
40845		R	Reconstruction of mouth	17.94	23.99	1.93	43.86	090	S
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	YYY	S
41000		A	Drainage of mouth lesion	1.25	0.75	0.08	2.09	010	S
41005		A	Drainage of mouth lesion	1.21	0.62	0.07	1.90	010	S
41006		A	Drainage of mouth lesion	3.03	1.01	0.11	4.15	090	S
41007		A	Drainage of mouth lesion	2.69	2.90	0.30	5.09	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
41005		A	Drainage of mouth lesion	3.16	1.06	0.11	4.33	090	S
41009		A	Drainage of mouth lesion	3.35	3.31	0.34	7.00	090	S
41010		A	Incision of tongue fold	1.19	0.37	0.04	1.60	010	S
41015		A	Drainage of mouth lesion	3.72	0.57	0.10	4.69	090	S
41016		A	Drainage of mouth lesion	3.72	3.69	0.38	7.79	090	S
41017		A	Drainage of mouth lesion	3.72	1.40	0.14	5.26	090	S
41018		A	Drainage of mouth lesion	4.75	3.93	0.38	9.06	090	S
41100		A	Biopsy of tongue	1.56	0.80	0.08	2.46	010	S
41105		A	Biopsy of tongue	1.37	1.03	0.12	2.52	010	S
41108		A	Biopsy of floor of mouth	1.00	0.85	0.09	1.94	010	S
41110		A	Excision of tongue lesion	1.46	1.30	0.15	2.91	010	S
41112		A	Excision of tongue lesion	2.63	2.39	0.23	5.25	090	S
41113		A	Excision of tongue lesion	3.09	3.41	0.37	6.87	090	S
41114		A	Excision of tongue lesion	7.88	6.39	0.73	15.00	090	S
41115		A	Excision of tongue fold	1.69	1.78	0.17	3.64	010	S
41116		A	Excision of mouth lesion	2.36	2.49	0.27	5.12	090	S
41120		A	Partial removal of tongue	8.83	7.28	0.88	16.99	090	S
41130		A	Partial removal of tongue	10.27	9.06	1.14	20.47	090	S
41135		A	Tongue and neck surgery	14.29	*18.30	2.64	35.23	090	S
41140		A	Removal of tongue	23.46	18.89	2.45	44.80	090	S
41145		A	Tongue removal; neck surgery	27.58	22.79	2.95	53.32	090	S
41150		A	Tongue, mouth, jaw surgery	19.36	18.96	2.46	40.78	090	S
41153		A	Tongue, mouth, neck surgery	21.18	25.00	3.03	49.21	090	S
41155		A	Tongue, jaw, & neck surgery	23.40	*29.95	3.75	57.10	090	S
41250		A	Repair tongue laceration	1.06	1.07	0.11	3.04	010	S
41251		A	Repair tongue laceration	2.22	2.07	0.21	4.50	010	S
41252		A	Repair tongue laceration	2.92	2.35	0.26	5.53	010	S
41500		A	Fixation of tongue	3.50	3.29	0.26	7.05	090	S
41510		A	Tongue to lip surgery	3.32	2.53	0.45	6.30	090	S
41520		A	Reconstruction, tongue fold	2.63	2.88	0.28	5.79	090	S
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	YYY	S
41800		A	Drainage of gum lesion	1.12	0.69	0.07	1.88	010	S
41805		A	Removal foreign body, gum	1.19	0.84	0.08	2.11	010	S
41806		A	Removal foreign body, jawbone	2.64	1.64	0.15	4.43	010	S
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	XXX	S
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	XXX	S
41822		R	Excision of gum lesion	2.26	3.03	0.25	5.54	010	S
41823		R	Excision of gum lesion	3.15	4.20	0.34	7.69	090	S
41825		A	Excision of gum lesion	1.26	1.49	0.14	2.89	010	S
41826		A	Excision of gum lesion	2.26	2.07	0.18	4.51	010	S
41827		A	Excision of gum lesion	3.27	3.78	0.38	7.43	090	S
41828		R	Excision of gum lesion	3.04	4.07	0.33	7.44	010	S
41830		R	Removal of gum tissue	3.30	4.41	0.36	8.07	010	S
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	XXX	S
41870		R	Gum graft	0.00	0.00	0.00	0.00	XXX	S
41872		R	Repair gum	2.44	3.26	0.27	5.97	090	S
41874		R	Repair tooth socket	2.94	3.93	0.32	7.19	090	S
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	YYY	S
42000		A	Drainage mouth roof lesion	1.18	0.62	0.06	1.86	010	S
42100		A	Biopsy roof of mouth	1.26	0.79	0.08	2.13	010	S
42104		A	Excision lesion, mouth roof	1.59	1.62	0.17	3.38	010	S
42106		A	Excision lesion, mouth roof	2.63	2.22	0.21	5.06	010	S
42107		A	Excision lesion, mouth roof	4.20	4.91	0.50	9.61	090	S
42120		A	Remove palate/lesion	5.39	*6.90	1.01	13.30	090	S
42140		A	Excision of uvula	1.54	1.35	0.15	3.04	090	S
42145		A	Repair, palate, pharynx/uvula	7.04	*9.01	1.45	17.50	090	S
42160		A	Treatment mouth roof lesion	1.75	1.53	0.16	3.44	010	S
42180		A	Repair palate	2.45	2.24	0.26	4.95	010	S
42182		A	Repair palate	3.78	3.47	0.38	7.63	010	S
42200		A	Reconstruct cleft palate	9.48	7.19	0.85	17.52	090	S
42205		A	Reconstruct cleft palate	8.96	10.82	0.79	20.57	090	S
42210		A	Reconstruct cleft palate	10.02	12.51	0.95	23.48	090	S
42215		A	Reconstruct cleft palate	8.42	7.68	0.86	16.96	090	S
42220		A	Reconstruct cleft palate	6.65	5.40	0.81	12.86	090	S
42225		A	Reconstruct cleft palate	9.08	6.90	1.08	17.06	090	S
42226		A	Lengthening of palate	9.42	7.89	0.86	18.17	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
42227		A	Lengthening of palate	8.89	7.41	0.38	16.68	090	S
42235		A	Repair palate	7.50	5.55	0.49	13.54	090	S
42260		A	Repair nose to lip fistula	4.17	3.98	0.44	8.59	090	S
42280		A	Preparation, palate mold	1.49	1.99	0.17	3.65	010	S
42281		A	Insertion, palate prosthesis	1.77	1.47	0.15	3.39	010	S
42299		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	YYY	S
42300		A	Drainage of salivary gland	1.88	0.96	0.12	2.96	010	S
42305		A	Drainage of salivary gland	5.59	2.18	0.27	8.04	090	S
42310		A	Drainage of salivary gland	1.51	1.03	0.12	2.66	010	S
42320		A	Drainage of salivary gland	2.30	1.83	0.22	4.35	010	S
42325		A	Create salivary cyst drain	2.65	2.12	0.20	4.97	090	S
42326		A	Create salivary cyst drain	3.65	4.34	0.33	8.32	090	S
42330		A	Removal of salivary stone	2.16	1.10	0.12	3.38	010	S
42335		A	Removal of salivary stone	3.21	2.47	0.27	5.95	090	S
42340		A	Removal of salivary stone	4.47	4.25	0.45	9.17	090	S
42400		A	Biopsy of salivary gland	0.78	0.79	0.10	1.67	000	S
42405		A	Biopsy of salivary gland	3.24	1.54	0.19	4.97	010	S
42408		A	Excision of salivary cyst	4.41	3.24	0.38	8.03	090	S
42409		A	Drainage of salivary cyst	2.71	2.81	0.30	5.82	090	S
42410		A	Excise parotid gland/lesion	8.88	5.94	0.92	15.74	090	S
42415		A	Excise parotid gland/lesion	16.12	12.68	1.68	30.48	090	S
42420		A	Excise parotid gland/lesion	18.63	14.82	1.87	35.32	090	S
42425		A	Excise parotid gland/lesion	12.36	11.10	1.43	24.89	090	S
42426		A	Excise parotid gland/lesion	19.88	24.12	3.21	47.21	090	S
42440		A	Excision submaxillary gland	6.61	7.98	0.99	15.58	090	S
42450		A	Excision sublingual gland	4.38	3.42	0.35	8.15	090	S
42500		A	Repair salivary duct	4.06	4.61	0.50	9.17	090	S
42505		A	Repair salivary duct	5.92	7.34	0.86	14.12	090	S
42507		A	Parotid duct diversion	5.96	4.65	0.67	11.28	090	S
42508		A	Parotid duct diversion	8.64	7.61	0.94	17.19	090	S
42509		A	Parotid duct diversion	11.08	7.31	1.23	19.62	090	S
42510		A	Parotid duct diversion	7.71	7.65	0.84	16.20	090	S
42550		A	Injection for salivary x-ray	1.25	0.44	0.04	1.73	000	N
42600		A	Closure of salivary fistula	4.58	3.89	0.46	8.93	090	S
42650		A	Dilation of salivary duct	0.77	0.39	0.04	1.20	000	S
42660		A	Dilation of salivary duct	1.13	0.50	0.06	1.69	000	S
42665		A	Ligation of salivary duct	2.43	2.04	0.25	4.72	090	S
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	YYY	S
42700		A	Drainage of tonsil abscess	1.57	0.85	0.10	2.52	010	S
42720		A	Drainage of throat abscess	2.61	1.89	0.22	4.72	010	S
42725		A	Drainage of throat abscess	7.60	4.45	0.53	12.58	090	S
42800		A	Biopsy of throat	1.34	0.74	0.08	2.16	010	S
42802		A	Biopsy of throat	1.49	1.02	0.12	2.63	010	S
42804		A	Biopsy of upper nose/throat	1.19	1.09	0.13	2.41	010	S
42806		A	Biopsy of upper nose/throat	1.53	1.40	0.16	3.09	010	S
42808		A	Excise pharynx lesion	2.25	2.52	0.29	5.06	010	S
42809		A	Remove pharynx foreign body	1.76	0.82	0.08	2.66	010	S
42810		A	Excision of neck cyst	3.20	3.14	0.47	6.81	090	S
42815		A	Excision of neck cyst	6.75	8.47	1.12	16.34	090	S
42820		A	Remove tonsils and adenoids	3.59	3.15	0.32	7.06	090	S
42821		A	Remove tonsils and adenoids	4.10	3.93	0.46	8.49	090	S
42825		A	Removal of tonsils	3.21	2.64	0.33	6.18	090	S
42826		A	Removal of tonsils	3.19	3.86	0.43	7.48	090	S
42830		A	Removal of adenoids	2.49	1.86	0.27	4.62	090	S
42831		A	Removal of adenoids	2.61	2.36	0.25	5.22	090	S
42835		A	Removal of adenoids	2.22	1.86	0.10	4.18	090	S
42836		A	Removal of adenoids	3.10	2.79	0.31	6.20	090	S
42842		A	Extensive surgery of throat	8.13	6.69	0.73	15.55	090	S
42844		A	Extensive surgery of throat	12.73	10.85	1.27	24.85	090	S
42845		A	Extensive surgery of throat	21.88	18.62	2.22	42.72	090	S
42860		A	Excision of tonsil tags	2.14	1.89	0.21	4.24	090	S
42870		A	Excision of lingual tonsil	5.16	2.32	0.26	7.74	090	S
42880		A	Excise nose/throat lesion	6.01	4.62	0.52	11.15	090	S
42890		A	Partial removal of pharynx	11.67	8.99	1.03	21.69	090	S
42892		A	Revision of pharyngeal walls	13.94	10.92	1.27	26.13	090	S
42894		A	Revision of pharyngeal walls	20.68	16.06	1.83	38.57	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
42900		A	Repair throat wound	4.98	4.26	0.48	9.72	010	S
42950		A	Reconstruction of throat	7.70	9.86	1.10	18.66	090	S
42953		A	Repair throat, esophagus	8.21	6.34	0.93	15.48	090	S
42955		A	Surgical opening of throat	6.50	3.32	0.43	10.25	090	S
42960		A	Control throat bleeding	2.28	1.08	0.12	3.48	010	S
42961		A	Control throat bleeding	5.18	1.75	0.19	7.12	090	S
42962		A	Control throat bleeding	6.64	5.98	0.68	13.30	090	S
42970		A	Control nose/throat bleeding	4.78	1.03	0.10	5.91	090	N
42971		A	Control nose/throat bleeding	5.56	2.90	0.34	8.80	090	S
42972		A	Control nose/throat bleeding	6.55	4.55	0.73	11.83	090	S
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	YYY	S
43020		A	Incision of esophagus	7.72	6.58	0.71	15.01	090	S
43030		A	Throat muscle surgery	7.15	*9.15	1.21	17.51	090	S
43045		A	Incision of esophagus	18.83	12.45	2.36	33.64	090	S
43100		A	Excision of esophagus lesion	8.47	6.19	0.95	15.61	090	S
43101		A	Excision of esophagus lesion	15.11	9.48	1.88	26.47	090	S
43107		A	Removal of esophagus	27.20	22.50	4.42	54.12	090	S
43108		A	Removal of esophagus	32.64	25.27	4.77	62.68	090	S
43112		A	Removal of esophagus	29.67	21.55	4.22	55.54	090	S
43113		A	Removal of esophagus	33.63	25.27	4.77	63.67	090	S
43116		A	Partial removal of esophagus	29.87	25.27	4.77	59.71	090	S
43117		A	Partial removal of esophagus	28.47	25.27	4.77	58.51	090	S
43118		A	Partial removal of esophagus	31.65	25.27	4.77	61.69	090	S
43121		A	Partial removal of esophagus	27.69	21.36	4.19	53.24	090	S
43122		A	Partial removal of esophagus	27.69	21.36	4.19	53.24	090	S
43123		A	Partial removal of esophagus	31.65	25.27	4.77	61.69	090	S
43124		A	Removal of esophagus	24.73	22.50	4.42	51.65	090	S
43130		A	Removal of esophagus pouch	10.68	10.51	*1.60	22.79	090	S
43135		A	Removal of esophagus pouch	15.11	11.72	2.17	29.00	090	S
43200		A	Esophagus endoscopy	1.59	*2.04	0.26	3.89	000	S
43202		A	Esophagus endoscopy, biopsy	1.89	*2.41	0.31	4.61	000	N
43204		A	Esophagus endoscopy & inject	3.77	*4.83	0.36	8.96	000	N
43205		A	Esophagus endoscopy/ligation	3.79	2.70	0.18	6.67	000	N
43215		A	Esophagus endoscopy	2.60	*3.33	0.46	6.39	000	N
43216		A	Esophagus endoscopy/lesion	2.40	*3.58	0.37	6.35	000	N
43217		A	Esophagus endoscopy	2.90	*3.58	0.37	6.85	000	N
43219		A	Esophagus endoscopy	2.80	*3.58	0.34	6.72	000	N
43220		A	Esophagus endoscopy, dilation	2.10	*2.68	0.27	5.05	000	N
43226		A	Esophagus endoscopy, dilation	2.34	*3.00	0.26	5.60	000	N
43227		A	Esophagus endoscopy, repair	3.60	*4.61	0.34	8.55	000	N
43228		A	Esophagus endoscopy, ablation	3.77	4.79	0.38	8.94	000	N
43234		A	Upper GI endoscopy, exam	2.01	*2.57	0.30	4.88	000	N
43235		A	Upper GI endoscopy, diagnosis	2.39	*3.07	0.29	5.75	000	N
43239		A	Upper GI endoscopy, biopsy	2.69	*3.44	0.33	6.46	000	N
43241		A	Upper GI endoscopy with tube	2.59	*3.31	0.38	6.28	000	N
43243		A	Upper GI endoscopy & inject.	4.57	5.63	0.39	10.59	000	N
43244		A	Upper GI endoscopy/ligation	4.59	3.47	0.41	8.47	000	N
43245		A	Operative upper GI endoscopy	3.39	*4.34	0.40	8.13	000	N
43246		A	Place gastrostomy tube	4.33	*5.55	0.51	10.39	000	N
43247		A	Operative upper GI endoscopy	3.39	*4.34	0.38	8.11	000	N
43248		A	Upper GI endoscopy/guidewire	3.15	*4.03	0.35	7.53	000	N
43249		A	Esophagus endoscopy, dilation	2.90	3.73	0.30	6.93	000	N
43250		A	Upper GI endoscopy/tumor	3.20	*4.60	0.43	8.23	000	N
43251		A	Operative upper GI endoscopy	3.70	*4.60	0.43	8.73	000	N
43255		A	Operative upper GI endoscopy	4.40	5.63	0.38	10.41	000	N
43258		A	Operative upper GI endoscopy	4.55	5.41	0.38	10.34	000	N
43259		A	Endoscopic ultrasound exam	4.89	4.02	0.35	9.26	000	N
43260		A	Endoscopy,bile duct/pancreas	5.96	5.98	0.39	12.33	000	N
43261		A	Endoscopy,bile duct/pancreas	6.27	5.98	0.39	12.64	000	N
43262		A	Endoscopy,bile duct/pancreas	7.39	9.00	0.58	16.97	000	N
43263		A	Endoscopy,bile duct/pancreas	6.19	5.83	0.38	12.40	000	N
43264		A	Endoscopy,bile duct/pancreas	8.90	8.92	0.61	18.43	000	N
43265		A	Endoscopy,bile duct/pancreas	8.90	6.82	0.49	16.21	000	N
43267		A	Endoscopy,bile duct/pancreas	7.39	7.41	0.48	15.28	000	N
43268		A	Endoscopy,bile duct/pancreas	7.39	8.72	0.56	16.67	000	N
43269		A	Endoscopy,bile duct/pancreas	8.04	7.35	0.51	13.90	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
43271		A	Endoscopy,bile duct/pancreas	7.39	7.63	0.50	15.52	000	N
43272		A	Endoscopy,bile duct/pancreas	7.39	5.60	0.42	13.41	000	N
43300		A	Repair of esophagus	8.72	*11.17	1.70	21.59	090	S
43305		A	Repair esophagus and fistula	16.14	13.71	1.78	31.63	090	S
43310		A	Repair of esophagus	24.20	16.99	3.23	44.42	090	S
43312		A	Repair esophagus and fistula	27.26	13.72	2.30	43.28	090	S
43320		A	Fuse esophagus & stomach	14.49	11.68	2.05	28.22	090	S
43324		A	Revise esophagus & stomach	15.18	11.88	2.53	29.59	090	S
43325		A	Revise esophagus & stomach	14.63	11.61	2.29	28.53	090	S
43326		A	Revise esophagus & stomach	14.37	7.52	1.75	23.64	090	S
43330		A	Repair of esophagus	14.27	11.36	2.39	28.02	090	S
43331		A	Repair of esophagus	14.73	14.33	2.64	31.70	090	S
43340		A	Fuse esophagus & intestine	14.16	12.44	2.52	29.12	090	S
43341		A	Fuse esophagus & intestine	15.26	9.90	1.56	26.72	090	S
43350		A	Surgical opening, esophagus	11.25	7.88	1.15	20.28	090	S
43351		A	Surgical opening, esophagus	13.42	8.77	1.53	23.72	090	S
43352		A	Surgical opening, esophagus	10.92	8.86	1.47	21.25	090	S
43360		A	Gastrointestinal repair	26.06	21.36	4.19	51.61	090	S
43361		A	Gastrointestinal repair	29.67	25.27	4.77	59.71	090	S
43400		A	Ligate esophagus veins	15.55	10.82	1.63	28.00	090	S
43401		A	Esophagus surgery for veins	16.26	9.59	1.93	27.78	090	S
43405		A	Ligate/staple esophagus	14.84	14.33	2.64	31.81	090	S
43410		A	Repair esophagus wound	9.61	8.90	1.54	20.05	090	S
43415		A	Repair esophagus wound	15.86	12.74	2.52	31.12	090	S
43420		A	Repair esophagus opening	10.19	5.88	0.78	16.85	090	S
43425		A	Repair esophagus opening	15.58	9.94	1.71	27.23	090	S
43450		A	Dilate esophagus	1.38	0.68	0.05	2.11	000	N
43453		A	Dilate esophagus	1.51	1.51	0.11	3.13	000	N
43456		A	Dilate esophagus	3.52	2.47	0.24	6.23	000	N
43458		A	Dilation of esophagus	3.06	*1.52	0.27	4.85	000	N
43460		A	Pressure treatment esophagus	3.80	1.67	0.15	5.62	000	N
43499		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	YYY	N
43500		A	Surgical opening of stomach	7.60	6.13	1.20	14.93	090	S
43501		A	Surgical repair of stomach	13.85	8.58	1.83	24.26	090	S
43502		A	Surgical repair of stomach	15.82	8.58	1.83	26.23	090	S
43510		A	Surgical opening of stomach	9.27	8.29	0.94	18.50	090	N
43520		A	Incision of pyloric muscle	7.00	4.46	0.87	12.35	090	S
43600		A	Biopsy of stomach	1.91	0.50	0.05	2.46	000	N
43605		A	Biopsy of stomach	8.23	5.91	1.29	15.43	090	S
43610		A	Excision of stomach lesion	10.11	8.17	1.71	19.99	090	S
43611		A	Excision of stomach lesion	12.43	8.17	1.71	22.31	090	S
43620		A	Removal of stomach	21.03	15.38	3.19	39.60	090	S
43621		A	Removal of stomach	21.47	15.38	3.19	40.04	090	S
43622		A	Removal of stomach	22.82	15.38	3.19	41.39	090	S
43631		A	Removal of stomach, partial	18.10	12.42	2.66	33.18	090	S
43632		A	Removal stomach, partial	18.10	12.42	2.66	33.18	090	S
43633		A	Removal stomach, partial	18.54	12.42	2.66	33.62	090	S
43634		A	Removal stomach, partial	19.89	20.83	4.57	45.29	090	S
43635		A	Partial removal of stomach	2.06	1.08	0.26	3.40	ZZZ	S
43638		A	Partial removal of stomach	20.15	12.75	2.73	35.63	090	S
43639		A	Removal stomach, partial	20.64	12.75	2.73	36.12	090	S
43640		A	Vagotomy & pylorus repair	13.28	10.34	2.19	25.81	090	S
43641		A	Vagotomy & pylorus repair	13.28	10.34	2.18	25.80	090	S
43750		A	Place gastrostomy tube	5.71	4.35	0.56	10.62	010	N
43760		A	Change gastrostomy tube	1.10	0.69	0.09	1.88	000	N
43761		A	Reposition gastrostomy tube	2.01	1.06	0.25	3.32	000	N
43800		A	Reconstruction of pylorus	9.41	8.85	1.47	17.73	090	S
43810		A	Fusion of stomach and bowel	10.08	7.64	1.53	19.25	090	S
43820		A	Fusion of stomach and bowel	10.43	8.29	1.75	20.47	090	S
43825		A	Fusion of stomach and bowel	13.28	11.08	2.30	26.66	090	S
43830		A	Place gastrostomy tube	4.84	*6.19	1.19	12.22	090	S
43831		A	Place gastrostomy tube	6.41	5.20	0.93	12.54	090	S
43832		A	Place gastrostomy tube	10.68	7.95	1.36	19.99	090	S
43840		A	Repair of stomach lesion	10.45	7.84	1.66	19.95	090	S
43842		A	Gastroplasty for obesity	13.76	13.72	2.93	30.41	090	S
43843		A	Gastroplasty for obesity	13.76	13.72	2.93	30.41	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
43846		A	Gastric bypass for obesity	17.84	14.80	3.30	35.94	090	S
43847		A	Gastric bypass for obesity	19.87	14.80	3.30	37.97	090	S
43848		A	Revision gastroplasty	22.10	14.80	3.30	40.20	090	S
43850		A	Revise stomach-bowel fusion	18.14	11.64	2.25	32.03	090	S
43855		A	Revise stomach-bowel fusion	19.15	10.44	2.28	31.87	090	S
43860		A	Revise stomach-bowel fusion	18.14	11.46	2.51	32.11	090	S
43865		A	Revise stomach-bowel fusion	19.15	13.39	2.98	35.52	090	S
43870		A	Repair stomach opening	6.56	5.77	1.14	13.47	090	S
43880		A	Repair stomach-bowel fistula	18.14	8.25	1.76	28.15	090	S
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	YYY	N
44005		A	Freeing of bowel adhesion	12.52	8.28	1.75	22.55	090	S
44010		A	Incision of small bowel	9.24	6.91	1.42	17.57	090	S
44015		A	Insert needle catheter, bowel	2.62	3.22	0.45	6.29	ZZZ	S
44020		A	Exploration of small bowel	10.69	7.81	1.65	20.15	090	S
44021		A	Decompress small bowel	10.83	7.00	1.48	19.31	090	S
44025		A	Incision of large bowel	11.07	7.74	1.61	20.42	090	S
44050		A	Reduce bowel obstruction	10.05	7.77	1.64	19.46	090	S
44055		A	Correct malrotation of bowel	11.92	7.66	1.60	21.18	090	S
44100		A	Biopsy of bowel	2.01	1.38	0.13	3.52	000	N
44110		A	Excision of bowel lesion(s)	9.01	7.67	1.58	18.26	090	S
44111		A	Excision of bowel lesion(s)	11.05	9.67	2.14	22.86	090	S
44120		A	Removal of small intestine	13.15	9.46	2.02	24.63	090	S
44121		A	Removal of small intestine	4.45	2.32	0.54	7.31	ZZZ	S
44125		A	Removal of small intestine	13.15	10.75	2.28	26.18	090	S
44130		A	Bowel to bowel fusion	11.09	8.67	1.86	21.62	090	S
44139		A	Mobilization of colon	2.23	1.17	0.27	3.67	ZZZ	S
44140		A	Partial removal of colon	16.97	11.37	2.40	30.74	090	S
44141		A	Partial removal of colon	17.36	11.86	2.55	31.77	090	S
44143		A	Partial removal of colon	15.00	12.26	2.62	29.88	090	S
44144		A	Partial removal of colon	15.00	12.06	2.53	29.59	090	S
44145		A	Partial removal of colon	21.29	13.25	2.78	37.32	090	S
44146		A	Partial removal of colon	22.22	14.98	3.14	40.34	090	S
44147		A	Partial removal of colon	16.23	15.34	3.30	34.87	090	S
44150		A	Removal of colon	19.04	14.84	3.17	37.05	090	S
44151		A	Removal of colon/ileostomy	17.95	10.21	2.22	30.38	090	S
44152		A	Removal of colon/ileostomy	22.98	15.44	3.36	41.78	090	S
44153		A	Removal of colon/ileostomy	24.69	19.35	3.63	47.67	090	S
44155		A	Removal of colon	22.09	16.85	3.50	42.24	090	S
44156		A	Removal of colon/ileostomy	20.48	11.40	2.52	34.40	090	S
44160		A	Removal of colon	14.09	12.44	2.68	29.21	090	S
44300		A	Open bowel to skin	7.77	6.03	1.29	15.09	090	S
44310		A	Ileostomy/jejunostomy	10.07	7.88	1.66	19.61	090	S
44312		A	Revision of ileostomy	5.34	3.08	0.45	8.87	090	S
44314		A	Revision of ileostomy	9.77	6.68	1.21	17.66	090	S
44316		A	Devise bowel pouch	13.59	9.64	1.43	24.66	090	S
44320		A	Colostomy	11.39	7.46	1.57	20.42	090	S
44322		A	Colostomy with biopsies	10.31	9.07	1.88	21.26	090	S
44340		A	Revision of colostomy	4.92	1.68	0.35	6.95	090	S
44345		A	Revision of colostomy	10.05	4.84	1.03	15.92	090	S
44346		A	Revision of colostomy	11.13	6.65	1.38	19.16	090	S
44360		A	Small bowel endoscopy	2.92	*3.74	0.32	6.98	000	N
44361		A	Small bowel endoscopy, biopsy	3.23	*4.14	0.34	7.71	000	N
44363		A	Small bowel endoscopy	3.94	2.99	0.36	7.29	000	N
44364		A	Small bowel endoscopy	4.22	4.73	0.72	9.67	000	N
44365		A	Small bowel endoscopy	3.73	4.73	0.72	9.18	000	N
44366		A	Small bowel endoscopy	4.97	5.86	0.45	11.28	000	N
44369		A	Small bowel endoscopy	5.09	*6.52	0.50	12.11	000	N
44372		A	Small bowel endoscopy	4.97	5.83	0.67	11.47	000	N
44373		A	Small bowel endoscopy	3.94	*5.03	0.50	9.47	000	N
44376		A	Small bowel endoscopy	5.69	4.05	0.26	10.00	000	N
44377		A	Small bowel endoscopy	5.98	4.26	0.28	10.52	000	N
44378		A	Small bowel endoscopy	7.71	5.27	0.35	13.33	000	N
44380		A	Small bowel endoscopy	1.51	*1.94	0.22	3.67	000	N
44382		A	Small bowel endoscopy	1.82	*2.33	0.29	4.44	000	N
44385		A	Endoscopy of bowel pouch	1.82	*2.33	0.34	4.49	000	S
44386		A	Endoscopy, bowel pouch, biopsy	2.12	1.54	0.15	3.81	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
44388		A	Colon endoscopy	2.82	*3.61	0.50	6.93	000	S
44389		A	Colonoscopy with biopsy	3.13	*4.00	0.45	7.58	000	N
44390		A	Colonoscopy for foreign body	3.63	2.63	0.28	6.74	000	N
44391		A	Colonoscopy for bleeding	4.32	5.26	0.53	10.11	000	N
44392		A	Colonoscopy & polypectomy	3.82	*5.16	0.70	9.68	000	N
44393		A	Colonoscopy, lesion removal	4.84	5.41	0.70	10.95	000	N
44394		A	Colonoscopy w/snare	4.43	*5.16	0.70	10.29	000	N
44500		A	Intro, gastrointestinal tube	0.49	0.36	0.02	0.87	000	N
44602		A	Suture, small intestine	9.72	7.65	1.62	18.99	090	S
44603		A	Suture, small intestine	12.94	9.09	1.96	23.99	090	S
44604		A	Suture, large intestine	12.94	7.87	1.67	22.48	090	S
44605		A	Repair of bowel lesion	13.91	9.37	2.02	25.30	090	S
44615		A	Intestinal stricturoplasty	12.89	6.74	1.57	21.20	090	S
44620		A	Repair bowel opening	9.65	5.97	1.26	16.88	090	S
44625		A	Repair bowel opening	12.10	9.58	2.03	23.71	090	S
44640		A	Repair bowel-skin fistula	13.34	6.54	1.35	21.23	090	S
44650		A	Repair bowel fistula	13.76	7.33	1.46	22.55	090	S
44660		A	Repair bowel-bladder fistula	13.14	8.34	1.21	22.69	090	S
44661		A	Repair bowel-bladder fistula	15.44	13.94	2.52	31.90	090	S
44680		A	Surgical revision, intestine	12.41	9.71	2.14	24.26	090	S
44799		C	Intestine surgery procedure	0.00	0.00	0.00	0.00	YYY	S
44800		A	Excision of bowel pouch	10.12	5.24	1.08	16.44	090	S
44820		A	Excision of mesentery lesion	9.31	5.80	1.21	16.32	090	S
44850		A	Repair of mesentery	8.64	5.60	1.18	15.42	090	S
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	YYY	S
44900		A	Drainage of appendix abscess	7.86	4.28	0.88	13.02	090	S
44950		A	Appendectomy	5.06	4.89	1.01	11.96	090	S
44955		A	Appendectomy	1.53	*1.96	0.60	4.09	ZZZ	S
44960		A	Appendectomy	9.78	5.89	1.24	16.91	090	S
45000		A	Drainage of pelvic abscess	4.28	1.59	0.24	6.11	090	S
45005		A	Drainage of rectal abscess	1.96	1.29	0.21	3.46	010	S
45020		A	Drainage of rectal abscess	4.40	2.61	0.51	7.52	090	S
45100		A	Biopsy of rectum	3.38	1.88	0.35	5.61	090	S
45108		A	Removal of anorectal lesion	4.28	2.66	0.53	7.47	090	S
45110		A	Removal of rectum	21.68	16.32	3.43	41.43	090	S
45111		A	Partial removal of rectum	14.97	11.77	2.49	29.23	090	S
45112		A	Removal of rectum	24.02	16.06	3.36	43.44	090	S
45113		A	Partial proctectomy	24.69	16.06	3.36	44.11	090	S
45114		A	Partial removal of rectum	21.20	15.39	3.24	39.83	090	S
45116		A	Partial removal of rectum	19.09	10.77	2.34	32.20	090	S
45120		A	Removal of rectum	22.78	16.39	3.54	42.71	090	S
45121		A	Removal of rectum and colon	24.96	10.79	2.01	37.76	090	S
45123		A	Partial proctectomy	13.27	11.77	2.49	27.53	090	S
45130		A	Excision of rectal prolapse	13.03	8.92	1.79	23.74	090	S
45135		A	Excision of rectal prolapse	15.36	15.95	3.50	34.81	090	S
45150		A	Excision of rectal stricture	5.26	3.38	0.63	9.27	090	S
45160		A	Excision of rectal lesion	12.34	7.46	1.56	21.36	090	S
45170		A	Excision of rectal lesion	9.40	4.62	0.96	14.98	090	S
45190		A	Destruction, rectal tumor	7.91	5.09	1.06	14.06	090	S
45300		A	Proctosigmoidoscopy	0.70	0.55	0.07	1.32	000	S
45303		A	Proctosigmoidoscopy	0.50	*0.64	0.12	1.26	000	S
45305		A	Proctosigmoidoscopy; biopsy	1.01	0.84	0.14	1.99	000	S
45307		A	Proctosigmoidoscopy	1.71	1.27	0.18	3.16	000	S
45308		A	Proctosigmoidoscopy	1.51	1.13	0.20	2.84	000	S
45309		A	Proctosigmoidoscopy	2.01	1.13	0.20	3.34	000	S
45315		A	Proctosigmoidoscopy	2.54	1.19	0.18	3.91	000	S
45317		A	Proctosigmoidoscopy	2.73	1.26	0.19	4.18	000	S
45320		A	Proctosigmoidoscopy	2.88	1.87	0.34	5.09	000	S
45321		A	Proctosigmoidoscopy	2.12	1.47	0.27	3.86	000	S
45330		A	Sigmoidoscopy, diagnostic	0.96	*1.23	0.12	2.31	000	N
45331		A	Sigmoidoscopy and biopsy	1.26	*1.61	0.15	3.02	000	N
45332		A	Sigmoidoscopy	1.96	1.76	0.16	3.88	000	N
45333		A	Sigmoidoscopy & polypectomy	1.96	2.24	0.26	4.46	000	N
45334		A	Sigmoidoscopy for bleeding	2.99	2.71	0.23	5.93	000	N
45337		A	Sigmoidoscopy, decompression	2.36	*3.03	0.38	5.77	000	N
45338		A	Sigmoidoscopy	2.57	2.24	0.26	5.07	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
45339		A	Sigmoidoscopy	3.14	3.24	0.31	6.69	000	N
45355		A	Surgical colonoscopy	3.52	1.17	0.10	4.79	000	N
45378		A	Diagnostic colonoscopy	3.70	4.13	0.39	8.22	000	N
45379		A	Colonoscopy	4.72	5.33	0.45	10.50	000	N
45380		A	Colonoscopy and biopsy	4.01	4.79	0.40	9.20	000	N
45382		A	Colonoscopy, control bleeding	5.73	5.87	0.41	12.01	000	N
45383		A	Colonoscopy, lesion removal	5.87	5.92	0.50	12.29	000	N
45384		A	Colonoscopy	4.70	*6.65	0.58	11.93	000	N
45385		A	Colonoscopy, lesion removal	5.31	*6.65	0.58	12.54	000	N
45500		A	Repair of rectum	6.59	5.95	1.21	13.75	090	S
45505		A	Repair of rectum	5.54	6.29	1.23	13.06	090	S
45520		A	Treatment of rectal prolapse	0.55	0.61	0.10	1.26	000	N
45540		A	Correct rectal prolapse	11.98	9.89	2.10	23.97	090	S
45541		A	Correct rectal prolapse	9.79	10.17	2.04	22.00	090	S
45550		A	Repair rectum; remove sigmoid	13.38	11.49	2.38	27.25	090	S
45560		A	Repair of rectocele	7.48	4.79	0.98	13.25	090	S
45562		A	Exploration/repair of rectum	11.13	8.09	1.58	20.80	090	S
45563		A	Exploration/repair of rectum	17.55	12.77	2.49	32.81	090	S
45800		A	Repair rectum/bladder fistula	12.75	9.82	1.45	24.02	090	S
45805		A	Repair fistula; colostomy	15.08	12.32	2.39	29.79	090	S
45820		A	Repair rectourethral fistula	13.31	8.98	1.23	23.52	090	S
45825		A	Repair fistula; colostomy	15.45	9.87	1.66	26.98	090	S
45900		A	Reduction of rectal prolapse	1.68	0.58	0.11	2.37	010	S
45905		A	Dilation of anal sphincter	1.51	0.71	0.12	2.34	010	S
45910		A	Dilation of rectal narrowing	1.86	0.87	0.13	2.86	010	S
45915		A	Remove rectal obstruction	2.09	0.78	0.09	2.96	010	N
45999		C	Rectum surgery procedure	0.00	0.00	0.00	0.00	YYY	N
46030		A	Removal of rectal marker	1.20	0.40	0.07	1.67	010	S
46040		A	Incision of rectal abscess	4.90	1.69	0.34	6.93	090	S
46045		A	Incision of rectal abscess	3.91	1.85	0.38	6.14	090	S
46050		A	Incision of anal abscess	1.14	0.60	0.11	1.85	010	S
46060		A	Incision of rectal abscess	5.03	5.35	1.12	11.50	090	S
46070		A	Incision of anal septum	2.63	1.37	0.33	4.33	090	S
46080		A	Incision of anal sphincter	2.35	2.13	0.43	4.91	010	S
46083		A	Incise external hemorrhoid	1.35	0.63	0.08	2.06	010	N
46200		A	Removal of anal fissure	3.02	3.29	0.66	6.97	090	S
46210		A	Removal of anal crypt	2.52	0.77	0.14	3.43	090	S
46211		A	Removal of anal crypts	4.07	1.90	0.38	6.35	090	S
46220		A	Removal of anal tab	1.51	0.63	0.12	2.26	010	S
46221		A	Ligation of hemorrhoid(s)	1.38	0.66	0.14	2.18	010	S
46230		A	Removal of anal tabs	2.52	0.83	0.12	3.47	010	S
46250		A	Hemorrhoidectomy	4.29	2.84	0.52	7.65	090	S
46255		A	Hemorrhoidectomy	4.95	4.72	0.85	10.52	090	S
46257		A	Remove hemorrhoids & fissure	5.87	5.23	1.08	12.18	090	S
46258		A	Remove hemorrhoids & fistula	6.26	5.87	1.22	13.35	*090	S
46260		A	Hemorrhoidectomy	5.70	6.07	1.25	14.02	090	S
46261		A	Remove hemorrhoids & fissure	6.54	6.62	1.34	14.50	090	S
46262		A	Remove hemorrhoids & fistula	6.77	6.72	1.39	14.88	090	S
46270		A	Removal of anal fistula	3.51	1.87	0.37	5.75	090	S
46275		A	Removal of anal fistula	4.35	5.50	1.13	10.98	090	S
46280		A	Removal of anal fistula	5.63	6.08	1.24	12.95	090	S
46285		A	Removal of anal fistula	3.88	2.28	0.43	6.59	090	S
46288		A	Repair anal fistula	6.83	3.57	0.83	11.23	090	S
46320		A	Removal of hemorrhoid clot	1.58	0.70	0.11	2.39	010	S
46500		A	Injection into hemorrhoids	1.53	0.32	0.06	1.91	010	S
46600		A	Diagnostic anoscopy	0.50	0.28	0.03	0.81	000	N
46604		A	Anoscopy and dilation	1.31	0.38	0.06	1.75	000	S
46606		A	Anoscopy and biopsy	0.81	0.36	0.06	1.23	000	S
46608		A	Anoscopy; remove foreign body	1.51	1.07	0.12	2.70	000	N
46610		A	Anoscopy; remove lesion	1.32	0.85	0.15	2.32	000	S
46611		A	Anoscopy	1.81	0.85	0.15	2.81	000	S
46612		A	Anoscopy; remove lesions	2.34	1.39	0.20	3.93	000	S
46614		A	Anoscopy; control bleeding	2.01	1.55	0.25	3.81	000	S
46615		A	Anoscopy	2.68	1.55	0.25	4.48	000	S
46700		A	Repair of anal stricture	6.40	6.14	1.24	13.78	090	S
46705		A	Repair of anal stricture	6.38	3.60	0.77	10.75	090	S

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
46715		A	Repair of anovaginal fistula	6.73	3.51	0.82	11.06	090	S
46716		A	Repair of anovaginal fistula	11.58	6.05	1.40	19.03	090	S
46730		A	Construction of absent anus	20.54	10.74	2.50	33.78	090	S
46735		A	Construction of absent anus	24.91	13.04	3.04	40.99	090	S
46740		A	Construction of absent anus	22.08	11.55	2.68	36.31	090	S
46742		A	Repair, imperforated anus	27.82	19.75	1.93	49.50	090	S
46744		A	Repair, cloacal anomaly	31.23	22.17	2.17	55.57	090	S
46745		A	Repair, cloacal anomaly	34.17	24.26	2.37	60.80	090	S
46748		A	Repair, cloacal anomaly	38.07	27.03	2.64	67.74	090	S
46750		A	Repair of anal sphincter	7.35	5.00	1.22	14.57	090	S
46751		A	Repair of anal sphincter	7.78	4.07	0.95	12.80	090	S
46753		A	Reconstruction of anus	6.04	4.89	1.02	11.95	090	S
46754		A	Removal of suture from anus	1.51	1.48	0.30	3.29	010	S
46760		A	Repair of anal sphincter	10.61	5.80	1.41	18.82	090	S
46761		A	Repair of anal sphincter	10.16	6.83	1.35	18.34	090	S
46762		A	Implant artificial sphincter	9.26	5.72	1.21	16.19	090	S
46900		A	Destruction, anal lesion(s)	1.81	0.39	0.06	2.26	010	S
46910		A	Destruction, anal lesion(s)	1.81	0.64	0.08	2.53	010	S
46916		A	Cryosurgery, anal lesion(s)	1.81	0.67	0.06	2.54	010	S
46917		A	Laser surgery, anal lesion(s)	1.81	1.94	0.31	4.06	010	S
46922		A	Excision of anal lesion(s)	1.81	1.28	0.23	3.32	010	S
46924		A	Destruction, anal lesion(s)	2.71	2.56	0.46	5.73	010	S
46934		A	Destruction of hemorrhoids	3.84	1.19	0.17	5.20	090	N
46935		A	Destruction of hemorrhoids	2.40	1.62	0.22	4.24	010	N
46936		A	Destruction of hemorrhoids	4.17	2.29	0.24	6.70	090	N
46937		A	Cryotherapy of rectal lesion	2.66	2.35	0.45	5.46	010	S
46938		A	Cryotherapy of rectal lesion	4.42	2.50	0.52	7.44	090	S
46940		A	Treatment of anal fissure	2.29	0.51	0.09	2.89	010	S
46942		A	Treatment of anal fissure	2.01	0.46	0.08	2.55	010	S
46945		A	Ligation of hemorrhoids	3.06	0.63	0.12	3.81	090	S
46946		A	Ligation of hemorrhoids	4.04	0.94	0.17	5.15	090	S
46999		C	Anus surgery procedure	0.00	0.00	0.00	0.00	YYY	S
47000		A	Needle biopsy of liver	1.90	1.40	0.13	3.43	000	N
47001		A	Needle biopsy, liver	1.90	1.40	0.13	3.43	ZZZ	S
47010		A	Drainage of liver lesion	8.75	6.75	1.13	16.63	090	S
47015		A	Inject/aspirate liver cyst	8.78	6.75	1.13	16.66	090	S
47100		A	Wedge biopsy of liver	6.75	3.29	0.67	10.71	090	S
47120		A	Partial removal of liver	19.99	12.00	2.48	34.47	090	S
47122		A	Extensive removal of liver	32.54	17.58	3.59	53.71	090	S
47125		A	Partial removal of liver	28.68	17.43	3.61	49.72	090	S
47130		A	Partial removal of liver	31.56	19.19	3.89	54.64	090	S
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	XXX	0
47134		R	Partial removal, donor liver	39.15	20.48	4.77	64.40	XXX	S
47135		R	Transplantation of liver	77.61	54.48	8.49	140.58	090	S
47136		R	Transplantation of liver	64.04	33.50	7.79	105.33	090	S
47300		A	Surgery for liver lesion	8.75	7.67	1.59	18.01	090	S
47350		A	Repair liver wound	11.29	7.46	1.49	20.24	090	S
47355		D	Repair liver wound	0.00	0.00	0.00	0.00	090	S
47360		A	Repair liver wound	15.34	10.93	2.18	28.45	090	S
47361		A	Repair liver wound	28.00	14.64	3.41	46.05	090	S
47362		A	Repair liver wound	10.00	5.23	1.22	16.45	090	S
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	YYY	S
47400		A	Incision of liver duct	18.90	8.53	1.36	28.79	090	S
47420		A	Incision of bile duct	15.31	9.48	1.99	26.78	090	S
47425		A	Incision of bile duct	14.79	11.71	2.45	28.95	090	S
47460		A	Incise bile duct sphincter	14.41	15.54	1.82	31.77	090	N
47480		A	Incision of gallbladder	8.05	7.60	1.59	17.24	090	S
47490		A	Incision of gallbladder	6.04	3.57	0.38	9.99	090	N
47500		A	Injection for liver x-rays	1.96	1.51	0.14	3.61	000	N
47505		A	Injection for liver x-rays	0.76	*0.98	0.14	1.88	000	N
47510		A	Insert catheter, bile duct	7.39	2.87	0.25	10.51	090	N
47511		A	Insert bile duct drain	9.91	2.87	0.25	13.03	090	N
47525		A	Change bile duct catheter	5.41	1.59	0.16	7.16	010	N
47530		A	Revise, reinsert bile tube	5.41	1.51	0.19	7.11	090	N
47550		A	Bile duct endoscopy	3.02	1.56	0.35	4.93	000	S
47552		A	Biliary endoscopy, thru skin	6.04	1.36	0.21	7.61	000	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
47553		A	Biliary endoscopy, thru skin	6.35	3.80	0.62	10.77	000	N
47554		A	Biliary endoscopy, thru skin	9.06	3.93	0.67	13.66	000	S
47555		A	Biliary endoscopy, thru skin	7.56	2.63	0.30	10.49	000	N
47556		A	Biliary endoscopy, thru skin	8.56	2.63	0.30	11.49	000	N
47600		A	Removal of gallbladder	10.68	7.53	1.58	19.79	090	S
47605		A	Removal of gallbladder	11.53	8.14	1.75	21.42	090	S
47610		A	Removal of gallbladder	13.86	9.37	2.00	25.23	090	S
47612		A	Removal of gallbladder	14.75	14.23	3.05	32.03	090	S
47620		A	Removal of gallbladder	15.79	11.23	2.36	29.38	090	S
47630		A	Remove bile duct stone	8.31	3.75	0.40	12.46	090	N
47700		A	Exploration of bile ducts	13.75	7.63	1.58	22.96	090	S
47701		A	Bile duct revision	26.57	8.21	1.90	36.68	090	S
47711		A	Excision of bile duct tumor	18.16	12.06	2.46	32.68	090	S
47712		A	Excision of bile duct tumor	23.74	12.06	2.46	38.26	090	S
47715		A	Excision of bile duct cyst	14.50	8.22	1.71	24.43	090	S
47716		A	Fusion of bile duct cyst	12.53	6.56	1.53	20.62	090	S
47720		A	Fuse gallbladder & bowel	11.90	9.16	1.93	22.99	090	S
47721		A	Fuse upper gi structures	14.41	11.42	2.47	28.30	090	S
47740		A	Fuse gallbladder & bowel	13.93	10.21	2.14	26.28	090	S
47741		A	Fuse gallbladder & bowel	16.23	14.35	3.02	33.60	090	S
47760		A	Fuse bile ducts and bowel	19.93	11.61	2.53	34.07	090	S
47765		A	Fuse liver ducts & bowel	19.04	14.61	2.97	36.62	090	S
47780		A	Fuse bile ducts and bowel	20.40	13.07	2.73	36.20	090	S
47785		A	Fuse bile ducts and bowel	24.41	13.07	2.73	40.21	090	S
47800		A	Reconstruction of bile ducts	17.71	13.22	2.43	33.36	090	S
47801		A	Placement, bile duct support	11.28	5.48	0.81	17.57	090	S
47802		A	Fuse liver duct & intestine	18.01	10.27	1.75	28.03	090	S
47900		A	Suture bile duct injury	15.83	13.22	2.43	31.28	090	S
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	YYY	S
48000		A	Drainage of abdomen	13.10	7.05	1.40	21.55	090	S
48001		A	Placement of drain, pancreas	15.54	8.13	1.89	25.56	090	S
48005		A	Resect/debride pancreas	17.57	9.19	2.14	28.90	090	S
48020		A	Removal of pancreatic stone	12.98	6.78	1.57	21.33	090	S
48100		A	Biopsy of pancreas	10.19	4.21	0.79	15.19	090	S
48102		A	Needle biopsy, pancreas	4.43	2.41	0.25	7.09	010	N
48120		A	Removal of pancreas lesion	12.79	9.72	2.07	24.58	090	S
48140		A	Partial removal of pancreas	18.27	13.29	2.83	34.39	090	S
48145		A	Partial removal of pancreas	19.09	15.71	3.16	37.96	090	S
48146		A	Pancreatectomy	21.73	16.49	1.92	40.14	090	S
48148		A	Removal of pancreatic duct	14.41	8.23	1.68	24.32	090	S
48150		A	Partial removal of pancreas	40.25	22.54	4.75	67.54	090	S
48152		A	Pancreatectomy	36.50	22.54	4.75	63.79	090	S
48153		A	Pancreatectomy	40.25	22.54	4.75	67.54	090	S
48154		A	Pancreatectomy	36.50	22.54	4.75	63.79	090	S
48155		A	Removal of pancreas	19.43	20.40	4.26	44.09	090	S
48160		N	Pancreas removal, transplant	0.00	0.00	0.00	0.00	XXX	0
48180		A	Fuse pancreas and bowel	20.88	12.50	2.63	36.11	090	S
48400		A	Injection, intraoperative	1.95	1.03	0.24	3.22	ZZZ	N
48500		A	Surgery of pancreas cyst	12.04	8.53	1.66	22.23	090	S
48510		A	Drain pancreatic pseudocyst	11.22	7.54	1.44	20.20	090	S
48520		A	Fuse pancreas cyst and bowel	12.97	11.30	2.43	26.70	090	S
48540		A	Fuse pancreas cyst and bowel	15.77	12.66	2.65	31.08	090	S
48545		A	Pancreatorrhaphy	14.65	7.66	1.79	24.10	090	S
48547		A	Duodenal exclusion	21.18	11.06	2.58	34.84	090	S
48550		N	Donor pancreatectomy	0.00	0.00	0.00	0.00	XXX	0
48554		N	Transplantallograft pancreas	#34.17	17.87	4.16	56.20	XXX	0
48556		A	Removal, allograft pancreas	13.89	7.26	1.69	22.84	090	S
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	YYY	S
49000		A	Exploration of abdomen	8.99	6.79	1.40	17.18	090	S
49002		A	Reopening of abdomen	9.40	6.05	1.21	16.66	090	S
49010		A	Exploration behind abdomen	11.19	6.95	1.31	19.45	090	S
49020		A	Drain abdominal abscess	9.06	4.82	0.91	14.79	090	S
49040		A	Drain abdominal abscess	8.74	6.54	1.27	16.55	090	S
49060		A	Drain abdominal abscess	10.55	5.54	1.01	17.10	090	S
49080		A	Puncture, peritoneal cavity	1.35	0.87	0.08	2.30	000	N
49081		A	Removal of abdominal fluid	1.26	0.75	0.07	2.08	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
49085		A	Remove abdomen foreign body	7.91	3.46	0.67	12.04	090	S
49180		A	Biopsy, abdominal mass	1.49	1.82	0.20	3.51	000	N
49200		A	Removal of abdominal lesion	9.19	8.38	1.70	19.27	090	S
49201		A	Removal of abdominal lesion	13.60	12.10	2.50	28.20	090	S
49215		A	Excise sacral spine tumor	21.05	8.50	1.59	31.14	090	S
49220		A	Multiple surgery, abdomen	13.66	12.30	2.53	28.49	090	S
49250		A	Excision of umbilicus	7.42	4.52	0.96	12.90	090	S
49255		A	Removal of omentum	4.04	*5.16	1.15	10.35	090	S
49400		A	Air injection into abdomen	1.88#	1.12	0.17	3.17	000	S
49420		A	Insert abdominal drain	2.22	1.58	0.20	4.00	000	S
49421		A	Insert abdominal drain	4.89	4.14	0.81	9.84	090	S
49422		A	Remove perm cannula/catheter	5.85	4.14	0.81	10.80	010	S
49425		A	Insert abdomen-venous drain	10.22	8.48	1.78	20.48	090	S
49426		A	Revise abdomen-venous shunt	8.57	5.39	1.07	15.03	090	S
49427		A	Injection, abdominal shunt	0.89	0.49	0.03	1.41	000	N
49428		A	Ligation of shunt	1.98	1.04	0.24	3.26	010	S
49429		A	Removal of shunt	6.35	3.32	0.77	10.44	010	S
49495		A	Repair inguinal hernia, init	5.79	4.98	0.95	11.72	090	S
49496		A	Repair inguinal hernia, init	8.37	5.04	1.08	14.49	090	S
49500		A	Repair inguinal hernia	4.41	4.98	0.95	10.34	090	S
49501		A	Repair inguinal hernia, init	7.26	5.04	1.08	13.38	090	S
49505		A	Repair inguinal hernia	6.17	4.51	0.94	11.62	090	S
49507		A	Repair, inguinal hernia	7.40	5.04	1.08	13.52	090	S
49520		A	Rerepair inguinal hernia	7.87	5.22	1.11	14.20	090	S
49521		A	Repair inguinal hernia, rec	9.43	5.04	1.08	15.55	090	S
49525		A	Repair inguinal hernia	6.97	5.55	1.16	13.68	090	S
49540		A	Repair lumbar hernia	7.91	5.20	1.12	14.23	090	S
49550		A	Repair femoral hernia	6.97	4.61	0.97	12.55	090	S
49553		A	Repair femoral hernia, init	7.40	4.61	0.97	12.98	090	S
49555		A	Repair femoral hernia	7.29	6.07	1.26	14.62	090	S
49557		A	Repair femoral hernia, recur	8.73	6.07	1.26	16.06	090	S
49560		A	Repair abdominal hernia	9.48	5.65	1.19	16.32	090	S
49561		A	Repair incisional hernia	11.38	5.65	1.19	18.22	090	S
49565		A	Rerepair abdominal hernia	9.48	6.41	1.35	17.24	090	S
49566		A	Repair incisional hernia	11.38	6.41	1.35	19.14	090	S
49568		A	Hernia repair w/mesh	4.89	2.56	0.59	8.04	ZZZ	S
49570		A	Repair epigastric hernia	4.46	4.38	0.91	9.75	090	S
49572		A	Repair, epigastric hernia	5.35	5.60	1.18	12.13	090	S
49580		A	Repair umbilical hernia	3.24	*4.15	0.94	8.33	090	S
49582		A	Repair umbilical hernia	5.13	4.61	0.94	10.68	090	S
49585		A	Repair umbilical hernia	4.95	4.41	0.91	10.27	090	S
49587		A	Repair umbilical hernia	5.93	4.41	0.91	11.25	090	S
49590		A	Repair abdominal hernia	6.55	5.63	1.22	13.40	090	S
49600		A	Repair umbilical lesion	9.48	5.26	0.77	15.51	090	S
49605		A	Repair umbilical lesion	21.92	8.57	1.77	32.26	090	S
49606		A	Repair umbilical lesion	17.93	8.31	0.96	27.20	090	S
49610		A	Repair umbilical lesion	9.83	5.48	1.27	16.58	090	S
49611		A	Repair umbilical lesion	8.25	9.00	0.58	17.83	090	S
49900		A	Repair of abdominal wall	4.54	3.66	0.75	8.95	090	S
49905		A	Omental flap	6.55	3.42	0.80	10.77	ZZZ	S
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	YYY	S
50010		A	Exploration of kidney	10.07	9.55	1.13	20.75	090	S
50020		A	Drainage of kidney abscess	12.41	6.80	0.85	20.06	090	S
50040		A	Drainage of kidney	13.80	7.18	0.82	21.80	090	N
50045		A	Exploration of kidney	14.48	9.81	0.89	25.18	090	S
50060		A	Removal of kidney stone	18.00	12.25	1.21	31.46	090	S
50065		A	Incision of kidney	19.62	13.93	1.35	34.90	090	S
50070		A	Incision of kidney	19.15	12.87	1.35	33.37	090	S
50075		A	Removal of kidney stone	24.05	16.87	1.62	42.54	090	S
50080		A	Removal of kidney stone	13.98	12.20	1.15	27.33	090	S
50081		A	Removal of kidney stone	20.58	14.96	1.44	36.98	090	S
50100		A	Revise kidney blood vessels	15.11	10.34	1.35	26.80	090	S
50120		A	Exploration of kidney	15.00	10.91	1.24	27.15	090	S
50125		A	Explore and drain kidney	15.61	10.95	1.06	27.62	090	S
50130		A	Removal of kidney stone	16.12	12.80	1.26	30.18	090	S
50135		A	Exploration of kidney	18.14	17.05	1.63	36.82	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
50200		A	Biopsy of kidney	2.63	2.61	0.22	5.46	000	N
50205		A	Biopsy of kidney	12.69	5.64	0.69	19.02	090	S
50220		A	Removal of kidney	15.98	13.31	1.43	30.72	090	S
50225		A	Removal of kidney	18.93	16.52	1.70	37.15	090	S
50230		A	Removal of kidney	20.56	18.40	1.84	40.80	090	S
50234		A	Removal of kidney & ureter	21.11	16.65	1.65	39.41	090	S
50236		A	Removal of kidney & ureter	23.33	17.74	1.74	42.81	090	S
50240		A	Partial removal of kidney	20.24	16.00	1.70	37.94	090	S
50280		A	Removal of kidney lesion	14.63	10.86	1.16	26.65	090	S
50290		A	Removal of kidney lesion	13.69	8.87	1.19	23.75	090	S
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	XXX	0
50320		A	Removal of donor kidney	21.22	16.49	2.40	40.11	090	S
50340		A	Removal of kidney	10.73	12.49	2.24	25.46	090	S
50360		A	Transplantation of kidney	27.05	24.45	4.24	55.74	090	S
50365		A	Transplantation of kidney	32.54	30.71	3.89	67.14	090	S
50370		A	Remove transplanted kidney	11.11	11.08	1.92	24.11	090	S
50380		A	Reimplantation of kidney	16.49	10.12	1.71	28.32	090	S
50390		A	Drainage of kidney lesion	3.24	1.69	0.15	5.08	000	N
50392		A	Insert kidney drain	5.59	2.36	0.20	8.15	000	N
50393		A	Insert ureteral tube	6.88	3.01	0.26	10.15	000	N
50394		A	Injection for kidney x-ray	0.76	0.55	0.05	1.36	000	N
50395		A	Create passage to kidney	5.15	3.33	0.29	8.77	000	N
50398		A	Measure kidney pressure	2.09	0.50	0.05	2.64	000	N
50400		A	Change kidney tube	1.46	0.53	0.05	2.04	000	S
50405		A	Revision of kidney/ureter	18.07	13.66	1.36	33.09	090	S
50600		A	Revision of kidney/ureter	22.45	17.29	1.74	41.48	090	S
50520		A	Repair of kidney wound	18.27	12.46	1.64	32.37	090	S
50525		A	Close kidney-skin fistula	15.93	10.34	1.50	27.77	090	S
50526		A	Repair renal-abdomen fistula	20.59	12.61	1.99	35.19	090	S
50540		A	Repair renal-abdomen fistula	22.15	7.39	2.32	31.86	090	S
50551		A	Revision of horseshoe kidney	19.15	13.41	1.54	34.10	090	S
50553		A	Kidney endoscopy	5.60	2.19	0.21	8.00	000	S
50555		A	Kidney endoscopy	5.99	1.66	0.17	7.82	000	S
50557		A	Kidney endoscopy & biopsy	6.53	4.70	0.45	11.68	000	S
50559		A	Kidney endoscopy & treatment	6.82	4.71	0.49	11.82	000	S
50561		A	Renal endoscopy; radiotracer	6.76	1.34	0.14	8.26	000	S
50570		A	Kidney endoscopy & treatment	7.59	5.12	0.49	13.20	000	S
50572		A	Kidney endoscopy	9.54	1.45	0.14	11.13	000	S
50574		A	Kidney endoscopy	10.35	7.25	0.75	18.35	000	S
50575		A	Kidney endoscopy & biopsy	11.02	7.08	0.64	18.74	000	S
50576		A	Kidney endoscopy	13.98	9.93	0.97	24.88	000	S
50578		A	Kidney endoscopy & treatment	10.99	8.69	0.77	20.45	000	S
50580		A	Renal endoscopy; radiotracer	11.35	3.79	1.19	16.33	000	S
50590		A	Kidney endoscopy & treatment	11.86	3.58	0.35	15.79	000	S
50600		A	Fragmenting of kidney stone	9.62	10.11	0.97	20.70	090	S
50605		A	Exploration of ureter	14.78	9.69	1.01	25.48	090	S
50610		A	Insert ureteral support	14.40	6.11	0.60	21.11	090	S
50620		A	Removal of ureter stone	14.86	11.77	1.17	27.80	090	S
50630		A	Removal of ureter stone	14.17	11.49	1.16	26.82	090	S
50650		A	Removal of ureter stone	13.95	12.71	1.25	27.91	090	S
50660		A	Removal of ureter	16.37	12.07	1.21	29.65	090	S
50684		A	Removal of ureter	18.44	12.49	1.53	32.46	090	S
50686		A	Injection for ureter x-ray	0.76	0.49	0.05	1.30	000	S
50688		A	Measure ureter pressure	1.51	0.37	0.04	1.92	000	S
50690		A	Change of ureter tube	1.14	0.39	0.04	1.57	010	S
50700		A	Injection for ureter x-ray	1.16	0.32	0.03	1.51	000	S
50715		A	Revision of ureter	14.10	12.57	1.29	27.96	090	S
50722		A	Release of ureter	17.80	11.24	1.49	30.33	090	S
50725		A	Release of ureter	15.11	10.32	1.97	27.40	090	S
50727		A	Release/revise ureter	17.12	12.05	1.75	30.92	090	S
50728		A	Revise ureter	7.57	5.37	0.51	13.45	090	S
50740		A	Revise ureter	11.13	7.90	0.77	19.80	090	S
50750		A	Fusion of ureter & kidney	17.12	13.03	1.88	32.03	090	S
50760		A	Fusion of ureter & kidney	18.14	14.04	1.26	33.44	090	S
50770		A	Fusion of ureters	17.12	13.47	1.48	32.07	090	S
			Splicing of ureters	18.14	15.23	1.53	34.90	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
50780		A	Reimplant ureter in bladder	17.12	13.78	1.46	32.36	090	S
50782		A	Reimplant ureter in bladder	18.23	13.78	1.46	33.47	090	S
50783		A	Reimplant ureter in bladder	19.17	13.78	1.46	34.41	090	S
50785		A	Reimplant ureter in bladder	19.15	15.42	1.80	36.37	090	S
50800		A	Implant ureter in bowel	13.10	14.67	1.51	29.28	090	S
50810		A	Fusion of ureter & bowel	18.14	12.57	1.75	32.46	090	S
50815		A	Urine shunt to bowel	18.14	19.76	2.75	40.65	090	S
50820		A	Construct bowel bladder	20.15	18.97	2.50	41.62	090	S
50825		A	Construct bowel bladder	26.19	30.54	3.33	60.06	090	S
50830		A	Revise urine flow	29.29	20.93	2.27	52.49	090	S
50840		A	Replace ureter by bowel	18.14	13.32	1.35	32.81	090	S
50845		A	Appendico-vesicostomy	19.52	13.87	1.35	34.74	090	S
50860		A	Transplant ureter to skin	13.99	10.92	1.16	26.07	090	S
50900		A	Repair of ureter	12.58	9.98	1.15	23.71	090	S
50920		A	Closure ureter/skin fistula	13.22	9.52	0.99	23.73	090	S
50930		A	Closure ureter/bowel fistula	17.61	12.50	1.22	31.33	090	S
50940		A	Release of ureter	13.47	9.90	0.95	24.32	090	S
50951		A	Endoscopy of ureter	5.84	1.67	0.17	7.68	000	S
50953		A	Endoscopy of ureter	5.24	1.66	0.16	8.06	000	S
50955		A	Ureter endoscopy & biopsy	6.75	2.55	0.25	9.55	000	S
50957		A	Ureter endoscopy & treatment	6.79	2.50	0.25	9.54	000	S
50959		A	Ureter endoscopy & tracer	4.40	3.38	0.29	8.07	000	S
50961		A	Ureter endoscopy & treatment	6.05	2.62	0.26	8.93	000	S
50970		A	Ureter endoscopy	7.14	5.17	0.52	12.83	000	S
50972		A	Ureter endoscopy & catheter	6.89	1.54	0.16	8.59	000	S
50974		A	Ureter endoscopy & biopsy	9.17	7.01	0.65	16.83	000	S
50976		A	Ureter endoscopy & treatment	9.04	6.41	0.62	16.07	000	S
50978		A	Ureter endoscopy & tracer	5.10	4.05	0.48	9.63	000	S
50980		A	Ureter endoscopy & treatment	6.85	3.13	0.30	10.28	000	S
51000		A	Drainage of bladder	0.78	0.48	0.05	1.31	000	S
51005		A	Drainage of bladder	1.02	0.46	0.04	1.52	000	S
51010		A	Drainage of bladder	2.54	0.97	0.11	3.62	010	S
51020		A	Incise & treat bladder	6.04	6.85	0.71	13.60	090	S
51030		A	Incise & treat bladder	6.04	4.53	0.43	11.00	090	S
51040		A	Incise & drain bladder	4.08	*5.23	0.75	10.06	090	S
51045		A	Incise bladder, drain ureter	6.04	4.96	0.50	11.50	090	S
51050		A	Removal of bladder stone	6.04	7.12	0.70	13.86	090	S
51060		A	Removal of ureter stone	8.05	*10.31	1.19	19.55	090	S
51065		A	Removal of ureter stone	8.05	7.08	0.71	15.84	090	S
51080		A	Drainage of bladder abecess	5.41	5.18	0.57	11.16	090	S
51500		A	Removal of bladder cyst	9.54	6.86	1.21	17.61	090	S
51520		A	Removal of bladder lesion	8.69	8.53	0.87	18.09	090	S
51525		A	Removal of bladder lesion	12.78	10.67	1.06	24.51	090	S
51530		A	Removal of bladder lesion	11.32	9.25	1.02	21.59	090	S
51535		A	Repair of ureter lesion	11.51	7.68	1.14	20.33	090	S
51550		A	Partial removal of bladder	14.34	10.71	1.17	26.22	090	S
51555		A	Partial removal of bladder	19.60	12.26	1.31	33.17	090	S
51565		A	Revise bladder & ureter(s)	20.01	15.84	1.67	37.52	090	S
51570		A	Removal of bladder	22.16	15.86	1.62	39.44	090	S
51575		A	Removal of bladder & nodes	27.93	22.87	2.25	53.05	090	S
51580		A	Remove bladder; revise tract	28.20	19.95	2.04	50.19	090	S
51585		A	Removal of bladder & nodes	32.22	25.12	2.42	59.76	090	S
51590		A	Remove bladder; revise tract	30.21	24.52	2.56	57.29	090	S
51595		A	Remove bladder; revise tract	34.25	33.80	3.34	71.39	090	S
51596		A	Remove bladder, create pouch	36.27	34.89	3.45	74.61	090	S
51597		A	Removal of pelvic structures	35.27	30.63	4.31	70.21	090	S
51600		A	Injection for bladder x-ray	0.88	0.28	0.03	1.19	000	S
51605		A	Preparation for bladder xray	1.13	0.30	0.03	1.46	000	S
51610		A	Injection for bladder x-ray	1.59	0.27	0.02	1.88	000	S
51700		A	Irrigation of bladder	0.88	0.22	0.02	1.12	000	S
51705		A	Change of bladder tube	0.99	0.38	0.04	1.41	010	S
51710		A	Change of bladder tube	1.46	0.57	0.06	2.09	010	S
51715		A	Endoscopic injection/implant	3.74	2.65	0.27	6.66	000	S
51720		A	Treatment of bladder lesion	1.96	0.45	0.05	2.46	000	S
51725		A	Simple cystometrogram	1.51	1.01	0.11	2.63	000	S
51725	26	A	Simple cystometrogram	1.51	0.63	0.07	2.21	000	S

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
51725	TC	A	Simple cystometrogram	0.00	0.38	0.04	0.42	000	S
51726		A	Complex cystometrogram	1.71	1.29	0.13	3.13	000	S
51726	26	A	Complex cystometrogram	1.71	0.81	0.08	2.60	000	S
51726	TC	A	Complex cystometrogram	0.00	0.48	0.05	0.53	000	S
51736		A	Urine flow measurement	0.84	0.41	0.04	1.29	000	S
51736	26	A	Urine flow measurement	0.84	0.26	0.03	1.13	000	S
51736	TC	A	Urine flow measurement	0.00	0.15	0.01	0.16	000	S
51741		A	Electro-uroflowmetry, first	1.57	0.56	0.06	2.19	000	S
51741	26	A	Electro-uroflowmetry, first	1.57	0.35	0.04	1.96	000	S
51741	TC	A	Electro-uroflowmetry, first	0.00	0.21	0.02	0.23	000	S
51772		A	Urethra pressure profile	1.61	0.94	0.11	2.66	000	S
51772	26	A	Urethra pressure profile	1.61	0.52	0.06	2.19	000	S
51772	TC	A	Urethra pressure profile	0.00	0.42	0.05	0.47	000	S
51784		A	Anal/urinary muscle study	1.53	1.04	0.11	2.68	000	S
51784	26	A	Anal/urinary muscle study	1.53	0.65	0.07	2.25	000	S
51784	TC	A	Anal/urinary muscle study	0.00	0.39	0.04	0.43	000	S
51785		A	Anal/urinary muscle study	1.53	1.04	0.11	2.68	000	S
51785	26	A	Anal/urinary muscle study	1.53	0.65	0.07	2.25	000	S
51785	TC	A	Anal/urinary muscle study	0.00	0.39	0.04	0.43	000	S
51792		A	Urinary reflex study	1.10	1.93	0.20	3.23	000	S
51792	26	A	Urinary reflex study	1.10	0.59	0.06	1.75	000	S
51792	TC	A	Urinary reflex study	0.00	1.34	0.14	1.48	000	S
51795		A	Urine voiding pressure study	1.53	1.44	0.16	3.13	000	S
51795	26	A	Urine voiding pressure study	1.53	0.57	0.06	2.16	000	S
51795	TC	A	Urine voiding pressure study	0.00	0.87	0.10	0.97	000	S
51797		A	Intraabdominal pressure test	1.60	0.96	0.10	2.66	000	S
51797	26	A	Intraabdominal pressure test	1.60	0.51	0.05	2.16	000	S
51797	TC	A	Intraabdominal pressure test	0.00	0.45	0.05	0.50	000	S
51800		A	Revision of bladder/urethra	16.31	12.02	1.47	29.80	090	S
51820		A	Revision of urinary tract	16.67	7.39	1.32	25.38	090	S
51840		A	Attach bladder/urethra	9.78	9.22	1.26	20.26	090	S
51841		A	Attach bladder/urethra	12.10	11.01	1.48	24.59	090	S
51845		A	Repair bladder neck	9.06	10.71	1.09	20.86	090	S
51860		A	Repair of bladder wound	11.17	7.62	0.91	19.70	090	S
51865		A	Repair of bladder wound	13.99	10.96	1.27	26.22	090	S
51880		A	Repair of bladder opening	7.21	4.96	0.52	12.69	090	S
51900		A	Repair bladder/vagina lesion	11.67	11.65	1.41	24.73	090	S
51920		A	Close bladder-uterus fistula	10.57	7.51	0.73	18.81	090	S
51925		A	Hysterectomy/bladder repair	14.10	10.07	2.33	26.50	090	S
51940		A	Correction of bladder defect	25.00	18.95	2.22	46.17	090	S
51960		A	Revision of bladder & bowel	21.15	21.40	2.27	44.82	090	S
51980		A	Construct bladder opening	10.43	7.46	0.75	18.64	090	S
52000		A	Cystoscopy	2.01	1.33	0.14	3.48	000	S
52005		A	Cystoscopy & ureter catheter	2.37	2.20	0.22	4.79	000	S
52007		A	Cystoscopy and biopsy	3.02	2.82	0.28	6.12	000	S
52010		A	Cystoscopy & duct catheter	3.02	1.90	0.20	5.12	000	S
52204		A	Cystoscopy	2.37	2.38	0.24	4.99	000	S
52214		A	Cystoscopy and treatment	3.71	2.80	0.28	6.79	000	S
52224		A	Cystoscopy and treatment	3.14	2.90	0.29	6.33	000	S
52234		A	Cystoscopy and treatment	4.63	4.71	0.45	9.79	000	S
52235		A	Cystoscopy and treatment	5.45	*6.97	0.81	13.23	000	S
52240		A	Cystoscopy and treatment	9.72	10.65	1.04	21.41	000	S
52250		A	Cystoscopy & radiotracer	4.50	2.86	0.29	7.65	000	S
52260		A	Cystoscopy & treatment	3.92	2.11	0.22	5.25	000	S
52265		A	Cystoscopy & treatment	2.94	1.35	0.14	4.43	000	S
52270		A	Cystoscopy & revise urethra	3.84	3.47	0.35	7.66	000	S
52275		A	Cystoscopy & revise urethra	4.70	3.42	0.34	8.46	000	S
52276		A	Cystoscopy and treatment	3.93	4.58	0.45	8.96	000	S
52277		A	Cystoscopy and treatment	6.17	4.82	0.47	11.46	000	S
52281		A	Cystoscopy and treatment	2.80	2.31	0.23	5.34	000	S
52283		A	Cystoscopy and treatment	3.74	1.51	0.15	5.40	000	S
52285		A	Cystoscopy and treatment	3.61	2.94	0.30	6.85	000	S
52290		A	Cystoscopy and treatment	4.59	2.34	0.24	7.17	000	S
52300		A	Cystoscopy and treatment	5.35	3.47	0.36	9.18	000	S
52305		A	Cystoscopy and treatment	5.31	3.50	0.35	9.16	000	S
52310		A	Cystoscopy and treatment	2.81	2.99	0.30	6.10	000	S

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
52315		A	Cystoscopy and treatment	5.21	4.07	0.40	9.68	000	S
52317		A	Remove bladder stone	6.72	6.19	0.59	13.50	000	S
52318		A	Remove bladder stone	9.19	7.88	0.77	17.84	000	S
52320		A	Cystoscopy and treatment	4.70	4.86	0.47	10.03	000	S
52325		A	Cystoscopy, stone removal	6.16	7.01	0.68	13.85	000	S
52327		A	Cystoscopy, inject material	5.19	3.69	0.36	9.24	000	S
52330		A	Cystoscopy and treatment	5.04	3.47	0.35	8.86	000	S
52332		A	Cystoscopy and treatment	2.83	3.21	0.32	6.36	000	S
52334		A	Create passage to kidney	4.83	3.33	0.34	8.50	000	S
52335		A	Endoscopy of urinary tract	5.86	4.69	0.45	11.00	000	S
52336		A	Cystoscopy, stone removal	5.88	*6.81	0.99	16.68	000	S
52337		A	Cystoscopy, stone removal	7.97	*10.21	1.08	19.26	000	S
52338		A	Cystoscopy and treatment	7.34	5.92	0.57	13.83	000	S
52339		A	Cystoscopy and treatment	8.82	5.92	0.57	15.31	000	S
52340		A	Cystoscopy and treatment	7.76	5.15	0.50	13.41	090	S
52450		A	Incision of prostate	7.05	4.99	0.49	12.53	090	S
52500		A	Revision of bladder neck	7.82	7.44	0.72	15.98	090	S
52510		A	Dilation prostatic urethra	6.04	7.64	0.74	14.42	090	S
52601		A	Prostatectomy (TURP)	11.51	11.87	1.16	24.54	090	S
52606		A	Control postop bleeding	7.51	3.32	0.33	11.16	090	S
52612		A	Prostatectomy, first stage	7.05	*9.03	0.99	17.07	090	S
52614		A	Prostatectomy, second stage	6.04	7.09	0.68	13.81	090	S
52620		A	Remove residual prostate	6.04	5.33	0.51	11.88	090	S
52630		A	Remove prostate regrowth	6.55	*8.38	1.13	16.06	090	S
52640		A	Relieve bladder contracture	6.04	6.43	0.62	13.09	090	S
52647		A	Laser surgery of prostate	9.84	11.87	1.16	22.87	090	S
52648		A	Laser surgery of prostate	10.69	11.87	1.16	23.72	090	S
52700		A	Drainage of prostate abscess	6.31	3.30	0.34	9.95	090	S
53000		A	Incision of urethra	2.01	1.76	0.17	3.94	010	S
53010		A	Incision of urethra	3.02	3.52	0.37	6.91	090	S
53020		A	Incision of urethra	1.77	0.82	0.09	2.68	000	S
53025		A	Incision of urethra	1.13	0.80	0.08	2.01	000	S
53040		A	Drainage of urethra abstess	6.01	1.85	0.19	8.05	090	S
53060		A	Drainage of urethra abscess	2.58	0.51	0.07	3.16	010	S
53080		A	Drainage of urinary leakage	5.87	3.98	0.45	10.30	090	S
53085		A	Drainage of urinary leakage	9.67	6.75	0.70	17.12	090	S
53200		A	Biopsy of urethra	2.59	1.10	0.12	3.81	000	S
53210		A	Removal of urethra	11.71	6.64	0.67	19.02	090	S
53215		A	Removal of urethra	14.59	10.00	0.96	25.55	090	S
53220		A	Treatment of urethra lesion	6.58	4.77	0.49	11.84	090	S
53230		A	Removal of urethra lesion	9.04	7.93	0.79	17.76	090	S
53235		A	Removal of urethra lesion	9.60	5.02	0.49	15.11	090	N
53240		A	Surgery for urethra pouch	6.03	4.33	0.45	10.81	090	S
53250		A	Removal of urethra gland	5.69	4.05	0.40	10.14	090	S
53260		A	Treatment of urethra lesion	2.93	1.12	0.16	4.21	010	S
53265		A	Treatment of urethra lesion	3.07	1.88	0.22	5.17	010	S
53270		A	Removal of urethra gland	2.93	0.84	0.18	3.95	010	S
53275		A	Repair of urethra defect	4.37	2.37	0.25	6.99	010	S
53400		A	Revise urethra, 1st stage	11.79	7.47	0.76	20.02	090	S
53405		A	Revise urethra, 2nd stage	13.70	10.38	1.21	25.29	090	S
53410		A	Reconstruction of urethra	15.59	8.56	0.84	24.99	090	S
53415		A	Reconstruction of urethra	18.50	11.87	1.15	31.52	090	S
53420		A	Reconstruct urethra, stage 1	13.28	10.88	1.05	25.21	090	S
53425		A	Reconstruct urethra, stage 2	15.18	9.25	0.88	25.31	090	S
53430		A	Reconstruction of urethra	15.54	7.16	0.76	23.46	090	S
53440		A	Correct bladder function	11.49	13.14	1.39	26.02	090	S
53442		A	Remove perineal prosthesis	7.67	5.84	0.67	14.18	090	S
53443		A	Reconstruction of urethra	18.96	10.03	1.07	30.08	090	S
53445		A	Correct urine flow control	13.15	*16.83	2.03	32.01	090	S
53447		A	Remove artificial sphincter	12.37	9.16	0.89	22.42	090	S
53449		A	Correct artificial sphincter	9.16	8.41	0.82	18.39	090	S
53450		A	Revision of urethra	5.72	2.74	0.27	8.73	090	S
53460		A	Revision of urethra	6.70	2.44	0.25	9.39	090	S
53502		A	Repair of urethra injury	7.21	4.97	0.56	12.74	090	S
53505		A	Repair of urethra injury	7.21	5.16	0.51	12.90	090	S
53510		A	Repair of urethra injury	9.57	5.96	0.66	17.21	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
53515		A	Repair of urethra injury	12.71	9.03	0.88	22.62	090	S
53520		A	Repair of urethra defect	8.21	5.89	0.56	14.66	090	S
53600		A	Dilate urethra stricture	1.21	0.33	0.03	1.57	000	S
53601		A	Dilate urethra stricture	0.98	0.29	0.03	1.30	000	S
53605		A	Dilate urethra stricture	1.28	0.46	0.05	1.79	000	S
53620		A	Dilate urethra stricture	1.62	0.47	0.05	2.14	000	S
53621		A	Dilate urethra stricture	1.35	0.38	0.04	1.77	000	S
53640		A	Relieve bladder retention	1.59	0.57	0.06	2.22	000	S
53660		A	Dilation of urethra	0.71	0.28	0.03	1.02	000	S
53661		A	Dilation of urethra	0.72	0.25	0.03	1.00	000	S
53665		A	Dilation of urethra	0.76	0.36	0.04	1.16	000	S
53670		A	Insert urinary catheter	0.50	0.22	0.02	0.74	000	S
53675		A	Insert urinary catheter	1.47	0.47	0.05	1.99	000	S
53899		C	Urology surgery procedure	0.00	0.00	0.00	0.00	YYY	S
54000		A	Slitting of prepuce	1.49	0.63	0.07	2.19	010	S
54001		A	Slitting of prepuce	2.14	0.84	0.09	3.07	010	S
54015		A	Drain penis lesion	5.16	0.83	0.09	6.08	010	S
54050		A	Destruction, penis lesion(s)	1.19	0.38	0.03	1.60	010	S
54055		A	Destruction, penis lesion(s)	1.19	0.61	0.06	1.86	010	S
54056		A	Cryosurgery, penis lesion(s)	1.19	0.53	0.04	1.76	010	S
54057		A	Laser surg, penis lesion(s)	1.19	*1.52	0.21	2.92	010	S
54060		A	Excision of penis lesion(s)	1.88	1.17	0.12	3.17	010	S
54065		A	Destruction, penis lesion(s)	2.37	2.47	0.25	5.09	010	S
54100		A	Biopsy of penis	1.90	0.65	0.07	2.62	000	S
54105		A	Biopsy of penis	3.45	1.01	0.11	4.57	010	S
54110		A	Treatment of penis lesion	9.66	6.03	0.61	16.30	090	S
54111		A	Treat penis lesion, graft	13.03	9.18	0.97	23.18	090	S
54112		A	Treat penis lesion, graft	15.14	10.84	1.14	27.12	090	S
54115		A	Treatment of penis lesion	5.68	4.18	0.44	10.30	090	S
54120		A	Partial removal of penis	9.24	6.47	0.62	16.33	090	S
54125		A	Removal of penis	12.80	11.56	1.17	25.53	090	S
54130		A	Remove penis & nodes	18.92	14.66	1.32	34.90	090	S
54135		A	Remove penis & nodes	25.01	17.75	1.74	44.50	090	S
54150		A	Circumcision	1.78	0.54	0.05	2.37	010	S
54152		A	Circumcision	2.26	1.82	0.20	4.28	010	S
54160		A	Circumcision	2.43	1.86	0.21	4.30	010	S
54161		A	Circumcision	3.22	2.17	0.23	5.62	010	S
54200		A	Treatment of penis lesion	1.01	0.32	0.03	1.36	010	S
54205		A	Treatment of penis lesion	7.20	5.11	0.50	12.81	090	S
54220		A	Treatment of penis lesion	2.42	1.58	0.17	4.17	000	S
54230		A	Prepare penis study	1.34	1.34	0.13	2.81	000	S
54231		A	Dynamic cavernosometry	2.04	1.44	0.14	3.62	000	S
54235		A	Penile injection	1.19	0.43	0.04	1.66	000	S
54240		A	Penis study	1.31	0.99	0.12	2.42	000	S
54240	26	A	Penis study	1.31	0.51	0.06	1.88	000	S
54240	TC	A	Penis study	0.00	0.48	0.06	0.54	000	S
54250		A	Penis study	2.22	0.80	0.08	3.10	000	S
54250	26	A	Penis study	2.22	0.50	0.05	2.77	000	S
54250	TC	A	Penis study	0.00	0.30	0.03	0.33	000	S
54300		A	Revision of penis	10.05	6.88	0.87	17.80	090	S
54304		A	Revision of penis	12.13	8.86	0.90	21.89	090	S
54308		A	Reconstruction of urethra	11.58	5.84	0.74	18.16	090	S
54312		A	Reconstruction of urethra	13.16	9.37	0.91	23.44	090	S
54316		A	Reconstruction of urethra	15.97	11.34	1.12	28.43	090	S
54318		A	Reconstruction of urethra	10.47	7.53	1.11	19.11	090	S
54322		A	Reconstruction of urethra	12.34	7.61	0.74	20.69	090	S
54324		A	Reconstruction of urethra	15.46	10.98	1.08	27.52	090	S
54326		A	Reconstruction of urethra	14.81	10.51	1.03	26.35	090	S
54328		A	Revise penis, urethra	14.00	10.72	1.24	25.76	090	S
54332		A	Revise penis, urethra	16.17	12.52	1.13	29.82	090	S
54336		A	Revise penis, urethra	18.95	18.79	1.40	39.14	090	S
54340		A	Secondary urethral surgery	8.55	6.07	0.59	15.21	090	S
54344		A	Secondary urethral surgery	15.22	16.51	1.10	32.93	090	S
54348		A	Secondary urethral surgery	16.57	11.62	1.14	29.13	090	S
54352		A	Reconstruct urethra, penis	23.84	16.18	1.49	41.51	090	S
54360		A	Penis plastic surgery	11.39	7.02	0.73	19.14	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
54380		A	Repair penis	12.59	9.42	0.75	22.76	090	S
54385		A	Repair penis	14.75	10.46	0.89	26.10	090	S
54390		A	Repair penis and bladder	20.97	13.57	1.58	36.12	090	S
54400		A	Insert semi-rigid prosthesis	8.58	*10.99	1.27	20.84	090	S
54401		A	Insert self-contd prosthesis	9.67	*12.38	1.73	23.78	090	S
54402		A	Remove penis prosthesis	8.67	6.00	0.58	15.25	090	S
54405		A	Insert multi-comp prosthesis	12.63	*16.17	2.10	30.90	090	S
54407		A	Remove multi-comp prosthesis	12.61	11.22	1.10	24.93	090	S
54409		A	Revise penis prosthesis	11.53	8.97	0.87	21.37	090	S
54420		A	Revision of penis	10.75	7.74	0.87	19.36	090	S
54430		A	Revision of penis	9.55	6.99	0.69	17.23	090	S
54435		A	Revision of penis	5.63	4.15	0.39	10.17	090	S
54440		C	Repair of penis	0.00	0.00	0.00	0.00	090	S
54450		A	Preputial stretching	1.12	0.68	0.07	1.87	000	S
54500		A	Biopsy of testis	1.31	0.44	0.05	1.80	000	S
54505		A	Biopsy of testis	3.41	1.86	0.22	5.49	010	S
54510		A	Removal of testis lesion	5.24	3.03	0.38	8.65	090	S
54520		A	Removal of testis	4.93	5.31	0.52	10.76	090	S
54530		A	Removal of testis	8.04	7.32	0.77	16.13	090	S
54535		A	Extensive testis surgery	11.43	8.54	1.02	20.99	090	S
54550		A	Exploration for testis	7.36	5.25	0.61	13.22	090	S
54560		A	Exploration for testis	10.46	7.23	0.81	18.50	090	S
54600		A	Reduce testis torsion	6.59	4.62	0.48	11.69	090	S
54620		A	Suspension of testis	4.69	3.32	0.33	8.34	010	S
54640		A	Suspension of testis	6.55	7.82	0.91	15.28	090	S
54650		A	Orchiopexy (Fowler-Stephens)	10.93	7.82	0.91	19.66	090	S
54660		A	Revision of testis	4.80	3.40	0.34	8.54	090	S
54670		A	Repair testis injury	6.06	4.30	0.43	10.79	090	S
54680		A	Relocation of testis(es)	11.53	8.19	0.80	20.52	090	S
54700		A	Drainage of scrotum	3.38	0.90	0.11	4.39	010	S
54800		A	Biopsy of epididymis	2.33	1.97	0.19	4.49	000	S
54820		A	Exploration of epididymis	4.72	2.62	0.29	7.63	090	S
54830		A	Remove epididymis lesion	5.07	3.51	0.39	8.97	090	S
54840		A	Remove epididymis lesion	5.01	4.84	0.48	10.33	090	S
54860		A	Removal of epididymis	6.01	5.17	0.50	11.68	090	S
54861		A	Removal of epididymis	8.54	7.30	0.72	16.56	090	S
54900		A	Fusion of spermatic ducts	12.61	8.95	0.87	22.43	090	S
54901		A	Fusion of spermatic ducts	17.30	12.29	1.20	30.79	090	S
55000		A	Drainage of hydrocele	1.43	0.40	0.04	1.87	000	S
55040		A	Removal of hydrocele	5.15	4.88	0.55	10.58	090	S
55041		A	Removal of hydroceles	7.38	7.47	0.81	15.66	090	S
55060		A	Repair of hydrocele	5.21	4.13	0.50	9.84	090	S
55100		A	Drainage of scrotum abscess	2.03	0.63	0.07	2.73	010	S
55110		A	Explore scrotum	5.28	3.48	0.37	9.13	090	S
55120		A	Removal of scrotum lesion	4.78	1.79	0.21	6.78	090	S
55150		A	Removal of scrotum	6.62	5.45	0.57	12.64	090	S
55175		A	Revision of scrotum	4.93	4.49	0.48	9.90	090	S
55180		A	Revision of scrotum	10.07	6.83	0.82	17.72	090	S
55200		A	Incision of sperm duct	4.14	1.97	0.20	6.31	090	S
55250		A	Removal of sperm duct(s)	3.21	2.63	0.28	6.12	090	S
55300		A	Preparation, sperm duct x-ray	3.51	2.71	0.27	6.49	000	S
55400		A	Repair of sperm duct	8.25	6.56	0.62	15.43	090	S
55450		A	Ligation of sperm duct	3.91	2.61	0.32	6.84	010	S
55500		A	Removal of hydrocele	5.28	4.32	0.50	10.10	090	S
55520		A	Removal of sperm cord lesion	5.72	3.12	0.51	9.35	090	S
55530		A	Revise spermatic cord veins	5.45	5.20	0.60	11.25	090	S
55535		A	Revise spermatic cord veins	5.25	4.40	0.45	11.10	090	S
55540		A	Revise hernia & sperm veins	7.25	4.54	0.91	12.70	090	S
55600		A	Incise sperm duct pouch	6.07	4.31	0.55	10.93	090	S
55605		A	Incise sperm duct pouch	7.60	5.60	0.59	13.79	090	S
55650		A	Remove sperm duct pouch	11.26	7.22	0.76	19.24	090	S
55680		A	Remove sperm pouch lesion	4.82	4.43	0.35	9.63	090	S
55700		A	Biopsy of prostate	1.57	1.50	0.15	3.22	000	S
55705		A	Biopsy of prostate	4.41	3.37	0.34	8.12	010	S
55720		A	Drainage of prostate abscess	7.54	3.51	0.37	11.42	090	S
55725		A	Drainage of prostate abscess	7.70	5.62	0.54	13.86	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
55801		A	Removal of prostate	16.25	12.76	1.44	30.45	090	S
55810		A	Extensive prostate surgery	21.21	17.88	1.77	40.86	090	S
55812		A	Extensive prostate surgery	25.55	17.68	1.94	45.27	090	S
55815		A	Extensive prostate surgery	28.47	25.20	2.42	56.09	090	S
55821		A	Removal of prostate	13.00	13.59	1.35	27.94	090	S
55831		A	Removal of prostate	14.30	14.56	1.44	30.30	090	S
55840		A	Extensive prostate surgery	21.21	16.80	1.61	39.42	090	S
55842		A	Extensive prostate surgery	22.70	19.16	1.88	43.74	090	S
55845		A	Extensive prostate surgery	26.73	25.10	2.44	54.27	090	S
55859		A	Percut/needle insert, pros	8.29	5.89	0.58	14.76	090	S
55860		A	Surgical exposure, prostate	13.33	7.13	0.70	21.16	090	S
55862		A	Extensive prostate surgery	17.09	11.69	1.20	29.98	090	S
55865		A	Extensive prostate surgery	21.55	24.52	2.39	48.56	090	S
55870		A	Electroejaculation	2.58	1.83	0.18	4.59	000	N
55899		C	Genital surgery procedure	0.00	0.00	0.00	0.00	YYY	S
55970		N	Sex transformation, M to F	0.00	0.00	0.00	0.00	XXX	0
55980		N	Sex transformation, F to M	0.00	0.00	0.00	0.00	XXX	0
56300		A	Pelvis laparoscopy, dx	3.58	*4.58	1.03	9.19	010	S
56301		A	Laparoscopy; tubal cautery	3.88	*4.71	1.28	9.87	010	S
56302		A	Laparoscopy; tubal block	4.11	*5.26	1.32	10.69	010	S
56303		A	Laparoscopy; excise lesions	5.69	5.53	1.16	12.38	010	S
56304		A	Laparoscopy; lysis	4.37	*5.60	1.20	11.17	010	S
56305		A	Pelvic laparoscopy; biopsy	3.80	*4.87	0.95	9.62	010	S
56306		A	Laparoscopy; aspiration	3.80	*4.87	1.18	9.85	010	S
56307		A	Laparoscopy; remove adnexa	5.60	*7.16	1.60	14.36	010	S
56308		A	Laparoscopy; hysterectomy	13.87	9.39	2.07	25.33	010	S
56309		A	Laparoscopy; remove myoma	5.60	4.76	1.03	11.39	010	S
56311		A	Laparoscopic lymph node biop	8.93	6.38	1.47	16.78	010	S
56312		A	Laparoscopic lymphadenectomy	12.06	8.56	0.84	21.46	010	S
56313		A	Laparoscopic lymphadenectomy	14.00	10.01	2.31	26.32	010	S
56315		A	Laparoscopic appendectomy	6.06	4.89	1.01	11.96	090	S
56316		A	Laparoscopic hernia repair	6.17	4.51	0.94	11.62	090	S
56317		A	Laparoscopic hernia repair	7.87	5.22	1.11	14.20	090	S
56320		A	Laparoscopy, spermatic veins	6.25	4.40	0.45	11.10	090	S
56322		A	Laparoscopy, vagus nerves	9.70	5.07	1.18	15.95	090	S
56323		A	Laparoscopy, vagus nerves	11.65	6.09	1.41	19.15	090	S
56324		A	Laparoscopy, cholecystoenter	11.90	9.16	1.93	22.99	090	S
56340		A	Laparoscopic cholecystectomy	10.66	7.99	1.74	20.41	090	S
56341		A	Laparoscopic cholecystectomy	11.53	8.43	1.84	21.80	090	S
56342		A	Laparoscopic cholecystectomy	13.86	9.37	2.00	25.23	090	S
56343		A	Laparoscopic salpingostomy	6.96	5.26	1.11	13.35	090	S
56344		A	Laparoscopic fimbrioplasty	7.16	5.11	1.19	13.46	090	S
56350		A	Hysteroscopy; diagnostic	2.39	1.99	0.44	4.82	000	S
56351		A	Hysteroscopy; biopsy	2.85	1.99	0.44	5.28	000	S
56352		A	Hysteroscopy; lysis	3.14	3.77	0.85	7.76	000	S
56353		A	Hysteroscopy; resect septum	3.51	3.77	0.85	8.13	000	S
56354		A	Hysteroscopy; remove myoma	3.85	*4.93	1.30	10.08	000	S
56355		A	Hysteroscopy; remove impact	3.09	1.99	0.44	5.52	000	S
56358		A	Hysteroscopy; ablation	3.43	*4.39	1.49	9.31	000	S
56360		A	Peritoneoscopy	4.04	3.80	0.43	8.27	000	S
56361		A	Peritoneoscopy w/biopsy	4.32	4.93	0.49	9.74	000	S
56362		A	Peritoneoscopy w/cholangio	4.89	2.77	0.19	7.85	000	S
56363		A	Peritoneoscopy w/biopsy	5.18	3.93	0.45	9.56	000	S
56399		C	Laparoscopy procedure	0.00	0.00	0.00	0.00	YYY	S
56405		A	I & D of vulva/perineum	1.39	0.76	0.15	2.30	010	S
56420		A	Drainage of gland abscess	1.34	0.80	0.13	2.27	010	S
56440		A	Surgery for vulva lesion	2.79	2.63	0.52	5.94	010	S
56441		A	Lysis of labial lesion(s)	1.92	1.65	0.30	3.87	010	S
56501		A	Destruction, vulva lesion(s)	1.48	0.54	0.11	2.13	010	S
56515		A	Destruction, vulva lesion(s)	1.85	*2.36	0.66	4.87	010	S
56605		A	Biopsy of vulva/perineum	0.86	0.68	0.15	1.69	000	S
56606		A	Biopsy of vulva/perineum	0.43	0.35	0.08	0.86	000	S
56620		A	Partial removal of vulva	6.67	6.47	1.40	14.54	090	S
56625		A	Complete removal of vulva	7.41	*9.52	2.13	19.06	090	S
56630		A	Extensive vulva surgery	10.47	*13.46	3.28	27.21	090	S
56631		A	Extensive vulva surgery	14.57	*18.70	4.51	37.78	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
56632		A	Extensive vulva surgery	18.56	*21.32	4.51	44.49	090	S
56633		A	Extensive vulva surgery	12.15	*15.97	3.28	31.40	090	S
56634		A	Extensive vulva surgery	16.25	*21.21	4.51	41.97	090	S
56637		A	Extensive vulva surgery	20.34	21.42	4.51	46.27	090	S
56640		A	Extensive vulva surgery	20.09	19.96	4.36	44.40	090	S
56700		A	Partial removal of hymen	2.42	1.82	0.35	4.59	010	S
56720		A	Incision of hymen	0.68	0.48	0.11	1.27	000	S
56740		A	Remove vagina gland lesion	3.60	2.87	0.55	7.02	010	S
56800		A	Repair of vagina	3.73	2.92	0.57	7.22	010	S
56805		A	Repair clitoris	15.49	11.75	1.37	28.61	090	S
56810		A	Repair of perineum	3.97	2.62	0.51	7.10	010	S
57000		A	Exploration of vagina	2.92	2.03	0.35	5.30	010	S
57010		A	Drainage of pelvic abscess	5.41	2.65	0.51	8.57	090	S
57020		A	Drainage of pelvic fluid	1.50	0.65	0.14	2.29	000	S
57061		A	Destruction vagina lesion(s)	1.20	0.82	0.17	2.19	010	S
57065		A	Destruction vagina lesion(s)	2.56	*3.28	0.74	6.58	010	S
57100		A	Biopsy of vagina	0.97	0.62	0.13	1.72	000	S
57105		A	Biopsy of vagina	1.64	1.57	0.33	3.54	010	S
57106		A	Partial removal of vagina	5.69	5.28	1.10	12.07	090	S
57110		A	Removal of vagina	13.46	7.88	1.76	23.12	090	S
57120		A	Closure of vagina	6.73	6.99	1.51	15.23	090	S
57130		A	Remove vagina lesion	2.40	2.62	0.55	5.57	010	S
57135		A	Remove vagina lesion	2.64	1.93	0.38	4.95	010	S
57150		A	Treat vagina infection	0.94	0.19	0.04	1.17	000	S
57160		A	Insertion of pessary	0.89	0.25	0.05	1.19	000	S
57170		A	Fitting of diaphragm/cap	0.91	0.32	0.06	1.29	000	S
57180		A	Treat vaginal bleeding	1.53	0.55	0.11	2.19	010	S
57200		A	Repair of vagina	3.68	2.71	0.60	6.99	090	S
57210		A	Repair vagina/perineum	4.73	3.27	0.65	8.65	090	S
57220		A	Revision of urethra	3.87	4.44	0.80	9.11	090	S
57230		A	Repair of urethral lesion	5.07	3.84	0.64	9.55	090	S
57240		A	Repair bladder & vagina	5.39	*6.90	1.60	13.89	090	S
57250		A	Repair rectum & vagina	4.96	*6.36	1.69	13.01	090	S
57260		A	Repair of vagina	7.59	8.65	1.88	18.12	090	S
57265		A	Extensive repair of vagina	7.36	*9.42	2.11	18.89	090	S
57268		A	Repair of bowel bulge	6.14	7.02	1.50	14.66	090	S
57270		A	Repair of bowel pouch	7.36	5.83	1.44	15.63	090	S
57280		A	Suspension of vagina	8.35	8.53	1.85	18.73	090	S
57282		A	Repair of vaginal prolapse	8.06	8.72	1.89	18.67	090	S
57284		A	Repair paravaginal defect	12.10	8.59	0.84	21.53	090	S
57288		A	Repair bladder defect	12.34	10.72	1.36	24.42	090	S
57289		A	Repair bladder & vagina	6.40	*8.19	1.13	15.72	090	S
57291		A	Construction of vagina	7.46	5.35	1.19	14.00	090	S
57292		A	Construct vagina with graft	12.34	6.55	1.38	20.27	090	S
57300		A	Repair rectum-vagina fistula	6.61	7.91	1.66	16.38	090	S
57305		A	Repair rectum-vagina fistula	8.69	7.55	1.56	17.80	090	S
57307		A	Fistula repair & colostomy	10.05	6.11	1.28	17.44	090	S
57310		A	Repair urethrovaginal lesion	6.10	4.32	0.48	10.90	090	S
57311		A	Repair urethrovaginal lesion	7.23	5.58	0.41	13.22	090	S
57320		A	Repair bladder-vagina lesion	7.33	*9.38	1.35	18.06	090	S
57330		A	Repair bladder-vagina lesion	11.67	6.29	0.81	20.77	090	S
57335		A	Repair vagina	9.11	6.91	0.81	16.83	090	S
57400		A	Dilation of vagina	0.83	0.33	0.06	1.22	000	S
57410		A	Pelvic examination	0.59	0.36	0.05	1.00	000	S
57415		A	Removal vaginal foreign body	0.91	0.36	0.05	1.32	010	S
57452		A	Examination of vagina	0.99	0.65	0.14	1.78	000	S
57454		A	Vagina examination & biopsy	1.27	1.21	0.26	2.74	000	S
57460		A	Cervix excision	2.83	2.02	0.46	5.31	000	S
57500		A	Biopsy of cervix	0.97	0.57	0.12	1.66	000	S
57505		A	Endocervical curettage	1.09	0.63	0.13	1.85	010	S
57510		A	Cauterization of cervix	1.85	0.52	0.09	2.46	010	S
57511		A	Cryocautery of cervix	1.85	0.85	0.17	2.87	010	S
57513		A	Laser surgery of cervix	1.85	*2.38	0.67	4.88	010	S
57520		A	Conization of cervix	3.96	3.45	0.73	8.14	090	S
57522		A	Conization of cervix	3.26	3.45	0.73	7.44	090	S
57530		A	Removal of cervix	4.42	3.61	0.78	8.81	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
57540		A	Removal of residual cervix	6.01	6.74	1.51	14.26	090	S
57545		A	Remove cervix, repair pelvis	6.63	4.58	1.03	12.24	090	S
57550		A	Removal of residual cervix	4.91	*6.26	1.54	12.73	090	S
57555		A	Remove cervix, repair vagina	8.14	10.10	2.17	20.41	090	S
57556		A	Remove cervix, repair bowel	7.58	9.44	1.92	18.92	090	S
57700		A	Revision of cervix	3.30	2.39	0.34	6.03	090	S
57720		A	Revision of cervix	3.67	2.76	0.50	7.13	090	S
57800		A	Dilation of cervical canal	0.77	0.48	0.10	1.35	000	S
57820		A	D&C of residual cervix	1.62	*2.08	0.46	4.16	010	S
58100		A	Biopsy of uterus lining	0.71	0.66	0.14	1.51	000	S
58120		A	Dilation and curettage (D&C)	2.45	2.70	0.56	5.71	010	S
58140		A	Removal of uterus lesion	7.61	8.33	1.71	17.65	090	S
58145		A	Removal of uterus lesion	7.36	8.24	1.54	17.14	090	S
58150		A	Total hysterectomy	13.00	9.57	2.08	24.65	090	S
58152		A	Total hysterectomy	14.10	11.99	2.59	28.68	090	S
58180		A	Partial hysterectomy	9.06	9.76	2.11	20.93	090	S
58200		A	Extensive hysterectomy	20.34	12.98	2.80	36.12	090	S
58210		A	Extensive hysterectomy	23.97	17.77	3.87	45.61	090	S
58240		A	Removal of pelvis contents	28.79	28.73	6.15	63.67	090	S
58260		A	Vaginal hysterectomy	11.39	9.39	2.07	22.85	090	S
58262		A	Vaginal hysterectomy	13.08	9.39	2.07	24.52	090	S
58263		A	Vaginal hysterectomy	14.27	10.32	2.22	26.81	090	S
58267		A	Hysterectomy & vagina repair	13.94	11.53	2.46	27.93	090	S
58270		A	Hysterectomy & vagina repair	12.60	10.32	2.22	25.14	090	S
58275		A	Hysterectomy, revise vagina	13.99	11.02	2.32	27.33	090	S
58280		A	Hysterectomy, revise vagina	14.35	10.50	2.30	27.15	090	S
58285		A	Extensive hysterectomy	17.45	11.80	2.70	31.75	090	S
58300		N	Insert intrauterine device	#1.01	0.77	0.13	1.91	XXX	0
58301		A	Remove intrauterine device	0.73	0.45	0.08	1.26	000	S
58321		A	Artificial insemination	0.92	0.71	0.15	1.78	000	S
58322		A	Artificial insemination	1.10	0.71	0.15	1.96	000	S
58323		A	Sperm washing	0.23	0.16	0.04	0.43	000	S
58340		A	Inject for uterus/tube x-ray	0.88	0.57	0.08	1.53	000	S
58345		A	Reopen fallopian tube	4.61	3.49	0.41	8.51	010	S
58360		A	Reopen fallopian tube	0.96	0.69	0.16	1.81	010	S
58400		A	Suspension of uterus	5.66	5.64	1.16	12.46	090	S
58410		A	Suspension of uterus	6.78	5.53	0.84	13.15	090	S
58520		A	Repair of ruptured uterus	6.35	4.24	0.99	11.58	090	S
58540		A	Revision of uterus	8.58	6.13	1.42	16.13	090	S
58600		A	Division of fallopian tube	3.74	*4.79	1.38	9.91	090	S
58605		A	Division of fallopian tube	3.29	*4.21	1.01	8.51	090	S
58611		A	Ligate oviduct(s)	0.63	0.47	0.10	1.20	ZZZ	S
58615		A	Occlude fallopian tube(s)	3.85	2.91	0.35	7.11	010	S
58700		A	Removal of fallopian tube	5.92	6.33	1.31	13.56	090	S
58720		A	Removal of ovary/tube(s)	6.20	7.50	1.63	15.33	090	S
58740		A	Revise fallopian tube(s)	5.25	*6.76	1.88	13.92	090	S
58750		A	Repair oviduct	8.82	6.31	1.46	16.59	090	S
58752		A	Revise ovarian tube(s)	7.94	6.74	0.93	15.61	090	S
58760		A	Remove tubal obstruction	7.16	5.11	1.19	13.46	090	S
58770		A	Create new tubal opening	6.96	5.28	1.11	13.35	090	S
58800		A	Drainage of ovarian cyst(s)	3.77	2.68	0.53	6.98	090	S
58805		A	Drainage of ovarian cyst(s)	5.44	6.38	1.36	13.18	090	S
58820		A	Drainage of ovarian abscess	3.96	2.76	0.49	7.21	090	S
58822		A	Drainage of ovarian abscess	6.18	3.55	0.81	10.54	090	S
58825		A	Transposition, ovary(s)	5.63	4.03	0.93	10.59	090	S
58900		A	Biopsy of ovary(s)	5.49	5.19	1.07	11.75	090	S
58920		A	Partial removal of ovary(s)	6.28	6.78	1.41	14.47	090	S
58925		A	Removal of ovarian cyst(s)	6.40	6.56	1.38	14.34	090	S
58940		A	Removal of ovary(s)	6.54	6.49	1.33	14.36	090	S
58943		A	Removal of ovary(s)	17.49	12.11	2.63	32.23	090	S
58950		A	Resect ovarian malignancy	14.10	11.24	2.38	27.72	090	S
58951		A	Resect ovarian malignancy	20.34	18.34	3.93	42.61	090	S
58952		A	Resect ovarian malignancy	21.35	18.11	3.92	43.38	090	S
58960		A	Exploration of abdomen	10.14	*12.98	2.95	26.07	090	S
58970		A	Retrieval of oocyte	3.53	2.52	0.58	6.63	000	N
58972		D	Fertilization of oocyte	0.00	0.00	0.00	0.00	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	000	N
58976		A	Transfer of embryo	3.83	2.73	0.63	7.19	000	N
58999		C	Genital surgery procedure	0.00	0.00	0.00	0.00	YYY	S
59000		A	Amniocentesis	1.30	0.97	0.18	2.45	000	S
59012		A	Fetal cord puncture, prenatal	3.45	2.62	0.31	6.38	000	S
59015		A	Chorion biopsy	2.20	1.20	0.10	3.50	000	S
59020		A	Fetal contract stress test	0.66	*1.35	0.29	2.30	000	S
59020	26	A	Fetal contract stress test	0.66	*0.85	0.19	1.70	000	S
59020	TC	A	Fetal contract stress test	0.00	0.50	0.10	0.60	000	S
59025		A	Fetal non-stress test	0.53	0.61	0.12	1.26	000	S
59025	26	A	Fetal non-stress test	0.53	0.39	0.08	1.00	000	S
59025	TC	A	Fetal non-stress test	0.00	0.22	0.04	0.26	000	S
59030		A	Fetal scalp blood sample	1.99	1.58	0.21	3.78	000	S
59050		A	Fetal monitor w/report	0.89	0.81	0.15	1.85	XXX	S
59051		A	Fetal monitor/interpret only	0.74	0.81	0.15	1.70	XXX	N
59100		A	Remove uterus lesion	5.96	4.14	0.96	11.06	090	S
59120		A	Treat ectopic pregnancy	7.11	7.86	1.50	16.47	090	S
59121		A	Treat ectopic pregnancy	6.99	5.38	1.07	13.44	090	S
59130		A	Treat ectopic pregnancy	7.88	5.96	0.70	14.54	090	S
59135		A	Treat ectopic pregnancy	13.00	9.85	1.15	24.00	090	S
59136		A	Treat ectopic pregnancy	8.69	6.22	1.44	16.35	090	S
59140		A	Treat ectopic pregnancy	5.09	4.66	0.29	10.04	090	S
59150		A	Treat ectopic pregnancy	6.34	4.53	1.05	11.92	090	S
59151		A	Treat ectopic pregnancy	7.24	8.61	0.64	16.49	090	S
59160		A	D&C after delivery	2.66	2.93	0.52	6.11	010	S
59200		A	Insert cervical dilator	0.79	0.54	0.11	1.44	000	S
59300		A	Episiotomy or vaginal repair	2.41	0.99	0.10	3.50	000	S
59320		A	Revision of cervix	2.48	1.78	0.41	4.67	000	S
59325		A	Revision of cervix	4.07	2.89	0.29	7.25	000	S
59350		A	Repair of uterus	4.95	3.54	0.82	9.31	000	S
59400		A	Obstetrical care	20.99	14.99	3.47	39.45	MMM	S
59409		A	Obstetrical care	13.28	9.45	2.20	24.96	MMM	S
59410		A	Obstetrical care	14.44	10.31	2.39	27.14	MMM	S
59412		A	Antepartum manipulation	1.71	1.22	0.29	3.22	MMM	S
59414		A	Deliver placenta	1.61	1.15	0.27	3.03	MMM	S
59425		A	Antepartum care only	4.04	2.88	0.66	7.58	MMM	S
59426		A	Antepartum care only	5.91	4.94	1.14	12.99	MMM	S
59430		A	Care after delivery	2.01	0.38	0.07	2.46	MMM	S
59510		A	Cesarean delivery	23.57	16.90	3.92	44.49	MMM	S
59514		A	Cesarean delivery only	15.39	10.99	2.55	28.93	MMM	S
59515		A	Cesarean delivery	18.55	11.82	2.73	31.10	MMM	S
59525		A	Remove uterus after cesarean	8.54	3.81	0.88	13.23	MMM	S
59610		A	Vbac delivery	22.55	14.99	3.47	41.01	MMM	S
59612		A	Vbac delivery only	14.84	9.48	2.20	26.52	MMM	S
59614		A	Vbac care after delivery	15.96	10.31	2.39	28.66	MMM	S
59618		A	Attempted vbac delivery	25.23	16.90	3.92	46.05	MMM	S
59620		A	Attempted vbac delivery only	16.95	10.99	2.55	30.49	MMM	S
59622		A	Attempted vbac after care	18.11	11.82	2.73	32.66	MMM	S
59812		A	Treatment of miscarriage	3.10	3.61	0.77	7.48	090	S
59820		A	Care of miscarriage	3.73	3.75	0.77	8.25	090	S
59821		A	Treatment of miscarriage	4.26	2.72	0.62	7.60	090	S
59830		A	Treat uterus infection	5.96	4.53	0.52	11.01	090	S
59840		A	Abortion	2.91	3.22	0.69	6.82	010	S
59841		A	Abortion	3.24	3.75	0.76	7.75	010	S
59850		A	Abortion	5.46	4.00	0.85	10.31	090	S
59851		A	Abortion	5.62	4.28	0.88	10.78	090	S
59852		A	Abortion	7.70	5.51	1.27	14.48	090	S
59855		A	Abortion	5.80	4.14	0.96	10.90	090	S
59856		A	Abortion	7.16	5.11	1.19	13.46	090	S
59857		A	Abortion	8.71	6.22	1.44	16.37	090	S
59870		A	Evacuate mole of uterus	4.05	2.91	0.67	7.66	090	S
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	YYY	S
60000		A	Drain thyroid/tongue cyst	1.71	0.60	0.09	2.40	010	N
60001		A	Aspirate/inject thyriod cyst	0.97	1.05	0.12	2.14	000	N
60100		A	Biopsy of thyroid	0.97	1.05	0.12	2.14	000	N
60200		A	Remove thyroid lesion	8.83	6.02	1.04	15.89	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
60210		A	Partial excision thyroid	10.51	8.68	1.85	20.84	090	S
60212		A	Partial thyroid excision	15.48	9.04	1.74	26.26	090	S
60220		A	Partial removal of thyroid	9.86	8.54	1.61	20.01	090	S
60225		A	Partial removal of thyroid	11.65	10.49	1.92	24.06	090	S
60240		A	Removal of thyroid	15.68	10.58	1.96	28.20	090	S
60252		A	Removal of thyroid	16.40	13.65	2.55	31.60	090	S
60254		A	Extensive thyroid surgery	16.68	19.21	3.06	38.97	090	S
60260		A	Repeat thyroid surgery	14.49	3.14	0.34	17.97	090	S
60270		A	Removal of thyroid	16.44	13.97	2.54	32.95	090	S
60271		A	Removal of thyroid	14.16	12.14	2.25	28.55	090	S
60280		A	Remove thyroid duct lesion	5.55	*7.10	1.11	13.76	090	S
60281		A	Remove thyroid duct lesion	8.00	5.04	0.95	13.99	090	S
60500		A	Explore parathyroid glands	15.40	11.36	2.31	29.07	090	S
60502		A	Re-explore parathyroids	19.25	11.39	2.33	32.97	090	S
60505		A	Explore parathyroid glands	19.93	13.14	2.56	35.63	090	S
60512		A	Autotransplant, parathyroid	4.45	2.32	0.54	7.31	ZZZ	S
60520		A	Removal of thymus gland	15.82	13.54	2.46	31.82	090	S
60521		A	Removal thymus gland	17.80	13.54	2.46	33.80	090	S
60522		A	Removal of thymus gland	21.78	13.54	2.46	37.76	090	S
60540		A	Explore adrenal gland	15.72	12.05	2.08	29.85	090	S
60545		A	Explore adrenal gland	18.51	14.27	2.34	35.12	090	S
60600		A	Remove carotid body lesion	16.13	11.46	1.88	29.47	090	S
60605		A	Remove carotid body lesion	18.20	10.71	2.21	31.12	090	S
60699		C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	YYY	S
61000		A	Remove cranial cavity fluid	1.58	1.07	0.17	2.82	000	S
61001		A	Remove cranial cavity fluid	1.49	0.88	0.17	2.54	000	S
61020		A	Remove brain cavity fluid	1.51	1.26	0.20	2.97	000	S
61026		A	Injection into brain canal	1.69	2.03	0.22	3.94	000	N
61050		A	Remove brain canal fluid	1.51	1.23	0.15	2.89	000	N
61055		A	Injection into brain canal	2.10	1.88	0.19	4.17	000	N
61070		A	Brain canal shunt procedure	0.89	0.49	0.03	1.41	000	N
61105		A	Drill skull for examination	5.19	6.89	1.24	16.32	090	S
61106		A	Drill skull for exam/surgery	7.35	6.15	1.15	14.65	ZZZ	S
61107		A	Drill skull for implantation	4.35	*5.57	1.26	11.18	000	S
61108		A	Drill skull for drainage	10.80	12.05	2.22	25.07	090	S
61120		A	Pierce skull for examination	9.31	5.95	1.08	16.34	090	S
61130		A	Pierce skull, exam/surgery	6.37	4.95	0.96	12.28	ZZZ	S
61140		A	Pierce skull for biopsy	14.84	14.13	2.56	31.53	090	S
61150		A	Pierce skull for drainage	16.37	14.65	2.63	33.65	090	S
61151		A	Pierce skull for drainage	11.40	2.13	0.37	13.90	090	S
61154		A	Pierce skull, remove clot	13.67	*17.50	3.27	34.44	090	S
61156		A	Pierce skull for drainage	15.23	16.19	3.05	34.47	090	S
61210		A	Pierce skull; implant device	4.72	*5.04	1.53	12.29	000	S
61215		A	Insert brain-fluid device	10.05	9.00	1.63	20.68	090	S
61250		A	Pierce skull & explore	11.03	8.03	1.44	20.50	090	S
61253		A	Pierce skull & explore	13.00	9.62	1.69	24.31	090	S
61304		A	Open skull for exploration	20.63	26.03	4.78	51.44	090	S
61305		A	Open skull for exploration	24.77	29.11	5.05	58.93	090	S
61312		A	Open skull for drainage	20.54	24.13	4.46	49.13	090	S
61313		A	Open skull for drainage	20.54	24.04	4.38	48.96	090	S
61314		A	Open skull for drainage	22.78	25.62	4.68	53.08	090	S
61315		A	Open skull for drainage	25.91	24.41	4.47	54.79	090	S
61320		A	Open skull for drainage	23.90	18.70	3.41	46.01	090	S
61321		A	Open skull for drainage	26.65	19.83	3.54	50.03	090	S
61330		A	Decompress eye socket	15.65	12.97	1.22	29.84	090	S
61332		A	Explore/biopsy eye socket	26.08	20.72	2.76	49.56	090	S
61333		A	Explore orbit; remove lesion	26.75	20.46	3.26	50.47	090	S
61334		A	Explore orbit; remove object	17.07	14.65	1.82	33.54	090	S
61340		A	Relieve cranial pressure	11.56	*14.80	2.54	28.90	090	S
61343		A	Incise skull, pressure relief	27.87	30.05	5.28	63.20	090	S
61345		A	Relieve cranial pressure	25.36	19.18	3.45	47.99	090	S
61440		A	Incise skull for surgery	24.79	20.75	3.00	48.54	090	S
61450		A	Incise skull for surgery	24.29	20.43	3.43	48.15	090	S
61458		A	Incise skull for brain wound	25.97	27.28	4.87	58.12	090	S
61460		A	Incise skull for surgery	26.75	25.05	3.98	55.78	090	S
61470		A	Incise skull for surgery	20.79	13.86	2.53	37.18	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
61480		A	Incise skull for surgery	16.77	15.07	1.78	33.62	090	S
61490		A	Incise skull for surgery	15.63	11.72	2.16	29.51	090	S
61500		A	Removal of skull lesion	16.93	20.07	3.58	40.58	090	S
61501		A	Remove infected skull bone	13.59	*17.40	3.33	34.32	090	S
61510		A	Removal of brain lesion	23.39	27.04	4.90	55.33	090	S
61512		A	Remove brain lining lesion	24.26	29.02	5.28	58.56	090	S
61514		A	Removal of brain abscess	23.49	25.52	4.74	53.75	090	S
61516		A	Removal of brain lesion	22.84	25.48	4.57	53.89	090	S
61518		A	Removal of brain lesion	32.27	30.02	5.46	67.75	090	S
61519		A	Remove brain lining lesion	33.84	31.22	5.77	70.83	090	S
61520		A	Removal of brain lesion	38.35	33.85	5.89	78.09	090	S
61521		A	Removal of brain lesion	39.48	32.97	5.85	78.30	090	S
61522		A	Removal of brain abscess	27.55	19.96	3.79	51.30	090	S
61524		A	Removal of brain lesion	26.02	27.45	5.15	58.62	090	S
61526		A	Removal of brain lesion	29.71	34.01	4.79	68.51	090	S
61530		A	Removal of brain lesion	42.35	34.01	4.79	81.15	090	S
61531		A	Implant brain electrodes	20.50	14.98	1.75	37.23	090	S
61533		A	Implant brain electrodes	23.41	17.02	3.33	43.76	090	S
61534		A	Removal of brain lesion	19.13	6.38	2.01	27.52	090	S
61535		A	Remove brain electrodes	10.23	7.66	1.25	19.14	090	S
61536		A	Removal of brain lesion	29.43	21.96	3.99	55.38	090	S
61538		A	Removal of brain tissue	28.05	29.08	4.97	62.10	090	S
61539		A	Removal of brain tissue	30.05	22.96	4.07	57.08	090	S
61541		A	Incision of brain tissue	26.95	19.80	3.76	50.53	090	S
61542		A	Removal of brain tissue	27.39	19.91	3.90	51.20	090	S
61543		A	Removal of brain tissue	20.62	17.24	2.49	40.35	090	S
61544		A	Remove & treat brain lesion	23.71	28.19	2.11	54.01	090	S
61545		A	Excision of brain tumor	34.50	25.66	4.80	64.96	090	S
61546		A	Removal of pituitary gland	29.33	27.01	4.78	61.12	090	S
61548		A	Removal of pituitary gland	20.15	24.78	4.03	48.96	090	S
61550		A	Release of skull seams	14.24	11.81	1.11	27.16	090	S
61552		A	Release of skull seams	19.02	13.83	2.70	35.55	090	S
61556		A	Incise skull/sutures	21.35	15.53	3.04	39.92	090	S
61557		A	Incise skull/sutures	21.47	15.62	3.05	40.14	090	S
61558		A	Excision of skull/sutures	24.41	17.74	3.47	45.62	090	S
61559		A	Excision of skull/sutures	31.65	23.01	4.50	59.16	090	S
61563		A	Excision of skull tumor	25.87	18.81	3.68	48.36	090	S
61564		A	Excision of skull tumor	32.64	23.73	4.64	61.01	090	S
61570		A	Remove brain foreign body	22.89	16.49	3.06	42.44	090	S
61571		A	Incise skull for brain wound	24.55	18.32	3.21	46.08	090	S
61575		A	Skull base/brainstem surgery	32.33	32.99	5.05	70.37	090	S
61576		A	Skull base/brainstem surgery	33.82	28.23	3.91	65.96	090	S
61580		A	Craniofacial approach, skull	28.90	21.01	4.10	54.01	090	S
61581		A	Craniofacial approach, skull	32.80	23.84	4.66	61.30	090	S
61582		A	Craniofacial approach, skull	29.77	21.65	4.22	55.64	090	S
61583		A	Craniofacial approach, skull	33.97	24.70	4.83	63.50	090	S
61584		A	Orbitocranial approach/skull	32.89	23.91	4.68	61.48	090	S
61585		A	Orbitocranial approach/skull	36.80	26.75	5.23	68.78	090	S
61590		A	Infratemporal approach/skull	40.02	29.10	5.68	74.80	090	S
61591		A	Infratemporal approach/skull	41.97	30.52	5.96	78.45	090	S
61592		A	Orbitocranial approach/skull	38.07	27.68	5.41	71.16	090	S
61595		A	Transtemporal approach/skull	28.12	20.44	4.00	52.56	090	S
61596		A	Transcochlear approach/skull	34.17	24.84	4.86	63.87	090	S
61597		A	Transcondylar approach/skull	36.12	26.26	5.13	67.51	090	S
61598		A	Transpetrosal approach/skull	31.83	23.13	4.52	59.48	090	S
61600		A	Resect/excise cranial lesion	24.41	17.74	3.46	45.61	090	S
61601		A	Resect/excise cranial lesion	26.16	19.03	3.72	48.91	090	S
61605		A	Resect/excise cranial lesion	27.62	20.09	3.93	51.64	090	S
61606		A	Resect/excise cranial lesion	37.00	26.90	5.25	69.15	090	S
61607		A	Resect/excise cranial lesion	34.56	25.13	4.91	64.60	090	S
61608		A	Resect/excise cranial lesion	40.21	29.24	5.71	75.16	090	S
61609		A	Transect, artery, sinus	9.89	7.19	1.40	18.48	ZZZ	S
61610		A	Transect, artery, sinus	29.67	21.57	4.21	55.45	ZZZ	S
61611		A	Transect, artery, sinus	7.42	5.39	1.06	13.87	ZZZ	S
61612		A	Transect, artery, sinus	27.85	20.27	3.96	52.11	ZZZ	S
61613		A	Remove aneurysm, sinus	39.43	26.67	5.61	73.71	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
61615		A	Resect/excise lesion, skull	30.36	22.07	4.31	56.74	090	S
61616		A	Resect/excise lesion, skull	41.29	30.03	5.86	77.18	090	S
61618		A	Repair dura	15.62	11.35	2.22	29.19	090	S
61619		A	Repair dura	19.52	14.19	2.77	36.48	090	S
61624		A	Occlusion/embolization cath	20.15	15.28	1.79	37.22	000	N
61626		A	Occlusion/embolization cath	16.62	12.60	1.47	30.69	000	N
61680		A	Intracranial vessel surgery	36.45	31.06	5.79	73.30	090	S
61682		A	Intracranial vessel surgery	42.21	35.31	6.36	83.88	090	S
61684		A	Intracranial vessel surgery	39.25	29.76	3.47	72.48	090	S
61686		A	Intracranial vessel surgery	47.45	35.98	4.20	87.63	090	S
61690		A	Intracranial vessel surgery	33.82	27.46	4.09	65.37	090	S
61692		A	Intracranial vessel surgery	37.96	28.79	3.36	70.11	090	S
61700		A	Inner skull vessel surgery	34.83	31.69	5.67	72.19	090	S
61702		A	Inner skull vessel surgery	39.20	35.31	6.61	82.12	090	S
61703		A	Clamp neck artery	16.27	12.21	2.24	30.72	090	S
61705		A	Revise circulation to head	34.49	30.41	5.25	70.15	090	S
61708		A	Revise circulation to head	33.59	25.20	2.32	61.11	090	S
61710		A	Revise circulation to head	28.14	16.83	1.75	46.52	090	S
61711		A	Fusion of skull arteries	34.62	33.04	6.20	73.86	090	S
61712		A	Skull or spine microsurgery	3.49	*4.47	0.93	8.89	ZZZ	S
61720		A	Incise skull/brain surgery	15.85	*20.29	4.05	40.19	090	S
61735		A	Incise skull/brain surgery	17.08	12.96	1.51	31.55	090	S
61750		A	Incise skull; brain biopsy	10.03	*13.54	4.31	27.88	090	S
61751		A	Brain biopsy with cat scan	15.18	*19.43	4.44	39.05	090	S
61760		A	Implant brain electrodes	24.83	14.95	1.75	41.56	090	S
61770		A	Incise skull for treatment	15.14	*19.38	3.43	37.95	090	S
61790		A	Treat trigeminal nerve	10.31	*13.19	3.03	26.53	090	S
61791		A	Treat trigeminal tract	7.29	*9.77	3.16	20.22	090	S
61793		A	Focus radiation beam	16.70	21.35	1.96	40.01	090	S
61795		A	Brain surgery using computer	4.04	*5.24	1.55	10.83	000	S
61850		A	Implant neuroelectrodes	15.98	11.63	2.26	29.87	090	S
61855		A	Implant neuroelectrodes	12.94	10.39	1.47	24.80	090	S
61860		A	Implant neuroelectrodes	11.20	8.14	1.59	20.93	090	S
61865		A	Implant neuroelectrodes	21.70	15.78	3.09	40.57	090	S
61870		A	Implant neuroelectrodes	5.77	4.19	0.82	10.78	090	S
61875		A	Implant neuroelectrodes	9.20	6.69	1.31	17.20	090	S
61880		A	Revise/remove neuroelectrode	5.72	4.79	0.66	11.17	090	S
61885		A	Implant neuroreceiver	2.35	1.96	0.29	4.60	090	S
61888		A	Revise/remove neuroreceiver	3.10	2.25	0.44	5.79	010	S
62000		A	Repair of skull fracture	11.26	5.73	0.95	17.94	090	S
62005		A	Repair of skull fracture	14.84	11.08	1.97	27.89	090	S
62010		A	Treatment of head injury	18.43	19.20	3.39	41.02	090	S
62100		A	Repair brain fluid leakage	20.78	21.82	3.72	46.12	090	S
62115		A	Reduction of skull defect	20.50	15.51	1.82	37.83	090	S
62116		A	Reduction of skull defect	22.45	16.96	1.99	41.42	090	S
62117		A	Reduction of skull defect	25.38	19.20	2.25	46.83	090	S
62120		A	Repair skull cavity lesion	22.34	16.90	1.98	41.22	090	S
62121		A	Incise skull repair	20.25	17.51	3.41	41.17	090	S
62140		A	Repair of skull defect	12.83	13.43	2.39	28.45	090	S
62141		A	Repair of skull defect	13.90	17.73	3.28	34.91	090	S
62142		A	Remove skull plate/flap	9.91	*12.66	2.64	25.24	090	S
62143		A	Replace skull plate/flap	12.11	9.17	1.65	22.93	000	S
62145		A	Repair of skull & brain	17.58	13.16	2.29	33.13	090	S
62146		A	Repair of skull with graft	15.11	10.99	2.15	28.25	090	S
62147		A	Repair of skull with graft	18.14	13.17	2.57	33.88	090	S
62180		A	Establish brain cavity shunt	12.72	14.21	2.70	29.63	090	S
62190		A	Establish brain cavity shunt	10.13	*12.97	3.21	26.31	090	S
62192		A	Establish brain cavity shunt	11.31	*14.48	2.74	28.53	090	S
62194		A	Replace/irrigate catheter	2.61	1.88	0.29	4.98	010	N
62200		A	Establish brain cavity shunt	13.24	*16.95	3.09	33.28	090	S
62201		A	Establish brain cavity shunt	12.10	8.78	1.72	22.60	090	S
62220		A	Establish brain cavity shunt	12.06	*15.43	3.12	30.61	090	S
62223		A	Establish brain cavity shunt	12.81	*16.40	3.02	32.23	090	S
62225		A	Replace/irrigate catheter	4.71	4.80	0.58	10.09	090	S
62230		A	Replace/revise brain shunt	9.71	9.83	1.82	21.36	090	S
62256		A	Remove brain cavity shunt	5.90	6.38	1.17	13.45	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
62258		A	Replace brain cavity shunt	13.60	14.78	2.55	30.93	090	S
62268		A	Drain spinal cord cyst	3.87	2.98	0.36	7.21	000	N
62269		A	Needle biopsy spinal cord	4.07	1.75	0.28	6.10	000	N
62270		A	Spinal fluid tap, diagnostic	1.13	0.71	0.06	1.90	000	N
62272		A	Drain spinal fluid	1.35	1.01	0.12	2.48	000	N
62273		A	Treat lumbar spine lesion	2.15	1.12	0.26	3.53	000	N
62274		A	Inject spinal anesthetic	1.78	0.74	0.17	2.69	000	N
62275		A	Inject spinal anesthetic	1.79	0.59	0.19	2.57	000	N
62276		A	Inject spinal anesthetic	2.04	1.23	0.23	3.50	000	N
62277		A	Inject spinal anesthetic	2.15	0.84	0.23	3.22	000	N
62278		A	Inject spinal anesthetic	1.51	0.98	0.26	2.75	000	N
62279		A	Inject spinal anesthetic	1.58	0.82	0.24	2.64	000	N
62280		A	Treat spinal cord lesion	2.58	0.71	0.14	3.43	010	N
62281		A	Treat spinal cord lesion	2.61	0.87	0.28	3.76	010	N
62282		A	Treat spinal canal lesion	2.28	1.70	0.40	4.38	010	N
62284		A	Injection for myelogram	1.54	*1.98	0.34	3.86	000	S
62287		A	Percutaneous diskectomy	4.13	*6.96	2.65	13.74	090	S
62288		A	Injection into spinal canal	1.74	1.12	0.24	3.10	000	N
62289		A	Injection into spinal canal	1.64	1.07	0.29	3.00	000	N
62290		A	Inject for spine disk x-ray	3.58	1.86	0.24	5.68	000	N
62291		A	Inject for spine disk x-ray	2.91	1.78	0.39	5.08	000	N
62292		A	Injection into disk lesion	7.00	*8.96	2.13	18.09	090	S
62294		A	Injection into spinal artery	8.05	5.84	0.68	14.57	090	S
62298		A	Injection into spinal canal	2.20	1.04	0.13	3.37	000	N
62350		A	Implant spinal catheter	6.25	3.49	1.02	10.76	090	S
62351		A	Implant spinal catheter	9.25	5.16	1.50	15.91	090	S
62355		A	Remove spinal canal catheter	4.80	3.49	0.68	8.97	090	S
62360		A	Insert spine infusion device	2.00	1.12	0.33	3.45	090	S
62361		A	Implant spine infusion pump	4.80	2.68	0.78	8.26	090	S
62362		A	Implant spine infusion pump	6.29	3.51	1.02	10.82	090	S
62365		A	Remove spine infusion device	4.77	3.47	0.68	8.92	090	S
62367		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62367	26	A	Analyze spine infusion pump	0.48	0.35	0.07	0.90	XXX	N
62367	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62368	26	A	Analyze spine infusion pump	0.75	0.55	0.11	1.41	XXX	N
62368	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
63001		A	Removal of spinal lamina	14.50	*18.55	3.42	36.47	090	S
63003		A	Removal of spinal lamina	14.63	17.93	3.23	35.79	090	S
63005		A	Removal of spinal lamina	13.53	*17.32	3.10	33.95	090	S
63011		A	Removal of spinal lamina	11.11	9.99	1.87	22.97	090	S
63012		A	Removal of spinal lamina	14.21	18.07	3.15	35.43	090	S
63015		A	Removal of spinal lamina	16.59	*21.23	4.18	42.00	090	S
63016		A	Removal of spinal lamina	17.43	*22.30	4.11	43.84	090	S
63017		A	Removal of spinal lamina	15.85	*20.29	4.00	40.14	090	S
63020		A	Neck spine disk surgery	12.53	*16.04	3.38	31.95	090	S
63030		A	Low back disk surgery	12.11	*15.50	2.81	30.42	090	S
63035		A	Added spinal disk surgery	3.15	*4.04	0.76	7.95	ZZZ	S
63040		A	Neck spine disk surgery	17.56	*22.48	4.30	44.34	090	S
63042		A	Low back disk surgery	17.27	*22.10	4.38	43.75	090	S
63045		A	Removal of spinal lamina	15.31	*19.59	4.38	39.28	090	S
63048		A	Removal of spinal lamina	14.61	*18.70	4.58	37.89	090	S
63047		A	Removal of spinal lamina	12.76	*16.33	4.48	33.57	090	S
63048		A	Removal of spinal lamina	3.26	*4.17	1.03	8.46	ZZZ	S
63055		A	Decompress spinal cord	20.67	23.73	4.18	48.58	090	S
63056		A	Decompress spinal cord	19.11	21.84	3.76	44.71	090	S
63057		A	Decompress spinal cord	3.00	*3.84	0.65	7.69	ZZZ	S
63064		A	Decompress spinal cord	23.23	23.83	4.09	51.15	090	S
63066		A	Decompress spinal cord	3.26	2.48	0.45	6.19	ZZZ	S
63075		A	Neck spine disk surgery	19.77	17.57	3.21	40.55	090	S
63076		A	Neck spine disk surgery	4.05	*5.19	0.97	10.21	ZZZ	S
63077		A	Spine disk surgery, thorax	20.25	18.42	3.17	41.84	090	S
63078		A	Spine disk surgery, thorax	3.28	2.61	0.45	6.34	ZZZ	S
63081		A	Removal of vertebral body	22.08	26.26	4.50	52.84	090	S
63082		A	Removal of vertebral body	4.37	*5.60	1.22	11.19	ZZZ	S
63085		A	Removal of vertebral body	25.07	27.39	4.69	57.15	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
63086		A	Removal of vertebral body	3.19	*4.08	1.07	8.34	ZZZ	S
63087		A	Removal of vertebral body	27.56	26.25	4.85	60.66	090	S
63088		A	Removal of vertebral body	4.33	*5.55	1.18	11.06	ZZZ	S
63090		A	Removal of vertebral body	26.20	29.22	4.92	60.34	090	S
63091		A	Removal of vertebral body	3.03	2.73	0.46	6.22	ZZZ	S
63170		A	Incise spinal cord tract(s)	18.18	18.88	3.28	40.34	090	S
63172		A	Drainage of spinal cyst	16.19	*20.72	4.26	41.17	090	S
63173		A	Drainage of spinal cyst	20.40	15.47	1.81	37.68	090	S
63180		A	Revise spinal cord ligamenta	16.75	11.61	2.05	30.41	090	S
63182		A	Revise spinal cord ligamenta	18.91	16.44	2.21	37.56	090	S
63185		A	Incise spinal column/nerves	13.85	15.55	2.93	32.33	090	S
63190		A	Incise spinal column/nerves	16.26	*20.81	3.91	40.98	090	S
63191		A	Incise spinal column/nerves	16.42	13.04	2.21	31.67	090	S
63194		A	Incise spinal column & cord	17.53	13.02	2.33	32.88	090	S
63195		A	Incise spinal column & cord	17.16	13.86	2.11	33.13	090	S
63196		A	Incise spinal column & cord	20.57	15.59	1.83	37.99	090	S
63197		A	Incise spinal column & cord	19.38	14.36	2.62	36.36	090	S
63198		A	Incise spinal column & cord	22.45	16.32	3.19	41.96	090	S
63199		A	Incise spinal column & cord	23.89	21.40	2.61	47.90	090	S
63200		A	Release of spinal cord	17.56	12.49	1.83	31.98	090	S
63250		A	Revise spinal cord vessels	38.67	27.99	5.22	71.88	090	S
63251		A	Revise spinal cord vessels	35.86	22.74	4.32	65.92	090	S
63252		A	Revise spinal cord vessels	38.85	28.25	5.52	72.62	090	S
63265		A	Excise intraspinal lesion	20.04	22.01	3.90	45.95	090	S
63256		A	Excise intraspinal lesion	20.65	24.76	4.43	49.84	090	S
63267		A	Excise intraspinal lesion	16.70	*21.38	4.20	42.28	090	S
63268		A	Excise intraspinal lesion	17.27	12.56	2.46	32.29	090	S
63270		A	Excise intraspinal lesion	24.84	18.14	3.42	46.40	090	S
63271		A	Excise intraspinal lesion	24.96	26.60	4.79	56.35	090	S
63272		A	Excise intraspinal lesion	23.69	23.15	4.26	51.10	090	S
63273		A	Excise intraspinal lesion	22.66	17.56	3.12	43.34	090	S
63275		A	Biopsy/excise spinal tumor	22.05	27.82	5.09	54.96	090	S
63276		A	Biopsy/excise spinal tumor	21.76	25.31	4.62	51.69	090	S
63277		A	Biopsy/excise spinal tumor	19.51	23.75	4.25	47.51	090	S
63278		A	Biopsy/excise spinal tumor	19.24	23.34	4.32	46.90	090	S
63280		A	Biopsy/excise spinal tumor	26.72	28.06	4.99	59.79	090	S
63281		A	Biopsy/excise spinal tumor	26.42	27.57	4.96	59.05	090	S
63282		A	Biopsy/excise spinal tumor	24.96	24.11	4.44	53.51	090	S
63283		A	Biopsy/excise spinal tumor	23.57	18.77	3.44	45.78	090	S
63285		A	Biopsy/excise spinal tumor	34.24	24.49	4.49	63.22	090	S
63286		A	Biopsy/excise spinal tumor	33.94	28.76	4.92	67.62	090	S
63287		A	Biopsy/excise spinal tumor	34.43	25.72	4.53	64.68	090	S
63290		A	Biopsy/excise spinal tumor	35.04	27.16	4.65	66.85	090	S
63300		A	Removal of vertebral body	22.78	17.27	2.02	42.07	090	S
63301		A	Removal of vertebral body	25.08	18.45	3.58	47.11	090	S
63302		A	Removal of vertebral body	25.60	21.36	3.02	49.98	090	S
63303		A	Removal of vertebral body	28.47	18.50	3.39	50.36	090	S
63304		A	Removal of vertebral body	28.10	21.31	2.49	51.90	090	S
63305		A	Removal of vertebral body	29.42	22.49	3.75	55.66	090	S
63306		A	Removal of vertebral body	30.01	22.76	2.65	55.42	090	S
63307		A	Removal of vertebral body	29.42	24.42	2.98	56.82	090	S
63308		A	Removal of vertebral body	5.25	4.05	0.73	10.03	ZZZ	S
63600		A	Remove spinal cord lesion	13.06	10.70	2.63	26.41	090	N
63610		A	Stimulation of spinal cord	8.73	6.73	2.06	17.52	000	N
63615		A	Remove lesion of spinal cord	15.40	11.55	2.03	28.98	090	S
63650		A	Implant neuroelectrodes	5.99	*7.67	2.13	15.79	090	S
63655		A	Implant neuroelectrodes	8.95	*11.93	3.64	24.52	090	S
63650		A	Revise/remove neuroelectrode	5.54	*7.09	1.56	14.19	090	S
63685		A	Implant neuroreceiver	6.29	7.40	1.46	15.15	090	S
63688		A	Revise/remove neuroreceiver	4.77	*6.10	1.26	12.13	090	S
63690		A	Analysis of neuroreceiver	0.45	*0.58	0.12	1.15	XXX	N
63691		A	Analysis of neuroreceiver	0.65	0.41	0.11	1.17	XXX	N
63700		A	Repair of spinal herniation	15.62	11.35	2.22	29.19	090	S
63702		A	Repair of spinal herniation	17.57	12.78	2.49	32.84	090	S
63704		A	Repair of spinal herniation	19.52	14.19	2.77	36.48	090	S
63706		A	Repair of spinal herniation	22.45	16.33	3.18	41.96	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
63707		A	Repair spinal fluid leakage	10.14	*12.98	2.56	25.68	090	S
63709		A	Repair spinal fluid leakage	13.26	*16.97	3.30	33.53	090	S
63710		A	Graft repair of spine defect	13.01	9.75	1.58	24.34	090	S
63740		A	Install spinal shunt	10.43	*13.35	2.99	26.77	090	S
63741		A	Install spinal shunt	7.13	*9.13	2.39	18.65	090	S
63744		A	Revision of spinal shunt	6.83	8.15	1.68	16.66	090	S
63746		A	Removal of spinal shunt	5.60	5.52	1.08	12.20	090	S
63750		D	Insert spinal canal catheter	0.00	0.00	0.00	0.00	090	S
63780		D	Insert spinal canal catheter	0.00	0.00	0.00	0.00	090	N
64400		A	Injection for nerve block	1.11	0.48	0.05	1.64	000	N
64402		A	Injection for nerve block	1.25	0.62	0.09	1.96	000	S
64405		A	Injection for nerve block	1.32	0.64	0.07	2.03	000	N
64408		A	Injection for nerve block	1.41	1.04	0.11	2.56	000	N
64410		A	Injection for nerve block	1.43	0.71	0.15	2.29	000	N
64412		A	Injection for nerve block	1.18	0.62	0.08	1.88	000	N
64413		A	Injection for nerve block	1.40	0.74	0.08	2.22	000	N
64415		A	Injection for nerve block	1.48	0.26	0.07	1.81	000	N
64417		A	Injection for nerve block	1.44	0.53	0.15	2.22	000	N
64418		A	Injection for nerve block	1.32	0.85	0.10	2.27	000	N
64420		A	Injection for nerve block	1.16	0.64	0.07	1.89	000	N
64421		A	Injection for nerve block	1.68	0.83	0.17	2.68	000	N
64425		A	Injection for nerve block	1.75	0.57	0.10	2.42	000	N
64430		A	Injection for nerve block	1.46	0.70	0.12	2.28	000	S
64435		A	Injection for nerve block	1.45	0.47	0.09	2.01	000	S
64440		A	Injection for nerve block	1.34	0.79	0.09	2.22	000	N
64441		A	Injection for nerve block	1.79	1.01	0.12	2.92	000	N
64442		A	Injection for nerve block	1.41	1.19	0.16	2.76	000	N
64443		A	Injection for nerve block	1.35	0.63	0.12	2.10	ZZZ	N
64445		A	Injection for nerve block	1.48	0.49	0.06	2.03	000	N
64450		A	Injection for nerve block	1.27	0.53	0.05	1.85	000	S
64505		A	Injection for nerve block	1.36	0.62	0.06	2.04	000	N
64508		A	Injection for nerve block	1.12	1.04	0.08	2.24	000	N
64510		A	Injection for nerve block	1.22	0.71	0.18	2.11	000	N
64520		A	Injection for nerve block	1.35	0.72	0.17	2.24	000	N
64530		A	Injection for nerve block	1.58	1.17	0.28	3.03	000	N
64550		A	Apply neurostimulator	0.18	0.44	0.04	0.66	000	N
64553		A	Implant neuroelectrodes	2.26	1.02	0.10	3.38	010	N
64555		A	Implant neuroelectrodes	2.22	0.42	0.10	2.74	010	N
64560		A	Implant neuroelectrodes	2.31	1.45	0.24	4.00	010	S
64565		A	Implant neuroelectrodes	1.71	0.76	0.08	2.55	010	N
64573		A	Implant neuroelectrodes	4.35	3.16	0.61	8.12	090	S
64575		A	Implant neuroelectrodes	4.27	3.07	0.40	7.74	090	S
64577		A	Implant neuroelectrodes	4.54	2.76	0.45	7.75	090	S
64580		A	Implant neuroelectrodes	4.04	2.91	0.20	7.15	090	S
64585		A	Revise/remove neuroelectrode	2.01	0.97	0.09	3.07	010	S
64590		A	Implant neuroreceiver	2.35	1.84	0.35	4.54	010	S
64595		A	Revise/remove neuroreceiver	1.68	1.12	0.21	3.01	010	S
64600		A	Injection treatment of nerve	3.40	1.69	0.17	5.26	010	N
64605		A	Injection treatment of nerve	5.56	1.56	0.33	7.45	010	N
64610		A	Injection treatment of nerve	7.11	7.26	1.35	15.72	010	N
64612		A	Destroy nerve, face muscle	1.91	1.45	0.17	3.53	010	S
64613		A	Destroy nerve, spine muscle	1.91	1.45	0.17	3.53	010	S
64620		A	Injection treatment of nerve	2.79	1.00	0.19	3.98	010	N
64622		A	Injection treatment of nerve	2.95	1.82	0.35	5.12	010	N
64623		A	Injection treatment of nerve	0.99	0.85	0.17	2.01	ZZZ	N
64630		A	Injection treatment of nerve	2.95	1.74	0.38	5.07	010	N
64640		A	Injection treatment of nerve	2.49	0.92	0.09	3.50	010	N
64680		A	Injection treatment of nerve	2.57	1.55	0.41	4.53	010	N
64702		A	Revise finger/toe nerve	4.02	4.22	0.70	8.94	090	S
64704		A	Revise hand/foot nerve	4.44	5.38	0.74	10.56	090	S
64706		A	Revise arm/leg nerve	5.71	*7.31	1.26	14.28	090	S
64712		A	Revision of sciatic nerve	7.18	*9.19	1.68	18.05	090	S
64713		A	Revision of arm nerve(s)	10.34	9.40	1.72	21.46	090	S
64714		A	Revise low back nerve(s)	9.87	6.13	1.41	17.41	090	S
64716		A	Revision of cranial nerve	5.80	4.83	0.67	11.30	090	S
64718		A	Revise ulnar nerve at elbow	5.48	6.72	1.13	13.33	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
64719		A	Revise ulnar nerve at wrist	4.72	4.95	0.85	10.52	090	S
64721		A	Carpal tunnel surgery	3.99	4.90	0.83	9.72	090	S
64722		A	Relieve pressure on nerve(s)	4.46	*5.71	1.11	11.28	090	S
64726		A	Release foot/toe nerve	3.97	0.72	0.07	4.76	090	S
64727		A	Internal nerve revision	3.10	3.24	0.55	6.89	ZZZ	S
64732		A	Incision of brow nerve	4.15	4.31	0.72	9.18	090	S
64734		A	Incision of cheek nerve	4.62	4.61	0.67	9.90	090	S
64736		A	Incision of chin nerve	4.40	4.46	0.42	9.28	090	S
64738		A	Incision of jaw nerve	5.42	5.07	0.61	11.10	090	S
64740		A	Incision of tongue nerve	5.28	5.18	0.62	11.08	090	S
64742		A	Incision of facial nerve	5.91	5.00	0.44	11.35	090	S
64744		A	Incise nerve, back of head	4.87	6.10	1.10	12.07	090	S
64746		A	Incise diaphragm nerve	5.62	3.77	0.77	10.16	090	S
64752		A	Incision of vagus nerve	6.64	3.93	0.85	11.42	090	S
64755		A	Incision of stomach nerves	13.10	10.47	2.27	25.84	090	S
64760		A	Incision of vagus nerve	6.54	6.85	1.50	14.89	090	S
64761		A	Incision of pelvis nerve	6.10	4.66	0.50	11.26	090	S
64763		A	Incise hip/thigh nerve	6.72	4.80	0.92	12.44	090	S
64766		A	Incise hip/thigh nerve	8.31	6.67	1.20	16.18	090	S
64771		A	Sever cranial nerve	6.89	6.42	0.73	14.14	090	S
64772		A	Incision of spinal nerve	6.79	6.77	1.30	14.86	090	S
64774		A	Remove skin nerve lesion	4.86	2.74	0.45	8.05	090	S
64776		A	Remove digit nerve lesion	4.86	2.78	0.41	8.05	090	S
64778		A	Added digit nerve surgery	3.11	2.73	0.43	6.27	ZZZ	S
64782		A	Remove limb nerve lesion	5.81	4.70	0.46	10.97	090	S
64783		A	Added limb nerve surgery	3.72	3.26	0.47	7.45	ZZZ	S
64784		A	Remove nerve lesion	9.46	5.64	0.96	16.06	090	S
64786		A	Remove sciatic nerve lesion	15.10	12.66	2.14	29.90	090	S
64787		A	Implant nerve end	4.30	3.47	0.60	8.37	ZZZ	S
64785		A	Remove skin nerve lesion	4.30	3.83	0.50	8.43	090	S
64790		A	Removal of nerve lesion	10.95	7.11	1.22	19.28	090	S
64792		A	Removal of nerve lesion	14.40	8.99	1.66	25.05	090	S
64795		A	Biopsy of nerve	3.01	2.38	0.39	5.78	000	S
64802		A	Remove sympathetic nerves	8.22	5.40	1.10	14.72	090	S
64804		A	Remove sympathetic nerves	13.65	12.77	2.44	28.86	090	S
64809		A	Remove sympathetic nerves	12.79	10.55	2.04	25.38	090	S
64818		A	Remove sympathetic nerves	9.42	8.57	1.72	19.71	090	S
64820		A	Remove sympathetic nerves	10.00	7.27	1.42	18.69	090	S
64830		A	Microrepair of nerve	3.10	2.01	0.38	5.49	ZZZ	S
64831		A	Repair of digit nerve	8.84	3.38	0.56	12.78	090	S
64832		A	Repair additional nerve	5.66	1.40	0.24	7.30	ZZZ	S
64834		A	Repair of hand or foot nerve	9.77	3.50	0.56	13.83	090	S
64835		A	Repair of hand or foot nerve	10.47	5.95	1.03	17.46	090	S
64836		A	Repair of hand or foot nerve	10.47	5.70	1.22	18.39	090	S
64837		A	Repair additional nerve	6.26	4.45	0.85	11.56	ZZZ	S
64840		A	Repair of leg nerve	12.43	10.35	0.53	23.31	090	S
64856		A	Repair/transpose nerve	12.81	8.21	1.46	22.48	090	S
64857		A	Repair arm/leg nerve	13.43	9.53	1.54	24.50	090	S
64858		A	Repair sciatic nerve	15.43	10.98	2.11	28.52	090	S
64859		A	Additional nerve surgery	4.26	3.50	0.58	8.34	ZZZ	S
64861		A	Repair of arm nerves	17.94	13.42	1.38	32.74	090	S
64862		A	Repair of low back nerves	18.14	21.56	1.61	41.31	090	S
64864		A	Repair of facial nerve	11.87	7.86	1.16	20.89	090	S
64865		A	Repair of facial nerve	14.70	12.34	1.50	28.54	090	S
64866		A	Fusion of facial/other nerve	14.94	11.19	1.84	27.97	090	S
64868		A	Fusion of facial/other nerve	13.36	11.19	1.47	26.02	090	S
64870		A	Fusion of facial/other nerve	15.19	13.91	1.70	30.80	090	S
64872		A	Subsequent repair of nerve	1.99	1.44	0.29	3.72	ZZZ	S
64874		A	Repair & revise nerve	2.98	2.17	0.43	5.58	ZZZ	S
64876		A	Repair nerve; shorten bone	3.38	2.46	0.48	6.32	ZZZ	N
64885		A	Nerve graft, head or neck	16.73	12.69	1.48	30.90	090	S
64886		A	Nerve graft, head or neck	19.95	15.13	1.77	36.85	090	S
64890		A	Nerve graft, hand or foot	14.35	12.26	2.12	28.73	090	S
64891		A	Nerve graft, hand or foot	15.21	10.42	1.73	27.36	090	S
64892		A	Nerve graft, arm or leg	13.85	11.04	1.69	26.58	090	S
64893		A	Nerve graft, arm or leg	14.61	13.93	2.27	30.81	090	S

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[3] # Indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
64895		A	Nerve graft, hand or foot	18.39	13.16	2.55	34.10	090	S
64896		A	Nerve graft, hand or foot	19.38	17.53	1.90	38.81	090	S
64897		A	Nerve graft, arm or leg	17.38	12.63	2.47	32.48	090	S
64898		A	Nerve graft, arm or leg	18.39	14.40	2.35	35.14	090	S
64901		A	Additional nerve graft	10.22	10.16	0.87	21.25	ZZZ	S
64902		A	Additional nerve graft	11.83	11.92	0.99	24.74	ZZZ	S
64905		A	Nerve pedicle transfer	13.22	9.40	0.70	23.32	090	S
64907		A	Nerve pedicle transfer	17.90	13.02	2.55	33.47	090	S
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	YYY	N
65091		A	Revise eye	6.10	*7.81	0.45	14.36	090	S
65093		A	Revise eye with implant	6.47	*8.28	0.52	15.27	090	S
65101		A	Removal of eye	6.52	*8.35	0.47	15.34	090	S
65103		A	Remove eye/insert implant	7.06	*9.04	0.50	16.60	090	S
65105		A	Remove eye/attach implant	7.82	*10.01	0.55	18.38	090	S
65110		A	Removal of eye	13.18	15.99	1.14	30.31	090	S
65112		A	Remove eye, revise socket	15.44	12.16	1.09	28.69	090	S
65114		A	Remove eye, revise socket	16.59	13.07	1.65	31.31	090	S
65125		A	Revise ocular implant	2.97	2.47	0.13	5.57	090	S
65130		A	Insert ocular implant	5.75	*8.64	0.50	15.89	090	S
65135		A	Insert ocular implant	6.93	5.42	0.35	12.70	090	S
65140		A	Attach ocular implant	7.46	6.22	0.33	14.01	090	S
65150		A	Revise ocular implant	5.97	*7.64	0.56	14.17	090	S
65155		A	Reinsert ocular implant	8.21	*10.50	0.90	19.61	090	S
65175		A	Removal of ocular implant	5.93	7.49	0.40	13.82	090	S
65205		A	Remove foreign body from eye	0.78	0.37	0.02	1.17	000	S
65210		A	Remove foreign body from eye	0.84	0.46	0.03	1.33	000	S
65220		A	Remove foreign body from eye	0.71	0.52	0.04	1.27	000	N
65222		A	Remove foreign body from eye	0.93	0.57	0.03	1.53	000	S
65235		A	Remove foreign body from eye	7.12	5.61	0.30	13.03	090	S
65260		A	Remove foreign body from eye	10.35	8.63	0.45	19.43	090	S
65265		A	Remove foreign body from eye	12.04	10.04	0.51	22.59	090	S
65270		A	Repair of eye wound	1.85	1.17	0.07	3.09	010	S
65272		A	Repair of eye wound	3.57	1.64	0.10	5.31	090	S
65273		A	Repair of eye wound	3.69	3.22	0.21	7.32	090	S
65275		A	Repair of eye wound	5.04	0.66	0.04	5.74	090	S
65280		A	Repair of eye wound	7.10	*9.09	0.49	16.68	090	S
65285		A	Repair of eye wound	12.06	12.26	0.64	24.96	090	S
65286		A	Repair of eye wound	5.16	4.79	0.25	10.20	090	S
65290		A	Repair of eye socket wound	5.06	5.20	0.37	11.63	090	S
65400		A	Removal of eye lesion	5.61	6.46	0.35	12.42	090	S
65410		A	Biopsy of cornea	1.47	1.59	0.11	3.17	000	S
65420		A	Removal of eye lesion	3.97	4.28	0.23	8.48	090	S
65426		A	Removal of eye lesion	5.05	*6.47	0.38	11.90	090	S
65430		A	Corneal smear	0.87	0.54	0.03	1.44	000	S
65435		A	Curette/treat cornea	0.92	0.77	0.04	1.73	000	S
65436		A	Curette/treat cornea	3.99	1.53	0.08	5.60	090	S
65450		A	Treatment of corneal lesion	3.07	3.28	0.17	6.52	090	S
65600		A	Revision of cornea	3.15	2.62	0.14	5.91	090	S
65710		A	Corneal transplant	9.52	*12.44	1.13	23.09	090	S
65730		A	Corneal transplant	11.83	*15.14	1.29	28.26	090	S
65750		A	Corneal transplant	12.58	*16.10	1.33	30.01	090	S
65755		A	Corneal transplant	12.58	*16.10	1.39	30.07	090	S
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	XXX	0
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	XXX	0
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	XXX	0
65770		A	Revise cornea with implant	16.56	13.81	0.71	31.08	090	S
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	XXX	0
65772		A	Correction of astigmatism	4.04	*5.16	0.31	9.51	090	S
65775		A	Correction of astigmatism	5.44	*6.96	0.50	12.90	090	S
65800		A	Drainage of eye	1.91	1.72	0.10	3.73	000	S
65805		A	Drainage of eye	1.91	1.81	0.10	3.82	000	S
65810		A	Drainage of eye	4.57	5.45	0.30	10.32	090	S
65815		A	Drainage of eye	4.75	4.49	0.24	9.48	090	S
65820		A	Relieve inner eye pressure	7.60	9.54	0.51	17.65	090	S
65850		A	Incision of eye	10.18	*13.03	0.69	23.90	090	S
65855		A	Laser surgery of eye	4.65	*6.01	0.52	11.18	090	S

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[3] # Indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
65850		A	Incise inner eye adhesions	3.37	*4.31	0.37	8.05	090	S
65855		A	Incise inner eye adhesions	5.42	*6.93	0.41	12.76	090	S
65870		A	Incise inner eye adhesions	5.92	5.86	0.31	12.09	090	S
65875		A	Incise inner eye adhesions	5.14	6.28	0.34	12.76	090	S
65880		A	Incise inner eye adhesions	6.69	6.85	0.37	13.91	090	S
65900		A	Remove eye lesion	10.43	7.91	0.92	19.26	090	S
65920		A	Remove implant from eye	7.90	8.36	0.44	16.70	090	S
65930		A	Remove blood clot from eye	7.03	7.68	0.41	15.12	090	S
66020		A	Injection treatment of eye	1.54	*1.98	0.14	3.66	010	S
66030		A	Injection treatment of eye	1.20	0.54	0.03	1.77	010	S
66130		A	Remove eye lesion	7.54	5.26	0.26	13.10	090	S
66150		A	Glaucoma surgery	7.60	*9.72	0.59	17.91	090	S
66155		A	Glaucoma surgery	7.48	*9.57	0.50	17.55	090	S
66160		A	Glaucoma surgery	9.47	10.77	0.55	20.79	090	S
66165		A	Glaucoma surgery	7.31	*9.36	0.57	17.24	090	S
66170		A	Glaucoma surgery	11.31	12.16	0.63	24.09	090	S
66172		A	Incision of eye	13.67	12.15	0.63	26.45	090	S
66180		A	Implant eye shunt	12.63	*16.17	1.03	29.83	090	S
66185		A	Revise eye shunt	7.69	*9.85	0.58	18.12	090	S
66220		A	Repair eye lesion	7.32	5.95	0.34	13.61	090	S
66225		A	Repair/graft eye lesion	10.55	*13.51	0.86	24.92	090	S
66250		A	Follow-up surgery of eye	5.63	*7.20	0.38	13.21	090	S
66500		A	Incision of iris	3.58	*4.58	0.27	8.43	090	S
66505		A	Incision of iris	3.93	3.27	0.17	7.37	090	S
66600		A	Remove iris and lesion	8.23	9.36	0.51	18.10	090	S
66605		A	Removal of iris	12.34	11.67	0.67	24.88	090	S
66625		A	Removal of iris	4.95	*6.33	0.48	11.76	090	S
66630		A	Removal of iris	5.81	*7.43	0.45	13.69	090	S
66635		A	Removal of iris	5.90	*7.56	0.49	13.95	090	S
66680		A	Repair iris and ciliary body	5.14	6.42	0.35	11.91	090	S
66682		A	Repair iris and ciliary body	5.86	7.33	0.38	13.57	090	S
66700		A	Destruction, ciliary body	4.55	*5.83	0.35	10.73	090	S
66710		A	Destruction, ciliary body	4.55	*5.83	0.41	10.79	090	S
66720		A	Destruction, ciliary body	4.55	*5.83	0.38	10.76	090	S
66740		A	Destruction, ciliary body	4.55	*5.83	0.39	10.77	090	S
66761		A	Revision of iris	3.77	*5.10	0.47	9.34	090	S
66762		A	Revision of iris	4.33	*5.92	0.55	10.80	090	S
66770		A	Removal of inner eye lesion	4.88	*6.24	0.45	11.57	090	S
66820		A	Incision, secondary cataract	3.76	*4.81	0.29	8.86	090	S
66821		A	After cataract laser surgery	2.78	*3.81	0.37	6.96	090	S
66825		A	Reposition intraocular lens	7.73	7.33	0.38	15.44	090	S
66830		A	Removal of lens lesion	7.80	7.67	0.40	15.87	090	S
66840		A	Removal of lens material	7.51	*9.61	0.54	17.66	090	S
66850		A	Removal of lens material	8.66	*11.09	0.70	20.45	090	S
66852		A	Removal of lens material	9.52	*12.19	0.90	22.61	090	S
66920		A	Extraction of lens	8.46	*10.82	0.60	19.88	090	S
66930		A	Extraction of lens	9.73	10.49	0.57	20.79	090	S
66940		A	Extraction of lens	8.48	*10.85	0.62	19.95	090	S
66983		A	Remove cataract, insert lens	8.54	*10.94	0.95	20.43	090	S
66984		A	Remove cataract, insert lens	9.89	*12.66	0.94	23.49	090	S
66985		A	Insert lens prosthesis	7.89	*10.10	0.63	18.62	090	S
66986		A	Exchange lens prosthesis	11.78	12.20	0.63	24.61	090	S
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67005		A	Partial removal of eye fluid	6.53	*10.28	1.13	18.04	090	S
67010		A	Partial removal of eye fluid	6.67	*9.98	1.04	17.69	090	S
67015		A	Release of eye fluid	6.69	6.45	0.35	13.49	090	S
67025		A	Replace eye fluid	6.44	6.75	0.36	13.55	090	S
67026		A	Injection eye drug	2.52	*3.22	0.18	5.92	000	S
67030		A	Incise inner eye strands	4.44	*5.75	0.50	10.69	090	S
67031		A	Laser surgery, eye strands	3.42	*6.15	0.75	10.32	090	S
67036		A	Removal of inner eye fluid	11.33	*15.67	1.49	28.49	090	S
67038		A	Strip retinal membrane	20.20	*25.85	1.80	47.85	090	S
67039		A	Laser treatment of retina	13.60	*18.22	1.68	33.50	090	S
67040		A	Laser treatment of retina	16.26	*20.81	1.75	38.82	090	S
67101		A	Repair, detached retina	7.02	*8.99	0.66	16.67	090	S
67105		A	Repair, detached retina	7.06	*9.14	0.80	17.00	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
67107		A	Repair, detached retina	13.99	*17.91	1.10	33.00	090	S
67108		A	Repair, detached retina	19.90	*25.47	1.76	47.13	090	S
67109		D	Repair, detached retina	0.00	0.00	0.00	0.00	090	S
67110		A	Repair, detached retina	8.14	*10.60	0.97	19.71	090	S
67112		A	Re-repair, detached retina	16.15	16.51	0.86	33.52	090	S
67115		A	Release, encircling material	4.64	*5.93	0.44	11.01	090	S
67120		A	Remove eye implant material	5.63	7.15	0.38	13.16	090	S
67121		A	Remove eye implant material	10.17	9.42	0.49	20.08	090	S
67141		A	Treatment of retina	4.90	*6.27	0.48	11.65	090	S
67145		A	Treatment of retina	5.07	*6.50	0.49	12.06	090	S
67208		A	Treatment of retinal lesion	6.40	*8.19	0.52	15.11	090	S
67210		A	Treatment of retinal lesion	9.48	9.02	0.47	18.97	090	S
67218		A	Treatment of retinal lesion	12.73	13.31	0.70	26.74	090	S
67227		A	Treatment of retinal lesion	6.28	*8.04	0.51	14.83	090	S
67228		A	Treatment of retinal lesion	12.39	9.39	0.48	22.26	090	S
67250		A	Reinforce eye wall	8.36	6.99	0.40	15.75	090	S
67255		A	Reinforce/graft eye wall	8.39	*10.73	0.67	19.99	090	S
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67311		A	Revise eye muscle	6.30	*8.06	0.47	14.83	090	S
67312		A	Revise two eye muscles	7.55	*9.66	0.53	17.74	090	S
67314		A	Revise eye muscle	7.12	*9.12	0.58	16.82	090	S
67316		A	Revise two eye muscles	8.02	*10.27	0.67	18.96	090	S
67318		A	Revise eye muscle(s)	7.45	6.21	0.33	13.99	090	S
67320		A	Revise eye muscle(s)	8.26	*10.57	0.69	19.52	090	S
67331		A	Eye surgery follow-up	7.72	*9.89	0.54	18.15	090	S
67332		A	Reravise eye muscles	8.59	*11.00	0.58	20.17	090	S
67334		A	Revise eye muscle w/suture	7.56	6.30	0.33	14.19	090	S
67335		A	Eye suture during surgery	2.49	*3.89	0.43	6.81	ZZZ	S
67340		A	Revise eye muscle	9.45	7.88	0.41	17.74	090	S
67343		A	Release eye tissue	7.00	5.83	0.31	13.14	090	S
67345		A	Destroy nerve of eye muscle	2.91	2.22	0.26	5.39	010	S
67350		A	Biopsy eye muscle	2.87	2.39	0.13	5.39	000	S
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67400		A	Explore/biopsy eye socket	9.26	10.91	0.62	20.73	090	S
67405		A	Explore/drain eye socket	7.42	*9.49	0.67	17.58	090	S
67412		A	Explore/treat eye socket	9.14	*11.70	0.67	21.51	090	S
67413		A	Explore/treat eye socket	9.75	8.09	0.57	18.41	090	S
67414		A	Explore/decompress eye socket	10.07	8.39	0.44	18.90	090	S
67415		A	Aspiration orbital contents	1.76	2.02	0.12	3.90	000	S
67420		A	Explore/treat eye socket	13.36	16.78	1.11	31.25	090	S
67430		A	Explore/treat eye socket	12.79	10.65	0.54	23.98	090	S
67440		A	Explore/drain eye socket	12.43	*15.91	0.97	29.31	090	S
67445		A	Explore/decompress eye socket	13.36	11.13	0.57	25.06	090	S
67450		A	Explore/biopsy eye socket	12.80	15.29	0.87	28.96	090	S
67500		A	Inject/treat eye socket	0.79	0.73	0.06	1.58	000	S
67505		A	Inject/treat eye socket	0.82	1.04	0.06	1.92	000	S
67515		A	Inject/treat eye socket	0.61	0.56	0.03	1.20	000	S
67550		A	Insert eye socket implant	9.69	9.62	0.70	20.01	090	S
67560		A	Revise eye socket implant	10.10	8.30	0.48	18.88	090	S
67570		A	Decompress optic nerve	12.52	7.56	0.39	20.47	090	S
67599		C	Orbit surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67700		A	Drainage of eyelid abscess	1.30	0.49	0.03	1.82	010	S
67710		A	Incision of eyelid	0.97	1.01	0.06	2.04	010	S
67715		A	Incision of eyelid fold	1.17	*1.49	0.09	2.75	010	S
67800		A	Remove eyelid lesion	1.35	0.94	0.05	2.34	010	S
67801		A	Remove eyelid lesions	1.85	1.39	0.08	3.32	010	S
67805		A	Remove eyelid lesions	2.17	1.38	0.08	3.63	010	S
67808		A	Remove eyelid lesion(s)	3.55	2.13	0.13	5.81	090	S
67810		A	Biopsy of eyelid	1.48	0.81	0.05	2.34	000	S
67820		A	Revise eyelashes	0.89	0.38	0.02	1.29	000	S
67825		A	Revise eyelashes	1.33	0.90	0.05	2.28	010	S
67830		A	Revise eyelashes	1.65	*2.12	0.17	3.94	010	S
67835		A	Revise eyelashes	5.41	*6.92	0.45	12.78	090	S
67840		A	Remove eyelid lesion	1.99	1.22	0.07	3.28	010	S
67850		A	Treat eyelid lesion	1.64	0.82	0.05	2.51	010	S
67875		A	Closure of eyelid by suture	1.35	*1.72	0.13	3.20	000	S

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[3] 0 indicates RVUs are not used for Medicare payment.
[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
67880		A	Revision of eyelid	3.55	3.94	0.23	7.72	090	S
67882		A	Revision of eyelid	4.77	*6.10	0.37	11.24	090	S
67900		A	Repair brow defect	4.54	3.76	0.20	8.52	090	S
67901		A	Repair eyelid defect	6.82	*8.73	0.64	16.19	090	S
67902		A	Repair eyelid defect	6.88	*8.61	0.72	16.41	090	S
67903		A	Repair eyelid defect	6.22	*7.96	0.73	14.91	090	S
67904		A	Repair eyelid defect	5.96	*7.54	0.71	14.31	090	S
67906		A	Repair eyelid defect	6.64	5.46	0.36	12.46	090	S
67908		A	Repair eyelid defect	4.95	*6.34	0.54	11.83	090	S
67909		A	Revise eyelid defect	5.22	*6.69	0.48	12.39	090	S
67911		A	Revise eyelid defect	5.09	*6.58	0.79	12.46	090	S
67914		A	Repair eyelid defect	3.60	*4.61	0.39	8.60	090	S
67915		A	Repair eyelid defect	3.10	1.25	0.07	4.42	090	S
67916		A	Repair eyelid defect	5.13	6.50	0.38	12.01	090	S
67917		A	Repair eyelid defect	5.84	*7.48	0.47	13.79	090	S
67921		A	Repair eyelid defect	3.32	3.82	0.20	7.34	090	S
67922		A	Repair eyelid defect	2.98	1.19	0.07	4.24	090	S
67923		A	Repair eyelid defect	5.70	6.88	0.38	12.96	090	S
67924		A	Repair eyelid defect	5.84	*7.22	0.43	13.29	090	S
67930		A	Repair eyelid wound	3.56	1.27	0.08	4.91	010	S
67935		A	Repair eyelid wound	6.07	3.79	0.24	10.10	090	S
67938		A	Remove eyelid foreign body	1.28	0.52	0.03	1.83	010	S
67950		A	Revision of eyelid	5.64	*7.22	0.45	13.31	090	S
67961		A	Revision of eyelid	5.51	*7.05	0.50	13.06	090	S
67966		A	Revision of eyelid	6.39	*8.18	0.66	15.23	090	S
67971		A	Reconstruction of eyelid	9.56	10.68	0.64	20.88	090	S
67973		A	Reconstruction of eyelid	12.59	13.54	0.91	27.04	090	S
67974		A	Reconstruction of eyelid	12.56	14.07	0.87	27.50	090	S
67975		A	Reconstruction of eyelid	8.90	4.15	0.24	13.29	090	S
67999		C	Revision of eyelid	0.00	0.00	0.00	0.00	YYY	S
68020		A	Incise/drain eyelid lining	1.32	0.51	0.03	1.86	010	S
68040		A	Treatment of eyelid lesions	0.85	0.45	0.02	1.32	000	S
68100		A	Biopsy of eyelid lining	1.35	0.99	0.06	2.40	000	S
68110		A	Remove eyelid lining lesion	1.72	1.24	0.07	3.03	010	S
68115		A	Remove eyelid lining lesion	2.31	1.93	0.11	4.35	010	S
68130		A	Remove eyelid lining lesion	4.75	4.09	0.22	9.06	090	S
68135		A	Remove eyelid lining lesion	1.79	0.74	0.04	2.57	010	S
68200		A	Treat eyelid by injection	0.49	0.52	0.03	1.04	000	S
68320		A	Revise/graft eyelid lining	4.97	*6.37	0.42	11.76	090	S
68325		A	Revise/graft eyelid lining	5.96	*8.91	0.82	16.49	090	S
68326		A	Revise/graft eyelid lining	6.75	8.62	0.49	15.86	090	S
68328		A	Revise/graft eyelid lining	7.78	*9.96	0.82	18.56	090	S
68330		A	Revise eyelid lining	4.53	*5.80	0.35	10.68	090	S
68335		A	Revise/graft eyelid lining	6.79	*8.89	0.88	16.16	090	S
68340		A	Separate eyelid adhesions	3.92	3.14	0.17	7.23	090	S
68360		A	Revise eyelid lining	4.12	*5.28	0.33	9.73	090	S
68362		A	Revise eyelid lining	6.94	8.01	0.42	15.37	090	S
68399		C	Eyelid lining surgery	0.00	0.00	0.00	0.00	YYY	S
68400		A	Incise/drain tear gland	1.54	1.00	0.06	2.70	010	S
68420		A	Incise/drain tear sac	2.25	1.02	0.06	3.33	010	S
68440		A	Incise tear duct opening	0.89	0.76	0.04	1.69	010	S
68500		A	Removal of tear gland	10.47	7.51	0.75	18.83	090	S
68505		A	Partial removal tear gland	10.39	8.69	0.49	19.57	090	S
68510		A	Biopsy of tear gland	4.61	3.69	0.28	8.58	000	S
68520		A	Removal of tear sac	7.11	*9.10	0.51	16.72	090	S
68525		A	Biopsy of tear sac	4.43	3.68	0.23	8.34	000	S
68530		A	Clearance of tear duct	3.61	2.85	0.17	6.63	010	S
68540		A	Remove tear gland lesion	10.10	8.31	0.50	18.91	090	S
68550		A	Remove tear gland lesion	12.66	11.34	0.74	24.74	090	S
68700		A	Repair tear ducts	6.20	2.89	0.15	9.04	090	S
68705		A	Revise tear duct opening	2.01	1.02	0.05	3.08	010	S
68720		A	Create tear sac drain	7.68	*9.84	0.74	18.26	090	S
68745		A	Create tear duct drain	8.23	6.56	0.45	15.24	090	S
68750		A	Create tear duct drain	8.21	*10.50	0.83	19.54	090	S
68760		A	Close tear duct opening	1.68	0.92	0.04	2.64	010	S
68761		A	Close tear duct opening	1.31	0.92	0.04	2.27	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
68770		A	Close tear system fistula	6.62	4.24	0.23	11.09	090	S
68800		A	Dilate tear duct opening(s)	1.11	0.42	0.02	1.55	010	S
68820		A	Explore tear duct system	1.47	0.55	0.03	2.05	010	S
68825		A	Explore tear duct system	1.53	1.49	0.09	3.11	010	S
68830		A	Reopen tear duct channel	2.12	1.93	0.10	4.15	010	S
68840		A	Explore/irrigate tear ducts	1.22	0.49	0.03	1.74	010	S
68850		A	Injection for tear sac x-ray	0.80	0.51	0.04	1.35	000	S
68899		C	Tear duct system surgery	0.00	0.00	0.00	0.00	YYY	S
69000		A	Drain external ear lesion	1.40	0.35	0.03	1.78	010	S
69005		A	Drain external ear lesion	2.06	1.16	0.13	3.35	010	S
69020		A	Drain outer ear canal lesion	1.43	0.45	0.04	1.92	010	S
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	XXX	0
69100		A	Biopsy of external ear	0.75	0.56	0.07	1.49	000	S
69105		A	Biopsy of external ear canal	0.85	0.80	0.09	1.74	000	S
69110		A	Partial removal external ear	3.34	2.63	0.37	6.34	090	S
69120		A	Removal of external ear	3.95	0.78	0.07	4.80	090	S
69140		A	Remove ear canal lesion(s)	7.68	8.00	0.88	16.56	090	S
69145		A	Remove ear canal lesion(s)	2.54	2.51	0.28	5.33	090	S
69150		A	Extensive ear canal surgery	13.01	10.46	1.25	24.72	090	S
69155		A	Extensive ear/neck surgery	17.03	15.92	1.61	34.56	090	S
69200		A	Clear outer ear canal	0.77	0.42	0.04	1.23	000	N
69205		A	Clear outer ear canal	1.15	1.07	0.11	2.33	010	S
69210		A	Remove impacted ear wax	0.61	0.23	0.02	0.86	000	N
69220		A	Clean out mastoid cavity	0.83	0.50	0.05	1.38	000	S
69222		A	Clean out mastoid cavity	1.35	0.74	0.08	2.17	010	S
69300		R	Revise external ear	5.36	5.30	0.28	11.94	YYY	S
69310		A	Rebuild outer ear canal	10.59	9.84	1.08	21.51	090	S
69320		A	Rebuild outer ear canal	15.60	14.65	1.66	32.91	090	S
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69400		A	Inflate middle ear canal	0.83	0.45	0.05	1.33	000	S
69401		A	Inflate middle ear canal	0.63	0.25	0.03	0.91	000	S
69405		A	Catheterize middle ear canal	2.58	0.48	0.04	3.10	010	S
69410		A	Inset middle ear baffle	0.33	0.60	0.07	1.00	000	S
69420		A	Incision of eardrum	1.28	0.69	0.08	2.05	010	S
69421		A	Incision of eardrum	1.68	1.14	0.13	2.95	010	S
69424		A	Remove ventilating tube	0.85	0.60	0.06	1.51	000	S
69433		A	Create eardrum opening	1.47	1.33	0.15	2.95	010	S
69436		A	Create eardrum opening	1.91	2.13	0.23	4.27	010	S
69440		A	Exploration of middle ear	7.31	8.69	0.93	16.93	090	S
69450		A	Eardrum revision	5.44	*6.96	1.15	13.55	090	S
69501		A	Mastoidectomy	8.81	10.90	1.17	20.88	090	S
69502		A	Mastoidectomy	11.96	13.36	1.45	26.77	090	S
69505		A	Remove mastoid structures	12.57	*16.09	1.79	30.45	090	S
69511		A	Extensive mastoid surgery	13.10	*16.77	1.84	31.71	090	S
69530		A	Extensive mastoid surgery	18.04	16.71	1.72	36.47	090	S
69535		A	Remove part of temporal bone	34.50	25.27	2.85	62.82	090	S
69540		A	Remove ear lesion	1.15	1.27	0.14	2.56	010	S
69550		A	Remove ear lesion	10.70	*13.70	2.00	26.40	090	S
69552		A	Remove ear lesion	18.84	16.73	1.86	37.43	090	S
69554		A	Remove ear lesion	25.76	22.87	2.63	51.28	090	S
69601		A	Mastoid surgery revision	12.79	14.02	1.55	28.36	090	S
69602		A	Mastoid surgery revision	13.16	16.27	1.75	31.18	090	S
69603		A	Mastoid surgery revision	13.60	17.34	1.88	32.82	090	S
69604		A	Mastoid surgery revision	13.60	*17.41	2.70	33.71	090	S
69605		A	Mastoid surgery revision	18.04	14.95	1.86	34.85	090	S
69610		A	Repair of eardrum	4.36	0.93	0.10	5.41	010	S
69620		A	Repair of eardrum	5.74	*7.34	1.16	14.24	090	S
69631		A	Repair eardrum structures	9.55	*12.22	1.61	23.38	090	S
69632		A	Rebuild eardrum structures	12.41	*15.88	1.73	30.02	090	S
69633		A	Rebuild eardrum structures	11.76	*15.05	1.78	28.59	090	S
69635		A	Repair eardrum structures	13.02	*16.65	1.91	31.58	090	S
69636		A	Rebuild eardrum structures	14.88	*19.05	2.11	36.04	090	S
69637		A	Rebuild eardrum structures	14.77	*18.90	2.22	35.89	090	S
69641		A	Revise middle ear & mastoid	12.29	*15.73	1.87	29.89	090	S
69642		A	Revise middle ear & mastoid	16.37	20.62	2.21	39.20	090	S
69643		A	Revise middle ear & mastoid	14.81	*18.95	2.51	36.27	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
69644		A	Revise middle ear & mastoid	16.46	*21.07	2.70	40.23	090	S
69645		A	Revise middle ear & mastoid	15.80	*20.23	2.51	38.54	090	S
69646		A	Revise middle ear & mastoid	17.35	21.97	2.40	41.72	090	S
69650		A	Release middle ear bone	9.40	*12.03	1.33	22.76	090	S
69660		A	Revise middle ear bone	11.64	*14.90	1.82	28.36	090	S
69661		A	Revise middle ear bone	15.32	18.44	1.93	35.69	090	S
69662		A	Revise middle ear bone	15.04	18.02	1.94	35.00	090	S
69666		A	Repair middle ear structures	9.38	*12.00	1.77	23.15	090	S
69667		A	Repair middle ear structures	9.39	*12.02	1.66	23.07	090	S
69670		A	Remove mastoid air cells	11.05	10.18	1.08	22.31	090	S
69676		A	Remove middle ear nerve	9.23	8.53	0.86	18.62	090	S
69700		A	Close mastoid fistula	7.97	7.86	0.84	16.67	090	S
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	XXX	0
69711		A	Remove/repair hearing aid	10.13	8.44	0.44	19.01	090	S
69720		A	Release facial nerve	13.80	*17.66	2.27	33.73	090	S
69725		A	Release facial nerve	18.98	14.65	1.51	35.14	090	S
69740		A	Repair facial nerve	15.39	11.83	1.69	28.91	090	S
69745		A	Repair facial nerve	16.10	15.95	1.53	33.58	090	S
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69801		A	Incise inner ear	8.19	*10.48	1.84	20.51	090	S
69802		A	Incise inner ear	12.44	11.24	1.22	24.90	090	S
69805		A	Explore inner ear	10.27	*13.14	2.00	25.41	090	S
69806		A	Explore inner ear	11.82	*15.13	2.54	29.49	090	S
69820		A	Establish inner ear window	10.14	8.85	1.00	19.99	090	S
69840		A	Revise inner ear window	10.06	8.49	0.51	19.06	090	S
69905		A	Remove inner ear	10.70	*13.70	2.07	26.47	090	S
69910		A	Remove inner ear & mastoid	13.10	*16.77	2.34	32.21	090	S
69915		A	Incise inner ear nerve	19.89	17.71	2.02	39.62	090	S
69930		A	Implant cochlear device	14.00	*18.55	3.34	35.90	090	S
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69960		A	Incise inner ear nerve	21.15	17.99	2.31	41.45	090	S
69955		A	Release facial nerve	22.12	20.28	2.25	44.65	090	S
69960		A	Release inner ear canal	19.75	17.65	1.93	39.53	090	S
69970		A	Remove inner ear lesion	22.30	19.69	2.26	44.25	090	S
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	YYY	S
70010		A	Contrast x-ray of brain	1.19	4.65	0.34	6.18	XXX	N
70010	26	A	Contrast x-ray of brain	1.19	0.52	0.08	1.79	XXX	N
70010	TC	A	Contrast x-ray of brain	0.00	4.13	0.26	4.39	XXX	N
70015		A	Contrast x-ray of brain	1.19	1.81	0.17	3.17	XXX	N
70015	26	A	Contrast x-ray of brain	1.19	0.52	0.08	1.79	XXX	N
70015	TC	A	Contrast x-ray of brain	0.00	1.29	0.09	1.38	XXX	N
70030		A	X-ray eye for foreign body	0.17	0.48	0.04	0.69	XXX	N
70030	26	A	X-ray eye for foreign body	0.17	0.08	0.01	0.26	XXX	N
70030	TC	A	X-ray eye for foreign body	0.00	0.40	0.03	0.43	XXX	N
70100		A	X-ray exam of jaw	0.18	0.59	0.04	0.81	XXX	N
70100	26	A	X-ray exam of jaw	0.18	0.09	0.01	0.28	XXX	N
70100	TC	A	X-ray exam of jaw	0.00	0.50	0.03	0.53	XXX	N
70110		A	X-ray exam of jaw	0.25	0.71	0.06	1.02	XXX	N
70110	26	A	X-ray exam of jaw	0.25	0.12	0.02	0.39	XXX	N
70110	TC	A	X-ray exam of jaw	0.00	0.59	0.04	0.63	XXX	N
70120		A	X-ray exam of mastoids	0.18	0.68	0.05	0.91	XXX	N
70120	26	A	X-ray exam of mastoids	0.18	0.09	0.01	0.28	XXX	N
70120	TC	A	X-ray exam of mastoids	0.00	0.59	0.04	0.63	XXX	N
70150		A	X-ray exam of mastoids	0.34	0.91	0.07	1.32	XXX	N
70130	26	A	X-ray exam of mastoids	0.34	0.16	0.02	0.52	XXX	N
70130	TC	A	X-ray exam of mastoids	0.00	0.75	0.05	0.80	XXX	N
70134		A	X-ray exam of middle ear	0.34	0.86	0.07	1.27	XXX	N
70134	26	A	X-ray exam of middle ear	0.34	0.16	0.02	0.52	XXX	N
70134	TC	A	X-ray exam of middle ear	0.00	0.70	0.05	0.75	XXX	N
70140		A	X-ray exam of facial bones	0.19	0.68	0.05	0.92	XXX	N
70140	26	A	X-ray exam of facial bones	0.19	0.09	0.01	0.29	XXX	N
70140	TC	A	X-ray exam of facial bones	0.00	0.59	0.04	0.63	XXX	N
70150		A	X-ray exam of facial bones	0.26	0.87	0.07	1.20	XXX	N
70150	26	A	X-ray exam of facial bones	0.26	0.12	0.02	0.40	XXX	N
70150	TC	A	X-ray exam of facial bones	0.00	0.75	0.05	0.80	XXX	N
70160		A	X-ray exam of nasal bones	0.17	0.58	0.04	0.79	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
70160	26	A	X-ray exam of nasal bones	0.17	0.08	0.01	0.26	XXX	N
70160	TC	A	X-ray exam of nasal bones	0.00	0.50	0.03	0.53	XXX	N
70170		A	X-ray exam of tear duct	0.30	1.04	0.08	1.42	XXX	N
70170	26	A	X-ray exam of tear duct	0.30	0.14	0.02	0.46	XXX	N
70170	TC	A	X-ray exam of tear duct	0.00	0.90	0.06	0.96	XXX	N
70190		A	X-ray exam of eye sockets	0.21	0.69	0.05	0.95	XXX	N
70190	26	A	X-ray exam of eye sockets	0.21	0.10	0.01	0.32	XXX	N
70190	TC	A	X-ray exam of eye sockets	0.00	0.59	0.04	0.63	XXX	N
70200		A	X-ray exam of eye sockets	0.28	0.88	0.07	1.23	XXX	N
70200	26	A	X-ray exam of eye sockets	0.28	0.13	0.02	0.43	XXX	N
70200	TC	A	X-ray exam of eye sockets	0.00	0.75	0.05	0.80	XXX	N
70210		A	X-ray exam of sinuses	0.17	0.67	0.05	0.89	XXX	N
70210	26	A	X-ray exam of sinuses	0.17	0.08	0.01	0.26	XXX	N
70210	TC	A	X-ray exam of sinuses	0.00	0.59	0.04	0.63	XXX	N
70220		A	X-ray exam of sinuses	0.25	0.87	0.07	1.19	XXX	N
70220	26	A	X-ray exam of sinuses	0.25	0.12	0.02	0.39	XXX	N
70220	TC	A	X-ray exam of sinuses	0.00	0.75	0.05	0.80	XXX	N
70240		A	X-ray exam pituitary saddle	0.19	0.49	0.04	0.72	XXX	N
70240	26	A	X-ray exam pituitary saddle	0.19	0.09	0.01	0.29	XXX	N
70240	TC	A	X-ray exam pituitary saddle	0.00	0.40	0.03	0.43	XXX	N
70250		A	X-ray exam of skull	0.24	0.70	0.06	1.00	XXX	N
70250	26	A	X-ray exam of skull	0.24	0.11	0.02	0.37	XXX	N
70250	TC	A	X-ray exam of skull	0.00	0.59	0.04	0.63	XXX	N
70260		A	X-ray exam of skull	0.34	1.01	0.08	1.43	XXX	N
70260	26	A	X-ray exam of skull	0.34	0.16	0.02	0.52	XXX	N
70260	TC	A	X-ray exam of skull	0.00	0.85	0.06	0.91	XXX	N
70300		A	X-ray exam of teeth	0.10	0.30	0.03	0.43	XXX	N
70300	26	A	X-ray exam of teeth	0.10	0.05	0.01	0.16	XXX	N
70300	TC	A	X-ray exam of teeth	0.00	0.25	0.02	0.27	XXX	N
70310		A	X-ray exam of teeth	0.16	0.47	0.04	0.67	XXX	N
70310	26	A	X-ray exam of teeth	0.16	0.07	0.01	0.24	XXX	N
70310	TC	A	X-ray exam of teeth	0.00	0.40	0.03	0.43	XXX	N
70320		A	Full mouth x-ray of teeth	0.22	0.85	0.07	1.14	XXX	N
70320	26	A	Full mouth x-ray of teeth	0.22	0.10	0.02	0.34	XXX	N
70320	TC	A	Full mouth x-ray of teeth	0.00	0.75	0.05	0.80	XXX	N
70328		A	X-ray exam of jaw joint	0.18	0.56	0.04	0.78	XXX	N
70328	26	A	X-ray exam of jaw joint	0.18	0.09	0.01	0.28	XXX	N
70328	TC	A	X-ray exam of jaw joint	0.00	0.47	0.03	0.50	XXX	N
70330		A	X-ray exam of jaw joints	0.24	0.91	0.07	1.22	XXX	N
70330	26	A	X-ray exam of jaw joints	0.24	0.11	0.02	0.37	XXX	N
70330	TC	A	X-ray exam of jaw joints	0.00	0.80	0.05	0.85	XXX	N
70332		A	X-ray exam of jaw joint	0.54	2.25	0.17	2.96	XXX	N
70332	26	A	X-ray exam of jaw joint	0.54	0.25	0.04	0.83	XXX	N
70332	TC	A	X-ray exam of jaw joint	0.00	2.00	0.13	2.13	XXX	N
70336		A	Magnetic image jaw joint	0.95	11.11	0.73	12.79	XXX	N
70336	26	A	Magnetic image jaw joint	0.95	0.43	0.06	1.44	XXX	N
70336	TC	A	Magnetic image jaw joint	0.00	10.68	0.67	11.35	XXX	N
70350		A	X-ray head for orthodontia	0.17	0.44	0.03	0.64	XXX	N
70350	26	A	X-ray head for orthodontia	0.17	0.08	0.01	0.26	XXX	N
70350	TC	A	X-ray head for orthodontia	0.00	0.36	0.02	0.38	XXX	N
70355		A	Panoramic x-ray of jaws	0.20	0.63	0.05	0.88	XXX	N
70355	26	A	Panoramic x-ray of jaws	0.20	0.09	0.01	0.30	XXX	N
70355	TC	A	Panoramic x-ray of jaws	0.00	0.54	0.04	0.58	XXX	N
70360		A	X-ray exam of neck	0.17	0.48	0.04	0.69	XXX	N
70360	26	A	X-ray exam of neck	0.17	0.06	0.01	0.26	XXX	N
70360	TC	A	X-ray exam of neck	0.00	0.40	0.03	0.43	XXX	N
70370		A	Throat x-ray & fluoroscopy	0.32	1.39	0.10	1.81	XXX	N
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.15	0.02	0.49	XXX	N
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.24	0.08	1.32	XXX	N
70371		A	Speech evaluation, complex	0.84	2.38	0.19	3.41	XXX	N
70371	26	A	Speech evaluation, complex	0.84	0.38	0.06	1.26	XXX	N
70371	TC	A	Speech evaluation, complex	0.00	2.00	0.13	2.13	XXX	N
70373		A	Contrast x-ray of larynx	0.44	1.90	0.14	2.48	XXX	N
70373	26	A	Contrast x-ray of larynx	0.44	0.20	0.03	0.67	XXX	N
70373	TC	A	Contrast x-ray of larynx	0.00	1.70	0.11	1.81	XXX	N
70380		A	X-ray exam of salivary gland	0.17	0.72	0.05	0.94	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
70380	26	A	X-ray exam of salivary gland	0.17	0.08	0.01	0.26	XXX	N
70380	TC	A	X-ray exam of salivary gland	0.00	0.64	0.04	0.68	XXX	N
70390		A	X-ray exam of salivary duct	0.38	1.87	0.14	2.39	XXX	N
70390	26	A	X-ray exam of salivary duct	0.38	0.17	0.03	0.58	XXX	N
70390	TC	A	X-ray exam of salivary duct	0.00	1.70	0.11	1.81	XXX	N
70450		A	CAT scan of head or brain	0.85	4.88	0.35	6.08	XXX	N
70450	26	A	CAT scan of head or brain	0.85	0.38	0.06	1.29	XXX	N
70450	TC	A	CAT scan of head or brain	0.00	4.50	0.29	4.79	XXX	N
70460		A	Contrast CAT scan of head	1.13	5.89	0.43	7.45	XXX	N
70460	26	A	Contrast CAT scan of head	1.13	0.50	0.08	1.71	XXX	N
70460	TC	A	Contrast CAT scan of head	0.00	5.39	0.35	5.74	XXX	N
70470		A	Contrast CAT scans of head	1.27	7.30	0.52	9.09	XXX	N
70470	26	A	Contrast CAT scans of head	1.27	0.56	0.09	1.92	XXX	N
70470	TC	A	Contrast CAT scans of head	0.00	6.74	0.43	7.17	XXX	N
70480		A	CAT scan of skull	1.28	5.07	0.38	6.73	XXX	N
70480	26	A	CAT scan of skull	1.28	0.57	0.09	1.94	XXX	N
70480	TC	A	CAT scan of skull	0.00	4.50	0.29	4.79	XXX	N
70481		A	Contrast CAT scan of skull	1.38	6.00	0.44	7.82	XXX	N
70481	26	A	Contrast CAT scan of skull	1.38	0.61	0.09	2.08	XXX	N
70481	TC	A	Contrast CAT scan of skull	0.00	5.39	0.35	5.74	XXX	N
70482		A	Contrast CAT scans of skull	1.45	7.38	0.53	9.36	XXX	N
70482	26	A	Contrast CAT scans of skull	1.45	0.64	0.10	2.19	XXX	N
70482	TC	A	Contrast CAT scans of skull	0.00	6.74	0.43	7.17	XXX	N
70486		A	CAT scan of face, jaw	1.14	5.00	0.37	6.51	XXX	N
70486	26	A	CAT scan of face, jaw	1.14	0.50	0.08	1.72	XXX	N
70486	TC	A	CAT scan of face, jaw	0.00	4.50	0.29	4.79	XXX	N
70487		A	Contrast CAT scan, face/jaw	1.30	5.96	0.44	7.70	XXX	N
70487	26	A	Contrast CAT scan, face/jaw	1.30	0.57	0.09	1.96	XXX	N
70487	TC	A	Contrast CAT scan, face/jaw	0.00	5.39	0.35	5.74	XXX	N
70488		A	Contrast CAT scans face/jaw	1.42	7.37	0.53	9.32	XXX	N
70488	26	A	Contrast CAT scans face/jaw	1.42	0.63	0.10	2.15	XXX	N
70488	TC	A	Contrast CAT scans face/jaw	0.00	6.74	0.43	7.17	XXX	N
70490		A	CAT scan of neck tissue	1.28	5.07	0.38	6.73	XXX	N
70490	26	A	CAT scan of neck tissue	1.28	0.57	0.09	1.94	XXX	N
70490	TC	A	CAT scan of neck tissue	0.00	4.50	0.29	4.79	XXX	N
70491		A	Contrast CAT of neck tissue	1.38	6.00	0.44	7.82	XXX	N
70491	26	A	Contrast CAT of neck tissue	1.38	0.61	0.09	2.08	XXX	N
70491	TC	A	Contrast CAT of neck tissue	0.00	5.39	0.35	5.74	XXX	N
70492		A	Contrast CAT of neck tissue	1.45	7.38	0.53	9.36	XXX	N
70492	26	A	Contrast CAT of neck tissue	1.45	0.64	0.10	2.19	XXX	N
70492	TC	A	Contrast CAT of neck tissue	0.00	6.74	0.43	7.17	XXX	N
70540		A	Magnetic image, face, neck	1.48	11.34	0.77	13.59	XXX	N
70540	26	A	Magnetic image, face, neck	1.48	0.66	0.10	2.24	XXX	N
70540	TC	A	Magnetic image, face, neck	0.00	10.68	0.67	11.35	XXX	N
70541		R	Magnetic image, head (MRA)	1.81	11.34	0.77	13.92	XXX	N
70541	26	R	Magnetic image, head (MRA)	1.81	0.66	0.10	2.57	XXX	N
70541	TC	R	Magnetic image, head (MRA)	0.00	10.68	0.67	11.35	XXX	N
70551		A	Magnetic image, brain (MRI)	1.48	11.34	0.77	13.59	XXX	N
70551	26	A	Magnetic image, brain (MRI)	1.48	0.66	0.10	2.24	XXX	N
70551	TC	A	Magnetic image, brain (MRI)	0.00	10.68	0.67	11.35	XXX	N
70552		A	Magnetic image, brain (MRI)	1.78	13.61	0.93	16.32	XXX	N
70552	26	A	Magnetic image, brain (MRI)	1.78	0.80	0.12	2.70	XXX	N
70552	TC	A	Magnetic image, brain (MRI)	0.00	12.81	0.81	13.62	XXX	N
70553		A	Magnetic image, brain	2.36	24.79	1.65	28.80	XXX	N
70553	26	A	Magnetic image, brain	2.36	1.07	0.16	3.59	XXX	N
70553	TC	A	Magnetic image, brain	0.00	23.72	1.49	25.21	XXX	N
71010		A	Chest x-ray	0.18	0.53	0.04	0.75	XXX	N
71010	26	A	Chest x-ray	0.18	0.08	0.01	0.27	XXX	N
71010	TC	A	Chest x-ray	0.00	0.45	0.03	0.48	XXX	N
71015		A	X-ray exam of chest	0.21	0.60	0.04	0.85	XXX	N
71015	26	A	X-ray exam of chest	0.21	0.10	0.01	0.32	XXX	N
71015	TC	A	X-ray exam of chest	0.00	0.50	0.03	0.53	XXX	N
71020		A	Chest x-ray	0.22	0.69	0.05	0.96	XXX	N
71020	26	A	Chest x-ray	0.22	0.10	0.01	0.33	XXX	N
71020	TC	A	Chest x-ray	0.00	0.59	0.04	0.63	XXX	N
71021		A	Chest x-ray	0.27	0.82	0.07	1.16	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
71021	26	A	Chest x-ray	0.27	0.12	0.02	0.41	XXX	N
71021	TC	A	Chest x-ray	0.00	0.70	0.05	0.75	XXX	N
71022		A	Chest x-ray	0.31	0.84	0.07	1.22	XXX	N
71022	26	A	Chest x-ray	0.31	0.14	0.02	0.47	XXX	N
71022	TC	A	Chest x-ray	0.00	0.70	0.05	0.75	XXX	N
71023		A	Chest x-ray and fluoroscopy	0.38	0.92	0.08	1.38	XXX	N
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.17	0.03	0.58	XXX	N
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.75	0.05	0.80	XXX	N
71030		A	Chest x-ray	0.31	0.89	0.07	1.27	XXX	N
71030	26	A	Chest x-ray	0.31	0.14	0.02	0.47	XXX	N
71030	TC	A	Chest x-ray	0.00	0.75	0.05	0.80	XXX	N
71034		A	Chest x-ray & fluoroscopy	0.46	1.58	0.12	2.16	XXX	N
71034	26	A	Chest x-ray & fluoroscopy	0.46	0.21	0.03	0.70	XXX	N
71034	TC	A	Chest x-ray & fluoroscopy	0.00	1.37	0.09	1.46	XXX	N
71035		A	Chest x-ray	0.18	0.58	0.04	0.80	XXX	N
71035	26	A	Chest x-ray	0.18	0.08	0.01	0.27	XXX	N
71035	TC	A	Chest x-ray	0.00	0.50	0.03	0.53	XXX	N
71036		A	X-ray guidance for biopsy	0.54	1.75	0.14	2.43	XXX	N
71036	26	A	X-ray guidance for biopsy	0.54	0.25	0.04	0.83	XXX	N
71036	TC	A	X-ray guidance for biopsy	0.00	1.50	0.10	1.60	XXX	N
71038		A	X-ray guidance for biopsy	0.54	1.85	0.15	2.54	XXX	N
71038	26	A	X-ray guidance for biopsy	0.54	0.25	0.04	0.83	XXX	N
71038	TC	A	X-ray guidance for biopsy	0.00	1.60	0.11	1.71	XXX	N
71040		A	Contrast x-ray of bronchi	0.58	1.66	0.13	2.37	XXX	N
71040	26	A	Contrast x-ray of bronchi	0.58	0.27	0.04	0.89	XXX	N
71040	TC	A	Contrast x-ray of bronchi	0.00	1.39	0.09	1.48	XXX	N
71060		A	Contrast x-ray of bronchi	0.74	2.44	0.19	3.37	XXX	N
71060	26	A	Contrast x-ray of bronchi	0.74	0.34	0.05	1.13	XXX	N
71060	TC	A	Contrast x-ray of bronchi	0.00	2.10	0.14	2.24	XXX	N
71090		A	X-ray & pacemaker insertion	0.54	1.85	0.15	2.54	XXX	N
71090	26	A	X-ray & pacemaker insertion	0.54	0.25	0.04	0.83	XXX	N
71090	TC	A	X-ray & pacemaker insertion	0.00	1.60	0.11	1.71	XXX	N
71100		A	X-ray exam of ribs	0.22	0.64	0.06	0.92	XXX	N
71100	26	A	X-ray exam of ribs	0.22	0.10	0.02	0.34	XXX	N
71100	TC	A	X-ray exam of ribs	0.00	0.54	0.04	0.58	XXX	N
71101		A	X-ray exam of ribs, chest	0.27	0.77	0.06	1.10	XXX	N
71101	26	A	X-ray exam of ribs, chest	0.27	0.13	0.02	0.42	XXX	N
71101	TC	A	X-ray exam of ribs, chest	0.00	0.64	0.04	0.68	XXX	N
71110		A	X-ray exam of ribs	0.27	0.88	0.07	1.22	XXX	N
71110	26	A	X-ray exam of ribs	0.27	0.13	0.02	0.42	XXX	N
71110	TC	A	X-ray exam of ribs	0.00	0.75	0.05	0.80	XXX	N
71111		A	X-ray exam of ribs, chest	0.32	1.00	0.08	1.40	XXX	N
71111	26	A	X-ray exam of ribs, chest	0.32	0.15	0.02	0.49	XXX	N
71111	TC	A	X-ray exam of ribs, chest	0.00	0.85	0.06	0.91	XXX	N
71120		A	X-ray exam of breastbone	0.20	0.71	0.05	0.96	XXX	N
71120	26	A	X-ray exam of breastbone	0.20	0.09	0.01	0.30	XXX	N
71120	TC	A	X-ray exam of breastbone	0.00	0.62	0.04	0.66	XXX	N
71130		A	X-ray exam of breastbone	0.22	0.77	0.05	1.04	XXX	N
71130	26	A	X-ray exam of breastbone	0.22	0.10	0.01	0.33	XXX	N
71130	TC	A	X-ray exam of breastbone	0.00	0.67	0.04	0.71	XXX	N
71250		A	Cat scan of chest	1.16	6.14	0.44	7.74	XXX	N
71250	26	A	Cat scan of chest	1.16	0.51	0.08	1.75	XXX	N
71250	TC	A	Cat scan of chest	0.00	5.63	0.36	5.99	XXX	N
71260		A	Contrast CAT scan of chest	1.24	7.29	0.51	9.04	XXX	N
71260	26	A	Contrast CAT scan of chest	1.24	0.55	0.08	1.87	XXX	N
71260	TC	A	Contrast CAT scan of chest	0.00	6.74	0.43	7.17	XXX	N
71270		A	Contrast CAT scans of chest	1.38	9.04	0.61	11.03	XXX	N
71270	26	A	Contrast CAT scans of chest	1.38	0.61	0.09	2.08	XXX	N
71270	TC	A	Contrast CAT scans of chest	0.00	8.43	0.52	8.95	XXX	N
71550		A	Magnetic image, chest	1.60	11.40	0.78	13.78	XXX	N
71550	26	A	Magnetic image, chest	1.60	0.72	0.11	2.43	XXX	N
71550	TC	A	Magnetic image, chest	0.00	10.68	0.67	11.35	XXX	N
71555		N	Magnetic imaging/chest (MRA)	#1.81	11.40	0.78	13.99	XXX	0
71555	26	N	Magnetic imaging/chest (MRA)	#1.81	0.72	0.11	2.64	XXX	0
71555	TC	N	Magnetic imaging/chest (MRA)	#0.00	10.68	0.67	11.35	XXX	0
72010		A	X-ray exam of spine	0.45	1.18	0.09	1.72	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
72010	26	A	X-ray exam of spine	0.45	0.20	0.03	0.68	XXX	N
72010	TC	A	X-ray exam of spine	0.00	0.98	0.06	1.04	XXX	N
72020		A	X-ray exam of spine	0.15	0.47	0.04	0.66	XXX	N
72020	26	A	X-ray exam of spine	0.15	0.07	0.01	0.23	XXX	N
72020	TC	A	X-ray exam of spine	0.00	0.40	0.03	0.43	XXX	N
72040		A	X-ray exam of neck spine	0.22	0.67	0.05	0.94	XXX	N
72040	26	A	X-ray exam of neck spine	0.22	0.10	0.01	0.33	XXX	N
72040	TC	A	X-ray exam of neck spine	0.00	0.57	0.04	0.61	XXX	N
72050		A	X-ray exam of neck spine	0.31	0.99	0.08	1.38	XXX	N
72050	26	A	X-ray exam of neck spine	0.31	0.14	0.02	0.47	XXX	N
72050	TC	A	X-ray exam of neck spine	0.00	0.85	0.06	0.91	XXX	N
72052		A	X-ray exam of neck spine	0.36	1.25	0.09	1.70	XXX	N
72052	26	A	X-ray exam of neck spine	0.36	0.17	0.02	0.55	XXX	N
72052	TC	A	X-ray exam of neck spine	0.00	1.08	0.07	1.15	XXX	N
72069		A	X-ray exam of trunk spine	0.22	0.57	0.04	0.83	XXX	N
72069	26	A	X-ray exam of trunk spine	0.22	0.10	0.01	0.33	XXX	N
72069	TC	A	X-ray exam of trunk spine	0.00	0.47	0.03	0.50	XXX	N
72070		A	X-ray exam of thorax spine	0.22	0.72	0.05	0.99	XXX	N
72070	26	A	X-ray exam of thorax spine	0.22	0.10	0.01	0.33	XXX	N
72070	TC	A	X-ray exam of thorax spine	0.00	0.62	0.04	0.66	XXX	N
72072		A	X-ray exam of thoracic spine	0.22	0.80	0.06	1.08	XXX	N
72072	26	A	X-ray exam of thoracic spine	0.22	0.10	0.01	0.33	XXX	N
72072	TC	A	X-ray exam of thoracic spine	0.00	0.70	0.05	0.75	XXX	N
72074		A	X-ray exam of thoracic spine	0.22	0.97	0.07	1.26	XXX	N
72074	26	A	X-ray exam of thoracic spine	0.22	0.10	0.01	0.33	XXX	N
72074	TC	A	X-ray exam of thoracic spine	0.00	0.87	0.06	0.93	XXX	N
72080		A	X-ray exam of trunk spine	0.22	0.74	0.05	1.01	XXX	N
72080	26	A	X-ray exam of trunk spine	0.22	0.10	0.01	0.33	XXX	N
72080	TC	A	X-ray exam of trunk spine	0.00	0.64	0.04	0.68	XXX	N
72090		A	X-ray exam of trunk spine	0.28	0.77	0.06	1.11	XXX	N
72090	26	A	X-ray exam of trunk spine	0.28	0.13	0.02	0.43	XXX	N
72090	TC	A	X-ray exam of trunk spine	0.00	0.64	0.04	0.68	XXX	N
72100		A	X-ray exam of lower spine	0.22	0.74	0.05	1.01	XXX	N
72100	26	A	X-ray exam of lower spine	0.22	0.10	0.01	0.33	XXX	N
72100	TC	A	X-ray exam of lower spine	0.00	0.64	0.04	0.68	XXX	N
72110		A	X-ray exam of lower spine	0.31	1.01	0.08	1.40	XXX	N
72110	26	A	X-ray exam of lower spine	0.31	0.14	0.02	0.47	XXX	N
72110	TC	A	X-ray exam of lower spine	0.00	0.87	0.06	0.93	XXX	N
72114		A	X-ray exam of lower spine	0.36	1.30	0.09	1.75	XXX	N
72114	26	A	X-ray exam of lower spine	0.36	0.17	0.02	0.55	XXX	N
72114	TC	A	X-ray exam of lower spine	0.00	1.13	0.07	1.20	XXX	N
72120		A	X-ray exam of lower spine	0.22	0.95	0.07	1.24	XXX	N
72120	26	A	X-ray exam of lower spine	0.22	0.10	0.01	0.33	XXX	N
72120	TC	A	X-ray exam of lower spine	0.00	0.85	0.06	0.91	XXX	N
72125		A	CAT scan of neck spine	1.16	6.14	0.44	7.74	XXX	N
72125	26	A	CAT scan of neck spine	1.16	0.51	0.08	1.75	XXX	N
72125	TC	A	CAT scan of neck spine	0.00	5.63	0.36	5.99	XXX	N
72126		A	Contrast CAT scan of neck	1.22	7.27	0.51	9.00	XXX	N
72126	26	A	Contrast CAT scan of neck	1.22	0.53	0.08	1.83	XXX	N
72126	TC	A	Contrast CAT scan of neck	0.00	6.74	0.43	7.17	XXX	N
72127		A	Contrast CAT scans of neck	1.27	8.99	0.61	10.87	XXX	N
72127	26	A	Contrast CAT scans of neck	1.27	0.56	0.09	1.92	XXX	N
72127	TC	A	Contrast CAT scans of neck	0.00	8.43	0.52	8.95	XXX	N
72128		A	CAT scan of thorax spine	1.16	6.14	0.44	7.74	XXX	N
72128	26	A	CAT scan of thorax spine	1.16	0.51	0.08	1.75	XXX	N
72128	TC	A	CAT scan of thorax spine	0.00	5.63	0.36	5.99	XXX	N
72129		A	Contrast CAT scan of thorax	1.22	7.27	0.51	9.00	XXX	N
72129	26	A	Contrast CAT scan of thorax	1.22	0.53	0.08	1.83	XXX	N
72129	TC	A	Contrast CAT scan of thorax	0.00	6.74	0.43	7.17	XXX	N
72130		A	Contrast CAT scans of thorax	1.27	8.99	0.61	10.87	XXX	N
72130	26	A	Contrast CAT scans of thorax	1.27	0.56	0.09	1.92	XXX	N
72130	TC	A	Contrast CAT scans of thorax	0.00	8.43	0.52	8.95	XXX	N
72131		A	CAT scan of lower spine	1.16	6.14	0.44	7.74	XXX	N
72131	26	A	CAT scan of lower spine	1.16	0.51	0.08	1.75	XXX	N
72131	TC	A	CAT scan of lower spine	0.00	5.63	0.36	5.99	XXX	N
72132		A	Contrast CAT of lower spine	1.22	7.27	0.51	9.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
72132	26	A	Contrast CAT of lower spine	1.22	0.53	0.08	1.83	XXX	N
72132	TC	A	Contrast CAT of lower spine	0.00	6.74	0.43	7.17	XXX	N
72133		A	Contrast CAT scans,low spine	1.27	8.99	0.61	10.87	XXX	N
72133	26	A	Contrast CAT scans,low spine	1.27	0.56	0.09	1.92	XXX	N
72133	TC	A	Contrast CAT scans,low spine	0.00	8.43	0.52	8.95	XXX	N
72141		A	Magnetic image, neck spine	1.60	11.40	0.78	13.78	XXX	N
72141	26	A	Magnetic image, neck spine	1.60	0.72	0.11	2.43	XXX	N
72141	TC	A	Magnetic image, neck spine	0.00	10.68	0.67	11.35	XXX	N
72142		A	Magnetic image, neck spine	1.92	13.67	0.94	16.53	XXX	N
72142	26	A	Magnetic image, neck spine	1.92	0.86	0.13	2.91	XXX	N
72142	TC	A	Magnetic image, neck spine	0.00	12.81	0.81	13.62	XXX	N
72146		A	Magnetic image, chest spine	1.60	12.58	0.85	15.03	XXX	N
72146	26	A	Magnetic image, chest spine	1.60	0.72	0.11	2.43	XXX	N
72146	TC	A	Magnetic image, chest spine	0.00	11.86	0.74	12.60	XXX	N
72147		A	Magnetic image, chest spine	1.92	13.67	0.94	16.53	XXX	N
72147	26	A	Magnetic image, chest spine	1.92	0.86	0.13	2.91	XXX	N
72147	TC	A	Magnetic image, chest spine	0.00	12.81	0.81	13.62	XXX	N
72148		A	Magnetic image, lumbar spine	1.48	12.52	0.84	14.84	XXX	N
72148	26	A	Magnetic image, lumbar spine	1.48	0.66	0.10	2.24	XXX	N
72148	TC	A	Magnetic image, lumbar spine	0.00	11.86	0.74	12.60	XXX	N
72149		A	Magnetic image, lumbar spine	1.78	13.61	0.93	16.32	XXX	N
72149	26	A	Magnetic image, lumbar spine	1.78	0.80	0.12	2.70	XXX	N
72149	TC	A	Magnetic image, lumbar spine	0.00	12.81	0.81	13.62	XXX	N
72156		A	Magnetic image, neck spine	2.57	24.87	1.66	29.10	XXX	N
72156	26	A	Magnetic image, neck spine	2.57	1.15	0.17	3.89	XXX	N
72156	TC	A	Magnetic image, neck spine	0.00	23.72	1.49	25.21	XXX	N
72157		A	Magnetic image, chest spine	2.57	24.87	1.66	29.10	XXX	N
72157	26	A	Magnetic image, chest spine	2.57	1.15	0.17	3.89	XXX	N
72157	TC	A	Magnetic image, chest spine	0.00	23.72	1.49	25.21	XXX	N
72158		A	Magnetic image, lumbar spine	2.36	24.79	1.65	28.80	XXX	N
72158	26	A	Magnetic image, lumbar spine	2.36	1.07	0.16	3.59	XXX	N
72158	TC	A	Magnetic image, lumbar spine	0.00	23.72	1.49	25.21	XXX	N
72159		N	Magnetic imaging/spine (MRA)	#1.80	12.52	0.84	15.16	XXX	0
72159	26	N	Magnetic imaging/spine (MRA)	#1.80	0.66	0.10	2.56	XXX	0
72159	TC	N	Magnetic imaging/spine (MRA)	#0.00	11.86	0.74	12.60	XXX	0
72170		A	X-ray exam of pelvis	0.17	0.57	0.04	0.78	XXX	N
72170	26	A	X-ray exam of pelvis	0.17	0.07	0.01	0.25	XXX	N
72170	TC	A	X-ray exam of pelvis	0.00	0.50	0.03	0.53	XXX	N
72190		A	X-ray exam of pelvis	0.21	0.74	0.05	1.00	XXX	N
72190	26	A	X-ray exam of pelvis	0.21	0.10	0.01	0.32	XXX	N
72190	TC	A	X-ray exam of pelvis	0.00	0.64	0.04	0.68	XXX	N
72192		A	CAT scan of pelvis	1.09	6.11	0.43	7.63	XXX	N
72192	26	A	CAT scan of pelvis	1.09	0.48	0.07	1.64	XXX	N
72192	TC	A	CAT scan of pelvis	0.00	5.63	0.36	5.99	XXX	N
72193		A	Contrast CAT scan of pelvis	1.16	7.03	0.49	8.68	XXX	N
72193	26	A	Contrast CAT scan of pelvis	1.16	0.51	0.08	1.75	XXX	N
72193	TC	A	Contrast CAT scan of pelvis	0.00	5.52	0.41	5.93	XXX	N
72194		A	Contrast CAT scans of pelvis	1.22	8.62	0.58	10.42	XXX	N
72194	26	A	Contrast CAT scans of pelvis	1.22	0.53	0.08	1.83	XXX	N
72194	TC	A	Contrast CAT scans of pelvis	0.00	8.09	0.50	8.59	XXX	N
72196		A	Magnetic image, pelvis	1.60	11.40	0.78	13.78	XXX	N
72196	26	A	Magnetic image, pelvis	1.60	0.72	0.11	2.43	XXX	N
72196	TC	A	Magnetic image, pelvis	0.00	10.68	0.67	11.35	XXX	N
72198		N	Magnetic imaging/pelvis(MRA)	#1.80	11.40	0.78	13.98	XXX	0
72198	26	N	Magnetic imaging/pelvis(MRA)	#1.80	0.72	0.11	2.63	XXX	0
72198	TC	N	Magnetic imaging/pelvis(MRA)	#0.00	10.68	0.67	11.35	XXX	0
72200		A	X-ray exam sacroiliac joints	0.17	0.58	0.04	0.79	XXX	N
72200	26	A	X-ray exam sacroiliac joints	0.17	0.08	0.01	0.26	XXX	N
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.50	0.03	0.53	XXX	N
72202		A	X-ray exam sacroiliac joints	0.19	0.68	0.05	0.92	XXX	N
72202	26	A	X-ray exam sacroiliac joints	0.19	0.09	0.01	0.29	XXX	N
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.59	0.04	0.63	XXX	N
72220		A	X-ray exam of tailbone	0.17	0.62	0.05	0.84	XXX	N
72220	26	A	X-ray exam of tailbone	0.17	0.08	0.01	0.26	XXX	N
72220	TC	A	X-ray exam of tailbone	0.00	0.54	0.04	0.58	XXX	N
72240		A	Contrast x-ray of neck spine	0.91	4.93	0.35	6.19	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
72240	26	A	Contrast x-ray of neck spine	0.91	0.41	0.06	1.38	XXX	N
72240	TC	A	Contrast x-ray of neck spine	0.00	4.52	0.29	4.81	XXX	N
72255	.....	A	Contrast x-ray thorax spine	0.91	4.54	0.32	5.77	XXX	N
72255	26	A	Contrast x-ray thorax spine	0.91	0.41	0.06	1.38	XXX	N
72255	TC	A	Contrast x-ray thorax spine	0.00	4.13	0.26	4.39	XXX	N
72265	.....	A	Contrast x-ray lower spine	0.83	4.26	0.31	5.40	XXX	N
72265	26	A	Contrast x-ray lower spine	0.83	0.38	0.06	1.27	XXX	N
72265	TC	A	Contrast x-ray lower spine	0.00	3.88	0.25	4.13	XXX	N
72270	.....	A	Contrast x-ray of spine	1.33	6.40	0.46	8.19	XXX	N
72270	26	A	Contrast x-ray of spine	1.33	0.59	0.09	2.01	XXX	N
72270	TC	A	Contrast x-ray of spine	0.00	5.81	0.37	6.18	XXX	N
72285	.....	A	X-ray of neck spine disk	0.83	8.37	0.56	9.76	XXX	N
72285	26	A	X-ray of neck spine disk	0.83	0.38	0.06	1.27	XXX	N
72285	TC	A	X-ray of neck spine disk	0.00	7.99	0.50	8.49	XXX	N
72295	.....	A	X-ray of lower spine disk	0.83	7.87	0.52	9.22	XXX	N
72295	26	A	X-ray of lower spine disk	0.83	0.38	0.06	1.27	XXX	N
72295	TC	A	X-ray of lower spine disk	0.00	7.49	0.46	7.95	XXX	N
73000	.....	A	X-ray exam of collarbone	0.16	0.57	0.04	0.77	XXX	N
73000	26	A	X-ray exam of collarbone	0.16	0.07	0.01	0.24	XXX	N
73000	TC	A	X-ray exam of collarbone	0.00	0.50	0.03	0.53	XXX	N
73010	.....	A	X-ray exam of shoulder blade	0.17	0.58	0.04	0.79	XXX	N
73010	26	A	X-ray exam of shoulder blade	0.17	0.08	0.01	0.26	XXX	N
73010	TC	A	X-ray exam of shoulder blade	0.00	0.50	0.03	0.53	XXX	N
73020	.....	A	X-ray exam of shoulder	0.15	0.52	0.04	0.71	XXX	N
73020	26	A	X-ray exam of shoulder	0.15	0.07	0.01	0.23	XXX	N
73020	.....	A	Contrast CAT scans of leg	1.22	7.61	0.53	9.36	XXX	N
73020	26	A	Contrast CAT scans of leg	1.22	0.53	0.08	1.83	XXX	N
73020	TC	A	X-ray exam of shoulder	0.00	0.45	0.03	0.48	XXX	N
73030	.....	A	X-ray exam of shoulder	0.18	0.82	0.05	0.85	XXX	N
73030	26	A	X-ray exam of shoulder	0.18	0.08	0.01	0.27	XXX	N
73030	TC	A	X-ray exam of shoulder	0.00	0.54	0.04	0.58	XXX	N
73040	.....	A	Contrast x-ray of shoulder	0.54	2.25	0.17	2.96	XXX	N
73040	26	A	Contrast x-ray of shoulder	0.54	0.25	0.04	0.83	XXX	N
73040	TC	A	Contrast x-ray of shoulder	0.00	2.00	0.13	2.13	XXX	N
73050	.....	A	X-ray exam of shoulders	0.20	0.73	0.05	0.98	XXX	N
73050	26	A	X-ray exam of shoulders	0.20	0.09	0.01	0.30	XXX	N
73050	TC	A	X-ray exam of shoulders	0.00	0.64	0.04	0.68	XXX	N
73060	.....	A	X-ray exam of humerus	0.17	0.62	0.05	0.84	XXX	N
73060	26	A	X-ray exam of humerus	0.17	0.08	0.01	0.26	XXX	N
73060	TC	A	X-ray exam of humerus	0.00	0.54	0.04	0.58	XXX	N
73070	.....	A	X-ray exam of elbow	0.15	0.57	0.04	0.76	XXX	N
73070	26	A	X-ray exam of elbow	0.15	0.07	0.01	0.23	XXX	N
73070	TC	A	X-ray exam of elbow	0.00	0.50	0.03	0.53	XXX	N
73080	.....	A	X-ray exam of elbow	0.17	0.62	0.05	0.84	XXX	N
73080	26	A	X-ray exam of elbow	0.17	0.08	0.01	0.26	XXX	N
73080	TC	A	X-ray exam of elbow	0.00	0.54	0.04	0.58	XXX	N
73085	.....	A	Contrast x-ray of elbow	0.54	2.25	0.17	2.96	XXX	N
73085	26	A	Contrast x-ray of elbow	0.54	0.25	0.04	0.83	XXX	N
73085	TC	A	Contrast x-ray of elbow	0.00	2.00	0.13	2.13	XXX	N
73090	.....	A	X-ray exam of forearm	0.16	0.57	0.04	0.77	XXX	N
73090	26	A	X-ray exam of forearm	0.16	0.07	0.01	0.24	XXX	N
73090	TC	A	X-ray exam of forearm	0.00	0.50	0.03	0.53	XXX	N
73092	.....	A	X-ray exam of arm, infant	0.16	0.54	0.04	0.74	XXX	N
73092	26	A	X-ray exam of arm, infant	0.16	0.07	0.01	0.24	XXX	N
73092	TC	A	X-ray exam of arm, infant	0.00	0.47	0.03	0.50	XXX	N
73100	.....	A	X-ray exam of wrist	0.16	0.54	0.04	0.74	XXX	N
73100	26	A	X-ray exam of wrist	0.16	0.07	0.01	0.24	XXX	N
73100	TC	A	X-ray exam of wrist	0.00	0.47	0.03	0.50	XXX	N
73110	.....	A	X-ray exam of wrist	0.17	0.59	0.04	0.80	XXX	N
73110	26	A	X-ray exam of wrist	0.17	0.08	0.01	0.26	XXX	N
73110	TC	A	X-ray exam of wrist	0.00	0.51	0.03	0.54	XXX	N
73115	.....	A	Contrast x-ray of wrist	0.54	1.75	0.14	2.43	XXX	N
73115	26	A	Contrast x-ray of wrist	0.54	0.25	0.04	0.83	XXX	N
73115	TC	A	Contrast x-ray of wrist	0.00	1.50	0.10	1.60	XXX	N
73120	.....	A	X-ray exam of hand	0.16	0.54	0.04	0.74	XXX	N
73120	26	A	X-ray exam of hand	0.16	0.07	0.01	0.24	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
73120	TC	A	X-ray exam of hand	0.00	0.47	0.03	0.50	XXX	N
73130	.....	A	X-ray exam of hand	0.17	0.59	0.04	0.80	XXX	N
73130	26	A	X-ray exam of hand	0.17	0.08	0.01	0.26	XXX	N
73130	TC	A	X-ray exam of hand	0.00	0.51	0.03	0.54	XXX	N
73140	.....	A	X-ray exam of finger(s)	0.13	0.46	0.04	0.63	XXX	N
73140	26	A	X-ray exam of finger(s)	0.13	0.06	0.01	0.20	XXX	N
73140	TC	A	X-ray exam of finger(s)	0.00	0.40	0.03	0.43	XXX	N
73200	.....	A	CAT scan of arm	1.09	5.21	0.37	6.67	XXX	N
73200	26	A	CAT scan of arm	1.09	0.48	0.07	1.64	XXX	N
73200	TC	A	CAT scan of arm	0.00	4.73	0.30	5.03	XXX	N
73201	.....	A	Contrast CAT scan of arm	1.16	6.14	0.44	7.74	XXX	N
73201	26	A	Contrast CAT scan of arm	1.16	0.51	0.08	1.75	XXX	N
73201	TC	A	Contrast CAT scan of arm	0.00	5.63	0.36	5.99	XXX	N
73202	.....	A	Contrast CAT scans of arm	1.22	7.61	0.53	9.36	XXX	N
73202	26	A	Contrast CAT scans of arm	1.22	0.53	0.08	1.83	XXX	N
73202	TC	A	Contrast CAT scans of arm	0.00	7.08	0.45	7.53	XXX	N
73220	.....	A	Magnetic image, arm, hand	1.48	11.34	0.77	13.59	XXX	N
73220	26	A	Magnetic image, arm, hand	1.48	0.66	0.10	2.24	XXX	N
73220	TC	A	Magnetic image, arm, hand	0.00	10.68	0.67	11.35	XXX	N
73221	.....	A	Magnetic image, joint of arm	0.95	11.11	0.73	12.79	XXX	N
73221	26	A	Magnetic image, joint of arm	0.95	0.43	0.06	1.44	XXX	N
73221	TC	A	Magnetic image, joint of arm	0.00	10.68	0.67	11.35	XXX	N
73225	.....	N	Magnetic imaging/upper (MRA)	#1.73	11.34	0.77	13.84	XXX	0
73225	26	N	Magnetic imaging/upper (MRA)	#1.73	0.66	0.10	2.49	XXX	0
73225	TC	N	Magnetic imaging/upper (MRA)	#0.00	10.68	0.67	11.35	XXX	0
73500	.....	A	X-ray exam of hip	0.17	0.53	0.04	0.74	XXX	N
73500	26	A	X-ray exam of hip	0.17	0.08	0.01	0.26	XXX	N
73500	TC	A	X-ray exam of hip	0.00	0.45	0.03	0.48	XXX	N
73510	.....	A	X-ray exam of hip	0.21	0.64	0.05	0.90	XXX	N
73510	26	A	X-ray exam of hip	0.21	0.10	0.01	0.32	XXX	N
73510	TC	A	X-ray exam of hip	0.00	0.54	0.04	0.58	XXX	N
73520	.....	A	X-ray exam of hips	0.26	0.76	0.06	1.08	XXX	N
73520	26	A	X-ray exam of hips	0.26	0.12	0.02	0.40	XXX	N
73520	TC	A	X-ray exam of hips	0.00	0.64	0.04	0.68	XXX	N
73525	.....	A	Contrast x-ray of hip	0.54	2.25	0.17	2.96	XXX	N
73525	26	A	Contrast x-ray of hip	0.54	0.25	0.04	0.83	XXX	N
73525	TC	A	Contrast x-ray of hip	0.00	2.00	0.13	2.13	XXX	N
73530	.....	A	X-ray exam of hip	0.29	0.63	0.05	0.97	XXX	N
73530	26	A	X-ray exam of hip	0.29	0.13	0.02	0.44	XXX	N
73530	TC	A	X-ray exam of hip	0.00	0.50	0.03	0.53	XXX	N
73540	.....	A	X-ray exam of pelvis & hips	0.20	0.64	0.05	0.89	XXX	N
73540	26	A	X-ray exam of pelvis & hips	0.20	0.10	0.01	0.31	XXX	N
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.54	0.04	0.58	XXX	N
73550	.....	A	X-ray exam of thigh	0.17	0.62	0.05	0.84	XXX	N
73550	26	A	X-ray exam of thigh	0.17	0.08	0.01	0.26	XXX	N
73550	TC	A	X-ray exam of thigh	0.00	0.54	0.04	0.58	XXX	N
73560	.....	A	X-ray exam of knee	0.17	0.57	0.04	0.78	XXX	N
73560	26	A	X-ray exam of knee	0.17	0.07	0.01	0.25	XXX	N
73560	TC	A	X-ray exam of knee	0.00	0.50	0.03	0.53	XXX	N
73562	.....	A	X-ray exam of knee	0.16	0.63	0.05	0.86	XXX	N
73562	26	A	X-ray exam of knee	0.16	0.09	0.01	0.26	XXX	N
73562	TC	A	X-ray exam of knee	0.00	0.54	0.04	0.58	XXX	N
73564	.....	A	X-ray exam of knee	0.22	0.69	0.06	0.97	XXX	N
73564	26	A	X-ray exam of knee	0.22	0.10	0.02	0.34	XXX	N
73564	TC	A	X-ray exam of knee	0.00	0.59	0.04	0.63	XXX	N
73565	.....	A	X-ray exam of knee	0.17	0.54	0.04	0.75	XXX	N
73565	26	A	X-ray exam of knee	0.17	0.07	0.01	0.25	XXX	N
73565	TC	A	X-ray exam of knee	0.00	0.47	0.03	0.50	XXX	N
73580	.....	A	Contrast x-ray of knee joint	0.54	2.75	0.21	3.50	XXX	N
73580	26	A	Contrast x-ray of knee joint	0.54	0.25	0.04	0.83	XXX	N
73580	TC	A	Contrast x-ray of knee joint	0.00	2.50	0.17	2.67	XXX	N
73590	.....	A	X-ray exam of lower leg	0.17	0.57	0.04	0.78	XXX	N
73590	26	A	X-ray exam of lower leg	0.17	0.07	0.01	0.25	XXX	N
73590	TC	A	X-ray exam of lower leg	0.00	0.50	0.03	0.53	XXX	N
73592	.....	A	X-ray exam of leg, infant	0.16	0.54	0.04	0.74	XXX	N
73592	26	A	X-ray exam of leg, infant	0.16	0.07	0.01	0.24	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
73562	TC	A	X-ray exam of leg, infant	0.00	0.47	0.03	0.50	XXX	N
73600		A	X-ray exam of ankle	0.16	0.54	0.04	0.74	XXX	N
73600	26	A	X-ray exam of ankle	0.16	0.07	0.01	0.24	XXX	N
73600	TC	A	X-ray exam of ankle	0.00	0.47	0.03	0.50	XXX	N
73610		A	X-ray exam of ankle	0.17	0.59	0.04	0.80	XXX	N
73610	26	A	X-ray exam of ankle	0.17	0.08	0.01	0.26	XXX	N
73610	TC	A	X-ray exam of ankle	0.00	0.51	0.03	0.54	XXX	N
73615		A	Contrast x-ray of ankle	0.54	2.25	0.17	2.96	XXX	N
73615	26	A	Contrast x-ray of ankle	0.54	0.25	0.04	0.83	XXX	N
73615	TC	A	Contrast x-ray of ankle	0.00	2.00	0.13	2.13	XXX	N
73620		A	X-ray exam of foot	0.16	0.54	0.04	0.74	XXX	N
73620	26	A	X-ray exam of foot	0.16	0.07	0.01	0.24	XXX	N
73620	TC	A	X-ray exam of foot	0.00	0.47	0.03	0.50	XXX	N
73630		A	X-ray exam of foot	0.17	0.59	0.04	0.80	XXX	N
73630	26	A	X-ray exam of foot	0.17	0.08	0.01	0.26	XXX	N
73630	TC	A	X-ray exam of foot	0.00	0.51	0.03	0.54	XXX	N
73650		A	X-ray exam of heel	0.16	0.52	0.04	0.72	XXX	N
73650	26	A	X-ray exam of heel	0.15	0.07	0.01	0.24	XXX	N
73650	TC	A	X-ray exam of heel	0.00	0.45	0.03	0.48	XXX	N
73660		A	X-ray exam of toe(s)	0.13	0.46	0.04	0.63	XXX	N
73660	26	A	X-ray exam of toe(s)	0.13	0.06	0.01	0.20	XXX	N
73660	TC	A	X-ray exam of toe(s)	0.00	0.40	0.03	0.43	XXX	N
73700		A	CAT scan of leg	1.09	5.21	0.37	6.67	XXX	N
73700	26	A	CAT scan of leg	1.09	0.48	0.07	1.64	XXX	N
73700	TC	A	CAT scan of leg	0.00	4.73	0.30	5.03	XXX	N
73701		A	Contrast CAT scan of leg	1.16	6.14	0.44	7.74	XXX	N
73701	26	A	Contrast CAT scan of leg	1.16	0.51	0.08	1.75	XXX	N
73701	TC	A	Contrast CAT scan of leg	0.00	5.63	0.36	5.99	XXX	N
73702		A	Contrast CAT scans of leg	1.22	7.61	0.53	9.36	XXX	N
73702	26	A	Contrast CAT scans of leg	1.22	0.53	0.08	1.83	XXX	N
73702	TC	A	Contrast CAT scans of leg	0.00	7.08	0.45	7.53	XXX	N
73720		A	Magnetic image, leg, foot	1.48	11.34	0.77	13.59	XXX	N
73720	26	A	Magnetic image, leg, foot	1.48	0.66	0.10	2.24	XXX	N
73720	TC	A	Magnetic image, leg, foot	0.00	10.68	0.67	11.35	XXX	N
73721		A	Magnetic image, joint of leg	0.95	11.11	0.73	12.79	XXX	N
73721	26	A	Magnetic image, joint of leg	0.95	0.43	0.06	1.44	XXX	N
73721	TC	A	Magnetic image, joint of leg	0.00	10.68	0.67	11.35	XXX	N
73725		N	Magnetic imaging/lower (MRA)	#1.82	11.34	0.77	13.93	XXX	0
73725	26	N	Magnetic imaging/lower (MRA)	#1.82	0.66	0.10	2.58	XXX	0
73725	TC	N	Magnetic imaging/lower (MRA)	#0.00	10.68	0.67	11.35	XXX	0
74000		A	X-ray exam of abdomen	0.18	0.58	0.04	0.80	XXX	N
74000	26	A	X-ray exam of abdomen	0.18	0.08	0.01	0.27	XXX	N
74000	TC	A	X-ray exam of abdomen	0.00	0.50	0.03	0.53	XXX	N
74010		A	X-ray exam of abdomen	0.23	0.65	0.06	0.94	XXX	N
74010	26	A	X-ray exam of abdomen	0.23	0.11	0.02	0.36	XXX	N
74010	TC	A	X-ray exam of abdomen	0.00	0.54	0.04	0.58	XXX	N
74020		A	X-ray exam of abdomen	0.27	0.72	0.06	1.05	XXX	N
74020	26	A	X-ray exam of abdomen	0.27	0.13	0.02	0.42	XXX	N
74020	TC	A	X-ray exam of abdomen	0.00	0.59	0.04	0.83	XXX	N
74022		A	X-ray exam series, abdomen	0.32	0.85	0.07	1.24	XXX	N
74022	26	A	X-ray exam series, abdomen	0.32	0.15	0.02	0.49	XXX	N
74022	TC	A	X-ray exam series, abdomen	0.00	0.70	0.05	0.75	XXX	N
74150		A	CAT scan of abdomen	1.19	5.91	0.43	7.53	XXX	N
74150	26	A	CAT scan of abdomen	1.19	0.52	0.08	1.79	XXX	N
74150	TC	A	CAT scan of abdomen	0.00	5.39	0.35	5.74	XXX	N
74160		A	Contrast CAT scan of abdomen	1.27	7.08	0.50	8.85	XXX	N
74160	26	A	Contrast CAT scan of abdomen	1.27	0.56	0.09	1.92	XXX	N
74160	TC	A	Contrast CAT scan of abdomen	0.00	6.52	0.41	6.93	XXX	N
74170		A	Contrast CAT scans, abdomen	1.40	8.71	0.60	10.71	XXX	N
74170	26	A	Contrast CAT scans, abdomen	1.40	0.62	0.10	2.12	XXX	N
74170	TC	A	Contrast CAT scans, abdomen	0.00	8.09	0.50	8.59	XXX	N
74181		A	Magnetic image, abdomen (MRI)	1.60	11.40	0.78	13.78	XXX	N
74181	26	A	Magnetic image, abdomen (MRI)	1.60	0.72	0.11	2.43	XXX	N
74181	TC	A	Magnetic image, abdomen (MRI)	0.00	10.68	0.67	11.35	XXX	N
74185		N	Magnetic image/abdomen (MRA)	#1.80	11.40	0.78	13.98	XXX	0
74185	26	N	Magnetic image/abdomen (MRA)	#1.80	0.72	0.11	2.63	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
74185	TC	N	Magnetic image/abdomen (MRA)	#0.00	10.68	0.67	11.35	XXX	0
74190		A	X-ray exam of peritoneum	0.48	1.37	0.10	1.95	XXX	N
74190	26	A	X-ray exam of peritoneum	0.48	0.13	0.02	0.63	XXX	N
74190	TC	A	X-ray exam of peritoneum	0.00	1.24	0.08	1.32	XXX	N
74210		A	Contrast xray exam of throat	0.36	1.29	0.09	1.74	XXX	N
74210	26	A	Contrast xray exam of throat	0.36	0.16	0.02	0.54	XXX	N
74210	TC	A	Contrast xray exam of throat	0.00	1.13	0.07	1.20	XXX	N
74220		A	Contrast xray exam, esophagus	0.46	1.34	0.10	1.90	XXX	N
74220	26	A	Contrast xray exam, esophagus	0.46	0.21	0.03	0.70	XXX	N
74220	TC	A	Contrast xray exam, esophagus	0.00	1.13	0.07	1.20	XXX	N
74230		A	Cinema xray throat/esophagus	0.53	1.49	0.12	2.14	XXX	N
74230	26	A	Cinema xray throat/esophagus	0.53	0.25	0.04	0.82	XXX	N
74230	TC	A	Cinema xray throat/esophagus	0.00	1.24	0.08	1.32	XXX	N
74235		A	Remove esophagus obstruction	1.19	3.02	0.25	4.46	XXX	N
74235	26	A	Remove esophagus obstruction	1.19	0.52	0.08	1.79	XXX	N
74235	TC	A	Remove esophagus obstruction	0.00	2.50	0.17	2.67	XXX	N
74240		A	X-ray exam upper GI tract	0.69	1.71	0.14	2.54	XXX	N
74240	26	A	X-ray exam upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74240	TC	A	X-ray exam upper GI tract	0.00	1.39	0.09	1.48	XXX	N
74241		A	X-ray exam upper GI tract	0.69	1.74	0.14	2.57	XXX	N
74241	26	A	X-ray exam upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74241	TC	A	X-ray exam upper GI tract	0.00	1.42	0.09	1.51	XXX	N
74245		A	X-ray exam upper GI tract	0.91	2.68	0.21	3.80	XXX	N
74245	26	A	X-ray exam upper GI tract	0.91	0.41	0.06	1.38	XXX	N
74245	TC	A	X-ray exam upper GI tract	0.00	2.27	0.15	2.42	XXX	N
74246		A	Contrast xray upper GI tract	0.69	1.89	0.15	2.73	XXX	N
74246	26	A	Contrast xray upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74246	TC	A	Contrast xray upper GI tract	0.00	1.57	0.10	1.67	XXX	N
74247		A	Contrast xray upper GI tract	0.69	1.92	0.16	2.77	XXX	N
74247	26	A	Contrast xray upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74247	TC	A	Contrast xray upper GI tract	0.00	1.60	0.11	1.71	XXX	N
74249		A	Contrast xray upper GI tract	0.91	2.86	0.22	3.99	XXX	N
74249	26	A	Contrast xray upper GI tract	0.91	0.41	0.06	1.38	XXX	N
74249	TC	A	Contrast xray upper GI tract	0.00	2.45	0.16	2.61	XXX	N
74250		A	X-ray exam of small bowel	0.47	1.45	0.11	2.03	XXX	N
74250	26	A	X-ray exam of small bowel	0.47	0.21	0.03	0.71	XXX	N
74250	TC	A	X-ray exam of small bowel	0.00	1.24	0.08	1.32	XXX	N
74251		A	X-ray exam of small bowel	0.69	1.45	0.11	2.25	XXX	N
74251	26	A	X-ray exam of small bowel	0.69	0.21	0.03	0.93	XXX	N
74251	TC	A	X-ray exam of small bowel	0.00	1.24	0.08	1.32	XXX	N
74260		A	X-ray exam of small bowel	0.50	1.65	0.12	2.27	XXX	N
74260	26	A	X-ray exam of small bowel	0.50	0.23	0.03	0.76	XXX	N
74260	TC	A	X-ray exam of small bowel	0.00	1.42	0.09	1.51	XXX	N
74270		A	Contrast x-ray exam of colon	0.69	1.94	0.16	2.79	XXX	N
74270	26	A	Contrast x-ray exam of colon	0.69	0.32	0.05	1.06	XXX	N
74270	TC	A	Contrast x-ray exam of colon	0.00	1.62	0.11	1.73	XXX	N
74280		A	Contrast x-ray exam of colon	0.99	2.58	0.21	3.78	XXX	N
74280	26	A	Contrast x-ray exam of colon	0.99	0.45	0.07	1.51	XXX	N
74280	TC	A	Contrast x-ray exam of colon	0.00	2.13	0.14	2.27	XXX	N
74283		A	Contrast x-ray exam of colon	2.02	3.34	0.30	5.66	XXX	N
74283	26	A	Contrast x-ray exam of colon	2.02	0.90	0.14	3.06	XXX	N
74283	TC	A	Contrast x-ray exam of colon	0.00	2.44	0.16	2.60	XXX	N
74290		A	Contrast x-ray, gallbladder	0.32	0.85	0.07	1.24	XXX	N
74290	26	A	Contrast x-ray, gallbladder	0.32	0.15	0.02	0.49	XXX	N
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.70	0.05	0.75	XXX	N
74291		A	Contrast x-rays, gallbladder	0.20	0.49	0.04	0.73	XXX	N
74291	26	A	Contrast x-rays, gallbladder	0.20	0.09	0.01	0.30	XXX	N
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.40	0.03	0.43	XXX	N
74300		C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	XXX	N
74300	26	A	X-ray bile ducts, pancreas	0.36	0.17	0.02	0.55	XXX	N
74300	TC	C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	XXX	N
74301		C	Additional x-rays at surgery	0.00	0.00	0.00	0.00	XXX	N
74301	26	A	Additional x-rays at surgery	0.21	0.10	0.01	0.32	XXX	N
74301	TC	C	Additional x-rays at surgery	0.00	0.00	0.00	0.00	XXX	N
74305		A	X-ray bile ducts, pancreas	0.42	0.94	0.08	1.44	XXX	N
74305	26	A	X-ray bile ducts, pancreas	0.42	0.19	0.03	0.64	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
74305	TC	A	X-ray bile ducts, pancreas	0.00	0.75	0.05	0.80	XXX	N
74320		A	Contrast x-ray of bile ducts	0.54	3.25	0.23	4.02	XXX	N
74320	26	A	Contrast x-ray of bile ducts	0.54	0.25	0.04	0.83	XXX	N
74320	TC	A	Contrast x-ray of bile ducts	0.00	3.00	0.19	3.19	XXX	N
74327		A	X-ray for bile stone removal	0.70	2.00	0.16	2.86	XXX	N
74327	26	A	X-ray for bile stone removal	0.70	0.32	0.05	1.07	XXX	N
74327	TC	A	X-ray for bile stone removal	0.00	1.68	0.11	1.79	XXX	N
74328		A	Xray for bile duct endoscopy	0.70	3.32	0.24	4.26	XXX	N
74328	26	A	Xray for bile duct endoscopy	0.70	0.32	0.05	1.07	XXX	N
74328	TC	A	Xray for bile duct endoscopy	0.00	3.00	0.19	3.19	XXX	N
74329		A	X-ray for pancreas endoscopy	0.70	3.32	0.24	4.26	XXX	N
74329	26	A	X-ray for pancreas endoscopy	0.70	0.32	0.05	1.07	XXX	N
74329	TC	A	X-ray for pancreas endoscopy	0.00	3.00	0.19	3.19	XXX	N
74330		A	Xray, bile/pancreas endoscopy	0.70	3.32	0.24	4.26	XXX	N
74330	26	A	Xray, bile/pancreas endoscopy	0.70	0.32	0.05	1.07	XXX	N
74330	TC	A	Xray, bile/pancreas endoscopy	0.00	3.00	0.19	3.19	XXX	N
74340		A	X-ray guide for GI tube	0.54	2.75	0.21	3.50	XXX	N
74340	26	A	X-ray guide for GI tube	0.54	0.25	0.04	0.83	XXX	N
74340	TC	A	X-ray guide for GI tube	0.00	2.50	0.17	2.67	XXX	N
74350		A	X-ray guide, stomach tube	0.76	3.35	0.24	4.35	XXX	N
74350	26	A	X-ray guide, stomach tube	0.76	0.35	0.05	1.16	XXX	N
74350	TC	A	X-ray guide, stomach tube	0.00	3.00	0.19	3.19	XXX	N
74355		A	X-ray guide, intestinal tube	0.76	2.85	0.22	3.83	XXX	N
74355	26	A	X-ray guide, intestinal tube	0.76	0.35	0.05	1.16	XXX	N
74355	TC	A	X-ray guide, intestinal tube	0.00	2.50	0.17	2.67	XXX	N
74360		A	X-ray guide, GI dilation	0.54	3.25	0.23	4.02	XXX	N
74360	26	A	X-ray guide, GI dilation	0.54	0.25	0.04	0.83	XXX	N
74360	TC	A	X-ray guide, GI dilation	0.00	3.00	0.19	3.19	XXX	N
74363		A	X-ray, bile duct dilation	0.88	6.21	0.43	7.52	XXX	N
74363	26	A	X-ray, bile duct dilation	0.88	0.40	0.06	1.34	XXX	N
74363	TC	A	X-ray, bile duct dilation	0.00	5.81	0.37	6.18	XXX	N
74400		A	Contrast x-ray urinary tract	0.49	1.82	0.14	2.45	XXX	N
74400	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74400	TC	A	Contrast x-ray urinary tract	0.00	1.60	0.11	1.71	XXX	N
74405		A	Contrast x-ray urinary tract	0.49	2.11	0.16	2.76	XXX	N
74405	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74405	TC	A	Contrast x-ray urinary tract	0.00	1.89	0.13	2.02	XXX	N
74410		A	Contrast x-ray urinary tract	0.49	2.08	0.15	2.72	XXX	N
74410	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74410	TC	A	Contrast x-ray urinary tract	0.00	1.86	0.12	1.98	XXX	N
74415		A	Contrast x-ray urinary tract	0.49	2.24	0.16	2.89	XXX	N
74415	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74415	TC	A	Contrast x-ray urinary tract	0.00	2.02	0.13	2.15	XXX	N
74420		A	Contrast x-ray urinary tract	0.36	2.66	0.19	3.21	XXX	N
74420	26	A	Contrast x-ray urinary tract	0.36	0.16	0.02	0.54	XXX	N
74420	TC	A	Contrast x-ray urinary tract	0.00	2.50	0.17	2.67	XXX	N
74425		A	Contrast x-ray urinary tract	0.36	1.40	0.10	1.86	XXX	N
74425	26	A	Contrast x-ray urinary tract	0.36	0.16	0.02	0.54	XXX	N
74425	TC	A	Contrast x-ray urinary tract	0.00	1.24	0.08	1.32	XXX	N
74430		A	Contrast x-ray of bladder	0.32	1.15	0.09	1.56	XXX	N
74430	26	A	Contrast x-ray of bladder	0.32	0.15	0.02	0.49	XXX	N
74430	TC	A	Contrast x-ray of bladder	0.00	1.00	0.07	1.07	XXX	N
74440		A	Xray exam male genital tract	0.38	1.25	0.10	1.73	XXX	N
74440	26	A	Xray exam male genital tract	0.38	0.17	0.03	0.58	XXX	N
74440	TC	A	Xray exam male genital tract	0.00	1.08	0.07	1.15	XXX	N
74445		A	X-ray exam of penis	1.14	1.58	0.15	2.87	XXX	N
74445	26	A	X-ray exam of penis	1.14	0.50	0.08	1.72	XXX	N
74445	TC	A	X-ray exam of penis	0.00	1.08	0.07	1.15	XXX	N
74450		A	X-ray exam urethra/bladder	0.33	1.54	0.11	1.98	XXX	N
74450	26	A	X-ray exam urethra/bladder	0.33	0.15	0.02	0.50	XXX	N
74450	TC	A	X-ray exam urethra/bladder	0.00	1.39	0.09	1.48	XXX	N
74455		A	X-ray exam urethra/bladder	0.33	1.65	0.12	2.10	XXX	N
74455	26	A	X-ray exam urethra/bladder	0.33	0.15	0.02	0.50	XXX	N
74455	TC	A	X-ray exam urethra/bladder	0.00	1.50	0.10	1.60	XXX	N
74470		A	X-ray exam of kidney lesion	0.54	1.44	0.12	2.10	XXX	N
74470	26	A	X-ray exam of kidney lesion	0.54	0.25	0.04	0.83	XXX	N

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
74470	TC	A	X-ray exam of kidney lesion	0.00	1.19	0.08	1.27	XXX	N
74475		A	Xray control catheter insert	0.54	4.13	0.29	4.96	XXX	N
74475	26	A	Xray control catheter insert	0.54	0.25	0.04	0.83	XXX	N
74475	TC	A	Xray control catheter insert	0.00	3.88	0.25	4.13	XXX	N
74480		A	Xray control catheter insert	0.54	4.13	0.29	4.96	XXX	N
74480	26	A	Xray control catheter insert	0.54	0.25	0.04	0.83	XXX	N
74480	TC	A	Xray control catheter insert	0.00	3.88	0.25	4.13	XXX	N
74485		A	X-ray guide, GU dilation	0.54	3.25	0.23	4.02	XXX	N
74485	26	A	X-ray guide, GU dilation	0.54	0.25	0.04	0.83	XXX	N
74485	TC	A	X-ray guide, GU dilation	0.00	3.00	0.19	3.19	XXX	N
74710		A	X-ray measurement of pelvis	0.34	1.16	0.09	1.59	XXX	N
74710	26	A	X-ray measurement of pelvis	0.34	0.16	0.02	0.52	XXX	N
74710	TC	A	X-ray measurement of pelvis	0.00	1.00	0.07	1.07	XXX	N
74740		A	X-ray female genital tract	0.38	1.41	0.11	1.90	XXX	N
74740	26	A	X-ray female genital tract	0.38	0.17	0.03	0.58	XXX	N
74740	TC	A	X-ray female genital tract	0.00	1.24	0.08	1.32	XXX	N
74742		A	X-ray fallopian tube	0.61	3.25	0.23	4.09	XXX	N
74742	26	A	X-ray fallopian tube	0.61	0.25	0.04	0.90	XXX	N
74742	TC	A	X-ray fallopian tube	0.00	3.00	0.19	3.19	XXX	N
74775		A	X-ray exam of perineum	0.62	1.68	0.13	2.43	XXX	N
74775	26	A	X-ray exam of perineum	0.62	0.29	0.04	0.95	XXX	N
74775	TC	A	X-ray exam of perineum	0.00	1.39	0.09	1.48	XXX	N
75552		A	Magnetic image, myocardium	1.60	11.40	0.78	13.78	XXX	N
75552	26	A	Magnetic image, myocardium	1.60	0.72	0.11	2.43	XXX	N
75552	TC	A	Magnetic image, myocardium	0.00	10.68	0.67	11.35	XXX	N
75553		A	Magnetic image, myocardium	2.00	11.40	0.78	14.18	XXX	N
75553	26	A	Magnetic image, myocardium	2.00	0.72	0.11	2.83	XXX	N
75553	TC	A	Magnetic image, myocardium	0.00	10.68	0.67	11.35	XXX	N
75554		A	Cardiac MRI/function	1.83	11.40	0.78	14.01	XXX	N
75554	26	A	Cardiac MRI/function	1.83	0.72	0.11	2.66	XXX	N
75554	TC	A	Cardiac MRI/function	0.00	10.68	0.67	11.35	XXX	N
75555		A	Cardiac MRI/limited study	1.74	11.40	0.78	13.92	XXX	N
75555	26	A	Cardiac MRI/limited study	1.74	0.72	0.11	2.57	XXX	N
75555	TC	A	Cardiac MRI/limited study	0.00	10.68	0.67	11.35	XXX	N
75556		N	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	XXX	0
75600		A	Contrast x-ray exam of aorta	0.49	12.23	0.78	13.50	XXX	N
75600	26	A	Contrast x-ray exam of aorta	0.49	0.22	0.03	0.74	XXX	N
75600	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75605		A	Contrast x-ray exam of aorta	1.14	12.51	0.83	14.48	XXX	N
75605	26	A	Contrast x-ray exam of aorta	1.14	0.50	0.08	1.72	XXX	N
75605	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75625		A	Contrast x-ray exam of aorta	1.14	12.51	0.83	14.48	XXX	N
75625	26	A	Contrast x-ray exam of aorta	1.14	0.50	0.08	1.72	XXX	N
75625	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75630		A	X-ray aorta, leg arteries	1.31	13.09	0.88	15.28	XXX	N
75630	26	A	X-ray aorta, leg arteries	1.31	0.58	0.09	1.98	XXX	N
75630	TC	A	X-ray aorta, leg arteries	0.00	12.51	0.79	13.30	XXX	N
75650		A	Artery x-rays, head & neck	1.49	12.67	0.85	15.01	XXX	N
75650	26	A	Artery x-rays, head & neck	1.49	0.66	0.10	2.25	XXX	N
75650	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75658		A	X-ray exam of arm arteries	1.31	12.59	0.84	14.74	XXX	N
75658	26	A	X-ray exam of arm arteries	1.31	0.58	0.09	1.98	XXX	N
75658	TC	A	X-ray exam of arm arteries	0.00	12.01	0.75	12.76	XXX	N
75660		A	Artery x-rays, head & neck	1.31	12.59	0.84	14.74	XXX	N
75660	26	A	Artery x-rays, head & neck	1.31	0.58	0.09	1.98	XXX	N
75660	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75662		A	Artery x-rays, head & neck	1.66	12.75	0.86	15.27	XXX	N
75662	26	A	Artery x-rays, head & neck	1.66	0.74	0.11	2.51	XXX	N
75662	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75665		A	Artery x-rays, head & neck	1.31	12.59	0.84	14.74	XXX	N
75665	26	A	Artery x-rays, head & neck	1.31	0.58	0.09	1.98	XXX	N
75665	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75671		A	Artery x-rays, head & neck	1.66	12.75	0.86	15.27	XXX	N
75671	26	A	Artery x-rays, head & neck	1.66	0.74	0.11	2.51	XXX	N
75671	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75676		A	Artery x-rays, neck	1.31	12.59	0.84	14.74	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
75676	26	A	Artery x-rays, neck	1.31	0.58	0.09	1.98	XXX	N
75676	TC	A	Artery x-rays, neck	0.00	12.01	0.75	12.76	XXX	N
75680		A	Artery x-rays, neck	1.66	12.75	0.86	15.27	XXX	N
75680	26	A	Artery x-rays, neck	1.66	0.74	0.11	2.51	XXX	N
75680	TC	A	Artery x-rays, neck	0.00	12.01	0.75	12.76	XXX	N
75685		A	Artery x-rays, spine	1.31	12.59	0.84	14.74	XXX	N
75685	26	A	Artery x-rays, spine	1.31	0.58	0.09	1.98	XXX	N
75685	TC	A	Artery x-rays, spine	0.00	12.01	0.75	12.76	XXX	N
75705		A	Artery x-rays, spine	2.18	12.99	0.90	16.07	XXX	N
75705	26	A	Artery x-rays, spine	2.18	0.98	0.15	3.31	XXX	N
75705	TC	A	Artery x-rays, spine	0.00	12.01	0.75	12.76	XXX	N
75710		A	Artery x-rays, arm/leg	1.14	12.51	0.83	14.48	XXX	N
75710	26	A	Artery x-rays, arm/leg	1.14	0.50	0.08	1.72	XXX	N
75710	TC	A	Artery x-rays, arm/leg	0.00	12.01	0.75	12.76	XXX	N
75716		A	Artery x-rays, arms/legs	1.31	12.59	0.84	14.74	XXX	N
75716	26	A	Artery x-rays, arms/legs	1.31	0.58	0.09	1.98	XXX	N
75716	TC	A	Artery x-rays, arms/legs	0.00	12.01	0.75	12.76	XXX	N
75722		A	Artery x-rays, kidney	1.14	12.51	0.83	14.48	XXX	N
75722	26	A	Artery x-rays, kidney	1.14	0.50	0.08	1.72	XXX	N
75722	TC	A	Artery x-rays, kidney	0.00	12.01	0.75	12.76	XXX	N
75724		A	Artery x-rays, kidneys	1.49	12.67	0.85	15.01	XXX	N
75724	26	A	Artery x-rays, kidneys	1.49	0.66	0.10	2.25	XXX	N
75724	TC	A	Artery x-rays, kidneys	0.00	12.01	0.75	12.76	XXX	N
75726		A	Artery x-rays, abdomen	1.14	12.51	0.83	14.48	XXX	N
75726	26	A	Artery x-rays, abdomen	1.14	0.50	0.08	1.72	XXX	N
75726	TC	A	Artery x-rays, abdomen	0.00	12.01	0.75	12.76	XXX	N
75731		A	Artery x-rays, adrenal gland	1.14	12.51	0.83	14.48	XXX	N
75731	26	A	Artery x-rays, adrenal gland	1.14	0.50	0.08	1.72	XXX	N
75731	TC	A	Artery x-rays, adrenal gland	0.00	12.01	0.75	12.76	XXX	N
75733		A	Artery x-rays, adrenal glands	1.31	12.59	0.84	14.74	XXX	N
75733	26	A	Artery x-rays, adrenal glands	1.31	0.58	0.09	1.98	XXX	N
75733	TC	A	Artery x-rays, adrenal glands	0.00	12.01	0.75	12.76	XXX	N
75736		A	Artery x-rays, pelvis	1.14	12.51	0.83	14.48	XXX	N
75736	26	A	Artery x-rays, pelvis	1.14	0.50	0.08	1.72	XXX	N
75736	TC	A	Artery x-rays, pelvis	0.00	12.01	0.75	12.76	XXX	N
75741		A	Artery x-rays, lung	1.31	12.59	0.84	14.74	XXX	N
75741	26	A	Artery x-rays, lung	1.31	0.58	0.09	1.98	XXX	N
75741	TC	A	Artery x-rays, lung	0.00	12.01	0.75	12.76	XXX	N
75743		A	Artery x-rays, lungs	1.66	12.75	0.86	15.27	XXX	N
75743	26	A	Artery x-rays, lungs	1.66	0.74	0.11	2.51	XXX	N
75743	TC	A	Artery x-rays, lungs	0.00	12.01	0.75	12.76	XXX	N
75746		A	Artery x-rays, lung	1.14	12.51	0.83	14.48	XXX	N
75746	26	A	Artery x-rays, lung	1.14	0.50	0.08	1.72	XXX	N
75746	TC	A	Artery x-rays, lung	0.00	12.01	0.75	12.76	XXX	N
75756		A	Artery x-rays, chest	1.14	12.51	0.83	14.48	XXX	N
75756	26	A	Artery x-rays, chest	1.14	0.50	0.08	1.72	XXX	N
75756	TC	A	Artery x-rays, chest	0.00	12.01	0.75	12.76	XXX	N
75774		A	Artery x-ray, each vessel	0.36	12.17	0.77	13.30	XXX	N
75774	26	A	Artery x-ray, each vessel	0.36	0.16	0.02	0.54	XXX	N
75774	TC	A	Artery x-ray, each vessel	0.00	12.01	0.75	12.76	XXX	N
75790		A	Visualize A-V shunt	1.84	2.12	0.21	4.17	XXX	N
75790	26	A	Visualize A-V shunt	1.84	0.83	0.12	2.79	XXX	N
75790	TC	A	Visualize A-V shunt	0.00	1.29	0.09	1.38	XXX	N
75801		A	Lymph vessel x-ray, arm/leg	0.81	5.53	0.38	6.72	XXX	N
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.37	0.05	1.23	XXX	N
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.16	0.33	5.49	XXX	N
75803		A	Lymph vessel x-ray, arms/legs	1.17	5.67	0.41	7.25	XXX	N
75803	26	A	Lymph vessel x-ray, arms/legs	1.17	0.51	0.08	1.76	XXX	N
75803	TC	A	Lymph vessel x-ray, arms/legs	0.00	5.16	0.33	5.49	XXX	N
75805		A	Lymph vessel x-ray, trunk	0.81	6.18	0.42	7.41	XXX	N
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.37	0.05	1.23	XXX	N
75805	TC	A	Lymph vessel x-ray, trunk	0.00	5.81	0.37	6.18	XXX	N
75807		A	Lymph vessel x-ray, trunk	1.17	6.32	0.45	7.94	XXX	N
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.51	0.08	1.76	XXX	N
75807	TC	A	Lymph vessel x-ray, trunk	0.00	5.81	0.37	6.18	XXX	N
75809		A	Nonvascular shunt, x-ray	0.47	0.94	0.08	1.49	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
75809	26	A	Nonvascular shunt, x-ray	0.47	0.19	0.03	0.69	XXX	N
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.75	0.05	0.80	XXX	N
75810		A	Vein x-ray, spleen/liver	1.14	12.51	0.83	14.48	XXX	N
75810	26	A	Vein x-ray, spleen/liver	1.14	0.50	0.08	1.72	XXX	N
75810	TC	A	Vein x-ray, spleen/liver	0.00	12.01	0.75	12.76	XXX	N
75820		A	Vein x-ray, arm/leg	0.70	1.22	0.11	2.03	XXX	N
75820	26	A	Vein x-ray, arm/leg	0.70	0.32	0.05	1.07	XXX	N
75820	TC	A	Vein x-ray, arm/leg	0.00	0.90	0.06	0.96	XXX	N
75822		A	Vein x-ray, arms/legs	1.06	1.88	0.16	3.10	XXX	N
75822	26	A	Vein x-ray, arms/legs	1.06	0.47	0.07	1.60	XXX	N
75822	TC	A	Vein x-ray, arms/legs	0.00	1.41	0.09	1.50	XXX	N
75825		A	Vein x-ray, trunk	1.14	12.51	0.83	14.48	XXX	N
75825	26	A	Vein x-ray, trunk	1.14	0.50	0.08	1.72	XXX	N
75825	TC	A	Vein x-ray, trunk	0.00	12.01	0.75	12.76	XXX	N
75827		A	Vein x-ray, chest	1.14	12.51	0.83	14.48	XXX	N
75827	26	A	Vein x-ray, chest	1.14	0.50	0.08	1.72	XXX	N
75827	TC	A	Vein x-ray, chest	0.00	12.01	0.75	12.76	XXX	N
75831		A	Vein x-ray, kidney	1.14	12.51	0.83	14.48	XXX	N
75831	26	A	Vein x-ray, kidney	1.14	0.50	0.08	1.72	XXX	N
75831	TC	A	Vein x-ray, kidney	0.00	12.01	0.75	12.76	XXX	N
75833		A	Vein x-ray, kidneys	1.49	12.67	0.85	15.01	XXX	N
75833	26	A	Vein x-ray, kidneys	1.49	0.66	0.10	2.25	XXX	N
75833	TC	A	Vein x-ray, kidneys	0.00	12.01	0.75	12.76	XXX	N
75840		A	Vein x-ray, adrenal gland	1.14	12.51	0.83	14.48	XXX	N
75840	26	A	Vein x-ray, adrenal gland	1.14	0.50	0.08	1.72	XXX	N
75840	TC	A	Vein x-ray, adrenal gland	0.00	12.01	0.75	12.76	XXX	N
75842		A	Vein x-ray, adrenal glands	1.49	12.67	0.85	15.01	XXX	N
75842	26	A	Vein x-ray, adrenal glands	1.49	0.66	0.10	2.25	XXX	N
75842	TC	A	Vein x-ray, adrenal glands	0.00	12.01	0.75	12.76	XXX	N
75860		A	Vein x-ray, neck	1.14	12.51	0.83	14.48	XXX	N
75860	26	A	Vein x-ray, neck	1.14	0.50	0.08	1.72	XXX	N
75860	TC	A	Vein x-ray, neck	0.00	12.01	0.75	12.76	XXX	N
75870		A	Vein x-ray, skull	1.14	12.51	0.83	14.48	XXX	N
75870	26	A	Vein x-ray, skull	1.14	0.50	0.08	1.72	XXX	N
75870	TC	A	Vein x-ray, skull	0.00	12.01	0.75	12.76	XXX	N
75872		A	Vein x-ray, skull	1.14	12.51	0.83	14.48	XXX	N
75872	26	A	Vein x-ray, skull	1.14	0.50	0.08	1.72	XXX	N
75872	TC	A	Vein x-ray, skull	0.00	12.01	0.75	12.76	XXX	N
75880		A	Vein x-ray, eye socket	0.70	1.22	0.11	2.03	XXX	N
75880	26	A	Vein x-ray, eye socket	0.70	0.32	0.05	1.07	XXX	N
75880	TC	A	Vein x-ray, eye socket	0.00	0.90	0.06	0.96	XXX	N
75885		A	Vein x-ray, liver	1.44	12.65	0.85	14.94	XXX	N
75885	26	A	Vein x-ray, liver	1.44	0.64	0.10	2.18	XXX	N
75885	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75887		A	Vein x-ray, liver	1.44	12.65	0.85	14.94	XXX	N
75887	26	A	Vein x-ray, liver	1.44	0.64	0.10	2.18	XXX	N
75887	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75889		A	Vein x-ray, liver	1.14	12.51	0.83	14.48	XXX	N
75889	26	A	Vein x-ray, liver	1.14	0.50	0.08	1.72	XXX	N
75889	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75891		A	Vein x-ray, liver	1.14	12.51	0.83	14.48	XXX	N
75891	26	A	Vein x-ray, liver	1.14	0.50	0.08	1.72	XXX	N
75891	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75893		A	Venous sampling by catheter	0.54	12.26	0.79	13.59	XXX	N
75893	26	A	Venous sampling by catheter	0.54	0.25	0.04	0.83	XXX	N
75893	TC	A	Venous sampling by catheter	0.00	12.01	0.75	12.76	XXX	N
75894		A	X-rays, transcatheter therapy	1.31	23.58	1.53	26.42	XXX	N
75894	26	A	X-rays, tranacatheter therapy	1.31	0.58	0.09	1.98	XXX	N
75894	TC	A	X-rays, transcatheter therapy	0.00	23.00	1.44	24.44	XXX	N
75896		A	X-rays, transcatheter therapy	1.31	20.58	1.34	23.23	XXX	N
75896	26	A	X-rays, transcatheter therapy	1.31	0.58	0.09	1.98	XXX	N
75896	TC	A	X-rays, transcatheter therapy	0.00	20.00	1.25	21.25	XXX	N
75898		A	Follow-up angiogram	1.65	1.74	0.18	3.57	XXX	N
75898	26	A	Follow-up angiogram	1.65	0.74	0.11	2.50	XXX	N
75898	TC	A	Follow-up angiogram	0.00	1.00	0.07	1.07	XXX	N
75900		A	Arterial catheter exchange	0.49	20.22	1.29	22.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
75900	26	A	Arterial catheter exchange	0.49	0.23	0.03	0.75	XXX	N
75900	TC	A	Arterial catheter exchange	0.00	19.99	1.26	21.25	XXX	N
75940		A	X-ray placement, vein filter	0.54	12.26	0.79	13.59	XXX	N
75940	26	A	X-ray placement, vein filter	0.54	0.25	0.04	0.83	XXX	N
75940	TC	A	X-ray placement, vein filter	0.00	12.01	0.75	12.76	XXX	N
75960		A	Transcatheter intro, stent	0.82	14.57	0.94	16.33	XXX	N
75960	26	A	Transcatheter intro, stent	0.82	0.37	0.06	1.25	XXX	N
75960	TC	A	Transcatheter intro, stent	0.00	14.20	0.88	15.08	XXX	N
75961		A	Retrieval, broken catheter	4.25	11.91	0.90	17.06	XXX	N
75961	26	A	Retrieval, broken catheter	4.25	1.90	0.28	6.43	XXX	N
75961	TC	A	Retrieval, broken catheter	0.00	10.01	0.62	10.63	XXX	N
75962		A	Repair arterial blockage	0.54	15.25	0.98	16.77	XXX	N
75962	26	A	Repair arterial blockage	0.54	0.25	0.04	0.83	XXX	N
75962	TC	A	Repair arterial blockage	0.00	15.00	0.94	15.94	XXX	N
75964		A	Repair artery blockage, each	0.36	8.16	0.52	9.04	XXX	N
75964	26	A	Repair artery blockage, each	0.36	0.16	0.02	0.54	XXX	N
75964	TC	A	Repair artery blockage, each	0.00	8.00	0.50	8.50	XXX	N
75966		A	Repair arterial blockage	1.31	15.58	1.03	17.92	XXX	N
75966	26	A	Repair arterial blockage	1.31	0.58	0.09	1.98	XXX	N
75966	TC	A	Repair arterial blockage	0.00	15.00	0.94	15.94	XXX	N
75968		A	Repair artery blockage, each	0.36	8.16	0.52	9.04	XXX	N
75968	26	A	Repair artery blockage, each	0.36	0.16	0.02	0.54	XXX	N
75968	TC	A	Repair artery blockage, each	0.00	8.00	0.50	8.50	XXX	N
75970		A	Vascular biopsy	0.83	11.38	0.75	12.96	XXX	N
75970	26	A	Vascular biopsy	0.83	0.38	0.06	1.27	XXX	N
75970	TC	A	Vascular biopsy	0.00	11.00	0.69	11.69	XXX	N
75978		A	Repair venous blockage	0.54	15.48	0.98	17.00	XXX	N
75978	26	A	Repair venous blockage	0.54	0.48	0.04	1.06	XXX	N
75978	TC	A	Repair venous blockage	0.00	15.00	0.94	15.94	XXX	N
75980		A	Contrast x-ray exam bile duct	1.44	5.80	0.43	7.67	XXX	N
75980	26	A	Contrast x-ray exam bile duct	1.44	0.64	0.10	2.18	XXX	N
75980	TC	A	Contrast x-ray exam bile duct	0.00	5.16	0.33	5.49	XXX	N
75982		A	Contrast x-ray exam bile duct	1.44	6.45	0.47	8.36	XXX	N
75982	26	A	Contrast x-ray exam bile duct	1.44	0.64	0.10	2.18	XXX	N
75982	TC	A	Contrast x-ray exam bile duct	0.00	5.81	0.37	6.18	XXX	N
75984		A	X-ray control catheter change	0.72	2.19	0.17	3.08	XXX	N
75984	26	A	X-ray control catheter change	0.72	0.33	0.05	1.10	XXX	N
75984	TC	A	X-ray control catheter change	0.00	1.86	0.12	1.98	XXX	N
75989		A	Abscess drainage under x-ray	1.19	3.52	0.27	4.98	XXX	N
75989	26	A	Abscess drainage under x-ray	1.19	0.52	0.08	1.79	XXX	N
75989	TC	A	Abscess drainage under x-ray	0.00	3.00	0.19	3.19	XXX	N
75992		A	Atherectomy, x-ray exam	0.54	15.25	0.98	16.77	XXX	N
75992	26	A	Atherectomy, x-ray exam	0.54	0.25	0.04	0.83	XXX	N
75992	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75993		A	Atherectomy, x-ray exam	0.36	8.16	0.52	9.04	XXX	N
75993	26	A	Atherectomy, x-ray exam	0.36	0.16	0.02	0.54	XXX	N
75993	TC	A	Atherectomy, x-ray exam	0.00	8.00	0.50	8.50	XXX	N
75994		A	Atherectomy, x-ray exam	1.31	15.58	1.03	17.92	XXX	N
75994	26	A	Atherectomy, x-ray exam	1.31	0.58	0.09	1.98	XXX	N
75994	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75995		A	Atherectomy, x-ray exam	1.31	15.58	1.03	17.92	XXX	N
75995	26	A	Atherectomy, x-ray exam	1.31	0.58	0.09	1.98	XXX	N
75995	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75996		A	Atherectomy, x-ray exam	0.36	8.16	0.52	9.04	XXX	N
75996	26	A	Atherectomy, x-ray exam	0.36	0.16	0.02	0.54	XXX	N
75996	TC	A	Atherectomy, x-ray exam	0.00	8.00	0.50	8.50	XXX	N
76000		A	Fluoroscope examination	0.17	1.31	0.09	1.57	XXX	N
76000	26	A	Fluoroscope examination	0.17	0.07	0.01	0.25	XXX	N
76000	TC	A	Fluoroscope examination	0.00	1.24	0.08	1.32	XXX	N
76001		A	Fluoroscope exam, extensive	0.67	2.81	0.22	3.70	XXX	N
76001	26	A	Fluoroscope exam, extensive	0.67	0.31	0.05	1.03	XXX	N
76001	TC	A	Fluoroscope exam, extensive	0.00	2.50	0.17	2.67	XXX	N
76003		A	Needle localization by x-ray	0.54	1.49	0.12	2.15	XXX	N
76003	26	A	Needle localization by x-ray	0.54	0.25	0.04	0.83	XXX	N
76003	TC	A	Needle localization by x-ray	0.00	1.24	0.08	1.32	XXX	N
76010		A	X-ray, nose to rectum	0.18	0.58	0.04	0.80	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
76010	26	A	X-ray, nose to rectum	0.18	0.08	0.01	0.27	XXX	N
76010	TC	A	X-ray, nose to rectum	0.00	0.50	0.03	0.53	XXX	N
76020		A	X-rays for bone age	0.19	0.59	0.04	0.82	XXX	N
76020	26	A	X-rays for bone age	0.19	0.09	0.01	0.29	XXX	N
76020	TC	A	X-rays for bone age	0.00	0.50	0.03	0.53	XXX	N
76040		A	X-rays, bone evaluation	0.27	0.88	0.07	1.22	XXX	N
76040	26	A	X-rays, bone evaluation	0.27	0.13	0.02	0.42	XXX	N
76040	TC	A	X-rays, bone evaluation	0.00	0.75	0.05	0.80	XXX	N
76061		A	X-rays, bone survey	0.45	1.15	0.09	1.69	XXX	N
76061	26	A	X-rays, bone survey	0.45	0.20	0.03	0.68	XXX	N
76061	TC	A	X-rays, bone survey	0.00	0.95	0.06	1.01	XXX	N
76062		A	X-rays, bone survey	0.54	1.62	0.13	2.29	XXX	N
76062	26	A	X-rays, bone survey	0.54	0.25	0.04	0.83	XXX	N
76062	TC	A	X-rays, bone survey	0.00	1.37	0.09	1.46	XXX	N
76065		A	X-rays, bone evaluation	0.28	0.83	0.07	1.18	XXX	N
76065	26	A	X-rays, bone evaluation	0.28	0.13	0.02	0.43	XXX	N
76065	TC	A	X-rays, bone evaluation	0.00	0.70	0.05	0.75	XXX	N
76066		A	Joint(s) survey, single film	0.31	1.20	0.09	1.60	XXX	N
76066	26	A	Joint(s) survey, single film	0.31	0.14	0.02	0.47	XXX	N
76066	TC	A	Joint(s) survey, single film	0.00	1.06	0.07	1.13	XXX	N
76070		A	CT scan, bone density study	0.25	2.93	0.20	3.38	XXX	N
76070	26	A	CT scan, bone density study	0.25	0.12	0.02	0.39	XXX	N
76070	TC	A	CT scan, bone density study	0.00	2.81	0.18	2.99	XXX	N
76075		A	Dual energy x-ray study	0.30	3.07	0.21	3.58	XXX	N
76075	26	A	Dual energy x-ray study	0.30	0.12	0.02	0.44	XXX	N
76075	TC	A	Dual energy x-ray study	0.00	2.95	0.19	3.14	XXX	N
76080		A	X-ray exam of fistula	0.54	1.25	0.11	1.90	XXX	N
76080	26	A	X-ray exam of fistula	0.54	0.25	0.04	0.83	XXX	N
76080	TC	A	X-ray exam of fistula	0.00	1.00	0.07	1.07	XXX	N
76085		A	X-ray of mammary duct	0.36	2.67	0.19	3.22	XXX	N
76085	26	A	X-ray of mammary duct	0.36	0.17	0.02	0.55	XXX	N
76085	TC	A	X-ray of mammary duct	0.00	2.50	0.17	2.67	XXX	N
76088		A	X-ray of mammary ducts	0.45	3.69	0.25	4.39	XXX	N
76088	26	A	X-ray of mammary ducts	0.45	0.20	0.03	0.68	XXX	N
76088	TC	A	X-ray of mammary ducts	0.00	3.49	0.22	3.71	XXX	N
76090		A	Mammogram, one breast	0.25	1.12	0.09	1.46	XXX	N
76090	26	A	Mammogram, one breast	0.25	0.12	0.02	0.39	XXX	N
76090	TC	A	Mammogram, one breast	0.00	1.00	0.07	1.07	XXX	N
76091		A	Mammogram, both breasts	0.41	1.42	0.11	1.94	XXX	N
76091	26	A	Mammogram, both breasts	0.41	0.18	0.03	0.62	XXX	N
76091	TC	A	Mammogram, both breasts	0.00	1.24	0.08	1.32	XXX	N
76092		X	Mammogram, screening	0.00	0.00	0.00	0.00	XXX	0
76093		A	Magnetic image, breast	1.63	17.52	1.16	20.31	XXX	N
76093	26	A	Magnetic image, breast	1.63	0.72	0.11	2.46	XXX	N
76093	TC	A	Magnetic image, breast	0.00	16.80	1.05	17.85	XXX	N
76094		A	Magnetic image, both breasts	1.63	23.51	1.53	26.67	XXX	N
76094	26	A	Magnetic image, both breasts	1.63	0.72	0.11	2.46	XXX	N
76094	TC	A	Magnetic image, both breasts	0.00	22.79	1.42	24.21	XXX	N
76095		A	Stereotactic breast biopsy	1.59	7.54	0.54	9.67	XXX	N
76095	26	A	Stereotactic breast biopsy	1.59	0.71	0.11	2.41	XXX	N
76095	TC	A	Stereotactic breast biopsy	0.00	5.83	0.43	7.26	XXX	N
76096		A	X-ray of needle wire, breast	0.56	1.50	0.12	2.18	XXX	N
76096	26	A	X-ray of needle wire, breast	0.56	0.26	0.04	0.86	XXX	N
76096	TC	A	X-ray of needle wire, breast	0.00	1.24	0.08	1.32	XXX	N
76098		A	X-ray exam, breast specimen	0.16	0.47	0.04	0.67	XXX	N
76098	26	A	X-ray exam, breast specimen	0.16	0.07	0.01	0.24	XXX	N
76098	TC	A	X-ray exam, breast specimen	0.00	0.40	0.03	0.43	XXX	N
76100		A	X-ray exam of body section	0.58	1.46	0.12	2.16	XXX	N
76100	26	A	X-ray exam of body section	0.58	0.27	0.04	0.89	XXX	N
76100	TC	A	X-ray exam of body section	0.00	1.19	0.08	1.27	XXX	N
76101		A	Complex body section x-ray	0.58	1.62	0.13	2.33	XXX	N
76101	26	A	Complex body section x-ray	0.58	0.27	0.04	0.89	XXX	N
76101	TC	A	Complex body section x-ray	0.00	1.35	0.09	1.44	XXX	N
76102		A	Complex body section x-rays	0.58	1.92	0.15	2.65	XXX	N
76102	26	A	Complex body section x-rays	0.58	0.27	0.04	0.89	XXX	N
76102	TC	A	Complex body section x-rays	0.00	1.65	0.11	1.76	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
76120		A	Cinematic x-rays	0.38	1.17	0.10	1.65	XXX	N
76120	26	A	Cinematic x-rays	0.38	0.17	0.03	0.58	XXX	N
76120	TC	A	Cinematic x-rays	0.00	1.00	0.07	1.07	XXX	N
76125		A	Cinematic x-rays	0.27	0.87	0.07	1.21	XXX	N
76125	26	A	Cinematic x-rays	0.27	0.12	0.02	0.41	XXX	N
76125	TC	A	Cinematic x-rays	0.00	0.75	0.05	0.80	XXX	N
76140		G	X-ray consultation	0.00	0.00	0.00	0.00	XXX	0
76150		A	X-ray exam, dry process	0.00	0.40	0.03	0.43	XXX	N
76350		C	Special x-ray contrast study	0.00	0.00	0.00	0.00	XXX	N
76355		A	CAT scan for localization	1.21	8.40	0.57	10.18	XXX	N
76355	26	A	CAT scan for localization	1.21	0.53	0.08	1.82	XXX	N
76355	TC	A	CAT scan for localization	0.00	7.87	0.49	8.36	XXX	N
76360		A	CAT scan for needle biopsy	1.16	8.37	0.57	10.10	XXX	N
76360	26	A	CAT scan for needle biopsy	1.16	0.50	0.08	1.74	XXX	N
76360	TC	A	CAT scan for needle biopsy	0.00	7.87	0.49	8.36	XXX	N
76365		A	CAT scan for cyst aspiration	1.16	8.37	0.57	10.10	XXX	N
76365	26	A	CAT scan for cyst aspiration	1.16	0.50	0.08	1.74	XXX	N
76365	TC	A	CAT scan for cyst aspiration	0.00	7.87	0.49	8.36	XXX	N
76370		A	CAT scan for therapy guide	0.85	3.19	0.24	4.28	XXX	N
76370	26	A	CAT scan for therapy guide	0.85	0.38	0.06	1.29	XXX	N
76370	TC	A	CAT scan for therapy guide	0.00	2.81	0.18	2.99	XXX	N
76375		A	CAT scans, other planes	0.16	3.44	0.22	3.82	XXX	N
76375	26	A	CAT scans, other planes	0.16	0.07	0.01	0.24	XXX	N
76375	TC	A	CAT scans, other planes	0.00	3.37	0.21	3.58	XXX	N
76380		A	CAT scan follow-up study	0.98	3.78	0.28	5.04	XXX	N
76380	26	A	CAT scan follow-up study	0.98	0.44	0.07	1.49	XXX	N
76380	TC	A	CAT scan follow-up study	0.00	3.34	0.21	3.55	XXX	N
76400		A	Magnetic image, bone marrow	1.60	11.40	0.78	13.78	XXX	N
76400	26	A	Magnetic image, bone marrow	1.60	0.72	0.11	2.43	XXX	N
76400	TC	A	Magnetic image, bone marrow	0.00	10.68	0.67	11.35	XXX	N
76499		C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76506		A	Echo exam of head	0.63	1.64	0.13	2.40	XXX	N
76506	26	A	Echo exam of head	0.63	0.29	0.04	0.96	XXX	N
76506	TC	A	Echo exam of head	0.00	1.35	0.09	1.44	XXX	N
76511		A	Echo exam of eye	0.94	1.44	0.12	2.50	XXX	N
76511	26	A	Echo exam of eye	0.94	0.25	0.04	1.23	XXX	N
76511	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76512		A	Echo exam of eye	0.86	1.75	0.15	2.56	XXX	N
76512	26	A	Echo exam of eye	0.86	0.30	0.05	1.01	XXX	N
76512	TC	A	Echo exam of eye	0.00	1.45	0.10	1.55	XXX	N
76513		A	Echo exam of eye, water bath	0.86	1.75	0.15	2.56	XXX	N
76513	26	A	Echo exam of eye, water bath	0.86	0.30	0.05	1.01	XXX	N
76513	TC	A	Echo exam of eye, water bath	0.00	1.45	0.10	1.55	XXX	N
76516		A	Echo exam of eye	0.54	1.44	0.12	2.10	XXX	N
76516	26	A	Echo exam of eye	0.54	0.25	0.04	0.83	XXX	N
76516	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76519		A	Echo exam of eye	0.54	1.44	0.12	2.10	XXX	N
76519	26	A	Echo exam of eye	0.54	0.25	0.04	0.83	XXX	N
76519	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76529		A	Echo exam of eye	0.57	1.56	0.13	2.26	XXX	N
76529	26	A	Echo exam of eye	0.57	0.26	0.04	0.87	XXX	N
76529	TC	A	Echo exam of eye	0.00	1.30	0.09	1.39	XXX	N
76536		A	Echo exam of head and neck	0.56	1.61	0.13	2.30	XXX	N
76536	26	A	Echo exam of head and neck	0.56	0.26	0.04	0.86	XXX	N
76536	TC	A	Echo exam of head and neck	0.00	1.35	0.09	1.44	XXX	N
76604		A	Echo exam of chest	0.55	1.50	0.12	2.17	XXX	N
76604	26	A	Echo exam of chest	0.55	0.26	0.04	0.85	XXX	N
76604	TC	A	Echo exam of chest	0.00	1.24	0.08	1.32	XXX	N
76645		A	Echo exam of breast	0.54	1.25	0.11	1.90	XXX	N
76645	26	A	Echo exam of breast	0.54	0.25	0.04	0.83	XXX	N
76645	TC	A	Echo exam of breast	0.00	1.00	0.07	1.07	XXX	N
76700		A	Echo exam of abdomen	0.81	2.25	0.17	3.23	XXX	N
76700	26	A	Echo exam of abdomen	0.81	0.37	0.05	1.23	XXX	N
76700	TC	A	Echo exam of abdomen	0.00	1.88	0.12	2.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
76705		A	Echo exam of abdomen	0.59	1.62	0.13	2.34	XXX	N
76705	26	A	Echo exam of abdomen	0.59	0.27	0.04	0.90	XXX	N
76705	TC	A	Echo exam of abdomen	0.00	1.35	0.09	1.44	XXX	N
76770		A	Echo exam abdomen back wall	0.74	2.22	0.17	3.13	XXX	N
76770	26	A	Echo exam abdomen back wall	0.74	0.34	0.05	1.13	XXX	N
76770	TC	A	Echo exam abdomen back wall	0.00	1.88	0.12	2.00	XXX	N
76775		A	Echo exam abdomen back wall	0.58	1.62	0.13	2.33	XXX	N
76775	26	A	Echo exam abdomen back wall	0.58	0.27	0.04	0.89	XXX	N
76775	TC	A	Echo exam abdomen back wall	0.00	1.35	0.09	1.44	XXX	N
76778		A	Echo exam kidney transplant	0.74	2.22	0.17	3.13	XXX	N
76778	26	A	Echo exam kidney transplant	0.74	0.34	0.05	1.13	XXX	N
76778	TC	A	Echo exam kidney transplant	0.00	1.88	0.12	2.00	XXX	N
76800		A	Echo exam spinal canal	1.13	1.85	0.17	3.15	XXX	N
76800	26	A	Echo exam spinal canal	1.13	0.50	0.08	1.71	XXX	N
76800	TC	A	Echo exam spinal canal	0.00	1.35	0.09	1.44	XXX	N
76805		A	Echo exam of pregnant uterus	0.99	2.45	0.20	3.64	XXX	N
76805	26	A	Echo exam of pregnant uterus	0.99	0.45	0.07	1.51	XXX	N
76805	TC	A	Echo exam of pregnant uterus	0.00	2.00	0.13	2.13	XXX	N
76810		A	Echo exam of pregnant uterus	1.97	4.88	0.38	7.23	XXX	N
76810	26	A	Echo exam of pregnant uterus	1.97	0.88	0.13	2.98	XXX	N
76810	TC	A	Echo exam of pregnant uterus	0.00	4.00	0.25	4.25	XXX	N
76815		A	Echo exam of pregnant uterus	0.65	1.65	0.13	2.43	XXX	N
76815	26	A	Echo exam of pregnant uterus	0.65	0.30	0.04	0.99	XXX	N
76815	TC	A	Echo exam of pregnant uterus	0.00	1.35	0.09	1.44	XXX	N
76816		A	Echo exam followup or repeat	0.57	1.32	0.11	2.00	XXX	N
76816	26	A	Echo exam followup or repeat	0.57	0.26	0.04	0.87	XXX	N
76816	TC	A	Echo exam followup or repeat	0.00	1.06	0.07	1.13	XXX	N
76818		A	Fetal biophysical profile	0.77	1.89	0.15	2.81	XXX	N
76818	26	A	Fetal biophysical profile	0.77	0.35	0.05	1.17	XXX	N
76818	TC	A	Fetal biophysical profile	0.00	1.54	0.10	1.64	XXX	N
76825		A	Echo exam of fetal heart	0.98	2.23	0.17	3.38	XXX	N
76825	26	A	Echo exam of fetal heart	0.98	0.35	0.05	1.38	XXX	N
76825	TC	A	Echo exam of fetal heart	0.00	1.88	0.12	2.00	XXX	N
76826		A	Echo exam of fetal heart	0.83	1.35	0.10	2.28	XXX	N
76826	26	A	Echo exam of fetal heart	0.83	0.68	0.05	1.56	XXX	N
76826	TC	A	Eche exam of fetal heart	0.00	0.67	0.05	0.72	XXX	N
76827		A	Echo exam of fetal heart	0.58	2.33	0.18	3.09	XXX	N
76827	26	A	Echo exam of fetal heart	0.58	0.69	0.05	1.32	XXX	N
76827	TC	A	Echo exam of fetal heart	0.00	1.64	0.13	1.77	XXX	N
76828		A	Echo exam of fetal heart	0.56	1.34	0.11	2.01	XXX	N
76828	26	A	Echo exam of fetal heart	0.56	0.28	0.02	0.86	XXX	N
76828	TC	A	Echo exam of fetal heart	0.00	1.06	0.09	1.15	XXX	N
76830		A	Echo exam, transvaginal	0.69	1.77	0.15	2.61	XXX	N
76830	26	A	Echo exam, transvaginal	0.69	0.32	0.05	1.06	XXX	N
76830	TC	A	Echo exam, transvaginal	0.00	1.45	0.10	1.55	XXX	N
76856		A	Echo exam of pelvis	0.69	1.77	0.15	2.61	XXX	N
76856	26	A	Echo exam of pelvis	0.69	0.32	0.05	1.06	XXX	N
76856	TC	A	Echo exam of pelvis	0.00	1.45	0.10	1.55	XXX	N
76857		A	Echo exam of pelvis	0.38	1.17	0.10	1.65	XXX	N
76857	26	A	Echo exam of pelvis	0.38	0.17	0.03	0.58	XXX	N
76857	TC	A	Echo exam of pelvis	0.00	1.00	0.07	1.07	XXX	N
76870		A	Echo exam of scrotum	0.64	1.74	0.14	2.52	XXX	N
76870	26	A	Echo exam of scrotum	0.64	0.29	0.04	0.97	XXX	N
76870	TC	A	Echo exam of scrotum	0.00	1.45	0.10	1.55	XXX	N
76872		A	Echo exam, transrectal	0.69	1.77	0.15	2.61	XXX	N
76872	26	A	Echo exam, transrectal	0.69	0.32	0.05	1.06	XXX	N
76872	TC	A	Echo exam, transrectal	0.00	1.45	0.10	1.55	XXX	N
76880		A	Echo exam of extremity	0.59	1.62	0.13	2.34	XXX	N
76880	26	A	Echo exam of extremity	0.59	0.27	0.04	0.90	XXX	N
76880	TC	A	Echo exam of extremity	0.00	1.35	0.09	1.44	XXX	N
76930		A	Echo guide for heart sac tap	0.67	1.76	0.15	2.58	XXX	N
76930	26	A	Echo guide for heart sac tap	0.67	0.31	0.05	1.03	XXX	N
76930	TC	A	Echo guide for heart sac tap	0.00	1.45	0.10	1.55	XXX	N
76932		A	Echo guide for heart biopsy	0.67	1.76	0.15	2.58	XXX	N
76932	26	A	Echo guide for heart biopsy	0.67	0.31	0.05	1.03	XXX	N
76932	TC	A	Echo guide for heart biopsy	0.00	1.45	0.10	1.55	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
76934		A	Echo guide for chest tap	0.67	1.76	0.15	2.58	XXX	N
76934	26	A	Echo guide for chest tap	0.67	0.31	0.05	1.03	XXX	N
76934	TC	A	Echo guide for chest tap	0.00	1.45	0.10	1.55	XXX	N
76936		A	Echo guide for artery repair	1.99	7.24	0.48	9.71	XXX	N
76936	26	A	Echo guide for artery repair	1.99	1.24	0.10	3.33	XXX	N
76936	TC	A	Echo guide for artery repair	0.00	6.00	0.38	6.38	XXX	N
76938		A	Echo exam for drainage	0.67	1.76	0.15	2.58	XXX	N
76938	26	A	Echo exam for drainage	0.67	0.31	0.05	1.03	XXX	N
76938	TC	A	Echo exam for drainage	0.00	1.45	0.10	1.55	XXX	N
76941		A	Echo guide for transfusion	1.34	2.07	0.19	3.60	XXX	N
76941	26	A	Echo guide for transfusion	1.34	0.61	0.10	2.05	XXX	N
76941	TC	A	Echo guide for transfusion	0.00	1.46	0.09	1.55	XXX	N
76942		A	Echo guide for biopsy	0.67	1.76	0.15	2.58	XXX	N
76942	26	A	Echo guide for biopsy	0.67	0.31	0.05	1.03	XXX	N
76942	TC	A	Echo guide for biopsy	0.00	1.45	0.10	1.55	XXX	N
76945		A	Echo guide, villus sampling	0.67	2.07	0.19	2.93	XXX	N
76945	26	A	Echo guide, villus sampling	0.67	0.61	0.10	1.38	XXX	N
76945	TC	A	Echo guide, villus sampling	0.00	1.46	0.09	1.55	XXX	N
76946		A	Echo guide for amniocentesis	0.38	1.62	0.13	2.13	XXX	N
76946	26	A	Echo guide for amniocentesis	0.38	0.17	0.03	0.58	XXX	N
76946	TC	A	Echo guide for amniocentesis	0.00	1.45	0.10	1.55	XXX	N
76948		A	Echo guide, ova aspiration	0.38	1.62	0.13	2.13	XXX	N
76948	26	A	Echo guide, ova aspiration	0.38	0.17	0.03	0.58	XXX	N
76948	TC	A	Echo guide, ova aspiration	0.00	1.45	0.10	1.55	XXX	N
76950		A	Echo guidance radiotherapy	0.58	1.51	0.12	2.21	XXX	N
76950	26	A	Echo guidance radiotherapy	0.58	0.27	0.04	0.89	XXX	N
76950	TC	A	Echo guidance radiotherapy	0.00	1.24	0.08	1.32	XXX	N
76960		A	Echo guidance radiotherapy	0.58	1.51	0.12	2.21	XXX	N
76960	26	A	Echo guidance radiotherapy	0.58	0.27	0.04	0.89	XXX	N
76960	TC	A	Echo guidance radiotherapy	0.00	1.24	0.08	1.32	XXX	N
76965		A	Echo guidance radiotherapy	1.34	7.38	0.52	9.24	XXX	N
76965	26	A	Echo guidance radiotherapy	1.34	2.07	0.19	3.60	XXX	N
76965	TC	A	Echo guidance radiotherapy	0.00	5.31	0.33	5.64	XXX	N
76970		A	Ultrasound exam follow-up	0.40	1.18	0.10	1.68	XXX	N
76970	26	A	Ultrasound exam follow-up	0.40	0.18	0.03	0.61	XXX	N
76970	TC	A	Ultrasound exam follow-up	0.00	1.00	0.07	1.07	XXX	N
76975		A	GI endoscopic ultrasound	0.81	1.79	0.15	2.75	XXX	N
76975	26	A	GI endoscopic ultrasound	0.81	0.34	0.05	1.20	XXX	N
76975	TC	A	GI endoscopic ultrasound	0.00	1.45	0.10	1.55	XXX	N
76986		A	Echo exam of surgery	1.20	3.03	0.25	4.48	XXX	N
76986	26	A	Echo exam of surgery	1.20	0.53	0.08	1.81	XXX	N
76986	TC	A	Echo exam of surgery	0.00	2.50	0.17	2.67	XXX	N
76999		C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
77261		A	Radiation therapy planning	1.39	0.62	0.09	2.10	XXX	N
77262		A	Radiation therapy planning	2.11	0.94	0.14	3.19	XXX	N
77263		A	Radiation therapy planning	3.14	1.40	0.20	4.74	XXX	N
77280		A	Set radiation therapy field	0.70	3.63	0.26	4.59	XXX	N
77280	26	A	Set radiation therapy field	0.70	0.32	0.05	1.07	XXX	N
77280	TC	A	Set radiation therapy field	0.00	3.31	0.21	3.52	XXX	N
77285		A	Set radiation therapy field	1.05	5.77	0.41	7.23	XXX	N
77285	26	A	Set radiation therapy field	1.05	0.46	0.07	1.58	XXX	N
77285	TC	A	Set radiation therapy field	0.00	5.31	0.34	5.65	XXX	N
77290		A	Set radiation therapy field	1.56	6.90	0.50	8.96	XXX	N
77290	26	A	Set radiation therapy field	1.56	0.70	0.11	2.37	XXX	N
77290	TC	A	Set radiation therapy field	0.00	6.20	0.39	6.59	XXX	N
77295		A	Set radiation therapy field	4.57	28.68	1.93	35.18	XXX	N
77295	26	A	Set radiation therapy field	4.57	2.06	0.23	6.86	XXX	N
77295	TC	A	Set radiation therapy field	0.00	26.62	1.70	28.32	XXX	N
77299		C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77300		A	Radiation therapy dose plan	0.62	1.56	0.12	2.30	XXX	N
77300	26	A	Radiation therapy dose plan	0.62	0.28	0.04	0.94	XXX	N
77300	TC	A	Radiation therapy dose plan	0.00	1.28	0.08	1.36	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
77305		A	Radiation therapy dose plan	0.70	2.09	0.17	2.96	XXX	N
77305	26	A	Radiation therapy dose plan	0.70	0.32	0.05	1.07	XXX	N
77305	TC	A	Radiation therapy dose plan	0.00	1.77	0.12	1.89	XXX	N
77310		A	Radiation therapy dose plan	1.05	2.68	0.22	3.95	XXX	N
77310	26	A	Radiation therapy dose plan	1.05	0.46	0.07	1.58	XXX	N
77310	TC	A	Radiation therapy dose plan	0.00	2.22	0.15	2.37	XXX	N
77315		A	Radiation therapy dose plan	1.56	3.23	0.28	5.07	XXX	N
77315	26	A	Radiation therapy dose plan	1.56	0.70	0.11	2.37	XXX	N
77315	TC	A	Radiation therapy dose plan	0.00	2.53	0.17	2.70	XXX	N
77321		A	Radiation therapy port plan	0.95	4.28	0.30	5.53	XXX	N
77321	26	A	Radiation therapy port plan	0.95	0.43	0.06	1.44	XXX	N
77321	TC	A	Radiation therapy port plan	0.00	3.85	0.24	4.09	XXX	N
77326		A	Radiation therapy dose plan	0.93	2.67	0.21	3.81	XXX	N
77326	26	A	Radiation therapy dose plan	0.93	0.42	0.06	1.41	XXX	N
77326	TC	A	Radiation therapy dose plan	0.00	2.25	0.15	2.40	XXX	N
77327		A	Radiation therapy dose plan	1.39	3.93	0.30	5.62	XXX	N
77327	26	A	Radiation therapy dose plan	1.39	0.62	0.09	2.10	XXX	N
77327	TC	A	Radiation therapy dose plan	0.00	3.31	0.21	3.52	XXX	N
77328		A	Radiation therapy dose plan	2.09	5.66	0.44	8.19	XXX	N
77328	26	A	Radiation therapy dose plan	2.09	0.93	0.14	3.16	XXX	N
77328	TC	A	Radiation therapy dose plan	0.00	4.73	0.30	5.03	XXX	N
77331		A	Special radiation dosimetry	0.87	0.87	0.09	1.83	XXX	N
77331	26	A	Special radiation dosimetry	0.87	0.39	0.06	1.32	XXX	N
77331	TC	A	Special radiation dosimetry	0.00	0.48	0.03	0.51	XXX	N
77332		A	Radiation treatment aid(s)	0.54	1.53	0.12	2.19	XXX	N
77332	26	A	Radiation treatment aid(s)	0.54	0.25	0.04	0.83	XXX	N
77332	TC	A	Radiation treatment aid(s)	0.00	1.28	0.08	1.36	XXX	N
77333		A	Radiation treatment aid(s)	0.84	2.19	0.18	3.21	XXX	N
77333	26	A	Radiation treatment aid(s)	0.84	0.38	0.06	1.28	XXX	N
77333	TC	A	Radiation treatment aid(s)	0.00	1.81	0.12	1.93	XXX	N
77334		A	Radiation treatment aid(s)	1.24	3.64	0.27	5.15	XXX	N
77334	26	A	Radiation treatment aid(s)	1.24	0.54	0.08	1.86	XXX	N
77334	TC	A	Radiation treatment aid(s)	0.00	3.10	0.19	3.29	XXX	N
77336		A	Radiation physics consult	0.00	2.84	0.18	3.02	XXX	N
77370		A	Radiation physics consult	0.00	3.33	0.21	3.54	XXX	N
77399		C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77401		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77402		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77403		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77404		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77406		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77407		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77408		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77409		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77411		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77412		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77413		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77414		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77416		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77417		A	Radiology port film(s)	0.00	0.56	0.04	0.60	XXX	N
77419		A	Weekly radiation therapy	3.60	1.61	0.23	5.44	XXX	N
77420		A	Weekly radiation therapy	1.61	0.72	0.11	2.44	XXX	N
77425		A	Weekly radiation therapy	2.44	1.10	0.17	3.71	XXX	N
77430		A	Weekly radiation therapy	3.60	1.61	0.23	5.44	XXX	N
77431		A	Radiation therapy management	1.81	0.81	0.12	2.74	XXX	N
77432		A	Stereotactic radiation trmt	7.93	4.94	0.40	13.27	XXX	N
77470		A	Special radiation treatment	2.09	11.55	0.80	14.44	XXX	N
77470	26	A	Special radiation treatment	2.09	0.93	0.14	3.16	XXX	N
77470	TC	A	Special radiation treatment	0.00	10.62	0.66	11.28	XXX	N
77499		C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77600		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N
77600	26	A	Hyperthermia treatment	1.56	0.70	0.11	2.37	ZZZ	N

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CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs 4	Malpractice RVUs	Total	Global period	Update
77600	TC	A	Hyperthermia treatment	0.00	2.90	0.18	3.08	ZZZ	N
77605		A	Hyperthermia treatment	2.09	4.80	0.39	7.28	ZZZ	N
77605	26	A	Hyperthermia treatment	2.09	0.93	0.14	3.16	ZZZ	N
77605	TC	A	Hyperthermia treatment	0.00	3.87	0.25	4.12	ZZZ	N
77610		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N
77610	26	A	Hyperthermia treatment	1.56	0.70	0.11	2.37	ZZZ	N
77610	TC	A	Hyperthermia treatment	0.00	2.90	0.18	3.08	ZZZ	N
77615		A	Hyperthermia treatment	2.09	4.80	0.39	7.28	ZZZ	N
77615	26	A	Hyperthermia treatment	2.09	0.93	0.14	3.16	ZZZ	N
77615	TC	A	Hyperthermia treatment	0.00	3.87	0.25	4.12	ZZZ	N
77620		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N
77620	26	A	Hyperthermia treatment	1.56	0.70	0.11	2.37	ZZZ	N
77620	TC	A	Hyperthermia treatment	0.00	2.90	0.18	3.08	ZZZ	N
77750		A	Infuse radioactive materials	4.59	3.32	0.38	8.29	090	N
77750	26	A	Infuse radioactive materials	4.59	2.05	0.30	6.94	090	N
77750	TC	A	Infuse radioactive materials	0.00	1.27	0.08	1.35	090	N
77761		A	Radioelement application	3.56	3.98	0.39	7.93	090	N
77761	26	A	Radioelement application	3.56	1.59	0.23	5.38	090	N
77761	TC	A	Radioelement application	0.00	2.39	0.16	2.55	090	N
77762		A	Radioelement application	5.35	5.83	0.57	11.75	090	N
77762	26	A	Radioelement application	5.35	2.39	0.35	8.09	090	N
77762	TC	A	Radioelement application	0.00	3.44	0.22	3.66	090	N
77763		A	Radioelement application	8.01	7.86	0.77	16.64	090	N
77763	26	A	Radioelement application	8.01	3.58	0.50	12.09	090	N
77763	TC	A	Radioelement application	0.00	4.28	0.27	4.55	090	N
77776		A	Radioelement application	4.56	4.16	0.45	9.27	XXX	N
77776	26	A	Radioelement application	4.56	2.09	0.31	7.06	XXX	N
77776	TC	A	Radioelement application	0.00	2.07	0.14	2.21	XXX	N
77777		A	Radioelement application	6.99	7.17	0.71	14.87	090	N
77777	26	A	Radioelement application	6.99	3.13	0.45	10.57	090	N
77777	TC	A	Radioelement application	0.00	4.04	0.26	4.30	090	N
77778		A	Radioelement application	10.46	9.58	0.98	21.02	090	N
77778	26	A	Radioelement application	10.46	4.69	0.67	15.82	090	N
77778	TC	A	Radioelement application	0.00	4.89	0.31	5.20	090	N
77781		A	High intensity brachytherapy	1.55	20.04	1.32	22.91	090	N
77781	26	A	High intensity brachytherapy	1.55	0.69	0.11	2.35	090	N
77781	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77782		A	High intensity brachytherapy	2.33	20.40	1.37	24.10	090	N
77782	26	A	High intensity brachytherapy	2.33	1.05	0.16	3.54	090	N
77782	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77783		A	High intensity brachytherapy	3.49	20.90	1.44	25.83	090	N
77783	26	A	High intensity brachytherapy	3.49	1.55	0.23	5.27	090	N
77783	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77784		A	High intensity brachytherapy	5.24	21.69	1.56	28.49	090	N
77784	26	A	High intensity brachytherapy	5.24	2.34	0.35	7.93	090	N
77784	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77789		A	Radioelement application	1.05	0.89	0.10	2.04	090	N
77789	26	A	Radioelement application	1.05	0.46	0.07	1.58	090	N
77789	TC	A	Radioelement application	0.00	0.43	0.03	0.46	090	N
77790		A	Radioelement handling	1.05	0.94	0.10	2.09	XXX	N
77790	26	A	Radioelement handling	1.05	0.46	0.07	1.58	XXX	N
77790	TC	A	Radioelement handling	0.00	0.48	0.03	0.51	XXX	N
77799		C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
77799	26 *	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
78000		A	Thyroid, single uptake	0.19	1.01	0.07	1.27	XXX	N
78009	26	A	Thyroid, single uptake	0.19	0.09	0.01	0.29	XXX	N
78000	TC	A	Thyroid, single uptake	0.00	0.92	0.05	0.96	XXX	N
78001		A	Thyroid, multiple uptakes	0.26	1.36	0.10	1.72	XXX	N
78001	26	A	Thyroid, multiple uptakes	0.26	0.12	0.02	0.40	XXX	N
78001	TC	A	Thyroid, multiple uptakes	0.00	1.24	0.08	1.32	XXX	N
78003		A	Thyroid suppress/stimul	0.33	1.07	0.08	1.48	XXX	N
78003	26	A	Thyroid suppress/stimul	0.33	0.15	0.02	0.50	XXX	N
78003	TC	A	Thyroid suppress/stimul	0.00	0.92	0.06	0.98	XXX	N
78006		A	Thyroid, imaging with uptake	0.49	2.49	0.18	3.16	XXX	N
78006	26	A	Thyroid, imaging with uptake	0.49	0.22	0.03	0.74	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs 4	Malpractice RVUs	Total	Global period	Update
78006	TC	A	Thyroid, imaging with uptake	0.00	2.27	0.15	2.42	XXX	N
78007		A	Thyroid, image, mult uptakes	0.50	2.68	0.19	3.37	XXX	N
78007	26	A	Thyroid, image, mult uptakes	0.50	0.23	0.03	0.76	XXX	N
78007	TC	A	Thyroid, image, mult uptakes	0.00	2.45	0.16	2.61	XXX	N
78010		A	Thyroid imaging	0.39	1.90	0.14	2.43	XXX	N
78010	26	A	Thyroid imaging	0.39	0.17	0.03	0.59	XXX	N
78010	TC	A	Thyroid imaging	0.00	1.73	0.11	1.84	XXX	N
78011		A	Thyroid imaging with flow	0.45	2.50	0.18	3.13	XXX	N
78011	26	A	Thyroid imaging with flow	0.45	0.21	0.03	0.69	XXX	N
78011	TC	A	Thyroid imaging with flow	0.00	2.29	0.15	2.44	XXX	N
78015		A	Thyroid met imaging	0.67	2.76	0.21	3.64	XXX	N
78015	26	A	Thyroid met imaging	0.67	0.31	0.05	1.03	XXX	N
78015	TC	A	Thyroid met imaging	0.00	2.45	0.16	2.61	XXX	N
78016		A	Thyroid met imaging/studies	0.82	3.70	0.27	4.79	XXX	N
78016	26	A	Thyroid met imaging/studies	0.82	0.38	0.06	1.26	XXX	N
78016	TC	A	Thyroid met imaging/studies	0.00	3.32	0.21	3.53	XXX	N
78017		A	Thyroid met imaging, mult	0.87	3.94	0.28	5.09	XXX	N
78017	26	A	Thyroid met imaging, mult	0.87	0.39	0.06	1.32	XXX	N
78017	TC	A	Thyroid met imaging, mult	0.00	3.55	0.22	3.77	XXX	N
78018		A	Thyroid, met imaging, body	0.95	5.60	0.39	6.94	XXX	N
78018	26	A	Thyroid, met imaging, body	0.95	0.43	0.06	1.44	XXX	N
78018	TC	A	Thyroid, met imaging, body	0.00	5.17	0.33	5.50	XXX	N
78070		A	Parathyroid nuclear imaging	0.51	1.96	0.15	2.62	XXX	N
78070	26	A	Parathyroid nuclear imaging	0.51	0.23	0.04	0.78	XXX	N
78070	TC	A	Parathyroid nuclear imagirig	0.00	1.73	0.11	1.84	XXX	N
78075		A	Adrenal nuclear imaging	0.74	5.51	0.38	6.63	XXX	N
78075	26	A	Adrenal nuclear imaging	0.74	0.34	0.05	1.13	XXX	N
78075	TC	A	Adrenal nuclear imaging	0.00	5.17	0.33	5.50	XXX	N
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78102		A	Bone marrow imaging, tid	0.55	2.19	0.17	2.91	XXX	N
78102	26	A	Bone marrow imaging, tid	0.55	0.25	0.04	0.84	XXX	N
78102	TC	A	Bone marrow imaging, tid	0.00	1.94	0.13	2.07	XXX	N
78103		A	Bone marrow imaging, mult	0.75	3.36	0.24	4.35	XXX	N
78103	26	A	Bone marrow imaging, mult	0.75	0.34	0.05	1.14	XXX	N
78103	TC	A	Bone marrow imaging, mult	0.00	3.02	0.19	3.21	XXX	N
78104		A	Bone marrow imaging, body	0.80	4.25	0.30	5.35	XXX	N
78104	26	A	Bone marrow imaging, body	0.80	0.37	0.05	1.22	XXX	N
78104	TC	A	Bone marrow imaging, body	0.00	3.88	0.25	4.13	XXX	N
78110		A	Plasma volume, single	0.19	0.99	0.07	1.25	XXX	N
78110	26	A	Plasma volume, single	0.19	0.09	0.01	0.29	XXX	N
78110	TC	A	Plasma volume, single	0.00	0.90	0.06	0.96	XXX	N
78111		A	Plasma volume, multiple	0.22	2.55	0.18	2.95	XXX	N
78111	26	A	Plasma volume, multiple	0.22	0.10	0.02	0.34	XXX	N
78111	TC	A	Plasma volume, multiple	0.00	2.45	0.16	2.61	XXX	N
78120		A	Red cell mass, single	0.23	1.76	0.13	2.12	XXX	N
78120	26	A	Red cell mass, single	0.23	0.11	0.02	0.36	XXX	N
78120	TC	A	Red cell mass, single	0.00	1.65	0.11	1.76	XXX	N
78121		A	Red cell mass, multiple	0.32	2.92	0.19	3.43	XXX	N
78121	26	A	Red cell mass, multiple	0.32	0.15	0.02	0.49	XXX	N
78121	TC	A	Red cell mass, multiple	0.00	2.77	0.17	2.94	XXX	N
78122		A	Blood volume	0.45	4.59	0.31	5.35	XXX	N
78122	26	A	Blood volume	0.45	0.20	0.03	0.68	XXX	N
78122	TC	A	Blood volume	0.00	4.39	0.28	4.67	XXX	N
78130		A	Red cell survival study	0.61	3.00	0.21	3.82	XXX	N
78130	26	A	Red cell survival study	0.61	0.28	0.04	0.93	XXX	N
78130	TC	A	Red cell survival study	0.00	2.72	0.17	2.89	XXX	N
78135		A	Red cell survival kinetics	0.64	4.93	0.34	5.91	XXX	N
78135	26	A	Red cell survival kinetics	0.64	0.29	0.04	0.97	XXX	N
78135	TC	A	Red cell survival kinetics	0.00	4.64	0.30	4.94	XXX	N
78140		A	Red cell sequestration	0.61	4.03	0.28	4.92	XXX	N
78140	26	A	Red cell sequestration	0.61	0.28	0.04	0.93	XXX	N
78140	TC	A	Red cell sequestration	0.00	3.75	0.24	3.99	XXX	N
78160		A	Plasma iron turnover	0.33	3.64	0.24	4.21	XXX	N
78160	26	A	Plasma iron turnover	0.33	0.15	0.02	0.50	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
78160	TC	A	Plasma iron turnover	0.00	3.49	0.22	3.71	XXX	N
78162		A	Iron absorption exam	0.45	3.25	0.22	3.92	XXX	N
78162	26	A	Iron absorption exam	0.45	0.20	0.03	0.68	XXX	N
78162	TC	A	Iron absorption exam	0.00	3.05	0.19	3.24	XXX	N
78170		A	Red cell iron utilization	0.41	5.24	0.35	6.00	XXX	N
78170	26	A	Red cell iron utilization	0.41	0.18	0.03	0.62	XXX	N
78170	TC	A	Red cell iron utilization	0.00	5.06	0.32	5.38	XXX	N
78172		C	Total body iron estimation	0.00	0.00	0.00	0.00	XXX	N
78172	26	A	Total body iron estimation	0.53	0.25	0.04	0.82	XXX	N
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	0.00	XXX	N
78185		A	Spleen imaging	0.40	2.43	0.18	3.01	XXX	N
78185	26	A	Spleen imaging	0.40	0.18	0.03	0.61	XXX	N
78185	TC	A	Spleen imaging	0.00	2.25	0.15	2.40	XXX	N
78190		A	Platelet survival, kinetics	1.09	5.93	0.42	7.44	XXX	N
78190	26	A	Platelet survival, kinetics	1.09	0.48	0.07	1.64	XXX	N
78190	TC	A	Platelet survival, kinetics	0.00	5.45	0.35	5.80	XXX	N
78191		A	Platelet survival	0.61	7.27	0.48	8.36	XXX	N
78191	26	A	Platelet survival	0.61	0.28	0.04	0.93	XXX	N
78191	TC	A	Platelet survival	0.00	6.99	0.44	7.43	XXX	N
78195		A	Lymph system imaging	0.70	4.20	0.30	5.20	XXX	N
78195	26	A	Lymph system imaging	0.70	0.32	0.05	1.07	XXX	N
78195	TC	A	Lymph system imaging	0.00	3.88	0.25	4.13	XXX	N
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78201		A	Liver imaging	0.44	2.44	0.18	3.06	XXX	N
78201	26	A	Liver imaging	0.44	0.19	0.03	0.66	XXX	N
78201	TC	A	Liver imaging	0.00	2.25	0.15	2.40	XXX	N
78202		A	Liver imaging with flow	0.51	2.98	0.21	3.70	XXX	N
78202	26	A	Liver imaging with flow	0.51	0.23	0.04	0.78	XXX	N
78202	TC	A	Liver imaging with flow	0.00	2.75	0.17	2.92	XXX	N
78205		A	Liver imaging (3D)	0.71	5.96	0.41	7.08	XXX	N
78205	26	A	Liver imaging (3D)	0.71	0.33	0.05	1.09	XXX	N
78205	TC	A	Liver imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78215		A	Liver and spleen imaging	0.49	3.02	0.20	3.71	XXX	N
78215	26	A	Liver and spleen imaging	0.49	0.22	0.03	0.74	XXX	N
78215	TC	A	Liver and spleen imaging	0.00	2.80	0.17	2.97	XXX	N
78216		A	Liver & spleen image, flow	0.57	3.58	0.25	4.40	XXX	N
78216	26	A	Liver & spleen image, flow	0.57	0.26	0.04	0.87	XXX	N
78216	TC	A	Liver & spleen image, flow	0.00	3.32	0.21	3.53	XXX	N
78220		A	Liver function study	0.49	3.77	0.25	4.51	XXX	N
78220	26	A	Liver function study	0.49	0.22	0.03	0.74	XXX	N
78220	TC	A	Liver function study	0.00	3.55	0.22	3.77	XXX	N
78223		A	Hepatobiliary imaging	0.84	3.87	0.28	4.99	XXX	N
78223	26	A	Hepatobiliary imaging	0.84	0.38	0.06	1.28	XXX	N
78223	TC	A	Hepatobiliary imaging	0.00	3.49	0.22	3.71	XXX	N
78230		A	Salivary gland imaging	0.45	2.28	0.17	2.90	XXX	N
78230	26	A	Salivary gland imaging	0.45	0.21	0.03	0.69	XXX	N
78230	TC	A	Salivary gland imaging	0.00	2.07	0.14	2.21	XXX	N
78231		A	Serial salivary imaging	0.52	3.26	0.23	4.01	XXX	N
78231	26	A	Serial salivary imaging	0.52	0.24	0.04	0.80	XXX	N
78231	TC	A	Serial salivary imaging	0.00	3.02	0.19	3.21	XXX	N
78232		A	Salivary gland function exam	0.47	3.59	0.24	4.30	XXX	N
78232	26	A	Salivary gland function exam	0.47	0.22	0.03	0.72	XXX	N
78232	TC	A	Salivary gland function exam	0.00	3.37	0.21	3.58	XXX	N
78258		A	Esophageal motility study	0.74	3.09	0.22	4.05	XXX	N
78258	26	A	Esophageal motility study	0.74	0.34	0.05	1.13	XXX	N
78258	TC	A	Esophageal motility study	0.00	2.75	0.17	2.92	XXX	N
78261		A	Gastric mucosa imaging	0.69	4.23	0.30	5.22	XXX	N
78261	26	A	Gastric mucosa imaging	0.69	0.32	0.05	1.06	XXX	N
78261	TC	A	Gastric mucosa imaging	0.00	3.91	0.25	4.16	XXX	N
78262		A	Gastroesophageal reflux exam	0.68	4.36	0.31	5.35	XXX	N
78262	26	A	Gastroesophageal reflux exam	0.68	0.31	0.05	1.04	XXX	N
78262	TC	A	Gastroesophageal reflux exam	0.00	4.05	0.26	4.31	XXX	N
78264		A	Gastric emptying study	0.78	4.29	0.30	5.37	XXX	N
78264	26	A	Gastric emptying study	0.78	0.36	0.05	1.19	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
78264	TC	A	Gastric emptying study	0.00	3.93	0.25	4.18	XXX	N
78270		A	Vit B–12 absorption exam	0.20	1.57	0.11	1.88	XXX	N
78270	26	A	Vit B–12 absorption exam	0.20	0.10	0.01	0.31	XXX	N
78270	TC	A	Vit B–12 absorption exam	0.00	1.47	0.10	1.57	XXX	N
78271		A	Vit B–12 absorp exam, IF	0.20	1.67	0.11	1.98	XXX	N
78271	26	A	Vit B–12 absorp exam, IF	0.20	0.10	0.01	0.31	XXX	N
78271	TC	A	Vit B–12 absorp exam, IF	0.00	1.57	0.10	1.67	XXX	N
78272		A	Vit B–12 absorp, combined	0.27	2.34	0.17	2.78	XXX	N
78272	26	A	Vit B–12 absorp, combined	0.27	0.13	0.02	0.42	XXX	N
78272	TC	A	Vit B–12 absorp, combined	0.00	2.21	0.15	2.36	XXX	N
78278		A	Acute GI blood loss imaging	0.99	5.09	0.37	6.45	XXX	N
78278	26	A	Acute GI blood loss imaging	0.99	0.45	0.07	1.51	XXX	N
78278	TC	A	Acute GI blood loss imaging	0.00	4.64	0.30	4.94	XXX	N
78282		C	GI protein loss exam	0.00	0.00	0.00	0.00	XXX	N
78282	26	A	GI protein loss exam	0.38	0.17	0.03	0.58	XXX	N
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	0.00	XXX	N
78290		A	Meckel's divert exam	0.68	3.21	0.23	4.12	XXX	N
78290	26	A	Meckel's divert exam	0.68	0.31	0.05	1.04	XXX	N
78290	TC	A	Meckel's divert exam	0.00	2.90	0.18	3.08	XXX	N
78291		A	Leveen/shunt patency exam	0.88	3.31	0.24	4.43	XXX	N
78291	26	A	Leveen/shunt patency exam	0.88	0.39	0.06	1.33	XXX	N
78291	TC	A	Leveen/shunt patency exam	0.00	2.92	0.18	3.10	XXX	N
78299		C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78300		A	Bone imaging, limited area	0.62	2.66	0.20	3.48	XXX	N
78300	26	A	Bone imaging, limited area	0.62	0.29	0.04	0.95	XXX	N
78300	TC	A	Bone imaging, limited area	0.00	2.37	0.16	2.53	XXX	N
78305		A	Bone imaging, multiple areas	0.83	3.57	0.28	4.98	XXX	N
78305	26	A	Bone imaging, multiple areas	0.83	0.38	0.06	1.27	XXX	N
78305	TC	A	Bone imaging, multiple areas	0.00	3.49	0.22	3.71	XXX	N
78306		A	Bone imaging, whole body	0.86	4.46	0.32	5.64	XXX	N
78306	26	A	Bone imaging, whole body	0.86	0.39	0.06	1.31	XXX	N
78306	TC	A	Bone imaging, whole body	0.00	4.07	0.26	4.33	XXX	N
78315		A	Bone imaging, 3 phase	1.02	5.00	0.36	6.38	XXX	N
78315	26	A	Bone imaging, 3 phase	1.02	0.45	0.07	1.54	XXX	N
78315	TC	A	Bone imaging, 3 phase	0.00	4.55	0.29	4.84	XXX	N
78320		A	Bone imaging (3D)	1.04	6.09	0.43	7.56	XXX	N
78320	26	A	Bone imaging (3D)	1.04	0.46	0.07	1.57	XXX	N
78320	TC	A	Bone imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78350		A	Bone mineral, single photon	0.22	0.82	0.07	1.11	XXX	N
78350	26	A	Bone mineral, single photon	0.22	0.10	0.02	0.34	XXX	N
78350	TC	A	Bone mineral, single photon	0.00	0.72	0.05	0.77	XXX	N
78351		N	Bone mineral, dual photon	#0.30	0.19	0.02	0.51	XXX	0
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78414		C	Non-imaging heart function	0.00	0.00	0.00	0.00	XXX	N
78414	26	A	Non-imaging heart function	0.45	0.20	0.03	0.68	XXX	N
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	0.00	XXX	N
78428		A	Cardiac shunt imaging	0.78	2.51	0.19	3.48	XXX	N
78428	26	A	Cardiac shunt imaging	0.78	0.36	0.05	1.19	XXX	N
78428	TC	A	Cardiac shunt imaging	0.00	2.15	0.14	2.29	XXX	N
78445		A	Vascular flow imaging	0.49	2.01	0.15	2.65	XXX	N
78445	26	A	Vascular flow imaging	0.49	0.24	0.04	0.77	XXX	N
78445	TC	A	Vascular flow imaging	0.00	1.77	0.11	1.88	XXX	N
78455		A	Venous thrombosis study	0.73	4.13	0.29	5.15	XXX	N
78455	26	A	Venous thrombosis study	0.73	0.33	0.05	1.11	XXX	N
78455	TC	A	Venous thrombosis study	0.00	3.80	0.24	4.04	XXX	N
78457		A	Venous thrombosis imaging	0.77	2.88	0.22	3.87	XXX	N
78457	26	A	Venous thrombosis imaging	0.77	0.35	0.05	1.17	XXX	N
78457	TC	A	Venous thrombosis imaging	0.00	2.53	0.17	2.70	XXX	N
78458		A	Ven thrombosis images, bilat	0.90	4.23	0.30	5.43	XXX	N
78458	26	A	Ven thrombosis images, bilat	0.90	0.40	0.06	1.36	XXX	N
78458	TC	A	Ven thrombosis images, bilat	0.00	3.83	0.24	4.07	XXX	N
78459		G	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
78459	26	G	Heart muscle imaging (PET)	#1.88	1.34	0.10	3.32	XXX	0
78459	TC	G	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78460		A	Heart muscle blood single	0.86	2.64	0.21	3.71	XXX	N
78460	26	A	Heart muscle blood single	0.86	0.39	0.06	1.31	XXX	N
78460	TC	A	Heart muscle blood single	0.00	2.25	0.15	2.40	XXX	N
78461		A	Heart muscle blood multiple	1.23	5.04	0.37	6.64	XXX	N
78461	26	A	Heart muscle blood multiple	1.23	0.54	0.08	1.85	XXX	N
78461	TC	A	Heart muscle blood multiple	0.00	4.50	0.29	4.79	XXX	N
78464		A	Heart image (3D) single	1.09	7.22	0.50	8.81	XXX	N
78464	26	A	Heart image (3D) single	1.09	0.48	0.07	1.64	XXX	N
78464	TC	A	Heart image (3D) single	0.00	6.74	0.43	7.17	XXX	N
78465		A	Heart image (3D) multiple	1.46	11.89	0.80	14.15	XXX	N
78465	26	A	Heart image (3D) multiple	1.46	0.65	0.10	2.21	XXX	N
78465	TC	A	Heart image (3D) multiple	0.00	11.24	0.70	11.94	XXX	N
78466		A	Heart infarct image	0.69	2.82	0.22	3.73	XXX	N
78466	26	A	Heart infarct image	0.69	0.32	0.05	1.06	XXX	N
78466	TC	A	Heart infarct image	0.00	2.50	0.17	2.67	XXX	N
78468		A	Heart infarct image, EF	0.80	3.85	0.27	4.92	XXX	N
78468	26	A	Heart infarct image, EF	0.80	0.36	0.05	1.21	XXX	N
78468	TC	A	Heart infarct image, EF	0.00	3.49	0.22	3.71	XXX	N
78469		A	Heart infarct image (3D)	0.92	5.39	0.38	6.69	XXX	N
78469	26	A	Heart infarct image (3D)	0.92	0.41	0.06	1.39	XXX	N
78469	TC	A	Heart infarct image (3D)	0.00	4.98	0.32	5.30	XXX	N
78472		A	Gated heart, resting	0.98	5.69	0.41	7.08	XXX	N
78472	26	A	Gated heart, resting	0.98	0.44	0.07	1.49	XXX	N
78472	TC	A	Gated heart, resting	0.00	5.25	0.34	5.59	XXX	N
78473		A	Gated heart, multiple	1.47	8.52	0.59	10.58	XXX	N
78473	26	A	Gated heart, multiple	1.47	0.65	0.10	2.22	XXX	N
78473	TC	A	Gated heart, multiple	0.00	7.87	0.49	8.36	XXX	N
78478		A	Heart wall motion (add-on)	0.62	1.76	0.14	2.52	XXX	N
78478	26	A	Heart wall motion (add-on)	0.62	0.28	0.04	0.94	XXX	N
78478	TC	A	Heart wall motion (add-on)	0.00	1.48	0.10	1.58	XXX	N
78480		A	Heart function, (add-on)	0.62	1.76	0.14	2.52	XXX	N
78480	26	A	Heart function, (add-on)	0.62	0.28	0.04	0.94	XXX	N
78480	TC	A	Heart function, (add-on)	0.00	1.48	0.10	1.58	XXX	N
78481		A	Heart first pass single	0.98	5.42	0.39	6.79	XXX	N
78481	26	A	Heart first pass single	0.98	0.44	0.07	1.49	XXX	N
78481	TC	A	Heart first pass single	0.00	4.98	0.32	5.30	XXX	N
78483		A	Heart first pass multiple	1.47	8.15	0.57	10.19	XXX	N
78483	26	A	Heart first pass multiple	1.47	0.65	0.10	2.22	XXX	N
78483	TC	A	Heart first pass multiple	0.00	7.50	0.47	7.97	XXX	N
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78580		A	Lung perfusion imaging	0.74	3.61	0.26	4.61	XXX	N
78580	26	A	Lung perfusion imaging	0.74	0.34	0.05	1.13	XXX	N
78580	TC	A	Lung perfusion imaging	0.00	3.27	0.21	3.48	XXX	N
78584		A	Lung V/Q image single breath	0.99	3.50	0.26	4.75	XXX	N
78584	26	A	Lung V/Q image single breath	0.99	0.45	0.07	1.51	XXX	N
78584	TC	A	Lung V/Q image single breath	0.00	3.05	0.19	3.24	XXX	N
78585		A	Lung V/Q imaging	1.09	5.85	0.41	7.35	XXX	N
78585	26	A	Lung V/Q imaging	1.09	0.48	0.07	1.64	XXX	N
78585	TC	A	Lung V/Q imaging	0.00	5.37	0.34	5.71	XXX	N
78586		A	Aerosol lung image, single	0.40	2.65	0.19	3.24	XXX	N
78586	26	A	Aerosol lung image, single	0.40	0.18	0.03	0.61	XXX	N
78586	TC	A	Aerosol lung image, single	0.00	2.47	0.16	2.63	XXX	N
78587		A	Aerosol lung image, multiple	0.49	2.89	0.20	3.58	XXX	N
78587	26	A	Aerosol lung image, multiple	0.49	0.22	0.03	0.74	XXX	N
78587	TC	A	Aerosol lung image, multiple	0.00	2.67	0.17	2.84	XXX	N
78591		A	Vent image, 1 breath, 1 proj	0.40	2.90	0.20	3.50	XXX	N
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.18	0.03	0.61	XXX	N
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.72	0.17	2.89	XXX	N
78593		A	Vent image, 1 proj, gas	0.49	3.51	0.24	4.24	XXX	N
78593	26	A	Vent image, 1 proj, gas	0.49	0.22	0.03	0.74	XXX	N
78593	TC	A	Vent image, 1 proj, gas	0.00	3.29	0.21	3.50	XXX	N
78594		A	Vent image, mult proj, gas	0.53	5.00	0.34	5.87	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
78594	26	A	Vent image, mult proj, gas	0.53	0.25	0.04	0.82	XXX	N
78594	TC	A	Vent image, mult proj, gas	0.00	4.75	0.30	5.05	XXX	N
78596		A	Lung differential function	1.27	7.30	0.52	9.09	XXX	N
78596	26	A	Lung differential function	1.27	0.56	0.09	1.92	XXX	N
78596	TC	A	Lung differential function	0.00	6.74	0.43	7.17	XXX	N
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78600		A	Brain imaging, ltd static	0.44	2.95	0.20	3.59	XXX	N
78600	26	A	Brain imaging, ltd static	0.44	0.20	0.03	0.67	XXX	N
78600	TC	A	Brain imaging, ltd static	0.00	2.75	0.17	2.92	XXX	N
78601		A	Brain ltd imaging & flow	0.51	3.48	0.24	4.23	XXX	N
78601	26	A	Brain ltd imaging & flow	0.51	0.24	0.04	0.79	XXX	N
78601	TC	A	Brain ltd imaging & flow	0.00	3.24	0.20	3.44	XXX	N
78605		A	Brain imaging, complete	0.53	3.49	0.24	4.26	XXX	N
78605	26	A	Brain imaging, complete	0.53	0.25	0.04	0.82	XXX	N
78605	TC	A	Brain imaging, complete	0.00	3.24	0.20	3.44	XXX	N
78606		A	Brain imaging comp & flow	0.64	3.98	0.27	4.89	XXX	N
78606	26	A	Brain imaging comp & flow	0.64	0.29	0.04	0.97	XXX	N
78606	TC	A	Brain imaging comp & flow	0.00	3.69	0.23	3.92	XXX	N
78607		A	Brain imaging (3D)	1.23	6.79	0.47	8.49	XXX	N
78607	26	A	Brain imaging (3D)	1.23	0.54	0.08	1.85	XXX	N
78607	TC	A	Brain imaging (3D)	0.00	5.25	0.39	6.64	XXX	N
78608		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78610		A	Brain flow imaging only	0.30	1.64	0.12	2.06	XXX	N
78610	26	A	Brain flow imaging only	0.30	0.14	0.02	0.46	XXX	N
78610	TC	A	Brain flow imaging only	0.00	1.50	0.10	1.60	XXX	N
78615		A	Cerebral blood flow imaging	0.42	3.86	0.26	4.54	XXX	N
78615	26	A	Cerebral blood flow imaging	0.42	0.19	0.03	0.64	XXX	N
78615	TC	A	Cerebral blood flow imaging	0.00	3.67	0.23	3.90	XXX	N
78630		A	Cerebrospinal fluid scan	0.68	5.11	0.36	6.15	XXX	N
78630	26	A	Cerebrospinal fluid scan	0.68	0.31	0.05	1.04	XXX	N
78630	TC	A	Cerebrospinal fluid scan	0.00	4.80	0.31	5.11	XXX	N
78635		A	CSF ventriculography	0.61	2.70	0.20	3.51	XXX	N
78635	26	A	CSF ventriculography	0.61	0.28	0.04	0.93	XXX	N
78635	TC	A	CSF ventriculography	0.00	2.42	0.16	2.58	XXX	N
78645		A	CSF shunt evaluation	0.57	3.53	0.25	4.35	XXX	N
78645	26	A	CSF shunt evaluation	0.57	0.26	0.04	0.87	XXX	N
78645	TC	A	CSF shunt evaluation	0.00	3.27	0.21	3.48	XXX	N
78647		A	Cerebrospinal fluid scan	0.90	6.04	0.42	7.36	XXX	N
78647	26	A	Cerebrospinal fluid scan	0.90	0.41	0.06	1.37	XXX	N
78647	TC	A	Cerebrospinal fluid scan	0.00	5.63	0.36	5.99	XXX	N
78650		A	CSF leakage imaging	0.61	4.70	0.32	5.63	XXX	N
78650	26	A	CSF leakage imaging	0.61	0.28	0.04	0.93	XXX	N
78650	TC	A	CSF leakage imaging	0.00	4.42	0.28	4.70	XXX	N
78655		D	Nuclear exam of eye lesion	0.00	0.00	0.00	0.00	XXX	N
78655	26	D	Nuclear exam of eye lesion	0.00	0.00	0.00	0.00	XXX	N
78655	TC	D	Nuclear exam of eye lesion	0.00	0.00	0.00	0.00	XXX	N
78660		A	Nuclear exam of tear flow	0.53	2.27	0.17	2.97	XXX	N
78660	26	A	Nuclear exam of tear flow	0.53	0.25	0.04	0.82	XXX	N
78660	TC	A	Nuclear exam of tear flow	0.00	2.02	0.13	2.15	XXX	N
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78700		A	Kidney imaging, static	0.45	3.10	0.21	3.76	XXX	N
78700	26	A	Kidney imaging, static	0.45	0.20	0.03	0.68	XXX	N
78700	TC	A	Kidney imaging, static	0.00	2.90	0.18	3.08	XXX	N
78701		A	Kidney imaging with flow	0.49	3.61	0.24	4.34	XXX	N
78701	26	A	Kidney imaging with flow	0.49	0.22	0.03	0.74	XXX	N
78701	TC	A	Kidney imaging with flow	0.00	3.39	0.21	3.60	XXX	N
78704		A	Imaging renogram	0.74	4.11	0.29	5.14	XXX	N
78704	26	A	Imaging renogram	0.74	0.34	0.05	1.13	XXX	N
78704	TC	A	Imaging renogram	0.00	3.77	0.24	4.01	XXX	N
78707		A	Kidney flow & function image	0.94	4.68	0.33	5.95	XXX	N
78707	26	A	Kidney flow & function image	0.94	0.42	0.06	1.42	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
78707	TC	A	Kidney flow & function image	0.00	4.26	0.27	4.53	XXX	N
78710		A	Kidney imaging (3D)	0.66	5.93	0.41	7.00	XXX	N
78710	26	A	Kidney imaging (3D)	0.66	0.30	0.05	1.01	XXX	N
78710	TC	A	Kidney imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78715		A	Renal vascular flow exam	0.30	1.84	0.12	2.06	XXX	N
78715	26	A	Renal vascular flow exam	0.30	0.14	0.02	0.46	XXX	N
78715	TC	A	Renal vascular flow exam	0.00	1.50	0.10	1.60	XXX	N
78725		A	Kidney function study	0.38	1.87	0.14	2.39	XXX	N
78725	26	A	Kidney function study	0.38	0.17	0.03	0.58	XXX	N
78725	TC	A	Kidney function study	0.00	1.70	0.11	1.81	XXX	N
78726		A	Kidney function w/intervent	0.87	3.21	0.24	4.32	XXX	N
78726	26	A	Kidney function w/intervent	0.87	0.39	0.06	1.32	XXX	N
78726	TC	A	Kidney function w/intervent	0.00	2.82	0.18	3.00	XXX	N
78727		A	Kidney transplant evaluation	0.99	4.25	0.31	5.55	XXX	N
78727	26	A	Kidney transplant evaluation	0.99	0.45	0.07	1.51	XXX	N
78727	TC	A	Kidney transplant evaluation	0.00	3.80	0.24	4.04	XXX	N
78730		A	Urinary bladder retention	0.38	1.55	0.11	2.02	XXX	N
78730	26	A	Urinary bladder retention	0.36	0.16	0.02	0.54	XXX	N
78730	TC	A	Urinary bladder retention	0.00	1.39	0.09	1.48	XXX	N
78740		A	Ureteral reflux study	0.57	2.28	0.17	3.02	XXX	N
78740	26	A	Ureteral reflux study	0.57	0.26	0.04	0.87	XXX	N
78740	TC	A	Ureteral reflux study	0.00	2.02	0.13	2.15	XXX	N
78760		A	Testicular imaging	0.66	2.85	0.21	3.72	XXX	N
78760	26	A	Testicular imaging	0.66	0.30	0.04	1.00	XXX	N
78760	TC	A	Testicular imaging	0.09	2.55	0.17	2.72	XXX	N
78761		A	Testicular imaging & flow	0.71	3.38	0.24	4.33	XXX	N
78761	26	A	Testicular imaging & flow	0.71	0.33	0.05	1.09	XXX	N
78761	TC	A	Testicular imaging & flow	0.00	3.05	0.19	3.24	XXX	N
78799		C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78800		A	Tumor imaging, limited area	0.66	3.54	0.24	4.44	XXX	N
78800	26	A	Tumor imaging, limited area	0.66	0.30	0.04	1.00	XXX	N
78800	TC	A	Tumor imaging, limited area	0.00	3.24	0.20	3.44	XXX	N
78801		A	Tumor imaging, mult areas	0.79	4.39	0.31	5.49	XXX	N
78801	26	A	Tumor imaging, mult areas	0.79	0.36	0.05	1.20	XXX	N
78801	TC	A	Tumor imaging, mult areas	0.00	4.03	0.26	4.29	XXX	N
78802		A	Tumor imaging, whole body	0.86	5.66	0.40	6.92	XXX	N
78802	26	A	Tumor imaging, whole body	0.86	0.39	0.06	1.31	XXX	N
78802	TC	A	Tumor imaging, whole body	0.00	5.27	0.34	5.61	XXX	N
78803		A	Tumor imaging (3D)	1.09	6.73	0.46	8.28	XXX	N
78803	26	A	Tumor imaging (3D)	1.09	0.45	0.07	1.64	XXX	N
78803	TC	A	Tumor imaging (3D)	0.00	6.25	0.39	6.64	XXX	N
78805		A	Abscess imaging, lld area	0.73	3.57	0.25	4.55	XXX	N
78805	26	A	Abscess imaging, lld area	0.73	0.33	0.05	1.11	XXX	N
78805	TC	A	Abscess imaging, lld area	0.00	3.24	0.20	3.44	XXX	N
78806		A	Abscess imaging, whole body	0.86	6.51	0.45	7.82	XXX	N
78806	26	A	Abscess imaging, whole body	0.86	0.38	0.06	1.30	XXX	N
78806	TC	A	Abscess imaging, whole body	0.00	6.13	0.39	6.52	XXX	N
78807		A	Nuclear localization/abscess	1.09	6.73	0.46	8.28	XXX	N
78807	26	A	Nuclear localization/abscess	1.09	0.46	0.07	1.64	XXX	N
78807	TC	A	Nuclear localization/abscess	0.00	6.25	0.39	6.64	XXX	N
78810		N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78810	26	N	Tumor imaging (PET)	#1.93	1.37	0.10	3.40	XXX	0
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78890		B	Nuclear medicine data proc	#0.05	1.26	0.08	1.39	XXX	0
78890	26	B	Nuclear medicine data proc	#0.05	0.02	0.00	0.07	XXX	0
78890	TC	B	Nuclear medicine data proc	#0.00	1.24	0.08	1.32	XXX	0
78891		B	Nuclear med data proc	#0.10	2.55	0.18	2.83	XXX	0
78891	26	B	Nuclear med data proc	#0.10	0.05	0.01	0.16	XXX	0
78891	TC	B	Nuclear med data proc	#0.00	2.50	0.17	2.67	XXX	0
78990		G	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	XXX	0
78999		C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
79000		A	Intial hyperthyroid therapy	1.80	3.31	0.29	5.40	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
79000	26	A	Intial hyperthyroid therapy	1.80	0.31	0.12	2.73	XXX	N
79000	TC	A	Intial hyperthyroid therapy	0.00	2.50	0.17	2.67	XXX	N
79001		A	Repeat hyperthyroid therapy	1.05	1.70	0.15	2.90	XXX	N
79001	26	A	Repeat hyperthyroid therapy	1.05	0.46	0.07	1.58	XXX	N
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.24	0.08	1.32	XXX	N
79020		A	Thyroid ablation	1.81	3.31	0.29	5.41	XXX	N
79020	26	A	Thyroid ablation	1.81	0.81	0.12	2.74	XXX	N
79020	TC	A	Thyroid ablation	0.00	2.50	0.17	2.67	XXX	N
79030		A	Thyroid ablation, carcinoma	2.10	3.44	0.31	5.85	XXX	N
79030	26	A	Thyroid ablation, carcinoma	2.10	0.94	0.14	3.18	XXX	N
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.50	0.17	2.67	XXX	N
79035		A	Thyroid metastatic therapy	2.52	3.63	0.34	6.49	XXX	N
79035	26	A	Thyroid metastatic therapy	2.52	1.13	0.17	3.82	XXX	N
79035	TC	A	Thyroid metastatic therapy	0.00	2.50	0.17	2.67	XXX	N
79100		A	Hematopoetic nuclear therapy	1.32	3.08	0.26	4.66	XXX	N
79100	26	A	Hematopoetic nuclear therapy	1.32	0.58	0.09	1.99	XXX	N
79100	TC	A	Hematopoetic nuclear therapy	0.00	2.50	0.17	2.67	XXX	N
79200		A	Intracavitary nuc treatment	1.99	3.39	0.31	5.69	XXX	N
79200	26	A	Intracavitary nuc treatment	1.99	0.89	0.14	3.02	XXX	N
79200	TC	A	Intracavitary nuc treatment	0.00	2.50	0.17	2.67	XXX	N
79300		C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	XXX	N
79300	26	A	Interstitial nuclear therapy	1.60	0.71	0.11	2.42	XXX	N
79300	TC	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	XXX	N
79400		A	Nonhemato nuclear therapy	1.96	3.37	0.30	5.63	XXX	N
79400	26	A	Nonhemato nuclear therapy	1.96	0.87	0.13	2.96	XXX	N
79400	TC	A	Nonhemato nuclear therapy	0.00	2.50	0.17	2.67	XXX	N
79420		C	Intravascular nuc therapy	0.00	0.00	0.00	0.00	XXX	N
79420	26	A	Intravascular nuc therapy	1.51	0.67	0.10	2.28	XXX	N
79420	TC	C	Intravascular nuc therapy	0.00	0.00	0.00	0.00	XXX	N
79440		A	Nuclear joint therapy	1.99	3.39	0.31	5.69	XXX	N
79440	26	A	Nuclear joint therapy	1.99	0.89	0.14	3.02	XXX	N
79440	TC	A	Nuclear joint therapy	0.00	2.50	0.17	2.67	XXX	N
79900		C	Provide ther radiopharm(s)	0.00	0.00	0.00	0.00	XXX	N
79999		C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
80002		X	1–2 clinical chem tests	0.00	0.00	0.00	0.00	XXX	0
80003		X	3 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80004		X	4 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80005		X	5 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80006		X	6 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80007		X	7 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80008		X	8 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80009		X	9 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80010		X	10 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80011		X	11 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80012		X	12 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80016		X	13–16 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80018		X	17–18 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80019		X	19 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80050		X	General health panel	0.00	0.00	0.00	0.00	XXX	0
80055		X	Obstetric panel	0.00	0.00	0.00	0.00	XXX	0
80058		X	Hepatic function panel	0.00	0.00	0.00	0.00	XXX	0
80059		X	Hepatitis panel	0.00	0.00	0.00	0.00	XXX	0
80061		X	Lipid panel	0.00	0.00	0.00	0.00	XXX	0
80072		X	Arthritis panel	0.00	0.00	0.00	0.00	XXX	0
80090		X	Torch antibody panel	0.00	0.00	0.00	0.00	XXX	0
80091		X	Thyroid panel	0.00	0.00	0.00	0.00	XXX	0
80092		X	Thyroid panel w/TSH	0.00	0.00	0.00	0.00	XXX	0
80100		X	Drug screen	0.00	0.00	0.00	0.00	XXX	0
80101		X	Drug screen	0.00	0.00	0.00	0.00	XXX	0
80102		X	Drug confirmation	0.00	0.00	0.00	0.00	XXX	0
80103		X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	XXX	0
80150		X	Assay of amikacin	0.00	0.00	0.00	0.00	XXX	0
80152		X	Assay of amitriptyline	0.00	0.00	0.00	0.00	XXX	0
80154		X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
80185		X	Assay carbamazepine	0.00	0.00	0.00	0.00	XXX	0
80158		X	Assay of cyclosporine	0.00	0.00	0.00	0.00	XXX	0
80160		X	Assay of desipramine	0.00	0.00	0.00	0.00	XXX	0
80162		X	Assay for digoxin	0.00	0.00	0.00	0.00	XXX	0
80164		X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	XXX	0
80166		X	Assay of doxepin	0.00	0.00	0.00	0.00	XXX	0
80168		X	Assay of ethosuximide	0.00	0.00	0.00	0.00	XXX	0
80170		X	Gentamicin	0.00	0.00	0.00	0.00	XXX	0
80172		X	Assay for gold	0.00	0.00	0.00	0.00	XXX	0
80174		X	Assay of imipramine	0.00	0.00	0.00	0.00	XXX	0
80176		X	Assay for lidocaine	0.00	0.00	0.00	0.00	XXX	0
80178		X	Assay for lithium	0.00	0.00	0.00	0.00	XXX	0
80182		X	Assay for nortriptyline	0.00	0.00	0.00	0.00	XXX	0
80184		X	Assay for phenobarbital	0.00	0.00	0.00	0.00	XXX	0
80185		X	Assay for phenytoin	0.00	0.00	0.00	0.00	XXX	0
80186		X	Assay for phenytoin, free	0.00	0.00	0.00	0.00	XXX	0
80188		X	Assay for primidone	0.00	0.00	0.00	0.00	XXX	0
80190		X	Assay for procainamide	0.00	0.00	0.00	0.00	XXX	0
80192		X	Assay for procainamide	0.00	0.00	0.00	0.00	XXX	0
80194		X	Assay for quinidine	0.00	0.00	0.00	0.00	XXX	0
80196		X	Assay for salicylate	0.00	0.00	0.00	0.00	XXX	0
80198		X	Assay for theophylline	0.00	0.00	0.00	0.00	XXX	0
80200		X	Assay for tobramycin	0.00	0.00	0.00	0.00	XXX	0
80202		X	Assay for vancomycin	0.00	0.00	0.00	0.00	XXX	0
80299		X	Quantitative assay, drug	0.00	0.00	0.00	0.00	XXX	0
80400		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80402		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80406		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80408		X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	XXX	0
80410		X	Calcitonin stimul panel	0.00	0.00	0.00	0.00	XXX	0
80412		X	CRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80414		X	Testosterone response	0.00	0.00	0.00	0.00	XXX	0
80415		X	Estradiol response panel	0.00	0.00	0.00	0.00	XXX	0
80416		X	Renin stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80417		X	Renin stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80418		X	Pituitary evaluation panel	0.00	0.00	0.00	0.00	XXX	0
80420		X	Dexamethasone panel	0.00	0.00	0.00	0.00	XXX	0
80422		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80424		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80426		X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	XXX	0
80428		X	Growth hormone panel	0.00	0.00	0.00	0.00	XXX	0
80430		X	Growth hormone panel	0.00	0.00	0.00	0.00	XXX	0
80432		X	Insulin suppression panel	0.00	0.00	0.00	0.00	XXX	0
80434		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80435		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80436		X	Metyrapone panel	0.00	0.00	0.00	0.00	XXX	0
80438		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80439		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80500		A	Lab pathology consultation	0.37	0.20	0.01	0.58	XXX	N
80502		A	Lab pathology consultation	1.33	0.33	0.02	1.68	XXX	N
81000		X	Urinalysis, nonauto, w/scope	0.00	0.00	0.00	0.00	XXX	0
81001		X	Urinalysis, auto, w/scope	0.00	0.00	0.00	0.00	XXX	0
81002		X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	XXX	0
81003		X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	XXX	0
81005		X	Urinalysis	0.00	0.00	0.00	0.00	XXX	0
81007		X	Urine screen for bacteria	0.00	0.00	0.00	0.00	XXX	0
81015		X	Microscopic exam of urine	0.00	0.00	0.00	0.00	XXX	0
81020		X	Urinalysis, glass test	0.00	0.00	0.00	0.00	XXX	0
81025		X	Urine pregnancy test	0.00	0.00	0.00	0.00	XXX	0
81050		X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	XXX	0
81099		X	Urinalysis test procedure	0.00	0.00	0.00	0.00	XXX	0
82000		X	Assay blood acetaldehyde	0.00	0.00	0.00	0.00	XXX	0
82003		X	Assay acetaminophen	0.00	0.00	0.00	0.00	XXX	0
82009		X	Test for acetone/ketones	0.00	0.00	0.00	0.00	XXX	0
82010		X	Acetone assay	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
82013		X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	XXX	0
82024		X	ACTH	0.00	0.00	0.00	0.00	XXX	0
82030		X	ADP & AMP	0.00	0.00	0.00	0.00	XXX	0
82040		X	Assay serum albumin	0.00	0.00	0.00	0.00	XXX	0
82042		X	Assay urine albumin	0.00	0.00	0.00	0.00	XXX	0
82043		X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	XXX	0
82044		X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	XXX	0
82055		X	Assay ethanol	0.00	0.00	0.00	0.00	XXX	0
82075		X	Assay breath ethanol	0.00	0.00	0.00	0.00	XXX	0
82085		X	Assay of aldolase	0.00	0.00	0.00	0.00	XXX	0
82088		X	Aldosterone	0.00	0.00	0.00	0.00	XXX	0
82101		X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	XXX	0
82103		X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	XXX	0
82104		X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	XXX	0
82105		X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	XXX	0
82106		X	Alpha-fetoprotein, amniotic	0.00	0.00	0.00	0.00	XXX	0
82108		X	Assay, aluminum	0.00	0.00	0.00	0.00	XXX	0
82126		X	Test for amino acids	0.00	0.00	0.00	0.00	XXX	0
82130		X	Amino acids analysis	0.00	0.00	0.00	0.00	XXX	0
82131		X	Amino acids	0.00	0.00	0.00	0.00	XXX	0
82135		X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	XXX	0
82140		X	Assay of ammonia	0.00	0.00	0.00	0.00	XXX	0
82143		X	Amniotic fluid scan	0.00	0.00	0.00	0.00	XXX	0
82145		X	Assay of amphetamines	0.00	0.00	0.00	0.00	XXX	0
82150		X	Assay of amylase	0.00	0.00	0.00	0.00	XXX	0
82154		X	Androstanediol glucuronide	0.00	0.00	0.00	0.00	XXX	0
82157		X	Assay of androstenedione	0.00	0.00	0.00	0.00	XXX	0
82160		X	Androsterone assay	0.00	0.00	0.00	0.00	XXX	0
82163		X	Assay of angiotensin II	0.00	0.00	0.00	0.00	XXX	0
82164		X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	XXX	0
82172		X	Apolipoprotein	0.00	0.00	0.00	0.00	XXX	0
82175		X	Assay of arsenic	0.00	0.00	0.00	0.00	XXX	0
82180		X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	XXX	0
82190		X	Atomic absorption	0.00	0.00	0.00	0.00	XXX	0
82205		X	Assay of barbiturates	0.00	0.00	0.00	0.00	XXX	0
82232		X	Beta-2 protein	0.00	0.00	0.00	0.00	XXX	0
82239		X	Bile acids, total	0.00	0.00	0.00	0.00	XXX	0
82240		X	Bile acids, cholylglycine	0.00	0.00	0.00	0.00	XXX	0
82250		X	Assay bilirubin	0.00	0.00	0.00	0.00	XXX	0
82251		X	Assay bilirubin	0.00	0.00	0.00	0.00	XXX	0
82252		X	Fecal bilirubin test	0.00	0.00	0.00	0.00	XXX	0
82270		X	Test feces for blood	0.00	0.00	0.00	0.00	XXX	0
82273		X	Test for blood, other source	0.00	0.00	0.00	0.00	XXX	0
82286		X	Assay of bradykinin	0.00	0.00	0.00	0.00	XXX	0
82300		X	Assay cadmium	0.00	0.00	0.00	0.00	XXX	0
82306		X	Assay of vitamin D	0.00	0.00	0.00	0.00	XXX	0
82307		X	Assay of vitamin D	0.00	0.00	0.00	0.00	XXX	0
82308		X	Assay of calcitonin	0.00	0.00	0.00	0.00	XXX	0
82310		X	Assay calcium	0.00	0.00	0.00	0.00	XXX	0
82330		X	Assay calcium	0.00	0.00	0.00	0.00	XXX	0
82331		X	Calcium infusion test	0.00	0.00	0.00	0.00	XXX	0
82340		X	Assay calcium in urine	0.00	0.00	0.00	0.00	XXX	0
82355		X	Calculus (stone) analysis	0.00	0.00	0.00	0.00	XXX	0
82360		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	XXX	0
82365		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	XXX	0
82370		X	X-ray assay, calculus (stone)	0.00	0.00	0.00	0.00	XXX	0
82374		X	Assay blood carbon dioxide	0.00	0.00	0.00	0.00	XXX	0
82375		X	Assay blood carbon monoxide	0.00	0.00	0.00	0.00	XXX	0
82376		X	Test for carbon monoxide	0.00	0.00	0.00	0.00	XXX	0
82378		X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	XXX	0
82380		X	Assay carotene	0.00	0.00	0.00	0.00	XXX	0
82382		X	Assay urine catecholamines	0.00	0.00	0.00	0.00	XXX	0
82383		X	Assay blood catecholamines	0.00	0.00	0.00	0.00	XXX	0
82384		X	Assay three catecholamines	0.00	0.00	0.00	0.00	XXX	0
82387		X	Cathepsin-D	0.00	0.00	0.00	0.00	XXX	0
82390		X	Assay ceruloplasmin	0.00	0.00	0.00	0.00	XXX	0

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
82397		X	Chemiluminescent assay	0.00	0.00	0.00	0.00	XXX	0
82415		X	Assay chloramphenicol	0.00	0.00	0.00	0.00	XXX	0
82435		X	Assay blood chloride	0.00	0.00	0.00	0.00	XXX	0
82436		X	Assay urine chloride	0.00	0.00	0.00	0.00	XXX	0
82438		X	Assay other fluid chlorides	0.00	0.00	0.00	0.00	XXX	0
82441		X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	XXX	0
82465		X	Assay serum cholesterol	0.00	0.00	0.00	0.00	XXX	0
82480		X	Assay serum cholinesterase	0.00	0.00	0.00	0.00	XXX	0
82482		X	Assay rbc cholinesterase	0.00	0.00	0.00	0.00	XXX	0
82485		X	Assay chondroitin sulfate	0.00	0.00	0.00	0.00	XXX	0
82486		X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	XXX	0
82487		X	Paper chromatography	0.00	0.00	0.00	0.00	XXX	0
82488		X	Paper chromatography	0.00	0.00	0.00	0.00	XXX	0
82489		X	Thin layer chromatography	0.00	0.00	0.00	0.00	XXX	0
82491		X	Chromotography, quantitative	0.00	0.00	0.00	0.00	XXX	0
82495		X	Assay chromium	0.00	0.00	0.00	0.00	XXX	0
82507		X	Assay citrate	0.00	0.00	0.00	0.00	XXX	0
82520		X	Assay for cocaine	0.00	0.00	0.00	0.00	XXX	0
82525		X	Assay copper	0.00	0.00	0.00	0.00	XXX	0
82528		X	Assay corticosterone	0.00	0.00	0.00	0.00	XXX	0
82530		X	Cortisol, free	0.00	0.00	0.00	0.00	XXX	0
82533		X	Total cortisol	0.00	0.00	0.00	0.00	XXX	0
82540		X	Assay creatine	0.00	0.00	0.00	0.00	XXX	0
82550		X	Assay CK (CPK)	0.00	0.00	0.00	0.00	XXX	0
82552		X	Assay CPK in blood	0.00	0.00	0.00	0.00	XXX	0
82553		X	Creatine, MB fraction	0.00	0.00	0.00	0.00	XXX	0
82554		X	Creatine, isoforms	0.00	0.00	0.00	0.00	XXX	0
82565		X	Assay creatinine	0.00	0.00	0.00	0.00	XXX	0
82570		X	Assay urine creatinine	0.00	0.00	0.00	0.00	XXX	0
82575		X	Creatinine clearance test	0.00	0.00	0.00	0.00	XXX	0
82585		X	Assay cryofibrinogen	0.00	0.00	0.00	0.00	XXX	0
82595		X	Assay cryoglobulin	0.00	0.00	0.00	0.00	XXX	0
82600		X	Assay cyanide	0.00	0.00	0.00	0.00	XXX	0
82607		X	Vitamin B–12	0.00	0.00	0.00	0.00	XXX	0
82608		X	B–12 binding capacity	0.00	0.00	0.00	0.00	XXX	0
82615		X	Test for urine cystines	0.00	0.00	0.00	0.00	XXX	0
82626		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	XXX	0
82627		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	XXX	0
82633		X	Desoxycorticosterone	0.00	0.00	0.00	0.00	XXX	0
82634		X	Deoxycortisol	0.00	0.00	0.00	0.00	XXX	0
82638		X	Assay dibucaine number	0.00	0.00	0.00	0.00	XXX	0
82646		X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	XXX	0
82649		X	Assay of dihydromorphinone	0.00	0.00	0.00	0.00	XXX	0
82651		X	Dihydrotestosterone assay	0.00	0.00	0.00	0.00	XXX	0
82652		X	Assay, dihydroxyvitamin D	0.00	0.00	0.00	0.00	XXX	0
82654		X	Assay of dimethadione	0.00	0.00	0.00	0.00	XXX	0
82664		X	Electrophoretic test	0.00	0.00	0.00	0.00	XXX	0
82666		X	Epiandrosterone assay	0.00	0.00	0.00	0.00	XXX	0
82668		X	Erythropoietin	0.00	0.00	0.00	0.00	XXX	0
82670		X	Estradiol	0.00	0.00	0.00	0.00	XXX	0
82671		X	Estrogen assay	0.00	0.00	0.00	0.00	XXX	0
82672		X	Estrogen assay	0.00	0.00	0.00	0.00	XXX	0
82677		X	Estriol	0.00	0.00	0.00	0.00	XXX	0
82679		X	Estrone	0.00	0.00	0.00	0.00	XXX	0
82690		X	Ethchlorvynol	0.00	0.00	0.00	0.00	XXX	0
82693		X	Ethylene glycol	0.00	0.00	0.00	0.00	XXX	0
82696		X	Etiocholanolone	0.00	0.00	0.00	0.00	XXX	0
82705		X	Fats/lipids, feces, qualitative	0.00	0.00	0.00	0.00	XXX	0
82710		X	Fats/lipids, feces, quantitative	0.00	0.00	0.00	0.00	XXX	0
82715		X	Fecal fat assay	0.00	0.00	0.00	0.00	XXX	0
82725		X	Assay blood fatty acids	0.00	0.00	0.00	0.00	XXX	0
82728		X	Assay ferritin	0.00	0.00	0.00	0.00	XXX	0
82735		X	Assay fluoride	0.00	0.00	0.00	0.00	XXX	0
82742		X	Assay of flurazepam	0.00	0.00	0.00	0.00	XXX	0
82746		X	Blood folic acid serum	0.00	0.00	0.00	0.00	XXX	0
82747		X	Folic acid, RBC	0.00	0.00	0.00	0.00	XXX	0

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
82757		X	Assay semen fructose	0.00	0.00	0.00	0.00	XXX	0
82759		X	RBC galactokinase assay	0.00	0.00	0.00	0.00	XXX	0
82760		X	Assay galactose	0.00	0.00	0.00	0.00	XXX	0
82775		X	Assay galactose transferase	0.00	0.00	0.00	0.00	XXX	0
82776		X	Galactose transferase test	0.00	0.00	0.00	0.00	XXX	0
82784		X	Assay gammaglobulin IgM	0.00	0.00	0.00	0.00	XXX	0
82785		X	Assay, gammaglobulin IgE	0.00	0.00	0.00	0.00	XXX	0
82787		X	IgG1, 2, 3 and 4	0.00	0.00	0.00	0.00	XXX	0
82800		X	Blood pH	0.00	0.00	0.00	0.00	XXX	0
82803		X	Blood gases: pH, pO2 & pCO2	0.00	0.00	0.00	0.00	XXX	0
82805		X	Blood gases W/O2 saturation	0.00	0.00	0.00	0.00	XXX	0
82810		X	Blood gases, O2 sat only	0.00	0.00	0.00	0.00	XXX	0
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	XXX	0
82926		X	Assay gastric acid	0.00	0.00	0.00	0.00	XXX	0
82928		X	Assay gastric acid	0.00	0.00	0.00	0.00	XXX	0
82938		X	Gastrin test	0.00	0.00	0.00	0.00	XXX	0
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	XXX	0
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	XXX	0
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	XXX	0
82947		X	Assay quantitative, glucose	0.00	0.00	0.00	0.00	XXX	0
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	XXX	0
82950		X	Glucose test	0.00	0.00	0.00	0.00	XXX	0
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	XXX	0
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	XXX	0
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	XXX	0
82955		X	Assay G6PD enzyme	0.00	0.00	0.00	0.00	XXX	0
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	XXX	0
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	XXX	0
82963		X	Glucosidase assay	0.00	0.00	0.00	0.00	XXX	0
82965		X	Assay GDH enzyme	0.00	0.00	0.00	0.00	XXX	0
82975		X	Assay glutamine	0.00	0.00	0.00	0.00	XXX	0
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	XXX	0
82978		X	Glutathione assay	0.00	0.00	0.00	0.00	XXX	0
82979		X	Assay RBC glutathione enzyme	0.00	0.00	0.00	0.00	XXX	0
82980		X	Assay of glutethimide	0.00	0.00	0.00	0.00	XXX	0
82985		X	Glycated protein	0.00	0.00	0.00	0.00	XXX	0
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	XXX	0
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	XXX	0
83003		X	Assay growth hormone (HGH)	0.00	0.00	0.00	0.00	XXX	0
83008		X	Assay guanosine	0.00	0.00	0.00	0.00	XXX	0
83010		X	Quant assay haptoglobin	0.00	0.00	0.00	0.00	XXX	0
83012		X	Assay haptoglobins	0.00	0.00	0.00	0.00	XXX	0
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	XXX	0
83016		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	XXX	0
83020		X	Assay hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83020	26	A	Assay hemoglobin	0.37	0.20	0.01	0.58	XXX	N
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	XXX	0
83030		X	Fetal hemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83033		X	Fetal fecal hemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83051		X	Assay plasma hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83065		X	Hemoglobin heat assay	0.00	0.00	0.00	0.00	XXX	0
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	XXX	0
83069		X	Assay urine hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83070		X	Qualt assay hemosiderin	0.00	0.00	0.00	0.00	XXX	0
83071		X	Quant assay of hemosiderin	0.00	0.00	0.00	0.00	XXX	0
83088		X	Assay histamine	0.00	0.00	0.00	0.00	XXX	0
83150		X	Assay for HVA	0.00	0.00	0.00	0.00	XXX	0
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	XXX	0
83497		X	Assay 5–HIAA	0.00	0.00	0.00	0.00	XXX	0
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	XXX	0
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
83500		X	Assay free hydroxyproline	0.00	0.00	0.00	0.00	XXX	0
83505		X	Assay total hydroxyproline	0.00	0.00	0.00	0.00	XXX	0
83516		X	Immunoassay, non antibody	0.00	0.00	0.00	0.00	XXX	0
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	XXX	0
83519		X	Immunoassay nonantibody	0.00	0.00	0.00	0.00	XXX	0
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	XXX	0
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	XXX	0
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	XXX	0
83528		X	Assay intrinsic factor	0.00	0.00	0.00	0.00	XXX	0
83540		X	Assay iron	0.00	0.00	0.00	0.00	XXX	0
83550		X	Iron binding test	0.00	0.00	0.00	0.00	XXX	0
83570		X	Assay IDH enzyme	0.00	0.00	0.00	0.00	XXX	0
83582		X	Assay ketogenic steroids	0.00	0.00	0.00	0.00	XXX	0
83586		X	Assay 17-(17–KS)ketosteroids	0.00	0.00	0.00	0.00	XXX	0
83593		X	Fractionation ketosteroids	0.00	0.00	0.00	0.00	XXX	0
83605		X	Lactic acid assay	0.00	0.00	0.00	0.00	XXX	0
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	XXX	0
83625		X	Assay LDH enzymes	0.00	0.00	0.00	0.00	XXX	0
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	XXX	0
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	XXX	0
83634		X	Assay urine for lactose	0.00	0.00	0.00	0.00	XXX	0
83655		X	Assay for lead	0.00	0.00	0.00	0.00	XXX	0
83661		X	Assay L/S ratio	0.00	0.00	0.00	0.00	XXX	0
83662		X	L/S ratio, foam stability	0.00	0.00	0.00	0.00	XXX	0
83670		X	Assay LAP enzyme	0.00	0.00	0.00	0.00	XXX	0
83690		X	Assay lipase	0.00	0.00	0.00	0.00	XXX	0
83715		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	XXX	0
83717		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	XXX	0
83718		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83719		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83721		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83727		X	LRH hormone assay	0.00	0.00	0.00	0.00	XXX	0
83735		X	Assay magnesium	0.00	0.00	0.00	0.00	XXX	0
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	XXX	0
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	XXX	0
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	XXX	0
83825		X	Assay mercury	0.00	0.00	0.00	0.00	XXX	0
83835		X	Assay metanephrines	0.00	0.00	0.00	0.00	XXX	0
83840		X	Assay methadone	0.00	0.00	0.00	0.00	XXX	0
83857		X	Assay methemalbumin	0.00	0.00	0.00	0.00	XXX	0
83858		X	Assay methsuximide	0.00	0.00	0.00	0.00	XXX	0
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	XXX	0
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	XXX	0
83872		X	Assay synovial fluid mucin	0.00	0.00	0.00	0.00	XXX	0
83873		X	Assay, CSF protein	0.00	0.00	0.00	0.00	XXX	0
83874		X	Myoglobin	0.00	0.00	0.00	0.00	XXX	0
83883		X	Nephelometry, not specified	0.00	0.00	0.00	0.00	XXX	0
83885		X	Assay for nickel	0.00	0.00	0.00	0.00	XXX	0
83887		X	Assay nicotine	0.00	0.00	0.00	0.00	XXX	0
83890		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83894		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83898		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83912		X	Genetic examination	0.00	0.00	0.00	0.00	XXX	0
83912	26	A	Genetic examination	0.37	0.20	0.01	0.58	XXX	N
83915		X	Assay nucleotidase	0.00	0.00	0.00	0.00	XXX	0
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	XXX	0
83918		X	Assay organic acids	0.00	0.00	0.00	0.00	XXX	0
83925		X	Opiates	0.00	0.00	0.00	0.00	XXX	0
83930		X	Assay blood osmolality	0.00	0.00	0.00	0.00	XXX	0
83935		X	Assay urine osmolality	0.00	0.00	0.00	0.00	XXX	0
83937		X	Assay for osteocalcin	0.00	0.00	0.00	0.00	XXX	0
83945		X	Assay oxalate	0.00	0.00	0.00	0.00	XXX	0
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	XXX	0
83986		X	Assay body fluid acidity	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
83992		X	Assay for phencyclidine	0.00	0.00	0.00	0.00	XXX	0
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	XXX	0
84030		X	Assay blood PKU	0.00	0.00	0.00	0.00	XXX	0
84035		X	Assay phenylketones	0.00	0.00	0.00	0.00	XXX	0
84060		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	XXX	0
84061		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	XXX	0
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	XXX	0
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
84080		X	Assay alkaline phosphatases	0.00	0.00	0.00	0.00	XXX	0
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	XXX	0
84085		X	Assay RBC PG6D enzyme	0.00	0.00	0.00	0.00	XXX	0
84087		X	Assay phosphohexose enzymes	0.00	0.00	0.00	0.00	XXX	0
84100		X	Assay phosphorus	0.00	0.00	0.00	0.00	XXX	0
84105		X	Assay urine phosphorus	0.00	0.00	0.00	0.00	XXX	0
84106		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	XXX	0
84110		X	Assay porphobilinogen	0.00	0.00	0.00	0.00	XXX	0
84119		X	Test urine for porphyrins	0.00	0.00	0.00	0.00	XXX	0
84120		X	Assay urine porphyrins	0.00	0.00	0.00	0.00	XXX	0
84126		X	Assay feces porphyrins	0.00	0.00	0.00	0.00	XXX	0
84127		X	Porphyrins, feces	0.00	0.00	0.00	0.00	XXX	0
84132		X	Assay serum potassium	0.00	0.00	0.00	0.00	XXX	0
84133		X	Assay urine potassium	0.00	0.00	0.00	0.00	XXX	0
84134		X	Prealbumin	0.00	0.00	0.00	0.00	XXX	0
84135		X	Assay pregnanediol	0.00	0.00	0.00	0.00	XXX	0
84138		X	Assay pregnanetriol	0.00	0.00	0.00	0.00	XXX	0
84140		X	Assay for pregnenolone	0.00	0.00	0.00	0.00	XXX	0
84143		X	Assay/17-hydroxypregnenolone	0.00	0.00	0.00	0.00	XXX	0
84144		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84146		X	Assay for prolactin	0.00	0.00	0.00	0.00	XXX	0
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	XXX	0
84153		X	Prostate specific antigen	0.00	0.00	0.00	0.00	XXX	0
84155		X	Assay protein	0.00	0.00	0.00	0.00	XXX	0
84160		X	Assay serum protein	0.00	0.00	0.00	0.00	XXX	0
84165		X	Assay serum proteins	0.00	0.00	0.00	0.00	XXX	0
84165	26	A	Assay serum proteins	0.37	0.20	0.01	0.58	XXX	N
84181		X	Western blot test	0.00	0.00	0.00	0.00	XXX	0
84181	26	A	Western blot test	0.37	0.20	0.01	0.58	XXX	N
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	XXX	0
84182	26	A	Protein, western blot test	0.37	0.20	0.01	0.58	XXX	N
84202		X	Assay RBC protoporphyrin	0.00	0.00	0.00	0.00	XXX	0
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	XXX	0
84206		X	Assay of proinsulin	0.00	0.00	0.00	0.00	XXX	0
84207		X	Assay vitamin B–6	0.00	0.00	0.00	0.00	XXX	0
84210		X	Assay pyruvate	0.00	0.00	0.00	0.00	XXX	0
84220		X	Assay pyruvate kinase	0.00	0.00	0.00	0.00	XXX	0
84228		X	Assay quinine	0.00	0.00	0.00	0.00	XXX	0
84233		X	Assay estrogen	0.00	0.00	0.00	0.00	XXX	0
84234		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84235		X	Assay endocrine hormone	0.00	0.00	0.00	0.00	XXX	0
84238		X	Assay non-endocrine receptor	0.00	0.00	0.00	0.00	XXX	0
84244		X	Assay of renin	0.00	0.00	0.00	0.00	XXX	0
84252		X	Assay vitamin B–2	0.00	0.00	0.00	0.00	XXX	0
84255		X	Assay selenium	0.00	0.00	0.00	0.00	XXX	0
84260		X	Assay serotonin	0.00	0.00	0.00	0.00	XXX	0
84270		X	Sex hormone globulin (SHBG)	0.00	0.00	0.00	0.00	XXX	0
84275		X	Assay sialic acid	0.00	0.00	0.00	0.00	XXX	0
84285		X	Assay silica	0.00	0.00	0.00	0.00	XXX	0
84295		X	Assay serum sodium	0.00	0.00	0.00	0.00	XXX	0
84300		X	Assay urine sodium	0.00	0.00	0.00	0.00	XXX	0
84305		X	Somatomedin	0.00	0.00	0.00	0.00	XXX	0
84307		X	Somatostatin	0.00	0.00	0.00	0.00	XXX	0
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	XXX	0
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	XXX	0
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	XXX	0
84392		X	Assay urine sulfate	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
84402		X	Testosterone	0.00	0.00	0.00	0.00	XXX	0
84403		X	Assay total testosterone	0.00	0.00	0.00	0.00	XXX	0
84425		X	Assay vitamin B–1	0.00	0.00	0.00	0.00	XXX	0
84430		X	Assay thiocyanate	0.00	0.00	0.00	0.00	XXX	0
84432		X	Thyroglobulin	0.00	0.00	0.00	0.00	XXX	0
84436		X	Assay, total thyroxine	0.00	0.00	0.00	0.00	XXX	0
84437		X	Assay neonatal thyroxine	0.00	0.00	0.00	0.00	XXX	0
84439		X	Assay, free thyroxine	0.00	0.00	0.00	0.00	XXX	0
84442		X	Thyroid activity (TBG) assay	0.00	0.00	0.00	0.00	XXX	0
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	XXX	0
84445		X	Thyroid immunoglobulins TSI	0.00	0.00	0.00	0.00	XXX	0
84446		X	Assay vitamin E	0.00	0.00	0.00	0.00	XXX	0
84449		X	Assay for transcortin	0.00	0.00	0.00	0.00	XXX	0
84450		X	Transferase (AST) (SGOT)	0.00	0.00	0.00	0.00	XXX	0
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	XXX	0
84466		X	Transferrin	0.00	0.00	0.00	0.00	XXX	0
84478		X	Assay triglycerides	0.00	0.00	0.00	0.00	XXX	0
84479		X	Assay triiodothyronine (T–3)	0.00	0.00	0.00	0.00	XXX	0
84480		X	Total assay, TT–3	0.00	0.00	0.00	0.00	XXX	0
84481		X	Free assay (FT–3)	0.00	0.00	0.00	0.00	XXX	0
84482		X	T3 reverse	0.00	0.00	0.00	0.00	XXX	0
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	XXX	0
84486		X	Test feces for trypsin	0.00	0.00	0.00	0.00	XXX	0
84490		X	Assay feces for trypsin	0.00	0.00	0.00	0.00	XXX	0
84510		X	Assay tyrosine	0.00	0.00	0.00	0.00	XXX	0
84520		X	Assay urea nitrogen	0.00	0.00	0.00	0.00	XXX	0
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	XXX	0
84540		X	Assay urine urea-N	0.00	0.00	0.00	0.00	XXX	0
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	XXX	0
84550		X	Assay blood uric acid	0.00	0.00	0.00	0.00	XXX	0
84560		X	Assay urine uric acid	0.00	0.00	0.00	0.00	XXX	0
84577		X	Assay feces urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84580		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84583		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84585		X	Assay urine VMA	0.00	0.00	0.00	0.00	XXX	0
84586		X	VIP assay	0.00	0.00	0.00	0.00	XXX	0
84588		X	Assay vasopressin	0.00	0.00	0.00	0.00	XXX	0
84590		X	Assay vitamin-A	0.00	0.00	0.00	0.00	XXX	0
84597		X	Assay vitamin-K	0.00	0.00	0.00	0.00	XXX	0
84600		X	Assay for volatiles	0.00	0.00	0.00	0.00	XXX	0
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	XXX	0
84630		X	Assay zinc	0.00	0.00	0.00	0.00	XXX	0
84681		X	Assay C-peptide	0.00	0.00	0.00	0.00	XXX	0
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	XXX	0
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	XXX	0
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	XXX	0
84999		X	Clinical chemistry test	0.00	0.00	0.00	0.00	XXX	0
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	XXX	0
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	XXX	0
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	XXX	0
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	XXX	0
85013		X	Hematocrit	0.00	0.00	0.00	0.00	XXX	0
85014		X	Hematocrit	0.00	0.00	0.00	0.00	XXX	0
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	XXX	0
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85029		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85030		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85031		X	Manual hemogram, complete cbc	0.00	0.00	0.00	0.00	XXX	0
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	XXX	0
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	XXX	0
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	XXX	0
85060		A	Blood smear interpretation	0.45	0.22	0.02	0.69	XXX	N
85095		A	Bone marrow aspiration	1.08	0.67	0.05	1.80	XXX	N
85097		A	Bone marrow interpretation	0.94	0.48	0.04	1.46	XXX	N
85102		A	Bone marrow biopsy	1.37	0.80	0.05	2.22	XXX	N
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	XXX	0
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	XXX	0
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	XXX	0
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	XXX	0
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	XXX	0
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	XXX	0
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	XXX	0
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	XXX	0
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	XXX	0
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	XXX	0
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	XXX	0
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	XXX	0
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	XXX	0
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	XXX	0
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	XXX	0
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	XXX	0
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	XXX	0
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	XXX	0
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	XXX	0
85345		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85347		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85348		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	XXX	0
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	XXX	0
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	XXX	0
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	XXX	0
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	XXX	0
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	XXX	0
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	XXX	0
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	XXX	0
85390		X	Fibrinolysins screen	0.00	0.00	0.00	0.00	XXX	0
85390	26	A	Fibrinolysins screen	0.37	0.20	0.01	0.58	XXX	N
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	XXX	0
85410		X	Fibrinolytic antiplasmin	0.00	0.00	0.00	0.00	XXX	0
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85441		X	Heinz bodies; direct	0.00	0.00	0.00	0.00	XXX	0
85445		X	Heinz bodies; induced	0.00	0.00	0.00	0.00	XXX	0
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	XXX	0
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	XXX	0
85475		X	Hemolysin	0.00	0.00	0.00	0.00	XXX	0
85520		X	Heparin assay	0.00	0.00	0.00	0.00	XXX	0
85525		X	Heparin	0.00	0.00	0.00	0.00	XXX	0
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	XXX	0
85535		X	Iron stain, blood cells	0.00	0.00	0.00	0.00	XXX	0
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	XXX	0
85549		X	Muramidase	0.00	0.00	0.00	0.00	XXX	0
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	XXX	0
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	XXX	0
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
85576	26	A	Blood platelet aggregation	0.37	0.20	0.01	0.58	XXX	N
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	XXX	0
85590		X	Platelet manual count	0.00	0.00	0.00	0.00	XXX	0
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	XXX	0
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	XXX	0
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	XXX	0
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	XXX	0
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	XXX	0
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	XXX	0
85635		X	Reptilase test	0.00	0.00	0.00	0.00	XXX	0
85651		X	RBC sed rate, nonauto	0.00	0.00	0.00	0.00	XXX	0
85652		X	RBC sed rate, auto	0.00	0.00	0.00	0.00	XXX	0
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	XXX	0
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	XXX	0
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	XXX	0
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	XXX	0
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	XXX	0
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	XXX	0
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	XXX	0
85999		X	Hematology procedure	0.00	0.00	0.00	0.00	XXX	0
86000		X	Agglutinins; febrile	0.00	0.00	0.00	0.00	XXX	0
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	XXX	0
86005		X	Allergen specific IgE	0.00	0.00	0.00	0.00	XXX	0
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	XXX	0
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	XXX	0
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	XXX	0
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	XXX	0
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	XXX	0
86060		X	Antistreptolysin O titer	0.00	0.00	0.00	0.00	XXX	0
86063		X	Antistreptolysin O screen	0.00	0.00	0.00	0.00	XXX	0
86077		A	Physician blood bank service	0.37	0.30	0.02	0.69	XXX	N
86078		A	Physician blood bank service	0.94	0.34	0.02	1.30	XXX	N
86079		A	Physician blood bank service	0.37	0.33	0.02	0.72	XXX	N
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	XXX	0
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	XXX	0
86155		X	Chemotaxis assay	0.00	0.00	0.00	0.00	XXX	0
86156		X	Cold agglutinin screen	0.00	0.00	0.00	0.00	XXX	0
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	XXX	0
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	XXX	0
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	XXX	0
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	XXX	0
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	XXX	0
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	XXX	0
86225		X	DNA antibody	0.00	0.00	0.00	0.00	XXX	0
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	XXX	0
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	XXX	0
86243		X	Fc receptor	0.00	0.00	0.00	0.00	XXX	0
86255		X	Fluorescent antibody; screen	0.00	0.00	0.00	0.00	XXX	0
86255	26	A	Fluorescent antibody; screen	0.37	0.20	0.01	0.58	XXX	N
86256		X	Fluorescent antibody; titer	0.00	0.00	0.00	0.00	XXX	0
86256	26	A	Fluorescent antibody; titer	0.37	0.20	0.01	0.58	XXX	N
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	XXX	0
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	XXX	0
86287		X	Hepatitis B (HBsAg)	0.00	0.00	0.00	0.00	XXX	0
86289		X	Hepatitis BC antibody test	0.00	0.00	0.00	0.00	XXX	0
86290		X	Hepatitis BC antibody test	0.00	0.00	0.00	0.00	XXX	0
86291		X	Hepatitis BS antibody test	0.00	0.00	0.00	0.00	XXX	0
86293		X	Hepatitis Be antibody test	0.00	0.00	0.00	0.00	XXX	0
86295		X	Hepatitis Be antibody test	0.00	0.00	0.00	0.00	XXX	0
86296		X	Hepatitis A antibody test	0.00	0.00	0.00	0.00	XXX	0
86299		X	Hepatitis A antibody test	0.00	0.00	0.00	0.00	XXX	0
86302		X	Hepatitis C antibody	0.00	0.00	0.00	0.00	XXX	0
86303		X	Hepatitis C antibody	0.00	0.00	0.00	0.00	XXX	0
86306		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	XXX	0
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0
86311		X	HIV antigen test	0.00	0.00	0.00	0.00	XXX	0
86313		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86315		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86316		X	Immunoassay, tumor antigen	0.00	0.00	0.00	0.00	XXX	0
86317		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86318		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86320	26	A	Serum immunoelectrophoresis	0.37	0.20	0.01	0.58	XXX	N
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86325	26	A	Other immunoelectrophoresis	0.37	0.20	0.01	0.58	XXX	N
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	XXX	0
86327	26	A	Immunoelectrophoresis assay	0.37	0.20	0.01	0.58	XXX	N
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	XXX	0
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	XXX	0
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	XXX	0
86334		X	Immunofixation procedure	0.00	0.00	0.00	0.00	XXX	0
86334	26	A	Immunofixation procedure	0.37	0.20	0.01	0.58	XXX	N
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	XXX	0
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	XXX	0
86341		X	Islet cell antibody	0.00	0.00	0.00	0.00	XXX	0
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	XXX	0
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	XXX	0
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	XXX	0
86359		X	T cells, total count	0.00	0.00	0.00	0.00	XXX	0
86360		X	T cell ratio	0.00	0.00	0.00	0.00	XXX	0
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	XXX	0
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	XXX	0
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	XXX	0
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	XXX	0
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	XXX	0
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	XXX	0
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	XXX	0
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	XXX	0
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	XXX	N
86490		A	Coccidioidomycosis skin test	0.00	0.28	0.02	0.30	XXX	N
86510		A	Histoplasmosis skin test	0.00	0.30	0.02	0.32	XXX	N
86580		A	TB intradermal test	0.00	0.24	0.02	0.26	XXX	N
86585		A	TB tine test	0.00	0.19	0.01	0.20	XXX	N
86586		C	Skin test, unlisted	0.00	0.00	0.00	0.00	XXX	N
86588		X	Streptococcus, direct screen	0.00	0.00	0.00	0.00	XXX	0
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	XXX	0
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	XXX	0
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	XXX	0
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	XXX	0
86603		X	Adenovirus, antibody	0.00	0.00	0.00	0.00	XXX	0
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	XXX	0
86609		X	Bacterium, antibody	0.00	0.00	0.00	0.00	XXX	0
86612		X	Blastomyces, antibody	0.00	0.00	0.00	0.00	XXX	0
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	XXX	0
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	XXX	0
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	XXX	0
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	XXX	0
86622		X	Brucella, antibody	0.00	0.00	0.00	0.00	XXX	0
86625		X	Campylobacter, antibody	0.00	0.00	0.00	0.00	XXX	0
86628		X	Candida, antibody	0.00	0.00	0.00	0.00	XXX	0
86631		X	Chlamydia, antibody	0.00	0.00	0.00	0.00	XXX	0
86632		X	Chlamydia, IgM, antibody	0.00	0.00	0.00	0.00	XXX	0
86635		X	Coccidioides, antibody	0.00	0.00	0.00	0.00	XXX	0
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	XXX	0
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	XXX	0
86644		X	CMV antibody	0.00	0.00	0.00	0.00	XXX	0
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	XXX	0
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	XXX	0
86651		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
86652		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0
86653		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0
86654		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0
86658		X	Enterovirus, antibody	0.00	0.00	0.00	0.00	XXX	0
86663		X	Epstein-barr, antibody	0.00	0.00	0.00	0.00	XXX	0
86664		X	Epstein-barr, antibody	0.00	0.00	0.00	0.00	XXX	0
86665		X	Epstein-barr, antibody	0.00	0.00	0.00	0.00	XXX	0
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	XXX	0
86671		X	Fungus, antibody	0.00	0.00	0.00	0.00	XXX	0
86674		X	Giardia lamblia	0.00	0.00	0.00	0.00	XXX	0
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	XXX	0
86682		X	Helminth, antibody	0.00	0.00	0.00	0.00	XXX	0
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	XXX	0
86687		X	HTLV I	0.00	0.00	0.00	0.00	XXX	0
86688		X	HTLV-II	0.00	0.00	0.00	0.00	XXX	0
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	XXX	0
86692		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	XXX	0
86694		X	Herpes simplex test	0.00	0.00	0.00	0.00	XXX	0
86695		X	Herpes simplex test	0.00	0.00	0.00	0.00	XXX	0
86698		X	Histoplasma	0.00	0.00	0.00	0.00	XXX	0
86701		X	HIV-1	0.00	0.00	0.00	0.00	XXX	0
86702		X	HIV-2	0.00	0.00	0.00	0.00	XXX	0
86703		X	HIV-1/HIV-2, single assay	0.00	0.00	0.00	0.00	XXX	0
86710		X	Influenza virus	0.00	0.00	0.00	0.00	XXX	0
86713		X	Legionella	0.00	0.00	0.00	0.00	XXX	0
86717		X	Leishmania	0.00	0.00	0.00	0.00	XXX	0
86720		X	Leptospira	0.00	0.00	0.00	0.00	XXX	0
86723		X	Listeria monocytogenes	0.00	0.00	0.00	0.00	XXX	0
86727		X	Lymph choriomeningitis	0.00	0.00	0.00	0.00	XXX	0
86729		X	Lympho venereum	0.00	0.00	0.00	0.00	XXX	0
86732		X	Mucormycosis	0.00	0.00	0.00	0.00	XXX	0
86735		X	Mumps	0.00	0.00	0.00	0.00	XXX	0
86738		X	Mycoplasma	0.00	0.00	0.00	0.00	XXX	0
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	XXX	0
86744		X	Nocardia	0.00	0.00	0.00	0.00	XXX	0
86747		X	Parvovirus	0.00	0.00	0.00	0.00	XXX	0
86750		X	Malaria	0.00	0.00	0.00	0.00	XXX	0
86753		X	Protozoa, not elsewhere	0.00	0.00	0.00	0.00	XXX	0
86756		X	Respiratory virus	0.00	0.00	0.00	0.00	XXX	0
86759		X	Rotavirus	0.00	0.00	0.00	0.00	XXX	0
86762		X	Rubella	0.00	0.00	0.00	0.00	XXX	0
86765		X	Rubeola	0.00	0.00	0.00	0.00	XXX	0
86768		X	Salmonella	0.00	0.00	0.00	0.00	XXX	0
86771		X	Shigella	0.00	0.00	0.00	0.00	XXX	0
86774		X	Tetanus	0.00	0.00	0.00	0.00	XXX	0
86777		X	Toxoplasma	0.00	0.00	0.00	0.00	XXX	0
86778		X	Toxoplasma, IgM	0.00	0.00	0.00	0.00	XXX	0
86781		X	Treponema pallidum confirm	0.00	0.00	0.00	0.00	XXX	0
86784		X	Trichinella	0.00	0.00	0.00	0.00	XXX	0
86787		X	Varicella-zoster	0.00	0.00	0.00	0.00	XXX	0
86790		X	Virus, not specified	0.00	0.00	0.00	0.00	XXX	0
86793		X	Yersinia	0.00	0.00	0.00	0.00	XXX	0
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	XXX	0
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	XXX	0
86806		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	XXX	0
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	XXX	0
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	XXX	0
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	XXX	0
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	XXX	0
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	XXX	0
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	XXX	0
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	XXX	0
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	XXX	0
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	XXX	0
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	XXX	0
86860		X	RBC antibody elution	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	XXX	0
86880		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86885		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86886		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	XXX	0
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	XXX	0
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	XXX	0
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	XXX	0
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	XXX	0
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	XXX	0
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	XXX	0
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	XXX	0
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	XXX	0
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	XXX	0
86915		X	Bone marrow	0.00	0.00	0.00	0.00	XXX	0
86920		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0
86921		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0
86922		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	XXX	0
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	XXX	0
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	XXX	0
86932		X	Frozen blood, freeze/thaw	0.00	0.00	0.00	0.00	XXX	0
86940		X	Hemolysins/agglutinins auto	0.00	0.00	0.00	0.00	XXX	0
86941		X	Hemolysins/agglutinins	0.00	0.00	0.00	0.00	XXX	0
86945		X	Blood product/irradiation	0.00	0.00	0.00	0.00	XXX	0
86950		X	Leukacyte transfusion	0.00	0.00	0.00	0.00	XXX	0
86965		X	Pooling blood platelets	0.00	0.00	0.00	0.00	XXX	0
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86985		X	Split blood or products	0.00	0.00	0.00	0.00	XXX	0
86999		X	Transfusion procedure	0.00	0.00	0.00	0.00	XXX	0
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	XXX	0
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	XXX	0
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	XXX	0
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	XXX	0
87045		X	Stool culture for bacteria	0.00	0.00	0.00	0.00	XXX	0
87060		X	Nose/throat culture, bacteria	0.00	0.00	0.00	0.00	XXX	0
87070		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	XXX	0
87072		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87075		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	XXX	0
87076		X	Bacteria identification	0.00	0.00	0.00	0.00	XXX	0
87081		X	Bacteria culture screen	0.00	0.00	0.00	0.00	XXX	0
87082		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87083		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87085		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87086		X	Urine culture, colony count	0.00	0.00	0.00	0.00	XXX	0
87087		X	Urine bacteria culture	0.00	0.00	0.00	0.00	XXX	0
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	XXX	0
87101		X	Skin fungus culture	0.00	0.00	0.00	0.00	XXX	0
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	XXX	0
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	XXX	0
87106		X	Fungus identification	0.00	0.00	0.00	0.00	XXX	0
87109		X	Mycoplasma culture	0.00	0.00	0.00	0.00	XXX	0
87110		X	Culture, chlamydia	0.00	0.00	0.00	0.00	XXX	0
87116		X	Mycobacteria culture	0.00	0.00	0.00	0.00	XXX	0
87117		X	Mycobacteria culture	0.00	0.00	0.00	0.00	XXX	0
87118		X	Mycobacteria identification	0.00	0.00	0.00	0.00	XXX	0
87140		X	Culture typing, fluorescent	0.00	0.00	0.00	0.00	XXX	0
87143		X	Culture typing, GLC method	0.00	0.00	0.00	0.00	XXX	0
87145		X	Culture typing, phage method	0.00	0.00	0.00	0.00	XXX	0

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
87147		X	Culture typing, serologic	0.00	0.00	0.00	0.00	XXX	0
87151		X	Culture typing, serologic	0.00	0.00	0.00	0.00	XXX	0
87155		X	Culture typing, precipitin	0.00	0.00	0.00	0.00	XXX	0
87158		X	Culture typing, added method	0.00	0.00	0.00	0.00	XXX	0
87163		X	Special microbiology culture	0.00	0.00	0.00	0.00	XXX	0
87164		X	Dark field examination	0.00	0.00	0.00	0.00	XXX	0
87164	26	A	Dark field examination	0.37	0.20	0.01	0.58	XXX	N
87166		X	Dark field examination	0.00	0.00	0.00	0.00	XXX	0
87174		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87175		X	Assay, endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87176		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	XXX	0
87178		X	Microbe identification	0.00	0.00	0.00	0.00	XXX	0
87179		X	Microbe identification	0.00	0.00	0.00	0.00	XXX	0
87181		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87184		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87186		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	XXX	0
87187		X	Antibiotic sensitivity, MBC	0.00	0.00	0.00	0.00	XXX	0
87188		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87190		X	TB antibiotic sensitivity	0.00	0.00	0.00	0.00	XXX	0
87192		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	XXX	0
87205		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87206		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87207		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87207	26	A	Smear, stain & interpret	0.37	0.20	0.01	0.58	XXX	N
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87210		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87211		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	XXX	0
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	XXX	0
87250		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87252		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87253		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	XXX	0
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88016		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	XXX	0
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	XXX	0
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	XXX	0
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	XXX	0
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	XXX	0
88104		A	Microscopic exam of cells	0.56	0.44	0.04	1.04	XXX	N
88104	26	A	Microscopic exam of cells	0.56	0.23	0.02	0.81	XXX	N
88104	TC	A	Microscopic exam of cells	0.00	0.21	0.02	0.23	XXX	N
88106		A	Microscopic exam of cells	0.56	0.37	0.03	0.96	XXX	N
88106	26	A	Microscopic exam of cells	0.56	0.20	0.01	0.77	XXX	N
88106	TC	A	Microscopic exam of cells	0.00	0.17	0.02	0.19	XXX	N
88107		A	Microscopic exam of cells	0.76	0.47	0.04	1.27	XXX	N
88107	26	A	Microscopic exam of cells	0.76	0.24	0.02	1.02	XXX	N
88107	TC	A	Microscopic exam of cells	0.00	0.23	0.02	0.25	XXX	N
88108		A	Cytopathology	0.56	0.47	0.04	1.07	XXX	N
88106	26	A	Cytopathology	0.56	0.24	0.02	0.82	XXX	N
88108	TC	A	Cytopathology	0.00	0.23	0.02	0.25	XXX	N
88125		A	Forensic cytopathology	0.26	0.11	0.00	0.37	XXX	N
88125	26	A	Forensic cytopathology	0.26	0.07	0.00	0.33	XXX	N
88125	TC	A	Forensic cytopathology	0.00	0.04	0.00	0.04	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	XXX	0
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	XXX	0
88150		X	Cytopathology, pap smear	0.00	0.00	0.00	0.00	XXX	0
88151		X	Cytopathology interpretation	0.00	0.00	0.00	0.00	XXX	0
88151	26	A	Cytopathology interpretation	0.42	0.32	0.04	0.78	XXX	N
88155		X	Cytopathology, pap smear	0.00	0.00	0.00	0.00	XXX	0
88156		X	TBS smear (bethesda system)	0.00	0.00	0.00	0.00	XXX	0
88157		X	TBS smear (bethesda system)	0.00	0.00	0.00	0.00	XXX	0
88157	26	A	TBS smear (bethesda system)	0.42	0.32	0.04	0.78	XXX	N
88160		A	Cytopathology	0.50	0.33	0.03	0.86	XXX	N
88160	26	A	Cytopathology	0.50	0.17	0.01	0.68	XXX	N
88160	TC	A	Cytopathology	0.00	0.16	0.02	0.18	XXX	N
88161		A	Cytopathology	0.50	0.39	0.03	0.92	XXX	N
88161	26	A	Cytopathology	0.50	0.20	0.01	0.71	XXX	N
88161	TC	A	Cytopathology	0.00	0.19	0.02	0.21	XXX	N
88162		A	Cytopathology, extensive	0.76	0.79	0.05	1.60	XXX	N
88162	26	A	Cytopathology, extensive	0.76	0.41	0.03	1.20	XXX	N
88162	TC	A	Cytopathology, extensive	0.00	0.38	0.02	0.40	XXX	N
88170		A	Fine needle aspiration	0.50	0.99	0.09	1.58	XXX	N
88170	26	A	Fine needle aspiration	0.50	0.52	0.05	1.07	XXX	N
88170	TC	A	Fine needle aspiration	0.00	0.47	0.04	0.51	XXX	N
88171		A	Fine needle aspiration	1.05	1.35	0.09	2.49	XXX	N
88171	26	A	Fine needle aspiration	1.05	0.71	0.05	1.81	XXX	N
88171	TC	A	Fine needle aspiration	0.00	0.64	0.04	0.68	XXX	N
88172		A	Evaluation of smear	0.60	0.71	0.05	1.36	XXX	N
88172	26	A	Evaluation of smear	0.60	0.36	0.03	0.99	XXX	N
88172	TC	A	Evaluation of smear	0.00	0.35	0.02	0.37	XXX	N
88173		A	Interpretation of smear	1.08	0.87	0.05	2.00	XXX	N
88173	26	A	Interpretation of smear	1.08	0.45	0.03	1.56	XXX	N
88173	TC	A	Interpretation of smear	0.00	0.42	0.02	0.44	XXX	N
88180		A	Cell marker study	0.36	0.33	0.03	0.72	XXX	N
88180	26	A	Cell marker study	0.36	0.17	0.01	0.54	XXX	N
88180	TC	A	Cell marker study	0.00	0.16	0.02	0.18	XXX	N
88182		A	Cell marker study	0.77	0.89	0.07	1.73	XXX	N
88182	26	A	Cell marker study	0.77	0.45	0.03	1.25	XXX	N
88182	TC	A	Cell marker study	0.00	0.44	0.04	0.48	XXX	N
88199		C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88230		X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	XXX	0
88233		X	Tissue culture, skin/biopsy	0.00	0.00	0.00	0.00	XXX	0
88235		X	Tissue culture, placenta	0.00	0.00	0.00	0.00	XXX	0
88237		X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	XXX	0
88239		X	Tissue culture, other	0.00	0.00	0.00	0.00	XXX	0
88245		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88246		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88250		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88260		X	Chromosome analysis: 5 cells	0.00	0.00	0.00	0.00	XXX	0
88261		X	Chromosome analysis: 5 cells	0.00	0.00	0.00	0.00	XXX	0
88262		X	Chromosome count: 15–20 cells	0.00	0.00	0.00	0.00	XXX	0
88263		X	Chromosome analysis: 45 cells	0.00	0.00	0.00	0.00	XXX	0
88267		X	Chromosome analysis: placent	0.00	0.00	0.00	0.00	XXX	0
88269		X	Chromosome analysis: amniotic	0.00	0.00	0.00	0.00	XXX	0
88280		X	Chromosome karyotype study	0.00	0.00	0.00	0.00	XXX	0
88283		X	Chromosome banding study	0.00	0.00	0.00	0.00	XXX	0
88285		X	Chromosome count: additional	0.00	0.00	0.00	0.00	XXX	0
88289		X	Chromosome study: additional	0.00	0.00	0.00	0.00	XXX	0
88299		C	Cytogenetic study	0.00	0.00	0.00	0.00	XXX	N
88300		A	Surg path, gross	0.08	*0.20	0.01	0.29	XXX	N
88300	26	A	Surg path, gross	0.08	*0.10	0.01	0.19	XXX	N
88300	TC	A	Surg path, gross	0.00	0.10	0.00	0.10	XXX	N
88302		A	Tissue exam by pathologist	0.13	*0.40	0.04	0.57	XXX	N
88302	26	A	Tissue exam by pathologist	0.13	*0.17	0.02	0.32	XXX	N
88302	TC	A	Tissue exam by pathologist	0.00	0.23	0.02	0.25	XXX	N
88304		A	Tissue exam by pathologist	0.22	*0.61	0.04	0.87	XXX	N
88304	26	A	Tissue exam by pathologist	0.22	*0.28	0.02	0.52	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
88304	TC	A	Tissue exam by pathologist	0.00	0.33	0.02	0.35	XXX	N
88305		A	Tissue exam by pathologist	0.75	1.03	0.08	1.86	XXX	N
88306	26	A	Tissue exam by pathologist	0.75	0.53	0.04	1.32	XXX	N
88305	TC	A	Tissue exam by pathologist	0.00	0.50	0.04	0.54	XXX	N
88307		A	Tissue exam by pathologist	1.59	1.52	0.12	3.23	XXX	N
88307	26	A	Tissue exam by pathologist	1.59	0.78	0.06	2.43	XXX	N
88307	TC	A	Tissue exam by pathologist	0.00	0.74	0.06	0.80	XXX	N
88309		A	Tissue exam by pathologist	2.28	1.92	0.13	4.33	XXX	N
88309	26	A	Tissue exam by pathologist	2.28	0.99	0.07	3.34	XXX	N
88309	TC	A	Tissue exam by pathologist	0.00	0.93	0.06	0.99	XXX	N
88311		A	Decalcify tissue	0.24	0.21	0.01	0.46	XXX	N
88311	26	A	Decalcify tissue	0.24	0.11	0.01	0.36	XXX	N
88311	TC	A	Decalcify tissue	0.00	0.10	0.00	0.10	XXX	N
88312		A	Special stains	0.54	0.26	0.01	0.81	XXX	N
88312	26	A	Special stains	0.54	0.14	0.01	0.69	XXX	N
88312	TC	A	Special stains	0.00	0.12	0.00	0.12	XXX	N
88313		A	Special stains	0.24	0.21	0.01	0.46	XXX	N
88313	26	A	Special stains	0.24	0.11	0.01	0.36	XXX	N
88313	TC	A	Special stains	0.00	0.10	0.00	0.10	XXX	N
88314		A	Histochemical stain	0.45	0.62	0.04	1.11	XXX	N
88314	26	A	Histochemical stain	0.45	0.35	0.02	0.82	XXX	N
88314	TC	A	Histochemical stain	0.00	0.27	0.02	0.29	XXX	N
88318		A	Chemical histochemistry	0.42	0.24	0.01	0.67	XXX	N
88318	26	A	Chemical histochemistry	0.42	0.12	0.01	0.55	XXX	N
88318	TC	A	Chemical histochemistry	0.00	0.12	0.00	0.12	XXX	N
88319		A	Enzyme histochemistry	0.53	0.49	0.04	1.06	XXX	N
88319	26	A	Enzyme histochemistry	0.53	0.26	0.02	0.81	XXX	N
88319	TC	A	Enzyme histochemistry	0.00	0.23	0.02	0.25	XXX	N
88321		A	Microslide consultation	1.30	0.41	0.03	1.74	XXX	N
88323		A	Microslide consultation	1.35	0.72	0.05	2.12	XXX	N
88323	26	A	Microslide consultation	1.35	0.39	0.03	1.77	XXX	N
88323	TC	A	Microslide consultation	0.00	0.33	0.02	0.35	XXX	N
88325		A	Comprehensive review of data	2.22	0.47	0.04	2.73	XXX	N
88329		A	Pathology consult in surgery	0.67	0.37	0.03	1.07	XXX	N
88331		A	Pathology consult in surgery	1.19	1.10	0.08	2.37	XXX	N
88331	26	A	Pathology consult in surgery	1.19	0.56	0.04	1.79	XXX	N
88331	TC	A	Pathology consult in surgery	0.00	0.54	0.04	0.58	XXX	N
88332		A	Pathology consult in surgery	0.59	0.56	0.04	1.19	XXX	N
88332	26	A	Pathology consult in surgery	0.59	0.29	0.02	0.90	XXX	N
88332	TC	A	Pathology consult in surgery	0.00	0.27	0.02	0.29	XXX	N
88342		A	Immunocytochemistry	0.85	0.64	0.04	1.53	XXX	N
88342	26	A	Immunocytochemistry	0.85	0.33	0.02	1.20	XXX	N
88342	TC	A	Immunocytochemistry	0.00	0.31	0.02	0.33	XXX	N
88346		A	Immunofluorescent study	0.86	0.58	0.04	1.48	XXX	N
88346	26	A	Immunofluorescent study	0.86	0.31	0.02	1.19	XXX	N
88346	TC	A	Immunofluorescent study	0.00	0.27	0.02	0.29	XXX	N
88347		A	Immunofluorescent study	0.86	0.42	0.04	1.32	XXX	N
88347	26	A	Immunofluorescent study	0.86	0.15	0.02	1.03	XXX	N
88347	TC	A	Immunofluorescent study	0.00	0.27	0.02	0.29	XXX	N
88348		A	Electron microscopy	1.51	2.28	0.16	3.95	XXX	N
88348	26	A	Electron microscopy	1.51	1.19	0.08	2.78	XXX	N
88348	TC	A	Electron microscopy	0.00	1.09	0.08	1.17	XXX	N
88349		A	Scanning electron microscopy	0.76	1.55	0.12	2.43	XXX	N
88349	26	A	Scanning electron microscopy	0.76	0.79	0.06	1.61	XXX	N
88349	TC	A	Scanning electron microscopy	0.00	0.76	0.06	0.82	XXX	N
88355		A	Analysis, skeletal muscle	1.85	1.74	0.13	3.72	XXX	N
88355	26	A	Analysis, skeletal muscle	1.85	0.92	0.07	2.84	XXX	N
88355	TC	A	Analysis, skeletal muscle	0.00	0.82	0.06	0.88	XXX	N
88356		A	Analysis, nerve	3.02	2.66	0.18	5.86	XXX	N
88356	26	A	Analysis, nerve	3.02	1.39	0.10	4.51	XXX	N
88356	TC	A	Analysis, nerve	0.00	1.27	0.08	1.35	XXX	N
88358		A	Analysis, tumor	2.82	2.32	0.16	5.30	XXX	N
88358	26	A	Analysis, tumor	2.82	1.16	0.08	4.06	XXX	N
88358	TC	A	Analysis, tumor	0.00	1.16	0.08	1.24	XXX	N
88362		A	Nerve teasing preparations	2.17	1.97	0.13	4.27	XXX	N
88362	26	A	Nerve teasing preparations	2.17	1.00	0.07	3.24	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
88362	TC	A	Nerve teasing preparations	0.00	0.97	0.06	1.03	XXX	N
88365		A	Tissue hybridization	0.93	0.75	0.05	1.73	XXX	N
88365	26	A	Tissue hybridization	0.93	0.38	0.03	1.34	XXX	N
88365	TC	A	Tissue hybridization	0.00	0.37	0.02	0.39	XXX	N
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	XXX	0
88371	26	A	Protein, western blot tissue	0.37	0.20	0.01	0.58	XXX	N
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	XXX	0
88372	26	A	Protein analysis w/probe	0.37	0.20	0.01	0.58	XXX	N
88399		C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	XXX	0
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	XXX	0
89060		X	Exam, synovial fluid crystals	0.00	0.00	0.00	0.00	XXX	0
89060	26	A	Exam, synovial fluid crystals	0.37	0.20	0.01	0.58	XXX	N
89100		A	Sample intestinal contents	0.60	0.42	0.03	1.05	XXX	N
89105		A	Sample intestinal contents	0.50	0.39	0.03	0.92	XXX	N
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	XXX	0
89130		A	Sample stomach contents	0.45	0.41	0.03	0.89	XXX	N
89132		A	Sample stomach contents	0.19	0.19	0.02	0.40	XXX	N
89135		A	Sample stomach contents	0.79	0.58	0.04	1.41	XXX	N
89138		A	Sample stomach contents	0.21	0.22	0.02	0.45	XXX	N
89140		A	Sample stomach contents	0.94	0.81	0.07	1.82	XXX	N
89141		A	Sample stomach contents	0.85	0.73	0.06	1.64	XXX	N
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	XXX	0
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	XXX	0
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	XXX	0
89300		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89310		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89320		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	XXX	0
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	XXX	0
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	XXX	0
89350		A	Sputum specimen collection	0.00	0.39	0.03	0.42	XXX	N
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	XXX	0
89360		A	Collect sweat for test	0.00	0.43	0.03	0.46	XXX	N
89365		X	Water load test	0.00	0.00	0.00	0.00	XXX	0
89399		C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
90700		E	DTaP immunization	0.00	0.00	0.00	0.00	XXX	0
90701		E	DTP immunization	0.00	0.00	0.00	0.00	XXX	0
90702		E	DT immunization	0.00	0.00	0.00	0.00	XXX	0
90703		E	Tetanus immunization	0.00	0.00	0.00	0.00	XXX	0
90704		E	Mumps immunization	0.00	0.00	0.00	0.00	XXX	0
90705		E	Measles immunization	0.00	0.00	0.00	0.00	XXX	0
90706		E	Rubella immunization	0.00	0.00	0.00	0.00	XXX	0
90707		E	MMR virus immunization	0.00	0.00	0.00	0.00	XXX	0
90708		E	Measles-rubella immunization	0.00	0.00	0.00	0.00	XXX	0
90709		E	Rubella & mumps immunization	0.00	0.00	0.00	0.00	XXX	0
90710		E	Combined vaccine	0.00	0.00	0.00	0.00	XXX	0
90711		E	Combined vaccine	0.00	0.00	0.00	0.00	XXX	0
90712		E	Oral poliovirus immunization	0.00	0.00	0.00	0.00	XXX	0
90713		E	Poliomyelitis immunization	0.00	0.00	0.00	0.00	XXX	0
90714		E	Typhoid immunization	0.00	0.00	0.00	0.00	XXX	0
90716		E	Chicken pox vaccine	0.00	0.00	0.00	0.00	XXX	0
90717		E	Yellow fever immunization	0.00	0.00	0.00	0.00	XXX	0
90718		E	Td immunization	0.00	0.00	0.00	0.00	XXX	0
90719		E	Diphtheria immunization	0.00	0.00	0.00	0.00	XXX	0
90720		E	DTP/HIB vaccine	0.00	0.00	0.00	0.00	XXX	0
90721		E	Dtap/hib vaccine	0.00	0.00	0.00	0.00	XXX	0
90724		X	Influenza immunization	0.00	0.00	0.00	0.00	XXX	0
90725		E	Cholera immunization	0.00	0.00	0.00	0.00	XXX	0
90726		E	Rabies immunization	0.00	0.00	0.00	0.00	XXX	0
90727		E	Plague immunization	0.00	0.00	0.00	0.00	XXX	0
90728		E	BCG immunization	0.00	0.00	0.00	0.00	XXX	0

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
90730		E	Hepatitis A vaccine	0.00	0.00	0.00	0.00	XXX	0
90731		D	Hepatitis B immunization	0.00	0.00	0.00	0.00	XXX	0
90732		X	Pneumococcal immunization	0.00	0.00	0.00	0.00	XXX	0
90733		E	Meningococcal immunization	0.00	0.00	0.00	0.00	XXX	0
90735		E	Encephalitis virus vaccine	0.00	0.00	0.00	0.00	XXX	0
90737		E	Influenza B immunization	0.00	0.00	0.00	0.00	XXX	0
90741		E	Passive immunization, ISG	0.00	0.00	0.00	0.00	XXX	0
90742		E	Special passive immunization	0.00	0.00	0.00	0.00	XXX	0
90744		X	Hepatitis B vaccine, under 11	0.00	0.00	0.00	0.00	XXX	0
90745		X	Hepatitis B vaccine, 11–19	0.00	0.00	0.00	0.00	XXX	0
90746		X	Hepatitis B vaccine, over 20	0.00	0.00	0.00	0.00	XXX	0
90747		X	Hepatitis B vaccine, ill pat	0.00	0.00	0.00	0.00	XXX	0
90749		C	Immunization procedure	0.00	0.00	0.00	0.00	XXX	N
90780		A	IV infusion therapy, 1 hour	0.00	1.06	0.08	1.14	XXX	N
90781		A	IV infusion, additional hour	0.00	0.53	0.04	0.57	XXX	N
90782		T	Injection (SC)/(IM)	0.00	0.10	0.01	0.11	XXX	N
90783		T	Injection (IA)	0.00	0.39	0.03	0.42	XXX	N
90784		T	Injection (IV)	0.00	0.45	0.04	0.49	XXX	N
90788		T	Injection of antibiotic	0.00	0.11	0.01	0.12	XXX	N
90799		C	Therapeutic/diag injection	0.00	0.00	0.00	0.00	XXX	N
90801		A	Psychiatric interview	2.21	0.67	0.09	2.97	XXX	N
90820		A	Diagnostic interview	2.27	0.38	0.05	2.70	XXX	N
90825		B	Evaluation of tests/records	#0.97	0.31	0.04	1.32	XXX	0
90830		D	Psychological testing	0.00	0.00	0.00	0.00	XXX	N
90835		A	Special interview	2.84	0.50	0.07	3.41	XXX	N
90841		G	Psychotherapy	0.00	0.00	0.00	0.00	XXX	0
90842		A	Psychotherapy, 75–80 min.	2.76	1.05	0.15	3.96	XXX	N
90843		A	Psychotherapy, 20–30 min.	1.11	0.35	0.05	1.51	XXX	N
90844		A	Psychotherapy, 45–50 min.	1.73	0.54	0.08	2.35	XXX	N
90845		A	Medical psychoanalysis	1.79	0.41	0.05	2.25	XXX	N
90846		R	Special family therapy	1.83	0.62	0.08	2.53	XXX	N
90847		R	Special family therapy	2.21	0.56	0.08	2.87	XXX	N
90849		R	Special family therapy	0.59	0.26	0.03	0.88	XXX	N
90853		A	Special group therapy	0.43	0.26	0.03	0.72	XXX	N
90855		A	Individual psychotherapy	1.82	0.59	0.09	2.50	XXX	N
90857		A	Special group therapy	0.43	0.15	0.02	0.60	XXX	N
90862		A	Medication management	0.95	0.37	0.05	1.37	XXX	N
90870		A	Electroconvulsive therapy	1.88	0.55	0.08	2.51	000	N
90871		A	Electroconvulsive therapy	2.72	0.83	0.13	3.68	000	N
90880		A	Medical hypnotherapy	2.19	0.64	0.07	2.90	XXX	N
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	XXX	0
90887		B	Consultation with family	#1.48	0.33	0.04	1.85	XXX	0
90889		B	Preparation of report	0.00	0.00	0.00	0.00	XXX	0
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	XXX	N
90900		A	Biofeedback, electromyogram	0.89	0.90	0.08	1.87	000	N
90902		A	Biofeedback, nerve impulse	0.89	0.63	0.05	1.57	000	N
90904		A	Biofeedback, blood pressure	0.89	0.35	0.03	1.27	000	N
90906		A	Biofeedback, blood flow	0.89	1.60	0.11	2.60	000	N
90908		A	Biofeedback, brain waves	0.89	0.86	0.06	1.81	000	N
90910		A	Biofeedback, oculogram	0.89	0.67	0.10	1.66	000	N
90911		A	Anorectal biofeedback	2.15	1.13	0.27	3.55	000	N
90915		A	Biofeedback, unspecified	0.89	0.76	0.06	1.71	000	N
90918		A	ESRD related services, month	11.18	2.19	0.14	13.51	XXX	P
90919		A	ESRD related services, month	8.54	2.19	0.14	10.87	XXX	P
90920		A	ESRD related services, month	7.27	2.19	0.14	9.60	XXX	P
90921		A	ESRD related services, month	4.47	2.19	0.14	6.80	XXX	P
90922		A	ESRD related services, day	0.37	0.07	0.01	0.45	XXX	P
90923		A	Esrd related services, day	0.28	0.07	0.01	0.36	XXX	P
90924		A	Esrd related services, day	0.24	0.07	0.01	0.32	XXX	P
90925		A	Esrd related services, day	0.15	0.07	0.01	0.23	XXX	P
90935		A	Hemodialysis, one evaluation	1.22	1.49	0.10	2.81	000	N
90937		A	Hemodialysis, repeated eval.	2.11	*2.65	0.18	4.94	000	N
90945		A	Dialysis, one evaluation	1.28	1.27	0.08	2.63	000	N
90947		A	Dialysis, repeated eval.	2.16	2.09	0.14	4.39	000	N
90989		X	Dialysis training/complete	0.00	0.00	0.00	0.00	XXX	0
90993		X	Dialysis training/incomplete	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
90997		A	Hemoperfusion	1.84	*2.35	0.16	4.35	000	N
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	XXX	N
91000		A	Esophageal intubation	0.99	0.66	0.06	1.71	000	N
91000	26	A	Esophageal intubation	0.99	0.59	0.05	1.63	000	N
91000	TC	A	Esophageal intubation	0.00	0.07	0.01	0.08	000	N
91010		A	Esophagus motility study	1.65	2.28	0.17	4.10	000	N
91010	26	A	Esophagus motility study	1.65	1.50	0.11	3.26	000	N
91010	TC	A	Esophagus motility study	0.00	0.78	0.06	0.84	000	N
91011		A	Esophagus motility study	1.98	2.66	0.18	4.82	000	N
91011	26	A	Esophagus motility study	1.98	1.68	0.11	3.77	000	N
91011	TC	A	Esophagus motility study	0.00	0.98	0.07	1.05	000	N
91012		A	Esophagus motility study	1.92	3.12	0.23	5.27	000	N
91012	26	A	Esophagus motility study	1.92	2.02	0.15	4.09	000	N
91012	TC	A	Esophagus motility study	0.00	1.10	0.08	1.18	000	N
91020		A	Esophagogastric study	1.89	2.50	0.18	4.57	000	N
91020	26	A	Esophagogastric study	1.89	1.77	0.12	3.78	000	N
91020	TC	A	Esophagogastric study	0.00	0.73	0.06	0.79	000	N
91030		A	Acid perfusion of esophagus	1.20	0.56	0.05	1.81	000	N
91030	26	A	Acid perfusion of esophagus	1.20	0.35	0.03	1.58	000	N
91030	TC	A	Acid perfusion of esophagus	0.00	0.21	0.02	0.23	000	N
91032		A	Esophagus, acid reflux test	1.59	1.96	0.16	3.71	000	N
91032	26	A	Esophagus, acid reflux test	1.59	1.25	0.10	2.94	000	N
91032	TC	A	Esophagus, acid reflux test	0.00	0.71	0.06	0.77	000	N
91033		A	Prolonged acid reflux test	1.71	2.97	0.25	4.93	000	N
91033	26	A	Prolonged acid reflux test	1.71	1.69	0.14	3.54	000	N
91033	TC	A	Prolonged acid reflux test	0.00	1.28	0.11	1.39	000	N
91052		A	Gastric analysis test	1.71	0.82	0.07	2.60	000	N
91052	26	A	Gastric analysis test	1.71	0.50	0.04	2.25	000	N
91052	TC	A	Gastric analysis test	0.00	0.32	0.03	0.35	000	N
91055		A	Gastric intubation for smear	1.28	0.80	0.06	2.14	000	N
91055	26	A	Gastric intubation for smear	1.28	0.51	0.04	1.83	000	N
91055	TC	A	Gastric intubation for smear	0.00	0.29	0.02	0.31	000	N
91060		A	Gastric saline load test	0.45	0.71	0.06	1.22	000	N
91060	26	A	Gastric saline load test	0.45	0.50	0.04	0.99	000	N
91060	TC	A	Gastric saline load test	0.00	0.21	0.02	0.23	000	N
91065		A	Breath hydrogen test	0.45	0.83	0.05	1.33	000	N
91065	26	A	Breath hydrogen test	0.45	0.49	0.03	0.97	000	N
91065	TC	A	Breath hydrogen test	0.00	0.34	0.02	0.36	000	N
91100		A	Pass intestine bleeding tube	1.08	0.56	0.05	1.69	000	N
91105		A	Gastric intubation treatment	0.37	*0.46	0.04	0.87	000	N
91122		A	Anal pressure record	1.77	1.73	0.22	3.72	000	S
91122	26	A	Anal pressure record	1.77	1.06	0.13	2.96	000	S
91122	TC	A	Anal pressure record	0.00	0.67	0.09	0.76	000	S
91299		C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
92002		A	Eye exam, new patient	1.01	0.49	0.02	1.52	XXX	P
92004		A	Eye exam, new patient	1.61	0.57	0.02	2.20	XXX	P
92012		A	Eye exam established pt	0.82	0.44	0.02	1.28	XXX	N
92014		A	Eye exam & treatment	1.06	0.54	0.02	1.62	XXX	N
92015		N	Refraction	#0.38	0.32	0.02	0.72	XXX	0
92018		A	New eye exam & treatment	1.51	0.47	0.03	2.01	XXX	N
92019		A	Eye exam & treatment	1.31	0.47	0.03	1.81	XXX	N
92020		A	Special eye evaluation	0.37	0.29	0.01	0.67	XXX	N
92060		A	Special eye evaluation	0.50	0.39	0.02	0.91	XXX	N
92060	26	A	Special eye evaluation	0.50	0.21	0.01	0.72	XXX	N
92060	TC	A	Special eye evaluation	0.00	0.18	0.01	0.19	XXX	N
92065		A	Orthoptic/pleoptic training	0.37	0.36	0.01	0.74	XXX	N
92065	26	A	Orthoptic/pleoptic training	0.37	0.20	0.01	0.58	XXX	N
92065	TC	A	Orthoptic/pleoptic training	0.00	0.16	0.00	0.16	XXX	N
92070		A	Fitting of contact lens	0.70	1.20	0.06	1.96	XXX	N
92081		A	Visual field examination(s)	0.36	0.32	0.01	0.69	XXX	N
92081	26	A	Visual field examination(s)	0.36	0.17	0.01	0.54	XXX	N
92081	TC	A	Visual field examination(s)	0.00	0.15	0.00	0.15	XXX	N
92082		A	Visual field examination(s)	0.44	0.49	0.02	0.95	XXX	N
92082	26	A	Visual field examination(s)	0.44	0.30	0.01	0.75	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
92082	TC	A	Visual field examination(s)	0.00	0.19	0.01	0.20	XXX	N
92083		A	Visual field examination(s)	0.50	0.83	0.04	1.37	XXX	N
92083	26	A	Visual field examination(s)	0.50	0.55	0.03	1.08	XXX	N
92083	TC	A	Visual field examination(s)	0.00	0.28	0.01	0.29	XXX	N
92100		A	Serial tonometry exam(s)	0.92	0.25	0.01	1.18	XXX	N
92120		A	Tonography & eye evaluation	0.81	0.31	0.02	1.14	XXX	N
92130		A	Water provocation tonography	0.81	0.49	0.02	1.32	XXX	N
92140		A	Glaucoma provocative tests	0.50	0.30	0.01	0.81	XXX	N
92225		A	Special eye exam, initial	0.58	0.45	0.02	1.05	XXX	N
92226		A	Special eye exam, subsequent	0.50	0.40	0.02	0.92	XXX	N
92230		A	Eye exam with photos	0.60	0.69	0.04	1.33	XXX	N
92235		A	Eye exam with photos	0.81	1.58	0.09	2.48	XXX	N
92235	26	A	Eye exam with photos	0.81	0.59	0.03	1.43	XXX	N
92235	TC	A	Eye exam with photos	0.00	0.99	0.06	1.05	XXX	N
92250		A	Eye exam with photos	0.44	0.42	0.02	0.88	XXX	N
92250	26	A	Eye exam with photos	0.44	0.25	0.01	0.70	XXX	N
92250	TC	A	Eye exam with photos	0.00	0.17	0.01	0.18	XXX	N
92260		A	Ophthalmoscopy/dynamometry	0.50	0.54	0.03	1.07	XXX	N
92265		A	Eye muscle evaluation	0.81	0.29	0.02	1.12	XXX	N
92265	26	A	Eye muscle evaluation	0.81	0.07	0.00	0.88	XXX	N
92265	TC	A	Eye muscle evaluation	0.00	0.22	0.02	0.24	XXX	N
92270		A	Electro-oculography	0.81	0.67	0.05	1.53	XXX	N
92270	26	A	Electro-oculography	0.81	0.37	0.03	1.21	XXX	N
92270	TC	A	Electro-oculography	0.00	0.30	0.02	0.32	XXX	N
92275		A	Electroretinography	1.01	0.90	0.05	1.96	XXX	N
92275	26	A	Electroretinography	1.01	0.51	0.03	1.55	XXX	N
92275	TC	A	Electroretinography	0.00	0.39	0.02	0.41	XXX	N
92280		D	Special eye evaluation	0.00	0.00	0.00	0.00	XXX	N
92280	26	D	Special eye evaluation	0.00	0.00	0.00	0.00	XXX	N
92280	TC	D	Special eye evaluation	0.00	0.00	0.00	0.00	XXX	N
92283		A	Color vision examination	0.26	0.29	0.01	0.56	XXX	N
92283	26	A	Color vision examination	0.26	0.17	0.01	0.44	XXX	N
92283	TC	A	Color vision examination	0.00	0.12	0.00	0.12	XXX	N
92284		A	Dark adaptation eye exam	0.37	0.45	0.02	0.84	XXX	N
92284	26	A	Dark adaptation eye exam	0.37	0.28	0.01	0.66	XXX	N
92284	TC	A	Dark adaptation eye exam	0.00	0.17	0.01	0.18	XXX	N
92285		A	Eye photography	0.20	0.29	0.01	0.50	XXX	N
92285	26	A	Eye photography	0.20	0.18	0.01	0.39	XXX	N
92285	TC	A	Eye photography	0.00	0.11	0.00	0.11	XXX	N
92286		A	Internal eye photography	0.66	1.22	0.07	1.95	XXX	N
92286	26	A	Internal eye photography	0.66	0.83	0.05	1.54	XXX	N
92286	TC	A	Internal eye photography	0.00	0.39	0.02	0.41	XXX	N
92287		A	Internal eye photography	0.81	1.52	0.08	2.41	XXX	N
92310		N	Contact lens fitting	#1.17	1.32	0.00	2.49	XXX	0
92311		A	Contact lens fitting	1.08	0.90	0.03	2.01	XXX	N
92312		A	Contact lens fitting	1.26	1.16	0.03	2.45	XXX	N
92313		A	Contact lens fitting	0.92	0.88	0.03	1.83	XXX	N
92314		N	Prescription of contact lens	#0.69	0.78	0.00	1.47	XXX	0
92315		A	Prescription of contact lens	0.45	0.66	0.03	1.14	XXX	N
92316		A	Prescription of contact lens	0.68	0.95	0.04	1.67	XXX	N
92317		A	Prescription of contact lens	0.45	0.39	0.02	0.86	XXX	N
92325		A	Modification of contact lens	0.00	0.38	0.01	0.39	XXX	N
92326		A	Replacement of contact lens	0.00	1.56	0.06	1.62	XXX	N
92330		A	Fitting of artificial eye	1.08	1.13	0.09	2.30	XXX	N
92335		A	Fitting of artificial eye	0.45	1.97	0.11	2.53	XXX	N
92340		N	Fitting of spectacles	#0.37	0.42	0.00	0.79	XXX	0
92341		N	Fitting of spectacles	#0.47	0.53	0.00	1.00	XXX	0
92342		N	Fitting of spectacles	#0.53	0.60	0.00	1.13	XXX	0
92352		B	Special spectacles fitting	#0.37	0.30	0.01	0.68	XXX	0
92353		B	Special spectacles fitting	#0.50	0.40	0.01	0.91	XXX	0
92354		B	Special spectacles fitting	#0.00	8.44	0.10	8.54	XXX	0
92355		B	Special spectacles fitting	#0.00	4.13	0.01	4.14	XXX	0
92358		B	Eye prosthesis service	#0.00	0.92	0.05	0.97	XXX	0
92370		N	Repair & adjust spectacles	#0.32	0.36	0.00	0.68	XXX	0
92371		B	Repair & adjust spectacles	#0.00	0.59	0.02	0.61	XXX	0
92390		N	Supply of spectacles	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
92391		N	Supply of contact lenses	0.00	0.00	0.00	0.00	XXX	0
92392		G	Supply of low vision aids	#0.00	3.85	0.02	3.87	XXX	0
92393		G	Supply of artificial eye	#0.00	11.96	0.67	12.63	XXX	0
92395		G	Supply of spectacles	#0.00	1.31	0.10	1.41	XXX	0
92396		G	Supply of contact lenses	#0.00	2.19	0.08	2.27	XXX	0
92499		C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92502		A	Ear and throat examination	1.51	1.12	0.12	2.75	000	N
92504		A	Ear microscopy examination	0.18	0.26	0.02	0.46	XXX	N
92506		A	Speech & hearing evaluation	0.86	0.52	0.05	1.43	XXX	N
92507		A	Speech/hearing therapy	0.52	0.33	0.03	0.88	XXX	N
92508		A	Speech/hearing therapy	0.26	0.18	0.02	0.46	XXX	N
92510		A	Rehab for ear implant	1.50	1.36	0.15	3.01	XXX	N
92511		A	Nasopharyngoscopy	0.84	0.85	0.09	1.78	000	S
92512		A	Nasal function studies	0.55	0.47	0.05	1.07	XXX	N
92516		A	Facial nerve function test	0.43	0.39	0.04	0.86	XXX	N
92520		A	Laryngeal function studies	0.76	0.53	0.05	1.34	XXX	N
92525		A	Oral function evaluation	1.13	1.02	0.11	2.26	XXX	N
92526		A	Oral function therapy	0.52	0.47	0.05	1.04	XXX	N
92531		B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	XXX	0
92532		B	Positional nystagmus study	0.00	0.00	0.00	0.00	XXX	0
92533		B	Caloric vestibular test	0.00	0.00	0.00	0.00	XXX	0
92534		B	Optokinetic nystagmus	0.00	0.00	0.00	0.00	XXX	0
92541		A	Spontaneous nystagmus test	0.40	0.67	0.07	1.14	XXX	N
92541	26	A	Spontaneous nystagmus test	0.40	0.45	0.05	0.90	XXX	N
92541	TC	A	Spontaneous nystagmus test	0.00	0.22	0.02	0.24	XXX	N
92542		A	Positional nystagmus test	0.33	0.61	0.07	1.01	XXX	N
92542	26	A	Positional nystagmus test	0.33	0.36	0.04	0.73	XXX	N
92542	TC	A	Positional nystagmus test	0.00	0.25	0.03	0.28	XXX	N
92543		A	Caloric vestibular test	0.38	0.82	0.09	1.29	XXX	N
92543	26	A	Caloric vestibular test	0.38	0.42	0.05	0.85	XXX	N
92543	TC	A	Caloric vestibular test	0.00	0.40	0.04	0.44	XXX	N
92544		A	Optokinetic nystagmus test	0.26	0.47	0.05	0.78	XXX	N
92544	26	A	Optokinetic nystagmus test	0.26	0.27	0.03	0.56	XXX	N
92544	TC	A	Optokinetic nystagmus test	0.00	0.20	0.02	0.22	XXX	N
92545		A	Oscillating tracking test	0.23	0.40	0.04	0.67	XXX	N
92545	26	A	Oscillating tracking test	0.23	0.20	0.02	0.45	XXX	N
92545	TC	A	Oscillating tracking test	0.00	0.20	0.02	0.22	XXX	N
92546		A	Sinusoidal rotational test	0.29	0.53	0.05	0.87	XXX	N
92546	26	A	Sinusoidal rotational test	0.29	0.30	0.03	0.62	XXX	N
92546	TC	A	Sinusoidal rotational test	0.00	0.23	0.02	0.25	XXX	N
92547		A	Supplemental electrical test	0.00	0.53	0.06	0.59	XXX	N
92551		N	Pure tone hearing test, air	0.00	0.00	0.00	0.00	XXX	0
92552		A	Pure tone audiometry, air	0.00	0.42	0.04	0.46	XXX	N
92553		A	Audiometry, air & bone	0.00	0.63	0.07	0.70	XXX	N
92555		A	Speech threshold audiometry	0.00	0.36	0.04	0.40	XXX	N
92556		A	Speech audiometry, complete	0.00	0.54	0.06	0.60	XXX	N
92557		A	Comprehensive hearing test	0.00	1.13	0.13	1.26	XXX	N
92559		N	Group audiometric testing	0.00	0.00	0.00	0.00	XXX	0
92560		N	Bekesy audiometry, screen	0.00	0.00	0.00	0.00	XXX	0
92561		A	Bekesy audiometry, diagnosis	0.00	0.68	0.07	0.75	XXX	N
92562		A	Loudness balance test	0.00	0.39	0.04	0.43	XXX	N
92563		A	Tone decay hearing test	0.00	0.36	0.04	0.40	XXX	N
92564		A	Sisi hearing test	0.00	0.45	0.05	0.50	XXX	N
92565		A	Stenger test, pure tone	0.00	0.38	0.04	0.42	XXX	N
92567		A	Tympanometry	0.00	0.50	0.06	0.56	XXX	N
92568		A	Acoustic reflex testing	0.00	0.36	0.04	0.40	XXX	N
92569		A	Acoustic reflex decay test	0.00	0.39	0.04	0.43	XXX	N
92571		A	Filtered speech hearing test	0.00	0.37	0.04	0.41	XXX	N
92572		A	Staggered spondaic word test	0.00	0.08	0.01	0.09	XXX	N
92573		A	Lombard test	0.00	0.33	0.04	0.37	XXX	N
92574		D	Swinging story test	0.00	0.00	0.00	0.00	XXX	N
92575		A	Sensorineural acuity test	0.00	0.29	0.03	0.32	XXX	N
92576		A	Synthetic sentence test	0.00	0.42	0.05	0.47	XXX	N
92577		A	Stenger test, speech	0.00	0.68	0.08	0.76	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
92578		D	Delayed auditory feedback	0.00	0.00	0.00	0.00	XXX	N
92579		A	Visual audiometry (vra)	0.00	0.69	0.07	0.76	XXX	N
92580		D	Electrodermal audiometry	0.00	0.00	0.00	0.00	XXX	N
92582		A	Conditioning play audiometry	0.00	0.69	0.07	0.76	XXX	N
92583		A	Select picture audiometry	0.00	0.85	0.09	0.94	XXX	N
92584		A	Electrocochleography	0.00	2.36	0.25	2.61	XXX	N
92585		A	Auditory evoked potential	0.50	3.25	0.31	4.06	XXX	N
92585	26	A	Auditory evoked potential	0.50	1.49	0.14	2.13	XXX	N
92585	TC	A	Auditory evoked potential	0.00	1.76	0.17	1.93	XXX	N
92587		A	Evoked auditory test	0.13	1.35	0.13	1.61	XXX	N
92587	26	A	Evoked auditory test	0.13	0.11	0.01	0.25	XXX	N
92587	TC	A	Evoked auditory test	0.00	1.24	0.12	1.36	XXX	N
92588		A	Evoked auditory test	0.36	1.70	0.16	2.22	XXX	N
92588	26	A	Evoked auditory test	0.36	0.30	0.02	0.68	XXX	N
92588	TC	A	Evoked auditory test	0.00	1.40	0.14	1.54	XXX	N
92589		A	Auditory function test(s)	0.00	0.51	0.06	0.57	XXX	N
92590		N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	XXX	0
92591		N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	XXX	0
92592		N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	XXX	0
92593		N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	XXX	0
92594		N	Electro hearing aid test, one	0.00	0.00	0.00	0.00	XXX	0
92595		N	Electro hearingaid test, both	0.00	0.00	0.00	0.00	XXX	0
92596		A	Ear protector evaluation	0.00	0.56	0.06	0.62	XXX	N
92597		A	Oral speech device eval	1.11	1.01	0.11	2.23	XXX	N
92598		A	Modify oral speech device	0.73	0.66	0.07	1.46	XXX	N
92599		C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92950		A	Heart/lung resuscitation (CPR)	3.80	2.27	0.17	6.24	000	N
92953		A	Temporary external pacing	0.23	*0.66	0.15	1.04	000	N
92960		A	Heart electroconversion	2.25	1.88	0.16	4.29	000	N
92970		A	Cardioassist, internal	3.52	3.47	0.41	7.40	000	N
92971		A	Cardioassist, external	1.77	1.11	0.08	2.96	000	N
92975		A	Dissolve clot, heart vessel	7.25	5.71	0.42	13.38	000	N
92977		A	Dissolve clot, heart vessel	0.00	7.68	0.54	8.22	XXX	N
92980		A	Insert intracoronary stent	14.84	16.41	1.22	32.47	000	N
92981		A	Insert intracoronary stent	4.17	*5.42	0.44	10.03	ZZZ	N
92982		A	Coronary artery dilation	10.98	*14.05	1.22	26.25	000	N
92984		A	Coronary artery dilation	2.97	*3.80	0.44	7.21	ZZZ	N
92986		A	Revision of aortic valve	20.34	12.04	0.90	33.28	090	N
92987		A	Revision of mitral valve	20.69	12.20	0.91	33.80	090	N
92990		A	Revision of pulmonary valve	16.22	9.59	0.71	26.52	090	N
92992		C	Revision of heart chamber	0.00	0.00	0.00	0.00	090	S
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	090	S
92995		A	Coronary atherectomy	12.09	*15.47	1.22	28.78	000	N
92996		A	Coronary atherectomy	3.26	*4.17	0.44	7.87	ZZZ	N
93000		A	Electrocardiogram, complete	0.17	0.59	0.04	0.80	XXX	N
93005		A	Electrocardiogram, tracing	0.00	0.43	0.03	0.46	XXX	N
93010		A	Electrocardiogram report	0.17	0.16	0.01	0.34	XXX	N
93012		A	Transmission of ecg	0.00	2.25	0.22	2.47	XXX	N
93014		A	Report on transmitted ecg	0.52	0.40	0.05	0.97	XXX	N
93015		A	Cardiovascular stress test	0.75	2.37	0.18	3.30	XXX	N
93016		A	Cardiovascular stress test	0.45	0.39	0.03	0.87	XXX	N
93017		A	Cardiovascular stress test	0.00	1.60	0.12	1.72	XXX	N
93018		A	Cardiovascular stress test	0.30	0.38	0.03	0.71	XXX	N
93024		A	Cardiac drug stress test	1.17	*2.56	0.23	3.96	XXX	N
93024	26	A	Cardiac drug stress test	1.17	*1.49	0.14	2.80	XXX	N
93024	TC	A	Cardiac drug stress test	0.00	1.07	0.09	1.16	XXX	N
93040		A	Rhythm ECG with report	0.16	0.26	0.02	0.44	XXX	N
93041		A	Rhythm ECG, tracing	0.00	0.14	0.01	0.15	XXX	N
93042		A	Rhythm ECG, report	0.16	0.12	0.01	0.29	XXX	N
93201		A	Phonocardiogram & ECG lead	0.42	1.03	0.09	1.54	XXX	N
93202		A	Phonocardiogram & ECG lead	0.00	0.75	0.07	0.82	XXX	N
93204		A	Phonocardiogram & ECG lead	0.42	0.28	0.02	0.72	XXX	N
93205		A	Special phonocardiogram	0.46	0.88	0.07	1.41	XXX	N
93208		A	Special phonocardiogram	0.00	0.33	0.03	0.36	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
93209		A	Special phonocardiogram	0.46	0.55	0.04	1.05	XXX	N
93210		A	Intracardiac phonocardiogram	0.92	1.73	0.13	2.78	XXX	N
93210	26	A	Intracardiac phonocardiogram	0.92	0.82	0.06	1.80	XXX	N
93210	TC	A	Intracardiac phonocardiogram	0.00	0.91	0.07	0.98	XXX	N
93220		A	Vectorcardiogram	0.26	*0.91	0.07	1.24	XXX	N
93221		A	Vectorcardiogram tracing	0.00	0.58	0.04	0.62	XXX	N
93222		A	Vectorcardiogram report	0.26	*0.33	0.03	0.62	XXX	N
93224		A	ECG monitor/report, 24 hrs	0.52	*3.93	0.31	4.76	XXX	N
93225		A	ECG monitor/record, 24 hrs	0.00	1.18	0.09	1.27	XXX	N
93226		A	ECG monitor/report, 24 hrs	0.00	2.08	0.16	2.24	XXX	N
93227		A	ECG monitor/review, 24 hrs	0.52	*0.67	0.06	1.25	XXX	N
93230		A	ECG monitor/report, 24 hrs	0.52	*4.19	0.34	5.05	XXX	N
93231		A	ECG monitor/record, 24 hrs	0.00	1.45	0.11	1.56	XXX	N
93232		A	ECG monitor/report, 24 hrs	0.00	2.07	0.15	2.22	XXX	N
93233		A	ECG monitor/review, 24 hrs	0.52	*0.67	0.08	1.27	XXX	N
93235		A	ECG monitor/report, 24 hrs	0.45	*3.07	0.23	3.75	XXX	N
93236		A	ECG monitor/report, 24 hrs	0.00	2.50	0.17	2.67	XXX	N
93237		A	ECG monitor/review, 24 hrs	0.45	*0.57	0.06	1.08	XXX	N
93268		A	ECG record/review	0.52	3.83	0.36	4.71	XXX	N
93270		A	ECG recording	0.00	1.18	0.09	1.27	XXX	N
93271		A	ECG/monitoring and analysis	0.00	2.25	0.22	2.47	XXX	N
93272		A	ECG/review, interpret only	0.52	0.40	0.05	0.97	XXX	N
93278		A	ECG/signal-averaged	0.35	*1.55	0.18	2.08	XXX	N
93278	26	A	ECG/signal-averaged	0.35	*0.45	0.06	0.86	XXX	N
93278	TC	A	ECG/signal-averaged	0.00	1.10	0.12	1.22	XXX	N
93307		A	Echo exam of heart	0.78	*4.66	0.36	5.82	XXX	N
93307	26	A	Echo exam of heart	0.78	*1.00	0.09	1.87	XXX	N
93307	TC	A	Echo exam of heart	0.00	3.66	0.27	3.95	XXX	N
93308		A	Echo exam of heart	0.53	2.53	0.19	3.25	XXX	N
93308	26	A	Echo exam of heart	0.53	0.68	0.05	1.26	XXX	N
93308	TC	A	Echo exam of heart	0.00	1.85	0.14	1.99	XXX	N
93312		A	Echo exam of heart	1.57	4.95	0.45	6.97	XXX	N
93312	26	A	Echo exam of heart	1.57	1.35	0.12	3.04	XXX	N
93312	TC	A	Echo exam of heart	0.00	3.60	0.33	3.93	XXX	N
93313		A	Echo exam of heart	0.95	0.67	0.06	1.68	XXX	N
93314		A	Echo exam of heart	0.95	4.27	0.39	5.61	XXX	N
93314	26	A	Echo exam of heart	0.95	0.67	0.06	1.68	XXX	N
93314	TC	A	Echo exam of heart	0.00	3.60	0.33	3.93	XXX	N
93320		A	Doppler echo exam, heart	0.38	*2.11	0.18	2.67	XXX	N
93320	26	A	Doppler echo exam, heart	0.38	*0.48	0.05	0.91	XXX	N
93320	TC	A	Doppler echo exam, heart	0.00	1.63	0.13	1.76	XXX	N
93321		A	Doppler echo exam, heart	0.15	*1.25	0.11	1.51	XXX	N
93321	26	A	Doppler echo exam, heart	0.15	*0.19	0.02	0.36	XXX	N
93321	TC	A	Doppler echo exam, heart	0.00	1.06	0.09	1.15	XXX	N
93325		A	Doppler color flow	0.07	2.80	0.25	3.12	XXX	N
93325	26	A	Doppler color flow	0.07	0.04	0.01	0.12	XXX	N
93325	TC	A	Doppler color flow	0.00	2.76	0.24	3.00	XXX	N
93350		A	Echo exam of heart	0.78	*3.63	0.24	4.65	XXX	N
93350	26	A	Echo exam of heart	0.78	*1.95	0.10	2.83	XXX	N
93350	TC	A	Echo exam of heart	0.00	1.68	0.14	1.82	XXX	N
93501		A	Right heart catheterization	3.02	19.72	1.54	24.28	000	N
93501	26	A	Right heart catheterization	3.02	3.61	0.34	6.97	000	N
93501	TC	A	Right heart catheterization	0.00	16.11	1.20	17.31	000	N
93503		A	Insert/place heart catheter	2.43	2.37	0.36	5.16	000	N
93505		A	Biopsy of heart lining	4.56	4.92	0.46	9.94	000	N
93505	26	A	Biopsy of heart lining	4.56	3.03	0.28	7.87	000	N
93505	TC	A	Biopsy of heart lining	0.00	1.89	0.18	2.07	000	N
93510		A	Left heart catheterization	4.33	38.28	2.86	45.47	000	N
93510	26	A	Left heart catheterization	4.33	3.06	0.23	7.62	000	N
93510	TC	A	Left heart catheterization	0.00	35.22	2.63	37.85	000	N
93511		A	Left heart catheterization	5.03	36.91	2.76	44.70	000	N
93511	26	A	Left heart catheterization	5.03	2.62	0.20	7.85	000	N
93511	TC	A	Left heart catheterization	0.00	34.29	2.56	36.85	000	N
93514		A	Left heart catheterization	7.05	38.84	2.94	48.83	000	S
93514	26	A	Left heart catheterization	7.05	4.55	0.38	11.98	000	S
93514	TC	A	Left heart catheterization	0.00	34.29	2.56	36.85	000	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
93524		A	Left heart catheterization	6.95	49.45	3.69	60.09	000	N
93524	26	A	Left heart catheterization	6.95	4.65	0.34	11.94	000	N
93524	TC	A	Left heart catheterization	0.00	44.80	3.35	48.15	000	N
93526		A	Rt & Lt heart catheters	5.99	51.48	3.83	61.30	000	N
93526	26	A	Rt & Lt heart catheters	5.99	5.45	0.39	11.83	000	N
93526	TC	A	Rt & Lt heart catheters	0.00	46.03	3.44	49.47	000	N
93527		A	Rt & Lt heart catheters	7.28	*51.94	3.85	63.07	000	N
93527	26	A	Rt & Lt heart catheters	7.28	7.14	0.50	14.92	000	N
93527	TC	A	Rt & Lt heart catheters	0.00	44.80	3.35	48.15	000	N
93528		A	Rt & Lt heart catheters	9.00	49.23	3.68	61.91	000	N
93528	26	A	Rt & Lt heart catheters	9.00	4.43	0.33	13.76	000	N
93528	TC	A	Rt & Lt heart catheters	0.00	44.80	3.35	48.15	000	N
93529		A	Rt, Lt heart catheterization	4.80	47.73	3.57	56.10	000	N
93529	26	A	Rt, Lt heart catheterization	4.80	2.93	0.22	7.95	000	N
93529	TC	A	Rt, Lt heart catheterization	0.00	44.80	3.35	48.15	000	N
93536		A	Insert circulation assi	4.85	*6.20	0.71	11.76	000	N
93539		A	Injection, cardiac cath	0.29	*0.88	0.20	1.37	000	N
93540		A	Injection, cardiac cath	0.43	*0.88	0.20	1.51	000	N
93541		A	Injection for lung angiogram	0.29	*0.73	0.16	1.18	000	N
93542		A	Injection for heart x-rays	0.29	*0.72	0.16	1.17	000	N
93543		A	Injection for heart x-rays	0.29	*0.57	0.11	0.97	000	N
93544		A	Injection for aortography	0.29	*0.57	0.11	0.97	000	N
93545		A	Injection for coronary xrays	0.29	*1.03	0.24	1.56	000	N
93555		A	Imaging, cardiac cath	0.81	6.25	0.42	7.48	XXX	N
93555	26	A	Imaging, cardiac cath	0.81	0.27	0.04	1.12	XXX	N
93555	TC	A	Imaging, cardiac cath	0.00	5.98	0.38	6.36	XXX	N
93556		A	Imaging, cardiac cath	0.83	9.88	0.65	11.36	XXX	N
93556	26	A	Imaging, cardiac cath	0.83	0.45	0.07	1.35	XXX	N
93556	TC	A	Imaging, cardiac cath	0.00	9.43	0.58	10.01	XXX	N
93561		A	Cardiac output measurement	1.15	1.25	0.16	2.56	000	N
93561	26	A	Cardiac output measurement	1.15	0.75	0.09	1.99	000	N
93561	TC	A	Cardiac output measurement	0.00	0.50	0.07	0.57	000	N
93562		A	Cardiac output measurement	0.37	*0.76	0.10	1.23	000	N
93562	26	A	Cardiac output measurement	0.37	*0.48	0.08	0.89	000	N
93562	TC	A	Cardiac output measurement	0.00	0.30	0.04	0.34	000	N
93600		A	Bundle of His recording	2.12	*4.57	0.38	7.07	000	N
93600	26	A	Bundle of His recording	2.12	*2.71	0.24	5.07	000	N
93600	TC	A	Bundle of His recording	0.00	1.86	0.14	2.00	000	N
93602		A	Intra-atrial recording	2.12	2.83	0.22	5.17	000	N
93602	26	A	Intra-atrial recording	2.12	1.77	0.14	4.03	000	N
93602	TC	A	Intra-atrial recording	0.00	1.06	0.08	1.14	000	N
93603		A	Right ventricular recording	2.12	3.79	0.28	6.19	000	N
93603	26	A	Right ventricular recording	2.12	2.19	0.16	4.47	000	N
93603	TC	A	Right ventricular recording	0.00	1.60	0.12	1.72	000	N
93607		A	Right ventricular recording	3.26	3.63	0.28	7.17	000	N
93607	26	A	Right ventricular recording	3.26	2.21	0.17	5.64	000	N
93607	TC	A	Right ventricular recording	0.00	1.42	0.11	1.53	000	N
93609		A	Mapping of tachycardia	10.07	6.43	0.47	16.97	000	N
93609	26	A	Mapping of tachycardia	10.07	3.84	0.28	14.19	000	N
93609	TC	A	Mapping of tachycardia	0.00	2.59	0.19	2.78	000	N
93610		A	Intra-atrial pacing	3.02	3.60	0.27	6.89	000	N
93610	26	A	Intra-atrial pacing	3.02	2.31	0.17	5.50	000	N
93610	TC	A	Intra-atrial pacing	0.00	1.29	0.10	1.39	000	N
93612		A	Intraventricular pacing	3.02	3.88	0.29	7.19	000	N
93612	26	A	Intraventricular pacing	3.02	2.34	0.17	5.53	000	N
93612	TC	A	Intraventricular pacing	0.00	1.54	0.12	1.66	000	N
93615		A	Esophageal recording	0.99	0.65	0.04	1.68	000	N
93615	26	A	Esophageal recording	0.99	0.35	0.02	1.36	000	N
93615	TC	A	Esophageal recording	0.00	0.30	0.02	0.32	000	N
93616		A	Esophageal recording	1.49	1.66	0.10	3.25	000	N
93616	26	A	Esophageal recording	1.49	1.36	0.08	2.93	000	N
93616	TC	A	Esophageal recording	0.00	0.30	0.02	0.32	000	N
93618		A	Heart rhythm pacing	4.26	*9.24	0.72	14.22	000	N
93618	26	A	Heart rhythm pacing	4.26	*5.46	0.44	10.16	000	N
93618	TC	A	Heart rhythm pacing	0.00	3.78	0.28	4.06	000	N
93619		A	Electrophysiology evaluation	7.32	*16.71	1.40	25.43	000	N

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
93619	26	A	Electrophysiology evaluation	7.32	*9.37	0.86	17.55	000	N
93619	TC	A	Electrophysiology evaluation	0.00	7.34	0.54	7.88	000	N
93620		A	Electrophysiology evaluation	11.59	22.07	1.55	35.21	000	N
93620	26	A	Electrophysiology evaluation	11.59	13.53	0.95	26.07	000	N
93620	TC	A	Electrophysiology evaluation	0.00	8.54	0.60	9.14	000	N
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93621	26	A	Electrophysiology evaluation	12.66	14.94	1.11	28.71	000	N
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93622	26	A	Electrophysiology evaluation	12.74	14.74	1.07	28.55	000	N
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	000	N
93623	26	A	Stimulation, pacing heart	2.85	2.78	0.20	5.83	000	N
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	000	N
93624		A	Electrophysiologic study	4.81	4.88	0.35	10.04	000	N
93624	26	A	Electrophysiologic study	4.81	2.99	0.21	8.01	000	N
93624	TC	A	Electrophysiologic study	0.00	1.89	0.14	2.03	000	N
93631		A	Heart pacing, mapping	7.60	11.62	1.37	20.59	000	N
93631	26	A	Heart pacing, mapping	7.60	5.76	0.67	14.03	000	N
93631	TC	A	Heart pacing, mapping	0.00	5.86	0.70	6.56	000	N
93640		A	Evaluation heart device	3.52	*11.51	1.09	16.12	000	N
93640	26	A	Evaluation heart device	3.52	*4.67	0.61	8.80	000	N
93640	TC	A	Evaluation heart device	0.00	6.84	0.48	7.32	000	N
93641		A	Electrophysiology evaluation	5.93	*13.85	1.09	20.87	000	N
93641	26	A	Electrophysiology evaluation	5.93	*7.01	0.61	13.55	000	N
93641	TC	A	Electrophysiology evaluation	0.00	6.84	0.48	7.32	000	N
93642		A	Electrophysiology evaluation	4.89	*13.09	1.09	19.07	000	N
93642	26	A	Electrophysiology evaluation	4.89	*6.25	0.61	11.75	000	N
93642	TC	A	Electrophysiology evaluation	0.00	6.84	0.48	7.32	000	N
93650		A	Ablate heart dysrhythm focus	10.51	*13.46	1.34	25.31	000	N
93651		A	Ablate heart dysrhythm focus	16.25	17.83	1.34	35.42	000	N
93652		A	Ablate heart dysrhythm focus	17.68	17.83	1.34	36.85	000	N
93660		C	Tilt table evaluation	0.00	0.00	0.00	0.00	000	N
93660	26	A	Tilt table evaluation	1.89	1.44	0.17	3.50	000	N
93660	TC	C	Tilt table evaluation	0.00	0.00	0.00	0.00	000	N
93720		A	Total body plethysmography	0.17	*0.89	0.10	1.16	XXX	N
93721		A	Plethysmography tracing	0.00	0.67	0.07	0.74	XXX	N
93722		A	Plethysmography report	0.17	*0.22	0.03	0.42	XXX	N
93724		A	Analyze pacemaker system	4.89	6.66	0.50	12.05	000	N
93724	26	A	Analyze pacemaker system	4.89	2.88	0.22	7.99	000	N
93724	TC	A	Analyze pacemaker system	0.00	3.78	0.28	4.06	000	N
93731		A	Analyze pacemaker system	0.45	0.79	0.07	1.31	XXX	N
93731	26	A	Analyze pacemaker system	0.45	0.32	0.03	0.80	XXX	N
93731	TC	A	Analyze pacemaker system	0.00	0.47	0.04	0.51	XXX	N
93732		A	Analyze pacemaker system	0.92	0.91	0.08	1.91	XXX	N
93732	26	A	Analyze pacemaker system	0.92	0.42	0.04	1.38	XXX	N
93732	TC	A	Analyze pacemaker system	0.00	0.49	0.04	0.53	XXX	N
93733		A	Telephone analysis, pacemaker	0.17	*0.91	0.08	1.16	XXX	N
93733	26	A	Telephone analysis, pacemaker	0.17	*0.22	0.02	0.41	XXX	N
93733	TC	A	Telephone analysis, pacemaker	0.00	0.69	0.06	0.75	XXX	N
93734		A	Analyze pacemaker system	0.38	0.64	0.06	1.08	XXX	N
93734	26	A	Analyze pacemaker system	0.38	0.31	0.03	0.72	XXX	N
93734	TC	A	Analyze pacemaker system	0.00	0.33	0.03	0.36	XXX	N
93735		A	Analyze pacemaker system	0.74	0.85	0.08	1.67	XXX	N
93735	26	A	Analyze pacemaker system	0.74	0.43	0.04	1.21	XXX	N
93735	TC	A	Analyze pacemaker system	0.00	0.42	0.04	0.46	XXX	N
93736		A	Telephone analysis, pacemaker	0.15	*0.79	0.09	1.03	XXX	N
93736	26	A	Telephone analysis, pacemaker	0.15	*0.19	0.03	0.37	XXX	N
93736	TC	A	Telephone analysis, pacemaker	0.00	0.60	0.06	0.66	XXX	N
93737		A	Analyze cardio/defibrillator	0.45	0.74	0.06	1.25	XXX	N
93737	26	A	Analyze cardio/defibrillator	0.45	0.27	0.02	0.74	XXX	N
93737	TC	A	Analyze cardio/defibrillator	0.00	0.47	0.04	0.51	XXX	N
93738		A	Analyze cardio/defibrillator	0.92	0.88	0.07	1.87	XXX	N
93738	26	A	Analyze cardio/defibrillator	0.92	0.39	0.03	1.34	XXX	N
93738	TC	A	Analyze cardio/defibrillator	0.00	0.49	0.04	0.53	XXX	N
93740		A	Temperature gradient studies	0.16	0.45	0.04	0.65	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
93740	26	A	Temperature gradient studies	0.16	0.30	0.03	0.49	XXX	N
93740	TC	A	Temperature gradient studies	0.00	0.15	0.01	0.16	XXX	N
93760	.....	N	Cephalic thermogram	0.00	0.00	0.00	0.00	XXX	0
93762	.....	N	Peripheral thermogram	0.00	0.00	0.00	0.00	XXX	0
93770	.....	A	Measure venous pressure	0.16	0.20	0.02	0.38	XXX	N
93770	26	A	Measure venous pressure	0.16	0.17	0.02	0.35	XXX	N
93770	TC	A	Measure venous pressure	0.00	0.03	0.00	0.03	XXX	N
93784	.....	N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	XXX	0
93786	.....	N	Ambulatory BP recording	0.00	0.00	0.00	0.00	XXX	0
93788	.....	N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	XXX	0
93790	.....	N	Review/report BP recording	0.00	0.00	0.00	0.00	XXX	0
93797	.....	A	Cardiac rehab	0.18	0.30	0.02	0.50	000	N
93798	.....	A	Cardiac rehab/monitor	0.28	0.47	0.04	0.79	000	N
93799	.....	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93875	.....	A	Extracranial study	0.22	*1.36	0.18	1.76	XXX	N
93875	26	A	Extracranial study	0.22	*0.31	0.08	0.59	XXX	N
93875	TC	A	Extracranial study	0.00	1.05	0.12	1.17	XXX	N
93880	.....	A	Extracranial study	0.60	3.94	0.44	4.98	XXX	N
93880	26	A	Extracranial study	0.60	0.39	0.04	1.03	XXX	N
93880	TC	A	Extracranial study	0.00	3.55	0.40	3.95	XXX	N
93882	.....	A	Extracranial study	0.40	2.62	0.29	3.31	XXX	N
93882	26	A	Extracranial study	0.40	0.26	0.03	0.69	XXX	N
93882	TC	A	Extracranial study	0.00	2.36	0.26	2.62	XXX	N
93886	.....	A	Intracranial study	0.94	4.44	0.50	5.88	XXX	N
93886	26	A	Intracranial study	0.94	0.42	0.05	1.41	XXX	N
93886	TC	A	Intracranial study	0.00	4.02	0.45	4.47	XXX	N
93888	.....	A	Intracranial study	0.62	2.96	0.34	3.92	XXX	N
93888	26	A	Intracranial study	0.62	0.28	0.03	0.93	XXX	N
93888	TC	A	Intracranial study	0.00	2.68	0.31	2.99	XXX	N
93922	.....	A	Extremity study	0.25	*1.38	0.19	1.82	XXX	N
93922	26	A	Extremity study	0.25	*0.28	0.05	0.58	XXX	N
93922	TC	A	Extremity study	0.00	1.10	0.14	1.24	XXX	N
93923	.....	A	Extremity study	0.45	*2.59	0.35	3.39	XXX	N
93923	26	A	Extremity study	0.45	*0.51	0.09	1.05	XXX	N
93923	TC	A	Extremity study	0.00	2.08	0.26	2.34	XXX	N
93924	.....	A	Extremity study	0.50	*2.83	0.39	3.72	XXX	N
93924	26	A	Extremity study	0.50	*0.57	0.10	1.17	XXX	N
93924	TC	A	Extremity study	0.00	2.26	0.29	2.55	XXX	N
93925	.....	A	Lower extremity study	0.58	3.96	0.44	4.98	XXX	N
93925	26	A	Lower extremity study	0.58	0.39	0.04	1.01	XXX	N
93925	TC	A	Lower extremity study	0.00	3.57	0.40	3.97	XXX	N
93926	.....	A	Lower extremity study	0.39	2.64	0.30	3.33	XXX	N
93926	26	A	Lower extremity study	0.39	0.26	0.03	0.68	XXX	N
93926	TC	A	Lower extremity study	0.00	2.38	0.27	2.65	XXX	N
93930	.....	A	Upper extremity study	0.46	4.18	0.47	5.11	XXX	N
93930	26	A	Upper extremity study	0.46	0.39	0.05	0.90	XXX	N
93930	TC	A	Upper extremity study	0.00	3.79	0.42	4.21	XXX	N
93931	.....	A	Upper extremity study	0.31	2.78	0.31	3.40	XXX	N
93931	26	A	Upper extremity study	0.31	0.26	0.03	0.60	XXX	N
93931	TC	A	Upper extremity study	0.00	2.52	0.28	2.80	XXX	N
93965	.....	A	Extremity study	0.35	*1.49	0.19	2.03	XXX	N
93965	26	A	Extremity study	0.35	*0.45	0.06	0.86	XXX	N
93965	TC	A	Extremity study	0.00	1.04	0.13	1.17	XXX	N
93970	.....	A	Extremity study	0.68	4.33	0.51	5.52	XXX	N
93970	26	A	Extremity study	0.68	0.40	0.05	1.13	XXX	N
93970	TC	A	Extremity study	0.00	3.93	0.46	4.39	XXX	N
93971	.....	A	Extremity study	0.45	2.89	0.34	3.68	XXX	N
93971	26	A	Extremity study	0.45	0.27	0.03	0.75	XXX	N
93971	TC	A	Extremity study	0.00	2.62	0.31	2.93	XXX	N
93975	.....	A	Vascular study	1.80	4.90	0.55	7.25	XXX	N
93975	26	A	Vascular study	1.80	0.42	0.05	2.27	XXX	N
93975	TC	A	Vascular study	0.00	4.48	0.50	4.98	XXX	N
93976	.....	A	Vascular study	1.21	3.27	0.37	4.85	XXX	N
93976	26	A	Vascular study	1.21	0.28	0.03	1.52	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
93976	TC	A	Vascular study	0.00	2.99	0.34	3.33	XXX	N
93978	.....	A	Vascular study	0.65	4.06	0.47	5.18	XXX	N
93978	26	A	Vascular study	0.65	0.39	0.05	1.09	XXX	N
93978	TC	A	Vascular study	0.00	3.67	0.42	4.09	XXX	N
93979	.....	A	Vascular study	0.44	2.70	0.31	3.45	XXX	N
93979	26	A	Vascular study	0.44	0.26	0.03	0.73	XXX	N
93979	TC	A	Vascular study	0.00	2.44	0.28	2.72	XXX	N
93980	.....	A	Penile vascular study	1.82	4.15	0.45	6.42	XXX	N
93980	26	A	Penile vascular study	1.82	0.82	0.07	2.71	XXX	N
93980	TC	A	Penile vascular study	0.00	3.33	0.38	3.71	XXX	N
93981	.....	A	Penile vascular study	0.64	3.47	0.39	4.50	XXX	N
93981	26	A	Penile vascular study	0.64	0.40	0.03	1.07	XXX	N
93981	TC	A	Penile vascular study	0.00	3.07	0.36	3.43	XXX	N
93990	.....	A	Doppler flow testing	0.25	2.57	0.29	3.11	XXX	N
93990	26	A	Doppler flow testing	0.25	0.19	0.02	0.46	XXX	N
93990	TC	A	Doppler flow testing	0.00	2.38	0.27	2.65	XXX	N
94010	.....	A	Breathing capacity test	0.17	0.68	0.05	0.90	XXX	N
94010	26	A	Breathing capacity test	0.17	0.28	0.02	0.47	XXX	N
94010	TC	A	Breathing capacity test	0.00	0.40	0.03	0.43	XXX	N
94060	.....	A	Evaluation of wheezing	0.31	1.27	0.09	1.67	XXX	N
94060	26	A	Evaluation of wheezing	0.31	0.38	0.03	0.72	XXX	N
94060	TC	A	Evaluation of wheezing	0.00	0.89	0.06	0.95	XXX	N
94070	.....	A	Evaluation of wheezing	0.60	1.77	0.13	2.50	XXX	N
94070	26	A	Evaluation of wheezing	0.60	0.38	0.03	1.01	XXX	N
94070	TC	A	Evaluation of wheezing	0.00	1.39	0.10	1.49	XXX	N
94150	.....	A	Vital capacity test	0.11	0.20	0.02	0.33	XXX	N
94150	26	A	Vital capacity test	0.11	0.12	0.01	0.24	XXX	N
94150	TC	A	Vital capacity test	0.00	0.08	0.01	0.09	XXX	N
94160	.....	A	Vital capacity screening	0.18	0.37	0.02	0.57	XXX	N
94160	26	A	Vital capacity screening	0.18	0.19	0.01	0.38	XXX	N
94160	TC	A	Vital capacity screening	0.00	0.18	0.01	0.19	XXX	N
94200	.....	A	Lung function test (MBC/MVV)	0.11	*0.38	0.03	0.52	XXX	N
94200	26	A	Lung function test (MBC/MVV)	0.11	*0.14	0.01	0.26	XXX	N
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.24	0.02	0.26	XXX	N
94240	.....	A	Residual lung capacity	0.26	0.88	0.07	1.21	XXX	N
94240	26	A	Residual lung capacity	0.26	0.23	0.02	0.51	XXX	N
94240	TC	A	Residual lung capacity	0.00	0.65	0.05	0.70	XXX	N
94250	.....	A	Expired gas collection	0.11	*0.27	0.02	0.40	XXX	N
94250	26	A	Expired gas collection	0.11	*0.14	0.01	0.26	XXX	N
94250	TC	A	Expired gas collection	0.00	0.13	0.01	0.14	XXX	N
94260	.....	A	Thoracic gas volume	0.13	*0.69	0.06	0.88	XXX	N
94260	26	A	Thoracic gas volume	0.13	*0.17	0.02	0.32	XXX	N
94260	TC	A	Thoracic gas volume	0.00	0.52	0.04	0.56	XXX	N
94350	.....	A	Lung nitrogen washout curve	0.26	0.73	0.05	1.04	XXX	N
94350	26	A	Lung nitrogen washout curve	0.26	0.21	0.01	0.48	XXX	N
94350	TC	A	Lung nitrogen washout curve	0.00	0.52	0.04	0.56	XXX	N
94360	.....	A	Measure airflow resistance	0.26	1.11	0.07	1.44	XXX	N
94360	26	A	Measure airflow resistance	0.26	0.19	0.01	0.46	XXX	N
94360	TC	A	Measure airflow resistance	0.00	0.92	0.06	0.98	XXX	N
94370	.....	A	Breath airway closing volume	0.26	0.40	0.03	0.69	XXX	N
94370	26	A	Breath airway closing volume	0.26	0.14	0.01	0.41	XXX	N
94370	TC	A	Breath airway closing volume	0.00	0.26	0.02	0.28	XXX	N
94375	.....	A	Respiratory flow volume loop	0.31	0.67	0.04	1.02	XXX	N
94375	26	A	Respiratory flow volume loop	0.31	0.21	0.01	0.53	XXX	N
94375	TC	A	Respiratory flow volume loop	0.00	0.46	0.03	0.49	XXX	N
94400	.....	A	CO2 breathing response curve	0.40	0.77	0.19	1.36	XXX	N
94400	26	A	CO2 breathing response curve	0.40	0.47	0.13	1.00	XXX	N
94400	TC	A	CO2 breathing response curve	0.00	0.30	0.06	0.36	XXX	N
94450	.....	A	Hypoxia response curve	0.40	0.61	0.05	1.06	XXX	N
94450	26	A	Hypoxia response curve	0.40	0.24	0.02	0.66	XXX	N
94450	TC	A	Hypoxia response curve	0.00	0.37	0.03	0.40	XXX	N
94620	.....	A	Pulmonary stress testing	0.88	2.05	0.15	3.08	XXX	N
94620	26	A	Pulmonary stress testing	0.88	0.70	0.05	1.63	XXX	N
94620	TC	A	Pulmonary stress testing	0.00	1.35	0.10	1.45	XXX	N
94640	.....	A	Airway inhalation treatment	0.00	0.39	0.03	0.42	XXX	N
94642	.....	C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	XXX	N

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
94650		A	Pressure breathing (IPPB)	0.00	0.37	0.03	0.40	XXX	N
94651		A	Pressure breathing (IPPB)	0.00	0.36	0.03	0.39	XXX	N
94652		A	Pressure breathing (IPPB)	0.00	0.41	0.08	0.49	XXX	N
94656		A	Initial ventilator mgmt	1.22	1.13	0.12	2.47	XXX	N
94657		A	Cont. ventilator	0.83	0.62	0.05	1.50	XXX	N
94660		A	Pos airway pressure, CPAP	0.76	0.71	0.06	1.53	XXX	N
94662		A	Neg pressure ventilation, cnp	0.76	0.30	0.02	1.08	XXX	N
94664		A	Aerosol or vapor inhalations	0.00	0.50	0.04	0.54	XXX	N
94665		A	Aerosol or vapor inhalations	0.00	0.46	0.05	0.51	XXX	N
94667		A	Chest wall manipulation	0.00	0.55	0.05	0.60	XXX	N
94668		A	Chest wall manipulation	0.00	0.34	0.03	0.37	XXX	N
94680		A	Exhaled air analysis: O2	0.26	0.82	0.10	1.18	XXX	N
94680	26	A	Exhaled air analysis: O2	0.26	0.33	0.03	0.62	XXX	N
94680	TC	A	Exhaled air analysis: O2	0.00	0.49	0.07	0.56	XXX	N
94681		A	Exhaled air analysis: O2, CO2	0.20	*1.58	0.17	1.95	XXX	N
94681	26	A	Exhaled air analysis: O2, CO2	0.20	*0.26	0.04	0.50	XXX	N
94681	TC	A	Exhaled air analysis: O2, CO2	0.00	1.32	0.13	1.45	XXX	N
94690		A	Exhaled air analysis	0.07	0.56	0.04	0.67	XXX	N
94690	26	A	Exhaled air analysis	0.07	0.05	0.00	0.12	XXX	N
94690	TC	A	Exhaled air analysis	0.00	0.51	0.04	0.55	XXX	N
94720		A	Monoxide diffusing capacity	0.26	1.03	0.08	1.37	XXX	N
94720	26	A	Monoxide diffusing capacity	0.26	0.23	0.02	0.51	XXX	N
94720	TC	A	Monoxide diffusing capacity	0.00	0.80	0.06	0.86	XXX	N
94725		A	Membrane diffusion capacity	0.26	1.84	0.14	2.24	XXX	N
94725	26	A	Membrane diffusion capacity	0.26	0.18	0.01	0.45	XXX	N
94725	TC	A	Membrane diffusion capacity	0.00	1.66	0.13	1.79	XXX	N
94750		A	Pulmonary compliance study	0.23	0.83	0.06	1.12	XXX	N
94750	26	A	Pulmonary compliance study	0.23	0.28	0.02	0.53	XXX	N
94750	TC	A	Pulmonary compliance study	0.00	0.55	0.04	0.59	XXX	N
94760		A	Measure blood oxygen level	0.00	0.25	0.02	0.27	XXX	N
94761		A	Measure blood oxygen level	0.00	0.64	0.06	0.70	XXX	N
94762		A	Measure blood oxygen level	0.00	1.08	0.10	1.18	XXX	N
94770		A	Exhaled carbon dioxide test	0.20	0.40	0.11	0.71	XXX	N
94770	26	A	Exhaled carbon dioxide test	0.20	0.11	0.03	0.34	XXX	N
94770	TC	A	Exhaled carbon dioxide test	0.00	0.29	0.08	0.37	XXX	N
94772		C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94799		C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
95004		A	Allergy skin tests	0.00	0.09	0.01	0.10	XXX	N
95010		A	Sensitivity skin tests	0.15	0.11	0.01	0.27	XXX	N
95015		A	Sensitivity skin tests	0.15	0.11	0.01	0.27	XXX	N
95024		A	Allergy skin tests	0.00	0.14	0.01	0.15	XXX	N
95027		A	Skin end point titration	0.00	0.14	0.01	0.15	XXX	N
95028		A	Allergy skin tests	0.00	0.22	0.01	0.23	XXX	N
95044		A	Allergy patch tests	0.00	0.19	0.01	0.20	XXX	N
95052		A	Photo patch test	0.00	0.24	0.01	0.25	XXX	N
95056		A	Photosensitivity tests	0.00	0.17	0.01	0.18	XXX	N
95060		A	Eye allergy tests	0.00	0.33	0.02	0.35	XXX	N
95065		A	Nose allergy test	0.00	0.19	0.01	0.20	XXX	N
95070		A	Bronchial allergy tests	0.00	2.17	0.02	2.19	XXX	N
95071		A	Bronchial allergy tests	0.00	2.78	0.02	2.80	XXX	N
95075		A	Ingestion challenge test	0.95	1.97	0.02	2.94	XXX	N
95076		A	Provocative testing	0.00	0.24	0.02	0.26	XXX	N
95116		A	Immunotherapy, one injection	0.00	0.37	0.02	0.39	000	N
95117		A	Immunotherapy injections	0.00	0.48	0.02	0.50	000	N
95120		G	Immunotherapy, one injection	0.00	0.00	0.00	0.00	XXX	0
95125		G	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	XXX	0
95130		G	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	XXX	0
95131		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95132		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95133		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95134		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95144		A	Antigen therapy services	0.06	0.13	0.01	0.20	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
95145		A	Antigen therapy services	0.06	0.34	0.03	0.43	000	N
95146		A	Antigen therapy services	0.06	0.61	0.03	0.70	000	N
95147		A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95148		A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95149		A	Antigen therapy services	0.06	1.14	0.03	1.23	000	N
95165		A	Antigen therapy services	0.06	0.10	0.01	0.17	000	N
95170		A	Antigen therapy services	0.06	0.35	0.03	0.44	000	N
95180		A	Rapid desensitization	2.01	0.14	0.01	2.16	000	N
95199		C	Allergy immunology services	0.00	0.00	0.00	0.00	000	N
95805		A	Multiple sleep latency test	1.88	5.51	0.45	7.84	XXX	N
95805	26	A	Multiple sleep latency test	1.88	0.56	0.07	2.51	XXX	N
95805	TC	A	Multiple sleep latency test	0.00	4.95	0.38	5.33	XXX	N
95807		A	Sleep study	1.66	8.75	0.67	11.08	XXX	N
95807	26	A	Sleep study	1.66	2.45	0.19	4.30	XXX	N
95807	TC	A	Sleep study	0.00	6.30	0.48	6.78	XXX	N
95808		A	Polysomnography, 1–3	2.65	8.75	0.67	12.07	XXX	N
95808	26	A	Polysomnography, 1–3	2.65	2.45	0.19	5.29	XXX	N
95808	TC	A	Polysomnography, 1–3	0.00	6.30	0.48	6.78	XXX	N
95810		A	Polysomnography, 4 or more	3.53	8.75	0.67	12.95	XXX	N
95810	26	A	Polysomnography, 4 or more	3.53	2.45	0.19	6.17	XXX	N
95810	TC	A	Polysomnography, 4 or more	0.00	6.30	0.48	6.78	XXX	N
95812		A	Electroencephalogram (EEG)	1.08	1.85	0.15	3.08	XXX	N
95812	26	A	Electroencephalogram (EEG)	1.08	0.50	0.04	1.62	XXX	N
95812	TC	A	Electroencephalogram (EEG)	0.00	1.35	0.11	1.46	XXX	N
95813		A	Electroencephalogram (EEG)	1.73	1.85	0.15	3.73	XXX	N
95813	26	A	Electroencephalogram (EEG)	1.73	0.50	0.04	2.27	XXX	N
95813	TC	A	Electroencephalogram (EEG)	0.00	1.35	0.11	1.46	XXX	N
95816		A	Electroencephalogram (EEG)	1.08	1.54	0.13	2.75	XXX	N
95816	26	A	Electroencephalogram (EEG)	1.08	0.28	0.03	1.39	XXX	N
95816	TC	A	Electroencephalogram (EEG)	0.00	1.26	0.10	1.36	XXX	N
95819		A	Electroencephalogram (EEG)	1.08	1.80	0.14	3.02	XXX	N
95819	26	A	Electroencephalogram (EEG)	1.08	0.50	0.04	1.62	XXX	N
95819	TC	A	Electroencephalogram (EEG)	0.00	1.30	0.10	1.40	XXX	N
95822		A	Sleep electroencephalogram	1.08	2.28	0.18	3.54	XXX	N
95822	26	A	Sleep electroencephalogram	1.08	0.56	0.04	1.68	XXX	N
95822	TC	A	Sleep electroencephalogram	0.00	1.72	0.14	1.86	XXX	N
95824		A	Electroencephalography	0.74	0.98	0.07	1.79	XXX	N
95824	26	A	Electroencephalography	0.74	0.58	0.04	1.36	XXX	N
95824	TC	A	Electroencephalography	0.00	0.40	0.03	0.43	XXX	N
95827		A	Night electroencephalogram	1.08	3.06	0.24	4.38	XXX	N
95827	26	A	Night electroencephalogram	1.08	0.88	0.07	2.03	XXX	N
95827	TC	A	Night electroencephalogram	0.00	2.18	0.17	2.35	XXX	N
95829		A	Surgery electrocorticogram	6.21	0.59	0.05	6.85	XXX	N
95829	26	A	Surgery electrocorticogram	6.21	0.45	0.03	6.69	XXX	N
95829	TC	A	Surgery electrocorticogram	0.00	0.14	0.02	0.16	XXX	N
95830		A	Insert electrodes for EEG	1.70	0.78	0.07	2.55	XXX	N
95831		A	Limb muscle testing, manual	0.28	0.29	0.03	0.60	XXX	N
95832		A	Hand muscle testing, manual	0.29	0.25	0.02	0.56	XXX	N
95833		A	Body muscle testing, manual	0.47	0.38	0.05	0.90	XXX	N
95834		A	Body muscle testing, manual	0.60	0.61	0.06	1.27	XXX	N
95851		A	Range of motion measurements	0.28	0.24	0.02	0.54	XXX	N
95852		A	Range of motion measurements	0.19	0.15	0.02	0.36	XXX	N
95857		A	Tensilon test	0.53	0.50	0.04	1.07	XXX	N
95858		A	Tensilon test & myogram	1.56	1.02	0.09	2.67	XXX	N
95858	26	A	Tensilon test & myogram	1.56	0.64	0.05	2.25	XXX	N
95858	TC	A	Tensilon test & myogram	0.00	0.38	0.04	0.42	XXX	N
95860		A	Muscle test, one limb	0.96	1.09	0.09	2.14	XXX	N
95860	26	A	Muscle test, one limb	0.96	0.73	0.06	1.75	XXX	N
95860	TC	A	Muscle test, one limb	0.00	0.36	0.03	0.39	XXX	N
95861		A	Muscle test, two limbs	1.54	1.97	0.16	3.67	XXX	N
95861	26	A	Muscle test, two limbs	1.54	1.27	0.10	2.91	XXX	N
95861	TC	A	Muscle test, two limbs	0.00	0.70	0.06	0.76	XXX	N
95863		A	Muscle test, 3 limbs	1.87	2.30	0.18	4.35	XXX	N
95863	26	A	Muscle test, 3 limbs	1.87	1.41	0.11	3.39	XXX	N
95863	TC	A	Muscle test, 3 limbs	0.00	0.89	0.07	0.96	XXX	N
95864		A	Muscle test, 4 limbs	1.99	3.45	0.27	5.71	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
95864	26	A	Muscle test, 4 limbs	1.99	1.75	0.14	3.88	XXX	N
95864	TC	A	Muscle test, 4 limbs	0.00	1.70	0.13	1.83	XXX	N
95867	.....	A	Muscle test, head or neck	0.82	1.13	0.09	1.84	XXX	N
95867	26	A	Muscle test, head or neck	0.82	0.58	0.05	1.25	XXX	N
95867	TC	A	Muscle test, head or neck	0.00	0.55	0.04	0.59	XXX	N
95868	.....	A	Muscle test, head or neck	1.50	1.92	0.15	3.57	XXX	N
95868	26	A	Muscle test, head or neck	1.50	1.26	0.10	2.86	XXX	N
95868	TC	A	Muscle test, head or neck	0.00	0.66	0.05	0.71	XXX	N
95869	.....	A	Muscle test, limited	0.37	0.53	0.05	0.95	XXX	N
95869	26	A	Muscle test, limited	0.37	0.33	0.03	0.73	XXX	N
95869	TC	A	Muscle test, limited	0.00	0.20	0.02	0.22	XXX	N
95872	.....	A	Muscle test, one fiber	1.50	1.25	0.11	2.86	XXX	N
95872	26	A	Muscle test, one fiber	1.50	0.68	0.06	2.24	XXX	N
95872	TC	A	Muscle test, one fiber	0.00	0.57	0.05	0.62	XXX	N
95875	.....	A	Limb exercise test	1.34	0.60	0.10	2.04	XXX	N
95875	26	A	Limb exercise test	1.34	0.22	0.04	1.60	XXX	N
95875	TC	A	Limb exercise test	0.00	0.38	0.06	0.44	XXX	N
95880	.....	D	Cerebral aphasia testing	0.00	0.00	0.00	0.00	XXX	N
95881	.....	D	Cerebral developmental test	0.00	0.00	0.00	0.00	XXX	N
95882	.....	D	Cognitive function testing	0.00	0.00	0.00	0.00	XXX	N
95883	.....	D	Neuropsychological testing	0.00	0.00	0.00	0.00	XXX	N
95900	.....	A	Motor nerve conduction test	0.42	0.62	0.05	1.09	XXX	N
95900	26	A	Motor nerve conduction test	0.42	0.35	0.03	0.80	XXX	N
95900	TC	A	Motor nerve conduction test	0.00	0.27	0.02	0.29	XXX	N
95903	.....	A	Motor nerve conduction test	0.60	0.59	0.05	1.24	XXX	N
95903	26	A	Motor nerve conduction test	0.60	0.35	0.03	0.98	XXX	N
95903	TC	A	Motor nerve conduction test	0.00	0.24	0.02	0.26	XXX	N
95904	.....	A	Sense nerve conduction test	0.34	0.55	0.05	0.94	XXX	N
95904	26	A	Sense nerve conduction test	0.34	0.34	0.03	0.71	XXX	N
95904	TC	A	Sense nerve conduction test	0.00	0.21	0.02	0.23	XXX	N
95920	.....	A	Intraoperative nerve testing	2.11	2.67	0.20	4.98	XXX	N
95920	26	A	Intraoperative nerve testing	2.11	1.43	0.12	3.66	XXX	N
95920	TC	A	Intraoperative nerve testing	0.00	1.24	0.08	1.32	XXX	N
95925	.....	A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95925	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95925	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95926	.....	A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95926	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95926	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95927	.....	A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95927	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95927	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95930	.....	A	Visual evoked potential test	0.35	0.83	0.05	1.23	XXX	N
95930	26	A	Visual evoked potential test	0.35	0.58	0.04	0.97	XXX	N
95930	TC	A	Visual evoked potential test	0.00	0.25	0.01	0.26	XXX	N
95933	.....	A	Blink reflex test	0.59	1.25	0.10	1.94	XXX	N
95933	26	A	Blink reflex test	0.59	0.50	0.04	1.13	XXX	N
95933	TC	A	Blink reflex test	0.00	0.75	0.06	0.81	XXX	N
95934	.....	A	'H' reflex test	0.51	0.54	0.05	1.10	XXX	N
95934	26	A	'H' reflex test	0.51	0.34	0.03	0.88	XXX	N
95934	TC	A	'H' reflex test	0.00	0.20	0.02	0.22	XXX	N
95935	.....	D	'H' or 'F' reflex study	0.00	0.00	0.00	0.00	XXX	N
95935	26	D	'H' or 'F' reflex study	0.00	0.00	0.00	0.00	XXX	N
95935	TC	D	'H' or 'F' reflex study	0.00	0.00	0.00	0.00	XXX	N
95936	.....	A	'H' reflex test	0.55	0.54	0.05	1.14	XXX	N
95936	26	A	'H' reflex test	0.55	0.34	0.03	0.92	XXX	N
95936	TC	A	'H' reflex test	0.00	0.20	0.02	0.22	XXX	N
95937	.....	A	Neuromuscular junction test	0.60	0.77	0.07	1.44	XXX	N
95937	26	A	Neuromuscular junction test	0.60	0.45	0.04	1.09	XXX	N
95937	TC	A	Neuromuscular junction test	0.00	0.32	0.03	0.35	XXX	N
95950	.....	A	Ambulatory eeg monitoring	1.51	7.25	0.60	9.36	XXX	N
95950	26	A	Ambulatory eeg monitoring	1.51	1.21	0.10	2.82	XXX	N
95950	TC	A	Ambulatory eeg monitoring	0.00	6.04	0.50	6.54	XXX	N
95951	.....	A	EEG monitoring/videorecord	3.80	8.83	0.64	13.27	XXX	N
95951	26	A	EEG monitoring/videorecord	3.80	1.50	0.11	5.41	XXX	N
95951	TC	A	EEG monitoring/videoreeord	0.00	7.33	0.53	7.86	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
95953	.....	A	EEG monitoring/computer	3.08	7.25	0.60	10.93	XXX	N
95953	26	A	EEG monitoring/computer	3.08	1.21	0.10	4.39	XXX	N
95953	TC	A	EEG monitoring/computer	0.00	6.04	0.50	6.54	XXX	N
95954	.....	A	EEG monitoring/giving drugs	2.45	2.32	0.28	5.05	XXX	N
95954	26	A	EEG monitoring/giving drugs	2.45	1.87	0.22	4.54	XXX	N
95954	TC	A	EEG monitoring/giving drugs	0.00	0.45	0.06	0.51	XXX	N
95955	.....	A	EEG during surgery	1.01	2.90	0.30	4.21	XXX	N
95955	26	A	EEG during surgery	1.01	1.03	0.11	2.15	XXX	N
95955	TC	A	EEG during surgery	0.00	1.87	0.19	2.06	XXX	N
95956	.....	A	EEG monitoring/cable/radio	3.08	7.54	0.61	11.23	XXX	N
95956	26	A	EEG monitoring/cable/radio	3.08	1.50	0.11	4.69	XXX	N
95956	TC	A	EEG monitoring/cable/radio	0.00	6.04	0.50	6.54	XXX	N
95957	.....	A	EEG digital analysis	1.98	2.25	0.18	4.41	XXX	N
95957	26	A	EEG digital analysis	1.98	0.63	0.05	2.66	XXX	N
95957	TC	A	EEG digital analysis	0.00	1.62	0.13	1.75	XXX	N
95958	.....	A	EEG monitoring/function test	4.25	4.89	0.52	9.66	XXX	N
95958	26	A	EEG monitoring/function test	4.25	3.23	0.38	7.86	XXX	N
95958	TC	A	EEG monitoring/function test	0.00	1.66	0.14	1.80	XXX	N
95961	.....	A	Electrode stimulation, brain	2.97	2.67	0.20	5.84	XXX	N
95961	26	A	Electrode stimulation, brain	2.97	1.43	0.12	4.52	XXX	N
95961	TC	A	Electrode stimulation, brain	0.00	1.24	0.08	1.32	XXX	N
95962	.....	A	Electrode stimulation, brain	3.21	2.67	0.20	6.08	XXX	N
95962	26	A	Electrode stimulation, brain	3.21	1.43	0.12	4.76	XXX	N
95962	TC	A	Electrode stimulation, brain	0.00	1.24	0.08	1.32	XXX	N
95999	.....	C	Neurological procedure	0.00	0.00	0.00	0.00	XXX	N
96100	.....	A	Psychological testing	0.00	1.88	0.20	1.88	XXX	N
96105	.....	A	Assessment of aphasia	0.00	1.68	0.20	1.88	XXX	N
96110	.....	C	Developmental test, lim	0.00	0.00	0.00	0.00	XXX	N
96111	.....	A	Developmental test, extend	0.00	1.68	0.20	1.88	XXX	N
96115	.....	A	Neurobehavior status exam	0.00	1.68	0.20	1.88	XXX	N
96117	.....	A	Neuropsych test battery	0.00	1.68	0.20	1.88	XXX	N
96400	.....	A	Chemotherapy, (SC)/(IM)	0.00	0.13	0.01	0.14	XXX	N
96405	.....	A	Intralesional chemo admin	0.52	0.38	0.03	0.93	000	S
96406	.....	A	Intralesional chemo admin	0.80	0.56	0.04	1.40	000	S
96408	.....	A	Chemotherapy, push technique	0.00	0.92	0.06	0.98	XXX	N
96410	.....	A	Chemotherapy, infusion method	0.00	1.47	0.09	1.56	XXX	N
96412	.....	A	Chemotherapy, infusion method	0.00	1.10	0.08	1.18	XXX	N
96414	.....	A	Chemotherapy, infusion method	0.00	1.27	0.09	1.36	XXX	N
96420	.....	A	Chemotherapy, push technique	0.00	1.19	0.09	1.28	XXX	N
96422	.....	A	Chemotherapy, infusion method	0.00	1.17	0.09	1.26	XXX	N
96423	.....	A	Chemotherapy, infusion method	0.00	0.46	0.03	0.49	XXX	N
96425	.....	A	Chemotherapy, infusion method	0.00	1.36	0.09	1.45	XXX	N
96440	.....	A	Chemotherapy, intracavitary	2.37	0.81	0.06	3.24	000	N
96445	.....	A	Chemotherapy, intracavitary	2.20	0.98	0.09	3.27	000	N
96450	.....	A	Chemotherapy, into CNS	1.89	0.87	0.06	2.82	000	N
96520	.....	A	Pump refilling, maintenance	0.00	0.85	0.06	0.91	XXX	N
96530	.....	A	Pump refilling, maintenance	0.00	1.01	0.07	1.08	XXX	N
96542	.....	A	Chemotherapy injection	1.42	1.09	0.13	2.64	XXX	N
96545	.....	B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	XXX	0
96549	.....	C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	XXX	N
96900	.....	A	Ultraviolet light therapy	0.00	0.38	0.03	0.41	XXX	N
96910	.....	A	Photochemotherapy with UV-B	0.00	0.55	0.04	0.59	XXX	N
96912	.....	A	Photochemotherapy with UV-A	0.00	0.63	0.05	0.68	XXX	N
96913	.....	A	Photochemotherapy, UV-A or B	0.00	1.29	0.10	1.39	XXX	N
96999	.....	C	Dermatological procedure	0.00	0.00	0.00	0.00	XXX	N
97010	.....	A	Hot or cold packs therapy	0.11	0.21	0.02	0.34	XXX	N
97012	.....	A	Mechanical traction therapy	0.25	0.19	0.02	0.46	XXX	N
97014	.....	A	Electric stimulation therapy	0.18	0.20	0.02	0.40	XXX	N
97016	.....	A	Vasopneumatic device therapy	0.18	0.25	0.02	0.45	XXX	N
97018	.....	A	Paraffin bath therapy	0.11	0.24	0.03	0.38	XXX	N
97020	.....	A	Microwave therapy	0.11	0.20	0.02	0.33	XXX	N
97022	.....	A	Whirlpool therapy	0.25	0.19	0.02	0.46	XXX	N
97024	.....	A	Diathermy treatment	0.11	0.21	0.02	0.34	XXX	N
97026	.....	A	Infrared therapy	0.11	0.19	0.02	0.32	XXX	N
97028	.....	A	Ultraviolet therapy	0.20	0.19	0.01	0.40	XXX	N
97032	.....	A	Electrical stimulation	0.25	0.14	0.01	0.40	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
97033		A	Electric current therapy	0.26	0.14	0.02	0.42	XXX	N
97034		A	Contrast bath therapy	0.21	0.10	0.01	0.32	XXX	N
97035		A	Ultrasound therapy	0.21	0.11	0.01	0.33	XXX	N
97036		A	Hydrotherapy	0.38	0.21	0.02	0.81	XXX	N
97039		A	Physical therapy treatment	0.29	0.24	0.03	0.56	XXX	N
97110		A	Therapeutic exercises	0.45	0.13	0.02	0.60	XXX	N
97112		A	Neuromuscular reeducation	0.45	0.13	0.01	0.59	XXX	N
97113		A	Aquatic therapy/exercises	0.44	0.20	0.02	0.66	XXX	N
97116		A	Gait training therapy	0.40	0.11	0.01	0.52	XXX	N
97122		A	Manual traction therapy	0.45	0.11	0.01	0.57	XXX	N
97124		A	Massage therapy	0.35	0.11	0.01	0.47	XXX	N
97139		A	Physical medicine procedure	0.21	0.16	0.02	0.39	XXX	N
97150		A	Group therapeutic procedures	0.27	0.20	0.02	0.49	XXX	N
97250		A	Myofascial release	0.45	0.35	0.04	0.84	000	N
97260		A	Regional manipulation	0.19	0.20	0.02	0.41	000	N
97261		A	Supplemental manipulations	0.12	0.11	0.01	0.24	000	N
97265		A	Joint mobilization	0.45	0.35	0.04	0.84	XXX	N
97500		A	Orthotics training	0.31	0.27	0.04	0.62	XXX	N
97501		A	Supplemental training	0.17	0.15	0.02	0.34	XXX	N
97520		A	Prosthetic training	0.37	0.30	0.04	0.71	XXX	N
97521		A	Supplemental training	0.22	0.17	0.02	0.41	XXX	N
97530		A	Therapeutic activities	0.44	0.17	0.02	0.63	XXX	N
97535		A	Self care mngment training	0.33	0.17	0.02	0.52	XXX	N
97537		A	Community/work reintegration	0.33	0.17	0.02	0.52	XXX	N
97540		D	Training for daily living	0.00	0.00	0.00	0.00	XXX	N
97541		D	Supplemental training	0.00	0.00	0.00	0.00	XXX	N
97542		A	Wheelchair mngement training	0.25	0.17	0.02	0.44	XXX	N
97545		R	Work hardening	0.00	0.00	0.00	0.00	XXX	N
97546		R	Work hardening	0.00	0.00	0.00	0.00	XXX	N
97700		D	Training checkout	0.00	0.00	0.00	0.00	XXX	N
97701		D	Supplemental checkout	0.00	0.00	0.00	0.00	XXX	N
97703		A	Prosthetic checkout	0.25	0.18	0.03	0.46	XXX	N
97750		A	Physical performance test	0.45	0.24	0.03	0.72	XXX	N
97770		A	Cognitive skills development	0.44	0.28	0.03	0.75	XXX	N
97799		C	Physical medicine procedure	0.00	0.00	0.00	0.00	XXX	N
98925		A	Osteopathic manipulation	0.45	0.25	0.02	0.72	000	N
98926		A	Osteopathic manipulation	0.65	0.40	0.03	1.08	000	N
98927		A	Osteopathic manipulation	0.87	0.36	0.03	1.26	000	N
98928		A	Osteopathic manipulation	1.03	0.42	0.04	1.49	000	N
98929		A	Osteopathic manipulation	1.19	0.39	0.03	1.61	000	N
99000		B	Specimen handling	0.00	0.00	0.00	0.00	XXX	0
99001		B	Specimen handling	0.00	0.00	0.00	0.00	XXX	0
99002		B	Device handling	0.00	0.00	0.00	0.00	XXX	0
99024		B	Post-op follow-up visit	0.00	0.00	0.00	0.00	XXX	0
99025		B	Initial surgical evaluation	0.00	0.00	0.00	0.00	XXX	0
99050		B	Medical services after hrs	0.00	0.00	0.00	0.00	XXX	0
99052		B	Medical services at night	0.00	0.00	0.00	0.00	XXX	0
99054		B	Medical services, unusual hrs	0.00	0.00	0.00	0.00	XXX	0
99056		B	Non-office medical services	0.00	0.00	0.00	0.00	XXX	0
99058		B	Office emergency care	0.00	0.00	0.00	0.00	XXX	0
99070		B	Special supplies	0.00	0.00	0.00	0.00	XXX	0
99071		B	Patient education materials	0.00	0.00	0.00	0.00	XXX	0
99075		N	Medical testimony	0.00	0.00	0.00	0.00	XXX	0
99078		B	Group health education	0.00	0.00	0.00	0.00	XXX	0
99080		B	Special reports or forms	0.00	0.00	0.00	0.00	XXX	0
99082		C	Unusual physician travel	0.00	0.00	0.00	0.00	XXX	N
99090		B	Computer data analysis	0.00	0.00	0.00	0.00	XXX	0
99100		B	Special anesthesia service	0.00	0.00	0.00	0.00	XXX	0
99116		B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	XXX	0
99135		B	Special anesthesia procedure	0.00	0.00	0.00	0.00	XXX	0
99140		B	Emergency anesthesia	0.00	0.00	0.00	0.00	XXX	0
99175		A	Induction of vomiting	0.00	1.33	0.10	1.43	XXX	N
99178		D	Development evaluation tests	0.00	0.00	0.00	0.00	XXX	N
99183		A	Hyperbaric oxygen therapy	2.34	1.67	0.11	4.12	XXX	N
99185		A	Regional hypothermia	0.00	0.61	0.04	0.65	XXX	N
99186		A	Total body hypothermia	0.00	1.70	0.52	2.22	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
99190		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99191		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99192		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99195		A	Phlebotomy	0.00	0.42	0.03	0.45	XXX	N
99199		C	Special service or report	0.00	0.00	0.00	0.00	XXX	N
99201		A	Office/outpatient visit, new	0.38	0.37	0.04	0.79	XXX	P
99202		A	Office/outpatient visit, new	0.75	0.45	0.05	1.25	XXX	P
99203		A	Office/outpatient visit, new	1.14	0.52	0.06	1.72	XXX	P
99204		A	Office/outpatient visit, new	1.71	0.78	0.08	2.57	XXX	P
99205		A	Office/outpatient visit, new	2.28	0.85	0.09	3.22	XXX	P
99211		A	Office/outpatient visit, est	0.17	0.19	0.02	0.38	XXX	P
99212		A	Office/outpatient visit, est	0.38	0.28	0.02	0.68	XXX	P
99213		A	Office/outpatient visit, est	0.55	0.38	0.03	0.96	XXX	P
99214		A	Office/outpatient visit, est	0.94	0.50	0.04	1.48	XXX	P
99215		A	Office/outpatient visit, est	1.51	0.76	0.07	2.34	XXX	P
99217		A	Observation care discharge	1.09	0.52	0.04	1.65	XXX	N
99218		A	Observation care	1.08	0.68	0.06	1.82	XXX	N
99219		A	Observation care	1.75	1.05	0.09	2.89	XXX	N
99220		A	Observation care	2.41	1.14	0.09	3.64	XXX	N
99221		A	Initial hospital care	1.06	0.67	0.06	1.79	XXX	N
99222		A	Initial hospital care	1.84	1.04	0.09	2.97	XXX	N
99223		A	Initial hospital care	2.57	1.13	0.08	3.78	XXX	N
99231		A	Subsequent hospital care	0.51	0.38	0.03	0.92	XXX	N
99232		A	Subsequent hospital care	0.88	0.45	0.04	1.37	XXX	N
99233		A	Subsequent hospital care	1.25	0.60	0.05	1.90	XXX	N
99238		A	Hospital discharge day	1.06	0.51	0.04	1.61	XXX	N
99239		A	Hospital discharge day	1.75	0.51	0.04	2.30	XXX	N
99241		A	Office consultation	0.54	0.64	0.08	1.26	XXX	N
99242		A	Office consultation	1.11	0.77	0.09	1.97	XXX	N
99243		A	Office consultation	1.47	0.97	0.10	2.54	XXX	N
99244		A	Office consultation	2.23	1.23	0.11	3.57	XXX	N
99245		A	Office consultation	2.96	1.69	0.16	4.81	XXX	N
99251		A	Initial inpatient consult	0.54	0.67	0.08	1.29	XXX	N
99252		A	Initial inpatient consult	1.13	0.76	0.09	1.98	XXX	N
99253		A	Initial inpatient consult	1.56	0.95	0.10	2.61	XXX	N
99254		A	Initial inpatient consult	2.27	1.20	0.11	3.58	XXX	N
99255		A	Initial inpatient consult	3.14	1.57	0.14	4.85	XXX	N
99261		A	Follow-up inpatient consult	0.36	0.33	0.03	0.72	XXX	N
99262		A	Follow-up inpatient consult	0.74	0.46	0.04	1.24	XXX	N
99263		A	Follow-up inpatient consult	1.16	0.67	0.04	1.87	XXX	N
99271		A	Confirmatory consultation	0.45	0.58	0.07	1.10	XXX	N
99272		A	Confirmatory consultation	0.84	0.71	0.09	1.64	XXX	N
99273		A	Confirmatory consultation	1.19	1.02	0.11	2.32	XXX	N
99274		A	Confirmatory consultation	1.73	1.22	0.11	3.06	XXX	N
99275		A	Confirmatory consultation	2.31	1.74	0.17	4.22	XXX	N
99281		A	Emergency dept visit	0.28	0.28	0.01	0.57	XXX	P
99282		A	Emergency dept visit	0.47	0.38	0.03	0.88	XXX	P
99283		A	Emergency dept visit	1.07	0.49	0.04	1.60	XXX	P
99284		A	Emergency dept visit	1.68	0.70	0.06	2.44	XXX	P
99285		A	Emergency dept visit	2.63	1.13	0.08	3.84	XXX	P
99288		B	Direct advanced life support	0.00	0.00	0.00	0.00	XXX	D
99291		A	Critical care, first hour	3.84	1.43	0.11	5.18	XXX	N
99292		A	Critical care, addl 30 min	1.84	0.63	0.04	2.51	XXX	N
99295		A	Neonatal critical care	16.03	5.08	1.55	22.66	XXX	N
99296		A	Neonatal critical care	7.40	2.46	0.77	10.63	XXX	N
99297		A	Neonatal critical care	3.84	1.23	0.38	5.45	XXX	N
99301		A	Nursing facility care	1.07	0.45	0.03	1.55	XXX	P
99302		A	Nursing facility care	1.67	0.50	0.04	2.21	XXX	P
99303		A	Nursing facility care	2.29	0.95	0.07	3.31	XXX	P
99311		A	Nursing facility care, subseq	0.54	0.34	0.03	0.91	XXX	P
99312		A	Nursing facility care, subseq	0.89	0.41	0.03	1.33	XXX	P
99313		A	Nursing facility care, subseq	1.19	0.46	0.04	1.69	XXX	P
99321		A	Rest home visit, new patient	0.71	0.37	0.03	1.11	XXX	P
99322		A	Rest home visit, new patient	1.01	0.51	0.05	1.57	XXX	P
99323		A	Rest home visit, new patient	1.28	0.73	0.06	2.07	XXX	P
99331		A	Rest home visit, estab pat	0.60	0.28	0.02	0.90	XXX	P

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
99332		A	Rest home visit, estab pat	0.80	0.36	0.03	1.19	XXX	P
99333		A	Rest home visit, estab pat	1.00	0.44	0.02	1.46	XXX	P
99341		A	Home visit, new patient	1.12	0.53	0.05	1.70	XXX	P
99342		A	Home visit, new patient	1.58	0.60	0.05	2.23	XXX	P
99343		A	Home visit, new patient	2.09	0.77	0.06	2.92	XXX	P
99351		A	Home visit, estab patient	0.83	0.45	0.04	1.32	XXX	P
99352		A	Home visit, estab patient	1.12	0.53	0.04	1.69	XXX	P
99353		A	Home visit, estab patient	1.48	0.61	0.05	2.14	XXX	P
99354		A	Prolonged service, office	1.51	0.76	0.07	2.34	XXX	P
99355		A	Prolonged service, office	1.51	0.76	0.07	2.34	XXX	P
99356		A	Prolonged service, inpatient	1.44	0.85	0.08	2.37	XXX	N
99357		A	Prolonged service, inpatient	1.44	0.85	0.08	2.37	XXX	N
99358		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	XXX	0
99359		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	XXX	0
99360		X	Physician standby services	0.00	0.00	0.00	0.00	XXX	0
99361		B	Physician/team conference	0.00	0.00	0.00	0.00	XXX	0
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	XXX	0
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99375		A	Care plan oversight/30–60	1.73	0.51	0.04	2.28	XXX	P
99376		B	Care plan oversight/over 60	0.00	0.00	0.00	0.00	XXX	0
99381		N	Preventive visit, new, infant	#1.19	1.23	0.08	2.50	XXX	0
99382		N	Preventive visit, new, age 1–4	#1.36	1.41	0.09	2.86	XXX	0
99383		N	Preventive visit, new, age 5–11	#1.36	1.41	0.09	2.86	XXX	0
99384		N	Preventive visit, new, 12–17	#1.53	1.59	0.10	3.22	XXX	0
99385		N	Preventive visit, new, 18–39	#1.53	1.40	0.09	3.02	XXX	0
99386		N	Preventive visit, new, 40–64	#1.88	1.72	0.10	3.70	XXX	0
99387		N	Preventive visit, new, 65 & over	#2.06	1.88	0.11	4.05	XXX	0
99391		N	Preventive visit, est, infant	#1.02	1.06	0.07	2.15	XXX	0
99392		N	Preventive visit, est, age 1–4	#1.19	1.23	0.08	2.50	XXX	0
99393		N	Preventive visit, est, age 5–11	#1.19	1.23	0.08	2.50	XXX	0
99394		N	Preventive visit, est, 12–17	#1.36	1.41	0.09	2.86	XXX	0
99395		N	Preventive visit, est, 18–39	#1.36	1.25	0.08	2.69	XXX	0
99396		N	Preventive visit, est, 40–64	#1.53	1.40	0.09	3.02	XXX	0
99397		N	Preventive visit, est, 65 & over	#1.71	1.56	0.10	3.37	XXX	0
99401		N	Preventive counseling, indiv	#0.48	0.45	0.03	0.96	XXX	0
99402		N	Preventive counseling, indiv	#0.96	0.86	0.05	1.92	XXX	0
99403		N	Preventive counseling, indiv	#1.46	1.34	0.08	2.88	XXX	0
99404		N	Preventive counseling, indiv	#1.95	1.78	0.11	3.84	XXX	0
99411		N	Preventive counseling, group	#0.15	0.14	0.01	0.30	XXX	0
99412		N	Preventive counseling, group	#0.25	0.23	0.01	0.49	XXX	0
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	XXX	0
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	XXX	0
99431		A	Initial care, normal newborn	1.17	1.21	0.08	2.46	XXX	N
99432		A	Newborn care not in hospital	1.26	1.31	0.08	2.65	XXX	N
99433		A	Normal newborn care, hospital	0.62	0.64	0.04	1.30	XXX	N
99435		A	Hospital NB discharge day	1.50	1.55	0.10	3.15	XXX	P
99440		A	Newborn resuscitation	2.93	3.04	0.19	6.16	XXX	N
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	XXX	0
99455		R	Disability examination	0.00	0.00	0.00	0.00	XXX	N
99456		R	Disability examination	0.00	0.00	0.00	0.00	XXX	N
99499		C	Unlisted E/M service	0.00	0.00	0.00	0.00	XXX	N
A0021		G	Outside state ambulance serv	0.00	0.00	0.00	0.00	XXX	0
A0030		X	Air ambulance service	0.00	0.00	0.00	0.00	XXX	0
A0040		X	Helicopter ambulance service	0.00	0.00	0.00	0.00	XXX	0
A0050		X	Water amb service emergency	0.00	0.00	0.00	0.00	XXX	0
A0080		G	Noninterest escort in non er	0.00	0.00	0.00	0.00	XXX	0
A0090		G	Interest escort in non er	0.00	0.00	0.00	0.00	XXX	0
A0100		G	Nonemergency transport taxi	0.00	0.00	0.00	0.00	XXX	0
A0110		G	Nonemergency transport bus	0.00	0.00	0.00	0.00	XXX	0
A0120		G	Noner transport mini-bus	0.00	0.00	0.00	0.00	XXX	0
A0130		G	Noner transport wheelch van	0.00	0.00	0.00	0.00	XXX	0
A0140		G	Nonemergency transport air	0.00	0.00	0.00	0.00	XXX	0
A0160		G	Noner transport case worker	0.00	0.00	0.00	0.00	XXX	0
A0170		G	Noner transport parking fees	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
A0180		G	Noner transport lodging recip	0.00	0.00	0.00	0.00	XXX	0
A0190		G	Noner transport meals recip	0.00	0.00	0.00	0.00	XXX	0
A0200		G	Noner transport lodging escrt	0.00	0.00	0.00	0.00	XXX	0
A0210		G	Noner transport meals escort	0.00	0.00	0.00	0.00	XXX	0
A0225		X	Neonatal emergency transport	0.00	0.00	0.00	0.00	XXX	0
A0300		X	Ambulance basic non-emer all	0.00	0.00	0.00	0.00	XXX	0
A0302		X	Ambulance basic emergeny all	0.00	0.00	0.00	0.00	XXX	0
A0304		X	Amb adv non-er no serv all	0.00	0.00	0.00	0.00	XXX	0
A0306		X	Amb adv non-er spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0308		X	Amb adv er no spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0310		X	Amb adv er spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0320		X	Amb basic non-er + supplies	0.00	0.00	0.00	0.00	XXX	0
A0322		X	Amb basic emerg + supplies	0.00	0.00	0.00	0.00	XXX	0
A0324		X	Adv non-er serv sep mileage	0.00	0.00	0.00	0.00	XXX	0
A0326		X	Adv non-er no serv sep mile	0.00	0.00	0.00	0.00	XXX	0
A0328		X	Adv er no serv sep mileage	0.00	0.00	0.00	0.00	XXX	0
A0330		X	Adv er spec serv sep mile	0.00	0.00	0.00	0.00	XXX	0
A0340		X	Amb basic non-er + mileage	0.00	0.00	0.00	0.00	XXX	0
A0342		X	Ambul basic emer + mileage	0.00	0.00	0.00	0.00	XXX	0
A0344		X	Amb adv non-er no serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0346		X	Amb adv non-er serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0348		X	Adv emer no spec serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0350		X	Adv emer spec serv + mileage	0.00	0.00	0.00	0.00	XXX	0
A0360		X	Basic non-er sep mile & supp	0.00	0.00	0.00	0.00	XXX	0
A0362		X	Basic emer sep mile & supply	0.00	0.00	0.00	0.00	XXX	0
A0364		X	Adv non-er no serv sep mi&su	0.00	0.00	0.00	0.00	XXX	0
A0366		X	Adv non-er serv sep mil&supp	0.00	0.00	0.00	0.00	XXX	0
A0368		X	Adv er no serv sep mile&supp	0.00	0.00	0.00	0.00	XXX	0
A0370		X	Adv er spec serv sep mi&supp	0.00	0.00	0.00	0.00	XXX	0
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	XXX	0
A0382		X	Basic support routine supplS	0.00	0.00	0.00	0.00	XXX	0
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	XXX	0
A0390		X	Advanced life support mileag	0.00	0.00	0.00	0.00	XXX	0
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	XXX	0
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	XXX	0
A0396		X	Als esophageal intub supplS	0.00	0.00	0.00	0.00	XXX	0
A0398		X	Als routine disposble supplS	0.00	0.00	0.00	0.00	XXX	0
A0420		X	Ambulance waiting 1/2 hr	0.00	0.00	0.00	0.00	XXX	0
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	XXX	0
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	XXX	0
A0688		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	XXX	0
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	XXX	0
A2000		A	Chiropractor manip of spine	0.45	0.29	0.01	0.75	XXX	N
A4190		P	Transparent film each	0.00	0.00	0.00	0.00	XXX	0
A4200		P	Gauze pad medicated/non-med	0.00	0.00	0.00	0.00	XXX	0
A4202		P	Elastic gauze roll	0.00	0.00	0.00	0.00	XXX	0
A4203		P	Non-elastic gauze roll	0.00	0.00	0.00	0.00	XXX	0
A4204		P	Absorptive dressing	0.00	0.00	0.00	0.00	XXX	0
A4205		P	Nonabsorptive dressing	0.00	0.00	0.00	0.00	XXX	0
A4206		P	1 CC sterile syringe & needle	0.00	0.00	0.00	0.00	XXX	0
A4207		P	2 CC sterile syringe & needle	0.00	0.00	0.00	0.00	XXX	0
A4208		P	3 CC sterile syringe & needle	0.00	0.00	0.00	0.00	XXX	0
A4209		P	5+ CC sterile syringe & needle	0.00	0.00	0.00	0.00	XXX	0
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	XXX	0
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	XXX	0
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	XXX	0
A4213		P	20+ CC syringe only	0.00	0.00	0.00	0.00	XXX	0
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	XXX	0
A4215		P	Sterile needle	0.00	0.00	0.00	0.00	XXX	0
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	XXX	0
A4230		N	Infus insulin pump non needle	0.00	0.00	0.00	0.00	XXX	0
A4231		N	Infusion insulin pump needle	0.00	0.00	0.00	0.00	XXX	0
A4232		N	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	XXX	0
A4244		P	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	XXX	0
A4245		P	Alcohol wipes per box	0.00	0.00	0.00	0.00	XXX	0
A4246		P	Betadine/phisohex solution	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
A4247		P	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	XXX	0
A4250		R	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	XXX	N
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	XXX	0
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	XXX	0
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	XXX	0
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	XXX	0
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	XXX	0
A4260		N	Levonorgestrel implant	0.00	0.00	0.00	0.00	XXX	0
A4262		B	Temporary tear duct plug	0.00	0.00	0.00	0.00	XXX	0
A4263		A	Permanent tear duct plug	0.00	0.95	0.00	0.95	XXX	N
A4265		P	Paraffin	0.00	0.00	0.00	0.00	XXX	0
A4270		B	Disposable endoscope sheath	0.00	0.00	0.00	0.00	XXX	0
A4300		A	Cath impl vasc access portal	0.00	0.95	0.00	0.95	XXX	N
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	XXX	0
A4305		P	Drug delivery system >=50 ML	0.00	0.00	0.00	0.00	XXX	0
A4306		P	Drug delivery system <=5 ML	0.00	0.00	0.00	0.00	XXX	0
A4310		P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	XXX	0
A4311		P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	XXX	0
A4312		P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	XXX	0
A4313		P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	XXX	0
A4314		P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	XXX	0
A4315		P	Cath w/drainage 2-way silcne	0.00	0.00	0.00	0.00	XXX	0
A4316		P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	XXX	0
A4320		P	Irrigation tray	0.00	0.00	0.00	0.00	XXX	0
A4322		P	Irrigation syringe	0.00	0.00	0.00	0.00	XXX	0
A4323		P	Saline irrigation solution	0.00	0.00	0.00	0.00	XXX	0
A4326		P	Male external catheter	0.00	0.00	0.00	0.00	XXX	0
A4327		P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	XXX	0
A4328		P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	XXX	0
A4329		P	External catheter start set	0.00	0.00	0.00	0.00	XXX	0
A4330		P	Stool collection pouch	0.00	0.00	0.00	0.00	XXX	0
A4335		P	Incontinence supply	0.00	0.00	0.00	0.00	XXX	0
A4338		P	Indwelling catheter latex	0.00	0.00	0.00	0.00	XXX	0
A4340		P	Indwelling catheter special	0.00	0.00	0.00	0.00	XXX	0
A4344		P	Cath indw foley 2 way silicn	0.00	0.00	0.00	0.00	XXX	0
A4346		P	Cath indw foley 3 way	0.00	0.00	0.00	0.00	XXX	0
A4347		P	Male external catheter	0.00	0.00	0.00	0.00	XXX	0
A4351		P	Straight tip urine catheter	0.00	0.00	0.00	0.00	XXX	0
A4352		P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	XXX	0
A4354		P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	XXX	0
A4355		P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	XXX	0
A4356		P	Ext ureth clmp or compr dvc	0.00	0.00	0.00	0.00	XXX	0
A4357		P	Bedside drainage bag	0.00	0.00	0.00	0.00	XXX	0
A4358		P	Urinary leg bag	0.00	0.00	0.00	0.00	XXX	0
A4359		P	Urinary suspensory w/o leg bag	0.00	0.00	0.00	0.00	XXX	0
A4361		P	Ostomy face plate	0.00	0.00	0.00	0.00	XXX	0
A4362		P	Solid skin barrier	0.00	0.00	0.00	0.00	XXX	0
A4363		P	Liquid skin barrier	0.00	0.00	0.00	0.00	XXX	0
A4364		P	Ostomy/cath adhesive	0.00	0.00	0.00	0.00	XXX	0
A4367		P	Ostomy belt	0.00	0.00	0.00	0.00	XXX	0
A4397		P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	XXX	0
A4398		P	Irrigation supply bags	0.00	0.00	0.00	0.00	XXX	0
A4399		P	Irrigation supply cone/cathe	0.00	0.00	0.00	0.00	XXX	0
A4400		P	Ostomy irrigation set	0.00	0.00	0.00	0.00	XXX	0
A4402		P	Lubricant per ounce	0.00	0.00	0.00	0.00	XXX	0
A4404		P	Ostomy ring each	0.00	0.00	0.00	0.00	XXX	0
A4421		P	Ostomy supply misc	0.00	0.00	0.00	0.00	XXX	0
A4454		P	Tape all types all sizes	0.00	0.00	0.00	0.00	XXX	0
A4455		P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	XXX	0
A4460		P	Elastic compression bandage	0.00	0.00	0.00	0.00	XXX	0
A4465		P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	XXX	0
A4470		P	Gravlee jet washer	0.00	0.00	0.00	0.00	XXX	0
A4480		P	Vabra aspirator	0.00	0.00	0.00	0.00	XXX	0
A4490		N	Above knee surgical stocking	0.00	0.00	0.00	0.00	XXX	0
A4495		N	Thigh length surg stocking	0.00	0.00	0.00	0.00	XXX	0
A4500		N	Below knee surgical stocking	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
A4510		N	Full length surg stocking	0.00	0.00	0.00	0.00	XXX	0
A4550		A	Surgical trays	0.00	0.95	0.00	0.95	XXX	N
A4554		N	Disposable underpads	0.00	0.00	0.00	0.00	XXX	0
A4556		P	Electrodes	0.00	0.00	0.00	0.00	XXX	0
A4557		P	Lead wires	0.00	0.00	0.00	0.00	XXX	0
A4558		P	Conductive paste or gel	0.00	0.00	0.00	0.00	XXX	0
A4560		X	Pessary	0.00	0.00	0.00	0.00	XXX	0
A4565		X	Slings	0.00	0.00	0.00	0.00	XXX	0
A4570		X	Splint	0.00	0.00	0.00	0.00	XXX	0
A4572		X	Rib belt	0.00	0.00	0.00	0.00	XXX	0
A4575		N	Hyperbaric O2 chamber disps	0.00	0.00	0.00	0.00	XXX	0
A4580		X	Cast supplies (plaster)	0.00	0.00	0.00	0.00	XXX	0
A4581		X	Risser jacket supplies	0.00	0.00	0.00	0.00	XXX	0
A4590		X	Special casting material	0.00	0.00	0.00	0.00	XXX	0
A4595		X	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	XXX	0
A4610		X	Med supplies for use in DME	0.00	0.00	0.00	0.00	XXX	0
A4611		X	Heavy duty battery	0.00	0.00	0.00	0.00	XXX	0
A4612		X	Battery cables	0.00	0.00	0.00	0.00	XXX	0
A4613		X	Battery charger	0.00	0.00	0.00	0.00	XXX	0
A4615		X	Cannula nasal	0.00	0.00	0.00	0.00	XXX	0
A4616		X	Tubing (oxygen) per foot	0.00	0.00	0.00	0.00	XXX	0
A4617		X	Mouth piece	0.00	0.00	0.00	0.00	XXX	0
A4618		X	Breathing circuits	0.00	0.00	0.00	0.00	XXX	0
A4619		X	Face tent	0.00	0.00	0.00	0.00	XXX	0
A4620		X	Variable concentration mask	0.00	0.00	0.00	0.00	XXX	0
A4621		X	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	XXX	0
A4622		X	Tracheostomy or laringectomy	0.00	0.00	0.00	0.00	XXX	0
A4623		X	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	XXX	0
A4624		X	Tracheal suction tube	0.00	0.00	0.00	0.00	XXX	0
A4625		X	Trach care kit for new trach	0.00	0.00	0.00	0.00	XXX	0
A4626		X	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	XXX	0
A4627		X	Spacer bag/reservoir	0.00	0.00	0.00	0.00	XXX	0
A4628		X	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	XXX	0
A4629		X	Tracheostomy care kit	0.00	0.00	0.00	0.00	XXX	0
A4630		X	Repl bat t.e.n.s. own by pt	0.00	0.00	0.00	0.00	XXX	0
A4631		X	Wheelchair battery	0.00	0.00	0.00	0.00	XXX	0
A4635		X	Underarm crutch pad	0.00	0.00	0.00	0.00	XXX	0
A4636		X	Handgrip for cane etc	0.00	0.00	0.00	0.00	XXX	0
A4637		X	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	XXX	0
A4640		X	Alternating pressure pad	0.00	0.00	0.00	0.00	XXX	0
A4641		E	Diagnostic imaging agent	0.00	0.00	0.00	0.00	XXX	0
A4642		E	Saturomab pendetide per dose	0.00	0.00	0.00	0.00	XXX	0
A4643		E	High dose contrast MRI	0.00	0.00	0.00	0.00	XXX	0
A4644		E	Contrast 100–199 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4645		E	Contrast 200–299 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4646		E	Contrast 300–399 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4647		B	Supp- paramagnetic contr mat	0.00	0.00	0.00	0.00	XXX	0
A4649		B	Surgical supplies	0.00	0.00	0.00	0.00	XXX	0
A4650		X	Supp esrd centrifuge	0.00	0.00	0.00	0.00	XXX	0
A4655		X	Esrd syringe/needle	0.00	0.00	0.00	0.00	XXX	0
A4660		X	Esrd blood pressure device	0.00	0.00	0.00	0.00	XXX	0
A4663		X	Esrd blood pressure cuff	0.00	0.00	0.00	0.00	XXX	0
A4670		N	Auto blood pressure monitor	0.00	0.00	0.00	0.00	XXX	0
A4680		X	Activated carbon filters	0.00	0.00	0.00	0.00	XXX	0
A4690		X	Dialyzers	0.00	0.00	0.00	0.00	XXX	0
A4700		X	Standard dialysate solution	0.00	0.00	0.00	0.00	XXX	0
A4705		X	Bicarb dialysate solution	0.00	0.00	0.00	0.00	XXX	0
A4712		X	Sterile water	0.00	0.00	0.00	0.00	XXX	0
A4714		X	Treated water for dialysis	0.00	0.00	0.00	0.00	XXX	0
A4730		X	Fistula cannulation set dial	0.00	0.00	0.00	0.00	XXX	0
A4735		X	Local/topical anesthetics	0.00	0.00	0.00	0.00	XXX	0
A4740		X	Esrd shunt accessory	0.00	0.00	0.00	0.00	XXX	0
A4750		X	Arterial or venous tubing	0.00	0.00	0.00	0.00	XXX	0
A4755		X	Arterial and venous tubing	0.00	0.00	0.00	0.00	XXX	0
A4760		X	Standard testing solution	0.00	0.00	0.00	0.00	XXX	0
A4765		X	Dialysate concentrate	0.00	0.00	0.00	0.00	XXX	0

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CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
A4770		X	Blood testing supplies	0.00	0.00	0.00	0.00	XXX	0
A4771		X	Blood clotting time tube	0.00	0.00	0.00	0.00	XXX	0
A4772		X	Dextrostick/glucose strips	0.00	0.00	0.00	0.00	XXX	0
A4773		X	Hemastix	0.00	0.00	0.00	0.00	XXX	0
A4774		X	Ammonia test paper	0.00	0.00	0.00	0.00	XXX	0
A4780		X	Eard sterilizing agent	0.00	0.00	0.00	0.00	XXX	0
A4790		X	Eard cleansing agents	0.00	0.00	0.00	0.00	XXX	0
A4800		X	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	XXX	0
A4820		X	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	XXX	0
A4850		X	Rubber tipped hemostats	0.00	0.00	0.00	0.00	XXX	0
A4860		X	Disposable catheter cape	0.00	0.00	0.00	0.00	XXX	0
A4870		X	Plumbing/electrical work	0.00	0.00	0.00	0.00	XXX	0
A4880		X	Water storage tanks	0.00	0.00	0.00	0.00	XXX	0
A4890		N	Contracts/repair/maintenance	0.00	0.00	0.00	0.00	XXX	0
A4900		X	Capd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4901		X	Capd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4905		X	Ipd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4910		X	Eard nonmedical supplies	0.00	0.00	0.00	0.00	XXX	0
A4912		X	Gomco drain bottle	0.00	0.00	0.00	0.00	XXX	0
A4913		X	Eard supply	0.00	0.00	0.00	0.00	XXX	0
A4914		X	Preparation kit	0.00	0.00	0.00	0.00	XXX	0
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	XXX	0
A4919		X	Supp dialysis dialyzer holde	0.00	0.00	0.00	0.00	XXX	0
A4920		X	Harvard pressure clamp	0.00	0.00	0.00	0.00	XXX	0
A4921		X	Measuring cylinder	0.00	0.00	0.00	0.00	XXX	0
A4927		X	Gloves	0.00	0.00	0.00	0.00	XXX	0
A5051		P	Pouch clsd w barr attached	0.00	0.00	0.00	0.00	XXX	0
A5052		P	Clsd ostomy pouch w/o barr	0.00	0.00	0.00	0.00	XXX	0
A5053		P	Clsd ostomy pouch faceplate	0.00	0.00	0.00	0.00	XXX	0
A5054		P	Clsd ostomy pouch w/flange	0.00	0.00	0.00	0.00	XXX	0
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	XXX	0
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	XXX	0
A5062		P	Drnble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	XXX	0
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	XXX	0
A5064		P	Drain ostomy pouch w/faceplte	0.00	0.00	0.00	0.00	XXX	0
A5066		P	Drain ostomy pouch on faplte	0.00	0.00	0.00	0.00	XXX	0
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	XXX	0
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	XXX	0
A5073		P	Urinary pouch on barr w/flng	0.00	0.00	0.00	0.00	XXX	0
A5074		P	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	XXX	0
A5075		P	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	XXX	0
A5081		P	Continent stoma plug	0.00	0.00	0.00	0.00	XXX	0
A5082		P	Continent stoma catheter	0.00	0.00	0.00	0.00	XXX	0
A5093		P	Ostomy accessory convex inse	0.00	0.00	0.00	0.00	XXX	0
A5102		P	Bedside btle rigid/expenable	0.00	0.00	0.00	0.00	XXX	0
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	XXX	0
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	XXX	0
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	XXX	0
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	XXX	0
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	XXX	0
A5121		P	Solid skin barrier 6x8	0.00	0.00	0.00	0.00	XXX	0
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	XXX	0
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	XXX	0
A5126		P	Adhesive disc/foam pad	0.00	0.00	0.00	0.00	XXX	0
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	XXX	0
A5149		P	Incontinence/ostomy supply	0.00	0.00	0.00	0.00	XXX	0
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	XXX	0
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	XXX	0
A5502		X	Diabetic shoe density insert	0.00	0.00	0.00	0.00	XXX	0
A5503		X	Diabetic shoe w/roller/rocke	0.00	0.00	0.00	0.00	XXX	0
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	XXX	0
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	XXX	0
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	XXX	0
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	XXX	0
A6020		P	Collagen dressing cover sa	0.00	0.00	0.00	0.00	XXX	0
A9150		E	Misc/exper non-prescript dru	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
A9160		N	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	XXX	0
A9170		N	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	XXX	0
A9190		N	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	XXX	0
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	XXX	0
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	XXX	0
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	XXX	0
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	XXX	0
D0110		D	Initial oral examination	0.00	0.00	0.00	0.00	YYY	N
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	XXX	0
D0130		D	Emergency oral examination	0.00	0.00	0.00	0.00	YYY	N
D0140		N	Limit oral eval problm focus	0.00	0.00	0.00	0.00	XXX	0
D0150		R	Comprehenseve oral evaluation	0.00	0.00	0.00	0.00	YYY	N
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	XXX	0
D0210		G	Intraor complete film series	0.00	0.00	0.00	0.00	XXX	0
D0220		G	Intraoral periapical first f	0.00	0.00	0.00	0.00	XXX	0
D0230		G	Intraoral periapical ea add	0.00	0.00	0.00	0.00	XXX	0
D0240		R	Intraoral occlusal film	0.00	0.00	0.00	0.00	YYY	N
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	YYY	N
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	YYY	N
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	YYY	N
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	YYY	N
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	YYY	N
D0290		G	Dental film skull/facial bon	0.00	0.00	0.00	0.00	XXX	0
D0310		G	Dental sialography	0.00	0.00	0.00	0.00	XXX	0
D0320		G	Dental tmj arthrogram incl i	0.00	0.00	0.00	0.00	XXX	0
D0321		G	Dental other tmj films	0.00	0.00	0.00	0.00	XXX	0
D0322		G	Dental tomographic survey	0.00	0.00	0.00	0.00	XXX	0
D0330		G	Dental panoramic film	0.00	0.00	0.00	0.00	XXX	0
D0340		G	Dental cephalometric film	0.00	0.00	0.00	0.00	XXX	0
D0415		N	Bacteriologic study	0.00	0.00	0.00	0.00	XXX	0
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	XXX	0
D9460		R	Pulp vitality test	0.00	0.00	0.00	0.00	YYY	N
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	XXX	0
D0471		R	Diagnostic photographs	0.00	0.00	0.00	0.00	YYY	N
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	YYY	N
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	YYY	N
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	YYY	N
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	XXX	0
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	XXX	0
D1201		N	Topical fluor w prophy child	0.00	0.00	0.00	0.00	XXX	0
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	XXX	0
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	XXX	0
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	XXX	0
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	XXX	0
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	XXX	0
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	XXX	0
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	XXX	0
D1510		R	Space maintainer fxd unilat	0.00	0.00	0.00	0.00	YYY	N
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	YYY	N
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	YYY	N
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	YYY	N
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	YYY	N
D1525		R	Remove bilat space maintain	0.00	0.00	0.00	0.00	YYY	N
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	YYY	N
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	XXX	0
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	XXX	0
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	XXX	0
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	XXX	0
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	XXX	0
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	XXX	0
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	XXX	0
D2161		N	Amalgam 4 or > surfaces perm	0.00	0.00	0.00	0.00	XXX	0
D2210		N	Silicate cement per restorat	0.00	0.00	0.00	0.00	XXX	0
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	XXX	0
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	XXX	0
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
D2335		N	Resin 4/> surf or w incis an	0.00	0.00	0.00	0.00	XXX	0
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	XXX	0
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	XXX	0
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	XXX	0
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	XXX	0
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	XXX	0
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	XXX	0
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	XXX	0
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	XXX	0
D2420		N	Dental gold foil two surface	0.00	0.00	0.00	0.00	XXX	0
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	XXX	0
D2510		N	Dental inlay metallic 1 surf	0.00	0.00	0.00	0.00	XXX	0
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	XXX	0
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	XXX	0
D2540		D	Dental onlay metallic	0.00	0.00	0.00	0.00	YYY	N
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	XXX	0
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	XXX	0
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	XXX	0
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	XXX	0
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	XXX	0
D2640		D	Onlay w inlay porcelain/cera	0.00	0.00	0.00	0.00	YYY	N
D2642		N	Dental onlay porcelin 2 surf	0.00	0.00	0.00	0.00	XXX	0
D2643		N	Dental onlay porcelin 3 surf	0.00	0.00	0.00	0.00	XXX	0
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	XXX	0
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	XXX	0
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	XXX	0
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	XXX	0
D2660		D	Onlay w inlay composite/resi	0.00	0.00	0.00	0.00	YYY	N
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	XXX	0
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	XXX	0
D2664		N	Dental onlay resin 4/mre sur	0.00	0.00	0.00	0.00	XXX	0
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	XXX	0
D2720		N	Crown resin w/ high noble me	0.00	0.00	0.00	0.00	XXX	0
D2721		N	Crown resin w/ base metal	0.00	0.00	0.00	0.00	XXX	0
D2722		N	Crown resin w/ noble metal	0.00	0.00	0.00	0.00	XXX	0
D2740		N	Crown porcelain/ceramic subs	0.00	0.00	0.00	0.00	XXX	0
D2750		N	Crown porcelain w/ h noble m	0.00	0.00	0.00	0.00	XXX	0
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	XXX	0
D2752		N	Crown porcelain w/ noble met	0.00	0.00	0.00	0.00	XXX	0
D2790		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	XXX	0
D2791		N	Crown full cast base metal	0.00	0.00	0.00	0.00	XXX	0
D2792		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	XXX	0
D2810		N	Crown 3/4 cast metallic	0.00	0.00	0.00	0.00	XXX	0
D2910		N	Dental recement inlay	0.00	0.00	0.00	0.00	XXX	0
D2920		N	Dental recement crown	0.00	0.00	0.00	0.00	XXX	0
D2930		N	Prefab stnlss steel crwn pri	0.00	0.00	0.00	0.00	XXX	0
D2931		N	Prefab stnlss steel crown pe	0.00	0.00	0.00	0.00	XXX	0
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	XXX	0
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	XXX	0
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	XXX	0
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	XXX	0
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	XXX	0
D2952		N	Post and core cast + crown	0.00	0.00	0.00	0.00	XXX	0
D2954		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	XXX	0
D2955		N	Post removal	0.00	0.00	0.00	0.00	XXX	0
D2960		N	Laminate labial veneer	0.00	0.00	0.00	0.00	XXX	0
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	XXX	0
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	XXX	0
D2970		R	Temporary- fractured tooth	0.00	0.00	0.00	0.00	YYY	N
D2980		N	Crown repair	0.00	0.00	0.00	0.00	XXX	0
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	YYY	N
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	XXX	0
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	XXX	0
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	XXX	0
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	XXX	0
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
D3310		N	Anterior	0.00	0.00	0.00	0.00	XXX	0
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	XXX	0
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	XXX	0
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	XXX	0
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	XXX	0
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	XXX	0
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	XXX	0
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	XXX	0
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	XXX	0
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	XXX	0
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	XXX	0
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	XXX	0
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	XXX	0
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	XXX	0
D3450		N	Root amputation	0.00	0.00	0.00	0.00	XXX	0
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	YYY	N
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	XXX	0
D3910		N	Isolation- tooth w rubb dam	0.00	0.00	0.00	0.00	XXX	0
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	XXX	0
D3950		N	Canal prep/fitting of dowel	0.00	0.00	0.00	0.00	XXX	0
D3960		N	Bleaching of discolored toot	0.00	0.00	0.00	0.00	XXX	0
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	YYY	N
D4210		G	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	XXX	0
D4211		G	Gingivectomy/plasty per toot	0.00	0.00	0.00	0.00	XXX	0
D4220		N	Gingival curettage per quadr	0.00	0.00	0.00	0.00	XXX	0
D4240		N	Gingival flap proc w/ planin	0.00	0.00	0.00	0.00	XXX	0
D4249		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	XXX	0
D4250		R	Mucogingival surg per quadra	0.00	0.00	0.00	0.00	YYY	N
D4260		R	Osseous surgery per quadrant	0.00	0.00	0.00	0.00	YYY	S
D4261		D	Bone replace graft single si	0.00	0.00	0.00	0.00	YYY	S
D4262		D	Bone replace graft mult site	0.00	0.00	0.00	0.00	YYY	N
D4263		R	Bone replce graft first site	0.00	0.00	0.00	0.00	YYY	N
D4264		R	Bone replce graft each add	0.00	0.00	0.00	0.00	YYY	N
D4266		N	Guided tiss regen resorble	0.00	0.00	0.00	0.00	XXX	0
D4267		N	Guided tiss regen nonresorb	0.00	0.00	0.00	0.00	XXX	0
D4268		D	Guided tissue regeneration	0.00	0.00	0.00	0.00	YYY	N
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	YYY	S
D4271		R	Free soft tissue graft proc	0.00	0.00	0.00	0.00	YYY	S
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	YYY	N
D4274		N	Distal/proximal wedge proc	0.00	0.00	0.00	0.00	XXX	0
D4320		N	Provision splnt intracoronal	0.00	0.00	0.00	0.00	XXX	0
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	XXX	0
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	XXX	0
D4345		D	Periodontal scaling w/inflam	0.00	0.00	0.00	0.00	YYY	N
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	YYY	N
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	YYY	N
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	XXX	0
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	XXX	0
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	XXX	0
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	XXX	0
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	XXX	0
D5130		N	Dentures immediat maxillary	0.00	0.00	0.00	0.00	XXX	0
D5140		N	Dentures immediat mandible	0.00	0.00	0.00	0.00	XXX	0
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	XXX	0
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	XXX	0
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	XXX	0
D5214		N	Dentures mandibl part metal	0.00	0.00	0.00	0.00	XXX	0
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	XXX	0
D5410		N	Dentures adjust cmplt maxil	0.00	0.00	0.00	0.00	XXX	0
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	XXX	0
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	XXX	0
D5422		N	Dentures adjust part mandbl	0.00	0.00	0.00	0.00	XXX	0
D5510		N	Dentur repr broken compl bas	0.00	0.00	0.00	0.00	XXX	0
D5520		N	Replace denture teeth complt	0.00	0.00	0.00	0.00	XXX	0
D5610		N	Dentures repair resin base	0.00	0.00	0.00	0.00	XXX	0
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
D5630		N	Rep partial denture clasp	0.00	0.00	0.00	0.00	XXX	0
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	XXX	0
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	XXX	0
D5660		N	Add clasp to partial denture	0.00	0.00	0.00	0.00	XXX	0
D5710		N	Dentures rebase cmplt maxil	0.00	0.00	0.00	0.00	XXX	0
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	XXX	0
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	XXX	0
D5721		N	Dentures rebase part mandbl	0.00	0.00	0.00	0.00	XXX	0
D5730		N	Denture reln cmplt maxil ch	0.00	0.00	0.00	0.00	XXX	0
D5731		N	Denture reln cmplt mand chr	0.00	0.00	0.00	0.00	XXX	0
D5740		N	Denture reln part maxil chr	0.00	0.00	0.00	0.00	XXX	0
D5741		N	Denture reln part mand chr	0.00	0.00	0.00	0.00	XXX	0
D5750		N	Denture reln cmplt max lab	0.00	0.00	0.00	0.00	XXX	0
D5751		N	Denture reln cmplt mand lab	0.00	0.00	0.00	0.00	XXX	0
D5760		N	Denture reln part maxil lab	0.00	0.00	0.00	0.00	XXX	0
D5761		N	Denture reln part mand lab	0.00	0.00	0.00	0.00	XXX	0
D5810		N	Denture interm cmplt maxill	0.00	0.00	0.00	0.00	XXX	0
D5811		N	Denture interm cmplt mandbl	0.00	0.00	0.00	0.00	XXX	0
D5820		N	Denture interm part maxill	0.00	0.00	0.00	0.00	XXX	0
D5821		N	Denture interm part mandbl	0.00	0.00	0.00	0.00	XXX	0
D5850		N	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	XXX	0
D5851		N	Denture tiss conditn mandbl	0.00	0.00	0.00	0.00	XXX	0
D5860		N	Overdenture complete	0.00	0.00	0.00	0.00	XXX	0
D5861		N	Overdenture partial	0.00	0.00	0.00	0.00	XXX	0
D5862		N	Precision attachment	0.00	0.00	0.00	0.00	XXX	0
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	XXX	0
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	YYY	N
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	YYY	N
D5913		G	Nasal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5914		G	Auricular prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5915		G	Orbital prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5916		G	Ocular prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5919		G	Facial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5922		G	Nasal septal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5923		G	Ocular prosthesis interim	0.00	0.00	0.00	0.00	XXX	0
D5924		G	Cranial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5925		G	Facial augmentation implant	0.00	0.00	0.00	0.00	XXX	0
D5926		G	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5927		G	Auricular replacement	0.00	0.00	0.00	0.00	XXX	0
D5928		G	Orbital replacement	0.00	0.00	0.00	0.00	XXX	0
D5929		G	Facial replacement	0.00	0.00	0.00	0.00	XXX	0
D5931		G	Surgical obturator	0.00	0.00	0.00	0.00	XXX	0
D5932		G	Postsurgical obturator	0.00	0.00	0.00	0.00	XXX	0
D5933		G	Refitting of obturator	0.00	0.00	0.00	0.00	XXX	0
D5934		G	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5935		G	Mandibular denture prosth	0.00	0.00	0.00	0.00	XXX	0
D5936		G	Temp obturator prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5937		G	Trismus appliance	0.00	0.00	0.00	0.00	XXX	0
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	YYY	N
D5952		G	Pediatric speech aid	0.00	0.00	0.00	0.00	XXX	0
D5953		G	Adult speech aid	0.00	0.00	0.00	0.00	XXX	0
D5954		G	Superimposed prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5955		G	Palatal lift prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5958		G	Intraoral con def inter plt	0.00	0.00	0.00	0.00	XXX	0
D5959		G	Intraoral con def mod palat	0.00	0.00	0.00	0.00	XXX	0
D5960		G	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5982		G	Surgical stent	0.00	0.00	0.00	0.00	XXX	0
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	YYY	N
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	YYY	N
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	YYY	N
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	XXX	0
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	YYY	N
D5988		R	Surgical splint	0.00	0.00	0.00	0.00	YYY	N
D5999		G	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D6010		G	Odontics endosteal implant	0.00	0.00	0.00	0.00	XXX	0
D6020		G	Odontics abutment placement	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
D6030		D	Prosthodont endosseous impl	0.00	0.00	0.00	0.00	YYY	N
D6040		G	Odontics eposteal implant	0.00	0.00	0.00	0.00	XXX	0
D6050		G	Odontics transosteal implnt	0.00	0.00	0.00	0.00	XXX	0
D6055		G	Implant connecting bar	0.00	0.00	0.00	0.00	XXX	0
D6080		G	Implant maintenance	0.00	0.00	0.00	0.00	XXX	0
D6090		G	Repair implant	0.00	0.00	0.00	0.00	XXX	0
D6095		G	Odontics repr abutment	0.00	0.00	0.00	0.00	XXX	0
D6100		G	Removal of implant	0.00	0.00	0.00	0.00	XXX	0
D6199		G	Implant procedure	0.00	0.00	0.00	0.00	XXX	0
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	XXX	0
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	XXX	0
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	XXX	0
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	XXX	0
D6242		N	Bridge porcelain nobel metal	0.00	0.00	0.00	0.00	XXX	0
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	XXX	0
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	XXX	0
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	XXX	0
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	XXX	0
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	XXX	0
D6540		D	Retainer metallic cuspe	0.00	0.00	0.00	0.00	YYY	N
D6543		N	Dental retainr onlay 3 surf	0.00	0.00	0.00	0.00	XXX	0
D6544		N	Dental retainr onlay 4/more	0.00	0.00	0.00	0.00	XXX	0
D6545		N	Dental retainr cast metl	0.00	0.00	0.00	0.00	XXX	0
D6720		N	Retain crown resin w hi nble	0.00	0.00	0.00	0.00	XXX	0
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	XXX	0
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	XXX	0
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	XXX	0
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	XXX	0
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	XXX	0
D6780		N	Crown 3/4 high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6790		N	Crown full high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6791		N	Crown full base metal cast	0.00	0.00	0.00	0.00	XXX	0
D6792		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	XXX	0
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	YYY	N
D6930		N	Dental recement bridge	0.00	0.00	0.00	0.00	XXX	0
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	XXX	0
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	XXX	0
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	XXX	0
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	XXX	0
D6972		N	Prefab post & core plus reta	0.00	0.00	0.00	0.00	XXX	0
D6973		N	Core build up for retainer	0.00	0.00	0.00	0.00	XXX	0
D6975		N	Coping metal	0.00	0.00	0.00	0.00	XXX	0
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	XXX	0
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	XXX	0
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	YYY	S
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	YYY	S
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	YYY	S
D7210		R	Rem imp tooth w mucoper flp	0.00	0.00	0.00	0.00	YYY	S
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	YYY	S
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	YYY	S
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	YYY	S
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	YYY	S
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	YYY	S
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	YYY	S
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	XXX	0
D7271		D	Tooth implantation	0.00	0.00	0.00	0.00	YYY	N
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	XXX	0
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	XXX	0
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	XXX	0
D7285		G	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	XXX	0
D7286		G	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	XXX	0
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	XXX	0
D7291		R	Transseptal fiberotomy	0.00	0.00	0.00	0.00	YYY	N
D7310		G	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	XXX	0
D7320		G	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
D7340		G	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	XXX	0
D7350		G	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	XXX	0
D7410		G	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7420		G	Lesion > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7430		G	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7431		G	Benign tumor exc > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7440		G	Malig tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7441		G	Malig tumor > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7450		G	Rem odontogen cyst to 1.25cm	0.00	0.00	0.00	0.00	XXX	0
D7451		G	Rem odontogen cyst > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7460		G	Rem nonodonto cyst to 1.25cm	0.00	0.00	0.00	0.00	XXX	0
D7461		G	Rem nonodonto cyst > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7465		G	Lesion destruction	0.00	0.00	0.00	0.00	XXX	0
D7470		G	Rem exostosis maxilla/mandib	0.00	0.00	0.00	0.00	XXX	0
D7480		G	Partial ostectomy	0.00	0.00	0.00	0.00	XXX	0
D7490		G	Mandible resection	0.00	0.00	0.00	0.00	XXX	0
D7510		G	I&d abec intraoral soft tiss	0.00	0.00	0.00	0.00	XXX	0
D7520		G	I&d abscess extraoral	0.00	0.00	0.00	0.00	XXX	0
D7530		G	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	XXX	0
D7540		G	Removal of fb reaction	0.00	0.00	0.00	0.00	XXX	0
D7550		G	Removal of sloughed off bone	0.00	0.00	0.00	0.00	XXX	0
D7560		G	Maxillary sinusotomy	0.00	0.00	0.00	0.00	XXX	0
D7610		G	Maxilla open reduct simple	0.00	0.00	0.00	0.00	XXX	0
D7620		G	Clsd reduct simpl maxilla fx	0.00	0.00	0.00	0.00	XXX	0
D7630		G	Open red simpl mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7640		G	Clsd red simpl mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7650		G	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	XXX	0
D7660		G	Clsd red simp malar/zygom fx	0.00	0.00	0.00	0.00	XXX	0
D7670		G	Open red simple alveolus fx	0.00	0.00	0.00	0.00	XXX	0
D7680		G	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	XXX	0
D7710		G	Maxilla open reduct compound	0.00	0.00	0.00	0.00	XXX	0
D7720		G	Clsd reduct compd maxilla fx	0.00	0.00	0.00	0.00	XXX	0
D7730		G	Open reduct compd mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7740		G	Clsd reduct compd mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7750		G	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	XXX	0
D7760		G	Clsd red comp malar/zygma fx	0.00	0.00	0.00	0.00	XXX	0
D7770		G	Open reduc compd alveolus fx	0.00	0.00	0.00	0.00	XXX	0
D7780		G	Reduct compnd facial bone fx	0.00	0.00	0.00	0.00	XXX	0
D7810		G	Tmj open reduct-dislocation	0.00	0.00	0.00	0.00	XXX	0
D7820		G	Closed tmp manipulation	0.00	0.00	0.00	0.00	XXX	0
D7830		G	Tmj manipulation under anest	0.00	0.00	0.00	0.00	XXX	0
D7840		G	Removal of tmj condyle	0.00	0.00	0.00	0.00	XXX	0
D7850		G	Tmj meniscectomy	0.00	0.00	0.00	0.00	XXX	0
D7852		G	Tmj repair of joint disc	0.00	0.00	0.00	0.00	XXX	0
D7854		G	Tmj excien of joint membrane	0.00	0.00	0.00	0.00	XXX	0
D7856		G	Tmj cutting of a muscle	0.00	0.00	0.00	0.00	XXX	0
D7858		G	Tmj reconstruction	0.00	0.00	0.00	0.00	XXX	0
D7860		G	Tmj cutting into joint	0.00	0.00	0.00	0.00	XXX	0
D7865		G	Tmj reshaping components	0.00	0.00	0.00	0.00	XXX	0
D7870		G	Tmj aspiration joint fluid	0.00	0.00	0.00	0.00	XXX	0
D7872		G	Tmj diagnostic arthrocopy	0.00	0.00	0.00	0.00	XXX	0
D7873		G	Tmj arthrocopy lysis adhesn	0.00	0.00	0.00	0.00	XXX	0
D7874		G	Tmj arthrocopy disc reposit	0.00	0.00	0.00	0.00	XXX	0
D7875		G	Tmj arthrocopy synovectomy	0.00	0.00	0.00	0.00	XXX	0
D7876		G	Tmj arthrocopy discectomy	0.00	0.00	0.00	0.00	XXX	0
D7877		G	Tmj arthrocopy debridement	0.00	0.00	0.00	0.00	XXX	0
D7880		G	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	XXX	0
D7899		G	Tmj unspecified therapy	0.00	0.00	0.00	0.00	XXX	0
D7910		G	Dent suture recant wnd to 5cm	0.00	0.00	0.00	0.00	XXX	0
D7911		G	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	XXX	0
D7912		G	Suture complicate wnd > 5 cm	0.00	0.00	0.00	0.00	XXX	0
D7920		G	Dental skin graft	0.00	0.00	0.00	0.00	XXX	0
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	YYY	S
D7941		G	Bone cutting ramus closed	0.00	0.00	0.00	0.00	XXX	0
D7942		G	Bone cutting ramus open	0.00	0.00	0.00	0.00	XXX	0
D7943		G	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
D7944		G	Bone cutting segmented	0.00	0.00	0.00	0.00	XXX	0
D7945		G	Bone cutting body mandible	0.00	0.00	0.00	0.00	XXX	0
D7948		G	Reconstruction maxilla total	0.00	0.00	0.00	0.00	XXX	0
D7947		G	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	XXX	0
D7948		G	Reconstruct midface no graft	0.00	0.00	0.00	0.00	XXX	0
D7949		G	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	XXX	0
D7950		G	Mandible graft	0.00	0.00	0.00	0.00	XXX	0
D7955		G	Repair maxillofacial defects	0.00	0.00	0.00	0.00	XXX	0
D7960		G	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	XXX	0
D7970		G	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	XXX	0
D7971		G	Excision pericoronal gingiva	0.00	0.00	0.00	0.00	XXX	0
D7980		G	Sialolithotomy	0.00	0.00	0.00	0.00	XXX	0
D7981		G	Excision of salivary gland	0.00	0.00	0.00	0.00	XXX	0
D7982		G	Sialodochoplasty	0.00	0.00	0.00	0.00	XXX	0
D7983		G	Closure of salivary fistula	0.00	0.00	0.00	0.00	XXX	0
D7990		G	Emergency tracheotomy	0.00	0.00	0.00	0.00	XXX	0
D7991		G	Dental coronoidectomy	0.00	0.00	0.00	0.00	XXX	0
D7993		D	Implant facial bones	0.00	0.00	0.00	0.00	YYY	N
D7994		D	Implant chin	0.00	0.00	0.00	0.00	YYY	N
D7995		G	Synthetic graft facial bones	0.00	0.00	0.00	0.00	XXX	0
D7996		G	Implant mandible for augment	0.00	0.00	0.00	0.00	XXX	0
D7999		G	Oral surgery procedure	0.00	0.00	0.00	0.00	XXX	0
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	XXX	0
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	XXX	0
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	XXX	0
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	XXX	0
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	XXX	0
D8060		N	Intercep dental tx transitn	0.00	0.00	0.00	0.00	XXX	0
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	XXX	0
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	XXX	0
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	XXX	0
D8110		D	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	YYY	N
D8120		D	Fixed appliance therapy guid	0.00	0.00	0.00	0.00	YYY	N
D8210		N	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	XXX	0
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	XXX	0
D8360		D	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	YYY	N
D8370		D	Fixed appliance interceptive	0.00	0.00	0.00	0.00	YYY	N
D8460		D	Trans dentit class 1 malocci	0.00	0.00	0.00	0.00	YYY	N
D8470		D	Class ii malocclusion trnstn	0.00	0.00	0.00	0.00	YYY	N
D8480		D	Class iii malocclusion trnst	0.00	0.00	0.00	0.00	YYY	N
D8560		D	Class i tx atyp/ext skel cas	0.00	0.00	0.00	0.00	YYY	N
D8570		D	Class ii malocclusion perman	0.00	0.00	0.00	0.00	YYY	N
D8580		D	Class iii malocclusion permn	0.00	0.00	0.00	0.00	YYY	N
D8650		D	Tx atypical/extend skel case	0.00	0.00	0.00	0.00	YYY	N
D8660		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	XXX	0
D8670		N	Periodic orthodontc tx visit	0.00	0.00	0.00	0.00	XXX	0
D8680		N	Orthodontic retention	0.00	0.00	0.00	0.00	XXX	0
D8690		N	Orthodontic treatment	0.00	0.00	0.00	0.00	XXX	0
D8750		D	Post-treatment stabilization	0.00	0.00	0.00	0.00	YYY	N
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	XXX	0
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	YYY	N
D9210		G	Dent anesthesia w/o surgery	0.00	0.00	0.00	0.00	XXX	0
D9211		G	Regional block anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9212		G	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9215		G	Local anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9220		G	General anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9221		G	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	XXX	0
D9230		R	Analgesia	0.00	0.00	0.00	0.00	YYY	N
D9240		G	Intravenous sedation	0.00	0.00	0.00	0.00	XXX	0
D9310		G	Dental consultation	0.00	0.00	0.00	0.00	XXX	0
D9410		G	Dental house call	0.00	0.00	0.00	0.00	XXX	0
D9420		G	Hospital call	0.00	0.00	0.00	0.00	XXX	0
D9430		G	Office visit during hours	0.00	0.00	0.00	0.00	XXX	0
D9440		G	Office visit after hours	0.00	0.00	0.00	0.00	XXX	0
D9610		G	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	XXX	0
D9630		R	Other drugs/medicaments	0.00	0.00	0.00	0.00	YYY	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
D9910		H	Dent appl desensitizing med	0.00	0.00	0.00	0.00	XXX	0
D9920		H	Behavior management	0.00	0.00	0.00	0.00	XXX	0
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	YYY	N
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	YYY	N
D9941		R	Fabrication athletic guard	0.00	0.00	0.00	0.00	XXX	0
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	YYY	N
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	YYY	N
D9952		R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	YYY	N
D9970		H	Enamel microabrasion	0.00	0.00	0.00	0.00	XXX	0
D9999		G	Adjunctive procedure	0.00	0.00	0.00	0.00	XXX	0
G0001		X	Drawing blood for specimen	0.00	0.00	0.00	0.00	XXX	0
G0002		A	Temporary urinary catheter	0.50	0.70	0.02	1.22	000	S
G0004		A	ECG transm phys review & int	0.52	7.31	0.65	8.48	XXX	N
G0005		A	ECG 24 hour recording	0.00	1.18	0.09	1.27	XXX	N
G0006		A	ECG transmission & analysis	0.00	5.73	0.51	6.24	XXX	N
G0007		A	ECG phy review & interpret	0.52	0.40	0.05	0.97	XXX	N
G0008		K	Admin influenza virus vac	0.00	0.00	0.00	0.00	XXX	0
G0009		K	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	XXX	0
G0010		K	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	XXX	0
G0015		A	Post symptom ECG tracing	0.00	5.73	0.51	6.24	XXX	N
G0016		A	Post symptom ECG md review	0.52	0.40	0.05	0.97	XXX	N
G0020		D	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	010	S
G0021		D	Prepare orbital prosthesis	0.00	0.00	0.00	0.00	090	S
G0025		A	Collagen skin test kit	0.00	0.95	0.00	0.95	XXX	N
G0026		X	Fecal leukocyte examination	0.00	0.00	0.00	0.00	XXX	0
G0027		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
G0030		C	PET imaging prev PET single	0.00	0.00	0.00	0.00	XXX	N
G0030	26	A	PET imaging prev PET single	1.09	0.48	0.07	1.64	XXX	N
G0030	TC	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	XXX	N
G0031		C	PET imaging prev PET multiple	0.00	0.00	0.00	0.00	XXX	N
G0031	26	A	PET imaging prev PET multiple	1.46	0.65	0.10	2.21	XXX	N
G0031	TC	C	PET imaging prev PET multiple	0.00	0.00	0.00	0.00	XXX	N
G0032		C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	XXX	N
G0032	26	A	PET follow SPECT 78464 singl	1.09	0.48	0.07	1.64	XXX	N
G0032	TC	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	XXX	N
G0033		C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	XXX	N
G0033	26	A	PET follow SPECT 78464 mult	1.46	0.65	0.10	2.21	XXX	N
G0033	TC	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	XXX	N
G0034		C	PET follow SPECT 78465 singl	0.00	0.00	0.00	0.00	XXX	N
G0034	26	A	PET follow SPECT 78465 singl	1.09	0.48	0.07	1.64	XXX	N
G0034	TC	C	PET follow SPECT 78465 singl	0.00	0.00	0.00	0.00	XXX	N
G0035		C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	XXX	N
G0035	26	A	PET follow SPECT 78465 mult	1.46	0.65	0.10	2.21	XXX	N
G0035	TC	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	XXX	N
G0036		C	PET follow comry angio sing	0.00	0.00	0.00	0.00	XXX	N
G0036	26	A	PET follow comry angio sing	1.09	0.48	0.07	1.64	XXX	N
G0036	TC	C	PET follow comry angio sing	0.00	0.00	0.00	0.00	XXX	N
G0037		C	PET follow comry angio mult	0.00	0.00	0.00	0.00	XXX	N
G0037	26	A	PET follow comry angio mult	1.46	0.65	0.10	2.21	XXX	N
G0037	TC	C	PET follow comry angio mult	0.00	0.00	0.00	0.00	XXX	N
G0038		C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	XXX	N
G0038	26	A	PET follow myocard perf sing	1.09	0.48	0.07	1.64	XXX	N
G0038	TC	C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	XXX	N
G0039		C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	XXX	N
G0039	26	A	PET follow myocard perf mult	1.46	0.65	0.10	2.21	XXX	N
G0039	TC	C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	XXX	N
G0040		C	PET follow stress echo singl	0.00	0.00	0.00	0.00	XXX	N
G0040	26	A	PET follow stress echo singl	1.09	0.48	0.07	1.64	XXX	N
G0040	TC	C	PET follow stress echo singl	0.00	0.00	0.00	0.00	XXX	N
G0041		C	PET follow stress echo mult	0.00	0.00	0.00	0.00	XXX	N
G0041	26	A	PET follow stress echo mult	1.46	0.65	0.10	2.21	XXX	N
G0041	TC	C	PET follow stress echo mult	0.00	0.00	0.00	0.00	XXX	N
G0042		C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	XXX	N
G0042	26	A	PET follow ventriculogm sing	1.09	0.48	0.07	1.64	XXX	N
G0042	TC	C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	XXX	N
G0043		C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
G0043	26	A	PET follow ventriculogm mult	1.46	0.65	0.10	2.21	XXX	N
G0043	TC	C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	XXX	N
G0044		C	PET following rest ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0044	26	A	PET following rest ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0044	TC	C	PET following rest ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0045		C	PET following rest ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0045	26	A	PET following rest ECG mult	1.46	0.65	0.10	2.21	XXX	N
G0045	TC	C	PET following rest ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0046		C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0046	26	A	PET follow stress ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0046	TC	C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0047		C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0047	26	A	PET follow stress ECG mult	1.46	0.65	0.10	2.21	XXX	N
G0047	TC	C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0050		A	Residual urine by ultrasound	0.00	0.81	0.05	0.86	XXX	N
G0054		X	Blood cholesterol test	0.00	0.00	0.00	0.00	XXX	0
G0055		X	Glucose post dose measure	0.00	0.00	0.00	0.00	XXX	0
G0056		X	Glucose tolerance 3 specimen	0.00	0.00	0.00	0.00	XXX	0
G0057		X	Glucose tolerance>3 specimen	0.00	0.00	0.00	0.00	XXX	0
G0058		X	Auto multichannel 20 tests	0.00	0.00	0.00	0.00	XXX	0
G0059		X	Auto multichannel 21 tests	0.00	0.00	0.00	0.00	XXX	0
G0060		X	Auto multichannel 22 tests	0.00	0.00	0.00	0.00	XXX	0
G0061		N	Lung volume reduction surg	#17.62	15.81	3.01	36.44	XXX	0
H5300		G	Occupational therapy	#0.32	0.24	0.03	0.59	XXX	0
J0110		D	Administration injection	0.00	0.00	0.00	0.00	XXX	0
J0120		E	Tetracyclin injection	0.00	0.00	0.00	0.00	XXX	0
J0150		E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	XXX	0
J0170		E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	XXX	0
J0190		E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	XXX	0
J0205		E	Alglucerase injection	0.00	0.00	0.00	0.00	XXX	0
J0210		E	Methyldopate hcl injection	0.00	0.00	0.00	0.00	XXX	0
J0256		E	Alpha 1-proteinase 500 MG	0.00	0.00	0.00	0.00	XXX	0
J0280		E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0290		E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0295		E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	XXX	0
J0300		E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0330		E	Succinycholine chloride inj	0.00	0.00	0.00	0.00	XXX	0
J0340		E	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	XXX	0
J0350		E	Injection anistreplase 30 u	0.00	0.00	0.00	0.00	XXX	0
J0360		E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J0380		E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	XXX	0
J0390		E	Chloroquine injection	0.00	0.00	0.00	0.00	XXX	0
J0400		E	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	XXX	0
J0460		E	Atropine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J0470		E	Dimecaprol injection	0.00	0.00	0.00	0.00	XXX	0
J0475		E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	XXX	0
J0500		E	Dicyclomine injection	0.00	0.00	0.00	0.00	XXX	0
J0510		E	Benzquinamide injection	0.00	0.00	0.00	0.00	XXX	0
J0515		E	Inj benztropine mesylate	0.00	0.00	0.00	0.00	XXX	0
J0520		E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	XXX	0
J0530		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0585		E	Botulinum toxin a per 100 u	0.00	0.00	0.00	0.00	XXX	0
J0590		E	Ethylnorepinephrine hcl inj	0.00	0.00	0.00	0.00	XXX	0
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	XXX	0
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	XXX	0
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	XXX	0
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	XXX	0
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	XXX	0
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	XXX	0
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	XXX	0
J0680		D	Deslanoside injection	0.00	0.00	0.00	0.00	XXX	0

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
J0690			Cefazolin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0694			Cefoxitin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0695			Cefonocid sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0696			Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0697			Sterile cefuroxime injection	0.00	0.00	0.00	0.00	XXX	0
J0698			Cefotaxime sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0702			Betamethasone acet&sod phosp	0.00	0.00	0.00	0.00	XXX	0
J0704			Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	XXX	0
J0710			Caphapirin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0712			Inj ceftazidime per 500 mg	0.00	0.00	0.00	0.00	XXX	0
J0715			Ceftizoxime sodium / 500 MG	0.00	0.00	0.00	0.00	XXX	0
J0720			Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	XXX	0
J0725			Chorionic gonadotropin/1000u	0.00	0.00	0.00	0.00	XXX	0
J0730			Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	XXX	0
J0743			Cilastatin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0745			Inj codeine phosphate /30 MG	0.00	0.00	0.00	0.00	XXX	0
J0760			Colchicine injection	0.00	0.00	0.00	0.00	XXX	0
J0770			Colistimethate sodium inj	0.00	0.00	0.00	0.00	XXX	0
J0780			Prochlorperazine injection	0.00	0.00	0.00	0.00	XXX	0
J0800			Corticotropin injection	0.00	0.00	0.00	0.00	XXX	0
J0810			Cortisone injection	0.00	0.00	0.00	0.00	XXX	0
J0820			Cortigel 40 injection	0.00	0.00	0.00	0.00	XXX	0
J0835			Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	XXX	0
J0850			Cytomegalovirus imm IV /vial	0.00	0.00	0.00	0.00	XXX	0
J0895			Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	XXX	0
J0900			Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0
J0945			Brompheniramine maleate inj	0.00	0.00	0.00	0.00	XXX	0
J0970			Estradiol valerate injection	0.00	0.00	0.00	0.00	XXX	0
J1000			Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	XXX	0
J1020			Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1030			Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1040			Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1050			Medroxyprogesterone inj	0.00	0.00	0.00	0.00	XXX	0
J1055			Medroxyprogester acetate inj	0.00	0.00	0.00	0.00	XXX	0
J1060			Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	XXX	0
J1070			Testosterone cypionat 100 MG	0.00	0.00	0.00	0.00	XXX	0
J1080			Testosterone cypionat 200 MG	0.00	0.00	0.00	0.00	XXX	0
J1090			Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	XXX	0
J1095			Inj dexamethasone acetate	0.00	0.00	0.00	0.00	XXX	0
J1100			Dexamethasone sodium phos	0.00	0.00	0.00	0.00	XXX	0
J1110			Inj dihydroergotamine mesylt	0.00	0.00	0.00	0.00	XXX	0
J1120			Acetazolamid sodium injectio	0.00	0.00	0.00	0.00	XXX	0
J1160			Digoxin injection	0.00	0.00	0.00	0.00	XXX	0
J1165			Phenytoin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1170			Hydromorphone injection	0.00	0.00	0.00	0.00	XXX	0
J1180			Dyphylline injection	0.00	0.00	0.00	0.00	XXX	0
J1200			Diphenhydramine hcl injectio	0.00	0.00	0.00	0.00	XXX	0
J1205			Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	XXX	0
J1212			Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	XXX	0
J1230			Methadone injection	0.00	0.00	0.00	0.00	XXX	0
J1240			Dimenhydrinate injection	0.00	0.00	0.00	0.00	XXX	0
J1245			Dipyridamole injection	0.00	0.00	0.00	0.00	XXX	0
J1250			Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	XXX	0
J1320			Amitriptyline injection	0.00	0.00	0.00	0.00	XXX	0
J1330			Ergonovine maleate injection	0.00	0.00	0.00	0.00	XXX	0
J1340			Aqueous/saline placebo inj	0.00	0.00	0.00	0.00	XXX	0
J1362			Erythromycin glucep / 250 MG	0.00	0.00	0.00	0.00	XXX	0
J1364			Erythro lactobionate /500 MG	0.00	0.00	0.00	0.00	XXX	0
J1380			Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1390			Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1410			Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	XXX	0
J1435			Injection estrone per 1 MG	0.00	0.00	0.00	0.00	XXX	0
J1436			Etidronate disodium inj	0.00	0.00	0.00	0.00	XXX	0
J1440			Filgrastim 300 mcg injection	0.00	0.00	0.00	0.00	XXX	0
J1441			Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	XXX	0
J1455			Foscarnet sodium injection	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1490		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1560		E	Gamma globulin > 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1561		E	Immune globulin injection	0.00	0.00	0.00	0.00	XXX	0
J1562		E	Immune globulin 10% /5 grams	0.00	0.00	0.00	0.00	XXX	0
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	XXX	0
J1600		E	Gold sodium thiomalate inj	0.00	0.00	0.00	0.00	XXX	0
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	XXX	0
J1620		E	Gonadorelin hydroch/ 100 mcg	0.00	0.00	0.00	0.00	XXX	0
J1625		E	Granisetron hydrochlor/1 MG	0.00	0.00	0.00	0.00	XXX	0
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	XXX	0
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	XXX	0
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	XXX	0
J1644		E	Inj heparin sodium per 1000u	0.00	0.00	0.00	0.00	XXX	0
J1650		E	Inj enoxaparin sodium 30 mg	0.00	0.00	0.00	0.00	XXX	0
J1660		D	Histamine injection	0.00	0.00	0.00	0.00	XXX	0
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	XXX	0
J1690		E	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	XXX	0
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	XXX	0
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	XXX	0
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	XXX	0
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	XXX	0
J1739		E	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	XXX	0
J1741		E	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	XXX	0
J1760		E	Iron dextran 2 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1770		E	Iron dextran 5 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1780		E	Iron dextran 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1785		E	Injection imiglucerase /unit	0.00	0.00	0.00	0.00	XXX	0
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	XXX	0
J1800		E	Propranolol injection	0.00	0.00	0.00	0.00	XXX	0
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	XXX	0
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	XXX	0
J1830		E	Interferon beta-1b / .25 MG	0.00	0.00	0.00	0.00	XXX	0
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	XXX	0
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	XXX	0
J1930		E	Propiomazine injection	0.00	0.00	0.00	0.00	XXX	0
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	XXX	0
J1950		E	Leuprolide acetate /3.75 MG	0.00	0.00	0.00	0.00	XXX	0
J1955		E	Inj levocarnitine per 1 gm	0.00	0.00	0.00	0.00	XXX	0
J1960		E	Levorphanol tartrate inj	0.00	0.00	0.00	0.00	XXX	0
J1970		E	Methotrimeprazine injection	0.00	0.00	0.00	0.00	XXX	0
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J1990		E	Chlordiazepoxide injection	0.00	0.00	0.00	0.00	XXX	0
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	XXX	0
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	XXX	0
J2050		E	Liver injection	0.00	0.00	0.00	0.00	XXX	0
J2060		E,D	Lorazepem injection	0.00	0.00	0.00	0.00	XXX	0
J2100		D	Luminal sodium injection	0.00	0.00	0.00	0.00	XXX	0
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	XXX	0
J2175		E	Meperidine hydrochl /100 MG	0.00	0.00	0.00	0.00	XXX	0
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	XXX	0
J2190		D	Mersalyl & theophylline inj	0.00	0.00	0.00	0.00	XXX	0
J2210		E	Methylergonovin maleate inj	0.00	0.00	0.00	0.00	XXX	0
J2240		E	Metocurine iodide injection	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2260		E	Inj milrinone lactate / 5 ML	0.00	0.00	0.00	0.00	XXX	0
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	XXX	0
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	XXX	0
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	XXX	0
J2330		E	Thiothixene injection	0.00	0.00	0.00	0.00	XXX	0
J2350		E	Niacinamide/niacin injection	0.00	0.00	0.00	0.00	XXX	0
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	XXX	0
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2430		E	Pamidronate disodium /30 MG	0.00	0.00	0.00	0.00	XXX	0
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	XXX	0
J2480		E	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	XXX	0
J2485		E	Tridihexethyl chloride inj	0.00	0.00	0.00	0.00	XXX	0
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	XXX	0
J2512		E	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	XXX	0
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	XXX	0
J2545		E	Pentamidine isethionate/300mg	0.00	0.00	0.00	0.00	XXX	0
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	XXX	0
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	XXX	0
J2640		E	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	XXX	0
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	XXX	0
J2670		E	Tolazoline hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2675		E	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	XXX	0
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	XXX	0
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2700		E	Oxacillin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J2710		E	Neostigmine methylsilfe inj	0.00	0.00	0.00	0.00	XXX	0
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	XXX	0
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	XXX	0
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	XXX	0
J2760		E	Phentolaine mesylate inj	0.00	0.00	0.00	0.00	XXX	0
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2790		E	Rho d immune globulin inj	0.00	0.00	0.00	0.00	XXX	0
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	XXX	0
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	XXX	0
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	XXX	0
J2860		E	Secobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2910		E	Aurothioglucose injection	0.00	0.00	0.00	0.00	XXX	0
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	XXX	0
J2914		D	Sodium salicylate injection	0.00	0.00	0.00	0.00	XXX	0
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	XXX	0
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	XXX	0
J2950		E	Promazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2970		E	Methicillin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J2995		E	Inj streptokinase /250000 IU	0.00	0.00	0.00	0.00	XXX	0
J2996		E	Alteplase recombinant inj	0.00	0.00	0.00	0.00	XXX	0
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	XXX	0
J3005		E	Strontium-89 chloride /10 ML	0.00	0.00	0.00	0.00	XXX	0
J3010		E	Fentanyl citrate injection	0.00	0.00	0.00	0.00	XXX	0
J3030		E	Sumatriptan succinate / 6 MG	0.00	0.00	0.00	0.00	XXX	0
J3070		E	Pentazocine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3080		E	Chlorprothixene injection	0.00	0.00	0.00	0.00	XXX	0
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	XXX	0
J3150		E	Testosterone propionate inj	0.00	0.00	0.00	0.00	XXX	0
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	XXX	0
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	XXX	0
J3270		E	Imipramine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	XXX	0
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	XXX	0
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	XXX	0
J3303		E	Triamcinolone hexacetonl inj	0.00	0.00	0.00	0.00	XXX	0
J3305		E	Inj trimetrexate glucoronate	0.00	0.00	0.00	0.00	XXX	0
J3310		E	Perphenazine injection	0.00	0.00	0.00	0.00	XXX	0
J3320		E	Spectinomycin di-hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3340		D	Cryptenamine acetate inj	0.00	0.00	0.00	0.00	XXX	0
J3350		E	Urea injection	0.00	0.00	0.00	0.00	XXX	0
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	XXX	0
J3364		E	Urokinase 5000 IU injection	0.00	0.00	0.00	0.00	XXX	0
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	XXX	0
J3370		E	Vancomycin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3380		D	Isoxsuprine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3390		E	Methoxamine injection	0.00	0.00	0.00	0.00	XXX	0
J3400		E	Triflupromazine hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3410		E	Hydroxyzine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	XXX	0
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	XXX	0
J3450		E	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	XXX	0
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	XXX	0
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	XXX	0
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	XXX	0
J3500		D	Vitamin therapy	0.00	0.00	0.00	0.00	XXX	0
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	XXX	0
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	XXX	0
J3535		E	Metered dose inhaler drug	0.00	0.00	0.00	0.00	XXX	0
J3540		D	Autogenous blood extract	0.00	0.00	0.00	0.00	XXX	0
J3550		D	Intra-arterial oxygen inj	0.00	0.00	0.00	0.00	XXX	0
J3560		D	Adrenal cortex extract	0.00	0.00	0.00	0.00	XXX	0
J3570		N	Laetrile amygdalin vit B17	0.00	0.00	0.00	0.00	XXX	0
J6015		D	Typhus immun/injection	0.00	0.00	0.00	0.00	XXX	0
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX	0
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX	0
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	XXX	0
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX	0
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	XXX	0
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	XXX	0
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	XXX	0
J7080		D	5% albumisol infusion	0.00	0.00	0.00	0.00	XXX	0
J7090		D	25% albumisol infusion	0.00	0.00	0.00	0.00	XXX	0
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	XXX	0
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	XXX	0
J7120		E	Ringers lactate infusion	0.00	0.00	0.00	0.00	XXX	0
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	XXX	0
J7140		N	Prescription oral drug	0.00	0.00	0.00	0.00	XXX	0
J7150		N	Prescription oral chemo drug	0.00	0.00	0.00	0.00	XXX	0
J7190		X	Factor viii	0.00	0.00	0.00	0.00	XXX	0
J7191		X	Factor VIII (porcine)	0.00	0.00	0.00	0.00	XXX	0
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	XXX	0
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	XXX	0
J7195		X	Othr hemophilia clot factors	0.00	0.00	0.00	0.00	XXX	0
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	XXX	0
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	XXX	0
J7500		X	Azathiop po tab 50mg 100s ea	0.00	0.00	0.00	0.00	XXX	0
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	XXX	0
J7502		X	Cyclosporine oral solution	0.00	0.00	0.00	0.00	XXX	0

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[4] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
J7503		X	Cyclosporine parenteral	0.00	0.00	0.00	0.00	XXX	0
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	XXX	0
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	XXX	0
J7506		X	Prednisone	0.00	0.00	0.00	0.00	XXX	0
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	XXX	0
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	XXX	0
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	XXX	0
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	XXX	0
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	XXX	0
J7610		E	Acetylcysteine 10% injection	0.00	0.00	0.00	0.00	XXX	0
J7615		E	Acetylcysteine 20% injection	0.00	0.00	0.00	0.00	XXX	0
J7620		E	Albuterol sulfate .083% inj	0.00	0.00	0.00	0.00	XXX	0
J7625		E	Albuterol sulfate .5% inj	0.00	0.00	0.00	0.00	XXX	0
J7627		E	Bitolterolmesylate inhal sol	0.00	0.00	0.00	0.00	XXX	0
J7630		E	Cromolyn sodium injection	0.00	0.00	0.00	0.00	XXX	0
J7640		E	Epinephrine injection	0.00	0.00	0.00	0.00	XXX	0
J7645		E	Ipratropium bromide .02%/ml	0.00	0.00	0.00	0.00	XXX	0
J7650		E	Isoetharine hcl .1% inj	0.00	0.00	0.00	0.00	XXX	0
J7651		E	Isoetharine hcl .125% inj	0.00	0.00	0.00	0.00	XXX	0
J7652		E	Isoetharine hcl .167% inj	0.00	0.00	0.00	0.00	XXX	0
J7653		E	Isoetharine hcl .2%/ inj	0.00	0.00	0.00	0.00	XXX	0
J7654		E	Isoetharine hcl .25% inj	0.00	0.00	0.00	0.00	XXX	0
J7655		E	Isoetharine hcl 1% inj	0.00	0.00	0.00	0.00	XXX	0
J7660		E	Isoproterenol hcl .5% inj	0.00	0.00	0.00	0.00	XXX	0
J7665		E	Isoproterenol hcl 1% inj	0.00	0.00	0.00	0.00	XXX	0
J7670		E	Metaproterenol sulfate .4%	0.00	0.00	0.00	0.00	XXX	0
J7672		E	Metaproterenol sulfate .6%	0.00	0.00	0.00	0.00	XXX	0
J7675		E	Metaproterenol sulfate 5%	0.00	0.00	0.00	0.00	XXX	0
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	XXX	0
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	XXX	0
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	XXX	0
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	XXX	0
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	XXX	0
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	XXX	0
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	XXX	0
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	XXX	0
J9000		E	Doxorubic hcl 10 MG vl chemo	0.00	0.00	0.00	0.00	XXX	0
J9010		E	Doxorubicin hcl 50 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	XXX	0
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	XXX	0
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	XXX	0
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	XXX	0
J9050		E	Carmus bischl nitro inj	0.00	0.00	0.00	0.00	XXX	0
J9060		E	Cisplatin 10 MG injection	0.00	0.00	0.00	0.00	XXX	0
J9062		E	Cisplatin 50 MG injection	0.00	0.00	0.00	0.00	XXX	0
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	XXX	0
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9091		E	Cyclophosphamide 1.0 grm inj	0.00	0.00	0.00	0.00	XXX	0
J9092		E	Cyclophosphamide 2.0 grm inj	0.00	0.00	0.00	0.00	XXX	0
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX	0
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX	0
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX	0
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX	0
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX	0
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	XXX	0
J9130		E	Dacarbazine 10 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9140		E	Dacarbazine 200 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9150		E	Daunorubicin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	XXX	0
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Practice expense RVUs [4]	Malpractice RVUs	Total	Global period	Update
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	XXX	0
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	XXX	0
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	XXX	0
J9202		E	Goserelin acetate implant	0.00	0.00	0.00	0.00	XXX	0
J9208		E	Ifosfamide injection	0.00	0.00	0.00	0.00	XXX	0
J9209		E	Mesna injection	0.00	0.00	0.00	0.00	XXX	0
J9211		E	Idarubicin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	XXX	0
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	XXX	0
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	XXX	0
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	XXX	0
J9217		E	Leuprolide acetate suspnsion	0.00	0.00	0.00	0.00	XXX	0
J9218		E	Leuprolide acetate injection	0.00	0.00	0.00	0.00	XXX	0
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	XXX	0
J9245		E	Inj melphalan hydrochl 50 MG	0.00	0.00	0.00	0.00	XXX	0
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	XXX	0
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	XXX	0
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	XXX	0
J9266		E	Pegaspargase/singl dose vial	0.00	0.00	0.00	0.00	XXX	0
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	XXX	0
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	XXX	0
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9293		E	Mitoxantrone hydrochl / 5 MG	0.00	0.00	0.00	0.00	XXX	0
J9295		D	Polyestradiol phosphate inj	0.00	0.00	0.00	0.00	XXX	0
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	XXX	0
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	XXX	0
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	XXX	0
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	XXX	0
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	XXX	0
M0005		G	Off visit 2/more modalities	#0.76	0.31	0.03	1.10	XXX	0
M0006		G	One phys therapy modality	#0.50	0.15	0.02	0.67	XXX	0
M0007		G	Combined phys ther mod & tx	#1.01	0.35	0.04	1.40	XXX	0
M0008		G	Combined phys ther mod & tx	#0.50	0.11	0.01	0.62	XXX	0
M0064		A	Visit for drug monitoring	0.37	0.19	0.03	0.59	XXX	N
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	XXX	0
M0076		N	Prolotherapy	0.00	0.00	0.00	0.00	XXX	0
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	XXX	0
M0101		A	Cutting or removal of corns	0.37	9.35	0.03	0.75	XXX	S
M0300		N	IV chelation therapy	0.00	0.00	0.00	0.00	XXX	0
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	XXX	0
M0302		N	Assessment of cardiac output	0.00	0.00	0.00	0.00	XXX	0
P2026		X	Cephalin floculation test	0.00	0.00	0.00	0.00	XXX	0
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	XXX	0
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	XXX	0
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	XXX	0
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	XXX	0
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	XXX	0
P3001		X	Screening pap smear by phys	0.00	0.00	0.00	0.00	XXX	0
P3001	26	A	Screening pap smear by phys	0.42	0.32	0.04	0.78	XXX	N
P7001		G	Culture bacterial urine	0.00	0.00	0.00	0.00	XXX	0
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	XXX	0
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	XXX	0
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	XXX	0
P9013		E	Unit/s blood fibrinogen	0.00	0.00	0.00	0.00	XXX	0
P9014		E	Gamma globulin 1 ML	0.00	0.00	0.00	0.00	XXX	0
P9015		E	Rh immune globulin 1 ML	0.00	0.00	0.00	0.00	XXX	0
P9016		E	Leukocyte poor blood, unit	0.00	0.00	0.00	0.00	XXX	0
P9017		E	One donor fresh frozn plasma	0.00	0.00	0.00	0.00	XXX	0
P9018		E	Plasma protein fract, unit	0.00	0.00	0.00	0.00	XXX	0
P9019		E	Platelet concentrate unit	0.00	0.00	0.00	0.00	XXX	0
P9020		E	Platelet rich plasma unit	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	XXX	0
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	XXX	0
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	XXX	0
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	XXX	0
P9605		D	Routine venipuncture	0.00	0.00	0.00	0.00	XXX	0
P9610		X	Urine specimen collect singl	0.00	0.00	0.00	0.00	XXX	0
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	XXX	0
Q0034		X	Admin of influenza vaccine	0.00	0.00	0.00	0.00	XXX	0
Q0035		A	Cardiokymegraphy	0.17	0.49	0.04	0.70	XXX	N
Q0035	26	A	Cardiokymography	0.17	0.12	0.01	0.30	XXX	N
Q0035	TC	A	Cardiokymography	0.00	0.37	0.03	0.40	XXX	N
Q0068		A	Extracorpeal plasmapheresis	1.67	1.27	0.16	3.10	000	N
Q0091		A	Obtaining screen pap smear	0.37	0.28	0.03	0.68	XXX	N
Q0092		A	Set up port xray equipment	0.00	0.30	0.01	0.31	XXX	N
Q0103		A	Physical therapy evaluation	1.01	0.35	0.11	1.47	XXX	N
Q0104		A	Phys therapy re-evaluation	0.50	0.04	0.01	0.55	XXX	N
Q0109		A	Occupational therapy eval	1.01	0.35	0.11	1.47	XXX	N
Q0110		A	Occupational therap re-eval	0.50	0.04	0.01	0.55	XXX	N
Q0111		X	Wet mounts/ w preparations	0.00	0.00	0.00	0.00	XXX	0
Q0112		X	Potassium hydroxide prepe	0.00	0.00	0.00	0.00	XXX	0
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	XXX	0
Q0114		X	Fern test	0.00	0.00	0.00	0.00	XXX	0
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	XXX	0
Q0116		X	Hemoglbn angle analyte exam	0.00	0.00	0.00	0.00	XXX	0
Q0132		X	Dispensing fee DME neb drug	0.00	0.00	0.00	0.00	XXX	0
Q0136		X	Non esrd epoetin alpha inj	0.00	0.00	0.00	0.00	XXX	0
Q0137		D	Dexamethasone acetate 8MG/ML	0.00	0.00	0.00	0.00	XXX	0
Q0138		D	Dexamethasone acetat 16MG/ML	0.00	0.00	0.00	0.00	XXX	0
Q0139		D	Inj desmopressin acetat 4mcg	0.00	0.00	0.00	0.00	XXX	N
Q0140		D	Inj potassium chloride, 2meq	0.00	0.00	0.00	0.00	XXX	0
Q0141		D	Inj magnesium sulfate, 500 mg	0.00	0.00	0.00	0.00	XXX	N
Q0142		D	Sup thallous chloride tl 201	0.00	0.00	0.00	0.00	XXX	N
Q0143		D	Sup technetium tc sestamibi	0.00	0.00	0.00	0.00	XXX	0
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	XXX	0
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	XXX	0
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	XXX	0
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	XXX	0
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	XXX	0
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	XXX	0
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	XXX	0
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	XXX	0
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	XXX	0
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	XXX	0
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	XXX	0
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	XXX	0
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	XXX	0
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	XXX	0
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	XXX	0
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	XXX	0
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	XXX	0
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	XXX	0
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	XXX	0
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	XXX	0
Q9940		E	Epoetin with hct >=.40	0.00	0.00	0.00	0.00	XXX	0
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	XXX	N
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	XXX	N
R0076		C	Transport portable EKG	0.00	0.00	0.00	0.00	XXX	N
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	XXX	0
V2025		N	Eyeglasses delux frames	0.00	0.00	0.00	0.00	XXX	0
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	XXX	0
V2101		X	Single vian sphere 4.12–7.00	0.00	0.00	0.00	0.00	XXX	0
V2102		X	Singl vian sphere 7.12–20.00	0.00	0.00	0.00	0.00	XXX	0
V2103		X	Spherocylindr 4.00d/12–2.00d	0.00	0.00	0.00	0.00	XXX	0
V2104		X	Spherocylindr 4.00d/2.12–4d	0.00	0.00	0.00	0.00	XXX	0
V2105		X	Spherocylinder 4.00d/4.25–6d	0.00	0.00	0.00	0.00	XXX	0
V2106		X	Spherocylinder 4.00d/>6.00d	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
V2107		X	Spherocylinder 4.25d/12–2d	0.00	0.00	0.00	0.00	XXX	0
V2108		X	Spherocylinder 4.25d/2.12–4d	0.00	0.00	0.00	0.00	XXX	0
V2109		X	Spherocylinder 4.25d/4.25–6d	0.00	0.00	0.00	0.00	XXX	0
V2110		X	Spherocylinder 4.25d/over 6d	0.00	0.00	0.00	0.00	XXX	0
V2111		X	Spherocylindr 7.25d/.25–2.25	0.00	0.00	0.00	0.00	XXX	0
V2112		X	Spherocylindr 7.25d/2.25–4d	0.00	0.00	0.00	0.00	XXX	0
V2113		X	Spherocylindr 7.25d/4.25–6d	0.00	0.00	0.00	0.00	XXX	0
V2114		X	Spherocylinder over 12.00d	0.00	0.00	0.00	0.00	XXX	0
V2115		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	XXX	0
V2116		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	XXX	0
V2117		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	XXX	0
V2118		X	Lens aniseikonic single	0.00	0.00	0.00	0.00	XXX	0
V2199		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	XXX	0
V2200		X	Lens spher bifoc plano 4.00d	0.00	0.00	0.00	0.00	XXX	0
V2201		X	Lens sphere bifocal 4.12–7.0	0.00	0.00	0.00	0.00	XXX	0
V2202		X	Lens sphere bifocal 7.12–20.	0.00	0.00	0.00	0.00	XXX	0
V2203		X	Lens sphcyl bifocal 4.00d/.1	0.00	0.00	0.00	0.00	XXX	0
V2204		X	Lens sphcy bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	XXX	0
V2205		X	Lens sphcy bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	XXX	0
V2206		X	Lens sphcy bifocal 4.00d/ove	0.00	0.00	0.00	0.00	XXX	0
V2207		X	Lens sphcy bifocal 4.25–7d/.	0.00	0.00	0.00	0.00	XXX	0
V2208		X	Lens sphcy bifocal 4.25–7/2.	0.00	0.00	0.00	0.00	XXX	0
V2209		X	Lens sphcy bifocal 4.25–7/4.	0.00	0.00	0.00	0.00	XXX	0
V2210		X	Lens sphcy bifocal 4.25–7/ov	0.00	0.00	0.00	0.00	XXX	0
V2211		X	Lens sphcy bifo 7.25–12/.25-	0.00	0.00	0.00	0.00	XXX	0
V2212		X	Lens sphcyl bifo 7.25–12/2.2	0.00	0.00	0.00	0.00	XXX	0
V2213		X	Lens sphcyl bifo 7.25–12/4.2	0.00	0.00	0.00	0.00	XXX	0
V2214		X	Lens sphcyl bifocal over 12.	0.00	0.00	0.00	0.00	XXX	0
V2215		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	XXX	0
V2216		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	XXX	0
V2217		X	Lens lenticular aspheric bif	0.00	0.00	0.00	0.00	XXX	0
V2218		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	XXX	0
V2219		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	XXX	0
V2220		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	XXX	0
V2299		X	Lens bifocal speciality	0.00	0.00	0.00	0.00	XXX	0
V2300		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	XXX	0
V2301		X	Lens sphere trifocal 4.12–7.	0.00	0.00	0.00	0.00	XXX	0
V2302		X	Lens sphere trifocal 7.12–20	0.00	0.00	0.00	0.00	XXX	0
V2303		X	Lens sphcy trifocal 4.0/.12-	0.00	0.00	0.00	0.00	XXX	0
V2304		X	Lens sphcy trifocal 4.0/2.25	0.00	0.00	0.00	0.00	XXX	0
V2305		X	Lens sphcy trifocal 4.0/4.25	0.00	0.00	0.00	0.00	XXX	0
V2306		X	Lens sphcyl trifocal 4.00/>6	0.00	0.00	0.00	0.00	XXX	0
V2307		X	Lens sphcy trifocal 4.25–7/.	0.00	0.00	0.00	0.00	XXX	0
V2308		X	Lens sphc trifocal 4.25–7/2.	0.00	0.00	0.00	0.00	XXX	0
V2309		X	Lens sphc trifocal 4.25–7/4.	0.00	0.00	0.00	0.00	XXX	0
V2310		X	Lens sphc trifocal 4.25–7/>6	0.00	0.00	0.00	0.00	XXX	0
V2311		X	Lens sphc trifo 7.25–12/.25-	0.00	0.00	0.00	0.00	XXX	0
V2312		X	Lens sphc trifo 7.25–12/2.25	0.00	0.00	0.00	0.00	XXX	0
V2313		X	Lens sphc trifo 7.25–12/4.25	0.00	0.00	0.00	0.00	XXX	0
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	XXX	0
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	XXX	0
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	XXX	0
V2317		X	Lens lenticular aspheric tri	0.00	0.00	0.00	0.00	XXX	0
V2318		X	Lens aniseikonic trifocal	0.00	0.00	0.00	0.00	XXX	0
V2319		X	Lens trifocal seg width > 28	0.00	0.00	0.00	0.00	XXX	0
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	XXX	0
V2399		X	Lens trifocal speciality	0.00	0.00	0.00	0.00	XXX	0
V2410		X	Lens variab asphericity sing	0.00	0.00	0.00	0.00	XXX	0
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	XXX	0
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	XXX	0
V2500		X	Contact lens pmma spherical	0.00	0.00	0.00	0.00	XXX	0
V2501		X	Cntct lens pmma-toric/prism	0.00	0.00	0.00	0.00	XXX	0
V2502		X	Contact lens pmma bifocal	0.00	0.00	0.00	0.00	XXX	0
V2503		X	Cntct lens pmma color vision	0.00	0.00	0.00	0.00	XXX	0
V2510		X	Cntct gas permeable sphericl	0.00	0.00	0.00	0.00	XXX	0
V2511		X	Cntct toric prism ballast	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
V2512		X	Cntct lens gas permbl bifocl	0.00	0.00	0.00	0.00	XXX	0
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	XXX	0
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	XXX	0
V2521		X	Cntct lens hydrophilic toric	0.00	0.00	0.00	0.00	XXX	0
V2522		X	Cntct lens hydrophil bifocl	0.00	0.00	0.00	0.00	XXX	0
V2523		X	Cntct lens hydrophil extend	0.00	0.00	0.00	0.00	XXX	0
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	XXX	0
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	XXX	0
V2599		X	Contact lens/es other type	0.00	0.00	0.00	0.00	XXX	0
V2600		X	Hand held low vision aids	0.00	0.00	0.00	0.00	XXX	0
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	XXX	0
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	XXX	0
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	XXX	0
V2624		X	Polishing artifical eye	0.00	0.00	0.00	0.00	XXX	0
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	XXX	0
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	XXX	0
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	XXX	0
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	XXX	0
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	XXX	0
V2630		X	Anter chamber intrsocul lens	0.00	0.00	0.00	0.00	XXX	0
V2631		X	Iris support intraocr lens	0.00	0.00	0.00	0.00	XXX	0
V2632		X	Post chmbr intraocular lens	0.00	0.00	0.00	0.00	XXX	0
V2700		X	Balance lens	0.00	0.00	0.00	0.00	XXX	0
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	XXX	0
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	XXX	0
V2718		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	XXX	0
V2730		X	Special base curve	0.00	0.00	0.00	0.00	XXX	0
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	XXX	0
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	XXX	0
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	XXX	0
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	XXX	0
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	XXX	0
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	XXX	0
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	XXX	0
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	XXX	0
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	XXX	0
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	XXX	0
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	XXX	0
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	XXX	0
V2799		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	XXX	0
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	XXX	0
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	XXX	0
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	XXX	0
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	XXX	0
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	XXX	0
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	XXX	0
V5050		N	Body-worn hearing aid in ear	0.00	0.00	0.00	0.00	XXX	0
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	XXX	0
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	XXX	0
V5090		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	XXX	0
V5100		N	Body-worn bilat hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	XXX	0
V5120		N	Body-worn binaur hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5130		N	In ear binaural hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5140		N	Behind ear binaur hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	XXX	0
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5200		N	Cros hearing aid dispens fee	0.00	0.00	0.00	0.00	XXX	0
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5220		N	Behind ear bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Practice expense RVUs[4]	Malpractice RVUs	Total	Global period	Update
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	XXX	0
V5299		R	Hearing service	0.00	0.00	0.00	0.00	XXX	N
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	XXX	0
V5362		R	Speech screening	0.00	0.00	0.00	0.00	XXX	N
V5363		R	Language screening	0.00	0.00	0.00	0.00	XXX	N
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	XXX	N

Addendum C—Codes With Interim Relative Value Units

Addendum C lists the codes for which interim RVUs have been established. Because these RVUs are interim, public comments on these codes will be considered if they are received by 5 p.m., February 6, 1996. Any revisions to the interim RVUs will be announced in a document to be published in 1996 that provides our analysis of and responses to public comments. These revisions will apply to services furnished beginning January 1, 1997.

Addendum C contains the following information:

1. *CPT/HCPCS code.* This is either a CPT or alphanumeric HCPCS code for the service in question. CPT codes are listed first, followed by alphanumeric HCPCS codes.

2. *Modifier.* A modifier is shown if there is TC (modifier TC) and a PC (modifier – 26) for the service. If there is a PC and a TC for the service, Addendum C contains three entries for the code: One for the global values (both professional and technical); one for modifier – 26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PCs and the TCs of the service.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the fee schedule and whether it is separately payable if the service is covered. See Addendum B for a description of the status indicators.

4. *Description of the code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the interim RVUs for the physician work for this service.

6. *Practice expense RVUs.* These are the interim RVUs for the practice expense for the service.

7. *Malpractice expense RVUs.* These are the interim RVUs for the malpractice expense for the service.

8. *Total RVUs.* This is the sum of the work, practice expense, and malpractice expense RVUs.

9. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). See Addendum B for explanations of the alpha codes.

10. *Update.* This column indicates whether the update for surgical procedures, primary care services, or other nonsurgical services applies to the CPT/HCPCS code in column 1. A "0" appears in this field for codes that are deleted in 1996 or are not paid under the physician fee schedule. A "P" in this column indicates that the update and CF for primary care services applies to this code. An "N" in this column indicates that the update and CF for other nonsurgical services applies to this code. An "S" in this column indicates that the separate update and CF for surgical procedures applies.

ADDENDUM C.—CODES WITH INTERIM RVUs

CPT/ HCPCS[1]	MOD	Status	Description	Physician work RVUs[2]	Practice expense RVUs[3]	Malpractice RVUs	Total	Global period	Update
17110		A	Destruction of skin lesions	0.55	0.40	0.03	0.98	010	S
20100		A	Explore wound, neck	9.50	4.97	1.16	15.63	010	S
20101		A	Explore wound, chest	3.00	1.57	0.37	4.94	010	S
20102		A	Explore wound, abdomen	3.68	1.92	0.45	6.05	010	S
20103		A	Explore wound, extremity	4.95	2.59	0.60	8.14	010	S
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	XXX	0
20931		A	Spinal bone allograft	1.81	1.73	0.28	3.82	ZZZ	S
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	XXX	0
20937		A	Spinal bone autograft	2.79	2.56	0.44	5.89	ZZZ	S
20938		A	Spinal bone autograft	3.02	2.88	0.47	6.37	ZZZ	S
21076		A	Prepare face/oral prosthesis	12.54	16.77	1.35	30.66	010	S
21077		A	Prepare face/oral prosthesis	31.54	42.18	3.39	77.11	090	S
21141		A	Reconstruct midface, lefort	16.92	14.34	1.68	32.94	090	S
21142		A	Reconstruct midface, lefort	17.58	14.84	1.74	34.16	090	S
21143		A	Reconstruct midface, lefort	18.30	15.40	1.81	35.51	090	S
21145		A	Reconstruct midface, lefort	18.92	14.34	1.68	34.94	090	S
21146		A	Reconstruct midface, lefort	19.58	14.84	1.74	36.16	090	S
21147		A	Reconstruct midface, lefort	20.30	15.40	1.81	37.51	090	S
22100		A	Remove part of neck vertebra	9.05	7.64	1.09	17.78	090	S
22101		A	Remove part, thorax vertebra	9.00	8.01	1.38	18.39	090	S
22102		A	Remove part, lumbar vertebra	9.00	4.50	0.67	14.17	090	S
22103		A	Remove extra spine segment	2.34	2.23	0.37	4.94	ZZZ	S
22110		A	Remove part of neck vertebra	11.59	9.72	1.64	22.95	090	S
22112		A	Remove part, thorax vertebra	11.59	9.90	1.63	23.12	090	S
22114		A	Remove part, lumbar vertebra	11.59	7.25	1.17	20.01	090	S

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ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT/ HCPCS[1]	MOD	Status	Description	Physician work RVUs[2]	Practice expense RVUs[3]	Malpractice RVUs	Total	Global period	Update
22116		A	Remove extra spine segment	2.32	2.21	0.36	4.89	ZZZ	S
22210		A	Revision of neck spine	22.51	13.83	2.43	38.77	090	S
22212		A	Revision of thorax spine	18.14	17.29	2.83	38.26	090	S
22214		A	Revision of lumbar spine	18.14	15.11	2.68	35.93	090	S
22216		A	Revise, extra spine segment	6.04	5.07	0.89	12.00	ZZZ	S
22220		A	Revision of neck spine	20.15	16.64	2.63	39.42	090	S
22222		A	Revision of thorax spine	20.15	13.51	1.58	35.34	090	S
22224		A	Revision of lumbar spine	20.15	14.68	2.66	37.49	090	S
22226		A	Revise, extra spine segment	6.04	5.07	0.89	12.00	ZZZ	S
22305		A	Treat spine process fracture	1.86	*2.38	0.37	4.61	090	S
22310		A	Treat spine fracture	1.86	*2.52	0.69	5.07	090	S
22315		A	Treat spine fracture	8.36	5.51	0.86	14.73	090	S
22325		A	Repair of spine fracture	17.19	8.32	1.34	26.85	090	S
22326		A	Repair neck spine fracture	18.43	15.93	2.74	37.10	090	S
22327		A	Repair thorax spine fracture	17.56	15.95	2.35	35.86	090	S
22328		A	Repair each add spine fx	4.61	4.40	0.72	9.73	ZZZ	S
22548		A	Neck spine fusion	24.06	22.74	3.82	50.64	090	S
22554		A	Neck spine fusion	17.24	19.81	3.52	40.57	090	S
22556		A	Thorax spine fusion	22.27	21.68	3.58	47.53	090	S
22558		A	Lumbar spine fusion	21.22	20.17	3.38	44.77	090	S
22585		A	Additional spinal fusion	5.53	5.40	0.93	11.86	ZZZ	S
22590		A	Spine & skull spinal fusion	19.50	21.57	3.44	44.51	090	S
22595		A	Neck spinal fusion	18.19	22.46	3.87	44.52	090	S
22600		A	Neck spine fusion	14.74	19.36	3.32	37.42	090	S
22610		A	Thorax spine fusion	14.62	17.87	2.75	35.24	090	S
22612		A	Lumbar spine fusion	20.19	20.60	3.33	44.12	090	S
22614		A	Spine fusion, extra segment	6.44	5.65	0.92	13.01	ZZZ	S
22630		A	Lumbar spine fusion	20.03	18.44	3.15	41.62	090	S
22632		A	Spine fusion, extra segment	5.23	4.99	0.82	11.04	ZZZ	S
22800		A	Fusion of spine	16.92	*21.66	3.58	42.16	090	S
22802		A	Fusion of spine	29.74	28.32	4.61	62.67	090	S
22804		A	Fusion of spine	35.00	28.32	4.61	67.93	090	S
22808		A	Fusion of spine	25.00	18.41	3.15	46.56	090	S
22810		A	Fusion of spine	29.00	18.41	3.15	50.56	090	S
22812		A	Fusion of spine	31.00	25.93	4.24	61.17	090	S
22830		A	Exploration of spinal fusion	10.22	*13.07	2.18	25.47	090	S
22840		A	Insert spine fixation device	6.27	5.98	0.98	13.23	ZZZ	S
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	XXX	0
22842		A	Insert spine fixation device	7.19	6.86	1.12	15.17	ZZZ	S
22843		A	Insert spine fixation device	8.97	8.55	1.40	18.92	ZZZ	S
22844		A	Insert spine fixation device	10.96	10.45	1.71	23.12	ZZZ	S
22845		A	Insert spine fixation device	5.98	5.70	0.93	12.61	ZZZ	S
22846		A	Insert spine fixation device	8.28	7.90	1.29	17.47	ZZZ	S
22847		A	Insert spine fixation device	9.20	8.77	1.44	19.41	ZZZ	S
22848		A	Insert pelvic fixation device	6.00	5.72	0.94	12.66	ZZZ	S
22851		A	Apply spine prosth device	6.71	6.40	1.05	14.16	ZZZ	S
32095		A	Biopsy through chest wall	7.13	8.25	1.45	16.83	090	S
32501		A	Repair bronchus (add-on)	4.69	4.31	0.70	9.70	ZZZ	S
33253		A	Reconstruct atria	30.00	21.81	4.26	56.07	090	S
33924		A	Remove pulmonary shunt	5.50	4.00	0.78	10.28	ZZZ	S
38231		A	Stem cell collection	1.50	1.37	0.08	2.95	000	N
38240		A	Bone marrow/stem transplant	2.24	2.06	0.14	4.46	XXX	N
38241		A	Bone marrow/stem transplant	2.24	2.04	0.13	4.41	XXX	N
47350		A	Repair liver wound	11.29	7.46	1.49	20.24	090	S
47360		A	Repair liver wound	15.34	10.93	2.18	28.45	090	S
47361		A	Repair liver wound	28.00	14.64	3.41	46.05	090	S
47362		A	Repair liver wound	10.00	5.23	1.22	16.45	090	S
49000		A	Exploration of abdomen	8.99	6.79	1.40	17.18	090	S
49002		A	Reopening of abdomen	9.40	6.05	1.21	16.66	090	S
49010		A	Exploration behind abdomen	11.19	6.95	1.31	19.45	090	S
55859		A	Percut/needle insert, pros	8.29	5.89	0.58	14.76	090	S
56343		A	Laparoscopic salpingostomy	6.96	5.28	1.11	13.35	090	S
56344		A	Laparoscopic fimbrioplasty	7.16	5.11	1.19	13.48	090	S
57284		A	Repair paravaginal defect	12.10	8.59	0.84	21.53	090	S
59610		A	Vbac delivery	22.55	14.99	3.47	41.01	MMM	S
59612		A	Vbac delivery only	14.84	9.48	2.20	26.52	MMM	S

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[3] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT/ HCPCS[1]	MOD	Status	Description	Physician work RVUs[2]	Practice expense RVUs[3]	Malpractice RVUs	Total	Global period	Update
59614		A	Vbac care after delivery	15.96	10.31	2.39	28.66	MMM	S
59618		A	Attempted vbac delivery	25.23	16.90	3.92	46.05	MMM	S
59620		A	Attempted vbac delivery only	16.95	10.99	2.55	30.49	MMM	S
59622		A	Attempted vbac after care	18.11	11.82	2.73	32.66	MMM	S
62274		A	Inject spinal anesthetic	1.78	0.74	0.17	2.69	000	N
62288		A	Injection into spinal canal	1.74	1.12	0.24	3.10	000	N
62350		A	Implant spinal catheter	6.25	3.49	1.02	10.76	090	S
62351		A	Implant spinal catheter	9.25	5.16	1.50	15.91	090	S
62355		A	Remove spinal canal catheter	4.80	3.49	0.68	8.97	090	S
62360		A	Insert spine infusion device	2.00	1.12	0.33	3.45	090	S
62361		A	Implant spine infusion pump	4.80	2.68	0.78	8.26	090	S
62362		A	Implant spine infusion pump	6.29	3.51	1.02	10.82	090	S
62365		A	Remove spine infusion device	4.77	3.47	0.68	8.92	090	S
62367	26	A	Analyze spine infusion pump	0.48	0.35	0.07	0.90	XXX	N
62368	26	A	Analyze spine infusion pump	0.75	0.55	0.11	1.41	XXX	N
67107		A	Repair detached retina	13.99	*17.91	1.10	33.00	090	S
67108		A	Repair detached retina	19.90	*25.47	1.76	47.13	090	S
67112		A	Re-repair detached retina	16.15	16.51	0.86	33.52	090	S
76965	26	A	Echo guidance radiotherapy	1.34	2.07	0.19	3.60	XXX	N
78459	26	G	Heart muscle imaging (PET)	#1.86	1.34	0.10	3.32	XXX	0
78810	26	N	Tumor imaging (PET)	#1.93	1.37	0.10	3.40	XXX	0
92506		A	Speech & hearing evaluation	0.86	0.52	0.05	1.43	XXX	N
92507		A	Speech/hearing therapy	0.52	0.33	0.03	0.88	XXX	N
92508		A	Speech/hearing therapy	0.26	0.18	0.02	0.46	XXX	N
92510		A	Rehab for ear implant	1.50	1.36	0.15	3.01	XXX	N
92516		A	Facial nerve function test	0.43	0.39	0.04	0.86	XXX	N
92525		A	Oral function evaluation	1.13	1.02	0.11	2.26	XXX	N
92526		A	Oral function therapy	0.52	0.47	0.05	1.04	XXX	N
92546	26	A	Sinusoidal rotational test	0.29	0.30	0.03	0.62	XXX	N
92579		A	Visual audiometry (vra)	0.00	0.69	0.07	0.76	XXX	N
92597		A	Oral speech device eval	1.11	1.01	0.11	2.23	XXX	N
92598		A	Modify oral speech device	0.73	0.66	0.07	1.46	XXX	N
92987		A	Revision of mitral valve	20.69	12.20	0.91	33.80	090	N
95872	26	A	Muscle test, one fiber	1.50	0.68	0.06	2.24	XXX	N
95900	26	A	Motor nerve conduction test	0.42	0.35	0.03	0.80	XXX	N
95903	26	A	Motor nerve conduction test	0.60	0.35	0.03	0.98	XXX	N
95904	26	A	Sense nerve conduction test	0.34	0.34	0.03	0.71	XXX	N
95925	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95926	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95927	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95930	26	A	Visual evoked potential test	0.35	0.58	0.04	0.97	XXX	N
95934	26	A	'H' reflex test	0.51	0.34	0.03	0.88	XXX	N
95936	26	A	'H' reflex test	0.55	0.34	0.03	0.92	XXX	N
97010		A	Hot or cold packs therapy	0.11	0.21	0.02	0.34	XXX	N
97012		A	Mechanical traction therapy	0.25	0.19	0.02	0.46	XXX	N
97014		A	Electric stimulation therapy	0.18	0.20	0.02	0.40	XXX	N
97016		A	Vasopneumatic device therapy	0.18	0.25	0.02	0.45	XXX	N
97018		A	Paraffin bath therapy	0.11	0.24	0.03	0.38	XXX	N
97020		A	Microwave therapy	0.11	0.20	0.02	0.33	XXX	N
97022		A	Whirlpool therapy	0.25	0.19	0.02	0.46	XXX	N
97024		A	Diathermy treatment	0.11	0.21	0.02	0.34	XXX	N
97026		A	Infrared therapy	0.11	0.19	0.02	0.32	XXX	N
97028		A	Ultraviolet therapy	0.20	0.19	0.01	0.40	XXX	N
97032		A	Electrical stimulation	0.25	0.14	0.01	0.40	XXX	N
97033		A	Electric current therapy	0.26	0.14	0.02	0.42	XXX	N
97034		A	Contrast bath therapy	0.21	0.10	0.01	0.32	XXX	N
97035		A	Ultrasound therapy	0.21	0.11	0.01	0.33	XXX	N
97036		A	Hydrotherapy	0.38	0.21	0.02	0.61	XXX	N
97039		A	Physical therapy treatment	0.29	0.24	0.03	0.56	XXX	N
97110		A	Therapeutic exercises	0.45	0.13	0.02	0.60	XXX	N
97112		A	Neuromuscular reeducation	0.45	0.13	0.01	0.59	XXX	N
97113		A	Aquatic therapy/exercises	0.44	0.20	0.02	0.66	XXX	N
97116		A	Gait training therapy	0.40	0.11	0.01	0.52	XXX	N
97122		A	Manual traction therapy	0.45	0.11	0.01	0.57	XXX	N
97124		A	Massage therapy	0.35	0.11	0.01	0.47	XXX	N
97139		A	Physical medicine procedure	0.21	0.16	0.02	0.39	XXX	N

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ADDENDUM C.—CODES WITH INTERIM RVUs—Continued

CPT/HCPCS[1]	MOD	Status	Description	Physician work RVUs[2]	Practice expense RVUs[3]	Malpractice RVUs	Total	Global period	Update
97150		A	Group therapeutic procedures	0.27	0.20	0.02	0.49	XXX	N
97250		A	Myofascial release	0.45	0.35	0.04	0.84	000	N
97260		A	Regional manipulation	0.19	0.20	0.02	0.41	000	N
97261		A	Supplemental manipulations	0.12	0.11	0.01	0.24	000	N
97265		A	Joint mobilization	0.45	0.35	0.04	0.84	XXX	N
97500		A	Orthotics training	0.31	0.27	0.04	0.62	XXX	N
97501		A	Supplemental training	0.17	0.15	0.02	0.34	XXX	N
97520		A	Prosthetic training	0.37	0.30	0.04	0.71	XXX	N
97521		A	Supplemental training	0.22	0.17	0.02	0.41	XXX	N
97530		A	Therapeutic activities	0.44	0.17	0.02	0.63	XXX	N
97535		A	Self care mngment training	0.33	0.17	0.02	0.52	XXX	N
97537		A	Community/work reintegration	0.33	0.17	0.02	0.52	XXX	N
97542		A	Wheelchair mngement training	0.25	0.17	0.02	0.44	XXX	N
97703		A	Prosthetic checkout	0.25	0.18	0.03	0.46	XXX	N
97750		A	Physical performance test	0.45	0.24	0.03	0.72	XXX	N
97770		A	Cognitive skills development	0.44	0.28	0.03	0.75	XXX	N
99236		A	Hospital discharge day	1.06	0.51	0.04	1.61	XXX	N
99239		A	Hospital discharge day	1.75	0.51	0.04	2.30	XXX	N
99435		A	Hospital NB discharge day	1.50	1.55	0.10	3.15	XXX	P
G0030	26	A	PET imaging prev PET single	1.09	0.48	0.07	1.64	XXX	N
G0031	26	A	PET imaging prev PET multple	1.46	0.65	0.10	2.21	XXX	N
G0032	26	A	PET follow SPECT 78464 singl	1.09	0.48	0.07	1.64	XXX	N
G0033	26	A	PET follow SPECT 78464 mult	1.46	0.65	0.10	2.21	XXX	N
G0034	26	A	PET follow SPECT 76865 singl	1.09	0.48	0.07	1.64	XXX	N
G0035	26	A	PET follow SPECT 78465 mult	1.46	0.65	0.10	2.21	XXX	N
G0036	26	A	PET follow comry angio sing	1.09	0.48	0.07	1.64	XXX	N
G0037	26	A	PET follow comry angio mult	1.46	0.65	0.10	2.21	XXX	N
G0038	26	A	PET follow myocard perf sing	1.09	0.48	0.07	1.64	XXX	N
G0039	26	A	PET follow myocard perf mult	1.46	0.65	0.10	2.21	XXX	N
G0040	26	A	PET follow stress echo singl	1.09	0.48	0.07	1.64	XXX	N
G0041	26	A	PET follow stress echo mult	1.46	0.65	0.10	2.21	XXX	N
G0042	26	A	PET follow ventriculogm sing	1.09	0.48	0.07	1.64	XXX	N
G0043	26	A	PET follow ventriculogm mult	1.46	0.65	0.10	2.21	XXX	N
G0044	26	A	PET following rest ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0045	26	A	PET following rest ECG mult	1.46	0.65	0.10	2.21	XXX	N
G0046	26	A	PET follow stress ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0047	26	A	PET follow stress ECG mult	1.46	0.65	0.10	2.21	XXX	N

ADDENDUM D.—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier number	Locality number	Locality name	Work	Practice expense	Malpractice
00510	05	Birmingham, AL	0.994	0.912	0.927
00510	04	Mobile, AL	0.975	0.858	0.927
00510	02	North Central AL	0.973	0.850	0.927
00510	01	Northwest AL	0.990	0.873	0.927
00510	06	Rest Of AL	0.964	0.818	0.927
00510	03	Southeast AL	0.970	0.858	0.927
01020	01	Alaska	1.064	1.155	1.617
01030	05	Flagstaff, AZ	0.971	0.936	1.321
01030	01	Phoenix, AZ	1.004	0.983	1.321
01030	07	Prescott, AZ	0.971	0.912	1.321
01030	99	Rest Of AZ	0.989	0.948	1.321
01030	02	Tucson, AZ	0.978	0.942	1.321
01030	08	Yuma, AZ	0.984	0.925	1.321
00520	13	Arkansas	0.954	0.853	0.427
02050	26	Anaheim/Santa Ana, CA	1.037	1.205	0.752
00542	14	Bakersfield, CA	1.023	0.992	0.686
00542	11	Fresno/Madera, CA	1.000	0.977	0.596
00542	13	Kings/Tulare, CA	0.987	0.954	0.596
02050	18	Los Angeles (1st Of 8)	1.056	1.207	0.752
02050	19	Los Angeles (2nd Of 8)	1.056	1.207	0.752
02050	20	Los Angeles (3rd Of 8)	1.056	1.207	0.752
02050	21	Los Angeles (4th Of 8)	1.056	1.207	0.752

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act,
[2] # Indicates RVUs are not used for Medicare payment.
[3] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

ADDENDUM D.—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier number	Locality number	Locality name	Work	Practice expense	Malpractice
02050	22	Los Angeles (5th Of 8)	1.056	1.207	0.752
02050	23	Los Angeles (6th Of 8)	1.056	1.207	0.752
02050	24	Los Angeles (7th Of 8)	1.056	1.207	0.752
02050	25	Los Angeles (8th Of 8)	1.056	1.207	0.752
00542	03	Marin/Napa/Solano, CA	1.015	1.180	0.596
00542	10	Merced/Surr.Cntys, CA	1.002	0.988	0.596
00542	12	Monterey/Santa Cruz, CA	1.008	1.143	0.596
00542	01	N. Coastal Cntys, CA	1.003	1.090	0.596
00542	02	Ne Rural, CA	0.982	0.953	0.596
00542	07	Oakland/Berkeley, CA	1.042	1.215	0.596
00542	27	Riverside, CA	1.011	1.059	0.667
00542	04	Sacramento/Surr. Cntys, CA	1.020	1.069	0.596
00542	15	San Bernadino/E.Ctrl Cntys	1.015	1.056	0.749
02050	28	San Diego/Imperial, CA	1.017	1.077	0.618
00542	05	San Francisco, CA	1.068	1.330	0.596
00542	06	San Mateo, CA	1.049	1.300	0.596
02050	16	Santa Barbara, CA	1.016	1.119	0.686
00542	09	Santa Clara, CA	1.064	1.289	0.596
00542	08	Stockton/Surr. Cntys., CA	1.001	1.041	0.596
02050	17	Ventura, CA	1.028	1.192	0.686
00824	01	Colorado	0.989	0.951	0.827
10230	04	Eastern CT	1.033	1.132	1.001
10230	01	Nw And N. Cntrl CT	1.049	1.159	1.001
10230	03	S. Cntrl CT	1.056	1.226	1.001
10230	02	Sw CT	1.055	1.275	1.001
00570	01	Delaware	1.021	1.032	0.792
00580	01	DC+MD/VA Suburbs	1.051	1.192	0.980
00590	03	Fort Lauderdale, FL	0.998	1.036	1.867
00590	04	Miami, FL	1.016	1.087	2.456
00590	02	N/Nc FL Cities	0.978	0.952	1.417
00590	01	Rest Of Florida	0.971	0.914	1.417
01040	01	Atlanta, GA	1.007	1.030	0.902
01040	04	Rest Of GA	0.965	0.856	0.902
01040	02	Small GA Cities 02	0.981	0.917	0.902
01040	03	Small GA Cities 03	0.966	0.884	0.902
01120	01	Hawaii/Guam	0.999	1.220	0.921
05130	12	North Idaho	0.957	0.864	0.588
05130	11	South Idaho	0.963	0.887	0.588
00621	10	Champaign-Urbana, IL	0.952	0.884	1.008
00621	16	Chicago, IL	1.028	1.080	1.382
00621	03	De Kalb, IL	0.953	0.873	0.780
00621	11	Decatur, IL	0.962	0.864	0.880
00621	12	East St. Louis, IL	0.988	0.929	1.202
00621	06	Kankakee, IL	0.959	0.881	0.901
00621	08	Normal, IL	0.969	0.893	0.731
00621	01	Northwest, IL	0.951	0.842	0.731
00621	05	Peoria, IL	0.980	0.906	0.731
00621	07	Quincy, IL	0.946	0.824	0.731
00621	04	Rock Island, IL	0.972	0.858	0.731
00621	02	Rockford, IL	0.978	0.941	0.813
00621	13	Southeast IL	0.946	0.814	0.731
00621	14	Southern IL	0.946	0.822	0.822
00621	09	Springfield, IL	0.981	0.936	0.946
00621	15	Suburban Chicago, IL	1.007	1.093	1.159
00630	01	Metropolitan IN	0.989	0.937	0.363
00630	03	Rest Of IN	0.973	0.872	0.346
00630	02	Urban IN	0.974	0.896	0.346
00640	00	Iowa	0.960	0.877	0.679
00740	05	Kansas City, Kansas	0.989	0.949	1.191
00650	01	Rest Of Kansas	0.958	0.877	1.191
00740	04	Suburban Kansas City, Kans	0.989	0.949	1.191
00660	01	Lexington & Louisville, KY	0.989	0.904	0.819
00660	03	Rest Of Kentucky	0.957	0.821	0.819
00660	02	Sm Cities (City Limits), KY	0.960	0.850	0.819
00528	07	Alexandria, LA	0.958	0.864	0.911
00528	03	Baton Rouge, LA	0.984	0.894	0.911
00528	06	Lafayette, LA	0.971	0.857	0.911
00528	04	Lake Charles, LA	0.974	0.901	0.911

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act,

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ADDENDUM D.—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier number	Locality number	Locality name	Work	Practice expense	Malpractice
00528	05	Monroe, LA	0.958	0.867	0.911
00528	01	New Orleans, LA	0.999	0.946	0.997
00528	50	Rest Of LA	0.965	0.850	0.913
00528	02	Shreveport, LA	0.971	0.889	0.911
21200	02	Central Maine	0.961	0.929	0.759
21200	01	Northern Maine	0.964	0.920	0.759
21200	03	Southern Maine	0.980	1.034	0.759
00901	01	Baltimore/Surr. Cntys, MD	1.021	1.036	1.115
00901	03	South & E. Shore MD	0.985	0.972	0.862
00901	02	Western MD	0.982	0.930	0.862
00700	02	MA Suburbs/Rural Cities	1.015	1.101	0.978
00700	01	Urban MA	1.030	1.167	0.978
00823	01	Detroit, MI	1.043	1.038	3.051
00823	02	Michigan, Not Detroit	0.996	0.935	1.844
00720	00	Minnesota (Blue Shield)	0.990	0.965	0.594
10240	00	Minnesota (Travelers)	0.990	0.965	0.594
10250	01	Rest Of Mississippi	0.950	0.813	0.726
10250	02	Urban Mississippi	0.964	0.868	0.726
00740	03	K.C. (Jackson Cnty), MO	0.989	0.949	1.207
00740	02	N K.C. (Clay/Platte), MO	0.988	0.949	1.204
11260	03	Rest Of MO	0.944	0.810	1.159
00740	05	Rural Nw Counties, MO	0.950	0.835	1.159
11260	02	Sm E. Cities, MO	0.940	0.809	1.159
00740	01	St Joseph, MO	0.952	0.850	1.159
11260	01	St. Louis/Lg E. Cities, MO	0.983	0.921	1.193
00751	01	Montana	0.952	0.864	0.756
00655	00	Nebraska	0.951	0.872	0.444
01290	03	Elko & Ely (Cities), NV	0.984	0.986	0.887
01290	01	Las Vegas, Et Al. (Cities), NV	1.012	1.022	0.887
01290	02	Reno, Et Al. (Cities), NV	0.997	1.049	0.887
01290	99	Rest Of Nevada	0.997	1.013	0.887
00780	40	New Hampshire	0.988	1.034	0.916
00860	02	Middle NJ	1.032	1.137	0.762
00860	01	Northern NJ	1.059	1.215	0.762
00860	03	Southern NJ	1.024	1.082	0.762
01360	05	New Mexico	0.975	0.903	0.792
00801	01	Buffalo/Surr. Cntys, NY	1.003	0.936	0.821
00803	01	Manhattan, NY	1.095	1.359	1.546
00801	03	N. Central Cities, NY	1.005	0.957	0.821
00803	02	Nyc Suburbs/Long I., NY	1.068	1.235	1.759
00803	03	Poughkpsie/N Nyc Suburbs, NY	1.011	1.081	1.218
14330	04	Queens, NY	1.058	1.240	1.686
00801	04	Rest Of New York	0.989	0.937	0.821
00801	02	Rochester/Surr. Cntys, NY	1.012	0.992	0.821
05535	00	North Carolina	0.971	0.918	0.435
00820	01	North Dakota	0.951	0.860	0.617
18360	00	Ohio	0.991	0.940	1.049
01370	00	Oklahoma	0.970	0.882	0.481
01380	02	Eugene, et al. (Cities), OR	0.959	0.938	0.637
01380	01	Portland, et al. (Cities), OR	0.997	1.000	0.637
01380	99	Rest Of Oregon	0.962	0.907	0.637
01380	03	Salem, et al. (Cities), OR	0.965	0.929	0.637
01380	12	Sw Cities (City Limits), OR	0.967	0.954	0.637
00865	02	Lg PA Cities	1.006	1.002	0.936
00865	01	Philly/Pitt Med Shcls/Hosps, PA	1.027	1.040	1.213
00865	04	Rest Of PA	0.973	0.899	0.719
00865	03	Sm PA Cities	0.983	0.917	0.736
00973	20	Puerto Rico	0.888	0.739	0.268
00870	01	Rhode Island	1.019	1.074	1.569
00880	01	South Carolina	0.976	0.899	0.361
00820	02	South Dakota	0.936	0.856	0.443
05440	35	Tennessee	0.976	0.899	0.524
00900	29	Abilene, TX	0.960	0.851	0.827
00900	26	Amarillo, TX	0.975	0.883	0.827
00900	31	Austin, TX	0.987	0.966	0.827
00900	20	Beaumont, TX	0.993	0.893	1.428
00900	09	Brazoria, TX	0.993	0.966	1.428
00900	10	Brownsville, TX	0.955	0.848	0.827

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.

ADDENDUM D.—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier number	Locality number	Locality name	Work	Practice expense	Malpractice
00900	24	Corpus Christi, TX	0.983	0.898	0.827
00900	11	Dallas, TX	1.012	1.012	0.893
00900	12	Denton, TX	0.968	0.952	0.827
00900	14	El Paso, TX	0.973	0.893	0.893
00900	28	Fort Worth, TX	0.989	0.972	0.893
00900	15	Galveston, TX	0.989	0.966	1.428
00900	16	Grayson, TX	0.959	0.874	0.827
00900	18	Houston, TX	1.021	1.005	1.428
00900	33	Laredo, TX	0.957	0.851	0.827
00900	17	Longview, TX	0.973	0.863	0.827
00900	21	Lubbock, TX	0.955	0.894	0.827
00900	19	McAllen, TX	0.961	0.837	0.827
00900	23	Midland, TX	0.991	0.900	0.827
00900	02	Northeast Rural TX	0.960	0.857	0.827
00900	13	Odessa, TX	0.991	0.900	0.827
00900	25	Orange, TX	0.993	0.893	0.827
00900	30	San Angelo, TX	0.948	0.844	0.827
00900	07	San Antonio, TX	0.978	0.926	0.827
00900	03	Southeast Rural TX	0.963	0.872	0.889
00900	06	Temple, TX	0.968	0.884	0.827
00900	08	Texarkana, TX	0.955	0.872	0.827
00900	27	Tyler, TX	0.971	0.894	0.827
00900	32	Victoria, TX	0.983	0.868	0.827
00900	22	Waco, TX	0.966	0.877	0.827
00900	04	Western TX	0.956	0.818	0.827
00900	34	Wichita Falls, TX	0.950	0.857	0.827
00910	09	Utah	0.978	0.891	0.644
00780	50	Vermont	0.974	0.988	0.452
00973	50	Virgin Islands	0.966	0.975	1.023
10490	04	Rest Of VA	0.976	0.876	0.504
10490	01	Richmond & Charlottesville, VA	1.004	0.991	0.511
10490	03	Sm Town/Industrial VA	0.974	0.897	0.517
10490	02	Tidewater & N VA Cntys	0.990	0.965	0.530
01390	03	E Cntrl & Ne WA	0.985	0.943	0.748
01390	02	Seattle (King Cnty), WA	1.006	1.077	0.748
01390	01	W & Se WA (Excl Seattle)	0.982	0.968	0.748
16510	16	Charleston, WV	0.980	0.881	1.004
16510	18	Eastern Valley, WV	0.960	0.899	1.004
16510	19	Ohio River Valley, WV	0.959	0.833	1.004
16510	20	Southern Valley, WV	0.952	0.815	1.004
16510	17	Wheeling, WV	0.957	0.840	1.004
00951	13	Central WI	0.959	0.849	1.160
00951	40	Green Bay (Northeast), WI	0.976	0.894	1.160
00951	54	Janesville (S Cntrl), WI	0.966	0.895	1.160
00951	19	La Crosse (W Cntrl), WI	0.972	0.879	1.160
00951	15	Madison (Dane Cnty), WI	0.990	1.000	1.160
00951	46	Milwaukee Suburbs (Se), WI	0.990	0.959	1.160
00951	04	Milwaukee, WI	1.001	0.978	1.160
00951	12	Northwest WI	0.961	0.850	1.160
00951	60	Oshkosh (E Cntrl), WI	0.973	0.886	1.160
00951	14	Southwest WI	0.959	0.850	1.160
00951	36	Wausau (N Cntrl), WI	0.962	0.866	1.160
00625	21	Wyoming	0.968	0.881	0.811

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL

CPT/HCPCS #	Description
10040	Acne surgery.
10060	Drainage of skin abscess.
10081	Drainage of skin abscess.
10080	Drainage of pilonidal cyst.
10081	Drainage of pilonidal cyst.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/HCPCS #	Description
10120	Remove foreign body.
10121	Remove foreign body.
10140	Drainage of hematoma/fluid.
10160	Puncture drainage of lesion.
11000	Surgical cleansing of skin.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/HCPCS #	Description
11001	Additional cleansing of skin.
11040	Surgical cleansing, abrasion.
11041	Surgical cleansing of skin.
*11042	Cleansing of skin/tissue.
11050	Trim skin lesion.

* Added to the list as of 1/1/96.

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ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
11051	Trim 2 to 4 skin lesions.
11052	Trim over 4 skin lesions.
11100	Biopsy of skin lesion.
11101	Biopsy, each added lesion.
11200	Removal of skin tags.
11201	Removal of added skin tags.
11300	Shave skin lesion.
11301	Shave skin lesion.
11302	Shave skin lesion.
11303	Shave skin lesion.
11305	Shave skin lesion.
11306	Shave skin lesion.
11307	Shave skin lesion.
11308	Shave skin lesion.
11310	Shave skin lesion.
11311	Shave skin lesion.
11312	Shave skin lesion.
11313	Shave skin lesion.
11400	Removal of skin lesion.
11401	Removal of skin lesion.
11402	Removal of skin lesion.
11403	Removal of skin lesion.
*11404	Removal of skin lesion.
11420	Removal of skin lesion.
11421	Removal of skin lesion.
11422	Removal of skin lesion.
11423	Removal of skin lesion.
*11424	Removal of skin lesion.
11440	Removal of skin lesion.
11441	Removal of skin lesion.
11442	Removal of skin lesion.
11443	Removal of skin lesion.
*11444	Removal of skin lesion.
*11446	Removal of skin lesion.
11600	Removal of skin lesion.
11601	Removal of skin lesion.
11602	Removal of skin lesion.
11603	Removal of skin lesion.
*11604	Removal of skin lesion.
11620	Removal of skin lesion.
11621	Removal of skin lesion.
11622	Removal of skin lesion.
11623	Removal of skin lesion.
*11624	Removal of skin lesion.
11640	Removal of skin lesion.
11641	Removal of skin lesion.
11642	Removal of skin lesion.
11643	Removal of skin lesion.
*11644	Removal of skin lesion.
11700	Scraping of 1-5 nails.
11701	Scraping of additional nails.
11710	Scraping of 1-5 nails.
11711	Scraping of additional nails.
11730	Removal of nail plate.
11731	Removal of second nail plate.
11732	Remove additional nail plate.
11740	Drain blood from under nail.
11750	Removal of nail bed.
11752	Remove nail bed/finger tip.
11760	Reconstruction of nail bed.
11762	Reconstruction of nail bed.
11765	Excision of nail fold, toe.
11900	Injection into skin lesions.
11901	Added skin lesion injections.
*12021	Closure of split wound.
12031	Layer closure of wound(s).
12032	Layer closure of wound(s).
12041	Layer closure of wound(s).
12042	Layer closure of wound(s).
12051	Layer closure of wound(s).
12052	Layer closure of wound(s).
*13100	Repair of wound or lesion.
*13101	Repair of wound or lesion.
*13120	Repair of wound or lesion.
*13121	Repair of wound or lesion.
*13131	Repair of wound or lesion.
*13132	Repair of wound or lesion.
*13151	Repair of wound or lesion.
*13152	Repair of wound or lesion.
*14000	Skin tissue rearrangement.
*14040	Skin tissue rearrangement.
*14041	Skin tissue rearrangement.
*14061	Skin tissue rearrangement.
15780	Abrasion treatment of skin.
15781	Abrasion treatment of skin.
15782	Abrasion treatment of skin.
15783	Abrasion treatment of skin.
15786	Abrasion treatment of lesion.
15787	Abrasion, added skin lesions.
15851	Removal of sutures.
15852	Dressing change, not for burn.
16000	Initial treatment of burn(s).
16010	Treatment of burn(s).
16020	Treatment of burn(s).
16025	Treatment of burn(s).
17000	Destroy benign/premal lesion.
17001	Destruction of add'l lesions.
17002	Destruction of add'l lesions.
17010	Destruction skin lesion(s).
17100	Destruction of skin lesion.
17101	Destruction of 2nd lesion.
17102	Destruction of add'l lesions.
17104	Destruction of skin lesions.
17105	Destruction of skin lesions.
17106	Destruction of skin lesions.
17107	Destruction of skin lesions.
17110	Destruction of skin lesions.
17200	Electrocautery of skin tags.
17201	Electrocautery added lesions.
17250	Chemical cautery, tissue.
17260	Destruction of skin lesions.
17261	Destruction of skin lesions.
17262	Destruction of skin lesions.
17263	Destruction of skin lesions.
17264	Destruction of skin lesions.
17266	Destruction of skin lesions.
17270	Destruction of skin lesions.
17271	Destruction of skin lesions.
17272	Destruction of skin lesions.
17273	Destruction of skin lesions.
17274	Destruction of skin lesions.
17276	Destruction of skin lesions.
17280	Destruction of skin lesions.
17281	Destruction of skin lesions.
17282	Destruction of skin lesions.
17283	Destruction of skin lesions.
17284	Destruction of skin lesions.
17286	Destruction of skin lesions.
17304	Chemosurgery of skin lesion.
17305	2nd stage chemosurgery.
17306	3rd stage chemosurgery.
17307	Followup skin lesion therapy.
17310	Extensive skin chemosurgery.
17340	Cryotherapy of skin.
17360	Skin peel therapy.
19000	Drainage of breast lesion.
19001	Drain added breast lesion.
*19100	Biopsy of breast.
20000	Incision of abscess.
20500	Injection of sinus tract.
20520	Removal of foreign body.
20550	Inj tendon/ligament/cyst.
20600	Drain/inject joint/bursa.
20605	Drain/inject joint/bursa.
20610	Drain/inject joint/bursa.
20615	Treatment of bone cyst.
*20670	Removal of support implant.
20974	Electrical bone stimulation.
*21025	Excision of bone, lower jaw.
*21026	Excision of facial bone(s).
21029	Contour of face bone lesion.
21030	Removal of face bone lesion.
21031	Remove exostosis, mandible.
21032	Remove exostosis, maxilla.
*21040	Removal of jaw bone lesion.
*21041	Removal of jaw bone lesion.
21079	Prepare face/oral prosthesis.
21080	Prepare face/oral prosthesis.
21081	Prepare face/oral prosthesis.
21082	Prepare face/oral prosthesis.
21083	Prepare face/oral prosthesis.
21084	Prepare face/oral prosthesis.
21085	Prepare face/oral prosthesis.
21086	Prepare face/oral prosthesis.
21087	Prepare face/oral prosthesis.
21088	Prepare face/oral prosthesis.
21089	Prepare face/oral prosthesis.
21110	Interdental fixation.
*21210	Face bone graft.
*21215	Lower jaw bone graft.
*21245	Reconstruction of jaw.
*21249	Reconstruction of jaw.
*21485	Reset dislocated jaw.
*21550	Biopsy of neck/chest.
*21920	Biopsy soft tissue of back.
23031	Drain shoulder bursa.
*23330	Remove shoulder foreign body.
*23620	Treat humerus fracture.
*23931	Drainage of arm bursa.
*24065	Biopsy arm/elbow soft tissue.
24200	Removal of arm foreign body.
*24362	Reconstruct elbow joint.
24650	Treat radius fracture.
*25065	Biopsy forearm soft tissues.
25500	Treat fracture of radius.
25530	Treat fracture of ulna.
25600	Treat fracture radius/ulna.
25622	Treat wrist bone fracture.
*25624	Treat wrist bone fracture.
25630	Treat wrist bone fracture.
*25635	Treat wrist bone fracture.
25650	Repair wrist bone fracture.
26010	Drainage of finger abscess.
*26070	Explore/treat hand joint.
*26432	Repair finger tendon.

* Added to the list as of 1/1/96.
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ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
26600	Treat metacarpal fracture.
*26605	Treat metacarpal fracture.
26720	Treat finger fracture, each.
26725	Treat finger fracture, each.
26740	Treat finger fracture, each.
*27086	Remove hip foreign body.
*27323	Biopsy thigh soft tissues.
*27520	Treat kneecap fracture.
*27604	Drain lower leg bursa.
*27613	Biopsy lower leg soft tissue.
*27760	Treatment of ankle fracture.
*27780	Treatment of fibula fracture.
*27786	Treatment of ankle fracture.
*27788	Treatment of ankle fracture.
28001	Drainage of bursa of foot.
*28003	Treatment of foot infection.
28010	Incision of toe tendon.
28011	Incision of toe tendons.
28022	Exploration of a foot joint.
28024	Exploration of a toe joint.
28052	Biopsy of foot joint lining.
28108	Removal of toe lesions.
28124	Partial removal of toe.
28126	Partial removal of toe.
28153	Partial removal of toe.
28160	Partial removal of toe.
28190	Removal of foot foreign body.
28220	Release of foot tendon.
*28222	Release of foot tendons.
28230	Incision of foot tendon(s).
28232	Incision of toe tendon.
28234	Incision of foot tendon.
28270	Release of foot contracture.
28272	Release of toe joint, each.
*28313	Repair of demormity of toe.
*28400	Treatment of heal fracture.
28430	Treatment of ankle fracture.
28450	Treat midfoot fracture, each.
28455	Treat midfoot fracture, each.
28470	Treat metatarsal fracture.
28475	Treat metatarsal fracture.
28490	Treat big toe fracture.
28495	Treat big toe fracture.
28510	Treatment of toe fracture.
28515	Treatment of toe fracture.
28530	Treat sesamoid bone fracture.
28540	Treat foot dislocation.
28570	Treat foot dislocation.
28600	Treat foot dislocation.
28630	Treat toe dislocation.
*28635	Treat toe dislocation.
*28665	Treat toe dislocation.
29015	Application of body cast.
29020	Application of body cast.
29025	Application of body cast.
29035	Application of body cast.
29049	Application of shoulder cast.
29065	Application of long arm cast.
29075	Application of forearm cast.
29085	Apply hand/wrist cast.
29105	Apply long arm splint.
29125	Apply forearm splint.
29126	Apply forearm splint.
29130	Application of finger splint.
29131	Application of finger splint.
29200	Strapping of chest.
29220	Strapping of low back.
29260	Strapping of elbow or wrist.
29280	Strapping of hand or finger.
29345	Application of long leg cast.
29355	Application of long leg cast.
29358	Apply long leg cast brace.
29365	Application of long leg cast.
29405	Apply short leg cast.
29425	Apply short leg cast.
29435	Apply short leg cast.
29440	Addition of walker to cast.
29450	Application of leg cast.
29515	Application of lower leg splint.
29520	Strapping of hip.
29530	Strapping of knee.
29540	Strapping of ankle.
29550	Strapping of toes.
29580	Application of paste boot.
29590	Application of foot splint.
29700	Removal/revision of cast.
29705	Removal/revision of cast.
29710	Removal/revision of cast.
29715	Removal/revision of cast.
29720	Repair of body cast.
29730	Windowing of cast.
29740	Wedging of cast.
29750	Wedging of clubfoot cast.
29850	Knee arthroscopy/surgery.
30000	Drainage of nose lesion.
30020	Drainage of nose lesion.
30100	Intranasal biopsy.
30110	Removal of nose polyp(s).
*30124	Removal of nose lesion.
30200	Injection treatment of nose.
30210	Nasal sinus therapy.
30220	Insert nasal septal button.
30300	Remove nasal foreign body.
*30560	Release of nasal adhesions.
*30580	Repair upper jaw fistula.
*30801	Cauterization inner nose.
30901	Control of nosebleed.
31000	Irrigation maxillary sinus.
31002	Irrigation sphenoid sinus.
*31233	Nasal/sinus endoscopy, dx.
*31235	Nasal/sinus endoscopy, dx.
*31237	Nasal/sinus endoscopy, surg.
*31238	Nasal/sinus endoscopy, surg.
31505	Diagnostic laryngoscopy.
*31525	Diagnostic laryngoscopy.
*31570	Laryngoscopy with injection.
31575	Diagnostic laryngoscopy.
31579	Diagnostic laryngoscopy.
*33011	Repeat drainage of heart sac.
36000	Place needle in vein.
36400	Drawing blood.
36405	Drawing blood.
36406	Drawing blood.
36410	Drawing blood.
36430	Blood transfusion service.
36450	Exchange transfusion service.
36470	Injection therapy of vein.
36471	Injection therapy of veins.
36510	Insertion of catheter, vein.
*38300	Drainage lymph node lesion.
*38505	Needle biopsy, lymph node(s).
40490	Biopsy of lip.
40800	Drainage of mouth lesion.
*40801	Drainage of mouth lesion.
40804	Removal foreign body, mouth.
40808	Biopsy of mouth lesion.
40810	Excision of mouth lesion.
40812	Excise/repair mouth lesion.
*40814	Excise/repair mouth lesion.
*40816	Excision of mouth lesion.
*40819	Excise lip or cheek fold.
*40820	Treatment of mouth lesion.
*41000	Drainage of mouth lesion.
*41008	Drainage of mouth lesion.
41100	Biopsy of tongue.
*41105	Biopsy of tongue.
41108	Biopsy of floor of mouth.
*41110	Excision of tongue lesion.
*41112	Excision of tongue lesion.
*41113	Excision of tongue lesion.
*41800	Drainage of gum lesion.
*41806	Removal of foreign body, jawbone.
41825	Excision of gum lesion.
41826	Excision of gum lesion.
*41827	Excision of gum lesion.
*42000	Drainage mouth roof lesion.
42100	Biopsy roof of mouth.
*42104	Excision lesion, mouth roof.
*42106	Excision lesion, mouth roof.
*42107	Excision lesion, mouth roof.
*42160	Treatment mouth roof lesion.
*42300	Drainage of salivary gland.
*42310	Drainage of salivary gland.
42330	Removal of salivary stone.
*42335	Removal of salivary stone.
*42340	Removal of salivary stone.
42400	Biopsy of salivary gland.
*42405	Biopsy of salivary gland.
42650	Dilation of salivary duct.
42660	Dilation of salivary duct.
*42700	Drainage of tonsil abscess.
42800	Biopsy of throat.
45300	Proctosigmoidoscopy.
45303	Proctosigmoidoscopy.
*45305	Proctosigmoidoscopy; biopsy.
*45308	Proctosigmoidoscopy.
*45309	Proctosigmoidoscopy.
45330	Sigmoidoscopy, diagnostic.
45520	Treatment of rectal prolapse.
*46050	Incision of anal abscess.
46083	Incise external hemorrhoid.
46221	Ligation of hemorrhoid(s).
46230	Removal of anal tabs.
46320	Removal of hemorrhoid clot.
46500	Injection into hemorrhoids.
46600	Diagnostic anoscopy.
46604	Anoscopy and dilation.
46606	Anoscopy and biopsy.
*46611	Anoscopy.
46614	Anoscopy; control bleeding.
46615	Anoscopy.
46900	Destruction, anal lesion(s).
46910	Destruction, anal lesion(s).
46916	Cryosurgery, anal lesion(s).
46917	Laser surgery, anal lesion(s).

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ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
46934	Destruction of hemorrhoids.
46935	Destruction of hemorrhoids.
46936	Destruction of hemorrhoids.
46940	Treatment of anal fissure.
46942	Treatment of anal fissure.
46945	Ligation of hemorrhoids.
46946	Ligation of hemorrhoids.
51700	Irrigation of bladder.
51705	Change of bladder tube.
*51710	Change of bladder tube.
51720	Treatment of bladder lesion.
*52000	Cystoscopy.
*52010	Cystoscopy & duct catheter.
52265	Cystoscopy & treatment.
*52281	Cystoscopy & treatment.
*52285	Cystoscopy & treatment.
53270	Removal of urethra gland.
*53420	Reconstruct urethra, stage 1.
53600	Dilate urethra stricture.
53601	Dilate urethra stricture.
53620	Dilate urethra stricture.
53621	Dilate urethra stricture.
53660	Dilation of urethra.
53661	Dilation of urethra.
53670	Insert urinary catheter.
54050	Destruction, penis lesion(s).
54055	Destruction, penis lesion(s).
54056	Cryosurgery, penis lesion(s).
*54065	Destruction, penis lesion(s).
54200	Treatment of penis lesion.
54230	Prepare penis study.
54235	Penile injection.
55000	Drainage of hydrocele.
55250	Removal of sperm duct(s).
*55700	Biopsy of prostate.
*56405	I & D of vulva/perineum.
56420	Drainage of gland abscess.
56501	Destruction, vulva lesion(s).
*56605	Biopsy of vulva/perineum.
56606	Biopsy of vulva/perineum.
57061	Destruction vagina lesion(s).
57100	Biopsy of vagina.
57150	Treat vagina infection.
57160	Insertion of pessary.
57170	Fitting of diaphragm/cap.
*57180	Treat vaginal bleeding.
57452	Examination of vagina.
57454	Vagina examination & biopsy.
57460	Leep procedure.
57500	Biopsy of cervix.
57505	Endocervical curettage.
57510	Cauterization of cervix.
57511	Cryocautery of cervix.
*57800	Dilation of cervical canal.
58100	Biopsy of uterus lining.
58301	Remove intrauterine device.
59200	Insert cervical dilator.
59300	Episiotomy or vaginal repair.
59425	Antepartum care only.
59426	Antepartum care only.
59430	Care after delivery.
*60000	Drain thyroid/tongue cyst.
60100	Biopsy of thyroid.
61001	Remove cranial cavity fluid.
*61070	Brain canal shunt procedure.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
63690	Analysis of neuroreceiver.
63991	Analysis of neuroreceiver.
64400	Injection for nerve block.
64405	Injection for nerve block.
64408	Injection for nerve block.
64412	Injection for nerve block.
64413	Injection for nerve block.
64418	Injection for nerve block.
64435	Injection for nerve block.
64440	Injection for nerve block.
64441	Injection for nerve block.
64445	Injection for nerve block.
64450	Injection for nerve block.
64505	Injection for nerve block.
64508	Injection for nerve block.
64550	Apply neurostimulator.
64553	Implant neuroelectrodes.
64556	Implant neuroelectrodes.
64560	Implant neuroelectrodes.
64565	Implant neuroelectrodes.
64612	Destroy nerve, face muscle.
64613	Destroy nerve, spine muscle.
65205	Remove foreign body from eye.
65210	Remove foreign body from eye.
65220	Remove foreign body from eye.
65222	Remove foreign body from eye.
65286	Repair of eye wound.
65430	Corneal smear.
65435	Curette/treat cornea.
65436	Curette/treat cornea.
65600	Revision of cornea.
65772	Correction of astigmatism.
*65805	Drainage of eye.
65855	Laser surgery of eye.
65860	Incise inner eye adhesions.
*66030	Injection treatment of eye.
66761	Revision of iris.
*66762	Revision of iris.
66770	Removal of inner eye lesion.
*67031	Laser surgery, eye strands.
*67101	Repair detached retina.
*67105	Repair detached retina.
*67141	Treatment of retina.
67145	Treatment of retina.
*67208	Treatment of retinal lesion.
67210	Treatment of retinal lesion.
67228	Treatment of retinal lesion.
67345	Destroy nerve of eye muscle.
67506	Inject/treat eye socket.
67515	Inject/treat eye socket.
67700	Drainage of eyelid abscess.
67710	Incision of eyelid.
67800	Remove eyelid lesion.
67801	Remove eyelid lesions.
67805	Remove eyelid lesions.
67810	Biopsy of eyelid.
67820	Revise eyelashes.
67825	Revise eyelashes.
67840	Remove eyelid lesion.
67850	Treat eyelid lesion.
67915	Repair eyelid defect.
67922	Repair eyelid defect.
67930	Repair eyelid wound.
67938	Remove eyelid foreign body.
68020	Incise/drain eyelid lining.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
68040	Treatment of eyelid lesions.
68100	Biopsy of eyelid lining.
68110	Remove eyelid lining lesion.
68135	Remove eyelid lining lesion.
68200	Treat eyelid by injection.
68400	Incise/drain tear gland.
68420	Incise/drain tear sac.
68440	Incise tear duct opening.
68530	Clearance of tear duct.
68705	Revise tear duct opening.
68760	Close tear duct opening.
68761	Close tear duct opening.
68770	Close tear system fistula.
68800	Dilate tear duct opening(s).
68820	Explore tear duct system.
68830	Reopen tear duct channel.
68840	Explore/irrigate tear ducts.
69000	Drain external ear lesion.
69005	Drain external ear lesion.
69020	Drain outer ear canal lesion.
69100	Biopsy of external ear.
69105	Biopsy of external ear canal.
69200	Clear outer ear canal.
69210	Remove impacted ear wax.
69220	Clean out mastoid cavity.
69222	Clean out mastoid cavity.
69400	Inflate middle ear canal.
69401	Inflate middle ear canal.
69405	Catheterize middle ear canal.
69410	Inset middle ear baffle.
69420	Incision of eardrum.
*69424	Remove ventilating tube.
69433	Create eardrum opening.
69540	Remove ear lesion.
69610	Repair of eardrum.
92002	Eye exam, new patient.
92004	Eye exam, new patient.
92012	Eye exam established pt.
92014	Eye exam & treatment.
92019	Eye exam & treatment.
92020	Special eye evaluation.
92070	Fitting of contact lens.
92100	Serial tonometry exam(s).
92120	Tonography & eye evaluation.
92130	Water provocation tonography.
92140	Glaucoma provocative tests.
92225	Special eye exam, initial.
92226	Special eye exam, subsequent.
92230	Eye exam with photos.
92260	Ophthalmoscopy/dynamometry.
92287	Internal eye photography.
92311	Contact lens fitting.
92312	Contact lens fitting.
92313	Contact lens fitting.
92315	Prescription of contact lens.
92316	Prescription of contact lens.
92317	Prescription of contact lens.
92330	Fitting of artificial eye.
92335	Fitting of artificial eye.
92352	Special spectacles fitting.
92353	Special spectacles fitting.
92354	Special spectacles fitting.
92371	Repair & adjust spectacles.
92504	Ear microscopy examination.
92506	Speech & hearing evaluation.

* Added to the list as of 1/1/96.
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ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
92507	Speech/hearing therapy.
92508	Speech/hearing therapy.
92511	Nasopharyngoscopy.
92512	Nasal function studies.
92516	Facial nerve function test.
92520	Laryngeal function studies.
92565	Stenger test, pure tone.
92571	Filtered speech hearing test.
92575	Sensorineural acuity test.
92576	Synthetic sentence test.
92577	Stenger test, speech.
92582	Conditioning play audiometry.
93205	Special phonocardiogram.
93221	Vectorcardiogram tracing.
93721	Plethysmography tracing.
93797	Cardiac rehab.
93798	Cardiac rehab/monitor.
95010	Sensitivity skin tests.
95015	Sensitivity skin tests.
95056	Photosensitivity tests.
95065	Nose allergy test.
95075	Ingestion challenge test.
95144	Antigen therapy services.
95145	Antigen therapy services.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
95146	Antigen therapy services.
95147	Antigen therapy services.
95148	Antigen therapy services.
95149	Antigen therapy services.
95165	Antigen therapy services.
95170	Antigen therapy services.
95180	Rapid desensitization.
95831	Limb muscle testing, manual.
95832	Hand muscle testing, manual.
95833	Body muscle testing, manual.
95834	Body muscle testing, manual.
95851	Range of motion measurements.
95852	Range of motion measurements.
95857	Tensilon test.
96405	Intralesional chemo admin.
96406	Intralesional chemo admin.
96445	Chemotherapy, intracavitary.
96450	Chemotherapy, into cns.
96542	Chemotherapy injection.
99201	Office/outpatient visit, new.
99202	Office/outpatient visit, new.
99203	Office/outpatient visit, new.
99204	Office/outpatient visit, new.
99205	Office/outpatient visit, new.

ADDENDUM E.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

CPT/ HCPCS #	Description
99211	Office/outpatient visit, est.
99212	Office/outpatient visit, est.
99213	Office/outpatient visit, est.
99214	Office/outpatient visit, est.
99215	Office/outpatient visit, est.
99241	Office consultation.
99242	Office consultation.
99243	Office consultation.
99244	Office consultation.
99245	Office consultation.
99271	Confirmatory consultation.
99272	Confirmatory consultation.
99273	Confirmatory consultation.
99274	Confirmatory consultation.
99354	Prolonged service, office.
99355	Prolonged service, office.
A2000	Chiropractor manip of spine.
G0020	Prepare face/oral prosthesis.
G0021	Prepare face/oral prosthesis.
H5300	Occupational therapy.
M0101	Cutting/remove corns/calluses.

* Added to the list as of 1/1/96.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–628–FN]

RIN 0938–AH03

Medicare Program; Physician Fee Schedule Update For Calendar Year 1996 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the calendar year 1996 updates to the Medicare physician fee schedule and the Federal fiscal year 1996 volume performance standard rates of increase for expenditures for physicians' services under the Medicare Supplementary Medical Insurance (Part B) program as required by sections 1848 (d) and (f), respectively, of the Social Security Act. The fee schedule update for calendar year 1996 is 3.8 percent for surgical services, −2.3 percent for primary care services, and 0.4 percent for other nonsurgical services. While it does not affect payment for any particular service, there was a 0.8 percent increase in the update for all physicians' services for 1996. The physician volume performance standard rates of increase for Federal fiscal year 1996 are −0.5 percent for surgical services, 9.3 percent for primary care services, 0.6 percent for other nonsurgical services, and a weighted average of 1.8 percent for all physicians' services.

In our July 26, 1995 proposed rule concerning revisions to payment policies under the Medicare physician fee schedule for calendar year 1996, we proposed using category-specific volume and intensity growth allowances in calculating the default Medicare Volume Performance Standard (MVPS). We received 20 comments on this proposal. Since this proposal is related to the MVPS and this notice deals with MVPS issues, we are responding to those comments in this notice instead of in the final rule for the fee schedule entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1996" published elsewhere in this **Federal Register** issue.

EFFECTIVE DATE: The volume performance standard rates of increase are effective on October 1, 1995. The Medicare physician fee schedule update is effective on January 1, 1996.

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FOR FURTHER INFORMATION CONTACT: *Ordering information:* See ADDRESSES section.

Content information: Contact either Don Thompson, (410) 786–4586, or Rick Ensor, (410) 786–5617.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Legislation

A. The Physician Fee Schedule Update and Medicare Volume Performance Standard

Section 1848 of the Social Security Act (the Act) requires the Secretary of Health and Human Services to—

- Establish annual updates to payment rates under the Medicare physician fee schedule, and
- Establish volume performance standard rates of increase to help control the rate of growth in expenditures for physicians' services.

Under section 1848(b)(1) of the Act, payment for physicians' services, except for anesthesia services, equals the product of the relative value units (RVUs) for a service, a geographic adjustment factor, and a conversion factor. Anesthesia services are paid under a different relative value system, and payment is equal to the sum of the base and time units for the service multiplied by a geographically adjusted anesthesia-specific conversion factor. The RVUs and anesthesia base units reflect the relative amount of resources used by physicians to furnish the service, and the geographic adjustment factor measures practice cost differences between areas. The geographically adjusted RVUs are multiplied by a conversion factor to obtain the physician fee schedule payment amounts. The 1996 conversion factors are $15.28 for anesthesia services, $40.7986 for surgical services, $35.4173 for primary care services, and $34.6293 for other nonsurgical services.

1. Physician Fee Schedule Update

Section 1848(d) of the Act requires the Secretary to provide the Congress with her recommendation of a physician fee schedule update by April 15 of each year. Under section 1848(d)(2)(A) of the Act, the Secretary is required to consider a number of factors, including the following:

- The percentage change in the Medicare economic index (MEI), a measure of the change in the cost of operating a medical practice.
- The growth in actual expenditures for physicians' services in the prior fiscal year.
- The relationship between that growth and the volume performance standard rate of increase.
- Changes in the volume and intensity of services.
- Access to services.
- Other factors that may contribute to changes in the volume and intensity of services or access to services.

If the Congress does not set the update, section 1848(d)(3) of the Act establishes the process for updating the physician fee schedule. Under section 1848(d)(3), unless otherwise specified by the Congress, the fee schedule update for a category of physicians' services equals the appropriate update index (the MEI) adjusted by the number of percentage points by which expenditure growth exceeded or was less than the volume performance standard rates of increase for the second preceding year for that category of physicians' services. That is, the calendar year 1996 update would equal the 1996 MEI increased or decreased by the difference between the rate of increase in expenditures for fiscal year 1994 and the volume performance standard for that year. However, section 1848(d)(3)(B) of the Act limits the maximum downward adjustment for 1995 and any succeeding year to 5.0 percentage points. There is no restriction on upward adjustments to the MEI.

Section 1848(d)(1)(C) of the Act requires the Secretary to publish in the **Federal Register**, within the last 15 days of October, the updates for the following calendar year.

The updates are required by the Medicare statute, and any budget implications associated with them are due to the requirements of the law and not this notice.

2. Medicare Volume Performance Standard Rates of Increase Section 1848(f) of the Act requires the Secretary to establish volume performance standard rates of increase for Medicare expenditures for physicians' services. The use of volume performance standard rates of increase is intended to control the rate of increase in expenditures for physicians' services.

The volume performance standard rates of increase are not limits on expenditures. Payments for services are not withheld if volume performance standard rates of increase are exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, is adjusted to reflect the success or failure in meeting the volume performance standard rates of increase.

Section 1848(f) of the Act sets forth the process for establishing the volume performance standard rates of increase by requiring the Secretary to recommend to the Congress the physician volume performance standard rates of increase for the following Federal fiscal year by not later than April 15. The Secretary is required to recommend MVPS rates for surgical, primary care, other nonsurgical, and all physicians' services. In making the recommendations, the Secretary is required to confer with organizations that represent physicians and to consider the following factors:

- Inflation.
- Changes in the number and age composition of Medicare enrollees under Part B (excluding risk health maintenance organization enrollees).
- Changes in technology.
- Evidence of inappropriate utilization of services.
- Evidence of lack of access to necessary physicians' services.
- Other appropriate factors as determined by the Secretary.

If the Congress does not set the volume performance standard rates of increase, section 1848(f)(2) (A) and (B) of the Act requires the Secretary to set MVPS rates for all physicians' services and each category of physicians' services equal to the product of the following four factors reduced by a performance standard factor, which for fiscal year 1996 is 4.0 percentage points:

- 1.0 plus the Secretary's estimate of the weighted-average percentage increase (divided by 100) in fees for all physicians' services or for the category of physicians' services for the portions of calendar year 1995 and calendar year 1996 contained in fiscal year 1996.
- 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of Part B enrollees (excluding risk health maintenance organization enrollees) from fiscal year 1995 to fiscal year 1996.
- 1.0 plus the Secretary's estimate of the average annual percentage growth (divided by 100) in the volume and intensity of all physicians' services or of the category of physicians' services for fiscal year 1990 through fiscal year 1995.
- 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services or of the category of physicians' services that will result from changes in law or regulations in fiscal year 1996 as compared with expenditures for physicians' services in fiscal year 1995.

Section 1848(f)(1)(C) of the Act requires the Secretary to publish in the **Federal Register** within the last 15 days of October of each year the volume performance standard rates of increase for all physicians' services and for each category of physicians' services for the Federal fiscal year that began on October 1 of that year. (The MVPS for all physicians' services has no practical effect on the update. We publish it only because we are required to do so by section 1848(f) of the Act.)

3. Past Years' Medicare Volume Performance Standard Rates of Increase and Physician Fee Schedule Updates

MVPS rates have been established under section 1848 of the Act since fiscal year 1990. Calendar year 1992 was the first year in which the update was affected by expenditures under the MVPS system. The following tables illustrate the MVPS rates in each fiscal year since their inception, the actual rates of increase in expenditures, and the corresponding updates in the second subsequent calendar year.

FEE SCHEDULE UPDATE

[In percent]

Calendar year	MEI	Performance adjustment	Legislative adjustment	Update
CY 1992:				
All services	3.2	−0.9	−0.4	−1.9
CY 1993:				
Surgical	2.7	0.4		3.1
Nonsurgical	2.7	−1.9		0.8
CY 1994:				
Surgical	2.3	11.3	−3.6	10.0
Primary care	2.3	5.6	0.0	7.9
Other nonsurgical	2.3	5.6	−2.6	5.3
CY 1995:				
Surgical	2.1	12.8	−2.7	12.2
Primary care	2.1	5.8	0.0	7.9
Other nonsurgical	2.1	5.8	−2.7	5.2
CY 1996:				
Surgical	2.0	1.8		3.8
Primary care	2.0	−4.3		−2.3
Other Nonsurgical	2.0	−1.6		0.4

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MEDICARE VOLUME PERFORMANCE STANDARD RATES OF INCREASE

[In percent]

Fiscal year	MVPS	Actual	Difference
FY 1990:			
All services	9.1	10.0	−0.9
FY 1991:			
Surgical	3.3	2.9	0.4
Nonsurgical	8.6	10.5	−1.9
FY 1992:			
Surgical	6.5	−4.8	11.3
Nonsurgical	11.2	5.6	5.6
FY 1993:			
Surgical	8.4	−4.4	12.8
Nonsurgical	10.8	5.0	5.8
FY 1994:			
Surgical	9.1	7.3	1.8
Primary care	10.5	14.8	−4.3
Other nonsurgical	9.2	10.8	−1.6
FY 1995:			
Surgical	9.2	.....	.....
Primary care	13.6	.....	.....
Other nonsurgical	4.4	.....	.....
FY 1996:			
Surgical	−0.5	.....	.....
Primary care	9.3	.....	.....
Other nonsurgical	0.6	.....	.....

Separate MVPS rates for surgical and nonsurgical services were not required until fiscal year 1991. Separate fee schedule updates were not required until calendar year 1993. Beginning with the calendar year 1994 fee schedule update and the fiscal year 1994 MVPS, we established separate updates and MVPS rates of increase for surgical, primary care, and other nonsurgical services.

B. Physicians' Services

Section 1848(f)(5)(A) of the Act defines physicians' services for purposes of the volume performance standard rates of increase as including other items or services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed by a physician or furnished in a physician's office. Section 1861(s) of the Act defines medical and other health services covered under Part B. As provided for in the fiscal year 1990 volume performance standard rates of increase notice in the **Federal Register** on December 29, 1989 (54 FR 53819), we are including the following medical and other health services in section 1861(s) of the Act in the physician volume performance standard rates of increase if bills for the items are processed and paid for by Medicare carriers:

- Physicians' services.
- Services and supplies furnished incident to physicians' services.
- Outpatient physical therapy and speech therapy services, and outpatient occupational therapy services.
- Antigens prepared by or under the direct supervision of a physician.
- Services of physician assistants, certified registered nurse anesthetists, certified nurse midwives, clinical psychologists, clinical social workers, nurse practitioners, and clinical nurse specialists.
- Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests.
- X-ray, radium, and radioactive isotope therapy.
- Surgical dressings, splints, casts, and other devices used for reduction of fractures and dislocations.

As stated in our December 8, 1994 final notice (59 FR 63638) announcing the fiscal year 1995 volume performance standard rates of increase, we are including outpatient diagnostic laboratory tests paid through intermediaries in the MVPS definition of physicians' services beginning in fiscal year 1996 (59 FR 63640).

C. Definition of Surgical, Primary Care, and Other Nonsurgical Services

As described in the December 2, 1993 notice (58 FR 63858) containing our definitions of surgical, primary care, or other nonsurgical services, we consider a procedure to be surgical if the following conditions are met:

- In the HCFA Part B data system, the service is classified under "type of service" as a "surgery."
- The service is performed by surgical specialists more than 50 percent of the time.

As also discussed in the December 1993 notice, section 1842(i)(4) of the Act defines primary care services as "office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services." Since this language was the result of an amendment to the Act made by section 4042(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203), enacted on December 22, 1987, we rely on the conference report accompanying OBRA 1987 (H. R. Rep. No. 100–495, 100th Congress, 1st Session 594–595 (1987)) to determine the HCFA Common Procedure Coding System (HCPCS) codes to be included in the definition of primary care services. In addition, section 6102(f)(10) of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Public Law 101–239), enacted on December 19, 1989, indicated intermediate and comprehensive office visits for eye examinations and treatments for new patients were to be considered primary care services.

We classify physicians' services not meeting the surgical or primary care definitions as nonsurgical services.

For a procedure code that is new in 1996 and does not meet the primary care definition, we do not have any data for determining how often the procedure is performed by surgical specialists and therefore whether the service should be classified as surgical or nonsurgical. We categorized these codes as surgical or nonsurgical based on the judgment of our medical staff. To assist us in making these determinations, we considered the type-of-service classification within the Physicians' Current Procedural Terminology (CPT) and the relationship of services represented by the new codes to surgical services meeting the above-described criteria. We followed a similar process to classify codes that were new in 1995. For the 1996 classification of the new 1995 codes, however, we used 6 months of 1995 data to determine whether they meet the criteria for being considered surgical services. Based on these data, we did not need to reclassify any codes as surgical or nonsurgical.

For 1996, we have classified monthly end-stage renal disease services (HCPCS codes 90918 through 90921) as primary care services. For a full discussion of this classification, see the final rule with comment period entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1996" published elsewhere in this **Federal Register** issue and hereafter referred to as the physician fee schedule final rule.

Also, Addendum B of the physician fee schedule final rule, published elsewhere in this **Federal Register** issue, lists the RVUs and related information used in determining Medicare payments for HCPCS codes. For the purposes of the physician fee schedule, we have assigned the following surgical, primary care, or other nonsurgical service update indicators to these codes:

Update indicator	Interpretation
S	Surgical services.
P	Primary care services.
N	The physician fee schedule update applies, but the code is not defined as surgical or primary care.
O	The physician fee schedule update does not apply.

The MVPS indicator for a procedure code is identical to the update indicator for codes that have a surgical, primary care, or other nonsurgical service update indicator. However, we consider some codes with an update indicator of "O" to be nonsurgical for the purposes of the MVPS, most notably the clinical diagnostic laboratory codes.

The update indicators for codes new or revised in 1996 are shown in Addendum C of the physician fee schedule final rule, published elsewhere in this **Federal Register** issue.

II. Analysis of and Responses to Public Comments

In our July 26, 1995 proposed rule (60 FR 38400) concerning revisions to payment policies under the Medicare physician fee schedule for calendar year 1996, we invited public comments on a proposal to use category-specific volume and intensity growth allowances in calculating the default MVPS (60 FR 38416). Since this proposal is related to the MVPS and this notice deals with MVPS issues, we are responding to those comments in this notice instead of in the physician fee schedule, published elsewhere in this **Federal Register** issue. Our responses to the comments follow:

Comment: Several commenters stated that the use of category-specific volume and intensity growth allowances is counter to the spirit of the MVPS since categories with higher than average volume and intensity growth receive higher MVPS targets, and categories with lower than average volume and intensity growth receive lower targets.

Response: The use of category-specific volume and intensity is more consistent with section 1848(f)(2)(A) of the Act, which describes the calculation of the volume performance standards. Section 1848(f)(2)(A) states that one of the factors in calculating the volume performance standards for all physicians' services and for each category of physicians' services shall be equal to "1 plus the Secretary's estimate of the annual percentage growth (divided by 100) in the volume and intensity of all physicians' services or of the category of physicians' services, respectively, under this part for the 5-fiscal-year period ending with the preceding fiscal year * * *" As stated in our July 26, 1995 proposed rule, although historically the data available to us allowed an accurate estimate of the overall growth in the volume and intensity of physicians' services, they did not allow us to estimate the volume and intensity growth for each individual category of service with the degree of accuracy required for the MVPS calculation. More recent data now allow us to do this. So while it is true that the targets move in the direction of volume and intensity growth, this is a result of the statutory volume performance standard methodology.

Comment: Several commenters stated that the proposed change in methodology does not take into account the "appropriateness" of the differential volume and intensity growth allowances.

Response: As stated in the response to the prior comment, the use of category-specific volume and intensity growth allowances is more consistent with section 1848(f)(2)(A) of the Act. The appropriateness of the volume performance standards in any given year, or of the statutory methodology itself, can be handled through the MVPS recommendation process. Section 1848(f)(1) of the Act requires the Secretary and the Physician Payment Review Commission to provide recommendations to the Congress on the MVPS for the coming year. The Congress can choose to act on these recommendations or can set the MVPS itself.

Comment: One commenter opposed the use of category-specific volume and intensity growth allowances on the grounds that it was a "stopgap" policy and recommended a legislative change to a single conversion factor and volume performance standard.

Response: As we stated in our July 26, 1995 proposed rule, we proposed this change in our regulations to address immediate problems in the physician fee schedule. The Act does not allow us to create a single conversion factor and volume performance standard for all Medicare physician fee schedule services.

Comment: One commenter believed that we provided no justification for our proposal other than to increase payment for primary care services.

Response: As stated above, the use of category-specific volume and intensity is more consistent with section 1848(f)(2)(A) of the Act. In addition, although for fiscal year 1996 this change in methodology would result in a higher primary care MVPS, this does not necessarily mean the change would have a similar result in future years. The impact on any individual category of physicians' services is dependent on the future relationship between the average volume and intensity growth for that category and for physicians' services overall. If future growth in the volume and intensity of primary care services is lower than overall growth in physicians' services, this change would result in a lower MVPS for primary care services. Similar reasoning applies to the categories of surgical services and nonsurgical services other than primary care.

Comment: Several commenters believed that use of category-specific volume and intensity growth allowances would provide a more accurate baseline against which to compare volume and intensity growth. They also stated that the proposal was more consistent with our use of category-specific estimates of the MVPS factors for the weighted-average increase in physicians' fees and the percentage change in expenditures

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resulting from changes in law or regulations.

Response: The use of category-specific volume and intensity growth will make the volume performance standards more comparable with the actual growth in allowed charges for a given category of physicians' services. In addition, we agree that the use of category-specific volume and intensity growth allowances is more consistent with our use of category-specific estimates of the MVPS factors for fees and changes in law or regulations. The language in section 1848(f)(2)(A) of the Act regarding these two MVPS factors is similar to the language describing the volume and intensity factor.

Final decision: Beginning with fiscal year 1996, we will use category-specific volume and intensity growth allowances in calculating the default volume performance standards.

III. Provisions of This Final Notice

A. Physician Fee Schedule Update for Calendar Year 1996

Under the requirements of section 1848(d)(3) of the Act, the fee schedule update for calendar year 1996 will be 3.8 percent for surgical services, −2.3 percent for primary care services, and 0.4 percent for other nonsurgical services. While it does not affect payment, there was a 0.8 percent increase in the update for all physicians' services for 1996. We determined this update as follows:

[In percent]

	Surgical services	Primary care services	Nonsurgical services
1996 MEI	2.0	2.0	2.0
MVPS Adjustment	1.8	−4.3	−1.6
1996 Update	3.8	−2.3	0.4

In our July 26, 1995 proposed rule (60 FR 38400) concerning revisions to payment policies under the Medicare physician fee schedule for calendar year 1996, we proposed applying budget-neutrality adjustments to the conversion factors rather than to the RVUs (60 FR 38401 to 38402). As discussed in the physician fee schedule final rule, published elsewhere in this **Federal Register** issue, the 0.36 percent budget-neutrality adjustment for 1996 will be made on the conversion factors. However, if in the future the Congress explicitly sets a conversion factor at a fixed dollar amount for a given year, we will consider establishing a separate budget-neutrality adjuster or applying the adjustment to the RVUs.

Applying the updates and budget neutrality adjustment to the 1995 conversion factors of $39.447 for surgical services (other than anesthesia services), $36.382 for primary care services, and $34.616 for nonsurgical services yields 1996 conversion factors of $40.7986 for surgical services, $35.4173 for primary care services, and $34.6293 for other nonsurgical services. The 1995 anesthesia conversion factor of $14.77, which includes the effect of the 1995 RVU budget-neutrality adjustment, will be updated by the surgical update to $15.28 for 1996, after adjusting for the 1996 budget-neutrality adjustment.

The specific calculations to determine the fee schedule updates for physicians' services for calendar year 1996 are explained in section IV.A. of this notice.

B. Physician Volume Performance Standard Rates of Increase for Fiscal Year 1996

Under the requirements in section 1848(f)(2) (A) and (B) of the Act, we have determined that the volume performance standard rates of increase for physicians' services for fiscal year 1996 are −0.5 percent for surgical services, 9.3 percent for primary care services, 0.6 percent for other nonsurgical services, and a weighted average of 1.8 percent for all physicians' services.

This determination is based on the following legislative factors:

[In percent]

Legislative factors	Surgical services	Primary care services	Nonsurgical services
Fees	2.1	2.1	2.3
Enrollment	−0.3	−0.3	−0.3
Volume and Intensity	2.3	5.3	5.1
Legislation	−0.6	5.7	−2.4
Performance Standard Factor	4.0	4.0	4.0
Total	−0.5	9.3	0.6

The specific calculations to determine the volume performance standard rates of increase for physicians' services for fiscal year 1996 are explained in section IV.B. of this notice.

IV. Detail on Calculation of the Calendar Year 1996 Physician Fee Schedule Update and the Fiscal Year 1996 Physician Volume Performance Standard Rates of Increase

A. Physician Fee Schedule Update

1. The Percentage Change in the Medicare Economic Index

The MEI measures the weighted-average annual price change for various inputs needed to produce physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide labor productivity. This index, which has 1989 base weights, is comprised of two broad categories: (1) Physician's own time, and (2) physician's practice expense.

The physician's own time component represents the net income portion of business receipts and primarily reflects the input of the physician's own time into the production of physicians' services in physicians' offices. This category consists of two subcomponents, wages and salaries and fringe benefits. These components are adjusted by the 10-year moving average percent change in output per man-hour for the nonfarm business sector to eliminate double counting for productivity growth in physicians' offices and the general economy.

The physician's practice expense category represents the rate of price growth in nonphysician inputs to the production of services in physicians' offices. This category consists of wages and salaries and fringe benefits for nonphysician staff and other nonlabor inputs. Like physician's own time, the nonphysician staff categories are adjusted for productivity using the 10-year moving average percent change in output per man-hour for the nonfarm business sector. The physician's practice expense component also includes the following categories of nonlabor inputs: office expense, medical materials and supplies, professional liability insurance, medical equipment, professional car, and other expense. The table below presents a listing of the MEI cost categories with associated weights and percent changes for price proxies for the 1996 update. The calendar year 1996 MEI is 2.0 percent.

INCREASE IN THE MEDICARE ECONOMIC INDEX

[Update for Calendar Year 1996 [1]]

	1989 weights [2]	CY 1996 percent changes
Medicare Economic Index Total	100.0	2.0
1. Physician's Own Time [3 4]	54.2	1.7
a. Wages and Salaries: Average hourly earnings private nonfarm, net of productivity	45.3	1.6
b. Fringe Benefits: Employment Cost Index, benefits, private nonfarm, net of productivity	8.8	2.1
2. Physician's Practice Expense [3]	45.8	2.4
a. Nonphysician Employee Compensation	16.3	1.9
1. Wages and Salaries: Employment Cost Index, wages and salaries, weighted by occupation, net of productivity	13.8	1.8
2. Fringe Benefits: Employment Cost Index, fringe benefits, white collar, net of productivity	2.5	2.8
b. Office Expense: Consumer Price Index for Urban Consumers (CPI–U), housing	10.3	2.4
c. Medical Materials and Supplies: Producer Price Index (PPI), ethical drugs/PPI, surgical appliances and supplies/CPI–U, medical equipment and supplies (equally weighted)	5.2	2.8
d. Professional Liability Insurance: HCFA professional liability insurance survey [5]	4.8	2.9
e. Medical Equipment: PPI, medical instruments and equipment	2.3	0.9
f. Other Professional Expense	6.9	3.3
1. Professional Car: CPI–U, private transportation	1.4	4.8
2. Other: CPI–U, all items less food and energy	5.5	2.9
Addendum:		
Productivity: 10-year moving average of output per man-hour, nonfarm business sector	N/A	1.2
Physician's Own Time, not productivity adjusted	54.2	2.9
Wages and salaries, not productivity adjusted	45.3	2.8
Fringe benefits, not productivity adjusted	8.8	3.3
Nonphysician Employee Compensation, not productivity adjusted	16.3	3.1
Wages and salaries, not productivity adjusted	13.8	3.0
Fringe benefits, not productivity adjusted	2.5	4.0

[1] The rates of change are for the 12-month period ending June 30, 1995, which is the period used for computing the calendar year 1996 update. The price proxy values are based upon the latest available Bureau of Labor Statistics data as of September 1995.

[2] The weights shown for the MEI components are the 1989 base-year weights, which may not sum to subtotals or totals because of rounding. The MEI is a fixed-weight, Laspeyres-type input price index whose category weights indicate the distribution of expenditures among the inputs to physicians' services for calendar year 1989. To determine the MEI level for a given year, the price proxy level for each component is multiplied by its 1989 weight. The sum of these products (weights multiplied by the price index levels) over all cost categories yields the composite MEI level for a given year. The annual percent change in the MEI levels is an estimate of price change over time for a fixed market basket of inputs to physicians' services.

[3] The Physician's Own Time and Nonphysician Employee Compensation category price measures include an adjustment for productivity. The price measure for each category is divided by the 10-year moving average of output per man-hour in the nonfarm business sector. For example, the wages and salaries component of Physician's Own Time is calculated by dividing the rate of growth in average hourly earnings by the 10-year moving average rate of growth of output per man-hour for the nonfarm business sector. Dividing one plus the decimal form of the percent change in the average hourly earnings (1+.028=1.028 by one plus the decimal form of the percent change in the 10-year moving average of labor productivity (1+.012=1.012) equals one plus the change in average hourly earnings net of the change in output per man-hour (1.028/.012=1.016. All Physician's Own Time and Nonphysician Employee Compensation categories are adjusted in this way. Due to a higher level of precision the computer-calculated quotient may differ from the quotient calculated from rounded individual percent changes.

[4] The average hourly earnings proxy, the Employment Cost Index proxies, as well as the CPI–U, housing and CPI–U, private transportation are published in the Current Labor Statistics Section of the Bureau of Labor Statistics' Monthly Labor Review. The remaining CPIs and PPIs in the revised index can be obtained from the Bureau of Labor Statistics' CPI Detailed Report or Producer Price Indexes.

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[a] Derived from a HCFA survey of several major insurers (the latest available historical percent change data are for calendar year 1994). This is consistent with prior computations of the professional liability insurance component of the MEI.
N/A Productivity is factored into the MEI compensation categories as an adjustment to the price variables; therefore, no explicit weight exists for productivity in the MEI.

2. Medicare Volume Performance Standard Performance Adjustment

As required by section 1848(d)(3)(B)(i) of the Act, we are increasing the update by 1.8 percentage points for surgical services and decreasing it by 4.3 percentage points for primary care and 1.6 percentage points for other nonsurgical services to reflect the percentage increase in expenditures between fiscal year 1993 and fiscal year 1994 relative to the volume performance standard rates of increase for fiscal year 1994.

Our estimate of the percentage growth in surgical services between fiscal year 1993 and fiscal year 1994 is 7.3 percent. Because the volume performance standard rate of increase for fiscal year 1994 was 9.1 percent, the rate of increase in expenditures for surgical services was less than the volume performance standard rate of increase by 1.8 percentage points. For primary care services, the rate of increase in expenditures was 14.8 percent, 4.3 percentage points greater than the volume performance standard rate of increase of 10.5 percent. For other nonsurgical services, the rate of increase in expenditures was 10.8 percent, 1.6 percentage points greater than the volume performance standard rate of increase of 9.2 percent.

B. Fiscal Year 1996 Physician Volume Performance Standard Rates of Increase

Below we explain how we determined the increases for each of the four factors used in determining the volume performance standard rates of increase for fiscal year 1996.

Factor 1—Weighted-Average Percentage Increase in Fees for Physicians' Services (Before Applying Legislative Reductions) for Months of Calendar Years 1995 and 1996 Included in Fiscal Year 1996

This factor was calculated as a weighted average of the fee increases that apply to fiscal year 1996; that is, the fee increases that apply to the last 3 months of calendar year 1995 multiplied by 25 percent plus the fee increases that apply to the first 9 months of calendar year 1996 multiplied by 75 percent. Beginning with calendar year 1992, physicians' services are updated by a physician fee schedule update factor that is based on the MEI adjusted for several statutory factors. The update factor for a category of physicians' services for calendar year 1996 is adjusted by the number of percentage points that the rate of increase in expenditures in fiscal year 1994 compared to fiscal year 1993 was less than the volume performance standard rate of increase for the category of physicians' services in fiscal year 1994. Laboratory services are updated by increases in the Consumer Price Index for Urban Consumers (CPI–U).

Table 2 shows the updates that were used to determine the weighted-average percentage increase in physician fees.

TABLE 2.—MEDICARE ECONOMIC INDEX AND CONSUMER PRICE INDEX FOR URBAN CONSUMERS FOR CALENDAR YEARS 1995 AND 1996

	1995	1996
MEI	2.1	2.0
CPI–U	2.8	3.2

Physicians' services make up approximately 90 percent of the total expenditures in the definition of physicians' services used for purposes of the volume performance standard rates of increase; laboratory services represent approximately 10 percent.

In addition to the annual updates and individual weights of the above services, one other element has an effect on the rate of increase in physician fees. Section 1842(h)(1) of the Act provides for "participating physicians" who agree to accept Medicare payment as payment in full and to bill Medicare beneficiaries only for the 20 percent coinsurance amount and any unmet portion of the $100 annual deductible amount. Sections 1842(b)(4)(A)(iv) and 1848(a)(3) of the Act provide that nonparticipating physicians are paid 5 percent less for their Medicare services than participating physicians. The nonparticipating physicians are given an opportunity at the end of each calendar year to enroll as participating physicians for the next calendar year. Participation rates have increased each year, and we assume that this trend will continue. The increase in the number of participating physicians and the fact that they are paid at a rate higher than nonparticipating physicians also add to the rate of increase in the weighted-average percentage increase in physician fees.

After taking into account all the elements described above, we estimate that the weighted-average increase in fees for physicians' services in fiscal year 1996 before applying the legislative changes will be 2.1 percent for surgical services, 2.1 percent for primary care services, 2.3 percent for other nonsurgical services, and a weighted average of 2.2 percent for all physicians' services.

Factor 2—The Percentage Increase in the Average Number of Part B Enrollees from Fiscal Year 1995 to Fiscal Year 1996

We estimate that average Medicare Part B enrollment in fiscal year 1996 will be 36.2 million. Decreasing that figure by the estimated enrollment in risk health maintenance organizations of 3.1 million (those enrolled in risk health maintenance organizations whose Medicare-covered medical care is paid for through the adjusted average per capita cost mechanism and is therefore outside the scope of the MVPS) results in an estimate of 33.0 million Part B enrollees in fiscal year 1996 not in risk health maintenance organizations.

The corresponding figures for 1995 are estimated to be 35.5 million total Part B enrollees and 2.4 million risk health maintenance organization enrollees, which result in an estimate of 33.1 million Part B enrollees not in risk health maintenance organizations. We estimate that there will be 0.1 million fewer Part B enrollees not in risk health maintenance organizations in fiscal year 1996 than in fiscal year 1995, which represents a −0.3 percent decrease from fiscal year 1995 to fiscal year 1996 for surgical services, primary care services, other nonsurgical services, and the average of all physicians' services.

Factor 3—Average Annual Growth in the Volume and Intensity of Physicians' Services for Fiscal Year 1991 through Fiscal Year 1995

Section 1848(f)(2)(A)(iii) of the Act requires the Secretary to estimate the average annual percentage growth in the volume and intensity of physicians' services or of the category of physicians' services for fiscal year 1991 through fiscal year 1995. This estimate must be based upon information contained in the most recent annual report issued by the Board of Trustees of the Supplementary Medical Insurance Trust Fund (Trustees' Report).

The data on the percentage increase in the volume and intensity of services in the Trustees' Report are based on historical trends in increases in allowed charges, which are not influenced by the Part B deductible. The volume performance standard rates of increase under this notice, however, have historically been compared to increases in expenditures, which are influenced by the Part B deductible. Section 1832(b) of the Act specifies that the Part B deductible will be $100 for calendar year 1991 and subsequent years. The effect of the deductible remaining fixed at $100 is that the overall annual increases in allowed charges for MVPS physicians' services are lower than the overall annual increases in expenditures. Although we believe it would be consistent with a literal interpretation of section 1848(f)(2)(A)(iii) of the Act, it would be inappropriate to base the volume and intensity component on the lower 5-year growth in allowed charges and compare the volume performance standards to the higher growth in expenditures, so we instead compare the standards to the growth in allowed charges.

Consistent with data contained in the Trustees' Report, we estimated Factor 3 using a definition of physicians' services that includes certain supplies and nonphysician services not otherwise included in computing the volume performance standard rates of increase (primarily durable medical equipment and ambulance services). We included data for these services because we were required to base the estimate on data contained in the Trustees' Report, and it was not feasible to recompute the data from the 5-year period to exclude these supplies and nonphysician services. We believe the inclusion of these nonphysician supplies and services in this component has a minimal effect on the estimate because the component measures rates of change. Since durable medical equipment and ambulance services constitute only about 10 percent of the total charges used in the Trustees' Report, the rate of change for these nonphysician services and supplies would have to be significantly different from the rate of change for physicians' services to have any measurable impact on this volume and intensity increase factor. (Factor 3 is the only component of the volume performance standard rate of increase that was estimated using data that included nonphysician services and supplies.) The volume increases for services performed in independent laboratories were included in the calculation of the physician increases, as were the volume increases for clinical laboratory tests performed in hospital outpatient departments.

As described earlier, the fiscal year 1996 volume performance standards were calculated using category-specific volume and intensity. The 5-year average rate of increase in volume and intensity equals 2.3 percent for surgical services, 5.3 percent for primary care services, 5.1 percent for other nonsurgical services. The weighted-average increase for all physicians' services is 4.4 percent.

Factor 4—Percentage Increase in Expenditures for Physicians' Services Resulting from Changes in Law or Regulations in Fiscal Year 1996 Compared with Fiscal Year 1995

Legislative changes enacted in OBRA 1993 and changes in the regulations required by this law, as well implementation of the physician fee schedule (including refinements made in the RVUs for 1995 and 1996) will have an impact on the volume performance standard rates of increase for fiscal year 1996.

The net effect of implementing the physician fee schedule after making the RVU refinements for 1995 and 1996 will increase payment rates and, therefore, the volume performance standard for primary care services. Similarly, the net effect of refining the RVUs and implementing the fee schedule will reduce payment rates for most surgical services and many nonsurgical services other than primary care, thus, lowering the volume performance standard rates of increase for these services. Implementing the fee schedule will have no effect on the volume performance standard rates of increase for all physicians' services because the net effect of increases in payment for certain services and decreases in payment for other services will have a budget-neutral effect on payment for all physicians' services.

The net adjustments to the physician fee schedule updates will have the effect of increasing the volume performance standard rate for surgical services and decreasing the rate for primary care services. It will have no effect on the rate for other nonsurgical services. OBRA 1993 also included a provision to lower payment for practice expenses for certain services paid under the physician fee schedule, which will have the effect of lowering the MVPS for both surgical and nonsurgical services. After taking into account these provisions, this factor equals −0.6 percent for surgical services, 5.7 percent for primary care services, and −2.4 percent for other nonsurgical services, and a weighted average of −0.5 percent for all physicians' services.

V. Inapplicability of 30-Day Delay in Effective Date

We usually provide a delay of 30 days in the effective date for final **Federal Register** documents. In this case, however, the volume performance standard rates of increase are required by law to be published in the last 15 days of October 1995 and are effective on October 1, 1995. Thus, the Congress has clearly indicated its intent that the rates of increase be implemented without the usual 30-day delay in the effective date and has foreclosed any discretion by us in this matter. Therefore, the requirement for a 30-day delay in the effective date does not apply to this notice. With regard to the physician fee schedule, the effective date will be January 1, 1996, which is more than 30 days beyond the publication date of this notice.

VI. Regulatory Impact Statement

A. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all physicians to be small entities.

We are not preparing a regulatory flexibility analysis since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact analysis since we have determined, and the Secretary certifies, that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

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B. Effects of the Proposal for Using Category-Specific Volume and Intensity Growth Allowances in Calculating the Physician Volume Performance Standard Rates of Increase

The use of category-specific volume and intensity growth allowances in the calculation of the MVPS is budget-neutral overall, although it does have redistributional effects on the surgical, nonsurgical, and primary care categories.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Sections 1848(d) and (f) of the Social Security Act) (42 U.S.C. 1395w-4 (d) and (f))
(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95-29754 Filed 12-1-95; 4:08 pm]

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Friday
December 8, 1995

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Parts 3200 and 3411

National Cooperative Research Initiative Grants Program: Administrative Provisions; Requirements for Agricultural Research Enhancement Awards; Final Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Parts 3200, 3411

National Competitive Research Initiative Grants Program (Also Known as the National Research Initiative Competitive Grants Program); Administrative Provisions; Requirements for Agricultural Research Enhancement Awards

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Cooperative State Research, Education, and Extension Service (CSREES) regulations relating to the administration of the National Research Initiative Grants Competitive Program (NRICGP) (referred to in 7 CFR Part 3200 as the National Competitive Research Initiative Grants Program) that prescribe the procedures to be followed annually in the solicitation of competitive grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This action amends those regulations to redesignate 7 CFR Part 3200 as Part 3411, to change the legal name of the program to the National Research Initiative Competitive Grants Program, to clarify certain aspects of the program, and to add eligibility requirements for the Agricultural Research Enhancement Awards.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sally Rockey, Acting Deputy Administrator, CSREES, USDA, AG Box 2240, Washington, D.C. 20250–2240. Telephone: (202) 401–1761.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Information collection for this rule has previously been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control numbers 0524–0022 and 0524–0033. This amendment does not change this information collection burden.

Classification

This rule has been reviewed under Executive Order 12866 and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The following information is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Catalog of Federal Domestic Assistance

The NRICGP is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purposes

Under the authority of section 2(b) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(b)) (the Act), the Secretary of Agriculture is authorized to make competitive grants to State Agricultural Experiment Stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals to further the programs of the Department of Agriculture and to improve research capabilities in agricultural, food, and environmental sciences. Section 2(b) of the Act also authorizes the Secretary of Agriculture to make a variety of competitive grants to improve research capabilities in the agricultural, food, and environmental sciences.

The NRICGP was created pursuant to this authority. Pursuant to 7 CFR 2.107(a)(7), the Secretary delegated this authority to the Administrator of the Cooperative State Research Service. The Secretary of Agriculture's memorandum 1010–1 of October 20, 1994, implementing the reorganization authorities contained in the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, P.L. 103–354, redelegated this authority to the Administrator of the CSREES.

This rule moves this part from 7 CFR Chapter XXXII to 7 CFR Chapter XXXIV, changes the name of the program, adds additional definitions for "fundamental research," "mission-linked research," and "multidisciplinary research" to the NRICGP administrative provisions, and establishes eligibility requirements for the Agricultural Research Enhancement Awards program. Section 3411.3(d)(3)(ii)(C) has been changed from the proposed rule so that appointments to degree-granting institutions do not have to be full-time.

Discussion of Comments

Section 3411.2 Definitions

One respondent suggested including the following: "All proposed research should support the mission of generating new knowledge relevant to the agricultural, food, and natural resources sector of the economy." CSREES agrees with the proposed statement, but notes that this idea is conveyed in § 3200.1 and therefore that an additional statement is unnecessary.

List of subjects in 7 CFR Part 3411

Grant Programs—Agriculture, Grants administration.

For the reasons set forth in the preamble, CSREES amends 7 CFR Chapters XXXII and XXXIV as follows:

PART 3200—[REDESIGNATED AS PART 3411]

1. Part 3200 is redesignated as Part 3411 and moved from Chapter XXXII to Chapter XXXIV

2. The authority citation for newly redesignated part 3411 is revised to read as follows:

Authority: "Sec. 2(i) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(i))."

3. In newly redesignated part 3411, the term "National Competitive Research Initiative Grants Program" is revised to read "National Research Initiative Competitive Grants Program" in § 3411.1(a).

4. In newly redesignated part 3411, the term "NCRIGP" is revised to read "NRICGP", each time it appears in §§ 3411.1(a) and 3411.4(c)(9)(iii).

5. In newly redesignated part 3411, the term "Grant Application Kit" is revised to read "NRICGP Application Kit" each time it appears in § 3411.4(b) introductory text, (c)(1), (8), (9) (i), (ii) and (iii).

6. Newly redesignated section 3411.2 is amended by revising the introductory text, adding new paragraphs (l)(1), (l)(2), and (l)(3) and adding new paragraphs (n) and (o) to read as follows:

§ 3411.2 Definitions

As used in this part and in annual program solicitations issued pursuant to this part:

* * * * *

(l) * * *

(1) *Fundamental research,* as referred to annually in the program solicitation, means research that tests scientific hypotheses and provides basic knowledge which allows advances in applied research and from which major conceptual breakthroughs are expected to occur.

(2) *Mission-linked research,* as referred to annually in the program solicitation, means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

(3) *Multidisciplinary research,* as referred to annually in the program solicitation, means research in which investigators from two or more disciplines are collaborating closely. These collaborations, where appropriate, may integrate the biological, physical, chemical, or social sciences.

* * * * *

(n) *Small and mid-sized institution* means an academic institution with a total enrollment of 15,000 or less. An institution in this instance is an organization that possesses a significant degree of academic and administrative autonomy, as specified in the annual program solicitation.

(o) *USDA–EPSCoR States (Experimental Program for Stimulating Competitive Research)* means States which have had a funding level from the USDA NRICGP no higher than the 38th percentile of all States, based on a three-year rolling average, and all United States territories and possessions. A list of eligible States is published annually in the program solicitation.

7. Newly redesignated section 3411.3 is amended by adding paragraph (d) as follows:

§ 3411.3 Eligibility requirements

* * * * *

(d) *Agricultural Research Enhancement Awards.* In addition to paragraphs (a), (b), and (c) of this section, the following eligibility requirements apply to Agricultural Research Enhancement Awards (Program reserves the right to specify funding limitations and administrative requirements each year in the program solicitation):

(1) *Postdoctoral Fellowships.* In accordance with Section 2(b)(3)(D) of the Act of August 4, 1965, as amended, individuals who have recently received or will soon received their doctoral degree may submit proposals for postdoctoral fellowships. The following eligibility requirements apply:

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the fiscal year three years prior to the submission of the proposal and not later than June 15 of the fiscal year during which the proposal is submitted;

(ii) The individual must be a citizen of the United States; and

(iii) The proposal must contain:

(A) documentation that arrangements have been made with an established investigator to serve as mentor;

(B) documentation that arrangements have been made for the necessary facilities, space, and materials for conduct of the research; and

(C) documentation from the host institution's authorized organizational representative indicating that the host institution concurs with these arrangements.

(2) *New Investigator Awards.* Pursuant to Section 2(b)(3)(E) of the Act of August 4, 1965, as amended, investigators or co-investigators who are beginning their research careers, do not have an extensive research publication record, and have less than 5 years of post-graduate, career-track research experience may submit proposals as new investigators. Applicants may not have received competitively-awarded Federal research funds beyond the level of pre- or postdoctoral research awards.

(3) *Strengthening Awards.* Applicants that are eligible for any grant under this part may also be eligible for Equipment Grants, Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards pursuant to Sections 2(b)(3) (D) and (F) of the Act of August 4, 1965, as amended, subject to the following limitations on such eligibility:

(i) *Equipment Grants.* The following organizations are ineligible to apply for Equipment grants:

(A) Institutions which are among the top 100 universities and colleges for receiving Federal funds for science and engineering research as specified in the annual program solicitation; or

(B) non-degree granting institutions.

(ii) *Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards.* The following eligibility requirements apply to Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards:

(A) No investigator listed on the Application For Funding (Form CSRS–661) may have received a USDA NRICGP competitive research grant within the last five years as evidenced by an investigator listing on a prior Form CSRS–661 (an investigator may have received a Seed Grant, Research Career Enhancement Award, Equipment Grant, or Postdoctoral Fellowship and still be eligible to receive a Strengthening Standard Research Project Award);

(B) All investigators listed on the Application For Funding (Form CSRS–661) must be from a small or mid-sized institution that is not among the top 100 universities and colleges for receiving Federal funds for science and engineering research as specified in the annual program solicitation or must be from an institution located in a USDA–EPSCoR state; and

(C) Every investigator listed on the Application For Funding (Form CSRS–661) must have an appointment at a degree granting institution.

8a. The heading of paragraph (c)(1) of newly redesignated § 3411.4 is revised to read as set forth below, and in paragraph (c)(1), the words "a Grant Application cover page" are revised to read "an Application for Funding form".

b. Newly redesignated § 3411.4 is further amended by revising the last sentence of paragraph (c)(4), adding three new sentences at the end of paragraph (c)(8), adding a new last sentence to paragraph (c)(9)(i), and adding a new last sentence to paragraph (c)(9)(ii), by revising the term "Institutional Review Board" to read "Institutional Committee" in paragraph (c)(9)(ii), by adding a new last sentence to paragraph (c)(9)(iii), and adding new

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paragraphs (c) (13) and (14) to read as follows:

§ 3411.4 How to apply for a grant.

* * * * *

(c) * * *

(1) *Application for funding form.*

* * *

* * * * *

(4) *Facilities and equipment.* * * * In addition, requested items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed (including dollar amounts), and, if funds are requested for their acquisition, justified on a separate sheet of paper and attached to the budget.

* * * * *

(8) *Budget.* * * * Equipment grants may not exceed 50 percent of the cost of the equipment to be acquired. Equipment grant funds also may not be used for installation, maintenance, warranty, or insurance expenses. Indirect costs are not permitted on Equipment grants.

(9) *Research involving special considerations.*

* * * * *

(i) *Recombinant DNA and RNA molecules.* * * * In the event a project involving recombinant DNA and RNA molecules results in a grant award, a qualified Institutional Biosafety Committee must approve the research before CSREES funds will be released.

(ii) Human subjects at risk. * * * In the event a project involving human subjects results in a grant award, funds will be released only after a qualified Institutional Committee has approved the project.

(iii) *Experimental vertebrate animal.* * * * In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after a qualified Institutional Animal Care and Use Committee has approved the project.

* * * * *

(13) *National Environmental Policy Act.* As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR Part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR Part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form CSRS–1234) provided in the NRICGP Application Kit.

(14) Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

9. Newly redesignated section 3411.6 is amended by adding paragraph (f) as follows:

§ 3411.6 Grant awards.

* * * * *

(f) *Current Research Information Service (CRIS).* For each project funded, CRIS Form AD–416, "Research Work Unit/Project Description-Research Resume" and CRIS Form AD–417, "Research Work Unit/Project Description-Classification of Research" and specific instructions for their completion will be sent to the grantee for completion and return. Grant funds will not be released until the completed forms are received in CSREES.

10. Newly redesignated section 3411.8 is amended by adding the following additional applicable regulation:

§ 3411.8 Other Federal statutes and regulations that apply.

* * * * *

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

11. Newly redesignated section 3411.12 is amended by redesignating the current paragraph as paragraph (a) and by adding a new paragraph (b) as follows:

§ 3411.12 Conflicts of interest.

* * * * *

(b) Reviewers may not review proposals submitted by institutions or other entities with which they have an affiliation or in which they have an interest. For the purposes of determining whether such a conflict exists, an institution shall be considered as an organization if it possesses a significant degree of academic and administrative autonomy, as specified in the annual program solicitation.

Done at Washington, D.C., this 1st day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–29787 Filed 12–7–95; 8:45 am]

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federal register

Friday
December 8, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 20

Public Information; Communications With State and Foreign Government Officials; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 94N-0308]

Public Information; Communications With State and Foreign Government Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing communications with State and foreign government officials. This final rule permits FDA to receive and to disclose nonpublic safety, effectiveness, or quality information concerning FDA-regulated products to State government officials and to receive or to disclose draft proposed rules and other nonpublic, predecisional documents concerning regulatory requirements or activities to State or foreign government officials. In both cases, disclosures to or by State or foreign government officials would not require FDA to make the information or documents available to the public. This action is necessary to enhance cooperation in regulatory activities, to eliminate unwarranted contradictory regulatory requirements, and to minimize redundant application of similar requirements.

EFFECTIVE DATE: January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 27, 1995 (60 FR 5530), FDA published a proposed rule that would enable FDA to disclose to and receive from State government officials confidential commercial information without being compelled to make that information available to the general public. The proposed rule would also enable the agency to share and to receive nonpublic documents, such as draft rules, with State and foreign government officials. Exchanges of information, including nonpublic information, would enhance Federal-State cooperation in regulatory activities, help eliminate unwarranted contradictory regulatory requirements, and minimize redundant application of similar requirements by domestic and foreign bodies.

The preamble to the proposed rule described the statutory and regulatory provisions that had governed FDA's communications with State and foreign government officials. Generally, FDA has always possessed both statutory and regulatory authority to withhold some information from public disclosure. For example, the Freedom of Information Act (the FOIA) (5 U.S.C. 552) establishes categories of information that are exempt from public disclosure. Such categories of information relevant to FDA records include:

1. Trade secret and confidential commercial information to protect intellectual property rights and research incentives (5 U.S.C. 552(b)(4));

2. Predecisional documents to protect the deliberative process (5 U.S.C. 552(b)(5));

3. Information whose disclosure might invade personal privacy (5 U.S.C. 552(b)(6)); and

4. Investigatory files compiled for law enforcement purposes to protect investigations into violations of the statutes and regulations FDA enforces (5 U.S.C. 552(b)(7)).

In 1974, FDA issued regulations implementing the FOIA and other laws (such as the Trade Secrets Act (18 U.S.C. 1905) and section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(j)) that affect public access to government records and information. These regulations included a provision, now codified in § 20.21 (21 CFR 20.21), stating that any record that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public. When FDA issued § 20.21 in 1974, it expressly declined to make an exception for records disclosed to foreign governments, stating that:

> The Commissioner concludes that the same rules will apply with respect to disclosure of [safety and effectiveness information] to foreign governments as apply to disclosure to the public. This will permit the Food and Drug Administration to provide full summaries of all safety and effectiveness data for all approved [new drug applications (NDA's)] and selected summaries for [investigational new drug applications (IND's)] and pending NDA's of which the existence of an IND has been publicly disclosed or acknowledged. The Commissioner concludes that this will adequately satisfy the need for international exchange of important regulatory information of this type.

(See 39 FR 44602 at 44636 and 44637, December 24, 1974.)

However, since 1974, the regulatory environment has changed significantly. Increased international commerce and diminishing governmental resources have prompted public health regulatory agencies, as well as the industries they regulate, to make efforts to enhance the effectiveness and efficiency of their regulatory efforts. Public health regulatory agencies have engaged in activities to harmonize regulatory requirements, minimize duplicative regulations, and cooperate in joint scientific, regulatory, and enforcement endeavors.

For example, FDA is active in a program known as the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the Pharmaceutical Research and Manufacturers of America. In addition, the ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each organizing body and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area. The ICH expert working groups prepare guidelines on a variety of drug safety, efficacy, and quality matters, and FDA publishes these guidelines in the **Federal Register**.

Simultaneously, FDA's interaction with State agencies has become more important, particularly as Federal and State authorities have shared responsibilities in certain programs and new authorities have been added. For example, FDA and other Federal and State agencies regulate narcotic treatment program clinics. When new treatments become available, FDA must issue or amend its regulations regarding the new treatment's use and any special conditions on the treatment programs themselves. Yet, State government agencies may share responsibility for ensuring that the treatment programs are licensed and operate in accordance with the law and regulations. The current

degree of Federal-State cooperation was not contemplated back in 1974 when FDA first issued its public information regulations. New Federal laws enacted since 1974 have also emphasized the importance of Federal-State cooperation. Statutes such as the Prescription Drug Marketing Act of 1987, the Nutrition Labeling and Education Act of 1990, and the Mammography Quality Standards Act of 1992 have created regulatory schemes in which the Federal government establishes programs and standards and States play a major role in operations and enforcement.

This final rule is the second initiative in which FDA has amended its public information regulations to reflect its growing involvement in international activities. In the **Federal Register** of November 19, 1993 (58 FR 61598), FDA published a final rule amending its regulations governing communications with foreign officials (hereinafter referred to as the 1993 final rule). The 1993 final rule, which is now codified in § 20.89 (21 CFR 20.89), permits FDA, under certain safeguards, to disclose confidential commercial information concerning FDA-regulated products to foreign government officials who perform counterpart functions to FDA "as part of cooperative law enforcement or regulatory efforts." Those safeguards include: (1) A written statement from the foreign government agency establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose such information without the sponsor's written permission or written confirmation from FDA that the information is no longer confidential; and (2) a determination by FDA that the sponsor has provided written authorization for the disclosure, disclosure would be in the interest of public health, or disclosure is to a foreign scientist visiting FDA, on FDA's premises, as part of a joint review or long-term cooperative training effort and other safeguards. Except in the case of foreign scientists working on FDA's premises, the 1993 final rule did not authorize disclosure of trade secret information without written permission from the person that had submitted the trade secret information.

The 1993 final rule led the agency to consider whether the privileges accorded to foreign government representatives should be extended to State and local government officials. Although States carry out relatively few product approval programs, they are significant partners to FDA in such areas as bioresearch monitoring. The agency ultimately decided that there are times when FDA needs to be able to share confidential commercial information with State and local government officials and that, when FDA grants such access, it should be subject to the same restrictions and limitations on disclosure as in cases where FDA grants foreign government officials access to confidential commercial information. Also, cooperative regulatory activities would be enhanced if FDA could provide nonpublic, predecisional documents to State and foreign counterparts.

Consequently, FDA published a proposed rule (60 FR 5530) to amend § 20.88 (21 CFR 20.88) to: (1) Permit the agency to disclose confidential commercial information submitted to FDA or incorporated into FDA-prepared records to State government officials, and (2) disclose to or receive from State government officials nonpublic predecisional documents concerning FDA's or the State agency's regulations, regulatory requirements, or other nonpublic information. In both cases, disclosure would be subject to certain conditions or restrictions, and the information exchanges would not require disclosure to the public. For example, under proposed § 20.88(d), FDA would be authorized to disclose confidential commercial information to State government officials provided that: (1) The State government agency has provided a written statement establishing its authority to protect confidential commercial information and a written commitment not to disclose such information without written permission from FDA or the sponsor of the confidential commercial information; and (2) the agency found that the sponsor has provided written permission for the disclosure, disclosure would be in the interest of the public health, or disclosure would be to a visiting State government scientist on FDA's premises. (See 60 FR 5530 at 5539.)

The proposed rule would also amend § 20.89 to permit FDA to disclose to or receive from foreign government officials nonpublic predecisional documents, provided that certain conditions (such as provision of a written statement establishing the foreign government's authority to protect nonpublic documents from public disclosure) are observed and that certain findings (such as a finding that the exchange is "reasonably necessary to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements") are made.

II. Analysis of the Comments on the Proposed Rule

FDA received 20 comments on the proposed rule. Ten comments, consisting of letters from nine States and one foreign country, expressed strong support for the proposed rule. In general, these comments indicated that the proposed rule would enhance intergovernmental relations, help eliminate redundant regulatory requirements, permit Federal and State agencies to respond more quickly to potential public health problems, and aid efforts to combat health fraud.

The remaining 10 comments were sent by individual citizens and firms and opposed the proposed rule for the reasons described below. In brief, five comments opposed withholding information from the general public because they saw the proposed rule as undercutting openness in government, whereas the other five comments opposed disclosures because they felt the proposed rule lacked sufficient safeguards to prevent State and foreign government officials from disclosing confidential commercial information or trade secrets to third parties.

A. General Comments

1. Two comments commended FDA for trying to increase intergovernmental cooperation, but argued that, as FDA is not involved in matters of national security or defense, it should not keep any communications from the public. The comments asserted that withholding information from public disclosure would not benefit the public and might diminish public and industry respect for the agency. Similarly, two other comments argued that the proposed rule violated the First Amendment to the U.S. Constitution because it limited the amount of information that the public could examine. The comments stated that the agency had not justified or shown that its interest in denying public access to information exchanged with State and foreign governments exceeds the public's interest in access to that information.

The agency disagrees with the comments. The final rule does not in any way reduce the information in FDA records that the public can examine. Section 20.88(d) permits FDA to provide confidential commercial information to State government officials. Confidential commercial information has historically been exempt from public disclosure requirements, so FDA's providing such information to State government officials while withholding such information from the public will not decrease the amount of information

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available to the public. Sections 20.86(a) and 20.89(d) pertain to exchanges of nonpublic, predecisional documents with State and foreign government officials. Historically, FDA has generally withheld these documents from public disclosure as well.

The agency also disagrees with any assertion that the final rule violates the First Amendment. While courts have construed the First Amendment as giving the public access to government proceedings, they have declined to provide access to all government operations. Indeed, as the Supreme Court stated in *Press-Enterprise Co.* v. *Superior Court of California*, 478 U.S. 1, 9 (1986):

> Although many governmental processes operate best under public scrutiny, it takes little imagination to recognize that there are some kinds of government operations that would be totally frustrated if conducted openly.

In the present case, requiring FDA to publicly disclose confidential commercial information and predecisional documents that it provides to or receives from State and foreign governments would frustrate the final rule's fundamental purposes. The final rule is intended to encourage information exchanges between governments by assuring State and foreign governments that the information or documents they receive or provide will not be publicly available. The final rule also reassures those who submit confidential commercial information to FDA or to State or foreign governments that such information will be protected. If public access to confidential commercial information were required whenever FDA exchanged such information with a State or foreign government, as the comments suggest, firms would then be obliged to refuse requests for intergovernmental disclosure by FDA; State governments, or foreign governments or even refuse to submit confidential commercial information in order to protect it.

Additionally, courts have established a two-part test of "experience" and "logic" to determine whether the First Amendment requires the governmental proceeding to be open to the public. The first part, "experience," asks whether the proceeding is one that has historically been open to the public. The second part, "logic," asks whether public access would play a significant, positive role in the governmental process. If the government process passes these tests, then a qualified First Amendment right of public access exists; in other words, the right of public access is not absolute or unconditional. (See *Press-Enterprise Co.*, 478 U.S. 8 and 9; *United States* v. *Simone*, 14 F.3d 833, 837–839 (3d Cir. 1994).)

Applying the two-part test to the final rule leads to the conclusion that the First Amendment does not require these exchanges of information to be open to the public. Historically, the agency has always protected confidential commercial information and indicated that predecisional documents prepared by the agency are either not available to the general public or available under limited conditions. (See, e.g., 21 CFR 20.61 and 21 CFR 20.62 (nondisclosure of inter- or intra-agency memoranda or letters); 21 CFR 20.64 (nondisclosure of records or information compiled for law enforcement purposes); 21 CFR 10.80 (establishing conditions for release of draft notices and regulations).

Additionally, under the second prong, it is questionable whether public access would play a significant, positive role in the governmental process. For example, intergovernmental exchanges of confidential commercial information will enable governments to learn more about specific products and, as a result, to develop better and more efficient regulatory or enforcement actions. At the same time, disclosure of such confidential commercial information to the general public does not further any regulatory process, and in any event, is prohibited by 18 U.S.C. 1905. The law recognizes that public disclosure of confidential commercial information may have a detrimental effect on product development; providing a firm's competitors with access to valuable information may create a disincentive for firms to develop innovations or improve their products or methods. The result would be diminished availability of useful products.

Furthermore, intergovernmental exchanges of nonpublic, predecisional documents may help the agency decide whether a regulatory approach it is considering is appropriate or even necessary. While the agency may, in many cases, make draft documents available to the general public (for example, in the **Federal Register** of July 24, 1995 (60 FR 37856), FDA published a notice announcing the availability of a draft final rule on medical device good manufacturing practices to members of the public as well as to State and foreign regulators), in other cases, providing public access to predecisional documents during the deliberative process could interfere with that process or create misleading impressions about the agency's intentions.

In some cases, premature public disclosure of draft documents can unnecessarily complicate regulatory actions and undermine public health and safety. For example, if the agency developed a proposal on a particular form of tamper evident packaging, such information could be helpful to other foreign governments. However, premature disclosure of that same information could ultimately prove harmful to the general public if its disclosure would enable those who tamper with products to alter their methods in order to evade detection or to defeat the proposed solution.

FDA further emphasizes that, as stated in the preamble to the proposed rule, if any State or foreign government official provides information that the agency wishes to rely on in its published proposals or the administrative record, the agency will include that information unless inclusion would harm private or governmental interests (see 60 FR 5530 at 5538). When a proposed rule is published, therefore, the general public would be fully informed and have an opportunity to comment on the substance of any advice from State or foreign officials that FDA incorporated into the proposed rule.

The agency reiterates that nonpublic exchanges of information with State and foreign government officials will not be a routine occurrence and that FDA does not intend to prohibit public disclosure of information received from State and foreign government officials if such information can be disclosed without harm to any private or governmental interests.

More importantly, the agency believes that the final rule will result in significant public benefits because the final rule facilitates FDA's access to information and expertise within State and foreign governments and should result in better regulatory proposals and actions. For example, if FDA and a State are considering whether to issue proposed regulations on the same or similar subjects, exchanging nonpublic, predecisional documents might lead both parties to reexamine, modify, or harmonize their proposed regulatory strategy. Preventing the issuance of redundant or unnecessary regulations should benefit the public and the affected industries.

2. One comment claimed that the proposed rule violated the Tenth Amendment to the Constitution. The Tenth Amendment states that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The comment argued that the proposed rule violated the Tenth Amendment because citizens had not yielded to the Federal government their "rights of access to the information generated by our public servants."

The agency disagrees with the comment. The final rule concerns FDA's ability to exchange certain confidential commercial information or nonpublic, predecisional documents with State or foreign government officials. Thus, the final rule pertains to information exchange and access to FDA records and implements Federal authority without impairing State or popular power. Indeed, the final rule can strengthen States' regulatory roles.

3. Two comments said that the proposed rule violated procedural due process because it would give State and foreign government officials "preferential access" to predecisional documents, such as draft regulations, thereby giving those officials "far greater influence over the deliberative process by imparting selected information and opinion" to FDA.

The agency disagrees with the comments' assertion. As the Supreme Court said in *Mathews* v. *Eldridge*, 424 U.S. 319, 332 (1976), procedural due process "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." However, "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances * * * [d]ue process is flexible and calls for such procedural protections as the particular situation demands." Id. p. 334 (citations omitted).

Here, the final rule does not impose any constraints or sanctions nor does it deprive individuals of any liberty or property interest. The final rule does not "deprive" the public of its access to confidential commercial information or predecisional documents because such information has always been protected from disclosure. Neither does the final rule deprive the public of the opportunity to comment on rulemaking. As stated in the preamble to the proposed rule:

> * * * any information provided by State or foreign government officials upon which FDA is relying will be included in published proposals. At that time, the general public will be fully informed and have an opportunity to comment on the substance of any advice from foreign or State officials that is incorporated into agency proposals or initiatives.

(See 60 FR 5530 at 5538.) This approach is consistent with due process because "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner,'" *Mathews*, 424 U.S. 333 (citations omitted).

Moreover, judicial opinions concerning informal rulemaking have focused on the need to ensure that ex parte contacts do not frustrate judicial review or raise serious questions of fairness. (See *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1977), *cert. denied* 434 U.S. 829, *rehearing denied* 434 U.S. 988 (1977).) There is no *per se* prohibition on ex parte contacts. (See *Action for Children's Television* v. *FCC*, 564 F.2d 458, 475 n.28 (D.C. Cir. 1977).)

FDA reiterates that it will include in its published proposals any information provided by State or foreign government officials upon which FDA is relying. The agency will make such information available at the time of publication. Thus, the general public will be fully informed and have an opportunity to comment on the substance of any advice from foreign or State officials that is incorporated into agency proposals or initiatives. FDA believes this is consistent with all applicable legal requirements.

4. Two comments claimed that the proposed rule violated rights of privacy and confidentiality because information supplied to FDA, with the expectation that the information would remain confidential, would be eligible for disclosure to officials outside FDA. The comments noted that non-FDA officials may have interests and obligations that differ from those of FDA, the public, or the regulated industry. The comments said that requiring the State or foreign government to provide a written statement establishing its authority to protect confidential commercial information or nonpublic documents from public disclosure was "wholly inadequate" because State and foreign officials are not subject to FDA's management or control. The comments further asserted that much information given to FDA is unreliable, fraudulent, or defamatory and could be used by outside parties for ulterior purposes and that the proposed rule would dissuade submission of confidential information to FDA and encourage submission of false information.

Four other comments expressed similar objections to the proposed rule, stating that foreign governments might use confidential commercial information to benefit their own industries.

The agency has given serious attention to the concerns expressed in the comments, but disagrees that the safeguards are inadequate. As stated earlier, FDA issued a final rule on November 19, 1993, to permit the agency to disclose confidential commercial information to foreign government officials, subject to certain conditions and safeguards to protect the confidentiality of the information. Since issuing that final rule, the agency is unaware of any misuse or unauthorized disclosure of confidential commercial information supplied to a foreign government. In almost all cases, disclosure occurred with the knowledge and consent of the company that submitted the confidential commercial information to FDA. Thus, FDA's experience with the 1993 final rule indicates that confidential commercial information provided to a foreign government official remains confidential and is not used to benefit the foreign government's industry.

Furthermore, FDA emphasizes that the decision to share information with a foreign government is discretionary and that the agency will deny a foreign government's request for confidential commercial information if the foreign government officials are unable to assure FDA of their ability to protect the information. FDA will also deny access where there is a lack of scientific data or regulatory expertise to contribute to a product review or laboratory or clinical investigation, unless the foreign government intends to use the information for law enforcement purposes. (See 58 FR 61598 at 61600.) Similar standards will apply to exchanges with State governments and State government officials.

FDA also disagrees with the assertion that parties often submit false information to the agency. Submitting false information to the government is a Federal crime under 18 U.S.C. 1001. Submission of false or misleading reports with respect to medical devices is prohibited under section 301(q)(2) of the act (21 U.S.C. 331(q)(2)). Submission of false information may also lead to debarment under section 306 of the act (21 U.S.C. 335a) or assessment of civil money penalties under section 303(g) or 307 of the act (21 U.S.C. 333(g) or 335b). FDA has taken legal action against parties that have submitted false information to the agency and emphasizes that it will not tolerate the submission of false information to the agency.

5. Two comments asserted that the proposed rule was contrary to congressional intent, as expressed in the FOIA, to provide information to the public. The comments explained that the FOIA's exceptions to disclosure represented a balance between the public's "right to know" and the government's interest in not disclosing certain types of information. Thus, the comments claimed, only Congress can

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alter that balance. Another comment claimed that an executive branch agency cannot withhold information from the public, stating that only Congress could authorize such action.

The agency disagrees with the comments. The preamble to the proposed rule considered this issue and explained why the agency believes that the proposed rule is consistent with the FOIA. FOIA (5 U.S.C. 552) is a disclosure statute and its exemptions are intended to be discretionary. As stated earlier, those exemptions establish several categories of information that can be withheld from public disclosure. The categories relevant to FDA include: (a) Trade secret and confidential commercial information to protect intellectual property rights and research incentives (5 U.S.C. 552(b)(4)); (b) predecisional documents to protect the deliberative process (5 U.S.C. 552(b)(5)); (c) information whose disclosure might invade personal privacy (5 U.S.C. 552(b)(6)); and (d) investigatory files compiled for law enforcement purposes to protect investigations (5 U.S.C. 552(b)(7)).

For disclosures of confidential commercial information under § 20.88(d), the preamble to the proposed rule explained that the FOIA protects two broad categories of information from mandatory public disclosure: Trade secret information and "information that is: (1) Commercial or financial, (2) obtained from a person, and (3) privileged or confidential ('confidential commercial information')." (See 60 FR 5530 at 5535.) The preamble to the proposed rule explained that the proposed rule did not alter agency practice with respect to protecting trade secret information (except to permit disclosure to visiting State scientists) and that disclosures of confidential commercial information to State government officials in accordance with the conditions of the proposed rule would not be a public disclosure and would be "authorized" under the Trade Secrets Act. (See 60 FR 5530 at 5536.)

The preamble to the proposed rule also explained why the provisions regarding predecisional documents and other nonpublic information are consistent with the FOIA. The preamble characterized exchanges of nonpublic, predecisional documents between FDA and State and foreign governments as being of the same character as interagency memoranda and letters that are exempt from disclosure under the FOIA. The preamble to the proposed rule stated that:

> * * * it is appropriate to assert the deliberative process privilege (to disclosure under the FOIA) in response to requests for public access to certain communications from State and foreign government officials because the same policy reasons that support nondisclosure of deliberative and predecisional memoranda generated by Federal government agencies justify withholding, in many circumstances, the advice and recommendations generated for FDA by State and foreign government counterparts.

The agency's ability to make sound decisions about the development and implementation of public health and harmonization initiatives is enhanced by access to the advice and recommendations of experts in State and foreign governments who are engaged in similar efforts in their own jurisdictions. The agency views this kind of consultation as functionally equivalent to the "intra-" or "interagency" deliberation more commonly protected by exemption 5 of the FOIA. Indeed, it is frequently the case that advice from a State or foreign health official whose responsibilities parallel those of FDA officials concerning the feasibility of a particular technical or harmonization regulation will be as relevant as similar recommendations solicited from employees in other Federal government agencies. (See 60 FR 5530 at 5536 and 5537.) The preamble to the proposed rule noted that courts have applied a "functional" test for assessing the applicability of the exemption for intra- and interagency memoranda and letters and have included "nonagencies" within the exemption. Id.

The preamble also noted that in circumstances where advice or information is provided by foreign governments pursuant to international agreements that require confidentiality as a condition of exchange, FDA believes that a record so provided is not necessarily an "agency record" subject to FOIA. Id. at 60 FR 5537 through 5538. The agency cited recent court decisions suggesting that FDA could honor requests for confidentiality under these circumstances without contravening public disclosure requirements established by Congress. Id.

Thus, the final rule is consistent with the FOIA, and the agency declines to amend the final rule to require public access to documents beyond that required by the FOIA.

6. One comment said that FDA should discuss the proposed rule's potential effects, costs, and implications in a public forum.

FDA believes that notice and comment rulemaking has provided a satisfactory public forum for this issue.

7. Three comments said that FDA cannot ensure that no unauthorized disclosures of confidential commercial information will occur and cannot take effective action against State or foreign government officials if unauthorized disclosures occur. Two comments added that the agency should describe how it intends to monitor and investigate reports of unauthorized disclosures and take action against those employees making unauthorized disclosures. One comment suggested that FDA establish a mechanism to track such unauthorized disclosures, analyze and report any patterns or trends in unauthorized disclosures, and, if FDA becomes aware of any unauthorized disclosures by State or foreign government officials, notify the company whose confidential commercial information was disclosed and cease information exchanges with the State or foreign government.

FDA cannot guarantee that no unauthorized disclosures of confidential commercial information will ever occur, but it does note that procedures already exist for investigating reports of unauthorized disclosures. In 1994, the agency created the Office of Internal Affairs (OIA). OIA consists of one Special Agent in Charge and a team of Special Agents. These agents are trained criminal investigators and report directly to the Commissioner of Food and Drugs or the Deputy Commissioner/Senior Advisor. FDA described OIA's functions in a notice published in the Federal Register of January 23, 1995 (60 FR 4417 and 4418). In brief, OIA:

- Provides a centralized Agencywide investigative resource for the Commissioner, the Deputy Commissioners, and top Agency management;
- Provides a centralized investigative liaison between FDA and the Office of the Inspector General (OIG);
- Serves as an FDA investigative resource to conduct internal FDA investigations and to support OIG investigations; and

OIA is also responsible for investigating all allegations of misconduct by FDA employees. (See 59 FR 67087, December 28, 1994.) To assist in this task, the office uses a data base to track cases by type of investigation. One investigation type is "Unauthorized Release of Information."

Whenever OIA receives any report of unauthorized disclosures of information, OIA investigates the report and works with the OIG where appropriate. If the investigation suggests that Federal laws were violated, this information is presented to the OIG and may be referred to the Department of Justice for prosecution. These same resources and procedures could be applied, in cooperation with State and foreign governments, to allegations of inappropriate disclosures by their officials.

Furthermore, when FDA issued the 1993 final rule authorizing disclosure of confidential commercial information to foreign government officials, the agency expressly stated that it would cease cooperative ventures with any government that failed to honor its written commitment to preserve the confidentiality of the information provided by FDA. (See 58 FR 61596 at 61603.) The agency will expand this policy to include State governments. FDA's extensive experience sharing nonpublic investigative records with State government officials indicates that unauthorized disclosures are unlikely to occur and that any State employee misconduct will be expeditiously handled in order to preserve cooperative efforts between FDA and State governments.

Moreover, after issuing the 1993 final rule, FDA established internal procedures and model confidentiality agreements for disclosures to foreign government officials. These procedures will be expanded to apply to State government officials.

The agency also notes that, contrary to the comments' belief that firms and individuals have no recourse if a foreign government official makes an unauthorized disclosure of confidential commercial information, Federal law does provide an avenue for relief. Under section 301 of the Trade Act of 1974 as amended, the United States Trade Representative is authorized to take appropriate action against any act, policy, or practice of a foreign government that "is unjustifiable and burdens or restricts United States commerce." (See 19 U.S.C. 2411.) Such actions can be initiated by a petition to the United States Trade Representative. (See 19 U.S.C. 2412.) Additionally, as previously noted, FDA will not exchange information with any foreign government that does not honor its commitment to protect confidential commercial information. FDA believes that the value foreign governments place on the continuing ability to exchange information will also help assure that foreign government officials respect the confidentiality of information that they receive.

8. Three comments suggested adding additional safeguards to proposed §§ 20.88 and 20.89 to decrease the likelihood that unauthorized disclosures of confidential commercial information would occur. In brief, these comments would require State and foreign governments to provide written assurances that individuals who would have access to the confidential commercial information: (1) Will not be employees, consultants, or persons who have a professional relationship with a drug manufacturer; and (2) will be subject to a confidentiality agreement and/or appropriate laws and regulations prohibiting them from disclosing any information. These comments also would require both FDA and the firm that had submitted the confidential commercial information to FDA to consent, in writing, to any release or disclosure by the State or foreign government.

Under § 20.88(d)(1)(i), a State government agency must provide a written statement establishing its authority to protect confidential commercial information from public disclosure. FDA will supplement this requirement with guidance to States on conflicts of interest and prohibitions against further disclosure.

FDA declines to amend the final rule to require the agency and the party submitting the confidential commercial information to consent to any release or disclosure by the State or foreign government. This final rule and the 1993 final rule governing disclosures of confidential commercial information to foreign government officials already provide for written consent by the party submitting the confidential commercial information (see § 20.88(d)(1)(i); see also § 20.89(c)(1)(i)) or written permission from FDA before the State or foreign government can make any disclosure. Thus, these rules already would require a State or foreign government to obtain written authorization from the party that submitted the confidential commercial information, or written confirmation from FDA that the information was no longer confidential. The comments' suggested changes, therefore, are unnecessary.

As for disclosures to foreign government officials, since amending § 20.89 in 1993 to allow FDA to disclose confidential commercial information to foreign government officials, the agency has not received any reports of unauthorized disclosures by foreign government officials. The agency acknowledges that, in some cases, firms have requested additional safeguards, similar to those mentioned in the comments, and that the foreign government officials have consented to such additional safeguards. However, FDA's experience under § 20.89 does not indicate that such additional safeguards are necessary.

9. One comment would expand §§ 20.88 and 20.89 so that they applied to State and foreign government officials and "all agents contracted by them for any part of the review and approval processes involving confidential and trade secret information." The comment would also have State and foreign government officials and agents subject to the same confidentiality restrictions as FDA employees.

The agency agrees with the comment and has amended §§ 20.88(e)(3) and 20.89(d)(3) so that references to State or foreign government officials are understood to include agents contracted by those officials.

10. The agency, on its own initiative, has amended §§ 20.88(e) and 20.89(d) to permit the Deputy Commissioner for Policy to authorize disclosures of nonpublic, predecisional documents to State or foreign government officials. The Deputy Commissioner for Policy is authorized, under 21 CFR 5.20(f), to perform any of the functions of the Commissioner of Food and Drugs with respect to the issuance of notices, proposed rules, and final rules.

11. FDA, on its own initiative, has also amended the authority citation to include a reference to the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401–1403). FDA has taken this action because that statute provides for cooperative agreements between FDA and foreign governments and exchanges of certain information between FDA and States.

B. Section 20.88—Communications With State and Local Government Officials

12. Proposed § 20.88(d)(1)(i) would require, as a condition of authorizing disclosure of confidential commercial information to a State government official, a written statement from the State government agency "establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information" without the sponsor's written permission or FDA's written confirmation that the information was no longer confidential. One comment would require that State agencies provide written assurance that, notwithstanding their own State laws, the State agency would protect any confidential commercial information that it received "in accordance with Federal law and FDA regulations."

FDA sees no need to amend the final rule as suggested by the comment. FDA would not disclose confidential commercial information to a State government official unless State laws allow adequate protection of that information.

13. One comment would require FDA to notify and to obtain written consent

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from a party before disclosing confidential commercial information to State government officials. The comment would have the notice describe the information to be disclosed or provide sufficient detail to permit the party to decide whether to withhold permission for disclosure. The comment would also restrict any permission to disclose confidential commercial information to the specific request.

As stated elsewhere in this document, FDA intends, in most cases, to seek written approval from a party before disclosing confidential commercial information. However, the agency declines to require such written approval in all cases because there are situations, such as enforcement actions, where it would be inappropriate to require written approval prior to disclosure.

The agency does agree, however, that a party's written authorization to disclosure of confidential commercial information is limited to a specific request to disclose information and does not constitute automatic authorization to disclose the information to any subsequent State government official seeking to obtain that information. (See 58 FR 61598 at 61602 (stating that "in general, the sponsor needs to authorize further disclosure of confidential information").)

14. Proposed § 20.88(d)(1)(ii)(A) would authorize disclosure of confidential commercial information if disclosure would be "in the interest of the public health by reason of the State government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation, or by reason of the State government being able to exercise its regulatory authority more expeditiously" than FDA. One comment objected to this provision, arguing that it provided "no objective criteria for determining when the disclosure of confidential commercial information would be in the interest of public health." The comment claimed that the agency had not shown the State commissioned officials program to be inadequate, that the provision gave no "clear, objective standards outlining the procedure for allowing disclosure," and that the proposed rule would operate in an arbitrary and capricious fashion.

The agency declines to amend the final rule to provide the "objective criteria" requested by the comment. It would be extremely difficult, if not impossible, to draft objective criteria that would encompass all instances where disclosure of confidential commercial information would be in the interest of public health, and any "objective" regulatory criteria would invite parties to dispute the applicability of a particular criterion instead of examining public health concerns and would prevent the final rule from operating in a flexible manner.

FDA further notes that the phrase "interest of public health" is modified by two criteria. Under § 20.88(d)(1)(ii)(B), disclosure would be in the interest of public health: (1) By reason of the State government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation; or (2) by reason of the State government being able to exercise its regulatory authority more expeditiously than FDA. Thus, § 20.88(d)(1)(ii)(B) contemplates disclosures in the interest of public health if a State government possesses information about a product or an investigation or can exercise regulatory authority in a particular situation more quickly than FDA; the provision does not permit unconditional or unrestricted exchanges of confidential commercial information. As stated in the preamble to the proposed rule, disclosures to State governments will not be a routine occurrence, but would occur only in limited situations and on a case-by-case basis. (See 60 FR 5530 at 5535.)

As for the comment claiming that the agency had not shown the commissioned officials program to be inadequate, the preamble to the proposed rule described the commissioning process for State government officials and explained why commissioned officials might not always be the best or most appropriate persons to receive the types of confidential commercial information or nonpublic, predecisional documents contemplated by the rule. In brief, section 702(a) of the act (21 U.S.C. 372(a)) authorizes FDA to conduct examinations and investigations through employees of the Department of Health and Human Services (HHS) or through any health, food, or drug officer or employee of any State, territory, or political subdivision commissioned as an officer of HHS. (See 60 FR 5530 at 5531.) State or local government officials commissioned under this program have a status with respect to disclosure of FDA records that permits the commissioned official to review confidential investigative files and proposed policy statements that are normally restricted to Federal employees. Thus, FDA can solicit advice from these commissioned officials without public disclosure.

The commissioning process, however, is too cumbersome to be practical in the situations that led FDA to issue the proposed rule. A commissioned official is authorized to perform one or more of the following functions: (1) Conduct examinations, inspections, and investigations under the act; (2) collect and obtain samples; (3) copy and verify records; and (4) receive and review official FDA documents. (See Regulatory Procedures Manual, chapter 3 (regarding commissioning State and local officials).) A commissioned official is only authorized to review FDA documents that fall within the scope of his or her commission; the official may not necessarily have authorized access to all the information that the agency may need to convey to the State.

Yet, even if commissioning a State government official would enable an official to review FDA documents, such authority would not eliminate the need for the final rule. Commissioning a State government official does not confer any protection to documents supplied by a State government to FDA, whereas § 20.88(e) authorizes the agency to receive nonpublic, predecisional documents from State government officials and to protect those documents from public disclosure. Similar provisions in documents provided to FDA by foreign government officials are set forth in § 20.89(d). If information exchanges are to be valuable and meaningful, the agency must be able to protect State or foreign government documents that it receives, as well as the documents that it sends, and the final rule provides such protection to information that FDA receives.

Additionally, as stated in the preamble to the proposed rule, the commissioning process cannot be easily adapted for situations requiring rapid exchange of information. (See 60 FR 5530 at 5532.) The process involves identifying suitable candidates (and often requires commissioning the candidates' supervisors or State agency heads as well), reviewing the candidates' qualifications, conducting background checks (if necessary), issuing certificates and credentials, and accounting for credentials on a periodic basis. These procedures, even if they were as streamlined as possible, might be both impractical and unnecessary in situations where rapid information exchanges are necessary. Consequently, the agency believes that the final rule gives FDA needed authority to exchange information both quickly and efficiently in situations when reliance on commissioned officials would prove impractical.

15. Two comments would amend proposed § 20.88(d)(1)(ii)(C) to add new requirements to deter unauthorized disclosures of information. The comments would require visiting State scientists to confirm that they are not employees, consultants, or persons that have any professional relationship with a drug manufacturer and to provide a written commitment not to release or disclose information without approval from FDA and the party submitting the confidential commercial information. The comments would not permit FDA to authorize disclosures unilaterally.

FDA declines to revise the final rule as suggested by the comments. Section 20.88(d)(1)(ii)(C) already contains sufficient safeguards that accomplish the same purpose as those suggested by the comments. For example, the final rule requires a visiting State government scientist to provide a written assurance that he or she "has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under 21 CFR 14.80(b)(1)." Under § 14.80(b)(1), advisory committee members are subject to Federal conflict of interest laws and regulations. A visiting State government scientist, therefore, could not truthfully provide the written assurance required under § 20.88(d)(1)(ii)(C) if he or she were an employee or consultant of a drug manufacturer.

FDA also declines to amend the final rule to prevent FDA from authorizing disclosure of confidential commercial information or trade secrets to a visiting State government scientist. Section 20.88(d)(1)(ii)(C) authorizes disclosure to a visiting State government scientist if, among other things: (1) The visiting State government scientist signs a written commitment to protect the confidentiality of the information; (2) the visiting State government scientist provides written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in review of the matter if the visiting State government scientist were subject to FDA's conflict of interest rules; and (3) FDA retains physical control over the information. The agency believes that these safeguards provide sufficient protection to confidential commercial and trade secret information in FDA's possession. The agency further notes that a similar regulation has existed for visiting foreign government scientists since 1993, and the agency has not experienced any difficulties or problems with confidential commercial or trade secret information disclosed to visiting foreign government scientists.

16. One comment said that firms that submitted confidential commercial information should have the opportunity to purge "highly confidential" information before disclosure to State government officials. The comment explained that this would enable firms to discuss why FDA should not release certain information to a State government official.

The agency wishes to reassure regulated firms about its concerns for proprietary information, but declines to accept the comment's suggestion. While FDA intends, in most cases, to seek a firm's approval before disclosing confidential commercial information, there are situations where it would be inappropriate to permit firms to purge information before its release to State government officials. For example, if confidential commercial information in a marketing application indicated that a firm might have engaged in fraud or misrepresentation that violated both State and Federal laws, the agency might want to notify its State government counterparts. Permitting a firm to purge that information before its release to a State government official would defeat any State regulatory action. Consequently, the agency declines to amend the final rule as suggested by the comment.

C. Section 20.89—Communications With Foreign Government Officials

17. One comment from a foreign government official supported proposed § 20.89(d) but asked whether FDA would protect the confidentiality of nonpublic, predecisional documents provided by a foreign government.

Section 20.89(d) authorizes the agency to disclose and to receive nonpublic, predecisional documents to or from foreign government officials. Under § 20.89(d)(2), such documents would not be made available to all members of the public. Thus, FDA would maintain the confidentiality of nonpublic, predecisional documents supplied by a foreign government official. The basis for this position is explained in detail in the preamble to the proposed rule (60 FR 5530 at 5536 and 5538).

18. Four comments suggested that FDA either permit firms that submitted the confidential commercial information to purge those records before their release or to decide whether release should occur, or provide summaries to firms regarding the information disclosed to the foreign government.

The agency addressed similar comments when it issued the 1993 final rule permitting FDA to disclose confidential commercial information to foreign government officials. The preamble to the 1993 final rule stated that: (1) Any disclosure would be on a case-by-case basis under assurances of continuing confidentiality; (2) the agency will, in most circumstances, seek written authorization from the party submitting the confidential commercial information to permit disclosure; and (3) there are situations where it would be inappropriate to require consent from a party that submitted confidential commercial information. (See 58 FR 61598 at 61601.)

The same rationale applies here. FDA reiterates that the final rule authorizes disclosure only to those governments that have provided written assurances that they have the authority to protect confidential commercial information and nonpublic, predecisional documents from public disclosure and that they will not disclose such documents or information without the written permission of the sponsor or written confirmation from FDA that the information or documents are no longer confidential. Additionally, in most cases, FDA intends to seek written consent from the party that submitted the confidential commercial information before disclosing that information. To permit parties to purge information would lessen the utility of any information provided to a State or foreign government and invite such governments to withhold information themselves.

Requiring FDA to give parties summaries of information disclosed to a State or foreign government would also be inappropriate or unnecessary. For example, if a State or foreign government were considering whether to take action against a particular product, requiring FDA to provide a summary to the product's manufacturer would alert a violative firm of the potential enforcement action. In an action to help a government identify fraudulent goods, the agency might wish to provide confidential commercial information that would help distinguish legitimate products from fraudulent ones; in such a scenario, providing a summary to the product's manufacturer would be worthless because the manufacturer would already know the information that was the basis of the summary. Thus, the agency declines to accept the comments' suggestions.

19. Proposed § 20.89(d)(1)(i) would require, as a condition to authorizing disclosure of confidential commercial information to a foreign government official, a written statement from the foreign government establishing its authority to protect nonpublic documents from public disclosure and a

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written commitment not to disclose any such documents without FDA's written confirmation that the information was no longer confidential. One comment would limit disclosures to foreign government officials whose countries "can reasonably be expected to maintain confidentiality and patent protection at the level acceptable under U.S. intellectual property protection agreements with foreign nations." If the agency could not determine whether the foreign country offered "acceptable" protection, the comment said that FDA should be required to consult the firm that submitted the confidential commercial information regarding that firm's prior experience with intellectual property protection in the foreign country.

Although this comment pertains to the rulemaking completed in 1993 rather than the present final rule and is outside the scope of this rulemaking, the agency considered similar comments in 1993 when it issued a final rule authorizing the disclosure of confidential commercial information to foreign government officials. The comments asked FDA to restrict disclosures to countries with similar product approval processes or to list foreign governments "that have been designated as appropriate for the sharing of confidential information." (See 58 FR 61596 at 61602.) The agency declined to accept the comments' recommendations, stating that a list of foreign countries would not be useful, repeating that disclosures were subject to certain safeguards, and stating that, "in every case disclosure is at the discretion of the agency and cannot be automatic for any country." Id. The same rationale applies here. FDA will decide, on a case-by-case basis, whether to disclose confidential commercial information to a foreign government and, in most cases, will seek written permission from the party that submitted the confidential commercial information. Given these safeguards, there is no need to establish a list of countries that would protect intellectual property to an "acceptable" or "appropriate" level. Additionally, because most disclosures would be preceded by written approval from the party submitting the confidential commercial information, there is no need to amend the final rule to require prior consultation with the party that submitted the confidential commercial information.

20. One comment said that proposed § 20.89 would delay public participation in reviewing or commenting on predecisional documents and permit public comment "only after the agency has more invested in its own viewpoint."

The agency disagrees with the comment. The agency believes that exchanges of nonpublic, predecisional documents with State and foreign government officials will neither significantly delay public review of such documents nor make any public review less meaningful. FDA will be just as interested in hearing what the public thinks about a proposal, whether or not that proposal was previously shared with a regulatory counterpart. Nor will the agency's obligation to consider or respond to public comments in any way diminish because of this rule.

FDA stresses that the purpose behind exchanging nonpublic, predecisional documents is not to diminish the role of any participant in rulemaking, but to enhance Federal-State uniformity and facilitate global harmonization of regulatory requirements. Although FDA often considers State or foreign regulatory requirements when drafting its own predecisional documents, mutual exchanges between FDA and a State or foreign government will enable refinements in the documents to account for new requirements or developments. The agency believes that, in most cases, the changes that would be made would probably be minor technical adjustments or revisions to a document before publication or release, but, in any event, there should be no significant delay in publication for general review and comment.

The final rule also promotes efficiency during any public review period. Mutual exchanges between FDA and State or foreign governments should result in documents that reflect greater consideration of State or foreign requirements and resources, thereby reducing the possibility that the agency would have to substantially revise or even repropose a proposed regulatory approach due to an inconsistent or conflicting State or foreign requirement identified by comments submitted during a comment period. For example, providing a nonpublic, predecisional document to State governments could alert FDA that its proposed enforcement scheme would overly burden State resources; FDA could then revise the enforcement scheme and publish or release a document that contained the revised enforcement scheme. FDA also reiterates that any document that it publishes in the **Federal Register** will inform the public of any information from State or foreign government officials that affected the document and provide an opportunity for public comment.

In contrast, if FDA cannot exchange a nonpublic, predecisional documents with State governments, the agency may publish a document proposing an enforcement scheme that places unrealistic burdens on State governments, await comments, publish a second document proposing a revised enforcement scheme, await comments again, and then issue a final document. Under this scenario, public participation might occur earlier, but final action on the initiative would occur later, with attendant delays to the program in question and waste of public resources.

III. Description of the Final Rule

Section 20.88(d) of the final rule authorizes FDA to disclose confidential commercial information submitted to FDA or incorporated into FDA-prepared records to State government officials as part of cooperative law enforcement or regulatory efforts, provided that: (1) The State government agency has provided a written statement establishing its authority to protect the information from public disclosure and has provided a written commitment not to disclose such information without the sponsor's written permission or written confirmation from FDA that the information is no longer confidential; and (2) FDA has determined that the sponsor has consented, in writing, to disclosure, disclosure would be in the interest of public health, or disclosure would be to a visiting State scientist, subject to certain additional conditions (such as a written assurance that the visiting State scientist has no financial interest in the regulated industry that would preclude him or her from participating in the matter under review). Information exchanged under § 20.88(d) would not be available to the public.

Sections 20.88(e) and 20.89(d) permit the agency to disclose or to receive nonpublic, predecisional documents to or from State or foreign government officials as part of efforts to improve intergovernmental cooperation and uniformity or to implement intergovernmental agreements. The disclosure or receipt of nonpublic, predecisional documents is subject to two conditions: (1) The State or foreign government agency has provided a written statement establishing its authority to protect nonpublic documents from public disclosure and has provided a written commitment not to disclose such documents without FDA's written confirmation that the information no longer has nonpublic status; and (2) the agency has determined that exchange is reasonably necessary to cooperative regulatory activities or to improve Federal-State uniformity or to facilitate international harmonization of regulatory requirements. Information exchanged under §§ 20.88(e) or 20.89(d) will not be available to the public.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule promotes harmonized regulatory requirements, nationally and internationally, thereby reducing disparate regulatory requirements, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 1401–1403.

2. Section 20.88 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 20.88 Communications with State and local government officials.

* * * * *

(d)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure of confidential commercial information submitted to the Food and Drug Administration, or incorporated into agency-prepared records, to State government officials as part of cooperative law enforcement or regulatory efforts, provided that:

(i) The State government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the sponsor or written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes one or more of the following determinations:

(A) The sponsor of the product application has provided written authorization for the disclosure;

(B) Disclosure would be in the interest of public health by reason of the State government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation, or by reason of the State government being able to exercise its regulatory authority more expeditiously than the Food and Drug Administration; or

(C) The disclosure is to a State government scientist visiting the Food and Drug Administration on the agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the Federal Food, Drug, and Cosmetic Act (the act), the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting State government scientist to sign a written commitment to protect the confidentiality of the information, and the visiting State government scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under § 14.80(b)(1) of this chapter. Subject to all the foregoing conditions, a visiting State government scientist may have access to trade secret information, entitled to protection under section 301(j) of the act, in those cases where such disclosures would be a necessary part of the joint review or training.

(2) Except as provided under paragraph (d)(1)(ii)(C) of this section, this provision does not authorize the disclosure to State government officials of trade secret information concerning manufacturing methods and processes prohibited from disclosure by section 301(j) of the act, unless pursuant to an express written authorization provided by the submitter of the information.

(3) Any disclosure under this section of information submitted to the Food and Drug Administration or incorporated into agency-prepared records does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

(e)(1) The Deputy Commissioner for Policy, or any other officer or employee of the Food and Drug Administration whom the Deputy Commissioner for Policy may designate to act on his or her behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a State government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of efforts to improve Federal-State uniformity, cooperative regulatory activities, or implementation of Federal-State agreements, provided that:

(i) The State government agency has provided both a written statement establishing its authority to protect such nonpublic documents from public disclosure and a written commitment not to disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

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(ii) The Deputy Commissioner for Policy or the Deputy Commissioner for Policy's designee makes the determination that the exchange is reasonably necessary to improve Federal-State uniformity, cooperative regulatory activities, or implementation of Federal-State agreements.

(2) Any exchange under this section of nonpublic documents does not invoke the rule established at § 20.21 that such records shall be made available to all members of the public.

(3) For purposes of this paragraph, the term "official of a State government agency" includes, but is not limited to, an agent contracted by the State government, and an employee of an organization of State officials having responsibility to facilitate harmonization of State standards and requirements in FDA's areas of responsibility. For such officials, the statement and commitment required by paragraph (e)(1)(i) of this section shall be provided by both the organization and the individual.

3. Section 20.89 is amended by adding new paragraph (d) to read as follows:

§ 20.89 Communications with foreign government officials.

* * * * *

(d)(1) The Deputy Commissioner for Policy, or any other officer or employee of the Food and Drug Administration whom the Deputy Commissioner for Policy may designate to act on his or her behalf for the purpose, may authorize the disclosure to, or receipt from, an official of a foreign government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of cooperative efforts to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements, provided that:

(i) The foreign government agency has provided both a written statement establishing its authority to protect such nonpublic documents from public disclosure and a written commitment not to disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Deputy Commissioner for Policy or the Deputy Commissioner for Policy's designee makes the determination that the exchange is reasonably necessary to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements.

(2) Any exchange under this section of nonpublic documents does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

(3) For purposes of this paragraph, the term "official of a foreign government agency" includes, but is not limited to, an agent contracted by the foreign government, and an employee of an international organization having responsibility to facilitate global harmonization of standards and requirements in FDA's areas of responsibility. For such officials, the statement and commitment required by paragraph (d)(1)(i) of this section shall be provided by both the organization and the individual.

Dated: November 30, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29904 Filed 12–7–95; 8:45 am]

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December 8, 1995

Part V

Department of Health and Human Services

Food and Drug Administration

Advertising and Promotion; Draft Guidances; Republication; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D-0377]

Advertising and Promotion; Draft Guidances; Republication

Note: This document was originally published at 60 FR 62471, Wednesday, December 6, 1995. Certain text in the guidances were inadvertently omitted. For the convenience of the reader, the document is being republished in its entirety.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing two draft guidance documents entitled "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" and "Guidance for Industry Funded Dissemination of Reference Texts." These draft guidances are related to the dissemination, by sponsors of human and animal drugs, medical devices, and biological products, of certain reprints of journal articles discussing FDA-approved products, and reference texts (medical textbooks and compendia). The draft guidances describe circumstances under which the agency would exercise its discretion to allow the dissemination of these reprints and reference texts to health care professionals.

DATES: Written comments by January 5, 1996.

ADDRESSES: Submit written comments on the draft guidance documents to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, or FAX at 301-594-3215.

FOR FURTHER INFORMATION CONTACT: Ilisa B. G. Bernstein, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, rm. 15-74, Rockville, MD 20857, 301-827-3380, or via internet at IBernste@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: Health care professionals have always been able to obtain, from a number of different sources, journal articles and reference texts (i.e., medical textbooks and compendia), that discuss human and animal drugs, medical devices, and biological products. These journal articles and reference texts are commercially available and may be obtained from publishers, libraries, on-line data bases, colleagues, bookstores, companies upon request, or other sources. Sponsors of human and animal drugs, medical devices, and biological products frequently have expressed a desire to disseminate reprints of journal articles and reference texts to health care professionals.

FDA traditionally has taken the position that sponsors who wish to distribute articles and reference texts containing information that is inconsistent with the FDA-approved labeling for a product may be in conflict with the Federal Food, Drug, and Cosmetic Act and implementing regulations. The agency's position is based on its mission to help ensure the safety and efficacy of human and animal drugs, medical devices, and biological products. Sponsors seeking approval or clearance to market these products must demonstrate to FDA that the products are safe and effective for their intended use(s). Permitting sponsors to freely disseminate information that is inconsistent with the FDA-approved or cleared use(s) would diminish the incentive for sponsors to perform the clinical studies which are necessary to verify that the product is safe and effective for the unapproved use. Furthermore, information disseminated by a biased source may have a greater potential to mislead the health care professional.

FDA believes that journal articles and reference texts are often useful to health care professionals. Accordingly, the agency has reviewed its policies to determine if modifications can be made without jeopardizing the integrity of the statutorily mandated standard that marketed drugs be safe and effective and have adequate directions for their intended use(s). After careful review, the agency is proposing to modify two of its policies at this time.

First, under one proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, journal articles that report the results of well-controlled studies, provided they represent the peer-reviewed, published version of original efficacy trials used to support approval, licensure, or clearance. Second, under the other proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, reference texts that discuss human or animal drugs, medical devices, or biological products. FDA has prepared two draft guidance documents describing the proposed circumstances under which the agency would exercise its discretion regarding the dissemination of these materials by sponsors.

FDA is particularly interested in receiving comments on whether the reprints discussed in the "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" should be from "peer-reviewed" journals. If so, please comment on what constitutes a "peer-reviewed" journal and what benefits would be afforded if these reprints are from "peer-reviewed" journals.

Interested persons may, on or before January 5, 1996, submit to the Dockets Management Branch (address and FAX number above) written comments on the draft guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance documents and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The texts of the draft guidance documents follow:

Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data[1]

I. Purpose of Guidance

Sponsors frequently want to disseminate reprints of articles reporting the results of the effectiveness trials that have been relied on by FDA in its approval or clearance of a drug, device, or biologic product. However, such articles may contain effectiveness rates, data, analyses, uses, regimens, or other information that is different from the approved labeling, and might, if disseminated by the sponsor, be considered violative promotional activities.

Nonetheless, the agency intends to allow the dissemination of reprints of articles that represent the peer-reviewed, published version of original efficacy trials, under the circumstances described in section II. below.

II. Circumstances for Dissemination of Certain Journal Articles Discussing FDA-Approved Products

1. The principal subject of the article should be the use(s) or indication(s) that has been approved by FDA. The article should be published in accordance with the regular peer-review procedure of the journal in which it is published, and the article reports the original study that was represented by the sponsor, submitted to FDA, and accepted by the agency as one of the adequate and well controlled studies providing evidence of effectiveness. In the case of a medical device, this guidance also applies to studies that were otherwise represented by the sponsor, submitted to the agency, and accepted by the agency as valid and material evidence of safety or effectiveness in lieu of adequate and well controlled studies;

2. The reprint should be from a bona fide peer-reviewed journal. A bona fide peer-reviewed journal is a journal that utilizes experts to review and objectively select, reject, or provide comments about proposed articles. Such experts should have demonstrated expertise in the subject of the article under review, and be independent from the journal;

3. If the article contains effectiveness rates, data, analyses, uses, regimens, or other information that is different from approved labeling, the reprint should prominently state the difference(s), with specificity, on the face of the reprint. One acceptable means of achieving the appropriate prominence for this statement is to permanently affix to the reprint a sticker stating the differences; and

4. The reprint should disclose all material facts and should not be false or misleading.

Guidance for Industry Funded Dissemination of Reference Texts[2]

I. Purpose of Guidance

Sponsors have also expressed a desire to disseminate reference texts, i.e., medical textbooks and compendia, to health care professionals. These texts typically discuss a wide range of medical diagnoses and treatments, including drug product utilization, surgical techniques, and other medical topics. FDA recognizes that such texts are often useful to clinicians in the practice of medicine.

Reference texts often contain information about the use of drugs, devices, or biologic products in the treatment, diagnosis, or prevention of disease that may not be consistent with the FDA-approved labeling for the products (e.g., discussion of unapproved uses). FDA recognizes, however, that many textbooks do not necessarily highlight a particular drug or device manufacturers products. In such instances, industry's desire to disseminate these reference texts may be in conflict with the Federal Food, Drug, and Cosmetic Act (the act) and implementing regulations.[3]

Nonetheless, FDA intends to permit the distribution of sound, authoritative materials that are written, published, and disseminated independent of the commercial interest of a sponsoring company and are not false nor misleading. FDA, therefore, intends to allow the dissemination by sponsors of reference texts that discuss human or animal drug, device, or biologic products, under the circumstances described in section II. below.

II. Circumstances for Dissemination of Reference Textbooks

1. The reference text should not have been written, edited, excerpted, or published specifically for, or at the request of, a drug, device, or biologic firm (see discussion below);

2. The content of the reference text should not have been reviewed, edited, or significantly influenced by a drug, device, or biologic firm, or agent thereof (see discussion below);

3. The reference text should not be distributed only or primarily through drug, device, or biologic firms (e.g., it should be generally available for sale in bookstores or other distribution channels where similar books are normally available);

4. The reference text should not focus primarily on any particular drug(s), device(s), or biologic(s) of the disseminating company, nor should it have a significant focus on unapproved uses of the drug(s), device(s), or biologic(s) marketed or under investigation by the firm supporting the dissemination of the text; and

5. Specific product information (other than the approved package insert) should not be physically appended to the reference text.

The agency recognizes that there are some useful reference texts that are written, edited, or published by a sponsor or agent of the sponsor. In these instances, FDA intends to allow the distribution of a reference text under the circumstances described in paragraphs 3 through 5 above, when the authorship, editing, and publishing of the reference text results in the presentation of a balanced perspective of the subject matter. Typically, this would be evidenced by an authorship and editorial process that fosters input from a relatively wide spectrum of sources and that allows for information from all sources to be considered.

Dated: December 6, 1995.

William K. Hubbard,

Associate Commissioner for Policy.

[FR Doc. 95-30169 Filed 12-7-95; 10:42 am]

BILLING CODE 4160-01-F

[1] This guidance does not apply to reprints of articles that discuss the specific prohibited uses of animal drugs listed in the FDA, Center for Veterinary Medicine Compliance Policy Guide 7125.06 or the Animal Medicinal Drug Use Clarification Act implementing regulations. Although this guidance does not create or confer any rights on any person and does not operate to bind FDA in any way, it does represent the agency's current thinking on the dissemination of reprints of certain published, original data. The agency will consider individual circumstances on a case-by-case basis.

[2] Although this guidance does not create or confer any rights, on any person, and does not operate to bind FDA in any way, it does represent the agency's current thinking on industry funded dissemination of reference texts. Although FDA believes that this guidance encompasses the vast majority of reference texts, the agency will consider, on a case-by-case basis, reference texts that do not fall within the parameters of this guidance document. This guidance does not apply to textbooks or compendia that discuss the specific prohibited uses or animal drugs listed in the Center for Veterinary Medicine Compliance Policy Guide 7125.06 or the Animal Medicinal Drug Use Clarification Act implementing regulations.

[3] Printed materials, such as medical textbooks and compendia, which supplement, explain, or are textually related to a regulated product are considered labeling for that product when disseminated by or on behalf of the manufacturer, packer, or distributor of the product. See section 201(m) of the act (21 U.S.C. 321(m)) and *Kordel* v. *United States*, 336 U.S. 345, 350 (1948).

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Part VI

The President

Proclamation 6856—National Pearl Harbor Remembrance Day, 1995
Memorandum of December 6, 1995

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Presidential Documents

Title 3—

The President

Proclamation 6856 of December 6, 1995

National Pearl Harbor Remembrance Day, 1995

By the President of the United States of America

A Proclamation

America's involvement in World War II began 54 years ago as dawn was shattered by a surprise attack on our forces stationed at Pearl Harbor, Hawaii. In the words of President Franklin Delano Roosevelt, "December 7, 1941—a date which will live in infamy" began at 7:55 a.m. when Japan launched an offensive to destroy the United States Pacific Fleet. The losses suffered that day shocked our Nation with the realization that American soil was not immune to the ravages of war—at the end of the attack, more than 3,000 Americans were dead, missing, or wounded. We resolved to boldly defend our shores against further devastation. Just 4 years later, the same fleet that the Japanese had attempted to destroy at Pearl Harbor sailed triumphantly into Tokyo Bay.

The attack of Pearl Harbor marked the beginning of America's total mobilization against a common enemy, and the United States soon became the world's "Arsenal of Democracy." Citizens worked together toward a common goal as the "We Can Do It" attitude spread across the country. The landscape of American business was forever changed as over 19 million women and many minority workers took high-skill jobs to contribute to the war effort.

The courageous veterans who fought selflessly to bring an end to the war in the Pacific deserve our highest respect and our most profound gratitude. Today we honor the sacrifices that led to the ultimate victory—the triumph of freedom over tyranny. We also pay tribute to the families who contributed so much with their support, sacrifices, and prayers from the home front. A grateful Nation will long remember those who came home and those who did not.

In the post-Cold War era, it is vital that we pass along the lessons learned from Pearl Harbor to a new generation of Americans. We must never allow our country to be unprepared, and we must never again isolate ourselves from the problems of the world. This is the legacy we leave to our young people, and it is our responsibility to continue to teach them those lessons. By doing so, we reaffirm the values of democracy, freedom, and leadership that have made America great.

The Congress, by Public Law 103–308, has designated December 7, 1995, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1995, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95-30177
Filed 12-7-95; 10:57 am]
Billing code 3195-01-P

Presidential Documents

Memorandum of December 6, 1995

Delegation of Authority Under Section 321(c) of the North American Free Trade Agreement Implementation Act

Memorandum for the United States Trade Representative

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby delegate to the United States Trade Representative (USTR) the powers vested in the President by section 321(c) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3391(c)) with respect to the tariff rate quotas for tomatoes.

In carrying out this authority, USTR shall consult with interested agencies, as well as the National Economic Council and the National Security Council.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 6, 1995.

[FR Doc. 95-30200
Filed 12-7-95; 11:51 am]
Billing code 3190-01-M

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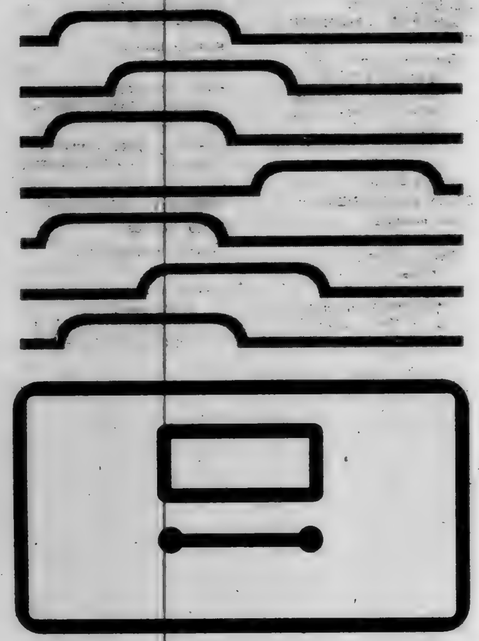
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Chapter XXXII

Office of Grants and Program Systems

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is removing 7 CFR Chapter XXXII and 7 CFR Part 3201, which relates to the Competitive Research Grants Program for Forest and Rangeland Renewable Resources.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On July 1, 1986, the Secretary of Agriculture issued Secretary's Memorandum 1020–26 which abolished the Office of Grants and Program Systems (OGPS) and transferred all of its authorities, responsibilities and activities to the Cooperative State Research Service (CSRS). Pursuant to Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994. That memorandum orders the abolishment of the CSRS and the establishment of the CSREES, which assumes the function previously performed by the CSRS. CSREES previously amended Chapter XXXII by moving 7 CFR Part 3200—National Competitive Research Intitative Grants Program (NCRIGP) to 7 CFR Part 3411, December 8, 1995. It now deletes 7 CFR Part 3201—Competitive Research Grants Program for Forest and Renewable Resources because the objectives of the program have been incorporated into the NCRIGP under newly redesignated 7 CFR Part 3411. This action vacates 7 CFR Chapter XXXII.

List of Subjects in 7 CFR Part 3201

Agricultural research, Forests and forest products, Grant programs—agriculture, Range management, Reporting and recordkeeping requirements.

CHAPTER XXXII—[REMOVED AND RESERVED]

For reasons set out in the preamble and under the authority of Public Law 103–354, Title 7, Subtitle B, Chapter XXXII is removed and reserved.

Done at Washington, D.C. this 29th day of November 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–29457 Filed 12–8–95; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0881]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The commentary provides guidance on issues such as the treatment under Regulation C of prequalifications, loan applications received through a broker, participations, refinancings, home-equity lines, and mergers. The Board believes the commentary will help reduce burden and ease compliance by clarifying application of the rules, providing flexibility in compliance, and consolidating the guidance that is currently available from a variety of sources.

DATES: *Effective date.* This rule is effective January 1, 1996.

Compliance date. Compliance is mandatory for collection of data that begins January 1, 1996, which is to be submitted to supervisory agencies no later than March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Lenders must file reports annually with their federal supervisory agencies and make disclosures available to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, sex, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

In June, the Board published a proposed staff commentary to Regulation C interpreting the regulation (60 FR 30013, June 7, 1995). The Board received approximately 130 comment letters, primarily from financial institutions and their trade associations. The commenters generally supported the Board's decision to develop a staff commentary and identified a number of additional issues that would benefit from interpretation. The commenters also made a variety of specific suggestions on the proposal.

Based on the comments received and further analysis, the Board has revised and reorganized many of the comments, and has made technical and stylistic changes to clarify the interpretations. Except as discussed below, the Board has retained the general substance of the commentary as proposed.

The commentary compliments Appendix A (Form and Instructions for

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Completion of HMDA Loan/Application Register) to Regulation C. Rather than reproducing the information from Appendix A in the commentary, the Board has incorporated that material only where necessary for clarity.

A number of commenters inquired about the status of *A Guide to HMDA Reporting—Getting It Right!*—developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board) and the Department of Housing and Urban Development (HUD) now that the Board is publishing a commentary to Regulation C. The *Guide* provides information in a more informal manner that many commenters have found useful (for example, its step-by-step guidance and the flow chart on coverage). In addition, the *Guide* provides useful information not provided in the regulation, such as the state and county codes for counties in Metropolitan Statistical Areas (MSAs). Accordingly, the member agencies of the FFIEC and HUD contemplate continuing to publish the *Guide*.

II. Section-by-Section Analysis

Section 203.1—Authority, Purpose, and Scope

1(c) Scope. Refinancings. Comments 1(c)–2 through –4 deal with refinancings. Comment 1(c)–2 states that modification, extension, and consolidation agreements (MECAs)—in which the existing obligation is not satisfied and replaced—are not refinancings. Some commenters suggested that the Board treat MECAs as refinancings, on the basis that they may serve the same purpose as formal refinancings. The Board has retained the interpretation as proposed. The Board believes that moving from the current bright-line test for refinancings to a broader test that would include MECAs and other types of renewals and extensions would increase institutions' compliance burdens significantly in determining which transactions are covered and which are not.

Comment 1(c)–3 clarifies that, for coverage purposes, an institution may base its determination of whether a transaction is a refinancing of a home-purchase loan on whether a first lien (as opposed to a subordinate lien) on a dwelling is involved. For institutions that meet the coverage test, comment 1(c)–4 makes clear that the data collection requirement (in contrast to coverage) does not depend on lien position.

Under both comments, an institution may always determine whether a new transaction is a refinancing for HMDA purposes based on the actual purpose of the existing loan. An institution also has the option to rely on the statement of the applicant or look to the security interest, if any.

Broker and investor institutions. The substance of proposed comments 1(c)–5 through –10 has been adopted as proposed, although the comments have been revised and reorganized. To address the concerns of some commenters and to allow the consistent use of the terms "broker" and "investor" in each of the comments, comment 1(c)–5 defines a "broker" and "investor" broadly. For example, as the term is used in the commentary a broker may or may not make the credit decision, depending upon the circumstances. The Board has also adopted a new comment 1(c)–9 which clarifies the reporting responsibilities of an institution that uses an agent.

Some commenters suggested revising the proposed comments to change the existing reporting responsibilities. Under the proposed commentary certain brokers could show a substantial number of denials, yet have few corresponding originations on their HMDA–LARs. This is the case where a broker makes the decision to deny certain applications rather than send them on to an investor for a credit decision. As a result, the investor reports more originations and the broker more denials. A number of commenters suggested revising this approach.

The position stated in the final commentary, like the proposal, is consistent with Appendix A's instructions for completing the HMDA–LAR, paragraphs IV.A.3 and IV.A.4. Prior to January 1, 1993, Regulation C specified that the institution in whose name a loan closed reported an origination (regardless of whether it made the credit decision), while the institution that made the credit decision reported the denials. Thus, a broker might report as an origination a loan that was approved in advance by an investor. In response to public comment, and based on its own analysis, the Board decided in 1992 that the rule for reporting originations in brokered or correspondent situations should match the reporting of denials—that is, the party making the credit decision should report both originations and denials for HMDA purposes. (See the Board's final rule revising Regulation C, at 57 FR 56963, December 2, 1992). Thus, the commentary has been adopted substantially as proposed.

Affiliate bank underwriting. In response to public comment, the Board has added a new comment 1(c)–10 to address a pre-closing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act, Restrictions on Transactions with Affiliates (sometimes known as a "250.250 review"). Section 23A limits the amount of "covered transactions" that a bank may engage in with a single affiliate. As stated in 12 CFR 250.250, a bank has not engaged in a covered transaction when it purchases a loan made by the affiliate if the bank completes an "independent evaluation of the credit worthiness of the mortgagor(s)" prior to the affiliate's committing to make the loan and the bank promptly purchases the loan after the loan is made. Under HMDA, when a bank conducts an "independent credit evaluation" of an application it must report the action taken on the application, rather than treat the transaction as the purchase of an originated loan.

Participations. Proposed comment 1(c)–10 would have allowed the reporting of an institution's partial interest in a participation loan, including interests in some consortium loans, at the institution's option. The Board solicited comment on whether it is appropriate to report partial interests on the HMDA–LAR in this manner. Based on the comments and after further consideration, the Board has decided that for the present the HMDA data should not reflect partial interests in loans. The Board has revised the comment accordingly. Reporting partial interests could distort the HMDA data by showing a single loan as a number of loans (for example, if ten lenders participated in a loan there could be as many as ten entries in HMDA–LARs). The Board may consider amending Regulation C at a later time to allow reporting of partial interests in loans, perhaps establishing a special code to indicate the extent of the interest.

Assumptions. In response to public comment, the Board has adopted a new comment 1(c)–12 dealing with assumptions. The comment adopts and expands upon the language found in the FFIEC's

Guide to HMDA Reporting—Getting it Right!

Section 203.2—Definitions

2(b) Application. Comment 2(b)–1 has been revised to clarify that while Board interpretations of the definition of application under Regulation B (Equal Credit Opportunity) (such as the distinction between an inquiry and an application, and the guidance concerning application procedures) are applicable to Regulation C, prequalification requests are not applications for purposes of Regulation C, even though they may be applications under Regulation B.

Comment 2(b)–2 addresses prequalification requests. Several commenters noted that institutions sometimes process and treat prequalification requests like other applications, to ensure that a notice of action taken under Regulation B is sent if the request is denied. The Board has revised comment 2(b)–2 to accommodate such practices.

In the amendments to Regulation C issued in December 1994 (59 FR 63698, December 9, 1994), the Board deferred a final determination on whether and how lenders ought to report requests for prequalifications (or preapprovals). (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) The Board stated that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar years 1994 or 1995.

Based on the comments and upon further analysis, the Board has determined that for 1996 data collection, institutions need not report prequalification (or preapproval) requests on the HMDA–LAR. The Board may consider amending Regulation C at a later date to address whether (and how) institutions should report some or all prequalification (or preapproval) requests.

2(c) Branch office. The Board has added a new comment 2(c)–1 to clarify that a branch office of a credit union meets the regulatory definition even if it has not been approved as a branch by a federal or state agency. The National Credit Union Administration, which charters and regulates federal credit unions, does not require approval of branch offices.

2(d) Dwelling. The Board has adopted comment 2(d)–1 substantially as proposed. Some commenters requested guidance on whether the purchase of a time-share is a purchase of a dwelling. Because the purchase of a time-share is the purchase of a "use" interest in the property, it is not a purchase of a dwelling for HMDA purposes. Other commenters requested guidance on the treatment of loans on structures such as dormitories and nursing homes. An institution need not treat these structures as dwellings for purposes of HMDA reporting. If an institution wishes to report the transaction it must determine that the structure is a residential structure under state or federal law.

2(f) Home-improvement loan. The Board has deleted an example in proposed comment 2(f)(1)–1 concerning the purchase of appliances to be installed as fixtures. The use of the term "fixture" generated numerous questions from commenters. Upon further analysis, the Board has decided not to define the term fixture because the Board believes the requirement that an institution classify a loan as a home-improvement loan suffices to distinguish these loans from other home-related consumer loans.

The Board has deleted proposed comment 2(f)(1)–2, which addressed home-improvement loans secured by a property other than the property being improved. Some commenters interpreted the comment to suggest that institutions should only report secured home-improvement loans. Rather than reiterate language from Appendix A—which instructs institutions to report both secured and unsecured home-improvement loans—the Board opted to delete the comment. Comment 4(a)(6)–2 addresses how to report the property location for a home-improvement loan secured by a property other than the property being improved.

Proposed comment 2(f)(2)–1 used the example of marketing as a means of classifying loans. Although the comment was intended to clarify that an institution satisfies the classification requirement if it designs and markets a loan product as a home improvement loan product, some commenters interpreted the comment as requiring an institution to report all loans for which the marketing might have indicated that the loan could be used for home-improvement. The Board has deleted the reference because marketing practices alone will not suffice for classifying a loan product as a home-improvement loan.

2(g) Home-purchase loan. The Board has revised the comments to § 203.2(g) in response to issues raised by commenters and to improve clarity. For example, comments 2(g)–2 and –3 clarify that, as is the case for home-improvement loans, an institution may use any reasonable standard to determine a property's primary use, and may select the standard case-by-case.

Section 203.3—Exempt Institutions

3(a) Exemption based on location, asset size, or number of home-purchase loans. Comment 3(a)–3 addresses reporting requirements for bulk purchases where no merger or acquisition of an institution is involved. Several commenters expressed concerns about data quality for these purchased loans. Commenters noted that a lender may only review a small percentage of the total loan purchase, and be unaware that information required to be reported on the HMDA–LAR is missing for some loans in the bulk purchase. The Board recognizes the reporting difficulties associated with bulk purchases, but believes that HMDA requires the reporting of these data in an accurate and complete manner.

Section 203.4—Compilation of Loan Data

4(a) Data format and itemization. Paragraph 4(a)(1)—Application date. The Board has revised comments 4(a)(1)–1 and –2 to clarify that while an institution is allowed flexibility, its approach in reporting the application date for its entire HMDA submission should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

The Board has revised comment 4(a)(1)–3 to clarify that the comment applies to all reinstated applications (not only counteroffers and denials).

Paragraph 4(a)(2)—Type and purpose. In response to comments on proposed comment 2(f)(1)–4, the Board has added a new comment 4(a)(2)–1 concerning loans that are for more than one covered purpose (home purchase, home improvement, or refinancing).

Paragraph 4(a)(3)—Occupancy. Proposed comment 4(a)(3)–1 dealt with the occupancy status for properties located outside the MSAs in which an institution has a home or branch office, and allowed an institution to report the actual occupancy status. The final comment makes this rule applicable also to a multifamily property loan. Although Appendix A is written more narrowly, the Board believes this more permissive rule will reduce compliance burden and will not adversely affect data quality.

Paragraph 4(a)(4)—Loan amount. In response to requests by commenters, the Board has added a new comment 4(a)(4)–4 concerning the loan amount to be reported in the case of an assumption of a loan.

Proposed comment 4(a)(4)–4 has been deleted, consistent with the position taken on the nonreporting of loan

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participations. (See discussion of comment 1(c)–11, above.)

Paragraph 4(a)(5)—Type of action taken and date. Comment 4(a)(5)–1 deals with the "action taken" code to be used for counteroffers. A change has been made to illustrate that counteroffers may contain other terms different from those initially requested besides loan amount. Counteroffers that are not accepted by the applicant are to be reported as denials. If there are a series of offers or counteroffers, an institution reports only the final action taken at the conclusion of the negotiations. In addition, in some circumstances a rejected counteroffer that is reinstated and accepted by the applicant need not be reported as a denial. (See comment 4(a)(1)–3.)

Comment 4(a)(5)–2 deals with rescinded transactions. Some commenters asked whether they must consistently report the action taken in the case of a loan rescission as either "approved but not accepted" or as "loan originated." The Board believes that a strict requirement is not warranted in light of the small number of loans that are rescinded.

Comment 4(a)(5)–4 relates to conditional approvals. The proposal stated that if an institution approves an application subject to conditions that are not met, the action is reported as a denial. In response to comments, the Board has revised the comment to reflect that not all instances of failure to satisfy conditions should be classed as denials. For example, if a loan application is approved subject to routine conditions such as attendance at the closing or payment of closing costs, and such conditions are not met, the action is reported as approved but not accepted, rather than denied. However, loan approval subject to an underwriting condition (such as a larger downpayment or obtaining a cosigner or guarantor) is reported as a denial if the condition is not met.

Comment 4(a)(5)–5 gives options for reporting the date of action taken for applications approved but not accepted. In response to comments received, the options have been expanded.

Paragraph 4(a)(6)—Property location. In response to comments and to improve the usefulness of the HMDA data, the Board has revised proposed comment 4(a)(6)–1 and added a new comment to indicate that for home-improvement loans involving multiple properties, an institution should generally report the location of the property being improved.

Paragraph 4(a)(7)—Applicant and income data. Applicant data. The Board has revised and reordered comments 4(a)(7)–1 through –5 for greater guidance. For example, comment 4(a)(7)–3 clarifies that a creditor is not required to collect monitoring information if the face-to-face meeting occurs after the application process is complete, and comment 4(a)(7)–4 clarifies that a joint applicant may enter the government monitoring information on behalf of an absent co-applicant. The Board has expanded comment 4(a)(7)–5 to address the treatment of remote electronic application processes that use text communication (such as Internet-based services) rather than "live" oral and visual communication. Such applications are treated as mail applications.

Income data. The Board has revised and reorganized the comments concerning the reporting of income data. For example, proposed comment 4(a)(7)–5 provided that institutions must report all income used to make the credit decision, even if the funds were not included in the debt-to-income ratio. Proposed comment 4(a)(7)–7 provided that an institution should not report the income of cosigners and guarantors, even if the creditor relied on that income in making the credit decision. Commenters believed that guarantors' and cosigners' income should be reported if that income was in fact relied upon by the creditor. Several commenters noted that to do otherwise is inconsistent with the general rule that creditors report the income relied on. Some commenters made a distinction between cosigners, who are primarily liable on the obligation, and guarantors, who are secondarily liable. They suggested that an institution should report the income of cosigners but not guarantors. Based on the comments received and upon further analysis, the Board has revised and consolidated the proposed comments into comment 4(a)(7)–6 to clarify that institutions report the income of applicants and cosigners (but not guarantors) to the extent relied upon in making the credit decision.

Paragraph 4(c) Optional data. In response to comments, comment 4(c)–1 has been modified to reflect that state regulations also may require the reporting of the reasons for denial.

Section 203.6—Enforcement

6(b) Bona fide errors. Comment 6(b)–1 states that an error is bona fide only if the institution maintains reasonable procedures to avoid the error. To provide an example of reasonable procedures, the proposed comment had used the word "audit" in the sense of examine and check. Because some commenters interpreted this as a requirement to conduct a formal audit, the Board has revised the comment.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as set forth below:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Part 203 is amended by adding a new Supplement I—Staff Commentary after the Appendices to read as follows:

Supplement I to Part 203—Staff Commentary

Introduction

1. *Status and citations.* The commentary in this supplement is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues formal staff interpretations of Regulation C (12 CFR part 203). The parenthetical citations given are references to Appendix A to Regulation C, Form and Instructions for Completion of the HMDA Loan/Application Register.

Section 203.1—Authority, Purpose, and Scope

1(c) *Scope.*

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Appendix A of this part, I., IV., and V.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed, modified, extended, or consolidated (as in certain modification, extension, and consolidation agreements), the transaction is not a refinancing for purposes of HMDA. (Appendix A of this part, Paragraph V.A.5. Code 3.)

3. *Refinancing—coverage.* The regulation bases coverage, in part, on whether an institution originates home purchase loans. For determining whether an institution is subject to Regulation C or is exempt from coverage, an origination of a home-purchase loan includes the refinancing of a home-purchase loan. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). (Appendix A of this part, Paragraphs I.B., I.C., and I.D.) Alternatively, an institution may:

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home-purchase loan; or

ii. Assume that the new obligation is not a refinancing of a home-purchase loan if either the existing obligation or the new obligation is not secured by a first lien on the dwelling.

4. *Refinancing—data collection.* The regulation requires collection and reporting of data on refinancings of home-purchase and home-improvement loans. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). (Appendix A of this part, Paragraph V.A.5. Code 3.) Alternatively, an institution may:

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home-purchase or home-improvement loan; or

ii. Assume that the new obligation is a refinancing of a home-purchase or home-improvement loan only if the existing obligation was secured by a lien on a dwelling; or

iii. Assume that the new obligation is a refinancing of a home-purchase or home-improvement loan only if the new obligation will be secured by a lien on a dwelling.

5. *The broker rule and the meaning of "broker" and "investor."* For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a "broker," and an institution that acquires a loan from a broker at or after closing is acting as an "investor." (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. Thus, an institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in. (Appendix A of this part, Paragraphs IV.A. and V.B.)

6. *Illustrations of the broker rule.* Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial. (Appendix A of this part, Paragraphs IV.A. and V.B.)

7. *Broker's use of investor's underwriting criteria.* If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases. (Appendix A of this part, Paragraphs IV.A. and V.B.)

8. *Insurance and other criteria.* If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). (Appendix A of this part, Paragraphs IV.A. and V.B.)

9. *Credit decision of agent is decision of principal.* If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another. (Appendix A of this part, Paragraphs IV.A. and V.B.)

10. *Affiliate bank underwriting (250.250 review).* If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a pre-closing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes another action reports that action. (Appendix A of this part, Paragraphs IV.A. and V.B.)

11. *Participation loan.* An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan. (Appendix A of this part, Paragraphs I., II., IV., and V.)

12. *Assumptions.* An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports as a home-purchase loan an assumption (or an application for an assumption) in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported. (Appendix A of this part, Paragraphs IV.A. and V.B.)

Section 203.2—Definitions

2(b) *Application.*

1. *Consistency with Regulation B.* Board interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR Part 202, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests. (Appendix A of this part, Paragraph IV.A.)

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA–LAR, even though these requests may constitute applications under Regulation B. (Appendix A of this part, Paragraphs I. and IV.A.)

2(c) *Branch office.*

1. *Credit union.* For purposes of Regulation C, a "branch" of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a federal or state agency. (See 12 U.S.C. 1752.) (Appendix A of this part, Paragraphs I., V.A.7., and V.C.)

2. *Depository institution.* A branch of a depository institution does not include a loan production office, the office of an affiliate, or the office of a third party such as a loan broker. (Appendix A of this part, Paragraphs I., V.A.7., and V.C.) (But see Appendix A of this part, Paragraph V.C.7., which requires certain depository institutions to report property location even for properties located outside those MSAs in which the institution has a home or branch office.)

3. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party such as a loan broker. (Appendix A of this part, Paragraphs I., V.A.7., and V.C.) (But see Appendix A of this part, Paragraph V.C.6., which requires certain nondepository institutions to report property location even in MSAs where they do not have a physical location.)

2(d) *Dwelling.*

1. *Scope.* The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes a mobile or manufactured home, a multifamily structure (such as an apartment building), and a condominium or a cooperative unit. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. (Appendix A of this part, Paragraphs I.B., IV., and V.A.5.)

2(e) *Financial institution.*

1. *Branches of foreign banks—treated as a bank.* A federal branch or a state-licensed insured branch of a foreign bank is a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1) of Regulation C. (Appendix A of this part, Paragraphs I.A. and I.B.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches

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of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25(a) of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and Agreement corporations) are not "banks" under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2(e)(2) and 203.3(a)(2) of Regulation C. (Appendix A of this part, Paragraphs I.C. and I.D.)

2(f) *Home-improvement loan.*

1. *Definition.* A home-improvement loan is a loan that is made for the purpose of home improvement and that is classified by the institution as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

2. *Statement of the applicant.* An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.c.)

3. *Home-equity lines.* An institution that has chosen to report home-equity lines of credit reports as a home-improvement loan only the part of a home-equity line that is intended for home improvement. An institution that reports home-equity lines reports the disposition of all applications, not just originations. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.c.)

4. *Classification requirement.* An institution has "classified" a loan as a home-improvement loan if it has entered the loan on its books as a home-improvement loan, or has otherwise coded or identified the loan as a home-improvement loan. For example, an institution that has booked a loan or reported it on a "call report" as a home-improvement loan has classified it as a home-improvement loan. An institution may also classify loans as home-improvement loans in other ways (for example, by color-coding loan files). (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

5. *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping). (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

6. *Commercial and other loans.* A loan for improvement purposes originated outside an institution's consumer lending division (such as a loan to improve an apartment building made through the commercial loan department) is reported if the institution classifies it as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

7. *Multiple-purpose loan.* A loan for home improvement and for other purposes is treated as a home-improvement loan even if less than 50 percent of the total loan proceeds are to be used for improvement, provided the institution classifies the loan as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.) (But see comment (2)(f)–3 of this supplement on home-equity lines of credit.)

8. *Mixed-use property.* A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) satisfies the purpose requirement if the loan proceeds are primarily to improve the residential portion of the property. If the loan proceeds are to improve the entire property (for example, to replace the heating system), the loan satisfies the purpose requirement if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. To report the loan as a home-improvement loan, the institution must also classify it as such. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

2(g) *Home-purchase loan.*

1. *Multiple properties.* A home-purchase loan includes a loan secured by one dwelling and used to purchase another dwelling. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home-purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. (Appendix A of this part, Paragraphs IV.A., IV.B.1., and V.A.5. Code 1.)

3. *Farm loan.* A loan to purchase property used primarily for agricultural purposes is not a home-purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 24 CFR 3500.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis. (Appendix A of this part, Paragraphs IV.B.1. and V.A.5. Code 1.)

4. *Commercial and other loans.* A home-purchase loan includes a loan originated outside an institution's residential mortgage lending division (such as a loan for the purchase of an apartment building made through the commercial loan department). For home-purchase loans, there is no classification test. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

5. *Construction and permanent financing.* A home-purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered "temporary financing" under Regulation C and is not reported. (Appendix A of this part, Paragraphs IV.A. and B.2, and V.A.5. Code 1.)

6. *Home-equity line.* An institution that has chosen to report home-equity lines of credit reports as a home-purchase loan only the part that is intended for home purchase. An institution may rely on the applicant's oral or written statement about the proposed use of the funds. An institution that reports home-equity lines reports the disposition of all applications, not just the originations. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

1. *General.* An institution that ceases to meet the tests for HMDA coverage (such as the 10 percent test for nondepository institutions) or becomes exempt may stop collecting HMDA data beginning with the next calendar year. For example, a bank whose assets drop to $10 million or less on December 31 of a given year reports data for that full calendar year, but does not report data for the succeeding calendar year. (Appendix A of this part, Paragraph I.)

2. *Coverage after a merger.* Several scenarios of data collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year. (Appendix A of this part, Paragraph I.)

i. Two institutions are exempt from Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of an institution is involved, the institution reports the loans as purchased loans. (Appendix A of this part, Paragraph V.B.)

Section 203.4—Compilation of Loan Data

4(a) *Data format and itemization.*

1. *Quarterly updating.* An institution must make a good-faith effort to record all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in originations—fully and accurately within 30 days after the end of each calendar quarter. If some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C provided that the institution corrects and completes the information prior to reporting the HMDA–LAR to its regulatory agency. (Appendix A of this part, Paragraph II.E.)

2. *Updating—agency requirements.* Certain state or federal regulations, such as the Federal Deposit Insurance Corporation's regulations, may require an institution to update its data more frequently than is required under Regulation C. (Appendix A of this part, Paragraph II.E.)

3. *Form of updating.* An institution may maintain the quarterly updates of the HMDA–LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request. (Appendix A of this part, Paragraph II.E.)

Paragraph 4(a)(1) Application date.

1. *Application date—consistency.* In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.A.2.)

2. *Application date—application forwarded by a broker.* For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.A.2.)

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it report the date of the request as the application date. (Appendix A of this part, Paragraph V.A.2.)

Paragraph 4(a)(2) Type and purpose.

1. *Purpose—multiple-purpose loan.* If a loan is for home improvement and another covered purpose, an institution reports the loan as a home-improvement loan if the institution classifies it as a home-improvement loan. Otherwise the institution reports the loan as a home-purchase loan or a refinancing, as appropriate. An institution may determine how to report such loans on a case-by-case basis. (Appendix A of this part, Paragraphs V.A.4. and 5.)

Paragraph 4(a)(3) Occupancy.

1. *Occupancy—actual occupancy status.* If a loan relates to multifamily property, property located outside an MSA, or property in an MSA where the institution has no home or branch office, the institution may either report the actual occupancy status or report using the code for "not applicable." (A nondepository institution may be deemed to have a home or branch office in an MSA under § 203.2(c)(2) of Regulation C.) (Appendix A of this part, Paragraph V.A.7.)

2. *Occupancy—multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status of the property for which property location is being reported. (See the comments to paragraphs 4(a)(6) Property location.) (Appendix A of this part, Paragraphs V.A.6. and 7.)

Paragraph 4(a)(4) Loan amount.

1. *Loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested. (Appendix A of this part, Paragraph V.A.8.f.)

2. *Loan amount—multiple-purpose loan.* Except in the case of a home-equity line of credit, an institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement. (Appendix A of this part, Paragraph V.A.8.)

3. *Loan amount—home-equity line.* An institution that reports home-equity lines of credit reports only the part that is intended for home-improvement or home-purchase purposes. An institution may rely on the applicant's oral or written statement about the proposed use of the loan proceeds. (Appendix A of this part, Paragraph V.A.8.c.)

4. *Loan amount—assumption.* An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount. (Appendix A of this part, Paragraphs V.A.8.)

Paragraph 4(a)(5) Type of action taken and date.

1. *Action taken—counteroffers.* If an institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial. (Appendix A of this part, Paragraph V.B.)

2. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing, the institution, on a case-by-case basis, may report the transaction either as an origination or as an application that was approved but not accepted. (Appendix A of this part, Paragraph V.B.)

3. *Action taken—purchased loans.* An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase. (Appendix A of this part, Paragraph V.B.)

4. *Action taken—conditional approvals.* If an institution issues a loan approval subject to the applicant's meeting underwriting conditions (other than customary loan commitment or loan closing conditions, such as a "clear title" requirement or an acceptable property survey) and the applicant does not meet them, the institution reports the action taken as a denial. (Appendix A of this part, Paragraph V.B.)

5. *Action taken date—approved but not accepted.* For a loan approved by an institution but not accepted by the applicant, the institution reports using any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.B.3.b.)

6. *Action taken date—originations.* For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.B.3.)

Paragraph 4(a)(6) Property location.

1. *Property location—multiple properties (home improvement/refinance of home improvement).* For a home-improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties. (Appendix A of this part, Paragraph V.C.)

2. *Property location—multiple properties (home purchase/refinance of home purchase).* For a home-purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties. (Appendix A of this part, Paragraph V.C.)

3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA and did not collect the property location information. (Appendix A of this part, Paragraph V.C.)

4. *Property location—mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution reports using the code for "not applicable." (Appendix A of this part, Paragraph V.C.)

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5. *Property location—use of BNA.* At its option, an institution may report property location by using a block numbering area (BNA). The U.S. Census Bureau, in conjunction with state agencies, has established BNAs as statistical subdivisions of counties in which census tracts have not been established. BNAs are generally identified in census data by numbers in the range 9501 to 9999.99. (Appendix A of this part, Paragraph V.C.4.)

Paragraph 4(a)(7) Applicant and income data.

1. *Applicant data—completion by applicant.* An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the "other" box the institution reports using the "other" code. (Appendix A of this part, Paragraph V.D.)

2. *Applicant data—completion by lender.* If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname. As stated in paragraph I.B.5 to Appendix B of this part, the institution does not use the "other" code, but selects from the categories listed on the form. (Appendix A of this part, Paragraph V.D.)

3. *Applicant data—application completed in person.* When an applicant meets in person with a lender to complete an application that was begun by mail or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information. (Appendix A of this part, Paragraph V.D.)

4. *Applicant data—joint applicant.* A joint applicant may enter the government monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the code for "information not provided by applicant in mail or telephone application." (Appendix A of this part, Paragraph V.D.)

5. *Applicant data—video and other electronic application processes.* An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the race or national origin and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the Internet or facsimile) treats the applications as accepted by mail. (Appendix A of this part, Paragraph V.D.) (See Appendix B of this part for procedures to be used for data collection.)

6. *Income data—income relied upon.* An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable. (Appendix A of this part, Paragraph V.D.5.)

7. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on. (Appendix A of this part, Paragraph V.D.5.)

8. *Income data—loan to employee.* An institution may report "NA" in the income field for loans to employees to protect their privacy, even though the institution relied on their income in making its credit decisions. (Appendix A of this part, Paragraph V.D.5.)

Paragraph 4(a)(8) Purchaser.

1. *Type of purchaser—loan participation interests sold to more than one entity.* An institution that originates a loan, and then sells it to more than one entity, reports the "type of purchaser" based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest it does not report the sale. (Appendix A of this part, Paragraph V.E.)

4(c) Optional data.

1. *Agency requirements.* Certain state or federal entities, such as the Office of Thrift Supervision, require institutions to report the reasons for denial even though this is optional reporting under HMDA and Regulation C. (Appendix A of this part, Paragraph V.F.)

4(d) Excluded data.

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security under HMDA and is not reported on the HMDA–LAR. (Appendix A of this part, Paragraph IV.B.5.)

Section 203.5—Disclosure and Reporting

5(a) Reporting to agency.

1. *Change in supervisory agency.* If the supervisory agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution reports data to its new supervisory agency for the year of the change and subsequent years. (Appendix A of this part, Paragraphs I., III. and VI.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Appendix A of this part, Paragraph I.E. and VI.)

5(e) Notice of availability.

1. *Poster—suggested text.* The suggested wording of the poster text provided in Appendix A of this part is optional. An institution may use other text that meets the requirements of the regulation. (Appendix A of this part, Paragraph III.G.)

Section 203.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—information from third parties.* An institution that obtains the property location information for applications and loans from third parties (such as appraisers or vendors of "geocoding" services) is responsible for ensuring that the information reported on its HMDA–LAR is correct. An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or regulation, provided that the institution maintains reasonable procedures to avoid such errors (for example, by conducting periodic checks of the information obtained from these third parties). (Appendix A of this part, Paragraph V.C.)

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30035 Filed 12–8–95; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessments; Adjustment of Assessment Rate Schedule for BIF-Assessable Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Adjustment of assessment rate schedule.

SUMMARY: On November 14, 1995, the Board of Directors of the FDIC adopted a resolution to reduce to a range of 0 to 27 basis points the assessment rates applicable to deposits assessable by the Bank Insurance Fund for the semiannual assessment period beginning January 1, 1996. The reduction represents a downward adjustment of 4 basis points from the BIF assessment rate schedule currently in effect for the second semiannual assessment period of 1995.

EFFECTIVE DATE: January 1, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick S. Carns, Chief, Financial Markets Section, Division of Research and Statistics, (202) 898–3930; Christine Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–3985; Martha L. Coulter, Counsel, Legal Division, (202) 898–7348; Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, D. C., 20429.

SUPPLEMENTARY INFORMATION:

I. Adjustment of Existing BIF Assessment Rate Schedule

On August 8, 1995, the Board of Directors of the FDIC (Board) adopted a new assessment rate schedule for

deposits subject to assessment by the Bank Insurance Fund (BIF). 60 FR 42680 (August 16, 1995). The new schedule (codified as Rate Schedule 2 at 12 C.F.R. 327.9(a)) provided for an assessment-rate range of 4 to 31 basis points and became effective retroactively on June 1, 1995, the beginning of the month following the month in which the BIF reached its designated reserve ratio (DRR) of 1.25 percent of total estimated insured deposits.

In adopting that rate schedule, the Board took into account the factors required by the assessment provisions of section 7(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b). Those factors include the requirement for a risk-based assessment system that is based on the risk of loss posed to BIF by each BIF-insured institution, taking into account different categories and concentrations of assets and liabilities and other relevant factors; the likely amount of any such loss; and BIF's revenue needs. (Section 7(b)(1)). They also include the requirement that rates be set to reach or maintain the DRR, taking into account BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors the Board may deem appropriate. (Section 7(b)(2)).

At the same time the Board adopted the current rate schedule, it also amended the FDIC's assessment regulations to permit the Board to make limited adjustments to the schedule without notice-and-comment rulemaking. Any such adjustments can be made as the Board deems necessary to maintain the BIF reserve ratio at the DRR and can be accomplished by Board resolution. Under this provision, codified at 12 CFR 327.9(b), any such adjustment must not exceed an increase or decrease of 5 basis points and must be uniform across the rate schedule.

The amount of an adjustment adopted by the Board under 12 C.F.R. 327.9(b) is to be determined by the following considerations: (1) the amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members. In determining the relevant amount of assessment revenue, the Board is to consider BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on BIF members' earnings and capital, and any other factors the Board may deem appropriate.

Having considered all of these factors, the Board has decided to adopt an adjustment factor of 4 basis points for the semiannual assessment period beginning January 1, 1996, with a resulting adjusted schedule as follows:

BIF Rate Schedule as Adjusted for the First Semiannual Period of 1996

Capital group	Supervisory subgroup		
	A	B	C
1	[1]0	3	17
2	3	10	24
3	10	24	27

[1] Subject to a statutory minimum assessment of $1,000 per semiannual period (which also applies to all other assessment risk classifications).

The basis for the Board's decision is discussed below.

II. Basis for the Adjustment

A. Maintaining at the Designated Reserve Ratio

On June 30, 1995, the BIF reserve ratio stood at nearly 1.29 percent, and all indications are that it continued to grow during the third quarter of 1995. If the rates in effect for the current semiannual assessment period were to continue in effect, it is likely that, absent large increases in insurance losses and deposit growth, the reserve ratio would continue to grow during the first half of 1996. BIF operating expenses and insurance losses have been lower than anticipated and are projected to remain low in the near term due to the strong economy and high capital levels in the banking industry. Even taking into account the possibility of large increases in insurance losses and deposit growth that currently appear highly unlikely, it is still probable that the reserve ratio would remain at or above the target reserve ratio of 1.25 percent in the near term. Accordingly, the Board has determined that a reduction in the BIF assessment rate schedule is necessary to comply with the statutory requirements for setting assessment rates, including the requirement that the FDIC maintain the reserve ratio at the target DRR.

B. Determination of the Adjustment Factor

1. Amount of Assessment Revenue Needed

The FDIC determined in August that an effective average BIF assessment rate at the low end of a range beginning at around 4.5 basis points was appropriate to achieve a long-term balance of BIF revenues and expenses (where expenses include monies needed to prevent dilution due to deposit growth). This determination was based on a thorough historical analysis of FDIC experience and consideration of recently enacted statutory provisions that may moderate deposit insurance losses going forward.

The Board has not altered its view that, in setting rates, it should look beyond the immediate time frame in estimating the revenue needs of the fund. However, under the law, the current balance in the BIF also is directly relevant to determining the appropriate assessment level for the first semiannual period of 1996. In light of the favorable existing conditions and outlook for the next several months, it is anticipated that even an adjustment sufficient to reduce the rate for the least-risky institutions essentially to zero for the next assessment period would still provide assessment revenue in an amount that is expected to maintain the BIF reserve ratio at or above the target ratio of 1.25 percent in the near term.

In deciding upon a rate schedule for the second semiannual assessment period of 1995, the Board considered high-growth and low-growth scenarios for the BIF balance and the anticipated reserve ratio at year end. Current information suggests that the BIF balance and reserve ratio at year end will correspond more closely to the high-than the low-growth scenario, as indicated below.

The BIF reserve ratio stood at nearly 1.29 percent as of June 30, 1995, the latest date for which complete data are available. Assuming annualized insured deposit growth of between 0 and 2 percent during the third quarter, the BIF reserve ratio may have achieved 1.30 to 1.31 percent as of September 30, 1995.[1] All indications are that the reserve ratio will continue to rise for the remainder of 1995.

Insurance losses and operating expenses for the second half of 1995 are expected to total under $400 million, while assessments plus investment income will exceed $1 billion for this period. Insured deposit growth for the second half of 1995 likely will be moderate; the annualized growth rate was 1.5 percent for the year ending on June 30, and preliminary estimates suggest that deposit growth will be near zero or possibly negative for the third quarter. Table 1 indicates that the reserve ratio is likely to reach 1.31 to 1.34 percent by year-end 1995, reflecting a range of insured deposit growth from +2 to −2 percent annually for the second half of the year.

[1] The BIF reserve ratio as of September 30, 1995, cannot be determined precisely until Call Report data showing BIF-assessable deposits for that date are processed and analyzed. This process is expected to be completed by mid-December 1995.

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With a forecast horizon exceeding six months, large unexpected changes in the reserve ratio are possible, given the historical volatility in deposit growth and insurance losses. However, the outlook for the first semiannual assessment period of 1996 is for continued growth in BIF and its reserve ratio. Little change is expected in the pace of insurance losses or operating expenses, with the result that investment income is expected to be sufficient to fund BIF expenditures through June 30.

Table 1 indicates that, under the current assessment schedule, the BIF reserve ratio would exceed 1.25 percent as of June 30, 1996, even assuming a severe negative growth scenario for the reserve ratio. For example, the reserve ratio at June 30 likely would be at least 1.28 percent even if losses plus new provisions for future losses total $600 million for the first half of 1996 and insured deposits grow at an annual rate of 6 percent from mid-year 1995 through mid-year 1996. Table 1 indicates that under these same extreme assumptions, an assessment rate schedule of 0 to 27 basis points annually (4 basis points lower for all risk categories than the existing schedule) likely would maintain the reserve ratio at 1.25 percent through June 30.

In short, the FDIC's best estimate is that the BIF reserve ratio is highly likely to remain well above 1.25 percent for the first semiannual period of 1996 even if assessment revenue is minimal. Given these circumstances, it is the Board's view that assessment rates should be reduced by a substantial amount. The data reviewed above support a reduction in BIF assessment rates to the lowest levels that are consistent with an effective risk-based assessment system.

Finally, the Board notes that this reduction of BIF assessment rates is likely to have a positive impact on earnings and capital of insured institutions having deposits assessable by BIF.

2. Maintaining a Risk-Based Assessment System.

The FDI Act requires a risk-based assessment system. In adopting the current rate schedule, the Board explained its view that, to be effective, the risk-based assessment system must incorporate a range of rates that provides an incentive for institutions to control risk-taking behavior while at the same time covering the long-term costs of the obligations borne by the deposit insurer. 60 FR 42683 (August 16, 1995). The Board's decision to adopt a 4-point adjustment to the current rate schedule, thereby retaining rate differentials among the various assessment-risk classifications, continues to reflect this view.

It should be noted that, under existing statutory provisions, BIF members are subject to a minimum assessment of $1,000 for each semiannual period. (FDI Act section 7(b)(2)(iii)). Under this requirement, even those institutions posing the least risk of loss to BIF are statutorily required to pay semiannual assessments of at least that amount.

In light of its decision to reduce to zero the explicit assessment rate for those institutions in the most favorable assessment risk classification, the Board recognizes two concerns associated with the statutory minimum assessment: (1) the absence of an explicit assessment rate combined with a minimum semiannual assessment of only $1,000 suggests that the risk posed to the insurance fund by such institutions is insignificant, but FDIC experience suggests otherwise; and (2) the marginal cost of deposit insurance for such institutions is zero (that is, insurance is provided on new deposits at zero additional cost).

The first concern arises because, historically, a significant percentage of failed institutions might have qualified for the most favorable assessment risk classification two or three years prior to failure. Figure 1 shows that, of the insured institutions that failed in the period beginning with 1980 and extending through 1994, nearly 35 percent were rated CAMEL 1 or 2 as of two years prior to failure, and approximately 55 percent were rated CAMEL 1 or 2 as of three years prior to failure. Moreover, of the BIF members that failed from the beginning of 1987 through 1994, 80 percent were well capitalized as of three years prior to failure (see Figure 2).

An argument for imposing only the minimum assessment on the least-risky institutions is that the reserve ratio is intended to provide for insurance losses arising from these types of failures; because BIF has been recapitalized through assessments, the protection received during periods when only the minimum assessment is paid may be viewed as "prepaid insurance."

An alternative view supports an explicit, risk-based assessment rate for even the least-risky institutions as an important element of a risk-based assessment system. However, as the Board noted in adopting the existing BIF assessment rate schedule in August, the FDIC is required by statute both to have a risk-based assessment system and to maintain the reserve ratio at the target DRR. The Board cannot ignore one in favor of the other but must, instead, balance the two in an appropriate manner. The Board believes that the 4-point adjustment strikes such a balance.

Regarding the second concern noted above, among the implications of a zero marginal cost for deposit insurance is that the best-rated new institutions would receive insurance protection essentially premium-free without having contributed to the existing reserve ratio. The FDIC is analyzing this issue to determine whether new institutions should receive special assessment treatment for a period of time after they initially become insured. Without any operational track record and with no previous contribution to BIF, there is a question as to whether an essentially zero marginal rate is justified.

Another implication of a zero marginal assessment is that the largest institutions in the best category would pay the same dollar amount for deposit insurance as the smallest institutions. For example, an institution with $10 billion in BIF-assessable deposits would pay the same amount ($1,000 per semiannual period) as an institution with $10 million in BIF-assessable deposits.

The Board does not minimize the foregoing concerns. Rather, given current industry conditions, the financial health of the BIF, low projected losses, and the statutory requirement to maintain the BIF reserve ratio at the target DRR, it is the judgment of the Board that the institutions posing the lowest risk to BIF should be assessed only the statutory minimum assessment. In particular, this decision does *not* reflect a judgment that such institutions pose a near-zero risk to BIF but instead a recognition that the existing BIF balance, in excess of $25 billion, represents the significant prepayment BIF-assessable institutions have made for deposit insurance.

III. Board Resolution

The Resolution by which the Board adopted the adjustment to the current rate schedule is set out below.

Resolution

Whereas, section 7(b) of the Federal Deposit Insurance Act ("FDI Act") requires the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") to establish by regulation a risk-based assessment system; and

Whereas, section 7(b) of the FDI Act requires that when the reserve ratio of the Bank Insurance Fund ("BIF") reaches the designated reserve ratio ("DRR") of 1.25 percent of estimated insured deposits, the Board shall set semiannual assessments for BIF members to maintain the reserve ratio at the DRR; and

Whereas, section 7(b) further requires that, in setting BIF semiannual assessments, the Board consider the following factors: (1) expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate; and

Whereas, Part 327 of the FDIC's rules and regulations, 12 CFR Part 327, entitled "Assessments," prescribes the rules governing the assessment of institutions insured by the FDIC; and

Whereas, on August 8, 1995, the Board adopted, by regulation, a rate schedule for deposits assessable by BIF of 4 to 31 basis points, set forth as Rate Schedule 2 at section 327.9(a) of the FDIC's rules and regulations, to become effective at the beginning of the month after BIF reached the DRR; and

Whereas, said rate schedule became effective on June 1, 1995, and continues in effect for the second semiannual assessment period of 1995; and

Whereas, section 327.9(b) of the FDIC's rules and regulations, also adopted by the Board on August 8, 1995, permits the Board, by resolution, to adjust said rate schedule upward or downward by a maximum of 5 basis points, as the Board deems necessary to maintain the reserve ratio at the DRR; and

Whereas, section 327.9(b) requires that any such adjustment shall be determined by (1) the amount of assessment revenue necessary to maintain the BIF reserve ratio at the DRR, and (2) the assessment schedule that would generate that amount of revenue considering the risk profile of BIF members; and

Whereas, in determining that amount of revenue, the Board is required to take into consideration (1) expected BIF operating expenses, (2) case resolution expenditures and income, (3) the effect of assessments on BIF members' earnings and capital, and (4) any other factors the Board may deem appropriate; and

Whereas, the BIF's operating expenses and insurance losses have been lower than anticipated and are projected to remain low in the near term due to the strong economy and high capital levels in the banking industry; and

Whereas, the BIF reserve ratio currently exceeds the target DRR and, absent unexpectedly large insurance losses or deposit growth, is expected to remain above the DRR for the first semiannual period of 1996 and beyond if the current rate schedule remains in effect without adjustment; and

Whereas, reducing BIF assessment rates is likely to have a favorable impact on earnings and capital of insured institutions having deposits insured by the BIF; and

Whereas, the Board has therefore determined that a downward adjustment to the current rate schedule is necessary to comply with the statutory requirements for setting assessments, including the requirement that the FDIC maintain the BIF reserve ratio at the DRR; and

Whereas, in determining the amount of the downward adjustment, the Board has considered the factors specified in section 327.9(b), as reflected in the attached **Federal Register** notice document.

Now, therefore, be it resolved, that the Board does hereby adjust, for the semiannual period beginning January 1, 1996, through June 30, 1996, BIF rate schedule based on Rate Schedule 2 at section 327.9(a) of the FDIC's rules and regulations by a reduction of 4 basis points to be applied uniformly across the schedule to each assessment risk classification represented in the schedule.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the aforementioned **Federal Register** notice document to be published in the **Federal Register** in a form and manner satisfactory to the Executive Secretary, or his designee, and the General Counsel, or his designee.

By order of the Board of Directors.

Dated at Washington, D.C., this 14th day of November, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

TABLE 1.—BIF ASSESSMENT RATES FACTORS TO BE CONSIDERED FIRST SEMIANNUAL ASSESSMENT PERIOD, 1996

	Current rate schedule of 4 to 31 basis points	Adjusted rate schedule of 0 to 27 basis points
BIF Ratio at December 31, 1995[1] (Percent)	1.31 to 1.34	1.31 to 1.34.
Expected Income ($Millions)	1,171	677.
Assessment Income ($Millions)	546	52.
Interest Income ($Millions)	625	620.
Expected Insurance Losses and Change in Provisions for Future Losses ($Millions)[2]	−100 to +600	−100 to +600.
Expected Operating Expenses ($Millions)	215	215.
Estimated BIF-Insured Deposits at June 30[3] ($Billions)	1,877 to 2,032	1,877 to 2,032.
BIF Ratio at June 30, 1996[4] (Percent)	1.28 to 1.40	1.25 to 1.37.

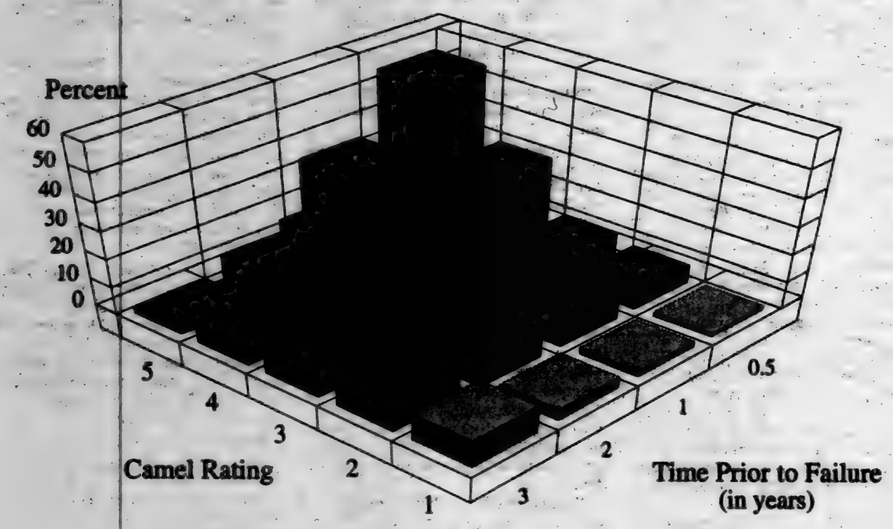
[1] Range reflects annual insured growth rate of +2 percent versus −2 percent for second half of 1995.
[2] Range based on FDIC experience, as reviewed in Federal Register notice of August 16, 1995, 60 FR 42680.
[3] Lower bound assumes annual growth of insured deposits of −2 percent for second half of 1995 and first half of 1996. Upper bound assumes annual growth of 6 percent for these same four quarters. Range based on quarterly volatility evidence from 1984:Q2 to 1995:Q1.
[4] Reflects ranges for all preceding items in Table 1.

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Figure 1

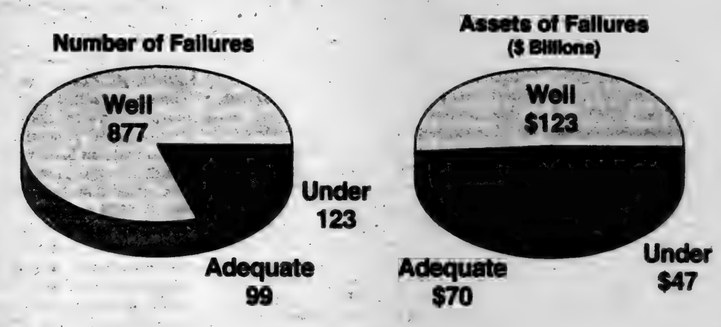
Supervisory Ratings of Failed Banks, 1980-1994
U.S. Total



Camel Rating	Time Prior to Failure (in years) 3	2	1	0.5
5	2.8%	7.8%	32.8%	54.4%
4	18.4	31.1	37.3	28.6
3	23.2	26.4	16.5	9.1
2	46.1	30.7	11.3	6.5
1	9.6	4.0	2.1	1.4

Figure 2

Failed BIF Members, 1987-1994:
3-Year Lagged Capital Category



Note: For purposes of this chart, "adequately-capitalized" institutions are those with equity-to-assets ratios of four percent or more. For "well-capitalized" the cutoff is five percent.

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12 CFR Part 327

Assessments; Retention of Existent Assessment Rate Schedule for SAIF-Member Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Confirmation of assessment rate.

SUMMARY: On November 14, 1995, the Board of Directors of the FDIC (Board) adopted a resolution to retain the existing assessment rate schedule applicable to members of the Savings Association Insurance Fund (SAIF) for the first semiannual assessment period of 1996. As a result of this action, the SAIF assessment rate to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

EFFECTIVE DATE: January 1, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027; Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–3985; or Valerie Jean Best, Counsel, Legal Division, (202) 898–3812; Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Summary

Based upon the results of its semiannual review of the capitalization of the SAIF and of the SAIF assessment rates, the Board has determined to retain the existing assessment rate schedule applicable to SAIF-member institutions for the first semiannual assessment period of 1996 so that capitalization of the SAIF is accomplished as soon as possible. As a result of this action, the SAIF assessment rate to be paid by institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

Despite the general good health of the thrift industry, the SAIF is not in good condition and it remains significantly undercapitalized. On June 30, 1995, the SAIF had a balance of $2.6 billion, or about 37 cents in reserves for every $100 in insured deposits. An additional $6.3 billion would have been required on that date to fully capitalize the SAIF to its designated reserve ratio (DRR) of 1.25 percent of estimated insured deposits. As of September 30, 1995, the SAIF balance had grown to $3.1 billion, although the reserve ratio for that date cannot be determined until insured deposits as of September 30 become available in December. At the current pace, and under reasonably optimistic assumptions, the SAIF would not reach the statutorily mandated DRR until at least the year 2002. The failure of a single large SAIF-insured institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. While the FDIC is not currently predicting such thrift failures, they are possible.

The main source of income for the SAIF is assessments. A sizable portion of the SAIF's ongoing assessments (up to $793 million annually) is diverted to meet interest payments on obligations of the Financing Corporation (FICO). Reducing assessment rates to the lowest minimum average rate permitted by law—18 basis points—is presently projected to delay SAIF capitalization until 2005, and it would cause a FICO shortfall as early as 1996. Moreover, there will still be a significant differential between assessment rates of the Bank Insurance Fund (BIF) and the SAIF even if the Board reduces the SAIF assessments to the minimum average allowed by statute.

II. Statutory Provisions Governing SAIF Assessment Rates

A. Section 7 of the Federal Deposit Insurance Act

Section 7(b) of the Federal Deposit Insurance Act (FDI Act) governs the Board's authority for setting assessments for SAIF members. 12 U.S.C. 1817(b). Section 7(b)(1) (A) and (C) require that the FDIC maintain a risk-based assessment system, setting assessments based on (1) the probable risk to the fund posed by each insured depository institution taking into account different categories and concentrations of assets and liabilities and any other relevant factors; (2) the likely amount of any such loss; and (3) the revenue needs of the fund. Section 7(b)(2)(A)(iii) further directs the Board to impose a minimum assessment on each institution not less than $1,000 semiannually. The Board must set semiannual assessments and the DRR for each deposit insurance fund independently. FDI Act section 7(b)(2)(B).

The Board must set semiannual assessments for SAIF members to maintain the reserve ratio at the DRR or, if the reserve ratio is less than the DRR, to increase the reserve ratio to the DRR. FDI Act section 7(b)(2)(A)(i). The reserve ratio is the dollar amount of the fund balance divided by estimated SAIF-insured deposits. The DRR for the SAIF is currently 1.25 percent of estimated insured deposits, the minimum level permitted by the FDI Act. In setting SAIF assessments to achieve and maintain the DRR, the Board must consider the SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. FDI Act section 7(b)(2)(D).

Before January 1, 1998, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised if section 7(b) as in effect on July 15, 1991 remained in effect. See FDI Act section 7(b)(2) (E) and (F). The minimum rate required by section 7(b) as then in effect was 0.18 percent.

Beginning January 1, 1998, all minimum assessment provisions applicable to BIF members also apply to SAIF members. Under these provisions, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised by an assessment rate of 0.23 percent. See FDI Act section 7(b)(2)(E).

The Board thus has the legal authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998. Beginning January 1, 1998, however, the minimum average rate must be 23 basis points until SAIF achieves its DRR of 1.25 percent.

In setting semiannual assessments for members of the SAIF, beginning January 1, 1998, if the reserve ratio of the SAIF is less than the DRR, the Board must set semiannual assessments either, (a) at rates sufficient to increase the reserve ratio to the DRR within 1 year after setting the rates, *or* (b) in accordance with a schedule for recapitalization, adopted by regulation, that specifies target reserve ratios at semiannual intervals culminating in a reserve ratio that is equal to the DRR not later than 15 years after implementation of the schedule. FDI Act section 7(b)(3). Section 8(h) of the Resolution Trust Corporation Completion Act (RTCCA), Pub. L. No. 103–204, 107 Stat.2369, 2388, amended section 7(b)(3) to allow the Board, by regulation, to amend the SAIF capitalization schedule to extend the date by which the SAIF must be capitalized beyond the 15-year time limit to a date which the Board determines will, over time, maximize the amount of semiannual assessments received by the SAIF, net of insurance losses incurred. FDI Act section 7(b)(3)(C).

Amounts assessed by the FICO against SAIF members must be subtracted from the amounts authorized to be assessed by the Board. FDI Act section 7(b)(2)(D).

In order to achieve SAIF capitalization, the Board adopted a risk-related assessment matrix in September 1992 (see Table 1) which has remained unchanged.

TABLE 1.—SAIF-MEMBER ASSESSMENT RATE SCHEDULE FOR THE SECOND SEMIANNUAL ASSESSMENT PERIOD OF 1995

[Basis points]

Capital group	Supervisory subgroup		
	A	B	C
Well capitalized	23	26	29
Adequately capitalized	26	29	30
Undercapitalized	29	30	31

B. Statutory Provisions Governing FICO Assessments

FICO was originated by section 302 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100–86, 101 Stat. 552, 585, which added section 21 to the Federal Home Loan Bank Act (FHLB Act).[1] FICO's assessment authority derives from section 21(f) of the FHLB Act, 12 U.S.C. 1441(f). As amended by section 512 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat. 183, 406, section 21(f) requires that FICO obtain funding for "anticipated interest payments, issuance costs, and custodial fees" on FICO obligations from the following sources, in descending priority order: (1) FICO assessments previously imposed on savings associations under pre-FIRREA funding provisions; (2) "with the approval" of the FDIC Board, assessments against SAIF member institutions; and (3) FSLIC Resolution Fund (FRF) receivership proceeds not needed for the Resolution Funding Corporation (REFCORP) Principal Fund.

Under section 21(f)(2), FICO assessments against SAIF members are to be made in the same manner as FDIC insurance assessments under section 7 of the FDI Act. The amount of the FICO assessment—together with any amount assessed by REFCORP under section 21B of the FHLB Act—must not exceed the insurance assessment amount authorized by section 7.[2] Section 21(f)(2) further provides that FICO "shall have first priority to make the assessment," and that the amount of the insurance assessment under section 7 is to be reduced by the amount of the FICO assessment. One important effect of the FICO assessment is to exacerbate any premium differential that may exist between BIF and SAIF assessment rates.

III. Problems Confronting the SAIF

A. Background: SAIF Assessment Rates

In deciding against changes in the SAIF assessment rate, the Board has considered the SAIF's expected operating expenses, case resolution expenditures and income under a range of scenarios. The Board also has considered the effect of an increase in the assessment rate on SAIF members' earnings and capital. When first adopted, the assessment rate schedule yielded a weighted average rate of 25.9 basis points. With subsequent improvements in the industry and the migration of institutions to lower rates within the assessment matrix, the average rate has declined to 23.7 basis points (based on risk-based assessment categories as of July 1, 1995 and the assessment base as of June 30, 1995—see Table 2).

TABLE 2.—SAIF ASSESSMENT BASE DISTRIBUTION SUPERVISORY AND CAPITAL RATINGS IN EFFECT JULY 1, 1995 DEPOSITS AS OF JUNE 30, 1995

[In billions]

Capital group		Supervisory subgroup					
		A		B		C	
Well capitalized	Number	1,529	86.1%	137	7.7%	24	1.4%
	Base	$611.1	83.6	$58.4	8.0	$17.0	2.3
Adequately capitalized	Number	22	1.2	30	1.7	25	1.5
	Base	$16.6	2.3	$18.3	2.5	$6.8	0.9
Under-capitalized	Number	0	0.0	0	0.0	7	0.4
	Base	$0.2	0.0	$0.0	0.0	$2.1	0.3

"Number" reflects the number of SAIF members; "Base" reflects the SAIF-assessable deposits of SAIF members and of BIF-member Oakar banks.

The primary source of funds for the SAIF is assessment revenue from SAIF-member institutions. Since the creation of the fund and through the end of 1992, however, all assessments from SAIF-member institutions were diverted to other needs as required by FIRREA.[3] Only assessment revenue generated from BIF-member institutions that acquired SAIF-insured deposits under section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) (so-called "Oakar" banks) was deposited in the SAIF throughout this period.

B. The SAIF is Significantly Undercapitalized

SAIF-member assessment revenue began flowing into the SAIF on January 1, 1993. However, the FICO has a priority claim on SAIF-member assessments in order to service FICO bond obligations. Under existing statutory provisions, FICO has assessment authority through 2019, the maturity year of its last bond issuance. At a maximum of $793 million per year, the FICO draw is substantial, and is expected to represent 45 percent of estimated assessment revenue for 1995,

[1] Title III of CEBA, entitled the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, directed the Federal Home Loan Bank Board to charter FICO for the purpose of financing the recapitalization of the FSLIC by purchasing FSLIC securities (and, subsequently, securities issued by the FSLIC Resolution Fund as successor to FSLIC).

[2] The REFCORP Principal Fund is now fully funded and, accordingly, REFCORP's assessment authority has effectively terminated.

[3] From 1989 through 1992, more than 90 percent of SAIF assessment revenue went to the FRF, the REFCORP and the FICO.

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or 11 basis points of the average assessment rate of 23.7 basis points.[4] The SAIF had a balance of $3.1 billion (unaudited) on September 30, 1995. With primary responsibility for resolving failed thrift institutions residing with the Resolution Trust Corporation (RTC) until June 30, 1995, there were few demands on the SAIF. The SAIF assumed resolution responsibility for failed thrifts from the RTC on July 1, 1995.

In addition to assessment revenue and investment income, there are other potential sources of funds for the SAIF as follows. First, the FDIC has a $30 billion line of credit available from the Department of the Treasury (Treasury) for deposit insurance purposes, on which no draws have been made to date. FDI Act section 14(a). The SAIF would be required to repay any amounts borrowed from the Treasury with revenues from deposit insurance premiums. As a condition of borrowing, the FDIC would be required to provide the Treasury with a repayment schedule demonstrating that future premium revenue would be adequate to repay any amount borrowed plus interest. FDI Act section 14(c).

Next, the RTCCA authorized the appropriation of up to $8 billion in Treasury funds to pay for losses incurred by the SAIF during fiscal years 1994 through 1998, to the extent of the availability of appropriated funds. In addition, at any time before the end of the 2-year period beginning on the date of the termination of the RTC, the Treasury is to provide out of funds appropriated to the RTC but not expended, such amounts as are needed by the SAIF and are not needed by the RTC. To obtain funds from either of these sources, however, certain certifications must be made to the Congress by the Chairman of the FDIC. FDI Act sections 11(a)(6)(D), (E) and (J). Among these, the Chairman must certify that the Board has determined that:

(1) SAIF members are unable to pay additional semiannual assessments at the rates required to cover losses and to meet the repayment schedule for any amount borrowed from the Treasury for insurance purposes under the FDIC's line of credit without adversely affecting the SAIF members' ability to raise capital or to maintain the assessment base; and

(2) An increase in assessment rates for SAIF members to cover losses or meet any repayment schedule could reasonably be expected to result in greater losses to the Government.

It may require extremely grave conditions in the thrift industry in order for the FDIC to certify that raising SAIF assessments would result in increased losses to the Government. Moreover, these funds cannot be used to capitalize the fund, that is, to provide an insurance reserve, which was the original purpose of requiring a 1.25 reserve ratio.

The RTC's resolution activities and the thrift industry's substantial reduction of troubled assets in recent years have resulted in a relatively sound industry as the SAIF assumed resolution responsibility. However, with a balance of $3.1 billion, the SAIF does not have a large cushion with which to absorb the costs of thrift failures. The FDIC has significantly reduced its projections of failed-thrift assets for the next two years, but the failure of a single large institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. The FDIC's loss projections for the SAIF are discussed in more detail below.

C. Condition and Performance of SAIF-Member Institutions[5]

SAIF members earned $1.4 billion in the second quarter of 1995, compared to $1.2 billion in the first quarter. Average returns on assets (0.73 percent) and equity (9.23 percent) both increased from first-quarter levels, but SAIF members' average returns remain well below those of BIF members (1.14 percent ROA and 14.25 percent ROE). Despite a slight rise in loss provisions (up 1 percent), asset quality remains strong. Noncurrent loans and foreclosed real estate both declined from first-quarter levels, reducing the ratio of troubled assets to total assets from 1.18 percent to 1.12 percent. Reserve coverage of noncurrent loans improved slightly, from 84 cents for each dollar of noncurrent loans to 85 cents, and the equity-to-assets ratio also rose, from 7.88 percent on March 31 to 8.02 percent on June 30. SAIF members were slightly less reliant on deposits, which comprised 77.9 percent of their liabilities on June 30, down from 78.2 percent in the first quarter.

As of June 30, 1995, there were 1,774 members of the SAIF, including 1,696 savings institutions and 78 commercial banks. On this date, there were 54 SAIF-member "problem" institutions with total assets of $30 billion, compared to 73 institutions with $59 billion a year earlier. Two SAIF-member thrifts, with total assets of $456 million, failed during the first half of 1995. No SAIF members have failed since July 1, when the SAIF assumed resolution responsibility from the RTC.

A discussion of the improving condition of the SAIF-member thrift industry must be tempered by the higher risks the SAIF faces relative to the BIF. The SAIF has fewer members among which to spread risk and also has greater risks from geographic and product concentrations. The eight largest holders of SAIF-insured deposits, with a combined 18.5 percent of such deposits, all operate predominantly in California. By contrast, the eight largest holders of BIF-insured deposits operate in five different states and hold 10 percent of all BIF-insured deposits. The assets of SAIF members are heavily concentrated in residential real estate, largely due to statutory requirements that must be met to realize certain income tax benefits. While these investments entail relatively little credit risk, SAIF members generally are more exposed to interest-rate risk than BIF members.

D. Impact of a Premium Differential

The BIF achieved its statutorily required minimum reserve ratio of 1.25 percent during the second quarter of 1995, enabling the Board to lower BIF assessment rates. On August 8, 1995, the Board adopted an assessment rate schedule for the BIF ranging from 4 to 31 basis points, compared to a range of 23 to 31 basis points under the earlier BIF schedule and the current SAIF schedule. The Board has decided to decrease BIF rates further, to a range of 0 to 27 basis points, based on the continuing strength of the commercial banking industry and low near-term loss expectations. A notice concerning the BIF assessment rate schedule is published elsewhere in this **Federal Register**.

Under the current BIF and SAIF assessment rate schedules, average SAIF rates are 23 basis points higher than average BIF rates. It is likely that for the next seven years SAIF rates will remain significantly higher than BIF rates, until the SAIF is capitalized. After capitalization, SAIF rates will continue to be at least 11 basis points higher until the FICO bonds mature in 2017 to 2019, assuming the Board sets SAIF assessment rates to cover FICO's needs. If BIF members pass along most of their assessment savings to their customers, SAIF members may be forced to pay more for deposits or charge less for loans to remain competitive. For SAIF members, this could result in reduced earnings and an impaired ability to raise funds in the capital markets. An analysis of a five-year time span suggests that any increase in failures attributable solely to an average 23-basis point differential is likely to be sufficiently small as to be manageable by the SAIF under current interest-rate and asset-quality conditions. The analysis also indicates that under harsher than assumed interest-rate and asset-quality conditions, these economic factors would have a significantly greater effect on SAIF-member failure rates than would a 23-basis point premium differential by itself. Among the weakest SAIF members, the differential could be as high as 31 basis points, possibly resulting in competitive pressures that cause additional failures. However, analysis showed that, apart from institutions that have already been identified by the FDIC's supervisory staff as likely failures, the wider spread is likely to have a minimal impact in terms of additional failures.

Nevertheless, the Board recognizes that a premium differential between BIF- and SAIF-insured institutions is likely to increase competitive pressures on thrifts and impede their ability to generate capital both internally and externally.[6] The Board recognizes that an ongoing premium disparity of 23 basis points provides powerful incentives to reduce SAIF-assessable deposits. This could be readily accomplished in a number of ways, with implications both for the ability of SAIF members to fund FICO interest payments, discussed in the following section, and for the structural soundness of the SAIF. A sharp decline in membership and the assessment base would also render the SAIF less effective as a loss-spreading mechanism for insurance purposes by exacerbating the concentration risks the fund already faces.

E. The Ability of the SAIF to Fund FICO

Under law, SAIF assessments paid by BIF-member Oakar banks are deposited in the SAIF and are not subject to FICO draws.[7] Further, SAIF assessments paid by any former savings association that (i) Has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member in accordance with section 5(d)(2)(G) of the FDI Act (12 U.S.C. 1815(d)(2)(G)) (a so-called "Sasser" bank), are likewise not subject to assessment by FICO.[8] On June 30, 1995, BIF-member Oakar banks held 27.8 percent of the SAIF assessment base, and SAIF-member Sasser banks held an additional 7.5 percent (see Table 3).

TABLE 3.—PERCENTAGE DISTRIBUTION OF THE SAIF ASSESSMENT BASE

	Available to FICO	Not available to FICO			
		Oakar	Sasser	Subtotal	Total
12/89	99.6	0.2	0.0	0.2	100.0
12/90	95.8	3.9	0.3	4.2	100.0
12/91	89.9	8.7	1.5	10.1	100.0
12/92	85.9	10.3	3.8	14.1	100.0
12/93	74.7	19.4	5.9	25.3	100.0
12/94	67.3	25.4	7.3	32.7	100.0
6/95	64.7	27.8	7.5	35.3	100.0

While the pace of Oakar acquisitions slowed as RTC resolution activity wound down, Oakar acquisitions may continue and become an even greater proportion of the SAIF assessment base.[9] This has the potential result of the SAIF having insufficient assessments to cover the FICO obligation at current assessment levels. The rate of Sasser conversions is difficult to predict and is partially dependent on state laws, but any future conversions would also decrease the proportion of SAIF assessment revenues available to FICO.

In addition to the growth of the Oakar/Sasser portion of the SAIF assessment base, the ability of the SAIF to fund FICO interest payments will be adversely affected by the premium differential. Despite the current moratorium on the transfer of deposits between funds, many alternatives are available to SAIF-insured institutions seeking to reduce their SAIF-assessable deposits.[10] These institutions could decrease their SAIF assessments by shifting their funding to nondeposit liabilities, such as Federal Home Loan Bank advances and reverse repurchase agreements; by securitizing assets; or by changing business strategies, such as choosing to become a mortgage bank. Lastly, SAIF-insured institutions and their parent companies could structure affiliate relationships that facilitate the "migration" of deposits from a SAIF-insured institution to a BIF-insured affiliate. At least a dozen large organizations have already filed applications seeking to establish affiliate relationships for this apparent purpose. Moreover, more than 100 bank and thrift holding companies with both BIF- and SAIF-member affiliates already have the means in place.

These strategies to reduce reliance on SAIF-insured deposits could rapidly deplete the SAIF assessment base to the point where the assessment base is not large enough to generate sufficient revenue to cover the FICO obligation. This would occur with a 20 percent reduction in the current SAIF assessment base, and it is not unreasonable to expect a decline of that magnitude.

[4] The FICO has an annual call on up to the first $793 million in SAIF assessments until the year 2017, with decreasing calls for two additional years thereafter. With interest credited for early payment, the actual annual draw is expected to approximate $750 million.

[5] Excluding one self-liquidating savings institution and RTC conservatorships. The final RTC conservatorship was resolved during the second quarter, prior to June 30.

[6] *See The Condition of the BIF and the SAIF and Related Issues*, Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment C entitled "Analysis of Issues Confronting the Savings Association Insurance Fund," March 23, 1995.

[7] See Notice of FDIC General Counsel's Opinion No. 7, 60 FR 7055 (Feb. 6, 1995).

[8] *Id.*

[9] SAIF-assessable deposits held by BIF-member Oakar banks will continue to grow at the same rate as the Oakar bank's overall deposit base. Under section 5(d)(3) of the FDI Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), such deposits are adjusted annually by the acquiring institution's overall deposit growth rate (excluding the effects of mergers or acquisitions).

[10] *The Condition of the SAIF and Related Issues*, Testimony of Ricki Helfer, Chairman, FDIC, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Attachment A entitled "The Immediacy of the Savings Association Insurance Fund Problem," July 28, 1995. *The Condition of the SAIF and Related Issues*, Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment A entitled "The Immediacy of the Savings Association Insurance Fund Problem," August 2, 1995.

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With two insurance funds providing essentially the same product at significantly different prices, it must be expected that purchasers will seek the lower price. Attempts to control this behavior through legislation or regulation are likely to be ineffective and may only result in companies finding less efficient means. A legislated reversal of the Oakar/Sasser exemption would only defer a FICO shortfall because the existence of a significant, prolonged premium differential is likely to result in continued erosion of the SAIF assessment base.

F. Failed-Asset Estimates for the SAIF

Among the factors that affect the ability of the SAIF to capitalize and to meet the FICO assessment are the number of thrift failures and the dollar amount of failed assets going forward.

Estimates of failed-institution assets are made by the FDIC's interdivisional Bank and Thrift Failure Working Group. In September 1995, the Working Group estimated failed thrift assets of $50 million for the fourth quarter of 1995, $1 billion for 1996 and $4.5 billion for the first nine months of 1997. For loss projections beyond September 1997, the assumed failed-asset rate for the SAIF was 22 basis points, or about $2 billion per year.

In the FDIC's projections, banks and thrifts were assumed to face similar longer-run loss experience. The BIF's historical average failed-asset rate from 1974 to 1994 was about 45 basis points. However, a lower failure rate than the recent historical experience of the BIF was assumed because the thrift industry is relatively sound following the RTC's removal of failing institutions from the system, and the health and performance of the remaining SAIF members has improved markedly. As of June 30, 1995, 86 percent of all SAIF-member institutions were in the best risk classification of the FDIC's risk-related premium matrix.

One of the purposes of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was to minimize losses to the insurance funds. FDICIA increased regulatory oversight and emphasized capital. Specifically, FDICIA requires the closing of failing institutions prior to the full depletion of their capital, limits riskier activities by institutions that are less than adequately capitalized, and establishes audit standards and statutory time frames for examinations. The law also requires the implementation of risk-related assessments, which have provided effective incentives for institutions to achieve and maintain the highest capital and supervisory standards. In light of these provisions, the high levels of thrift failures and insurance losses experienced over the past decade must be tempered when considering the industry's near-term future performance.

G. Projections for the SAIF

The FDIC currently projects that, under reasonably optimistic assumptions, the SAIF is not likely to reach the statutorily mandated DRR of 1.25 percent until 2002. Also, projections indicate the fund will not encounter problems meeting the FICO obligation through 2004.

It is important to note that the baseline assumptions underlying these projections foresee shrinkage in the non-Oakar portion of the SAIF assessment base of 2 percent per year. If thrifts react aggressively to the premium differential and reduce their SAIF-assessable deposits, as discussed in Section IV.E, substantially greater shrinkage may occur. Under higher rates of shrinkage, the SAIF is likely to capitalize prior to 2002 because a lower level of insured deposits would require a smaller fund to meet the DRR; however, FICO interest payments could be jeopardized within a year or two.

As stated earlier, the Board has the authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998, at which time the average rate would rise to 23 basis points until capitalization occurs. Projections made under this scenario (and using the other baseline assumptions) indicate that the SAIF would capitalize in 2005, or three years later than under the existing rate schedule. Perhaps more importantly, reduction of the SAIF assessment rate to 18 basis points is expected to cause a FICO shortfall in 1998.

IV. Suggested Legislative Initiatives

Congress is considering a number of legislative proposals to resolve the difficulties facing the SAIF. Most of these proposals are intended to bring about the capitalization of the SAIF early in 1998 and expand the assessment base for the FICO obligation. Pending enactment of a comprehensive, legislative resolution to the difficulties facing the SAIF, however, the FDIC must comply with current statutory mandates.

As discussed above, the law provides that if the reserve ratio is less than the DRR, the Board must set semiannual assessments for SAIF members to increase the reserve ratio to the DRR. FDI Act section 7(b)(2)(A)(i). In setting SAIF assessments to achieve and maintain the current DRR of 1.25 percent, the Board must consider the SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. FDI Act section 7(b)(2)(D). Given the uncertainty underlying the current legislative process and the range of possible solutions, it would be inappropriate to base the assessment rate for the first semiannual period of 1996 on what Congress may or may not do. Should legislation affecting the SAIF finally be enacted, the FDIC will promptly consider its impact and take any action deemed necessary or appropriate regarding assessment rates in accordance with the new legislative mandates.

V. Board Resolution

For the reasons outlined above, the Board has adopted a Resolution to retain the existing assessment rate schedule applicable to SAIF-member institutions for the first semiannual assessment period of 1996. The text of the Resolution is set out below.

Resolution

Whereas, section 7(b) of the Federal Deposit Insurance Act ("FDI Act") requires the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") to establish by regulation a risk-based assessment system; and

Whereas, section 7(b) of the FDI Act requires the Board to set semiannual assessments for Savings Association Insurance Fund ("SAIF") members to maintain the reserve ratio of SAIF at the designated reserve ratio ("DRR") or, if the reserve ratio is less than the DRR, to increase the reserve ratio to the DRR; and

Whereas, the DRR for the SAIF is currently 1.25 percent of estimated insured deposits, the minimum level permitted by the FDI Act; and

Whereas, section 7(b) further requires that, in setting SAIF assessments to achieve and maintain the reserve ratio of SAIF at the DRR, the Board consider the following factors: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate; and

Whereas, the Board has considered the factors specified in the FDI Act, as reflected in the attached **Federal Register** notice document; and

Whereas, Part 327 of the rules and regulations of the FDIC, 12 C.F.R. Part 327, entitled "Assessments," prescribes the rules governing the assessment of institutions insured by the FDIC; and

Whereas, paragraph 327.9(c)(1) of title 12 of the C.F.R. prescribes the assessment rate schedule applicable to members insured by the SAIF; and

Whereas, based upon its semiannual review of the SAIF capitalization schedule and assessment rates for SAIF-insured institutions, the Board finds that it is appropriate to retain the existing assessment rate schedule applicable to members of the SAIF with the result that the SAIF assessment rates to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

Now, therefore, be it resolved, that the existing assessment rate schedule applicable to members of the SAIF shall be retained for the first semiannual assessment period of 1996 from January 1, 1996, through June 30, 1996.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the aforementioned **Federal Register** notice document to be published in the **Federal Register** in a form and manner satisfactory to the Executive Secretary, or his designee, and the General Counsel, or his designee.

By the order of the Board of Directors.

Dated at Washington, D.C., this 14th day of November, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95-28720 Filed 12-8-95; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-26-AD; Amendment 39-9442; AD 95-24-12]

Airworthiness Directives; Jetstream Aircraft Limited Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Model 3201 airplanes. This action requires repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Cracking found at the MLG bay forward lower edge wing skin structure during fatigue testing of the JAL Model 3201 prompted this action. The actions specified by this AD are intended to prevent the MLG bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane.

DATES: Effective January 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44-292) 79888; facsimile (44-292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington DC 20041-6029; telephone (703) 406-1161; facsimile (703) 406-1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-26-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Jetstream Aircraft Limited (JAL) Model 3201 airplanes was published in the **Federal Register** on August 14, 1995 (60 FR 41868). The action proposed to require repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin (SB) 57-A-JA920540; Original Issue September 1, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 134 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 35 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $281,400. This figure is based on the assumption that all of the affected airplanes do not have the new joggled doublers installed and that none of the owners/operators of the affected airplanes have replaced the doublers. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

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of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD No. 95–24–12. Jetstream Aircraft Limited: Amendment 39–9442; Docket No. 95–CE–25–AD.

Applicability: Model 3201 Airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the main landing gear (MLG) bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane, accomplish the following:

(a) Upon accumulating 4,000 hours time-in-service (TIS) or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, inspect the MLG bay forward lower edge wing skin structure adjacent to the main spar for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–A–JA920540, Original Issue September 1, 1992.

(1) If cracks are found, prior to further flight, replace the existing doublers with joggled doublers of improved design in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–A–JA920540, Original Issue September 1, 1992.

(2) If no cracks are found, re-inspect the MLG bay forward lower edge wing skin structure at intervals not to exceed 600 hours TIS until modified as specified in paragraph (b) of this AD.

(b) Upon accumulating 9,000 hours TIS or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (a)(1) of this AD, replace the existing doublers with joggled doublers of improved design in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–A–JA920540.

(c) Replacing the joggled doublers as required by paragraph (a)(1) or (b) of this AD eliminates the repetitive inspection requirements of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(f) The inspection and modification required by this AD shall be done in accordance with SB 57–A–JA920540, Original Issue September 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; or Jetstream Aircraft Inc., Liberian, P.O. Box 16029, Dulles International Airport, Washington DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9442) becomes effective on January 9, 1996.

Issued in Kansas City, Missouri, on November 17, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30133 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–145–AD; Amendment 39–9455; AD 95–25–09]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires that certain flight control computers be modified so that the autopilot will disengage when the airplane is in the "go-around" mode under certain conditions. This amendment is prompted by an accident in which the flight crew may have initiated an inadvertent go-around which, following several subsequent actions by the crew and automated system, placed the airplane in a severe out-of-trim condition. The actions specified by this AD are intended to prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which may severely reduce controllability of the airplane.

EFFECTIVE DATE: Effective January 10, 1996.

ADDRESSES: Information concerning this AD may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on October 17, 1994 (59 FR 52273). That action proposed to require modification of flight control computers (FCC's) having part numbers (P/N's) B216ABM6, B350AAM1, B350AAM2, and B350AAM3 (for Model A310 series airplanes); and P/N's B297AAM3, B297AAM4, and B297AAM5 (for Model A300–600 series airplanes).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter points out that the Discussion section of the preamble to the notice incorrectly stated that "the flight crew may have attempted a go-around while the airplane was in an out-of-trim condition." The commenter asserts that the subject airplane was correctly trimmed prior to the accident. The FAA acknowledges that the event that prompted the AD could be described more accurately. Therefore, the FAA has revised the Summary section and the statement of unsafe condition in the final rule.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 15 Model A310 series airplanes and 36 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

Since the manufacturer has not yet developed one specific modification commensurate with the requirements of this AD, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the required modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The compliance time of 24 months should provide ample time for the development, approval, and installation of an appropriate modification.

However, based on similar modifications accomplished previously on other FCC's installed on other airplane models, the FAA can reasonably estimate that the required modification may require as few as 2 work hours or as many as 50 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range from a negligible amount to as much as $1,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $6,120 ($120 per airplane) and $229,500 ($4,500 per airplane).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–25–09 Airbus Industrie: Amendment 39–9455. Docket 94–NM–145–AD.

Applicability: Model A310 series airplanes equipped with flight control computers (FCC) having part number (P/N) B216ABM6, B350AAM1, B350AAM2, or B350AAM3; and Model A300–600 series airplanes equipped with FCC's having P/N B297AAM3, B297AAM4, or B297AAM5; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which may severely reduce controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the FCC's in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) As of 24 months after the effective date of this AD, no person shall install an FCC having P/N B216ABM6, B350AAM1, B350AAM2, or B350AAM3 on any Model A310 series airplane; and P/N B297AAM3, B297AAM4, or B297AAM5 on any Model A300–600 series airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators

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shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on January 10, 1996.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30134 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–219–AD; Amendment 39–9454; AD 95–20–04 R1]

Airworthiness Directives; Lockheed Model L–1011–385–1 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385–1 series airplanes, that currently requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That AD originally was prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions specified in that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes. This amendment corrects the compliance time for the initial inspection of each structurally significant detail (SSD).

DATES: Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 2, 1995 (60 FR 51713, October 3, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On September 20, 1995, the FAA issued AD 95–20–04, amendment 39–9382 (60 FR 51713, October 3, 1995), applicable to all Lockheed Model L–1011–385–1 series airplanes. That AD requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That action was prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions required by that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

Since the issuance of that AD, the FAA has received communications from an affected operator indicating confusion about the compliance time for accomplishing the inspections of each structurally significant detail (SSD). This operator points out that the AD specifies, first, that the inspections contained in the SID must be incorporated into the FAA-approved maintenance program within 12 months after the effective date of the AD. Second, the AD requires that the initial inspection of each SSD must be accomplished within one repeat interval after the effective date of the AD. The operator points out that this presents a problem in complying with the AD, since, in some cases, the initial inspection of an SSD may be required to be accomplished prior to the incorporation of the SID program into an operator's maintenance program.

The FAA has reviewed the compliance time specified in AD 95–20–04, and finds that it is indeed erroneous. It was the FAA's intent that the SID program be incorporated into the FAA-approved maintenance inspection program prior to the performance of any inspection contained in the SID. Therefore, the FAA has determined that it is appropriate to take action to correct paragraph (a)(1) of that AD to specify that the compliance time for performing the initial inspection of each SSD is within one repeat interval *measured from a date 12 months after November 2, 1995* (the effective date of the AD). The FAA finds that this change will not compromise safety and is consistent with what the FAA had originally intended.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the rule remains November 2, 1995.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this AD merely corrects the compliance time for a previously-required action, it requires no additional work to be performed by affected operators. In light of this, the FAA has determined that it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9382 (60 FR 51713, October 3, 1995), and by adding a new airworthiness directive (AD), amendment 39–[redacted], to read as follows:

95–20–04 R1 Lockheed: Amendment 39–9454. Docket 93–NM–219–AD. Revises AD 95–20–04, Amendment 39–9382.

Applicability: Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking that could compromise the structural integrity of these airplanes, accomplish the following:

(a) Within 12 months the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the structurally significant details (SSD) defined in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994.

(1) The initial inspection for each SSD must be performed at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Within one repeat interval measured from a date 12 months after the effective date of this AD; or

(ii) Prior to the threshold specified in the Lockheed Document for that SSD.

(2) A 10 percent deviation from the repetitive interval specified in the Lockheed Document for that SSD is acceptable to allow for planning and scheduling time.

(3) If the Lockheed Document specifies that inspection of any SSD be performed at every "C" check, those inspections must be performed at intervals not to exceed 5,000 hours time-in-service or 2,500 flight cycles, whichever occurs earlier.

(4) If the Lockheed Document specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection shall be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(5) The non-destructive inspection techniques referenced in Appendix VI of the Lockheed Document provide acceptable methods for accomplishing the inspections required by this AD.

(b) If any cracking is found in any SSD, prior to further flight, repair in accordance with paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) In accordance with the applicable service bulletin referenced in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994; or

(2) In accordance with the Structural Repair Manual; or

(3) In accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) Within 30 days after returning the airplane to service, subsequent to accomplishment of the inspection(s) specified in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994, submit a report of the results (positive or negative) of the inspection(s) to Lockheed in accordance with Section V., Data Reporting System (DRS), of the Lockheed Document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The incorporation of the revision and reporting requirements shall be done in accordance with Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of November 2, 1995 (60 FR 51713, October 3, 1995). Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment is effective on November 2, 1995.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30132 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–09]

Amendment to Class E Airspace; Council Bluffs, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Council Bluffs, IA to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Council Bluffs Municipal Airport. This action will provide for additional controlled airspace necessary for the GPS SIAP.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On October 3, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Council Bluffs, IA (60 FR 51747). The proposed action would provide additional controlled airspace to accommodate a GPS SIAP to runway 31 at the Council Bluffs Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

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part 71) amends the Class E airspace area at Council Bluffs, IA, by providing additional controlled airspace for aircraft executing the GPS Runway 31 SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Omaha, Eppley Airfield, NE [Revised]

Omaha, Eppley Airfield, NE
(Lat. 41°18'08" N., long. 95°53'37" W)
Offut AFB, NE
(Lat. 41°07'06" N., long. 95°54'45" W)
Council Bluffs Municipal Airport, IA
(Lat. 41°15'32" W., long. 95°45'35" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Eppley Airfield and within 4.3 miles each side of the Eppley Airfield ILS localizer course to Runway 32L extending from the 6-mile radius to 13 miles southeast of the airport and within 4 miles northeast and 8 miles southwest of the Eppley Airfield ILS localizer course to Runway 14R extending from the 6-mile radius to 15.3 miles northwest of the airport and within a 6-mile radius of the Offutt AFB and within 4.3 miles each side of the Offutt ILS localizer course extending from the 6-mile radius to 7.4 miles southeast of the AFB and within a 6.3 mile radius of Council Bluffs Municipal Airport excluding that portion which lies within the Eppley Airfield and the Offutt AFB Class E5 airspace.

* * * * *

Issued in Kansas City, MO on November 28, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30099 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 29403; Amdt. No. 1699]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington; DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal, Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective JAN 04, 1996*

Madera, CA Madera Muni, VOR or GPS RWY 30, Amdt 9 CANCELLED
Madera, CA Madera Muni, VOR RWY 30, Amdt 9
Webster City, IA, Webster City Muni, NDB or GPS RWY 32, Amdt 7 CANCELLED
Webster City, IA, Webster City Muni, NDB RWY 32, Amdt 8
Augusta, KS, Augusta Muni, VOR/DME RNAV or GPS RWY 36, Orig-A CANCELLED
Augusta, KS, Augusta Muni, VOR/DME RNAV RWY 36, Orig-A
Olathe, KS, Johnson County Executive, VOR or GPS RWY 35, Amdt 10 CANCELLED
Olathe, KS, Johnson County Executive, VOR RWY 35, Amdt 10
Eastport, ME, Eastport Muni, NDB or GPS RWY 15, Orig CANCELLED
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME or GPS RWY 35, Orig CANCELLED
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Omaha, NE, Millard, VOR/DME RNAV or GPS RWY 12, Amdt 6 CANCELLED
Omaha, NE, Millard, VOR/DME RNAV RWY 12, Amdt 6
Sidney, NE, Sidney Muni, VOR/DME OR TACAN or GPS RWY 30 Amdt 4 CANCELLED
Sidney, NE, Sidney Muni, VOR/DME OR TACAN RWY 30 Amdt 4
Clinton, OK, Clinton-Sherman, NDB or GPS RWY 17R, Amdt 10 CANCELLED
Clinton, OK, Clinton-Sherman, NDB RWY 17R, Amdt 10
Pauls Valley, OK, Pauls Valley Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Gainesville, TX, Gainesville Muni, NDB or GPS RWY 17, Amdt 8 CANCELLED
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt 8

[FR Doc. 95–30098 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 124 and 270

[FRL–5319–4 RIN 2050–AD97]

RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing new regulations under the Resource Conservation and Recovery Act (RCRA). The new regulations will improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC) located at 1235 Jefferson Davis Highway, Arlington VA. The Docket Identification Number is F–95–PPCP–FFFFF (the docket number for the proposed rule is F–94–PPCP–FFFFF). The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Patricia Buzzell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8632, email address buzzell.tricia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Access

An abstract and fact sheet on this rule are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov

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Dial-up: (919) 558-0335.

From the main EPA Gopher menu, select: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste/Permits and Permitting.

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet address

Files are located in /pub/gopher/OSWRCRA

Preamble Outline

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C. How Today's Rule will Improve the Program
D. The Rule: From Proposal to Final
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A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Enhancing the Intergovernmental Partnership

I. Statutory Authority

EPA is issuing these regulations under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

II. Background

A. Overview of the RCRA Permitting Program

In RCRA, Congress gave EPA the authority to write regulations, or "rules," to govern, among other things, the permitting of hazardous waste management facilities. EPA is issuing today's regulations to enhance public participation in the hazardous waste facility permitting process.

Under RCRA, EPA is responsible for regulating the "cradle to grave" management of hazardous wastes. Hazardous wastes come in many shapes and forms. They may be liquids, solids, or sludges. They may be the by-products of manufacturing processes, or simply commercial products—such as household cleaning fluids or battery acid—that have been discarded. EPA determines if wastes are hazardous by judging, among other things, the characteristics of the wastes and their potential to cause harm to human health and the environment when not properly managed. RCRA regulations identify hazardous wastes based on their characteristics and also provide a list of specific hazardous wastes (refer to 40 CFR 261 for more information). To manage hazardous waste in an environmentally sound manner, companies often need to store it, treat it (for instance, by burning it or mixing it with stabilizing chemicals), and/or dispose of it into specially built landfills. In most cases, a business that stores, treats, or disposes of hazardous waste, needs a permit under RCRA.

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous wastes to comply with standards that are "necessary to protect human health and the environment." EPA or EPA-authorized States implement these standards by issuing RCRA permits to facilities that treat, store, or dispose of hazardous wastes. In some circumstances, existing facilities may continue to operate without a full RCRA permit under the "interim status" provision of RCRA § 3005(e). In RCRA, Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. Section 7004(b) of RCRA requires EPA to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

Under RCRA section 3006, States may seek EPA authorization to administer and enforce the RCRA program in lieu of EPA. Once a State adopts today's rule and receives EPA authorization for the rule, the State will become the primary implementor of the rule (see Section V. below for more information). In today's preamble, we refer to the primary implementing agency for this rule as "the permitting agency" or "the agency." "The Director" refers to the head of the primary implementing agency. We refer to EPA as "EPA" or "the Agency."

B. Shortcomings of the Current Program

Many stakeholders have expressed the concern that the current RCRA permitting process does not involve the public at an early stage in the process, does not provide adequate information, and does not provide an equitable opportunity to participate. EPA is responding to these concerns in today's rule. In fact, EPA has emphasized the need for more public involvement in all its activities. The Agency's Hazardous Waste Minimization and Combustion Strategy calls for the development of mechanisms to ensure that local communities are fully informed about the RCRA decision-making process and have an opportunity to participate in that process. Recommendations from the National Performance Review, the RCRA Implementation Study, and the Permits Improvement Team have all emphasized the need for expanded public participation in permitting. A number of sources outside the Agency (e.g., environmental groups, and business trade associations) have also supported enhanced public participation.

C. How Today's Rule Will Improve the Program

Today's final rule will require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit. Also, the regulations will require the applicant to advertise the meeting in the newspaper, through a broadcast announcement (e.g., by radio or television), and on a sign posted at or near the property. This meeting will provide a chance for the community to interact with and provide input to a facility owner or operator before the owner or operator submits a permit application. The rule also directs the permitting agency to mail a notice to interested people when the facility submits its application. The notice will tell members of the public where they can examine the application at the same time that the agency reviews it.

In some cases, RCRA permits can be the subject of intense debate. When permits raise a lot of public interest, the public's demand for information increases. Today's rule will give the permitting agency the authority to require a facility owner or operator to set up an information repository at any time during the permitting process or the permit life. We anticipate that agencies will use this authority only in those permitting cases that raise a lot of public interest, or in other cases where the public needs more access to information. The repository will hold all information and documents that the permitting agency decides are necessary to fulfill the purposes for which the repository was established. Finally, today's rule will require combustion facilities (i.e., incinerators and other facilities that burn hazardous wastes) to notify the public before they hold a trial burn.[1]

EPA anticipates that these regulations will provide an opportunity for the public to participate earlier in the permitting process. In addition, the rule will give the public increased access to facility and permitting information. Finally, we hope that the rule will help people become involved in the permitting process and increase understanding of hazardous waste management facilities.

D. The Rule: From Proposal to Final

EPA proposed the RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule on June 2, 1994 (59 FR 28660–28711). The proposed rule contained changes and additions to the RCRA public participation regulations (40 CFR 124) and RCRA Subtitle C permitting regulations (40 CFR 270).

Today, EPA is finalizing the public participation portion of the proposal (with a number of changes in response to comments received by the Agency during the comment period for the proposed rule—see Section IV below), which includes changes to both Parts 124 and 270. The Agency is not finalizing the proposed revisions to combustion permitting procedures at this time.

EPA decided to separate the two portions for a number of reasons. First, the public comments on the proposed rule were more favorable towards the public participation changes. On the other hand, the commenters were less satisfied with the proposed combustion permitting changes, particularly those changes regarding the trial burn. The Agency is currently considering and addressing the commenters' concerns on the proposed combustion permitting changes. In the meantime, EPA sees no reason to delay the important changes to the public participation provisions.

Moreover, EPA is committed to issuing comprehensive emissions standards for combustion facilities under RCRA and the Clean Air Act. The Agency anticipates issuing a proposed rule on these standards in the fall of 1995. Due to potential overlap between the procedures in the emissions standards proposed rule and the combustion permitting procedures in the June 2, 1994 proposed rule, EPA has decided to take more time to consider the permitting provisions in the June 2 proposal. We intend to find the best possible solution to coordinate these two rulemakings.

Finally, EPA realized that the proposed rule may have caused some confusion. A few commenters pointed to the different character of the public participation changes and the combustion permitting changes. The commenters expressed concern over combining these two dissimilar portions in the same rule. Moreover, a number of commenters seemed to be confused over the applicability of the rule. In particular, since the combustion permitting provisions would apply only to combustion facilities, and the proposed rule was an outgrowth of the Combustion Strategy, a number of commenters seemed confused over the applicability of the public participation procedures to all RCRA TSDFs.

[1] The owner or operator of a combustion unit must conduct a trial burn as part of the permitting process for a combustion unit. The trial burn is a demonstration period held by the owner or operator of a combustion unit to test the unit's ability to meet the regulatory performance standards for treatment of hazardous wastes. The permitting agency uses the results of the trial burn to establish operating conditions in the RCRA permit.

III. Applicability of Today's Rule

Today's rule promulgates changes and additions to Parts 124 and 270 in the Code of Federal Regulations (CFR). The Part 124 changes, which include new and earlier public involvement steps and procedures, apply to every facility that has or is seeking a RCRA subtitle C permit to treat, store, or dispose of hazardous waste, unless exempted under a specific section. The changes to Part 270, in §§ 270.2, 270.14, and 270.30, also apply to every facility. The changes to §§ 270.62 and 270.66, however, apply only to combustion facilities.

The rule does not require RCRA facilities that are already involved in the permitting process to step back in the process to comply with the new requirements. Instead, the rule will apply to a facility according to what stage of the process the facility is in when the rule becomes effective. For instance, if a facility has submitted its part B permit application before the effective date of this rule, then the rule does not require the facility to hold a pre-application meeting under § 124.31. This facility would, however, have to comply with all requirements relating to steps in the permitting process that it has not yet undertaken.

IV. Review of Public Comments, Responses, and Changes From the Proposed Rule

The following (IV. A through E) is a section-by-section summary of the most significant comments on the proposed rule, EPA's responses to those comments, and an explanation of any changes from the proposed rule to the final. All of the public comments and EPA's comprehensive response to comments document on this rulemaking are available through the RCRA Docket (see the paragraph entitled ADDRESSES, above).

The most significant changes in the final rule involve our decision to use guidance, instead of rule language, to encourage facilities to strive toward some of the important goals in the proposed rule. EPA recognized in the proposal that some of the proposed regulatory provisions were very general and requested comment on how they could be effectively implemented (see, e.g., 59 FR 28702). In response, commenters argued that several portions of the proposed regulatory language were vague and would spawn disputes, controversy, and litigation. The commenters suggested that EPA relocate some of the proposed regulatory text to the preamble as guidance.

EPA found these comments persuasive in certain instances. The development of today's rule has, from the start, involved a balance between promoting broader, more equitable public participation while maintaining the flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approach consistent with the principles of fairness and openness. Some of the principles underlying the proposed and final rules are inherently difficult to prescribe through regulation. For example, it is possible to require an applicant to hold a meeting; it is much more difficult to require through regulation that the meeting be conducted in an equitable fashion, since the steps required to accomplish this objective will necessarily vary from situation to situation. Although the final rule retains most of the proposed regulatory changes, EPA concluded that, in certain instances, the need to maintain flexibility is inconsistent with a national regulatory approach. In these instances, as explained more fully in the sections below, EPA has decided to proceed by using guidance, rather than regulations, to encourage facilities to adopt and strive towards a number of the goals in the proposed rule. The Agency will provide some guidance in today's preamble; however, we also anticipate releasing a guidance document, in the near future, to help permitting agencies and facilities to implement today's rule.

The Agency believes that facility owners, State environmental agencies, tribes, and private citizens are often in the best position to determine what modes of communication and

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participation will work best in their communities. The final rule provides the flexibility necessary to find the best local solutions to ensure equal opportunities for all members of the community.

A. Equitable Public Participation and Environmental Justice

Proposed § 124.30 and Preamble. In section 124.30 of the proposed rule, entitled "Equitable Public Participation," EPA proposed to require facilities and permitting agencies to "make all reasonable efforts" to ensure equal opportunity for the public to participate in the permitting process. The proposed rule language defined "reasonable efforts" as including the use of multilingual fact sheets and interpreters at meetings and hearings, when the "affected community contains a significant non-English speaking population."

In the preamble to the proposed rule (see 59 FR 28686), EPA solicited comments on several key environmental justice issues for the RCRA permitting program: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; (3) environmental justice concerns in corrective action cleanups; and (4) how EPA programs can take account of "cumulative risk" and "cumulative effects" associated with the siting of a hazardous waste management facility. The Agency noted that, while it did not expect to address these issues in this rulemaking, public input on these topics would be helpful.

Synopsis of Major Comments on § 124.30 and Preamble. The major comments on this section of the proposal involved definitions. Commenters asked the Agency to define many of the terms in § 124.30, including "all reasonable efforts," "significant," "non-English speaking" and "affected community." The commenters were concerned about the disputes, controversy, and litigation that could arise from these undefined terms. Other commenters supported the concept of equitable public participation, particularly as an approach to addressing any environmental justice concerns that might be present.

The Agency received a number of comments supporting expanded public participation as an effective approach to addressing environmental justice issues. Commenters stated that additional opportunities for public involvement and access to information will increase the probability that all communities will have input into the permitting process, and should strengthen involvement of those who have felt disenfranchised from the process. Some commenters urged EPA to avoid a one-size-fits-all approach and allow flexibility for State, local, and facility leadership to make suitable determinations about how to address environmental justice issues.

EPA's Response to Commenters. EPA is committed to the principles of equitable public participation and equal treatment of all people under our environmental statutes and regulations. The regulatory changes we are making today will enhance the RCRA public participation process for all citizens. We urge all permitting agencies, permit holders, and applicants, to make all reasonable efforts to provide equal access to information and participation in the RCRA permitting process.

While we continue to promote equitable public participation, we have decided to address the objectives of § 124.30 in guidance rather than through regulatory language. In response to the concerns expressed by many commenters, we are not including § 124.30 in the final rule. The Agency agrees with the commenters who expressed concern that the language in the proposal was ambiguous, making compliance with the requirements difficult to evaluate and enforce, and could engender disputes and litigation without advancing the objectives of today's rulemaking.

As we noted earlier, EPA continues to support the principles embodied in § 124.30 of the proposed rule. We encourage permitting agencies and facilities to follow the spirit of that section and use all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language.

In lieu of a regulation, the Agency will take additional steps to encourage equitable public participation in RCRA permitting. In the near future, EPA will issue further guidance to assist facilities, permitting agencies, and communities in implementing the expanded public participation requirements in today's rule. In this guidance document, EPA plans to discuss additional options for increasing public participation by going beyond the regulatory requirements. The guidance document will address, in more detail, the approaches to equitable public participation that we are emphasizing in this preamble.

EPA believes that this rule presents significant opportunities to be responsive to environmental justice concerns in the context of public involvement. Prior to the promulgation of today's rule, the permitting process did not formally involve the public until the permitting agency issued a draft permit or an intent to deny a permit. In many cases, communities around RCRA facilities felt that the draft permit stage was too late to enter the process, that the facility and the permitting agency had already made all the major decisions by that point, and any comments the public offered would have no real effect. Insufficient opportunity for communities to become involved in environmental decision-making is a contributing factor to environmental justice concerns. The provisions in today's rule will address many of these concerns by expanding public participation and access to permitting information.

EPA continues to see public participation as an important activity that empowers communities to become actively involved in local waste management activities. The Agency believes that this rulemaking is an important step in empowering all communities, including communities of color and low-income communities.

EPA agrees with the commenters who stated that the expanded public participation requirements in today's rule will be useful tools for addressing environmental justice concerns. Today's rule provides all communities with a greater voice in decision making and a stronger opportunity to influence permit decisions early in the process. EPA also agrees with the commenters who stated that environmental justice issues should be addressed at a local level and on a site-specific basis. Local agencies and leaders have an important role to play in addressing environmental justice concerns. States and EPA Regional offices are the principal implementors of the RCRA permitting program, and have been directed to develop mechanisms that respond effectively to environmental justice concerns during permitting activities (RCRA Implementation Plan (RIP), 1995). In the RIP, EPA asked RCRA implementing agencies to continue their commitment to seek opportunities to address patterns of disproportionately high and adverse environmental effects and human health impacts on low-income communities and communities of color that may result from hazardous waste management activities. The States and Regions have been involved in environmental justice pilot projects, which have included, among other activities, increasing public involvement by tailoring outreach activities to affected communities.

EPA and its Office of Solid Waste and Emergency Response (OSWER) also remain committed to addressing environmental justice concerns beyond those related to public participation. The preamble to the proposed rule (see 59 FR 28686) discussed OSWER's environmental justice efforts. Elliott P. Laws, OSWER Assistant Administrator, formed the OSWER Environmental Justice Task Force ("EJ Task Force") to begin addressing many of these issues. EPA released the "OSWER Environmental Justice Task Force Draft Final Report" (OSWER 9200.3–16 Draft) and its separate executive summary (OSWER 9200.3–16–1 Draft) on April 25, 1994. Since that time, the EPA Regional offices and the OSWER program offices have been implementing the recommendations outlined in the EJ Task Force's draft final report. The report was distributed to the National Environmental Justice Advisory Council (NEJAC) for comment. In June 1995, after careful consideration of all comments, EPA released the "OSWER Environmental Justice Action Agenda." The Action Agenda provides a concise summary of OSWER's current strategy and describes the implementation process for ensuring that major issues, identified by the NEJAC and others, continue to be recognized and addressed. A full report on implementation progress and accomplishments, entitled "Waste Programs Environmental Justice Accomplishments Report," was released concurrently with the Action Agenda. All of these documents are "living documents" and, as such, are a part of the process of continuously addressing environmental justice concerns. This process represents OSWER's commitment to adhere to the principles of Executive Order 12898, in which the President directed federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. Furthermore, in an effort to make environmental justice an integral part of the way we do business, the Agency issued a policy directive, in September 1994 (OSWER 9200.3–17), that requires all future OSWER policy and guidance documents to consider environmental justice issues.

During the public comment period on the proposed rule, EPA received a large number of comments on preliminary recommendations that the EJ Task Force had developed regarding several other (i.e., beyond today's public involvement rule) key environmental justice issues facing the RCRA permitting program. The comments ranged from general observations to more detailed suggestions, particularly with regard to siting criteria, cumulative risk assessments, and the need to base decisions on sound science.

We are disseminating the comments that deal with these environmental justice issues in the following manner: (1) We are forwarding the comments on RCRA facility siting to the Office of Solid Waste's (OSW) RCRA Siting Workgroup and to the NEJAC's Waste and Facility Siting Subcommittee's Siting Workgroup; (2) we are forwarding the comments on issues affecting RCRA corrective action to the RCRA Subpart S Workgroup, which is developing a rule to establish corrective action requirements for releases of hazardous wastes or hazardous waste constituents to any environmental medium, including ground water, from any solid waste management unit, including regulated units; (3) we are sharing the comments on cumulative risk, multiple exposure, and synergistic effects with the EPA Science Policy Council, the group actively working to address these issues; and (4) the comments on how EPA should respond to RCRA permit challenges based on environmental justice issues are being addressed by OSWER with assistance from the Office of General Counsel, Office of Civil Rights, and any other appropriate party.

EPA also received several comments that did not approve of the Agency's decision to discuss and solicit comments on the more technical environmental justice issues in the context of a RCRA public involvement rule. Many commenters argued that these issues are broad, far-reaching, and impact a much larger constituency than the intended audience for the public participation rulemaking.

EPA acknowledges the breadth of these issues. The preamble to the proposed rule has not been the only forum for discussing these issues. As we discussed above, EPA has received and considered comments from additional stakeholders, including States, the NEJAC, environmental groups, environmental justice groups, and regulated industries in developing the "OSWER Environmental Justice Action Agenda." Furthermore, since the Action Agenda is a living document, OSWER will continue to seek external comments, suggestions and experiences as we strive to ensure environmental justice in all our programs.

B. Pre-Application Meeting and Notice

1. Applicability (Proposed § 124.31(d)). EPA proposed to exempt permit modifications, permit renewals, and permit applications submitted for the sole purpose of conducting post-closure activities from the requirements in § 124.31.

Synopsis of Major Comments on § 124.31(d). A number of commenters stated that the rule should require facilities seeking permit renewals to hold a pre-application meeting. Other commenters recommended that the pre-application meeting requirements apply to facilities making significant changes during the renewal process, or that the permitting agency should have discretion in applying the requirement to renewals. Opposing these commenters, several commenters supported the requirement as proposed and urged EPA to keep the exemption for renewals since many renewal applications simply continue "business as usual." In these cases, said the commenters, the community will have adequate opportunity to participate in the renewal process; for instance, at the draft permit stage.

EPA's Response to Commenters. EPA has decided to expand § 124.31 to cover facilities that make a significant change at permit renewal. For the purposes of § 124.31, a "significant" change in facility operations is a change that is equivalent to a class 3 modification in § 270.42, e.g., operating conditions change significantly.

The Agency believes that this approach is a common sense compromise that will ensure adequate public participation in the necessary cases. At the same time, the regulated community will have the assurance that facilities undergoing minor changes will be spared unnecessary administrative burden.

EPA will continue the exemption for facilities that submit permits for the purpose of conducting post-closure activities. As we stated in the proposed rule, the goals of the pre-application meeting (e.g., establishing an early dialogue between the facility and the public) do not apply at most post-closure facilities. EPA's experience is that the public has usually been concerned with permit decisions relating to active hazardous waste management operations, as opposed to decisions relating to closed facilities. In addition, most post-closure activities are mandatory (e.g., maintenance of a closed unit) and involve fewer discretionary judgments than are involved in issuing an operating permit. The existing public participation

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requirements in Part 124 (e.g., the notice and comment period at the draft permit stage) will continue to apply. Since closure and post-closure plans are included in the permit application, and become part of the permit, they will be available for public review and comment along with the application and the draft permit. Any changes to these plans after permit issuance will follow the modification procedures in § 270.42, which also have public notice requirements. We think that the existing process provides sufficient public involvement in post-closure permitting.

While we are retaining the exemption for post-closure permit applications in the final rule, we have tried to clarify our intent in the applicability requirements. Specifically, we have clarified that the exemption applies to facilities seeking permits solely to conduct post-closure activities, as well as to facilities seeking permits to conduct post-closure activities along with corrective action. Our intent in the proposal, which remains our intent in the final rule, was to distinguish post-closure facilities from facilities with operating units. However, someone could have read the proposed rule as not providing an exemption for post-closure facilities with remaining corrective action obligations (which post-closure facilities often have). Because the rationale for exempting post-closure activities applies whether or not the facility is also performing corrective action, EPA has added language to §§ 124.31(a) and 124.33(a) to clarify our intent.

2. Meeting Requirements (Proposed § 124.31(a)–(b)). In these two paragraphs, EPA proposed to require the permit applicant to hold at least one meeting with the public before submitting the part B permit application. The proposed rule listed topics that the applicant must cover and required the applicant to submit a record of the meeting and a list of attendees.

Synopsis of the Major Comments on § 124.31(a)–(b). The commenters generally expressed support for the pre-application meeting. Few commenters opposed EPA's proposal to have a meeting early in the process, though many suggested changes to the proposed rule itself.

Several commenters thought that the pre-application stage is too early for a public meeting. Some commenters stated that neither the applicant nor the agency could provide the public with accurate and complete information about the facility at such an early stage. Moreover, they noted, the application could change dramatically between the pre-application meeting and application submittal.

Some commenters asked EPA to clarify the record-keeping requirements in the final rule. A number of commenters opposed the requirement, with some commenters opposing the term "record" because it would qualify the meeting summary as an official document and make it subject to litigation. Other commenters opposed the rule's requirement that the applicant submit the record as a component of the part B permit application.

Concerning whether the permitting agency should conduct, or even attend, the meeting, the comments varied. Some commenters supported agency attendance because the agency would provide the meeting with credibility and a source of accurate information. Other commenters expressed concern that agency attendance would interfere with the "open and informal dialogue" between the facility owner and the public.

Finally, many commenters supported alternatives to the pre-application meeting. Numerous commenters backed the idea of combining pre-application meetings with the siting meetings that many States already require. A few commenters noted that EPA should allow such a combination only where the State meeting fulfills all the requirements of the pre-application meeting. Another group of commenters supported other options, such as using an Intent-to-Submit form in place of the meeting or holding the meeting after application submittal.

EPA's Response to Commenters. Section 124.31(b) of the final rule requires the facility to hold a meeting prior to submitting the part B permit application; however, the rule language no longer lists specific topics that the facility must cover in the meeting, requiring instead that the facility solicit questions from the community and inform the community about proposed hazardous waste management activities. After the meeting, the facility must prepare a "summary" of the meeting and submit it as a component of the part B permit application. The agency should use its judgement in deciding whether to attend the meeting.

EPA disagrees with the commenters who stated that the pre-application stage is too early to hold a meeting with the public. The most important goal we hope to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications (see the discussion two paragraphs below). We hope that this requirement will help address the public concern that public involvement occurs too late in the RCRA permitting process. Although the Agency agrees with the commenters that the early timing of the meeting may prevent the agency and the applicant from having complete information, we believe that the benefits of early public involvement and early access to information outweigh the drawbacks of incomplete information.

In any case, EPA does not intend for the pre-application meeting to be a forum for examining technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage. Instead, the pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of a hazardous waste management facility's operations. We anticipate that the applicant and the public will share ideas, educate each other, and start building the framework for a solid working relationship. Of course, the public retains the opportunity to submit comments throughout the process.

EPA has also revised the pre-application meeting requirements in the final rule to make them more straightforward and more flexible than the requirements in the proposed rule. The Agency is trying to provide flexibility in the way that permit applicants hold pre-application meetings. To this end, we have removed the list of required discussion topics, proposed in § 124.31(a). In addition, we have removed from the rule provisions that the commenters considered vague, including the requirement that the applicant describe the facility "in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment." We agree with commenters that such a requirement would be difficult to implement and enforce.

While we have removed such requirements from the final rule, we expect permit applicants to follow the spirit of the proposed requirements. For instance, we encourage permit applicants to address, at the level of detail that is practical at the time of the meeting, the topics we identified in § 124.31(a) of the proposed rule: the type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The discussions may also include such topics as the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases. These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition.

Moreover, the applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. In addition, as we emphasized in the preamble to the proposed rule (59 FR 28691), the permit applicant should encourage full and equitable public participation by selecting a meeting date, time, and place that are convenient to the public.

The final rule requires the applicant to submit a "summary" of the pre-application meeting as a component of the part B permit application. EPA shares the concern of several commenters that "the record" could be subject to litigation, for instance, on the basis of inaccuracy. EPA's intent in this rule is to foster communication and mutual understanding, not to create divisiveness and additional points of dispute in the permitting process. Thus, we have deleted the word "record" and replaced it with "summary" in the final rule. We do not intend for the meeting summary to be a verbatim account of the meeting; the Agency is aware of how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting and a list of all attendees who wish to identify themselves (see § 124.31(b) of the final rule).

In accordance with our intent in the proposed rule, we are requiring the permit applicant, in the final rule, to submit the summary as a component of the part B permit application. Since the part B application is available for review by the public, requiring the meeting summary to be part of the application assures that people who are unable to attend the meeting will have an opportunity to learn what transpired at the meeting. In the proposed rule, however, the Agency neglected to add the summary to the list of part B requirements in § 270.14(b). We have added this reference in the final rule.

The pre-application meeting summary will be useful to the permitting agency. The summary will alert the agency to important community concerns, areas of potential conflict, and other issues that may be relevant to agency permitting decisions. In addition, the meeting attendee list will help generate a mailing list of interested citizens. (The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10). The list of attendees from the pre-application meeting will assist the permitting agency in identifying people or organizations to include on the mailing list so that it represents everyone who demonstrates an interest in the facility and the permit process. It has been EPA's experience that mailing lists often are not fully developed until the permitting agency issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities. A mailing list developed pursuant to § 124.10 could also be available to enhance public participation in other Agency or community-based initiatives.

The actual timing of the meeting is flexible in the final rule. The Agency believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator.

In today's rule, we require the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. We encourage permitting agencies to attend pre-application meetings, in appropriate circumstances, but the agency should not run the pre-application meeting. Although agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, it may undercut some of the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

In the proposed rule, EPA solicited comments (see 59 FR 28702) on the option of allowing a State siting meeting to substitute for the pre-application meeting. EPA is not including this option in the final rule, because doing so would defeat some of the purposes of the pre-application meeting (e.g., establishing an open dialogue on a range of RCRA permitting issues that may differ from siting issues). Some commenters suggested that siting meetings and pre-application meetings be combined. There is nothing in today's rule to preclude States and permit applicants from working together to combine these meetings. EPA encourages them to do so, provided that the combined meetings fulfill the pre-application meeting requirements in today's rule.

3. Notice of the Pre-Application Meeting (§ 124.31(c)). Paragraph (c) of proposed § 124.31 required the facility to give notice of the pre-application meeting at least 30 days prior to the meeting "in a manner that is likely to reach all affected members of the community." EPA proposed to require the facility to give the notice in three ways: as a display advertisement in a newspaper of general circulation; as a clearly-marked sign on the facility property; and as a radio broadcast. Each of these notices had to include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, and a statement asking people who need special access to notify the applicant in advance.

Synopsis of the Major Comments on § 124.31(c). Most commenters expressed general support for the expanded notice requirements, but questioned specific aspects of the proposal. The commenters also asked for flexibility in choosing the types of notice that would best reach different communities.

The newspaper advertisement requirement brought up the most controversy. Some commenters challenged as vague the provision that the facility publish the notice in the local paper and also in papers of adjacent counties.

A number of commenters pointed out problems with requiring a large sign at the facility. Some commenters mentioned that nobody would pass near enough to some rural facilities to see the

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sign. Other commenters reminded EPA that some communities have ordinances that ban large signs. The commenters urged that the rule be more flexible and allow applicants to place signs at nearby intersections or on town bulletin boards. Other commenters recommended that the agency approve the sign or grant waivers where communities ban signs.

The commenters did not express many objections to the radio requirement, but asked for overall flexibility in the notice requirements.

EPA's Response to Commenters. In response to these comments, EPA has enhanced the flexibility of the final rule. Instead of requiring the applicant to provide three specific types of public notice, as in the proposed rule, the final rule specifies only one type of notice (i.e., the display advertisement). The other notices must fall within broader categories—one must be a broadcast announcement and one must be a sign—but are otherwise flexible.

We have decided to retain the display ad requirement because of the expanded public notice it will provide; at the same time, we have increased the flexibility of the requirement by moving some of the proposed rule's more general provisions out of rule language and into guidance, both in today's preamble (see below) and in the future guidance document for implementing this rule.

Section 124.31(d) requires the applicant to keep documentation of the public notice and provide the documentation to the permitting agency upon request. The reason for this requirement is to provide proof of the public notice that can be verified by the permitting agency. We do not want this requirement to be burdensome for the facility. Instead, we encourage the facility to keep a simple file for the notice requirements. Items for inclusion in the file may include: copies of the newspaper announcement, a receipt or affidavit of the radio announcement, a photograph of the sign, or a receipt of purchase for the sign.

The Agency expects that applicants and permit holders will make a good faith effort to announce the pre-application meeting to as many members of the affected community as possible.

- The newspaper advertisement. The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public. The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers and community bulletins.

In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.

- The visible and accessible sign. The final rule requires the applicant to post the notice on a clearly-marked sign at or near the facility. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass, on foot or by vehicle, by the site. The Agency anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards. If a sign on the facility grounds is not practical or useful—for instance, if the facility is in a remote area—then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic. In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted "at or near" the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs in nearby commercial, residential, or downtown areas.

- The broadcast media announcement. The final rule requires the applicant to broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium with prior approval of the Director. We encourage the applicant to consult the preamble to the proposed rule (59 FR 28690) for recommendations on choosing the best circumstances for the broadcast announcement.

EPA will soon issue a guidance document to assist facilities and agencies in implementing the expanded public participation requirements. The guidance document will include more detailed discussions on the approaches to broad and equitable public notice that we are emphasizing in today's preamble.

C. Notice at Application Submittal (§ 124.32)

1. Applicability (Proposed § 124.32(c)). The proposed rule required the permitting agency to send a notice to the facility mailing list upon receipt of a permit application. EPA proposed that the rule apply to all new and interim status facilities, but not to permit modifications or applications submitted for the sole purpose of conducting post-closure activities.

Synopsis of Major Comments on Proposed § 124.32(c). The commenters generally supported this provision of the proposed rule. A few commenters recommended that EPA apply the provision to modifications, post-closure permits, and interim status facilities.

EPA's Response to Commenters. The final rule retains the applicability standards of the proposed rule. We continue to believe that the notice at application submittal is an effective means to let the community know that the permitting agency has received a permit application. The notice allows members of the community to keep track of new or existing facilities and to review, concurrently with the permitting agency, the permit application, which will be available for review at a location specified by the permitting agency (either in the vicinity of the facility or at the permitting agency's office). We suggest that the permitting agency consult the public when choosing a suitable location to place the application materials for public review.

The notice requirement does not apply to permit modifications or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility. The permit modification requirements in § 270.42 already include provisions for providing public notice of modification requests. We explain the exemption for post-closure activities in section B.1. above.

2. Responsibility and Timing (Proposed § 124.32(a) and (b)). The proposed rule directed the permitting agency to give the notice "within a reasonable period of time after the application is received by the Director." The proposed rule also listed the information that must go in the notice.

Synopsis of Major Comments on Proposed § 124.32(a) and (b). Many of the commenters provided suggestions on who should be responsible for the notice at application submittal. The majority of these commenters supported EPA's proposal, agreeing that the Director should issue the notice. A few commenters expressed concern over the timing of the notice. They suggested that EPA rewrite the rule to require the Director to issue the notice within 30 days of application submittal.

EPA's Response to Commenters. These provisions have not changed from the proposed rule to the final rule. EPA maintains its position that the permitting agency should be responsible for providing the public notice at application submittal. Providing the notice will demonstrate clearly that the permitting agency's role in the process has begun.

We anticipate that the permitting agencies will issue timely notices and, thus, we have decided not to prescribe a time frame for agency issuance of the notice at permit application.

D. Information Repository

1. Applicability/Use/Responsibility (Proposed §§ 124.33(a) and 270.30(m)). EPA proposed to give the Director the authority to require the facility to establish and maintain an information repository during the permitting process (§ 124.33(a)) or during the life of a permit (§ 270.30(m)). The purpose of the repository, as proposed, was to make information available to the public during the permit issuance process and during the life of a permit.

Synopsis of Comments on Proposed §§ 124.33(a) and 270.30(m). A number of the comments asked EPA for exemptions from the repository "requirement," especially for boilers and industrial furnaces (BIFs) and federal facilities that must fulfill similar standards under other rules. Many commenters asked for flexibility, suggesting that EPA allow the Director to decide when to require a repository. Some commenters suggested that the Director use this authority only in cases where the community shows true need or public interest when the facility is high. Making a contrary point, a group of commenters argued that the repository should be mandatory for all facilities. Another group of commenters insisted that the permitting agency should be responsible for the repository, or at least split the responsibility with the facility.

EPA's Response to Commenters. In the final rule, EPA has rewritten §§ 124.33(a) and 270.30(m) to better reflect our original intent in proposing the information repository requirement. Our intent was for permitting agencies to use the information repository requirement sparingly. We anticipate that the Director will require such a repository only in special cases where a significant amount of public concern has surfaced or where the community has unique information needs.

Many commenters suggested exemptions from the "information repository requirement." However, the information repository is not a requirement that applies to a pre-determined group of facilities. Instead, the information repository is a public involvement tool that today's rule makes available to permitting agencies for use on a case-by-case basis. Accordingly, there is no need for exemptions from §§ 124.33 or 270.30(m).

Some of the confusion over this section may be the result of the language in the proposed rule. We have reworded §§ 124.33 and 270.30(m) in the final rule to make clear that the Director shall assess a variety of factors, including the status of existing repositories and the community's proximity to a copy of the administrative record, when considering whether or not to require a repository at any facility. So, for instance, if the Director determines that public interest warrants a repository at hypothetical Facility X, but finds that a BIF repository already existing at the facility is responsive to the public interest, then the Director may determine that the facility has no need for a repository under §§ 124.33 or 270.30(m). Or, if the existing repository does not completely satisfy the need that the Director identified, then the Director may specify additional steps that the facility must take to make the repository meet the public need. At Facility X, for instance, the Director may require the facility to make available more information on the general permitting standards, or on the permit application and technical standards for the other units on site, aside from the BIF unit. The facility could then add this information to the existing repository if the repository meets the requirements of §§ 124.33 or 270.30(m).

2. Contents (Proposed § 124.33(b) and (e)). The proposed rule language required the repository to contain all "documents, reports, data, and other information deemed sufficient by the Director for public understanding," as well as information on public involvement activities and how to get on the facility mailing list.

Synopsis of the Major Comments on Proposed § 124.33(b) and (e). A number of commenters recommended specific documents and types of documents (e.g., the permit application, all relevant fact sheets) that EPA should require in the information repository provisions. Some commenters insisted that the content requirements in the proposed rule were too vague. Other commenters thought that EPA should ban certain materials (e.g., public relations literature) from the information repository.

EPA's Response to Commenters. We have changed the repository content requirements in the final rule. The new provision requires the repository to hold "all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established." We have tried to be as flexible as possible in this section since the permitting agency could require a facility to establish a repository at any stage during any permit process or for any time during the life of the facility. Moreover, the requirement to establish a repository will be imposed by the Director on a case-by-case basis; after taking into account the site-specific factors in each case, the Director will decide what materials are appropriate for the repository.

The final rule gives the Director the authority to limit the contents of the repository. While the rule creates no outright bans on materials, EPA anticipates that the Director will use his or her discretion to ensure that repository materials are relevant to permitting activities and to prevent parties from placing inappropriate materials in the repository. We encourage permitting agencies, in the spirit of equitable public participation and access to information, to consult the public regarding what materials would be most useful to members of the surrounding community.

3. Location (Proposed § 124.33(c)). The proposed rule stated that the facility should choose the location for the repository in a place with suitable public access. If the Director opposed the site, then the Director could choose a more appropriate location. The proposed rule also required the repository to be open during reasonable hours and to give the public access to photocopy service (or an alternative means for people to obtain copies).

Synopsis of Public Comments on § 124.33(c). Several commenters expressed concern over the geographic location of the repository. Other commenters asked that EPA rewrite the rule to allow for on-site repositories.

EPA's Response to Commenters. EPA has tried to be flexible in revising the final rule. While we expect that the Director will only infrequently require a repository, we anticipate that those situations will all be different. For this reason, we have avoided writing narrow prescriptions for the location of the repository. Instead, § 124.33(d) of the final rule retains the provision allowing the facility to choose the location. We encourage facilities, in the spirit of

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equitable public participation and access to information, to involve the public when suggesting a location for the repository. The Director has the discretion to choose a more suitable location if he or she finds that the one chosen by the facility is unsuitable based on access, location, hours of availability, or other relevant criteria. The Director should exercise this authority sparingly; we are anticipating that, in the great majority of cases, the facility will choose a suitable location. EPA encourages facilities to establish repositories off-site (i.e., within the community where the facility is located) whenever an off-site repository is feasible and would be more readily accessible to the public. Today's rule does not, however, preclude the use of on-site repositories.

4. Timing and Duration (Proposed § 124.33(f)). The proposed rule required the facility to maintain and update the repository for a time period determined by the Director. The proposal also stated that the Director could require the repository at any time during the application process for a RCRA permit or during the active life of a facility.

Synopsis of the Major Comments on Proposed § 124.33(f). The commenters submitted a variety of comments concerning the timing and duration of the repository. Some commenters thought that permitting agencies need flexibility in applying the repository requirement. Others thought that EPA should require the repository to open and close at specific points during the permitting process. One group of commenters insisted that EPA include a provision in the rule to allow for automatic closure of the repository once the permit is issued, denied, or appealed.

EPA's Response to Commenters. In the final rule, EPA clarifies its intent that the Director have the discretion to apply the repository requirement at any time during the permitting process or the life of a facility. Given that it is within the Director's discretion whether to establish a repository at all, we believe that it would be inappropriate to prescribe specific timing and duration requirements that are triggered by the creation of a repository; rather, the Director should decide on questions of timing and duration on a case-by-case basis. The final rule continues the proposed rule's provision that the Director determine the duration of the repository. The final rule provides that the Director can close the repository, based on the same standards (found in paragraph (a)) that the Director uses when assessing the need for a repository.

E. Trial Burn Notices

1. Notice of the Trial Burn for Permitted Combustion Facilities (Proposed §§ 270.62(b)(6) and 270.66(d)(3)). Permits for new hazardous waste combustion facilities must include a plan, approved by the permitting agency as part of the permit, that describes how the facility will conduct the trial burn. However, because construction of a new facility may take a considerable period of time, the trial burn itself might not take place until several years after permit issuance. The proposed rule required the permitting agency to give public notice of the impending trial burn for permitted incinerators and BIFs. Under the proposed rule, the permitting agency would send a notice to the facility mailing list and appropriate units of State and local governments announcing the scheduled commencement and completion dates for the trial burn. The notice would also provide the public with contact information at the permitting agency and the facility and a location where members of the public could review the approved trial burn plan. The proposal required the permitting agency to mail the notice within a reasonable time period prior to the trial burn.

Synopsis of the Major Comments on Proposed §§ 270.62(b)(6) and 270.66(d)(3). We received both positive and negative comments on the proposed notice of trial burn for permitted combustion facilities. The supporters noted the importance of informing the public of the anticipated time period for conducting the burn, because a significant amount of time may elapse between issuing the permit and conducting the trial burn.

Those who opposed the trial burn notice asked what benefit would accrue from public notice of an impending, scheduled trial burn for a new (permitted) facility. One commenter asked EPA to discuss the purpose for requiring this notice from a new facility, considering that the schedule is set out in the permit and the trial burn plan is already open for public comment as part of the draft permit. Some commenters thought that the other permitting events already provide sufficient opportunity for public comment. Other commenters opposed the requirement that the permitting agency give the trial burn notice, claiming that delays would ensue when the agency could not publish the notice on time.

EPA's Response to Commenters. EPA has decided to finalize the trial burn notice provisions for permitted facilities as proposed. The Agency agrees with the commenters who noted the importance of keeping the community up to date on permitting activities at the facility. Several years may pass between the approval of the trial burn plan and the actual date of the trial burn. During the intervening time, the public may not necessarily remain up to date on activities at the facility. The trial burn is a significant step in the process of a combustor moving toward full operation; experience has shown that the public is often interested in knowing when the burn will occur so that citizens can review the trial burn results. Thus, we remain committed to giving notice of the impending trial burn at permitted facilities.

The final rule requires the permitting agency to send the notice to the facility mailing list. While we do not specify a time period during which the permitting agency should send out the notice, we anticipate that permitting agencies will typically notify the public at least 30 days before the trial burn.

The final rule does not provide for a comment period after the permitting agency gives notice of the trial burn dates. A number of commenters asked EPA what the purpose of such a notice would be, if not to open a comment period. Other commenters asked the Agency to make clear whether or not the rule would require a comment period during the trial burn stage. EPA decided that a comment period during the trial burn phase would not be necessary or appropriate. The public has already had the opportunity to be involved with, and comment on, the trial burn plan during the draft permit stage. Our intent in providing for the notice at this stage is to make the public aware of an impending trial burn. The notice will serve as an update, rather than the opening of a comment period.

Finally, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a new hazardous waste combustion facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. It was clear from the proposal that we intended for the permitting agency to issue the notice before the trial burn. However, the proposed rule language did not explicitly state the obvious corollary, which was that the facility may not commence the trial burn until after the notice.

EPA does not believe that the notice requirement established by today's rule will delay trial burns. The notice requirement is straightforward and easy to implement; we do not anticipate that permitting agencies will fail to issue the required notices in a timely fashion.

Because the notice is purely informational, EPA will be flexible in interpreting the requirement that the notice be mailed a reasonable time before the commencement of the trial burn. Ideally, the Agency anticipates that permitting agencies will mail the notice at least thirty days before the trial burn. However, as long as the notice is mailed sufficiently in advance of the scheduled trial burn so that the recipients would be expected to receive the notice prior to the commencement date, EPA would consider the notice timely.

It is EPA's intent that the trial burn notice requirements in §§ 270.62(b)(6) and 270.66(d)(3) apply only to initial trial burns, and not to subsequent trial burns that may be conducted as part of the permit modification procedures. EPA believes that the trial burn notices required by today's rule are not necessary in these latter circumstances, since the amount of time between modification approval and the subsequent trial burn is typically much shorter than the amount of time that may elapse between permit issuance and the initial trial burn. Moreover, the modification procedures in § 270.42 include provisions for involving the public throughout the modification submittal and approval process (e.g., through notices or public meetings). Of course, if there are substantial unforeseen delays between the approval of the modification request and the trial burn, EPA suggests that the permitting agency issue a notice in accordance with the procedures set forth in today's rule.

2. Notice of Planned Trial Burn Plan Approval for Interim Status Combustion Facilities (Proposed § 270.74(b) and (c)(3)). Trial burns at interim status facilities generally take place before permit issuance so that the permitting agency can set operating conditions in the permit based on the results of the trial burn. The proposed rule required the permitting agency to give public notice of the tentative approval of a trial burn plan for interim status incinerators and BIFs. The notice requirements are the same as those proposed for permitted incinerators and BIFs, except for an additional provision that the notice contain a schedule of activities that are required prior to permit issuance, including the permitting agency's anticipated schedule for trial burn plan approval and the actual trial burn.

Synopsis of Major Comments on § 270.74(b) and (c)(3). Many of the comments described in section E.1. above with regard to the trial burn notice for permitted incinerators and BIFs also are relevant to the trial burn notice for interim status incinerators and BIFs (e.g., comments on the timing of the notice). A number of commenters raised the issue of a comment period on the trial burn plan for interim status facilities. A few commenters supported the idea, some opposed it, and several more asked EPA to clarify whether or not we would require a comment period on the tentatively approved trial burn plan. One commenter noted that this additional information was critical for interim status facilities where the public has not yet had an opportunity for involvement.

EPA's Response to Commenters. EPA has decided to finalize the provisions for interim status facilities with two slight changes from the proposal. First, the final rule provides for notice of the Director's intention to approve a trial burn plan, rather than his or her "tentative approval." In response to commenter concerns that the notice could be an extra time-consuming step in the process, EPA has changed the language to better reflect its intent that the notice occurs in the final stages of review, rather than being a separate step following completion of review.

Second, we proposed to place the notice requirements in a newly created § 270.74, which contained interim status combustion permitting requirements. However, since EPA is not finalizing the combustion permitting sections of the proposed rule at this time, we have integrated the notice requirements with the regulations for the permitting of interim status combustion facilities, i.e., § 270.62(d) for incinerators and § 270.66(g) for BIFs.

Although the Agency has not changed the trial burn plan notice requirements for interim status combustors in the final rule, the requirements are in a different format than in the proposal. First, the notice requirements are now located in the centers of the paragraphs (§ 270.62(d) for incinerators and § 270.66(g) for BIFs) along with other permitting requirements. Since the notice contents for interim status facilities differ from the contents for permitted facilities with regard to announcing planned approval of the trial burn plan, we are amending §§ 270.62(d) and 270.66(g) to list the specific information that the permitting agency must include in the notices for interim status combustors. Second, we do not list the timing and distribution requirements for the notice for interim status facilities, as we did in the proposed rule. Instead, each of these paragraphs refers the reader to another paragraph (§ 270.62(b) and § 270.66(d), respectively) that covers the notice of the trial burn for permitted facilities. For instance, § 270.62(d) states that the agency shall issue the notice "in accordance with the timing and distribution requirements of (b)(6) of this section." The requirements in (b)(6) are the new notice requirements that we are issuing today for permitted combustion facilities (see section E.1. above). In following the standards in (b)(6), the permitting agency will send the notice to the facility mailing list and the appropriate units of State and local government within a reasonable period of time before the trial burn. Section 270.66(g) takes the same approach for BIFs by referring to paragraph (d) of that section.

For permitted combustion facilities, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. EPA does not believe that comparable clarifying language is necessary in §§ 270.62(d) or 270.66(g) for the notice of planned approval of a trial burn plan for an interim status facility. EPA believes it is clear under these provisions that the permitting agency will not approve a plan and, consequently, the facility cannot commence its trial burn, until issuance of the required notice.

The role of the notice for interim status BIFs and incinerators is much the same as the notice for permitted facilities, i.e., to keep the public informed throughout the trial burn stage. The final rule does not require a comment period after the permitting agency gives notice of the planned approval of the trial burn plan and the trial burn dates for interim status facilities. The trial burn notice, like the other notices required by this rule, is primarily intended to keep the community informed while not slowing down the permitting process. Since interim status facilities are already operating, and continue to operate while the permitting agency evaluates the permit application, EPA does not believe it would generally be in the public interest to delay the evaluation process in order to provide a formal response to comments on the trial burn plan. However, if members of the public submit significant information or views relating to the trial burn plan, the Director should consider this information, and may choose to respond in writing at the time of plan approval. In addition, a formal comment period will, of course, still take place after draft permit issuance.

EPA believes that the final rule strikes the appropriate balance between public

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involvement and the efficiency of the permitting process. The notice alerts the public of the impending trial burn, and of the opportunity to review the trial burn plan. Since EPA is not yet finalizing the other revisions to combustion permitting procedures proposed in § 270.74, trial burn plans for interim status combustors may not always be available for review with the rest of the application. Through today's notice requirement, the public will still have an opportunity to stay informed and to review the plan before the Director approves it.

EPA is currently considering and addressing the comments it received on the revised combustion permitting procedures. If those procedures are finalized and go into effect as proposed, including the provision requiring facilities to submit trial burn plans with permit applications, the public will have the opportunity to review and submit opinions or suggestions on the proposed trial burn plan at any time after the facility submits the application. At that time, EPA will have the opportunity to consider any such submissions in the process of reviewing the plan. Accordingly, EPA is not requiring a comment period for the planned trial burn plan approval in this rule, since such a requirement could likely be rendered unnecessary in the future.

V. State Authority

A. Applicability of Today's Rule in Authorized States

The overall effect of today's final rule is to increase the stringency of the RCRA permitting process. Therefore, States that are authorized to administer and enforce the RCRA program in lieu of EPA under section 3006 of RCRA are required to modify their programs by adopting equivalent requirements if necessary (see § 271.21(e)). States must submit their proposed program modifications to EPA for approval according to the schedules set forth in section V.B. below.

EPA is promulgating today's rule pursuant to statutory authority that existed prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984. As we explained in more detail in the proposed rule (59 FR 28703–04), EPA will implement §§ 124.31 (the pre-application meeting), 124.32 (the notice at application submittal), and 124.33 (the information repository) of this rule in authorized States only when EPA is processing permit applications for hazardous waste management units over which it has the basic permit issuance authority (e.g., BIFs in States not yet authorized to issue BIF permits). EPA has added language to §§ 124.31(a), 124.32(a), and 124.33(a) of the final rule to clarify that EPA will implement these sections only for such applications. For all other permit applications in authorized States, the requirements of these sections will not take effect until the States adopt and become authorized for this rule.[2]

Under this approach, EPA will be implementing §§ 124.31, 124.32, and 124.33 only where it is the basic permitting authority for the unit. EPA will, of course, implement these sections in non-authorized States. EPA will also implement these sections in authorized States when the permit application in question contains one or more hazardous waste management units for which the State is not authorized to issue RCRA permits and, thus, EPA has basic permit issuance authority. For example, EPA will implement today's rule when processing an application that includes a BIF if the State is not authorized to issue BIF permits. The facility with the BIF unit will be subject to all the applicable requirements in today's rule.

However, if the State is authorized to issue RCRA permits for all of the hazardous waste management units in an application, then EPA will not implement the requirements in §§ 124.31, 124.32, and 124.33. EPA will not implement those provisions in such a case, even though EPA may retain authority to issue a HSWA "rider" relating to the units in the application (e.g., authority to control air emissions from certain units under 40 CFR Part 264 Subparts AA, BB, and CC), or relating to the facility as a whole (e.g., corrective action authority under 40 CFR § 264.101). For example, EPA will not implement §§ 124.31, 124.32, and 124.33 when processing the corrective action portion of a tank storage permit application in an authorized State.

The Agency believes that this arrangement best implements the intent of today's rule. EPA designed the pre-application meeting, the notice at application submittal, and repository requirements to enhance communication and understanding between the public, the facility owners and operators, and the permitting agency. These requirements will foster a dialogue between facilities and communities with a focus on fundamental permitting issues. EPA believes that these interactions are properly part of the application process for the basic permit to conduct hazardous waste management operations, and not part of the process to evaluate and issue additional conditions through a HSWA rider. Accordingly, and consistent with the proposal, we have explicitly tied these requirements to the basic permit issuance authority for hazardous waste management units.

For most units in most States, the basic permit issuance authority rests with the State. Accordingly, EPA strongly urges authorized States to adopt this rule in an expeditious manner. Specifically, EPA encourages States that have not yet adopted the BIF rule to adopt the new public participation procedures concurrently with their BIF rules, rather than deferring adoption to the somewhat later deadline that applies to today's rule.

In adopting today's rule, authorized States should not include in their approved regulations the limiting language added to the final applicability sections of §§ 124.31, 124.32 and 124.33. This language includes both the limitation of the sections' applicability to "all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority" and the definition of the phrase "hazardous waste management units over which EPA has permit issuance authority." Obviously, the reference to EPA would be inappropriate in a State rule. Moreover, even if the State changed the language to refer to the State environmental agency, the provision would be unnecessary because authorized States process RCRA permit applications and administer RCRA permits only at facilities with units over which they have permit issuance authority. Accordingly, EPA recommends that States not include in their regulations limiting language similar to that in today's final rulemaking.

[2] EPA is not including similar limiting language, like the language in §§ 124.31, 124.32, and 124.33, in the other provisions of today's rule. With respect to § 270.14, the requirement to submit the summary of the pre-application meeting with the Part B permit application expressly references § 124.31. Accordingly, where the regulations do not require a meeting, it is clear that the applicant does not need to provide a meeting summary. With respect to the information repository requirement of § 270.30(m), EPA will follow the general principles applicable to the inclusion of the § 270.30 "boilerplate" provisions in HSWA portions of RCRA permits (*see, e.g., In re General Motors Corp.*, RCRA Appeal Nos. 90–24, 90–25, at 23 (EAB Nov. 6, 1992)). Finally, §§ 270.62 and 270.66 apply only where EPA has permit issuance authority over incinerators and BIFs, respectively, so there is no need to limit the applicability of the specific requirements added to these sections today.

B. Schedules and Requirements for Authorization

40 CFR 271.21(e) requires States with final authorization to modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadlines for State modifications are set out in § 271.21(e)(2) and depend upon the date of promulgation of final rules by EPA. Thus, because EPA has promulgated today's rule before June 30, 1996, States must modify their programs, if necessary, to adopt this rule before July 1, 1997 (or July 1, 1998 if a State statutory change is needed). States then must submit these program modifications to EPA according to the schedules in § 271.21(e)(4). Once EPA approves the modifications, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those we are proposing today. EPA has not assessed these State regulations against the final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of State law are not authorized to operate in lieu of today's RCRA requirements until the State submits them to EPA, who then evaluates them against the final EPA regulations. Of course, States may continue to administer and enforce their existing standards in the meantime.

In developing today's final rule, EPA considered impacts on existing State programs. The public participation requirements may be viewed as performance objectives the Agency wants States to meet in their own authorized programs. It is not EPA's intent to restrict States from conducting similar activities that accomplish the same objectives. Therefore, EPA intends to be flexible in reviewing State program submissions and evaluating them against the requirements for authorization.

VI. Permits Improvement Team

In July 1994, EPA created a group of EPA, State, Tribal and local government officials (Permits Improvement Team) to examine and propose improvements to EPA's permit programs. As part of its efforts, the Permits Improvement Team is examining ways to streamline the permitting process, exploring possible alternatives to individual permits, and evaluating ways to enhance public involvement in the permitting process. The Team plans to develop recommendations in each of these areas, discuss them with stakeholders, and submit them to Agency management for consideration.

The public participation requirements that EPA is promulgating in today's rule are appropriate for the RCRA permitting program as it currently exists. If, however, the nature of the RCRA permitting program changes as a result of the Permits Improvement Team's efforts, then the Agency may amend these procedures, or develop additional procedures. For example, the Team is considering recommending several alternatives to individual permits, such as establishing general permits for RCRA non-commercial storage and treatment units. The process of issuing general permits is very different from the current RCRA permitting process; thus, different approaches for involving the public may be appropriate.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the regulatory action.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this rule is not a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the RCRA Expanded Public Participation rule.

Based upon the economic impact analysis for today's rule, the Agency's best estimate is that the expanded public participation requirements would result in an incremental national annual cost of $180,000 to $500,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's rule in a report entitled "Economic Impact Analysis for the RCRA Expanded Public Participation Rule."

Cost Analysis. Today's rule includes several requirements that would result in direct costs to facilities submitting initial permit applications or submitting permit renewal applications that propose a significant change for facility operations (see § 124.31). The analysis estimates the costs to all affected facilities of (1) preparing a public notice announcing the intention to hold a public meeting; (2) disseminating the public notice in a local newspaper, over a broadcast medium, and by posting a sign; and (3) holding a public meeting and preparing a meeting summary.

In addition, the rule gives the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process or at any time during the active life of a facility.

The total cost per facility of the above requirements is approximately $5,000 to $14,000. Over the next ten years, EPA estimates that between 300 to 450 facilities will incur these costs. The resulting total national annual cost, assuming a discount rate of 7% is estimated to be between $180,000 to $500,000 per year.

Summary of Benefits. The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's rule produces environmental benefits that result from a more efficient permitting process. The following is an explanation of how each of the provisions of today's rule provides benefits.

The main benefit of the expanded public participation requirements of today's rule is to provide earlier opportunities for public involvement and expand public access to information throughout the permitting process and the operational lives of facilities. EPA believes that these requirements will give applicants and permitting agencies a better opportunity to address public concerns in making decisions about the facility and in subsequent permitting activities.

Providing the public with an expanded role in the permit process, by promoting community participation and

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input throughout the permitting process, will also help foster continued community involvement after facilities become permitted.

In addition, expanding public involvement opportunities could, in some cases, streamline the permitting process, since the public will raise issues, and the applicant can address the issues, at an earlier stage in the process. Currently, the public is not formally involved in the permitting process until the draft permit stage, which occurs after the permitting agency and the permit applicant have discussed crucial parts of the part B permit application. The Agency anticipates that the earlier participation provided in this rule will address the public concern that major permit decisions may be made before the public has the opportunity to get involved in the process. This earlier involvement may well reduce costs associated with delays, litigation, and other products of disputes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires agencies to perform an initial screening analysis to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, then the agency must consider regulatory alternatives to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

In developing today's rule for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. The provisions set forth the minimum requirements necessary to fulfill the public involvement objectives in this rule. Additional examples of activities that facilities may choose to conduct are provided in the preamble for the proposed rule (59 FR 28680) and will be included in a future guidance document, rather than in this rule. EPA's intent is to provide flexibility for a facility to determine, in view of the facility-specific circumstances, the appropriate level of public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource-intensive for a facility or for the local community. EPA has addressed this concern by clarifying, in the final rule, that the information repository is not mandatory for all facilities. The rule makes clear our intent that the Director reserve the use of the information repository option only for the limited number of facilities that raise high levels of public interest or whose communities have a special need for more access to information.

EPA conducted a small entity impact screening analysis for the proposed rule and determined that there were no small entities significantly impacted (see 59 FR 28680–28711, Section VI.C.). Because the public participation requirements have not increased since the proposal, EPA has determined that the final rule also does not significantly impact small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0149.

This collection of information is estimated to have a public reporting burden averaging 89.60 hours per response, and to require 34.60 hours per recordkeeper annually. This total includes time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Display of OMB Control Numbers. EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the UMRA), P.L. 104–4, EPA generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them about compliance with the regulatory requirements.

For the reasons explained in Section VI.A. above, EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Rather, EPA projects the total annual costs imposed by today's rule to be less than $500,000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the total costs of the rule are very low. These minimal costs will be incurred by owners and operators of hazardous waste treatment, storage and disposal facilities, which are principally private entities, and federal government agencies. Accordingly, this rule does not impose any requirements that might significantly or uniquely affect small governments.

E. Enhancing the Intergovernmental Partnership

Executive Order 12875. Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies with establishing meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste.

EPA has consulted with State officials to develop today's rule. EPA invited several States, representing various parts of the country, to participate in this rulemaking process. These States reviewed and provided feedback on the draft proposal over a period of eight months, and the draft final rule over a period of five months. In addition, these States participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the rulemaking effort.

EPA contacted additional States in an effort to receive their specific feedback on general permitting and public involvement techniques. EPA solicited State input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which sixteen State representatives participated. The State participants provided numerous helpful suggestions and ideas. In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in the process, State representatives made valuable contributions to the development of today's rule. EPA also received comments from several States following publication of the proposed rule. Many of the States' concerns are addressed by the final rule.

The Relationship of Today's Rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation and enforcement of the Subtitle C hazardous waste regulatory program on Indian lands. This responsibility includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement the public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of federally-recognized Tribes and commits EPA to a government-to-government relationship with the Tribes.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 124

Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

Dated: October 18, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
. . . . .	
PART 124—PROCEDURES FOR DECISIONMAKING	
124.31	2050–0149
124.32	2050–0149
124.33	2050–0149
PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM	
270.62	2050–0149
270.66	2050–0149
. . . . .	

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Subpart B is amended by adding text to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.

124.31 Pre-application public notice and meeting.

124.32 Public notice requirements at the application stage.

124.33 Information repository.

Subpart B—Specific Procedure Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary

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opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) *A newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *A visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) *A notice to the permitting agency.* The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with § 124.10(c)(1)(x).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under § 124.32(b) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

§ 124.33 Information repository.

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by revising the definition for "Facility mailing list" to read as follows:

§ 270.2 Definitions.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.14 is amended by adding paragraph (b)(22) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under § 124.31(c).

4. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR 124.33(b). The information repository will be governed by the provisions in 40 CFR 124.33(c) through (f).

5. Section 270.61(b)(5) introductory text is amended by removing the reference § 124.11(b) and adding in its place § 124.10(b).

* * * * *

6. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

7. Paragraph (d) of § 270.62 is revised as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(d) For the purpose of determining feasibility of compliance with the performance standards of § 264.343 of this chapter and of determining adequate operating conditions under § 264.345 of this chapter, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with § 270.19(b) and paragraphs (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in § 270.19(c). The Director must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (b)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under § 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(7) of this section, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

8. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the permitting agency contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

9. Paragraph (g) of § 270.66 is revised as follows:

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§ 270.62 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(g) *Interim status boilers and industrial furnaces.* For the purpose of determining feasibility of compliance with the performance standards of § 266.104 through 266.107 of this chapter and of determining adequate operating conditions under § 266.103 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 270.22(a)(6). The Director must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

[FR Doc. 95–29896 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SC–029–1–7177a; FRL–5316–8]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the South Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the State of South Carolina to issue Federally enforceable state construction and operating permits (FESCOP). On July 12, 1995, the State of South Carolina through the Department of Health and Environmental Control (DHEC) submitted a SIP revision which updates the procedural rules governing the issuance of air permits in South Carolina and fulfills the requirements necessary for a state FESCOP program to become Federally enforceable. In order to extend the Federal enforceability of South Carolina's FESCOP program to hazardous air pollutants (HAPs), EPA is also approving South Carolina's FESCOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that South Carolina may issue Federally enforceable construction and operating permits for HAPs.

DATES: This final rule will be effective February 11, 1996, unless adverse or critical comments are received by January 10, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4153. Reference file SC029.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the State of South Carolina through the DHEC submitted a SIP revision designed to allow South Carolina to issue FESCOP which conform to EPA requirements for Federal enforceability as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of state-issued minor source construction and operating permits. Construction and operating permits that are issued under the State's minor source construction and operating permit program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable construction and operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements. EPA notes that the State will continue to issue construction and operating permits that are not intended to be Federally enforceable under regulations found at South Carolina Air Pollution Control Regulation (SCAPCR) 61–62.1 Section II.A and Section II.B.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a state agency's minor source construction and operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's minor source construction and operating permit program.

The first criterion for a State's construction and operating permit program to become Federally enforceable is EPA's approval of the permit program into the SIP. On July 12, 1995, the State of South Carolina submitted through the DHEC a SIP revision designed to meet the five criteria for Federal enforceability. This action will approve these regulations into the South Carolina SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's construction and operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. SCAPCR 61–62.1 Section II imposes a legal obligation that construction and operating permit holders adhere to the terms and limitations of the construction or operating permit intended to be Federally enforceable. Every construction and operating permit must include all applicable State and Federal requirements. In addition, the permits must include monitoring, recordkeeping, efficiency levels for add-on air pollution control devices, and other provisions to show compliance with the terms and conditions of the construction/operating permit. Hence, the second criterion for Federal enforceability is met.

The third criterion for a state's construction and operating permit program to be Federally enforceable is that the state construction and operating permit program must require that all emissions limitations, controls, and other requirements imposed by the permit be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). SCAPCR 61–62.1 Section II G(8)(b)(vii) mandates that every construction and operating permit that a facility intends to be Federally enforceable must include all applicable State and Federal requirements. SIP requirements are applicable Federal requirements and therefore, will not be waived or made less stringent since they must be included in any permit intended to be Federally enforceable. Therefore, the third criterion for Federal enforceability is met.

The fourth criterion for a state's construction and operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. SCAPCR 61–62.1 Section II G(4)(f) includes a verbatim incorporation of this requirement. Also, with respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. Therefore, the fourth criterion for Federal enforceability is met.

The fifth criterion for a state's construction and operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. SCAPCR 61–62.1 Section II G(5)(a) requires that a permit intended to be Federally enforceable shall be provided to EPA and the public for a period of 30 days prior to its issuance. In addition, if the State determines that a public hearing is required the State will give notice of a public hearing 30 days before it occurs. SCAPCR 61–62.1 Section II G(4)(g) requires DHEC to provide to EPA on a timely basis a copy of each proposed (draft permit) or final permit intended to be Federally enforceable. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the South Carolina FESCOP program will not be Federally enforceable. Hence, the fifth criteria for Federal enforceability is met.

In addition to meeting the five criteria for issuance of Federally enforceable construction and operating permits, the State provides for the issuance of Federally enforceable general permits which may cover several air pollution sources in a source category with one permit. These regulations mirror the part 70 regulations found at 40 CFR 70.6(d) which govern the issuance of title V general permits.

In addition to requesting approval into the SIP, South Carolina also requested on July 12, 1995, approval of its FESCOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state construction and operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability are also appropriate for evaluating and approving FESCOP programs under section 112(l). The June 28, 1989, **Federal Register** document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESCOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESCOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FESCOP programs, will mirror those set forth in the June 28, 1989, **Federal Register** document. The EPA also anticipates that since FESCOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is

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approving South Carolina's FESCOP program so that South Carolina may issue Federally enforceable construction and operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes South Carolina's FESCOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, South Carolina's program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes South Carolina has demonstrated that it will provide for adequate resources to support the FESCOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source construction and operating permit program under which Federally enforceable construction and operating permits will be issued since South Carolina has administered a minor source construction and operating permit program for a number of years. EPA will monitor South Carolina's implementation of its FESCOP program to ensure that adequate resources are in fact available. EPA also believes that South Carolina's FESCOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in South Carolina's FESCOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes South Carolina's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g., for a source to have minor source potential to emit) was subject to public notice and prior EPA review.

Therefore, EPA will consider all such construction and operating permits which were issued in a manner consistent with both the State regulations and the five criteria as Federally enforceable upon the effective date of this action provided that any permits that the State wishes to make Federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with program requirements.

With South Carolina's addition of these provisions and EPA's approval of this revision into the SIP, South Carolina's FESCOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

Final Action

In this action, EPA is approving South Carolina's air permitting regulations as submitted on July 12, 1995. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 9, 1996 unless, within 30 days of its publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 9, 1996.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(40) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(40) The minor source operating permit program for South Carolina, submitted by the Department of Health and Environmental Control on July 12, 1995, and as part of the South Carolina SIP.

(i) Incorporation by reference.

(A) Regulation 61–62.1, Section I.3, 13, 19, 50, 72, and 73, Section II.F.2, Section II.F.2.e, Section II.G, and Section II.H of the South Carolina SIP which became effective on June 23, 1995.

(ii) Other material. None.

[FR Doc. 95–30110 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300406; FRL–4989–5]

RIN 2070–AB78

Carbofuran; Tolerance Extension for Canola

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate (common name "carbofuran") and its metabolites in or on canola at 1.0 part per million (ppm) for an additional 1-year period, to February 22, 1998. EPA is issuing this rule on its own initiative following a request from the U.S. Canola Association to allow the use of carbofuran on canola in the 1996 growing season.

EFFECTIVE DATE: This regulation becomes effective December 11, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300406], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300406] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 8, 1994 (59 FR 55605), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), it proposed a time-limited, regionally restricted tolerance for the residues of carbofuran and its metaboites in or on canola at 1.0 ppm. EPA proposed the tolerance because canola treated with carbofuran may not be processed in the U.S. and must be exported to Canada. A 2-year time-limited tolerance was established by a rule in the Federal Register of February 22, 1995 (60 FR 9781), with an expiration date of February 22, 1997. Registrations associated with this tolerance will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

In Federal Register of October 25, 1995 (60 FR 54685), EPA issued a notice of receipt of a request from the U.S. Canola Association asking for a 1-year extension of the canola tolerance. This extension would then allow the use of carbofuran on canola in the 1996 growing season. The use of carbofuran

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on canola will remain regionally restricted and time-limited because of a concern for avian toxicity. The use is extended for the 1996 growing season only. The Agency expects to register an alternative chemical in late 1995 for early season control of the flea beetle. This may be available in limited quantities for the 1996 growing season, and fully available thereafter.

The Interregional Research Project No. 4 (IR-4) plans to submit a petition for a permanent tolerance for carbofuran on canola in late 1995 or early 1996. However, because of the known hazard of carbofuran to birds and wildlife, EPA will not establish a permanent tolerance until the Agency has fully evaluated risks to wildlife.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule of November 8, 1994 (59 FR 55605). Based on that data and information considered, the Agency concludes that extension of the time-limited tolerance will continue to protect the public health. Therefore, the time-limited tolerance is extended for an additional 1-year period.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP-300406] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.254 [Amended]

2. In § 180.254 *Carbofuran; tolerances for residues*, by amending paragraph (c) in the introductory text by changing the date "February 22, 1997" to read "February 22, 1998".

[FR Doc. 95-30115 Filed 12-6-95; 4:03 pm]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BPD-850-F]

Medicare Program; Physician Self-Referral Regulations: Change in Date for Submission of Group Attestation Statement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule—Technical amendment.

SUMMARY: This final rule changes (delays) the date by which a group of physicians that wishes to be identified as a group practice for purposes of the physician self-referral regulations (42 CFR 411.350 through 411.361) must file a statement attesting that it meets certain specified conditions.

DATES: These regulations are effective on December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Snyder (attestation issues) (410) 786-5991, Betty Burrier (other physician referral issues) (410) 786-4649.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 1995, we published, at 60 FR 41914, a final rule with comment period entitled, "Medicare program; Physician Financial Relationships With, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services and Financial Relationship Reporting Requirements." That rule specified that, if a physician or a member of a physician's immediate family has a financial relationship with an entity, the physician may not make referrals to the entity for the furnishing of clinical laboratory services under the Medicare program except under specified circumstances. Under the rule, being designated as a group practice may enable a group of physicians to meet the conditions that would qualify it for an exception to the prohibition on referrals. Specifically, the rule required, at § 411.360 (a) and (b), that a group of physicians that intends to be identified as a group practice (as defined at § 411.351) submit a written statement to attest that, during the most recent 12-month period (calendar year, fiscal year, or immediately preceding 12-month period), 75 percent of the total patient care services of group practice members was furnished through the group, was billed under a billing number assigned to the group, and the amounts so received were treated as receipts of the group. In the case of a newly formed group practice, the group would submit a statement to attest that during the next calendar year, fiscal year, or 12-month period, it expects to meet the 75-percent standard. The rule further required, at § 411.360(e), that the attestation be submitted to the appropriate Medicare carrier by December 12, 1995.

II. Provisions of This Rule

This rule changes the above submittal date to require that the attestation statement be submitted no later than 60 days after receipt of instructions from the carrier.

We have been in the process of developing a method for groups to provide us with their attestation statements. However, we have come to realize that those individuals who would be completing the attestation statement need to be offered more guidance than we had originally anticipated providing in the attestation instructions. The attestation instructions will not be available early enough to give the respondents sufficient time to submit the statement by the deadline stated in the regulations. Therefore, this final rule revises § 411.360(e) to require that the attestation be submitted no later than 60 days after receipt of the attestation instructions from the carrier. In the interim, a group of physicians can regard itself as a group practice if it believes it meets the definition of group practice that was incorporated in our regulations, at § 411.351, by the August 14 rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the information collection requirement discussed below.

Section 411.360 contains a requirement concerning those groups of physicians attempting to be identified as a "group practice." It specifies that the group must attest that, in the aggregate, 75 percent of total patient care services furnished by all physician members are (or, in the case of a newly formed group, are expected to be) furnished through the group and billed under a billing number assigned to the group. This information collection requirement was established by the August 14, 1995 rule discussed earlier. As stated in the August 14, 1995 rule, public reporting burden for this collection of information is estimated to be 1 hour per response. Organizations and individuals were given an opportunity to comment on the information collection requirements at the time the August 14 rule was published. However, because this rule changes the date by which the attestation must be submitted, we are again soliciting public comment on this requirement and providing the 60-day notice. As also stated in the August 14 rule, a document will be published in the Federal Register after Office of Management and Budget approval is obtained.

Organizations and individuals desiring to submit comments on these information collection and recordkeeping requirements should mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-850-F, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21224-1850.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

As required by the Administrative Procedure Act, we generally provide notice and opportunity for comment on regulations and provide that final rules are not effective until 30 days after the date of publication unless we can find good cause for waiving the notice-and-comment procedure and delayed effective date as impracticable, unnecessary, or contrary to the public interest.

Unless the requirement at § 411.360(e) is revised before December 12, 1995, the regulations would contain a requirement that, through no fault of their own, groups of physicians would be unable to meet. Therefore, we find good cause to waive the notice-and-comment procedure as being contrary to the public interest. We also find good cause to waive the delay in effective date.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

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In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule merely makes a technical amendment to delay the due date for the submission, by a group of physicians that wishes to be identified as a "group practice," of a statement attesting that it meets certain conditions. For this reason, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

42 CFR part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATION ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.360, paragraph (e) is revised to read as follows:

§ 411.360 Group practice attestation.

* * * * *

(e) A group that intends to meet the definition of a group practice in order to qualify for an exception described in §§ 411.355 through 411.357, must submit the attestation required by paragraph (a) or paragraph (b)(1) of this section, as applicable, to its carrier no later than 60 days after receipt of the attestation instructions from its carrier.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 21, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 29, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–30064 Filed 12–8–95; 8:45 am]

BILLING CODE 4120–01–P

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42 CFR Part 424

[BPD–838–FC]

RIN 0938–AH19

Medicare Program; Additional Supplier Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment.

SUMMARY: This final rule with comment period conforms our regulations to changes made to section 1834 of the Social Security Act (the Act) by section 131 of the Social Security Act Amendments of 1994. Section 1834(j) of the Act requires that suppliers meet additional standards related to compliance with State and Federal licensure requirements, maintaining a physical facility on an appropriate site, and proof of appropriate liability insurance. This final rule retains existing regulatory standards and incorporates the three additional standards specifically cited from the statute.

DATES: Effective Date: This rule is effective January 1, 1996.

Comments: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 9, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–838–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–838–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Larry Bonander, (410) 786–4479.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Medicare Part B program is a voluntary program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and hospital health services not covered by Medicare Part A.

Medicare services are furnished by two types of entities, that is, providers and suppliers. The term "provider" as defined in our regulations at 42 CFR 400.202, means a hospital, a rural primary care hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare. A clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services, or a community mental health center with a similar agreement to furnish partial hospitalization services, is also considered a provider (see sections 1861(u) and 1866(e) of the Social Security Act (the Act)).

In general, suppliers are individuals or entities that furnish certain types of medical and other health services under part B. There are different definitions of the term supplier and specific regulations governing different types of suppliers. Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) encompasses the types of items included in the definition of "medical equipment and supplies" found at section 1834(j)(5) of the Act. In this rule, the term "DMEPOS supplier" refers to all individuals or entities that furnish these items.

For purposes of DMEPOS supplier standards, the term "supplier" is currently defined in § 424.57(a) as an entity or individual, including a physician or part A provider, which sells or rents part B covered items to Medicare beneficiaries, and which meets certain standards. We are retaining this definition for purposes of identifying those entities that must meet Medicare DMEPOS supplier standards in order to obtain a supplier number. Those individuals or entities that do not furnish DMEPOS items but only furnish other types of health care services, such as physicians' services or nurse practitioner services, would not be subject to these standards. Moreover, a supplier number is not necessary before Medicare payment can be made with respect to medical equipment and supplies furnished incident to a physician's service.

For Medicare purposes, DMEPOS suppliers either accept or do not accept assignment. If a DMEPOS supplier accepts assignment, it agrees to accept the Medicare approved amount as payment in full for the covered item. Generally, Medicare pays 80 percent of the approved amount and the beneficiary is responsible for applicable coinsurance and any unmet Medicare deductible amounts. DMEPOS suppliers that have voluntarily agreed to enter into an agreement to accept assignment for all items are referred to as "participating suppliers". Participating DMEPOS suppliers are listed in directories available to Medicare beneficiaries and receive part B payment directly from the Medicare program. Nonparticipating DMEPOS suppliers may accept assignment on a case-by-case basis, and for these claims, receive payment directly from Medicare. If a beneficiary receives a service from a nonparticipating DMEPOS supplier on a nonassigned basis, however, payment is made to the beneficiary who in turn pays the DMEPOS supplier. This rule applies to all DMEPOS suppliers for all items furnished to Medicare beneficiaries regardless of whether they accept Medicare assignment or are Medicare participating suppliers.

Durable Medical Equipment

Durable medical equipment (DME) is included in the definition of "medical and other health services" as indicated by section 1861(s)(6) of the Act. The term DME is defined at section 1861(n) of the Act. This definition, in part, excludes from coverage as DME, items furnished in skilled nursing facilities and hospitals. (Equipment furnished in those facilities is paid for as part of their routine or ancillary costs.) The term is also defined in § 414.202 as meaning "equipment, furnished by a supplier or a home health agency that—

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to an individual in the absence of an illness or injury; and

(4) Is appropriate for use in the home." Examples of DME include such items as blood glucose monitors, hospital beds, nebulizers, oxygen delivery systems, and wheelchairs.

Prosthetic Devices

Prosthetic devices are also included in the definition of "medical and other health services" under section 1861(s)(8) of the Act. They are defined in this section of the Act as "devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens". Other examples of prosthetic devices include cardiac pacemakers, cochlear implants, electrical continence aids, electrical nerve stimulators, and tracheostomy speaking valves.

Orthotics and Prosthetics

Section 1861(s)(9) of the Act provides for the coverage of "leg, arm, back, and neck braces, and artificial legs, arms, and eyes * * *" under the term "medical and other health services". As indicated by section 1834(h)(4)(C) of the Act, these items are often referred to as "orthotics and prosthetics."

Supplies

Section 1861(s)(5) includes "surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;" as one of the "medical and other health services" that is covered by Medicare. Other items that may be furnished by suppliers would include (among others):

(1) Prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and that are furnished within a certain time period after the date of the transplant procedure as noted at section 1861(s)(2)(J) of the Act.

(2) Extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes as listed at section 1861(s)(12) of the Act.

(3) Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies included at section 1861(s)(2)(F) of the Act.

(4) Oral drugs prescribed for use as an anticancer therapeutic agent as noted at section 1861(s)(2)(Q) of the Act.

(5) Self-administered erythropoietin (as described in section 1861(s)(2)(O) of the Act).

B. DMEPOS Supplier Standards

On June 18, 1992, we published a final rule with comment period (57 FR 27290) that established in § 424.57 certain business standards for entities seeking to qualify as Medicare suppliers of DMEPOS items. Currently, in order to obtain a Medicare billing number, a DMEPOS supplier is required to meet, and to certify that it meets, the following supplier standards:

1. Respond to orders received by filling those orders from its own inventory or inventory from other companies with which it has contracted to fill such orders; or fabricating or fitting items for sale from supplies purchased under a contract.

2. Be responsible for delivery of Medicare covered items to Medicare beneficiaries.

3. Honor all warranties express and implied under applicable State law.

4. Answer any questions or complaints a beneficiary has about the item or use of the item that was sold or rented to him or her, and refer beneficiaries with Medicare questions to the appropriate carrier.

5. Maintain and repair items rented to beneficiaries directly or through a service contract with another company.

6. Accept returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold) from beneficiaries.

7. Disclose consumer information to each beneficiary who rents or purchases items. This information consists of the supplier standards to which it must conform.

8. Comply with the disclosure provisions in § 420.206 (Disclosure of persons having ownership, financial, or control interest).

C. Obtaining a DMEPOS Supplier Number for Identification and Billing Purposes

Since November 1, 1993, every DMEPOS supplier that submits claims to a Durable Medical Equipment Regional Carrier (DMERC) is required to complete and return the Medicare

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Supplier Number Application (HCFA–192 Form) to the National Supplier Clearinghouse (NSC). The NSC distributes applications, verifies the data, issues numbers to approved suppliers, and maintains a national supplier file. The DMEPOS supplier must obtain a supplier number from the NSC before the DMERC will accept a claim. If the DMEPOS supplier attempts to file a claim before obtaining a supplier number the DMERC will reject the claim.

Under this final rule, in order to obtain a Medicare supplier number, a DMEPOS supplier will be required to meet, and to certify that it meets, the supplier standards found in the new § 424.57 as discussed in section II. of this rule. The DMEPOS supplier standards found in the new § 424.57 include the supplier standards that are in the existing § 424.57, and also the standards cited in section 1834(j)(1)(B)(ii) (I) through (III) of the Act.

The DMEPOS supplier's certification that supplier standards are met must be completed before a supplier number will be issued by the NSC. The DMEPOS supplier is accountable to complete the application accurately. Any deliberate misrepresentation or concealment of material information may subject the DMEPOS supplier to liability under civil and criminal laws. Every three years the DMEPOS supplier is required to recertify that it continues to meet the DMEPOS supplier standards.

II. Provisions of the Final Regulation

Section 131 of the Social Security Act Amendments of 1994 (SSA '94, Pub. L. 103–432, enacted on October 31, 1994), added a new subsection (j) to section 1834 of the Act. Section 1834(j)(1)(B)(i) of the Act requires that for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier must meet the current standards established in § 424.57. Section 1834(j)(1)(B)(ii) of the Act requires that for medical equipment and supplies furnished on or after January 1, 1996, the supplier must meet revised standards issued by the Secretary, after consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers.

As a result of SSA '94, we are establishing additional DMEPOS supplier standards by revising paragraph (c) of § 424.57 of the regulations. The revised standards include all of the standards that are in the existing § 424.57 and those standards specifically required by section 1834(j)(1)(B)(ii) (I) through (III) of the Act.

Beginning January 1, 1996, a supplier will be required to meet, and to certify that it meets, the existing standards discussed in section C. of this rule, and also the following additional standards. The supplier must—

(1) Comply with all applicable State and Federal licensure and regulatory requirements;

(2) Maintain a physical facility on an appropriate site; and

(3) Have proof of appropriate liability insurance.

We are issuing this final rule to incorporate those standards that Congress has explicitly identified and indicated should be used beginning January 1, 1996. In addition, our existing regulatory standards have already been subject to the notice and comment process, and both the public and the industry are familiar with those standards. Congress did not indicate any intention to relax those standards. Rather, we believe Congress' intent is to strengthen these standards to protect Medicare beneficiaries. This final rule will provide a base level of protection that will enable us to continue to process applications of individuals and entities who seek to become suppliers, and will provide a basis to revoke the numbers of suppliers who do not fulfill those standards according to our regulations at § 405.874.

The statute also gives the Secretary the authority to establish additional standards besides those included in the existing § 424.57 and those standards specifically cited in section 1834(j)(1)(B)(ii) (I) through (III). As directed by the statute, we have contacted or consulted with representatives of suppliers, carriers, and consumers concerning the need for additional supplier standards. These meetings were productive and we have received numerous comments that suggest that additional standards may be necessary in certain areas. We are currently considering these comments as we develop a proposed rule that would set forth additional substantive supplier standards. At this time, however, we are retaining our existing standards and only adding those standards specifically cited from section 1834(j) of the Act.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

The following sections of this document contain information collection requirements as described below:

The information collection requirements in § 424.57 ("Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers"), in paragraph (c)(7), arise as a result of requiring all DMEPOS suppliers to give a copy of the DMEPOS supplier standards to each Medicare beneficiary with whom they do business. The National Supplier Clearinghouse will supply a copy to each enrolled supplier which may be photocopied. We estimate the public reporting burden for this collection of information to average approximately 20 minutes per year, including photocopying and handing out the standards, which totals approximately 46,200 hours.

The information collection requirements in § 424.57(c)(8) cross refers to § 420.208 ("Disclosure of persons having ownership, financial, or control interest") concern the information necessary for disclosure of ownership and control and the identities of managing employees. The respondents who will provide the information will be the DMEPOS suppliers. Public reporting burden for this collection of information is estimated to be 140,000 hours. We estimate that 140,000 suppliers will complete the information which is estimated at one hour per supplier.

We have submitted a copy of this final rule with comment period to OMB for its review of the information collection requirements in § 424.57(c) (7) and (8). These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should send them to the Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850 and to the Office of Management and Budget official whose name appears in the **ADDRESSES** section of this preamble.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Prior Notice With Comment Period and of Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period of public comment prior to the effective date of the rule. This procedure can be waived, however, when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest. Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause to waive the delay.

In the case of this rule, we find good cause to implement this rule as a final rule because the delay involved in the prior notice and comment procedures for these DMEPOS supplier standards would be contrary to the public interest. In SSA '94, Congress enacted numerous substantive provisions designed to protect Medicare beneficiaries from abusive practices by DMEPOS suppliers. These provisions establish limitations on the information DMEPOS suppliers may include on a certificate of medical necessity (section 1834(j)(2)), establish restrictions on the methods DMEPOS suppliers may use to contact certain Medicare beneficiaries (section 1834(a)(17)), and limit the Medicare beneficiary's liability if the DMEPOS supplier does not comply with these statutory requirements (section 1834(j)(4)). Congress has also established significant penalties, including civil money penalties, if DMEPOS suppliers violate particular statutory provisions (section 1834(a)(18)(B)). Most importantly, for purposes of this regulation, Congress has indicated that beginning January 1, 1996, individuals or entities must meet at least three additional standards in order to obtain a Medicare supplier number.

When considered as a whole, these legislative changes demonstrate that Congress has serious concerns about the business practices employed by certain DMEPOS suppliers, and that Medicare beneficiaries require additional protection from these practices. It would, therefore, be contrary to the public interest to delay establishing the specific additional criteria that Congress has identified by adhering to the normal notice and comment procedures. In addition, as noted previously, the Secretary has already established certain regulatory standards for DMEPOS suppliers that were developed in accordance with the notice and comment procedures. These standards are familiar to the public and the regulated DMEPOS supplier community and provide a base level of protection for Medicare beneficiaries. Congress has not indicated any intention to reduce or eliminate these existing standards. It is necessary to maintain these existing regulatory standards in order to protect the public interest and to further our efforts to prevent fraud and abuse in the Medicare program through Operation Restore Trust.

As directed by statute, we have met with representatives of DMEPOS suppliers, the carriers, and consumers to consider whether additional standards are necessary. Although these meetings were productive, it was not possible to complete the full notice and comment procedure in order to have final rules in place before January 1, 1996. We are currently preparing a notice of proposed rulemaking reflecting our consultations with these entities and individuals and will publish that document in the near future. These final rules will be effective until altered by those regulations.

We believe that it would be contrary to public interest to delay implementation of the revised standards pending the process of publishing both a proposed rule and a final rule. The three new standards are required to be included in any new standards promulgated by the Secretary, and are not discretionary. Moreover, the existing DMEPOS standards had been promulgated in accordance with the notice and comment provisions of the Administrative Procedure Act. Therefore, we find good cause to waive proposed rulemaking for the revised requirements set forth in § 424.57 and to issue these regulations in final. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on the changes to § 424.57. For the above reasons, we also find good cause to waive the delay in effective date of this rule.

VI. Regulatory Impact Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers, physicians, and other suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 424 is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh).

2. Paragraph (c) of § 424.57 is revised to read as follows:

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§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers.

* * * * *

(c) Medicare does not issue a billing number to a supplier that submits claims for items listed in § 421.210(b) of this subchapter until that supplier meets, and certifies that it meets, the following standards. The supplier—

(1) In response to orders which it receives, fills those orders from its own inventory or inventory in other companies with which it has contracted to fill such orders or fabricates or fits items for sale from supplies it buys under a contract;

(2) Is responsible for delivery of Medicare covered items to Medicare beneficiaries;

(3) Honors all warranties express and implied under applicable State law;

(4) Answers any questions or complaints a beneficiary has about the item or use of the item that was sold or rented to him or her, and refers beneficiaries with Medicare questions to the appropriate carrier;

(5) Maintains and repairs directly or through a service contract with another company, items it has rented to beneficiaries;

(6) Accepts returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold) from beneficiaries;

(7) Discloses consumer information to each beneficiary with whom it does business which consists of the supplier standards to which it must conform;

(8) Complies with the disclosure provisions in § 420.206.

(9) Complies with all applicable State and Federal licensure and regulatory requirements;

(10) Maintains a physical facility on an appropriate site; and

(11) Has proof of appropriate liability insurance.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30068 Filed 12–8–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–272]

Organization and Delegation of Powers and Duties; Transfer of Great Lakes Pilotage Authority From the Coast Guard to the Saint Lawrence Seaway Development Corporation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, and the Secretary's authority to enter into, revise, or amend arrangements with Canada, are being transferred to the Saint Lawrence Seaway Development Corporation. This rule affirms the interim final rule amending the delegations to be in accordance with the changed responsibilities. Although a comment period for the Secretary's delegations is not required by the Administrative Procedure Act, the Department of Transportation requested public comment on the interim final rule because of public and Congressional interest in Great Lakes Pilotage. This final rule responds to the comments and is necessary to inform the public that the interim final rule has been affirmed.

DATES: This rule is effective on December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Steven R. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

REGULATORY HISTORY: On July 31, 1995, the Department of Transportation (Department) published an interim final rule with request for comments (60 FR 38871). The interim final rule contained language that would transfer Great Lakes Pilotage authority from the Coast Guard to the St. Lawrence Seaway Development Corporation (SLSDC). The comment period for the interim final rule ended on September 29, 1995, and was to become effective October 30, 1995. On October 27, 1995, the Department issued a rule suspending the effectiveness of the interim final rule. This final rule affirms the interim final rule and establishes a new effective date.

SUPPLEMENTARY INFORMATION: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, (the Act) is being transferred to the SLSDC. This rule amends the delegations and enabling regulations to be in accordance with the changed responsibilities. The functions that are being transferred are: (1) Investigation and prosecution of violations of the Act; (2) registration, qualification, and training of registered pilots; (3) association working rules and dispatching procedures; (4) pilot working conditions; (5) selection of pilots; (6) number of pilots; (7) availability of pilots; (8) number of pilotage pools; (9) articles of association; (10) auditing; and (11) ratemaking. The licensing of pilots and the investigation and prosecution of marine accidents and incidents are essential Coast Guard safety functions that are separate from the Act and Great Lakes Pilotage Regulations. These functions will remain with the Coast Guard.

Transfer of pilotage responsibilities to the SLSDC will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, the SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates. The lack of timely adjustments has been a subject of past pilot criticism.

The Secretary's authority to enter into, revise, or amend arrangements with Canada is being delegated to the SLSDC Administrator in coordination with the General Counsel of the Department. A Memorandum of Arrangements between the United States and Canada, last renegotiated in 1977, states that the Secretary and the Minister of Transport of Canada "will arrange for the establishment of regulations imposing identical rates, charges, and any other conditions or terms for services of pilots in the waters of the Great Lakes." * * *" In 1983, the Act was amended to provide that the "Secretary, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to * * * prescribe joint or identical rates and charges."

Discussion of Comments and Changes

The Department received comments from well over 100 commenters regarding the transfer of Great Lakes Pilotage oversight from the Coast Guard to the SLSDC. Comments on the interim final rule were received from Federal and State legislators, pilot associations and their employees, individual pilots, professional maritime organizations, shipping associations, port authorities, labor organizations, marine service companies, an environmental group, one State regulatory agency, and interested members of the public.

The interim final rule was supported in comments from Members of Congress, individual members of the public, port authorities, labor organizations, professional maritime organizations, pilot organizations, pilots, a pilot association and its employees, and marine service companies. Among the organizations supporting the rule is the owner and operator of one of the largest fleet of Great Lakes-dedicated deep sea ships; this organization is also one of the largest consumers of pilotage services in the St. Lawrence Seaway system. Also in support of the rule was the Association of Great Lakes Ports, representing the public port authorities of Green Bay, Milwaukee, Chicago, Burns Harbor, Detroit, Monroe, Toledo, Cleveland, Erie, Ogdensburg, Superior, and Oswego. Comments in support of the transfer of delegation also came from the International Longshoremen's Association (ILA) and individual ports, representing approximately 95,000 members and associated parties. A subgroup of the ILA, representing approximately 10,000 members, the International Organization of Masters, Mates and Pilots, is in favor of transferring delegation from the Coast Guard, but want it moved to an "Undersecretary" in the Department. Of the three Great Lakes pilot associations, District 2 favors the transfer to SLSDC. As of the close of the comment period, there were 12 pilots in District 2.

Those in favor gave the following reasons in support of the transfer of delegation: (1) the SLSDC is a smaller organization than the Coast Guard, and it can significantly reduce the amount of "red tape" associated with pilotage oversight; (2) the SLSDC is a civilian agency, and it can guarantee a civilian Director of Great Lakes Pilotage with better continuity than a military Director; (3) the SLSDC's focus is on the Great Lakes; (4) pilotage issues would receive more attention from the Administrator of the SLSDC and the Secretary of Transportation; and (5) the SLSDC's interaction with all elements of the Great Lakes community would give the pilots significant new contacts with their customer base.

The interim final rule was opposed in comments from Members of Congress and State legislators, pilot associations and their employees, individual pilots, professional maritime organizations, shipping associations, an environmental group, one State regulatory agency, and interested members of the public. Among the organizations opposed to the transfer are the American Pilots Association, Save The River, Inc., Lake Carriers' Association, and the Association of International Ship Masters, which represents about 3,000 to 5,000 members. Of the three Great Lakes pilot associations, Districts 1 and 3 oppose the transfer. As of the close of the comment period, there were 9 pilots in District 1 and 19 pilots in District 3.

Those objecting to the transfer of authority did so for the following reasons: (1) The SLSDC is primarily concerned with economic and financial issues, and, because of this focus, it will sacrifice safety by reducing American pilotage jobs and pay, increasing hours of service, or taking other actions that will have an impact on the working conditions of pilots and, therefore, the protection of the environment; (2) many of the functions being transferred to the SLSDC are related to both safety and economics; (3) the SLSDC does not have the knowledge to oversee pilotage or negotiate with Canadian officials regarding pilotage issues; (4) the Coast Guard's recent transfer of Great Lakes pilotage oversight to the newly-established National Maritime Center (NMC) reduces red tape, and establishes a civilian Director without the need for a transfer; (5) the fate of the SLSDC is in transition because of the DOT's restructuring plans, and this restructuring will remove the SLSDC and Great Lakes pilotage from government oversight; (6) there should have been more public input and more information published regarding the transfer of authority, including extensive public hearings; (7) the interim final rule violated the notice and comment requirements of the Administrative Procedure Act (APA); and (8) Congress intended that pilotage functions remain in the Coast Guard.

The Department agrees with those commenters who stated that many of the 11 functions being transferred to the SLSDC relate in part to safety as well as economics. While the interim final rule stated that those functions "are considered to have economic effects," the Department did not mean to imply that only economic functions could be transferred. The fact that there are safety ramifications involved, however, should not, and does not, disqualify SLSDC as the agency in which the authority should reside.

Some commenters opposing the rule pointed to a November 1994 Coast Guard memorandum approved by the Secretary; attached to the November 1994 memorandum is an options paper, which noted that both safety and economic functions are vested in the Director of Great Lakes Pilotage, and that the registration of pilots is a safety function. It also acknowledged that some economic issues such as travel and work-hour limits also have safety implications (e.g., their effect on fatigue). Four options for Departmental oversight of Great Lakes pilotage functions, each listing pros and cons were provided: (1) Separate safety and economic oversight; (2) retain in the Coast Guard; (3) transfer to the Office of the Secretary (OST); and (4) transfer to SLSDC/MARAD.

Included in this last option was the following statement: "A transfer to SLSDC or MARAD may have an adverse impact on safety because the mission of each agency is economic in nature and primarily associated with promotion of shipping." The memorandum that the Secretary approved recommended that the responsibility for safety aspects of Great Lakes pilotage remain with the Coast Guard, but that economic elements of pilotage oversight be transferred to another Department office or agency. It also recommended that a Great Lakes Pilotage Working Group (Working Group) be formed to develop this option.

The Working Group was formed and included representatives from OST, the Coast Guard, MARAD, and SLSDC. In developing the option that SLSDC should assume responsibility for the 11 Great Lakes pilotage functions, the Final Report of the Working Group was not inconsistent with the November 1994 memorandum, which had stated that a transfer to SLSDC may have an adverse impact on safety. The Final Report listed the functions to be transferred under the heading, "Economic Functions," and it referred to them as "essentially economic functions. * * *" The Department believes that the 11 functions are essentially, though not entirely, economic functions. The option in the November 1994 memorandum that contained the "adverse impact on safety" statement envisioned the transfer to SLSDC of not only the 11 "essentially economic" functions, but the following two safety functions as well: (1) The licensing of pilots and (2) the investigation and prosecution of marine accidents and incidents.

The Final Report judged these to be essential Coast Guard functions solely related to safety, and said they should remain with the Coast Guard. Similarly, the November 1994 memorandum intended that responsibility for only the safety aspects of Great Lakes pilotage

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remain with the Coast Guard, but not those "essentially economic" functions that also have safety ramifications. In fact, the Final Report stated that the Working Group believed that the transfer of the 11 functions out of the Coast Guard—to any other recipient, including the SLSDC—would not have a detrimental effect on safety.

Moreover, to the extent the functions involve safety, the Department has determined there is no problem transferring them to the SLSDC. As described below, the SLSDC has significant safety responsibilities, which it has performed successfully for over thirty-five years. An examination of the SLSDC's operations shows that it has an impeccable safety record with respect to its authority over one of the most difficult sections of the entire Great Lakes/Saint Lawrence Seaway System. Furthermore, in implementing its safety responsibilities, there is no evidence that the SLSDC has ever sacrificed safety considerations for economic gain.

The SLSDC operates two locks, a fleet of vessels, maintains navigational aids, and carries out safety inspections of vessels. In the St. Lawrence Seaway System, the SLSDC works closely with the Coast Guard, and performs the same Captain-of-the-Port functions in the principal operating areas of the Seaway System that the Coast Guard performs elsewhere. In the Port and Tanker Safety Act of 1978, Congress expressly reserved that authority to the SLSDC.

In addition, the SLSDC has a comprehensive emergency response plan designed to protect the environment on the St. Lawrence River and adjacent areas. The plan directly involves U.S. and Canadian Federal, state, and local governments, private organizations, and other interested parties, including pilots. The plan is in place, is tested yearly, and has been used in actual circumstances twice with complete success. This year's drill included participation by Federal, state, and local agencies, in addition to representatives from U.S. and Canadian pilot organizations.

The SLSDC also has ample, long-standing safety law enforcement experience. It is responsible for administration of the Seaway Regulations and Rules (33 CFR Part 401) regarding the clearance, readiness, and operating requirements for safe passage of vessels transiting the St. Lawrence Seaway. It operates the Seaway under these regulations, which are jointly promulgated and enforced with the Canadian Saint Lawrence Seaway Authority and which contain many vessel safety rules. In addition, its Captain-of-the-Port responsibility carries with it enforcement authority, including the ability to fine for violations, which the SLSDC exercises under subpart B of part 401.

The SLSDC not only has this independent, significant law enforcement experience, but under an agreement with the Coast Guard, the SLSDC coordinates the exercise of its authority with related enforcement activities of the Coast Guard, including those related to pilotage. Moreover, the SLSDC's personnel carry out many of the Coast Guard inspection and related functions for the Coast Guard, including inspections performed by the SLSDC in Canadian waters before vessels transit the Seaway. In this regard, the SLSDC has the added advantages of long-standing, joint enforcement with Canada of laws and regulations relative to the Seaway, including safety laws and regulations, and ready, cooperative access to Canadian waters for joint as well as U.S. law enforcement purposes.

Several commenters cited the SLSDC's handling of an incident involving the M/T CONCORDE as a demonstration of the SLSDC's concern for economics over safety, alleging that the SLSDC permitted a master who was drunk to pilot a vessel alone. This refers to an incident in which it was reported to U.S. and Canadian authorities that the master of the M/T CONCORDE may have been intoxicated. Upon learning of these allegations, the St. Lawrence Seaway Pilots Association (SLSPA) requested permission to assign two pilots to the vessel. In response to the allegations of intoxication, the M/T CONCORDE was boarded by the Coast Guard and the master was given a breathalyzer test. The master not only passed the breathalyzer test, but he showed no signs of misuse of alcohol. As a result of the U.S. Coast Guard boarding, the Coast Guard, the SLSDC, and the Canadian Great Lakes Pilotage Authority cleared the M/T CONCORDE to proceed on its voyage without restriction with one pilot. Accordingly, the Department finds no basis for the position of those commenters who described this incident as an example of the SLSDC favoring economics over safety. Rather, the Department believes that it is an excellent example of coordination and cooperation among the Coast Guard, SLSDC, and Canadian authorities regarding safety issues that affect the entire St. Lawrence Seaway.

Some commenters objected to the interim final rule's characterization that it was issued in response to "pilot concerns;" they argued instead that it was issued in response to outside political pressure. Some commenters stated that the transfer of authority is supported by only one Great Lakes Registered pilot, and is opposed by all three Great Lakes pilot associations.

The Department's examination of a possible transfer of Great Lakes pilotage authority was the result of a request from a delegation of interested persons, which included the President of a Great Lakes Pilot Association (also Vice President of the American Pilots Association for the Great Lakes), and President of the American Pilots Association. These organizations expressed concerns on behalf of their members about the lengthy ratemaking process and the lack of prompt attention given to pilotage issues. The Department continued its examination and discovered that similar concerns were expressed by many other interested parties throughout the Great Lakes. Commenters who believe the transfer of authority is not supported by any pilots are incorrect. While two Great Lakes Pilot Associations are opposed to the transfer, one Great Lakes Pilot Association supports the transfer. Letters of support for the transfer were also received from individual Great Lakes Registered Pilots, and from many other interested Great Lakes parties. The Department did not issue the interim final rule in response to Congressional pressure. Although the Department has received some Congressional support for the transfer, it has also received letters from individual Members of Congress expressing misgivings.

Some commenters contended that the SLSDC lacks the knowledge or experience to negotiate issues with Canada. The Department disagrees. The SLSDC has over thirty-five years of experience in direct negotiations with the government of Canada over the Joint Tariff of Tolls, Joint Seaway Operating Regulations, and other matters of mutual concern. Moreover, the SLSDC has daily contact and coordination of activities and implementation of policies with the Great Lakes Pilotage Authority, Ltd. and the Canadian Seaway authority. In this respect, the SLSDC is experienced in, and well suited to, the role of negotiator on pilotage matters with the Canadian government.

Some commenters stated that out of the 12 or so reviewers of rate adjustments, the SLSDC is the one agency that consistently opposed rate adjustments and was responsible for slowing down or halting the process. The Department, however, has found the opposite to be true. The Department has checked its records for the last seven years, the time during which a rulemaking data base has been kept, and, in that time period, the SLSDC has not opposed rate adjustments or been responsible for slowing down or halting the process.

Some commenters declared that only the Coast Guard has pilotage expertise such as the experience to determine who is qualified to be a registered pilot. We are aware, too, that the Inspector General of the Department has sent a letter to Congressman David Obey, claiming that the SLSDC has no experience or expertise in many, if not all, of the responsibilities to be transferred. (The Inspector General also has raised this concern in the Department's coordination of the interim final rule.) The pilotage expertise resides in the Coast Guard's Great Lakes Pilotage Staff (the Staff), which is comprised of the Director of Great Lakes Pilotage, a Transportation Specialist who serves as the Assistant Director, and an Economist; the Staff and, thus, the expertise will transfer in its entirety to the SLSDC when the functions are transferred. Those who are executing the Great Lakes pilotage program now, including enforcement of the Act, will continue to do so after the transfer.

The Staff will continue to operate in the SLSDC in the same manner in which it has operated in the Coast Guard. In preparation for the upcoming winter meetings of the three pilot associations, the Director of Great Lakes Pilotage has written to each of the association presidents to make them aware of pilotage issues that he would like to discuss. In each letter, the Director stated that he would like to reach an agreement on how the process can be improved. "Identifying the areas where we need better procedures is beneficial to the system and the goals of safety. In the spirit of partnership, I hope we can improve the process together." These same goals are transferring to the SLSDC with the Director.

Moreover, since shortly before its transfer to the NMC in July 1995, the Staff has performed its Great Lakes pilotage responsibilities without receiving any specialized Coast Guard support to enable the Staff to perform these responsibilities better. It is not clear, therefore, why some believe that the expertise will suddenly evaporate when the Staff is transferred to the SLSDC. Furthermore, the SLSDC itself has developed an expertise in pilotage issues; it has directed vessel traffic in the Seaway system for decades and in so doing has substantial experience in dealing with pilots and pilotage matters. To the extent the Coast Guard has some special expertise necessary for a particular matter, the Staff can obtain Coast Guard support regardless of where the Staff is located.

Some commenters questioned Department statements that the current Director of Great Lakes Pilotage has ten years of experience in Great Lakes Pilotage issues. The person who is the current Director became the Assistant Chief of the Coast Guard's Merchant Vessel Personnel Division in January 1985. As Assistant Chief, the Coast Guard's Pilotage Staff reported to him, and he was involved in every major pilotage policy decision. Since the function was moved from Cleveland to Washington, DC in 1990, he has been the alternate Director of Great Lakes Pilotage, that is, the person acting as Director in the latter's absence. In 1994, he assumed his present duties as Director of Great Lakes Pilotage. In addition, his career includes over 20 years of experience as a merchant marine officer, an officer in charge of U.S. naval vessels, navigation and seamanship instructor at the U.S. Naval Academy, and head of the Navigation Department at the Maritime Institute of Technology and Graduate Studies, an advanced school operated by the International Organization of Masters, Mates and Pilots. The Assistant Chief of the Pilotage staff also has many years of experience as a merchant marine officer, has commanded a vessel, and is a licensed first class pilot on the Great Lakes.

Some commenters asked what the relationship would be between the Coast Guard and the SLSDC after the transfer of delegation of pilotage functions. The Department expects the Coast Guard and SLSDC to continue their current strong relationship of cooperation and coordination. Concerning pilotage on the Great Lakes, the Coast Guard will continue to perform the functions of evaluating, testing, grading, issuing and upgrading pilot licenses, investigating accidents and other infractions, and suspending or revoking pilot licenses. The SLSDC will perform all other functions related to Great Lakes registered pilots. The Coast Guard and SLSDC will enter into a Memorandum of Agreement (MOA) to ensure coordination and cooperation between the parties.

One commenter argued that giving SLSDC the authority to enter into, revise, or amend arrangements with Canada with respect to pilotage rates, which until now has been reserved to the Secretary, may cost U.S. jobs as a bargaining tool to extract concessions from Canada on Seaway tolls. The Department disagrees. The transfer of the delegation of authority does not affect pilotage jobs, pay, or working conditions, increase hours of service, or impact adversely on safety or the environment. There is no connection between negotiations with Canada on Seaway tolls and on pilotage rates. Pilotage rates are now set in accordance with the published methodology; because rules setting pilotage rates generally are significant, Department policy requires that they be coordinated with and cleared through several Department offices and agencies before negotiations with Canada begin. Those negotiations were routinely conducted in the past by Coast Guard staff in Cleveland with no involvement by the Office of the Secretary or any of the other Department agencies. Under this delegation, the Secretary's authority to enter into, revise, or amend arrangements with Canada must be coordinated by SLSDC with the General Counsel of the Department, in the Office of the Secretary.

That same commenter averred that the May 1972 Great Lakes Pilotage Review by the Department said that the significant policy leadership and review function must be retained by the Office of the Secretary. Policy review and oversight of pilotage is so retained. The Secretary is transferring one of his responsibilities from one agency that reports to him (the Coast Guard) to another (the SLSDC). He is not abrogating his responsibilities. The pilotage functions and personnel positions created to carry them out are designed to ensure that those responsibilities will be fully met. The individuals who occupy the positions must meet the requirements and qualifications demanded of those positions, irrespective of the agency in which they reside.

The same commenter claimed that it is the layers of review by the Office of the Secretary (OST), not the size of the Coast Guard or negotiations with Canada, that have created the less than timely attention to pilotage issues and less than timely rate adjustments. Again, the Department disagrees. Coordination by OST allows review among interested Department elements. This review is necessary in the Department's decision-making process. The Department's experience shows that OST review has not caused unreasonable delay. Furthermore, there are no "layers of review;" review by OST and other interested elements is accomplished in one step and the document is then sent to the Secretary for approval.

On the other hand, there can be multiple layers of review in Department agencies before a document is submitted to OST for coordination. Although approvals can take varying amounts of

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time, the Department has no doubt that the SLSDC, with a short review process, will be able to give more timely attention to pilotage issues and make more timely rate adjustments than would the Coast Guard, including the NMC. In addition, a transfer to the SLSDC would guarantee that there would always be a civilian Director of Great Lakes Pilotage.

Some commenters believe that the transfer should not take place during the busiest part of the shipping season, *i.e.*, November and December. These commenters indicated that a transfer at this time will disrupt pilotage operations. They cited the Final Report, which says that a target date for the transfer of March 31 is believed to be necessary to minimize disruption to the operation of the pilotage pools. If the Working Group believed that there would have been disruption had the transfer taken place in April, the commenters argued, how could there not be disruption to the operation of the pilotage pools during the height of the shipping season?

The Department expects no disruption to pilotage operations, notwithstanding the position of the Working Group. The transfer does not in any way represent a shift in pilotage policies or operations. It only affects the internal delegation of responsibilities within the Department. There should be no negative effect on pilotage service. This rule will not change the pilotage rules and the manner in which they are administered, make the pilots employees of the SLSDC, or change the status or organizational structure under which the pilots now function. As it is with the Coast Guard, pilotage safety will remain the paramount concern of the SLSDC and will not become secondary to economic considerations. Since the Great Lakes Pilotage Staff is transferring with the functions, the only expected change is that the phone numbers for the Great Lakes Pilotage Staff will change. The new phone numbers will be widely distributed, and will not cause a disruption to pilotage operations.

The DOT restructuring, if it occurs, will not remove Great Lakes pilotage from Federal government oversight. The Administrator will always exercise authority over Great Lakes pilotage under a delegation from the Secretary of Transportation and his successors. The transfer would not compromise the Secretary's ability to intervene in pilotage issues should that become necessary. Even if the SLSDC were to become separate from the Department, the legislation proposed by the Administration to accomplish this would provide for continued delegation of Secretarial authority to the SLSDC. The SLSDC would also remain a wholly-owned Federal government agency. The proposed legislation, in pertinent part, reads as follows:

(b) Section 1 of the Act of May 13, 1954, Public Law 358 (33 U.S.C. 981), as amended, is amended to read as follows:

"(a) There is hereby created a body corporate to be known as the Saint Lawrence Seaway Development Corporation (hereinafter referred to as the 'Corporation').

"(b) The Secretary of Transportation may delegate his or her authority to the Administrator as the Secretary deems appropriate or as directed by law."

Thus the Secretary's ability to intervene would continue. If the legislation is enacted, the manner in which the Secretary's oversight of Great Lakes pilotage would be carried out would be set forth in a document to be published in the **Federal Register**.

In a "voice mail" communication from counsel for the SLSPA to an OST staff attorney, an additional argument against the transfer was posed. A memorandum concerning this communication has been entered into the docket. SLSPA's counsel points out that the Great Lakes Pilotage Act is set forth in section 46 of the United States Code (U.S.C.), which contains the following definition at 46 U.S.C. 2101:

(34) "Secretary", except in part H, means the head of the department in which the Coast Guard is operating.

Since Great Lakes Pilotage is contained in Part F, this definition of "Secretary" pertains to it. The SLSPA maintains that whatever Congress intended to reside within the Coast Guard is contained within Title 46 under this definition and that, therefore, this transfer to the SLSDC would be in contravention of Congressional intent.

Three Members of Congress submitted to the Secretary the House Report for the legislation that defines "Secretary." The report states: "'Section 2101(34) defines 'Secretary' so that maritime safety and seamen's welfare jurisdiction remains within the Coast Guard at all times." They also refer to 46 U.S.C. 2104(a), which states that "[t]he Secretary may delegate the duties and powers conferred by this subtitle [which includes Great Lakes pilotage] to any officer, employer, or member of the Coast Guard * * *." The Congressmen conclude that the House Report and the statutory section concerning delegation "appear to confirm Congress's determination that [Great Lakes pilotage functions] reside with the Coast Guard."

The definition of "Secretary," which is clear on its face, does not change with the transfer of pilotage authority to the SLSDC. The Secretary of Transportation is still the head of the Department in which the Coast Guard is operating. Upon declaration of war or when the President directs, the Coast Guard would operate in the Navy (14 U.S.C. 3). In that event, the Secretary of Defense would be the head of the Department in which the Coast Guard is operating. (*N.B.*: even during the Vietnam War and the Persian Gulf War, the Coast Guard remained part of the Department of Transportation.) The House Report explanation is not the statutory definition. Even if it were the statutory definition, it says that maritime safety is to remain in the Coast Guard at all times. While many of the 11 functions to be transferred have safety ramifications, they are still essentially economic. The House Report language did not address where functions should reside that fall outside the parameters of maritime safety and seamen's welfare jurisdiction.

That Congress did not intend that all statutory authority that comes under the above-cited definition of Secretary reside in the Coast Guard is demonstrated by the Port and Tanker Safety Act of 1978. That Act contains the following definition at 33 U.S.C. 1222:

(2) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

Nevertheless, that Act also states that certain authority granted to the Secretary shall not be delegated to any agency other than the Saint Lawrence Seaway Development Corporation (33 USC 1239). Thus, Congress envisioned a situation in which authority residing within the "Department in which the Coast Guard is operating" not only could be delegated to an agency within the Department of Transportation that was not the Coast Guard, but must not be delegated to the Coast Guard. Moreover, by this language, Congress has also demonstrated that, when it intends for authority to remain within one agency and not be delegated elsewhere, it will so state.

Furthermore, had Congress desired that the Great Lakes pilotage function remain solely within the Coast Guard, it could have given the authority directly to the Commandant instead of the Secretary. By contrast, in other circumstances, Congress has given authority, not first to the Secretary to be delegated, but directly to the Federal Aviation Administrator and to the Federal Highway Administrator. For example, the Intermodal Surface Transportation Efficiency Act of 1991

(section 6016) directs the Federal Highway Administrator to conduct certain studies, while legislation concerning nationality and ownership of aircraft as well as safety regulation of civil aeronautics gives authority to the Federal Aviation Administrator (49 U.S.C. 44101 *et seq.*; 49 U.S.C. 44701 through 44717, 44720 through 44722). (*N.B.*: Within the safety regulation chapter, three sections, 49 U.S.C. 44718, 44719, and 44723, set forth requirements for the Secretary.)

Moreover, the Department of Transportation Act (Public Law 89–670, 1966) (DOT Act), which created the Department, specifically authorized the Federal Railroad Administrator and the Federal Highway Administrator to carry out certain functions, powers, and duties of the Secretary (section 6(f)(3)(A) and (3)(B)). Unlike 46 U.S.C. 2104(a), which states that the Secretary "may" delegate duties and powers to any officer, employee, or member of the Coast Guard, the DOT Act stated that the Federal Railroad and Highway Administrators "shall" carry out the functions, duties, and powers of the Secretary. In addition, the DOT Act did not authorize the Commandant of the Coast Guard to carry out the functions, powers, and duties of the Secretary regarding Great Lakes pilotage. On the contrary, the DOT Act, which transferred the Coast Guard to the Department, also transferred to, and vested in the Secretary, the functions, powers, and duties relating to the Coast Guard (section 6(b)(1)).

In a formal comment to the docket, the SLSPA also argued that the interim final rule violated the notice and comment requirements of the APA. It asserted that the statutory exemption from the notice and comment requirements does not extend to "any action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority." [citation omitted.] The SLSPA concluded that since this rule affects timeliness and, therefore, substantially affects the rights of pilots, the exemption does not apply. It pointed to the timely adjustments to pilotage rates as demonstrating the effect of the rule on the rights of pilots. It contended that the Department failed to provide a concise general statement of its basis and purpose, as required by the APA, and that no explanation was offered for overturning a regulation that "has been in place since DOT was established in 1967."

The Department disagrees. If the Department were to accept SLSPA's argument that, since the rule affects timeliness and, therefore, substantially affects the rights of pilots, all delegations of authority would have to be published for notice and comment. One of the paramount reasons for delegations is to reduce delays by eliminating needless work at the top levels. All delegations, therefore, can affect timeliness. Moreover, requesting public comment on delegations of authority is not required by the APA. 5 U.S.C. 553(b)(3)(A) states that the notice and comment requirements of the APA do not apply to rules of agency organization, procedure, or practice.

The Department, therefore, disagrees with SLSPA's contention that notice and comment are required for this delegation. In its discretion, however, the Department did offer a 60-day comment period; it even suspended the effectiveness of the interim final rule to allow the Department additional time to consider all the issues raised in the comments.

The Department disagrees with the SLSPA's APA argument that the Department did not provide a concise general statement of its basis and purpose and did not offer an explanation for overturning a regulation that had been in place since the Department was established. Putting aside the question of whether a concise general statement is even required, the Department provided one. The interim final rule stated that the transfer of responsibilities from the Coast Guard to the SLSDC "will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates." This statement contains the Department's basis and purpose for the change. A small SLSDC, when compared with the Coast Guard in general or even the NMC within the Coast Guard, will be able to give more timely attention to pilotage issues and make more timely rate adjustments.

Many commenters opposed to the transfer claimed that they were given no opportunity to have input into the process and therefore the interim final rule is invalid. The Department disagrees. As we have demonstrated earlier, a comment period is not required by the APA. Nevertheless, because of public and Congressional interest in Great Lakes pilotage, the Department took the extraordinary step of providing an opportunity for public comment on this rule and provided 60 days for the receipt of public comment. In accordance with its published procedures, the Department even accepted comments after the 60 days had elapsed. The Department, thus, has provided ample opportunity for public input and has thoroughly considered that input before issuing this rule.

Several commenters, however, requested that the Department hold a public hearing. Even with respect to rulemakings for which notice and comment are required, which this rulemaking is not, the APA gives the agency discretion to hold a public hearing or not. "[T]he agency shall give interested persons an opportunity to participate in the rulemaking . . . with or without the opportunity for oral presentation." (5 U.S.C. 553(c).). By allowing interested persons to submit written views, the Department has provided the public with a greater opportunity to participate in a rule of agency organization, procedure, or practice than the APA requires. Moreover, in addition to providing the 60-day comment period, representatives from the Great Lakes Pilotage Staff and the SLSDC participated in a February 9, 1995, meeting in Chicago, organized by the Great Lakes Shipping Association, which represents vessel owners engaged in the international Great Lakes trades. Also in attendance were representatives from the three Great Lakes pilot associations and a large number of other industry representatives. At that meeting, the Staff and SLSDC representatives responded to questions from pilots and others for several hours concerning the possibility of a transfer.

In addition, during the winter of 1994–95, the Staff also met with the three pilot associations and presented to each of them a draft of the "St. Lawrence Seaway Development Corporation Pilotage Concept," which included the SLSDC's 1995 plan. The plan comprised the SLSDC's 5-year performance goals, its 3-to-5-year business focus, and its 5-to-15-year strategic goals. The document emphasized the importance of the pilotage program and the SLSDC's role in the program, when it said, "[t]he mission of the Great Lakes Pilotage Program is to protect the public, the environment, and the economic interests of foreign trade shippers by assuring that their vessels are safely navigated by competent and qualified U.S. registered pilots." Although the Staff orally requested that the associations provide reaction to this document, none was forthcoming.

In light of the many opportunities that the pilots have had to voice their opinions about the transfer and the exhaustive public record before the

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Department, the Department concludes that holding a public hearing would not result in the presentation of additional or different information from what has already been submitted.

The Department stated in the interim final rule that it would consider any new matters presented and make changes if warranted. The Department has carefully considered all comments presented and concludes that no revisions to the interim final rule are warranted. Accordingly, the Department affirms, without change, the interim final rule.

A final rule redesignating those portions of the Coast Guard's Great Lakes Pilotage Regulations that are necessary for SLSDC to carry out its responsibilities under the Act will be published in the Federal Register shortly.

List of Subjects in 46 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

Accordingly, 49 CFR part 1 is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.46 [Removed]

2. Section 1.46(a) is removed and reserved.

3. Section 1.52 is amended by adding a new paragraphs (d) and (e) to read as follows:

§ 1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

* * * * *

(d) Carry out the Great Lakes Pilotage Act of 1960, as amended, (46 U.S.C. 9301 *et seq.*).

(e) Under the 1977 Memorandum of Arrangements with Canada and the Great Lakes Pilotage Act of 1960, as amended in 1983 (46 U.S.C. 9305), enter into, revise, or amend arrangements with Canada in coordination with the General Counsel.

Issued at Washington, DC, this 5th day of December 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–30081 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–135; Amdt. 192–74A]

RIN 2137–AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition to reconsider the rule that requires operators of gas service lines who do not maintain certain buried customer piping to notify customers of the need for maintenance. The request to change the rule to clarify the exclusion of customer branch lines is granted because some operators are apparently misconstruing the rule to cover these lines. The request to change the rule to specify operator repair as a maintenance option is granted because a literal reading of the rule's definition of maintenance excludes this legitimate option.

EFFECTIVE DATE: January 10, 1996.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392.

SUPPLEMENTARY INFORMATION: As directed by the 102d Congress (49 U.S.C. 60113(a)), RSPA issued a rule (49 CFR 192.16) that requires certain operators of gas service lines to notify their customers of the need to maintain buried customer piping (60 FR 41828, August 14, 1995). Operators subject to this rule are identified in the first paragraph of the rule, as follows:

§ 192.16 Customer Notification

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

In a petition dated September 8, 1995, the American Gas Association (AGA) asked RSPA to reconsider this notification rule. AGA contends § 192.16(a) is deficient in two respects. First, AGA is concerned that § 192.16(a) does not indicate that branch lines, serving secondary equipment such as yard lanterns or pool heaters, are not part of the customer's buried piping that operators must maintain to qualify for exclusion from the rule. In fact, as AGA construes the rule, to avoid sending notifications operators would have to maintain most of these branch lines. For clarity, AGA recommends amending § 192.16(a) to refer to "buried gas supply piping" instead of "buried piping."

The amount of customer piping an operator must maintain to avoid sending customer notifications was a significant issue in this rulemaking proceeding. Of particular concern was buried piping that branches from the customer's primary gas supply line to serve secondary equipment, such as a yard lantern or pool heater. We addressed this issue in the final rule document as follows:

> [w]e intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§ 192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. (60 FR 41822)

Given this history of § 192.16(a) and the plain meaning of the rule, we do not agree with AGA that the rule can reasonably be construed to apply to most branch lines serving yard lanterns or pool heaters. As AGA acknowledges in its petition, such lines typically do not enter buildings. Buried customer piping that does not enter a building is covered only if it serves the customer's principal gas utilization equipment. And by their very nature, branch lines do not serve principal gas utilization equipment.

Nevertheless, the existence of the AGA petition indicates that some service line operators may be misconstruing the rule. Since we want to make the rule as easy as possible for everyone to understand, we have amended § 192.16(a) to emphatically state that the customer's buried piping does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. We did not feel AGA's suggestion to modify "piping" with "gas supply" would necessarily clarify the rule because all customer piping provides a supply of gas.

Next, AGA argues that the definition of "maintain" is too restrictive because it does not mention repair as a method of remedying unsafe customer piping. As a result, AGA suggests § 192.16(a) could be construed to require operators to send customer notifications even if they repair unsafe conditions on customer piping. AGA recommends amending the definition of "maintain" to include repair as a remedial measure.

We believe AGA's recommendation has merit. Operators may indeed choose to repair some unsafe conditions on customer piping without shutting off the gas or advising the customer of the problem. Such repair would be wholly consistent with the purpose of § 192.16—to promote the safety of customer piping—and would exceed the required minimum level of maintenance. Thus, operator repair should not be the basis for a charge of noncompliance with the rule. To preclude this possibility and clarify the rule, we have amended § 192.16(a) as AGA recommends in the second part of its petition.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an evaluation of the costs and benefits of the rule revised by this regulatory action is available for review in the docket.

Executive Order 12612

We analyzed this final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. As explained in Amendment 192–74 (60 FR 41828, August 14, 1995), most small entities do not come under the rule revised by this regulatory action, and those small entities that do may exercise very low cost means of compliance.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.16(a) is revised to read as follows:

§ 192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "customer's buried piping" does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

* * * * *

Issued in Washington, DC, on December 4, 1995.

Ana Sol Gutiérrez,

Deputy Administrator.

[FR Doc. 95–30032 Filed 12–8–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 951128281–5281–01; I.D. 112795A]

Groundfish of the Bering Sea and Aleutian Islands Area, Trawl Closure To Protect Red King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that an interim closure to all trawling is necessary in a portion of the Bristol Bay area of the Bering Sea. The number of female red king crab in Bristol Bay has declined to a level that presents a serious conservation problem for this stock. To prevent excessive bycatch rates of Bristol Bay area red king crab, NMFS is implementing an interim closure in an area of Bristol Bay to vessels using trawl gear. This management measure is intended to accomplish the objectives of the North Pacific Fishery Management Council with respect to fishery management in the Bering Sea and Aleutian Islands management area (BSAI).

DATES: Effective January 20, 1996, through March 31, 1996. Comments must be submitted by January 10, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for proposed Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area addresses the action implemented under this inseason adjustment. Copies of the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, 605 W. 4th Ave. Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

High prohibited species bycatch rates may warrant inseason adjustment to close an area to fishing for groundfish. Authority for interim closures of a specific area is outlined under regulations at § 675.20(e). This inseason adjustment prohibits fishing for groundfish by operators of vessels using trawl gear in that portion of the Bering Sea that is bounded by a straight line connecting the following coordinates in the order listed below from January 20 through March 31, 1996:

56°00′ N.; 162°00′ W.;

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56°00' N.;	164°30' W.;
57°00' N.;	164°00' W.;
57°00' N.;	162°00' W.; and
56°00' N.;	162°00' W.

This action is necessary to protect declining stocks of red king crab and to prevent an excessive share of red king crab from being taken by the groundfish trawl fisheries early in the fishing season.

The Red King Crab Savings Area (RKCSA), outlined above, was closed to vessels using non-pelagic trawl gear by emergency rule on January 20, 1995 (60 FR 4866, January 25, 1995) to protect declining stocks of red king crab. At that time the Council asked staff to further analyze alternative closure areas that could be implemented permanently under an FMP amendment to provide long-term protection to Bristol Bay red king crab. At its September 1995 meeting, the Council recommended implementation of proposed Amendment 37 to the FMP, an action similar to the emergency rule. This includes a closure of the RKCSA to vessels using non-pelagic trawl gear as well as an increase in observer coverage. The Council further expressed its intent that the closure be implemented in time for the 1996 trawl season, which starts January 20, 1996.

NMFS concurs that crab conservation concerns, as well as excessive red king crab bycatch rates historically experienced by the flatfish trawl fisheries early in the year, warrant timely action in 1996. Therefore, NMFS is implementing a modified version of the Council's recommended action via inseason adjustment authority under regulations at § 675.20(c). NMFS intends to initiate review of the Council's proposed Amendment 37 to the FMP as quickly as possible. If the amendment is approved by NMFS, the Council's preferred action would be effective for 1997 and beyond.

Under the 1995 emergency rule, NMFS required increased observer coverage on vessels fishing for flatfish in Zone 1 as well as on vessels fishing with pelagic trawl gear in the RKCSA. The extra observer coverage on the pelagic trawl vessels was implemented to ensure that the crab performance standard, established for pelagic trawl operators (§ 675.7(n)), could be monitored.

At its September 1995 meeting, the Council recommended that these increases in observer coverage be included as part of the proposed action under Amendment 37. The regulatory authority for inseason adjustment does not allow for increases in observer coverage. Therefore, NMFS is prohibiting the use of all trawl gear in the RKCSA for the effective period in 1996 because requirements for increased observer coverage cannot be implemented under this inseason adjustment to assure that the crab performance standard will be met. Unlike the emergency rule (60 FR 4866, January 25, 1995), the pelagic trawl gear component is unable to fish in the closed area. However, under the proposed Amendment 37 the pelagic trawl gear component would be exempt from a closure of the RKSCA.

Further justification for the inseason adjustment under § 675.20(e)(1)(iv) follows.

Red King Crab Conservation Issues

The number of red king crab in the Bristol Bay area of the Bering Sea is declining. Results of the 1994 and 1995 NMFS crab surveys estimated the number of female red king crab to be below the threshold number established in the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands Area (Crab FMP). The 1994 and 1995 fishery for red king crab was closed in Bristol Bay because of the low abundance of mature female red king crab. No fishery is anticipated for 1996. Due to the closure of the Bristol Bay red king crab fishery, the area east of 163° W. long. was also closed to *C. bairdi* Tanner crab fishing for the 1994–95 season to reduce red king crab bycatch. A similar situation is likely to occur in 1996. Current regulations at § 675.22(a) close Federal statistical area 512 to trawling to protect the red king crab stock. This closure area was designed to protect approximately 90 percent of the mature female red king crab. This measure was based on the distribution of female crab in the mid 1980's. The current distribution of mature female crab shows considerable concentrations between 162° and 164° W. long. and between 56° and 57° N. lat., the area of the RKCSA. As a result, closure of the area encompassed by these coordinates would prevent excessive bycatch of female crab.

Based on NMFS' survey data, the 1994 and 1995 abundance index for legal-sized male Bristol Bay red king crab was 5.5 million and 5.3 million crab, respectively, compared to 7.3 million in 1993. The abundance index for mature female crab declined from 14.2 million crab in 1993 to 7.5 million crab in 1994 and 8.4 million crab in 1995. These numbers are below or equal to the threshold value of 8.4 million crab established pursuant to the crab FMP. These declines were corroborated by the length-based assessment model that was newly developed by the Alaska Department of Fish and Game. The Bristol Bay red king crab stock continues to suffer from a long period of low recruitment and sublegal crab populations are among the lowest on record.

Crab and Halibut Bycatch in the Groundfish Trawl Fisheries

The highest bycatch of red king crab has been from the rock sole/other flatfish fishery category, especially in 1993 and 1994 when the red king crab bycatch in Zone 1 was estimated at 134,000 and 193,000 crab, respectively. During this same period, the bottom trawl pollock fishery caught the next highest amount of Zone 1 red king crab (44,000 and 39,000, respectively). The yellowfin sole and Pacific cod fisheries also took some red king crab. Red king crab bycatch in trawl fisheries tends to be highest during the first few months of the year. The location of the red king crab during this period is coincident with the spawning rock sole. Significantly reduced bycatch rates of red king crab occur in other trawl fisheries throughout the year.

Data from 1990–94 show that between 20 and 45 percent of the groundfish catch in the rock sole fishery has come from within the RKCSA. Between 40 and 70 percent of the red king crab incidental catch in the rock sole fishery is taken within this area.

The RKCSA also accounts for between 10 and 45 percent of the halibut incidental catch in the rock sole fishery. Although closure of the RKCSA to protect red king crab stocks would also reduce halibut bycatch within this area, relocated fishing effort could result in similar or higher halibut bycatch rates in other areas. Fishing effort relocated from the closure area could also result in greater bycatch of *C. bairdi* Tanner crab. This may cause the rock sole roe fishery to attain specified halibut and *C. bairdi* bycatch allowances more quickly, which would close the fishery sooner.

The closure of the RKCSA in 1995 was correlated with a dramatic reduction in red king crab bycatch. In 1992 the rock sole fishery caught approximately 59,000 red king crab, in 1993 166,154 red king crab, in 1994 the fishery took 216,821 red king crab. The rock sole fishery significantly exceeded its red king crab bycatch allowance in both 1993 and 1994. In 1995 through the month of March, the rock sole fishery took only 19,000 red king crab; an additional 1,500 crab were taken later in the year.

Economic Impacts of the Closure

The RKCSA closure could have economic consequences for the rock sole fishery. Whereas the majority of the red king crab historically taken in the rock sole fishery were within the RKCSA, this area has also provided a significant percentage of groundfish catch. The potential impacts of the closure are made more significant because of the recent closure of the Pribilof Islands area to vessels using trawl gear (§ 675.24(h)). The Pribilof Islands area has historically been important to the rock sole fishery.

Appendix 2 to the EA/RIR/IRFA for Amendment 37 (see **ADDRESSES**) contains an economic comparison of the 1993, 1994, and 1995 rock sole fisheries. This analysis compares the 1993, 1994, and 1995 rock sole fishery using several different scenarios (i.e., with and without the Pribilof Island closure, different price sets, etc.). As an example, the 1994 and 1995 fishery data for the rock sole fishery, accounting for the closure of the Pribilof Island area in 1995, and using inseason 1994 prices, indicate that gross and net product value decreased by 35 percent, bycatch costs decreased by 51 percent, and net benefit decreased by 30 percent. The factors that would determine the effects of closing the RKCSA in the future will change. In the future, the adjustment to such a closure would tend to be less difficult than in 1995 because the fleet has the experience of having adjusted to the emergency rule closure in 1995.

The Council recommended closure of the RKCSA from January 20 through March 31. The greatest number of female red king crab is most likely to be taken as bycatch during this time. Inseason closures of an area are authorized for a period of 60 days, which would be less than the Council's intended closure period. Regulations at § 675.20(e)(6) authorize closures beyond 60 days if warranted by available data. The available scientific information indicates that the relative distribution and abundance of female red king crab in the closure area is high. Large numbers of red king crab have been taken from this area by trawling operations during the early part of the year when the concentration of female king crab is high. To ensure that bycatch of female red king crab is minimized in the early season trawl fisheries, NMFS is extending the closure for an additional 11 days beyond the usual 60-day effective period, through March 31, 1996. The Regional Director, Alaska Region, has determined that this interim closure is based on the best available scientific information concerning the seasonal distribution and abundance of red king crab and the bycatch rates of red king crab associated with groundfish trawl fisheries.

Classification

This action is taken under § 672.20(e) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30011 Filed 12–08–95; 8:45 am]

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VOL 60 ISS 237 DEC 11 1995 UMI

Proposed Rules

Federal Register
Vol. 60, No. 237
Monday, December 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 412

RIN 3206-AF96

Executive and Management Development

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend part 317 of its regulations governing initial career appointment to the Senior Executive Service (SES) and Qualifications Review Board certification. The proposed changes to part 317 would eliminate the 3-year limitation on the validity of Qualifications Review Board (QRB) certification for appointment to the Senior Executive Service and simplify the Executive Resources Board (ERB) certification of candidates. The Office is also proposing to amend part 412 of its regulations governing executive and management development. The coverage will be expanded to include supervisory development. The revised regulations present broad program criteria on the systematic development of executives, managers, supervisors, and candidates. They also establish minimum requirements for formal Senior Executive Service candidate development programs. The changes proposed promote training and development activities which foster a corporate perspective of Government.

DATES: Written comments will be considered if received no later than February 9, 1996.

ADDRESSES: Send or deliver written comments to the Ms. K. Joyce Edwards, Assistant Director, Office of Executive Resources, Office of Personnel Management, Room 6484, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Constance Maravell, 202–606–1832.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) issued proposed regulations on executive and management development on March 2, 1993 (58 FR 11988). We received comments from 23 agencies, 9 individuals and the Federal Executive Institute Alumni Association. Most comments expressed support for including the development of supervisors along with that of managers and executives. The proposed regulations were withdrawn on February 11, 1994 (59 FR 6593) to see which objectives of the regulations could be achieved through alternative means and so they could be reviewed in the context of the sunsetting of the Federal Personnel Manual in December 1993.

General

In keeping with the spirit of Executive Order 12861 on "Elimination on One-Half of Executive Branch Internal Regulations," we re-examined the proposed regulations. This has resulted in the elimination of regulations on needs assessments for the management profession and for individuals and formal candidate development programs for supervisors and managers. Proposed requirements in these areas have been removed, not because we have found such activities to be ineffective, but because agencies should be free to engage in them without being required to do so. Well selected developmental experiences enhance the competence and broaden the perspective of the managerial workforce. We encourage agencies to undertake these activities on a systematic basis.

We are also deleting regulations that are covered by statute which require no further clarification such as OPM's responsibility for the review of agency programs. We would like to draw agency attention to two provisions of statute which will not be regulated further. The first is the use of sabbaticals in general, 5 U.S.C. 3396(c). The second is, 5 U.S.C. 3396(d), authorizing sabbaticals, training, or details or other temporary assignments in other agencies, State or local governments, or the private sector for the continuing training and development of incumbent career SES members

The earlier proposed regulations also provided for the reactivation of expired QRB certifications for graduates of formal SES candidate development programs (CDP). Reactivation was accomplished by a variation to the regulations in December 1993, which extended certifications until December 31, 1996. The current proposed regulations in part 317 would remove the present 3-year time limit on all QRB certifications. The removal would apply to certifications issued before the regulations as well as those issued afterwards.

In response to a recommendation from the Executive Resources Management Group work group on staffing, we propose to simplify procedural requirements for the ERB certification of SES candidates. Specifically, when there are less than 10 eligible candidates for an SES position, an ERB would be permitted to refer all candidates to the appointing authority without further ranking. The statutory requirement that ERB's make written recommendations must be observed regardless of the number of candidates.

What remains in the regulations is a clear set of criteria which promote a corporate perspective of governance through the systematic development of candidates for the SES and the continuing development of supervisors, managers, and executives. Public managers with a corporate perspective respect and embrace the dynamics of American democracy; they recognize their fundamental responsibility for balancing change and continuity. Their values encompass a respect for both diversity and merit. Their commitment to Government service transcends their agency mission and individual profession. Executives with a corporate perspective will play a critical role in the reinvention of Government.

These regulations recognize and give meaning to the findings of OPM's 1992 Leadership Effectiveness Study. The 10,000 managers who responded identified 22 generic competencies essential to successful performance as leaders in any government position. The study found that effective supervisors, managers and executives have a shared base of competencies. As individuals move from supervisors to managers and executives they must acquire additional enhanced competencies. For this reason, the preparation of supervisors and managers is considered integral to the development of candidates for the SES.

The criteria in section 412.103 are designed to enable agencies to run strong supervisory, managerial and executive development programs to provide a corporate perspective in the context of their succession planning systems. This assures that there are enough prepared and qualified employees as candidates for SES positions. This section requires agencies to provide initial and continuing training and development to their management corps. Formal SES candidate development programs are one option, but not the only one for assuring that agencies have enough candidates for the SES.

SES Candidate Development Programs (CDP)

If an agency desires graduates of its SES candidate development program to receive Qualifications Review Board certification, the program must meet the minimum standards in § 412.104. OPM will review all programs prior to announcement for the first time under these regulations regardless of whether they have been approved under the previous regulations. After the initial announcement, OPM will only review programs if there is a significant change in the program.

The standards meet statutory requirements and support the National Performance Review recommendation for promoting a corporate culture in the SES. During the time the candidates are in the program, they must attend at least 80 hours of formal interagency training programs; have developmental assignments totalling 4 months; and have a mentor. If an agency wishes to deviate from these minimum requirements, it must obtain an exception from OPM before the candidate starts the program.

OPM believes that even individuals who are well qualified for an SES appointment can benefit from this minimum training and development. It is not our intention to grant exceptions to the minimum requirements based on the fact that the candidate is already well qualified to enter the SES. OPM does not support the use of the formal SES candidate development program as a mechanism for "precertifying" fully qualified individuals for the SES.

These standards differ from the existing regulations in the following ways. Agencies can choose, under the standards, the formal interagency executive level training experience rather than be limited to OPM approved programs. An agency may substitute a work experience, longer than 80 hours, that involves multiple agencies for formal training; but this substitution does not eliminate the requirement for a developmental assignment. The length of the developmental work assignments has been specified to eliminate confusion about what cases will be presented to the QRB.

One way to promote a corporate perspective in the SES is to encourage the selection of qualified applicants from outside the agency. The law, in 5 U.S.C. 3393(a), supports this goal by requiring at least governmentwide competition for initial appointment to the SES. While the proposed regulations on recruitment for SES CDP are consistent with this statutory requirement, they provide flexibility for those agencies which have demonstrated support for an SES corporate perspective.

Specifically, the exception from Governmentwide competition in the current regulations for agencies with 150 or fewer allocated SES positions for their candidate development programs has been changed in two ways. First, the exception is available to agencies which can show OPM that in the 5 years prior to announcing a CDP, at least 15% of the career SES members appointed come from outside the agency. An agency may be able to conduct one offering of a CDP under this exception but not another because the agency does not meet the criterion at that time. Second, when there has only been agencywide competition for the CDP, the graduates of these programs are required to compete Governmentwide for entry to the SES.

The regulations on "status" and "non-status" SES candidate development programs currently in subpart E have been rewritten in a new subpart B to eliminate redundancy. There is no change in the nature of the programs.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Parts 317 and 412

Government employees.

Office of Personnel Management.

James B. King,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR parts 317 and 412 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3302, 3303, 3393a, 3395, 3397, 3593, and 3595.

2. In section 317.501, paragraph (c)(5) is revised to read as follows:

§ 317.501 Recruitment and selection for initial SES career appointment.

* * * * *

(c) * * *

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates and identify the best qualified candidates. If there are less than 10 eligible candidates, the ERB may refer to the appointing authority all candidates as "best qualified." Rating sheets may be used to satisfy the written recommendations requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

* * * * *

3. In section 317.502, paragraph (c) is revised to read as follows:

§ 317.502 Qualifications Review Board certification.

* * * * *

(c) Qualifications Review Board certification of executive qualifications must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

* * * * *

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

3. Part 412 is revised to read as follows:

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

Subpart A—General Provisions

Sec.
412.101 Coverage.
412.102 Purpose.
412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.
412.104 Formal candidate development programs for Senior Executive Service positions.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

412.201 Purpose.
412.202 "Status" programs.
412.203 "Non-status" programs.

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Authority: 5 U.S.C. 3397, 4101, *et seq.*

Subpart A—General Provisions

§ 412.101 Coverage.

This subpart applies to all incumbents of or candidates for supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems who are also covered by part 410 of this chapter.

§ 412.102 Purpose.

(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) The subpart identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions governmentwide. For this reason, the subpart establishes a comprehensive system that is intended to:

(1) Provide the competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency; and

(2) Provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency and the government with an adequate number of well prepared and qualified candidates to fill supervisory, managerial, and executive positions governmentwide.

§ 412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.

Each agency must provide for the initial and continuing development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue a written policy to assure that their development programs:

(a) Are designed as part of the agency's strategic plan and foster a corporate perspective.

(b) Make assignments to training and development consistent with the merit system principles set forth in 5 U.S.C. 2301(b) (1) and (2).

(c) Provide for:

(1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive consistent with the results of needs assessments;

(2) Continuing learning experiences, both short- and long-term, throughout an individual's career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development.

§ 412.104 Formal candidate development programs for Senior Executive Service positions.

Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.

(a) *Recruitment.* (1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.

(2) Agencies may request an exception to the provision in paragraph (a)(1) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the goal of achieving a diversified workforce.

(c) All candidates are selected through SES merit staffing procedures. The number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

(1) There is a formal training experience that addresses the executive core qualifications and their application to SES positions governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

(2) There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, "status" and "nonstatus."

§ 412.202 "Status" programs.

Only employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2), may participate in "status" candidate development programs.

§ 412.203 "Nonstatus" programs.

(a) Eligibility. Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.* (1) Candidates must be appointed utilizing the Schedule B authority authorized by 5 CFR 213.3202(j). The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c)(6) from the appointment procedures of part 302.

[FR Doc. 95–30053 Filed 12–8–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB24

Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby proposes to revise the Malting Barley Option Crop Insurance provisions. The intended effect of this action is to improve the insurance coverage now available for producers who grow malting barley under contract with a brewery, or business that sells malt or processed mash to a brewery; and to provide a new option that will allow producers without contracts (open market producers) to obtain insurance for their malting barley.

DATES: Written comments, data, and opinions on this proposed rule must be submitted by the close of business December 21, 1995 to be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Economic Analysis of the Malting Barley Endorsement Crop Insurance provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Telephone (202) 720–0713.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Regulatory Economic Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. The new Malting Barley Price and Quality Endorsement will simplify program operations, benefit FCIC and reinsured companies, and enhance the insurance coverage for malting barley producers.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through March 5, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). These requirements were previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. Public comments are due by February 5, 1996.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting malting barley insurance coverage options. Potential respondents to this information collection are growers of malting barley that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996, on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

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on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Information Management Branch, Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The impact of obtaining or delivering these policies will not vary significantly from that required to obtain or deliver the present policy. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising and reissuing 7 CFR 457.103, Malting Barley Option effective for the 1996 and succeeding crop years. The principal changes to the provisions for insuring malting barley are as follows:

1. The current Malting Barley Option will be replaced by the proposed Malting Barley Price and Quality Endorsement. The new endorsement is divided into two coverage options. Option A is intended to provide insurance coverage for producers who do not grow malting barley under contract with a brewery or with a business that makes or sells malt or processed mash to a brewery. Option B provides insurance coverage for producers who grow malting barley under such a contract. A producer may select only one option to cover all acreage planted to approved varieties of malting barley in the county during the crop year.

Option A

2. Section 1—Requires an applicant for insurance or insured to provide records of the sale of malting barley for at least four crop years to be eligible for coverage. These production records may be used to determine the malting barley production guarantee (see item 3 below).

3. Section 2—Provides that the malting barley production guarantee per acre will be the lesser of: (a) The production guarantee calculated under the APH regulations, 7 CFR part 400, subpart G, and the Small Grains Crop Provisions for feed barley for acreage planted to approved malting varieties; or (b) the average amount calculated under the APH regulations of malting barley sold per planted acre during the APH base period.

4. Section 3—Provides for the maximum malting barley additional value price to be designated in the Special Provisions.

5. Section 4—Indicates the production to count against the malting barley production guarantee. Quality standards specified in this section represent typical minimum acceptance standards in the malting barley industry.

6. Section 5—Provides that a claim cannot be settled until final disposition of all production can be determined, or May 31 of the calendar year following the crop year. Production stored after May 31 of the calendar year following the crop year will be adjusted based on the quality specifications contained in subsection 4(b) of the option. This extended settlement period is intended to prevent the payment of an indemnity for production that does not meet quality specifications but is ultimately used for malting purposes due to a shortage of quality malting barley. If barley is used for malting purposes regardless of quality it is production to count against the guarantee.

Option B

7. Section 1—Requires an applicant for insurance or insured to provide a copy of the malting barley contract by the acreage reporting date to be eligible for coverage. The amount of production under contract may be used to determine the malting barley production guarantee (see item 8 below).

8. Section 2—Provides that the malting barley production guarantee per acre be the lesser of: (a) The production guarantee calculated under the APH regulations, 7 CFR part 400, subpart G, and the Small Grains Crop Provisions for feed barley for acreage planted to approved malting varieties; or (b) the amount determined by dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties, and multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions for feed barley.

9. Section 3—Establishes the maximum malting barley additional value price as: (a) The difference between the maximum price election available for feed barley under the Small Grains Crop Provisions and the established sale price in the malting barley contract provided such price is fixed on or before the acreage reporting date; or (b) the basis or differential per bushel shown in the malting barley contract if the sale price is based on a future market price for basic (feed) barley plus a differential amount for malting barley production. For example, if the malting barley contract provides for a fixed price of $2.50 per bushel on or before the acreage reporting date and the maximum price election available for feed barley is $1.90 per bushel, the additional value price would be $0.60 per bushel ($2.50–$1.90); however, if the malting barley contract provides for a basis or differential of $0.60 per bushel above a future market price, the additional value price would be $0.60. In no event will the additional value price exceed 200% of the maximum additional value price shown in the Special Provisions.

10. Section 4—Indicates the production to count against the malting barley production guarantee in the event of a claim. Production meeting the minimum acceptance standards specified in the malting barley contract for percentage of protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and parts per million of substances or conditions, including mycotoxins, that are identified by the Food and Drug Administration as being injurious to human or animal health, or the standards specified in this section, will be considered production to count.

11. Section 5—Specifies that a claim cannot be settled until final disposition of all production can be determined, or May 31 of the calendar year following the crop year. Production stored after this date will be adjusted based on the quality specifications indicated in subsection 4(b) of the option. This extended settlement period is intended to prevent the payment of an indemnity for production that does not meet quality specifications but that is ultimately used for malting purposes due to a shortage of quality malting barley. If barley is used for malting purposes regardless of quality it is production to count against the guarantee.

List of Subjects in 7 CFR Part 457

Crop insurance, Malting Barley Price and Quality Endorsement Crop Provisions

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 457.103 is revised to read as follows:

§ 457.103 Malting Barley Crop Insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture; Federal Crop Insurance Corporation; Small Grains Crop Insurance; Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101), subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Insurance Provisions (§ 457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either option A or option B before the sales closing date. Failure to select either option A or option B, or failure to qualify for coverage under the terms of the option selected, will result in no coverage under this endorsement for the applicable crop year. For example, if you elect option B but fail to have a binding malting barley contract by the acreage reporting date, no coverage will be provided under this endorsement for the crop year. The selection will continue from year to year unless you cancel or change your selection prior to the sales closing date.

3. You must select an added value price election at the time of application.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre times your selected additional value price election, times the premium rate, times the insured acreage, times your share at the time coverage begins.

5. In addition to the acreage reporting requirements contained in section 6 of the Common Crop Insurance Policy (§ 457.8), you must provide the information required by your selected option.

6. All barley acreage that is planted to approved malting varieties, and that is insurable under the feed barley crop provisions and the selected option must be insured under this endorsement and, on the acreage report, will be designated as, and limited to, one unit.

7. In lieu of provisions in the Common Crop Insurance Policy (§ 457.8) that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, you must submit a claim for indemnity declaring the amount of your loss not later than May 31 of the calendar year immediately following the crop year.

8. Prevented planting coverage is not provided by this endorsement but is available only under the terms of the Small Grains Crop Provisions for barley.

9. Definitions:

(a) APH—Actual Production History as determined in accordance with 7 CFR part 400, subpart G.

(b) Approved malting variety—A variety of barley specified as such in the Special Provisions.

(c) Brewery—A facility where malt beverages are commercially produced for human consumption.

(d) Contracted production—The quantity of malting barley the insured producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) Licensed grain grader—A person who is authorized to inspect and grade barley under the United States Grain Standards Act or the United States Warehouse Act.

(f) Malting barley contract—A written contract with a brewery or business that produces or sells malt or processed mash to a brewery or a company owned by such brewery or business, in which is stated the production contracted and a purchase price or a method to be used in determining such price.

(g) Objective test—A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining parts per million of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) Subjective test—A determination made using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment, or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) Value per bushel—The highest price per bushel received or that could be received for the malting barley in the local market area.

(j) Unit—All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

Option A (for Non-Contracted Production or a Combination of Contracted and Non-Contracted Production)

This option provides coverage for malting barley production losses at a price per bushel greater than that available under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option you must provide us acceptable records of the sale of malting barley and the number of acres planted to malting varieties for at least the four crop years prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1995 crop year, records must be provided for the 1990 through the 1993 crop years, if malting barley was planted in each of those crop years. You must provide these records to us no later than the production reporting date.

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will include all:

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(a) Appraised production determined in accordance with subsections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(b) Harvested production and potential unharvested production that meets, or would if properly handled, meet:

	Six-rowed malting barley	Two-rowed malting barley
Protein (dry basis)	14.0% maximum	14.0% maximum.
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Sprout damaged	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.

(c) Harvested production that does not meet the quality standards contained in subsection 4(b) of this option, but is accepted by a buyer for malting purposes.

(d) No reduction in value will be allowed for moisture content; damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in subsection (b) of this section; or any other costs associated with normal handling and marketing of malting barley. All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the Grain Standards Act to verify the result of any test. In the event of a conflict in the test results, our results will be used to determine the amount of production to count. If failure to meet the quality standards is due to insurable causes, the quantity of such production may be reduced for quality deficiencies by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing this sum into the value per bushel of the damaged production; and

(3) Multiplying the resulting factor (not to exceed 1.0) by the number of bushels of damaged production.

5. No claim under this option may be settled until the earlier of:

(a) The date final disposition of production from all acreage planted to approved malting barley varieties is completed; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. Production to count for malting barley that has not been sold by this May 31 date will include all production that meets the quality specifications contained in subsection 4(b) of this option.

The limitations specified in subsections 5(a) and (b) will not apply when all production from the insured malting barley unit grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed barley, Two-rowed barley, and the class Barley in accordance with the Official United States Standards for Grain.

6. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage by the malting barley production guarantee per acre;

(b) Multiplying the result by your elected additional value price per bushel;

(c) Multiplying the number of bushels of production to count by your elected additional value price per bushel; and

(d) Subtracting the result of step (c) from the result of step (b).

7. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume that each unit contains 40 acres. Further assume that your production guarantee under the Small Grains Crop Provisions is 30 bushels per acre or a total of 2,400 bushels. Your malting barley unit production guarantee is limited to 2,100 bushels by subsection 2(b). A loss causes the total production to count for all units under the Small Grains Crop Provisions to drop to 1,000 bushels, none of which meet the quality standards covered by this option. The indemnity for the malting barley unit would be based on a combined production and quality loss of 2,100 bushels. The indemnity would be paid at the additional value price per bushel. If the price were $0.40 per bushel, the indemnity for the malting barley unit would be $840.00 (2,100 × $0.40). The basic loss is paid under the Small Grains Crop Provisions for feed barley.

Option B—(for Contracted Production)

This option provides coverage for malting barley production losses at a price per bushel greater than that available under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option you must provide us a copy of your malting barley contract by the acreage reporting date. Only production or acreage under contract is covered by this option (B). The contract must be in place and effective before the acreage reporting date.

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected for barley covered under the Small Grains Crop Provisions.

3. The additional value price per bushel will not exceed 200% of the maximum additional value price shown on the Special Provisions and will be further limited to:

(a) The difference between the maximum price election available for feed barley under the Small Grains Crop Provisions and the established sale price contained in the malting barley contract for production that meets the quality standards required by such contract (without regard to discounts or incentives) if the sale price is a fixed dollar amount established on or before the acreage reporting date; or

(b) The premium amount per bushel contained in the malting barley contract for production that meets the quality specifications required by such contract (without regard to discounts or incentives) if the sale price is based on a future market price for feed barley plus a premium amount for malting barley production.

4. The amount of production to count against your malting barley production guarantee will include all:

(a) Appraised production determined in accordance with subsection 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(b) Either harvested production and potential unharvested production that meets, or would if properly handled meet, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human or animal health, or the following quality standards as applicable:

	Six-rowed malting barley	Two-rowed malting barley
Protein (dry basis)	14.0% maximum	14.0% maximum.
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Sprout damaged	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.

(c) Harvested production that does not meet the minimum acceptance standards for the factors listed in subsection 4(b) of this option, but that is accepted by a buyer for malting purposes.

(d) No reduction in value will be allowed for moisture content; damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in subsection (b) of this section; or any other costs associated with normal handling and marketing of malting barley. All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the Grain Standards Act to verify the result of any test. In the event of a conflict in the test results, our results will be used to determine the amount of production to count. If failure to meet the quality standards is due to insurable causes, the quantity of such production may be reduced for quality deficiencies by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing this sum into the value per bushel of the damaged production; and

(3) Multiplying the resulting factor (not to exceed 1.0) by the number of bushels of damaged production.

5. No claim under this option may be settled until the earlier of:

(a) The date final disposition of production from all acreage planted to approved malting barley varieties is completed; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. Production to count for malting barley that has not been sold by this May 31 date will include all production established in accordance with subsection 4(b) of this option.

The limitations specified in subsections 5(a) and (b) will not apply when all production from the insured malting barley unit grades U.S. No. 4 or worse in accordance with the grades and grade requirements for the subclasses Six-rowed barley, Two-rowed barley, and the class Barley in accordance with the Official United States Standards for Grain.

6. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage by the malting barley production guarantee per acre;

(b) Multiplying the result by your elected additional value price per bushel;

(c) Multiplying the number of bushels of production to count by your elected additional value price per bushel; and

(d) Subtracting the result of step (c) from the result of step (b).

7. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume that unit contains 40 acres. Further assume that your production guarantee under the Small Grains Crop Provisions is 30 bushels per acre or a total of 2,400 bushels. Your malting barley unit production guarantee is limited to 2,100 bushels by subsection 2(b). A loss causes the total production to count under the basic barley policy to drop to 1,000 bushels, none of which meet the minimum acceptance standards covered under this option. The indemnity for the malting barley unit would be based on a combined production and quality loss of 2,100 bushels. The indemnity would be paid at the additional value price per bushel. If the price were $0.60 per bushel, the indemnity for the malting barley unit would be $1,260.00 (2,100 × $0.60). The basic loss is paid under the Small Grains Crop Provisions for feed barley.

Done in Washington, D.C., on December 5, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–30085 Filed 12–6–95; 4:03 pm]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 31

[Docket No. 95–29]

RIN 1557–AB40

Extensions of Credit to Insiders and Transactions With Affiliates

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules governing extensions of credit to national bank insiders and to relocate to part 31 several interpretive rulings dealing with transactions with affiliates. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal modernizes and clarifies the insider lending rules and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received by February 9, 1996.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–29. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to reg.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Aline Henderson, Senior Attorney, Bank Activities and Structure (202) 874–5300; Emily McNaughton, National Bank Examiner, Credit & Management Policy (202) 874–5170; or Mark Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

Summary of Regulation Review Program

The OCC proposes to revise 12 CFR part 31 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

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The OCC intends for this proposal to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities. The proposal also seeks comments on whether it would be useful for the OCC to issue additional guidance on the differences between the requirements of part 31 and 12 CFR part 32 (Lending Limits).

Discussion

Current part 31 contains two subparts. Subpart A implements 12 U.S.C. 375a(4) and 375b(3) by setting a limit on the amount that a national bank may lend to any one of its executive officers other than for housing- and education-related loans and by establishing a threshold above which approval of the bank's board of directors is required for any loan to an insider. Subpart B implements 12 U.S.C. 1817(k) and 1972(2)(G)(ii) by requiring a national bank to disclose, upon request, the names of its executive officers and principal shareholders who borrow more than specified amounts from the bank itself or the bank's correspondent banks and to maintain records related to requests for this information. Subpart B also implements 12 U.S.C. 1972(2)(G)(i), which requires a national bank's executive officers and principal shareholders to report on loans they or their related interests receive from the bank's correspondent banks.

This proposal creates three exceptions to the limit on loans that a national bank may make to its executive officers for situations where the lending bank's position is clearly protected by virtue of the type of collateral involved. It also clarifies and simplifies the current rule by removing provisions that are no longer necessary. Finally, it invites comments on whether guidance would be helpful on the differences between the insider lending limits and the loans-to-one-borrower limits and, if so, the areas where clarification may be most needed.

The following discussion identifies and explains material proposed changes to part 31. The OCC invites general comments on the proposed regulation as well as specific comments on the areas identified.

Title of Regulation

The current rule is titled "Extensions of Credit to National Bank Insiders."

The proposed rule changes the title to "Extensions of Credit to Insiders and Transactions with Affiliates." This change reflects the proposed relocation to 12 CFR part 31 of several interpretations regarding transactions with affiliates that currently are set out in part 7. (*See* "Interpretations" and text that follows for further discussion of the relocation.)

Subpart A—Loans to Insiders

Definitions (Proposed § 31.2)

Current § 31.3 states that the definitions contained in §§ 215.2 and 215.3 of Regulation O (12 CFR part 215) apply to subpart A of part 31.

Proposed § 31.2 also states that the definitions used in §§ 215.2 and 215.3 of Regulation O apply. However, because proposed § 31.3 uses a term (capital and surplus) that is Not defined in Regulation O, proposed § 31.2 states that "capital and surplus" will be defined in the same way as that term is defined in part 32 (Lending Limits) (12 CFR 32.2(b)). This clarifies that national banks calculate their loans-to-one-borrower lending limits and their insider lending limits using the same capital base.[1]

Loan Limits (Proposed § 31.3)

Current § 31.2(a) prohibits a national bank from making a loan to an executive officer if the loan, when aggregated with all other loans outstanding from the bank to the officer, would exceed the higher of $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, up to $100,000. However, the current rule exempts home mortgage and educational loans from this limit pursuant to sections 22(g)(2) and 22(g)(3) of the Federal Reserve Act (12 U.S.C. 375a (2) and (3)).[2] Loans that do not comply with sections 22(g)(2) or 22(g)(3) often are referred to as "other purpose loans," because they are for purposes other than those identified in those sections of the Federal Reserve Act.

Pursuant to the rulemaking authority in 12 U.S.C. 375(a)(4), proposed § 31.3(a) exempts a loan from the limits applicable to "other purpose loans" if the loan is secured by United States obligations, obligations guaranteed by a Federal agency, or a segregated deposit account.[3] The proposal effects this change by incorporating the exceptions set forth in the OCC's Lending Limits regulation at 12 CFR 32.3(c)(3), (c)(4)(ii), and (c)(6). The proposal also clarifies that the limits prescribed by § 31.3(a) do not apply to executive officers of affiliates of the lending bank.

The OCC believes that the proposed exceptions, which entail situations where the lending bank's position is secure by the nature of the collateral required, are consistent with safe and sound banking practices and would eliminate unnecessary restrictions on lending by national banks. Moreover, in the insider lending context, loans that qualify for the exceptions remain subject to the safeguards found in sections 22(g)(1) and 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375a(1) and 375b(2)), thereby providing additional protection against abuse.[4]

Both the Federal Deposit Insurance Corporation (FDIC) and the Board have amended their insider lending rules to include exemptions similar to those noted above. See 59 FR 66666 (December 28, 1994) (amending the FDIC's rule at 12 CFR 337.3) and 59 FR 8831 (February 24, 1994) (amending the Board's rule at 12 CFR 215.5).[5] The OCC

[1] Regulation O uses the term "unimpaired capital and unimpaired surplus." *See* 12 CFR 215.2(i). The Board of Governors of the Federal Reserve System (Board) recently amended Regulation O to conform the definition of "unimpaired capital and unimpaired surplus" to the definition of "capital and surplus" as defined in part 32 (60 FR 31063, June 13, 1995). Accordingly, the capital base from which different limits are measured now is the same, despite the different terminology.

[2] Section 22(g)(2) of the Federal Reserve Act permits a member bank (and, therefore, a national bank) to make a loan to one of its executive officers if the loan is secured by a first lien on a dwelling that the officer will own and use as his or her residence after the loan is made. Section 22(g)(3) permits a member bank to make a loan to an executive officer to finance the education of the officer's children.

[3] The OCC currently exempts these loans from the limits on loans to one borrower. *See* 12 CFR 32.3(c)(3), (4), and (6). The only difference between the exceptions in proposed part 31 and the exceptions currently available under part 32 is that the proposal does not include the exemption for loans to a Federal agency (12 CFR 32.3(c)(4)(i)), given that this exemption does not apply to loans to executive officers.

[4] Section 22(g)(1) of the Federal Reserve Act requires that any loan by a member bank to one of its executive officers be promptly reported to the bank's board of directors. The bank may make the loan to the executive officer only if it is authorized to make the loan to borrowers other than its officers, the loan is on terms not more favorable than those afforded other borrowers, and the officer has submitted a detailed current financial statement. Section 22(h)(2) authorizes a member bank to make a loan to a bank insider only if the loan is made on substantially the same terms as those prevailing at the time for comparable transactions by the bank with persons who are not insiders, the loan does not involve more than the normal risk of repayment or present other unfavorable features, and the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with non-insiders.

[5] The Office of Thrift Supervision's regulation automatically applies the Board's insider lending rule to thrifts. *See* 12 CFR 563.43. Accordingly, the amendment to 12 CFR 215.5 also applies to thrifts. The OCC also believes that the current restrictions run counter to section 303(a)(1)(A) of the CDRI, which requires the Federal banking agencies to eliminate unwarranted constraints on credit availability. The OCC has observed no significant problems arising from the exemptions in the loans-to-one-borrower context. This experience, coupled with the safeguards provided by sections 22(g) and 22(h), leads the OCC to conclude that limiting the amount of loans secured in the manner in question is unwarranted.

believes the disparity between its rule and those of the other Federal banking agencies is both unnecessary and inconsistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) (12 U.S.C. 4803), which requires each agency to work with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies. CDRI, section 303(a)(2).

For these reasons, the OCC proposes to eliminate the special restrictions on extensions of credit by national banks to their executive officers, provided the loans are secured in the manner previously described. The OCC seeks comment on whether interested parties agree that the exemptions are appropriate for national banks.

Current § 31.2(b) requires a majority of the directors of a national bank to approve in advance a loan to one of the bank's executive officers, principal shareholders, or directors (or to any related interest of such persons) if the amount of the loan, when aggregated with other loans outstanding to that insider and his or her related interests, exceeds the higher of $25,000 or 5 percent of the bank's capital and surplus. In no event may a national bank lend more than $500,000 to an insider and his or her related interests without the majority of the bank's board first approving the loan. Interested directors must abstain from the voting.

Proposed § 31.3(b) amends the OCC's rule to conform to recent changes made to the definitions of "director," "executive officer," and "principal shareholder" in Regulation O (12 CFR 215.2(d), (e), and (m), respectively). The Board narrowed these definitions so that they generally apply just to insiders of the bank and not to its affiliates. At the same time the Board narrowed these definitions, it also clarified, in 12 CFR 215.4(b)(1), that the prior approval requirements continue to apply to insiders of the bank as well as insiders of the bank's affiliates. Proposed § 31.3(b) also makes this clarification.

It should be noted that the exemptions set forth in proposed § 31.3(a) do not apply to proposed § 31.3(b). Thus, a loan secured, for instance, by a segregated deposit account still must be counted for purposes of determining whether prior approval is required under proposed § 31.3(b). This provides an additional protection against insider abuse by insuring that a bank's directors will have the opportunity to review loans to insiders in amounts that exceed the specified thresholds.

Subpart B—Reports and Public Disclosure

Authority and OMB Control Number (§ 31.4)

Current § 31.4 states the authority pursuant to which subpart B is issued and sets forth the Office of Management and Budget (OMB) control number.

The proposed rule removes the statement of the OMB control number from part 31 but retains the statement of authority. In a separate rulemaking, the OCC will relocate all OMB control numbers to 12 CFR part 4.

Definitions (Proposed § 31.5)

Current § 31.5(d) states, as a general matter, that the definitions found in subpart B of Regulation O (12 CFR 215.20 through 215.23) apply to subpart B of part 31. Current § 31.5(d) also states that, for purposes of the requirement governing reports of loans to insiders from the insider's bank, the term "bank" means Federally-chartered insured bank.

The proposal relocates the definition section to proposed § 31.5 and incorporates into subpart B of part 31 the definitions found in subpart B of Regulation O. The proposal also clarifies, for the reasons stated in the discussion of proposed § 31.2, that the term "capital and surplus" in part 31 has the same meaning as "capital and surplus" as that term is used in 12 CFR part 32. The proposal also removes an obsolete reference to 12 U.S.C. 1817.

Disclosure of Insider Indebtedness (Proposed § 31.6)

Current § 31.5 requires a national bank to disclose, if requested, the names of each executive officer and principal shareholder whose aggregate indebtedness (including debt of the insider's related interests) from either the bank or its correspondent banks equals or exceeds the lesser of 5 percent of the bank's capital and unimpaired surplus or $500,000.[6] The current rule also requires a national bank to maintain records of requests for information for two years following the request.

Proposed § 31.6 makes no substantive change, but revises the current section's style in order to improve clarity. Proposed § 31.6(a) uses the term "capital and surplus" instead of "capital and unimpaired surplus," which is used in the current regulation. This change conforms subpart B of part 31 to subpart A. The proposal also clarifies, in § 31.6(c), that the two-year period for retaining records of requests and the disposition of requests begins on the date of the request.

Reports by Executive Officers and Principal Shareholders (Proposed § 31.7)

Current § 31.6 implements 12 U.S.C. 1972(2)(G)(i), which requires national bank executive officers and principal shareholders to file annual reports with their bank's board of directors showing indebtedness from correspondent banks to the insiders or their related interests. The current rule states that "This requirement is restated in Regulation O, 12 CFR 215.22," thereby implicitly incorporating the provisions of the section cited.

Proposed § 31.7 clarifies that 12 U.S.C. 1972(2)(G)(i) requires reports only if the executive officer or principal shareholder (or their related interests) have credit outstanding at some point during the year. The proposed rule also clarifies that all of the provisions of 12 CFR 215.22 apply. The OCC does not intend any substantive change by these proposed amendments.

Interpretations

On March 3, 1995, the OCC proposed to relocate several interpretations that currently appear in part 7. *See* 60 FR 11924, 11930 (proposing to relocate 12 CFR 7.7355 (debts of affiliates), 7.7360 (loans secured by stock or obligations of an affiliate), 7.7365 (Federal funds transactions between affiliates), and 7.7370 (deposits between affiliated banks)). The OCC proposed to relocate these interpretations to part 31 because the interpretations and part 31 stem from the same concern about persons or entities taking undue advantage of positions of influence and thereby adversely affecting the safety and soundness of a national bank. Given the similarities in the supervisory concerns that prompted both part 31 and the interpretations, the OCC believes that it is more appropriate to include the interpretations in part 31 rather than in a collection of unrelated interpretations. The OCC also believes that relocating the interpretations to part 31 will make them easier to find.

The proposed rule restates the latter three of these interpretations at new §§ 31.100–31.102. Current § 7.7355, which interprets the prohibition against a national bank withdrawing its capital, will be relocated to part 5 to consolidate all provisions related to changes in a national bank's equity capital. The OCC

[6] This requirement applies only to aggregate indebtedness that exceeds $25,000.

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invites comments on these interpretations.

Additional Guidance Regarding Differences Between Lending Limits and Insider Lending Standards

The OCC seeks comment on whether it would be useful for the OCC to issue guidance clarifying the differences between the loans-to-one-borrower limits (12 CFR part 32) and the insider lending limits (part 31). For instance, the attribution rules and the definition of "extension of credit" applied by the OCC in the two regulations are similar but sufficiently different that a banker or bank counsel must keep straight two different sets of rules that often will apply to the same transaction. In many cases, these differences are compelled by differences in the underlying statutory authority for the two parts. The OCC requests that commenters who believe that this type of guidance would be helpful also identify areas where the intersection of the two rules gives rise to the most uncertainty. In this way, the OCC can focus any guidance it provides on those areas where help is most needed. The OCC also requests comment on whether the guidance should appear in an appendix to part 31, as an OCC bulletin, or in some other format.

The following table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based, and identifies generally the action taken.

DERIVATION TABLE

Revised section	Original section	Comments
31.1	31.1	No change.
31.2	31.3	Relocated and modified.
31.3(a)(1)	31.2(a)	Modified.
31.3(a)(2)		Added.
31.3(b)	31.2(b)	Modified.
31.4	31.4	Modified.
31.5	31.5(d)	Relocated and modified.
31.6(a)	31.5(a)	Modified.
31.6(b)	31.5(b)	Modified.
31.6(c)	31.5(c)	Modified.
31.7	31.6	Modified.
31.100	7.7360	Relocated and modified.
31.101	7.7366	Relocated,
31.102	7.7370	Relocated and modified.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by eliminating and clarifying current regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a proposal likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a proposal. The OCC has determined that the proposal, if adopted, will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 31

Credit, Disclosure, Executive officers, National banks, Principal shareholders, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to revise part 31 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

Subpart A—Loans to Insiders

Sec.
31.1 Authority.
31.2 Definitions.
31.3 Loan limits.

Subpart B—Reports and Public Disclosure

31.4 Authority.
31.5 Definitions.
31.6 Disclosure of insider indebtedness.
31.7 Reports by executive officers and principal shareholders.

Interpretations

31.100 Loans secured by stock or obligations of an affiliate.
31.101 Federal funds transactions between affiliates.
31.102 Deposits between affiliated banks.

Authority: 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii), as amended.

Subpart A—Loans to Insiders

§ 31.1 Authority.

The part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(3), as amended.

§ 31.2 Definitions.

For the purposes of this subpart, the definitions of the terms contained in Regulation O, 12 CFR 215.2 and 215.3, apply, except that the term "capital and surplus" as used in this subpart has the same meaning as "capital and surplus" as defined in 12 CFR 32.2(b).

§ 31.3 Loan limits.

(a) *Lending limit on loans to executive officer*—(1) *General limit.* Except as provided in paragraph (a)(2) of this section, a national bank may not extend credit to an executive officer of the bank in an amount that, when aggregated with all other outstanding extensions of credit to that officer, exceeds the greater of $25,000 or 2.5 percent of the bank's capital and surplus, or in any event $100,000. The restrictions of this section apply only to executive officers of the national bank and not to executive officers of its affiliates.

(2) *Exceptions.* The general limit specified in paragraph (a)(1) of this section does not apply to the following:

(i) A loan made for the purpose described in 12 U.S.C. 375a(2) (housing-related loans) or 12 U.S.C. 375a(3) (loans made to finance the education of the officer's children); and

(ii) A loan secured in a manner described in 12 CFR 32.3(c)(3) (secured by United States obligations), 12 CFR 32.3(c)(4)(ii) (secured by obligations guaranteed by a Federal agency), or 12 CFR 32.3(c)(6) (secured by a segregated deposit account).

(b) *Approval limits on all loans to an insider.* Notwithstanding paragraph (a) of this section, a national bank may not extend credit to an insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that insider, exceeds the greater of $25,000 or 5 percent of the bank's capital and surplus, or in any event $500,000, unless:

(1) A majority of the lending bank's entire board of directors approves the loan in advance; and

(2) The interested party abstains from participating directly or indirectly in the vote.

Subpart B—Reports and Public Disclosure

§ 31.4 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G)(ii), as amended.

§ 31.5 Definitions.

The definitions set forth in 12 CFR 215.21 apply to this subpart, except that "capital and surplus" has the same meaning as "capital and surplus" as defined in 12 CFR 32.2(b), and, for purposes of § 31.5(a)(1), "bank" means an insured national bank.

§ 31.6 Disclosure of insider indebtedness.

(a) Upon receipt of a written request, a national bank shall disclose the name of each of its executive officers and principal shareholders whose aggregate indebtedness (including indebtedness of related interests of such persons) from either—

(1) The insider's bank as of the latest calendar quarter, or

(2) The bank's correspondent banks at any time during the previous calendar year, equals or exceeds the lesser of 5 percent of the bank's capital and surplus or $500,000. This requirement applies only if the insider's (and his or her related interest's) aggregate indebtedness described in paragraphs (a)(1) or (a)(2) of this section exceeds $25,000.

(b) A national bank need not disclose additional information concerning indebtedness of its executive officers and principal shareholders. The bank may base its disclosure under paragraph (a)(1) of this section on the bank's most recent Consolidated Report of Condition and Income. The bank may base its disclosure under paragraph (a)(2) of this section on information contained in the reports referred to in § 31.6.

(c) A national bank shall maintain records of any requests for information under paragraph (a) of this section and records of the disposition of these requests for two years from the date of the request.

§ 31.7 Reports by executive officers and principal shareholders.

Pursuant to 12 U.S.C. 1972(2)(G)(i), each executive officer and principal shareholder of a national bank shall report annually to the bank's board of directors his or her indebtedness, and the indebtedness of his or her related interests, from correspondent banks of the insider's bank. For purposes of this section, the requirements stated in 12 CFR 215.22 (which implements the insider reporting requirements imposed by 12 U.S.C. 1972(2)(G)(i)) apply.

Interpretations

§ 31.100 Loans secured by stock or obligations of an affiliate.

If a loan to an affiliate is otherwise adequately secured in compliance with 12 U.S.C. 371c(c), a national bank may take a security interest in the securities of an affiliate as additional collateral without the loan being considered a covered transaction for purposes of the limits on transactions with affiliates in 12 U.S.C. 371c(a)(1) (A) and (B).

§ 31.101 Federal funds transactions between affiliates.

The limitations contained in 12 U.S.C. 371c apply to the sale of federal funds by a national bank to an affiliate of the bank.

§ 31.102 Deposits between affiliated banks.

(a) *General rule.* The OCC considers a deposit made by a bank in an affiliated bank to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c. These deposits must be secured in accordance with 12 U.S.C. 371c(c). However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (see, e.g., 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 U.S.C. 371c noted in paragraph (b), of this section, applies or unless another exception applies that enables a bank to meet the collateral requirements of 12 U.S.C. 371c(c), a national bank may not:

(1) Make a deposit in an affiliated national bank;

(2) Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 U.S.C. 371c; or

(3) Receive deposits from an affiliated bank.

(b) *Exceptions.* The restrictions of 12 U.S.C. 371c (other than 12 U.S.C. 371c(a)(4), which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

(1) Made in the ordinary course of correspondent business; or

(2) Made in an affiliate that qualifies as a "sister bank" under 12 U.S.C. 371c(d)(1).

Dated: November 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-30028 Filed 12-8-95; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-225-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that would have required modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP). That proposal was prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. This action revises the proposed rule by revising the applicability of the proposed AD to add additional airplanes and additional part numbers of the elevator PCP's, and by including additional service information. The actions specified by this proposed AD are intended to prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane.

DATES: Comments must be received by January 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-226-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi N. Ishimaru, Aerospace Engineer,

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Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2674; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-228-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-228-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on March 3, 1995 (60 FR 11942). That NPRM would have required modification of the left and right inboard elevator servo assemblies and re-routing the hydraulic tubing of the inboard elevator power control package (PCP). That NPRM was prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. That condition, if not corrected, could result in structural damage and reduced controllability of the airplane.

Due consideration has been given to the comments received in response to the NPRM.

One commenter requests that paragraph (a) of the proposal be revised to cite the latest revision of Boeing Alert Service Bulletin 747-27A2348 when referring to the applicability of that paragraph. This commenter states that Revision 1 of the service bulletin includes additional airplanes that are also subject to the proposed AD. The FAA concurs. The FAA inadvertently cited the original version, dated November 17, 1994, of Boeing Alert Service Bulletin 747-27A2348 in paragraph (a) of the proposal when referring to the applicable airplanes for that paragraph. Since that revision level is incorrect, the FAA has removed it and referenced Revision 1, dated January 26, 1995, in its place in paragraph (a) of the supplemental NPRM.

One commenter states that Model 747SP series airplanes should be subject to paragraph (b) of the proposal. The FAA acknowledges that Model 747SP series airplanes were inadvertently omitted from the applicability of the proposal. The FAA's intent was that the proposed rule be applicable to all Model 747 series airplanes (i.e., Model 747-100, -200B, -200F, -200C, 747SR, 747SP, 747-100B, -300, -100B SUD, -400, -400D, and -400F series airplanes). Therefore, the FAA has revised the applicability statement of the supplemental NPRM accordingly.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

In addition, due consideration has been given to the following additional comments, which do not change the scope of the originally proposed rule, received in response to the NPRM.

Three commenters request that the compliance time for paragraph (a) of the proposal be extended from the proposed 1 year. One of these commenters states that such an extension will allow operators to accomplish the modification during a regularly scheduled heavy maintenance visit. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspects of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts should be available for modification of the U.S. fleet within the proposed compliance period. Further, the FAA has determined that a heavy maintenance visit is not required to accomplish the modification.

Several commenters state that paragraph (b) of the proposed rule is unjustified because there have been no reports of actuator jamming on the classic Model 747 (747-100, -100B SUD, -200, -300, SR, SP) series airplanes after accumulating 87 million flight hours. One of these commenters states that the safety concern surrounding the configuration of the servo valve assembly of the inboard elevator PCP is theoretical at best.

The FAA does not concur with the commenters' suggestion that paragraph (b) of the proposed rule is unjustified. The FAA finds that the lack of reported jams and subsequent uncommanded elevator motion may be attributed, in part, to the small percentage of airplanes that recorded the elevator position while accumulating the 87 million flight hours. Paragraph (c)(10) of section 121.343, "Flight recorders", of the Federal Aviation Regulations (FAR) (14 CFR 121.343) requires that operators record either the control column or pitch control surface position (i.e., the position of the elevator and the stabilizer) of the airplane. Operators may comply with section 121.343 by electing to record the control column position, which is not a positive indicator of the elevator position. Consequently, incidents of uncommanded elevator motion due to actuator jamming may have occurred, but were not reported due to the flightcrew's inability to confirm the anomaly. Furthermore, the FAA finds that uncommanded elevator motion may occur on all Boeing Model 747 series airplanes if the servo valve secondary slide moves to the valve's internal stop. Therefore, the FAA finds that this AD action is warranted since an unsafe condition exists, which is identified as reduced controllability or structural damage to the airplane due to asymmetric elevator.

One commenter states that only Model 747-400 series airplanes have experienced actuator jamming with uncommanded elevator deflection. The commenter also states that the uncommanded elevator deflection problem has been directly attributed to

the fact that Model 747-400 series airplanes have the hydraulic system number 4 connected to the pressure sensitive side of the servo valve of the right inboard elevator PCP. The commenter contends that rerouting the hydraulic tubing, as required by paragraph (a) of the proposal (which references Boeing Alert Service Bulletin 747-27A2348, Revision 1, dated January 26, 1995, as the appropriate source of service information) will alleviate this problem. The commenter notes that Model 747-100, -200, -300, and SP series airplanes, which do not have the hydraulic system number 4 connected to the pressure sensitive side of the servo valve of the right inboard elevator PCP, have not experienced the uncommanded elevator deflection problem.

From this comment, the FAA infers that the commenter is requesting that paragraph (b) of the proposal be deleted. The FAA does not concur. The FAA has reviewed the pressure survey data for the number 3 and number 4 systems that was submitted by another commenter. The FAA finds that pressure fluctuations, which contribute to uncommanded elevator deflection, occur in hydraulic system number 3, as well as hydraulic system number 4. Therefore, the FAA finds that these data do not substantiate the commenter's suggestion that routing the hydraulic system number 3 to the sensitive side of the servo valve would preclude uncommanded elevator deflection.

One commenter states that paragraph (b) of the proposal, which is applicable to certain Model 747-100, -200, -300, and -400 series airplanes, references Parker Service Bulletin 327400-27-171 as the appropriate source of service information. The commenter further states that this service bulletin is not applicable to certain Model 747-100, -100B SUD, -200, -300, SR, and SP series airplanes, since the elevator power control packages specified in Parker Service Bulletin 327400-27-171 are not installed on these airplanes. The FAA's intent was to reference a service bulletin that addressed a modification for all affected airplane models. The FAA has reviewed and approved Parker Service Bulletin 93600-27-173, dated May 17, 1995. The modification procedures described in this service bulletin are identical to those described in Parker Service Bulletin 327400-27-171. The effectivity listing of Parker Service Bulletin 93600-27-173 contains elevator PCP's having part numbers (P/N) 93600-5005 through -5051 inclusive, which are installed on certain Model 747-100, -100B SUD, -200, -300, SR, and SP series airplanes. The FAA has revised the applicability statement of the supplemental NPRM to include these additional P/N's. Additionally, the FAA has revised paragraph (b) of the supplemental NPRM to include this service bulletin as an additional source of service information.

One commenter requests that applicability of paragraph (b) of the proposal be limited to Model 747-100, -100B SUD, -200, -300, SR, and SP series airplanes ("classic") having cumulative line (C/L) 696 and subsequent and that the compliance time be extended from 3 years to 5 years for those airplanes. The commenter contends that the aft fuselage limit load can be exceeded if the residual pressure at the actuator pistons exceeds 800 pounds per square inch (psi)/cylinder. The commenter further contends that the probability of exceeding this is less than $1 \times 10e{-}5$. This pressure assumes the valve jammed at the most adverse position achievable from pilot inputs. The commenter states that the aft fuselage limit load can be exceeded for classic airplanes having C/L 001 through 695 inclusive, if the residual pressure at the actuator pistons exceeds 1,700 psi/cylinder. The commenter also states that the probability of exceeding the structural limit is less than $1 \times 10e{-}9$.

The FAA does not concur with the commenter's request to limit the applicability and extend the compliance time of paragraph (b) of the proposal. Following a review of the commenter's probability analysis, the FAA has determined that the commenter has based its analysis on a sampling that was much too small from which accurate statistical conclusions that would be representative of the fleet could be drawn. Further, the FAA finds that the flow rate and differential pressures used by this commenter were not substantiated to be the worst case scenario. Therefore, based on this flawed probability analysis, no change to the supplemental NPRM is warranted.

One commenter requests that Boeing Model 747-400 series airplanes be removed from the applicability of paragraph (b) of the proposal. The commenter states that if the valve jams, the resultant asymmetric elevator will not result in structural damage on these airplanes. The FAA does not concur. The FAA has determined that, although the asymmetric elevator may not damage Model 747-400 series airplanes, an unsafe condition (i.e., reduced controllability) still exists.

Two commenters request that the compliance time for paragraph (b) of the proposal be extended from the proposed 3 years to 5 years. One commenter states that it does not have enough seed units to accomplish the modification at their own facilities within the proposed compliance time. The FAA does not concur. As stated above, the FAA considered the availability of required parts and the practical aspects of installing the required modification. In addition, the FAA finds that other maintenance facilities are available to operators that are unable to accomplish the modification at their own facilities. However, under paragraph (c) of the proposed rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

One commenter questions the FAA's estimate of the cost of required replacement parts for classic Model 747 series airplanes. The commenter states that the $3,720 per airplane figure, presented in the cost impact information in the preamble to the notice, is too low. This commenter suggests that parts costs will be approximately $7,440 per airplane (2 elevator power control packages at $3,720 each). After considering the data presented by the commenter, the FAA concurs that the cost of required parts per airplane is higher than previously estimated; the economic impact information, below, has been revised to indicate this higher amount.

There are approximately 672 Model 747-100, -100B SUD, -200, -300, SR, and SP series airplanes, and 357 Model 747-400 series airplanes of the affected design in the worldwide fleet, a total of 1,029 airplanes.

The FAA estimates that 114 Model 747-100, -100B SUD, -200, -300, SR, and SP series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 73 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,440 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,347,480, or $11,820 per airplane.

The FAA estimates that 65 Model 747-400 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 111 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,269 per airplane. Based on these figures, the cost impact

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of the proposed AD on U.S. operators is estimated to be $1,230,385, or $16,929 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–228–AD.

Applicability: Model 747 series airplanes, equipped with Parker inboard elevator power control packages (PCP) having part numbers (P/N) 93600–5005 through –5051 inclusive, or P/N's 327400–1001, –1003, –1005, and –1007; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane, accomplish the following:

(a) For Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995: Within 1 year after the effective date of this AD, modify the hydraulic tubing of the right inboard elevator PCP, in accordance with Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995.

(b) For all airplanes: Within 3 years after the effective date of this AD, modify the left and right servo assemblies of the inboard elevator PCP, in accordance with Parker Service Bulletin 327400–27–171, Revision 1, dated April 14, 1995, or Parker Service Bulletin 93600–27–173, dated May 17, 1995, as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30074 Filed 12–8–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–99–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspections to verify the correct operation of the main landing gear (MLG) downlock actuators, and replacement of any discrepant unit with a serviceable unit. The proposed AD also would require eventual replacement of the MLG downlock actuators with improved units. This proposal is prompted by reports of improper operation of the MLG downlock actuator due to jamming. The actions specified by the proposed AD are intended to prevent such jamming of the downlock actuator, which could result in failure of the MLG downlock system, and a potential gear-up landing.

DATES: Comments must be received by January 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314, and Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, VA 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that several operators of these airplanes have reported that landing gear "unsafe" warning indications have appeared on the multi-function display unit (MFDU) after the flight crew selected the landing gear to the down position. In most cases, recycling the landing gear resulted in a positive downlock indication. Investigation revealed that the main landing gear (MLG) downlock actuator (jack and springpot unit) did not operate properly. Further investigation revealed that the tip of a spring carrier broke due to a malformed piston rod and a spring that was not square, which caused the spring carrier to move at an angle. A jammed actuator could result in failure of the MLG downlock system. This condition, if not corrected, could result in a gear-up landing.

Fokker has issued Service Bulletin SBF100–32–072, dated March 30, 1993, which describes procedures for repetitive inspections to verify the correct operation of any MLG downlock actuator having part number (P/N) 201218001, 201218002, 201218003, or 201218004, and replacement of discrepant units with serviceable units. The Fokker service bulletin references Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993. The Dowty Aerospace Hydraulics service bulletin contains additional procedures for accomplishment of the inspection. For airplanes on which the MLG downlock actuator operates correctly, the Dowty Aerospace Hydraulics service bulletin also specifies procedures for recording the accomplishment of each inspection on the unit nameplate.

Fokker also has issued Service Bulletin SBF100–32–074, dated July 21, 1993, which describes procedures for replacement of any MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004 with an improved unit having P/N 201218005, 201218006, 201218007, or 201218008, respectively. The improved units have improved jack and springpot units with modified spring carriers and spring actuators, as well as a new end fitting subassembly and nut. The Fokker service bulletin references Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993, as an additional source of service information.

The RLD classified these service bulletins as mandatory and issued Netherlands airworthiness directive BLA 93–052/2 (A), dated September 10, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to verify the correct operation of the MLG downlock actuators; and replacement of any discrepant unit with a serviceable unit. For airplanes on which no discrepant unit is found, the proposed AD also would require recording the accomplishment of each inspection on the unit nameplate. In addition, the proposed AD would require eventual replacement of the MLG downlock actuators with improved units. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be supplied by the vendor at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $149,940, or $1,260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–93–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace Hydraulics main landing gear (MLG) downlock actuators having part number (P/N) 201216001, 201216002, 201216003, or 201218004, all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the MLG downlock actuator and a potential gear-up landing, accomplish the following:

(a) Within 2 months after the effective date of this AD, and thereafter at intervals not to exceed 1,250 landings: Perform an inspection to verify correct operation of the MLG downlock actuator having P/N 201216001, 201216002, 201216003, or 201218004, all serial numbers, in accordance with Fokker Service Bulletin SBF100–32–072, dated March 30, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993.

(1) If the MLG downlock actuator operates as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, record the accomplishment of the inspection on the unit nameplate in accordance with the Dowty Aerospace Hydraulics service bulletin. Following accomplishment of each subsequent inspection required by this AD, record the accomplishment of the inspection in accordance with the requirement of this paragraph.

(2) If any MLG downlock actuator does not operate as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, replace the downlock actuator with a serviceable unit, in accordance with Chapter 32–32–05 of the Aircraft Maintenance Manual. Thereafter, perform repetitive inspections of the replacement unit in accordance with paragraph (a) of this AD until the replacement required by paragraph (b) of this AD is accomplished.

(b) Within 9 months after the effective date of this AD, replace any MLG downlock actuator having P/N 201216001, 201216002, 201216003, or 201218004, any serial number, with an improved unit having P/N 201216005, 201216006, 201216007, or 201218008, respectively; in accordance with Fokker Service Bulletin SBF100–32–074, dated July 21, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a MLG downlock actuator having P/N 201216001, 201216002, 201216003, or 201218004, any serial number.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30075 Filed 12–8–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–86–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspection(s) to verify that the position indicator of the fuel balance transfer valve (FBTV) is in the closed position, and closing the FBTV, if necessary; and deactivation of the fuel balance transfer system (FBTS). This proposal is prompted by a report that, under certain failure conditions, the actuator of the FBTV could remain in the open position without a flight deck indication. The actions specified by the proposed AD are intended to ensure that the FBTV is not in the open position during flight, which could lead to the reduction of fuel supply to the engines during cross-feed operation and consequent engine fuel starvation.

DATES: Comments must be received by January 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–86–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received a report that, under certain failure conditions, the actuator of the fuel balance transfer valve (FBTV) could remain in the open position after maintenance without a flight deck indication. The FBTV is part of the fuel balance transfer system (FBTS) that prevents inadvertent and uncontrolled transfer of fuel. The FBTS is used during maintenance activities to move the center of gravity of the airplane forward, as required, and allows fuel to be transferred from the main tanks to the center tanks through the cross-feed system. If the FBTV remains in the open position during flight, the fuel supply to the engines during cross-feed operation may be reduced, which could lead to engine fuel starvation.

Fokker has issued Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994, which describes procedures for inspection(s) to verify that the position indicator of the FBTV is in the closed position, and closing the FBTV, if necessary; and deactivation of the FBTS. For all airplanes, the deactivation involves disconnecting the power supply to the FBTV. In addition, for certain airplanes, the deactivation involves removing the FBTV actuator, and installing a locking device. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94–146 (A), dated September 30, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection(s) to verify that the position indicator of the FBTV is in the closed position, and closing the FBTV, if necessary; and deactivation of the FBTS. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,960, or $490 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–86–AD.

Applicability: Model F28 Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an

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assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the reduction of fuel supply to the engines during cross-feed operation, which could lead to engine fuel starvation, accomplish the following:

(a) After the effective date of this AD, whenever the fuel balance transfer system (FBTS) is used during maintenance, prior to further flight, perform an inspection to verify that the position indicator of the fuel balance transfer valve (FBTV) is in the closed position, in accordance with Fokker Service Bulletin SBF100-28-030, Revision 1, dated December 8, 1994. The inspection requirements of this paragraph must be accomplished until the deactivation required by paragraph (b) of this AD is accomplished.

(1) If the position indicator is in the closed position, no further action is required by this paragraph.

(2) If the position indicator is in the open position, close the FBTV in accordance with the service bulletin.

(b) Within 90 days after the effective date of this AD, deactivate the FBTS in accordance with either Part 2 or Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100-28-030, Revision 1, dated December 8, 1994, as applicable. Accomplishment of the deactivation constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30076 Filed 12-8-95; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend rule 30.3 to eliminate the requirement that the CFTC authorize the offer and sale of a particular foreign commodity option before it can be offered or sold in the United States. This proposal reflects the Commission's assessment that the continued treatment of foreign commodity options differently from foreign futures (which do not require a specific authorization order) should be reevaluated.

DATES: Comments must be submitted on or before January 10, 1996.

ADDRESSES: Comments should be sent to the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Reference should be made to "Rule 30.3—Foreign commodity options."

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418-5435.

SUPPLEMENTARY INFORMATION:

Background

Commission rule 30.3(a) of the Commission's Part 30 rules governing the offer and sale of foreign futures and option transactions makes it unlawful for any person to engage in the domestic offer or sale of any foreign commodity option contract until the Commission, by order, authorizes the foreign option to be offered or sold in the United States.[1] A Commission order is not required with respect to foreign futures. However, an option on a foreign stock-index futures contract will not be approved unless, among other things, the Commission's Office of the General Counsel has issued a no-action letter authorizing the offer and sale in the United States of the underlying foreign stock-index futures contract. In addition, debt obligations of a foreign country must be designated as an exempted security by the SEC under its rule 3a12-8, 17 CFR 240.3a12-8, before a futures contract based on such debt obligation (or an option on such a futures contract) may be offered or sold to a U.S. person.[2]

The Commission is proposing to eliminate the specific authorization requirement of rule 30.3 thereby permitting, subject to existing prohibitions with respect to stock index futures and options and foreign government debt futures and options products, the offer and sale of foreign commodity options in the same manner as currently applies to the offer and sale of foreign futures. The Commission would, however, continue to monitor the situation and take appropriate action should it determine that U.S. investors, or the Commission, are not able to obtain appropriate information related to the option transactions of a specific exchange or are otherwise being adversely affected by the rule change. Moreover, the proposal would not affect the existing regulatory requirements applicable to the manner in which appropriate products may be offered or sold to U.S. persons, *e.g.*, registration of intermediaries, requirements related to sales practices (including appropriate disclosures), availability to the Commission of books and records and prohibitions on fraudulent activities.

The Commission's determination to propose modifications to the current procedure of regulation 30.3(a) for approval of foreign option products for sale to U.S. persons is based on its experiences with the regulations governing options generally, and, in particular, with the initial regulations imposed on foreign options trading. This proposal reflects the Commission's assessment that the continued treatment of foreign commodity options differently from foreign futures (which do not require a specific authorization order) should be reevaluated.

History of Options Regulation

The regulatory approach to commodity options in the United States has been particularly cautious due to the history of abuses which had been associated with such transactions.[3]

Unsatisfactory experiences with what essentially were unregulated sales of options on commodities in the early 1970's, and further abuses under interim regulations adopted in 1976 ultimately resulted in the Commission's suspension of the offer and sale of all commodity options as of June 1, 1978 and the codification of that suspension by Congress in the Commodity Exchange Act of 1978. *See* 46 FR 54500, 54502 (November 3, 1981). The suspension codified by Congress permitted the Commission to introduce option trading, but only if the Commission could document to its Congressional oversight committee its ability to regulate successfully such transactions.[4]

Mindful of this history, in proposing a pilot program for the offer and sale of options in 1981, the Commission expressly stated that it was:[5]

> Cognizant of the need to exercise a strong degree of control over all aspects of commodity option trading.

Thus, the final domestic exchange-traded commodity option rules adopted in 1981 authorized the introduction of options under a limited pilot program which permitted only one option contract per exchange, did not permit either foreign options or options on physical commodities to be offered, and placed significantly greater self-regulatory responsibilities on boards of trade than was then required for futures trading, particularly with respect to the protection of the public from sales practice abuses.[6]

Evolution of Domestic Option Regulations

Although starting narrowly and cautiously, the Commission's options regulations have evolved consistently with the acquisition of an operational history under those regulations. Thus, in December 1982 the Commission expanded the pilot program to permit each exchange to trade one option on a futures contract and one option contract on a non-agricultural physical commodity.[7] The Commission continued to expand the pilot program in a controlled and orderly manner so that both the Commission and the exchanges would obtain greater experience with the trading of options,[8] subsequently expanding the pilot program to permit more option contracts per exchange,[9] to include option contracts on futures contracts on agricultural commodities,[10] and ultimately, to eliminate the pilot status of the option regulations.[11]

The Commission's incremental expansion of the domestic exchange-traded options program was validated by Congress in 1986 when Congress amended section 4c of the CEA to make permanent the program of exchange-traded commodity options. As stated in the House Report on the 1986 legislation:[12]

> The Committee's amendment coincides with a recent decision by the Commission to terminate the pilot status of the program for trading options on futures contracts other than those on domestic agricultural commodities and make the trading of such options permanent. * * *
>
> The Committee believes the Commission has practiced good judgment in its regulation and oversight of both agricultural and the nonagricultural options programs. Furthermore, the Committee is satisfied that the overall experience with both of these pilot programs indicates that few regulatory problems have arisen, and that the exchanges have discharged their responsibilities adequately. Additionally, the Commission has detected no adverse effects on the underlying futures markets resulting from such option trading.

Moreover, based on its administration of the option pilot program for more than ten years, the Commission has previously determined to eliminate certain provisions that were originally part of its options designation requirements for which there were not comparable futures regulation, such as:

—Rule 33.4(b)(9) which required a board of trade applying for designation as a contract market with respect to commodity option transactions to adopt special rules governing the handling by its member FCMs of discretionary accounts in option transactions;[13]

—rules which require boards of trade designated as contract markets for options to adopt rules requiring FCMs that engage in the offer or sale of commodity options regulated under Part 33 to send copies of customer complaints and their resolutions and copies of all promotional materials to the members' designated self-regulatory organization (DSRO);[14] and

—rules which required a specified volume of trading in the underlying futures contract prior to designation; established a delisting criterion for the trading of low-volume contracts; and required exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option.[15]

History of Foreign Options Rules.

As noted above, the Commission's initial pilot programs did not include foreign options.[16] Thus the ban contained in section 4c of the CEA remained in effect with respect to foreign options. A program to authorize the offer and sale of foreign exchange-traded commodity options was not implemented until 1987 with the general adoption of the part 30 rules governing foreign futures and option transactions generally.[17] The Part 30 rules, among other things, provided a mechanism for lifting the ban with respect to foreign exchange-traded options. Under rule 30.3(a), foreign exchange-traded commodity options are prohibited from being offered or sold in the United States unless the Commission issues a product-specific order. The part 30 rules did not similarly require a product-specific order for foreign futures transactions.

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[1] The Commission previously made clear that subject to certain conditions applicable to transactions involving stock indexes and foreign government debt, a rule 30.3 order would not be necessary for transactions effected by U.S. futures commission merchants (FCM) on behalf of foreign customers. *See* 57 FR 36360 (August 13, 1992).

[2] Consistent with section 2(a)(1)(B) of the CEA, this proposed rulemaking would not be applicable to commodity options based on or involving a foreign futures contract based on a foreign stock index unless the foreign stock index futures contract has been approved for offer or sale in the United States through the issuance of a no-action letter by the Commission's Office of the General Counsel. Further, this proposed rulemaking would not be applicable to commodity options based on a foreign government debt which has not been designated as an exempted security under SEC rule 3a12-8.

[3] The Commission notes that the abuses which characterized the offer and sale of commodity options in the past generally involved sales practices, 46 FR 54500, 54503 (November 3, 1981), including sales activity with respect to alleged "London options" (which appeared to have been perpetrated exclusively by sales persons or organizations in the United States, and did not involve any improper activities on the part of foreign exchanges), *see* 42 FR 18246, 18249 (April 5, 1977).

[4] *See* section 4c(c) of the CEA, as amended by the 1978 Act. *See* 46 FR 33293, 33294 (June 29, 1981).

[5] *See* 46 FR 33293, 33294 (June 29, 1981).

[6] *See* 46 FR 54500, 54502 (November 3, 1981).

[7] 47 FR 56996 (December 22, 1982).

[8] *Id.* at 56997.

[9] *See, e.g.*, 49 FR 33641 (August 24, 1984) (permitting each exchange to trade five contracts); 50 FR 45811 (November 4, 1985) (increasing from five to eight the number of contracts permitted per exchange).

[10] 49 FR 2752 (January 23, 1984). The pilot program was established after the statutory bar to trading options on domestic agricultural commodities was repealed by section 206 of the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294, 2301 (1983). The Commission limited the pilot program to options on futures contracts on agricultural products. The Commission noted that industry commenters generally favored such a restriction and the Commission's cautious approach. *See* 49 FR at 2754.

[11] *See* 51 FR 17464 (May 13, 1986) (termination of pilot status for non-agricultural options); 53 FR 777 (January 9, 1987) (termination of pilot status for options on non-agricultural physical commodities and on agricultural futures contracts).

[12] *See* H. Rep. 99-624, 99th Cong., 2d Sess. 15 (1986).

[13] 58 FR 30701 (May 27, 1993). The Commission based this rule change on its belief that compliance with the supervisory requirements of rule 166.3, the requirements of rule 166.2 concerning authorization to trade, other Commission rules of general applicability, and SRO rules such as NFA compliance rule 2-8, should be adequate to address the regulatory concerns applicable to both option and futures customer discretionary accounts. *See* 58 FR 30701, 30702.

[14] *See* 57 FR 58976, 58977 (December 14, 1992) (such records must however be maintained by the FCM for review as part of the routine audit process); *see generally* 56 FR 43694 (September 4, 1991).

[15] 56 FR 43694 (September 4, 1991). The Commission also revised rule 33.4(d) which had required exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever comes first.

[16] *See* 46 FR 33293, 33294 (June 29, 1981).

[17] 52 FR 28980 (August 5, 1987).

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As with the Commission's pilot program for domestic exchange-traded options, the program for foreign exchange-traded commodity options also has proceeded cautiously. Thus, in issuing the order for any foreign market, the Commission has considered: (1) The availability of certain information relevant to preventing abuses including, but not limited to trade confirmation data; (2) the arrangements in place for assuring that sales practice abuses do not occur; (3) the arrangements for U.S. customers to redress grievances; and (4) the regulatory environment in which such options are traded.[19]

In particular, the Commission placed great stress initially on its ability to obtain information from the foreign exchange with respect to transactions entered into on that exchange on behalf of U.S. customers.[20] As stated in the final rules:[20]

> In order to ensure that foreign commodity exchanges are both willing and able to share appropriate information with the Commission * * * the Commission has determined to make the issuance of a Commission order a prerequisite to the lawful offer and sale of such products.

Reevaluation of foreign options rules.

Since 1987 foreign option sales to U.S. customers have been permitted under the Commission's part 30 rules. Such sales have occurred without the type of sales abuses that historically had been associated with commodity option activities. Contributing to this success has been the requirement that foreign options be sold to U.S. customers by futures commission merchants (which ensures among other things the adequacy of firm capital, fitness of personnel and proper supervision of sales practices); the Commission's Part 30 rules, which seek to ensure that foreign firms directly soliciting U.S. customers for foreign products are otherwise regulated as to their sales practices;[21] and the undertaking by the National Futures Association (NFA) to audit the foreign options sales practices of domestic firms marketing foreign options to domestic customers.[22] In particular, under the current regulatory scheme, firms engaged in the offer or sale of foreign commodity options (and futures) to U.S. customers must either be a Commission registrant or a foreign firm which has qualified to sell foreign products in the United States under the Commission's Part 30 rules based on substituted compliance with a foreign jurisdiction's licensing and fitness requirements and subject to certain other conditions to assure the availability of the firms' records and its submission to Commission jurisdiction under the CEA and U.S. law otherwise.

In the case of NFA, NFA audits generally include the review and analysis of a member firm's trading records, sales materials and practices (sales practices compliance audits), and for FCMs and independent IBs, accounting procedures, financial statements and records (financial audits). NFA's audit programs are designed so that the auditors must perform a certain amount of work at the member firm's office, testing records and resolving any discrepancies. While all NFA members are subject to audit, decisions concerning whether to audit a particular firm are based on a number of factors, including NFA's review of financial statements, monitoring of media advertising, receipt of customer complaints, knowledge of the past history of the firm and its principals, the time elapsed since the previous NFA audit, potential effects of market movements and referrals outside of NFA.

NFA compliance audits have two major objectives: to determine whether the firm is maintaining records in accordance with NFA rules and applicable Commission regulations, and to ascertain that the firm is being operated in a professional manner and that customers are protected against unscrupulous activities, including fraudulent or high-pressure sales practices. The compliance program specifically examines the firm's practices in soliciting accounts and audits could review, among other things: records of customers' orders; customer confirmations and other account statements; records regarding handling of discretionary accounts; disclosure documents, advertising and other promotional material; records of customer complaints; and records relative to the internal supervision of account executives, order handling or sales personnel.[23]

The Commission believes that its experience since 1987 with foreign options justifies a reexamination of the necessity of requiring a specific option authorization order for each options contract offered and sold in the United States, that is, the continuing need for differential treatment of the offer or sale of foreign futures and foreign options in the United States. Just as the Commission's domestic exchange-traded option program has evolved on the basis of accumulated operational experience, the Commission believes that a similar measured evolution, based on experience, is warranted with respect to foreign commodity options.

However, as noted above, the Commission believes that its existing regulatory scheme governing domestic registered firms which deal directly with the public in conjunction with the sales practice program of the NFA—all subject to Commission oversight—should provide adequate sales practice protections for customers who would engage in foreign options transactions through registered FCMs. In this connection, prior to adopting any final rules in this regard, the Commission would need to be assured that arrangements exist through NFA or otherwise to ensure that sales practice compliance audits of registrants offering foreign commodity options will be undertaken, thereby ensuring complete sales practice compliance audit coverage of firms (which heretofore has been mandated on a product-specific basis under rule 30.3 orders).

Similarly, the Commission's rule 30.10 orders permitting foreign firms to directly solicit U.S. persons for foreign products address options and futures sales practice concerns. In addition, the Commission notes that existing 30.10 orders have been accompanied by information-sharing arrangements which assure Commission access to relevant information of the type which previously may not have been available.[24] The Commission further recognizes that its ability to obtain information to confirm the existence of transactions executed on foreign exchanges[25] has been materially enhanced by the numerous information-sharing memoranda of understanding and cooperative arrangements that have been entered with foreign jurisdictions.[26]

Nor would elimination of the authorization requirement negatively affect the access of U.S. customers to existing customer complaint procedures, either under existing rule 30.10 orders for customers directly solicited by foreign firms or under NFA's arbitration rules governing disputes with a foreign party.

Customers solicited by foreign firms operating under a rule 30.10 order will, pursuant to the express terms of such orders, have access to arbitration procedures both abroad and through NFA. Customers transacting through a domestic firm will have the option of electing NFA arbitration procedures. NFA rules governing arbitration of disputes involving foreign parties provide that disputes involving a foreign party may, in the discretion of NFA, be arbitrated if the parties agree to such arbitration (see NFA foreign arbitration rule sec. 2(a)(1)). Demands for arbitration will be rejected, however, if the claim arises primarily out of delivery, clearance, settlement or floor practices of a foreign exchange unless the foreign jurisdiction has no program for the resolution of disputes, in which case NFA will hear such claims. The rule 30.10 order permits the 30.10 firm to require a customer to consent to use a foreign regulator's non-binding mediation or conciliation service prior to initiating an NFA arbitration case. (See NFA Arbitration Policy Statement (March 1, 1989)).

Thus, whether solicited by Commission registrants or foreign firms operating under rule 30.10, the Commission believes that the systems in place to address sales practice abuses and information sharing warrant reexamination of existing procedures.

Finally, the Commission notes that FCMs which are not members of foreign exchanges should assure themselves that there are no statutory or regulatory impediments on their ability to obtain information from foreign exchange-members firms necessary to enable such FCMs to comply with the CEA and regulations thereunder relative to confirming the execution of foreign option transactions.

In conclusion, the Commission believes that the differential treatment of foreign options no longer is justified. Indeed, to the extent that such differential treatment continues under circumstances when such treatment is not warranted based on existing economic and/or regulatory concerns, it risks conveying to traders the incorrect impression that the Commission can provide a greater level of protection with respect to foreign options than with respect to foreign futures. Moreover, as domestic exchanges increasingly seek to link their exchanges electronically with other exchanges worldwide, the presence of an authorization process for commodity options raises, under the current circumstances, an unnecessary obstacle that could competitively disadvantage domestic exchanges.

Proposal

The Commission is therefore proposing to eliminate rule 30.3's requirement that no foreign option may be offered or sold in the United States until the Commission, by order, authorizes such foreign commodity option to be offered or sold in the United States.

The Commission notes that the proposed elimination of the specific authorization requirement in rule 30.3(a) will not affect the existing product restrictions applicable to options on futures contracts based on stock index products (*i.e.*, the underlying stock index futures must be the subject of a no-action letter issued by the CFTC's Office of the General Counsel) and foreign government debt (i.e., the debt product must be designated by the SEC as an exempted security under SEC rule 13a–8) contained in section 2(a)(1)(B)(v) of the CEA.

Accordingly, the Commission invites comment from interested parties on its proposal. Moreover, the Commission specifically invites the contract markets to indicate any other areas in which the designation requirements for options and futures generally could be further harmonized.

Other Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619 (April 30, 1982). The Commission similarly determined that CPOs are not small entities for purposes of the RFA. 47 FR 18618, 18620 (April 30, 1982). With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule. 47 FR 18618, 18620 (April 30, 1982) (CTAs); 48 FR 35248, 35276 (August 3, 1983) (IBs).

The proposed amendment of rule 30.3 is intended to facilitate the ability of Commission registrants or exempted firms to provide customers with access to desired products by eliminating a current product-by-product authorization requirement, thus providing easier access to a greater number of persons.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1960 (Act), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. The Commission has determined that the proposed amendment does not have any paperwork burden.

Persons wishing to comment on the Commission's determination on the paperwork burden concerning this proposed rule should contact Jeff Hill,

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[19] See, e.g., 53 FR 28940 (July 20, 1988).

[20] See 52 FR 28980, 28988 (August 5, 1987).

[21] Id.

[22] In reviewing the foreign regulatory program for purposes of rule 30.10, the Commission's staff considers the sales practice compliance review program in effect in the foreign jurisdiction.

[23] Part 33 requires exchanges as a condition of designation as a contract market to have specific options sales practice compliance responsibilities. NFA and the futures exchanges participate in a Joint Audit Plan (Plan) to reduce the duplication of audit and financial surveillance work which otherwise could occur with respect to FCMs which are members of more than one exchange. The plan assigns primary audit and financial surveillance responsibility for each FCM, which is a member of more than one of the SROs, to one of the Plan participants. The SRO which has the primary responsibility is known as that FCM's DSRO. NFA is the DSRO for all FCMs which are not members of any commodity exchange and therefore, do not have an exchange SRO and, in some cases, NFA by agreement is the DSRO for certain exchange member firms. NFA also is the DSRO responsible for surveillance over the financial reporting and recordkeeping by all member CPOs, and independent introducing brokers (IBs), as well as guaranteed IBs whose guarantoring FCMs have NFA as the DSRO. NFA also is charged with auditing for sales practice compliance all member IBs, CTAs and CPOs, and branch offices of FCMs for which NFA is DSRO, as well as all futures sales practices compliance not contracted to another SRO.

To date, NFA has undertaken, in conjunction with specific Commission orders under rule 30.3(a), to conduct sales practice compliance auditing of registrants marketing particular foreign commodity options under relevant arrangements with such firms' DSRO. Therefore, any revisions to Commission rule 30.3 would be premised on the existence of an audit program to assure general sales practice compliance for all foreign commodity option transactions. *See also* n. 21.

[23] *See* Commission rule 33.4(c); *see also* n. 22.

[24] Significantly, to date, the Commission has not had occasion to request any information under any information sharing arrangement in connection with the approval of a particular exchange foreign option product.

[25] In explaining its decision to suspend the offer and sale of foreign commodity options in the United States, the Commission noted in 1977, among other things, that:

> The Commission's investigators and auditors have also encountered great difficulty in their attempts to verify the details of option transactions purportedly effected for Americans on foreign exchanges.

See 43 FR 16153, 16155 (April 17, 1977).

[26] For example, such regulatory and enforcement MOUs and cooperative arrangements have been entered into with authorities in Australia, Argentina, Brazil, Canada, France, Hong Kong, Italy, Japan, Mexico, the Netherlands, Singapore, Spain, Taiwan, and the United Kingdom.

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Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe Mink, CFTC Clearance Officer, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5170.

List of Subjects in 17 CFR Part 30

Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby proposes to amend part 30 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Section 30.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part; Provided, that, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

* * * * *

Issued in Washington, D.C. on December 5, 1995 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30046 Filed 12–8–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM96–5–000]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act

November 29, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the Natural Gas Act and the Outer Continental Shelf Lands Act over natural gas facilities and services on the Outer Continental Shelf (OCS). The notice of inquiry is intended to receive information respecting the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The notice of inquiry solicits comments on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy. The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Written comments must be received on or before January 12, 1996; an original and 14 copies should be filed.

ADDRESSES: All comments should refer to Docket No. RM96–5–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert Wolfe, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 208–2098.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the Natural Gas Act (NGA) and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the Outer Continental Shelf (OCS).

The Commission is initiating this Notice of Inquiry (NOI) to examine the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The NOI will also seek information on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy.

II. Background

The Commission's current policy respecting the jurisdictional status of gas pipelines and services on the OCS presents a number of issues concerning the status, scope, and effects of the Commission's regulation of gathering and transportation on the OCS. The Commission has determined that it should undertake a review of these issues.

Increases in successful offshore exploration and development activities, particularly in the Gulf of Mexico, have heightened the significance of these jurisdictional issues. Recently, several companies have either filed requests for, or have indicated their intent to request, exempt gathering status for offshore pipeline systems that each is eager to construct to bring gas onshore from significant newly developed deep water reserves in the Gulf. There are also pending requests for declaratory orders concerning existing certificated offshore systems.

There are 18 existing interstate pipelines on the Outer Continental Shelf (OCS) in the Gulf of Mexico that are presently subject to the Commission's regulation under the NGA. There are also numerous facilities that are not under NGA jurisdiction. These are principally producer-owned facilities. It is noteworthy that an estimated 27% of the lower 48 State's total dry gas production comes from the Gulf of Mexico OCS.[1]

The various OCS pipeline system proposals and Sea Robin Pipeline Company's request for rehearing of the Commission's June 16, 1995 order in Docket No. CP95–168–000[2] have prompted reexamination of the

[1] *See, Natural Gas Production for the Lower 48 States 1982 through 1993*, Energy Information Agency, March 1995.

[2] 71 FERC ¶ 61,351 (1995).

Commission's approach to regulating OCS facilities. Given the continuing importance of the OCS as a source of natural gas, a principal aim of the Commission is to develop regulatory policies that do not impede or distort developmental activities on the OCS.

III. The Statutory Framework

A. The Natural Gas Act (NGA)

The basic purpose of Congress in enacting the NGA was to "occupy the field"[3] of the regulation of natural gas moving in interstate commerce by the primary grant of jurisdiction to the Commission over those aspects of such regulation over which the states may not act.[4] To that end, Congress meant to create a comprehensive regulatory scheme of dual state and federal authority.[5] Section 1(b) of the NGA embodies the primary grant of jurisdiction to the Commission. At the same time, section 1(b) exempts from the Act's coverage "the production or gathering of natural gas." Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b), by operation of the "production and gathering" exemption, removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.[6]

B. The Outer Continental Shelf Lands Act (OCSLA)

Additional sources of regulatory authority over OCS pipeline facilities and activities are sections 5(e), and 5(f)(1), of the OCSLA.[7] Generally, sections 5(e) and 5(f)(1) of the OCSLA give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS transport for non-owner shippers in a nondiscriminatory manner and operate in accordance with certain competitive principles.

Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS "without discrimination" and in such "proportionate amounts" as the Commission, in consultation with the Secretary of Energy, determines to be reasonable. In addition, section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain "competitive principles". These "competitive principles" include a requirement that the pipeline must provide "open and nondiscriminatory access to both owner and nonowner shippers."

The applicability of the provisions of sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction. The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain "feeder lines," which are defined in section 5(f)(2) of the OCSLA[8] as a pipeline that feeds into a facility where oil and gas are "first collected" or a facility where oil and gas are "first separated, dehydrated, or otherwise processed." These "feeder lines" may only be exempted from the requirements of the OCSLA by order of the Commission.

IV. The Commission's Current Policy

In 1989, in response to the court's decision in *EP Operating* v. *FERC (EP Operating)*,[9] which reversed a Commission determination that a 51-mile long, 16-inch diameter OCS pipeline was a jurisdictional transportation facility, the Commission set upon a review of its "gathering policy." The purpose of that review was to assess the impact of *EP Operating* as well as the continuing viability and relevance of the "primary function" test, which at that time was the Commission's preferred methodology for determining the jurisdictional status of gas pipeline facilities.[10] That review culminated in the Commission's articulation and application of the "modified primary function" test in *Amerada Hess, et. al.* (*Amerada Hess*).[11]

As set out in *Amerada Hess*, the "modified primary function" test consists of the continued application of the "primary function" test, with a modification in its application in accord with *EP*. Specifically, when applying the *Farmland* criteria, the Commission stated that it would consider, especially for offshore facilities, the changing technical and geographic nature of exploration and production. The order explained that because of recent advances in engineering and available technology, offshore drilling operations were moving further offshore and further from existing interstate pipeline interconnections. Accordingly, the order explained that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production whereas an onshore pipeline of similar length would not. Therefore, in applying the "modified primary function" test to OCS pipeline facilities the Commission stated that it would apply, in effect, a sliding scale that would allow for the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area.

V. Specific Questions for Response by All Commenters

The Commission has compiled a list of questions, set forth below, that will be helpful in assessing the Commission's current policy and possible policy alternatives. This list is not meant to be all inclusive. Parties to this proceeding are invited to present alternative solutions not specifically referenced in this notice.

A. General.

1. It is necessary or appropriate to continue distinguishing between gathering and transportation on the OCS, or would it be better either to declare that under the NGA all such facilities are exempt gathering facilities or to declare that under the NGA all such facilities are jurisdictional transportation facilities?

2. Does the Commission need to continue to regulate offshore transportation under the NGA, or is reliance on the OCSLA sufficient to protect the public interest?

3. Is there a "regulatory gap" pertaining to rates or any other matter respecting gas pipeline facilities or services on the OCS?

4. What is the extent of the Commission's authority under the

[3] See Schneidwind v. ANR Pipeline Co., 485 U.S. 293, 310–311 (1988).

[4] Interstate Natural Gas Co. v. FPC, 331 U.S. 682 (1947).

[5] FPC v. Louisiana Power & Light Co., 406 U.S. 621 (1972).

[6] See, *e.g.*, Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 682–84 (1954); Interstate Natural Gas Co. v. FPC, *supra* at 690.

[7] 43 U.S.C. § 1334(e), (f)(1).

[8] 43 U.S.C. § 1334(f)(2).

[9] 876 F. 2d 46 (Fifth Cir. 1989).

[10] The "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983). In Farmland the Commission enumerated several physical and geographic criteria to be included in the analysis for determining whether the "primary function" of a facility is the transportation or the gathering of natural gas. These factors are: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the line's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The "primary function" test has been found by the Commission to be applicable to both onshore and offshore facilities. The criteria set out in *Farmland* were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA).

[11] 52 FERC ¶ 61,268 (1990).

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OCSLA respecting rates for gas pipeline services?

5. Does the OCSLA provide sufficient remedial authority for the Commission to ensure nondiscriminatory access by prohibiting discriminatory or excessive rates?

6. Does the OCSLA provide the Commission with sufficient authority to protect the interests of historical customers of existing offshore interstate pipelines if these pipelines were declared to be gathering facilities?

7. Is it feasible, as a matter of law and policy, to adopt a light-handed regulatory approach that relies on complaints about discriminatory access or rates?

8. If such an approach is adopted, is there a need to distinguish between new and existing pipelines to determine how much regulation is necessary? What would be the legal and policy basis for any such distinction?

9. What are the implications of a change in OCS gathering policy on existing OCS interstate pipelines that may wish to retain their jurisdictional status or on existing, interstate pipeline-owned, OCS transmission facilities that wish to retain a transmission classification for those facilities?

10. How much, if any, OCS gas is processed at locations other than onshore or in shallow waters?

B. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be nonjurisdictional gathering facilities and simultaneously issue a rule under the OCSLA imposing terms and conditions on OCS facilities to protect existing shippers on existing OCS interstate pipelines or on existing OCS transmission facilities?

1. What would be the practical effect of these rules?

2. Does the Commission have sufficient authority under the OCSLA to prohibit, eliminate or alter rates that are clearly discriminatory or rates that are so high that they would have the effect of denying access to shippers?

3. What would be the impact of the Commission's ceasing to regulate any offshore pipeline rates under the "just and reasonable" standard of sections 4 and 5 of the NGA?

4. Is here a legal basis under the OCSLA for the Commission to regulate generally the level of rates for services performed by OCS pipelines?

5. What conditions could the Commission require under the NGA and/or the OCSLA to protect historical customers of currently regulated OCS pipelines if their facilities are declared to be exempt gathering facilities?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for "recourse rates".[12])

C. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be jurisdictional transportation facilities, but only regulate transportation rates for historical customers on existing interstate pipelines and for non-owner shippers on new facilities?

1. What would be the practical effect of such a rule?

2. Does a "regulatory gap" exist on the OCS that would support the issuance of such a rule?

3. What legal support is there for the Commission's regulating only those pipelines that transport non-owner shipper gas?

4. Is there any need to regulate the rates charged new customers that have not relied upon or have no expectation of NGA regulation?

5. Would the provisions of the OSCLA provide sufficient protection from undue discrimination to both historical and new customers of OCS pipelines?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for "recourse rates".[13])

D. Should the Commission continue the application of the "modified primary function" test on a case-by-case basis? What would be the effects of this approach?

VI. Procedure for Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in the NOI. Commenters are requested to identify the specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additionally, commenters should double space their comments.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Friday, January 12, 1996. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refar to Docket No. RM96–5–000.

In addition, commenters are asked to submit their written comments and executive summaries on a 3 1/2-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.* MS WORD, WordPerfect, ASC III, etc.) For Macintosh users, it would be helpful to save the documents in word processor format and then write them to files on a diskette formatted for MS-DOS machines.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30062 Filed 12–8–95; 8:45 am]

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[12] Under "recourse rates", pipelines would be free to offer negotiated rates. Customers could choose either negotiated rates or they could choose the pipeline's on-file, cost-of-service rates.

[13] *See* n. 13 *supra.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0008–95]

RIN 1545–AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations governing the source of income from sales of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States. This document affects persons who produce natural resources or other inventory in the United States and sell in a foreign country, or produce natural resources or other inventory in a foreign country and sell in the United States. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for April 10, 1996, at 10 a.m. must be received by March 11, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL–0003–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL–0003–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Anne Shelburne, (202) 622–3880; concerning submissions and the hearing, Ms. Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 9, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information requirements are in proposed §§ 1.863–1(b)(6) and 1.863–3(e)(2). This information is required by the IRS to monitor compliance with the federal tax rules for determining the source of income from the sale of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States. The likely respondents are taxpayers who produce natural resources or other inventory in the United States and sell in a foreign country, or who produce natural resources or other inventory in a foreign country and sell in the United States. Responses to this collection of information are required to properly determine the source of a taxpayer's income from such sales.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 1125 hours. The estimated annual burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 2.6 hours.

Estimated number of respondents: 425.

Estimated annual frequency of responses: One time per year.

Background

These proposed regulations contain rules relating to the source of income from the sale of certain natural resources and other inventory. These regulations are proposed to be effective for taxable years beginning 30 days after publication of final regulations. However, taxpayers may elect to apply these regulations for taxable years beginning after July 11, 1995.

Explanation of Provisions

I. Natural Resources

A. Current Regulations

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning to sources within or without the United States all items of gross income, expenses, losses, and deductions other than those items specified in sections 861(a) and 862(a).

Section 1.863–1 of the existing regulations contains rules for determining the source of income derived from the sale of certain natural resources. Generally, under paragraph (b)(1) of those regulations, income derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber located within the United States and from the sale by the producer of the products within or without the United States ordinarily must be included in gross income from sources within the United States. However, if a taxpayer can show to the satisfaction of the District Director that, due to peculiar conditions of production and sale or for other reasons, not all of the gross income derived therefrom should be allocated to sources within the United States, the source of the income generally is determined under the 50/50 method described in § 1.863–3(b)(2) *Example 2.* The regulations do not define "peculiar conditions of production and sale." In addition, § 1.863–1(b)(2) permits the Commissioner to make an allocation or apportionment that more clearly reflects the proper source of a taxpayer's income, if the Commissioner determines that the application of paragraph (b)(1) does not result in the proper allocation or apportionment of income. Similar rules apply in the case of natural resources produced without the United States and sold within the United States. See § 1.863–3. Thus, income from the sale of such products ordinarily will be allocated entirely to foreign sources.

B. Issues Under Current Regulations

The IRS and Treasury have reexamined the existing regulations under section 863 regarding natural resources and arrived at several conclusions. First, certain ambiguities in existing § 1.863–1 should be clarified. For example, the regulation does not define the term "peculiar conditions of production and sale," and there is virtually no authoritative guidance as to the scope of that term. To the extent that "peculiar conditions of production and sale" is defined narrowly, the regulation may lead to inappropriate results when determining the source of income from the sale of processed natural resources. For example, if a U.S. corporation harvests timber to manufacture furniture for export, all of its income may be from sources within the United States. However, if another U.S. corporation purchases cut timber to manufacture furniture for export from the United States, one-half of that taxpayer's income may be from sources without the United States under the 50/50 method.

Second, the interaction of the existing regulations and the recently-issued consolidated return regulations may cause inappropriate sourcing results. On July 11, 1995, the IRS and Treasury issued final regulations under § 1.1502–13 [TD 8597 (60 FR 36671)], treating members of a U.S. consolidated group as a single entity for purposes of determining the source of a taxpayer's income. The IRS and Treasury understand that inappropriate results may occur when the current section 863 regulations are applied to certain consolidated groups on a single entity basis. For example, a U.S. corporation that is a member of a consolidated group may extract oil abroad. The oil is then transported to the United States where it is refined by another member of the consolidated group. It is sold in the United States through other members of the consolidated group. Under § 1.1502–13 of the consolidated return rules, the consolidated group is treated as a single entity, and the source of income from the sale of oil must be determined under

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section 863. Because the consolidated group refines the oil outside the country of extraction, it may be that peculiar conditions of production and sale exist, and the exclusive sourcing rules of paragraph (b)(1) do not apply. Thus, the taxpayer would generally determine the source of its income under the 50/50 method described in § 1.863–3(b)(2) *Example 2*. Under this method, 50 percent of the consolidated group's income would be U.S. source income based on the place of sale. However, this calculation may understate the appropriate amount of the taxpayer's foreign source income because the value of the oil as extracted may represent more than 50 percent of the total value of the product that is finally sold in the United States. The preamble to the regulations under § 1.1502–13 indicated that the IRS and Treasury would consider amending the regulations under section 863 to address these concerns.

Accordingly, the IRS and Treasury are issuing proposed regulations under section 863 to clarify ambiguities in the existing regulation and to address concerns created by the new § 1.1502–13 regulations.

C. Proposed Regulations

Section 1.863–3(b) provides special rules for determining the source of income from the sale of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, within the United States and the sale of these products without the United States. The proposed regulations also provide special rules for determining the source of income from the sale of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, without the United States and the sale of these products within the United States. The export terminal rule of paragraph (b)(1) provides that the source of gross receipts from the sale of such products equal to the fair market value of the product immediately prior to export (referred to in the proposed regulations as the export terminal) is determined according to where the farm, mine, oil or gas well, other natural deposit or timber is located. Separate rules are provided for determining the source of any gross receipts in excess of the fair market value of the product at the export terminal. Paragraph (b)(2) provides an exception to the approach of paragraph (b)(1) where, prior to export, the taxpayer engages in substantial production activities in addition to activities related to the ownership or operation of a farm, mine, oil or gas well, other natural deposit, or timber.

1. Export Terminal Rule

Under the export terminal rule of paragraph (b)(1), gross receipts derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, and sale of the products derived therefrom, are allocated between sources within and without the United States based on the fair market value of the product at the export terminal. The export terminal is the last point from which the product is sent from the United States to a foreign country or the last point from which goods are sent from a foreign country to the United States. For example, if a U.S. corporation extracts oil in one foreign country, sends the crude oil to a port in a second foreign country via pipeline, and delivers the oil to a U.S. refinery by ship, the export terminal would be the port in the second foreign country where the crude oil was loaded onto the ship.

Under the export terminal rule, the source of gross receipts equal to the fair market value of the product at the export terminal is determined by the location of the farm, mine, well, deposit, or uncut timber. The source of gross receipts in excess of the fair market value of the product at the export terminal (excess gross receipts) is determined according to whether the taxpayer engages in any additional production activity following export. A taxpayer will be treated as performing production activities in addition to the activities of owning or operating a farm, mine, oil or gas well, other natural deposit, or timber based on the principles of § 1.954–3(a)(4). However, activities that prepare the natural resource itself for export, including those that are designed to facilitate the transportation of the natural resource to or from the export terminal, will not be considered additional production activities. Thus, § 1.863–1 *Example 2* illustrates that liquefaction of natural gas would not constitute additional production activities. In addition, activities such as delimbing and debarking trees, sorting grain, and treating and stabilizing oil would ordinarily not constitute additional production activities. In contrast, the transformation of timber into furniture is not done to prepare the natural resource itself for export, and would constitute additional production activity. Production activities are defined in § 1.863–1(b)(3)(i).

If no additional production occurs following export, paragraph (b)(1)(i) requires that the source of the excess gross receipts be determined according to where the farm, mine, well, deposit, or uncut timber is located.

However, under paragraph (b)(1)(ii), if the taxpayer engages in additional production activities after the export terminal and outside the country of sale, the source of excess gross receipts is determined under the rules of § 1.863–3. For example, if a U.S. corporation extracts oil in a foreign country, refines the oil in the United States, and sells the refined product in another foreign country, the source of gross receipts in excess of the fair market value of the product when it is exported from the first foreign country must be determined under one of the three methods described in § 1.863–3 (i.e., the 50/50 method as described in § 1.863–3(b)(1), the IFP method described in § 1.863–3(b)(2), or, if permitted by the District Director, the books and records method as described in § 1.863–3(b)(3)).

In any case not described in either paragraph (b)(1) (i) or (ii) of the proposed regulations, the source of the excess gross receipts is determined according to the place of sale pursuant to paragraph (b)(1)(iii). This rule would apply, for example, in the case where the taxpayer engages in additional production activities in the country of sale.

Paragraph (b)(1) addresses the concerns of U.S. corporations involved in the production of natural resources abroad and the application of the new § 1.1502–13 consolidated return regulations, by allowing them to treat the value of the natural resources at the point of export as income from sources where the farm, mine, well, deposit, or uncut timber is located. This rule has no effect on the rules governing foreign oil and gas extraction income under section 907(c)(1).

On November 28, 1995, the Tenth Circuit affirmed the Tax Court decision in *Phillips Petroleum* v. *Comm'r*, 97 T.C. 30 (1991), which held existing § 1.863–1(b)(1) invalid to the extent it allocates income from the sale of U.S. natural resources solely to sources within the United States. *Phillips Petroleum* v. *Comm'r*, No. 94–9021 (10th Cir. Nov. 28, 1995). The IRS and Treasury will consider the implications of this decision when finalizing these proposed regulations.

2. Additional Production Prior to Export Terminal

Paragraph (b)(2) provides a special rule for determining the source of income where a taxpayer performs substantial additional production activities before the product leaves the export terminal. Under paragraph (b)(2), the source of gross receipts equal to the fair market value of the product prior to the additional production activities is based on the location of the farm, mine, well, deposit, or uncut timber. The source of gross receipts in excess of the fair market value of the products at the beginning of the additional production activities is determined under the rules of § 1.863–3.

3. Other Rules

The proposed regulation contains rules for determining the fair market value of relevant products. For this purpose, fair market value depends on all of the facts and circumstances as they exist relative to a party in any particular case. Thus, these rules for determining fair market value are consistent with the foreign oil and gas rules contained in § 1.907(c)–1(b)(6). In addition, fair market value determinations must be consistent with prices charged in sales, if any, to related parties in a transaction that is subject to section 482. For example, if a member of a U.S. consolidated group extracts natural resources in a foreign country and sells the natural resources to another member of the same group at the export terminal, the value of the natural resources determined at the export terminal should be the price charged by the producing member to the purchasing member for purposes of section 482.

Under paragraph (b)(5), a taxpayer's gross income from sources within or without the United States is determined by reducing its gross receipts from sources within or without the United States by the cost of goods sold properly attributable to such gross receipts. Under paragraph (c), a taxpayer's taxable income from U.S. or foreign sources must be determined under the rules of §§ 1.861–8 through 1.861–14T.

Under paragraph (b)(6), taxpayers must fully explain the methodology used, the facts describing substantial additional production activities (if any), and the determination of fair market value in a statement attached to the taxpayer's return. In addition, taxpayers must provide such other information as is required by § 1.863–3(e)(2).

Taxpayers may elect to apply the rules of these regulations for taxable years beginning after July 11, 1995. Otherwise, these regulations are effective for taxable years beginning 30 days after the publication of this regulation as a final regulation.

II. Inventory Other Than Natural Resources

A. Current Regulations

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning to sources within or without the United States all items of gross income, expenses, losses, and deductions other than those specified in sections 861(a) and 862(a).

Section 1.863–3 of the current regulations governs the source of income from the sale of inventory produced (in whole or in part) in the United States and sold in a foreign country, or produced (in whole or in part) in a foreign country and sold in the United States (Section 863 Sales). Section 1.863–3 provides three methods, set forth in the form of three examples, to determine the source of income from Section 863 Sales.

§ 1.861–3(b)(2) *Example 1* of the current regulations illustrates how an independent factory or production price (IFP) applies to determine the income attributable to production (IFP method). An IFP generally is established if a taxpayer regularly sells part of its output to wholly independent distributors in such a way as to reasonably reflect the income attributable to production activity. If an IFP exists, taxpayers must use the IFP method to determine the income attributable to production activities in both the sale establishing the IFP and in sales of similar products. See *Phillips Petroleum* v. *Comm'r*, 97 T.C. 30 (1991), *aff'd*, No. 94–9021 (10th Cir. Nov. 28, 1995); Rev. Rul. 88–73 (1988–2 C.B. 173). Gross receipts in excess of the IFP are attributable to sales activity. Taxpayers can otherwise establish an IFP by showing to the satisfaction of the District Director that an IFP exists. Notice 89–10 (1989–1 C.B. 631) contains additional rules regarding the application of the IFP method. Section 1.863–3(b)(2) *Example 1* of the current regulations does not provide explicit guidance as to how to determine the source of income attributable to production activities under the IFP method. However, the source of income attributable to sales activities is based generally on where title to the inventory passes to the purchaser as defined in § 1.861–7(c).

Section 1.863–3(b)(2) *Example 2* of the current regulations divides a taxpayer's income from Section 863 Sales equally between production activity and sales activity (50/50 method). The source of income attributable to production activity is based on the location of the taxpayer's property. The portion of this production income attributable to sources within the United States is determined by a fraction, the numerator of which is the taxpayer's property located within the United States used to produce income from Section 863 Sales, and the denominator of which is the taxpayer's property both within the United States and within a foreign country used to produce income from Section 863 Sales. The source of the taxpayer's income attributable to sales activity is based on where title to the inventory passes to the purchaser as defined in § 1.861–7(c).

Section 1.863–3(b)(2) *Example 3* of the current regulations allows a taxpayer to request permission from the District Director to use the taxpayer's books and records to allocate income to sources within and without the United States if those books reflect more clearly than the other methods the taxable income derived from sources within the United States (books and records method).

B. Issues Under Current Regulations

On July 12, 1995, the IRS and Treasury issued regulations under § 1.1502–13, treating members of a consolidated group as a single entity for purposes of determining the source of a taxpayer's income. The IRS and Treasury understand that the current section 863 regulations may raise questions when applied to certain consolidated groups on a single entity basis. The preamble to the regulations under § 1.1502–13 indicated that the IRS and Treasury would reevaluate part of the regulations under section 863. As part of this process, the IRS and Treasury also have reexamined the remainder of the existing section 863 regulations and have concluded that several additional changes are necessary.

First, the existing regulations were drafted more than 70 years ago, and have not been amended to reflect the evolution of business practices. As a result, the regulations have been the source of controversies in recent years. See *Intel Corporation* v. *Comm'r*, 100 T.C. 39 (1993), *aff'd*, No. 94–70105 (9th Cir. Oct. 16, 1995); *Phillips Petroleum* v. *Comm'r*, 97 T.C. 30 (1991), 101 T.C. 78, 104 (1993) ("there have been no cases interpreting [the 50/50 method] and no administrative pronouncements regarding its application since the regulation was promulgated in 1922 except for necessary inferences to be drawn from *Intel* * * *"), *aff'd*, No. 94–9021 (10th Cir. Nov. 28, 1995). In part, these controversies may be due to the structure of the current regulations, which do not contain operative rules to describe the methods of allocating and

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apportioning income, but instead rely on examples.

Second, the existing regulations raise important administrative concerns. For example, the IFP method requires an analysis of each of the taxpayer's sales transactions to identify an IFP. If one or more IFPs are so identified, a second analysis is required of each of the taxpayer's sales transactions to identify which transactions are similar to the IFP sale. In some cases, this process may require a review of a multitude of transactions. The IFP method may, therefore, be difficult for both taxpayers and the government to apply. The existing 50/50 method also presents administrative concerns. For example, the 50/50 method may require the taxpayer to determine the fair market value of each of its assets at the end of every tax year. Taxpayers have often commented to the IRS about the difficulties of determining the fair market value of their assets.

Third, the existing regulations result in disparate treatment of similarly situated taxpayers. Although an IFP must be used under current rules if one exists, the mandate applies only to taxpayers selling inventory to certain independent distributors. Taxpayers selling exclusively to related parties are not required to use the IFP method since the IRS may not establish an IFP based on such sales. Instead, these taxpayers use the 50/50 method to source their income from export sales. Thus, taxpayers selling inventory exclusively to related parties may be deemed to generate far more foreign source income than taxpayers selling a portion of their inventory to independent distributors, even though the two taxpayers may perform the same functions. The IRS and Treasury believe that this differing treatment of similarly situated taxpayers is not justified.

Fourth, the existing 50/50 method can result in apportionment of income that is inconsistent with the common understanding of that method. The 50/50 method is generally characterized as a method that would source export sales income one-half in the United States and one-half in a foreign country. For example, in 1984 the Treasury Department stated: "Generally, [income derived from manufacture and sale of property] is allocated one-half on the basis of the place of manufacture and half on the basis of the place of sale * * *" Treasury Department, Tax Reform for Fairness, Simplicity, and Economic Growth, Nov. 1984 at 364. In addition, Congress understands the 50/50 method to operate in this fashion. In 1986, the House, Senate and Conference Committees each stated: "[Under the existing 50/50 method], half of such income generally is sourced in the country of manufacture, and half of the income is sourced on the basis of the place of sale". House Rep. No. 426, 99th Cong. 1st Sess. 359 (1985); S. Rep. No. 313, 99th Cong. 2d Sess. 329 (1986); H.R. Conf. Rep. No. 841, 99th Cong. 2d Sess. II–595 (1986). The staff of the Joint Committee on Taxation has referred to the 50/50 method as the "production/marketing split" and stated that under this method "50 percent of such income generally is attributed to the place of production * * *" Staff of the Joint Comm. on Taxation, Factors Affecting International Competitiveness of the United States 148 (1991).

The existing regulations may, however, allow taxpayers to use the 50/50 method to obtain results that are inconsistent with this common understanding. Under the existing regulations, 50 percent of the income is treated as sales income and sourced on the basis of title passage. The remaining 50 percent is treated as production income and sourced based on the location of assets. This half of the formula is not necessarily, however, limited to production assets. For example, goodwill and accounts receivables are counted as assets in allocating production income. The inclusion of sales assets in the formula allocating production income results in additional income being allocated to sales activities. The contribution of the sales assets to sales income should be reflected only in the 50 percent of the income that is allocated to sales and sourced under title passage. Thus, the production income formula should only take into account assets directly involved in the production of inventory.

B. Proposed Regulations

1. Overview

Section 1.863–3 provides rules for allocating and apportioning income from Section 863 Sales. Generally, § 1.863–3(b) provides three methods for determining the amount of gross income attributable to production activity and the amount of gross income attributable to sales activity. The source of gross income attributable to each activity is then determined under the rules of paragraph (c). Paragraph (d) provides rules to determine the source of taxable income. Reporting and election rules are set forth under paragraph (e) of the proposed regulations. The proposed regulations reserve on paragraph (f) (prior paragraph (c)), dealing with income partly from sources within a possession of the United States. The IRS and Treasury solicit comments from taxpayers regarding changes that should be made to new paragraph (f) (if any) to conform to the other changes in § 1.863–3.

The proposed regulations generally apply an aggregate approach in taking into account a taxpayer's interest in a partnership. The IRS and Treasury solicit comments on the appropriate treatment of partnerships, including whether there should be special rules for limited partnerships, de minimis interests in partnerships, and tiered partnerships.

2. Methods To Determine Gross Income Attributable to Production Activity and Sales Activity

Section 1.863–3 generally retains the three methods of the current regulations for splitting income between production and sales activity, with several modifications.

a. 50/50 Method

The proposed regulations do not change the allocation of half of the taxpayer's income from Section 863 Sales to production activity and half to sales activity. As described below, the proposed regulations modify and clarify the determination of the location of assets. In addition, paragraph (b)(1) of the proposed regulations makes the 50/50 method the general rule to determine the amount of income attributable to production and sales activities. The taxpayer, however, may elect to apply the IFP method, described in paragraph (b)(2), or, with the consent of the District Director, the books and records method, described in paragraph (b)(3).

b. IFP Method

By making the IFP method elective, the proposed regulations significantly reduce administrative burdens related to its application and eliminate any bias against taxpayers choosing to export through independent distributors.

Under the proposed regulations, the taxpayer may elect to apply the IFP method if it is able to establish an IFP. As in the current regulations, an IFP is fairly established by actual sales of the taxpayer if the taxpayer regularly sells part of its output to wholly independent distributors or other selling concerns in such a way as to reasonably reflect the income attributable to production activity. Once the IFP is established, it can be used to determine the amount of income attributable to production activity in other Section 863 Sales if the inventory sold in the other sales is substantially similar in physical characteristics and function, and is sold at a similar level of distribution as the inventory sold in a sale establishing an IFP. A sale will not be considered to establish an IFP if sales activity for the relevant product is significant in relation to all of the activities for that product. The IRS and Treasury intend to supersede Notice 89–10 upon publication of final regulations.

The proposed regulations would also eliminate the existing rule permitting taxpayers to otherwise establish an IFP by showing to the satisfaction of the District Director that a sale reasonably reflecting the income attributable to production exists. This "otherwise established" IFP is rarely, if ever, used. American Law Institute, International Aspects of United States Income Taxation 31 (1987). The IRS and Treasury solicit comments from taxpayers on the continued utility of the otherwise established IFP.

The proposed regulations omit the reference in the existing regulation to a sales branch. A taxpayer may elect to use the IFP method even if it does not maintain a sales branch in a foreign country.

c. Books and Records Method

The proposed regulations retain the books and records method of the existing regulations, permitting taxpayers to request permission from the District Director to use their books and records to determine the income attributable to production and sales activities. The District Director will consider a taxpayer's request if the taxpayer maintains a detailed allocation of receipts and expenditures, clearly reflecting the amount of income from production and sales activities.

The books and records method is rarely, if ever, used. American Law Institute, International Aspects of United States Income Taxation, 31 (1987). The IRS and Treasury solicit comments from taxpayers on the continued utility of the books and records method, or whether the books and records method should be replaced by another method of economic sourcing.

3. Determination of Source of Gross Income

Unlike the current regulations which provide specific rules for determining the source of income attributable to production activity and sales activity only for purposes of the 50/50 method, the proposed regulations adopt rules applicable to each of the three methods. Under the proposed regulations, once gross income attributable to production activity and sales activity has been determined under one of the methods described in paragraph (b), the source of the income is determined separately for each type of income under paragraph (c). The source of gross income attributable to production activity is determined under paragraph (c)(1), based on the location of production assets, and the source of gross income attributable to sales activity is determined under paragraph (c)(2) based on the location of the sale.

a. Source of Gross Income Attributable to Production Activity

The proposed regulations generally adopt the approach set forth in the current regulations under the 50/50 method, but with modifications and clarifications.

Under § 1.863–3(c)(1), the source of income attributable to production activity is determined based on the location of the taxpayer's production assets. Thus, if a taxpayer manufactures inventory exclusively in the United States, all of its income attributable to production activity will be considered from sources within the United States. The rules described below are intended to apply only to taxpayers that produce inventory both within and without the United States.

Under the proposed regulations, the source of a taxpayer's income from production activities is determined by reference to the taxpayer's production assets, instead of all of its assets that produce income from Section 863 Sales. The IRS and Treasury believe that this change is appropriate to ensure that the source of production income corresponds to the location of production activity. Production assets are defined to include tangible and intangible property owned by the taxpayer that are used to produce inventory sold in Section 863 Sales. Any property not directly used to produce inventory is excluded. Thus, accounts receivable and marketing intangibles are excluded because they are sales assets and not production assets. Other assets excluded because they do not directly produce inventory are transportation assets, warehouses, inventory, work-in-process, raw materials, cash, investment assets, and stock of a subsidiary. Working capital is excluded to avoid uncertainty arising from determinations of the appropriate amount of working capital. In addition, working capital would generally be apportioned pro rata in accordance with a taxpayer's production assets. As under the current regulations, leased assets are excluded; only assets owned by the taxpayer are included.

The proposed regulations also provide specific rules for determining where a production asset is located. Tangible assets are located where the assets are used by the taxpayer. Intangible Assets are located where the tangible production assets to which they relate are located.

Where production takes place both within the United States and within a foreign country, the regulations apply a property fraction to apportion production income between U.S. and foreign sources. The taxpayer's foreign source gross production income is determined by multiplying its gross production income by a fraction, the numerator of which is the taxpayer's production assets located within a foreign country, and the denominator of which is the taxpayer's production assets located both within the united States and within a foreign country.

The current regulations generally include assets in the property formula at fair market value. The proposed regulations modify this rule to provide that an asset must be included in the property formula at its average adjusted basis (see section 1011). The IRS and Treasury believe that this change to adjusted basis will significantly simplify the application of this formula for both taxpayers and the IRS.

The proposed regulations also contain more detailed guidance than the current regulations for determining the amounts to be included in the property fraction. For example, the proposed regulations would require that if the asset is used to produce inventory sold in Section 863 Sales and is also used to produce other property, the basis of the asset must be prorated to account for such other uses.

The purpose of the property formula is to attribute the source of the taxpayer's production income to the location of its production activity. The IRS and Treasury are concerned that taxpayers may be able to affect the location of assets without changing the sit us of economic activity. Accordingly, comments are solicited about whether there should be rules to prevent manipulation of this formula in a manner inconsistent with the purpose of the regulation.

b. Source of Gross Income Attributable to Sales Activity

The source of gross income that is attributable to sales activity is determined under paragraph (c)(2). As under the current regulations, the source of this income is generally based on where a sale takes place. See § 1.861–7(c). Accordingly, if a U.S. producer sells its goods in a foreign country, the income attributable to sales activity is generally foreign source income.

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The proposed regulation would retain the language of the existing regulation, which only applies to sales that occur within a foreign country. The IRS and Treasury solicit comments as to whether the regulations should be expanded to apply to sales made in international waters or in space. The IRS and Treasury are concerned, however, that if such a change were made, a U.S. seller may try to use the 50/50 method by selling inventory in international waters to U.S. purchasers, even when the goods were destined for the United States. In view of these concerns, the IRS and Treasury also solicit comments as to whether the regulations should provide an exception to the title passage rule in the case of sales of goods produced in the United States and destined for use in the United States.

4. Determination of Source of Taxable Income

Once the amount and source of gross income are determined under paragraph (c), taxpayers then determine the source of their taxable income. Under proposed paragraph (d), taxpayers must allocate or apportion under §§ 1.861–8 through 1.861–14T the amounts of expenses, losses and other deductions to its gross income determined under each method described in paragraph (b). In the case of amounts of expenses, losses and other deductions allocated or apportioned to gross income determined under the IFP method or the books and records method, the taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to allocate or apportion these amounts between gross income from sources within and without the United States. For amounts of expenses, losses and other deductions allocated or apportioned to gross income determined under the 50/50 method, taxpayers must apportion expenses and other deductions prorata based on the relative amounts of U.S. and foreign source gross income. These rules are consistent with existing regulations.

5. Election and Reporting Rules

Under paragraph (e) of the proposed regulations, a taxpayer must use the 50/50 method unless the taxpayer elects to use the IFP method, or elects the Books and Records method. The taxpayer makes the election by using the method on its tax return. Once The tax return is filed, the election is not revokable for that year. In addition, that method must be used in later taxable years unless the Commissioner or her delegate consents to a change. Permission to change methods in later years will not be withheld unless the change would result in a substantial distortion of the source of income.

A taxpayer must fully explain the methodology used in paragraph (b), and the amount of income allocated or apportioned to U.S. and foreign sources in a statement attached to its tax return.

6. Conforming Changes

The proposed regulations make conforming changes to § 1.863–2 of the regulations. Under § 1.863–2, the taxpayer may elect to apply the 50/50 method to its net taxable income, instead of its gross income as specified in § 1.863–3. The proposed regulations clarify that income derived from the purchase of personal property within a possession of the United States and its sale within the United States is subject to these regulations only to the extent it is not excluded by § 1.936–6(a)(5), Q&A 7. Other changes to § 1.863–2 were intended to conform the language of the regulation to the changes in § 1.863–3.

Finally, the IRS and Treasury will reconsider the existing regulations issued under section 863 regarding transportation services and cable and telegraph services in light of the Tax Reform Act of 1986. Accordingly, the transportation rules contained in § 1.863–4 will only apply to services that are not described in section 863(c) and the telegraph and cable rules contained in § 1.863–5 are deleted. No inference is intended as to whether portions of the existing regulations continued to apply after the Tax Reform Act of 1986.

7. Proposed Effective Dates

These regulations are effective for taxable years beginning 30 days after publication of final regulations. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 10, 1996, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 11, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Anne Shelburne, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.863–1 also issued under 26 U.S.C. 863.

Section 1.863–2 also issued under 26 U.S.C. 863.

Section 1.863–3 also issued under 26 U.S.C. 863.

Section 1.863–4 also issued under 26 U.S.C. 863.

Section 1.863–6 also issued under 26 U.S.C. 863. * * *

Par. 2. Sections 1.863–0 is added to read as follows:

§ 1.863–0 Table of contents.

This section lists captions contained in §§ 1.863–1, 1.863–2, and 1.863–3.

§ 1.863–1 Allocation of Gross Income.

(a) In general.
(b) Natural resources.
(1) In general.
(2) Additional production prior to export terminal.
(3) Definitions.
(i) Production activity.
(ii) Additional production activities.
(iii) Export terminal.
(4) Determination of fair market value.
(5) Determination of gross income.
(6) Tax return disclosure.
(7) Examples.
(c) Determination of taxable income.
(d) Effective dates.

§ 1.863–2 Allocation and Apportionment of Taxable Income.

(a) Determination of taxable income.
(b) Determination of source of taxable income.
(c) Effective dates.

§ 1.863–3 Allocation and Apportionment of Income from Certain Sales of Inventory.

(a) In general.
(b) Methods to determine income attributable to production activity and sales activity.
(1) 50/50 method.
(i) Determination of gross income.
(ii) Example.
(2) IFP method.
(i) Establishing an IFP.
(ii) Applying the IFP method.
(iii) Determination of gross income.
(iv) Examples.
(3) Books and records method.
(c) Determination of the source of gross income from production activity and sales activity.
(1) Income attributable to production activity.
(i) Production only within the United States or only within foreign countries.
(A) Source of income.
(B) Definition of production assets.
(C) Location of production assets.
(ii) Production both within the United States and within foreign countries.
(A) Source of income.
(B) Adjusted basis of production assets.
(iii)Examples.
(2) Income attributable to sales activity.
(d) Determination of source of taxable income.
(e) Election and reporting rules.
(1) Elections under paragraph (b) of this section.
(2) Disclosure on tax return.
(f) Income partly from sources within a possession of the United States.
[Reserved]
(g) Effective dates.

Par. 3. Sections 1.863–1, 1.863–2, and 1.863–3 are revised to read as follows:

§ 1.863–1 Allocation of gross income.

(a) *In general.* Items of gross income other than those specified in section 861(a) and section 862(a) will generally be separately allocated to sources within or without the United States. See § 1.863–2 for alternate methods to determine the income from sources within or without the United States in the case of items specified in § 1.863–2(a). See also sections 865(b) and 865(e)(2).

(b) *Natural resources*—(1) *In general.* Except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale outside the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber within the United States, are allocated between sources within or without the United States based on the fair market value of the product at the export terminal (as defined in paragraph (b)(3)(iii) of this section). Except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale within the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber outside the United States are also allocated between sources within or without the United States based on the fair market value of the product at the export terminal. The source of gross receipts equal to the fair market value of the product at the export terminal will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of its fair market value at the export terminal (excess gross receipts) will be determined as follows—

(i) If the taxpayer does not engage in additional production activities (as defined in paragraph (b)(3)(ii) of this section), excess gross receipts will be from sources where the farm, mine, well, deposit, or uncut timber is located;

(ii) If the taxpayer engages in additional production activities subsequent to shipment from the export terminal and outside the country of sale, the source of excess gross receipts must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in additional production activity subsequent to the export terminal are taken into account; or

(iii) In all other cases, excess gross receipts will be from sources within the country of sale, as described in § 1.861–7(c). This paragraph (b)(1)(iii) applies, for example, to a taxpayer that engages in additional production activities in the country of sale.

(2) *Additional production prior to export terminal.* Notwithstanding any other provision of this section, gross receipts from the sale of products derived by a taxpayer who performs additional production activities as defined in paragraph (b)(3)(ii) of this section before the relevant product is shipped from the export terminal are allocated between sources within and without the United States based on the fair market value of the product immediately prior to the additional production activities. The source of gross receipts equal to the fair market value of the product immediately prior to the additional production activities will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of the fair market value immediately prior to the additional production activities must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in the additional production activities are taken into account.

(3) *Definitions*—(i) *Production activity.* For purposes of this section, *production activity* means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1.

(ii) *Additional production activities.* For purposes of this section, *additional production activities* are substantial production activities performed by the taxpayer in addition to activities from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber. Whether a taxpayer performs such additional production activities will be determined under the principles of § 1.954–3(a)(4). However, in no case will activities that prepare the natural resource itself for export, including those that are designed to facilitate the transportation of the natural resource to or from the export terminal, be considered additional production activities for purposes of this section.

(iii) *Export terminal.* Where the farm, mine, well, deposit, or uncut timber is located without the United States, the export terminal will be the final point in a foreign country from which goods are shipped from a foreign country to the United States. Where the farm, mine, well, deposit, or uncut timber is located within the United States, the export terminal will be the final point in the United States from which goods are shipped from the United States to a foreign country. The export terminal is determined without regard to any contractual terms agreed to by the taxpayer and without regard to whether there is an actual sale of the products at the export terminal.

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(4) *Determination of fair market value.* For purposes of this section, fair market value depends on all of the facts and circumstances as they exist relative to a party in any particular case. Where the products are sold to a related party in a transaction subject to section 482, the determination of fair market value under this section must be consistent with the arm's length price determined under section 482.

(5) *Determination of gross income.* To determine the amount of a taxpayer's gross income from sources within or without the United States, the taxpayer's gross receipts from sources within or without the United States determined under this paragraph (b) must be reduced by the cost of goods sold properly attributable to gross receipts from sources within or without the United States.

(6) *Tax return disclosure.* A taxpayer that determines the source of its income under this paragraph (b) shall attach a statement to its return explaining the methodology used to determine fair market value under paragraph (b)(4) of this section, and explaining any additional production activities (as defined in paragraph (b)(3)(ii) of this section) performed by the taxpayer. In addition, the taxpayer must provide such other information as is required by § 1.863–3.

(7) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. No additional production. US Mines, a U.S. corporation, extracts coal in the United States and, without substantial additional production, sells the coal in a foreign country. Under § 1.863–1(b) and (b)(1)(i), all of US Mines' income will be from sources within the United States.

Example 2. Scope of additional production. US Gas, a U.S. corporation, extracts natural gas within the United States, and transports the natural gas to a U.S. port where it is liquified in preparation for shipment. The liquified natural gas is then transported via freighter and sold without additional production activities in a foreign country. Liquefaction of natural gas is not an additional production activity because liquefaction prepares the natural gas for transportation from the export terminal. Therefore, under § 1.863–1(b) and (b)(1)(i), all of US Gas' income will be from sources within the United States.

Example 3. Sale in third country. US Gold, a U.S. corporation, mines gold in country X, produces gold jewelry in the United States, and sells the jewelry in country Y. Assume that the fair market value of the gold at the export terminal in country X is $40, and that US Gold ultimately sells the gold jewelry in country Y for $100. Under § 1.863–1(b), $40 of US Gold's gross receipts will be allocated to sources without the United States. Under § 1.863–1(b)(1)(ii), the source of the remaining $60 of gross receipts will be determined under § 1.863–3. If US Gold applies the 50/50 method described in § 1.863–3, $20 of cost of goods sold is properly attributable to activities subsequent to the export terminal, and all of US Gold's production assets subsequent to the export terminal are located in the United States, then $20 of gross income will be allocated to sources within the United States and $20 of gross income will be allocated to sources without the United States.

Example 4. Production in country of sale. US Oil, a U.S. corporation, extracts oil in country X, transports the oil via pipeline to the export terminal in country Y, refines the oil in the United States, and sells the refined product in the United States to unrelated persons. Assume that the fair market value of the oil at the export terminal in country Y is $80, and that US Oil ultimately sells the refined product for $100. Under § 1.863–1(b)(1), $80 of US Oil's gross receipts will be allocated to sources without the United States, and under § 1.863–1(b)(1)(iii) the remaining $20 of gross receipts will be allocated to sources within the United States.

Example 5. Additional production prior to export. US Furniture, a U.S. corporation, cuts trees in the United States, converts the trees into lumber, uses the lumber to manufacture furniture in the United States, and sells the furniture in another country. Assume that the fair market value of the trees when the conversion into lumber begins is $40, and that US Furniture ultimately sells the furniture for $100. Because the conversion of the trees into lumber is an additional production activity within the United States within the meaning of § 1.863–1(b)(3)(ii), the source of US Furniture's income will be determined under § 1.863–1(b)(2). Thus, $40 of US Furniture's gross receipts will be allocated to sources within the United States. The source of the remaining $60 of gross receipts will be determined under § 1.863–3. If US Furniture applies the 50/50 method described in § 1.863–3(b)(1), $20 of cost of goods sold is properly attributable to the additional production activity, and all of US Furniture's production assets used in the additional production activity are located in the United States, then $20 of gross income will be allocated to sources within the United States and $20 of gross income will be allocated to sources without the United States.

(c) *Determination of taxable income.* The taxpayer's taxable income from sources within or without the United States will be determined under the rules of §§ 1.861–8 through 1.861–14T for determining taxable income from sources within the United States.

(d) *Effective dates.* The rules of this section will apply to taxable years beginning 30 days after publication of these regulations as final regulations. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after publication of these regulations as final regulations, see § 1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1995).

§ 1.863–2 Allocation and apportionment of taxable income.

(a) *Determination of taxable income.* Section 863(b) provides an alternate method for determining taxable income from sources within the United States in the case of gross income derived from sources partly within and partly without the United States. Under this method, taxable income is determined by deducting from such gross income the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions that cannot definitely be allocated to some item or class of gross income. The income to which this section applies (and that is treated as derived partly from sources within and partly from sources without the United States) will consist of gains, profits, and income—

(1) From certain transportation or other services rendered partly within and partly without the United States to the extent not within the scope of section 863(c) or other specific provisions of this title;

(2) From the sale of inventory property (within the meaning of section 865(i)) produced (in whole or in part) by the taxpayer in the United States and sold in a foreign country or produced (in whole or in part) by the taxpayer in a foreign country and sold in the United States; or

(3) Derived from the purchase of personal property within a possession of the United States and its sale within the United States, to the extent not excluded from the scope of these regulations under § 1.936–6(a)(5), Q&A 7.

(b) *Determination of source of taxable income.* Income treated as derived from sources partly within and partly without the United States under paragraph (a) of this section may be allocated to sources within and without the United States pursuant to § 1.863–1 or apportioned to such sources in accordance with the methods described in other regulations under section 863. To determine the source of certain types of income described in paragraph (a)(1) of this section, see § 1.863–4. To determine the source of gross income described in paragraph (a)(2) of this section, see § 1.863–3. However, the principles of § 1.863–3 (b)(1) and (c) may be applied to determine the source of taxable income from sales of inventory property. To determine the source of income described in paragraph (a)(3) of this section, see § 1.863–3(f).

(c) *Effective dates.* This section will apply to taxable years beginning 30 days after publication of these regulations as final regulations. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after publication of these regulations as final regulations, see § 1.863–2 (as contained in 26 CFR part 1 revised as of April 1, 1995).

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) *In general.* This section applies to determine the source of income derived from the sale of inventory property (inventory) produced (in whole or in part) by a taxpayer within the United States and sold within a foreign country, or produced (in whole or in part) by a taxpayer in one or more foreign countries and sold within the United States (Section 863 Sales). For purposes of this section, a taxpayer's production activity includes production activities conducted by members of the same affiliated group as defined under section 1504(a). A taxpayer's production activity also includes production activities conducted through a partnership of which the taxpayer is a partner either directly or through one or more partnerships. A taxpayer subject to this section must divide gross income from Section 863 Sales between production activity and sales activity using one of the methods described in paragraph (b) of this section. The source of gross income from production activity and from sales activity must then be determined under paragraph (c) of this section. Taxable income from Section 863 Sales is determined under paragraph (d) of this section. Paragraph (e) of this section describes the rules for electing the methods described in paragraph (b) of this section and the information that a taxpayer must disclose on a tax return. Paragraph (f) of this section applies to determine the source of certain income derived from a possession of the United States. Paragraph (g) of this section provides effective dates for the rules in this section. Once a taxpayer has elected a method described in paragraph (b) of this section, the taxpayer must separately apply that method to Section 863 Sales in the United States and to Section 863 Sales in foreign countries. In addition, the taxpayer must apply the rules of paragraphs (c) and (d) of this section by aggregating all Section 863 Sales to which a method described in paragraph (b) of this section applies. See section 865(i)(1) for the definition of inventory property; § 1.861–7(c) for the time and place of sale. See also section 865(e)(2).

(b) *Methods to determine income attributable to production activity and sales activity—(1) 50/50 method—(i) Determination of gross income.* Generally, gross income from Section 863 Sales will be apportioned between production activity and sales activity under the 50/50 method as described in this paragraph (b)(1). Under the 50/50 method, one-half of the taxpayer's gross income will be considered income attributable to production activity and the source of that income will be determined under the rules of paragraph (c)(1) of this section. The remaining one-half of such gross income will be considered income attributable to sales activity and the source of that income will be determined under the rules of paragraph (c)(2) of this section. In lieu of the 50/50 method, the taxpayer may elect to determine the source of income from Section 863 Sales under the IFP method described in paragraph (b)(2) of this section or, with the consent of the District Director, the books and records method described in paragraph (b)(3) of this section.

(ii) *Example.* The following example illustrates the rules of this paragraph (b)(1):

Example. 50/50 method. (i) P, a U.S. corporation, produces widgets in the United States. P sells the widgets for $100 to D, an unrelated foreign distributor, in another country. P's cost of goods sold is $40. Thus, P's gross income is $60.

(ii) Pursuant to the 50/50 method, one-half of P's gross income, or $30, is considered income attributable to production activity, and one-half of P's gross income, or $30, is considered income attributable to sales activity.

(2) *IFP method—(i) Establishing an IFP.* A taxpayer may elect to allocate gross income earned from production activity and sales activity using the independent factory price (IFP) method described in this paragraph (b)(2) if an IFP is fairly established. An IFP is fairly established based on a sale by the taxpayer only if the taxpayer regularly sells part of its output to wholly independent distributors or other selling concerns in such a way as to reasonably reflect the income earned from production activity. A sale will not be considered to fairly establish an IFP if sales activity by the taxpayer with respect to that sale is significant in relation to all of the activities with respect to that product.

(ii) *Applying the IFP method.* If the taxpayer elects to use the IFP method, the amount of the gross sales price equal to the IFP will be treated as attributable to production activity, and the excess of the gross sales price over the IFP will be treated as attributable to sales activity. If a taxpayer elects to use the IFP method, the IFP must be applied to all Section 863 Sales of inventory that are substantially similar in physical characteristics and function, and are sold at a similar level of distribution as the inventory sold in the sale fairly establishing an IFP. The IFP will only be applied to sales that are reasonably contemporaneous with the sale fairly establishing the IFP. An IFP cannot be applied to sales in other geographic markets if the markets are substantially different. The rules of this paragraph will also apply to determine the division of gross receipts between production activity and sales activity in a Section 863 Sale that itself fairly establishes an IFP. If the taxpayer elects to apply the IFP method, the IFP method must be applied to all sales for which an IFP may be fairly established for that taxable year and each subsequent taxable year. The taxpayer will apply either the 50/50 method described in paragraph (b)(1) of this section or the books and records method described in paragraph (b)(3) of this section to any other Section 863 Sale for which an IFP cannot be established or applied for each taxable year.

(iii) *Determination of gross income.* The amount of a taxpayer's gross income from production activity is determined by reducing the amount of gross receipts from production activity by the cost of goods sold properly attributable to production activity. The amount of a taxpayer's gross income from sales activity is determined by reducing the amount of gross receipts from sales activity by the cost of goods sold (if any) properly attributable to sales activity. The source of gross income from production activity is determined under the rules of paragraph (c)(1) of this section, and the source of gross income from sales activity will be determined under the rules of paragraph (c)(2) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(2):

Example 1. IFP method. (i) P, a U.S. producer, purchases cotton and produces cloth in the United States. P sells cloth in country X to D, a unrelated foreign clothing manufacturer, for $100. Cost of goods sold for cloth is $80, entirely attributable to production activity. P does not engage in significant sales activity in relation to its other activities in the sales to D. Under these facts, the sale to D fairly establishes an IFP of $100. Assume that P elects to use the IFP method. Accordingly, $100 of the gross sales price is treated as attributable to production activity, and no amount of income from this

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sale is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100–$80).

(ii) P also sells cloth in country X to A, a unrelated foreign retail outlet, for $110. Because P elected the IFP method and the cloth is substantially similar to the cloth sold to D, the IFP fairly established in the sales to D must be used to determine the amount attributable to production activity in the sale to A. Accordingly, $100 of the gross sales price is treated as attributable to production activity and $10 ($110–$100) is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100 − $80) and $10 is attributable to sales activity.

Example 2. Scope of IFP Method. (i) USCo manufactures three dissimilar products. USCo elects to apply the IFP method. In year 1, an IFP can be established for sales of product X, but not for products Y and Z. In year 2, an IFP cannot be established for any of USCo's products. In year 3, an IFP can be established for products X and Y, but not for product Z.

(ii) In year 1, USCo must apply the IFP method to sales of product X. In year 2, although USCo's IFP election remains in effect, USCo is not required to apply the IFP election to any products. In year 3, USCo is required to apply the IFP method to sales of products X and Y.

(3) *Books and records method.* A taxpayer may elect to determine the amount of its gross income from Section 863 Sales that is attributable to production and sales activities for the taxable year based upon its books of account if it has received in advance the permission of the District Director having audit responsibility over its tax return. The taxpayer must establish to the satisfaction of the District Director that the taxpayer, in good faith and unaffected by considerations of tax liability, will regularly employ in its books of account a detailed allocation of receipts and expenditures which clearly reflects the amount of the taxpayer's income from production and sales activities. If a taxpayer receives permission to apply the books and records method, but does not comply with a material condition set forth by the District Director, the District Director may, in its discretion, revoke permission to use the books and records method. The source of gross income treated as attributable to production activity under this method may be determined under the rules of paragraph (c)(1) of this section, and the source of gross income attributable to sales activity will be determined under the rules of paragraph (c)(2) of this section.

(c) *Determination of the source of gross income from production activity and sales activity*—(1) *Income attributable to production activity*—(i) *Production only within the United States or only within foreign countries*—(A) *Source of income.* Where the taxpayer's production assets are located only within the United States or only within a foreign country, the income attributable to production activity is sourced where the taxpayer's production assets are located. For rules regarding the source of income when production assets are located both within the United States and within one or more foreign countries, see paragraph (c)(1)(ii) of this section. For purposes of this section, *production activity* means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1.

(B) *Definition of production assets.* For purposes of this section, production assets include only tangible and intangible assets owned by the taxpayer that are directly used by the taxpayer to produce inventory described in paragraph (a) of this section. Production assets do not include assets that are not directly used to produce inventory described in paragraph (a) of this section. Thus, production assets do not include such assets as accounts receivables, intangibles not related to production of inventory (e.g., marketing intangibles, including trademarks and customer lists), transportation assets, warehouses, the inventory itself, raw materials, or work-in-process. In addition, production assets do not include cash or other liquid assets (including working capital), investment assets, prepaid expenses, or stock of a subsidiary. A partner will be treated as owning its proportionate share of the partnership's production assets, determined by reference to the partner's distributive share of partnership income for the year attributable to such production assets.

(C) *Location of production assets.* For purposes of this section, a tangible production asset will be considered located where the asset is physically located. An intangible production asset will be considered located where the tangible production assets owned by the taxpayer to which it relates are located.

(ii) *Production both within the United States and within foreign countries*—(A) *Source of income.* Where the taxpayer's production assets are located both within the United States and within one or more foreign countries, income from sources without the United States will be determined by multiplying the income attributable to production activity by a fraction, the numerator of which is the average adjusted basis of production assets that are located in one or more foreign countries and the denominator of which is the average adjusted basis of all production assets in foreign countries and in the United States. The remaining income is treated as from sources within the United States.

(B) *Adjusted basis of production assets.* For purposes of paragraph (c)(1)(ii)(A) of this section, the adjusted basis of an asset is determined under section 1011. The average adjusted basis is computed by averaging the adjusted basis of the asset at the beginning and end of the taxable year, unless by reason of material changes during the taxable year such average does not fairly represent the average for such year. In this event, the average adjusted basis will be determined upon a more appropriate basis. If production assets are used to produce inventory sold in Section 863 Sales and are also used to produce other property during the taxable year, the portion of its adjusted basis that is included in the fraction described in paragraph (c)(1)(ii)(A) of this section will be determined under any method that reasonably reflects the portion of the assets that produces inventory sold in Section 863 Sales. For example, the portion of such an asset that is included in the formula may be determined by multiplying the asset's average adjusted basis by a fraction, the numerator of which is the gross receipts from sales of inventory from Section 863 Sales produced by the asset, and the denominator of which is the gross receipts from all property produced by that asset. For purposes of this section, a taxpayer's basis in production assets held through a partnership shall be determined by reference to the partnership's adjusted basis in its assets (including a partner's special basis adjustment, if any, under section 743).

(iii) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

Example 1. Source of production income. (i) A, a U.S. corporation, produces widgets that are sold both within the United States and within a foreign country. The initial manufacture of all widgets occurs in the United States. The second stage of production of widgets that are sold within a foreign country is completed within the country of sale. A's U.S. plant and machinery which is involved in the initial manufacture of the widgets has an average adjusted basis of $200. A also owns warehouses used to store work-in-process. A owns foreign equipment with an average adjusted basis of $25. A's gross receipts from all sales of widgets is $100, and its gross receipts from export sales of widgets is $25. Assume that apportioning average adjusted basis using gross receipts is reasonable. Assume A's cost of goods sold from the sale of widgets in the foreign countries is $13 and thus, its gross income from widgets sold in foreign countries is $12. A uses the 50/50 method to divide its gross income between production activity and sales activity.

(ii) A determines its production gross income from sources without the United States by multiplying one-half of A's $12 of gross income from sales of widgets in foreign countries, or $6, by a fraction, the numerator of which is all relevant foreign production assets, or $25, and the denominator of which is all relevant production assets, or $75 ($25 foreign assets + ($200 U.S. assets × $25 gross receipts from export sales/$100 gross receipts from all sales)). Therefore, A's gross production income from sources without the United States is $2 ($6 × ($25/$75)).

Example 2. Location of intangible property. Assume the same facts as *Example 1*, except that A employs a patented process that applies only to the initial production of widgets. In computing the formula used to determine the source of income from production activity, A's patent, if it has an average adjusted basis, would be located in the United States.

(2) *Income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity will be determined under the provisions of § 1.861–7(c).

(d) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (c) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861–8 through 1.861–14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Sales determined separately under each method described in paragraph (b) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Sales under § 1.861–8(e)(3), the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861–8(e)(3)(i)(A). In the case of gross income from Section 863 Sales determined under the IFP method or the books and records method, the rules of §§ 1.861–8 through 1.861–14T must apply to properly allocate or apportion amounts of expenses, losses and other deductions allocated and apportioned to such gross income between gross income from sources within and without the United States. In the case of gross income from Section 863 Sales determined under the 50/50 method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States pro rata based on the relative amounts of gross income from sources within and without the United States determined under the 50/50 method.

(e) *Election and reporting rules*—(1) *Elections under paragraph (b) of this section.* If a taxpayer does not elect a method specified in paragraph (b)(2) or (3) of this section, the taxpayer must apply the method specified in paragraph (b)(1) of this section. The taxpayer may elect to apply the method specified in paragraph (b)(2) of this section by using the method on a timely filed original return (including extensions). A taxpayer may elect to apply the method specified in paragraph (b)(3) of this section by using the method on a timely filed original return (including extensions), but only if the taxpayer has received permission from the District Director to apply that method. Once a method under paragraph (b) of this section has been used, that method must be used in later taxable years unless the Commissioner consents to a change. See e.g., paragraph (b)(2)(ii) *Example 2* of this section. However, if a taxpayer elects to change to or from the method specified in paragraph (b)(3) of this section, the taxpayer must obtain permission from the District Director instead of the Commissioner. Permission to change methods from one year to another year will not be withheld unless the change would result in a substantial distortion of the source of the taxpayer's income.

(2) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (b) of this section must fully explain the methodology used, the circumstances justifying use of that method, the extent that sales are aggregated, and the amount of income so allocated.

(f) *Income partly from sources within a possession of the United States.* [Reserved]

(g) *Effective dates.* The rules of paragraphs (a) through (e) of this section will apply to taxable years beginning 30 days after publication of final regulations. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after the publication of these regulations as final regulations, see § 1.863–3 (as contained in 26 CFR part 1 revised as of April 1, 1995).

Par. 4. Section 1.863–4 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.863–4 Certain transportation services.

(a) *General.* A taxpayer carrying on the business of transportation service (other than an activity giving rise to transportation income described in section 863(c) or to income subject to other specific provisions of this title) between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

* * * * *

§ 1.863–5 [Removed]

Par. 6. Section 1.863–5 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30087 Filed 12–7–95; 2:00 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

33 CFR Part 52

[OST Docket No. OST–95–878; Notice 95–14]

RIN 2105–AC31

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to amend its regulations with respect to reconsideration of final decisions of the Board for Correction of Military Records of the Coast Guard (Board). This action is taken on the Department's initiative in order to streamline processing of these cases and to clarify the circumstances under which final decisions can be reconsidered. The proposed amendment will make it possible for the Board to expedite reconsideration and will increase the resources available to meet the requirement that all cases be decided within 10 months of the receipt of a completed application.

DATES: Comments must be submitted on or before February 9, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed, preferably in duplicate, to Docket No. OST–95–878, Documentary Services Division, C–55, PL–401, U.S. Department of Transportation; 400 Seventh Street SW, Washington, D.C. 20590. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday

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through Friday. Persons wishing acknowledgment of their comments' receipt should include a stamped, self-addressed postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert H. Joost, Chairman, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW, Washington, D.C. 20590–0001. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION:

The Board Process With Respect to Reconsideration

The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10, United States Code, to correct the military records of serving, separated and retired Coast Guard military personnel when there is an error or injustice in a military record.

After a final decision has been reached on an application for correction, the decision can be appealed by the applicant in an appropriate Federal court. There is no right, under 10 U.S.C. 1552, to administrative reconsideration of a final decision, but applicants have always been allowed to request such reconsideration by regulation.

Under the present DOT BCMR regulation with respect to reconsideration (33 CFR 52.67(b)), the only basis for reconsideration is the presentation of "newly discovered evidence or information, not previously considered by the Board * * * [which] would, if true, result in a determination other than that originally made."

The present regulation does not explicitly authorize reconsideration if the applicant offers evidence showing that material legal or factual error was made by the Board in its original decision. Also, it does not provide a means for expeditious handling of requests for reconsideration that do not meet the threshold requirements for review. Because of the current statutory direction that Board decisions be issued within 10 months of receiving a complete application, and the resulting pressure on Board resources, the Board must find ways to increase its efficiency of operation. An expedited process for handling facially defective reconsideration requests is proposed as an appropriate step in that direction. In addition, the present rule does not require that a request for reconsideration be made within a certain time period.

The Proposal

The proposed rule would explicitly authorize the Board to consider applications for reconsideration upon a showing that the Board committed legal or factual error in the original determination that could have resulted in a determination other than that made.

The proposed rule would authorize the Chairman not to docket applications for reconsideration that do not meet the threshold requirements for reconsideration, i.e. applications that only (1) present evidence or information previously considered by the Board, (2) present new evidence or information that is clearly not material to the result in the case, (3) present new evidence or information that could have been submitted earlier with the exercise of reasonable diligence, or (4) make arguments as to legal or factual error that are clearly not material to the result. The phrase "otherwise comes to the attention of the Board" has been deleted, however, as unnecessary.

The proposed rule would provide that no Board member who considered an applicant's original application for correction would participate in the consideration of that person's application for reconsideration. There will, to the extent practicable, be a related prohibition on the staff member; the person who drafted the original decision would not draft the reconsideration decision. In light of these safeguards, it would not be necessary for the Secretary's designate to approve each denial of a reconsideration request, thus expediting the review process.

Section-by-Section Analysis

Section 52.67, Reconsideration, is rewritten to add the new requirements outlined above, and to simplify the procedure on reconsideration.

Paragraph (a) provides that reconsideration of an application may occur if the applicant meets at least one of two sets of criteria. The first of these, paragraph (a)(1), directs reconsideration if an applicant presents evidence or information that was not previously considered by the Board if that evidence or information could result in a different determination and if it "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The second of these, paragraph (a)(2), directs reconsideration if an applicant presents evidence or information that the Board committed legal or factual error in the original determination that could have resulted in a different result.

Paragraph (b) directs the Chairman to docket a reconsideration request if it meets the requirements of paragraph (a)(1) or (a)(2). If neither of these requirements is met, the Chairman shall not docket the request, and shall return the application to the applicant with a statement that no action is being taken due to a failure to meet the threshold requirements for docketing.

Paragraph (c) provides that the Board shall consider each application for reconsideration that has been docketed under paragraph (b). This paragraph also provides that the final decision on reconsideration shall involve a different Board than the one that initially considered the application.

Paragraph (d) provides that the Board's final action on docketed application for reconsideration shall be the same as if they were original applications for correction.

Paragraph (e) provides that an applicant's request for reconsideration must be filed within two years after the issuance of a final decision, subject to other legal rules such as the Soldier's and Sailor's Civil Relief Act. The two-year statute of limitations parallels the time period allowed by Article 73 of the Uniform Code of Military Justice for petitioning for a new trial after the approval of a court-martial sentence on the grounds of newly discovered evidence or fraud on the court. If the Chairman dockets an applicant's request for reconsideration under paragraph (b), the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Regulatory Process Matters

This NPRM does not propose a significant rule under Executive Order 12681 or the Department's Regulatory Policies and Procedures. The costs of a purely procedural change in the Board's rule would be negligible. The NPRM would not, if adopted, have a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act. There are no Federalism factors to warrant the preparation of a Federalism assessment.

List of Subjects in 32 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel, Military records.

Issued this 24th day of November at Washington, DC.

Mortimer L. Downey,

Deputy Secretary of Transportation.

For the reasons set forth in the preamble, the Office of the Secretary of the U.S. Department of Transportation proposes to amend 33 CFR Part 52 as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 is revised to read as follows:

Authority: 10 U.S.C. 1552; 49 U.S.C. 108; Pub. L. 101–225, 103 Stat. 1908, 1914.

2. Section 52.67 is revised to read as follows:

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board that could result in a determination other than that originally made. Evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chairman shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chairman shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who considered an applicant's original application for correction shall participate in the consideration of that applicant's application for reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to § 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chairman dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

[FR Doc. 95–29345 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–029–1–7177b; FRL–5316–6]

Approval and Promulgation of Implementation Plans State of South Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of South Carolina for the purpose of establishing a Federally enforceable state construction and operating permit (FESCOP) program. In order to extend the Federal enforceability of South Carolina's FESCOP to hazardous air pollutants (HAPs), EPA is also proposing approval of South Carolina's FESCOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATE: To be considered, comments must be received by January 10, 1996.

ADDRESSES: Written comments should be addressed to: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Mangement Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of South Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4153.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–30107 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–281; FCC 95–490]

Calling Number Identification Service—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 30, 1995, the Commission adopted a Fourth Notice of Proposed Rulemaking (Fourth NPRM) addressing numerous petitions for waiver of its Caller ID rules. The Fourth NPRM is intended to address issues associated with requiring carriers to deploy blocking capabilities. It seeks comment on whether local exchange carriers (LECs) must pass calling party number (CPN) if they use particular switches that do not have CLASS software installed.

DATES: Comments must be filed on or before December 27, 1995, and reply comments must be filed on or before January 10, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

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FOR FURTHER INFORMATION CONTACT: Michael Specht, Senior Engineer, Network Services Division, Common Carrier Bureau, (202) 418–2378 or Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth Notice of Proposed Rulemaking in the matter of Calling Number Identification Service—Caller ID, (CC Docket No. 91–281, FCC 95–480, adopted November 30, 1995 and released December 1, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

On May 5, 1995, the Commission affirmed its finding that interstate delivery of a calling party's number is in the public interest. The Commission noted that widespread availability of CPN promotes new services, consistent with Commission responsibilities under Section 1 and 7 of the Communications Act and benefits the public by enabling consumers to conduct telephone transactions more efficiently. The Commission also continued to recognize the importance of balancing the benefits of such widespread availability with the privacy interests of calling and called parties and the need for reasonable consumer education. The Commission affirmed rules that require carriers with Signalling System 7 (SS7) call set up capability to transport CPN to interconnecting carriers without additional charge. The Commission also affirmed rules that require originating carriers to recognize *67 as the first three digits of a call as a caller's request for privacy. The Commission permitted per line blocking where state policy allows and established rules that carriers providing per line blocking services recognize *82 as a caller's request that privacy not be provided. Additionally, the Commission affirmed rules that require carriers to notify customers with respect to *67 and *82 capabilities.

Over the past several months, the Commission has received numerous requests from petitioners seeking waivers, stays or declaratory rulings of the Commission's caller ID rules. On October 30, 1995, the Commission released an Order that addressed some of these requests for relief. *See Rules and Policies Regarding Calling Numbering Identification Service—Caller ID*, Order, CC Docket No. 91–281, FCC 95–446, released October 30, 1995. On November 30, 1995, the Common Carrier Bureau, pursuant to delegated authority, adopted an Order that addressed the remaining petitions for relief. *See Rules and Policies Regarding Calling Number Identification Service—Caller ID*, Order, CC Docket No. 91–281, DA 95–2415 (Com. Car. Bur. adopted November 30, 1995).

The Fourth NPRM tentatively concludes that LEC switches not equipped with CLASS software should not be required to pass CPN and that they should be permitted to pass it only if they can provide the blocking and unblocking capabilities specified in Section 64.1601(b) of the Commission's rules. The Fourth NPRM seeks comment on its tentative conclusions, and specifically on the economic feasibility of adding blocking and unblocking capabilities to switches already able to pass CPN.

Ordering Clauses

It is further ordered, pursuant to Sections 1, 4(i) and (j), 201–205, 218 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 218, that notice is hereby given of the proposed changes in policies regarding the application of caller ID rules to switches without CLASS software, and comment is invited on this proposal.

List of Subjects in 47 CFR Part 64

Calling party telephone number, Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30051 Filed 12–8–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[CS Docket No. 95–174; FCC 95–472]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking seeks comment on proposed methods for cable operators' setting of uniform rates for uniform services offered in multiple franchising areas. The Commission is exploring this issue to solicit comment on possibly permitting operators to establish uniform rates. The item will help the Commission create a record on this issue, which will assist the Commission in designing new or amending current regulations to allow operators to establish uniform rates.

DATES: Comments are due on or before January 12, 1996 and reply comments are due on or before February 12, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

[CS Docket No. 95–174]

In the matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation Uniform Rate-Setting Methodology.

Notice of Proposed Rulemaking

Adopted: November 28, 1995.
Released: November 29, 1995.
By the Commission:

Comment Date: January 12, 1996.
Reply Comment Date: February 12, 1996.

I. Introduction

1. Under the Commission's cable service rate regulations, a cable operator serving multiple franchise areas must establish maximum permitted service rates in each franchise area. These rates often vary from franchise area to franchise area, even if each area receives the identical package of program services. This outcome may cause needless confusion for subscribers, as well as unnecessary administrative burdens for cable companies. In addition, a cable operator's ability to market its product on a regional basis may be hindered. Therefore, in this Notice of Proposed Rulemaking ("NPRM"), we explore the design and implementation of an optional rate-setting methodology under which a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise area.

II. Background

2. Under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), the rates charged by a cable system are

subject to regulation unless the system faces effective competition. In particular, the 1992 Cable Act directed the Commission to establish regulations designed to protect subscribers from unreasonable rates for certain types of cable services offered by such systems. Rate-regulated services consist of the basic service tier ("BST") and the cable programming services tier ("CPST").

3. Every cable operator subject to rate regulation must offer a BST that includes all local broadcast stations that the operator carries on its system, plus all public, educational, and governmental ("PEG") access channels required by the operator's franchise agreement with its local franchising authority. If it so chooses, a cable operator may offer additional programming on its BST beyond these minimum requirements. Subscribers to a rate-regulated cable system must purchase the BST in order to have access to any other tier of service. CPSTs include all non-BST programming offered over the cable system, other than programming offered to subscribers on a per channel or per program basis. There is no general requirement that an operator offer a CPST, and some operators offer no CPST. Per channel and per program offerings are generally exempt from rate regulation.

4. Congress identified several specific factors that the Commission must consider in establishing regulations governing BST and CPST rates. The Commission may take other factors into account as well. In addition, the 1992 Cable Act required that the Commission "seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission" in establishing its regulations.

5. Under the primary method of rate regulation adopted by the Commission, a regulated cable system determines the maximum permitted initial rates for cable services pursuant to a benchmark formula. In selecting a primary regulatory model, the Commission employed a benchmark formula instead of the cost-of-service methodology that is traditionally applied to public utilities because of the often significant administrative costs and burdens on regulators and regulated companies associated with cost-of-service regulation. However, operators subject to regulation do have the option of setting rates in accordance with a cost-of-service methodology that the Commission has developed.

6. To set or justify its initial rates in accordance with the benchmark formula, a cable operator first must use FCC Form 1200. This form generates a maximum permitted rate as of May 15, 1994 for a particular franchise area, based upon various characteristics specific to the cable system within that franchise area. These variables include channels per tier, number of regulated non-broadcast channels per tier, number of subscribers in the local franchise area, number of tier changes, the census income level for the franchise area, number of additional outlets and remote control units in the franchise area, system-wide subscribership, whether the system is part of a multiple system operation ("MSO"), and the number of systems in the MSO. A benchmark operator may, and sometimes must, adjust the rates permitted by Form 1200 to take account of changes in inflation and other costs since May 15, 1994. Currently, the operator must use FCC Form 1210 to calculate these adjustments. As of the effective date of the Form 1240 promulgated pursuant to the recently adopted Thirteenth Order on Reconsideration, 60 FR 52106 (October 6, 1995), operators may make rate adjustments as provided by FCC Form 1240 in lieu of Form 1210. Whereas an operator can file Form 1210 as often as once per calendar quarter to adjust rates to take account of costs already incurred by the operator, Form 1240 will be filed no more than annually but will permit the operator to adjust rates based on costs to be incurred within the coming year. In addition, operators may increase rates to reflect the addition of new programming services to regulated tiers. Our rules provide two methods for adjusting rates for the addition of programming services. First, an operator can add channels to CPSTs using our original "going-forward" rules, which allow the operator to charge subscribers the cost of the additional programming plus up to an additional 7.5% markup on that cost. Second, an operator may add programming services under the Commission's more recently adopted going-forward option, which allows an operator to charge subscribers up to $0.20 per channel for additional channels and up to a further $0.30 in associated licensing fees. The latter going-forward rules similarly require specific decreases in subscriber rates when an operator deletes channels from its lineup, depending on when the channel in question was added.

7. Enforcement of the Commission rate regulations is divided between qualified local franchising authorities and the Commission. A local franchising authority may enforce regulation of the cable operator's BST once the Commission has received and approved the local franchising authority's certification that it has the legal and practical ability to do so. Upon receiving notification that the franchising authority has been certified by the Commission to regulate rates, a cable operator opting for benchmark regulation must justify its existing BST rates pursuant to the benchmark formula. Once regulated, the operator also must seek local approval for future BST rate increases. The operator seeks such approvals by filing the forms described above. The operator also must justify its rates for equipment and installations associated with the BST. The franchising authority must then review the forms, may request additional information if reasonably necessary to complete its review, and ultimately issue an order approving or disapproving the rates proposed by the operator.

8. The participation by local franchising authorities in the regulation of cable service is critical. Generally, the Commission establishes federal standards and procedures concerning various aspects of cable service which local franchising authorities implement. These rules include but are not limited to subscriber rates, cable service technical standards, and customer service. Local franchising authorities are the first line of enforcement of these numerous regulations. While the Commission may be on hand, either by statute or informally, to help resolve any disputes that may arise between a cable provider and a local franchising authority, the responsibility to oversee cable service regulations falls primarily on the franchise authorities. Generally, the Commission gives significant deference to decisions by local franchising authorities. For example, where a cable operator appeals a franchising authority's rate decision, the Commission will not conduct de novo review of the decision; rather, the Commission will defer to the local authority's decision provided there is a rational basis for the decision. This process is just one example of the Commission's significant reliance upon local franchising authorities in the regulation of basic cable service. Moreover, in all but the most rare situations, local authorities administer cable service regulation without federal assistance.

9. An operator's CPST is subject to regulation directly by the Commission. Commission enforcement of CPST rate regulation is triggered by the filing of a complaint by a subscriber or franchising authority or other relevant state or local regulatory authority. Upon the filing of

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such a complaint, the operator must file the necessary forms with the Commission, which then follows a review process analogous to that used by local franchising authorities regulating BST rates.

10. The benchmark approach described above requires operators to establish a separate rate structure in each franchise area served; since many of the variable used to generate the maximum rate are franchise specific. For example, while the data on whether the system is part of an MSO will be identical throughout all of the franchise areas served, the census income and subscribership variables are measured on a franchise area basis and necessarily will vary among franchise areas. Similarly, costs associated with PEG channels and other franchise-related costs may vary among franchise areas. A disparity in rates among franchise areas will occur even if the operator provides service to multiple franchise areas through a single, integrated cable system, since even in that case rates are set separately for each franchise area on the basis of variables specific to the franchise area.

11. Relatedly, we note that the acquisition and clustering of neighboring cable systems by MSOs has become fairly common. An operator seeking to establish uniform rates and services for clustered systems likely will need to add channels to the programming lineups of certain system and delete channels from the lineups of other systems. While the Commission's "going-forward" rate regulations typically provide operators with the flexibility to establish a uniform package of programming services, the operator's efforts to equalize prices will be severely constrained because the rules quite specifically dictate permitted changes in rates that must accompany changes in level of service and do not permit regional averaging of the data used to complete rates.

III. Discussion

12. We tentatively conclude that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all such areas would be beneficial for subscribers, franchising authorities, and operators. For example, facilitating an operator's ability to advertise a single rate for cable service over a broad geographic region may lower marketing costs and enhance the operator's efficiency in responding to competition from alternative service providers that typically may establish and market uniform services and rates without regard to franchise area boundaries. The increased ability of operators to compete resulting from this approach may increase penetration in a particular franchise area. Such an approach could reduce consumer confusion because a subscriber moving from one part of the operator's service area to another would not experience any difference in price or service offerings. We explore below two alternatives for permitting an operator to establish uniform rates for uniform services across multiple franchise areas, while fully protecting subscribers from unreasonable rates, and solicit comment on these and any other possible approaches. Before discussing these two methodologies, we will identify several issues that will arise regardless of which methodology we ultimately adopt.

13. Cable operators currently serve multiple franchise areas using a variety of system structure; some operators serve multiple areas with a single, integrated cable system while others use multiple, distinct systems. An operator's rates are not dependent on whether single or multiple systems are used to deliver service. We propose that under a uniform rate0-setting option, a cable operator be allowed to establish uniform rates for uniform service offerings in multiple franchise areas regardless of whether the operator serves the multiple franchise areas with on integrated cable system (i.e., one "headend") or with multiple separate cable systems, and seek comment on this proposal.

14. We believe that cable operators primarily will seek to establish uniform rates for systems serving multiple franchise areas that are located within some measure of proximity to each other, perhaps for purposes of regional adverting. Moreover, it is likely that the service costs and characteristics, such as the number of channels, density of subscribers, and median income level, associated with various franchise areas typically will vary as the geographic distances increase between the multiple franchise areas. This circumstance can increase the complexity of uniform rate-setting across multiple franchise areas. We note that a cable operator's obligation under the "must-carry" rules to carry local over-the-air broadcast stations, as well as the operator's copyright fee responsibilities, are determined based on the Area of Dominant Influence ("ADI") in which the system is located. Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in § 73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated § 73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991–1992 Television Market Guide. This Arbitron Guide is available at the Federal Communications Commission, 2033 M Street, N.W., Room 200, Washington, D.C. We note that Arbitron, the company that establishes the boundaries for ADIs, has ceased updating its ADI market list. Commission staff is currently exploring the designation of a replacement measure. Accordingly, we seek comment on whether the ADI, or some other region, would be appropriate for the setting of uniform rates. We seek comment on additional benefits of limiting uniform rate-setting to franchise areas located within the same ADI or similar region, as well as any difficulties resulting from this limitation. We further seek comment on the benefits or detriments of limiting rates to franchise areas located within the same county or state. Finally, we seek comment on the costs and benefits of permitting cable operators to select the region in which to set uniform rates under a uniform rate-setting method.

15. Below we describe two possible approaches for permitting cable operators to establish uniform rates for uniform packages of services offered to multiple franchise areas. We invite comment from interested parties as to these approaches and we seek suggestions as to any other alternatives that would further the goals discussed above.

16. The first approach would work generally as follows. A cable operator first would determine or identify BST and CPST rates established in each local franchise area pursuant to our existing rate regulations, as adjusted to reflect permitted or required rate changes resulting from the addition or deletion of channels necessary to structure uniform tiers throughout the franchise areas served. We seek comment on whether an operator would similarly follow our existing regulations concerning rates for equipment. BST rates then would be equalized by reducing all BST rates charged in the relevant region to the lowest regulated BST rate charged in any one franchise area located in the region. The new uniform BST rate would now constitute the operator's maximum permitted rate for basic cable service in all the relevant franchise areas. The operator then would add the total amount of "lost" revenue resulting from the various BST rate reductions to the total CPST revenues to which the operator is otherwise entitled, under our existing rules, for all franchise areas in the relevant region. The operator then would determine a uniform CPST rate by dividing the total of the displaced BST revenues and existing CPST revenues by all CPST subscribers in the region. Thereafter, the operator would apply our going-forward policies and annual rate adjustment regulations on a regional basis. A numerical example of this option can be found below.

17. In some instances, cable systems may be regulated in certain franchise areas within the region and unregulated in others. We proposed that operators be free to establish uniform rates under the uniform rate-setting approach in unregulated as well as regulated franchise areas for purposes of uniformity. We believe that in such situations, an operator may elect to base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas. We believe that this optional approach further enhances operators' flexibility in establishing uniform rates. Moreover, uniform rates calculated pursuant to the method ultimately adopted in this proceeding, and charged in unregulated areas, should increase an operator's regulatory certainty with respect to whether the subscriber rates charged in the unregulated areas are reasonable under our rules should the operator later become subject to rate regulation in one of those areas. An operator later becoming subject to regulation would follow our existing procedures for establishing regulated rates, including determining an initial rate pursuant to our benchmark formula or cost-of-service rules, and seeking the approval of rates from the local franchising authority. We seek comment on this approach. We also seek comment on how an operator's regulated rates for equipment may affect the setting of uniform rates.

18. An operator's rates would remain subject to the dual jurisdictions of the affected local franchising authorities and the Commission. Upon the initial application of this approach, BST rates would be unchanged in at least one franchise area and would be reduced in each franchise area with higher rates. Thus, this proposal may benefit many subscribers who receive only basic cable service, and should be cost-neutral to the remaining basic-only subscribers in the franchise area(s) with the lowest current BST rates. Certified local franchising authorities would retain jurisdiction to ensure that the operator's BST rates are in compliance with our rules. The operator would recoup the costs of reduced BST rates through the averaged CPST rates over which the Commission would retain jurisdiction. We seek comment on this proposed approach, including comment on: (1) the costs and benefits of requiring operators to reduce BST rates to the lowest common rate under this option, (2) the impact of an operator's redistribution of BST rate reductions among CPST rates charged in neighboring franchise areas, and (3) the application of our going-forward policies and annual rate adjustment on a regional basis. We note that our rules allow franchising authorities to review and approve operators' proposed BST rates and increases to those rates. Under this option, however, pre-approval of uniform BST rates by franchising authorities generally will be unnecessary given that subscriber rates typically will decrease or remain unchanged. We seek comment on the benefits and costs of this approach for local franchising authorities, and whether this approach will protect subscribers from unreasonable rates.

19. Under the second possible approach for establishing uniform rates for uniform services, a cable operator would determine or identify BST and CPST rates charged in each of the relevant franchise areas pursuant to our existing rate regulations, as adjusted for rate changes resulting from the addition or deletion of channels necessary to structure uniform service tiers. We seek comment on whether an operator similarly would follow our existing regulations concerning rates for equipment. After aggregating the BST rates and revenues for all the franchise areas in the region, and then the CPST rates and revenues for all franchise areas, the operator would determine a single "blended" rate for BSTs, and a single blended rate for CPSTs, to be charged in all franchise areas in the region pursuant to a formula designed by the Commission. The blended rates for BSTs and CPSTs would be determined by averaging the operator's total BST and CPST rates, respectively, on a per subscriber basis for all subscribers in the region, in order to ensure that the establishment of uniform rates is revenue-neutral to the cable operator. A numerical example of this option can be found below. The operator would be required to justify its blended rates to each local franchising authority certified to regulate rates. The operator would be free, of course, to establish this rate in uncertified areas, for purposes of uniformity across a wide region. As noted for the other proposed approach, we propose that an operator may elect a base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas, and believe that similar benefits for operators and subscribers will result from this requirement under both possible approaches. We seek comment on this tentative conclusion, as well as comment on other benefits and detriments of the cable operator basing the blended rate in part on data from such unregulated areas. We also seek comment on how an operator's establishment of uniform rates in uncertified areas may impact on the operator's ability to later implement required refunds or prospective rate reductions in certified areas.

20. After setting initial uniform rates, the operator would apply our going-forward policies and the recently adopted annual adjustment method on a regional basis to adjust future rates. Again, the dual jurisdictional boundaries of franchising authorities and the Commission would remain intact. We seek comment on this approach generally, including comment on: (1) any associated burdens for regulated cable companies and regulators, (2) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, (3) the proposed calculation of the blended rate, and (4) the application of our going-forward policies and annual adjustment method on a regional basis. We note that under this approach subscribers' BST rates may increase in certain jurisdictions (and decrease in others) as BST rates are adjusted to establish uniformity. We seek comment on the benefits and costs of adopting this formula given that certain BST subscribers may experience rate increases.

21. Both proposed uniform rate setting methodologies will result in increases in CPST rates for some subscribers. In light of the cost savings to cable operators likely to be created by implementation of uniform rates, we seek comment on whether it is appropriate to either limit the amount of increase a CPST subscriber must pay in a given year as a result of this institution of uniform rates or to phase-in significant increases over a two-year period. Comments should also address what administrative burdens such a limitation or phased-in increase would create for operators.

22. Several potential timing circumstances may affect the implementation of a uniform rate-setting approach. For example, where an operator has submitted justifications, the operator may be subject to multiple

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local tolling orders of varying durations which can complicate implementation of uniform BST rates. After the initial 30 day notice period that must precede any rate adjustment, franchising authorities can toll the effective date of a proposed rate for an additional 90 days in benchmark cases or 150 days in cost of service cases. We seek suggestions of procedures that would permit a cable operator in this situation to establish uniform rates as expeditiously as possible. We solicit comment on allowing proposed uniform rates to take effect automatically after some period of time, subject to ultimate resolution in a later "truing-up" process, in which rate discrepancies could be reflected in rates for the following year.

23. In proposing to give cable operators flexibility to charge uniform rates for uniform services, we in no way seek to circumscribe the authority of local franchising authorities to negotiate franchise-specific terms in their agreements with cable operators. For example, we note that local franchising authorities typically establish requirements in a franchise agreement with respect to the designation or use of the franchised cable operator's channel capacity of PEG services. This could result in a cable system having a non-uniform channel line-up within franchise areas where it seeks to establish uniform rates. We seek comment on whether our uniform rate proposals require any modification or adjustment to accommodate such non-uniform offerings.

24. A further problem may arise because PEG requirements and other franchise obligations will vary between franchise areas, such that the operator's "franchise related costs," one of the variables used to establish and adjust rates, also will vary among franchise areas. We seek to provide cable operators with uniform rate alternatives while allowing franchising authorities flexibility to negotiate franchise terms and conditions that respond to particular community needs. We also seek to ensure that the uniform rate proposal does not allow franchise-specific costs to be shifted from one community to another. One alternative for resolving this issue would be to permit the cable operator simply to itemize and charge for franchise-related costs outside the uniform rate-setting formula. We seek comment on this approach. We also seek suggestions of other methods that could compensate operators for legitimately incurred expenses while protecting subscribers from unreasonable rates. Finally, we seek comment on additional potential obstacles to the establishment of uniform rates and service offerings, and possible resolutions to such obstacles.

IV. Initial Regulatory Flexibility Act Analysis

25. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the NPRM, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

26. Reason for Action. The Commission has perceived that our cable service rate regulations may impede a cable operator's ability to establish uniform rates for uniform services offered in multiple clustered franchise areas. We believe that allowing operators to set such uniform rates may facilitate operators' regional marketing of services, reduce administrative burdens on both regulators and cable companies, and reduce consumer confusion resulting from disparate rates. The NPRM proposes two possible alternatives for setting uniform rates, and solicits comments on further approaches.

27. Objectives. To explore a method under which a cable operator could establish uniform rates for uniform services offered in multiple franchise areas.

28. Legal Basis. Action as proposed for this rulemaking is contained in Section 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543.

29. Description, Potential Impact and Number of Small Entities Affected. The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

30. Reporting, Recordkeeping and Other Compliance Requirements. None.

31. Federal Rules which Overlap, duplicate or Conflict with these Rules. None.

32. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

V. Paperwork Reduction Act

33. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due to the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

VI. Procedural Provisions

34. Ex parte Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

35. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. Comments are due by January 12, 1996, and reply comments are due by February 12, 1996. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

36. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236, NEBO, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

37. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

VII. Ordering Clauses

38. It is ordered that, pursuant to Sections 623 of the Communications Act of 1934, as amended, 47 U.S.C. 543 notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this NPRM, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

39. It is further ordered that the Secretary shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

List of Subjects in 47 CFR Part 76

[Cable television.]

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Examples of Proposed Methods

Current rates	Franchise A	Franchise B	Franchise C
BST	$10	$11	$11
CPST	21	21	20
Total	31	32	31

*Each franchise area has 11,000 BST subscribers and 10,000 CPST subscribers.

First Proposed Method:

Step 1: BST rates reduced to lowest in region: BST rates in franchise areas "B" and "C" reduced to $10.

Step 2: "Lost" BST revenues is totaled; $1/subscriber in franchise areas "B" and "C"=($1×11,000)+($1×11,000)=$22,000.

Step 3: Current CPST revenue is totaled: ($21×10,000)+($21×10,000)+($20×10,000)=$620,000.

Step 4: Current CPST revenue is added to Lost BST revenue to create new CPST revenue requirement: $620,000+$22,000=$642,000.

Step 5: New CPST revenue requirement is divided evenly by all CPST subcribers in the region to calculate new uniform CPST rate: $642,000/30,000=$21.40.

Current rates	Franchise A	Franchise B	Franchise C
BST	$10.00	$10.00	$10.00
CPST	21.40	21.40	21.40
Total	31.40	31.40	31.40

Franchise A: no change in BST rates; increase in CPST and overall rates.

Franchise B: decrease in BST rates; increase in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in overall rates.

Second Proposed Method:

Step 1: Average current BST rates on a per BST subscriber basis to calculate average, uniform BST rate: $10(11,000)+$11(11,000)+$11(11,000) =$10.67/BST subscriber.

Step 2: Average current CPST rates on a per CPST subscriber basis to calculate average, uniform CPST rate: $21(10,000)+$21(10,000)+$20(10,000) =$20.67/CPST subscriber.

Total: $31.34/subscriber.

New rates	Franchise A	Franchise B	Franchise C
BST	$10.67	$10.67	$10.67
CPST	20.67	20.67	20.67
Total	31.34	31.34	31.34

Franchise A: increase in BST rates; decrease in CPST; increase in overall rates.

Franchise B: decrease in BST rates; decrease in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in CPST rates; increase in overall rates.

The results under each proposed method will vary widely depending on the current rates and the numbers of subscribers in each franchise area. In addition, these examples do not account for the impact of channel changes that may be necessary to achieve uniform packages of services.

[FR Doc. 95–29807 Filed 12–8–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 237
Monday, December 11, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Formulation of the Communications Strategy for the Revision of the Cibola National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

SUMMARY: The Cibola National Forest requests comment on the formulation of a communications strategy that will describe how the public and government entities may participate that will describe how the public and government entities may participate in the prerevision review and revision of the Cibola National Forest Plan on an ongoing basis. This is an invitation to the public and representatives of government entities to express their ideas and suggestions on ways that the Cibola National Forest can coordinate and disseminate information throughout the entire forest planning process.

DATES: This notice is effective the December 11, 1995. Comments must be submitted in writing on or before February 9, 1996.

ADDRESSES: Direct comments to: Jeanine A. Derby, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87110.

FOR FURTHER INFORMATION CONTACT: Karen Carter, Public Affairs Officer, Cibola National Forest at 505–761–4650.

BACKGROUND: The Land and Resource Management Plan defines the long-term direction for managing the Cibola National Forest and the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. The Forest Plan will take an ecological approach to achieve multiple-use management of the National Forest and National Grasslands. It means that we must blend the needs of people and environmental values in such a way that the National Forest and Grasslands represent diverse, healthy, productive, and sustainable ecosystems. The present Cibola National Forest Plan was approved in 1985 and has been amended six times since then. Revision of a forest plan should occur about every 10 years, but no later than 15 years, from the date of approval of the original plan or the latest plan revision. Briefly stated, the following steps are taken during a forest plan revision:

(1) Prerevision review of the forest plan. The entire forest plan is reviewed to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan.

(2) Communications Strategy. The Forest Supervisor shall formulate a communications strategy that describes how the public and government entities may participate in the prerevision and revision of the forest plan on an ongoing basis.

(3) Scoping. Upon completion of the prerevision review, the Regional Forester shall initiate the forest plan revision process by publishing a Notice of Intent to revise the forest plan and to prepare the draft environmental impact statement.

(4) Based on analysis and public comments, a draft environmental impact statement is completed.

(5) Based on analysis and public comments, a final environmental impact statement is completed with a revised forest plan.

(6) Following public comments a revised forest plan is approved.

The Communications Strategy is the tool used to guide the public participation process. The intent of the document is to list activities designed to foster ongoing participation by the public and government representatives during the entire planning process.

We are seeking comments as to which ways are most useful in order to receive and disseminate information concerning the planning process. Examples that are presently used include, but are not limited to, the following:

(1) Conduct public meetings, with adequate public notice to all interested persons, for the purpose of soliciting comments.

(2) Initiate meeting and invite the public and specific interested parties for the purpose of explaining agency proposals.

(3) Participate in one-on-one meetings to obtain individual views.

(4) Produce news releases through television, radio, newspapers.

(5) Write individual or group letters.

A copy of the draft Communications Strategy is available at the Cibola National Forest Supervisor's Office, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87110, 505–761–4650.

Dated: December 5, 1995.

Kenneth D. Kaarr,

Acting Forest Supervisor.

[FR Doc. 95–30057 Filed 12–8–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Thursday, December 7, 1995. The purpose of the meeting is to provide orientation to new members, brief Committee members on Commission activities, discuss the current project, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Betty L. Mills, 701–223–4643, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC,.

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 95–30078 Filed 12–8–95; 1:38 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 787]

IPR Pharmaceuticals, Inc., (Pharmaceutical Products), Guayama and Carolina, Puerto Rico; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facilities of IPR Pharmaceuticals, Inc., in Guayama and Carolina, Puerto Rico, was filed by the Board on December 16, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 42–94, 59 FR 66892, 12–28–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of subzones (Subzones 61F and 61G) at the plant sites of IPR Pharmaceuticals, Inc., in Guayama and Carolina, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30091 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 786]

Hoffmann-La Roche Inc., (Pharmaceutical Products), Freeport, TX; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Freeport, Texas, grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility (vitamins and fine chemicals) of Hoffmann-La Roche Inc., in Freeport, Texas, was filed by the Board on November 29, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 39–94, 59 FR 65752, 12–21–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149B) at the plant of Hoffmann-La Roche Inc., in Freeport, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30090 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping Administrative Reviews; Time Limits; Correction to Notice of Extension of Time Limits

AGENCY: Import Administration; International Trade Administration; Department of Commerce.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Avenue NW., Washington DC 20230, telephone: (202) 482–0649.

CORRECTION: In the notice of extension of time limits for certain antidumping administrative reviews, published in the **Federal Register** on November 7, 1995 (60 FR 56141), the Department incorrectly included the review of the antidumping duty order on sulfanilic acid from the People's Republic of China; no extension of time limits for that review has been granted, and the deadlines accordingly remain May 2, 1996, for the preliminary results of review, and August 30, 1996, for the final results of review. Furthermore, the correct case number for this order is A–570–815.

This notice is published pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)).

Dated: December 4, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30089 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 17, 1995, the Department of Commerce (the Department) issued the preliminary results of its 1992–94 administrative review of the antidumping duty order on steel wire rope from Korea (60 FR 14421; March 17, 1995). The review covers 25 manufacturers/exporters for the period September 30, 1992, through February 28, 1994 (the POR). We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made changes, including corrections of certain clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for each of the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Davina Friedmann, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1995, the Department published in the **Federal Register** the preliminary results of its 1992–94 administrative review of the antidumping duty order on steel wire rope from the Republic of Korea (60 FR 14421). There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for certain firms. In determining what to use as BIA, the Department employs a two-tiered methodology. In the case of respondents who do not cooperate, or who significantly impede the review, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the LTFV investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm. When a company substantially cooperates with our requests for information, but fails to provide all information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the current review for any firm for the class or kind of merchandise from the same country (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992)). *See also Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d. 1185 (Fed. Cir. 1993) (*Allied Signal*); *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp 789 (CIT 1993).

For a discussion of our application of BIA regarding specific firms, see comments one through five, below.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from the petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), and nine respondents including Boo-Kook Corp. (Boo-Kook), Chung-Woo Rope Co., Ltd. (Chung Woo), Chun Kee Steel & Wire Rope Co. Ltd. (Chun Kee), Hanboo Wire Rope, Inc. (Hanboo), Manho Rope & Wire Ltd. (Manho), Kumho Wire Rope Mfg. Co., Ltd. (Kumho), Ssang Yong Steel Wire Co., Inc. (Ssang Yong), Sungjin Company (Sungjin), and Yeonsin Metal Industrial Co., Ltd. (Yeonsin).

Comment 1: The Committee argues that the Department should not use its two-tiered methodology for establishing the BIA rate for uncooperative respondents, but instead should apply a dumping margin of 48.8 percent to these firms, as calculated by the Committee. Referring to its letter of November 15, 1994, the Committee urges the Department to establish a rate reflective of POR costs and values based on a comparison of the constructed value of Korean steel wire rope and the U.S. price of Korean wire rope. It claims that the U.S. price of steel wire rope from Korea should be based upon an actual price quotation for sales to the United States.

The Committee cites, in support of that proposition, *Sodium Thiosulfate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 59 FR 12934 (March 8, 1993) (*Sodium Thiosulfate from China*). The Committee asserts that, in that review, the Department used a BIA rate premised upon petitioner-supplied information because the petitioner demonstrated that costs and prices in the relevant industry had changed substantially since the original investigation. The Committee argues that substantial evidence indicates that Korean wire rope producers' raw material costs increased dramatically over the POR, while the U.S. price of Korean imports of carbon steel wire rope declined. The Committee also cites a decision by the Court of Appeals for the Federal Circuit that states that first-tier BIA "merely establishes a presumption that the highest prior margins are the best information available" (*Allied-Signal* at 1185 and 1187). The Committee argues that the presumption may be rebutted with evidence which included "all information that is accessible or may be obtained, whatever its sources," citing *Timken Co.* v. *United States*, 11 CIT 786, 673 F. Supp. 495, 500 (October 29, 1987).

In further support of its position, the Committee refers to *Silicon Metal From Argentina: Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65337 (December 14, 1993) (*Silicon Metal from Argentina*). The Committee argues that, in that decision, the Department reiterated its position and explained that the BIA provision of the statute ensures that the antidumping duties assessed are not less than the actual amounts might have been, had the Department received full and accurate information. The Committee concludes that a respondent should not find itself in a better position as a result of its noncompliance than it would have had it provided the Department with complete, accurate and timely data. The Committee argues that respondents are likely to not submit any information to the Department after considering the low dumping margin established in *Steel Wire Rope from Korea: Final Determination of Sales at Less Than Fair Value*, 58 FR 11029, 11032 (February 23, 1993) (*LTFV Final Determination*), and the possibility that the margins calculated in the review will also be low. It states that the Court of International Trade has affirmed the appropriateness of the Department's use of information from other sources. The Committee quotes the Court as saying that BIA "is not necessarily accurate information, it is information which becomes usable because the respondent has failed to provide accurate information," citing *Asociacion Colombiana de Exportadores de Flores v. United States*, 13 CIT 13, 28, 704 F. Supp. 1114, 1126.

Boo-Kook responds by arguing that the purpose of BIA is to set an accurate assessment of current dumping margins. Since there are eight respondents in this review and three companies in the *LTFV Final Determination* for which the Department calculated individual dumping margins, Boo-Kook asserts that the verified data of the companies for which the Department calculated dumping margins should be the most accurate assessment of current dumping margins.

Department's Position: We disagree with the Committee and find that reliance on petitioner-supplied data as a basis for BIA would be inappropriate in the context of this review. The Department has broad discretion in determining what constitutes BIA in a given situation. *Krupp Stahl* at 792; *see also Allied Signal* at 1191: "[b]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the best information available, the ITA's construction of the statute must be accorded considerable deference," citing *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 833–44 (1984). The Department's two-tiered BIA methodology has been upheld as "a reasonable and permissible exercise of the ITA's statutory authority to use the best information available when a respondent refuses or is unable to provide requested information." *Allied Signal* at 1192.

The Department has used the two-tiered methodology in the vast majority of cases involving the application of BIA to non-responsive companies since the adoption of this approach in the first administrative review of *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, et al.: Final Results of Antidumping Duty Administrative Reviews* (56 FR 31692, 31705 (July 11, 1991)). In such cases we have been satisfied that the two-tiered methodology effectuates the purpose of the BIA provision of the Act, which is to encourage compliance in our reviews.

In any given review, a respondent will have knowledge of the antidumping rates from the investigation and past reviews but not of the rates that will be established in the ongoing review. Because the two-tiered approach incorporates the highest rate from the current review as one source of BIA, potentially uncooperative respondents will generally be less able to predict their BIA rate as the number of participants in the ongoing review increases. Thus the two-tiered methodology induces respondents to participate and receive their own known rates as opposed to a potentially much higher unknown rate. Therefore in most cases the BIA selection pursuant to the two-tiered methodology satisfies the cooperation-inducing function of the BIA provision. However, the Department recognizes that there are instances in which the BIA resulting from the two-tiered methodology may not induce respondents to cooperate. The rare cases in which we have not relied on this approach have involved an extremely limited number of participants, and a consequent small number of rates available for use as BIA. For instance, in *Sodium Thiosulfate*, we used information supplied by the petitioner to establish the BIA rate for the one respondent that had shipments of subject merchandise during the POR. Similarly, in *Silicon Metal*, we resorted to petitioner-supplied data where we had a calculated rate for only one firm: "[i]n this instance, we have only Andina's rate from the LTFV investigation * * *. Because Andina's rate is also the 'all other' rate, Silarsa would be assured a rate no higher than Andina's, *the only respondent who cooperated fully with the Department in this administrative review.* The use of the two-tier methodology, *in this instance*, restricts the field of potential BIA rates *to the rate established for one firm.*" *Silicon Metal*, 58 FR 65336, at 65337 (December 14, 1993) (emphasis added). The concern in such cases with respect to the two-tiered methodology is that the lack of past rates, as well as the small number of participants in the current review, could allow a respondent in such a review to manipulate the proceeding by choosing not to comply with our requests for information. In such cases the cooperation-inducing function of the BIA provision of the Act may not be achieved by use of the two-tiered BIA methodology, in which case the Department will resort to alternatives sources in determining the BIA rate for uncooperative respondents.

The cases cited by the Committee thus establish only that we will consider, on a case-by-case basis as appropriate, petitioner-supplied data in situations involving a number of calculated rates insufficient to provide an adequate indication of the best information available and to induce cooperation by respondents in the proceeding. In those cases, we did not have rates for more than one company and therefore determined that use of a BIA rate outside our two-tiered methodology was appropriate to encourage future cooperation.

Our recent determination in *Certain Malleable Cast Iron Pipe Fittings from Brazil; Final Results of Antidumping Duty Administrative Review* is a further example of a situation in which the circumstances of the case clearly demonstrated that the two-tiered BIA selection was not sufficient to induce the respondent to cooperate. In *Pipe Fittings*, we applied a petition- based BIA rate to a non-responsive company that was the only company to have ever been investigated or reviewed: "[we] have only calculated one margin, which was in the less-than- fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition * * *. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate." *Pipe Fittings*, 60 FR 41876, 41877–78 (August 14, 1995).

Given the number of rates and respondents involved in both the LTFV investigation and in this review, the concern over potential manipulation of antidumping rates cited in *Sodium Thiosulfate, Silicon Metal*, and *Pipe Fittings* does not exist in the present case, wherein we have calculated rates from three companies in the LTFV final determination and eight companies in this review. We are satisfied that selection of the highest of these rates is appropriate for BIA for this review, is consistent with our practice, and

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effectuates the cooperation-inducing purpose of the BIA rule.

Comment 2: The Committee contends that Boo-Kook should be treated as an uncooperative respondent in this review and receive a dumping margin based on the best information available (BIA). It argues that Boo-Kook was uncooperative since it did not respond to the Department's cost of production (COP) questionnaire and canceled the scheduled verification. The Committee states that the Department was unable to substantiate the information submitted by Boo-Kook since the Department did not verify the sales questionnaire response. Further, the Committee claims that the Department has determined that a company which does not permit verification of its response to the sales questionnaire and does not respond to the COP questionnaire must be classified as an "uncooperative" respondent, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determinations of Sales at Less Than Fair Value*, 54 FR 18992, 19033 (May 3, 1989) (*AFBs from Germany*).

In response, Boo-Kook argues that it filed timely responses to the Department's initial sales questionnaire and to the supplemental questionnaires. It states that during its preparation of the sales response it discovered that it was the victim of misconduct, including embezzlement, by the company's former chief director and the company's accountant. Due to these circumstances, Boo-Kook contends that key records were unavailable to it. Boo-Kook maintains that some of the key records were missing and it assumes that they were destroyed by the embezzler, while others were confiscated by Korean authorities as evidence. Hence, Boo-Kook argues that it was unable to undergo verification or respond to the COP questionnaire. It states further that the uncooperative (first-tier) BIA rate is intended to induce foreign manufacturers to respond and that Boo-Kook did respond to the best of its ability.

Department's Position: We agree with Boo-Kook. Boo-Kook submitted a timely response to our original and supplemental sales questionnaires. Before its cost response was due and before the verification, Boo-Kook informed us that a former president and the present chief accountant had been arrested and prosecuted for embezzlement. Boo-Kook indicated that it hoped to recover missing records and be able to respond to the cost questionnaire in 90 days.

In addition, Boo-Kook also requested that we postpone the verification for 60 to 90 days. In *Allied Signal*, the U.S. Court of Appeals ruled that "[i]n order to apply the first tier [BIA] to a particular respondent, the ITA must conclude that the respondent 'refused to cooperate with the ITA or otherwise significantly impeded' the review. However, if the respondent 'substantially cooperated * * * but failed to provide the information in a timely manner or in the format required,' the second tier (cooperative rate) is applicable." (At 1192). The court concluded, in that case, that, because respondent supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, it was unreasonable for the Department to have characterized respondent's behavior as a refusal to cooperate. Therefore, because Boo-Kook cooperated with the Department to the best of its ability, and given the unusual and extenuating circumstances, we have applied second-tier total BIA to Boo-Kook's U.S. sales.

Comment 3: The Committee contends that the Department's preliminary results regarding Jinyang Wire Rope (Jinyang), Korope Co. (Korope), and Sungsan Special Steel Processing Inc. (Sungsan) were erroneous. It states that the Department incorrectly applied a zero dumping margin to the companies based on the companies' claims that they had no shipments or sales of subject merchandise during the POR. The Committee states further that the Department must classify Jinyang and Korope as uncooperative respondents because their submissions were not submitted according to the Department's regulations. It claims that it was never served with submissions from Jinyang and Korope. Petitioner argues that it has seen in the public file a copy of a letter from the Department to Jinyang that refers to a June 22, 1994 letter from Jinyang and a copy of a letter from the Department referring to a July 28, 1994 letter from Korope. In these letters, the Committee further argues, the Department asked Jinyang and Korope to resubmit their letters. Since the companies neglected to do so, the petitioner believes that the Department should consider them to be uncooperative respondents and apply the first-tier BIA rate to their U.S. sales.

The Committee acknowledges that Sungsan submitted a letter on the file indicating that it sold subject merchandise during the POR that was not manufactured by Sungsan. However, the Committee notes, the Department then sent Sungsan a letter, asking it to demonstrate that the manufacturer had knowledge of the ultimate destination of the merchandise. The Committee states that Sungsan failed to respond to the above-mentioned inquiry and thus should also be treated as an uncooperative respondent and receive the first-tier BIA rate.

Department's Position: We agree with the Committee regarding Jinyang and Korope and we disagree regarding Sungsan. Sungsan submitted for the record on August 5, 1994, a letter and attachment indicating that the supplier of the steel wire rope that it shipped to the United States during the POR was aware at the time of purchase that the product was destined to the United States. The attached invoice from the supplier to Sungsan indicates the destination as the United States. Therefore, we have sufficient evidence on the record that the only shipments of subject merchandise that Sungsan made to the United States during the POR were manufactured by a supplier that had knowledge that the product was destined to the United States. Hence, we have not applied BIA to Sungsan's shipments.

Neither Jinyang nor Korope properly submitted a response to our original questionnaire. In accordance with section 777(d) of the Tariff Act, we do not accept documents that are not served on all interested parties. In addition, section 777(e) of the Tariff Act states that all submissions shall be submitted in a timely manner. Jinyang submitted a letter, but did not serve it upon interested parties. Because Jinyang did not serve interested parties, we have rejected Jinyang's response and we have applied first-tier BIA to its sales of subject merchandise to the United States. Korope submitted a late response which it also did not serve upon interested parties. Therefore, we have rejected Korope's submission and have applied first-tier BIA to Korope.

Comment 4: The Committee argues that Atlantic and Pacific, Dong-Il Metal, Dong Yong Rope, Kwang Shin Industries and Seo Hae Industrial (Seo Hae), which the Department classified as "unlocated companies," should be assigned a BIA rate. It argues that the Department provided no indication of whether these five companies remain functioning entities or what efforts the Department took to locate them. Further, it states that, for Dong-Il Metal, the address was set forth on the service list for this administrative review. The Committee argues that, in the absence of verified information, the Department must determine that these companies are still functioning entities and that they have refused to cooperate or have significantly impeded this proceeding

and should be treated as uncooperative respondents.

Department's Position: We disagree with the Committee and have assigned the "All Others" rate to the unlocated companies. The U.S. Embassy in Seoul, Korea, provided us with information for each company and their response to our inquiry is in the public file. The Embassy confirmed, with help from the Korea Iron and Steel Association, that Atlantic and Pacific was bankrupt, Seo Hae was closed, and Kwang Shin Industries was closed. None of these companies had forwarding addresses. The Embassy initially provided us with addresses for Dong-Il metal and Dong Yong and we sent them questionnaires. We did not receive responses from these companies and later the questionnaires for these companies were returned by the U.S. Postal Service as undeliverable. Also, upon further inquiry, we learned through the Embassy that Dong Yong Rope and Dong-Il Metal were closed. We are not applying BIA to these companies because we use BIA as an adverse assumption for companies that have refused to cooperate in the Department's solicitation or verification of information. Therefore, we are continuing to classify these companies as "unlocated companies," and are assigning them the "All Others" rate.

Comment 5: The Committee states that, because the Department did not verify Chun Kee's COP information, it must use constructed value in the calculation of the foreign market value for Chun Kee. The Committee contends that the Department was obligated to verify Chun Kee's COP response under the statute and the Department's regulations. Further, it argues that Chun Kee's constructed value information cannot be relied upon without a cost verification. Therefore, the Committee asserts, the Department should base its calculation on information submitted in the Committee's original petition, dated November 15, 1994, which constitutes BIA.

Chun Kee responds by stating that it was fully cooperative and provided all of the cost information as requested. Further, it was ready, willing, and able to substantiate its cost information through verification. It cites *Olympic Adhesives* v. *United States*, 889 F.2d 1565, 1574 (Fed. Cir. 1990), to argue that the Department may not make adverse inferences unless a respondent refuses or is unable to provide information requested by the Department. Further, Chun Kee argues that the Committee's request for a verification was untimely and in any case there was not good cause for verification. Further, even if the Department should have verified the COP information, Chun Kee asserts that there would still not be a basis for making adverse inferences against it.

Department's Position: We agree with Chun Kee. Although the Committee cites 19 CFR 353.36(a)(1)(v) in arguing that we were required to verify Chun Kee's submitted information, the statute and regulations state that we will verify all factual information submitted if no verification was conducted during either of the two immediately preceding administrative reviews. Section 776(b)(3)(B) of the Act. See also 19 CFR 353.36(a)(v)(B). Since this is only the first administrative review, and no information has been placed on the record indicating that Chun Kee's response is inaccurate, we are not obligated to verify any responses. Hence, we have used the cost information Chun Kee submitted in this review.

Comment 6: The Committee asserts that the Department should reject the claimed circumstance-of-sale (COS) adjustment to foreign market value for Chun Kee, Chung Woo, and Manho regarding home market credit expenses. The Committee argues that these three respondents' calculations for credit expenses are incorrect because they used the total value of home market sales, including non-subject merchandise, and divided this amount by the total accounts receivable balance. The Committee asserts that these calculations must include non- subject merchandise since the total sales values of subject merchandise for each firm vary from the figures in the credit expense calculations. The Committee argues that the Department has only allowed such an adjustment when the calculations are exclusive of non-subject merchandise, citing *AFBs from Germany* and *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate File, Sheet, and Strip from the Republic of Korea*, 56 FR 16305, 16310 (April 22, 1991) (*Pet Film from Korea*).

All three respondents argue that they provided their home market imputed credit expenses in accordance with well-established Department policy. They argue further that the Department never asked any of the respondents to revise their methodology, nor did the petitioner urge the respondents to do so during the course of the review. They cite *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to Length Carbon Steel Plate from Korea*, 58 FR 37176, 37184 (July 9, 1993) (*Carbon Steel Flat Products from Korea*), in which the Department accepted credit expenses where company-wide credit periods were used to calculate credit. They also state that, for Chun Kee, Chung Woo, and Manho, the Department verified their methodology and found no discrepancies. They state that, while the calculation included data on non-subject merchandise, there is no difference between the payment terms for subject and non-subject merchandise, nor do terms of payment under the respondents' open accounting system recognize a difference between subject and non-subject merchandise. Due to the similarities among all of the products they sold and the similarities of the payment, the respondents claim that there is no business reason to maintain different accounts based on different types of merchandise, and the payment methods do not even allow it. Hence, respondents argue, they could not possibly provide information that does not exist in their accounting records. Further, the respondents claim that their case is not analogous to the cases petitioner cites since, in *AFBs from Germany*, by including sales of non-subject merchandise in the turnover rate calculation, the respondent distorted the actual average credit period of the subject merchandise. In addition, the respondents assert, at verification in *AFBs from Germany*, the Department found that the average credit period for the subject merchandise was much less than the respondent had originally reported. Chun Kee, Chung Woo and Manho argue that there is no indication that the inclusion of non-subject merchandise in their calculations of the turnover period distorts the credit calculation. Further, respondents claim that, in *Pet Film from Korea*, the Department accepted a respondent's company-wide turnover calculation. Respondents claim that the only difference between Pet Film from Korea and the present review is that in the present case the accounts receivable balances for subject and non-subject merchandise cannot be separated. Therefore, respondents argue, the Department should accept their company-wide turnover calculations.

Department's Position: We disagree with the Committee and have not changed our adjustment for home market credit expenses. In *AFBs from Germany*, as cited by the Committee, we rejected the respondent's calculation of home market credit expenses because its calculation distorted the actual average credit period on the products under investigation and we discovered that the average credit period on sales of subject

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merchandise in the home market was consistently much less than respondent had originally reported. In *Pet Film from Korea*, we accepted respondent's reported home market credit expenses and at verification we calculated all balances exclusive of non-subject merchandise. In that case, we also indicated that reliance on an average collection period method to determine home market credit expense is reasonable.

At verification of Chun Kee, Chung Woo, and Manho, we verified the amounts of total sales and receivables and found no discrepancies and have no reason to believe that the inclusion of sales not under review distorted the actual average credit period on the products under review. Moreover, it has been our practice to accept such calculations where we are satisfied that a company has provided us reasonable information, given its normal record-keeping system. *See Carbon Steel Flat Products from Korea.* Therefore, we are accepting Chun Kee's, Chung Woo's, and Manho's calculations of home market credit expenses.

Comment 7: The Committee argues that six respondents incorrectly calculated the turnover ratio in their calculations of imputed credit by including value added tax (VAT) in the accounts receivable (AR) balance and the total home market sales amount. The Committee argues that the Department should revise the home market credit expenses for these respondents by excluding VAT. The Committee cites Pet Film from Korea and argues that the Department determined in that case that an adjustment for VAT payments was not warranted when the respondent did not pay the VAT to the government at the time of sale, but instead maintained a rolling account. Citing the *LTFV Final Determination* at 11032 for this case, the Committee asserts that the Department determined that the calculation of home market credit expenses inclusive of VAT was erroneous.

Respondents claim that they included the VAT both in the numerator and the denominator in the calculation of the turnover ratio, resulting in an "apples-to-apples" ratio and the same results would be achieved by excluding VAT from total home market sales and the AR balance. They also argue that VAT is part of the actual sales price respondents charged to their customers and, therefore, they should receive an imputed credit expense on the VAT. They claim that removing the VAT would be equivalent to removing the profit from the sales price. They cite *Color Television Receivers from Korea: Final Results of Antidumping Duty Determination*, 51 FR 41363 (November 14, 1986), to support their position that respondents justifiably may include VAT in their total sale price when calculating credit expense.

Department's Position: We disagree with the Committee concerning exclusion of VAT from the turnover ratio calculation. The respondents calculated the turnover rates reasonably, including VAT in the AR balance and the total home market sales amount, and, because VAT is included in both the denominator and the numerator of the turnover ratio, the resulting figure is not distorted. However, we agree with the Committee concerning the adjustment to FMV for the imputed VAT credit expenses. We find that there is no statutory or regulatory requirement for making the proposed adjustment. While we recognize that there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact is not sufficient for us to make an adjustment in price-to-price comparisons. Most charges or expenses associated with price-to-price comparisons are either prepaid or paid for at some point after the cost is incurred and they may each involve an opportunity cost or gain. Therefore, to allow an adjustment for the VAT in this case would imply that we make adjustments for every charge and expense reported by the respondents. Such an exercise would make our dumping calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department (*see LTFV Final Determination at 11032*). Therefore, we have changed the final results and adjusted the credit expense to not include VAT for the final results, and we have not adjusted the potential opportunity cost related to each expense.

Comment 8: The Committee asserts that the Department must revise its calculations of the addition to United States price (USP) for Korean VAT. Although the Department stated that it had applied its methodology from *Silicomanganese from Venezuela: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 59 FR 31204 (June 17, 1994) (*Silicomanganese from Venezuela*), the Committee asserts that, for some respondents, the Department's calculations in this case contradicted *Silicomanganese from Venezuela*. The committee claims that, although the Department stated in *Silicomanganese from Venezuela* that the addition to USP should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales, in the preliminary results the Department performed the VAT adjustment to the net unit price of subject merchandise, which includes an adjustment for duty drawback. The Committee argues that the addition of the amount for duty drawback to the base price against which the Department applied VAT was inconsistent with earlier determinations. In the Committee's view, the Department should not apply VAT to the duty drawback adjustment because respondents do not receive duty drawback on sales in the home market. Therefore, the Committee argues, to apply a VAT adjustment after adjusting USP for duty drawback ignores the importance of applying VAT at an analogous point in the chain of commerce. In addition, the Committee argues that the Department must limit the VAT adjustment to the USP at the absolute level of the VAT adjustment it applies to the home market price of the subject merchandise.

Respondents argue that the Court of International Trade has upheld the Department's decision to include duty drawback in the USP base to calculate the VAT adjustment in *Avesta Sheffield v. United States*, Court No. 93–01–00062, Slip Op. 94–53 (1994). They state that the Department, in that case, argued that it includes duty drawback in the U.S. base to avoid the creation of fictitious margins. Respondents argue that the cases the Committee cites are not relevant here and that they simply explain that the tax base for the U.S. sale should be calculated by applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to the foreign market sale. The respondents interpret Section 772(d)(1)(B) of the Tariff Act to mean that USP is comparable to the home market price only when duty drawback is added to USP, since this is the price which is comparable to the home market price. Concerning the Committee's proposed limit on the VAT adjustment, the respondents argue that the CIT presently requires the Department to apply the home market tax rate to a U.S. tax base that is appropriately adjusted rather than adjusting for the absolute amount of the foreign tax. They further argue that it is not appropriate to limit the adjustment under the new methodology in which the Department applies the home market tax rate to the USP citing *Zenith Electronics. Corp. v. United States*, Consol. Ct. No. 88–07–00488, Slip op. 95–38 (1995). The respondents also cite *Zenith Electronic. Corp. v. United States*, 10 CIT 268, 633 F. Supp. 1382 (1986), to argue that the Department's prior methodology is no longer applicable.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul v. United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith v. United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul v. United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT. Accordingly, in the final results, we have not applied VAT to the adjustments for duty drawback.

Comment 9: Chung Woo, Hanboo, Kumho, Ssang Yong, Sungjin and Yeonsin disagree with the Department's decision not to adjust USP for duty drawback. They argue that it was inappropriate to deny the adjustment simply because the respondents used the "simplified fixed amount duty drawback application" method. Respondents argue that this method, in which the Korean Customs Authority determines and refunds duty drawback using a percentage of the export dollar amount, reflects the Korean government's analysis of the average drawback amounts given for particular products under the individual method (which refunds duty drawback on a product-specific basis). They cite Article 2.6 of the GATT Antidumping Code which states that "due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability." In this case, the respondents view duty drawback as a difference in taxation which affects comparability of transactions. In addition, respondents argue, the Department verified that they receive duty drawback under this simplified method.

The Committee argues that the respondents fail to meet the requirements of the Department's two-pronged test for determining whether a party is entitled to an adjustment to USP for duty drawback. Under this test, according to the Committee, a respondent must demonstrate that (1) the import duty and the rebate received under the duty drawback program are directly linked to and dependent upon one another, and (2) there were sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The Committee claims that this has been upheld by the Court of International Trade, citing *Far East Machinery Co. v. United States*, 12 CIT 972, 699 F. Supp. 309 (1988), and *Carlisle Tire & Rubber Co. v. United States*, 11 CIT 168 (1987). The Committee argues that, in this case, the respondents received a fixed amount of duty drawback based on the export dollar amount and did not demonstrate that the drawback amounts they received were contingent upon the weight and value of imported raw materials incorporated in the exported merchandise. The Committee cites section 772(a)(1)(B) of the Tariff Act to support its view that USP must be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." In this case, the Committee claims, the Department is left without means for determining the amount of any import duties rebated on particular export shipments because respondents received duty drawback under the simplified method.

Department's Position: We agree with the Committee. As we stated in the preliminary results, we did not adjust USP for duty drawback for respondents that reported using the simplified method. Under this method, the respondents were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope. The second prong of our two-pronged test requires sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product (*see Fourth Review of AFBs*): "(t)he second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates." In its supplemental questionnaire response of December 19, 1994, Sungjin stated that it is not required to demonstrate to the Korean government that the product it exports contains the actual imported product. All of the respondents clearly stated in their questionnaire responses that the

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Korean government determines the drawback amount using its calculation of the amount of duty each importer paid on average. Hence, although respondents do not have to tie their imports to the exports in order to receive duty drawback from the Korean government, this average drawback approach does not satisfy the second prong of our duty drawback test. Although we verified that respondents received duty drawback under the simplified method, an adjustment to USP to determine the amount of dumping of a specific product might be distorted if that adjustment has not been calculated on a product-specific basis. Therefore, we have not adjusted USP for duty drawback where the respondents used the simplified method.

Comment 10: Ssang Yong asserts that the Department failed to adjust its USP for drawback it received using the individual drawback system. Ssang Yong further states that it received duty drawback under the individual method and the simplified method. Ssang Yong states that the Department verified its records for drawback and, citing the verification report, was satisfied that there were no discrepancies. Ssang Yong requests that the Department adjust USP for duty drawback in the cases where it was received under the individual drawback system.

Department's Position: We are satisfied that Ssang Yong's calculation of duty drawback under the individual method, as calculated during a portion of the POR, meets our test and have adjusted USP for duty drawback where appropriate.

Comment 11: Chun Kee asserts that the Department calculated the VAT tax twice on its home market sales by multiplying the net home market price (NETPRIH) by the VAT rate, and by multiplying the final foreign market value (FUPDOL), which the Department derives from NETPRIH, by the VAT rate later in the calculations. Chun Kee states that all positive and negative adjustments to the gross unit price must be multiplied by the VAT rate, but argues that the Department's calculations inflate the entire net price by applying the VAT rate twice.

The Committee responds, that, according to the Analysis Memorandum for Chun Kee, all positive and negative adjustments to the gross unit price must be multiplied by the VAT rate. The Committee further claims that first the Department performs the VAT adjustment with respect to negative adjustments and, later in the calculations, performs the adjustment with respect to the positive adjustments, and, hence, there was no double-counting of the VAT rate.

Department's Position: We agree with Chun Kee that we made a ministerial error. However, for the final results we have made tax adjustments based on our new methodology. See comment eight above.

Comment 12: Chun Kee and Manho contend that, in a number of cases, they provided similar home market matches for U.S. sales, but the Department calculated constructed value to determine the dumping margin. They explain that this occurs in the model match portion of the Department's program. Respondents suggest that, because the Department's program retains only the first occurrence of each home market model that matches a U.S. sale, even though a home market model may be comparable to more than one U.S. model, subsequent U.S. sales cannot find a match and, therefore, the Department relied on constructed value. They recommend that one way to correct this would be to ensure that every U.S. sale which does not have an identical home market match, has a home market control number attached to the observation so that a merge of databases and information can occur when appropriate.

Department's Position: We agree with respondents and have ensured that, where appropriate, each U.S. sale is matched to a home market model.

Comment 13: Chun Kee claims that the Department inadvertently added home market packing to FMV instead of subtracting the expense. It claims that this had a very large impact on FMV and provides an example of the effect of this error.

The Committee argues that Chun Kee's explanation of the error is incorrect and that the Department's calculation of FMV is correct.

Department's Position: We agree with Chun Kee and have corrected this ministerial error. In our calculations for Chun Kee we inadvertently inserted a minus sign twice, which had the effect of adding packing instead of subtracting it. We have corrected this by deleting one of the minus signs.

Comment 14: Chun Kee claims that the Department failed to subtract home market inspection fees and rebates from the home market net price in its calculations.

Department's Position: We agree with Chun Kee and have corrected this ministerial error.

Comment 15: Chun Kee and Manho assert that major errors exist in the COP portion of the Department's calculations which affect the integrity of the COP test. Respondents request that the Department correct these errors for the final results.

Department's Position: We agree with Chun Kee and Manho. We have corrected the error.

Comment 16: Chun Kee asserts that the Department neglected to apply the 90/60 day contemporaneity guideline for finding home market sales matches. It claims further that the Department's calculations relied only on home market sales in the same month as the U.S. sale, and, instead of examining the 90/60 window for home market sales, the Department relied on constructed value to determine FMV.

Department's Position: We agree with Chun Kee and have applied our 90/60 day contemporaneity guideline in our calculations for Chun Kee.

Comment 17: Chun Kee claims that the Department failed to incorporate the corrections which Chun Kee submitted in attachment 13 of its supplemental questionnaire response. Chun Kee requests that the Department reflect these corrections in the final results.

Department's Position: We agree with Chun Kee and have made these corrections.

Comment 18: Manho claims that the Department mistakenly added U.S. packing to the FMV, even though the calculations for constructed value contains U.S. packing costs. Respondent requests that the Department correct this double-counting error.

Department's Position: We agree with Manho and have corrected this ministerial error.

Comment 19: Manho claims that the Department incorrectly subtracted duty drawback from USP rather than adding it, as the statute requires. Manho requests that the Department correct this error.

Department's Position: We agree with Manho and have corrected this ministerial error.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period September 30, 1992, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	1.51
Chun Kee Steel & Wire Rope Co., Ltd.	0.20
Chung Woo Rope Co., Ltd	0.14
Dae Heung Industrial Co	(1)
Dae Kyung Metal	1.51
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	1.51
Dong Young	1.51
Hanboo Wire Rope, Inc	0.51
Jinyang Wire Rope, Inc	1.51
Korea Sangsa Co	(1)
Koropo Co	1.51
Kumho Rope	0.01
Kwang Shin Ind.	1.51
Kwangshin Rope	1.51
Manho Rope & Wire, Ltd	0.00
Myung Jin Co	1.51
Seo Hae Ind	1.51
Seo Jin Rope	1.51
Ssang Yong Steel Wire Co., Ltd	0.06
Sung Jin	0.04
Sungsan Special Steel Processing Inc	(1)
TSK (Korea) Co., Ltd	(1)
Yeonsin Metcl	0.18

[1] No shipments or sales subject to this review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established above (except that if the rate for a firm is *de minimis, i.e.*, less than 0.5 percent, a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 1.51 percent, the "All Others" rate established in the *LTFV Final Determination* (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30088 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the U.S. International Trade Administration, in an affirmative countervailing duty administrative review respecting live swine from Canada, Secretariat File No. USA–94–1904–01.

SUMMARY: Pursuant to the Order of the Binational Panel dated September 27, 1995, affirming the final determination described above was completed on November 13, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the Binational Panel issued an order which affirmed the final affirmative countervailing duty administrative review of the United States International Trade Administration ("ITA") concerning Live Swine from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective November 13, 1995.

Dated: December 1, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–30093 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–GT–M

North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the U.S. International Trade Administration, in an affirmative countervailing duty administrative review respecting leather wearing apparel from Mexico, Secretariat File No. USA–94–1904–02.

SUMMARY: Pursuant to the Order of the Binational Panel dated October 20, 1995, affirming the final redetermination on remand described above was completed on December 1, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On October 20, 1995, the Binational Panel Issued an Order which affirmed the final affirmative countervailing duty administrative review redetermination on remand of the United States International Trade Administration ("ITA") concerning Leather wearing Apparel from Mexico. The Secretariat was instructed to issue a Notice of

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Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective December 1, 1995.

Dated: December 1, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95-30094 Filed 12-8-95; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Monitor National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue a special use permit; request for applications for special use permit; request for comments.

SUMMARY: This is a public notice of intent to issue, and a request for applications for a special use permit to conduct non-research diving at the Monitor National Marine Sanctuary (MNMS). Public comments are invited. Since 1975, NOAA has protected and preserved the wreck of the USS Monitor as a significant historical resource by restricting physical access except for research expeditions. NOAA recognizes that changes in dive technology and experience in the dive community have resulted in a growing public interest to dive at this site. In 1994, NOAA issued a special use permit, on a trial basis, which authorized a concessionaire to conduct non-research dives over a two-week period. Upon evaluation of activities conducted under the 1994 permit, NOAA has determined to issue a three-year special use permit to a qualified dive concessionaire, selected competitively, for non-intrusive dives at this site for a total of two (2) weeks (14 days) each year. Because any touching of the Monitor or its debris field will be prohibited, NOAA expects that no disruption or harm will occur at the site from dive activities. NOAA will continue to review this activity, evaluate impacts to the Monitor, if any, and assess whether to issue subsequent special use permits.

DATES: Applications must be submitted no later than February 9, 1996. Public comments must be received by February 9, 1996. Applicants will be notified as to the disposition of their applications by March 11, 1996.

ADDRESSES: All applications for a special use permit and comments on this notice must be sent to: John Broadwater, Manager, Monitor National Marine Sanctuary, NOAA/Building 1519, Fort Eustis, VA 23604. Fax: (804) 876-4519.

FOR FURTHER INFORMATION CONTACT: John Broadwater, Manager, Monitor National Marine Sanctuary, (804) 876-2973, Internet: jbroadwater@ocean.nos.noaa.gov; or Helen Golde, Sanctuaries and Reserves Division, (301) 713-3145, extension 152, Internet: hgolde@ocean.nos.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice and request for applications is issued under the authority of the National Marine Sanctuaries Act (NMSA), as amended, 16 U.S.C. 1431 *et seq.*

II. Background

The USS Monitor was the first American ironclad turretted warship and is therefore of cultural significance to the transition from wood to metal vessels, as well as for its historic battle against the CSS Virginia (Merrimack). The Monitor was lost during a storm off Cape Hatteras, NC, on December 31, 1862. The wreck of the Monitor was located in 1973, 16.1 miles (29.8 km) south-southeast of Cape Hatteras, resting in 230 feet (70.1 m) of water. The Monitor and the water column 1 nautical mile in diameter centered on the vessel were designated as the first National Marine Sanctuary in 1975, in order to protect and preserve the Monitor from commercial salvors and souvenir collectors. The Monitor has also been designated as a National Historic Landmark.

The regulations governing the MNMS are found at 15 CFR part 924. The MNMS is the most strictly regulated sanctuary regarding public access and is the only sanctuary where any type of diving without a sanctuary permit is prohibited, primarily because it is also an archaeological research site. Alteration of the seabed risks harm of contextual information. Thus, non-research access had previously not been permitted because of the threat of harm or unauthorized removal of Monitor artifacts and the archaeological information contained by the vessel and the surrounding seabed. Private research expeditions on the Monitor have been permitted annually since 1989. Research permits have allowed access to the MNMS for research purposes while including conditions to prevent harm to the Monitor and associated artifacts. NOAA recognizes that non-research access may be conducted in a similar fashion.

1994 Special Use Permit

NOAA issued a special use permit to conduct non-research dives on a trial basis during the 1994 season. Out of 15 days scheduled for diving, dives were successfully conducted on 4 days. The canceled dives were due to adverse weather and current conditions. Typically, at Hatteras, approximately one-third of the scheduled dive days are lost due to adverse weather and/or currents. The divers who were successful in diving to the Monitor reported bottom conditions varying from fair to excellent. Participants generally agreed that they enjoyed the diving experience, but that the questionable diving conditions would negatively affect their decision to return for future dives. Dive procedures and dive safety briefings were given daily by the concessionaire. A NOAA Observer was present on the boat during all diving operations, but did not dive.

Although the NOAA observer did not dive and directly observe dive activities, based on observations of, and conversation with and among the divers, it appeared that a number of divers made contact with the wreck by diving through or under the wreck or through accidental contact due to the effects of nitrogen narcosis, strong currents and excessive amounts of gear (usually including steel tanks hanging at the divers' sides). Such incidental contact, if repeated frequently enough, would have a very adverse cumulative effect on the Monitor. The NOAA observer also noted that dive briefings were not as thorough as they should have been, primarily because they were usually conducted hastily at the dock before departure.

The 1994 dive trips were not widely advertised, partially due to the short time frame the concessionaire had to schedule the 1994 dives. Further, adverse weather and sea conditions resulted in the cancellation of dive trips. Thus, only a few divers were able to view the wreck. However, NOAA believes that the goal of increased public access was at least partially met by allowing the non-research dives under the special use permit.

Future Special Use Permits

As a result of the 1994 special use permit, the concessionaire and Sanctuary manager provided a number of recommendations for future special use permits to address the concerns raised during the 1994 dives. Consequently, based on its review of the activities conducted under the 1994 special use permit and recommendations from the Sanctuary manager, NOAA determined that it is possible to establish a viable, ongoing special use permit procedure to allow non-research dives on the Monitor. NOAA believes this can be accomplished without causing serious adverse effects to the wreck or creating an unmanageable administrative burden to NOAA, the concessionaire or the divers. NOAA will issue a three-year special use permit to a qualified dive concessionaire, selected competitively, for non-intrusive dives at this site for a total of two (2) weeks (14 days) each year. Recommendations from the Sanctuary manager based on the 1994 special use permit are reflected in the conditions outlined below, and will be further reflected in the 1996–1998 special use permit terms and conditions.

NOAA will supply the concessionaire with informational packets to be distributed to each participating diver. Each packet will provide a history of the ship, a description of the sanctuary, illustrations of the wreck as it lies on the seabed with unstable areas identified, and sanctuary regulations. In addition, prohibitions against all contact with the wreck will be specified in more detail, including specific prohibitions against entering the wreck, diving beneath the wreck and all types of disturbance including fanning the silt in or around the wreck with hands, fins or other methods. Finally, by issuing a three-year special use permit, NOAA will reduce the administrative burden and costs on the agency, the concessionaire, and the divers.

Recent research, by both private research expeditions and by NOAA, has shown that the Monitor's hull has become unstable in some areas, especially in the stern area near the propeller. During 1995, NOAA attempted to remove the Monitor's skeg and propeller in an effort to stabilize the stern, but adverse weather prevented the recovery. Another expedition is being planned for 1996. Although non-research divers will be prohibited from touching or otherwise contacting the Monitor, the special use permittee shall, in the dive safety briefings, be required to specifically advise divers to use extra caution if opting to dive near the stern area of the wreck.

III. Special Use Permit

NOAA plans to issue a special use permit pursuant to section 310 of the NMSA, 16 U.S.C. 1441, to allow non-research dives to the Monitor. Activities conducted pursuant to the special use permit will be limited to non-intrusive, non-destructive access, observation and photography of the Monitor, and must be consistent to the highest practicable degree with the preservation and conservation of the MNMS. Touching or disturbing the Monitor or its associated debris field will be prohibited.

A qualified applicant will be selected on a competitive basis and allowed to bring qualified divers to the Monitor during a 2-week period (14 days) between May and October in the three-year period 1996–1998. The two week period will be determined by NOAA in consultation with the selected permittee. Applicants are requested to include their preferred dates for the 1996 season. In addition, should the permittee be unable to conduct dives on 4 or more days of that 2-week period due to weather or environmental conditions, NOAA will attempt to accommodate the permittee by scheduling another 2-week period to conduct the remainder of the dives [Note: Due to scheduled research dives at the Monitor, which must take precedence, make-up dives may not be able to be scheduled]. No more than a total of 14 days of diving per year may be conducted under special use permit. The permittee will be authorized to conduct one trip by one vessel to the MNMS per day, during which daylight-only dive activities may be conducted. The permittee will be fully responsible for ensuring that all divers are appropriately qualified and for ensuring the safety of all divers.

At a minimum, the following conditions will be included in the special use permit:

1. The permittee may use only vessel captains that meet all applicable U.S. Coast Guard (USCG) certification and license requirements and that are appropriately certified and licensed;

2. The permittee shall provide documentation verifying that all vessel captains are (a) thoroughly familiar with the local environmental conditions at the sanctuary and (b) experienced in supporting dive operations in deep water (up to 250 feet);

3. The permittee shall use only vessels of less than 45 feet in length that meet all applicable U.S. Coast Guard (USCG) certification and license requirements and that are appropriately inspected, certified, and licensed. A low profile vessel to reduce wind drag is preferred;

4. The permittee shall carry a maximum of 18 divers each day and shall allow a maximum of 6 divers to dive at the same time;

5. The permittee shall be responsible for screening divers to ensure that they meet minimum requirements for diving skills and experience that the permittee deems necessary for making dives on the Monitor;

6. The permittee shall not anchor in the sanctuary. The permittee shall utilize the permanent mooring at the Monitor site for a diver descent/ascent line when conducting dive activities. The permittee may secure a surface float or small inflatable boat to the mooring line, but at no time may the trip vessel be secured to the permanent mooring;

7. The permittee shall not allow any dives to be made if currents at the surface are greater than one (1) knot;

8. The permittee shall ensure activities conducted in the MNMS pursuant to the special use permit are limited to non-intrusive, non-destructive access, observation and photography of the Monitor. The permittee shall ensure that all divers maintain neutral buoyancy, do not penetrate the wreck, and do not touch, otherwise contact, disturb, attempt to recover, or recover any portion of the Monitor, its associated debris field, or any artifact which may be found;

9. The permittee shall conduct a briefing for all divers before the first day of diving, as well as a briefing before each dive, these briefings must stress the importance of avoiding any contact with or disturbance of the Monitor, its associated debris field, or any artifact(s) which may be observed;

10. Upon request of the Sanctuary Manager, the permittee shall carry an individual designated by the Sanctuary Manager as an observer on board the permittee's vessel during trips to and from the MNMS and when the vessel is in the MNMS for the purpose of observing, monitoring, and documenting the activities conducted pursuant to the special use permit. The permittee shall allow the observer free and unobstructed access to all portions of the vessel at any time, and facilitate observation and documentation by the observer of all activities conducted pursuant to the special use permit. The permittee shall provide the observer all reasonable assistance to enable the observer to carry out his/her duties. (Other requirements of the permittee with respect to the observer such as advance notification of trip dates and departure times and responsibilities

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regarding boarding and debarking will appear in the actual permit conditions.)

11. Pursuant to section 310 of the NMSA, the permittee shall purchase and maintain a comprehensive general liability insurance policy in an amount to be negotiated upon selection of an applicant, but not less than $100,000 plus the value of any vessel used under the special use permit. The policy shall insure against any claims that may arise from the activities conducted pursuant to the special use permit, including diver accidents and damage to the Monitor. A copy of such policy must be furnished to NOAA before conducting any activity authorized by the special use permit; and

12. Pursuant to section 310 of the NMSA, before conducting any activity under the special use permit, the permittee and all divers shall sign and furnish NOAA with a hold harmless and indemnification agreement, provided by NOAA, releasing and holding the United States harmless for any claim arising from the conduct of any activity under the special use permit and assuming the risk of harm from any such activity.

In addition, depending on the final agreement between the permittee and NOAA as to the exact role of the NOAA, observer, the permittee may also be asked to comply with the following condition:

13. The permittee shall document all activities conducted pursuant to the special use permit through the use of videotape and/or still photography, and written records. The permittee shall submit a report on all activities and copies of all photographs and videotapes taken of the activities.

Fees

The NMSA authorizes NOAA to assess fees for the costs incurred, or expected to be incurred from the review and processing of the special use permit, monitoring the permitted dive activities, and a fair market value of the use of the resources and a reasonable return to the United States. Therefore, NOAA will assess a fee for the special use permit issued pursuant to this notice. Based on the 1994 special use permit and NOAA's other experience with special use permits, the fee will be approximately (exact costs are subject to actual costs incurred): (1) $500.00 to cover the cost of reviewing and processing the application, i.e., personnel hours, copying and other overhead; (2) $200.00 per day that dives take place to cover the cost of monitoring the activity, i.e., personnel hours, equipment costs and travel expenses; and (3) 2% of the gross receipts that the permittee receives to cover the fair market value and reasonable rate of return.

IV. Application Process

All applications should be submitted to Mr. John Broadwater, Manager at the address indicated in the ADDRESSES section. Applications must be submitted no later than February 9, 1996. Applicants will be notified as to the disposition of their applications by March 11, 1996.

Application Format and Contents

All applications must be typed double spaced. All applications must describe in detail:

1. The methodologies that would be employed to conduct dive activities at the site, including, but not limited to, the number of trips, the number of divers per trip, type of vessel, the minimum qualifications each diver would have to meet, the dive plan, and the diver safety contingency plans in the event of an accident;

2. The experience of the applicant in organizing and running dive expeditions, including information on expeditions involving diving of this type, including the number of divers, the depth of the dives, the time of year, and environmental conditions;

3. Information and/or statement showing that the applicant has the financial capability to organize and run the activity to be conducted under the special use permit and to obtain the required insurance;

4. The applicant's plans for documenting all activities conducted pursuant to the special use permit (assume that the NOAA Observer will not be participating in dives);

5. The applicant's plans to advertise the availability of dives at the MNMS, as NOAA believes that public access should be widely publicized in the diving community; and

6. The dates that applicant prefers to conduct dive activities.

Application Review and Evaluation

All applications will be reviewed by the Sanctuaries and Reserves Division (SRD). This will include the Sanctuary Manager, the technical projects staff and the regional management staff. Outside peer reviewers may also be used.

In selecting the permittee, SRD shall consider the applicants ability to address the criteria in B, above, and: (1) The experience of the applicant for organizing and running dive expeditions involving diving of this type; (2) the applicant's financial capability; (3) the likelihood that the permittee will be able to fully comply with all permit conditions; and (4) such other factors as the SRD deems appropriate, based on review of submitted comments and information, consistent with the purposes of the NMSA.

SRD may solicit additional information from any applicant, or written clarification of an application, and may extend the solicitation period at its discretion. SRD may choose to reject all applications received at any time, re-request, or cancel this request at its discretion when in the best interest of preserving and conserving the Monitor MNMS. Any information made available to any applicant by SRD will be made available to all applicants, and will be available to the public upon request.

Once an applicant is selected, SRD shall draft and issue a special use permit incorporating as conditions the terms of this notice and the application. SRD may include additional conditions if necessary to protect the MNMS. The special use permit and application shall be subject to review by the State Historic Preservation Officer and Advisory Council on Historic Preservation pursuant to section 106 of the National Historic Preservation Act (NHPA).

NOAA considers diving to the depths of the Monitor (230 ft; 70.1 m) with compressed air to be extremely hazardous. All dive activities conducted pursuant to the special use permit are at the permittee's and each diver's own risk. The permittee is solely responsible for setting the minimum technical requirements and experience for a diver to participate in dives at the site. Further, the permittee is solely responsible for the adequacy and implementation of all diver safety requirements and the contingency plan for diver emergencies.

V. Request for Comments

NOAA requests comments and suggestions from applicants and other interested parties on: Methods to conduct safe dive activities at the Monitor site; conditions for the special use permit; methods to safeguard the wreck; the fair market value of the use of the MNMS and a reasonable return to the United States; and any other relevant information pertaining to the activities proposed to be permitted at the MNMS.

VI. Classification

This notice is not subject to review under E.O. 12866.

Prior notice and an opportunity for public comment, although voluntarily here given, are not required by the Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, preparation of a Regulatory Flexibility Analysis is not required.

This action is categorically excluded from the requirements to prepare an Environmental Assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Dated: December 4, 1995.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 95–30056 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 112995D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 2 to scientific research permit no. 836 (P79F)

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 836 submitted by the Institute of Marine Science, University of California at Santa Cruz, Santa Cruz, California 95064 (Agents: Drs. Daniel Costa, Burney J. Le Boeuf, and Charles L. Ortiz), has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389);

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: On August 18, 1995, notice was published in the **Federal Register** (60 FR 43124) that a modification of Permit No. 836, issued on May 12, 1993 (as modified June 29, 1994), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 836 authorizes, annually, the capture and handling of up to 3,880 northern elephant seals (*Mirounga angustirostris*), the unintentional killing of up to 3 elephant seals during the conduct of the authorized research activities; import up to 40 northern elephant seal and southern elephant seal (*Mirounga leonina*) tissue samples and export samples from northern elephant seals (only) from/to England, Argentina, Australia, Mexico, and Japan; and incidentally harass up to 54,400 seals.

The modification authorizes: an increase in the number of animals that may be accidentally killed annually from three to five; muscle biopsies to be taken from juvenile elephant seals to examine the muscle structure as it relates to aerobic capacity; since location of the ATOC sound source has changed; a change in the release site from Point Sur to Pioneer Seamount, approx. 70 miles west of Half Moon Bay; and, an increase the number of southern elephant seal samples to be imported from 40 to 650.

Dated: November 22, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–30063 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–22–F

National Technical Information Service

Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Monday, January 8, 1996, from 9:00 a.m. to 4:00 p.m., and on Tuesday, January 9, 1996, from 9:00 a.m. to 4:00 p.m. The session on Tuesday, January 9, 1996, will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed-session discussion is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. on January 9, 1996. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on January 8, 1996, at 9:00 a.m. and adjourn at 4:00 p.m. and convene again on January 9, 1996, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation on January 8, 1996, and closed on January 9, 1996. Approximately thirty minutes will be set aside on January 8, 1996 for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: December 5, 1995.

Donald R. Johnson,

Director.

[FR Doc. 95–30050 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 5, 1995.

On page 53899 of the notice published in the **Federal Register** on October 11, 1995, correct the 1995 adjusted limit for Category 369–S in the table of the letter to the Commissioner

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of Customs from "640,500 kilograms" to "640,580 kilograms."

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-30090 Filed 12-8-95; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of a New Export Visa Arrangement and Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk-Blend and Non-Cotton Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Colombia

December 5, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new export visa and certification requirements.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 31, 1995 representatives of the Governments of the United States and the Republic of Colombia signed an agreement to establish a new export visa arrangement and certification requirements for certain cotton, wool, man-made fiber, silk-blend and other vegetable fiber textiles and textile products, produced or manufactured in Colombia and exported from Colombia on and after November 10, 1995. Goods exported during the period November 10, 1995 through December 31, 1995 shall not be denied entry for lack of a visa or certification. All goods exported after January 1, 1996 must be accompanied by an appropriate export visa or certification. Certain merchandise shall be exempt from quota requirements.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in Colombia and exported from Colombia for which the Government of the Republic of Colombia has not issued an appropriate export visa or certificate.

Facsimiles of export visa and certification stamps are on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 45144, published on August 30, 1995; 60 FR 45145, published on August 30, 1995; 60 FR 53762, published on October 17, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989. Also see 41 FR 30707, published on July 26, 1976.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa and certification requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on July 20, 1976, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in Colombia and exported from Colombia for which the Government of the Republic of Colombia has not issued an appropriate export visa or certificate.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Export Visa Arrangement dated October 31, 1995 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 6, 1995, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk-blend, and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, and 800–899, including merged and part categories, produced or manufactured in Colombia and exported from Colombia on and after November 10, 1995 for which the Government of the Republic of Colombia has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota the entire category(s) or part category(s) shall be included in the coverage of this arrangement. Goods exported during the period November 10, 1995 through December 31, 1995 shall not be denied entry for lack of a visa or certification.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Colombia is "CO"). These first two codes shall be followed by the number "1" and a five-digit serial number identifying the shipment, e.g., 5CO112345.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Colombia.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation or successor document and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 352–510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be vissed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be vissed as "Cat. 352," but not as "Cat. 652").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of the actual manufacturer of the textile product must be included on the visa document. If a textile product has been processed by more than one manufacturer, the complete name and address of the last firm to substantially transform the article into a new and different article of commerce must be listed on the visa document.

If the visa is not acceptable then a new visa must be obtained from the Government of the Republic of Colombia, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy of Colombia in Washington, DC, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the vissed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that vissed invoice.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Colombia has been allowed entry into the commerce of the United States with either an incorrect category classification or misstatement of the quantity, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Each shipment of items to be exempted from the bilateral agreement shall be accompanied by a certification issued by the Government of the Republic of Colombia. The certification shall be a stamped marking in blue ink on the front of the invoice.

The Government of the Republic of Colombia will include the following information on each certification:

1. authorized signature and title of the official issuing the certification;

2. identify the items exempted;

3. date the certificate was signed and certified;

4. certificate number.

5. in the space marked "Description" indicate that the shipment is either "less than $250," "a cottage industry product of handloom fabric," or the name of the particular Colombian traditional folklore products as listed in Annex A.

An export visa will not be required for shipments of certified exempt items.

Each shipment of textile products which has been assembled in the Republic of Colombia wholly from components cut in the United States from U.S. formed fabric which are subject to the Andean Special Access Textile Program as set out in the Agreement shall be so certified by the Government of the Republic of Colombia. This certification shall be presented to the U.S. Customs Service before entry, or withdrawal from warehouse for consumption, into the customs territory of the United States (the 50 states and Puerto Rico).

Each shipment shall be certified by the stamping of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original copy of the invoice with the original certification will be required in order to enter the shipment into the United States. Duplicate copies of the invoice and/or certification may not be used.

Each certification shall include the following information:

1. The certification number. The certification number shall be nine digits and letters. It shall begin with one digit for the last digit of the year of export followed by the two character country code for Colombia, which is "CO." These first two codes shall be followed by the number "2" and a five-digit serial number identifying the shipment, e.g., 5CO212345.

2. The date of issuance. The date of issuance shall be the day, month and year in which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Colombia.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 352-510 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be vissed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be vissed as "Cat. 352," but not as "Cat. 652").

U.S. Customs shall not permit entry if the shipment does not have a certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the certification is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Entry of textile products subject to the certification system outlined above into the customs territory of the United States will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of the Republic of Colombia.

2. A completed copy of form ITA–370P or successor document with a proper declaration by the Colombian assembler that the articles were subject to assembly in Colombia from parts described on that declaration; and

3. A proper importer's declaration.

Any shipment which is not accompanied by a valid and correct certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States. If U.S. Customs determines that the certification is invalid because of an error, and the remaining documentation fulfills requirements for entry under the Andean Special Access Textile Program then a new certification from the Government of the Republic of Colombia must be obtained or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of the Republic of Colombia must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

Any shipment found not to be in compliance with the provisions of the Andean Special Access Textiles Program relating to trade in textile products wholly assembled of U.S. components cut from U.S. formed fabrics, may be permanently denied entry under this program.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked or mutilated commercial sample shipments valued at U.S.$250 or less, do not require a visa or certification for entry and shall not be charged to existing quota levels.

Vissed merchandise and products eligible for the Andean Special Access Textiles Program may not appear on the same invoice.

The visa and certification stamps are enclosed. The certification stamp for exempt items remains unchanged.

The actions taken concerning the Government of the Republic of Colombia with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A—Colombian Traditional Folklore Handicraft Textile Products

"Colombian Items" are traditional Colombian products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

1. *Bedspread:* Bedspread made on manual loom.
2. *Blouse with crochet knitted neck:* A blouse made of greige cloth heavily decorated around the neck, extending down the front and around the sleeves with hand crochet work. This blouse also has embroidered panels extending down the front on either side of the crochet work.

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Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

3. *Embroidered Blouse:* Hand cut and hand sewn blouse with extensive hand embroidery on the upper front and lower portions.
4. *Embroidered Skirt:* Hand cut and hand sewn skirt with extensive hand embroidery.
5. *Blankets, Hand Woven:* These colorful blankets are hand woven from wool, cotton or wool and cotton, heavy yarns to form striped or block patterns. The ends may be finished with spangles formed by the ends of the yarn and knotted, or may be hemmed.
6. *Indian Embroidered Cloth:* Cloth panels hand embroidered with various crude and colorful Indian scenes. Generally these cloths are used as wall hangings.
7. *Typical Colombia Dress:* An ankle length dress with a very wide skirt trimmed with wide handmade lace. The entire dress is hand cut and hand sewn and is a typical dress for gaiety affairs.
8. *Typical Guajira Dress:* A traditional loose fitting women's garment formed by a folded rectangular piece of fabric with a hole or slot in the center for the head, with intricate embroidery around the neck. This dress is made similar to a ruana, but has the outer edges sewn together except for slots for the hands and arms, and has closures on the front.
9. *Typical Mapale Dress:* A knee length dress consisting of very wide skirt having a row of heavy ruffles around the blouse portion and two bands of wide ruffles forming the skirt. A very gay colored festival dress.
10. *Typical Mestiza Dress:* A native handmade dress with wide neckline, ruffled collar and wide skirt and with ruffles on the lower part of the skirt.
11. *Hammock:* Multicolored stripped hammocks made by hand from coarse fabrics. Ends are formed and reinforced with strong rope.
12. *Jacket, hand knitted:* Wholly hand knitted jacket. These jackets are usually knitted from wool yarns. Patched pockets, also hand knitted, are hand sewn to the garment.
13. *Jacket of hand loomed fabric:* These jackets are wholly hand made from hand loomed fabrics. Patched pockets, also of hand loomed fabric, are hand sewn to the garment.

Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

14. *Ruana:* A cloak made from a heavy rectangular piece of fabric or a blanket with hole in the center for the head to pass through. This is a typical garment worn by men, women and children throughout the higher and cooler altitudes of Colombia. The men's ruana will generally have no fringes. Women's ruanas may have fringes and are sometimes slit from the neck opening to the edge to permit the wearer to put it on as a cape. Children's ruanas sometimes have a color around the opening with draw strings for a close fit. These garments are sometimes known as ponchos.
15. *Rugs, hand woven or hand knotted:* These rugs are usually made from wool yarns and are either wholly hand woven or hand knotted. They are generally square or rectangular in shape and are in colorful designs.
16. *Macrame Shawl:* Hand made shawls wholly of macrame lace or with macrame lace edge. The shawls are in various colors with the typical long fringe around the lower edges.
17. *Sweaters and Cardigans, hand knitted:* Wholly hand knitted sweaters and cardigans, generally a bulky knit with decorative vertical patterns.
18. *Table Cloths and Napkins, embroidered:* Table cloths and napkins cut and hemmed by hand and extensively embroidered by hand.
19. *Colorful waist band:* Hand plaited waist bands in multicolors. These are sometimes sewn together to form wide bands.
20. *Wall hangings, rectangular:* A colorful wall hanging made from coarse yarns connected to decorative crudely woven bands. These are hand made and come in various sizes.
21. *Wall hanging, tree:* Tree shaped wall hangings formed by connecting together crudely woven bands in graduated sizes with coarse yarns to form the outline of a tree. The wall hanging is decorated with small balls of cotton fiber.
22. *Indian Color Knapsack:* Knapsack made with belt like woven or plaited strap and multicolored bag, to be worn on the shoulder.
23. *Pillow Covers, Embroidered by hand:* Covers for throw pillow containing extensive hand embroidery covering 50 percent or more of the outer surface of the cover.
24. *Hand made macrame handbags*

Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

25. *Molas:* Hand appliqued layers of different colors, forming geometric and abstract designs, made of cotton material.
26. *Santa Rosa Tapestries, Bedspreads and Pillowcases:* Tapestries, bedspreads and pillowcases, of vivid colors, with hand appliqued figures forming landscapes and folk scenes, made of cotton material.

[FR Doc. 95–30097 Filed 12–8–95; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

DOE Request for an Additional 45 Days to Respond to Defense Nuclear Facilities Safety Board Recommendation 95–2, Safety Management

AGENCY: Department of Energy.
ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 95–2 concerning Safety Management in the **Federal Register** on October 19, 1995 (60 FR 54065). The Department of Energy (DOE) hereby publishes notice of a request for 45-days additional time to respond to Recommendation 95–2 as allowed by the statute cited above.

DATES: Comments, data, views, or arguments concerning the Secretary's request are due on or before January 10, 1996.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter N. Brush, Principal Deputy, Assistant Secretary for Environmental, Safety and Health, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on December 1, 1995.

Mark B. Whitaker,
Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

December 1, 1995.

The Honorable John T. Conway, Chairman,
Defense Nuclear Facilities Safety Board,
Suite 700, 625 Indiana Avenue, N.W.,
Washington, DC 20004.

Dear Chairman Conway: This letter acknowledges receipt of your Recommendation 95–2 regarding Safety Management. The issues identified in the Recommendation are extensive and may have significant impact on many of our existing and developing programs and initiatives. Accordingly, the Department will require additional time to evaluate fully these cross-cutting issues and their impact from both a headquarters and field perspective.

In accordance with 42 U.S.C. 2286d, the Department requests an additional 45 days to respond to Recommendation 95–2. If a 45 day extension is granted, the Department will respond to the Board by January 17, 1996.

Sincerely,

Hazel R. O'Leary

[FR Doc. 95–30084 Filed 12–8–95; 8:45 am]
BILLING CODE 6450–01–P

Privatization of Isotope Activities; Comment Request

AGENCY: Department of Energy (DOE).
ACTION: Notice for Expressions of Interest.

SUMMARY: Expressions of Interest are sought concerning the possible privatization of DOE isotope activities such as selling or leasing existing DOE facilities for commercial use; sale of existing isotope inventory; isotope marketing, distribution, or technical services; and other innovative arrangements for enhanced private sector involvement in isotope operations.

DATES: This notice is effective on the date of publication and will remain effective until February 23, 1996. Responses may be submitted at any time prior to February 23, 1996. An information meeting addressing this notice will be held at the DOE facility in Germantown, Maryland, from 9:00 a.m. until noon on January 10, 1996. Information packages distributed during the January 10, 1996, meeting will be made available to interested parties after January 11, 1996. Submit requests to the programmatic information contact listed below.

FOR FURTHER INFORMATION CONTACT: Requests for programmatic information should be directed to: Mr. Owen W. Lowe, U.S. Department of Energy, Isotope Production and Distribution, NE–70 (GTN), 19901 Germantown Road, Germantown, MD 20874, (301) 903–5161.

Expressions of Interest (original plus five copies), citing this notice, should be postmarked by February 23, 1996, and mailed to: U.S. Department of Energy, Document Control Specialist, HR–562, Headquarters Procurement Operations, 1615 M Street, N.W., Washington, D.C. 20036.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Areas of DOE Interest
III. Expressions of Interest Format

I. Purpose

The DOE Isotope Program has a twofold mission. First, the Isotope Program produces and distributes certain radioisotopes and enriched stable isotopes for research or development purposes. Prices for these isotopes are set at a level designed to balance cost recovery with the national priority of meeting U.S. research needs and supporting our health care system. Second, other radioisotopes and enriched stable isotopes are produced and distributed for medical diagnostics and therapeutics, industrial, agricultural, and other useful applications on a cost-recovery basis.

The DOE Isotope Program currently produces isotopes at six locations in the United States. The isotope products and related services from these sites are provided only where: a) there is no existing domestic, private sector capability; b) unique Government facilities are needed to provide such a capacity; or c) other productive capacity is insufficient to meet pressing national needs. While continuing to assure that a reliable supply exists, DOE is encouraging privatization of DOE Isotope Program activities in order to fulfill the DOE Isotope Program's missions at a reduced cost to isotope customers and the Nation's taxpayers by greater involvement of the private sector. This notice is not intended to be a solicitation for proposals. Instead, it is an attempt to obtain information and to identify interested private sector participants in the possible privatization of some or all DOE isotope activities. Activities that fall under the scope of this notice include, but are not limited to, selling or leasing existing DOE facilities for commercial use; sale of existing isotope inventory; isotope marketing, distribution, or technical services; and other innovative arrangements for private sector isotope operations. Depending on the nature of the responses and subsequent determinations by DOE, a formal solicitation for competitive proposals may be published in the future, and awards may be made based upon an evaluation of proposals received pursuant to the evaluation criteria as stated in the solicitation.

II. Areas of DOE Interest

DOE is seeking to encourage innovative Expressions of Interest for privatization. Expressions of Interest should be structured to address:

1. The development or deployment of isotope production, distribution, and services in terms of:

a. A significant decrease over the cost of current methods through a substantial reduction in the cost of manufacturing by use of more efficient methods or technology.

b. Feasibility of approach consistent with proposed cost. The Expression of Interest must demonstrate a knowledgeable approach and an appreciation of risks.

2. Probability of success: Clarity of objectives and quality of approach. The approach should be based on well-defined objectives, milestones, and deliverables. The approach should contain a reasonable and practical plan for providing the maximum private sector participation on a financial and managerial basis and at the least cost to the Government.

3. The appropriateness of the facilities and techniques. The need for (and availability of) facilities, equipment, design and manufacturing tools; technical, financial, and administrative resources; and the protection of intellectual property.

III. Expression of Interest Format

The length of the Expression of Interest should not be more than 15 pages (double spaced) using a 12-point type font. It is left to the responder to determine how best to use the 15 pages, however, it would facilitate review if the Expression of Interest was divided into the following sections:

Section 1—Summary
Section 2—Comments on privatization of some or all DOE isotope activities
Section 3—Additional comments and recommendations

Proprietary Information

If the Expression of Interest contains information that is privileged or confidential and that the respondent does not want disclosed to the public or used by the Government for any purpose other than this notice, the respondent should place the following notice on the Expression of Interest.

Notice: The data contained in pages _____ of this Expression of Interest has been submitted in confidence and contains trade secrets or commercial or financial information that is confidential or privileged, and such data should be used or disclosed only for purposes of consideration of this

response. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source including the respondent.

Submission

Each submittal should consist of six copies, one original and five photocopies. The original copy of the Expression of Interest shall contain all documents that bear original signatures. DOE is under no obligation to pay for any costs associated with the preparation or submission of Expressions of Interest in response to this notice. DOE reserves the right to respond or not respond to any portion, all, or none of the Expressions of Interest submitted in response to this notice.

Issued in Washington, D.C., on November 21, 1995.

Terry R. Lash,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 95–30086 Filed 12–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–32–000]

Viking Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed VGT Expansion Project and Request for Comments on Environmental Issues

December 5, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the VGT Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Viking Gas Transmission Company (VGT) wants to expand the capacity of its facilities in Kittson and Norman Counties, Minnesota, to transport an additional 19,420 decatherms per day of natural gas. VGT requests authorization to construct and operate two 24-inch-diameter pipeline loops, totalling 13.51 miles in length, and appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 179.3 acres of land, including 81.9 acres of temporary right-of-way. Following construction, all of the land would be restored and allowed to revert to its former use. No new permanent right-of-way is required for the project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by VGT.

- A total of 155 acres of agricultural land, virtually all of it is prime farmland soils, would be affected.
- One perennial stream (the North Branch, Two Rivers) would be crossed.

Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. you should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–32–000;
- Send a *copy* of your letter to: Mr. Jeff Shenot, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., Room 7L–05, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 10, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Shenot at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intevenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention,. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Shenot, EA Project Manager, at (202) 219–0295.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30061 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Viking Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP96–91–000]

Stingray Pipeline Company; Notice of Request Under Blanket Authorization

December 5, 1995.

Take notice that on December 1, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–91–000 a request pursuant to Sections 157.205 and 157.208(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to own and operate, by means of construction and acquisition, various facilities located offshore Louisiana, in order to give Stingray access to additional gas supplies and to expand operational flexibility, under Stingray's blanket certificate issued in Docket No. CP91–1505–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray proposes to: (1) Acquire, own and operate dual 8-inch meter facilities and approximately 0.13 mile of 20-inch lateral that will be constructed by Midcon Exploration Company and Flex Trend Development Company (the Producers) on the construction platform being constructed by the Producers in Garden Banks Block 72, offshore Louisiana; (2) construct, own and operate 15.49 miles of 20-inch lateral from the Garden Banks 72 production platform to Stingray's existing facilities in Vermilion Block 362, offshore Louisiana; (3) construct, own and operate a 20-inch subsea tap valve on the proposed 20-inch lateral in Vermilion Block 408 for future interconnects; and (4) construct, own and operate a 12-inch subsea tap valve on the proposed 20-inch lateral in Vermilion Block 385 for a future interconnect.

It is stated that construction of the 20-inch lateral and related facilities will allow Stingray to receive and transport up to 75 Mmcf of natural gas per day produced by the Producers at Garden Banks 72. It is asserted that the taps proposed in (3) and (4) above would allow Stingray additional opportunities for operational flexibility in acquiring volumes of gas that may become available in the future from other production sources in the Vermilion and Garden Banks areas. It is estimated that the cost of acquisition and construction would be approximately $8.927 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30013 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–10–001]

UtiliCorp United Inc.; Notice of Amended Application

December 5, 1995.

Take notice that on December 1, 1995, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its November 3, 1995, application in Docket No. ES96–10–000, under § 204 of the Federal Power Act. In the original filing, UtiliCorp seeks authorization to issue and sell up to and including $7.3 million of Pollution Control Bonds (PCBs) which would be secured by a letter of credit. In its amendment, UtiliCorp indicates that the original application inadvertently failed to specify a request for an authorization that would cover the full amount of the letter credit used to support the payment of principal and interest of the PCBs issuance, when due. In the amendment, UtiliCorp requests an authorization to enter into a letter of credit in the amount of $7,502,300 to be issued in support of the payment of the principal of and interest on the PCBs.

Any person desiring to be heard of to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30012 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–3]

CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily

AGENCY: Environmental Protection Agency.

ACTION: Announcement and publication of policy.

SUMMARY: This policy memorandum sets forth the Environmental Protection Agency ("EPA") and the Department of Justice's ("DOJ") policy regarding the government's enforcement of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") against lenders and against government entities that acquire property involuntarily. As an enforcement policy, EPA and DOJ intend to apply as guidance the provisions of the "Lender Liability Rule" promulgated in 1992, thereby endorsing the interpretations and rationales announced in the Rule. See

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"Final Rule on Lender Liability Under CERCLA," 57 Fed. Reg. 18344 (April 29, 1992). This rule was vacated by the Circuit Court of Appeals for the District of Columbia in 1994.

The purpose of the memorandum is to provide guidance within EPA and DOJ on the exercise of enforcement discretion in determining whether particular lenders and government entities that acquire property involuntarily may be subject to CERCLA enforcement actions. The memorandum advises EPA and DOJ personnel to consult both the regulatory text of the Rule and the accompanying preamble language in exercising their enforcement discretion under CERCLA as to lenders and government entities that acquire property involuntarily.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao, Office of Site Remediation Enforcement, 401 M St. SW. (Mail Code 2273A), Washington, DC 20460 (202–564–6028), or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC area at 703–412–9810).

Note: The memorandum below has been altered from the original memorandum issued on September 22, 1995 to reflect updated information about obtaining additional copies and whom to contact for further information. No other changes were made to the text of the policy. The original memorandum issued on September 22, 1995 was not published in the **Federal Register**.

Dated: November 30, 1995.

Jerry Clifford,

Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency.

Memorandum

Subject: Policy on CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily

From: Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency

Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice

To: Regional Administrators, Regions I–X, EPA, Regional Counsel, Regions I–X, EPA, Waste Management Division Directors, Region I–X, EPA, Chief, Environmental Enforcement Section, DOJ, Assistant Section Chiefs, Environmental Enforcement Section, DOJ

This memorandum sets forth the Environmental Protection Agency's ("EPA") and the Department of Justice's ("DOJ") policy regarding the government's enforcement of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") against lenders and against government entities that acquire property involuntarily. As an enforcement policy, EPA and DOJ intend to apply as guidance the provisions of the "Lender Liability Rule" promulgated in 1992, thereby endorsing the interpretations and rationales announced in the Rule. See "Final Rule on Lender Liability Under CERCLA," 57 Fed. Reg. 18,344 (April 29, 1992).[1] (This rule has been vacated by a court, as described below in the "Background" section).

ADDRESSES: Additional copies of this policy statement can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS accession number PB95–234496. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service or 800–553–NTIS for rush service. For orders via email/Internet send to the following address: orders@ntis.fedworld.gov.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao, Office of Site Remediation Enforcement (Mail Code 2273A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202–564–6028), or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC area at 703–412–9810).

I. Background

This policy guidance establishes EPA's and DOJ's position regarding possible enforcement actions against lenders and government entities who are associated with property that may be subject to a CERCLA response action. EPA and DOJ recognize CERCLA's unintended effects on lenders and government entities and the relative concern from these parties regarding the consequences of potential enforcement. In light of these concerns, lenders may refuse to lend money to an owner or developer of a contaminated or potentially contaminated property or they may hesitate in exercising their rights as secured parties if such loans are made. Additionally, government entities that involuntarily acquire property may be reluctant to perform certain actions related to contaminated or potentially contaminated property.

The language of Section 101(20)(A) leaves lenders and other interested parties uncertain as to which types of actions—such as monitoring vessel or facility operations, requiring compliance with applicable laws, and refinancing or undertaking loan workouts—they may take to protect their security interests without risking EPA enforcement under CERCLA. Courts have not always agreed on when a lender's actions are "primarily to protect a security interest," and what degree of "participation in the management" of the property will forfeit the lender's eligibility for the exemption. This uncertainty was heightened by dicta in the *Fleet Factors*[2] opinion, where the circuit court suggested that a lender participating in the management of a vessel or facility "to a degree indicating a capacity to influence the corporation's treatment of hazardous waste" could be considered liable under CERCLA.[3]

The lack of legislative history on and consistent court treatment of the CERCLA Section 101(20)(A) security interest exemption prompted EPA to address potential lender liability for cleanup costs at CERCLA sites in the Lender Liability Rule, which was promulgated in April 1992.

Regarding the exemption for government entities, neither the legislative history of CERCLA Sections 101(20)(D) and 101(35)(A) nor the case law provide sufficient explanation of when a property acquisition or transfer is considered involuntary. Thus, in the Rule, EPA also clarified the language of these sections, describing when a government entity was exempted from CERCLA enforcement as an owner or operator or was protected from third party actions.

However, in *Kelley* v. *EPA*,[4] the Circuit Court of Appeals for the District of Columbia vacated the Rule on the ground that EPA lacked authority to issue the Rule as a binding regulation. Nevertheless, the *Kelley* decision did not preclude EPA and DOJ from following the provisions of the Rule as enforcement policy, and the agencies have generally done so.

II. Policy Statement

This memorandum reaffirms EPA's and DOJ's intentions to follow the provisions of the Lender Liability Rule as enforcement policy. EPA and DOJ endorse the interpretations and rationales announced in the Rule and its preamble. The purpose of this memorandum is to provide guidance within EPA and DOJ on the exercise of enforcement discretion in determining whether particular lenders and government entities that acquire property involuntarily may be subject to CERCLA enforcement actions. In making such determinations, EPA and DOJ personnel should consult both the regulatory text of the Rule and the accompanying preamble language in exercising their enforcement discretion under CERCLA as to lenders and government entities that acquire property involuntarily.[5]

After the promulgation of the Lender Liability Rule, but prior to its invalidation, several district and circuit courts adhered to the terms of the Rule or interpreted the statute in a manner consistent with the Rule.[6] Moreover, notwithstanding the Rule's invalidation in *Kelley*, since that decision several courts have also interpreted the statute in a way that is consistent with the Rule.[7] EPA and DOJ believe that this case law is further evidence of the reasonableness of the agencies' interpretation of the statute, as embodied formerly in the Rule and now in this policy statement.

III. Use of This Policy

The policies and procedures established in this document and any internal procedures adopted for its implementation are intended solely as guidance for employees of EPA and DOJ. They do not constitute rulemaking and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law, or in equity, by any person. EPA and DOJ reserve the right to act at variance with this guidance or its internal implementing procedures.

[FR Doc. 95–29842 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

[1] This guidance does not address lender liability under any statutory or regulatory authority, rule, regulation, policy, or guidance, other than CERCLA. Specifically, this guidance does not cover lender liability determinations as they relate to the Resource Conservation and Recovery Act ("RCRA") and RCRA's Underground Storage Tank program.

[2] *United States* v. *Fleet Factors Corp.*, 901 F.2d 1550, 1557 (11th Cir. 1990), cert. denied, 111 S. Ct. 752 (1991).

[3] *Fleet*, 901 F.2d at 1557.

[4] 15 F.3d 1100 (D.C. Cir. 1994), reh. denied, 25 F.3d 1088 (D.C. Cir. 1994), cert. denied, *American Bankers Ass'n* v. *Kelly*, 115 S.Ct. 900 (1995).

[5] See 57 Fed. Reg. 18,344 (April 29, 1992) (text and preamble).

[6] See *Northeast Doran, Inc.* v. *Key Bank of Maine*, 15 F.3rd 1 (1st Cir. 1994); *United States* v. *McLamb*, 5 F.3d 69 (4th Cir. 1993); *Waterville Indus., Inc.* v. *Finance Authority of Maine*, 984 F. 2d 549 (1st Cir. 1993); *United States* v. *Fleet Factors*, 901 F.2d 1150 (11th Cir. 1990), *on remand*, 821 F. Supp. 07 (S.D. Ga. 1993); *Kelley* v. *Tiscornia*, 810 F. Supp. 901 (W.D. Mich. 1993); *Grantors to the Silresim Site Trust* v. *State Street Bank & Trust Co.*, 23 ELR 20428 (D. Mass. Nov. 24, 1992).

[7] *See Z & Z Leasing, Inc.* v. *Graying Reel, Inc.*, 873 F.Supp. 51 (E.D. Mich. 1995); *Kemp Industries, Inc.* v. *Safety Light Corp.*, 857 F.Supp. 373 (D.N.J. 1994).

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 95–118, FCC 95–396]

Notice of Public Information Collections for Streamlining the International Section 214 Authorization Process and Tariff Requirements submitted to OMB for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 17, 1995, the Federal Communications Commission released a Notice of Proposed Rulemaking (NPRM) to streamline the international Section 214 authorization process and tariff requirements. This NPRM, published in the Federal Register on July 25, 1995, Volume 60, page 37989, contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Written comments by the public on the proposed and/or modified information collections are due January 10, 1996. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before February 9, 1996.

ADDRESSES: Submit all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New Collection.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 431 per year.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 3448 hours.

Needs and Uses: The NPRM proposes to streamline the international Section 214 authorization process and tariff requirements. The proposed rules would greatly reduce the regulatory burdens on applicants, authorized carriers, and the Commission. The NPRM proposes to reduce the need for carriers to file multiple applications by enabling a non-dominant carrier to obtain a global Section 214 authorization, which is not limited to specific carrier facilities, and by eliminating several regulatory requirements that require carriers to file multiple Section 214 applications. The global Section 214 authorization would allow carriers to provide international services on a facilities-basis to virtually all points in the world, using any licensed facility. This authorization would be subject to an exclusion list that the Commission would publish identifying countries or facilities for which there are restrictions. In regard to the regulatory requirements being removed, Section 63.01 is proposed to be amended to make it applicable only to applications for domestic Section 214 authority. A new rule is proposed that will detail the application requirements for international Section 214 authority, and include the provisions for filing a global Section 214 application. In addition, the proposed rule will enable resellers to provide international resale services via any authorized common carrier, except those affiliated with the reseller, without obtaining additional authority. Also, private line resale carriers would be able to resell interconnected private lines for switched services to all designated "equivalent" countries, without obtaining additional authority to serve each equivalent country. And, Section

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63.15 is proposed to be amended to enable carriers to add circuits on private satellite or cable systems, without obtaining prior authority. The NPRM also proposes to simplify the Section 214 and cable landing license application process by reducing the detailed information now required in Sections 63.01 and 1.767. The NPRM also proposes to encourage filing of international Section 214 applications electronically and on computer disk, and to require that any information contained in an application in a foreign language be accompanied with a certified translation in English.

The NPRM further reduces filing requirements by allowing dominant carriers to automatically convey transmission capacity in submarine cables to other carriers without obtaining prior Section 214 authority. Also, the NPRM proposes to further streamline the tariff requirements for non-dominant international resale and facilities-based carriers by permitting them to file their international tariffed rates on one day's notice instead of the current 14 days' notice, and seeks comment, in general, on whether to streamline the international tariff process. However, these tariff related proposals are not subject to the PRA.

Finally, the Commission seeks comments on what, if any, Section 214 authorization requirements it should forbear from applying if given forbearance authority by Congress.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95-30118 Filed 12-8-95; 8:45 am]
BILLING CODE 6712-01-P

Schedule for En Banc Hearing, Advanced Television Proceeding

December 6, 1995.

The schedule for the Federal Communications Commission's December 12, 1995 *en banc* hearing on Advanced Television, MM Docket No. 87-268, is as follows:

8:30–8:45 a.m.—Opening remarks from the Commission

8:45–10:15 a.m.—Commercial Opportunities of Digital Broadcast

The transition to digital broadcast is fraught with risk and uncertainty yet promises rich rewards if successful. Panelists discuss the opportunities and challenges created by the transition to digital television. Issues to be explored include whether digital technology will allow broadcasters to compete in an increasingly challenging video marketplace, how will they finance the transition, what is the impact on their competitors?

Richard E. Wiley, Chairman, Advisory Committee on Advanced Television Services
Steven Rattner, Managing Director, Lazard Freres & Co
Ed Grebow, President, TELETV Systems, TELETV
Neil Braun, President, NBC Television Network, NBC, Inc.
John Hendricks, Chairman and CEO, Discovery Communications, Inc./NCTA
Stanley Hubbard, Chairman and CEO of Hubbard Broadcasting, Inc.
Lawrence Grossman, President, Brookside Productions & Horizons Cable

10:30 a.m.–noon—The Public Interest, Convenience and Necessity

The Commission's current public interest rules, including those mandating specific statutory requirements, were developed for broadcasters essentially limited by technology to a single, analog video programming service. Panelists discuss the potential for more flexible and dynamic use of the spectrum through digital broadcast and its impact on broadcasters' obligation to serve the public interest.

Gigi Sohn, Deputy Director, Media Access Project
Alan Braverman, Vice President and General Counsel, Cap Cities/ABC
Barry Diller, Chairman, Silver King Communications
Faya Anderson, President, Douglass Policy Institute
David Honig, Executive Director, Minority Media and Telecommunications Council
John Siegel, Sr. Vice President, Chris Craft Industries/INTV

1:30–3:00 p.m.—Digital Applications

The digital transmission system designed by the Grand Alliance would provide broadcasters with new flexibility as they embark on serving the American public with the next generation of television. Allowing some flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace. Panelists discuss potential for new applications to complement broadcast video as well as look to the future for services made possible on recovered channels.

Ed Horowitz, Senior Vice President of Technology, Viacom
George Keyworth, Chairman, Progress and Freedom Foundation
James C. McKinney, Chairman, Advanced Television Systems Committee
Edward Reilly, President, McGraw-Hill Broadcasting/MSTV
John Major, Senior Vice President and Assistant Chief Corporate Staff Officer, Motorola
James Carnes, President and CEO, Sarnoff/Grand Alliance
Joseph A. Flaherty, Senior Vice President, Technology, CBS Inc./ATSC Broadcast Caucus

3:15–4:30 p.m.—Impact on Consumers

While a transition to digital broadcast promises many benefits, the public interest would be served by avoiding any substantial dislocation of service to existing viewers. With many competing services coming on line, greater incentives exist for broadcasters to convert rapidly to digital broadcast. Panelists discuss the expected impact on consumers as it relates to deployment of new equipment and services, the ability of broadcasters to continue to serve their audience during the transition, the opportunities for improved service and technology and the extent to which consumers' value is enhanced such that analog transmission may be terminated.

Bruce Allan, Vice President, Technology & Business Development, Thompson Consumer Electronics
Sherwin Grossman, President, Community Broadcasters Association (CBA)
John Abel, President and CEO, Datacast Partners
Ralph Gabbard, President/COO of Gray Communications/NAB
David Liroff, Vice-President and Chief Technology Officer, WGBH Educational Foundation

The hearing will take place Tuesday, December 12, 1995, from 8:30 a.m. to 4:30 p.m. in the Commission Meeting Room, Room 856, 1919 M St., NW., Washington, DC, and is open to the public. Concurrently, digital television technology demonstrations, also open to the public, will be presented. These demonstrations will be available for viewing Tuesday, December 12 from 8:30 a.m. to 5:30 p.m. in the Commission's Training Center located on the first floor of 2000 M St., NW., Washington, DC. The Commission may alter the schedule of demonstrations and panelists if necessary.

Scheduled demonstrations will be presented by:

The Digital HDTV Grand Alliance
CBS, Inc.
Hitachi America, Ltd.
Hubbard Broadcasting, Inc.
Microsoft Corporation
Sony Corporation of America
Texas Instruments

For the hearing impaired, an ASL interpreter will translate the hearing. Video tapes, which will be closed captioned, and written transcripts of the hearing will be available for a fee.

For further information about the hearing, please contact Saul Shapiro at (202) 418–2600. The contacts for media coverage are Karen Watson, David Fiske, Maureen Peratino and Audrey Spivack at (202) 418–0500.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95-30230 Filed 12-8-95; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Star Clippers Ltd., Luxembourg Shipping Services S.A., Star Flyer N.V. and Star Clipper N.V., 4101 Salzedo Street, Coral Gables, Florida 33146

Vessel: STAR FLYER

Dated: December 5, 1995.

Joseph C. Polking,
Secretary.
[FR Doc. 95-30021 Filed 12-8-95; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

Star Clippers Ltd. and Luxembourg Shipping Services S.A., 4101 Salzedo Street, Coral Gables, Florida 33146

Vessel: STAR FLYER

Dated: December 5, 1995.

Joseph C. Polking,
Secretary.
[FR Doc. 95-30021 Filed 12-8-95; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is net required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. *Report title:* Annual Report of Foreign Banking Organizations; Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities; and Foreign Banking Organization Confidential Report of Operations

Agency form number: FR Y-7, FR Y-7A, and FR 2068

OMB Docket number: 7100-0125

Frequency: Annual

Reporters: Foreign banking organizations

Annual reporting hours: 13,243

Estimated average hours per response: 41

Number of respondents: 323

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. §§1844(c), 3106, and 3108(a)]. Upon request from a respondent, certain information in the FR Y-7 and FR Y-7A may be deemed confidential pursuant to sections b(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §552]. All information provided in the FR 2068 is confidential [5 U.S.C. §552(b)(8)] and is subject to special handling procedures [12 CFR §261.11(h)].

These reports are required from all foreign banking organizations (FBOs) engaged in the business of banking in the United States. Respondents must report, on the FR Y-7, information on the structure of their activities in the United States as well as financial statements prepared in accordance with home country accounting practices, separate financial statements for U.S. nonbanking subsidiaries, an organization chart reflecting investments in U.S. companies and foreign companies that do business in the United States, disclosure of large shareholders, and a list of officers and directors.

The FR 2068 requires FBOs to report revenues and expenses, loan losses, asset quality, hidden reserves not disclosed on the FR Y-7, an organization chart, and financial data on non-U.S. subsidiaries that the FBO controls. Respondents will continue to submit the FR 2068 directly with the Federal Reserve Board.

Abstract: On December 16, 1994, the Federal Reserve Board approved earlier versions of these proposals for public comment and published notice in the FR [Vol. 60, FR 1779, January 6, 1995]. The initial comment period (30 days) expired on February 5, 1995. In light of the extensive changes proposed, commenters requested three successive 30-day extensions of the comment period in order to fully assess the effects of the changes. As a result of those extensions, the final comment period expired on May 31, 1995.

There were six commenters, four trade groups and two FBOs. The nature of the comments varied. Some addressed burden, some concerned confidentiality, and some suggested improvements to the reporting forms and instructions. Comments regarding burden focused on the accuracy of the overall burden estimate and on specific proposed revisions that commenters believed would increase burden significantly.

After considering the comments, the Federal Reserve Board has approved several modifications to the initial proposal.

Reporting Structure

FR Y-7

All FBOs engaged in the business of banking in the United States file the FR Y-7 annually, as of the end of the reporter's fiscal year. 323 FBOs file the FR Y-7: 55 foreign bank holding companies; 218 foreign banks with commercial lending companies, Edge corporations, or U.S. branches and agencies; and 50 foreign parent companies. Respondents report information on the structure of their activities in the United States, as well as the following financial and managerial information:

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(1) Financial statements prepared in accordance with home country accounting practices.

(2) Separate financial statements for U.S. nonbanking subsidiaries.

(3) An organization chart reflecting investments in U.S. companies and foreign companies that do business in the United States.

(4) Disclosure of large shareholders of registered shares and disclosure of known large shareholders of bearer shares.

(5) A list of officers and directors.

(6) Information to determine continuing eligibility as a qualified foreign banking organization under sections 2(h) and 4(c)(9) of the Bank Holding Company Act.

FR 2068

FBOs that have a significant presence in the United States also file the FR 2068 annually. Prior to the latest revisions, FBOs with small U.S. banking operations were eligible for a filing exemption. While these exemptions were in effect there were 292 respondents. Elimination of the exemption adds 31 respondents. The FR 2068 collects information that enables the Federal Reserve to carry out its responsibilities by assessing the impact of an FBO's worldwide operations on its U.S. banking business. Prior to the latest revisions, this report required disclosure of revenues and expenses as calculated in accordance with local accounting practices and an explanation or general description of those accounting practices. The report still requires disclosure of loan losses, asset quality, gains and losses on securities, and hidden reserves not disclosed in the FR Y-7. The format calls for beginning balances, additions, deductions, and ending balances. The report provides flexibility that enables an FBO to submit the information in a manner that will minimize burden. Respondents may request permission to report substitute information when the specific reporting requirements would result in undue burden or expense or when the information is unavailable in the requested format.

The FR 2068 also collects financial data on non-U.S. subsidiaries. Financial statements are required on all majority-owned (more than 50 percent), unconsolidated, material foreign subsidiaries. FBOs also must report financial data detailing the total assets, total stockholders' equity, and net income of all material foreign companies in which it owns between 25 percent and 50 percent of the shares or which it otherwise controls.

The FR 2068 requires that reporters provide an organization chart that details all foreign companies that the FBO directly or indirectly owns, controls, or holds with power to vote 25 percent or more of any class of voting stock. This requirement is broader than the organization chart required by the FR Y-7 in that the latter is limited to all related U.S. companies and foreign companies that engage in business in the United States.

Changes Proposed Initially

FR Y-7

Several revisions were initially proposed for the FR Y-7: adding the Nonbank Financial Information Summary (NFIS), financial statements for each of the FBO's U.S. nonbanking subsidiaries, replacing the free-form financial statements currently submitted; adding a new schedule to collect information on risk-based capital; requiring submission of documentation explaining differences in accounting standards in the FBO's home country from U.S. accounting standards; requiring submission of a copy of Securities and Exchange Commission (SEC) Form 20-F for those respondents that report to the SEC; and replacing part of the FR Y-7 with a new report, the FR Y-7A, to collect information on the structure and activities of FBOs.

FR 2068

Initial proposed revisions to the FR 2068 included eliminating the filing exemption for those FBOs with small U.S. operations; eliminating earnings information; filing with the appropriate Federal Reserve Bank rather than directly with the Board; and adding several items to collect information on past due loans to replace similar information previously submitted in a free format. For both the FR Y-7 and FR 2068 it was proposed that the organization chart be expended to include U.S. and non-U.S. companies owned by individuals who own 25 percent or more of the FBO.

Public Comments and Federal Reserve Board Recommendations.

After considering the comments, the Federal Reserve Board made several modifications to the initial proposed changes. Changes and comments are discussed below in detail.

FR Y-7

Commenters addressed several matters regarding the FR Y-7, including confidentiality, accounting standards, the organization chart, bearer shareholdings, and the Nonbank Financial Information Summary (NFIS.) There were no comments on the proposed new schedule for risk-based capital.

Confidentiality procedures. Several commenters asked for advance guarantee of confidentiality for the FR Y-7. If this request were to be granted, commenters stated that certain affiliates may be more willing to disclose information. Other commenters suggested that, although they had no expectation that a request for confidential treatment would be denied, the Board's existing procedure places them in an awkward position when seeking information from affiliates. They also asked that confidentiality be granted "on request" for NFIS information. However, it is not possible to guarantee the confidentiality of this information in light of the Freedom of Information Act, since ultimately a court may be called on to decide the matter. Under the applicable statutes and regulations, a foreign banking organization can make a case for confidentiality by showing that disclosure is likely to result in competitive harm or an invasion of personal privacy. The Board will agree to grant a request for confidential treatment that is properly supported with the understanding that if a Board decision to deny a formal request for access to such information is challenged in court, the court will decide the matter. In view of these considerations, the Board decided to retain the current procedures regarding confidentiality.

Explanation of national accounting standards. The Federal Reserve Board initially recommended that a respondent include a detailed explanation of national accounting standards and terminology with the FR Y-7 in the first year it files and thereafter in every year ending in "5" or "0." This information would supplement the Board's understanding of the differences in accounting standards. Commenters requested that the Board clarify the scope of this proposed report item. Several commenters stated that they were not aware of any complete explanation of foreign accounting terminology and standards. Another commenter requested that the Federal Reserve accept explanations of the type filed with securities offerings statements with the Securities and Exchange Commission (SEC.) Another suggested that FBOs be permitted to submit a statement of material differences between Generally Accepted Accounting Principles (GAAP) and home country accounting requirements. After reviewing these comments, the Federal Reserve decided to drop the proposed report item, and will instead collect this information on an ad hoc basis. Respondents that are SEC reporters must include a copy of SEC form 20-F (OMB No. 3235-0288) with the FR Y-7. The SEC form 20-F is similar to SEC form 10-K (Annual Report Pursuant to Sections 13 and 15(d) of the Securities and Exchange Act of 1934; OMB No. 3235-0063) and includes information on the differences between GAAP and the FBO's home country accounting standards.

Bearer shareholdings. Two commenters stated that they may be unable to identify bearer shareholders that have a greater than 5 percent interest in their organization. However, since item 4 collects information on "known shareholders" there is no need to change this report item.

Risk-based capital schedule. No comments were received on this aspect of the proposal. This schedule breaks out details of an FBO's risk-based capital computations. If this information is confidential in the home country, the FBO would have the option of providing this information in the FR 2068. For banks from countries that do not follow a risk-based capital format, information on capital computations required by their home country banking supervisor(s) would be required.

Q and A checkboxes. No comments addressed the proposal to add several questions that require either a yes or no response, or a box to check, to assist the respondents in providing a complete report and to assist Federal Reserve Banks in their review and analysis. The checkboxes will reduce the need for follow-up correspondence with respondents.

Nonbank Financial Information Summary (NFIS). The Federal Reserve will collect summary financial information on U.S. nonbank subsidiaries of FBOs on the NFIS. The free-form financial statements for U.S. nonbank subsidiaries have been replaced by specific schedules of core financial information that will be processed electronically. The new reporting format includes a principal schedule of thirty-three balance sheet and income statement items (such as loans, securities, assets, capital, and income) and four supporting schedules with a total of forty-one items. Nonbanking subsidiaries with total assets of more than $1 billion must complete the principal and supporting schedules; nonbanking subsidiaries with total assets between $150 million and $1 billion must complete only the principal schedule; and nonbanking subsidiaries with total assets of less than $150 million must respond only to six core items on the principal schedule; these items are denoted by an asterisk on the reporting form. This information will enable the Federal Reserve to better assess the condition of the U.S. nonbank financial activities of foreign banking organizations. Commenters made several suggestions regarding the NFIS including exempting various types of companies from reporting, clarifying the instructions, and eliminating one item from the schedule. Each of the comments is discussed below.

Exemptions from NFIS reporting. Two commenters requested exemptions for Regulation K, section 211.23(f)(3) (incidental activities) companies and another commenter suggested that the Board exempt section 4(c)(8) subsidiaries of section 2(h) (of the Bank Holding Company Act) companies from filing the NFIS because section 2(h) companies are themselves exempt. These commenters also requested that section 4(c)(9) companies be exempt from filing the NFIS. However, section 4(c)(8) and section 4(c)(9) companies are active financial entities in the United States and are subject to the same rules as U.S. subsidiaries operating under the Bank Holding Company Act. The incidental activities covered under section 211.23(f)(3) typically involve brokerage, investment advisory, and foreign exchange operations. The Federal Reserve believes that the NFIS information should be provided on these companies because they are engaged in financial activities in the United States and their parent FBOs are subject to supervision and regulation by the Federal Reserve. Thus, the Board believes that 4(c)(8), 4(c)(9), and incidental-activities companies should file the NFIS.

A commenter suggested that companies whose shares are held by the FBO as a result of debts previously contracted or in a fiduciary capacity should be exempt from filing the NFIS. The Board agrees that individual holdings should be exempt. However, DPC subsidiaries and companies formed specifically to hold fiduciary entities should file in the same manner as other companies.

Submitting a consolidated NFIS. A commenter stated that the Board proposed to significantly limit the conditions under which NFIS statements can be submitted on a consolidated basis, and asked that FBOs not be required to seek annual prior approval from Federal Reserve Banks. Rather, they favored gaining initial approval once those conditions were met and for as long as they remained in effect. This commenter further requested that Federal Reserve Banks be given the discretion to make exceptions to the consolidation rules. The Federal Reserve concurred and has amended the NFIS instructions.

Book value of nonbank subsidiaries on the NFIS. Five commenters noted that the amount at which a nonbank subsidiary is carried on the books of the FBO is highly confidential in some countries and should be collected in the FR 2068. After review, the Board decided that this information is not critical, and deleted the item from the form.

Fiscal-year reporting on the NFIS. A commenter asked that the Board clarify in the instructions to the NFIS that financial information may be prepared as of the end of the fiscal year of the nonbank subsidiary and not as of the end of the fiscal year of the FBO. The instructions have been clarified.

FR Y-7A

The FR Y-7A will collect structure information that was previously reported in Section II of the FR Y-7. Apart from making this a stand-alone report, two initially proposed revisions to the collection process were to collect the information on a flow basis and to implement exception reporting. Flow-basis reporting would have allowed the Federal Reserve to recommend eliminating the FR 4002. Commenters indicated that flow-basis reporting would be very burdensome. The Federal Reserve agreed that flow basis reporting would be burdensome and dropped this revision. However, this required dropping the proposal to discontinue the FR 4002. Annual exception reporting is designed to reduce burden and will be implemented. Annual exception reporting requires completing the entire FR Y-7A only once. In subsequent years, the Federal Reserve Bank will provide the FBO with a printout of its previously submitted structure information. The FBO will review the printout and annotate the information to indicate changes, instead of completing an entire report each year. This is helpful for those banks whose operations are not highly automated, and also may ease the burden of translating the report into English. Other comments included a request to modify Regulation K to exempt certain holdings from reporting, to refine the General Instructions of the FR Y-7A, and to clarify the instructions on reporting DPC shareholdings, fiduciary holdings, and dormant companies.

Flow-basis reporting. The Federal Reserve reviews the structure and activities of FBOs to determine if they are in compliance with applicable statutes and regulations. The Board initially proposed collecting information in Section II ("Activities Conducted in the United States") of the

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old FR Y-7 in a stand-alone report, the FR Y-7A, which would consist of two items: "U.S. Banking Activities" and "U.S. Nonbanking Activities." The Board further proposed that existing reporters complete both items in the first year and that new reporters complete both items at the time of their first filing. Subsequent changes in the information originally provided would be reported to the appropriate Federal Reserve Bank on a flow basis; that is, within thirty calendar days of such changes.

However, commenters objected to the burden associated with flow-basis reporting and asked that current reporting requirements be continued. They stated that the proposed reporting requirements would be very burdensome, particularly since FBOs would need to poll their affiliates regularly to determine organizational changes. They stated that not every structure and activity change is regularly reported to the parent organization. In addition, although the statutory control threshold is 25 percent or more in the United States, the control threshold in many other nations is 50 percent. Under U.S. statutes, when ownership of an affiliate reaches 25 percent, the affiliate would normally be considered a subsidiary, but in other countries it might be considered an "investment". The FBO may not have the legal authority to require information from an affiliate in which its ownership is only 25 percent.

Although the Federal Reserve would prefer to have this information reported as changes occur, the burden on the reporters outweighs the benefits to the Federal Reserve of receiving it within thirty calendar days of each change. Accordingly, the Board dropped the proposal to require flow-basis reporting. However, structure changes that require monitoring for compliance with the Bank Holding Company Act must continue to be reported within thirty days of the end of each quarter on the FR 4002, as required by Regulation K; all other changes must be reported annually on the FR Y-7A.

Request to modify Regulation K. A commenter stated that the costs of flow basis reporting would exceed the benefits of discontinuing the FR 4002, and requested modification of section 211.23(h) of Regulation K. Section 211.23(h) requires reporting, within thirty days of the end of a quarter, of all newly acquired shares of companies engaging in activities in the United States or of any U.S. activities commenced by companies in which the FBO already owns shares. Thus, this section requires the FBO to report information collected in the FR 4002. The requested modification would exempt respondents from reporting investments or activities permitted under section 211.23(f)(5), activities that are not incidental to international banking.

Reporting of non-voting equity interests in excess of 25 percent of any class of non-voting shares. The Federal Reserve initially recommended that FBOs report on the FR Y-7A investments of 25 percent or more of any class of non-voting equity of banks, bank holding companies, and other companies. Commenters said that reporting should not be required since the statutory control indicia normally do not apply to non-voting shares. The Board disagreed and remains concerned with foreign ownership of U.S. financial institutions of this magnitude, irrespective of the non-voting status of the shares. Several commenters indicated that reporting such non-voting interests in U.S. companies, other than banks and bank holding companies, would represent a significant increase in burden. In the interest of reducing burden, reporting will be limited to U.S. banks and bank holding companies, including all types of non-voting interests such as "equity kickers". This conforms to the reporting requirements of the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A; OMB No. 7100-0124) for domestic bank holding companies. One commenter requested that if non-voting equity interests must be reported then the requirement not be made retroactive. The Board decided to make the requirement retroactive so that the Federal Reserve will be cognizant of all such control situations. If an FBO cannot produce this information in a timely manner, a reasonable extension of time may be granted.

Reporting of shares held as a result of debts previously contracted. Comments were made on two revisions to how DPCs are reported. One commenter objected to the amount of information required about each DPC and proposed that the Board require only a listing of such holdings. The Board did not agree that a simple listing would provide sufficient information for monitoring these holdings. Another commenter stated that lowering the threshold for reporting DPCs, from ownership or control of 25 percent of any class of voting shares to ownership or control of 5 percent, is burdensome, especially when non-U.S. companies are involved, and asked that the 5 percent threshold be applied to only U.S. banking and nonbanking offices and subsidiaries. The commenters noted that in addition to the increase in the number of reportable holdings, the information would be difficult to obtain because these companies may be located worldwide. Further, the FBO may not have the authority to require these companies to share information. The Board decided to lower the threshold to 5 percent to ensure consistent treatment of domestic and foreign banking organizations ("national treatment") and to maintain consistency with FR Y-6A reporting requirements.

General Instructions. A commenter recommended clarifying the General Instructions to the FR Y-7A to distinguish companies that do business in the United States from those that have no U.S. presence, suggesting that the reporting requirements apply only to all U.S. companies and those non-U.S. companies that engage in business in the United States. The Board agreed and made the clarification. Another commenter noted that the list of reportable companies on page 1 of the instructions to the FR Y-7A is confusing and asked that it be eliminated. The Board has clarified the instructions. Two other commenters asked that the term "manages" be deleted from the definition of control since the term's definition differs from the statutory definition. In considering this comment, the Board determined that the instruction was redundant and deleted it.

Instructions on shares held in a fiduciary capacity. A commenter suggested that the Board modify the General Instructions to the FR Y-7A so the instructions state more explicitly the requirement that FBOs disclose fiduciary holdings of shares only under either of the following two conditions:

(1) More than 5 percent of the shares of a company are held in a fiduciary capacity for the benefit of the foreign banking organization, its shareholders, or its employees; or

(2) More than 5 percent of the shares in U.S. banks and bank holding companies are held in a fiduciary capacity by a subsidiary of the foreign banking organization that has the sole discretion to vote the shares.

This commenter also asked that the Board revise the instructions so that fiduciary holdings held for the benefit of employees or shareholders are reported only if they are held for the employees or shareholders as a class. The Board believes that the instructions adequately address the statutory and regulatory factors regarding fiduciary holdings. These instructions are similar to those provided for bank holding company reporters and therefore are consistent with the policy of national treatment.

Instructions on reporting of shares held in dormant companies. A commenter requested that the Federal Reserve not require reporting of dormant companies in the FR Y-7A and suggested instead to require an FBO to report the cessation and re-commencement of a business activity. However, the disposition of such holdings would not be known if the FBO stopped reporting them. Such holdings need not be reported until the company becomes active, but once active, it must be reported until divested, even if it becomes dormant again.

FR 2068

Five revisions were proposed for the FR 2068. After reviewing comments, one change was dropped and another was modified.

Filing exemption. The Federal Reserve eliminated the filing exemption for small companies in light of financial problems that developed in financial institutions with a relatively small presence in the United States. This added thirty-one respondents to the panel.

Earnings item. The Federal Reserve eliminated earnings information from the FR 2068 because this information is reported in the FR Y-7.

Past due loans. FBOs now must report specified information on past due loans to replace similar information previously submitted on a free-form basis in the FR 2068. The initial proposal provided three alternative methods for reporting this information. This has been reduced to two alternatives, with no loss of flexibility for the respondent, by rewording the instructions. An FBO may submit either an abbreviated table of information which is similar to that collected from domestic banks, or it may submit the same type of information that is provided to its home country supervisor. Notwithstanding these alternatives, a commenter noted that certain banks do not routinely collect this information on a past-due basis, but on the basis of whether interest is accruing. The Federal Reserve believes that the instructions for the past-due loans item provide sufficient flexibility; furthermore, the General Instructions to the FR 2068 state that FBOs may request permission to provide substitute information when undue burden is imposed by a particular item.

Filing directly with the Board. A proposed revision to the filing procedures of the FR 2068 would have required the FBO to submit the information to the appropriate Federal Reserve Bank rather than directly to the Board. The procedure of filing directly with the Board was developed because the FBOs desired strict confidentiality. Several commenters strongly advocated that this procedure be retained. One commenter, although not in objection to filing with Federal Reserve Banks, asked that the same security standards used by the Board be implemented at the Federal Reserve Banks. Specifically, the commenter requested that only one Federal Reserve Bank receive a copy of the FR 2068, that the Federal Reserve Banks not permit other regulators to have access to the information, and that secure areas be set up for storing the information. In response to these comments, the Board has decided that the procedure of filing with the Board be retained.

Expanded organization chart. The organization chart provides a listing of all corporate components of the foreign banking organization. The Federal Reserve initially proposed reporting both U.S. and non-U.S. interests of the principal shareholders of the FBO. Commenters noted that this requirement would significantly increase burden, and asked that the organization chart show only those foreign interests that are directly or indirectly engaged in business in the United States. Commenters also noted that a foreign banking organization normally cannot compel a shareholder to disclose personal information. In response to comments regarding burden and possible legal constraints with respect to collection of information on non-U.S. entities, the Federal Reserve dropped this reporting requirement with regard to strictly non-U.S. companies.

General Comments

Commenters addressed several matters regarding both the FR Y-7 and the FR 2068, including the reporting universe, implementation date, and glossary.

Instructions - Who Must Report. In response to a commenter, the following clarification has been added to the introduction to the General Instructions: "The Annual Report of foreign banking organizations is required to be filed by companies that are directly or indirectly engaged in the business of banking in the United States." Also, the term "organized under the laws of a foreign country" was deleted from the "Who Must Report" section, because an FBO could be organized, for example, under Delaware laws, and operate overseas and in the United States. The instructions thus revised will conform to the statutory definition of a required reporter.

Implementation date. A commenter requested that the NFIS section of the FR Y-7 and the FR Y-7A be implemented as of December 31, 1995. This request will be accommodated because the Board intends to use this implementation date for all sections of the reports. FBOs whose fiscal years end prior to December 30, 1995, will use the existing FR Y-7 and FR 2068 forms.

Glossary. A glossary has been prepared as part of the instructions to clarify certain terms and to reduce the number of footnotes in the forms. In response to comments, the Federal Reserve expanded the glossary to provide information on applicable statutes and regulations, defined additional terms, and clarified several definitions.

Respondent Burden. Commenters provided various burden estimates, all of which were substantially higher than the Federal Reserve estimates. One commenter stated that the Federal Reserve's combined burden estimate for the FR Y-7 and FR 2068 of 41 hours was much lower than the actual time spent by some FBOs. However, this commenter's estimate represented the burden on some of the larger and more complex organizations. The Federal Reserve's burden estimates are an average across all sizes of institutions and incorporate the higher burdens of large institutions. The Federal Reserve believes that the original proposal, having been substantially modified in response to comments, does not significantly increase the burden averaged across all 323 respondents.

Apart from total burden estimates, there were three specific proposed changes that commenters stated would significantly increase burden. One of these proposed changes was dropped and one was scaled back.

(1) The proposal that structure changes be reported on the proposed FR Y-7A on a flow basis, that is, within thirty days of their occurrence, was considered quite burdensome by commenters. The Federal Reserve decided not to require flow-basis reporting and dropped the proposal to discontinue the FR 4002, in which structure changes are reported quarterly.

(2) The proposal that FBOs report, in the FR Y-7A, investments of 25 percent or more of any class of non-voting equity of any company was scaled back. Now respondents report only such investments in U.S. banks and bank holding companies.

(3) In the existing FR Y-7, an FBO must report each company in which it owns or controls 25 percent or more of any class of voting shares as a result of debts previously contracted. The Federal Reserve changed the threshold

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at which these shares are reportable, from 25 percent to 5 percent.

The burden estimate for the existing FR Y-7 is 19.5 hours per response. Based on that estimate, along with net new burden, the Federal Reserve estimates that the collective burden for the FR Y-7 and FR Y-7A increased by one hour, to 20.5 hours per response. Considered separately, burden for the FR Y-7 is 12.0 hours and the FR Y-7A is 8.5 hours. The burden estimate for the FR 2068 is unchanged from 20.5 hours per response.

Final approval under OMB delegated authority of the extension, without revision, of the following report:

2. Report title: Notification Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations
Agency form number: FR 4002
OMB Docket number: 7100-0110
Frequency: On occasion
Reporters: Foreign Banking Organizations
Annual reporting hours: 60
Estimated average hours per response: 0.5
Number of respondents: 160
Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. §§1844(c), 3106, and 3106(a)].

This report is required within thirty days of the end of a quarter during which an FBO acquires shares of a company that engages, directly or indirectly, in business in the United States, or during which a foreign subsidiary of the FBO commences direct activity in the United States.

Abstract: The Federal Reserve, in its original proposal to revise the FR Y-7 and FR 2068, proposed to eliminate the FR 4002, because proposed changes to the FR Y-7 would have made the FR 4002 redundant. (See Vol. 60, FR 1779, January 5, 1995.) After review of public comments, the Federal Reserve modified the originally proposed revisions to the FR Y-7 such that it became necessary to retain the FR 4002.

Board of Governors of the Federal Reserve System, December 5, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-30036 Filed 12-8-95; 8:45 am]
Billing Code 6210-01-F

Proposed Agency Information Collection Activities; Comment

AGENCY: Board of Governors of the Federal Reserve System (Board).
ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Proposed revisions to the following currently approved collections of information have received approval from the Federal Financial Institutions Examination Council (FFIEC), of which the Board is a member, and are hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the proposed revisions should be modified prior to the agencies' submission of them to OMB for review and approval. Comments are invited on:

(a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 9, 1996.

ADDRESSES: Interested parties are invited to submit written comments the agency listed below. All comments should refer to the OMB control number.

Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions to the collections of information may be requested from the agency clearance officers whose name appears below.
Mary M. McLaughlin, Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Proposal to revise the following currently approved collection of information:
Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Form Number: FFIEC 002
OMB Number: 7100-0032.
Frequency of Response: Quarterly.
Affected Public: U.S. branches and agencies of foreign banks.
Estimated Number of Respondents: 557
Estimated Time per Response: 22.40 burden hours.
Estimated Total Annual Burden: 49,907 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (i.e., small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies (i.e., the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation).

Current Actions: The proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1996, report date. Nonetheless, as is customary for FFIEC 002 reporting changes, U.S. branches are advised that, for the March 31, 1996, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available.

The proposed revisions are summarized as follows:

New Items

FFIEC 002 items in the following areas would be added:

(1) Trading Assets and Liabilities

When off-balance-sheet derivative contracts held by U.S. branches for trading purposes are periodically marked to market (or the lower of cost or market, as appropriate), this process results in the recording of the fair values of derivatives that are in gain and loss positions as on-balance-sheet assets and liabilities, respectively. In order to monitor the magnitude of these fair values and changes therein, new items would be added for the reporting of these two amounts in the Memoranda section of Schedule RAL, "Assets and Liabilities."

(2) Past Due Derivatives

The FFIEC 002 does not currently require disclosures about off-balance sheet derivative contracts where the counterparty is not performing in accordance with the contractual terms. Although the number of such contracts is believed to be limited, the disclosure of exposures associated with such contracts will highlight, for supervisory purposes, the most immediate risks faced by a U.S. branch from its involvement with off-balance-sheet derivatives. Information about these past due derivatives would be added to the Memoranda section of Schedule N, "Past Due, Nonaccrual, and Restructured Loans." Amounts would be separately reported for derivatives that are past due 30 through 89 days and for those past due 90 days or more. Reported amounts associated with derivatives that are past due 90 days or more would also include information about derivatives that, while not technically past due, are with counterparties that are not expected to pay the full amounts owed to the institution under the derivative contracts. As with the information U.S. branches currently report in Schedule N, individual U.S. branch information on derivatives for which payments are delinquent would be treated as confidential.

In these new items, U.S. branches would first report the book value of any amounts carried as assets on the balance sheet that are related to those off-balance sheet derivatives for which any required payment from the counterparty is either past due 30 through 89 days or past due 90 days or more. In addition, in order to indicate the relative size and volume of those contracts where the counterparty is not performing, separate Memoranda items would be provided for reporting the current replacement cost (if positive) for those contracts that are past due 30 through 89 days and for those that are past due 90 days or more.

Instructional Changes

Changes, which may affect how some banks report certain information on the FFIEC 002, would be made to the instructions as follows.

(1) The FFIEC 002 Glossary entry for "Trading Account" would be revised to incorporate parallel changes to the FFIEC 031 instructions regarding report changes implemented since 1994 on trading assets and liabilities and the treatment of off-balance-sheet derivatives held for trading purposes. In addition, the Glossary entry's discussion of the accounting for transfers to or from a trading account would be brought into conformity with FASB Statement no. 115, "Accounting for Certain Investments in Debt and Equity Securities."

(2) The instructions for the reporting of commercial and industrial loans with remaining maturity of

(i) one year or less and

(ii) of more than one year in the loan schedule (Schedule C), would be clarified to exclude nonaccrual status loans in a manner consistent with the reporting of maturity and repricing data for loans and leases on the FFIEC 031. Clarifications or other conforming changes would also be made to several other instructions.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, December 5, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-30037 Filed 12-8-95; 8:45 am]
Billing Code 6210-01-F

Caisse Nationale de Credit Agricole, S.A.; Notice to Engage in Certain Nonbanking Activities

Caisse Nationale de Credit Agricole, S.A., Paris, France (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage through CAL FP (US), Inc., New York, New York (Company), in the following activities:

1. Acting as agent in the private placement of securities;

2. Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;

3. Providing securities brokerage services pursuant to 12 CFR 225.25(b)(15)(i) and (ii);

4. Providing investment advisory services pursuant to 12 CFR 225.25(b)(4);

5. Acting as broker or agent and providing advisory services with respect to interest rate and currency swaps and swap derivative products, and swaps, swap derivative products and over-the-counter options linked to certain commodities, stock, bond or commodity indices, a hybrid of interest rates and such commodities or indices, a specially tailored basket of securities selected by the parties, or single equity securities;

6. Providing advisory services, including discretionary portfolio management services, with respect to futures and options on futures on financial and nonfinancial commodities; and

7. Providing foreign exchange advisory and transactional services pursuant to 12 CFR 225.25(b)(17).

Notificant has stated that it anticipates that an affiliate of Company would act as principal in transactions with respect to which Company has provided advisory and/or transactional services. Company would provide the proposed services throughout the world.

Company is an indirect subsidiary of Credit Agricole Lazard Financial Products Limited, London, England (CALFP Holding). Notificant owns 75 percent of the capital of CALFP Holding, and Three Houses Investment Company, Limited, London, England

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(Three Houses), owns the remaining 25 percent. Notificant and Three Houses have equal voting rights in CALFP Holding. Three Houses is controlled by Lazard Freres & Co., LLC, New York, New York, Lazard Freres et Cie, Paris, France, and Lazard Brothers & Co., Limited, London, England.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Notificant maintains that the Board previously has determined by regulation or order that the proposed activities are closely related to banking. See 12 CFR 225.25(b)(4), (15), (17) and (19); *Security Pacific Corporation*, 74 Fed. Res. Bull. 820 (1988); *J.P. Morgan & Company, Incorporated*, 80 Fed. Res. Bull. 151 (1994); Swiss Bank Corporation, 81 Fed. Res. Bull. 185 (1995); *CS Holding*, 81 Fed. Res. Bull. 803 (1995); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989). Notificant has stated that Company would engage in the proposed activities in accordance with the limitations and conditions established by the Board in its regulations, related interpretations, and orders.

In order to approve the proposal, the Board also must determine that the proposed activities to be conducted by Notificant "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificant believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificant maintains that the proposal would enhance competition in the relevant markets and would enable Notificant to offer its customers a broader range of services. Notificant also maintains that its proposal would not result in any adverse effects in light of the commitments it has made to the Board, including commitments designed to address the Board's concerns over the separation of a banking organization's activities from the activities of a co-venturer. See *Banque Nationale de Paris*, 80 Fed. Res. Bull. 638 (1994); *The Chuo Trust and Banking Company*, 78 Fed. Res. Bull. 446 (1992).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30038 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

First United Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First United Bancorporation, Anderson, South Carolina; to acquire 100 percent of the voting shares of The Community Bank of Greenville, N.A., Greenville, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Wilson Bank Holding Company, Lebanon, Tennessee; to acquire 50 percent of the voting shares of DeKalb Bank & Trust, Smithville, Tennessee (in organization).

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30039 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Rodney G. Joy, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rodney G. Joy, Cranfills Gap, Texas; to acquire an additional 4.18 percent, for a total of 20.82 percent, and Bosque Bancshares, Inc. Employee Stock Ownership Plan, Rodney G. Joy, Trustee, Cranfills Gap, Texas, to acquire an additional 5.67 percent, for a total of 10.35 percent, of the voting shares of Bosque Bancshares, Inc., Cranfills Gap, Texas, and thereby indirectly acquire First Security State Bank, Cranfills Gap, Texas.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30040 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* in issuing commercial and standby letters of credit related to customers of The Foothill Group, Los Angeles, California, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and issuing shipping guarantees, pursuant to § 211.3(b)(1) of the Board's Regulation K.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30140 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Storm Lake Security Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Storm Lake Security Bancorporation, Storm Lake, Iowa; to become a bank holding company by acquiring 88.8 percent of the voting shares of Security Trust & Savings Bank, Storm Lake, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri; to merge with River Bend Bancshares, Inc., East Alton, Illinois, and thereby indirectly acquire Illinois State Bank & Trust, East Alton, Illinois.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30141 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Summit Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute,

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summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than December 28, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19106:

1. Summit Bancorp, Inc., Johnstown, Pennsylvania; to acquire Cambria Thrift Consumer Discount Company, Ebensburg, Pennsylvania, and thereby engage in making and servicing loans as a consumer finance company, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted throughout Cambria County, Pennsylvania.

In connection with this acquisition, Notificant also has applied to establish a new subsidiary, Value Finance Company, Johnstown, Pennsylvania, which will also make andservice loans through Cambria Thrift Consumer Discount Company.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30142 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Union Planters Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than December 26, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Valley Federal Savings Bank, Sheffield, Alabama, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30143 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 27, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey; to acquire UJB Commercial Corp., Hackensack, New Jersey, and thereby engage in making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made, for example, by commercial finance or factoring companies, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to engage in the leasing of personal property to the extent, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The Shorebank Corporation, Chicago, Illinois; to acquire the Austin Labor Force Intermediary, Chicago, Illinois (ALFI), and thereby consolidate ALFI with and into its subsidiary, Neighborhood Institute, Chicago, Illinois, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30041 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 110695 AND 111795

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ford Motor Company, Volkswagen AG, Autolatina America, Inc	96–0155	11/07/95
Appalachian Basin Partners, L.P., Equitable Resources, Inc., Equitable Resources Energy Company	96–0187	11/07/95
Compaq Computer Corporation, Walter Thirion, Thomas-Conrad Corporation	96–0192	11/07/95
Saratoga Partners III, L.P., Fisons plc (a British corporation), J&W Scientific Incorporated	96–0198	11/07/95
Sears, Roebuck and Co., Fay's Incorporated, Wheels Discount Auto Supply, Inc	96–0209	11/07/95
The Manitowoc Company, Inc., Trivest Institutional Fund, Ltd., The Shannon Group Inc	96–0204	11/08/95
Guilford Mills, Inc., Bruno Hofmann, Hofmann Laces, Ltd	96–0084	11/09/95
Century Communications Corp., American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd	96–0168	11/09/95
Unitog Company, Irving Laker, Act-Tex Corporation	96–0179	11/09/95
U.F. Holdings, Inc., The Fuji Bank, Limited (a Japanese company), Fixture Holding Company	96–0185	11/09/95
Catholic Healthcare West, Sierra Nevada Memorial-Miners Hospitals, Inc., Sierra Nevada Memorial-Miners Hospitals, Inc	96–0087	11/12/95
Wingate Partners II, L.P., Leonard Turnage, ITC Holding Company, Inc	96–0258	11/13/95
Harley-Davidson, Inc., Eaglemark Financial Services, Inc. Eaglemark Financial Services, Inc	96–0272	11/13/95
EMC Corporation, McDATA Corporation, McDATA Corporation	96–0201	11/14/95
Diamond Multimedia Systems, Inc., Dennis C. Hayes, Hayes Microcomputer Products, Inc	96–0207	11/14/95
Dennis C. Hayes, Diamond Multimedia Systems, Inc., Diamond Multimedia Systems, Inc	96–0208	11/14/95
VTEL Corporation, Peirce-Phelps, Inc., Peirce-Phelps, Inc	96–0213	11/14/95
WorldCom, Inc., James F. Corman, Touch 1 Communications, Inc	96–0218	11/14/95
Philip Morris Companies Inc., Del Monte Foods Company, Del Monte Corporation	96–0222	11/14/95
Collins & Aikman Corporation, Ronald T. Larizza, Larizza Industries, Inc	96–0225	11/14/95
TSB Group plc, Lloyds Bank plc, Lloyds Bank plc	96–0228	11/14/95
Erik Hvide Trust, OMI Corp., OMI Hudson Transport, Inc	96–0231	11/14/95
Erik Hvide Trust, General Electric Company, General Electric Capital Corporation	96–0232	11/14/95
Theodore Ammon, Brian Mason, Laser Tech Color, Inc	96–0234	11/14/95
OrNda Health Corp., Houston Northwest Medical Center, Inc., Houston Northwest Medical Center, Inc	96–0239	11/14/95
U.S. Office Products Company, Carithers-Wallace-Courtenay, incorporated, Carithers-Wallace-Courtenay, incorporated	96–0243	11/14/95
Heritage Media Corporation, DIMAC Corporation, DIMAC Corporation	96–0251	11/14/95
Den norske stats oljeselskap a.s., Aran Energy plc, Aran Energy plc	96–0254	11/14/95
Pearson plc (a British Corporation), Allied Communications, Inc., Allied Communications, Inc	96–0267	11/14/95
Tribune Company, Gaylord Entertainment Company, New Gaylord Broadcasting Company, L.P	96–0191	11/15/95
American General Corporation, Independent Insurance Group, Inc., Independent Insurance Group, Inc	96–0256	11/15/95
The Cleveland Clinic Foundation, Sisters of St. Joseph of the Third Order of St. Francis, Marymount Health Care Systems	96–0263	11/15/95
Bruce and Debra Scott, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0273	11/15/95
Robert E. and Kathryn Gracey Cannon, Buckeye Cellulose Corporation, Buckeye Cellulose Corporation	96–0283	11/15/95
IMI plc, Tremont Corporation, Titanium Metals Corporation	96–0214	11/16/95
Tremont Corporation, IMI plc, IMI plc	96–0215	11/16/95
Royal Plastics Group Limited, Novo Industries, Inc., Novo Industries, Inc	96–0223	11/16/95
William B. Sansom, Nash-Finch Company, Thomas & Howard Company of Hickory, Inc	96–0151	11/17/95
Citizens Utilities Company, American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd	96–0169	11/17/95
Wells Fargo & Company, First Interstate Bancorp, First Interstate Bancorp	96–0183	11/17/95
Atlantic American Corporation, Fuqua Enterprises, Inc., American Southern Insurance Company	96–0253	11/17/95
Newco, Cable TV Fund 11–B, Ltd, Cable TV Fund 11–B, Ltd	96–0257	11/17/95
Ronald O. Perelman, James E. McCrink, Seatt Corporation, Jasan Products, Ltd	96–0260	11/17/95
Alberto-Culver Company, St. Ives Laboratories, Inc., St. Ives Laboratories, Inc	96–0269	11/17/95
Lee G. Grown, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0270	11/17/95
Boston Ventures Limited Partnership IVA, Apollo Investment Fund, L.P., National Law Publishing Company, Inc	96–0274	11/17/95
Boston Ventures Limited Partnership IV, Apollo Investment Fund, L.P., National Law Publishing Company, Inc	96–0275	11/17/95
AlliedSignal Inc., Exxon Corporation, Paxon Polymer Company L.P	96–0276	11/17/95
Exxon Corporation, AlliedSignal Inc., Paxon Polymer Company L.P	96–0277	11/17/95
Duke Seabridge Limited, Smith Brothers Farms, Inc., Smith Tractor & Equipment Co. and Olympic Tracks and	96–0278	11/17/95
General Motors Corporation, STM Holding Corporation, STM Mortgage Company	96–0279	11/17/95
Mr. Jason Barzilay, Creative Technology, Ltd., Creative Technology, Ltd	96–0284	11/17/95
Creative Technology, Ltd., Reveal Computer Products, Inc., Reveal Computer Products, Inc	96–0285	11/17/95
The Robert Rosenkranz Trust, SIG Holdings, Inc., SIG Holdings, Inc	96–0286	11/17/95
Devon Energy Corporation, Union Oil Company of California, Union Oil Company of California	96–0293	11/17/95
Robert B. McKeon, Bliss & Laughlin Industries Inc., Bliss & Laughlin Industries Inc	96–0297	11/17/95
United States Surgical Corporation, E–Z–EM, Inc., Surgical Dynamics Inc	96–0300	11/17/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 110695 AND 111795—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cox Enterprises, Inc., James M. Moran, Greater Auction Group, Inc	96-0301	11/17/95
Trizec Corporation Ltd. (a Canadian corporation), Trizec Corporation Ltd., HSD/Horton Associates	96-0306	11/17/95
Madison Dearborn Capital Partners, L.P., Madison Dearborn Capital Partners, L.P., Buckeye Florida, L.P	96-0311	11/17/95
Madison Dearborn Capital Partners, L.P., The Proctor & Gamble Company, Buckeye Florida, Limited Partnership	96-0312	11/17/95
Mr. Kevin H. Azzouz, Seagate Technology, Inc., Seagate Technology, Inc	96-0313	11/17/95
Cox Enterprises, Inc., Dennis E. Hecker, The Greater Auction Group, Inc	96-0326	11/17/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-30083 Filed 12-8-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee and Idaho National Engineering Laboratory Worker Epidemiologic Study Public Meetings: Date Change

Federal Register Citation of Previous Announcement: 60 FR 58629—dated November 28, 1995.

SUMMARY: Notice is given that the meeting date for the Idaho National Engineering Laboratory Worker Epidemiologic Study Public Meeting (INEL), of the Centers for Disease Control and Prevention (CDC) has changed. The meeting time, place, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL DATE: December 13, 1995.

NEW DATE: December 12, 1995.

CONTACT PERSONS FOR MORE INFORMATION: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: December 6, 1995.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-30166 Filed 12-7-95; 11:22 am]

BILLING CODE 4163-18-M

Health Care Financing Administration

[ORD-061-N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: August and September 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the months of August and September 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3-11-07, 7500 Security Boulevard, Baltimore, MD 21244-1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786-3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) The principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Months of August and September 1995

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of August.

The following comprehensive health reform proposals were received during the month of September.

Demonstration Title/State: The Georgia Behavioral Health Plan—Georgia.

Description: Georgia proposes to provide behavioral health services under a managed care system through the section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who become newly eligible.

Date Received: September 1, 1995.

State Contact: Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street NW., Suite 27-100, Atlanta, GA 30303-3159, (404) 657-2012.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Demonstration Title/State: State of Texas Access Reform (STAR)—Texas.

Description: Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

Date Received: September 6, 1995.

State Contract: Cathy Rossberg, State Medicaid Office, P.O. Box 13247, Austin, TX 78711, (512) 502-3224.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

2. Pending Proposals

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency, PO. Box 5624, Montgomery, AL 36103-5624, (334) 242-5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271-4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, IL 62763, (217) 782-2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296-4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-21-04, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Demonstration Title/State: Kentucky Health Care Partnership—Kentucky.

Description: Kentucky proposes to enroll all non-institutional AFDC, AFDC-related, and aged, blind, and disabled Medicaid-eligible individuals in regional managed care networks operated by a sole-source contractor. The proposed start date of the demonstration is December 1, 1995.

Date Received: June 19, 1995.

State Contact: Larry A. McCarthy, Director, Program Development and Budget, Department of Medicaid Services, 275 East Main Street, Frankfort, KY 40621, (406) 444-4540.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850,

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821-2871, (504) 342-2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-18-26, 7500 Security Boulevard, Baltimore, MD 21244-1850,

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the

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Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65103–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low-income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses. The proposed enrollment date for Home Relief and AFDC recipients is November 1, 1995, followed by a 1-year enrollment period for the supplemental security income (SSI) population beginning January 1, 1997.

Date Received: March 17, 1995.

State Contact: Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, OK 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level (subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact: Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the months of August and September.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the months of August and September.

5. Approved Proposals

No proposals were approved during the months of August and September.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the months of August and September.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of August.

The following proposal was received during the month of September:

Demonstration/Title: Integrated Care and Financing Project Demonstration—Colorado.

Description: Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

Date Received: September 28, 1995.

State Contact: Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Contact: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals.

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact: Dann Milne, Director, Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer: Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled "Georgia Children's Benefit Plan" to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid beneficiaries.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, MD 21201, (410) 225–5206.

Federal Project Officer: William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995.

State Contact: Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

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Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact: Jean Shell, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the months of August and September.

4. Approved Proposals

No proposals were approved during the months of August and September.

5. Disapproved Proposals

No proposals were disapproved during the months of August and September.

6. Withdrawn Proposals

No proposals were withdrawn during the months of August and September.

IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779, Health Financing Research, Demonstrations, and Experiments)

Dated: November 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30066 Filed 12–8–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Influenza A PB2 Gene Technology

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA Collaborators for the joint research, development, evaluation, and commercialization of its influenza A polymerase basic 2 (PB2) patent portfolio. The inventions claimed in U.S. Patent Application Serial No. 08/123,933 ("Method for Generating Influenza A Viruses Bearing Attenuating Mutations in Internal Protein Genes," filed September 20, 1993), and its related patent applications, are available for either co-exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs for important clinical and research applications described below in the Supplementary Information section.

DATES: License applications must be received on or before March 11, 1996. CRADA proposals should be received on or before April 11, 1996 *for priority consideration.* However, CRADA proposals submitted thereafter will be considered until a suitable CRADA Collaborator is selected.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Claire T. Driscoll, Technology Transfer Manager, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 3B62, 9000 Rockville Pike, Bethesda, MD 20892; Telephone: 301/496–2644; Fax: 301/402–7123; E-mail: cd66y@nih.gov.

Licensing proposals and questions about this opportunity should be addressed to: Cindy K. Fuchs, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301/496–7735 ext. 232; Fax: 301/402–0220; E-mail: Cindy_Fuchs@nih.gov.

Information on the patent applications and pertinent information not yet publicly disclosed can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

SUPPLEMENTARY INFORMATION: This invention involves the use of modern molecular virologic techniques to introduce temperature sensitive (ts) attentuating mutations into a complementary DNA (cDNA) copy of the influenza A polymerase basic 2 (PB2) protein gene and to recover viruses bearing the mutant PB2 gene. Viral RNA (vRNA) transcribed in vitro from the PB2 DNA is transfected into avian kidney cells in the presence of an influenza A helper virus. The PB2 gene of the helper virus, which restricts its replication in mammalian cells, is substituted by the transfected mutant PB2 gene, which is known to function efficiently in mammalian cells. Using this system it has been possible to introduce three attenuating temperature sensitive mutations into the PB2 gene and to recover an infectious virus bearing this triple mutant gene. The virus bearing this mutant gene was highly attenuated in animals, was stable genetically even after prolonged replication in immunocuppressed rodents, and induced resistance to challenge with wild type influenza A virus. This gene can now be transferred from a donor virus to new epidemic or pandemic variants of influenza A virus as they appear in nature. The end result is a live attenuated reassortant influenza A virus vaccine that not only contains an attenuating PB2 gene from the attenuated donor but also the protective antigens, i.e., the hemagglutinin and neuraminidase glycoproteins, from the newly emerged wild type virus. Such a reassortant virus can serve as a protective vaccine, when administered into the respiratory tract of a vaccine, against disease caused by the epidemic influenza A viruses.

To speed the research, development, and commercialization of these agents, the NIH is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Proposals relating to any biomedical area will be considered.

The CRADA aims will include the rapid publication of research results consistent with protection of proprietary information and patentable inventions as well as the timely exploitation of commercial opportunities. The CRADA Collaborator will enjoy the benefits of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the National Institute of Allergy and Infectious Diseases will be as follows:

1. Provide the PB2 technology to the CRADA Collaborator.

2. Jointly develop a series of donor viruses containing the mutant PB2 gene with or without a second non-hemaglutinin (HA), non-neuraminidase (NA) attenuating gene.

3. Jointly produce a series of reassortants bearing current H1 or H3 hemagglutinins (HAs) for evaluation in clinical trials in humans.

4. Jointly produce experimental vaccines and evaluate them in clinical trials.

The role of the Collaborator(s) will be to:

1. Participate in joint activities 2–4 above.

2. Evaluate a variety of mammalian cell lines for production of live attenuated virus vaccines in lieu of production in the allantoic cavity of eggs.

Selection criteria for choosing the CRADA Collaborator(s) will include but are not limited to the following:

1. The ability to collaborate with the NIAID on further research and development of this technology. This ability can be demonstrated through experience and expertise in this and related areas of technology.

2. The demonstration of adequate resources to perform the research, development, and commercialization of this technology (e.g., personnel, expertise, and facilities) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The ability to perform clinical testing or trials, and obtain IND, ELA/PLA and FDA approval for a new vaccine or other products based on this technology.

4. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this technology.

5. The level of financial support to CRADA Collaborator will provide for CRADA-related Government activities.

6. The willingness to cooperate with the NIAID in the timely publication of research results consistent with the protection of proprietary information and patentable inventions that may arise during the period of the CRADA.

7. Agreement to be bound by DHHS rules and regulations involving human subjects, patent rights, ethical treatment of animals, and randomized clinical trails.

8. The willingness to accept the language and legal provisions of the NIH model CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to any inventions developed under the CRADA. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) The grant of an irrevocable, non-exclusive, royalty-free license for research purposes to the Government when the CRADA Collaborator's employee(s) is/are the sole inventor(s), or (2) the grant of an option to negotiate an exclusive or non-exclusive license to the CRADA Collaborator when a Government employee(s) is/are the sole inventor(s).

Dated: November 30, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30004 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of the rescheduling of the meeting of the Ad Hoc Clearinghouse Subcommittee of the National Deafness and Other Communication Disorders Advisory Council, the notice of which was published in the **Federal Register** 60 FR 55849 on November 3, 1995. This meeting could not be convened on November 16 due to the partial shutdown of the Federal Government. It is rescheduled for December 18 from 11:00 a.m. to 1:00 p.m., as a telephone conference call originating in room 3C05, Building 31, 9000 Rockville Pike, Bethesda, Maryland. The meeting will be open to the public, limited to space available.

Dated: December 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30001 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Physical Activity and Cardiovascular Health

Notice is hereby given of the NIH Consensus Development Conference on "Physical Activity and Cardiovascular Health," which will be held December 18–20, 1995, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on December 18, at 8 a.m. on December 19, and at 9 a.m. on December 20.

Over the past 25 years, the United States has experienced steady declines in the death toll from cardiovascular disease (CVD), primarily in coronary heart disease and stroke. Despite these declines, heart disease remains the number one and stroke the third leading cause of death. Lifestyle improvements by the American public and better control of the risk factors for heart disease and stroke have been a major factor in this decline.

Cardiovascular disease is of multifactorial etiology. Modifiable risk factors include high blood pressure, high blood cholesterol, obesity, smoking, diabetes, and physical inactivity. In contrast to the positive trends observed with the reduction of high blood pressure and high blood cholesterol, overweight and physical inactivity have been on the increase. In light of this, the accumulating evidence of the risk of cardiovascular disease associated with a sedentary lifestyle and the role of physical activity in the prevention and treatment of CVD and other CVD risk factors needs to be examined.

In 1991, 58 percent of adults reported that they exercised sporadically or not at all. Data from the 1990 Youth Risk Behavior Survey suggests that adolescents are less active than they were a decade ago. Only 37 percent of teenagers in grades 9 through 12 reported performing at least 20 minutes of vigorous exercise at least three or more times per week. About 50 percent of students reported they did not participate in physical education (PE) classes. Of those who reported participating in PE classes, 25 percent said they do not do any physical activity.

Physical activity not only independently protects against the development of cardiovascular disease but also has effects through the CVD risk factors of high blood pressure, high blood cholesterol, diabetes mellitus/insulin resistance, and overweight. The type, frequency, and intensity of the physical activity, however, remains controversial. Some experts suggest that moderate forms of physical activity can help prevent cardiovascular disease, while others suggest it must be vigorous and sustained.

Physical activity is also important in the treatment and management of patients with CVD or its risk factors, including patients who have stable angina, have suffered a myocardial infarction, or have heart failure. Physical activity is an important component of cardiac rehabilitation but questions remain regarding the type, frequency, and intensity needed for patients.

In addition, to potential benefits, questions remain regarding risks

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associated with becoming physically active and whether environmental factors affect possible benefits.

Becoming physically active is a lifestyle behavior that is influenced by many variables such as socioeconomic status, cultural influences, age, and health status. There is a need to understand how such variables influence the adoption of this behavior by various population groups including children, adolescents, adults, the elderly, and minority populations. Various intervention strategies might be more or less useful for encouraging individuals to adopt and comply with a physically active lifestyle. Different environments such as schools, work sites, health care settings, and family structures need to be examined for their role in promoting physical activity. In addition, costs and availability of adequate resources can influence the adoption of a physically active lifestyle.

The conference will bring together specialists in cardiology, exercise physiology, cardiovascular and behavioral medicine, epidemiology, nutrition, family practice, physical therapy, and nursing as well as representatives from the public on Physical Fitness and Sports.

Advance information on the conference program and conference registration materials may be obtained from: Debra DeBose, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, ddebose@tech-res.com.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning December 20, 1995 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: November 29, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–30008 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Antibacterial Therapy With Bacteriophage Genotypically Modified to Delay Inactivation by the Host Defense System

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application 08/222,956 and corresponding foreign patent applications entitled, "Antibacterial Therapy with Bacteriophage Genotypically Modified to Delay Inactivation by the Host Defense System" to Exponential Therapies, Inc., New York, New York 10001. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Alternatively, the subject technology may be licensed as a CRADA invention under 15 U.S.C. 3701 *et seq.* if it is determined to have been made in whole or in part under CRADA 94/0023.

The patent application concerns bacteriophage therapy and discloses methods that enable bacteriophage to delay inactivation by any and all parts of the host defense system (HDS) against foreign objects that would tend to reduce the numbers of bacteriophage and/or the efficiency of those phage at killing the host bacteria present during an infection. The application discloses two method for producing genotypically modified bacteriophage: (1) Selection by serial passaging and (2) genetic engineering. The foregoing methods can be used to manufacture a variety of distinct therapeutics for antibiotic-resistant bacterial diseases.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 263; facsimile: 301/402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the indicated exclusive field(s) of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before February 9, 1996 will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 1, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30003 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Activity Dependent Neurotropic Factor

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Applications 07/688,087, 07/871,973 and 08/324,297 and corresponding foreign patent applications entitled, "Activity Dependent Neurotropic Factor" to Pfizer Inc. of New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present patent applications cover a purified non-neuronal activity-dependent neurotropic factor (ADNF) protein that increases the growth and survival of developing spinal cord neurons and prevents neuronal cell death. It may have extensive use in treating various neurological deficiencies, such as Alzheimer's disease, Huntington's disease, diabetic neuropathy, spinal cord injury, HIV encephalopathy and stroke.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Girish C. Barua, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7735 ext. 263; facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses.

Only written comments and/or applications for a license which are received by NIH on or before February 9, 1996 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 28, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30005 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 50634, September 29, 1995), is amended to reflect a technical correction in the title and functional statement of the organization currently identified as the Office of Contracts and Grants Management, Office of Administration, Office of the Director, NIH (OCGM/OA/OD/NIH) (HNAB2). The correct title of this organization is the Office of Contracts Management.

Section HN–B, Organization and Functions, is amended as follows:

Under the heading Office of the Director (HNA), Office of Administration (HNAB), Office of Contracts and Grants Management (HNAB2), delete the title and functional statement in their entirety and substitute the following:

Office of Contracts Management (HNAB2)

(1) Advises the NIH Director and staff and provides leadership and direction for the NIH acquisition activities; (2) plans, develops and implements NIH-wide contracting policies and procedures and participates with other offices in the Office of the Director, NIH, and with the NIH awarding components in the coordination and implementation of Federal and Departmental acquisition policies and procedures; (3) plans, negotiates, awards, administers, and closes research and development and related contracts for those NIH Institutes, Centers, and Divisions (ICDs) electing to employ this centralized service and advises the Directors of those ICDs on research and development contracting issues; (4) maintains continuing reviews and evaluations of NIH contracting and purchasing operations to ensure adherence to the Federal Acquisition Regulation and all supplemental departmental and NIH policies and standards; (5) provides NIH grants and contracts operating offices with cost/price analysis services and technical advice on the adequacy of accounting systems and financial responsibility of prospective contractors and grantees; negotiates indirect cost rates with commercial organizations awarded contracts or grants; maintains liaison with the Office of the Inspector General, Office of Audit Services, and resolves findings in external audit reports; (6) plans, develops, and directs an NIH-wide Small Business Program in order to maximize contract and purchasing opportunities for small, disadvantaged, and women-owned businesses, and to monitor for compliance with applicable statutes and regulations; (7) analyzes and coordinates requirements for contract information relevant to the NIH IMPAC and higher-level contract data systems for the NIH; (8) analyzes, develops, and coordinates with appropriate departmental and NIH officials on initiatives pertaining to contract automated data and documentation systems, procurement planning and control, contract forms management and contract closure; and (9) manages the NIH acquisition training and certification activities under the Department's Acquisition Training and Certification Program; sponsors other professional acquisition training to attract, develop, and retain high quality personnel; and determines course equivalencies and grants waivers as necessary for employees who serve as project officers on contracts.

Dated: November 30, 1995.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 95–30002 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14954–A2, F–19148–37]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Olgoonik Corporation for 13,497 acres. The lands involved are in the vicinity of Wainwright, Alaska, within Tps. 14 and 16 N., Rs. 30 W., Umiat Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 10, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30060 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–JA–P

[OR–110–1220; G5–205]

Notice Rescinding Emergency Closure and Restriction on Public Lands Near West Fork of Williams Creek

AGENCY: Bureau of Land Management, Medford District, Grants Pass Resource Area, Interior.

ACTION: Public notice.

SUMMARY: The notice published on page 45489 in the issue of Thursday, August 31, 1995, closing entry to and prohibiting physical presence upon all lands, roads and trails near West Fork

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of Williams Creek in Josephine County, Oregon is hereby rescinded.

Dated: December 1, 1995.

Wayne M. Kuhn,

Associate District Manager.

[FR Doc. 95–29999 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–33–M

[AZ–933–05–1430–01; 5410–00–A113; AZA 4558, AZA 29367]

Notice of Realty Action; Termination of R&PP Classification; Correction Concerning Concession Lease; Application for Conveyance of Federally-Owned Mineral Interests (CMI)

AGENCY: Bureau of Land Management, Interior.

ACTION: (1) Termination/R&PP Classification; (2) Correction/ Concession Lease; (3) Segregation for CMI.

SUMMARY: (1) *AZA 4456.* The following described 80 acres were classified on June 17, 1971, for a private exchange.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 14 E.,
Sec. 8, NE¼SW¼, SW¼SW¼.

Since these lands were not conveyed in the exchange, the classification is terminated effective the date of this notice.

(2) In notice document 95–20925 beginning on page 43811 in the issue of Wednesday, August 23, 1995, make the following correction: On page 43812 in the first column, please delete the following: "Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under mineral leasing laws." This sentence does not apply to leasing land under regulations found at 43 CFR part 2920. All other details of the notice remain as originally published.

(3) *AZA 29367.* Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), the Dunne Family Trust, Alexander Dunne, and Thomas Griffin Dunne have applied to purchase the mineral estate in the following lands:

Gila and Salt River Meridian, Arizona

T. 23 S., R. 14 E.,
Sec. 34, NW¼.

The area described contains 160 acres.

Upon publication of this notice, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregation shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office (AZ933), 3707 North 7th Street, Phoenix, Arizona 85014, Phone: (602) 650–0518.

Dated: December 4, 1995.

Mary Jo Yeas,

Chief, Branch of Lands and Minerals Operations Section.

[FR Doc. 95–30006 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–32–M

[WY–923–5440–00–K017; WYW 133127]

Realty Action; Conveyance of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; airport conveyance to the City of Kemmerer.

SUMMARY: The following public lands in Lincoln County have been found suitable for conveyance to the City of Kemmerer for airport purposes under the Act of May 24, 1928, as amended and Section 516 of the Airport and Airway Improvement Act of 1982.

Sixth Principal Meridian

T. 21 N., R. 116 W.,
Sec. 2, lots 8 and 9;
Sec. 3, lot 5;
Sec. 11, lot 16;
Tract 58, lot 15.
T. 22 N., R. 116 W.,
Sec. 34, lot 4;
Sec. 35, lot 7.

The above land contains 194.06 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Conveyance of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Lincoln County Residents Under this conveyance Runway 16–34 at the Kemmerer Municipal Airport will be extended for safety purposes.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including a right-of-way, WYW 50098, to U.S. West Communications for a telephone line; a right-of-way, WYW 105806, to Utah Power and Light for a powerline; and a Federal-aid highway right-of-way, WYE 025956, to the Federal Highway Administration. The patent will be subject to the continued grazing of Ken Hankin under grazing permit GR–494055, until September 30, 1996, and Robert Peternal under grazing permit GR–494122, until October 3, 1996. Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the office listed below.

The conveyance is consistent with the Kemmerer Resource Management Plan. The land is not required for any other Federal purpose.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except applications for airport purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, Branch of Minerals & Lands Authorizations, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: December 4, 1995.

Melvin Schlagal,

Realty Specialist.

[FR Doc. 95–30009 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice was published on November 2, 1995, in FR Vol. 60, No. 212, 55727, pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). The comment period has been extended for an additional 5 days because of the public interest.

Applicant: Robert Dunn, Sylmar, CA, PRT–807838.

The applicant requests a permit to purchase in interstate commerce one captive-born female orangutan (*Pongo pygmaeus*) from Last Chance Farm of Florida for the purpose of enhancement of the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 5 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 5, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–30023 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Richard Olsen, Santa Cruz, CA, PRT–809107.

The applicant requests a permit for the import of one male and three female Chinese Monals (*Lophophorus lhuysis*) bred in captivity at the Forestry Department of Sichuan Province aviary, Baoxing, China, for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 1, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 95–30024 Filed 12–08–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Operations of ARCO Western Energy, Kern County, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that ARCO Western Energy has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–809228. The proposed permit would authorize the incidental take of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelia silus*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Joaquin woolly threads (*Lembertia congdonii*), Kern mallow (*Eremalche kernensis*) and the threatened Hoover's eriastrum (*Eriastrum hooveri*) and/or their habitat during the implementation of oil exploration activities. The permit will become effective for the following currently unlisted, covered species if they are listed under the Act: San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), southwestern pond turtle (*Clemmys marmorata pallida*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), San Joaquin LeConte's thrasher (*Toxostoma lecontei macmillanorum*), western burrowing owl (*Athene cunicularia hypugea*), slough thistle (*Cirsium crassicaule*) and the recurved larkspur (*Delphinium recurvatum*).

The Service also announces the availability of an environmental assessment (EA) for the incidental take permit application, which includes the proposed habitat conservation plan (HCP) fully describing the proposed project and mitigation, and the accompanying implementing agreement (IA). This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, EA and IA should be received on or before (January 10, 1996).

ADDRESSES: Comments regarding the application or adequacy of the EA and IA should be addressed to Mr. Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. Please refer to permit number PRT–809228 when submitting comments. Individuals wishing copies of the application, EA or IA for review should immediately contact the above office (916–979–2725).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton or Ms. Jody Brown, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916–979–2725).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Sacramento Field Office at the above referenced address, or by telephone at (916) 979–2725. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act, and implementing regulations, prohibit the "taking" of a species listed as threatened or endangered. However, the Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are promulgated at 50 CFR 17.22 and 17.32, respectively.

ARCO Western Energy proposes to conduct on-going oil production, operations and transportation activities on approximately 330 acres in Kern County, California. The age of the field makes routine maintenance, repair and sometimes replacement of active equipment necessary. In addition, ARCO Western Energy seeks coverage for operations and maintenance activities for pipeline, powerline, and emergency response activities outside of the Coles Levee oil field. Though the proposed project would remove 330 acres of suitable habitat for the San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, giant

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kangaroo rat, Kern mallow and Hoover's eriastrum, the HCP involves implementation of measures to minimize effects to the environment by utilizing previously disturbed lands for construction related activities to the greatest extent practicable, and designating Habitat Management Lands to compensate for the loss of natural lands. Compensation ratios for permanently disturbed habitat areas will be 3:1 (3 acres will be preserved for every 1 acre permanently disturbed); for areas considered to be temporarily disturbed, a ratio of 1.1:1 will be used (1.1 acres will be preserved for every 1 acre temporarily disturbed). In addition, direct harassment of any covered species will be avoided to the greatest extent practicable.

The EA considers the environmental consequences of four alternatives. The no project alternative would result in no immediate environmental impacts. However, state and Federal agencies regulating oil and gas activities would still require a variety of abandonment activities to occur over time; these activities may result in take of listed species. Thus, this alternative may place ARCO in violation of state and/or Federal regulations while denying ARCO Western Energy the opportunity to develop, recover and maintain potential oil resources. For these reasons, this alternative was rejected. Alternative 1, the proposed action, was selected because: (1) it best satisfies the needs and purpose of the proposed project; (2) it is likely to result in a relatively low level of incidental take; (3) impacts are mitigated through the establishment of the Coles Levee Ecosystem Preserve and the use of take reduction methods; (4) funding is available for the project as designed; and (5) high quality compensation habitat is present on the Coles Levee Ecosystem Preserve. It is anticipated that up to 330 acres of endangered species habitat may be impacted by implementation of this alternative. Alternative 2 involves the full development of the Coles Levee area for oil production. It is anticipated that up to 3,000 acres of endangered species habitat may be impacted by implementation of this alternative. This alternative was rejected because: (1) The level of incidental take would likely be greater than under the preferred alternative; (2) the additional level of mitigation funding is not economically feasible; (3) this intensity of development is not appropriate at this site based on oil reserves and extraction techniques. Alternative 3 involves the development of oil production facilities on an alternative site. This alternative is severely constrained by the lack of facilities on-site, the costs of constructing alternative facilities, land purchase, and the likelihood of any other areas suitable for oil production in this portion of California having similar endangered species concerns. It is anticipated that up to 10,000 acres of endangered species habitat may be impacted by implementation of this alternative. For these reasons this alternative was rejected.

The Service considers implementation of the proposed HCP in connection with a section 10(a)(1)(B) permit, to be an effective means to reconcile oil drilling activities with the section 9 listed species take prohibition and other conservation mandates under the Act.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final NEPA and permit determination will be made no sooner than 30 days from the date of this notice.

Dated: December 5, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–30058 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, January 24, 1996 at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. This meeting was previously scheduled for Wednesday, November 15, 1995, but due to the federal shutdown affecting national parks that week, the meeting was rescheduled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaos
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

The main agenda item at this meeting will be a presentation of a GGNRA Staff Report on the Golden Gate Bridge Seismic Upgrade Project. A public hearing on this project was held on Wednesday, December 13, 1995 at the Board of Supervisors and Planning Chambers, Marin County Civic Center, San Rafael, California. An overview of the Golden Gate Bridge District Seismic Retrofit Project was presented to this Advisory Commission on August 16, 1995 by Merv Giacomini, District Engineer, Golden Gate Bridge, Highway, and Transportation District. The major impacts to the park are anticipated to be on lands directly under the bridge, at Fort Point National Monument (requiring the Fort to close for several days a week during the one-year construction period), the Fort Scott area of the Presidio (which will be a staging area for construction work), and the north end of the bridge. Following approval of the Staff Report and approval of a Negative Declaration by the Golden Gate Bridge, Highway, and Transportation District board, and a Finding of No Significant Impact by the Federal Highway Administration and the National Park Service, a permit for construction activities on GGNRA land will be issued by the National Park Service incorporating agreed upon mitigation.

Also on the agenda at this meeting will be briefings on the status of a park entrance at East Fort Miley, on the Historical Compliance Process on the Presidio and GGNRA, and an update on the Bolinas Lagoon Management Plan.

This meeting will also contain a GGNRA Superintendent's Report and a Presidio General Manager's Report.

A specific final agenda for this meeting will be made available to the public at least 15 days prior to this meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after the meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 1, 1995.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 95–29946 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[No. MC–F–20757]

ANR Advance Holdings, Inc.—Merger and Control Exemption—ANR Freight System, Inc., Transport USA, Inc., and Advance Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice that the Commission has been requested to issue a finding that the cash price of $10 per share payable to the minority stockholders of Advance Transportation Company in connection with the recent merger of that corporation into ANR Freight System, Inc., is just and reasonable.

SUMMARY: On November 3, 1995, Advance Transportation Company was merged into ANR Freight System, Inc., which has been renamed ANR Advance Transportation Company, Inc. The terms and conditions of the merger included, among other things, a "cashing out" of all minority stockholders of Advance Transportation Company at a price of $10 per share. The Commission has been requested to issue a finding that the cash price of $10 per share payable to the minority stockholders of Advance Transportation Company in connection with the merger is just and reasonable.

DATES: Comments must be filed by January 10, 1996. Replies must be filed by January 25, 1996.

ADDRESSES: All pleadings should refer to No. MC–F–20757. Comments (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.[1] Comments should also be served (one copy each) on: (1) Warren Belmar, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004; and (2) James F. Moriarty, Fleischman & Walsh, P.C., Suite 600, 1400 16th Street, N.W., Washington, D.C. 20036. Replies (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Replies should also be served (one copy each) on: any persons filing comments; each of the approximately 675 participants in the employee stock ownership plan that formerly held stock in Advance Transportation Company; and each of the 39 former employees that held stock in Advance Transportation Company immediately prior to the recent merger.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The merger consummated November 3, 1995, was incidental to a control transaction that involved three motor carriers: ANR Freight System, Inc. (ANR Freight); Transport USA, Inc. (Transport); and Advance Transportation Company (ATC).[2]

Immediately prior to the merger and the control transaction, (1) ANR Freight and Transport were wholly owned direct subsidiaries of ANR Advance Holdings, Inc. (AA Holdings), which was itself a wholly owned direct subsidiary of ANRFS Holdings, Inc. (ANRFS), which was in its turn a wholly owned indirect subsidiary of The Coastal Corporation, and (2) ATC's stock was held by "principal stockholders" and by "minority stockholders." The ATC principal stockholders were eight individual family members, who collectively owned 78.4% of ATC's stock. The ATC minority stockholders included both an employee stock ownership plan (an ESOP), under which approximately 675 ATC employees were the beneficial owners of the stock held by the ESOP, and 39 former ATC employees, each of whom owned outright ATC stock that had formerly been held by the ESOP. The ESOP held 21.6% of ATC's stock; the 39 former employees held an additional 415 shares of ATC's stock.[3]

The control transaction of which the merger was a part involved the common control of ANR Freight, Transport, and ATC. Common control of these three motor carriers was obtained by AA Holdings, which already controlled ANR Freight and Transport, and which received, as part of the control transaction, the 78.4% stock ownership of ATC that had previously been held by the eight principal stockholders of ATC.

In connection with and incidental to the control transaction, (1) ATC was merged into ANR Freight, and ANR Freight was renamed (its new acronym is AATC), and (2) the principal stockholders of ATC acquired 50% of the stock of AA Holdings (prior to the transaction, ANRFS had held 100% of the stock of AA Holdings). In connection with and incidental to the merger of ATC into ANR Freight, ATC's minority stockholders (the ESOP and the former employees) were "cashed out" at a price of $10 per each share of ATC stock formerly held by such minority stockholders.

The merger and the broader control transaction were subject to our jurisdiction under 49 U.S.C. 11343(a). Accordingly, by notice of exemption filed August 23, 1995, five parties (ANR Freight, Transport, AA Holdings, ANRFS, and ATC) invoked the 49 U.S.C. 11343(e) class exemption codified at 49 CFR Part 1186. The notice was published in the *ICC Register* on September 1, 1995 (at pages 15–16), and it indicated that we had exempted, subject to public comment, both the merger of ATC into ANR Freight and the

[1] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, parties submitting pleadings should continue to use the current name and address.

[2] ATC was also licensed as a broker, but its broker status is of no particular consequence in the present context.

[3] The cited figures (the 78.4% holdings of the principal stockholders; the 21.6% holdings of the ESOP, on behalf of approximately 675 ATC employees; and the 415 shares held by the 39 former ATC employees) have varied somewhat through the course of this proceeding. We have therefore used the figures provided in the most recent pleading (the petition filed November 14, 1995), which we understand to represent the exact figures as they stood immediately prior to the merger of ATC into ANR Freight. We realize, of course, that the described ATC holdings add up to 415 shares above 100%. The context, however, suggests that either the 78.4% figure or the 21.6% figure has been rounded off, because the 415 shares held outright by former employees amount to approximately 0.07% of ATC's stock.

control by AA Holdings of AATC (the renamed survivor of that merger) and Transport.[4] Comments were due 30 days after publication of the notice, but none was filed. Accordingly, the exemption became effective on October 31, 1995. *See* 49 CFR 1186.7. The merger and the control transaction of which it was a part were thereafter consummated on November 3, 1995.

By petition filed November 14, 1995, AA Holdings and AATC (petitioners) request a determination verifying that the cash price of $10 per share payable to ATC's minority stockholders in liquidation of their ATC stock is just and reasonable.[5] Petitioners seek this determination (1) because they believe that we are required by *Schwabacher* v. *United States*, 334 U.S. 182 (1948), to make such a determination to protect minority stockholders, and (2) in order to immunize the ANR Freight/ATC merger from the otherwise applicable state law rights, particularly the otherwise applicable state law dissenters' rights, of the minority stockholders. *See* 49 U.S.C. 11341(a) ("A carrier, corporation, or person participating in [a transaction exempted under Title 49, Subtitle IV, Chapter 113, Subchapter III] is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction," etc.). Petitioners urge expedited handling of their petition.

Our statutory mandate, 49 U.S.C. 11344(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. *See, e.g., Union Pacific Corp. et al.—Cont.—MO–KS–TX Co. et al.*, 4 I.C.C.2d 409, 515 (1988) ("In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher* v. *United States*, 344 U.S. 182, 198, 201 (1948)."). To move this matter to a speedy resolution, we will proceed in an expedited fashion.

Because one or more of the eight principal ATC stockholders, although not "minority stockholders" in petitioners' usage of this term, could be "minority stockholders" in the *Schwabacher* sense,[6] our "just and reasonable" jurisdiction conceivably encompasses matters broader than the precise determination sought by petitioners. Petitioners, however, have the right to seek the narrow determination they have requested, and we will therefore limit our inquiry to the precise matter that petitioners have placed before us: Whether the cash price of $10 per share payable to ATC's minority stockholders in liquidation of their ATC stock is just and reasonable; and we will adhere to petitioners' usage of the term "minority stockholders" to embrace only the ESOP (under which approximately 675 ATC employees were the beneficial stockholders) and the 39 former ATC employees that held ATC stock outside the ESOP.

Accordingly, we solicit comments from all interested persons respecting whether the cash price of $10 per share payable to the minority stockholders of ATC is just and reasonable. Such comments must be submitted by January 10, 1996. Petitioners may file replies to such comments by January 25, 1996.

Petitioners have indicated that they will serve a copy of their petition (only the petition; not the appendix document) on each ESOP participant and on each of the 39 former employee stockholders. Petitioners have further indicated that they will serve a copy of the appendix document on any person requesting a copy. We expect that petitioners, if they have not completed such service of the petition prior to the date of publication of this notice, will complete such service no later than December 18, 1995.

Petitioners have noted that, as a matter of law, Federal Register publication is considered to provide notice to all interested persons. Due process considerations, however, suggest that, whenever possible, identifiable interested persons should receive actual notice rather than constructive notice. We will therefore require petitioners to serve a copy of this notice on each of the approximately 675 ESOP participants and on each of the 39 former employee stockholders. Such service should be accomplished by first class mail, postage prepaid, and all such notices should be mailed no later than December 18, 1995.

Petitioners should certify in writing, no later than December 21, 1995, that they have served copies of their petition and this notice in the manner indicated in the two preceding paragraphs.

Any interested person may request copies of the petition and/or the appendix document, in writing or by telephone, from Warren Belmar, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004 (telephone: 202–662–0200) or James F. Moriarty, Fleischman & Walsh, P.C., Suite 600, 1400 16th Street, N.W., Washington, D.C. 20036 (telephone: 202–939–7900).

In addition to submitting an original and 10 copies of all comments and replies filed with the Commission, commenters and petitioners are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). Petitioners are also encouraged to submit on such a diskette the petition and the appendix document (or so much thereof as can conveniently be submitted on such a diskette).

Decided: December 1, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30082 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–448 (Sub-No. 1X)]

SF & L Railway Inc.—Abandonment Exemption—in Ellis and Hill Counties, TX

SF & L Railway, Inc. (SF&L), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 18.23 miles of railroad between milepost 813.1, near Italy, and milepost 831.33, near Hillsboro, in Ellis and Hill Counties, TX.

SF&L has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic that must be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1105.7 (environmental reports), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 10, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 21, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[4] 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Jo A. DeRoche, 1350 New York Ave., N.W., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

SF&L has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 15, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 4, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30059 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32256]

Consolidated Rail Corporation—Control and Operation Exemption—Clearfield and Mahoning Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the control and operation by Consolidated Rail Corporation of Clearfield and Mahoning Railway Company, subject to standard labor protective conditions.

DATES: This exemption will be effective on January 7, 1996. Petitions to stay must be filed by December 18, 1995, and petitions to reopen must be filed by December 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32256 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative, John J. Paylor, 2001 Market St.–16A, P.O. Box 41416, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Dated: November 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30079 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *General Motors Corporation*, Civil Action No. 1:95–CV–02215, was lodged on November 30, 1995, with the United States District Court for the District of Columbia. The proposed Consent Decree resolves claims against General Motors Corporation for injunctive relief and civil penalties under the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the "Act"), arising from the sale of approximately 470,000 model year 1991–1995 Cadillac vehicles, certain model year 1991–1995 light duty vehicles, and certain model year 1989–1996 heavy-duty gasoline engines (collectively, the "covered vehicles and engines") in violation of the Act and the regulations promulgated thereunder relating to the emission of pollutants from mobile sources.

The proposed Consent Decree requires that General Motors Corporation: Implement a remedial recall campaign to reduce emissions associated with the climate-control system fuel-enrichment strategy employed on the Cadillacs that are the subject of the government's claims; establish a fund of up to $8.75 million to implement one or more emission remedial projects and an emission test program to remedy the past and future emission of air pollutants from the covered vehicles and engines; conduct tests of future model years of the covered vehicles and engines to assess the affects of accessory- and timer-based enrichment strategies; and pay a civil penalty of $11 million to resolve the United States' civil claims with respect to the vehicles and engines covered by the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

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[4] By separate decision served September 1, 1995, AA Holdings was authorized to assume temporary control of ANR Freight, Transport, and ATC pending final disposition of the exemption proceeding.

[5] The petition itself references, and is accompanied by, a substantial document entitled "Petitioners' Appendices," which we shall refer to as the appendix document.

[6] The eight principal stockholders owned, collectively, 78.4% of ATC's stock; what any one of the eight owned has not been indicated. Petitioners have indicated, however, that a 66⅔ vote was necessary for approval of the merger. A single principal stockholder acting alone could block the merger only if that stockholder held approximately 11.74% of ATC's stock (and any single principal stockholder might have been unable to block the merger even with 11.74% of ATC's stock; the 11.74% calculation assumes that no stock held by the ESOP and the former employees was voted in favor of the merger). It is immediately apparent that at least two of the principal stockholders each must have owned less than 11.74% of ATC's stock, because the eight principal stockholders together held only 78.4% of such stock.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[4] Legislation that will terminate the Commission on December 31, 1995, is now pending enactment. Parties submitting pleadings should continue to use the Commission's current name and address until further notice.

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comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Motors Corporation*, DOJ Ref. #90–5–2–1–2011 and 2011A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Judiciary Center Bldg., 555 Fourth St. NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202–624–0692. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 95–30065 Filed 12–8–95; 8:45 am]

BILLING CODE 4410–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

National Consultation on Drug Control

AGENCY: Office of National Drug Control Policy.

ACTION: The Office of National Drug Control Policy (ONDCP) is requesting an emergency review under the Paperwork Reduction Act. This is because ONDCP is required by law to deliver the 1996 National Drug Control Strategy and Budget document to the Congress in February, 1996, and the subject consultation is critical to the development of that Strategy.

SUMMARY: The Office of National Drug Control Policy, Executive Office of the President, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting a request to conduct a National Consultation on Drug Control, entitled "Consult With America." The ONDCP consultation survey instrument will be used to assess public opinion regarding perceptions of the use and impact of illicit drugs; the effectiveness of prevention, intervention and treatment programs; and level of public support for specific drug control actions. A telephone survey of a random sample of adults 18 years of age and older will be conducted.

DATES: ONDCP has requested an emergency review of this submission under the Paperwork Reduction Act; this Office of Management and Budget (OMB) review has been requested to be completed by December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the National Survey on Drug Control should be directed to Mr. N. Ross Deck, Senior Policy Analyst, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street NW., Washington, DC 20500, (202) 395–6736. Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Deck of this intent at the earliest possible date.

Average Burden Hours/Minutes per Response: 12 Minutes.

Frequency of Response: One time data collection.

Number of Respondents: 2,000.

Total Annual Burden Hours: 400.

Total Annual Response: 2,000.

Affected Public: Non-institutional adult (18 years of age or older) population residing in the U.S. at the household level.

Respondents Obligation to Replay: The survey is voluntary.

SUPPLEMENTARY INFORMATION: None.

Signed at Washington, DC, this 1st day of December, 1995.

N. Ross Deck,

Senior Policy Analyst.

[FR Doc. 95–30030 Filed 12–8–95; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company (Perry Nuclear Power Plant, Unit 1); Exemption

I

Cleveland Electric Illuminating Company, (the licensee) is the holder of Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant, Unit 1 (PNPP). The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a single boiling water reactor located at the licensee's site in Lake County, Ohio.

II

Containment leak rate testing is necessary to demonstrate that the measured leak rate is within the acceptance criteria cited in the licensing design basis. Periodic testing of the overall containment structure along with separate leak testing of the penetrations provides assurance that post-accident radiological consequences will be within the limits of 10 CFR Part 100. The Commission's requirements regarding leak rate testing are found in Appendix J to 10 CFR Part 50.

In its letter dated October 21, 1994, the licensee applied for partial exemptions from the Commission's regulations. The subject exemptions, which are from the requirements in Appendix J, Option A, to 10 CFR Part 50, include:

- Section III.A.5(b)(2) states that the measured leakage from the containment integrated leak rate (Type A) test (Lam) shall be less than 75% of the maximum allowable leakage rate (0.75 La).
- Sections III.B.3 and III.C.3 require that the combined leakage of valves and penetrations subject to Type B and C local leak rate testing be less than 0.6 times the maximum allowable leakage rate (0.6 La).
- Section III.A.1(d) requires that all fluid systems that would be open to containment following post-accident conditions, be vented and drained prior to conducting the containment integrated leak rate test.
- Section III.D.1(a) states that the third Type A test of each 10-year interval be conducted when the plant is shut down for the 10-year plant inservice inspection.
- Section III.D.3 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are tests intended to measure containment isolation valve leakage rates.

III

Section III.A.5(b)(2) states that the measured leakage from the containment integrated leak rate (Type A) test (L_{am}) shall be less than 75% of the maximum allowable leakage rate (0.75 L_a). The licensee proposes to exempt main steam line isolation valve leakage from Type A test results and consider leakage from the main steam lines separately. Sections III.B.3 and III.C.3 require that the combined leakage of valves and penetrations subject to Type B and C local leak rate testing be less than 0.6

times the maximum allowable leakage rate (0.6 L_a). The licensee proposes to exempt main steam line isolation valve leakage from the combined leakage from Type B and C local leak rate testing and consider leakage from the main steam lines separately. Section III.A.1(d) requires that all fluid systems that would be open to containment following post-accident conditions, be vented and drained prior to conducting Type A tests. The licensee proposes that the piping between the inboard and outboard main steam line isolation valves be flooded with water when Type A tests are conducted.

During the original staff review of the PNPP, the licensee proposed separate treatment of measured leakage past the main steam isolation valves. This approach is consistent with the staff's Standard Review Plan (SRP) 15.6.5, Appendix D, "Radiological Consequences of a Design Basis Loss-of-Coolant Accident: Leakage from Main Steam Isolation Valve Leakage Control System." In this SRP, the radiological consequences associated with leakage from the main steam lines is calculated separately and subsequently combined with the consequences from other fission product release paths.

As described in the Final Safety Analysis Report, the licensee calculates off-site dose consequences by assuming separate contributions from the containment integrated leak rate and the main steam line isolation valve leak rate. These assumptions are supported by the staff's Safety Evaluation Report (NUREG–0887) and the PNPP Technical Specifications. Both the FSAR and Specification 3.6.1.2.a state that the overall containment integrated leak rate shall be less than 0.20 percent per day. NUREG–0887 lists this same value for the containment integrated leak rate and a separate contribution from main steam line leakage. Finally, Specification 3.6.1.2.b specifically states that main steam line leakage will not be considered part of the combined leak rate for penetrations and valves. Specification 3.6.1.2.c limits the maximum allowable leakage from each main steam line to 25 standard cubic feet per hour.

As described above, the licensee does not include leakage from the main steam line isolation valves in either the Type A test results or the combined Type B and C test results. Since the licensee measures main steam line leakage separately from other Appendix J related testing, the licensee does not want leakage from the main steam lines to inadvertently influence the Type A test results. Therefore, in lieu of venting and draining the piping between containment isolation valves as required by Appendix J, the licensee proposes filling this section of piping with water when Type A tests are performed. Filling these sections of pipe with water would ensure that air would not pass through these lines and thereby contribute to the Type A test results.

The licensee has proposed alternative methods to the leak testing requirements of Appendix J. While the licensee is treating main steam line leakage separately from both Type A test results and the combined Type B and C test results, the licensee still meets the intent of Appendix J by demonstrating that the overall leakage is within design limits. Therefore, the staff concludes that special circumstances are present as required by 10 CFR 50.12(a)(2)(ii), in that application of the regulation is not needed to meet the underlying purpose of the rule. Furthermore, the staff finds that permitting the alternative methods of leak testing will not present an undue risk to the public health and safety.

Section III.D.1(a) requires, in part, that "* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10-years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface, and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the 10-year inspection interval. The major portion of this effort is presently being performed during the refueling outages. As a result, there is no extended outage in which the 10-year ISI examinations are performed.

There is no benefit to be gained by the coupling requirement cited above in that elements of the PNPP ISI program are conducted throughout each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR Part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems and components as well as verifying operational readiness of pumps and valves in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2)(ii). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

Section III.D.3 of Appendix J states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The licensee requested relief from the requirement to perform Type C tests during each reactor shutdown for refueling. The licensee proposes to perform the required Type C tests while the plant is at power.

Section II.D.3 of Appendix J requires that "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years." Paragraph III.D.2 discusses the scheduling of Type B tests and contains the same wording but also includes an additional provision that allows Type B tests to be performed at "other convenient intervals" in lieu of during reactor shutdown for refueling. The licensee has requested that this same flexibility be applied to Type C local leak rate testing.

The underlying purpose of the rule is to ensure that adequate testing is done to demonstrate containment integrity. From the standpoint of testing adequacy, when the testing is performed is not significant because the conditions of testing are the same regardless of when it is performed. As indicated by the licensee, the BWR/6 Mark III containment/suppression pool design is such that Type C local leak rate testing can be performed during power operation on certain systems. In addition, the Drywell and Containment Purge System containment isolation

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valves have surveillance requirements imposed on them to demonstrate leak tightness during power operation. These surveillance tests are the same exact leak rate tests as the Type C local leak rate tests performed during refueling outages.

Taking credit for testing performed during power operation provides the same degree of assurance of containment integrity as taking credit for testing performed during shutdown. In addition, testing while at power may be preferable when considering ALARA and operability requirements. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will not have a significant impact on the quality of the human environment (60 FR 51821). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation

[FR Doc. 95–30048 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

Cleveland Electric Illuminating and Ohio Edison Company, et al.; Notice of Transfer of Ownership of Perry Nuclear Power Plant

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under Title 10 of the *Code of Federal Regulations* (CFR), Section 50.80, of the transfer of 17.42% (except for related transmission facilities) of the ownership of the facilities for the Perry Nuclear Power Plant, Unit No. 1 (PNPP Unit 1) from the Ohio Edison Company (Ohio Edison) to a wholly owned subsidiary of Ohio Edison, OES Nuclear Inc. (OES). By "Application For License Transfer In Connection With Sale And Related Transactions" filed November 17, 1995, Ohio Edison informed the Commission that it will sell to OES on or before December 31, 1995, a 17.42% ownership interest in the PNPP Unit 1 facility, except for the transmission facilities that are a part of Unit 1. On January 1, 1996, or immediately thereafter, OES will enter into a take or pay steam sale agreement with Ohio Edison pursuant to which Ohio Edison will purchase from OES the steam generated by the interest in PNPP Unit 1 transferred to OES. OES will also grant Ohio Edison the right to utilize the turbine generator portion of PNPP Unit 1 transferred to OES. Both the agreement for the sale of steam and the grant of the right to use the turbine generator will run for the term of the PNPP Unit 1 license through completion of plant decommissioning. Pursuant to the terms of the arrangements, Ohio Edison will have the option to convert the steam purchase agreement and its right to utilize the Unit 1 turbine generator to a lease to itself of the interest in PNPP Unit 1 conveyed to OES.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to be a holder of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. Ohio Edison has requested consent under 10 CFR 50.80 to transfer of the license effectuated by the change in control of such ownership interest in PNPP Unit 1. Additionally, Ohio Edison has submitted a license amendment application, dated November 22, 1995, adding OES to the PNPP Unit 1 license, to reflect this transfer.

For further details with respect to this action, see the November 17, and 22, 1995 letters, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland this 4th day of December 1995.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30049 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–255]

Consumers Power Company; Palisades Plant; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its June 14, 1991 (as supplemented July 17, 1991, and January 10, 1992), application for a proposed amendment to Facility Operating License No. DPR–20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would have modified the facility operating license to allow an exception to the Palisades Final Safety Analysis Report requirement to perform the maximum hypothetical accident analysis in accordance with the Standard Review Plan, Section 15.6.5, Appendix B, Subsection II(1). The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 18, 1991 (56 FR 47233). However, by letter dated October 9, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 14, 1991, as supplemented July 17, 1991, and January 10, 1992, and the licensee's letter dated October 9, 1995, which withdrew the application for license amendment. The issue was addressed in a related safety evaluation dated January 9, 1995. Consumers Power Company will submit a revised maximum hypothetical accident analysis by January 1996. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

Marsha Gamberoni,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30047 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR part 50, Appendix J, Paragraph III, Leakage Testing Requirements, to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated November 28, 1995, as supplemented on December 6, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR part 50, Appendix J, Paragraph III.C and III.D, to the extent that exemptions would be granted due to system and penetration design.

The Need for the Proposed Action

The current Type C containment leak rate test requirements for Zion Nuclear Power Station, pursuant to 10 CFR part 50, Appendix J, Sections III.C and III.D.3 are that local leak rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. ComEd has determined that the required tests have not been performed previously on the penetrations that form the basis for this exemption request. The exemptions are needed to allow the licensee to use an alternate testing method and thereby realize considerable cost savings, less radiological exposure and fewer unit thermal cycles with no adverse impact on public health and safety.

Environmental Impacts of the Proposed Action

The proposed exemptions would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the possible leak paths, availability of the isolation valve seal water system, prior Type A leak test results as they are impacted by leaks from the types of valves in question and the probability of the sequences of events necessary for significant leakage to occur through the identified pathways. The licensee has provided an acceptable basis for concluding that in spite of the proposed exemptions the containment leak rates would still be maintained within acceptable limits.

Accordingly, the Commission has concluded that the exemptions do not result in a significant increase in the amounts of any effluents that may be released nor do they result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemptions only involve Type C testing of the containment. They do not affect nonradiological plant effluents and have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for exemptions. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on November 28, 1995, the NRC staff consulted with the Illinois State Official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letters dated November 28, 1995, as supplemented on December 6, 1995, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 7th day of December 1995.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30253 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Public Information Collection Requirements, Request for Public Input; Personal Reference Inquiry for Administrative Law Judge Positions; Notice of Intent To Request OMB Approval for Continuation of Form OPM–192

AGENCY: U.S. Office of Personnel Management.

ACTION: Announcement of information collection; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Office of Personnel Management (Office) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Personal Reference Inquiry for Administrative Law Judge positions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Comments are requested by February 9, 1996.

ADDRESSES: Direct all written comments to U.S. Office of Personnel Management,

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Administrative Law Judges Office, Room 6321, 1900 E. Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Office of Personnel Management, Attn: John E. Flannery, Room 6321, 1900 E Street NW., Washington, DC 20415, Tel. (202) 606–0810.

SUPPLEMENTARY INFORMATION: The Office invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Office's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the Office is soliciting comments concerning the following information collection.

Title: Personal Reference Inquiry for Administrative Law Judge Positions.

OMB Number: 3206–0043.

Form Number: OPM Form 192.

Abstract: OPM Form 192 is designed to collect information about an applicant's qualifications in as simple a manner as possible. It asks reference givers to circle statements indicating which of the behavioral statements describing the behavior of an attorney or a judge are most representative of the applicant. This format takes less time to complete and is less burdensome to the reference giver than the more traditional open-ended personal reference inquiry which asks for written statements assessing applicants' job qualifications. The circled marks on the returned form are easily scored.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Personal Reference Inquiry forms are not sent to small businesses or entities as such. However, the person from whom information is sought may be an employee or member of a small business or law firm. As explained in the above Abstract, the form is designed in a brief, six-question format which can be answered by including responses. Thus, the information collection burden on respondents is minimal.

Estimated Number of Respondents: Approximately 3,000 reference givers respond each year.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Legal Citations: Under the provisions of the Administrative Procedures Act of 1946 in pertinent part, now 5 U.S.C. 553–559 and 3105, and 5 U.S.C. 1104 and 3304, the U.S. Office of Personnel Management (OPM) is required to identify through competitive examination qualified applicants for appointment to Administrative Law Judge (ALJ) positions. Further, under 5 U.S.C. 1305, OPM is specifically authorized to collect such information and reports as it needs to carry out its responsibility for examining applicants for ALJ positions.

Dated: November 7, 1995.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–29881 Filed 12–8–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36550; File No. SR–Amex–95–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Listing Standards for Options on Equity Securities Issued in a Reorganization Transaction Pursuant to a Public Offering or a Rights Distribution

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is published this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its listing standards in respect of options on equity securities issued in a spin-off, reorganization, recapitalization, restructuring or similar transaction where the issuance is made pursuant to a public offering or a rights distribution.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the special listing standards set forth in Amex Rule 915, Commentary .05 that apply to options on equity securities issued in certain spin-offs, reorganizations, recapitalizations, restructurings or similar transactions (referred to herein as "restructuring transactions") so as to also include securities issued pursuant to a public offering or a rights distribution that is part of a restructuring transaction.

The proposed amendment to Rule 915, Commentary .05 is intended to facilitate the listing of options on equity securities issued in restructuring transactions (referred to as "Restructure Securities") by permitting the Exchange to base its determination as to the satisfaction of certain of the listing standards set forth in Exchange Rule 915 and Commentary .01 thereunder by reference to (1) specified characteristics of the "Original Security" in respect of which the Restructure Security was issued or distributed; (2) the trading market of the Original Security; (3) the number of shares of the Restructure Security issued and outstanding; or (4) to the listing standards of the exchange on which the Restructure Security is listed. Rule 915, Commentary .05 would permit the Exchange to certify a Restructure Security as options eligible sooner than if it had to wait until it could base its certification on characteristics of the Restructure Security itself, but only in circumstances where the factors relied upon make it reasonable to conclude that the Restructure Security will in fact satisfy applicable listing criteria.

As recently approved by the Commission, Amex Rule 915, Commentary .05 does not extend to restructuring transactions involving the issuance of a Restructure Security in a public offering or a rights distribution.[3] The questions raised by the proposed extension of Commentary .05 to Amex Rule 915 to reorganization transactions involving public offerings or rights distributions reflect that when a Restructure Security is issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead the holders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the holders of a Restructure Security issued in a rights distribution will be those persons who elected to exercise their rights. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public float and trading volume simply because the Original Security satisfied these criteria.

On the other hand, the Exchange believes that the same reasons for wanting to make an options market available without delay to holders of securities issued in reorganizations that do not involve public offerings or rights distributions apply with equal force to securities issued in reorganizations that do involve public offerings or rights distributions, so long as there can be reasonable assurance that the securities satisfy applicable options listing standards. That is, holders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be holders of both the Original Security and the Restructure Security following a reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchange believes that it is important to avoid any undue delay in the introduction of options trading in such a Restructure Security in circumstances where there is sound reason to believe that the Restructure Security does in fact satisfy options listing standards.

Accordingly, the Amex proposes to add new paragraph (d) to Commentary .05 of Rule 915, to address situations where a Restructure Security is issued pursuant to a public offering or rights distribution. Pursuant to the proposed rule change, the Exchange may certify the Restructure Security as satisfying minimum shareholder and minimum public float requirements on the basis provided for in approved Commentary .05(c), only after at least five days of "regular way" trading. Moreover, after due diligence, the Exchange must have no reason to believe that the Restructure Security does not satisfy these requirements. Additionally, in order to base certification on Commentary .05 of Rule 915, the closing prices of the Restructure Security on each of the five or more trading days prior to the selection date must be at least $7.50. Finally, as is required for all underlying securities selected for options trading, trading volume in the Restructure Security must be at lease 2,400,000 shares during a period of twelve months or less up to the time the security is so selected.

The effect of the proposed rule change is that a Restructure Security issued pursuant to a public offering or a rights distribution that is part of a reorganization will be eligible for options trading only if it satisfies all of the existing standards applicable to the selection of underlying securities generally, except that (A) the Exchange may assume the satisfaction of the minimum public ownership requirement of 7,000,000 shares and the minimum 2,000 shareholders requirement if (i) either the percentage of value tests of subparagraph (a)(1) of Commentary .05 are met or the aggregate market value represented by the Restructure Security is at least $500,000,000; *and if* (ii) the Restructure Security is listed on an exchange of an automatic quotation system having equivalent listing requirements or at least 40,000,000 shares of the Restructure Security are issued and outstanding, *and if* (iii) after the Restructure Security has traded "regular way" for at least five trading days and after having conducted due diligence in the matter, the Exchange has no reason to believe that these requirements are not met, and (B) subject to the same percentage of value or aggregate market value requirements, the Restructure Security may be deemed to satisfy the minimum market price per share requirement if it has a closing market price per share of at least $7.50 during each of the five or more trading days preceding the date of selection, instead of having to satisfy this requirement over a majority of days over a period of three months. (In the event the Restructure Security has a closing price that is less than $7.50 on any of the trading days preceding its selection, it will have to satisfy this requirement on a majority of trading days over a period of three months before it can be certified as eligible for options trading.) For any Restructure Security issued in a public offering or a rights distribution that does satisfy these requirements, the effect of the proposed rule change will be to permit its certification for options trading to take place as early as on the sixth day after trading in the stock commences, instead of having to wait for three months of trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued in public offerings or pursuant to rights distributions as part of restructuring transactions and other similar corporate reorganizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[3] See Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving Commentary .05 to Amex Rule 915).

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as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–95–47 and should be submitted by January 2, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30068 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36548; File No. SR–CBOE–95–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Telephone on the Floor of the Exchange

December 1, 1995.

I. Introduction

On August 25, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal regarding the adoption of a Regulatory Circular governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index ("OEX") options are traded. The proposed rule change was published for comment and appeared in the Federal Register on October 13, 1995.[3] No comments were received regarding the proposal.[4] This order approves the proposal.

II. Description of the Proposal

The purpose of the Regulatory Circular is to permit telephones located at the OEX trading post on the floor of the Exchange to provide members and clerks with access to outside lines for outgoing calls, subject to the conditions set forth in the Regulatory Circular. With the exception of the prohibition on the use of telephones at the OEX trading post to receive incoming calls, these conditions are the same as those the Commission previously approved governing the use of telephones at the equity option trading posts on the floor of CBOE.[5] Because there are no restrictions on where a member may place an outgoing call, telephones at the OEX trading post may be used to place orders in equity or futures markets.[6]

Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor without prior Exchange approval, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to this rule, the Exchange adopted the Regulatory Circular to permit the installation of outside telephone lines at the OEX trading post, and to adopt conditions governing their use.

The proposed rule change also imposes user fees on members who are approved to use Exchange-installed telephones located at the OEX trading post. The Exchange is adopting these fees pursuant to Exchange Rule 2.22, which permits the Exchange to impose fees on members for the rule of Exchange facilities or for any services or privileges granted by the Exchange.

The conditions imposed by the Regulatory Circular on the use of telephones at the OEX trading post are as follows:

1. The telephones may not be used to receive orders, but may be used to provide quotes that have been publicly disseminated pursuant to Rule 6.43.

2. Members may give their clerks their PIN access code. Although both members and clerks may use the telephones, members will have priority. Each member will be responsible for all calls made using that member's PIN access code.

3. Headsets will not be permitted on the telephones in the post pit. Portable or cellular phones also will not be permitted.

4. Clerks will not be permitted to establish a base of operation utilizing telephones at the OEX post.

5. Members and their clerks using the telephones are required to consent to recording of conversations on telephones at the OEX post.

6. The telephones are to be used for voice service only. Data services CPC's, fax, etc.) will remain subject to Exchange consent under a separate program.

7. Only outgoing calls may be made on the telephones; incoming calls are not permitted.

The Exchange intends to enforce these conditions as rules of the Exchange, and has advised members that violations may lead to formal disciplinary proceedings.

The Exchange's proposal is limited to outgoing calls only. The Exchange has stated that telephones at the OEX trading post should not be used to receive customer order until it has given further consideration to relevant regulatory issues, including how to provide customers with access to the trading floor on a fair and non-discriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers,

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36331 (October 3, 1995), 60 FR 53440.

[4] The Exchange previously filed a proposal concerning its OEX trading post telephone policy that became effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Securities Exchange Act Release No. 35725 (May 17, 1995), 60 FR 27575. The Commission received one comment letter objecting to the prohibition on the use of telephones at the OEX post to receive orders. Letter from David C. Boham, Jenner & Block, to Jonathan G. Katz, Secretary, Commission, dated June 14, 1995. The Commission published the CBOE's current proposal for a full 21 day comment period, and has received no comments.

[5] See Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336.

[6] The telephone policy also allows members to use the floor telephones to provide quotations on OEX options. In using the telephones for this purpose, members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

and how to surveil order-taking activity conducted over floor telephones.[7]

III. Discussion

The Committee finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets. Specifically, the Commission believes the proposed rule change should help to promote improved relationships between the OEX trading crowds and the member firms and facilitate efficient access to underlying markets. Providing procedures whereby members in the OEX options crowd can readily communicate with the off-floor offices of member firms as well as other locations off of the Exchange's trading floor, will allow them to obtain and transmit information more efficiently which may result in benefits to investors by improving execution of orders.

Further, incorporating the procedures contained in the Regulatory Circular into the Rules of the Exchange will enable the Exchange to monitor better the use of the floor telephones and to discipline members for violations of those rules. As noted above, because the proposed telephone policy does not restrict where a member may call, the telephones may be used to place orders in underlying stocks and in futures markets.[9]

With respect to equity-related transactions, while the telephones may give options market makers more immediate access to the market in the underlying securities, the Commission believes that the CBOE's surveillance systems currently in place are adequate to detect and deter any such attempts at manipulation including frontrunning. It also should be noted that the S&P 100 Index, on which OEX options are based, is a capitalization-weighted index of 100 different blue chip stocks. The fact that the value of OEX options is derived from the value of these stocks, combined with the large number of stocks included in the index, suggests that the type of information that may be available at the OEX trading post is not likely to be significant in predicting future changes in the index.

With respect to futures-related transactions, the Commission believes that the Exchange will be able to conduct adequately surveillance for improper activities as a result of the transaction information provided to the Exchange by the Chicago Mercantile Exchange ("CME") pursuant to the Exchange's surveillance sharing agreement with the CME. Although the surveillance information obtained by the Exchange would not indicate that the floor telephones were used to enter into a potentially improper futures transactions, the Exchange's ability to conduct surveillance for potential manipulation will not be hindered because of the existence of floor telephones at the OEX options posts on the floor of the Exchange. Additionally, the Commission also notes that surveillance information is shared through the Intermarket Surveillance Group ("ISG")[10] which the CME and the Chicago Board of Trade joined as affiliate members in 1990.

The Commission believes that the Exchange's prohibition on the use of telephones to receive incoming calls is justified by legitimate regulatory concerns. Specifically, issues such as the possible misuse of non-public information, the need to ensure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide adequate surveillance over this activity need to be addressed.

The Exchange's proposal also prohibits the use of portable, cellular, and headset telephones on the OEX options trading floor. Prohibiting the use of portable telephones aids in ensuring that market makers will be physically present at the OEX options trading posts where the options classes to which they have been appointed are traded. It is not unreasonable for the CBOE to take measures to ensure the physical presence of market makers at the OEX trading post in order to promote the maintenance of fair and orderly markets. The Exchange believes that the prohibition should enable it to monitor and control telephone usage at the trading post, and minimize disruption of trading at the post. In addition, the Exchange notes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service. As a result, the Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory concerns.[11]

The Exchange has represented that since the Regulatory Circular was issued and telephones at the OEX options trading post have been installed, the Exchange has not received any complaints concerning their use, nor detected any violations of the procedures set forth in the Regulatory Circular.[12]

Finally, the Commission believes that the CBOE's proposed fees for the use of the telephones are consistent with the requirement under Section 6(b)(4) of the Act that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. CBOE Rule 2.22 allows the Exchange to impose fees on members relating to the use of Exchange facilities or for any services or privileges granted by the Exchange. The Exchange has stated that the proposed fees generally will be the same as those charged for the use of telephones at the equity trading posts.[13]

In summary, because the Commission believes that installing telephones at the OEX options post on the floor of the Exchange may result in benefits to investors by allowing market makers to hedge their options positions more efficiently through improved immediate access to underlying markets while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper equity-related or futures-related trading activity, the Commission finds that the proposed rule change is

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[7] The Exchange states that it intends to consider these issues in the near future, and depending on its conclusions, the Exchange may determine to revise or eliminate these conditions pursuant to a subsequent rule filing under Section 19(b) of the Act.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] The proposed rule change also allows members to use the floor telephones for the purpose of providing quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

[10] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigate information sharing arrangements in the stock and options market. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stocks and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the Chicago Mercantile Exchange and the Chicago Board of Trade joined the ISG as affiliate members in 1990. See Intermarket Surveillance Group Agreement, July 14, 1983.

[11] This does not imply that the Exchange is prohibited from allowing portable telephones on its floor, subject to appropriate safeguards. Rather, that it is not inconsistent with the Act for the CBOE to prohibit them for the reasons discussed above.

[12] Telephone Conversation between Timothy Thompson, Senior Attorney, CBOE, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 21, 1995.

[13] Specifically, local calls over Exchange telephones will be charged at 10 cents per minute. Long distance calls over Exchange telephones will be charged at a rate 25% greater than the Exchange's direct costs. In addition, the Exchange will charge a $5 monthly fee for the use of the phones.

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consistent with the requirements of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–95–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30073 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36545; File No. SR–DTC–95–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change to Establish a Coupon Collection Service for Municipal Bearer Bonds

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 18, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–18) as described in Items I, II, and III below, which items have been prepared primarily by DTC. On October 30, 1995, DTC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to establish a coupon collection service program in order to provide its participants with a cost effective method for the collection of interest relating to the coupons from municipal bearer bonds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. DTC has prepared summaries, set forth in sections (A), (B), (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC seeks to establish a coupon collection service in order to provide DTC's participants with a cost-effective method for the collection of interest relating to the coupons from municipal bearer bonds. This service will include collection of coupons which are due in the future as well as past due coupons for DTC eligible and ineligible municipal issues payable in the United States. Past due coupons will be accepted for up to three years after the payable date.

DTC participants will be required to deposit coupons in a standard sealed envelope or "shell" with no more than two hundred coupons contained in any one shell. Only coupons for the same CUSIP number, series, and payable date can be enclosed in any one shell. Mutilated coupons will be required to be guaranteed by the depositing participant and placed into separate shells.[4] DTC will require that each shell contain the following information on its face: (i) CUSIP number; (ii) a description of the issue including municipality, state, purpose, series, date of issue, and maturity date; (iii) payable date; (iv) quantity of coupons enclosed; (v) dollar value of individual coupons; (vi) total shell value; (vii) participant number; and (viii) contact name and telephone number of the depositing participant. All shells must be accompanied by a complete deposit ticket that includes: (i) DTC participant number; (ii) shell quantity; (iii) total dollar value; (iv) CUSIP number per shell; (v) coupon quantity per shell; (vi) dollar value per shell; and (vii) whether the coupons are payable on a future date or are past due.[5]

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, DTC will immediately reject the entire deposit and will return it to the participant. DTC will neither inspect nor verify the shell contents prior to presentation to the paying agent. The depositing participant is responsible for the integrity of the shell contents. In the event of a coupon shell loss, the participant will be required to provide DTC with a full description (including certificate number) of the coupons contained in the shell.

Coupons may be rejected by the paying agent and returned to the depositing participant for a variety of reasons. The most common reasons for rejection are likely to include: (i) Mixed shell contents including mixed payable dates, mixed series or purposes, or mixed maturity years; (ii) incorrect count of shell contents; (iii) called certificate; (iv) mutilated coupon; (v) stopped certificate;[6] or (vi) issue in default.

DTC will act simply as a conduit between the participant and the paying agent. In this capacity, DTC will pass through rejected shells to DTC participants in the form received from the paying agent together with any paying agent documentation. DTC will neither inspect nor verify the contents of rejected shells. For shells rejected after the payable date, appropriate funds will be debited from the participant's account on the day the rejected coupons are returned to the participant.

Interest for coupons for which the paying agent is located outside of New York City that are deposited at least

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[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation ("Division"), Commission (October 26, 1995).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The validity of the coupon number, bond number, payable date, and payable amount of the mutilated coupon will be guaranteed by the depositing participant by a stamp affixed to the coupon executed by an authorized officer of such participant. In cases of a badly mutilated coupon, DTC may require a letter of indemnity. In the event a paying agent rejects a mutilated coupon, any credit made to the depositing participant's account with respect to such coupon will be reversed. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

[5] When the coupons are due in the future, each deposit ticket can have up to 50 shells attached to it, but each of the attached shells must have the same payable date. For past due coupons, shells with different deposit dates may be listed on the same deposit ticket. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division, Commission (October 26, 1995).

[6] A "stopped certificate" is a certificate for which a stop transfer instruction has been requested. A stop transfer instruction typically is initiated as the result of a lost or stolen stock certificate. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 26, 1995).

eight business days prior to payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located outside of New York City that are deposited less than eight business days prior to payable date will be credited to the participant ten business days following the date of the deposit. Interest for coupons for which the paying agent is located in New York City that are deposited at least five business days prior to the payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located in New York City that are deposited less than five business days prior to payable date will be credited to the participant seven business days following the date of the deposit. Interest for past due coupons will be credited to the participant as if they were received less than eight business days prior to the original payable date if the paying agent is located outside New York City and less than five business days prior to the original payable date if the paying agent is located in New York City.[7]

DTC will credit the accounts of its depositing participants on the foregoing payable dates without regard to whether DTC actually has received the interest payment from the issuer or paying agent as of such date.[8] All coupons deposited after 11:00 a.m. will be considered to be received the following business day. In addition, during the first quarter of 1996, a new Participant Terminal System function will be made available which will enable DTC participants to view the status of their coupon deposits.

DTC proposes to charge its participants the following fees for this service:

Shells deposited a minimum of 15 days before payable date: $4.50.
Shells deposited less than 15 days before payable date (including past due coupons): $5.25.
Rejected shells: $15.00.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments from DTC participants and others have not been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Room 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–18 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30072 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36544; International Series Release No. 897; File No. SR–GSCC–95–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Permitting Entities Established or Organized in a Foreign Country to Become Members of GSCC's Netting System

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 6, 1995, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–95–05) as described in Items, I, II, and III below, which items have been prepared primarily by GSCC. On October 30, 1995, GSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC's rules to enable entities that are established or organized in a foreign country and regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system.[3]

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[7] DTC will accept past due coupons into the coupon collection service program for up to three years after the original coupon payment date.

[8] According to DTC, payments due DTC from issuers and paying agents are received on or before the payable date between 97 and 98 percent of the time. Typically, late payments are the result of transmission problems or equipment failures that are unrelated to the ability of the issuer or paying agent to actually make such payments. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

[9] 15 U.S.C. §78q–1 (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (October 26, 1995).

[3] The netting system is a system for aggregating and matching offsetting obligations resulting from trades submitted by or on behalf of members in eligible securities. The resulting deliver, receive, and payment obligations are settled through designated clearing banks.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (C), and (B) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to permit entities that are organized or established under the laws of a country other than the United States ("foreign entities") and that are regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system. Currently, a foreign entity is eligible to apply to become a comparison-only member if it has demonstrated to GSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to GSCC's services. The proposed rule change also will establish new requirements applicable to foreign comparison-only members.

Currently, GSCC has eleven enumerated categories of netting system membership. A foreign entity is not eligible for any of these categories of netting membership. Nevertheless, foreign entities are among the most significant participants in the government securities marketplace and trade actively with many current netting members. Six of the seven firms on GSCC's list of grandfathered entities (Daiwa Europe Ltd.; Nikko Europe PLC; The Nikko Securities Co., Ltd., Tokyo; Nomura International PLC, London; Nomura International Inc., Tokyo; and Nomura Securities Co., Ltd., Tokyo) are foreign entities.[5] GSCC believes it is appropriate for regulated foreign entities to be eligible for netting system membership and proposes to establish a new category of netting system membership for such foreign entities.

GSCC recognizes that admitting foreign entities to netting system membership raises various unique issues and concerns for GSCC in connection with the legal and financial requirements for those entities, information sharing obligations, the requirements of the foreign entities' home country, and the physical presence of the foreign entities in the United States. GSCC's proposed rule change addresses each of these issues as discussed below. Except as otherwise indicated, the requirements set forth below are not applicable to a foreign entity that applies for membership only in GSCC's comparison system.

1. Legal Considerations

In order to address the particular legal concerns raised by the admission of foreign entities to netting system membership, GSCC will require foreign netting system applicants to enter into a special netting member agreement ("Agreement"). The Agreement, which generally requires the foreign netting system applicant to adhere to GSCC's rules, will provide that the Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Under the Agreement, the foreign entity (i) irrevocably waives all immunity for attachment of its assets in this country, (ii) irrevocably submits to the jurisdiction of a court in the U.S. with respect to any action or proceeding brought against it relating in any way to the Agreement, (iii) irrevocably waives any objection to the laying of venue in a court in the U.S., (iv) expressly states that any judgment obtained against it by GSCC may be enforced in the courts of any jurisdiction where it or any of its property may be found and will irrevocably submit to the jurisdiction of each such court, (v) agrees that payment of any judgment obtained by GSCC shall be in U.S. dollars, and (vi) agrees to provide GSCC with information on its financial condition and/or trading activity that is deemed pertinent by GSCC and understands and agrees that any such information may be provided by GSCC to the Commission.

GSCC further will require the foreign netting system applicant to submit an opinion of foreign counsel ("Opinion"). The Opinion must provide that the execution by the foreign entity of the Agreement with GSCC, the foreign entity's performance under the Agreement, and the exercise by GSCC of its rights and remedies under the Agreement will not conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator. In addition, the Opinion must state that the Agreement's provision for governance by and construction in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

The Opinion also must provide the (i) The waiver by the foreign entity of all immunity from attachment of its assets in the U.S. is valid and will be recognized and given effect by the courts of the foreign entity's home country, (ii) for foreign entity has the power to irrevocably submit to the jurisdiction of a court in the U.S. and to waive all objections to venue, (iii) any judgment obtained against the foreign entity by GSCC may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be found and its submission to the jurisdiction of each such court is valid and will be recognized and given effect by the courts of the foreign entity's home country, (iv) GSCC can institute in the foreign entity's home country an action for breach of the Agreement without first having to obtain a judgment against the entity in the U.S., and (v) GSCC can institute in the U.S. an action for breach of the Agreement without first having to obtain a judgment against the entity in the entity's home country. Finally, the Opinion must state that the foreign entity has the power to provide GSCC with information in its financial condition and/or trading activity that is deemed pertinent by GSCC and that neither the foreign entity's compliance with such a request nor the sharing by GSCC of such information with the Commission will conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator.

In addition to the Agreement and the Opinion, GSCC also will require any foreign netting system applicant to submit a designation specifying an appropriate person or persons located in the State of New York as its agent to receive service of process or other legal summons.

While there will be no special agreement applicable to a foreign entity that applies for membership in GSCC's comparison system, such entity will be required to provide to GSCC an opinion of foreign counsel stating that (i) the execution by the foreign entity of the comparison-only member agreement ("Comparison Agreement") with GSCC, its performance under that agreement, and the exercise by GSCC of its rights and remedies under that agreement will not conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator and (ii) the language in the Comparison Agreement providing that the agreement shall be governed by and construed in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

2. Minimum Financial Standards and Clearing Fund Requirements

GSCC also seeks to amend its rules to establish minimum financial standards and clearing fund requirements for foreign netting system applicants. The minimum financial standards, the clearing fund deposit, and any other payments or deposits called for under GSCC's rules required to be met by a foreign meeting system member will be the same as those applicable to the domestic netting system membership category that in GSCC's sole determination is most comparable in type to the foreign entity. In making this determination, GSCC will take into account, among other things, whether the entity's trading activity is done primarily for itself or for others. If a foreign netting system members falls out of compliance with its minimum financial requirements, the consequences of such noncompliance shall be determined by reference to the subsection of GSCC Rule 3, Section 5 that is applicable to the netting system membership category upon which the foreign entity's minimum financial standards are based.

3. Home Country Standards

In order to be eligible for netting system membership, the foreign entity will have to be in compliance with the financial reporting and responsibility standards of its home country. The foreign entity applying for netting system membership will have to be regulated in its home country in ways and pursuant to provisions comparable to those imposed on domestic members of a comparable type.

4. Information Sharing/Regulatory and Financial Reporting

To insure appropriate information sharing, the foreign entity applying for netting system membership must have a home country regulator that has entered into a memorandum of understanding with the Commission regarding the sharing or exchange of information. In its application for membership (either comparison-only or netting system), the foreign entity will have to agree to provide GSCC with all material regulatory filings made with its primary home country regulator over the prior year, audited financial statements for the prior three years, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members. Upon acceptance to comparison-only or netting system membership, a foreign member must provide GSCC with all material regulatory filings made with its primary home country regulator promptly following its filing with such regulator, audited financial statement, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members.

GSCC ordinarily will accept for financial monitoring purposes audited financial statements prepared in accordance with the home country's generally accepted accounting principles ("GAAP"). If GSCC believes that those statements are not satisfactory, it will assess whether the foreign entity can provide information equivalent to that information provided by financial statements prepared in accordance with U.S. GAAP. All required financial and other reports will have to be submitted to GSCC in English. All required financial reports will have to be submitted to GSCC in dollar equivalents indicating the conversion rate and date used.

As noted above, pursuant to the Agreement the foreign netting system member will have agreed to provide GSCC with information on its financial condition and/or trading activity deemed pertinent by GSCC and that GSCC may share this information with the Commission. In addition, GSCC will expect the foreign entity to prepare and provide to GSCC information in the form of unaudited financials sufficient for GSCC to monitor and assess the entity's financial condition on no less than a quarterly basis.

5. Physical Presence

With respect to the foreign netting member's physical presence in the U.S., GSCC will require every foreign entity to maintain an office in the U.S. either directly or through a suitable agent that (i) has available individuals fluent in English who are knowledgeable about the entity's business and can assist GSCC representatives as necessary and (ii) ensures that the foreign member can meet its data submission and settlement obligations to GSCC.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will extend the benefits of GSCC's netting and risk management processes to a broader segment of government securities market participants and will provide those benefits to trades of current members with foreign entity counterparties.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. GSCC members will be notified of the rule filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication in this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of

[4] The Commission has modified the text of the summaries prepared by GSCC.

[5] GSCC maintains a list of "grandfathered" entities which are non-netting system members that historically have done business with GSCC's interdealer netting members. Business done by the interdealer broker netting members with grandfathered entities is treated by GSCC as business done with an actual netting member. GSCC's goal is to eliminate the list of granfathered entities by having each of the entities on that list become a member of the netting system.

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5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–95–05 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30069 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36551; File No. SR–OCC–95–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending the Agreements Governing Non-Proprietary Cross-Margining Accounts of Market Professionals in the Cross-Margining Program Among The Options Clearing Corporation ("OCC"), the Intermarket Clearing Corporation ("ICC"), and the Chicago Mercantile Exchange, in the Cross-Margining Program Between OCC and ICC, and in the Cross-Margining Program Between OCC and the Kansas City Board of Trade Clearing Corporation

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 15, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–95–12) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On September 12, 1995, and on October 11, 1995, OCC filed amendments to the proposed rule change to include in addition to proposed changes to the agreements governing non-proprietary cross-margining ("XM") accounts in the XM program between OCC, The Intermarket Clearing Corporation ("ICC"), and the Chicago Mercantile Exchange ("CME"), proposed changes to the agreements governing non-proprietary XM accounts in the XM program between OCC and ICC and in the XM program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC"), respectively.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the agreements governing non-proprietary XM accounts of market professionals in the OCC/ICC/CME XM program, in the OCC/ICC XM program, and in the OCC/KCC XM program in order to implement the revised distributional scheme adopted by the Commodity Futures Trading Commission ("CFTC") in the new appendix to the CFTC's bankruptcy rules.[3] The proposed rule change also seeks to revise the terms of the agreements government the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and in the OCC/ICC XM program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to amend the agreements governing non-proprietary XM accounts of market professionals to correspond with the requirements of the distributional scheme adopted by the CFTC as a new appendix to its bankruptcy rules. The proposed rule change also seeks to conform the terms of the agreements governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to make the terms of those agreements substantially identical to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and the OCC/ICC XM program.

In November 1991, the Commission and the CFTC approved non-proprietary cross-margining.[5] As part of the CFTC's approval, it required each futures commission merchant ("FCM") participating in cross-margining to agree that all funds and property in a non-proprietary XM account would be treated as customer property subject to the segregation requirements of the Commodity Exchange Act[6] and to segregate such fund and property from that of non-XM customers. In addition, the CFTC required each market professional to subordinate its XM related claims to customer claims based on non-XM positions.

Pursuant to that subordination requirement, if a clearing member became insolvent, all non-XM customers of the FCM would be paid their pro-rata share of the combined segregated funds pool, including funds of XM market professionals, before the XM market professionals received any portion of their claims. The subordination was intended to insulate non-XM customers from losses arising from XM accounts. The subordination also ensured that the XM accounts of market professional would not be treated as accounts of securities customers subject to liquidation under the Securities Investors Protection Act of 1970[7] or the stock broker liquidation provisions of the Bankruptcy Code.[8] Therefore, the accounts could be liquidated as accounts of commodity customers under the commodity broker liquidation provisions of the Bankruptcy Code[9] and the CFTC's bankruptcy rules,[10] and both the Commission's order and the CFTC's order approving non-proprietary XM provide for such result.

The CFTC has adopted new rules that provide for a different distributional framework for funds and property carried in a non-proprietary XM account.[11] The new revised rules continue the concept of subordination for the purpose of ensuring that the market professionals' securities included in a XM account will be subject to commodity broker liquidation rules but modify the method for property distribution in the event of the liquidation of the firm(s) carrying the non-propriety XM account. Under the revised distributional scheme, FCMs will continue to make separate calculations for non-XM customers and XM market professionals, and funds deposited pursuant to those calculations will continue to be separately maintained. However, in the event of the failure of the firm(s) carrying the non-proprietary XM accounts, the respective shortfalls, if any, of the pools of funds would be determined as a percentage of the segregation requirement for each pool.

In the event of (i) No shortfall in either pool, (ii) an equal percentage of shortfall in both pools, (iii) a shortfall in the non-XM pool only, or (iv) a greater percentage of shortfall in the non-XM pool than in the XM pool, then the two pools of segregated funds would be combined and non-XM customers and XM market professionals would share pro rata in the combined pool. In the event of (i) a shortfall in the XM pool only or (ii) a greater percentage shortfall in the XM pool than in the non-XM pool, then the two pools of segregated funds would not be combined. Instead, XM market professionals will share pro rata in the pool of XM segregated funds while non-XM customers would share pro rata in the pool of non-XM segregated funds.

In order to implement the new distributional requirements, the clearing organizations operating non-proprietary XM programs must submit amended agreements to the respective regulatory authorities deleting the subordination requirement and substituting a reference to the CFTC's distribution rules. Accordingly, OCC is proposing to make those and other conforming changes[12] to the agreements governing non-proprietary XM accounts for the XM program among OCC, CME, and ICC, the XM program between OCC and ICC, and the XM program between OCC and KCC.[13]

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–12 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30070 Filed 12–8–95; 8:45 am]

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[2] Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 11, 1995, and October 10, 1995).

[3] The CFTC's distributional requirements are set forth in Appendix B to Part 190 of the CFTC's General Regulations. 17 CFR 190. The CFTC's distributional framework was adopted in April 1994. 59 FR 17468 (April 13, 1994).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] Securities Exchange Act Release Nos. 29901 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary XM program); 56 FR 61404 (Comm. F. T. Comm'n 1991) (order approving OCC/CME non-proprietary XM program); 30041 (December 5, 1991) 56 FR 64824 [File Nos. SR–OCC–90–04 and SR–ICC 90–03] (order approving OCC/ICC non-proprietary, market professional cross-margin program); and 56 FR 61406 (Comm. F. T. Comm'n 1991) (order approving OCC/ICC non-proprietary cross-margin program). In August 1993, the Commission approved expansion of the OCC/KCC XM program established in February of 1992 to include non-proprietary positions. Securities Exchange Act Release No. 32706 (August 2, 1993), 58 FR 42586 [File No. SR–OCC–93–13] (order approving OCC/KCC non-proprietary XM program).

[6] 7 U.S.C. § 6d(2) (1988) and 17 CFR 1.20 (1991).

[7] 15 U.S.C. §§ 78aaa–78*lll* (1988).

[8] 11 U.S.C. §§ 741–752 (1988).

[9] 11 U.S.C. §§ 761–766 (1988).

[10] 17 CFR 190.01–190.10.

[11] Supra, note 3.

[12] The conforming changes include terms that ensure that non-broker-dealer XM market professional will not be treated as "customers" for purposes of Rule 15c3–3 under the Act pursuant to the conditions set forth in the Commission's no-action letter dated July 31, 1995. Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Jean Cawley, OCC (July 31, 1995).

[13] In addition, pursuant to the amendment filed on October 11, 1995, OCC proposes to revise the agreements governing the proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms used in the agreements used in the OCC/ICC/CME and OCC/ICC XM programs.

[14] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21585; File No. 812–8666]

CIGNA Variable Products Group, et al.

December 4, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: CIGNA Variable products Group (the "Trust"), CIGNA Investments, Inc. ("CIGNA") and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company that is designed to fund insurance products and for which CIGNA, or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the "Funds") to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both

[14] 17 CFR 200.30–3(a)(12) (1994).

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affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); and (b) qualified pension and retirement plans outside of the separate account context (the "Plans").

FILING DATE: The application was filed on July 31, 1995 and amended on August 28, 1995. Applicants represent that an amendment to the application will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 1995, and accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Jeffrey S. Winer, Esq., CIGNA Variable Products Groups, 900 Cottage Grove Road, S–215, Hartford, Connecticut 06152–2215.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust. Currently, the Trust has one series of shares, the Companion Fund.

2. CIGNA serves as the investment advisor for the Trust. CIGNA is a Delaware corporation registered as an investment advisor under the Investment Advisers Act of 1940.

3. The Trust currently offers its shares to and its shares are held by CG Variable Annuity Account I ("Account I") and CG Variable Annuity Account II ("Account II") of Connecticut General Life Insurance Company ("Connecticut General"). Account I and Account II are separate accounts registered with the Commission under the 1940 Act as unit investment trusts. The Trust serves as the investment vehicle for variable annuity contracts issued by Connecticut General. Shares of the Trust are also sold to and held by Connecticut General on behalf of the Connecticut General Field Individual Deferred Compensation Plan.

4. Applicants state that, upon the granting of the order requested in this application, the Trust intends to offer shares of its existing and future portfolios to separate accounts, registered as investment companies under the 1940 Act, of Connecticut General and of other unaffiliated insurance companies (collectively, the "Accounts"), to serve as an investment vehicle for various types of insurance products. These products may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, the "Contracts"). The Trust also may offer shares of its portfolios directly to the Plans outside of the separate account context.

5. In connection with any Contract issued by a Participating Insurance Company, Applicants state that each such company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. Applicants further state that the role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the Accounts and to the Plans and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants state that, due to the applicable tax law, the Funds wish to avail themselves of the opportunity to increase their asset base through the sale of shares of the Funds to the Plans. The Plans may choose any of the Funds as the sole investment option under the Plan or as one of several investment options. Participants may be given an investment choice depending upon the Plan. Shares of any of the Funds sold to Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement income Security Act ("ERISA"). CIGNA will not act as investment advisor to any of the Plans that will purchase shares of the Funds. Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to participants in the Plans. Thus, Applicants state that there will be no pass-through voting provided to the participants in the Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment advisor, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares, "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b) (15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment advisor to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment advisor or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment advisor, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants further represent that the Funds' sale of shares to the Plans does not impact the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the

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exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

15. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any Participating Insurance Company, type of Contract, or Plan.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Account or the Plan is unable to net purchase payments to make the distributions, the Account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the Account into the general account to make distributions in accordance with the terms of the Contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the Funds will inform each shareholder, including each Account and Plan, of its respective share of ownership in the respective Funds. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

20. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a "senior security", as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually are unable to simply redeem their separate accounts out of one fund and invest those monies in another fund. Generally, to accomplish such redemption and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

22. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Plans and owners of the Contracts issued by the Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

23. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management; and the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment advisor, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

24. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and sharing funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors of each fund (each, a "Board") shall consist of persons who are not "interested persons" of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, CIGNA (or any other investment advisor of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants") will report any potential or existing conflicts to the Board.[1] Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever voting instructions of Contract owners are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants in the Funds under their agreements governing participation in the Funds. These responsibilities will be carried out with a view only to the interests of Contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that an irreconcilable material conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take any steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Funds and reinvesting such assets in a different investment medium including another portfolio of the relevant Fund or another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners, or variable contract owners of one or more of the Participants) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Fund, to withdraw its Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under the agreement governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners. For purposes of this Condition Four, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the relevant Fund or CIGNA (or any other investment advisor of the Funds) be required to establish a new funding medium for any Contract. Further, no

[1] Applicants represent that, during the notice period, an amendment to the application will be filed and that such amendment will extend the obligation set forth in condition three to "any other investment advisor of the Funds."

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Participant shall be required by this Condition Four to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participants.

6. Participants will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participants, where applicable, will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from Contract owners. Participants will be responsible for assuring that each of their Accounts that participates in the Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participants under the agreements governing their participation in the Funds. Each Participant will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to qualified plans; [2] (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in the Funds and the interests of Plans investing in the Funds may conflict; and (c) the Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants, and/or CIGNA, and/or its affiliates, shall submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data to the Boards, when the appropriate Board so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

12. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with the applicable Fund. A Plan will execute an investor's application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30071 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Applicants represent that an amendment to the application will be filed during the notice period, and that such amendment will include the representation regarding disclosure of the sale of shares of the Funds to qualified plans.

SMALL BUSINESS ADMINISTRATION

Specialized Small Business Investment Company (SSBIC) Advisory Council Public Meeting

The U.S. Small Business Administration, Investment Division (SSBIC) Advisory Council will hold a public meeting on Wednesday, December 13, 1995, at 9:00 a.m. The meeting will be held at the Law Office of Reid and Priest, 701 Pennsylvania Avenue, N.W., Eighth Floor, Washington Conference Room, Washington, D.C. This meeting was previously scheduled for Friday, November 17, 1995 but was cancelled due to the shutdown of the Federal government. The purpose of the meeting is to discuss matters as may be presented by Council members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Darryl K. Hairston, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Suite 6300, Washington, D.C. 20416 (202) 205–6510.

Dated: December 5, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–30022 Filed 12–8–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 2297]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 18, 1996 at 9:30 a.m. in Conference Room 1205, Department of State Building, 2201 C Street, N.W., Washington, D.C. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800, prior to December 30, 1995. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: November 20, 1995.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 95–30015 Filed 12–8–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending December 1, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–870.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/083 dated November 17, 1995 r–1—r–51
PSC/Minutes/031 dated November 17, 1995
Necessary Government Action Date: no later than April 5, 1996
Intended effective date: June 1, 1996

Docket Number: OST–95–871.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/081 dated October 23, 1995 r–1—r–11
PSC/Reso/082 dated November 17, 1995 r–12—r–13
Expedited Resolutions/Recommended Practices (A summary is attached. Minutes, filed this date with the non-expedited resolutions, are contained in PSC/Minutes/031.)
Intended effective date: Dec. 1/Jan. 1/Jan. 15/March 1, 1996

Docket Number: OST–95–872.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 760
Amend Mileage Manual
Intended effective date: December 1, 1995

Docket Number: OST–95–873.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 761
Amend Resolution 313
Intended effective date: December 15, 1995

Docket Number: OST–95–874.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/389 dated November 22, 1995
Expedited Resolutions, 18th PAConference
r–1–800t r–3–810 r–5–850d
r–2–800z r–4–826
Intended effective date: January 1/April 1, 1996

Docket Number: OST–95–875.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/P 0128 dated October 13, 1995
North/Mid/South Atlantic Resolutions r–1–r–36
Intended effective date: March 1, 1995

Docket Number: OST–95–881.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1831 dated November 14, 1995 r1–2
TC2 Reso/P 1832 dated November 14, 1995 r3–5
TC2 Reso/P 1833 dated November 14, 1995 r6–23
Europe-Africa Expedited Resos
Intended effective date: expedited December 31, 1995

Docket Number: OST–95–882.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1834 dated November 14, 1995 r1
TC2 Reso/P 1835 dated November 14, 1995 r2
TC2 Reso/P 1836 dated November 14, 1995 r3–10
TC2 Reso/P 1837 dated November 14, 1995 r–11
TC2 Reso/P 1838 dated November 14, 1995 r–12–13
TC2 Reso/P 1839 dated November 14, 1995 r14–16
TC2 Reso/P 1840 dated November 14, 1995 r17–24
TC2 Reso/P 1841 dated November 14, 1995 r25–31
TC2 Reso/P 1849 dated November 14, 1995 r32–34
TC2 Reso/P 1850 dated November 14, 1995 r35–37
TC2 Reso/P 1851 dated November 14, 1995 r38–40
TC2 Reso/P 1852 dated November 14, 1995 r41–42
TC2 Reso/P 1853 dated November 14, 1995 r43–46
TC2 Reso/P 1854 dated November 14, 1995 r–47
TC2 Reso/P 1855 dated November 14, 1995 r48–r53
TC2 Reso/P 1856 dated November 14, 1995 r54–56
TC2 Reso/P 1857 dated November 14, 1995 r57–59
TC2 Reso/P 1858 dated November 14, 1995 r60–61
TC2 Reso/P 1859 dated November 14, 1995 r62–63
TC2 Reso/P 1860 dated November 14, 1995 r64–66
TC2 Reso/P 1861 dated November 14,1995 r67–68
Within Europe Expedited Resos
Intended effective date: various dates starting Jan. 16, 1996

Docket Number: OST–95–883.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/P 1698 dated October 31, 1995
Mexico-Europe Resos r—1—26
Intended effective date: April 1, 1996

Docket Number: OST–95–884.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Reso/P 1089 dated November 10, 1995
Japan-North America/Caribbean Resos r1–13
Intended effective date: April 1, 1996

Docket Number: OST–95–885.
Date filed: November 28, 1995.

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Parties: Members of the International Air Transport Association.
Subject:
TC31 Reso/P 1089 dated November 10, 1995
Japan-North America/Caribbean Resos r1–13
Necessary Government Action Date: no later than February 10, 1996
Intended effective date: April 1, 1996
Docket Number: OST–95–892.
Date filed: November 30, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/P 1704 dated November 7, 1995 r1–12
TC12 Reso/P 1703 dated November 7, 1995 r13–23
TC12 Reso/P 1706 dated November 7, 1995 r24–39
North/Mid/South Atlantic-Africa resos
Intended effective date: April 1, 1996
Necessary Government Action Date: no later than February 1, 1996
Docket Number: OST–95–893.
Date filed: November 30, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1829 dated November 10, 1995
Within Africa Resos r1–22
Intended effective date: April 1, 1996
Necessary Government Action Date: no later than February 1, 1996
Docket Number: OST–95–894.
Date filed: November 30, 1995.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 762
Amend Mileage Manual
Intended effective date: January 1, 1996

Paulette V. Twine,
Chief Documentary Services Division.
[FR Doc. 95–30043 Filed 12–8–95; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 1, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–869.
Date filed: November 24, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 22, 1995.
Description: Application of Continental Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a five-year renewal of its Route 171 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Guam and Tokyo, Japan.

Docket Number: OST–95–885.
Date filed: November 29, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 1995.
Description: Application of Coastal Jet, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing interstate, foreign, and charter air transportation within the Continental U.S., Canada, the Caribbean, Central and South America.

Docket Number: OST–95–891.
Date filed: November 30, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 28, 1995.
Description: Application of Jetall Airways, Inc. pursuant to 49 U.S.C. Section 41302, applies for a foreign air carrier permit to provide nonscheduled foreign air transportation of property and mail under charter between a poifit or points in Canada, on the one hand, and a point or points in the United States, on the other hand.

Paulette V. Twine,
Chief Documentary Services Division.
[FR Doc. 95–30042 Filed 12–8–95; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 10, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joseph J. Brauer, Airport Manager, of the Rhinelander-Oneida County Airport at the following address: Rhinelander-Oneida County Airport, 3375 Airport Road, Rhinelander, WI 54507–9178.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhinelander-Oneida County Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 28, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rhinelander-Oneida County Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1996.

The following is a brief overview of the application.

PFC application number: 96–03–C–00–RHI.
Level of the proposed PFC: $3.00.
Proposed charge effective date: April 1, 1996.
Proposed charge expiration date: July 31, 2000.
Total estimated PFC revenue: $332,000.
Brief description of proposed project(s):

PROJECTS TO IMPOSE AND USE: Acquire Snow Removal Equipment, Update Airport Master Plan, Interactive Training Equipment, PFC Administration, Groove and Mark Runway 9/27.

IMPOSE-ONLY PROJECT: Terminal Building Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air.

Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport.

Issued in Des Plaines, Illinois on December 4, 1995.

Benito De Leon,
Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.
[FR Doc. 95–30100 Filed 12–8–95; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Jaguar

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).
ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Jaguar Cars Limited (Jaguar) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On July 31, 1995, Jaguar Cars, on behalf of Jaguar Cars Limited, submitted to NHTSA a petition for exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The petition has been filed pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Jaguar's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter to Jaguar dated August 18, 1995, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the line and the model year of its introduction.

In its petition, Jaguar provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter interrupt function and an alarm function. The antitheft device is activated by operating a radio frequency ("RF") transmitter or by removing the ignition key and locking the doors with it.

In order to ensure reliability and durability of the device, Jaguar stated that it conducted tests for performance under conditions of vibration, humidity, and temperature extremes, as well as for endurance, flammability, resistance to fluids, thermal shock, RFC and EMC, and overall performance. Jaguar stated its belief that the device is reliable and durable since the device complied with Jaguar's specified requirements for each test.

Jaguar also compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements.

Jaguar bases its belief on the ease of use of the antitheft system it is proposing for the new car line. In addition, it points out that other Jaguar models, which are all parts-marked, all have theft rates below the median theft rate according to NHTSA's vehicle theft data published on November 29, 1994 (59 FR 61023). Other aspects of the system cited by Jaguar as reasons why it should be as effective as parts-marking are the shielding of the driver's door lock barrel to prevent opening by "Slim-Jims" and other tools; the location of the hood latch control; location of the battery, which is protected by the security system; the capability of the alarm to function when the battery has been reconnected after having been disconnected; and a flashing LED and warning labels that advise unauthorized persons that the vehicle is protected by a security system. Jaguar believes that the theft rate for this vehicle line equipped with this antitheft device as standard equipment will be below the most recent median theft rate of 3.5826 published by NHTSA.

Based on evidence submitted by Jaguar, the agency believes that the antitheft device for the new Jaguar line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standards (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Jaguar has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Jaguar provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Jaguar for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Jaguar's petition for exemption for vehicle line (confidential) from the parts-marking requirements of 49 CFR Part 541.

If Jaguar decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

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NHTSA notes that if Jaguar wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden with Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 6, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30101 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–94; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 BMW 735IL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 BMW 735IL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 BMW 735IL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 10, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA had decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and for sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1991 BMW 735IL passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 735IL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 BMW 735IL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 BMW 735IL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 BMW 735IL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1991 BMW 735IL complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side convex rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag with a U.S.-model component; (d) installation of a U.S.-model knee bolster on the driver's side to augment the automatic restraint system. The petitioner states that the vehicle is equipped in each front designated seating position with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped in each outboard rear designated seating position with a combination lap and shoulder restraint that releases by means of a single push button, and with a lap belt in its rear center seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–30033 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Office of General Counsel (OGC) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than February 9, 1996.

ADDRESSES: Direct all written comments to Harold (Butch) Miller, Office of General Counsel (026A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the OGC request for Office of Management and Budget (OMB) approval. In this document OGC is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0018.

Title and Form Number: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The forms are used to appoint a service organization, attorney or agent as a representative in claims for VA benefits.

Current Circumstances: VA Form 21 will be evaluated by Office of General Counsel to determine qualification for accreditation and the need for cautionary instructions concerning conflict of interest. Applicants meeting the regulatory standards are issued an ID card allowing them access to VA files of claimants who have designated the service organization with which they are affiliated as claims representative and are issued a letter setting forth their responsibilities. Those denied accreditation, and their organizations, are informed of the reason for the denial. If the information were not collected, VA would have no way of evaluating applicants for accreditation under the requirements of 38 CFR 14.629.

VA Form 22a will be reviewed by VA's Veterans Benefits Administration. The information on the form will be used to ascertain the identity of the representative appointed by the claimant to represent him or her and the scope of the representative's authority to inspect records. This information is necessary for determining whether access to claimant records may be provided and for notification purposes. If the information were not collected, VA could not recognize the representative as the attorney or agent of the claimant under applicable statutes and regulations and could not provide access to claimant records.

Affected Public: Individuals and households, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Annual Burden: 1,650 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,600.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to

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Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 30, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–30010 Filed 12–8–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 237

Monday, December 11, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: December 13, 1995 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington D.C. 20426

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 643rd Meeting—December 13, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–2725, 040, Oglethorpe Power Corporation
CAH–2.
Docket# P–6901, 039, City of New Martinsville, West Virginia
CAH–3.
Docket# P–11402, 001, City of Crystal Falls, Michigan
CAH–4.
Docket# P–10867, 002, Holliday Historic Restoration Associates, LTD.
CAH–5.
Docket# P–1287, 000, Greenwood County, South Carolina
CAH–6.
Docket# P–2406, 002, Duke Power Company
CAH–7.
Docket# P–2465, 003, Duke Power Company
CAH–8.
Docket# P–2486, 002, Wisconsin Electric Power Company
CAH–9.
Docket# P–2643, 001, Pacificorp Electric Operations
CAH–10.
Docket# P–7174, 023, Truman Price, Inc.

Consent Agenda—Electric

CAE–1.
Docket# ER95–1625, 000, USGEN Power Services L.P.
CAE–2.
Docket# ER95–1139, 000, Carolina Power & Light Company
CAE–3.
Docket# ER96–108, 000, Duke/Louis Dreyfus L.L.C.
Other#s ER95–760 000, Duke Power Company
ER96–109 000, Duke Energy Marketing Corporation
ER96–110 000, Duke Power Company
CAE–4.
Docket# ER96–71, 000, Pacificorp
CAE–5.
Docket# ER94–1518, 000, Commonwealth Electric company
CAE–6.
Docket# ER95–1104, 000, Cleveland Electric Illuminating Company and the Toledo Edison Company
Other#s EC94–14, 000, Cleveland Electric Illuminating Company and the Toledo Edison Company
CAE–7.
Docket# FA91–65, 001, Kentucky Utilities Company
CAE–8.
Docket# ER94–108, 000, Heartland Energy Services, Inc.
Other#s ER94–475, 000, Wisconsin Power and Light Company
CAE–9.
Docket# ER95–1268, 001, Public Service Company of Colorado
CAE–10.
Docket# ER95–1545, 001, Commonwealth Edison Company
Other#s ER93–777, 005, Commonwealth Edison Company
ER95–371, 006, Commonwealth Edison Company
ER95–1539, 001, Commonwealth Edison Company
CAE–11.
Docket# TX93–4, 002, Florida Municipal Power Agency v. Florida Power & Light Company
Other#s EL93–51, 001, Florida Municipal Power Agency v. Florida Power & Light Company
CAE–12.
Docket# EL95–35, 001, Kootenai Electric Cooperative, Inc. et al. v. Public Utility District No. 2 of Grant County, Washington
CAE–13.
Docket# ER95–1230, 001, Niagara Mohawk Power Corporation
Other#s ER94–478, 002, Medina Power Company
CAE–14.
Docket# EL94–39, 001, City of Bedford, et al., Town of Richlands Virginia and Blue Ridge Power Agency v. Appalachian Power Company
CAE–15.
Docket# ER95–1843, 002, Illinois Power Company
Other#s EL96–20, 000, Illinois Power Company
ER95–764 003 Illinois Power Company
CAE–16.
Docket# TX93–2, 005, Cities of Bedford, Danville and Martinsville Virginia, Town of Richlands, and Blue Ridge Power Agency
CAE–17.
Docket# EL92–33, 003, Citizens Utilities Company
Other#s EL92–33, 001, Barton Village, Inc., Village of Enosburg Falls Water & Light Department, et al., v. Citizens Utilities Company
EL95–10, 000, Central Vermont Public Service Corporation v. Citizens Utilities Company
ER94–1209, 001, Citizens Utilities Company
ER94–1210, 001, Citizens Utilities Company
CAE–18.
Docket# EL95–36, 001, Jersey Central Power & Light Company
CAE–19.
Docket# EG96–14, 000, Mid Georgia Cogen L.P.
CAE–20.
Docket# EG96–16, 000, West Allegheny Biomass Energy Corporation
CAE–21.
Docket# EG96–17, 000, Kraftwerk Schkopau GBR
CAE–22.
Docket# EG96–18, 000, Kraftwerk Schkopau Betriebsgesellschaft MBH
CAE–23.
Docket# EG96–13, 000, NYC Energy group, L.P.
CAE–24.
Docket# EG96–10, 000, Northwest power company, LLC
CAE–25.
Docket# EG96–11, 000, CSW Development–3, Inc.
CAE–26.
Docket# EG96–19, 000, Kingston Cogen Limited Partnership
CAE–27.
Omitted
CAE–28.
Docket# EL91–43, 000, Southern Minnesota Municipal Power Agency v. Northern States Power Company (Minnesota)
CAE–29.
Omitted
CAE–30.
Docket# EL95–40, 000, Megan-Racine Associates, Inc.
Other#s EL95–47, 000, Megan-Racine Associates, Inc.
QF89–58, 001, Megan-Racine Associates, Inc.

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QF95–54, 002, Magan-Racine Associates, Inc.
CAE–51.
Docket# ER95–1536, 001, Florida Power Corporation
Other#s ER95–634, 002, Florida Power Corporation

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM96–1, 000, Supplemental Standards of Ethical Conduct for Employees of the Federal Energy Regulatory Commission

Consent Agenda—Gas and Oil

CAG–1.
Omitted
CAG–2.
Docket# RP96–5, 001, Carnegie Interstate Pipeline Company
CAG–3.
Docket# RP96–44, 000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Omitted
CAG–5.
Omitted
CAG–6.
Docket# PR95–15, 000, Olympic Pipeline Company
Other#s PR95–17, 000, Olympic Pipeline Company
CAG–7.
Docket# CP88–391, 016, Transcontinental Gas Pipe Line Corporation
Other#s CP88–391, 017, Transcontinental Gas Pipe Line Corporation
CAG–8.
Docket# PR95–11, 000, Egan Hub Partners, L.P.
CAG–9.
Docket# RP95–122, 011, Tennessee Gas Pipeline Company
CAG–10.
Docket# RP96–39, 000, Cove Point LNG Limited Partnership
CAG–11.
Docket# RP96–45, 000, ANR Pipeline Company
CAG–12.
Omitted
CAG–13.
Docket# RP95–409, 001, Northwest Pipeline Corporation
CAG–14.
Docket# RP95–43, 000, Pacific Gas Transmission Company
CAG–15.
Docket# RP94–120, 006, Koch Gateway Pipeline Company
CAG–16.
Docket# RP92–74, 011, South Georgia Natural Gas Company
CAG–17.
Docket# RP95–103, 000, Florida Gas Transmission Company
CAG–18.
Docket# RP94–227, 003, Transwestern Pipeline Company
CAG–19.
Docket# RP93–185, 010, Northern Natural Gas Company
CAG–20.
Docket# RP95–451, 001, Tennessee Gas Pipeline Company
CAG–21.
Docket# TM96–3–22, 001, CNG Transmission Corporation
CAG–22.
Docket# RP94–286, 007, Williams Natural Gas Company
CAG–23.
Docket# RP95–374, 002, Gas Research Institute
CAG–24.
Omitted
CAG–25.
Docket# RP95–296, 001, Williams Natural Gas Company
CAG–26.
Docket# RP95–429, 001, ANR Pipeline Company
Other#s
RP95–180, 001, ANR Pipeline Company
RP95–181, 002 ANR Pipeline Company
RP95–315, 001 ANR Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket# RP95–364, 002, Williston Basin Interstate Pipeline Company
CAG–29.
Docket# TM94–5–49, 003, Williston Basin Interstate Pipeline Company
Other#s
TM95–5–49, 003, Williston Basin Interstate Pipeline Company
CAG–30.
Docket# RP94–164, 008, Trunkline Gas Company
Other#s AC94–49, 002, Trunkline Gas Company
CP92–496, 006, Trunkline Gas Company
RP94–164, 007, Trunkline Gas Company
RP94–374, 002, Trunkline Gas Company
RP95–19, 002, Trunkline Gas Company
CAG–31.
Docket# RP91–166, 029, Northwest Pipeline Corporation
Other#s RP91–166, 028, Northwest Pipeline Corporation
CAG–32.
Docket# RP87–103, 016, Panhandle Eastern Pipe Line Company
CAG–33.
Docket# RP95–197, 006, Transcontinental Gas Pipe line Corporation
CAG–34.
Docket# OR95–7, 000, Longhorn Partners Pipeline
CAG–35.
Docket# CP86–760, 020, Transcontinental Gas Pipe line Corporation
CAG–36.
Docket# CP95–177, 001, Burton McDaniel, M.D. v. East Tennessee Natural Gas Company
CAG–37.
Docket# CP95–681, 001, Texas Eastern Transmission Corporation
CAG–38.
Docket# CP95–724, 001, Transcontinental Gas Pipe line Corporation
CAG–39.
Docket# CP93–258, 007, Mojave Pipeline Company
CAG–40.
Docket# CP93–613, 003, Northwest Pipeline Corporation
Other#s CP93–613, 004, Northwest Pipeline Corporation
CP93–673, 003, Northwest Pipeline Corporation
CP93–673, 004, Northwest Pipeline Corporation
RP95–413, 000, Northwest Pipeline Corporation
CAG–41.
Omitted
CAG–42.
Docket# CP94–575, 002, El Paso Natural Gas Company
CAG–43.
Docket# CP94–775, 002, Tennessee Gas Pipeline Company
CAG–44.
Docket# CP95–304, 001, Shell Western E&P Inc.
CAG–45.
Docket# CP86–111, 003, Great Lakes Gas Transmission Limited Partnership
Other#s CP86–26, 000, Great Lakes Gas Transmission Limited Partnership
CAG–46.
Docket# CP93–618, 004, Pacific Gas Transmission Company
CAG–47.
Docket# CP95–314, 000, East Tennessee Natural Gas Company
CAG–48.
Docket# CP95–581, 000, Midwestern Gas Transmission Company and Trunkline Gas Company
CAG–49.
Docket# CP93–566, 000, ANR Pipeline Company
Other#s CP93–564, 000, ANR Pipeline Company
CP93–564, 001, ANR Pipeline Company
CP93–564, 002, ANR Pipeline Company
CP93–564, 003, ANR Pipeline Company
CP93–566, 001, ANR Pipeline Company
CP93–566, 002, ANR Pipeline Company
CAG–50.
Docket# CP95–784, 000, Mountain Fuel Supply Company v. Prima Exploration, Inc., BTA Oil Producers and NGC Energy Resources, et al.
CAG–51.
Docket# CP95–22, 000, Anadarko Gathering Company
Other#s CP95–21, 000, Panhandle Eastern Pipe Line Company
CP95–23, 000, Panhandle Field Services Company
CAG–52.
Docket# RP95–212, 001, Kansok Partnership, Kansas Pipeline Partnership and Riverside Pipeline Company, L.P.
Other#s RP95–395, 001, Williams Natural Gas Company v. Kansas Pipeline Operating Company and Kansas Pipeline Partnership, et al.
CAG–53.
Docket# RP95–364, 001, Williston Basin Interstate Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# RM95–9, 000, Real-Time Information Networks and Standards of Conduct—Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters
PR–1.
Reserved
II. Pipeline Certificate Matters
PC–1.
Reserved
Dated: December 6, 1995.
Lois D. Cashell,
Secretary.
[FR Doc. 95–30199 Filed 12–7–95; 12:39 pm]
BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, December 14, 1995 at 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).
STATUS: This meeting will be open to the public.
ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes
Advisory Opinion 1995–42: Jim McCrery on behalf of McCrery for Congress
Administrative Matters
DATE AND TIME: Thursday, December 14, 1995 will convene following the Open Meeting.
PLACE: 999 E Street NW., Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee
PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 95–30264 Filed 12–7–95; 2:42 pm]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Wednesday, December 13, 1995.
PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.
STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:
• Second Round 1995 AHP Applications Approval for the FHLBanks of Boston, New York, Cincinnati, Chicago, Des Moines, Dallas, Topeka, San Francisco and Seattle
• Approval of AHP District Priorities
• Approval of an AHP Award for First Union National Bank of Georgia
• Review of Finance Board Policy for Directors Fees and Expenses
• Appointment of FHLBank Public Interest Directors
• Appointment of FHLBank Chairs
• Repeal of Finance Board Regulation on Charitable Donations by the FHLBanks
MATTER TO BE CONSIDERED DURING PORTIONS CLOSED TO THE PUBLIC:
• FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances
CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.
Rita I. Fair,
Managing Director.
[FR Doc. 95–30211 Filed 12–7–95; 12:41 pm]
BILLING CODE 6725–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on December 18, 1995. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.
LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002.
STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may be briefed by management on internal operational and personnel matters. In addition, the General Counsel will report to the Board on litigation to which the Corporation is or may become a party and the Board may act on the matters reported. Finally, the Board may be briefed by the Inspector General on activities of the Office of Inspector General.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. section 552b(c)(10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. section 1622.5(h)]. A copy of the General Counsel's certification that the closing is authorized by law will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE, Washington, DC 20002, in its 11th floor reception area, and will otherwise be available upon request.

[1] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act. Notice of the briefings is here provided as a courtesy to the public.

MATTERS TO BE CONSIDERED:

Open Session
1. Approval of Agenda.
2. Approval of Minutes of October 6, 1995, meeting.
3. Approval of Minutes of October 6, 1995, Executive Session.
4. Election of Corporate Secretary.
5. Chairman's and Member's Reports.
6. President's Report on Status of Reauthorization for LSC and LSC's FY '96 Appropriations.
7. Inspector General's Report.
8. Consider and act on Board's Operations and Regulations Committee report on:
   a. Proposed Regulation restricting LSC-funded representation in certain eviction proceedings.
   b. Proposed Regulation requiring timekeeping by LSC grantees.
   c. Proposed Regulation governing competitive bidding of LSC grants.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Committee on the Provision for the Delivery of Legal Services.
11. Announcement of action taken by notational vote on draft Board Response to the Office of Inspector General's Semiannual Report to Congress for the Period of April 1, 1995–September 30, 1995.

Closed Session
12. Report of the Board's Special Litigation Committee.
13. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
14. Inspector General's briefing of the Board on activities of LSC's Office of Inspector General.
15. Management's briefing of the Board on internal operations and personnel matters.

Open Session
16. Public comment.
17. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.
SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.
Victor M. Fortuno,
General Counsel.
[FR Doc. 95–30265 Filed 12–7–95; 2:43 pm]
BILLING CODE 7050–01–M

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LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on December 17, 1995. The meeting will begin at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Consider proposed regulation restricting representation in certain eviction proceedings and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
4. Consider proposed regulation requiring timekeeping by LSC grantees and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
5. Consider proposed regulation governing competitive bidding of grants and contracts and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
6. Report from management on the operations implications of prospective reductions in funding for management and administration of the Corporation.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30266 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation's Committee on Provision for the Delivery of Legal Services will meet on December 17, 1995. The meeting will commence at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Staff report on conversion of Corporation's grant-making system to one of competitive bidding and the current status of grantmaking by the Corporation.
4. Consider and act on recommendations to make to the Board concerning funding policies pursuant to FY '96 LSC appropriation for promulgation of national priorities that grantees may use in settling local priorities.
5. Staff report on possible changes in how compliance and enforcement are handled by the Corporation.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30267 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on December 17, 1995. The meeting will begin at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of the Committee's meeting of October 6, 1995.
3. Staff report on expenses.
4. Develop a Consolidated Operating Budget to recommend to the Board.
5. Develop a Budget Request to Congress for FY '97 to recommend to the Board.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30268 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10:00 a.m., Thursday, December 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation.
3. Central Liquidity Facility Agent Reimbursement for 1996.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, December 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 205 of the FCU Act and Part 706 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Action under Section 109 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Administrative Actions under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).
5. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
6. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–30269 Filed 12–7–95; 2:44 pm]

BILLING CODE 7535–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1461]

TIME AND DATE: 10 a.m. (EST), December 13, 1995.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on October 18, 1995.

New Business

A—Budget and Financing

A1. Adoption of Tennessee Valley Authority Financial Statements for Fiscal Year 1995.

A2. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1996, Pursuant to Section 26 of the TVA Act.

C—Energy

C1. Contract with Sargent & Lundy for engineering and design services related to TVA's generating plant switchyards, electrical transmission system, and power control communication facilities.

C2. Contracts with GLI Technical Services, Inc., Plant Technical Services, Inc., and TAD Resources International, Inc., to provide temporary professional and technical support services.

E—Real Property

E1. Land exchange by the State of Tennessee involving 0.30 acre of former TVA land on Chickamauga Lake in McMinn County, Tennessee (Tract No. XTCR–101).

E2. Sale by the United States Department of Agriculture, Forest Service, involving 1.24 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

E3. Grant of permanent easement to the State of Alabama for highway improvements affecting approximately 1.33 acres of land on Guntersville Lake in Marshall County, Alabama (Tract No. XTGR–161H).

E4. Sale of five noncommercial, nonexclusive permanent recreation easements affecting a total of 0.80 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee (Tract Nos. XTELR–171RE, XTELR–174RE, XTELR–177RE, XTELR–178RE, and XTELR–179RE).

E5. Deed modification to allow Big Bear Resort to construct and sell condominiums on an additional portion of the tract comprising approximately 1.25 acres of former TVA land on Kentucky Lake in Marshall County, Kentucky (Tract No. XGIR–125).

E6. Wheeler Reservoir Land Management Plan establishing management strategies and identifying the most suitable uses for 11,284 acres of public land owned and managed by TVA on Wheeler Reservoir.

F—Information Items

1. Supplement No. 14 to Contract No. TV–85454V–1 with Stone & Webster Engineering Corporation for continuation of engineering services at Sequoyah Nuclear Plant.

2. Approval of Fiscal Year 1996 Operating Budget and Power System Capital Budget.

3. Supplement to Contract No. TV–90562V with The Hartford Steam Boiler Inspection and Insurance Company.

4. Abandonment of easement rights over portions of the East Cleveland Primary-Oglethorpe Primary Transmission Line right-of-way in Hamilton County, Tennessee, and Catoosa County, Georgia (Tract No. CCCL–18 and portions of Tract Nos. CCCL–17, –18A, and –19).

5. Implementation of the decisions of the Secretary of Labor in the wage disputes between TVA and the International Brotherhood of Electrical Workers for 1993, 1994, and 1995.

6. Appointment of J. Wayne Owens as Assistant Secretary of TVA.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999

Dated: December 6, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95–30210 Filed 12–7–95; 8:45 am]

BILLING CODE 8120–08–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, December 13, 1995 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

Children's Sleepwear

The Commission will consider whether to issue final amendments of the children's sleepwear flammability standards to exempt tight fitting sleepwear garments and sleepwear garments intended for children younger than six months of age.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–30270 Filed 12–7–95; 2:45 pm]

BILLING CODE 6355–01–M

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Corrections

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Correction

In rule document 95–29527 beginning on page 62702 in the issue of Thursday, December 7, 1995, make the following correction:

On page 62702, in the third column, under **EFFECTIVE DATE**, in the first line, insert "January 8, 1996." before "See".

BILLING CODE 1505-01-D

APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1000

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff)

Correction

In rule document 95–29684 appearing on page 62702 in the issue of Thursday, December 7, 1995, make the following correction:

§ 1900.100 [Corrected]

On page 62702, in the third column, the heading for § 1900.100 should read as set forth below.

§ 1900.100 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 95–28452 beginning on page 57573 in the issue of Thursday, November 16, 1995, make the following correction:

On page 57574, in the table, in the entry for Brazil, in the second column, the dates should read "01/01/94-12/31/94".

BILLING CODE 1505-01-D

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the National Senior Service Corps' Project Profile and Volunteer Activity (PPVA) Information Collection Instruments

Correction

In notice document 95–29475 appearing on page 62078 in the issue of Monday, December 4, 1995, in the third column, under **DATES**, beginning with the fifth line, "within 60 days from the date of publication" should read "on or before February 2, 1996".

BILLING CODE 1505-01-D

federal register

Monday
December 11, 1995

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 803, et al.
Medical Device User Facility and Manufacturer Reporting, Certification and Registration; Delegations of Authority; Medical Device Reporting Procedures; Final Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 807

[Docket No. 91N-0296]

RIN 0910-AA06

Medical Devices; Medical Device User Facility and Manufacturer Reporting, Certification and Registration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations requiring medical device user facilities and manufacturers to report adverse events, related to medical devices, under a uniform reporting system. This regulation is mandated by the Safe Medical Devices Act of 1990 (SMDA) and prescribes the conditions under which reports must be submitted, the content and timing of the requisite reports, and how FDA will utilize the information in carrying out its public health protection responsibilities. This rule is intended to augment the agency's postmarket surveillance activities and public health protection responsibilities relating to medical devices.

In the future, FDA will propose to revoke the distributor adverse event reporting regulations that went into effect on May 28, 1992, by operation of law and replace them with provisions based on notice and comment. FDA will also propose to fully implement its authority under the Medical Device Amendments of 1992 (the 1992 amendments).

DATES: This final rule is effective April 11, 1996. Submit written comments, as requested elsewhere in this document by, January 10, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ-530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-2735.

SUPPLEMENTARY INFORMATION: On November 26, 1991 (56 FR 60024), FDA published a tentative final rule implementing the user and distributor reporting provisions of the SMDA (hereinafter referred to as the November 1991 tentative final rule). The agency received over 300 comments in response to the tentative final rule, which are carefully evaluated and responded to in this final rule. The final rule also reflects the superseding reporting standard mandated by the Medical Device Amendments of 1992.

I. Highlights of the Final Rule

This final rule provides FDA with increased post-market surveillance information by requiring medical device user facilities and manufacturers to report adverse event information as follows:

(a) Medical device user facilities must submit a medical device report (MDR) to the device manufacturer within 10 days after becoming aware of a reportable death or serious injury (including serious illness). If the event involves a device-related death, or if the identity of the device manufacturer is not known, the report must be sent to FDA. User facilities must also submit a semiannual summary of reports to FDA.

(b) Device manufacturers must submit MDR reports to FDA within 30 days after becoming aware of a reportable death, serious injury, or malfunction.

(c) Device manufacturers must annually certify the number of MDR reports filed with FDA during the preceding year.

(d) Upon receiving information about an MDR reportable event, device manufacturers must submit a "5-day report" to FDA, within 5 work days of: (1) Becoming aware that a reportable event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or (2) becoming aware of an MDR reportable event from which FDA has made a written request for the submission of a 5-day report.

(e) A device manufacturer is responsible for reporting MDR events related to its devices, whether or not the devices are still being marketed by the firm. If a manufacturer receives information about an event involving a device incorrectly identified as one marketed by that firm, the information received must still be forwarded to FDA, with an explanation that the device was misidentified.

In finalizing this regulation, FDA has worked to meet the significant challenges of devising an effective medical device adverse event reporting system while balancing industry concerns with public health needs and statutory imperatives. The agency has also taken steps to minimize the administrative costs and paperwork burdens that will inevitably result for FDA, the medical device industry, and the device user community. FDA is keenly aware of and sensitive to the impacts of these new regulatory requirements on the pace of technological advancement and economic well-being of the medical device industry. At the same time, the agency is cognizant of the usefulness of information about the clinical performance of medical devices in fulfilling its public health mandate.

In striving to achieve regulatory balance, the agency carefully analyzed over 300 public comments submitted in response to the November 1991 tentative final rule, and resolved policy and legal issues arising from the comments and internal deliberations. This review of comments, combined with an economic threshold analysis, and other agency studies and deliberations, resulted in a number of major modifications that will facilitate compliance with the final reporting requirements and substantially reduce the overall costs, by an estimated $31 million, borne by device user facilities, the device industry, and the agency. These modifications are as follows:

(a) The agency has eliminated certain criteria from the previously proposed manufacturer monthly reports including: An evaluation consisting of a narrative description of the results of statistical trend analyses conducted by the manufacturer, a discussion of the underlying methodologies used, a description of any unusual or unexpected events, and a description of any remedial actions taken.

FDA believes that the benefits of the proposed mandatory trend analyses were not commensurate with the attendant costs to industry. Upon further review, the agency has determined that it would incur the costs of data entry regardless of the industry's analysis, and operating a computer program for the analysis of the data would be a relatively low cost to the agency. The proposed requirements for other information that the final regulation is not adopting will still be made available to the agency under the existing current good manufacturing practice (CGMP) regulations (21 CFR part 820), and under proposed 21 CFR part 806, reports of removals and corrections (59 FR 13828, March 23, 1994).

(b) The final regulation's reporting timeframe is shorter than the timeframe proposed. Earlier access to adverse event information will help the agency better to protect the public health.

(c) The agency has eliminated the proposed training and educational requirements, which would have been particularly costly to user facilities, because the projected costs substantially exceeded expected benefits. This change will provide a net estimated annual cost saving of $29.1 million.

(d) The proposed imminent hazard report deadline has been extended from 3 days to 5 days, and renamed a 5-day report. This extended reporting timeframe should provide a more realistic opportunity for the manufacturer to conduct a preliminary investigation regarding the event. Any information not available for submission on the 5-day report must be submitted in a supplemental report.

(e) The agency has developed reporting forms for baseline reports, semiannual reports, and annual certifications. This action will streamline the reporting procedure because industry will not be required to format its own reports. The standardized report forms and associated standardized electronic reporting formats will facilitate the input of information submitted into FDA's data base. This more efficient data processing will increase the agency's capacity to respond to critical device- related problems by permitting more rapid data analysis, leading to appropriate corrective measures.

(f) The agency has adapted its MDR systems and reporting requirements in order to use the MEDWATCH form for reporting individual adverse events. In so doing, FDA has eliminated a number of proposed reporting elements, including the "degree of certainty" associated with a reportable event, the "medical status of patients" involved in device-related incidents, product "service and maintenance," etc. The adoption of the MEDWATCH reporting form streamlines the reporting process and reduces the amount of information reporters must submit to FDA.

(g) The agency has clarified that user facilities must report only information that is reasonably known to them, and are not required to investigate adverse events.

(h) The agency has devoted much time and effort to accommodate electronic reporting. The agency is in the process of developing formats, guidelines, and procedures for electronic reports which, when available, will obviate the need for written agency approval for the use of electronic submissions.

(i) In response to comments, the agency has clarified a number of the definitions included in the proposed rule and added new definitions to enhance clarity. The agency also substantially altered the organization and the paragraph designations of the final rule to provide information in the clearest and most usable form in part 803 (21 CFR part 803).

Revised part 803 has been subdivided into five subparts. Subpart A contains general provisions including sections for the scope, definitions, public availability of reports, and general reporting and record requirements.

Subpart B of revised part 803 contains generally applicable reporting requirements for individual adverse event reports. Specific requirements for individual adverse event reports, and other reports required by user facilities and manufacturers, are in subparts C and E, respectively. Each subpart divides the reporting requirements for each type of reporting entity into separate sections that are organized to improve readability. The agency believes that the new organization of the regulation provides clearer guidance to industry than the 1991 tentative final rule.

II. Background

Under the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 301-394) (the act), and the Medical Device Amendments of 1976 (Pub. L. 94-295) (the 1976 amendments), FDA issued medical device reporting regulations for manufacturers (49 FR 36326 at 36348, September 14, 1984). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the SMDA (Pub. L. 101-629), which required medical device user facilities, and distributors to report certain device-related adverse events. In response to a directive in the SMDA, FDA issued the November 1991 tentative final rule proposing to implement regulations concerning reporting of adverse events related to devices by user facilities and distributors. In the November 1991 tentative final rule, FDA also proposed to amend the existing manufacturer reporting regulations to conform to the proposed user facility and distributor reporting requirements.

A. User Facility, Manufacturer and Distributor Reporting Requirements Under the SMDA

The SMDA added section 519(b)(1) to the act (21 U.S.C. 360i(b)(1)) to require that certain user facilities (hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities) report certain adverse events. The SMDA also authorized FDA to require diagnostic outpatient facilities to submit reports. Under the SMDA, user facilities must report device-related deaths to FDA and to the manufacturer. They must also report serious illnesses and injuries to the manufacturer, or to FDA if the manufacturer's identity is unknown. Reports must be made as soon as practicable, but no later than 10 working days after the user facility becomes aware of a reportable event. In addition to individual adverse event reports, the SMDA requires each user facility to submit to FDA, on a semiannual basis, a summary of the reports it has submitted to FDA and to manufacturers. The provision in section 519(b) of the act that requires user facilities to report adverse events became effective by operation of law on November 28, 1991.

In addition to requiring reporting by user facilities, the SMDA added section 519(a)(6) (subsequently redesignated as 519(a)(9) by the 1992 amendments) to the act to require FDA to issue regulations regarding distributor reporting of adverse device events. The SMDA also added section 519(d) to the act to require both manufacturers and distributors to certify to FDA either the number of reports submitted in a year or that no such reports were submitted to the agency.

Distributor reporting requirements became effective on May 28, 1992, when the provisions relating to distributor reporting in the November 1991 tentative final rule became final by operation of law. In the Federal Register of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law on May 28, 1992, and that these regulations had been amended by certain provisions of the 1992 amendments discussed below.

In the Federal Register of September 1, 1993, FDA also published a final rule, based on the November 1991 tentative final rule, requiring distributors to register and list their devices (58 FR 46514). Distributor registration and listing requirements became effective on October 1, 1993.

In a future rulemaking, FDA will propose in the Federal Register to revoke the distributor regulation that went into effect by operation of law and replace it with provisions based on notice and comment.

B. User Facility, Manufacturer and Distributor Reporting Requirements Under the Medical Device Amendments of 1992

Subsequent to FDA's issuance of the November 1991 tentative final rule to require adverse event reporting by user facilities, distributors, and manufacturers, on June 16, 1992, the President signed into law the 1992

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amendments (Pub. L. 102–300), amending certain provisions of section 519 of the act relating to reporting of adverse device events. In the future, FDA will publish a proposed rule to fully implement its authority under the 1992 amendments. A summary of these changes follows:

1. Adoption of a Single Reporting Standard

Section 5(a) of the 1992 amendments adopts a single standard to specify when injuries caused by devices must be reported to FDA. Manufacturers and importers are required to report a device-related adverse event to FDA whenever they receive or otherwise become aware of information that reasonably suggests that one of their marketed devices may have caused or contributed to a death or serious injury, or has malfunctioned and that such device or a similar device marketed by them would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Similarly, section 5(a) of the 1992 amendments revises the reporting requirements to require a user facility to report whenever the facility receives or otherwise becomes aware of information that reasonably suggests that a device "has or may have caused or contributed" to the death, serious illness or serious injury of a patient of the facility.

2. Single Definition of Types of Injuries That Must Be Reported

Section 5(a) of the 1992 amendments also adopted a single definition for the types of injuries that user facilities, manufacturers, importers, and distributors must report. This definition requires reporting of an injury or illness that is: (1) Life-threatening; (2) results in permanent impairment of a body function or permanent damage to a body structure; or (3) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure. This definition differs from the previous statutory definition of "serious injury" or "serious illness" in the user facility provisions and the definition in the November 1991 tentative final regulation. The new definition deleted the requirement that an injury must require immediate intervention to preclude permanent impairment or damage in order to qualify as a reportable adverse event.

3. New Authority To Require Reporting of "Other Significant Adverse Device Experiences"

The 1992 amendments also authorized FDA to issue regulations requiring user facilities, manufacturers, importers, and distributors to report "significant adverse device experiences" that the agency determines are necessary to be reported, other than deaths, serious injuries or serious illnesses, that might otherwise not fall within the definitions of reportable deaths, serious injuries, or malfunctions.

III. Reporting Forms

A. Individual Adverse Event Reports by User Facilities and Manufacturers

Under §§ 803.30 and 803.50, user facilities and manufacturers are required to submit device-related reports of individual adverse events on FDA Form 3500A or an FDA approved electronic equivalent. In order to simplify and consolidate reporting of adverse events, FDA announced in the **Federal Register** of February 26, 1993 (58 FR 11768) the availability of a new single "MEDWATCH" form for reporting adverse events and product problems with devices, drugs, biologics, special nutritional products and other products regulated by the agency (hereinafter referred to as the February 1993 notice). In response to FDA's request for comments on the form in the **Federal Register**, 79 comments were submitted by medical device trade associations and other regulated or affected entities. On June 3, 1993 (58 FR 31598), after consideration of these comments, FDA published the final reporting form. (The form is described in § 803.10.)

B. Annual Certification by Manufacturers

Under § 803.57, manufacturers must also submit at the time of their annual registration a completed FDA Form 3381 or an FDA approved electronic equivalent, certifying: (1) That all reportable events were submitted; (2) the number of reports submitted; or (3) that no reports were submitted during the previous 12-month period.

C. Semiannual Summaries by User Facilities

Under § 803.33, user facilities are required to submit, on FDA Form 3419 or an FDA approved electronic equivalent, a semiannual summary of all events reported during the prior reporting period. Semiannual reports must include information regarding the user facility, device manufacturers, products, and a brief description of the events.

D. Baseline Reports

Under § 803.55, manufacturers must submit baseline reports, on FDA Form 3417 or an FDA approved electronic equivalent, simultaneously with the submission of the first event report for each device. These reports, which are to be updated annually, must contain information on the manufacture and distribution of the relevant devices.

E. Effective Date of the Reports

Adverse event reports and other related reports required by this regulation must be submitted using the appropriate forms or approved electronic equivalents, after April 11, 1996.

IV. Summary and Analysis of Comments and FDA's Response

This final rule is based on FDA's analysis of the over 300 comments that the agency received in response to the November 1991 tentative final rule, and it conforms to certain statutory revisions in the 1992 amendments. This final rule reflects actions in two areas. First, it revises the manufacturer reporting regulations that have been in effect since 1984. Second, it implements the statutorily directed user facility reporting requirements that have been in effect since November 28, 1991.

Originally, FDA gave interested persons until January 27, 1992, to comment on the November 1991 tentative final rule. In the **Federal Register** of January 24, 1992 (57 FR 2861), FDA extended the comment period until February 26, 1992. A summary of the comments and FDA's responses follow:

A. Section 803.1—Scope

1. Several comments stated that the proposed regulation exceeds the SMDA and has no statutory authority. Many comments stated that the scope of the provisions was overly broad, and would increase the burdens, with unclear benefits, on all parties involved.

The agency disagrees. Section 519 of the act, as amended by the SMDA and the 1992 amendments, provides clear authority to issue this regulation. Section 519 of the 1976 amendments granted FDA the authority to issue regulations to require manufacturers to maintain such records, make such reports, and provide such information to FDA as may reasonably be necessary to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. The legislative history of the 1976 amendments reflects clear congressional intent to permit FDA to require, under the authority of section 519 of the act, manufacturers to report to FDA product defects and adverse effects of the firms' devices. (See H. Rept. 853, 94th Cong., 2d Sess. 23 (1976).)

Among other things, section 519 of the act states that any reporting requirement established under the authority of that section: (1) May not be unduly burdensome (considering the cost of compliance and the need for the requirement); (2) shall state the purpose for any required report or information and identify to the fullest extent practicable such report or information; (3) may not, except in certain circumstances, require the disclosure of a patient's identity; and (4) may not, except in certain circumstances, require the manufacturer of a class I device to maintain records or to submit information not in its possession, unless such report or information is necessary to determine whether a device is misbranded or adulterated. The House Report cautions, however, that these limitations "should not be construed as limiting the Secretary's authority to obtain information needed to insure that the public is protected from potentially hazardous devices." (Id.) In its discussion of section 519 of the act, the House Report lists examples of reasonable reporting requirements, including reports of defects, adverse reactions and patient injuries. It is also clear from the legislative history that Congress intended FDA to use its authority under section 519 of the act to protect the public from potentially hazardous devices, as well as from devices with confirmed hazards. (Id.)

Since enactment of the 1976 amendments, Congress has focused considerable attention on FDA's implementation and enforcement of the act. Congress concluded that the 1976 amendments were not always adequate to protect the public health. (H. Rept. 808, 101st Cong., 2d Sess. 13–14 (1990); S. Rept. 513, 101st Cong., 2d Sess. 13–16 (1990).) To correct these problems, Congress passed and the President, on November 28, 1990, signed into law the SMDA, which amended the medical device provisions of the act.

The SMDA added section 519(b)(1) to the act to require that certain user facilities (e.g., hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities) report deaths related to medical devices to FDA, as well as to the manufacturer if the manufacturer's identity is known. Section 519(b)(5)(A) of the act also provides FDA with authority, which FDA has exercised in this final regulation, to include outpatient diagnostic facilities in this requirement. Serious illnesses and injuries are to be reported to the manufacturer, or to FDA if the manufacturer's identity is not known. Reports must be made as soon as practicable but no later than 10 working days after the user facility becomes aware of an event. The responsibility for reporting is limited to events involving patients and employees of the facility. Each device user facility is also required to submit to FDA, on a semiannual basis, a summary of reports it has submitted to both FDA and manufacturers.

Section 519(d) of the act, as added by the SMDA, also requires manufacturers to certify to FDA the number of reports submitted in the preceding 12-month period or, alternatively, certify that no such reports have been submitted to the agency during the same period. FDA believes that section 519 of the act, as amended by the SMDA and the 1992 amendments, provides clear authority to issue this regulation for manufacturers and user facility reporting.

Moreover, FDA does not believe that the provisions of this regulation are overly broad or unduly burdensome. FDA has reviewed and revised the regulation to clarify and limit the scope as appropriate. FDA believes that certain classes of persons, which might otherwise fit within the definition of manufacturer, should be exempt from the reporting requirements because reports from these persons are not necessary to ensure that the device is not adulterated or misbranded, and the device is otherwise safe and effective. Accordingly under § 803.19, dental laboratories and optical laboratories have been exempted from the reporting requirements. FDA believes that these entities are not likely to receive reports of device-related deaths, serious injuries, or reportable malfunctions. In addition, requiring negative annual certification reports from these entities would be burdensome and not provide significant benefit to the public health. Therefore, FDA is excluding such entities from the reporting requirements. Other specific revisions are discussed in detail throughout this document.

FDA believes this regulation carefully balances the interests of public health with industry burdens by limiting the required information to only that which is necessary to evaluate risks associated with medical devices and that it will enable the agency better to take appropriate regulatory measures to protect the public health. Furthermore, FDA does not believe that the burden on reporting entities will be significant. Based upon the number of reports FDA has received since the publication of the November 1991 tentative final rule, the agency anticipates that it will receive approximately 150,000 reports the first year of this reporting program (the agency currently receives over 100,000 reports annually).

2. Several comments pointed out that these provisions go beyond the scope of the SMDA in that the timeframes for reporting adverse events exceed the requirements of SMDA. Other comments argued that all employees of reporting entities should not be included under the reporting requirements of the SMDA, and that accordingly, the timeframes for reporting should not be triggered upon the knowledge of "any employee" of a reporting entity.

FDA does not agree that the regulation's 10-day reporting timeframes for user facilities and 5-day and 30-day reporting timeframes for manufacturers are beyond the scope of the SMDA. Section 519(b)(1)(A) of the act specifies that user facilities must report certain adverse events as soon as practicable, but not later than 10 work days after becoming aware of the information. This section further specifies that FDA has the discretion to prescribe, by regulation, a shorter reporting period. While the statute does not specify the time periods allowed to manufacturers, the timeframes are consistent with section 519 of the act, the legislative history and FDA's public health responsibility to require that the reports are forwarded to the agency in a timely manner. FDA believes the time periods prescribed in the final regulation allow sufficient time for reporting entities to gather information, and are sufficiently time sensitive to allow the agency to respond rapidly and appropriately to protect the public health.

FDA also does not agree that employees of reporting entities should not be subject to the reporting requirements and that timeframes for reporting should not be triggered when employees of the reporting entities become aware of events. The scope of the act does not exclude any responsible persons who are employees of these entities from complying with section 519 of the act.

Under the final regulation, the reporting periods are based upon the time at which the reporting entity becomes aware of the reportable event. FDA believes that the final regulation's definition of "becomes aware" in § 803.3(c) properly defines the types of user facility and manufacturer employees who must become aware of a reportable event in order to trigger the reporting requirement. FDA believes

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that it will be feasible for user facilities and manufacturers to train the employees, described below, to be familiar enough with the obligation to report adverse events immediately to the appropriate person that the manufacturer or user facility designates as responsible for MDR reporting.

Under § 803.3(c), a device user facility is deemed to have "become aware" when medical personnel of a facility become aware of a reportable event. "Medical personnel" are defined in § 803.3(r) as individuals who are licensed, registered, or certified to administer health care; individuals with professional or scientific degrees; individuals who are responsible for receiving medical complaints or adverse event reports; or supervisors of such persons. FDA believes that a user facility can easily notify these types of employees about their obligation to immediately forward possible device-related adverse events to the appropriate person designated by the hospital to submit such reports.

FDA believes that manufacturers have a direct responsibility to inform all employees to immediately forward adverse event information to the appropriate person appointed by those entities to submit MDR reports. Accordingly, FDA generally considers that a manufacturer becomes aware of an adverse event whenever any employee becomes aware of an adverse event. The one exception is for 5-day reports under § 803.53(b), which requires manufacturers to submit a report when the manufacturer becomes aware of information that an adverse event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

Under § 803.53, manufacturers must submit a 5-day report under two different circumstances. The first type of 5-day reporting obligation arises after a manufacturer has received a written request from FDA for 5-day reports for specific types of adverse events. Under this circumstance, a 5-day report must be submitted when any employee becomes aware of an adverse event. FDA believes that the awareness of any employee should trigger the reporting requirement when FDA has informed the manufacturer of the need for specific adverse events that require 5-day reports because the manufacturer could easily inform all of its employees of FDA's request.

The second type of 5-day report does not involve a direct request from FDA and is required only when the manufacturer becomes aware that an event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health. Accordingly, this type of 5-day reporting requirement would only arise if remedial action were required, and the remedial action is necessary to prevent an unreasonable risk of substantial harm to the public health. If no remedial action is required, or the remedial action is taken but it is not necessary to prevent an unreasonable risk to the public health, reportable adverse events should be submitted as 30 day reports.

Because FDA does not believe certain employees, such as non-technical staff, would be able to recognize that an adverse event or events may require remedial action to prevent a substantial risk to the public health, the final regulation requires that these types of 5-day reports be submitted only when employees holding certain positions of responsibility become aware of adverse event information. Accordingly, the final regulation considers a manufacturer to be aware of this type of 5-day report only when an employee with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health. FDA believes that limiting the type of person who must be aware of the adverse event to these types of individuals is appropriate because persons in these positions should be able to recognize that the event or events may present significant risks to the public health.

3. Some comments suggested limiting the scope of these provisions so that reporting is required only when there is a death or serious injury. Other comments suggested that reports not be required if the device was only indirectly responsible for a death or serious injury, or was not a significant factor. Another comment suggested that reporting be limited to instances of malfunction.

Section 519 of the act provides FDA with authority to require reporting of adverse events other than deaths or serious injuries. FDA has exercised this authority since 1984 by requiring manufacturers to report certain malfunctions. Moreover, section 519(a)(1) of the act (as amended by section 5 of the 1992 amendments) specifically states FDA's adverse event reporting regulations must require manufacturers to report malfunctions if the recurrence of the malfunction would be likely to cause a death or serious injury, regardless of whether an actual death or injury occurs. Because devices with such malfunctions pose significant risks, FDA needs to be informed of these incidents. The final regulation, therefore, requires manufacturers to report malfunctions when recurrence would be likely to cause a death or serious injury. User facilities are encouraged but not required to report malfunctions to manufacturers and distributors.

Section 519(b)(1)(B)(ii) of the act, as added by the 1992 amendments, also provides FDA with authority to require user facilities, distributors, and manufacturers to report other significant adverse device experiences that FDA determines necessary. Therefore, in a future issue of the Federal Register, FDA will propose to require that certain events be reported as significant adverse device experiences. Although some of these experiences may not have caused harm, FDA believes such events should be reported because of the potential risk to the public health if the event were to recur. Such information will enable the agency to take appropriate measures to prevent such recurrences.

FDA also disagrees with the comments stating that reporting should be required only when a device directly causes an adverse event or is a significant factor. Section 519(a)(1) and (b)(1)(A) of the act requires reporting of any adverse event when information reasonably suggests that a marketed device "may have caused *or contributed*" to a reportable event (emphasis added). Limiting reporting to adverse events directly or significantly caused by devices would narrow the statutory reporting standard which requires reporting of adverse events when a device "may have caused *or contributed*" to an adverse event (emphasis added).

FDA cannot agree with the comment that suggested reporting be limited to instances of malfunction. As stated above, section 519 of the act requires reporting of deaths and serious injuries, and authorizes FDA to require reporting of other significant adverse device experiences, as well as malfunctions.

FDA does not agree with the comments that reporting should not be required when events are anticipated or intrinsically caused by the device. The statute does not exempt events that were anticipated or intrinsically caused by the device. (See section 519(a) (1) and (b)(1)(B) of the act.) Moreover, merely knowing that adverse events are anticipated or intrinsically caused by a device does not obviate the need for information contained in event reports.

FDA needs to know the frequency and severity of adverse events in order to take appropriate action.

4. One comment objected to providing warranty information. Other comments stated that a manufacturer's responsibility to report should end at the expiration of the warranty.

The agency disagrees. Reporting requirements under section 519 of the act are not restricted or limited in any way by manufacturer warranties. Section 519 of the act requires manufacturers to report certain adverse events regardless of whether the warranty has expired. Warranties are private contracts between the purchaser and the manufacturer. In order to protect the public health and determine whether actions should be taken with respect to a device associated with an adverse event, FDA must receive information regarding all reportable events, including those that occur after a manufacturer's warranty has expired.

5. One comment stated that certain adverse events may result from the user not knowing how to properly use the device, and that this would lead to the reporting of events properly attributable not to the device, but to its incorrect use.

As with the 1984 manufacturer adverse event reporting regulation, this rule requires reports of certain adverse device events caused by user error. Device injuries attributed to user error may indicate that the device is misbranded within the meaning of section 502(f) of the act (21 U.S.C. 352(f)) in that the device fails to bear adequate directions for use or adequate warnings. In such cases, reports of adverse events that result from user error may alert FDA to the need for improved labeling to prevent future injuries.

6. One comment suggested that independent device service personnel be added to the list of people required to report because some manufacturers may not receive reports from their own service personnel.

Under section 519 of the act, only user facilities, manufacturers, and distributors are required to report adverse events to FDA. User facilities are considered to have "become aware" of such information whenever any medical personnel becomes aware of a reportable event. Manufacturers are considered to have "become aware" of events required to be reported in 30 days, or required to be reported in 5 days, pursuant to an FDA request, when any employee becomes aware of an adverse event. Manufacturers are considered to have become aware of significant risk 5-day reports, which are more fully described in IV.A., comment 2, of this document, only when certain higher level employees become aware of adverse events requiring remedial action.

FDA believes that an employee of a manufacturer includes independent service personnel who are contracted by manufacturers to service their medical devices. It is the responsibility of manufacturers to ensure that their service personnel, whether staff employees or under contract, are informed of the requirement to report deaths, serious injuries, malfunctions, or other significant adverse device experiences that may be required by regulation in the future.

B. Section 803.3—Definitions

7. Many comments stated that the definition of "device family" (§ 803.3(s)) that is used to identify similar groups of devices on the manufacturer baseline report, is vague and overly broad. One comment suggested that each device be listed in the regulation; others suggested that the definition be deleted.

FDA does not agree that the definition should be deleted. The identification of the device family on the baseline reports for individual device models will help FDA and manufacturers group similar models for analysis. This will aid in identifying the causation and nature of device-related problems. FDA agrees, however, that the definition should be clarified and has revised it accordingly. Manufacturers may use their own methods of grouping devices if the groupings meet the definition of "device family," i.e., the devices have the same basic design and performance characteristics related to safety and effectiveness, intended use and function, and device classification and product code. FDA has the discretion to determine the appropriateness of a manufacturer's determination of the devices that comprise a device family. It would be impractical to list each device in the regulation.

8. Many comments stated that the definition of "device user facility" (§ 803.3(f)) is vague. Several of these comments requested clarification regarding what facilities are included in the definition. Several comments suggested that certain groups (i.e., blood banks, independent rescue squads, school clinics or nurse offices, employee health units, dental offices and free-standing care units operating as private physician offices) be specifically included or excluded from the definition.

FDA agrees in part. Under section 519(b)(5)(A) of the act, FDA has exercised its discretion to include outpatient diagnostic facilities that are not physician offices in the definition of "device user facility." Under § 803.3(f), device user facility means "a hospital, ambulatory surgical facility, nursing home, or an outpatient diagnostic or treatment facility which is not a physician's office." To further clarify this definition, FDA has included definitions for the terms "physician's office" (§ 803.3(w)), "hospital" (§ 803.3(l)), "ambulatory surgical facility," (§ 803.3(b)), "nursing home" (§ 803.3(s)), "outpatient diagnostic facility" (§ 803.3(t)), and "outpatient treatment facility" (§ 803.3(u)).

Under section 519(b)(5)(A) of the act, physicians' offices are excluded from the definition of user facilities and are thereby excluded from adverse event reporting requirements. FDA believes that groups performing functions similar to physicians' offices such as dental offices and offices of other health care practitioners (e.g., chiropractors, optometrists, nurse practitioners, school nurse offices, employee health clinics, free-standing care units) fall within the definition of "physician's office" and therefore should be excluded from reporting. FDA invites further public comment on the definition of "physician's office" and may issue further guidance as necessary.

FDA has defined "outpatient treatment facility" as a distinct entity that operates for the primary purpose of providing non-surgical therapeutic care. FDA believes that ambulance or rescue squad services and independent home health care agencies fall within this definition. Given the critical risks posed by potential malfunctions of devices used by ambulance services and in home health care settings, FDA believes the inclusion of these services within the definition of "outpatient treatment facility" is appropriate.

Blood banks that operate in hospitals or as outpatient treatment or outpatient diagnostic centers fall within the definition of user facility. Accordingly, device-related adverse events that meet the definition of MDR reportable event, as defined in § 803.3(q), that occur in such blood banks must be reported. FDA invites further public comment on the definition of user facility and may issue further guidance as necessary.

9. Several comments stated that the definition of "imminent hazard" relating to types of adverse events that FDA proposed should have 3-day reporting timeframes (proposed § 803.3(g)) is unclear. A few comments suggested that the definition be deleted because it is too subjective, belongs in another regulation, or is beyond the scope of the SMDA. Some comments

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stated that more than 3 days were needed for reporting.

FDA agrees. The agency is extending the time period to make such reports from 3 days to 5 days. FDA is also renaming "imminent hazard reports" as "5-day reports" (defined in § 803.3(k)), and has clarified this requirement in § 803.53.

The purpose of the 5-day report is to alert the agency rapidly to adverse events that may pose an unreasonable risk of substantial harm to the public health. Thus, the definition of "5-day report" has been revised to mean a report of an adverse event required by a manufacturer, submitted on FDA Form 3500A or an FDA approved electronic equivalent within 5 work days of: (1) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becoming aware that a reportable MDR event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or (2) any employee becoming aware of an adverse event, if the manufacturer has received a written request from FDA for the submission of a 5-day report for those types of adverse events. When such a request is made, the manufacturer shall submit a 5-day report for all subsequent adverse events of the same nature that involve substantially similar devices for the time period specified in the written request. The time period stated in the original written request can be extended by FDA if it is in the interest of the public health.

FDA does not intend that a manufacturer delay or interrupt a remedial action in order to submit a 5-day report. The report must be made within 5 days of the manufacturer becoming aware that a reportable event or events necessitate remedial action to prevent unreasonable risk of substantial harm to the public health. Information that would reasonably suggest remedial action is necessary to prevent such risk may, for example, be from one MDR reportable event that makes the manufacturer aware of a serious design flaw that necessitates remedial action to prevent an unreasonable risk of substantial harm to the public. On the other hand, information that would reasonably suggest remedial action is necessary may result from an internal trending analysis of several MDR reports that make the manufacturer aware that serious injuries or deaths occur at a much higher frequency than expected. Further discussion relating to when a manufacturer is considered aware of a reportable event is in section IV.A., comment 2, of this document.

Manufacturers who submit 5-day reports are not required to submit reports of removals and corrections under section 519(f) of the act. Any information not available for reporting under the 5-day reporting timeframe may be submitted in a supplemental report.

FDA does not agree with comments asserting that 5-day reports are beyond the scope of the SMDA or belong in another regulation. Requiring 5-day reports is consistent with FDA's authority under section 519(a)(1) of the act to issue regulations requiring manufacturers to report information that reasonably suggests that one of their marketed devices "may have caused or contributed to a death or serious injury, or has malfunctioned and that such device * * * would be likely to cause or contribute to a death or serious injury if the malfunction were to recur." For the protection of the public health, FDA may limit the time allowed to manufacturers for reporting events of which the agency should be quickly aware.

10. Many comments stated that the requirements relating to user facility incident files (proposed § 803.35(c)) that contain documents related to adverse events that a user facility must maintain are overly burdensome because the definition of "incident files" in proposed § 803.3(h) is overly broad. Many of these comments suggested that the definition of incident files be removed or changed in order to clarify or limit the scope of requirements relating to the files. Other comments suggested that FDA's access to the files be limited.

The agency agrees that the definition of these files (which have been renamed "MDR event files" in § 803.18 of the final regulation) could be narrowed. Accordingly, FDA has revised the definition of MDR event files to include MDR reports filed with FDA or other entities, and documents related to the adverse event, including documents relating to deliberations and decisionmaking processes used in the evaluation or determination of whether an event is an MDR reportable event. The final rule also allows the reporter to incorporate certain information by reference, such as medical records, patient files, and engineering reports, rather than include them in the MDR event file.

FDA does not agree that agency access to user facility files should be limited. Under § 803.18(b), user facilities shall permit any authorized FDA employee during all reasonable times to have access to, and to copy and verify the records required under part 803. FDA has authority to inspect files under section 704(e) of the act (21 U.S.C. 374(e)). Section 704(e) of the act states that every person required to maintain records under section 519 of the act, and every person who is in charge or custody of such records, shall permit FDA at all reasonable times to have access to and to copy and verify such records. In issuing a regulation stating its authority under section 704(e) of the act to have access to user facility adverse event files, FDA is exercising its duty under the statute to protect the public health by ensuring that user facilities comply with reporting requirements issued under section 519 of the act.

11. Several comments stated that the definition of what kind of information triggers the reporting requirements, specifically, the definition of "information that reasonably suggests that there is a probability that a device has caused or contributed to a death or serious injury, or serious illness" (proposed § 803.3(i)), is unclear and requires further definition.

The agency agrees and has clarified this concept in § 803.20(c). As explained in section II.B.1 of this document, section 5 of the 1992 amendments revised section 519(a)(1) of the act, subsequent to FDA's November 1991 tentative final rule, to require the agency to issue regulations that require manufacturers and importers to report to FDA "whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious injury, or (2) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur." Similarly, section 5 of the 1992 amendments revised the reporting standard for user facilities under section 519(b)(1) (A) and (B) of the act to require a user facility to submit a report whenever it receives or otherwise becomes aware of information "that reasonably suggests that a device has or may have caused or contributed to a death * * * or serious illness of, or serious injury to, a patient of the facility * * *."

Under the revised 1992 amendments' statutory reporting standards, FDA has no discretion to change the reporting standards for manufacturers and user facilities. Accordingly, FDA has revised the wording of the reporting standards in the final regulation for user facilities and manufacturers to reflect the exact wording in the 1992 amendments for these entities. Therefore, the final regulation requires user facilities and manufacturers to report certain adverse events whenever there is "information that reasonably suggests that a device may have caused or contributed to a death or serious injury."

The final rule describes, in § 803.20(c) "[i]nformation that reasonably suggests that a device has or may have caused or contributed to an MDR reportable event" to be any information, such as professional, scientific or medical facts and observations or opinions, that would reasonably suggest that a device has caused or may have caused or contributed to an MDR reportable event. Reports are not required when there is information that would cause a person who is qualified to make a medical judgment (e.g., a physician, risk manager, or biomedical engineer) to reach a reasonable conclusion that a device did not cause or contribute to an MDR reportable event. Information that leads to the conclusion that an event is not reportable must be retained in the MDR event files for the time periods specified in § 803.18.

The final rule further defines, in § 803.3(d), "caused or contributed" to mean that a death or serious injury was or may have been attributable to a medical device, or that a medical device was or may have been a factor in the adverse event including events occurring as the result of its failure, malfunction, improper or inadequate design, labeling, performance, manufacture, or user error. Devices may cause or contribute to MDR reportable events either directly or indirectly.

12. One comment stated that malfunctions of medical devices used for a nonmedical purpose should be exempted. Other comments stated that the term "malfunction," as defined in § 803.3(m), needed clarification, especially with regard to implanted devices. Another comment asked who is required to report implant malfunctions.

Under this final regulation in subpart E of part 803 manufacturers must report certain malfunctions, including implant malfunctions, that would be likely to cause or contribute to an MDR reportable event, regardless of how the device is used. Although user facilities are not required by statute or regulation to report malfunctions, FDA encourages user facilities to report malfunction information to manufacturers and distributors. Malfunction reports provide important information to FDA concerning device safety.

Reporters do not need to assess the likelihood that a malfunction will recur. The fact that the malfunction occurred once leads to the presumption that the malfunction will recur. A malfunction is reportable if any one of the following is true: (1) The chance of a death or serious injury occurring as a result of a recurrence of the malfunction is not remote; (2) the consequences of the malfunction affect the device in a catastrophic manner that may lead to a death or serious injury; (3) the malfunction results in the failure of the device to perform its essential function and compromises the device's therapeutic, monitoring or diagnostic effectiveness which could cause or contribute to a death or serious injury, or other significant adverse device experiences required by regulation (the essential function of a device refers, not only to the device's labeled use, but for any use widely prescribed within the practice of medicine); (4) the malfunction involves a long- term implant or a device that is considered to be life-supporting or life-sustaining and thus is essential to maintaining human life; or (5) the manufacturer takes or would be required to take an action under sections 518 or 519(f) of the act as a result of the malfunction of the device or other similar devices.

Malfunctions are not reportable if they are not likely to result in a death, serious injury or other significant adverse device experience, that FDA, in a future rulemaking, may require by regulation. A malfunction which is or can be corrected during routine service or device maintenance must be reported if the recurrence of the malfunction would be likely to cause or contribute to a death or serious injury, or other significant adverse device experiences required by a future regulation.

13. Several comments stated that the definition of a "manufacturer" (§ 803.3(n)), who is subject to adverse event reporting requirements, is overly broad with regard to custom devices and devices modified by users. One comment suggested that the definition be modified to include manufacture for commercial distribution only.

FDA believes that for protection of the public health, the definition should be broad enough to provide for reporting by all persons engaged in the manufacture, preparation, propagation, compounding, assembly or processing of medical devices, who may receive information about adverse events related to medical devices, except those manufacturers exempted under section 519(c) of the act and § 803.19. Under section 519(c) of the act and § 803.19, a practitioner licensed by law to prescribe or administer devices intended for use in humans and who manufactures or imports devices solely for use in the course of that individual's professional practice is exempt from reporting. Manufacturers of devices not being commercially distributed but which are being used under an investigational device exemption are required to report adverse events under parts 812 and 813 (21 CFR parts 812 and 813) and are not required to submit reports under part 803. Parts 812 and 813, however, require reporting of all adverse device affects.

14. Many comments stated that the definition of "MDR reportable event" (§ 803.3(q)) is unclear, beyond the scope of SMDA, or otherwise in need of revision.

The definition of "MDR reportable event" has been modified to conform to revisions made to section 519 of the act by section 5 of the 1992 amendments. As defined in § 803.3(q), the revised definition of "MDR reportable event" mirrors the language of section 519(a)(1) and (b)(1) of the act, as amended by section 5 of the 1992 amendments.

FDA has further clarified terms contained in the definition of an "MDR reportable event" throughout this document. These include: "caused or contributed," as defined in § 803.3(d) and discussed in section IV.B., comment 11 of this document; "information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury" as defined in § 803.20(c) and discussed in section IV.B., comment 11 of this document; "malfunction" as defined in § 803.3(m) and discussed in section IV.B., comment 12 of this document; "become aware" as defined in § 803.3(c) and discussed in sections IV.A., comments 2 and 6, and IV.D., comment 27 of this document; and "serious injury," as defined in § 803.3(aa) and discussed in section IV.B., comment 21 of this document. The terms "necessitated medical or surgical intervention" and "permanent," which are now included in the definition of "serious injury," are also clarified in this document. "Necessitated medical or surgical intervention" is discussed in section IV.B., comment 16 of this document. FDA believes that these added definitions and discussion of these terms this document provides adequate clarification of the term "MDR reportable event."

15. A few comments stated that the definition of "manufacturer report number" (§ 803.3(o)), should be changed to allow flexibility and permit

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manufacturers to use their own numbers.

The agency disagrees. A uniform numbering system is essential for FDA evaluation of reports, recordkeeping, filing and analyses. Because the manufacturer report number is based on the manufacturer registration number and all manufacturing sites are required to have a registration number, there is no additional burden on the manufacturer to comply with this requirement. If the manufacturer reporting site does not have a registration number, FDA will assign a temporary registration until the site is officially registered.

16. Several comments stated that the definition of "necessitated immediate medical or surgical intervention" (proposed § 803.3(q)), included as an element of the "serious injury" definition in § 803.3(aa), which is unclear, overly broad, and unduly burdensome. Some of these comments suggested that the terms "timely" and "intervention" be further defined or a standard for "immediate intervention be set (e.g., within 6 hours). Other comments suggested that the event be reported only if significant intervention actually occurred.

In light of the 1992 amendments, most of the comments relating to the "immediate medical or surgical intervention" definition are no longer relevant. Section 5(a)(2) of the 1992 amendments revised and broadened the scope of reportable events that fall within the definition of "serious injury" by deleting the immediacy requirement from the definition. Under the 1992 amendments' revisions, FDA must require that injuries be reported that necessitate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure, that have or may have been caused by a device, regardless of the immediacy of the surgical or medical intervention.

FDA agrees with comments suggesting that an event be reported if significant intervention actually occurred. FDA believes, however, that any intervention is per se "significant" if it is necessary to preclude permanent impairment of a body function or permanent damage to a body structure.

17. Many comments stated that the definition of "patient of the facility" whose serious injuries and deaths user facilities must report(§ 803.3(v)) is too broad. Several comments objected to including individuals being diagnosed, treated, or receiving care "under the auspices of" the facility under this definition. Other comments objected to including employees of the facility who suffer death or serious injury from a device used at or by the facility as a "patient of the facility." They further asserted that FDA does not have clear jurisdiction over these types of employee events and that MDR reports would duplicate reports required by other regulations (e.g., Occupational Safety and Health Administration (OSHA) regulations). A few comments suggested that the term "patient" be further defined.

The agency agrees that including any individuals treated or diagnosed "under the auspices" of a facility could be read very broadly to include certain individuals that are not intended to be covered by this regulation. Accordingly, FDA has revised this definition to include only individuals that are "being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility."

FDA does not agree, however, that employees of the facility who are injured and/or receive medical care arising from a device-related event at the facility should be excluded from the definition of "patient of the facility," and that information provided to other agencies for work-related injuries is duplicative of information required in an MDR report. FDA believes that facility employees who suffer injury or death in a device-related event reasonably fall within the meaning of the requirement under section 519(b)(1)(A) of the act to report such events that involve a "patient of the facility." To ensure the safety and efficacy of devices, FDA needs information required in the MDR reports for all device-related adverse events regardless of the individual's employment relationship to the facility. MDR reports are required to provide information that is specifically tailored to help FDA determine the risks posed by a certain device and whether further action may be necessary. Reports required by other agencies relating to work injuries, such as OSHA, do not provide the MDR report information that is necessary for FDA to make these determinations. Accordingly, there is no unnecessary duplication involved in reporting.

18. A few comments stated that injuries must be reported because they are "permanent," (proposed § 803.3(q)), should exclude "trivial" or "cosmetic" irreversible damage.

FDA agrees in part. To improve clarity, the agency has included the definition of "permanent" with the "serious injury" definition (§ 803.3(aa)). The agency has also modified the definition of "serious injury" to exclude trivial irreversible damage. While most cosmetic damage will be trivial, not all cosmetic damage would be considered trivial. Therefore, FDA is not excluding all cosmetic damage from this definition.

19. A few comments recommended that the definition of "probability, probable, or probably" in the reporting standard be clarified and suggested using a "greater than 50 percent" standard.

As discussed earlier in this document, the 1992 amendments deleted the term "probability" from the reporting standard and revised the standard for manufacturers and user facilities. Therefore, this definition has been removed from the final rule.

20. A few comments stated that the definition of a "remedial action," (§ 803.3(y)), which is required to be reported under §§ 803.53(a) and 803.52(f)(7), is unclear. One comment suggested that the definition be deleted; another suggested that it be removed from the user reporting form.

The agency does not agree that this definition should be deleted. The agency should be aware of remedial actions taken in response to reportable events in order to thoroughly evaluate the event. However, the definition has been reworded for clarity. Also, the request for remedial action information has been removed from the user facility section of the final reporting form (FDA Form 3500A) because user facilities do not ordinarily undertake remedial actions. The revised definition of "remedial action" appears in § 803.3(y).

21. Several comments stated that the definition of a reportable "serious injury or serious illness" (§ 803.3(aa)) is overly broad and needs to be better defined. Another comment suggested that these terms be deleted from the manufacturer and distributor report forms altogether. One comment suggested that "temporary damage" be excluded from the definition.

The agency disagrees with comments that requirements to report serious injuries or illnesses should be deleted from the manufacturer and distributor reporting form. Section 519(a)(1)(a) of the act requires manufacturers to report serious injuries. Nor does FDA agree that the definitions of these terms are overly broad. The regulatory definition in § 803.3(aa) of the terms "serious illness" and "serious injury" are derived directly from the statutory definitions provided in section 519(a)(2) and (b)(5)(B) of the act, as amended by the 1992 amendments.

The SMDA added section 519(b)(5)(B) to require that user facilities report "serious illnesses" as well as "serious injuries." The 1992 amendments

amended section 519(a)(2) to require that manufacturers report only "serious injuries." The statutory definitions of the terms "serious injury" and "serious illness," however, are identical. (See section 519(a)(2) and (b)(5)(B) of the act.) The legislative history of the 1992 amendments indicates that "the term 'injury' probably covers any illness that could be caused by a device * * *."(138 Congressional Record H 3884 (1992).)

In accordance with the statutory definition, FDA has defined "serious injury" to mean an injury or illness that is: (1) Life-threatening; (2) results in permanent impairment of a body function or permanent damage to body structure; or (3) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

As stated in response to comments described in section IV.B., comment 18 of this document, FDA has further clarified the definition of serious injury by clarifying the term "permanent" within the definition in § 803.3(aa). Because section 519(a)(2) and (b)(5)(B), as amended by the 1992 amendments, identically defines the terms "serious injury" and "serious illness" FDA has revised the definition of the term "serious injury" to include "serious illness."

FDA does not agree with the comment stating that temporary damage should not fall within the definition of "serious injury." Section 519(a)(2)(A) and (b)(5)(B) define serious injury to include any event that is "life-threatening." Because life-threatening events may include temporary damage, FDA believes that life-threatening events that may have been caused by a device must be reported, regardless of whether the damage was "temporary."

22. One comment stated that the definition of "user facility report number" (§ 803.3(dd)) needs to be more specific, especially regarding leading zeroes in the number.

The agency agrees and has modified the definition for clarity. The revised definition appears in § 803.3(dd).

23. Several comments requested that the terms: "become aware," "expected life," and "shelf life" be defined.

FDA agrees. These definitions have been included in the final rule and appear in § 803.3(c), (i), and (bb) respectively. For further discussion of the term "become aware," see sections IV.A., comments 2, 6, and IV.D., comment 27 of this document.

C. Section 803.9—Public Availability of Reports

24. Many comments expressed concern over confidentiality of the reports.

The agency is aware of confidentiality concerns and will protect the confidentiality of information to the fullest extent allowed under the law. FDA is generally required, under the Freedom of Information Act (FOIA) (5 U.S.C. 552), to make publicly available reports received under this final rule. Public availability of such reports is governed by FOIA and part 20 (21 CFR part 20). Before a report is made publicly available, FDA, in accordance with FOIA and part 20 as promulgated in 1984, will delete from the report information whose disclosure would constitute an invasion of personal privacy (see 5 U.S.C. 552(b)(6); § 20.63) or information that constitutes trade secret, confidential commercial or financial information (see 5 U.S.C. 552(b)(4); § 20.61). Persons who are subjects of the reports, however, can receive all information in the report concerning themselves, except for trade secret, confidential commercial or financial information.

FDA has modified § 803.9 in this final rule to clarify that the identity of a third party who submits a voluntary adverse event report, such as a physician or other health care professional, will be protected. This revision does not add any new protection for voluntary third-party reporters. It merely clarifies that the existing protection afforded to voluntary reporters under § 20.111 is applicable to MDR reports.

Revised § 803.9 incorporates the confidentiality provisions relating to user facility reporting in section 519(b)(2) of the act, as added by the SMDA. Specifically, § 803.9(c) states that FDA may not disclose the identity of a device user facility except in connection with : (1) An action brought to enforce section 301(q) of the act (21 U.S.C. 331(q)), which includes the failure or refusal to furnish material or information required by section 519 of the act; (2) a communication to a manufacturer of a device which is the subject of a report of a death, serious injury or other significant adverse device experience required by a user facility under § 803.30; (3) a disclosure relating to a manufacturer or distributor report which is required under section 519(a) of the act; and (4) a disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to duly authorized committees and subcommittees of the Congress.

As stated above, § 803.9, which is derived from the statutory language in section 519(b)(2)(C) of the act, allows disclosure of the user facility's identity when disclosure is required under provisions requiring manufacturer and distributor reporting. The legislative history of section 519(b)(2)(C) of the act states that this section is not intended to affect public access to information contained in MDR reports to FDA, and that the full requirements of reporting under section 519(a) of the act (the manufacturer and distributor reporting provisions), will apply. If a manufacturer chooses to forward a user report to FDA, that will then constitute a report described in section 519(a) of the act, not a report described in section 519(b) of the act, for purposes of public access to the contents of the report. (H. Rept. 101–808, 101st Cong., 2d sess., pp. 21–22). Accordingly, if information in a required user facility report is submitted as part of a distributor or manufacturer report, the information relating to the identity of the user facility would be disclosable because the report would be submitted under section 519(a) of the act. FDA notes that, in accordance with part 20 and section 519(b) of the act, the agency will not disclose the identity of the user facility physicians, persons designated by the user facility to submit reports, or other user facility employees, although the identity of the user facility may be disclosed.

25. Many comments expressed concern that the regulation will increase liability and that the availability of reports will lead to civil litigation.

Although FDA is aware that litigants in civil suits may attempt to use information in adverse event reports as evidence in product liability suits, FDA does not have any information as to whether the information from reports will actually lead to the initiation or increase of civil litigation. Section 519 of the act requires user facilities and manufacturers to submit reports of adverse events. While these reports may have some effect on a reporter's liability, these regulations are required to implement statutory requirements. They are also necessary to make FDA aware of unsafe devices and better enable the agency to take appropriate action to safeguard the public health. With respect to user facilities, section 519(b)(3) of the act provides some protection against liability in that it prohibits the admissibility of device user facility adverse event reports into evidence for civil actions involving private parties, except where the party making the report had knowledge that information in the report is false.

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With respect to manufacturers and distributors, FDA has attempted to provide protection from liability by clearly stating in § 803.16 of this final rule, and including a statement on FDA Form 3500A, that the submission of a report does not constitute an admission that the user facility, manufacturer/distributor, product, or medical personnel caused or contributed to the event. Moreover, in the Federal Register of April 3, 1995 (60 FR 16962), FDA issued a final rule that became effective on July 3, 1995, that protects the identity of voluntary reporters by preempting State laws or other requirements requiring or permitting disclosure.

26. Comments objected to providing FDA with proprietary information.

FDA may require the submission of certain proprietary information because it is necessary to fully evaluate the adverse event. Proprietary information will be kept confidential in accordance with § 803.9, which prohibits public disclosure of trade secret or confidential commercial information, and in accordance with the FOIA and FDA regulations in 21 CFR part 20.

D. Reports by Device User Facilities (Part 803, Subpart C)

27. Several comments stated that 10 days is too short a time period for user facilities to report adverse events properly. One comment suggested that the 10-day "clock" for reporting should commence when the facility completes its investigation and determines that an event is reportable.

FDA cannot agree because the 10-day time period is the maximum time allowed by the statute. (See section 519(b)(1)(A) of the act.) However, this comment raises the issue of when the reporting "clock" starts. In the preamble to the November 1991 tentative final rule, FDA proposed to consider a user facility to have "become aware" of reportable events only when it has sufficient information to make a determination that a report is required, and that this commences the 10-day reporting period. (See the notice of availability of the MEDWATCH adverse event reporting form (FDA Form 3500A) in the Federal Register of June 3, 1993 (58 FR 31566.))

FDA has reevaluated the issue of when a user facility should be considered to "become aware" of information that triggers the reporting requirements and has determined that user facilities should be considered to have "become aware" of information that triggers reporting requirements when they first receive a report. The agency does not believe that information-gathering required of user facilities is sufficiently burdensome or time consuming to justify triggering the 10-day timeframe any time after they receive a report of an adverse event. A user facility, unlike a manufacturer, is not required to provide any information that is not in its possession. For further discussion on when user facilities are considered to have "become aware" of an event, see section IV.A., comment 2 of this document.

28. Several comments suggested that the user/operator error reporting requirement be eliminated.

As stated in section IV.A., comment 3 of this document, the language of the SMDA as amended by the 1992 amendments requires reporting in all instances where the facility becomes aware of information that reasonably suggests that a device has or may have caused or contributed to certain device-related adverse events. FDA needs to be aware of events that are related to user error any time such error may have caused or contributed to a reportable event. By receiving information on device user problems, FDA can determine whether additional measures are necessary to resolve such problems, for example, relabeling or a redesign of the device.

29. One comment suggested that all reports be sent only to FDA.

FDA does not agree. This regulation merely implements section 519(b) of the act, which requires user facilities to submit deaths to FDA and the manufacturer, and serious injuries to the manufacturer or FDA, if the identity of the manufacturer is unknown.

30. Some comments suggested that an anonymous reporting path be provided for reporting directly to FDA.

FDA disagrees. It is important that both FDA and the manufacturer know the identity of the user facility in case followup information is needed. As discussed in section IV.C., comment 24 of this document, the act does provide some protection of the identity of user facilities.

31. Several comments requested clarification of the terms "adverse events," "formally affiliated," and "user error."

Adverse events are those events that may be related to an FDA-regulated product and which have a negative or harmful effect on the user or recipient of the product's use. The only adverse events required to be reported under this regulation, however, are "MDR reportable events" as defined in § 803.3(q) of the final rule.

The term "formally affiliated" means individuals who are employed by a user facility or medical personnel who have admitting, practicing, or equivalent privileges at a user facility. Reporting requirements for user facilities are triggered when medical personnel who are employed by or otherwise "formally affiliated" with the facility, receive information or become aware of information that reasonably suggests a reportable event has occurred.

The term "user error" means any error made by the person using the device. A user error may be the sole cause or merely contribute to a reportable adverse event.

32. One comment suggested that FDA provide user facilities with manufacturer and agency contacts. Another comment suggested that a hotline be established for reporting.

It would be very difficult for FDA to establish and maintain up-to-date manufacturer "contact" lists for device user facilities. The agency, however, will consider publicizing a list of firm contact names and telephone numbers. Although there is no requirement for telephone reporting in this regulation, emergency situations can be handled in accordance with § 803.12(c) of this final rule.

33. One comment asked how foreign user facilities will be affected by these provisions.

Only those user facilities located outside the United States which are operated by the U.S. Government are required to report under this regulation.

34. Comments suggested that the requirements for semiannual reports be deleted because they are redundant. Other comments suggested that no semiannual report be required if no reports had been submitted during that period.

Semiannual reports are required by section 519(b)(1)(C) of the act and therefore the requirement cannot be deleted. Under § 803.33(c), the user facility is not required to submit a semiannual report if no reportable events occurred during the reporting period.

E. Reports by Manufacturers (Part 803, Subpart E)

35. One comment suggested that manufacturer reporting of "planned remedial actions" be deleted. Another comment stated that remedial action often occurs after the reporting deadline, and therefore cannot be included in the report.

Remedial actions taken after a reporting deadline can be submitted to the agency via a supplemental report. The individual adverse event reports required under the final rule, with the exception of circumstances requiring 5-day reports, do not require information concerning "planned remedial action" because supplemental reports and reports of Removals and Corrections will provide the agency with the same information. Remedial actions that are necessary to prevent an unreasonable risk to the public health should be reported as 5-day reports under to § 803.53.

36. Several comments requested that manufacturers be exempt from the requirement of submitting supplemental reports because they are vague and burdensome.

FDA does not agree. The supplemental report does not impose any significant additional burden under § 803.56 because it requires information that a manufacturer was required to submit on its initial report, but did not do so because such information was unknown or unavailable at the time of the report. This information may include, for example, the results of a firm's investigations that may not have been completed at the time of the initial report, or any other required information that the manufacturer becomes aware of after filing a report. The information required is not vague and is clearly specified in §§ 803.52 and 803.56. Both initial and supplemental reports are to be submitted on FDA Form 3500A or electronic equivalent.

Under § 803.15, FDA may also require supplemental information (termed "request for additional information" in the final rule) in addition to that required on other reports specified in this part. FDA believes these reports are not unduly burdensome given that they will be required only in instances when the agency determines that the protection of the public health requires such information. In such cases, FDA will specify the type of information needed.

37. One comment stated that the quality of information will decrease if manufacturers are denied access to products.

FDA agrees that manufacturers should evaluate a device problem if they have access to the device. FDA has no authority to require that a device be returned to the manufacturer, but the agency encourages device users, when possible, to permit access or return the device to the manufacturer for evaluation.

38. One comment suggested that manufacturer reports should be sent to user facilities, as well as to FDA.

FDA does not agree. FDA believes that user facilities do not have the appropriate resources or personnel to properly evaluate the public health significance of manufacturers' reports. FDA is the proper entity to evaluate MDR information to determine whether further action, including notification to user facilities or others of device risks, is appropriate.

39. A few comments suggested that the 1984 requirements for manufacturer reporting should be retained to avoid possible confusion caused by the creation of a new standard. Other comments called for the elimination of the monthly reporting requirement.

As discussed earlier in the preamble, subsequent to the issuance of the November 1991 tentative final rule, the 1992 amendments modified the language for reporting standards that apply to user facilities, manufacturers, and importers. The language used in the November 1991 tentative final rule no longer reflected the statutory language, as modified. In this final regulation, FDA has revised the reporting standard to reflect the statutory language added by the 1992 amendments. This statutory reporting standard is substantially similar to the manufacturer reporting standard in the 1984 regulations.

Although the final regulation retains the reporting standard language from the 1984 regulation referenced above, it incorporates many changes from that regulation that are intended to enhance the quality of the reports received and increase the efficiency of FDA's report processing. FDA believes the benefits of changes implemented by the new regulation far outweigh the limited costs for manufacturers to familiarize themselves with the new requirements.

Under the final rule, manufacturers have 30 days after they become aware of an MDR event (with the exception of 5-day reports required by § 803.53) to report the event to FDA. FDA, however, has eliminated the portions of monthly reporting requirements, as proposed, that would have required manufacturers to submit, in addition to individual adverse event report information, an evaluation of adverse events consisting of the results of a statistically-based trend analyses conducted by the manufacturer, a discussion of the underlying methodologies used, a description of any unusual or unexpected events, and a description of remedial action taken.

As proposed, the greatest benefit of the evaluation portions of the monthly report would have been the overview of adverse experience trends it would provide. However, FDA has reevaluated the benefits of these monthly reports, and determined that the agency would incur the costs of data entry regardless of the industry's analysis, and that a computer program for the analysis of the data may be used at a relatively low cost to the agency. Furthermore, the agency anticipates that internal trending analysis will be conducted as part of a manufacturer's CGMP. Any remedial actions presenting an unreasonable risk of substantial harm that are undertaken based upon internal trend analyses are reportable in a 5-day report. Other essential information under the proposed monthly report will also be made available to the agency under the CGMP regulations, and would be made available to FDA under the proposed reports of removals and corrections regulation.

The final regulation will also allow FDA to receive information about reports sooner than the monthly reports as previously proposed. The proposed regulation allowed the manufacturer up to 2 months from the date of an adverse event to submit the monthly report. For example, under the proposed regulation, information received by the manufacturer on January 1 would have been due in a monthly report in March. Under the final regulation, the manufacturer will submit all reports of adverse events within 30 days of the event. Accordingly, under the final rule, information about a reportable event the manufacturer received on January 1, would have to be reported within 30 days.

FDA believes that the timeframes under the final regulation allow sufficient time for completing individual reports because the manufacturer would no longer be required to compile the trend analysis and other evaluations as previously proposed for the monthly reports. FDA also believes that the monthly reporting of individual adverse events in the final rule will achieve FDA's goal of obtaining better quality initial reports from manufacturers by allowing more time to complete the reports than allowed under the 1984 regulation. Nonetheless, the public health will benefit under the final rule because FDA will receive reports of individual events sooner than under the proposed rule.

40. One comment objected to the use of identification (ID) numbers on the reporting form, claiming they are unnecessary.

The agency disagrees. Report ID numbers are essential to FDA's ability to efficiently audit, process, analyze and evaluate MDR data. One of the major deficiencies of the current system is its inability to consistently identify similar devices and other data elements that facilitate the comparison of adverse events. The use of device ID numbers (§§ 803.32(c)(6) and 803.52(c)(6)), user facility and manufacturer report numbers (§§ 803.3(dd) and (o), respectively)), and event codes

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(discussed in section IV.F., comment 52 of this document) will facilitate information access and retrieval, and increase the agency's ability to evaluate the information.

41. Comments stated that the requirement for firms to compare events associated with the use of their devices, in order to perform trending studies, should be removed.

The agency agrees in part and has deleted MDR trending reporting requirements, as discussed in section IV.E, comment 39 of this document. Under the prior reporting regulation, FDA has faced difficulties in making an effective determination of the significance of many device failures, because the reports did not include the total number of similar devices in current use or similar failures. Such information, which is required in baseline reports, provides the agency with information regarding the rate of adverse events. An understanding of device failure rates is essential for the agency to determine the level of risk involved, and the appropriate regulatory or other public health response.

42. One comment suggested that instead of the manufacturer indicating to whom the information was reported in the monthly reporting form, it is more important to indicate by whom it was reported.

The agency agrees in part. As noted above, the monthly report requirement, as proposed, has been eliminated; however, information about the initial reporter is required on the individual adverse event MEDWATCH form (FDA Form 3500A or an FDA approved electronic equivalent).

43. One comment objected to the requirement to report problems found in the scientific literature. Another comment objected to reporting anything except problems found in the scientific literature or from research.

Any information which reasonably suggests that a reportable event occurred is important to evaluate the risks of a device, regardless of the source. Although reports in the scientific literature or research are usually not proximate in time to actual events, the information often represents the results of cumulative observations and experience, and provides important information to FDA about device safety and effectiveness.

44. One comment stated that the manufacturer reporting requirements are inappropriate for device sales made directly to the patient.

The agency disagrees. The act does not provide any restrictions or limitations with respect to how the device was marketed. FDA would lose a valuable source of information if manufacturers of devices sold directly to patients, such as many apnea monitors or home use glucose monitors, were excluded from this requirement. All information concerning device-related deaths, serious injuries or other reportable events is equally important, regardless of how the device is marketed.

45. One comment stated that there is no relationship between devices shipped by the manufacturer and those on the market, as the devices may have been altered; therefore, the manufacturer should not be responsible for reporting events involving such devices.

The agency disagrees. Devices in commercial distribution are presumed to be the same devices shipped by the manufacturer. If a manufacturer receives information about an MDR event involving a device that has been altered, the information must nevertheless be forwarded to FDA with an explanation that the device has been altered.

46. One comment suggested that a U.S.-designated agent should be responsible for reporting on behalf of foreign manufacturers.

FDA's November 1991 tentative final rule proposed that U.S.-designated agents should be required to report for foreign manufacturers. This requirement has been adopted in § 803.58.

47. One comment suggested that the manufacturer should disclose the results of event evaluations to distributors of the device.

FDA does not agree. Disclosure of evaluations would be burdensome and may result in release of information that is protected under other laws and regulations. FDA will inform the public, including distributors, of steps necessary to protect the public health if the agency determines such steps are necessary.

F. User Facility and Manufacturer Reporting Forms for Individual Adverse Events (§§ 803.32 and 803.52)

48. Several comments asserted that this section is costly, complicated, overly broad, unacceptably burdensome and not consistent with the SMDA as it requires the reporting of information not required or supported by the SMDA.

The agency disagrees. As stated earlier in the preamble, FDA has adopted the use of a single reporting form for most FDA-regulated products, in order to facilitate the cost-efficient submission of information required by or consistent with the provisions of the SMDA. The agency agrees that the data elements could be simplified and has modified the form after consideration of comments to the February 1993 notice submitted by medical device trade associations and other regulated or affected entities. FDA anticipates that the consolidated form will facilitate the submission, and improve the quality, of adverse event reports. During the initial period of its use, FDA will continue to closely monitor comments and suggestions received from interested parties regarding the reporting form, and will consider additional modifications to further improve the form as the need arises.

49. One comment stated that it will be difficult to find manufacturer reporting forms. Another comment stated that the report form, distributed as a draft to certain interested parties, is not compatible with the use of a word processor.

The MEDWATCH forms (FDA Forms 3500 and 3500A) are already in wide distribution and were published in the **Federal Register** on June 3, 1993. Information about the MEDWATCH form, and how to obtain it, is provided §§ 803.10 and 803.11.

Although a word processor would be able to fill the fields on FDA Form 3500A with great difficulty, the agency has made provisions for the submission of reports on alternative (electronic) media which would obviate the need for printing the form from a word processor.

50. Several comments were concerned with the adversarial and litigation issues which may be raised by reporting on the forms. In this regard, a few comments suggested deleting all items that require speculation and judgment in reporting, removing the signature block, or adding a disclaimer to the form.

As stated in section IV.C., comment 25 of this document, although FDA is aware that these reports may have some effect on liability, the required information is necessary to implement the agency's statutory responsibilities. Under the statute, user facilities and manufacturers must report adverse events when a device "may" have caused or contributed to the event. Accordingly, FDA does not have the discretion to require reporting only when a definitive causal relationship is established. Furthermore, adoption of such a standard would preclude FDA from receiving information that would help the agency assess the risks associated with devices.

FDA has removed the signature block on the form. FDA has provided a disclaimer statement on the reporting form, as discussed in section IV.C., comment 25 of this document.

51. Some comments suggested that the evaluation of events or reports be

left to FDA, the manufacturer or another third party. Other comments suggested that the manufacturer should not be required to verify data or provide data about which it has no knowledge. Other comments suggested that user facilities do not have the appropriate expertise to analyze events or make determinations concerning the reportability of events.

FDA agrees that user facilities should not be required to conduct in-depth analyses of events and has deleted certain requirements regarding information relating to evaluation and testing. User facilities serve principally as conduits of information and thus are required only to fill out information that is known to them. However, the statute and regulations still require user facilities to make an initial determination as to whether an event should be reported under the regulation's criteria. Accordingly, FDA has retained elements that relate to this determination. In § 803.30, FDA explains user facilities' obligations to obtain information about adverse events.

FDA believes that the manufacturer who is responsible for placing a device into interstate commerce is the appropriate entity to initially investigate and evaluate whether, and why, the device may have caused or contributed to a reportable event or malfunctioned and that such malfunction is a reportable event. In order for FDA to determine whether the risk posed by a device necessitates action to protect the public health, the manufacturer is also required to verify data and provide missing information after investigating the event. If after an investigation the information cannot be determined, a manufacturer must explain in the MDR report why the information cannot be obtained.

The agency agrees that an analysis of reports for patterns and trends may be more appropriately conducted by the manufacturer or FDA. FDA will conduct statistical analyses of report information submitted. The agency expects that manufacturers will conduct trend analyses as part of their CGMP.

52. Several comments suggested that numerical event and evaluation codes should not be used on the adverse event reporting form. Other comments stated that the codes lacked accuracy or were insufficient.

The agency disagrees. It is the manufacturer's responsibility to evaluate reports to determine causation. It is reasonable that an evaluation will result in the assignment or identification of failure modes and that these can be communicated to FDA in the form of a structured vocabulary or "coded" data. In developing these codes, the agency has used the experience gained from reviewing nearly 400,000 reports submitted since 1984. The use of these codes is essential to the rapid evaluation of device risks and processing of reports by computer. Regardless of whether the codes are specific enough to describe a particular event, the event must be fully described in the narrative section of the reporting form.

The list of codes for use with the final form (FDA Form 3500A or FDA approved electronic equivalent) has been expanded for completeness and modified to improve accuracy. The agency will continue to improve the accuracy of its codes as needed.

53. Various comments suggested that the following elements be removed from the form: Degree of certainty, labelled usage, result of analysis, list of other devices, purchase date, service and maintenance items, event description, and medical status of the patient.

FDA has deleted requirements for user facilities and manufacturers to report service and maintenance information and to state the degree of certainty concerning whether the device caused or contributed to an adverse event. FDA believes the burden of requiring this information would usually outweigh the benefit of assessing the cause of an adverse event. FDA, however, has retained the requirements for manufacturers to report use indications specified in the labeling and device analyses because this information is valuable in determining causation of the event. FDA has deleted the requirements to report these elements for user facilities because the agency believes the manufacturer is the most appropriate source for this information. All user facilities and manufacturers will still be required to provide information regarding concomitant product use, age of the device, event description and certain patient information. FDA believes this information is important to assess adverse events and should be available to user facilities as well as manufacturers.

G. Manufacturer Annual Certification Report (§ 803.57)

54. A few comments stated that this section is redundant, overly broad and burdensome, exceeds the scope of the SMDA and should be deleted. Another comment suggested that certification be limited to events involving class III devices.

The agency cannot agree. Section 519(d) of the act states that each manufacturer required to make reports under section 519(a) of the act must submit annual statements certifying the number of reports filed or that no reports were filed during the previous 12-month period. The provisions of this regulation pertaining to the statutory certification requirement merely explain what information should be contained in the submission. Furthermore, FDA does not agree that certification should be limited to reports about adverse events involving class III devices. Any device, regardless of its classification, can pose serious risks that need to be reported to FDA.

55. Some comments suggested that the certification be limited to the number of reports actually filed, and that liability should attach only in instances of known reporting violations.

The agency disagrees. The purpose of this provision is to ensure reporter compliance with MDR requirements by certifying that all reportable events have been submitted. Such purpose would be thwarted and the certification requirement rendered meaningless if it were limited to simply certifying the number of reports submitted instead of all reportable events known to the certifying entity. The legislative history of section 519(d) of the act references a U.S. General Accounting Office recommendation that the certification state that the reporter "filed a specific number of reports * * * and that the firm received or became aware of information concerning only these events." (H. Rept. 808, 101st Cong., 2d sess. 23 (1990)).

Accordingly, consistent with Congress' intent, FDA is requiring certification that all known reportable events were reported. This requirement does not impose liability for adverse events that are unknown to the reporter because the reporting requirements are triggered only when the reporting entity "becomes aware" of a reportable event.

56. Several comments stated that the purpose of certification should be to verify reports, not to certify with absoluteness; therefore the standard should be changed to "reasonably certain" and a disclaimer should be added.

The agency disagrees. Section 519(d) of the act specifically states that firms shall certify, not verify their reports. As discussed in the previous paragraph, the purpose of this provision is to ensure that the reporter complies with the law by certifying that it has submitted all the reports it was required to submit. This purpose would not be accomplished by verifying the report.

57. One comment asked for clarification about who is required to certify. Another comment suggested that

the signature block be for the certifier and contractor as well.

The agency agrees with the need for clarification regarding who must certify and has incorporated language in the final rule to address this suggestion. Under the final rule, the president, chief executive officer, executive officer, U.S.-designated agent of a foreign manufacturer or other official most directly responsible for the firm's operations shall certify reports submitted under section 519 of the act.

58. Two comments requested that decentralized certification be allowed for multisite firms. Another comment suggested that centralized reports be used in this situation.

Manufacturers have the option of certifying centrally or on a decentralized basis. Firms deciding to certify centrally must identify the sites covered by the certificate by name and registration number or FDA-assigned identification number.

H. Additional Requirements (§ 803.15)

59. A few comments asserted that these provisions are vague and inappropriate in the absence of a device failure complaint.

The agency disagrees. This provision refers to submission of additional information after an adverse event report has been filed. Accordingly, FDA would not be requesting information in the absence of a device failure or complaint.

60. A few comments objected to the idea of giving FDA unlimited access to data. One comment wanted to restrict FDA's right to copy data and another wanted an appeal process.

FDA does not agree with comments proposing to restrict or limit the agency's access to additional information about adverse events. Under section 704(a) of the act, every person who is required to maintain records under section 519 of the act and every person who is in charge or custody of such records must permit FDA at all reasonable times to have access to and to copy and verify such records. Failure to provide such information may be a violation of section 301 of the act and may subject a person to civil or criminal penalties. Section 704(a) of the act does not limit in any way the types of device records maintained under section 519 of the act that FDA may inspect.

FDA does not agree that the agency should be required to provide an appeal process with respect to requests for additional information. As described above, FDA has statutory authority to require additional information concerning adverse events. Moreover, such information needs to be provided as quickly as possible to enable FDA to take appropriate action.

61. Several comments suggested the regulation be modified to remove the requirement that each reportable event be investigated because in some instances an investigation is unnecessary.

The agency disagrees. All reportable events must be investigated by the manufacturer. The scope of an investigation may vary according to the circumstances; however, an investigation must be able to adequately assess the cause of the event. Sections 820.162 and 820.198 of FDA's CGMP regulations require manufacturers to review, evaluate and investigate any complaint involving the failure of a device to meet its performance specifications or involving injury, death, or any hazard to safety. FDA considers any event that must be reported under this part to be a death, injury, or hazard to safety.

I. Exemptions, Variances, and Alternative Reporting Requirements (§ 803.19)

62. One comment asked that alternative reporting requirements under the current MDR system be incorporated into this regulation. One comment stated that the criteria for alternative reporting should be clarified.

FDA has incorporated the alternative reporting options from the MDR regulation issued in 1984 and expanded the options available in this regulation. Under the final regulation, FDA may grant a written exemption, variance, or alternative to some or all of the requirements when it determines compliance with all MDR requirements is not necessary to protect the public health. Examples of situations include: (1) Devices for which FDA is already aware of a type of malfunction and appropriate action has been taken to protect the public health, such as a recall, removal, or other correction; (2) adverse events that are known and well documented, are occurring at a normal rate, and do not justify the initiation of remedial action; and (3) device events occurring on an infrequent basis or where a longer period for investigation or followup is appropriate and necessary.

In these cases, FDA may impose conditions on its approval of an exemption, variance, or alternative reporting mechanism, including the requirement to report on a less frequent basis than otherwise required or to provide summary data rather than individual reports. The final regulation, upon its effective date, will supersede all previously granted exemptions and variances from the 1984 reporting requirements. The agency intends to review all current exemptions and variances and notify relevant parties about the status of their exemptions and variances and the additional steps that may be necessary to conform to the new requirements effected by this regulation.

63. A few comments stated the criteria for exemption are unclear, especially with respect to investigational device exemptions, and thus create a loophole.

The criteria for exemptions (§ 803.19) are based upon interpretations of the act as to the types of entities Congress intended should be subject to reporting. FDA believes these exemptions are reasonably clear. The exemptions specifically granted under this final regulation are the same as those in the MDR regulation issued in 1984. Devices subject to investigational device exemptions are subject to reporting under the regulations governing that process (parts 812 and 813). The exception to this are devices with investigational device exemptions that are approved for export. These devices are considered to be in commercial distribution and, therefore, subject to MDR.

J. Where To Submit a Report (§ 803.12)

64. There were only two comments on this section. One suggested that "MDR" be added to the mailing address. The other recommended the use of electronic reporting.

The agency agrees with these comments. "MDR" has been added to the mailing address. In addition, the agency, with prior approval, will accept required reports submitted electronically or on reporting media such as magnetic disc or tape in accordance with § 803.14(a). The agency is in the process of developing standards, guidelines, or procedures for the format to be used with electronic reports. Once available, any electronic reporting system meeting such criteria will be deemed to have prior FDA approval.

K. Written MDR Procedures (§ 803.17)

65. A few comments requested additional guidance on written MDR procedures.

FDA agrees and has developed guidance concerning MDR procedures. Requests for this guidance should be directed to:

Division of Small Manufacturers Assistance (HFZ-220), Office of Health and Industry Programs, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850.

Copies can also be obtained from an electronic docket maintained by the Division of Small Manufacturers Assistance. This system can also be accessed by dialing: 1–800–252–1366 or 301–594–2741. Persons wishing to obtain the guidance document via this system must have a video terminal or a personal computer with communication software (VT emulation) and a modem that can operate at a baud rate of 1200, 2400, 4800, or 9600. Persons wishing to transfer files from the electronic docket must use the KERMIT file transfer protocol.

66. One comment requested that the requirement for staff education be deleted.

The agency agrees and, as stated previously in this preamble, has removed this requirement from the final regulation.

67. One comment objected to the requirement for written procedures. Another comment objected to FDA having access to the firm's procedures.

The agency disagrees. Written procedures are essential to the development of a standard, institutional reporting program. FDA also needs access to such procedures so it can conduct an adequate audit of user facility and manufacturer compliance with MDR.

68. One comment requested clarification of the term "information that facilitates a submission" for which documentation and recordkeeping requirements were proposed.

"Information that facilitates the submission [of a semiannual report]" refers to any information that was evaluated for the purpose of preparing a semiannual report or certification. The regulation has been revised in § 803.17 to clarify this point.

69. One comment stated that these provisions do not address the penalties for failure to comply.

FDA intends to enforce this regulation and will take appropriate action against any firm or facility that does not comply. Violations may result in criminal prosecutions and/or civil remedies such as seizure, injunction, recall, and civil penalties. FDA's enforcement mechanisms and penalties for noncompliance are detailed in the preamble to the November 1991 tentative final rule (56 FR 60024 at 60029 through 60030).

L. Files (§ 803.18)

70. Several comments complained that these requirements are overly broad, burdensome, and beyond the scope of the SMDA.

FDA does not agree. Sections 519 and 701 of the act provide FDA the authority to require user facilities and manufacturers to maintain records to ensure that devices are not adulterated or misbranded. The file requirements are necessary to enable FDA to: (1) Further investigate potentially adulterated or misbranded devices to determine the cause of adverse events; (2) verify information received; and (3) ensure compliance with the regulations. These filing requirements will also enable the reporting entity to more readily identify causes of problems associated with devices so they can take appropriate actions.

71. Several comments expressed concern about public access and a loss of confidentiality stating that these will lead to increased lawsuits and, therefore, decreased reporting. Some comments suggested that only events reportable to FDA be kept in FDA accessible files. Others suggested that confidential materials and irrelevant data be excluded from the files.

FDA has addressed issues related to confidentiality of reports it receives in section IV.C., comment 24 of this document. As stated therein, certain statutory and regulatory protections exist that prevent release of confidential information. FDA does not agree that only events that are ultimately determined to be reportable should be kept in MDR files. FDA must be able to audit files containing events that were determined not reportable to ensure such determinations were correct.

72. A few comments objected to FDA prescribing the method of record retention, preferring the use of individual systems.

The agency disagrees. Effective and uniform regulatory enforcement is better assured by a standardized method of record retention. The agency believes that the method of record retention prescribed in this regulation does not impose an undue burden on the entities required to maintain such records.

73. One comment suggested that separate files be kept for devices and patients.

FDA does not object to a reporting entity maintaining separate files for devices and patients provided that all required information is contained in the MDR files.

74. A few comments stated that a user facility should be required to keep files for a maximum of 2 years, rather than the expected life of the product, because some devices may have unusually long life expectancies.

The agency agrees and has modified this section accordingly. It should be noted that device manufacturers, however, are still required to retain their records for 2 years or a period of time equivalent to the expected life of the device, whichever is greater.

M. Who Must Register and Submit a Device List (Section 807.20)

75. One comment suggested that foreign manufacturers designate a U.S. agent to fulfill the registration and certification requirements. Another comment suggested that foreign manufacturers be permitted to register.

Under § 807.40 (21 CFR 807.40), foreign manufacturers are required to designate a U.S. agent to serve as an official correspondent, as well as to register and list their medical devices distributed in the United States, submit premarket notifications and ensure compliance with the MDR reporting requirements. In § 807.40(a), FDA has changed the time allowed for foreign manufacturers to inform the agency of their designated U.S. agents, or a change in such agents, from 30 days to 5 days. FDA believes this is sufficient time to comply with this requirement.

76. Under § 807.20 (21 CFR 807.20), an owner or operator is required to register its "name, places of business, and all establishments." Under this regulation, FDA has required the registration of all locations that fit within the definition of "establishment," which is defined under § 807.3(a) (21 CFR 807.3(a)) as a location where devices are "manufactured, assembled, or otherwise processed." Although FDA has authority under § 807.20 to require the registration of "places of business" that are not "establishments" under initial registration and listing regulation that were issued in 1977, the agency previously has declined to exercise this authority.

Under this regulation, FDA will use registration numbers in its data bases to process all manufacturer adverse event reports. Thus FDA must receive reports that originate from locations that may not be "establishments" and, therefore, have previously not had registration numbers. Accordingly, FDA is notifying manufacturers that upon the effective date of this final regulation, the agency will exercise its authority under § 807.20, and require all locations that are MDR reporting sites to register because they are "places of business" under § 807.20, regardless of whether they fit under the definition of "establishment."

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

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neither an environmental assessment nor an environmental impact statement is required.

VI. Intergovernmental Partnership

The agency has analyzed this rulemaking in accordance with the principles and criteria set forth in the Unfunded Mandate Reform Act (Pub. L. 104–4) and Executive Order 12875. Executive Order 12875 states that no agency or executive department shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government supplies funds necessary to comply with the mandate, or the agency provides the Office of Management and Budget (OMB) a description of the agency's consultations with affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate. Executive Order 12875 does not apply to this final rule because the regulatory requirements that are applicable to government facilities are required by the provisions of the SMDA, as amended by the 1992 amendments. Moreover, many of the comments the agency received in response to the November 26, 1991, tentative final rule were from Federal, State, or local government facilities or from organizations representing these facilities. The agency believes this final rule is responsive to those comments.

The agency has also examined the consistency of this final rule with the Unfunded Mandate Reform Act. The Unfunded Mandate Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The Unfunded Mandate Reform Act does not apply to this final rule because it will not result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million.

VII. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the principles set out in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

Many comments stated that the provisions of the rule, as proposed, are overly burdensome, that the costs outweigh the benefits, and that the economic impact was underestimated and misleading. Several comments stated that the provisions constitute too great a burden for FDA, as well as for user facilities, distributors, and manufacturers.

The agency does not agree. For the reasons stated in the preamble, including section IV.A., comment 1 of this document, FDA believes this regulation carefully balances the interests of public health with industry requirements. The agency also does not agree that the economic impact assessment was misleading. The cost projections contained in the proposed rule were based upon the information available to the agency at the time.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The full economic impact assessment is on file at the Dockets Management Branch (address above). This rule is designed to: (1) Implement provisions of the SMDA regarding user facility reporting to FDA of deaths and serious injuries and illnesses related to medical devices and (2) amend the MDR regulations that require manufacturers to report deaths, serious injuries and malfunctions related to medical devices to FDA.

A. Benefits

The legislative history of the SMDA documents reports that device problems that occur in hospitals are rarely reported, despite full scale implementation of the current medical device reporting regulation. A 1986 Government Accounting Office report showed that less than 1 percent of device problems occurring in hospitals were reported directly to FDA. As a result, neither patients nor medical providers would have access to relevant safety information. This final rule requires user facilities to report device-related deaths and serious injuries promptly, and thus it expands the information base of FDA and the manufacturer for early detection of problems associated with medical devices. In addition to manufacturers, those required to report to FDA include device distributors, hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment and diagnostic facilities. As a result of this rule, FDA, patients, and medical providers will have access to relevant safety information not previously available. MDR reports alert FDA to life-threatening and other serious problems with medical devices that are on the market, and FDA then can address these problems through the appropriate mechanisms. Further, when the final rule is in place, FDA will begin to receive denominator, or baseline data, such as the number of a particular device manufactured, distributed, and in use in the previous year. This information will enable FDA to better perform trend analyses and determine the significance of a report or group of reports.

Unfortunately, there are insufficient data available to quantify the benefits of the rule. The primary benefit of this rule is that it provides an early warning of device problems which is then evaluated together with other information and, if appropriate, followed by a corrective action such as the issuance of an FDA Safety Alert, recall, or other action. The agency believes the actions taken as a result of the information provided by MDR reports will provide benefits such as injuries prevented, lives saved, avoidance of hospitalization and outpatient treatment costs, and other possible benefits. Any quantification of benefits would require an estimation of both the number and seriousness of adverse events prevented by actions taken as the result of the evaluation of MDR reports. Thus the agency does not believe benefits can be quantified with any reliable accuracy.

B. Nature of the Economic Impact

This regulation will require certain device user facilities to develop, maintain, and implement procedures for reporting deaths and serious injuries related to medical devices. Some current MDR requirements for manufacturers are being eliminated or reduced, but manufacturers will now be required to develop and maintain written MDR procedures and implement new reporting requirements, including the submission of baseline reports and annual updates and annual certification. In addition, foreign manufacturers will be required to designate an agent in the United States that will be responsible for submitting required documents for complying with the MDR reporting requirements and for related documentation.

C. Impact Assessment

Based on the cost analysis, the economic impact on manufacturers, U.S. agents for foreign manufacturers, and users of medical devices will not exceed the $100 million threshold established under Executive Order 12866. Annualized one-time costs of about $0.1 million will be incurred by industry for establishing and/or documenting procedures for data collection and reporting. In addition, the annual cost of user reporting is estimated to be $31.7 million, for a total annualized industry cost of $40.8 million.

An estimated 51,000 additional death and injury reports are expected as a result of adverse incidents that must be reported under this rule. This is in line with the Congressional Budget Office estimate of 40,000 reports. These incidents generate investigation, data analyses and summaries, and additional reporting requirements. Based on the above estimates, this translates to an average cost per adverse report of $799.

1. User Facility Costs

Table 1 summarizes the total incremental initial and recurring costs of the reporting requirements for user facilities. These estimates are based on cost data from the Center for Devices and Radiological Health's draft report to Congress, entitled "The Evaluation of Medical Device User Facility Reporting Requirements", 1994. Components of one-time costs include developing procedures and modifying forms for reporting and training personnel. The most significant one-time costs are $3.0 million for developing procedures and $2.6 million for "other" startup costs. The total annualized one-time cost to user facilities is estimated to be $8.9 million.

TABLE 1.—TOTAL COSTS TO USER FACILITIES BY TYPE OF FACILITY

[millions of dollars]

Facility type	Number of facilities	One-time cost	Annualized [1]	Annual	Total
Hospitals	6,738	7.9	1.9	7.0	8.9
Nursing homes	25,648	12.7	3.1	5.3	8.4
Ambulatory surgical	1,300	0.7	0.2	0.7	0.9
Outpatient diagnostic	7,578	3.3	0.8	0.7	1.5
Outpatient treatment	4,041	2.5	0.6	1.4	2.0
Emergency medical service	15,800	9.5	2.3	4.1	6.4
Total	60,905	36.6	8.9	19.3	28.2

[1] Annualized over 5 years at a discount rate of 7 percent. (Numbers may not add due to rounding.)

Annual costs include investigation of the event, reporting the event, preparing semiannual reports, and related computer, and other costs. The total annual cost to user facilities is $19.3 million. Hospitals and nursing homes incur about two- thirds of this cost at $7.0 million and $5.3 million, respectively. Major components of annual cost include $5.4 million to investigate and to prepare the initial reports. Semiannual reports are required only if a facility has a reportable event, and are estimated to cost $59,000. The most significant costs are for computer and other costs at $14.8 million. The total first-year costs to user facilities is $28.2 million.

2. Manufacturer and U.S. Agent for Foreign Manufacturer Costs

Manufacturers are currently required under the current good manufacturing practices regulation to investigate complaints and analyze device failures. Manufacturers will now be required to document and maintain their MDR related procedures. The vast majority of manufacturers already have such written procedures in place. Incremental one-time costs for documenting these procedures will be $105 thousand. Foreign manufacturers will incur additional one-time costs of $862 thousand to select an agent and notify FDA. Annualized at 7 percent over 5 years, this translates to $187 thousand per year.

Manufacturers must also comply with the new reporting requirements. Table 2 presents the expected annual cost of reporting by type of facility and type of report. The major components of annual cost include the followup and reporting of additional adverse medical device events and the submission of baseline reports. MDR followup on user and distributor reports and completion of information on Form 3500A is expected to cost manufacturers $11.1 million annually for the estimated 51,000 reports from user facilities and distributors. The cost of 8,000 new baseline reports and 12,000 updates will be $598 thousand.

TABLE 2.—ANNUAL COST OF REPORTING

Type of facility	Type of report	Cost (dollars)	Number of reports	Total cost ($000)
All manufacturers	Followup MDR's from user/distributor facilities	217.60	51,000	11,098
	Baseline report	54.40	8,000	435
	Baseline update	13.60	12,000	163
	Five-day report	233.80	100	23
	Annual certification	26.00	12,145	316
Foreign only	Fees for MDR reporting			134
	Fees for 510(k) filing	110.08	510	56
(All manufacturers-Total)				12,225
U.S. agents for foreign manufacturers	Register and list	16.64	4,812	80

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TABLE 2.—ANNUAL COST OF REPORTING—Continued

Type of facility	Type of report	Cost (dollars)	Number of reports	Total cost ($000)
	Notify and document MDR's	7.80	5,750	45
(U.S. agents for foreign manufacturers-Total).				125
Total				12,350

In addition, domestic manufacturers and U.S. agents for foreign manufacturers will be required to certify annually the number of reportable events that have occurred. This is a formality in terms of data collection and reporting and is expected to cost $316 thousand. Foreign manufacturers will incur a fee of $190 thousand for reporting services conducted by their U.S. agents. Annual costs to U.S. agents are $125 thousand for registering and listing their foreign manufacturers establishments and products and for complying with reporting requirements. Previously, foreign manufacturers were required to submit premarket notifications or have their initial distributor in the United States do so. Now, U.S. agents will be required to submit premarket notifications for foreign manufacturers. This represents a transfer of existing requirements and therefore, no increase in cost.

3. Total Cost to Industry

Table 3 presents a summary of the total annual costs to industry. Costs are $28.2 million for user facilities, $12.4 million for manufacturers, and $125 thousand for U.S. agents for foreign manufacturers, for a total annual cost to industry of $40.6 million.

TABLE 3.—TOTAL ANNUALIZED COST TO INDUSTRY

[In millions of dollars]

Industry	One-time[1]	Annual	Total
User Facilities	0.93	19.31	28.24
Manufacturers	0.19	12.22	12.41

TABLE 3.—TOTAL ANNUALIZED COST TO INDUSTRY—Continued

[In millions of dollars]

Industry	One-time[1]	Annual	Total
U.S. agents for foreign manufacturers		0.13	0.13
Total	9.12	31.66	40.77

[1] Annualized over 5 years at a discount rate of 7 percent. (Numbers may not add due to rounding.)

4. Small Business Impacts

There is little likelihood that there will be a significant impact on small facilities. The one-time start-up costs range from $437 to $1,629 for user facilities, depending on facility type. Annualized at 7 percent for 5 years, these costs range from $107 to $397 for user facilities. In addition, estimates of the annual number of additional medical device events attributable to this regulation are about 51,000. Because there are nearly 61,000 user facilities, this averages out to about .8 serious events per facility attributable to the user reporting rule at an annual cost of $400 per event.

Similarly, small businesses in the medical device manufacturing industry will not be significantly affected, although the industry has a substantial number of small facilities, with about 65 percent of the establishments having fewer than 50 employees. No more than 22 percent of the anticipated $12 million annual impact of these regulations on manufacturers would be attributable to small establishments, or about $2.7 million per year. Because there are about 7,300 small medical device establishments (including foreign manufacturers), the average impact on one small establishment should be less than $338 annually. Assuming that all of the approximately 4,800 U.S. agents are small, on average, the $125 thousand impact on any one establishment would be $26 annually.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and recordkeeping requirements for user facilities and manufacturers of medical devices under the Safe Medical Devices Act of 1990 (SMDA) and the Medical Device Amendments of 1992 (1992 Amendments)(General requirements).

Description: This regulation implements provisions of the SMDA and the 1992 amendments regarding user facility reporting of deaths and serious injuries related to medical devices. This regulation also amends regulations regarding device manufacturer reporting of deaths, serious injuries, and certain malfunctions related to medical devices. The purpose of these changes is to improve the protection of the public health while also reducing the regulatory burden on reporting entities.

Description of Respondents: Businesses or other for profit organizations, nonprofit organizations, Federal, State, and local governments.

TABLE 4.—ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
803.19	100	1.0	100	3.0	300

TABLE 4.—ESTIMATED ANNUAL BURDEN FOR REPORTING—Continued

CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
803.30(a)	700	1.0	700	3.0	2,100
803.30(b)	20,000	1.5	30,000	3.0	90,000
803.33	2,000	1.0	2,000	1.0	2,000
803.50	1,250	40.0	50,000	0.5	25,000
803.53	100	1.0	100	0.5	50
803.55	1,000	20.0	20,000	[1] 1.1	22,000
803.56	500	20.0	10,000	1.0	10,000
803.57	12,000	1.0	12,000	1.0	12,000
803.58	5,000	1.0	5,000	1.0	5,000
Total					168,450

[1] Although an initial submission will take an estimated 2 hours to complete, the annual update will take only .5 hours. The average hours per response is therefore 1.1, as reflected here.

TABLE 5.—ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

CFR section	Number of recordkeepers	Hours per recordkeeper	Total hours
803.18(c)	36,639	0.25	9,160
803.18(e)	625	16.00	10,000
Total			19,160

Although the November 26, 1991, tentative final rule provided a 60-day comment period (extended to 90 days in the January 24, 1992, **Federal Register**, 57 FR 2861), and this final rule is based on the comments received, FDA Form 3419 (semiannual report), FDA Form 3417 (baseline report), and FDA Form 3381 (annual certification) have not been previously available to OMB or the public for review. Therefore, as required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this final rule to OMB for its review of these information collection requirements.

In addition, the agency solicits public comment on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Individuals and organizations may submit comments on the information collection requirements by January 10, 1996, and should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for FDA.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been approved under OMB no. 0910–0059 and which expires on March 31, 1996. FDA will publish a notice in the **Federal Register** prior to the effective date of this final rule of OMB's decision to approve, modify or disapprove the information collection requirements.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended as follows:

1. Part 803 is revised to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.
803.1 Scope.
803.3 Definitions.
803.9 Public availability of reports.
803.10 General description of reports required from user facilities and manufacturers.
803.11 Obtaining the forms.
803.12 Where to submit reports.
803.13 English reporting requirement.
803.14 Electronic reporting.
803.15 Requests for additional information.
803.16 Disclaimers.
803.17 Written MDR procedures.
803.18 Files.
803.19 Exemptions, variances, and alternative reporting requirements.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

803.20 How to report.
803.21 Reporting codes.
803.22 When not to file.

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Subpart C—User Facility Reporting Requirements

803.30 Individual adverse event reports; user facilities.
803.32 Individual adverse event report data elements.
803.33 Semiannual reports.

Subpart D—[Reserved]

Subpart E—Manufacturer Reporting Requirements

803.50 Individual adverse event reports; manufacturers.
803.52 Individual adverse event report data elements.
803.53 Five-day reports.
803.55 Baseline reports.
803.56 Supplemental reports.
803.57 Annual certification.
803.58 Foreign manufacturers.

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

Subpart A—General Provisions

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities and manufacturers must report deaths and serious injuries to which a device has or may have caused or contributed, and must establish and maintain adverse event files. Manufacturers are also required to report certain device malfunctions and submit an annual report to FDA certifying that the correct number of medical device reports were filed during the previous 12-month period or, alternatively, that no reports were required during that same time period. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

(b) This part supplements and does not supersede other provisions of this subchapter, including the provisions of part 820 of this chapter.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of title 21, unless otherwise noted.

§ 803.3 Definitions.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Ambulatory surgical facility (ASF)* means a distinct entity that operates for the primary purpose of furnishing same day outpatient surgical services to patients. An ASF may be either an independent entity (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure or control of an entity). An ASF is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or regardless of whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the ASF must report that event regardless of the nature or location of the medical service provided by the ASF.

(c) *Become aware* means that an employee of the entity required to report has acquired information reasonably suggesting a reportable adverse event has occurred. Device user facilities are considered to have "become aware" when medical personnel, as defined in paragraph (r) of this section, who are employed by or otherwise formally affiliated with the facility, acquire such information about a reportable event. Manufacturers are considered to have "become aware" of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported within 30 days, or that is required to be reported within 5 days pursuant to a written request from FDA under 803.53(b); and

(2) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events, from any information, including any trend analysis, necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

(d) *Caused or contributed* means that a death or serious injury was or may have been attributed to a medical device, or that a medical device was or may have been a factor in a death or serious injury, including events occurring as a result of:

(1) Failure;
(2) Malfunction;
(3) Improper or inadequate design;
(4) Manufacture;
(5) Labeling; or
(6) User error.

(e) (1) *Device family* means a group of one or more devices manufactured by or for the same manufacturer and having the same:

(i) Basic design and performance characteristics related to device safety and effectiveness,

(ii) Intended use and function, and

(iii) Device classification and product code.

(2) Devices that differ only in minor ways not related to safety or effectiveness can be considered to be in the same device family. Factors such as brand name and common name of the device and whether the devices were introduced into commercial distribution under the same 510(k) or premarket approval application (PMA), may be considered in grouping products into device families.

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in paragraphs (l), (b), (s), (t), and (u), respectively, of this section, which is not a "physician's office," as defined in paragraph (w) of this section. School nurse offices and employee health units are not device user facilities.

(g) [Reserved]

(h) [Reserved]

(i) *Expected life* of a device (required on the manufacturer's baseline report) means the time that a device is expected to remain functional after it is placed into use. Certain implanted devices have specified "end of life" (EOL) dates. Other devices are not labeled as to their respective EOL, but are expected to remain operational through maintenance, repair, upgrades, etc., for an estimated period of time.

(j) *FDA* means the Food and Drug Administration.

(k) *Five-day report* means a medical device report that must be submitted by a manufacturer to FDA pursuant to § 803.53, on FDA Form 3500A or electronic equivalent as approved under § 803.14, within 5 work days.

(l) *Hospital* means a distinct entity that operates for the primary purpose of providing diagnostic, therapeutic (medical, occupational, speech, physical, etc.), surgical and other patient services for specific and general medical conditions. Hospitals include general, chronic disease, rehabilitative, psychiatric, and other special-purpose facilities. A hospital may be either independent (e.g., not a part of a provider of services or any other facility) or may be operated by another medical entity (e.g., under the common ownership, licensure or control of another entity). A hospital is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the hospital must report that event regardless of the nature or location of the medical service provided by the hospital.

(m) *Malfunction* means the failure of a device to meet its performance specifications or otherwise perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the intended use for which the device is labeled or marketed, as defined in § 801.4 of this chapter.

(n) *Manufacturer* means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper or labeling of a device in furtherance of the distribution of the device from the original place of manufacture;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications;

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient; or

(4) Is the U.S. agent of a foreign manufacturer.

(o) *Manufacturer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device. (If the manufacturing site does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer will be informed of the temporary number.);

(2) The four-digit calendar year in which the report is submitted; and

(3) The five-digit sequence number of the reports submitted during the year, starting with 00001. (For example, the complete number will appear 1234567–1995–00001.)

(p) *MDR* means medical device report.

(q) *MDR reportable event* (or *reportable event*) means:

(1) An event about which user facilities become aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury; or

(2) An event about which manufacturers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(r) *Medical personnel*, as used in this part, means an individual who:

(1) Is licensed, registered, or certified by a State, territory, or other governing body, to administer health care;

(2) Has received a diploma or a degree in a professional or scientific discipline;

(3) Is an employee responsible for receiving medical complaints or adverse event reports; or

(4) Is a supervisor of such persons.

(s)(1) *Nursing home* means an independent entity (i.e., not a part of a provider of services or any other facility) or one operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity) that operates for the primary purpose of providing:

(i) Skilled nursing care and related services for persons who require medical or nursing care;

(ii) Hospice care to the terminally ill; or

(iii) Services for the rehabilitation of the injured, disabled, or sick.

(2) A nursing home is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the nursing home must report that event regardless of the nature, or location of the medical service provided by the nursing home.

(t)(1) *Outpatient diagnostic facility* means a distinct entity that:

(i) Operates for the primary purpose of conducting medical diagnostic tests on patients;

(ii) Does not assume ongoing responsibility for patient care; and

(iii) Provides its services for use by other medical personnel. (Examples include diagnostic radiography, mammography, ultrasonography, electrocardiography, magnetic resonance imaging, computerized axial tomography and in-vitro testing).

(2) An outpatient diagnostic facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient diagnostic facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient diagnostic facility must report that event regardless of the nature or location of the medical service provided by the outpatient diagnostic facility.

(u) (1) *Outpatient treatment facility* means a distinct entity that operates for the primary purpose of providing nonsurgical therapeutic (medical, occupational, or physical) care on an outpatient basis or home health care setting. Outpatient treatment facilities include ambulance providers, rescue services, and home health care groups. Examples of services provided by outpatient treatment facilities include: Cardiac defibrillation, chemotherapy, radiotherapy, pain control, dialysis, speech or physical therapy, and treatment for substance abuse.

(2) An outpatient treatment facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient treatment facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient treatment facility must report that event regardless of the nature or location of the medical service provided by the outpatient treatment facility.

(v) *Patient of the facility* means any individual who is being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility. For the purposes of this part, the definition encompasses employees of the facility or individuals affiliated with the facility, who in the course of their duties suffer a device-related death or serious injury that has or may have been caused or contributed to by a device used at the facility.

(w) *Physician's office* means a facility that operates as the office of a physician or other health care professional (e.g., dentist, chiropractor, optometrist, nurse practitioner, school nurse offices, school clinics, employee health clinics, or free-standing care units) for the primary purpose of examination, evaluation, and treatment or referral of patients. A physician's office may be independent, a group practice, or part of a Health Maintenance Organization.

(x) [Reserved]

(y) *Remedial action* means, for the purposes of this subpart, any action other than routine maintenance or servicing, of a device where such action is necessary to prevent recurrence of a reportable event.

(z) [Reserved]

(aa)(1) *Serious injury* means an injury or illness that:

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(i) Is life-threatening;

(ii) Results in permanent impairment of a body function or permanent damage to body structure; or

(iii) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(2) *Permanent* means, for purposes of this subpart, irreversible impairment or damage to a body structure or function, excluding trivial impairment or damage.

(bb) *Shelf life*, as required on the manufacturer's baseline report, means the maximum time a device will remain functional from the date of manufacture until it is used in patient care. Some devices have an expiration date on their labeling indicating the maximum time they can be stored before losing their ability to perform their intended function.

(cc) [Reserved]

(dd)(1) *User facility report number* means the number that uniquely identifies each report submitted by a user facility to manufacturers and FDA. This number consists of three parts as follows:

(i) The user facility's 10-digit Health Care Financing Administration (HCFA) number (if the HCFA number has fewer than 10 digits, fill the remaining spaces with zeros);

(ii) The four-digit calendar year in which the report is submitted; and

(iii) The four-digit sequence number of the reports submitted for the year, starting with 0001. (For example, a complete number will appear as follows: 1234560000–1995–0001.)

(2) If a facility has more than one HCFA number, it must select one that will be used for all of its MDR reports. If a facility has no HCFA number, it should use all zeros in the appropriate space in its initial report (e.g., 0000000000–1995–0001) and FDA will assign a number for future use. The number assigned will be used in FDA's record of that report and in any correspondence with the user facility. All zeros should be used subsequent to the first report if the user does not receive FDA's assigned number before the next report is submitted. If a facility has multiple sites, the primary site can report centrally and use one reporting number for all sites if the primary site provides the name, address and HCFA number for each respective site.

(ee) *Work day* means Monday through Friday, excluding Federal holidays.

§ 803.9 Public availability of reports.

(a) Any report, including any FDA record of a telephone report, submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter;

(2) Any personal, medical, and similar information (including the serial number of implanted devices), which would constitute an invasion of personal privacy under § 20.63 of this chapter. FDA will disclose to a patient who requests a report, all the information in the report concerning that patient, as provided in § 20.61 of this chapter; and

(3) Any names and other identifying information of a third party voluntarily submitting an adverse event report.

(c) FDA may not disclose the identity of a device user facility which makes a report under this part except in connection with:

(1) An action brought to enforce section 301(q) of the act, including the failure or refusal to furnish material or information required by section 519 of the act;

(2) A communication to a manufacturer of a device which is the subject of a report required by a user facility under § 803.30;

(3) A disclosure relating to a manufacturer or distributor adverse event report that is required under section 519(a) of the act; or

(4) A disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

§ 803.10 General description of reports required from user facilities and manufacturers.

(a) *Device user facilities.* User facilities must submit the following reports, which are described more fully in subpart C of this part.

(1) User facilities must submit MDR reports of individual adverse events within 10 days after the user facility becomes aware of an MDR reportable event as described in §§ 803.30 and 803.32.

(i) User facilities must submit reports of device-related deaths to FDA and to the manufacturer, if known.

(ii) User facilities must submit reports of device-related serious injuries to manufacturers, or to FDA, if the manufacturer is unknown.

(2) User facilities must submit semiannual reports as described in § 803.33.

(b) [Reserved]

(c) *Device manufacturers.* Manufacturers must submit the following reports as described more fully in subpart E of this part:

(1) MDR reports of individual adverse events within 30 days after the manufacturer becomes aware of a reportable death, serious injury, or malfunction as described in §§ 803.50 and 803.52.

(2) MDR reports of individual adverse events within 5 days of:

(i) Becoming aware that a reportable MDR event requires remedial action to prevent an unreasonable risk of substantial harm to the public health or,

(ii) Becoming aware of an MDR reportable event for which FDA has made a written request, as described in § 803.53.

(3) Annual baseline reports as described in § 803.55.

(4) Supplemental reports if they obtain information that was not provided in an initial report as described in § 803.56.

(5) Annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 Obtaining the forms.

User facilities and manufacturers must submit all reports of individual adverse events on FDA Form 3500A (MEDWATCH form) or in an electronic equivalent as approved under § 803.14. This form and all other forms referenced in this section can also be obtained from the Consolidated Forms and Publications Office, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785, or from the Division of Small Manufacturers Assistance, Office of Health and Industry Programs, Center for Devices and Radiological Health, 1350 Piccard Dr. (HFZ–220), Rockville, MD 20850, telephone facsimile (FAX) 301–443–8818. FDA Form 3500A may also be obtained from the Food and Drug Administration, MEDWATCH (HF–2), 5600 Fishers Lane, rm. 9–57, Rockville, MD 20850, 301–443–0117.

§ 803.12 Where to submit reports.

(a) Any written report or additional information required under this part shall be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Medical Device Reporting, PO Box 3002, Rockville, MD 20847–3002.

(b) Each report and its envelope shall be specifically identified, e.g., "User Facility Report," "SemiAnnual Report," "Manufacturer Report," "5-Day Report," "Baseline Report," etc.

(c) If an entity is confronted with a public health emergency, this can be brought to FDA's attention by contacting the FDA Emergency Operations Branch (HFC–162), Office of Regional Operations, at 301–443–1240, and should be followed by the submission of a FAX report to 301–443–3757.

(d) A voluntary telephone report may be submitted to, or information regarding voluntary reporting may be obtained from, the MEDWATCH hotline at 800–FDA–1088.

§ 803.13 English reporting requirement.

(a) All reports required in this part which are submitted in writing or electronic equivalent shall be submitted to FDA in English.

(b) All reports required in this part which are submitted on an electronic medium shall be submitted to FDA in a manner consistent with § 803.14.

§ 803.14 Electronic reporting.

(a) Any report required by this part may be submitted electronically with prior written consent from FDA. Such consent is revocable. Electronic report submissions include alternative reporting media (magnetic tape, disc, etc.) and computer-to-computer communication.

(b) Any electronic report meeting electronic reporting standards, guidelines, or other procedures developed by the agency for MDR reporting will be deemed to have prior approval for use.

§ 803.15 Requests for additional information.

(a) FDA may determine that protection of the public health requires additional or clarifying information for medical device reports submitted to FDA under this part. In these instances, and in cases when the additional information is beyond the scope of FDA reporting forms or is not readily accessible, the agency will notify the reporting entity in writing of the additional information that is required.

(b) Any request under this section shall state the reason or purpose for which the information is being requested, specify the date that the information is to be submitted and clearly relate the request to a reported event. All verbal requests will be confirmed in writing by the agency.

§ 803.16 Disclaimers.

A report or other information submitted by a reporting entity under this part, and any release by FDA of that report or information, does not necessarily reflect a conclusion by the party submitting the report or by FDA that the report or information constitutes an admission that the device, or the reporting entity or its employees, caused or contributed to the reportable event. The reporting entity need not admit and may deny that the report or information submitted under this part constitutes an admission that the device, the party submitting the report, or employees thereof, caused or contributed to a reportable event.

§ 803.17 Written MDR procedures.

User facilities and manufacturers shall develop, maintain, and implement written MDR procedures for the following:

(a) Internal systems that provide for:

(1) Timely and effective identification, communication, and evaluation of events that may be subject to medical device reporting requirements;

(2) A standardized review process/procedure for determining when an event meets the criteria for reporting under this part; and

(3) Timely transmission of complete medical device reports to FDA and/or manufacturers;

(b) Documentation and recordkeeping requirements for:

(1) Information that was evaluated to determine if an event was reportable;

(2) All medical device reports and information submitted to FDA and manufacturers;

(3) Any information that was evaluated for the purpose of preparing the submission of semiannual reports or certification; and

(4) Systems that ensure access to information that facilitates timely followup and inspection by FDA.

§ 803.18 Files.

(a) User facilities and manufacturers shall establish and maintain MDR event files. All MDR event files shall be prominently identified as such and filed to facilitate timely access.

(b) (1) For purposes of this part, "MDR event files" are written or electronic files maintained by user facilities and manufacturers. MDR event files may incorporate references to other information, e.g., medical records, patient files, engineering reports, etc., in lieu of copying and maintaining duplicates in this file. MDR event files must contain:

(i) Information in the possession of the reporting entity or references to information related to the adverse event, including all documentation of the entity's deliberations and decisionmaking processes used to determine if a device-related death, serious injury, or malfunction was or was not reportable under this part.

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., a distributor or manufacturer).

(2) User facilities and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) User facilities shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event. Manufacturers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. MDR event files must be maintained for the time periods described in this paragraph even if the device is no longer distributed.

(d) [Reserved]

(e) The manufacturer may maintain MDR event files as part of its complaint file, under § 820.198 of this chapter, provided that such records are prominently identified as MDR reportable events. A report submitted under this subpart A shall not be considered to comply with this part unless the event has been evaluated in accordance with the requirements of §§ 820.162 and 820.198 of this chapter. MDR files shall contain an explanation of why any information required by this part was not submitted or could not be obtained. The results of the evaluation of each event are to be documented and maintained in the manufacturer's MDR event file.

§ 803.19 Exemptions, variances, and alternative reporting requirements.

(a) The following persons are exempt from the reporting requirements under this part.

(1) An individual who is a licensed practitioner who prescribes or administers devices intended for use in humans and who manufactures or imports devices solely for use in diagnosing and treating persons with whom the practitioner has a "physician-patient" relationship.

(2) An individual who manufactures devices intended for use in humans solely for such person's use in research or teaching and not for sale, including any person who is subject to alternative reporting requirements under the investigational device exemption regulations, parts 812 and 813 of this chapter, which require reporting of all adverse device effects.

(3) Dental laboratories, or optical laboratories.

(b) Manufacturers or user facilities may request exemptions or variances from any or all of the reporting requirements in this part. The request shall be in writing and include information necessary to identify the

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firm and device, a complete statement of the request for exemption, variance, or alternative reporting, and an explanation why the request is justified.

(c) FDA may grant in writing, to a manufacturer or user facility, an exemption, variance or alternative from, or to, any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually, or other appropriate time period. These modifications may be initiated by a request as specified in this section, or at the discretion of FDA. When granting such modifications, FDA may impose other reporting requirements to ensure the protection of public health.

(d) FDA may revoke or modify in writing an exemption, variance, or alternative reporting requirements if FDA determines that protection of the public health justifies the modification or a return to the requirements as stated in this part.

(e) Firms granted a reporting modification by FDA shall provide any reports or information required by that approval. The conditions of the approval will replace and supersede the reporting requirement specified in this part until such time that FDA revokes or modifies the alternative reporting requirements in accordance with paragraph (d) of this section.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

§ 803.20 How to report.

(a) *Description of form.* There are two versions of the MEDWATCH form for individual reports of adverse events. FDA Form 3500 is available for use by health professionals and consumers for the submission of voluntary reports regarding FDA-regulated products. FDA Form 3500A is the mandatory reporting form to be used for submitting reports by user facilities and manufacturers of FDA-regulated products. The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device and "initial reporter" (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or distributor).

(2) The back part of the form contains sections to be completed by user facilities and manufacturers. User facilities must complete section F; device manufacturers must complete sections G and H. Manufacturers are not required to recopy information submitted to them on a Form 3500A unless the information is being copied onto an electronic medium. If the manufacturer corrects or supplies information missing from the other reporter's 3500A form, it should attach a copy of that form to the manufacturer's report form. If the information from the other reporter's 3500A form is complete and correct, the manufacturer can fill in the remaining information on the same form.

(b) *Reporting standards.* (1) User facilities are required to submit MDR reports to:

(i) The device manufacturer and to FDA within 10 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death; or

(ii) The manufacturer within 10 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a serious injury. Such reports shall be submitted to FDA if the device manufacturer is not known.

(2) [Reserved]

(3) Manufacturers are required to submit MDR reports to FDA:

(i) Within 30 days of becoming aware of information that reasonably suggests that a device may have caused or contributed to a death or serious injury; or

(ii) Within 30 days of becoming aware of information that reasonably suggests a device has malfunctioned and that device or a similar device marketed by the manufacturer would be likely to cause a death or serious injury if the malfunction were to recur; or

(iii) Within 5 days if required by § 803.53.

(c) *Information that reasonably suggests a reportable event occurred* (1) Information that reasonably suggests that a device has or may have caused or contributed to an MDR reportable event (i.e., death, serious injury, and, for manufacturers, a malfunction that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur) includes any information, such as professional, scientific or medical facts and observations or opinions, that would reasonably suggest that a device has caused or may have caused or contributed to a reportable event.

(2) Entities required to report under this part do not have to report adverse events for which there is information that would cause a person who is qualified to make a medical judgment (e.g., a physician, nurse, risk manager, or biomedical engineer) to reach a reasonable conclusion that a device did not cause or contribute to a death or serious injury, or that a malfunction would not be likely to cause or contribute to a death or serious injury if it were to recur. Information which leads the qualified person to determine that a device-related event is or is not reportable must be contained in the MDR event files, as described in § 803.18.

§ 803.21 Reporting codes.

(a) FDA has developed a MEDWATCH Mandatory Reporting Form Coding Manual for use with medical device reports. This manual contains codes for hundreds of adverse events for use with FDA Form 3500A. The coding manual is available from the Division of Small Manufacturer Assistance, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850, FAX 301–443–8818.

(b) FDA may use additional coding of information on the reporting forms or modify the existing codes on an ad hoc or generic basis. In such cases, FDA will ensure that the new coding information is available to all reporters.

§ 803.22 When not to file.

(a) Only one medical device report from the user facility or manufacturer is required under this part if the reporting entity becomes aware of information from multiple sources regarding the same patient and same event.

(b) A medical device report that would otherwise be required under this section is not required if:

(1) The user facility or manufacturer determines that the information received is erroneous in that a device-related adverse event did not occur. Documentation of such reports shall be retained in MDR files for time periods specified in § 803.18.

(2) The manufacturer determines that the device was manufactured by another manufacturer. Any reportable event information that is erroneously sent to a manufacturer shall be forwarded to FDA, with a cover letter explaining that the device in question was not manufactured by that firm.

Subpart C—User Facility Reporting Requirements

§ 803.30 Individual adverse event reports; user facilities.

(a) *Reporting standard.* A user facility shall submit the following reports to the manufacturer or to FDA, or both, as specified below:

(1) *Reports of death.* Whenever a user facility receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to the death of a patient of the facility, the facility shall as soon as practicable, but not later than 10 work days after becoming aware of the information, report the information required by § 803.32 to FDA, on FDA Form 3500A, or an electronic equivalent as approved under § 803.14, and if the identity of the manufacturer is known, to the device manufacturer.

(2) *Reports of serious injury.* Whenever a user facility receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to a serious injury to a patient of the facility, the facility shall, as soon as practicable but not later than 10 work days after becoming aware of the information, report the information required by § 803.32, on FDA Form 3500A or electronic equivalent, as approved under § 803.14, to the manufacturer of the device. If the identity of the manufacturer is not known, the report shall be submitted to FDA.

(b) *Information that is reasonably known to user facilities.* User facilities must provide all information required in this subpart C that is reasonably known to them. Such information includes information found in documents in the possession of the user facility and any information that becomes available as a result of reasonable followup within the facility. A user facility is not required to evaluate or investigate the event by obtaining or evaluating information that is not reasonably known to it.

§ 803.32 Individual adverse event report data elements.

User facility reports shall contain the following information, reasonably known to them as described in 803.30(b), which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event, e.g., death; or serious injury, that is:

(i) Life threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests including dates and laboratory data; and

(7) Description of other relevant history including pre- existing medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether device was available for evaluation and whether device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and telephone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether initial reporter also sent a copy of the report to FDA, if known.

(e) User facility information (Block F) shall contain the following:

(1) Whether reporter is a user facility;

(2) User facility number;

(3) User facility address;

(4) Contact person;

(5) Contact person's telephone number;

(6) Date the user facility became aware of the event (month, day, year);

(7) Type of report (initial or followup (if followup, include report number of initial report));

(8) Date of the user facility report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA "Coding Manual For Form 3500A");

(11) Whether a report was sent to FDA and the date it was sent (month, day, year);

(12) Location, where event occurred;

(13) Whether report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address; if available.

§ 803.33 Semiannual reports.

(a) Each user facility shall submit to FDA a semiannual report on FDA Form 3419, or electronic equivalent as approved by FDA under § 803.14. Semiannual reports shall be submitted by January 1 (for reports made July through December) and by July 1 (for reports made January through June) of each year. The semiannual report and envelope shall be clearly identified and submitted to FDA with information that includes:

(1) User facility's HCFA provider number used for medical device reports, or number assigned by FDA for reporting purposes in accordance with § 803.3(dd);

(2) Reporting year and period, e.g., January through June or July through December;

(3) Facility's name and complete address;

(4) Total number of reports attached or summarized;

(5) Date of the semiannual report and the lowest and highest user facility report number of medical device reports submitted during the report period, e.g., 1234567890–1995–0001 through 1000;

(6) Name, position title, and complete address of the individual designated as the facility contact person responsible for reporting to FDA and whether that person is a new contact for that facility; and

(7) Information for each reportable event that occurred during the semiannual reporting period including:

(i) User facility report number;

(ii) Name and address of the device manufacturer;

(iii) Device brand name and common name;

(iv) Product model, catalog, serial and lot number;

(v) A brief description of the event reported to the manufacturer and/or FDA; and

(vi) Where the report was submitted, i.e., to FDA, manufacturer, distributor, etc.

(b) In lieu of submitting the information in paragraph (a)(7) of this section, a user facility may submit a copy of FDA Form 3500A, or an electronic equivalent as approved under section 803.14, for each medical device report submitted to FDA and/or

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manufacturers by that facility during the reporting period.

(c) If no reports are submitted to either FDA or manufacturers during these time periods, no semiannual report is required.

Subpart D—[Reserved]

Subpart E—Manufacturer Reporting Requirements

§ 803.50 Individual adverse event reports; manufacturers.

(a) *Reporting standards.* Device manufacturers are required to report within 30 days whenever the manufacturer receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device marketed by the manufacturer:

(1) May have caused or contributed to a death or serious injury; or

(2) Has malfunctioned and such device or similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur.

(b) *Information that is reasonably known to manufacturers.*—(1) Manufacturers must provide all information required in this subpart E that is reasonably known to them. FDA considers the following information to be reasonably known to the manufacturer:

(i) Any information that can be obtained by contacting a user facility, distributor and/or other initial reporter;

(ii) Any information in a manufacturer's possession; or

(iii) Any information that can be obtained by analysis, testing or other evaluation of the device.

(2) Manufacturers are responsible for obtaining and providing FDA with information that is incomplete or missing from reports submitted by user facilities, distributors, and other initial reporters. Manufacturers are also responsible for conducting an investigation of each event, and evaluating the cause of the event. If a manufacturer cannot provide complete information on an MDR report, it must provide a statement explaining why such information was incomplete and the steps taken to obtain the information. Any required information not available at the time of the report, which is obtained after the initial filing, must be provided by the manufacturer in a supplemental report under § 803.56.

§ 803.52 Individual adverse event report data elements.

Individual medical device manufacturer reports shall contain the following information, known or reasonably known to them as described in § 803.50(b), which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Adverse event or product problem;

(2) Outcomes attributed to the adverse event, e.g., death; or serious injury, that is:

(i) Life threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem to include a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including pre-existing medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and phone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to FDA, if known.

(e) All manufacturers (Block G) shall contain the following:

(1) Contact office name and address and device manufacturing site;

(2) Telephone number;

(3) Report sources;

(4) Date received by manufacturer (month, day, year);

(5) Type of report being submitted (e.g., 5-day, initial, supplemental); and

(6) Manufacturer report number.

(f) Device manufacturers (Block H) shall contain the following:

(1) Type of reportable event (death, serious injury, malfunction, etc.);

(2) Type of followup report, if applicable (e.g., correction, response to FDA request, etc.);

(3) If the device was returned to the manufacturer and evaluated by the manufacturer, a summary of the evaluation. If no evaluation was performed, provide an explanation why no evaluation was performed;

(4) Device manufacture date (month, day, year);

(5) Was device labeled for single use;

(6) Evaluation codes (including event codes, method of evaluation, result, and conclusion codes) (refer to FDA "Coding Manual for Form 3500A");

(7) Whether remedial action was taken and type;

(8) Whether use of device was initial, reuse, or unknown;

(9) Whether remedial action was reported as a removal or correction under section 519(f) of the act (list the correction/removal report number); and

(10) Additional manufacturer narrative; and/or

(11) Corrected data, including:

(i) Any information missing on the user facility report or distributor report, including missing event codes, or information corrected on such forms after manufacturer verification;

(ii) For each event code provided by the user facility under § 803.32(d)(10) or a distributor, a statement of whether the type of the event represented by the code is addressed in the device labeling; and

(iii) If any required information was not provided, an explanation of why such information was not provided and the steps taken to obtain such information.

§ 803.53 Five-day reports.

A manufacturer shall submit a 5-day report to FDA, on Form 3500A or electronic equivalent as approved by FDA under § 803.14 within 5 workdays of:

(a) Becoming aware that a reportable MDR event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or

(b) Becoming aware of an MDR reportable event for which FDA has made a written request for the submission of a 5-day report. When such a request is made, the manufacturer shall submit, without further requests, a 5-day report for all subsequent events of the same nature that involve substantially similar devices for the time period specified in the written request. The time period stated in the original written request can be extended by FDA if it is in the interest of the public health.

§ 803.55 Baseline reports.

(a) A manufacturer shall submit a baseline report on FDA Form 3417, or electronic equivalent as approved by FDA under § 803.14 for a device when the device model is first reported under § 803.50.

(b) Each baseline report shall be updated annually, on the anniversary month of the initial submission, after the initial baseline report is submitted. Changes to baseline information shall be reported in the manner described in § 803.56 (i.e., include only the new, changed, or corrected information in the appropriate portion(s) of the report form). Baseline reports shall contain the following:

(1) Name, complete address, and registration number of the manufacturer's reporting site. If the reporting site is not registered, FDA will assign a temporary registration number until the reporting site officially registers. The manufacturer will be informed of the temporary registration number;

(2) FDA registration number of each site where the device is manufactured;

(3) Name, complete address, and telephone number of the individual who has been designated by the manufacturer as its MDR contact and date of the report. For foreign manufacturers, a confirmation that the individual submitting the report is the agent of the manufacturer designated under § 803.58(a) is required;

(4) Product identification, including device family, brand name, generic name, model number, catalog number, product code and any other product identification number or designation;

(5) Identification of any device previously reported in a baseline report that is substantially similar (e.g., same device with a different model number, or same device except for cosmetic differences in color or shape) to the device being reported, including the identification of the previously reported device by model number, catalog number or other product identification, and the date of the baseline report for the previously reported device;

(6) Basis for marketing, including 510(k) premarket notification number or PMA number, if applicable, and whether the device is currently the subject of an approved post-market study under section 522 of the act;

(7) Date the device was initially marketed and, if applicable, the date on which the manufacturer ceased marketing the device;

(8) Shelf life, if applicable, and expected life of the device;

(9) The number of devices manufactured and distributed in the last 12 months and, an estimate of the number of devices in current use; and

(10) Brief description of any methods used to estimate the number of devices distributed and the method used to estimate the number of devices in current use. If this information was provided in a previous baseline report, in lieu of resubmitting the information, it may be referenced by providing the date and product identification for the previous baseline report.

§ 803.56 Supplemental reports.

When a manufacturer obtains information required under this part that was not provided because it was not known or was not available when the initial report was submitted, the manufacturer shall submit to FDA the supplemental information within 1 month following receipt of such information. In supplemental reports, the manufacturer shall:

(a) Indicate on the form and the envelope, that the reporting form being submitted is a supplemental report. If the report being supplemented is an FDA Form 3500A report, the manufacturer must select, in Item H–2, the appropriate code for the type of supplemental information being submitted;

(b) Provide the appropriate identification numbers of the report that will be updated with the supplemental information, e.g., original manufacturer report number and user facility report number, if applicable;

(c) For reports that cross reference previous reports, include only the new, changed, or corrected information in the appropriate portion(s) of the respective form(s).

§ 803.57 Annual certification.

All manufacturers, including U.S. agents of foreign manufacturers required to report under this section, shall submit a certification report to FDA, on FDA Form 3381, or electronic equivalent as approved under part 814 of this chapter. The date for submission of certification coincides with the date for the firm's annual registration, as designated in § 807.21 of this chapter. The certification period will be the 12-month period ending 1 month before the certification date. The reports shall contain the following information:

(a) Name, address, telephone number, and FDA registration number or FDA-assigned identification number of the firm and whether the firm is a manufacturer;

(b) A statement certifying that:

(1) The firm listed in paragraph (a) of this section has filed reports for all reportable events required under this section during the previous 12-month period. The firm shall also provide a numerical summary of MDR reports that it submitted to FDA during the preceding year; or

(2) The firm listed in paragraph (a) of this section did not receive reportable events for any devices manufactured by the firm during the previous 12-month period.

(c) Certification shall be made by the president, chief executive officer, U.S.-designated agent of a foreign manufacturer, or other official most directly responsible for the firm's operations; and

(d) Name of the manufacturer and registration numbers submitted under paragraph (a) of this section shall be the same as those used in submitting the reports required by §§ 803.52, 803.53 and 803.55. Multisite manufacturers who choose to certify centrally must identify the reporting sites, by registration number or FDA-assigned identification number and name covered by the certification, and provide the information required by paragraph (b) of this section for each reporting site.

§ 803.58 Foreign manufacturers.

(a) Every foreign manufacturer whose devices are distributed in the United States shall designate a U.S. agent to be responsible for reporting in accordance with § 807.40 of this chapter. The U.S. designated agent accepts responsibility for the duties that such designation entails. Upon the effective date of this regulation, foreign manufacturers shall inform FDA, by letter, of the name and address of the U.S. agent designated under this section and § 807.40 of this chapter, and shall update this information as necessary. Such updated information shall be submitted to FDA, within 5 days of a change in the designated agent information.

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(b) U.S.-designated agents of foreign manufacturers are required to:

(1) Report to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56;

(2) Conduct, or obtain from the foreign manufacturer the necessary information regarding, the investigation and evaluation of the event to comport with the requirements of § 803.50;

(3) Certify in accordance with § 803.57;

(4) Forward MDR complaints to the foreign manufacturer and maintain documentation of this requirement;

(5) Maintain complaint files in accordance with § 803.18; and

(6) Register, list, and submit premarket notifications in accordance with part 807 of this chapter.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

2. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

3. Section 807.3 is amended by adding new paragraph (r) to read as follows:

§ 807.3 Definitions.

* * * * *

(r) *U.S.-designated agent* means the person, residing in the United States, designated and authorized by the owner or operator of a foreign manufacturer who exports devices into the United States and is responsible for:

(1) Submitting MDR reports,

(2) Submitting annual certifications,

(3) Acting as the official correspondent,

(4) Submitting registration information,

(5) Submitting device listing information, and

(6) Submitting premarket notifications on behalf of the foreign manufacturer.

4. Section 807.20 is amended by adding new paragraph (a)(6) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(6) Acts as the U.S.-designated agent as defined in § 807.3(r).

* * * * *

5. Section 807.22 is amended by revising paragraph (a) to read as follows:

§ 807.22 How and where to register establishments and list devices.

(a) The first registration of a device establishment shall be on Form FDA–2891 (Initial Registration of Device Establishment). Forms are available upon request from the Office of Compliance, Center for Devices and Radiological Health (HFZ–307), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, or from Food and Drug Administration district offices. Subsequent annual registration shall be accomplished on Form FDD–2891a (Annual Registration of Device Establishment), which will be furnished by FDA to establishments whose registration for that year was validated under § 807.35(a). The forms will be mailed to the owner or operators of all establishments via the official correspondent in accordance with the schedule as described in § 807.21(a). The completed form shall be mailed to the address designated in this paragraph 30 days after receipt from FDA.

* * * * *

6. Section 807.40 is revised to read as follows:

§ 807.40 Establishment registration and device listing for U.S. agents of foreign manufacturers of devices.

(a) Each foreign device manufacturer who exports devices into the United States shall designate a person as their U.S.-designated agent, who is responsible for:

(1) Submitting MDR reports,

(2) Submitting annual certifications,

(3) Acting as the official correspondent,

(4) Submitting registration information,

(5) Submitting device listing information, and

(6) Submitting premarket notifications.

(b) The foreign manufacturer shall provide FDA with a statement of authorization for their U.S.-designate to perform MDR reporting duties under part 803 of this chapter, and to register, list, and submit premarket notifications under this part. The foreign manufacturer must provide this statement of authorization along with the name, address, and telephone number of the person initially designated, or any subsequent person designated as the U.S.-designated agent, within 5 days of the initial or subsequent designation. Information shall be sent to the Center for Devices and Radiological Health, Medical Device Reporting, Food and Drug Administration, P.O. Box 3002, Rockville, MD 20847–3002.

(c) The U.S.-designated agent of a foreign device manufacturer that exports devices into the United States is required to register the foreign manufacturer's establishments or places of business, and to list the foreign manufacturer's devices, in accordance with subpart B of this part, unless exempt under subpart D of this part, and to submit premarket notifications in accordance with subpart E of this part. The information submitted shall be in the English language.

Dated: October 25, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29906 Filed 12–8–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 5

Delegations of Authority; Medical Device Reporting Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to redelegate to certain officials in the Center for Devices and Radiological Health (CDRH) authorities relating to medical device reporting procedures.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Kerry G. Rothschild, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, or

Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under part 5 (21 CFR part 5) by adding new § 5.98 *Authority relating to medical device reporting procedures.* In conjunction with CDRH's issuance of a medical device reporting final rule under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i), the Commissioner of Food and Drugs (the Commissioner) has decided to delegate to certain officials in CDRH the authority to approve electronic reporting under 21 CFR 803.14, to request the submission of additional information under 21 CFR 803.15, and to grant or revoke exemptions and variances from reporting requirements under 21 CFR 803.19. Delegation of these authorities to the directors and deputy directors of the Office of the Director and the Office of Surveillance and Biometrics, CDRH, will increase the efficiency of the medical device reporting process.

The authority delegated may be redelegated further only with the Commissioner's approval. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. New § 5.98 is added to subpart B to read as follows:

§ 5.98 Authority relating to medical device reporting procedures.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to approve electronic reporting under § 803.14 of this chapter.

(b) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to request the submission of additional information under § 803.15 of this chapter.

(c) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to grant or revoke exemptions and variances from reporting requirements under § 803.19 of this chapter.

Dated: September 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29905 Filed 12–8–95; 8:45 am]

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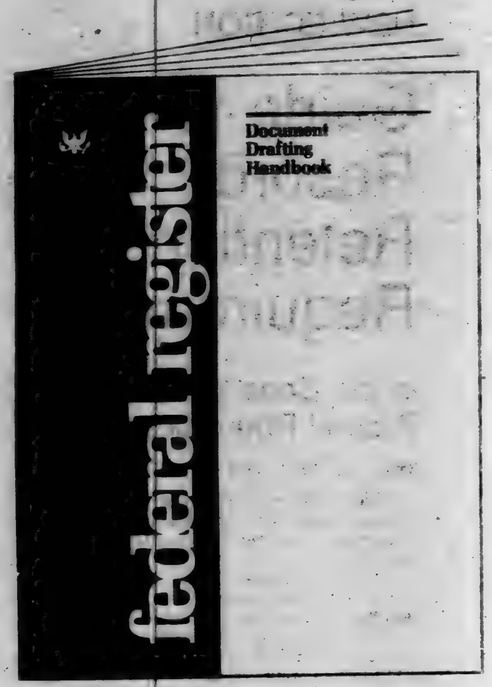
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV95-955-2FIR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 955 for the 1995–96 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 16, 1995, through September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which began September 16, 1995, and ends September 15, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 240 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Since the interim final rule was issued, information regarding a reduction in the number of producers from approximately 250 to 240 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 20, 1995, and unanimously recommended a 1995–96 budget of $343,000, $11,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Dues and subscriptions, $2,500 ($2,000), equipment maintenance, $1,600 ($750), office overhead, $6,000 ($3,000), office supplies, $3,500 ($3,000), telephone, $5,000 ($4,000), printing, $2,200 ($2,000), postage and courier, $6,000 ($5,000), employee salaries, $65,000 ($60,000), miscellaneous general and administrative, $1,700 ($1,000), marketing, $146,500 ($132,000), $6,500 for retirement, which was included in the employee benefits category last year, and $25,400 for a newly created compliance category. Items which have decreased compared to those budgeted

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for 1994–95 (in parentheses) are: Equipment purchases, $2,000 ($3,000), FICA employer, $3,100 ($4,250), employee benefits (health and dental), $7,000 ($13,500), research, $48,500 ($80,000), and ($8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield $301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $4,250 in interest income and $32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve as of September 15, 1995, amounted to over $173,000 and were within the maximum permitted by the order of three fiscal periods' expenses. However, at its September 21, 1995, meeting the Committee voted to refund $100,000 of this amount pro rata to handlers who paid assessments during the 1992–93, 1993–94, and 1994–95 fiscal periods. To determine each handler's proportionate share, the Committee plans to total the excess funds for each of these fiscal periods, divide this excess by the total assessments levied on all handlers during this period, and apply the resulting percentage to the assessments paid by each individual handler during the three-year period. Funds remaining in the reserve will be adequate for administrative operating expenses, if needed.

An interim final rule was published in the **Federal Register** on September 19, 1995 (60 FR 48361). That interim final rule added § 955.208 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 19, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on September 16, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 60 FR 48361 on September 19, 1995, is adopted as a final rule without change.

Dated: December 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30234 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[Docket No. FV95–959–2IFR; Amendment 1]

Onions Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur additional expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by January 11, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This amended interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 89 producers of South Texas onions under this marketing order, and approximately 35 handlers. Since the interim final rule was issued, information regarding an increase in the number of producers from approximately 70 to 89 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $239,250 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $239,250 were published in the **Federal Register** as an interim final rule August 17, 1995 (60 FR 42774). That interim final rule added § 959.236, authorizing expenses for the Committee, and provided that interested persons could file comments through September 18, 1995. No comments were filed.

The Committee subsequently met on November 14, 1995, and unanimously recommended an increase of $1,000 for insurance in the recently approved 1995–96 budget. The Committee also unanimously recommended $246,000 for promotion and $99,000 for onion breeding research. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Manager's salary, $19,094 ($15,172), office salaries, $24,000 ($22,000), payroll taxes, $4,000 ($3,100), insurance, $8,000 ($6,250), rent and utilities, $6,500 ($5,000), supplies, $2,000 ($1,500), postage, $1,500 ($1,000), telephone and telegraph, $4,000 ($2,500), furniture and fixtures, $2,000 ($1,000), equipment rental and maintenance, $3,500 ($2,500), contingencies, $6,706 ($3,978), manager travel, $5,000 ($3,000), Canadian onion promotion, $5,000 ($4,450), $226,000 for the Thacker Group for promotion ($200,000), onion breeding research, $99,000 ($88,028), and $3,750 for deferred compensation (manager's retirement), and $5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995–96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.06 more than last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from $0.04 to $0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 million 50-pound containers or equivalents, will yield $600,000 in assessment income, which, will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1995, were $406,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to that taken for the 1994–95 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

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PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.236 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.236 Expenses and assessment rate.

Expenses of $585,250 by the South Texas Onion Committee are authorized and an assessment rate of $0.10 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: December 6, 1995.

Sharon Bomer Lauriston,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30232 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1004

[Docket No. AO–160–A71; DA–95–24]

Milk in the Middle Atlantic Marketing Area; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes the suspension action (DA–95–24) issued on August 17, 1995, and published in the **Federal Register** on August 24, 1995 (60 FR 43953) in effect under the Middle Atlantic order through February 1996. The suspension is no longer needed because an amended order for that market became effective on December 1, 1995 (60 FR 55309).

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION:

Background

This correction ensures that a suspension scheduled to continue through February 1996 will be removed. The suspension was issued August 17, 1995, and published in the August 24, 1995, **Federal Register** (60 FR 43953). The provisions affected by the suspension (sections 1004.7 and 1004.12) have been amended, making the suspension unnecessary.

This document removes the suspension action (60 FR 43953) and ensures that the Code of Federal Regulations will reflect only the amended language (and not the suspended language in the two aforementioned sections of the Middle Atlantic order).

Therefore, under the authority of 7 U.S.C. 601–674, the suspension of provisions of 7 CFR part 1004, published in the **Federal Register** on August 24, 1995 (60 FR 43953), is lifted effective December 12, 1995.

Dated: December 6, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–30231 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1099

[DA–95–27]

Milk in the Paducah, KY, Marketing Area; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document terminates the remaining administrative provisions of the Paducah, Kentucky, Federal milk marketing order (Order 99), effective upon publication in the **Federal Register**. All of the monthly operating provisions were terminated as of November 1, 1995, since the terms and provisions of the order no longer effectuated the declared policy of the Act.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Termination Order: Issued October 23, 1995; published October 31, 1995 (60 FR 55179).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule terminates the remaining administrative provisions of the Paducah, Kentucky, order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

A comment period was not provided since there were no interested parties affected by the termination order.

It is hereby found and determined that § 1099.1 of the Paducah, Kentucky, order does not effectuate the declared policy of the Act.

Statement of Consideration

This rule terminates the remaining administrative provisions of the Paducah, Kentucky, Federal milk order. There currently are no handlers regulated under the Paducah, Kentucky, order. Turner Dairies, the one handler that was regulated under Order 99, became regulated under the Southeast order on September 1, 1995, because of its greater sales into that marketing area. Producers who ship their milk to Turner's Fulton, Kentucky, plant now have their milk pooled under the adjacent Southeast Federal milk order.

Since there were no plants regulated under the Paducah, Kentucky, order, all of the monthly operating provisions were terminated as of November 1, 1995. However, the termination order left intact certain administrative provisions that were embodied, by reference, in § 1099.1 of the order.

The market administrator, in his capacity as the order's liquidating agent, has completed the disbursement of all of the money remaining in the administrative, producer-settlement, and marketing service funds established under the order. Hence, the remaining provisions of the order should be terminated.

Therefore, the aforesaid provisions of § 1099.1 of the order are hereby terminated.

For good cause shown, this rule shall be effective December 22, 1995. Neither a comment period nor a 30-day effective date is provided in that all other provisions of the order were terminated effective November 1, 1995, and no parties are affected by this action.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA [REMOVED]

For the reasons set forth in the preamble and under the authority 7 U.S.C. 601–674, 7 CFR part 1099 is removed.

Dated: December 4, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–30095 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Technical Amendments; Organization and Operation of Federal Credit Unions; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Correction to final regulation.

SUMMARY: This document corrects an inadvertent error in an amendatory instruction to the final regulations which were published Tuesday, November 28, 1995 (60 FR 58502). The regulations consolidated all current regulations and requirements that apply to federally insured state-chartered credit unions in one place, the regulations on requirements for insurance. The error occurred in one of the conforming technical amendments.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, 1775 Duke Street, Alexandria, VA 22314, or telephone (703) 518–6544.

SUPPLEMENTARY INFORMATION: In the **Federal Register** published on November 28, 1995, there was an inadvertent error in an amendatory instruction to the final regulation. The final regulations concern requirements for insurance. However, the error was contained in the instruction for a technical amendment to § 701.21—Loans to members and lines of credit to members. This correction is being made in order to ensure that the final regulation is published correctly in the Code of Federal Regulations.

Correction of Publication

Accordingly, the publication on November 28, 1995 of the final regulations which were the subject of FR Doc. 95–28703, is corrected as follows:

§ 701.21 [Corrected]

On page 58504, column one, the second line of amendatory instruction 3., the word "fourth" is corrected to read "fifth".

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 95–30178 Filed 12–11–95; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–236–AD; Amendment 39–9457; AD 95–25–11]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to limit the revolutions per minute (RPM) of the propeller during ground operation, and removing and installing a new placard. This AD also requires revising the FAA-approved maintenance program to limit the maximum RPM of the propeller during ground operations. This amendment is prompted by reports of failures of in-service propellers and subsequent testing, which revealed that operating the propeller at or near certain nominal propeller RPM produces high vibration stress. The actions specified in this AD are intended to limit exposure to high vibration stresses during ground operations under certain weather conditions; this situation could accelerate fatigue cracking if corrosion is present in the propeller, which could lead to the failure of the propeller and subsequent reduced controllability of the airplane.

DATES: Effective December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Carla J.W. Worthey, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7364; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of in-service Hamilton Standard 14RF, 14SF, and 6/5500/F series propellers. Result of inspections have revealed internal corrosion in the taper bore and external damage to the shank section on these propellers. Such internal corrosion or external damage reduces the design allowable stress levels of the propeller material. Further inspections revealed that the corrosion and damage is evenly distributed amongst the subject propellers. However, fracturing has occurred predominately on the Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes. This disparity has prompted an investigation into operational differences between the airplanes utilizing these propellers.

A vibration/loads survey and analysis was conducted by Hamilton Standard on the Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes. The survey and analysis results verified that high vibration stresses could occur on

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all Hamilton Standard propeller installations during ground operation in tail and cross winds (adverse winds) when the propeller is operated at or near 73% of the nominal propeller revolutions per minute (RPM). For EMBRAER Model EMB–120 series airplanes equipped with Hamilton Standard 14RF series propellers, operation at 73% RPM is coincident with a propeller natural frequency at exactly twice the RPM (denoted as 2P), which produces high vibration stresses. For all other airplanes equipped with this propeller, the 2P natural frequency is below the normal propeller operating speed and, therefore, a resonant vibration could not occur.

Subsequent propeller vibration survey testing on a Model EMB–120 series airplane revealed a possible small downward shift in the 2P frequency RPM on these airplanes relative to the original 1983 certification test data. Such a shift could increase cyclic stress on the propeller blade during normal ground operations. The possible cause of such a shift could be attributed to wear and normal changes in the propeller mass properties while in-service.

Operation of Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes at or near 73% of the nominal propeller RPM, if not corrected, could result in high stresses on the propeller. Such high stresses subsequently could accelerate fatigue cracking at existing internal corrosion pits in the propeller, which could lead to the failure of the propeller and subsequent reduced controllability of the airplane.

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to limit ground operation of Hamilton Standard 14RF series propellers installed on EMBRAER Model EMB–120 series airplanes at or near 73% of the nominal propeller RPM, which could result in high stresses on the propeller; this condition could accelerate fatigue cracking at existing internal corrosion pits in the propeller, which could lead to the failure of the propeller and subsequent reduced controllability of the airplane. This AD requires revising the Limitations and Normal Procedures Sections of the AFM to reduce ground operating RPM to MIN RPM (approximately 50%), except for brief excursions as needed to maneuver the airplane, which will limit exposure to high cyclic stresses on the propeller. This AD also requires removal of a placard and installation of a new placard on the instrument panel of the cockpit. Additionally, this AD requires revising the FAA-approved maintenance program to limit the maximum RPM for ground operations.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–236–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–25–11 Embraer: Amendment 39–9457. Docket 95–NM–236–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller and subsequent reduced controllability of the airplane due to high stresses on the propeller at certain nominal propeller revolutions per minute (RPM), accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section (under "Propeller") of the FAA-approved Airplane Flight Manual (AFM) (in the basic AFM and in AFM Supplement 4) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Condition Levers must be in the MIN RPM position during all ground operations, except when cleared for takeoff or during landing roll.

"Power Levers must remain at or below Flight Idle during all ground operations, except for brief (approximately 5 seconds) excursions as needed to maneuver the airplane.

"CAUTION: Ground operation above Flight Idle significantly increases propeller stress under certain adverse wind conditions (e.g., tailwinds or rear crosswinds). Operation in this RPM range must be avoided to the maximum extent practicable."

(2) Revise the Normal Procedures Section (under "CLEARED INTO POSITION") of the FAA-approved AFM to separate the current procedures listed under the "CLEARED INTO POSITION" heading into two separate headings, as follows, to delay movement of condition levers until cleared for takeoff. This may be accomplished by inserting a copy of this AD into the AFM.

"CLEARED INTO POSITION	
Landing Lights Switches	ON.
STROBE Light Switch	ON.
Transponder	ON.
"CLEARED FOR TAKEOFF	
Condition Levers	MAX RPM.
Multiple Alarm Panel Lights	CHECK EXTINGUISHED".

(b) Within 14 days after the effective date of this AD, remove the placard having part number (P/N) 120–30915–001 on the instrument panel of the cockpit.

(c) Within 30 days after the effective date of this AD, install a new placard having P/N 120–61757–001 on the instrument panel of the cockpit.

(d) Within 14 days after the effective date of this AD, revise the FAA-approved maintenance program to incorporate the following into Chapter 61–00–00, "Propeller System Operating Limitations," and Chapter 71–00–00, "Propeller Operating Limitations," of the airplane maintenance manual:

"To prevent excessive propeller stress, do not operate above 60% Np *UNLESS:*

The wind is less than 10 knots, OR

The airplane is headed into the wind +/−45 degrees.

Wind direction must be monitored locally at the run up site."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30252 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–213–AD; Amendment 39–9446; AD 95–25–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires inspection(s) to detect cracks of the fuselage-mounted half of hinge assemblies of the small cargo door, and replacement of any cracked hinge assembly with a new hinge assembly. This amendment is prompted by a report that the hinges of the small cargo door on these airplanes are made of a material that is sensitive to stress corrosion cracking. The actions specified in this AD are intended to prevent failure of the hinges of the small cargo door due to stress corrosion cracking, which could result in opening and/or separation of the door while the airplane is in flight, and resultant rapid decompression and/or structural damage to the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Model F28 Mark 0100 series

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airplanes. The RLD advises that the hinges of the small cargo door on these airplanes are made of aluminum AL2024–T4, which is a material that is sensitive to stress corrosion cracking. Stress corrosion cracking in the hinge of the small cargo door could result in the failure of the hinge. If the hinge fails, the small cargo door could open and/or separate while the airplane is in flight, which could result in rapid decompression and/or structural damage to the airplane.

Fokker has issued Service Bulletin SBF100–52–048, dated March 5, 1993, which describes procedures for performing a one-time high-frequency eddy current (HFEC) inspection to detect cracks in the fuselage mounted half of the hinge assemblies, having part numbers (P/N) A28410–405 and P/N A28410–407, of the small cargo door. Fokker has also issued Service Bulletin SBF100–52–055, dated July 20, 1994, which describes inspection procedures identical to those specified in Service Bulletin SBF100–52–048; however, the inspections would be conducted repetitively, if no cracks are detected. Additionally, Fokker has issued Service Bulletin SBF100–52–043, dated June 12, 1995, which describes procedures for replacement of any cracked hinge assembly with a new hinge assembly having P/N D28410–409. These new hinges are made of aluminum AL7075–T73, which is much less sensitive to stress corrosion cracking than the material used in the existing hinges. In addition, the radii between the lugs were increased, and the web plate thickness was increased for the door-mounted part, to provide better fatigue resistance. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 93–036/2 (A) in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent separation or opening of the small cargo door while the airplane is in flight, which could result in rapid decompression and/or structural damage to the airplane. This AD requires HFEC inspection(s) to detect cracks of the fuselage-mounted half of certain hinge assemblies of the small cargo door, and replacement of any cracked hinge assembly with a certain new hinge assembly. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model F28 Mark 0100 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $120 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–213–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–25–02 Fokker: Amendment 39–9446. Docket 94–NM–213–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11408 inclusive, equipped with small cargo doors having hinges with part numbers (P/N) A28410–405 and/or P/N A28410–407; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hinges of the small cargo door due to stress corrosion cracking, which could result in rapid decompression and/or structural damage to the airplane, accomplish the following:

(a) Within 36 months since date of manufacture of the airplane or within 3 months after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage-mounted half of the hinge assemblies of the small cargo doors, in accordance with Fokker Service Bulletin SBF100–52–048, dated March 5, 1993.

(1) If no cracks are detected, thereafter repeat the HFEC inspections at intervals not to exceed 6 months, in accordance with Fokker Service Bulletin SBF100–52–055, dated July 20, 1994.

(2) If any crack is detected during any inspection required by paragraph (a) or (a)(1) of this AD, prior to further flight, except as provided in the "NOTE" of paragraph 2.C. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–055, dated July 20, 1994, replace the hinge assembly with a new hinge assembly having P/N D28410–409. The replacement shall be done in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995.

(b) Replacement of the hinge assembly with a new hinge assembly having P/N D28410–409, in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995, constitutes terminating action for the requirements of this AD for that small cargo door.

(c) As of the effective date of this AD, no person shall install a hinge assembly having P/N A28410–405 or –407, on any airplane, unless it has been previously inspected and found to be crack-free, in accordance with Fokker Service Bulletin SBF100–52–055, dated July 20, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Fokker Service Bulletin SBF100–52–048, dated March 5, 1993, and Fokker Service Bulletin SBF100–52–055, dated July 20, 1994. The replacement shall be done in accordance with Fokker Service Bulletin SBF100–52–043, dated June 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29301 Filed 12–11–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–209–AD; Amendment 39–9447; AD 95–25–03]

Airworthiness Directives; Learjet Model 23, 24, 25, 35, and 36 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Learjet Model 23, 24, 25, 35, and 36 airplanes. This action requires repetitive inspections to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions. This AD action also requires replacing the flapper valves with new flapper valves, and repetitively performing certain other follow-on actions. This amendment is prompted by reports of imbalance of the fuel loads in the wings of the airplane due to failed or cracked flapper valves. The actions specified in this AD are intended to prevent significant reduction in the lateral control of the airplane due to imbalance of the fuel loads in the wings of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received several reports of imbalance of the fuel loads in the wings of Learjet Model 23, 24, 25, 35, and 36 airplanes. Investigation reveals that the

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flapper valves in the fuel tanks may deteriorate over a period of time, which may result in failure of the valve hinge or cracking of the circular portion of the valve. Further investigation indicates that such failures and cracking may allow fuel to enter into the tip tanks in the wings of the airplane. This condition, if not corrected, could result in imbalance of the fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane.

The FAA has reviewed and approved Learjet Service Bulletins SB 23/24/25–28–2 (for Model 23, 24, and 25 airplanes) and SB 35/36–28–10 (for Model 35 and 36 airplanes), both dated October 6, 1995, which describe procedures for a one-time inspection to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions (which include inspecting the flapper valve to ensure proper positioning of the valve, inspecting the conditions of the screws that retain the flapper valve to the plate assembly, and ensuring that the flapper valve completely covers the opening of the tube and is seated against the tube). The service bulletins also describe procedures for replacement of both flapper valves of the tip tank in each wing with new flapper valves, and inspecting to verify free movement of the flapper valve.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent imbalance of fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane. This AD requires that operators perform repetitive inspections to detect deterioration of both flapper valves of the tip tank in each wing of the airplane, and various follow-on actions (such as, inspecting the flapper valve to ensure proper positioning of the valve, inspecting the conditions of the screws that retain the flapper valve to the plate assembly, ensuring that the flapper valve completely covers the opening of the tube and is seated against the tube, and inspecting to verify free movement of the flapper valve). The AD requires that operators replace both flapper valves of the tip tank in each wing of the airplane with new flapper valves, and repetitively performing certain other follow-on actions. The actions are required to be accomplished in accordance with the procedures in the service bulletins described previously.

Operators should note that, although the service bulletins recommend that certain follow-on actions be accomplished only once, the FAA has determined that accomplishing these follow-on actions just one time would not address the identified unsafe condition over the long term. In developing the appropriate actions for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the potential catastrophic consequences of the unsafe condition, and the numerous reported incidents of unbalanced fuel loads. In light of all of these factors, the FAA finds that certain follow-on actions must be performed repetitively at intervals of 600 hours time-in-service to ensure continued operational safety of the fleet.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–209–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–25–03 Learjet: Amendment 39–9447. Docket 95–NM–209–AD.

Applicability: Model 23, 24, and 25 airplanes, as listed in Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995, and Model 35 and 36 airplanes, as listed in Learjet Service Bulletin 35/36–28–10, dated October 6, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: This AD references certain Learjet service bulletins for applicability information, and inspection and replacement procedures. This AD requires performing certain follow-on actions repetitively, although the service bulletins specify accomplishing these actions just once. Where there are differences between the AD and the service bulletins, the AD prevails.

To prevent imbalance of the fuel loads in the wings of the airplane, which can significantly reduce lateral control of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD or prior to the accumulation of 600 hours time-in-service since installation of the flapper valve, whichever occurs later: Perform an inspection to detect deterioration (such as cracks, cuts, breaks, splits, or warpage) of both flapper valves of the tip tank in each wing, in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable. Repeat this inspection thereafter at intervals not to exceed 600 hours time-in-service.

(1) If no deterioration of the flapper valve is detected, prior to further flight, inspect the flapper valve to ensure proper positioning, inspect the condition of the screws that retain the flapper valve to the plate assembly to ensure that the flapper valve is secure, inspect to ensure that the flapper valve completely covers the opening of the tube and is seated against the tube, and inspect the flapper valve to verify that it moves freely; and accomplish the follow-on corrective actions, if any discrepancy is found. These actions shall be accomplished in accordance with the applicable service bulletin.

(2) If any flapper valve is found to be deteriorated, prior to further flight, replace it with a new flapper valve in accordance with the applicable service bulletin.

(b) Except as provided in paragraph (c) of this AD, at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD: Replace both flapper valves of the tip tank in each wing with new flapper valves in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(1) Within 5 years since date of installation of the flapper valve, or prior to the accumulation of 2,400 total hours time-in-service on the flapper valve, whichever occurs earlier.

(2) Within 50 hours time-in-service after the effective date of this AD.

(c) For airplanes on which the age and time-in-service of the flapper valve cannot be determined: Within 50 hours time-in-service after the effective date of this AD, replace both flapper valves of the tip tank in each wing in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes), or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(d) Within 600 hours time-in-service following replacement of any flapper valve in accordance with the requirements of this AD, and thereafter at intervals not to exceed 600 hours time-in-service: Accomplish the requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995; or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29300 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 88G–0318]

Glyceryl Palmitostearate; Affirmation of GRAS Status of Direct Food Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that glyceryl palmitostearate is generally recognized as safe (GRAS) for use as a formulation aid in excipient mixtures used in tablets. This action is in response to a petition filed on behalf of Gattefossé, S.A.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

In accordance with the procedures described in 21 CFR 170.35, a petition was submitted (GRASP 8G0344) on behalf of Gattefossé, S.A., 36 Chemin de Genas, Saint Priest, France, requesting that glyceryl palmitostearate be affirmed as GRAS for use as an excipient in tablets.

FDA published a notice of filing of this petition in the **Federal Register** of October 20, 1988 (53 FR 41241), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm.1–23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received no comments in response to that notice.

B. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and

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experience to evaluate the safety of food substances. The basis of such views may be either scientific procedures, or in the case of a substance used in food before January 1, 1958, through experience based on common use in food. General recognition of safety based upon scientific procedures shall require the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation, and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)).

The subject petition relies on scientific procedures evidence to support GRAS affirmation of glyceryl palmitostearate as an excipient in tablets.

C. Manufacturing Process and Identity

According to information contained in the petition, glyceryl palmitostearate is manufactured by heating a mixture of glycerin (glycerol) and a mixture of fatty acids of vegetable origin composed of roughly equal amounts (48 to 50 percent) of palmitic and stearic acid, and 4 percent myristic acid.

Glyceryl palmitostearate prepared in this way is a mixture of mono-, di-, and triglycerides of palmitic and stearic acids. It contains primarily di- and triglycerides (>78.5 percent), a small amount of monoglycerides (8 to 17 percent), and trace amounts of free glycerin (<1.0 percent) and free palmitic and stearic acid moieties (<3.0 percent).

D. Use and Exposure

The proposed use of the substance is as a lubricating agent in excipient mixtures for preparation of tablets (vitamin and related products). The technical properties of the substance in excipient formulations are similar to those of other fatty acid glycerides. The petitioner asserts that the normal use level of the substance will be 6 to 40 percent of the total tablet weight and that the 40 percent level is typical for long-duration timed-release formulations. The petitioner also estimates that although the typical dosage is approximately two tablets per day, some individuals may take as many as six tablets per day.

Based on a typical dose of two 600-milligram (mg) tablets per person per day, FDA estimates that the typical intake of glyceryl palmitostearate would be from 72 to 480 mg per person per day (Ref. 2). The petitioner estimates that on the basis of 2,000 to 2,700 calories per person per day total food intake and 35 percent fat in the diet (one-third of all ingested fat being fully saturated), the intake of saturated fat per person per day is between 20 and 30 grams. This estimate is consistent with dietary data compiled by the United States Department of Agriculture (1985). Based on this information, FDA concludes that the proposed use of glyceryl palmitostearate will increase the dietary intake of saturated fat by 2.4 percent per person per day (Ref. 2).

II. Safety

The notice of filing in this proceeding used the name "glyceryl palmitostearate" to represent the substance that is the subject of the petition. The agency considers this name to be appropriate, although the substance is actually not a single chemical entity, but rather a mixture of di- and triglycerides with a small amount of monoglycerides.

Triglycerides (triacylglycerols) are the most abundant form of fat in the human diet (Ref. 1). Their component fatty acids are the major energy reserve of plant and animal cells (Ref. 1). When ingested, triglycerides are initially digested into free fatty acids and diglycerides. Diglycerides are further digested into a mixture of monoglycerides, glycerol, and free fatty acids. Monoglycerides, glycerol, and free fatty acids are the chemical forms in which dietary fats are absorbed into the body (Ref. 1). Thus, all of the components of glyceryl palmitostearate are present as components of fats found in foods or are generated in large amounts in the human digestive tract during the digestion of fat (Ref. 1). As previously stated, the proposed use of glyceryl palmitostearate will not result in a material increase in exposure to these substances (Ref. 2).

The agency has previously examined the safety of the components of glyceryl palmitostearate. Glycerin is listed as a multipurpose GRAS substance in 21 CFR 182.1320. Mono- and diglycerides prepared from fats, oils, or fat-forming acids derived from edible sources, including palmitic and stearic acids, are affirmed as GRAS in 21 CFR 184.1505. Stearic and palmitic acid are approved as multipurpose food additives in 21 CFR 172.860. Glyceryl tristearate, a component of glyceryl palmitostearate, is approved as a multipurpose food additive in 21 CFR 172.811. Glyceryl monostearate is affirmed as GRAS (21 CFR 184.1324).

The Select Committee on GRAS Substances (SCOGS) reviewed all available toxicological studies on mono- and diglycerides and concluded:

There is no evidence in the available information on mono- and diglycerides of fat-forming fatty acids that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future. (Ref. 4, p. 23.)

The Joint Expert Committee on Food Additives (JECFA) of the Food and Agriculture Organization and the World Health Organization (FAO/WHO) has also reviewed the safety of mono- and diglycerides. Based on its review, JECFA has concluded that no limit on the acceptable daily intake of mono- and diglycerides need be established (Ref. 5).

III. Conclusion

FDA concludes that there is no meaningful difference between the components of glyceryl palmitostearate and dietary fats or the products of digestion of fats. The agency further concludes that there will not be a materially significant increase in exposure to these substances from the petitioned use of glyceryl palmitostearate. The safety of the mono- and diglyceride components of glyceryl palmitostearate has been reviewed by independent bodies of experts qualified by training and experience to evaluate the safety of food ingredients. These experts have concluded that mono- and diglycerides are safe. The information that the agency used to arrive at these conclusions is publicly available in published form (Refs. 1, 3, 4, and 5).

FDA, therefore, concludes that the petitioned use of glyceryl palmitostearate fully meets the requirements outlined in § 170.30(b) for GRAS affirmation based on scientific procedures. Therefore, in accordance with 21 CFR 184.1(b)(1), the agency is affirming that the use of glyceryl palmitostearate as a formulation aid in excipients for tablets is GRAS with no limitations other than current good manufacturing practice. The agency is listing the specific use as a formulation aid in excipients for tablets in the regulation solely to reflect that the affirmation of GRAS status is based on the evaluation of this use.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. Because no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include wider use of this substance because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this substance for this use. The agency certifies, therefore, that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. References

The following references have been placed on display in the Dockets Management (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Gurr, M. I., and A. T. James, *Lipid Biochemistry: An Introduction*, John Wiley and Sons, Inc., New York, 1975.

2. Memorandum dated September 6, 1988, from M. Dinovi to J. Ziyad, "GRP 8G0344—Parexel Int. Corp. (PI) for Gattefossé, SA. Glyceryl Palmitostearate."

3. Park, Y. K., and E. A. Yetley "Trend Changes in Use and Current Intakes of Tropical Oils in The United States" *American Journal of Clinical Nutrition* 51:738–746, 1990.

4. Select Committee on GRAS Substances. "Evaluation of the Health Aspects of Glycerin and Glycerides as Food Ingredients" (SCOGS–30) PB–254 536, 1975.

5. Food and Agriculture Organization of the United Nations; "Toxicological Evaluation of Some Food Additives Including Anticaking Agents, Antimicrobials, Antioxidants, Emulsifiers and Thickening Agents." FAO Nutrition Meetings Report Series No. 53A, Rome, 1974.

List of Subjects in 21 CFR Part 184

Food additives, Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1329 is added to subpart B to read as follows:

§ 184.1329 Glyceryl palmitostearate.

(a) Glyceryl palmitostearate is a mixture of mono-, di-, and triglyceryl esters of palmitic and stearic acids made from glycerin, palmitic acid, and stearic acid.

(b) The ingredient meets the following specifications:

(1) The substance is a mixture of mono-, di-, and triglycerides of palmitic acid and stearic acid.

(2) Heavy metals (as lead): Not more than 10 parts per million.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a formulation aid, as defined in § 170.3(o)(14) of this chapter.

(2) The ingredient is used in excipient formulations for use in tablets at levels not to exceed good manufacturing practice.

Dated: November 16, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–30125 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510, 520, and 522

Animal Drugs, Feeds, and Related Products; Diphenylhydantoin Sodium Capsules, et al.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of one new animal drug application (NADA) held by Parke-Davis, Division of Warner-Lambert Co., three held by Akorn, Inc., and one held by Veterinary Research and Development, Inc. All of the sponsors submitted written requests that the agency withdraw approval of the NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
6–032	Diphenylhydantoin sodium capsules	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950
12–444	Sterile prednisolone suspension	Akorn, Inc., 100 Akorn Dr., Abita Springs, LA 70420
94–978	Phenylbutazone injection	Do.
110–046	Dexamethasone injection	Do.
140–904	Copper disodium edetate injection	Veterinary Research and Development, Inc., P.O. Box 1299, Truckee, CA 95734

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The sponsors requested withdrawal of approval of the NADA's because the drug products are no longer being marketed. This final rule removes 21 CFR 520.704, 522.514, and 522.1880, and amends 21 CFR 522.540 and 522.1720 to reflect the withdrawal of approval of these NADA's.

In addition, 21 CFR 510.600(c) is amended to remove the entries for the three sponsors from the list of approved drug sponsors because they no longer hold any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Akorn, Inc.," "Parke-Davis, Division of Warner-Lambert Co.," and "Veterinary Research and Development, Inc." and in the table in paragraph (c)(2) by removing the entries for "000071," "017478," and "057428."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.704 [Removed]

4. Section 520.704 *Diphenylhydantoin sodium capsules* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.514 [Removed]

6. Section 522.514 *Copper disodium edetate injection* is removed.

§ 522.540 [Amended]

7. Section 522.540 *Dexamethasone injection* is amended by removing paragraph (d)(2)(ii) and by redesignating paragraph (d)(2)(iii) as paragraph (d)(2)(ii).

§ 522.1720 [Amended]

8. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing the phrase "000031, 017220, 015579, and 017478" and adding in its place "000031, 017220, and 015579".

§ 522.1880 [Removed]

9. Section 522.1880 *Sterile prednisolone suspension* is removed.

Dated: December 4, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–30123 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA provides for use of an approved monensin Type A medicated article to make a revised formulation of a monensin Type C medicated feed/free-choice mineral granule fed to pasture cattle for increased rate of weight gain.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735, which provides for use of 80 grams(g) per pound monensin Type A articles to make a monensin Type C medicated feed/free-choice mineral granule containing 1,620 g per ton monensin. The Type C feed/free-choice mineral granules are fed to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) for increased rate of weight gain. The supplemental NADA provides for a revised formulation Type C free-choice mineral granule. The revised formulation does not affect the safety or effectiveness data and information upon which the application is approved. The supplemental NADA is approved as of December 12, 1995, and the regulations are amended in 21 CFR 558.355 by adding new paragraph (f)(3)(x) to reflect the approval.

Use of a Type A medicated article to make a free-choice Type C medicated feed/ mineral granule requires an approved Form FDA 1900 as in 21 CFR 510.455.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

A freedom of information summary for this approval is not required because it involves approval of a revised formulation which does not affect the basis of approval of the product. A summary of the data and information submitted to support the original approval may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by adding new paragraph (f)(3)(x) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(x) *Amount per ton.* Monensin, 1,620 grams as monensin sodium (810 milligrams per pound).

(a) Indications for use. For increased rate of weight gain.

(b) Specifications. Use as free-choice Type C medicated feed formulated as mineral granules as follows:

Ingredient	Percent	International feed no.
Monocalcium phosphate (21% phosphorus, 15% calcium)	29.49	6–01–080
Sodium chloride (salt)	24.25	6–04–152
Dried cane molasses	20.0	4–04–152
Ground limestone (33% calcium)	13.75	6–02–632
Cane molasses	3.0	4–04–896
Processed grain by-products (as approved by AAFCO)	5.0	
Vitamin/trace mineral premix[1]	2.5	
Monensin Type A article, 80 grams per pound	1.01	
Antidusting oil	1.0	

[1]Content of the vitamin/trace mineral premix may be varied. However, they should be comparable to those used for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium and ethylenediamine dihydroiodide (EDDI) must comply with the published requirements. (For selenium see 21 CFR 573.920; for EDDI see 51 FR 11483 (April 3, 1986).)

(c) Limitations. Medicated mineral granules to be fed free-choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) weighing more than 400 pounds. Feed continuously on a free-choice basis at the rate of 50 to 200 milligrams per head per day. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day. Do not feed additional salt or minerals. Do not mix with grain or other feeds. Monensin is toxic to cattle when consumed at higher than approved levels. Stressed and/or water deprived cattle should be adapted to the pasture and to unmedicated mineral supplement before using this product. Do not feed to lactating dairy cattle. Do not allow horses, other equines, mature turkeys, or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal. The product's effectiveness in cull cows and bulls has not been established. Each use of this free-choice Type C feed must be the subject of an approved medicated feed application (MFA or Form FDA 1900) or supplemental MFA as required by § 510.455 of this chapter.

* * * * *

Dated: November 22, 1995.

Nicholas E. Weber,

Director, Division of Chemistry, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–30124 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD–94–026]

RIN 2115–AE78

Inland Waterways Navigation Regulations; Wrangell Narrows, AK

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the maximum width allowable for single barge tows transiting Wrangell Narrows, Alaska. In accordance with the goals of the Presidential Regulatory Reinvention Initiative, this action is being taken to better meet maritime industry needs in Southeast Alaska. The current size restriction for single barge tows in Wrangell Narrows is 80 feet in width overall. An increase in the maximum barge width to 100 feet in width overall will allow barge operators to carry more cargo on each barge to meet the increasing needs of their Alaskan consumers. Increasing the restriction to 100 feet in width overall will have no adverse effects on navigation and marine safety in Wrangell Narrows.

EFFECTIVE DATE: January 11, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–026), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Diane Schneider Appleby, Project Manager, (202) 267–0352.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 15, 1995, the Coast Guard published a notice of proposed rulemaking entitled Inland Waterways Navigation Regulations: Wrangell Narrows, Alaska in the **Federal Register** (60 FR 179). The Coast Guard received four comments on the proposal. No public meeting was requested, and none was held.

Background and Purpose

Wrangell Narrows is a navigable waterway of the United States located in Southeast Alaska. It connects Frederick Sound on the north end to Sumner Strait on the south. It is approximately 24 miles long and narrows to 300 feet in five places. The longest of the 300 foot wide sections is approximately 5.5 nautical miles in length. The other four sections vary from approximately 600 yards to approximately 1.3 nautical miles in length.

The primary users of Wrangell Narrows are passenger ferries, log carriers, pleasure craft and container barges. Container barges are used to transport consumer goods throughout South East Alaska which is vital to the every day life of Alaskan citizens.

The increased demand for consumer goods in Southeast Alaska has created a greater demand on providers of these goods. The current regulations limit the width of single barge tows allowed to

transit Wrangell Narrows to no more than 80 feet in width overall. Increasing the maximum barge width which can transit Wrangell Narrows from 80 to 100 feet will allow barge operators to carry more containers per transit and enable them to more efficiently meet the needs of their Alaskan customers.

Approximately 95,000 containers are shipped through Southeast Alaska each year on approximately 200 transits of Wrangell Narrows. Consumer goods are the primary cargo.

Barges larger than 80 feet in width overall, cannot transit Wrangell Narrows without a waiver of the size restriction. If they cannot use Wrangell Narrows, they must transit through Chatham Strait around Cape Decision which increases the transit distance to the Gulf of Alaska by over 170 miles. Inclement weather, common in Southeast Alaska, often causes delays of as many as two or three days while barge operators wait for better weather to make the passage around Cape Decision. The risk of a marine casualty increases when transporting cargo in severe weather.

Wrangell Narrows is wide enough, even in its narrowest sections, to allow for the safe transit of 100 foot wide barges. Alaska Marine Lines has been safely operating 100 foot wide single barge tows on Wrangell Narrows with as Coast Guard waiver since May 1994. Southeast Alaska relies heavily upon container barges to deliver consumer goods essential to the every day life of its residents. Allowing 100 foot wide single barge tows in Wrangell Narrows will eliminate all current requests for waivers from the width restriction and will reduce unnecessary weather-related delays of consumer good shipments to Alaska residents. It will also allow most single barge tows to operate in the protected waters of Wrangell Narrows during inclement weather.

Discussion of Comments

The Coast Guard received four comments following the publication of the NPRM. Three comments were from barge operators and one was from a national trade association for the inland and coastal barge and towing industry. All of the comments received were in support of the proposed regulation for the following reasons:

(1) The barge width increase will reduce the number of transits, improving marine safety in the Wrangell Narrows;

(2) Barge freight will reach customers in a more timely manner since tow operators will be able to transit the Narrows rather than going the extra 170 miles around Cape Decision; and

(3) The need to transit by way of Cape Decision during bad weather will be eliminated, avoiding the risk of weather-related accidents.

Regulatory Evaluation

This final rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected.

Small Entities

Because the impact of this regulatory action is minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulatory action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This rule has been analyzed in accordance with Executive Order No. 12812 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that this action is Categorically Excluded in accordance with section 2.B.2.e(34)(g) of the NEPA Implementing Procedures, COMDTINST M16475.2B. A copy of the categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 3 U.S.C. 1231; 49 CFR 1.46.

2. In section 162.255, paragraph (e)(2) is revised to read as follows:

§ 162.255 Wrangell Narrows, Alaska; use, administration, and navigation.

* * * * *

(e) * * *

(2) Raft and barge tows of more than one unit shall not exceed 65 feet in width overall. Single barge tows shall not exceed 100 feet in width overall.

* * * * *

Dated: December 5, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–30262 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5332–6]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correcting amendments.

SUMMARY: This action corrects several errors in cross-referencing provisions and clarifies regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Coatings and Consumer Products Group, Emissions Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION: On April 22, 1994 (59 FR 19402) and June 6, 1994 (59 FR 29196), the EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the Hazardous Organic NESHAP or the HON. On September 20, 1994, the EPA published in the **Federal Register** a notice of corrections to typographical and cross-referencing errors in subparts F, H, and I of the final regulations. The notice also included a few editorial changes to clarify the intent of certain provisions in those subparts. This notice contains additional corrections to typographical and cross-referencing errors, as well as additional editorial changes to clarify the intent of certain provisions in subparts F, G, and H of the final regulations.

Corrections are being made to § 63.100(f)(1) and the definition of "batch operation" in § 63.101 of subpart F to clarify that the process vent provisions of the rule apply only to continuous vents, and the definition of batch operation was intended to apply to unit operations. This correction is necessary to avoid confusion over the applicability of the process vent control requirements. The definition of "batch operation" is being revised to clarify that the term "batch operation" refers to a unit operation within the chemical manufacturing process unit rather than to the entire chemical manufacturing process unit operation. To improve consistency with the definition of "unit operation," the definition of "batch operation" under § 63.101 of subpart F is being revised to cover all operations, including but not limited to, extraction, drying, condensation, filtration, absorption, distillation, and reaction. This same revision is being made to the definition of "batch operation" under § 63.111 of subpart G.

Section 63.104(b)(1)(i)(C) is being revised to correct a drafting error. The restrictive clause "If monitoring for speciated HAP" is being deleted from that paragraph because it was the EPA's intention in the final rule that under the provisions for monitoring cooling water, whether a source chooses to monitor for total hazardous air pollutants (HAP), total volatile organic compounds (VOC), or speciated HAP, the source is required to monitor for only those HAP that are present in the process fluid in concentrations greater than 5 percent by weight.

A few revisions are being made to subpart F to improve consistency in terminology and consistency among the provisions in subparts A, F, and H. To improve consistency among the subpart A, F, and H provisions, and to correct an error in cross-referencing subpart A, § 63.100(k)(3) of subpart F is being revised to cross-reference the compliance extension provisions in § 63.182(a)(6) of subpart H and § 63.6(i) of subpart A which indicates that sources granted extensions as provided in subparts A and F are not required to meet the schedule requirements under subpart H. Additionally, § 63.102(c)(1) is being revised to correct errors in cross-referencing 40 CFR parts 70 and 71, and § 63.105(a) is being revised to correct an error in cross-referencing subpart G.

A few corrections are being made to subpart G to improve consistency in terminology. The term "vapor pressure" in table 10, which is not defined in the HON provisions, is being changed to "maximum true vapor pressure," which is the defined term in the HON provisions. The definition of "hard-piping" is being changed to make it consistent with an earlier revision to the definition of this term in subpart H. The definition of the term "rack-weighted average partial pressure" is being changed to clarify that the mole fraction of the compound is used in calculating the individual HAP maximum true vapor pressure, and to clarify the definition of the term G_i. Footnote "d" for tables 14b and 15b, and footnote "e" for table 16 are being corrected to be consistent with the reporting requirements specified in those tables.

Various sections in subpart G are being revised to correct drafting errors in the usage of terms and in cross-referencing. Several typographical errors in Figure 7, table 6, the definition of "incinerator" in § 63.111, and in §§ 63.144, 63.145, and 63.152 are being corrected. Various cross-referencing errors in table 15a, table 15b, the definition of "average flow rate" in § 63.111, and in §§ 63.138, 63.147, 63.150, and 63.175 are being corrected.

Changes are being made to § 63.150 (k) and (k)(1) to correct a drafting error. The rule should have referred to "operating permit authority" instead of the "Administrator." As discussed in the April 22, 1994 **Federal Register**, the decision on the hazard/risk evaluation is to be made by the State or local permit authority, not by the EPA.

The reference to § 63.6(i)(6) of subpart A in § 63.151(a)(6)(ii) is being revised to reflect the general provisions as issued in the final rule (59 FR 12408). The reference made to § 63.6 of subpart A in § 63.151(a)(6)(ii) of the final HON rule had reflected an earlier draft of the general provisions. This same cross-reference correction is being made to § 63.182(a)(6)(ii) of subpart H. Section 63.182(d)(2)(vii) is being corrected to cross-reference both § 63.173(a) and (b). Nitrobenzene is being added to table 9 because nitrobenzene was inadvertently not included in table 9 of the version of the HON sent to the **Federal Register** for printing.

Corrections are being made to several sections in subpart G to clarify the intent of the provisions. The "knowledge of the wastewater" option for determining average volatile organic hazardous air pollutant (VOHAP) concentration is being amended to clarify that water concentrations of HAP must be multiplied by the appropriate f_m factors from table 34 to obtain the volatile HAP fraction. The drafting in § 63.148(j) is being corrected to clarify the relationship between those requirements and the reporting requirements of §§ 63.152(c) and 63.182(b).

The Implementation Plan requirements in § 63.151(a)(2) and § 63.151 (c) are being corrected to clarify that for existing sources, the information required in the implementation plan need not be submitted earlier than 12 months prior to the compliance date for sources not using emissions averaging or 18 months prior to the compliance date for sources using emissions averaging. This clarification is necessary to make the regulation consistent with the EPA's intent to allow 18 or 24 months for preparation of the required information. Due to a drafting error, the final rule could be interpreted to require earlier submittal of this information for any source required to submit an operating permit application before these dates. The intent of § 63.151(c)(1) is to avoid duplicative submissions of implementation plan information, not to require submission of such information earlier than 12 or 18 months prior to the compliance date.

By promulgating these technical corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code and Section 307(b) of the Clean Air Act permit an agency to forego notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively

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change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, Title 40, chapter I, part 63, of the Code of Federal Regulations is corrected as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (f)(1) and revising the first sentence of paragraph (k)(3) introductory text to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(f) * * *

(1) Process vents from batch operations;

* * * * *

(k) * * *

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided for in paragraphs (k)(4) through (k)(8) of this section, unless an extension has been granted by the Administrator as provided in § 63.182(a)(6) of subpart H of this part or granted by the operating permit authority as provided in § 63.6(i) of subpart A of this part. * * *

* * * * *

3. Section 63.101 is amended by revising the definition of "batch operation" in paragraph (b) to read as follows:

§ 63.101 Definitions.

* * * * *

(b) * * *

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a unit operation within a chemical manufacturing process unit and processed at one time. Batch operation includes noncontinuous operations in which the equipment is fed intermittently or discontinuously. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. After each batch operation, the equipment is generally emptied before a fresh batch is started.

* * * * *

4. Section 63.102 is amended by revising paragraph (c)(1) to read as follows:

§ 63.102 General standards.

* * * * *

(c) * * *

(1) If the EPA has approved a State operating permit program under 40 CFR Part 70, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the source shall apply to the EPA Regional Office.

* * * * *

5. Section 63.104 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 63.104 Heat exchange system requirements.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Only HAP that are present in the process fluid in concentrations greater than 5 percent by weight are required to be measured in the cooling water.

* * * * *

§ 63.105 [Amended]

6. Section 63.105 is amended by revising the reference in paragraph (a) from "table 2 of this subpart" to read "table 9 of subpart G of this part".

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

7. Section 63.111 is amended by revising the definitions of "average flow rate," "batch operation," "hard-piping," "incinerator," "mass flow rate," and "rack-weighted average partial pressure" to read as follows:

§ 63.111 Definitions.

* * * * *

Average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c).

Batch operation means a noncontinuous operation in which a discrete quantity or batch of feed is charged into a unit operation within a chemical manufacturing process unit and distilled or reacted at one time. Batch operation includes noncontinuous operations in which the equipment is fed intermittently or discontinuously. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation. After each batch operation, the equipment is generally emptied before a fresh batch is started.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards such as American National Standards Institute (ANSI) B31–3.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

* * * * *

Mass flow rate, as used in the wastewater provisions, means the rate at which the mass of a constituent in a wastewater stream flows past a point, determined by multiplying the average concentration of that constituent in the wastewater stream by the average flow rate (annual average volumetric flow rate) and density of the wastewater stream, as determined according to the procedures specified in §§ 63.144 (e)(2) and (e)(3).

* * * * *

Rack-weighted average partial pressure means the throughput weighted average of the average maximum true vapor pressure of liquids containing organic HAP transferred at a transfer rack. The rack-weighted average partial pressure shall be calculated using the equation below:

Where:

P = Rack-weighted average partial pressure, kilopascals.

$$P = \frac{\sum P_i G_i}{\sum G_i}$$

P_i = Individual HAP maximum true vapor pressure, kilopascals, = X_i*P, where X_i is the mole fraction of compound i in the liquid.

G_i = Yearly volume of each liquid that contains organic HAP that is transferred at the rack, liters.

i = Each liquid that contains HAP that is transferred at the rack.

* * * * *

8. Section 63.138 is amended by revising the second sentence in paragraph (h) introductory text to read as follows:

§ 63.138 Process wastewater provisions—treatment processes.

* * * * *

(h) * * * The requirements of this paragraph are illustrated in Figure 10 of this subpart.

* * * * *

9. Section 63.144 is amended by adding a sentence to the end of paragraph (b)(3), and by revising paragraphs (b)(5)(i)(B), (b)(5)(i)(D), and (b)(5)(i)(E) to read as follows:

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations.

* * * * *

(b) * * *

(3) * * *. If the water concentration of an individual HAP present in the wastewater is used to develop a total VOHAP average concentration or average VOHAP concentration for that individually speciated HAP, it shall be multiplied by the HAP-specific f_m factor in table 34 of this subpart to obtain the volatile portion of that HAP.

* * * * *

(5) * * *

(i) * * *

(B) Total VOHAP concentration (stream) can be determined by summing the VOHAP concentrations of all individually speciated organic HAP in the wastewater.

$$C_{stream} = \sum_{i=1}^{n} C_i$$

Where:

C_{stream} = Total VOHAP concentration of wastewater stream.

n = Number of organic HAP in the wastewater stream.

C_i = VOHAP concentration of individual organic HAP (i) calculated according to the procedures in paragraph (b)(5)(i)(A) of this section.

* * * * *

(D) If the wastewater stream has a steady flow rate throughout the year, the total VOHAP average concentration for HAP listed on table 9 of this subpart of the wastewater stream shall be calculated by averaging the values calculated in paragraph (b)(5)(i)(B) for the individual samples:

$$C_{stream,\,avg} = \frac{\sum_{j=1}^{m} C_{stream,\,j}}{m}$$

Where:

$C_{stream,avg}$ = Total VOHAP average concentration for HAP listed on table 9 of this subpart of the wastewater stream.

m = Number of samples.

$C_{stream,j}$ = Total VOHAP concentration of wastewater stream as measured in sample j, calculated according to the procedures in paragraph (b)(5)(i)(B) of this section.

(E) The average VOHAP concentration for each individually speciated organic HAP (i) listed on table 8 of this subpart shall be calculated by averaging the values calculated in paragraph (b)(5)(i)(A) of this section for the individual samples:

$$C_{i,\,avg} = \frac{\sum_{j=1}^{m} C_{i,\,j}}{m}$$

Where:

$C_{i,avg}$ = Average VOHAP concentration for each individually speciated organic HAP i listed on table 8 of this subpart.

m = Number of samples.

$C_{i,j}$ = VOHAP concentration of an individual organic HAP i as measured in sample j.

* * * * *

§ 63.145 [Amended]

10. Section 63.145 is amended by revising paragraphs (c)(2)(ii)(E), (f) introductory text, and (g) introductory text to read as follows: § 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) The HAP mass flow rates of each individual HAP compound entering and exiting the treatment process are calculated as follows:

$$E_b = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{bp} C_{bp}\right)$$

$$E_a = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{ap} C_{ap}\right)$$

Where:

E_b = HAP mass flow rate of an individually speciated HAP compound entering the treatment process, kilograms per hour.

E_a = HAP mass flow rate of an individually speciated HAP compound exiting the treatment process, kilograms per hour.

K = Density of the wastewater stream, kilograms per cubic meter.

n = Number of runs.

V_{bp} = Average volumetric flow rate of wastewater entering the treatment process during each run p, cubic meters per hour.

V_{ap} = Average volumetric flow rate of wastewater exiting the treatment process during each run p, cubic meters per hour.

C_{bp} = Average HAP concentration of an individually speciated HAP in the wastewater stream entering the treatment process during each run p, parts per million by weight.

C_{ap} = Average HAP concentration of an individually speciated HAP in the wastewater stream exiting the treatment process during each run p, parts per million by weight.

* * * * *

(f) A performance test to demonstrate compliance with the mass removal provision for new sources in § 63.138(b)(1)(iii)(C) shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (h) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \left(\frac{K}{10^6} V \sum_{j=1}^{n} C_{j,\,avg}\right) 0.99 * 60$$

Where:

RMR = Required mass removal of organic HAP listed in table 8 of this subpart in a Group 1 wastewater stream, in kilograms per hour.

K = Density of the Group 1 wastewater stream, kilograms per liter.

V = Annual average wastewater flow rate of the Group 1 wastewater stream, liters per minute.

n = Number of organic HAP listed in table 8 of this subpart in stream.
$C_{j,avg}$ = Average HAP concentration of each organic HAP j listed in table 8 of this subpart in the Group 1 wastewater stream at the point of generation, parts per million by weight.
0.99 = Required fraction removed of organic HAP listed in table 8 of this subpart.

* * * * *

(g) A performance test to demonstrate compliance with the mass removal provisions for new and existing sources in § 63.138(c)(1)(ii)(D) shall consist of a determination of mass removal required to be achieved, and a determination of mass removal actually achieved. Actual mass removal and compliance shall be determined by the procedure in paragraph (h) of this section. The required mass removal for each Group 1 wastewater stream prior to combination of the streams for treatment shall be determined using the following equation:

$$RMR = \frac{K}{10^6} V \sum_{j=1}^{n} \left(C_{j,avg} * Fr\right) * 60$$

Where:
RMR = Required mass removal of table 9 of this subpart organic HAP in a Group 1 wastewater stream, prior to combination with other Group 1 wastewater streams, kilograms per hour.
K = Density of the Group 1 wastewater stream, kilograms per liter.
V = Annual average wastewater flow rate of the Group 1 wastewater stream, liters per minute.
n = Number of table 9 of this subpart organic HAP compounds in stream.
$C_{j,avg}$ = Average HAP concentration of each organic HAP j listed in table 9 of this subpart in the Group 1 wastewater stream at the point of generation, parts per million by weight.
Fr = Required fraction removed of each compound j (target removal efficiency from table 9 of this subpart).

* * * * *

11. Section 63.147 is amended by revising paragraph (b) to read as follows:

§ 63.147 Process wastewater provisions—recordkeeping.

* * * * *

(b) The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 63.132(j) shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic HAP that are required to be managed and treated in accordance with the provisions of this subpart.

* * * * *

12. Section 63.148 is amended by revising paragraph (j) introductory text to read as follows:

§ 63.148 Leak inspection provisions.

* * * * *

(j) The owner or operator shall submit with the reports required by § 63.182(b) of subpart H of this part or with the reports required by § 63.152(c) of this subpart, the information specified in paragraphs (j)(1) through (j)(3) of this section.

* * * * *

13. Section 63.150 is amended by revising paragraphs (g)(5)(i) introductory text, (k) introductory text, and (k)(1) introductory text to read as follows:

§ 63.150 Emissions averaging provisions.

* * * * *

(g) * * *

(5) * * *

(i) The following equation shall be used for each wastewater stream i to calculate EWW_{ic}:

$$EWW_{ic} = \left(6.0 * 10^{-8}\right) Q_i \, H_i \sum_{m=1}^{s} \left(1 - Fr_m\right) Fe_m HAP_{im} + (0.05)\left(6.0 * 10^{-8}\right) Q_i \, H_i \sum_{m=1}^{s} \left(Fr_m HAP_{im}\right)$$

Where:
EWW_{ic} = Monthly wastewater stream emission rate if wastewater stream i is controlled by the reference control technology, megagrams per month.
Q_i = Average flow rate for wastewater stream i, as determined by the procedure in § 63.144(c)(3), liters per minute.
H_i = Number of hours during the month that wastewater stream i was generated, hours per month.
s = Total number of organic HAP in wastewater stream i.
Fr_m = Fraction removed of organic HAP m in wastewater, from table 9 of this subpart, dimensionless.
Fe_m = Fraction emitted of organic HAP m in wastewater, from table 34 of this subpart, dimensionless.
HAP_{im} = Average concentration of organic HAP m in wastewater stream i, parts per million by weight.

* * * * *

(k) The owner or operator must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the operating permit authority, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.113 through 63.148.

(l) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the operating permit authority.

* * * * *

14. Section 63.151 is amended by revising paragraphs (a)(2) introductory text and (a)(6)(ii) and by revising the first sentences in paragraphs (c) introductory text, (c)(1)(i), and (c)(1)(ii) to read as follows:

§ 63.151 Initial notification and implementation plan.

(a) * * *

(2) An Implementation Plan, unless an operating permit application has been submitted prior to the date the Implementation Plan is due and the owner or operator has elected to include the information specified in § 63.152(e) in that application.

* * * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A of this part.

* * * * *

(c) Each owner or operator of an existing or new source subject to this subpart must submit an Implementation Plan to the Administrator by the dates specified in paragraphs (c)(1) and (c)(2) of this section unless an operating permit application accompanied by the information specified in § 63.152(e) has been submitted. * * *

(1) * * *

(i) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 by using emissions averaging for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) at least 18 months prior to the compliance dates specified in § 63.100 of subpart F of this part, shall develop an Implementation Plan for emissions averaging. * * *

(ii) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.148 of this subpart, rather than emissions averaging, for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) at least 12 months prior to the compliance dates specified in § 63.100 of subpart F of this part, shall develop an Implementation Plan. * * *

* * * * *

15. Section 63.152 is amended by revising paragraph (c)(4) introductory text to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(c) * * *

(4) Periodic Reports shall include the information in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, as applicable:

* * * * *

Appendix to Subpart G—[Amended]

Table 6—[Amended]

16. Table 6 in the appendix of subpart G is amended by revising the vapor pressure for vessel capacity entry "38≤capacity<151" from "13.1" to "≥13.1."

Table 9—[Amended]

17. Table 9 in the appendix to subpart G is amended by adding, in alphabetical order, an entry for "nitrobenzene" with its CAS number of "98953" and its Fr of "0.80".

Table 10—[Amended]

18. Table 10 in the appendix to subpart G is amended by revising the term "vapor pressure (kPa)" to read "Maximum true vapor pressure (kPa)" in the middle column heading.

Table 14b—[Amended]

19. Table 14b in the appendix to subpart G is amended by revising the footnote "d" to read as follows:

* * * * *

[d] Except when § 63.132(c) is used, annual average total VOHAP concentration in wastewater stream at point of generation, parts per million by weight (ppmw).

* * * * *

Table 15a—[Amended]

20. Table 15a in the appendix to subpart G is amended by revising the footnote "i" to read as follows:

* * * * *

[i] If the stream is being treated in accordance with the requirements of § 63.138(b), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in table 17 of this subpart.

* * * * *

Table 15b—[Amended]

21. Table 15b in the appendix to subpart G is amended by revising the footnotes "d" and "i" to read as follows:

* * * * *

[d] Except when § 63.132(c) is used, annual average total VOHAP concentration in wastewater stream at point of generation, parts per million by weight (ppmw).

* * * * *

[i] If stream is being treated in accordance with § 63.138(c), give identification code of treatment unit(s) treating stream. Identification codes should correspond to entries in table 17 of this subpart.

* * * * *

Table 16—[Amended]

22. Table 16 in the appendix to subpart G is amended by revising the footnote [e] to read as follows:

* * * * *

[e] Flow-weighted annual average total VOHAP concentration of individual or combined stream before exposure to the atmosphere and before combination with streams other than process wastewater from the specific process unit, parts per million by weight (ppmw).

* * * * *

Figure 7—[Amended]

23. Figure 7 in the appendix to subpart G is revised to read as follows:

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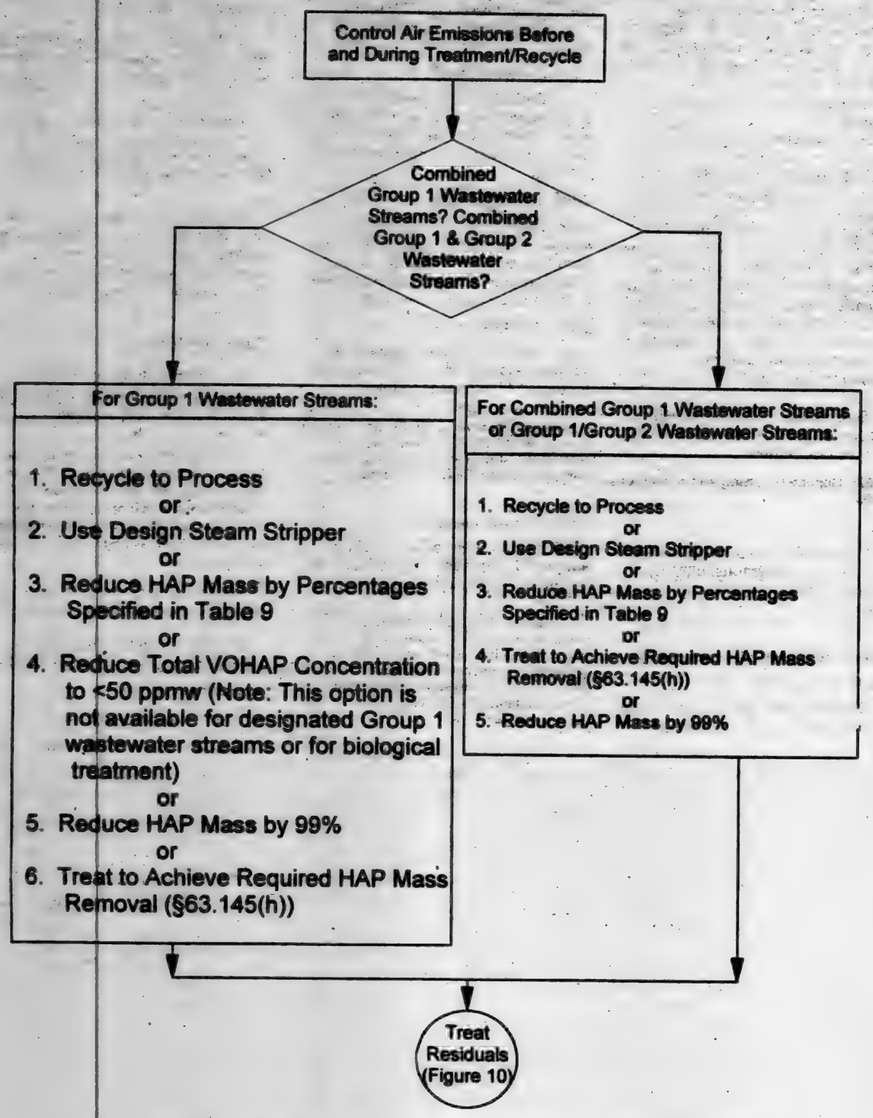


Figure 7. Compliance Options for Control of Table 9 HAP's (Refer to §63.138(c))

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Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

24. Section 63.175 is amended by revising paragraph (d)(4) introductory text to read as follows:

§ 63.175 Quality improvement program for valves.

* * * * *

(d) * * *

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

* * * * *

25. Section 63.182 is amended by revising paragraphs (a)(6)(ii) and (d)(2)(vii) to read as follows:

§ 63.182 Reporting requirements.

(a) * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A of this part.

* * * * *

(d) * * *

(2) * * *

(vii) The number of agitators for which leaks were detected as described in § 63.173(a) and (b) of this subpart;

* * * * *

[FR Doc. 95–28382 Filed 12–11–95; 8:45 am]

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40 CFR Part 70

[AD–FRL–5344–9]

Clean Air Act Final Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Nevada Division of Environmental Protection ("NDEP" or "State") for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: January 11, 1996.

ADDRESSES: A copy of NDEP's submittal and other supporting information used in developing the final approval are available for inspection (docket number NV–DEP–95–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("Act")), and implementing regulations at 40 Code of Federal Regulations ("CFR") part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On August 7, 1995, EPA proposed interim approval of the operating permits program for NDEP ("NPRM"). *See* 60 FR 40140. In that **Federal Register** document, EPA also proposed approval of NDEP's interim mechanism for implementing section 112(g) and its program for delegation of section 112 standards as promulgated as they apply to title V and non-title V sources. Public comment was solicited on the three proposed actions, and EPA is responding to those comments in this document and in a separate "Response to Comments" document that is available in the docket at the Regional office.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The August 7, 1995 **Federal Register** notice proposed interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. EPA is aware that NDEP has revised its implementing regulations since the February 8, 1995 submission; however, those revisions have not been submitted to EPA for approval and are not part of the program being approved in today's final action.

EPA received comments on the NPRM from two commenters: the National Mining Association ("NMA") and NDEP. With one exception, the program deficiencies identified in the NPRM remain unchanged as a result of public comment. Based on public comment and further analysis, the deficiency identified in section II.B.1.(2) of the NPRM has been removed; i.e., NDEP's definition of "regulated air pollutant" is fully approvable. See section II.A.4. below for further discussion. The commenters also provided a few program clarifications which are discussed below. Furthermore, please note that an issue raised as a deficiency in the context of "insignificant activities" and discussed in section II.A.2.c. of the proposed notice has become a separate interim approval issue as a result of public comment. See section II.A.1. for more information. No adverse public comment was received on the proposed approvals of NDEP's program for delegation of section 112 standards as promulgated or transition mechanism for implementing section 112(g), and hence, those approvals have not been altered as a result of public comment.

1. Applicability

In response to a program deficiency identified by EPA in section II.B.1.(10) of the NPRM, NDEP commented that it does not plan to permit *any source* that is subject to the New Source Performance Standard ("NSPS") for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for asbestos demolition because the State has not accepted delegation for such standards.

In order to have a fully approvable program, a state must have authority to permit *all major sources* and to write permits that assure compliance with all federal applicable requirements. If under State law NDEP must receive delegation of a federal requirement before it can write that requirement into a permit or assure compliance with that requirement, then NDEP must seek and receive delegation in sufficient time to issue the permit. It is possible for Nevada to obtain delegation of an NSPS or NESHAP requirement solely for title V sources.

In the NPRM, EPA relied on the Nevada Attorney General's legal opinion (dated November 15, 1993) that NDEP has authority to issue permits to all

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sources required to have permits pursuant to section 502(a) of the Act and § 70.3 of part 70 (p. 2 of legal opinion), and authority to "require that all applicable requirements be incorporated into an operating permit" (p. 3 of legal opinion). In addition, NDEP has committed to implement all applicable requirements, including those that would necessitate State rule adoption prior to incorporation into the permit. (*See* Program Submittal, Section II.A.2., pp. II–1 to II–2.) EPA expects NDEP to issue permits to all major sources and to include all applicable requirements in those permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate it in order to have a fully approvable program.

In response to EPA's discussion in the NPRM (section II.A.2.c.) on insignificant activities, NDEP commented that two of the listed insignificant activities, agricultural land use and equipment or contrivances used for food processing, are "unpermittable activities." EPA regards this comment as ambiguous given that NAC 445B.293.1 (previously NAC 445.705.1) requires, and the Attorney General's legal opinion confirms, that all major sources (with the two exceptions noted above) must obtain operating permits. Furthermore, EPA assumed that if information is provided in the application because it is needed to "establish the basis for the applicability of standards" (section 445B.295.2(b), previously 445.7054.2(b)), then the units subject to such standards (i.e., applicable requirements) would be contained in the permit. EPA expects NDEP to implement its insignificant activities provisions in a manner consistent with both part 70 and the provisions of the NAC relied upon in the NPRM, that is: (1) Emissions from insignificant activities must be considered in applicability determinations; (2) Class I permit applications may not omit any information needed to determine or impose any applicable requirement; and (3) if an applicable requirement applies to a unit at a major source, that unit must be permitted. In order to have a fully approvable program, NDEP must remove all ambiguity regarding the permitting of agricultural and food processing activities and clearly require all major sources to obtain Class I permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate that impediment prior to full program approval.

Also, in the NPRM, EPA noted that NDEP's program contains inconsistencies with regard to the applicability of nonmajor sources to title V. (*See* 60 FR 40141–40142, section II.A.2.a. "applicability.") EPA requested a letter from NDEP clarifying how it intends to carry out the applicability requirements in its program.

In the comment letter received from NDEP on September 6, 1995, the State informed EPA that it has already corrected the ambiguity regarding whether or not nonmajor sources subject to a section 111 or 112 standard are subject to title V. NDEP revised the Nevada Administrative Code on April 4, 1995 to clearly state that "major," and not "minor," new sources subject to sections 111 and 112 will be permitted as Class I–B sources.

2. Insignificant Activities

One commenter asserted that EPA's position in the NPRM regarding insignificant activities is inconsistent with the July 10, 1995 "White Paper," which gives states flexibility in designating insignificant activities. EPA disagrees that the NPRM is inconsistent with the "White Paper" with regard to insignificant activities. EPA is not questioning the State's authority to identify insignificant activities; rather, EPA is rejecting the unbounded nature of some of the listed activities.

The meaning of the term "insignificant" as used in section 70.5(c) is that information is unessential for determining whether and how an applicable requirement applies at a source. If emissions at an activity are extremely low, that activity is unlikely to be subject to an applicable requirement. That is why EPA suggested that NDEP create an across-the-board emissions threshold above which activities could not qualify as insignificant. Without an across-the-board threshold or unit-specific limits, activities on NDEP's list, such as "agricultural land use" and "equipment or contrivances used exclusively for the processing of food" could be construed as being "insignificant" even if subject to an applicable requirement. Where there is a chance that an activity is subject to an applicable requirement (e.g., food processing activities may be subject to the yeast manufacturing NESHAP), EPA needs additional criteria, such as an emissions threshold, to ensure that the activity is insignificant for part 70 permitting purposes.

The commenter further contended that NDEP's regulation already prohibits activities subject to an applicable requirement from qualifying as insignificant. Nevertheless, the commenter asked whether the following language would resolve EPA's concerns: "[N]o source subject to an applicable requirement may qualify as an insignificant activity."

EPA disagrees that NDEP's regulation clearly prohibits activities subject to an applicable requirement from qualifying as insignificant. In fact, NDEP's list of insignificant activities contains activities, such as air-conditioning equipment, that are almost certainly subject to an applicable requirement. Unless NDEP removes from the list of insignificant activities those activities that are likely to be subject to a unit-specific applicable requirement, the language proposed by the commenter might only cause confusion. However, the language proposed by the commenter would help clarify that insignificant activities provisions do not exempt sources from title V and do not relieve sources from having to comply with any applicable requirements.

Another comment received on insignificant activities is that EPA's recommended emissions thresholds are arbitrary and unnecessary. The commenter pointed out that other state programs have allowed emission thresholds that are higher than EPA's recommended limits for HAP emissions.

As stated in the proposed notice, EPA will review and evaluate any emissions thresholds proposed by NDEP. Emissions thresholds should reflect state-specific circumstances. Part 70 specifically provides that the permitting authority is responsible for providing the "criteria used to determine insignificant activities or emission levels." NDEP may use levels approved in other state programs as guidance.

3. Reporting of Permit Deviations

Both commenters disagreed with EPA's statement that each permit must define "prompt" for purposes of prompt reporting of deviations. According to the commenters, "prompt" is already defined in NAC 445B.232.4 (previously 445.667.4) as reporting any excess emissions within 24 hours. In addition, NAC 445B.326 (previously 445.7133) defines prompt for emergencies.

The purpose of defining "prompt" in either the title V program or the title V permit is to notify the source of its exact reporting obligation. While NAC 445B.232.4 defines "prompt" in an acceptable manner, it is not currently part of NDEP's title V program. However, NAC 445B.326 was submitted as part of NDEP's title V program, and EPA agrees that "prompt" has already been defined for emergencies covered by that provision.

Given that permits must contain "all applicable reporting requirements" and that the definition of "applicable requirement" in NDEP's program includes State-only requirements, EPA believes that sources are adequately notified of their reporting obligation for the interim period. Therefore, during the interim period, NDEP may rely on NAC 445B.232.4 to define "prompt" rather than defining it in each individual permit. For full approval, however, NDEP must either submit NAC 445B.232.4 for inclusion in its approved program, or define "prompt" in each permit.

4. Regulated Air Pollutant

Both commenters disagreed with EPA's position that the definition of "regulated air pollutant" in NAC 445B.153 (previously 445.5905) is deficient. EPA identified NDEP's definition of "regulated air pollutant" as a program deficiency because it appeared to be inconsistent with the part 70 definition. Specifically, NDEP's definition seemed to exclude pollutants that are subject to requirements of the Act (such as title VI and sections 112(g), 112(j), and 112(r)), but are not subject to promulgated standards. This apparent inconsistency is not an issue, however, for Class I and Class II pollutants since they are all currently subject to promulgated requirements (57 FR 31242, July 14, 1992). It is also not an issue for section 112 requirements since NDEP's definition of "regulated air pollutant" can be interpreted broadly to include pollutants regulated by sections 112(g), 112(j), and 112(r) of the Act.

5. Duty to Apply

One commenter asked EPA to clarify what application trigger is missing from the State's title V program. In order to understand the deficiency, one must look at the language in part 70 which states that an initial title V application is due "within 12 months after the source *becomes subject* to the permit program" (section 70.5(a)(1)). As is the case in NDEP's regulation, a source may "become subject" upon the effective date of the program or after commencing operation of a new source. However, these two situations are not the only scenarios that would make a source subject to title V for the first time. For instance, a source may become subject to title V upon promulgation of a MACT standard that does not exempt nonmajor sources to obtain title V permits. Similarly, the Administrator could designate a category of nonmajor sources to be subject to title V. Finally, facility modifications may increase a source's potential to emit to above the major source level, thus making a source newly subject to title V. For these reasons, NDEP's regulation must be revised for full approval.

6. Permit Shield

NDEP disputed EPA's comment in the NPRM that the program's permit shield provisions are deficient. Because a permit shield may insulate a source from enforcement, it is essential for EPA and the public to know when a permit shield is in the permit and exactly which conditions the permit shield is covering. According to NDEP's regulation, permits may be written to provide the benefits of a permit shield without expressly stating that a permit shield exists. This approach is plainly inconsistent with § 70.6(f)(2) which states that: "[a] part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield." NDEP must make all the changes identified in the proposed notice in order to have fully approvable permit shield provisions.

7. Emissions Trading

NDEP commented that it does not intend to provide the emissions trading opportunity specified in § 70.6(a)(10) and that it intends to remove the existing provisions for trading under a federally enforceable emissions cap, which are now located in NAC 445B.316.1(g) (previously NAC 445.7114.1(g)) and which satisfy the requirements of § 70.4(b)(12)(iii). Consequently, NDEP indicated that it will not correct the regulatory deficiencies with regard to trading identified in the proposed approval notice under section II.B.1.(9). NDEP noted, however, that it will allow trading as an alternative operating scenario.

The federal part 70 regulation does not give states discretion about whether to allow the emissions trading provisions of §§ 70.6(a)(10) and 70.4(b)(12)(iii). First, § 70.6(a)(10) says that the permitting authority cannot deny trading opportunities where such opportunities are provided by the underlying applicable requirement. For instance, if NDEP permits a source subject to the Hazardous Organic NESHAP (HON), which allows for trading without a case-by-case approval, and the source requests to take advantage of the trading provisions of the HON, then NDEP must establish trading terms and conditions in the source's permit. Second, § 70.4(b)(12)(iii) states that the permitting authority "shall" allow for trading under a federally enforceable emissions cap. In the proposed approval, EPA relied on NAC 445.7114.1(g) to satisfy the requirements for trading under a federally enforceable emissions cap. If NDEP removes such trading provisions from its program, the program will become deficient with regard to operational flexibility. Moreover, EPA is not convinced that NDEP's alternative operating scenario provisions provide an adequate framework for these types of trading opportunities.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. In order to receive full approval, NDEP must correct the ten program deficiencies listed in the proposed interim approval document under section II.B.1.(1, 3–11)[1] as well as one additional deficiency regarding the unpermittable status of agricultural and food processing activities which was identified as a result of public comment and is discussed above in section II.A.1.

The scope of NDEP's part 70 program approved in this notice applies to all sources under NDEP's jurisdiction. It does not apply to any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 12, 1998. The specific conditions of the interim approval, NDEP's obligation to submit a complete corrective program, and the potential use of sanctions were set out in the proposed notice (60 FR 40140, August 7, 1995, section I.B.) and will not be repeated in this document.

2. State Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of NDEP's integrated preconstruction/operating permit program as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by NDEP of rules specifically designed to implement section 112(g).

[1] Please see the proposed interim approval document (60 FR 40143–40144, August 7, 1995) for a list of changes that must be made in order for NDEP's program to be fully approvable.

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EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

EPA is promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. EPA is approving NDEP's delegation mechanism for part 70 and non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of NDEP's submittal and other information relied upon for the final interim approval, including public comment letters received and reviewed by EPA on the proposal, are contained in docket number NV–DEP–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: December 1, 1995.

Felicia Marcus,

Regional Administrator.

* * * * *

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (a) to the entry for Nevada:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following state program was submitted by the Nevada Division of Environmental Protection:

(a) *Nevada Division of Environmental Protection:* submitted on February 8, 1995; interim approval effective on January 11, 1996; interim approval expires January 12, 1998.

* * * * *

[FR Doc. 95–30261 Filed 12–11–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991–AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are being made as a result of statutory revisions designed to address health care fraud and abuse issues and the OIG sanctions process. In addition, this final rule sets forth new appeal and reinstatement procedures for practitioners and other persons excluded by the OIG based on a PRO recommendation.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Joe J. Schaer, Office of Management and Policy, (202) 619–3270

Joanne Lanahan, Office of Civil Fraud and Administrative Adjudication, (410) 786–9609.

SUPPLEMENTARY INFORMATION:

I. Background

A. The PRO Sanctions Process

Section 1156 of the Social Security Act imposes specific statutory obligations on practitioners and other persons to furnish necessary services to Medicare and State health care program beneficiaries that meet professionally recognized standards, and authorizes the Secretary—based on a PRO's recommendation—to impose sanctions on those who fail to comply with these statutory obligations.

Under the PRO sanctions process, no practitioner or other person is recommended for an exclusion or a monetary penalty until the practitioner or other person has an opportunity to provide additional information and have an extensive discussion with the PRO. After the receipt of a recommendation from a PRO, the OIG excludes or imposes a monetary penalty only after a careful review of all submitted documents and a separate determination that the practitioner or other person (1) violated the statutory obligations to render medically necessary and appropriate care or failed to provide evidence of medical necessity and quality, and (2) was unwilling or unable to comply with these obligations. A practitioner or other person who is excluded from Medicare and any State health care programs, or assessed a monetary penalty, on the basis of a PRO finding is entitled to administrative and judicial review after such sanction is assessed.

B. Summary of Recent Statutory Changes

A number of recent statutory changes have resulted in revisions to section 1156 of the Act—

Public Law 100–93: Section 6 of the Medicare and Medicaid Patient and Program Protection Act extended the obligation to provide appropriate and medically necessary care that meets professionally recognized standards of quality, and the obligation to ensure that the care is appropriately documented, to encompass *all* health care services for which payment may be made under the Act, and not just Medicare. In addition, the exclusion authority under section 1156 of the Social Security Act was extended to encompass violations occurring in, and exclusions from, the State health care programs.

Public Law 100–203: Section 4095 of the Omnibus Budget Reconciliation Act (OBRA) of 1987 provided that an exclusion of a practitioner or other person who practices in a county of less than 70,000 people or in a rural health professional shortage area (HPSA) cannot be effectuated until an opportunity for a preliminary administrative hearing is provided and, if requested, the administrative law judge (ALJ) determines that the practitioner or other person will pose a serious risk to beneficiaries if permitted to continue furnishing services during the appeals process.

Public Law 101–508: Section 4205 of OBRA 1990 set forth new statutory requirements for PROs, where appropriate, to offer a corrective action plan (CAP) to practitioners and other persons prior to making a finding; and, in determining whether a practitioner or other person is willing and able to comply with his or her obligations, require the Secretary to consider whether they entered into and successfully completed a CAP prior to the PRO's submission of a recommendation and report to the Secretary.

Public Law 103–432: Section 156 of the Social Security Act Amendments of 1994 set forth the requirement that if a PRO, after reasonable notice and opportunity for discussion with the physician or practitioner concerned, finds that the physician or practitioner has furnished services in violation of section 1156(a) of the Act and determines that the physician or practitioner should enter into a CAP under section 1156(b)(1), the PRO will notify the State board(s) responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding. (See discussion regarding § 1004.70 under the Response to the Public Comments section regarding use of the term "physician and practitioner.")

II. Summary of the Proposed Regulations

On February 28, 1994, the OIG published a notice of proposed rulemaking in the **Federal Register** that set forth a comprehensive rewrite of 42 CFR part 1004 consistent with the statutory revisions and other proposed procedures and recommendations. The proposed regulations were specifically designed to revise and update the administrative procedures for the imposition and adjudication of the PRO sanctions process. The proposed regulations addressed revisions in three broad areas: (1) Procedural changes resulting from the OBRA 1990 provisions, (2) the establishment of preliminary hearings for practitioners and other persons in rural areas or counties, and (3) an alternative sanctions notification process.

A. The OBRA 1990 Provisions Relating to PRO's

Among other things, the proposed regulations provided for—

- The elimination of the procedural distinction between "substantial" violations and "gross and flagrant" violations.
- The use of any violations of the obligations identified during a CAP period in support of the PRO's recommendation regarding a practitioner's or other person's unwillingness or inability to comply with statutory obligations.[1]
- The inclusion of a provision that no physician member of the PRO panel may be in direct competition with, or have a substantial bias for or against, the practitioner or other person being considered for sanction.
- The revision of § 1004.30(e) by setting forth instructions to PROs on the actions to be taken when a physician relocates after receiving a sanction notice.
- The inclusion of any prior problems that any State health care program has had with a practitioner or other person as an additional factor to be considered by the OIG in imposing an exclusion.

[1] If a PRO decides to use any of the violations identified during a corrective action plan as a basis for a pending recommendation for sanction, instead of a basis to support unwillingness or inability, the PRO must send out a notification on these violations in accordance with § 1004.40.

B. Preliminary Hearings

The proposed regulations also set forth provisions to allow a practitioner or other person in specified rural areas or counties of a specified population to request a preliminary hearing when notified by the OIG of an exclusion from participation in the Medicare program resulting from a PRO recommendation. The preliminary hearing would be solely on the issue of whether such practitioner's or other person's continued participation in the program during the appeal to an ALJ would place program beneficiaries at serious risk.

Entitlement to such a preliminary hearing would apply to practitioners and other persons for whom an exclusion is proposed who practice in a rural HPSA for their specialty or in a county with a population of less than 70,000. A practitioner's or other person's practice was considered to be where over 50 percent of his, her or its services were rendered. The proposed regulations provided that a practitioner's or other person's request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice.

C. Sanctions Notification Process

The proposed regulations set forth an alternative sanctions notification process that would allow sanctioned practitioners and other persons the option of informing all their patients *directly* of the sanction action taken against them. If they selected this option and complied with its requirements in a timely fashion, sanctioned practitioners and other persons would be exempted from current requirement for public notice.

Under this proposed option, practitioners and other persons would be required to certify to the Department that they have taken action to inform all their patients of the sanction and, in the case of exclusion, that they would notify new patients before furnishing services. Each sanctioned practitioner or other person opting for this alternative notice procedure would have to alert both existing patients and all new patients through written notification based on a suggested, non-mandatory model that would be provided by the OIG. For

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those sanctioned practitioners or other persons not electing this alternative method or failing to return the required certification form within the proposed 30-day period, the OIG would follow its standard procedure for public notification.

III. Response to the Public Comments

As a result of the proposed rulemaking published on February 28, 1994, the OIG received a total of 12 timely-filed public comments from various practitioners and providers, medical and professional associations, third party payers, peer review organizations and other interested parties.

Set forth below is a summary of those comments and our response to the issues and concerns raised.

Section 1004.1—Scope and Definitions

Comment: Three commenters stated that the term "gross and flagrant" was confusing, and as currently defined, has been erroneously interpreted to permit the Department and the PROs to focus on the outcome of the procedure and not on the degree of the violation. The commenters believed that under the existing definition the PROs have been given broad authority to arbitrarily determine that any given quality concern is potentially sanctionable, and that this, in turn, has lead to the initiation of the sanction process in some questionable cases.

Response: We believe it is important to retain the present definition and classification for the term "gross and flagrant" so that the severity of the violation can be demonstrated. While we have considered alternative definitions for defining this term, we believe that the current classification adequately and properly reflects the severity of the violation of the obligation(s) and the risk to the patient(s) which has already been identified. As to one commenter's suggestion that the patient must be "harmed" before a violation can be considered gross and flagrant, we disagree. We believe that a gross and flagrant violation includes those situations where a patient is placed in danger or in a high-risk situation, whether or not the patient is harmed. Thus, we are retaining the current definition.

Comment: While agreeing that there needs to be a definition for the term "pattern of care," one commenter was concerned that the definition for "substantial violation in a substantial number of cases"—which encompasses the requirement that there be an inappropriate pattern of care—has been interpreted to support a finding of a substantial violation exclusively on the basis of multiple allegations of treatment deficiencies in a single patient. The commenter believes this is unfair since, while a physician's course of treatment with respect to one patient may be alleged to be negligent, the treatment of a single individual does not indicate the "pattern" of professional negligence that the law was designed to address.

Response: We agree with the commenter's concern and have revised the definition of "pattern of care" in substantial violation cases to mean that the care under question has been demonstrated in more than 3 instances, which must involve different *admissions*. Under this revised definition, the instances could involve the same patient but reflect problems with the treatment occurring at different times. This is in contrast with the definition of gross and flagrant violations in which multiple violations may be found within the same admission.

Comment: One commenter objected to our defining the term "practice area" as "the location where over 50 percent of the practitioner's or other person's patients are seen," and requested that the definition be deleted. The commenter believed that a practitioner who has *any* amount of practice in a rural area should be entitled to a preliminary hearing on the issue of whether that person's continued participation during the appeal of the exclusion would place program beneficiaries at serious risk.

Response: We are rejecting this comment since we believe it is not consistent with the statutory provision and congressional intent in providing for such preliminary hearings. If Congress wanted to extend the right to a preliminary hearing to *all*, or virtually all, practitioners and other persons, it would have done so in the statutory language. Rather, the statute and these regulations are targeted only to those who "practice" in a HPSA or a county with a population of less than 70,000, and not those who may occasionally see a patient in a rural area. In order to carry out the intent of the statutory provision, we believe that the definition for the term "practice area" is appropriate, fair and reasonable.

Section 1004.40—Action on Identification of a Violation

Comment: While several commenters strongly supported the OIG's proposal to eliminate the distinction between "substantial" violations and "gross and flagrant" violations, one commenter believed that the elimination of this distinction would result in less due process by removing the physician's right to receive two notices and two hearings for any violation.

Response: As noted in the proposed rule, the second meeting in substantial violation cases has proven simply to be a repeat of the initial or 20-day meeting. This, in turn, has increased the risk of serious patient harm due to this procedural delay. Experience has shown that this dual meeting process has tended to be cumbersome, time-consuming and confusing to both the physician responding to substantial violations issues and the physician members of the PRO's sanction panel. The OIG believes that this approach to eliminating the violations' distinction will serve program beneficiaries well while still continuing to provide adequate due process to all practitioners and other persons.

Comment: One commenter strongly agreed with the additional safeguards under § 1004.40 that state that the notice must contain information regarding the meeting, that an attorney may represent the practitioner, and that the attorney may make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner in presenting testimony of expert witnesses who may appear on behalf of the practitioner. However, the commenter believed that the notice should also contain a provision stating that the attorney may also cross-examine any physician or other expert who provided evidence upon which the PRO relied in identifying a potential violation under § 1004.10.

Response: We do not agree with the commenter's recommendation under § 1004.40 that notice should also include a provision that would allow attorney cross-examination. The meeting between the PRO and the practitioner or other person is not a formal adversarial hearing or trial. Rather, this meeting serves only as a medical dialogue to afford the practitioner or other person an opportunity to discuss medical issues.

Comment: Under § 1004.40, when a PRO identifies a violation, it must send a notice to the practitioner or provider identifying the specific concerns. One commenter stated that, while traditionally it has been up to the provider or practitioner to initiate a CAP before the PRO would consider it, this rule change places the obligation on the PRO to initiate resolution through a CAP. The commenter questioned whether the absence of a CAP in the notice constituted a determination by the PRO that the case cannot, at that time, be resolved with a CAP, and opined that if a CAP is *not* considered appropriate, perhaps the notice should state this along with the reasons why. The commenter also wanted the practitioner or provider to be given an opportunity to submit additional information within 15 days of receipt of notice without, at the same time, having to decide to request a meeting.

Response: With regard to the use of a CAP, we believe that there are times when the PRO will not know if, or what type of, a CAP is appropriate until they have met with or heard from the practitioner or other person in response to the letter. We are, therefore, dissuaded by the comment raised. With regard to the commenter's second point, before the PRO sends out a notice under this regulatory process, the practitioner or other person is given at least one and, in most instances, two opportunities to present clarifying information. Therefore, we do not believe that another opportunity such as that proposed by the commenter would be necessary.

Comment: One commenter indicated concern with the proposed language in § 1004.40(b)(5) that stated the PRO must advise the practitioner or other person of "the sanction that the PRO could recommend to the OIG *if the violation continues*" (italic added). The phrase "if the violation continues" is not contained in the current "gross and flagrant" notice, and the commenter believed that the use of these words in the regulations would prevent an exclusion recommendation by the PRO in the most egregious of circumstances if the PRO cannot document that the violation continues. The commenter specifically recommended that this phrase be deleted.

Response: We agree with the commenter and are deleting this wording from § 1004.40(b)(5).

Section 1004.50—Meeting With a Practitioner or Other Person

Comment: Several commenters strongly agreed with the codification of the requirement that no physician member of the PRO panel may be in direct competition with, or have a substantial bias against, the practitioner or other person being considered for sanction. One commenter urged, however, that this section be expanded to include specific reference to the right of the practitioner's attorney to cross-examine any reviewing physician who has made recommendations to the PRO regarding the quality of care rendered by the practitioner under review. The commenter also raised concern over the lack of a requirement that physicians providing expertise to the PRO in regard to the sanction investigation or other proceedings be in the same specialty as the practitioner under review.

Response: As discussed above, we do not believe that it is necessary that the physician's attorneys have the opportunity to cross-examine physician panel members. The meeting between the PRO and the physician or other person is *not* a formal adversarial hearing or trial. Rather, it is intended to remain merely a medical dialogue designed to afford the practitioner or other person an opportunity to discuss medical issues. With respect to the suggestion that the medical professional providing expertise be of the same or closely related specialty and be practicing in similar circumstances to the practitioner under review, we believe that proposed section (d) of this section satisfies this specific concern. Specifically, § 1004.50(d) states that at least one member of the PRO panel meeting with the practitioner or other person should practice in a similar geographic area, and at least one member of the panel must be in the same specialty. Both requirements can be met by a single individual.

Comment: One commenter asked that the composition of the sanctions panel be expanded to include persons trained and experienced in "hospital issues" before any hospital can be appropriately subject to a sanction.

Response: Since the obligations with regard to any violation involve medical quality of care issues, necessary services and medical documentation, we remain unclear as to what unique "hospital issues" are involved. As set forth, we believe that the changes contained in the rulemaking adequately remove any bias from addressing the pertinent issues in the ongoing sanction process.

Comment: Section 1004.50(g) provides that, when a practitioner or other person requests a meeting with the PRO, "[t]he PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its decision * * *." One commenter suggested that 5 working days was not adequate time for a practitioner to provide additional information to the PRO, and that 14 days would be a more reasonable amount of time.

Response: We believe that the 5-day period granted to provide additional information after the meeting is adequate. We believe that the practitioner or other person has been afforded several opportunities up to this point to provide additional information, and that 5 days, consistent with the American Medical Association (AMA) understanding, is sufficient in this instance.

Comment: One commenter indicated that the terms "determination," "decision" and "finding" are used interchangeably in §§ 1004.40 and 1004.50, and requested that the terms "determination" and "decision" be eliminated and the term "finding" be used consistently throughout.

Response: We agree with the commenter's concern, and to be consistent throughout these sections, we are deleting the terms "decision" and "determination" by a PRO and inserting the word "finding" in its place.

Section 1004.60—PRO Finding of a Violation

Comment: One commenter requested that we specifically clarify the term "issue" in this section, and specify when it has been resolved since no clear distinction is made between a "issue," a "determination" and a "finding." In addition, the commenter asked that the last sentence in § 1004.60(a) be eliminated and a new sentence to paragraph (b) stating that "(T)he PRO may, on the basis of the additional information, modify either its finding or recommendation or close the case."

Response: While we have agreed to replace the term "issue" with the word "finding," there remain numerous ways for a "finding" to be resolved by a PRO and believe it would not be appropriate in these regulations to attempt to attempt further clarification of this term. With regard to the commenter's second point, we have agreed instead to modify the language in paragraph (a). As revised, the language in § 1004.60(a) will state that "(I)f the finding has been resolved to the PRO's satisfaction, the PRO may modify its initial finding or recommendation or close the case."

Section 1004.70—PRO Action on Final Finding of a Violation

Comment: A commenter stated that in § 1004.70(c) the word "physician" should be replaced with the phrase "physician or other person" to be consistent with other references found elsewhere in these regulations.

Response: We agree that a revision to this section is appropriate. In addition, a technical correction is being made over language in section 1154(a)(9)(B) of the Act resulting from Pub. L. 103–432. With regard to the requirement that the PRO notify licensure boards for practitioners *other than physicians* when it submits a report and recommendation to the OIG, section 1154(a)(9)(B) of the Social Security Act, as recently amended by Pub. L. 103–

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432, provides that if a PRO finds that a "physician or practitioner has furnished services in violation of section 1156(a) and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1156(b)(1), the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding."

The Secretary may require by regulation that the PRO notify appropriate licensure boards for non-physician practitioners when those practitioners are found in violation. Accordingly, we are revising § 1004.70(c) to include notification by the PRO of appropriate licensure boards when it sends a report to the OIG regarding a physician or other person.

Section 1004.100—Acknowledgement and Review of Report

Comment: While a number of respondents concurred with the content of this section, one commenter stated that if the OIG believes that a particular sanction recommendation is not warranted, procedures should be in place for the OIG to discuss the matter with the PRO before making a final decision. Accordingly, the commenter requested that we add a provision requiring the OIG physician advisor to communicate with one or more of the physicians on the PRO panel.

Response: We disagree with the need for this added requirement. We believe such communication on the part of the OIG physician advisor could raise specific concerns of due process. There would be no clear way for the practitioner or other person to be made aware of the questions raised and the responses made by the PRO through such communication. In addition, since the PRO has provided all the documentation on which it has based its recommendation, we believe that it is unnecessary for such discussion to occur prior to the OIG making a decision.

Section 1004.110—Notice of Sanction

Comment: Two commenters strongly opposed any alternative notification process for sanctions. One of the commenters indicated that an option of allowing the physician to notify privately both his or her existing and new patients does not adequately protect the public interest. While acknowledging the OIG's concerns that the current public notification may not be effectively reaching all of the physician's patients, the commenter stated that the same risk exists with private notification and, therefore, suggested that private notification be mandatory and that it be used in addition to the current public notification process.

Response: We believe that the present public notification process has not yielded the most effective results of informing affected parties and program beneficiaries of a specific sanction action taken under the program. As a result of preliminary discussions with the AMA, the American Association of Retired Persons (AARP) and the Health Care Financing Administration, we believe that this approach, with built-in safeguards such as the certification of patient notice, would afford both the provider community and the patient community with an alternative for disseminating information regarding program sanctions. By definition, this alternative approach will offer a second options for public notification. Any effort to require both newspaper publication *and* direct notice to a physician's patients would, in effect, not offer an alternative as we have contemplated, but rather impose an additional layer of burden on the practitioner or other person. Our intent is for such notice to be both effective and cost-efficient, and we believe that this approach will meet those objectives. In addition, as indicated in the preamble to the proposed rule, where the OIG receives reliable evidence that a practitioner or other person has not adequately informed his, her or its new and existing patients of the sanction, the OIG reserves the right to follow existing procedures for public notification. Failure by the practitioner or other person to comply with the alternative method of notification once he, she or it has elected to do so will be adversely considered by the OIG at the time of application for reinstatement.

Comment: While supportive of the alternative notification process, two commenters requested that the regulations also include a requirement that the OIG receive a copy of the notice sent to each patient to determine its adequacy, or include in the regulations certain minimum requirements for the content of such notice. One commenter recommended that if providers are allowed to create their own letters, then it should be required that the letters be reviewed and approved first by the OIG prior to the provider sending them to the patients.

Response: We believe that the requirements that were set forth in proposed § 1004.110(d) with regard to patient notification and certification are adequate. As indicated, the OIG will provide the sanctioned practitioner or other person a suggested model letter designed to address the nature of the sanction, as well as the exclusion's effective date and duration. In turn, the practitioner or other person is to specifically certify to the OIG that the information provided is truthful and accurate. Failure to properly inform one's patients and return to the required certification to the OIG within 30 days, or the obtaining of reliable evidence by the OIG that the practitioner or other person failed to adequately inform patients of the sanction, will result in the publication of a public notice and will be considered an aggravating factor at the time of the practitioner's or other person's application for reinstatement. As a result, we do not believe that the use of additional OIG staff time in reviewing such individuals letters is necessary.

Comment: In order to have each practitioner or other person in full compliance with the alternative notification approach, one commenter asked that the term "all existing patients" be cleared defined. In addition, the commenter questioned how notice to a new patient presenting himself or herself for emergency care would be handled, and whether such required notice would impede the provision or quality of care to such patients.

Response: We agree that the term "all existing patients" could be interpreted in different ways. In doing so, we believe it is necessary to balance our intent of assuring that proper notice is provided to the largest possible spectrum of program beneficiaries that may be affected by this sanction, without insurmountable burdens being placed on practitioners and other persons to contact their affected patient base. For this reason, we have agreed to define the term "all existing patients" to include *all* patients currently under active treatment with the practitioner or other person, as well as *all* patients who have been treated by the practitioner or other person within the last three years. We believe that this definition will provide adequate notification of the sanction to those most likely to be affected by it while assuring that this alternative approach remains a viable, effective option.

Patients being treated in an emergency situation could be notified verbally at the point they seek treatment, and since excluded physicians and others can be paid for emergency services, we do not believe this to result in a significant quality of care problem.

Comment: One commenter believed that effective monitoring and validation of timely and complete compliance with this notice option by the OIG would be very difficult. A second commenter stated that monitoring this option should include a signed statement of completion by the sanctioned provider and a follow-up mail survey of a sample of patients to determine if the requirements were met.

Response: The issue of ensuring that direct patient notification is enforced was given full consideration during the development of the alternative notification process. Specifically, we do not foresee expending and designating an excessive amount of staff time to directly monitor the alternative notification process. Rather, when the OIG learns through patient complaints or other methods that the practitioner or other person has not fully complied, it will at that point taken an action to remedy the situation, such as pursuing penalties for the filing of a false statement.

Comment: One commenter recommended that since PRO activity relates only to Medicare patients, the alternative notification process should be limited to Medicare patients only.

Response: Our rationale for selecting notification to all patients rests with the statutory requirement for "reasonable notice to the *public*" (underlining added). U.S.C. 1320c–5(b)(2). We believe that such proper public notice would not be met by having sanctioned parties limit notice to only their program-eligible patients. This selected option is designed to protect both Medicare program beneficiaries and future beneficiaries, and to ensure that the statutorily-required notice to the public of a sanction action is as effective as possible. As a result, in an effort to achieve proper notification and public awareness in an effective manner, we have opted to require that alternative notification be given to *all* patients.

Comment: While supportive of the alternative sanctions notification process, one commenter believed that the requirement that hospitals post a sign "in all affiliated entities" needs to be clarified to indicate what would be required of a hospital electing this alternative approach.

Response: We agree with the commenter over the need to define this term. Accordingly, we are defining in § 1004.110(d)(1)(i) the term "in all affiliated entities" to encompass all entities and properties which provide services and in which the hospital has a direct or indirect ownership interest of 5 percent or more and any management, partnership or control of the entity.

Comment: One commenter was concerned with the timeframes provided for in § 1004.110(b). That section provides that "the sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary." The commenter believed that in order for the provisions of this rule to be consistent, the effective date of a sanction should be 30 days from the date of the receipt of the notice in order to allow the sanctioned practitioner's patients adequate time to make other arrangements.

Response: Section 1156(b)(2) of the Social Security Act requires the effective date of the sanction to be consistent with section 1128(c) of the Act. Therefore, we are retaining the effective date as 20 days from the date of notice.

Section 1004.140—Appeal Rights

Comment: The proposed regulations provided that a request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice. Two commenters indicated that they did not believe 15 days is sufficient time to request a preliminary hearing, with one of these commenters suggesting that providers be given 30 days, rather than 15 days, to request such a preliminary hearing of a sanction.

Response: The OIG's concern remains with the protection of program beneficiaries and with decisions being reached in a timely and efficient manner. Accordingly, we believe that since the practitioner or other person continues to participate in the program until the time period for requesting a preliminary hearing has expired or a decision is made after a preliminary hearing, this process must be expeditious. Since all notices of exclusion under § 1004.110 are sent by overnight mail, we continue to believe that 15 days is sufficient time to request a preliminary hearing when desired.

Comment: The proposed regulations provided for a preliminary hearing prior to exclusion "if the location where services are rendered to over 50 percent of the practitioner's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county where the population is less than 70,000." Citing that it is contrary to the public's interest to impose a specific, quantitative requirement on the amount of services that a practitioner provides in a rural area as a condition for eligibility for a hearing, one commenter disagreed with limiting the right to a preliminary hearing to physicians where over 50 percent of their practice is located in such a rural area.

Further, a second commenter indicated that they believe it would be difficult in many instances for the PRO to determine where 50 percent of the practitioner's practice is located.

Response: Section 1156(a) of the Act specifically limits the right to a preliminary hearing to those physicians who practice in a county with a population of less than 70,000 or those practicing in a HPSA. The statutory language was intentionally limiting and did not provide the right to such a hearing to every practitioner or other person who may occasionally provide a service in a rural HPSA. We believe that the "over 50 percent" standard is reasonable and is in keeping with the statutory intent.

Comment: One commenter believed that there should be an additional regulatory requirement that the OIG notify the PRO when a sanction appeal is made. The commenter believed that they should have this knowledge so that they can participate with and assist the OIG through the administrative appeal process.

Response: The OIG does not receive specific notification when a sanction is being appealed and, therefore, it cannot routinely notify the PRO of such action. In most cases, it is the Regional Counsel's office that notifies the PRO so that it can prepare the defense of the practitioner's or other person's exclusion action.

IV. Technical Revisions to 42 CFR Part 1004

In addition to the public comments received on the proposed rulemaking, the OIG received a number of internal technical comments from two of the Department's Regional Counsel's offices. These comments and recommendations for change were designed to further clarify specific aspects of the regulatory language set forth in 42 CFR part 1004, and are technical, non-substantive and editorial in nature. We have adopted a number of these suggestions and have incorporated them into the revised text for part 1004 set forth below.

V. Regulatory Impact Statement

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866. As indicated above, the revisions contained in this final rule are intended to revise and update administrative procedures governing the imposition and adjudication of program sanctions, based on PRO recommendations, against practitioners and other persons who

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violate the statute. We believe that the great majority of practitioners and other persons do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, these regulations should have no direct effect on the economy or on Federal or State expenditures.

In addition, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Secretary certifies that this final rulemaking will not have a significant economic impact on a substantial number of small entities. While some sanctions and penalties may have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, we have determined, and the Secretary certifies, that this final rule should not have a significant economic impact on a number of small business entities.

List of Subjects in 42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Part 1004 is revised to read as follows:

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

Subpart A—General Provisions

Sec.

1004.1 Scope and definitions.

Subpart B—Sanctions Under the PRO Program; General Provisions

1004.10 Statutory obligations of practitioners and other persons.
1004.20 Sanctions.

Subpart C—PRO Responsibilities

1004.30 Basic responsibilities.
1004.40 Action on identification of a violation.
1004.50 Meeting with a practitioner or other person.
1004.60 PRO finding of a violation.
1004.70 PRO action on final finding of a violation.
1004.80 PRO report to the OIG.
1004.90 Basis for recommended sanction.

Subpart D—OIG Responsibilities

1004.100 Acknowledgement and review of report.
1004.110 Notice of sanction.

Subpart E—Effect and Duration of Exclusion

1004.120 Effect of an exclusion on program payments and services.
1004.130 Reinstatement after exclusion.

Subpart F—Appeals

1004.140 Appeal rights.

Authority: 42 U.S.C. 1302 and 1320c–5.

Subpart A—General Provisions

§ 1004.1 Scope and definitions.

(a) *Scope.* This part implements section 1156 of the Act by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from peer review organizations (PROs) when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise—

Dentist is limited to licensed doctors of dental surgery or dental medicine.

Economically means the services are provided at the least expensive, medically appropriate type of setting or level of care available.

Exclusion means that items and services furnished or ordered (or at the medical direction or on the prescription of a physician) by a specified health care practitioner, provider or other person during a specified period are not reimbursed under titles V, XVIII, XIX, or XX of the Social Security Act and all other Federal non-procurement programs.

Gross and flagrant violation means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety, or well-being of a program patient or places the program patient unnecessarily in high-risk situations.

Health care service or services means services or items for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Health professional shortage area (HPSA) means an area designated by the Secretary and defined in 42 CFR 5.2.

Metropolitan Statistical Area means an area as defined by the Executive Office of Management and Budget.

Obligation means any of the obligations specified at section 1156(a) of the Act.

Other person means a hospital or other health care facility, an organization or an agency that provides health care services or which payment may be made (in whole or in part) under the Medicare or State health care programs.

Pattern or care means that the care under question has been demonstrated in more than three instances, each of which involved different admissions.

Pharmacy professional is a term limited to individuals who are licensed or registered to provide pharmaceutical services.

Podiatric professional is a term limited to licensed doctors of podiatric medicine.

Practice area means the location where over 50 percent of the practitioner's or other person's patients are seen.

Practitioner means a physician or other health care professional licensed under State law to practice his or her profession.

Primary medical care professional is a term limited to:

(i) Licensed doctors of medicine and doctors of osteopathy providing direct patient care who practice in the fields of general or family practice, general internal medicine, pediatrics, obstetrics and gynecology, surgery, and any other specialty that is not accommodated by the remaining specialty HPSA designator, or

(ii) Those facilities where care and treatment is provided to patients with health problems other than mental disorders.

Pro area means the geographic area subject to review by a particular PRO.

Provider means a hospital or other health care facility, agency, or organization.

Psychiatric professional is a term limited to licensed doctors of medicine who limit their practice to psychiatry or to those facilities where care and treatment is limited to patients with mental disorders.

Rural means any area outside an urban area.

Rural health professional shortage area means any health professional shortage area located outside a Metropolitan Statistical Area.

Sanction means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

Serious risk includes situations that may involve the risk of unnecessary treatment, prolonged treatment, lack of treatment, incorrect treatment, medical complication, premature discharge, physiological or anatomical impairment, disability, or death.

State health care program means a State plan approved under title XIX, any

program receiving funds under title V or from an allotment to a State under such title, or any program receiving funds under title XX or from an allotment to a State under such title.

Substantial violation in a substantial number of cases means a pattern of providing care, as defined in this section, that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

Urban means a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget.

Vision care professional is a term limited to licensed doctors of medicine who limit their practice to ophthalmology and to doctors of optometry.

Subpart B—Sanctions Under the PRO Program; General Provisions

§ 1004.10 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under the Medicare or State health care programs to ensure, to the extent of his or her or its authority, that those services are—

(a) Provided economically and only when, and to the extent, medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of medical necessity and quality in the form and fashion and at such time that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements) to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 1004.20 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from participating in programs under titles V, XVIII, XIX, and XX of the Social Security Act; or

(b) In lieu of exclusion and as a condition for continued participation in titles V, XVIII, XIX, and XX of the Act, if the violation involved the provision or ordering (or at the medical direction or the prescription of a physician) of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered (and prescribed, if appropriate). The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal government owes the practitioner or other person.

Subpart C—PRO Responsibilities

§ 1004.30 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 1004.10.

(b) When the PRO identifies situations where an obligation specified in § 1004.10 is violated, it will afford the practitioner or other person reasonable notice and opportunity for discussion and, if appropriate, a suggested method for correcting the situation and a time period for a corrective action in accordance with §§ 1004.40 and 1004.60.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section and, if appropriate, the opportunity to enter into and complete a corrective action plan (CAP) if the PRO finds that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of admissions; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 1004.80.

(e) If a practitioner or other person relocates to another PRO area prior to a finding of a violation or sanction recommendation, and the originating PRO—

(1) Is able to make a finding, the originating PRO must, as appropriate, close the case or forward a sanction recommendation to the OIG; or

(2) Cannot make a finding, the originating PRO must forward all documentation regarding the case to the PRO with jurisdiction, and notify the practitioner or other person of this action.

(f) The PRO must deny payment for services or items furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by an excluded practitioner or other person when the PRO identifies the services or items. It must report the findings to the Health Care Financing Administration.

§ 1004.40 Action on identification of a violation.

When a PRO identifies a violation, it must—

(a) Indicate whether the violation is a gross and flagrant violation or is a substantial violation in a substantial number of cases; and

(b) Send the practitioner or other person written notice of the identification of a violation containing the following information—

(1) The obligation(s) involved;

(2) The situation, circumstances or activity that resulted in a violation;

(3) The authority and responsibility of the PRO to report violations of any obligation under section 1156(a) of the Act;

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate;

(5) The sanction that the PRO could recomment to the OIG;

(6) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice additional information or a written request for a meeting with the PRO to review and discuss the finding, or both. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary. The notice will also state that if a meeting is requested—

(i) It will be held within 30 days of receipt by the PRO of the request, but may be extended for good cause;

(ii) The practitioner or other person may have an attorney present; and

(iii) The attorney, if present, will be permitted to make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf; and

(7) A copy of the material used by the PRO in arriving at its finding except for PRO deliberations, as set forth in § 476.139 of this part.

§ 1004.50 Meeting with a practitioner or other person.

If the practitioner or other person requests a meeting with the PRO—

(a) The PRO panel that meets with the practitioner or other person must consist of a minimum of 3 physicians;

(b) No physician member of the PRO panel may be in direct economic competition with the practitioner or other person being considered for sanction;

(c) The PRO must ensure that no physician member of the PRO panel has

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a substantial bias for or against the practitioner or other person being considered for sanction;

(d) At least one member of the PRO panel meeting with the practitioner or other person should practice in a similar area, e.g., urban or rural, and at least one member of the panel must be in the same specialty (both requirements could be met by a single individual);

(e) If the practitioner or other person has an attorney present, that attorney will be permitted to make opening and closing remarks, ask clarifying questions and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person behalf;

(f) The physician who recommends to the PRO that a practitioner or other person be sanctioned may not vote on that recommendation at the meeting;

(g) The PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its finding; and

(h) A verbatim record must be made of the meeting and must be made available to the practitioner or other person promptly.

§ 1004.50 PRO finding of a violation.

(a) On the basis of any additional information received, the PRO will affirm or modify its finding. If the PRO affirms its finding, it may suggest in writing a method for correcting the situation and a time period for corrective action. This CAP could correspond with, or be a continuation of, a prior CAP or be a new proposal based on additional information received by the PRO. If the finding has been resolved to the PRO's satisfaction, the PRO may modify its initial finding or recommendation or close the case.

(b) The PRO must give written notice to the practitioner or other person of any action it takes as a result of the additional information received, as specified in § 1004.70.

(c) At least one member of the PRO participating in the process which resulted in a recommendation to the OIG that a practitioner or other person be sanctioned should practice in a similar geographic area, e.g. urban or rural, and at least one member of the panel must be in the same medical specialty. Both requirements can be met by a single individual. In addition, no one at the PRO who is a participant in such a finding may be in direct economic competition with, or have a substantial bias for or against, that practitioner or other person being recommended for sanction.

§ 1004.70 PRO action on final finding of a violation.

If the finding is not resolved to the PRO's satisfaction as specified in § 1004.60(a), the PRO must—

(a) Submit its report and recommendation to the OIG;

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of all the material that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional written material or documentary evidence to the OIG at its headquarters location. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified in § 1004.100(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered; and

(c) Provide notice to the State medical board or to other appropriate licensing boards for other practitioner types when it submits a report and recommendations to the OIG with respect to a physician or other person whom the board is responsible for licensing.

§ 1004.80 PRO report to the OIG.

(a) *Manner of reporting.* If the violation(s) identified by the PRO have not been resolved, it must submit a report and recommendation to the OIG at the field office with jurisdiction.

(b) *Content of report.* The PRO report must include the following information—

(1) Identification of the practitioner or other person and, when applicable, the name of the director, administrator or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including specific dates, places, circumstances and other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence, including reports of conversations with the practitioner or other person regarding the violation and, if applicable, a copy of the verbatim transcript of the meeting with the practitioner or other person;

(6) The PRO's finding that an obligation under section 1156(a) of the Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) A case-by-case analysis and evaluation of any additional information provided by the practitioner or other person in response to the PRO's initial finding;

(8) A copy of the CAP that was developed and documentation of the results of such plan or an explanation of why such the CAP will be used to support the PRO's recommendation regarding inability or unwillingness in accordance with § 1004.80(c)(6) and not as a basis for the sanction;

(9) The number of admissions by the practitioner or other person reviewed by the PRO during the period in which the violation(s) were identified;

(10) The professional qualifications of the PRO's reviewers; and

(11) The PRO's sanction recommendation.

(c) *PRO recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable;

(4) The availability of alternative sources of services in the community, with supporting information;

(5) The county or counties in which the practitioner or other person furnishes services; and

(6) A recommendation, with supporting documentation, as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated and the basis for that recommendation.

§ 1004.90 Basis for recommended sanction.

The PRO's specific recommendation must be based on documentation provided to the OIG showing its consideration of—

(a) The type of offense involved;

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant, such as the duration of the problem.

Subpart D—OIG Responsibilities

§ 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO has followed the regulatory requirements of part 1004;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction, the affected practitioner or other person, and the licensing board informed by the PRO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4) The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations, including whether he, she or it entered into a CAP—where such plan was deemed appropriate by the PRO—prior to the PRO's recommendation and, if so, whether he, she or it successfully completed such CAP; and

(8) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty.* If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.110 (a)–(e).

§ 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 20 days from the date of the notice. Receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—

(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person;

(5) The opportunity and the process necessary to provide alternative notification as set forth in paragraphs (d) and (e) of this section; and

(6) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) *Patient notification.* (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notification—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date and duration. Receipt of the OIG notice is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this time period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice. For purposes of this section, the term "all existing patients" includes all patients currently under active treatment with the practitioner or other person, as well as all patients who have been treated by the practitioner or other person within the last 3 years. In addition, the practitioner or other person must notify all prospective patients orally at the time such persons request an appointment. If the sanctioned party is a hospital, it must notify all physicians who have privileges at the hospital, and must post a notice in its emergency room, business office and in all affiliated entities regarding the exclusion. In addition, for purposes of this section, the term "in all affiliated entities" encompasses all entities and properties in which the hospital has a direct or indirect ownership interest of 5 percent or more and any management, partnership or control of the entity.

(ii) The certification will provide that the practitioner or other person—

(A) Has informed each of his, her or its patients in writing that the practitioner or other person has been sanctioned, or if a hospital, has informed all physicians having privileges at the hospital that it has been sanctioned;

(B) If excluded from Medicare and the State health care programs, has informed his, her or its existing patients in writing that the programs will not pay for items and services furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by the practitioner or other person until they are reinstated, or if a hospital, has provided this information to all physicians having privileges at that hospital;

(C) If excluded from Medicare and State health care programs, will provide prospective patients—or if a hospital, physicians requesting privileges at that hospital prior to furnishing or ordering (or in the case of an excluded physician, medically directing or prescribing) services—oral information of both the sanction and that the programs will not pay for services provided and written notification of the same at the time of the provision of services;

(D) If excluded from Medicare and State health care programs and is an entity such as a hospital, has posted a notice in its emergency room, business office and in all affiliated entities that the programs will not pay for services provided; and

(E) Certifies to the truthfulness and accuracy of the notification and the statements in the certification.

(2) If the sanctioned practitioner or other person does not inform his, her or its patients *and* does not return the required certification within the 30-day period, or if the sanctioned practitioner or other person returns the certification within the 30-day period but the OIG obtains reliable evidence that such person nevertheless has not adequately informed new and existing patients of the sanction, the OIG—

(i) Will see that the public is notified directly of the identity of the sanctioned practitioner or other person, the finding that the obligation ha been violated, and the effective date and duration of any exclusion; and

(ii) May consider this failure to adhere to the certification obligation as an adverse factor at the time the sanctioned practitioner or other person requests reinstatement.

(3) If the sanctioned practitioner or other person is entitled to a preliminary hearing in accordance with § 1004.140(a) and requests such a preliminary hearing, and if the administrative law judge (ALJ) decides that he, she or it poses a risk to program beneficiaries, the sanctioned practitioner or other person would have 30 days from the date of receipt of the ALJ's decision to provide certification to

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the OIG in accordance with § 1004.110(d)(1). The date of receipt is presumed to be 5 days after the date of the ALJ's decision, unless there is a reasonable showing to the contrary.

(e) Notice of the sanction is also provided to the following entities as appropriate—

(1) The PRO that originated the sanction report;

(2) PROs in adjacent areas;

(3) State Medicaid fraud control units and State licensing and accreditation bodies;

(4) Appropriate program contractors and State agencies;

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facilities, home health agencies, and health maintenance organizations and Federally-funded community health centers where the practitioner or other person works;

(6) Medical societies and other professional organizations; and

(7) Medicare carriers and fiscal intermediaries, health care prepayment plans and other affected agencies and organizations.

(f) If an exclusion sanction is effectuated because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows—

(1) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person, in compliance with the requirements of paragraph (c) of this section, affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case, and that the exclusion is effective 20 days from the date of the notice; and

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section; and

* * * * *

Subpart E—Effect and Duration of Exclusion

§ 1004.120 Effect of an exclusion on program payments and services.

The effect of an exclusion is set forth in § 1001.1901 of this chapter.

§ 1004.130 Reinstatement after exclusion.

(a) A practitioner or other person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with provisions of §§ 1001.3001 through 1001.3005 of this chapter.

(b) The OIG may also consider a practitioner's or other person's compliance with the certification obligation in § 1004.110(d) at the time of reinstatement.

Subpart F—Appeals

§ 1004.140 Appeal rights.

(a) *Right to preliminary hearing.* (1)(i) A practitioner or other person excluded from participation in Medicare and any State health care programs under section 1156 of the Act may request a preliminary hearing if the location where services are rendered to over 50 percent of the practitioner's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county with a population of less than 70,000.

(ii) Unless the practitioner's or other person's practice meets the definition for psychiatric professional, vision care professional, dental professional, podiatric professional or pharmacy professional, the HPSA used by the OIG for determination of entitlement to a preliminary hearing will be the HPSA list for primary medical care professional.

(iii) Information on the population size of a county in order to determine entitlement to a preliminary hearing will be obtained by the OIG from the responsible officials of that county.

(2)(i) A request for a preliminary hearing must be made in writing and received by the Departmental Appeals Board (DAB) no later than the 15th day after the notice of exclusion is received by a practitioner or other person. The date of receipt of the notice of exclusion by the practitioner or other person is presumed to be 5 days after the date appearing on the notice, unless there is a reasonable showing to the contrary.

(ii) A request for a preliminary hearing will stay the effective date of the exclusion pending a decision of the ALJ at the preliminary hearing, and all the parties informed by the OIG of the exclusion will be notified of the stay.

(iii) A request for a preliminary hearing received after the 15-day period has expired will be treated as a request for a hearing before an ALJ in accordance with paragraph (b) of this section.

(iv) If the practitioner or other person exercises his, her or its right to a preliminary hearing, such a hearing must be held by the ALJ in accordance with paragraph (a)(3)(i) of this section unless the OIG waives it in accordance with paragraph (a)(6)(i) of this section.

(v) The ALJ cannot consolidate the preliminary hearing with a full hearing without the approval of all parties to the hearing.

(3)(i) The preliminary hearing will be conducted by an ALJ of the DAB in a city that the ALJ deems equitable to all parties. The ALJ will conduct the preliminary hearing and render a decision no later than 45 days after receipt of the request for such a hearing by the DAB. Unless there is a reasonable showing to the contrary, date of receipt by the DAB is presumed to be 5 days after the date on the request for a preliminary hearing or, if undated, the date of receipt will be the date the DAB actually received the request. A reasonable extension to the 45-day period of up to 15 days may be requested by any party to the preliminary hearing and such a request may be granted upon concurrence by all parties to the preliminary hearing. Such request must be received no later than 15 days prior to the scheduled date of the preliminary hearing.

(ii) The only issue to be heard and decided on by the ALJ at the preliminary hearing, based on the preponderance of the evidence, is whether the practitioner's or other person's continued participation in the Medicare and State health care programs during the appeal of the exclusion before an ALJ would place program beneficiaries at serious risk. The ALJ's decision is to be based on the preponderance of the evidence.

(iii) In the interest of time, the ALJ may issue an oral decision to be followed by a written decision.

(iv) In those cases where the ALJ has stayed an exclusion after a preliminary hearing, a full hearing must be held and a decision rendered by the ALJ within 6 months. If, for any reason, the request for a full hearing before the ALJ is withdrawn or dismissed, the practitioner or other person will be excluded effective 5 days after the notice of the withdrawal or dismissal is received in the OIG headquarters.

(4) The preliminary hearing decision is not appealable or subject to further administrative or judicial review.

(5) A practitioner or other person found at the preliminary hearing not to place program beneficiaries at serious risk, but later determined to have been properly excluded from program participation after a full hearing before an ALJ, is not entitled to have the exclusion stayed further during an appeal to the DAB. Exclusions in such instances will be effective 5 days after receipt of the ALJ decision in the OIG headquarters.

(6)(i) After notice of a timely request for a preliminary hearing, the OIG may determine that the practitioner's or other person's continued program participation during the appeal before the ALJ will not place program beneficiaries at serious risk and waive the preliminary hearing. Under these circumstances, the exclusion will be stayed pending the decision of the ALJ after a full hearing. the hearing must be held, and a decision reached, within 6 months.

(ii) If the OIG decides to waive the preliminary hearing, the request for the preliminary hearing will be considered a request for a hearing before the ALJ in accordance with paragraph (b) of this section.

(b) *Right to administrative review.* (1) A practitioner or other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.100(e), the following limitations apply—

(i) The period of time for submitting additional information will not be extended.

(ii) Any material received by the OIG after the 30-day period allowed will not be considered by the ALJ or the DAB.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(c) *Rights to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

Approved: October 23, 1995.

Jane G. Sabo Brown,

Inspector General.

[FR Doc. 95-30130 Filed 12-11-95; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-76; RM-8611]

Radio Broadcasting Services; Homestead and North Miami Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 239C2 for Channel 239C1 at Homestead, Florida, reallots the channel to North Miami Beach, Florida, and modifies the license for Station WXDJ(FM) accordingly, in response to a petition filed by New Age Broadcasting, Inc. *See* 60 FR 31278, June 14, 1995. The coordinates for Channel 239C2 at North Miami Beach, Florida, are 25–42–55 and 80–09–17. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–76, adopted November 24, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 239C1 and adding Channel 239C2 at Homestead, removing Channel 239C2 at Homestead and adding North Miami Beach, Channel 239C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-30218 Filed 12-11-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-163; RM-7176]

Radio Broadcasting Services; Bay St. Louis and Poplarville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 300C from Poplarville, Mississippi to Bay St. Louis and modifies the license for Station WZKX(FM) accordingly, in response to a petition filed by Dowdy and Dowdy Partnership. See 55 FR 1913, April 3, 1990. The coordinates for Channel 300C at Bay St. Louis, MS are 30–44–48 and 89–03–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 90–163, adopted November 25, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 300C from Poplarville, Mississippi and adding Bay St. Louis, Channel 300C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-30219 Filed 12-11-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991-AB08

Acquisition Regulation; Legislative Lobbying Cost Prohibition

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department amends the Department of Energy Acquisition Regulation (DEAR) to clarify its

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provision on legislative lobbying cost prohibition. To avoid any misunderstandings or disagreements between contractors and the Department, the criteria for cost allowability are being revised to provide clear direction on when and under what circumstances management and operating contractors will be reimbursed for costs of providing information or expert advice to Congress or a State legislature. While contractors may incur the costs of responding to a request for information from Congressional Members or staff, reimbursement of travel costs will require the additional step of a written request signed by a Member of Congress.

EFFECTIVE DATE: January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–8175).

SUPPLEMENTARY INFORMATION:

I. Background
- A. Discussion
- B. Disposition of Comments

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I. Background

A. Discussion

The proposed rule was published on October 18, 1994, at 59 FR 52505 to amend the DEAR standard clause on legislative lobbying cost prohibition, DEAR 970.5204–17, which is applicable to all DOE management and operating (M&O) contracts. It included a new requirement that the contractor notify the Department as soon as practicable when providing information or expert advice to Congress or a State legislature. It also included a new requirement that the contractor provide a disclaimer that the information or expert advice represents the views of the contractor and not the Department.

Five sets of comments were received from organizations outside of the Department.

B. Disposition of Comments

1. Statutory Treatment of Laboratories (Pub. L. 100–202)

Two of the commenters referred to language contained in Pub. L. 100–202, Section 306 of the Energy and Water Development Appropriation Act for 1988. A variation of the same language was enacted in the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100–180, Section 3131. The language from the authorization act extends beyond treatment of just laboratories and was codified at 42 U.S.C. 7256a(b)(2).

As a practical matter, neither the 1988 Appropriations Act nor the 1988/1989 Defense Authorization Act prohibits the Department from issuing clarifying regulations on the circumstances under which lobbying costs will be reimbursed. In fact, both prohibitions specifically contemplate implementing regulations. Further, neither of these Acts prohibit the Department from defining the parameters for reimbursement or imposing documentation requirements on the contractor for reimbursement of these costs. Rather, these Acts appear simply to prohibit the Department from making a blanket prohibition of unallowability. Since the language in this rulemaking describes the parameters for reimbursement of this category of cost, we do not believe it violates the prohibition contained in 42 U.S.C. 7256a(b)(2).

2. Distinction Between Requests From Congress and State Legislatures

Two of the commenters questioned creating different treatment for costs depending on whether they were incurred in response to a Congressional request or a request from a State legislature. More specifically, unlike Congressional requests, a request for information or expert advice from a State legislator would be required to be written and signed by the legislator (not staff) in advance, in all cases, to justify any reimbursement of costs.

The U.S. Congress has oversight responsibility over the Department and its operations, and appropriates funds for its use. This authority and responsibility are not delegated to, or shared by, the State legislatures. Thus, we believe that the difference in treatment between Congressional requests and requests from State legislatures is justified because of the higher level of responsibility and responsiveness owed by the Department to the U.S. Congress.

3. Deletion of Reference to Congressional Record Notice

One commenter questioned the deletion of the parenthetical reference "(* * * including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) * * *." This language referred to types of requests where the response costs would be allowable.

A general request or invitation for "interested parties" to present views or testimony to Congress on a particular issue, such as that appearing in a Congressional Record notice, is open to the public at large and is usually general in nature. Members of the public whose views are specifically sought are individually invited. It is not unreasonable for the Department to require its contractors be specifically invited in writing to testify before providing for reimbursement of travel costs.

4. Record Keeping Requirements and Proposed Deletion of FAR 31.205–22(f)

Two commenters disagreed with the Department's conclusion that the NOPR contained no new record keeping requirements. These commenters felt that the burden under this initiative ran counter to the current streamlining efforts in the Federal government.

The Department believes that the additional documentary burden, compared to that currently imposed on the Department's contractors, is not unreasonable and is consistent with FAR Part 31, generally, and FAR 31.205–22, specifically. It is also consistent with Office of Management and Budget Circular A–21 paragraph 24, and a recently proposed amendment to FAR 31.201–2, Determining allowability (59 FR 47776, September 16, 1994, FAR Case 93–20). The proposal to amend FAR 31.201–2 will make it clear that the contractor is to be responsible for maintaining records to support its cost claims and authorizes the contracting officer to disallow costs which are inadequately supported. While the proposed rulemaking to amend FAR 31.201–2 has not been finalized, 41 U.S.C. 256(f)(2) now provides that the FAR shall require that a contracting officer may not resolve any questioned costs until the contracting officer has obtained adequate documentation, and the opinion of the contract auditor, with respect to such costs. The amendment to 41 U.S.C. 256 resulted from Section 2151 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355.

Another commenter pointed out that the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) have published a proposal to delete paragraph (f) of FAR 31.205–22 (See 59 FR 47776, September 16, 1994, FAR Case 93–6). Paragraph (f) of the DEAR clause parallels paragraph (f) of FAR 31.205–22. The language proposed for deletion provides that time logs, calendars and other records shall not be required to be created when the lobbying employee engages in lobbying less than 25% of the employee's compensated hours, or when the contractor has not materially misstated its allowable or unallowable costs, of any nature, within the last 5 years.

When the two proposed rules amending FAR Part 31 discussed above are put together, the result is that the specific requirement of record keeping is no longer stated, but the contractor is made responsible for maintaining adequate records to support its cost claims for all categories of cost. The Department will review the issue of deleting paragraph (f) of the DEAR clause once the rulemaking amending FAR 31.205–22 is finalized.

5. Distinction Between Oral and Written Requests

One commenter objected to the bifurcated system for cost allowability which provides that oral requests are adequate to support some costs while written requests are required to support others. In particular, the rulemaking places a greater burden to support costs associated with travel.

Both FAR 31.205–22 and OMB Circular A–21 paragraph 24 place a higher burden on the contractor to support costs of transportation, lodging and meals. When costs of transportation, lodging or meals are associated with responding to a request for information from Congress or a State legislature, the costs are likely to increase dramatically. Additionally, these are the areas of cost probably most vulnerable to abuse.

6. Advance Notification Requirement

One commenter objected to the bifurcated requirement in the newly proposed paragraph (h). While acknowledging that the contracting officer should be made aware of all requests for information or expert advice regardless of how the request was communicated, the commenter disagreed with the requirement that the contracting officer be notified in advance of responding in the case of a written request. As pointed out by that commenter, the contractor could conceivably receive the request by facsimile or mail with less than a 48-hour turnaround. (There was also some confusion by a different commenter whether the contractor would have to have the contracting officer's acknowledgement before responding to the request for information.)

The commenter recommended deleting the language "in the case of a written request." The language in paragraph (h) is revised to require the contractor to "advise the contracting officer in advance or as soon as practicable."

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses apply only to contracts which would be awarded after the effective date of the final rule and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of Sections 2(a) and (b)(2) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, that requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions that are categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)) under 10 CFR Part 1021, Appendix A to Subpart D as rulemakings that are strictly procedural, such as rulemakings establishing contracting practices (Exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 970

Government procurement.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 970.5204–17 is amended by revising clause paragraph (b)(1), redesignating paragraphs (b)(2) and

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(b)(3) as (b)(3) and (b)(4), adding a new paragraph (b)(2), and adding paragraph (h) to read as follows:

970.5254–17 Legislative lobbying cost prohibition.

* * * * *

(b) * * *

(1) Providing Members of Congress, their staff members, or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members, or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable, provided the request for information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.

(2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees shall also be reimbursable, provided such costs also comply with the allowable costs provision of the contract.

* * * * *

(h) In providing information or expert advice under paragraphs (b)(1) and (b)(2) of this clause, the contractor shall advise the Contracting Officer in advance or as soon as practicable.

[FR Doc. 95–30236 Filed 12–11–95; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–275]

Organization and Delegation of Powers and Duties Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority to carry out the provisions of sections 10 through 13 of the National Maritime Heritage Act of 1994, Public Law 103–451. These sections authorize the Secretary to convey all rights, title and interests of the United States Government in specified and non-specified vessels, and vessel equipment and spare parts, for various specified purposes and subject to specified conditions which vary among the recipients. This amendment to 49 CFR Part 1 adds a new paragraph 1.66(p) to reflect the delegation of authority to the Maritime Administrator.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Chief, Division of Vessel Transfer and Disposal, Office of Ship Operations, Maritime Administration, MAR–631, Room 7324, 400 Seventh Street SW, Washington, DC, 20590, (202) 366–5821, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Sections 10 through 13 of Public Law 103–451, 108 Stat. 4769, 4778–4782, cited as the "National Maritime Heritage Act of 1994," authorize the Secretary of Transportation to convey a specified vessel, or a vessel of comparable size and class, as well as unneeded vessel equipment, to the Battle of the Atlantic Historical Society; an unspecified vessel, including related spare parts and vessel equipment, to the City of Warsaw, Kentucky; three specified vessels, including related spare parts and vessel equipment, to Assistance International, Inc.; and a specified vessel, as well as unneeded vessel equipment, to the Rio Grande Military Museum. The conveyance of one or more vessels to each specified recipient is for one or more specified purposes, respectively, a merchant marine memorial, historical preservation, and educational activities; the promotion of economic development and tourism; use in emergencies, vocational training, and economic development programs; and use as a military museum. Conveyances to each recipient are subject to specified common financial requirements and other conditions relating to the use and redelivery of the vessels. This amendment to 49 CFR 1.66 adds the subject authority to those already delegated to the Maritime Administrator. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by adding a new paragraph (p), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(p) Carry out the provisions of sections 10 through 13 of Public Law 103–451, the National Maritime Heritage Act of 1994, 108 Stat. 4769, 4778–4782;

* * * * *

Issued at Washington, DC this 5th day of December 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–30144 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90–25; Notice 2]

RIN 2127–AD78

Rulemaking Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: NHTSA is amending its procedural regulations that apply to judicial review of regulations issued under Chapters 301, 325, 329, and 331 of Title 49 of the United States Code. The provisions at issue address the time within which affected persons may seek judicial review of a final rule issued by NHTSA under those statutes if a petition for agency reconsideration of that rule has been filed. The amendment will make the regulation consistent with the judicial review provisions of the statutes and with recent judicial decisions.

EFFECTIVE DATE: The amendments made in this rule are effective January 11, 1996.

Any petitions for reconsideration must be received by NHTSA no later than January 26, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Kenneth N. Weinstein, Assistant Chief Counsel for Litigation, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–5263.

SUPPLEMENTARY INFORMATION: Certain provisions of the former Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the former National Traffic and Motor Vehicle Safety Act ("Safety Act") provide for judicial review of rules and standards issued thereunder. These statutes were recently recodified, "without substantive change," as various chapters of Title 49 of the U.S. Code. Section 6 of Pub. L. 103–272.

With respect to Chapter 301, "Motor Vehicle safety," 49 U.S.C. 30161(a) (formerly section 105(a) of the Safety Act) provides that any person adversely affected by an order prescribing a motor vehicle safety standard under chapter 301 may file a petition for judicial review of the order in an appropriate United States Court of Appeals "not later than 59 days after the order is issued."

With respect to Chapter 325, "Bumper Standards," 49 U.S.C. 32503(a) (formerly section 103(a) of the Cost Savings Act) provides that any person who may be adversely affected by a standard issued under section 32502 may file a petition for judicial review of the standard in an appropriate United States Court of Appeals "not later than 59 days after the standard is prescribed."

With respect to Chapter 329, "Automobile Fuel Economy," 49 U.S.C. 32909 (formerly section 504(a) of the Cost Savings Act) provides that any person who may be adversely affected by a regulation prescribed under sections 30901–30904, 32908, or 32912(c)(1) may file a petition for judicial review of the regulation in an appropriate United States Court of Appeals "not later than 59 days after the regulation is prescribed."

With respect to Chapter 331, "Theft Prevention," 49 U.S.C. 33117 (formerly section 610 of the Cost Savings Act) provides that a person who may be adversely affected by any regulation prescribed under that chapter may obtain judicial review of that regulation in accordance with 49 U.S.C. 32909, as described in the previous paragraph.

None of these statutory provisions require parties to seek administrative reconsideration before filing a petition for judicial review. However, NHTSA has authorized the filing of petitions for reconsideration of standards and regulations issued under the Chapters 301, 325, 329, and 331. 49 CFR 553.35. Time limits and other procedures applicable to such petitions are set forth in 49 CFR 553.35–553.39.

Section 553.39 currently provides as follows:

> The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the **Federal Register** of the Administrator's disposition of any timely petitions for reconsideration.

Unfortunately, this regulatory provision contains several erroneous statements. First, the applicable time period for filing petitions for judicial review under these chapters is actually 59 days rather than 60 days. Prior to the recent recodification, the statutory language provided that petitions for review had to be filed "prior to the sixtieth day" after the order in question was issued. Each of the courts that considered the issue had ruled that this language required petitions to be filed not later than 59 days after the issuance of the order. The recodified language in each of the four chapters explicitly states that the applicable review period is 59 days.

Second, recent judicial decisions construing the judicial review provisions of the Administrative Procedure Act and similar statutory review provisions have made it clear that a person who files a petition for agency reconsideration of a regulation may not simultaneously seek judicial review of that regulation, since the original decision is rendered "nonfinal" as to that person. See, *e.g.*, *Wade* v. *F.C.C.*, 986 F.2d 1433 (D.C. Cir. 1993); *United Transp. Union* v. *I.C.C.*, 871 F.2d 1114 (D.C. Cir. 1989); *West Penn Power Co.* v. *U.S. EPA*, 860 F.2d 581 (3rd Cir. 1988). See generally *I.C.C.* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987); *Bellsouth Corp.* v. *F.C.C.*, 17 F.3d 1487 (D.C. Cir. 1994).

Third, these decisions also demonstrate that the filing of a petition for agency reconsideration by one person does not affect the judicial review rights of other persons affected by the rule. See *ICG Concerned Workers Ass'n* v. *United States*, 888 F.2d 1455 (D.C. Cir. 1989); *West Penn, supra; Winter* v. *I.C.C.*, 851 F.2d 1056 (8th Cir.), *cert. denied*, 109 S. Ct. 308 (1988) [GET U.S. CITATION]; *Petroleum Communications, Inc.* v. *F.C.C.*, 22 F.3d 1164, 1171 n.6 (D.C. Cir. 1994).

Finally, contrary to NHTSA's current regulation, a person who files a petition for reconsideration may not file a petition for judicial review "at any time" prior to the expiration of the statute of limitations. Rather, a petition for review that is filed by a party prior to the agency's action on his or her petition for reconsideration is "incurably premature" and does not "ripen" when the ruling on reconsideration is issued. *TeleSTAR, Inc.* v. *F.C.C.*, 888 F.2d 132 (D.C. Cir. 1989).

On the basis of its review of the case law, NHTSA issued a Notice of Proposed Rulemaking ("NPRM") to correct the erroneous portions of section 553.39. 55 FR 45825 (October 31, 1990). First, the agency proposed to eliminate the inaccurate reference to a 60-day limitations period for judicial review. The proposal did not refer to a 59-day period, however, since Part 553 applies to regulations issued under statutes other than the four chapters identified above that have statutory 59-day limitations periods. *See, e.g.*, 49 U.S.C. Chapters 323 and 327.

In addition, the agency proposed language to clarify that the filing of a petition for reconsideration tolls the limitations period for judicial review only as to the petitioner, and not as to other interested persons, and that such a petitioner may not seek judicial review until the agency acts on the petition for reconsideration.

Discussion of Comments

Three commenters responded to the NPRM: Chrysler Corporation (Chrysler), the Association of International Automobile Manufacturers (AIAM), and the Motor Vehicle Manufacturers Association (MVMA). (MVMA has subsequently changed its name to the American Automobile Manufacturers Association.)

None of the commenters objected to the elimination of the erroneous reference to 60 days as the time period within which a petition for judicial review may be filed. However, Chrysler

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and MVMA sought clarification as to what constituted final agency action upon a petition for reconsideration and asked when "a petitioner [is] presumed to have notice of that action."

In the absence of a petition for reconsideration, regulations and standards promulgated under Chapters 301, 325, 329, and 331 are deemed final for purposes of judicial review when they are "issued" (49 U.S.C. § 30161(a)) or "prescribed" (49 U.S.C. §§ 32503(a) and 32909(b)). (In this context, NHTSA interprets the word "prescribed" to be synonymous with the word "issued.") The agency deems a decision in response to a petition for reconsideration, which usually will be either a denial of the petition or a revision to the regulation or standard that generated the petition, to be final for judicial review purposes on the date that it is issued or prescribed.

A petitioner is presumed to have notice of the agency's action when it is published in the **Federal Register**. See 44 U.S.C. § 1507; *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380 (1947). However, the language of each of these statutes indicates that the time period for judicial review does not begin to run on the publication date; rather it runs from the date that the regulation, standard, or decision on reconsideration is "issued" or "prescribed" by the agency.

MVMA and AIAM opposed the remainder of the proposed amendment, arguing that one party's petition for reconsideration should stay the statute of limitations for judicial review for all interested parties, not merely for the petitioner. They asserted that the proposed amendment was not compelled by the case law described in the NPRM. They also suggested that the amendment would increase paperwork and reduce efficiency and could lead to the filing of unnecessary petitions for reconsideration and/or protective petitions for review.

None of the commenters dispute the agency's conclusion that the filing of a petition for reconsideration stays the running of the limitations period for the petitioner because the filing of the petition renders the prior decision "nonfinal" as to that petitioner. (In this regard, NHTSA is aware that in a recent case, the Supreme Court ruled that a petition to reopen a decision of the Board of Immigration Appeals does not toll the limitations period or otherwise affect judicial review of the Board's decision. *Stone* v. *I.N.S.*, 115 S. Ct. 1537 (1995). However, the Court based its ruling on the specific language of the judicial review provisions of the Immigration and Nationality Act and policy considerations arising under that statute. Indeed, the Court explicitly confirmed that, in general, the filing of a request for agency reconsideration renders the underlying order nonfinal for purposes of judicial review and that the petitioning party cannot seek judicial review until the reconsideration is concluded. 115 S. Ct. at 1543.)

The commenters also agreed that persons who have not sought agency reconsideration may seek judicial review immediately, without waiting for the completion of the reconsideration process. However, in suggesting that such other persons should be able, at their option, to await the agency's decision on reconsideration before seeking judicial review, the commenters lose sight of the fact that the reason such persons may seek judicial review promptly is that the regulation is final as to them. "If a party has sought only judicial review, agency action can be deemed final and hence reviewable as to that party, regardless of whether other parties have moved for administrative reconsideration." *ICG Concerned Workers*, 888 F.2d at 1457.

Given that the regulation is final as to all persons not seeking reconsideration, there is no basis on which the agency (or the courts) could legally extend the limitations period applicable to those parties beyond the 59 days provided by statute. The case law clearly demonstrates that "finality with respect to agency action is a party-based concept." *IGC Concerned Workers*, 888 F.2d at 1457, citing *West Penn*, 860 F.2d at 586–87; *Winter*, 851 F.2d at 1062; and *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 541 (1970).

It is true that the cases on this subject have focussed primarily on whether a nonpetitioning party may seek judicial review of an agency action while another party's petition for reconsideration of that action is pending, rather than on whether such a party must seek such review within the statutory limitations period. However, in the agency's view, the latter principle necessarily follows from the fact that the original decision is final as to all nonpetitioning parties.

NHTSA recognizes that under this amendment, some parties may feel compelled to file protective petitions for reconsideration or judicial review that might ultimately be withdrawn depending on the agency's response to another party's petition for reconsideration. However, to the extent that this is "wasteful," it is not the fault of the amendment; it is required by the case law. As noted in the NPRM, an agency's regulations may not expand the jurisdiction of the Federal courts beyond that established by Congress. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 336 (1957); *City of Rochester* v. *Bond*, 603 F.2d 927 (D.C. Cir. 1979).

The agency believes the public interest would be disserved by a regulation that erroneously purported to confer Federal court jurisdiction that does not exist, since a person might improperly rely on the regulation to his or her detriment. To further reduce the possibility of confusion or misunderstanding, NHTSA is adding a phrase at the end of the first sentence of the amended regulation that explicitly states that the expiration of the review period is not postponed for persons who have not sought agency reconsideration.

Chrysler requested clarification as to the amended rule's impact upon associations composed of various member companies. Chrysler suggested that an association's petition for reconsideration should stay the limitations period for judicial review for the members of the association as well as for the association itself.

NHTSA realizes that some individual members of an association might want to wait for the agency's response to their association's petition for reconsideration before deciding whether to seek judicial review. However, as MVMA emphasized in its comments, other members might want to seek such review immediately. Consistent application of the principle of finality requires that if individual members of an association are permitted to seek judicial review of the original regulatory action following disposition of the association's petition for reconsideration, they must be precluded from seeking immediate judicial review during the pendency of that petition.

Thus, when an association files a petition for reconsideration solely in its own name, such a petition would only extend the right of the association itself to seek judicial review following reconsideration. Under those circumstances, the members would not have any right to an extended period for seeking judicial review derived from the association's petition. However, if the association explicitly files its petition for reconsideration on behalf of all of its members, or some specifically identified members, those members would each be deemed as having filed a petition. Of course, under that scenario, none of the identified members could individually seek judicial review while the petition for reconsideration is pending.

The purpose of the amended rule is not to encourage pre-mature requests for judicial review; rather, the amendment seeks to provide notice of the applicable

law. Thus, each person who considers himself or herself to be aggrieved by a NHTSA rule or standard must file a timely petition for reconsideration or a timely petition for judicial review in order to preserve his or her ability to challenge the underlying rule.

NHTSA wishes to emphasize two additional points. First, this amendment does not preclude any person who is aggrieved by the agency's action in response to a petition for reconsideration from seeking judicial review of that response, since such a response is itself a reviewable agency action. Second, a person who files a petition for reconsideration may obtain judicial review of all aspects of the original order, not merely the portion of that order on which he or she sought reconsideration. See *Bellsouth Corp.*, 17 F.3d at 1489–90. However, persons who did not seek timely reconsideration or timely judicial review of the original agency action may only challenge the actions taken by the agency in response to the petition for reconsideration. All other issues were final as to the nonpetitioning parties at the time of the original action. Therefore, any court challenge by nonpetitioning parties to agency actions not affected by the response to the petition for reconsideration must be made within 59 days of the original agency action.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. Because the changes are only procedural in nature, they will not have any cost impacts.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. For reasons discussed above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

Civil Justice Reform

This final rule does not have any retroactive or preemptive effect.

List of Subjects in 49 CFR Part 553

Administrative practice and procedure.

PART 553—RULEMAKING PROCEDURES

In consideration of the foregoing, 49 CFR part 553 is amended as follows:

1. The authority citation for part 553 of title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.50.

2. Section 553.39 is revised to read as follows:

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner, and not as to other interested persons. For the petitioner, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

Issued on: December 5, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30034 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 74–09; Notice 43]

RIN 2127–AF92

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration, delay of compliance date.

SUMMARY: This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child restraint systems must comply with a final rule that was published July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," to add a greater array of sizes and weights of test dummies for use in compliance tests. Today's document responds to those requests in petitions for reconsideration of the rule relating to the compliance date. It provides needed leadtime to manufacturers of add-on (portable) child restraint systems to make necessary design changes to conform to the new requirements.

The agency will respond to the remaining requests in the petitions for reconsideration in another document that will be published in the **Federal Register** in the near future.

DATES: The effective date (i.e., the date on which the text of the CFR is changed) of the final rule published July 6, 1995 (60 FR 35126) and corrected September 29, 1995 (60 FR 50477), remains January 3, 1996.

For manufacturers of built-in child restraint systems, the compliance date for the amendments remains September 1, 1996.

However, for manufacturers of add-on child restraint systems, the compliance date for the amendments made by those rules (i.e., the date on which these manufacturers must begin complying with the amendments) is changed to September 1, 1996.

Petitions for reconsideration of the rule must be received by January 11, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919).

For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Background

This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child

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restraint systems must begin complying with the amendments made by a final rule that was published Thursday, July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The July 1995 final rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," by adding a greater array of sizes and weights of test dummies for use in compliance tests. The rule, which completed a substantial upgrade of the standard long envisioned by the agency, also responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")). That Act directed NHTSA to initiate rulemaking on child seat safety. The notice of proposed rulemaking (NPRM) for the rule was published March 16, 1994 (59 FR 12225).

Current Requirements

Standard 213 applies to any device, except Type I (lap) or Type II (lap/shoulder) seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children whose mass is 23 kilograms (kg) (50 pounds) or less. The standard evaluates the performance of child restraint systems in dynamic tests under conditions simulating a frontal crash of an average automobile at 48 kilometers per hour (kph) (30 miles per hour (mph)).

The dynamic tests are conducted using a test dummy. Currently, Standard 213 (S7) specifies that a dummy representing a 6-month-old child be used for testing a child restraint system that is recommended by its manufacturer for use by children in a mass range that includes children whose mass is 9 kg or less (weighing 20 pounds or less). That dummy, which is not instrumented, is specified in subpart D of 49 CFR part 572. A dummy whose mass is 15 kg (weighing 33 pounds), representing a 3-year-old child, is used for testing a child restraint system that is recommended for children whose mass is 9 kg or more (weighing 20 or more pounds). This dummy is instrumented with accelerometers for measuring accelerations in the head and chest during impacts, and is specified in 49 CFR Part 572, subpart C.

The requirements to be met by a child restraint in the dynamic testing include maintaining its structural integrity, retaining portions of the dummy within specified excursion limits (limits on how far specified portions of the body may move forward), and in the case of the 3-year-old dummy, limiting the forces exerted on the head and chest of the dummy in the crash. These requirements reduce the likelihood that the child using a child seat will be injured by the collapse or disintegration of the seat, by contact with the interior of the vehicle, or by imposition of intolerable forces by the seat.

July 1995 Final Rule

The July 1995 final rule amended Standard 213 to add three dummies, representing a newborn infant, 9-month-old and 6-year-old child, for use in compliance testing under the standard. The rule removed the 6-month-old child dummy currently used, since the need for it was eliminated by the addition of the new dummies.

The additional dummies provide a better evaluation of the ability of child restraint systems to restrain and protect the range of children recommended for those systems. As a result of the rule, child restraints must meet the performance requirements of the standard while tested with dummies more representative of the range of children for whom the restraints are recommended. As a result, the performance of child restraints is more thoroughly evaluated. A dummy representing children at the lower end of the weight ranges recommended for a restraint evaluates the ability of the restraint to restrain its occupant. In other words, it evaluates the ability of a restraint to prevent a smaller child from slipping out of the restraint. A dummy at the higher end approximates the heaviest load that the restraint will have to bear in a crash and thus is particularly useful in evaluating the structural integrity of the restraint.

The rule adopted the following provisions specifying which of the new dummies NHTSA will use in the compliance testing of child restraint systems:

If the range of children recommended by a child restraint's manufacturer includes any children in the following range	The following dummy(ies) is(are) used in the compliance testing of that restraint
Birth—5 kg or less (Birth—11 lb or less).	Newborn.
More than 5 kg–10 kg (22 lb).	Newborn. 9-month-old.
More than 10 kg–18 kg (40 lb).	9-month-old.* 3-yr-old.
More than 18 kg or 40 lb	6-yr-old.

*This dummy is not to be used to test booster seats.

Compliance Dates

The rule was drafted to have one compliance date for add-on child restraint systems, and another for built-in systems. The compliance date for add-on child restraint systems was January 3, 1996 (which is 180 days after the publication date of the rule), and for built-in systems, September 1, 1996.

Rationale for Different Dates

Different compliance dates were established due to NHTSA's belief, at the time, that add-on restraint manufacturers did not need so much time to comply with the amendments as did built-in restraint manufacturers. In the apparent absence of comments objecting to the proposed 180 day effective date, the agency concluded that manufacturers of add-on systems could comply with the proposed period of 180 days. In contrast, there were comments indicating that a 180-day effective date would be insufficient for built-in restraint manufacturers. In commenting on the NPRM, an individual built-in restraint manufacturer (Ford) and a association of built-in restraint manufacturers (American Automobile Manufacturers Association) requested a September 1, 1996 compliance date for amending the standard with regard to built-in systems. Ford stated that the proposed 180-day period would not provide enough time for it to test all its built-in systems to the adopted requirements and make any needed design changes. Ford also said that 180 days is insufficient to enable it to modify the labeling of its built-in restraints, or to change the vehicle owner's guides of the vehicles equipped with built-in systems, in accordance with the rule. Ford indicated that a September 1, 1996 compliance date would better allow it to incorporate necessary changes in the vehicle owner's manual, since the manuals are usually printed in June or July of the model year. NHTSA concluded that a September 1, 1996 compliance date for built-in restraints "gives motor vehicle manufacturers sufficient leadtime to evaluate their products and make any necessary changes to them, and prepare the labels and owners manuals for the new model vehicles without unnecessary burdens." 60 FR 35136.

Correction of Effective Date

As noted above, the agency drafted the rule so that the "effective date" for add-on child restraint systems was January 3, 1996, and the "effective date" for built-in systems was September 1, 1996. This wording did not conform to the drafting practices of the **Federal Register**. Based on the language of 49 U.S.C. 30101 *et seq.* (formerly the National Traffic and Motor Vehicle Safety Act), NHTSA has traditionally used the term "effective date" to mean the date on and after which any vehicle or item of equipment subject to a rule must comply with the requirements of the rule. The **Federal Register** uses different terminology. It calls this date the rule's "compliance date," not its "effective date." For **Federal Register** purposes, the "effective date" of a rule is the date on which the Code of Federal Regulations (CFR) is amended to reflect the changes set forth in the rule. Since the amendments of a rule appear in the CFR on the "effective date" of the rule, amendments cannot vary in effective date by subject matter, e.g., a rule cannot have one effective date for add-on systems and another for built-in systems.

On September 29, 1995 (60 FR 50477), NHTSA corrected the error by correcting the **DATES** section of the final rule to specify that the rule is effective (as the **Federal Register** uses that term) on January 3, 1996, with two provisos. The provisos, relating to the compliance dates of the rule, are as follows:

> However, manufacturers of built-in child restraint systems may comply with existing requirements for built-in systems (as of July 6, 1995) until September 1, 1996.
>
> Manufacturers of add-on child restraint systems may comply with existing requirements for add-on systems (as of July 6, 1995) until January 3, 1996.

The correction conformed the wording of the **DATES** section to **Federal Register** drafting practices. It did not affect the compliance date of the amendments made by the rule. Thus, beginning January 3, 1996, each add-on restraint would have to meet the performance criteria and labeling requirements specified in the standard when tested with the test dummies specified by the rule, including, if appropriate for a particular restraint, the newly-adopted dummies.

Petitions for Reconsideration of Compliance Date

Cosco Inc. and Gerry Baby Products Company, two manufacturers of add-on child restraint systems, petitioned for reconsideration of the January 3, 1996 compliance date for add-on restraints. Both manufacturers requested NHTSA to change the date to September 1, 1996, to make the compliance date the same as that for built-in restraint manufacturers.

In support of its petition, Cosco said it needs a leadtime longer than 180 days to test its products and make needed design and tooling changes. Cosco disagreed with NHTSA's statement in the final rule that "No comment was received on leadtime for add-on restraints." (60 FR at 35137) Cosco said it had commented on the issue, and quoted a statement in its comment which stated: "Whatever changes are made to the standard, Cosco reminds NHTSA that manufacturers need enough time to deplete inventories of printed materials (at least 6 months) or develop complying designs (up to 2 years)." In its petition, Cosco said that:

> While this two year time period may be compressed to some degree, certain critical elements of the design, development, tooling and testing of a new add-on child restraint cannot be accelerated. For instance, the tooling time for the mold for an add-on child restraint shell is approximately six months. This does not include time for fine tuning the tool after it is completed and for testing the first production adequately to ensure that safety guidelines and compliance with FMVSS 213 are met. * * *

Cosco believed there is no reason to have a compliance date for add-on systems that differed from that for built-in systems. It stated:

> The discussion in the final rule regarding Ford's comments essentially reflects the same concerns that Cosco raised in response to the NPRM. * * * This arbitrary distinction will have an unnecessary, negative impact on add-on restraint manufacturers and should be amended as requested.

Gerry Baby Products raised similar concerns in its petition. Gerry said that 180 days does not provide enough time for it to sufficiently test its products to the new requirements and implement any necessary design changes. Gerry also stated:

> This short phase-in time period may result in Gerry Baby and other child restraint manufacturers pulling a significant percentage of shield type booster seats (for which head excursion limits may be an issue) from the market. Thus, the end result of the 180-day effective date could be a significant time period in which the retail market would have minimal, if any, shield-type booster seats available. Consumers with Type I seat belt systems in the rear seats of their vehicles would thus probably have no child restraints available to restrain their 40 to 60 pound children.

Gerry requested that the compliance date for add-on restraints and built-in restraints be the same, September 1, 1996.

Agency Decision

NHTSA has reviewed the petitions and has decided that, for add-on systems, the compliance date for the July rule should be changed to September 1, 1996. NHTSA adopted a 180-day compliance date, as proposed, for the rule for add-on systems because a longer leadtime did not seem necessary. In its petition for reconsideration, Cosco and Gerry have provided information explaining why they believe that the rule's original compliance date "is not practicable, is unreasonable, or is not in the public interest." 49 CFR 553.35. The agency agrees that, similar to built-in restraint manufacturers, manufacturers of add-on systems need sufficient time to evaluate their products and make any necessary changes to them. As noted by Gerry, shield boosters, in particular, will likely need to be redesigned to meet Standard 213's head excursion requirement when tested with the 6-year-old dummy. Shield boosters, used for older children who have outgrown a convertible or toddler seat, enables a Type I (lap only) vehicle belt to more properly fit the child by preventing the belt from riding up across the child's stomach.

NHTSA is therefore extending the compliance date for add-on systems to ensure that adequate time is provided add-on restraint manufacturers to test their seats and implement necessary design changes. This will also ensure the continued availability of shield booster seats. The compliance date of the July 1995 final rule, as corrected September 29, 1995, is delayed to September 1, 1996 for add-on restraints.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impacts of this rulemaking action and has determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are so minimal that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers will be minimally affected by this rulemaking because it only extends the compliance date of the July 6, 1995 final rule, which amended Standard 213. There will be no additional costs associated with this final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Since this document simply extends the compliance date of a previously-issued rule, no costs are associated with it. Accordingly, the agency has not prepared a regulatory flexibility analysis.

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Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on December 7, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30233 Filed 12–7–95; 2:11 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950906226–5282–02; I.D. 083095A]

RIN 0648–AH00

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 40 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 38 implements an allocation of pollock for processing by the inshore and offshore components in the BSAI management area from January 1, 1996, through December 31, 1998. Amendment 40 implements an allocation of Pacific cod for processing by the inshore and offshore components, and an allocation of pollock for processing by the inshore component in the GOA from January 1, 1996 through December 31, 1998. It also continues the Western Alaska Community Development Quota (CDQ) Program for pollock for the same period of time. This action is necessary to continue the management measures that were contained in Amendments 18 and 23 to the BSAI and GOA FMPs, respectively. The intended effect of this final rule is to promote management and conservation of groundfish, enhance the stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: Copies of Amendments 38 and 40, and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendments 38 and 40 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, room 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: David Ham, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676; for the GOA FMP, regulations are found at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/FRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP, respectively.

Amendments 18 and 23 and their implementing regulations expire on December 31, 1995. The Council has not yet completed development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries. Therefore, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40. A notice of availability of Amendments 38 and 40 was published at 60 FR 46572 (September 7, 1995).

Amendments 38 and 40 are essentially the same as amendments 18 and 23, with minor changes. A full discussion of these changes is listed in the proposed rule for amendments 38 and 40 (60 FR 48087, September 18, 1995).

Amendments 38 and 40 were approved by NMFS on November 28, 1995, under section 304(b) of the Magnuson Act. Upon reviewing the reasons for Amendments 38 and 40 and the comments on the proposed rule to implement it, NMFS has determined that this final rule extending the allocation between inshore and offshore components is necessary for fishery conservation and management.

Changes in the Final Rule From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 675.27(e)(1)(iii), the date that the annual budget reconciliation report is due to NMFS from each CDQ group is changed from May 15 to May 30 to provide more time for the CDQ groups to comply with this requirement.

2. The definition of "inshore component" at §§ 672.2 and 675.2 is revised as follows. The requirement for an owner of a processor vessel to declare on the annual application for a Federal fishery permit (NOAA Form 88–155) whether it will be part of the inshore component has been deleted from paragraphs (2) and (3) of the definition. This definition is revised for clarity and is not fundamentally different from the current definition.

3. The definitions of "inshore component" and "offshore component" at §§ 672.2 and 675.2 are revised as follows. The phrase "any processor vessel" that appears in both definitions is changed to "vessels". This change was made to simplify and clarify the definition. The definition already refers to vessels that "process", therefore, further reference to a "processor vessel" is redundant.

4. For clarity, NMFS revises the definitions of Community Development Quota Reserve and Community Development Quota at § 675.2.

5. For clarity, NMFS combines paragraphs (*1*) and (*2*) of § 675.27(e)(3)(i)(F) into one paragraph 675.27(e)(3)(i)(F). Also, NMFS revises this paragraph (e)(3)(i)(F) of § 675.27 to give the Secretary of Commerce (Secretary) acting through NMFS, in addition to the Governor of the State of Alaska, the authority to deem a change to a Community Development Plan (CDP) to be a material change. This will give NMFS the ability to make a determination that a proposed change to a CDP is a material change.

6. Paragraph § 675.22(g)(2) is removed. This permissive statement is unnecessary.

7. The phrase "processor vessels" in paragraphs § 675.22(g) (3), (4), and (5) is changed to "vessels" to be consistent with the definition of "offshore component."

Response to Comments

Fourteen letters of comment were received within the public comment period. Two letters had no comment, eight were supportive of the proposed action and are summarized in comment 1, and four were received with comments that are summarized and responded to in comments two through ten below:

Comment 1. Continuation of the inshore-offshore program through Amendments 38 and 40 provides the industry with stability while the Council proceeds with developing a comprehensive rationalization plan. This program is needed by fishery-dependent coastal communities to ensure continuing access to fisheries resources. These fishery resources provide revenue to local communities through raw fish taxes, municipal sales taxes from goods and services, fuel tax revenues from sales to the fishing fleet, corporate income tax revenues, and real and personal property tax revenues. Much of this tax revenue has gone into community infrastructure that has been a great benefit to rural Alaskan coastal communities. The inshore-offshore program slows the pace of harvesting activity and allows NMFS to improve its monitoring of the fisheries. The CDQ program has been a success and has accomplished the positive results that were intended.

Response. NMFS notes this comment.

Comment 2. Amendments 38 and 40 will not maintain stability in the fishery, safeguard capital investments, prevent preemption, or protect coastal communities that are dependent on a local fleet. The derby-style fishing that will continue to characterize these fisheries under Amendments 38 and 40 is unstable. Fishing seasons will continue to shorten, capital investments will continue to be at risk as a result of increased inter-sector competition and capital investment. Local fishing fleets will continue to be preempted by other nonlocal inshore fleets.

Response. NMFS recognizes some limitations of these amendments, but the inshore/offshore allocation is not intended to be a substitute for comprehensive rationalization planning. This allocation extension is a continuation of a temporary solution and as such will provide 3 additional years for completing the development and implementation of a permanent solution.

Comment 3. The analysis for Amendments 38 and 40 should examine environmental issues, such as the water quality problems that have continued to plague shoreside processing operations in Dutch Harbor.

Response. Pages 214 and 215 of the EA/RIR/FRFA for Amendments 38 and 40 address water quality problems in Dutch Harbor. The analysis concluded that it is unlikely that Amendments 38 and 40 will have a negative impact on the water quality in this area.

Comment 4. The analysis did not evaluate the market structure in key seafood markets to determine whether there might be anti-competitive effects by giving shoreside processing plants an increased share of the pollock resource. For example, is there a transfer pricing risk? Or, did the inshore-offshore allocation result in the price collapse of offshore surimi that occurred during the first inshore-offshore allocation in 1993?

Response. The EA/RIR/FRFA for inshore-offshore examined several issues related to this comment. Page 124 shows that the inshore price for surimi collapsed at about the same rate as the offshore price for surimi from 1992 through 1993. This overall price drop may or may not have been influenced by the inshore-offshore allocation at that time. The price drop was experienced by both sectors, though it was slightly more severe for the offshore sector. The analysis indicates that this may not have been a price collapse at all, but a return to normal prices after 2 years (1991 and 1992) of inordinately high prices. Pages 119 to 123 of the analysis contain a detailed discussion of price factors, though the analysis is not specific to the issue of the collapse of 1993 surimi prices. In an issue related to the collapse of the 1993 surimi prices, Appendix V of the analysis contains further analysis of the structural breakdown of surimi prices relative to exvessel prices paid. The analysis in Appendix V is unable to attribute this phenomenon to the inshore-offshore allocation. Furthermore, the price collapse issue raised in this comment is more relevant to the original inshore-offshore decision than to Amendments 38 and 40, because the inshore-offshore allocations have been in place for 3 years and their continuance now represents the status quo.

Comment 5. Proponents of the inshore-offshore allocation program claim that allocating more fish to large shoreside processors will provide jobs and economic opportunity for local residents. However, the analysis did not address this question. On the other hand, Akutan has petitioned the Council to be included in the pollock CDQ program because the Akutan Trident plant is not part of the community and local residents rarely work at the plant. The logic on these two issues is inconsistent.

Response. The Akutan plant is not necessarily reflective of other shoreside plants, in terms of local employment. The social impact analysis focused primarily on Dutch Harbor, Kodiak, St. Paul, and Ballard/Seattle. The community impact study in the analysis looked at total and distributional income indices, of which direct employment is only a part. The relevant point is not just one of direct employment. There are other non-quantifiable benefits derived from the inshore/offshore allocation system. The availability of alternative economic activity was also an important

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consideration. Maintenance of cultural stability, social impacts, and other impacts were also considered.

Comment 6. The proposed regulations at § 675.23(e)(2)(iii) preclude pollock catcher vessels from participating in the yellowfin sole fishery prior to January 26 if they want to harvest pollock roe for processing by the offshore component starting on January 26. Vessels that participate in the yellowfin sole fishery before January 26 cannot enter the pollock fishery for processing by the offshore component until February 5. Yellowfin sole is an abundant species and its harvest should be encouraged, not discouraged. Therefore, there should be no restriction on fishing for yellowfin sole prior to the January 26 start of the pollock fishery for processing by the offshore component.

Response. NMFS acknowledges that limitations on the participation in the yellowfin sole fishery prior to the opening of the pollock fishery for processing by the offshore component could reduce potential revenues of vessels. NMFS approved this limitation after considering the intent of the Council to minimize the preemptive impact on other fisheries that could result from the delay of the pollock roe fishery for processing by the offshore component until January 26. Additionally, if vessels were allowed to harvest yellowfin sole before January 26, those vessel operators could have an unfair advantage by potentially prospecting for pollock stocks just prior to the opening of the pollock fishery for processing by the offshore component.

Comment 7. The proposed CDQ regulations require that an annual budget reconciliation report be submitted to NMFS by May 15 of the year following the year for which the annual budget applies. However, due to other CDQ reporting requirements during May, a burden on the CDQ groups would be relieved if the May 15 due date were changed to May 30. This would allow the CDQ groups more time to prepare the annual budget reconciliation report for NMFS.

Response. NMFS concurs. The regulations at § 675.27(e)(1)(iii) are changed to require the annual budget reconciliation report to be due to NMFS on May 30 instead of May 15.

Comment 8. The focus of the CDQ program needs to remain on long-term development projects, not short-term projects such as job creation. The CDQ regulations need to be more clear in describing the types of CDQ projects that would be acceptable. The CDQ regulations should direct a portion of CDQ resources to be used to construct and maintain public infrastructure in CDQ communities.

Response. Job creation is part of some CDPs and is usually associated with training and job creation in commercial fisheries. Training and job creation in commercial fisheries will increase the number of skilled fishermen. This will enable CDQ communities to become more self-sufficient in regional fisheries related development, which is a valid long-term goal of the CDQ program. The CDQ regulations allow the CDQ group's board of directors, along with their constituents, to choose their own CDQ projects because each CDQ group is more familiar with the needs of its communities and would be the best judge of whether a project would succeed or fail due to the local conditions. Additionally, by choosing their own projects and succeeding or failing on their own business skills, the CDQ groups can best learn the skills for developing a viable business. This will assist the CDQ groups in becoming self-sufficient in the future. Viable, ongoing businesses are a long-term goal of the CDQ program.

Comment 9. The proposed annual budget and annual budget reconciliation process is burdensome, and NMFS and State budget reporting requirements should be integrated so that separate reports to NMFS and the State are not necessary. CDQ groups should be allowed to submit existing business records to NMFS instead of separately prepared documents whose contents are based on NMFS' criteria.

Response. The Secretary, through NMFS, is obliged to ensure that the funds derived from CDQ activity are used as directed in each CDP for the benefit of the western Alaska communities. The annual budget and annual budget reconciliation report requirements were developed in conjunction with the State of Alaska because the existing reporting requirements were not sufficient to track the financial transactions of the CDQ groups. NMFS is requesting basic business information that should have already been developed for the CDQ board of directors. NMFS requires that each CDQ group submit reports based on NMFS' criteria because NMFS must ensure that the report contains the necessary information to evaluate any financial transactions.

Comment 10. Clarification is requested as to whether § 675.27(e)(3)(i)(F) (*1*) and (*2*) are intended to constitute substantial amendments because their contents are already covered under paragraphs § 675.27(e)(3)(i) (A) through (E). Clarification is requested as to the meaning of the term "material change" in paragraph § 675.27(e)(3)(i)(F). The CDQ regulations should contain solid guidance so that a CDQ group can determine from the regulations whether an amendment is a substantial amendment or a technical amendment. The proposed requirement for written notification of technical amendments to be sent to NMFS before the change occurs is burdensome. This requirement could be met equally well with a quarterly reporting requirement.

Response. Paragraphs (e)(3)(i)(F)(*1*) and (*2*) of § 675.27 are part of the definition for a substantial amendment to a CDP. NMFS agrees that this is not clear and revises paragraphs (F)(*1*) and (*2*) to create a new paragraph (F). Paragraph (F) is necessary because it would be impossible to list every change to the present or future CDPs that could be a substantial amendment. NMFS did not want to burden the CDQ groups with a long list of CDP changes that would constitute substantial amendments. On the other hand, NMFS did not want to omit any change that could be a substantial amendment. NMFS decided to list the most important general changes that would be substantial in paragraphs (A) through (E), and then give the Governor of Alaska the discretion to recommend to the Secretary other changes to be substantial amendments, based on the Governor's decision as to what constitutes a "material change." NMFS must approve the Governor's recommendations for substantial amendments. A technical amendment is any change to a CDP that is not a substantial amendment. NMFS must be notified of any such change before the change is effected because the Governor and the Secretary must ensure that the change is not a substantial amendment. The burden of notification is slight because it can be accomplished by fax, and, in most cases, the response can be rapid.

Classification

The Director, Alaska Region, NMFS, determined that these FMP amendments are necessary for the conservation and management of the BSAI and GOA fisheries and that they are consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by The Office of Management and Budget (OMB), OMB control number 0648–0269. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB approval has been obtained under OMB control number 0648–0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA (AA) finds, good cause, pursuant to authority at 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this final rule. The inshore-offshore and CDQ programs have been in effect for the last 3 years, and the fishing industry is relying upon their continuation. A lapse in the effective regulations for these programs would confuse and destabilize the industry. Further, to the extent that this final rule continues regulations that currently are in effect, a delayed effectiveness period is unnecessary because the fishing industry does not need additional time to plan or prepare for compliance with these regulations. Therefore, the AA is waiving the 30-day delayed effectiveness period and making these regulations effective January 1, 1996, to coincide with the start of the fishing year.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions of "Inshore component" and "Offshore component" are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and

(3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) and 675.5(c)(1)) of this chapter when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all vessels in the U.S. groundfish fisheries not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

§ 672.20 [Amended]

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(ii), and (c)(2)(ii) are revised to read: "*Applicable through December 31, 1998.*".

5. In § 672.20, the headings of paragraphs (c)(1)(i) and (c)(2)(i) are revised to read: "*Applicable after December 31, 1998.*".

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

6. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 675.2, a definition for "Catcher vessel operational area" is added, in alphabetical order, and the definitions for "Community Development Plan," "Community Development Quota," "Community Development Quota Program," "Community Development Quota Reserve," "Inshore component," and "Offshore component" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel operational area (CVOA) (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00′ N. lat. and between 163°00′ and 167°30′ W. long.

Community Development Plan (CDP) (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a percentage of the CDQ reserve for a BSAI subarea or district as defined at § 675.20(a)(3)(ii) that is allocated to a CDP.

Community Development Quota Program (CDQ Program) (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998) means one half of the pollock TAC that is placed into the reserve for each subarea and district of the BSAI as specified at

§ 675.20(a)(3) and that is set aside for the CDQ program.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) in length overall, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of those fish; and

(3) Vessels that process those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§§ 672.5(c)(1) of this chapter and 675.5(c)(1)) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all vessels not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

6. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at § 672.2 of this chapter and § 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

* * * * *

9. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) Applicable through December 31, 1998.

* * * * *

(3) * * *

(i) Applicable through December 31, 1998. * * *

(ii) Applicable through December 31, 1998. * * *

(iii) Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation. * * *

* * * * *

10. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1998).* (1) The Catcher Vessel Operational Area is established annually from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31, whichever is earlier.

(2) Vessels in the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are operating under a CDP approved by NMFS.

(3) Vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within the CVOA to process pollock.

(4) Vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within the CVOA.

(h) * * *

(2) If the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

11. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) * * *

(2) *Applicable through December 31, 1998.* * * *

* * * * *

12. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).

The goals and purpose of the CDQ program are to allocate pollock from the CDQ reserve to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses.

* * * * *

(b) * * *

(1) * * *

(i) A description of the CDP projects that are proposed to be funded by the CDQ and how the CDP projects satisfy the goals and purpose of the CDQ program;

* * * * *

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

* * * * *

(2) * * *

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

* * * * *

(3) * * *

(ii) * * *

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

* * * * *

(e) *Monitoring of CDPs—(1) CDP reports.* The following reports must be submitted to NMFS:

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting

the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each subsequent annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) *CDQ increase.* If an applicant requests an increase in a CDQ under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up to date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 calendar days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

(A) Any change in the applicant communities or replacement of the managing organization;

(B) A change in the CDP applicant's harvesting or processing partner;

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or the Secretary to be a material change.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text; and

(F) A description of how the proposed amendment meets the requirements of this § 675.27. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

* * * * *

[FR Doc. 95-30139 Filed 12-11-95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Regulation U; Docket No. R–0905]

RIN 7105–AB85

Securities Credit Transactions; Review of Regulation U, "Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks"

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation U, the regulation that covers extensions of credit by banks that are secured in whole or in part by those publicly traded securities defined as "margin stock". These amendments are being proposed as part of the Board's program to periodically review its regulations as well as to fulfill the requirements of section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994. Two of the most important effects of the proposed amendments would be to provide: Explicit guidance for banks financing margin stock purchased by their customers through a broker-dealer on a delivery-versus-payment (or C.O.D.) basis; and greater flexibility for withdrawals and substitutions of collateral when margin stock is pledged along with cash equivalents and other securities by treating the entire credit as a single loan. In addition, amendments would conform Regulation U to changes recently proposed for Regulation T regarding increased loan value for exchange-traded options and money market mutual funds. Technical amendments would update the regulation to reflect a 1991 Board interpretation allowing lead banks to apply Regulation U to syndicated loans independent of other credit extended by syndicate banks and restore language indicating that the exemption for temporary financing of customer securities transactions does not apply to securities purchased at a broker-dealer.

DATES: Comments should be received on or before February 15, 1996.

ADDRESSES: Comments should refer to Docket No. R–0905, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation, (202) 452–2781. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is proposing amendments to Regulation U (12 CFR part 221), "Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks," as part of its program to periodically review its regulations and to satisfy requirements under section 303 of the Riegel Community Redevelopment and Regulatory Improvement Act of 1994. The proposed amendments include coverage of bank financing of securities purchased by customers through a broker-dealer on a cash basis and treatment of mixed-collateral loans (loans secured in part by margin stock and in part by other collateral) as a single loan if all collateral consists of securities and cash equivalents. Conforming amendments are proposed in light of the recently published amendments to Regulation T (12 CFR part 220), "Credit by Brokers and Dealers" (see 60 FR 33763; June 29, 1995) that would increase the loan value of exchange-traded options and money market mutual funds. Two technical amendments are discussed below.

In addition to the amendments described in this proposal, comment is invited on all areas of Regulation U, including (but not limited to) whether the regulation can be eliminated, simplified, or the burdens imposed thereunder eased.

1. Financing of Securities Purchased on a DVP Basis

Banks often act as custodians for their customers' securities. These securities are generally purchased via a registered broker-dealer in a cash account and sent to the bank on a delivery-versus-payment (DVP) basis.[1] Banks traditionally have not accepted securities in a DVP transaction if the customer does not have the funds to make full payment on hand at the bank. Accepting securities without having the customer's full payment on hand involves a credit relationship similar to a customer using a margin account at a broker-dealer.

In the past few years, System examiners and staff of the Securities and Exchange Commission have alleged that certain banks were financing these DVP purchases without documentation and in excess of margin requirements contained in Regulation U. The banks were found in violation of Regulation U or settled charges without admitting or denying their culpability.[2]

Provided customers have sufficient collateral, Board staff believes financing of securities purchases can be accommodated within the existing provision for revolving-credit agreements found in § 221.3(c) of Regulation U, with the addition of some clarifying language.[3] However, it should be noted that this will not result in exactly equal regulation between banks and broker-dealers because the combination of Board, SEC, and SRO rules applicable to broker-dealers in this area cannot be recreated in Regulation U.[4] Board staff believes that the supervisory structure for banking institutions and the requirement that banks establish credit agreements before financing these transactions will lead banks to impose some additional limitations themselves, but because the additional requirements applicable to broker-dealers are not contained in Regulation T, they cannot be imposed by Regulation U.

[1] Customers purchase securities at a broker-dealer on either a cash or margin basis, using either a cash or margin account. When a customer purchases a security on a cash basis, he either deposits the full purchase price in the cash account or asks to have the security sent to his agent (usually a custodial bank) against full payment of the purchase price. This latter method is described in section 220.2(o) of Regulation T as a *delivery against payment, payment against delivery*, or *C.O.D. transaction* and is generally referred to by the industry as a DVP transaction.

[2] See, e.g., *SEC* v. *Hansen*, 726 F. Supp. 74 (S.D.N.Y. 1989).

[3] Applying the section on revolving-credit agreements will ensure that banks financing such purchases establish credit limits for their customers, including limits on intraday trading.

[4] Although the Board does not have a maintenance margin in its regulations, broker-dealers are required to monitor extensions of securities credit under SRO rules, call for additional collateral when market values fall below a specified percentage, and sell some of the customer's securities if the additional collateral is not received. In addition, SRO rules require customers opening margin accounts to deposit a minimum amount of equity in cash or securities (generally $2000).

[5] The ability of a bank to use a single credit agreement was a reform instituted in 1983. Before that time, separate credit agreements were required for the stock collateral and the nonstock collateral.

[6] Before 1983, Regulation U covered loans secured by any stock. A "mixed-collateral" loan was one secured in part by stock and in part by other collateral. Now that the regulation's scope has been reduced to cover only loans secured by margin stock, a "mixed-collateral" loan is one secured in part by margin stock and in part by other collateral. "Other collateral" may include stock that would have been covered under the previous version of Regulation U and therefore not subject to the provisions covering mixed-collateral loans. This reduction in the scope of the regulation had the unintended effect of reducing the flexibility for withdrawals and substitutions of collateral for mixed-collateral loans.

2. Mixed-Collateral Loans

Regulation U does not apply to extensions of securities credit that are not secured at least in part by margin stock. Loans secured in part by margin stock and in part by other collateral are known as "mixed-collateral" loans and Regulation U has always required some kind of separation for these types of loans. Although a single credit agreement may be used,[5] § 221.3(e) of Regulation U states that a loan secured in part by margin stock and in part by other collateral "shall be treated as two separate loans." This separation requirement has been the subject of numerous inquiries since the last revision of Regulation U and has led to this proposal for a relaxation of the regulation in this area.[6]

The section on mixed-collateral loans does not present a problem when first applied at the time the loan commitment is made, as it merely requires a bank to determine the loan value of margin stock collateral and then verify that the other collateral has a good faith loan value sufficient to make up the difference between the loan value of the margin stock and the amount of credit being extended and to allocate the credit secured by each tranche.

There have been, however, a number of inquiries concerning the interplay of § 221.3(e) (mixed-collateral loans) and § 221.3(f) (withdrawals and substitutions) of Regulation U. As an example, suppose the value of a customer's nonmargin stock collateral has increased over time but the value of the margin stock has not. In spite of the fact that the overall value of the collateral has increased, the customer cannot withdraw margin stock because this "separate" loan does not have sufficient loan value to permit the withdrawal. In other words, changes in collateral value in one tranche have no effect on the other tranche. This separation requirement makes collateral management extremely difficult.

Board staff has tried to respond to inquiries in this area through interpretation of the existing regulation.[7] However, in light of the growth of revolving credit agreements secured by more than just margin stock, it appears that the current rule is unnecessarily burdensome to effectuate the statutory scheme of regulation.[8]

The proposed amendment to the section on mixed collateral loans would still require the regulatory segregation of collateral, but would expand the types of collateral that could be securing loans that currently can only be secured by margin stock to include all financial instruments (stocks, bonds, and cash equivalents).[9] Acting in good faith, a bank would be able to value all financial instruments in accordance with the margin requirements in the Supplement to Regulation U (§ 221.8) and permit substitutions within this group in conformity with the section on withdrawals and substitutions, meaning the aggregate loan value of the substituted collateral must at least equal the aggregate loan value of the collateral withdrawn. Under the proposed amendment, credit secured by nonfinancial collateral, such as real estate, would continue to be treated as a separate loan. Comment is invited on the continuing need for separation of collateral between financial instruments and other collateral.

[7] See, e.g., *Federal Reserve Regulatory Service* 5–923.2, 5–923.41, and 5–923.42.

[8] Many customers who have securities to pledge as collateral have more than just margin stock (they often have debt securities as well). The section on mixed-collateral loans presumes there will be no change in the collateral once it has been pledged. The number of inquiries in this area is an indication that this is often not the case.

[9] One of the goals of the section on mixed-collateral loans is to ensure that a lender does not inflate the loan value of nonmargin collateral to offset the fact that the margin regulations limit the value of margin stock to 50 percent of its current market value. Most financial instruments have readily available prices, lessening the possibility for evasion of the margin requirements. Other collateral, such as real estate, boats and automobiles, is more likely to have a less well agreed upon market value.

3. Conforming Amendments

Although the Board's margin regulations provide a level playing field for lenders extending purpose credit secured by margin stock, statutory and other considerations have always made the scope of Regulations G and U less broad than that of Regulation T.[10] Two of the proposed amendments to Regulation T would make it less restrictive than Regulation U, leading the Board to propose conforming amendments. The two amendments would allow 50 percent margin for exchange-traded options (currently given no loan value) and good faith loan value for money market mutual funds (currently given 50 percent loan value). In addition, the definitions of "cash equivalent" and "examining authority" would be added from the Regulation T proposal to the definitional section of Regulation U.

4. Technical Amendments

Two technical amendments are proposed. The first would add a sentence to the "single-credit rule" to reflect a 1991 Board interpretation allowing the lead bank to perform Regulation U compliance for syndicated loans. The other would reinsert language inadvertently deleted in 1983 from one of the Regulation U exemptions for credit extended to persons other than broker-dealers.[11]

5. Section-by-Section Explanation of Proposed Changes to Regulation U

Section 221.1 Authority, Purpose and Scope.

No substantive changes.

Section 221.2 Definitions.

(1) Eliminate letter designations for definitions in § 221.2 and references thereto in §§ 221.1(b), 221.3(a) and 221.7(c)(2).

(2) Add definitions (from Regulation T) for *cash equivalent* and *examining authority* (referred to in § 221.5(c)(9)(ii)).

[10] For example, although the Securities Exchange Act of 1934 requires the Board to set margins for all purchases of securities, it specifically excludes bank loans on nonconvertible debt securities.

[11] The exemption for credit to a customer to temporarily finance the purchase or sale of securities for prompt delivery contained a restriction prohibiting its use for securities purchased at a broker-dealer. This restriction was inadvertently dropped in 1983 and it is being reinserted.

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(3) Exclude money market funds from definition of *margin stock* so as to give allow them good faith loan value.

(4) Edit statement in definition of *maximum loan value* that "[p]uts, calls and combinations thereof have no loan value" to reflect loan value for exchange-traded options.

Section 221.3 General Requirements

221.3(a)—General Rule

(1) Edit statement in general rule that collateral other than margin stock has good faith loan value to reflect fact that puts and calls that do not qualify as margin stock have no loan value.

221.3(c)—Revolving-Credit or Multiple-Draw Agreements

(2) Expand subsection to cover financing of securities purchased on a payment-against-delivery (or DVP) basis.

(3) Clarify that FR U–1 is always taken when arrangement is established and must be amended for subsequent disbursements if (i) all collateral is not pledged up front, or (ii) collateral has been withdrawn or substituted between disbursements.

221.3(d)—Single Credit Rule

(4) Clarify that single credit rule does not cover syndicated loans (see Board Interpretation on loan participations in section 221.124 of Regulation U).

221.3(e)—Mixed Collateral Loans

(5) Alter application of rule so that instead of separating margin stock collateral from nonmargin stock collateral, securities and cash equivalents are separated from other types of collateral.

Section 221.4 Agreements of Nonmember Banks

Editorial change reflects combining of Forms FR T–1 and FR T–2.

Section 221.5 Special Purpose Loans to Brokers and Dealers

No substantive changes.

Section 221.6 Exempted Transactions

Restore language to 221.6(f) that credit is not to be used by a customer to purchase securities from a broker-dealer.

Section 221.7 OTC List

No substantive changes.

Section 221.8 Supplement

Allow options that qualify as margin stock the same loan value as other margin stock.

Regulatory Flexibility Act

As noted in the summary, the proposed amendments should improve the regulation by providing explicit guidance on certain lending practices and greater flexibility in verifying compliance for certain types of loans. The Board believes there will be a beneficial economic impact if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0115), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR part 221. This information is required by Regulation U and authorized by the Securities Exchange Act of 1934 (15 U.S.C. 78g and 78w). The respondents are for-profit financial institutions. Records must be retained for three years after the credit is extinguished.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0115.

No additional reporting requirements or modifications to existing recordkeeping requirements are proposed. The current estimated burden is 4 minutes per response. There are 10,637 subject respondents making an estimated average of 212 of the subject loans annually, for a total of 157,853 hours of annual burden for recordkeeping. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,157,060.

Because the records would be maintained at banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 221

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 221 as follows:

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

1. The authority citation for Part 221 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

§ 221.1 [Amended]

2. Section 221.1(b) is amended by removing the word "§ 221.2(b)" and adding "§ 221.2" in its place.

3. Section 221.2 is amended as follows:

a. By removing the alphabetic paragraph designations from the definitions and placing the definitions in alphabetical order;

b. By removing the paragraph designation (1) in front of the definition of *Bank*, by designating the text following the work *Bank* as paragraph (1), by revising newly designated paragraph (1) introductory text and paragraph (2) introductory text;

c. By adding new definitions in alphabetical order for *Cash equivalent* and *Examining authority*;

d. By removing the period at the end of paragraph (6)(iii) and adding "; or" in its place, and by adding new paragraph (6)(iv) to the definition of *Margin stock*;

e. By revising the third sentence of the definition of *Maximum loan value*.

The additions and revisions read as follows:

§ 221.2 Definitions.

* * * * *

Bank (1) Has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes:

* * * * *

(2) Bank does not include:

* * * * *

Cash equivalent means negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, and any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is a money market fund in compliance with all applicable requirements of SEC Rule 2a–7 (17 CFR 270.2a–7).

* * * * *

Examining authority means:

(1) The national securities exchange or national securities association of which a broker or dealer is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission (SEC) as the examining authority for the creditor.

* * * * *

Margin stock * * *

(6) * * *

(iv) A company which is a money market fund in compliance with all applicable requirements of SEC Rule 2a–7 (17 CFR 270.2a–7).

Maximum loan value * * * Puts, calls and combinations thereof that do not qualify as margin stock have no loan value. * * *

* * * * *

4. Section 221.3 is amended as follows:

a. By revising the last sentence of paragraph (a)(1);

b. By revising paragraph (c);

c. By adding a sentence to the end of paragraph (d)(1);

d. By revising paragraph (e). The revisions and additions read as follows:

§ 221.3 General requirements.

(a) * * * (1) * * * All other collateral, except for puts and calls, has good faith loan value, as defined in § 221.2 of this part.

* * * * *

(c) *Purpose statement for agreements involving revolving or multiple-draw credit or financing of securities purchases on a payment-against-delivery basis.* (1) If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding $100,000, under an agreement involving revolving or other multiple-draw credit or financing of securities purchases on a payment-against-delivery basis, Form FR U–1 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed or at the end of any day on which credit is extended under the agreement, the bank calls for additional collateral sufficient bring the credit into compliance with § 221.8 (the Supplement). For any purpose credit disbursed under the agreement, the bank shall obtain and attach to the executed Form FR U–1 a current list of collateral which adequately supports all credit extended under the agreement.

(d) * * * (1) * * * Syndicated loans need not be aggregated with other unrelated purpose credit extended by the same bank.

* * * * *

(e) *Mixed collateral loans.* (1) A purpose credit secured in part by margin stock and in part by collateral other than securities and cash equivalents shall be treated as two separate loans, one secured by margin stock and any other securities and cash equivalents and one by all other collateral. A bank may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(2) A purpose credit secured entirely by securities and cash equivalents may be treated as a single loan.

* * * * *

5. Section 221.4 is amended by revising the parenthetical phrase in the middle of paragraph (a) to read as follows:

§ 221.4 Agreements of nonmember banks.

(a) * * * (See Form FR T–1, T–2)

* * *

* * * * *

6. Section 221.6 is amended by revising paragraph (f) to read as follows:

§ 221.6 Exempted transactions.

* * * * *

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

* * * * *

7. Section 221.7 is amended by revising paragraph (c)(2) to read as follows:

§ 221.7 Requirements for the list of OTC margin stocks.

* * * * *

(c) * * *

(2) No longer substantially meets the provisions of paragraph (b) of this section or the definition of *OTC margin stock* in § 221.2 of this part.

* * * * *

8. Section 221.8 is amended by revising paragraphs (a) and (c) to read as follows:

§ 221.8 Supplement, maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is fifty percent of its current market value.

* * * * *

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

By order of the Board of Governors of the Federal Reserve System, December 6, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30131 Filed 12–11–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–66–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Powered by General Electric CF6–80C2 or Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require modification of the engine fuel feed system. This proposal is prompted by reports indicating that the coupling nut on the fuel tube on the outboard strut (engine position 1) fractured. The actions specified by the proposed AD are intended to prevent such fracturing of the coupling nut, which could result in release of fuel onto the engine cowling and a subsequent fire.

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DATES: Comments must be received by February 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamra J. Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2669; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

The FAA has received reports indicating that the coupling nut on the fuel tube on the outboard strut (engine position 1) on several Boeing Model 747–400 series airplanes fractured. Fracturing of the coupling nut caused fuel to leak onto the engine cowling. This fracturing has been attributed to relative movement between the outboard struts (engine positions 1 and 4) and the wing front spar. Fracturing of the coupling nut on the fuel tube can result in release of fuel onto the engine cowling. This condition, if not corrected, could result in a fire.

The FAA has reviewed and approved two service bulletins that describe procedures for modification of the engine fuel feed system:

1. Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995, which applies to certain Model 747–400 series airplanes powered by either General Electric CF6–80C2 or Pratt & Whitney PW4000 series engines. This service bulletin describes procedures for replacement of the strut fuel tubes and couplings at engine positions 1 and 4. The replacement involves installing new shrouded couplings that have been redesigned to be more flexible in response to the relative movement between the outboard struts and the wing front spar.

2. Boeing Service Bulletin 747–28–2146, dated August 13, 1992, which applies to certain Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines. This service bulletin describes procedures for installation of new fuel lines, shrouded fuel line couplings redesigned to be more flexible (between the strut mid bulkhead and the wing front spar), and drain lines at each engine position to provide a drain path from the new couplings to the existing drain system.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the engine fuel feed system. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that, although Boeing Service Bulletin 747–28–2146 recommends installation of fuel lines, couplings, and drain lines at each engine position, this proposed AD would require those installations only at engine positions 1 and 4. The FAA finds that the addressed unsafe condition does not exist with regard to engine positions 2 and 3, since relative movement between those engine positions and the wing front spar is insufficient to cause fracturing of the coupling nut. Further, the FAA has received no reports of fracturing of the coupling nut that have been attributed to relative movement between engine positions 2 and 3 and the wing front spar.

There are approximately 226 Model 747–400 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 34 airplanes of U.S. registry would be required by this proposed AD to replace the strut fuel tubes and couplings at engine positions 1 and 4 in accordance with Boeing Alert Service Bulletin 747–28A2185. That replacement would take approximately 74 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,582 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $476,748, or $14,022 per airplane.

Currently, there are no Model 747–400 series airplanes on the U.S. Register that would be required by this AD to accomplish the installation specified in Boeing Service Bulletin 747–28–2146. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 162 work hours per airplane (81 work hours per engine; 2 engines per airplane) to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,582 per airplane. Based on these figures, the cost impact of this proposed installation would be $19,302 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–98–AD.

Applicability: Model 747–400 series airplanes powered by General Electric CF6–80C2 or Pratt & Whitney PW4000 series engines; as identified in Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995, and Boeing Service Bulletin 747–28–2146, dated August 13, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracturing of the coupling nut, which could result in release of fuel onto the engine cowling and a subsequent fire, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2), as applicable.

(1) For Model 747–400 series airplanes identified in Boeing Alert Service Bulletin 747–28A2185, Revision 1, dated September 21, 1995: Replace the strut fuel tubes and couplings at engine numbers 1 and 4 with new redesigned (shrouded) couplings, in accordance with that alert service bulletin.

(2) For Model 747–400 series airplanes having variable numbers RT641 through RT650 inclusive, identified in Boeing Service Bulletin 747–28–2146, dated August 13, 1992: On engine positions 1 and 4 only, install new fuel lines, shrouded fuel line couplings (between the strut mid bulkhead and the wing front spar), and drain lines in accordance with that service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30213 Filed 12–11–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–78–AD]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require inspections to detect corrosion and cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the outer skin; and repair, if necessary. This proposal is prompted by cracking found at the lower corner of the horizontal-stabilizer cutout longeron during a full scale fatigue test. The actions specified by the proposed AD are intended to prevent such cracking, which could result in reduced structural integrity of the horizontal stabilizer cutout longeron.

DATES: Comments must be received by January 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 277–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

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submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-78-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-78-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300-600 series airplanes. The DGAC advises that, during a full-scale fatigue test, cracking was found on the test airplane at the lower corner of the horizontal-stabilizer cutout longeron, between frame (FR) 87 and FR89 and between stringer (STGR) 24 and STGR27, left- and right-hand. The cracking was found after 87,875 simulated flights. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the horizontal stabilizer cutout longeron.

Airbus has issued Service Bulletin A300-53-6042, Revision 1, dated February 20, 1995, which describes procedures for repetitive visual and eddy current inspections to detect corrosion and cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the outer skin between FR87 and FR89 and between STGR24 and STGR27, left- and right-hand; and repair, if necessary. The service bulletin also describes procedures for repetitive rotating probe inspections to detect cracks in the fastener holes at the same locations, and repair, if necessary. The service bulletin also describes procedures for certain follow-on actions, which include installing a new corner fitting, installing a new longeron, and perfor[illegible] a cold working procedure repairing c[illegible]cks of certain measurements. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 94-269-171(B)R1, dated March 29, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual and eddy current inspections to detect corrosion and fatigue cracking of the lower horizontal-stabilizer cutout longeron, the corner fitting, the skin strap, and the skin between FR87 and FR89 and between STGR24 and STGR27, left-hand and right-hand. The proposed AD would also require repetitive rotating probe inspections to detect cracks in the fastener holes at the same locations; and repair or certain a follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously. Certain repairs would be required to be accomplished in accordance with a method approved by the FAA.

Operators should note that certain requirements of this proposed AD would differ from actions recommended in the referenced Airbus service bulletin. The service bulletin specifies that inspection thresholds and intervals may be adjusted based on certain average flight operations of the airplane. However, the FAA has determined that such adjustments would not address the unsafe condition in a timely manner. Therefore, this proposed AD does not permit such adjustments. In developing the appropriate compliance time for the proposed rule, the FAA considered not only the manufacturer's recommendation, but the safety implications involved with cracking of the horizontal-stabilizer cutout longeron and the number of landings that had been accumulated when cracking was detected. In light of these factors, the FAA finds the compliance times specified in the proposed AD for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Additionally, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, even if those landings are less than five percent of the landings between inspection intervals. Since the fatigue cracking that was found in the lower horizontal stabilizer cutout longeron is aggravated by landing, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 268 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,160 to $16,080 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95-NM-78-AD.

Applicability: Model A300-600 series airplanes on which Airbus Modification No. 6146 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alternation, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer cutout longeron due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later: Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Areas 1 and 2 of the lower horizontal stabilizer cutout longeron, as defined in Airbus Service Bulletin A300-53-6042, Revision 1, and dated February 20, 1995. Perform the inspections in accordance with the service bulletin.

(b) Perform a visual and an eddy current inspection to detect cracks and/or corrosion of Area 3 of the lower horizontal-stabilizer cutout longeron, as defined in Airbus Service Bulletin A300-53-6042, Revision 1, dated February 20, 1995. Perform these inspections in accordance with the service bulletin, at the later of the times specified in paragraph (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 24,000 total landings, but not before the accumulation of 18,000 total landings; or

(2) Prior to the accumulation of 2,000 landings after the effective date of this AD.

(c) If no cracking is detected during any inspection required by this AD: Prior to further flight, cold work and ream the vacated fastener holes, in accordance with Airbus Service Bulletin A300-53-6042, Revision 1, dated February 20, 1995; and perform the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which no cracking is found in Area 1 or 2: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes on which no cracking is found in Area 3: Perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include installing a new corner fitting, installing a new longeron and performing a cold working procedure.) After accomplishment of these follow-on actions, no further action is required by this AD.

(d) If any cracking is detected during any inspection required by this AD, perform the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If any cracking is found in Area 1 or 3 that is within the limits specified in Airbus Service bulletin A300-53-6042, Revision 1, dated February 20, 1995: Prior to further flight, repair in accordance with the service bulletin.

(2) If any cracking is found in Area 2, or if any cracking is found in any area and that cracking is beyond the limits described in Airbus Service Bulletin A300-53-6042, Revision 1, dated February 20, 1995: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(e) If any corrosion is detected during any inspection required by this AD, prior to further flight, repair the corrosion in accordance with Airbus Service Bulletin A300-53-6042, Revision 1, dated February 20, 1995.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manger, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30212 Filed 12-11-95; 8:45 am]

BILLING CODE 4910-13-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 87-124; FCC 95-474]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 28, 1995, the Commission adopted a Notice of Proposed Rulemaking (NPRM) regarding hearing aid compatibility of wireline telephones. Rules proposed in the NPRM would require that all wireline telephones in the workplace, confined settings (e.g., hospitals, nursing homes) and hotels and motels eventually would be hearing aid compatible and have volume control. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Written comments by the public on the NPRM and on the proposed and/or modified information collections are due on or before January 12, 1996, and reply comments are due on or before February 16, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 12, 1996.

ADDRESSES: Office of the Secretary, Room 222, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Attorney, 202/418-2340, Fax 202/418-2345, TTY 202/418-0484, glipscom@fcc.gov, Network Services

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Division, Common Carrier Bureau. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Notice of Proposed Rulemaking in the matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, (CC Docket 87–124, adopted November 28, 1995, and released November 28, 1995). The file is available for inspection and copying during the weekday hour of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037, phone 202/857–3800.

Paperwork Reduction Act of 1995

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: NA.

Title: Access to Telecommunications Equipment and Services by Persons With Disabilities, CC Docket No. 87–124.

Form No.: NA.

Type of Review: New Collection.

Respondents: Businesses or other for profit.

Number of Respondents: 806,100.

Estimated Time per Response: 2 hours.

Total Annual Burden: 1,635,000 hours.

Needs and Uses: The manufacturing date stamp on telephone equipment is needed for, and will be used for, determining whether a particular telephone is hearing aid compatible. The designation of emergency use hearing aid compatible telephones is needed to provide access to workplace emergency telephones for persons with hearing disabilities until workplaces are required to provide that all workplace telephones are hearing aid compatible. The equipment packaging and instructions information is needed to alert consumers in cases where a packaged telephone is not hearing aid compatible.

Analysis of Proceeding: In 1982, the Commission adopted rules implementing the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610 (HAC Act). In 1993, the Commission suspended portions of the 1982 rules because petitions filed by establishments affected by the regulations stated that the establishments were encountering serious difficulties in their attempts to comply. On March 27, 1995, the Commission announced that an advisory committee, the Hearing Aid Compatibility Negotiated Rulemaking Committee (Committee), would consider whether the rule suspension should be lifted and whether new rules should be proposed. (See 59 FR 60343 (Nov. 23, 1994); 58 FR 1539 (March 27, 1995); and 60 FR 27945 (May 26, 1995). The Committee represented the views and interests of all interested parties, including those of the Commission, telephone equipment manufacturers, employers, hospitals, nursing homes, hotels and motels, and persons with disabilities. The Committee's recommendations, adopted by unanimous consent, were filed with the Commission in the Committee's Final Report of August, 1995. The NPRM reflects the recommendations of the Committee.

The NPRM seeks comment first, on the Committee's proposal to require hearing aid-compatible telephones in: (1) The non-common areas of the workplace; (2) the patient and residential rooms of confined settings, such as hospitals and nursing homes; and (3) the guest rooms of hotels and motels. Second, the NPRM seeks comment on a proposal that all replacement telephones and all newly purchased telephones should be equipped with volume control, in addition to having electro-magnetic coil hearing aid-compatibility. The NPRM also seeks comment on a proposed rule that would require that all telephones manufactured or imported for use in the United States have a volume control feature, and includes a proposed technical specification for volume control. Third, the NPRM seeks comment on a proposal to modify our rules governing telephone equipment labelling requirements. Fourth, the NPRM seeks comment on proposals to implement additional recommendations of the Committee regarding consumer education. Finally, the NPRM seeks comment on proposed amendments to existing hearing aid compatibility rules for the purpose of clarification.

The proposed rules provide, in general, that all wireline telephones in the workplace, in confined settings, and in hotels and motels eventually would be hearing aid compatible, as defined at 47 C.F.R. Section 68.316 (electro-magnetic coil compatibility). The proposed rules would require no testing or retrofitting of existing workplace telephones. Instead, the proposed rules set deadlines that are beyond the normal life-cycle times for the telephones in these establishments to be replaced. The proposed rules also would require volume control for newly acquired and replacement telephones in these establishments, once the Commission's technical standards and implementation rules for volume control are in place. Replacement or retrofitting for volume control also would not be required, and existing inventories of telephones would not be affected by the volume control requirement. The NPRM states that the volume control feature could assist many telephone users, whether they have hearing disabilities, and whether they rely on telephones that are hearing aid compatible. The rules are necessary to implement the Hearing Aid Compatibility Act of 1988. If adopted, the proposed rules would increase access by persons with hearing disabilities to telephones provided for emergency use.

Under the proposed rules, most workplace telephones would be required to be hearing aid compatible by January 1, 2000. In harmony with the provisions of the Americans With Disabilities Act of 1990, establishments with fewer than fifteen employees would be exempt from these requirements. After the applicable date for having hearing aid compatible telephones, employers could presume that their telephones were hearing aid compatible. Any person legitimately on the premises could challenge this presumption with a good faith request for a hearing aid compatible telephone. Upon receipt of such a request, the employer would have fifteen working days to replace any particular telephone that turns out not to be hearing aid compatible.

For confined settings, the proposed rules would require that establishments with fifty or more beds make their telephones hearing aid compatible within one year of the Commission's implementing Order, while those with fewer than fifty beds would have to comply within two years. Telephones in all confined setting establishments would be exempt if alternate signalling devices were available, monitored and working, or if a resident brought in and maintained his or her own telephone equipment.

The proposed rules would require that hotels and motels with eighty or more guest rooms be required to provide hearing aid compatible telephones within two years of the Commission's implementing Order, while those with fewer than eighty guest rooms would have three years to do so. Upon the effective date of these proposed rules, generally twenty percent of guest rooms must have telephones that are hearing aid compatible.

The proposed rules do not address wireless telephone hearing aid compatible issues, because those are being addressed by the Commission's Wireless Telecommunications Bureau.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix C of the NPRM. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they also must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

Reason for Action: The NPRM responds to the recommendations of the Hearing Aid Compatibility Negotiated Rulemaking Committee. Pursuant to the Negotiated Rulemaking Act, the Commission is obligated to initiate this rulemaking proceeding.

Objectives: The objective of this proposal is to provide greater access to the telephone network by persons with hearing disabilities, while at the same time balancing the needs of establishments that must provide hearing aid-compatible telephones.

Legal Basis: The proposed action is authorized under Sections 1, 201–205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, and 218.

Reporting, Record Keeping and Other Compliance Requirements: The proposed rules would require manufacturers and importers of telephones for use in the United States to provide volume control with their equipment after a certain date. Such telephone equipment manufacturers and importers also would be required to display on their equipment the date of manufacture. In addition, workplaces with fifteen or more employees, confined setting establishments and hotels and motels would have to provide hearing aid-compatible telephones after certain dates.

Federal Rules Which Overlap, Duplicate, or Conflict with These Rules: None.

Description, Potential Impact and Number of Small Entities Involved: The proposals set forth in this Notice may have an economic impact on workplaces with fifteen or more employees, confined setting establishments and hotels and motels. These establishments eventually may be required to replace some or all of their existing telephones with telephones that are hearing aid-compatible, including telephones that have volume control. These proposals also may make it easier for these establishments to acquire employees and generate business.

Any Significant Alternatives Minimizing the Impact on Small Entities, Consistent with Stated Objectives: None.

List of Subjects

47 CFR Part 64

Communications common carriers, Handicapped, Telephone, Hearing aid compatibility.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telephone, Hearing aid compatibility, Volume control.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30374 Filed 12–11–95; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–175; RM–8707]

Radio Broadcasting Services; Ada, Newcastle, Watonga, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tyler Broadcasting Corporation requesting the reallotment of Channel 227C1 from Ada, OK, to Newcastle, OK, as the community's first local aural broadcast service, and the modification of Station KTLS' license to specify Newcastle as its community of license. To accommodate the allotment at Newcastle, the Commission also proposes the substitution of Channel 230A for Channel 228A at Watonga, OK, and the modification of Station KIMY's license to specify the alternate Class A channel. Channel 227C1 can be allotted to Newcastle in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) south, at coordinates 35–10–44 NL; 97–36–03 WL, to accommodate petitioner's desired transmitter site. Channel 230A can be allotted to Watonga at Station KIMY's licensed transmitter site, at coordinates 35–54–17 NL; 98–23–09 WL.

DATES: Comments must be filed on or before January 29, 1996, and reply comments on or before February 13, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smith, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–175, adopted November 21, 1995, and released December 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–

3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-30320 Filed 12-11-95; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 60, No. 238

Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Request for New Information Collection and Extension and Revision of Currently Approved Information Collection

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Forest Service's intention to collect information necessary to implement the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. 101–382). New information collection is necessary to administer timber export restrictions. Extension and revision of currently approved existing information collection, included with this notice, is also necessary to administer timber export restrictions.

DATES: Comments must be submitted on or before February 12, 1996.

ADDRESSES: All comments should be addressed to: Dave Hessel, Director, Timber Management Staff, U.S. Forest Service, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Rex Baumbeck, Timber Sale Contract Administration Specialist, Timber Management Staff, U.S. Forest Service, at (202) 205–0855.

SUPPLEMENTARY INFORMATION: The Forest Service needs this collection to assist in the administration of the Forest Resources Conservation and Shortage Relief Act of 1990 (Act). All new and revised collections mentioned in this notice are proposed to be consolidated under OMB Number 0596–0114:

New Information Collection Requirements

Title: USDA, Forest Service Request for Timber Export and Substitution Information Collection.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following collection requirements are new and have not received approval by the Office of Management and Budget. These collections are proposed to be consolidated with other collections under OMB Number 0596–0114.

36 CFR 223.187(a)(1)(i)

Abstract: To validate that lumber and construction timbers (except western red cedar) have been manufactured to required grades (16 U.S.C. 620e(7)(B)(i)), the shipper must retain a legible, certified copy of the lumber inspection certificate. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: The public reporting burden to retain lumber inspection certificates to validate that products have been manufactured to required grades is estimated to average 0.05 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for maintaining lumber inspection certificates (except western red cedar) are estimated to be 40.

Estimated Number of Responses per Respondent: 40.

Estimated Total Annual Burden on Respondents: 80.

36 CFR 223.187(b)(2)

Abstract: To ensure that lumber products (except western red cedar) are processed for their intended use (16 U.S.C. 620e(7)(B)(i)), manufacturers are required to certify that the products are not intended for remanufacture. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for certification that lumber products (except western red cedar) are not intended for remanufacture is estimated to average 0.20 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that lumber products (except western red cedar) are not intended for remanufacture are estimated to be 40.

Estimated Number of Responses per Respondent: 40.

Estimated total Annual Burden on Respondents: 320.

36 CFR 223.187(b)(3)

Abstract: To ensure that pulpwood bolts are not intended for remanufacture, manufacturers are required to certify that the bolts are intended to be manufactured into pulp (16 U.S.C. 620e(7)(B)(viii)). This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification that pulpwood bolts are not intended for remanufacture is estimated to average 0.25 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that pulpwood bolts are not intended for remanufacture are estimated to be 3.

Estimated Number of Responses per Respondent: 33.

Estimated Total Annual Burden on Respondents: 25.

36 CFR 223.187(b)(5)

Abstract: To assist enforcement of the Act, the certifications in 36 CFR 223.187(b) (2) and (3) must be signed by someone with authority. Thus, a delegation of authority is required. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for the delegation of authority is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the delegation of authority are estimated to be 43.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 43.

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36 CFR 223.187(c)(1)

Abstract: To validate that western red cedar lumber has been manufactured to required grades (16 U.S.C. 620b and 620e), the shipper must retain a legible, certified copy of the lumber inspection certificate. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: The public reporting burden to retain lumber inspection certificates to validate that western red cedar products have been manufactured to required grades is estimated to average 0.05 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for lumber inspections certificates for western red cedar are estimated to be 7.

Estimated Number of Responses per Respondents: 43.

Estimated Total Annual Burden on Respondents: 15.

36 CFR 223.187(d)(1)

Abstract: To ensure that western red cedar lumber products are processed for their intended use (16 U.S.C. 620b and 620e), manufacturers are required to certify that the products are not intended for remanufacture. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification that western red cedar lumber products are not intended for remanufacture is estimated to average 0.20 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that western red cedar lumber products are not intended for remanufacture are estimated to be 7.

Estimated Number of Responses per Respondent: 43.

Estimated Total Annual Burden on Respondents: 60.

36 CFR 223.187(d)(3)

Abstract: To assist in enforcement of the Act, the certification in 36 CFR 223.187(d)(1) must be signed by someone with authority. Thus, a delegation of authority is required. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for the delegation of authority is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for delegation of authority are estimated to be 7.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7.

36 CFR 223.190(a)

Abstract: An exporter of unprocessed timber that intends to affiliate with a purchaser of Federal timber may apply for a sourcing area if they certify their intent to affiliate (16 U.S.C. 620b(c)(3)). This certification is necessary to ensure that sourcing area applications are processed only when there is demonstrated intent to affiliate. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for certification of intent to affiliate is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification of intent to affiliate are estimated to be 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.

36 CFR 223.190(j)

Abstract: Applicants for sourcing areas are required to certify that their applications are accurate and true. Respondents to the proposed regulations suggested that people who comment on sourcing area applications should submit accurate and true information, as well. This certification meets that need (16 U.S.C. 620b(c)(3)). This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: The public reporting burden to certify comments on sourcing area applications is estimated to average 0.10 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents to certify comments on sourcing area applications are estimated to be 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10.

36 CFR 223.190(l)

Abstract: A person with an approved sourcing area may choose to relinquish it (16 U.S.C. 620b(c)). It is important that this be a carefully considered decision; therefore, persons relinquishing a sourcing area are asked to sign a certification stating that they understand the consequences of relinquishing a sourcing area. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for relinquishing a sourcing area is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents wishing to relinquish a sourcing area are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.

36 CFR 223.193(b)

Abstract: The Act requires each person who transfers unprocessed timber originating from Federal lands to provide such other person with a notice, acknowledgement, and agreement that the Federal timber will receive domestic processing (16 U.S.C. 620d(a)). This certification is necessary in order to prevent substitution of Federal timber for private timber that is exported. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the certification concerning transfers of unprocessed timber originating from Federal lands is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the certification concerning transfers of unprocessed timber originating from Federal lands are estimated to be 500.

Estimated Number of Responses per Respondent: 25.

Estimated Total Annual Burden on Respondents: 12,500.

36 CFR 223.194(b)

Abstract: Except for private timber that is exempt from the export restrictions, the rule requires a certification that domestic processing is required for each transaction involving unprocessed private timber, pursuant to the Act's prohibition against substitution (16 U.S.C. 620b). This certification is necessary in order to prevent substitution of private timber that requires domestic processing for private timber that is exported. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the certification required for transfers of private timber requiring domestic processing is estimated to average 0.50 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the certification required for transfers of private timber requiring domestic manufacturing are estimated to be 500.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 5,000.

36 CFR 223.195(b)

Abstract: The rule requires that all identifying marks placed on Federal logs and/or private logs that require domestic processing be retained or, if lost, replaced. This requirement is needed to maintain log identity until the log is processed, in order to enforce the Act's prohibition against substitution (16 U.S.C. 620b). This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for the retention of identifying marks is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for retention of identifying marks are estimated to be 100.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 1,000.

36 CFR 223.195(c)

Abstract: The rule requires that National Forest System logs be branded and, if they require domestic processing, painted with highway yellow paint. This is necessary to show National Forest System timber sale origin and the domestic processing requirement, in order to enforce the Act's prohibition against exporting unprocessed Federal timber (16 U.S.C. 620a). This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for branding and painting National Forest System logs is estimated to average 3.33 hours per (sale) response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for branding and painting National Forest System logs are estimated to be 1,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 10,000.

36 CFR 223.195(d)

Abstract: The rule requires that private logs that require domestic processing be painted with highway yellow paint. This is necessary to show the domestic processing requirement. This information collection requirement was identified in the proposed comprehensive rule published January 29, 1991 (56 FR 3354).

Estimate of Burden: Public reporting burden for painting private timber with highway yellow paint is estimated to average 2.25 hours per (sale) response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for painting private timber with highway yellow paint are estimated to be 2,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 13,500.

36 CFR 223.195(f)

Abstract: The rule provides that branding requirements on National Forest System logs may be waived in certain situations in order to lessen the burden on timber purchasers without hindering the agency's ability to enforce the Act. Purchasers may request a waiver by completing a certification statement. This information requirement was added in the final comprehensive rule, published September 8, 1995 (60 FR 46890), in response to comments received on the proposed comprehensive rule.

Estimate of Burden: Public reporting burden for waiver of the branding requirement on National Forest System logs is estimated to average 0.50 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for waiver of the branding requirement on National Forest System logs are estimated to be 1,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 1,500.

Extension and Revision of Currently Approved Information Collection Under 0596–0021

Title: USDA, Forest Service Request for Disposal of National Forest Timber, Reports on Export or Substitution of Unprocessed Timber.

OMB Number: 0596–0021.

Expiration Date of Approval: March 31, 1997.

Type of Request: The following collection requirements are extensions and revisions of currently approved OMB Number 0596–0021 and are proposed to be consolidated under OMB Number 0596–0114.

36 CFR 223.48(a)

Abstract: The existing regulations require an annual report, for all sales purchased prior to August 20, 1990, on the disposition of any unprocessed timber from the sale and the disposition of private timber within the tributary area which is exported or sold for export. This collection needs to be maintained, since timber purchased prior to August 20, 1990, may still be in commerce.

Estimate of Burden: Public reporting burden for the annual report, for timber sales purchased prior to August 20, 1990, is estimated to average 2.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the annual report, for timber sales purchased prior to August 20, 1990, are estimated to be 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50.

36 CFR 223.87

Abstract: In order to be eligible to bid, bidders must certify that their timber purchase and export activities are in

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compliance with the Act and existing regulations.

Estimate of Burden: Public reporting burden for certification that timber purchase and export activities are in compliance with the Act and existing regulations is estimated to average 30 seconds per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for certification that timber purchase and export activities are in compliance with the Act and existing regulations are estimated to be 500.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 83.

36 CFR 223.193(a)

Abstract: The Act requires an annual report on the acquisition and disposition of Federal timber. The Act contains this reporting requirement (16 U.S.C. 620d(a)(1)). This is a revision of currently approved form FS 2400–46 that was approved in OMB Number 0596–0021 as part of the 36 CFR 223.87 information collection requirements.

Estimate of Burden: Public Reporting burden for the annual report is estimated to average 4.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for the annual report are estimated to be 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000.

Extension and Revision of Currently Approved Information Collection Under 0596–0114

Title: USDA, Forest Service Request for Disposal of National Forest Timber, Timber Export or Substitution Restrictions.

OMB Number: 0596–0114.

Expiration Date of Approval: May 31, 1997.

Type of Request: The following collection requirement is an extension and revision of currently approved OMB Number 0596–0114 and is proposed to be consolidated with other information collections in this notice under OMB Number 0596–0114.

36 CFR 223.190(c)

Abstract: Sourcing area applications require certain minimum information to be evaluated, pursuant to the Act's requirements (16 U.S.C. 620b(c)(3)). This information includes: a map; a list of manufacturing facilities within same vicinity as applicant's facilities; any other relevant information; and certification that the information is true, complete, and accurate.

Estimate of Burden: Public reporting burden is estimated to average 8.0 hours per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estimated Number of Respondents: Respondents for sourcing area applications are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estiamted Total Annual Burden on Respondents: 16.

Extension and Revision of Currently Approved Information Collection Under 0596–0115

Title: USDA, Forest Service Request for Sale and Disposal of National Forest Timber, Log Export and Substitution Exemption Restrictions.

OMB Number: 0596–0115.

Expiration Date of Approval: August 31, 1995.

Type of Request: The following collection requirements are extensions and revisions of currently approved OMB Number 0596–0115 and are proposed to be consolidated under OMB Number 0596–0114.

36 CFR 223.191(e)

Abstract: Purchasers have the option of providing information for sourcing area reviews. This information may increase the likelihood that the results of the review will meet the purchaser's needs and will provide comprehensive information for the Department's review of the application (16 U.S.C. 620b(c)(3)).

Estimate of Burden: If purchasers elect to provide information for sourcing area reviews, the public reporting burden is estimated to average 2.0 hours per responses.

Respondents: Businesses or other for-profit entities, including small businesses.

Estiamted Number of Respondents: Respondents to the review of sourcing areas are estimated to be 10.

Estiamted Number of Responses per Respondent: 1.

Estiamted Total Annual Burden on Respondents: 20.

36 CFR 223.203(c)

Abstract: The Act provides an exception to indirect substitution restrictions for National Forest System timber from within Washington State (16 U.S.C. 620b(b)(2)). Purchasers with approved shares may sell or trade those shares if the purchaser advises the Regional Forester of the amounts being traded and the name of the person acquiring such rights, so the agency has accurate information by which to monitor the exemption.

Estimate of Burden: Public reporting burden is estimated to average 1.0 hour per response.

Respondents: Businesses or other for-profit entities, including small businesses.

Estmated Number of Respondents: Respondents to the trading of shares in Washington State are estimated to be 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 4, 1995.

Valdis E. Mezainis,

Acting Chief.

[FR Doc. 95–29949 Filed 12–11–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Housing and Community Development Service

Notice of Availability of Housing Funds

AGENCIES: Rural Housing and Community Development Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing and Development Service (RHCDS) announces the availability of housing funds for fiscal year 1996 (FY 1996). This action is taken to comply with 42 U.S.C. 1490p which requires that RHCDS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Room 5337, or Gloria Denson, Senior Loan Specialist, Single Family Housing Processing Division, Room 5334, RHCDS, USDA, South Agriculture Building, Washington, DC 20250, telephones (202) 720–1608 and (202) 720–1474 respectively. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the formulas and methodology applicable to loan and grant funds for FY 1996.

At the current time, there is no authority to obligate section 515 new construction loans. Rural Economic and Community Development (RECD) state offices will be advised when the program is re-authorized for new construction loans. The public may contact the individuals listed in this Notice or state office personnel for further information. The guidance provided to our state offices is separated between assistance available in our Multi- and Single-Family Housing Programs as follows:

Multi-Family Housing (MFH)

I. General

A. This notice provides MFH allocations to individual States for Fiscal Year (FY) 1996. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. The transition formula is not used.

B. MFH loan and grant levels for FY 1996 are as follows:

Section 514 Farm Labor Housing (LH) Loans	$15,000,000
Section 515 Rural Rental Housing (RRH) Loans	152,480,000
Section 516 LH Grants (Unobligated prior year balances and/or cancellations of prior years will be added to the amount shown)	10,0000,000
Section 521 Rental Assistance (RA)	
RRH New Construction	32,200,000
LH New Construction	4,600,000
Section 525/509 Housing Application Packaging Grants*	1,000,000
Section 533 Housing Preservation Grants (HPG)	11,000,000

* See Single Family Housing (SFH) section of this Notice for further information.

II. State Allocations

All state allocations, with the exception of new construction RA, have been developed with the methodology and formulas stated in 7 CFR part 1940, subpart L.

A. Section 515 RRH Loan Funds

1. *Amount Available for Allocation.*

Total available	$152,480,000
Less inventory property sales	8,500,000
Less general reserve	34,500,000
Less base administrative allocation	16,428,426
Less base allocation	0
Basic formula amount	93,051,574

2. *Base Allocation.* Not used.

3. *Administrative Allocation.* A distribution of funds to certain States to assure that all States receive at least $1,250,000 to ensure sufficient funding levels for new construction or repair and rehabilitation loans less base allocation.

4. *Reserves.*

a. *State Office Reserve.* In States which allocate funds to Districts, 7 CFR 1940.552(j) authorizes the State Director to hold a reserve. Such reserves, if established, will be available only for patchouts, leveraging state Section 515 funds with National Office reserve funds in a targeted area and to nonprofits, hardships or emergency situations.

b. *Inventory Property Sales.* $8,500,000 has been set aside to facilitate the sale of inventory properties. Funding for inventory property sales will be split between the National Office and State Office on a 50/50 basis.

c. *National Office Reserve.* The reserve is approximately 25 percent of the total funds available and is distributed as follows:

(i) *General Reserve.* $34,500,000 in general reserve funds have been set aside. Since access to general reserve funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Forms AD–622, "Notice of Preapplication Review Action," up to the authorized percentage of their allocation. Until June 3, 1996, State Directors can request these funds for the following purposes:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to consider the request.

(B) *Patchouts.* A patchout, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its allocation.

Note: Repairs/Rehabilitations. Each State will use its Section 515 Allocation for repair and rehabilitation loans. Such loans will have first priority for funds in each State.

(C) *RH Cooperatives.*

(ii) *Designated Reserves.* The following set asides are derived from the general reserve.

(A) *State Rental Assistance (RA).* An amount of $2.5 million of the RRH funds has been set aside for States in which an active State sponsored RA program is available. Funds will be distributed to participating States based on a pro rata share of State RA units being provided. These funds are subject to year-end pooling requirements.

(B) *Equity Loans.* An amount of $2.5 million has been set aside for the equity loan prepayment incentive features described in FmHA Instruction 1965–E. Funds are fully available and are subject to year-end pooling requirements. The amount of equity funds available may be changed administratively by RHCDS based upon use and need for funds.

(C) *Nonprofit Reserve.* An amount of $7.5 million has been set-aside for certain nonprofit applicants. The applicant must be a nonprofit entity which meets the following conditions:

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(1) Is a private nonprofit organization, consumer cooperative, or Indian Tribe; (2) whose principle purposes include the planning, development, and management of low-income housing; (3) is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code; (4) is not wholly or partially owned or controlled with or by a "for profit" entity; (5) is not a public body, housing authority, limited partnership, limited partnership with a nonprofit general partner; (6) is not coventuring with a "for profit" entity eligible for Section 515 assistance; and (7) is not requesting Low-Income Housing Tax Credits (LIHTC) pursuant to section 42 of the Internal Revenue Code. In order to maximize the number of loans from this reserve, each State may develop one proposal which may not exceed the State's average size (number of units) new construction loan. Funds will be made available on a first-come-first-served basis.

(D) *Targeting Reserve:* An amount of $12 million has been set aside for loan requests which are located in target areas selected by the State Director, in accordance with Strategic Plan Goals established by the Under Secretary. By December 15, 1995, each State Director will ensure that such target areas are selected. No state may request or receive more than $1 million from this reserve. A state or jurisdiction may utilize up to $500,000 of their own allocation in addition to the $1 million they can receive from the National Office provided they have addressed all repair and rehabilitation needs in their state. No requests received after January 3, 1996, will be considered.

5. *Pooling of Funds.*

a. *State Office Pooling.* The States which allocate funds by/to Districts are not authorized to pool unobligated funds prior to May 5, 1996.

b. *National Office Pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all Section 515 RRH loan funds is scheduled for close of business (COB), August 19, 1996.

B. Rental Assistance (RA)

1. *Valuation of New Construction RA.* A total of $32,200,000 will be available for RRH new construction RA and $4,600,000 is available for LH new construction RA. These equate to an estimated 3,200 units for the RRH and LH loan programs. All RA units held in the reserves are estimated based on the national weighted average.

2. *Estimated Units Available for Allocation.* The allocation formula contained in 7 CFR 1940.576 will not provide a proportionate amount of new construction RA in each State to match loan funds available for new unit development and is therefore not utilized in FY 1996. New construction RA allocations, based upon State's requests, are included in this Notice.

Estimated total units available	3,200
Less LH Reserve	400
Subtotal RRH	2,800
Less RRH reserve	1,550
Less RRH base allocation	0
Less RRH administrative allocation	0
Total State Requested RA Units	1,250

3. *Base Allocation.* No base allocation is provided.

4. *Administrative Allocation.* No administrative allocation is provided.

5. *Reserves:*

a. *State Office Reserve.* In States which allocate funds and RA, 7 CFR 1940.552(j) authorizes the State Director to hold a reserve. Such reserves, if established, will be limited only to patchouts and loans under the nonprofit or targeted area reserves, and hardships and emergency situations.

b. *National Office Reserve.* 925 units will be held in the National Office reserve. The National Office reserve is available to States for the nonprofit and targeting reserves.

c. *Participation loans and RA:* 625 units of new construction RA have been set aside to provide tenant subsidy on units that may be developed through participation loans, if such loans are authorized. This set aside will be redistributed if participation loans are not authorized.

d. *LH.* The 400 RA units for LH new construction are being retained in a separate LH reserve.

6. *Pooling of RA.*

a. *State Office Pooling.* The States which allocate RA by or to Districts are not authorized to pool unobligated RA prior to May 6, 1996.

b. *National Office Pooling.* Year-end National Office pooling of RA for RRH is scheduled for COB, August 19, 1996.

7. *Availability of the Allocation.* States are authorized to approve up to 100 percent of their RA allocation indicated in this Notice.

8. *Suballocation by the State Director.* RA units may be suballocated to Servicing Offices, at the discretion of the State Director, in accordance with 7 CFR 1940.552(j).

9. *Approval and Obligation of RA.* Loans will only be obligated when sufficient RA to ensure market feasibility can be obligated at the same time. RA for loans obligated in a prior FY is not authorized.

III. Farm Labor Housing Loan and Grant Funds (Not Allocated to States)

A. Section 514 Farm LH Loans

Loans are funded in accordance with 7 CFR 1940.579(a).

FY 1996 Appropriation	$15,000,000
Available for Off-Farm Loans	10,500,000
Available for On-Farm Loans	1,500,000
National Office Reserve	3,000,000

B. *Section 516 LH Grants.* These grants are funded in accordance with 7 CFR 1940.579(b).

FY 1996 Appropriation	$10,000,000
Available for LH Grants	7,000,000
Available for Technical Assistance Contracts	1,000,000
National Office Reserve	2,000,000

C. *National Office Loan and Grant Reserve.* $5 million National Office loan and grant reserve that will be available until June 30, 1996, or until expended. The reserve will be used for the following purposes on a first-come-first-served basis.

1. *Repair and rehabilitation of LH projects in the portfolio.* Loans and grants are available for the repair and rehabilitation of existing projects that have health and safety violations.

2. *Migrant and migrant/homeless projects.* Funds are available for obligation for proposals under existing regulations that include at least fifty percent of the units to serve migrant farmworkers or the dual populations of migrant farmworkers and the homeless.

3. *Leveraged LH projects.* While some leverage funds should be used in all LH projects to the degree possible and feasible, reserve funds are available for projects that have commitments of non-LH loan and grant funds in excess of 25 percent of total development cost.

D. *RA for LH—New Construction.* This RA is held in a National Office reserve for use with LH loan and grant applications in accordance with paragraph II B of this Notice.

E. *Processing Preapplications:*

1. In light of the current number of preapplications authorized to be developed into full applications, new Forms AD–622 will be authorized on a limited basis. Those preapplications that fall within the following categories will be accepted for National Office review:

a. Preapplications that are on-hand in the National Office and those that have been reviewed by the State Office and are ready as of the date of this notice for National Office review.

b. Preapplications that are from sponsors assisted by the TA contractors.

c. Preapplications for repair and rehabilitation of existing projects to correct serious health and safety conditions.

d. Preapplications that include at least 50 percent of the units for migrant farmworkers and operate on a seasonal basis.

e. Preapplications that are highly leveraged and reflect at least 50 percent of the total development cost being funded by the LH loan and grant program.

2. Preapplications should not exceed $2.5 million in LH loan and grant funds and proposals should reflect economically feasible projects in terms of management and operation.

IV. Section 533 Housing Preservation Grants (HPG)

A. *Amount Available for Allocation.*

Total available	$11,000,000
Less reserve	550,000
Less base allocation	5,300,000
Less administrative allocation	541,436
Basic Formula Amount	4,608,564

B. *Base Allocation.* The base allocation is $100,000 times 53 states and territories which equals $5.3 million.

C. *Administrative Allocations.* A distribution of funds to certain States to assure that all States receive at least $150,000 of initial allocation.

D. *Reserve.* The National Office reserve is 5 percent of the total funds available. The reserve is for emergency and projects in targeted areas. The request must include sufficient documentation to support the emergency and projects in targeted areas including reasons why it is in the Government's best interest to consider the request.

E. *Pooling of Funds.* Funds in excess of the dollar amount of applications on hand will be pooled in the National Office at a date to be announced.

F. *Availability of the Allocation.* HPG is a competitive grant program. Opening and closing dates for submission of preapplications will be announced. Subsequent to review and ranking of preapplications and submission of final applications, States are authorized to obligate HPG requests in amounts not to exceed those reflected in this Notice. There will be no funds for patchouts or additional projects.

V. Exception Authority

The Administrator, or designee, may in individual cases, make an exception to any requirements of this Notice which are not inconsistent with the authorizing statute, if he or she finds that application of such requirement would adversely affect the interest of the Government. The Administrator, or his or her designee, also reserves the right to change pooling dates, establish or change minimum and maximum fund usage from set-asides or the reserve, or restrict participation in set-asides and reserves.

Single Family Housing (SFH)

I. General

A. This section provides SFH allocations available to individual States for fiscal year (FY) 1996. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568.

B. The SFH loan amounts and grant amounts shown below are based on the total loan levels deliverable with subsidy. The SFH levels authorized for FY 1996 are as follows:

Section 502 Guaranteed Rural Housing (RH) Loans	
Nonsubsidized Guarantees *	$1,700,000,000
Subsidized Guarantees	0
Section 502 Direct RH Loans	
Very Low-income Subsidized Loans *	406,498,000
Low-income Subsidized Loans *	609,747,000
Nonsubsidized Loans	0
Credit Sales	0
Section 504 Housing Repair Loans *	37,798,000
Section 504 Housing Repair Grants **	24,900,000
Section 509 Compensation for Construction Defects *	495,000
Section 523 Self-Help Site Loans *	595,010
Section 523 Self-Help Technical Assistance Grants **	12,650,000
Section 524 RH Site Loans *	600,000
Section 525/509 Housing Application Packaging Grants (HAPG) **	5,191,000

* SFH loan levels deliverable with subsidy.
** Unobligated or canceled funds from prior fiscal years have been added to the amount shown.

C. SFH loan and grant types not allocated to States are available on a first-come-first-served basis as follows:

1. *Section 502 Direct Nonsubsidized Funds (loan making and servicing).* There were no FY 1996 funds designated for loans for nonsubsidized loan making and servicing applicants. Assistance is available for qualified very low- and low-income applicants who are eligible for subsidy, but at the present time the subsidy is not needed. The subsidy will be obtain from the State's subsidized regular funding.

2. *Credit Sale Authority.* There is no funding provided for credit sales in FY 1996. State Directors are required to maintain an adequate reserve of section 502 loan funds to finance the sale of SFH inventory program property to program eligible buyers. FY 1996 funding for RHCDS nonprogram financing of credit sales is not authorized.

3. *Section 509 Compensation for Construction Defects, Section 523 Self-Help Site Loans, Section 523 Self-Help Technical Assistance Grants, and Section 524 RH Site Loans.* Funding will be approved by the National Office, SFHPD.

4. *Deferred Mortgage Payment Demonstration.* Funding will not be provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in 7 CFR part 1940. The funds distributed to each State for a particular quarter in total may exceed the funds available nationally for all States. *Therefore, if funds become exhausted at the National Office level, some States will not have access to the full distribution for the remainder of the quarter.* ALL ALLOCATED FUNDS TO STATE OFFICES ARE SUBJECT TO

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THE AVAILABILITY OF FUNDS AT THE NATIONAL LEVEL.

A. Section 502 Nonsubsidized Guaranteed RH Loans.

1. *Amount Available for Allocation.*

Total Available	$1,709,000,000
Less National Office Reserve	255,000,000
Less Base Allocation	0
Basic Formula—Administrative Allocation	$1,445,000,000

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 1940.563(b) Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993.

3. *Transition Formula.* Will not be used in FY 1996.

4. *Base Allocation.* The base allocation is an amount, if any, above the computed formula allocation necessary for each State to receive a total allocation sufficient to run a viable program (at least $1 million).

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation.

6. *General Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis.

7. *Pooling of Funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed cumulatively by quarters as follows: 45 percent through the first quarter, 75 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director will retain these funds at the State Office level. Funds will not be suballocated to District or County Offices.

B. Section 502 Direct RH Loans

1. *Amount Available for Allocation.*

Total Available	$1,016,244,245
Less General Reserve	30,000,000
Less Designated Reserves	120,000,000
Basic Formula—Administrative Allocation	$866,244,245

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 1940.565(b). Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993.

3. *Transition Formula.* Will not be used in FY 1996.

4. *Base Allocation.* Will not be used in FY 1995.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation.

6. *Reserve.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship applications. Hardship is determined by the State Director on a case-by-case basis and must include applications from persons living in deficient housing for more than 6 months.

(ii) The State's portion of funds for Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and in connection with transfers with assumptions of the RHCDS indebtedness.

(iv) Financing for the purchase of Government owned inventory properties.

(v) State Directors are required to set aside not more than 20 percent of their initial low-income allocation for participation in leveraging Section 502 Direct loan funds. A reserve for very low-income participation is not required, but may be established if significant activity is anticipated by the State Director.

b. *National Office Reserves.*

(i) *General Reserve.* The total allocated FY 1996 general reserve contains $30 million. The reserve funds will be limited to providing funds to States for extreme hardship cases. FUNDING WILL NOT BE AVAILABLE UNTIL THE BEGINNING OF THE THIRD QUARTER.

(A) For the Section 502 Direct Loan Program, an extreme hardship case exists when:

(1) An individual or family is currently without housing and is unable to find shelter on a temporary basis with other family members, relatives, or friends, or the applicant is occupying a structure that has been recently condemned by local authorities; or

(2) The family is unable to obtain an adequate rental unit because:

(a) Such units are not available in the local market; or

(b) The family cannot afford the interim move due to money, health reasons, adequacy of optioned housing, importance of location of optioned house, etc.; or

(c) The hardship has been caused by fire, flooding, hurricane, tornado, or other causes beyond the applicant's control.

(B) Certain subsequent loans may be made in conjunction with a transfer or assumption, if the loan amount is very small and the hardship is determined to be unique.

(C) Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the **Federal Register**.

(ii) Designated Reserves.

(A) *Targeted Reserve.* Of the FY 1996 Section 502 funds, $46 million will be held in the National Office reserve for targeted counties. Designated funds will be allotted 60 percent for low-income and 40 percent for very low-income applicants. These funds will be subject to year-end pooling requirements.

(1) Funds will be distributed cumulatively by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

(2) The targeted reserve must be set aside and used for areas identified in the States' FY 1996 annual performance goals such as the underserved counties; nonmetro counties with persistent poverty; Indian reservations; colonias; Empowerment Zones/Enterprise Communities (EZ/ECs), Pacific Northwest areas; the Appalachia; Mississippi Delta Region; and communities with special needs that have not been adequately served during the last 5 years.

(B) Demonstration Housing Program: Section 502 RH funds in the amount of $4 million have been set aside for demonstration housing concepts which were identified by the National Office for approval in FY 1995. Designated funds will be allotted 60 percent for low-income and 40 percent for very low-income. All funds are subject to the pooling requirements of 7 CFR part 1940 subpart L.

(C) *Matching Funds for States with Approved Mutual Self-Help Housing Grants.* THE AMOUNT OF $70 MILLION OF FY 1996 SECTION 502 FUNDS HAS BEEN SET ASIDE FOR MATCHING FUNDS ON THE BASIS OF THE NATIONAL OFFICE CONTRIBUTING 75 PERCENT FROM THE NATIONAL OFFICE RESERVE TO AN INDIVIDUAL STATE CONTRIBUTING 25 PERCENT OF ALLOCATED SECTION 502 RH FUNDS USED OR THE GRANTEE CONTRIBUTING 25 PERCENT TO ASSIST PARTICIPATING SELF-HELP FAMILIES. Funds are to be requested for the participating family at the time of loan approval and are subject to the pooling requirements of 7 CFR part 1940 subpart L. Reimbursement funds will be reimbursed at a rate of 60 percent for low-income and 40 percent for very low-income funds. States will be responsible for adjusting very low-/low-income funding activity within their state to compensate for the Mutual and Self-Help Program obligations differing significantly from the 40/60 percent allocation ratio.

7. *Pooling of Funds.*

a. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.) The pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be used in the field offices receiving the funds allocated in accordance with 7 CFR part 1940 subpart L.

b. *National Office Pooling.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business August 12, 1996. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* The Housing Act of 1949, as amended, provides that not less than 40 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters, cumulatively, as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director must suballocate to each District Office using the methodology and formulas required by 7 CFR part 1940, subpart L. The District Director will make funds available on a first-come-first-served basis to all field offices in the district. No County Office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Repair Loans and Grants.

1. *Amount Available for Allocations.*

Section 504 Loans	
Total Available	$37,798,000
Less General Reserve	3,800,000
Less Designated Targeted Reserve	1,900,000
Basic Formula—Administrative Allocation	32,098,000
Section 504 Grants	
Total Available	24,900,000
Less General Reserve	2,490,000
Less Designated Targeted Reserve	1,245,000
Basic Formula—Administrative Allocation	21,165,000

2. *Basic Formula Criteria, Data Source, and Weight.* See 7 CFR 940.566(b). Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993. This data must be used if funds are suballocated to District Offices.

3. *Transition Formula and Base Allocation.* Will not be used in FY 1996.

4. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

5. *Reserve.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund hardship applications. Hardships will be determined by the State Director on a case-by-case basis.

b. *National Office Reserves.*

(i) *General Reserve.* The total allocated FY 1996 funds contain only 10 percent for the general reserve. Use of these reserve funds will be limited to providing funds to States for extreme hardship cases. An extreme hardship case is defined as an individual case with significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant or community. The priority may be related to sanitation hazards, or impending climatic hazards which are above average and should receive priority for funds. Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the **Federal Register**. All funds allocated to states are subject to the availability of funds at the National Level.

(ii) *Targeted Reserve.* Of the FY 1996 Section 504 loan and grant appropriations, $1.9 million and $1.245 million, respectively will be held in the National Office's reserve for the targeted counties. These funds will be subject to year-end pooling requirements.

7. *Pooling of Funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters cumulatively as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

D. Sections 525/509 HAPG.

1. *Amount Available for Allocations.*

Total Available (Carry-over Funds)	$5,191,000
Less General Reserve	391,000
Basic Formula Amount:	
Sections 502/504 Loans and Grants	3,000,000
Sections 514/516, 515, 524, and 533	1,000,000

2. *Basic Formula Criteria, Data Source, and Weight.* For Sections 502/504 loan and grant programs, each participating State's funds will be based on its number of eligible counties or colonias, with each State receiving a pro rata share of the total funds available. For Sections 514/516, 515, 524, and 533 programs, $1 million has been set aside in the National Office, on a first-come-first-served basis.

3. *Transition Formula, Base Allocation and Administrative Allocation. Will not be used in FY 1996.*

4. *General Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis.

5. *Pooling of Funds.* Year-end pooling is tentatively scheduled for close of business August 12, 1996. Pooled funds will be placed in the National Office reserve and will be made available administratively.

6. *Availability of the Allocation.* Funds will be distributed cumulatively by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

III. Exception Authority

The Administrator, or designee, may, in individual cases, make an exception to any requirements of this attachment which are not inconsistent with the authorizing statute, if the Administrator or designee finds that application of such requirement would adversely affect the interest of the Government. The Administrator, or designee, also reserves the right to change pooling dates, establish or change minimum and maximum fund usage from set asides and the reserve, or restrict participation in set asides and reserves.

The following spreadsheets contain the allocation of FY 1996 MFH and SFH

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loan and grant funds to individual States:

Dated: December 4, 1995.

Jan E. Shadburn,

Acting Administrator, Rural Housing and Community Development Service.

SECTION 515 RURAL RENTAL HOUSING PROGRAM ALLOCATIONS

[Fiscal year 1996]

State	Formula factor	Loan allocation	Base/Admin allocation	Total allocation	State req.'d RA units	1995 weighted new constr. RA value	RA dollar value
AL	0.02957	$2,751,535	$0	$2,751,535	7	$11,706	$81,942
AK	0.00587	546,213	703,787	1,250,000	14	17,844	249,816
AZ	0.01780	1,656,318	0	1,656,318	39	14,862	579,618
AR	0.02310	2,149,491	0	2,149,491	35	10,766	376,810
CA	0.04653	4,329,690	0	4,329,690	65	11,429	742,885
CO	0.00840	781,633	468,367	1,250,000	20	11,280	225,600
DE	0.00190	176,798	1,073,202	1,250,000	26	15,143	378,575
MD	0.00880	818,854	431,146	1,250,000	14	15,074	211,036
FL	0.02890	2,689,190	0	2,689,190	0	10,450	0
GA	0.03867	3,598,304	0	3,598,304	81	8,556	693,036
HI	0.00790	735,107	514,893	1,250,000	12	13,344	160,128
WPA	0.00847	602,044	647,956	1,250,000	12	11,190	134,280
ID	0.00743	691,373	558,627	1,250,000	28	10,865	304,220
IL	0.02250	2,093,660	0	2,093,660	0	10,441	0
IN	0.02157	2,007,122	0	2,007,122	14	9,181	128,534
IA	0.01340	1,246,891	3,109	1,250,000	28	9,584	268,352
KS	0.01130	1,051,483	198,517	1,250,000	25	8,551	213,775
KY	0.03483	3,240,986	0	3,240,986	75	11,353	851,475
LA	0.03170	2,949,735	0	2,949,735	69	12,495	862,155
ME	0.00913	849,561	400,439	1,250,000	10	19,311	193,110
MA	0.00793	737,899	512,101	1,250,000	14	16,831	235,634
CT	0.00453	421,524	828,476	1,250,000	18	13,940	250,920
RI	0.00100	93,052	1,156,948	1,250,000	19	16,229	308,351
MI	0.02977	2,770,145	0	2,770,145	20	8,239	164,780
MN	0.01673	1,556,753	0	1,556,753	17	10,062	171,054
MS	0.03180	2,959,040	0	2,959,040	34	11,586	393,924
MO	0.02460	2,289,069	0	2,289,069	60	8,073	484,380
MT	0.00620	576,920	673,080	1,250,000	10	10,007	100,070
NE	0.00713	663,456	586,542	1,250,000	18	8,347	150,246
NV	0.00283	244,726	1,005,274	1,250,000	7	13,596	95,186
NJ	0.00657	611,249	638,651	1,250,000	23	20,565	472,995
NM	0.01437	1,337,151	0	1,337,151	34	13,843	463,862
NY	0.02753	2,561,710	0	2,561,710	42	13,256	556,710
NC	0.04497	4,184,529	0	4,184,529	18	13,224	238,032
ND	0.00413	384,303	865,697	1,250,000	24	9,159	219,816
OH	0.03450	3,210,279	0	3,210,279	0	10,001	0
OK	0.01917	1,783,799	0	1,783,799	0	10,128	0
OR	0.01423	1,324,124	0	1,324,124	5	10,959	54,795
PA	0.03687	3,430,812	0	3,430,812	45	11,538	519,210
PR	0.04923	4,580,929	0	4,580,929	91	15,902	1,447,082
SC	0.02690	2,503,087	0	2,503,087	0	12,315	0
SD	0.00597	555,518	694,482	1,250,000	24	12,365	296,760
TN	0.02973	2,766,423	0	2,766,423	0	10,044	0
TX	0.07645	7,113,793	0	7,113,793	0	10,503	0
UT	0.00430	400,122	849,878	1,250,000	20	13,163	263,260
VT	0.00403	374,998	875,002	1,250,000	20	16,304	326,080
NH	0.00503	468,049	781,951	1,250,000	22	15,561	342,782
VI	0.00273	254,031	995,969	1,250,000	20	22,792	455,840
VA	0.02660	2,475,172	0	2,475,172	0	10,867	0
WA	0.01743	1,621,889	0	1,621,889	36	9,925	357,300
WV	0.01937	1,802,409	0	1,802,409	0	9,875	0
WI	0.01873	1,742,856	0	1,742,856	36	9,245	332,820
WY	0.00307	285,668	964,332	1,250,000	0	10,883	0
DISTR	1.00000	93,051,574	16,428,426	109,480,000	1,250		15,357,236
N/O RES				43,000,000	1,550		
TTL AVAIL				152,480,000	2,800		

SECTION 533 HOUSING PRESERVATION GRANT PROGRAM

[Fiscal year 1996]

State	Base allocation	Basic formula factor	Basic formula amount	Admin. allocation	FY 96 allocation (rounded)
ALABAMA	100,000	0.02957	$136,277	.....	$236,280
ALASKA	100,000	0.00587	27,053	$22,947	150,000
ARIZONA	100,000	0.01780	82,033	.....	182,030
ARKANSAS	100,000	0.02310	106,459	.....	206,460
CALIFORNIA	100,000	0.04653	214,439	.....	314,440
COLORADO	100,000	0.00840	38,712	11,288	150,000
CONNECTICUT	100,000	0.00453	20,877	29,123	150,000
DELAWARE	100,000	0.00190	8,756	41,244	150,000
FLORIDA	100,000	0.02890	133,189	.....	233,190
GEORGIA	100,000	0.03867	178,215	.....	278,210
HAWAII	100,000	0.00817	28,435	21,565	150,000
IDAHO	100,000	0.00743	34,242	15,758	150,000
ILLINOIS	100,000	0.02250	103,694	.....	203,690
INDIANA	100,000	0.02157	99,408	.....	199,410
IOWA	100,000	0.01340	61,755	.....	161,750
KANSAS	100,000	0.01130	52,077	.....	152,080
KENTUCKY	100,000	0.03483	160,518	.....	260,520
LOUISIANA	100,000	0.03170	146,093	.....	246,090
MAINE	100,000	0.00913	42,077	7,923	150,000
MARYLAND	100,000	0.00880	40,556	9,444	150,000
MASSACHUSETTS	100,000	0.00793	36,546	13,454	150,000
MICHIGAN	100,000	0.02977	137,198	.....	237,200
MINNESOTA	100,000	0.01673	77,102	.....	177,100
MISSISSIPPI	100,000	0.03180	146,554	.....	246,550
MISSOURI	100,000	0.02460	113,372	.....	213,370
MONTANA	100,000	0.00620	28,573	21,427	150,000
NEBRASKA	100,000	0.00713	32,859	17,141	150,000
NEVADA	100,000	0.00263	12,121	37,879	150,000
NEW HAMPSHIRE	100,000	0.00503	23,181	26,819	150,000
NEW JERSEY	100,000	0.00657	30,279	19,721	150,000
NEW MEXICO	100,000	0.01437	66,226	.....	166,230
NEW YORK	100,000	0.02753	126,875	.....	226,880
NORTH CAROLINA	100,000	0.04497	207,249	.....	307,250
NORTH DAKOTA	100,000	0.00413	19,034	30,966	150,000
OHIO	100,000	0.03450	158,997	.....	259,000
OKLAHOMA	100,000	0.01917	88,347	.....	188,350
OREGON	100,000	0.01423	65,581	.....	165,580
PENNSYLVANIA	100,000	0.03687	169,919	.....	269,920
PUERTO RICO	100,000	0.04923	226,892	.....	326,890
RHODE ISLAND	100,000	0.00105	4,839	45,161	150,000
SOUTH CAROLINA	100,000	0.02690	123,972	.....	223,970
SOUTH DAKOTA	100,000	0.00597	27,513	22,487	150,000
TENNESSEE	100,000	0.02973	137,014	.....	237,010
TEXAS	100,000	0.07639	352,052	.....	452,050
UTAH	100,000	0.00430	19,817	30,183	150,000
VERMONT	100,000	0.00403	18,573	31,427	150,000
VIRGINIA	100,000	0.02660	122,589	.....	222,590
VIRGIN ISLAND	100,000	0.00273	12,582	37,418	150,000
WASHINGTON	100,000	0.01743	80,326	.....	180,330
W. PACIFIC TERR.	100,000	0.00820	37,791	12,209	150,000
WEST VIRGINIA	100,000	0.01937	89,269	.....	189,270
WISCONSIN	100,000	0.01873	86,319	.....	186,320
WYOMING	100,000	0.00307	14,148	35,852	150,000
STATE TOTALS	5,300,000	.....	4,808,564	541,436	10,450,000
N.O. RESERVES	550,000	.....	.....	.....	550,000
ADMIN. ALLOCATION	541,436	.....	.....	.....	.....
TOTAL ALLOCATION	.....	.....	.....	.....	11,000,000

SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0253847	36,656	36,656

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SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALASKA	0.0061561	8,889	8,889
ARIZONA	0.0155290	22,424	22,424
ARKANSAS	0.0213861	30,853	30,853
CALIFORNIA	0.0524861	75,790	75,790
COLORADO	0.0100701	14,541	14,541
DELAWARE	0.0024043	3,472	3,472
MARYLAND	0.0104750	15,126	15,126
FLORIDA	0.0308357	44,527	44,527
GEORGIA	0.0385293	55,636	55,636
HAWAII	0.0083323	12,032	12,032
W. PACIFIC AREAS*	N/A	1,000	1,000
IDAHO	0.0077774	11,231	11,231
ILLINOIS	0.0256395	37,023	37,023
INDIANA	0.0236023	34,082	34,082
IOWA	0.0151422	21,865	21,865
KANSAS	0.0123032	17,766	17,766
KENTUCKY	0.0286790	41,412	41,412
LOUISIANA	0.0256223	36,999	36,999
MAINE	0.0113916	16,450	16,450
MASSACHUSETTS	0.0117468	16,962	16,962
CONNECTICUT	0.0065708	9,488	9,488
RHODE ISLAND	0.0017216	2,486	2,486
MICHIGAN	0.0337181	48,689	48,689
MINNESOTA	0.0184736	26,678	26,678
MISSISSIPPI	0.0259870	37,496	37,496
MISSOURI	0.0253687	36,632	36,632
MONTANA	0.0067138	9,695	9,695
NEBRASKA	0.0083218	12,016	12,016
NEVADA	0.0029735	4,294	4,294
NEW JERSEY	0.0091825	13,260	13,260
NEW MEXICO	0.0117200	16,924	16,924
NEW YORK	0.0369739	53,390	53,390
NORTH CAROLINA	0.0471742	68,119	68,119
NORTH DAKOTA	0.0040847	5,898	5,898
OHIO	0.0378081	54,595	54,595
OKLAHOMA	0.0175713	25,373	25,373
OREGON	0.0166212	24,001	24,001
PENNSYLVANIA	0.0438367	63,300	63,300
PUERTO RICO	0.0250931	36,234	36,234
SOUTH CAROLINA	0.0249510	36,029	36,029
SOUTH DAKOTA	0.0065435	9,449	9,449
TENNESSEE	0.0276859	39,978	39,978
TEXAS	0.0665018	96,029	96,029
UTAH	0.0039861	5,756	5,756
VERMONT	0.0057475	8,299	8,299
NEW HAMPSHIRE	0.0075234	10,864	10,864
VIRGIN ISLANDS	0.0027236	3,933	3,933
VIRGINIA	0.0278404	40,201	40,201
WASHINGTON	0.0200905	29,011	29,011
WEST VIRGINIA	0.0172518	24,912	24,912
WISCONSIN	0.0222867	32,182	32,182
WYOMING	0.0035006	5,055	5,055
STATE TOTALS	1.0000000	1,455,000	1,455,000
GENERAL RESERVE			255,000
DESIGNATED RESERVES			0
TOTAL			1,700,000

*Denotes Administrative Allocation.

SECTION 502 DIRECT RURAL HOUSING LOANS

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0267275	23,056	23,056
ALASKA	0.0055160	4,758	4,758

SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ARIZONA	0.0145422	12,545	12,545
ARKANSAS	0.0208104	17,952	17,952
CALIFORNIA	0.0454819	39,234	39,234
COLORADO	0.0091766	7,916	7,916
DELAWARE	0.0024571	2,120	2,120
MARYLAND	0.0115334	9,949	9,949
FLORIDA	0.0312406	26,949	26,949
GEORGIA	0.0374586	32,313	32,313
HAWAII	0.0067195	5,796	5,796
W. PACIFIC AREAS*	N/A	3,610	3,610
IDAHO	0.0076722	6,618	6,618
ILLINOIS	0.0266774	23,013	23,013
INDIANA	0.0270785	23,359	23,359
IOWA	0.0163474	14,102	14,102
KANSAS	0.0127369	10,987	10,987
KENTUCKY	0.0288838	24,916	24,916
LOUISIANA	0.0246715	21,283	21,283
MAINE	0.0108314	9,344	9,344
MASSACHUSETTS	0.0109818	9,473	9,473
CONNECTICUT	0.0066693	5,753	5,753
RHODE ISLAND	0.0015545	1,341	1,341
MICHIGAN	0.0353525	30,496	30,496
MINNESOTA	0.0199077	17,173	17,173
MISSISSIPPI	0.0250226	21,585	21,585
MISSOURI	0.0252733	21,802	21,802
MONTANA	0.0063685	5,494	5,494
NEBRASKA	0.0086752	7,483	7,483
NEVADA	0.0026583	2,466	2,466
NEW JERSEY	0.0097784	8,435	8,435
NEW MEXICO	0.0110320	9,517	9,517
NEW YORK	0.0359041	30,972	30,972
NORTH CAROLINA	0.0484405	41,786	41,786
NORTH DAKOTA	0.0045131	3,893	3,893
OHIO	0.0390131	33,654	33,654
OKLAHOMA	0.0174005	15,010	15,010
OREGON	0.0154949	13,366	13,366
PENNSYLVANIA	0.0467857	40,359	40,359
PUERTO RICO	0.0239695	20,677	20,677
SOUTH CAROLINA	0.0258249	22,277	22,277
SOUTH DAKOTA	0.0062682	5,407	5,407
TENNESSEE	0.0291846	25,176	25,176
TEXAS	0.0660415	56,971	56,971
UTAH	0.0040618	3,504	3,504
VERMONT	0.0052653	4,542	4,542
NEW HAMPSHIRE	0.0072711	6,272	6,272
VIRGIN ISLANDS	0.0020058	1,730	1,730
VIRGINIA	0.0289841	25,003	25,003
WASHINGTON	0.0187042	16,135	16,135
WEST VIRGINIA	0.0175008	15,097	15,097
WISCONSIN	0.0237188	20,461	20,461
WYOMING	0.0036105	3,115	3,115
STATE TOTALS	1.0000000	866,245	866,245
GENERAL RESERVE			30,000
DESIGNATED RESERVES			120,000
TOTAL			1,016,245

*Denotes Administrative Allocation.

SECTION 502 DIRECT RURAL HOUSING LOANS

States	Total FY 1995 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
ALABAMA	23,056	9,223	13,833
ALASKA	4,758	1,904	2,854

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SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	Total FY 1995 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
ARIZONA	12,545	5,018	7,527
ARKANSAS	17,952	7,181	10,771
CALIFORNIA	39,234	15,694	23,540
COLORADO	7,916	3,167	4,749
DELAWARE	2,120	848	1,272
MARYLAND	9,949	3,980	5,969
FLORIDA	26,949	10,780	16,169
GEORGIA	32,313	12,926	19,387
HAWAII	5,796	2,319	3,477
W. PACIFIC AREAS	3,610	1,444	2,166
IDAHO	6,618	2,648	3,970
ILLINOIS	23,013	9,206	13,807
INDIANA	23,359	9,344	14,015
IOWA	14,102	5,641	8,461
KANSAS	10,987	4,395	6,592
KENTUCKY	24,916	9,967	14,949
LOUISIANA	21,283	8,514	12,769
MAINE	9,344	3,738	5,606
MASSACHUSETTS	9,473	3,790	5,683
CONNECTICUT	5,753	2,302	3,451
RHODE ISLAND	1,341	537	804
MICHIGAN	30,496	12,199	18,297
MINNESOTA	17,173	6,870	10,303
MISSISSIPPI	21,585	8,634	12,951
MISSOURI	21,802	8,721	13,081
MONTANA	5,494	2,198	3,296
NEBRASKA	7,483	2,994	4,489
NEVADA	2,466	987	1,479
NEW JERSEY	8,435	3,374	5,061
NEW MEXICO	9,517	3,807	5,710
NEW YORK	30,972	12,389	18,583
NORTH CAROLINA	41,786	16,715	25,071
NORTH DAKOTA	3,893	1,558	2,335
OHIO	33,654	13,462	20,192
OKLAHOMA	15,010	6,004	9,006
OREGON	13,366	5,347	8,019
PENNSYLVANIA	40,359	16,144	24,215
PUERTO RICO	20,677	8,271	12,406
SOUTH CAROLINA	22,277	8,911	13,366
SOUTH DAKOTA	5,407	2,163	3,244
TENNESEE	25,176	10,071	15,105
TEXAS	56,971	22,787	34,204
UTAH	3,504	1,402	2,102
VERMONT	4,542	1,817	2,725
NEW HAMPSHIRE	6,272	2,509	3,763
VIRGIN ISLANDS	1,730	692	1,038
VIRGINIA	25,003	10,002	15,001
WASHINGTON	16,135	6,454	9,681
WEST VIRGINIA	15,097	6,039	9,058
WISCONSIN	20,461	8,185	12,276
WYOMING	3,115	1,246	1,869
STATE TOTALS	866,245	346,498	519,747
GENERAL RESERVE	30,000	12,000	18,000
DESIGNATED RESERVES	120,000	48,000	72,000
TOTAL	1,016,245	406,498	609,747

SINGLE FAMILY HOUSING TARGETED FUNDS

States	Section 502 direct loans base allocation	Section 502 direct loans formula alloc	Section 502 direct loans total allocation	Section 504 repair loans total allocation	Section 504 repair grants total allocation
ALABAMA	300	695	995	25	20
ALASKA	300	143	443	25	20
ARIZONA	300	378	678	25	20

SINGLE FAMILY HOUSING TARGETED FUNDS—Continued

States	Section 502 direct loans base allocation	Section 502 direct loans formula alloc	Section 502 direct loans total allocation	Section 504 repair loans total allocation	Section 504 repair grants total allocation
ARKANSAS	300	541	841	25	20
CALIFORNIA	300	1,183	1,483	25	20
COLORADO	300	239	539	25	20
DELAWARE	300	34	334	25	20
MARYLAND	300	300	600	25	20
FLORIDA	300	812	1,112	25	20
GEORGIA	300	974	1,274	25	20
HAWAII	300	175	475	25	20
W. PACIFIC AREAS*	300	93	393	25	20
IDAHO	300	200	500	25	20
ILLINOIS	300	694	994	25	20
INDIANA	300	704	1,004	25	20
IOWA	300	425	725	25	20
KANSAS	300	331	631	25	20
KENTUCKY	300	751	1,051	25	20
LOUISIANA	300	642	942	25	20
MAINE	300	282	582	25	20
MASSACHUSETTS	300	286	586	25	20
CONNECTICUT	300	173	473	25	20
RHODE ISLAND	300	40	340	25	20
MICHIGAN	300	919	1,219	25	20
MINNESOTA	300	518	818	25	20
MISSISSIPPI	300	651	951	25	20
MISSOURI	300	657	957	25	20
MONTANA	300	166	466	25	20
NEBRASKA	300	226	526	25	20
NEVADA	300	74	374	25	20
NEW JERSEY	300	254	554	25	20
NEW MEXICO	300	287	587	25	20
NEW YORK	300	934	1,234	25	20
NORTH CAROLINA	300	1,260	1,560	25	20
NORTH DAKOTA	300	117	417	25	20
OHIO	300	1,015	1,315	25	20
OKLAHOMA	300	453	753	25	20
OREGON	300	403	703	25	20
PENNSYLVANIA	300	1,217	1,517	25	20
PUERTO RICO	300	623	923	25	20
SOUTH CAROLINA	300	672	972	25	20
SOUTH DAKOTA	300	163	463	25	20
TENNESSEE	300	759	1,059	25	20
TEXAS	300	1,717	2,017	25	20
UTAH	300	106	406	25	20
VERMONT	300	137	437	25	20
NEW HAMPSHIRE	300	189	489	25	20
VIRGIN ISLANDS	300	52	352	25	20
VIRGINIA	300	754	1,054	25	20
WASHINGTON	300	486	786	25	20
WEST VIRGINIA	300	455	755	25	20
WISCONSIN	300	617	917	25	20
WYOMING	300	94	394	25	20
TOTAL ALLOCATED	15,900	26,100	42,000	1,325	1,060
N.O. RESERVES			4,000	575	185
TOTALS			46,000	1,900	1,245

*Denotes Administrative Allocation.

SECTION 504 RURAL HOUSING LOANS

States	State basic formula factor	State Basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0291457	866	866
ALASKA	0.0080402	239	239
ARIZONA	0.0201005	597	597
ARKANSAS	0.0226131	672	672
CALIFORNIA	0.0532663	1,582	1,582

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SECTION 504 RURAL HOUSING LOANS—Continued

States	State basic formula factor	State Basic formula/administrative allocation	Total FY 1996 allocation
COLORADO	0.0085427	254	254
DELAWARE	0.0020101	60	60
MARYLAND	0.0095477	284	284
FLORIDA	0.0296482	880	880
GEORGIA	0.0396985	1,179	1,179
HAWAII	0.0100503	298	298
W. PACIFIC AREAS*	N/A	2,400	2,400
IDAHO	0.0075377	224	224
ILLINOIS	0.0226131	672	672
INDIANA	0.0221106	657	657
IOWA	0.0130653	388	388
KANSAS	0.0115578	343	343
KENTUCKY	0.0321608	955	955
LOUISIANA	0.0296482	880	880
MAINE	0.0100503	298	298
MASSACHUSETTS	0.0080402	239	239
CONNECTICUT	0.0040201	119	119
RHODE ISLAND	0.0010050	30	30
MICHIGAN	0.0281457	866	866
MINNESOTA	0.0175879	522	522
MISSISSIPPI	0.0301508	895	895
MISSOURI	0.0241206	716	716
MONTANA	0.0060302	179	179
NEBRASKA	0.0070352	209	209
NEVADA	0.0030151	90	90
NEW JERSEY	0.0070352	209	209
NEW MEXICO	0.0150754	448	448
NEW YORK	0.0286432	851	851
NORTH CAROLINA	0.0477387	1,418	1,418
NORTH DAKOTA	0.0040201	119	119
OHIO	0.0331658	985	985
OKLAHOMA	0.0175879	522	522
OREGON	0.0150754	448	448
PENNSYLVANIA	0.0371859	1,104	1,104
PUERTO RICO	0.0341709	1,015	1,015
SOUTH CAROLINA	0.0281407	836	836
SOUTH DAKOTA	0.0060302	179	179
TENNESSEE	0.0296482	880	880
TEXAS	0.0783920	2,329	2,329
UTAH	0.0040201	119	119
VERMONT	0.0045226	134	134
NEW HAMPSHIRE	0.0055276	164	164
VIRGIN ISLANDS	0.0030151	90	90
VIRGINIA	0.0296482	880	880
WASHINGTON	0.0185930	552	552
WEST VIRGINIA	0.0180905	537	537
WISCONSIN	0.0195980	582	582
WYOMING	0.0035176	104	104
STATE TOTALS	1.0000000	32,098	32,098
GENERAL RESERVE			3,800
DESIGNATED RESERVES			1,900
TOTAL			37,798

*Denotes Administrative Allocation.

SECTION 504 RURAL HOUSING GRANTS

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
ALABAMA	0.0281124	579	579
ALASKA	0.0056994	117	117
ARIZONA	0.0170683	352	352
ARKANSAS	0.0224230	462	462
CALIFORNIA	0.0481928	993	993

SECTION 504 RURAL HOUSING GRANTS—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1996 allocation
COLORADO	0.0083668	172	172
DELAWARE	0.0023427	48	48
MARYLAND	0.0100402	207	207
FLORIDA	0.0341365	703	703
GEORGIA	0.0368139	759	759
HAWAII	0.0076975	159	159
W. PACIFIC AREAS*	N/A	560	560
IDAHO	0.0073628	152	152
ILLINOIS	0.0264391	545	545
INDIANA	0.0244311	503	503
IOWA	0.0163989	338	338
KANSAS	0.0133869	276	276
KENTUCKY	0.0297858	614	614
LOUISIANA	0.0261044	538	538
MAINE	0.0103748	214	214
MASSACHUSETTS	0.0097055	200	200
CONNECTICUT	0.0053548	110	110
RHODE ISLAND	0.0013387	28	28
MICHIGAN	0.0317938	655	655
MINNESOTA	0.0197456	407	407
MISSISSIPPI	0.0271084	559	559
MISSOURI	0.0257897	531	531
MONTANA	0.0060241	124	124
NEBRASKA	0.0087015	179	179
NEVADA	0.0026774	55	55
NEW JERSEY	0.0083668	172	172
NEW MEXICO	0.0123829	255	255
NEW YORK	0.0324632	669	669
NORTH CAROLINA	0.0471888	972	972
NORTH DAKOTA	0.0046854	97	97
OHIO	0.0361446	745	745
OKLAHOMA	0.0184070	379	379
OREGON	0.0157296	324	324
PENNSYLVANIA	0.0438420	903	903
PUERTO RICO	0.0264391	545	545
SOUTH CAROLINA	0.0261044	538	538
SOUTH DAKOTA	0.0063588	131	131
TENNESSEE	0.0294511	607	607
TEXAS	0.0716198	1,476	1,476
UTAH	0.0036814	76	76
VERMONT	0.0046854	97	97
NEW HAMPSHIRE	0.0060241	124	124
VIRGIN ISLANDS	0.0023427	48	48
VIRGINIA	0.0284471	586	586
WASHINGTON	0.0184070	379	379
WEST VIRGINIA	0.0180723	372	372
WISCONSIN	0.0224230	462	462
WYOMING	0.0033467	69	69
STATE TOTALS	1.000000	21,165	21,165
GENERAL RESERVE			2,490
DESIGNATED RESERVES			1,245
TOTAL			24,900

*Denotes Administrative Allocation.

SECTION 525/509 HOUSING APPLICATION PACKAGING GRANT FUNDS

States	Number of counties eligible	State basic formula factor	State allocation	Number of packaging grants per allocation
ALABAMA	13	0.0431894	164	328
ALASKA	5	0.0166113	63	126
ARIZONA	8	0.0265781	101	202
ARKANSAS	5	0.0166113	63	126
CALIFORNIA	3	0.0099668	38	76

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SECTION 525/509 HOUSING APPLICATION PACKAGING GRANT FUNDS—Continued

States	Number of counties eligible	State basic formula factor	State allocation	Number of packaging grants per allocation
COLORADO	1	0.0033223	13	25
FLORIDA	2	0.0066445	25	50
GEORGIA	22	0.0730897	278	555
IDAHO	1	0.0033223	13	25
KENTUCKY	25	0.0830565	316	631
LOUISIANA	10	0.0332226	126	252
MISSISSIPPI	27	0.0897010	341	682
MONTANA	2	0.0066445	25	50
NEW MEXICO	11	0.0365449	139	278
NORTH CAROLINA	4	0.0132890	50	101
NORTH DAKOTA	3	0.0099668	38	76
OHIO	1	0.0033223	13	25
SOUTH CAROLINA	6	0.0199336	76	151
SOUTH DAKOTA	9	0.0299003	114	227
TENNESSEE	2	0.0066445	25	50
TEXAS	45	0.1495017	568	1,136
UTAH	1	0.0033223	13	25
VIRGINIA	4	0.0132890	50	101
WASHINGTON	2	0.0066445	25	50
WEST VIRGINIA	4	0.0132890	50	101
WISCONSIN	1	0.0033223	13	25
PUERTO RICO	77	0.2558140	972	1,944
VIRGIN ISLANDS	2	0.0066445	25	50
WEST PAC TERR	5	0.0166113	63	126
TOTAL COUNTIES	301	1.0000000	3,800	7,600
TOTAL RESERVE	.....	.....	1,391	.....
NATIONAL TOTAL	.....	.....	5,191	.....

AA reserve of $1,000,000 for section 514/516, 515, 524 and 533 will be held in the national office, available on a first-come-first-served basis. Additional reserve of $391,000 is available for all programs.

[FR Doc. 95–30135 Filed 12–11–95; 8:45 am]
BILLING CODE 3410–07–U

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 1996

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 1996.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 1996.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 1996, and ending March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230–s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 1996 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 1996.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2016 or later	5.500
2015	5.500
2014	5.500
2013	5.375
2012	5.375
2011	5.375
2010	5.375
2009	5.250
2008	5.125
2007	5.000
2006	5.000
2005	4.875
2004	4.750
2003	4.625
2002	4.500
2001	4.375
2000	4.375
1999	4.250
1998	4.125
1997	4.000

Dated: December 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–30136 Filed 12–11–95; 8:45 am]
BILLING CODE 3410–15–P

Interest Rate for FY 1996 RUS Telecommunications Cost-of-Money Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) is announcing that interest rates on telecommunications Cost-of-Money loans approved during fiscal year 1996 may exceed the 7 percent per year statutory limit.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Assistant Administrator-Telecommunicafions Program, Rural Utilities Service, U.S. Department of Agriculture, room 4056–S, Ag Box 1590, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: Notice is given that under Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1996 (Appropriations Act of 1996) (Pub. L. 104–37, approved October 21, 1995), the interest rate for telecommunications loans approved during fiscal year 1996 may exceed the 7 percent per year ceiling established by Pub. L. 103–129 (see 7 CFR 1735.31(c)(1)). The Appropriations Act of 1996 removes the 7 percent interest rate ceiling for telecommunications Cost-of-Money loans made during fiscal year 1996 only (October 1, 1995 to September 30, 1996).

Dated: December 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–30235 Filed 12–11–95; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Federal Highway Administration, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–084. *Applicant:* Federal Highway Administration, McLean, VA 22101. *Instrument:* Automatic Non-Contact Aggregate Graduation Device, Model VDG 40. *Manufacturer:* Yernaux Pesage, France. *Intended Use:* See notice at 60 FR 50555, September 29, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides characterization of the size and shape of particles in aggregate paving mixtures using a special light and videocamera, a hopper, vibrating feeder and rotating drum. The Army Corps of Engineers and a university research department advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–30092 Filed 12–11–95; 8:45 am]
BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction of Import Charges for Certain Wool Textile Products Produced or Manufactured in Poland

December 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on December 8, 1995, U.S. Customs Service adjusted charges in the following amounts made to textile products in Categories 433 and 443 for the period beginning on January 1, 1995 and extending through December 31, 1995. As a result, the limits, which were closed, will be reopened on December 12, 1995.

Category	Amount deducted
433	1,522 dozen.
443	3,000 numbers.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

Trey H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30362 Filed 12–8–95; 1:48 pm]
BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 12, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the Internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a

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telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, the proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 7, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Title I State Plan for State Vocational Rehabilitation Service Program and the Title VI.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.
Reporting Burden and Recordkeeping:
Responses: 82.
Burden Hours: 1,658,139.
Abstract: The Rehabilitation Act of 1973, as amended, and its proposed implementing regulations, require each of the 82 State vocational rehabilitation agencies to submit a State plan for vocational rehabilitation services and a supplement for supported employment services. Program funding is contingent upon the department's approval of these state plans.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: 1996 National Postsecondary Student Aid Study.
Frequency: On Occasion.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions.
Reporting Burden and Recordkeeping:
Responses: 1
Burden Hours: 36,191.
Abstract: This study collects data from a sample of students in postsecondary institutions, including institutional financial aid data on sample students, and a sample of students' parents. It collects data to determine how students and their families finance postsecondary education, and to describe characteristics of enrolled postsecondary students, addressing important issues in this area. This collection is for institutional student, and parent data.

[FR Doc. 95–30164 Filed 12–11–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Reporting and Recordkeeping Requirement for Douglas School & Stafford/Plus Loans.
Frequency: Annually.
Affected Public: Individual or households; State, Local or Tribal Government.
Reporting and Recordkeeping Burden:
Responses: 4308
Burden Hours: 1077.

Abstract: Collection of state proposals for Targeted Teacher Deferment/ Teacher Shortage Areas, of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986.

Office of Educational Research and Improvement

Type of Review: New.
Title: Development of Measures of Elementary School Organization and Educational Processes: School Survey.
Frequency: One Time.
Affected Public: Not for Profit institutions.
Reporting Burden:
Responses: 300
Burden Hours: 75.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This Study is the full-scale pilot test of the proposed data collection procedures and instrument for an effort to develop better measures of elementary school characteristics and processes that will be comparable with those of other countries. The survey was developed by the Indicators of Educational Systems Project in cooperation with the Organization for Economic Cooperation and Development (OECD) with support of the National Center for Education Statistics. Data will be collected on such topics as the stability of the school's staff, aspects of school leadership, cooperation among teachers, student evaluation practices, achievement orientation, and parent involvement.

[FR Doc. 95–30165 Filed 12–11–95; 8:45 am]
BILLING CODE 4000–01–M

Fund for the Improvement of Education Program

AGENCY: Department of Education.
ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes to establish absolute priorities to fund projects that develop, evaluate and field-test State assessments aligned with challenging State content standards. The Secretary may use these priorities in FY 1996 and subsequent years. The Secretary proposes to provide Federal financial assistance to assist States in the development of assessments that can be used to improve classroom instruction, motivate all students to improve educational performance, and provide examples for students, teachers and parents of the learning outcomes that can be expected for all students.

DATES: Comments must be received on or before January 11, 1996.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Dr. David Sweet, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, N.W., Room 508H, Washington, D.C. 20208–5573. Comments can be faxed to David Sweet at (202) 219–2135. Comments may also be sent through the Internet to David—Sweet@ed.gov.

FOR FURTHER INFORMATION CONTACT: David Sweet, telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement of Education (FIE) supports nationally significant projects to improve the quality of education, assist all students to meet challenging State content and student performance standards and contribute to the achievement of the National Education Goals. The FIE program is authorized under Part A of Title X of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (20 U.S.C. 8001).

The Secretary is expressly authorized to use FIE program funds to support systemic education reform at the State and local levels through activities such as the development and evaluation of model strategies for assessment of student learning. The Secretary believes that the alignment of State content standards and State assessments is an important part of systemic educational reform. Exemplifying the forms and levels of educational performance that students in a State should be able to achieve is a critical step in the process of ensuring that students are reaching the State's challenging content standards. While many States are developing new content standards for the core academic subjects, some States are using assessments that are not aligned to their new content standards. The Secretary believes that helping to defray the cost of developing assessments aligned with challenging State content standards will advance State reform efforts.

State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and other public and private agencies, organizations, and institutions are eligible to receive funds under these priorities. However, the Secretary believes that SEAs and LEAs have the resources, knowledge, and authority necessary to lead systemic reform efforts. Therefore, SEAs and LEAs must participate as lead agents in the development of State assessments to ensure that the assessment systems are aligned with State content standards and the content of the curriculum. If reform is to be systemic, State agencies that are working on content and curriculum must either direct the development of assessments themselves or provide direction to LEAs to do so.

It is imperative that State assessments take into account the needs of all students. Therefore, funds awarded under the proposed priority may be used to develop, modify, field-test and evaluate assessments that take into account the needs of students with disabilities or students who have limited English proficiency.

Awards under these proposed priorities may be jointly funded under three statutory authorities:

(1) The Fund for the Improvement of Education (20 U.S.C. 8001);

(2) Section 618(c) of the Individuals with Disabilities Education Act (IDEA) regarding Evaluation and Program Information (20 U.S.C. 1418(c));

(3) Bilingual Education Research, Evaluation, and Dissemination Program, authorized by Title VII, Part A, Subpart 2 of the Improving America's Schools Act of 1994 (20 U.S.C. 7451–7452).

The Secretary has determined that the availability of this joint funding option would enhance the Department's ability to support projects that integrate into a single effort the development of assessments for all students and the modification of those assessments to take into account the needs of disabled and limited English proficient students.

Funds provided under Section 618 of IDEA can only be used for projects that modify, field-test, and evaluate assessments that take into account the needs of children and youth with disabilities. A project funded under Section 618 of IDEA should address how the assessments will improve the ability of SEAs and LEAs to provide full educational opportunities to children and youth with disabilities and to better assess the progress of children and youth with disabilities while in special education. As part of the post-award requirements for a project funded under Section 618 of IDEA, a grantee must prepare its procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by Section 618, and in a form for inclusion in the annual report to

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Congress submitted pursuant to Section 618(g). Funds provided under Section 618 may be used to fund projects proposed by applicants that are private for-profit agencies only when necessary because of the unique nature of the study.

In accordance with 20 U.S.C. 7452(b)(4), funds provided under the Bilingual Education Research, Evaluation, and Dissemination Program must be administered by individuals with expertise in bilingual education and the needs of limited English proficient students and their families. Funds provided under this program must be used to improve bilingual education and special alternative instruction programs for children and youth of limited English proficiency.

As part of the efforts to improve student assessment, the Department made awards in FY 1995 under the Assessment Development and Evaluation Grants Program, authorized by section 220 of the Goals 2000: Educate America Act. Under this program, the Secretary provides grants to SEAs, LEAs or partnerships of such agencies to help defray the costs of developing, field-testing and evaluating State assessments aligned to State content standards. Applications involving 43 States were received in 1995 and grants were made to support 9 projects. The Secretary expects these projects to develop model strategies for the assessment of student learning that will have a significant impact on State and local level systemic reform efforts.

Depending on the availability of funds in FY 1996 and subsequent years, the Secretary may decide to use funds under the proposed priorities to continue projects initially funded under the Assessment Development and Evaluation Grants program or to fund additional applications considered in the 1995 competition. Alternatively, the Secretary may decide to hold a competition for new awards under the proposed priorities.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Proposed Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to projects that meet one or more of the following priorities. The Secretary proposes to fund only projects that meet one or more of these absolute priorities:

Proposed Absolute Priority 1—Projects that develop, field-test, and evaluate assessments that are aligned to State content standards.

Proposed Absolute Priority 2—Projects that modify, field-test, and evaluate assessments to address the needs of children and youth with disabilities or limited English proficiency. Assessments to be modified must be those developed under priority (1) or similar assessments developed for all students and aligned to State content standards.

All projects must—

(a) Examine the validity and reliability of the assessment for the particular purposes for which the assessment was developed;

(b) Ensure that the assessment is consistent with relevant, nationally recognized professional and technical standards for assessments;

(c) Devote special attention to how the assessment treats all students, especially with regard to race, gender, ethnicity, disability, and language proficiency of those students; and

(d) Be developed by, or under the direction of, an SEA, LEA, or consortia of those agencies.

Selection Criteria

With respect to new awards made with funds from Section 618 of IDEA, the Secretary does not intend to use the selection criteria in 34 CFR 327.31. With respect to any new awards made with funds from the Bilingual Education Research, Evaluation, and Dissemination Program, the Secretary does not intend to use the selection criteria in 34 CFR 75.210. The Secretary intends to use the evaluation criteria in 34 CFR Part 700 to select all new awards under these priorities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in OERI, Room 510, 555 New Jersey Avenue, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

(a) 34 CFR part 327, with the exception of 34 CFR 327.31; and (b) the final regulations for the Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of applications for Grants and Cooperative Agreements and Proposals for Contracts, published on September 14, 1995 in the **Federal Register** (60 FR 47808), to be codified as 34 CFR Part 700.

Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215L—Fund for the Improvement of Education Program)

Dated: December 5, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–30167 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.305F, 84.306F, 84.307F, 84.308F and 84.309F]

Office of Educational Research and Improvement: National Institutes' Field-Initiated Studies Grant Program

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for fiscal year (FY) 1996—Amendment.

On September 14, 1995, the Assistant Secretary for Educational Research and Improvement published in the **Federal Register** (60 FR 47830) a notice inviting applications for new awards for the National Institutes' Field-Initiated Studies Grant Program. This notice amends the original information by adding a paragraph that indicates that the Secretary may fund two cycles of awards from this competition.

In the notice inviting applications for new awards, add the following paragraph to the **SUPPLEMENTARY INFORMATION** section.

The Department may fund two cycles of awards from these competitions. Applications funded in the first cycle will be awarded in June 1996 from FY 1996 funds. A second cycle of additional applications from this competition may be funded early in FY 1997, pending availability of FY 1997 funds, if the Secretary decides that there are applications of sufficiently high quality to merit funding.

Note: The Department is not bound by any estimates in this notice.

FOR FURTHER INFORMATION CONTACT: National Institute on Student Achievement, Curriculum, and Assessment: Clara Lawson-Holmes, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 510, Washington, DC 20208–5573. Telephone: (202) 219–2079 or clawson@inet.ed.gov. National Institute on the Education of At-Risk Students: Beth Fine, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 610, Washington, DC 20208–5521. Telephone: (202) 219–1323, or bfine@inet.ed.gov. National Institute on Early Childhood Development and Education: Joe Caliguro, U.S. Department of Education, 555 New Jersey Avenue, N.W., Washington, DC 20208–5520. Telephone: (202) 219–1935. National Institute on Educational Governance, Finance, Policy-Making, and Management: Elizabeth DeBra or Edward Fuentes, 555 New Jersey Avenue, N.W., Washington, DC 20208–5510. Telephone (202) 219–2021 or -2032. National Institute on Postsecondary Education, Libraries, and Lifelong Learning: Delores Monroe, 555 New Jersey Avenue, N.W., Room 620, Washington, DC 20208–5531. Telephone (202) 219–2229, or fis@inet.ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Servers at gopher.ed.gov (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6031(c)(2)(B).

Dated: December 5, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–30166 Filed 12–11–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–15–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

December 4, 1995.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company

[Docket No. EL96–15–000]

Take notice that on November 13, 1995, Jersey Central Power & Light Company tendered for filing a request for waiver of the Commission's Regulations to allow JCP&L to pass back to its wholesale customers certain refunds, including interest.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. EL96–18–000]

Take notice that on November 21, 1995, MidAmerican Energy Company (MidAmerican), filed an Application for Approval of Depreciation Rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

MidAmerican is the surviving corporation and utility of the July 1, 1995 merger of Iowa-Illinois Gas and Electric Company with Midwest Power Systems, Inc. and its exempt holding company parent, Midwest Resources, Inc. MidAmerican states that since July 1, 1995, the effective date of the merger, MidAmerican has used the depreciation rates used by its predecessors immediately prior to the merger. This practice has resulted in the application of two different depreciation rates to depreciable property held in the same account. MidAmerican requests authorization to use a single set of electric depreciation rates for accounting and final reporting purposes effective of January 1, 1996.

Copies of the filing were served on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Louisiana Public Service Commission, Mississippi Public Service Commission, State of Mississippi, Arkansas Public Service Commission and the City of New Orleans v. Systems Energy Resources, Inc. and Entergy Services, Inc.

[Docket No. EL96–19–000]

Take notice that on November 22, 1995, the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Mississippi Public Service Commission, the City of New Orleans and the State of Mississippi filed a Complaint under Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against System Energy Resources, Inc. and Entergy Services, Inc. The Complaint seeks to lower the allowed return on equity under the Entergy Unit Power Sales Agreement upon allegations under current circumstances, it is unjust and unreasonable. The Complaint contains a motion to consolidate this proceeding with an ongoing FERC proceeding entitled, System Energy Resources, Inc., Docket No. ER95–1042–000.

Comment date: January 3, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complain shall be due on or before January 3, 1996.

4. PacifiCorp

[Docket No. ER95–1838–000]

Take notice that on November 8, 1995 and November 14, 1995 Black Hills Power & Light Company tendered for filing amendments in the above-referenced docket.

Comment date: December 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER95–1797–000]

Take notice that on November 14, 1995, the American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCO), tendered for filing an amendment to its filing in the above-referenced docket.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

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6. Northern States Power Company (Wisconsin)

[Docket No. ER96-372-000]

Take notice that on November 16, 1995, Northern States Power Company (Wisconsin) (NSPW) tendered for filing its Amended and Restated Power and Energy Supply Agreement with the Village of Trempealeau, Wisconsin, dated November 6, 1995. NSPW states that the Agreement supersedes the Power and Energy Supply Agreement between the parties dated March 5, 1992, as amended on July 5, 1994.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. MP Energy, Inc.

[Docket No. ER96-373-000]

Take notice that on November 16, 1995, MP Energy, Inc. (MP Energy) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

MP Energy intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MP Energy sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. MP Energy is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER96-374-000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Heartland Energy Services, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96-375-000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Electric Clearinghouse, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER96-376-000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Catex-Vitol Electric, L.L.C. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96-377-000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Louis Dreyfus Electric Power, Inc. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER96-378-000]

Take notice that on November 16, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Citizens Lehman Power Sales. FPL requests an effective date of November 20, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Power, Inc.

[Docket No. ER96-379-000]

Take notice that Entergy Power, Inc. (EPI) on November 16, 1995, tendered for filing a Purchase and Sale Agreement with Citizens Lehman Power Sales.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing and respectfully requests waiver of the Commission's notice requirements.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Paragon Gas Marketing

[Docket No. ER96-380-000]

Take notice that on November 16, 1995, Paragon Gas Marketing (Paragon), a division of Eastex Energy, Inc. tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Paragon intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Paragon sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Paragon nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that sales may be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER96-382-000]

Take notice that on November 17, 1995, Southern Company Services, Inc. ("SCS"), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed two (2) service agreements between SCS, as agent of the Southern Companies, and (i) Gulf Stream Entergy and (ii) Louis Dreyfus Electric Power Inc. for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Kentucky Utilities Company

[Docket No. ER96-383-000]

Take notice that on November 14, 1995, Kentucky Utilities Company (KU) filed to withdraw the Letter Agreement (FERC Rate Schedule 215) providing for coordination sales between itself and Electric Clearinghouse, Inc. (ECI).

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER96-387-000]

Take notice that on November 17, 1995, PECO Energy Company (PECO) filed a Service Agreement dated October 26, 1995, with Commonwealth Electric Company (CECO) under PECO's Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CECO as a customer under the Tariff.

PECO requests an effective date of October 26, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CECO and the Pennsylvania Public Service Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96-388-000]

Take notice that on November 17, 1995, PECO Energy Company (PECO) filed a Service Agreement dated October 26, 1995, with Cambridge Electric Light Company (CELCO) under PECO's Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CELCO as a customer under the Tariff.

PECO requests an effective date of October 26, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CELCO and the Pennsylvania Public Service Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Washington Water Power Company

[Docket No. ER96-389-000]

Take notice that on November 17, 1995, the Washington Water Power Company (WWP) tendered for filing two signed service agreements under FERC Electric Tariff Volume No. 4 with Heartland Energy Services, Inc. and Public Utility District No. 1 of Grays Harbor County previously approved as unsigned service agreements. A Certificate of Concurrence with respect to exchanges is included for Heartland Energy Services, Inc.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Washington Water Power Company

[Docket No. ER96-390-000]

Take notice that on November 17, 1995, the Washington Water Power Company (WWP) tendered for filing an Interconnection and Transmission Service Agreement between WWP and Public Utilty District No. 1 of Chelan County, Washington. WWP requests waiver of the prior notice requirement and requests an effective time and date of 0001 hours, June 22, 1995.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Kansas City Power & Light Company

[Docket No. ER96-391-000]

Take notice that on November 17, 1995, Kansas City Power & Light Company filed an amendment to its Flexibile Point-to-Point Transmission Service Tariff and Network Integration Transmission Service Tariff in this docket.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Energy West Power Company, LLC

[Docket No. ER96-392-000]

Take notice that on November 17, 1995, Energy West Power Company, LLC (Energy West) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Energy West intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Energy West sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Energy West is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96-393-000]

Take notice that on November 17, 1995, GPU Service Corporation, on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred as to the GPU Operating Companies), filed an amendment to the GPU Power Pooling Agreement. The purpose of this amendment is to provide for the allocation of revenues received by the GPU Operating Companies under their Firm Transmission Service and Energy Transmission Service Tariffs between and among the Companies. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER96-394-000]

Take notice that on November 20, 1995, New England Power Company submitted for filing a letter agreement for transmission service to Rainbow Energy Marketing Corporation.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Green Mountain Power Corporation

[Docket No. ER96-395-000]

Take notice that on November 20, 1995, Green Mountain Power Corporation (GMP) tendered for filing Service Agreements for sales of capacity and energy under its FERC Electric Tariff, Original Volume No. 2 (Opportunity Transactions Tariff) to North American Energy Conservation, Inc, KCS Power Marketing, Virginia Power, and Pennsylvania Power & Light Company. GMP has requested waiver of the notice requirements of the Commission's Regulations in order to permit each of the Service Agreements to be made effective as of the date on which such Service Agreement was made.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Company

[Docket No. ER96-396-000]

Take notice that on November 20, 1995, New England Power Company (NEP) submitted for filing a service agreement and certificate of service with Connecticut Municipal Electric Energy Cooperative under NEP's FERC Electric Tariff, Original Volume No. 6.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Service Company

[Docket No. ER96-397-000]

Take notice that on November 20, 1995, New England Power Service Company (NEPSCO) submitted for filing a supplement, dated December 5, 1995, to the Amended REMVEC Agreement.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Northern Indiana Public Service Company

[Docket No. ER96-399-000]

Take notice that on November 20, 1995, Northern Indiana Public Service Company (Northern Indiana), tendered for filing with the Commission its Point-to-Point Transmission Service Tariff and Network Integration Service Tariff.

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Northern Indiana states that the Point-to-Point Transmission Service Tariff and Network Integration Service Tariff are initial rate schedules to implement open access electric transmission service on Northern Indiana's system.

Copies of the filing have been served on the Indiana Utility Regulatory Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER96-400-000]

Take notice that on November 20, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the "Companies", tendered for filing executed Service Agreements between the Companies and Bangor Hydro-Electric Company.

These Service Agreements specify that Bangor Hydro-Electric Company has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 1, 1995, and which have an effective date of March 20, 1995, will allow the Companies and Bangor Hydro-Electric Company to enter into separately scheduled transactions under which the Companies will sell to Bangor Hydro-Electric Company capacity and/or energy as the parties may mutually agree.

The Companies request an effective date of October 20, 1995, as specified on each Service Agreement.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER96-401-000]

Take notice that on November 20, 1995, New England Power Company filed Service Agreements and Certificates of Concurrence with two power marketers under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Illinois Power Company

[Docket No. ER96-402-000]

Take notice that on November 20, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Industrial Energy Applications (IEA). IPC states that the purpose of this agreement is to provide for the selling of capacity and energy by IPC to IEA.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Idaho Power Company

[Docket No. ER96-403-000]

Take notice that on November 20, 1995, Idaho Power Company (IPC) tendered for filing a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Rainbow Energy Marketing Corporation and Idaho Power Company and a Certificate of Concurrence.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Questar Energy Trading Company

[Docket No. ER96-404-000]

Take notice that Questar Energy Trading Company (Questar Energy) on November 20, 1995, tendered for filing its Rate Schedule No. 1, to be effective 60 days from November 20, 1995, and a petition for waivers of and blanket approvals under various regulations of the Commission.

Questar Energy intends to engage in electric power and energy transactions as a power marketer. Questar Energy proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length.

Questar Energy is not in the business of producing or transmitting electric power. Neither Questar Energy nor its affiliate(s) currently has or contemplates acquiring title to any electric power transmission or generation facilities. Questar Energy's Rate Schedule No. 1 provides for the sale of energy and capacity at prices mutually agreed upon by the purchaser and Questar Energy.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER96-405-000]

Take notice that on November 21, 1995, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Tennessee Power Company.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

35. Heath Petra Resources, Inc.

[Docket No. ER96-381-000]

Take notice that on November 16, 1995, Heath Petra Resources, Inc. (Heath Petra), tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Heath Petra intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Heath Petra sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Heath Petra nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that sales may be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

36. National Gas & Electric L.P.; Western System Power Pool; Rainbow Energy Marketing Corporation; Imprimis Corporation Power; Clearinghouse Inc.

[Docket No. ER90-168-025, ER91-195-022, ER94-1061-006, ER94-1672-004, ER95-914-002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 22, 1995, National Gas & Electric L.P. filed certain ifftormation as required by the Commission's March 20, 1990, order in Docket No. ER90-168-000.

On October 30, 1995, Western System Power Pool filed certain information as required by the Commission's May 13, 1993, order in Docket No. ER91-195-000.

On October 30, 1995, November 2, 1995, and November 22, 1995 Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994 order in Docket No. ER94-1061-000.

On November 27, 1995, Imprimis Corporation filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94-1672-000.

On November 13, 1995, Power Clearinghouse Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95-914-000.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-30200 Filed 12-11-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP95-375-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Intent To Prepare an Environmental Assessment for the Proposed Security Loop I Project and Request for Comments on Environmental Issues

December 6, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Security Loop I Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes Gas Transmission Limited Partnership (Great Lakes) requests Commission authorization, in Docket No. CP95-375-000, to construct and operate one segment of approximately 13.8 miles of 36-inch-diameter mainline loop in Charlevoix and Otsego Counties, Michigan. Great lakes wants to complete the looping of a portion of its 973-mile-long mainline. In addition, Great Lakes proposes to modify the existing piping at the Boyne Falls Compressor Station to accommodate the new loop. No additional compression is proposed. The proposed project would provide increased system reliability and flexibility for Great Lakes' customers, and would facilitate maintenance on the Great lakes system.

The general location of the proposed facilities is shown in appendix 1. Detailed project maps are shown in appendix 2[2].

Land Requirements for Construction

The proposed loop would be built adjacent and parallel to the existing right-of-way. Great Lakes intends to use a 100-foot-wide construction right-of-way for most of the project. About 50 feet of the planned 100-foot width would be on existing right-of-way. Consequently, about 50 feet of new clearing would be required. Following construction, about 25 feet of the construction right-of-way would be allowed to revert to its former land use.

A 55-foot-wide construction right-of-way would be used for the 2.65 miles of state forest land. About 15 feet of the 55-foot width would be on existing right-of-way. Of the 40 feet of new clearing that would be required, about 20 feet would be allowed to revert to forest use.

Additional working space would be required adjacent to the planned construction right-of-way at road and other utility line crossings, wetland crossings, in areas of steep side slopes, and at the beginning and end of the proposed loop.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Soils.
- Wetlands.
- Land use.
- Vegetation and wildlife.

We do not believe that the proposed project will have any impacts on geology, water resources, endangered and threatened species, cultural resources, air quality and noise, and hazardous waste.

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. Keep in mind that this is a preliminary list. The list of issues may be added to, subtract from, or changed based on your comments and our analysis. Issues are:

- One wetland would be crossed.
- A 100-foot-wide construction right-of-way is proposed.
- About 9.6 miles of the proposed pipeline right-of-way would cross forestland, resulting in the clearing of about 54.6 acres of forest.
- Approximately 11 percent of the proposed right-of-way would cross sandy soils within are considered highly

[1] Great Lakes Gas Transmission Limited Partnership's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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erodible soils by the Natural Resources Conservation Service.

- A total of 18.3 acres of public lands, including the Mackinaw State Forest, would be disturbed by the proposed construction right-of-way.
- Two residences are within 50 feet of the proposed construction right-of-way. In addition, a garage and a storage building are within 50 feet of the proposed construction right-of-way.
- The proposed construction right-of-way would cross 1.8 miles of Woodland Heights Estates, a proposed residential development.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–375–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EA Project Manager, Federal Energy Regulatory Commission—PR 11.2, 888 First Street, N.E., Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 5, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Gerber at the above address.

Becoming an Intervenor

In additional to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Gerber, EA Project Manager, at (202) 208–1121.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30207 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[TM96–3–20–000]

Algonquin Gas Transmission Company, et al.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995 and December 1, 1995, the thirty-five natural gas pipeline companies captioned above have each filed tariff sheets to establish the revised Gas Research Institute (GRI) surcharges effective January 1, 1996, for their respective transportation rates.[1] The proposed effective date of the tariff sheets is January 1, 1996.

The natural gas companies state that the tariff sheets listed in the Appendix A of this notice are being filed pursuant to the "Opinion and Order Approving Gas Research Institute's Second Year of its 1995–1996 Research, Development and Demonstration Program, Related Five-Year Research and Development Plan for 1996–2000, and Funding for 1996 RD&D Activities" issued by the Commission in Docket No. RP95–374–000 on October 13, 1995.

Any person desiring to be heard or to protest any of these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] See Appendix A for a listing of the tariff sheets filed by each pipeline.

APPENDIX A

Pipeline/Docket No./Filing date	Tariff sheets	FERC gas tariff
Algonquin Gas Transmission Company, TM96–3–20–000, 12/1/95.	Eleventh Revised Sheet No. 21, Original Sheet No. 21A, Eleventh Revised Sheet No. 22, Second Revised Sheet No. 22A, Eighth Revised Sheet No. 23, Eighth Revised Sheet No. 24, Eighth Revised Sheet No. 25, Eighth Revised Sheet No. 27, Seventh Revised Sheet No. 29, Seventh Revised Sheet No. 31, Seventh Revised Sheet No. 35, First Revised Sheet No. 41.	Fourth Revised Volume No. 1.
	Eighth Revised Sheet No. 259, Seventh Revised Sheet No. 343, Fifth Revised Sheet No. 431.	Original Volume No. 1.
ANR Pipeline Company, TM96–2–48–000, 12/1/95.	Tenth Revised Sheet No. 17	Second Revised Volume No. 1.
CNG Transmission Corporation, TM96–3–22–000, 12/1/95.	Eighth Revised Sheet No. 31, Fourteenth Revised Sheet No. 32, Fourteenth Revised Sheet No. 33.	Second Revised Volume No. 1.
Columbia Gas Transmission Corporation, TM96–1–21–000, 12/1/95.	Second Rev Tenth Revised Sheet No. 25, Second Rev Tenth Revised Sheet No. 26, Second Rev Tenth Revised Sheet No. 27, Second Rev Eleventh Revised Sheet No. 28.	Second Revised Volume No. 1.
Columbia Gulf Transmission Company, TM96–3–70–000, 12/1/95.	Tenth Revised Sheet No. 018, Tenth Revised Sheet No. 019	Second Revised Volume No. 1.
East Tennessee Natural Gas Company, TM96–2–2–000, 12/1/95.	Sixth Revised Sheet No. 4	Second Revised Volume No. 1.
El Paso Natural Gas Company, TM96–1–33–000, 12/1/95.	4th Revised Fourth Revised Sheet No. 20, 3rd Revised First Revised Sheet No. 22, 5th Revised Fourth Revised Sheet No. 23, Fifth Revised Sheet No. 24, Second Revised Sheet No. 256, Second Revised Sheet No. 257.	Second Revised Volume No. 1–A.
	4th Rev Thirty-Fifth Rev Sheet No. 1-D.2, Twenty-Eighth Revised Sheet No. 1-D.3.	Third Revised Volume No. 2.
Equitrans, Inc., TM96–1–24–000, 11/29/95.	Sixth Revised Sheet No. 5, Fifth Revised Sheet No. 6, Fifth Revised Sheet No. 8.	First Revised Volume No. 1.
Florida Gas Transmission Company, TM96–2–34–000, 11/30/95.	Tenth Revised Sheet No. 8A, Fifth Revised Sheet No. 8A.01, Second Revised Sheet No. 8A.02, Ninth Revised Sheet No. 8B, Second Revised Sheet No. 8B.01.	Third Revised Volume No. 1.
Great Lakes Gas Transmission Company, TM96–2–51–000, 11/30/95.	Fifth Revised Sheet No. 7, Third Revised Sheet No. 4B	Second Revised Volume No. 1.
Iroquois Gas Transmission System, L.P., TM96–3–110–000, 11/30/95.	Eleventh Revised Sheet No. 4	First Revised Volume No. 1.
K N Interstate Gas Transmission Co. TM96–2–53–000, 11/29/95.	Twelfth Revised Sheet No. 4–D	Second Revised Volume No. 1–A.
	second Revised Sheet No. 36, Second Revised Sheet No. 37	Second Revised Volume No. 1–B.
	Fourth Revised Sheet No. 4	First Revised Volume No. 1–C.
	First Revised Sheet No. 31, First Revised Sheet No. 32	First Revised Volume No. 1–D.
K N Wattenberg Transmission, TM96–2–117–000, 11/29/95.	Fourth Revised Sheet No. 6, Second Revised Sheet No. 65, Third Revised Sheet No. 66.	Original Volume No. 1.
Koch Gateway Pipeline Company TM96–2–11–000, 11/30/95.	Ninth Revised Sheet No. 20, Ninth Revised Sheet No. 22, Sixth Revised Sheet No. 23, Ninth Revised Sheet No. 24.	Fifth Revised Volume No. 1.
Midwestern Gas Transmission Company, TM96–1–5–000, 12/1/95.	Fifth Revised Sheet No. 5	Second Revised Volume No. 1.
Mississippi River Transmission Company, TM96–3–25–000, 11/30/95.	Eighth Revised Sheet No. 10, Second Revised Sheet No. 227	Third Revised Volume No. 1.
Mojave Pipeline Company, TM96–2–92–000, 12/1/95.	Fifth Revised Sheet No. 11	Third Revised Volume No. 1.
National Fuel Gas Supply Corporation, TM96–2–16–000, 11/30/95.	Twelfth Revised Sheet No. 5, Eleventh Revised Sheet No. 6, Sixth Revised Sheet No. 6A.	Third Revised Volume No. 1.
Natural Gas Pipeline Company of America, TM96–2–26–000, 12/1/95.	Twelfth Revised Sheet No. 25	Sixth Revised Volume No. 1.
NorAm Gas Transmission Company, TM96–2–31–000, 12/1/95.	Fifth Revised Sheet No. 13	Fouth Revised Volume No. 1.
Northern Natural Gas Company, TM96–2–59–000, 12/1/95.	7 Rev Seventeenth Revised Sheet No. 50, 7 Rev Seventeenth Revised Sheet No. 51, 2 Rev Sixth Revised Sheet No. 52, 2 Revised Sixth Revised Sheet No. 59, 2 Revised Sixth Revised Sheet No. 60.	Fifth Revised Volume No. 1.
	3 Revised 145 Revised Sheet No. 1C, 3 Rev Twentieth Revised Sheet No. 1C.a.	Original Volume No. 1.
Northwest Pipeline Corporation, TM96–2–37–000, 11/30/95.	Third Revised Sixth Revised Sheet No. 5 Twentieth Revised Sheet No. 2.2.	Third Revised Volume No. 1.
Panhandle Eastern Pipe Line Company, TM96–3–28–000, 12/1/95.	Twenty-First Revised Sheet No. 4, Twenty-First Revised Sheet No. 5, Twenty-First Revised Sheet No. 6, Twenty-First Revised Sheet No. 7.	First Revised Volume No. 1.
Questar Pipeline TM96–2–55–000, 12/1/95.	Second Revised Substitute Fourth Revised Sheet No. 5, Second Revised Fourth Revised Sheet No. 5A.	First Revised Volume No. 1.

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APPENDIX A—Continued

Pipeline/Docket No./Filing date	Tariff sheets	FERC gas tariff
	Second Revised Fourteenth Revised Sheet No. 8	Original Volume No. 1.
Southern Natural Gas Company, TM95–1–7–000, 11/30/95.	3rd Revised Sheet No. 194	Seventh Revised Volume No. 1.
T C P Gathering Co., TM96–1–122–000, 11/29/95.	First Revised Sheet No. 6, First Revised Sheet No. 84	Original Volume No. 1.
Texas Eastern Transmission Corporation, TM96–3–17–000, 12/1/95.	Seventeenth Revised Sheet No. 25, Sixteenth Revised Sheet No. 26, Seventeenth Revised Sheet No. 30, Sixteenth Revised Sheet No. 31, Eleventh Revised Sheet No. 34A, Tenth Revised Sheet No. 34B, Twenty-first Revised Sheet No. 41, Sixth Revised Sheet No. 41A, Twenty-first Revised Sheet No. 42, Eleventh Revised Sheet No. 42A, Eighth Revised Sheet No. 42B, Sixteenth Revised Sheet No. 43, Sixteenth Revised Sheet No. 50, Sixteenth Revised Sheet No. 51, Thirteenth Revised Sheet No. 52, Sixth Revised Sheet No. 631.	Sixth Revised Volume No. 1.
	Thirty-second Revised Sheet No. 1J, Thirty-first Revised Sheet No. 1K, Seventeenth Revised Sheet No. 1L.	Original Volume No. 2.
Texas Gas Transmission Corporation, TM95–3–18–000, 12/1/95.	Thirteenth Revised Sheet No. 10, Tenth Revised Sheet No. 11,, Fifth Revised Sheet No. 11A, Fifteenth Revised Sheet No. 12, Fifth Revised Sheet No. 13.	First Revised Volume No. 1.
Transcontinental Gas Pipe Line Corporation, TM96–5–29–000, 12/1/95.	Thirteenth Revised Sheet No. 60, Third Revised Sheet No. 60B, Second Revised Sheet No. 60C.	Third Revised Volume No. 1.
Transwestern Pipeline Company, TM95–2–42–000, 11/30/95.	116th Revised Sheet No. 5, 21st Revised Sheet No. 5A, 13th Revised Sheet No. 5A.02, 13th Revised Sheet No. 5A.03, 18th Revised Sheet No. 5B.	Second Revised Volume No. 1.
Trunkline Gas Company, TM96–4–30–000, 12/1/95.	Fifth Revised Sheet No. 13, Second Revised Sheet No. 216	First Revised Volume No. 1.
Williams Natural Gas Co., TM95–2–43–000, 11/29/95.	Eighth Revised Sheet No. 13, First Revised Sheet No. 268	Second Revised Volume No. 1.
Williston Basin Interstate Pipeline Company, TM96–2–49–000, 12/1/95.	4th Rev 58th Revised Sheet No. 11B, 4th Rev Thirteenth Revised Sheet No. 15, 4th Rev Sixteenth Revised Sheet No. 16, 4th Rev Thirteenth Revised Sheet No. 18, 4th Rev Eleventh Revised Sheet No. 21.	Second Volume No. 1.
	4th Rev 58th Revised Sheet No. 11B	Original Revised Volume No. 1.

[FR Doc. 95–30179 Filed 12–11–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP96–33–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995 ANR Pipeline Company ("ANR") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 ("Tariff"), the following tariff sheets, to become effective December 1, 1995:

Title Page to Tariff
Tenth Revised Sheet No. 8
Twelfth Revised Sheet No. 9
Twelfth Revised Sheet No. 13
Twelfth Revised Sheet No. 16
Fourteenth Revised Sheet No. 18
Third Revised Sheet No. 185

The proposed changes would increase proposed Quarterly Dakota Above-Market cost recoveries from $9.3 million to $9.7 million based upon costs incurred from August, 1995 to October, 1995.

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.7 million of costs that are associated with its obligations to Dakota Gasification Company ("Dakota").

ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–30195 Filed 12–11–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP96–70–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to be effective January 1, 1996.

Canyon states that the purpose of the filing is to convert Canyon's tariff and rates from a volumetric (Mcf) to a thermal basis (MMBtu). The Commission's Order No. 582 issued September 28, 1995 at Docket No. RM95–3–000 requires pipelines that are on a volumetric basis to convert to a thermal basis within one year of implementation. Canyon states that it is therefore converting its existing volumetric rates to a thermal basis. Canyon states that it has used the system average Btu for the twelve months ended September 30, 1995 as the basis for converting to a thermal basis. Canyon states that there will be no increase in revenues under the proposed revisions since both volumes and rates are being converted.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1996.

Canyon states that copies of the filing are being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–30187 Filed 12–11–95; 8:45 am]
BILLING CODE 6717–01–M

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–30183 Filed 12–11–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ96–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned proceeding, with a proposed effective date of December 1, 1995.

ESNG states that the revised tariff sheets are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The revised sales rates reflect an increase of $0.4234 per dt in the Commodity Charge, as measured against ESNG's regularly scheduled Annual PGA filing, Docket No. TA96–1–23–000, *et seq.*, filed on September 1, 1995 and approved by the Commission on September 26, 1995.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the period December 1, 1995 through January 31, 1996, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG respectfully requests waiver of the Commission's thirty (30) day notice requirement so as to permit it to place the subject rates into effect on December 1, 1995, as proposed. ESNG states that it is unable to meet the thirty (30) day notice requirements due to the fact that the normal purchasing of gas supplies from producers/marketers is negotiated five working days before the end of the month (for the next month's supply). The normal time frame to order gas supply for the next month does not give ESNG any flexibility in order to make a filing in time for the "notice requirement" when gas prices spike upward (from projected) as they have for the month of December, 1995 (projected to remain at the same level for January, 1996). The Commission's waiver of the thirty day notice requirement in the case of this instant filing would allow for a more accurate recovery of ESNG's costs and mitigate the deferred commodity costs which would occur in the absence of such waiver.

ESNG states that copies of the filing have been served upon it customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Pursuant to Section 154.1210 of the Commission's Regulations, all such motions or protests should be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–30181 Filed 12–11–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP96–74–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Fourteenth Revised Sheet No. 11. CIG requests that the proposed tariff sheet be made effective on January 1, 1996.

CIG states that this filing is being made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.7 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

[Docket No. RP96–56–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Volume No. 1–A, the

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following tariff sheets, to become effective January 1, 1996:

4th Revised Fourth Revised Sheet No. 23
Fourth Revised Sheet No. 24
Fourth Revised Sheet No. 26
3rd Revised Third Revised Sheet No. 27
3rd Revised Third Revised Sheet No. 28
First Revised Sheet Nos. 30–32

El Paso states that Section 31.4(b) of its tariff provides the mechanism by which El Paso adjusts the interest calculated on the unrecovered balance of its stranded investment cost in Washington Ranch Storage Facility and then adjusts the Monthly Amortized Amount allocated to each Shipper. El Paso states that the Tariff further provides that El Paso will adjust its rates for any differences resulting from the use of the estimated interest versus the actual interest and such difference shall be added to or deducted from the estimated interest for the upcoming six month period.

El Paso states that the Monthly Amortized Amount has been adjusted to reflect the projected interest and the difference in the previously estimated interest and actual interest utilizing the appropriate interest rate calculated pursuant to § 154.501(d)(1) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act. El Paso states that the projected interest was calculated on the remaining unrecovered balance of the stranded investment costs. El Paso states that the revised Washington Ranch Reservation Surcharges and resulting Monthly Billed Amounts are shown on the tendered tariff sheets.

Any person desiring to be heard or to protest any of these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filings noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30200 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–75–000]

High Island Offshore System; Notice of Tariff Revision

December 5, 1995.

Take notice that on December 4, 1995, High Island Offshore System (HIOS) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following revised sheets

Rate schedule(s)	Sheet No.
T–3	Fifteenth Revised Sheet No. 73.
	Ninth Revised Sheet No. 73A.
	Seventh Revised Sheet No. 73B.
T–17	Second Revised Sheet No. 419.

HIOS states Rate Schedules T–3 and T–17 are gas transportation agreements between HIOS and Texas Gas Transmission Corporation (Texas Gas), for service authorized by the Commission at Docket No. CP75–104, et al.

HIOS further states that the revisions reflect HIOS' tariff conversion from a volumetric to a thermal based tariff effective December 1, 1995. The said conversion is in compliance with the Commission's Stipulation and Agreement under FERC Docket No. RP94–162.

HIOS has requested that the subject Tariff revision be accepted for filing and made effective on December 1, 1995.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30202 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–63–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Second Revised Sheet No. 1
Sixth Revised Sheet No. 5
First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet Nos. 39–40
First Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44
Fourth Revised Sheet No. 45
Third Revised Sheet No. 46
Second Revised Sheet No. 47
Fourth Revised Sheet No. 48
Second Revised Sheet No. 49
Third Revised Sheet No. 50
Third Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 54
Third Revised Sheet No. 55
Third Revised Sheet No. 56
Fourth Revised Sheet No. 57
Original Sheet No. 57A
Original Sheet No. 57B
Third Revised Sheet No. 59
Original Sheet No. 59A
Second Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 68
First Revised Sheet No. 70
First Revised Sheet No. 73
Second Revised Sheet No. 75
Second Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
Original Sheet No. 79A
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 86A
First Revised Sheet No. 87
Second Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 116
Second Revised Sheet No. 117
Fourth Revised Sheet No. 118
Second Revised Sheet No. 119
First Revised Sheet No. 171
First Revised Sheet No. 172
First Revised Sheet No. 173
First Revised Sheet No. 174
First Revised Sheet No. 175
First Revised Sheet No. 176
First Revised Sheet No. 177
First Revised Sheet No. 178
First Revised Sheet Nos. 179–180
Third Revised Sheet No. 181
Second Revised Sheet No. 184
Second Revised Sheet No. 185
Second Revised Sheet No. 186
Second Revised Sheet No. 188
Original Sheet No. 188A
Second Revised Sheet No. 189

Iroquois states that the purpose of the proposed changes is to establish a new park and loan service that would be performed by Iroquois under the proposed Rate Schedule PAL. PAL service will permit Iroquois customers to utilize Iroquois' linepack on an interruptible basis as a form of short-term storage. Iroquois states that this service is similar to other services which have been approved by the Commission in recent cases. See, e.g., Pacific Gas Transmission Company, 66 FERC ¶ 61,356 (1994); 68 FERC ¶ 61,197 (1994). In addition to the new rate schedule, the filing includes (i) numerous changes to the General Terms and Conditions of Iroquois' tariff to conform it to the new park and loan service, and (ii) a pro forma park and loan service contract. Iroquois states that copies of this filing were served upon all customers and interested state regulatory agencies. Any person desiring to be heard or to protest this filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30194 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–58–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1996:

First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 204
First Revised Sheet No. 305
First Revised Sheet No. 4101
First Revised Sheet No. 4201

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission").

Koch Gateway also states that copies of its filing are being served upon Koch Gateway customers, states commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30201 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–68–000]

Mississippi River Transmission Corporation; Notice of Filing

December 6, 1995.

Take notice that on November 30, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing worksheets reflecting the calculation of Miscellaneous Revenues in accordance with Section 18 of its FERC Gas Tariff, Third Revised Volume No. 1. MRT states that during the Miscellaneous Revenue Accumulation Periods contained in the filing its cashout costs exceeded cashout revenues and that no penalty charges were collected from affiliates, resulting in no Miscellaneous Revenue Flowthrough Adjustment at this time.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30191 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–67–000]

Mojave Pipeline Company; Notice of Tariff Filing

December 6, 1995.

Take notice that on December 1, 1995, Mojave Pipeline Company (Mojave) tendered for filing a notice of tariff filing concerning natural gas services proposed to be rendered pursuant to Mojave's FERC Gas Tariff, First Revised Volume No. 1. Mojave is tendering revised tariff sheets for filing and acceptance to become effective January 1, 1996.

Mojave states that its proposed Tariff Sheets implement two, new "Hub Series," including Authorized Loan Service under Rate Schedule ALS–1 and Authorized Parking Service under Rate Schedule APS–1, to be provided by Mojave pursuant to its blanket transportation certificate under Part 284 of the Commission's Regulations. In addition, Mojave states that its filing includes modifications to the Operating Tolerances provisions set forth in Section 20 of the General Terms and Conditions of its tariff which provide for Imbalance Trading as a further operational accommodation available to firm and interruptible shippers on Mojave's system. Mojave proposes to

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change two-tiered rates for Authorized Loan Service and Authorized Parking Service consisting of a minimum $0.001/MMBtu and maximum $0.329/MMBtu "First Day" rate; and a minimum $0.001/MMBtu and maximum $0.1645/MMBtu "Subsequent Day" rate. Mojave further proposes to treat revenues derived from such services as interruptible transportation revenues for purposes of revenue allocations and crediting under Rate Schedule FT–1. Mojave purposes no separate rate for Imbalance Trading, except for a $0.02/MMBtu "marketing fee" which trading at the request of an affected shipper.

Mojave states that copies of the notice were served upon all of Mojave's firm and interruptible transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30190 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–59–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Thirteenth Revised Sheet No. 5, to be effective January 1, 1996.

National states that the proposed tariff sheet reflects an adjustment to recover $59,000 through National's EFT rate based on the Transportation and Storage Cost Adjustment provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30197 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–59–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on November 30, 1995, National Fuel Gas Supply Corporation (National), pursuant to Section 12.5 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, tendered for filing as a limited application, pursuant to Section 4 of the Natural Gas Act, a proposed direct bill to recover unassigned gas costs effective on January 1, 1996.

National states that the proposed limited Section 4 application provides for the recovery of unassigned gas costs incurred by National from the time it restructured its services on August 1, 1993, until the time CNG Transmission Corporation, Columbia Gas Transmission Corporation, and Tennessee Gas Pipeline Company implemented their restructured services.

National further states that $184,647.89 of unassigned gas costs billed by those pipelines during that period, including interest, are to be recovered from National's customers pursuant to the allocation method set forth on Sheet Nos. 167 through 179 of National's tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriated action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30196 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–59–000]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 1995.

Take notice that Northern Natural Gas Company (Northern), on December 1, 1995, tendered for filing, under Section 4 of the Natural Gas Act (NGA), notice in compliance of the November 29, 1995, Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities (Order), issued by the Commission in Docket No. CP95–270–000 et al. authorizing Northern Natural Gas Company (Northern) to abandon certain transmission facilities, located in Reeves, Pecos and Ward Counties in Texas, (Reeves and Ward County Facilities) by sale to Mobil Producing Texas & New Mexico Inc. (Mobil Producing).

Northern states the reason for the termination is the abandonment of the Reeves and Ward County Facilities by sale to Mobil Producing. As a result of restructuring under Order No. 636, Northern's merchant services obligations have been terminated and Northern no longer requires any gas supplies from the production areas accessed by the Reeves and Ward County Facilities to fulfill its customer obligations.

A notice of the deletion of receipt and delivery points of the Reeves and Ward County Facilities will be posted on Northern's EBB, consistent with Northern's practice.

Copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protest will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30188 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–58–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858-Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 6th Rev Seventeenth Revised Sheet Nos. 50 and 51 and Twenty-Fifth Rev Sheet No. 53 to revise these surcharges effective January 1, 1996.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30189 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–54–000]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 1995.

Take notice that on November 30, 1995, Northern Natural Gas Company (Northern), tendered for filing, under Section 4 of the Natural Gas Act (NGA), notice of termination of gathering services. Northern states that on November 29, 1995, an Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities (Order) was issued by the Commission in the above-referenced Docket Numbers authorizing Northern Natural Gas Company (Northern) to abandon certain pipeline, compression, dehydrating and delivery point gathering facilities, with appurtenances, located in various counties in Texas, Oklahoma, Kansas, Wyoming and Colorado (Facilities), by sale to its affiliates Enron Anadarko Gathering Corp., Enron Gathering Limited Partnership, Enron Permian Gathering Inc. and Enron Mountain Gathering Inc. (collectively referred to as "Enron Gathering Companies").

Northern states that this filing is being made in compliance with the Order.

Northern states the reason for the termination is the abandonment of the Facilities by sale to the Enron Gathering Companies. As a result of restructuring under Order No. 636, Northern's merchant services obligations have been terminated and Northern no longer requires any gas supplies from the Anadarko, Hugoton, Permian or Rocky Mountain production areas accessed by the Facilities to fulfill its customer obligations.

Northern states that a notice of this termination has been posted on Northern's EBB, consistent with Northern's practice. In addition, contemporaneous with this filing, written notice of the termination is being provided to each applicable individual gathering shipper.

Northern also states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30204 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–2–000]

Sea Robin Pipeline Company; Notice of Filing

December 6, 1995.

Take notice that on November 28, 1995, Sea Robin Pipeline Company (Sea Robin) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 19286–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994).

Continued

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and Order Nos. 566 *et seq.*[2] See Robin states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

See Robin states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30288 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–64–000]

South Georgia Natural Gas Company; Notice of Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1996:

Second Revised Sheet No. 5
Second Revised Sheet No. 6

South Georgia sets forth in the filing the deferred costs of its post employment benefits (other than pensions) ("PBOPs") incurred since January 1, 1993. These costs have arisen as a result of South Georgia's adoption of the Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106).

Copies of the filing were served upon South Georgia's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of South Georgia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30193 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–72–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 6, 1995.

Take notice that on December 1, 1995, Southern Natural Gas Company (Southern) submitted for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following substitute tariff sheets, to become effective January 1, 1996:

Sixth Revised Sheet No. 15A
Sixth Revised Sheet No. 17A
Second Revised Sheet No. 18A

Southern asserts that the purpose of this filing is to comply with the Commission's Order Accepting Settlement, Severing Contesting Parties, Issuing Certificates and Approving Abandonment issued on September 29, 1995, 72 FERC ¶ 61,322 (1995) (Order), which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al. In accordance with Paragraph 15 of Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its unrecovered 1995 and 1996 GSR costs.

Under the terms of the Settlement, Southern had filed tariff sheets providing for recovery of Southern's gas supply realignment (GSR) costs from the parties supporting the Settlement through a reservation surcharge of $1.40/Mcf of Transportation Demand and a volumetric surcharge of $0.08/MMBtu, which sheets were accepted subject to conditions effective March 1, 1995, by Letter Order of the Commission dated April 4, 1995, in Docket No. RP95–209, 71 FERC ¶ 61,022 (1995). Paragraph 15 of Article VII of the Settlement provides for Southern to file on or before December 1, 1995 a GSR volumetric surcharge to be effective for the parties supporting the Settlement beginning January 1, 1996, which surcharge replaces the $1.40/Mcf and $0.08/MMBtu surcharges previously in effect. Such volumetric surcharge is to be calculated based on the sum of Southern's estimate of its unrecovered GSR costs as of December 31, 1995, plus Southern's estimate of its 1996 GSR costs (after deducting (i) Southern's share of GSR costs and (ii) any transportation revenue credits to be applied against the GSR volumetric surcharges as provided in paragraph 3 of Article VIII of the Settlement and excluding costs allocated to contesting parties not bound by the Settlement), divided by the latest 12-month actual throughput on Southern's system. The Settlement provides that the GSR volumetric surcharge calculated as described hereinabove shall be effective as of January 1, 1996, subject to an adjustment effective April 1, 1996, as provided in Paragraph 16 of Article VII of the Settlement.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30185 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994)].

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Camco, Inc.* v. *FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[Docket No. RP96–65–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Twenty-sixth Revised Sheet No. 15
Fifth Revised Sheet No. 15a
Twenty-sixth Revised Sheet No. 17
Fifth Revised Sheet No. 17a
Fourteenth Revised Sheet No. 18
First Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30192 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–57–000]

Southern National Gas Company; Notice of GSR Revised Tariff Sheets

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective December 1, 1995.

Twenty-fourth Revised Sheet No. 15
Twenty-fourth Revised Sheet No. 17

The proposed tariff sheets reflects a slight decrease in Southern's December 1, 1995, FT and FT-NN GSR surcharge.

Southern states that the above referenced sheets will be applicable to parties who are not in support of Southern's Stipulation and Agreement filed on March 15, 1995 in Docket Nos. RP89-224, et al.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc- 95-30202 Filed 12-11-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96–53–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

December 6, 1995.

Take notice that on November 30, 1995, Southern Natural Gas Company (Southern) set forth its revised demand tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1996.

Tariff Sheets Applicable to Contesting Parties:

Twenty-Fifth Revised Sheet No. 15
Twenty-Fifth Revised Sheet No. 17
Thirteenth Revised Sheet No. 18
Seventeenth Revised Sheet No. 29
Seventeenth Revised Sheet No. 30
Seventeenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties:

Fourth Revised Sheet No. 15A
Fourth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period August 1, 1995 through October 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1996.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30205 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP96–73–000 and TM96–2–8–000]

Tennessee Gas Pipeline Company; Notice of Filing

December 6, 1995.

Take notice that on December 1, 1995, Tennessee Gas Pipeline Company (Tennessee) filed a transportation cost rate adjustment (TCRA) to recover costs paid for transportation on other pipelines, as reflected in Account 858, pursuant to Article XXIV of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 and to reflect the Gas Research Institute (GRI) Adjustment for 1996. Tennessee requests that the following tariff sheets implementing the TCRA, be accepted and allowed to go into effect on January 1, 1996:

Fourth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Eighth Revised Sheet No. 21A
Thirteenth Revised Sheet No. 22
Eighth Revised Sheet No. 22A
Fourth Revised Sheet No. 23
First Revised Sheet No. 23A
Fourth Revised Sheet No. 26
Fifth Revised Sheet No. 26A
Fourth Revised Sheet No. 26B

Tennessee states that the filing will reduce its TRCA surcharge by $.14 per dth, resulting in a TCRA surcharge of $.30 per dth.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30205 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–95–81–000]

Tennessee Gas Pipeline Company; Notice of Change Pursuant to Tariff Adjustment Provisions

December 6, 1995.

Take notice that on November 30, 1995, Tennessee Gas Pipeline Company (Tennessee) filed to revise its recovery of take-or-pay transition costs pursuant to Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee states that the purpose of the filing is to reflect the recovery of an additional $5,141,642 of new take-or-pay transition costs, including interest, incurred by Tennessee pursuant to settlements predating July 1, 1992. Tennessee states that the new costs of $5,141,642 have been allocated under an equitable sharing formula of 50% absorption and 50% recovery (41.78% demand, 8.22% volumetric) in conformance with the Stipulation and Agreement filed on June 25, 1991, as amended, in Docket No. RP86–119, *et al.*

Tennessee also submitted the following revised tariff sheet to be effective October 1, 1995:

Fifth Revised Volume No. 1
Third Revised Sheet No. 38

Tennessee states that the purpose of this tariff sheet is to terminate the previously effective demand surcharge to Alabama-Tennessee Natural Gas Company.

Tennessee states that copies of the filing have been mailed to affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30184 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–71–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1995.

Take notice that on December 1, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to be effective January 1, 1996.

Trailblazer states that the purpose of the filing is to convert Trailblazer's tariff and rates from a volumetric (Mcf) to a thermal basis (MMBtu). The Commission's Order No. 582 issued September 28, 1995 at Docket No. RM95–3–000 requires pipelines that are on a volumetric basis to convert to a thermal basis within one year of implementation. Trailblazer states that it is therefore converting its existing volumetric rates to a thermal basis. Trailblazer states that it has used the system average Btu for the twelve months ended September 30, 1995 as the basis for converting to a thermal basis. Trailblazer states that there will be no increase in revenues under the proposed revisions since both volumes and rates are being converted.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1996.

Trailblazer states that copies of the filing are being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30186 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

Upper Peninsula Power Company; Notice of Public Scoping Meeting

[Project No. 1864–005]

December 6, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application for a new license (relicense) for the existing project operated by the Upper Peninsula Power Company (UPPCo) on the Ontonagon River system in the western part of Michigan's Upper Peninsula and a small portion of neighboring Wisconsin. The project includes four developments: Bond Falls, Bergland, Cisco, and Victoria.

Upon review of the application, supplemental filings and intervenor submittals, the Commission staff concludes that, given the location and interaction of the project with other projects nearby, staff will prepare an Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposals and alternatives for the project.

One element of the EIS process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EIS; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EIS.

Scoping Meetings

Commission staff will conduct three public meetings for the Bond Falls Project. All interested individuals, organizations, and agencies are invited to attend any of the planned meetings and help staff identify the scope of environmental issues that should and should not be analyzed in the Bond Falls EIS.

Two scoping meetings will be held on Wednesday, January 10, 1996, at the Best Western Porcupine Mountain Lodge in Silver, City, MI. The first meeting will be held from 1:00 PM to 4:00 PM, EST, and will be oriented toward resource agency concerns. The second meeting will be held in the evening from 7:30 PM to 10:00 PM, EST, and will be oriented toward public participation.

A third scoping meeting will be held on Thursday, January 11, 1996, at the Sylvania Visitor Center in Watersmeet, MI. The meeting will be held in the evening from 7:00 PM to 10:00 PM, EST, and will be oriented toward public participation.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Bond Falls Project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to speak during the public meeting. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Objectives of the Scoping Meetings

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EIS;
- Identify resource issues that are of lesser importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EIS.

Information Requested

Federal and state resource agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the project. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the projects; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than January 31, 1996. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefits of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page:

FERC Project No. 1864: Bond Falls

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Frankie Green at (202) 501–7704.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30206 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ96–1–35–000]

West Texas Gas, Inc.; Notice of Filing

December 6, 1995.

Take notice that on December 1, 1995, West Texas Gas, Inc. (WTG) filed Seventeenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1996. WNG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211

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and 385.214. Pursuant to Section 154.210 of the Commission's regulations, all such motion or protests must be filed not later than 12 days after the date of filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30180 Filed 12–11–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–6]

Request for Comments: Information Collection Request for the 1996 Metal Products and Machinery—Phase II Survey; Agency Information Collection Activities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the United States Environmental Protection Agency (EPA) is planning to request approval from the Office of Management and Budget (OMB) to conduct a survey of industries included in the Metal Products and Machinery (MP&M) Phase II industrial categories. These categories are motor vehicles (i.e., automotive industry activities—excluding automotive filling stations), bus & truck, railroad, office machines, household equipment, instruments (i.e., measurement and control instruments), precious metals, and ships & boats. Before submitting the proposed Information Collection Request (ICR) to OMB for review and approval, EPA is soliciting comments from the public on specific aspects of the proposed information collection as described below.

DATES: Comments and requests for information must be received by EPA no later than February 12, 1996.

ADDRESSES: The public may contact Mr. Mark Ingle at the EPA for a copy of the proposed survey instruments. Mr. Ingle may be reached by mail at U.S. EPA, Engineering and Analysis Division, Mail Code 4303, Office of Science and Technology, 401 M Street SW., Washington, DC 20460; or by telephone at (202) 260–7191. The survey instruments will be available as draft documents that include all pertinent instructions, information request questions, and definitions.

SUPPLEMENTARY INFORMATION: *Affected Entities:* Entities affected by the proposed survey include industrial activities that manufacture, maintain, or repair metal products and machinery included in the following industry categories: motor vehicles (i.e., automotive industry activities—excluding automotive filling stations), bus & truck, railroad, office machines, household equipment, instruments (i.e., measurement and control instruments), precious metals, and ships & boats. Such entities may be privately owned, or may be owned by the federal government and/or state/local governments. The survey instruments will be sent to entities in these categories, regardless of the ownership status of the parts they are manufacturing, maintaining, or repairing. The survey is intended to identify and collect data from MP&M Phase II industrial sites that generate and discharge process wastewater from unit operations associated with potential water-using industrial activities (selected examples of water-using industrial activities are electroplating, painting, machining, grinding, conversion coating).

In addition to the directly affected entities listed above, the EPA also plans to collect information related to regulatory burden that would be created by implementation of a final MP&M Phase II rule on other federal agencies (e.g., Department of Defense, Department of Energy, etc.), and the state/local governmental authorities responsible for operating the affected publicly owned treatment works. Impacts on these other government entities could include either increased costs to issue additional permits or cost savings realized from using the proposed national standards instead of local pollutant limits.

Title: 1996 Metal Products and Machinery Industry—Phase II Survey.

Abstract: The survey is intended to collect, from industry and other affected parties, the type of technical and economic information required by EPA to develop effluent limitations guidelines for the Metal Products and Machinery, Phase II industry categories described above. EPA is required under Section 304(m) of the Clean Water Act of 1987 (Federal Water Pollution Control Act, 33 U.S.C. 1314(m)) to promulgate new effluent limitations guidelines. As the result of a lawsuit by the Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. (*NRDC et al.* v. *Reilly*, Civ. No. 89–2980), a Consent Decree was entered by the Court on January 31, 1992 that established the schedule for promulgating numerous effluent limitations guidelines including the MP&M Phase II rule. Thus, EPA is required under a court order stemming from the CWA to promulgate the MP&M Phase II rule. Because this survey will be issued under authority of Section 308 of the Clean Water Act of 1987 (Federal Water Pollution Control Act, U.S.C. Section 1318), responses from data collection survey instrument recipients are mandatory. The survey instruments will be mailed after OMB approves the ICR. The ICR that will be submitted by EPA to OMB will include discussion of the comments EPA has already received to date and the comments received as the result of today's announcement. The proposed survey instruments are a necessary part of the data collection portion of the effluent limitations guidelines development process. The proposed survey instruments will provide EPA with the technical and economic data required to effectively evaluate pollution control technologies and the economic achievability of the final rule. EPA will consider both technical performance and economic achievability (including cost effectiveness analyses of alternative pollution control technologies) when developing the final regulations.

Burden Statement: The proposed survey instruments were developed by improving upon the MP&M Phase I survey in such a manner as to reduce burden and improve clarity. EPA has already conducted an outreach program to industry and other government entities with the objective of minimizing reporting burden. The outreach program included distribution of draft survey instruments to industry and governmental associations, outreach to community groups, and direct presentations at meetings. The following are the industry/government associations already contacted as part of the EPA outreach program: Air Conditioning and Refrigeration Institute, American Ambulance Association, American Automotive Manufacturers Association, American Bus Association, American Electronics Association, American Electroplaters and Surface Finishers Society, American Furniture Manufacturing Association, American Public Transit Association, American Short Line Railroad Association, American Trucking Association, American Watch Association, Association Council of the National Association of Manufacturers, Association for the Advancement of Medical Instruments, Association of American Railroads, Association of International Automotive Manufacturers, Association of Home Appliance Manufacturers, Association of Metropolitan Sewerage Agencies, Automotive Service Association, Citizens for a Better Environment, Clock Manufacturers and Marketing Association, Community Transportation Association of America, Computer and Communication Industry Association, Dental Manufacturers of America, Electronic Industries Association, Environmental Defense Fund, Friends of the Earth, Gold & Silver Institute, Health Industry Manufacturers Association, Information Technology Industry Council, International Precious Metals Institute, Manufacturing Jewelers & Silversmiths of America, Motor & Equipment Manufacturers Association, National Coalition of Advanced Manufacturing, National Association of Metal Finishers, National Shipbuilding Research Program, Natural Resources Defense Council, Railway Progress Institute, Scientific Apparatus Manufacturers Association, Silver Coalition, Silver Users Association, Sierra Club, Sporting Goods Manufacturers Association, The Jewelry Manufacturers Guild, Truck Renting and Leasing Association, United Bus Owners of America, United Auto Workers Union—Health and Safety Department. Based on comments already received as the result of these outreach activities, the proposed MP&M Phase II industry survey instruments will be made up of a brief screener and a more detailed questionnaire. This two-phase survey will allow burden on industrial facilities to be related to process wastewater flow and pollutant discharges such that facilities discharging less than 1,000,000 gallons per year of process wastewater will have less reporting burden than facilities discharging larger volumes of process wastewater. Finally, EPA will maintain a temporary, no-charge telephone number that survey recipients may call to obtain assistance in completing the data collection surveys. EPA believes that the no-charge telephone number will greatly reduce burden by helping recipients to answer specific questions within the context of their individual operations. To minimize burden on federal, state, and local governments that may operate MP&M-Phase-II-type facilities, survey instruments for these specific government entities that reflect the unique nature of government economic accounting have been developed. Similar survey instruments that discuss potential burden issues on other government entities such as wastewater treatment plant operators have also been developed. Current burden estimates, based on an analysis of the MP&M Phase I survey responses and comments provided by trade associations on the proposed MP&M Phase II survey instruments are based on the type and number of surveys that will be distributed. The following summarizes these burden estimates:

1. The total estimated burden on industry to respond to the data collection surveys is estimated to be 59,540 hours. This burden is based on industry completing approximately 5,000 surveys. Of these 5,000 surveys, 4,620 will be the simple, one-page screeners that are estimated to require only one hour to complete (i.e., the average time required by all recipients to complete the survey will be one hour; with many recipients requiring only a few minutes to complete the screener, while large firms may require a few hours to collect the required data). The remaining 380 recipients (i.e., the larger industrial wastewater dischargers) will receive larger, more comprehensive surveys that will take up to approximately 154 hours to complete. The burden estimates for these larger facilities are based on approximately 100 sites requiring approximately 118 hours to complete the survey and 280 of the largest discharging facilities requiring 154 hours to complete the survey.

2. The total burden estimate on municipalities, DoD, DoE, and other government entities is expected to be 3,400 hours with approximately 50 government entities having to complete surveys. EPA estimates that these other government entities will require an average of 68 hours to complete the surveys (i.e., the amount of time municipalities will require to complete the surveys will range from 1 hour to 136 hours with 68 hours being an average estimated amount of time).

3. The total burden estimate on POTWs and other entities that will implement the MP&M Phase II rules is estimated to be 5,500 hours with approximately 250 POTWs completing the data collection surveys and each respondent requiring an average of 22 hours to complete the survey. Estimates for the time required to complete these surveys ranges from 4 to 40 hours for each survey respondent.

Thus, the total national burden estimate for all parts of this data collection is 68,440 hours.

Given that EPA needs to collect data regarding both costs and benefits associated with environmental rules, EPA is interested in any suggestions industry or the public may have regarding means of reducing the data collection burden. Any burden reduction suggestions must consider the need to collect information on the pollutants being discharged by the industries, the processes that generate the pollutants, the economic achievability of the proposed regulations, and the economic benefits derived from reducing pollution in our oceans, lakes, rivers, and streams. Please send any suggestions for reducing burden to Mr. Mark Ingle, U.S. EPA, Engineering and Analysis Division, Mail Code 4303, Office of Science and Technology, 401 M Street, S.W., Washington, DC 20460.

Dated: November 14, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–30258 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–5]

XL Community Pilot Program

SUMMARY: This document responds to President Clinton's March 16, 1995 initiatives listed in the report, *Reinventing Environmental Regulation.* In the report, EPA committed to implementing pilot programs to develop innovative alternatives to the current environmental management system. These programs will give a limited number of regulated entities and communities an opportunity to demonstrate excellence and leadership in environmental protection. These reinvention pilot programs, entitled Project XL, will focus on four areas: facilities, industry sectors, federal government agencies, and communities. This **Federal Register** Notice addresses the XL Community Pilot Program and is a solicitation for pilot project proposals and comments on all aspects of the XL Community Pilot Program. An earlier Federal Register Notice published on May 23, 1995 (60 FR 27282 discusses the XL pilot programs for facilities, industry sectors, and Federal government agencies.

Today, EPA is announcing the XL Community Pilot Program to join with local governments, communities, states, federal recognized tribes, and others to conduct a limited number of pilot projects that demonstrate and assess the merits of community-designed and directed strategies for achieving greater environmental quality and sustainable

economic goals. These pilots will build on the experience gained in the Administration's Empowerment Zone and Ecosystem Management Initiatives. Both of these efforts encourage participants to achieve their community's economic development and environmental quality goals by using community-based planning to mobilize the resources necessary to sustain economic and environmental health. XL Community pilots will integrate the mutually supportive goals of economic development and environmental protection at the community level utilizing full public participation.

In the XL Communities Pilot Program EPA will assist local communities to achieve superior environmental performance. Through the XL Communities Pilot Program, EPA will offer assistance in one or more areas, depending on the nature of the proposed project—flexibility in the implementation of environmental regulations, technical support, coordination of federal programs, the identification of government resources, and other type of support identified on a case by case basis—in exchange for a commitment on the part of the community entity to go beyond the environmental results of compliance and achieve greater environmental quality that would have been realized under traditional approaches.

In a separate reinvention effort, also included in the initiatives announced by the President on March 16, 1995, the Agency's Office of Enforcement and Compliance Assurance (OECA) is developing an enforcement policy for communities whose facilities are not in compliance with environmental regulations and are willing to enter into compliance agreements to make progress towards meeting environmental standards. These agreements may extend across more than one environmental program and would recognize the need for flexibility in approach or timing. (For information on this policy contact Kenneth Harmon; Office of Enforcement and Compliance Assurance; (202) 564–7049.)

This document includes: background information on the XL Communities Pilot Program; a description of the Program; its relationship to other regulatory reinvention activities; the criteria, process, and timing for the selection of projects; and an invitation for public comment.

This Notice invites proposals from local governments, community groups, and other public and private entities interested in initiating pilot programs.

Dated: December 6, 1995.

Leonard Fleckenstein,

Office of Sustainable Ecosystems and Communities.

[FR Doc. 95–30250 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5343–6]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; In Re Chicago Industrial Waste Haulers, Alsip, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, notice is hereby given of a proposed administrative settlement concerning the recovery of past response cost at the Chicago Industrial Waste Haulers Site ("CIWH") in Alsip, Illinois (the "Site"). This settlement requires respondent to pay specified amounts of money to reimburse the U.S. Environmental Protection Agency for past response costs incurred at the Site.

DATES: Comments must be submitted on or before January 11, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In Re Chicago Industrial Waste Haulers, Alsip, Illinois, U.S. EPA Docket No. V–W–96–C–324.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, U.S. Environmental Protection Agency, Assistant Regional Counsel (C–29A), 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–5825.

SUPPLEMENTARY INFORMATION: The party listed below has executed binding certification of its consent to participate in the settlement.

The Respondent will pay approximately $75,000.000 in settlement payments for response costs related to the CIWH Site. Should CIWH miss a payment, the entire balance would become immediately due and owing.

Respondent: Chicago Industrial Waste Haulers.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this Notice.

A copy of the settlement agreement and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Nancy-Ellen Zusman, Assistant Regional Counsel (C–29A), 77 W. Jackson Blvd., Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 95–30105 Filed 12–11–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1074–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–30226 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1074–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paulina C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 20, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–30227 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: November 29, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–30228 Filed 12–11–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Seiwa America, Inc., 5500 Frantz Road, Suite 117, Dublin OH 43017, Officers: Kazunari Tada, President, Seigo Iwafune, Executive Vice President

Honesty Trade and Business Around The World, 7400 Harwin Drive, Suite 112, Houston, TX 77036, Tarek A. Morsi, Sole Proprietor

Overseas Trading & Shipping Co., Inc., 2719 Pittman Drive, Silver Spring, MD 20910, Officers: Mohamed Ali Taha, President, Richard Paul Stevens, Treasurer/Secretary

Independent Brokerage, L.L.C., 510 Plaza Drive #2755, Atlanta, GA 30349, Officers: Leslie M. Dodgen, President, Robin T. Craig, Vice President

King Senderax, Incorporated dba, King Senderax Cargo, 1520 North Gower Street, #100, Los Angeles, CA 90028, Officers: Anupam Biswas, C.E.O., Norbert Giessmann, Vice President

Robinson Expediters, Inc., 9675 NW 13th Street, Miami, FL 33172, Officers: Jorge Robinson, President, Ebba Robinson, Vice President

Cibao Cargo/Cibao Furniture, Inc., 14 East 167 Street, Bronx, NY 10452, Officer: Jose Perdomo, President

Marimar Forwarding, Inc., 9804 N.W. 13th Street, Miami, FL 33172, Officer: Maria A. Morales, President

Lynx International, Inc., 1942 Shawnee Road, Eagan, MN 55122, Officers: Joel N. Meyer, President, Mark D. Spurbeck, Vice President

Wesley S. Koerber, 4242 Harford Creamery Road, White Hall, MD 21161, Sole Proprietor

Glory Express, Inc., 460 Carson Plaza Drive, #119, Carson, CA 90746, Officers: Kuk Yul Cho, President

VIP Transport, Inc., 2703 Wardlow Road, Corona, CA 91720, Officers: Danny C. Griffins, President

Dated: December 6, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30126 Filed 12–11–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Catholic Healthcare West, Memorial Health Systems, Inc., Bakersfield Memorial Hospital and Memorial Center, Inc	95–1553	11/20/95
Bayer AG, Hoechst AG, Hoechst Celanese Corporation	96–0288	11/20/95

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
McKesson Corporation, Ogden Corporation, Ogden BioServices Corporation	96-0315	11/20/95
John W. Kluge, Padang Securities Limited, Cal-Almond, Inc	96-0319	11/20/95
Ronald O. Perelman, Lomas Financial Corporation (Debtor-in-Possession), Lomas Mortgage USA, Inc	96-0322	11/20/95
Republic Waste Industries, Inc., Lee G. Brown, Garbage Disposal Service, Inc	96-0271	11/22/95
Michael J. Cudahy, E for M Corporation, E for M Corporation	96-0294	11/22/95
Quantum Realty Trust, Quantum Realty Trust, BHL Limited Partnership	96-0299	11/22/95
National Grange Mutual Insurance Company, The Mutual Assurance Company, The Mutual Assurance Company	96-0304	11/22/95
Browning-Ferris Industries, Inc., MacMillan Bloedel Limited (a British Columbia Corp), Fibres International, Inc	96-0316	11/22/95
NRE Holdings, Inc., Joseph J. Naparte, C&N Dining, Inc	96-0347	11/22/95
SoftKey International Inc., Minnesota Educational Computing Corporation, Minnesota Educational Computing Corporation	96-0249	11/24/95
Finaxa, The Restaurant Company, The Restaurant Company	95-0146	11/25/95
Mellon Bank Corporation, KeyCorp, KeyCorp	96-0245	11/27/95
El Paso Natural Gas Company, Charles Schusterman, Premier Gas Company	96-0255	11/27/95
Mr. Joe Lewis Allbritton, Price Communications Corporation, WHTM-TV, Inc	96-0318	11/27/95
Peter Munk, Occidental Petroleum Corporation, Occidental C.O.B. Co., Inc	96-0320	11/27/95
Occidental Petroleum Corporation, Peter Munk (a Canadian resident), Clark USA, Inc	96-0321	11/27/95
Consolidated Electrical Distributors, Inc., Price Brothers Company, Utility Systems Division of Price Brothers Company	96-0330	11/27/95
Interim Services Inc., Computer Power Group, Ltd., CP Systems, Inc. and Computer Power (UK) Limited	96-0335	11/27/95
Mrs. Mugdha N. Gadgil, Castle Energy Corporation, Indian Refining Company, Indian Refining I Limited Part	96-0341	11/27/95
AT&T Corp., Mobil Corporation, Mobil Mining and Minerals Company	96-0343	11/27/95
Republic Waste Industries, Inc., George W. Fennell, Fennell Container Co., Inc., Fennell Waste Systems, Inc	96-0350	11/27/95
George W. Fennell, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96-0351	11/27/95
Republic Waste Industries, Inc., Robert C. and Jannette T. Duncan, J.C. Duncan Company, Inc., Grand Prairie Disposal Company	96-0352	11/27/95
Robert C. & Jannette T. Duncan, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96-0353	11/27/95
United TransNet, Inc., CDG Holding Corp., CDG Holding Corp	96-0355	11/27/95
United TransNet, Inc., Chee B. Louie, Tricor America, Inc	96-0356	11/27/95
Quality Dining, Inc., Brinker International, Inc., Brinker International, Inc	96-0359	11/27/95
H Group Holding, Inc., Presidio Capital Corp., Northpark Associates Limited Partnership	96-0362	11/27/95
Sprint Corporation, Sprint Corporation, Centel Cellular Company of Fort Walton Beach Limited Partners	96-0364	11/27/95
Gordon + Morris Investment Partnership, L.P., Thomas H. Lee Equity Partners, L.P., Lee-CST Holding Corp	96-0366	11/27/95
Medaphis Corporation, MedQuist, Inc., MedQuist Receivables Management Company	96-0367	11/27/95
CGW Southeast Partners I, L.P., Asahi Glass Co., Ltd. (a Japanese Company), Cataphote Inc	96-0376	11/27/95
Employers Self Insurers Fund, Summit Holding Corporation, Summit Holding Corporation	96-0389	11/27/95
Carlos M. and Rosa R. de la Cruz, Bacardi Limited (a Bermuda Company), Coca-Cola Puerto Rico Bottlers & B&C Bever. Distrb. N.V	96-0390	11/27/95
Capital Area Health Foundation, Polyclinic Health System, Inc., Polyclinic Health System, Inc	95-2357	11/28/95
The Multicare Companies, Inc., Glenmark Holding Company Limited Partnership, Glenmark Associates, Inc	96-0281	11/28/95
CSX Corporation, Continental Grain Company, ContiCarriers and Terminals, Inc	96-0282	11/28/95
All American Semiconductor, Inc., Added Value Electronics Distribution, Inc., Added Value Electronics Distribution, Inc	96-0331	11/28/95
First Union Corporation, NOVA Holdings, Inc., NOVA Holdings, Inc	96-0368	11/28/95
First Fidelity Bancorporation, NOVA Holdings, Inc., NOVA Holdings, Inc	96-0369	11/28/95
WorldCom, Inc., NOVA Holdings, Inc., NOVA Holdings, Inc	96-0370	11/28/95
Warburg, Pincus Investors, L.P., NOVA Holdings, Inc., NOVA Holdings, Inc	96-0375	11/28/95
Rexam plc (a British Corporation), Emson Research, Inc., The Mark Industries, Incorporated	96-0379	11/28/95
Advanced Micro Devices, Inc., NexGen, Inc., NexGen, Inc	96-0264	11/29/95
Thomas & Betts Corporation, Equity Holdings Limited, Amerace Corporation	96-0329	11/29/95
Blue Cross and Blue Shield of Tennessee, Memphis Hospital Service & Surgical Association, Inc., Memphis Hospital Service & Surgical Association, Inc	96-0367	11/29/95
Anadarko Petroleum Corporation, Royal Dutch Petroleum Company, Shell Western E&P Inc	96-0393	11/29/95
Illinois Tool Works Inc., John Legat, Waltraud Legat, Trans Tech America Inc	96-0247	11/30/95
Real Estate Operations, Inc., The Prudential Insurance Company of America, The Prudential Insurance Company of America	96-0385	11/30/95
Richey Electronics, Inc., Electrical Distribution Acquisition Company, Electrical Distribution Acquisition Company	96-0388	11/30/95
Winton M. Blount, Noel Group, Inc., Simmons Outdoor Corporation	96-0395	11/30/95
United/Harvey Holdings, L.P., United/Harvey Holdings, L.P., Harvey Hotel Company, L.P	96-0397	11/30/95
Time Warner Inc., Meredith Corporation, Meredith Corporation	96-0444	11/30/95
CORE Industries Inc., CMB Industries, CMB Industries	96-0292	12/01/95
Western Wireless Corporation, Bechtel Cellular Liquidity, L.P., Great Plains Cellular, L.P	96-0307	12/01/95
Gordon S. Lang, Avery Dennison Corporation, Avery Dennison Corporation	96-0314	12/01/95
John J. and Janet L. Melk, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96-0358	12/01/95
Amcor, Ltd. (an Australian Corporation), The ANLE Paper Company, The ANLE Paper Company	96-0360	12/01/95
Dennis Mehiel, Chesapeake Corporation, Chesapeake Consumer Products Company	96-0363	12/01/95
Matsushita Electrical Industrial Co., Ltd., General Motors Corporation, Hughes-JVC Technology Corporation	96-0403	12/01/95
MIDCOM Communications Inc., Cherry Communications Incorporated, Cherry Communications Incorporated	96-0407	12/01/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/20/95 AND 12/01/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FrontierVision Partners, L.P., Lee A. Bertman, C4 Media Cable Southeast, L.P. and County Cable Co., L.P	96-0408	12/01/95
ITT Corporation, John Hancock Mutual Life Insurance Company, Russell Hotel Joint Venture Partnership	96-0427	12/01/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commssion.

Donald S. Clark,

Secretary.

[FR Doc. 95-30214 Filed 12-11-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 952-3391]

The Dannon Company, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Tarrytown, NY-based frozen yogurt manufacturer from misrepresenting the fat, calories, saturated fat, or cholesterol in any of its frozen yogurt products. The consent agreement settles allegations stemming from nutritional claims made in advertisements for Dannon's line of Pure Indulgence frozen yogurt.

DATES: Comments must be received on or before February 12, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St., and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder, Bureau of Consumer Protection, Federal Trade Commission, S-4631, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580, (202) 326-3017.

Peter Metrinko, Bureau of Consumer Protection, Federal Trade Commission, S-4624, 6th Street & Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326-2194.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

United States of America Before Federal Trade Commission

In the Matter of The Dannon Company, Inc., a corporation.

[File No. 952-3391.]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Dannon Company, Inc., hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The Dannon Company, Inc., by this duly authorized officer and attorneys, and counsel for the Federal Trade Commission, that:

1. Proposed respondent The Dannon Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 White Plains Road, Tarrytown, NY 10591.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 234 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Delivery by the Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement

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may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent The Dannon Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of $150,000. Respondent shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment.

IV

It is further ordered that, for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this Order;

2. All materials that were relied upon to substantiate any representation covered by this Order; and

3. All test reports, studies, surveys, demonstrations or other evidence in its possession or control, that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

V

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondent shall, within thirty days after service of this Order, distribute a copy of this Order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other materials covered by this Order.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

VIII

It is further ordered that this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Benjamin I. Berman,

Acting Secretary.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Dannon Co., Inc., ("respondent" or "Dannon").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of public comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Dannon in its advertising for Pure Indulgence frozen yogurt.

The Commission's complaint in this matter charges Dannon with engaging in deceptive and unfair acts or practices in connection with the advertising of Pure Indulgence. The complaint alleges that respondents manufactured, advertised, offered for sale, sold or distributed a frozen yogurt sold under the name "Pure Indulgence," which it represented

was low in fat, low in calories, and lower in fat than ice cream. At the serving size for frozen yogurt commonly consumed, Pure Indulgence was not low in fat or low in calories. Further, Pure Indulgence was not lower in fat than many ice creams.

The Commission's complaint alleges that the above representations for certain flavors of Pure Indulgence, at the time the advertising was disseminated, were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Dannon from engaging in similar deceptive and unfair acts in the future.

Part I of the Commission's order prohibits respondent, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. However, if any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

Part II of the order provides that nothing in the order shall prohibit respondent from making any representation that is specifically permitted in labeling for any such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Under the terms of Part III of the order, respondents shall pay $150,000.00 to the U.S. Treasury.

Part IV of the order requires Dannon to maintain copies of all materials relating to advertisements covered by the order and all documents relating to substantiation of advertising claims covered by the order.

Part V requires Dannon to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI requires Dannon to distribute copies of the order to certain company officials and employees and certain other representatives and agents of Dannon.

Part VII requires Dannon to file with the Commission a report detailing compliance with the order.

Part VIII provides for termination of the order twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.

[FR Doc. 95–30215 Filed 12–11–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3012]

Safe Brands Corporation, Warren Distribution, Inc. and ARCO Chemical Company; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit Safe Brands, the manufacturer of Sierra antifreeze, Warren Distribution, its parent company, and ARCO, the supplier of the principal ingredient in Sierra antifreeze, from making unsubstantiated claims about the safety and environmental benefits of Sierra. They would also be required to put a statement on Sierra containers cautioning consumers that it may be harmful if swallowed. The Commission alleged that the companies had claimed, without adequate substantiation, that Sierra is absolutely safe for people and pets, that Sierra is generally safer for the environment than conventional antifreezes because it is biodegradable, and that Sierra and its container are recycled.

DATES: Comments must be received on or before February 12, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Bureau of Consumer Protection, Federal Trade Commission, S–4002, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580 (202) 326–3153; Michael Dershowitz, Bureau of Consumer Protection, Federal Trade Commission, S–4002, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580 (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

United States of America Before Federal Trade Commission

In the Matter of Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation.

[File No. 942 3012]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of proposed respondents Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Safe Brands Corporation, Warren Distribution, Inc., and ARCO Chemical Company, by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Safe Brands Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. It is a wholly-owned subsidiary of proposed respondent Warren Distribution, Inc. Proposed respondent Warren Distribution, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. Proposed respondents Safe Brands Corporation and Warren Distribution, Inc. have their principal offices or places of business at 727 South 13th Street, Omaha, Nebraska 68102.

Proposed respondent ARCO Cemical Company is a corporation organized, existing and doing business under and by virtue of the law of the State of Delaware with its principal office or place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073.

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2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and education, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in deposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply:

"Competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the safety or relative safety of such product for humans or animals unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

III

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, offering for sale, sale, or distribution of any propylene glycol-based antifreeze or coolant product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall disclose on the front of the container of all such products the following:

"See Back Panel for CAUTIONARY INFORMATION"

and shall disclose on the back of the container of all such products the following:

"CAUTIONARY INFORMATION: This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers."

Each disclosure shall be in a conspicuous and prominent place on the container, in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the container. The disclosure on the back of the container shall be surrounded by a one (1) point rule. The disclosure on the front of the container and the first two sentences of the disclosure on the back of the container shall be in type at least as large as the largest print type on the back of the container, but, in any case, no smaller than ten (10) point type. The words "CAUTIONARY INFORMATION" on the front and back of the container shall be in bold type. The last sentence of the disclosure on the back of the container shall be in type at least as large as the type in which the majority of the printed material on the back of the container is printed.

The back of the container shall also contain the following statement, printed in type at least as large as the type in which the majority of the printed material on the back of the container is printed:

"Clean up any leaks or spills."

IV

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or my implication, the level of vehicular engine protection provided by any such product, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

V

It is further ordered that respondents, Safe Brands Corporation, a corporation, Warren Distribution, Inc., a corporation, and ARCO Chemical Company, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any antifreeze, coolant, or deicer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

A. Any such product or its package is capable of being recycled; or,

B. Recycling collection programs for such product or its package are available.

VI

It is further ordered that the provisions of this Order shall not apply to any label or labeling printed prior to the date of service of this Order and shipped by respondents to distributors or retailers prior to one hundred (100) days after the date of service of this Order.

VII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that respondents shall distribute a copy of this Order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

IX

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assigned, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations under this Order.

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

It is further ordered that respondents shall, within sixty (60) days later service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Benjamin I. Berman,

Acting Secretary.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Safe Brands Corporation, Warren Distribution, Inc., and ARCO Chemical Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of Sierra Antifreeze-Coolant ("Sierra"), a propylene glycol-based automobile antifreeze marketed by Safe Brands Corporation and its parent company, Warren Distribution, Inc. The Commission's complaint in this matter alleges that ARCO Chemical Company sold the propylene glycol ("PG") used in the manufacture of Sierra and provided information for, participated in the preparation of, paid for, and reviewed and/or approved Sierra advertising and promotional materials. The complaint also alleges that ARCO Chemical itself disseminated advertisements under its own name for PG antifreeze generally.

The Commission's complaint charges that the respondents claimed in advertising and promotional materials

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that compared to conventional, ethylene glycol-based antifreeze ("EG antifreeze"), Sierra and other PG antifreezes are safer for the environment generally. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes, compared to EG antifreeze, are less toxic, and therefore safer for that part of the environment that is composed of humans, pets, and wildlife that may accidentally ingest it, respondents did not substantiate their claim that Sierra and other PG antifreezes are safer for the environment generally (*e.g.*, the air, water, soil, plants, or aquatic life). The complaint also alleges that respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for the environment after ordinary use and that because Sierra and other PG antifreezes are biodegradable, they are absolutely safe for the environment after ordinary use. The complaint states that one reason these claims are unsubstantiated is that used antifreeze, whether EG or PG-based, may contain lead and/or other substances that are hazardous to the environment.

Furthermore, the complaint charges that the respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for people and pets. The complaint also charges that respondents claimed without adequate substantiation that because Sierra and other PG antifreezes contain PG—an ingredient designated by the Food and Drug Administration as "generally recognized as safe" and which is found in foods, drugs, cosmetics, and pet foods—they are absolutely safe for people and pets. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes are safer than EG antifreeze, respondents lacked substantiation for the claim that they are absolutely safe.

In addition, the complaint alleges that the respondents made the unsubstantiated representation that compared to conventional, EG antifreeze, Sierra provides superior automotive protection from freezing temperatures, boil-overs, and corrosion.

Finally, the complaint charges that the respondents falsely and without adequate substantiation represented that Sierra antifreeze and its plastic container are recyclable. In fact, the complaint alleges, while both Sierra and its container are capable of being recycled, the vast majority of consumers cannot recycle either of them because there are few collection facilities nationwide that accept PG antifreeze or high-density polyethylene plastic antifreeze containers for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondents to cease and desist from representing that any antifreeze, coolant, or deicer product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless the respondents possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part II of the proposed order requires the respondents to cease and desist from making any representation about the safety or relative safety for humans or animals of any antifreeze, coolant, or deicer product, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order requires that the respondents print the following two statements on the back of containers of all PG antifreeze or coolant products: "CAUTIONARY INFORMATION: This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers" and "Clean up any leaks or spills." On the front of all such containers the following must be disclosed: "See Back Panel for CAUTIONARY INFORMATION." Part III also specifies the manner in which these disclosures must be made.

Part IV of the proposed order requires the respondents to cease and desist from making any representation about the level of vehicular engine protection provided by any antifreeze, coolant, or deicer product, unless the respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order requires that the respondents cease and desist from misrepresenting the extent to which any antifreeze, coolant, or deicer product or its package is capable of being recycled or the extent to which recycling collection programs are available.

Part VI of the proposed order provides that, for up to 100 days after the service of the order, respondents may continue to ship products from existing stock in containers with nonconforming labeling.

The proposed order also requires the respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing of a complaint against respondents alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[FR Doc. 95–30216 Filed 12–11–95 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Cancellation of December 14 meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the previously announced December 14 meeting of the Federal Accounting Standards Advisory Board has been canceled. Agenda issues planned for the December meeting will be discussed at the January 25 meeting, which will be duly announced in a later edition of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: December 7, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–30245 Filed 12–11–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0346]

Akorn, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five new animal drug applications (NADA's). Three NADA's are held by Akorn, Inc., and one each is held by Parke-Davis, Division of Warner-Lambert Co., and Veterinary Research and Development, Inc. The firms notified the agency in writing that the animal drug products were no longer marketed and requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: The sponsors of the applications listed in the table in this document have informed FDA that these animal drug products are no longer marketed and have requested that FDA withdraw approval of the applications.

NADA No.	Drug name	Sponsor name and address
6–032	Diphenylhydantoin sodium capsules	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950
12–444	Sterile prednisolone suspension	Akorn, Inc., 100 Akorn Dr., Abita Springs, LA 70420
94–978	Phenylbutazone injection	Do.
110–046	Dexamethasone injection	Do.
140–904	Copper disodium edetate injection	Veterinary Research and Development, Inc., P.O. Box 1299, Truckee, CA 95734

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 6–032, 12–444, 94–978, 110–046, and 140–904 and all supplements and amendments thereto is hereby withdrawn, effective December 22, 1995.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.704, 522.514, and 522.1880, and amending 21 CFR 510.600(c), 522.540, and 522.1720 to reflect the withdrawal of approval of the above mentioned NADA's.

Dated: December 4, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–30122 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0370]

Revised Compliance Policy Guides (CPG's); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revision of two CPG's. The CPG's are being revised because they contain outdated information and misprinted regulatory guidance. This action is being taken to ensure that FDA's CPG's accurately reflect FDA policy and to limit confusion.

DATES: Effective December 12, 1995. Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG Sec. 545.400 "Pottery (Ceramics); Imported and Domestic—Cadmium Contamination" (CPG 7117.06), and CPG Sec. 545.450 "Pottery (Ceramics); Imported and Domestic—Lead Contamination" (CPG 7117.07) to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG Sec. 545.400 "Pottery (Ceramics); Imported and Domestic—Cadmium Contamination" (CPG 7117.06) and CPG Sec. 545.450 "Pottery (Ceramics); Imported and Domestic—Lead Contamination" (CPG 7117.07) to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville MD, 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG Sec. 545.400 "Pottery (Ceramics); Imported and Domestic—Cadmium Contamination" (CPG 7117.06) and CPG Sec. 545.450 "Pottery (Ceramics); Imported and Domestic—Lead Contamination" (CPG 7117.07) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ronald C. Varsaci, Center for Food Safety and Applied Nutrition (HFS–022), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251.

SUPPLEMENTARY INFORMATION: FDA is revising the following two CPG's because they contain outdated information or misprinted regulatory guidance: (1) CPG Sec. 545.400 "Pottery (Ceramics); Imported and Domestic—Cadmium Contamination" (CPG 7117.06), and (2) CPG Sec. 545.450 "Pottery (Ceramics); Imported and Domestic—Lead Contamination" (CPG 7117.07).

The guidance for flatware and small hollowware in CPG Sec. 545.400 and for pitchers in CPG Sec. 545.450 was mistakenly printed as 0.05 instead of 0.5 microgram/milliliter. The CPG's are also being revised to specify current methodologies in the Official Methods of Analysis of the Association of Official Analytical Chemists International (AOAC) and to include the American Society for Testing Materials (ASTM) and Laboratory Information Bulletin (LIB) methodologies. The CPG provides guidance on recommending legal actions and on when entries of potteries should be detained based on cadmium or lead contamination. To minimize any confusion that may exist, FDA has decided to issue revisions.

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Dated: December 5, 1995.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–30171 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel–Review of R03 Small Grants—96–05 (Teleconference).

Dates: December 13, 1995.

Time: 1 pm.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel–Review of Research Projects, Small Business Grants, and Conference Grants—96–06.

Dates: December 14, 1995.

Time: 8 am.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special, Emphasis Panel–Review of Oral Cancer Centers—96–07.

Dates: January 7–11, 1996.

Time: 8 am.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel–Review of the Conference Grants—97–10 (Teleconference).

Dates: January 18, 1996.

Time: 11 am.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel–Review of Coop Agreement Applications—96–08.

Dates: January 23–24, 1996.

Time: 8 am.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No: 93.121, Oral Diseases and Disorders Research)

Dated: December 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30303 Filed 12–11–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 12, 1995.

Time: 5:15 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Biological and Physiological Sciences.

Date: December 13, 1995.

Time: 4 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip L. Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes, of Health, HHS).

Dated: December 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30304 Filed 12–11–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in January 1996.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA fiscal year 1996 budget and reauthorization; regional meetings on SAMHSA's proposed Performance Partnership Grants; SAMHSA policy on inclusion and attention to the needs of women and racial/ethnic minority populations; activities of the National Women's Resource Center for the Prevention and Treatment of Alcohol, Tobacco and Other Drug Abuse and Mental Illness; monitoring the impact of change at HHS; and a discussion of data collection pertaining to women.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela J. McDonnell, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): January 8–9, 1996.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: January 8: 8:30 a.m. to 5:00 p.m.; January 9: 8:30 a.m. to adjournment

Contact: Pamela J. McDonnell, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated: December 6, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–30170 Filed 12–11–95; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Upper Skagit Indian Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that by Resolution No. 95–18, the Upper Skagit Indian Tribe Liquor Control Ordinance was duly adopted by the Upper Skagit Indian Tribe on May 4, 1995. This Ordinance provides for the possession, sale, introduction for sale, purchase, or other dealing in alcoholic beverages within Upper Skagit Indian Tribe country, as defined by 18 U.S.C. 1151.

DATES: This Ordinance is effective as of December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, N.W., MS–2611–MIB, Washington, D.C. 20240; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Upper Skagit Indian Tribe Liquor Control Ordinance is to read as follows:

Upper Skagit Indian Tribe Liquor Control Ordinance

Part I. Policy and Definitions

Section 1.1. Public Policy Declared

This Tribal Liquor Control Ordinance shall be cited as the "Upper Skagit Tribal Liquor Control Ordinance" (the "Ordinance"). Under the inherent sovereignty of the Upper Skagit Indian Tribe (the "Tribe"), this Ordinance shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe. It is further the Tribe's policy to assure that any transaction, importation, sale or consumption involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this Ordinance, the laws of the United States and where applicable, the State of Washington.

Section 1.2. Definitions

The stated terms are defined as follows:

a. "Alcoholic Beverage" shall mean any intoxicating liquor, beer or any wine, as defined under the provisions of this Ordinance or other applicable law;

b. "Tribal Council" shall mean the Tribal Council of the Upper Skagit Indian Tribe, which is its governing body.

c. "Legal Age" shall mean the age requirements, as defined in Part II, Section 2.2.

d. "Sale" shall mean the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage by any means whatsoever for a consideration of currency exchange.

Section 1.3. General Prohibition

It shall be a violation of Tribal law to manufacture for sale, to sell, offer or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 1.4. Tribal Control of Alcoholic Beverages

The Tribal Council shall have the sole and exclusive right to authorize the importation of alcoholic beverages into the Upper Skagit Reservation and Indian Country over which the Upper Skagit Tribe has jurisdiction for sale or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverages into the Upper Skagit Reservation or Indian Country over which the Upper Skagit Tribe has jurisdiction unless authorized by the Tribal Council to do so.

Section 1.5. Community On-Site Sales

The Tribal Council shall establish and maintain within the Upper Skagit Reservation a Casino, including full-service restaurants and bar, all of which are located within the Casino Facility, which shall be authorized to store and sell alcoholic beverages in conjunction with the operation of the restaurants and bar and in accordance with the provisions of this Ordinance. The Tribal Council shall set the prices of alcoholic beverages sold.

Section 1.6. State of Washington Licenses and Agreements

The Tribe/casino/licensee/operator may negotiate an agreement or obtain a State of Washington liquor license for any Tribally-operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages to the extent required by applicable law in order to allow the Tribe to sell liquor on the Upper Skagit Reservation or in Indian Country under the Tribe's control.

Part II. Compliance With the Laws of the State of Washington

Section 2.1. Applicability of State Law

The Tribe and its agents shall act in conformity with State laws regarding the sale of liquor to the extent required by applicable federal law, including 18 U.S.C. § 1161.

Section 2.2. Persons Under 21 Years of Age: Restrictions

The Tribe shall comply with the State of Washington laws regarding restrictions on the sale of alcoholic beverages to persons under the age of 21 years in any Tribal establishment operating pursuant to the provisions of this Ordinance.

Section 2.3. Restrictions on Intoxicated Persons

No Tribally-operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

Section 2.4. Hours and Days of Sale

Any Tribally-operated or licensed establishment shall sell or furnish alcoholic beverages for on-site consumption only during hours or on days which are in compliance with applicable Washington law.

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Part III. Tribal Licensing and Regulation

Section 3.1. Power to License and Tax

The power to establish tribal licenses and levy taxes under the provision of this Ordinance is vested exclusively with the Tribal Council. If the Tribal Council enters into any agreements with the State regarding the sale of liquor, the agreement shall be deemed to constitute Tribal Law.

Section 3.2. Tribally-Owned Establishments

The Tribal Council can issue, by resolution, an appropriate license to a Tribally-owned establishment upon determining the site for the establishment and obtaining the necessary licensing or agreement from the State of Washington.

Section 3.3. License of Retail Sales

3.3.1 The Tribal Council shall have the power to issue licenses to any tribal or state chartered corporation, individual or partnership or other entity to undertake any sales or transactions which the Tribe itself has the power to undertake under this ordinance for the sale of alcoholic beverages at a retail store.

3.3.2 Applications for a License shall be submitted in the form prescribed by the Tribal Council or its authorized employees. The Tribal Council may, within its sole discretion and subject to the conditions in this Ordinance, issue or refuse to issue the License applied for upon payment of such fee as the Tribal Council may prescribe.

3.3.3 Every license shall be issued in the name of the applicant and no license shall be transferable or assignable without the written approval of the Tribal Council, nor shall the licenses allow any other person or entity to use the license.

3.3.4 The Tribal Council may, for violations of this Ordinance, suspend or cancel any license. Prior to cancellation or suspension of a license, the Tribal Council shall send notice of its intent to cancel or suspend the license to the licensee. A licensee whose Liquor License is cancelled or suspended by the Tribal Council shall be entitled to appeal the cancellation or suspension within 10 days of the receipt from the Tribal Council of such notice by filing a Notice of Appeal with the Clerk of the Tribal Court. The appeal of any such Notice shall be determined by the Tribal Court in accordance with the Ordinances of the Tribe governing Tribal Court actions and the decision of the Tribal Court, including any appeal within the Tribal Court system, shall be final and binding on the parties.

3.3.5 No license issued under this Ordinance shall be valid for a period longer than one year.

Section 3.3.4. Regulations

The Tribal Council may, consistent with this Ordinance, adopt regulations it deems necessary to implement this Ordinance.

Part IV. Construction

Section 4.1. Severability

If any part of this Ordinance, or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the section or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 4.2. Amendment or Repeal of Ordinance

This Ordinance may be amended or repealed by a majority vote of the Tribal Council. Any amendment to this Liquor Ordinance shall be published as required pursuant to Federal Law.

Section 4.3. Sovereign Immunity

Nothing in this Ordinance is intended, nor shall anything contained in it be construed, as a waiver of the sovereign immunity of the Upper Skagit Indian Tribe.

Section 4.4. Effective Date

This Ordinance shall be effective upon the date that the Secretary of the Interior certifies this Ordinance and publishes it in the **Federal Register**.

Section 4.5. Jurisdiction

Notwithstanding anything in this Ordinance to the contrary, nothing herein is intended, nor shall it be construed, as a grant of jurisdiction from the Upper Skagit Indian Tribe to the State of Washington beyond that provided by applicable law. The Tribe shall operate in conformity with State law and Tribal Law to the extent provided pursuant to 18 U.S.C. § 1161.

Dated: December 5, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–30244 Filed 12–11–95; 8:45 am]

BILLING CODE 4310–02–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 2, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 27, 1995.

Paul R. Lusignan,

Acting Keeper of the National Register.

COLORADO

Denver County

Austin Building, 2400–2418 E. Colfax and 1742 Josephine St., Denver, 95001512

Jefferson County

Thiede Ranch, 22258 Shingle Creek Rd., Golden, 95001509

Larimer County

Baldpate Inn, 4900 S. CO 7, Estes Park vicinity, 95001510

Moffat County

Vanatta Apartments, 660 Yampa Ave., Craig, 95001511

Ouray County

Jackson, George, House, 129 Citadel Dr., Ridgway vicinity, 95001508

HAWAII

Honolulu County

Aiea Sugar Mill, 99—197 Aiea Heights Dr., Aiea, 95001501

INDIANA

Carroll County

Adams Mill Covered Bridge, Co. Rd. 50 E over Wildcat Cr., Cutler vicinity, 95001537

Cass County

Pleasant Hill Church, Jct. of Co. Rd. 400 S and Co. Rd. 675 W, Logansport vicinity, 95001519

Dubois County

Dubois County Courthouse, One Courthouse Sq., Jasper, 95001538

Marion County

Homecroft Historic District, Roughly bounded by Madison Ave., Southview Dr., Orinoco Ave., and Banta Rd., Homecroft, 95001536

Marshall County

Culver Commercial Historic District, Roughly bounded by Washington St., the N-S alley E of Main St., Madison St. and Ohio St., Culver, 95001530

Montgomery County

Normal Hall, Jct. of W. Main and Harrison Sts., NW corner, Ladoga, 95001533

Morgan County

Hite—Finney House, 183 N. Jefferson St., Martinsville, 95001532

Morgan County Courthouse, Courthouse Sq., Martinsville, 95001531

Orange County

Newberry Friends Meeting House, US 150/IN 56 W of Paoli, Paoli vicinity, 95001534

Posey County

Mount Vernon Site, Address Restricted, Mount Vernon vicinity, 95001542

St. Joseph County

Battell Park Historic District, Mishawaka Ave., Mishawaka, 95001541

Shelby County

Shelbyville High School, Jct. of Second and Tompkins Sts., Shelbyville, 95001535

Steuben County

Pokagon State Park (New Deal Resources in Indiana State Parks MPS) 5 mi. N of Angola, W of US 27, Angola vicinity, 95001540

KENTUCKY

Bourbon County

Glen Oak, 1004 Thatchers Mill Rd., Paris vicinity, 95001513

Edmonson County

Mitchell—Estes Farmstead, 1706 Upper Smiths Grove Rd., Smiths Grove vicinity, 95001528

Kenton County

Covington Downtown Commercial Historic District (Boundary Increase), 701, 702, 709, 711, 713, 715, 722 and 723–725 Scott Blvd., Covington, 95001525

Madison County

Boone Tavern, 100 Main St., Berea, 95001527

Simpson County

Cedars, The, 812 E. Cedar St., Franklin, 95001516
Hampton Hall, 6240 Bowling Green Rd., Franklin, 95001519
Hargis House, 300 E. Cedar St., Franklin, 95001518
Harristown Historic District, Roughly bounded by Walker Ave., Bell St., W. Washington St. and West St., Franklin, 95001515
Moore, Randolph Gilbert, House, 321 S. College St., Franklin, 95001517
Triple Pine Farm, 5945 Bowling Green Rd., Franklin, 95001520
West Cedar Street Historic District, W. Cedar St., N and S sides, between N. High and West Sts., Franklin, 95001514

Warren County

College Hill Historic District (Boundary Increase), 416 E. 12th Ave., Bowling Green, 95001526

MARYLAND

Howard County

Brick House on the Pike, 9465 Baltimore National Pike, Ellicott City, 95001522

NEBRASKA

Dodge County

Turner, George and Nancy, House, 78 S. C St., Fremont, 95001502

NORTH CAROLINA

Watauga County

US Post Office—Boone, 679 W. King St., Boone, 95001521

OKLAHOMA

Oklahoma County

Elks Victory Lodge—Ruby's Grill Building, 322 NE 2nd, Oklahoma City, 95001498
Haywood Building, 307 NE 2nd, Oklahoma City, 95001499
Littlepage Building, 219 N. Central Ave., Oklahoma City, 95001500

OREGON

Douglas County

Umpqua—Eden Site, Address Restricted, Reedsport vicinity, 95001524

TENNESSEE

Wilson County

Castle Heights Academy Historic District, Jct. of Castle Heights Ave. N. and Cadet Ct., Lebanon, 95001507

VERMONT

Grand Isle County

Grand Isle County Courthouse, US 2, North Hero, 95001523

Lamoille County

Lamoille County Courthouse, Main St., Hyde Park, 95001497

WASHINGTON

Spokane County

Fuller, W.P., and Company Warehouse, E. 111 and E. 115 Desmet, Spokane, 95001529

WISCONSIN

Dodge County

Schulze, Ferdinand, House, N. 4262 Daley Rd., Hustisford, 95001503

Forest County

Camp Five Farmstead, 5466 Connor Farm Rd., Laona, 95001506

Waukesha County

Block C Historic District, Roughly bounded by W. Main St., Gaspar St. and Broadway, Waukesha, 95001504

Winnebago County

Brooklyn No. 4 Fire House, 17 W. Sixth Ave., Oshkosh, 95001505

[FR Doc. 95–30225 Filed 12–11–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from Escalation Consultants, Inc., for permission to use certain data from the Commission's 1988 through 1994 I.C.C. Waybill Samples: A copy of the request (WB489 — 11/11/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30242 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32819]

Toledo, Peoria and Western Railway Corporation; Trackage Rights Exemption; Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Toledo, Peoria and Western Railway Corporation (TP&W) over the trackage of BN located between BN milepost 00.0 at Galesburg, IL, and BN milepost 52.3 at Peoria, IL. The purpose of this transaction is to enable TP&W to connect with BN and The Atchison, Topeka, and Santa Fe Railway Company (Santa Fe) at Galesburg. The trackage rights were to become effective on or after November 29, 1995.

These trackage rights have been granted pursuant to a settlement agreement, dated May 5, 1995, which was entered into by TP&W, on the one hand, and, on the other, BN and Santa Fe in connection with the BN/Santa Fe control proceeding in Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company. Under the agreement, TP&W also is to provide haulage services for BN and Santa Fe between Galesburg and Peoria, IL.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Suite 1035, 1101

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Pennsylvania Avenue, N.W., Washington, D.C. 20004.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 4, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30241 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket Nos. AB–364 (Sub-No. 2X) and AB–3 (Sub-No. 125X)]

Texas Northeastern Division, Mid-Michigan Railroad, Inc.; Discontinuance of Service Exemption; in Lamar and Red River Counties, TX; Missouri Pacific Railroad Company; Abandonment Exemption; in Lamar and Red River Counties, TX

Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), and Missouri Pacific Railroad Company (MP) have filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* for TNER to discontinue service over and MP to abandon 29.1 miles of rail line extending from Clarksville (milepost 61.5) to Paris (milepost 90.6), in Lamar and Red River Counties, TX.[1]

TNER and MP certify that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 11, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by December 22, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[5]

A copy of any pleading filed with the Commission should be sent to applicant's representatives: Michael W. Blaszak, Texas Northeastern Division, Mid-Michigan Railroad, Inc., 211 South Leitch Avenue, LaGrange, IL 60525–2162; and Joseph D. Anthofer, Union Pacific Railroad Co., 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

TNER and MP have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 15, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30243 Filed 12–11–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of January 3, 1996. Because the verified notice was not filed until November 22, 1995, consummation should not have been proposed to take place before January 11, 1996. Applicants' representatives have subsequently agreed that the proposed consummation date is January 11, 1996.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of this notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[5] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, parties submitting pleadings should continue to use the current name and address.

JUDICIAL CONFERNECE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will meet on January 10, at 7 p.m., and on January 11 and 12, at 8:30 a.m. The meeting will be open to public observation but not participation.

DATES: January 10–12, 1996.

ADDRESSES: The Ritz-Carlton, Marina del Rey, 4375 Admiralty Way, Marina del Rey, California.

FOR FURTHER INFORMATION CONTACT:

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: December 6, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–30217 Filed 12–11–95; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP No. 1006]

RIN 1121–ZA25

National Criminal History Improvement Program ("NCHIP") Advanced State Award Program ("ASAP")

November 7, 1995.

AGENCY: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Notice of program plan.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the initiation of the National Criminal History Improvement Program (NCHIP) Advanced State Award Program (ASAP). The grant program implements the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993, and those provisions of the Violent Crime Control and Law Enforcement Act of 1994, which pertain to the establishment, maintenance, or use of criminal history records and criminal record systems.

DATES: Eligible states must submit applications on or before December 31, 1995.

ADDRESSES: Applications should be sent to Application Coordinator, the Bureau of Justice Statistics, 633 Indiana Avenue, N.W., 11th Floor, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan, Chief, Criminal History Improvement Programs, (202) 307–0759. The BJS fax number is (202) 307–5846.

SUPPLEMENTARY INFORMATION:

The National Criminal History Improvement Program

The National Criminal History Improvement Program (NCHIP) implements the grant provisions of the Brady Handgun Violence Prevention Act (Brady Act), 103 Pub.L. 159, 107 Stat. 1563, the National Child Protection Act of 1993, 103 Pub.L. 209, 107 Stat. 2490, and those provisions of the Violent Crime Control Act of 1994, 103 Pub.L. 322, 108 Stat. 1796, which pertain to the improvement of criminal history record systems.

The appropriation for the NCHIP program in Fiscal Year 1995 was $100 Million. Of this amount, $6 Million was transferred to the FBI to support implementation of the National Instant Criminal Background Check System (NICS), $5 Million was awarded for program evaluation, firearm related research, and state technical assistance, and $88 Million is for direct awards to the states.

The NCHIP "core" program, as described in the Program Announcement issued by the Bureau of Justice Statistics (BJS) in November 1994, assists states in improving the quality and accessibility of criminal history records in support of the national record system, NICS. $83 Million was designated for this component of the NCHIP program. Consistent with legislative preference for states with the least advanced computerized criminal history files, $5 Million of this $83 Million represents supplemental awards to 5 states designated as least-advanced priority states.

The Advanced State Award Program (ASAP), formerly referred to as the "extended core" program, is supported with $5 Million from the Fiscal Year 1995 appropriation.

The NCHIP program builds on earlier efforts supported by the Bureau of Justice Statistics and the Bureau of Justice Assistance (BJA). These include the BJS-administered Criminal History Record Improvement Program (CHRI) and the BJA-administered Byrne Formula 5% set-aside program. As described in the November 1994 program announcement, NCHIP is closely coordinated with the Byrne Formula program and with related activities being undertaken by the FBI and the Bureau of Alcohol, Tobacco, and Firearms.

The Advanced State Award Program

The goal of the NCHIP Advanced State Award Program (ASAP) is to assist states in the identification of persons other than felons who are prohibited from purchasing firearms under 18 U.S.C. Sec. 922(g) and (n), as amended. This effort supports the goal of the permanent system established under Section 102(b) of the Brady Act by enhancing the effectiveness of the National Instant Criminal Background Check System (NICS).

The focus of the Advanced State Award Program is on the specific provisions (other than those pertaining to disqualified convicted felons) of 18 U.S.C. Sec. 922 (g) and (n), as amended by the Violent Crime Control Act of 1994, for which relevant data are available in state and local databases. The Federal Bureau of Investigation is implementing the Federal segment of the NICS and will make available to states, through the NICS, data which are available from or through the Federal systems.

Applications for funding under the Advanced State Award Program should focus on one or more of the following categories of persons prohibited from purchase of firearms:

Anyone who—

—is an unlawful user of, or addicted to, any controlled substance;

—has been adjudicated as a mental defective or been committed to a mental institution;

—is an alien who is illegally or unlawfully in the United States;

—is subject to any court order restraining them from threatening or committing acts of domestic violence or abuse;

—is under indictment for an offense punishable by imprisonment for more than 1 year.

The objective of the Advanced State Award Program is to build a body of knowledge on the access and retrieval of data on these categories of prohibited persons for use by all the states; applicants should not focus exclusively on benefits to their own state.

Definitions: Final Regulations defining the categories stated above have not yet been issued. Pending release of such final definitions, applicants may refer to Appendix B for the current working definitions of prohibited classes other than felons. States will be advised of any changes in such definitions where applicable.

States should recognize that the definitions in Appendix B may be narrower than applicable definitions for prohibited firearm purchasers under state legislation. For purposes of the ASAP program, applicable state definitions which place broader restrictions on purchase of firearms may be used in defining eligible projects in those states. In those states, applicants should cite relevant state legislation, where pertinent.

Eligibility Criteria

To be eligible to apply for additional NCHIP funding under the Advanced State Award Program, a state must be a participant in the FBI's Interstate Identification Index (III) at the date of application. The same agency that submitted the state's original NCHIP application should submit the state's application for ASAP funding. If an exception is necessary (for example, in the case of a successor agency), contact your BJS grant monitor.

Allowable Costs

Costs associated with developing access to databases on persons other than felons, who are ineligible to purchase a firearm, are allowed.

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ASAP funds can be used to:
—investigate the existence and completeness of noncriminal history data bases;
—evaluate the feasibility of accessing relevant noncriminal justice data systems for purposes of background checks;
—create or upgrade noncriminal justice data bases;
—develop and/or implement protocols for accessing such systems and, where appropriate, incorporate such data into criminal history systems;
—develop and implement procedures for making data on prohibited persons other than felons available to the national NICS;
—develop and implement necessary protocols to ensure privacy and confidentiality of identifiable data;
—document activities, protocols, and systems to assist other jurisdictions in developing similar capabilities.

Where the system or procedures to be established or upgraded are not maintained by a criminal justice agency or the agency charged with implementation of the Brady Act, a justification for such proposed expenditures must be included with the application.

Consistent with NCHIP program policy applicable to systems which serve purposes other than the identification of prohibited persons, ASAP funds are allowable to cover only that portion of system development and implementation costs which support the NCHIP and ASAP goals and objectives as defined in the NCHIP Program Announcement and discussed above. Therefore, the applicant must determine (and the application must include) a reasonable cost estimate for that portion of a proposed effort which meets these objectives.

The Application

The application must contain a clear and concise description of the project proposed for funding and a statement of the benefits to be derived from the project both within the state and for other jurisdictions. A complete budget (including applicable proration information, where appropriate) and budget narrative must also be included. The budget should indicate costs associated with each task proposed for funding.

As in the original NCHIP application, the application should indicate any linkages between what is being proposed and activities of a similar nature that have been funded with state funds, or with funds made available under the Byrne Formula program. The application should also describe the relationship, if any, between the proposed efforts and the activities being funded under the state's NCHIP award.

See Appendix A, "Application and Administrative Requirements," for other information which should be included in the application.

BJS recognizes that, in some cases, an extended core activity was proposed in the state's original NCHIP application. In order to minimize state effort, the same, or a revised version, of the previously submitted project description may be resubmitted for the state's ASAP application.

Selection Criteria

Applications will be judged on a competitive basis. This means that some applications may not be selected for funding. Applications from different states which address the same kind of prohibited database will be judged against each other, although more than one may be funded.

Applications will be evaluated on the basis of the following factors:

- Evidence of the state's commitment to participate in and support the NICS, consistent with the Attorney General's Notice in the **Federal Register** on June 1, 1994;
- The extent to which the state has implemented an advanced criminal history record system (in terms of automation, arrest and disposition reporting, fingerprint supported records, and other relevant factors) or has provided evidence that plans are currently being implemented to achieve such a high level of operation;
- The extent to which the proposed development, use, or enhancement of innovative procedures, or the development and implementation of databases and/or operating policies, will be of value to other jurisdictions;
- The technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the state's current level of system development and statutory framework;
- The extent to which the state has demonstrated commitment to the improvement of criminal record systems through efforts supported with state funds or awards under the BJS administered CHRI program, the NCHIP program or the Byrne Formula program;
- Reasonableness of the budget and the nature of the proposed expenditures.

When May A State Apply?

Applications for funding under the Advanced State Award Program will be accepted until December 31, 1995.

What is the Maximum Dollar Amount for Which A State May Apply?

In general, the maximum award will not exceed $250,000 per state. If states wish to submit combined applications, larger award amounts will be considered.

When Will Awards Be Made?

The selection of applications to be funded with funds appropriated in Fiscal Year 1995 will be made after the December 31 deadline. Awards will be announced no later than March 15, 1996. Projects can be scheduled for up to 24 months.

Appendix A

Application and Administrative Requirements

Application Content

All applicants must submit:
- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information.
- OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances.
- OJP Form 4061/6 Certifications.
- OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Applicants are requested to submit an original and two copies of the application and certifications to the following address: Application Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue, NW, Washington, DC 20531, Phone: (202) 616–3500.

Standard Form 424 (SF–424). The SF–424, a one page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. No application can be accepted without a completed, signed original SF–424. Directions to complete each item are included on the back of the form.

Standard Form 424A (SF–424A). All applications must include SF–424A, Budget Information for all years of project activity. Applicants should ensure that all appropriate columns and rows balance. Directions to complete this form are found on page 3 of SF–424A.

Detailed Budget. Applicants must provide a detailed justification for all costs including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project.

Budget Narrative. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to specific tasks and allowable cost categories and should provide a justification and explanation for the budgeted items including the criteria and data used to arrive at the estimates for each budget category. Please note applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $25,000.

The budget narrative should indicate amounts to be made available to agencies other than the grant recipient (for example, the agency with responsibility for CCH, the courts, local agencies.)

Program Narrative. All applications must include a program narrative which fully describes the expected design and implementation of the proposed program. OJP Form 4000/3 (Rev. 1–93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a time line of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected.

The application should include a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program.

Assurances. OJP Form 4000/3 (Rev. 1–93) must be included in the application submission. If submitting this form separate from the SF–424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 can be obtained from the BJS Application Coordinator. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and Administrative Requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual, provided upon request, is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil Rights Obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, 42 U.S.C. Sec. 3789d, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability.

The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits—to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices—to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation—to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, "Audits of State and Local Governments" which establishes regulations to implement the Act. OMB Circular A–128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Intergovernmental Review of Federal Programs

Federal Executive Order 12372, "Intergovernmental Review of Federal Programs," allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State "single point of contact."

If the State has established a "single point of contact," and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State "single point of contact" at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's "single point of contact" by the end of the review period, this will be interpreted as a "no comment" response.

If the State has not established a "single point of contact," or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Appendix B

Categories of Persons Prohibited From Receiving Firearms [1]

Persons Who Are Under Indictment for, or Have Been Convicted in Any Court of, a Crime Punishable by Imprisonment for a Term Exceeding One Year

This category includes any person (1) who currently is under indictment (or "information") for a crime *punishable* by imprisonment for a term exceeding one year, or whose case has been referred to court-martial if he/she is in the military; or (2) who has been convicted in any court (including, for example, a military court) of a crime *punishable* by imprisonment for a term exceeding one year. ("Information" refers to a formal accusation of a crime made by a prosecuting attorney, as distinguished from an "indictment" presented by a grand jury.) The maximum sentence that may be imposed determines whether a person is under indictment or information for a disabling crime. Similarly, the maximum sentence that may be imposed, rather than the actual sentence, determines whether a person has been convicted of a disabling crime. Such a crime includes any Federal, State, or foreign offense for which the maximum penalty is

[1] These definitions of categories of persons prohibited from receiving firearms are pending final action by the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department.

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capital punishment or imprisonment in excess of one year. Indictments, information, and convictions for the following crimes are exceptions and are *not* disabling: (1) Federal or State offenses pertaining to antitrust offenses, unfair trade practices, and other similar business-related offenses; and (2) State offenses classified by State law as misdemeanors punishable by imprisonment for a term of 2 years or less.

Any conviction which has been expunged, set aside, or for which a person has been pardoned or has had civil rights restored *remains disabling if* (1) the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, *or* (2) the person is prohibited by the law where the conviction occurred, from receiving or possessing any firearm. Also, a State's restoration of a convicted felon's civil rights does not remove any firearms disability caused by a Federal conviction. The burden of proof is on the applicant to prove that his/her firearms disabilities have been removed.

Persons Who Are Fugitives From Justice

This category includes persons (1) who know they have charges pending against them, even if only for a misdemeanor, and who leave the State of prosecution, or (2) who leave the State in order to avoid giving testimony in any criminal proceeding.

Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

This category includes persons who are unlawful users of or addicted to any controlled substance, as defined in section 102 of the Controlled Substances Act. Controlled substances include, but are not limited to, marijuana, depressants, stimulants, and narcotic drugs. They do not include distilled spirits, wine, malt beverages, or tobacco.

It is unlawful to use any illegal controlled substance (such as PCP), or to use any other controlled substance (such as morphine) in a manner other than as prescribed by a licensed physician. A person who is "addicted" to a controlled substance is any individual who is found to (1) habitually use a controlled substance so as to endanger the health, safety, welfare, or morals of the public, or (2) to have lost the power of self-control with reference to the addiction.

To incur firearms disabilities, there must be evidence that a person is a current unlawful user of, or addict to, a controlled substance. Such unlawful use or addiction may be demonstrated by evidence of: (1) The recent use of a controlled substance, which is part of a pattern of unlawful use or addiction; or (2) the current unlawful use of, or addiction to, a controlled substance.

Evidence of unlawful use or addiction includes, but is not limited to, any of the following: a criminal record, self-admission of use, diagnoses or other records at a drug treatment or rehabilitation center or other medical facility, testimony or a statement by a psychiatrist or other licensed physician who diagnosed the symptoms or treated the person, needle marks on the person, a failed (that is, "positive") drug test, or testimony of a social acquaintance who observed the unlawful use of a controlled substance by the person.

Concerning drug tests, failing a single drug test would give reasonable cause for disqualifying a person from purchasing a firearm. Federal agencies may exercise discretion in determining when to report the "positive" result of a drug test for controlled substances. For example, agencies are not required to report such results prior to giving the person an opportunity to contest the results of the "test" through a proceeding that provides due process.

Persons Who Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution

The category includes persons who have been adjudicated as mental defectives or been committed to a mental institution by a court, board, commission, or other lawful authority. An adjudication as a mental defective occurs when a court, board, commission, or other lawful authority determines that an individual is mentally retarded or of marked subnormal intelligence, mentally ill, or mentally incompetent. Examples of persons adjudicated as mental defectives include defendants in criminal cases who are found not guilty by reason of insanity, and persons found to be a danger to others as a result of a mental disorder or illness.

For there to be a disabling "commitment" to a mental institution, a formal commitment by a court, board, commission, or other legal authority is necessary. Any person who has been committed in such a way to a mental institution *involuntarily*—even for reasons other than mental defectiveness or mental illness (such as for drug use)—is prohibited from receiving firearms. However, the mere presence of a person in a mental institution for observation is not a disabling commitment. Also, a voluntary commitment to a mental institution is not disabling. "Mental institutions" include mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness.

Persons Who are Aliens and are Illegally or Unlawfully in the United States

This category includes all aliens who are unlawfully in the United States or are not in a valid nonimmigrant or immigrant status—except for individuals in "immigration parole" status (see the note below).

Examples of persons in this category include any alien:

(1) Who has entered the country illegally;

(2) Nonimmigrant whose authorized period of admission has expired;

(3) Student who has failed to maintain status as a student; or

(4) Under an order of deportation, whether or not he/she has left the United States.

(**Note:** Aliens are not disqualified from purchasing firearms for being in "immigration parole" status in the United States pursuant to the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, (INA). In accordance with the INA, immigration parole may be granted temporarily to an alien at the discretion of the U.S. Attorney General "for emergent reasons or for reasons deemed strictly in the public interest." An example would be a person who is ineligible to enter the United States legally, but who has been granted parole into the United States to assist the government in an investigation.)

Persons Who Have Been Discharged from the Armed Forces Under Dishonorable Conditions

This category only includes persons whose separation from the Armed Forces resulted from a dishonorable discharge. It does not include, for example, persons whose separation from the Armed Forces resulted from a dismissal, bad conduct discharge, or other than honorable discharge.

Persons Who Have Renounced their United States Citizenship

This category includes persons who have formally renounced their United States citizenship either (1) before a diplomatic or consular officer of the United States in a foreign state, or (2) before an officer designated by the Attorney General when the United States is in a state of war.

Persons Who are Subject to a Court Order Restraining Them from Committing Domestic Violence

This category includes any person who, at the time he/she applies to receive a firearm, is under a court order that meets the following criteria:

- The order must have been issued after a hearing of which the person subject to the order received actual notice, and at which the person had an opportunity to participate; *and*
- The order must restrain the person subject to the order from harassing, stalking, or threatening an intimate partner of the person, or a child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*
- The order must include a finding that the person subject to the order represents a credible threat to the physical safety of the intimate partner or child, *or* the order must explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

The term "intimate partner" is defined as a spouse, former spouse, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person.

Persons Who Are Juveniles

This category covers the prohibition against the transfer of firearms by Federal Firearms Licensees to certain underage persons. Federal Firearms Licensees are prohibited from transferring a *shotgun or rifle* to any person less than 18 years of age, and are prohibited from transferring *any other firearm, including a handgun,* to any person less than 21 years of age.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 95–30221 Filed 12–11–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

December 7, 1995.

The Department of Labor has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICR listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 within 30 days from the date of this publication in the **Federal Register.** Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Employment and Training Administration.

Title: An Evaluation of the Emergency Unemployment Compensation Act.

OMB Number: 1205–0 new.

Frequency: One-time.

Affected Public: Federal Government.

Number of Respondents: 4,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 4,520.

Description: This project is designed to conduct a comprehensive analysis of the Emergency Unemployment Compensation Act. The results of this evaluation will provide policy relevant information required by the Administration and Congress to determine how to structure future extended benefits programs.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–30162 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–31,365]

Conagra Flour Milling Company, Superior, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at ConAgra Flour Milling Company, Superior Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,365; ConAgra Flour Milling Company, Superior, Wisconsin (November 22, 1995)

Signed at Washington, D.C. this 30th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30157 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 22, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/27/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,645	Details by Patricia Green (Wkrs)	Portland, OR	10/30/95	Ladies' Belts.
31,646	DMI Furniture, Inc (Co.)	Gettysburg, PA	11/15/95	Wood Household Furniture.
31,647	Country Maid Sportswear (Wkrs)	Danville, PA	11/13/95	Girl's Sportswear.
31,648	Country Maid Sportswear (Co.) (	Shamokin Dam, PA	11/13/95	Girl's Sportswear.
31,649	Columbia Sportswear (Wkrs)	Portland, OR	11/08/95	Sportswear Apparel.
31,650	Carpenter Manufacturing (UAW)	Mitchell, IN	10/29/95	Automotive Parts.
31,651	Brookside Group, Inc. (USWA)	McCordsville, IN	11/11/95	Air Moving Devices.
31,652	Bob-Kat Tanning Co. (Co.)	Peabody, MA	11/17/95	Cowhide Split Suede Leather.

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APPENDIX—Continued
[Petitions Instituted On 11/27/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,653	Akzo Nobel Salt, Inc. (USWA)	Mainstee, MI	11/07/95	Evaporated Salt.
31,654	Abu Garcia, Inc. (Wkrs)	Fairfield, NJ	11/15/95	Warehouse/Sales etc. Fishing Rods, Reels.
31,655	Albemarle Spinning Mills (Wkrs)	Albemarle, NC	11/09/95	Yarn & Greige Cloth.
31,656	American Trouser, Inc. (Co.)	Columbus, MS	11/15/95	Men's Dress & Casual Slacks.
31,657	Joseph A. Bank, Mfg. (UNITE)	Hampstead, MD	11/13/95	Men's Suits, Sportcoats, Vest.
31,658	Wilkes Mill & Feed Co. (Co.)	Washington, GA	11/10/95	Beef Cattle Feed.
31,659	Custom Packaging Systems (Wkrs)	Manistee, MI	11/13/95	Flexible Intermediate Bulk Containers.
31,660	The Elkins Company (Wkrs)	Elkins, WV	11/14/95	Household Furniture.
31,661	Westchester Lace, Inc. (UNITE)	West New York, NJ	11/14/95	Lace.
31,662	Grossman and Sons, Inc. (UNITE)	Passaic, NJ	11/14/95	Ladies' Hats.
31,663	J. Lamb, Inc. (UNITE)	Englewood, NJ	11/14/95	Vinyl Mattress Covers.

[FR Doc. 95–30152 Filed 12–11–95; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,547; Columbian Cutlery Co., Inc., Reading, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,536; General Electric Co., GE Transportation Systems—Erie, Erie, PA

TA–W–31,434; CVI, Inc., Hilliard, OH

TA–W–31,440; BP Chemicals (Hitco), Inc., Fibers & Materials Div., Santa Ana, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,510; Movil Corp., Marketing, Refining & Chemical Technical Center (MRCTEC), Paulsboro, NJ

TA–W–31,472; Sara International, Inc., Opa Locka, FL

TA–W–31,478; J.H. Enterprise, Shreveport, LA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,525; Matsushita Electric Corp of America, Matsushita Television Co., Franklin Park, IL: September 29, 1994.

TA–W–31,459; Treasure Craft, Compton, CA: September 7, 1994.

TA–W–31,584; R & R Sportswear, Exeter, PA: October 17, 1994.

TA–W–31,628; Cal-Style Furniture Mfg Co., Compton, CA: November 20, 1994.

TA–W–31,417; Parker Drilling Co., Del City, OK: September 1, 1994.

TA–W–31,446; Fruit of The Loom, Rockingham, NC; August 28, 1994.

TA–W–31,421; Continental Systems, Jonesboro, AR: September 7, 1994.

TA–W–31,518; Samson International Ltd, Tulsa, OK: September 28, 1994.

TA–W–31,553; Stratus Computer, Inc., Marlboro, MA: October 4, 1994.

TA–W–31,419; Fifth Street Slacks, Louisville, GA: September 7, 1994.

TA–W–31,580; The MFC Group, Telford, PA: October 11, 1994.

TA–W–31,485; Quantum Corp., High Capacity Storage Group, Colorado Springs, CO Including "Temporary" workers employed through Kelly Services, Inc., Colorado Springs, CO & workers subcontracted through the following firms, all located in Colorado Springs, CO: Tech/Aid, Olsten Staffing Services, Manpower Temporary Services, Tad Staffing Service, Power Temps and Aerotek: September 19, 1994.

TA–W–31,610; Toll Gate Garmet Co., Inc., Hamilton, AL: October 26, 1994.

TA–W–31,602; Crown Textile Co., Plants #01, #02, #03 & Converting Plant, South Talladega, AL: October 23, 1994.

TA–W–31,465; Cranston Print Works Co., Cranston, RI: September 13, 1994.

TA–W–31,555; Fruit of The Loom, Woodville Apparel Corp., Woodville, MS: October 10, 1994.

TA–W–31,557; Fruit of The Loom, Rienzi Manufacturing, Inc., Rienzi, MS: October 9, 1994.

TA–W–31,568; Fruit of The Loom, Greensburg, KY: October 4, 1994.

TA–W–31,599; Fruit of The Loom, Bowling Green, KY: October 18, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00648; The MFC Group, Telford, PA

NAFTA–TAA–00636; Colombian Cutlery Co., Inc., Reading, PA

NAFTA–TAA–00653; Weksler Instruments Corp., Freeport, NY

NAFTA–TAA–00652; Master Package Corp., Owen, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00669; Kellogg USA, In., San Leandro Plant, San Leandro CA: October 30, 1994.

NAFTA–TAA–00679; Cal-Style Furniture Manufacturing Co., Compton, CA: November 9, 1994.

NAFTA–TAA–00664; Koring Brothers, Inc., Long Beach, CA: October 24, 1994.

NAFTA–TAA–00662; Equitable Resources Energy Co., Buckhannon, WV: October 19, 1994.

I hereby certify that the aforementioned determinations were issued during the month of November, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated December 4, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30153 Filed 12–11–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–31,385]

Johnson Controls Battery Group, Inc. Louisville, Kentucky; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 13, 1995, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on October 13, 1995 and published in the **Federal Register** on October 27, 1995 (60 FR 55063).

The petitioner presents evidence that the subject firm shifted production to a foreign owned facility.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 30th day of November 1995.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30150 Filed 12–11–95; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin, Ocean, Radar & Sensor Systems, Utica, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 26, 1995, applicable to workers of Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York. The notice will soon be published in the **Federal Register.**

At the request of the State designee, the Department has reviewed the subject certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include all workers engaged in the production of printed circuit boards.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Canada or Mexico. Therefore, the Department is amending the certification to expand coverage to all workers engaged in the production of printed circuit boards and all workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York that were adversely affected by increased imports from Canada or Mexico and a shift in production of the inspection operation to Mexico, respectively.

The amended notice applicable to NAFTA–00634 is hereby issued as follows:

"All workers engaged in the production of printed circuit boards and all workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York who become totally or partially separated from employment on or after October 5, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 30th day of November 1995.

Russell T. Kile.

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30145 Filed 12–11–95; 8:45 am]
BILLING CODE 4510–30–M

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[TA-W-31,569; TA-W-31,570]

Mapa Pioneer, et al., Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on October 23, 1995 and filed on behalf of workers at Mapa Pioneer in Willard and Attica Ohio. The workers produce nitrile and neoprene gloves.

The investigation revealed that Mapa Pioneer made a decision in 1995 to transfer its neoprene glove production from its domestic plants to an affiliate in France. In addition, the transfer will result in the closing of the Attica, Ohio facility at the end of 1995.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with nitrile and neoprene gloves produced at Mapa Pioneer in Willard and Attica, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Mapa Pioneer in Willard and Attica, Ohio who became totally or partially separated from employment on or after October 10, 1994 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 14th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30151 Filed 12-12-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,761]

Motor Coach Industries International, Roswell, New Mexico; Notice of Revocation of Certification of Eligibility To Apply for Worker Adjustment Assistance

This notice revokes the Notice of Certification of Eligibility To Apply for Worker Adjustment Assistance issued April 11, 1995 for petition TA-W-30,761. The notice was published in the **Federal Register** on April 24, 1995 (60 FR 20764). The notice is revoked since new information supplied by the company shows that the determination issued was based on erroneous information.

Signed in Washington, D.C., this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30146 Filed 12-11-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,457]

Reckitt & Colman, Alliance and Toledo, Ohio, and Lincoln, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 25, 1995, in response to a worker petition which was filed on September 25, 1995, on behalf of workers at Reckitt & Coleman, Alliance and Toledo, Ohio, and Lincoln, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 28th day of November, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30159 Filed 12-11-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,470]

Reidbord Brothers Company, Pittsburgh and Apollo, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 2, 1995, in response to a worker petition which was filed by a company official on behalf of workers at Reidbord Brothers Company, Pittsburgh and Apollo, Pennsylvania.

An existing certification for this company is currently in effect (TA-W-31,574A and TA-W-31,574B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 1st day of December, 1995.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30154 Filed 12-11-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,930]

Sun Apparel, Incorporated El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 18, 1995, applicable to all workers of Sun Apparel, Concepcion Plant, El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1995 (60, FR 20764).

The State Agency requested that the Department review the subject certification. New findings show that worker separations have occurred at the Sun Apparel's Armour Plant in El Paso. The workers at the Armour Plant, like the Concepcion Plant, are engaged in employment related to the production of jeans. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Therefore, the Department is amending the certification to expand coverage to all workers of Sun Apparel in El Paso, not just workers at the Concepcion Plant.

The amended notice applicable to TA-W-30,930 is hereby issued as follows:

All workers of Sun Apparel, Incorporated, El Paso, Texas who became totally or partially separated from employment on or after April 3, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

FR Doc. 95-30147 Filed 12-11-95; 8:45am]

BILLING CODE 4510-30-M

[TA-W-30,932; TA-W-30, 932A]

Thomas & Betts Company, Elizabeth, New Jersey, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers of Thomas & Betts Company, located in Elizabeth, New Jersey. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26450).

Based on new information received from petitioners, the Department reviewed the subject certification. Findings show that worker separations have occurred at the distribution center of Thomas & Betts located in Cranbury, New Jersey. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA-W-30,932 is hereby issued as follows:

All workers of Thomas & Betts Company, Elizabeth, New Jersey (TA-W-30,932) and Cranbury, New Jersey (TA-W-30,932A) who became totally or partially separated from employment on or after April 12, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30149 Filed 12-11-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,329A; TA-W-30, 329D; TA-W-30, 329E]

United Technologies Corporation, Pratt & Whitney East Hartford, Connecticut, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 22, 1995, applicable to all workers of Pratt & Whitney, East Hartford, Connecticut engaged in employment related to the production of jet engine parts. The notice was published in the **Federal Register** on March 1, 1995 (60 FR 11119).

At the request of two State Agencies, the Department reviewed the certification for workers of the subject firm. New findings show that state field representatives for the subject firm located in Florida and Michigan, were paid by the subject firm and should have been included in the certification. The intent of the Department's certification is to include all workers of Pratt & Whitney who were adversely affected by increased imports.

The amended notice applicable to TA-W-30,329 is hereby issued as follows:

All workers of United Technologies Corporation, Pratt & Whitney, East Hartford, Connecticut (TA-W-30,329A); and field representatives located in Florida (TA-W-30,329D) and Michigan (TA-W-30,329E) whose wages were paid by Pratt & Whitney, East Hartford Connecticut, engaged in employment related to the production of jet engine parts who became totally or partially separated from employment on or after September 7, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-30158 Filed 12-11-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,927, NAFTA-00120]

Walker Manufacturing Company, Hebron, OH; Notice of Negative Determination on Reconsideration

On December 14, 1994 the United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *UAW Local 1927 and Employees and Former Employees of Walker Manufacturing* v. *Secretary of Labor* (94-10-00584).

The Department's initial denial for the Hebron workers, issued on August 15, 1994 and published in the **Federal Register** on September 2, 1994 (59 FR 45711), was based on the fact that the increased import criterion and the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act were not met. U.S. aggregate imports of mufflers and exhaust pipes declined absolutely in 1993 compared to 1992 and in the latest twelve month period from June 1993 through May 1994 compared with the same period one year earlier.

The Hebron plant had only one customer and that customer's import purchases were not important relative to Hebron's sales during the relevant period.

The workers were also denied eligibility to apply for TAA on reconsideration. The reconsideration notice was issued on October 5, 1994 and published in the **Federal Register** on October 14, 1994 (59 FR 52194).

The reconsideration findings show that as a result of the Hebron closure, the company is making Hebron's machinery available to other corporate North American plants including some machinery to Mexico. However, the capital equipment used to make exhaust systems is not like or directly competitive with exhaust systems themselves and as such would not form a basis of a worker group certification. Other findings on reconsideration show that no production was shifted to Mexico and only a very small portion of Hebron's total production, the production of resonator bodies, was shifted to Canada; however, the workers who produced resonator bodies were not separately identifiable. (AR p. 23 and p. 28).

The workers were also denied under a NAFTA petition (NAFTA-00120) on June 30, 1994 (59 FR 37997) and on reconsideration on October 7, 1994 (59 FR 53213). The Department's denial was based on the fact that neither the increased import criterion nor the shift in production to Mexico or Canada criterion of the Worker Group Eligibility Requirements of the NAFTA provisions of the Trade Act was met.

The record states that the Ohio Bureau of Employment Security (OBES) made a preliminary finding that the firm met the increased import criterion. (See AR p. 30). This state finding is only a preliminary finding to get the investigatory process started. The state's investigation was not as extensive as the Department's investigation. Further, under the NAFTA-TAA provisions, the state, unlike the Department, does not make a finding on the "contributed importantly" test, which the workers failed to pass.

On further reconsideration, the Department has difficulty obtaining additional information from Walker Manufacturing especially as to a further breakout of Hebron's production and sales. On December 20, 1994, the Department, however, did contact the plaintiffs' counsel, and other union witnesses to request any information or documentation that would contradict the Department's negative determinations. Counsel for the plaintiffs alleged that about 50 resonator workers were laid off in February 1994 and that 40 percent of the plant's production was shipped to Mexico prior

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to the phasedown. (See AR pp. 69–70). These allegations were not backed up by any supporting documentation, and none of the other union witnesses supplied any evidence or documentation.

The remand findings show that the Walker plant in Queretaro, Mexico does not produce any goods or products like or directly competitive with the articles formerly produced at Hebron. The Mexican plant is a supplier of exhaust systems for General Motors, Chrysler and Volkswagen and to the replacement parts market (aftermarket) in Mexico. The Herbron plant, on the other hand, produced exhaust systems only for Ford. These customized exhaust systems are not interchangeable. (See AR p. 74).

The findings also show that no production was transferred to Mexico as a result of the closure of the Hebron plant. (See AR p.49, p.64). Neither the Hebron plant nor Walker's Mexico plant supply the same customers. (See AR p. 49). Only the production of resonator bodies was transferred to Canada; however, this transfer accounted for only a very small portion of Hebron's total production and the workers were not separately identifiable by product. All other production was transferred to company owned domestic plants, primarily Marshall, Michigan and Ligonier, Indiana. (See AR p. 62).

Other findings on reconsideration show that the Hebron plant closure was due to capacity concerns within Walker Manufacturing and Walker's desire to provide better service for Hebron's sole customer, Ford Motor Company. (See AR p. 62).

On remand, the Department received a further breakout by month of Hebron's production and a listing of all Hebron's capital assets shipped to other corporate locations. (See AR pp. 118–46). These new findings show that Canadian corporate exports (from Cambridge) to the U.S. from May 1, 1992 to April 30, 1994, were less than one-tenth of one percent of Hebron's sales during the same period. (See AR pp. 147, 149). Such a small proportion is too insignificant to form a basis for a worker group certification, especially since the Hebron workers are not separately identifiable by product, and thus it cannot be determined how many workers produced the components that are now being imported. (See AR p. 23, pp. 28–29).

Other findings on reconsideration show only very small amounts of Hebron's assets were shipped to Mexico. (See AR pp. 118–152). Contrary to the contention of the plaintiffs' counsel, (See AR p. 163), the mere transfer of machinery from a domestic plant to a Mexican or Canadian plant would not, by itself, form a basis for a worker group certification under the NAFTA provisions of the Trade Act. Rather the NAFTA provisions specifically state that there must be a shift in production of *articles* from a domestic firm to a Mexican or Canadian plant for the workers to be eligible to apply for transitional adjustment assistance, not the shifts of *machinery* associated with those, or any other type of articles. (Trade Act, Sec 250(a)(1)(B), 19 U.S.C. § 2331(a)(1(B)). Since no articles formerly produced at the Hebron plant are now being produced in Mexico, the transfer of production criterion has not been met here.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of the Walker Manufacturing Company in Hebron, Ohio.

Signed at Washington, D.C., this 5th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30156 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00602]

Conagra Flour Milling Company Superior, Wisconsin; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at ConAgra Flour Milling Company, Superior, Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–00602; ConAgra Flour Milling Company, Superior, Wisconsin (November 22, 1995)

Signed at Washington, D.C. this 29th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30161 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00609]

Dow Chemical Company Corporate Aviation Division, Freeland, Michigan; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Dow Chemical Co., Corporate Aviation Division, Freeland, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–00609; Dow Chemical Co., Corporate Aviation Division, Freeland, Michigan (November 22, 1995)

Signed at Washington, D.C. this 29th day of November, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30160 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin, Ocean, Radar & Sensor Systems, Utica, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1995, applicable to all workers of Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York. The notice will soon be published in the **Federal Register**.

At the request of the State designee, the Department has reviewed the subject certification to specify that only the inspection operation of the printed circuit board assemblies are being shifted to Mexico.

The intent of the Department's certification is to include workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York that were adversely affected by the shift in production of the inspection operation to Mexico.

The amended notice applicable to NAFTA—00634 is hereby issued as follows:

All workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York who become totally or partially separated from employment on or after October 5, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.

Signed at Washington, D.C. this 1st day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30155 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00358]

Sun Apparel, Inc., El Paso, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 10, 1955, applicable to all workers of Sun Apparel, Inc., Concepcion Plant located in El Paso, Texas. The notice was published in the **Federal Register** on March 22, 1995 (60 FR 15164).

At the request of the State Agency, the Department reviewed the subject certification. New findings show that worker separations have occurred at the Sun Apparel's Armour Plant in El Paso. The workers at the Armour Plant, like the Concepcion Plant, are engaged in employment related to the production of jeans. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Mexico or Canada. Therefore, the Department is amending the certification to expand coverage to all workers of Sun Apparel in El Paso, not just those workers at the Concepcion Plant.

The amended notice applicable to NAFTA–00358 is hereby issued as follows:

All workers of Sun Apparel, El Paso, Texas who became totally or partially separated from employment on or after February 2, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30148 Filed 12–11–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, on October 4, 19985, **Federal Register** No. 192, page 52024, the National Science Foundation (NSF) published, for public comment, a proposed collection of information, "Survey of Industrial Research and Development, 1995–97." No public comments were received. The collection of information is now being forwarded to the Office of Management and Budget for consideration. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance Officer at (703) 306–1243, or send comments to: National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230.

Written comments should be received by January 5, 1995.

Abstract: This survey measures the amount and indicates the direction of R&D expenditures by U.S. industry, Government agencies, corporations, academic researchers, trade associations, research organizations, and others use the survey statistics to analyze and forecast technological growth, investigate productivity determinants, formulate tax policies, and compare individual company performance with industry averages.

Companies with known R&D activity and samples of companies in selected industries that may conduct R&D are included.

Dated: December 7, 1995.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 95–30229 Filed 12–11–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309, 50–285, 50–317, 50–318, 50–336, and 50–335]

Maine Yankee Atomic Power Co., Omaha Public Power District, Baltimore Gas and Electric Co., Northeast Nuclear Energy Co., and Florida Power & Light Co.; Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated May 2, 1995, by Mr. John F. Doherty, J.D. (Petition for action under 10 CFR 2.206). The Petition pertains to the following plants: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1.

In the Petition, Petitioner requested that the following six pressurized-water reactors be immediately shut down: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1. In addition, the Petitioner requested that steam generator tubes be inspected immediately at those plants.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–95–22), the complete text of which follows this notice, and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of December, 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Office of Nuclear Reactor Regulation, William T. Russell, Director

In the Matter of: Maine Yankee Atomic Power Co., Omaha Public Power District, Baltimore Gas and Electric Co., Northeast

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Nuclear Energy Co., Florida Power & Light Co. (Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1), Docket Nos. 50–309, 50–285, 50–317, 50–318, 50–336, and 50–335. License Nos. DPR–36, DPR–40, DPR–53, DPR–59, DPR–65, DPR–67.

I. Introduction

On May 2, 1995, Mr. John F. Doherty, J.D. (Petitioner), filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206. The Petitioner requested that the following six pressurized-water reactors be immediately shut down: Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, Millstone Unit 2, and St. Lucie Unit 1. In addition, the Petitioner requested that steam generator tubes be inspected immediately at those plants. The Petitioner stated that an inspection by the licensee in April 1995 of the Maine Yankee plant using the newly developed Point Plus system revealed that the steam generator tubes are on the verge of rupture, threatening the release of radioactive liquid and gaseous material into the environment and consequent harm to human health and safety. Because the other plants the Petitioner identified were built by the same manufacturer (Combustion Engineering) and are of similar operating age, the Petitioner asked that they, along with the Maine Yankee, be immediately shut down and that all steam generator tubes be immediately inspected using the Point Plus Probe system.

On June 28, 1995, I informed the Petitioner that the Petition had been referred to my office for preparation of a Director's Decision. I further informed the Petitioner that his request for immediate shutdown and inspection was denied because continued operation of these units until their next scheduled outage posed no undue risk to public health and safety. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time.

II. Discussion

The Petitioner requested that six CE-designed plants be shut down and their steam generator tubes inspected with the Plus Point inspection probe. The request appears to be based on concerns that without inspections using the Plus Point probe, the steam generators in these plants may be susceptible to one or more steam generator tube ruptures (SGTRs). However, the results of examinations of tubes removed from the Maine Yankee steam generators and in situ pressure tests of the most severely degraded tubes in the Maine Yankee steam generators have demonstrated that the tubes, although severely degraded, still had a significant margin before failure even under postulated accident conditions. Furthermore, the NRC has taken actions to ensure that other plants have performed appropriate steam generator tube inspections to assure tube integrity. These important actions are discussed below in greater detail.

The NRC applies a defense-in-depth approach toward protecting public health and safety from the potential consequences of events involving the rupture of steam generator tubes. Steam generator tube degradation is managed through a combination of several different elements, including inservice inspection, tube repair criteria, primary-to-secondary leak rate monitoring, water chemistry, and analyses to ensure safety objectives are met.

The primary means for assessing steam generator tube degradation is through inservice inspections. Plant technical specifications require a periodic inspection of the steam generator tubes. Any tubes with identified degradation in excess of the repair criteria are repaired or removed from service. In order to assess the condition of steam generator tubing, the industry primarily relies on eddy current inspection techniques, which includes the motorized rotating pancake coil (MRPC) test. Circumferential cracking in steam generator tubing has been identified at expansion transitions, small radius U-bends, dented tube support plate intersections, and sleeved joints. Based on the utilities' responses to GL 95–03, the inservice CE steam generators (i.e., not including retired CE steam generators) have been inspected in these areas with techniques capable of detecting circumferential cracking and, to date, such cracking was found only at the expansion transitions.

Experience to date, including experience at the Maine Yankee plant, shows that the standard MRPC probe is a reliable means for detecting structurally significant cracking in steam generator tubes. The use of an MRPC probe in conjunction with adequate inspection procedures is a reliable means for detecting circumferential cracking in steam generator tubes. As discussed above, metallographic examinations of removed tubing and in situ pressure testing of degraded tubes continue to support the staff's conclusion that properly conducted MRPC inspections can identify circumferential cracking before the cracking exceeds the structural limits.

In addition to requiring periodic steam generator tube inspections, the NRC requires an operational leak rate limit to provide reasonable assurance that should a primary-to-secondary leak be experienced during service, it will be detected and the plant will be shut down in a timely manner before rupture occurs and with no undue risk to public health or safety. Requiring operation within these limits decreases the possibility that steam generators may be vulnerable to tube ruptures during postulated accidents such as a main steamline break or a loss-of-coolant accident.

Inspection findings at Maine Yankee in 1994 revealed indications of large circumferential cracks that had been missed in previous inspections because of inadequacies in MRPC test and analysis procedures. The test and analysis procedures were upgraded accordingly. However, subsequent inspections at Maine Yankee performed with the MRPC in early 1995 revealed circumferential indications that were more numerous and larger than expected based on the short operating interval since the previous inspection. The 100-percent MRPC inspection of the expansion transitions were supplemented by inspections with the recently developed Plus Point probe and a specially wound high-frequency MRPC coil. These latter probes offer improved sensitivity to inner-diameter-initiated circumferential cracks of the type present at the Maine Yankee expansion transitions and identified substantial numbers of relatively small circumferential cracks not detected with the conventional MRPC.

Three tubes were removed from these steam generators in early 1995. Before the tubes were removed, they were tested by ultrasonic, visual (fluorescent penetrant dye), and eddy current techniques to confirm the nature of the indications. Eddy current methods included examination with a standard rotating pancake coil, a Plus Point coil, and a high-frequency pancake coil. The indications were sized with various techniques and the tubes were then destructively examined so that the actual size of the indications could be determined. The results of the destructive examinations are provided in NRC Information Notice 95–40, "Supplemental Information Pertaining to Generic Letter 95–03, 'Circumferential Cracking of Steam Generator Tubes.'" The destructive examination results and data obtained with a high-frequency pancake coil suggest that many of the indications may not have been as structurally significant as the standard pancake coil appeared to indicate.

In situ pressure tests were conducted on the tubes with the largest MRPC indications and the results indicate acceptable margins against burst under normal operating and postulated accident conditions. The NRC had a review conducted by an independent contractor of the in situ test method used at Maine Yankee and determined that it provides a reasonable simulation of the hydraulic pressure loads induced during a postulated main steamline break.

Thus, it has been demonstrated that the tubes with the largest indications at Maine Yankee continued to exhibit adequate structural integrity at the time they were found. This finding is attributable to the morphology of the cracks as determined from metallographic examinations of pulled tube specimens from Maine Yankee. This morphology consists of cracks that were not coplanar but rather of short circumferential length and staggered around the circumference over a short axial region with ligaments of material between the cracks. These ligaments add considerably to the strength of the tube, but these ligaments are generally not detectable by the MRPC.

The findings at Maine Yankee nevertheless raised concern that large undetected circumferential cracks could possibly exist at other plants. Therefore, the NRC issued Generic Letter (GL) 95–03, "Circumferential Cracking of Steam Generator Tubes," on April 28, 1995, notifying licensees of the Maine Yankee experience and requesting that they evaluate recent operating experience concerning the detection and sizing of circumferential cracks and the potential applicability of this experience to their plants. On the basis of the results of this evaluation, past inspections and the results thereof, and other relevant factors, licensees were requested to develop a safety assessment justifying continued operation until the next scheduled steam generator tube inspections were to be performed. The generic letter also requested that licensees develop and submit their plans for the next steam generator tube inspection as they pertain to the detection of circumferential cracks. The utilities were required to respond to GL 95–03 within 60 days. By now, the utilities that own the six plants listed in the Petition have responded to GL 95–03 and the responses have been evaluated by the staff.

Based on the utilities' responses to GL 95–03, with the exception of Millstone Unit 2, the CE plants listed in the Petition have been inspected in those areas susceptible to circumferential cracking with improved eddy current inspection probes equally capable as the Point Plus system of detecting circumferential cracking. All tubes with detected cracks have been removed from service. The licensee for Millstone Unit 2 replaced the original CE steam generators during an outage that ended in January 1993. The new steam generators incorporated many new design features that are expected to eliminate or greatly reduce the potential for circumferential tube cracking. These include the use of Inconel 690, a material that has significantly greater resistance to cracking and hydraulic expansion of tubes, which reduces the potential for cracking in the expansion transitions. The limited operational time, improvements in design, and favorable plant operating conditions minimize the potential for the development of circumferential cracking in the Millstone Unit 2 steam generators. Millstone Unit 2 steam generators will continue to be inspected during refueling outages.

The NRC has studied the risk and potential consequences of a range of SGTR events in NUREG–0844, "NRC Integrated Program for the Resolution of Unresolved Safety Issues A–3, A–4, and A–5 Regarding Steam Generator Tube Integrity." The staff estimated the risk contribution due to the potential for single and multiple SGTRs. The study also examined the expected consequences of SGTR scenarios, including beyond-design-basis situations, such as the potential for release as a result of containment bypass because of failed tubes concurrent with a breach of secondary system integrity. A combination of circumstances and conditions is required to produce such simultaneous failures: (1) Main steamline break or other less severe loss of secondary system integrity, (2) the potential that a population of tubes susceptible to rupture exists in a particular steam generator, (3) the potential that operators would not take actions to avoid high differential pressures, and (4) the probability that a large number of tubes would actually fail simultaneously. In the NUREG–0844 assessment, the staff concluded that the probability of simultaneous multiple tube failure was small (approximately 10^{-3}), and that the risk resulting from releases during SGTRs with loss of secondary system integrity was small (about 10^{-7} latent fatalities per reactor year).

III. Conclusion

Based on the fact that (1) adequate steam generator tube inspections have been performed, (2) primary-to-secondary leakage is being monitored on a continuing basis, and (3) the risk of multiple SGTR events is low, I have concluded that an immediate shutdown and Plus Point probe inspection of Maine Yankee, Fort Calhoun Unit 1, Calvert Cliffs Units 1 and 2, St. Lucie Unit 1, and Millstone Unit 2 is not warranted.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of the Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of December , 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30176 Filed 12–11–95; 8:45 am]

BILLING CODE 7590–01–P–M

[Docket Nos. 50–325 AND 50–324]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP) located in Southport, North Carolina.

Effective October 26, 1995, the Commission amended its regulations (10 CFR Part 50, Appendix J) to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear plants. The proposed amendment would permit the licensee to implement this performance-based option, which allows leakage testing intervals to be based on system and component testing performance.

The proposed amendment requires the establishment of a "Primary Containment Leakage Rate Testing Program" (program) and makes general reference to the NRC guidance utilized by the licensee for development of this program, i.e. Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program". Regulatory Guide 1.163 addresses the acceptability of industry-

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developed guidance described in Nuclear Energy Institute document NEI 94–01, entitled "Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J." The proposed amendment takes one exception to the guidance in NEI 94–01. Based upon the use of compensatory measures, the exception would allow the use of less accurate flow measuring equipment.

Certain containment leakage testing schedules and details regarding the scope of containment valves and penetrations to be leak-tested will be included in the licensee's program but would be removed by this proposed amendment from the BSEP Technical Specifications. Consistent with NEI 94–01 the proposed amendment relaxes the schedules for performing primary containment air lock leakage surveillance testing and, if the interval for testing of overall containment leakage (Type A testing) has been extended under the program to 10 years, requires inspections for containment integrity during two other refueling outages before the next Type A test as well as immediately prior to that test.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed license amendments revise the Technical Specifications to reflect the adoption of a performance-based containment leakage-testing program. The Nuclear Regulatory Commission has approved the use of a performance-based option for containment leakage testing programs when it amended 10 CFR Part 50, Appendix J (60 FR 49495).

For adoption of the revised regulations, licensees are required to incorporate into their Technical Specifications, by general reference, the NRC regulatory guide or other plant-specific implementing document [used to develop the performance-based leakage-testing program]. A new Administrative Control subsection is being added to the Brunswick Plant Technical Specifications that requires the establishment and maintenance of a Primary Containment Leakage Rate Testing Program. As stated in the Technical Specification, this Primary Containment Leakage Rate Testing-Program will conform with NRC Regulatory Guide 1.163, Revision 0, dated September 1995, "Performance-Based Containment Leak-Rate Testing Program" by establishing leakage testing intervals based on the criteria in Section 11.0 of NEI 94–01. The Technical Specifications will continue to require performance of a periodic general visual inspection of the containment to ensure early detection of any structural deterioration of the containment system that might occur.

The effect of increasing containment leakage rate testing intervals has been evaluated by the Nuclear Energy Institute using the methodology described in NUREG–1493 ["Performance-Based Containment Leak-Test Program", September 1995] and historical representative industry leakage rate testing data. The results of this evaluation, as published in NEI 94–01, Revision 0, are that the increased risk corresponding to the extended test interval is small (less than 0.1 percent of total risk) and compares well to the guidance of the NRC's safety goal. Therefore, adoption of performance-based verification of leakage rates for isolation valves, containment penetrations, and the overall containment boundary will provide an equivalent level of safety and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed license amendment. The safety objective for the primary containment is stated in 10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants." The safety function of the primary containment will be met since the containment will continue to provide "an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment * * *" for postulated accidents. Therefore, the proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. As stated above, the Nuclear Regulatory Commission has approved the use of a performance-based option for containment leakage testing programs when it amended 10 CFR Part 50, Appendix J (60 FR 49495). The new Primary Containment Leakage Rate Testing Program will conform with NRC Regulatory Guide 1.163, Revision 0, dated September 1995, "Performance-Based Containment Leak-Rate Testing Program" by requiring that leakage testing intervals be established based on the criteria in Section 11.0 of NEI 94–01, Revision 0.

As discussed in Part 1 above, the effect of increasing containment leakage rate testing intervals has been evaluated by the Nuclear Energy Institute using the methodology described in NUREG–1493 and historical representative industry leakage rate testing data. The results of this evaluation, as published in NEI 94–01, Revision 0, are that the increased safety risk corresponding to the extended test intervals is small (less than 0.1 percent of total risk) and compares well to the guidance of the NRC's safety goal. In addition, as demonstrated by risk analyses contained in NUREG–1482 (sic) [NUREG–1493], relaxation of the integrated leak rate test frequency does not significantly increase the probability or consequences of a previously evaluated accident. Integrated leakage rate tests have been demonstrated to be of limited value in detecting significant leakages from penetrations and isolation valves. Therefore, the proposed license amendments adopting a performance-based approach for verification of leakage rates for isolation valves, containment penetrations, and the containment overall will continue to meet the regulatory goal of providing an essentially leak-tight containment boundary, will provide an equivalent level of safety, and do not involve a significant reduction in a margin of safety.

The revised Technical Specifications will continue to maintain the allowable leak rate (L_a) as the Type A test [containment overall leak-rate test] performance criterion. In addition, a requirement to perform a periodic general visual inspection of the containment has been maintained as part of the performance-based leakage testing program.

The revised Technical Specifications will continue to maintain the allowable leak rate (L_a) (sic) [0.6 L_a] as the Type B [containment penetration leak-rate test] and C [containment isolation valve leak-rate test] tests' performance criterion. As supported by the findings of NUREG–1493, the percentage of leakages detected only by integrated leak rate tests is small (only a few percent) and Type B and C leakage tests are capable of detecting more than 97 percent of containment leakages and virtually all such leakages are identified by local leak rate tests (LLRTs) of containment isolation valves.

Thus, the proposed license amendments do not involve a significant reduction in a margin of safety and will continue to ensure the revised Appendix J regulatory goal of ensuring an essentially leak-tight containment boundary.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

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Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 13, 1995, as amended on November 27, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 5th day of December 1995.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30175 Filed 12–11–95; 8:45 am]

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[IA 95–058]

Five Star Products, Inc. and Construction Products Research, Fairfield, CT and H. Nash Babcock, Order

I

Five Star Products, Inc. (FSP), is a company located in Fairfield, Connecticut, and was formerly known as U.S. Grout Corporation. FSP manufactures and sells grout and concrete products to the nuclear industry and has done so for about 20 years. Through a holding company, Mr. Babcock owns FSP and several related businesses, including Construction Products Research, Inc. (CPR), which performs laboratory tests of FSP products. Mr. Babcock is Vice-President of FSP and President of CPR.

II

FSP submitted its grout and concrete products to CPR for testing. Following the tests, CPR issued certifications that it tested FSP products in conformance with certain specifications of the American Society for Testing and Materials. FSP subsequently utilized those certifications as the basis for certifying that its products satisfied Appendix B and customer Purchase Order (PO) requirements. At various times since 1980, FSP has advertised and represented to NRC licensees that its products are manufactured in accordance with the requirements of Appendix B. It has supplied products pursuant to purchase orders requiring FSP to meet the requirements of Appendix B, and 10 CFR Part 21. Licensees who have purchased material from FSP under FSP's certification of quality have used the grout and concrete in safety-related applications and as basic components.

The Nuclear Regulatory Commission (NRC or Commission) issued 10 CFR Part 21 (Part 21) to implement Section 206 of the Energy Reorganization Act of 1974. Part 21 imposes, *inter alia*, evaluation and reporting requirements on directors and responsible officers of firms which supply basic components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974. Basic components are structures, systems, or parts in which a defect or failure to comply with applicable requirements could create a substantial safety hazard. 10 CFR 21.3(a). Part 21 is implemented in conjunction with Appendix B, which contains the quality assurance (QA) criteria applicable to design, fabrication, construction, and testing of safety-related structures, systems, and components in commercial nuclear power plants. Together, these requirements are intended to assure the safety of safety-related components, materials, and services for nuclear power plants.

Section 206 of the Energy Reorganization Act of 1974 requires directors and responsible officers of firms constructing, owning, operating or supplying the basic components of a facility or activity licensed or regulated by the Atomic Energy Act of 1954, as amended, who obtain information regarding defects in those basic components, or failures of basic components, or of the facility to comply with NRC requirements, to notify the NRC of those defects and failures to comply. Section 206(d) authorizes the Commission to conduct inspections and other enforcement activities necessary to insure compliance with that section. 10 CFR 21.41 and 21.51 implement Section 206(d).

III

The NRC conducts inspections of vendors who supply safety-related components pursuant to Appendix B and who supply basic components pursuant to Part 21. On August 18, 1992, the NRC began an unannounced inspection of FSP, and of its laboratory contractor, CPR, to determine the extent to which FSP supplied basic components to NRC licensees, the adequacy of FSP's QA Program, the adequacy of CPR's testing of FSP products, and the adequacy of FSP products.

Shortly after the inspection began, Mr. Babcock met with the inspection team and questioned the NRC's authority to conduct the inspection. Mr. Babcock was presented with two identical letters from the NRC staff, dated August 13, 1992, each addressed separately to FSP and CPR. The letters outlined the NRC's inspection authority under 10 CFR Part 21, Section 161o of the Atomic Energy Act of 1954, as amended (AEA), and Section 206(d) of the Energy Reorganization Act of 1974, as amended (ERA). Despite this, Mr. Babcock continued to question the NRC's authority and, throughout the inspection, denied the inspectors access to inspect CPR's testing laboratory, which was located in the basement of FSP's Fairfield, Connecticut, headquarters, and access to inspect CPR's laboratory records.

During the inspection of August 18 and 19, 1992, the inspection team reviewed NRC power reactor licensee POs submitted to Five Star in order to determine the scope of FSP's nuclear involvement. The team was provided with POs for the period 1988 to 1992. Those POs demonstrate that at least seven NRC reactor licensees and one licensee contractor had issued POs to FSP for safety-related grout and concrete mix products, and had specified compliance with Appendix B and Part 21.

The inspection team reviewed copies of several NRC licensee audit reports of FSP and CPR. These reports documented that NRC licensee requests to audit CPR's test laboratory and records were consistently denied by FSP. Further, several NRC licensee audit reports found that FSP's QA program was not acceptable and did not meet certain requirements of Appendix B.

The NRC inspection team requested copies of all audits performed by FSP of CPR to determine CPR's compliance with the quality assurance criteria of Appendix B and Part 21. Only one FSP audit of CPR was performed, by the FSP QA Manager, and it was provided to the NRC inspection team by the FSP QA Manager. The July 31, 1992 audit report concluded that CPR's June 10, 1992 QA program was satisfactory. The format and most of the language of this report were identical to a report of an audit conducted by Toledo Edison, an NRC

Part 50 reactor licensee, of FSP's QA program in February 1991. The FSP QA Manager later admitted that he had not in fact conducted an audit of CPR, and that he had used the Toledo Edison audit report to fabricate the July 31, 1992 audit report of CPR.

On August 19, 1992, the second day of the inspection, Mr. Babcock told the inspectors to leave at the end of that day and not return until after Labor Day. At 4:45 p.m. that day, Mr. Babcock was presented with another letter from the NRC staff which was witnessed by members of the inspection team and Mr. Henry Allen of FSP. This letter reiterated the legal authority of the NRC to conduct the inspection, and notified Mr. Babcock that continued refusals to permit inspection of FSP or CPR would be treated as a violation of 10 CFR 21.41, could result in enforcement action, and could be subject to treatment as a criminal violation in accordance with Sections 161o and 223 of the AEA. Notwithstanding this second letter, Mr. Babcock continued to deny the NRC inspectors access to the CPR laboratory and to records of the CPR laboratory. The inspectors left the site at 5:00 pm as Mr. Babcock had requested.

The inspection team also requested copies of QA manuals for both FSP and CPR which would provide the basis to support FSP's certifications to licensees that its products were manufactured under an appendix B Quality Assurance (QA) program. Copies of these documents were not furnished by FSP due to Mr. Babcock's suspension of further inspection activities.

As a result of FSP's and Mr. Babcock's curtailing the inspection, the inspection team was unable to review the implementation of FSP's QA Program against licsnsee PO's or to inspect CPR's testing of FSP's grout and concrete mix products, and thus was unable to determine whether those products were produced, tested and provided in compliance with appendix B and part 21. Therefore, the NRC staff could not determine whether there was reasonable assurance that those FSP grout and concrete mix products were acceptable for use in safety-related applications in nuclear power plants.

Shortly thereafter, the NRC obtained a federal criminal search warrant, which was executed on September 1, 1992. Certain documents and testimonial evidence were taken.

Additionally, the NRC Office of Investigations conducted an investigation of the allegations leading to and the events surrounding the inspection. (OI Case No. 1–92–037). During the course of the OI investigation, Mr. Babcock instructed his attorney to forward to the NRC a letter dated February 18, 1994, which Mr. Babcock had composed and signed. The attorney forwarded the letter, in which Mr. Babcock stated: "We did not deny the NRC inspectors access to the laboratory in August 1992. Mr. John S. Ma, a civil engineer on the NRC inspection team, was escorted to the lab where he conducted an inspection of the test laboratory." As indicated above, and as known to Mr. Babcock, no NRC inspectors were allowed in the laboratory at any time during the August 1992 inspection and, therefore, the statement concerning Mr. Ma's access to and inspection of the CPR laboratory is deliberately false. The letter was material because it provided incorrect information to the NRC on a matter that was under investigation.

IV

Based on the facts discussed above, the NRC concludes that the following violations of NRC requirements occurred:

A. 10 CFR 50.5, "Deliberate misconduct" prohibits any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, the Quality Assurance Manager of Five Star Products, and Five Star Products through its Quality Assurance Manager, prepared an audit report for Five Star Products of the Construction Products Research QA Program, dated July 31, 1992, without conducting an audit of Construction Products Research, and provided that audit report to NRC inspectors during an inspection of Five Star Products on August 18–19, 1992, knowing that no such audit had been conducted. This audit report was material to the NRC because it was capable of influencing its determination of whether the Construction Products Research QA Program complied with appendix B, and 10 CFR part 21 requirements.

B. Contrary to 10 CFR 50.5, Mr. H. Nash Babcock, the Vice President of Five Star Products, Inc. and the President of Construction Products Research, prepared and caused to be sent to the NRC a letter, in which Mr. Babcock stated that one NRC inspector had been allowed to and did in fact inspect the laboratory test facility of Construction Products Research on August 19, 1992. In fact, as Mr. Babcock knew, no NRC inspector was permitted to inspect the laboratory facilities of Construction Products Research during the August 18–19, 1992 inspection. The letter was material to the NRC because it provided information directly related to a matter under investigation by the NRC, specifically, whether Mr. Babcock had deliberately denied NRC inspectors access to the Construction Products Research test facility in violation of NRC requirements.

C. 10 CFR 21.41 requires that each individual, corporation, partnership or other entity subject to the regulations in part 21 shall permit duly authorized representatives of the Commission to inspect its records, premises, activities, and basic components as necessary to effectuate the purposes of part 21.

10 CFR 21.51(b) requires, in part, that each individual, corporation, partnership or other entity subject to the regulations in part 21 must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components.

Contrary to the above, on August 18 and 19, 1992, Five Star Products, Inc., through H. Nash Babcock, Vice President of Five Star Products, and Construction Products Research, Inc., through H. Nash Babcock, President of Construction Products Research, denied NRC inspectors access necessary to conduct an inspection of Five Star Products' contracted laboratory test facility, Construction Products Research, for, and of Construction Products Research records of test data associated with, safety-related grout and concrete mix products sold by Five Star Products to nuclear power plants licensed under 10 CFR part 50, pursuant to purchase orders specifying compliance with appendix B and 10 CFR part 21. Mr. Babcock also refused to allow NRC inspectors reasonable access to CPR laboratory personnel. By terminating the inspection, Mr. Babcock also prevented NRC inspectors from completing their examination of Five Star records.

V

The NRC and its licensees must be able to rely on licensee contractors and officers of licensee contractors, including providers of safety-related basic components such as Five Star Products, Inc., and suppliers of services associated with basic components, such as Construction Products Research, Inc., to comply with NRC requirements,

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including the requirements to provide accurate and complete information in all material respects and the requirements to permit inspection of their records, premises, activities and components. Five Star Products' and Mr. H. Nash Babcock's violations of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Five Star Products and its Vice President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections and to provide complete and accurate information to the NRC in all material respects. In addition, they did not permit NRC licensees access to CPR's facilities in order to conduct necessary audits. Construction Products Research's and Mr. Babcock's violation of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Construction Products Research and its President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections by the NRC or its licensees and to provide complete and accurate information to the NRC in all material respects. Consequently, I lack the requisite reasonable assurance that the NRC and NRC licensees can rely on the statements or certifications of Five Star Products, Inc., Construction Products Research, Inc., or Mr. H. Nash Babcock, that basic components of Five Star Products, Inc. or associated services of Construction Products Research, Inc. meet NRC requirements necessary to protect public health and safety. Therefore, I find that the public health, safety, and interest require that Five Star Products, Inc., Construction Products Research, Inc. and Mr. Babcock (1) be prohibited from providing structures, systems, and components subject to a procurement contract specifying compliance with Appendix B, or basic components subject to a procurement contract specifying compliance with 10 CFR Part 21, and (2) must respond to this Order and take certain other actions if they desire to provide such products to NRC licensees who specify that they must meet the requirements of Appendix B, or 10 CFR Part 21 [1].

VI

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, Section 206 of the Energy Reorganization Act, as amended, and the Commission's regulations at 10 CFR 2.202, 10 CFR Parts 21 and 50, and 10 CFR 50.5, IT IS HEREBY ORDERED, THAT:

1. Until Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, and any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2., below, they are prohibited from:

A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with Appendix B; and

B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;

2.A. If Five Star Products, Inc., Construction Products Research Inc., or any concern owned, controlled, operated or managed by H. Nash Babcock, desires to lift the prohibition specified in paragraph 1, above, then Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:

(1) Advise the NRC of that intent in writing;

(2) Respond in writing under oath or affirmation specifically as to each of the violations listed in Section IV, including: (a) An admission or denial of the alleged violation, (b) the reasons for the violation if admitted, and if denied, the reasons why, (c) the corrective steps that have been taken and the results achieved, (d) the corrective steps that will be taken to avoid further violations, and (e) the date when full compliance will be achieved;

(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of Five Star Products, Inc., of Construction Products Research, Inc., or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;

(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of Appendix B by having tests performed by an independent third party and having that third party provide copies of the results of those tests directly to the NRC; and

(5) The officers, managers, and supervisors of Five Star Products, Inc. and Construction Products Research, Inc. provide statements that they understand that the activities and records of the organization are subject to NRC inspection, that communications with the NRC must be complete and accurate, and that any employee may provide information to the NRC at any time without fear of retribution; and

B. When all conditions of paragraph 2.A. above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of Five Star Products, Inc., Constructions Products Research, Inc., and any concern owned, controlled, operated, or managed by H. Nash Babcock, and any necessary corrective action has been completed, the prohibition of paragraph 1, above, will be lifted in writing.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Five Star Products, Inc., Construction Products Research, Inc., and Mr. H. Nash Babcock of good cause.

VII

In accordance with 10 CFR 2.202, Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, or any other person adversely affected by the Order, may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, and any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Hearings and Enforcement and the Director, Office of Nuclear Reactor Regulation, both at the same address. If a person other than Five Star Products, Inc., Construction Products Research, Inc., or H. Nash Babcock requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, the provisions specified in Section VI above shall be effective and final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland this 1st day of December 1995.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 95–30174 Filed 12–11–95; 8:45 am]

BILLING CODE 7590–01–P

[1] This does not prohibit FSP from supplying commercial grade materials to NRC licensees, or CPR from testing and certifying commercial grade materials to NRC licensees, provided that no representations are made with regard to FSP products being qualified for safety-related applications in nuclear power plants based on compliance with 10 CFR Part 50, Appendix B, or that 10 CFR Part 21 requirements have been met.

OFFICE OF NATIONAL DRUG CONTROL POLICY

High Intensity Drug Trafficking Areas; Availability of Funds

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of funds availability.

SUMMARY: Public Law 102–393 directs the Office of National Drug Control Policy (ONDCP) to transfer certain funds to Federal, State and local drug control entities in connection with the High Intensity Drug Trafficking Area (HIDTA) program. The purpose of this announcement is to communicate to potential applicants the policies and procedures that are used in administering the program. This announcement parallels requirements of the HIDTA Program Guidance which is issued annually to the HIDTA Directors.

FOR FURTHER INFORMATION CONTACT: The HIDTA Director in your area as follows:

Houston (and a surrounding area that includes Harris County, Galveston County, and all municipalities therein). Stan Furce (713) 567–9331.

Miami (and a surrounding area that includes Broward County, Dade County, Monroe County, and all municipalities therein). Doug Hughes (305) 597–2091.

New York City (and a surrounding area that includes Nassau County, Suffolk County, and Westchester County, New York and all municipalities therein; and Union County, Hudson County, Essex County, Bergen County, and Passaic County, New Jersey, and all the municipalities therein). Harry Brady (212) 385–6980.

Los Angeles (and a surrounding area that includes Los Angeles County, Orange County, Riverside County, and San Bernardino County, and all municipalities therein). Roger Bass (213) 894–1868.

Washington D.C./Baltimore (and a surrounding area that includes Baltimore County, Howard County, Anne Arundel County, Prince Georges County, Montgomery County, and Charles County, Maryland and all the municipalities therein; and Washington, D.C.; and Arlington County, Alexandria County, Fairfax County, Prince William County, and Loudoun County, Virginia, and all the municipalities therein). Tom Carr (301) 489–1777.

Puerto Rico/Virgin Islands, Bill Lindley (809) 766–5656.

The Southwest Border (and adjacent areas that include:

San Diego County and Imperial County, California, and all the municipalities therein;

Yuma County, Marcopia County, Pinal County, Pima County, Santa Cruz County, and Cochise County, Arizona, and all the municipalities therein;

Bernalillo County, Hidalgo County, Grant County, Luna County, Dona Ana County, Eddy County, Lea County, and Otero County, New Mexico, and all the municipalities therein;

El Paso County, Hudspeth County, Culberson County, Jeff Davis County, Presidio County, Brewster County, Pecos County, Terrell County, and Crockett County, Texas, and all the municipalities therein;

Bexar County, Val Verde County, Kinney County, Maverick County, Zavala County, Dimmit County, La Salle County, Webb County, Zapata County, Jim Hogg County, Starr County, Hildago County, Willacy County, and Cameron County, Texas, and all the municipalities therein).

Dennis Usrey (619) 557–6850.

Chicago, Illinois—Mark Prosperi (312) 886–7855.

Atlanta, Georgia—Zenford Mitchell (404) 730–9359.

Philadelphia, Pennsylvania and Camden, New Jersey—Dave Webb (215) 451–5450.

SUPPLEMENTARY INFORMATION: ONDCP hereby announces its policies and application procedures for funds available under Public Law 102–393 to state and local drug control entities for drug control activities consistent with the approved strategy for each HIDTA.

Eligible Applicants

Public Law 100–690, Nov. 18, 1988, authorized the Director of ONDCP to designate areas meeting certain criteria as HIDTAs. Houston, Los Angeles, Miami, New York and the Southwest Border were so designated as part of the 1990 National Drug Control Strategy. In 1994 Washington/Baltimore and Puerto Rico/Virgin Islands were also designated. Chicago, Atlanta and Philadelphia/Camden were designated Empowerment HIDTAs in 1995. Federal, State and local law enforcement agencies located within the specific geographical areas outlined in the National Drug Control Strategy are eligible to apply for funds under this notice.

Program Objective

The goal of the HIDTA program is to reduce drug trafficking. The primary objective is to severely disrupt and dismantle drug and money laundering organizations operating in and through the HIDTAs. In concert with Federally led HIDTA initiatives, State and local proposals focus on joint local, State and Federal law enforcement efforts that target major drug organizations that support the international organizations and cartels. Funds must be used strictly for implementing an approved joint HIDTA strategy. The funds cannot be used to supplant existing support for ongoing State or local drug control operations, which should be funded out of the agencies' normal operating budgets.

Available Funds

At least $55.0 million is available for State and local participation in the HIDTAs.

Application Procedures

Each applicant must submit a written joint proposal and cooperative agreement application to the HIDTA Director in the respective HIDTA. A majority, if not all, of the transfers may be in the form of cooperative agreements. The proposals must include a written statement of the purpose, scope and measurable objective of the initiative; a narrative of the implementation plan; administrative

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data including the name and address of the official authorized to enter into the cooperative agreement between the agency and the U.S. Government; a proposed detailed budget outlining how the funds will be spent; and internal controls which will ensure the funds are spent for stated purposes. The proposals and applications are first submitted to and reviewed by the area Executive Committee in the HIDTA and, upon approval, forwarded for review by National HIDTA Committee which includes representatives of ONDCP, the Departments of Justice, Treasury, and Health and Human Services. Next, they are submitted to the Director of ONDCP for review, final approval, and transfer of funds. The applicant may be required to submit additional information deemed necessary prior to approval of the cooperative agreement.

Funding Mechanism and Restrictions

Upon receipt and approval of the application, the applicant and the government will execute cooperative agreements specifying the mechanism for receipt of funds and the conditions attendant to initial and continued receipt of the funds. The applicant will be expected to comply with the following conditions prior to the expenditure of any of the funds: all travel funded must be in accordance with the published U.S. Government travel regulations; all pertinent information regarding the cooperative agreement must be made available to the public; applicable civil rights and anti-discrimination statutes must be adhered to; accounting systems and records shall be such that the Comptroller General of the United States shall be able to audit the uses of the funds. Other conditions regarding expenditures of the funds and applicant performance shall be specified in the terms and conditions of the cooperative agreement that must be executed before any funds may be received.

For any expenditure incurred prior to execution of the cooperative agreement, detailed transaction records must be submitted along with evidence supporting that the expenditures were for the purposes stated in the legislation. The ONDCP/HIDTA Director will have to approve reimbursement for these expenditures before they can be considered eligible grant costs.

Lee P. Brown,

Director.

[FR Doc. 95–30163 Filed 12–11–95; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee, Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 4, 1996
Thursday, January 18, 1996
Thursday, February 8, 1996
Thursday, February 22, 1996

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: December 5, 1995.

Anthony F. Ingrassia,

Chairman Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–30054 Filed 12–11–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36552; International Series Release No. 866; File No. SR–NASD–95–49]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing of Proposed Rule Change Granting the Canadian Depository for Securities Access to the Automated Confirmation Transaction Service

December 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 12, 1995, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its "Rules of Practice and Procedure for the Automated Confirmation Transaction Service" ("ACT Rules") to permit The Canadian Depository for Securities ("CDS") to enter trades in NASD's Automated Confirmation Transaction Service ("ACT").

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1992, the NASD approved an amendment to the ACT Rules to permit certain non member clearing organizations and their member broker/dealers to have access to and participate in ACT.[3] The rule change was adopted with the West Canada Clearing Corporation ("WCCC") in mind, and WCCC was the first non member clearing organization to be granted access to and participation in ACT.[4]

In granting access and participation to non member clearing organizations, however, the NASD was concerned about its ability to regulate individual non member broker/dealers that enter into transactions with NASD member. Accordingly, the NASD determined to permit non member participation only for those organizations that would guarantee the trades submitted by their members. The amendments to the ACT Rules allowing non member clearing organizations access to and participation in ACT and specifically approving WCCC participation were approved by the Commission on April 19, 1995.[5]

The NASD has received another request through the International Securities Clearing Corporation to allow member broker/dealers of CDS to participate in ACT. After reviewing the financial status of CDS, the NASD believes CDS is in a financial position to guarantee the performance of its members. In addition, CDS is a member of the National Securities Clearing Corporation ("NSCC") and a Special Representative under NSCC's rules.[6] Furthermore, CDS members submit trade data through NSCC's Correspondent Clearing Service[7] as required by ACT Rules.[8]

The NASD believes that permitting CDS broker/dealer members to participate in ACT will expand the universe of Canadian brokers executing trades with NASD members in the U.S. and will facilitate comparison of trades executed by members of CDS in the T+3 settlement cycle.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] which require that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The NASD believes the rule change is consistent with the Act because the rule change will permit CDS broker/dealer members to participate in ACT under an agreement by CDS to guarantee its member transactions. It will expand the universe of Canadian brokers executing trades with NASD members in the U.S., and it will facilitate the comparison of trades executed by members of CDS in the T+3 settlement cycle.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designated up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–49 and should be submitted by January 2, 1996.

[2] The Commission has modified the text of the summaries prepared by the NASD.

[3] Generally, ACT facilitates comparison and clearing of interdealer over-the-counter equity trades by requiring input of trade details within specific time frames, comparing the trade details, and submitting matched, locked-in trades for clearing. For a complete description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR–NASD–89–25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order approving remainder of File SR–NASD–89–25 to permit ACT to be used by introducing and correspondent broker-dealers).

[4] The NASD granted access and participation to WCCC in part because it submits its transaction data to the Midwest Clearing Corporation ("MCC") through an end-of-day processing transmittal that is part of the regional interface between the clearing corporations. WCCC also demonstrated sufficient financial strength to support the trade guarantee made on behalf of its members.

[5] Securities Exchange Act Release No. 35625 (April 19, 1995), 60 FR 20785 [File No. SR–NASD–94–55] (order approving proposed rule change relating to the access of WCCC and its members to ACT).

[6] Generally, a Special Representative is a member or a registered clearing agency that has been authorized by one or more other persons to act on their behalf at NSCC. For a complete description of Special Representative, refer to NSCC Rule 39, "Special Representative/Index Receipt Agent."

[7] Under the correspondent clearing service, NSCC members functioning as Special Representatives (e.g., CDS) submit transaction data on behalf of correspondents, which are NSCC members or non members of NSCC that are members of an interfaced clearing organization (e.g., CDS member). For a complete description of NSCC's Correspondent Clearing Service, refer to NSCC Procedure IV., C.

[8] ACT Rules require that a nonmember clearing organization not be given access to ACT unless it (1) is a clearing agency registered under the Act, (2) maintains membership in a registered clearing agency, or (3) maintains an effective clearing arrangement with a registered clearing agency.

[9] 15 U.S.C. 78o-3(b)(6) (1994).

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30222 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21570; 812–9820]

EAI Select Managers Equity Fund, et al.; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: EAI Select Managers Equity Fund ("Fund"), Evaluation Associates Capital Markets, Incorporated ("Manager"), EAI Partners, L.P. ("EAI"), Evaluation Associates, Incorporated 401(K) Plan and Trust ("EAI Plan"), Harding Service Corporation, *et al.* Profit Sharing Plan and Trust ("Harding Plan"), and Stockwood VII, Inc. 401K Plan ("Stockwood Plan", and, together with the EAI Plan and the Harding Plan, the "Affiliated Plans").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act exempting applicants from section 17(a) of the Act and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit a collective investment account sponsored by EAI to transfer its securities to the Fund.

FILING DATES: The application was filed on October 16, 1995 and amended on December 1, 1995. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: EAI, 200 Connecticut Avenue, Suite 700, Norwalk, Connecticut 06854–1958; Harding Plan and Stockwood Plan, 300 South Street, P.O. Box 1975, Morriston, New Jersey 07962–1975.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust. The Fund has filed a registration statement under the Securities Act of 1933 which will become effective prior to the consummation of the transactions described in this application. The Manager is the investment adviser of the Fund and presently owns all of the Fund's outstanding shares. EAI is the parent of the Manager and is the sponsor of the EAI Plan, an in-house employee benefit plan for employees of EAI, the Manager, and their affiliates.

2. The Harding Plan is an employee benefit plan for employees of Harding Service Corporation ("Harding"). The Stockwood Plan is an employee benefit plan for employees of Stockwood VII, Inc. ("Stockwood"). Certain trustees of the Harding Plan and the Stockwood Plan have a greater than five percent direct or indirect equity interest in EAI. In addition, certain officers, employees and/or affiliates of Harding and Stockwood have a greater than five percent direct or indirect equity interest in EAI.

3. The Affiliated Plans and certain other participant-directed employee benefit plans (collectively, the "Plans") currently invest in The EAI Small Managers Equity Fund Trust, a collective investment account ("Account"). EAI is the investment adviser of the Account. The Account has not registered under the Act in reliance on the exception from the definition of "investment company" under section 3(c)(1) of the Act. Section 3(c)(1) provides that an issuer whose outstanding securities are beneficially owned by not more than one hundred persons and which is not making and does not propose to make a public offering of its securities is not an investment company. In The PanAgora Group Trust (pub. avail. April 29, 1994), the staff stated that, for purposes of section 3(c)(1), the staff would consider a defined contribution plan participant who decides whether or how much to invest in a private investment company to be a beneficial owner of the company's securities. Participants in the Plans have discretion to direct investment of their assets, and there are more than 100 such participants. Therefore, the Account may no longer rely on the exception in section 3(c)(1) unless the Plans' investment in the Account is terminated by December 31, 1995.[1]

4. EAI believes that the Fund is a suitable alternative investment vehicle for the Plans. Applicants contemplate that the Account would make an in-kind distribution of securities held in the Account's portfolio to the Plans and that those Plans choosing to invest in the Fund would purchase shares of the Fund by contributing the distributed securities to the Fund in exchange for Fund shares. The Account would remain available to employee benefit plans whose participants cannot direct asset investment.

5. Upon its withdrawal from the Account, each Plan would receive securities equal in value to its *pro rata* beneficial interest in the Account. Each Plan purchasing shares of the Fund by contribution of the securities distributed to it would receive shares of the Fund having a net asset value equal to the value of the securities contributed. Assets of the Plans used to purchase Fund shares would be valued at "current market value" as defined in rule 17a–7(b). The assets of the Fund would be invested with the same objectives and in the same manner as the assets of the Account are presently invested.

6. Each Plan choosing to purchase Fund shares by an in-kind contribution of securities would do so only upon written direction of the Plan fiduciaries. A party independent of EAI would provide such direction for the Affiliated Plans. EAI and/or the Manager would provide each Plan fiduciary with the Fund's current prospectus and a written statement disclosing the fee structure under which the Manager would be paid. Because the total expenses to be paid by the Fund will be higher than those paid by the Account, a Plan purchasing shares of the Fund would incur greater total expenses, and this would be disclosed in a written statement to the Funds.

7. Applicants represent that investments in the Fund by the Plans would provide the plans with several benefits that are not presently available with the Account. The Plan participants would enjoy the protections of the Securities Act and the Act. In addition, investment of Plan assets in the Fund allows the Plan's participants and sponsors to monitor more easily the performance of their investments, as information concerning the investment performance of the Fund generally would be available in daily newspapers.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Although the SEC has taken a no-action position with respect to certain collective investment fund conversions, that position is conditioned on affiliated persons, or second-tier affiliates, of the Fund having no beneficial interest in the proposed transactions. Federated Investors (pub. avail. April 21, 1994). In the case of the EAI Plan, the transaction involves assets belonging to an employee benefit plan established for employees of EAI or other affiliated persons that could be considered second-tier affiliates of the Fund. In the case of the Harding Plan and Stockwood Plan, the transactions involve assets belonging to employee benefit plans with trustees, officers, employees, and/or affiliates of the sponsoring entities having a greater than five percent ownership interest in EAI. Applicants request an exemptive order to permit the Fund to accept in-kind transfers of the assets of the Affiliated Plans.

3. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants represent that the proposed transactions meet the requirements of section 17(b). Because the value of the shares each Plan receives in the Fund would be equal to fair market value of that Plan's *pro rata* share of assets in the Account, applicants represent that the transactions are fair to all involved and do not involve overreaching on the part of any person. In addition, applicants represent that because the investment policies and objectives of the Fund are identical to those of the Account, the transactions would be consistent with the portfolio objectives and policy of the Fund. Because the transactions would bring the Plans' investments under the supervision of the SEC, applicants represent that the transactions would be consistent with the provisions of the Act.

5. Applicants represent that the proposed transactions would comply with rule 17a–7 under the Act in most respects. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are affected at an "independent market price" and the investment company's board of directors reviews the transactions for fairness. Applicants would comply with rule 17a–7 to the extent possible, as stated in the conditions to the requested order.

6. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

7. Because EAI, as sponsor of the EAI Plan, may have legal title to the EAI Plan's assets invested in the Account, EAI may be viewed as acting as a principal in the proposed transactions. Applicants represent that, since the fiduciaries of each Plan would make an independent determination as to whether to invest in the Fund and assets used to purchase shares of the Fund would be valued at current market prices, the terms received by the Affiliated Plans would not be more or less advantageous than those available to other investors. In addition, as discussed previously, applicants represent that the transactions would be consistent with the Act and the rules thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The purchase transactions will comply with the provisions of rule 17a–7(b)–(f).

2. The purchase transactions will not occur unless and until the Board of Trustees of the Fund (including a majority of Trustees that are not interested persons of the Fund) and the Plans' fiduciaries (or, in the case of the Affiliated Plans, parties independent of EAI) find that the transactions are in the best interest of the Fund and the Plans, respectively. In the case of the Fund, this determination and the basis on which it is made will be recorded fully in the records of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30223 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21569; 812–9842]

PCS Cash Fund, Inc., et al.; Notice of Application December 5, 1995

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PCS Cash Fund, Inc., Morgan Stanley Fund, Inc., and Morgan Stanley Institutional Fund, Inc. (with their successors in interest,[1] the "Funds").

RELEVANT ACT SECTIONS: Order request under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule

[1] "Successors in interest" is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[10] 17 CFR 200.30-3(a)(12) (1994).

[1] *See* Latham & Watkins (pub. avail. Dec. 20, 1994).

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17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applications request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its directors who are not interested persons of the company.

FILING DATES: The application was filed on November 13, 1995, and amended on December 5, 1995

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1221 Avenue of the Americas, New York, New York, 10020.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a Maryland corporation registered under the Act as an open-end management investment company. The PCS Cash Fund, Inc. consist of three series, the PCS Money Market Portfolio, PCS Tax-Free Money Market Portfolio, and PCS Government Obligations Money Market Portfolio. The Morgan Stanley Money Market Fund is a series of the Morgan Stanley Fund, Inc. The Money Market Portfolio and Municipal Money Market Portfolios are series of the Morgan Stanley Institutional Fund, Inc. (Shares of the PCS Tax-Free Money Market Portfolio and the Morgan Stanley Money Market Fund are not currently being offered.) Morgan Stanley Asset Management Inc. ("Morgan Stanley") is the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940.

2. Each Fund has a board of directors, a majority of the members of which are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act. Each of the directors who is not an "interested person" of one or more of the Funds receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the directors who are not interested persons of any of the Funds and who receives director's fees from one or more of the Funds (the "Eligible Directors") to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the "Plan") and related election agreement entered into between each Eligible Director and the appropriate Fund. Under the Plan, the Eligible Directors could defer payment of directors' fees (the "Deferred Compensation") in order to defer payment of income taxes or for other reasons.

3. Applicants request that relief be extended to any other registered open-end investment company established or acquired in the future, or series thereof, for which Morgan Stanley or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Morgan Stanley, acts in the future as investment adviser or principal underwriter (the "Future Funds").

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Director will be credited to a book reserve account established by the Fund (an "Deferred Fee Account"), as of the first business day following the date such fees would have been paid to the Eligible Director. Each Eligible Director may elect to have the return on his or her deferred fees measured as if the fees had been invested and reinvested in 90-day U.S. Treasury Bills or shares of one or more of the portfolios of the Fund of which he or she is a director (the "Underlying Securities").

5. The initial value of Deferred Compensation credited to a Deferred Fee Account will be effected at the respective current net asset value of each such open-end Fund. In the future, the Plan may be modified so that an Eligible Director may select as Underlying Securities shares of any other Fund besides the one of which he or she is a director.

6. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

7. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, each Fund that is not a money market fund may purchase and hold shares of the Underlying Securities in amounts equal in value to the deemed investments of the Deferred Fee Accounts of its Eligible Directors. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in Underlying Securities), which assets would not be held by the Fund if directors' fees were paid on a current basis.

8. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Director's termination of service occurred. In the event of death prior to the commencement of the distribution of amounts credited to a Deferred Fee Account, the balance of such account will be distributed to the Eligible Director's designated beneficiary in a lump sum as soon as practicable after such director's death. In the event of death after the commencement of the distribution of the Deferred Fee Account, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. In all other events, a Eligible Director's right to receive payments will be nontransferable. The Plan provides that the board of directors of the Fund has the right to accelerate or extend payment of amounts in the Deferred Fee Account at any time after the termination of the Eligible Director as a director. In the event of the liquidation, dissolution, or winding up of a Fund or the distribution of all or substantially all of a Fund's assets and property to its shareholders (unless the Fund's obligations under the Plan have been assumed by a financially responsible party purchasing such assets) or in the event of a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund's board of directors determines that the Plan shall survive the merger or reorganization), all unpaid amounts in the Deferred Fee Accounts maintained by such Fund shall be paid in a lump sum to the Eligible Directors on the effective date thereof.[2] The Plan will not obligate any participating Fund to retain a director in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) directors' fees to any director.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18(f)(1). The Plan would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Directors and would not adversely affect the interests of the directors or of any shareholder.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend to Future Funds for which Morgan Stanley becomes investment adviser subsequent to such Future Fund's initial public offering and that have investment policies prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Fund of the Deferred Compensation under the Plan. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act.[3] Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred directors' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.

10. Section 17(d) and rule 17d–1 generally prohibit a registered

[2] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Plan if such obligations would constitute a violation of the Act by the assuming party. Accordingly, such assumption would be permitted only if the assuming party is (a) another Fund, (b) another registered investment company that has received exemptive relief similar to that requested by applicants, or (c) not a registered investment company or is otherwise exempt from the provisions of the Act.

[3] Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person.

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investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan "on a basis different from or less advantageous than that of" the affiliated person. Eligible Directors will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Directors will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Director, the Eligible Director will be no better off, relative to the Funds, than if he or she had received directors fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund, or series thereof, that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the value of the Deferred Fee Accounts to achieve an exact match between such Funds' or series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30224 Filed 12–11–95; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 2302]

Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Fourteenth Meeting in Hobart, Tasmania, October 24 to November 3, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of cartain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 11, 1996.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5805, Department of State, Washington, D.C. 20520, (202) 647–3262.

SUPPLEMENTARY INFORMATION

Conservation Measures Adopted at the Fourteenth Annual Meeting of CCAMLR

At its Fourteenth Annual Meeting in Hobart, Tasmania, October 24 to November 3, 1995, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following conservation measures. The conservation measures addressing catch limitations were adopted in accordance with Conservation Measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted in 1995

Conservation Measure 29/XIV[1,2]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water.[3] Only thawed bait shall be used.

2. Longlines shall be set at night only (i.e., between the times of nautical twilight).[4] During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. The dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are set or hauled.

4. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

5. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.[5]

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[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; wherever possible weights of at least 6 kg mass should be used, spaced at 20 m intervals.

[4] Wherever possible, setting of lines should be completed at least three hours before dawn (to reduce loss of bait to/catches of white-chinned petrels).

[5] The streamer lines under test should be constructed and operated taking full account of the principles set out in WG–IMALF–94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.

Conservation Measure 45/XIV

Precautionary Catch Limitation on *Euphausia superba* in Statistical Division 58.4.2

The total catch of *Euphausia superba* in Statistical Division 58.4.2 shall be limited to 450 000 tonnes in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

For the purposes of implementing this Conservation Measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 78/XIV

Precautionary Catch Limits on *Champsocephalus gunnari* and *Dissostichus eleginoides* in Statistical Division 58.5.2

1. In accordance with the management advice of the 1994 meeting of the Scientific Committee:

(i) a precautionary TAC of 311 tonnes in any one season shall be set for *Champsocephalus gunnari* in Division 58.5.2; and

(ii) a precautionary TAC of 297 tonnes in any one season shall be set for *Dissostichus eleginoides* in Division 58.5.2.

These TACs may only be taken by trawling.

2. If, in the course of a directed fishery for *Dissostichus eleginoides* or *Champsocephalus gunnari*, the by-catch in any haul of any of the species *Lepidonotothen squanifrons, Notothenia rossii, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5%, the fishing vessel shall move to another fishing location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days.[2]

3. The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII and the Monthly Effort and Biological Data Reporting System set out in Conservation Measure 52/XI shall apply.

4. The fishing season shall commence in each year at the close of the annual meeting of the Commission and shall continue until the respective precautionary catch limits are reached or until 30 June, whichever comes first.

5. The catch limits shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

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[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XXI, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 88/XIV

New Fishery in Statistical Division 58.4.3 in the 1995/96 Season

The Commission,

Welcoming the notification of Australia of its intention to conduct a new fishery in Statistical Division 58.4.3 for *Dissostichus* species.

Noting that no other Member has notified the Commission of the intent to establish a new fishery for these species in this Statistical Division.

Agreeing that no other fishing shall occur for the *Dissostichus* species in Statistical Division 58.4.3 in the 1995/96 season.

adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. The new fishery by Australia for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Division 58.4.3 shall be limited to 200 tonnes for both species combined. This fishery shall be conducted by bottom trawling only.

2. For the purposes of this new fishery, the fishing season is defined as the period from 4 November 1995 until 30 June 1996.

3. The by-catch of any other species in this Statistical Division shall not exceed 50 tonnes for each species.

4. Fishing should take place over as large a geographical and bathymetric range as possible within the Statistical Division. In particular, areas where concentrations of fish are found should not be the only areas that are fished.

5. The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply.

6. Monthly effort and biological data shall be reported in accordance with Conservation Measure 52/XI. By-catch species are defined as any cephalopod, crustacean or fish species other than *Dissostichus* species.

Conservation Measure 89/XIV

New Fishery in Statistical Division 58.5.2 in the 1995/96 Season for Deep-water Species

The Commission,

Welcoming the notification of Australia of its intention to conduct a new fishery in the 1995/96 season in Statistical Division 58.5.2 for deep-water species, not covered by Conservation Measure 78/XIV,

Noting that no other Member has notified the Commission of the intent to establish a new fishery for these species in this Statistical Division,

adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. The new fishery by Australia for deep-water species, not covered by Conservation Measure 78/XIV, shall be limited to 50 tonnes for each species. This fishery shall be conducted by bottom trawling only.

2. For the purposes of this new fishery, the fishing season is defined as the period from 4 November 1995 to 30 June 1996.

3. If, in any haul, the by-catch of any of the species *Lepidonotothen squamifrons, Notothenia rossi, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5%, the fishing vessel shall move to another location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days[2].

4. The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply.

5. Monthly effort and biological data shall be reported in accordance with Conservation Measure 52/XI.

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[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 90/XIV

Experimental Harvest Regime for the Crab Fishery in Statistical Subares 48.3 for the Seasons 1995/96 to 1997/98

The following measures apply to all crab fishing within Statistical Subarea 48.3 for the 1995/96, 1996/97 and 1997/98 fishing seasons. Every vessel participating in the crab fishery in Subarea 48.3 shall conduct fishing operations in accordance with an experimental fishing regime as outlined below:

1. The experimental regime shall consist of three phases. Each vessel participating in the fishery shall complete all three phases. Phase 1 shall be conducted during the first season that a vessel participates in the experimental regime. Phases 2 and 3 shall be completed in the next season of fishing.

2. Vessels shall conduct Phase 1 of the experimental regime at the start of their first season of participation in the

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experimental regime. For the purposes of Phase 1, the following conditions shall apply:

(i) Phase 1 shall be defined as a vessel's first 200,000 pot hours of effort at the start of its first fishing season;

(ii) every vessel conducting Phase 1 shall expend its first 200,000 pot hours of effort within a total area delineated by twelve 0.5° latitude by 1.0° longitude blocks. For the purposes of this Conservation Measure, these blocks shall be numbered A through L. The blocks are illustrated in Figure 1, and the northeast corner of each block is listed in Table 1 of Annex 90/A. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(iii) vessels shall not fish outside the area delineated by the twelve 0.5° latitude by 1.0° longitude blocks prior to completing Phase 1;

(iv) during Phase 1, vessels shall not expend more than 30,000 pot hours in any single 0.5° latitude by 1.0° longitude block;

(v) if a vessel returns to port before it has expended 200,000 pot hours in Phase 1, the balance of remaining pot hours shall be expended before the vessel can consider Phase 1 to be completed; and

(vi) after completing 200,000 pot hours of experimental fishing, vessels shall consider Phase 1 to be completed and commence fishing in a normal fashion.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 91/XIV.

4. For the purposes of implementing normal fishing operations after Phase 1 of the experimental regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels shall conduct Phase 2 of the experimental regime at the start of their second season of participation in the experimental regime. For the purposes of Phase 2, the following conditions shall apply:

(i) every vessel conducting Phase 2 shall fish in three small squares measuring approximately 26 n miles^2 in area (the dimensions of these squares shall be 6.0′ latitude by 7.5′ longitude). These squares shall be subdivisions of the blocks delineated in Phase 1 of the experimental regime;

(ii) vessel captains shall determine the location of the three squares that will be fished, but selected squares may not be contiguous and the distance between the boundaries of any two squares must be at least 4 n miles;

(iii) vessels shall fish continuously (except in emergencies or foul weather conditions) within a single square until the average catch per pot has been reduced to 25% or less of its initial value and then continue fishing for an additional 7,500 pot hours. Not more than 50,000 total pot hours shall be expended in each square. For the purposes of Phase 2, the initial catch rate for a particular square shall be defined as the average catch per pot calculated from the first five sets made in that square. Soak times for these initial sets shall be at least 24 hours;

(iv) vessels shall finish fishing in one square before starting operations in another square;

(v) vessels shall attempt to distribute effort throughout the entire square and not fish the gear in the same location on every set; and

(vi) after completing fishing operations in the third square, fishing vessels shall consider Phase 2 to be completed and commence fishing in a normal fashion.

6. For the purposes of implementing normal fishing operations after Phase 2 of the experimental regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

7. Vessels shall conduct Phase 3 of the experimental regime at the end of their second season of participation in the experimental regime. For the purposes of Phase 3, the following conditions shall apply:

(i) a vessel shall begin conducting Phase 3 of the experimental regime approximately one week prior to the conclusion of its second fishing season. A vessel's fishing season shall be concluded if the vessel leaves the fishery voluntarily of if the fishery is closed because the TAC has been attained;

(ii) if a vessel captain voluntarily concludes fishing operations, the vessel shall begin implementing Phase 3 approximately one week prior to the conclusion of its fishing operations;

(iii) the CCAMLR Secretariat shall notify (according to the guidelines set out in Conservation Measure 61/XII) all Contracting Parties that are conducting operations in their second experimental fishing season to begin Phase 3 when approximately one week remains before the TAC is attained and the fishery is closed; and

(iv) to conduct Phase 3, every vessel shall return to the three squares it depleted during Phase 2 of the experimental regime and expend between 10,000 and 15,000 pot hours of effort in each square.

8. To facilitate analysis of data collected during Phases 2 and 3, vessels shall report the coordinates defining the boundaries of the squares where fishing occurred, date, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) for each haul.

9. Data collected during the experimental harvest regime up to 30 June in any split-year shall be submitted to CCAMLR by 31 August of the following split-year.

10. Vessels that complete all three phases of the experimental regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 91/XIV.

11. Fishing vessels shall participate in the experiment independently (e.g., vessels may not cooperate to complete phases of the experiment).

12. Crabs captured during the experimental regime shall be considered part of the prevailing TAC for the current fishing season (e.g., for 1995/96, experimental catches shall be considered part of the 1,600 tonne TAC outlined in Conservation Measure 91/XIV).

13. The experimental regime shall be instituted for a period of three split-years (1995/96 to 1997/98), and the details of the regime may be revised by the Commission during this period of time. Fishing vessels that begin experimental fishing in the 1997/98 split-year must complete the regime during the 1998/99 split-year.

Annex 90/A

Locations of Fishing Areas for the Experimental Regime of the Exploratory Crab Fishery

TABLE 1.—NORTHEAST CORNERS FOR TWELVE 0.5° LATITUDE BY 1.0° LONGITUDE BLOCKS THAT ARE CONSIDERED TO BE THE OPERATIONAL AREA FOR FISHING VESSELS CONDUCTING PHASE 1 OF THE EXPERIMENTAL CRAB FISHERY REGIME (CONSERVATION MEASURE 90/XIV)

Block No.	Coordinates of Northeast Corner	
	Latitude	Longitude
A	53°30.0′ S	39°00.0′ W
B	53°30.0′ S	38°00.0′ W
C	53°30.0′ S	37°00.0′ W
D	53°30.0′ S	36°00.0′ W
E	53°30.0′ S	35°00.0′ W
F	54°00.0′ S	36°00.0′ W

TABLE 1.—NORTHEAST CORNERS FOR TWELVE 0.5° LATITUDE BY 1.0° LONGITUDE BLOCKS THAT ARE CONSIDERED TO BE THE OPERATIONAL AREA FOR FISHING VESSELS CONDUCTING PHASE 1 OF THE EXPERIMENTAL CRAB FISHERY REGIME (CONSERVATION MEASURE 90/XIV)—Continued

Block No.	Coordinates of Northeast Corner	
	Latitude	Longitude
G	54°00.0′ S	35°00.0′ W
H	54°30.0′ S	35°00.0′ W
I	54°30.0′ S	34°00.0′ W
J	55°00.0′ S	36°00.0′ W
K	55°00.0′ S	35°00.0′ W
L	55°00.0′ S	34°00.0′ W

Conservation Measure 91/XIV

Limits on the Exploratory Crab Fishery in Statistical Subarea 48.3 in the 1995/96 Season

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order *Decapoda*, Suborder *Reptantia*).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 4 November 1995 to end of the Commission meeting in 1996, or until the TAC is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall not exceed 1 600 tonnes during the 1995/96 crab fishing season.

5. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

6. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 996 for crabs caught prior to 31 July 1996:

(i) the location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1.0° longitude) for each 10-day period;

(ii) the species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 91/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps, and

(iii) other relevant data, as possible, according to the requirements set out in Annex 91/A.

7. For the purposes of implementing this conservation measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

8. Data on catches taken between 31 July 1996 and 31 August 1996 shall be reported to CCAMLR by 30 September 1996 so that the date will be available to the working group on Fish Stock Assessment.

9. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

10. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. in the case of *Paralomis spinosissima* and *P. formosa*, males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

11. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Annex 91/A

Data Requirements on the Exploratory Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE EXPLORATORY CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other Species ...	Estimated total weight.

Biological Data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 92/XIV

Catch Limit on *Dissostichus eleginoides* in Statistical Subarea 48.4 for the 1995/96 Season

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.4 in the 1995/96 season shall be limited to 28 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the 1995/96 fishing season is defined as the period from 1 March to 31 August 1996, or until the TAC for *Dissostichus eleginoides* in Subarea 48.4 is reached, or until the TAC for *Dissostichus eleginoides* in Subarea 48.3, as specified in Conservation Measure 93/XIV is reached, whichever is sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.4 in the 1995/96 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in

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Conservation Measure 51/XII shall apply in the 1995/96 season, commencing on 1 March 1996; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 94/XIV shall apply in the 1995/96 season, commencing on 1 March 1996.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be prohibited.

Conservation Measure 93/XIV

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 1995/96 season shall be limited to 4,000 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1995/96 fishing season is defined as the period from 1 March to 31 August 1996, or until the TAC is reached, whichever is the sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.3 in the 1995/96 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1995/96 season, commencing on 1 March 1996; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 94/XIV shall apply in the 1995/96 season, commencing on 1 March 1996.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be prohibited.

Conservation Measure 94/XIV

Effort and Biological Data Reporting System for *Dissostichus eleginoides* in Statistical Subareas 48.3 and 48.4 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each month each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, latest version). These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. It shall transmit those data to the Executive Secretary not later than the end of the following month.

2. At the end of each month, each Contracting Party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below; and

(ii) representative samples of length composition should be taken from a single fishing ground.[1] In the event that the vessel moves from one fishing ground to another during the course of a month, then separate length compositions should be submitted for each fishing ground.

4. Should a Contracting Party fail to transmit the fine-scale catch and effort data or length composition data to the Executive Secretary by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided the Executive Secretary shall notify all Contracting parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

Conservation Measure 95/XIV

Limitation of the By-catch of *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons*, in Statistical Subarea 48.3

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

In any directed fishery in Statistical Subarea 48.3 in any fishing season, the by-catch of *Gobionotothen gibberifrons* shall not exceed 1,470 tonnes; the by-catch of *Chaenocephalus aceratus* shall not exceed 2,200 tonnes; and the by-catch of *Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons* shall not exceed 300 tonnes each.

These limits shall be kept under review by the Commission taking into account the advice of the Scientific Committee.

Conservation Measure 96/XIV

Precautionary TAC for *Electrona carlbergi* in Statistical Subarea 48.3 for the 1995/96 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for *Electrona carlsbergi* is defined as the period from 4 November 1995 to the end of the Commission meeting in 1996.

2. The total catch of *Electrona carlsbergi* in the 1995/96 season shall not exceed 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1995/96 season shall not exceed 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30'S, 40°W; 52°30'S, 44°W; 54°30'S, 40°W and 54°30'S, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 1995/96 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the 1996 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever comes first.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever comes first.

7. if, in the course of the directed fishery for *Electrona carlsbergi*, the catch of any one haul of any species other than the target species exceeds 5%, the fishing vessel shall move to another fishing location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of location in which the catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2]

8. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation measure 40/X shall apply in the 1995/96 season; and

(ii) the Monthly Effort and Biological Data Reporting System set out in Conservation Measure 52/XI also shall apply in the 1995/96 season. For the purposes of Conservation Measure 52/XI, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 6(ii) of Conservation Measure 52/XI a representative sample shall be a minimum of 500 fish.

Conservation Measure 97/XIV

Limitation of the Total Catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1995/96 Season

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/V:

1. The total catch of *Champsocephalus gunnari* in the 1995/96 season shall not exceed 1 000 tonnes in Statistical Subarea 48.3.

2. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Champsocephalus gunnari* reaches 1 000 tonnes, whichever comes first.

3. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV exceeds 5%, the fishing vessel shall move to another location not closer than 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the by-catch exceeded 5%, for a period of at least five days.[2]

4. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

5. The fishery for *Champsocehalus gunnari* in Statistical Subarea 48.3 shall be closed from 1 April 1996 until the end of the Commission meeting in 1996.

6. Any vessel of any Member intending to participate in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 during the 1995/96 season shall be required to undertake a scientific survey carried out in accordance with the survey design specified in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC-CAMLR-XI, Annex 5, Appendix H, Attachment E). A list of proposed trawl survey stations shall be transmitted to the Executive Secretary at least one month before the start of the survey.

7. Each vessel participating in the directed fishery for *Champsocephalus gunnari* in Subarea 48.3 in the 1995/96 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of the Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1995/96 season; and

(ii) the Effort and Biological Data Reporting System set out in Conservation Measure 98/XIV shall apply for *Champsocephalus gunnari*.

Conservation Measure 97/XIV

Effort and Biological Data Reporting System for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1995/96 Season

This Conservation measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLAR fine-scale catch and effort data form for trawl fisheries (Form C1, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month,

2. At the end of each month, each contracting Party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, latest version). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. for the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below; and

(ii) representative samples of length composition should be taken from a single fishing ground.[1] In the event that the vessel moves from one fishing ground to another during the course of a month, then separate length compositions should be submitted for each fishing ground.

4. Should a Contracting Party fail to transmit the fine-scale catch and effort data or length composition data to the Executive Secretary by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided the Executive Secretary shall notify all contracting parties of the closure of the fishery to vessels of the Contracting Parry which has failed to supply the data as required.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 95-30248 Filed 12-11-95; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice No. 2300]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on January 3, 1996, at 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to inform the public of the accomplishments at the Marine Environment Protection Committee (MEPC) 37, to discuss what will be on the Agenda at MEPC 38, and set forth a strategy for establishing the U.S. position on these issues. MEPC 38 will take place from July 1–10, 1996 in London, England.

The major items for discussion will be the following:

1. The adoption of amendments to Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) to require placards, garbage management plans and record keeping on ships;

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[1] Pending the provision of a more appropriate definition, the term fishing ground is defined here as the area within a single fine-scale rectangle (0.5° latitude by 1° longitude).

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing ground by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

[1] Pending the provision of a more important definition, the term fishing ground is defined here as the area within a single fine-scale grid rectangle (0.5° latitude by 1° longitude).

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2. The approval of a draft Assembly resolution on follow-up action to the U.N. Conference on the Environment and Development (UNCED);

3. The adoption of an MEPC resolution on Guidelines on the Application of the Precautionary Approach;

4. Plans for a special meeting of entities involved with the carriage of materials subject to the Irradiated Nuclear Fuel (INF) Code;

5. The proposed new Annex VI to MARPOL on prevention of air pollution from ships;

6. The future work of the committee on "The Human Element";

7. Port State Control procedures;

8. Unwanted aquatic organisms in ballast water; and

9. The work plan for the international Convention on Oil Pollution, Preparedness, Response and Co-operation (OPRC) intersessional meeting which will take place from 27 February—1 March 1996 in London, England.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MOS–4), 2100 Second Street, S.W., Washington, D.C. 20593–0001, Telephone: (202) 267–2714, Facsimile: (202) 267–4600.

Dated: December 1, 1995.

Richard T. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 95–30120 Filed 12–11–95; 8:45 am]

BILLING CODE 4710–07–M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Deirdre E. Curley, Assistant Director for Management Trade and Development Agency, State Annex–16, Room 309, Washington, D.C. 20523–1602, (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5), U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personal Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Jessalyn L. Pendarvis, Director of Equal Opportunity Programs, Agency for International Development; James D. Murphy, Deputy Director Office of Procurement, Agency for International Development; and Edward Dragon, former Regional Legal Advisor, Senior Foreign Service, Agency for International Development.

Dated: December 6, 1995.

Deirdre E. Curley,

Assistant Director for Management.

[FR Doc. 95–30263 Filed 12–11–95; 8:45am]

BILLING CODE 8240–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition From Robert G. Gingher

This notice sets forth the reasons for the denial of a petition submitted to the NHTSA under 49 U.S.C. 30162(a)(2).

In August 1995, Mr. Robert G. Gingher petitioned the National Highway Traffic Safety Administration (NHTSA) to issue an order concerning the notification and remedy of a defect in certain 1987 through 1993 Taurus, Sable, and Continental model vehicles, produced by the Ford Motor Company, because of an alleged defect in the design of the steering system tie rods. Specifically, Mr. Gingher alleges that the tie rods can break, causing loss of control of the vehicle, and that accidents have occurred because of this failure. The petitioner proposes that these vehicles be recalled and that their tie rods be replaced by a more recently designed tie rod.

This matter was the subject of an investigation by NHTSA (EA94–008) which was closed on February 27, 1995. The results of that investigation did not indicate that a safety-related defect trend existed. As a result, that investigation was closed.

Mr. Gingher bases his petition on several allegations. First, he infers that the replacement parts sales indicate a high rate of occurrence of the alleged safety defect. This is not necessarily correct because of the existence of more than one failure mode for the part. The investigation showed that fracture of the tie rod was the only failure mode that had any potential safety consequence, that fracture was a rare occurrence in service, and that the tie rods were far more likely to have been replaced because of wear, which had no identified safety consequence. Accordingly, replacement parts sales do not accurately reflect the number of occurrences of this alleged defect.

Second, Mr. Gingher states that "the VRTC did not evaluate steering degradation." The Vehicle Research and Test Center did, in fact, evaluate steering performance degradation in several driving maneuvers, including straight ahead stopping, various right and left hand constant radius turns, low speed steering maneuvers, and several collision avoidance maneuvers. In only one condition, the double lane change maneuver, was the steering performance of the vehicle degraded with a separated tie rod.

Mr. Gingher has not presented any new information which was not already considered by the agency during its previous investigation. Accordingly, there is no reason to reopen the investigation. Thus, after considering all of the issues raised by this petition, recognizing the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the agency has decided to deny the petition.

Issued on: December 7, 1995.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 95–30251 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Certification of Training, Notice of Intent To Employ a Veteran, Employer's Application for Approval of a Job Training Program, and Application for a Certificate of Eligibility; VA Forms 22–8929, 22–8930, 22–8931, and 22–8932

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 12, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0396.

Title and Form Number: Certification of Training, Notice of Intent to Employ a Veteran, Employer's Application for Approval of a Job Training Program, and Application for a Certificate of Eligibility.

Type of Review: Revision of currently approved collection.

Need and Uses: The employer uses: the Certification of Training to apply for reimbursement for training a veteran; the Notice of Intent to Employ a Veteran to notify VA that the employer is going to hire a veteran; and the Application for Approval of a Job Training Program to request VA approval of a job training program. The veteran uses the Application for a Certificate of Eligibility to apply for a certification of eligibility for job training.

Current Actions: Public Law 102–484 established the Service Members Occupational Conversion and Training Act (SMOCTA). This program is administered by the Department of Veterans Affairs (VA) based on an agreement between the Secretary of Defense, the Secretary of Labor, and the Secretary of Veterans Affairs. Under current legislation no funds can be obligated under SMOCTA after September 30, 1995. However, VA will continue to reimburse an employer beyond September 30, 1995, throughout the approval length of the training program by September 30, 1995.

The sole form currently approved for use under SMOCTA is VA Form 22–8929, Certification of Training. Continued use of this form is necessary to authorize reimbursement after September 30, 1995. Approval for the form has been extended through April 30, 1997, under OMB Control Number 2900–0396. OMB extended approval of the form on September 18, 1995. Congress is currently considering legislation to fund SMOCTA beyond September 30, 1995. In anticipation of continued funding, we will request approval of the following additional forms: VA Form 22–8930, Notice of Intent to Employ a Veteran; VA Form 22–8931, Employer's Application for approval of a Job Training Program; and VA Form 22–8932, Application for Certificate of Eligibility.

Affected Public: Business or other for-profit, Individuals or Households, State, Local or Tribal Government, and Not-for-profit institutions.

Estimated Annual Burden: 26,400 hours.

Estimated Average Burden Per Respondent: 45 minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 59,400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, Telephone (202) 565–8266 or Fax (202) 565–8267.

Dated: December 4, 1995.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–30249 Filed 12–11–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Electrical Systems Inspection Report (Manufactured Home), VA Form 26–8731b

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 12, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0244.

Title and Form Number: Electrical Systems Inspection Report (Manufactured Home) VA Form 26–8731b.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form is used by inspectors to record findings for electrical systems of used manufactured homes proposed as security for guaranteed loans. The information is used to determine acceptability of units for VA financing.

Current Actions: VA Form 26–8731b is required in conjunction with the approval of loans guaranteed for the purchase of used manufactured homes. Section 3712(h)(l) of Title 38 U.S.C., prohibits the guaranty of any loans which does not meet standards prescribed by the Secretary. This form serves as an inspection report on the electrical system of a used unit. VA standards require tests of systems and components as described on the form. Inspections are ordered by lending institutions and performed by experienced electricians or manufactured home service personnel. VA Form 26–8731b is completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing.

Affected Public: Individuals or households, Business or other for-profit, and Small businesses or organizations.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 120.

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FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 565–9266 or Fax (202) 565–8267.

Dated: December 4, 1995.
By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.

[FR Doc. 95–30250 Filed 12–11–95; 8:45 am]
BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–30204.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 14, 1995, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Disclaimers Final Rules: Announcement of Effective Date.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 95–30377 Filed 12–8–95 2:46 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the **Federal Register** on Wednesday, December 6, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 13, 1995.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed policy statement describing how interest rate risk will be measured and evaluated for supervisory purposes (proposed earlier for public comment; Docket No. R–0802).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 7, 1995.

William W. Wiles,
Secretary of the Board.

[FR Doc. 95–30318 Filed 12–7–95; 5:09 pm]
BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 11, 18, 25, 1995 and January 1, 1996.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 11

Tuesday, December 12

2:00 p.m.
Briefing on Materials Events Data Base (Public Meeting)
(Contact: Samuel Pettijohn, 301–415–6822)

Thursday, December 14

10:00 a.m.
Briefing on Industry Restructuring and Deregulation (Public Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting)
2:00 p.m.
Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting)
(Contact: John Glenn, 301–415–6187)

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Friday, January 5

10:00 a.m.
Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting)
(Contact: Scott Newberry, 301–415–1183)
1:30 p.m.
Discussion on Full Power Operating License for Watts Bar (Public Meeting)
(Contact: Fred Hebdon, 301–415–2024)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–4154–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: December 8, 1995.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–30407 Filed 12–8–95; 8:45 am]
BILLING CODE 7590–01–M

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Corrections

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket Number TB-95-17]

Removal of Selected Regulations

Correction

In rule document 95–29792 beginning on page 62974 in the issue of Thursday, December 7, 1995, make the following correction:

§ 29.131 [Removed and reserved]

On page 62975, in the second column, the heading above amendatory instruction 2 should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-39-AD; Amendment 39-9336; AD 95-17-07]

Airworthiness Directives; Fairchild Aircraft SA226 Series Airplanes

Correction

In rule document 95–20278 beginning on page 43359 in the issue of Monday, August 21, 1995, make the following correction:

§ 39.13 [Corrected]

On page 43360, in the second column, in the amendment to § 39.13, in the table, in the second column, the first entry should read "T201 through T275 and T277 through T291.".

BILLING CODE 1505-01-D

federal register

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Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Solicitation for Applications for Fiscal Year 1996 National Research Initiative Competitive Grants Program; Amendment; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Solicitation for Applications for Fiscal Year 1996 National Research Initiative Competitive Grants Program, Amendment

The National Research Initiative Competitive Grants Program (NRICGP) published a solicitation for Applications for Fiscal Year 1996 on Friday, October 13, 1995 (60 FR 53476). The NRICGP amends this solicitation to include the following definitions.

Project Types

II. Agricultural Research Enhancement Awards

(c) Strengthening Awards: Institutions in USDA EPSCoR states are eligible for strengthening awards. For FY 1996, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Vermont
West Virginia
Wyoming
All U.S. territories and possessions, including the District of Columbia.

Investigators at small and mid-size institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy, as determined by reference to the December, 1994 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Institutions which are among the top 100 universities and colleges, except those in USDA EPSCoR states, are ineligible for strengthening awards. The top 100 institutions, as published in Selected Data on Federal Support to Universities and Colleges, Fiscal Year 1993 (National Science Foundation, NSF 95–320), are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
John Hopkins University
Louisiana State University
Massachusetts Institute of Technology
Michigan State University
New York University
North Carolina State University at Raleigh
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers the State University of New Jersey
Stanford University
State University of New York Stony Brook
State University of New York at Buffalo
Texas A&M University
Thomas Jefferson University
Tufts University
University of Alabama Birmingham
University of Arizona
University of California Santa Barbara
University of California San Francisco
University of California Irvine
University of California San Diego
University of California Davis
University of California Los Angeles
University of California Berkeley
University of Chicago
University of Cincinnati
University of Colorado
University of Dayton
University of Florida
University of Georgia
University of Illinois Urbana
University of Illinois Chicago
University of Iowa
University of Kansas
University of Kentucky
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Med Schl Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan
University of Minnesota
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Tennessee Knoxville
University of Texas Health Science Center Houston
University of Texas MD Anderson Cancer Center
University of Texas Health Sci. Center San Antonio
University of Texas at Austin
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
Utah State University
Vanderbilt University
Virginia Ploytech Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Washington State University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University

See the FY 1996 Program Description for complete details on programs and eligibility.

Conflicts of Interest

For purposes of conflict of interest, determination of academic and administrative autonomy of an institution will be made by reference to the December, 1994 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained from Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 631W, Bethesda, MD 20814.

Done at Washington, D.C., this 1 day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–29786 Filed 12–11–95; 8:45 am]

BILLING CODE 3410-22-M

federal register

Tuesday
December 12, 1995

Part III

Department of Justice

Antitrust Division

American Bar Association; Response of the United States to Public Comments; Notice

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American Bar Association Civ. No. 95–1211 (CRR) (D.D.C.); Response of the United States to Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), the United States publishes below the written comments received on the proposed Final Judgment in *United States* v. *American Bar Association*, Civil Action No. 95–1211 (CRR), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the written comments and the responses are available for inspection and copying in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825A, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Rebecca P. Dick,
Deputy Director of Operations.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant. Civil Action No. 95–1211 (CRR).

United States' Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16 (b)–(h), the United States is filing this Response to public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding. The United States has carefully reviewed the public comments on the proposed Final Judgment. Entry of the proposed Final Judgment, with some limited modifications, will be in the public interest. After the comments and this Response have been published in the Federal Register, under 15 U.S.C. 16(d), the United States will move the Court to enter the proposed Final Judgment.

This action began on June 27, 1995 when the United States filed a Complaint charging that the American Bar Association ("ABA") violated Section 1 of the Sherman Act, 15 U.S.C. 1, in its accreditation of law schools. The Complaint alleges that the ABA restrained competition among professional personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. The Complaint also alleges that the ABA allowed its law school accreditation process to be captured by those with a direct interest in its outcome. Consequently, rather than setting minimum standards for law school quality and providing valuable information to consumers, the legitimate purposes of accreditation, the ABA acted as a guild that protected the interests of professional law school personnel.

Simultaneously with filing the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by the defendant consenting to the entry of the proposed Final Judgment, after compliance with the requirements of the APPA.

Pursuant to the APPA, the United States filed a Competitive Impact Statement ("CIS") on July 14, 1995. The defendant filed a Statement Of Certain Communications on its behalf, as required by Section 16(g) of the APPA, on July 12, 1995, and amended its statement on October 16, 1995. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal, were published in the The Washington Post for seven days from July 23, 1995 through July 29, 1995. The proposed Final Judgment and the CIS were published in the Federal Register on August 2, 1995. 60 Fed. Reg. 39421–39427 (1995). The 60-day period for public comments began on August 3, 1995 and expired on October 2, 1995.[1] The United States has received 41 comments, which are attached as Exhibits 1–41.

I. Background

The proposed Final Judgment is the culmination of a year-long investigation of the ABA. The Justice Department interviewed numerous law school deans, university and college presidents, and others affected by the ABA's accreditation process. Twenty-seven depositions were conducted pursuant to Civil Investigative Demands ("CIDs") the Department issued. In addition, the Department reviewed over 500,000 pages of documents in connection with this investigation.

At the conclusion of its investigation, the Department determined that the ABA accreditation process and four specific rules arising from that process violated the Sherman Act. The Department challenged the four rules and, more importantly, the accreditation process itself, and it negotiated a proposed Final Judgment with the defendant that adequately resolves its competitive concerns. The ABA indicated its willingness to reform its accreditation process before the Complaint was filed. After preliminary discussions with the Department, the ABA began to implement the reforms. The Department, however, insisted that the elimination of anticompetitive behavior should be subject to the terms of a court-supervised consent decree.

The focus of this case was the capture of the ABA's law school accreditation process by those who used it to advance their self-interest by limiting competition among themselves and from others. The case was not based on any determination by the Department of Justice as to what, specifically, most individual accreditation rules should provide. The Department is not particularly qualified to make such an assessment and has not attempted to do so. The Department concluded that the process that had produced the present rules was tainted. The appropriate solution—and the relief imposed by the proposed decree—was to reform the process, removing the opportunity for taint, and then to have the cleansed process establish new rules.

II. The Legal Standard Governing the Court's Public Interest Determination

A. General Standard

When the United States proposes an antitrust consent decree, the Tunney Act requires the court to determine whether "the entry of such judgment is in the public interest." 15 U.S.C. § 16(e) (1988). As the D.C. Circuit explained, the purpose of a Tunney Act proceeding "is not to determine whether the resulting array of rights and liabilities 'is one that will *best* serve society,' but only to confirm that the resulting settlement is 'within the *reachs* of the public interest,'" *U.S.* v. *Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original); *accord, United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993); *see also United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975.[2] Hence, a court should not reject a decree "unless 'it has exceptional confidence

[1] The United States has treated as timely all comments that it received up to the time of the filing of this Response.

[2] The *Western Elec.* decision involved a consensual modification of an antitrust decree. The Court of Appeals assumed that the Tunney Act standards were applicable in that context.

that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'" *Microsoft*, 56 F.3d at 1460 (quoting *Western Elec.*, 993 F.2d at 1577). Congress did not intend the Tunney Act to lead to protracted hearings on the merits, and thereby undermine the incentives for defendants and the Government to enter into consent judgments. S. Rep. No. 298, 93d Cong. 1st Sess. 3 (1973).

Tunney Act review is confined to the terms of the proposed decree and their adequacy as remedies for the violations alleged in the Complaint. *Microsoft*, 56 F.3d at 1459. The Tunney Act does not contemplate evaluating evaluating the wisdom or adequacy of the Government's Complaint or considering what relief might be appropriate for violations that the United States has not alleged. *Id.* Nor does it contemplate inquiring into the Government's exercise of prosecutorial discretion in deciding whether to make certain allegations. Consequently, a district court exceeds its authority if it requires production of information concerning "the conclusions reached by the Government" with respect to the particular practices investigated but not charged in the Complaint, and the areas addressed in settlement discussions, including "what, if any areas were bargained away and the reasons for their non-inclusion in the decree." *Id.* at 1455, 1459. To the extent that comments raise issues not charged in the Complaint, those comments are irrelevant to the Court's review. *Id.* at 1460. The Court's inquiry here is simply whether the accreditation process set in place by the proposed decree will cure the taint of self-interest that, the Complaint alleges, had infected the process.

In addition, no third party has a right to demand that the Government's proposed decree be rejected or modified simply because a different decree would better serve its private interests in obtaining accreditation or being awarded damages. For, as this Circuit has emphasized, unless the "decree will result in positive injury to third parties," a district court "should not reject an otherwise adequate remedy simply because a third party claims it could be better treated." *Microsoft*, 56 F.3d at 1461 n.9.[3] The United States—not a third party—represents the public interest in Government antitrust cases. *See, e.g., Bechtel Corp.*, 648 F.2d at 660, 666; *United States* v. *Associated Milk Producers* 534 F.2d 113, 117 (8th Cir.), *cert. denied*, 429 U.S. 940 (1976). The decree is intended to set in place a fair process that will produce fair results for those seeking accreditation. It is not designed to transfer to the Department the process of accreditation itself and require the Department to determine who should or should not be accredited.

Moreover, comments that challenge the validity of the Government's case and assert that it should not have been brought are beyond the scope of this Tunney Act proceeding. It is not the function of the Tunney proceeding "to make [a] de novo determination of facts and issues" but rather "to determine whether the Department of Justice's explanations were reasonable under the circumstances" for "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *Western Elec.*, 993 F.2d at 1577 (internal quotations omitted). Courts have consistently refused to consider "contentions going to the merits of the underlying claims and defenses." *Bechtel*, 648 F.2d at 666.

B. Special Commission

Finally, the fact that the consent decree includes a condition that will occur after its entry is not a bar to its entry now. Many courts have approved consent decrees requiring defendants, after entry of the decree, to take actions that must be approved by the Government or the court. For example, courts have entered consent decrees with provisions requiring defendants to divest assets within a certain time period after entry of the decree to a company approved by the Government and requiring the court to oversee divestiture by a trustee if the defendant did not meet the divestiture deadline. In *United States* v. *Browning-Ferris Industries*, 1995–2 Trade Cas. (CCH) ¶ 71,079 (D.D.C. 1995) (Richey, J.), this Court entered a decree requiring the defendant to divest assets within 90 days after entry, unless the Government agreed to a partial divestiture. The decree gave the Government authority to determine whether the buyer was a viable competitor. Moreover, if Browning-Ferris did not meet the 90-day deadline, the Court would appoint a trustee whose activities the Court would oversee. *Id.* at pp. 75,166–67. Several courts have entered very similar decrees. *E.g., United States* v. *Baroid Corp.*, 1994–1 Trade Cas. (CCH) ¶ 70,752 (D.D.C. 1994); *United States* v. *Outdoor Systems, Inc.*, 1994–2 Trade Cas. (CCH) ¶ 70,807 (N.D. Ga. 1994); *United States* v. *Society Corp.*, 1992–2 Trade Cas. (CCH) ¶ 68,239 (N.D. Ohio 1992) (similar decree provisions); *United States* v. *General Adjustment Bureau, Inc.*, 1971 Trade Cas. (CCH) ¶ 73,509 (S.D.N.Y. 1971); *United States* v. *Mid-America Dairymen*, 1977–1 Trade Cas. (CCH) ¶ 61,509 (W.D. Mo. 1977) (mandating divestiture within two years after entry and allowing Government to object to proposed sale in court).

Other decrees have included conditions that must be implemented after their entry. In *United States* v. *Baker Commodities, Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,929 (C.D. Cal. 1974), the district court entered a decree requiring each consenting defendant, within 90 days after entry, to independently re-establish its prices and to file with the court and the United States an affidavit stating that they have complied. Moreover, within two years after entry, defendant Baker was required to divest certain interests to a person approved by the Government or the Court upon a proper showing by Baker. *Id.* at pp. 96,160–61. Finally, if the Government objected to certain future acquisitions, then the court would decide the matter, with Baker having to show that the acquisition would not substantially lessen competition. *Id.* This is akin to the hearing that could ensue here if the Government challenged the Special Commission's revisions as antitrust violations.[4]

In other cases, decrees have required defendants, after entry of the decree, to eliminate from their bylaws or codes any sections that are inconsistent with the decree. *E.g., United States* v. *American Inst. of Architects*, 1990–2 Trade Cas. (CCH) ¶ 69,256 (D.D.C. 1990) (Richey, J.); *United States* v. *Hawaii Island Contractors' Ass'n*, 1988–1 Trade Cas. (CCH) ¶ 68,021 (D. Hawaii 1988); *United States* v. *Society of Authors' Reps.*, 1982–83 Trade Cas. (CCH) ¶ 65,210 (S.D.N.Y. 1982). In addition, defendants have been ordered to independently re-establish their prices after the decree is entered and to file statements with the Government

[3] *Cf. United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 n.3 (8th Cir.) ("The cases unanimously hold that a private litigant's desire for [the] *prima facie* effect [of a litigated government judgment] is not an interest entitling a private litigant to intervene in a government antitrust case."), *cert. denied*, 429 U.S. 940 (1976).

[4] *See also United States* v. *Primestar Partners, L.P.*, 1994–1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994) (decree prohibited defendant, after entry, from taking programming actions without prior Government approval); *United States* v. *Pilkington PLC*, 1994–2 Trade Cas. (CCH) ¶ 70,842 (D. Ariz. 1994) (defendants forbidden after entry to assert certain patent claims except upon proper showing to Government); *United States* v. *Industrial Electronic Engineers*, 1977–2 Trade Cas. (CCH) ¶ 61,734 (C.D. Cal. 1977) (decree required defendant, within 90 days after entry, to write a policy statement approved by Government).

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explaining their basis. *E.g., United States* v. *Brownell & Co., Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,945 (W.D. Tenn. 1974); *United States* v. *First Washington Net Factory, Inc.*, 1974–1 Trade Cas. (CCH) ¶ 74,941 (N.D. Ala. 1974); *United States* v. *Capital Glass & Trim Co.*, 1973–1 Trade Cas. (CCH) ¶ 74,386 (M.D. Ala. 1973).

III. Entry of the Decree is in the Public Interest

Entry of the proposed decree is clearly well within the reaches of the public interest under the standards articulated in *Microsoft* and other decided cases. It prevents the ABA from fixing faculty compensation and from enforcing its boycott barring ABA-approved law schools from offering transfer credit for courses completed at state-accredited laws schools and enrolling in their LL.M. programs graduates of state-accredited law schools and members of the bar. Most important, the proposed consent decree ends the capture of the accreditation process.

Much as in most cases, the decree here requires subsequent action that does not necessitate delay in its entry. The problem identified in the Complaint—the capture of the ABA's accreditation process—has been eliminated. Absent that capture problem, the ABA should be allowed to set standards in areas principally involving educational policy. This Court retains jurisdiction to ensure that the ABA's Special Commission does not produce standards that are the product of capture. Nothing more is legally required.

We received over 40 comments, which we have divided into seven categories: other accrediting agencies; faculty; university administrators; law schools not approved by the ABA; graduates and students at non-ABA approved law schools; practicing attorneys; and the general public.

A substantial number of the comments raise educational policy questions and are directed to issues outside the allegations in the Complaint. For example, they propose the ABA require additional clinical education, modify the rules about required seating in the library, or use bar passage rates to assess law school quality. Such comments, while relevant to educational policy, go beyond the allegations in the Complaint. Hence, they are not relevant to the Tunney Act proceeding. Other comments criticize the Government for bringing suit or argue that the Complaint is not justified. For example, the former ABA Consultant on Legal Education contends that the ABA has not conspired to fix faculty salaries. But comments about the underlying merits and defenses are irrelevant in a Tunney Act proceeding, as explained above. In addition, some commentators complained about state rules requiring approval from an ABA-accredited law school prior to taking the bar examination. Others complain about other state government activities. Under *Parker* v. *Brown*, 317 U.S. 341 (1943), such state actions are exempt from antitrust prosecution. Some state-accredited law school students and graduates complained about ABA-approved law schools denying them transfer credit or refusing to admit them to LL.M. programs. The decree stops the ABA from forbidding law schools from offering such credit or enrolling these students. But the individual decision of whether to do so remains up to the individual school.

Furthermore, some commentators worried that the decree prevents accrediting agencies from assessing the quality of educational institutions engaging in legitimate accreditation activities. The decree is directed only at the activities of the ABA. By preventing the ABA from violating the antitrust laws, the decree ensures that the ABA will engage in the legitimate accreditation activity of assessing the quality of legal education programs. Four accrediting agencies argued that the proposed decree is inconsistent with the *Marjorie Webster* decision and that there may be an implied repeal of antitrust enforcement because accreditation is regulated by the Department of Education. *Marjorie Webster Junior College Inc.* v. *Middle States Ass'n of Colleges & Secondary Schools, Inc.*, 432 F.2d 650 (D.D. Cir.), *cert. denied*, 400 U.S. 965 (1970). But *Marjorie Webster* itself held that antitrust laws would apply to restrictions with a commercial motive and practices that fix compensation and enforce a boycott have. In addition, the agencies' *Marjorie Webster* argument goes directly to the merits of the underlying claims and defenses, an inquiry that is irrelevant in a Tunney Act proceeding, as noted above. Furthermore, under the case law, there is no implied repeal and the Department of Education has specifically deferred to the Justice Department on the antitrust issues.

The Massachusetts School of Law ("MSL"), a private plaintiff in antitrust actions in Pennsylvania and Massachusetts, recommends altering the decree, delaying its entry, and requests the production of documents from the Government's files. The Government opposes the modifications and recommends no delay in entering the decree. Some of MSL's comments go beyond the allegations in the Complaint. While MSL may believe that its recommended changes are the ones that will "best serve society," the issue in a Tunney Act proceeding is only whether the settlement is "within the reaches of the public interest." *Microsoft*, 56 F.3d at 1460. No third party may demand that the proposed decree be rejected or modified just because a different decree would better serve its private interests. We further oppose MSL's discovery request, as we believe it is improper to grant discovery collaterally in a Tunney Act proceeding to a party whose discovery requests have been denied in its own case.

The parties' agreement that the Special Commission should have the first opportunity to report on issues that involve education and antitrust policies is a reasonable accommodation. That the Special Commission's report, ABA Board approval, and a possible Justice Department challenge will occur after entry of the decree is no bar to entry of the decree now. The decree prohibits a number of practices for which there were no apparent educational policy justifications. The accreditation standards on which the Special Commission will report do not on their face constitute naked antitrust restraints, but the Government seriously questioned the process by which these standards were administered. The defendant had taken measures to reform its accreditation process before agreeing to the consent decree and affording it the first opportunity to address the remaining issues is a reasonable compromise. The public has had the opportunity to comment on the process and on the subject matter of these issues, although only a few chose to do so. The Special Commission's report will be made public and third parties will have the opportunity to provide the Justice Department with possible objections.[5]

Because the proposed decree is within the scope of the public interest, the Court should enter it after the Government's responses to the public comments are published in the **Federal Register** and the Government certifies compliance with the APPA and moves for entry of judgment.

IV. Response to Public Comments

This case has generated a large number of comments, despite the absence of any apparent organized effort to solicit comments. Because of the number of comments, the Government has organized its Response based on the categories of those who submitted comments.

A. Other Accreditation Agencies

The Department received five comments from other accrediting agencies and one from an individual who has headed an accrediting agency since 1973. These comments are generally critical of the severity of the proposed Final Judgment and are concerned with its possible effect on the practices of other accrediting agencies.

1–2. The Association of Specialized and Professional Accreditors ("ASPA") (Exhibit 1), and National Office for Arts Accreditation in Higher Education (Exhibit 2)

ASPA is an umbrella organization with a membership of 40 specialized accrediting agencies (one of which is itself an umbrella agency for 17 allied organizations). The National Office for Arts Accreditation in Higher Education consists of four separate accrediting agencies for schools of art and design, music, theater, and dance. ASPA believes that the consent decree could produce "unintended consequences" for other accrediting agencies by equating the presence of expertise in an accreditation area with its automatic capture by a vested interest and criticizes the data collection and other limitations imposed by the consent decree as unnecessarily restrictive or unnecessarily prescriptive. ASPA fears that the requirements of the consent decree will create a climate in which fraudulent institutions may use "antitrust terrorism" against accrediting agencies.

We share ASPA's concern that this action should not be used to diminish accreditation's legitimate role as a guarantee of quality and a source of information to the public. The requirements of the proposed Final Judgment apply only to the defendant and only for the duration of the decree. The terms of the decree are designed to remedy the defendant's anticompetitive practices. They are not meant to be a generalized prescription for other accrediting agencies.

The limitations in the decree on the collection and use of certain data are directed only to remedy the defendant's conduct. The ABA required by law schools to respond to detailed annual and site inspection questionnaires that included providing extensive salary data. The defendant used the data to raise the salaries of law school deans, full-time faculty, and professional librarians during the accreditation process. Because of this abuse, the proposed consent decree prohibits the defendant from conditioning accreditation on the compensation paid professional personnel or collecting salary data that could be used to determine individual salaries.

Nor does the Government seek to discourage the participation of individuals with "professional expertise" in the accreditation process and the consent decree will not have that effect. The defendant permitted its accreditation activities, however, to be captured by legal educators who used it to advance their own personal interests. The proposed consent decree remedies the defendant's abuses. The Government is not suggesting it apply to other accrediting agencies whose accreditation processes promote quality rather than the self-interest of a group that controls the process.[6]

ASPA's concern that the proposed consent decree may promote "antitrust terrorism" against accrediting agencies by institutions seeking accreditation is unwarranted. This is the first Justice Department antitrust case brought against an accrediting agency in the 105-year history of the Sherman Act. The Government cannot prevent the filing of meritless or harassing actions by private institutions, but does note that such actions are costly to the plaintiff, and meritless actions are subject to court sanctions.

Finally, ASPA points out that some of the requirements of the proposed Final Judgment may conflict with the requirements of the Higher Education Act. The Justice Department consulted with the Department of Education concerning this objection. Sections VI (C)(1), (D)(1) and E(1) of the decree require that elections and appointments to the Council, the Accreditation Committee, and the Standards Review Committee of the Section of Legal Education and Admission to the Bar ("Section of Legal Education") must be subject to the approval of the ABA's Board of Governors ("Board") for a period of five years. This provision appears to conflict with 20 U.S.C. 1099b, requiring agencies to be "separate and independent" of related trade associations. The Department of Education recognizes the Section of Legal Education as a specialized accrediting agency for law schools and has determined that the ABA is a related trade association from which the Section must be "separate and independent." Giving the ABA's Board power to "approve" elections and appointments to the Section's Council and Committees thus may breach the "separate and independent" requirement of § 1099b. Consequently, the United States and the ABA have proposed to modify the decree by substituting a notification requirement in Section VI for the approval requirement.[7] The parties intended that these and other requirements in the proposed consent decree would assist in the ABA's oversight of the Section of Legal Education's accreditation activities. Changing the approval requirements should not impair the ABA's oversight while simultaneously ensuring that the requirement of 20 U.S.C. 1099b is not offended.

The National Office for Arts Accreditation joins in ABA's comments. The National Office is particularly concerned that the Justice Department may be setting an inappropriate precedent or providing loopholes that may prevent accrediting bodies from working effectively with problem institutions. While we are sympathetic to the National Office's concern, the Justice Department believes that the remedies in the proposed consent decree are directed just to the facts in this case, not to the activities of other accrediting agencies. The Department does not believe that effective antitrust enforcement—which requires entry of the relief in this case—is at all incompatible with quality accreditation.

3. Association of Collegiate Business Schools and Programs ("ACBSP") (Exhibit 3)

ACBSP has 500 business school members and is one of two accrediting agencies in the business school area. ACBSP commented that a number of States require that their state business schools must obtain accreditation from the other business school accrediting agency, thereby locking out ACBSP. The actions of States are exempt from the antitrust laws under the "state action" doctrine announced in *Parker* v. *Brown*, 317 U.S. 341 (1943), and its progeny. Consequently, the activities ACBSP complains of are beyond the reach of antitrust enforcement and outside of the matters in the Complaint.

4. American Library Association ("ALA") (Exhibit 4)

The ALA commented on two points: the size and composition of

[5] Additionally, as part of its supervisory powers, the Court could, after entry of the decree, require the parties to report on the Special Commission's report.

[6] ASPA questions other specific consent decree provisions, not because they are unwarranted in this proceeding, but because their application to other accrediting agencies would produce bad results. The provisions of the proposed Final Judgment, of course, apply to the ABA.

[7] The proposed modification is attached as Exhibit 42.

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accreditation site inspection teams; and the proposed consent decree's effect on accreditation agencies' functions. Without citing specific examples, the ALA believes that the remedies in the consent decree are overly prescriptive and may promote a bureaucratic and regulatory environment antithetical to the analysis and accreditation of higher education. The consent decree should not affect the composition of ALA accreditation teams or its accreditation practices. The decree is designed to ensure that the accreditation process proceeds on the basis of legitimate academic concerns; the decree does not confine or constrain the process in any other way.

5. Bernard Fryshman (Exhibit 5)

Dr. Fryshman has headed a nationally-recognized accrediting body since 1973 and has been very active in the accreditation field.[8] Dr. Fryshman's principal point is that the cooperative nature of higher education is intended to produce different bottom-line results than commercial enterprises. Accordingly, Dr. Fryshman believes that higher education should not be judged under antitrust standards. In his wide-ranging comment, Dr. Fryshman appears to question the applicability of the antitrust laws to any of the defendant's practices challenged in this action, including the imposition of higher salaries. Dr. Fryshman suggests a review of the corrective actions in the proposed consent decree.

Admittedly, higher education differs in some important respects from commercial enterprises; but it is a significant and growing part of the national economy. While this Circuit has held that the antitrust laws do not apply to the "non-commercial" aspects of post-secondary accreditation, *Marjorie Webster*, 432 F.2d at 650, the efforts of an accrediting agency to fix the salaries and perquisites of professional staff and engage in other guild activities unrelated to quality assurance are clearly commercial activities that restrain trade. We agree with Dr. Fryshman that it is "inappropriate for government to determine how lectures are to be delivered, what books are to be read and what facilities are appropriate," but disagree that antitrust enforcement has no role in eliminating anticompetitive distortions of the process.

[8] We believe that Dr. Fryshman's agency accredited rabbinical and Talmudic schools.

6. Accrediting Bureau of Health Schools, Accrediting Council of Continuing Education and Training Accrediting Council for Independent Colleges and Schools, and National Accrediting Commission of Cosmetology Arts and Sciences ("Four Agencies") (Exhibit 6)

These Four Agencies have filed a joint comment and request a hearing concerning possible modification and entry of the proposed Final Judgment. The Four Agencies suggest that the proposed consent decree is inconsistent with the *Marjorie Webster* decision and that there may be an "implied repeal" of antitrust enforcement in this area because accreditation is regulated by the Department of Education. The Four Agencies request that Section XI(C) of the proposed Final Judgment be amended by adding: "Nothing in this judgment shall be construed to modify any of the provisions of the Higher Education Act of 1965, as amended, or any of the regulations adopted pursuant thereto, or any existing law concerning the recognition of private accrediting agencies, or the activities of such agencies relating thereto."

This Circuit's decision in *Marjorie Webster* does not prevent the Court from finding entry of this proposed consent decree is in the public interest. In *Marjorie Webster*, the Court held that an accrediting agency's refusal to accredit a junior college solely because it was organized as a for-profit corporation did not violate the antitrust laws because the Sherman Act does not apply to the noncommercial aspects of the liberal arts.[9] The Court noted that antitrust policy would be applicable to restrictions that had a commercial motive. 432 F.2d at 654–55.[10]

An institution's form of organization should not be the basis for totally excluding it from an industry,including the provision of a legal education. Significantly, the ABA eliminated its Accreditation Standard 202, which denied the accreditation of for-profit law schools, during the Justice Department's investigation. In its enforcement activities in industries in which some competitors are organized as not-for-profits and some as for-profits (e.g., hospitals), the Antitrust Division does not find that an entrant's particular form of organization is of decisive significance in antitrust analysis. Nor do courts. *See United States* v. *Rockford Mem. Corp.*, 898 F.2d 1278 (7th Cir. 1990), *cert. denied*, 498 U.S. 920 (1990); *FTC* v. *University Health, Inc.*, 938 F.2d 1206, 1214–16 (11th Cir. 1991). Since the ABA has already abandoned Standard 202, since its "market power" is significantly greater than that of the defendant in *Marjorie Webster*, and since entry into the law school field should not be unreasonably restricted, the Four Agencies' comment that the relief of the proposed Final Judgment is inconsistent with *Marjorie Webster* is incorrect and, therefore, no bar to the Court's finding that entry is in the public interest.

Subsequent to *Marjorie Webster*, the Supreme Court held that the Sherman Act applies to all anticompetitive restraints, regardless of the non-profit status of the defendant. *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773, 787–89 (1975). To the extent *Marjorie Webster* suggests a "liberal arts" exemption from the antitrust laws, that suggestion has been rejected. As one district court observed, "*Marjorie Webster* is of questionable vitality after *Goldfarb*, to the extent that it draws bright lines between education and business or accreditation policy and commerce." *Welch* v. *American Psychoanalytic Ass'n*, 1986–1 Trade Cas. (CCH) ¶67,037 (S.D.N.Y. 1986).

The Four Agencies also contend that there is an "implied immunity" from the antitrust laws for the activities of accrediting agencies because they are subject to Department of Education oversight. The implied immunity doctrine is not nearly so broad as the Four Agencies would suggest. The leading case on this point is the Supreme Court's decision in *National Gerimedical Hospital versus Blue Cross*, 452 U.S. 378 (1981). Prior to *Gerimedical*, the Supreme Court had held that antitrust repeal was implied only if necessary to make the regulatory statute work, and even then only to the minimum extent necessary. *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963). In *Gerimedical*, the Supreme Court clarified this standard, holding that: "Implied antitrust immunity is not favored and can be justified only by a convincing showing of *clear repugnancy* between the antitrust laws and the regulatory system." 452 U.S. at 390–91 (emphasis added). The Four Agencies have not, and cannot, make this clear

[9] In reaching its decision, the Court doubted that Marjorie Webster "will be unable to operate successfully * * * unless considered for accreditation," 432 F.2d at 657; Marjorie Webster has since passed from existence. The Court also noted that the defendant did not possess monopoly power over accreditation, something the ABA clearly possesses in the 42 States where graduation from an ABA school is a prerequisite to taking the bar examination.

[10] In fact, in a civil antitrust action, liability may be shown by proof of either an unlawful motive or an anticompetitive effect. *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 436 n.13 (1978).

showing.[11] Indeed, in the Department of Education's "Staff Analysis of the ABA's Section of Legal Education's Interim Report on its Standards to DOE and Massachusetts School of Law's Compliant," the staff noted:

> One aspect of MSL's complaint against the Council that is totally outside of the Department's purview is the charge that the Council has violated federal antitrust laws for the economic benefit of law professors, law deans, and law librarians but to the detriment of students. That matter is currently before the Justice Department.[12]

Amending the proposed consent decree in the manner requested by the Four Agencies is unnecessary. While the comment claims that the Government and the ABA are asking the Court to approve "a broad, in-depth intrusion of the Sherman Act * * * that will have a chilling effect on the entire accreditation process * * *" (comment, p. 5), the proposed Final Judgment addresses three specific practices (it prevents the ABA from fixing salaries and engaging in a boycott). The decree does not interfere with the day-to-day accreditation process that determines whether law schools offer quality educations. The decree simply ensures that the process rests on legitimate educational principles. Nor does it conflict with controlling precedent in this Circuit or the doctrine of "implied immunity." The decree binds only the parties to it. The Four Agencies fail to show how it will prevent the defendant from carrying out its accrediting obligations under the Higher Education Act or how it will prevent other accrediting agencies from doing so.

B. Law School Faculty

The Justice Department received nine comments from administrators and faculty at ABA-approved law schools.[13] The substance of these comments vary enormously, but all recommend some modification of the proposed Final Judgment.

[11] In an advisory opinion, the Federal Trade Commission informed another accrediting agency, the Accrediting Commission on Career Schools and Colleges of Technology, that the 1992 Higher Education Act Amendments, specifically, 20 U.S.C. § 1099b(a)(5), relied upon by the Four Agencies, conveyed no implied repeal of the antitrust laws, finding no broad or inherent conflict between the antitrust laws and the Department of Education's regulatory regime. January 19, 1995 FTC Advisory Opinion, File No. P94 4015; *see* 5 Trade Reg. Rep. (CCH) ¶23,755.

[12] December 5–6, 1994 Staff Analysis appended as Exhibit 43.

[13] One of these comments is from the Clinical Legal Education Association, an organization of more than 400 clinical teachers who "have a dual identity as law teachers and practicing lawyers." Comment, p. 1. Four of the nine faculty comments were from clinical instructors.

1. Clinical Legal Education Association ("CLEA") (Exhibit 7)

CLEA maintains that, because the accreditation process has been dominated by legal academics (i.e., research scholars) and deans, it has not served the function of insuring that law school graduates are adequately prepared to practice law. CLEA claims that the proposed consent decree will further entrench the power of legal academics and will interfere with the ability of accreditation to improve the quality of lawyers. CLEA further believes that requiring a university administrator not affiliated with a law school on each site inspection team will entrench legal academics since university administrators are concerned that law schools are not sufficiently "academic," i.e., research-oriented. Additionally, according to CLEA, the proposed consent decree will not change the ABA standards that favor legal academics over clinicians with respect to tenure and law school governance. CLEA also believes that the proposed Final Judgment is not "final" because of the pendency of the report of the Special Commission and because the Government retains authority to review changes in the accreditation process.

Whether legal education is better served by emphasizing legal scholarship or practical clinical instruction is neither an antitrust issue nor an issue addressed in the Complaint. CLEA raises an issue of educational policy, not antitrust policy, that should not be governed by the consent decree. Furthermore, to the extent that these comments raise issues not alleged in the Complaint, they are outside the scope of a Tunney Act review. *Mircosoft*, 56 F.3d at 1448, 1459. The inclusion of non-law school university administrators on site inspection teams is intended to reduce the likelihood that accreditation will be used to advance the narrow economic interests of law school faculty and administrators.

CLEA supports the provision in the proposed consent decree requiring the ABA to reconsider its standards regarding student-faculty ratios, but is concerned that the Special Commission is scheduled to make its report after entry of the consent decree. The Special Commission's August 3, 1995 preliminary report noted the widespread dissatisfaction with the past manner in which student-faculty ratios were computed for accreditation purposes and will report on this issue. CLEA also claims that the proposed consent decree gives the Government authority to review all changes in the ABA's accreditation process. This seems to be an unduly expansive reading of the Government's rights under Section VIII(D) and Section X of the proposed Final Judgment.

2. Howard B. Eisenberg (Exhibit 8)

Mr. Eisenberg is dean of Marquette Law School and a former dean at the Arkansas-Little Rock Law school. Dean Eisenberg expresses concern that the Government's law suit was "commenced and settled without input from legal educators or consumers of legal education." He is also dissatisfied that Section VII of the proposed consent decree "leaves open for future determination five issues of extraordinary importance to legal education." Dean Eisenberg believes that leaving these matters to the Special Commission strikes him "as a guarantee that the Court will be involved in protracted and difficult litigation in the future over these matters." Consequently, Dean Eisenberg urges that entry of the proposed consent decree now is premature and not in the public interest, or that Section VII should be deleted entirely.

We believe that Dean Eisenberg has vastly overstated the likelihood of protracted and difficult litigation, or the possibility of any litigation at all, and also has exaggerated the breadth of the Government's involvement in the remaining five issues. The decree simply sets in place procedures to ensure that the accreditation requirement of paid sabbaticals, the computation of student-faculty ratios, and other standards should not be manipulated by a control group to further its own interests. The Special Commission may make recommendations that, as difficult questions of educational policy, cna be fairly disputed, but the Government does not anticipate that the Special Commission and the Board will fail to resolve our antitrust policy concerns or that the Special Commission's analysis will spark litigation.

3. John S. Elson (Exhibit 9)

Mr. Elson is a professor at Northwestern Law School. He has been on the Section of Legal Education Accreditation Committee, is a former chair of the Section's Skills Training Committee, and has served on about 15 site inspection teams since 1986. Professor Elson sees the proposed Final Judgment as offering a "unique opportunity" to return ABA accreditation to its only proper purpose, "the adequate preparation of law students for competent and ethical legal practice."

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Professor Elson, therefore, proposes adding the following injunctive provision to Section IV of the proposed consent decree:

The ABA is enjoined and restrained from:
* * *
(E) adopting or enforcing any standard, interpretation, rule or policy that is not needed in order to prepare law students to participate effectively in the legal profession.

Professor Elson is also concerned that the proposed consent decree will leave law school academics in control of the process. They will continue to emphasize the production of scholarship as a priority and relegate clinical training to a lesser role. Professor Elson also expresses his dissatisfaction with the Special Commission's initial report, which he believes affirms the priority given to legal scholarships and its explicit rejection of proposals emphasizing practical training. Professor Elson believes that his proposed modification will fairly and effectively protect the public interest in having adequately prepared law graduates without denying market entry to those who can satisfy that public interest.

While criticizing the provision of the proposed Final Judgment that seeks to open participation in the accreditation process, Professor Elson does not specifically address what procedures he would prefer. We agree that, in law school accreditation, just as in accreditation in other areas, participation in the process is more apt to come from people within the discipline and who have a stake in the effect of accreditation. The proposed consent decree makes reasonable efforts to include more outsiders. For example, no more than 50% of the membership of the Council, Accreditation Committee or Standards Review Committee may be law school deans or faculty. The term limitation will also produce greater turnover among those participating in the process.

Professor Elson plainly thinks that legal education should give a higher priority to practical training. This is a matter of educational, not antitrust, policy and it is outside the limits of the Complaint and proposed consent decree.

4. Jeffrey L. Harrison (Exhibit 10)

Mr. Harrison is the Chesterfield Smith Professor of Law at the University of Florida College of Law. His principal hope is that the Antitrust Division will devote further study to the issues of the proposed market definition, competitive harm, and the appropriate remedy. Other than the prohibition against price fixing in Section IV(A) of the proposed consent decree, Professor Harrison recommends abandoning all of the other prohibitions in the decree, at least until there is data showing that the ABA's accreditation process has unreasonably restricted entry. In the alternative, Professor Harrison believes the decree should be modified to permit the collection and dissemination of "past" compensation data because it "can be critical" in diagnosing the problems of a law school. Professor Harrison also recommends dropping the 50% membership limitation of legal academics on the Council, its Accreditation Committee, and the Standards Review Committee, describing them as "counter-productive."

While perhaps useful as an academic exercise, Professor Harrison's objections to the alleged theoretical weaknesses of the Government's case are not appropriate for a review of whether entry of the proposed Final Judgment is within the reaches of the public interest. The Court should assume that there is some basis to the allegations in the Complaint and determine whether the proposed consent decree sufficiently remedies the alleged violations. A value of the consent decree process is that it releases the Court and the parties from the time and expense of a Rule of Reason inquiry into all of the issues raised in the Complaint.[14]

The Government strongly disagrees with Professor Harrison's suggestion that "past" compensation data can be used as a surrogate for measuring quality. Observations of outputs are a more reliable measure of quality.

5. Gary H. Palm (Exhibit 11)

Mr. Palm is Clinical Professor of Law at the University of Chicago Law School. Professor Palm currently serves on the Council of the Section of Legal Education, was a member of the Accreditation Committee from 1987 to 1994, is a past member of the Clinical Education and Skills Training Committee, and served on 14 ABA site inspections from 1984 to 1994, nine of which were in Europe. Professor Palm believes that the proposed consent decree does not recognize that "the real conspiracy" involved just law school deans and academics, not other faculty, and that the proposed consent decree "will likely result in a lessening of vigorous enforcement of accreditation standards." Professor Palm makes a number of proposals in his comprehensive comment. He recommends that another section of the ABA or some other entity should perform law school accrediting, claiming that the ABA has been a "paper tiger" with respect to ensuring adequate training in legal skills and values.

Finding a substitute for the Section of Legal Education would not be easy since a new agency will have to obtain Department of Education and state certifications. Additionally, the ABA initiated accreditation reforms before the consent decree discussions started. The Justice Department seldom, if ever, seeks to eliminate an entrant as antitrust relief and, unlike monopoly or merger cases, partial divestiture here is not a realistic remedy.

Professor Palm's comment, and those of other clinicians, are critical of the ABA accreditation requirement with respect to skills training. This is essentially a question of education, not antitrust, policy. Professor Palm believes that there is a need for substantial, additional diversification in the accreditation process, particularly the continued or greater involvement of clinicians on site inspection teams or as part of the law faculty representation on the Council and committees. Again, whether clinicians should be included among faculty appointments to site inspection teams and governing committees is not an antitrust issue.

Professor Palm also criticizes procedural difficulties with respect to the report of the Special Commission. He urges either that the public be given a chance to comment on the report or that the consent decree not be entered until after the Special Commission makes its report.

Professor Palm also makes specific comments with respect to several of the subjects on which the Special Commission will report. He criticizes the current computation of student-faculty ratios for excluding as "faculty," adjuncts and part- and full-time skills teachers who have short-term employment contracts.

He defends the current application of the facilities standards. The precise contours of the facilities standard are not challenged by the Department nor are they before the Court. The Department does not intend to constrain the setting of legitimate educational

[14] We do not wish to "try" the issue of output restriction but do question the manner in which Professor Harrison uses statistics. Rather than the 30-year comparison in his comment (p. 3), a more appropriate period would be from when the current Standards were made applicable (1975) and when the Consultant's office regularized the ABA's current accreditation regulatory regime (late 1970s). Roughly halving the 30-year period used by Dr. Harrison, comparing 1980–81 statistics with those of 1994–95, the number of ABA-approved law schools increased only from 171 to 177 (+3.4%) and total J.D. enrollment in ABA-approved schools increased only from 119,501 to 128,989 (+7.9%).

standards. Because the facilities standards raise issues of legitimate educational policy that are within the Special Commission's expertise, the Department believes the Commission should have the first opportunity to reconcile the issues of antitrust and educational policy. Professor Palm also argues that the "adequate resources" standard should be applied to reallocate greater resources for skills instruction. This is neither an antitrust issue nor one raised in the Complaint. Professor Palm has suggested an appointment, as an *amicus curiae*, of a representative for the public interest. The Justice Department represents the public interest in this proceeding and Professor Palm has shown no breach of that representation. Most of Professor Palm's suggestions seem intended to advance clinical training at law schools. This is an educational policy issue that is irrelevant here and certainly one that does not call for a court-appointed representative.

6. Millard H. Ruud (Exhibit 12)

Former ABA Consultant on Legal Education Millard Ruud submitted an extensive comment criticizing the proposed consent decree.[15] He doubts that the ABA violated the antitrust laws. He believes that the ABA accreditation process is not a guild and that it has not been captured by legal educators. He also doubts that there was an agreement to ratchet up law teachers' salaries. Professor Ruud does not believe that deans want the ABA to impose unreasonably high salary requirements for full-time faculty and argues that deans only want to meet the competition set by market forces. He contends that leading law schools must compete with major law firms for highly-qualified faculty, and must offer competitive salaries to retain and recruit these faculty.

Professor Ruud also comments that the ABA has not "monopolized" accreditation through its own actions because state supreme courts and bar admission authorities gave the ABA the power to approve law schools. He notes that there are competitive disadvantages for unapproved law schools because these schools are considered to be lower in quality. ABA-approved schools have an advantage in recruiting quality students and faculty. Professor Ruud also questions the meaning of the phrase "state-accredited" law schools in the decree and correctly points out the decree only prohibits the ABA from requiring ABA-approved law schools not to accept credit for work at state-accredited schools.

Professor Ruud questions the decree's requirement that a university administrator who is not affiliated with a law school be included on site evaluation teams. He claims that it is present ABA practice to include university administrators when the law school is affiliated with a university. He asks why university administrators should be included in evaluating law schools that are not part of a university.

Professor Ruud further believes that the consent decree is an excessive intrusion into ABA governance and questions some specific decree provisions. He assets that the issues the Special Commission is to examine go beyond antitrust. He further believes that the decree should not set term limits for membership on the Council, Accreditation Committee, or Standards Review Committee. Finally, Professor Ruud describes the basic purpose of accreditation: ensuring that the school meets the basic requirements of quality and informing other schools that a degree from an accredited school should be recognized by them.

The purpose of this proceeding is not to evaluate the merits of the Government's case. To the extent comments challenge the Department's decision to bring this case, they are beyond the scope of this decision.

7. Roy T. Stuckey (Exhibit 13)

Mr. Stuckey is a professor in the Department of Clinical Studies at University of South Carolina Law School. Professor Stuckey served on the Council of the Section of Legal Education from 1988 to 1994 and the Standards Review Committee from 1990 to 1995. He has been a member of about 11 site inspection teams since 1982.

Professor Stuckey objects to entry of the proposed Final Judgment unless it is modified:

(1) to allow the ABA to continue gathering data about faculty compensation; (2) to allow the ABA to continue considering compensation as one factor in determining the quality of a law school's program of education; and (3) to allow the ABA to permit some people to serve at least six years on the Standards Review Committee.

Professor Stuckey believes that compensation is related to quality, knows of no data showing that law school faculty are compensated disproportionately to similarly qualified judges and lawyers, and points out that the ABA's data collection was reliable but will now have to be done by someone else.

The an on salary data collection is for only the 10-year term of the decree and is intended as a prophylactic. The defendant's practice, compiling a "peer group" salary comparison prior to a site inspection and pressuring the law school (or, more frequently, university administrators) to raise salaries without a finding that the law school was unable to attract and retain competent faculty, was an anticompetitive practice that artificially inflated law school personnel salaries. The consent decree prevents the defendant from collecting salary information to reduce the likelihood that the behavior alleged in the Complaint will recur. During the time that the consent decree limitations apply, site inspectors will be able to use such direct measurement of faculty quality like classroom instruction, scholarly production, and bar and practical skills preparation. The ABA is not enjoined from continuing to collect and disseminate other law school data.

The Standards Review Committee has in the past been totally dominated by law faculty. In addition to proposing new Standards, the Committee also adopted Interpretations that were not fully subject to public and Board review and were, at times, protective of law school professional personnel in an anticompetitive manner. The Standards Review Committee has staggered terms so that it will have varying levels of experience. The one-term limitation on service on the Standards Review Committee is a reasonable prophylactic provision designed to get more individuals involved in law school accreditation.

8. Lawrence A. Sullivan and Warren S. Grimes (Exhibit 14)

Mr. Sullivan and Mr. Grimes are professors at Southwestern University School of Law. Professors Sullivan and Grimes fear that the proposed consent decree may lead to a relaxation of accreditation standards that will be particularly harmful in California. The-

[15] Professor Ruud was the ABA's first Consultant on Legal Education, serving from 1966 to 1973; was the Executive Director of the American Association of Law Schools which conducts joint law school accreditation inspections with the ABA; has participated in numerous law school site inspections; and has extensive experience in ABA and AALS law school accreditation. Professor Ruud was involved in drafting the Standards under which the ABA operated for many years. These include the Standards fixing faculty compensation. Professor Ruud has conducted over 40 site inspections, although all but three of these were before 1979. He is currently a professor at the University of Texas.

University of Texas Provost and its former law dean Mark Yudof has a somewhat different view of the consent decree than Professor Ruud. "Yahoo!" was the first response from Mark Yudof" after he was told of the consent decree, the *Texas Lawyer* reported. Provost Yudot called the ABA's process an "accreditation hammer" that did not recognize diverse models of legal education. *Texas Lawyer*, July 3, 1995 at 7 (Lexis, News Library).

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also oppose the prohibition against the defendant's collecting and disseminating salary data.

California has 16 ABA-approved law schools, 19 state-accredited law schools, and 37 uncertified law schools, according to the comment. Professors Sullivan and Grimes note that, while, admittedly, the ABA-approved schools are able to attract better qualified students, the August, 1994 California bar results for first-time takers show that the average pass rate for each of the ABA-approved schools was higher than those for any law school in each of the other two categories. The comment suggests that this raises consumer protection issues since students at non-ABA-approved schools are investing much time and money with a diminished likelihood of passing the bar or finding legal employment.[16] This case is not intended to inhibit in any way the setting of legitimate educational standards and the proposed Final Judgment does not do so. Accreditation is a consumer protection service. It informs students that an accredited school meets appropriate educational standards. The proposed Final Judgment leaves in place a process to provide this service.

	ABA-approved (percent)	State-accredited (percent)
July 1993	89–92	0–89
February 1993*	40–67	0–75
July 1992	83–90	25–75
February 1992*	54–85	5–61

*Most takers in February are repeaters and the results are for all takers.

The comment also fears that the consent decree will relax standards in two areas—student-faculty ratios and library facilities—permitting new schools to be accredited, thereby injuring the 12 "second-level" ABA-approved schools in California. The consent decree, however, does not address library facilities, and simply requires that student-faculty ratio standards be reassessed by an unbiased group.

Professors Sullivan and Grimes also believe that the collection of salary data serves a number of legitimate and important functions. We agree, but believe it should be kept separate from ABA accreditation because of past abuses.[17] A school that attracts a higher-quality faculty at a lower cost should be rewarded in the marketplace and not punished in an accreditation inspection. Consequently, the proposed consent decree restricts the ABA from this activity for its 10-year duration. The comment properly points out that other organizations, without the incentives of this one, should be able to collect this information.

9. Bardie C. Wolfe, Jr. (Exhibit 15)

Bardie C. Wolfe, Jr. is a professor of law and the law library director at St. Thomas University School of Law in Miami, Florida. Professor Wolfe submitted comments about the ABA annual questionnaire and Standards. The ABA sends out a questionnaire each year seeking law school operations information. Professor Wolfe believes that the annual questionnaire section on library resources should include computerized, not just paper, collections. Otherwise, the ABA, in effect, forces law schools to purchase expensive books and other paper publications that are available in electronic form. Professor Wolfe also is concerned about the ABA Standards for law libraries. He advocates law school libraries sharing electronic resources through networks and the Internet. This would enable libraries to share expensive but little used titles. He would also like to see electronic resources held by other parts of the university counted as part of the law schools' resources.

It may be a laudable goal to decrease library expenses by sharing electronic information. But the issue of what resources libraries must have for student and faculty research implicates issues of educational policy, not antitrust issues and is outside the ambit of this case and the Tunney Act proceeding.

10. Marina Angel (Exhibit 16)

Ms. Angel is a professor of law at Temple Law School. Her comment was transmitted on October 16, two weeks after the close of the comment period.

Professor Angel complains that Section IV(A) of the proposed consent decree, prohibiting the collection of salary data, may prevent the enforcement of ABA Accreditation Standards 211–213 that prohibit discrimination. While Professor Angel does not state it, salary data showing apparent discrepancies between protected and other groups may be a basis for pursuing discrimination claims. The consent decree does not prevent law schools, however, from maintaining that data. Additionally, as Professor Angel has noted, Section V of the decree notes that nothing in the proposed decree prohibits the ABA from conducting a *bona fide* investigation of whether a law school is complying with its accreditation standards.

C. University Administrators

1. Bernard J. Coughlin, S.J. President of Gonzaga University (Exhibit 17)

Gonzaga University President Bernard J. Coughlin, S.J., believes that 40% of a site inspection team should be people who are not law school deans or law faculty. He further believes that the consent decree should mandate the Special Commission to consider whether to revise ABA practices regarding control of financial resources. Father Coughlin is concerned that the ABA gives law school deans and faculty too much control of financial resources contributed to or generated by the law school. Father Coughlin also expressed concern that the ABA's proposed decree notification did not identify the officer to whom comments should be sent.

The ABA accreditation process was captured by legal educators. Section VI of the decree is designed to remedy this problem. The decree requires that site teams include a university administrator not affiliated with the law school and other public members. It also requires that law faculty make up no more than 50% of the Accreditation Committee and Council. Together, these provisions will significantly open up the process. Requiring site teams to include more people who are not law faculty may make it difficult to fill the teams. Being a member of a site team involves a substantial amount of work.

Intra-university resource allocation raises issues of educational policy. The resources standard will be initially addressed by the Special Commission.

Finally, Father Coughlin expressed concerns about notification by the ABA. In accord with the Antitrust Civil Process Act, the Justice Department published the proposed Final Judgment and CIS in the **Federal Register** and newspapers, informing members of the public that they may submit comments to the Antitrust Division of the Justice Department. The ABA, on its own, individually notified presidents of universities with ABA-approved law schools of the proposed Final Judgment.

[16] We have the 1992 and 1993 California bar results, but not for 1994. The results do not show what percentage of graduates of each law school ultimately passed the California bar. We agree with the comment's observation that better qualified applicants generally will choose to attend an ABA-approved school because, among other reasons, graduation from an ABA-approved school is a bar prerequisite in most States. The range of pass rate in 1992 and 1993 for July first-time takers and all takers in February is:

[17] The dean of one very high salary law school criticized the ABA's persistence in obtaining his school's salary data, stating that obviously his law school's salaries were adequate and the ABA was using the salary data to "ratchet up" salaries at lower paying law schools.

The legal education community is now well acquainted with this case and the proposed Final Judgment.

D. Law Schools Not Approved by the ABA

The Department received three comments from law schools not approved by the ABA.[18] They are generally critical of the limited scope of the Final Judgment.

1. University of La Verne (Exhibit 18)

The University of La Verne ("LA Verne") is a law school accredited by the State of California but not approved by the ABA. While the California state court will admit graduates of California-accredited schools to its bar, most state bar admission rules require graduation from an ABA-approved school. First, La Verne believes that the consent decree does not restrain the ABA's support of bar admission or employer requirements that applicants graduate from ABA-approved law schools. Second, La Verne is concerned about the decree provisions relating to the physical facilities Standards and Interpretations. La Verne thinks that the ABA has required costly facilities in the past and is particularly worried that ABA Interpretations will continue to prohibit the leasing of law school facilities. Third, La Verne is opposed to the ABA's requirements about law library seating. Fourth, La Verne wants the Justice Department and Court to carefully review the Special Commission's proposals regarding calculating the faculty component of student-faculty rations. Fifth, La Verne fears that ABA inspection teams will use salary data available for other sources. Finally, La Verne believes that the ABA should ascertain the quality of law schools by measuring such outcomes as bar passage rates.

Preliminarily, we note that the consent decree is tailored to remedy the antitrust violations alleged in the Complaint: The ABA's acting as a guild for legal educators, and the resulting competitive distortion of the accreditation process. In addition, the decree is designed to remedy the four ABA accreditation practices that were alleged in the Complaint as Sherman Act violations. This is the purpose of a consent decree: to provide relief appropriate for the allegations in the Complaint. *Microsoft*, 56 F.3d at 1448, 1459.

La Verne's first concern, whether the ABA has encouraged States to require graduation from an ABA-approved school for bar membership, is outside the scope of charges in the Complaint and, consequently, is not addressed in the proposed Final Judgment. Moreover, in general, an organization's lobbying of state agencies is immune from antitrust liability under *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny. The fact that individual employers may require graduation from an ABA-approved law school is not itself an antitrust violation and is outside the scope of the Complaint and relief in this case.

Second, La Verne is concerned about the ABA's rules on facilities. As we alleged in the Complaint, while adequate physical facilities is a relevant factor in assessing an educational program's quality, the facilities standards may have been applied inappropriately to enhance working conditions for law faculty. The ABA's facilities standards and practices, like others addressed in Section IV(D) of the Complaint, raise what are, in essence, educational policy issues. Hence, under the decree, they have been initially referred for re-evaluation to the Special Commission.

Third, the issue of library seating is not raised in the Complaint and is, thus, not a part of this proceeding.

Fourth, with regard to the student-faculty ration issue, the Department has required that this question of educational policy be reconsidered through a process not infected by capture. The Department will carefully review the Special Commission's report.

Fifth, the consent decree expressly forbids the ABA from taking any actions that impose salary requirements or using law school compensation data in connection with the accreditation or review of any law school. Consequently, ABA inspection teams cannot use any such data, regardless of its source, without the defendant risking contempt sanctions.

Finally, outcomes, like bar review passage rates, may be a useful measure of educational quality. This is, however, an issue of educational policy, not an antitrust issue and is outside the matters alleged in the Complaint.

2. Reynaldo G. Garza School of Law (Exhibit 19)

Reynaldo G. Garza School of Law ("Garza") is a Texas law school that is not approved by the ABA. The Texas Supreme Court mandates that bar applicants be graduates of ABA-approved law schools. Garza complains that the proposed consent decree does not deal with the requirement that bar applicants be graduates of ABA-approved law schools and the effect of this Standard on graduates of unapproved law schools. Second, Garza alleges that the consent decree does not address the ABA requirement of a core library collection. Third, the decree does not address the ABA's requirement that law schools have a full time law librarian.

We respond by noting, first, that the decree was tailored to address the antitrust violations alleged in the Complaint. The Complaint does not challenge state requirements that bar applicants must graduate from ABA-approved schools. The actions of States are exempt from the antitrust laws under the "state action" doctrine announced in *Parker* v. *Brown*, *supra*.

The ABA Standards on core library collection and full-time librarian administrators are not challenged in the Complaint as antitrust violations and appear to involve solely questions of educational policy.

E. Graduates of Unapproved Law Schools

The United States received 13 comments from students and graduates of law schools that are not accredited by the ABA. Among the schools represented are Texas Wesleyan School of Law, the Commonwealth School of Law in Massachusetts, an unnamed state-accredited law school in Alabama, and five California schools: Western State University in San Diego; West Los Angeles School of Law; Glendale University College of Law; People's College of Law; and an unnamed law school. The majority of these comments describe the consequences of ABA accreditation for graduates of law schools not approved by the ABA.

Ten graduates and students criticized the rules in various States that require bar applicants to graduate from ABA-approved law schools only. They suggested that the consent decree abolish or weaken these rules. These graduates were: Deborah Davy (Western State University) (Exhibit 20); Joel Hauser (People's College of Law) (Exhibit 21); Wendell Lochbiler (West Los Angeles School of Law) (Exhibit 22); Larry Stern (Glendale College of Law) (Exhibit 23); Julie Ann Giantassio (Western State University) (Exhibit 24); Robert Ted Pritchard (enrolled in unnamed non-ABA approved law school) (Exhibit 25); Donald H. Brandt, Jr. (Texas Wesleyan University) (Exhibit 26); David White (Western State University) (Exhibit 27); Bill Newman (an unnamed unaccredited California law school) (Exhibit 28); and Russell R. Mirabile (school not named) (Exhibit 29).

[18] MSL's comment is responded to in Section IV.H.

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Ms. Davy, Mr. Pritchard, and Mr. Stern suggested that graduates of state-accredited law schools should be allowed to take any state's bar examination. Mr. Mirabile proposed waiving graduates of all unapproved schools into the bar. Mr. Brandt proposed eliminating the ABA's power to accredit law schools. Mr. Brandt alleges that his school, Texas Wesleyan University, was granted provisional ABA approval on the condition that it graduate its third-year class before receiving that approval. Hence, Mr. Brandt did not graduate from an ABA-approved law school.

The ABA does not itself set state bar admission criteria. Approximately 42 States require graduation from an ABA-approved school as a condition for sitting for the bar. Such state requirements fall within the "state action" immunity from antitrust prosecution recognized by the Supreme Court in *Parker* v. *Brown, supra*, and its progeny. Consequently, we did not and cannot address state bar admission requirements in the proposed Final Judgment.

Five comments discuss graduates of unapproved law schools being denied admission into advanced legal degree ("LL.M") programs at ABA-approved law schools. Ms. Davy contends that the ABA intrudes upon the discretion of the law schools and proposes amending the Final Judgment to make all individuals holding a Juris Doctor degree eligible for admission into ABA-approved LL.M. programs. Mr. Lochbihler explained that he was denied admission into a number of ABA-approved LL.M. and J.D. programs; each institution refused to accept a graduate of an unaccredited school. Mr. Stern said that he was denied admission into LL.M. programs because no ABA-approved school would consider him without risking its accreditation. Mr. White was recently denied admission to an LL.M. program at an ABA-accredited Florida law school. He claimed the school would not change its policy regardless of the consent decree. Mr. Brandt noted that has continued educational options have been limited, but did not describe these options.

Under the consent decree, the ABA may not bar a law school from enrolling a member of the bar or a graduate of a state-accredited law school in an LL.M. or other post-J.D. program. Previously, the ABA Standards had barred law schools from doing so. The decree permits individual law schools the discretion to admit whom they want in their graduate programs.

Five comments focus on the ABA's rules prohibiting approved schools from offering transfer credit for courses at unapproved law schools.

The author of one comment, who wished to remain anonymous, graduated from a state-accredited, but not ABA-approved, law school and is a member of the bar (Exhibit 30).[19] He wrote that the dean of an ABA law school in another State refused to grant credit for any of his courses. The dean was aware of the proposed Final Judgment. The author believes that the proposed Final Judgment should be modified to prevent approved schools from refusing to grant credit. Mr. Prichard described an admissions representative of an ABA-approved California law school who told him that the institution does not accept any credits earned at a non-ABA school. The admissions representative allegedly stated that the consent decree did not change this. Mr. Prichard advocates several modifications to the proposed Final Judgment, including requiring all law schools to sign the consent decree and mandating that all state-accredited law schools be automatically granted provisions approval by the ABA.

In his comment, Frank DeGiacomo proposes deleting from the proposed Final Judgment the phrase in Section IV(D)(2) that allows the ABA to require that "two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school." (Exhibit 31). Mr. DeGiacomo contends that the provision deters competition from non-ABA law schools. He alleges that ABA-approved schools have few seats for transfer students and that transfer applicants from unaccredited schools are viewed less favorably than students from ABA-approved law schools who are perceived as having achieved greater academic achievement.

James B. Healy submitted to the Government a background brief by himself and three other students detailing the closure of the unaccredited Commonwealth School of Law. The closure prevented them from graduating (Exhibit 32). The four unsuccessfully sought to transfer to 15 law schools with credit for their courses at Commonwealth. Mr. Healy inquires whether the students have any recourse. Finally, Mr. Mirabile believes ABA-approved schools should give complete credit for all work at unapproved law schools.

Under the consent decree, the ABA may not prevent ABA-approved schools from offering transfer credit for work successfully completed at a state-accredited law school. The decree allows the ABA to require that two-thirds of the credits required for graduation be successfully completed at an ABA-approved law school. As with the LL.M. programs, the decree leaves the choice of whether to offer transfer credits to the individual school. Some schools may choose to do so; others may not.

Mr. DeGiacomo proposes eliminating the requirement that two-thirds of the credits be completed at an ABA-approved law school and Mr. Mirabile proposes granting credit for all work at unapproved law schools. For reasons of educational policy, an accrediting agency may require that the bulk of an education be completed at the degree-granting institution. The two-thirds requirement allows the ABA to ensure quality control—the legitimate purpose of accreditation. The decree provision rests on the ABA's existing parallel rule for credit for courses completed at foreign law schools, a rule that did not so directly implicate the guild interests that distorted the rule for transfers from domestic schools.

In addition to comments about bar admission and LL.M. requirements, Mr. Stern pointed out that the ABA's student-faculty ratio rules that no rational application to educational quality because they excluded part-time faculty from the ratio. Evidence that anticompetitive purposes had distorted the formulation of the present student-faculty ratio rule was the basis of the Department's allegation in the Complaint. But low student-faculty ratios may ensure smaller classes and more student-faculty contact, desirable educational outcomes. Because of this, the Special Commission will have the first opportunity to address this educational policy issue.

F. Other Practicing Attorneys

The Justice Department received comments from five other practicing attorneys.

1. William A. Stanmeyer (Exhibit 33)

William A. Stanmeyer is a practicing attorney and former law professor. He commends the Justice Department for bringing this action. He believes that many of the ABA's Standards are irrelevant to quality legal education, sometimes vague, and often applied arbitrarily. Mr. Stanmeyer is troubled by outgoing ABA President George Bushnell's denial of any wrongdoing and fears that the ABA will resist real change.

[19] The author requested having his name and address withheld from the comment because he has an application pending with an ABA-approved law school. We have redacted this information in the copy of the comment filed with the Court.

The Justice Department agrees that some of the ABA's accreditation practices had little to do with quality. The decree is designed to remedy these problems. In terms of Mr. Bushnell's comment, a defendant is not required to admit to the charges in the Complaint as part of a settlement. This is one of the incentives to enter a decree instead of proceeding to trial. Finally, the Department expects that the contempt sanction will be sufficient to ensure that the ABA will abide by the decree.

2. Four Concerned Lawyers (Exhibit 34)

The Justice Department received an anonymous comment from "4 Concerned Lawyers." They congratulate the Department on the consent decree. They are concerned about having the ABA's Consultant on Legal Education, Jim White, reporting to the ABA's Executive Director, Bob Stein. They fear that friendship between White and Stein will prevent the latter from effectively supervising the former. Second, the four wish that the Justice Department would investigate the relationship between Consultant White and Indiana University, where he teaches, and examine the payment arrangements between them.

In response, we note, preliminarily, that the decree does not require the Consultant to report to the Executive Director. Moreover, there are strong incentives to ensure that the terms of the decree are carried out. Violations of the consent decree are punishable by contempt sanctions. In fact, the Consultant and Executive Director must sign annual certificates acknowledging this. In addition, the decree opens up the ABA's accreditation operations to more scrutiny. The Accreditation Committee, Council, and Standards Review Committee will have many members who are not affiliated with law schools. The payment antitrust concern or relate to the antitrust violations alleged in the Complaint.

3. Frederick L. Judd (Exhibit 35)

Frederick L. Judd is an attorney, certified public accountant, and a graduate of Brigham Young University ("BYU") law school. He fears that the ABA's requiring law schools to set schedules that limit the amount of time students can work excludes students who need to work to pay for law school. Mr. Judd wished to work as a C.P.A. while a full-time BYU student, but was prevented from setting up a class schedule that would enable him to work during the day.

The ABA's Standard limiting full-time students to 20 hours of work per week does not raise antitrust concerns or relate to the violations alleged in the Complaint. There may be strong educational policy reasons to limit students' work so they may devote more time to their studies.

4. Michael L. Coyne (Exhibit 36)

Michael L. Coyne is an attorney in private practice in North Andover, Massachusetts, and is also associate dean of MSL. In his comment, Dean Coyne complains about deposition testimony of former Accreditation Committee Vice Chairman Claude Sowle and ABA Consultant on Legal Education James White, taken by MSL in its private action against the ABA. Dean Coyne believes that their testimony about salaries is at odds with Paragraphs 15 and 16 of the United States' Complaint, in which we allege that the ABA collected salary data for peer schools and found that schools which paid salaries below the median were non-compliant. Dean Coyne says that Mr. Sowle testified in the private action that the ABA has not paid attention to geographic or competitive salary information for some time. He asks the Department to clarify whether this testimony contradicts documentary evidence held by the Justice Department.

Dean Coyne also seeks disclosure of materials that were obtained under the Antitrust Civil Process Act, 15 U.S.C. §§ 1311–1314. The Act imposes strict disclosure limits on the Government (15 U.S.C. 1313 (c) and (d), and the Government must comply with them.

The "Government's Opposition To MSL's Motion For Intervenor Status and For Determinative Documents And Materials," filed on October 10, 1995, addresses MSL's request for documents in more detail. Were the Court to order production of the documents, there would be a substantial chilling effect on the Department's work. Defendants would be less willing to enter consent decree because they would fear it would lead to the production of their documents. MSL has a private action against the ABA and has sought discovery in that action. That is the proper forum for MSL's discovery requests.

Dean Coyne also attached pages 207–08 of Mr. Sowle's testimony to his comment. On those pages, Mr. Sowle admitted that the Accreditation Committee considered how salaries paid by a school compared to those paid by its peers. Dean Coyne's concern as to the substance of the deposition testimony regarding the use of salary information does not seem directly relevant to the issue in this APPA proceeding. That issue is whether entry of the proposed consent decree is in the public interest. Regardless of the testimony, the relief proposed adequately deters the defendant from using the accreditation process to fix salaries.

5. Jackson Leeds (Exhibit 37)

Mr. Leeds believes that the consent decree will allow state courts to violate antitrust laws in regulating admissions to the bar.[20] Mr. Leeds believes that the New York Court of Appeals wrongly requires law schools to be approved by the ABA, American Association of Law Schools, or the New York State Department of Education. Moreover, Mr. Leeds apparently requested from the City University of New York Law School at Queens College ("CUNY") a copy of the ABA's site inspection report for CUNY. CUNY apparently refused because distribution of the report is limited to those authorized to receive it by the ABA's Council of the Section of Legal Education. Mr. Leeds also is upset that CUNY admits students with low traditional indicators (test scores and GPAs), and claims that CUNY does not enforce class attendance policies.

In response, the Justice Department notes that, under *Parker* v. *Brown, supra*, and its progeny, the actions of the state courts in determining bar admissions or in approving law schools are immune from antitrust prosecution. CUNY's apparent refusal to give Mr. Leeds the inspection report, CUNY's admissions standards, and its class attendance policies do not raise antitrust issues and are not related to the subject matter of the Justice Department's Complaint in this action.

G. Members of the General Public

The Justice Department received comments from three individuals whom we cannot identify as being in any of the preceding categories.

1. Robert Reilly (Exhibit 38)

Robert Reilly is concerned about practicing lawyers who are graduates of unapproved law schools but who are unable to practice in many States because those States require graduation from ABA-accredited law schools. Mr. Reilly believes that the States impose this requirement to limit competition and to deny graduates of unapproved law schools the ability to practice law in the place they wish to live.

State bar admission requirements restricting bar membership to graduates of ABA-approved schools may limit competition, but they cannot be

[20] It is not entirely clear that Mr. Leeds is a practicing attorney. His letter indicates legal training and, hence, we have classified him here as such.

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challenged under the antitrust laws because of the "state action" immunity doctrine announced by the Supreme Court in *Parker* v. *Brown*, *supra*. Consequently, such requirements are beyond our enforcement jurisdiction.

2. Robert W. Hall (Exhibit 39)

Robert Hall, President and Director, Hawaii Institute for Biosocial Research, expressed dissatisfaction with the proposed Final Judgment, primarily because he believes that it does not remedy the ABA's role in "anticompetitive admissions processes required by the ABA in the accreditation process." In particular, he criticized the control of the Law School Admissions Council ("LSAC") by ABA-approved law schools. He does not believe that law schools should use the LSAC's aptitude test (the "LSAT") in the admissions process.

While the ABA's Accreditation Standards require that law schools use the LSAT, or a comparable aptitude test, we do not know that the ABA requires law schools to maintain median LSAT scores. The ABA's requirement appears consistent with Department of Education regulations mandating that accrediting agencies require that accredited schools employ a suitable aptitude test to screen applicants. Whether the LSAT, or any other test, is a reliable indication of an aptitude for a field of study seems to involve educational, not antitrust, policy questions. This issue is also not raised in the Complaint.

Mr. Hall also criticized the domination of the law school accreditation process by insiders and the lack of public involvement in the accreditation process. We recognize this problem and the consent decree remedies it by introducing more people outside of legal education into the accreditation process and by setting term limits for members of the committees that oversee law school accreditation. Mr. Hall further believes that the insider status of some members of the Special Commission may have the effect of putting the fox in charge of the chicken house. The proposed consent decree answers this, too, by requiring that the ABA's Board of Governors review the Special Commission's findings. Additionally, the Justice Department may challenge the Special Commission's recommendations in this case.

Mr. Hall further believes that the ABA has boycotted any law school that does not have small classes for at least some part of its total instructional program. He believes it will be costly for a proprietary school to offer small classes. In response, we note that the size of classes usually raises issues of educational policy. An accrediting agency may require some small classes so students benefit from greater teacher contact.

Finally, Mr. Hall criticizes the ABA Interpretation requiring law schools to have facilities that are owned rather than leased. He points out that this may be a problem in areas where land and buildings are extremely expensive. In response, the Justice Department notes that the decree is tailored to the antitrust violations alleged in the Complaint. The ABA is not charged with violating the antitrust laws by virtue of all of its facilities standards, including its rules regarding leased facilities or their implementation.

3. Amrit Lal (Exhibit 40)

Amrit Lal wrote to congratulate the Justice Department on the consent decree. Dr. Lal believes that state bar examiners allegedly manipulate bar exam results to limit bar admissions. The Supreme Court, in *Hoover* v. *Ronwin*, 466 U.S. 558 (1984), held that the state action immunity doctrine protected one state supreme court's bar admissions restrictions from an antitrust claim that made similar allegations. Dr. Lal also alleges that the Pennsylvania Board of Law Examiners discriminate on the basis of age, ethnic identity, and national origin. These concerns do not relate to the matters alleged in the Complaint.

H. Massachusetts School of Law (Exhibit 41)

MSL has filed a massive 83-page comment with an Appendix and about 400 pages of Exhibits. MSL previously filed an Intervention Motion that both parties oppose. MSL was denied accreditation by the ABA in 1994 and has filed an antitrust case against the ABA in the Eastern District of Pennsylvania. Last month, MSL filed a second action against the ABA in a Massachusetts state court, alleging unfair competition, fraud, and other matters. MSL's comment recommends numerous changes in the proposed Final Judgment, the delay of its entry, and the vast production of documents and materials from the Justice Department's investigatory files. The Government opposes the requested modifications and recommends no delay in the entry of the Final Judgment. We also oppose MSL's "discovery" request, believing that it is particularly inappropriate to grant discovery collaterally in an APPA proceeding to a party whose discovery requests have been denied in its own litigation.

1. Capture

MSL does not believe that the proposed consent decree adequately remedies the "capture" of the ABA accreditation process by the group that benefited from it. MSL suggests, as more effective remedies, requiring the ABA to choose "procompetitive" nominees for the Council and Committee (MSL provides the names of 21 possible nominees), and banning any members of the "insider" group (MSL lists about 47 "insiders" and about 32 of their "helpers") from further participation in accreditation. It urges that the decree should ban "the ABA from violating the Sherman Act through use of its other accreditation criteria to achieve anticompetitive purposes." Comment, p. 11. The Government believes that it is inappropriate for it or the Court to micromanage the defendant's accreditation activities to require that certain people be designated to participate in accreditation and others prohibited. Such relief would be extraordinary and unique among consent decrees. Enjoining the ABA from violating the Sherman Act in its application of its remaining accreditation criteria is at the other extreme—so vague as to add little effective relief. This is because such a provision requires a Rule of Reason trial just to enforce a contempt action. The consent decree's limits on law school faculty participation on governing committees, the required involvement of "outsiders" on site inspections, and the close involvement of the ABA's Board, itself undoubtedly independent from accreditation "insider" control, are reasonable measures to eliminate the capture of the accreditation process.[21]

MSL claims that the ABA has violated the consent decree by adding an extra academic to the Section of Legal Education's Nominating Committee and that the new data questionnaire circulated by the ABA to law schools requests data from which average and, possibly, individual salaries can be calculated is in violation of the decree. Our information, however, is that no additional academics have been added to the Nominating Committee since the decree was filed, and that the event that MSL describes took place last year. The 1995–96 Nominating Committee has one legal educator.[22] As to the data

[21] The ABA's Board, independent of consent decree requirements, has also required the Consultant of the Section of Legal Education to report to the ABA's Executive Director.

[22] The Nominating Committee members are a California practitioner, a law school librarian, a university president (who is a former law school dean), a Nebraska practitioner, and a non-lawyer public member. The term of the individual mentioned by MSL expired last summer.

[23] Only two of the Commissioners are listed in MSL's enumeration of the 79 "insiders" and "helpers" group. Comment, p. 6 n.4.

questionnaire, our understanding is that average salaries cannot be calculated, except in the most gross fashion, and that individual salaries cannot be calculated in any fashion from the data being collected. Moreover, the aggregated salary expense data the ABA collects is not given to the Accreditation Committee, the Council or members of site teams, and is not used in connection with law school accreditation. The Justice Department does not object to the collection of this data as long as it cannot be disaggregated.

2. Secrecy

MSL points out that the ABA's accreditation Standards and Interpretations are often quite general. Their content has been supplied by the enforcement process and by the policies followed by enforcement officials. MSL believes that a simple cure for monitoring the ABA's actual accreditation practices would be to require that all documents created during the accreditation process be made public.

The proposed Final Judgment does require the defendant to publish annually the names of those who participate in domestic and foreign site inspections and the schools inspected. Additionally, the Council must report to the Board all schools under accreditation review and the reason the law schools are still under review. The Council must also approve and the Board review all annual and site inspection data questionnaires sent to law schools. Our interviews indicated that some individuals thought that schools and site inspectors might be inhibited in some respects if their free exchange of views during the accreditation process were made public. Since this appears to be a matter implicating legitimate accreditation process concerns, the Government was reluctant to include total disclosure as required antitrust relief.

3. The Special Commission

MSL attacks the composition of the Special Commission, claiming that they were appointed by the two immediate past Chairmen of the Council and that at least 8 of the 15 commissioners "are part of the heart and soul * * * or are closely tied to the capturing inside groups."[23] Comment, p. 20. While many of the members of the Special Commission have had close ties to the ABA and its accreditation activities, its membership is six legal academics (including one well-known critic of ABA accreditation), two judges, one university president (a past ABA president and Council Chair), five practitioners (including one critic of ABA accreditation), and one public member (the president of the League of Women Voters). The Special Commission had been established by the ABA, prior to settlement negotiations with the Government, to make a comprehensive review of the ABA's accreditation of law schools. The Government will closely examine its report. The proposed decree leaves matters that have legal educational policy implications to the Special Commission. The ABA had initiated the Special Commission in response to criticisms prior to the filing of the Department's case and it is reasonable to give the first opportunity to address these policy interests to the Commission. The Special Commission's recommendations are subject to the approval of the ABA's Board. The Government may challenge any proposal with respect to the six subjects enumerated in the proposed consent decree.[24] The Government expects that it and the defendant will resolve any differences that may develop so that court involvement in the process will be unnecessary.

MSL claims that this process involves lengthy delays, possibly 15–18 months, and requests that either the Court delay entry of the decree until the Special Commission's report is adopted and approved by the Board and Justice Department, or that the Court should allow third parties the opportunity to comment.

While we do not expect anything so lengthy as a 15–18-month delay, entry of the decree should occur now.[25] The decree has established a reasonable, defensible remedy to treating the allegations in the Complaint. Specific practices that clearly violate the antitrust laws and cannot be justified on educational policy ground have been immediately enjoined. The process that produced these and other accreditation rules is in the process of reformation, with the initial work being done by the ongoing Special Commission, subject to later approval by the ABA Board and Justice Department.

The public has had the opportunity to comment on the subject areas referred to the Special Commission and some, including MSL, have. Certainly, if third parties have comments or complaints about the Special Commission's report, which will be made public, the Justice Department welcomes and will consider those comments.[26] We have often initiated judgment enforcement proceedings based on information from third parties. Public comments will be valuable in forming our response and in our discussions with the defendant after the Special Commission's report.

MSL claims that use of the Special Commission circumvents the Tunney Act. The consent decree establishes a process rectifying the conduct alleged in the Complaint. The public has had the opportunity to comment on the process as well. The Department will welcome comments when the Special Commission's report is public. In the unlikely event the two parties cannot reconcile differences on the Special Commission's report, the proposed consent decree provides that the Court will resolve the Government's challenge, applying a Rule of Reason analysis.

MSL believes that such a challenge should be decided under a "quick look" analysis. In a recently decided case, however, the Third Circuit remanded for a Rule of Reason analysis a district court decision that had applied a "quick look" analysis where elite Northeastern universities fixed the *price* charged to commonly-admitted students who also received financial aid. *United States* v. *Brown University, et al.*, 5 F.3d 658 (3rd Cir. 1993). The subjects referred to the Special Commission do not directly restrain price and do not seem as appropriate for a "quick look" analysis.

MSL also comments on some of the topics on which the Special Commission will report. It notes that the student-faculty ratio standard has been applied by the ABA against law schools to require the employment of the capturing group—full-time legal theorists—and discourages the use of judges and practitioners.

The proposed consent decree left the initial recommendation regarding the correct use of student-faculty ratios to the Special Commission for several reasons. Student-faculty ratios are generally regarded as a useful legitimate accreditation tools, as is the requirement of a core full-time faculty. The Government expects that the Special Commission and the ABA Board will suitably assess the continuing utility of student-faculty ratios in a manner that

[24] The six subjects are a small part of the Special Commission's entire report.

[25] The decree can be entered once the comments and the Response have been published in the Federal Register and the Government has certified to the Court compliance with the APPA.

[26] Only a few of the 41 comments discuss the Special Commission.

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does not skew the outcome to promote guild interests.

MSL also criticizes the ABA's use of the vague facilities accreditation standards to micromanage law schools and to require the construction of what it terms "Taj Mahal" law school facilities. The use of this standard to enhance unnecessarily full-time faculty working conditions is an appropriate concern. Since adequate facilities can be clearly related to educational quality, but the construction of unnecessary facilities imposes costs on universities and state governments, the Special Commission should have the opportunity to recommend a standard and practice that will consist wholly of legitimate educational concerns.

4. "Procedural" Matters

MSL believes that the proposed relief is inadequate to eliminate the capture problem. MSL anticipates that the ABA will claim that it was not "feasible" to include practitioners to staff 6–7 person inspection teams and staff them with insiders.[27] The proposed consent decree does require that the composition of site teams be made public. This will make it easier for the public, and the Government, to see if the defendant is living up to its obligations under the decree. MSL raises the specter of other possible abuses by a Legal Consultant intent on evading, at a minimum, the spirit of the consent decree. The decree cannot address all possible outcomes, but a systematic evasion of its mandate is cause for a contempt hearing. On balance, the decree makes a reasonable effort to eliminate capture of the accreditation process while preserving the ABA's ability to perform legitimate and important accreditation work. This case has also captured the attention of the ABA's leadership, which has personal and economic incentives to avoid a repetition of the conduct that caused the United States to bring this suit.

5. Reliance on ABA Leadership

MSL doubts that the ABA's leadership can be trusted to effect changes in the accreditation process, relying, in particular, on the ABA's outgoing president's statement denying antitrust liability. A value of the consent decree process is that it permits the Government to obtain effective and immediate relief that the defendant may accept in part because it does not require an admission that can be used collaterally. Whether the defendant believes it has violated the antitrust laws is not as important as whether it intends to comply with the decree. Further, unlike defendants in most antitrust cases, the ABA's leadership did not economically benefit from the conduct alleged in the Complaint, nor, perhaps, did the ABA itself. Benefit accrued to legal academics in the Section of Legal Education, not ABA leaders who have an economic incentive to avoid conduct that may be costly to their organization. The leadership adopted changes and entered this decree over the apparent opposition of the leadership of the Section of Legal Education.[28] MSL's recitation of ABA antitrust "insensitivity," involving far different subjects several decades ago, is of little relevance.

6. ABA Antitrust Compliance Officer

MSL also objects to the provision of Section VIII of the proposed Final Judgment that requires an antitrust compliance program, including the appointment of an antitrust compliance officer. Compliance programs have been a fairly standard provision in civil antitrust cases brought by the Government and settled by consent decrees since the *Folding Carton* case in the late 1970s.[29] The compliance program is, if anything, somewhat more rigorous than in other consent decrees.

We expect that the ABA's General Counsel will be named as the compliance officer. This, too, typically occurs in Government antitrust consent decree proceedings. We know of no case in which the "identity, professional background and views of the Compliance Officer" was an issue in an APPA proceeding. Clearly, since the compliance officer may be required to provide advice to the defendant's officials, one cannot expect the compliance officer to be one chosen by MSL.

MSL claims that it is "an incomprehensible lacuna" for the proposed consent decree not to give the antitrust compliance officer "supervisory responsibilities" with respect to the Special Commission. But, we see no there, there. The Special Commission's charge is to reconcile the educational policy questions in the six subjects it is to report on. While it may be seeking antitrust advice, there is no reason why its work, which also includes a comprehensive review of law school accreditation, must be supervised by the antitrust compliance officer or why that should be required by the Court.

MSL also claims that the Department of Education's review of ABA accreditation "has been wholly ineffective to date in assessing quality." It believes that Section VI(L) of the proposed consent decree may be related to that claimed failure by the Department of Education.[30] MSL concludes that "it is perplexing that the Antitrust Division would now rely on the DOE as a vehicle for assuring quality or for precluding self-interested conduct." Comment, p. 58. The justice Department disagrees with MSL's statement about the Department of Education and has no doubt that the Department of Education has carried out its mandate under the Higher Education Act. MSL's claims does not relate to whether entry of the proposed Final Judgment is within the reaches of the public interest, the issue now before the Court.

7. MSL Discovery Requests

MSL's comment restates the arguments made in its September 26 Intervention Motion for discovery of the Government's investigative files. As its first ground, MSL contends that it is entitled to discovery of a "wide spectrum of documents, evidence, memoranda and other evidence that can be determinative" under § 16(b) of the APPA. The APPA calls for the Government to file "materials and documents *which the United States considered determinative in formulating* [the proposed consent decree]" (emphasis added). Usually, there are no such documents and there were none in this proceeding.[31]

MSL again heavily relies on *United States v. Central Contracting Co.*, 537 F. Supp. 571 (E.D. Va. 1982). since *Central Contracting* was decided, however, two courts in this District have rejected requests for documents not identified by the United States as "determinative." *United States v.* LTV Corp., 1984–2 Trade Cas. (CCH) ¶66,133 at 66,335 n.3, *appeal dismissed*, 746 F.2d 51, 52 (D.C. Cir. 1984); *United States v.* Airline

[27] There is no requirement that the size of inspection teams be that great. ABA inspection teams have doubled in size over the past 20 years.

[28] Within a month of the filing of the consent decree, the chairpersons of the Council and Accreditation Committee had resigned, sharply criticizing the settlement.

[29] *U.S. v. Alton Box Board Co.*, 1979–2 Trade Cas. (CCH) ¶62,992 (N.D. Ill. 1979). The then-Assistant Attorney General of the Antitrust Division described the antitrust compliance program as "innovative provisions that add a new dimension to . . . (a) recent emphasis on preventive antitrust." P. 1, *Legal Times of Washington*, July 9, 1979.

[30] MSL's venturing into unrelated subjects and gratuitous attacks on a Cabinet agency is further reason why it should not have party or *amicus curiae* standing in this proceeding.

[31] The Government attached three documents as exhibits to its Memorandum Opposing Intervention that, while not "determinative," were relevant to the proposed consent decree since they showed the ABA was reforming its accreditation of law schools before settling this case.

Tariff Pub. Co., 1993–1 Trade Cas. (CCH) ¶70,191 at 69,894. MSL attacks at great length the Government's certification in most APPA proceedings that there were no 16(b) "determinative" documents. All of the APPA proceedings were court-supervised and the courts entered the consent decrees. The Government previously briefed this issue and incorporates that brief by reference.[32]

As a second prong for discovering the Government's investigative files, MSL claims that 16(e) of the APPA provides for such discovery in the public interest when there is ". . . a need to protect the interests of injured parties by making available to them documents and information gathered by the Government that will 'assist in the effective prosecution of their claim.'" Comment, p. 68. Of course, no court has ordered such discovery in the 20-year history of the Tunney Act and none of the other 40 comments in this proceeding requested such discovery. MSL's stated purpose for its request is improper—to intrude into the Government's deliberative process to second-guess its use of prosecutorial discretion. Nor should MSL be able to use the APPA proceeding here to obtain discovery it was denied in its pending case against the ABA in the Eastern District of Pennsylvania. The discovery sought by MSL goes far beyond the limited purpose of an APPA proceeding, which is the review of the decree itself, not a review of the actions or behavior of the Justice Department.

MSL's attempt to obtain discovery under 16(e) should be denied for a number of reasons. MSL should not use this proceeding to obtain discovery it was unable to gain in its two pending cases against the ABA. If anything, the APPA was designed to protect injured parties who are uninformed as to the source of their injury, not disappointed litigants. The purpose MSL states for its discovery request goes well beyond the limited purpose of an APPA proceeding and no court has required such production under § 16(e). Additionally, requiring the production of investigative files will harm the public interest by discouraging other antitrust defendants from entering into consent decrees, and will make more difficult compliance with CIDs during Antitrust Division investigations.

[32] At pages 11–20 of our October 10 Memorandum opposing intervention, we briefed the Court on the § 16(b) determinative documents requirement.

8. Non-Decree Matters

In its comment, MSL requests the Government to give further consideration to three subjects outside the Compliant and proposed Final Judgment. The subjects are the accreditation requirements that substantially all law school first-year courses be taught by full-time faculty, the prohibition against full-time law students working more than 20 hours per week, and the library facilities and core collection requirement. MSL correctly recognizes that these matters are outside the scope of this APPA proceeding. *Microsoft*, 56 F.3d at 1459–60.

Conclusion

For these reasons, the Court should enter the consent decree upon the Government's certification to the Court of compliance with the APPA.

Dated: October 27, 1995.

Respectfully submitted,

D. Bruce Pearson,
Jessica N. Cohen,
James J. Tierney,
Molly L. Debusschere,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, DC 20001, Tel: 202/307–0809, Fax: 202/616–5980.

Certificate of Service

On October 27, 1995, I caused a copy of "United States' Response To Public Comments" to be served by hand-delivery upon:

David L. Roll,
Richard L. Whiting,
Roger E. Warin,
Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036

and by Federal Express upon:

Ronald S. Flagg, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006
David T. Pritikin, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603
Darryl L. DePriest, 541 N. Fairbanks Court, Chicago, Illinois 60611
D. Bruce Pearson

In the United States District Court for the District of Columbia

[Civil Action No. 95–1211 (CRR)]

United States of America v. American Bar Association.

United States' Response To Public Comments; Exhibits

Exhibits

Comment of Association of Specialized and Professional Accreditors ("ASPA")
Comment of National Office for Arts Accreditation in Higher Education
Comment of Association of Collegiate Business Schools and Programs ("ACBSP"
Comment of American Library Association ("ALA")
Comment of Bernard Fryshman
Comment of Accrediting Bureau of Health Schools, Accrediting Council of Continuing Education & Training, Accrediting Council for Independent Colleges and Schools, and National Accrediting Commission of Cosmetology Arts & Sciences ("Four Agencies")
Comment of Clinical Legal Association ("CLEA")
Comment of Howard B. Eisenberg
Comment of John S. Elson
Comment of Jeffrey L. Harrison
Comment of Gary H. Palm
Comment of Millard H. Ruud
Comment of Roy T. Stuckey
Comment of Lawrence A. Sullivan and Warren S. Grimes
Comment of Bardie C. Wolfe, Jr.
Comment of Marina Angel
Comment of Bernard J. Coughlin, S.J., Gonzaga University
Comment of University of La Verne
Comment of Reynaldo G. Garza School of Law ("Garza")
Comment of Deborah Devy
Comment of Joel Hauser
Comment of Wendell Lochbiler
Comment of Larry Stern
Comment of Julie Anne Gianatassio
Comment of Robert Ted Pritchard
Comment of Donald H. Brandt
Comment of David White
Comment of Bill Newman
Comment of Russell R. Mirabile
Comment of an Author to remain Anonymous
Comment of Frank DeGiacomo
Comment of James B. Healy
Comment of William A. Stanmeyer
Comment of "Four Concerned Lawyers"
Comment of Frederick L. Judd
Comment of Michael L. Coyne
Comment of Jackson Leeds
Comment of Robert Reilly
Comment of Robert W. Hall
Comment of Amrit Lal
Comment of Massachusetts School of Law ("MSL")
Proposed modification to consent decree
December 5–6, 1994 Staff Analysis

Association of Specialized and Professional Accreditors

September 25, 1995.

John F. Greaney, Chief,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW.—Room 9903, Washington, DC 20001

Dear Chief Greaney: The Association of Specialized and Professional Accreditors (ASPA) appreciates the opportunity to provide comment on the issues and actions proposed to settle the antitrust suit of the United States of America against the American Bar Association, filed June 27, 1995, as Civil Action No. 95–1211(CR). A list of ASPA's 40 member specialized and professional accreditng agencies is enclosed.

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ASPA does not presume legal expertise in this case, but does see and wishes to comment on the potential impact of the proposed settlement on accreditation theory and practice as it affects the education of students and the improvement of institutions and programs. ASPA does not take issue with prohibitions against the use of accreditation to establish specific dollar figures for compensation paid to faculty, administrators or other employees. ASPA has no comment regarding settlement terms associated with transfer of credit based on the profit or not-for-profit status of an institution.

ASPA supports the principle of a free and open market in the education arena and believes that educational quality should be pursued in ways that promote such a free market. After careful reading of the Competitive Impact Statement filed on July 27, 1995, ASPA concludes that the Department of Justice, in its interactions with the American Bar Association, has gone beyond the identification and remediation of specific problems and has created theories and potential precedents that could do serious damage to educational quality and to the practice of accreditation. ASPA's comments are intended, in part, to help reduce the unintended consequences that are likely to result if the proposed Final Judgment is not modified prior to being finalized.

1. The document, in its tone, equates the presence of expertise with the automatic capture of a field against the public interest, long service with conflict of interest, and confidentiality with collusion for sinister purposes.

We believe that in the vast majority of cases, expertise helps to build and maintain excellence and the kind of progress that creates and sustains a free market. Long service contributes to the development of expertise, wisdom and consistent application of standards and criteria in the accreditation process, as in other situations. Surely this is one reason that most judges are appointed for life. Likewise, appropriate confidentiality enables serious and honest reviews of institutions and programs by minimizing superficiality and the defensiveness that are often imposed by public relations considerations when deliberations are not confidential.

2. In a data-based society, it is excessive and inappropriate to prohibit the collection or dissemination of data by an accrediting agency or professional association.

The Justice Department has identified a problem with the particular uses of data. The identified problem does not focus on the existence of the data or the fact of its collection. Accrediting agencies and affiliated professional associations collect and publish data as a resource. That collection does not seem to be an antitrust issue, or if so, it extends beyond accreditation into other higher education arenas. The settlement, in our view, can appropriately focus on the appropriate use of data, while not focusing on or limiting its existence or generation.

3. To prohibit any use of compensation and similar data could create a chilling effect on self-assessment and other benign practices.

A truly comprehensive review of all elements involved in the work of a particular university or program can require the use of compensation and other similar data. There is a clear distinction between using statistics to set salary and similar requirements and using such statistics (along with other data) in local management decisions. Data facilitate comparisons of performance against a school or program's mission, goals and objectives. To restate, the focus of the Competitive Impact Statement should be to limit the inappropriate use of data, not any use.

4. The proposed final judgment inappropriately imposes specific numerical requirements on:

a. the composition of various decision-making bodies.

The specific numbers outlined in the Competitive Impact Statement will not in-and-of-themselves ensure either a free market or educational quality, nor will any other set of numbers. We are not aware of any validity and reliability study proving that the presence of professionals or public members in certain proportions changes the values of an accrediting agency, increases fairness or integrity, or brings about true representation of a profession or the public as a whole.

While we strongly favor the presence of professional expertise and public oversight in accreditation activities, we believe that the federal government should not dictate particular distributions, especially as this could be viewed as an attempt to use precedent to set national policies in these areas.

b. the length of terms of office.

When volunteers who serve on decision-making bodies or accrediting teams are prevented by stringent term-limits from developing sufficient experience or expertise, agency staff can have a disproportionate influence on the accreditation process. While we favor appropriate limits on terms, such limits are best set by the agencies themselves. There is no evidence that suggests that shorter terms promote the Department of Justice's antitrust and free-market objectives.

c. the size and composition of accrediting teams.

If extrapolated over the accreditation community as a whole, the effect of such stipulations on size and composition of site visit teams could increase the cost of accreditation site visits by as much as 200%-to-300% with little benefit except for the symbolic value of representation. An accrediting agency must have appropriate standards, well-trained volunteer personnel, and written policies and protocols that are consistent with free-market objectives. However, when an agency has such mechanisms in place, it is wasteful and unnecessary to require participation formulas that are based on place of work.

5. The specified appeal and reporting requirements between the ABA's Accreditation Committee, Council and Board of Governors appear to directly conflict with the U.S. Department of Education's requirement for increased separation and independence of the accrediting arm from the professional association.

Section 602.3(b)(1)–(3) of the USDoE's Procedures and Criteria for Recognition of Accrediting Agencies requires accrediting agencies with gatekeeping responsibilities to maintain an arm's length "separate and independent" distance from their professional associations (see enclosure). In addition, another section of the DoE Criteria requires that accrediting agencies must not report to their professional associations any accreditation information that is not also reported to the public. Thus, accreditors are faced with two different points of view and with conflicting requirements. It is our contention that oversight by a larger or parent body will neither automatically create nor prevent conflict of interest.

6. Annual publication of schools visited and their site visitors would bring accreditation personnel decisions into a public relations context, damage important conditions of confidentiality and overemphasize the role of site visitors in the final accreditation decision.

Settlement terms such as this publication requirement are likely to reduce volunteer participation in accreditation, especially by distinguished individuals from prestigious institutions. We see no linkage between this concept and the maintenance of a free market. We do see a number of harmful, probably unintended, side effects.

7. Taken together, the issues raised in 1–6 above will produce a climate and create doctrine and precedents that will offer incentives for fraudulent institutions and programs to use a kind of "antitrust terrorism" against accrediting agencies.

Under the consent decree proposed by the Department of Justice, an institution engaged in unfair or even illegal hiring and compensation practices could not be questioned by an accreditor, using data, without being threatened with an antitrust action.

In summary, ASPA believes that the Department of Justice, in its zeal to pursue perceived antitrust violations, has gone beyond what is necessary. In doing this, inappropriate indicators of compliance were designed. If accepted, these indicators could be extremely destructive to the legitimate efforts of accrediting agencies to consider the full range of available information and to work to deploy a wide range of expertise in the service of higher education and the public.

Accrediting agencies are expected to identify the problems an institution or program has in complying with the accreditation standards but are not expected to dictate how those problems should be addresses as that is the prerogative of the specific institution or program. In a similar way, ASPA asks that the Justice Department identify the problems of concern and ask the specific agency, in this case the ABA, to develop and defend a solution. The Justice Department should not dictate the solution, especially in light of the potentially harmful consequences that are likely to extend beyond this particular case to the broader arena of accreditation and higher education. For this reason, ASPA asks that prior to final filing the Final Judgment be shortened and focused to address only those practices that directly produce anticompetitive conditions.

We appreciate the opportunity to submit these comments and would also appreciate any opportunity to discuss these matters with you more fully.

Sincerely,

Milton Blood,

Chair, ASPA, Director of Accreditation, American Assembly of Collegiate Schools of Business.

cc: Members, ASPA Board of Directors
ASPA-member Accrediting Agencies
Regional Accrediting Agencies
Cynthia A. Davenport, ASPA Executive Director

Enclosures:
ASPA-Member Accrediting Agencies
DoE *Criteria* § 602.3 re: Separate and Independent

MB/cd

ASPA Membership Roster

1. Acupuncture: National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSAOM)
2. Allied Health: Commission on Accreditation of Allied Health Education Programs (CAAHEP)—CAAHEP serves as an umbrella agency for 17 separate allied health Committees on Accreditation (CoAs)
3. Architecture: National Architectural Accrediting Board, Inc.
4. Art & Design: National Association of Schools of Art and Design
5. Business: American Assembly of Collegiate Schools of Business (AACSB)
6. Chiropractic: Commission on Accreditation for the Council on Chiropractic Education
7. Clinical Laboratory Science: National Accrediting Agency for Clinical Laboratory Sciences (NAACLS)
8. Computing Sciences: Computing Sciences Accreditation Board, Inc.
9. Construction: American Council of Construction Education
10. Counseling: Council for Accreditation of Counseling and Related Education Programs (CACREP)
11. Dance: National Association of Schools of Dance (NASD)
12. Dentistry: Commission on Dental Accreditation, American Dental Association (CDA/ADA)
13. Dietetics: Commission on Accreditation/Approval, American Dietetic Association (CAADE/ADA)
14. Engineering: Accreditation Board for Engineering and Technology, Inc. (ABET)
15. Forestry: Society of American Foresters
16. Health Education: Accrediting Bureau of Health Education Schools (ABHES)
17. Home Economics: American Association of Family and Consumer Science
18. Interior Design: Foundation for Interior Design Education Research (FIDER)
19. Journalism: Accrediting Council—Journalism and Mass Communication (ACEJMC)
20. Landscape Architecture: American Society of Landscape Architects
21. Librarianship: American Library Association (ALA)
22. Music: National Association of Schools of Music (NASM)
23. Nuclear Medicine: Joint Review Committee (JRC) in Nuclear Medicine Technology
24. Nurse Anesthesia: Council on Accreditation of Nurse Anesthesia
25. Nursing: National League for Nursing, Inc. (NLN)
26. Occupational Therapy: American Occupational Therapy Association (AOTA)
27. Optometry: Council on Optometric Education, American Optometric Association
28. Pharmacy: American Council of Pharmaceutical Education (ACPE)
29. Physical Therapy: American Physical Therapy Association (APTA)
30. Planning (City & Regional): Planning Accreditation Board
31. Podiatry: Council on Podiatric Medical Education, American Podiatric Medical Association (APMA)
32. Psychology: American Psychological Association (APA)
33. Public Health: Council of Education for Public Health
34. Public Affairs: National Association of Schools of Public Affairs and Administration
35. Radiology: Joint Review Committee (JRC) in Education in Radiologic Technology
36. Recreation & Parks: Council on Accreditation, National Recreation and Park Association (NRPA/AALR)
37. Rehabilitation Counseling: Council on Rehabilitation Education (CORE)
38. Speech-Language-Hearing: American Speech-Language-Hearing Association (ASHA)
39. Teacher Education: National Council for Accreditation of Teacher Education (NCATE)
40. Theatre: National Association of Schools of Theatre (NAST)

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840–AB82

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Secretary's recognition of accrediting agencies in order to implement provisions added to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993. The purpose of the Secretary's recognition of accrediting agencies is to assure that those agencies are, for HEA and other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

Note: "Separate and Independent" issues are addressed in Section 602.3 below. See the specific definition in subsection (b).

§ 602.3 *Organization and membership.*

(a) The Secretary recognizes only the following categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991;

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in programs authorized under this Act; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those institutions or programs, or both, to participate in Federal programs not authorized under this Act; and

(4) An accrediting agency that, for purposes of determining eligibility for Title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii)(A) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section; or

(B) Obtains a waiver from the Secretary under paragraph (d) of this section of the "separate and independent" requirements contained in paragraph (b) of this section.

(b) For purposes of this section, "separate and independent" means that—

(1) The members of the agency's decision-making body—who make its accrediting decisions, establish its accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, with no less than one-seventh of the body consisting of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency's budget is developed and determined by the agency without review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization does

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not violate the provisions of paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

National Office for Arts Accreditation in Higher Education

11250 Roger Bacon Drive, Suite 21, Reston, Virginia 22090, 703–437–0700

September 29, 1995.

John F. Greaney, Chief,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W.—Room 9903, Washington, DC 20001

Dear Mr. Greaney: I write on behalf of the National Association of Schools of Music, National Association of Schools of Art and Design, National Association of Schools of Theatre, and National Association of Schools of Dance. These organizations represent over 850 programs and institutions concerned with professional education and training in the arts. Each is recognized by the United States Secretary of Education, and each has a distinguished history of accreditation service.

We appreciate the opportunity to comment on the proposed settlement of the antitrust suit of the United States of America against the American Bar Association filed June 27, 1995, in Civil Action No. 95–1211(CR). The four associations wish to support and endorse positions and ideas contained in the letter about this action from the Association of Specialized and Professional Accreditors (ASPA) to you dated September 25, 1995.

Since each of the above arts accreditors has voluntary membership, and since there are no connections in the arts between accreditation and licensure, we are traditionally supportive of free market principles in higher education. We appreciate the role the Justice Department has played in raising antitrust policy issues for the accreditation community. We look forward to a positive and productive result from the continuation of your deliberations. However, without presuming to enter into legal questions beyond our expertise, we urge you and your colleagues to heed the warnings contained in the ASPA letter and to be especially sure that in pursuing issues and concerns with a particular accrediting body, the Justice Department does not set inappropriate precedents or provide loopholes that will preclude accrediting bodies from working effectively in their most difficult situations with problem institutions. By following the recommendations of the ASPA letter, the Justice Department should be able to create clarity on pure antitrust issues without unintended counterproductive results.

Please do not hesitate to contact us if we may provide any additional clarification or information.

With best regards, I remain

Sincerely yours,

Samuel Hope,
Executive Director.

SH:ck

cc: Cynthia Davenport, Executive Director, Association of Specialized and Professional Accreditors

Association of Collegiate Business Schools and Programs

July 27, 1995.

Anne K. Bingaman,
Assistant Attorney General, United States Department of Justice, Antitrust Division, 10th and Constitution Avenue NW., Washington, D.C. 20530

Dear Ms. Bingaman: I am writing this letter in reaction to the recent ruling by the U.S. Justice Department on the American Bar Association accreditation activities.

In the professional field of business there are two accrediting bodies: (1) The Association of Collegiate Business Schools and Programs (ACBSP) which is seven years old, and (2) The American Assembly of Collegiate Schools of Business (AACSB) which was established more than 70 years ago. For many years the AACSB accrediting body dominated the professional field of business in terms of accreditation with stringent requirements for faculty research and faculty release time to conduct research. Our association, ACBSP, was created to provide an opportunity to institutions with a primary mission of teaching to have an opportunity to become accredited without having a heavy research emphasis.

ACBSP has maintained, since its inception, that it should complement AACSB. The association would exist to address the unmet needs of institutions which were not served by AACSB. Thus, ACBSP views its market niche as business schools and programs offered by the mid-sized and small institutions, as well as the community and junior colleges.

There are approximately 2400 institutions that conduct business programs in American higher education. About ⅓ of these are two year colleges and the other half are four year colleges, some of which have graduate programs. Business education as a professional field of study is four times as large as the next largest professional field which is teacher education. AACSB does not allow the two year colleges to be members of its association and of its 657 members only 293 are accredited by AACSB. Our association, ACBSP, has approximately 500 members and 175 of these are accredited. In addition, our association allows two year colleges to be members as well as four year colleges. Take A and B summarize some of the differences between the two organizations.

TABLE A.—DIFFERENCES IN AACSB AND ACBSP

	AACSB	ACBSP
Mission	Fosters excellence in research	Advances excellence in teaching; stresses articulation/transfer policy statements and agreements.
Organization	857 U.S. Colleges and Universities, 293 accredited. Only accredited schools vote on standards.	475 U.S. Colleges, 9 Int'l. institutions, 175 accredited. All member schools vote on standards.
Accreditation Philosophy	Mission-based: (new) encourages diversity	Mission-based: encourages creativity and innovation.
Types of Accreditation	Bachelors, Masters, Doctorate	Associate, Bachelors, Masters.
Evaluation	Process of review and evaluation required	Outcomes assessment program with results used for improvement required.
Costs	See Table B	See Table B.

Table B presents a comparison of membership and accreditation expenses.

TABLE B.—A COMPARISON OF MEMBERSHIP AND ACCREDITATION EXPENSES

	AACSB	ACBSP
Annual Dues	*$2,000–$3,400	$800
Non-accredited Institutions	**800	
Initial Accreditation:		
Application	***3,000–5,000	1,350
Continuing Analysis	***3,000–5,000	100
Reaccreditation	***4,000–6,500	1,350

TABLE B.—A COMPARISON OF MEMBERSHIP AND ACCREDITATION EXPENSES—Continued

	AACSB	ACBSP
Candidacy:		
Application	***2,000–3,000	350
Maintenance	1,000–1,500	0
Total	15,000–24,400	3,600

*The annual dues of $2,100 are for business administration accreditation; the annual dues of an additional $1,300 are required for Accounting accreditation for a total of $3,400. ACBSP does not have a differential fee for accredited institutions.

** Non-accredited AACSB institutions pay an annual fee of $800.

*** Initial accreditation fee is $3,000 for Business or Accounting; $5,000 for Business and Accounting. Reaccreditation fee of $4,000 for Business or Accounting and $6,500 for Business and Accounting. Candidacy fee is $2,000 for Business or Accounting and $3,000 for Business and Accounting.

Some states have taken the position that their public institutions must obtain AACSB accreditation and these schools are prohibited from obtaining accreditation from our association. The reason for this is partly because AACSB as an organization and its membership (which represents the large doctoral granting universities) have been very jealous of our existence and they try numerous schemes to prevent us from obtaining additional membership. One scheme is to form a "lock-out" in state systems of higher education which forces the public institutions to seek accreditation from AACSB. Where licensing is involved, such as accountants sitting for the CPA exam, some states have used the "lock-out" system to require individuals that sit for the CPA exam to have attended an AACSB accredited institution.

We feel that the above practices represent restraint to trade and are in direct opposition to the antitrust laws of this country. To add to our dilemma, ACBSP is currently recognized by the U.S. Department of Education and the other association; AACSB is not. AACSB is recognized by a fairly new organization called the Commission on Recognition of Postsecondary Accreditation (CORPA).

The accreditation process of ACBSP is very rigorous and requires that institutions meet 26 standards of quality and integrity. Despite the fact that these standards are more rigorous than those imposed by AACSB, some states continue to give AACSB an unfair advantage by granting this organization a virtual monopoly in their jurisdiction.

We would like very much to have a ruling from you concerning the legality of states locking out our nationally recognized accrediting body from being used to accredit business programs in public institutions. With such a ruling we will be able to deal with states such as Louisiana, Tennessee, Maryland, Florida, etc.

Thank you for your assistance in this matter.

Sincerely,

Harold W. Lundy, Ph.D.,
Executive Director.

cc: ACBSP Board of Directors

American Library Association, Office for Accreditation

50 East Huron Street, Chicago, Illinois 60611–2795, U.S.A., 312–280–2432, 800–545–2433, Ext. 2432, Fax: 312–280–2433

September 29, 1995.

John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: On behalf of the Committee on Accreditation of the American Library Association, I would like to comment on the following issues related to Civil Action No. 95–1211(CR) against the American Bar Association. We do so from a desire to preserve the values inherent in the voluntary accreditation process now in place in American higher education, and to ensure that the practices undertaken by accrediting agencies are of the highest quality and benefit both to the American public and to the educational institutions themselves.

The integrity of accreditation rests in part on the values inherent in peer review; that is, each peer must take responsibility to ensure that others' behavior does not compromise the process. This is a self-regulatory process and each member must encourage the entire community to meet the standards and expectations for good practice. Thus, we welcome vigilance that results in improved practice.

We strongly endorse self-regulation and express our concern that the proposed settlement may promote a bureaucratic and regulatory environment that his antithetical to achieving excellence in higher education.

Specifically, we wish to comment on two points: directives relating to the size and composition of accrediting teams and the degree to which the competitive impact statement may unintentionally affect the ability of accrediting agencies to perform their function in a free and open environment.

The American Library Association recently revised its accreditation standards and practices. The revisions were prompted not by external pressures from outside regulators, but by a real desire for self-improvement. As a result of these revisions, we believe that our current procedures reflect best practices. Our procedures stipulate that size and composition of the external review panels who evaluate the programs may vary according to the complexity and focus of the program. Our panels consist of both visiting and non-visiting members, and have historically included both practicing professionals and faculty. Each member of a panel represents a financial investment on the part of the program, and an investment of time, energy and expertise on the part of the panelist. Most of our panel members have a broad range of experience and a single individual may be both a practitioner and a faculty member (adjunct faculty, for example, represent the practitioner and educator perspective) or they may be veterans of careers that have included both practice and teaching at various times. Setting quotas for certain types of individuals seems to us to set a dangerous precedent and introduce unnecessarily regulatory practices that serve the best interests of no one.

Similarly, the overall aim of accreditation as we see it is to produce a diagnostic accreditation report and to provide incentives to address the identified problems. We expect programs to comply with our standards, but we do not presume to dictate solutions. We believe the solutions must arise from the particular context of the program within its institution, its region, and its identified constituency. This is a fundamental principle and one that we believe applies to problems identified through the peer review of accrediting agencies themselves. Therefore, we cannot support prescriptive solutions such as the one proposed in the case of the American Bar Association.

We appreciate the opportunity to comment on these issues.

Sincerely yours,

Prudence W. Dalrymple, Ph.D.,
Director, Office for Accreditation.

cc:
Brooke Sheldon, Ph.D. Chair, ALA Committee on Accreditation
Elizabeth Martinez, Executive Director, American Library Association

Bernard Fryshman, Ph.D.

1016 East Second Street. Brooklyn, N.Y. 11230, (718) 253–4857

October 2, 1995.

Re: Civil Action No. 95–1211 (CR) [United States of America vs. American Bar Association]

John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, AntiTrust Division; Room 9903, 555 4th Street, NW., Washington, DC 20001

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Dear Mr. Greaney: I have headed a nationally recognized accrediting body since 1973, and served for two terms on the National Advisory Committee on Accreditation and Institutional Eligibility (now the National Advisory Committee on Institutional Quality and Integrity). In addition, I have been teaching at the university level since 1962. I believe I have a perspective which you may find helpful in reviewing your personal Final Judgment in the above named case. I very much appreciate this opportunity to comment.

I. The Focus of My Comments

It would be presumptuous of me to enter into the debate between the Department of Justice and the ABA. Where I do address ABA issues, it is only to be able to react to Department of Justice contentions, which, by extrapolation, can be applied to other accrediting agencies.

II. Are Anti-Trust Considerations Relevant To Higher Education?

Higher education is characterized by a sense of mission against which all considerations of commerce and competition must be weighed. Higher education in America traces its antecedents to a culture of service which pervades Academe and influences day to day policy. Two examples will suffice to illustrate my point.

(I) Most colleges and universities survive on the basis of student tuition and research. Consider a student who is doing poorly in his studies and enrolls in the class of a professor who opens up the excitement of learning. At the end of the term, in consultation with this professor, the student concludes that his career would be better served by transferring to another institution.

The professor does everything possible to facilitator this move, including contacting colleagues, writing letters of recommendation and helping the student search for applicable scholarships and fellowships. The professor knows full well that her classes will be the poorer for the student having transferred, and the student's tuition dollars will now help pay someone else's salary. Yet, everyone associated with the school recognizes the welfare of the student and his ultimate contribution to knowledge as the true goals of the institution.

(II) A senior research professor at a university works with his graduate students in an area of current research, helps them attain their Ph.D.'s and then moves heaven and earth to try to place them in tenure track positions at other universities. Knowing full well that these students will now be competing with him for research dollars and for quality graduate students.

In a word, postsecondary institutions have a bottom line which is quite different from that of commercial enterprises.

III. Accreditation is an Integral Part of the Culture of Higher Education

Accreditation agencies emanate from the community of schools they sever, and are guided by the same sense of mission. Accrediting bodies have an uninterrupted record of opening their doors to ever increasing number of schools. Highly paid professionals give gladly of their time to serve on site visiting teams, on committees and commissions, for little or no recompense.

Accreditation professionals spend untold hours working with applicant institutions to help them meet standards. Visitors are encouraged to make helpful suggestions to institutions which they visit. The fact that so few institutions are turned down in petitions for renewal of recognition, even in this period of service competition for students, is inconsistent with accusations that accreditors have been stifling competition.

IV. Accreditation Involves the Application of Standards

Whenever standards are applied, there will be those who fail to meet those standards. Where judgement is involved, there will always be questions.

Scholarly journals publish only refereed papers. If I, a physicist, submit a research paper to a journal, it will be reviewed by someone working in the same field and therefore competing with me for recognition and research grants. If my paper is not accepted for publication, the outside observer might conclude that there was a desire to stifle competition. Yet, no one in the world of science, no matter how aggrieved, would come to this conclusion.

Accreditation, like all of higher education, is not an exact science. Judgement plays a large role in the decision making process, and disagreement is inevitable. But the honest application of standards is a far cry from an intent to stifle competition.

V. States Determine Eligibility for Bar Exams

ABA standards are universally recognized as establishing the quality of a law school; and any seeming restrictions on competition are a function of those who use the ABA list of accredited schools—not of the ABA itself! Thus, the fact that 40 states open the bar exams only to ABA graduates is not the fault of the ABA. Rather the states should be asked to open the bar exam process. Can an accrediting body be blamed for the misuse of its accreditation list?

VI. "Capture of the Accreditation Process"

It is important to recognize that law schools educate students in the law, whereas the bar examination and the states create lawyers. The distinction is important since it is educators, not practitioners, who are best qualified to judge the functioning of a school. Whether a school creates effective attorneys is a question entirely distinct from its ability to educate students in the law. It is counterproductive for the Department of Justice to force accrediting bodies to include people who are not educators to judge an educational institution.

VII. Professional Staff Compensation

A high salary structure, together with an emphasis on full-time faculty, can ensure that faculty remain fully focused on their teaching and research responsibilities without the pressures of an outside job. For some students, faculty availability outside class is as important as the lecture itself. High salaries will also ensure that schools will attract high quality faculty. In any case, it is not clear to me why such a clause is anti-competitive. Schools not accredited by the ABA, and therefore not required to pay exceedingly high salaries, could charge a much lower tuition, thereby competing effectively for students.

VIII. Facilities

Proper facilities are integral to the educational process. It is inappropriate for government to determine how lectures are to be delivered, what books are to be read, and what facilities are appropriate for any given educational system.

IX. Public View

Bringing the public eye into deliberations involving standards can cripple the accreditation process and discourage site visitors from expressing true opinions and making difficult judgements.

X. Other Schools Can Compete

It would be extremely troubling were the Justice Department to force accrediting agencies to expand their scope to areas outside their competence. Well run non-ABA schools are able to attract students, and in many states their students can sit for the bar examination. Such schools can even organize their own (Department of Education Recognized) accrediting body. How is the ABA's unwillingness to accredit proprietary institutions a barrier to competition?

XI. An Alternative Approach

Recognized agencies must satisfy federal regulations which require, among others, that standards be reviewed regularly for reliability, validity and relevance. If there is any indication that standards are not relevant to quality education, the Department of Education can be very effective in ensuring change, particularly if a third party comment is properly structured.

XII. Conclusion

Higher education and accreditation have characteristics and a culture which may make certain anti-trust considerations irrelevant. Perhaps a reconsideration of the findings in this case, in light of the special nature of accreditation, is in order. Certainly a review of the proposed corrective actions should be made.

Thank you again for this opportunity to comment.

Respectfully,

Dr. Bernard Fryshman

Whiteford, Taylor & Preston,

1025 Connecticut Avenue, NW., Washington, D.C. 20036–5405, 202 659–6800, Fax 202 331–0573

October 2, 1995.

Via Hand Delivery

John F. Greaney,
Chief, Computers and Finance Section, Antitrust Division, Department of Justice, Room 9903, 555 4th Street NW., Washington, DC 20001

Re: U.S.A. v. American Bar Association, U.S. District of Columbia, Civil Action No. 95–1211 (CR), WTP No. 00732/00408

Dear Mr. Greaney: Pursuant to Section V of the Competitive Impact Statement filed in the above captioned action on July 14, 1995, we submit herewith the Comments of the below listed nationally recognized accrediting agencies on the proposed Final Judgment against the American Bar Association.

Accrediting Bureau of Health Education Schools (ABHES)
Accrediting Council for Continuing Education & Training (ACCET)
Accrediting Council for Independent Colleges and Schools
National Accrediting Commission of Cosmetology Arts & Sciences

You will note that we have asked for a hearing before the Court. We would appreciate a copy of any response to our Comments that you may file with the Court.

Sincerely,

C. William Taylor

CWT:das
Enclosure

cc:
U.S. Department of Education (w/encl.)
Participating Accrediting Agencies (w/ encl.)
William C. Clohen, Jr., Esq. (w/encl.)
David T. Pritken, Esq. (w/encl.)

United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant. Civil Action No.: 95–1211(CR), Judge Charles R. Richey, Deck Type: Antitrust.

Comments and Suggested Modification of Proposed Final Judgment and Request for Hearing

The undersigned recognized accrediting agencies ("the agencies"), by counsel, hereby submit the following Comments and Suggested Modification to the proposed final judgment in this manner. The agencies also respectfully request a hearing concerning modification and entry of the proposed final judgment in this matter.

Introduction

The agencies are all formally recognized by the United States Department of Education. They submit that the proposed final judgment is inconsistent with current antitrust law in this circuit with respect to the applicability of the antitrust laws in the field of accreditation and in those areas subject to oversight by Congress and other federal government agencies. In this connection, the proposed final judgment fails to recognize the significant role of the United States Department of Education in accreditation as mandated by the Congress in the Higher Education Act of 1965, as amended. 20 U.S.C. § 1099b. The agencies submit that this Court should ensure that the proposed final judgment not undermine or otherwise limit the important purposes of the Higher Education Act.[1]

Thus, the agencies respectfully submit that the proposed final judgment be modified by adding an additional sentence to Part XI(C) as follows: "Nothing in this judgment shall be construed to modify any of the provisions of the Higher Education Act of 1965, as amended, or any of the regulations adopted pursuant thereto, or any existing law concerning the recognition of private accrediting agencies, or the activities of such agencies relating thereto."

The Framework of Recognition of Private Accrediting Agencies

Private accrediting agencies are recognized by the Department of Education under the provisions of the Higher Education Act of 1965 (HEA), Pub. L. 89–329, 20 U.S.C. 1001, et seq. as amended, and are subject to a significant oversight by the Secretary of Education. Recognition is a process by which the Secretary of Education determines that an accrediting agency is a "reliable authority as to the quality of education or training offered" at the institutions accredited by the agency. 20 U.S.C. 1099b(a). Accreditation by a recognized accrediting agency is a prerequisite to the ability of students to obtain federal financial assistance. See 20 U.S.C. § 1085(c).

For an accrediting agency to be "recognized," the Secretary must conduct a comprehensive review and evaluation of the accrediting agency to determine whether the agency meets the standards established by the law. 20 U.S.C. 1099b(n). An accrediting agency may be recognized for a period of no more than five years and must apply to be re-recognized by the Secretary. 20 U.S.C. 1099b(d).

An accrediting agency seeking recognition from the Department of Education must have accrediting standards which assess the following areas of activity of educational institutions:

1. Curricula
2. Faculty
3. Facilities, equipment and supplies
4. Fiscal and administrative capability
5. Student support services
6. Recruiting and admissions policies
7. Academic calendars, catalogues, publications, grading and advertising
8. Program length
9. Tuition and fees
10. Measures of program length
11. Course completion, State licensing examination and job placement rates
12. Default rates
13. Student complaints
14. Compliance with program responsibilities

20 U.S.C. 1099b(a). The Secretary of Education is required by the Congress to conduct oversight activities even during periods of recognition. 20 U.S.C. 1099b(n). Thus, it is clear that the oversight role of the Department of Education is, as required by Congress, extensive. In this connection, the Secretary has further authority to promulgate regulations concerning the recognition process. 20 U.S.C. 1099b(o).

Application of the Antitrust Laws to Accrediting Agencies

Since at least 1970, the courts have shown substantial deference to accrediting agencies in recognition of their expertise in the area of educational accreditation.[2] In the case of *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 432 F.2d 650 (D.C. Cir. 1970), the United States Court of Appeals for the District of Columbia Circuit specifically rejected an antitrust challenge to the actions of private accrediting agencies: "We do not believe that Congress intended this concept [accreditation] to be molded by the policies underlying the Sherman Act." *Id.* at 655. As recently as 1993, federal courts have recognized the continuing viability of *Marjorie Webster*,[3] and it remains the law in this Circuit. The continued applicability of *Marjorie Webster* in the field of accreditation has never been questioned in court decisions.

Five years after *Marjorie Webster* was decided, the Supreme Court was called upon to address the applicability of the antitrust laws in circumstances where there is an inconsistency with federal agency activity. In *U.S.* v. *National Ass'n of Sec. Dealers*, 422, U.S. 694 (1975) and *Gordon* v. *New York Stock Exchange*, 422 U.S. 659 (1975), the Supreme Court held that when there is an inconsistency between a federal regulatory scheme and the antitrust laws, there is an implied immunity from the antitrust laws for the conduct subject to the agency's scheme. This rule has been recognized and applied in the context of several federal statutory frameworks, including the Federal Communications Commission,[4] the Securities and Exchange Commission,[5] and the Interstate Commerce Commission.[6]

Ramifications of the Proposed Final Judgment

The Department of Justice is asking this Court to approve a broad, in-depth intrusion of the Sherman Act into the field of educational accreditation that will have a chilling effect on the entire accreditation process and conflict with the Higher Education Act of 1965, as amended. Nowhere in the proposed final judgment does the Department of Justice attempt to reconcile this intrusion in light of the existing precedent in this Circuit and the implied immunity doctrine relating to activities subject to federal agency oversight.

Arguably, many accrediting agency standards adopted in connection with 20 U.S.C. § 1099b(a)(5) could be the basis for claims of anticompetitive activity. Yet the Congress has clearly legislated that these

[1] By submitting these comments, the agencies are not taking a position on the merits of the current litigation.

[2] See *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 432 F.2d 650 (D.C. Cir. 1970); *Wilfred Academy of Hair and Beauty Culture v. Southern Ass'n of Colleges and Schools*, 957 F.2d 210 (5th Cir. 1992); *Medical Inst. of Minnesota v. National Ass'n of Trade and Technical Schools*, 817 F.2d 1310 (8th Cir. 1987); *Peoria School of Business, Inc. v. ACCET*, 805 F. Supp. 579 (N.D. Ill. 1992); *Transport Careers, Inc. v. National Home Study Council*, 646 F. Supp. 1474 (N.D. Ind. 1986); *Parsons College v. North Central Ass'n of Colleges and Secondary Schools*, 271 F. Supp. 65 (N.D. Ill. 1967).

[3] See *U.S. v. Brown University, et al.*, 5 F.3d 658 (3rd. Cir. 1993).

[4] See *Phonetelle, Inc.* v. *American Telephone and Telegraph Co.*, 664 F.2d 716 (1981).

[5] See *Finnegan* v. *Campeau Corp.*, 915 F.2d 824 (2nd. Cir 1990); *Shumate & Co., Inc.* v. *NYSE, Inc.*, 486 F. Supp. 1333 (N.D. Tex. 1980).

[6] See *Waldo* v. *North American Van Lines*, 669 F. Supp 722 (W.D.Pa. 1987).

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standards, the purpose of which is to ensure a level of quality assurance in the area of educational accreditation, should be the subject of oversight by the Department of Education. It would be unfortunate if this Court's endorsement of the proposed final judgment were construed as a blank check to pursue antitrust claims against nonprofit, recognized accrediting agencies already subject to significant oversight by the Secretary of Education.

Accordingly, the agencies submit that the suggested modification to the proposed final judgment will protect the integrity of private accreditation and the important oversight activity of the Department of Education mandated by Congress in 20 U.S.C. § 1099b. The proposed modification is consistent with the precedent in this Circuit and the limited immunity doctrine set forth in *United States v. National Association of Securities Dealers*, 422 U.S. 694 (1975) and *Gordon v. New York Stock Exchange*, 422 U.S. 659 (1975).

Conclusion

For all the reasons set forth herein, the agencies respectfully request this Court modify the proposed final judgment in this matter to be consistent with existing law and the Higher Education Act of 1965, as amended.

Respectfully submitted,

Whiteford, Taylor & Preston, L.L.P.

C. William Taylor (Bar No. 012930)

Kenneth J. Ingram (Bar No. 145088)

1024 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036, (202) 659–6800.

Counsel for Accrediting Bureau of Health Education Schools (ABHES), Accrediting Council for Continuing Education & Training (ACCET), Accrediting Council for Independent Colleges and Schools (ACICS), National Accrediting Commission of Cosmetology Arts & Sciences (NACCAS)

Dated: October 2, 1995.

Exhibit A—The Organizations Filing Comments

ABHES. The Accrediting Bureau for Health Education Schools (ABHES) is a non-profit organization that accredits both institutions and programs. The institutions are private postsecondary institutions that primarily provide allied health programs. The programs are either medical assisting or medical laboratory assisting and can be provided by private institutions or public institutions. Its accredited membership consists of:

• 70 institutions providing allied health programs.

• 93 medical assisting and medical laboratory technician programs.

ABHES is located in Arlington, Virginia and has filed under the Virginia Nonstock Corporation Act to have its Indiana corporation merged with a new corporation in Virginia.

ABHES is currently recognized (approved) by both the U.S. Secretary of Education and the Commission on Recognition of Postsecondary Accreditation (CORPA), a nonprofit, nongovernmental organization that evaluates accrediting agencies for their ability to determine the quality of educational offerings and administrative capability at postsecondary institutions. Institutional accreditation by ABHES, under the Secretarial recognition, is often one of the prerequisites for students attending those institutions to be eligible for federal student assistance from programs authorized by the Higher Education Act of 1965, as amended.

ACICS. The Accrediting Council for Independent Colleges and Schools (ACICS) is an independent and autonomous body which accredits private, postsecondary career colleges and schools through a peer review evaluation process. Located in Washington, D.C. and incorporated under the Virginia Nonstock Corporation Act, ACICS is a nonprofit corporation organized and operated exclusively for education purposes, holding 501 (c)(3) Federal tax exempt status. The Council is composed of a Board of Directors and two commissions—the Commission on Postsecondary School Accreditation (COPSA) and the Commission on College Accreditation (COCA). Council members include representatives from institutions, education-related government agencies or other sectors of higher education, and the general public. Public members come from business, industry, or other professions. COPSA accredits noncollegiate, postsecondary institutions that offer programs of two years or less. COCA accredits collegiate institutions (i.e., junior and senior colleges). Its accredited membership consists of:

• 338 noncollegiate, postsecondary institutions at 338 main campuses with 129 branch campuses and 59 learning sites.

• 81 collegiate institutions at 81 main campuses with 55 branch campuses and 14 learning sites.

Since 1956, the U.S. Secretary of Education and his predecessor, the Commissioner of Education, have officially recognized ACICS as a nationally recognized accrediting body of postsecondary institutions offering primarily business and business-related programs of study. ACICS is also recognized by the Commission on Recognition of Postsecondary Accreditation (CORPA), a non-governmental organization dedicated to promoting and insuring the quality and diversity of American postsecondary education.

ACCET. The Accrediting Council for Continuing Education & Training (ACCET) was established in 1974 as a private, non-profit corporation for the purpose of establishing standards for accreditation and a peer-review-based evaluation process by which institutions providing continuing education and training programs could seek accredited status. Since 1978, ACCET has been officially recognized by the United States Department of Education under the criteria and procedures established by the U.S. Secretary of Education to identify accrediting agencies determined to be reliable authorities as to the quality of education or training provided by the institutions they accredit. Under the Higher Education Act of 1965, Pub. L. 89–329, 20 U.S.C. Section 1001 et seq., as amended, ACCET accreditation serves as one element of eligibility for its members to participate in HEA Title IV programs of federal financial assistance for their students.

Under the ACCET Bylaws, an Accrediting Commission, consisting of not more than 15 nor fewer than 11 Commissioners, 5 of which must be public members, are empowered to promulgate policies and procedures required to operationalize the standards for accreditation, and to determine whether institutions seeking accreditation meet those standards. With offices in Arlington, Virginia, an Executive Director, with a full-time staff of 10, administers the day-to-day operation subject to the policies, procedures and directives of the Commission. Currently, ACCET member institutions consist of both for-profit and non-profit institutions totaling 245 main campus operations with a combined total of approximately 800 training sites across the United States.

NACCAS. The National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) is an autonomous, independent accrediting commission constituted as a non-profit [501(c)(3)] Delaware corporation, with its main offices located in Arlington, Virginia. The Commission's origins date back to 1969, when two accrediting agencies in the field merged to form the Cosmetology Accrediting Commission (CAC), which became NACCAS in 1981.

NACCAS is directed by a Board of Commissioners. Between 1996 and 1998 the size of the Commission shall be reduced from 17 to 13 members. Seven will represent accredited schools; three will represent the salon industry, and three will be educators who represent the public interest. Currently it is 9, 4 and 4 respectively. The Commission comes together twice a year to review school files and holds two conference call meetings for school file review. It holds one meeting a year dedicated to reviewing quality standards, policies and operations.

Committees carry out preliminary policy review and make recommendations to the full Commission. Several interim committees have the authority to take action on complaints, applications for changes such as changes of ownership, and to review interim visit reports and annual reports.

Since 1969, NACCAS has become recognized by the U.S. Department of Education as a national agency for the institutional accreditation of postsecondary schools and departments of cosmetology arts and sciences, including specialized schools.

NACCAS currently accredits 1,300 private postsecondary institutions which educate and train cosmetologists, barbers, estheticians, manicurists and other professionals in the cosmetology field.

Clinical Legal Education Association

6020 South University Avenue, Chicago, Illinois 60637–2786, Phone 312/702–9611, Fax 312/702–2063

October 1, 1995.

John F. Greaney

Chief, Computers and Finance Section, U.S. Department of Justice—Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001

Re: *U.S.A. v. American Bar Association*, No. 95–1211.

Dear Mr. Greaney: Enclosed please find the comments of the Clinical Legal Education Association on the proposed Consent Decree to be entered in the above case. CLEA is very concerned that the proposed decree will exacerbate the very problems it identifies by further entrenching the power of legal academics, and, more importantly, may not fully serve the public interest by interfering with the ability of accreditation to improve the quality of lawyers.

There are two ways in which this "final" judgment will not really be final. First, many of its most important terms await the outcome of recommendations to be made by the "special commission" and reviewed by the United States. Second, the United States retains the authority to review all changes in accreditation standards, interpretations and rules. CLEA would greatly appreciate the opportunity to participate in these ongoing processes. We believe that we can be a useful voice in insuring that accreditation serves the needs of students to learn how to practice law and the needs of their future clients for competent lawyers. Additionally, we would be happy to meet with you at any time to discuss the concerns expressed in the attached comments.

Sincerely,

Mark J. Heyrman,

Secretary-Treasurer.

Enclosure.

Comments of the Clinical Legal Education Association on the Proposed Consent Decree Between the United States of America and the American Bar Association

The Clinical Legal Education Association (CLEA) is an organization of more than 400 clinical teachers affiliated with more than 125 law schools. It is the only independent organization of clinical teachers. Because clinical teachers have a dual identity as law teachers and practicing lawyers, we believe that we are in a unique position to address issues concerning the relationship between law schools and the bar and to evaluate the competing demands upon law schools which make the accreditation process so difficult.

1. Law schools have two major purposes: (1) to prepare students for the competent, ethical and effective practice of law; and (2) to conduct research designed to increase our understanding of law and legal institutions with the ultimate aim of improving our system of justice. Any system of accreditation must be designed to increase the likelihood of achieving these purposes. It must also recognize that law is a diverse and complex field and that a sound legal education system will include law schools that are diverse in their methods and practices and in the balance they chose to strike between these sometimes competing goals.

2. Because of law's complexity, few non-lawyers are able adequately to assess the ability of lawyers to perform on their behalf. Additionally, few prospective law students are able to assess the skills and qualities of mind that they will need to practice law effectively. Thus, the ordinary market mechanisms are insufficient to insure either that law students demand an appropriate legal education or that clients, the ultimate consumers of legal education, can with confidence locate lawyers who are capable of competently assisting them. On the other hand, most law faculty derive the largest share of their prestige within the legal education community from their scholarly output. Consequently, while the accreditation process should enhance the ability of law schools to produce scholarship, there is far less need for outside pressure to insure that this important goal will be met. Thus, the consent decree must be designed to insure that its efforts to eliminate anti-competitive practices do not interfere with the most important goal of accreditation: the need to improve the quality of lawyers. (See ¶33 of the Complaint, describing the legitimate goals of accreditation.)

3. Because, as alleged in the Complaint (¶¶9–14), the accreditation process has been dominated by academics and deans, it has not been able to serve the function of insuring that students are adequately prepared to practice law. The failure of law schools to prepare students to practice law competently and ethically has been documented repeatedly, most recently in *Legal Education and Professional Development: An Educational Continuum*, the 1992 Report of the ABA Task Force on Law Schools and the Profession: Closing the Gap (this Report is commonly referred to as the MacCrate Report after the Task Force's chairman, Robert MacCrate). Thus, CLEA supports those aspects of the proposed decree which will improve the likelihood that accreditation serves students and clients, not deans and academics.

4. Unfortunately, the proposed consent decree will not necessarily further that goal. Indeed, it may weaken an accreditation process which is already quite weak. One of the ways in which the decree may weaken the accreditation process is its insistence that each site visit team include "one university administrator who is not a law school dean or faculty member" (Decree, p. 4). This requirement is apt to increase the likelihood that law school resources are expended on research rather than on education. University administrators have neither an ethical obligation to, nor a highly developed interest in, insuring that the quality of lawyering be improved. Indeed, the principle tension between law schools and the universities with which they are affiliated is the concern the law schools are not sufficiently academic. Since the prestige of most universities is most commonly measured by the scholarly output of its faculty, these administrators are apt to pursue the goal of improving scholarly output as their highest priority. Finally, if the Complaint is correct in alleging that accreditation has been taken over by a "guild" of academics, then it seems odd to add to the accreditation process persons so completely identified as running the guild.

5. The requirement that site visit teams include a university administrator, when coupled with the new requirement that the majority of each team not be full-time faculty members, is also apt to reduce the likelihood that these teams contain clinical teachers. Since clinical teachers are the only full-time members of most faculties who practice law, this result may exacerbate the imbalance between research and the education of lawyers which already exists.

6. More importantly, the Proposed Consent Decree does little to change or challenge existing standards and practices which enhance the power of academics at the expense of the needs of students and their future clients. For example, the existing standards mandate that legal academics be granted tenure, but do not provide this protection to many clinical teachers who are involved in preparing students to practice law. Standard 405(d), (e). The standards also require law schools to permit legal academics to participate in the governance of the law school, but have not been interpreted to mandate that clinical teachers be allowed to partake in governance. Standard 304. This differential treatment serves to preserve the status quo in which the research and other needs of academics are given priority over the needs of students and their future clients. That is because clinical teachers and adjuncts, who often are the only members of law faculties with substantial interest in how law is practiced, are often denied a voice in governance.

7. As set forth in the Complaint (¶ 21), the current accreditation standards specify student-faculty ratios. Standard 402. However, under this standard, many clinical teachers and adjunct faculty primarily engaged in preparing students for the competent and ethical practice of law are not included in the faculty component of the ratios. (Complaint, ¶ 21). This omission discourages law schools from employing many persons whose primary role in the law school is to prepare students to practice law. CLEA supports the provision in the proposed consent decree which requires the ABA to reconsider its standards concerning faculty-student ratios. (Decree, p. 8)

8. The proposed Consent Decree also does nothing to change the fact that the current accreditation standards do not even require law schools to provide students with any experience in the practice of the law. Indeed, the self-interested nature of the standards is demonstrated by the fact that they are virtually silent concerning curriculum. This silence permits academics to pursue their own teaching interests without concern for the effect on students or their future clients. Thus, while the superiority of clinical methodology for preparing professionals is well documented (see, for example, D. Schon, *The Reflective Practitioner* (1983)), the accreditation standards do not require law schools to provide any clinical experience for students and many law schools do not so provide. The Consent Decree should prohibit the ABA accreditation process from being used to protest the interests of academics by mandating standards that, at a minimum, treat the obligation of law schools to prepare students to practice law as being of equal importance to their obligation to conduct research.

9. CLEA supports the continued role of the American Bar Association in accreditation. However, the current process has failed, not because the standards are too vigorously enforced, but because they are misdirected. Given the interests of legal academics and

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law school administrations, accreditation standards can serve to heighten competition and serve consumers only if they are focussed primarily on curriculum and are designed to insure that curricula reflect the needs of consumers in addition to those of the academy.

10. In order to improve consumer choice, the accreditation process should require law schools to provide information to applicants to improve their ability to make informed choices among schools. (Complaint, ¶ 33.) This information should reveal the actual availability of courses and programs and the extent to which each school is able to prepare students for the practice of law. The Consent Decree should require the special commission provided for in Section VII of the proposed decree (pp. 7–8) to review the standards relating to disclosures to prospective students.

Marquette University Law School, Office of the Dean

September 20, 1995.

Mr. John F. Greaney, Chief,
Computer and Finance Sections, Antitrust Division, United States Dept. of Justice, Room 9903, 555 Fourth Street, N.W., Washington, D.C. 20001

Re: United States v. American Bar Association, Case No. 95–1211 (D.C.D.C.)

Dear Mr. Greaney: I am writing to express my substantial concern with the terms of the Consent Decree proposed by the American Bar Association and the Government in the above entitled matter.

I am troubled that this litigation was commenced and settled without input from legal educators or consumers of legal education and legal services. Still, I could live with most of the provisions of the settlement, but I cannot live with the provisions of Section VII.

Section VII leaves open for future determination five issues of extraordinary importance to legal educators, including, faculty teaching hours; leaves of absence for faculty; calculation of faculty component of the student/faculty ratio; physical facilities; and the allocation of resources of the law school by the law school or its parent university. Frankly, these five issues are of much greater importance to me and to most legal educators than anything actually resolved in the settlement. These issues strike at the heart of the fiscal integrity of law schools, as well as the basic structure of law school faculties. I cannot conceive of a reason why the Government and the ABA would want to leave these five matters on the table for further resolution. I strongly oppose such action. Allowing these matters to officially remain open and unresolved strikes me as a guarantee that the Court will be involved in protracted and difficult litigation in the future over these matters. Until and unless these matters are definitively resolved, I think any settlement is premature, unwarranted, and not in the public interest or in the interest of this Court.

Thus, while I generally oppose the settlement before the Court, I particularly urge the Court to reject the provisions of Section VII of the proposed judgment and direct the parties to either delete entirely these six issues or to propose a settlement of the issue before the matter is approved by the Court.

The Court's consideration of my views on this matter is greatly appreciated.

Yours respectfully,

Howard B. Eisenberg,
Dean and Professor of Law.

Northwestern University School of Law

357 East Chicago Avenue, Chicago, Illinois 60611–3069, (312) 503–8573, (312) 503–8977 Fax

September 13, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001

Re: Comments on modifications of proposed Final Judgment in *U.S.A. v. American Bar Assoc.*, (D.Ct. D.C.; C.A. No. 95–1211).

The proposed Final Judgment offers a unique opportunity to restore ABA accreditation to its original and only proper purpose of safeguarding the public interest in the adequate preparation of law students for competent and ethical law practice. Unless, however, the proposed judgment is modified to make the accomplishment of this purpose an explicit requirement of the planned reconstruction of the accreditation process, the Judgment will become an instrument for the degradation of both legal education and the practice of law.

I, therefore, propose that the Judgment be modified to add the following language to Section IV, which defines prohibited ABA conduct:

The ABA is enjoined and restrained from:

(E) adopting or enforcing any standard, interpretation, rule or policy that is not needed in order to prepare law students to participate effectively in the legal profession.

As the case law interpreting the Sherman Act makes clear, a professional society's regulations that raise cost barriers to market entry must be justified by their role in protecting the public interest in competent professional services. *See e.g., National Society of Professional Engineers v. U.S.*, 435 U.S. 679, 696 (1978); *Wilk v AMA*, 719 F.2d 207, 226 (7th Cir. 1983). The ABA House of Delegates recently recognized the importance of this public protection role of accreditation when it amended Standard 301 to require that law schools maintain educational programs designed to prepare students for effective participation in the legal profession as well as for admission to the bar.

Nevertheless, the proposed Judgment's plan for reforming law school accreditation leaves the ABA free to establish an accreditation process that has little regard for law schools' duty to prepare students for their professional roles. As a result of the Judgment's laissez-faire approach toward the substantive ends of the accreditation process, the legal academics, who will inevitably continue to control that process, will naturally seek to maintain a system of accreditation that reinforces their notions of "quality" legal education. Those are the notions that have elevated the production of scholarship as the highest law school priority and relegated students' professional preparation as an obligatory burden that should not interfere with academics' higher intellectual calling. Under the proposed Judgment, therefore, the conduct of accreditation will be the conduct of business as usual.

The very fact of the ABA's consent to the Judgment, however, guarantees that a credible accreditation process cannot be carried on as business as usual. The significance of the ABA's now well-publicized willingness to settle over the fervent opposition of those who administer the accreditation process will not be lost on university and law school administrators, who will appreciate that lawsuits, or the threat thereof, can be more economical than compliance with unwanted accreditation requirements. Unless the reformed accreditation process can be justified by its manifest promotion of the public interest in adequately prepared law graduates, it will remain as vulnerable to attack as the present system has been. A toothless or timid accreditation process would obviously undermine the public's reliance on law degrees as an assurance of minimal competence.

The proposed Judgment does seek to avoid legal academics' conduct of accreditation business as usual and, thereby, assure both anti-trust compliance and an effective accreditation process by changing the composition of the groups that will make accreditation decisions. Concluding that legal academics have "captured" the accreditation process for their own and their cohort's economic self-interest, the Judgment would dissipate academicians' influence by increasing the representation of practitioners and non-law school university administrators on the Section of Legal Education's Council and Accreditation and Standard Review Committees. The Judgment would also involve the ABA Board of Governors more actively in the current reformation and ongoing administration of accreditation.

For the reasons discussed below, this strategy will neither avoid the continuing "capture" of the accreditation process by the legal academics nor rationalize the often conflicting goals of open market competition and professionally adequate legal education. I base this conclusion primarily on my experience as a member during the last year on the ABA Accreditation Committee, on my participation on 15 ABA or AALS (American Association of Law Schools) site inspection teams, on my 23 years of laws school teaching primarily in a clinical setting and my years of graduate school training in education.

First, with rare exception, practitioners both on site inspection teams and at accreditation committee meetings defer on questions of educational policy to the legal academics, whose expertise on such matters they quite understandably respect. Although nonacademics' outside perspective on accreditation issues is important to the process, they generally do not have sufficient time, interest, confidence in their own educational expertise and, most important, the will to become an effective counter-force to the academic administrators' dominance of the accreditation process.

Second, non-law school university administrators will also likely defer to their law school colleagues' educational judgments, except in one area of special concern to central university administrations. University administrators will undoubtedly challenge legal academics' use of accreditation to limit the percent of law school revenues a central administration can divert for its own discretionary use. There is a serious public policy question as to whether the important cause of general higher education justifies a university's confiscation of the high law school revenues that are made possible by legal education's current relatively low cost and high tuitions. Although the public ultimately pays for such high tuitions through higher legal costs, universities' appropriation of much of that tuition deprives the public of the benefit such tuition would otherwise derive through improved legal education. However these conflicting interests can be best accommodated, there is no question that elevating the role of university administrators in the accreditation process is likely to decrease the quality of legal education without any corresponding increase in competitiveness.

The personnel changes contemplated by the proposed Judgment will, thus, not significantly diminish legal educators' dominance of the accreditation process. There is, in sum, nothing in the Judgment that would cause the law school deans who have dominated, and will continue to dominate, ABA accreditation, to change their priorities so that the preparation of law students for competent, ethical practice would become accreditations' primary mission. As indicated by the ABA's much heralded Wahl Commission Report's affirmation of the basic elements of the present accreditation process and its explicit rejection of proposals that would make preparation for practice a far more significant goal of accreditation, the ABA appears incapable of generating by itself any systemic alteration of the existing priorities of law school accreditation.

The Wahl Commission Report did make some largely hortatory concessions to the recent concerns expressed in the MacCrate Task Force Report and in the ABA House of Delegates for greater attention to the preparation of students for practice. Far more significant, however, was the Commission's ringing endorsement of an accreditation process that has reinforced a system of legal education in which scholarship production is the most rewarded faculty activity and teaching for practice competence the least rewarded. Concrete curricular reforms that would make available to all students the opportunity to become professionally competent through supervised practical learning experiences taught by skilled teachers would impose unacceptable economic burdens on law schools, according to the Wahl Commission. The Commission would, thus, do virtually nothing to change the priorities of an educational system in which students' limited opportunities for experiential learning would continue to be relegated to a so-called special interest group of second-class citizens—mainly non-faculty adjuncts, legal writing instructors and, very often, clinical teachers.

The language I propose for addition to the Final Judgment would not run afoul of the Wahl Commission's strictures against imposing on law schools either uniform programs or prohibitive expenditures. What such a mandate would do, however, would be to assure that whatever cost barriers to entry into the legal education market the ABA decides to impose would have a clear relation to promoting the public interest in the adequate preparation of law graduates for practice.

Such a mandate will, of course, not be a panacea and will undoubtedly be vigorously opposed by most legal academics who will see it as an intrusion on their prerogative to determine "quality" legal education. This objection should be rejected. As noted above, most legal academics presume that the highest quality legal education takes place in law schools with the most prestigious legal scholars, regardless of those scholars' interest in or aptitude for preparing students for practice. It is legal academia's inverse correlation between "quality" education and the attention a faculty pays to preparing students for practice that has resulted in the Government's present accusations of antitrust conspiracy. ABA accreditation will not be reformed if the proposed Judgment allows this mentality to continue to hold sway.

Furthermore, the academics' warning against using ABA accreditation to suppress educational diversity sounds a false alarm. An accreditation process narrowly tailored to achieve its public protection purposes will not prevent legal academics from implementing their own visions of a "quality" or scholarly legal education in their own schools and through their own membership organizations. It will, however, prevent them from using the quasi-governmental power of ABA accreditation to deny market entry to those who do not share or cannot afford the more prestigious academics' vision of whatever they think a "quality" legal education should be.

In sum, enforceable restrictions on entry to the legal education market are necessary, but they can be justified only to the extent they protect the public interest in assuring that law students are receiving the education necessary for initial readiness to practice law both competently and ethically. Failure to incorporate this insight as an explicit mandate in the Final Judgment would forfeit a unique opportunity to develop an accreditation process that will fairly and effectively protect the public interest in adequately prepared law graduates without denying market enfry to those who can satisfy that public interest.

Sincerely,

John S. Elson,
Professor of Law.

University of Florida, College of Law, Offices of the Faculty

PO Box 117625, Gainesville, FL 32611–7625, (904) 392–2211, Fax (904) 392–3005

August 29, 1995.

Dear Mr. Greaney: Please excuse all the confusion. The comment I mailed on the 24th had many typographical errors. Yesterday, the 28th, I mailed a corrected copy by first class mail. After sleeping on it, though, I realized I would feel more comfortable sending the corrected copy by express mail so that you will have it tomorrow. Please regard the enclosed comment as my "official" comment.

Thank You,

Jeffrey L. Harrison

University of Florida, College of Law, Office of the Faculty

PO Box 117625, Gainesville, FL 32611–7625, (904) 392–2211, Fax (904) 392–3005

August 29, 1995.

Mr. John Greaney,
Chief, Computers and Finance Section, Antitrust Division, Department of Justice, Room 9901, JCB Building, 555 4th St. N.W., Washington D.C. 20001

Re: United States of America v. American Bar Association

Dear Mr. Greaney: I am writing to comment on the pending consent degree with respect to the above referenced case. Although I oppose certain elements of the proposed consent decree, my more pressing hope is that the Antitrust Division will devote further study to the issue of the proper market definition, competitive harms and the appropriate remedy. This is all in the context of whether the changes in the accreditation process will further the public interest in having low cost and high quality legal services available to all Americans.

Let me begin by noting that there appear to be three possible markets involved here. One market is the market for post graduate study. Law schools operate as sellers in this market and concerns in this market would be on the buyers. Another market is for individuals selling services as law teachers (full time or adjuncts) or administrators. The antitrust concern would be that law schools may have market power as buyers of the services of these individuals (monopsony power). Please note that monopsony power is used by buyers to force prices below competitive levels Antitrust Law and Economics (1993).

The third market is the market for legal services. Obviously, law schools provide the educational opportunities that are combined with other inputs by individuals who want to become attorneys. If the input is too expensive, legal services would become scarce and expensive. My view and, I am confident, the view of the great majority of Americans is that this is the only relevant market. Any intermediate market—like the sale of legal training by laws schools—is only relevant to the extent it bears on the primary market. In this regard it is important to note that the most costly aspect of attending law school is probably not tuition. Whether the student can afford to give up the income forgone while in law school is likely to be a more critical factor. My point is that one

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cannot fully assess the importance of the accreditation standards and tuition costs outside the context of a more comprehensive examination of the costs of legal education and the rate of return to that investment.

If I understand he main thrust of the Complaint, it focuses on the market for selling legal training with the theory being that the A.B.A. Section of Legal Education has attempted to raise the cost of new entrants into this "business." My concern about this theory is that the incumbent law school can only raise the costs of potential rivals by raising their own costs. In other words, I do not understand the Complaint to be saying that the costs are raised for new entrants only. Instead, the possible salary floor, faculty-student teaching ratios, sabbatical requirements and the like are also costs the incumbent law schools must incur.

This strikes me as a possibly illogical strategy that would if undertaken, ultimately backfire. Every college student makes a decision about a post graduate activity. A great number of them choose no post graduate study and this is an opportunity that competes heavily with a decision to study law. In addition, many students do choose to pursue other forms of post graduate education. My point is simply this: In a world in which law school applicants have declined from 98,800 in 1990–91 to 78,200 in 1994–1995 (or put more technically, in which the demand for legal education, at least in the short run, is falling) and in which there is competition among sellers of post graduate study, it may make little sense for law schools to embark on a strategy that would raise their own costs and decrease the attractiveness of a legal education generally.

The critical matter is one of defining the relevant market. If the market is only "legal education," such a strategy may work. If the market includes other post graduate opportunities including employment, the strategy will fail. In short, the foundation of the theory of the Justice Department is the market definition which can only be ascertained through an empirical investigation.

As for the second market—law faulty and administrators, I think it would more likely that any price fixing by law schools would be in the hiring market with the goal of using monopsony power to keep salaries low with respect to entry level hiring or the hiring of adjunct professors. Of course, there is no suggestion of this in the Complaint and ultimately law schools as buyers probably have insufficient market power to lower faculty or administrator salaries. Still, law schools are both buyers and sellers and concern for the public interest requires attention to both sides of the market.

The third market here is the market for legal services. Typically, one would expect a professional association to limit opportunities to enter the profession. In fact, as I recall, the American Medical Association pursued a policy of "professional birth control" for some years. The A.B.A. has generally taken a different course. The number of accredited law schools has increased from 135 to 176 over the past 30 years. Enrollment has increased from 46,666 to 128,989 over the same time period. Finally, bar admissions have increased from 10,755 to 39,710. See American Bar Association, A Review of Legal Education in the United States 67 (1995).

By involving legal educators—those whose welfare depends on *supplying* legal education—the A.B.A. has probably only encouraged the increased availability of legal education and legal services. For this reason, I find the assertion that "Legal Educators Have Captured the ABA's Law School Accreditation Process" (Complaint, p. 4) rather odd. If there has been any "capture" it certainly does not appear to be one that has benefitted the individual A.B.A. member. That interest would best be served by a far more restrictive accreditation process—one that would effectively slow down the explosion in the number of law school graduates.

Summary

1. The question of whether law schools can further their competitive interests by raising their own costs of operation in a market in which there is competition for students and a recently decreasing demand for legal education is a pivotal empirical question. The key to the answer lies on proper market definition.

2. If there is an inconsistency between the aims of the A.B.A. and the Section of Legal Education, it is an inconsistency that works in favor of greater competition in the market for attorneys' services.

Proposals

1. Other than prohibiting price fixing as described in section IV.A. of the proposed consent decree, the Justice Department should abandon all of its recommendations at least until there is data indicating that the accreditation process has unreasonably restricted entry into the legal profession. This would require careful attention to the relevant market.

2. Failing this reconsideration I propose the following two steps:

a. Modify item IV.(B) of the consent decree so that it reads as follows: "collecting from or disseminating to any law school data concerning compensation paid to deans, administrators, faculty, librarians, or other employees." The purpose of this change would be to permit the exchange of information about *past* compensation. The exchange of past information in a market that is not concentrated is unlikely to result in competitive harm. On the other hand, this information can be critical in diagnosing the problems of a law school that has fallen below acceptable qualitative standards.

b. Delete items VI.(C)(3); VI.(D)(3); VI.(E)(3); and VI.(F). These requirements suggest that the interest of legal educators is to stem the supply of legal services. This is counterintuitive and is not supported by available data.

I hope these comments are of use. I am ready to consult or comment further if necessary.

Respectfully,

Jeffrey L. Harrison,

Chesterfield Smith Professor of Law.

The University of Chicago—The Law School
111 East 60th Street, Chicago, Illinois 60637, Telephone (312) 702–9611, FAX: (312) 702–2063

October 2, 1995.

Via Facsimile Number: (202) 616–5980

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, D.C. 20001

Re: Comments as to modifications of proposed Final Judgment in *U.S.A. v. American Bar Assoc.*, (D. Ct. D.C. C.A. No. 95–1211)

Dear Mr. Greaney: I have decided to file comments about the proposed consent decree because (i) it does not recognize that the real conspiracy was of academics and deans and not all faculty to control the accreditation process and (ii) the proposed reforms will likely result in a lessening of vigorous enforcement of accreditation standards. Both results are not in the public interest of providing dramatically different and better legal education so that lawyers of the future can redeem the reputation of the profession by providing better representation to their clients and improving our system of justice.

I. My Involvement in the ABA Section of Legal Education and its Accreditation Process

After serving for many years on the American Bar Association's (hereinafter "ABA") Section of Legal Education and Admission to the Bar's (hereinafter "Section of Legal Education") Clinical Education and Skills Training Committees, I was appointed by the Chair of the Section to the Accreditation Committee in 1987 and was re-appointed in 1990. I served on the Accreditation Committee for a total of seven years (1987–1994). In 1994, the Nominating Committee of the Section on Legal Education nominated me to one of the twelve-at-large positions on the Council of the Section. I was unanimously elected by the Section to a three-year term of office in 1994. I participated in all the decisions at issue in this case with the exception of when I recused. I spent anywhere from 30–40 hours preparing for each of the 2–3-day long meetings each year. I did not receive any compensation for the 200 hours I spent on the Accreditation Committee's work (I spent another 100–200 hours each year on domestic and foreign site visits). (Contrary to the supposed embarrassment of receiving one round-trip plane ticket to Europe each year to inspect one or two foreign programs which took 20–30 hours each, I feel it was an earned "perk".) Of course, the ABA could have paid my customary hourly rate.

I have also been part of a political movement of clinical teachers to drastically reform legal education so that issues relating to serving the client, instruction in lawyering skills, and knowledge about the legal rights and needs of the poor would begin to be covered in law schools. I have seen meritorious proposals submitted by clinical teachers and recommended by the Skills Training Committee repeatedly rejected by the Council of the Section of Legal Education. I believe that the Council, the officers and the Section itself have been controlled by academic faculty and Deans and lawyers and judges who had been deans and academics. Many on the Council and the Accreditation Committee have served previously in leadership positions in the Association of American Law Schools, ("AALS") the trade association of law schools. Indeed the AALS has been routinely allocated one position on each site evaluation team.

I believe that persons representing other aspects of legal education have been excluded from leadership in the Section or are grudgingly accepted into the Section's Committees and the Council only after making major political demands and efforts. For example, in the early 1980's clinical and professional skills teachers sought to be involved in the Section of Legal Education but were repeatedly rebuffed. Finally, out of desperation, a group of these teachers ran an alternative slate for election to the Council and for the officer positions. Only then were these groups invited to participate.

Even then, only a handful of accreditation site visit teams included a skills teacher or a clinical teacher. After many efforts to urge the increased use of persons knowledgeable in these areas and several resolutions from the Skills Training Committee did the Section of Legal Education begin to send out skills and clinical teachers on a regular basis. Recently the Section has assigned a clinical teacher to nearly every team. The Section's Wahl Commission has also recognized the importance of including skills and teachers on the teams. I urge the Justice Department to strengthen the consent decree by assuring that there is truly outside regulation apart from the academic faculty and deans. Maybe a different Section of the ABA or a new entity should conduct the accreditation of legal education.

But whoever does accreditation should be much more vigorous than the ABA has been. Yet the Justice Department seems to take the position that there has been over-enforcement. The reality is that the ABA has been a "paper tiger" and has not sufficiently pushed to improve legal education to train our students to be prepared to practice. The ABA has been a "paper tiger" by not adopting and enforcing Accreditation Standards which relate to providing adequate education in skills and values needed by lawyers. Indeed only after a concerted initiative by certain members of the House of Delegates did the Section agree to amend the Accreditation Standards to require that each Law School "shall maintain an educational program that is designed to * * * prepare them [students] to participate effectively in the legal profession." Before this change, the ABA only required that schools have a program designed "to qualify its graduates for admission to the bar." Many aspects of law schools that do not directly relate to teaching such as scholarly, theoretical research have been the basis for strong action, but the quality and type of teaching has not been as carefully and thoroughly addressed in the accreditation process.

In my areas of concern and interest, the official action taken by the Council and the Accreditation Committee has been grossly inadequate to improve the legal education of American law students. Although clinical education has been the most significant change in law school teaching methods in the last 30 years, it is not even mentioned once in the Accreditation Standards. The Justice Department seems satisfied with the current state of legal education. Apparently it has not examined the many reports and studies which show a widespread dissatisfaction about the lack of training for practice. Such reports include the Cranton Report and the Report on the Future of the In-House Clinic. If an evidentiary hearing were held, the Justice Department would find that legal education is still mired in the past with large lecture classes, a bar examination orientation or esoteric theoretical courses of interest only to the faculty. The schools have been slow to change. The ABA has been responsible for what little progress toward teaching more about lawyering skills, using live client representation, preparing students to do *pro bono* to serve the poor and offering well-supervised externships have come through the ABA's House of Delegates and grudgingly from the Section of Legal Education.

Years ago, Chief Justice Burger summarized the conclusion earlier reached by many knowledgeable persons, that the trial bar was "incompetent." Yet still many schools limit the number of courses a student can take in litigation skills, including interviewing, counseling, pre-trial, trial and post-trial, trial and post-trial skills (sometimes to as few or six credits on a quarter system). Some schools still do not provide a live client clinic even though educational literature shows that this method of close supervision and collaboration with a law professor in serving a real client is the best way to teach students in a service profession and to teach adult learners. Yet many schools still do not provide credit for clinical instruction or severely limit the amount of credit that can be earned for clinical work.

II. My Appeal Within the American Bar Association

When the possibility of a consent decree was raised, I opposed it because I did not believe it was in the public interest. I was allowed to attend the Board of Governors meeting when it was considered, but was not given the privilege of the floor. Upon the advice of the legal counsel of the ABA that I could challenge the actions of the Board of Governors by appealing to the Secretary of the ABA, I filed two appeals with the Secretary. President Bushnell ruled that the appeals were mooted by the agreement to enter into the Consent Decree. I have decided not to pursue these appeals further, not because they are moot as indicated in president Bushnell's letter, but because I have sadly and regretfully concluded that the Board of Governors' decisions were justified in part.

I challenged the Board's actions because (i) they were taken in violation of proper procedures required by the controlling ABA governing documents and due process of law and (ii) the actions including the consent decree were not in the public interest of effective accreditation of law schools—the responsibility assigned to the American Bar Association by the highest courts of the states; and (iii) were not in the best interest of the ABA. Based on the positions taken by the Council and officers of the Section of Legal Education this spring and summer, I have reluctantly concluded that the Board of Governors was justified in deviating from the normally required procedures because of the emergency nature of the matters under consideration.

Recent decisions by the officers and the Council of the Section show that the Board of Governor's decision to enter into the consent decree was correct. The Council has acknowledged that the consent decree is justified by its failure to present a theory of the case or otherwise defend its accreditation practices (within the ABA or publicly) from the Justice Department's accusations. As far as I am aware, I have never been a party to any effort to raise salaries of faculty and Deans for any reason other than to improve the quality of legal education.

I now also believe that the reforms adopted were partially justified but do not go nearly far enough. Through the years, the Council of the Section of Legal Education has failed to include enough "outsiders," (such as adjuncts, legal writing instructors, clinical teachers, practicing lawyers, younger lawyers, judges and public members) and has unduly relied on full-time *academic* faculty and deans and those allied with them. I urge the Justice Department to recognize that the process needs substantial additional diversification to include more clinical teachers, adjunct faculty, externship supervisors, writing instructors, younger lawyers, law students and judges and practicing lawyers who have not been full-time *academics* or deans previously. I agree with the conclusion in the competitive impact statement that the accreditation process has been captured by the deans and faculty of American law schools. I disagree though that it was captured by all types of full-time faculty. Rather the "guild" is composed of the academics and deans and those aligned with the academics.

III. Student/Faculty Ratio

The Justice Department is correct that the student-faculty ratio did not allow adequate consideration of the importance of many at the institution who teach and hold lesser status than full-time tenured faculty. Thus, as noted in the impact statement, the groups excluded from the count, included many important teachers in the skills area:

(1) Adjunct professors who often provide all or nearly all the teaching staff for skills courses;

(2) Clinical teachers who hold short-term contracts or are not accorded security of position similar to tenure; and

(3) Legal research and writing instructors who are nearly all employed on one-year contracts.

The purpose of the ratio, though, has been well-intended—to move towards smaller classes and increased student-faculty contact. Other circumstances have undercut accomplishing those purposes, such as the imposition of very low teaching load limits on academics by the schools and by the ABA and the increasingly extensive outside

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practice of many of our most distinguished and effective full-time tenured faculty. Indeed what is particularly shocking is that while Congress provided $14 million dollars a year through the U.S. Department of Education for clinical education (until the recent election of 1994), much of that money was only used for temporary hires. At the same, time, the law schools used their increased revenues from raises in tuition to increase the size of the academic faculty and increase scholarly production without adding equally to the permanent, full-time faculty committed to clinical and skills instruction with security of position equivalent to tenure under Standard 405(c).

IV. Physical Facilities

In the portion of the Competitive Impact Statement about facilities, the Justice Department makes some flaws of logic. The Statement indicates that one-third of all ABA approved law schools were "put" on report for inadequate facilities by the Accreditation Committee in 1994. It takes many years to build new buildings so schools are on report for inadequate buildings for maybe a decade or more. Schools with prior violations are in the process of correcting them by building additions or adding heating and ventilation and the like. So the one-third must have been put on report over a seven-year sabbatical period.

But the more troubling aspect of the facility portion is that the Justice Department apparently wants one rule for "law schools of recognized distinction" and another rule for those schools that it would not recognize as "law schools of recognized distinction." The problem is one of equal treatment and the public interest. Those who teach at "schools of recognized distinction" know how much room they have to improve in terms of the quality of legal education provided their students. Some of those schools have been particularly reluctant about entering into clinical education and skills instruction and have slowly, and in some cases, only recently increased their commitment in this regard. The need for assuring that even students who go to law schools of "recognized distinction" are prepared to represent individuals in major criminal cases and civil cases of significance after graduation upon passing the Bar is just as great as it is for other law schools. To apply one standard at schools of "recognized distinction" and a substantially higher standard to others would be wrong. Hopefully, the Justice Department will indicate that it did not intend this result and will correct the impression left on Page 8.

If the Justice Department is concerned about improving the process to have more equal treatment, it should require the ABA to provide more funding to add staff to improve the evenness of the decisionmaking. The overreliance on volunteers at every stage of the process has resulted in some unintended differences in treatment. But, by and large the volunteers have done very well at implementing the Standards established by those in control of the process.

V. Resources

The problem of in adequate resources is not only with the total resources available to the law school but also more importantly, the prioritization of its use. Since schools are required by ABA Standards to be controlled by the full-time academic faculty, they naturally tend to favor adding additional academic faculty over full-time skills and writing instructors and full-time clinical teachers. The public interest demands a change in priorities and an improvement in the methods of instruction for all students at *all* schools. The ABA has not done enough in this regard. It has not required that law schools provide instruction in the core professional skills to all students who want this instruction, let alone to all students. Clinical education is not even mentioned once in the Accreditation Standards.

More money is needed to reduce the teaching ratios to something more appropriate to professional education or graduate education—where ratios are set as low as 3 to 1. Increased sums are needed and if the Justice Department does not recognize the importance of increases in resources for legal education, then it really is not aware of the realities of funding for different parts of the university and the needs of legal education. The failure to require additional resources for law schools may be the result of an effort, which is apparent throughout the decree, to respond to the complaints of the regulated—the presidents of universities. Indeed, overall the decree seems to be more a response to individual constituent complaints than legitimate anti-trust concerns.

VI. Remedies

The requirement that no more than 50 percent of the Council members should be law school deans or faculty, should provide that at least one of those should be a clinical teacher or else the Committee will be controlled exclusively by academics. Likewise, the provision that 40 percent of the members of the Nominating Committee shall be law school deans or faculty, should be changed to require that at least one of those be a full-time clinical or skills teacher. Again, with respect to the Accreditation Committee, one of the members of the Accreditation Committee should be a clinical teacher, or else up to 50 percent of the Accreditation Committee may be academics or deans. Likewise, with the Standards Review Committee, a clinical or skills teacher must be included. Each site team should include one clinical teacher. The AALS should no longer be allocated one position on each site team. It should be noted that the Justice Department is seeking to include one non-law school university administrator. It may be that this addition will replace the clinical teacher, who has been on nearly all teams recently, a practice of which the Wahl Commission approves. This would be a most disastrous result.

I am particularly concerned that the non-law school university administrator, who will most likely reflect the views of the regulated entity that is refusing to provide the resources necessary to improve the quality of legal education, will be siding with the University in the face of demonstrable needs for legal education. But, if the Justice Department is intent upon putting the regulated entity into the process, then certainly the decree should provide that that person not displace the one non-academic full-time teacher on the team.

VI. Over-Enforcement

With respect to the consent decree, it should be noted that the Justice Department has agreed that the ABA can continue to adopt reasonable standards, interpretations and rules and that it can enforce its standards and interpretations even with respect to the ability of a law school to attract and retain a competent faculty. This ratification of the accreditation process is a good sign. Yet, in many places in the competitive impact statement the Justice Department undercuts that recognition and seems to indicate that it believes there has been over-enforcement of the accreditation standards. Even though American legal education needs great improvement, the Justice Department does not want the accreditation process to play a significant role in assuring that future law students are actively prepared to practice law.

VII. Discrimination Against Clinical and Skills Teachers

Some Deans and academic faculty have alleged that clinical teachers, including extern faculty supervisors and other skills teachers have "captured" the Section on Legal Education's accreditation apparatus. To my knowledge, no active clinical teacher has chaired a site evaluation team. No more than one clinical teacher has served on the Accreditation Committee at one time. Likewise, only one clinician serves on the Council. Only recently has a clinical teacher been included on nearly all site evaluation teams.

The following shows the kind of discriminatory treatment accorded clinical and skills instructors by the ABA:

Differential Treatment Between Academics and Skills in the Standards and Interpretations

Skills

1. Skills Curriculum

(a) Schools need only "offer instruction in professional skills. There is no requirement that all students who want to take "core skills courses" must be accommodated. For example, trial practice courses at many schools are overbooked and students are turned away. Likewise, many students who want courses in interviewing, counseling, negotiation, alternative dispute resolution, pre-trial practice, problem solving, representing organizations and other skills courses are turned away.

(b) Schools are not required to offer clinics to all, nor even to those students who want this training. Indeed the ABA has not been chosen to recommend that schools offer clinics by using a *"should offer"* standard.

2. Status

(a) School are *not required* to give tenure or any job security to full-time faculty members whose primary responsibilities are in its professional skills program.

(b) The requirements of tying faculty salaries to the prevailing compensation of comparably qualified private practitioners and government attorneys led to the anomaly where the Accreditation Committee and the Council would not require schools to raise the salaries for clinical and skills teachers if they were close to the salary levels of legal aid lawyers and government lawyers (prosecutors and public defenders) at the state and local level. This stifled any effort to diversify the faculty teaching in clinical programs by attracting persons in private practice at large and small firms and with qualifications more like those hired to the academic faculty. Many schools argued that 405(a) allowed them to keep clinical salaries very low and the leadership of the ABA has agreed. The Accreditation Committee has not required comparable salaries for skills faculty because the Committee has concluded time and time again, over objections by some Committee members, that compensation is not a *"perquisite"* of the position under 405(c).

(c) Most often those on the clinical professional track are not allowed to vote on appointments to the academic faculty and in many instances are not allowed to vote at all. In some schools, professors holding clinical ranks are not even allowed to attend faculty meetings. Short-term contract clinicians are afforded no involvement whatsoever in governance at most schools. They cannot attend faculty meetings, do not serve on committees, and sometimes are not even listed in the catalogue. The ABA does not require that clinical and skills teachers be allowed to participate in governance.

3. Physical Facilities

The Accreditation Committee has ruled that the absence of space for a clinical program or professional skills instruction does not violate Standard 702. The Standard 701 requires that the physical plant is adequate for both its current program and for such growth in program should be anticipated in the immediate future. Many schools will report in their self-studies that they would very much like to have a clinical program in house, but do not have the facilities or lack the resources.

4. Adequacy of Financial Resources

(a) Standard 201(b) has been repeatedly applied so that schools do not have to provide skills instruction or clinical education if they plead that they lack adequate resources to do so.

Differential Treatment Between Academics and Skills in the Standards and Interpretations

Non-Skills

1. Academic Curriculum

(a) "Shall offer to *all students* instructions in those subjects generally regarded as the core curriculum." Standard 302(a)(i).

(b) "Shall offer to *all students* at least one rigorous writing experience." Standard 302(a)(ii).

2. Status

(a) Schools are required to provide eligibility for tenure status for academic faculty under Standard 405(d).

(b) Until recently Standard 405(a) the academic faculty were required to be provided conditions adequate to attract and retain a competent faculty. The standard included that the compensation should be sufficient to attract and retain persons of high ability and should be reasonably related to the prevailing compensation of comparably qualified practitioners and government attorneys and of the judiciary. This standard of course has been eliminated in the consent decree. It was applied in the past in a way to increase academic salaries while putting a lid on clinical and skills salaries.

(c) Under Section 405, professors on the academic faculty are usually allowed to vote on all matters, including appointments and tenure on the selection on the Dean and, often, on budgetary matters as well.

3. Physical Facilities

Standard 702 requires "classrooms and seminar rooms to permit reasonable rescheduling of all courses."

4. Adequacy of Financial Resources

(a) There must be adequate resources to accomplish the objectives of its educational program.

The ABA uses a *"should"* standard to recommend that schools "should afford to full-time faculty members whose primary responsibilities are in its professional skills program, a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members" Standard 405(e). This standard originally was a "shall" standard that was mandatory with respect to a predominant number of the full-time skills faculty. However, when the deans of some schools (the Justice Department would call them "schools of recognized distinction") organized to defeat this standard and the Association of American Law Schools came out in opposition, the Council of the Section of Legal Education reversed its previous recommendation that there be a "shall" standard and changed it to a "should" standard. The clinical teachers then organized a campaign to support a resolution introduced before the House of Delegates by the Section on Criminal Justice, that the "should" standard be changed back to a "shall" standard. The Council of the Section on Legal Education opposed this. The proposal was then defeated in a close vote on the floor of the House of Delegates. Likewise, the efforts by the deans of the elite schools to eliminate even a "should" standard was resoundingly defeated by the House of Delegates with the Section opposing it. Recent practice of the Accreditation Committee is only to express a concern about lack of compliance with Standard 405(e) and not to find a violation. (The medical accrediting authorities would find a violation when a school lacks a good justification for not following a "should" standard). The short-term contract clinicians have absolutely no security of contract even under the "should" provisions of Standard 405(e).

VIII. Procedural Difficulties With the Incomplete Decree

Another problem is that the Justice Department and the ABA did not resolve several matters. Six years were left for later determination. The result of this approach could be to deprive the public of a chance to comment on those actions. This approach may also preclude review and approval by the Court. The ABA has until February 29, 1996 to act. The Justice Department will either agree with the actions taken or it can challenge them within 90 days. But the public apparently will not be given an opportunity to express its views about the public interest. Essentially, there will either be a trial or a second consent decree as to these six areas.

Since the Justice Department has made crystal clear its conclusion that tough standards and tough enforcement to improve legal education are inappropriate for the ABA, the likely result of this process will be to come up with watered-down new standards that will get by Justice Department scrutiny. It is very strange for the Justice Department, which is supposed to be protecting the public interest, to take the position that it wants less vigorous enforcement to improve legal education. Even worse, is its use of an approach that will preclude effective public involvement. Therefore, I request either that (i) when the Justice Department decides on its response to the ABA's recommendations, the public be given a new chance to take part and submit its response and comments or (ii) that the consent decree be held open and not be deemed a final judgment and that the court continue the matter until the completion of the Wahl Commission and ABA process and Justice Department's decision on whether to agree or oppose the ABA's recommendations.

Indeed, given the reluctance of the Justice Department to support strong, vigorous, tough accreditation of American law schools for the improvement of legal education, the Court should go further and appoint an *amicus curiae* to represent the public interest in improved legal education. Surely the performance of the legal profession has never been held in lower regard by the public than it is today. The next generation of lawyers needs a different end better education in skills and values to improve the profession. The Justice Department seems too much concerned with satisfying different discrete constituents and not really bringing about major reforms in legal education. The American Bar Association on the other hand has been too concerned with the costs of litigation, the loss of its effectiveness with the Justice Department and others in Washington and perhaps the disclosure of embarrassing details that might surface. Much more is at stake and the Court should act to protect the public interest in improving legal education even if the Justice Department and the ABA will not.

Respectfully submitted,

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Chief, Computers and Finance Section, Department of Justice, 555 Fourth Street, N.W., Room 9903, Washington, D.C. 20001

Re: United States of America v. American Bar Association Civil Action No. 95–1211 (CR), U.S. District Court for D.C.

Dear Mr. Greaney: *My Interest.* I became involved in the national accreditation of law schools in September 1968 when I became the first Consultant on Legal Education to the American Bar Association (ABA). I became the Executive Director of the Association of American Law Schools (AALS) in September 1973 and served in that role for 11 years. AALS accredits law schools by admission to membership—the historic method. After retiring from the AALS in 1987, in 1989 I became a member of the ABA Council's Standards Review Committee. While with the AALS, I was active in the Council on Postsecondary Accreditation Committee on Professional and Specialized Accreditation. In these capacities and as a law teacher, I have inspected many laws schools and long dealt with accreditation issues.

My experience and knowledge of the history of legal education and accreditation compels me to help the court understand what the Department of Justice () has done and the court is asked to do. The proposed Final Judgment manifests a gross misunderstanding of legal education and accreditation. Its understanding is not enlightened by knowledge of the history of legal education.

Legal Educators' Guild and Capture. DOJ uses the pejorative "guild" to describe the law teachers and deans involved in the ABA accreditation process. This defames the hundreds of law teachers and deans who have given faithfully of their time to the process without compensation or other reward and in the public interest. It also defames the judges, practitioners, and bar examiners who served the process faithfully, especially those who have for years been the majority members of the Council. The implication of the charge is that these lawyers have been dupes, fools, or co-conspirators.

Before the DOJ issued its command, the 19 officers and members of the 1994–1995 Council were three members of state supreme courts, six practitioners, one bar admission administrator, six law school deans, one law school librarian, and two professors, one of whom is retired and formerly was a college president and law school dean. If the purpose of the conspiracy was to "ratchet up" the salaries of law teachers, there was only one individual with a direct interest in the purported conspiracy.

DOJ apparently assumes that the interest of law teachers and deans are identical. If it had a realistic understanding of law school budgeting, it would understand that they are not; while attracting and retaining highly qualified and valued law teachers is obviously an objective of the dean. There are other important objectives of expenditure, such as scholarships, library collection, adequate admissions and placement programs, and student co-curricular activities. Deans of inspected schools certainly do not want unreasonable requirements imposed on them, especially unreasonably high salary requirements for full-time faculty. They want to meet the competition set by market forces but not pay unnecessarily high salaries. DOJ gives as evidence that legal educators dominate the law school accreditation process the fact that 90 percent of the members of the Section are legal educators. It neglects to note that the Section plays little or no role in the accreditation of law schools. The role of Section members is largely to elect the officers and members of the Council. Like many other ABA Sections and nonprofit organizations, the electoral process largely affirms the decisions made by the nominating committee.

ABA "Monopoly" of Accreditation. The ABA did not acquire by its action the "monopoly" to accredit law schools and have its approval exclusively relied upon by most bar admission authorities. State supreme courts and bar admission authorities gave that authority to the ABA. These authorities have confidence in the Standards defining quality and in the process evaluating adequately the schools.

In *La Bossiere* v. *Florida Board of Bar Examiners*, 279 So. 2d 288 (FL 1973) the Florida Supreme Court observed: "We were persuaded to follow the American Bar Association Standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorney. * * * (W)e were unequipped to make such a determination ourselves because of financial limitations and press of judicial business. * * * (I)t is * * * patently obvious that judicial bodies are singularly ill-equipped to bring to bear the resources and expertise necessary to conduct a case-by-case evaluation."

Cognizant of the trust placed upon it by bar admission authorities, the ABA Council has for many years involved members of state supreme courts in its work—as members of the Council, site evaluation teams, and other committees of the Council. It also sends to all supreme courts and other bar admission authorities, among others, all proposed amendments to the Standards. Officers and the Consultant from time to time attended meetings of the National Conference of Chief Justices to discuss the Council's accreditation activities.

The Department of Education (D.Ed.) now recognizes the Council of the ABA Section of Legal Education and Admissions to the Bar as the sole accreditation agency for law schools. While the AALS has been accrediting law schools by admission to membership since 1900, the Department of Education recognizes only one accrediting organization for law. It is the Council.

The United States' recognition of accreditation agencies who admit as members or approve educational institutions assures the federal government that the students who attend the accredited institutions are receiving a quality of postsecondary education that justifies the government student loan and grant programs to those students.

It is these two organizations that grant to the ABA Council what "monopoly" the Council has with respect to legal education. It is not any action by the Council of the ABA that gives it activity this monopoly. It is their "fault" that the ABA Council plays the critical role.

Basic Characteristics of Accreditation. Historically accreditation of educational institutions served two purposes. First, it informs prospective students and their parents that the education provided by an accredited institution at least meets the basic requirements of quality. Secondly, it informs other educational institutions that the credit or a degree earned by a student at an accredited institution is entitled to be recognized by other educational institutions. Later accreditation has been used to assure professional licensing institutions, such as legal and medical profession admission authorities, that the degree earned at an accredited institution represented an adequate professional education.

Accreditation is a peer review process. Professional educators evaluate educational institutions' conformance to quality standards. It is understandable therefore that legal educators are involved in evaluating programs of legal education.

In 1970 the Council decided that site evaluation teams should contain, in addition to legal educators, practitioners, judges, bar admission administrators and the like. This practice has been followed since then.

In the mid-1970's the Bureau of Competition, Federal Trade Commission questioned the involvement of the American Medical Association in the accreditation of medical schools through its partnership with the Association of American Medical Colleges in the Liaison Committee on Medical Education. The concern was about any role for the practitioners of medicine in professional education for the profession. The concern was that doctors would use accreditation to serve the economic interests of those in the profession. In the mid-1990's DOJ is taking an opposite position concerning the accreditation of law schools. Curious?

On the other hand, it is clear that the profession has not used ABA accreditation to hold down law school enrollment or the increase in the number of approved law schools. Responding to the great growth in demand for legal education and interest in establishing new law schools, the 1971 ABA presidential Commission on Professional Utilization noted the large unserved need for legal services and welcomed this growth.

Relevance of Faculty Compensation. The proposed Final Judgment prohibits the ABA from considering compensation paid full-time faculty in its accreditation of law schools. Whatever is the alleged conduct that forms the basis for the DOJ prohibition, it is beyond dispute that a law school's compensation structure directly affects the quality of those whom it can recruit and retain. Is it mere coincidence that the law schools that compensate its faculty best are also those that have the most highly regarded programs of legal education?

Law schools are not immune from market forces. Other law schools and law firms are a school's principal competitors. Major law firms and law schools compete for the same group of graduates of well regarded law schools. This group is composed of those who were officers or members of a law review, and graduated with honors, including Order of the Coif. Matters other than compensation are factors, but compensation remains a significant factor.

The ABA understandably has chosen to reduce its large litigation costs by entering a consent decree and so has not contested this DOJ charge. But the fact remains that the charge has a weak foundation in fact.

Competitive Disadvantage of Unapproved Law Schools. If accreditation has any meaning, it means that some law schools will not have the established quality standards and so not earn approval. The approved law schools have an obvious advantage in recruiting quality students and faculty. The "market" informs potential students and faculty of the quality advantages of the approved law schools. Is accreditation an unreasonable "restraint of trade"? It would be shocking if DOJ said it was.

The evidence is clear that law schools in their initial period of approval experience a very significant increase in applications by better qualified students. A number of law schools during my experience as Consultant found that one-half of the students admitted in the previous year would not have been admitted had they applied after the school received approval. Approval, in other words, improved the competitive position of the school.

During my five years as Consultant, I dealt with a number of established unapproved law schools that wanted to become ABA approved. My assigned role was to help the schools to redesign their programs to comply with the ABA standards. The present consultant has the same responsibility. I never lost an applicant. Except for a for-profit law school unwilling to use the resources needed and a current applicant, this has been the current consultant's experience, too. If the Council's program of accreditation has been aimed at reducing competition for the approved law schools, it has done a very poor job. Many new law schools have been approved since the explosion of demand for legal education began in 1968.

There are two additional badges of quality a law school may earn—membership in the AALS and having a chapter of the Order of the Coif. To some extent the schools who have one or both of these have a competitive advantage over the approved law schools that do not. A "restraint of trade"?

State Accredited Law Schools. The Final Judgment enjoins the ABA from adopting or enforcing any Standard, Interpretation, or Rule prohibiting an approved law school from "enrolling a member of the bar or graduate of *a state-accredited law school*" in a post-J.D. program or from offering transfer credits for any course successfully completed at a *state-accredited law school.*"

If DOJ used the term "accredited" with care and precision and with knowledge of accreditation in the United States, this prohibition applies to very few unapproved law schools.

"Accreditation is the process by which educational institutions work together and with others to establish standards, evaluate and improve educational quality, and provide public evidence of this quality." Elaine El-Khawas, Accreditation: Self Regulation p. 555 in UNDERSTANDING ACCREDITATION (Kenneth E. Young, ed.) Jossey-Bass Publishers (1993).

"Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's established standards and requirements." Section 602.2, Department of Education, Procedures and Criteria for Recognition of Accrediting Agencies, 34 CFR Part 602.

The foregoing establishes that the essential elements of accreditation are (i) established standards concerning quality of the educational institution or program, (ii) site evaluation to determine whether the educational institution or program complies with the standards, and (iii) periodic re-evaluation of the institution or program's conformance to the Standards.

Some state supreme courts authorize graduates of unapproved law schools within their state to take their bar examination. In some states, such as Texas, authorization has been given on an ad hoc basis for graduates of unapproved law schools that failed to get ABA provisional approval before its first class graduates. A major consideration was concern for the grave situation in which the school's failure placed its graduates. Accordingly, this recognition of the unapproved law school's degrees is generally for a short time. It is often based on the time needed by the school to get provisional approval. A few states, on the other hand, accept a state's unapproved law school's degree as satisfying the legal education requirement for eligibility to take the bar examination. This recognition cannot accurately be called accreditation.

The proposed Final Judgment prohibits only the ABA from directing approved law schools not to recognize credit or degrees earned at unapproved law schools. Approved law schools will make their own quality educational judgments. Credits or degrees earned at unapproved schools are unlikely to pass the individual law schools' quality test.

University Administrator on Site Evaluation Team. The proposed Final Judgment requires that each site evaluation team include "one university administrator who is not a law school dean or faculty member."

It is present practice to involve university administrators who do not have a law school connection on many evaluations of law schools that are parts of a university, especially a major university. The role of a university administrator in the evaluation of a law school that is not part of a university seems uncertain. Does DOJ require their appointment in those evaluations? Why?

It is unusual for an individual to be at the same time a university administrator and law school dean or professor. The individual might be on leave from her law school position, but rarely from a deanship. Just what does DOJ mean? Is this another example of DOJ's ignorance of legal education and its administration?

Excessive Intrusion Into ABA Governance and Issues of Legal Education. The legitimate jurisdiction of DOJ is confined to its allegation that the ABA has violated the Sherman Act. It is the U.S. Department of Education (D. Ed.) that has jurisdiction over the ABA Standards and accreditation process' evaluation of the quality of legal education offered by approved law schools.

Many aspects of the proposed Final Judgment address matters not within its limited jurisdiction. The requirement of a university administrator on a site evaluation team is clearly only a question of quality and not unreasonable restraint of trade. The requirement of validation of the Standards and Interpretation by an outside consultant is clearly a matter for D. Ed. The anti-trust relevance of most of what the Special Commission is to study under VII(A) of the Proposed Final Judgment seems remote; they are concerned with quality of legal education.

DOJ seems intent on reforming legal education. That is not its business. To a limited extent it is the business of D. Ed.

DOJ's very doubtful conclusion that the ABA has violated the antitrust laws raise serious questions about its justification for the excessive intrusion into the ABA's operation of its accreditation program. For example, the proposed Final Judgment specifies three-year terms for members of the Council, Accreditation Committee, and Standards Review Committee. Those serving on the Council and Accreditation A committee may serve a second term but those on the Standards Review Committee may not.

While three-year terms may be a good idea, it should be up to the Section to decide that. Who should be eligible to serve should also be a policy left to the Section or the ABA. It is curious that the Standards Review Committee is mentioned at all. It has only the power of recommendation to the Council. It is the Council that decides. Members of the Standards Review Committee must know institutional history. Under the DOJ mandate it is the group that must rely most on others.

Sincerely yours,

Millard H. Ruud

MHR:cer

P.S.: These comments, of course, represent my views and not those of The University of Texas or its School of Law or officer or staff member, or of any committee of the ABA Section of Legal Education and Admission to the Bar.

University of South Carolina, Department of Clinical Legal Studies School of Law

September 29, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, Room 9903, 555 4th Street, N.W., Washington, D.C. 20001

Re: Comments on proposed Final Judgment in *U.S.A. v. American Bar Association*, (D.Ct. D.C., C.A. No. 95–1211).

Dear Mr. Greaney: Two provisions of the proposed Consent Decree should be modified: 1) the absolute prohibition against the collection or use of compensation data in the accreditation process; and 2) the limitation of three years service on the Standards Review Committee. These

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conditions are unnecessary to accomplish the objectives on the Consent Decree, and they are likely to affect negatively the quality of legal education and the accreditation process.

I am a professor at the University of South Carolina School of Law. I served two successive three year terms on the Council of the ABA Section of Legal Education and Admissions to the Bar (1988–1994), and I served on the Standards Review Committee for five years (1990–1995).

Compensation

My understanding is that the Justice Department had two primary concerns about the ABA's practices with respect to compensation:

1. The ABA asked each law school being inspected to identify other law schools which it considered to be its peer institutions. The ABA then compared the salaries of the respective faculties and criticized the law school if its salary scale was below the median. I agree this practice was inappropriate, whether or not it violated any antitrust laws.

2. ABA Accreditation Standard 405 also suggested that law faculty salaries should be "reasonably related to the prevailing compensation of comparably qualified private practitioners and government attorneys and the judiciary." It is my understanding that the ABA had stopped using this as a factor related to accreditation well before the Justice Department began its investigation. The Standards Review Committee had drafted a revised version of the relevant provision before the investigation began, and it further revised the language on advice of counsel for the ABA after counsel had discussed the problem with attorneys for the Justice Department. The proposed language would have allowed the ABA to consider compensation only as one factor in determining whether a law school was maintaining conditions sufficient to attract and retain a competent faculty. This should have alleviated the Justice Department's primary concerns.

The proposed Final Judgment has two key provisions related to compensation. The first condition would "eliminate the adoption or enforcement of any Standard, Interpretation or Rule or the taking of any action that imposes requirements as to the base salary, stipends, fringe benefits, or other compensation paid to law school faculty, administrators or other law school employees."

It is the second condition which is unnecessary and inappropriate. It would "eliminate the collection or dissemination of compensation data for deans, administrators, faculty, librarians, or other employees, and the use of compensation data in connection with the accreditation of any law school."

I cannot see any rationale for this language. Surely, the Justice Department cannot believe compensation is unrelated to the quality of a faculty or to the quality of legal education. There is no data showing that the ABA has driven faculty salaries to such a high level that members of law faculties are paid disproportionately to similarly qualified lawyers who are in private practice, or even the judiciary. At most schools they are paid significantly less.

I am not suggesting that the ABA should be allowed to use information about compensation to drive salaries upward, generally. However, the ABA should be allowed to consider compensation of faculty as one factor in measuring the quality of a law school's educational program. It makes no sense to prohibit the ABA from mentioning compensation, even if the ABA discovers that inadequate compensation is clearly contributing to high faculty turnover and making it difficult for a particular school to attract and retain competent faculty. This restriction is unwarranted and harmful to legal education.

The ABA should also be allowed to continue collecting data about salaries. If it visits a school at which the faculty is complaining that low salaries are harming the educational program, the ABA needs reliable data to be able to determine whether the salaries are really out of line or if the faculty is whining unjustifiably. Prohibiting the ABA from collecting salary data will not make it less available, just less reliable. Salary data will continue to be collected and shared whether or not the ABA continues doing it. Several other organizations already collect salary data or plan to do so if the ABA cannot. The ABA's data collection system has proven its reliability, the others' have not.

To conclude my discussion of compensation, it is important to understand that the goals of legal education and the interests of consumers are not served by encouraging a complete free market economy. Many lawyers would rather teach than practice, regardless of the salary offered, especially those lawyers who are not finding success in law practice. Many of the law schools at the lower end of the quality scale face significant economic pressures which could lead them to offer salaries which are insufficient to attract successful lawyers and judges into the academic world. Without a highly qualified faculty, law schools cannot prepare law students adequately for the practice of law. Ultimately, public consumers, i.e., clients, will suffer the consequences.

Standards Review Committee

The Consent Decree imposes a three year limit for service on the Standards Review Committee. This is unwarranted and will have a detrimental impact on the accreditation of law schools.

The Consent Decree incorporates the preexisting six year limit for service on the Council and Accreditation Committee. Before the Consent Decree, there was no limit on the length of service on the Standards Review Committee. I have been unable to unearth any explanation for this provision of the Decree. Unlike the Council and the Accreditation Committee, the Standards Review Committee has no rule-making or decision-making power. Its function is to consider proposed amendments to the Standards and make recommendations for consideration by the Council. The Council is free to accept, reject, or modify such advice.

If any limit is to be imposed, it should be a longer, not a shorter, term than for the Council or Accreditation Committee.

As a former member of the Council and the Standards Review Committee, I can attest that it takes longer to become acclimated to the work of the Standards Review Committee than to that of the Council and that there is a greater need for longevity of service. It is not uncommon to take longer than three years to process a proposed amendment to the Standards. For example, Standard 405(e) took six years from initiation to fruition; and Interpretation 2 of Standard 306 took over three years. The recodification project, the first stage of which is expected to be completed in August, 1996, will have taken much longer than three years to process.

It is important to the quality of the finished product that some people be allowed to remain on the Standards Review Committee from start to finish of proposed modifications to the Standards. The proposed three year limit will not permit this.

For the reasons stated above, I object to the proposed Final Judgment unless it is modified as follows: 1) to allow the ABA to continue gathering data about faculty compensation; 2) to allow the ABA to continue considering compensation as one factor in determining the quality of a law school's program of education; and 3) to allow the ABA to permit some people to serve at least six years on the Standards Review Committee.

Respectfully submitted,

Roy T. Stuckey

Southwestern University School of Law

September 29, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, JCB Building, 555 4th St., NW., Washington, DC 20530

United States v. American Bar Association
Civil Action No. 95–1211 (CR)

Dear Mr. Greaney: We write to express our concerns about the impact of the above-captioned consent decree, with particular reference to legal education in the State of California (Part I), and to indicate our concern with a particular provision concerning the collection and dissemination of salary data (Part II).

Part I (The Impact of the Decree on Legal Education in California)

The self-regulatory mechanism for American legal education is an unlikely target for antitrust enforcement. It is true, as Lord Acton warns us, that power corrupts—the greater the more absolutely. Reviewing the publicly available materials on this case, it is apparent that law schools and those who regulate them are not free of the venial sins common to all human endeavors. It may well be that some of this activity contravenes the Sherman Act (and we have no objection to the decree insofar as it is narrowly drawn to address any such violations).

We are concerned, however, about more intrusive aspects of the decree which seem motivated by a deregulatory animus. Current ABA regulation of accreditation standards has been targeted by some within the law school community who see it as stifling creativity, innovation and, perhaps, efficiency in legal education. Some, or even a great deal, of this criticism may have merit.

But, aside from the bureaucratic momentum that stifles change in any self-regulatory mechanism, there is no evidence that the traditional antitrust concern, market power, underlies this resistance to change. And, as we suggest below, there is legitimate controversy within the law school community about the wisdom of wholesale changes in accreditation standards.

The vast majority of men and women who have chosen to teach in American law schools do so because they believe in, and truly enjoy, the teaching and writing that is the core of the profession. For the most part, individuals who make this choice could have opted for higher paying jobs in the private bar or, perhaps, in government. The deans and administrators of law schools come from the ranks of these academics. They share with their colleagues strong commitments to the profession that they serve, the students that they teach, and the institutions that they lead.

The decisions of those who have led American legal education have not prevented development of a fiercely competitive market. Among the 178 ABA accredited law schools (there have been roughly 40 additions to this number over the past three decades) are a great range of institutions in all parts of the nation. The programs, the teaching methods, the tuition rates, and the reputations of these institutions vary widely. One example of this diversity, and the kind of program innovation it generates, is found at our own law school, which offers an ABA approved 24-month program leading to a J.D. degree.[1] The program discards traditional law school courses in favor of instructional units that stress concepts common to many subjects of the law. The existence of such programs tends to refute claims that ABA accreditation requirements stifle experimentation and creativity.

For reasons that we explain below, our fear is that the decree may result in relaxation of ABA accreditation standards, thereby heightening information problems for matriculating law students and distorting the allocation of legal educational services. Although the impact of the consent decree will be felt in all states, it is helpful to focus on the decree's potential impact in California. Aside from being the most populous State, California also has the most open system of legal education of any of the fifty states.

There are three categories of law schools now operating in California:

(1) ABA accredited law schools (16 schools);

(2) law schools certified by the State Bar (19 schools);

(3) law schools lacking certification from the State Bar (24 schools and an additional 13 correspondence schools).

Tuition demanded by these schools varies widely, as do the teaching methods, faculty student ratios, the percentage of full time instructors, library facilities, and other student support services. Unaccredited and uncertified schools may have no library facilities, few if any full time instructors, and few support services for students or faculty. Schools falling in the second category (certified by the State Bar) tend to offer some of these advantages but not to the extent of ABA accredited schools. Although accreditation standards are stiff, seven of the sixteen ABA accredited schools have achieved that status since 1960.[2]

Students attending the various categories of schools do not perform equally on the State Bar examination. The chart below compares the 1994 passage rate for first time takers from each of the three categories of law schools.

CALIFORNIA STATE BAR EXAMINATION PASSAGE RATE FOR FIRST-TIME TAKERS

[Calendar Year 1994][3]

	Took	Pass	Pass (percent)
California ABA Accredited Law Schools	3555	3048	85.7
State Certified Law Schools	1090	572	52.5
Unaccredited Law Schools (including correspondence schools)	159	59	37.1

The figures are skewed because the most gifted students tend to select among the ABA accredited schools. Indeed, students do not treat all ABA accredited schools as equivalent, discriminating among these schools based upon reputation, location, and tuition. Whatever the reason, the low bar-passage rates for many of the schools raise troubling consumer protection questions. There is ongoing debate about whether schools should be allowed to recruit students to pay out thousands of dollars of tuition and dedicate three or four years of their lives to obtain a legal education, only to find that their chances of passing the bar are quite low. The California Legislature has seen fit to require a "baby bar examination" for all students attending unaccredited and uncertified law schools.[4] Students are required to pass this examination before commencing their second year of studies at these unaccredited or uncertified institutions.

Even if students pass the bar examination, the market for jobs is skewed against those who attend unaccredited or state certified schools. The reputation of the school (and its status as an accredited, certified, or unaccredited institution) are considered by employers, making job prospects bleak indeed for those who have attended unaccredited schools.

These realities about bar passage rates and job prospects are probably understood by most matriculating law students. Students are aided in their understanding by the clear distinctions among the three categories. It is our sense that most applicants who have a choice will choose among ABA accredited schools, further refining their choice by assessing the reputation of an individual school. Indeed, some students who fail to gain admission to an ABA accredited school may decide not to pursue a legal education. We doubt that anything suggested in the decree will alter these fundamental market realities. On the other hand, the direction in which the decree appears to push ABA law school—toward relaxation of accreditation requirements such as faculty-student ratios and library facilities—will blur distinctions between ABA and non-ABA accredited schools, and make it easier for schools that lack that advantages now needed for ABA accreditation to obtain it. For reasons that we explore below, this may create greater information problems for applicants and pressure second-level, currently accredited law schools[5] to relax quality standards.

We digress at this point to offer an overview of such second-level law schools. At present, each of the ABA-accredited law schools in California operates as a non-profit, educational institution. Most have excellent law libraries, highly respected full-time

[1] Southwestern's Conceptual Approach to Legal Education, or "SCALE" as it is commonly known.

[2] California law schools that have gained ABA accreditation since 1960 are: University of San Diego (1961); California Western (1962); University of California-Davis (1966); University of the Pacific (McGeorge) (1966); southwestern University (1970); Pepperdine University (1972); and Whittier College (1978).

[3] This data is compiled from figures provided by the State Bar for the February and August 1994 administrations of the examination.

It is also significant that there is little overlap in the results among the various categories. For example, in the August 1994 administration of the bar examination, the passage rate for first-time-takers, calculated for individual ABA accredited schools, ranged from 77.9% to 94.4%. For State Certified schools, the rates for individual schools range from 16.7% to 76.3%.

[4] State Bar Act, § 6060(g). We understand that a bill has been introduced in the legislature to repeal this requirement. Its changes of success are unclear.

[5] We use the term "second-level" law schools to describe those ABA accredited schools that tend not to compete for the top five or ten percent of law school applicants, but will generally deny admission to those not meeting minimum objective qualifications. Our rough definition probably includes about twelve of the sixteen ABA accredited schools in California.

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professors, and a solid commitment to both teaching and scholarship. Our own school, for example, has one of the finest law libraries in the State and a reputation for being a "teaching" law school.[6] The school also operates an academic support program for interested first year students. And, as is the case with most second-level law schools, it has for some years aggressively recruited and supported minority law students.

Although the primary mission of the second-level law school is teaching, these schools serve the community in other ways. Law libraries are generally open to practicing attorneys and students from other law schools. These schools also contribute substantially to scholarship on cutting edge issues. And full-time faculty and staff contribute to the community through membership in, and pro bono work for, various bar groups and community organizations.

Relaxed ABA accreditation standards probably would not affect second-level law schools if information flow and comprehension among law school applicants were optimal. Our school, for example, would chose to continue emphasizing its role as a teaching law school (maintaining its high full-time faculty to student ratio), as a leader in the recruitment and support of a large pool of minority applicants, as a promoter of legal scholarship, and as a provider of a first-class law library for the benefit of students, faculty and the surrounding legal community. Under optimal conditions, these features of the school would be valued by the community and the student applicant pool, ensuring the school's success in recruiting students.

We claim no prescience as to what the future may hold. But the very existence of accreditation standards (and other regulatory steps such as California's Baby Bar Examination) suggests that substantial information problems are inherent in running a system of legal education. Further evidence of these information problems is the heavy emphasis most law schools place on achieving a favorable rating from private surveys that rank law schools. Many legal educators regard these ratings as superficial and perhaps even misleading.[7] But because matriculating law students pay attention to these surveys in making their choices, law schools are very sensitive to the resultant rankings.

Although we have conducted no cost benefit analysis of the ABA's current accreditation requirements (and doubt whether a reliable one could be conducted), we believe that standards such as those governing the ratio of full-time faculty to students and the library collection are important to a quality legal education and to providing other community values that law schools serve. To the extent that such requirements are relaxed, currently non-accredited schools, with relatively few sunk costs in library and physical facilities, and fewer full-time faculty, will be in a position to obtain accreditation. Their status as "accredited schools" will not affect elite schools such as Stanford, which will doubtless continue to attract the most gifted law students. But the newcomers may, because of their substantially lower costs, be in a position to siphon away students from second-level accredited schools.

These consumer protection concerns are real. Schools, particularly those operated on a for profit basis, will have an incentive to avoid building libraries and hiring full-time faculty with teaching loads that permit non-classroom contact hours. Such schools certainly will be able to reduce their costs and their prices. If they can also present themselves to the market place with full accreditation credentials, currently accredited second-level schools will be forced to compromise important standards currently protected by ABA accreditation. Lower tuition costs would be a welcome development, but only if they can be achieved without injury to the important education and community values.

To summarize, we believe that to the extent that the consent decree pushes the nation's law schools toward relaxation of quality standards that bear on the education, research, and related community goals served by law schools, the decree will be counterproductive. As the system of legal education in California suggests, creating well-defined categories of law schools can serve an important consumer-information function, making it easier for matriculating law students to make wise choices about whether and where to pursue a legal education. To the extent that these distinctions are blurred, information problems for incoming students could be exacerbated and the market allocation mechanism for legal education services distorted.

Part II (The Collection and Dissemination of Salary Data)

Part IV(B) of the consent decree enjoins the ABA from "collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees."

Because we believe that the collection and dissemination of salary data serves a number of legitimate and important functions, we urge that this provision be removed from the decree.

Information about salary and benefit levels is a useful market indicator. Indeed, as a general matter, and especially where as here the structure of the market is plainly competitive, markets function better when players on all sides of a transaction are knowledgeable about market conditions. Although the exchange of information has sometimes been prohibited in oligopolistic markets, as when a trade association uses information exchange as a step in achieving uniformity in prices for a standardized product, there is no history of ABA accredited law schools attempting or achieving such uniformity in salaries or benefits. Nor do applicants regard legal education among law schools to be a standardized product.

Moreover, withholding market information about salary levels increases the possibility of exploitation of those with less knowledge and power. In the law school context, such salary information might be used by employees or faculty to gauge their market value based on what others in comparable positions receive. Those most likely to be underpaid are generally those with the most limited ability to obtain market information. Another way in which such information could be useful is in negotiations between a law school dean and a university president concerning the amount to be budgeted for law school salaries. Market information about salary and benefit levels would be helpful in budget discussions that ensure that the law school remains competitive.

We do not object to provisions of the decree that prohibit the ABA from setting salary or benefit standards, or making compensation levels a condition of accreditation. Our concern is rather that data collection and dissemination, which serve an important function by making the market more visible and less susceptible to exploitation, not be hampered by the decree.

Because there is a legitimate need for salary and benefit data, it is likely that other organizations (such as the American Association of Law Schools) would seek to collect and disseminate it even if the ABA cannot do so. These groups should be allowed to do so. But there is no reason for forcing this data collection out of the ABA's domain, with the attendant transactional costs involved in shifting this responsibility.

Sincerely,

Lawrence A. Sullivan,

Professor.

Warren S. Grimes,

Professor.

St. Thomas University School of Law

July 7, 1995

Roger Jacobs,

Director of Library, Member of Council, Notre Dame Law School, Kresge Library, Notre Dame, IN 46556

Dear Roger: I am not able to come to the AALL meeting in Pittsburgh to attend and to make a presentation about the proposed Library Standards. In addition, I have not seen the June final draft of the Library Standards. Thus, the following comments are subject to change and clarification based upon what is in the final draft of the proposed Library Standards.

Although not separately stated in either the Department of Education's regulations or the June 27, 1995, *Final Judgment of U.S.* vs. *ABA*, I interpret both documents to include law libraries and their operations under the category, "physical facilities". If law library operations are included within the grasp and meaning of the term, I contend that the proposed Standards (I am referring to the January 11, 1995, proposed revision) do not comply with the DOE regulations as to the required documentation to justify the changes in the Standards or the *Final Judgment* of June 27, 1995, requiring the proposed Standards be submitted to the Board for review, followed by the Board filing its report with the United States District Court for the District of Columbia and the Justice Department for their review to determine whether to challenge any of the proposals. In Addition, under the *Final Judgment*, there is an antitrust compliance program that may not be in place. With these restrictions, (especially the *Final Judgment*), I contend that the proposed Standards (the January 11, 1995, revision or either the June 1995 or July 1995 revision) are not ripe for Council to submit its recommendation for action of the ABA House of Delegates at the August, 1995 Meeting. Within the time frames indicated in the June 27, 1995, *Final Judgment*, August 1996 would appear to me to be the earliest time under which the ABA House of Delegates could take any action relating to the proposed Library Standards. I do note that a *Final Judgment* has not been entered, but note in the *Stipulation* that the ABA agrees to be bound by the provisions of the *Final Judgment*. I view the agreement to be in force as of June 27, 1995.

As you may be aware, I have received ABA comprehensive library statistics and special statistics for selected schools for over ten years, including statistics based on Fall 1994 information. These statistics have been used to assess St. Thomas' growth and development, its operations and the Law Library plan of action, which is required under the 1986 Standards. Based on my assessments of these statistics, I have serious and considerable concern with the present methods of (a) collecting statistical information, (b) categories used in the collection document or vehicle (annual questionnaire), and (c) publishing and using the statistics in this present form.

As presently designed, the statistical information creates a very significant economic impact to the disadvantage of newer as well as smaller schools with less than 700 FTE students. There are approximately 63 schools with 700 FTE students or more and 115 schools with less than 700 FTE students. Note, however, the ABA does not include graduate students and special students in identifying the FTE student count used for analysis of library operations only full time and part time JD students are used. There are over 100 schools with graduate students, that are excluded from the analysis of library statistics. Important comparisons of book dollars per student and retrieval usage per student are *overstated* when graduate students are excluded; thus, in several instances, statistical information is somewhat, if not totally, skewed with misleading and incorrect information.

The elimination of students from the student side of the formula created in several instances a higher expense of book dollars per FTE student and higher retrieval usage per student, resulting in a higher mean and median. The constant and continuing pressure through the accreditating process for schools to reach and exceed the mean or median of information for all schools is based upon an incorrect foundation of statistical information.

The 1986 Standards, as part of the core collection requirements, specifically recognized and added online services (and probably the CD–ROM and other electronic resources) as a basic category of collection and information resources which schools have to use to support the academic program. Other changes were made in the 1986 revision, which can be interpreted to reinforce this conclusion—the elimination of some of the Shepard's Citations requirements and state statutes requirements, existing in pre-1986 Standards. These changes and others would, I contend, lead to the conclusion that the Standards did eliminate the ownership/warehouse concept for all ABA approved libraries to support academic programs. The Accreditation Committee and Council have provided no written ground rules or other information relating to the use of electronic information as part of the core collection requirements, and, specifically, whether these electronic resources could be used in place of hard copy or microform resources. While the January 1995 revision of the Standards appears to provide some way to incorporate electronic sources as an integrated part of total collection resources, the language in the entire document is fuzzy and leads to considerable interpretation, resulting in little or no guidance for library operations or what should be in the written plan. This would lead to subjective fact finding through onsite inspections and written reports. (As earlier noted, I have not seen or reviewed the June or July revision of the Standards)

Even the ABA document provided to onsite inspectors to use as part of the questioning for and collecting of information from libraries has not been updated with the 1986 ABA Standards. I contend that the financial form which a library is required to complete as part of the inspection questionnaire, is based on pre-1986 Standards.

The ABA through its Accreditation Committee and Council has not accepted electronic resources as part of the basic and *only* foundation upon which the ABA statistics are collected, developed, made available to directors and others as well as published (selective information only) in the *Law Library Journal*. The ABA uses only hard copy and microform equivalents to identify the grouping and the size of the collection in terms of volume count.

Since 1986, the ABA has not provided any way to determine equivalent volumes of electronic resources. The formula used by the ABA to determine collection size specifically excludes electronic resources of any type, the very source of information the ABA added to the Standards in 1986. Thus, reliance and use of the existing ABA library statistics are totally off base, being unreliable and useless for comparative purposes for any reason.

The ABA continues this omission through publishing only hard copy and microform equivalent counts in its *Review of Legal Education*; electronic resources, as best as I can determine from a review of the publication, are not included in any manner. The economic impact of the exclusion of electronic resources from statistical analysis of ABA information has adversely affected most, if not all, schools by resulting in increased costs to continue and maintain hard copy collections through publisher dominated lists of titles libraries must maintain to satisfy accreditation requirements.

The attempt of the June 1994 revision of the Standards was to, for all practical purposes, eliminate the consideration of electronic resources as part of the core information resources a library must use—the January 1995 revision, apparently, attempted to weaken this dark age approach for collection support of academic programs for accreditation purposes. I have not seen the June 1995 revision, which is to be discussed in Pittsburgh.

I am not sure, but would assume that work by the Standards Review Committee or others has not been done on the collection vehicle, the annual questionnaire, or the statistical format used to provide statistical analysis of the information collected through the annual questionnaire. The statistics are used in preparing on-site reports. The existing problems with the annual questionnaire and the statistical information produced there from would, I contend, lead to the conclusion that these have to be revised at the same time the Standards are revised. These, in most instances, were not updated and revised as a result of the revisions in the Standards made in 1986, resulting in subjective fact finding through the inspection process and procedure as well as faculty analysis by the Accreditation Committee and Council based upon the inspection reports. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations, (effective July 1994) and specifically contend that the attempt (at least as I presently understand the procedure) to obtain Council's recommendation for action by the August ABA House of Delegates violates the *Final Judgment* requirements, identified June 27, 1995.

I have not seen any documentation by the Standards Review Committee or others specifically relating to the proposed Standards, and especially relating to collection resource requirements. Choices have been made in setting accreditation requirements, but written documentation to justify the choices is lacking. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations (effective July 1994), and specifically contend that the proposed Standards have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the August ABA House of Delegates.

The annual questionnaire and the ABA produced statistical information requite urgent and mandatory revision. Unless and until volume equivalences are determined for electronic sources and information, volume counts have to be eliminated from the

[6] According to a survey that the school commissioned, our graduates, and the graduates of one other California school (McGeorge), performed better on the State Bar examination than students with equivalent LSAT scores graduating from other California ABA accredited law schools. The widely held view among our colleagues is that the accessibility of the full-time faculty, the emphasis on attendance and class preparation, and the school's strict grading policy contribute to our students' success on the bar examination.

[7] By contrast, the ABA accreditation process, upon which students also rely, makes threshold judgements about whether schools meet relatively objective standards, but does not attempt to rank the various accredited schools. An ABA publication encourages students to "consider a variety of factors in making their choice among approved schools." ABA, A Review of Legal Education in the United States, 2 (Fall 1991).

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questionnaire and statistics. The reliance and dependence on volume counts as the only measuring device in the statistics have to be eliminated. Some means have to be established to eliminate the wrong or incorrect information in the statistics. As an example, in the recently produced comprehensive tables, Column 65c–3, several schools provided information that they are open more hours that there are hours in a seven day week; for some schools, information is column 44 and 46 appears to be crossed and included in the wrong column. There are probably others errors.

The continued use of gross information for volume added counts requires a revisit. A total revamp is required for the use of this information in statistical analysis. I have read speeches that have provided statistical comparison using the gross volumes added without indicating that the net is what produces the collection growth. This net information is provided to the ABA, but the statistics specifically exclude the information in volumes added columns.

Information relating to technology-driven formats, such as on-line, CD–ROM, INTERNET, etc., has to be developed to a greater extent for the annual questionnaire and statistics. As examples, equipment and other costs directly associated with technology-driven formats should be, I contend, part of the total acquisition expenses, just as postage and handling and insurance charges (of 8 to 20% for many titles) are added to serials and book or other information expenses reported. Users can not obtain access and use these sources without the proper equipment. At present, expenses for LEXIS and WESTLAW are considered part of acquisitions and information expenses per student, column 14–6 of the tables. I further contend that costs associated with bibliographical systems or in-house computerized public catalogs should be a basic and integral part of information expenses to reflect that these resources are part of the information resources provided to students and faculty.

With electronic resources increasing in importance in all libraries, the existing Standards, the proposed Standards, the annual and on-site questionnaire, and library statistics need to reflect an "open environment" and atmosphere" for libraries to respond to their direct goal of supporting the law school education program, including the training of students in a number of different research skills. I view the proposed Standards, the annual and on-site questionnaires and the statistics as major hurdles, which are preventing libraries from maximizing the use of technology for the benefit of faculty and students as part of the education program. I can not see or determine any difference in using OCLC or other systems to locate title information for a variety of purposes and using CD–ROM or WESTLAW to locate title information for ordering purposes, verification or ILL. In one case, expenses are part of information resources, and in the other case, expenses are excluded from information resources and treated in a totally different manner.

This area must be revisited by the ABA. The Standards, the annual and on-site questionnaires, and library statistics must represent the present and future aspirations and goals of legal education. In several instances, at least through the January 1995 revision of the Standards (Note, I have not seen or assessed the June 1995 revision), several of the Standards and Interpretations clearly represent the mandated requirements of hard copy holdings from a limited number of publishers, even though the same basic legal information (excluding copyright material) is available through electronic sources at less cost in many instances that the hard copy costs. The basic difference is that a different publisher or vendor provides the electronic sources. On this ground, I register a protest and complaint that the proposed Standards do not comply with the DOE regulations of documentation justifying the mandated accreditation requirements, and specifically contend that the proposed Standards have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the 1995 August ABA House of Delegates.

I am aware of the salary collection issues being discussed on INTERNET. As I read the June 27, 1995, *Final Judgment* in *U.S.* vs. *ABA*, the ABA, including the accreditation committee and Council (and I would also include the on-site inspectors), is prohibited from *any* consideration of salary or other compensation as a fact or factor in the accreditation or review of any law school program. This would preclude and prohibit the inclusion of this information as part of any accreditation or review process, even to discussions with on-site inspectors of any comparative salary information regardless of source used to obtain the comparative information. At least for the period of time in which the *Final Judgment* remains in place or is modified, salary issues are not an issue upon which the ABA can report. The language of the *Final Judgment* is absolutely clear in this matter. I would further contend that libraries, groups of libraries, and any association not involved in accreditation, and private vendors could collect the salary and compensation statistics, assuming the school's policy would permit the disclosure. Since salary is not an accreditation issue under the *Final Judgment*, many schools may prohibit or limit the release of salary information. The salary statistics collection issue is not part of the Standards or proposed Standards and must not detract from the issues and problems with the proposed Standards, and annual and on-site questionnaires and statistics.

There are several other problems and issues within the proposed Standards, the 2 questionnaires and statistics to be addressed. For one, I seriously question the process of including interpretations of the proposed Standards along with the Standards for Council action for the ABA House of Delegates action. If approved in this format, the interpretations will take the form of Standards that will require a more complex procedure to change or amend rather than the less cumbersome procedure for adopting interpretations. The *Final Judgment* makes changes in the procedure for this matter. I oppose this part of the approach by the Standards Review Committee. In some instances, the interpretations limit and completely restrict choices of libraries to do things differently, especially with the changes technology has brought and will bring to library operations. In some instances, the interpretations appear to be new statements, not even interpreting the existing Standards. On this ground, I register a protest and complaint that the proposed Standards and Interpretations do not comply with the DOE regulations of documentation justifying the mandated accreditation requirements, and specifically contend that the proposed Standards and Interpretations have not satisfied the requirements of the *Final Judgment* of June 27, 1995, for Council action for a final recommendation for action by the 1995 August ABA House of Delegates.

The "rush to judgment" to seek approval of the proposed Standards and Interpretations within the next 30 days or less flies directly in the face of the requirements of the *Final Judgment* of the *U.S.* v. *ABA* of June 27, 1995. I contend much more has to be done before approval is sought. I am aware of Internet comments regarding the upcoming Pittsburgh meeting on the Standards and Interpretations to the effect that there is an appearance and perception of a "farce" regarding the meeting and comments made. I sincerely hope this is not the case, and that the report has not yet been written for Council's action.

I have attempted to provide some information on some issues I am concerned with as these relate to the Standards, the proposed Standards and Interpretations, the questionnaires and statistics. I regret very much not being able to attend the AALL meeting in Pittsburgh for the comment portion. However, I do look forward to receiving any information about the meeting and comments made. As soon as I am back to work in a couple of weeks, I hope to be able to address and assess the June 1995 proposed Standards and Interpretations.

Roger, I would appreciate this document being added to the comments for the AALL Pittsburgh meeting. Thanks.

Sincerely yours,

Prof. Bardie C. Wolfe, Jr.,

Professor of Law and Law Library Director.

cc: Anne Bingaman, Dept. of Justice
Darryl Depriest, General Counsel—ABA
Dean Rudolph Hasl, St. John's
Dean Steven Smith, CSU
Jim White, ABA—Consultant
Dean Dan Morrissey, St. Thomas
Prof. Roy Mersky, Texas
Prof. Pat Kehoe, American University
Prof. Larry Wenger, Virginia
Florida Academic Law Library Directors

St. Thomas University School of Law

July 7, 1995.

Roger Jacobs,

Director of Library, Member of Council, Notre Dame Law School, Kresge Library, Notre Dame, IN 46556

Dear Roger: I write to inform you of several concerns I have with the ABA Library Standards as adopted in August 1995, including the Interpretations. In addition, I also write about concern with current Fall 1995 Annual Questionnaire—Part III Law Library. Among the concerns are the following:

A. Annual Questionnaire

1. While I view the Annual Questionnaire as tracking the ABA Standards and Interpretations, the continued exclusion from published reports of recognizing computer—technology driven resources enables the ABA to publish in its *Review of Legal Education* and the AALL *Law Library Journal* (Statistics) misleading, inadequate and incomplete data about Law Library operations and their support of academic programs—see questions 8–14 in the Annual Questionnaire. I am in the process of updating my 1991 report on the economic impact of the reported ABA library statistics. See separate report attached. From the Fall 1994 statistics, total expenses in 93/94 of 176 schools are $282,843,440 (2 schools not reporting) with 99 or 56.3% of the schools (those over 300,000 columns) having 69.2% of total expenses and 61 schools (those with 200,000 to 300,000 volumes) or 34.7% of the schools having 26.2% of the total expenses. This imbalance creates significant problems.

2. There appears to be substantial activities regarding Internet, legal resources and law library activities—see recent article September 95, *ABA Journal*. As best as I can determine, the Annual Questionnaire does not include questions about Internet usage, but does include questions about CD–ROMS. I view the August 1995 Standards and Interpretations as eliminating the warehouse concept and ownership requirements of library resources—see various interpretations under the August 1995 Standards. The Annual Questionnaire, in my view, continues and emphasizes, as the ABA questionnaire has included in the past, the warehouse and ownership requirements of resources. The Standards do not support this.

Because of a variety of changes in how OCLC—RLIN and other bibliographical systems are being used to provide reference assistance, I urge the inclusion of these expenses as part of Collection Development Resources and the elimination of separate lines for the other categories included—Serials, online services, other, binding and preservation. In addition, consideration should be given to including in Collection Development Resources the cost of computers both hardware and software and microform readers and reader printers and cabinets as Collection Development resources. I do not see any difference of including postage and handling, service charges, etc,. as part of regular acquisition and excluding the above. Perhaps the inclusion of these costs as Collection Development resources will encourage law libraries to update equipment as part of Collection Development.

Although the Questionnaire asks for LEXIS and WESTLAW usage, there are other usages of computer resources including library networks, law school networks, Internet, CD–ROMS. This usage can be metered and the Questionnaire should reflect this usage.

5. In terms of comparative information, the ABA continues to publish comparative law library information based on JD students only. While there are apparently over 100 schools with graduate programs, graduate students are excluded by the ABA in publishing library statistics. Thus, the information about libraries in terms of usage per student and expenses per student is inaccurate and overstated.

Since the Annual Questionnaire is used as part of the inspection and accreditation process as well as its data being published by the ABA and by other publishers, the questionnaire should collect the appropriate data as reflected by the Standards. I do not think this is the case with the 1995 Questionnaire.

B. Standards

My primary concerns relate to Standards 606 and its Interpretations and to Interpretation of 602. Regarding 606 (a) if followed to its logical sequence, Interpretation 5 of Standards 606(a) relating to sharing information resources completely inhibits and reduces the possibilities of sharing of electronic resources by several libraries thru wide area networks and Internet. At the same time existing resource sharing programs by a state or regional consortium may not be in compliance. Interpretation 5 of 606(a) read in conjunction with interpretation 1 of 606(b) significantly reduces the possibilities of libraries sharing expensive but little used titles. I view the Standards and Interpretations at setting minimum Standards for compliance. To indicate as minimum requirements that all schools have to have all published regulations for the federal government and the reported decisions of the highest appellate court for each state is in my opinion, a substantial addition to earlier ABA Library Standards. I disagree that these are minimum requirements for accreditation purposes. In addition, I do have concern about the requirement of an annotated code from each state. Annotated code is a descriptive word or phrase of paper products. This term could be constructed to include only paper editions while electronic resources can and do include statutory, administrative, and case law. Thus, this term, annotated code, could be interpreted by the ABA to exclude the electronic resources simply because the term, annotated code, is used.

Regarding Interpretation of 602, the operational system for implementation of electronic resources could involve other University components beside the Main Library. The Interpretation is too restrictive and should be expanded to include the supervision of electronic resources as well.

As experience is gained with the new Standards and Interpretations, I will write to keep you informed of my concerns. In the case of the Annual Questionnaire, Fall 1995, time is very important since libraries are presently completing it. This Fall 1995 Data could be used for upcoming Accreditation reports. Regarding the concerns about the Standards and Interpretations, I would request a continuing review. As financial resources for legal education become tight, the Standards and Interpretations must provide great flexibility for law libraries to support their academic programs within the means available. The sharing of resources, including electronic resources, will become important in the near future. I simply do not view the present Standards and Interpretations as encouraging and supporting this flexibility. In regards to the Questionnaire, I would not publish the number of volumes until the ABA has decided the equivalent for electronic resources.

Sincerely yours,

Prof. Bardie C. Wolfe, Jr.,

Professor of Law and Law Library Director.

cc: Anne Bingaman, Dept. of Justice
Darryl Depriest, General Counsel—ABA
Dean Rudolph Hasl, St. John's
Dean Steven Smith, CSU
Jim White, ABA—Consultant
Dean Dan Morrissey, St. Thomas
Prof. Roy Mersky, Texas
Prof. Pat Kehoe, American University
Prof. Larry Wenger, Virginia
Florida Academic Law Library Directors

St. Thomas University School of Law

April 1, 1991.

To: Dean Jacqueline Allee
From: Bardie C. Wolfe, Jr.

Re: Economic Impact of Large Schools on National Mean and Median—Law Library Comparative Information Based on the ABA Law Library Statistics.

The ABA collects statistics from all ABA libraries and publishes the data. From this data, national mean and median, such as size of collection, budgets, salaries, etc., are established. The national mean and median of various categories of law library statistics are used for a variety of purposes.

The large schools, that is, schools with a FTE student body above 650 FTE and/or a collection of over 300,000 volumes, have a major and substantial economic impact on driving upward the national mean and median of most, if not all, measurable law library statistical categories. This process would, apparently, be normal and of little concern. However, the magnitude of the differences between the schools at the top and the schools at the bottom is great. The unbalanced differences do impact very significantly the establishment of the national mean and median for all schools.

Of the 176 schools, 109 or 62 percent have a collection of less than 300,000 volumes; of the 109 school, 35 schools or 20 percent of the total 176 schools have a collection of less than 200,000 volumes. The remaining 67 schools or 38 percent of the total have a collection of more than 300,000 volumes. Of the 176 schools, there are 96 schools or 55 percent with a student body of less than 650 FTE, and the remaining 80 schools or 45 percent have a student body of more than 650 FTE.

The duplication of materials, graduate programs and international and foreign law collections are basic factors in many schools. These factors are not measured or taken into account by the existing ABA statistics or identified separately when national mean and median in categories are developed from all the statistics from the 176 schools. The inclusion of the resources in, including staff, salaries, etc., and the economic impact of these resources on the establishment of national mean and median are unknown.

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They may be overlooked when national mean and median are used for statistical comparisons.

The size of the collection, that is, the number of hard copy and microform volumes, has been the ABA measuring tool. All comparative information available from the ABA statistics is based on the size of collection. There are five broad categories: Collection size from 0 to 100,000 volumes; 100,000 to 200,000 volumes; 200,000 to 300,000 volumes; 300,000 volumes and over; and collection size 0 to all volumes. These categories were established many years ago when few libraries had over 300,000 volumes. At present, there are 87 libraries which contain over 300,000 volumes. In fact, there are approximately 16 libraries with more than 500,000 volumes, and approximately 34 libraries with more than 400,000 volumes, including the 16 above.

This report is an attempt to provide information about the establishment of the national mean and median of law library statistical categories. Please note that the new technologies, including on-line services, CD-ROM, video, etc., have not been built into the measuring tool used by the ABA, that is the size of collection. In addition, microform statistics for titles added or held are not reliable to provide this information to add to the hard copy title added or held categories. The number of students, specialized programs in some schools, or their missions also have not been built into the measuring tool, except in two areas, information resources per student and computer retrieval per student per year. In these two areas, the ABA mixes two years of information, and this use may not be a correct assessment of a library's program.

Thus, for the above reasons, and with exceptions, the report is an analysis of traditional academic law libraries, and the measuring tool for the analysis is what the ABA uses, the size of collection.

The following tables provide an overview of the economic impact of the inclusion of the data from large schools on the establishment of national means and medians for various law library statistical categories. The information has been taken from the Fall 1990 ABA Law Library Comprehensive Statistical Table Data. The law library has enhanced the basic information to create the tables, comparisons and characteristics indicated. All tables use COLLECTION SIZE RANGE OF VOLUMES for the comparison with the exception of two tables which were created by the law library and are based on FTE size of student body with range. Without reinputting all data from all schools, there is no possibility of creating the same tables for the other comparisons used in the report. The two tables created by the law library do support the conclusion that the large schools have a major and substantial economic impact on driving upward the national mean and median of all schools, simply because of size and the resources needed to sustain the academic program because of size.

The tables are as follows:

TABLE 1.—TOTAL LAW LIBRARY BUDGETS FOR 1990–91

Collection size range of volumes	Mean budget for 1990–91	Number of schools	Total budget of all schools	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$804,634	34	$27,357,556	12
200,000 to 300,000	1,127,992	73	82,343,416	36
300,000 and Over	1,824,354	65	118,583,010	52
All schools reported mean	1,327,232	172	228,283,909	

Note—Federal Work Study funds are not included. Of the 176 law schools only 172 reported 1990–91 budgets.

TABLE 2.—TOTAL LAW LIBRARY EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses for 1989–90	Number of schools	Total expenses of all schools	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$782,072	34	$26,590,448	12
200,000 to 300,000	1,080,107	73	78,847,811	36
300,000 and Over	1,744,301	66	115,123,866	52
All schools reported mean	1,274,925	173	220,562,025	

Note—Federal Work Study funds are not included. Of the 176 law schools only 173 reported 1989–90 expenses.

TABLE 3.—TOTAL INFORMATION RESOURCES EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses for 1989–90	Median expenses for 1989–90	Total expenses all schools	Percent total
0–100,000	0	0	0	0
100,000 to 200,000	$372,223	$356,105	$12,655,582 (34)	13
200,000 to 300,000	502,535	484,102	36,685,055 (73)	38
300,000 and Over	732,289	700,033	48,331,074 (66)	50
All schools reported mean and median	564,576	525,415	97,671,848 (173)	

Note—Total information resources expenses include expenses for all forms of information, including serials, monographs, microforms, binding, computer-based services, others such as video and audio. Of the 176 law schools only 173 reported 1989–90 expenses for information resources.

TABLE 4.—INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

Collection size range of volumes	Books dollars per student—mean—	Mean FTE number of students	Book dollars per student—median—
0–100,000	0	0	0
100,000 to 200,000	$851.89	475 (34)	$823.80
200,000 to 300,000	885.17	625 (74)	807.70

TABLE 4.—INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)—Continued

Collection size range of volumes	Books dollars per student—mean—	Mean FTE number of students	Book dollars per student—median—
300,000 and Over	912.53	865 (67)	902.20
All schools reported mean and median	889.07	688 (175)	855.10

Note—Book dollars per student are determined by the FTE student count as of October 1990 and the total information resources' expenses for 1989–90. ABA tables do not identify this category as either 1990–91 or 1989–90. The mix of the two year information may not be a correct assessment of this information. SEE TABLE 5, 6, and 7 for additional analysis.

TABLE 5.—COLLECTION SIZE ANALYSIS OF INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

Collection size range of volumes	Mean expenses for 1989–90	Mean FTE number of students—89	Book dollars per student—Mean
0 to 100,000	0	0	0
100,000 to 200,000	$372,223 (34)	466 (45)	$798.76
200,000 to 300,000	502,535 (73)	636 (73)	790.15
300,000 and Over	732,289 (66)	875 (57)	836.90
All Schools	564,576 (173)	668 (176)	845.17

Note—This table developed by law library from both the 1989 and 1990 ABA law library comprehensive statistical table data. This table is NOT an accurate indication of book dollars per student, since there were shifts in the number of students in the two categories for the two years. The ABA Fall data for 1989 indicates 45 schools with a collection count of 100,000 to 200,000 and 57 schools with a collection count of 300,000 volumes or more; this compares to the ABA Fall data for 1990 in which the ABA reports 34 schools with a collection count of 100,000 to 200,000 and 66 schools with a collection count of 300,000 volumes or more. The number of schools with a collection count of between 200,000 and 300,000 volumes stayed the same, although the data for Fall 1990 would, apparently, indicate that the schools at the high end of approaching 300,000 volumes in 1988–89 moved into the 300,000 volumes or more category by the end of 1989–90. The same would be true of the number of schools in the 100,000 to 200,000 volume category in 1988–89 moving into the next category of 200,000 to 300,000 volumes. This shift of 10 or more schools into the next and higher category would impact any assessment using the two years of information, Fall 1989 and Fall 1990, when the collection size range of volumes category is used as the ABA has used them. See next two tables, developed by the Law Library and based on FTE students and not on collection size.

TABLE 6.—FTE ANALYSIS OF INFORMATIONAL RESOURCES EXPENSES PER STUDENT (SEE NOTE)

FTE size of school—range with 1990 FTE and 1989–90 expenses	Mean expenses for 1989–90	Median expenses for 1989–90	Per student mean expenses	Per Student median expenses
0 to 450 students	$382,795	$373,824	$1,149.49	$1,072.20
451 and 650 students	512,122	477,332	966.04	957.80
651 to 875 students	584,010	585,301	784.57	768.10
876 to 1,100 students	666,673	638,239	671.18	626.40
1,101 and Over	862,503	742,222	641.84	619.00
All Schools	564,576	525,415	889.17	855.10

Note—In October 1990, there were 32 schools in the 0–450 category with an average of 341 FTE (1 school did not report expenses). There were 64 schools in the 451–650 category with an average of 532 FTE (4 schools at low end included 437 FTE −443 FTE). There were 45 schools included in the 651–875 category with an average of 749 FTE. There were 18 schools in the 876–1,100 category with an average of 988 FTE. There were 20 schools in the 1,101 and over category with an average of 1,319 FTE.

TABLE 7.—FTE ANALYSIS OF INFORMATION RESOURCES EXPENSES PER STUDENT (SEE NOTE)

FTE size of school—range with 1989 FTE and 1989–90 expenses	Mean expenses for 1989–90	Median expenses for 1989–90	Per student mean expenses	Per student median expenses
0 to 450 students	$384,199	$386,579	$1,184.22	$1,112.99
451 to 650 students	529,607	513,127	991.63	954.80
651 to 875 students	581,536	585,301	791.81	778.44
876 to 1,100 students	581,536	585,301	678.85	695.01
1,101 and Over	881,627	742,222	670.02	610.61
All Schools	564,576	525,415	845.17	868.45

Note—In October 1989, there were 37 schools in the 0–450 category with an average FTE of 338 (1 school did not report expenses). There were 59 schools in the 451 to 650 category with an average of 535 FTE. There were 43 schools in the 651 to 875 category with an average of 742 FTE (1 school did not report expenses). There were 17 schools in the 876 to 1,100 category with an average of 990 FTE. There were 19 schools in the 1,101 and over category with an average of 1,301 FTE.

This table developed by the Law Library. The ABA does not use FTE size as a measuring factor; the ABA uses collection size.

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TABLE 8.—TOTAL COLLECTION SIZE ANALYSIS

Collection size range of volumes	Mean size at start of 90–91	Median size at start of 90–91	Total size at start of 90–91	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	165,333 (35)	167,591	5,786,565	11
200,000 to 300,000	245,613 (74)	250,839	18,175,362	33
300,000 and Over	455,320 (67)	395,672	30,506,440	56
All Schools	309,480 (176)	267,945	54,468,480	

Note—Volumes include hard copy and microform volume equivalency.

TABLE 9.—VOLUMES ADDED ANALYSIS FOR 1989–90

Collection size range of volumes	Mean volumes added 89/90	Median volumes added 89/90	Total volumes added 89/90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	11,568 (35)	7,378	405,580	16
200,000 to 300,000	11,555 (74)	10,442	855,070	33
300,000 and Over	19,790 (67)	16,569	1,325,930	51
All Schools	14,696 (176)	11,368	2,586,496	

Note—Volumes added included hard copy and microform volume equivalency.

TABLE 10.—TITLES ADDED ANALYSIS FOR 1989–90

Collection size range of volumes	Mean titles added—89/90	Median titles added—89/90	Total titles added—89/90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	1,198 (35)	1,166	41,930	11
200,000 to 300,000	1,633 (73)	1,620	119,209	32
300,000 and Over	3,100 (67)	2,665	207,700	56
All Schools	2,106 (175)	1,692	368,900	

Note—Only hard copy titles are included in this table. The count of microform titles either added or held is not reliable to produce statistical comparisons.

TABLE 11.—TITLES HELD ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean titles held	Median titles held	Total titles held	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	21,328 (34)	21,341	725,152	7
200,000 to 300,000	37,782 (74)	34,724	2,795,868	27
300,000 and Over	102,151 (66)	76,276	6,741,966	66
All Schools	58,983 (174)	38,710	10,263,042	

Note—Only hard copy titles are included in this table. The count of microform titles held is not reliable to produce statistical comparisons.

TABLE 12.—SERIAL SUBSCRIPTIONS ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean serial subscriptions	Median serial subscriptions	Total serial subscriptions	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	2,367 (35)	2,444	82,845	12
200,000 to 300,000	3,587 (73)	3,487	233,629	32
300,000 and Over	5,600 (67)	5,364	375,200	52
All Schools	4,114 (175)	3,760	719,950	

TABLE 13.—SERIAL SUBSCRIPTIONS EXPENSES ANALYSIS FOR 1989–90

Collection size range of volumes	Mean expenses subscriptions	Median expenses subscriptions	Total expenses subscriptions	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$278,132 (34)	$268,284	$9,456,488	13
200,000 to 300,000	381,289 (73)	376,149	27,834,097	38
300,000 and Over	544,141 (66)	514,715	35,913,306	49
All Schools	423,144 (173)	401,846	73,203,912	

TABLE 14.—SERIAL TITLES ANALYSIS AT START OF 1990–91

Collection size range of volumes	Mean titles active subs.	Median titles active subs.	Total titles active subs.	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	2,238 (35)	2,210	78,330	12
200,000 to 300,000	3,267 (72)	3,366	235,224	37
300,000 and Over	4,916 (67)	4,622	329,372	51
All Schools	3,695 (174)	3,446	642,930	

TABLE 15.—DUPLICATIONS OF SUBSCRIPTIONS ANALYSIS FOR 1990–91

Collection range of volumes	Mean serial subscriptions	Mean serial titles	Estimated projection of duplication of serial subscriptions		Percent of total
			Difference	Percent of mean subs	
0 to 100,000	0	0	0	0	0.
100,000 to 200,000	2,367	2,238	130	5	31.
200,000 to 300,000	3,587	3,267	320	9	76.
300,000 and Over	5,600	4,916	684	12	Off sc. and above.
All Schools	4,114	3,695	419	10	63.

Note—This table provides an overview of the extent of duplication of serial subscriptions; as an example, more than 1 copy of the Federal Reporter 2d, the ALR series, etc. *This table should be used in conjunction with the serial subscription expenses' table on this page.*

TABLE 16.—COMPUTER RETRIEVAL EXPENSES FOR 1989–90

Collection size range of volumes	Mean expenses retrieval	Median expenses retrieval	Total expenses retrieval	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$33,341 (34)	$31,067	$1,133,594	16
200,000 to 300,000	39,713 (73)	36,494	2,890,049	40
300,000 and Over	48,533 (66)	41,023	3,203,178	44
All Schools	41,826 (173)	36,286	7,235,898	

TABLE 17.—COMPUTER RETRIEVAL TO TOTAL INFORMATIONAL RESOURCES EXPENSES FOR 1939–90

Collection size range of volumes	Mean expenses all information	Mean expenses only retrieval	Percent
0 to 100,000	$372,223	$33,341	9
100,000 to 200,000	502,535	39,713	8
200,000 to 300,000	732,289	48,533	7
300,000 and Over	564,576	41,826	7
All Schools			

TABLE 18.—FTE STUDENTS FOR 1990–91

Collection size range of volumes	Mean number students FTE	Median number students FTE	Total number students FTE	Percent of total
0 to 100,000	0	0	0	0

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TABLE 18.—FTE STUDENTS FOR 1990–91—Continued

Collection size range of volumes	Mean number students FTE	Median number students FTE	Total number students FTE	Percent of total
100,000 to 200,000	475 (34)	471	16,150	14
200,000 to 300,000	625 (74)	614	46,250	39
300,000 and over	885 (67)	783	57,955	49
All Schools	688 (173)	629	119,024	

TABLE 19.—RETRIEVAL USAGE FOR 1989–90

Collection size range of volumes	Mean retrieval usage 89/90	Median retrieval usage 89/90	Total retrieval usage 89/90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	2,733 (35)	2,449	95,655	11
200,000 to 300,000	4,319 (74)	3,856	319,606	38
300,000 and Over	6,342 (66)	5,097	418,572	50
All Schools	4,785 (175)	4,048	833,875	

TABLE 20.—RETRIEVAL USAGE PER STUDENT PER YEAR COMPARISON (SEE NOTE)

Collection size range of volumes	Mean retrieval 1990 FTE students	Mean retrieval 1989 FTE students
0 to 100,000	0	0
100,000 to 200,000	6.0 (34)	5.9 (45)
200,000 to 300,000	7.1 (74)	6.8 (73)
300,000 and Over	7.7 (66)	7.3 (57)
All Schools	7.1 (174)	7.1 (176)

Note—The ABA uses the 1989–90 retrieval hours with the October Fall FTE 1990 student count to determine retrieval usage per student per year. The law library has, for this table, used in the first column the exact figures from the Fall 1990 ABA Law Library Comprehensive Statistical Table Data. For the second column, the law library used the 1989–90 retrieval hours but also used the FTE student count from the 1989 ABA Law Library Comprehensive Statistical Table Data. As noted above the number of schools in the categories has shifted because of the base of collection size.

TABLE 21.—OTHER INFORMATIONAL RESOURCES' EXPENSES FOR 1989–90

[Note—Serial and Retrieval Expenses and Binding Not Included]

Collection size range of volumes	Mean expenses 1989–90	Median expenses 1989–90	Total expenses 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$53,357 (34)	$36,030	$1,814,138	12
200,000 to 300,000	72,992 (72)	57,170	5,255,424	35
300,000 and Over	120,224 (66)	107,989	7,934,478	53
All Schools	87,234 (172)	65,617	15,004,248	

TABLE 22.—STAFF SIZE COMPARISON—1990–91 STAFF FTE

[Note—All Staff Except Students]

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	12.5 (35)	11.0	437.5	13
200,000 to 300,000	15.1 (74)	15.2	1,117.4	33
300,000 and Over	27.5 (67)	21.3	1,842.5	54
All Schools	19.3 (176)	16.6	3,396.8	

TABLE 23.—PROFESSIONAL STAFF SIZE COMPARISON—1990–91 FTE

[Note—includes only professional staff]

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	5.7 (35)	5.0	199.5	14
200,000 to 300,000	6.8 (74)	6.5	503.2	34
300,000 and Over	11.3 (67)	9.8	757.10	52
All Schools	8.3 (176)	7.0	1,460.8	

TABLE 24.—PROFESSIONAL STAFF SALARY COMPARISON—1990–91 SALARIES

Collection size range of volumes	Mean of staff size	Median of staff size	Total of staff	Percent of total
0 to 100,000	0	0		
100,000 to 200,000	$29,876 (35)	$28,690		
200,000 to 300,000	32,669 (72)	31,525		
300,000 and Over	36,378 (65)	34,783		
All Schools	33,502 (172)	32,179		

TABLE 25.—STUDENT STAFF—NUMBER OF HOURS AND PAY—COMPARISON 1989–90

Collection size range of volumes	Mean of number hours per year	Mean of wage per hour
0 to 100,000	0	0
100,000 to 200,000	7,255 (35)	$4.79 (34)
200,000 to 300,000	10,832 (73)	5.05 (72)
300,000 and Over	14,531 (67)	5.51 (66)
All Schools	11,364 (175)	5.18 (172)

TABLE 26.—SALARY ANALYSIS FOR ALL FTE STAFF FOR 1989–90 EXPENSES

[Note—Does not include student wages, Work Study federal share, or temporary part time]

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$257,330 (34)	$233,527	$8,749,220	11
200,000 to 300,000	355,654 (73)	339,584	25,962,742	34
300,000 and Over	638,385 (65)	519,361	41,495,025	54
All Schools Mean	443,064 (172)	375,493	76,207,008	

TABLE 27.—FRINGE BENEFITS' EXPENSES ANALYSIS FOR 1989–90

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0–100,000	0	0	0	0
100,000 to 200,000	$54,623 (34)	$49,408	$1,857,182	10
200,000 to 300,000	84,537 (71)	85,616	6,002,127	34
300,000 and Over	155,540 (64)	130,780	9,954,560	56
All Schools Mean	105,408 (169)	93,520	17,813,952	

TABLE 28.—WAGE EXPENSES ANALYSIS FOR 1989–90

[Note—Includes student wages, not federal work study portion, temporary part time]

Collection size range of volumes	Mean wages for 1989–90	Median wages for 1989–90	Total wages for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$22,006 (31)	$19,679	$682,186	8

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TABLE 28.—WAGE EXPENSES ANALYSIS FOR 1989–90—Continued

[Note—Includes student wages, not federal work study portion, temporary part time]

Collection size range of volumes	Mean wages for 1989–90	Median wages for 1989–90	Total wages for 1989–90	Percent of total
200,000 to 300,000	49,173 (73)	33,595	3,151,629	39
300,000 and Over	66,821 (65)	60,324	4,343,365	53
All Schools	48,386 (169)	34,459	8,177,234	

TABLE 29.—GRAND TOTAL—ALL SALARIES, WAGES AND FRINGE BENEFITS—EXPENSES FOR 1989–90

[NOTE.—Does Not Include Federal Work Study Funds, Federal Share]

Collection size range of volumes	Mean salary expenses for 1989–90	Median salary expenses for 1989–90	Total salary expenses for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$332,017 (34)	$301,528	$11,288,578	11
200,000 to 300,000	481,047 (73)	451,329	35,116,431	34
300,000 and Over	858,353 (65)	696,258	55,792,945	55
All schools	594,174 (172)	521,210	102,197,928	

TABLE 30.—FEDERAL WORK STUDY CONTRIBUTION ANALYSIS EXPENSES FOR 1989–90

Collection size range of volumes	Mean share for 1989–90	Median share for 1989–90	Total share for 1989–90	Percent of total
0 to 100,000	0	0	0	0
100,000 to 200,000	$15,630 (29)	$11,392	$453,270	12
200,000 to 300,000	13,368 (55)	10,472	735,240	20
300,000 and Over	52,034 (49)	13,759	2,549,666	68
All schools	28,107 (133)	11,342	3,738,231	

TABLE 31.—NUMBER OF HOURS OF PROFESSIONAL ON DUTY ANALYSIS FOR 1990–91

[NOTE.—Number of Hours per Week—Regular Semester Schedule]

Collection size range of volumes	Mean hours library has on duty	Mean hours reference available
0 to 100,000	0	0
100,000 to 200,000	62 (35)	62 (35)
200,000 to 300,000	69 (74)	72 (73)
300,000 and Over	70 (67)	70 (67)
All schools	68 (176)	70 (175)

TABLE 32.—SPECIAL COMPARISON—INFORMATION RESOURCE AND SALARIES TO TOTAL EXPENSES—1989–90

[NOTE—Federal Work Study Funds are not Included In This Table Comparison]

Collection size range of volumes	Mean total all library expenses 1989–90	Total information expenses 1989–90	Percent	Total salaries expenses 1989–90	Percent
0 to 100,000	0	0	0	0	0
100,000 to 200,000	$782,072	$372,223	48	332,017	42
200,000 to 300,000	1,080,107	502,535	47	481,047	45
300,000 and Over	1,744,301	732,289	42	858,353	49
All Schools	1,274,925	564,576	44	594,174	47

Note: Salary expenses includes all salaries, wages and fringe benefits except for federal work study portion of student wages. Remainder of expenses not included are expenses of operaitons, such as supplies, computer-bibliographic systems, automation, conferences and travel, etc.

TABLE 33.—SPECIAL COMPARISON—LIBRARY BUDGET FOR 1990–91 AND LIBRARY EXPENSES FOR 1989–90 PER STUDENT ANALYSIS.

Collection size range of volumes	Mean budget for 1990–91	FTE students October 90	1990–91 estimated budget per student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$804,534	475	$1,693.97
200,000 to 300,000	1,127,992	625	1,804.79
300,000 and Over	1,824,354	865	2,109.08
All Schools	1,327,232	688	1,929.12

Collection size range of volumes	Mean expenses for 1989–90	FTE students October 89	1989–90 estimated expenses per student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$782,072	466	$1,678.27
200,000 to 300,000	1,080,107	636	1,698.28
300,000 and Over	1,744,301	875	1,993.49
All Schools	1,274,925	668	1,908.57

Note: Table 33 does not include federal work funds, either in 1990–91 budget or 1989–90 expenses.

TABLE 34.—SPECIAL COMPARISON OF PER STUDENT EXPENSES

Collection size range of volumes	1989–90 Estimated expenses per student for library program	1989–90 Estimated salary expenses per student for library program	1989–90 Estimated information expenses per 89 FTE student for library program
0 to 100,000	0	0	0
100,000 to 200,000	$1,678.27	$746.02	$798.76
200,000 to 300,000	1,698.28	777.38	790.15
300,000 and over	1,933.49	1,040.44	836.90
All schools	1,908.57	931.56	845.17

Note.—Information taken from TABLE 33, TABLES 29 and 30 COMBINED, AND TABLE 5. In these tables, several schools did not report data and special comparison may be off. Salary information does include federal work study funds. However, it is believed that the characteristics of this table are true—that is that the libraries, generally, with less than 300,000 volumes spend more for information resources than for salaries and fringes while libraries, generally, with more than 300,000 volumes spend more for salaries and fringes than for information resources.

These tables are an attempt to document the economic impact of the schools with more than 300,000 volumes on the establishment of the national mean and median of various law library statistical categories of all 176 schools. Based on the Fall 1990 ABA statistics, there are 67 schools or 38 percent of all schools with more than 300,000 volumes.

In summary, the ABA uses SIZE OF COLLECTION as the basic measuring tool to determine the national mean and median of all law library statistical categories. The direct consequence of this use is that the schools with more than 300,000 volumes exert a very significant and substantial economic impact on driving upward the national mean and median in various statistical categories for all schools with less than 300,000 volumes. For schools with less than 200,000 volumes, the economic impact has major consequences for them to comply with the national mean and median.

In important categories of statistical analysis in comparing law libraries, the total resources, based on the mean of all schools with less than 300,000 volumes, do not equal the total resources of the schools with more than 300,000 volumes. From the tables, the information reveals.

Category	Total resources all schools with less than 300,000 volumes (109 schools)	Total resources all schools with more than 300,000 volumes (67 schools)
1. Table 1—Budget for 1990–91	$109,700,972	$118,583,010
2. Table 2—Expenses for 89–90	$105,438,259	$115,123,866
3. Table 3—Information Expenses for 1989–90	$48,340,637	$48,331,074
4. Table 8—Total Collection in Number of Volumes	23,962,027	30,506,440
5. Table 9—Volumes added 89–90	1,260,650	1,325,930
6. Table 10—Titles added 89–90	160,839	207,700
7. Table 11—Titles held at start of 1990–91 (Hard Copy Only)	3,521,020	7,741,966
8. Table 12—Serial Subscriptions	316,474	375,200
9. Table 13—Serial Expenses	$37,290,585	$35,913,306
10. Table 14—Serial Titles	313,554	329,371
11. Table 15—Duplication of Serial Subscriptions	450	564
12. Table 16—Retrieval Expenses	$4,023,643	$3,203,178
13. Table 18—FTE students '90	62,400	57,955

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Category	Total resources all schools with less than 300,000 volumes (109 schools)	Total resources all schools with more than 300,000 volumes (67 schools)
14. Table 19—Retrieval use 89–90	415,261	416,572
15. Table 21—Other Information Resources (Treatises) Expenses for 89–90	$7,069,562	$7,934,478
16. Table 22—Total Number of FTE Staff	1,554.9	1,842.5
17. Table 23—Total Number FTE Librarians	702.7	757.1
18. Table 26—Salaries paid 89–90	$34,711,982	$41,495,025
19. Table 27—Fringe Benefits paid 89–90	$7,859,309	$9,954,560
20. Table 28—Wages paid 89–90	3,833,815	$4,343,365
21. Table 29—All Salary, Wages, and Fringes paid 89–90	$46,405,009	$55,792,945
22. Table 30—Federal Work Study Funds, paid 89–90	$1,188,510	$2,549,231

As noted, the basic measuring tool is *size of collection*. However, when FTE students rather than size of collection is the measuring tool, the economic impact is that larger schools are driving downward the per student analysis of all schools. Table 6 and 7 reveal the following:

For libraries with less than 200,000 volumes, the economic impact of the use of libraries with 300,000 or more volumes to establish the national mean of certain categories is major. The tables reveal the following:

Category	Mean of schools with less than 200,000 vols.	Mean of schools with more than 300,000 vols.	National mean of all schools	Percent schools less than 200,000 vols. are to schools with more than 300,000 vols.	Percent schools less than 200,000 vols. are to National mean
1. Table 1, Budget 90–91	$804,634	$1,824,354	$1,327,232	44	61
2. Table 2, Expenses 89–90	$782,072	$1,744,301	$1,274,925	45	61
3. Table 3, Information Expenses 89–90	$372,223	$732,289	$564,576	51	66
4. Table 8, Collection Size	165,333	455,320	309,480	36	53
5. Table 9, Volumes added 89–90	11,588	19,790	14,896	59	75
6. Table 10, Titles added, 89–90 Hard	1,198	3,100	2,108	39	57
7. Table 11, Titles held Hard only	21,328	102,151	58,983	21	36
8. Table 12, Serial Subscriptions	2,367	5,600	4,114	36	58
9. Table 13, Serial Expenses	$278,132	$544,141	$423,144	51	66
10. Table 14, Serial Titles	2,238	4,916	3,695	46	61
11. Table 15, Duplication-Serials	130	684	419	19	31
12. Table 16, Retrieval Expenses	$33,341	$48,533	$41,826	69	80
13. Table 18, FTE Students 90	475	865	688	55	69
14. Table 19, Retrieval use	2,733	6,342	4,765	43	57
15. Table 21, Other Information Expenses (Treatises)	$53,357	$120,224	$87,234	44	61
16. Table 22, Total Staff, FTE	12.5	27.5	19.3	45	65
17. Table 23, Total Librarians—FTE	5.7	11.3	8.3	50	69
18. Table 26, Total Salaries Paid	$257,330	$638,385	443,064	40	58
19. Table 27, Total Fringes Paid	$54,823	$155,540	$105,408	35	52
20. Table 28, Wages Paid	$22,006	$66,821	$48,386	33	55
21. Table 29, All Salary, wages fringes paid	$332,017	$858,353	$594,174	39	56
22. Table 30, Federal Work Study paid	$15,630	52,034	28,107	30	56

As noted, the basic measuring tool is size of collection. Large schools; that is, schools with a collection of more than 300,000 volumes, do have a very significant economic impact on the establishment of the national mean (as well as median) for law library statistical categories. For schools with less than 200,000 volumes, the economic impact indicates very significant problems in being able to meet the national mean of all schools.

This report provides detailed information about the establishment of the national mean and median of 176 law schools based on size of collection as the measuring tool. Thirty-four different tables have been used and twenty-two measuring characteristics based on size of collection summarize the information.

Temple University, School of Law

1719 N. Broad Street (055–00), Philadelphia, Pennsylvania 19122, (215) 204–7861, Fax: (215) 204–1185

October 16, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, JCB Building, 555 4th Street NW., Washington, D.C. 20530, FAX 202 616–8544

Dear Mr. Greaney: I was shocked to learn that your interpretation of the proposed Consent Decree between the American Bar Association and the U.S. Department of Justice prohibits review of race and/or gender discrimination in salary and/or fringe benefits.

Both the ABA and the U.S. government have been on record for a long period of time in opposing discrimination on the basis of race and/or gender. Specifically, it is the job of the Department of Justice to fight discrimination on the basis of race and/or gender. I therefore do not understand your interpretation.

Section IV, Prohibited Conduct, of the proposed consent decree enjoins the ABA from,

"(B) collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees;

(C) using law school compensation data in connection with the accreditation or review of any law school;"

Section V, Permitted Conduct, states,

"Nothing herein shall be construed to prohibit the ABA from: . . . (2) investigating or reporting on whether a law school is in compliance with such Standards, Interpretations or Rules, or the cause of non-compliance; or (3) requiring that a law school take remedial action to comply with such Standards, Interpretations or Rules as a condition of obtaining or maintaining ABA approval."

Since ABA Accreditation Standards 211 to 213 prohibit discrimination, Section V of the proposed Consent Decree clearly allows review and use of salary and fringe data for the purpose of determining whether the school is discriminating when a colorable claim of discrimination has been raised.

It is an outrage that the Clinton Administration has taken a position against the enforcement of anti-discrimination provisions. I suggest strongly that you change your interpretation of the proposed Consent Decree.

Sincerely,

Marina Angel,

Professor of Law.

Gonzaga University

Office of the President

September 5, 1995.

Dear Mr. Greaney: On August 11, 1995, I received the enclosed memorandum from the General Counsel of the ABA advising that the proposed final Judgment in the ABA anti-trust matter is subject to public comment through the end of September. The notice did not indicate to whom comments should be sent but through other sources I was advised that you were the proper person to receive those comments.

Enclosed are my comments which hopefully will be given consideration. If I have forwarded these to the wrong office, please advise.

Sincerely,

Bernard J. Coughlin, S.J.,

President.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti-Trust Division, 555 Fourth St., NW., Room 9903, Washington, DC 20001.

Enclosures

c: John E. Clute, Dean of the School of Law

Darryl L. DePriest

General Counsel

American Bar Association, 541 North Fairbanks Court, Chicago, Illinois 60611–3314, (312) 988–5215

Memorandum

To: Presidents of Universities with ABA Approved Law Schools

From: Darryl L. DePriest

Date: August 3, 1995

Re: Law School Accreditation Process

As you may have read or heard, the American Bar Association and the Department of Justice have entered into a settlement agreement concerning the Department's investigation of the ABA's law school accreditation process.

Enclosed is a copy of the proposed Final Judgment. This proposal will be subject to public comment through the end of September, after which we anticipate the Court's approval.

Allow me to suggest that you review the proposed Final Judgment in concert with the letter, dated June 14, 1995, from President Bushnell and President-Elect Ramo. I believe you will find that the ABA either had done or had already decided to do everything that will be required pursuant to the proposed Final Judgment. For your further information, I am including a copy of President Bushnell's statement explaining why the American Bar Association decided to enter into the settlement agreement.

If you have any questions about this matter, please do not hesitate to contact me.

DLD:md

Enclosures

Comments as to Proposed Final Judgment in United States of America v. American Bar Association, U.S. District Court, District of Columbia, Civil Action No. 95 1211

1. *Site Evaluation Team:* Paragraph VI, subparagraph (G) of the proposed Final Judgment should be amended to provide that at least forty (40%) percent of the members of the evaluation team be other than law school deans or faculty members. The proposal as written is satisfactory for a five (5) person team; however, if the site evaluation team includes more than five members, the proposal provides inadequate assurances as to representation.

2. *Control of Resources:* The proposed Final Judgment should be amended to state that the responsibility of the Special Commission referenced in § 7(A) of the proposed Final Judgment also includes the subject of "Control of resources."

Control of financial resources gives effective control of salaries, compensation, fringe benefits, stipends, and working conditions of law school faculty and personnel. The proposed Final Judgment does not directly address the matter of "control of resources" in § IV—Prohibited Conduct or in § VII—Special Commission.

Control and domination by legal educators of the ABA's "law school accreditation standard-setting and enforcement process" is a principal theme of the Complaint (see Complaint at § 9). Complaint §§ 28–33 allege that that control has been used for inappropriate purposes. For example, see Complaint § 28: "* * * site inspection teams * * * have at times been unduly concerned with the salaries, perquisites and working conditions of their colleagues, among other things. Site inspection teams on occasion have incorporated law faculty demands and complaints into their site inspection reports." By imposing requirements going beyond the matter of compliance with the Standards, "the ABA Accreditation Committee demands that the school exceed the Standard's minimum requirements or meet the law school's stated aspirational goals" (Complaint § 29) which aspirational goals typically are set by law school faculty and personnel.

The ABA Standards and Interpretations are designed and enforced to give the law school dean and faculty effective control over resources contributed to or generated by the law school. For example, see the ABA's Interpretation of Standards 201, 209, and 210 (coupled with 105). Additionally, Standard 702 requires physical facilities to be under the "exclusive control" of the law school.

Unlike the Law School deans and faculty, the governing board of the University (of which the Law School is a part) is safely-distant and removed from the accreditation process. Control over resources should be the ultimate responsibility of the University and its governing board. However, the present ABA Standards, Interpretations and enforcement serve to remove control of law school resources from the University's governing board.

3. *Adequacy of Notice:* The notification from the ABA of the opportunity to comment on proposed Final Judgment did not include identification of the office to whom such comments should be sent. Though possibly not intended, that omission likely will reduce the number of public responses.

University of La Verne

September 28, 1995.

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

Dear Mr. Greaney: The University of La Verne submits the following regarding the proposed Final Judgment in *United States* v. *American Bar Association*, and requests that they be given consideration.

The proposed Final Judgment (the "Judgment") does not adequately address the findings of the Department of Justice, nor does it deal with certain other anti-competitive aspects of the American Bar Association accreditation process. In the Competitive Impact Statement, the DOJ discussed the ABA's policies with regard to Student-Faculty ratios, teaching loads, resources and facilities, among other things. Despite the ABA's record in these matters, the Judgment fails to deal strongly enough with many of them.

1. RESTRICTION ON NON-ABA GRADUATES: Although the Judgment deals with the question of ABA schools accepting students and graduates from state-accredited institutions, it fails to address the full consequences of the ABA's "capture of the accreditation process."

Specifically, the Judgment does not restrain the ABA's support of ABA-only graduation requirements for admission or employment. The ABA states in its Standard 102 "that every candidate for admission to the bar should have graduated from a law school approved by the American Bar Association." It has on at least one occasion filed an *amicus* brief in a suit by a graduate of a state-accredited school seeking admission in Nevada, a state with no ABA law school of its own. In recent years several states have abandoned admission rules which permitted non-ABA graduates to sit

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for the Bar, and the Judge Advocate General branches of the armed forces have enforced an ABA-only rule. Given the DOJ findings, these states and agencies in effect require adherence to standards which are the product of anti-competitive actions by the ABA.

The Law School Admission Council, which is responsible for producing and administering the LSAT, restricts membership to ABA schools, despite the use of the LSAT by non-ABA institutions. As a result, non-ABA schools are denied access to important seminars and information about the LSAT.

The DOJ should examine the ABA's possible role in seeking ABA-accreditation exclusivity, and deal with it by enjoining such activities or by requiring remedial action.

2. FACILITIES: The ABA standards on physical facilities, and the interpretation thereof, raise serious concerns. The Competitive Impact Statement implies that the standard on physical facilities has been improperly applied, pointing out that a substantial percentage of schools have been criticized by Site Visitation Teams despite new or renovated facilities. The Judgment leaves this and other topics to a Special Commission previously formed by the ABA. That Commission (the Wahl Commission) has generated a lengthy report which rewords the physical facility standards but leaves the mechanism of interpretive abuses unchecked.

It is through the interpretations that the Standards become reality for an institution seeking accreditation. For instance, the interpretation to Standard 701 states that leased facilities are not in compliance. There may be a number of reasons a developing school may wish to occupy leased facilities in either the short or long term, including the economy, regional growth patterns and institutional needs. The only rational basis for the ABA's blanket restriction would seem to be the promotion of locational stability, which may itself have anti-competition ramifications. Ownership offers no guarantee that a school will not change locations. Indeed, selling a building in order to relocate may well be less difficult than early termination of a lease. In any event, the decision of whether to lease or own should be left to the institution. Students are well-taught in either kind of facility. If non-owned facilities meet the reasonable needs of the educational program, and taken together with the school's history promise reasonable locational stability, they should not be the subject of a blanket prohibition.

The cost of facilities meeting the ABA's ever-evolving and ever more expensive demands is one of the factors putting ABA accreditation out of the reach of institutions willing and able to meet reasonable educational standards but unable to afford the millions needed for state-of-the-art buildings.

3. LIBRARY: Another interpretation, dealing with library facilities, requires seating capacity for half the school's largest division. In an era when computers allow students to access WESTLAW, LEXIS and the informational world of on-line services and the Internet from their homes, the ABA requires the allocation of precious fiscal and physical resources for empty seating. In fact, most students are provided with WESTLAW access from their personal computers as part of the school's subscription with West. Although the library provides a study hub for a law school, the facts of life for today's adult student, particularly a working adult attending school part-time, increase the likelihood of more home study than when the interpretation was written, and decrease the need for added seats in the library.

The facts of modern electronic research also impact the ABA standards on library holdings, which generally increase the need for larger library staffs and hardcover holdings, and thereby the cost of education to students.

4. FACULTY: The Judgment leaves the calculation of the faculty component of student-faculty ratios to the Special Commission. The Wahl Commission Report acknowledges the role of teachers with administrative posts and adjunct faculty in the academic program of a law school, and this is an important development. It remains to be seen what effect this, and the DOJ action, will have on the resulting Standards and particularly on the interpretations. The DOJ and the court should carefully review the final form and application of new standards and interpretations to assure compliance with the spirit of the judgment.

A further concern is raised by the Judgment's language concerning the use of salary and benefits data as part of the accreditation process. Such data is gathered by organizations and subject to the judgment, such as SALT and AALL, and is therefore available to inspection teams. The judgment should more clearly and forcefully forbid the use of such data whatever the source.

5. OUTCOME MEASUREMENT: Ultimately, the quality of a law school's program is measured by the results it obtains with its students. The ABA Standards and the Judgment do not address outcome measurement. Although it may be difficult to measure academic outcomes, law schools have the Bar passage rate as one indicator. A high passage rate may perhaps be obtained by "teaching to the Bar," and such a practice would be rightly criticized. But some state-accredited institutions in California, clearly *not* engaging in such a practice, have on occasion attained higher Bar passage rates than some ABA-accredited schools. At least with regard to that one measurement, the lack of relationship between the Standards and educational outcomes is apparent. The alumni of state-accredited schools who daily demonstrate the quality of their education on the bench, in their work in Bar Associations and in law practice, further prove the point.

The success of a law school in producing competent practitioners should be a critical component of the accreditation process. New measurement methods need to be developed and utilized as part of the accreditation process.

We are thankful for the opportunity to present these points.

Sincerely,

Kenneth Held,

Dean.

Normal Daniel Frank II

Attorney and Counselor at Law

1606 East Expressway 83, Mission, Texas 78572, 210 585–2764

September 11, 1995.

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America, Plaintiff v. American Bar Association, Defendant, Civil Action No. 95–1211 (CR), Filed: June 27, 1995

Dear Mr. Greaney: Enclosed are the comments of the Reynaldo G. Garza School of Law concerning the above referenced antitrust suit. I understand that you are the proper person to send these comments to in order for them to be filed with the U.S. District Court and published in the Federal Register.

Should you wish to contact me please do so at my above address or phone number.

We are very grateful that the Department of Justice has taken this course of action. This was something that was sorely needed.

Sincerely,

Norman Daniel Frank, II,

President, Reynaldo G. Garza School of Law.

Reynaldo G. Garza School of Law

905 North Shore Drive, San Benito, Texas 78586, (210) 399–1800

September 11, 1995

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America, Plaintiff v. American Bar Association, Defendant, Civil Action No. 95–1211 (CR), Filed: June 27, 1995

The Reynaldo G. Garza School of Law, hereinafter also called Garza Law School, is a Texas non profit corporation incorporated under the laws of the State of Texas. The Garza Law School would like to submit the following comments believing that the above referenced civil action final judgment should be modified to more satisfactorily cover the following issues:

(1) The proposed final judgment does not go far enough to rectify the great injustice that the American Bar Association (ABA) has perpetrated on victims of its illegal policies. The victims are not only the law Schools, including the Garza Law School, who have had to deal with the ABA abuse of the accreditation process they are the students who have been denied access to take bar exams and become licensed as attorneys. These students have been denied student loans, have had to make unfair sacrifices, and are to this day denied an opportunity to earn a living practicing law.

(2) The proposed final judgment does not specifically address the issue of Library collections. This is an important issue due to ABA Standard 602 which requires an ABA approved core collection. The interpretation of this requirement in the past has meant that law schools must have physical possession of paper books printed and published by a select few printers and publishers and waste valuable financial resources warehousing these books and materials. The interpretation of ABA Standard 602 also meant that a law school could not *fully* take advantage of the latest technology in CD ROM and computer modem access to large data bases.

(3) The proposed final judgment does not specifically address the issue of ABA Standard 605 which requires a full time librarian to administer a law library. Just as the United States recognized the ABA's abuses in setting standards that require only full time faculty to teach students so too the court should consider that a law library can be equally well managed by part time librarians.

(4) The final judgment does nothing to correct any of the additional injustices done as exhibited by the Texas Supreme Court in their letter, signed by Justice John Cornyn, and attached hereto as exhibit "A". The Texas Supreme Court zealously supports and punitively enforces all the illegal standards created by the ABA. The letter from the Texas Supreme Court documents the following:

(a) the Texas Supreme Court, the Deans of all eight Texas ABA accredited law schools, and the chairman of the Board of Law Examiners stood in opposition to bills that would have allowed Garza Law School Students to sit for the Texas Bar Exam. Their stalwart opposition to the bills was to force the Garza Law School to comply with the illegal ABA standards. This action caused damage to the Garza Law School and its students and students who would have liked to attend the Garza Law School.

(b) the Texas Supreme Court does not want the Garza Law School and unaccredited law schools to "get rich from the tuition dollars of their students to the damage of accredited law schools and educational standards generally." This statement of the Texas Supreme Court is obviously in support of the illegal guild standards as created by the ABA and unfairly gives preference to Law Schools accredited by the ABA.

I hope the United States District Court will consider the actions of the Texas Supreme Court as documented in their letter to the Texas Senate dated April 7, 1993 and enclosed herein as exhibit "A". It was in the hands of the Texas Supreme Court that the Garza Law School had to place itself for justice and relief from the illegal guild standards created by the ABA. The Texas Supreme Court ignored its duty and responsibilities to the people of Texas and instead zealously supported the illegal guild standards enacted by the ABA. Because of the above reasons the U.S. District Court should be able to understand that adequate relief is not in the proposed final judgment. Stronger measures and procedures that include State level enforcement are necessary in order to insure proper compliance. These measures and procedures need to be included in the final order. Please see that justice is done and that proper and adequate relief is granted.

Respectfully submitted,

Norman Daniel Frank II,

President, Reynaldo G. Garza School of Law.

The Supreme Court of Texas

Post Office Box 12248

Austin, Texas 78711, Tel: (512) 463–1312, FAX: (512) 463–1365

April 7, 1993.

The Honorable Eddie Lucio,

Texas Senate, 402 One Capitol Square, Austin, TX 78701

Re: H.B. 850 (Rep. Rodriguez), S.B. 296 (Sen. Lucio)

Dear Senator Lucio: I am writing to ask for your support in defeating H.B. 850 by Representative Rodriguez, which has passed the House with amendments, and its companion, S.B. 296 by Senator Lucio. Both of these bills would allow the graduates of the Reynaldo Garza Law School to take the bar examination even though the Rules Governing Admission to the Texas Bar promulgated by the Supreme Court require graduation from a law school accredited by the American Bar Association.

Although the court previously granted to that school's graduates a limited waiver from its rules, that waiver expired and was not renewed because of the court's waning expectation that the Garza Law School would ever become accredited by the ABA. The school then directed its attention to the legislature, which granted another limited waiver of this requirement. But instead of trying to improve the school to meet the ABA standards, even after the court granted a waiver, the school withdrew its application for ABA accreditation.

House Bill 850 has now passed out of the House and will be referred to the Senate Jurisprudence Committee, where it may be substituted for S.B. 296. As the Supreme Court liaison to the Board of Law Examiners I have already expressed concern about these bills to Senator Henderson, chairman of the Senate Jurisprudence Committee. Numerous witnesses, including myself, the chairman of the Board of Law Examiners, and the deans of all eight Texas ABA accredited law schools stand ready to testify about our opposition to these bills, but the following summarizes our concerns.

Our concerns are twofold: (1) the future of the requirement of graduation from an ABA accredited law school in Texas and what its demise may mean to the public and the legal profession on our state; and (2) the patently inadequate educational preparation being given to Garza's graduates.

None of the five Garza graduates who took the most recent bar exam passed on the first try. Compare this result with an average passage rate of 88.5% for graduates of Texas' eight ABA accredited schools. Since July 1988, the cumulative bar passage rate was 22% for Garza graduates and 82.9% for graduates of ABA accredited Texas law schools. I am personally concerned that the state of Texas would officially encourage or even condone this situation: Garza students pay tuition and work their way through the rigors and difficulties of law school, only to be thoroughly unprepared to take the bar exam. These statistics raise serious concerns about the quality of legal education afforded these students in spite of their best efforts. There can be little doubt that law students are better prepared for the bar examination and the practice of law when they graduate from a law school required to meet or exceed ABA accreditation standards.

There is also the issue of whether special treatment for graduates of Garza can be defended when graduates of out-of-state unaccredited law schools seek the same privilege. Questions of fundamental fairness, not to mention equal protection, are presented. The exemptions contained in H.B. 850 and S.B. 296 are limited to an unapproved law school within the boundaries of Texas; however, there is a serious legal question whether a state can discriminate in the bar admission process in favor of residents of its state. The Board has already been informed by graduates of out-of-state non-ABA-approved law schools that if the exemption for Garza is renewed, we can expect a court challenge of the Supreme Court rules on the basis that they discriminate against individuals who are not residents of Texas.

We must also consider whether Texas will eventually become like California, where unaccredited law schools get rich from the tuition dollars of their students to the damage of accredited schools and educational standards generally. Will Texas eventually open its bar exam to everyone, whether they graduate from an unaccredited law school—or even receive degrees for correspondence courses—or if they do not graduate from a law school at all?

The main reason for this lengthy letter is to provide you with accurate information regarding the context in which I hope you will consider these bills. At my request, representatives of the Board of Law Examiners attended the public hearing before the House Committee on Judicial Affairs and were present in the gallery during floor debate when H.B. 850 was considered on second reading; I fear that many members of the Legislature have been misled about the facts and so I offer the following background information.

Some of the proponents of the Garza bill have suggested that the issue is accreditation by the *Coordinating Board*; however, the real issue is accreditation by the American Bar Association. The first deals with the right granted by the State for a school to grant a degree; the second deals with a law school's certification as meeting a set of standards and criteria set by the American Bar Association's Section on Legal Education and Admission to the Bar.

The exemption from the law study requirment for Garza law students which is the backbone of H.B. 850 is an exemption from the Supreme Court's rule requiring that an applicant for the Texas Bar hold a Doctor of Jurisprudence degree from a ABA-approved law school. In other words, the Supreme Court has determined both under its rulemaking authority and by its inherent power under the Texas Constitution to regulate the practice of law that to be eligible to take the Texas Bar Examination, an individual must have a J.D. degree awarded by a law school which is approved or accredited by the American Bar Association. The Supreme Court does not have a rule requiring that an applicant hold a degree from a school accredited by the Coordinating Board.

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However, most of the floor debate and, indeed, most of the comments made by the proponents of the bill at the public hearing in the Judicial Affairs Committee centered on Garza's inability to become accredited by the Coordinating Board, allegedly due to the Coordinating board's discriminatory policies. The rules of the Supreme Court which H.B. 850 will override have nothing to do with the Coordinating Board's accreditation or certification.

In both the committee hearing and the House floor debate on April 6th, statements were made that Garza had an application for accreditation on file, and that additional years were needed to process that application. I do not know whether Garza has an application on file with the Coordinating Board. However, I can assure you that Garza School of Law does not have an application on file for approval by the American Bar Association.

I offer the following background information:

1. Reynaldo G. Garza School of Law was incorporated in October 1983, and began conducting classes in August 1984.

2. In December 1984, Garza asked the Supreme Court of Texas to exempt its graduates from the ABA-approval requirement; the request was denied in January 1985.

3. In January 1987, Garza filed an application with the American Bar Association seeking provisional approval.

4. An ABA site inspection was scheduled for March 7–10, 1987, but was cancelled by Garza, resulting in its application fee being returned, leaving no application for approval pending.

5. In June 1987, Garza again requested exemption from the ABA-approval requirement; the Supreme Court denied the request in July 1987.

6. In November 1987, Garza filed a formal petition with the Supreme Court requesting exemption from the ABA-approval requirement. In this petition Garza stated that it has "filed its application for initial inspection by the American Bar Association in March, 1986, and is currently pending." This statement was not true.

7. On January 8, 1988, after filing the petition containing the statement in item 6 above, Garza filed a second application with the ABA seeking provisional approval.

8. Based on Garza's representation that it was actively seeking ABA-approval, the Supreme Court signed an order on January 14, 1988, granting an exemption of the ABA-approval requirement to those Garza students awarded a J.D. degree from Garza between May 1988 and June 1989, allowing them to take the Texas Bar Examination in July 1988, and February and July 1989. The order specifically stated that no extension of the order would be granted.

9. On April 5, 1988, Garza School of Law withdrew its second application for ABA approval.

10. In December 1989, after the expiration of the exemption granted the school in the January 1988 order, Garza filed another petition with the Supreme Court, requesting an exemption from the ABA-approval requirement. This petition stated that Garza "has no plans for continuing its existence[beyond December 31, 1989." The petition states that Garza students who have not completed their degree requirements upon the school's closing would do so through another institution.

11. In February 1989, the Supreme Court denied Garza's request for an extension of the exemption from the ABA-approval requirement.

12. In June 1991, the 72nd Legislature enacted a temporary legislative exemption for Garza graduates by amending Sec. 82.0241, Texas Government Code, thereby allowing Garza students who has enrolled before June 1, 1989, and who received a J.D. degree by June 1, 1993, to take the Texas Bar Examination. The exemption specially expired on June 1, 1993, and thereafter, according to the 1991 legislation, all matters relating to eligibility of students at unaccredited law schools would remain in the sole jurisdiction of the Supreme Court of Texas.

13. The Reynaldo G. Garza School of Law does not have a pending application for approval by the American Bar Association. The ABA informed the Board of Law Examiners on April 7, 1993, that Garza has not filed any application for approval since the school's voluntary withdrawal of its 1988 application.

14. Representatives of the Reynoldo G. Garza School of Law visited with James P. White, the ABA Consultant on Legal Education (the executive officer of the ABA's section in charge of law school accreditation) on November 24, 1992, and told Mr. White that they would not be seeking ABA approval for at least three years from that date.

15. The accreditation process takes approximately nine months, rather than four years as represented by some Garza proponents.

Both the Board of Law Examiners and this Court believe that these facts demonstrate that the Reynaldo G. Garza School of Law has been given every reasonable opportunity to obtain the required approval by the American Bar Association for its graduates to sit for the bar exam. I am especially concerned that representatives of the school have, inadvertently or otherwise, misrepresented their efforts to seek ABA-approval. I am equally concerned that the Legislature is being misled by the repeated references to the Coordinating Board accreditation dispute which is not an issue in this controversy.

I urge you to vote against H.B. 850 or S.B. 298. I believe it would be a grave mistake to weaken the educational standards that must be met before an individual is entitled to be licensed to practice law in Texas. Thank you for your consideration.

Sincerely,

John Cornyn,

Justice.

cc: Warlick Carr, Chairman, Board of Law Examiners, Deans of ABA-Accredited Texas Law Schools

September 27, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: This comment is written in support of the United States civil antitrust suit alleging that the American Bar Association [hereinafter "ABA") violated Section 1 of the Sherman Act in the accreditation of law schools. The complaint alleges that the ABA restrained competition among personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. In order to comply with the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16) this comment proposes two essential modifications before the approval of the Final Judgment.

First, all individuals holding a Juris Doctor degree from a state-accredited law school should be allowed to take the bar examination in any state of their choice. Currently, bar admission rules in over forty states require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination. Allowing state-accredited law school graduates to take the bar examination is consistent with the ABA's high standards requiring law schools to maintain an educational program designed to qualify its students for admission to the bar.

This proposal suggests treating state-accredited non-ABA-approved law school graduates similarly to ABA-approved law school graduates. A state-accredited law school graduate must comply with rigorous state requirements and procedures, passing the bar examination demonstrates that individual's qualifications to practice law in the applicable state.

Additionally, the ABA is the only agency recognized by the United States Department of Education as a law school accrediting agency. The ABA Standard which requires an individual graduate from an ABA-approved law school before admission to the bar gives the ABA power to influence where an individual can or cannot practice his or her livelihood. This flies in the face of the United States Constitution's commerce clause and is an unreasonable restraint on interstate commerce for prohibiting graduates from a non-ABA-approved school to freely move from one state to another.

This total ban on non-ABA-approved schools by the ABA has prevented my taking the Massachusetts Bar Examination. I attended Western State University College of Law, in San Diego, California, a state-accredited law school but a non-ABA-approved school. I was awarded the position of Editor-in-Chief of Law Review, participated in the regional for the Phillip C. Jessup International Moot Court Competition, and attained a certificate in the International Certificate Process. I am currently awaiting the results of the July California Bar Examination. Lifting this prohibition will allow me to take the bar examination in an additional state of my choice.

Second, all individuals holding a Juris Doctor degree should be eligible for admission in LL.M or post-juris Doctorate programs based on the student's academic achievements and according to the admission standards of the law school. While the ABA prohibits an ABA-approved law school from matriculating graduates of state-accredited or unaccredited law schools, it permits, under certain circumstances, the matriculation of graduates of foreign law schools (Interpretation 3 of Standard 307). The ABA only allows a law school to apply for a waiver of Interpretation 3 of Standard 307 and does not allow the affected individual to apply for a waiver on their own behalf. This rule extends too much authority to the ABA over decisions best suited to the academic institution. Additionally, allowing foreign student enrollment in advance law programs but not allowing state-accredited law students the opportunity to enroll is clearly discriminatory.

I graduated from Wells College in 1978 and continually have taken graduate classes at the Harvard Extension School and also attended the College for Financial Planning. The pursuit of higher education has always been a personal and professional goal for self improvement and one which I hope to continue in the future. The interpretation of this Standard prevents graduates from state-accredited law schools such as myself and members of the bar who have practiced with distinction from furthering their professional careers by obtaining advanced law degrees. Once again, this is fundamentally unjust and substantially affects the flow of interstate commerce.

The proposed Final Judgment should include modifications made in this comment. Such modifications will prohibit the recurrence of conduct that is plainly anticompetitive and which bars the free flow of graduates from moving interstate.

Based on the foregoing, the United States request for a permanent injunctive relief should be granted, enjoining the ABA from engaging in further violations of Section 1 of the Sherman Act.

Respectfully submitted,

Deborah B. Davy,

3814 Arnold Ave., Apt. 6, San Diego, CA 92104.

Joel Hauser

Attorney at Law, 234 Kenwood Ave., Delmar, NY 12054, 518 475–0446

September 21, 1995

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti Trust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

RE: Proposed Final Judgment, *U.S.* v. *ABA*

Dear Mr. Greaney: Pursuant to the Antitrust Procedures and Penalties Act, I would like to submit these comments regarding the Proposed Final Judgment and Consent Decree in the above referenced case.

While I am generally satisfied with the settlement your office has proposed, I am disappointed that you have not gone farther towards breaking the stranglehold the ABA has maintained over our profession. Unfortunately, even if the ABA fully complies with the terms and conditions described in the Settlement, enough of the old practices are maintained to thwart any chance for real change and progress. In particular, the Settlement fails to resolve the issues of part time faculty and student/faculty ratios, both of which were prominent and central to Justice's Complaint against the ABA. Nor does the settlement recognize the value and contribution of non-ABA accredited schools. I believe that the settlement should go on record as acknowledging that these schools may be a viable and practical alternative to the ABA schools.

As noted in Justice's Complaint, while the ABA has insisted on a high student/faculty ratio, it has never considered actual student/faculty contact or actual class size when considering accreditation. Consequently, the high ratio policy has had no significant impact on the quality of a law school education. It has, however, had a significant impact on the cost of a law school education. The high ratio does not come cheap. Similarly, denying a law school the opportunity to count part time faculty towards this ratio does little towards achieving academic excellence. It merely serves to maintain an artificially high operating cost by requiring schools to continue to hire a large number of full time faculty who devote remarkably little time to actual teaching. This high cost makes it all but impossible for new law schools to gain accreditation. And without accreditation, these new schools can't compete.

People's College of Law, which I attended, had few full time faculty members. Our instructors were, for the most part, full time attorneys actively engaged in the practice of law. They taught those subjects which they specialized in as attorneys. Our Criminal Law professors were often lawyers from the Public Defender Service. Our Constitutional Law Professors came from the ACLU. Because our professors were experts in the practice of their respective fields, they were able to teach not only the history and theory of the law, they were also able to illustrate the application of the law through their personal experience and practice. Students at PCL didn't just learn the law, we learned how to practice law. That is something which only a part time faculty can convey. It is something which all law schools should strive for. It is something which serves the profession and the public at large. Yet the ABA has, and will continue to resist such an academic goal. Your settlement should insist that the ABA abandon it's full-time faculty Standards and Interpretations. Furthermore, law schools must be permitted to count part-time faculty members when considering student/faculty ratios.

I should note that I have personally suffered great hardship as a result of the ABA's tight control over the profession. I am a graduate of People's College of Law, a California law school which is not accredited by the ABA. I was admitted to practice law in California in 1981, after taking and passing the California Bar Exam. In 1989 I waived into the Washington, D.C. Bar by motion to the Court. In 1995, I was admitted to practice in New York State, after taking and passing the New York Bar exam.

I have been admitted to practice law for more than fourteen years, devoting my career to public interest work. As a counselor and attorney with the Center for Veterans' Rights and G.I. Forum, I represented hundreds of military veterans' in discharge upgrade hearings, Veteran's Administration reviews, and Social Security proceedings. As a lawyer with California Rural Legal Assistance, I represented countless poor farm workers in a wide variety of legal matters including housing, working conditions, and public benefits. As a lawyer with Neighborhood Legal Services Program in Washington, D.C. I represented poor people faced with eviction, termination or denial of crucially needed public benefits and services, and general consumer complaints. I am extremely proud of my work as a lawyer and the good that I have done for so many people. I am equally proud of the education and training which I received at People's College of Law.

Yet, despite my accomplishments as a lawyer, I was for three years denied the opportunity to take the New York Bar Exam simply because PCL was not accredited by the ABA. Up until last year, New York State's Rules for Admission provided that only graduates of ABA approved schools could be admitted to practice. On three occasions I Petitioned the New York State Court of Appeals for a waiver of the ABA accreditation rule. Each petition was denied, without any consideration given to my practice experience or my law school education, due to the Court of Appeals' blind adherence to the ABA accreditation rule.

Fortunately for me, in 1994 an Act of the New York State Legislature modified the laws governing the admission of attorneys. Effective the winter of 1994, lawyers who had graduated from a non-ABA law school, and who subsequently practiced law for at least five years after gaining admission in their home state, could sit for the New York Bar Exam. With the passage of this legislation, I was able to take the February 1995 bar exam. I passed the exam and was admitted to practice in New York in June, 1995.

However, as a graduate of a non-ABA approved law school my right to practice in most states remains in doubt. Only a handful of States are willing to look beyond ABA accreditation. I would urge Justice to include in this settlement an acknowledgment by the ABA that its "seal of approval" is only one factor which the States may consider when evaluating a particular lawyer or law school graduate's application for admission. As an alternative to an education at an ABA-approved school, States should be encouraged to consider a candidate's overall work and life experiences, in conjunction with his or her training and education at a non-ABA accredited school. Only then will the stranglehold which the ABA has maintained over our profession begin to be loosened. And only then will law school tuition start to come down.

Thank you for the opportunity to comment on your settlement. If you have any questions please give me a call.

Sincerely,

Joel Hauser

Wendell A. Lochbiler III

704 Wolverine Drive, Wolverine Lake, MI 48390

September 28, 1995.

Mr. John F. Greaney,

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Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

RE: United States of America v. American Bar Association, Civil Action 95–1211

Dear Mr. Greaney, I am writing to comment on the proposed Final Judgment in the above captioned case and to relate the devastating effect the discriminatory practices of the American Bar Association (ABA) has had upon my life. I will keep my comments brief since I only recently learned about the Competitive Impact Statement and I want to meet the October 1, 1995, deadline. However, I would be happy to provide you with more details upon request.

I attended the University of West Los Angeles School of Law (UWLA), located in California, from 1985 through 1988. The University of West Los Angeles is a state accredited school, but it is not accredited by the ABA. At the time I decided to attend UWLA, I planned to practice law and remain in California for I strongly believe that I received an excellent legal education at UWLA. I worked very hard, did well in school, and graduated in the top third of my class.

I passed the California Bar Examination, on my first attempt. (The California Bar Exam is widely recognized as being one of the most difficult in the country). I was admitted to the California Bar on December 7, 1988. In addition I was admitted to the United States District Court for the Central District of California on May 7, 1990. I practiced law for five (5) years in California. I have an impeccable record and excellent references from all my employers.

In October, 1993, I returned to Michigan for personal reasons, my father and my wife's father each underwent two heart operations. I applied for admission to the Michigan Bar. My application was summarily denied, and the *only* reason given was the fact that I did not graduate from an ABA accredited law school. The people I contacted at the Michigan Bar indicated my application was not even considered because I could not meet that threshold requirement.

I subsequently wrote to the Michigan Bar with three alternative requests: (1) I requested a waiver of the rule which requires applicants to have a degree from an ABA accredited institution; (2) In the alternative, I asked for an opportunity to take the Michigan Bar Examination; (3) I requested a hearing on the matter before the Board of Examiners. Again, the Board denied my request, and again the only reason given was my failure to attend an ABA accredited law school. Furthermore, they would not even hold a hearing on the matter, as per their guidelines. I have attached a copy of my letter to the Board and their response.

Having no other alternative, I contacted a local ABA accredited law school and inquired about admission to their LLM program. I was informed by the program director that I would not be considered for admission, even though I may be a qualified candidate, because I did not have a degree from an ABA accredited law school. He further indicated that the school's LLM program could lose its accreditation by accepting graduates of non-ABA accredited law schools.

I then contacted virtually every other ABA accredited law school in the state of Michigan regarding admission as a transfer student. I was uniformly informed that I would not be accepted as a transfer student since I did not have a degree from an ABA accredited law school. Moreover, I was told that I would have to retake the LSAT, since my previous LSAT score was over five (5) years old.

The above events transpired over the course of approximately two years. During this time I remained unemployed. I could not work in the field of my chosen profession since I was not admitted to the Michigan Bar. In addition, I was overlooked for several non-legal positions because potential employers considered me overqualified, or were concerned by the fact that I could not practice law. I have recently found employment in a position that pays far less (nearly 50% less) than I earned as an attorney. I know for a fact at least two firms would have been interested in hiring me, if I had been admitted to the Michigan Bar.

In conclusion, I am concerned that even though, I passed the California Bar examination on my first attempt, and I am qualified to practice in California and Federal Courts, and I would be considered a worthy candidate for employment by the FBI, or the Justice Department, which accept graduates of State accredited law schools; that I am not eligible for admission to the Michigan Bar, or allowed to take the Bar Examination, or even to be admitted to another law school. I believe the proposed Final Judgment is an admirable first step toward correcting the egregious conduct of the ABA. However, I would like to see some action taken to lessen the ABA's control over the admission of attorneys in the vast majority of States. In fact, I believe that eliminating the States requirement that candidates graduate from only ABA accredited schools, would be the singe most effective measure toward preventing control over the legal profession by the ABA. I also am afraid that enforcement of the Final Judgment will be lax because it appears it will be left in the hands of people who are somehow connected to the ABA. Thank you for your diligent work.

Respectfully Submitted,

Wendell A. Lochbiler III

Wendell A. Lochbiler III

704 Wolverine Drive, Wolverine Lake, Michigan 48390, (810) 624–4286

September 21, 1994.

Mr. Dennis Donohue,

State Board of Law Examiners, 200 Washington Square North, P.O. Box 30104, Lansing, Michigan 48909

Dear Mr. Donohue: I am writing in response to your letter of August 23, 1994 and our subsequent telephone conversation concerning my request for admission to practice in Michigan without examination.

You returned my application indicating that I was ineligible since I did not graduate from a law school approved by the American Bar Association (hereinafter ABA). During our telephone conversation I requested a hearing before the board under Rule 5(C) which states:

"An applicant not satisfying Rule 5(A) will be notified and given an opportunity to appear before the Board. The applicant may use the Boards subpoena power."

The reason I have requested such a hearing is to seek a waiver from the Board under Rule 7 which states:

"An applicant may ask the board to waive *any requirement* except the payment of fees. The applicant must demonstrate why the request should be granted."

You suggested that I submit my request in writing which I am now doing. In addition, I have outlined a number of factors which I believe warrant consideration by the Board with regard to my request for a waiver. In the alternative, I would like to discuss the possibility of being allowed to take the Bar Exam.

Factors in Favor of Waiving Rule 5(A) in the Case of Wendell A. Lochbiler III

1. Professional Experience

I have five years of professional experience as an attorney. I was admitted to the California Bar on December 7, 1988. I passed the California bar exam on my first attempt. The California Bar exam is recognized as being one of the most difficult of all 50 states.

I have experience in managing hundreds of cases from their initial inception to their final conclusion. I have also made hundreds of court appearances in the majority of the courts located in Southern California. I have been involved in a large variety of cases ranging from: complex construction defect, professional liability, and real estate errors and omissions cases, to typical personal injury lawsuits.

I have experience as a partner of my own law firm. I have also served as the acting managing attorney of an 11 member law firm, during absences of the managing attorney.

I have excellent references. My last employers, Paul Coony and Bernhard Bihr of Coony and Bihr in Beverly Hills, California, will attest to my professionalism and qualifications to practice law. I have also listed numerous other references in my application ranging from former partners to law school professors. I am confident they will provide excellent references.

Prior to my admission to the California Bar, I was employed as a law clerk in several different positions including one of the Los Angeles County Superior Courts.

I have been a member of several different Bar Associations, including the *American Bar Association.*

I was admitted and qualified to practice law in the United States District Court for the Central District of California (Federal Court) on May 7, 1990.

2. Educational Background

I graduated from the University of West Los Angeles School of Law (hereinafter UWLA) in 1988. UWLA was chartered in February 1966, under the laws of the state of California as a non-profit institution. The law school was fully accredited by the State Bar of California in April 1978. The University was also accredited by the Western Association of Schools and Colleges in June 1983.

I completed 84 Semester Units prior to graduation. I ranked number 16 out of a class of 48. I was on the Dean's list during the 1985–86 term. I received an award for my law review article on Tender Offer Regulations: printed in UWLA Review Volume 19. While in law school I participated in the legal aid clinic, which provided free legal services to indigent people.

Although UWLA is not accredited by the ABA, it has a solid reputation within the legal community of the State of California. A large number of respected Judges and attorneys have graduated from our law school. In addition, our law school has established a good track record in preparing candidates for the bar exam. UWLA generally ranks near the top when its bar passing rate is compared to other institutions of its type. I believe UWLA's bar passing rate has occasionally exceeded the rate of some ABA accredited schools. Personally, I felt I was well prepared as evidenced by the fact that I passed the Bar exam on my *first* attempt and I would point out that many graduates of ABA accredited schools do not.

I received my Bachelor of Arts Degree from Wayne State University in 1984.

3. Other Factors

I am a native of Michigan, born in Detroit in 1961. My wife Susan is also a Michigan native. Susan is an engineer, employed by Hughes Information Technology Company, a subsidiary of General Motors. We both have large families long established in southeastern Michigan. One of the primary considerations influencing our decision to move back to Michigan was our desire to be close to our families and help provide care for our parents. The opportunity to return to Michigan arose when Susan was offered a transfer to the Hughes facility located in Troy, Michigan.

Susan and I are hard working, productive people. We have a two year old child named Thomas. We have purchased a home in Michigan and would like to remain here. We both feel that with our professional experience and educational background we have a lot to offer our local community and the state of Michigan.

Addressing the ABA Accreditation Requirement

Rule 5(A) requires that an applicant for admission to the Michigan Bar obtain a law degree from a law school which is approved by the ABA. However, Rule 7 allows the applicant to request a waiver of *any requirement* except the payment of fees.

In order to determine whether to waive the requirement that an applicant graduate from an ABA accredited School, the board must take into consideration the purpose of the rule. Obviously the purpose of the rule is to ensure that the applicant is qualified and competent to practice law. I agree that the rule works in a limited manner to fulfill its purpose. However, it appears that the rule is one of a number of factors used to establish a persons qualifications to practice law.

As practicing attorneys, we know that there are a number of qualities which make a person qualified to practice law. These include intelligence, honesty, knowledge of the law, strong communication skills, and professionalism to name a few. I believe that I have all of these qualities as demonstrated by my five years of professional experience and which can be confirmed by contacting my references. Furthermore, I find it ironic that even though I was allowed to become a *member* of the ABA after I was admitted to the California Bar, I am not eligible for the Michigan Bar because I did not attend an ABA approved law school.

As for the argument that my admission would be unfair to those who have met this requirement, I say that each application should be judged on its individual merits. Obviously, the legal profession can only be enhanced, not diminished by the admission of another well qualified candidate. If no exceptions were to be allowed under these circumstances, the drafters of the rules would have stated so explicitly in Rule 7, as they did regarding the fee requirements.

A Brief Comparison of the Arguments

By way of demonstration, I have prepared a chart comparing the factors in favor of granting admission to the Michigan Bar versus the factors against granting admission. As you can see, the factors in favor far out weigh those against.

Factors in Favor of Admission of Applicant

1. Five years of professional experience.
2. Passed California Bar Exam on first attempt.
3. Admitted and qualified to practice in Federal Court.
4. Member California Bar since 1988.
5. Member American Bar Association 1989–1992.
6. Member Los Angeles County Bar Association 1989–1991.
7. Member South Bay Bar Association 1989, 1992–1993.
8. UWLA is approved by the State of California and has an excellent reputation.
9. UWLA is accredited by the Western Association of Schools and Colleges.
10. Excellent References.
11. Future employment prospects are excellent.
12. Native of Michigan with strong family ties.
13. Both spouses are professional, productive members of community.
14. Applicant has excellent character.

Factors Against Granting Admission

1. Law school not accredited by ABA.

Conclusion

Based upon the foregoing, I believe I have established a solid basis for the Board to grant my admission to the Michigan Bar. Rule 7 provides an exception to the general requirement that an applicant must graduate from an ABA approved law school. My years of professional experience coupled with my demonstrated intellectual ability and numerous other factors in my favor outweigh the ABA requirement.

I am resubmitting my original application and fees of $600.00, to avoid any further delay. I am also willing to submit any addition information or references requested by the Board. I look forward to hearing from you soon regarding a hearing date.

Respectfully Submitted,

Wendel A. Lochbiler III

Larry Stern

Phone (301) 320–2693 Fax (301) 320–2694

John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice, Anti Trust Division, 555 4th St., NW., Room 9903, Washington, DC 20001

Re: Proposed Final Judgment, *Civil Action #95–1211, U.S.* v. *ABA*, 6/27/95. 09/26/95.

Dear Mr. Greaney: Pursuant to section 2.b. of the Antitrust Procedures and Penalties Act, I would like to object to entering the above referenced Proposed Final Judgment and Consent decree in its present form.

While the settlement your office has proposed considerably improves on the current rules, it does not go nearly far enough in breaking the stranglehold the ABA has so arbitrarily exercised over the legal profession.

First, the settlement does not right the discrimination and injury visited upon graduates of State accredited law schools. For the past two decades they were discriminated against and restricted through the efforts of the ABA. To permit this to remain unchanged is to invite the ABA to find more subtle forms of abuse. The only conscionable remedy is to grandfather in similar Bar examination rights for State accredited law school graduates, as ABA graduates enjoyed to date. Any settlement terms and Wahl Commission issues should apply from the settlement date forward.

Full compliance of the ABA with the terms and conditions of your proposed Settlement maintains enough of the old practices to thwart any incentive for real change and progress. In particular the settlement even at this late date does not acknowledge the value and contribution of non-ABA accredited schools. The ABA cannot, must not remain the sole accreditation authority to the denigration of the rights of the States.

As noted in justice's complaint, the ABA's insistence on low student/faculty ratios was applied so as to be divorced from rational connection to the quality of education. In particular denying the schools the opportunity to count part time faculty toward these ratios eliminated the benefits of a faculty with practical experience, while at the same time raising the cost of a legal education. The results are of dubious if not outright negative effect on the quality of the graduates.

The Glendale University College of Law (GUCL) which I attended had, in addition to full time staff, a number of part time faculty. The part time faculty belonged to a number of firms specializing in the legal fields their attorneys taught at the school. We learned Intellectual Property from the head of that department for 20th Century Fox. Criminal law was taught in part by members of the District Attorney's staff. These professors were able to bring to life dry legal theory by relating to us their personal experiences in actual practice. Students at GUCL did not just learn the law, they learned how to practice law.

I have personally suffered hardship as a result of the ABA's tight control over the

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profession. After graduation from Law School I chose, for a variety of reasons, to continue my former profession as an engineer. After a number of years and significant accomplishments I was awarded, on a competitive basis, a national Fellowship to Congress. I performed my duties as a legislative aide with distinction and renewed my interest in certain technology related legal fields, such as FCC and Patent law. Despite high accomplishment, despite the fact that laws I helped create and place on the books will be interpreted by attorneys without a technology background, despite the scarcity of knowledgeable attorneys in these specialized fields, I found the door to further legal education –LLM– as well as to practice effectively blocked. No ABA approved school can consider my application without putting its own accreditation at risk. I no longer reside in California, the state which would allow me the privilege of sitting for the Bar Examination. The ABA would have me start all over again, except that most law schools would be foreclosed from admitting me because of my prior—State accredited—legal education. I submit the nation is not best served by such a policy. The least justice can do is level the playing ground for everyone.

I would urge Justice to include in this settlement an acknowledgment by the ABA that it's "seal of approval" is but one measure which the States *may* consider in prescribing the basic qualifications for admission to each State's Bar Examination. Full faith and credit to the rules governing admission to the Bar in the state where the candidate studied law should be a mandatory alternative to an education at an ABA approved school. Also a State should be allowed the latitude to consider the candidate's overall work and life experience, in conjunction with his or her training and education at a non-ABA accredited school. Only if these alternatives are mandated and implemented will the stranglehold of the ABA over the profession begin to be loosened.

Thank you for the opportunity to comment on your settlement. I'd be glad to answer any questions you may have.

Sincerely,

Larry Stern

Julie Anne Gianatassio, *Esq.*,
7008 Stafford Avenue, Huntington Park, CA 90255
August 30, 1995

Mr. John F. Greaney,
Chief, Computers and Finance Section, United States Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

Dear Mr. Greaney: After reading the proposed Final Judgment between the United States of America and the American Bar Association [ABA], I decided to write this letter to you because I have been personally affected by the ABA accreditation process. In my opinion, for the reasons which I will state herein, the accreditation process followed by the ABA is unreasonable and discriminatory. Further, I believe it is important for you, as a representative of the United States Department of Justice, to know that the practices of the ABA have had an impact on ordinary citizens like myself.

Last year I graduated from Western State University College of Law in Fullerton, California. Although I lived in Massachusetts all of my life, attended public school there, and received my undergraduate degree from Boston University, I decided to attend Western State for my juris doctor.

Western State is a fine institution and has produced thousands of successful and competent California attorneys since its foundation thirty years ago. The law school is accredited by the state of California and by the Western Association of Schools and Colleges. However, several years before I enrolled, the ABA denied accreditation to Western State University College of Law primarily because Western State is a proprietary institution.

The ABA's accreditation process is unreasonable because it emphasizes factors beyond academics when judging a law school's ability to produce competent graduates. The accreditation process should deal solely with the quality of education. Emphasis in other 'business' areas, such as how much money the faculty is paid or whether the school makes a profit, have nothing to do with basic educational standards. Unquestionably, Western State has produced many prominent California attorneys. The quality of the education I received there was outstanding and my education more than prepared me to take any bar exam. Proof that I was competently prepared by Western State is the fact that I passed the California Bar Exam [one of the most difficult bar exams in the nation].

Since the ABA has sole discretion to accredit law schools in the United States, any misuse of its discretion results in discrimination to thousands of individuals. Most states equate ABA accreditation with competency of law school graduates and permit only graduates from ABA approved schools to take the bar exam. In fact, the overwhelming majority of states, forty-two out of fifty, prohibit non-ABA law school graduates from sitting for the bar exam. No other profession faces such discrimination for thousands of its members. I have experienced this discrimination personally.

My greatest desire is to return home to Massachusetts to be with my family and establish a law practice there. However, graduating from a non-ABA accredited law school, I am prohibited from taking the bar exam in Massachusetts. Despite the fact that I have proven my competency by passing the California Bar Exam and have skillfully represented my own clients, I have been denied the opportunity to take the Massachusetts Bar Exam. Thus, I have been discriminated upon by the Massachusetts Board of Bar Examiners solely because I attended a non-ABA approved law school.

In my opinion, the Antitrust Division of the Department of Justice should step in to closely scrutinize the accreditation process of the ABA and, in the best interest of the public, should critically evaluate whether the ABA be allowed to continue accrediting law schools. Since there are many competent attorneys like myself from non-ABA approved law schools, the ABA's accreditation process fails to serve its intended purpose—to judge the quality of legal education. Because of the ABA's unfair practices, my professional opportunities as well as those of many thousands of attorneys from non-ABA accredited schools have been severely limited. Most important, however, is that the ABA accreditation process has greatly disadvantaged the public in general because it deprives the public of zealous representation by thousands of competent, concerned attorneys.

Before agreeing to the proposed Final Judgment, I urge you to closely examine the adverse effects that will be suffered by the American people if the ABA is permitted to continue misusing its discretion to accredit law schools. Evidence of the ABA's prior misuse of discretion justifies immediate government intervention and infliction of harsh penalties.

If you have any questions about my comments or if I can be of further assistance to you regarding this matter, please feel free to contact me.

Sincerely,

Julie Anne Gianatassio, Esq.

Robert Ted Pritchard
10116 Firmona Ave., Inglewood, California 90304, Ph 310–673–7007
September 2, 1995.

John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, DC 20001

In reference: United States of America vs. American Bar Association

Dear Mr. Greaney: I have been made aware of the antitrust suit brought against the A.B.A. for reasons ranging from salary fixing to admissions of students transferring from non-A.B.A school to A.B.A. accredited with the credits earned at the non-A.B.A. school be transferable. One comment on the Justice Department's consent decree with the A.B.A.

On Friday, September 1, 1995, I visited the Law School Director of Admission office at the University of Southern California, University Park Campus at Los Angeles, California 90089 and had a conversation with an admission representative by the name of Melanie Macleod. I inquired if the law school will accept the credit students earn from non-A.B.A. accredited law schools. Her remark was, "certainly no." Then I asked if she was speaking for the admissions committee including the director, her response was, "Yes certainly I am." I then advised her of the consent decree along with its content which did not change her response nor did it appear that the conversation had an impact. I then left bewildered thinking this situation through where I then came to one conclusion that the consent decree by the A.B.A. relating to transferable credit from non-accredited law schools will not materialize or will be a sham.

The law schools are the A.B.A's co-conspirators as mentioned in the content of the government's complaint against the A.B.A. In order to ensure the consent decree will materialize is to require every A.B.A. accredited law school to sign the consent decree.

Unless the A.B.A. will require by newly established standards that all A.B.A. accredited schools will accept transfer course credit from non-A.B.A. accredited law schools.

Thus in making the initial application for admission to law school by those who desire to pursue the profession of law, it would be justified for all law schools that are accredited by their state Bar of Law Examiners be automatically provisionally A.B.A. accredited, therefore, a requirement to continually meet their state's requirements for ongoing A.B.A. accreditation be the rule.

The A.B.A. requires all its law schools to maintain a quality student body meaning a declining L.S.A.T. and G.P.A. is grounds for dismissal from being an accredited law school or a denial for expansion. Therefore, open admissions policy by A.B.A. law schools is frowned upon when a declining L.S.A.T. and G.P.A. is present.

The Justice Department acknowledges in their complaint that most state's requirement to practice law that one be a graduate of an A.B.A. accredited school. The statistics are that four out of five applicants for admission to an A.B.A. accredited law school are denied. Therefore, in order to further pursue the profession of law by the applicant is forced to enter a non-A.B.A. law school. In return, after graduation be restricted to a territorial location to practice the profession of law. The A.B.A. has systematically boycotted non-A.B.A. accredited schools and its graduates. Although, I can reasonably see where employers are allowed as a perquisite for employment one to be an A.B.A. graduate. But not a state to require the same when the passing of a rigorous bar exam is required. After all, the bar exam is to ensure competency. Therefore, I see no need for graduates of state accredited schools be excluded in the states that allow only A.B.A. accredited graduates take the bar.

For your information I am presently enrolled in a non-A.B.A. accredited law school where the attorney that represented Rosa Lopez in the O.J. Simpson trial is a graduate, included in the school's list of graduates, a member of the State Supreme Court and several members of the Superior court. I applied to twenty A.B.A. accredited law schools and was denied.

I believe it is a necessity for the court or you to visit an A.B.A. accredited law school and a non-A.B.A. accredited law school, then contrast and compare. Please let me make some recommendations for the schools.

First the District of Columbia school of law and Duquesne school of law for the A.B.A then LaVerne school of law, Western University School of law, University of West Los Angles school of law all California state accredited schools and more important visit the Massachusetts School of Law.

I recently read a case on loss of consortium where I found a quote on reason to change law or rule and that is the following:

"The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it "the instrument of injustice." Whenever an old rule is found unsuited to prevent conditions or unsound, it should be set aside and a rule declared which is in harmony with those conditions and meets "the demands of justice." (15 Am Jur 3rd Common Law, Section 2 page 797)

In the Fall of 1994 I attended an open house at Duquesne School of Law where Dean Ricci made the following announcement: "We are not rejecting students because they are not capable of successfully pursuing the career of law. But, we look to your L.S.A.T and G.P.A." I also attended an open house at the District of Columbia School of law in the fall of 1994 and I was stunned by the filthy appearance of the school. I filed a Discrimination compliant with the A.B.A. of the office of Mr. William Powers assistant consultant on legal education to the American Bar Association in the Spring of 1995 and have yet received any results of response. Although, I have had conversations recently with Mr. Powers that produced endless results. It is to say that I doubt that if the District of Columbia school of law were to be located in California it would fail to be state accredited.

Therefore, I submit to you that the A.B.A.'s "Standards of Rules" have become an "instrument of injustice" thus "the demands of justice" is calling for a change.

The question I want you to ponder is how many Abraham Lincoln's, Clearance Darrells or Thurgood Marshalls been denied admission to A.B.A law schools?

Sincerely,

Robert Ted Pritchard

Donald H. Brandt, Jr.

Attorney and Counselor at Law, Donald H. Brandt, Jr., P.C., 9550 Skillman road; Suite 300; Lock Box 110, Dallas, Texas 75243
September 28, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Subject: comment—Proposed Final Judgment, 95–1211 (CR): United States of America v. American Bar Association

Dear Sir: My comment on the proposed Final Judgment in United States of America v. American Bar Association follows:

In 1990, I began my legal education at the then Dallas/Forth Worth School of Law. In 1992, Texas Wesleyan University ("TWU") acquired the Dallas/Fort Worth School of Law. In August 1994, the American Bar Association ("ABA") granted provisional accreditation of TWU's law school. As a condition precedent to that provisional accreditation, TWU was required to graduate the three hundred (300) students who were responsible for the creation and existence of the TWU's law school before that accreditation. I was one of the students affected.

Because of the arbitrary and capricious acts of TWU and the ABA, I have been personally harmed. I am denied the opportunity to be licensed to practice law in both Colorado and Florida. My employment opportunities have been limited. My continued educational options have, also, been limited. Considering the actions of TWU, its administration, and the ABA, I brought suit against those involved.

According to the Competitive Impact Statement, the proposed Final Judgment prohibits the recurrence of conduct that is plainly anticompetitive. Based upon its past conduct, the ABA should be precluded from accrediting any law school. While they is a need to accredit law schools, the ABA has shown that it has abused that responsibility. Consequently, the ABA should be denied the ability to accredit any law school. While each State has the responsibility for accrediting law schools, it appears that a vast number (including Texas) have delegated that responsibility to the ABA. By denying the ABA the ability to accredit any law school, each State will be required to re-establish its accrediting standards and procedures. This will foster an environment for improved competition and innovation.

In summary, the proposed Final Judgment merely changes faces. A fundamental change in the method and manner in which law schools are accredited is required to cure the past anticompetitive practices of the ABA.

Very truly yours,

Donald H. Brandt, Jr.,

Donald H. Brandt, Jr., P.C.

David White

3547 N.W. 35th St., Coconut Creek, FLA 33066

September 13, 1995.

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Room 9903, Washington D.C. 20001

Dear Mr. Greaney, I am writing to you to give you my opinion of the Consent Decree entered into between the American Bar Association and the Department of Justice, which arose from the case against the ABA brought by the Massachusetts School of Law.

In May of 1995, I graduated from Western State University College of Law in San Diego. Western State (WSU) is a state accredited law school that has been in existence for over twenty five years. In addition, WSU has three campuses in Southern California, that fact makes it the largest law school in the United States.

At the current time I am living in Florida and because of the ABA's discriminatory practices which have prevented my school from not becoming accredited I will not be granted permission to sit for the Florida Bar exam, even though I have taken the California Bar exam and I am waiting for those results.

I will enclose a copy of a petition that I had sent to the Florida Board of Bar Examiners asking for a waiver of the ABA school graduation requirement which will fill you in more on my situation. Also enclosed will be their denial of that petition.

My primary reason for this letter is the following, approximately two weeks ago I contacted the law school at the University of Miami regarding their LL.M. program. The usual practice is to require that candidates for the program be graduates of an ABA accredited law school.

During a discussion with Tina Portuando, who to my understanding is either the director of admissions or holds a similar

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position, I had mentioned the Consent Decree and the section dealing with allowing state accredited graduates into an ABA LL.M. program. Even after mentioning the Consent Decree, I was under the impression that she had no idea what she was talking about. Finally she told me that I would not be admitted to the LL.M. program regardless of any other credentials or qualifications that I may have. Her reason was that I did not graduate from an ABA school, and I was then told that was the policy at Miami and there was not now, nor would there be any intention or attempt to change that policy, Consent Decree or not. I believe that this is in direct contrast with the Decree that your department (DOJ) has worked so hard to achieve. I believe that this merits further investigation.

One final point; the reason I had to return to Florida from California is that as a graduate of a Non-ABA school there were no government or private lending programs available to me from the time of my graduation in May to the Bar Exam in late July. However several friends of mine at ABA schools were offered and had accepted this type of loan. Without this added financial support, my credit and ability to pay my bills was ruined and I had to return to Florida to live with my in-laws.

Now a resident of Florida, I will never be eligible to practice law (because of my being declared not eligible to sit for the Bar exam) and my three years in law school and the eighty-thousand dollars of debt to pay for it have been wasted. This is the greatest hardship of all, that is, not letting the Bar exam determine my competence to practice law, but letting that be determined by a group of individuals in the ABA who were not acting in the best interests of the legal profession, but rather for their own self-interests.

Respectfully submitted,

David White

David William White

3547 N.W. 35th Street, Coconut Creek, Florida 33066

August 18, 1995.

Executive Director,

Florida Board of Bar Examiners, 1300 East Park Avenue, Tallahassee, FL 32301–8051

Dear Board of Bar Examiners: I hereby petition for a waiver of the application of the Florida rule denying graduates from a non-ABA law school eligibility to sit for the Florida Bar Examination unless they have practiced law in another jurisdiction for ten years. I respectfully request permission to sit for the February 1996 Florida Bar examination.

After doing research on this rule and its application to graduates from non-ABA law schools, I am aware of its effect and its interpretation. In this letter I will present only the non-legal issues involved, saving the legal aspects of the application of the rule for judicial proceedings if necessary.

As you are well aware, the recent litigation and resulting consent decree arising from the Sherman Act/Anti-Trust action against the American Bar Association brought by the Massachusetts School of Law, has shed light on a problem that directly affects myself, and my ability to practice law in Florida.

I graduated from Western State University, College of Law in San Diego in May of this year, with a grade point average placing me in the top twenty-five percent of my graduating class. I have taken the California Bar Examination in July of this year and I am waiting for the results which are due in late November.

Some important facts about the school are as follows:

Western State University is not an ABA accredited law school.

Western State University (WSU) has been in existence since 1969.

WSU has been approved by the State of California since 1973.

WSU is a for-profit institution, one of the reasons that its application was recommended it be withdrawn when it applied for ABA approval in 1986. As part of the consent decree, this factor, a school's non-profit or for-profit status is now considered not proper in determining a schools' approval by the ABA.

A majority of the faculty of WSU are adjunct professors. Prior to the consent decree, this factor negatively affected the student teacher ratio as far as the ABA was concerned. As part of the consent decree, this factor, the full time or part time status of professors is no longer relevant for the basic computation of a student to faculty ratio.

WSU's three campuses in Southern California make it the largest law school in the United States. The fact that WSU has more than one campus also led to the belief that it would not receive ABA accreditation.

Results regarding the passage rate of the February 1994 California Bar Examination showed that graduates of WSU as first time bar examination takers had passage rate higher than that of every other California accredited school and a higher pass rate than several ABA accredited schools in California.

During the time that I was enrolled at WSU, the ABA did not allow ABA accredited schools to accept credits from a student who wanted to transfer from a non-ABA school to an ABA accredited school. As a result of the consent decree, this bar against transfer of credits is no longer permitted. Had this option been available to me at the time of my attendance at WSU, I would have, or at least could have had the opportunity to transfer to an ABA approved school in Florida.

Both the Dean and assistant Dean of WSU are Harvard Law school graduates and many of the full time faculty are nationally known scholars in their area of practice and teaching.

Based on the factors that the American Bar Association must now use, Western State University would now be in compliance for the guidelines regarding accreditation.

I understand that if I had practiced law in any jurisdiction for ten years I would be able to apply for permission to sit for the Florida Bar examination.

Unfortunately, after graduating law school, there were no lending institutions that would lend me money during my studies for the California Bar Examination, due to the non-ABA status of WSU. Given the high cost of living, stagnant economy of California, and facing bankruptcy, my wife and I had to return to Florida and live with her parents, where we now presently reside. Returning to California to practice law for ten years is not an option. Applying to an AB approved law school in Florida, transferring credits and incurring both more loans and spending more time in law school, in light of the fact that I have already graduated, is not an option.

Application of this rule will render my successful three years of quality legal education, eighty thousand dollars indebtedness to pay for it and my choice to be a lawyer absolutely null and void. As a tax paying American citizen and current resident of Florida, I stand firm in not allowing this outdated and arbitrary method of discrimination to ruin my life, professionally or financially.

With the ABA's settlement of the case against them and the involvement of the Department of Justice in their accreditation procedures and requirements, it is obvious to me that the time has come where a student of a non-ABA school that was directly and adversely affected by the ABA's discriminatory practices to have the opportunity to prove that the education they received was similar to that of an ABA school. This I can and will do at your request.

What I request is to be allowed to prove myself eligible and/or be declared eligible to take the Florida Bar Examination, it is the examination itself that determines an individuals' competency to practice law.

That is exactly what a bar examination is designed to test; an individuals' knowledge of the law, legal theory and their ability to apply it. What is most offensive, is the irrebuttable presumption that I am not competent to practice law. I request the same opportunity as an ABA student, being allowed to sit for the exam.

I also fully understand the states' interest in regulating who is allowed to practice law, but that interest can not be perceived as legitimate when a state chooses to continue to follow the ABA's past actions that were not in compliance with Federal law. As you can see, WSU is not the "Fly-by-night" operation that the ABA is so concerned about.

Notwithstanding the fact that twelve years have passed since the Florida Supreme Court issued their opinion in the *Hale* case, recent developments may or may not influence the court in re-examining their grant of authority to the ABA.

However, the Board of Bar examiners does have the authority to grant a waiver to the rule. In this letter I have attempted to show that the ABA's consent decree eliminated all of the irrelevant and irrational requirements of accreditation. It was those very requirements which prevented my school from "achieving" ABA status, which in turn rendered me a non-ABA graduate, giving rise to the need for this letter. I hope that the Board will be sympathetic to my cause, because they do have the power to rectify this unfortunate situation.

The purpose of this letter is not to advocate the repeal of the rule, or to challenge its' constitutionally. I intended to show that due to the facts and circumstances beyond my control that my situation is unique, and I hope that the Board will consider the issues that it raises.

My sole ambition is to become a respected and contributing member of the Florida legal community.

To you this is a petition, to me, this represents the future of myself and my family.

Enclosed please find a letter from the Dean of Western State University regarding the school.

If you would kindly respond to this request as soon as possible so arrangements might be made for the formal application for the exam, or petition for review by the Florida Supreme Court.

Respectfully submitted,

David William White

Western State University College of Law

2121 San Diego Avenue, San Diego, CA 92110, (619) 297–9700

January 27, 1995.

To Whom It May Concern: I have been asked to provide information concerning the quality of the academic program at Western State University—San Diego and, in particular, to compare the program with that at ABA accredited law schools.

Western State University College of Law at San Diego boasts a young and dynamic faculty. The full-time faculty includes 21 men and women, two-thirds of whom have joined the faculty within the last four years. All are graduates of ABA approved law schools, including Harvard, Columbia, Michigan, Boalt Hall, New York University, Pennsylvania, Virginia, UCLA and Duke. The full-time faculty is supplemented by a pool of adjunct faculty, which includes a number of sitting state and federal judges, local federal and state prosecutors, and practitioners drawn from San Diego's leading law firms.

The curriculum is rigorous and diverse. So that students are actively involved, class sizes are limited to 60 students in required courses, 40 students in electives and about 20 students in skills courses. The average class has 27 students. In the fall 1994 semester, course offerings included 28 electives, such as comparative law, jurisprudence, international business transactions, federal income tax, civil rights law, mediation theory, negotiation skills, advanced criminal procedure and advanced trial advocacy.

To ensure that the faculty has adequate time to prepare for class, counsel students and engage in research, teaching loads are set at 6–9 hours per semester. Faculty promotion and pay are based on teaching effectiveness and scholarly productivity. Although most members of the faculty are relatively new to teaching, they have produced in the last four years a casebook on civil procedure and another on international law (both published by West Publishing Company, the nation's largest law publisher), a treatise on international investment law published by a major Dutch international law publisher, and a book on the nature of legal reasoning, published as part of a series on the relationship between law and modern thought edited by two Stanford law professors. They also have produced more than 40 law review articles on a variety of topics, many of which have been cited in leading casebooks or in judicial opinions.

Although the school does not currently have an application for ABA accreditation pending, it easily satisfies the few quantifiable indicators of academic quality used by the ABA. Our library has more than 90,000 volumes, which is about equal to the number held by the most recent law school to receive ABA provisional accreditation. Our student-faculty ratio of about 26–1 is well within ABA guidelines. The median LSAT of our entering class is equal to or higher than that of several ABA approved law schools around the nation.

The quality of education is demonstrated by the success of the school's alumni. The alumni have included judges on the superior and municipal courts, members of the state legislature and city council, and, currently, a member of the U.S. House of Representatives. On the February 1994 bar exam, about 60% of WSU's graduates passed the California bar exam on the first attempt. This was the highest bar pass rate of any of the California accredited law schools and was higher than that of several ABA approved law schools in California, including UCLA.

On the July 1994 bar exam, the pass rate was approximately 64%.

I hope this information is helpful. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kenneth J. Vandevelde,

Acting Dean.

Florida Board of Bar Examiners

Administrative Board of The Supreme Court of Florida

September 8, 1995.

Mr. David William White,

3547 N.W. 35th Street, Coconut Creek, FL 33066

Dear Mr. White: This will acknowledge the receipt of your letter dated August 18, 1995, with enclosures.

As you know, a 1983 ruling of the Supreme Court of Florida styled: *In Re Kevin Charles Hale* (433 So. 2d 969) states in part, "This court will no longer favorably consider petitions for waiver of Section 1.b. currently 1.a. of the Rule. We voice our opinion that the Rule, while conceivably a hardship to some, is in the best interest of the legal profession in our state."

As the Supreme Court of Florida has ruled not to consider petitions to waive the legal educational requirements, the Board will not accept petitions for waiver of Article III, Section 1 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar. Until such time as the Supreme Court of Florida modifies its position, the Board will continue to adhere to that policy.

Thank you for your cooperation.

Sincerely yours,

Kathryn E. Rossel,

Executive Director.

June 29, 1995.

Ms. Anne K. Bingaman,

Assistant Attorney General, Antitrust Division, Room 3109, Tenth & Constitution Avenue NW., Washington, D.C. 20530

Dear Madame Assistant Attorney General Bingaman: I read the June 28, 1995 article that appeared in the New York Times and just want to take a moment of your time to applaud your efforts for investigating the American Bar Association.

I am a former resident of the State of Nevada and the only way in which to be licensed as an attorney in that state is to have graduated from an ABA accredited school.

In 1988, I was admitted to an ABA law school and after two years was academically disqualified by .5 of a point. With this disqualification, I would no longer be able to receive a J.D. degree from an ABA school. I did finish my studies at an unaccredited school here in California and am taking the General Bar Examination.

Because I graduated from a law school not approved by the ABA, I will never get the chance to take the Nevada Bar Examination. Last year I petitioned the Nevada Supreme Court for a waiver of the ABA requirement and it was denied. I think that this is so unfair. In effect, I have been banished to California, which even with all of our problems, is not too bad of a place.

The State of Nevada has precluded me from pursuing my chosen career within its borders. A life long resident of the state, graduated from local schools and degrees from three out of the four colleges within the state and I won't even be allowed to take their bar examination because of the powerful ABA cartel.

I tried to stay in school, like all of the government sponsored advertisements suggest, but I was disqualified and am now forever banned from returning home. It just doesn't make sense to me.

Thank you for your time. Keep after the ABA. If you ever need an antitrust lawyer out here in California, please look me up.

Sincerely,

Bill Newman,

3756 Cardiff Ave. #315, Los Angeles, CA. 90034–7201.

7932 Oakdale Avenue, Baltimore, Maryland 21237.

September 29, 1995.

D. Bruce Pearson, Esquire,

U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, D.C. 20001, Fax: 202–616–5980

Re: Case number 1:95CV01211

Dear Mr. Pearson: Please be advised that the first response faxed to you on Thursday evening was my rough draft. The attached response should replace the previously faxed copy.

I express my apologies as I become more skilled in working with this computer.

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Very truly yours,

Russell R. Mirabile

7932 Oakdale Avenue, Baltimore, Maryland 21237.

September 23, 1995.

D. Bruce Pearson, *Esquire*
U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001, Fax: 202–616–5980, Revised Response

Re: Case number 1:95CV01211

Dear Mr. Pearson: In response to and as input to MSL vs. ABA Anti Trust Action, and corresponding as a victim of this over twenty-year scheming by the ABA to prevent people from education and practicing law, I hope the following would be implemented.

No person, no group, no government or agency can give back a life, a livelihood as a result of the calculated law school genocide by the ABA. However, to make amends and prepare a preventive program will be a beginning against future open-handed injustices.

These vicious actions taken by the ABA to minimize one's liberties and freedom should be dealt with in a very severe manner. The ABA has produced a million dollar business by making a selective discrimination process.

First: The time limit for responses to this action should be extended. *Notice* to all offended person(s) has *not* been accomplished nor been effective.

Most graduates of non-ABA schools that were discriminated against or victims of this monopolistic scheme are in other walks of life and may not be associated with the practice of law to receive the Law Journal. Thus, these victims have no way of becoming aware of a welcomed response by the State Department.

Non-ABA schools that fall victim to those monopolistic schemes should present student enrollment lists to the ABA and the ABA should send notices to all affected students so that responses are possible. There should be a full scale effort upon the ABA; they have made millions of dollars from these victims. The price of a letter and stamp is minimal in comparison.

Second: Remuneration should be awarded to those non-ABA schools, students, etc. who were injured due to the intentional starvation of these victims.

Third: Those persons, either directly or indirectly involved with these ABA monopoly practices, should be disbarred and never allowed to practice again in any state or territory. Their licenses to practice law should be suspended until proper hearings are held, then forever be banished from practicing law.

Fourth: The ABA should be monitored for years to come for their intrusive, intentional improprieties. The group should be independent with severe sanctions and penalties attached to those millions of dollars that have been gathered from the victims' backs. *Or*, the ABA should be disbanded

Fifth: The ABA should be completely severed form any administering of education or testing of LSAT and all testing for multi-state examinations. The multi-state courses that have made millions of dollars for the ABA should be independent with no leadership or influencing input from the ABA. The ABA should not be involved in any testing or correcting of Multi-State Test scores or examinations. If contamination has not be declared or thought of, then there is plenty of room for irresponsibility and mistrust. There should be complete removal from testing by the ABA.

Sixth: Students who have graduated from non-ABA Law Schools should be waived into states or territories affected by these over twenty-year practices of the ABA.

Seventh: The non-ABA graduates that were affected by this law school genocide of the ABA should be allowed to take undergraduate courses at ABA law schools for credit for any reason.

There should be a complete acknowledgment and credit for past work, accomplishments and performances at non-ABA schools.

Eighth: Liability should be broadened and a time table should be prepared for punishment for those ABA leaders who had the intent to deprive people from the liberty and right to achieve an education and practice law as a livelihood, or for any reason.

In conclusion, if the defendants, members of the ABA and defendants that were engaged in these violations of the Sherman Act, graduate from ABA schools, then these violators are a product of an ABA education. But, the ultimate question is, "Were they educated in Anti Trust Law, or is the ABA above the law?" I would hope this government will protect the citizens and punish severely those involved in this ABA scandal and correct a twenty-year wrong.

The bottom line is what is the difference which law school, place and manner that one learns the laws as long as a person passes the bar exam in reference the knowledge of the law. I would hope that this government will protect the citizens.

Very truly yours,

Russell R. Mirabile

September 21, 1995.

Mr. John F. Greaney,
Chief Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: I am writing in response to United States vs. American Bar Association, No. 951211. I have a profound concern that this order will be futile unless needed changes are made.

I graduated from a state-accredited law school in Alabama that lacks ABA accreditation, and I am fully licensed to practice law in both federal and state court in Alabama. I recently applied to an ABA accredited law school in another state in order to obtain a law license in that state. The dean of the law school was aware of the United States vs. ABA case and even had a copy of the final order on his desk. However, when I inquired about which classes would receive transfer credit, he responded that the law school was not in a position to accept any of my credits.

It appears as if either collusion exists between the ABA and the accredited law schools not to accept any credits pursuant to Section four, Part two of the order or that the law school was reluctant to act due to potential repercussions from the ABA. Furthermore, I have been advised by fellow attorneys that this same scenario has occurred at other ABA accredited law schools in different states.

I strongly believe that modifications or changes need to be considered before a final order is entered. The rule as it stands lacks any meaning because ABA accredited law schools remain free to ignore the order and continue the exact restraints on trade and competition as alleged in the lawsuit.

Due to the fact that I have an application pending with a law school in this state, I would please request that my name and address be withheld from this comment. Thank you.

Justice Department: I am writing to propose that the *Final Judgement* regarding *US* v. *ABA* (Civil Action No. 95–1211 (CR), filed 7/14/95) be modified.

Under Section IV, subsection D(2), I propose that the phrase, "except that the ABA may require that two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school", be dropped entirely from the *Final Judgement*.

The restrictions on offering transfer credits for coursework completed at non-ABA-approved schools is still an unreasonable restraint of grade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

The number of seats available to transfer students is very low compared to the number of applicants for those seats (see Barron's Guide to Law Schools), and even lower in comparison with the untold numbers who would apply if seats were more copious in number.

On top of the great statistical challenge already at hand for the transfer applicant, the difficulty of transferring becomes compounded when the applicants are from non-ABA-approved schools. They are competing against applicants from ABA-approved schools who will be looked at in a more favorable light because of the perception that they gained greater academic achievement. In fact, I suspect that many of the ABA-schools will take it upon themselves not to consider non-ABA applicants, or consider their credits transferable, thereby lessening the total number of available transfer seats. The number of potential seats for non-ABA-applicants will dwindle further when potential mid-second year and third year seats are made unavailable due to the daunting prospect of spending an additional ten to twenty thousand dollars on one's legal education because their second or third year courses won't transfer. This rings especially true to the socio-economically deprived students who benefit most from the lower costs of non-ABA-approved schools.

The bottom line will be that very few, if any, transfers will occur because the non-ABA-applicants will face a monumental statistical probability that they will not be able to successfully transfer; and a monumental financial hurdle for many who won't be able to afford to transfer. Section IV, subsection D(2) starts to ring hollow in reality unless no limits are set on the number of credits that can transfer from non-ABA approved schools, or better yet the ABA is actually required to take affirmative action to insist schools accept *all* non-ABA-transfer credits (and accept non-ABA applicants).

Another argument for allowing unlimited transfer credits from non-ABA approved schools is that ABA approved law schools' trade is restrained unfairly when they can accept all of the credits from an applicant transferring from a foreign law school, but can't accept all the credits from a non-ABA-applicant. Furthermore, that still constitutes the remnants of a boycott of non-ABA-schools applicants.

Lastly, learning disabled applicants from non-ABA-approved schools who were forced into attending non-ABA-approved schools, and who did not properly diagnose their learning disability until late their first year of law school or later, will be unfairly discriminated against, and unlawfully discriminated against under the ADA (American's With Disabilities Act) because they will not be able to transfer their credits. This also holds true for those with other types of disabilities.

Frank DeGiacomo,

P.O. Box 79170, North Darmouth, MA 02747.

James B. Healy

519 Bloomfield Avenue, Caldwell, New Jersey 07006, (201) 228–0860

July 3, 1995

Honorable Joel I. Klein,
Deputy Assistant Attorney General, Antitrust Division, Department of Justice, Constitution Avenue & 10th Street NW., Washington, DC 20530

Dear Mr. Klein: I read with interest in *The Chronicle of Higher Education* about your role in reforming the A.B.A. accreditation process and laud your success in settling the controversy.

As one of four adult students victimized by the unyielding A.B.A. standards, I draw your attention to the enclosed *Background Brief* as it relates to our dilemma.

We applied to approximately 15 law schools requesting admission as advanced students. Five responded negatively and the remained ignored our petitions.

Given the background and circumstances, is there recourse for us to complete our law school degree program as advanced standing students?

On behalf of my colleagues, whatever you may be in a position to do on our behalf will be greatly appreciated.

Thank you.

Sincerely,

James B. Healy

Enclosure

Background Brief: The Dilemma of Minority Students of Commonwealth School of Law Massachusetts

January 15, 1990.

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Statement of Facts

On December 14, 1987, the undersigned (Hereinafter referred to as the students) were accepted by the then unaccredited Commonwealth School of Law, Lowell, Massachusetts, as part time students. All transferred from St. Matthew School of Law in Philadelphia, an institution established primarily for the needs of minority students, and each received various transfer credits from Commonwealth School of Law for law courses taken at St. Matthew, in which two completed approximately sixty-eight (68) credits and two completed forty-five (45) credits.

Each week, for two years the students journeyed over two hundred and fifty miles each way, at times twice a week, from New Jersey and New York to attend classes in Lowell. Because of family responsibilities, employment and other exigencies, the students were unable to attend conventional law school programs. Further, these students for the most part are minority students attempting to improve their station in life and sought a program which allowed them to continue full time employment during their period of studies.

While Commonwealth School of Law was not accredited at the time the students began classes in January, 1988, the administration appeared to be making favorable progress towards State accreditation and ABA approval of the School. A full time dean was appointed, full time faculty brought on board and a distinguished roster of part time faculty were hired, (See Appendix A). The instruction throughout was qualitatively excellent.

The Students became aware of internal political problems during the first semester. A splinter group, including the dean, faculty and students, severed relationships with Commonwealth School of Law and formed the Massachusetts School of Law at Andover during the spring semester, 1988. Commonwealth School of Law was left with approximately ninety students, including the minority students petitioning herein, a new dean appointed and full time faculty hired in September, 1988.

A preliminary state accreditation inspection visit was made in December of 1986 to Commonwealth School of Law by a Board of Regent's Visiting Team. A number of recommendations were made by the team, which were apparently corrected before the official evaluation. The second and official Visiting Committee completed the accreditation inspection in November, 1988. On December 5, 1988, the president of Commonwealth School of Law, Michael Boland, made the following memorandum announcement:

We have received the report from the Board of Regents Visiting Team and the news is good! The conclusion of the report was that "Commonwealth School of Law has worked hard to address deficiencies of concern to the prior visiting committee * * *" and the visiting committee recommends that the Board of Regents approve the school's application * * *" (See Appendix B & C)

It appears that extensive hierarchal political power plays were taking place between April, 1988 and into the spring of 1989. The former Dean of Seton Hall Law School, John F. X. Irving, was seated with Donald H. Berman and three other candidates on the Board of Trustees, announced by memorandum to law students, on March 25, 1988, (See Appendix D). Students were advised by memorandum on June 16, 1988 that the former Law Professor Irving was elected Chairman of the Accreditation Committee and that he was also named Chairman of the Board of-Trustees, effective June 1, 1988, (See Appendix E).

On April 8, 1988, by way of a memorandum to students from President Boland, an announcement issued advising that an agreement was entered into to lease a new law school facility in downtown Lowell, with an expected occupancy scheduled for June, 1989, (See Appendix F).

A memorandum to the law students, dated October 21, 1988, announced that former Senator Paul E. Tsongas was seated on the Accreditation Advisory Board "* * *to help guide the School in its mission to serve the community as well as the legal community." In the same memorandum, Ms. Regina Faticanti was appointed as Student Representative to the Board of Trustees, (See Appendix G).

During this organizational juxtapositioning, the Commonwealth SBA (Student Bar Association) students began lobbying the merits of Commonwealth School of Law with the Board of Regents. Students met with Dr. Weston, Vice Chancellor of the Commonwealth of Massachusetts Board of Regents on March 10, 1988. The dialog of the meeting seems to indicate that Dr. Weston could find no reason to deny accreditation to the Commonwealth School of Law as long as the December, 1986 inspection recommendations were remediated, (See Appendix H).

Following the favorable recommendations of the Visiting Committee on Accreditation, which was conducted in November, 1988, it appeared that the administration was committed to resolving the perceived minor deficiencies, in-house turmoil notwithstanding. There was a move afoot to oust the founding president, Michael Boland, by some members of the Board of Trustees, some faculty and some students. Persisting local newspaper articles appeared questioning the moral conduct of Mr. Boland. In early spring, 1989, the Chairman of the Board of Trustees, John F. X. Irving suspiciously resigned. It was announced that former Senator Paul E. Tsongas became the Chairman. President Michael Boland was apparently discharged or resigned, and Ms. Margaret Talkington, Vice President, became President of the School, (See Appendix I).

The bases for these changes were not made clear nor were the changes documented for distribution to the students. The general consensus was that it was likely initiated by a number of issues: the newspaper articles; conflict between Boland and the Lowell Planning and Economic Development

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seems to have evolved from likely poor judgment, and self-serving motivations. The telltale trail grew out of an economic development plan, to control of the Commonwealth School of Law Board of Trustees, to the Board of Regents of the Commonwealth of Massachusetts. The welfare of the individual students appeared incidental and did not seem to place high on the roster of priorities, thus the students' rights were neglected and abandoned.

It would appear that Mr. Tsongas has a statutory and fiduciary obligation and responsibility to the students as a member of the Board of Regents and a civil professional responsibility in contract due to gross negligence in which the students were harmed by reliance on his promises, resulting in loss of their property interests.

4. *Are there other responsible persons who may have interfered with contract performance, been contributorily negligent, and caused the denial of due process rights to the detriment of the students and against whom action may be taken?*

Yes, the following played a role for which they may have liability:

Honorable Michael Dukakis—In appointing Paul Tsongas to the Board of Regents, was undoubtedly aware of the Commonwealth School of Law accreditation agenda and Mr. Tsongas' role therein.

Dr. Allen E. Koenig, former president of Emerson College, for gross negligence, breach of contract, and denying due process rights to the students because of his representations that led to the absorption of Commonwealth School of Law, the closing of Emerson Law School, and denial of educational opportunity earlier guaranteed and Juris Doctor degree conferral expected by the students.

Mr. Michael Boland, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning his contractual responsibility to provide the legal education promised.

Ms. Margaret Talkington, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning her contractual responsibility to provide the legal education promised.

Mr. Donald Berman, Acting Dean, Emerson Law School and member of the Board of Trustees of Commonwealth School of Law, for negligent misrepresentation, conflict of interest, concealment, breach of contract, contract performance interference and denial of due process rights to the students because of the events and his positions previously stated.

Ms. Judy Jackson, Commonwealth School of Law Dean and Associate Dean of Emerson Law School, for misrepresentation, conflict of interest, concealment, contract performance interference and denial of due process rights to the students because of opportunism and likely self-serving motivations.

Ms. Regina Faticanti, student representative to the Board of Trustees, Commonwealth School of Law, and agent for Emerson Law School, for negligent misrepresentation, conflict of interest, concealment, and contract performance interference. Ms. Faticanti, because of perceived self-interest and personal ambitions, is seen as not having fulfilled her responsibilities in adequately representing the students.

Mr. Roland Hughes, president of the Student Bar Association of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important information and events affecting Commonwealth School of Law and abandoning responsibility as an elected student representative.

Mr. Stephen Moses, president of the Senior Graduating Class of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important events and information affecting their status and abandoning responsibility as an elected student representative.

Applicable Statutes

U.S. Const. amend. 1
U.S. Const. amend. 14 Section 1
42 U.S.C. Section 1983 (1976)

Annotated Laws of Massachusetts

Chapter 15A, "Board of Regents of Higher Education."
Section 1. Board of Regents; Purpose and Responsibility.
Section 3. Institutions under Board of Regents.
Section 4. Officers and Employees.
Section 5. Powers and Duties.
Section 9. Boards of Trustees of Individual Institutions.
Section 10. Powers and Duties of Boards of Trustees.
Chapter 93A, "Consumer Law."
Chapter 151A, "Fair Educational Practices."
Section 3. Petition Alleging Unfair Practice.

Discussion

Students at institutions of higher education were not afforded meaningful legal protection until *Frank* v. *Marquette University, 245 N.W. 125, (1932),* (one of the first cases to hold that a private university could not act arbitrarily or unreasonably with regard to its students). Two leading cases removing immunity and allowing students to take action against schools are *Dixon* v. *Alabama, 294 F.2d 150, (1961) Healy* v. *James, 408 U.S. 169, (1972).* In the latter *Healy* case, the Supreme Court, in a commentary by justice Powell proffered "At the outset we note that state colleges and universities are not enclaves immune from the sweep of the First Amendment." Justice Douglas, in support of the same opinion, advocated the students' need for first amendment protection. Both decisions, *Dixon* and *Healy,* indicate that school authorities no longer have unilateral authority to take arbitrary actions against students, especially when these actions violate the constitutional or legal rights of the students. In *Baldwin* v. *Zoradi, 123 Cal. App.3d 175, (1981),* a California court removed the perceived legal assumption that colleges and universities exercises power over student's rights.

1. *Mandatory legal precedents have been established recognizing that students are protected by contract theory as consumers of educational services.*

Courts have held that because of their expenditure of time and money, students are entitled to the same protection afforded in other consumer situations, such as consumers of commercial products. See Cahn, "Law in the Consumer Perspective," *122 U.L. Rev. 1 (1963),* and Chapter 93A, *Massachusetts General Laws Annotated.* Students expect to be treated reasonably: when these expectations are not met, they seek protection from the judicial and legislative systems. See "Consumer Protection and Higher Education—Student Suits Against Schools," *37 Ohio St. L.J. 608, (1976).* Students bringing actions are seen as relying upon contract theory, which the courts seem to favor when finding for students. This contract theory suggests an express or implied contract exists between the students and the school. In *Anderson* v. *Regents of Univ. of Cal., 22 Cal. App. 3d 1, (1972),* the court ruled that by the act of matriculation and payment of fees, a contract between the student and the state is created. While *Anderson* may have limited the ruling for state schools, *Zumbrin* v. *Univ. of So. Cal., 25 Cal. App. 3d 1, (1972),* held that a private university was contractually liable to students. Oral representations of school agents become terms of the contract and were held binding on the school in *Healy and Blank* v. *Board of Higher Education, 273 N.Y.S.2d 798, (1966)* and see generally Calamari & Perillo, "Law of Contracts," 16–1 to –6, at 581–88 showing specific enforcement of the contract will be permitted where a student can show that damages resulting from the breach are inadequate to compensate for the loss and what was bargained for was unique. [Where this is shown] courts have required that degrees be awarded to students.

In *Zumbrun, supra,* and *Lowenthal* v. *Vanderbilt Univ., 7 J. Coll. & U.L. 191, (1981),* the obligations of a higher educational institution is seen as contractual to provide the curriculum promised and that the essence of the implied contract is good faith and reasonableness, see also *Olsson* v. *Board of Higher Education, 402 N.E.2d 1150, (1980).*

Students, in some cases and in order to prevent a school from withholding degrees, have used the estoppel theory, see *Olsson,*

entities; bad blood arising from the unfavorable comments made by the dean, some faculty and some students providing wrongful and distorted information and impressions to the Visiting Team, evident from the analysis of their report, (See Appendix J). At this juncture, it appears that the Commonwealth School of Law was divided by power factions. In order to quell the apprehensions of the students, Senator Paul E. Tsongas, (as Chairman of the Board), appeared before the student body sometime during the early part of the spring, 1989 semester. Mr. Tsongas informed the students that the School would be accredited and personally assured the graduating seniors that they would receive their juris Doctor degrees and qualify to take the Massachusetts Bar examination. Twelve members of the senior class (Two of the four here) were to complete their studies by the end of May, 1989.

It seems that with the unseating of President Boland went the financial resources to sustain the cost of required remediation necessary for accreditation. Students became aware that Mr. Tsongas and the Board of Trustees were negotiating with Emerson College, who expressed an interest in absorbing the Commonwealth School of Law, driven by the Lowell financial package earlier negotiated by Boland and continued by the new executives. According to information transmitted by Regina Faticanti, student member of the Board of Trustees, to the students in the months following, the new Board of Trustees was concluding the negotiations of the financial plan with both developers and officials of the City of Lowell and Emerson College.

While this process was proceeding, former Senator Tsongas was appointed by Governor Michael Dukakis as President/Chairman of the Board of Regents. Nothing was documented relative to the resignation of Mr. Tsongas from the Board of Trustees of Commonwealth School of Law. Shortly thereafter a memorandum to Commonwealth students, dated May 16, 1989, was received from Allen E. Koenig, President of Emerson College, announcing the opening of Emerson School of Law, (See Appendix K).

The senior class did not receive the appropriate juris Doctor degree in May of 1989 as Mr. Tsongas earlier promised so encouragingly. Whether the Senator's intentions may have been sublimated to the negotiations with Emerson College is unknown.

Emerson Law School published a catalog, which was provided to all Commonwealth School of Law students, together with an admission's application. All four of the students applied, remitting the prescribed $40 application fee and subsequently an acceptance fee of $400. Emerson acknowledged acceptance of each, both by letter and through endorsing and cashing the respective checks, (See Appendix L for specimen letter, receipts and refunds).

While the transition from Commonwealth School of Law to Emerson was in progress, announcements were made appointing Donald Berman, ex Commonwealth School of Law Trustee, as Dean of Emerson Law School, Regina Faticanti as an administrative executive, the former Commonwealth Dean Judy Jackson as Associate Dean and all full-time and numerous part-time faculty were absorbed by Emerson, (See catalog exerpt Appendix M).

On August 31, 1989, the Dean of Emerson Law School, Donald Berman, sent a letter to each of the students advising that Emerson Law School would not open. While there was an expectation among the students that some form of intervention might evolve to place the students at another law school, the letter from Dean Berman was the last official statement, (See Appendix N).

The students wrote to Mr. Tsongas as Chairman/President of the Board of Regents on September 8, 1989 and again on November 21, 1989. Mr. Tsongas did not respond, (See Appendix O for specimen letters).

Questions Presented

1. *Is the Commonwealth of Massachusetts a party to the harm and injurious consequences suffered by the students?*

It would seem that in legislating an educational policy, the Commonwealth of Massachusetts designated and empowered a Board of Regents to "* * * develop, foster, and advocate a comprehensive system of public higher education of high quality, flexibility, responsiveness, and accountability," (Title II, Chapter 15A, *Annotated Laws of Massachusetts*), clearly assumed a responsibility to be accountable for the educational welfare of students attending institutions, whether public or private, within the Commonwealth of Massachusetts. That the Board of Regents, as a group and, through its members, individually, provided encouragement to Commonwealth School of Law students (upon which they relied), sanctioned visiting Commonwealth School of Law accreditation teams' evaluations, approved of the merger of Commonwealth School of Law into Emerson College and the creation of Emerson Law School (a Commonwealth of Massachusetts accredited school of higher education over which the Board of Regents exercised jurisdiction), and permitted the closure of Emerson Law School by its oversight, negligence, malfeasance, misrepresentation, concealment, and denial of due process inflicted grave and irrevocable harm to the students herein.

Beyond the Board's negligence and suspected mala in se by its failure to protect the welfare of Commonwealth School of Law students transferred and accepted by the State-approved Emerson College, it seems the Board was negligent in its statutory responsibility under Title II, Chapter 15A, Section 5, *Annotated Laws of Massachusetts.*

Emerson College, as an accredited state educational institution, as seen by its action to absorb/merge Commonwealth School of Law into its educational institution, was acting with the approval and full knowledge of the Commonwealth of Massachusetts Board of Regents of Higher Education, through its members and its agent Paul E. Tsongas, who knowingly permitted and encouraged Emerson College to expand its educational offerings through the Commonwealth School of Law takeover, placing the students welfare under the Board's jurisdiction.

The students are presumed to be protected by the Laws of Massachusetts as promulgated to the Board of Regents of Higher Education under Chapter 15A, *Annotated Laws of Massachusetts,* in that, Emerson College was under the jurisdiction of the Board of Regents at the time Emerson accepted the students and acquired the resources of the Commonwealth School of Law.

The negligence and inaction of the Board of Regents to protect the interests of the students suggests discrimination against them, wherein, the Board of Regents, by its mandate, ordinarily does act to protect the interests of students within the Commonwealth of Massachusetts. It is untenable that minority students should not be protected as other students in the Commonwealth of Massachusetts.

2. *Did the Emerson College Board of Trustees have a statutory or other responsibility to the students harmed by its failure to act an in a responsible manner and was there a duty to protect the academic credentials and make provisions to insure that the juris Doctor degree be made available for which the students contracted and made good faith reliances thereon?*

The individual members of and the Board of Trustees of Emerson College are seen as subject to the provisions of Sections 9 & 10, Chapters 15A, *Annotated Laws of Massachusetts.* By the decision of the Board of Trustees of Emerson College, (Including Emerson Law School Division), to close Emerson Law School, thus abandoning the students and depriving them of educational opportunity, rights of appeal and due process, it would seem that the statute was violated. The Board of Regents, for its failure to oversee and protect the rights of the students, would appear similarly in violation of the statute for its failure to exercise regulatory fiduciary responsibility to the students harmed by the actions of the Emerson College Board of Trustees.

3. *The students relied on the promise of former Senator Paul E. Tsongas, by which he assured the graduating class that each would receive the juris Doctor degree and that those other Commonwealth School of Law students would be continued in a law program, does Mr. Tsongas, in his role as an agent, and as President/Chairman of the Massachusetts Board of Regents, become liable?*

It seems clear that Mr. Tsongas, individually and as an agent for the Board of Regents for the Commonwealth of Massachusetts, is liable for breach of contract, for failing to provide juris Doctor degrees promised and continuing legal education, misrepresentation and conflict of interest in his function with Lowell economic development, concealment, negligence, and in circumventing the rightful due process to the students.

The evidence seems to support the notion that the reason Mr. Tsongas became involved was due essentially to his wish to enhance economic development in Lowell, (See Appendix P). That bodies were scattered as a consequence of this venture is not seen as part of the plan. That many students, administrators, and faculty were harmed

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Healy, and *Blank*, *supra*. The basis for applying the estoppel theory is that the promise (contract) is a representation from the school that, if the student follows a prescribed course of conduct, he will be given a degree evidencing his academic accomplishments. If the student receives such representation from a qualified school official, the student will rely upon it. Lastly, a student's reliance upon such representation from a school, is clear by his expenditure of money for fees, the pursuit of a prescribed curriculum, the foregoing of other opportunities, and the commitment to complete that school's program. See Calamari & Perillo, Section 6–1, at 202.

Financial exigency of a school is not a wholly viable defense of impossibility to perform as may likely be evoked. In *Peretti v. Montana, 464 F.Supp. 786, (1979)*, the court held that financial exigency alleged was not sufficient to show impossibility of performance and increased costs of performance are not sufficient to excuse performance.

Where unconscionability may surface, particularly seen in education cases, a contract of adhesion exists where there is gross overall one-sidedness of gross one-sidedness of a term disclaiming a warranty, limiting damages or granting procedural advantages. If the clause places a great hardship or risk upon the party in the weaker bargaining position, it must be shown the provision was explained to the weaker party and came to his knowledge. A real and voluntary "meeting of the minds," not merely an objective meeting, must be proved. See Calamari, Section 9–40, at 325 and *Weaver v. American Oil Co., 276 N.E.2d 144, (1971)*.

In *Peretti, supra.*, the court prohibited a public school from terminating a program due to insufficient funding from the state, ruling that the program was unique and to terminate would interfere with the completion of an ongoing . . . program. In *Eden v. Board of Trustees, 374 N.Y.S.2d 686, (1975)*, SUNY terminated a program because of financial problems. The court held that the state could not show sufficient immediate monetary savings to justify abrogating its existing contracts with potential students. A private college was denied the right to terminate a program in *Galton v. College of Pharmaceutical Science, 322 N.Y.S.2d 909, (1972)*, where the court held that students in the program had a contractual right to continue their studies until graduation.

Any defenses if impossibility to perform would likely turn on the educational institution. Many court decisions hold that a party may not, by this own conduct, create the event causing impossibility or impracticability of performance. Rather, the promisor must make all reasonable efforts to avoid the "impossibility." See Johnson, "The Problems of Contraction: Legal Considerations in University Retrenchment," *10 J.L. & Educ. 269, (1980)*. In *Behrend v. State, 378 N.E.2d 617, (1977)*, the court put schools on notice by its decision requiring performance that, where it is difficult if not impossible for students to transfer to another college or university with credit for work completed elsewhere, the court would view close scrutiny the obligation of schools to provide students with an opportunity to complete their education, and to provide the education at the level which was reasonably expected.

2. *Negligence and misrepresentation are two tort actions which students may use against higher educational institutions to seek recovery.*

The tort doctrine of negligence has been used by students to hold a school, through its agents, negligent for failing to act reasonably in accord with its duty do adequately provide services associated with such institution. See *Zumbrun* and *Behrend, supra*. W. Prosser, in "Handbook of the Law of Torts," Section 92, at 613–22, notes that the duties imposed in tort are those imposed by the law, based primarily on social policy, and not necessary upon the will or intention of the parties; they are owed to all those within the range of harm. The damages in tort require that the damages be proximately caused by the defendant's act and damages are available. Prosser, Section 31, at 145, also indicates that a school has a duty to protect its students from unreasonable risks.

Massachusetts Educational Statutes require private schools to meet certain minimum requirements to operate. Consumer protection in higher education services is covered by Massachusetts Consumer Statutes for the purpose of avoiding abusive practices.

3. *Violation of students' civil rights and property interest may be the bases for actions used against a public or private educational institution.*

Rights guaranteed by the first and fourteenth amendments to the U.S. Constitution which are denied by institutions of higher education may be challenged at law where civil liberties regarding free speech and procedural due process are concerned. See Olswang, Cole & Wilson, "Program Elimination, Financial Emergency and Student Rights," *9 J. Coll. & U.L. 170, (1982)*.

In *Peretti, supra.*, the court found that an implied contract existed within the fourteenth amendment's protection if there was a violation of a right protected by the Constitution. The court held that where an administrative body's act making the exercise of a legal right impossible, a federal question existed. Olswang notes that property interest cannot be denied without due process.

Again, in *Peretti, supra.*, and *Hall v. University of Minnesota, 530 F. Supp. 104, (1982)*, the courts held that students must be provided with process commensurate with the rights affected. Students have a private interest at stake in their continuing education. The education is necessary for careers they plan to pursue upon graduation. The student is deprived of that interest * * * if programs are terminated, * * * Robert R. DeKoven, "Challenging Educational Fee Increases, Program Termination and Deterioration, and Misrepresentation of Program Quality: The Legal Rights and Remedies of Students," *19 Cal. Western L. Rev.*, 467–506, *(Summer, 1983)*.

4. *Boards of trustees of institutions of higher education within the Commonwealth of Massachusetts are delegated fiduciary responsibility by the Massachusetts Board of Regents and, by virtue of their charter, have power to delegate to the chief executive officer of the institution.*

The courts in *Behrend* and *Peretti supra.*, on termination cases, etc., found that state educational requirements to qualify the student to take a state examination established a duty on the part of the schools to provide that level of education. As here, the students in cases examined showed that the schools acted unreasonably, and, as a result of misconduct, caused undue risk of harm to the student and the injury was proximately caused by the acts of the schools. Thus, with the powers of authority vested in schools by a state indult, so also the responsibility issues to those officials to protect the rights of students.

Institutional responsibility for educational policy is statutorily derived from the authority given the Massachusetts Board of Regents under the provisions of Sections 1 & 5, Chapter 15A, "Board of Regents of Higher Education," *Annotated Laws of Massachusetts*. The power to delegate policy and fiduciary responsibility to Boards of Trustees of individual institutions is mandated by Section 9, of Chapter 15A, and Section 10 promulgates the powers and duties of individual Board of Trustees. Section 1 reads in part:

* * * to advocate a comprehensive system of * * * education of high quality, flexibility, responsiveness, and accountability. * * * To achieve these goals it shall be the responsibility of the board of regents to preserve and promote * * * the highest level of academic quality to community services activity.

5. *The Board of Regents of the Commonwealth of Massachusetts exercises regulatory powers over colleges and universities within Massachusetts.*

Section 3, Chapter 15A, "Board of Regents of Higher Education," *Annotated Laws of Massachusetts*, specifically states, "The board of regents of higher education shall be the governing authority of the system."

Court decisions supporting this governing power may be found in *Hamilton v. Regents of the University of Cal., 293 U.S. 245, (1934)*, *Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967)*, and *Blank, Galton*, and *Zumbrun supra.*, which establish standing, authority to regulate state educational statutes, and provides a source of remedy for students seeking relief from state (private and public) institutions of higher education.

6. *The Board of Regents of the Commonwealth of Massachusetts has the authority and duty to grant degrees and transfer students to other institutions where a controversy exists.*

Among the "Powers and Duties" of the Board of Regents of the Commonwealth of Massachusetts, (Section 5, Chapter 15A, "Board of Regents of Higher Education," *Annotated Laws of Massachusetts*), are:

5.(a). to confer upon the boards of trustees the power to award certain degrees to persons who have satisfactorily completed degree requirements.

5.(b). in addition to the degrees authorized to be awarded under clause (a), the board of regents may approve the awarding of certain other degrees and may define and authorize new functions or new programs; or consolidate, discontinue or transfer existing functions, educational activities and programs; and may, after public hearing and submission of a written report to the clerks of the house of representatives and the senate, by a two-thirds vote of the full membership of the board, consolidate, discontinue, or transfer divisions, schools, stations, colleges, branches or institutions as it deems advisable.

5.(t). develop and implement a transfer compact for the purpose of facilitating and fostering the transfer of students without the loss of academic credit or standing from one * * * institution to another.

5.(u). shall establish an affirmative action policy and implement a program necessary to assure conformance with such policy throughout the system.

Remedies

First Option for Remediation

1. A Commonwealth of Massachusetts Legislative Act designed to: (Following St. George's Medical School (Grenada) model).

a. Award Juris Doctor degrees to the eligible Commonwealth School of Law seniors who completed the eighty-four (84) credit hour requirements for graduation and certify the class to take the Massachusetts Bar examination.

b. Arrange to place all other students in a Commonwealth of Massachusetts accredited law school, such as Southern New England School of Law, allowing credits earned to be protected, transferred, and remain intact.

2. Legislative action authorizing the judiciary to allow bona fide graduates of Commonwealth School of Law and/or Southern New England School of Law to apply for admission to the Massachusetts Bar.

Second Option for Remediation

1. Enroll all Commonwealth School of Law students in a Commonwealth of Massachusetts accredited law school, such as Southern New England School of Law:

a. Require those Commonwealth School of Law students who completed in excess of eighty-four (84) credits to complete no more than six (6) additional credits at a cost not to exceed $3,000 and be awarded the Juris Doctor degree at the end of the study semester.

b. Enroll all other Commonwealth School of Law students in the same institution without loss of credits earned.

2. Legislative action authorizing the judiciary to allow bona fide graduates of Commonwealth School of Law and/or Southern New England School of Law to apply for admission to the Massachusetts Bar.

Cora Anderson
James B. Healy
Melvin Clark
Keith Wilson

William A. Stanmeyer, Attorney at Law, (703) 750–3432, 750–5227 VMail
P.O. Box 15, Great Falls VA 22066

July 10, 1995.

Hon. Joel Klein, Esq.,
Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C.

Dear Mr. Klein: This letter is prompted by the article, "ABA Settles Antitrust Case Over Certifying Law Schools," THE WASHINGTON POST (June 28, 1995), page A2.

I wish to commend you and the Department for your action in this matter. As a former law professor (Georgetown, Indiana; see enclosed resume) who, during the period 1974–1984, was actively engaged in an attempt to start a new law school, I was very familiar with the American Bar Association's "standards" of accreditation and the persons they used to enforce them.

Based on personal experience, as well as conversations with other legal educators who dealt with the ABA during those years, I can confidently state that the Justice Department's position is entirely correct. In my opinion, many of the "standards" were irrelevant to quality legal education; they were in some cases vague; and often they were applied arbitrarily.

Had resources been available, others would have brought the antitrust suit before Dean Lawrence Velvel finally did. What concerns me, however, is the quote from George Bushnell not admitting even a molehill of fault when the record, if properly built, should be a mountain of evidence that Dean Velvel is entirely correct. My hunch is that ABA being dragged "kicking and screaming" into admitting the abuse, will resist real change.

I could provide some additional insight, if you wish it, into the mentality of the ABA accreditation people during the period mentioned. If you would like to have a short meeting, just give me a call.

Very truly yours,

William A. Stanmeyer

Curriculum Vitae: WILLIAM A. STANMEYER, ESQ.

Education:
A.B., 1956, *magna cum laude;* M.A., Philosophy, 1962; Graduate Study, Northwestern University, 1962; J.D., DePaul University College of Law, 1966.

Legal Activities and Associations:
Admitted, Illinois Bar, 1966; Virginia Bar, 1980
Private Practice of Law, Illinois, 1966–68
Associate Professor of Law, Georgetown University Law Center, 1968–72
Arbitrator, American Arbitration Association, 1972–1995
Associate Professor of Law (tenured), Indiana University School of Law, 1974–80
President, Lincoln Center for Legal Studies, 1980–85
Private Practice of Law, Virginia, 1985 to present, Wills, Trusts, Family Partnerships

Civic and Other Professional Activities:
American Bar Association: Member, Special Committee on Youth Education for Citizenship, 1970–73; Consultant, Criminal Law Section, 1970–72
Public Lectures: at major universities, including Harvard, Univ. of Cincinnati, Notre Dame
Virginia Bar Association: Member since 1980
Consultant, fields of Business Development, Financial Analysis, Income Diversification

Administrative, Fund-Raising Experience:
Managed numerous Institutes and educational projects raised over $1,000,000 for various education programs

Publications:
Two Books
Over twenty scholarly articles, in the Law Reviews of such law schools as: George Washington, Indiana University, and Hastings College of Law
Numerous serious "op ed" pieces, in such newspapers as: the Miami Herald, the Chicago Tribune

Family and Personal:
Married to the former Judith Ann Heitzmann of Chicago
Five children, ages 15 to 26
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August 26.

Mr. Klein: Congratulations on the ABA Consent Degree! It has been long overdue. Two points, however, need to be made: (1)—The reporting requirement for Jim White to Bob Stein is ineffective * * * simply because Stein & White are *close* friends and there will, thus, be little real supervision of White * * * he will do what he wants to. (2). You should take a special look at White's relationship with Indiana University. Here is a real conflict of interest * * * he is listed as a Professor of Law—supposedly with half of his salary coming from the Law School * * * but he has not taught in over 20 years and, his whole salary, came from the Law School budget until the then-Dean, William Harvey, put his foot down and stopped this. It is speculated that the Law school now pays for White's University salary totally. Doesn't is seem odd that an educational unit that profits from the accrediting agency is running the show? Why not let the ABA, itself, pay for all of White's salary?? Jerry Bepko, the IU-Indianapolis Chancellor, has had a sweet-heart arrangement with White for years! Please investigate these two points and maybe amend the Consent Degree * * *

Thanks

4 Concerned Lawyers

Frederick L. Judd, Attorney at Law, (714) 852–1000 X257, (714) 281–3481 (fax)
2181 Dupont Drive, Irvine, CA 92715

September 5, 1995.

Mr. John Greaney,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 9903, Washington, DC 20001

Response to proposed Final Judgment in United States of America v. American Bar Association

VOL 60 ISS 238 DEC 12 1995 UMI

Dear Mr. Greaney: The purpose of this letter is to provide the Department of Justice with written comments with respect to the proposed final judgment in the USA v. American Bar Association, Civil Action No. 95–1211 (CR).

While the final judgment appears to deal with some issues, I strongly believe that the Final Judgment does not adequately resolve certain other practices that result in very anticompetitive and discriminatory consequences. I do not know if these issues have been reviewed by the Department, but the final judgment should take them into account.

I refer primarily to the accreditation standards of the ABA which appear to require that law schools set schedules in such a way as to minimize the amount of time that all students can work while attending law school, and even more, nearly make impossible outside work during a student's first year. I do not understand any rational basis for this practice, and believe its primary effect is to minimize the entrance into the profession of those who would have to or choose to "work their way through" their legal education.

While testimonial evidence is not necessarily as relevant as would be statistical verification of my claims, I will tell you that in 1982, BYU Law School refused to allow me to work into a schedule that would allow me, a CPA, a reasonable (i.e. three hour or greater) block of time during every school day in which I could complete outside work for clients. I remember discussing the situation with the Assistant Dean, who admitted that such a schedule could have been completed, but that the American Bar Association would consider it a negative factor in BYU's accreditation process if they were to accommodate my schedule.

I understood the reason for the scheduling difficulty was an ABA proclamation that first-year students needed to concentrate on studies, and not on outside work, and that scheduling classes at 8:00 am, 11:00 am, 2:00 pm and a study group at 6:00 pm would cause students to focus on the law, avoiding the certain distractions inherent in earning a living. However, the groups that congregated around study carrels seldom (until "finals" weeks) discussed the recent contracts, torts or property law concepts, but instead, their conversations inevitably rotated toward movies, television, sports, BYU policies, and the national championship football team.

The effect of the ABA policy was obvious: I could not learn because carrel conversations were usually not about the law, and I could not earn because I could not find appreciable blocks of time in which to make money. Ironically, my grades probably suffered because I would miss a class when I felt it financially necessary to service a client, or when I would work late at night, which some expert at the ABA would probably admit was not helpful for my class attentiveness during the daytime sessions.

I was able to make it through law school, but I believe the effect of the baseless ABA regulation is to exclude others without the right combination of sufficient means, earning capacity or desire to get through law school, and I am sure that the practice arbitrarily reduces entrance into the profession, of students generally (anticompetitive) and especially economically disadvantaged classes (discriminatory).

I believe the number of hours of outside work had little to do with my ability to study or learn. Law schools should be able to determine compliance with assignments and deadlines, and to appropriately measure class learning if they administer fair and comprehensive examinations. In my case, I worked more than the allowed number of hours, but still graduated in the top 10% of my class, while presumably those who knew the names and achievements of the football players did not. I did not lose the opportunity for the quality education BYU Law School offered.

The Department of Justice's lawsuit discusses the effects of the "capture" of the accreditation process by the accredited. In my situation, I thought it very unfair that by following the ABA accreditation standards, BYU actually reduced my ability to pay my own way through law school, and I was required to borrow, and the primary source of those funds was the BYU Student Loan Program. This appears to me to be a highly anticompetitive process, and those who are not selected by that process (although admittedly I was) find themselves at another distinct disadvantage where the opportunity for unfair discrimination can arise, especially where a law school may have additional criteria for the availability of those loans (i.e. compliance with church regulations or other goals).

I hope that the Justice Department will not simply stop its review of the accreditation policies of the ABA with the final judgment, and will not enter into the final judgment prior to examining this practice. The rules relating to barring students from working more than 20 hours a week or scheduling classes to prohibit outside work during the first year and minimized work in years two and three need to be examined and then discarded as what they are: Rationally baseless policies designed to prevent entrance into the profession which operate to discriminate against those who need the protections of antitrust and antidiscrimination laws the most.

I hope this material is helpful. If you wish more information about the matters in this letter, please feel free to call me.

Sincerely,

Frederick Judd.

Coyne and Condurelli, Attorneys at Law,

Professional Center, 198 Massachusetts Avenue, North Andover, Massachusetts 01845 (508) 794–1906

October 2, 1995.

Mr. John F. Greaney, Esq.,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 9903, Washington, DC 20001

Dear Mr. Greaney: I am writing this letter of public comments not on behalf of the Massachusetts School of Law but as an attorney and officer of the court. For some time, I have been very concerned about the American Bar Association and its agents confusing effective advocacy with a reckless disregard for the truth in their efforts to continue to control law school accreditation at all costs.

Various pages from the depositions of the ABA Consultant, James P. White, and ABA Section of Legal Education officer, Claude Sowle, conducted during the preliminary discovery phase of Massachusetts School of Law's antitrust suit are enclosed. As you can see, Mr. Sowle's deposition (page 206, lines 22–25 and page 207, lines 1–2) and Mr. White's deposition (page 58, lines 23–25 and Page 59, lines 1–24) are at odds with paragraphs 15 and 16 of the Government's complaint. They are likewise at odds with the enclosed April, 1995 exchange of correspondence between counsel for the ABA and its Consultant.

In view of statements in the government's complaint, Mr. Sowle's testimony that the salary standard was not applied to MSL in June, 1993 because the ABA's "actual practice for some time was not to pay attention to the geographical or competitive comparability of salary levels in its evaluation," is necessarily contrary to the information that the Justice Department must have in its possession. If Sowle's testimony is contrary to documentary information possessed by the Division, the testimony is plainly false and as officers of the Court must be exposed as such.

Additional pages from these two depositions are enclosed which show that when MSL attempted to impeach this testimony with contrary evidence from various schools, its efforts were blocked by the ABA. It is incumbent on the Government to clarify this matter since counsel for the ABA has yet to bring this false testimony to the Court's attention. Canon 7 of the Canons of Ethics and the relevant Disciplinary rules, specifically DR 7–102(B)(2), and District of Columbia Model Rule 3.3 require the Government's action at this time. I appreciate your efforts to improve American legal education and concomitantly the American justice system.

Sincerely,

Michael L. Coyne

MLC:cm

cc:

D. Bruce Pearson, Esq.

Darryl L. DePriest, General Counsel

Privileged and Confidential

April 27, 1995.

Dean James P. White,
Consultant on Legal Education, American Bar Association, 550 W. North St., Indianapolis, IN 46202

Dear Jim: Reflecting upon our conversation yesterday, I though that it might be useful to you and the Accreditation Committee if I put in writing my recommendations concerning the Committee's meeting this weekend.

As we discussed, there are a number of schools that are scheduled to appear on Friday and Saturday. I understand that some of the schools that are appearing are responding to concerns raised about faculty and staff compensation. In that respect, I propose that the Committee Chair make the following statement prior to hearing from the law school:

As you may know, Standard 405(a) was amended by the House of Delegates in February. As a result, we will no longer be considering compensation as a part of the accreditation process. Therefore, you need not address that issue as part of your presentation as we will not be making any findings on that issue.

Committee members should not, of course, ask questions concerning compensation during the appearance.

In addition, findings implicating compensation should be deleted from any Action Letters that are forthcoming as a result of the meeting. I also suggest that we continue the practice of having the Action Letters reviewed by counsel prior to their issuance.

Finally, I advise the Committee to be cautious about raising compensation issues in conjunction with Standards 201, 209 or 210, which deal with adequacy of resources. Also, the Committee should examine whether, given the amendment to Standard 405(a), it should discontinue its practice of examining library staff compensation under the library Standards.

I hope this letter is helpful to you and the Accreditation Committee. As I may have mentioned, I am planning to be in Washington, D.C. this weekend attending the Diversity Summit sponsored by the Commission on Minorities. I will change those plans, however, if you feel it would be useful for me to attend all or part of the meeting in Indianapolis.

Very truly yours,

Darryl L. DePriest

DLD:mc

cc:

David T. Pritikin
David R. Stewart
Allison Breslauer
Donna C. Willard-Jones

American Bar Association, Section of Legal Education and Admissions to the Bar, Office of the Consultant on Legal Education to the American Bar Association

Indiana University, 550 West North Street Suite 350, Indianapolis, Indiana 46202–3162, (317) 264–8340, FAX (317) 264–8355, ABA/net:ABA411

Transmitted Via Facsimile and U.S. Mail

April 28, 1995.

Darryl DePriest, *Esq.*,
American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611

Dear Darryl: I am responding to your letter of April 27, 1995. As you have requested, I have given a copy of your letter to the Chairperson and Vice-Chairperson of the Accreditation Committee. I will also include your letter with materials on this subject to be considered by the Council of the Section at its meeting on June 2–3, 1995.

In your letter you "suggest that we continue the practice of having the action letters reviewed by counsel prior to their issuance," Ms. Schneider and Professor Sowle have asked me to convey to you that the Committee has not observed such a practice in the past. To the extent that you are prepared to recommend such a change of procedure, perhaps you should direct a communication on the subject to the Council for its consideration in June. The Committee has made a determination not to depart from its established procedures prior to receiving advice and direction from the Section Council on this matter.

Sincerely,

James P. White,

Consultant on Legal Education to the American Bar Association.

cc:

David T. Pritikin, Esq.
David R. Stewart, Esq.
Alison Breslauer, Esq.
Donna C. Willard-Jones, Esq.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6205.

Volume I—Deposition of Dean James P. White, September 27, 1994, 9:30 a.m.

Reported by: James M. Trapskin, RPR, CM, Calif. CSR No. 8407.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, N.J. 08753, (908) 244–6100.

By Mr. Hart.

Q. I will ask you to turn to Page 43 of White Deposition Exhibit Number 1, the part in there that refers to "Proposed Amendment of Standard 405 and Interpretations Thereto."

A. Yes.

Q. And it refers to a proposed revision——

A. Yes.

Q.——to 405? Could you tell us, sir, the, the reason for undertaking such a revision?

A. This suggestion came from the Standards Review Committee that, looking at current practices of, and, and from the Accreditation Committee looking at current practices of the Accreditation Committee, the procedure that is followed is whether a law school has conditions adequate to attract and retain a competent faculty.

And the suggestion was that the standard should be amended to conform with current practice.

Q. Is it your testimony that the second sentence of Standard 405(a) has not been literally applied on evaluations of law schools?

Mr. Pritikin. Which sentence are you referring to?

Mr. Hart. The one that says, quote, "The compensation paid faculty members at a school seeking approval should be comparable with the paid faculty members at similar approved law schools in the same general geographical area."

By Mr. Hart.

Q. Do you see that, sir?

A. I see that. My view would be why information might be reported by a team. The Accreditation Committee, itself, is concerned, does not consider the, whether the compensation is comparable to that at similar approved schools in the same geographic area.

Q. And that is a, quote, current practice——

A. That is correct.

Q. of the Accreditation Committee?

A. Yes.

Q. How long has that been the practice of the Accreditation Committee?

Mr. Pritikin. Again, we've allowed you some latitude here, but I don't see what relevance this has to this lawsuit, and I'm going to instruct him not to answer.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6205.

Volume II—Deposition of Dean James P. White, September 28, 1994, 9:00 a.m.

Reported By: James M. Trapskin, RPR, CM, Calif. CSR No. 8407.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, N.J. 08753, (908) 244–6100.

Mr. Hart. I would ask the reporter to mark as White Deposition Exhibit Number 37, a July 26th, 1984 document from James P. White to Dr. William Birenbaum, president of Antioch University and Dean Issac Hunt of Antioch School of Law.

(Whereupon, White Deposition Exhibit 37 was marked for identification.)

By Mr. Hart.

Q. Are you familiar with that action letter that you sent to Dr. Birenbaum and Dean Hunt?

Mr. Pritikin. I note, Mr. Hart, that this document does not bear production numbers.

Do you know where it came from?

Mr. Hart. I recall we had a conversation along these lines in another deposition, and you wrote me a letter that you didn't have to disclose such things, Mr. Pritikin.

Mr. Pritikin. We produced documents to you that were used in deposition in advance of using them.

Mr. Hart. Yes.

Mr. Pritikin. Has this document previously been produced by the Massachusetts School of Law in this litigation?

Mr. Hart. Well, I, I don't know. You can look it up.

Mr. Pritikin. It is highly improper for you to use documents in a deposition that have not been produced. I object strenuously to that practice.

By Mr. Hart.

Q. Well, can you identify this?

Mr. Pritikin. Do you have other documents that you're going to use this morning that have not been produced in the litigation?

Mr. Hart. I do not know, Mr. Pritikin. I have not sat down and gone through all these exhibits. And as I understand, you know, 40 or 50,000 documents produced, and I have not checked them, no I have not.

Mr. Pritikin. Well, the documents, my understanding is the documents that have been produced by the school have Bates numbers on them.

Mr. Hart. Well, a, a good number of the documents I used today don't have Bates numbers on them.

Let's get on with the deposition, Mr. Pritikin. If you have some quarrel with, to

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find with the production of documents by the Massachusetts School of Law, we can take that up at an appropriate time.

Mr. Pritikin. No, I have a problem with your pulling out documents that haven't been produced; I do have a problem with that.

Mr. Hart. All right, well, let's proceed.

Mr. Pritikin. If you want the witness to identify the document, he can do that. But if you're going to ask substantive questions on a document that has not previously been produced——

Mr. Hart. I know of no such rule in litigation.

Mr. Pritikin. What's the pending question?

(Whereupon, the record was read by the court reporter.)

Mr. Pritikin. Can you answer that question?

The Witness. This appears to be an action letter went by me to, in 1984 to the president and dean of Antioch University and its School of Law.

By Mr. Hart.

Q. And it sets forth, does it not, conclusions by the Accreditation Committee with respect to the Antioch School of Law?

Mr. Pritikin. I'm going to instruct the witness not to answer any further questions about the document.

It does not pertain to the Massachusetts School of Law. Apparently it pertains to Antioch University. It says—I don't know where you got the document, it says "Strictly Confidential" on it, and the witness is not going to answer questions about this.

Mr. Hart. Let, will you please cite me some provision of the Federal Rules or some order or whatever that forecloses me to ask this witness questions about some document.

Mr. Pritikin. Judge Dittar has already ruled that matters pertaining to other law schools are not relevant to these proceedings. This has nothing to do with this case.

Mr. Hart. Well, this witness has already testified that the act, the actions and practices by the Accreditation Committee with respect to salaries are, are not in accordance with the literal letters of the second sentence of 405(a) of the Standards and they have followed a different practice over the years. And I need, bases that as far as a decision with respect to the Massachusetts School of Law, and think I'm entitled to get into what, in fact, the practice of the American Bar Association's Accreditation Committee has been with respect to faculty salaries.

There's an old legal saying that you can't have your cake and eat it too.

Mr. Pritikin. We disagree. In fact, any salaries are not part of this case. The Antioch University School of Law is not part of the case. This is not going to——

Mr. Hart. We've made allegations in this case about a conspiracy. We've alleged a conspiracy relating to salaries, and I think that I'm entitled to get into that. I don't know of any rule that forecloses me from getting facts from this witness.

And this document is chockablock full of references to the salary levels of the Antioch School of, of Law and how low they are, and is a basis for the decisions that are made with respect to that school.

Mr. Pritikin. The witness——

Mr. Hart. It's totally inconsistent with this witness's testimony and Claude Sowle's testimony with respect to the practice of the Council with respect to faculty salaries.

Mr. Pritikin. Well, my instruction stands. You might as well move on.

By Mr. Hart.

Q. If I had asked 15 other questions with respect to this document, Dean White, would you have refused to answer those?

A. I would.

Q. If I had asked 25 questions with respect to this document, would you have refused to answer those questions?

Mr. Pritikin. Based on the description of relevance that you have given us, the instruction will be the same, and I'll stipulate to that.

The Witness. Yes.

By Mr. Hart.

Q. And if I had 15 other action letters with respect to 15 other schools that contained information with respect to the practice of the Council with respect to, under 405(a) concerning salaries, you would have refused to answer those questions too.

A. Based upon——

Mr. Pritikin. I would give him that instruction, and I assume he would follow it.

The Witness. Based upon relevance to this case, I would not answer the questions.

Mr. Hart. Well, I guess we won't use these, Mike, today.

I have no further questions at this time.

Mr. Pritikin. I, why don't we take a——

Mr. Hart. Could I just say one other thing?

Mr. Pritikin. Sure.

Ms. Paxton. On the record?

Mr. Pritikin. On the record?

Mr. Hart. Yes.

Mr. Pritikin. Sure, absolutely.

Mr. Hart. We are going to pursue, and with bulldog tenacity, our efforts to obtain from the American Bar Association action reports relating to other schools, and we would be hopeful to obtain those. And we would also obtain discovery of documents relating to faculty salaries.

And to the extent that that might be helpful in my examination of this witness or with Mr. Sowle concerning their testimony on what the practice of the Accreditation Committee and the Council was under, in applying 405(a), I surely would want to continue that with Dean White and other witnesses.

Mr. Pritikin. Well, that doesn't surprise me, since you file another motion to reconsider that point every three or four weeks with some regularity.

Mr. Hart. Never give up.

Mr. Pritikin. Our positions have been made clear on that point and it will be for the Court to resolve.

Let's go off the record.

Mr. Cullen. Off the video record at 11:49:23.

(Whereupon, the noon recess was taken.)

Afternoon Session, 1:00 p.m.

Mr. Cullen. Back on the video record at 13:22:45.

Mr. Hart. I'd like to try to respond to an inquiry that Mr. Pritikin went to, asked with respect to White Deposition Exhibit Number 37 which I tried to use to question Dean White with before the break, break for lunch. And I was unable to ascertain whether or not we had produced that document in discovery because the people who would handle that were not available.

I also was unable to check on whether or not it was responsive, the document was responsive to any Discovery Requests. However, I'd be very surprised if it was because it relates to, "A," another law school, and "B," to salaries and I didn't think the ABA was interested in such documents.

And furthermore, I would guess the Judge's Order with respect to discovery relating to other law schools and also salaries suggests that that was not the proper subject of discovery. However, in view of the witness's testimony about the practice under 405(a) and Mr. Sowel's testimony in the same regard, I do think, it is relevant for cross-examination of those purposes. That's all I can say about the document at this time, Mr. Pritikin.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93–CV–6202.

Deposition Under Oral Examination of Claude R. Sowle, Volume II

Transcript of the deposition of Claude R. Sowle, called for Oral Examination in the above-captioned matter, said deposition being taken pursuant to the Federal Rules of Civil Procedure, by and before Suzanne Boulos, a Certified Shorthand Reporter and Notary Public, at the offices of Spencer & Klein, 801 Brickell Avenue, Suite 1901, Miami, Florida, on Wednesday, September 15, 1994, commencing at 10:00 o'clock a.m.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, New Jersey 08753, Telephone (908) 244–6100.

Mr. Stewart. Object to form.

A. Did I personally?

Q. That's the question, yes.

A. That thought never entered my mind.

Q. Prior to this time did the American Bar Association seek legal advice on whether Standard 405A might present problems under the antitrust laws?

A. I don't know the answer to that.

Q. Prior to this time had the American Bar Association sought legal advice as to whether the gathering and distribution of salary levels among law schools might present problems under the antitrust laws?

A. If that occurred, I'm not aware of it.

Q. Referring to some of the testimony you gave yesterday, Professor Sowle, you testified as I recall that in preparing the action letter on the Massachusetts School of Law application for accreditation you did not apply the letter of 405A with respect to the requirement that, quote, the compensation paid faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved schools in the same general geographical area, end quote. The reason you gave for not so applying the letter 405A was that the American Bar Association's actual practice for sometime was not to pay attention to the geographical or competitive comparability of salary levels in its evaluations; is that correct?

A. That's correct.

Mr. Stewart. Object as to form. Object. Asked and answered.

By Mr. Hart.

Q. In the numerous evaluations in which you have been involved, was it the practice not to pay attention to the geographical or competitive comparability of the salary levels in the law schools being evaluated?

Mr. Stewart. Object as to form.

By Mr. Hart.

Q. You may answer.

A. You are speaking now of my role as a site evaluator, not as a member of the Accreditation Committee?

Q. Of both.

A. I'll bifurcate my answer. With respect to site evaluations in which I have participated, my general recollection is and it's certainly a correct recollection in recent years. My recollection going back 10 years is not as good. But certainly my recollection is that I would pay attention as a site evaluator to the peer schools selected by the school being evaluated in terms of comparing or looking, at least, salaries, etc., and often would include in the report relevant data in that respect. Similarly I would as a member of the Accreditation Committee or as a monitor pay attention to the data provided in the site evaluation report regarding how the school took up as against those schools that it considers its peers in various areas, library expenditure, salary, etc. and I think much of that would appear in the transcript from yesterday.

Q. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?

Mr. Stewart. Object as to form.

A. Did I hear the word geographical in your question?

Q. Yes, you did.

A. Could I hear the question again, then, please.

Q. Surely.

(Whereupon, the following question is read back by the reporter):

"Question. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?"

Mr. Stewart. Objection as to form. This does not go to the issue of whether 405A served as a basis for the denial of Massachusetts School of Law application for provisional approval, so I'll instruct you not to answer on grounds of relevance.

The Witness. What is my—I need advice.

Mr. Hart. You are not going to get it from me.

The Witness. I understand not answering on the grounds of privilege but I don't understand what my status is with respect to——

Mr. Hart. Would you like to take a brief recess to discuss this with your attorney so you are not influenced by my views?

Let's take a five minute recess.

(Whereupon, there is a brief recess.)

(The deposition resumes and the following question is read back by the reporter:

"Question. And when you, acting as a site evaluator, put together the information with respect to competitive or geographical comparable school salary levels, you did that, did you not, because you thought that was relevant and required by 405A?"

A. With respect to the question just repeated, on the advice of counsel, I respectfully decline to respond on grounds of relevancy.

Q. When you were involved in the evaluation of the Thomas M. Cooley Law School in 1984 did you gather together and set forth a comparative salary data for the faculty at Cooley Law School?

A. When you say I, do you mean I personally?

Q. Or when you were on the team. You were on that team, weren't you?

A. Correct.

Mr. Stewart. I'll repeat my instruction.

A. I'm going to be disobedient for a moment and say I don't have the faintest recollection for the moment what that report contained with respect to salary information comparative or otherwise. That was 10 years ago and 16 sabbatical site evaluations ago and I simply would have to look at the report to be able to answer that.

Q. And you if looked at the report, do you think that would refresh your recollection?

A. I'm sure it would. President Brennan has provided you with a copy of the report.

Q. I have a copy of report on Thomas M. Cooley Law School November 7, 1984 in which you were listed on its face as one of the evaluators and I would ask you, sir, to turn to Page 23.

Mr. Stewart. Are you going to mark this as an exhibit, Ken?

Mr. Hart. I hadn't planned to.

Mr. Stewart. How come? I'm just curious.

Mr. Hart. Mainly I was trying to be merciful, if you will, about reproduction costs and burdening the record unnecessarily. I'm just using this for purpose of refreshing his recollection and see if it can refresh his recollection, which I don't think there's any requirement that I mark it as an exhibit or put it on the flagpole or do anything.

Mr. Stewart. If you are showing it to the witness and questioning him, it's appropriate to mark it as an exhibit but you proceed as you think appropriate.

Mr. Stewart. I will point out that it is marked as Deposition Exhibit Number 12 in the Brennan deposition of July 16, 1994.

By Mr. Hart.

Q. I will ask you, sir , to look at that and see if that refreshes your recollection whether the site report on Cooley Law School in 1984 sets forth comparative salary data?

A. Page 23 of the report does compile comparative information on what I assume are the approved law schools located in the State of Michigan.

Q. With respect to salaries?

A. That's correct.

Q. And as a member of the team at that time you consider that to be a relevant fact on the evaluation of the Cooley Law School?

Mr. Stewart. I object as to relevance and further, as we have with other witnesses, instruct Professor Sowle not to in your answers divulge any of the substantive issue concerning specific schools and the ABA consideration of their accreditation status. Furthermore, this goes beyond the bounds of the principles laid down in the Court's July 20 order and I'll instruct you not to answer to those grounds.

By Mr. Hart.

Q. Sir, are you going to answer the question?

A. On the advice of Counsel, I respectfully decline to answer on grounds of relevance.

Q. I will ask you to turn to Page 39 of the site report on Cooley Law School in 1984 and ask you if it does not refer to the library staff salaries being competitive with the regional norms?

Mr. Stewart. I object as lack of foundation. I'll object as to form and I'll object—I don't see how this leads to the potential discovery of admissible evidence as far as him saying what a document says or doesn't say.

By Mr. Hart.

Q. You may answer.

A. Yes, the report states with salaries of the junior librarian of professional staff range from $18,000 to $29,000. Cooley librarian compensation appears to be competitive with regional and law library norms.

Q. And at the time you as a member of the site inspection team for the American Bar Association understood that to be relevant facts to meeting the American Bar Association Standards?

Mr. Stewart. I object. I instruct you not to answer on the grounds stated earlier.

A. I respectfully decline on advice of Counsel to respond on grounds of relevance.

Q. When you were involved in the inspection team for the American Bar Association on Oral Roberts back in 1986 did you make any findings with respect to competitive or comparable salaries of the faculty at Oral Roberts compared to other law schools in the area?

Mr. Stewart. I'll object as to form and instruct you not to answer on the two grounds previously described relating to relevance, both in terms of outside the bounds the Court's July 20 order and relevance and confidentiality concerns regarding the substantive issues on relating to specific identified schools other than Massachusetts School of Law in their accreditation.

A. On the advice of Counsel, I respectfully decline to answer for the reasons stated just now by Counsel.

Q. Which you incorporate in your refusal?

A. Incorporate by reference.

Q. Same question with respect to Loyola Law School.

Mr. Stewart. Same instruction.

A. Same answer.

Q. Same question with respect to Seton Hall Evaluation 1987, which you were the Chair.

Mr. Stewart. Same instruction.

A. Same response.

Q. Same question with respect to the College of Law at Christian Broadcasting Network School 1987.

Mr. Stewart. Same instruction.

A. And same response.

Q. Same question with respect to the School of Law at the InterAmerican University, San Juan in 1988 in which you were the Chair.

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Mr. Stewart. Same instruction.
A. Same response.
Mr. Stewart. We have attained a certain level of efficiency here.
Q. Same question with respect to Paul M. Hebert Law Center, Louisiana State University 1968 in which you were the Chair.
Mr. Stewart. Same instruction.
A. Same answer.
Q. Same question with respect to the University of Puerto Rico Law School 1966 in which you were the Chair.
Mr. Stewart. Same instruction.
A. Same answer.
Q. Same question with respect to the Boston University School of Law, my alma mater, in which you were the Chair in 1968
Mr. Stewart. With all due respect to your alma mater, same instruction.
A. With great respect, same response.
Q. Same question with respect to the University of Hawaii in 1969.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to the University of Virginia Law School in 1969 in which you were the Chair.
Mr. Stewart. Same instruction.
A. And same response.
Q. Same question with respect to Saint John's Law School in 1990 in which you were the Chair.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to the Cleveland-Marshall College of Law in 1992.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to Southern California Law Center 1993 which you were the Chair.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to the School of Law at Regent University formerly the Christian Broadcasting Network University in 1993 in which you were the Chair.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to Stanford Law School in 1994 in which you were the Chair.
Mr. Stewart. Same instruction.
A. Same response.
Q. And same question with respect to George Washington Law School 1994 in which you were the Chair.
Mr. Stewart. Same instruction.
A. And same response.
Q. I will direct your attention now to when you were a member of the Accreditation Committee of the American Bar Association section on legal education reviewing the District of Columbia School of Law's evaluation. In that evaluation did you take into account comparable or competitive salary levels of the fact of that school as compared with salary levels at other comparable institutions?
Mr. Stewart. I'll object as to form and I'll instruct the witness not to answer the question on the grounds that it is outside the discovery specifically identified as being appropriate in its July 20th order and furthermore instruct you not to answer on relevance and confidentiality grounds because it goes into the substantive issues that were involved in the accreditation of schools other than Massachusetts School of Law specifically identically identified school?
A. On the advice of Counsel, I respectfully decline to answer the question for the reasons stated by Counsel which I hereby incorporate in this nonresponse.
Q. Same question with respect to the Bridgeport School of Law at Quinnipiac College.
Mr. Stewart. Same instruction.
A. Same response.
Q. Same question with respect to Texas Wesleyan 1994.
Mr. Stewart. Same instruction.
A. And same response.
Mr. Hart. I will ask the reporter to mark as Sowle Deposition Exhibit Number 8 a 9-page document on the stationery of the American Bar Association from James P. White to the Very Reverend Donald J. Harrington, president of St. John's University and acting dean Edward T. Fagan of St. John's University with copies shown to Claude R. Sowle and others marked 8.
(Sowle Deposition Exhibit 8 marked for identification by the reporter.)
Mr. Stewart. Ken, is this a Bate Stamp from this litigation or from some other proceeding?
Mr. Hart. I don't think I have to tell you those things.
Mr. Stewart. Just asking.
Mr. Hart. I asked your good colleague Mr. Pritikin similar information and he told me in effect that he did not have to disclose where he got documents or what marks were on them.
Mr. Stewart. I was asking one of the Bate stamp or whether it's indicate it's been produced in this litigation. I certainly respect your decision not to respond.
By Mr. Hart.
Q. I will ask you, sir, if you can identify that document as a copy of a so-called action letter sent on or about November 5, 1990 to Saint John's Law school as a result of American Bar Association proceedings in which you had been involved earlier as chairman of the site evaluation?
Mr. Stewart. Objection to form.
A. I did chair the Saint John's site evaluation in that capacity. I did receive a copy of the action letter as shown on Page 9 of the letter and nothing would cause me to believe that this is anything other than the official action letter that was sent.
142-24 61st Road, Flushing, NY 13367-1202, (718) 461-1209, July 6, 1995
U.S. Dep't of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001, (202) 307-0809, (202) 616-5980 (FAX)
David T. Pritikin, Esq., Sidley & Austin, One First National Plaza, Chicago, IL 60603, (312) 853-7036 (FAX)
Hon. Charles R. Richey, U.S. Dist. Ct. for the District of Columbia, U.S. Court house, 333 Constitution Avenue, N.W., Washington, D.C. 20001

15 USC 16 Comment, U.S. v. ABA, 95 CV 1211 (D.D.C.) (CRR)

The Proposed Final Judgement will allow the state judges/justices, conspirators[1] with the ABA,[2] to continue to violate federal law. The highest court of each state regulates[3] legal education and admission to the bar.[4] New York's Court of Appeals is illustrative.

Hon. Joseph W. Bellacosa[5] and his colleagues discharge their responsibilities imposed by the Legislature pursuant to N.Y. Jud. Law §§ 53, 56, 460; See *Matter of Shiakh v. Appellate Div.*, 1976, 39 N.Y.2d 676, 385 N.Y.S.2d 514, 350 N.E.2d 902 (1976); *Matter of Cooper*, 22 N.Y. 67 (1860); Court of Appeals Rules Part 520.

The Dep't of Justice and 95 CV 1211 have not addressed the state prerogative, if any, to violate the antitrust laws. Despite *Hoover v. Ronwin*, 466 U.S. 558 (1984) and the antitrust immunity test set forth in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), it is unclear whether the NY Court of Appeals has antitrust immunity. The quality of a law school's educational program and the provision of consumer information are not antitrust concerns.

The Court's Rules defined "Approved Law School" in Rule 520.3(b):

(b) Approved Law School Defined. An approved law school for purposes of these rules is one:
(1) whose program and course of study meets the requirements of this section, as shown by the law school's bulletin or catalogue, which shall be filed annually with the Court of Appeals; and
(2) which is approved by the American Bar Association; or
(3) which is a member of the American Association of Law Schools[6];
(4) which is registered and approved by the NY State Department of Education.

The Court of Appeals own rules the Court of Appeals sets forth an explicit policy

[1] *Rohan v. ABA*, -F.Supp.-, 93 CV 1338, 1995 WL 347035 (E.D.N.Y.)). Rejects argument of former law school Dean that ABA accreditors are state agents for purpose of stating 42 USC § 1983 cause of action.

[2] "5. Various others, not named as defendants, have participated as conspirators with the ABA in the violations alleged in this Complaint, and have performed acts and made statements to further the conspiracy." Complaint 95 CV 1211 (DDC).

[3] See Proposed Final Judgement at p.8, lines 6-7, & 10 "(g) require that each site evaluation team include, to the extent reasonably feasible, at least: (2). * * *judge (state or federal, active or retired)* * *"

[4] See paragraph 7, Complaint 95 CV 1211 (DDC).

[5] "Let me [Joseph W. Bellacosa] express my personal view that the Section's Accreditation decisions and process are and have been supportable, honorable, forthright, and upright." *Initial Report of the Chairperson of the ABA Section on Legal Education and Admissions to the Bar* at p. 6, lines 13-15 (Aug. 30, 1994). Page 1 Court of Appeals Stationary is marked "*Personal and Unofficial.*"

[6] ". . . [o]f the 1976 ABA-approved J.D. granting law schools. 159 are AALS members." * * "The AALS is recognized as one of the two national accrediting agencies for law by the Council on Postsecondary Accreditation the other is the Section of Legal Education and Admission to the Bar of the American Bar Association." at p.1, *1994 Handbook of Ass'n of American Law Schools.*

articulating a clear intent to displace unfettered competition with regulated market activity. The Court, its members and agents (The Board of Law Examiners) are actively involved in the operative anticompetitive decisions in restraint of trade. The history of the City University of New York (CUNY) School of Law at Queens College shows that if CUNY was not accredited by the ABA, despite Rule 520.3(b)(4), it would cease to exist.[7]

The ABA coerces Law School Deans, state actors, into violating state law.

Dean Haywood Burns based his refusal to supply Leeds with the requested documents upon an American Bar Association Report on "The City University of New York Law School at Queens College" regarding the February 10–13, 1991 visit made by a Committee of the Section of Legal Education. The foreward [sic] to the report stated:

'Important:' This report was prepared by the members of the visitation team named therein * * * It is intended for the exclusive use and information of those persons authorized by the Council to receive it. Any copying or distribution of a part or whole of this report is subject to this restriction.

What Dean Burns failed to note was that the American Bar Association is a private organization, and he works for a public agency, bound by all states law that affect public agencies in New York State. *Leeds v. Burns*, Index No. 1201/92, N.Y. State Sup. Ct. Queens Cty. Posner J., 208 *NYLJ* No. 18, p. 1, (col. 1), cont. p. 27, (col. 5) (Mon. July 27, 1992).

The ABA and AALS subvert state laws (e.g. N.Y. Pub. Off. Law § 84 *et seq.*) giving citizens access to government records.

As you may know, ABA Rule 36 on confidentiality of site visitation reports currently permits broader release of those reports than AALS Executive Committee Regulation 5.6. There are also a number of states which have public records laws that could conceivably be applied to site visitation reports. Carl C. Monk AALS Exec. VP & Exec. Dir., Memorandum 93–9 to Deans of Member and Fee-Paid Schools; Subject: Attached Survey on Confidentiality of Site Visitation Reports; Feb. 9, 1993.

The ABA's accrediting activities have not focussed on assuring the quality of the educational program and providing consumers with information regarding the quality of the educational program.

The ABA did not find jurisdiction pursuant to ABA Rule 34 regarding CUNY Law School's failure to comply with the Family Education Rights and Privacy Act [20 USC § 1232g; "FERPA"). The federal court [42 USC § 1983 & 20 USC § 1232g) shall hear (94 CV 2367 (EDNY)) and decide.

As we discussed in our phone conversation last week, the federal financial aid program regulations require that an institution publish its academic standards used in determining satisfactory progress towards a degree. Most colleges, including CUNY campuses, meet this requirement by publishing their requirements in the college catalog. Martha Martin Program Compliance Officer to Dave Fields[8] Associate Dean, April 6, 1993. Exhibit One attached hereto and incorporated herein.

Despite numerous ABA Site Visits CUNY Law School's Catalog[9] continuously fails to provide required information to students and prospective students.

CYNY Law School admits students with low "traditional indicators" (undergraduate cum GPA & LSAT) based upon impermissible criteria. See *Davis v. Halpern*, 768 F. Supp. 966 (EDNY 1991 Glasser J.). CUNY's active recruitment of these students and its failure to discharge its obligations, act in good faith,[10] and help CUNY students pass the NY Bar Examination (ABA S301) constitutes the inculcation of false hopes and economic exploitation (ABA S304). Repeated ABA Site Visits have not influenced CUNY's deceptive practices. Potential remedies are provided for by N.Y. Gen. Bus. Law § 349 and RICO. See *Rosario v. Livaditis*, 963 F.2d 1013 (7th Cir., 1992).

Despite ABA S305(c) the law school has not adopted and enforced policies relating to class attendance. Chairman of the Black and Puerto Rican Caucus, NY State Assemblyman Larry B. Seabrook[11] (D-Bronx), concurrently served as an Assemblyman and attended CUNY Law School. The ABA has received a complaint pursuant to ABA Rule 34 and Standard[12] 305 & 305(c).

This Comment has been promulgated without my having had the opportunity to journey to the Washington, DC or otherwise obtain copies of the material[13] available to the public[14] in Washington, DC pursuant to 15 USC § 16(b). I request that the court make said materials available in the EDNY (225 Cadman Plaza East, Brooklyn, NY 11201) and/or SDNY (500 Pearl Street, NY, NY).

The Complaint in 95 CV 1211 (DDC) publicly slaps the ABA on the wrist and does not assert federal power to its full and proper extent. State judges may agree themselves[15] or through their "state" agents (e.g. state board of law examiners) as they have previously agreed through the ABA.[16]

Conclusion

The proposed Final Judgment in 95 CV 1211 (DDC) should be rejected.

Respectfully submitted,

Jackson Leeds,
142–24 61st Road, Flushing, NY 11367–1202, (718) 461–1209.

July 6, 1995, Flushing, Queens NY

Attachments:
(1) Exhibit 1 (1 page)
Memorandum From Martha Martin
Program Compliance Officer
Re: Academic Standards, April 6, 1993.

Exhibit One

The City University of New York, Office of Student Financial Assistance

101 West 31st Street, 7th Floor, New York, N.Y. 10001–3503, (212) 947–6000. EXt.

April 6, 1993.

To: Dave Fields, Associate Dean
From: Martha Martin, Program Compliance Officer
Subject: Academic Standards

As we discussed in our phone conversation last week, the federal financial aid program regulations require that an institution publish it's academic standards used in determining satisfactory progress towards a degree. Most colleges, including CUNY campuses, meet this requirement by publishing their requirements in the college catalog. Enclosed is a copy of the satisfactory progress section from the *Encyclopedia of Student Financial Aid* complied by the National Association of Student Financial Aid Administrators and copies of the following federal regulations:

34 CFR 668.43(c)(2)(i) and (ii) indicate that standards must be included in consumer information available to all enrolled students and to prospective students upon request;

34 CFR 668.14(e) indicates that establishing, publishing and applying academic standards is part of the criteria used by the Department of Education to demonstrate an institution's administrative capability;

34 CFR 668.23(f)(1)(iii) indicates that student recipients' records used to determine satisfactory progress are subject to audit.

In addition, New York State regulations require that students be in good academic standing to receive state funds, including TAP. I am enclosing the applicable sections of policy and procedures published by this office.

If you need any further information, please let me know.

[7] See Paragraph 7, Complaint 95 CV 1211 (DDC).

[8] Fields is also Special Counsel to CUNY Chancellor W. Ann Reynolds and Records Access Officer for the CUNY Law School and the Central Administration located at 535 East 80th Street, NY, NY 10021. Martin refers to him as Associate Dean, but his full title is Associate Dean for Administration and Finance.

[9] The Catalog which contains the application for admission does not refer to the Student Handbook. Applicants requesting information are sent the Catalog and application and not the Student Handbook.

[10] See *Branum v. Clark*, 927 F.2d 68 (2d Cir. 1991).

[11] Listed in the "unofficial list" May 27, 1993 CUNY Law School Commencement Program.

[12] 305(c) A full-time student, to satisfy residence study requirements, shall devote substantially all working hours to the study of law and shall not engage in remunerative employment for more than 20 hours per week, whether outside or inside the law school. Regular and punctual class attendance is necessary to satisfy residence and class hour requirements. The law school has the burden to show it has adopted and enforces policies relating to class attendance." *Standards for Approval of Law Schools and Interpretations*, October 1994.

[13] 15 USC § 16(b) . . . Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct . . .

[14] CUNY Law School students and alumni may be particularly interested in any records pertaining to their school.

[15] See U.S. Const. Art. I, § 10 "[n]o State shall without the Consent of Congress, . . . enter into any Agreement or Compact with another state . . ."

[16] The ABA Accreditation Committee includes at least one federal judge and one state judge of a state's highest court.

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cc: George Chin

Robert A. Reilly

P.O. Box 309, Phoenix, AZ 85003–0309

July 4, 1995.

Mr. Joel Klein,

Deputy Assistant Attorney General, U.S. Department of Justice, Washington, DC.

Re: U.S. Justice Department/American Bar Association

Dear Mr. Klein: I wish to make a few comments on the Justice Department's proposed settlement with the American Bar Association (ABA) regarding the accreditation standards of the nation's law schools.

Although many of the recommendations are excellent and long overdue the tentative agreement, as reported in The Wall Street Journal on June 28, 1995, did not go far enough.

State Supreme Courts and State Legislatures should not be permitted to deny an attorney with good moral character who passed a bar exam in another state from taking its bar exam, a situation that currently exists in 42 or 43 states.

This ABA accrediting rule requirement is Jim Crowism at its worst, a throwback to a time when the ABA was a racist professional organization. A person who passes the bar exam in a state is a licensed attorney and should be allowed the opportunity to take the bar exam in other states unless there is a compelling reason backed by sufficient evidence that the applicant is unfit to practice law. Law schools, whether they are accredited by the ABA or not, have basically the same curriculum. Furthermore, the practice of law is learned on the job, particularly since most collegiate law programs decry the "trade school" approach.

Second, the main reason Arizona and other states with a similar rule prohibit non-ABA graduates from taking its bar exam is to limit competition. It's that simple.

In addition, denying bar certified attorneys from taking the bar exam in another state may be an impeachable offense by the public body that enforces the rule.

Public entities such as the various State Supreme Courts and State Legislatures are required to act in the public's interest. By limiting competition, denying qualified individuals from earning a living, by unjustly preventing individuals from practicing their profession in a place they want to live, simply defies the principles of freedom and justice our public officials are bound by office to uphold.

Frankly, the State Supreme Courts and State Legislators do not understand what accreditation is all about and what it is suppose to accomplish. If you don't believe this have some members of your staff check around. I did. The responses were ludicrous. Accreditation is not a Good Housekeeping Seal of Approval. It shouldn't imply non-accredited schools are diploma mills. Accreditation isn't mandatory, it's voluntary, a self-evaluation process that's been distorted by those in authority to suit their own vested interests.

Now is the appropriate time to bring this issue before the American people because the current status have far-reaching ramifications that are too many to include in this letter.

The burden of proof is on the State Supreme Courts and the State Legislatures to justify the current policy. I can furnish plenty of information showing the policy is a sham.

Enclosed are three news articles I've written on this issue. I'm not an attorney; I'm writing a book that includes the law school accrediting issue. I would be delighted to debate this issue in a public forum with anyone with the courage to do so.

Please let me know if you need additional information. I'm looking forward to your response.

Sincerely,

Robert Reilly,

(602) 252–5352.

Exhibit 38, Robert Reilly's letter, included three news articles. They cannot be published in the **Federal Register**. A copy of these articles can be obtained from our Legal Procedures Office.

Hawaii Institute for Biosocial Research

Private Carrier Address: Century Center, 1750 Kalakaua Avenue, Suite 3303, Honolulu, Hawaii 96826

Address all Mail to: P.O. Box 4124, Honolulu, Hawaii 96812–4124, Tel: (808) 943–7910 or 949–3200 (Messages Only), FAX: (808) 943–6912

July 30, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, NW., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed Final Judgment.

Dear Mr. Greaney: The enclosed letter dated July 30, 1995 amends and replaces my letter of July 18, 1995.

Sincerely yours,

Robert W. Hall,

President and Director.

July 30, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed Final Judgment.

Dear Mr. Greaney: We comment and object to the following omissions and deficiencies in the proposed Final Judgment. The proposed Final Judgment is seriously flawed and will result in injustice to the group that matters the most in any antitrust action, *consumers*. No group needs government anti-trust assistance more than law school applicants who are powerless in the accreditation and application process.

The issue is the American Bar Association's (ABA) involvement in the law school admissions process. The ABA is no disinterested, academic group. The ABA is a guild, a cartel with an economic ax to grind. The fox is in the hen house.

With ABA knowledge, sanction and support, one of the many "services" provided by Law Services includes the LSAT. LSAC members and many non-member law schools in the United States require applicants to (1) subscribe to the Law School Data Assembly Service (LSDAS) service and (2) take the LSAT as a part of the application process, self-serving disclaimers to avoid antitrust scrutiny notwithstanding.

The Law School Admission Council (LSAC) is an association of 191 law schools in the United States and Canada founded in 1947 to "coordinate, facilitate and enhance the admissions process." During 1992, the Law School Admission Council administered 150,000 LSAT's, supported 477,000 law school applications, and processed 198,000 transcripts. As owners of the LSAC, the same legal educators that control the accreditation office control the LSAC. All law schools accredited by the ABA are LSAC members. That is a classic definition of a cartel. In most states, the practice of law is controlled by this cartel. An analogy would be a teachers' union controlling accreditation and applicant selection requirements at college level teacher training programs.

Taking the most conservative line and following Judge Bork's anti-trust positions, the goal of antitrust law should focus on the *maximization of consumer welfare*. The proposed Final Judgment fails by that measure or the more liberal measures in effect today. The proposed Final Judgment is deficient for all of the antitrust reasons listed in the initial Complaint.

The "settlement" and proposed Final Judgment omits mention of the most egregious American Bar Association (ABA) accreditation requirements from the consumer antitrust point-of-view which are that the fact of the ABA being involved in admissions requirements at all is simply for the purpose of restricting law school output which in turn, limits competition among licensed attorneys. Competition is directly controlled by the ABA accreditation (filtration) process.

The complaint in this action states that it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. The government also noted in its Competitive Impact Statement that it has learned more about the ABA's practices and their competitive effects as the investigation proceeded.

In the process of that investigation, the government appears to have missed, not fully understood, or ignored other ABA accreditation standards and interpretations that limit competition and permit competitor law schools to limit rivalry among themselves. The government appears to have spent so much time looking at trees that it did not see the forest. The government first should have questioned the role of the ABA in the accreditation process at all.

The ABA walks, talks and acts like a cartel. The subject of cartels lies at the center of antitrust policy. ABA admissions standards and interpretations constitute one threat of a

boycott after another. (See, United States v. Nationwide Trailer Rental Systems, 156 F.Supp. 800, 806, 807 (D. Kan. 1957).) In Nationwide the Supreme court applied the rule of per se illegality because the Nationwide had the power to order a boycott.

As a group, these ABA anticompetitive issues involve a conspiracy to boycott law schools and consumer applicants a number of different ways. The ABA is also engaged in fixing prices charged law school applicants in a conspiracy with the Law School Admission Council (LSAC), particularly with the LSAT.

Despite the government's statement in Section XI, (c), "Entry of this Final Judgment is in the public interest" the proposed Final Judgment is not in the public interest. The combination of ABA accreditation practices in a conspiracy with LSAC is a "naked," anticompetitive restraint. The power exercised by conspirators is enormous, i.e., the power of entry to the law profession. The intent the ABA's accreditation standards and interpretations are anticompetitive to restrict competition for the cartel that is the ABA.

The LSAT is an entry barrier to a law school education and subsequently, the practice of law. The issues raised in the attached white paper support the allegation that LSAT's are a fraud, the con of the century. The purpose of the LSAT is to restrict entry into the law profession, reduce the number of applicants, and by that process, enable the ABA to maintain a law monopoly in the United States. In that process, the ABA is able to support the legal profession's ability to charge high legal fees by restricting competition. More important, the ABA restricts entry to the profession so that in the maximum number of cases possible, ABA members in litigation are unopposed by those who cannot afford the services of an ABA member. The ABA is the most egregious and efficient monopoly in the United States.

ABA accreditation requirements and reviews involve minimum median LSAT scores along with pressure to keep median scores high. This pressure essentially makes the LSAT a gateway requirement to the legal profession in this country. See, ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Interpretation 209, Page 2, 501 and 304, i.e., "declining median (or average) LSAT scores". By this Interpretation, the ABA has announced a boycott against law schools that do not require LSAT's. Law schools must also stay above "declining median LSAT scores." This Interpretation is proof of a boycott against applicant *consumers* who have "declining median LSAT scores." Interpretation 501 requires that a law school have an artificial barrier, and threaten to boycott those with "declining median LSAT scores" despite the fact that there is no proven or provable correlation between LSAT scores and success in law school.

ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 503 is an attempt to confuse the LSAT issue, by requiring an "acceptable (apparent aptitude) test." The ABA knows that no predictive or aptitude test can ever prove a correlation between LSAT scores and success in law school. Thus the ABA stands on a fraud and says that another fraud *may* be acceptable in order to avoid an ABA boycott or threat of a boycott. That is not likely. The entire issue of predictive or aptitude tests is an artificial, fraudulent barrier to entry to the ABA controlled law profession.

LSAT tests are so devoid of any proven or provable ability to predict first year law school performance that eliminating LSAT requirements entirely would result in a higher correlation with first year law school performance than LSAT scores alone provide. A statistical analysis of flipping a coin will yield a better set of correlation coefficients than LSAT's yield. The above facts are a classic definition of an unlawful, artificial barrier for the purpose of limiting the number consumer applicants who survive while. That in turn keeps law profession fees high. The accompanying white paper expounds on this subject in considerable detail.

The accreditation process reinforces the stranglehold the ABA has over law education in this country regardless of whether an applicant intends to use his/her law education in the licensed practice of law or not. Proof of that allegation lies in ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 301, "(a) A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession." Thus a person who simply wants a legal education without intent to petition for admission to the bar is either required to participate in an inappropriate ABA admissions program or both the applicant and the law school will be sanctioned with either a boycott or the threat of a boycott.

This letter is not a challenge to any Department of Education regulation. The Department of Education cannot lawfully mandate a fraudulent test and the LSAT is not named in any DOE mandate. The issue of whether a particular aptitude test is "suitable" is well within the jurisdiction of this antitrust action where the issue of fraud is raised and as it is accompanied by the wealth of material found in the attached white paper. It is well known that correlation does not prove causation. The fraud inquiry can stop right there or continue if the government wants redundant proof of fraud. It is well within the U.S. Department of Justice's responsibilities to take up the issue of "suitable" in relation to the LSAT. The issue is that of a fraudulent LSAT on the antitrust issues of this action and the well-being of consumers. The issue is well within the United States District Court for the District of Columbia's jurisdiction in this action. Fraud is the cornerstone for much that is anticompetitive and subject to antitrust litigation.

The ABA has boycotted and intends to boycott any law school, proprietary or non-profit, that does not have "small classes for at least some portion of the total instructional program." See, ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard 303, (ii). That Standard makes the requirement to accredit proprietary schools moot. The most prestigious schools in the country have very large classes for economic reasons. Small classes are uneconomical and are an artificial barrier not eliminated by the proposed Final Judgment. The requirement for small classes is under pain of boycott if the law school does not comply. Only law schools that have substantial amounts of government financial support can meet this anticompetitive requirement. This anticompetitive ABA requirement directly results in law school education price fixing, it is an artificial barrier to competition and both limit entry to the law profession as an illegal boycott.

ABA Standards for Approval of Law Schools and Interpretations, October, 1994, Standard and Interpretation 701 essentially means that the proposed Final Judgment provision concerning proprietary law schools is not a serious remedy. Only government supported or unusually well financed non-profit law schools can start-up with only permanent facilities, and without "leased or rented facilities." The issue is one of business prudence, not law education. This particular Standard and Interpretation is an artificial barrier erected under pain of boycott, or threat of boycott to limit competition. The no lease, no rental standard is anticompetitive particularly in areas where land and buildings are extremely expensive. The requirement is anticompetitive to the extent that the ABA has proven by past deeds that are established in these proceedings, that it does not want for-profit competition. Standard 701 is an anticompetitive artificial barrier to competition.

From the public's point-of-view, a Special Commission consisting of largely the same actors who created the anticompetitive guild described in the government's complaint does not constitute serious relief. The fox remains in charge of the hen house.

The above anticompetitive practices have evolved without any real public participation, scrutiny or oversight. Proposed Interpretations of Standards, Rules, and Policies to the admissions process which are very much a part of the accreditation process have been hidden from the public view and will continue to be hidden from the public if they are published only in the ABA Journal and the Review of Legal Education in the United States. The "public comment" requirements of the proposed Final Judgment are for insiders, not consumers. There is no evidence of reasonable notice to consumers in this action. It is this absence of public oversight that has caused the ABA as an anticompetitive cartel, to flourish and prosper.

Law school applicants have no escape from the ABA's monopoly and anticompetitive practices described herein. The above issues are a very important part of the accreditation process. Admissions requirements directly affecting consumers are also a part of the accreditation process. That process has been captured by those with an economic interest in limiting the practice of law in the United States.

It is critical that the government not limit its ABA investigation to the issues listed in the proposed Final Judgment. The fact of this

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action is not widely known to the public and that has injured consumers. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest i.e., consumers are ignored. The investigation must be opened to public hearings for the reasons given herein.

Sincerely yours,

Rober W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

July 18, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed final judgment.

Dear Mr. Greaney: The complaint in this action states that it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. The government also noted in its Competitive Impact Statement that it has learned more about the ABA's practices and their competitive effects as the investigation proceeded. Unfortunately, the government's action and order have concentrated on issues far less important to the public than other ABA anticompetitive practices that severely impact the public. The issues listed in the proposed Final Judgment are essentially insider issues.

Far more serious is the ABA's role in anticompetitive admissions processes required by the ABA in the accreditation process. Listed below and attached hereto are major anticompetitive issues left out of the final judgment that will be impacted by the ten year term of the judgment if they are not reviewed, investigated and included now. In the alternative, the following issues must be specifically excluded from the settlement prescribed by the proposed Final Judgment.

The public is concerned about the preclusion and res judicata effect of the proposed Final Judgment, Clayton Act disclaimers not withstanding. For the reasons given, the proposed judgment is deficient and potentially harmful to the public interest. Despite the statement in Section XI, (c), "Entry of this Final Judgment is in the public interest." the proposed Final Judgment is not in the public interest.

Major issues not dealt with include but are not limited to:

1. The Law School Admission Council (LSAC) is an association of 191 law schools in the United States and Canada founded in 1947 to coordinate, facilitate and enhance the admissions process. During 1992, the Law School Admission Council administered 150,000 LSAT's, supported 477,000 law school applications, and processed 198,000 transcripts. As owners of the LSAC, the same legal educators that control the accreditation office control the LSAC.

2. All law schools accredited by the American Bar Association (ABA) are LSAC members.

3. With ABA knowledge, sanction and support, one of the many "services" provided by Law Services includes the LSAT.

4. LSAC members and many non-member law schools in the United States require applicants to (1) subscribe to the Law School Data Assembly Service (LSDAS) service and (2) take the LSAT as a part of the application process.

5. The LSAT is an entry barrier to a law school education and in addition, the practice of law.

6. The issues raised in the attached white paper support the allegation that LSAT's are a fraud having no validity at all, and certainly less predictability than the toss of a coin.

7. By ABA knowledge, sanction and requirement, ABA accreditation requirements and reviews involve minimum median LSAT scores along with pressure to keep median scores high. This pressure essentially makes the LSAT a gateway requirement to the legal profession in this country.

8. By ABA knowledge, sanction and requirement, the accreditation process reinforces the stranglehold the ABA has over law education in this country regardless of whether an applicant intends to use his/her law education in the licensed practice of law or not. As but one example, the government appears to be unaware that in Hawaii and other states, an officer and sole owner of a closely held corporation cannot lawfully represent the corporation before *federal* courts including bankruptcy courts regardless of competence since federal courts follow state licensing rules requiring an ABA approved law school education. In many cases, ABA lawyers file actions unopposed as corporate officers who cannot afford attorneys are told to sit down while licensed attorneys proceed. This issue starts with accreditation and admissions requirements required by ABA accreditation.

The above anticompetitive practices have evolved without any real public view, participation, scrutiny or oversight. Proposed Interpretations of Standards, Rules, and Policies to the admissions process which are very much a part of the accreditation process have been hidden from the public and will continue to be hidden from the public if they are published only in the ABA Journal and the Review of Legal Education in the United States. The "public comment" requirements of the proposed Final Judgment are for insiders, not the public. It is this absence of public oversight that has caused the ABA anticompetitive guild to flourish.

ABA facilities requirements essentially rule out for-profit law schools in Hawaii since Hawaii is the only state where commercial land is largely leasehold; land and buildings are extremely expensive since government and large estates own most of the land. If current accreditation practices continue to be used and a Hawaii for-profit corporation leases land and buildings, mainland accreditation teams who are unfamiliar with Hawaii's special problems will continue to use that fact to deny accreditation.

From the public's point-of-view, a Special Commission consisting of largely the same actors who created the anticompetitive guild described in the government's complaint does not constitute relief. The situation is one where the fox remains in charge of the chicken house.

Law school applicants have no escape from the ABA's monopoly and anti competitive practices described herein. The above issues are a very important part of the accreditation process. Admissions requirements are also a part of the accreditation process that have been captured by those with a direct interest in the outcome of admissions requirements.

It is critical that the government not limit its ABA investigation to the issues list in the proposed Final Judgment. It should also be understood that the entire action was not one widely known to the public and that has injured the interest the public has in this proceeding. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest is ignored.

Sincerely yours,

Robert W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

The Ethics of Educational and Employment Aptitude Testing

Robert W. Hall, Hawaii Institute for Biosocial Research, Honolulu, Hawaii, Revised, July 18, 1995

Abstract

The author presents a case against the continued use of graduate or undergraduate educational or employment aptitude or predictive tests. The author argues that educational aptitude or predictive tests have no proven or provable validity, that there is no justification to continue to require educational or employment aptitude or predictive tests from the moral, ethical or legal points of view. The author raises the issues that (1) applicants required to take aptitude or predictive tests are forced to participate in psychological research without their informed consent, (2) applicants must pay for forced participation benefiting private, for-profit corporations, (3) nationwide cheating is distorting normative standards, (4) there is no known statistical method for validating aptitude or predictive tests since in actual use, random statistical selection is routinely ignored, and (5) validity correlations reported by the test makers prove the tests do not do what they purport to do. This paper is a call for multi-discipline reflection with regard to the moral, ethical and legal issues presented.

The Ethics of Educational and Employment Aptitude Testing

Introduction

Secondary, undergraduate, and graduate level educational and employment aptitude or predictive testing has had a profound impact upon the educational, social and political fabric of this country. Entry into key professions such as medicine, law, education

and the sciences is dependent upon high, predictive test scores. Educational and employment aptitude tests are an undisputed, major influence in the selection process of our intellectual elite.

Educational institutions use aptitude or predictive tests in order to predict first year grade performance. Government and private corporations use aptitude tests in order to predict first year job performance. The tests purport to predict the future by their claimed ability to predict future performance.

The purpose of this paper is to discuss the ethical considerations of aptitude testing in light of the many deficiencies of these tests. The most obvious deficiency of predictive or aptitude tests is the fact that no one can predict the future. The aptitude tests discussed in this paper are primarily the product of the Educational Testing Service (ETS) or the Law School Admission Council (LSAC) and their affiliated organizations.

Reliability and Validity

Over the years, warnings have appeared in lay and professional literature that have added to the doubt surrounding the use of aptitude or predictive tests. Educational and employment aptitude tests must have proven statistical reliability and validity in order to enjoy academic and professional ethical support.

Reliability refers to the ability to replicate the results of the test (Kidder, 1981). Commonly used methods for determining reliability are test, re-test methods or analysis of variance methodology. Examples of uneasiness in the literature include Lumsden (1976). Lumsden suggested that the study of reliability is largely irrelevant to predictive test. He argued that reliability theory is based upon assumptions that cannot be proven.

Validity refers generally to the criteria the test measures and how useful that measurement is. In order for a test to have validity, the test must correlate with another variable of interest. This variable is sometimes called a criterion.

There are two commonly used types of validity. One is face validity which is the apparent appropriateness of the test, a judgment call. The other is content validity which refers to how adequately the items in a test sample the area of interest (Guion, 1978; Messich, 1980). Both measures are important in the measurement of aptitude. The difficulty in measuring aptitude becomes clear when one attempts to define aptitude. Any definition of that word is truly in the eye of the beholder.

Of the two measures utilized in measuring validity, the important measure for our purposes is criterion-related validity. Criterion-related validity refers to the practical use of test scores in predicting performance on non-test behaviors of interest.

Criterion-related validity may be either concurrent or predictive validity. Predictive validity is essentially subsequent academic or employment performance. With concurrent validity, both the test scores and the criterion measures are immediately available . With predictive validity, test scores are available before the criterion data are available. Time passes before we know whether the applicant performed as predicted.

Statistics used to validate aptitude tests depend upon random selection. Without random selection, validation statistics are meaningless. Schools that admit or deny admission using test scores including a minimum predictive test score destroy random selection. Applicants who are not admitted as a result of failure to achieve an acceptable or a minimum test score become a control group, or the criterion-control group.

Once the criterion-control group drops out of the statistical equation (when they are not given the opportunity to perform), the statistical basis for validating aptitude tests becomes nothing more than worthless assumptions based upon other worthless assumptions. An attorney would call this hearsay upon hearsay.

Without control group first year grades or first year performance records, there is no way of validating the tests. We must know how all of those taking the test would have performed in order to validate the tests. Once random selection is destroyed, no credible data is available to validate the tests. Each test that eliminates applicants on the basis of minimum test scores adds to the destruction of the statistical data base. As a result, ethical considerations prevent the use of statistical data that depend upon random selection if random selection is destroyed in the process of gathering statistical data. In practice ethical considerations are routinely ignored in the name of expediency in the validation, sale and use of aptitude tests. The problem is one of the test-makers and the agencies requiring applicants to take the test refuse to face. One may either choose statistical validation, or one may choose expediency. The two are mutually exclusive. This example is only one of several serious flaws in the statistical process of validating aptitude tests (Tenopyr. 1977).

The test-makers are aware that it is not wise to use educational tests as the sole selection criterion with regard to any of its tests. The producers of the LSAT for example, routinely warn law schools not to use the LSAT as the sole selection criterion. At the same time, the LSAC knows or should know, that law schools habitually ignore those warnings and are pressured to do so in the accreditation process. In practice, the LSAC leaves the decision of how to use test results up to individual law schools. The failure to control the use of the tests is but one of the ways the tests become statistically worthless.

Despite their disclaimers, the candor of the test makers in presenting a clear, truthful statement concerning their products may be questioned. As an example, the validity statement in the 1984–85 General Information Booklet for the Law School Admission Test is notable for its brevity and general lack of information. Part of the statement reads, "while correlations between test scores and grades are not perfect, these studies show that LSAT scores help to predict which students will do well in law school." Correlation between LSAT scores and first-year law school grades for 139 schools ranged from .06 to .71. The 1992–93 LSAT Information Book reported correlations from .11 to .64 (median is .41) between LSAT scores and first-year law school grades and from .22 to .69 (median is .49) between LSAT scores combined with undergraduate grade-point averages and first-year law school grades.

The concept of validity may be best understood by translating psychometric and statistical jargon into something everyone can understand. Correlations look like percentages. In fact, they are not. In order to obtain percentages, correlations must be squared. A correlation statistic of .06 becomes .0036 or about a third of one percent. A correlation statistic of .71 becomes .5041 or slightly over 50%. Such statistics cannot seriously be described as validations. It is also important to keep in mind that correlation does not prove causality. The assertion that one variable causes another always remains not proven.

Correlations for the GRE exam are routinely published between .20 and .30 or 4% to 9%. The 1992 LSAT correlations translate into from 1 to 41% (median is 17%) between LSAT scores and first-year law school grades and from 5% to 48% (median is 24%) between LSAT scores combined with undergraduate grade-point averages and first-year law school grades. Those validation statistics are terrible regardless of the criteria. A flip of the coin does better. When one realizes that careers are determined on the basis of assumption drawn from these statistics, the situation is even more of a human tragedy.

The 1984–85 LSAT statement could be characterized as one of no validity at all for an entirely different reason. The correlation data presented by the test maker in the 1984–85 LSAT statement describes an old, entirely different test. A new LSAT test was introduced in June, 1982. No correlation or validity data was available at the time of the 1984–85 test. In order to correlate and validate the new test, the test makers used the remarkable expedient of simply reporting correlation and validity data for the old test. The data presented failed to substantiate validity for the old test much less the new test. The ethical implications of that decision are that ethical standards were not observed.

The 1992–93 LSAT "Information Book" published by the Law School Admission Council (LSAC) claims (p. 4), "The LSAT is designed to measure skills that are considered essential for success in law school:" "The LSAT provides a standard measure of acquired verbal and reasoning skills that law schools can use in assessing applicants." The validity information found on p. 125 does not support either of these statements i.e., medians of 17% to 24% (LSAS, 1992).

The 1984–85 GRE Information Bulletin reported validity correlations of from .13 to .40 (1.7% to 16%) in various categories (p. 27). The test maker did not even bother to publish criterion statistics. Despite that omission, the Educational Testing Service confidently states that the General Test or Subject Tests are appropriate for admitting students for graduate study, and for decisions in awarding fellowship awards.

The test-makers also recommended their tests for predicting success in graduate

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school and for guidance in counseling students in their courses in graduate study (p. 28). There is considerable irony in the fact that most accredited graduate schools of psychology depend upon GRE test scores despite the fact that such scores have no acceptable proven or provable validity.

For a period of time, some test-maker bulletins omitted validity correlation statistics entirely. For reasons best known to the test-makers, validation information was for a time, not published in the test information sent to and read by the student. In order to obtain validation statistics, the bulletins instruct SAT student applicants, for example, to order a second manual called the ATP guide. The reference to this second guide is not prominent in the bulletin.

The 1987–88 ATP Guide admits that the SAT-verbal and mathematical predictive correlation is 27% for 10% of the colleges measured (.52×.52=27%), between 13% and 27% for 40 percent of the colleges (.36–.52), between 4% and 13% for 40 percent of the colleges (.21–.36), and below 4% for 10 percent of the colleges. ETS admits, "The validity of high school record is typically somewhat higher than the validity of the optimally weighted combination of SAT scores." ETS claims that the weighted combination of the highs chool record and SAT scores by a correlation addition of less than one half percent (0.07×.07). The ETS fails to state how the data should be weighted. There is no indication in the ATP Guide that any admissions director or admissions committee weights SAT scores or high school grades in the admissions process. (The College Board, 1987).

The 1984–85 Graduate Management Admission Test Bulletin of Information resolved validity disclosure problems by the simple expediency of not publishing validity information to test applicants. GMAT disclaimers are in comparison, much stronger than those provided with the GRE. ETS admits that the test, "cannot and does not measure all the qualities important for graduate study in management and other pursuits, whether in education, career, or other areas of experience; . . . (2) there are psychometric limitations to the test—for example, only score differences of certain magnitudes are reliable indicators of real differences in performance. Such limits should be taken into consideration as GMAT scores are used."

Employment test validity information provided by the ETS for tests such as the NTE teacher's test is also less than a resounding vote of confidence. The NTE teacher's test is sold to states and counties without validation. ETS simply tells prospective users to validate the test themselves. Incredibly, state after state has bought the test with that proviso.

The test-makers have not and cannot validate these tests with ethically applied, generally accepted statistical methods. A more serious question involves whether or not the test-makers use vague, ambiguous or highly technical disclosure information. The average applicant taking a predictive test is not skilled in statistics or psychometrics. Why then, do the test-makers persist in using statistical and psychometric language in place of plain English? Why are correlation figures used in place of percentages? The answer may be that the plain English information does not look very good. The data provided by the test-makers constitutes prima facie proof that forcing students or job applicants to take predictive tests is an economic and human waste.

Why don't the test-makers and their affiliates publish percentage statistics? Would you publish percentage statistics if your correlations were this bad?

Practical Considerations

The actual field use of predictive tests is even more interesting than their statistical shortcomings. A large number of prospective law school applicants expressed concern when the 1982 LSAT test was announced, and they rushed to take the old test. The same thing happened in 1991 when the test was changed once again. As a result, applicants for the 1983–84 and 1992–93 school years are believed to be heavily represented by those who took the old test while applicants for the 1984–85 or 1993–94 school years are a mixed group. There is no ethical justification to support the use of two entirely different tests in selecting a particular law school class or any other class.

The Richardson School of Law at the University of Hawaii as but one example, admitted as much in a 1993 report to the Hawaii Legislature footnote (p. 12): "It is impossible to compare Law School Admission Test (LSAT) scores for all 20 years of the law school because both the test and the scoring system of the LSAT exam have changed during that period. The three different score ranges used since 1973 are not comparable. When the law school first opened in 1973, the range of scoring was 200–800; from the early 1980s until 1991, the test was scored on a 10–48 range. The latest scoring scheme—120–180—was first effective with the 1992 entering class." Here we have an accredited, ABA approved law school admitting LSAT scores over the years "are not comparable" and yet LSAT are still used to deny admission to applicants. In fact, either the new test score or the previous test scores were accepted for a time during an overlap period by educational institutions whenever new tests were introduced. That created a situation where a particular class would be entered using two different test score "schemes" despite the fact that they "are not comparable."

Another weakness with the practical use in the field of predictive test scores involves the limited psychometric background of those using the test scores. Most of those who make final selection decisions have no training whatsoever with regard to the limitations of predictive tests. Few decision makers understand the meaning of the psychometric cautions or the disclaimers found in testing literature. The average selection committee member may be reading far more into test scores than they should. To the extent that a situation has been created where users have too much confidence in the tests, the responsibility lies both with the test-maker and the institution requiring the tests. Additional responsibility lies with those in the academic community who know better and keep quiet.

At least one fully accredited, ABA approved law school, has a six person admissions committee two of whom are law students elected by the student body. Both are able to lobby and one has voting power. If any of the student admissions committee members have training in psychologicl testing, it would have to be by pure coincidence. When test makers send out test results, they routinely disclaim any responsibility with regard to the educational qualifications of those using their test results. The Standards for Educational and Psychological Tests and Ethical Principles of Psychologists of the American Psychological Association are simply ignored.

Admissions committee members may also be missing other important cautions found in standard psychometric texts such as Graham and Lilly's Psychological Testing (1984). Graham and Lilly caution (p. 42), "If not all people can be accepted by an institution, those admitted should be randomly selected in the absence of any validity information. Only if the test scores are not used in the selection process can an accurate determination of the predictive validity of a test be made." Once predictive test scores are used in the admissions process, any hope of determining validity based upon generally accepted statistical models is destroyed.

Graham and Lilly also note (p. 40), "* * * being able to predict who will be successful in a given job, whether as a police officer or airline pilot (or we might add, a physician, psychologist or an attorney), saves the person involved from an embarrassing failure and the institution from possible economic loss." The statement fails to deal with the embarrassing failure of not being admitted to graduate school. The statement also fails to deal with the potential economic loss to the applicant and the community despite the equal opportunity laws and constitutional protections of this country.

The uneasiness that continues to surface in the literature with regard to predictive tests (Fitzpatrick, 1983; Guion, 1978; Tenopyr, 1977; Messick, 1980; Federal Trade Commission, 1978; Owen, 1985) comes from the knowledge that criterion information is far from perfect. It is well known that grades in graduate programs are a function of, and are influenced by, many factors other than academic aptitude. In the real world, criterion information represents a measure of convenience. There is no evidence that the criteria measured proves anything (Graham & Lilly, 1984).

The most important criterion from society's point of view is not grade point average, but the far more important criterion of excellence in one's chosen profession. The criterion actually used in this context is a compromise between one that is ideal and one that is readily available.

Substantial legal questions are involved whenever educational and employment tests are used in the admissions or employment process. Not only are careers being decided, the applicant is forced to pay for the privilege of taking a test that cannot be validated using either statistical or ethical principles. Those who make decisions utilizing predictive tests are vulnerable pursuant to federal and state privacy, due process, equal opportunity, and civil rights laws.

Coaching Courses

Statistical assumptions validating predictive tests assume that the person taking the test has no previous experience with the content of the test. That assumption is not true for a group of privileged individuals.

A new dimension of concern surfaced with the publication of the "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission" (FTC) with regard to "The Effects of Coaching on Standardized Admission Examinations" (1978). The Staff memorandum viewed the coaching of educational aptitude testing in light of equal education opportunity as mandated by federal law, and found educational testing wanting. The FTC memorandum presented evidence that well run coaching organizations can significantly increase test scores. The FTC memorandum found that coaching score increases (p. 1), "have a practical, educationally meaningful, effect in that coaching can be the determining factor in deciding who is admitted to undergraduate and graduate colleges and universities. The availability of coaching is positively correlated to the ability to pay the tuition at coaching schools, which can be as high as $500 or more. Therefore coachable, standardized admission examinations create financial barriers to educational opportunities in direct conflict with our Congressionally declared national education policy."

The FTC memorandum involved a 124,022 person LSAT study group of whom 8,660 had a total of 9,029 coaching school enrollments. The data showed that increases of anywhere from 30 to 100 or more test points on a test with a possible 800 points, could be achieved by the better coaching schools. That translates to an increase of from 2 to 6 points on the LSAT test that has a possible maximum of 48 points. The test makers represented that the 48 point test is reliable to within 2 plus or minus test points or roughly 4%. Thus a person with a 27 could raise his/her score to 29 or 33 points with coaching. That difference could easily be the difference between rejection and admission at many law schools.

The FTC memorandum contained (p. 2), "* * * the existence of only one coaching school (and there is more than one) that can materially increase individuals' scores on standardized admission examinations such as the Scholastic Aptitude Test and the Law School Admission Test reveals the lack of reliability and validity of these examinations. The test makers themselves tell us that standardized admission examinations should be used to help predict the academic performance of an individual in undergraduate or graduate school. Yet, since short-term preparation can increase scores, but has a questionable long-term effect, the true predictive value of the standardized examinations is suspect."

The most damning statement in the FTC memorandum involved discrimination between applicants. "The standardized admission examinations are discriminatory in a number of ways. They discriminate against any individual who either: (1) cannot afford the cost of commercial preparation or (2) elects not to attend a commercial preparation course even if he can afford it because of acceptance of the dogma promulgated by the test makers, test administrators, and test users over the past twenty years that coaching is valueless." Two additional factors not noted in the report are that some applicants simply do not have an additional 250 hours of time to spend on coaching. Those who are successfully coached raise the national norms used to standardize the tests. Those who are not successfully coached pay not one, but several unfair penalties.

The FTC memorandum reported that educational aptitude examinations appeared to discriminate on the basis of race since certain sub-populations may receive a lesser benefit from coaching than others. The memorandum also noted that, "The economic and social benefits flowing from admission to undergraduate and graduate colleges and universities (especially the more prestigious) are axiomatic."

The FTC staff estimated that in 1979 the total cost of educational coaching, much less educational testing, was in excess of $10,000,000. The total cost of coaching for college, graduate school and employment applicants is now far more than $50,000,000 a year. At a time when the political administration in Washington is cutting back college student aid, the economic discrimination inherent in those numbers is weighted more than ever in favor of the wealthy.

The Federal Trade Commission was sorely embarrassed by the Boston staff memorandum. The Commission quickly watered down some of the credibility of the staff memorandum with a second, 1979 report that questioned purported methodological flaws in the data analysis. It should be noted that the Federal Trade Commission has not seen fit to subsequently commission a research study where the data analysis would be more acceptable to the FTC. The second report was not convincing. The original staff report made its point.

Coaching courses influence "aptitude" test scores. Each time that happens, national statistics are influenced in favor of those who have access to the better coaching courses. Thus the disparity between those with the $500–$600 tuition fee and access to the better coaching courses, and those who do not have access affects those who are not coached at least two ways. First, those who are not coached do not get the inside information necessary to increase their scores. Second, national predictive test statistics become a fraud.

Incredibly some school systems and universities are attempting to resolve the problem by offering their own coaching courses (Lynch, 1985). Owen (1985) compares various coaching courses and concludes that some courses are close to being worthless. The law School Admissions Services (Law Services or LSAS) has its own "Official LSAT Prep Test" as well as a series of "Official" preparation materials (LSAS, 1992).

There are some very good coaching courses, however, and those who have the key or the "Trick" to ETS examinations have an enormous advantage. In the real world, the Princeton Review may have the most salable service. The New York Times reported (Associated Press, 1987) a settlement of a lawsuit between the Educational Testing Service and the Princeton Review Inc. John Katzman, the founder of the Princeton Review was reported as having admitted "distributing test questions from the company's (ETS) tests to students taking his (Katzman's) course giving them an unfair edge in the tests." (Insertions added for clarity.) Katzman was reported in an interview as having boasted that the lawsuit, "quadrupled" his business at $595 per student. Since its founding in 1981, the Princeton Review alone had grown to become a multi-million dollar business annually. The ethics of this situation is now to the point where "coaching courses" that give an unfair advantage to a privileged group taking ETS tests is a national disgrace. The word cheating has been used and will continue to be used to describe this situation.

Opting out:

The New York Times (Fiske, 1984) reported that Bates College in Maine, Bowdin College in Maine, and Sarah Lawrence in Yonkers discontinued their policy of requiring SAT scores. The University of Florida now makes achievement tests optional for those who do not do well on the SAT. The article reported that Harvard has considered achievement scores as an alternative to the SAT. The Harvard Business School dropped the GMAT test as an admissions requirement shortly thereafter (Day, 1985).

The Dean of Admissions at Bowdin was quoted as having "serious" ethical questions" about the SAT. He noted concern about the growth of commercial "coaching" courses that help students prepare for the standardized tests. "There has been an explosion of coaching schools," he said, "but enrollment (in coaching schools) is almost stratified along financial lines. We have some real problems using something that can be so biased by economic resources. It's just not fair to minority, blue-collar and rural students" (Fiske, 1984).

The New York Times reported (Lederman, 1985) on the findings of James Kulik and his associates at the University of Michigan's Center for Research on Learning and Teaching in an attempt to find an unbiased summary of the research literature on the subject to coaching. Kulik disagreed with previous findings of the Educational Testing Service (ETS.) that the average gain by coaching was small. Kulik found that ETS "did not make clear that some individuals may make gains (through coaching) that cannot be ignored." Mr. Kulik said equality must be reached in one of two ways. "Either no one gets any preparation which is more or less how it used to be; or everyone should have enough familiarity with the test. The former cannot happen now, and that latter raises the question: who's going to pay for it?"

The Law School Admission Council, the developer of the LSAT test, has contradicted long-standing ETS coaching disclaimers by proposing to enter the coaching business (Adams, 1988). The president of LSAC, Craig W. Christensen, was quoted in the National

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Law Journal as admitting, "* * * it's hard to say with a straight face that coaching does a student no good. "The LSAC's own Pre-law Handbook statement admits, "very few people can achieve their full potential by not preparing at all."

Science (Holden, 1985) reported that the prestigious Johns Hopkins University School of Medicine has dropped the Medical College Admissions Test (MCAT) as an admissions requirement. Johns Hopkins dean Richard S. Ross stated that they were dropping the MCAT since the process has been "distorting the premed curriculum grossly." The Science article reported that "many see the MCAT as contributing to the dehumanizing aspects of medical school by favoring the more narrowly focused, competitive-minded students." Norman D. Anderson of Johns Hopkins was reported as stating "there are no data indicating that MCAT scores correlate with either clinical performance in medical school or later success in medical careers." Another article appearing in the New York Times ("Top Medical," 1985) quoted Dr. Ross as stating "We want people who are not monochromatic" and stated that the tests "perverted the undergraduate experience. It tends to displace all thinking about a general education. A student may think about taking a course in astronomy or European history, but then thinks about that test. The whole thrust of the undergraduate experience becomes a multiple choice standardized test."

The admissions director of Harvard was quoted in the New York Times (S.A.T. coaching, 1988), "Spending time on coaching takes time away from working on getting good high school grades, on extracurricular activities or community service, all of which are important when admissions officers are choosing a class."

Other ethical questions:

Each predictive test has one section that is "experimental". That section is interposed in order to develop questions for future tests. Applicants are not informed which section is the experimental section. Applicants cannot skip the experimental section. Applicants have not volunteered to participate in a predictive test research project. Test-makers do not have the informed consent of those taking the test regarding psychological experimentation. The test-makers experiment with human subjects in what amounts to psychological research without full disclosure or informed consent. Applicants are not volunteers as test subjects in what amounts to psychological research without full disclosure or informed consent. Applicants are not volunteers as test subjects in order to support test-maker income producing activities. Yet, test-maker position is clear. There are no deviations. They have a monopoly. It is amazing how universities across the country blithely teach that such experiments are professionally unethical while at the same time, cooperating with test-makers. The hypocrisy of the situation is obvious.

As Owen (1985) reports, the experimental sections of ETS tests are the sections most likely to have "miskeyed, flawed, badly written, and ambiguous items" (p. 135) that are usually much more difficult than standard questions. A student coming across one of those sections without realizing it can become completely demoralized. The student could easily suffer a loss of confidence that would affect test performance. Experimental sections are moved around from test to test and according to Owen, have been placed as early as section 3 on the SAT. The final assault on the dignity of the hapless student is that he/she has to pay for the privilege of being humiliated while the subject of a hidden experiment.

The Ethics Code of the American Psychological Association (APA) states "Ethical practice requires the investigator to respect the individual's freedom to decline to participate in or withdraw from research. The obligation to protect this freedom requires special vigilance when the investigator is in a position of power over the participant, as for example, when the participant is a student, client, employee, or otherwise is in a dual relationship with the investigator" ("APA ethics", 1979). Despite that well defined ethical standard, psychology professionals throughout this country require the GRE and related ETS examinations complete with the coerced research sections. It is clear that the disparity between preached and practiced ethics must be addressed.

ETS has had other problems with its tests. The release of the results for the 1986 National Assessment of Educational Progress reading test developed by the ETS were postponed until major problems in the exam are corrected. The first results of the $4 million a year contract were so unbelievable that Chester E. Finn, jr., the Education Department's assistant secretary for educational research was quoted as saying, "I'm pretty disgusted by the whole situation." (Reading test, 1988)

What to do?

Another, better approach to evaluating people may be the one suggested by the recent research of Dr. Siegfried Streufert of Pennsylvania State University College of Medicine (Goleman, 1984). Dr. Streufert indicates that thinking style is a better indicator of achievement than intelligence tests. Similar criticism has been made by David McClelland, a psychologist at Harvard. Dr. McClelland argued in the American Psychologist that it makes more sense to test for competence than intelligence. Dr. McClelland argued "there are almost no occupations or life situations that require a person to do word analogies or choose the most correct of four alternative meanings of a word." While some commentators caution not to throw the baby out with the bath water, the approach urged by Dr. Ernest L. Boyer, president of the Carnegie Foundation for the Advancement of Teaching may be the most sensible (Hechinger, 1985). "Let's decide what should be the goals of education before we think of tests."

The issue of predictive and aptitude testing involves ethical and moral considerations, not to mention legal considerations. Anyone who has read H.C. Anderson's "Emperor's Fine Clothes" knows why a more conservative approach must be taken. The use of predictive or aptitude tests in the educational and employment settings cannot be defended on ethical, moral or legal grounds. They are a fraud (i.e., misrepresentation) foisted upon a hapless public by those who know the truth about their products.

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338 Joy Lane, West Chester, Pa. 19380

July 15, 1995.

Joel Klein, *Esquire*,
Deputy Assistant Attorney General, Department of Justice, Washington, D.C. 20000

Re: Recent settlement with ABA

Dear Mr. Klein: Wish to congratulate you on successful resolution of the ABA's anti-trust and corrupt influences in the accreditation process of the law schools which had the direct effect of Board of Law Examiners not admitting to the Bar lawyers who were otherwise qualified but had attended non-accredited law schools.

The purpose of this letter is to request that the Department of Justice should also investigate similar corrupt influences of ABA and the National Conference of Bar Examiners in fixing the number of lawyers who will be admitted to the Bar through the unethical and corrupt manipulation of Bar Exam results.

In my case, the Pa. Board of Law Examiners impounded my results because I was attempting to change career from teaching to law practice and because of my age, ethnic identity and national origin.

You would be surprised to find how many violations of human rights occur within the boundary of the United States under the guise and pretext of one unjustifiable regulation or the other.

See if you or your other colleagues can do something on this matter.

Yours truly,

Amrit Lal, Ph.D.

Massachusetts School of Law at Andover

Woodland Park, 500 Federal Street, Andover, MA 01810, 508/681–0800, FAX: 508/681–6330

September 28, 1995

Mr. John F. Greaney,
Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust division, 555 4th Street NW., Room 9903, Washington, D.C. 20001

Dear Mr. Greaney: Enclosed are MSL's Tunney Act comments on the Consent Decree filed in the Division's case against the ABA.

Sincerely,

Lawrence R. Velvel,

Dean.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendants. Docket No. CA95–1211.

Comments of the Massachusetts School of the Law on the Consent Decree and the Competitive Impact Statement

Massachusetts School of Law at Andover, Inc. 500 Federal Street, Andover, MA 01810, (508) 681–0800

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In the United States District Court for the District of Columbia

United States of America Plaintiff, v. American Bar Association, Defendants. Civil Action No. 95–1211 (CR).

Comments of the Massachusetts School of Law on the Consent Decree and Competitive Impact Statement

1. Introduction

The Massachusetts School of Law ("MSL") hereby submits its Comments on the Consent Decree filed June 27, 1995 and the Competitive Impact Statement ("CIS") dated July14, 1995.

As the Antitrust Division is aware, MSL—a gravely injured victim of the anticompetitive conduct challenged by the Department of Justice ("DOJ") in this case—has been in the forefront of the battle against that illegal conduct. MSL alone challenged the conduct before the Department of Education ("DOE") in 1992 and 1994. MSL challenged the conduct before the American Bar Association's ("ABA's") Board of Governors and House of Delegates in 1993 and 1994. The School filed an antitrust case against the conduct in November, 1993. It subsequently brought the conduct to the attention of the Antitrust Division, and provided the Division with documents and depositions in the School's possession. MSL's history of being injured by the anticompetitive conduct at issue here, of studying that conduct, and of combating it, gives the School extensive insight into the anticompetitive actions challenged by the DOJ.

MSL's consent views are stated in these Comments. To some extent, the views reiterate those in MSL's prior *Memorandum* in support of its motion to intervene. However, these Comments also deal with numerous topics not covered in that *Memorandum*, and contain additional information on

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several topics which were covered in it.[1]

We also wish to point out, as indicated in the prior Memorandum, that we believe the Complaint and Decree are a step toward eliminating serious anticompetitive practices that have injured hundreds of schools and hundreds of thousands of students. With changes to cure weaknesses that might otherwise undermine the effectiveness of the Decree, it could become not a mere step toward eliminating injurious anticompetitive practices, but almost certainly a highly effective step toward doing so. The needed changes, moreover, while curative, are relatively small in the total scheme of things. Yet, unless the changes are made, the Decree could fail to remedy the anticompetitive practices charged in the Complaint. We therefore urge the Government to make the necessary changes, so that the Complaint and Consent Decree will not risk ineffectiveness, but will instead fulfill their capability of being a major accomplishment which rectifies long-standing secretive practices that wreaked extensive anticompetitive and, indeed, antisocial injury.

2. The Consent Decree Does Not Contain Provisions Needed To Insure Against Continued or Renewed Capture of the Regulatory Process by Directly Interested Persons Who Hold Economically Self Interested, Anticompetitive Views

The Complaint and the Competitive Impact Statement accurately say that the ABA's "accreditation process has been captured by legal educators who have a direct interest in the outcome of the process." (CIS, p. 10; Complaint, pp. 12–13; *see also* CIS, p. 1.) Thus "the ABA at times acted as a guild that protected the interests of professional law school personnel." (CIS, p. 2.) So strong was the evidence of guild capture that the Division eventually concluded "that mere amendment of the ABA's Standards and practices would not provide adequate or permanent relief and that reform of the entire accreditation process was needed. * * * [T]he larger and more fundamental problem of regulatory capture also had to be addressed." (CIS, p. 16.)

One of the most important steps taken in the Consent Decree to address the problem of regulatory capture is to limit the percentage of law school deans or faculty who can comprise the membership of key committees. (CIS, pp. 11–12.) Their membership on the Accreditation Committee, the Council and the Standards Review Committee cannot be greater than 50 percent (Consent Decree, pp. 5–6; CIS, pp. 11–12); their membership on the Nominating Committee (which nominates Section officers) cannot be greater than 40 percent. (Consent Decree, p. 6, CIS, p. 11.) (These four committees are hereinafter referred to collectively as "committees.")

In addition, for five years appointments to the Council, the Accreditation Committee and the Standards Review Committee—but *not* the Nominating Committee—will be subject to approval by the Board of Governors.

Limiting the membership of academics on the foregoing committees to "only" 50 percent or "only" 40 percent is not likely, however, to cure the problem of capture of the process. Not only will the ostensible limitations make little difference to the existing percentage memberships on the Council and the Accreditation Committee,[2] but, far more importantly, the capture of the process has not been primarily a question of numbers or percentages. It has been, instead, a matter of who has been interested in and willing to devote the most time to the work of the Section—to the work of establishing and implementing Section policies. As the DOJ recognized, accreditation is of direct concern to the professional well-being of the existing academic participants—it has deeply affected their academic salaries and working conditions and, because a leading position as an accreditor regularly enables them to obtain (lucrative) deanships, it has even been the determinant of their professional positions. Because of its effect on their academic salaries and working conditions, it has been of preeminent interest to academics who hold the anticompetitive view that the accreditation process should be used to force increases in salaries, enhanced fringe benefits, decreases in hours of teaching, and increases in perquisites. Members of the aforementioned committees who are judges or practicing lawyers, on the other hand, are usually far too busy on the bench or in practice to give accreditation the intense attention given it by the academics. And even when they do give it comparable attention, it almost invariably is the case that they are in agreement with the academics who captured and control accreditation, often because the lawyers and judges are themselves former academics (e.g., the most recent past Chairman of the Council, Joseph Bellacosa), or because, as events and testimony make plain, they defer to the views of the academics and support the academics' agenda.

As stated buy a leading academic at Northwestern University Law School who from time to time has been active in the Section:

> * * * the most powerful force in the Section is made up of law school deans, who by and large defend the regulatory status quo. It could hardly be otherwise. The other predominant occupational groups represented in the Section—practitioners, judges and bar admissions officials—more often than not defer to the deans on most questions involving legal education. Such deference is natural both because the deans necessarily have superior knowledge of the internal workings of legal education and because they are willing to spend the substantial time necessary to maintain direction of the Section. To the practitioners, judges and bar admissions officials, service in the Section is a voluntary diversion from their real work; to the deans, it is part of their real work of effectively governing legal education.[3]

The academics' capture and use of the accreditation process has also been augmented by additional factors. One is that, as said in the CIS, most of the accreditation process as it applies to particular schools "was carried out by the Accreditation Committee and the Consultant's office. * * *" (CIS, p. 10.) The Consultant "direct[s]" "[t]he day-to-day operation of the ABA's accreditation process." (CIS, p. 4.) However, as the Division recognized, "the individuals who served on the Accreditation Committee and in the Consultant's office had been in these positions for many years."(CIS. p. 10.) indeed, the Consultant, James White, has held the office for nearly 22 years—from January 1, 1974 until today.

Furthermore, the Section as a whole, though containing approximately 6650 members, has long been under the control of about one percent of that total, or about 50 to 60 persons, who are the insider group that establishes and implements the Section's policies, and who are supported and assisted by another 30 to 35 persons who provide vigorous written and oral approbation for anticompetitive policies and additional manpower to carry out those policies.[4]

None of these factors is affected by the percentage limitations on membership of committees. Nor is there any bar to continued domination of the Section by precisely the same individuals who captured it in the past. Therefore, because these persons continue to have a direct interest in accreditation, it is reasonable to expect that they will continue to be accreditation leaders in the future—as they are today, three months after entry of the Decree. But these persons have highly anticompetitive views, resisted the entry of the Consent Decree, continue to resist the existence of a Decree which they regard as the product of a Department of Justice that is "out of control" and an ABA leadership that "sold out,"[5] and have already been taking concrete actions which directly flout specific provisions of the Decree.[6]

Notwithstanding that membership on crucial committees is limited to "only" 50 percent or "only" 40 percent academics, continued domination of the accreditation process by these same capturing individuals must be expected to result in compliance with the Decree that is at best grudging and in the maximum amount of anticompetitive conduct that the members of the group feel they can "get away with"—for example, as has occurred, in conduct which flouts the Decree if this can be gotten away with and, as evidence and testimony show to have occurred in fact, in anticompetitive conduct that can be hidden by not stating the *real* reasons for action in documents and formal meetings, so that there can be no readily available evidence of anticompetitive purpose such as price fixing.[7]

Furthermore, requiring Board of Governors' approval for appointments to the Accreditation Committee, the Council and the Standards Review Committee may have little or no effect on any of this. There is no evidence of any effect to date, three months after the Decree was filed on June 27, 1995, and there are several reasons for skepticism that there will be significant future effect. For example, the Consent Decree contains no provision requiring the Nominating Committee—whose membership was recently raised to 60 percent academics, *in violation of the Decree*, by adding leading insider Steven Smith—to seek out nominees known to hold procompetitive views instead of nominating persons who hold the capturing insiders' anticompetitive views. Nor is there any provision requiring the Board of Governors itself to insist that there be nominees who hold procompetitive views instead of the prevailing anticompetitive views. Nor is there assurance, particularly given the annual turnover in ABA leadership, that the Board will long have any stomach for opposing the wishes of the powerful, anticompetitively-oriented Section of Legal Education. The high level politics of the ABA have made it a goal of Board members to make no enemies lest this stand in the way of advancement. The Board has therefore acceded to anticompetitive Section wishes in the past despite heavily documented warnings of serious antitrust violations, and already has failed to prevent violations of the Consent Decree even though it is being relied on to do so.

What curative steps, then, can be taken to ensure that the Consent Decree effectively guards against continued capture of the accreditation process by precisely the same persons and continued anticompetitive conduct camouflaged by hiding underlying anticompetitive reasons? First, the Decree should bar members of the insider group, who are the persons responsible for the anticompetitive problems which arose—and also should bar their supporters—from any continued participation on behalf of the ABA in the accreditation process, just as securities law violators are often barred by injunctions from continuing to be active in the brokerage business.

Second, just as federal injunctions often bar defendants from engaging in future violations of laws they have already violated, in order to preclude future anticompetitive use of the process by captors, the Consent Decree should not only bar the actions which it already does enjoin, but should also include a provision specifically banning the ABA from violating the Sherman Act through use of its other

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[1] Among the topics covered here but not in the Memorandum are the composition of site inspection teams, the practice of writing one-sided and even untrue site reports in order to force compliance with anticompetitive rules, appeals from the Accreditation Committee to the Council of the Section of Legal Education, term limits on membership on committees, the identity of an antitrust compliance officer, validation of ABA accreditation requirements in accordance with Department of Education rules, requiring first year courses to be taught by full-time faculty as defined by the ABA, barring full-time students from working more than 20 hours per week, and requiring expensive library facilities and very large and expensive hard cover collections of books.

[2] At a meeting of the American Association of Law Libraries, accreditation leader Roger Jacobs, a member of the Council, recently indicated correctly that the percentage limitations on the Accreditation Committee and Council will have little effect because the limitations "only requires the shift in one member or so in each of those bodies." (Exhibit 1.)

[3] John S. Elson, *The Regulation Of Legal Education; The Potential For Implementing The MacCrate Report's Recommendations For Curricular Reform*, 1 Clinical L. Rev. 363, 372–3 (1994) (footnotes omitted).

[4] The members of the insider group include (in alphabetical order): Jacquelyn Allee, Philip Anderson, Nina Appel, Joseph Bellacosa, Donald Dunn, Fred Franklin, Jose Garcia-Pedrosa, Laura Gasaway, Kathy Grove, Harry Groves, Jane Hammond, Joseph Harbaugh Frederick Hart, Rudulph Hasl, Thomas Jackson, Roger Jacobs, John Kramer, Wayne McCormack, Erica Moeser, Carl Monk, Lizabeth Mody, Richard Nahstoll, Gary Palm, William Powers, Henry Ramsey, Jr., Frank Read, Norman Redlich, Millard Ruud, John Ryan, Gordon Schaber, Pauline Schneider, Cathy Schrage, Marilyn Shannon, Philip Shelton, Steven Smith, Claude Sowle, Robert Stein, Rennard Strickland, Roy Stuckey, Leigh Taylor, Robert Walsh, Frank Walwer, Peter Winograd, James White, Sharp Whitmore, Marilyn Yarborough, and Diane Yu.

The persons who have supported and assisted the insider group include (in alphabetical order): Steven Bahls, James Castleberry, Charles Daye, Roger Dennis, John FitzRandolph, Arthur Frakt, Steven Frankino, Martin Frey, Nelson Happy, Richard Huber, Isaac Hunt, Vincent Immel, Barbara Lewis, Jeffrey Lewis, Dennis Lynch, Peter McGovern, John O'Brien, Michael Olivas, Kenneth Randall, Barney Reams, Gail Richmond, Victor Rosenblum, Laura Rothstein, Anthony Santoro, Richard Schmalbeck, Randall Schmidt, John Sebert, Rodney Smith, Dennis Stone, Bradford Toben, Linda Whisman, and Leah Workman.

[5] The verbal opposition to the Decree is illustrated by statements made by a leading insider, Joseph Bellacosa (Exhibit 2), and by the knowledgeable statement of Dean Ronald Cass of Boston University Law School that "People who are long-time section activists regard what's going on now as crazy and can't understand how this came to pass." "They think the Department of Justice people are out of control and that the ABA sold out by settling." Ken Myers, *ABA Accreditation Panel Urges Changes, But Critics Want More*, National Law Journal, August 21, 1995, p. A16. (Bellacosa's statements, Exhibit 2, illustrate Cass' points.)

[6] Actions that contradict the Decree include the following. The ABA agreed the Decree was binding as of the day it was filed, June 27, 1995. The Decree provides (and the CIS confirms) that the Nominating Committee's membership cannot be comprised of more than 40 percent academics. It also provides that no data is to be collected on salaries. Nonetheless, (1) in August, 1995, it was announced by the capturing insiders that a fourth academic was being added to the five person Nominating Committee, so that its membership was raised from 60 percent academics to 80 percent academics, instead of declining to the 40 percent allowed by the Decree. The academic being added to the Nominating Committee is preeminent captor Steven Smith, who, though apparently well-aware of antitrust problems with the ABA's practices (Exhibit 3), continued to be a leader in training site inspectors to engage in what he admitted was thought by many to be "a guild effort to up salaries" and in training them to disguise the true purpose of this guild effort by claiming it was necessary for quality. (Exhibit 4.) And (2) notwithstanding the Decree's ban against collection of salary information, in August 1995 the Consultant's office circulated a new questionnaire to law schools seeking salary data. (Exhibit 5.) The data are sought in a form that allows calculations of average salaries and, possibly, identification of individual salaries in certain instances. (The questionnaire was circulated approximately one month after accreditation captor Roger Jacobs, who is a law library director, circulated a letter on the Internet saying that several law library directors were wondering whether the Association of American Law Schools ("AALS") would be willing to collect and distribute salary information now that the ABA is barred from doing so, and had received a reply from a law librarian saying this would not be wise. (Exhibit 6.))

[7] Efforts to "get away" with anticompetitive action are exemplified when anticompetitive conduct is hidden by not stating in writing or at formal meetings the *real* reasons for action, so that there can be no readily available evidence of anticompetitive purpose such as price fixing. (This was done in connection with MSL.) Inspectors have also disguised price-fixing motivation by claiming that higher salaries were necessary for qualfty. See note 6, *supra*.

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accreditation criteria to achieve anticompetitive purposes (which the Complaint and CIS specifically say was done at times by the captors).[8]

Third, the Decree should require the Board of Governors, on which the Division is depending, to itself seek out, and to insist that the Nominating Committee likewise seek out, nominees for the Accreditation Committee, Council and Standards Review Committee who are known to have procompetitive views and to oppose the anticompetitive conduct which prevailed for two decades. There are numerous individuals who, notwithstanding academic affiliations, are already known to fill this bill and who have shown great knowledge of and/or interest in accreditation matters.[9]

3. The Consent Decree Will Not Eliminate the Secrecy Which Has Led to Violations of Law, Unwritten Rules, and Capture of the Process

A second problem with the remedial provisions of the Decree arises because it does not curb the secrecy which infested the accreditation process and allowed illegality to flourish.

A. The CIS correctly says that application of the accreditation process to individual schools "was kept from public view and the supervision of the ABA's Board of Governors and House of Delegates." (CIS, p. 10.) The application of the process was in fact kept totally secret. Self studies, site inspection reports, schools' responses to those reports, transcripts of hearings before the Accreditation Committee and Council, action letters, schools' responses to action letters, and correspondence between schools and accreditors were all treated as highly confidential. Time and again—in articles, in briefs and in oral statements—the accreditors said such secrecy was essential because without it schools allegedly would be unwilling to share the truth with accreditors, and the accreditation process assertedly would collapse.[10] On the basis of these assertions, complete secrecy was demanded and enforced, even though there are other accrediting bodies that make similar documents and assessments public and have thrived rather than collapsed.[11]

A less charitable way of looking at the accreditors' demands for secrecy is that total confidentiality was needed not to preclude collapse of the process, but because (1)without total secrecy schools would not provide the extraordinary criticism of their own competence and programs which the accreditors needed to force universities to give the law schools more money for ever higher salaries, more full-time teachers, larger buildings, ever expanding libraries and other matters comprising the guild interests, and (ii) without secrecy the actions of the accreditors would have come to light. In the latter regard, the total secrecy of the accreditation process with respect to individual schools is what enabled the accreditors to fix prices and commit the other violations of the Sherman Act detailed in the Complaint, to develop and apply secret rules that were written nowhere, to treat schools inconsistently and arbitrarily, and to use the same people over and over again to enforce the anticompetitive policies.

It is literally impossible to overestimate the extent to which violations, secret policies and arbitrary action flourished because of the secrecy. As is often the case with regard to written standards of conduct, the ABA's written criteria most often are generalized vessels whose content is supplied by the enforcement policies followed by enforcement officials.[12] What was done in practice was therefore often more important than generalized written standards. The DOJ itself has recognized this de facto by saying time and again in the complaint and CIS that certain policies were followed *in practice*, including policies regarding compensated leaves, physical facilities, extending salary criteria from faculty alone to deans and librarians as well, the definition of an hour, and failure ever to recommend accreditation of a proprietary school. (See Complaint, pp. 6, 8, 9; CIS, pp. 5, 6, 8.) MSL itself, moreover, was subjected to a host of unpublished secret rules, which it has learned are common, to arbitrary and illegal procedures, and to inconsistent actions.

Thus, among the commonly followed but unpublished rules to which MSL was subjected are ones requiring that: a school's salaries must be in the top half of schools with which it is compared; no transcription is permitted of fact-finding inspection meetings even though the accreditors perform a quasi-judicial function; site team reports are done jointly by representatives of the ABA and the Association of American Law Schools ("AALS"); and AALS representative writes the portion of a site report dealing with a school's faculty; a university cannot take more than 20 percent of the tuitions generated by its law school and, if a law school is not part of a university, it must spend all its revenues rather than use a part of them to create an endowment; law schools must meet a librarian/student ratio; law students (unlike medical students) cannot be given credit for clinical experience obtained in cases from which a supervising professor obtains fees; the faculty must control a school; not matter how much work she does for a school—even if she works 60 hours per week for it—a professor cannot be treated as a full-time professor if more than 20 percent of her time is spent doing compensated work for clients, but a professor will be counted as a full-time faculty member although she spends extensive time every week working on a probono basis; leaves of absence have to be granted with pay; the Law School Admissions Test ("LSAT") is the only permissible entrance test; a school often must require full-time students to sign affidavits saying they are not working more than 20 hours per week; a school will ipso facto be said to be of poor quality if it makes extensive use of adjuncts instead of employing a large full-time faculty; and a school's physical facilities will be called inadequate if they are not new or recently refurbished and do not cost literally tens of millions of dollars.

The arbitrary procedures and inconsistent actions to which MSL was subjected included: the site inspection team was stacked with the insiders to insure the adverse site report desired by the accreditors; site inspectors were prejudiced against MSL before they even inspected it; they intentionally wrote a biased and false report; rules were applied against MSL that were applied to no other schools or that were invented on the spot; MSL was criticized on the basis of comparative statistics that had been withheld from it; the School was criticized for matters on which it had a far better record than other schools that were praised (e.g., bar passage rates); procedural delays were placed in the School's path; site inspectors were chosen who had grave conflicts of interest; some of the same persons sat on both the Accreditation Committee and on the Council which reviewed the Accreditation Committee's decision; intentionally false statements were made to MSL and its students; and certain site inspectors may have been applying more stringent Association of American Law Schools ("AALS") criteria although MSL was not seeking AALS membership.

From MSL's study of the accreditation process, knowledge the School has obtained in discovery, information it has received from other schools, and even statements in the Complaint and CIS, it is clear that MSL's experience was typical in the sense that secret rules and arbitrary and inconsistent conduct, as well as grave violations of the antitrust laws, have been de rigueur in ABA accreditation. Yet *none* of this could have happened if the accreditation process regarding schools had been open—if the documents kept secret had instead been made public. For, if the relevant documents had been public—just as their analog court and agency briefs, records and opinions are public—then the affected law schools, faculty members, students, scholars and analysts, law enforcement agencies, reporters, potential students and members of the public would all have been able to see that there were violations of law, unwritten rules, and inconsistent treatment of schools. The result would have been that these things would not have occurred or, at minimum, would have been quickly stopped.

B. The short of it is that secrecy was and remains the essential precondition of accreditation misconduct, and openness was and remains the best guarantee against it. Yet, the Consent Decree does not require an end to the secrecy that has prevailed. The closet the Decree comes to providing for openness on any matter other than the identity of site inspectors is to say that the Council must annually send the Board of Governors a report of accreditation activities during the preceding year, including a list of schools on report or under review, with identification of each school's areas of actual or apparent non compliance with the Standards and how long the School has been on report or under review. (Consent Decree, p. 6.) But even this report—which goes *only* to the Board, and not to any other person—can be provided "on a confidential basis if necessary." (Consent Decree, p. 6.) Given the long, strongly held view of the accreditors that confidentially is always necessary, as a practical matter it is certain that these annual reports will be kept confidential, thus maintaining secrecy from everyone but Board members. And, since the reports do not need to discuss the reasons why schools are held not to comply with given Standards, even complete openness of these reports would not enable schools, scholars and analysts, potential students, reporters or others to know such underlying reasons, much less to know of unwritten rules that are used as reasons.[13]

C. Thus, the secrecy which led to illegality will, as a practical matter, be preserved under the Consent Decree. There is, however, a simple step that would cure this and would almost certainly insure, in and of itself, that the process is conducted in a legal and fair way in the future—in a way that does not violate the Sherman Act and does not violate elemental rules of fairness and due process. The Consent Decree should be changed to provide that the documents created during the accreditation process will be available to any person, just like analogous court and agency briefs, records, transcripts and opinions are available to any person. This would make it impossible to have a repetition of the illegality, unwritten rules, inconsistency and arbitrariness that arose. For such conduct would be quickly discovered and attacked by a host of schools, analysts, students, reporters, members of the public, and enforcement officials. Justice Brandeis said that sunlight is the best disinfectant; the principle is applicable to ABA accreditation.

4. The Consent Decree's Novel Provisions for Review of Anticompetitive Practices by a Special Commission Heavily Comprised of Accreditation Insiders May Cause the Decree To Fail To Remedy Anticompetitive Practices Charged in the Complaint

A. The CIS says that the DOJ originally intended to seek to prohibit anticompetitive rules relating to calculation of student/faculty ratios, limitations of teaching hours, leaves of absence, and banning of credit for bar review courses. (CIS, p. 15.) Ultimately, however, the DOJ agreed that, although these practices, plus practices regarding physical facilities and allocation of revenues between law schools and universities, had been used "inappropriately" "at times to achieve anticompetitive, guild objectives" (CIS, pp. 9, 13), they nonetheless should be reviewed "in the first instance by the ABA itself" (CIS, p. 16). The practices, the Government agreed, should thus be submitted to a "Special Commission." (Consent Decree, pp.7–8; CIS, p. 16). That Commission, it is now known, is the so-called Wahl Commission. It is packed with accreditation insiders who had captured the accreditation process and, when the Decree was filed on June 27, 1995, it had been sitting for over a year and was nearing the end of its work, which from inception had been due to be completed by the first week in August, 1995.

Under the Consent Decree, the Special Commission's Report is to be submitted to the Board of Governors "no later than February 29, 1996" (CIS, p. 13), and the Board, after reviewing it for an unspecified period (presumably for the purpose of possibly making changes in the Commission's recommendations), will file it with the Government and the Court. (CIS, p. 13.) The Government can then challenge the Report in Court within 90 days if the Special Commission "fails to consider adequately the antitrust implications of continuing the ABA's past practices * * *" (CIS, p. 16.)

The government states that this arrangement is "novel relief." (CIS, p.13.) The DOJ's agreement to allow an insider-dominated Special Commission to make the initial decisions on crucial anticompetitive practices could result in failure of the Consent Decree to stop those practices, however.

B. The members of the Special Commission were appointed by two leading members of the group which controls ABA accreditation: Joseph

[8] We note in this regard that the Consent Decree already requires a number of Section officials to certify annually that they are abiding by the terms of the Decree and know of no unreported violations of it, and requires the Executive Director of the ABA (leading insider Robert Stein), the Consultant and the Consultant's staff to certify annually their understanding that failure to comply with the Decree can result in conviction for contempt of court. (Consent Decree, p. 10.) Clearly it would not be unfair to require the ABA itself to agree that it is abiding by the Decree by not committing acts that the Government had already determined to be anticompetitive but withheld challenging pending the Special Commission's Report.

[9] They include, among others, Dean Colin Diver of the University of Pennsylvania Law School, Dean Ronald Cass of Boston University Law School, Dean Howard Glickstein of Touro College Law Center, Dean Patrick Hetrick of Campbell University Law School, President Thomas Brennan of Cooley Law School, Dean Howard Eisenberg of Marquette University Law School (formerly Dean of the University of Arkansas Law School at Little Rock), Dean Robert Reinstein of the Temple University Law School, Dean Anthony Pagano of the Golden Gate University Law School, Dean Henry Manne of the George Mason University Law School, Dean Richard Matasar of the IIT-Kent Law School, Thomas Leahy, who is a recent President of the Illinois Bar Association, Chancellor R. Gerald Turner of the University of Mississippi, Dean Timothy Heinaz of the University of Missouri Law School, Provost Mary Sue Coleman of the University of New Mexico, Dean David Shipley of the University of Kentucky Law School, President Steven Sample of the University of Southern California, Chancellor William H. Danforth of Washington University of St. Louis, Dean Majorie Girth of Georgia State University College of Law, President William Greiner of the State University of New York at Buffalo, President Thomas Salmon of the University of Vermont, and Dean Harvey Perlman of the University of Nebraska Law School.

[10] See, e.g., the materials in Exhibit 7.

[11] See, e.g., the materials in Exhibit 8.

[12] This is another reason why the procompetitive or anticompetitive views of accreditation personnel are so crucial.

[13] The provision of the Consent Decree (p. 6) requiring the Accreditation Committee to send reports to the Council suffer from all the same weaknesses plus the weakness that the reports go to the Council alone.

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Bellacosa, the immediate past Chairman of the Council, and Robert Stein, who preceded Bellacosa in that position and now is Executive Director of the ABA. There are 15 Commission members, at least eight of whom are part of the heart and soul of, or are closely tied to, the capturing inside group. A ninth member belonged to a closely cooperating group, the Special Accreditation Committee of the Association of American Law Schools, and the Commission has worked closely with two other leaders of the controlling inside group.

Confining ourselves to listing only one or two of the accreditation credentials for each of these persons, the relevant members of the Special Commission are: Commission Chairperson Roselle Wahl, a former Chair of the Council, which oversees the Accreditation Committee; Henry Ramsey, Jr., a recent former Chair of the Council and Chair of the committee which produced a 1990 report seeking broader funding for insiders; Pauline Schneider, a recent chair of the Accreditation Committee; Diane Yu, recently a member simultaneously of both the Accreditation Committee and the Council; Talbot D'Alemberte, a former Chairman of the Council; Joseph Harbaugh, a Section activist and former head of the Section committee on diversity; Nancy Neuman, a member of the Accreditation Committee and recently the president of the AALS, which cooperates closely with the ABA in accreditation; and Thomas Sullivan, who has been a member of the Accreditation Committee of the cooperating AALS.

In addition, the Special Commission worked closely with the ABA's Consultant, James White, who has headed the controlling group for nearly 22 years. And, of the two "reporters" who helped write the Commission's report, one was Frank Read, a long time Section activist and former president of the cooperating Law School Admission Council, who was serving as James White's Deputy Consultant during the period of the Special Commission's work.

Thus, review of anticompetitive accreditation practices has initially been placed largely in the hands of persons who have vigorously implemented and thoroughly approve of those anticompetitive practices, who resisted the Consent Decree and continue to resist it, and who, in the words of Dean Cass, regard the Decree as the product of a Department of Justice that is "out of control" and of an ABA leadership that "sold out by settling."[14] (P. 7, and pp. 7–8, N. 5, *supra*.)

C. It would be unrealistic to expect a 15 person Commission with so many members and associated persons who are leaders of the controlling inside group to vigorously recommend changes in accreditation practices, or not to minimize any changes that intense opposition to their practices cause the group to feel compelled to recommend notwithstanding their predilections. Thus, it is not surprising that the Commission's initial Report (Exhibit 9), delivered August 3, 1995, did in fact minimize recommended changes in the subjects of interest to the DOJ. And although their own views were published for 61 single spaced pages, members of the Commission (successfully) requested Commission member Ronald Cass to suppress publication of a "lengthy separate statement" of views which differ from ones the majority had put forth.

In a brief, 1¼ page "Separate Statement" appended to the Commission Report, Dean Cass said he had prepared a "lengthy separate statement" of his views because he disagrees both with the Commission's views on accreditation and with its treatment of specific issues. (Exhibit 9, p. 62). The specific issues include two which the DOJ agreed to have reviewed by the Special Commission, student/faculty ratios and the allocations of funds between law school and university. They also include other specified issues plus unspecified ones as to which Cass says there is "a basis for skepticism" about existing accreditation practices or the changes proposed by the Commission. (Exhibit 9, p. 62.) However, "[a]t the request of a number of Commission members" Dean Cass withheld his lengthy separate statement from publication "until the Commission completes its work." (Exhibit 9, p. 62.) Until then, his separate statement will be available only members of the Council and the Board of Governors. (Exhibit 9, p. 62.)

Dean Cass' timing of the publication of his views is a reference to the fact that, because the DOJ has agreed to have the Commission review anticompetitive practices listed above, the Commission has said it will meet again in September and issue a supplementary Report sometime in October. It is Dean Cass' hope that the withholding of his lengthy statement of dissenting views will contribute to the Commission changing its mind, and accepting recommendations *that he says it already has rejected*, when it meets again this fall. (Exhibit 9, pp. 62–63.) It is his further hope that, if the Commission does not accept recommendations it has already rejected, the ABA will nonetheless take further steps to remedy the problems. (Exhibit 9, p. 63.)

Thus, it is impossible at this time to know Dean Cass' views regarding weaknesses in the majority's current recommendations. Also, it is possible that neither additional changes recommended in the majority's supplementary Report due in October, nor Dean Cass' views, will be available early enough to be known to the Division or the Court if the latter assesses in October, 1995 whether the Decree's provisions for review of anticompetitive practices by the Special Commission are within the reaches of the public interest. Additionally, it is certain that, if the Court considers the issue this October, neither the Division nor the Court will know what if any corrective action the ABA will take should the Commission's Supplementary Report continue to reject

[14] From the Complaint and the CIS, it is not clear whether and the extent to which the DOJ, when negotiating the Decree, had been informed by the ABA as to the heavily insider nature of the Special Commission , the length of time it had been sitting (over one year), or that its work was due to be completed at the beginning of August, 1995. The Consent Decree contains some language which, because expressed in the future tense (the "ABA *shall*: establish a Special Commission") (Consent Decree, P. 7 (emphasis added)), would indicate that the Government did not know, when negotiating the Decree, that the already long-existing Wahl Commission would be the *Special Commission*. On the other hand, the CIS, filed approximately three weeks after the Decree, contains language which, because expressed in the past tense, indicates that the Government had possessed at least some relevant knowledge about the Wahl Commission when negotiations were in progress. (The CIS says, for example, that the DOJ had "considered" that the Commission "had progressed" in the work doing. (CIS, p. 27).)

The question of the extent of the Government's knowledge when negotiating the Decree is an important one. Prior to agreeing that the insider-packed Wahl Commission, which was due to finish its work shortly, would be the Special Commission, the DOJ had proposed that the Special Commission should be "separately constituted as an antitrust review committee." (CIS, p. 17.) If the DOJ was apprised, when it agreed that the Wahl Commission rather than a separate antitrust committee should be the Special Commission, that the Wahl Commission was an insider-packed group that had been sitting for a long period and was about to finish its work, then one might disagree with the Government's decision that the Wahl group should be the Special Commission, but the decision was nonetheless an informed one. But if the Government had not been told of the heavily insider nature of the Wahl Commission and that the Commission had been sitting for over a year and its work was nearly completed—if the DOJ had not been informed that the Commission was heavily comprised of persons who, the Government correctly charged, had captured the accreditation process and used it for anticompetitive purposes and who were about to submit their report—then it would appear that the ABA leaders with whom the Government was negotiating withheld crucial information even though the Government is heavily depending on them to make the Consent Decree efficacious.

significant changes in anticompetitive practices.

Thus, although both the Senate and House Reports on the Tunney Act, and the Court of Appeals for this Circuit, have made clear that the Court must receive information necessary to determine whether a consent judgment is in the public interest,[15] information of consequence to this question will continue to be unavailable to the Division and the Court well into the future.

Indeed, under the Consent Decree this information could be delayed until mid 1996. The Decree provides that the Special Commission will submit its report to the Board of Governors no later than February 29, 1996 (Consent Decree, p. 8), eight months after the Decree was filed. There is no written time limit on the time during which the Board of Governors can review the recommendations. (Consent Decree, p. 8.) It is realistic to believe the Board might not finish its review until the ABA's August, 1996 convention. The Government then has an additional 90 days to decide whether or not to challenge the recommendations. (Consent Decree, p. 8.) Therefore, it is entirely possible that the recommendations, and whether there will be a government challenge to them, will not be known until 15 months to 1½ years after the Consent Decree was filed. And, if the Government does challenge the recommendations in Court, the final result might not be known for yet another year or two. Thus, in addition to placing in the hands of anticompetitively-oriented insiders the task of recommending changes to practices they desire, the provisions of the Decree relating to the Special Commission are a recipe allowing extensive delay, instead of requiring expedition.

D(i). Although neither the contents of the Supplementary Report nor subsequent corrective actions by the ABA can presently be known, what *can* be known at this time is that the Special Commission's current recommendations, as expected, often exemplify avoidance and minimization of changes in anticompetition practices. A prime example is the student/faculty ratio, as can be illustrated by discussing the origin of the ratio, its anticompetitive effects, its indefensibility, and the minimal or nonexistent nature of the change recommended by the Commission. We discuss these in turn.

D(ii) With the exception of fixing of salaries, which is banned outright by the Consent Decree, the accreditors' methods of calculating and using the student/faculty ratio are the most anticompetitive restrictions enforced by the insider group. They are in origin *solely* the products of that group. They appear nowhere in the accreditation Standards, but rather were created by capturing insiders via an Interpretation in 1978 without action by the House of Delegates. They have been used for their own purposes ever since by the capturing insiders without action by the House of Delegates.

D(iii). The anticompetitive effects of the ratio are drastic. In an anticompetitive blow at the ability of any law school to provide a lower cost education by using fewer full-time professors (whose presence in large numbers is desired by the capturing insiders), and in a simultaneous anticompetitive blow at the ability of a law school to provide practical instruction instead of only the theoretical instruction usually provided by the full-time professors, the ratio discourages the use of adjunct professors to teach courses. That is, it anticompetitively discourages teaching by highly knowledgeable judges and lawyers whose teaching salaries, even when adequate, are less than those of full-timers, and who bring a wealth of practical knowledge and experience to the classroom. It discourages this by providing that no adjunct can be counted *at all*, not even fractionally, when computing the ratio. Thus, schools must hire more full-timers to meet the ratio, instead of using adjuncts to teach courses.

To insure that schools do hire more full-timers, the ratio is enforced with Draconian stringency. Schools have, indeed, been forced by the accreditors to hire enough full-timers to bring their ratios down even far below the written ones stated in the insiders' published Interpretation on the subject.

Additionally, in a further anticompetitive blow against use of individuals with practical experience, unlike the prevailing practice in medical schools where many full-time professors also engage in active practice and regard this as essential to keeping abreast of knowledge needed in the classroom, the ABA accreditors preclude full-time professors from engaging in an active practice and thereby obtaining practical knowledge that should be brought to the classroom. The preclusion is accomplished by refusing to count a full-time professor in the student/faculty ratio if he or she also maintains an active practice. Because schools are stringently required to meet the ratio, and expensive full-time professors will not be counted towards the ratio if they have an active practice, no school can afford to have such professors. Similarly, and with the same effect, a full-time professor, including one who teaches a full load of courses, will not be counted toward the ratio if he or she also does significant administrative work. Thus, no school can afford to have its professors hold administrative positions as well as teach.

D(iv). None of this can successfully be defended on the ground that it is needed for quality. The Consultant has admitted on deposition that the ABA has developed no empirical proof that the ratio leads to quality education. (Exhibit 10.) The DOJ has pointed out in its Complaint and CIS that, although part of the policy supporting the ratio is the desirability of smaller classes and more student/faculty contact (Complaint, p. 8; CIS, p. 7), the ABA "did not measure actual class size or effectively measure actual student/faculty contact." (CIS, p. 7.) It is a well known fact that, notwithstanding the ratio, large classes, not small ones, are the norm in most law schools, particularly in the first year or two of school, and student/faculty contact is at a minimum because the interests of the full-time faculty members lie elsewhere. We question, indeed, whether it is accidental that the Section of Legal Education, though it has maintained an elaborate statistical measurement program that includes extensive figures on fully *85* different subjects, has never sought easily available statistics on actual class sizes, let alone statistics on estimated amounts of student/faculty contact. Such data, it is obvious, would have shown that the insiders' ratio does not result in small classes or student/faculty contact.

It is becoming increasingly understood that, if one truly desires small classes, the way to achieve them is by use of knowledgeable judges and lawyers as adjuncts. This provides a cost-effective method of obtaining large numbers of highly competent professors whose presence enables a school to offer many more, and smaller, classes. It is also becoming increasingly recognized that, because of a difference in attitude, adjunct professors often make themselves more available to students than full timers.

Furthermore, notwithstanding the traditionally prejudiced views that the capturing insiders hold against adjunct professors—who inherently threaten insiders' guild objectives of ever higher

[15] S. Rep. No. 93–298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974); *United States* v. *LTV, Corp.*, 746 F.2d 51, 52 n. 2 (D.C. Cir. 1984).

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salaries for full-time professors and ever more full-time professors—the results of a recent survey of student bar association personnel,[16] discussed in an article on the use of adjuncts,[17] show that law students regard adjunct professors as equal or preferable to full-time professors. Students are, of course, the consumers who are paying the bills, and consumers, the Supreme Court has said, are the persons to whom the Sherman Act awards choice. *National Society of Professional Engineers* versus *United States*, 435 U.S. 679, 695 (1978).

Student bar association officials at 29 schools responded to a survey questionnaire which inquired about students' evaluations of adjunct teachers versus their evaluations of tenure track professors, i.e., full-time professors. Sixty-one percent of the respondents found adjuncts as qualified as full-time professors, 32 percent found adjuncts *more* qualified, and only 7 percent found them less qualified. Forty-three percent of the respondents found adjuncts to be as available to meet with students as full-timers, 32 percent found them *more* available, and only 25 percent found them less available. Sixty-four percent said an adjunct had been the professor who contributed most to their education; only 36 percent said that it had been a full-time professor. Sixty-eight percent said that if a particular state law course were on a bar exam, they would prefer to take it from an adjunct professor; only 32 percent preferred a full-time professor. Sixty-eight percent said full-time professors should practice law—which is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission—and only 32 percent felt to the contrary. Views favorable to adjuncts were also expressed, by overwhelming percentages, with regard to other important matters.[18] All these results obtained though 93 percent said adjuncts taught not just electives, but core or required courses—which, like full-time professors practicing law, is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission.

This survey of the opinions of the consumers of legal education directly contradicts the unfounded claims made about adjuncts by the accreditation insiders—claims which the consultant had to admit under oath lack any empirical statistical basis. (Exhibit 10.)

The situation has been aptly explicated in letters written to the Special Commission by knowledgeable deans and lawyers, including the Deans of the Touro, University of Pennsylvania, Campbell University, and Case Western Reserve University Law Schools. Their comments, which are appended at the back of this Memorandum, make clear that the failure to include adjuncts when calculating the student-faculty ratio is for many reasons arbitrary and unjustified. The Dean of the Touro College Law Center aptly summed up the matter by saying, "I agree with those who find it insulting to the practicing bar to refuse to recognize the contributions that adjuncts can make to a law school's program. Adjuncts are not included in the calculation of the student-faculty ratio. * * * The leading trial lawyer in the state, who taught trial practice as part of the law school's program, would not be included in that law school's student-faculty ratio." Appendix, *infra*.

The Dean of the University of Pennsylvania Law School summed up the matter by calling the student/faculty ratio arbitrary and by saying its definition of full-time faculty is "arbitrary almost to the point of absurdity." Appendix, *infra*.

D(v). Yet, notwithstanding the deeply anticompetitive nature of the student/faculty ratio and particularly its anticompetitive effect of greatly reducing the number of adjunct professors,[19] the Special Commission made only minimal recommendations for change.[20] And, though obviously cognizant that intense opposition to current practices regarding the ratio disabled it from declining to recommend any change whatever, the Commission couched its suggestions in language so abstract and general that it is meaningless because it could be met even if there were to be no change whatever in actual results.

Thus, although in one place the Report says the ratio should "take into account" the contributions of adjuncts, in its immediately following "recommendation," the Commission does *not* say adjuncts should be counted on some proportional basis or on any basis at all. Rather, it says only that it is "reasonable to consider the effect of adjuncts on the quality of the academic program in assessing the significance of student/faculty ratios." (Exhibit 9, p. 29.) One who is so minded can take these effects into consideration as the insiders claim to have done for years, but can then decide the effects do not warrant any change in the application of the ratio, as the insiders have also done for years. Furthermore, rather than require adjuncts to be counted on some basis, the insider dominated Wahl Commission accepted the insiders' erroneous assertions regarding alleged problems with adjuncts.[21] (Exhibit 9, pp. 27–28.)

E. The foregoing discussion of the student/faculty ratio demonstrates that, by agreeing to have anticompetitive practices reviewed by the Special Commission comprised largely of insiders who enforced, approved of and created those practices, the Government has agreed to a compliance procedure that may cause the Consent Decree not to rectify the anticompetitive practices identified in the Complaint. There are, however, at least two curative practices that could solve this problem.

The first is that, in accordance with the DOJ's initial intent, misuse of the practice should simply be enjoined. As discussed above, using a technique common to federal law, such an injunction would prohibit the practices from being used to violate the Sherman Act.

Second, instead of following the presently contemplated schedule under which a Tunney Act hearing is planned for October 23, 1995, in accordance with a revised and expedited schedule discussed below, a postponement of the hearing should be sought until the Special Commission's final report and Dean Cass' lengthy separate statement have been published, the ABA has either made changes in the Report or announced that it will not do so, and the Government has determined whether to challenge any of the Special Commission's recommendations. This would enable first the DOJ and then the Court to know if what if any changes have been recommended and/or made with respect to anticompetitive practices charged in the Complaint, when assessing what action to take. Such knowledge would at minimum be desirable to the DOJ's assessment, and under the Tunney Act is essential to the Court's assessment, of whether the decree is within the reaches of the public interest. *Otherwise the Court will be passing on a decree without knowledge of what, if anything, will be banned in connection with anticompetitive practices identified in the Complaint.*

Furthermore, postponing the Tunney Act hearing until such knowledge is available should be combined with a revised schedule in order to spur quicker action that would avoid the undue passage of time invited by the current provisions of the decree. Instead of the Special Commission not having to submit the Report until February 29, 1996, the Board of Governors then having unlimited time to review the recommendations, and the DOJ then having 90 days to decide on challenges, a firm date such as December 31, 1995, should be set as the time by which the Commission's report must be finished, any changes to it need to have been made by the ABA, and the DOJ need have notified the Court whether it accepts the Report or intends to challenge any of its provisions. The date of December 31, 1995 is, after all, more than six months after the Consent Decree was filed.

5. The "Novel" Relief Involving Review by the Special Commission Raises Additional Problems (i) Because it May Bind the Court, Regardless of Relevant Circumstances, to Use a Full Blown Rule of Reason Analysis Rather "Quick-Look" Rule of Reason Analysis When Considering a Government Challenge to Recommendations of the Special Commission, and (ii) Because it Circumvents the Tunney Act Rights of Third Parties

In addition to compliance weaknesses stemming from the composition and views of the Special Commission, there also are other reasons why use of this admittedly novel compliance mechanism may cause failure to rectify the anticompetitive practices identified in the Complaint.

A. First, the Government has agreed that, if it challenges any of the proposals in the Special Commission's Report, the challenge will be decided "by this Court applying a Rule of Reason antitrust analysis." (Consent decree, p. 8.) This may be intended to bind the Court in advance to use a *full blown* Rule of Reason analysis. It would be inappropriate to confine the Court in advance to such a full blown Rule of Reason analysis, when it is surely possible and indeed probable that some of the anticompetitive practices on which the Commission is to make recommendations are susceptible to a "quick-look" Rule of Reason analysis in which the Court could quickly determine that there is a lack of redeeming procompetitive value.[22]

This is even more the case since, in accordance with its incredible standard practice of saying that there are no determinative documents to be made available to the Court and the public, the DOJ has not provided any information indicating why it believes that the matters which are to be the subject of recommendations by the Special Commission should necessarily be adjudicated under a full blown Rule of Reason analysis rather "quick-look" Rule of Reason analysis or other analysis.

The following examples demonstrate why this Court should not be bound in advance to a full blown Rule of Reason analysis:

A(i). The exclusion of adjuncts from the student/faculty ratio has been a method used to increase dramatically the demand for full time professors and, by doing so, to (a) simultaneously make necessary the payment of higher salaries to them while (b) lowering their individual output by spreading the same work among a larger body of full-timers. It has been, in short, a method of concertedly increasing the demand for and the price of full-time labor, whether this is efficient or not.[23] Such concerted action is normally a *per se* violation of the antitrust laws (except when taken by a certified labor union)—it normally is not even given the benefit of "quick-look" Rule of Reason treatment. However, the recommendations of the Special Commission may result in little or no change in the rule excluding adjuncts from computations of the student/faculty ratio. If that is the result, it would seem proper to apply, at most, a "quick-look" rule of reason analysis.

A(ii). The exclusion of clinicians who are not on tenure track or its equivalent, when computing a school's student/faculty ratio, has been a method of concertedly insuring higher salaries for non-clinical, or "academic," faculty. There is, indeed, evidence showing that opposition to including such clinicians in the ratio arose because they generally were paid less than "academic" faculty and thus would bring down the average and median salary levels that all schools were required to meet for academic faculty. (Exhibit 14.) There is not as yet any recommendation from the Special Commission reversing the exclusion of such clinicians, nor has the Government provided any evidence as to why such exclusion has any procompetitive benefits, let alone significant ones. In the circumstances, "quick-look" Rule of Reason treatment is the most that is warranted.

A(iii). As appears to be implied by the statement in the CIS that over one-third of all ABA-approved schools are on report for inadequate facilities even though nearly all schools occupy new or substantially renovated facilities (CIS, p. 8), the problem existing with regard to physical facilities has been, in the bluntest terms, that the accreditors have required schools to build the law school equivalent of the Taj Mahal. The accreditors seem never to be satisfied unless a school's facilities are such that they cost from $20 to $60 million. The accreditors operate at such a

[16] Exhibit 11.

[17] The article, entitled "The Advance of the Adjunct," is in Exhibit 12.

[18] Seventy-nine percent said with regard to Criminal Procedure—now widely regarded as a core course and often a required one—that they would prefer to take it from an adjunct; only 21 percent preferred a full-time professor. Eighty-six percent found full-time professors more likely to cancel classes than adjuncts, and only 14 percent found adjuncts more likely to cancel. Ninety-three percent found full-timers more likely to arrive late to classes; only seven percent found adjuncts more likely to be late. Ninety-six percent thought that ABA accreditation guidelines should be the same with regard to use of adjuncts as with regard to full-timers, and only four percent felt to the contrary.

[19] At a recent meeting of the American Association of Law Libraries, Donald Dunn, who is the Library Director of the Western New England College School of Law and has been on many site inspection teams, stated publicly that the "action letter" recently received by his law school placed it under a show cause order to decrease the number of its adjunct professors. (Exhibit 13.)

[20] The Government has indicated a need for reconsideration of the exclusion of adjuncts from the student/faculty ratio. There appears to have been a drafting mistake that could nullify this, however. Apparently in an effort to insure that adjunct faculty members who belong to the Accreditation Committee, Council, Standards Review Committee or Nominating Committee are not counted against the percentage limitations on academics who can belong to those committees, the Consent Decree defines "faculty" as all persons who teach *except* for adjuncts. (Consent Decree, p. 2 (emphasis added).) This apparent drafting error could be used to assert that the exclusion of adjuncts from "faculty" need not be reconsidered and changed in *any* way, when in reality its intended meaning is only that adjuncts should not be considered "faculty" when determining whether there is a violation of the percentage limitations applying to the number of faculty on committees. This drafting error should be corrected, perhaps by simply including adjuncts in the Consent Decree's definition of "faculty," but adding that "adjuncts shall not, however, be considered faculty for purposes of determining the number of faculty members on the Accreditation Committee, Council, Standard Review Committee or Nominating Committee."

[21] Given the meaningless nature of the Special Commission's recommendations regarding the ratio, and the Commission's reliance on shop-worn cliches, it is not overly surprising that Commission members did not care to see publication of Dean Cass' views on the ratio.

[22] It is even possible that in certain instances *per se* analysis should apply. In the *Ivy League Overlap* case, *United States* v. *Brown University, et al.*, 5 F. 3d 658 (3d Cir. 1993), the Third Circuit repeatedly and extensively pointed out that quick-look Rule of Reason treatment, or even *per se* treatment, could be appropriate in an antitrust case involving education if restraints were motivated by self-interested economic factors, involved price-fixing, or lowered output. Such factors are often present here, as discussed below.

[23] Simultaneously, at least at schools with limited resources that cannot afford to adequately pay both a large number of full-timers and a large number of adjuncts, and probably at other schools as well, it reduced the demand for adjuncts, and thereby caused reduction in the compensation paid to them.

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micromanagement level in this regard that, as the Dean of the Temple University Law School recently pointed out, they will put a school "on report" if it allegedly does not provide adequate office space for every one of dozens of not-for-credit student organizations. (Exhibit 15, Testimony of Robert Reinstein, Dean of Temple University Law School, before the Wahl Commission.)

The Special Commission's present recommendation regarding physical facilities will make little or no change in this situation. For the Commission, while recommending that the current Standards be replaced by a new one, simultaneously recommends that the current Standards be retained as Interpretations, i.e., that they be retained in a different guise. (Exhibit 9, p. 31.) And the Commission's recommendation does not even begin to reach what has been the *real* problem: the way in which the rules, be they Standards or Interpretations, are enforced in practice by the accreditors. It is the method of enforcement which here, and often elsewhere too, has caused inappropriate application of rules to further anticompetitive guild interests.

In these circumstances, it is difficult to comprehend why continuation of a failure to recommend drastic changes in practices that inevitably require unnecessarily huge inputs of resources—that inevitably require $20, $40 or $60 million dollar buildings to satisfy the accreditors when far less expensive facilities would be completely serviceable—should be given anything more than "quick-look" Rule of Reason treatment.

A(iv). It is not difficult to cure the problem arising because the Decree may bind the Court to use a full blown Rule of Reason analysis in deciding a governmental challenge to recommendations of the Special Commission. Cure requires only that the provision in question be removed from the Decree. That would leave the Court free to use a full blown or "quick-look" Rule of Reason analysis, as appropriate, or even a *per se* analysis if and when appropriate.

B. Second, the Decree unnecessarily and improperly allows only the Government to challenge the Special Commission's recommendations. (CIS, p. 17.) Unlike the Tunney Act, which allows third parties to file documents explaining why they believe the provisions of a decree are too weak to cure the violations identified in the Government's Complaint, there is no provision here for other parties to file comments explaining why they believe Special Commission recommendations which the Government should accept in whole or in major part are insufficient.

In the normal consent decree the relief is stated, and private parties can comment on it under the Tunney Act. Here, realistically speaking, the provisions for review by the Special Commission are not themselves relief, but only a method of obtaining possible future relief. Yet, there is no provision for private parties to comment on that future relief when it becomes known—why may not occur for a considerable period of time, as discussed above. Hence, the Tunney Act's provisions allowing third parties to comment on relief stated in a consent decree have been circumvented. This will be of particular importance if the Special Commission issues minimalist recommendations, as thus far seems likely, the Board of Governors does not strengthen them considerably, and the Government either does not challenge them at all or challenges them only in minor or minimal ways.

To cure this problem, third parties should specifically be given the right to comment on the Commission's recommendations in order to ensure that their Tunney Act right to comment on relief is preserved. Alternatively, as discussed earlier, the Court should postpone its Tunney Act hearing until a specified date (such as December 31, 1995) by which time the Commission's recommendations shall have been submitted, any changes shall have been made by the Board of Governors, and the DOJ shall have decided which recommendations it accepts and which it will challenge.

6. There are Important "Procedural" Matters Which Have not Been Addressed Effectively in the Consent Decree or Have not Been Addressed at all

Contributing to the violations of law charged in the Complaint are several "procedural" points which, when directly addressed in the Consent Decree, have been addressed in a way that may not remedy the problems, or which have not been addressed at all in the Decree.

A. First is the composition of inspection teams. These have been stacked by the Consultant and his colleagues to insure the anticompetitive results they desire at a school. Thus, even the insider-dominated Special Commission has had to concede that only two percent of the inspectors have participated in 38 percent of the inspections. (Exhibit 9, p. 51.)

MSL's inspection team was illustrative, having been stacked with insiders who previously had anticompetitvely devastated schools, and who would be sure to write a highly adverse report against MSL in order to anticompetitvely stifle its innovations and efforts. The inspectors thus included leading insiders such as Steven Smith, Peter Winograd, Jose Garcia-Pedrosa, and Richard Nahstoll.

The Consent Decree does not effectively remedy the problem. All that it does is require (i) that "to the extent *reasonably feasible*" (Consent Decree, p. 6 (emphasis added)), each inspection team shall include one non-law school university administrator and one practicing lawyer, judge or public member, and (ii) that there be publication of the names of those who inspected each school (Consent Decree, pp. 6–7). These remedies could easily prove useless, for several reasons:

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A(i). Given publicly acknowledged difficulties in finding six or seven persons whose schedules simultaneously allow them to inspect during a given week, it often may *not* prove "reasonably feasible," and it usually will be easy for the Consultant to *claim* it is not "reasonably feasible," to find a knowledgeable non-law school administrator and a knowledgeable practicing lawyer, judge or public member to be on an inspection team.

A(ii). The Consultant can continue to appoint anticompetitively oriented insiders to inspection teams for schools for which the insider group desires highly critical reports that preclude or cause threatened withdrawal of accreditation. Publishing the list of inspectors will not cure this. For all that the Consultant will need to do is save anticompetitive insiders for inspections of schools the insiders privately desire to be injured by adverse reports.

A(iii). Even when the Consultant appoints non-law school administrators, practicing lawyers, judges or public members to an inspection team, if the insiders desire to injure a school, the appointees can be persons who will support the goals of the insider group. This was done to MSL.

B. A second problem, not addressed anywhere in the Decree, is that inspection teams regularly write deeply one-sided, even outright false, inspection reports designed to castigate schools and thereby force them to adhere to the insiders' wishes regardless of how anticompetitive those wishes may be. MSL was a victim of this practice [24] and, notwithstanding the

[24] Instead of reporting the favorable views expressed about MSL by Massachusetts judges and lawyers, the site report on MSL invented false claims that Massachusetts judges were concerned about MSL's student/faculty ratio and about the small percentage of applicants interviewed by the entire Admissions Committee rather than by one admissions officer. The report also omitted to mention, mentioned only cursorily, or gravely distorted MSL's objectives, the persons whom MSL serves and the fact that they have been frozen out of legal education, the methods MSL uses to bring efficiency into law school operations, MSL's efforts to diminish the long standing gulf between the academic and practical sides of law, its innovative courses and methods, its high percentage of truly small classes, important qualifications of MSL's faculty, the quality of instruction, the capabilities of MSL's students, the extensive student/faculty contact at MSL, MSL's view of scholarship, MSL's salary structure, MSL's teaching loads, the School's grading curve, the faculty's role in School governance, the School's views on attendance, MSL's views on the use of adjuncts, the student/faculty ratio, MSL's admissions process, MSL's electives, MSL's instruction in ethics, the School's program of concentrations, its residency practices, its class schedules, its clinical programs, the School's financial aid views and practices, its minority policies, its retention rates, its bar passage record, MSL's administrative structure, its library philosophy, its physical facilities, the School's law review, its placement philosophy, the criticism of legal education discussed in MSL's self study and underlying many of the School's views and practices, and crucial philosophies underlying MSL's finances.

secrecy with which the accreditation process has been cloaked, in conversations, in some site reports it has managed to obtain, and even in other written materials it has learned of other schools that were likewise subjected to the practice. Thus notwithstanding the prevailing secrecy, even a letter to the Wahl Commission reveals an analogous experience at the highly regarded law school of the State University of New York at Buffalo. There the inspection team wrote a negative report notwithstanding expressions of approval and even delight that it made in person. The President of the University thus wrote as follows to the Wahl Commission:

> The site evaluation team expressed amazement that a law faculty could develop such a well-coordinated, thoroughgoing revision of its curriculum and build near-unanimous faculty support for the changes. In meetings with the faculty, dean, provost and me, they expressed great enthusiasm for the path our law school had marked out for its future. From all that they said, it was clear that the team took a very positive view of the law school, its faculty, and its programs and new curriculum.
>
> *But, the team's positive firsthand response notwithstanding, their report and the Accreditation Committee's response to us was full of quibbles. It bore faint evidence of what the site evaluation team saw and applauded. It bore ample evidence, however, that the elaborate and complex rules of the accreditation system are focused on the trees—some might even say the scrub underbrush—rather than the forest. It is this approach in accreditation report after accreditation report that has ground down innovative, forward-thinking law faculty members and law faculties over the years.*
>
> Lest you think this is another president beating his drum, please note that I have been a member of UB's law faculty for 28 years; I taught regularly in our law school until I became provost eleven years ago; and *I have observed this process from up close for a long time. I generally believe that it will take more than tinkering to put right the encrusted system that has grown over the years. After reading the testimony before the National Advisory Committee last December, I was left wondering whether the current system has the capacity to get past tinkering and into significant reform.* (Exhibit 16 (emphasis added).)

C. A third problem is that it is unlikely that any beneficial effect will flow from the Decree's provision that the ABA shall "permit appeals from Accreditation Committee Action Letters to the Council." (Consent Decree, p. 5.) For such appeals have *always* been permitted. They are, indeed, provided for in the existing rules. The difficulty has not lain in the absence of a right of appeal. It has lain, rather, in the fact that the Council has mainly been a rubber stamp for the Accreditation Committee because both have been dominated and populated by the same group of insiders, and it is therefore explained to and widely understood by schools caught in the toils of the process that an appeal to the Council will do them no good. The only thing that would do them any good, they are made to understand, is knuckling under to the Accreditation Committee. (Thus it is that capturing insider Henry Ramsey admitted to the DOE at a hearing that the Council rarely disagrees with Accreditation Committee actions. (Exhibit 17.))

Accordingly, the provision for an appeal to the Council is meaningless as a practical matter.

D. The Decree also does not address, and therefore fails to remedy, another feature of the process that has kept it in the hands of the group of insiders: The same persons sometimes serve simultaneously on two of the four committees mentioned in the Decree (e.g., serve simultaneously on the Council and the Accreditation Committee), and, even when persons don't serve on two of the committees at the same time, membership on the committees is rotated among the same group of persons, so that an insider serves first on the Accreditation Committee and then, having acted in accordance with the group's wishes, moves up to the Council, while at other times being a member of the Standards Review or Nominating Committees.

The Decree cures none of this. It does not prevent simultaneous service on two committees. And its provisions for term limits allow a *minimum* of twelve years membership, through successive nonsimultaneous memberships on the Accreditation Committee and Council; and actually allows *18* years of successive membership on those two committees if a person chairs each of them, as several have done.[25] The ostensible term limits further allow an additional three years on the Standards Review Committee and an unlimited period of membership on the Nominating Committee.

Nor, of course, does the Decree place any limit on the length of time that a person can be Consultant. It this allows one to use the Consultancy for decades as a power base, as James White has done.

Thus, the provisions for term limits, far from limiting the power of the group which has captured the accreditation process, presents opportunities for that group to perpetuate themselves in power.

E. What, then, can be done about these various problems? There is a certain amount of tinkering that can be done to improve the Decree, such as providing that a person's membership on any and all committees shall be limited to a *collective* total of six years, or that service as Consultant is limited to five years. But the two really crucial changes that would virtually insure against further violations and improper conduct are ones discussed above. First, the whole process should be made an open one. If all the pertinent documents, meetings and transcripts are open and subject to scrutiny by interested parties and the public, accreditors will no longer have the ability to get away with violations of law, false statements, phony or incompetent site reports, inconsistent and arbitrary conduct, and so forth. Second, the entire body of persons who captured and misused the process in the past, or assisted those who did, should be excluded from it in the future.

7. The Government's Heavy Reliance on the ABA Leadership Could Result in Failure to Remedy the Violations Charged in the Complaint

It is evident from the Consent Decree and the CIS that the DOJ is relying *very* heavily on the leadership of the ABA to prevent the Decree's effectiveness from being undermined by its weaknesses. Thus the Decree requires that all Interpretation and Rules shall go before

[25] The Decree's provisions allow an individual two three-year terms on each of the committees (for a total of twelve years) plus an additional three years as chair of each committee.

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the House of Delegates (Consent Decree, pp. 4–5), requires that for five years elections to the Council, Accreditation Committee and Standards Review Committee (but not the Nominating Committee) shall be subject to Board of Governors approval (Consent Decree, pp. 5–6), requires the Council to send annual reports to the Board of Governors (Consent Decree, p. 6), requires the Board to receive site inspection questionnaires before they are sent to law schools (Consent Decree, pp. 6–7), and indicates that the Board will review the Special Commission's recommendations (Consent Decree, p. 8). And thus it is that the CIS says that one reason the DOJ agreed that the insider-dominated Wahl Commission could be the Special Commission is that the "ABA leadership was now familiar with and sensitive to antitrust concerns."[26] (CIS, p. 17.)

It is therefore clear that reliance on the ABA leadership to rectify anticompetitive actions has supplanted the more usual procedure of barring such actions in a consent decree. This course of conduct, however, is fraught with problems. One major problem is the perception it invites. The other is whether the ABA leadership can or should in fact be depended upon.

With regard to perception, although MSL does not claim to be au courant with all Division practices, it seems unusual for an enforcement agency not to seek to bar practices it finds illegal, and to instead tell the organization that violated the law to cure its derelictions itself. Reminiscent of overly generous treatment of violations that arose from misuse of power by private parties and led to the Tunney Act, this course of conduct leads to the question of why the ABA was given special dispensation. Further fueling this question is the fact that the ABA and government officials work together on many projects, high DOJ officials speak regularly at ABA conventions, the ABA passes on judicial nominees, and there are other ties. As wrong and unfair as the perception of untoward leniency may be, it will be there, particularly in this day and age.

Nor will the perception of special leniency necessarily be dissipated by assertions that questions of educational quality exist. The DOJ found instances when guild objectives rather than educational quality was the catalyst for inappropriate use of requirements regarding ratios, resources, facilities, etc. The question will thus remain of why wasn't anticompetitive conduct barred in at least those circumstances? Why was "novel" relief devised in *those* circumstances?

The perception of inappropriate leniency will be heightened because of serious questions over whether the ABA's leadership can or should be depended upon to be a major vehicle for reform. We note that, as a matter of history, in the mid 1970's it was thrice necessary for the DOJ to bring litigation or issue warnings, or for private parties to bring litigation, in order to put an end to antitrust violations committed or encouraged by the ABA. This occurred with regard to lawyers' fees, lawyer advertising, and prepaid legal service plans.[27] Yet the same mid 1970's, precisely when it was caught in three violations, was also the period when the ABA undertook the massive development of a fourth set of violations, in the field of accreditation of law schools. These historical facts do not give any reason to believe that the ABA leadership should be depended upon to be the vehicle of antitrust enforcement.

Further, the more recent record provides ample additional reason to think the leadership should not be depended on in this way, notwithstanding the statement in the CIS that the leadership has undergone some sort of conversion to better appreciation of the needs of antitrust. Prior to this claimed epiphany, the leadership had no interest in rectifying the antitrust violations. Thus, both the Board of Governors and the House of Delegates rejected MSL's efforts to resolve the relevant matters, notwithstanding MSL's extensive written and oral warnings of serious antitrust problems. The Board, indeed, after debate on whether to hear an oral presentation by MSL, decided against even hearing it. Subsequently, as the Section 16(g) Statement would indicate, the DOJ investigation was in progress for nearly 1½ years before ABA officials displayed any interest in resolving the antitrust matter with the Government. (They have never shown the slightest interest in resolving it with MSL.)

Then, after signing the Consent Decree, the ABA leadership has shown no sign indicating it can be relied on to be a primary vehicle of rectification, but has instead shown it should *not* be so relied on. When announcing the Decree, the President of the ABA, with the General Counsel sitting next to him, proclaimed, as said, that "We do not believe that we have violated the Sherman Act in any particular"; this June 27th statement denying violation was carried in the ABA's national publication, the ABA Journal, as well as in other nationally circulated media.[28] Today, three months after the Decree was filed, the leadership appears to have done little if anything to enforce it, but has instead acted in a manner that is inconsistent with both its letter and spirit, and that augurs further anticompetitive actions. Thus, the leadership has not stopped the insiders from already violating the Consent Decree by demanding salary information from schools and *raising* the number of academics on the Nominating Committee to 80 percent, though the number permitted under the Consent Decree is only 40 percent.[29] The leadership has not taken steps to replace the insiders who have controlled and used the Section to further guild purposes: the same people still populate the pertinent committees, new persons with pro-competitive views have not been added to the committees, James White, the ABA's Legal Consultant still sits, and the new ABA Executive Director was a recent Council Chairman.

Additionally, rather than requiring postponement and change in the Special Commission's Report, the leadership allowed the insider-dominated Commission, on August 3rd, to release an initial report whose recommendations are vastly inadequate to remedy violations. Nor has the leadership taken steps to remedy untrue statements made in antitrust proceedings regarding the alleged nonavailability or irrelevance of documents and regarding an alleged longstanding practice of supposedly not considering salaries when making accreditation decisions. The statements regarding nonavailability of documents contradict the ABA's production to the Government in this antitrust proceeding and the statements regarding salaries contradict the Government's statements in its Complaint and Competitive Impact Statement.

Nor can it be ignored that the ABA is a very political organization in which the Section has long wielded great political power, that ambitious persons rise in the leadership by *not* making enemies of those with power, that there is continuous turnover of the elected officers of the ABA, that the politically powerful Section continues to violently oppose the Consent Decree, and that, while it is claimed that the leadership has now undergone a metamorphosis regarding its antitrust responsibilities, the leadership, as said, cared nothing about antitrust for a long period of time.

Thus there is ample historical and current reason to fear that the DOJ's reliance on the ABA leadership, rather than on an injunction, as the vehicle for obtaining compliance with the antitrust laws will prove inadequate and may result in a failure to rectify the violations charged in the Complaint. There are two simple steps that can be taken to cure this problem, however. First, anticompetitive practices found to exist by the Government should be enjoined, as discussed above. Second, to test whether the leadership will in fact act in accordance with a new found commitment to antitrust, the Tunney Act hearing should be postponed until December 31, 1995 (as discussed above) to see whether the leadership forwards recommendations adequate to cure the violations and whether it has taken other steps that are required by the Decree or are desirable to cure violations. Such other steps would include, for example, appointing numerous persons known to have procompetitive views to the various committees, and excluding from further Section work the capturing insiders and their supporters, who are responsible for the problems.

8. The Effectiveness of the Decree is Potentially Diminished by Lack of Knowledge Regarding the Identity of an Antitrust Compliance Officer, by a Serious and Inexplicable Limitation on the Compliance Officer's Duties, and by Reliance on Staff of the Department of Education Who Have Been Ineffective in Regard to the ABA

The Consent Decree provides that the ABA shall appoint an Antitrust Compliance Officer who shall supervise a compliance program by, among other things, supervising accreditation activities to insure they are not inconsistent with certain provisions of the Decree. (Consent Decree, pp. 8–10.) The Antitrust Compliance Officer is to be appointed within 30 days of entry of the Decree. The Decree also provides that the ABA shall, by October 31, 1995, hire an independent, non-legal-educator, outside consultant to assist in validating all Standards and Interpretations as required by the Department of Education ("DOE") and to develop a plan for such validation by December 31, 1995. (Consent Decree, p. 7.)

A. The existence of an Antitrust Compliance Officer could be a matter of the first importance. However, the identity of the Officer is crucial. Antitrust is a field in which there is a wide gulf between the opinions of two vigorously differing sides of the bar. There is the plaintiff's side of the bar, composed of Government enforcers and plaintiffs' treble damages lawyers, who believe in and seek relatively widespread and vigorous application of antitrust. On the other side, there is the defense side of the bar, whose members, by belief and affiliation, generally minimize the circumstances in which antitrust violations should be found to exist. There are relatively few lawyers who straddle the two camps intellectually and by professional affiliations.

If the person appointed to be the Compliance Officer is highly defense oriented by belief and previous professional commitments and work, then the result is likely to be approval of activities which would be found anticompetitive and which would not be approved even by persons who straddle the two camps. What is anticompetitive, and what cannot be justified by claims of being necessary for quality, are, after all, matters which are subject to differences of opinion. Thus, the identity, professional background, and views of the Compliance Officer will almost surely be vital in determining whether the person will be an adequate proponent for the strictures of the Decree. His or her identity will be vital to assessing whether the public interest will be served or thwarted by the provision for a Compliance Officer.

Yet, as said, under the Decree the Compliance Officer will not be selected until *after* the Decree is entered—and thus will not be known to the Court when assessing whether the public interest will be served. The Court will thus be unable to make a fully knowledgeable assessment.

The problem, however, is readily curable. The Decree need only provide that the Compliance Officer must be named a reasonable time *before* the Tunney Act hearing, so that knowledgeable assessments can be made by the DOJ, commentators and the Court as to the likelihood that the named individual will be a vigorous proponent of antitrust. Naming a Compliance Officer before the Tunney Act hearing should not pose any more problem than naming a DOE consultant by October 31, 1995, which the Decree specifically provides shall be done. (Consent Decree, p. 7.)

Additionally, the Decree presently contains a paramount hole in the duties of the Compliance Officer. The Officer is to review ABA actions to be sure they do not violate Sections IV and VI (Consent Decree, pp. 8–9.), which respectively (a) list the activities banned outright by the Decree—including price fixing, denial of entry into graduate programs, denial of transfer credit, and preclusion of profit making status—and (b) supervise various procedural matters such as those involving membership on committees. *But the Compliance Officer has no supervisory responsibilities relating to Section VII of the Decree, and therefore does not supervise the ABA's accreditation activities in the areas where recommendations are to be received from the Special Commission (after review by the ABA leadership), recommendations which are to govern if not challenged by the Government or which are to govern as possibly amended after a DOJ challenge. This is an incomprehensible lacuna in the duties of the Compliance Officer.* The accreditation rules governing the matters to be treated by the Special Commission—e.g., student/faculty ratios, hours of work by professors, physical facilities, and so forth—have encompassed several of the most crucially important, most anticompetitive, actions of the accreditors. Yet, as said, such matters are not to come within the purview of the Antitrust Compliance Officer. How can this possibly be justified? How can it be within the reaches of the public interest? There is, of course, a simple corrective step, which is to change the Decree so that the Compliance Officer also has the duty of reviewing and supervising accreditation activities involving student/faculty ratios, hours of work and other matters that are to be addressed in the first instance by the Special Commission and reviewed by the ABA.

B(i). The reason why the DOJ has required the ABA to "validate" the accreditation criteria as required by the DOE is not entirely clear. It *would* be clear if, in accordance with the DOE's abstract written criteria of "validity," DOE approval ensured that ABA accreditation criteria assure educational quality. Unfortunately, however, DOE review of the ABA has been wholly ineffective to date in assuring quality.

(ii). DOE assessment of accrediting agencies such as the ABA is carried out by a small office which has relatively few staff members. For convenience we shall refer to it simply as the Accreditation and State Liaison Division ("ASLD"). The ASLD receives reports from accreditation agencies such as the ABA; ASLD has charge of scores of such agencies who report to it. After

[26] It is a curious contrast that, when he announced the Consent Decree, the ABA's president, with its General Counsel at his side, said "We do not believe that we have violated the Sherman Act in any particular." *See* n. 28, *infra*.

[27] See materials in Exhibit 18.

[28] Henry J. Reske, *ABA Settles Antitrust Suit on Accreditation*, ABA Journal, August 1995, at 24; Shanis Latham, *ABA, Justice Dept. Settle Antitrust Suit*, The National Jurist, August/September, 1995, at 6.

[29] The leadership allowed salary information to be sought via questionnaire even though the Consent Decree provides that the Board of Governors should receive questionnaires before they are sent to law schools. (Consent Decree, pp. 6–7.)

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reviewing a report from an accrediting agency, and otherwise communicating with it, ASLD makes a recommendation to the National Advisory Committee on Institutional Quality and Integrity ("NAC") on what action should be taken regarding the accrediting agency. To consider and recommend such action, the NAC meets two times a year, for about three days at a time. Its recommendation for each agency is forwarded to the Secretary of the Department of Education, whose office sends the accrediting agency a letter that usually adopts the NAC's recommendation.

The NAC is by and large an admirable group. It is comprised of volunteers who generally are accomplished in the field of education or other public fields—numerous university presidents, professors, other knowledgeable academic persons, legislators, and public spirited people serve on the NAC. They appear to give it extensive time and to work hard, and most of them seek to do what is right.[30]

But the NAC operates under serious handicaps. Being comprised of volunteers who have time consuming, energy consuming professional careers elsewhere, but who nonetheless are confronted with the need to read reports and make decisions on scores of matters annually, the time that NAC members can give to any one accreditation agency individually, or even to all collectively, is limited. To a major extent, therefore, the NAC has to rely on the Staff of the ASLD.

The Staff's work with regard to the ABA, however, has been ineffective to date in assuring quality and in precluding self-interested conduct unrelated to quality. Perhaps this is because, as the responsible staff member said at a hearing on December 5, 1994, the staff members, who are not lawyers, feel that they are "not in a position to say" whether or how quickly ABA criteria need to be revised. (Exhibit 21.) Perhaps it is because the ASLD is a small office. Perhaps it is simply a reflection of the fact that, as publicly stated by Assistant Secretary David Longanecker at a meeting of the NAC on December 5, 1994, the DOE had not been doing its job well ("there was serious skepticism about the Department of Education's performance and very, very, very serious questions about the performance of the accrediting community * * *" (Exhibit 22)). Whatever the reasons, there was ineffectiveness with regard to the ABA. Time and space preclude extensive elaboration here of the many facts showing such ineffectiveness, so we are simply attaching as exhibits illustrative materials showing crucial points the staff ignored (Exhibit 23.) *Many of those points are the same ones that the Division has now made in the Complaint and CIS.* Thus, it is perplexing that the Antitrust Division would now rely on the DOE as a vehicle for assuring quality or for precluding self-interested conduct.

9. In Order To Insure That the Purposes of the Tunney Act Are Carried Out and Its Provisions Complied With, the Consent Decree Needs To Provide for the Filing of Determinative Documents and Materials, and Approval of the Decree Must be Conditioned on Making Available The Documents That Injured Private Parties Need to Effectively Pursue Their Claims

A. Under Section 2(b) of the Tunney Act, 15 U.S.C. 16(b), any "materials and documents which the United States considered determinative in formulating" the proposed consent decree "shall also be made available to the public at the district court and in such other districts as the court may subsequently direct." Under Sections 2(e) (1) and (2) of the Act, 15 U.S.C. § 16(e) (1) and (2), in considering whether the consent decree is in the public interest, the court may consider the decree's "competitive impact," its "impact * * * upon the public generally," and its "impact * * * upon * * * individuals alleging specific injury from the violations set forth in the complaint." As discussed in more detail below, these statements raise serious questions regarding the compliance mechanisms of the decree and regarding whether the DOJ is fulfilling the duties placed upon it by the Tunney Act.

B. When the Tunney Act was enacted in the aftermath of a scandal over settlement of a government antitrust case against IT&T, Congress was deeply concerned, as Senator Tunney said, about "antitrust violators [who] wield great influence and economic power" and can "bring significant pressure to bear on government, and even on the courts, in connection with the handling of consent decrees."[31] An important matter, said Senator Tunney, was "the excessive secrecy with which many consent decrees have been fashioned."[32]

Congress desired the consent decree process to remain a viable method of resolving government antitrust litigation, but it also wanted courts to have sufficient information to make a considered judgment on whether the public interest was being served, and it was deeply concerned lest consent decrees injure the interests of private plaintiffs who had been harmed by violations. The need for a balance was stressed in the Senate Report in language later quoted in the House Report. The Reports said that a "court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option."[33] The Reports then pointed out that, where the interests of private plaintiffs required it, "*the court can condition approval of the consent decree on the Antitrust Division's making available information and evidence obtained by the government to potential, private plaintiffs which will assist in the effective prosecution of their claims.*"[34]

The concern over harm to private plaintiffs was elaborated on the floor by Senator Tunney. He said that, because the Government may be the only party with sufficient resources to effectively counter a wealthy defendant, one consequence of a consent decree is that it leaves few private plaintiffs who have the resources to sustain a case:

> The consent decree [as distinguished from pursuing a case to judgment through trial] has a number of major public consequences, however. First, it means that the substantial resources of the Justice Department will be removed from the effort to establish that the antitrust laws were violated. Because consent decrees by statute carry with them no prima facie effect as an admission of guilt, private parties who may have been damaged by the alleged violations are left to their own resources in their efforts to recover damages. As a practical matter because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department.[35]

He then extensively pointed out that, because of the effect of consent decrees on private plaintiffs harmed by the violations, it can be appropriate *not* to enter a decree, but to instead require the Government to go to trial so that private plaintiffs will be aided:

> * * * [I]n addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and *specifically to the effect of entry of the decree upon private parties aggrieved by the alleged violations* and upon the enforcement of the antitrust laws generally.
>
> These latter two points merit some additional explanation. First, as is well known by the antitrust bar, in the vast majority of cases, the Government is the only plaintiff with resources adequate to the task of protracted antitrust litigation. Thus, a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources. Consent decrees have that effect because by statute they cannot be used as prima facie evidence of a violation in subsequent suits by private plaintiffs.
>
> Thus, removal of the Government as plaintiff through entry of a consent decree has a profound impact upon the ability of private parties to recover for antitrust injuries. Such a result is by no means improper nor perhaps in every case unreasonable. But because of that impact, it is a factor which should enter into the calculus by which the merits of the decree are assessed. *It may well be that the economic cost to the public of a particular antitrust violation merits the application of governmental resources toward gaining a recovery of that cost in damages for those who can establish their injury.*[36]

As Congress provided, an alternative to refusing to enter a consent decree and thereby forcing the government to try a case in order to aid private parties is, in the words of the House and Senate reports, to "condition approval of the consent decree on the Antitrust Division's making available information and evidence obtained by the government to potential, private plaintiffs which will assist in the effective prosecution of their claims."

C. To incorporate in the Tunney Act its concerns that the Court receive information needed to determine whether a decree is in the public interest, and whether the interests of injured private parties are preserved, Congress enacted three specific provisions. One is Section 2(e)(1), under which the Court is to consider the competitive impact of the consent decree. The second is Section 2(e)(2), under which the Court considers the impact of the decree on parties harmed by the violations and can condition approval of the decree on the government's making available to private parties the information and evidence it obtained. The third is Section 2(b), under which the Government is to file the documents that were determinative in formulating the consent decree. Section 2(e)(1) and 2(e)(2) are self explanatory. Section 2(b), the determinative documents provision, requires some elaboration.

There is a wide spectrum of documents, evidence, memoranda and other materials that can be determinative in deciding what provisions shall be put into and which kept out of a consent decree. For the specific provisions of the decree—the practices it bans, the ones it does not ban, and its enforcement mechanisms—depend on what the government has learned in the course of its investigation. This was put as follows in Senate hearings on the Tunney Act by Professor Howard Lurie, who testified that the determinative materials provision:

> Covers more than simply those materials and documents which were relevant to the Government's decision to settle the case by consent, but covers in addition those which were relevant to the formulation of the consent judgment. In other words, the bill calls for the disclosure of those materials and documents which were relevant to the relief, and that of necessity includes those materials and documents which go to establish or prove the violation of law.[37]

Precisely because it was aware that the "determinative documents" provision encompasses a wide range of documents and evidence, the Antitrust Division vigorously opposed it. Thus, Assistant Attorney General Thomas Kauper wrote Congress a letter of opposition saying that:

> The bill, as reported out, provides that the United States shall file, in addition to that which it already files, "other materials and documents which the United States considers determinative in formulating the proposed consent judgment." This conceivably could require production of virtually every piece of paper generated by the staff of the Antitrust Division, outside reports of complainants and the like, as such documents may be considered in one way or another to have entered into the determination of the government to enter the settlement, and thereby would be "determinative."[38]

Notwithstanding the Division's opposition, Congress enacted the determinative documents provision as originally drafted.

The Division, however, then embarked on a course of nullifying the provision by saying in nearly every case, as it has here, that no documents were determinative. Reduced to its essence, the Division's position almost uniformly has been that, because many documents were determinative, no documents were.

The Division's position has been litigated in only one case—*United States* versus *Central Contracting Co., Inc.*—in which the court rejected the Government's position three separate times, at 527 F. Supp. 1101, 531 F. Supp. 133, and 537 F. Supp. 571 (E.D. Va. 1982). In its first opinion, the court, pointing out that the Tunney Act "sets out procedural requirements with which the parties are to comply," held that:

> Where the parties ignore the procedures, not only is the public hampered in its efforts to provide the Court with information that the Court may find helpful, but also the silent record raises a specter, however incorrect in a given case, of the questionable practices which characterize some of these arrangements that Congress sought to guard against through passage of the Act. See 119 Cong. Rec. 24598 (1973).[39]

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[30] Unfortunately, one member of the NAC, Robert Potts (who was supported by the General Counsel's office of DOE, amazingly enough), refused to disqualify himself from participating in the NAC's 1994 discussion of the ABA though he was then the President of the National Conference of Bar Examiners ("NCBE") which works very closely with the Section of Legal Education. (Exhibit 19.) The relationship between the NCBE and the Section is exemplified by the fact that the NCBE and the Section jointly publish a "Comprehensive Guide To Bar Requirements," that the Joint Guide sets forth the Code of Recommended Standards for Bar Examiners, which says that all bar admission candidates should be required to have attended an *approved ABA School*, and that Potts and Joseph Bellacosa, then Chairman of the Council, jointly signed a Preface to the 1995–96 edition of the Joint Guide. Exhibit 20. Not surprisingly, Potts supported the ABA in the NAC's discussion.

[31] 119 Cong. Rec. 24597 (quoting Judge Skally Wright) (1973).

[32] Consent Decree Bills: Hearings on H.R. 9203, H.R. 9947, and S. 782 Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 93d Cong., 1st Sess. 38 (1973).

[33] The Circuit Court stated in *United States* v. *LTV Corp.*, 746 F.2d 51, 52 n.2 (D.C. Cir. 1984), that "The APPA was adopted in the wake of concerns that government consent decrees had been entered in secrecy and without adequate attention to the public interest. The twin goals of the Act have been described as "[f]irst, that the courts would be able to obtain the requisite information enabling them to make an independent determination, and second, that the consent decree process would be preserved as a viable settlement option."

[34] S. Rep. No. 93–298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974); *LTV*, *supra* n. 33.

[35] 119 Cong. Rec. 3449, 3451 (remarks of Sen. John V. Tunney, introducing S. 782, 93d Cong., 1st Sess., February 5, 1973).

[36] 119 Cong. Rec. 3449, 3452 (1973) (emphasis added).

[37] Hearings Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 93d Cong., 1st Sess. 128 (1973).

[38] 119 Cong. Rec. 24601 (1973).

[39] *Central Contracting*, 527 F. Supp. 1101, 1102.

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The court then refused to accept the Government's nullification of the determinative documents procedure:

> The Court finds plaintiff's statement in Paragraph 7 of its competitive impact statement that it considered "no materials and documents * * * determinative" in formulating its proposal for a consent judgment to be almost incredible. Section 2(b) of the Act refers to "any * * * materials and documents which the United States considered determinative in formulating such proposal." 15 U.S.C. 16(b). The Court is skeptical that *no* documents were significant in formulating the proposed consent judgment. If any documents were considered plaintiff should comply with Section 2(b) forthwith.[40]

The Court expressed its views even more vigorously in its second opinion, 531 F. Supp. 133, 134:

> But in the instant case, plaintiff appears to interpret "determinative" as if it means a single critical or decisive document which evoked a cry of "Eureka!" from the Justice Department. The Government seems to contend that if no *one* document were "determinative" it may refuse to disclose the several documents which were determinative. Although it is conceivable that in some rare case a single document may hold such vital importance it is hardly conceivable that *no* document is of vital importance. Indeed, in most circumstances a determination will be based upon an aggregate of facts, materials, and documents, no one of which may be of overwhelming importance but when viewed together are determinative as to the way in which the United States elects to proceed in a given situation. The materials and documents that substantially contribute to the determination to proceed by consent decree must be disclosed and a list thereof published pursuant to section 2(d) of the Act. 15 U.S.C. 16 (b) and (c). (Emphasis in original.)

In its third opinion, the Court rejected the Government's position that "the legislative history of the Act supports a definition of 'determinative' which excludes 'evidentiary materials' obtained by the government." 537 F. Supp. at 574. The Court said that "[i]n most cases * * * a determination to proceed on a given course will be reached upon an aggregate of information" which today is "collected and communicated in document form," and it is "the aggregate of these documents and other materials that leads the Justice Department to a conclusion that it should enter into a consent decree." *Id.* at 575. Nor, said the Court, did the government argue that "the decision to proceed with the consent decree was an idea that came out of the blue. *Rather, the idea emerged through consideration of compiled information concerning the alleged offense * * **" *Id.* at 576 (emphasis added).

The Court once again rejected the Division's continued claim that there are no determinative documents, saying:

> * * * by its own statistics, the Department of Justice states that out of the 188 cases that have settled by consent decree since the enactment of the Act, only 16 have involved "documents [and other materials] which the government considered determinative in formulating the relief," Pl.Br. at 6. If this be true, (and given the Justice Department's construction of the Act, the Court does not doubt its truth) then the directive in the Act is either superfluous, or it is being misinterpreted or subverted. The Court presumes that Congress did not intend legislation to be superfluous * * * *Id.* at 575.
>
> * * * * * *

Plaintiff suggests that it is not unusual for there to be no determinative documents even in the most complicated of cases. *Cf., United States* v. *AT&T*, Civ. No. 74–1698 (D.D.C.) (dismissal of monopolization suit against AT&T in which Justice Department has agreed to abide by provisions of the Act). That view, in the opinion of the Court, is based upon a misinterpretation of the Act. The Act clearly does not require a full airing of Justice Department files *but the Court cannot countenance plaintiff's claim that though Congress enacted sunshine legislation the courts may blandly (and blindly) accept government certification in case after case that no documents or materials, by themselves or in the aggregate, led to a determination by the government that it should enter into a consent decree.* (*Id.* (emphasis added).)

*The Court simply cannot accept an interpretation of legislation that permits the government to assert in 172 out of 188 cases that it considered neither documents nor any other materials determinative in reaching its conclusion to enter into a consent decree. To reiterate, the Act as interpreted by this Court requires the government to disclose "[t]he materials and documents that substantially contribute to the determination [by the government] to proceed by consent decree. * * *" United States v. Central Contracting Co., supra,* at 134 (E.D.Va. 1982). This does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those which meet the above criterium. (*Id.* at 577 (emphasis added).)

In short, first Congress overrode the Antitrust Division's efforts to defeat the broadly encompassing determinative documents provision, and then the only Court to consider this issue flatly rejected the Division's consistent efforts to subvert Congressional intent, including efforts to subvert it by arguing that determinative documents do not include evidentiary materials. Notwithstanding this, and even though antitrust law is a documents-driven field, the Government, as here, continues to ignore its responsibilities, the will of Congress, and judicial disapprobation by claiming in virtually every case that no documents were determinative.

D. Serious questions regarding the efficacy of the Consent Decree's compliance mechanisms, and the DOJ's fidelity to its statutory duty, arise because here the Government claims, as usual, that there were no determinative documents. Such questions also arise because of a need to protect the interests of injured parties by making available to them documents and information gathered by the Government that will "assist in the effective prosecution of their claims."

D(i). *Determinative documents and materials.* As discussed above, there are numerous questions here regarding the efficacy of compliance mechanisms in the Decree. Without submission by the Government of documents and materials showing why the DOJ believed those mechanisms will be successful and therefore decided to include them in the Consent Decree, the Court cannot make—as Congress intended it to make—an *informed* determination that the Decree's remedial provisions are in the public interest. Without submission of the determinative documents and materials, the Court is remitted to simply accepting the Government's unsupported claims that provisions it agreed to are in the public interest—the very kind of uninformed judicial acceptance that Congress sought to avoid by passage of the Tunney Act. This can be demonstrated by the following examples:

(a). Having found that reform of the accreditation process is necessary because it has been captured by self interested persons, the Government formulated a Consent Decree that relies on percentage limitations on the number of faculty on various committees to achieve such reform. The Government determined to so rely even though, under the Decree, the very same persons who captured and used the process are free to comprise up to 50 percent of the membership of pertinent committees, and even though the problem of capture has resulted not from mere numbers, but from these individuals' deep interest in and their consequent willingness (and their time) to do the work of accreditation. What determinative documents and materials persuaded the Government that notwithstanding these facts, (1) accreditation will not continue to be controlled by these individuals, and (ii) they will not be able to continue to maneuver accreditation in their own interest? Is the Government persuaded that these apparent problems are not in fact problems because determinative documents and materials show that the ABA leadership has promised it that the individuals who captured the process will be excluded from the relevant committees or will comprise only a very small proportion of them?

(b) The Government has formulated a Decree that places heavy reliance on the ABA leadership to control the Section and preclude further anticompetitive actions. The DOJ did so even though it knew that the leadership resisted correcting the problems in the past when they were called to its attention in 1993, 1994, and early 1995, that the leadership persuaded it to allow a Special Commission packed with insiders—who believe in the violations—to make recommendations for change, and that the ABA is a highly political organization in which the Section wields much power. The Government continues to rely on the leadership though the latter has thus far taken no steps to clean house in the Section and has allowed the Section to flout the Consent Decree. Why has the Government done this? Are there determinative documents and materials showing that the ABA leadership has made promises of change and that such promises are backed by believable commitments for future action even though events to date do not bear out any such commitments?

(c). At least on its face, the Government's formulation of a Decree that relies on the insider dominated Wahl Commission to be the Special Commission that recommends changes in anticompetitive practices is unwarranted. This is the more true because of the inadequacy of the Commission's initial recommendations and its members' request for the suppression of the views of Dean Cass. What, then, do determinative documents show to be the reasons that led the Government not to adhere to its initial position that a special antitrust review committee should be the Special Commission, and to agree instead that an insider-dominated group responsible for the challenged violations can be the Special Commission? Are there determinative documents showing that the ABA leadership made a commitment to change the recommendations of the Wahl Commission if they were inadequate?

(d). As with almost all conspiracies, secrecy concerning accreditation has been the linchpin of the conspiracy. It is secrecy that allowed anticompetitive actions, secret rules and inconsistent conduct to exist unknown to scholars and analysts, enforcement agencies, reporters, members of the public and others, and which disabled potential students from learning more about schools as a matter of consumer protection. At least on its face, the Consent Decree formulated by the DOJ allows extensive secrecy to continue. Why? What do the determinative documents show as to why this is being allowed? Do they show that, notwithstanding that the Decree does not on its face open up the process to public scrutiny, there are commitments from the ABA leadership to open it to public scrutiny in order to insure against future anticompetitive actions, secret rules and inconsistent conduct?

(e). The Government initially intended to seek a prohibition against anticompetitive ABA rules on student/faculty ratios, limitations of teaching hours, leaves of absence, and banning of credit for bar review courses. It has evidence that such rules, plus rules on physical facilities and allocation of resources, have at times been used to further guild interests. It knew the circumstances in which they had been so used. It knew that it was common for the rules to be used in conjunction with fixing of the price of salaries, which is banned outright, and that actions taken in conjunction with forms of price fixing are normally banned along with the price fixing.

Yet, the DOJ became persuaded that the rules implicate educational concerns and, instead of enjoining them, at least in the circumstances in which they have been used anticompetitively, agreed to formulate a Decree that allows them to be considered by a Special Commission. Why? What do determinative documents and materials show to be the reasons why they were not banned outright in any circumstances whatever, not even when used in conjunction with price fixing or in circumstances known to be intended to advance guild interests?

(f). The DOJ formulated a Decree in which the duties of the Antitrust Compliance Officer do not encompass accreditation rules in areas where the Government has found the accreditors to have anticompetitively pursued guild interests instead of educational quality (areas such as ratios, physical facilities, etc.). Why were such areas excluded from the antitrust compliance program? What do the determinative documents show in this regard?

D(ii) *Interest of injured private parties.* In the last two decades, the ABA has caused injury to and sometimes even the outright destruction of a significant number of law schools, because anticompetitive rules identified in the Complaint were used to deny accreditation to the schools, to withdraw accreditation from them, to make clear to schools that it was useless for them even to seek accreditation, and to raise the costs of beginning new schools. Many of these injured institutions, particularly those injured during the latter half of the period, have potential claims against the ABA, but most of them will never be able to afford to bring the claims, and if they were to bring them, would be unable to afford to pursue them to victory, unless approval of the Decree is conditioned upon the Government making available the claim-proving information and documents it has gathered. For as the ABA has shown in its litigation against MSL, its defense tactics are the very scorched earth tactics that caused Senator Tunney to say when introducing the Tunney Act (i) that "because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department," (ii) that "a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources," and (iii) that the costs to injured parties of violations might justify requiring the Government to go to trial instead of being allowed to settle by consent, and that led Congress to say in its Reports that a court should consider conditioning approval of the Decree upon the Government making relevant documents available to private parties.

The ABA's defense tactics, tactics Congress knew and feared, feature stonewalling against production of documents needed to prove a case: in nearly two years, as the Government knows, the ABA has produced to MSL less than 50,000 of the 544,000 documents which it admits to having produced to the Government and which led the latter to say in its CIS that it could prove the charges in the Complaint—which are mainly identical to MSL's.[41]

That the ABA uses these tactics to defeat the claims of injured private parties is an unhappy demonstration that, contrary to the Government's statement, the Consent Decree will have a deeply adverse impact on private

[40] *Id.* at 1104.

[41] As said earlier, the ABA has also made untrue representations regarding alleged lack of availability of documents which it has already assembled and produced to the DOJ, and has presented false deposition testimony, concerning price fixing, which contradicts the charges the Government has made and says in the CIS it can prove. We have attached recent briefs filed by MSL discussing the false testimony. (Exhibit 24.)

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parties, many of whom will be unable to afford even to bring their claims, let alone pursue them to victory, if the Decree is entered without making documents and information available to the private parties. It is likewise a demonstration that approval of the Decree, in accordance with Congressional intent and statutory language, should be conditioned on the Government making available to private parties the documents and materials it has gathered that will enable them to effectively prosecute their claims. This is required in order to give appropriate consideration to the decree's "impact * * * upon * * * individuals alleging specific injury from the violations set forth in the complaint." 15 U.S.C. 16(e)(2).

10. There are Three Areas, Involving Rules Which Stifle Competition, in Which USL Urges the Division to Reconsider its Decision not to Act

We conclude with a discussion of three matters to which we recommend the Government give further consideration.[42] Because the matters were not charged as violations in the Complaint, in accordance with the Court of Appeals decision in *United States* v. *Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995), MSL is not urging that the Court should require the Consent Decree to be revised to cover these matters. Rather, MSL is urging only that the Division itself might decide to reconsider them because they involve anticompetitive guild actions used to prevent the establishment of new, and to eliminate existing, law schools that provide a more efficient, lower cost education. Such education makes law school accessible to less economically privileged individuals, e.g., to persons from working class and minority backgrounds. These guild practices also lessen the quality of legal education.

A. *The Requirement That Substantially All First Year Courses Be Taught By Full-Time Faculty Members As Defined By The ABA.* In the CIS, the Government says that it initially proposed injunctive relief barring the ABA's requirement that substantially all first year courses be taught by full-time faculty (CIS, p. 15), but that evidence it gathered persuaded the DOJ to abandon its opposition to the practice. (CIS, p. 16.) Given the current unavailability of determinative documents showing what evidence persuaded the Division to abandon its opposition, MSL cannot know why the DOJ came to feel it permissible to force all 178 accredited law schools, and every law school seeking accreditation, to follow this practice without even a single exception. What we do know, however, is that the practice is anticompetitive, can result in legal education being unaffordable to persons who are less privileged economically, and often lessens, not heightens, the quality of legal education.

The anticompetitive nature of the practice is obvious. There are a number of unaccredited law schools in this country—in California, Tennessee, Alabama, Georgia and Massachusetts—which seek to make legal education available to less privileged individuals, particularly persons from the working class and minority persons such as African-Americans and Hispanic-Americans. Many of these schools use highly knowledgeable judges and lawyers as adjuncts to teach various first year courses. The schools exist in the aforementioned states because the states allow the schools' graduates to take bar examinations. But the growth of the schools is stifled because their students cannot take bar exams elsewhere, and such schools cannot be established elsewhere.[43]

The rule thus anticompetitively stifles the growth and establishment of schools devoted to serving the less-privileged. Furthermore, the rule reflects true—and correctly felt—terror of competition. For at least 90 years the Section of Legal Education has been aware that, because they provide a lower cost method of legal education, the schools in question will ultimately expand to populations additional to the economically less-privileged if the schools are allowed to flourish with the cachet of ABA accreditation. Many people—whether poor, middle class or rich—do not want to pay $20,000 per year in tuition for legal education if good education is available at $5,000 or $10,000 per year. The terror this potential competition presents has become particularly acute today (as it was in the 1920s) because (i) the cost of tuition at ABA schools, driven by the expensive guild mandates of the accreditors, has become so high and (ii) (a) students, like the practicing and judging arms of the legal profession, are increasingly demanding education in practical skills, (b) current ABA schools often are deficient in such education and have locked themselves into high cost structure that leave little or no financial room for adding skills training to the curriculum, (c) students would go to schools that offer such skills if the schools were ABA accredited, and (d) the schools which currently are precluded from obtaining accreditation do, or if established would, offer extensive education in practical skills (as well as the customary theoretical training).[44] There is thus serious concern over the competition such schools would offer if accreditation were not precluded by ABA rules, including the rule requiring substantially all first year courses to be taught by full-time faculty members as defined by the ABA.

B. *The Ban On Full-Time Students Working More Than 20 Hours Per Week.* This rule bars a school from competing by allowing its full time students to work for compensation more than 20 hours per week outside the law school. By preventing schools from thusly competing, the rule destroys the ability of some less-economically privileged persons to obtain a legal education and works an enormous hardship on other such persons.

[42] There are additional deeply anticompetitive practices which MSL believes are violations of the antitrust laws, but they are not discussed here.

[43] The populations whom those schools seek to serve in the five aforementioned states, and who would be served by similar schools elsewhere, often are in straitened economic circumstances. Yet they too wish to rise on the socio-economic scale, and it has been the promise of America that they should have a chance to rise as high as their capabilities and willingness to work can take them. Nonetheless, the unchallengeable historic record show that, since its founding in 1878, the ABA has regularly taken actions to bar this rise, and that actions which prevent it have for more than 30 years been a staple of the activity of the Section of Legal Education. Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s, passim* (1983); Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America, passim* (1976). Such actions by the ABA and the Section of Legal Education have always been defended by the mantra of quality. But though wrapped in the flag of quality, the actions have always knowingly harmed and continue to knowingly harm the poor, immigrants, minorities and the working class.

[44] It is especially crucial that adjunct professors teach the all-important practical skill of writing in the first year of law school. Failure to train students to write well is one of the gravest deficiencies of legal education. It can be cured only by giving extensive, intensively supervised writing courses to students in small groups having approximately ten or less students and taught by competent, perhaps even professional, writers. This is the way that writing is taught competently in the few areas of education where it *is* taught competently. The only financially feasible method of doing this for most law schools is to hire a large corps of capable adjuncts who are professional writers or, in some cases, are lawyers who write well. Every other method the law schools have tried has been a jury rigged, Rube Goldberg failure. Using third year students to supervise writing classes has been a failure. Using instructors who are recent law school graduates with no practical experience has been a failure. Having a full-time professor supervise scores of students has been a failure because the amount of work needed is too great to effectively supervise scores of people. But under the ABA's rule regarding first-year courses, the only method that will work cannot be used, since the use of a large body of professional writers or competent lawyers as adjunct writing teachers would almost surely cause a violation of the guild rule regarding first year classes.

Since only slightly more than one-third of the ABA law schools offer part-time study,[45] there are many geographical areas of the country where no part-time legal education is available. In those areas persons whose financial situation compel them to hold full-time jobs are precluded from attending law school or can attend only under extreme hardship. The rule barring schools from competing by allowing students to work more than 20 hours per week thereby makes it especially difficult or even impossible for such individuals, however competent, to attend law school as a means of exercising their right to choose a career and of improving their socio-economic position. In other geographic areas the same results obtain because, though part-time education is available, it is only available in sufficient quantity at ABA schools to accommodate a fraction of the competent but less-privileged applicants who must hold full-time jobs.[46] The anticompetitive rule perpetuates these antisocial results regardless of whether the excluded or injured individuals are capable of taking a full schedule of law school courses while working more than 20 hours per week, as many are.

There is no defensible justification for this rule. To begin with, when the Standards were adopted in 1973, the House of Delegates expressly made clear its intention, which was part of the legislative history, that the rule would not apply to persons who worked in a law firm—that was regarded (rightly) as in itself being legal training. (Exhibit 27.) It is the capturing insider group which has extended the rule to work done for a law firm. It has done so in defiance of the express intent of the House of Delegates.

Furthermore, it is widely known that the rule is regularly violated instead of being enforced in the name of purported quality of education. It is common in large cities for full-time students to work more than 20 hours per week for compensation, especially at law firms. The ABA accreditors know this is occurring, and in effect wink at it.[47] They wink at it even while ostensibly enforcing it by forcing schools to require full-time students to sign affidavits saying they are *not* working more than 20 hours per week.

Moreover, the accreditors discriminatorily purport to bar more than 20 hours of work per week *only* when it is done for compensation (by students who need the money). The accreditors do not bar a full-time student from working 25, 30 or even 40 hours per week at a public interest organization that does *not* pay the student. Nor do the accreditors ban a woman (or a man) from working in the home 30 or 40 hours per week or more, as many female students do, nor bar a wealthy full-time student—and there are such—from spending 30 or 40 hours per week tracking investments. As said, the only thing banned by the anticompetitive, antisocial rule is work exceeding 20 hours per week by those who need to and do obtain compensation—by those who need the money.

C. *The Requirement of Enormously Expensive But Needless Hard Copy Books In A Law School Library.* It is widely regarded that librarians have been among the groups which most effectively captured the ABA accreditation process and used it to advance their own, often anticompetitive guild interests, including higher salaries for librarians, ever greater prestige obtained through greater independence within the law schools and university library systems, obtaining of near-tenure for library directors, ever fancier and more elaborate physical facilities for libraries (facilities that now can cost ten million dollars or more), and very large, ever expanding hard cover collections of books that cost several millions of dollars.

Because of their enormous costs, the requirements of ever more elaborate physical facilities for libraries and ever larger hard cover book collections are instrumental in anticompetitively preventing the establishment and growth of lower cost, efficient schools that seek to serve the economically less privileged.

In recent years, the advance of computerized, electronic research capabilities, and CD Rom collections, have made cost of the expensive hard cover books totally unnecessary and correlatively had made it unnecessary to have huge library facilities to store and service enormous hard cover collections. We are, indeed, hurtling towards the age of what the Dean of the University of Pennsylvania Law School has called the "virtual library." (Exhibit 28.) The vast bulk of materials needed by most law school libraries is now instantly available on computers, and students and faculty members can access these materials not just in law school libraries or law school offices, but at home, or anywhere, by means of modems.[48]

Yet the ABA accreditors, though *slowly* changing their rules, still require a law school to have millions of dollars worth of hard cover books to obtain accreditation and still require elaborate physical facilities. These requirements are simply another of the devices which, because of the costs they impose, are used to anticompetitively exclude schools that desire to make education available at lower cost to less affluent persons.

Conclusion

As said at the inception of these Comments, MSL believes the Consent Decree is a step towards eliminating long-standing anticompetitive practices. But the Decree contains weaknesses that could undermine its effectiveness in combatting these practices. MSL therefore urges the Division to cure those weaknesses so that the Decree, rather than possibly being undermined, will in fact prove to be the major procompetitive step it is capable of being.

Respectfully submitted,
The Massachusetts School of Law at Andover, Inc.
500 Federal Street, Andover, MA 01810.

PROPOSED MODIFICATION TO PROPOSED FINAL JUDGMENT, p. 5, Part VI (B)

(Note: deletions are bracketed; insertions are italicized.)

to the same public comment and review process and approval procedures that apply to proposed Standards;

(B) permit appeals from Accreditation Committee Action Letters to the Council;

(C) revise the Council's membership as follows:

(1) for a period of five years, all elections shall be [subject to] *reported to the* Board [approval];

(2) members shall serve staggered three-year terms, with a two-term limit; however, officers may serve as officers for an additional term beyond the six-year limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(D) revise the Accreditation Committee's membership as follows:

[45] Only 15 percent of first year seats in law school are devoted to part-time students. (Exhibit 25.)

[46] Leading insider Leigh Taylor has said that "Evening students are older (4 to 5 years older at [his law school]), *tend to come from a lower economic situation, and tend to be married and have children. Typically there are more minority students in the evening.*" (Exhibit 26 (emphasis added).)

[47] American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 288 (July 1992).

[48] The materials are also available within minutes or hours via fax machines, and overnight via Federal Express and other forms of overnight mail.

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(1) for a period of five years, all appointments shall be [subject] *reported to the* Board [approval];

(2) all members shall serve staggered three-year terms, with a two-term limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(E) revise the Standards Review Committee's membership as follows:

(1) for a period of five years, all appointments shall be [subject to] *reported to the* Board [approval];

U.S. Department of Education

Staff Analysis of the Interim Report Submitted by the Council of the Section of Legal Education and Admission to the Bar of the American Bar Association

December 5–6, 1994.

Background

The Council of the section of Legal Education and Admission to the Bar of the American Bar Association (ABA) appeared on the first list of nationally recognized accrediting agencies published by the Commissioner of Education in 1952. The Council has received periodic renewal of recognition since that time.

The Council's most recent review by the National Advisory Committee was in May 1992. At that time, there was considerable third-party opposition to the Council, most of which centered on its accreditation standards. As a result, Advisory Committee members questioned Council representatives at length about their process for reviewing and revising the standards. Upon completion of that discussion, the Advisory Committee recommended that, while renewing the Council's recognition for a period of five years, the Secretary should also require the Council to submit an interim report by July 1, 1993 on its effort to strengthen compliance with § 602.16(i)—maintenance of a systematic program of review designed to assess the validity and reliability of the Council's criteria, procedures and standards. On August 18, 1992, the Secretary renewed the Council's recognition for a period of five years and requested the interim report on § 602.16(i).

In January 1994, the Massachusetts School of Law (MSL), one of the third parties that testified in opposition to the Council at the May 1992 meeting of the National Advisory Committee, filed a formal complaint against the Council and requested that the Secretary terminate the Council's recognition on the grounds that it failed to follow appropriate and required standards, procedures, and regulations. MSL cited a number of reasons for its request, many of which were related to the issue of whether the Council's criteria, procedures, and standards were valid and reliable. Consequently, in this analysis, Department staff examines both the Council's interim report and MSL's complaint. The analysis also takes into account both the Council's response to MSL's compliant and subsequent responses by MSL and the Council.

It should be noted that, as is customary when the Department receives a compliant against an accrediting agency, staff provided the Council with an opportunity to respond to MSL's complaint. MSL subsequently requested and, because of the seriousness of its charges against the Council, was granted an opportunity to rebut the Council's response. MSL's rebuttal was not received by the Department, however, until August 1994. Department staff's investigation of MSL's complaint was completed in as timely as manner as possible, given the delay in the submission of MSL's rebuttal and the extent of the documentation submitted by both parties.

Summary of Findings

While the Council has technically complied with the requirement to provide the Secretary with a progress report on its efforts to assess the validity and reliability of its standards by describing its process for reviewing its 100- and 200-series standards, it has not provided any results of its work to date. The Council needs to do so.

Staff Analysis

602.16(i) It maintains a systematic program of review designed to assess the validity and reliability of its criteria, procedures, and standards relating to its accrediting and preaccrediting activity and their relevance to the educational and training needs of affected students.

Problem: At the time of the Council's last review, there was considerable third-party opposition to the Council, most of which centered on the validity and reliability of its standards. Noting that the Council had reported that work was continuing on the assessment of the validity and reliability of its standards as a result of a conference held on the subject in 1989, the Advisory Committee requested an interim report on the Council's continuing progress assessing validity and reliability.

Agency Response: The Council maintains a Standards Review Committee, each of whose meetings includes a review of the validity and reliability of certain standards among the ones currently used to accredit programs. At its November 1992 meeting, the Committee agreed to concentrate on the 100- and 200-series of its standards. At its meeting in January 1993, the Committee focused on the 100-series standards, discussing various comments received from the membership on the standards and agreeing to proposed some changes to the membership. At its May 1993 meeting, the Committee continued its review of the 100-series and began work on the 200-series. At the conclusion of the meeting, the Committee decided that, rather than propose changes in either series' standards to the Council's different constituencies, it would continue its standards review for the next 2–3 years and then propose all the changes at once. Its rationale for this course of action was the effect that more than one of the modified standards would have on some of the Council's other standards.

Staff Determination: By describing the process it is engaged in to review the validity and reliability of its standards, the Council has technically complied with the requirement that it submit an interim report addressing its continuing progress assessing validity and reliability. However, the Council has failed to provide any concrete results of its efforts, presumably because it plans to extend its current review effort over the next 2–3 years.

The Department's new regulations require not just a demonstration that the Council has in place a systematic program for the review of the validity and reliability of its standards but a demonstration that each of its standards provides a valid measure of the educational quality it is intended to measure and a consistent basis for determining the educational quality of different law schools. It is the Council's compliance with this new requirement that is challenged by MSL in its complaint against the agency.

Like all agencies, the Council must take action to bring itself into compliance with this new requirement. Department staff recognizes that this will take some time. However, Department staff also recognizes that in the interim some institutions may be denied accreditation, placed on probation, and/or forced to take corrective action to come into compliance with standards that may in fact prove not to be valid and reliable measures of educational quality. For this reason, Department staff believes it is critical that the Council keep the Department thoroughly informed of its progress in assessing the validity and reliability of its standards and the *results* of that assessment. Specifically, the Council should provide the Department with an interim report in each of the next two years, and that report should include complete reports of each meeting of its Standards Review Committee, including any proposed changes in Council standards that are under consideration, and reports of any other meetings, forums, or other opportunities for discussion of its standards that took place that year. Department staff has been informed by MSL that at least one such opportunity—a meeting of a group of law school deans—is scheduled to take place in January or February of 1995.

At this point, Department staff believes that any termination of the Council's recognition on the grounds that its standards are neither valid nor reliable measures of quality, as has been requested by MSL, is premature and without merit. All currently recognized accrediting agencies need to come into compliance with the requirement in the new regulations that each of their standards must provide a valid measure of the educational quality it is intended to measure and a consistent basis for determining educational quality. To single the Council out for noncompliance at this time when other agencies are likewise in noncompliance would be unfair to the Council.

While MSL may not like the Council's current standards and may question their validity and reliability, it has not provided convincing evidence to contradict the Council's assertion that its current standards have in fact been adopted by its members in the manner that has been agreed to by the members for the establishment of accreditation standards. Thus, even though they may be found at some future date not be fully valid or reliable indicators of educational quality, at the present time the Council's standards represent the current best thinking of those in the profession.

MSL has indicated that there is some opposition to the current standards from within the organization but has provided no evidence of large numbers of members opposing ABA standards at its meetings and being constantly frustrated in their efforts to change the standards by undemocratic procedures on the part of the Council. If there is in fact opposition to the Council's standards, it is Department staff's opinion that the Council appears to have in place the mechanisms that will allow those who seek change to be heard. The scheduled meeting of the law school deans early in 1995 is evidence that those in opposition to the standards have the ability to work from within and propose changes that they believe will strengthen the accreditation process.

Department staff further believes that the Council's standards have been subject to regular, systematic review by the profession and have been changed whenever the profession deemed necessary. It also appears to Department staff that any changes to the standards have been decided upon only after proper consultation with the membership and other relevant constituencies. Thus, from the Department's perspective, the Council has acted in accordance with the criteria for recognition as far as the review and subsequent revision of its standards is concerned. MSL points out that, as an unaccredited law school, it is not part of the membership, and therefore, does not have adequate opportunity for input into any changes to the standards. Department staff's response to this concern is that the Council is not obliged by the requirements for Secretarial recognition to consult with non-members like MSL.

One other aspect of MSL's complaint against the Council is particularly relevant to the validity and reliability issue. MSL charges that the Council has throttled diversity among law schools by refusing to follow a written provision contained in its own standards that is intended to promote such diversity. As evidence to support its charge, MSL states that its requests for several variances have been repeatedly denied by the Council. Department staff believes that in general MSL's requests for variance were not accompanied by a compelling rationale for the request and that there is no evidence to suggest that, if they were accompanied by such rational, they would not have been given fair consideration by the Council.

Other aspects of MSL's complaint against the Council have no direct bearing on the validity and reliability issue. Department staff has investigated them and found some of them to be without merit. For example, MSL charges that the Council regularly violates the requirements of due process but does not provide convincing evidence to support its charge.

Still other aspects of MSL's complaint relate to new requirements imposed on accrediting agencies as a result of the Higher Education Amendments of 1992 and the Department's regulations implementing those amendments. For example, MSL charges that the Council does not provide public notice of when a law school will be considered for accreditation and does not provide an opportunity for public comment on the school's qualifications for accreditation. All agencies must come into compliance with this requirement and the other new requirements, but it takes time for them to develop and implement the requisite standards, policies, and procedures. Department staff believes that there is no evidence to suggest that the Council will not do so in a timely and appropriate manner.

It should be pointed out that MSL presented many aspects of its current complaint to a member of the National Advisory Committee when it reviewed the Council in 1992, yet the Advisory Committee was satisfied with the Council's overall performance at the time and recommended renewal of recognition for the maximum period of five years. Thus, it does not appear to Department staff that MSL has presented compelling new evidence to warrant a full review of the agency before its originally scheduled renewal date.

Note. One aspect of MSL's complaint against the Council that is totally outside of the Department's purview is the charge that the Council has violated federal anti-trust laws for the economic benefit of law professors, law deans, and law librarians but on the detriment of students. That matter is currently before the Justice Department.

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Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program; Notices

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priority for Fiscal Years 1996–1997 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces a final funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1996–1997. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: This priority takes effect on January 11, 1996.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: This notice contains a final priority to establish ten regional Disability and Business Technical Assistance Centers.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

This final priority supports the National Education Goal calling for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

On July 24, 1995, the Secretary published a notice of a proposed priority in the **Federal Register** (59 FR 46300). The Department of Education received thirty-five letters commenting on the proposed priority. Modifications were made to the priority as a result of those comments. The comments, and the Secretary's responses, are discussed in an appendix to this notice.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this program only applications that meet this absolute priority:

Priority: Regional Disability and Business Technical Assistance Centers

Background: Public Law 101–336, the Americans with Disabilities Act (ADA), enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government, and telecommunications. Because of NIDRR's experience and support of information dissemination and technical assistance, and its support of research and demonstration efforts to promote employment and independence for individuals with disabilities, Congress directed NIDRR to use FY 1991 funds to establish a technical assistance program to further the successful implementation of the ADA. In October of 1991, NIDRR awarded grants to establish ten regional Disability and Business Technical Assistance Centers (DBTACs), previously referred to as Regional Disability and Business Accommodation Centers), for five years. There is one DBTAC in each of the ten Department of Education regions. The final funding priority for the original DBTACs is contained in the **Federal Register** of August 13, 1991, Vol.5, No.156, page 40168.

Covered entities and individuals with responsibilities and rights under the ADA continue to need technical assistance on the ADA. The ADA is a complex and relatively new civil rights statute. Many covered entities may be unaware of the basic requirements of the law or unfamiliar with legal precedents or policy guidance being issued by Federal agencies. According to a recent General Accounting Office (GAO) Report, "[GAO] observed steady improvement in both accessibility and awareness during the initial 15 months that the ADA was in effect. However, enough areas of concern remain to suggest a need for continuing educational outreach and technical assistance to business and government agencies..." (U.S. General Accounting Office, *Americans with Disabilities Act: Effects of the Law on Access to Goods and Services* (GAO/PEMD–94–14; June 21, 1994).

The DBTACs provide a wide range of technical assistance services such as referrals, consultation, and facility surveys. The DBTACs provide training to individuals and entities with responsibilities and rights under the ADA and disseminate information on the ADA through such methods as distributing materials that have been created or reviewed and approved by Federal agencies, issuing newsletters and information briefs, and participating in discussion groups on the INTERNET. In addition, the DBTACs carry out public awareness activities on the ADA and the services provided by the DBTACs and other NIDRR ADA grantees through a variety of means including, but not limited to, the use of public service announcements, radio and television appearances, presentations at conferences, and the publication of newspaper and magazine articles.

In order to tailor their efforts to State and local needs and maximize their resources, DBTACs increase the capacity of State and local organizations to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The DBTACs have established at least one affiliate in every State. The State affiliates carry out their activities in collaboration with coalitions of organizations interested in promoting the implementation of the ADA. In addition, the DBTACs provide support to and collaborate with Centers for Independent Living (CILs) in each region to increase the capacity of CILs to promote the successful implementation of the ADA through the provision of technical assistance and training.

In FY 1994 the DBTACs fielded over 75,700 ADA-related telephone inquiries, made 13,764 referrals, distributed almost 700,000 publications, engaged in over 4,600 different types of public awareness and outreach activities such as public speeches, TV and radio appearances, newspaper interviews, and public workshops, and trained approximately 54,000 individuals with responsibilities and rights under the ADA.

The DBTACs rely to the maximum extent possible on existing Federally-approved materials, and, through a systematic process of quality control, ensure the legal sufficiency and accuracy of the information disseminated by the Centers and their affiliates. All of the materials that the DBTACs distribute are available in alternate formats and DBTAC services and activities are accessible to all individuals with disabilities. The DBTACs share a national toll-free 800 telephone number that automatically connects the caller with the DBTAC serving the caller's area code. The DBTACs participate in a discussion group on an electronic bulletin board operated by Project Enable at the University of West Virginia to share information and discuss answers to technical questions. The DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA.

Priority: The Secretary will establish a Regional Disability and Business Technical Assistance Center in each Department of Education region to facilitate implementation of the ADA by: (1) Providing technical assistance, disseminating information, and providing training to individuals or entities with responsibilities and rights under the Act on the requirements of the ADA and developments in ADA case law, policy and implementation; (2) increasing the capacity of organizations, including Centers for Independent Living, at the State and local level to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA; and (3) promoting awareness of the ADA and the availability of services provided by the DBTACs, and other NIDRR ADA grantees, and other Federal information sources on the ADA.

In carrying out the objectives of the priority each DBTAC shall:

- Involve individuals with disabilities, parents or other family members of individuals with disabilities, in all phases of the design and operation of the DBTAC to the maximum extent possible;
- Cooperate and coordinate its activities with other NIDRR ADA technical assistance projects as well as Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the Rehabilitation Services Administration, the President's Committee on Employment of Persons with Disabilities, and the National Council on Disability;
- Provide performance accountability data on a monthly and annual basis as requested by NIDRR; and
- Distribute services and resources equitably—taking into account population and size—among each State in its region.

Applicable Program Regulations: 34 CFR Parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: December 6, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

By the deadline date, the Department received thirty-five comments in response to the proposed priority. Eleven additional comments were received after the deadline date and were not considered in this response. All thirty-five letters supported the priority. This Appendix contains an analysis of the comments and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Priority: Regional Disability and Business Technical Assistance Centers

Comment: One commenter noted that while the priority indicates that the DBTACs trained approximately 54,000 individuals in FY 1994, training is not included among the list of services provided by the DBTACs in the Background section.

Discussion: The Secretary agrees that training should be included in the Background section of the priority in the list of services provided by the DBTACs.

Changes: The Background section has been revised to indicate that the DBTACs provide training to individuals and entities with responsibilities and rights under the ADA.

Comment: Two commenters pointed out that the current DBTACs meet semi-annually and submit data for an annual report that NIDRR issues on its ADA technical assistance program. The commenters recommended including these activities in the priority for planning purposes.

Discussion: NIDRR plans to continue with semi-annual meetings and to issue an annual report on the ADA technical assistance program. The Secretary agrees to include the semi-annual meetings and the submission of annual performance data in the priority.

Changes: The Background section has been revised to indicate that the DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA. In addition, the priority has been revised to require that the DBTACs submit annual performance data.

Comment: One commenter suggested emphasizing minority outreach activities. A second commenter recommended requiring the DBTACs to address the needs of cultural and linguistic minorities.

Discussion: The Secretary believes that is important for the DBTACs to address the needs of underserved populations. The Secretary points out that under 34 CFR part 350.21, an applicant for assistance under the Knowledge Dissemination and Utilization program must demonstrate how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. This requirement applies to cultural and linguistic minorities.

Changes: None.

Comment: One commenter suggested requiring applicants to specify how their grant funds will be distributed to each State in the region in order to address the equitable distribution of the DBTAC's resources.

Discussion: The Secretary agrees with the commenter's purpose. However, the Secretary believes that the commenter's suggestion may be an administrative burden that relies too heavily on allocation of funds to determine equitable distribution of services. The Secretary believes that the requirement to distribute resources and financial support equitably among the States in the region should be based on factors such as population and geographic size and extended to all of a DBTAC's activities. The Secretary believes that each applicant should be provided with the discretion to propose how it will meet this requirement.

Changes: The priority has been revised to require each DBTAC to distribute services and resources equitably—taking into account population and size—among each State in its region.

Comment: One commenter recommended increasing the emphasis on interaction between the DBTACs and Federal agencies responsible for the enforcement of the ADA. A second commenter recommended requiring the DBTACs to coordinate services and resources with the National Council on Disability.

Discussion: The Secretary agrees that communication between the DBTACs and Federal agencies with administrative responsibilities under the ADA is imperative. The Secretary points out that the priority requires the DBTACs to cooperate and coordinate their activities with Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, and the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the Rehabilitation Services Administration, and the President's Committee on Employment of Persons with Disabilities. The Secretary agrees that the National Council on Disability should be added to this list of Federal agencies, but does not believe any further requirements are necessary.

Changes: The National Council on Disability has been added to the list of Federal agencies for coordination purposes.

Comment: One commenter recommended emphasizing collaboration between the DBTACs and the business community, labor associations, and State and local governments, including State associations of mayors and counties. Another commenter recommended that the priority include

States' Protection and Advocacy Systems as potential collaborators for the DBTACs.

Discussion: The Secretary believes that the types of collaborative relationships suggested by both commenters could be valuable and expects the DBTACs to work with all types of entities with rights and responsibilities under the ADA. However, the Secretary prefers to provide applicants with the discretion to propose those collaborative relationships that the applicant believes would be appropriate for the States in their region.

Changes: None.

Comment: One commenter recommended focusing the efforts of the DBTAC's capacity-building activities on the business community.

Discussion: The capacity-building requirement in the priority refers to "organizations at the State and local level." The Secretary expects the DBTACs to undertake capacity-building with a variety of organizations, including business organizations. The Secretary declines to direct the DBTACs to focus its capacity-building activities on only one community.

Changes: None.

Comment: One commenter recommended changing the name of the DBTACs because it is "awkward and not easy to use."

Discussion: The Secretary declines to change the name of the DBTAC in order to take advantage of the name recognition that the DBTACs have developed.

Changes: None.

Comment: One commenter recommended revising the priority to indicate that the DBTACs provide referrals to individuals and entities with responsibilities and rights under the ADA.

Discussion: The Secretary points out that, in the Background section, referrals are included among examples of the technical assistance services that the DBTACs provide, along with consultation and facility surveys. The Secretary expects the DBTACs to provide a wide range of technical assistance services including those in the Background section as well as any others that an applicant may propose.

Changes: None.

Comment: One commenter pointed out that, while the Background section refers to the capacity-building support that the DBTACs provide to Centers for Independent Living (CILs), this support is not specified in the priority. A second commenter recommended requiring the DBTACs to interact with State's Independent Living Councils "and/or any other associations that the CILs may have formed."

Discussion: The Secretary agrees that the priority should specify that CILs are to be included in the DBTACs capacity-building activities. However, the Secretary declines to provide further specification regarding the DBTACs' relationships with various associations of CILs.

Changes: Centers for Independent Living have been included in the requirement addressing capacity-building.

Comment: One commenter recommended requiring the DBTACs to build local capacity to implement mediation services to resolve ADA complaints.

Discussion: The priority authorizes the DBTACs to increase the capacity of organizations at the State and local level to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The Secretary believes that an applicant could propose to build local capacity to implement mediation services to resolve ADA complaints under the priority. However, the Secretary cautions that conflict resolution through mediation is a specialized field that requires a great deal of expertise. Properly developing local capacity to implement mediation services to resolve ADA complaints would require a significant financial commitment. The Secretary declines to impose this requirement.

Changes: None.

Comment: One commenter suggested that it would be more efficient to produce a national DBTAC newsletter rather than authorizing the DBTACs to produce regional newsletters.

Discussion: NIDRR's ADA Coordination contractor will provide all of the DBTACs with core information about developments in case law and policy to ensure that the production of newsletters will be carried out as economically as possible. This will enable each DBTAC to continue to address issues and events that are unique to its region through the issuance of regional newsletters.

Changes: None.

[FR Doc. 95-30128 Filed 12-11-95; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1996

Purpose of Program: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families. The final priority for this award, entitled "Regional Disability and Business Technical Assistance Centers," is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their application.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Applications Available: December 12, 1995.

Application Deadline: February 12, 1996.

Estimated Range of Awards:
Region I: $500,000–525,000
Region II: $550,000–600,000
Region III: $550,000–600,000
Region IV: $650,000–700,000
Region V: $650,000–700,000
Region VI: $550,000–600,000
Region VII: $500,000–525,000
Region VIII: $500,000–525,000
Region IX: $600,000–650,000
Region X: $500,000–525,000

Estimated Number of Awards: 10 (1 per Department of Education Region).

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 (amended April 5, 1995 (60 FR 17426)), and 355 (amended September 22, 1993 (58 FR 49419)); and the notice of final priority published elsewhere in this issue of the **Federal Register**.

For Further Information Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: December 6, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95-30129 Filed 12-11-95; 8:45 am]

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Part V

Department of Education

34 CFR Part 75
Direct Grant Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA89

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These amendments reduce the need for specific regulations governing individual programs. The amendments authorize the Secretary to establish selection criteria for a discretionary grant program based on statutory provisions that apply to a program and on existing selection criteria in EDGAR. The amendments also clarify the Secretary's authority to establish annual funding priorities for grant competitions.

EFFECTIVE DATE: These regulations take effect January 11, 1996. These regulations will affect only those competitions announced in the **Federal Register** after this effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Jacinta Ma, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments allow the Secretary to establish selection criteria based on certain statutory provisions, clarify the Secretary's authority to establish one or more annual priorities, and allow the Secretary to establish the maximum score for each selection criterion on a competition-by-competition basis. The amendments also conform existing regulations in §§ 75.1 and 75.200 to reflect the additional method for establishing selection criteria.

On September 1, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (60 FR 46004).

Except for minor technical and editorial revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM two parties submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Secretary add a selection criterion that would give additional consideration to small entities, such as small vocational rehabilitation agencies, because these entities have fewer resources than large entities for developing grant proposals, and thus are at a disadvantage in competing for awards.

Discussion: These amendments to EDGAR are not intended to change the substance of the EDGAR selection criteria. These amendments allow the Secretary to establish selection criteria based on statutory provisions and allow the Secretary to establish the maximum value of each criterion on a competition-by-competition basis. The Secretary expects to amend the EDGAR selection criteria in the future and will consider this comment in developing the new selection criteria.

Changes: None.

Comment: One commenter expressed opposition to the provision that would allow the Secretary to establish without public comment annual funding priorities that are specified in a program statute or selected from allowable activities specified in a program statute. The commenter believed that it would be important for the public to be able to comment on the establishment of annual priorities to alert the Secretary to important issues within States that might require changing a proposed priority.

Discussion: The Secretary believes that creating the option for the Department to establish certain annual funding priorities without public comment will allow the Department to award grants more quickly and at a time more convenient and useful to potential grantees. The Secretary believes that public comment on these types of priorities would be minimal. For those priorities specified in the authorizing statute, public comment would be limited to the way the Department implements the statutory priority, e.g., what weight to give to the priority or how to choose among priorities. Statutory priorities, moreover, are established through the legislative process, which provides for participation and comment from the public. In establishing priorities, the Department will continue to be guided by information generated during the legislative process, the Department's experience in administering its programs, and feedback from customers, grantees and others. The Secretary has balanced the benefits to all grant recipients of a speedier and more efficient grant making process against the loss of the public's opportunity to provide formal comment in these limited circumstances and has determined that the benefits outweigh the disadvantages.

Changes: None.

Paperwork Reduction Act of 1995

These amendments have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 5, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.1 is amended by revising the Note to read as follows:

§ 75.1 Programs to which part 75 applies.

* * * * *

Note: See part 76 for the general regulations that apply to programs that allocate funds among eligible States. For a description of the two kinds of direct grant programs see § 75.200. Paragraph (b) of that section describes discretionary grant programs. Paragraph (c) of that section describes formula grant programs. Also see §§ 75.201, 75.209, and 75.210 for the selection criteria for discretionary grant programs that do not have implementing regulations or whose implementing regulations do not include selection criteria.

§ 75.101 [Amended]

3. Section 75.101 is amended by removing paragraph (c).

4. Section 75.105 is amended by removing the word "or" following paragraph (b)(2)(ii), replacing the period at the end of paragraph (b)(2)(iii) with a semicolon, adding new paragraphs (b)(2)(iv) and (b)(2)(v), and revising the first sentence in paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(b) * * *

(2) * * *

(iv) The program statute requires or authorizes the Secretary to establish specified priorities; or

(v) The annual priorities are chosen from allowable activities specified in the program statute.

(c) * * *

(2) * * *

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. * * *

5. Section 75.200 is amended by revising paragraph (b)(3) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary uses one of the following to evaluate applications for new grants under the program:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in § 75.210.

(iii) A combination of selection criteria established under § 75.209 and selection criteria in § 75.210.

* * * * *

6. Section 75.201 is revised to read as follows:

§ 75.201 How to use the selection criteria.

(a) If points are assigned to the selection criteria, the Secretary informs applicants of—

(1) The total possible score for all of the criteria for a program; and

(2) The maximum possible score for each criterion.

(b) If no points are assigned to the selection criteria, the Secretary evaluates each criterion equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

7. A new § 75.209 is added to read as follows:

§ 75.209 Selection criteria based on statutory provisions.

(a) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary may evaluate applications by—

(1) Establishing selection criteria based on statutory provisions that apply to the authorized program, which may include, but are not limited to—

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; and

(2) Assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(b) The Secretary evaluates an application by determining how well the project proposed by the applicant meets each statutory provision selected under paragraph (a)(1) of this section.

Example: If a program statute requires that each application address how the applicant will serve the needs of limited English proficient children, under § 75.209 the Secretary could establish a criterion and evaluate applications based on how well the applicant's proposed project meets that statutory provision. The Secretary might decide to award up to 10 points for this criterion. Applicants who have the best proposals to serve the needs of limited English proficient children would score highest under the criterion in this example.

(Authority: 20 U.S.C. 1221e–3 and 3474)

8. Section 75.210 is amended by revising the heading, removing paragraphs (a) and (c), removing the point designations following the italicized headings in paragraphs (b) (1), (2), (3), (4), (5), (6), and (7), adding undesignated introductory text, removing "*The criteria*—" in paragraph (b), and redesignating paragraphs (b)(1), (b)(1) (i) and (ii), (b)(2), (b)(2)(i)–(iv), (b)(3), (b)(3)(i)–(vi), (b)(4), (b)(4)(i)(A)–(D), (b)(4)(ii) (A) and (B), (b)(5), (b)(5) (i) and (ii), (b)(6), (b)(6) (i) and (ii), and (b)(7) as paragraphs (a), (a) (1) and (2), (b), (b)(1)–(4), (c), (c)(1)–(6), (d), (d)(1)(i)–(iv), (d)(2) (i) and (ii), (e), (e) (1) and (2), (f), (f) (1) and (2), and (g), respectively, to read as follows:

§ 75.210 General selection criteria.

The Secretary may use one or more of the following selection criteria, together with one or more criteria established under § 75.209, if any, to evaluate applications for new grants under a discretionary grant program:

(a) *Meeting the purposes of the authorizing statute.* * * *

(b) *Extent of need for the project.* * * *

(c) *Plan of operation.* * * *

(d) *Quality of key personnel.* * * *

(e) *Budget and cost effectiveness.* * * *

(f) *Evaluation plan.* * * *

(g) *Adequacy of resources.* * * *

(Authority: 20 U.S.C. 1221e–3 and 3474)

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 6 and 26
Federal Acquisition Regulation: Disaster Relief Fund; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 26

[FAR Case 93-303]

RIN 9000-AG77

Federal Acquisition Regulation; Disaster Relief Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address competition requirements for acquisitions of major disaster or emergency assistance activities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 93-303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 93-303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5150 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) establishes a preference for local sources in the award of Federal contracts for major disaster or emergency assistance activities. This proposed rule amends FAR parts 6 and 26 to reflect the requirements of Section 5150.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule only applies to acquisitions conducted during the term of a Presidential declaration of major disaster or emergency. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 93-303 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6 and 26

Government procurement.

Dated: December 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 6 and 26 be amended as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Parts 6 and 26 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 6.302-5 is amended by removing "or" from the end of paragraph (b)(3); removing the period from the end of paragraph (b)(4) and inserting "; or"; and adding paragraph (b)(5) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(5) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see subpart 26.2).

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

3. Subpart 26.2 is added to read as follows:

Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302-5).

26.201 Policy.

(a) When contracting for major disaster or emergency assistance activities under this subpart, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*).

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Part VII

Department of Energy

Record of Decision; Tritium Supply and Recycling Programmatic Environmental Impact Statement; Notice

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DEPARTMENT OF ENERGY

Record of Decision; Tritium Supply and Recycling Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision: Selection of Tritium Supply Technology and Siting of Tritium Supply and Recycling Facilities.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision regarding DOE's proposal for Tritium Supply and Recycling Facilities. The Department is making three simultaneous decisions. First, the Department will pursue a dual track on the two most promising tritium supply alternatives: to initiate purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of the tracks to serve as the primary source of tritium. The other alternative, if feasible, would be developed as a back-up tritium source. Second, the Savannah River Site is selected as the location for an accelerator, should one be built. Third, the tritium recycling facilities at the Savannah River Site will be upgraded and consolidated to support both of the dual track options. If the commercial reactor alternative is selected as the primary source, a tritium extraction facility will also be constructed at the Savannah River Site. The environmental analysis to support this decision was issued by the Department in the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (PEIS) DOE/EIS–0161 (October 1995). The PEIS identified the dual-track strategy described above as the preferred technology alternative. The Savannah River Site was identified as the preferred site for an accelerator, and the site for the upgrade and consolidation of existing recycling facilities. The Department has decided to implement the preferred alternatives.

FOR FURTHER INFORMATION CONTACT: Further information on the Final Programmatic Environmental Impact Statement can be obtained by calling 800–776–2765, or writing to: Stephen M. Sohinki, Director, Office of Reconfiguration, DP–25, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302.

Information on the Department of Energy National Environmental Policy Act process can be obtained by contacting: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave. SW., Washington DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Department of Energy has prepared this Record of Decision pursuant to the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508) and the Department of Energy regulations implementing the National Environmental Policy Act (10 CFR Part 1021). This Record of Decision is based on the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (DOE/EIS–0161, October 1995) and the Technical Reference Report for Tritium Supply and Recycling (DOE/DP–0134, October 1995). The Technical Reference Report summarizes schedule, production assurance and cost data and presents the results of the uncertainty analysis. Several comments and a report from Congress were received after the documents listed above were published. This additional information was taken into consideration in preparing this Record of Decision.

In January 1991, the Department announced it would prepare a Programmatic Environmental Impact Statement (PEIS) examining alternatives for the reconfiguration of the Department's nuclear weapons complex. The framework for the Reconfiguration PEIS was described in the Nuclear Weapons Complex Reconfiguration Study (DOE/DP–0083), issued in January 1991. A Notice of Intent to prepare the PEIS was published in the **Federal Register** on February 11, 1991 (56 FR 5590). The purpose of the PEIS was to establish the locations for future weapons complex missions. The missions to be analyzed included plutonium and uranium component fabrication and processing, weapons assembly and disassembly, high explosive production, tritium recycling, and nonnuclear component fabrication.

At the time the Reconfiguration PEIS was begun, technology and siting alternatives for a new tritium supply facility were being examined in a separate New Production Reactor Capacity Environmental Impact Statement. On September 27, 1991, President Bush announced an initiative to reduce the Nation's nuclear weapons stockpile. In response to this initiative, the need for new facilities was delayed and the Department announced, on November 1, 1991, that it would delay decisions on the new production reactor technology and siting and include the environmental analysis for a new tritium production source in the Reconfiguration PEIS. The Department's intent to incorporate the New Production Reactor capacity analysis into the Reconfiguration PEIS was published in the **Federal Register** on November 29, 1991 (56 FR 60985).

In June 1992, the United States and Russia announced an arms reduction agreement which was signed in January 1993 as the START II Protocol. This agreement caused the most significant reductions to date in planned future weapons stockpiles of both nations. It also provided the Department with the opportunity to consider a much smaller weapons complex than previously envisioned. Therefore, the Department determined that it was necessary to reevaluate the Reconfiguration Program to insure that alternatives which reflected requirements of a greatly downsized nuclear weapons stockpile would be assessed in the PEIS. On July 23, 1993, a revised Notice of Intent was published in the **Federal Register** (58 FR 39528) which described a smaller, more integrated nuclear weapons complex. Additionally, long-term storage alternatives for plutonium and uranium were added to the analysis. As a result of this reevaluation and public comment, the Department published a notice in the October 28, 1994, **Federal Register** (59 FR 54175), that would separate the Reconfiguration PEIS into two separate analyses: the Tritium Supply and Recycling PEIS and Stockpile Stewardship and Management PEIS.

On March 1, 1995 the Department issued a Draft Programmatic Environmental Impact Statement for Tritium Supply and Recycling (DOE/EIS–0161) which presented an analysis of the environmental impacts of the proposed action and alternatives. In the Draft PEIS, the Department indicated that the use of a commercial reactor was not a reasonable long-term tritium supply alternative due to concerns about the use of civilian reactors for military purposes. However, the Draft PEIS evaluated the impacts associated with the use of a commercial reactor to make tritium, whether such a reactor were used as a contingency source of tritium in the event of a national emergency, or the Department chose to purchase an existing reactor and convert it to a defense facility for long-term tritium supply. Comments received during the agency and public review of the Draft PEIS asserted that the use of

an existing commercial reactor had the potential to be the lowest cost option and indicated confusion as to whether purchase of a commercial reactor or irradiation services from a privately owned reactor were treated as reasonable alternatives capable of meeting long-term tritium requirements. These comments and concerns prompted the Department to issue a **Federal Register** announcement on August 25, 1995 (60 FR 44327) in which the Department reopened the comment period for 21 days regarding its intention to treat both the purchase of irradiation services and the purchase of an existing or partially completed reactor as reasonable alternatives for long-term tritium supply. The Department summarized all comments received from both comment periods, prepared responses to the summaries, made revisions to the PEIS based on the comments, and identified its preferred alternative. The Notice of Availability of the Final Programmatic Environmental Impact Statement was published in the **Federal Register** on October 27, 1995 (60 FR 55021).

Comments have been received since the Notice of Availability was published asserting that there are errors in the analysis of cost, schedule and production assurance, especially regarding a new large Advanced Light Water Reactor. Comments were also received regarding the multipurpose reactor concept, and the use of the Fast Flux Test Facility at the Department's Hanford site to produce tritium. These comments are addressed in a subsequent section of this Record of Decision.

Alternatives Considered

Proposed Action: The Department of Energy proposes to provide tritium supply and recycling facilities for the Nation's Nuclear Weapons Complex. Tritium, a radioactive isotope of hydrogen, is produced in nature, but in very small amounts. Therefore, since it is an essential component of every warhead in the current and projected U.S. nuclear weapons stockpile, the amounts required must be man-made. Tritium decays at a rate of approximately 5.5 percent per year and must be replaced periodically as long as the Nation relies on a nuclear deterrent. Currently, the Department does not have the capability to produce the required amounts of tritium. The Department needs a capability that can produce tritium to meet the requirements set forth in the 1994 Nuclear Weapons Stockpile Plan, the latest official guidance. These requirements have been defined as a steady-state mode of 3/16 of the goal amount previously established for a nuclear reactor under the Department's New Production Reactors (NPR) program. The tritium supply source should also be capable of producing 3/8 of NPR goal amount if necessary either to eliminate inventory shortfalls or to support a larger stockpile size. The Department is currently meeting tritium requirements for the stockpile by utilizing tritium recycled from dismantled weapons. Ratification of the START II Protocol would mean that new tritium would be required by approximately 2011. The ability to meet an earlier date, if stockpile requirements should change, was also analyzed.

New tritium would be supplied, in either a reactor or accelerator, by irradiating target materials with neutrons and subsequently extracting the tritium in pure form for its use in nuclear weapons. The tritium recycling process consists of recovering residual tritium from weapons components, purifying it, and refilling weapons components with pure tritium. The Department's tritium recycle facilities are located at the Savannah River Site (SRS) near Aiken, SC.

Four technology alternatives were evaluated for a new supply facility—a heavy water reactor, an advanced light water reactor—both large (1,300 MWe) and small (600 MWe); a modular high temperature gas-cooled reactor; and a linear accelerator. Emerging design options for the heavy water reactor and the modular high temperature gas-cooled reactor were also reviewed. The advanced light water reactor and modular high temperature gas-cooled reactor alternatives were also evaluated as to the potential use of fuel fabricated from plutonium excess to weapons program requirements while simultaneously producing tritium and electricity (the so-called "multipurpose reactor"). Five sites were evaluated for a new facility—the Idaho National Engineering Laboratory (INEL), near Idaho Falls, ID; the Nevada Test Site (NTS), near Las Vegas, NV; the Oak Ridge Reservation (ORR), Oak Ridge, TN; the Pantex Plant (Pantex), Amarillo, TX; and SRS. The Department also evaluated the use of existing commercial light water reactors, either through purchase of an existing or partially completed reactor that would be converted for the production of tritium or through purchase of irradiation services from a privately owned reactor. The purchase of an existing or partially completed reactor would allow the Department, should it choose to do so, to implement the multipurpose reactor concept. Such use is evaluated in the Final PEIS and the Technical Reference Report. Additionally, in accordance with CEQ regulations, the no action alternative (not providing a new supply of tritium) was evaluated.

Tritium recycling alternatives evaluated included no action (utilizing existing facilities at the Savannah River Site with no upgrades or consolidation), consolidation and upgrading of the existing facilities, or construction of new recycling facilities to be collocated with a new tritium supply facility if the Savannah River Site were not chosen as the site for a new tritium supply facility. The consolidation and upgrading of the Savannah River Site recycling facilities would support either a new tritium supply facility (if constructed at the Savannah River Site) or the use of an existing commercial reactor (if a commercial reactor were ultimately selected as a long-term tritium supply source or became necessary as a contingency source of tritium). In addition, a new tritium extraction facility would be constructed at the Savannah River Site.

Tritium Supply Technology Alternatives

This section describes each of the alternatives. The size of the facilities, land area requirements, and construction and operation workforces are presented.

1. *No Action:* No Action is presented for comparison with the action alternatives. Under No Action, the Department would not establish a new tritium supply capability, the current inventory of tritium would decay, and the Department would eventually not meet stockpile requirements for tritium.

Construct and Operate New Facilities

2. *Accelerator Production of Tritium (APT):* An APT would accelerate a proton beam in a long tunnel toward one of two target/blanket assemblies located in separate target stations. Such an accelerator would be approximately 4,000 feet in length and would be housed in a concrete tunnel buried 40 to 50 feet underground. It would require approximately 550 MWe of electricity during peak production periods (to meet the 3/8 requirement) and 355 MWe to produce the steady-state requirement (to meet the 3/16 requirement) of tritium. In addition to the accelerator, the facility would include a klystron manufacturing and remanufacturing building as well as waste treatment, maintenance, operation, and administrative buildings, and a security infrastructure. Two target types are being analyzed, a helium-3 target which uses helium-3 gas to make tritium or a spallation-induced lithium

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conversion (SILC) target which uses lithium-6 to make tritium. The facilities required for the helium-3 target include target fabrication and target processing (including extraction) buildings. Facilities for the SILC target include target fabrication, target processing, and tritium extraction buildings. The APT complex would cover approximately 173 acres. Construction would take approximately 5 years and require approximately 2,760 workers during the peak construction year. Operation of the APT would require approximately 624 workers.

3. *Advanced Light Water Reactor (ALWR):* The ALWR would be a high temperature, high pressure reactor whose primary purpose would be to produce tritium, but which would also generate substantial amounts of electricity. There are two options for the ALWR technology: A large ALWR (1,300 MWe) and a small ALWR (600 MWe). Both options use light (regular) water as the reactor coolant and moderator, and include a power conversion facility as an integral part of the design. The design of the ALWR complex would include an interim spent fuel storage building, a waste treatment facility, a tritium target processing facility, warehouses, and security infrastructure. Fuel rods would be purchased from commercial suppliers.

Large ALWR: The large ALWR complex would require approximately 350 acres. Construction would take approximately 6 years and approximately 3,500 workers during the peak construction year. Operation would require approximately 830 workers.

Small ALWR: The small ALWR complex would also require approximately 350 acres. Construction would take approximately 5 years and require approximately 2,200 workers during the peak construction year. Operation would require approximately 500 workers.

4. *Heavy Water Reactor (HWR):* The HWR would be a low pressure, low temperature reactor whose sole purpose would be to produce tritium. The HWR uses heavy water (i.e. deuterium oxide) as the reactor coolant and moderator. Because of the low temperature of the exit coolant, a power conversion system designed to produce electrical power as an option would not be feasible. The conceptual design of the HWR complex includes a fuel and target fabrication facility, a tritium target processing building, an interim spent fuel storage building, a general services building, and security infrastructure. The HWR complex would cover approximately 280 acres. Construction would take somewhat less than 8 years and require approximately 2,320 workers during the peak construction year. Operation would require approximately 930 workers.

Small Advanced HWR: The small advanced HWR is an emerging design variation of the HWR. The design output of the small advanced HWR would be 470 MWt compared to 990 MWt for the HWR. It would have the same configuration of support buildings although they would be somewhat smaller. The design could be developed to produce tritium to meet steady-state tritium requirements, or modified to meet peak capacity requirements. The total area required for the complex would be 150 to 170 acres. Construction would take approximately 5 years and require approximately 1,800 workers during the peak year of construction. An operational workforce has not been estimated.

5. *Modular High Temperature Gas-Cooled Reactor (MHTGR):* The MHTGR would be a high temperature, moderate pressure reactor whose primary purpose would be to produce tritium, but which would also generate substantial amounts of electricity. The MHTGR would use helium gas as a core coolant and graphite as a moderator. A steam cycle MHTGR would use a heat converter to transfer the heat from the helium coolant to feedwater producing superheated steam which is then used to drive a turbine in the production of electricity.

The steam cycle MHTGR requires three 350 MWt reactors to produce the maximum (3/8) requirement of tritium. Because of the high temperature of the exit coolant, a power conversion facility designed to produce electricity is an integral part of the design. The design of the MHTGR complex, in addition to the three reactors, includes a fuel and target fabrication facility, a tritium target processing facility, helium storage buildings, waste treatment facilities, interim spent fuel storage facility, general services building, security infrastructure, and power conversion facility. The MHTGR complex would cover approximately 360 acres. Construction of the MHTGR would take about 9 years and require approximately 2,210 workers during the peak construction period. Operation would require approximately 910 workers.

Direct Cycle MHTGR: A direct cycle MHTGR is an emerging design variation of the steam cycle MHTGR. In this design the primary helium coolant drives a turbine generator through a gas-compression/gas-expansion, heating/cooling cycle. Two 600 MWt direct cycle reactors would be needed to produce the maximum (3/8) requirement of tritium. The support facilities, resource requirements, and environmental impacts of the direct cycle MHTGR are similar to the steam cycle MHTGR. A two reactor direct cycle MHTGR would require fewer operating personnel than the three module steam cycle MHTGR.

Use Existing Reactors

6. *Existing Commercial Reactors:* The purchase by the Department of an existing operating reactor, the purchase of a partially completed reactor, or the purchase of irradiation services from a commercial power reactor(s)(with an option to purchase the reactor) are the three options evaluated which utilize existing facilities. Commercial light water reactors use both pressurized water and boiling water technologies. The Department has conducted significant development work on tritium targets for pressurized water reactors. Significant additional development work would likely be required to develop a target for a boiling water reactor. The Department plans to proceed with development of the target for the pressurized water reactor, but has not ruled out the use of boiling water reactors if industry demonstrates an advantage to the Department in developing such a target.

Commercial pressurized water reactors are high-temperature, high pressure reactors that use ordinary light water as the coolant and moderator and are capable of generating large amounts of electricity through a steam turbine generator. A typical commercial light water reactor facility includes the reactor building, turbine generator building, auxiliary buildings, interim spent fuel storage facilities, cooling towers, a switchyard for the transmission of electricity, maintenance buildings, administrative buildings, and security facilities.

Purchase of an Operating Commercial Light Water Reactor or Purchase of Irradiation Services: Approximately 72 to 127 workers (depending upon the number of reactors utilized) would be added to the work force because of the tritium activities. New fencing and security buildings may be required to support additional security requirements. Road access restrictions or construction of new roads may also be required.

Purchase of a Partially Constructed Commercial Light Water Reactor: The number of construction workers and the length of the construction period would vary depending on the percentage of completion of the plant. Data were available for a two-unit reactor plant with one unit 45 percent complete and the second unit 85 percent complete. The schedule data estimated completing the 45 percent complete unit in 5 years or both units simultaneously in 7 years. Since the Department is only interested in one unit, the 5 year estimate was selected. It is possible that the 85 percent unit could be completed in a shorter time. For the 45 percent complete unit, peak year workers were estimated to be approximately 2,065. The 85 percent complete unit would require a peak work force of approximately 1,525. Operations would require approximately 830 workers.

Other Missions Beyond Tritium Production

Multi-Purpose Reactor Concept: The ALWR, MHTGR, and the purchase options of the commercial reactor alternative would also be capable of utilizing fuel fabricated from excess plutonium to make tritium and generate electricity. To "burn" plutonium in an ALWR or a commercial light water reactor, a plutonium Pit Disassembly, Conversion, and Fuel Fabrication Facility would be needed to fabricate the plutonium and uranium (mixed oxide) fuel rods. For the MHTGR, only a plutonium Pit Disassembly and Conversion Facility would be needed, because the MHTGR design already includes a fuel fabrication facility. The MHTGR, if used to "burn" plutonium, would utilize fuel fabricated solely from plutonium without blending it with uranium. However, because tritium production declines significantly in a plutonium-fueled MHTGR, twice as many reactors would be necessary in order to produce the steady-state (3/16) tritium requirements. The need to include a plutonium Pit Disassembly, Conversion, and Fuel Fabrication facility for the ALWR and commercial-reactor options, and the need for plutonium Pit Disassembly and Conversion Facility and more reactors for the MHTGR, would be major contributors to potential direct environmental impacts.

If an ALWR or commercial light water reactor were used as multi-purpose facilities, the new plutonium Pit Disassembly, Conversion, and Fuel Fabrication Facility would cover up to 129 acres and require a peak construction work force of approximately 745 during the 6-year construction period. Operation would require approximately 650 workers. If an MHTGR were used as a multi-purpose reactor, the new plutonium Pit Disassembly and Conversion Facility would cover up to 30 acres and require a peak construction work force of approximately 125 during the 6-year construction period. Operation would require approximately 520 workers.

Recycling Facilities

The tritium recycling facility processes and recycles tritium for use in nuclear weapons. This includes emptying reservoirs returned from weapons in the stockpile, recovering and purifying the tritium, reclaiming reusable reservoirs, providing new gas mixtures, and refilling reservoirs. The facility also tests reservoirs and provides appropriate waste management activities.

1. *No Action:* The Department currently operates tritium recycling facilities at the Savannah River Site. These facilities would continue to operate without modifications or consolidation to meet environmental, health, and safety requirements, or to maximize efficiencies. Environmental impacts would not change from those experienced today.

2. *Construct New Facilities:* If the tritium supply and recycling facilities were to be located at any site other than the Savannah River Site, new recycling facilities could be collocated with the supply facilities. The tritium recycling activities would be housed in two buildings for operations and several support facilities. All tritium handling activities would be completed in the tritium processing building, which would be designed to contain tritium releases should they occur. An auxiliary building would house non-tritium activities and extremely small amounts of working tritium. The recycling facilities would cover approximately 196 acres. Construction would take approximately 4 years and require approximately 335 workers during the peak year of construction. Operation of the recycling facilities would require approximately 910 workers.

3. *Upgrade Existing Facilities at Savannah River Site:* There are two options for the upgrade of recycling facilities at the Savannah River Site. The first, the unconsolidated upgrade, would result in the continued use of all existing facilities and thus no consolidation of tritium handling activities. Five buildings would be upgraded in order to meet environmental, health, and safety requirements. No additional land area would be required. Construction of the upgrades would take approximately 3 years and require approximately 26 workers during the peak construction year. Operations would require approximately 970 workers.

The second option, the consolidated upgrade, would result in closing one building and transferring its functions to two existing buildings. Four buildings would be upgraded to meet environmental, health, and safety requirements and one to accept the transferred activities. The land area required for the facilities would not change. Construction would take approximately 3 years and require approximately 36 workers during the peak construction year. Operations would require approximately 910 workers.

Siting of New Tritium Supply Facilities

New tritium supply facilities, if constructed, would be located at one of five sites currently owned by the Department. These five sites are:

1. *Idaho National Engineering Laboratory:* The INEL is situated on approximately 570,000 acres, approximately 50 miles west of Idaho Falls and presently employs approximately 10,100 workers. The site has been used to test, build, and operate nuclear facilities. Research and development activities include reactor performance studies, materials testing, environmental monitoring, waste processing, breeder reactor development, and naval reactor operator training. Currently, there are four operational reactors. In addition to nuclear research, INEL supports processing and/or storage of high-level, low-level, and transuranic radioactive wastes.

2. *Nevada Test Site:* The NTS is situated on approximately 854,000 acres, 65 miles northwest of Las Vegas. Approximately 6,850 workers are presently employed at the site. The site is a remote secure facility for conducting underground testing of nuclear weapons and evaluating the effects of nuclear detonations on military communications, electronics, satellites, sensors, and other materials. NTS is also the location of a low level radioactive waste management facility.

3. *Oak Ridge Reservation:* The ORR is located on approximately 35,000 acres, 20 miles west of Knoxville, TN. Approximately 15,000 workers are presently employed at the site. It includes three major facilities: the Oak Ridge National Laboratory; Y–12 Plant, and the K–25 site. The Oak Ridge National Laboratory conducts basic and applied scientific research and technology development. The K–25 site is the location of the former Oak Ridge Gaseous Diffusion Plant. It currently serves as an operations center for environmental restoration and waste management programs. Y–12 is the primary location for nuclear weapons activities at Oak Ridge. These include

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the dismantling of nuclear weapons components, maintaining uranium and lithium component fabrication capabilities, and storing special nuclear materials.

4. *Pantex Plant:* The Pantex Plant is located on 10,000 acres, 17 miles northeast of Amarillo, TX. Approximately 3,400 workers are presently employed at the site. Activities at Pantex include fabrication of chemical explosives, nuclear weapons assembly and disassembly, testing, repair and disposal of nonnuclear components, and development activities in support of the national laboratories. Pantex also is the interim storage site for sealed plutonium components from dismantled weapons.

5. *Savannah River Site:* The SRS is situated on approximately 198,000 acres, 12 miles south of Aiken, SC. Approximately 20,300 workers are presently employed at the site. Currently, tritium recycling operations to support nuclear weapons activities are conducted at the SRS. Other activities include interim storage of plutonium, waste management, and environmental monitoring and restoration. Past activities at SRS have included nuclear fuel and tritium target fabrication, operation of reactors for nuclear material production, chemical separation for recovery of plutonium and plutonium isotopes, tritium extraction, and uranium fuel reprocessing. The facilities that supported these past activities are currently supporting waste management and environmental cleanup activities and will ultimately be decommissioned and decontaminated.

Commercial Reactor Site: The commercial light water analysis does not evaluate a specific site. Currently, commercial light water reactors are operating on 59 sites in 32 states. Approximately one-half of these sites contain two or three nuclear units. The sites range in size from 84 to 30,000 acres. The largest use of the sites is for cooling systems, including reservoirs and artificial lakes, and safety buffer areas. Analysis of specific candidate reactors would be conducted in a separate NEPA document.

Preferred Alternative

Based on the analysis presented in the PEIS and Technical Reference Report, the Department announced a preferred alternative in the FINAL PEIS. The preferred alternative is a acquisition strategy that assures tritium production for the nuclear weapons stockpile rapidly, cost effectively, and safely. The preferred strategy is to begin work on the most promising production alternatives of purchasing an existing commercial light water reactor or irradiation services with an option to purchase the reactor for conversion to a defense facility, and to design, build, and test critical components of an accelerator system for tritium production.

The Savannah River Site was designated as the preferred site for an accelerator, should one be built. The preferred alternative for tritium recycling and extraction activities was to remain at the Savannah River Site with appropriate consolidation and upgrading of current facilities, and construction of a new extraction facility.

Tritium Supply Evaluation

This section describes the results of the Department's evaluation of each of the alternatives. It summarizes their environmental impacts, costs, and schedule and production assurance risks. The evaluation of schedule, production assurance and costs were completed by developing base estimates and then conducting a formal assessment by experts to determine the risk. The risk is presented as the probability of achieving a specific objective. Base cases were developed for six schedule components, production capacity and availability, and five cost components. The estimates were normalized to insure consistency across all tritium supply alternatives. Technical experts (different groups for schedule, production assurance, and cost) were asked to provide judgments of the probability of success of the base estimates for each of the schedule components, capacity and availability, and each of the cost components. In addition, potential technical, regulatory, or institutional problems were identified for each tritium supply alternative and their probability for causing schedule delay, production assurance uncertainty or cost uncertainty were assessed. The impacts of the problems on schedule, capacity and availability, and cost were assessed. This information was combined through multiple simulations to develop probabilities of meeting various schedule, production assurance and cost objectives. The environmental impacts reported in the PEIS were evaluated for discriminators among tritium supply technologies and among sites.

The schedule, production assurance, and waste factors which discriminate among tritium supply technology alternatives are summarized in Table 1. These are: (1) The capability of meeting a schedule supporting a START II Protocol stockpile size; (2) the likelihood of producing the amount of tritium necessary to meet maximum (3/8) tritium requirements; (3) amount of additional spent fuel generated; and (4) amount of additional solid low level radioactive waste generated. Costs are presented in Table 2. They are divided into: (a) Total life cycle cost with revenue; (b) total life cycle cost without revenue; (c) total project cost; (d) operations and maintenance cost; and (e) revenue.

Additional environmental discriminators are the need for or generation of electricity, and cancer risk from a severe accident. The APT and HWR are users of electricity while the ALWR(s), MHTGR(s), and purchase of a partially completed or existing commercial reactor will result in the generation of additional electricity. The range between the potential amount of electricity used (550 MWe for the APT) and the potential amount of electricity generated (1,300 MWe for the large ALWR) is 1,850 MWe. The amount of electricity used was evaluated for each candidate site against the capability of the power pool to supply electricity. No significant impacts on the pool or the ability to supply the required amounts were identified. A separate evaluation of the option of the construction and operation of a dedicated 550 MWe coal or gas-fired electrical generating plant was completed for the APT. The potential impacts of a gas-fired electrical generating plant were incorporated into the environmental analysis for each of the sites. The cancer risks attributable to a severe accident are, in absolute terms, very low for each alternative. However, in comparative terms, the APT clearly has a significantly lower cancer risk than any of the new facility reactor alternatives. Therefore, cancer risk is considered a discriminator between the APT and new reactor alternatives for the purposes of this decision. The results of the evaluations are described below.

TABLE 1.—SCHEDULE, PRODUCTION ASSURANCE, AND WASTE DISCRIMINATORS

Alternatives	Probability of delivering first gas in 2011 [a]	Probability of producing START I amounts in any one year	Additional spent fuel generated per year (yd³/yr)	Additional solid low level waste generated (yd³/yr)
No Action	0	0	0	0
APT	0.76	0.77	0	57 [e]
Large ALWR	0.78	0.96	55	710
Small ALWR	0.78	0.89	36	660
HWR	0.40	0.93	7	5,200
Small Advanced HWR	<0.40 [b]	0.79	<7 [f]	<5,200 [f]
Steam Cycle MHTGR	0.22	0.86	80	1,300
Direct Cycle MHTGR	<0.14 [c]	0.49	82	~1,300 [g]
Purchase Existing CLWR	>0.99 [d]	>0.96	40	160
Purchase Partially Complete CLWR	>0.99 [d]	>0.96	Similar to Large ALWR	Similar to Large ALWR
Purchase Irradiation Services	>0.99 [d]	>0.96	0 to 40 depending on number of reactors used.	160

[a] Includes technical, regulatory, and institutional delays.
[b] Due to emerging state of technology longer delays than HWR assumed.
[c] Probability without any delays is 0.14. Delay would reduce this probability.
[d] Assumes institutional questions are resolved.
[e] For Helium-3 target; 544 yd³/yr for SILC target.
[f] No analysis completed, however, expected to be the same or less than the HWR.
[g] No analysis completed, however, expected to be approximately the same as the steam cycle MHTGR.

1. Ability to meet required schedules. To meet projected stockpile requirements for tritium, new tritium gas is required by 2011. This date is based on a stockpile consistent with the START II Protocol. Maintaining a stockpile consistent with the START I Treaty would require new tritium gas by 2005. The schedule analyses assumed a requirement to deliver tritium in 2011. A sensitivity analysis assessed the ability of the alternatives to deliver new tritium gas in 2005.

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TABLE 2.—COST EVALUATION DATA AT SAVANNAH RIVER SITE
[In Billions of 1995 Dollars]

Alternatives	Total life cycle cost w/o revenue[a]						Total project cost[a]				Operations and maintenance[b] costs[a]			
	Low		Mean		High		Low	Mean	High		Low	Mean	High	
	Mean	High	Low	Mean	High									
No Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APT	5.1	7.8	3.6	5.1	7.8	2.0	3.0	5.6	7.2	3.9	1.4	2.1	2.9	
Large ALWR	3.7	7.6	4.8	6.5	10.2	2.4	4.0	7.2	3.9		1.9	2.8	3.3	
Small ALWR	2.7	4.5	3.2	4.2	5.8	1.6	2.3	3.9	6.4		1.4	1.9	2.5	
HWR	5.8	8.1	4.3	5.8	8.1	2.6	3.8	6.4	4.1		1.4	2.0	2.9	
Small Advanced HWR	4.2	5.7	2.9	4.2	5.7	1.8	2.7	4.1	7.8		0.9	1.5	2.1	
Steam Cycle MHTGR	6.3	9.9	5.0	7.1	10.7	3.0	4.5	7.8	7.4		1.8	2.6	3.7	
Direct Cycle MHTGR	5.0	8.3	4.2	6.0	9.5	2.5	4.1	7.4	2.8		1.4	1.9	2.6	
Purchase existing CLWR	1.4	3.8	2.8	4.1	6.2	1.0	1.7	2.8	3.4		1.7	2.4	3.2	
Purchase partially complete CLWR	2.0	4.4	2.9	4.4	6.6	1.1	1.9	3.4	0.7		0.5	2.5	3.8	
Purchase Irradiation Services	1.2	1.7	0.8	1.2	1.7	0.3	0.5	0.7				0.7	1.1	

[a] The costs are for steady-state production, discounted at 4.9% per year at SRS for new facilities. The low estimate corresponds to the 5th percentile of the cost probability distribution. The high estimate corresponds to the 95th percentile of the cost probability distribution.
[b] Operations and maintenance costs include decontamination and decommissioning costs.

The potential for technical or regulatory delays in the baseline schedule was also considered in assessing schedule uncertainties for each of the technologies. Technical delays relate to issues such as the maturity of the facility design, operational experience associated with the technology and maturity of the target design. Regulatory delays relate to the potential that independent reviews by organizations external to the Department could take longer than anticipated, either due to administrative licensing proceedings or to resolution of technical issues that delays design acceptance by the reviewing organization. By the end of 1995, a Task Force on External Regulation established by the Department is scheduled to present its recommendations whether the Department's nuclear facilities should be externally regulated, and if so, by what entity. While a number of different outcomes are possible as a result of the Task Force efforts, the Nation's commercial nuclear reactors are now regulated by the Nuclear Regulatory Commission (NRC). Therefore, in considering scenarios that involved regulatory delay, the Department used the NRC regulatory process and structure as the basis for this consideration, and assumed that an NRC license would be obtained for construction and operation of the reactor technologies.

Since the NRC has the greatest amount of experience with regulation of light water reactors, the potential regulatory delays associated with the light water options, either the new ALWR designs or the existing commercial reactor options, were assumed to be the shortest among the reactor technologies. Potential regulatory delays associated with the MHTGR and the HWR would be greater than for the light water candidates because changes to the NRC's regulatory structure would be required to license these technologies. While there will be technical and potential regulatory reviews associated with the APT design, the safety issues associated with this technology are not nearly as complex as those associated with any of the reactor technologies. Therefore, the potential for regulatory delays was assessed to be minimal. The purchase of an existing or partially complete commercial reactor would also require the transfer of a license to the Department, which would require a change to the Atomic Energy Act and corresponding changes to the NRC regulations.

While issues related to the new facility technologies are primarily technical and regulatory, existing commercial reactors are subject to an additional set of institutional issues that must be resolved before this option could be implemented to meet long-term tritium requirements. These center around concerns about the use of civilian commercial reactors for purposes which support military requirements. Such issues have been raised in the past predominantly in conjunction with the use of civilian reactors to produce special nuclear materials (highly enriched uranium and plutonium) which would, in turn, be used to make nuclear weapons. Any concerns will have to be addressed and resolved over the course of the next several years if the commercial reactor alternative options are to be utilized as the primary long-term source of tritium.

The no action alternative would not be able to produce new tritium. Therefore, it could not meet the schedule requirements.

Of the action alternatives, the commercial reactor options have the highest probability of meeting the 2011 start date, if there are no technical or institutional delays. However, as noted above, there are institutional issues related to their implementation. If these issues cannot be resolved, the commercial reactor alternative would remain only as a contingency source of tritium in the event of an emergency.

Even when delays or major issues are taken into account, the ALWRs, among the new facility alternatives, have a high probability of meeting the required 2011 start date. The base case construction schedule of the small ALWR is one year shorter than that of the large ALWR. However, the small ALWR has a higher risk of technical delays due to the uncertainties surrounding its passive safety system and potential regulatory delays, due to the fact that it has not yet received NRC design certification. The APT has only a slightly smaller probability of meeting the 2011 date compared to the ALWRs, and it is expected to have very few technical or regulatory delay problems. The HWR and the MHTGR would have difficulty in meeting the 2011 date.

The sensitivity analysis on producing tritium as early as 2005 assumed that the base schedules could be compressed by 2 years, and that no technical or regulatory delays would occur. It showed that the commercial options have a high probability (0.80 to 0.99) of meeting the 2005 date. The APT and the small ALWR have a small (0.20) probability of producing tritium by 2005 if no delays are experienced. None of the other alternatives could produce tritium by 2005.

The assessment also showed that the schedule for completing all activities to develop a multipurpose reactor would be similar or identical to that of the MHTGR, ALWRs, and purchase of a commercial reactor options if they are used for tritium production alone, as long as the tritium mission is given priority over the plutonium burning and electricity production missions.

In summary, the no action alternative is not able to meet tritium schedule requirements. The HWR and MHTGR have the potential for major technical or institutional delays; thus, there is a low probability of their making tritium by the 2011 start date. The ALWRs and the APT have a very high probability of delivering tritium by 2011. The commercial options have the highest potential for delivering tritium by 2011, if the institutional issues associated with the defense use of such facilities can be resolved. Only the commercial options have a high probability of delivering tritium by 2005, if that becomes a requirement.

2. Ability to produce the required amounts of tritium. Production assurance refers to the ability of the tritium supply alternatives to meet the annual production requirements for maintaining the tritium inventory. The steady-state (3/16) and maximum (3/8) production rates were used in the production assurance analysis.

The second column of Table 1 summarizes the results of the production assurance analysis in terms of the probability that a tritium supply option can meet the maximum rate in any given year. Since the facility is designed to operate for 40 years, a technology that produced at more than the maximum rate in any given year would produce excess tritium. If such a year is followed by a year that the technology produced at less than the maximum rate, the combination of years would still produce roughly the desired overall quantity of tritium over the 40-year lifetime of the facility. Thus, a production rate with a 0.50 probability of a rate meeting or exceeding the maximum rate in any given year provides a reasonable degree of production assurance. A 0.75 probability of meeting or exceeding the maximum rate every year is a high degree of production assurance, since it means that roughly during 30 years of the 40 years of production the maximum rate will be exceeded.

For all tritium supply alternatives, with the exception of the direct cycle MHTGR, there is a high probability of producing the required amounts of tritium (0.77 or higher). The direct cycle

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MHTGR has a moderate probability of production assurance (0.49).

The production assurance of a multipurpose reactor would not change from that of the MHTGR, ALWR, and commercial reactor purchase options, as long as tritium production is the primary mission of the facility. National security requirements mandate that tritium supply remain the primary mission of a multipurpose reactor.

In summary, the no action alternative has no chance of meeting the tritium production requirements. With the exception of the direct cycle MHTGR, all other alternatives have very high probabilities of meeting the steady-state and maximum production requirements.

3. Environmental impacts. The Final PEIS presents numerous environmental impacts for a variety of resource areas for each of the new tritium supply facility alternatives at each of the five sites, and generic impacts for the commercial reactor options. The analysis was completed for meeting the maximum (3/8) goal requirement of tritium. Many of these impacts are very small. For example, the air quality impacts of all technological alternatives at all sites are very low. Most other impacts show little or no differentiation among alternatives. The evaluation of the tritium supply alternatives focuses, therefore, on the three environmental impacts that differentiate among the tritium supply alternatives: spent fuel generation, low level radioactive waste generation and risks from severe accidents. For all three of these area of environmental impact, the no action alternative would not change the status quo, i.e., no tritium would be produced. Therefore, it has the lowest environmental impact. This section presents the evaluation of tritium supply technology alternatives which are not site dependent. The following section presents the evaluation of the sites.

3.1 Spent fuel. Spent fuel is measured by the cubic yards of radioactive spent fuel rods produced during reactor operations in one year. The third column of Table 1 shows the annual amounts of spent fuel generated by the reactor supply alternatives. The new reactors generate spent fuel amounts ranging from 7 cubic yards to 80 cubic yards. The options to purchase an operating reactor or to purchase irradiation services would create up to 48 cubic yards of additional spent fuel (if only one reactor were utilized) due to shorter refueling cycles. If there were no change to the refueling cycles, no additional spent fuel would be generated. The option to purchase an incomplete reactor would create amounts of spent fuel comparable to those of the large ALWR. The APT does not generate any spent fuel. No additional spent fuel would be produced by virtue of the use of fuel fabricated from excess plutonium for the ALWR, MHTGR, or purchase commercial reactors options.

3.2 Low level radioactive waste. The fourth column of Table 1 shows the annual amounts of low level radioactive waste produced by the supply alternatives. For the new facility alternatives the HWR creates by far the most low level radioactive waste (5,200 cubic yards), followed by the other new rectors. The APT generates the least amount of low level radioactive waste (57 cubic yards) when using the helium-3 target, and 544 cubic yards when using the SILC target. The options to purchase an operating commercial reactor or to purchase irradiation services would create 160 cubic yards of additional low level radioactive waste due to the use of additional fuel rods and to handling additional radioactive materials. The option of purchasing an incomplete reactor would produce amounts of low level radioactive wastes that are similar to those of the large ALWR. A multipurpose reactor would generate about the same amount of low level radioactive waste as the reactor when used for tritium production alone. However, the plutonium Pit Disassembly and Conversion and Mixed-Oxide Fuel Fabrication Facility for the ALWR and commercial reactor options would generate approximately 540 cubic yards of low level radioactive waste annually. The plutonium Pit Disassembly and Conversion Facility for the MHTGR would generate approximately 10 cubic yards of low level radioactive waste per year.

3.3 Severe accidents. Risk is the probability of an accident occurring times the consequences of the accident if it occurred. Cancer risk to a population within a 50-mile radius of a facility is influenced by the size of the population within the radius. However, technologies can be compared if the same 50 mile radius is used for the analysis. For the purposes of comparison the SRS is used. The annual cancer risk from a severe accident to the population within 50 miles of the facility for the new reactor technologies is very low, ranging from 5.1×10^{-5} to 2.6×10^{-7} at the SRS. The APT would have the lowest annual cancer risk (2.8×10^{-11}) for all the new facility alternatives. The options to purchase an operating reactor or to purchase irradiation services would pose no significant additional severe accident risks because of adding tritium production. The option to purchase an incomplete commercial reactor would have severe accident risks that are comparable to that of a large ALWR.

The use of plutonium as mixed oxide fuel in an ALWR or the purchase of commercial reactor options would not significantly affect the consequences of radioactivity releases from severe accidents though there would be some small changes in the source term release spectrum and frequency. The MHTGR would have twice as many reactors when operated in the multipurpose mode, and therefore, while extremely small, the accident risk for the MHTGR would double if used in this mode compared to the risk if used for tritium production alone.

An accident at a plutonium Pit Disassembly and Conversion and Mixed-Oxide Fuel Fabrication Facility for the ALWR and purchase of commercial reactor options would result in a small additional cancer risk from a severe accident if located at the SRS. A severe accident at the plutonium Pit Disassembly and Conversion facility for the MHTGR would also result in a small additional cancer risk.

In summary, the no action alternative has no additional environmental impacts. The APT and the commercial options to purchase an operating reactor or to purchase irradiation services, if the fuel cycle is not changed, generate no additional spent fuel, and have the lowest amounts of additional low level radioactive waste and cancer risks from a severe accident. The new reactor alternatives and the completion of a partially complete commercial reactor produce spent fuel and low level radioactive waste, and they present a very small additional cancer risk from a severe accident.

4. Affordability (Cost). For each action alternative, a range of costs, and the probability distributions over the range, were developed for Total Life Cycle Cost (TLCC), Total Project Cost (TPC), and Operation and Maintenance (O&M). The O&M costs included decontamination and decommissioning. No costs were developed for the no action alternative. For the action alternatives, results were calculated for both undiscounted and discounted cost. The discount rate used was 4.9% per year in accordance with Office of Management and Budget guidance. The ALWR, MHTGR, and purchase commercial reactor options can produce revenues through electricity generation. The TLCC was calculated with and without revenues for these alternatives. Costs were estimated both for steady-state and maximum production rates.

The results of the cost ranges for steady-state production using discounted 1995 dollars are shown in Table 2. For each alternative a low, mean and high cost estimate is presented for TLCC with revenue, TLCC without revenue, TPC and O&M. The low estimate is the 5th percentile of the cost probability distribution, i.e., there is a 5% chance that the true cost will fall below the low estimate. The mean estimate is the average of the cost probability distribution. The high estimate is the 95th percentile of the cost probability distribution, i.e., there is a 95% chance that the true cost will fall below it.

The TLCC with revenue represents the estimated cumulative discounted net cost to the government or the taxpayers for each of the alternatives, since revenues from electricity sales would come to the government, not the Department. The Department must budget for all costs; therefore, the TLCC without revenue shows the estimated cumulative discounted cost to the Department. TPC represents the discounted capital cost estimates to develop, construct and make operational each alternative. The O&M costs are the discounted costs after the facility would become operational.

For TLCC with revenues (first column of Table 2), the option to purchase irradiation services has the lowest mean estimated cost (1.2 billion dollars) with uncertainty adding approximately 500 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean cost of 1.4 billion dollars (17 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.4 billion dollars. The option to purchase a partially complete commercial reactor has a mean cost of 2.0 billion dollars (67 percent higher than purchasing irradiation services) with uncertainty adding 2.4 billion dollars. The new reactor technology alternatives have mean costs that range from 2.7 billion dollars for the small ALWR (125 percent higher than purchasing irradiation services) to 6.3 billion dollars for the steam cycle MHTGR (425 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, which add from 1.5 billion dollars (small advanced HWR) to 3.9 billion dollars (large ALWR). The APT has a mean cost of 5.1 billion dollars (325 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.7 billion dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

For TLCC without revenues (second column of Table 2), the option to purchase irradiation services has the lowest mean estimated cost (1.2 billion dollars) with uncertainty adding approximately 500 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean cost of 4.1 billion dollars (242 percent higher than purchasing irradiation services) with uncertainty adding approximately 1.1 billion dollars. The option to purchase a partially complete commercial reactor has a mean cost of 4.4 billion dollars (267 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.2 billion dollars. The new reactor technology alternatives have mean costs that range from 4.2 billion dollars for the small ALWR and small advanced HWR (250 percent higher than purchasing irradiation services) to 7.1 billion dollars for the steam cycle MHTGR (492 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, which add from 1.5 billion dollars (small advanced HWR) to 3.7 billion dollars (large ALWR). The APT has a mean cost of 5.1 billion dollars (325 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.7 billion dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

For TPC (third column of Table 2), the option to purchase irradiation services has the lowest mean estimated TPC (0.5 billion dollars) with uncertainty adding approximately 200 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean TPC of 1.7 billion dollars (240 percent higher than purchasing irradiation services) with uncertainty adding approximately 1.1 billion dollars. The option to purchase a partially complete commercial reactor has a mean TPC of 1.9 billion dollars (280 percent higher than purchasing irradiation services) with uncertainty adding 1.5 billion dollars. The new reactor technology alternatives have mean TPCs that range from 2.3 billion dollars for the small ALWR (360 percent higher than purchasing irradiation services) to 4.5 billion dollars for the steam cycle MHTGR (800 percent higher than purchasing irradiation services). All new reactor alternatives have significant cost uncertainties, that add from 1.4 billion dollars (small advanced HWR) to 3.3 billion dollars (Direct Cycle MHTGR). The APT has a mean TPC of 3.0 billion dollars (500 percent higher than purchasing irradiation services) with uncertainty adding approximately 2.5 billion dollars. The large uncertainties create a substantial overlap in the TPC distributions of the alternatives, except for the purchase of irradiation services.

The O&M costs make up the fourth cost item (fourth column of Table 2). The option to purchase irradiation services has the lowest mean estimated O&M cost (700 million dollars) with uncertainty adding approximately 400 million dollars (95th percentile above the mean). The option to purchase an existing reactor has a mean O&M cost of 2.4 billion dollars (243 percent higher than purchasing irradiation services) with uncertainty adding approximately 800 million dollars. The option to purchase a partially complete commercial reactor has a mean O&M cost of 2.5 billion dollars (257 percent higher than purchasing irradiation services) with uncertainty adding 1.3 billion dollars. The new reactor technology alternatives have mean O&M costs that range from 1.5 billion dollars for the small advanced HWR (114 percent higher than purchasing irradiation services) to 2.6 billion dollars for the steam cycle MHTGR (271 percent higher than purchasing irradiation services). All new reactor alternatives have significant O&M cost uncertainties, that add from 600 million dollars (small Advance HWR) to 1.1 billion dollars (steam cycle MHTGR). The APT has a mean O&M cost of 2.1 billion dollars (200 percent higher than purchasing irradiation services) with uncertainty adding approximately 800 million dollars. The large uncertainties create a substantial overlap in the cost distributions of the alternatives, except for the purchase of irradiation services.

The costs of a multipurpose reactor were analyzed separately from the tritium supply alternatives. The Department's Fissile Materials Disposition Office and an independent contractor prepared separate estimates. Different discount rates were used in the reports, which also only identified the minimum and maximum cost range. The results of the independent analysis, in discounted 1995 dollars are: (1) $4.5 billion to $14 billion for a government-owned large ALWR, $2.9 billion to 8.6 billion for a small ALWR, and $2.7 billion to $9.9 billion for a commercial reactor option; (2) $5.2 billion to $25.4 billion for a privatized large ALWR, $3.1 billion to $14 billion for a small ALWR, and $1.9 billion to $11.3 billion for a commercial reactor option. The result of the Department's analysis, in discounted 1993 dollars, is: (1) For a

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government-owned large ALWR costs would range from $1.5 billion to $3.5 billion, and 2) for a privately financed large ALWR costs would range from $0.7 billion to $5.0 billion. These amounts include revenue from electricity sales.

In summary, the purchase of irradiation services is the lowest cost in all categories and has the lowest uncertainty. The other commercial options have the lowest cost estimates for TLCC both with and without revenues, and for TPC but with a higher degree of uncertainty. The APT, small ALWR, and small advanced HWR make up a middle group with approximately similar discounted mean costs for TLCC without revenue, and TPC. The small ALWR and small Advanced HWR have smaller uncertainties than the APT in both these categories. TLCC with revenue shows the small ALWR to have a lower mean cost than the APT or the small advanced HWR and adds the large ALWR to this middle group. The large ALWR is in the higher mean cost group for TLCC without revenue and for TPC, along with the MHTGRs and HWR, which also have higher uncertainties. The O&M analysis shows that the purchase of irradiation services has clearly the lowest mean cost, with all other alternatives grouped together. The uncertainties for all the alternatives generally have a substantial overlap in their cost distributions.

Evaluation of Site Alternatives

The five sites for new tritium supply and recycling facilities were evaluated with respect to environmental impacts and cost. Two criteria emerged as discriminators: (1) Ability to handle low-level radioactive waste; and (2) cost. No siting analysis was needed for the commercial reactor options, since they all currently exist, and any reactor ultimately selected would have to undergo a separate NEPA review.

Numerous environmental impacts were examined in the Final PEIS. The analysis either showed very small or no impacts, or the impacts did not differentiate among sites including cancer risks from a severe accident. Impact differences are primarily due to the differences in the size of the population within 50 miles of the site. Because cancer risk is low for all sites, it is not a discriminator between sites. The cost estimates for site alternatives are published in the Technical Reference Report.

The results of the evaluations are summarized in Table 3 and described below.

TABLE 3.—SITE EVALUATION

Criterion site	Ability to dispose of wastes on site	Cost of adding non-evaporative cooling (reactors only)[a]	Percent adjustment to base cost site (INEL) due to site differences	
			Construction (percent)	Operation & maintenance (percent)
INEL	Yes	$86 to $208	0	0
NTS	Yes	99 to 239	5	15
ORR	Yes	0	5	0
PANTEX	No	98 to 239	−10	15
SRS	Yes	0	0	10

[a] Mean discounted cost in millions of 1995 dollars, using a 4.9% annual discount rate.

1. *Ability to Handle Wastes.* As shown in column 2 of Table 3, with the exception of Pantex, all sites can dispose of low level radioactive waste on site. The wastes from Pantex would be shipped to an approved off site low level radioactive waste disposal facility.

2. *Cost.* The results of the cost comparisons are shown in Table 3. Cost differences among sites are determined by three major factors:

(1) The cost for the non-evaporative cooling system needed at sites which do not have ample water availability (this does not apply to the APT, which is not designed to use non-evaporative cooling),

(2) The percentage differential in construction costs (primarily because of labor rates), and

(3) The percentage differential in operation and maintenance costs (primarily because of labor and electricity rates).

The third column of Table 3 shows the range of additional costs due to the need for non-evaporative dry cooling for reactors at INEL, NTS, and Pantex. The high end of these costs would occur for the large ALWR.

The fourth and fifth columns of Table 3 show the percent increases in cost of construction, and operation and maintenance over the least expensive site (INEL). For construction, Pantex shows a decrease, SRS shows no change, and NTS and ORR show small increases. Operation and maintenance costs are higher at NTS and Pantex than INEL, with SRS higher than INEL but less than NTS and Pantex. ORR shows the same cost to INEL. These differences are fairly small compared to the large uncertainties in the actual costs of the facilities.

Evaluation of Tritium Recycling Alternatives

If a new supply facility is chosen at INEL, NTS, ORR, or Pantex, the alternatives are to build a new recycling facility collocated with the supply facility or to upgrade the SRS facility. Constructing a new tritium recycling facility (1.9 to 2.1 billion dollars) is more expensive (between $500 million and $750 million) than upgrading existing tritium recycling facilities (1.3 billion) at SRS. The operational environmental impacts would be similar.

If a new supply facility is chosen at SRS or if a commercial reactor option is chosen, upgrading the existing tritium recycling facility is the only option considered, since building a new recycling facility at another site is more expensive and has no other advantages.

Cumulative Impacts

Impacts from the siting, construction, and operation of new tritium supply and recycling facilities would be cumulative with impacts from existing and planned facilities and actions at the five candidate sites. The consequences of each new tritium supply alternative and recycling alternatives include the cumulative effect of tritium supply and recycling impacts and impacts from existing, planned, and reasonably foreseeable operations. Other more long-term impacts associated with the Department's proposed Environmental Management Program and the Storage and Disposition of Weapons-Usable Fissile Materials Program are speculative at this time but could increase or decrease cumulative impacts, depending on the decisions resulting from the PEISs being prepared for these programs and the time frame of site-specific projects. Information on potential waste management activities at the candidate sites was included as appropriate in the assessment of waste management impacts in the Tritium Supply and Recycling PEIS.

The Storage and Disposition PEIS alternative of burning plutonium in a reactor could result in increased cumulative impacts at the candidate sites if this Record of Decision selected a new facility, and the Record of Decision for the Storage and Disposition PEIS selected a separate new reactor. The impacts of combining tritium production and plutonium disposition in a single reactor, the multipurpose reactor, were evaluated in the Tritium Supply and Recycle PEIS. Cumulative impacts from constructing two separate reactors would approximately double those presented for a single reactor in the Tritium Supply and Recycling PEIS. Cumulative impacts from construction of a APT for tritium production and a new reactor for plutonium disposition would be represented by adding together the APT and ALWR or MHTGR impacts evaluated in the Tritium Supply and Recycling PEIS. Cumulative impacts would be minimized if tritium production and plutonium disposition were to take place in a single reactor.

The Environmentally Preferable Alternative

The environmentally preferable alternative is the alternative that would cause the least impact to the physical environment, and best protect worker and public health.

With respect to all three decisions, the no action alternative is the environmentally preferable alternative. Under the no action alternative, tritium requirements to support the nuclear weapons stockpile would continue to be met by recovering residual tritium from weapons components, purifying it, and refilling weapons components. These activities would be performed at the Savannah River Site, the current location of this function. However, under the no action alternative, the Department would not establish a new tritium supply capability and the Department would not meet future stockpile requirements of tritium. This would be contrary to the Department's mission as specified by the Atomic Energy Act of 1954, as amended. Thus, no action is not a reasonable alternative.

Of the alternatives that would satisfy the Department's mission, the potential environmental impacts are generally small and, except for the commercial reactor options to purchase an existing reactor or irradiation services, the impacts are within the same range. The Department considers the commercial reactor options of purchasing an existing reactor or irradiation services to be the environmentally preferred alternative.

Implementation of either of these options would result in certain environmental impacts. The environmental impacts of construction activities would be limited to any support facilities that would be required. Operation of the commercial reactor options would have few potential environmental impacts. No additional spent fuel over and above what the reactor(s) would otherwise generate during their planned lifetime would be generated, assuming that operating scenarios do not change fuel cycles. If fuel cycles were changed, additional spent fuel would be generated.

There are no environmental grounds for discrimination among sites for the tritium supply alternatives. Therefore, the SRS is the environmentally preferred site since impacts from upgrading tritium recycling facilities are less than building new facilities at any of the other sites. Resource areas where no major differences exist, or where potential environmental impacts are small are: land resources, air quality, water resources, geology and soils, biotic resources, socioeconomics, and site infrastructure.

Comments on the PEIS and Related Documents

Several comments were received on the Final PEIS during the 30-day period following the filing of the Final PEIS with the Environmental Protection Agency (EPA). The EPA stated that all of its specific comments on the Draft PEIS had been adequately addressed in the Final PEIS. A vendor for one of the ALWRs commented that on the Final PEIS did not adequately reflect the fact that the electricity-producing reactor options have an environmental benefit. That is, construction of such a reactor would offset the need to build and operate an equivalent capacity of fossil-fueled power plants, whereas the accelerator would have an additional environmental impact from a power plant needed to provide electricity for operating the accelerator.

The Final PEIS assessed the environmental impacts associated with providing power to the APT. Two methods were assessed: (1) Purchasing electricity from regional power pool grids; and (2) building and operating a dedicated power plant. If a new dedicated power supply were constructed, impacts would occur to air resources, land use, soils, biotic resources, and socioeconomics at the construction site. Operation of a dedicated power supply, or increased electrical demand on the power pool would result in increased impacts to air resources, water resources, waste management systems, and local traffic. Impacts to land use, soils, waste management systems, and biotic resources could occur at the plant location and along the transportation system supplying the coal or gas to the power plant. While these environmental impacts were assessed, no decision regarding a preferred source of power is appropriate at this time. If an accelerator were eventually built, the site-specific NEPA review would more fully explore the options of providing power to the accelerator, and the appropriate decision would be made at that time. The environmental impacts that could be avoided through the use of a multipurpose reactor are discussed qualitatively in the Final PEIS for both the ALWR, MHTGR, and commercial reactor alternatives. These impacts are presented as part of the cumulative impacts discussion in the previous section.

Additional comments on the Technical Reference Report and cost analysis were also received from the vendor for one of the ALWRs. The vendor questioned the basis of the cost estimate and the judgments used in developing the uncertainties related to schedule, production assurance, and cost as presented in the Technical Reference Report. The commentor presented a revised set of assumptions resulting in modifications to the cost ranges for the large and small ALWRs, APT and commercial reactor options. The Department does not agree with these assumptions. However, if these assumptions were accepted hypothetically, and applied consistently and appropriately to each of the ALWR, APT, and commercial reactor options, the result would be to increase the cost range of the purchase of irradiation services and lower the cost ranges of all other light water alternatives. Thus, there still would be significant overlap in the cost of these alternatives, and there would be no effect on the decisions presented in this Record of

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Decision. The Department selected experts knowledgeable in schedule, cost or production assurance for the assessment panels who did not stand to gain from the results of the assessment. In addition, each panel included experts knowledgeable in the different technologies and the mean results of their combined judgments were used in the uncertainty analysis.

The Department received on October 11, 1995, a Congressional report: "Getting On With Tritium Production: A Report to Speaker Newt Gingrich". The primary recommendation of the report is that the Department base its selection of a tritium production source on two objectives: Maximizing the assurance that tritium sources will be available when needed and minimizing costs to the taxpayers. The Department's acquisition strategy described in this Record of Decision implements this recommendation of the Congressional report. Additional recommendations related to insuring that the plutonium disposition mission and the tritium production mission be reviewed for combining efforts to save money, and the new reactor option must be evaluated to the same level of detail as the commercial reactor options. The responsibility for tritium production and fissile material disposition rests with two separate offices in the Department, the preparation of the Tritium Supply and Recycle PEIS and Technical Reference Report was closely coordinated with the Office of Fissile Materials Disposition. Therefore, the option of using a reactor in a multipurpose mode is analyzed in these two documents and the factors relevant to decision making are presented in this Record of Decision. Due to the rapid decay of tritium, and the long lead time required to bring a new tritium source on line, even supplies of tritium from retired weapons are not sufficient to postpone the need for a tritium supply facility to the point where decisions concerning technology and site selection can be deferred. With regard to equal evaluation, the Department believes that the analysis completed to date accomplishes this recommendation. Cost considerations associated with the reactor alternatives point the decision toward existing commercial reactors. Moreover, a new reactor has no major schedule or production advantage over an existing reactor that would justify incurring the additional cost and environmental impacts associated with a new reactor.

A private group has recently suggested that it purchase the Fast Flux Test Facility (FFTF) from the Department and that the Department then contract with the private group to make tritium at that facility. In the PEIS, the use of FFTF was considered and dismissed as a long-term tritium supply option because the amount of tritium that it could produce would only meet a percentage of the steady state tritium requirements, and it was not reasonable to rely on operating the facility far beyond the end of its design life. However, the Department will evaluate the presentation made by the private group to determine whether the operation of the FFTF might be able to play any role in meeting future tritium requirements. If any changes are warranted to this Record of Decision following that review, or further NEPA documentation is required, the Department will take appropriate action.

Decision

The Department is making three simultaneous decisions regarding tritium supply and recycling. First, the Department will pursue a dual track on the two most promising tritium supply alternatives: (1) To initiate the purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and (2) to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of the tracks to serve as the primary source of tritium. The other alternative, if feasible, would be developed as a back-up tritium source. Second, the Savannah River Site is selected as the location for an accelerator, should one be built. Third, the tritium recycling facilities at Savannah River Site will be upgraded and consolidated to support both of the dual track options. A tritium extraction facility will be constructed at Savannah River Site. The basis for these decisions is as follows.

Tritium Supply Decision: The options of the commercial reactor alternative are the best in terms of schedule, production assurance and cost. However, there are institutional issues with these options that must be resolved, or else the alternative can only be used as a contingency.

Institutional issues regarding the use of a commercial reactor(s) must be resolved. Since commercial reactors are already constructed and operating, adding the tritium mission to an existing reactor does not significantly increase any existing environmental impact. Using existing commercial reactors offers the least expensive approach. The purchase of irradiation services presents the lowest cost and has the lowest uncertainty. The purchase of an existing or partially completed commercial reactor has the lowest capital and life cycle costs but a greater degree of uncertainty than the purchase of irradiation services.

Among the new facility alternatives, the accelerator has the highest probability to meet earlier production requirements because of less regulatory uncertainty. Among the new facility alternatives, the accelerator also has the least environmental impact because it does not use fissile material, generates no high-level wastes, and while the risk from a severe accident is very small for all of the alternatives, the risk for the accelerator is the smallest. While all of the components of the accelerator have been proven, the entire system needs to be demonstrated to assure the components work together as a complete system. From a cost perspective, the APT is grouped with the small ALWR and small advanced HWR in a middle range of costs if revenue is not taken into consideration. There is significant overlap among the alternatives, however. The two reactor alternatives have a smaller uncertainty than the APT. If revenue is included, the small ALWR has a lower mean cost than the APT and small advanced HWR. Also the large ALWR is added to this middle group. The Department has confidence that as we optimize the accelerator design over the next several years, the resulting costs will fall within the lower end of the cost range presented in the Technical Reference Report.

Based on the these considerations, the Department will implement a dual acquisition strategy that assures tritium production for the nuclear stockpile rapidly, cost-effectively, and safely. This dual-track strategy for meeting tritium supply requirements provides the following advantages:

- Resolves major uncertainties over the next three years, before selection of the primary alternative;
- Selects the new facility that has the lowest estimated environmental impacts, an accelerator, and the environmentally preferred alternative, purchase of a existing commercial reactor or irradiation services;
- Lessens programmatic risk because it: 1) pursues two technically different and independent approaches which provide fall back in the event either approach develops significant problems; 2) provides proven independent capability to increase production; 3) develops and protects contingency capability to support requirements in the event of a national emergency; 4) selects a strategy that has the greatest flexibility to meet production requirements earlier than 2011, if necessary, and 5) includes the least cost option (irradiation services); and
- Preserves an option for simultaneous reactor "burning" of excess weapons plutonium, if the Storage and Disposition of Weapons—Usable Fissile Materials Record of Decision selects reactor burning of that material.

Site Decision: For the commercial options, the potential sites are where existing facilities are located. Selection will be subject to a separate NEPA analysis. For the APT, environmental impacts and costs are not significant discriminators. The Savannah River Site will be the site for the APT, if one is constructed, because it has the only existing tritium recycling capability and infrastructure of the candidate sites.

Tritium Recycling Decision: Upgrading and consolidating the tritium recycling facilities at the Savannah River Site is the least expensive option and avoids additional transportation of tritium between sites if the APT is constructed. Therefore, if the APT is the primary source of tritium, the existing tritium recycling facilities at Savannah River Site will be consolidated and upgraded. If one of the commercial reactor options becomes the primary source of tritium, the existing recycling facilities at Savannah River Site will be consolidated and upgraded, and a new extraction facility will be constructed.

Issued in Washington D.C., December 5, 1995.

Hazel R. O'Leary,

Secretary.

[FR Doc. 95–30238 Filed 12–11–95; 8:45 am]

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Part VIII

The President

Executive Order 12982—Ordering the Selected Reserve of the Armed Forces to Active Duty

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Presidential Documents

Title 3—

The President

Executive Order 12982 of December 8, 1995

Ordering the Selected Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around former Yugoslavia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
December 8, 1995.

[FR Doc. 95-30451
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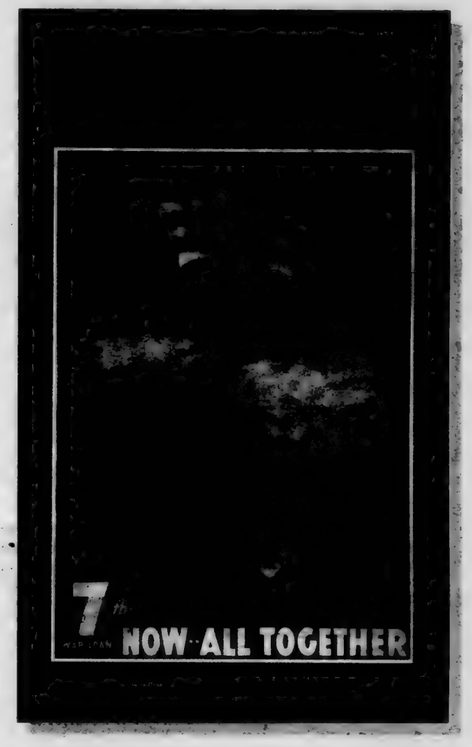
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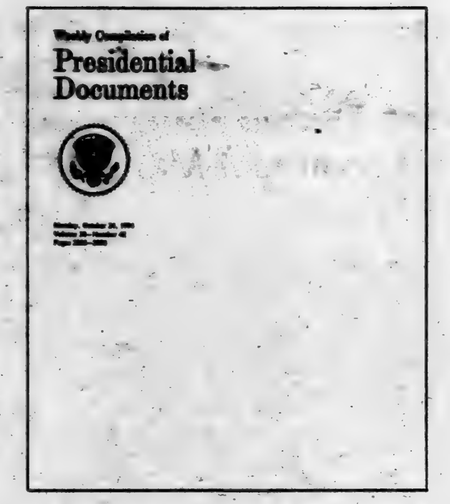
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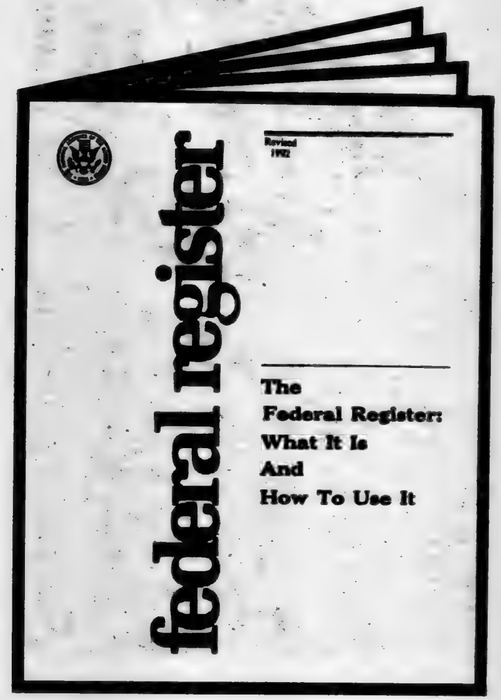
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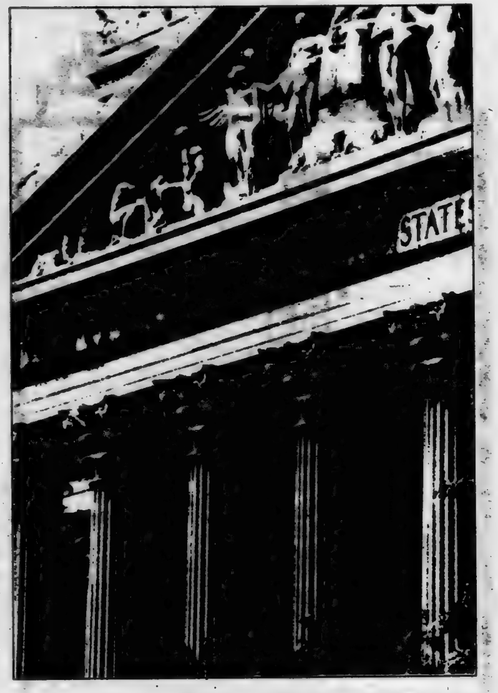
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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD83

Revision of Specific Exemptions Under the Privacy Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act of 1974, as amended (Privacy Act), to those currently in place for System of Records NRC–18, "Office of the Inspector General (OIG) Investigative Records—NRC," under subsections (k)(1), (k)(2), and (k)(6). The additional exemptions for NRC–18 are necessary to maintain the integrity and confidentiality of these records, to protect the privacy of third parties, and to avoid interference with law enforcement activities. The final rule also updates the list of exemptions that apply to specific NRC systems of records and is necessary to eliminate any confusion regarding the exemption(s) applicable to each system.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995 (60 FR 38282), the NRC published a proposed rule in the **Federal Register** that would amend NRC's Privacy Act regulations contained in 10 CFR part 9, subpart B. The proposed amendments would add subsections (j)(2) and (k)(5) exemptions to Privacy Act System of Records NRC–18, "Office of the Inspector General (OIG) Investigative Records—NRC," and update the list of exemptions that apply to specific NRC systems of records. On July 26, 1995 (60 FR 38379), the NRC published revisions to NRC–18 that would, among other things, add subsections (j)(2) and (k)(5) exemptions and two new routine uses, revise existing routine uses, and permit disclosures to consumer reporting agencies. The public was provided 40 days in which to comment on the two notices. No comments have been received. In addition, as required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–130, a report on the proposed revisions to the system of records and 10 CFR Part 9 was sent to the Committee on Government Reform and Oversight, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and OMB.

Under subsection (j)(2) of the Privacy Act, the head of an agency may issue rules to exempt any system of records within that agency from certain provisions of the Privacy Act if the system is maintained by an agency component whose principal function pertains to the enforcement of criminal laws and if the system of records consists of information compiled for a criminal law enforcement purpose. NRC–18 is maintained by the OIG, a component of NRC which performs, as one of its principal functions, investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended, and contains criminal law enforcement information. Therefore, pursuant to subsection (j)(2), NRC–18 is exempt from all provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC–18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to

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records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in those records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this exemption as that set out previously in item (4) (duty to maintain in agency records only "relevant and necessary" information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible to determine the accuracy, relevance, and completeness of some information until further investigation is conducted, or indeed in many cases until after a trial (if at all). This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigations.

(10) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Exemption from this requirement is needed to avoid revealing investigative techniques and procedures outlined in those records and to avoid prematurely revealing an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule issued thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may, by rule, exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC–18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC–18 is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only "relevant and necessary" information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because NRC–18 is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list includes NRC–23, "Office of Investigations Indices, Files, and Associated Records—NRC," and NRC–35, "Drug Testing Program Records—NRC," for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC–40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

Environmental Impact—Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0043.

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Regulatory Analysis

This final rule adds exemption (j)(2) of the Privacy Act to the NRC regulations that describe exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of statutorily appointed Inspectors General. The rule also adds the (j)(2) and (k)(5) exemptions to the system of records maintained by OIG and clearly links each NRC system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. The rule does not have an economic impact on any class of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the rule may provide some benefit to those who may be required to use these regulations.

The alternative to the rule would be to refrain from adopting the identified exemptions. As discussed in this document, failure to adopt the rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

§ 9.52 Types of requests.

* * * * *

(b) *Requests for accounting of disclosures.* * * * (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

* * * * *

4. In § 9.80, paragraphs (a)(6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) * * *

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or designee for evaluation to determine whether the record has such value;

* * * * *

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

The following records contained in the designated NRC Systems of Records (NRC–5, NRC–9, NRC–11, NRC–18, NRC–22, NRC–23, NRC–28, NRC–29, NRC–31, NRC–33, NRC–35, NRC–37, and NRC–39) are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC–18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC–5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC–9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC–11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC–18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC–22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC- 23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC–28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC–29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC–31 (Exemption (k)(1));

(j) Special Inquiry File, NRC–33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC–35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC–37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC–39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, MD., this 1st day of December, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–30173 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–120; Special Conditions No. 25–ANM–110]

Special Conditions: Jetstream Aircraft Limited Model 4101 Series Airplanes; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to Jetstream Aircraft Limited for the Jetstream Model 4101 series airplanes. This airplane will have an unusual design feature for which the applicable airworthiness regulations do not contain appropriate safety standards. The unusual design feature is an Automatic Takeoff Thrust Control System (ATTCS) that resets power on the operating engine for compliance with the approach climb performance requirements in § 25.121(d). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 6, 1995. Comments must be received on or before January 29, 1996.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–120, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–120." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–120." The postcard will be date stamped and returned to the commenter.

Background

On May 24, 1989, British Aerospace Public Limited Company (BAe) (currently Jetstream Aircraft Ltd.) applied for a type certificate for the BAe Model 4100 (currently Jetstream Model 4101) airplane in the transport airplane category. The Jetstream Model 4101 is a transport category airplane powered by two Garrett TPE331–14GR/HR Series turbo-propeller engines mounted on the wing. McCauley Model B/C 5JFR36C1101/2 or 3/4–/L114 G/H CA–0 five-blade propellers are installed. The airplane is type certificated with two flight crewmembers and up to 30 passengers.

The Jetstream Model 4101 will incorporate an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Jetstream as Automatic Power Reserve or APR, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.101, Jetstream must show that the Model 4101 series airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A41NM are as follows:

Based on §§ 21.29 and 21.17 and the type certification application date, the applicable U.S. type certification basis for the Model 4101 was established as follows:

—Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25–1 through 25–66 (all based on BAe application date to CAA), and

—Part 25 of the FAR, Amendments 25–67, 25–68, 25–69, 25–70, 25–71, and

—Part 25 of the FAR, §§ 25.361 and 25.729 and paragraphs 25.571(e)(2), 25.773(b)(2) and 25.905(d), all as amended by Amendment 25–72, and

—Section 25.1419 as amended by Amendments 25–1 through 25–66, and

—Special Conditions (SC) as follows:

—Special Conditions No. 25–ANM–48 issued August 29, 1991, Lightning and High Intensity Radiated Fields (HIRF)

—Special Conditions No. 25–ANM–45 issued July 9, 1991, Cabin Aisle Width, and

—The following exemptions were petitioned for and granted:

—FAA Exemption No. 5587 issued January 13, 1993, Head Impact Criteria (25.562(c)(5)) for the three most forward passenger seats in passenger cabin, and

—Equivalent safety findings as follows:

—25.349 of the FAR, Rolling Conditions

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—25.729(e)(2) of the FAR, Landing Gear Aural Warning
—25.811(d)(2) of the FAR, Emergency Exit Marking, Over Wing Exits
—25.1182 of the FAR, Nacelle areas behind firewalls, and
—Part 34 of the FAR effective September 10, 1990, and
—Part 36 of the FAR effective December 1, 1969, including Amendments 36–1 through 36–18, including Appendices A, B, and C.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Jetstream Model 4101 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Features

The Jetsteam 4101 is a twin turbopropeller airplane equipped with electronic engine controls that protect against exceeding the engine temperature and torque limits. It also incorporates an ATTCS system that can automatically add power to the operating engine in the event one engine fails. This system benefits engine life by allowing the normal all-engines-operating power to be set at less than the maximum available power when the airplane operation is limited only by one-engine-inoperative performance considerations. If an engine fails, the ATTCS is armed and the operating engine is above 65% torque, the ATTCS automatically increases the Exhaust Gas Temperature (EGT) limit by 40° C and the torque by 11%, but does not allow the torque to exceed either the 100% torque limit or the higher EGT limit. Therefore, the Jetstream 4101 ATTCS only provides an increase in power at temperatures above the normal flat rate limit temperature.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As stated in the preamble to Amendment 25–62:

In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.121(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase. (52 FR 43153, November 9, 1987)

The ATTCS incorporated on the Jetstream 4101 allows the pilot to use the same power setting procedure during a go-around regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by advancing the power levers until reaching either 100% torque or the EGT limit. If ATTCS is operating (i.e., one engine is inoperative), the EGT limit computed by the electronic engine control and displayed to the pilot is 40° C higher than when all engines are operating. For a go-around in which an engine fails after go-around power has been set, the ATTCS operates exactly as it does during takeoff to automatically boost power.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

As discussed above, these special conditions are applicable to the Jetstream Model 4101. Should Jetstream Aircraft Limited apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**, however, as the certification date for the Jetstream Model 4101 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Jetsteam Model 4101 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subject to the notice and public comment procedure in a recent instance with no comment. For this reason and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice. Therefore, special conditions are being issued for this airplane and made effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

According, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Jetstream Model 4101 airplane.

(a) *General:* An ATTCS is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

(b) *Automatic takeoff thrust control system (ATTCS).* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements:

(1) *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the fightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(2) *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll or go-around may not be less than:

(i) Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(ii) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; and

(iii) That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust or power to the maximum approved takeoff thrust or power.

(3) *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(i) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(ii) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, § 125.(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

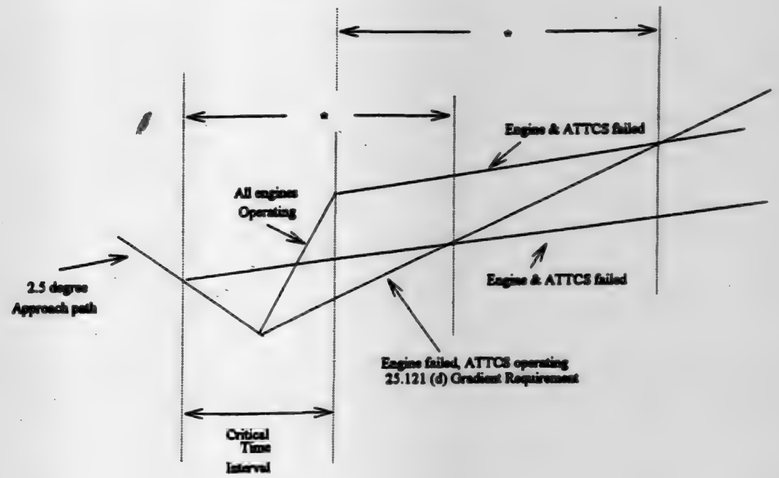
(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the Part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending up reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the Part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the Part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) the critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

(3) The critical time interval is illustrated in the following figure:

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*The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with 125.2(b) for ATTCS use during takeoff.

Issued in Renton, Washington, on December 6, 1995.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, AMN-100.

[FR Doc. 95-30386 Filed 12-12-95; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28390; Amdt. No. 1609]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 17, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 4, 1996*

Key West, FL, Key West Intl, VOR/DME or GPS RWY 27, Amdt 2
Key West, FL, Key West Intl, NDB or GPS-A, Amdt 14
Key West, FL, Key West Intl, RADAR-1, Amdt 4
Tecumseh, MI, Al Meyers, VOR OR GPS-A, Amdt 7
Fairmont, NE, Fairmont State Airfield, NDB RWY 17, Orig
Fairmont, NE, Fairmont State Airfield, NDB OR GPS RWY 35, Amdt 1
Hartington, NE, Hartington Muni, VOR/DME RWY 31, Orig
Nebraska City, NE, Nebraska City Muni, NDB RWY 15, Orig
Nebraska City, NE, Nebraska City Muni, NDB RWY 33, Orig
Scribner, NE, Scribner State, VOR RWY 35, Orig
Lexington, TN, Franklin-Wilkins, VOR or GPS RWY 33, Amdt 10
Louisa, VA, Louisa County-Freeman Field, LOC RWY 27, Orig

** * * Effective February 1, 1996*

Baltimore, MD, Martin State, ILS RWY 33, Amdt 5
Millville, NJ, Millville Muni, VOR-A, Orig
Millville, NJ, Millville Muni, VOR OR GPS RWY 19, Amdt 3A CANCELLED

** * * Effective February 29, 1996*

Bastrop, LA, Morehouse Memorial, GPS RWY 16, Orig
St. Charles, MO, St. Charles County Smartt, GPS RWY 18, Orig
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt 4

[FR Doc. 95-30369 Filed 12-12-95; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28402; Amdt. No. 1608]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria was applied to only these specified conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public

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procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
11/16/95	IA	Pella	Pella Muni	FDC 5/6289	NDB or GPS RWY 34, AMDT 6...
11/18/95	SC	Columbia	Columbia Metropolitan	FDC 5/6251	ILS RWY 29 AMDT 3B...
11/17/95	CA	Placerville	Placerville	FDC 5/6284	GPS RWY 5, ORIG...
11/21/95	VT	Morrisville	Morrisville-Stowe State	FDC 5/6339	NDB or GPS–B AMDT 1...
11/22/95	AR	Little Rock	Adams Field	FDC 5/6366	ILS RWY 4R, ORIG...
11/28/95	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 5/6438	ILS RWY 29L AMDT 41...

[FR Doc. 95–30367 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 29401; Amdt. No. 1697]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 4, 1996*

Jacksonville, FL, Jacksonville Intl, ILS RWY 13, Amdt 5
Olive Branch, MS, Olive Branch, LOC/DME RWY 18, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 9
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16R, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34L, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 34R, Amdt 1
Superior, WI, Richard I. Bong, GPS RWY 13, Orig
Superior, WI, Richard I. Bong, GPS RWY 31, Orig

** * * Effective February 1, 1996*

Syracuse, NY, Syracuse Hancock Intl, VOR or GPS RWY 14, Amdt 21

** * * Effective February 29, 1996*

Crossett, AR, Z M Jack Stell Field, GPS RWY 23, Orig
De Kalb, IL, De Kalb Taylor Muni, GPS RWY 9, Orig
Indianapolis, IN, Indianapolis Metropolitan, GPS RWY 33, Orig
New Castle, IN, New Castle-Henry Co Muni, VOR OR GPS RWY 27, Amdt 9
New Castle, IN, New Castle-Henry Co Muni, NDB OR GPS RWY 9, Amdt 5
New Castle, IN, New Castle-Henry Co Muni, NDB RWY 27, Amdt 5
Ames, IA, Ames Muni, GPS RWY 31, Orig
Fairfield, IA, Fairfield Muni, GPS RWY 36, Orig
Houma, LA, Houma-Terrebonne, GPS RWY 12, Orig
New Orleans, LA, Lakefront, GPS RWY 18R, Orig
Bar Harbor, ME, Hancock County-Bar Harbor, GPS RWY 4, Orig
Sullivan, MO, Sullivan Regional, GPS RWY 24, Orig
Woodbine, NJ, Woodbine Muni, VOR–A, Orig
Woodbine, NJ, Woodbine Muni, VOR or GPS–A, Amdt 2 Cancelled
Silver City, NM, Grant County, GPS RWY 26, Orig
Ponca City, OK, Ponca City Muni, NDB OR GPS RWY 17, Amdt 4
Ponca City, OK, Ponca City Muni, NDB RWY 35, Amdt 3
Ponca City, OK, Ponca City Muni, GPS RWY 35, Orig

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On July 22, 1994, the Commodity Futures Trading Commission (Commission) published for comment proposed amendments to Rule 3.34, which governs ethics training for Commission registrants. 59 FR 37446. Based upon its review of the comments received and its own reconsideration of the proposed amendments, the Commission has determined to adopt the rule amendments as proposed, with certain modifications discussed herein.

EFFECTIVE DATE: These rule amendments will become effective January 12, 1996. However, with respect to existing ethics training providers, the provision of § 3.34(b)(5) relating to promotional and instructional materials, including videotape and computer presentations, will become applicable March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Myra R. Silberstein,

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SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act), mandating ethics training for all persons registered under the Act.[1] On April 15, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.[2] By Federal Register release issued on September 13, 1993, the Commission provided further guidance with respect to the contents of applications to be submitted by persons seeking to provide ethics training to registrants.[3]

Proposed amendments to Rule 3.34, published in July 1994, would: (1) require a certification by persons seeking to provide ethics training that they would not be disqualified from registration under the Act; (2) limit certain representations that ethics training providers may make concerning their status as such; (3) facilitate the use of videotape and electronic presentations; and (4) enhance the ability of a registered futures association to track the ethics training attendance dates of registrants. The Commission received four comment letters on the proposed rule amendments. The commenters included a registered futures association, a computer-based ethics training provider and two other ethics training providers. The commenters generally supported, or acknowledged their understanding of, the objectives of the proposed rule amendments. Some commenters, however, criticized the scope of the proposed rule amendments. Further, one of the ethics training providers who submitted comments requested additional time to update its program materials to comply with the changes that would be required by the rule amendments. Comments addressed to specific provisions of the proposed rule amendments and the Commission's resolution of the issues raised therein are discussed below in the context of the relevant rule provision.

Based upon its review of the comments received on the proposed amendments and in light of its experience in administering this program, the Commission has adopted amendments to Rule 3.34 regarding ethics training providers. The provisions of Rule 3.34 relating to the topics to be covered in ethics training and the minimum requirements for attendance at such training remain unchanged. The amendments adopted herein will, subject to proposed amendments to Rule 3.34 published in this edition of the Federal Register, permit a person to be included by a registered futures association on a list of authorized providers of such training upon filing of a notice with a registered futures association certifying that: (1) he is not subject to a statutory disqualification from registration under the Act;[4] (2) barred from service on self-regulatory organization (SRO) governing boards or committees pursuant to Commission Rule 1.63 or SRO rules; or (3) subject to a pending proceeding with respect to possible violations of the Act or rules or orders promulgated thereunder. These amendments will also prohibit certain representations with respect to a person's status as an ethics training provider; allow wider use of ethics training presentations by videotape and computer; and require ethics training providers to furnish records of attendees to a registered futures association upon request.

By separate release published in this edition of the Federal Register, the Commission is proposing several additional amendments to Rule 3.34 to address certain further issues relating to ethics training providers. These amendments would require ethics training providers other than SROs: (1) To satisfy the same proficiency testing requirements as registrants; and (2) have at least three years of pedagogical or relevant industry experience.

II. Amendments to Commission Rule 3.34

A. Required Certifications by Applicants to Become Ethics Training Providers

Currently, three categories of persons may provide ethics training to Commission registrants pursuant to Rule 3.34: (1) SROs; (2) entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or (3) any other person whose program "is approved by the Commission for this purpose."[5] The amendments to Rule 3.34 proposed in July 1994 would have continued to permit SROs and state-accredited continuing education providers to act as ethics training providers without compliance with any additional requirements. With respect to persons other than SROs or state-accredited entities, the proposed amendments would permit such persons to provide ethics training upon filing of a notice with a registered futures association certifying that the person, all principals thereof (as defined in Commission Rule 3.1(a))[6] and any individuals who, on behalf of such person, conduct in-person ethics training sessions or prepare ethics training videotape or electronic presentations,[7] are not subject to: (1) any statutory disqualification from registration under Sections 8a(2) or (3) of the Act;[8] (2) a bar from service on SRO governing boards or committees arising from relevant disciplinary history, as specified in Commission Rule 1.63[9] or any SRO rule adopted thereunder; or (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or

[1] This provision of the Act is codified at 7 U.S.C. 6p(b)(1994) and states that:

> The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[2] 58 FR 19675, 19584–19587, 19593–19594 (April 15, 1993).

[3] 58 FR 47890 (September 13, 1993). The Commission has reviewed applications from more than twenty-five persons seeking to provide ethics training to registrants.

[4] Sections 8a (2) and (3) of the Act, 7 U.S.C. 12a (2) and (3) (1994).

[5] 17 CFR 3.34(b)(3)(1995).

[6] 17 CFR 3.1(a)(1995).

[7] Thus, if an entity organizes a corporation to offer ethics training and hires an instructor to conduct the lectures, the notice must include within its coverage the entity, the corporation and the instructor. Such notice must also be amended as necessary to cover any additional instructors required to handle the number of persons enrolling in the ethics training program.

[8] 7 U.S.C. 12a(2) or (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

[9] Pursuant to Rule 1.63, each SRO must maintain in effect rules which render a person ineligible to serve on its governing boards, disciplinary committees, or arbitration panels who, among other things, has been found within the prior three years to have committed a disciplinary offense or entered into a settlement agreement where the charge involved a "disciplinary offense," is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A "disciplinary offense" for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than $5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

Commission Rules 3.55, 3.56 or 3.60.[10] This certification procedure will replace the existing application procedure for entities that are not SROs or state-accredited providers of continuing education in the fields of law, finance, accounting or economics.

The Commission believes that it is appropriate to require persons seeking to act as ethics trainers to provide a certification of the nature outlined above in order to assure a minimum level of fitness to act as ethics trainers.[11] The statutory requirement for ethics training is intended "to ensure that registrants understand their responsibilities to the public under [the] Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rules of any appropriate contract market, registered futures association, or other self-regulatory organization or any other applicable Federal or State law, rule or regulation."[12] The Commission believes that, generally, it would be inconsistent with this Congressional mandate and contrary to the public interest for a person to instruct others about their responsibilities under the Act and other applicable requirements if such person has a disciplinary history that reflects a failure to comply with such provisions.

The Commission has used several objective, established benchmarks to identify persons with disciplinary histories that call into question their suitability to provide ethics training. Disqualifying disciplinary histories for this purpose would be those which constitute disqualifications from registration under the Act or bars from service on SRO governing boards or committees, pending adjudicatory proceedings, including disqualification proceedings relating to possible violations of the Act or Commission rules. The Commission has also provided in the final rules, as in the proposed rules, that the certification requirement imposes a continuing duty; consequently, if the certification becomes inaccurate, the provider must so inform the registered futures association, which shall then refuse to include such person on, or remove such person from, the list of ethics training providers.[13]

One effect of these amendments is to permit the National Futures Association (NFA), currently the only registered futures association, to maintain a list of eligible ethics training providers for purposes of Commission Rule 3.34. In its comment letter on the proposed amendments, NFA recommended that the rule amendments provide procedural protection for ethics training providers who are either rejected or removed from the list by NFA. In particular, NFA recommended that providers rejected or removed from the list be afforded a hearing before NFA with an opportunity to appeal to the Commission. The Commission believes such a procedure to be appropriate and, accordingly, has incorporated it in the final rules as subparagraph 3.34(b)(3)(v). The Commission contemplates that the hearing before NFA in these circumstances could be limited to written submissions and that any subsequent appeal to the Commission would be based on the record before NFA.

NFA also stated in its comment letter that it was uncertain how information regarding statutory disqualifications could be verified, particularly if it could not require that fingerprints be provided and thus would be unable to access the Federal Bureau of Investigations criminal records database. Although cognizant of this limitation, the Commission believes that, in the first instance, NFA should employ the other existing databases that it uses to verify applications of registrants, including the Clearinghouse of Disciplinary Information which NFA maintains with respect to futures industry data and the Securities and Exchange Commission database on securities industry violations.

Another commenter stated that all ethics training providers, including state-accredited continuing education entities and SROs, should be subject to prior approval by the Commission. The Commission's ethics training rule has not previously required state-accredited entities and SROs to file an application before providing ethics training to registrants. When the Commission originally adopted Rule 3.34(b), it did not require applications for authorization to provide ethics training by SROs and state-accredited entities because SROs are subject to the Commission's regulatory framework and oversight, while state-accredited entities are subject to certification and review by the relevant state. However, in the proposed rule amendments published elsewhere in this edition of the Federal Register, the Commission is now proposing that state-accredited entities be subject to certification and monitoring applicable to other ethics training providers, as discussed above. The Commission believes that in the absence of such compliance, given the lack of uniformity in state continuing education accreditation requirements, it will not have sufficient assurance that such providers have a minimum level of knowledge of relevant statutory and regulatory requirements or of fitness to provide ethics training.[14]

One commenter stated that those ethics training providers whose applications to provide ethics training have already been granted by the Commission should be exempt from the certification process set forth in the proposed amendments to Rule 3.34. The Commission agrees with this view and will provide NFA with the current list of authorized ethics training providers for inclusion in the list of authorized providers. However, NFA will be expected to monitor existing providers as well as new providers and may remove any provider for cause as contemplated by subparagraph (b)(3)(iv). As noted above, if circumstances change such that an ethics provider's certification becomes inaccurate, the provider must so inform the NFA. Upon such notice from the provider (or otherwise), NFA shall refuse to include such person on or remove such person from the list of authorized providers.

B. Delegation of Authority

The purposes of subparagraphs (b)(3)(iii) through (b)(3)(v) of Rule 3.34 are to permit NFA to maintain a list of eligible ethics training providers.

[10] A pending proceeding is a basis to bar a person whose registration has expired within the preceding sixty days from obtaining a temporary license upon mailing a new registration application (see 17 CFR 3.11(c)(1)(i)(B), 3.11(c)(1)(ii)(B), 3.12(d)(1)(iv), and 3.12(i)(1)(iv)(1995)), to bar a person from serving as a sponsor or special supervisor of a conditioned or restricted registrant (see 17 CFR 3.60(b)(2)(i)(A)(1995)), and to prevent withdrawal from registration (see 17 CFR 3.33(f)(1) (1995)).

[11] The requirements discussed above apply to a certification from any ethics training provider. As discussed below, if the ethics training provider will offer training by means of videotape or electronic presentation, the provider's certification would also be required to include a statement with respect to verification of registrants' attendance.

[12] Section 4p(b) of the Act.

[13] However, if a firm is subject to a pending adjudicatory proceeding as described above, the firm may submit a certification to a registered futures association with an explanation describing the circumstances of the proceeding, particularly with respect to the scope and nature of the proceeding in relation to the size of the firm. For example, a proceeding that is limited to a single branch office of a firm and that does not involve fraud or failure to supervise might be treated differently than a proceeding involving allegations extending to the overall operations of the firm or making claims of fraud. The Commission would expect the registered futures association to consult the Commission concerning specific certifications in cases involving an ethics provider that is or becomes subject to a proceeding.

[14] In the proposing release, the Commission also is inviting comments concerning the continued appropriateness of permitting SROs to offer ethics training without qualifying to do so in the same manner as other providers.

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Therefore, the Commission hereby delegates authority to NFA: (1) To maintain the list of eligible ethics training providers for purposes of Commission Rule 3.34, including the authority to refuse to include persons on such list pursuant to the criteria set forth in Rule 3.34(b)(3)(iii) or criteria established by NFA and approved by the Commission; (2) to establish guidelines as to the required proficiency and experience of ethics training providers; (3) to receive and evaluate complaints concerning such providers and conduct other appropriate reviews of providers' operations, subject to Commission oversight; (4) to develop appropriate procedures to verify certifications filed by potential ethics training providers; and (5) to require that such certifications be updated periodically. NFA's procedures must be submitted to the Commission for review pursuant to Section 17(j) of the Act,[15] which governs Commission review and approval of registered futures association rules.

In its comment letter on the proposed amendments to Rule 3.34, NFA supported the Commission's proposal to delegate responsibility to NFA for the processing and review of applications of prospective ethics training providers and confirmed its willingness to assume this responsibility. However, NFA suggested that the Commission establish objective standards for NFA to follow in discharging these responsibilities. NFA expressed the view that ethics training providers should satisfy a proficiency standard that is objective, readily measurable and would assure that providers possess a working knowledge of the industry and its regulations.

As noted above, the Commission is proposing, by separate **Federal Register** release, certain minimum requirements with respect to proficiency testing and experience to be applicable to ethics training providers other than SROs. These proposals include a requirement that ethics training providers be subject to the same proficiency testing requirements as the registrants they propose to instruct. This proficiency test will generally be the National Commodity Futures Examination (Series 3 Exam).

The Commission is also proposing to require that ethics training providers other than SROs demonstrate that they have at least three years of pedagogical or relevant industry experience. The Commission's delegation of authority to NFA includes authority to establish guidelines concerning the specific types of pro-ficiency tests and experience necessary to satisfy these requirements.[16] Of course, NFA may submit to the Commission for decision any specific matters which have been delegated to it and Commission staff will be available to discuss with NFA staff issues relating to the implementation of these rules, including the review of operations of ethics training providers.

[15] 7 U.S.C. 21(j)(1994).

C. Permissible Representations

To date, in granting the applications of persons seeking to provide ethics training, the Commission has made clear that it is not approving the specific content of the proposed ethics training program or expressing any opinion as to the program's quality or accuracy. The Commission believes that it is appropriate to clarify by rule the effect of authorization to provide ethics training under Rule 3.34 for all providers. Accordingly, the Commission proposed in Rule 3.34(b)(5) to prohibit any representation or implication that an ethics training provider has been sponsored, recommended or approved, or the provider's abilities or qualifications or the content, quality or accuracy of the training program provided, has in any respect been passed upon or endorsed by the Commission, a registered futures association, or any representative thereof.

The commenters voiced no objections to this proposed provision. However, one commenter requested that the effective date of these rule amendments be delayed for ninety days for existing ethics training providers to enable them to modify their presentations and materials to comply with the adopted changes. The Commission believes that all providers should be given ninety days in which to comply with the requirement to include the specified statement in promotional and instructional material. Therefore, the effective date of Rule 3.34(b)(5) will be ninety days following publication, rather than thirty days following publication, which is the effective date for all other provisions.

Accordingly, the Commission has adopted Rule 3.34(b)(5) to provide that no SRO, state-accredited continuing education entity or other person included on a list of ethics training providers "may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues,[17] have in any respect been passed upon or endorsed, by the Commission or a registered futures association." Rule 3.34(b)(5) further provides that any promotional or instructional material used in connection with ethics training "must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training."[18]

In the July 1994 release, the Commission also proposed to limit the use an ethics training provider may make of that status in certain adjudicatory proceedings. As stated in the proposing release, the Commission did not believe that a person should be able to use his or her status as an ethics training provider to qualify as an expert witness or to present expert testimony in an adjudicatory proceeding before the Commission or to which the Commission is a party. While the commenters voiced no objections to this provision, the Commission, upon reconsideration of this issue, has determined that the prohibitions of the representations specified in paragraph (b)(5) should suffice to bar inappropriate use of status as an ethics training provider. Therefore, the Commission has not adopted proposed paragraphs (b)(5)(ii) and (b)(5)(iii) of Rule 3.34, which would have limited certain uses of status as an ethics training provider. However, the Commission emphasizes that inclusion on the list of authorized ethics training providers should not be viewed as a warranty of expertise and that in its view such status should not be accorded weight in determinations of the provider's qualifications as an expert witness.

D. Videotape and Electronic Presentations

Commission Rule 3.34(b)(3) provides that a program of ethics training may be offered by videotape or electronic presentation. In adopting Rule 3.34, the Commission initially provided that videotape or computer training, in lieu of in-person ethics training, should only be available when geographical inconven-ience or other factors made in-person training impracticable.[19] However, in proposing amendments to Rule 3.34 in July 1994, the Commission indicated that any registrant may meet his ethics training requirement through in-person courses or through the use of videotape or computer presentations regardless of circumstances.[20]

The Commission also wishes to make clear, however, that if videotape or electronic training is offered, the provider must be able to verify that the video has been viewed or the electronic training completed by the registrant before the provider issues a certificate of attendance to the registrant.[21] Therefore, Rule 3.34(b)(3)(iii)(B), as revised by the amendments adopted herein, requires that, if a provider will conduct training by means of videotape or electronic presentations, either exclusively or in addition to in-person training, the provider's certification required under Rule 3.34(b)(3)(iii) must be supplemented to include a representation that the provider will maintain documentation reasonably designed to verify that registrants have properly completed ethics training for the minimum time required (one, two or four hours).

The Commission envisages that an appropriate verification regime for a provider would include procedures such as the following. The provider would maintain a list of the computer-based ethics program purchasers and match each completed program with a record of purchase. Registrants would be required to enter identifying information, such as name, firm's name, business address, telephone number, date of birth, NFA and/or Social Security number, on the control disk and return a signed statement with the completed computer disk certifying that he did in fact complete the ethics training course in the manner set out in the instructions.

With respect to the fulfillment of the minimum time requirements and verification of the registrants' participation in the program, the ethics training provider could use a computer-based test to assure that the registrant has attained a minimum level of understanding of the materials covered, drawing upon matters covered in video and written materials, as well as the computer program, to the extent applicable. To assure that each section of the program is completed, registrants would be required to pass each section of the test prior to answering questions in later sections of the test. While those who fail the test would be required to retake it until it is successfully completed, only the time spent on the first test could be credited toward the ethics training time required by Rule 3.34. Registrants answering quickly would be given additional questions to answer, and the program would cease recording elapsed time for those slow to answer questions. Thus, registrants would be monitored both as to time spent and material covered. If a provider wished to follow a different verification regime, he could do so if such steps had been submitted to and not found objectionable by a registered futures association.

The Commission contemplates that an ethics training provider would be able to document that a registrant had undertaken the various steps required for the provider to verify completion. The provider would be required under revised Rule 3.34(b)(4) to maintain documentation substantiating its determination that ethics training has been properly completed by a registrant and to support its issuance of a certificate of attendance.[22]

As noted above with respect to the limitations upon representations concerning authorization to provide ethics training, certain commenters requested that the effective date of the rule amendments be delayed for ninety days for existing ethics training providers to enable the providers to modify their video or electronic presentations and materials to comply with the rule amendments. Since new paragraph (b)(5) of Rule 3.34 concerning permissible representations applies to all promotional or instructional materials, that provision encompasses videotape and electronic presentations. Accordingly, the deferred effective date for the provision discussed above should accommodate any concerns of these commenters with respect to videotape or electronic presentations and materials.

E. Recordkeeping

Rule 3.34(b)(4), which governs recordkeeping by an ethics training provider, requires ethics training providers to maintain records of materials used in and attendees at such training in accordance with Commission Rule 1.31, *i.e.*, for a five-year period.[23] The Commission proposed to add a provision to these recordkeeping requirements to require providers of ethics training to furnish records of attendees at such training to a registered futures association in such format as the registered futures association may request. As noted in the proposing release, NFA is willing to compile information on ethics training attendance for inclusion in the registration database and believes that ethics training providers should cooperate with NFA requests for the information which providers are already required to maintain. In its comment letter, NFA stated that it was confident that the Commission's amendment to Rule 3.34(b), requiring providers to furnish a list of ethics training attendees to NFA, will streamline the recordkeeping needed in this area. Further, NFA believes that this requirement will reduce the burden borne by registrant firms in determining whether a prospective employee has satisfied his ethics training requirement. The Commission believes compilation of ethics training attendance data by NFA (or other registered futures associations) will produce a central repository of such information, which should benefit all registrants and facilitate oversight of compliance with the ethics training requirement. To facilitate NFA's incorporation of this data in the registration database, ethics training providers should include appropriate identifiers of registrants, such as NFA identification number, and follow other format conventions requested by NFA.

One commenter requested that ethics training providers be permitted to use identifiers other than NFA identification numbers, *e.g.*, name, date of birth or social security number, in reporting attendees to NFA. While this comment may have merit, the final rule amendments require providers to respond to NFA requests for information and to furnish to NFA the information that providers are already required to maintain. The specific data needed by NFA to maintain and compile its database may be decided by NFA. The Commission does not believe that it should be unduly burdensome for ethics training providers to obtain NFA identification numbers from attendees, unless such persons have not yet registered or filed an application for

[16] In comparable areas, such as registration and review of promotional material, the Commission has delegated authority to NFA to develop and implement specific standards and, in those instances, NFA has established standards above the minimum levels previously established by the Commission or set forth in the Act. *See, e.g.*, NFA Rule 2–8(d) (minimum experience requirements for an associated person to exercise discretion over an account).

[17] This additional language has been added to clarify the proposal and is consistent with the intent of Rule 3.34.

[18] Rule 3.34(b)(5) also contains a proviso that it "shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented."

[19] 58 FR 19575, 19586–19587.

[20] 59 FR 37446, 37448.

[21] 58 FR 19575, 19586–19587.

[22] Revised Rule 3.34(b)(4) also requires that records of trainer evaluations be maintained.

[23] 17 CFR 1.31 (1995). When the Commission adopted Rule 3.34, it stated that it would monitor the effectiveness of the requirement for maintaining a record of ethics training attendance and might reconsider the issue at a later date if appropriate. 58 FR 19575, 19587.

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registration.[24] However, NFA should arrange with providers to accomplish this task by the most efficient means for all concerned.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect only those ethics training providers that are not SROs or entities accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics. The Commission believes that the impact of these rule amendments on other providers of ethics training or persons seeking to become providers of ethics training should be minimal. The procedure for becoming an ethics training provider will be simplified. The restrictions upon permissible representations by ethics training providers concerning their status as such essentially codify conditions already imposed by the Commission to date in granting applications of individual ethics training providers. Finally, since ethics training providers are already required to maintain records of attendees, furnishing such information to NFA upon request should not be unduly burdensome. Therefore, these rules will not have significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted this rule and its associated information collection requirements to the Office of Management and Budget. While the amendments adopted herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden:

Rules 3.16, 3.32 and 3.34 (3038–0023, approved June 2, 1993):

Average Burden Hours Per Response—1.13
Number of Respondents—60,980
Frequency of Response—On Occasion and Triennially

Persons wishing to comment on the information which will be required by these rules as amended should contact Jeff Hill, Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st St. N.W., Washington, D.C. 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 3

Registration, Ethics training

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1994)), hereby amends Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

2. Section 3.34 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

§ 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *

(3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

(i) A self-regulatory organization;

(ii) An entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics; or,

(iii) A person included on a list maintained by a registered futures association who has filed a notice with the registered futures association certifying that:

(A) Such person, any principals thereof (as defined in § 3.1(a)) and any individuals, on behalf of such person, who present ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

(*1*) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;

(*2*) A bar from service on self-regulatory organization governing boards or committees based on disciplinary histories pursuant to § 1.63 of this chapter or any self-regulatory organization rule adopted thereunder; or

(*3*) A pending adjudicatory proceeding under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act, or §§ 3.55, 3.56 or 3.60; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification required by paragraph (b)(3)(iii) of this section is continuous and if circumstances change which result in the certification becoming inaccurate, the person must promptly so inform the registered futures association. Upon notice of such inaccuracy, the registered futures association shall refuse to include such person on or remove such person from the list referred to in paragraph (b)(3)(iii) of this section.

(v) The registered futures association shall develop and submit to the Commission in accordance with Section 17(j) of the Act rules to provide reasonable procedures for making determinations not to include or to remove persons from the list referred to in paragraph (b)(3)(iii) of this section. Such rules shall permit a hearing before the registered futures association with an opportunity for appeal to the Commission. Such appeal shall consist solely of consideration of the record before the registered futures association and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the decision of the registered futures association.

(4) Any person providing ethics training under this section must maintain records of the materials used in such training, and of the attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and evaluations of trainers in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content of the training program and do not recommend the provider of such training: *Provided, however,* that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.

* * * * *

Issued in Washington, D.C. on December 7, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30358 Filed 12–12–95; 8:45 am]

BILLING CODE 6351–01–P

[24] Ethics training may be taken up to six months prior to the date of application for registration. *See* 58 FR 19575, 19585.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8630]

RIN 1545–AR56

Actuarial Tables Exceptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income, estate, and gift tax regulations relating to exceptions to the use of the valuation tables in the regulations for valuing annuities, interests for life or a term of years, and remainder or reversionary interests, the valuation of which was the subject of final regulations published on June 10, 1994. These regulations are necessary in order to provide guidance consistent with court decisions concluding that the valuation tables are not to be used in certain situations.

EFFECTIVE DATE: These regulations are effective December 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1994, the IRS published in the **Federal Register** (59 FR 30100) final income tax regulations under sections 170, 642, 664 and 7520 of the Internal Revenue Code (Code), and final estate and gift tax regulations under sections 2031, 2512 and 7520 of the Code providing actuarial tables to be used in valuing annuities, interests for life or a term of years, and remainder or reversionary interests under section 7520. On June 10, 1994, the IRS also published in the **Federal Register** (59 FR 30180) proposed amendments to the income, estate, and gift tax regulations prescribing circumstances when the published actuarial tables cannot be used to value interests. This regulation finalizes those amendments.

Written comments responding to the notice of proposed rulemaking were received. Requests for a public hearing were also received but were subsequently withdrawn. After consideration of all the comments received, those amendments are revised and adopted by this Treasury decision.

Explanation of Provisions

Section 7520(a), which is effective for transfers after April 30, 1989, provides that the value of annuities, interests for life or a term of years, and remainder or reversionary interests is to be determined under tables published by the IRS. Section 7520(e) provides that, for purposes of section 7520, the term *tables* includes formulas. Section 7520(b) provides that section 7520 shall not apply for purposes of any provision specified in regulations. The Conference Report accompanying the Technical and Miscellaneous Revenue Act of 1988, H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 113 (1988) (1988–3 C.B. 603), states that section 7520 does not apply in "situations specified in Treasury regulations." A summary of the principal comments received and revisions made in the final regulations in response to those comments is provided below.

1. Valuation of Annuities, Income Interests, etc.

Under the proposed regulations, the tables cannot be used if the instrument of transfer does not provide the beneficiary of the annuity, income interest, or remainder interest with the degree of beneficial enjoyment that is consistent with the traditional character of that property interest under applicable local law. One comment letter suggested that, as a result of enactment of section 2702, it may no longer be necessary to prescribe special rules in the case of a trust corpus consisting of nonproductive property. It was decided to retain these rules because this issue will continue to arise in certain situations where section 2702 does not apply; e.g., the valuation of a gift of an income interest for purposes of determining the section 2503(b) gift tax exclusion; the valuation of the bequest of an income interest for purposes of the section 2013 estate tax credit.

In response to comments, the final regulations provide additional guidance for determining under what circumstances a life tenant or term certain beneficiary of tangible property possesses adequate beneficial use such that the tables would be used to value the interest.

A number of comments were received on the valuation of an annuity that is payable from a trust corpus that will exhaust prior to the annuitant reaching the presumed terminal age prescribed by the tables (age 110). Under the proposed regulations, the interest would be valued, not as a right to receive the annuity for the life of the annuitant, but rather as the right to receive the annuity for the shorter of the life of the annuitant or the date on which the corpus will exhaust. One commentator agreed that the possibility of exhaustion of corpus should be taken into account in cases of relatively severe underfunding of the trust. However, it was suggested that, if the underfunding was relatively less severe, it should be disregarded. After further consideration of this issue, the IRS has concluded that the method described in the proposed regulations for determining the value of the annuity is consistent with fundamental principles for determining present value and long-standing IRS position. See, Rev. Rul. 77–454 (1977–2 C.B. 351); Rev. Rul. 70–452 (1970–2 C.B. 199); *Moffett* v. *Commissioner*, 269 F.2d 738 (4th Cir. 1959); *United States* v. *Dean*, 224 F.2d 26 (1st Cir. 1955). However, in response to requests, the explanation of the methodology and computation has been amplified.

2. Terminal Illness

Under the proposed regulations, the tables cannot be used if the individual, who is the measuring life with respect to the property interest, is terminally ill. Under the proposed regulations, the individual is terminally ill if that individual was known to have an incurable illness or deteriorating physical condition such that there is at

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least a 50 percent probability that the individual will die within one year.

One commentator suggested that the value of a property interest that is dependent upon a measuring life should be determined in all events based on the mortality component contained in Table 80CNSMT (which is based on the life experience of the general population), rather than a mortality component that reflects the actual terminally ill condition of the individual. The commentator also suggested that if departure from the actuarial tables is deemed appropriate in the case of terminally ill individuals, then the standard in Rev. Rul. 80–80 (1980–1 C.B. 194), which is not explicitly expressed in the form of a percentage probability of survival (as is the standard in the proposed regulations), adequately differentiates between individuals that should not be considered terminally ill and those that should. This commentator also questioned whether a percentage probability standard, such as the one used in the proposed regulations, would be feasible to administer.

The IRS continues to believe that mortality tables such as Table 80CNSMT should not be used to predict the survival probabilities of an individual whose time of death is reasonably predictable based on the facts presented. To determine whether the proposed test for classifying an individual as terminally ill would be feasible, the IRS consulted with a number of medical specialists. Medical experts called upon to assess the probability of survival of a terminally ill individual base their assessment on statistical compilations of the percentage of individuals who survive for a specified period of time when suffering with a particular disease. Thus, the IRS believes that a test for classifying an individual as terminally ill can reasonably be based upon the probability of survival for a specified period of time.

One commentator suggested that the mortality test should take into account the actual period of survival after the transfer. For example, if the individual actually survived for one year, that individual should not be deemed to have been terminally ill. Although post-transaction events are not ordinarily determinative for valuation purposes, such events may provide evidence of value as of the valuation date. Accordingly, the final regulations provide a presumption that if the individual who is the measuring life survives for eighteen months or longer after the transfer, that individual shall be presumed to have not been terminally ill on the date of the transfer unless the contrary is established by clear and convincing evidence.

The commentator also questioned whether the proposed test for classifying an individual as terminally ill would result in the classification of elderly people suffering from the general infirmities of old age as "terminally ill." The IRS continues to believe that the test should be consistently applied to people of all ages. Under the regulations, the individual must be inflicted with an incurable illness or other deteriorating physical condition that is life threatening. Thus, elderly people suffering from the general infirmities of old age, but not from a specific incurable life-threatening illness, would not be considered terminally ill under the test. Consequently, if an elderly person has one or more illnesses, none of which, standing alone or considered together, is life-threatening, that person would not be considered to be terminally ill.

The same commentator suggested that "knowledge" of the terminal illness should be limited to actual knowledge by the taxpayer or the decedent, rather than to "knowledge" by any of the parties involved. However, limitation of the requisite "knowledge" to the taxpayer or decedent would present a significant burden to the IRS regarding proof and would present opportunities for easy circumvention. Thus, the IRS believes that the requirement that the condition of the individual be "known," although not necessarily by the taxpayer or decedent, is reasonable.

Commentators suggested that the regulations should make it clear that a special actuarial factor taking into account a transferor's terminal illness may be used in valuing a transfer to a pooled income fund. The final regulations incorporate that suggestion.

Comments were received that the language in § 20.7520–3(b)(3)(ii) of the proposed regulations regarding the valuation of a property interest that is based upon a terminally ill measuring life, for purposes of determining the applicable credit for tax on prior transfers under section 2013, was ambiguous. Generally, if the final determination of the estate tax liability in the transferor's estate was dependent on the valuation of the life interest received by the transferee, then the value of the property transferred, for purposes of determining the credit allowable for the transferee's estate, is the value determined previously for the transferor's estate. Section 20.7520–3(b)(3)(ii) of the final regulations clarifies this rule. The IRS invites comments on whether the value of a reversionary interest under section 673 should be determined without regard to the physical condition of the decedent immediately before death, a related issue that was raised by commentators.

3. Application of Actuarial Tables

One commentator suggested that the tables prescribed by the regulations must be used for valuing all interests transferred between April 30, 1989 (the effective date of section 7520) and December 13, 1995 (the effective date of the regulations). However, these regulations generally adopt principles established in case law and published IRS positions. See, e.g., *O'Reilly* v. *Commissioner*, 973 F.2d 1403 (8th Cir. 1992), *rem'd*, T.C.M. 1994–61 (underproductive income interest); *Estate of McLendon* v. *Commissioner*, T.C.M. 1993–459; Rev. Rul. 80–80 (1980–1 C.B. 194) (terminal illness of measuring life); *Moffett* v. *Commissioner*, 269 F.2d 738 (4th Cir. 1959); Rev. Rul. 77–454 (1977–2 C.B. 351) (exhausting corpus). There is no indication that Congress intended to supersede this well-established case law and administrative ruling position when it enacted section 7520. Consequently, in the case of transfers prior to the effective date of these regulations, the question of whether a particular interest must be valued based on the tables will be resolved based on applicable case law and revenue rulings.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is William L. Blodgett, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20 and 25 are amended as follows:

PART 1—INCOME TAXES

PARAGRAPH 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

PAR. 2. Section 1.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 1.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from, or the use of, property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to a contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraph (b)(4) *Example 2* of this section, which illustrates a situation where a special section 7520 actuarial factor is needed to take into account the shorter life expectancy of the terminally ill measuring life. See § 1.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 1.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present

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value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years or for one or more measuring lives if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit during the income beneficiary's term of enjoyment without the consent of and accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 and, when applicable, the rules set forth in paragraph (b)(3) of this section, if the individual who is the measuring life is terminally ill at the time of the transfer.

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the transaction. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the transaction, that individual shall be presumed to have not been terminally ill at the time of the transaction unless the contrary is established by clear and convincing evidence.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Annuity funded with unproductive property. The taxpayer transfers corporation stock worth $1,000,000 to a trust. The trust provides for a 6 percent ($60,000 per year) annuity in cash or other property to be paid to a charitable organization for 25 years and for the remainder to be distributed to the donor's child. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The section 7520 interest rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuitant or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 25-year term of the trust, or even indefinitely. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and the standard section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 25 years.

Example 2. Terminal illness. The taxpayer transfers property worth $1,000,000 to a charitable remainder unitrust described in section 664(d)(2) and § 1.664–3. The trust provides for a fixed-percentage 7 percent unitrust benefit (each annual payment is equal to 7 percent of the trust assets as valued at the beginning of each year) to be paid quarterly to an individual beneficiary for life and for the remainder to be distributed to a charitable organization. At the time the trust is created, the individual beneficiary is age 60 and has been diagnosed with an incurable illness and there is at least a 50 percent probability of the individual dying within 1 year. Assuming the presumption in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that this beneficiary will die within 1 year, the standard section 7520 unitrust remainder factor for a person age 60 from the valuation tables may not be used to determine the present value of the charitable remainder interest. Instead, a special unitrust remainder factor must be computed that is based on the section 7520 interest rate and that takes into account the projection of the individual beneficiary's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to transactions after December 13, 1995.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 20.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*— (1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs (b)(2)(v) *Example 4* and (b)(4) *Example 1* of this section, which illustrate situations where special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 20.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 20.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present

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value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. A died, survived by B and C. B died two years after A. A's will provided for a bequest of corporation stock in trust under the terms of which all of the trust income was paid to B for life. After the death of B, the trust terminated and the trust property was distributed to C. The trust specifically authorized, but did not require, the trustee to retain the shares of stock. The corporation paid no dividends on this stock during the 5 years before A's death and the 2 years before B's death. There was no indication that this policy would change after A's death. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that B did not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, B's life income interest in this case is considered nonproductive. Consequently, B's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of stock. Further, the terms of the trust specifically provide that B, the life income beneficiary, may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate for the month of A's death. In this case, because B has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income interest factor may be used to determine the present value of B's income interest.

Example 3. Discretionary invasion of corpus. The decedent, A, transferred property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder of the trust is to be distributed to a grandchild. The trust authorizes the trustee without restriction to distribute corpus to A's surviving spouse for the spouse's comfort and happiness. In this case, because the trustee's power to invade trust corpus is unrestricted, the exercise of the power could result in the termination of the income interest at any time. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and may not be valued actuarially under this section.

Example 4. Limited invasion of corpus. The decedent, A, bequeathed property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder is to be distributed to A's grandchild. The trust authorizes the child to withdraw up to $5,000 per year from the trust corpus. In this case, the child's power to invade trust corpus is limited to an ascertainable amount each year. Annual invasions of any amount would be expected to progressively diminish the property from which the child's income is paid. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 income interest factor may not be used to determine the present value of the income interest. Nevertheless, the present value of the child's income interest is ascertainable by making a special actuarial calculation that would take into account not only the initial value of the trust corpus, the section 7520 interest rate for the month of the transfer, and the mortality component for the child's age, but also the assumption that the trust corpus will decline at the rate of $5,000 each year during the child's lifetime. The child's right to receive an amount not in excess of $5,000 per year may be separately valued in this instance and, assuming the trust corpus would not exhaust before the child would attain age 110, would be considered an ordinary annuity interest.

Example 5. Power to consume. The decedent, A, devised a life estate in 3 parcels of real estate to A's surviving spouse with the remainder to a child, or, if the child doesn't survive, to the child's estate. A also conferred upon the spouse an unrestricted power to consume the property, which includes the right to sell part or all of the property and to use the proceeds for the spouse's support, comfort, happiness, and other purposes. Any portion of the property or its sale proceeds remaining at the death of the surviving spouse is to vest by operation of law in the child at that time. The child predeceased the surviving spouse. In this case, the surviving spouse's power to consume the corpus is unrestricted, and the exercise of the power could entirely exhaust the remainder interest during the life of the spouse. Consequently, the remainder interest that is includible in the child's estate is not considered an ordinary remainder interest for purposes of this paragraph and may not be valued actuarially under this section.

(3) *Mortality component*—(i) *Terminal illness.* Except as provided in paragraph (b)(3)(ii) of this section, the mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the decedent's death, that individual shall be presumed to have not been terminally ill at the date of death unless the contrary is established by clear and convincing evidence.

(ii) *Terminal illness exceptions.* In the case of the allowance of the credit for tax on a prior transfer under section 2013, if a final determination of the federal estate tax liability of the transferor's estate has been made under circumstances that required valuation of the life interest received by the transferee, the value of the property transferred, for purposes of the credit allowable to the transferee's estate, shall be the value determined previously in the transferor's estate. Otherwise, for purposes of section 2013, the provisions of paragraph (b)(3)(i) of this section shall govern in valuing the property transferred. The value of a decedent's reversionary interest under sections 2037(b) and 2042(2) shall be determined without regard to the physical condition, immediately before the decedent's death, of the individual who is the measuring life.

(iii) *Death resulting from common accidents.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if the decedent, and the individual who is the measuring life, die as a result of a common accident or other occurrence.

(4) *Examples.* The provisions of paragraph (b)(3) of this section are illustrated by the following examples:

Example 1. Terminal illness. The decedent bequeaths $1,000,000 to a trust under the terms of which the trustee is to pay $103,000 per year to a charitable organization during the life of the decedent's child. Upon the death of the child, the remainder in the trust is to be distributed to the decedent's grandchild. The child, who is age 60, has been diagnosed with an incurable illness, and there is at least a 50 percent probability of the child dying within 1 year. Assuming the presumption provided for in paragraph (b)(3)(i) of this section does not apply, the standard life annuity factor for a person age 60 may not be used to determine the present value of the charitable organization's annuity interest because there is at least a 50 percent probability that the child, who is the measuring life, will die within 1 year. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the child's actual life expectancy.

Example 2. Deaths resulting from common accidents, etc. The decedent's will establishes a trust to pay income to the decedent's surviving spouse for life. The will provides that, upon the spouse's death or, if the spouse fails to survive the decedent, upon the decedent's death the trust property is to pass to the decedent's children. The decedent and the decedent's spouse die simultaneously in an accident under circumstances in which it was impossible to determine who survived the other. Even if the terms of the will and applicable state law presume that the decedent died first with the result that the property interest is considered to have passed in trust for the benefit of the spouse for life, after which the remainder is to be distributed to the decedent's children, the spouse's life income interest may not be valued by use of the mortality component described under section 7520. The result would be the same even if it was established that the spouse survived the decedent.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to estates of decedents dying after December 13, 1995.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 6. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
25.2522(c)–3(c)(2)(i) 6th sentence	(e)(2) (ii), (iii), and (iv)	(c)(2) (ii), (iii), and (iv).
25.2522(c)–3(c)(2) (vi)(*a*) 2nd sentence	Subdivision (v)	Paragraph (c)(2)(vi).
25.2522(c)–3(c)(2) (vii)(*a*) 2nd sentence	Subdivision (vi)	Paragraph (c)(2)(vii).
25.2522(c)–3(d)(2) introductory text	Subdivision (iv), (v), or (vi) of paragraph (c)(2)	Paragraph (c)(2) (v), (vi), or (vii).
25.2522(c)–3(d)(2) (iv) 1st sentence	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (1)* 1st sentence.	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (2)* 1st sentence.	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (3)* 1st sentence (each place it appears).	Paragraph (c)(2)(v)	Paragraph (c)(2)(vi).
25.2522(c)–3(d)(2)(iv), *Example (4)* last sentence.	Paragraph (c)(2)(v)(*e*)	Paragraph (c)(2)(vi)(*e*)
25.2522(c)–3(d)(2)(v)	Paragraph (c)(2)(vi)	Paragraph (c)(2)(vii).

Par. 7. Section 25.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 25.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. However, in the case of certain gifts made after October 8, 1990, if the donor does not retain a qualified annuity, unitrust, or reversionary interest, the value of any interest retained by the donor is considered to be zero if the remainder beneficiary is a member of the donor's family. See § 25.2702–2.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs

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(b)(2)(v) *Example 5* and (b)(4) of this section, which illustrate situations in which special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 25.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment—*(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate on the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor as described in § 25.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms.

(ii) *Income and similar interests—*(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. The donor transfers corporation stock to a trust under the terms of which all of the trust income is payable to A for life. Considering the applicable federal rate under section 7520 and the appropriate life estate factor for a person A's age, the value of A's income interest, if valued under this section, would be $10,000. After A's death, the trust is to terminate and the trust property is to be distributed to B. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that the income beneficiary would not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, the life income interest in this case is considered nonproductive. Consequently, A's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of corporation stock. Further, the terms of the trust specifically provide that the life income beneficiary may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate on the valuation date. In this case, because A, the income beneficiary, has the right to compel the trustee to make the trust productive for purposes of applicable local law during A's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income factor may be used to determine the value of A's income interest. However, in the case of gifts made after October 8, 1990, if the donor was the life income beneficiary, the value of the income interest would be considered to be zero in this situation. See § 25.2702–2.

Example 3. Annuity trust funded with unproductive property. The donor, who is age 60, transfers corporation stock worth $1,000,000 to a trust. The trust will pay a 6 percent ($60,000 per year) annuity in cash or other property to the donor for 10 years or until the donor's prior death. Upon the termination of the trust, the trust property is to be distributed to the donor's child. The section 7520 rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on the stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuity beneficiary or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 10-year term of the trust, or even indefinitely. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and a section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 10 years or the prior death of a person age 60.

Example 4. Unitrust funded with unproductive property. The facts are the same as in *Example 3*, except that the donor has retained a unitrust interest equal to 7 percent of the value of the trust property, valued as of the beginning of each year. Although the trust corpus is nonincome-producing, the present value of the donor's retained unitrust interest may be determined by using the section 7520 unitrust factor for a term of years or a prior death.

Example 5. Eroding corpus in an annuity trust. (i) The donor, who is age 60 and in normal health, transfers property worth $1,000,000 to a trust. The trust will pay a 10 percent ($100,000 per year) annuity to a charitable organization for the life of the donor, payable annually, and the remainder will be distributed to the donor's child. The section 7520 rate for the month of the transfer is 6.8 percent. First, it is necessary to determine whether the annuity may exhaust the corpus before all annuity payments are made. Because it is assumed that any measuring life may survive until age 110, any life annuity could require payments until the measuring life reaches age 110. Based on a section 7520 interest rate of 6.8 percent, the determination of whether the annuity may exhaust the corpus before the annuity payments are made is computed as follows:

Age to which life annuity may continue	110
Less: Age of measuring life at date of transfer	60
Number of years annuity may continue	50
Annual annuity payment	$100,000.00
Times: Table B annuity factor for 50 years	14.1577
Present value of term certain annuity	1,415,770.00

(ii) Since the present value of an annuity for a term of 50 years exceeds the corpus, the annuity may exhaust the trust before all payments are made. Consequently, the annuity must be valued as an annuity payable for a term of years or until the prior death of the annuitant, with the term of years determined by when the fund will be exhausted by the annuity payments.

(iii) Using factors based on Table 80CNSMT at 6.8 percent, it is determined that the fund will be sufficient to make 17 annual payments, but not to make the entire 18th payment. Specifically, the initial corpus will be able to make payments of $67,287.26 per year for 17 years plus payments of $32,712.74 per year for 18 years. The annuity is valued by adding the value of the two separate temporary annuities.

(iv) Based on Table H of Publication 1457 (a copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402), the present value of an annuity of $67,287.26 per year payable for 17 years or until the prior death of a person aged 60 is $579,484.61 ($67,287.26 × 8.6121). The present value of an annuity of $32,712.74 per year payable for 18 years or until the prior death of a person aged 60 is $287,731.45 ($32,712.74 × 8.7957). Thus, the present value of the charitable annuity interest is $867,216.06 ($579,484.61 + $287,731.45).

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time the gift is completed. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date the gift is completed, that individual shall be presumed to have not been terminally ill at the date the gift was completed unless the contrary is established by clear and convincing evidence.

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example. Terminal illness. The donor transfers property worth $1,000,000 to a child in exchange for the child's promise to pay the donor $103,000 per year for the donor's life. The donor is age 60 but has been diagnosed with an incurable illness and has at least a 50 percent probability of dying within 1 year. The section 7520 interest rate for the month of the transfer is 10.6 percent, and the standard annuity factor at that interest rate for a person age 60 in normal health is 7.4230. Thus, if the donor were not terminally ill, the present value of the

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annuity would be $784,569 ($103,000 × 7.4230). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to gifts made after December 13, 1995.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: October 29, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30272 Filed 12–12–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–024–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to self-bonding. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, 943.16.

II. Submission of the Proposed Amendment

By letter dated August 11, 1995 (Administrative Record No. TX–593), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to revise 16 Texas Administrative Code 11.221, Texas Coal Mining Regulations (TCMR) at subsection 806.309(j)(2)(C)(iv) concerning alternative criteria for acceptance of self-bonds to ensure reclamation performance.

OSM announced receipt of the proposed amendment in the September 12, 1995, **Federal Register** (60 FR 47316), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period would have closed on October 12, 1995.

During its review of the amendment, OSM identified a concern relating to TCMR 806.309(j)(2)(C)(iv)(II)(C). Specifically OSM needed clarification on what effect, if any, Texas' existing 25 percent net worth limitation provision at TCMR 806.309(j)(5)(A) would have on the proposed 16⅔ percent net worth limitation provision at TCMR 806.309(j)(2)(C)(iv)(II)(C). OSM notified Texas of this concern by telephone on September 23, 1995 (Administrative Record No. TX–593.03).

By letter dated September 25, 1995 (Administrative Record No. TX–593.02), Texas responded to OSM's concern by submitting a revision to its proposed program amendment. Texas proposed an additional revision to TCMR 806.309(j)(2)(C)(iv) by adding the following clarification provision.

The limitation contained in subparagraph (II)(C) of this section applies to applicants or guarantors qualifying pursuant to subparagraph (II) only and does not affect the limitation set out in Section 806.309(j)(5)(A) for applicants or guarantors seeking acceptance of a self-bond pursuant to paragraphs i–iii or subparagraph (I) of this section.

Based upon the additional explanatory revision to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the October 16, 1995, **Federal Register** (60 FR 53567). The public comment period closed on October 31, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

TCMR 806.309(j)(2)(C)(iv) Self-Bonding: Requirements for a Business and Governmental Entities, Alternative Financial Eligibility Criteria

1. Existing State Regulation Requirements

Like the Federal self-bonding regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), Texas has standard financial criteria for self-bonding at § 806.309(j)(2)(C) (i), (ii), and (iii) that are substantively identical to the corresponding Federal regulations. Under the State's standard criteria, an applicant can qualify for self-bonding by meeting one of three criteria that pertain to having either a bond rating of A or higher; or $10 million net worth and certain financial ratio values; or having fixed assets of $20 million and certain financial ratio values.

To provide additional flexibility to financially strong firms, Texas proposed an alternative four-part test at § 806.309(j)(2)(C)(iv) that was approved by OSM on February 19, 1992, as an alternative test under the Texas self-bonding program (57 FR 5983). Texas' alternative test allows an applicant to qualify if it meets four criteria in combination. Specifically, an applicant applying for self-bonding under § 806.309(j)(2)(C)(iv) must have an investment-grade bond rating (§ 806.309(j)(2)(C)(iv)(I)); tangible net worth of at least $10 million and fixed assets in the United States of $20 million (§ 806.309(j)(2)(C)(iv)(II)); a ratio of total liabilities to net worth that is equal to or less than the industry median (§ 806.309(j)(2)(C)(iv)(III)); and a ratio of current assets to current liabilities that is equal to or greater than the industry median or a current credit rating of 4A2 or higher from Dun and Bradstreet Corporation (§ 806.309(j)(2)(C)(iv)(IV)).

There is no direct Federal counterpart regulation to Texas' alternative test for self-bonding. However, as explained in the February 19, 1992, **Federal Register** (57 FR 5983), the Director found that when an applicant for self-bonding in Texas meets the combined requirements of the alternative test at § 806.309(j)(2)(C)(iv), the applicant is complying with financial strength and solvency requirements that are no less effective than the standard financial safeguards of the Federal regulations at 30 CFR 800.23(b)(3).

2. Proposed State Regulation Requirements

On its own initiative, Texas proposes to recodify and expand the existing alternative financial criteria at § 806.309(j)(2)(C)(iv) to provide applicants a choice between two, four-part financial tests. The State's intention is to maintain consistency with the Federal regulations while providing flexibility to financially strong applicants who apply for self-bonding under its alternative eligibility criteria.

Texas proposes to recodify its existing regulations at § 806.309(j)(2)(C)(iv) (I)–(IV) as § 806.309(j)(2)(C)(iv)(I) (A), (B), and (C). This remodified section serves as the first optional financial test under the State's proposed alternative tests for self-bonding. Texas proposes to add § 806.309(j)(2)(C)(iv)(II) (A), (B), and (C). This new section constitutes the second optional financial test under the State's proposed alternative tests for self-bonding.

The State's proposal allows applicants the option of qualifying for self-bonding by meeting the combined requirements of either subparagraph (I) or subparagraph (II) of § 806.309(j)(2)(C)(iv). These proposed requirements are further discussed below:

a. *Investment-Grade Bond Rating (Applicable to both Alternative Test I and Test II). TCMR § 806.309(j)(2)(C)(iv).* First, an applicant applying for self-bonding under either of the two proposed alternative financial tests at § 806.309(j)(2)(C)(iv) (I) or (II) must have an investment-grade rating for its most recent bond issuance (Baa3 or higher from Moody's Investor Service and BBB– or higher from Standard and Poor's Corporation). This requirement is identical to the existing criteria at § 806.309(j)(2)(C)(iv)(I).

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM stated that "The services [bond rating services] are relied upon heavily by creditors and maintain a high rate of predictive success [about a bond issuer's ability to re-pay bond issues]." OSM's allowance of a bond rating of "A or higher" in the Federal regulations as a stand-alone test for self-bonding is based on reliance on the expertise of the rating service to evaluate the financial position of a firm. In determining the rating of a bond issue, rating services conduct an in-depth financial analysis of the issuer. Using Standard and Poor's rating of bonds issued by public utilities as an example, some factors that it considers include: (1) Legal considerations such as the rate covenant (which defines the size and source of the utility's financial reserve); the flow of funds (or the priority of claims on the revenue stream); and the legal implications of energy sales contracts (the company's potential liabilities); (2) economic considerations such as income trends; diversification of the employment base (analysis of key local industries); and growth trends; and (3) systems considerations such as projected energy growth; generating capacity and fuel sources; and whether customer profiles indicate that end-users are balanced in terms of including residential, commercial and industrial customers. Also considered are the company's capital improvement and financing plans; the stability and predictability of the revenue stream pledged to pay debt service; the liquidity position and equity position of the company; and the financial implications of the regulatory environment.

In the preamble to OSM's final self-bonding regulations, OSM also explained that since it was allowing a self-bonding applicant to qualify by meeting one financial test (unlike EPA that requires more than one test, and thus allows a lower, investment-grade bond rating), an applicant that selected the bond rating test would have to have bonds rated "A or higher." This is because the bond rating of "A or higher" is a stand-alone test in the Federal regulations. While not specifically addressed by OSM in its final regulations on self-bonding, it follows that a State's self-bonding program that requires an applicant to meet multiple financial criteria in addition to having an investment-grade bond rating is no less effective than the Federal regulations that allow a bond rating of "A or higher" as a stand-alone financial test.

As an additional safeguard, Texas is requiring applicants to notify the Commission of any rating change to a lower bond rating than the applicant had at the time the self-bond was approved. If an applicant's rating is down-graded, then the Commission will immediately hold a hearing to decide whether the applicant may remain in the self-bonding program. This requirement is in addition to the existing requirement at § 806.309(j)(6) for applicants to notify the Commission if it no longer meets the criteria at (2)(C) and (2)(D) of the self-bonding regulations.

b. *Alternative Test I. TCMR 806.309(j)(2)(C)(iv)(I)(A).* Under subparagraph (I)(A), Texas proposes to recodify the exiting requirements at § 806.309(j)(2)(C)(iv)(II) [wherein an applicant must demonstrate that it has a tangible net worth of at least $10 million and fixed assets in the United States totaling at least $20 million]. Other than recodifying this section, no changes are proposed; therefore, the requirements at § 806.308(j)(2)(C)(iv)(I)(A) are no less effective than the Federal self-bonding requirements at 30 CFR 800.23(b)(3).

TCMR 806.309(j)(2)(C)(iv)(I)(B). Texas is revising requirements at § 806.309(j)(2)(C)(iv)(III) to provide flexibility under the recodified subparagraph at § 806.309(j)(2)(C)(iv)(I)(B). The State is revising this sub-part to provide an optional test whereby an applicant must demonstrate that it has either a ratio of total liabilities to net worth of 2.5 or less or a ratio of total liabilities to net worth that is equal to or less than the industry median reported by Dun and Bradstreet Corporation for the applicant's primary SIC code. A ratio value of 2.5 or less is the current standard test in the State's self-bonding program at § 806.309(j)(2)(C) (ii) and (iii), and in the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). Therefore, allowing applicants the option of meeting either the standard ratio value of 2.5 or less, or having a ratio value that is equal to or less than the industry median is no less effective than the Federal regulations for reasons further explained below.

The rationale for comparing an applicant's ratio of total liabilities to net worth to the industry median was discussed in detail in the preamble to the final Texas rule (57 FR 5983, February 19, 1992). Industry medians reflect the relative financial status of firms within an industry classified by net worth. Comparing a firm with current industry medians is more meaningful than comparing it with static values for financial ratios that represent the conditions of an industry at an historical point in time. OSM determined that ratio values that are keyed to an applicant's industry

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medians are an appropriate measure of how the applicant performs financially in comparison to the rest of its industry. On this basis, OSM approved the use of industry median values in lieu of the standard value of 2.5 or less. However, since OSM's approval of Texas' alternative self-bonding test on February 19, 1992, changes have occurred in general financial accounting requirements resulting in industry median values that do not consistently reflect the true comparative financial strength of applicants for self-bonding.

For example, the Financial Accounting Standards Board (FASB) has issued new accounting standards that firms must follow in order to be in compliance with Generally Accepted Accounting Principles (GAAP). One such standard is the "Statement of Financial Accounting Standards No. 109, 'Accounting for Income Taxes'" (SFAS 109) issued in 1991. The effects of SFAS 109 and another accounting standard, "Employer's Accounting for Postretirement Benefits Other than Pensions" (SFAS 106), are complex and affect both sides of a firm's balance sheet in a variety of ways.

Upon review, ratio values for a firm that has adopted SFAS 106 (post-retiree health benefits) may not compare well with ratio values for a firm that has not yet adopted the standard or a firm that is on different implementation schedule. On the other hand, a firm that has adopted SFAS 109 (accounting for deferred income taxes) may appear financially stronger than it actually is. Accounting for deferred tax assets is an example. In an article entitled "Evaluating Deferred-Tax Assets: Some Guidance for Lenders" (Commercial Lending Review, July 1994, pp. 12–25), Eugene Comiskey and Charles Mulford state that "deferred tax assets result in increases to earnings, assets, and shareholders' equity which in essence do not increase the financial strength of the firm from that before adoption of FASB 109 [SFAS 109]." The authors advise that deferred tax assets "especially those recorded for various tax carryforwards, share features with intangible assets—assets that are often deducted from equity in the measurement of tangible net worth in debt covenants." These examples illustrate the many complexities involved in analyzing the interdependent effects that recent FASB standards have had on the financial status of self-bonding applicants. Therefore, Texas proposes to revise its alternative test to allow financially strong applicants the flexibility of qualifying by either having a ratio of total liabilities to net worth that meets the standard criteria (2.5 or less) or a ratio value that meets the industry median test.

Changes to accounting standards notwithstanding, ratio analysis based on industry medians, (industry norms) has merit when comparing firms with similar conditions (net worth and asset size) in the same industry. However, not all firms are adopting the FASB financial accounting standards during the same accounting year and/or in the same manner; so the industry medians do not always reflect a level financial playing field for the purpose of comparing a firm to its industry.

Under the State's proposal, an applicant that meets the standard criterion, 2.5 or less for the ratio of total liabilities to net worth, satisfies the Federal ceiling for this ratio under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). In addition, the ratio criterion based on comparison with the industry median is an approved financial test in the State's existing alternative criteria for self-bonding. Therefore, Texas' proposed revision at § 806.309(j)(2)(C)(iv)(I)(B) that allows an applicant the option of qualifying under either of these two ratio criteria is no less effective than the Federal regulations.

TCMR 806.309(j)(2)(C)(iv)(I)(C). Under subparagraph (I)(C), Texas proposes to recodify the existing State requirement at § 806.309(j)(2)(iv)(IV). Other than recodifying this section, no changes are proposed. Therefore, the State's proposed requirements at § 806.309(j)(2)(iv)(I)(C) are no less effective than the Federal regulations.

c. *Alternative Test II. TCMR 806.309(j)(2)(C)(iv)(II).* Applicants applying for self-bonding under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) and under the State's standard self-bonding test at § 806.309(j)(2)(C) (ii) and (iii) are required to have certain financial ratio values that indicate solvency and a reasonable liquidity position. Rather than measuring an applicant's liquidity position by requiring certain values for the ratio of current assets to current liabilities and the ratio of total liabilities to net worth, Texas is proposing alternative criteria to demonstrate financial strength.

In OSM's final self-bonding rules (48 FR 36418, August 10, 1983), OSM indicated that the self-bonding program was established at 30 CFR 800.23 for firms that could demonstrate a low likelihood of bankruptcy, debts that are not disproportionate to assets, and reasonable liquidity. OSM also stated that the "New § 800.23 allows a State to develop a comprehensive self-bonding program to balance the risk of forfeiture versus the benefits to financially sound operators of a self-bonding program," and that . . . "These final rules [Federal regulations] contain standards general enough to take into account state-specific conditions." To recognize variability among financially strong industries mining coal in Texas, the State proposes to add a second set of alternative criteria to provide financially strong applicants an additional option for demonstrating liquidity and financial strength. This proposed alternative test will provide flexibility and increase the availability of the self-bonding program without jeopardizing the level of reclamation assurance.

Texas' new proposed alternative test at § 806.309(j)(2)(C)(iv)(II), consists of three subparagraphs. All financial criteria (including the investment-grade bond rating discussed above) must be met in combination in order for an applicant to qualify for self bonding under this proposed alternative test.

TCMR 806.309(j)(2)(C)(iv)(II)(A). Texas is proposing that an applicant applying for self-bonding have a net worth of at least $100 million and fixed assets in the United States totaling at least $200 million. These proposed levels of net worth and fixed assets are ten times greater than the $10 and $20 million respective levels required by the standard self-bonding criteria at § 806.309(j)(2)(C) (i), (ii), and (iii), and the counterpart Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). Intangible assets such as goodwill, patents, royalties, and trademarks (if any) are included in the calculation of net worth in this proposal; whereas in the existing approved alternative test and standard criteria, intangible assets are not counted in the calculation of net worth. However, the Director finds that a tenfold increase in the required level of net worth from $10 million to $100 million provides assurance, no less effective than the Federal regulations, that sufficient assets should be available to conduct reclamation and avoid bankruptcy. Since the levels of net worth and fixed assets under this proposal require financial strength levels that are higher than the existing levels in the Federal counterpart regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), the State's requirements at § 806.309(j)(2)(C)(IV)(II)(A) are no less effective than the Federal regulations.

TCMR 806.309(j)(2)(C)(IV)(II)(B). Under subparagraph (II)(B), the Texas proposal requires the applicant to have issued securities in accordance with the requirements of the Securities Act of 1933, and that the applicant is subject to the periodic financial reporting requirements established by the Securities and Exchange Act of 1934. To protect investors, the Securities and Exchange Commission (SEC) has stringent financial disclosure and reporting requirements for issuers of securities.

Annual reports filed with the SEC are readily available public filings that require disclosure of detailed financial and business information that exceeds the level of detail usually found in a firm's annual report to its stockholders. Like the Federal self-bonding program, whether or not Texas accepts a qualified applicant's self-bond is discretionary with the State. In making this decision, the State is not limited to the materials filed by an applicant. In its analysis of an applicant's qualifications, Texas can calculate financial ratios from the applicant's balance sheet data, compare an applicant's ratios to industry norms, and conduct any number of other financial tests to determine whether an applicant is a good candidate for self-bonding. Having an applicant's SEC financial information at its disposal places the State in a position to make an informed decision about a self-bonding applicant's qualifications. For example, in addition to requiring that financial statements be prepared in conformance with GAAP, Section 78m.(b)(2)(B) of the Securities and Exchange Act requires firms to assure that safeguards are present to protect assets. Protecting assets helps assure reasonable liquidity which is one of the requirements for qualifying under the Federal and Texas self-bonding programs.

In lieu of using financial ratios to measure liquidity, Texas is proposing that under this alternative test applicants meet a combination of requirements including: stringent SEC financial reporting, an investment-grade bond rating, and net worth that is six times the total amount of the applicant's outstanding and proposed self-bonds. Meeting the combined financial requirements of Texas' proposed alternative test will assure that an applicant has reasonable liquidity and a low risk of bankruptcy. The requirement for net worth that is six times the total self-bonded amount is further discussed under subparagraph (C) below.

TCMR 806.309(j)(2)(C)(iv)(II)(C). Like the Federal self-bonding regulations at 30 CFR 800.23, an applicant applying for self-bonding under Texas' standard test at § 806.309(j)(2)(C) (i), (ii), and (iii) and an applicant applying for self-bonding under the first of Texas' alternative tests at § 806.309(j)(2)(C)(iv)(I) may not have outstanding and proposed self-bonds that are greater than 25 percent of the applicant's tangible net worth in the United States. In other words, tangible net worth must be four times the outstanding and proposed self-bonded amount. Tangible net worth is used as the basis for comparison with the amount of proposed and outstanding self-bonds because intangible assets such as goodwill, patents, royalties, and trademarks are difficult to evaluate and liquidate. Under the new alternative at § 806.309(j)(2)(C)(iv)(II)(C), Texas is proposing that an applicant's total outstanding and proposed self-bond amount not exceed 16⅔ percent of the applicant's net worth in the United States. In other words, net worth [including intangible assets] must be six times the amount of outstanding and proposed self-bonds. Under this proposal, Texas is allowing the basis of comparison to be total net worth including the calculation for intangible assets. However, the Director finds that the inclusion of intangible assets in this calculation is offset by the State's proposal to increase the ratio of net worth to self-bond amount to six times rather than four times. This proposed increase to the required level of net worth should provide assurance that a self-bonded permittee has sufficient assets to perform reclamation and stave off bankruptcy. Therefore, under this proposed second alternative test at § 806.309(j)(2)(C)(iv)(II), Texas is requiring that an applicant have a greater financial cushion to protect the State should it be required to attempt to recover self-bonded amounts from the applicant's assets in the event the applicant files for bankruptcy.

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM responded to a commenter who recommended a 6 to 1 ratio of net worth to self-bonded amount in the Federal regulations "to be more in keeping with the rates used by the surety industry." OSM responded by saying that "Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations for such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from the assets of the bankrupt entity. A 6 to 1 ratio is considered overly restrictive, especially in light of other required financial tests [at 30 CFR 800.23(b)(3)]." The State's proposal for a 6 to 1 ratio of net worth to self-bonded amount plus meeting a combination of three additional financial tests (investment-grade bond rating, $100 million net worth plus $200 million domestic fixed assets, and SEC financial reporting) is no less effective than the Federal regulations that require a 4 to 1 ratio of tangible net worth to self-bonded amount plus meeting one of three stand-alone financial tests (bond rating of A or higher; or $10 million tangible net worth plus 1.2 or greater current ratio of assets to liabilities plus 2.5 or less ratio of total liabilities to net worth; or $20 million domestic fixed assets plus the same ratio values as stated above).

d. Based on the above discussions, the Director finds that Texas' proposed financial criteria at TCMR 806.309(j)(2)(C)(iv) (I) and (II) are either already contained in Texas' existing approved alternative test for self-bonding or provide financial options for the new proposed alternative test that are no less effective at measuring financial strength and reasonable liquidity than the Federal self-bonding regulations at 30 CFR 800.23(b)(3).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No one requested an opportunity to speak at a public hearing; therefore, no hearing was held.

Texas Utilities Services Inc. provided written support for the proposed amendment (Administrative Record No. TX–593.07).

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11((i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. 593.01).

On September 15, 1995 (Administrative Record No. TX–593.06), the U.S. Bureau of Land Management commented that the revised regulations addressed by the documents appear to exceed Federal coal standards. On September 18, 1995 (Administrative Record No. TX–593.04), the U.S. Army Corps of Engineers acknowledged that the revisions were satisfactory. On October 2, 1995 (Administrative Record No. TX–593.08), the Natural Resources Conservation Services responded without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

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concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). However, none of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comment on the proposed amendment from EPA (Administrative Record No. TX–593.01). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–593.01). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on August 11, 1995, and as revised on September 25, 1995, concerning self-bonding alternative financial requirements for a business and governmental entities.

The Director approves the rules as proposed by Texas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding paragraph (1) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(1) The revisions to the following regulations at 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted to OSM on August 11, 1995, and as revised on September 25, 1995, are approved effective December 13, 1995.

TCMR 806.309(j)(2)(C)(iv) (I)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test I.
TCMR 806.309(j)(2)(C)(iv) (II)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test II.

[FR Doc. 95–30330 Filed 12–12–95; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AE28

Confidentiality of Certain Medical Records

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes Department of Veterans Affairs (VA) regulations to implement specific provisions of the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 concerning the confidentiality of certain medical records. These regulations protect the confidentiality of VA records pertaining to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), and sickle cell anemia.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Specialist, Veterans Health Administration (161F), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6274.

SUPPLEMENTARY INFORMATION: On July 26, 1993, at 58 FR 39703, VA published a notice of proposed rulemaking (NPRM) concerning the confidentiality of VA records pertaining to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV) and sickle cell anemia treatment, rehabilitation, education, training, evaluation and research information. Interested parties were invited to submit written comments on or before August 25, 1993. Two comments were received.

Background

VA was mandated by the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 to publish its own regulations relative to the confidentiality of medical records relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, and sickle cell anemia. VA, generally, has been following the Department of Health and Human Services' regulations on drug and alcohol abuse which were published in the **Federal Register**, July 1, 1975. The Department of Health and Human Services (HHS) regulations (42 CFR §§ 2.1–2.67) were promulgated with the enactment of legislation specific to alcohol and drug abuse programs and confidentiality of records. The regulations take into consideration the existing HHS regulations in implementing the confidentiality section of the Veterans Omnibus Health Care Act of 1976. Editorial and substantive changes were made to the HHS regulations which were published in the **Federal Register**, June 9, 1987.

The historical development of the regulations begins with Pub. L. 93–282, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974," which provided that the then Administrator of Veterans Affairs, through the then Chief Medical Director, consistent with responsibilities under Title 38, United States Code, prescribe regulations applicable to the confidentiality of medical records maintained in connection with the provision of hospital care, nursing home care, domiciliary care and medical services under Title 38 to patients suffering from alcohol abuse, alcoholism, and drug abuse. In prescribing and implementing these regulations, the Secretary of Veterans Affairs was required to consult with the Secretary of HHS in order to achieve the maximum possible coordination of the regulations.

Congress, recognizing that the particular problems of confidentiality of records in the VA health care system would best be handled by placing applicable provisions in Title 38, United States Code, added a new § 4132, now § 7332, to Title 38, United States Code, with the enactment of Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976. The intent of this legislation was to ensure confidentiality of certain medical records by establishing sanctions for unauthorized disclosure of information, while at the same time, meeting the legitimate needs for disclosure under certain conditions. As part of this legislation, Congress imposed upon VA requirements similar to those of Pub. L. 93–282 noted above (38 U.S.C. § 7334, formerly § 4134).

Section 111 of Pub. L. 94–581 replaced, for VA purposes, the provisions of Sections 122(a) and 303 of Pub. L. 93–282 (21 U.S.C. § 1175, for drug records; 42 U.S.C. § 4582, for alcohol records) as the statutory base for confidentiality of drug and alcohol abuse records for those patients treated by VA medical facilities. Additionally, it replaced Section 109 of Pub. L. 93–82 (38 U.S.C. § 1753(b), formerly § 653(b)) which provided for confidentiality of sickle cell anemia records and required VA to promulgate regulations. Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976, addressed all three subjects—drug abuse, alcoholism and sickle cell anemia records—in its confidentiality mandate. Section 121 of Pub. L. 100–322 provided for the confidentiality of records relating to infection with the HIV. Accordingly, drug and alcohol abuse, infection with the HIV, and sickle cell anemia records are included in these regulations.

VA has followed regulations on the confidentiality of patients' records related to drug and alcohol abuse as prescribed in 1975 by the Secretary of HHS. Certain provisions of the HHS regulations are inconsistent with VA requirements and these new VA regulations address those inconsistencies. Staff at HHS reviewed a draft of the regulations prior to publication and changes were made based on the comments where there was statutory authority for the change.

The HHS regulations as revised in 1987 and further amended on May 5, 1995, cover only alcohol and drug abuse information that is obtained by a specialized program or specific provider whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment. The 1987 regulations do not cover alcohol and drug abuse information obtained by health care facilities which provide alcohol and drug abuse care only as an incident to the provision of general medical care. The VA regulations include *all* records which are maintained in connection with the performance of any VA program or activity (including education, training, evaluation, treatment, rehabilitation or research) relating to drug abuse, alcoholism, infection with the HIV, or sickle cell anemia in order to provide greater confidentiality for patients who are provided care for these conditions. On May 5, 1995, HHS published a final rule in 60 FR 22296, amending its confidentiality regulations with regard to the definition of "program." HHS's final rule was in direct response to the holding made by the Ninth Circuit in a case involving the VA, *United States* v. *Eide*, 875 F.2d 1429, 1438 (9th Cir. 1989). There the court held the VAMC's (VA medical center) general emergency room to be a "program" as defined by the HHS regulations, upon which VA's policy is based. In its final rule, HHS limited the definition of "program" to: (1) an individual or entity, or an identified unit within a medical care facility, who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment, or (2) medical personnel or other staff in a general medical care facility, whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. VA's final regulations DO NOT reflect the same regulatory language concerning the definition of a "program" as the HHS regulations due to the VA's treatment of the encompassed conditions as an integral part of the VA medical health care system and not a separate program

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isolated from other Department functions. VA believes, as does HHS, that clarification of this point is necessary to help prevent other courts from ruling as the Ninth Circuit did in *Eide*, even as to the VA version of these regulations. Therefore, a specific example has been added to § 1.460(k)(2) to reflect that one-time emergency room care, where neither treatment or referral for treatment of the underlying drug or alcohol abuse condition is offered or sought, does not fall within the purview of these regulations. It was determined that a specific example was necessary to distinguish between those instances where an individual is brought into an emergency room for a potential drug overdose, receives one-time treatment and is released, from those instances where an individual enters an emergency room with, or acquires while there, the purpose of seeking treatment for his or her drug addiction, or VA offers treatment for such condition.

Discussion of Comments

A total of two comments were received—one from a national medical specialty society and the other from a not-for-profit public interest law firm that specializes in legal and policy issues related to substance abuse and HIV/AIDS. One of the commenters suggested that the regulations be revised to include a requirement that patients be given written notice and summary of the confidentiality protections of the subject records by §§ 1.460 through 1.499. This provision is included in the HHS regulations at 42 CFR 2.22. The HHS regulations provide confidentiality protections for drug or alcohol abuse information that is obtained by a specialized program or specific provider whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment. Consequently, the patients are easily identified at the initiation of treatment and can be provided the written notice and summary. The VA regulations, however, provide for the confidentiality of all records which are maintained in connection with the performance of any VA program or activity. Consequently, medical care may be given for drug or alcohol abuse, sickle cell anemia, or infection with the HIV in conjunction with, and after the initiation of medical care for other conditions. These patients are not as readily recognized as an individual who should be provided with the written notice and summary of the confidentiality protections. While VA will take efforts to notify patients of these provisions through notices in patient information handouts, handbooks, etc., it would not be possible to positively assure every patient will receive the notification as would be required if provided for in the regulations. Thus, we have not adopted this suggestion.

The same commenter suggested the addition of a provision that would provide for limitations on court-ordered disclosure of confidential communications. They suggested that disclosure of confidential communications that a patient provides to a treatment service be limited to those situations where a serious crime is reported or threatened, or where the patient has already testified about confidential communications in a formal proceeding, such as is provided for by HHS at 42 CFR 2.63. The final regulations have been revised to include the suggested provision. This is consistent with 38 U.S.C. 7334 which requires that the VA regulations follow the HHS regulations as far as possible. Accordingly, it has been added at § 1.491. The provisions previously published at § 1.491 and following have been renumbered following the newly inserted provision.

Another commenter addressed § 1.489(c) which provides for the release of identifiable patient records to "congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee." The commenter did not understand the necessity for a broad based authorization for the release of individually identifiable patient records for program oversight and evaluation and assumed that Congressional committees would not have a need for individual records, but rather a compilation of information without patient identifiers. It was further stated that the standards of disclosure to Congress of individually identifiable patient records for these diagnoses should be the same as for other Federal and State entities. We do not agree with this suggestion. As part of their oversight responsibilities, Congressional committees do review individual patient treatment issues as well as overall program issues. In order to carry out this function, they need access to treatment information concerning directly affected individuals. These responsibilities are not shared nor are they the responsibility of other Federal and State entities. For these reasons, the provision was not revised.

The same commenter recommended a revision of section 1.487 which provides for the notification of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of a patient. Disclosure may be made only after the patient's physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information and that the disclosure is necessary to protect the health of the spouse or sexual partner. The commenter recommended that the provision be refined to include a focus on risk behavior modification. No changes were made based on the comment. The regulation addresses the issue of confidentiality and the disclosure, under certain conditions, of the information to individuals who are at risk. The issue of risk behavior modification is best addressed in treatment and therapeutic publications, policies, guidelines, etc.

These regulations are not intended to direct the manner in which substantive functions, such as research, treatment, and evaluation should be carried out, but rather to define the minimum requirements for the protection of confidentiality of patient records which must be satisfied in connection with the conduct of those functions in order to carry out the purposes of the authorizing legislation.

An additional, clarifying change to the regulations has been made concerning internal non-patient investigations and healthcare inspections conducted by the Office of Inspector General (OIG). During the internal review process, a question was raised by the VA's OIG as to whether OIG would be prohibited access to records protected by the regulations in cases involving healthcare inspections or criminal investigations of non-patients. Because the statute prohibits access to such records only where the patient is the subject of an investigation, and because the OIG would have a need for the information in connection with their duties, we have included language in § 1.461(c) that explicitly extends the exception of coverage of the regulations to healthcare inspections and non-patient investigations conducted by OIG. We have also added language clarifying that confidential information obtained by VA components, including OIG, who have a need for the information in connection with their duties, may not be redisclosed except in accordance with the regulations. These clarifications from the proposed rule merely reflect our interpretation of statutory authority.

Other nonsubstantive changes have been added for purposes of clarity.

Executive Order 12866

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 600–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Paperwork Reduction Act

Section 1.475 of this regulation contains an information collection requirement that has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act and has been assigned OMB Control No. 2900–0544 (expiration date is October 31, 1996). The Department of Veterans Affairs estimates that it will take an average of five minutes per respondent to provide the required information for the consent form and there will be approximately 20,640 such requests made per year.

List of Subjects in 38 CFR Part 1

Administrative procedures, Privacy Act, Recordkeeping.

Approved: August 24, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

In consideration of the foregoing, the Department of Veterans Affairs amends 38 CFR part 1, General Provisions, as follows:

PART 1—GENERAL

1. The authority citation for part 1 is revised to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Sections 1.460 through 1.499, an undesignated center heading, note, and authority citation preceding § 1.460, and undesignated center headings preceding §§ 1.475, 1.475 and 1.485 and 1.490 are added to read as follows:

Release of Information from Department of Veterans Affairs (VA) Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection with the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia

Sec.

1.460 Definitions.
1.461 Applicability.
1.462 Confidentiality restrictions.
1.463 Criminal penalty for violations.
1.464 Minor patients.
1.465 Incompetent and deceased patients.
1.466 Security for records.
1.467 Restrictions on the use of identification cards and public signs.
1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
1.469 Patient access and restrictions on use.
1.470–1.474 [Reserved]

Disclosures With Patient's Consent

1.475 Form of written consent.
1.476 Prohibition on redisclosure.
1.477 Disclosures permitted with written consent.
1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the human immunodeficiency virus.
1.479 Disclosures to elements of the criminal justice system which have referred patients.
1.480–1.484 [Reserved]

Disclosures Without Patient Consent

1.485 Medical emergencies.
1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.
1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.
1.488 Research activities.
1.489 Audit and evaluation activities.

Court Orders Authorizing Disclosures and Use

1.490 Legal effect of order.
1.491 Confidential communications.
1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.
1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.
1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.
1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.
1.497–1.499 [Reserved]

Release of Information From Department of Veterans Affairs Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974).

The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94–581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93–82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751–1754).

Authority: 38 USC 1751–1754 and 7331–7334.

§ 1.460 Definitions.

For purposes of §§ 1.460 through 1.499 of this part, the following definitions apply:

Alcohol abuse. The term "alcohol abuse" means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Contractor. The term "contractor" means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§ 1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

Diagnosis. The term "diagnosis" means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or

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referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§ 1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

Disclose or disclosure. The term "disclose" or "disclosure" means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Drug abuse. The term "drug abuse" means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Infection with the human immunodeficiency virus (HIV). The term "infection with the human immunodeficiency virus (HIV)" means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§ 1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

Informant. The term "informant" means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient. The term "patient" means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual's eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term "patient" for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

Patient identifying information. The term "patient identifying information" means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a treatment program, if that number does not consist of, or contain numbers (such as social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the treatment program.

Person. The term "person" means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Records. The term "records" means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA, for the purpose of seeking or performing VA program or activity functions relating to drug abuse, alcoholism, tests for or infection with the human immunodeficiency virus, or sickle cell anemia regarding an identifiable patient. A program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia includes evaluation, treatment, education, training, rehabilitation, research, or referral for one of these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other diagnosis, or other information which identifies, or could reasonably be expected to identify, a patient as having a drug or alcohol abuse condition, infection with the human immunodeficiency virus, or sickle cell anemia (e.g., alcoholic psychosis, drug dependence), but only if such diagnosis or information is received, obtained or maintained for the purpose of seeking or performing one of the above program or activity functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or other information is not received, obtained or maintained for the purpose of seeking or performing a function or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia for the patient in question. Whenever such diagnosis or other information, not originally received or obtained for the purpose of obtaining or providing one of the above program or activity functions, is subsequently used in connection with such program or activity functions, those original entries become a "record" and §§ 1.460 through 1.499 of this part thereafter apply to those entries. Segregability: these regulations do not apply to records or information contained therein, the disclosure of which (the circumstances surrounding the disclosure having been considered) could not reasonably be expected to disclose the fact that a patient has been connected with a VA program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(1) The following are examples of instances whereby records or information related to alcoholism or drug abuse are covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses with the physician his use and abuse of alcohol. The physician offers VA alcohol rehabilitation treatment which is declined by the patient.

(2) The following are examples of instances whereby records or information related to alcoholism or drug abuse are not covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification, treated and released with no counseling or treatment for the underlying condition of alcoholism.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient's medical record is documented

to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Third party payer. The term "third party payer" means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment. The term "treatment" means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term "undercover agent" means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

(Authority: 38 U.S.C. 7334)

§ 1.461 Applicability.

(a) *General.*

(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation and research program or activity purposes.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research program or activity purposes.

(b) *Period covered as affecting applicability.* The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) *Exceptions.*

(1) *Department of Veterans Affairs and Armed Forces.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits, evaluations, healthcare inspections, or non-patient investigations, or between such components and the Armed Forces, of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. Information obtained by VA components under these circumstances may be disclosed outside of VA to prosecute or investigate a non-patient only in accordance with § 1.495 of this part. Similarly, the restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information to the Department of Justice or U.S. Attorneys who are providing support in civil litigation or possible litigation involving VA.

(2) *Contractor.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) *Crimes on VA premises or against VA personnel.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which:

(i) Are directly related to a patient's commission of a crime on the premises of the facility or against personnel of VA or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) *Undercover agents and informants.*

(i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient unless authorized pursuant to the provisions of § 1.494 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) *Applicability to recipients of information.*

(1) *Restriction on use of information.* In the absence of a proper § 1.494 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or

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substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from VA, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) *Restrictions on disclosures—third-party payers and others.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

(Authority: 38 U.S.C. 7332(e) and 7334)

§ 1.462 Confidentiality restrictions.

(a) *General.* The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by §§ 1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) *Acknowledging the presence of patients: responding to requests.*

(1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient's written consent is obtained in accordance with § 1.475 of this part or if an authorizing court order is entered in accordance with §§ 1.490 through 1.499 of this part. Acknowledgment of the presence of an identified patient in a facility is permitted if the acknowledgment does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§ 1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

(Authority: 38 U.S.C. 7334)

§ 1.463 Criminal penalty for violations.

Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§ 1.460 through 1.499 of this part shall be fined not more than $5,000 in the case of a first offense, and not more than $20,000 for a subsequent offense.

(Authority: 38 U.S.C. 7332(g))

§ 1.464 Minor patients.

(a) *Definition of minor.* As used in §§ 1.460 through 1.499 of this part the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide nonemergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) *State law requiring parental consent to treatment.*

(1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) *Minor applicant for service lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

(Authority: 38 U.S.C. 7334)

§ 1.465 Incompetent and deceased patients.

(a) *Incompetent patients other than minors.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) *Deceased patients.*

(1) *Vital statistics.* Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) *Information related to sickle cell anemia.* Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

(Authority: 38 U.S.C. 7332(b)(3))

§ 1.466 Security for records.

(a) Written records which are subject to §§ 1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§ 1.460 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.467 Restrictions on the use of identification cards and public signs.

(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.

(Authority: 38 U.S.C. 7334)

§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by the provisions of §§ 1.460 through 1.499 of this part and by administrative action taken under Sec. 303(a) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR Part 2a); or Sec. 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* Sections 1.460 through 1.499 of this part restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under §§ 1.490 through 1.499 of this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with §§ 1.490 through 1.499 of this part authorizes a VA facility to disclose certain information about its patients, the facility may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

(Authority: 38 U.S.C. 7334)

§ 1.469 Patient access and restrictions on use.

(a) *Patient access not prohibited.* Sections 1.460 through 1.499 of this part do not prohibit a facility from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that VA maintains about the patient, subject to the provisions of the Privacy Act (5 U.S.C. 552a(d)(1)) and 38 CFR 1.577. If the patient is accompanied, giving access to the patient and the accompanying person will require a written consent by the patient which is provided in accordance with § 1.475 of this part.

(b) *Restrictions on use of information.* Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

(Authority: 38 U.S.C. 7334)

§§ 1.470–1.474 [Reserved]

Disclosures With Patient's Consent

§ 1.475 Form of written consent.

(a) Required elements. A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

(1) The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

(7) The date on which the consent is signed.

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(8) A statement that the consent is subject to revocation at any time except to the extent that the facility which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by responsible personnel of VA to be materially false.

(c) *Notification of deficient consent.* Other than the patient, no person or entity may be advised that a special consent is required in order to disclose information relating to an individual participating in a drug abuse, alcoholism or alcohol abuse, HIV, or sickle cell anemia program or activity. Where a person or entity presents VA with an insufficient written consent for information protected by 38 U.S.C. 7332, VA must, in the process of obtaining a legally sufficient consent, correspond only with the patient whose records are involved, or the legal guardian of an incompetent patient or next of kin of a deceased patient, and not with any other person.

(d) It is not necessary to use any particular form to establish a consent referred to in paragraph (a) of this section, however, VA Form 10–5345, titled Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, may be used for such purposes.

(Authority: 38 U.S.C. 7332(a)(2) and (b)(1))

§ 1.476 Prohibition on redisclosure.

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient's written consent must be accompanied by a written statement similar to the following:

This information has been disclosed to you from records protected by Federal confidentiality rules (38 CFR Part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR Part 1. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient or patient with sickle cell anemia or HIV infection.

(Authority: 38 U.S.C. 7334)

§ 1.477 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

(Authority: 38 U.S.C. 7332(b)(1))

§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the HIV.

(a) *Definitions.*

For purposes of this section:

(1) *Central registry* means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

(2) *Detoxification treatment* means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

(3) *Maintenance treatment* means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(4) *Member program* means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:

(i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system which have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given, including parole.

(Authority: 38 U.S.C. 7334)

§§ 1.480–1.484 [Reserved]

Disclosures Without Patient Consent

§ 1.485 Medical emergencies.

(a) *General rule.* Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§ 1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:

(1) The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure;

(4) The nature of the emergency (or error, if the report was to FDA);

(5) The information disclosed; and

(6) The authority for making the disclosure (§ 1.485 of this part).

(Authority: 38 U.S.C. 7332(b)(2)(A))

§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.

(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.

(b) A person to whom a record is disclosed under this section may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(Authority: 38 U.S.C. 7332(b)(2)(C))

§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.

(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counseling or of testing to determine whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

(Authority: 38 U.S.C. 7332(b))

§ 1.488 Research activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584 and the following paragraphs, patient medical record information covered by §§ 1.460 through 1.499 of this part may be disclosed for the purpose of conducting scientific research.

(a) Information in individually identifiable form may be disclosed from records covered by §§ 1.460 through 1.499 of this part for the purpose of conducting scientific research if the Under Secretary for Health or designee makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research.

(2) Has a research protocol under which the information:

(i) Will be maintained in accordance with the security requirements of § 1.466 of this part (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(3) Has furnished a written statement that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.

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(b) A person conducting research may disclose information obtained under paragraph (a) of this section only back to VA and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

(Authority: 38 U.S.C. 7332(b)(2)(B))

§ 1.488 Audit and evaluation activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584, and the following paragraphs, patient medical records covered by §§ 1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.

(a) *Records not copies.* If patient records covered by §§ 1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and:

(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or

(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.

(b) *Copying of records.* Records containing patient identifying information may be copied by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 1.466 of this part (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section.

(2) The VA medical facility director determines to be qualified to conduct the audit or evaluation activities.

(c) *Congressional oversight.* Records subject to §§ 1.460 through 1.499 of this part upon written request may be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) *Limitation on disclosure and use.* Records containing patient identifying information disclosed under this section may be disclosed only back to VA and used only to carry out an audit or evaluation purpose, or, to investigate or prosecute criminal or other activities as authorized by a court order entered under § 1.494 of this part.

(Authority: 38 U.S.C. 7332(b)(2)(B))

Court Orders Authorizing Disclosures and Use

§ 1.490 Legal effect of order.

The records to which §§ 1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction to produce records subject to §§ 1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.

(Authority: 38 U.S.C. 7332(b)(2)(D))

§ 1.491 Confidential communications.

(a) A court order under §§ 1.490 through 1.499 of this part may authorize disclosure of confidential communications made by a patient to a treatment program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(Authority: 38 U.S.C. 7334)

§ 1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under §§ 1.460 through 1.499 of this part may not authorize qualified personnel, who have received patient identifying information from VA without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 1.495 of this part may authorize disclosure and use of records to investigate or prosecute VA personnel.

(Authority: 38 U.S.C. 7334)

§ 1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records covered by §§ 1.460 through 1.499 of this part for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of § 1.475 of this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and VA facility from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party

to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(Authority: 38 U.S.C. 7334)

§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 1.495 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including, but not limited to, homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

(Authority: 38 U.S.C. 7332(c))

§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.

(a) *Application.*

(1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, § 1.493(d) and (e) of this part.

(d) Limitations on disclosure and use of patient identifying information.

(1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

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§ 1.490 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) *Notice.* The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.494 of this part.

(Authority: 38 U.S.C. 7334)

§ 1.497–1.499 [Reserved]

§ 1.513 [Amended]

3. In § 1.513(b)(2) remove the words "Post Office Department" and add in their place, "U.S. Postal Service".

§ 1.513a [Removed]

4. Section § 1.513a is removed.

[FR Doc. 95–30138 Filed 12–12–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 081–4012a; FRL–5326–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Stage II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision supplements the approved Pennsylvania Stage II regulation by establishing and requiring appropriate testing and certification of Stage II vapor recovery equipment for affected sources in Pennsylvania. The intended effect of this action is to approve these requirements as a supplement to the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. Final approval of these supplemental provisions to the Stage II regulation will stop the sanctions clock that was started on June 13, 1994.

DATES: This action will become effective January 22, 1996 unless notice is received on or before January 12, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On October 26, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992 and effective on July 9, 1992. These provisions are meant to supplement the existing Pennsylvania Stage II vapor recovery regulation, Chapter 129.82. EPA approved the Stage II regulations in a final limited approval/disapproval rulemaking notice on June 13, 1994 (59 FR 30302). These supplemental provisions correct the deficiencies identified in that rulemaking notice and the proposal, which was published on November 29, 1993 (58 FR 62560). The June 13, 1994 final limited approval/disapproval rulemaking started a sanctions clock that allowed Pennsylvania 18 months to submit material that would correct the deficiencies in the Stage II regulation. This 18 month period ends on January 14, 1996. Final approval of the Stage II regulations will stop this sanctions clock. The submittal of the supplemental provisions that correct the existing deficiency in the Pennsylvania Stage II regulation allows EPA to convert the limited approval/disapproval of the Pennsylvania Stage II regulation to a full approval; thereby halting the sanctions clock.

Summary of SIP Revision

Section 17(2) establishes the effective date of the Pennsylvania Stage II vapor recovery regulations as November 12, 1992. This effective date is consistent with the requirements of section 182 of the Clean Air Act and the EPA Stage II guidance developed under that section. Sections 6.7(b) and (c) establish the effective date for affected sources based on their gasoline throughput or construction date. Section 6.7(h) establishes that the testing and certification required for all affected sources must be conducted in accordance with the Stage II guidance issued by EPA. EPA has determined that each of these provisions is consistent with the Clean Air Act and EPA's Stage II guidance.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 22, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1996.

Final Action

EPA is approving sections 6.7(b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992, as these provisions correct the deficiencies in the Stage II requirements in Pennsylvania Chapter 129.82, which were approved in a limited fashion by EPA on June 13, 1994. An interim final determination published elsewhere in this **Federal Register** stops the sanctions clock that was started when the final limited approval/disapproval action was published on June 13, 1994 until EPA's full approval of the Pennsylvania Stage II regulation becomes effective.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). SIP approval actions

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the approval of supplemental Stage II provisions in Pennsylvania, must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(106) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities originally submitted on March 4, 1992 and supplemented on October 26, 1995 by the Pennsylvania Department of Environmental Protection (formerly known as the Department of Environmental Resources):

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(i) Incorporation by reference.

(A) Letter of October 26, 1995 from the Pennsylvania Department of Environmental Protection transmitting sections 6.7 (b), (c), (h) and section 17(2) of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992.

(B) Sections 6.7 (b), (c), (h), and section 17(2) of the Pennsylvania Air Pollution Control Act, amended June 29, 1992 and effective on July 9, 1992.

[FR Doc. 95–30109 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[PA 061–4012c; FRL–5343–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Interim Final Determination That Pennsylvania has Corrected the Deficiency in the Stage II Vapor Recovery Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving the Commonwealth of Pennsylvania's submittal of its Stage II Vapor Recovery requirements. The EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on July 13, 1994. This action will defer the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's proposed approval of the State's submittal. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final rule taking into consideration any comments received.

DATES: *Effective date.* December 13, 1995.

Comment date. Comments must be received by January 12, 1996.

ADDRESSES: Comments should be sent to Marcia L. Spink, Associate Director, Air Programs, (3AT00), Air, Radiation and Toxics Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19103. The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above of via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1992, the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, submitted a Stage II vapor recovery regulation, Chapter 129.82, which EPA disapproved in a limited fashion on June 13, 1994 (59 FR 30302). The EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal implementation plan under section 110(c)(1) of the Act. The State subsequently submitted a revised program on October 27, 1995, correcting the deficiencies in the original submittal. The EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the Commonwealth of Pennsylvania's submittal of its Stage II vapor recovery regulation. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

II. EPA Action

Based on the proposed full approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiency that started the sanction clock and, therefore, EPA is taking this interim final action finding that the State has corrected the disapproval deficiency, effective on publication. This action does not stop the sanction clock that started under section 179 for this area on July 13, 1994. However, this action will defer the application of the offset sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994) to be codified at 40 CFR 52.31. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanction clock and will permanently lift any applied, stayed or deferred sanctions.

Today EPA is also providing the public with an opportunity to comment on this interim final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. In addition, the sanctions consequences described in the sanctions rule will also apply. See 59 FR 39832.

III. Administrative Requirements

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed and direct final action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action, pertaining to the interim final approval of corrections to the Pennsylvania Stage II vapor recovery regulation, temporarily relieves sources of an additional burden potentially placed on them by the sanction provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 1995.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 95–30111 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 140

[FRL–5345–4]

RIN 2040–AC51

Marine Sanitation Devices; Final Regulation to Establish Drinking Water Intake Zones in Two Sections of the Hudson River, New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is establishing two Drinking Water Intake Zones in the Hudson River, in response to an application received by the New York State Department of Environmental Conservation (NYSDEC). Establishment of a Drinking Water Intake Zone serves to completely *prohibit the discharge of vessel sewage*, treated or untreated, to waters contained in that zone. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

EFFECTIVE DATES: The final rule will take effect April 11, 1996. In accordance with 40 CFR 23.2, these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, two weeks after publication.

ADDRESSES: Patrick M. Durack, Chief, Water Permits and Compliance Branch (25th Floor), U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, New York, 10007–1866.

FOR FURTHER INFORMATION CONTACT: Philip Sweeney, 212–637–3765.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1992 the New York State Department of Environmental Conservation (NYSDEC) submitted an application for two reaches of the Hudson River to be designated by EPA as Drinking Water Intake Zones. Section 312(f)(4)(B) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4, (the "Clean Water Act"), states, "Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone. "Region II requested that authority for taking action in response to this application be delegated from the Administrator to the Regional Administrator. That authority was delegated on November 16, 1992.

Zone 1 is in the Hudson River/ Champlain Canal and is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north. It is approximately 8 miles long. This zone is classified in the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 941.6, Item Number 1, as one Class A segment. This classification was assigned in February 1967. Class A is the standard given to waters of New York for the protection of a source of water supply for drinking, culinary, or food processing purposes. There is one drinking water intake located in Zone 1, authorized for 2.0 million gallons per day, which serves the Town and Village of Waterford, Saratoga County, New York. This portion of the Hudson River adjoins Saratoga County on the west and Rensselaer County on the east.

Zone 2 is also in the Hudson River and is bounded on the south by the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28), was classified as Class B in 1966 and reclassified by the State of New York as Class A in 1969. The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York. This southern segment of Zone 2 was classified on October 15, 1966 as Class A. There are six authorized drinking water intakes in Zone 2. They are listed below:

Community served	Authorized taking in million gallons per day
Rhinebeck Village and Hamlet of Rhinecliff	1.0
Hyde Park Fire and Water District, Town of Hyde Park	6.0
City and Town of Poughkeepsie	16.0
New York City, Chelsea Emergency Pump Station	100.0
Port Ewan Water District, Town of Esopus	1.0
Highland Water District	3.0

Authority to enforce the prohibition of vessel sewage discharges lies with the U.S. Coast Guard, which may by agreement utilize enforcement officers of the U.S. Environmental Protection Agency, other Federal agencies, or States, in accordance with § 312(k) of the Clean Water Act.

Both the Federal and New York State governments will take a role in implementation and enforcement of the prohibition in the two drinking water

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intake zones. The prohibition will take effect one hundred and twenty (120) days after this notice. A major focus of the implementation plan for this prohibition will be public education, specifically boater education. For the purposes of boater understanding and compliance, it is worthwhile to note landmarks which approximate the boundaries of the drinking water intake zones, which are in view of the Hudson River boater. For Zone 1, the Troy-Waterford Bridge (126th Street Bridge) and Lock #2 are visible landmarks. For Zone 2, the northern border is at the southern end of Houghtaling Island. The Newburgh-Beacon Bridge, which is south of the southern zone border, is an obvious landmark for the southern end of Zone 2. All of Zone 2 lies between Houghtaling Island and the Newburgh-Beacon Bridge, and these landmarks are therefore useful markers for boaters.

II. Public Comments and Response to Most Significant Comments

On July 5, 1995, EPA noticed the proposed regulation in the **Federal Register**, which regulation would establish drinking water intakes zones in two sections of the Hudson River. Upon publication of the proposed regulation, a sixty day public comment period commenced and was closed on September 5, 1995. During the comment period, two public hearings were held at the following locations:

1. August 9, 1995 at the offices of the NYSDEC, 21 South Putt Corners Road, New Paltz, New York from 6:30 p.m. to 8:30 p.m.

2. August 10, 1995 at the Town of Waterford Civic Center, 35 Third Street, Waterford, New York from 6:30 p.m. to 8:30 p.m.

Written and/or oral statements were received by six individuals. One individual represented the association of towboat operators. Another individual represented the shipping operations for a major petroleum company. Two individuals represented two citizens group interested in the Hudson River. The comments of each individual are summarized and responded to below:

Comment 1: One individual asserted that the proposed rule goes beyond the proscriptions [sic] of the U.S. Coast Guard by effectively mandating that commercial vessels which operate on the Hudson River install a Type III marine sanitation device (MSD). She contended further that while Section 312(f)(4)(B) of the Clean Water Act (CWA) permits the establishment of a "no discharge zone" once a state submits an application to EPA, the statute does not limit the options which may be considered nor empower EPA to contravene federal regulations promulgated by the U.S. Coast Guard which address MSDs aboard vessels. The individual argued that the proposed rule "oversteps the bounds of established international and domestic statutes related to the discharge of sewage."

Response 1: Section 312 of the CWA requires the Administrator, in conjunction with the U.S. Coast Guard, to promulgate performance standards for MSDs and requires the U.S. Coast Guard to promulgate regulations governing the design, construction, installation and operation of MSDs. Section 312(f)(4)(B) of the CWA, however, addresses an issue other than performance standards, design, construction, installation or operation of MSDs. This subsection of the CWA provides that "[u]pon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." The rule, which designates two drinking water intake zones, is, therefore, not inconsistent with Coast Guard regulation and is consistent with the CWA. The comment concerning international agreements and statutes is non-specific and as such cannot be addressed; moreover, the Hudson River is considered domestic waters.

Comment 2: The individual maintained that by proposing to "prohibit the discharge of treated sewage, vessels with Type II MSDs will be rendered non-operational in the winter months and only operational at other times of the year."

Response 2: EPA maintains that vessel operators may operate in compliance with the no discharge requirements by utilizing permanently-installed Type III systems; using portable Type III systems; or by discharging treated waste outside the zone. However, EPA acknowledges that certain circumstances (e.g. winter operation in Zone 2) could preclude the "discharge outside the zone" option for certain vessels. In these circumstances, vessel owners may find it necessary to use either permanent or portable Type III systems. In response to the concern about complying with no discharge requirements during winter months without retrofitting with a permanent Type III system, EPA is delaying the effective date of the rule to 120 days after final notice. This change will allow additional time to retrofit and will allow operators additional time to plan for the more challenging winter operational period.

Comment 3: The two alternatives offered to vessel owners with Type II MSDs is to either install a Type III MSD or discharge treated sewage outside the no discharge zones. An individual argued that the off-loading of sewage at a pump-out station located in the no discharge zone is not a viable option for some vessel operators given the physical dimensions, geographic location and depth of water at many of the pump-out facilities on the Hudson River.

Response 3: Many vessel owners currently operating on the Hudson River use Type III MSDs and are off-loading sewage. The fact that these vessels commonly off-load sewage demonstrates that this is a viable alternative for many other vessel operators, as well. While applications made pursuant to section 312(f)(3) of the CWA must show that adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available, this is not a criterion for applications or determinations made pursuant to section 312(f)(4)(B) of the CWA.

Comment 4: One individual declared that the proposed regulation will have a detrimental operational and economic impact on commercial vessels which have a Type II marine sanitation device on-board. She criticized that the proposed rule characterizes the costs associated with the purchase of Type III marine sanitation devices as "nominal" and explained that the actual cost associated with the purchase and installation of a holding tank aboard a tugboat can be tens of thousands of dollars depending upon the configuration of the vessel. She concluded that the installation and utilization of a Type III MSD is not a viable alternative for many tug/barge units transporting petroleum products on the Hudson River.

Response 4: Retrofitting is not the only option available and some vessel owners will choose not to retrofit, but will use portable toilets or discharge outside the zones instead. EPA, however, recognizes that some vessels will retrofit with a Type III MSD to comply with the regulation and that there will be a cost associated with retrofitting. EPA—s original cost estimates were based on equipment costs and did not include installation costs. The individual points out that cost estimates should include installation of the equipment as well as the purchase price of the equipment. During the public hearing on August 9, 1995, an individual stated that the cost to retrofit would be between $10,000 and $75,000 and impact 100 tugboats and 40 to 75 barges (a total of 140 to 175 vessels). Employing the numbers provided by the industry representative, the most expensive estimates would result in costs of approximately $13 million to the industry. This dollar amount is well below the $100 million annual cost ceiling imposed by Congress in the Unfunded Mandates Reform Act of 1995, which amount can be used as a guide in determining what is, in the view of Congress, a substantial cost.

Comment 5: One person commented that the second alternative outlined in the proposed rulemaking is for vessels with a Type II MSD to simply treat and discharge the sewage outside the no discharge zone. She stated that the fact that EPA and DEC are suggesting that vessels discharge outside the proposed sixty-eight mile no discharge zone is disingenuous.

Response 5: Vessels which discharge treated sewage outside of the drinking water intakes zones are in compliance with the regulation. This rule, promulgated to protect specific drinking water intakes, regulates discharges inside the delineated zones as a means of protecting these intakes and does not attempt to control the discharge or prohibit the discharge of treated sewage outside the zones.

Comment 6: One individual speculated that the entire Hudson River would soon be designated as a no discharge zone. She made this speculation because based on her information and belief, the southern segment of Zone 2, from Esopus Island to Chelsea, New York also has drinking water intake valves with the cumulative capacity of 127 millions gallons per day.

Response 6: To date, no other applications have been made by NYSDEC or discussed with EPA. EPA will act on the facts before it and will not act on mere speculation.

With regard to the Chelsea water intake, that intake is included in Zone 2, which is bounded on the south by the Village of Roseton on the western shore and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28). The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York.

Comment 7: An individual questioned the beneficial results of designated no discharge zones if the Hudson River continues to be contaminated by combined sewer outfalls and storm water run-off.

Response 7: The prohibition of the discharge of vessel sewage from MSDs is not the only NYSDEC program to protect the drinking water sources of several communities and to improve the water quality in the Hudson River. There are programs in place to reduce and better manage the discharge of storm water and non-point pollution. Combined sewer overflows are regulated through the NYSDEC State Pollutant Discharge Elimination System permitting program. This final rule is in addition to programs already in place and will serve to enhance the Hudson River water quality.

Comment 8: Another individual representing a shipping operations for a major petroleum company provided a letter that reiterated the comments submitted by the association representing the tow boat industry. See comments and responses 1 through 7.

Comment 9: An individual entered an oral statement into the record at the public hearing held on August 10, 1995. This individual expressed his support of the regulation. He also stated that EPA should consider regulations which parallel the Lake Champlain regulations which require that all vessels with a marine toilet on-board must be equipped with a holding tank.

Response 9: EPA acknowledges this support for the proposal. With regard to mandating installation of holding tanks, EPA does not have the authority to prescribe the method of compliance with the rule. EPA expects to address operational procedures in the implementation plan which is to be developed following promulgation.

Comment 10: This individual also named four Class A water segments (a 30-mile stretch in the Mohawk River, the Seneca River, Cayuga Lake and Seneca Lake) as classified by NYSDEC which are navigable and not among the waters which are no discharge zones. These are waters which he feels need to be designated as no discharge zones. He recognized that EPA could not act on this suggestion unless NYSDEC applied for such designation.

Response 10: No response needed.

Comment 11: Another individual commented during the public hearing on August 10, 1995 that he wondered what part of the Mohawk River served as the southern boundary of Zone 1. He recommended that the Green Island-Troy dam be designated as the landmark for the southern boundary. He also stated his support for the regulation.

Response 11: EPA concurs that the description in the proposed rule is ambiguous and needs clarification. The final rule will clarify that the southern border of Zone 1 is the northernmost confluence of the Mohawk River with the Hudson River; the Troy-Waterford Bridge (126th Street Bridge) will serve as the line delineating the southern boundary of Zone 1. The confluence is not a landmark which is readily apparent to a vessel operator on the water. The Troy-Waterford Bridge (126th Street Bridge) will serve as a landmark which is easily recognized by an operator on the water. EPA considers this clarification to be a minor modification which results in the boundary line being moved approximately 3–4 city blocks to the north of the original boundary. Upon reevaluation of all the boundary delineations, EPA discovered that the description of the southern boundary to Zone 2 may not be easily understood by the public. The final regulation will add the phrase "in the vicinity of Chelsea."

Comment 12: A citizens group through its representative stated its support for the regulation in a letter dated August 25, 1995.

Response 12: EPA acknowledges this support for this proposal.

Comment 13: Another representative of a citizens group provided a comment on September 27, 1995, after the public comment period closed. The comment stated support for the proposed rule.

Response 13: No response required.

III. Compliance with Other Acts and Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.*, whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic effect on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the action will have any effect on any small entity. An

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abbreviated IRFA can be prepared depending on the severity of the economic impact and the relevant statute's allowance of alternatives.

The Agency has prepared an IRFA for this final rule. In summary, the IRFA describes that a prohibition of vessel sewage discharge in these two zones will apply to any commercial or recreational vessel with on-board toilet facilities that navigates the Hudson River in the described areas. Only commercial vessels are considered small entities with respect to the Regulatory Flexibility Act. All vessels are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of vessel sewage in any freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose inlet or outlet is such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of being navigated, (40 CFR 140.3). In other waters, including the Hudson River, vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Type I and Type II devices are both flow-through devices that treat sewage through maceration and disinfection. Type III devices are holding tanks. Vessel sewage is held in tanks until it can be properly disposed of at a pump-out facility, or it may be discharged untreated outside of U.S. territorial waters. Most Type III devices are equipped with a discharge option, in the form of a Y-valve, which allows the boater to discharge the sewage directly overboard, which is legal only outside of U.S. territorial waters. Since the Hudson River is a U.S. territorial water, the discharge of untreated vessel sewage is prohibited under the existing regulations. Today's rule, therefore, will not change the legal requirements for boats with Type III devices. Consequently, the only small entities affected by this rule will be commercial boats with on-board toilets with a Type I or II marine sanitation device which use these approximately 68 miles of the Hudson River. The rule will affect these vessels by requiring retention and pump-out of their sewage, or discharge outside of the designated zones. This rule requires no reporting or record keeping activity on the part of small entities. Because of the cost associated with purchase of portable Type III devices and use of pump-out facilities, and the option to discharge sewage in accordance with Federal standards outside of the zones, this final rule imposes no significant economic impact on a substantial number of small entities.

As mentioned above, NYSDEC submitted the application for these Drinking Water Intake Zones under Section 312(f) of the Clean Water Act—the section that sets national standards for discharges of vessel sewage and prohibits the states or political subdivision thereof from adopting or enforcing any other regulation or standard for vessel sewage discharges. There are several exceptions to this prohibition. Section 312(f)(4)(B) is one of these exceptions. This section was added to the Clean Water Act in 1977 in order to provide the states with an opportunity to have a more stringent standard (i.e., a prohibition) for drinking water intake areas. The Act states, "Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." EPA wishes to correct its interpretation of CWA section 312(f)(4)(B), as stated in the preamble of the proposed rule at 60 FR 34942. EPA interprets CWA Section 312(f)(4)(B) to give EPA discretion upon application by a state to establish a drinking water intake zone, both with respect to the timing of EPA action on such an application and the substance of such action. There is no mandatory duty for EPA to act upon such an application, as the CWA specifies no date certain for such action. Further, EPA interprets the requirement for states to apply to EPA for the flexibility to promulgate a drinking water intake zone different from that applied for, if EPA believes that a different zone is warranted.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community, as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under Section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under Section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with marine sanitation devices and that navigate the Hudson River are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of untreated vessel sewage in the Hudson River and require that vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this rule. Those vessels affected by this rule will either retain and pump out treated sewage or discharge outside of the designated zones. It is therefore estimated that the annualized costs to State, local and tribal governments in the aggregate, or to the private sector, will not be or exceed $100 million. Thus, today's rule is not subject to the requirements of Section 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it also is not subject to the requirements of Section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

List of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: December 5, 1995.

Jeanne M. Fox,

Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 140 is amended as follows:

PART 140—[AMENDED]

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 312, as added Oct. 18, 1972, Pub. L. 92–500, Sec. 2, 86 Stat. 871. Interpret or apply Sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

2. In § 140.4 paragraph (b)(1) is amended by designating the undesignated text after the colon as paragraph (b)(1)(i) and by adding paragraph (b)(1)(ii) to read as follows:

§ 140.4 Complete prohibition.

* * * * *

(b) * * *

(1) * * *

(ii) Two portions of the Hudson River in New York State, the first is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north, and the second of which is bounded on the north by the southern end of Houghtaling Island and on the south by a line between the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, as described in Items 2 and 3 of 6 NYCRR Part 858.4.

[FR Doc. 95–30406 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 180

[PP 3F4222/R2192; FRL–4989–4]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines) at 1.0 ppm. Miles, Inc. (now Bayer Corp.) submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish these maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: The effective date of this rule is November 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4222/R2192], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 3F4222/R2192]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 17, 1995 (60 FR 42885), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 3F4222 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines per 40 CFR 180.1(h)) at 1.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was

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based on decreases in mean body weights, body weight gains, and food consumption; and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm), and an LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in *Salmonella* that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 *ug*/mL without activation or 15 to 120 *ug*/mL with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the maximum-tolerated-dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and followup studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT, and the structural correlation with at least six other related triazole pesticides that produce liver tumors.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a no-observed-effect level (NOEL) of 1.00 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is based on a 1-year dog-feeding study that demonstrated lenticular and corneal opacity and hepatic toxicity as an endpoint effect. A chronic exposure analysis was performed using tolerance level residues and 100 percent crop-treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups.

The Theoretical Maximum Residue Contribution (TMRC) from the published uses is estimated at 0.000008 mg/kg bwt/day and utilizes 0.075% of the RfD for the general population of the lower 48 States. The proposed use on peaches, cherries, and necatrines contributes 0.000377 mg/kg bwt/day (3.8% of the RfD) which raises the TMRC to 0.000385 mg/kg bwt/day or 3.9% of the RfD.

The TMRC for the most highly exposed subgroup, nonnursing infants (less than 1-year old) is 0.000003 mg/kg bwt/day which represents 0.03% of the RfD. The proposed use on peaches, cherries, and nectarines for nonnursing infants (less than 1-year old) raises the TMRC to 0.002525 or 25.3% of the RfD.

The nature of the residue in cherries, peaches, and nectarines is adequately understood. An adequate analytical method using gas chromatography is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 3F4222/R2192] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.474, by amending the table therein by adding and alphabetically inserting new entries for cherries and peaches (includes nectarines), to read as follows:

§ 180.474 Tebuconazle (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole); tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	
Cherries	4.0
. . . . .	
Peaches (includes necatrines)	1.0
. . . . .	

[FR Doc. 95–29986 Filed 12–12–95; 8:45 am]
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40 CFR Part 180

[PP 5E4540/R2186; FRL–4985–7]

RIN 2070–AB78

α-Alkyl(C_{21}-C_{71})-ω-Hydroxypoly (Oxyethylene); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts α-alkyl(C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) from the requirement of a tolerance when used at levels not to exceed 10% as a wetting agent or granule coating in pesticide formulations. Petrolite Corp. requested this regulation under the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4540/R2186], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2,

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1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4540/R2186]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 1995 (60 FR 50514), EPA issued a proposed rule that gave notice that the Petrolite Corp., Polymers Division, 6910 East 14th St., Tulsa, OK 74112, had submitted pesticide petition (PP) 5E4540 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for α-alkyl (C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) when used at levels not to exceed 10% as a wetting agent or granule coating in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4540/R2186] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5E4540/R2186], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 3, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
α-Alkyl (C_{21}-C_{71})-ω-hydroxypoly (oxyethylene) in which the poly(oxyethylene) content is 2 to 91 moles and molecular weight range from 390 to 5,000..	Not to exceed 10%	Wetting agent or granule coating

* * * * *

[FR Doc. 95–29988 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E4464/R2185; FRL–4985–5]

RIN 2070–AB78

Linuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document increases the established tolerance for residues of the herbicide linuron in or on the raw agricultural commodity asparagus. The regulation to increase the maximum permissible level for residues of linuron was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4464/R2185], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4464/R2185]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 1995 (60 FR 50510), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 5E4464) to EPA on behalf of the IR-4 Agricultural Experiment Stations of California, Indiana, Michigan, and New Jersey. The petition requested that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.184 by increasing the established tolerance for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodity asparagus from 3.0 parts per million (ppm) to 7.0 ppm. IR-4 proposed the increased tolerance for asparagus in response to the reregistration eligibility review and decisions on the pesticide case linuron, which was completed by EPA on April 28, 1995. The Reregistration Eligibility Decision (RED) requires that the established tolerance for linuron on asparagus be increased to 7.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the

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proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4464/R2185] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5E4464/R2185], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.184, paragraph (a) is amended in the table therein by revising the entry for asparagus, to read as follows:

§ 180.184 Linuron; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
Asparagus	7.0

* * * * *

[FR Doc. 95–29989 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4467/R2193; FRL–4990–8]

RIN 2070–AB78

Neem Oil; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of clarified hydrophobic extract of neem oil when used according to good agricultural practice as a broad-spectrum fungicide/insecticide/miticide on all greenhouse and terrestrial food crops. A request for an exemption from the requirement of a tolerance was submitted by W.R. Grace Co.-Conn. This regulation eliminates the need to establish a maximum permissible level for residues of this broad-spectrum fungicide/insecticide/miticide on all greenhouse and terrestrial food crops when used according to good agricultural practice.

EFFECTIVE DATE: This rule becomes effective on December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4467/R2193], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5F4467/R2193]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Zubkoff, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8694; e-mail: zubkoff.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 29, 1995 (60 FR 50582), which announced that W.R. Grace Co.-Conn., 7379 Route 32, Columbia, MD 21044, had submitted a pesticide petition (PP) 5F4467 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the use of clarified hydrophobic extract of neem oil on all greenhouse and terrestrial food crops when used according to good agricultural practice. There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of PP 5F4467.

Existing Food Clearances

The clarified hydrophobic extract is prepared from the crude botanical extract of the seed kernels of the neem tree, *Azadiracta indica*. The constituents of clarified hydrophobic extract of neem oil are long-chain fatty acids and glycerides. Long-chain fatty acids and glycerides are Generally Recognized As Safe (GRAS) for use in foods by the U.S. Food and Drug Administration (FDA). Under title 21 of the Code of Federal Regulations (CFR) (21 CFR 172.860), oleic acid derived from tall oil fatty acids (21 CFR 172.862), and linoleic acid (21 CFR 184.1065), glyceryl monooleate (21 CFR 184.1323), glyceryl monostearate (21 CFR 184.1324), and mono- and diglycerides (21 CFR 184.1505) are considered as GRAS.

Natural Occurrence

Long-chain fatty acids and glycerides are readily synthesized by most forms of life and are common constituents of human, avian, and other mammalian diets. In most soil and aquatic environments, these constituents of clarified hydrophobic extract of neem oil would be readily metabolized by endemic microbial populations and should not accumulate. Because clarified hydrophobic extract of neem oil is a naturally occurring compound which displays a nontoxic mode of action to the target pest, the Agency classified the active ingredient as a biochemical pesticide.

Toxicology Assessment

All studies submitted for acute mammalian toxicology support the registration of the technical manufacturing product (Reg. No. 11688-8) and the end-use product for use on all terrestrial and greenhouse food crops. Summarized below are data and information for the registration of clarified hydrophobic extract of neem oil. EPA has examined the acute mammalian toxicology data related to human health submitted for clarified hydrophobic extract of neem oil. The mammalian toxicology data for clarified hydrophobic extract of neem oil indicate low acute toxicity following all routes of exposure. With the exceptions of the primary eye irritation study (toxicity category III) and the acute dermal study (toxicity category III), all other acute studies (oral, dermal irritation, and inhalation toxicity) were classified toxicity category IV. Based on the results from the sensitization test (Buehler), the clarified hydrophobic extract of neem oil is considered to be a mild (minimal) contact sensitizer. In addition, clarified hydrophobic extract of neem oil was shown not to be cytotoxic or mutagenic via the Ames test (Salmonella/reverse mutation assay). Further genotoxicity tests to address structural chromosomal aberrations and forward mutations have been waived based on the known composition (fatty acids and glycerides) and GRAS status of the technical manufacturing product (clarified hydrophobic extract of neem oil, the lack of mammalian and avian toxicity, and the negative results observed in the Ames tests). Consequently, at levels used on plants, human exposure is expected to be negligible and acute toxicity from such exposure is not expected.

Tolerance exemptions are usually, in part, based on the results of subchronic (90-day) feeding and developmental toxicity studies submitted to support registration. However, these studies were waived for clarified hydrophobic extract of neem oil because of the low demonstrated acute toxicity, the GRAS nature of the naturally occurring components (saturated fatty acids and glycerides) of the active pesticidal ingredient, and the negligible exposure to humans and the environment owing to the low use rates. Such use rates would not significantly increase dietary intake over routine exposure from general consumption of fatty acids in foods. Moreover, the Agency knows of no reported cases of adverse effects from exposure to low amounts of fatty acids.

Residue Chemistry Data

Residue chemistry data are usually required for biochemical pesticides only if the submitted mammalian toxicology studies indicate that additional Tier II or Tier III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity; it has naturally occurring components in many food plants and, therefore, it is

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a component of the normal human diet. Therefore, Tier II or Tier III data are not required. Based on the information considered, the Agency concludes that the establishment of a tolerance for the active ingredient, clarified hydrophobic extract of neem oil, is not necessary to protect the public health from food residues expected from the use of clarified hydrophobic extract of neem oil. Since this rule establishes an exemption from the requirement of a tolerance, the Agency has concluded that an analytical method is not required for enforcement purposes for clarified hydrophobic extract of neem oil.

Metabolism

Clarified hydrophobic extract of neem oil consists of naturally occurring fatty acids and glycerides that are considered GRAS by the FDA. The oxidative degradation of fatty acids is a central metabolic pathway in animals, plants, and microbes. Glycerides are degraded into glycerol and fatty acids of varying chain lengths. Glycerol is readily metabolized or used as an energy source or as a precursor to other carbohydrates, lipids, or amino acids. Fatty acids are metabolized into two-carbon fragments through a sequence of enzyme-catalyzed reactions. The metabolic products are then incorporated into fats, carbohydrates, and amino acids.

Conclusion

Based on the information considered, the Agency concludes that establishment of a tolerance for clarified hydrophobic extract of neem oil (Reg. No. 11688-8) is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule-making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, a summary of any evidence relied upon by the objector as well as the other materials required by 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5F4467/R2193] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5F4467/R2193], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1161, to read as follows:

§ 180.1161 Clarified hydrophobic extract of neem oil; exemption from the requirement of a tolerance.

Clarified hydrophobic extract of neem oil (Reg. No. 11688-8) is exempt from the requirement of a tolerance on all raw agricultural commodities when used as a botanical fungicide/insecticide/miticide.

[FR Doc. 95-29991 Filed 12-12-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 8E3574/R2165; FRL-4973-5]

RIN 2070-AB78

Terbufos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the time-limited tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) green coffee beans for an additional 2 years. American Cyanamid Co. submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the regulation to establish a maximum permissible level for combined residues of the insecticide/nematicide in or on the commodity.

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8E3574/R2165], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8E3574/R 2165]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 2, 1995 (60 FR 39299), EPA issued a proposed rule (FRL-4963-5) that gave notice that the American Cyanamid Co. had submitted data and a request under the FFDCA that a time-limited tolerance for residues of the insecticide/nematicide terbufos on coffee beans be changed to permanent status. The Agency proposed an extension of the time-limited tolerance to allow it to complete its in-depth reassessment of the current established tolerances for terbufos.

The following comments were received from the petitioner, American Cyanamid.

1. American Cyanamid believes that since the acceptance of the new rat metabolism study fulfills the condition of the time-limited coffee bean tolerance, it is sufficient to establish the regulation as permanent, regardless of any on-going analysis of tolerances for reregistration purposes.

2. Additionally, American Cyanamid believes that "the toxicological end-point of a no-observable-effect level (NOEL) based upon plasma cholinesterase (ChE) inhibition, as mentioned in the proposed rule, is of equivocal value when used in risk assesments" and that "A NOEL based upon alternative tox endpoints such as red blood cell ChE inhibition, brain ChE inhibition, or clinical signs would be more appropriately used to establish reference dose for regulatory purposes."

American Cyanamid has requested a reevaluation of plasma cholinesterase as a suitable endpoint.

The Agency acknowledges that the condition upon which the initial time-limited tolerance was based, i.e., the lack of an acceptable guideline rat metabolism study, has now been fulfilled.

However, as described in the proposed rule referenced above, the Agency currently has concern over the potential acute dietary risk posed by the current established tolerances based on the estimated margins of exposure (MOE). In light of this concern, the Agency believes that it is prudent to limit the period of time in which the coffee bean tolerance is in effect pending the Agency reassessment of the tolerances.

The Agency will take American Cyanamid's comments relative to the toxicological endpoint into consideration in its reassessment of the established tolerances.

There were no requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the

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requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8E3574/R2165] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8E3574/R2165], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 28, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.352, by revising paragraph (b), to read as follows:

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A time-limited tolerance to expire December 15, 1997 is established for combined residues of the insecticide/nematicide terbufos (*S*-[[1,1-dimethyl]thio] methyl] *O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity:

Commodity	Parts per million
Coffee beans, green[1]	0.05

[1]There are no U.S. registrations as of August 2, 1995, for the use of terbufos on the growing crop, coffee.

[FR Doc. 95–29990 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4584/R2190; FRL–4968–4]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes time-limited tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (also known as imidacloprid) and its metabolites in or on barley forage, straw, and grain with an expiration date of 3 years after its effective date. Gustafson, Inc., submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA) that requested this regulation to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATES: This effective date of this regulation is November 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4584/R2190], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5F4584/R2190]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of November 2, 1994 (59 FR 54907), which announced that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted a pesticide petition (PP 4F4337) to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide 1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine in or on the raw agricultural commodities wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm; barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, and barley, grain at 0.1 ppm; sorghum, forage at 0.2 ppm, sorghum, straw at 0.1 ppm, and sorghum, grain at 0.1 ppm; and beet, sugar (roots) at 0.1 pm and beets, sugar (tops) at 0.1 ppm. Gustafson, Inc., later withdrew the proposed sorghum tolerances and resubmitted them in a separate petition. On June 15, 1995, Gustafson amended this petition to request a feed additive tolerance of 0.5 ppm on sugarbeets and molasses. (See the **Federal Register** of June 15, 1995 (60 FR 31467)).

On August 14, 1995, Gustafson submitted a revised Section F deleting barley from this petition and stating it would be resubmitted in a separate petition. EPA issued a notice in the **Federal Register** of October 25, 1995 (60 FR 54691), which announced that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted a tolerance petition for premitting residues of insecticide imidacloprid in or the raw agriculture commodites barley, forage at 1.5 ppm, barley, straw at 0.2 ppm, and barley, grain at 0.05 ppm.

These tolerances are being established as 3-year time-limited tolerances to enable Gustafson to complete additional residue trials and present a final report. On June 2, 1994, the Agency issued a guidance document on crop residue trials. Among other things, this document provided guidance on the number and location of domestic crop field trials for establishment of pesticide residue trials. Based on this guidance document, the Agency determined that additional field trials are needed for barley. However, the Agency does not believe that this data will significantly change its risk assessment.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/ bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog-feeding study with a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208/mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RFD) Committee.

The reference dose (RfD) based on the 2-year rat feeding/ carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is .000817 mg/kg/bwt/day utilizing 14.377% of the RfD. The proposed tolerance will not significantly increase the TMRC. For exposure of the most highly exposured subgroups in the population, children (ages 1 to 6 years), the TMRC for the published and proposed tolerances is 0.016934 mg/kg/day. This is equal to 29.709% of the RfD. Dietary exposure from the existing uses and proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Imidacloprid and its metabolites are stable in the commodities when frozen for at least 24 months. There are adequate amounts of geographically representative crop field trial data to show that combined residues of imidacloprid and its metabolites, all calculated as imidacloprid, will not exceed the proposed tolerance when use as directed.

There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A

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request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5F4584/R2190] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 28, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, paragraph (e) is amended by redesignating the existing text as paragraph (e)(1), by revising the table therein, and by adding paragraph (e)(2) to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.

* * * * *

(e) * * *

Commodity	Parts per million	Expiration date
Barley, forage ...	1.5	Nov. 28, 1998
Barley, grain	0.05	Do.
Barley, straw	0.2	Do.
Beets, sugar (roots)	0.05	August 24, 1998
Beets, sugar (tops)	0.1	Do.
Wheat, forage ...	7.0	Do.
Wheat, grain	0.05	Do.
Wheat, straw	0.3	Do.

(2) Residues in the commodities listed in paragraph (e)(1) of this section not in excess of the established tolerances resulting from the uses described in this paragraph (e) remaining after expiration of the time-limited tolerances will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the above regulation in this paragraph (e).

[FR Doc. 95–29987 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 1E3979/R2187; FRL–4985–8]

RIN 2070–AB78

Clopyralid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity asparagus. The regulation to establish a maximum permissible level for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E3979/R2187], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 1E3979/R2187]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 1995 (60 FR 50512), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 1E3979) to EPA on behalf of the IR-4 Agricultural Experiment Stations of Arkansas, California, Maryland, Michigan, Minnesota, and Washington. The petition requests that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.431 by establishing a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity asparagus at 1.0 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 1E3979/R2187] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 1E3979/R2187], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

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requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.431 is amended in paragraph (a) in the table therein by adding and alphabetically inserting an entry for the commodity asparagus, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
Asparagus	1.0
* * * * *	

* * * * *

[FR Doc. 95–30113 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4063/R2183; FRL–4984–7]

RIN 2070–AB78

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 parts per million (ppm) and grass hay at 25.0 ppm. Ciba-Geigy Corp. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: The effective date of this regulation is October 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4063/R2183], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 2F4063/R2183]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the Federal Register of June 15, 1995 (60 FR 31465), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition, PP 2F4063, to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on grass forage at 10.0 parts per million (ppm) and grass hay at 25.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice).

Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of themicroscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence ofliver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD), anticipated residue contribution (ARC), and food additive regulations are covered by existing tolerances.

The nature of the residue is adequately understood. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2F4063/R2183] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2,

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1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 26, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.408, paragraph (a) is amended by revising the introductory text and by amending the table therein by revising the entry for grasses, forage and by adding and alphabetically inserting a new entry for grass, hay, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Grass, forage	10.0
Grass, hay	25.0
* * * * *	

* * * * *

[FR Doc. 95–30116 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 8F3607/R2184; FRL–4985–3]

RIN 2070–AB78

Glufosinate Ammonium; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, in or on various raw agricultural commodities (RAC's). AgrEvo USA Co. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the tolerances. The document also conforms the chemical expression for the herbicide to Chemical Abstract nomenclature.

EFFECTIVE DATE: This regulation becomes effective December 13, 1995. The tolerances will expire on July 13, 1999.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3607/R2184], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8F3607/R2184]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1995 (60 FR 38334), EPA issued a notice announcing that AgrEvo USA Co., Little Falls One, 2711 Centerville Rd., Wilmington, DE 19808, had submitted an amendment to PP 8F3607 (published at 53 FR 18897, May 25, 1988) proposing to amend 40 CFR 180.473 by adding tolerances for residues of glufosinate ammonium and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities: Tree nuts group at 0.10 ppm, almond hulls at 0.50 ppm, cattle fat at 0.05 ppm, cattle meat at 0.05 ppm, cattle meat byproducts (mbyp) at 0.10 ppm, eggs at 0.05 ppm, goat fat at 0.05 ppm, goat meat at 0.05 ppm, goat mbyp at 0.10 ppm, hog fat at 0.05 ppm, hog meat at 0.05 ppm, hog mbyp at 0.10 ppm, horse fat at 0.05 ppm, horse meat at 0.05 ppm, horse mbyp at 0.10 ppm, milk at 0.02 ppm, poultry fat at 0.05 ppm, poultry meat at 0.05 ppm, poultry mbyp at 0.10 ppm, sheep fat at 0.05 ppm, sheep meat at 0.05 ppm, and sheep mbyp at 0.10 ppm. Almonds are not considered a poultry feed commodity under present EPA Guidelines, and AgrEvo USA Co. has requested that the proposed tolerances for secondary residues in eggs, poultry fat, meat, and meat byproducts be deleted from the tolerances requested. This document also amends 40 CFR 180.473 to change the chemical expression for the herbicide to that given above in conformity with Chemical Abstract nomenclature.

The chemical expression for glufosinate ammonium has been changed to follow that given by the Chemical Abstracts Index Name for this chemical. This action is taken in concert with the final rule for Premanufacture Notification; Revisions of Premanufacture Notification Regulations, published in the **Federal Register** of March 29, 1995 (60 FR 16298-16310). The proposed analytical method for determining residues is high-pressure liquid chromatography.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. A battery of acute toxicity studies placing technical glufosinate-ammonium in Toxicity Categories II and III.

2. A 90-day feeding study in rats at dietary intakes of 0, 0.52, 4.1, 32, or 263 mg/kg/day with a no-observed-effect level (NOEL) of 4.1 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 32 mg/kg/day based on increased absolute and relative kidney weights.

3. A 90-day feeding study in mice at dietary intakes of 0, 16.6, 67.1, or 278 mg/kg/day with a NOEL of 16.6 mg/kg/day and an LOEL of 67.1 mg/kg/day based on increased absolute and relative liver weights (both sexes) and an increase in serum potassium levels (males).

4. Three teratology studies in rats at doses from 0.5 to 250 mg/kg/day with no teratogenic effects occurring up to and including 250 mg/kg/day. A NOEL for developmental toxicity was 2.24 mg/kg/day, based upon an increase in the incidence of dilated renal pelvis with hydroureter in the fetuses at 10 mg/kg/day. The maternal NOEL was also 2.24 mg/kg/day.

5. A teratology study in rabbits at doses of 0, 2, 6.3, or 20 mg/kg/day with no teratogenic effects occurring up to and including 20 mg/kg/day, and a maternal NOEL of 6.3 mg/kg/day and a developmental NOEL of 20 mg/kg/day, the highest dose tested.

6. A two-generation reproduction study in rats at dietary concentrations of 0, 40, 120, or 360 ppm with an NOEL for reproductive effects at 120 ppm (equivalent to 12 mg/kg/day) based upon reduced number of pups in the high-dose group. The NOEL for parental toxicity was also 120 ppm based upon increased kidney weights in the high-dose group.

7. A 12-month feeding study in dogs at doses of 0, 2, 5, or 8.5 mg/kg/day. The NOEL was 5.0 mg/kg/day based upon the death of one male and one female dog at 8.5 mg/kg/day with no other treatment-related toxicity.

8. A mouse carcinogenicity study at doses of 0, 2.8, 10.8, or 22.7 mg/kg/day in males and 0, 4.2, 16.2, or 64.0 mg/kg/day in females for 104 weeks with no carcinogenic effects observed under the conditions of the study up to and including 64 mg/kg/day and a systemic NOEL of 10.8 and 16.2 for males and females, respectively, based on the dose-related increase in mortality.

9. A chronic feeding/carcinogenicity study in rats at dietary doses of 0, 2.5, 8.8, or 31.5 mg/kg/day (males) and 0, 2.4, 8.2, or 28.7 mg/kg/day (females) with an NOEL of 2.1 mg/kg/day for systemic effects based on an increase in mortality rate in females at the two higher doses. There were no treatment-related carcinogenic effects at any dose level.

10. Acceptable studies on gene mutation (*Salmonella, E coli.*, and mouse lymphoma assays), structural chromosomal aberration (*in vivo* micronucleus assay in mice), and other genotoxic effects (unscheduled DNA synthesis assay with rat hepatocytes) yielded negative results.

11. Pharmacokinetic and metabolism studies in rats indicated that approximately 80 to 90 percent of the orally administered dose of glufosinate ammonium remained unabsorbed and was eliminated in the feces. Approximately 10 to 15 percent was eliminated in the urine. The major metabolic pathway is oxidative deamination yielding the metabolite, 3-methyl-phospinico propionic acid.

The chronic analysis used a Reference Dose (RfD) of 0.02 mg/kg/ body weight day, based on an NOEL of 2.1 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2-year rat feeding study that demonstrated increased absolute and relative kidney weight in males as an endpoint effect.

Using tolerance-level residues and assumptions that 100 percent of every crop for which glufosinate-ammonium has a proposed use is treated, the total Theoretical Maximum Residue Contribution (TMRC) for the general population and the highest exposed subgroup in DRES are as follows (as percents of RFD): General population, 0.627 percent; nonnursing infants less than 1-year-old, 3.7 percent.

A data gap currently exists for a rat carcinogenicity study. All tolerances are time-limited because of this gap. The time limitation allows for development and review of the data.

The analysis for glufosinate-ammonium using tolerance level residues suggests that the proposed uses on apples, grapes, and tree nut group will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All DRES subgroups are below 100 of the RfD for chronic effects.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residues is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology (gas chromatography with flame photometric detection of phosphorus) is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

Based on the information cited above, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.473 will protect the public health; therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed

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with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contantions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8F3607/R2184] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8F3607/R2184], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov.

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.473, by revising paragraph (a), to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a)(1) Time-limited tolerances are established for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Almond hulls	0.50	July 13, 1999
Apples	0.05	Do.
Cattle, fat	0.05	Do.
Cattle, meat	0.05	Do.
Cattle, mbyp	0.10	Do.
Goats, fat	0.05	Do.
Goats, meat	0.05	Do.
Goats, mbyp	0.10	Do.
Grapes	0.05	Do.
Hogs, fat	0.05	Do.
Hogs, meat	0.05	Do.
Hogs, mbyp	0.10	Do.
Horses, fat	0.05	Do.
Horses, meat	0.05	Do.
Horses, mbyp	0.10	Do.
Milk	0.02	Do.
Sheep, fat	0.05	Do.
Sheep, meat	0.05	Do.
Sheep, mbyp	0.10	Do.
Tree nuts group	0.1	Do.

(2) Residues in these commodities not in excess of the established tolerances resulting from the uses described in paragraph (a)(1) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of paragraph (a)(1) of this section.

* * * * *

[FR Doc. 95-30117 Filed 12-12-95; 8:45 am]

BILLING CODE 6560-50-F

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

45 CFR Part 1180

Institute of Museum Services: General Operating Support, Conservation Project Support, Museum Assessment Program, Conservation Assessment Program

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum Services amends regulations relating to its General Operating Support, Conservation Project Support grant programs, the Museum Assessment Program and the Conservation Assessment Program. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions, use of funds, amount of awards, reporting requirements and remove unneeded provisions.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, Telephone: (202) 606-8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act") which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985, 1988, 1990, 1991, 1993 and 1994). The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museums Services Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L 101-512, Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations and conservation.

The Need for the Amendment

The amendments to the regulations are intended to make the programs more responsive to the needs of applicants by increasing the maximum amount of conservation awards, by distributing general operating awards more broadly among high quality museums and by assisting in program evaluation.

Proposed Amendments and Public Comment

A notice of proposed rulemaking was published March 6, 1995, 60 Federal Register, 12186-12188. The preamble to the notice of proposed rulemaking contained an amendment-by-amendment analysis explaining the purpose of each amendment. The discussion is not repeated here. Public comment was invited on the proposed amendments to determine the necessity and appropriateness of the proposed changes.

General Operating Support

The Institute received 260 comments regarding § 1180.5 which would establish eligibility criteria for the General Operating Support program making museums that have not received two consecutive GOS awards eligible to apply and making museums that have received two consecutive GOS awards ineligible to apply in the immediately succeeding cycle. This criteria will be effective beginning with the 1996 competition. Therefore, the deadline for the fiscal year 2000 competition would be the first deadline for which this criteria would affect an institution's eligibility to compete for a General Operating Support award.

Of the commenters, 222 favored the proposed rule. Those who supported the change expressed the belief that many deserving, worthy museums compete for GOS awards without success. These commenters see broadening the distribution to make awards to more museums a highly desirable outcome of such a change. Supporters said this change would prevent museums from becoming dependent on the award. Some supporters believe, also, that the current status allows the "rich to get richer" and that receiving the award creates a perpetuating cycle of future awards. Some supporters said this change would help small museums. Others said it is a better way to broaden distribution of GOS funds than further reducing the amount of award.

Commenters opposing the change, said that it was inconsistent with the main role of GOS to reward and recognize the highest quality museums.

The Institute agrees that the issue of recognizing the high quality of museum operations is important. However, the Institute believes that many very high quality museums currently compete and do not receive awards. The Institute believes the broader distribution resulting from implementing the proposed criteria will not negatively affect recognition of high quality museums. The Institute further believes the change will encourage museums in aspiring to higher levels of operation in order to attain the award, as they will perceive that chances for receiving the award are greater.

Some commenters who opposed this change believe it is detrimental to small museums. The Institute believes the procedures established for the General Operating Support program ensure an equitable representation of small museums in the awards. The Institute does not anticipate that small museums will be negatively affected by this change. The Institute believes the change is equitable for museums of all sizes and types and applies equally to every institution.

Some commenters stated that this change is premature in relation to the other recent changes in GOS that reduce the maximum amount of the award and change to a two-year grant period. The Institute has received positive reaction to the previous changes in the grant period and the amount of the award. The Institute believes that this change reinforces the efforts by the Institute to broaden the distribution of these funds as was intended with the previous changes, and, therefore, is an appropriate action.

Conservation Project Support

The institute received five comments regarding §1180.20, which would

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increase the maximum amount of an award generally made for the Conservation Project Support program. Four commenters supported the change by indicating that this change is an appropriate response to rising costs for conservation activities. The Institute agrees that the change is appropriate. The commenter opposing the change believes that research for species survival projects will be neglected by zoos, who may choose to use the larger amount for changing in-house environments. The Institute has no evidence that zoos will make this choice. Historically, the projects for species survival have been more numerous that any other type of project submitted by zoos.

Other

No comments were received regarding removing references to "Special Project" grants from the regulations or regarding the requirement of final reports on Museum Assessment Program grants or Conservation Assessment Program grants.

The Institute has considered all comments and has again reviewed the necessity and appropriateness of the proposed changes. In light of this consideration and review, following consultation with the National Museum Services Board, the Institute has determined that the amendments to regulations should be adopted as proposed in the March 6, 1995 notice. The final regulations set forth below reflect this determination.

Executive Order 12866

These amendments have been reviewed in accordance with Executive Order 12866. They are classified as non-major because they do not meet the criteria of major regulations established in the Order.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National Boards.

Dated: December 4, 1995.

Mamie Bittner,

Director of Public and Legislative Affairs.

The Institute of Museum Services amends Part 1180 Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as set forth below:

PART 1180—GRANTS REGULATIONS

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 USC 960–968.

2. Section § 1180.5 is amended by adding a new paragraph (f):

§ 1180.5 Eligibility and burden of proof—Who may apply.

* * * * *

(f) In a given year, a museum that has not received two consecutive General Operating Support awards in the immediately preceding two-year cycles is eligible to apply for General Operating Support.

3. Section § 1180.20 is amended by revising paragraph (f)(1) to read as follows:

§ 1180.20 Guidelines and standards for conservation projects

* * * * *

(f) *Limits for Federal funding.* (1) The normal amount of a Conservation Project Support grant will be established through a notice published in the **Federal Register.** Beginning in FY 1996, the normal maximum amount is $50,000. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in Federal funds in excess of the normal maximum award. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

4. Section § 1180.17 is revised to read as follows:

§ 1180.17 Reports

In its final reports a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.13.

5. Section § 1180.35 is amended by revising its heading and paragraphs (a) and (b) to read as follows:

§ 1180.35 Group applications.

(a) Eligible museums may apply as a group for a project grant.

(b) If a group of museums applies for a grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

* * * * *

§ 1180.40 [Removed and reserved]

6. Section 1180.40 is removed and reserved.

7. Section 1180.41 is revised to read as follows:

§ 1180.41 The cost analysis; basis for grant amount.

Before the Director sets the amount of a grant, a cost analysis of the project is made which involves an examination of:

(a) The cost data in the detailed budget for the project;

(b) Specific elements of cost; and

(c) The necessity, reasonableness, and allowability under applicable statutes and regulations.

8. Section 1180.45 is amended by revising paragraph (a) to read as follows:

§ 1180.45 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the staff.

* * * * *

9. Section 1180.48 is revised to read as follows:

§ 1180.48 General conditions on publications.

(a) Content of materials. Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of materials that it publishes or arranges to have published.

(b) Required Statement. The grantee shall ensure that any publication that contains materials also contains the following statement:

The contents of this (insert type of publication, e.g., book, report, film) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed.

10. Section 1180.49 is revised to read as follows:

§ 1180.49 Copyright policy for grantees.

A grantee may copyright materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

11. Section 1180.50 is revised to read as follows:

§ 1180.50 Definition of "materials."

As used in §§ 1180.48 through 1180.49, materials means a copyrightable work developed in whole or in part with funds from a grant from the Institute.

12. Section 1180.58 is revised to read as follows:

§ 1180.58 Records related to performance.

(a) A grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing objectives; and

(2) Revise those objectives, if necessary and authorized under the grant.

13. Section 1180.59 is revised to read as follows:

§ 1180.59 Applicability.

Subparts B and C (§§ 1180.30 through 1180.58) apply to General Operating Support assistance, except as otherwise provided in these regulations.

14. Section 1180.75 is amended by revising paragraph (d) to read as follows:

§ 1180.75 Funding and award procedures.

* * * * *

(d) A museum receiving assistance under this subpart must submit a final financial and narrative report that evaluates the success of the assessment and actions taken by the museum as a result of the assessment. IMS may request that the report be submitted up to 12 months after the close of the grant period.

* * * * *

[20 U.S.C. 961–68]

[FR Doc. 95–30016 Filed 12–12–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 7; Docket No. 93–08; Notice 4; Docket No. 93–07; Notice 4]

RIN 2127–AF88; 2127–AF97; 2127–AF98; 2127–AF99

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking; and Stopping Distance Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of a final rule that amended Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, to require medium and heavy vehicles be equipped with an antilock brake system (ABS). This document also responds to petitions for reconsideration of final rules that established 60 mph stopping distance requirements for hydraulic-braked heavy vehicles and reinstated such requirements for air-braked heavy vehicles.

DATES: Effective Dates: The amendments to § 571.101 are effective January 12, 1996, the amendments to § 571.105 are effective March 1, 1999, and amendments to § 571.121 are effective March 1, 1997.

Compliance dates: Compliance with the amendments to 49 CFR 571.101 and 49 CFR 571.105 with respect to hydraulic-braked vehicles will be required on and after March 1, 1999. Compliance with 49 CFR 571.101 and 49 CFR 571.121 with respect to air-braked tractors will be required on and after March 1, 1997 and compliance with 49 CFR 571.101 and 49 CFR 571.121 with respect to air-braked trailers and single unit trucks and buses will be required on and after March 1, 1998.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than January 12, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 366–5892.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 366–2992.

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I. Background

On March 10, 1995, NHTSA published three final rules that amended the agency's brake standards for medium and heavy vehicles.[1] (60 FR 13216). One of those final rules requires heavy vehicles to be equipped with an antilock brake system (ABS) to improve the directional stability and control of these vehicles during braking.[2] The other two final rules announced NHTSA's decision to reinstate stopping distance requirements for air-braked heavy vehicles and to establish such requirements for hydraulic-braked heavy vehicles. (60 FR 13286, 13297)

As specified in the ABS final rule, in addition to the ABS requirement, truck tractors are required to comply with a 30-mph braking-in-a-curve test using a full brake application on a low coefficient of friction surface representing a wet surface. All powered heavy vehicles are also required to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other towing vehicles are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing vehicle ABS and the other indicating malfunctions in the ABS on one or more towed trailers and/or dollies. Trailers (including dollies) produced during an initial eight-year period are also required to be equipped with an external malfunction

[1] Hereinafter referred to as "heavy vehicles."

[2] Hereinafter referred to as "the ABS final rule."

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indicator that was to be visible to the driver through the rearview mirror of the towing vehicle.

NHTSA issued the ABS final rule pursuant to the Motor Carrier Act of 1991, a part of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 4012 of ISTEA directed the Secretary of Transportation to initiate rulemaking concerning methods for improving braking performance of new commercial motor vehicles,[3] including truck tractors, trailers, and their dollies. Congress specifically directed that such a rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The Act required that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31147) and be carried out pursuant to, and in accordance with, the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) (49 U.S.C. § 30101 *et seq.*).

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Trucking Associations (ATA), the American Automobile Manufacturers Association (AAMA), the Truck Trailer Manufacturers Association (TTMA), the Heavy Duty Brake Manufacturers Council (HDBMC), the United Parcel Service (UPS), vehicle manufacturers, including Chrysler, Navistar, AM General, and brake or component manufacturers including Midland-Grau, Jenflo, AlliedSignal, Rockwell WABCO, Rockwell International, Kelsey-Hayes, and Ferodo America.

The petitioners generally agreed with NHTSA's decision to require all heavy vehicles to be equipped with ABS and to comply with the stopping distance requirements and to require truck tractors to comply with the braking-in-a-curve requirements. Nevertheless, they requested modifications of various aspects of those requirements. The issues raised by the petitioners include the definition of antilock brake systems and the wheels to which the ABS requirement applies, the ABS requirement's applicability to hydraulic-braked vehicles, the implementation schedule, certain aspects of the performance tests, certain aspects of the malfunction indicator requirements, and the requirements addressing trailer ABS powering. The agency responds to each of the issues raised by the petitioners throughout the remainder of the document.

[3] Vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or greater.

III. Definitions Related to Antilock Brake Systems

A. Definition of Antilock Brake Systems

In the ABS final rule, NHTSA decided to require that each heavy vehicle be equipped with an antilock brake system that satisfies the following definition:

"*Antilock braking system*" means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more devices which adjust brake actuating forces in response to those signals.

To meet this definition, an antilock braking system must be closed-loop.[4] With respect to the definition for ABS, the input is the act of sensing the rate of angular rotation of the wheels, which is typically done by a device known as a wheel speed sensor. The output is the act of transmitting responsive controlling output signals to a device or devices known as modulator valves that adjust brake actuating forces in response to those signals.

Jenflo petitioned the agency to amend the definition of an antilock braking system so that the definition did not refer to components such as wheel speed sensors, control units, and modulators. Jenflo believes that it is possible to control rotational wheel slip and impending wheel lockup without monitoring these conditions, while still providing controlled stops. In its petition for reconsideration, Jenflo submitted 56 pages of test data, but did not explain the relevance of the data to the vehicle's ABS performance.

NHTSA has decided to deny Jenflo's petition to amend the definition of ABS so as to permit open-loop systems. In previous notices, the agency discussed in extensive detail the reasons for requiring a "closed-loop" antilock system and for combining an equipment requirement with a dynamic test requirement for truck tractors. (60 FR 13224–13228) NHTSA's definition permits any ABS, provided that it is a closed-loop system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to changes in wheel slip. As many brake and vehicle manufacturers commented on the September 1993 NPRM, a device that satisfies these criteria is necessary to prevent wheel lockup under a wide variety of real world conditions, thereby significantly improving safety. In contrast, a definition that permitted open-loop systems would allow systems that would not necessarily prevent wheel lockup.

NHTSA also stated that the desired safety benefits of ABS could currently be achieved only by means of both a specific equipment requirement for ABS and a dynamic performance test requirement applicable to truck tractors only. In its petition for reconsideration, Jenflo did not provide any information to support reliance solely on a dynamic performance requirement, or to support its statement that it is possible to control rotational wheel slip without monitoring wheel slip conditions. The agency therefore has decided to deny Jenflo's petition to amend the definition for antilock brake system.

B. Directly Controlled Wheel

In the ABS final rule, the agency defined "directly controlled wheel" to mean a wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. (60 FR 13228–13230) The definition further stated that each modulator may also adjust the brake actuating forces at other wheels in response to the same signal or signals. NHTSA explained that, by "directly controlled wheel," it meant that the signal provided at the wheel or on the axle of the wheel would directly modulate the braking forces of that wheel or axle.

AAMA, Chrysler, and Kelsey Hayes petitioned the agency to revise the definition of "directly controlled wheel" to allow the use of a single in-differential[5] or in-axle wheel speed sensor to control the rear wheel slip. Chrysler indicated that all of its pickup trucks in the 10,000–12,000 pound gross vehicle weight rating (GVWR) class now successfully use this type of sensor.

After reviewing the petitions for reconsideration regarding in-axle sensors, NHTSA has decided to revise the definition of "directly controlled wheel" to allow wheel speeds to be sensed at any point on the axle shaft of the wheel. This includes any point between the wheel hub and the point where the axle shaft mates with the differential output shaft. The agency believes that this modification to the definition will permit the manufacture of proven antilock systems, without any detriment to safety. This amendment is reflected in the revised definition for "directly controlled wheel" by adding the phrase "either at that wheel or on the axle shaft for that wheel" and allows two in-differential sensors to transmit corresponding signals to one or more modulators that adjust the brake actuating forces at the wheels on that axle.

NHTSA emphasizes that single in-differential sensors will only be allowed on light vehicles with GVWRs between 10,000 and 12,000 pounds. This limitation is reflected in S5.5.1 of Standard No. 105, which permits only vehicles with such GVWRs to provide direct wheel control by means of a single sensor in the drive line. The agency is concerned that sensing of rotational wheel slip at the ring gear or at other points on the driveline[6] forward of the drive axle, does not provide sufficiently precise measurements of wheel slip for effective ABS control on vehicles over 12,000 pounds. The braking distribution between the front and rear axles of heavy vehicles is different than on light vehicles, primarily because of the greater load-carrying capacity of heavy vehicles, which necessitates more braking at the rear wheels. As a result, greater braking efficiency is typically required at the rear wheels of heavy vehicles than on lighter vehicles. Based on the above considerations, the agency has decided to allow the use of a single in-axle or in-differential sensor, and include in-transmission sensors, for ABS control of rear wheel slip on vehicles with a GVWR between 10,000 and 12,000 pounds.

Rockwell WABCO requested that the agency change the definition of a "directly controlled wheel" to ensure that the modulator for controlling the wheels of the front axle is not used to control the wheels of the rear axle, and vice versa.

NHTSA has reviewed the definition of a "directly controlled wheel" and has concluded that it does not clearly state that, on single unit vehicles and full trailers, the same modulator should not be used to control both the front and rear axles. It is possible that the definition may be misinterpreted to allow a four sensor/one modulator (4S/1M) system on single unit vehicles and full trailers. As discussed in the final rule, it was the agency's intent to require at least one modulator for controlling the front axle(s) and at least one modulator for controlling the rear axle(s) of those vehicles. (60 FR 13230) In revising the definition, the agency has added the phrase "that are on the same axle or in the same axle set," to make it clear that the modulator that controls a directly controlled wheel, can also control a wheel on the same axle or wheel(s) on other axles in the same tandem[7].

Based on the above considerations, NHTSA has decided to amend the definition of directly controlled wheel as follows:

"Directly Controlled Wheel" means a wheel *for* which the degree of rotational wheel slip is sensed, *either at that wheel or on the axle shaft for that wheel*, and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels *that are on the same axle or in the same axle set* in response to the same signal(s).

(Italicized phrases are additions to the definition).

C. Independent Wheel Control

In the ABS final rule, NHTSA defined "independently controlled wheel" to mean a directly controlled wheel for which there is a modulator that adjusts the brake actuating forces at that wheel, but not at any other wheel on the same axle.

Jenflo petitioned the agency to delete the requirement for independent wheel control on truck tractors and issue what it called "performance only" requirements. That company stated that requiring independent wheel control is unreasonably design- restrictive and is not a performance requirement.

In the ABS final rule, NHTSA set forth the reasons for requiring independent control of at least one axle for truck tractors and the reasons for having more stringent requirements for truck tractors than for other types of vehicles. (60 FR 13230). The agency considers these reasons to be a sufficient basis for requiring independent control. Nevertheless, Jenflo has not addressed these reasons in the petition.

AAMA requested confirmation that the ABS rule requires a truck tractor to have an ABS with at least four sensors and three modulators (which are also known as channels of control)(4S/3M), a single unit vehicle to have an ABS with at least four sensors and two modulators (4S/2M), and a semitrailer to have an ABS with at least two sensors and one modulator (2S/1M). NHTSA confirms the AAMA's interpretation. In addition, the agency notes that a full trailer will be required to have an ABS with at least four sensors and two modulators (4S/2M), and a hydraulic-braked single unit vehicle with a GVWR between 10,000 lbs. and 12,000 lbs. will be required to have at least three sensors and two modulators (3S/2M).

IV. Overall Brake Test Sequence

A. Performance Test Sequence

In Table I of the stopping distance final rule for braked vehicles, NHTSA specified the sequence in which the brake tests are to be conducted for compliance testing, as follows:

(1) Burnish.

(2) Stops with vehicle at gross vehicle weight rating:

(a) Straight line stop at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle (straight line stop).

(b) Braking-in-a-curve stop at 30 mph on a peak friction coefficient surface of 0.5, for a truck tractor with a loaded unbraked control trailer.

(c) Emergency brake stops at 60 mph on a peak friction coefficient surface of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

(3) Parking brake test with vehicle loaded to GVWR.

(4) Stops with vehicle at unloaded weight plus up to 500 lbs.

(a) Straight line stop at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

(b) Braking-in-a-curve stop at 30 mph service brake stops on a peak friction coefficient surface of 0.5, for a truck tractor.

(c) Emergency brake stops at 60 mph on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

5. Parking brake test with vehicle at unloaded weight plus up to 500 lbs.

6. Final inspection of service brake system for condition of adjustment. (60 FR 13297)

AAMA, HDBMC, Midland-Grau, and Navistar requested that the agency revise the performance test sequence in Standard No. 121 by placing both braking-in-a-curve tests for truck tractors immediately after the burnish. These petitioners stated that such a change would result in certain

[4] A closed loop control system is one which examines the output of the system and adjusts the input to the system in response to that output. This inclusion of the output (or some function of the output) as part of the input to such a system is referred to as feedback.

[5] A differential is comprised of a set of gears which establish a constant equilibrium of torques between the left-side and right-side driven wheels, and which allow the outer wheels of a vehicle to rotate at a higher speed than the inner wheels during cornering.

[6] The driveline constitutes those parts of the vehicle that transfer power from the transmission to the drive wheels, including the drive shaft, differential, and axle shafts of the driven wheel.

[7] An arrangement of two or more axles placed in proximity one behind the other.

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advantages, including (1) allowing test track wetting to be accomplished more efficiently; (2) minimizing ABS performance variability since the tires would not be previously subject to the high speed stopping distance tests on a high coefficient of friction surface; and (3) minimizing vehicle transfers for those manufacturers that use a different test site for their low coefficient of friction tests.

After reviewing the petitions, NHTSA has decided to amend the performance test sequence by placing both braking-in-a-curve tests immediately after the burnish. The agency believes that conducting the braking-in-a-curve tests at the beginning of the test sequence simplifies the procedure and reduces the testing burden without compromising safety. The agency has specified the GVWR loading condition first because it coincides with the GVWR/LLVW sequence of the other stopping performance tests. This decision is also supported by the fact that performance variability due to tire wear and flat-spotting will be minimized if the GVWR test runs are conducted first, since wheel lock is more likely to occur in the lightly-loaded condition.

B. Brake Adjustment During Test Sequence

AAMA, HDBMC, Midland-Grau, and Rockwell International petitioned NHTSA to permit manual brake adjustments to be made after each part of the test sequence in Standard No. 121. The petitioners are concerned about the potential for over-adjustment and the impact on the subsequent tests in the sequence, during testing with automatic brake adjusters. Standard No. 121 currently requires that air-braked vehicles be equipped with automatic brake adjusters. The standard allows three manual adjustments, at the manufacturer's recommended intervals, during the burnish sequence, but does not allow subsequent adjustments during the testing itself.

NHTSA agrees with the petitioners that there is a potential for over-adjustment by automatic brake adjusters during a series of full treadle brake applications, as is required for the braking-in-a-curve tests. The agency also believes that it is important to specify precisely where in the test sequence the manual adjustments are allowed, since this enhances uniformity of the test procedures. The agency nevertheless believes that adjusting the brakes as frequently as after each test sequence is inappropriate, because it would be less representative of real world braking conditions.

Based on the above considerations, NHTSA has decided to amend the test sequence in Standard No. 121 by allowing some adjustment during testing. It is allowing two manual brake adjustments for truck tractors - the first at the end of the braking-in-a-curve tests and the second at the end of the GVWR parking brake test. It is also allowing one manual brake adjustment for single unit trucks and buses, at the end of the GVWR parking brake test. The agency believes that allowing a limited number of additional adjustments during testing accommodates the petitioners' concerns, while preserving a well- defined test procedure that properly accounts for the newly adopted test procedures.

NHTSA believes that there is no need to allow additional brake adjustments in the test procedure for Standard No. 105 for hydraulic-braked heavy vehicles, since the brake test procedure currently specifies four burnishes (one burnish and three reburnishes) and a brake adjustment after each burnish. Moreover, hydraulic-braked vehicles are not subject to the braking-in-a-curve test.

C. Final Brake Inspection in Test Sequence

HDBMC and Rockwell International petitioned NHTSA to delete the final brake inspection requirement that is specified at the end of the stopping sequence in Table I of Standard No. 121. They claimed that there are no stated requirements necessary to satisfy the results of this inspection, and that the condition of the adjusters has little significance to the brake adjusters—condition after real world service.

NHTSA disagrees with the petitioners' claims that the final brake inspection provision is unnecessary. The agency notes that Standard No. 121 was amended to include the final brake inspection as part of the amendments for the rulemaking on automatic brake adjusters. This issue has never been included in any of the notices for the heavy vehicle ABS rulemaking. As a result, the agency cannot delete the requirement without giving the public an opportunity to comment on the issue. Moreover, the agency disagrees with the petitioners that there are no stated requirements by which a manufacturer can ensure that its vehicle complies with this inspection. Paragraph S5.9, *Final Inspection*, specifies that the inspection is conducted to determine the condition of adjustment and for the brake indicator display, in accordance with S5.1.8 and S5.2.2 (i.e., brake adjustment within the limits recommended by the vehicle manufacturer). Based on these considerations, the agency has decided to deny the petitioners' request to delete the provision regarding the final brake inspection.

V. Braking-In-A-Curve Test

A. General Considerations

Navistar requested that the agency eliminate the braking-in-a-curve test for ABS-equipped truck tractors. That company stated that such a test is redundant to the provision requiring ABS because the test would not cause any changes to the ABS equipment mandated by the ABS equipment requirement.

NHTSA disagrees with Navistar's claim that the braking-in-a-curve performance test is redundant. As explained in the ABS final rule, the braking-in-a-curve test provides an important check of ABS performance. Merely having the ABS definition does not ensure that an antilock system will provide an acceptable level of performance. The test serves to evaluate the basic performance of an antilock system. The agency notes that the industry, through the Motor Vehicle Safety Research Advisory Committee (MVSRAC), has previously endorsed and recommended to the agency essentially the same dynamic performance test that is contained in the ABS final rule. The agency further notes that Navistar provided no support for its claim that the braking-in-a-curve performance requirement for truck tractors is redundant. Based on the above considerations, the agency has decided to deny Navistar's request to delete the braking-in-a-curve test for truck tractors equipped with antilock systems.

ATA requested that the agency apply the braking-in-a-curve performance requirements to single unit vehicles and trailers. ATA also requested that the agency consider making the requirements less design-restrictive by permitting, for an interim period, the option of meeting either the equipment requirement or the performance requirement.

While NHTSA agrees with ATA's goal of having a performance test for all heavy duty vehicles and not just for tractors, the agency believes that it is premature to do so at this time.

Thus, NHTSA has decided to deny ATA's requests to apply the braking-in-a-curve test to single unit vehicles and trailers at this time. In the ABS final rule, the agency discussed in detail the reasons for including a performance test for truck tractors. (60 FR 13230–13232) One of those reasons was that extensive truck tractor testing conducted by the agency and the industry indicated that the braking-in-a-curve test on a low mu surface is an objective, repeatable, and practicable procedure for evaluating a heavy vehicle's antilock braking system. However, for other heavy vehicles, the agency decided not to apply the braking-in-a-curve test at that time due to the need to conduct additional testing to ensure that these vehicles could be safely tested to the braking-in-a-curve maneuver. NHTSA is currently planning vehicle research to develop such a procedure for other vehicles and, should the research be successful, will consider adding performance tests for these vehicles to the standard.

As explained in the final rule, NHTSA regards the braking-in-a-curve requirement as a complement to the ABS equipment requirement, and not as an alternative to it. (60 FR 13231) The braking-in-a-curve test alone can neither evaluate the overall effectiveness of ABS nor ensure the use of a closed-loop system. Such an evaluation would require an array of performance tests such as split mu tests, surface transition tests, and stopping distance performance tests. However, as indicated above, the braking-in-a-curve test is an objective, repeatable, and practicable procedure for evaluating the performance of a vehicle's ABS, and will be used by the agency to complement the ABS equipment requirement. Based on these considerations, the agency has decided to deny ATA's request to allow vehicle manufacturers the option of complying either with the equipment requirement or with the braking-in-a-curve requirement.

B. Type of Brake Application

In the ABS final rule, NHTSA decided to specify that a driver conducting the braking-in-a-curve test must make a full treadle application, i.e., apply the brake at a rate sufficient to reach a pressure of 100 psi within 0.2 seconds, in at least one of the treadle valve's output circuits. The agency believed that these values properly represent full brake applications in terms of both the rate of application and level of output pressure. (60 FR 13234) This brake application is intended to evaluate worst case braking applications in an aggressive or "hard" stop.

AAMA, Allied Signal, HDBMC, and Midland-Grau petitioned NHTSA to change the definition of full-treadle brake application to allow treadle pressure of 60 psi in 0.2 seconds, or maximum treadle travel in 0.2 seconds. The petitioners claim that some pneumatic systems do not achieve 100 psi in 0.2 seconds, but that all systems can achieve 60 psi in that time. In support of its claim, Midland-Grau submitted data from testing performed on different antilock systems installed on various vehicles. The test data show that with the vehicles in the loaded condition, the full-treadle brake application pressures at the treadle valve were not consistently able to achieve 100 psi in 0.2 seconds. However, they were all able to achieve at least 85 psi within 0.2 seconds.

Based on NHTSA's analysis of the test data submitted by Midland-Grau, the agency has decided to amend the definition for "full treadle brake application" to mean a brake application in which the treadle pressure reaches 85 psi within 0.2 seconds * * * " The agency agrees with the petitioners that not all pneumatic systems would have been able to achieve a treadle valve output pressure of 100 psi within 0.2 seconds and that such a high threshold is not necessary to represent an aggressive stop. Midland-Grau's data further indicate that the ABS would activate at brake chamber pressures below 60 psi on most heavy vehicles in the loaded condition on a test surface with a peak friction coefficient (PFC) 0.5. However, there are some systems that would need at least 60 psi at the brake chamber within 0.2 seconds to ensure sufficient air pressure availability for effective ABS control.

NHTSA has also decided to modify the definition for "full-treadle brake application" to include a reference to maximum treadle travel within 0.2 seconds. By "maximum treadle travel," the agency means the distance that the treadle moves, from its position when no force is applied to its position when the treadle reaches a full stop. Allowing such an alternative is consistent with the agency's intent to require a brake application that simulates emergency braking. Moreover, this alternative may facilitate the introduction of certain future technologies such as electronic braking for which the pressure/time relationship at the treadle valve is not applicable.

Jenflo stated in its petition that NHTSA did not specify a duration for the full-treadle brake application. NHTSA agrees that such a duration should be specified to avoid misinterpretation of the brake application requirement. Accordingly, the agency has decided to amend S5.3.6.1 of Standard 121 to read as follows: "using a full-treadle brake application *for the duration of the stop*, stop the vehicle * * *." (emphasis added)

C. Number of Test Stops for Certification

In the ABS final rule, NHTSA decided that requiring compliance with the braking-in-a-curve requirements during three consecutive stops is appropriate. The agency noted that specifying three consecutive full treadle test stops is consistent with both NHTSA's own testing at its Vehicle Research and Test Center (VRTC) and its testing in conjunction with the motor vehicle industry through the MVSRAC ABS Task Force. The agency further noted that because the ABS automatically modulates the brakes, using full treadle brake applications to test an ABS-equipped vehicle in the braking-in-a-curve maneuver requires less driver skill than using a driver-best-effort modulated brake application in the stopping distance performance tests. The agency further noted that the braking-in-a-curve test is easier to perform than the stopping distance test because it is not coupled with a stopping distance requirement. Therefore, NHTSA decided not to adopt the AAMA recommendation in the NPRM that manufacturers should be given the option of complying in only three of ten stops. Adopting that recommendation would have made the braking-in-a-curve requirement unreasonably lenient.

AlliedSignal, Rockwell WABCO, HDBMC, AAMA, and Navistar petitioned the agency to allow truck tractors to be regarded as complying with the braking-in-a-curve test if they make three successful test runs out of six attempts. The petitioners claimed that additional test runs should be permitted given that some variability may be caused by the driver's performance of braking and steering while conducting these stops. They further stated that all of the stopping distance tests of Standard No. 105, Standard No. 121, and Standard No. 135 recognize the significance of driver-best-effort variability by prescribing that just one of six attempts need to be successful to satisfy the requirement.

NHTSA believes that treating three successful runs out of six attempts as demonstrating compliance would not provide a sufficiently stringent test for antilock brake systems, whose technology has demonstrated remarkably consistent performance during vehicle testing conducted by the agency and by the motor vehicle industry. As the agency stated in the final rule, it is unlikely that driver influences will result in significant variability, since the driver does not have to modulate the brake pedal to

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reduce wheel lockup and achieve the best stopping distance performance. (60 FR 13234) Nevertheless, since there may be some minor variability in the test driver's performance, the agency has decided to provide that compliance with the braking-in-a-curve test is demonstrated if a vehicle has three successful test runs out of four attempts. NHTSA believes that this number of test runs, which allows one failed test run, is appropriate for an antilock system tested to a braking-in-a-curve maneuver.

D. Initial Brake Temperature

In the March 1995 final rules, NHTSA concluded that an initial brake temperature range of between 150 °F and 200 °F is more appropriate than the proposed temperature range of 250 °F to 300 °F. The agency determined that testing using the 150 °F to 200 °F temperature range is more repeatable and results in less variation between test runs, compared to testing conducted at an initial brake temperature of 250 °F to 300 °F, particularly for the emergency brake stops.

Ferodo petitioned the agency to change the initial brake temperature to between 100 °F and 200 °F, claiming that this is a more practicable range.

NHTSA continues to believe that the initial brake temperature range of between 150 °F–200 °F is appropriate. It appears that Ferodo is not aware that broadening the initial brake temperature range makes the requirements more stringent, since the vehicle would have to comply with the requirements at any point within the specified range. The consensus of the comments received to the ABS and stopping distance NPRMs was that the agency should maintain the 150 °F–200 °F temperature range. In addition, the agency's vehicle research reached a similar conclusion. (60 FR 13235) Based on the above considerations, the agency has decided to deny Ferodo's petition to broaden the initial brake temperature to the range of 100 °F to 200 °F.

VI. Stopping Distance Performance

A. Stopping Distance Requirements for School Buses

AAMA and HDBMC petitioned the agency to allow manufacturers the option of certifying hydraulic-braked school buses to either the existing standard or the new standard with ABS, between now and March 1, 1999. They stated that, by being given such an option, manufacturers would have the incentive to offer ABS on hydraulic-braked school buses prior to 1999, and the vehicles would have to meet the more stringent second effectiveness test. HDBMC also petitioned the agency to immediately delete the first effectiveness test for school buses with a GVWR greater than 10,000 pounds.

NHTSA agrees with the petitioners' request to allow the option of meeting the new requirements, including the ABS requirements, prior to March 1, 1999. This amendment will facilitate the introduction of ABS equipped school buses. Nevertheless, the agency does not agree with HDBMC's request to immediately delete the first effectiveness test, since deleting this requirement prior to a vehicle being equipped with ABS might decrease the braking performance of school buses. NHTSA has modified S5.1.1(c) of Standard No. 105 to allow school bus manufacturers the option of certifying that their vehicles comply with the new requirements, beginning 30 days after this final rule is published.

B. Test Surface Specification

In the stopping distance final rule, NHTSA concluded that a PFC of 0.9 represents a typical dry surface and will not be a significant source of variability in the stopping distance tests. (60 FR 13289, 13290) The agency's conclusion was based on the industry-government cooperative testing to evaluate the effect of fluctuations of PFC on vehicle stopping performance.[8] Testing indicates that the expected minor variability of a high coefficient of friction surface appears to have a negligible impact on vehicle stopping distance performance. This testing led the agency to conclude that any variability in the stopping performance on a high coefficient of friction surface is more likely due to variation in the vehicle's performance than test surface variability. The agency further stated that a test surface specification of PFC 1.0 would result in practicability problems for the agency, since it would have problems finding such a surface and conducting compliance testing on such a surface.

Navistar petitioned NHTSA to specify a PFC of 1.0 instead of 0.9 for the high coefficient of friction surface on which the stopping distance performance tests are to be conducted. The petitioner claimed that the specification of PFC 0.9 will cause industry to incur costs for expensive equipment, maintenance, delays in testing and redeployment of scarce resources without any demonstrable safety improvement.

NHTSA has decided to continue to specify a PFC of 0.9 for high coefficient of friction surfaces, for the reasons set forth in the final rule. The agency notes that Navistar provided no additional information calling into question the agency's earlier conclusion that a test surface specification of PFC 1.0 would result in practicability problems for the agency. The agency therefore has decided to deny Navistar's petition.

AAMA petitioned the agency to allow the PFC of the curved test surface for the braking-in-a-curve test to be measured by the American Society for Testing and Materials (ASTM) trailer on a straight section of the curved test surface. Since the ASTM Method E1337–90 procedure specifies a straight line measurement, the agency agrees that measuring PFC on a curved road might introduce variability in the measurement as a result of lateral forces present at the tire. NHTSA therefore has decided to amend Standard No. 121 to allow the PFC of the 500-foot radius curved test surface to be measured by the ASTM skid trailer on a straight section of the test surface.

ATA requested that the agency amend S5.3.6.1 to specify that the ASTM Method E1337–90 be run either on a wet surface without further water delivery or on a dry surface with water delivery.

NHTSA believes that such an amendment about the test surface is not necessary. The agency's skid trailer measurements taken at VRTC show a negligible difference (i.e., less than 0.05) for PFC measurements for a surface that is "double wetted" as compared with an already wet surface. This is the same data variability that VRTC obtains from the skid trailer measurements of a wetted surface when one type of wetting is used. Therefore, if a wet test surface is wetted again just prior to skid trailer testing, the level of stringency of the test would be essentially the same as that for a "single wetting" condition.

C. Wheel Lockup Restrictions

AlliedSignal, AAMA, HDBMC, and Midland-Grau petitioned NHTSA to clarify the wording in S5.3.1 and S5.7.1 of Standard No. 121 to explicitly state that "unlimited wheel lockup is allowed during partial failure stops," as is stated in S6.10.2(e) of Standard No. 105.

NHTSA has decided that it is appropriate to modify the regulatory language in S5.7.1 of Standard No. 121 to explicitly allow unlimited wheel lockup during emergency brake stops. The agency emphasizes that this amendment serves merely to make it clear that unlimited wheel lockup is allowed during emergency brake system performance tests. While the agency intends to allow unlimited wheel lockup during emergency brake stops, it does not intend to allow such unlimited wheel lockup for service brake stops in

[8] Public Files Docket PF88–01, MVSRAC ABS Task Force, Round Robin No. 1.

S5.3.1 of Standard No. 121. NHTSA notes that this is only a clarification and does not change the requirements that were adopted in the March 1995 final rules.

D. Burnish Procedure

On May 15, 1995, NHTSA issued a notice that terminated rulemaking to amend Standard No. 105 and Standard No. 121 with respect to the burnish procedures for medium and heavy vehicles. (60 FR 25880) The agency determined that it would be unnecessary to extend the period during which a manufacturer may choose between two burnish procedures. The agency reasoned that its decision was appropriate because manufacturers have been certifying compliance to the brake standards, based on the "new" more representative burnish procedure, since September 1994.

In response to the March 1995 final rules, Navistar petitioned the agency to allow, indefinitely, the option of using either the old or the new burnish procedure.

As explained in the May 1995 termination notice, the new burnish procedure is currently in effect. Therefore, the issue of allowing the option of using the old procedure is moot.

E. Definition of Nonsteerable Axle

In the stopping distance final rule, NHTSA stated that wheel lockup is permitted at certain wheels, including "any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles * * *, for any duration * * *." (see paragraph S5.3.1(a))

AAMA requested the agency to make it clear that a nonsteerable axle is an axle that does not steer by means of a driver-controlled mechanism, and that a self-steering axle would be considered a nonsteerable axle.

NHTSA considers a self-steering axle to be a nonsteerable axle in this context, since such an axle is not under the control of the driver. The pertinent criterion is that an axle is only considered "steerable" for purposes of this requirement, if the steerability of the wheels on that axle is controlled by the steering wheel of the vehicle. Since a self-steering axle is not under the control of the driver's steering wheel, it is not considered to be steerable.

VII. ABS Malfunction Indicator Lamps

A. In-Cab Malfunction Lamp for Trailer ABS

In the final rule, NHTSA decided to require lamps in the cab of truck tractors to indicate any malfunction with the ABS of any towed vehicles. (60 FR 13244, 13245) The agency also required trailers to supply trailer ABS malfunction signals to the tractor. This requirement is essentially the same as the one proposed prior to the March 1995 final rule.

ATA petitioned the agency to delete the provision requiring in-cab indication of trailer ABS malfunctions. That organization claimed both in its comments to the NPRM and in its petition for reconsideration that such a lamp is unnecessary. It also argued that such a requirement needlessly complicates the electrical system of the tractor and the electrical connector arrangement between tractors and trailers.

NHTSA disagrees with ATA that the in-cab trailer malfunction lamp is unnecessary. Studies have shown that an in-cab malfunction lamp is a more effective means of making the driver aware of an ABS malfunction, compared with an external malfunction lamp on the trailer.[9] The agency also disagrees with ATA's statement that having two malfunction indicators unreasonably complicates the electrical systems in combination vehicles. In their comments on the NPRM, several brake and vehicle manufacturers stated that it was appropriate to have two indicators. For instance, Midland-Grau strongly opposed having a single malfunction indicator, claiming that having a single lamp would make it difficult to identify which vehicle had a malfunction without using separate diagnostic equipment. Since this issue has been addressed in detail in previous notices, and since ATA has not submitted any additional data to substantiate its claim, the agency has decided to deny ATA's request to delete the in-cab malfunction lamp for the trailer ABS.

B. Trailer-Mounted ABS Malfunction Indicator

In the final rule, NHTSA decided to require an external ABS malfunction lamp on trailers and dollies for the eight-year period during which some non-ABS-equipped tractors will be towing ABS-equipped trailers. (60 FR 13244, 13245) The requirement specified that the external lamp "be visible within the driver's forward field of view through rearview mirrors."

ATA and UPS petitioned the agency to delete the requirements for an external trailer-mounted malfunction lamp. They claimed that the external malfunction lamp will lead to less safety because drivers will be looking in their mirrors during braking to see whether the ABS lamp is functioning, instead of looking at traffic conditions ahead of their vehicle.

NHTSA continues to believe that it is appropriate to require an external malfunction lamp on trailers and dollies for the eight-year period during which some non-ABS-equipped tractors will be towing ABS-equipped trailers. The external malfunction lamp will indicate trailer ABS malfunctions to the driver of a non-ABS tractor and will also assist Federal and State inspectors in determining the operational status of a trailer's antilock system. NHTSA disagrees with ATA's claim that the external malfunction lamp would create a less safe condition for drivers. The agency anticipates that most drivers will look through their mirrors to check the lamp infrequently, and only when the vehicle is stationary or the road ahead is clear. The agency therefore denies the petitions from ATA and UPS to delete the trailer-mounted ABS malfunction lamp.

Midland-Grau and TTMA petitioned the agency to delete the requirement in S5.2.3.3 that the external indicator on a trailer be visible from the driver's seating position "through the rearview mirrors." Midland-Grau stated that since the truck tractor manufacturers cannot control where the external lamp would be located, requiring that the lamp be visible from the cab of the truck tractor is unreasonable. TTMA stated that since trailer manufacturers have no responsibility for the mirrors, requiring the ABS malfunction lamp on dollies and trailers to be visible "through the rearview mirrors" is not appropriate. They also stated that there is no good, practical location for such a lamp on a dolly.

Even though NHTSA believes that the external trailer malfunction lamp is appropriate, the agency agrees with Midland-Grau and TTMA that it is inappropriate to specify a location requirement for the external malfunction lamp that is based on what can be seen in a truck tractor's rearview mirror. Compliance with such a requirement would depend on factors that are not fully controlled by the trailer manufacturer. Rearview visibility of the ABS external malfunction lamp could vary based on truck tractor design and its aerodynamic fairings, the field of view provided by the rearview mirrors, and on the location of the lamp. Accordingly, the agency has decided to delete the requirement in S5.2.3.3 for rearview mirror visibility of the lamp on trailers and dollies.

[9] "An In-Service Evaluation of the Performance, Reliability, Maintainability, and Durability of Antilock Braking Systems for Semitrailers," U.S. Department of Transportation/ NHTSA Report No. DOT HS 808 059, October 1993.

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TTMA requested that if the agency retains the requirement for an external malfunction lamp on the trailer, then the location of the lamp, its color, and its intensity should be specified in Standard No. 108, *Lamps, reflective devices, and associated equipment.*

NHTSA emphasizes that it is important for the driver to see the trailer mounted malfunction lamp from his or her driving position. Therefore, the agency is issuing, simultaneously with this final rule, an NPRM that proposes a lamp location on the trailer and the dolly, but without stating any visibility requirements with reference to the tractor. The agency agrees with TTMA that it is appropriate to propose the location, color, and intensity of the trailer and dolly ABS external malfunction lamp. Specifically, the agency is proposing a location for the external ABS malfunction indicator on trailers, which is similar to the location proposed by the agency when it was considering requiring a low pressure warning lamp on trailers (55 FR 4453, February 8, 1995).

ATA and UPS petitioned the agency to only require that the ABS check lamp be visible for visual inspection during a walk-around of a vehicle.

NHTSA believes that only requiring a lamp for visual inspection during a vehicle walk-around is insufficient because current designs would require more than one person to conduct the inspection, if the trailer is powered through the stop lamp circuit. One person would have to apply the brake pedal to provide ABS power to the trailer, and another would need to be outside the vehicle to view the ABS lamp, if it is located somewhere on the trailer's chassis.

C. Activation Protocol for Malfunction Indicators

In the final rule, NHTSA decided to require the malfunction indicator lamp to activate when a problem exists and not activate when the system is functioning properly. (60 FR 13246) Under this requirement, the indicator lamp is required to provide a continuous indication until a function check of the ABS is completed. Under that format, the ABS malfunction lamp extinguishes after a function check, and before the vehicle is driven. The agency explained that this ABS malfunction lamp format, together with the requirement that the system stores malfunctions until the next key-on, is necessary to enable Federal and State inspectors to determine the operational status of an ABS without moving the vehicle. In support of its decision, the agency noted that this activation pattern is consistent with the one for light vehicle ABS and the one adopted by the Economic Commission for Europe (ECE).

Navistar petitioned NHTSA to allow the vehicle to be in motion at low vehicle speed during an ABS system check so that the sensor check could be included before the lamp extinguishes. Navistar stated that the benefits of a sensor check outweigh the convenience for use by Federal or State inspectors.

As explained in the final rule, NHTSA believes that the requirement that the system store malfunctions until the next key-on is necessary to enable Federal and State inspectors to determine the operational status of an ABS without moving the vehicle. On March 10, 1995, the Federal Highway Administration (FHWA) published a notice of intent to initiate rulemaking addressing requirements for motor carriers to maintain the ABS on those vehicles that are subject to NHTSA's final rule. These requirements could include inspecting the vehicle to determine whether ABS is operational. Navistar's request to allow the vehicle to be in motion before the lamp extinguishes would impede FHWA's inspection process to determine the operational status of ABS. The agency therefore has decided to deny Navistar's petition to amend the malfunction lamp protocol to allow the lamp to stay lit until the vehicle is driven.

AlliedSignal and TTMA requested that the check of lamp function on the external trailer ABS malfunction lamp would only activate when power is supplied to the ABS *and* the vehicle is stationary. They stated that such a requirement would prevent the ABS lamp from cycling on and off whenever power is supplied or with every brake application in cases where the trailer ABS is being powered through the stop lamp circuit.

NHTSA agrees with the petitioners that such a requirement reduces potential distractions to the driver or to drivers of other vehicles caused by the lamp cycling on and off with every brake application. The agency notes that this modification retains the requirement's primary purpose, which is to indicate an ABS malfunction to the driver or to Federal and State inspection personnel. The agency has therefore decided to amend paragraph S5.2.3.3 to specify that the check of lamp function will activate the trailer ABS malfunction lamp, whenever power is supplied to the ABS and there is an absence of wheel speed (i.e., that the vehicle is stationary).

TTMA stated that the final rule does not address the operation of the ABS malfunction lamp in the event of a total loss of electrical power. That organization requested that the agency explicitly state that neither the external trailer lamp nor the in-cab lamp is required to be activated if there is a total loss of electrical power to the trailer.

A total loss of power causes the control unit to be incapable of sending a malfunction signal to the indicator lamp, since the control unit for an electronic ABS requires electrical power for operation. NHTSA notes that no vehicle system is capable of indicating a warning or malfunction in the event of a total loss of electrical power. The agency therefore believes that there is no need to specify regulatory language about the operation of the ABS malfunction lamp in the event of a total loss of electrical power.

D. Signal Storage

In the final rule, NHTSA decided to require that the ABS indicator lamp system be capable of storing information regarding any malfunction that existed when the ignition was last turned to the "off" position or in the case of towed vehicles, when power was last received by the ABS. (60 FR 13246, 13247) The agency explained that the malfunction storage requirement is necessary to ensure that relief drivers and Federal and State inspectors are advised about any malfunctions in a vehicle's ABS without having to move the vehicle.

Rockwell WABCO, Midland-Grau, AAMA, TTMA, and ATA requested that the agency define a pre-existing malfunction as a malfunction that existed when the ignition switch was last turned to the "off" position. These petitioners argued that such a definition is necessary to clarify that malfunctions that no longer exist are to be cleared and do not need to be indicated.

After reviewing the petitions, NHTSA had decided to amend S5.3.3(b) of Standard No. 105, and S5.1.6.2 (a) and (b) and S5.2.3.2 of Standard No. 121 to clarify that a pre-existing malfunction is a malfunction that existed when the ignition switch was last turned to the "off" position. The agency never intended to require the indication of malfunctions that have been corrected but still remain in the long-term memory of the electronic control unit.

E. ABS Failed System Requirements

In the final rule, NHTSA decided to revise Standard No. 121 to prohibit any change in brake timing in the event of ABS malfunctions that affect the generation or transmission of response or control signals. The agency explained that this modification will ensure that the brake system reverts to normal braking without antilock control, in the event of such a malfunction in the antilock system.

AlliedSignal, HDBMC, and Midland-Grau petitioned the agency to amend S5.5.1 to require each vehicle to meet the emergency brake stopping requirements but not the service brake, actuation and release timing requirements. The petitioners are concerned about the potential for noncompliance that is not within the control of known antilock brake systems.

NHTSA believes that it is important that a heavy vehicle's brake system revert to normal braking without antilock control, in the event of an ABS malfunction that affects the generation or transmission of response or control signals in any part of the antilock system. The agency believes that it would be inappropriate to allow brake performance to degrade to the level of the emergency braking performance requirements when a typical ABS malfunction exists. The service brakes of a vehicle with a malfunctioning ABS should provide a level of braking performance that is not substantially different from the service brake performance with the ABS operational. This is necessary so that the resulting braking performance will not surprise a driver when the ABS malfunctions. Based on the above considerations, the agency has decided to deny the petitions to amend the performance requirements for a vehicle with a failed antilock system.

VIII. Power Source

A. Separate Powering for Trailer ABS

In the final rule, NHTSA decided to require full time powering for the trailer ABSs as well as requiring that the towing vehicle have a corresponding separate circuit. (60 FR 13248–13250) The agency explained that this requirement provides the strongest possible source of electrical power from the tractor to ensure the functioning of the ECU, the modulators, and a continuous malfunction indication whenever a malfunction exists.

AAMA, Midland-Grau, and TTMA requested the agency to make it clear that the phrase, "separate electrical circuits, specifically provided to power the antilock system," is not intended to require that a circuit be exclusively utilized by the towed vehicle ABS. AAMA and Midland-Grau want the agency to allow other uses for this circuit, such as interior van trailer lights and multiplexing applications. ATA asserted that the requirement for a separate circuit is redundant and costly. ATA subsequently requested the agency in a September 6, 1995 letter to interpret the requirement for a separate electrical circuit.

NHTSA has decided to deny the request to permit other uses for the separate ABS circuit. As emphasized in the final rule, based on the best data available to the agency, NHTSA determined that it is necessary for the ABS on towed vehicles to receive full-time power through a circuit that is exclusively used by the towed vehicle ABS, so as to reduce the possibility of the ABS being inoperative due to lack of power. Throughout the rulemaking, the agency has intended that a towed vehicle antilock system be powered through a separate electrical circuit that is specifically provided to power the antilock system.

NHTSA based that decision on the results of its field evaluation of the durability, reliability, and maintainability of trailer ABS systems (as reported in DOT Report No. HS 808 059). That report noted that each of the three electrical powering methods that employed a separate circuit (e.g., the Cole-Hersee 13-pin connector, the separate 6-pin connector, and the separate ISO connector) was superior to the stoplamp powering approach. Each of these separate powering approaches used completely dedicated electrical circuits, which included separate, fully dedicated positive and ground wires, to power the trailer ABS ECUs. Based on the existing data, the agency therefore believes that both positive and ground wires separate from those now provided for other uses are necessary to adequately power trailer ABS systems. The agency has no technical basis for concluding that circuits that share the existing ground provided by the currently-used SAE J560 connector would provide power as well as a fully separate circuit, and therefore has no basis to conclude that such a powering scheme would be adequate.

NHTSA is aware of extensive industry efforts in various Society of Automotive Engineers' (SAE) technical committees to establish performance standards for electrical systems used to power tractor and trailer ABS systems which include objective performance test procedures, measurement criteria, and, in some cases, target performance levels. If those efforts result in the development of consensus standards that would ensure high quality tractor and trailer electrical systems that could be demonstrated to adequately supply electrical power to trailer ABS systems, the agency would consider alternative means of satisfying the safety need for adequate trailer ABS powering, other than the one which currently available data indicate is necessary.

NHTSA has been asked whether the rule allows the use of the SAE J560 connector. The agency reiterates the point it made in the final rule, i.e, that it is leaving to industry the decision as to which design approach is used to implement the performance requirement that trailer ABS be supplied power through a separate circuit and that a means of signaling trailer ABS malfunctions to the tractor also be provided. SAE J560 standard both specifies the physical connector and standardizes the uses for each of the seven pins. Thus, the connector, if it is configured as specified in the J560 standard could not be used, because there is, at most, one pin available for new uses, and up to three new ones could be required. However, if the industry chooses to reconfigure the presently-used SAE J560 connector hardware in such a manner as to meet the requirements for a separate trailer ABS powering circuit (both positive and ground) and malfunction signaling, then that solution would be permitted. The agency notes that such a solution would require multiplexing of some circuits, in order to free up enough pins for ABS power

NHTSA agrees with TTMA's concern that "if the auxiliary circuit is used to provide full-time power to ABS, then there would be potential for inadvertently powering the auxiliary devices, due to human error, if a manual switch is left on * * *" Such an inadvertent powering of an auxiliary device that uses the same power circuit as the ABS could result in a low voltage condition at the electronic control unit of the ABS, thus making the ABS inoperative. Also, the suggestion that the trailer ABS powering circuit could be shared with other electrical devices and still be adequate if power to those devices were automatically switched off (except when the vehicle is stationary), lacks an objective basis to gauge whether such an automatic means would be fail-safe. If the automatic means failed, the trailer ABS systems could have insufficient power. The agency therefore considers this approach to providing separate power to trailer ABSs to be inadequate.

B. ABS Malfunction Signal Circuit and Ground

In the final rule, NHTSA specified detailed requirements about the capabilities of the electrical circuits. Among other things, paragraph S5.2.3.2 requires each non-towing trailer to have the means for connection of the antilock

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malfunction signal circuit and ground, at the front of the trailer.

AAMA and Midland-Grau petitioned the agency to delete the word "circuit" in the phrase "malfunction signal circuit and ground" in S5.2.3.2, claiming that it could be interpreted as requiring a separate circuit with dedicated power and ground wires.

After reviewing the petitions, NHTSA has decided to amend paragraph S5.2.3.2 to delete the words "and ground" from the phrase "malfunction signal circuit and ground." The agency notes that it did not intend to require a dedicated circuit for the ABS malfunction signal circuit on trailers. The agency agrees with the petitioners that since a "circuit" is defined as an electrical path having both a power source and a ground, the present language could be confusing, and that the language should be changed to avoid being misinterpreted.

TTMA requested that the agency amend S5.1.6.2(a) and S5.2.3.2, which require that the vehicle be equipped with an "electrical circuit that is capable of signaling a malfunction." The petitioner stated that the ABS, not the electrical circuit, should be required to signal a malfunction.

NHTSA agrees that TTMA's requested language is more precise than the wording in the final rule's regulatory text, and amends the regulatory language accordingly.

AAMA, Midland-Grau, and TTMA petitioned the agency to amend S5.1.6.2(c), which currently requires that a truck or truck tractor designed to tow another vehicle have an electrical circuit that is capable of "transmitting" information about a malfunction. The petitioners requested that the word "transmitting" be changed to "receiving."

NHTSA believes that it would be inappropriate to substitute the word "receiving" for "transmitting" since this electrical circuit both transmits and receives information. When towing a trailer, a tractor transmits the malfunction information that it receives from the trailer's ABS to the ABS malfunction indicator lamp in the cab of the tractor or the truck. Even though the agency has decided not to change the word "transmitting" in S5.1.6.2 to "receiving," it has decided to clarify the provision's wording.

In addition to the changes specifically addressed by the petitions, NHTSA has decided to reword all three ABS malfunction circuit and indicator provisions (S5.1.6.2, S5.2.3.2, and S5.2.3.3) to clarify them and make them more consistent in form and wording to each other and to the other parts of the standard.

In particular:

(a) The new [10] S5.1.6.2(a) is written as a general requirement.

(b) The old S5.1.6.2(a) and S5.1.6.2(b) has been combined into one paragraph.

(c) The old S5.1.6.2(c) has been renumbered S5.1.6.2(b) and has been reworded to delete references to trailer failures in a tractor requirement.

(d) The new S5.2.3.2 no longer references a "key switch" or an in-cab ABS malfunction lamp, because those items are not present on trailers.

(e) The new S5.2.3.3 now includes requirements for memory and check of lamp functions.

C. Tractor Trailer ABS Interface Connector

AAMA petitioned the agency to specify the electrical connector, *SAE J2272, Tractor Trailer Interface Connector*, stating that "the industry will not be able to converge to a single solution in the absence of regulatory direction." AAMA claimed that without regulatory direction, the end users could prevent an industry approach from being implemented, which would result in a proliferation, rather than needed deproliferation, in connector strategies. In its petition for reconsideration, TTMA supported the J2272 connector. However, in a later submission to the docket, that organization withdrew its support of that connector. TTMA now supports a separate connector, but does not favor any one in particular. ATA supports the current seven-pin connector.

NHTSA is aware that the industry is considering several options for powering trailer antilock systems and that it is having a difficult time reaching a consensus. The agency agrees that the SAE J2272 connector is one potentially permissible approach that should be given full consideration by the industry. However, the agency is also aware that the 7-pin configuration of the SAE J2272 connector might not allow the industry to have a one-connector solution in the long term, even if some of its pins are multiplexed. It is NHTSA's belief that the industry understands and can best respond to the future electrical powering needs for trailers, such as antilock braking systems, electronic braking systems, and satellite tracking and communications network. The agency believes that obtaining compatibility provides sufficient incentive for the industry to reach a consensus to standardize on a connector to comply with the full-time power and in-cab malfunction lamp requirements without the need for an electrical connector equipment requirement mandated by NHTSA. AMA, ATA, TTMA, and brake component manufacturers have been meeting under the auspices of SAE in an effort to reach consensus on the connector issue. These meetings indicate that all parties have placed forward and backward compatibility as an important issue for the industry to resolve and reach consensus. Based on these considerations, the agency has decided to deny the petition from AAMA to specify the SAE J2272 Tractor Trailer Interface Connector (or any other specific connector) as required equipment for tractors and trailers.

[10] "New" refers to changes made in today's document; "old" refers to the regulatory text adopted in the March 10, 1995 final rule.

IX. Applicability of Amendments and Leadtime

A. Hydraulic-Braked Vehicles

In the final rule, NHTSA stated that a March 1999 compliance date for installing antilock brake systems on hydraulic-braked single-unit trucks and buses provides sufficient time for vehicle manufacturers and ABS manufacturers to complete the development and testing of these systems. (60 FR 13250–13251) It noted that some Japanese and European manufacturers are currently marketing ABS for medium and heavy hydraulic-braked vehicles and that brake manufacturers expressed confidence that such antilock systems will be available in the United States.

In its petition, ATA expressed concern that NHTSA was requiring hydraulic-braked heavy vehicles to be equipped with antilock brake systems, even though that organization claimed that such systems are not currently commercially available for heavy vehicles sold in the United States. ATA further stated that "different concepts are necessary for hydraulic ABS on medium and heavy vehicles because of dissimilarities" between the braking systems of hydraulic-braked light vehicles and hydraulic-braked medium/heavy vehicles. Given these concerns, ATA and UPS petitioned the agency to postpone the compliance date for hydraulic-braked vehicles, claiming that no antilock systems are available for these vehicles and such systems, when they are available, would need time to be tested. The petitioners urged the agency to postpone the compliance date for these vehicles until 2 years after the technology is readily available. Further, UPS reiterated its request for a three-year phase-in scheme of 20 percent/50 percent/100 percent for the entire ABS applicability requirement.

NHTSA continues to believe that it is appropriate to require that medium and heavy hydraulic-braked vehicles be equipped with ABS, starting in March 1999. Two leading manufacturers of medium and heavy hydraulic vehicles, Freightliner and Navistar, have announced that they will offer the AlliedSignal hydraulic antilock brake system on their hydraulic-braked vehicles in 1996. Freightliner will offer ABS as an option on its Class 5–8 hydraulic Business Class models, while Navistar will offer hydraulic ABS as standard equipment on all its medium truck chassis, including the 4000 Series.[11] Moreover, in its comments to the April 1994 SNPRM, Freightliner stated that the March 1, 1999 ABS compliance date for hydraulic-braked heavy vehicles is realistic and appropriate, but urged the agency to continue to monitor manufacturers' progress and be willing to act on short notice, if necessary, to provide additional lead time.

NHTSA disagrees with ATA's claim that there are significant differences between ABS on hydraulic-braked light vehicles compared with medium and heavy vehicles. AlliedSignal, a manufacturer of both air-braked and hydraulic-braked ABS, stated in its comments to the September 1993 NPRM that the hydraulic- braked ABS technology that will be used on heavy vehicles is the same as the technology now used on passenger cars and other light vehicles, and that the application of hydraulic-braked ABS on heavy vehicles "should not present significant technical risk." That company also explicitly stated that "components are identical or nearly identical to that used in the passenger car and light truck applications." It added that "the wheel speed sensors are the same technology as used in light vehicle applications, and in fact are the same as that planned for air-braked vehicles. The electronic control unit utilizes the same components as light vehicles * * * and is planned to be the same as that supplied by our AlliedSignal Truck Brake System Company for air braked vehicle applications." AlliedSignal concluded their comments to the NPRM by stating that as a supplier of ABS for hydraulic-braked vehicles, the requirements can be reliably achieved with proven technology within the suggested time frame.

Such similarities are also present when comparing ABS on air braked vehicles and hydraulic-braked vehicles. In the September 1995 *Pickup & Delivery* article, a representative of AlliedSignal stated that—

> There's quite a few similarities in complexity [between hydraulic and air braked ABS]. For example, the means of sensing wheel speed is basically identical. There's a wheel speed sensor that's used to check the speed of each wheel. You also have an ECU which monitors those wheel speeds and identifies if they are remaining constant or there are differentials from one side to another or front to rear.

ATA also disagreed with NHTSA statements, claiming that ABS will not be required on European trucks until after NHTSA's requirement takes effect.

NHTSA believes that ATA's claim is based on a misinterpretation of the European type approval system as compared with the United States' self-certification system. The agency is aware that there are new European requirements pending for hydraulic-braked medium and heavy vehicles equipped with ABS, with the first compliance date of January 1999. In Europe, newly produced vehicles with old type-approvals can use their old brake system design for a period of time after the compliance dates when ABS will be required on new type-approved vehicles. Therefore, these vehicles can continue to be built and sold without ABS, even after the European compliance dates, which begin in January 1999. When a manufacturer redesigns a vehicle, however, the new design has to be typed-approved, and therefore would be required to comply with the new ABS requirements. Hence, ATA is technically correct that some hydraulic-braked heavy vehicles built for the European market will be allowed to be built without ABS even after the compliance date for the United States requirements. However, other European market vehicles with hydraulic brakes will have to have ABS before their United States counterparts. Due to the differences between the type approval and self-certification processes, there is no way to completely synchronize the introduction of ABS on hydraulic-braked heavy vehicles in the United States and in Europe, and there is no reason to delay introduction in the United States until after all European vehicles are required to have it.

Based on the above comments from manufacturers and the positive experience in other countries with ABS-equipped hydraulic-braked vehicles, NHTSA has determined that requiring hydraulic-braked vehicles to be equipped with ABS is practicable and appropriate. The agency continues to believe that four years is sufficient leadtime for vehicle manufacturers to develop and test these antilock systems, given that ABS technology has already been introduced on light vehicles equipped with hydraulic braking systems. Therefore, the agency has decided to deny ATA's petition to extend the compliance date for equipping hydraulic-braked vehicles with ABS.

AM General petitioned the agency to change the compliance date for equipping hydraulic-braked vehicles with ABS from March 1, 1999, to September 1, 1999. It claimed that the company would face complications in making such a major mid-year change.

NHTSA notes that vehicles produced on or after the specified compliance dates must comply with the new requirements. This also means that a vehicle manufacturer can comply with the new brake requirements before the compliance date of the new requirements. Hence, if AM General finds it difficult to comply with the March 1, 1999 compliance date because of the mid-year timing of the date, then it has the option of complying with the new requirements prior to that date, such as on September 1, 1998.

AM General petitioned the agency to specify a timetable for monitoring and reviewing the technical status and viability of commercially available hydraulic antilock systems.

NHTSA currently has no plans for specifying a formal timetable for monitoring and reviewing the technical status of hydraulic-braked ABS for heavy vehicles. Nevertheless, the agency plans to monitor this development closely and could modify the implementation schedule if development of antilock systems for hydraulic-braked vehicles faced unexpected development problems. As stated above, vehicle and brake manufacturers indicate that they will have hydraulic antilock systems commercially available in 1996. The agency has provided a leadtime of four years to ensure that manufacturers will have sufficient time to develop and test antilock systems for hydraulic-braked heavy vehicles. The agency believes that the fleets and users, the ABS manufacturers, and the vehicle manufacturers can work together to lay out a timetable for the industry so that antilock systems for these heavy vehicles are ready for commercial use by March 1, 1999.

B. Class 3 Vehicles

AM General petitioned that the ABS requirements not apply to vehicles with GVWRs between 10,001 and 14,000 pounds (Class 3 trucks). It argued that

[11] "Medium-Duty ABS," *Pickup and Delivery* September 1995

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since many of these vehicles are derived from light vehicles, and given its belief that the effectiveness of ABS on light vehicles is open to debate, the industry should be given the opportunity to review and consider comments on equipping Class 3 vehicles with ABS.

NHTSA has previously stated that excluding vehicles of certain weight classes between 10,000 and 26,000 pounds GVWR would create an uneven application of the ABS requirements and could result in an inconsistent regulatory framework that would not provide safety benefits to all vehicles. The results of the accident data analysis that examined the effectiveness of ABS on light vehicles showed that there was a net positive safety benefit from equipping vans, sport utilities, and light trucks with ABS. Since many Class 3 vehicles are derived from these light trucks, the agency anticipates that Class 3 vehicles will also experience safety benefits from being equipped with ABS. The agency therefore disagrees with AM General's conclusion and has decided to deny its petition requesting that Class 3 vehicles be excluded from applicability to the ABS requirements because of the lack of demonstrated effectiveness of ABS on passenger cars.

C. Four-Wheel Drive Vehicles

AM General also requested that the ABS requirement not apply to four-wheel drive vehicles. The company stated that it has had difficulty getting an ABS supplier to develop a system for its Hummer vehicle because of the vehicle's full-time 4WD, torque-biasing differentials on both axles, and low volume production. AM General believes that the issue of four-wheel drive ABS has been overlooked and needs to be addressed openly.

NHTSA believes that it is appropriate to apply the ABS requirements to four-wheel drive vehicles, since such vehicles can and do lose control during braking. Moreover, the agency is aware of ABS applications on current vehicles equipped with full-time four-wheel drive or with all-wheel drive, and believes that the ABS technology, to accomplish an ABS installation on AM General's Hummer vehicle, is readily available. Therefore, the agency has decided to deny AM General's petition requesting that four-wheel drive vehicles be excluded from being equipped with ABS.

D. Trailers and Dollies

UPS petitioned the agency to implement ABS on air-braked vehicles by using a three-year phase-in scheme of 20 percent/50 percent/100 percent for trailers and dollies. That company requested that in 1998, 20 percent of trailers and dollies be required to have ABS; in 1999, 50 percent be required to have ABS; and in 2000, 100 percent be required to have ABS. UPS claims that it faces critical problems regarding reliability and cost to meet the current effective dates.

NHTSA believes that such a protracted delay in the implementation of ABS on trailers and dollies is unnecessary, given the current state of development of ABS for these vehicles and given that 2S/1M and tandem control configurations on semi-trailers and dollies are being allowed. The agency further notes that no ABS or trailer manufacturer expressed concerns about the agency's timetable or ABS reliability. Moreover, in the final rule, the agency discussed in detail the issues that ATA and UPS raised about reliability of ABS on heavy vehicles. NHTSA concluded that ABSs are reliable and that maintenance costs associated with ABS are neither excessive nor unreasonable compared to other maintenance costs. The agency further stated that these costs will not be significantly reduced if the implementation dates of this rule are further delayed.

X. Miscellaneous

A. National Uniformity

ATA petitioned the agency to clarify that States may not impose compliance dates that differ from NHTSA's rules. That organization specifically requested NHTSA to "confirm * * * that any attempt under State law to impose a retroactive ABS mandate would frustrate the significant Federal statutory purpose and, therefore, is not permitted."

NHTSA notes that the statute (formerly known as the "National Traffic and Motor Vehicle Safety Act of 1966") clearly addresses the issue of preemption at 49 USC 30103(b). That provision states that when a Federal motor vehicle safety standard is in effect, a State generally may only prescribe an identical standard.

B. Publish Complete Regulatory Texts and Compliance Test Procedures

AAMA, HDBMC, and Midland-Grau requested that the agency immediately publish complete and updated versions of Standard No. 105 and Standard No. 121.

NHTSA agrees that there should be complete and updated versions of Standard No. 105 and Standard No. 121, showing all the amendments made by the ABS and Stopping Distance rulemakings. Such changes are generally reflected in the Code of Federal Regulations published annually by the National Archives and Records Administration. The agency believes that the publication of updated versions of Standard No. 105 and Standard No. 121 would be helpful to the regulated industry. Since the agency's first priority is to issue the substantive rules, it has issued today's notice first. The agency anticipates publishing the updated Standards in 1996.

AAMA, AlliedSignal, HDBMC, and Midland-Grau petitioned the agency to provide the compliance test procedures for Standard 121, TP–121, within 60 days after April 10, 1995.

NHTSA notes that these compliance test procedures are currently under development by the agency and will be made available in the near future.

C. Costs

ATA claimed that NHTSA's cost estimate for ABS "are low by roughly a factor of two." That organization stated that fleets are getting bids on ABS equipment and actual quotes are running at almost $2,000 per tractor and $1,400 per trailer.

NHTSA disagrees with ATA that the agency's cost estimates for ABS are low by "a factor of two." The agency conducted an in-depth study of heavy vehicle ABS cost, and the findings are reported in a final report, "Incremental Cost, Weight, and Leadtime Impacts of Requiring Heavy Truck Tractor/Trailer ABS," published in June 1994. This study is based on an annual production volume of 100,000 ABS units. Hence, it is to be expected that the current prices that ATA is quoting would be higher than those provided in the agency's study, considering that current annual production of ABS units is under 10,000 units.

D. Corrections to Standard No. 101 and Standard No. 105

NHTSA has revised Table 2 of Standard No. 101, *Controls and Displays*, to correct several of the identifying symbols in Column 4, which were inadvertently changed in the regulatory text of the final rule. The attached Table 2 has been revised to include the original identifying symbols in Column 4.

NHTSA has also corrected Table II of Standard No. 105 to reflect correct positioning of footnote references.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. In connection with the March 1995 final rules, the agency prepared a Final Economic Assessment (FEA) describing the economic and other effects of this rulemaking action. Summary discussions of those effects were provided in the ABS final rule. The amendments in this final rule do not make those effects any more stringent, and in some respects make it easier for a manufacturer to comply with them. For persons wishing to examine the full analysis, a copy is in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of both this final rule or the original final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis.

The primary cost effect of the requirements in this final rule or in the original final rules will be on manufacturers of heavy vehicles which are generally large businesses. However, final stage manufacturers are generally small businesses. A detailed discussion about the anticipated economic impact on these businesses is provided in the FEA.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 101, *Controls and Displays*, Standard No. 105, *Hydraulic Brake Systems* and Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

2. In § 571.101, Table 2 is revised to appear as follows: § 571.101 *Standard No. 101; Controls and Displays.*

* * * * *

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Table 2
Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also see FMVSS 108	⇦ ⇨ [1, 6]	—
Hazard Warning Telltale		Also see FMVSS 108	[2, 6]	—
Seat Belt Telltale	—[7]	Fasten Belts or Fasten Seat Belts Also see FMVSS 208	or	—
Fuel Level Telltale		Fuel	or	—
Gauge	—			Yes
Oil Pressure Telltale		Oil	[6]	—
Gauge	—			Yes
Coolant Temperature Telltale		Temp		—
Gauge	—			Yes
Electrical Charge Telltale		Volts, Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green [4]	Also see FMVSS 108	[6]	—
Brake System [8]	Red [4]	Brake. Also see FMVSS 105 & 135	—	—
Malfunction in Anti-Lock or	Yellow	Antilock, Anti-lock, or ABS. Also see FMVSS 105 & 135	—	—
Variable Brake Proportioning System [8]	Yellow	Brake Proportioning Also see FMVSS 135	—	—
Parking Brake Applied [8]	Red [4]	Park or Parking Brake Also see FMVSS 105 & 135	—	—
Malfunction in Antilock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock. Also see FMVSS 121	—	—
Brake Air Pressure Position Telltale		Brake Air, Also see FMVSS 121	—	—
Speedometer	—	MPH [5]	—	Yes
Odometer	—	—[3]	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

[1] The pair of arrows as a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
[2] Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning telltale.
[3] If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
[4] Red can be red-orange. Blue can be blue-green.
[5] If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
[6] Framed areas may be filled.
[7] The color of the telltale required by S4.5.3.3 of Standard No 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
[8] In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

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2. Section 571.105 is amended by revising the definition of "Directly controlled wheel" in S4; by revising S5.1.1(c), S5.3.3(b); S5.5.1, S7, and S7.5 to read as follows:

§ 571.105 Standard No. 105, Hydraulic Brake Systems

* * * * *

S4.* * *

Directly Controlled Wheel means a wheel for which the degree of rotational wheel slip is sensed, either at that wheel or on the axle shaft for that wheel and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels that are on the same axle or in the same axle set in response to the same signal or signals.

* * * * *

S5.1.1* * *

(c) The service brakes shall be capable of stopping each vehicle with a GVWR greater than 10,000 pounds in two effectiveness tests within the distances and from the speeds specified in S5.1.1.2 and S5.1.1.3. Each school bus with a GVWR greater than 10,000 pounds manufactured after January 12, 1996 and before March 1, 1999 and which is equipped with an antilock brake system may comply with paragraph S5.1.1.2 and S5.5.1 rather than the first effectiveness test, as specified in S5.1.1.1. Each school bus with a GVWR greater than 10,000 pounds manufactured on or after March 1, 1999 shall be capable of meeting the requirements of S5.1.1 through S5.1.5, under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7.

* * * * *

S5.3.3* * *

(b) For vehicles with a GVWR greater than 10,000 pounds, each message about the existence of a malfunction, as described in S5.3.1(c), shall be stored in the antilock brake system after the ignition switch is turned to the "off" position and the indicator lamp shall be automatically reactivated when the ignition switch is again turned to the "on" position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" (run) position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the "off" position.

* * * * *

S5.5.1 Each vehicle with a GVWR greater than 10,000 pounds, except for any vehicle that has a speed attainable in 2 miles of not more than 33 mph, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. On each vehicle with a GVWR greater than 10,000 pounds but not greater than 12,000 pounds, the antilock brake system may also directly control the wheels of the drive axle by means of a single sensor in the drive line. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

* * * * *

S7. *Test procedures and sequence.* Each vehicle shall be capable of meeting all the applicable requirements of S5 when tested according to the procedures and in the sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in the burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.1, S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.5, S7.8, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7 S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) Automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15 and S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a deceleration, a stop or snub shall be obtained by the following procedures:

(a) Exceed the test speed by 4 to 8 mph;

(b) close the throttle and coast in gear to approximately 2 mph above the test speed;

(c) shift to neutral; and

(d) when the test speed is reached, apply the service brakes.

* * * * *

S7.5 Service brake system-second effectiveness test. Repeat S7.3, except for vehicles with a GVWR greater than 10,000 lbs. Then, for vehicles with a GVWR of 10,000 pounds or less, make four stops from 80 mph if the speed attainable in 2 miles is not less 84 mph.

* * * * *

3. Section 571.121 is amended by revising the definitions of "Directly Controlled Wheel" and "Full-treadle brake application" in S4; by adding the definition for "Maximum treadle travel" in S4; and by revising S5.1.6.2, S5.2.3.2, S5.2.3.3, S5.3.1, S5.3.6, S5.3.6.1, and S5.7.1 to read as follows:

§ 571.121 Standard No. 121; Air Brake Systems.

* * * * *

S4.* * *

Directly Controlled Wheel means a wheel for which the degree of rotational wheel slip is sensed, either at that wheel or on the axle shaft for that wheel and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels that are on the same axle or in the same axle set in response to the same signal or signals.

* * * * *

Full-treadle brake application means a brake application in which the treadle valve pressure in any of the valve's output circuits reaches 85 psi within 0.2 seconds after the application is initiated, or in which maximum treadle travel is achieved within 0.2 seconds after the application is initiated.

* * * * *

Maximum treadle travel means the distance that the treadle moves from its position when no force is applied to its position when the treadle reaches a full stop.

* * * * *

S5.1.6.2 *Antilock Malfunction Signal.*

(a) Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall be equipped with an indicator lamp, mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the vehicle's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever the ignition (start) switch is in the "on" (run) position, whether or not the engine is running. Each message about the existence of such a malfunction shall be stored in the antilock brake system after the ignition switch is turned to the "off" position and automatically reactivated when the ignition switch is again turned to the "on" position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" or "run" position.

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The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the "off" position.

(b) Each truck tractor manufactured on or after March 1, 1997, and each single unit vehicle manufactured on or after March 1, 1998 that is equipped to tow another air-braked vehicle, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on one or more towed vehicle(s) (e.g., trailer(s) and dolly(ies)) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of this electrical circuit to the towed vehicle. Each such truck tractor and single unit vehicle shall also be equipped with an indicator lamp, separate from the lamp required in S5.1.6.2(a), mounted in front of and in clear view of the driver, which is activated whenever the malfunction signal circuit described above receives a signal indicating an ABS malfunction on one or more towed vehicle(s). The indicator lamp shall remain activated as long as an ABS malfunction signal from one or more towed vehicle(s) is present, whenever the ignition (start) switch is in the "on" (run) position, whether or not the engine is running. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" or "run" position. The indicator lamp shall be deactivated at the end of the check of lamp function unless a trailer ABS malfunction signal is present.

(c) [Reserved]

* * * * *

S5.2.3.2 *Antilock Malfunction Signal.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 that is equipped with an antilock brake system shall be equipped with an electrical circuit that is capable of signalling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this antilock brake system malfunction signal circuit to the towing vehicle. The electrical circuit need not be separate or dedicated exclusively to this malfunction signaling function. The signal shall be present whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The signal shall remain present as long as the malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated whenever power is again supplied to the trailer's antilock brake system. In addition, each trailer manufactured on or after March 1, 1998, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of additional trailers in a combination by means of its ABS malfunction signal circuit, and shall have the means for connection of its ABS malfunction signal circuit to the towed vehicle.

S5.2.3.3 *Antilock Malfunction Indicator.* In addition to the requirements of S5.2.3.2, each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2006, shall be equipped with an external indicator lamp that is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The indicator lamp shall also be activated as a check of lamp function whenever power is supplied to the antilock brake system and the vehicle is stationary. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

* * * * *

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of vehicle type, weight, and speed specified in S5.3.1.1, in the sequence specified in Table I, each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, and with wheel lockup permitted only as follows:

(a) At vehicle speeds above 20 mph, any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles may lock up, for any duration. The wheels on the two rearmost nonliftable, nonsteerable axles may lock up according to (b).

(b) At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration.

(c) At vehicle speeds above 20 mph, any wheel not permitted to lock in (a) or (b) may lock up repeatedly, with each lockup occurring for a duration of one second or less.

(d) At vehicle speeds of 20 mph or less, any wheel may lock up for any duration.

Table I.—Stopping Sequence

1. Burnish.
2. Stops on a peak friction coefficient surface of 0.5: (a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a truck tractor with a loaded unbraked control trailer. (b) With the vehicle at unloaded weight plus up to 500 lbs., stop the vehicle from 30 mph using the service brake, for a truck tractor.
3. Manual adjustment of the service brakes allowed for truck tractors, within the limits recommended by the vehicle manufacturer.
4. Other stops with vehicle at GVWR:
(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle.
(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.
5. Parking brake test with the vehicle loaded to GVWR.
6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.
7. Other stops with the vehicle at unloaded weight plus up to 500 lbs.
(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.
(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.
8. Parking brake test with the vehicle at unloaded weight plus up to 500 lbs.
9. Final inspection of service brake system for condition of adjustment.

S5.3.6 *Stability and Control During Braking-Truck Tractors.* When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each truck tractor manufactured on or after March 1, 1997 shall stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500- foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

* * * * *

Issued on: December 8, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30375 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1160

[Ex Parte No. 55 (Sub-No. 96)]

Freight Operations by Mexican Motor Carriers—Implementation of North American Free Trade Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This action amends Interstate Commerce Commission (ICC) regulations relating to motor carrier operating authority and insurance, in order to implement the second phase of the North American Free Trade Agreement (NAFTA) relating to land transportation. The amendments will establish procedures under which Mexican motor carriers may apply for operating authority to provide service across the United States-Mexico international boundary line to and from points in California, Arizona, New Mexico, and Texas. They will also establish procedures under which persons of Mexico who establish enterprises in the United States to distribute international cargo in this country may apply for operating authority.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Applications for operating authority may be obtained by calling the ICC's Automated Response Capability (ARC) telephone system at (202) 927–7600 and selecting the option for how to file an application. For additional information, contact either Bernard Gaillard, (202) 927–5500 or Stanley M. Braverman, (202) 927–6316. [TDD for the hearing impaired: (202) 927–5721.] To obtain a copy of the Commission's full decision in this matter, contact D.C. News & Data Inc., ICC Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking in the **Federal Register** on October 18, 1995 (60 FR 53894). This notice proposed changes to ICC licensing and insurance regulations, and it sought comments on a new application form created to assist in the implementation of the second phase of NAFTA. After reviewing the comments submitted, we have decided to adopt the proposed rules. We have made some changes to Form OP–1MX, "Application for Operating Authority by Mexican Carriers," to correct inadvertent oversights and to address points made in the comments.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, we have examined the impact of our action on small businesses and small organizations. We conclude that our action will not have a substantial impact upon a significant number of small entities, and that any impact it may have will be beneficial. We expect that the new application form designated for Mexican applicants (Form OP–1MX), and the corresponding regulations, will simplify and clarify the application process. Use of the existing Form OP–1 for these new applications, by contrast, could cause confusion and require more work on the part of Mexican carrier applicants.

Environmental and Energy Considerations

We conclude that our rules will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1043

Insurance, Motor Carriers, Surety Bonds.

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

Decided: November 30, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen and Commissioner Simmons.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1160 are amended as set forth below:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.1 [Amended]

2. Section 1043.1, paragraphs (a)(1) and (b) are amended as follows:

a. In paragraph (a)(1) in the first sentence add the words "or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities" after the words "No common or contract carrier".

b. In paragraph (b) in the first sentence add the words "nor any foreign (Mexican) common carrier of exempt commodities" after the words "title 49 of the U.S. Code".

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 continues to read as follows:

Authority: 5 U.S.C 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928 and 11102.

4. In § 1160.1 a new paragraph (h) is added to read as follows:

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§ 1160.1 Applications governed by these rules.

* * * * *

(h) Applications for Mexican carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between the U.S./Mexico border, and points in California, Arizona, New Mexico and Texas.

§ 1160.3 [Amended]

5. In § 1160.3, paragraph (a), remove the word "and" after the words "of household goods;"; add the words "and Form OP–1MX for Mexican motor property carriers" after the words "for water carriers".

§ 1160.4 [Amended]

6. Section 1160.4, paragraphs (a)(1) and (d) are amended as follows:

a. In paragraph (a)(1) add the words ", Mexican motor property carriers that perform private carriage and transport exempt items," after the words "(except household goods)".

b. In paragraph (d) introductory text, add the words ", including Mexican carrier applicants" after the words "household goods applications".

c. In the Note at the end of § 1160.4 add the words "Form OP–1MX for Mexican property carriers," after the words "OP–1 for motor property carriers,".

7. In § 1160.5 a new paragraph (a)(8) is added to read as follows:

§ 1160.5 Commission review of the applications.

(a) * * *

(8) All applications must be completed in English.

* * * * *

[FR Doc. 95–30239 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register

Vol. 60, No. 239

Wednesday, December 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1487, 1491, 1492 and 1495

Regulatory Reform Initiative

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: In response to the President's Regulatory Reform Initiative, the Commodity Credit Corporation is proposing to amend its regulations to eliminate the following programs: Noncommercial Risk Assurance Program (GSM–101); CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201); CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program).

These programs are inactive or obsolete and have not been used in 15 years or more.

DATES: Comments must be submitted on or before January 12, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1035, Washington, D.C., 20250–1035; FAX (202) 720–2949. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, at the address stated above. Telephone (202) 720–6211. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

The amendment to 7 CFR parts 1487, 1491, 1492 and 1495 set forth in this proposed rule does not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. The proposed rule would not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In response to the President's Regulatory Reform Initiative, the Commodity Credit Corporation is proposing to amend Title 7 of the Code of Federal Regulations to remove the following parts:

- Part 1487—Noncommercial Risk Assurance Program (GSM–101);
- Part 1491—CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201);
- Part 1492—CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities (GSM–301); and
- Part 1495—Disposition of Agricultural Commodities under the CCC Barter Program (Barter Program).

Reasons for Removal

CCC proposes to remove these parts for the following reasons:

- GSM–101—This risk assurance program, implemented in 1979, covered only non-commercial or political risk and became obsolete when the CCC Export Credit Guarantee Program (GSM–102) was introduced in 1980 to cover political and commercial risk. The GSM–101 program was last used in 1981.
- GSM–201—This direct credit program has been used only once (a transaction for livestock exports to Spain in 1979). The terms available under the program—3 to 10 year direct credits—could be made available under a modified GSM–5 Program (7 CFR Part 1488) Financing of Sales of Agricultural Commodities Program.

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• GSM–301—This direct credit program was intended to facilitate commodity exports which would be sold to generate funds to finance the construction of a market development project. The program was used only once (in connection with a bulk grain discharge and storage facility developed at Ashdod, Israel). That project began in 1978 and was completed in the early 1980's. For a number of years, funding has not been made available for this program.

• Barter Program—From 1950 through 1973, CCC exchanged CCC-owned agricultural commodities for strategic and critical materials for the National Defense Stockpile. The program could also be used to obtain foreign-produced supplies and services used in Department of Defense construction projects and Agency for International Development projects. The program was terminated in 1973 when CCC stocks were depleted. The National Defense Stockpile is now liquidating many strategic materials. Also, CCC has authority, which it has at times used, to enter into direct barter arrangements under the CCC Charter Act in order to obtain strategic materials for defense stock piles.

List of Subjects

7 CFR Part 1487

Agricultural commodities, Exports, Insurance, Reporting and recordkeeping requirements.

7 CFR Parts 1491 and 1492

Exports, Livestock, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1495

Agricultural commodities, Exports, Government procurement, Strategic and critical materials.

PARTS 1487, 1491, 1492, 1495—[REMOVED]

For the reasons set out in the preamble under the authority at 5 U.S.C. Section 552(a)(1)(E), it is proposed to amend 7 CFR Chapter XIV by removing parts 1487, 1491, 1492 and 1495.

Signed at Washington, DC, on December 1, 1995.

Christopher E. Goldthwait,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 95–30018 Filed 12–12–95; 8:45 am]

BILLING CODE 3410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF31

Constraint Level for Air Emissions of Radionuclides

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish a constraint of 10 mrem/yr total effective dose equivalent (TEDE) for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. This proposed rule is necessary to provide assurance to the Environmental Protection Agency (EPA) that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. This action is expected to be the final step in providing EPA with a basis upon which to rescind its Clean Air Act (CAA) regulations for NRC licensed facilities (other than power reactors) and Agreement State licensees, thereby relieving these licensees from unnecessary dual regulations.

DATES: Submit comments by March 12, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this bulletin board BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. With publication of this notice, proposed rulemakings and appropriate supporting documents will be available for review and comment on the BBS. These same documents are also available for review and comment at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, dialing the toll free number at 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339; or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, then you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu". Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using FTP, all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD also can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files, and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Comments received on this proposed rule may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6215; e-mail CTR@NRC.GOV.

SUPPLEMENTARY INFORMATION: The EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides on October 31, 1989. Subpart I of 40 CFR 61 was promulgated to implement the CAA and limit doses to members of the public from air emissions of radionuclides (other than Radon-222) from all NRC licensees other than licensees possessing only sealed sources, high-level waste repositories and uranium mill tailings piles that have been disposed of in accordance with 40 CFR Part 192 and are subject to the requirements of Subpart I. Initially, Radon-222 emissions from tailings were covered by 40 CFR 61, Subparts T and W. Subpart T was rescinded for NRC licensees after Appendix A to Part 40 was amended by the Commission to conform to changes EPA issued to 40 CFR 192 that adopted the provisions of subpart T (Subpart W still applies to NRC licensees). Since Radon-222 is adequately addressed in Appendix A to Part 40 and other provisions of Part 20 it is not covered in this proposed rulemaking.

Under Subpart I, emissions of radionuclides must be limited so that no member of the public would receive an effective dose equivalent of greater than 10 mrem/yr [1].

In 1990, Congress enacted amendments to the CAA. Section 112(d)(9) of these amendments to the CAA (the Simpson amendment) states:

[1] Subpart I expresses dose in effective dose equivalent (EDE). NRC expresses dose in total effective dose equivalent (TEDE). These terms are essentially equivalent. For the sake of consistency, this paper will refer to all doses in terms of TEDE.

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

Upon issuance, the effectiveness of Subpart I for all NRC licensees was immediately stayed by EPA pending further evaluation. During the stay period, EPA conducted two studies of the air emissions from NRC and Agreement State materials licensees. The first was a survey of 367 randomly selected nuclear materials licensees. EPA determined that the highest estimated dose to a member of the public from air emissions from these facilities was 8 mrem/yr, based on very conservative modeling. In addition, 98 percent of the facilities surveyed reported doses to members of the public resulting from air emissions less than 1 mrem/yr. The second study evaluated dose from air emissions from 43 additional facilities that were selected because of their potential for air emissions resulting in significant public exposures. EPA found that 75 percent of these licensees had air emissions resulting in an estimated maximum public dose less than 1 mrem/yr. For the licensees evaluated, none exceeded 10 mrem/yr.

In its initial proposal to rescind Subpart I for NRC licensees other than power reactors, EPA stated that:

> Based on the result of the survey undertaken by EPA and the commitments made by NRC in the MOU, EPA has made an initial determination that the NRC program under the Atomic Energy Act provides an ample margin of safety to protect the public health (57 FR 56880; December 1, 1992).

However, EPA continued to express concern regarding the adequacy of the measures to "assure EPA that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety." The stay on Subpart I expired on November 15, 1992, and Subpart I became effective on November 16, 1992. Subsequently, in July of 1993, the EPA Administrator determined that there was insufficient basis at that time to rescind Subpart I. Consequently, NRC and Agreement State licensed facilities are currently subject to dual regulation of air emissions of radionuclides under both the AEA and the CAA, including regulatory oversight by EPA (or authorized State) and NRC (or Agreement State).

NRC licensees subject to Subpart I are also subject to NRC dose limits for members of the public contained in 10 CFR Part 20, Subpart D entitled "Radiation Dose Limits for Individual Members of the Public" (Subpart D). Under Subpart D, licensees shall ensure that doses to members of the public are less than 100 mrem/yr from all pathways (including air emissions) and all sources associated with the licensee's operation. In addition, doses to members of the public must be kept as low as is reasonably achievable (ALARA). Based on the aforementioned studies conducted by EPA and licensee reporting of doses to members of the public from air emissions to EPA, it is evident that less than 10 mrem/yr to the maximally exposed member of the public from air emissions is reasonably achievable.

NRC power reactor licensees subject to 10 CFR 50.34a must keep doses to members of the public from air emissions consistent with the numerical guidelines in Appendix I to 10 CFR Part 50. In addition, these licensees have for many years reported estimated doses to members of the public from air emissions well below the Subpart I value. Based on the combination of a continuing regulatory basis for reduced air emissions and documented proof of the effectiveness of the NRC program for these licensees, EPA has already proposed to rescind Subpart I for power reactors licensed by NRC (56 FR 37196; August 5, 1991).

The NRC is proposing to establish a constraint of 10 mrem/yr TEDE for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors as a part of its program to maintain doses ALARA. The rulemaking being proposed would codify numerical values for NRC's application of ALARA guidelines on radioactive air emissions from its licensees, other than power reactors. For power reactors, ALARA guidelines have already been established within 10 CFR 50 and facility licensing conditions. This regulatory action would ensure that air emissions are maintained at a very low level and, taking into consideration the elimination of dual regulation, at little or no cost. This action would also bring consistency between EPA's dose standard and the NRC's ALARA application, thereby providing EPA with a basis upon which to rescind Subpart I as it applies to NRC licensed facilities other than power reactors. This action is expected to be the final step in providing EPA with a basis upon which to rescind Subpart I for NRC licensees other than power reactors.

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NRC has been working cooperatively with EPA over the last several years to support rescission of EPA's standards in Subpart I of 40 CFR Part 61 in accordance with Section 112(d)(9) of the CAA. The fundamental objective of this effort has been to eliminate unnecessary duplicative regulations that provide no incremental benefit in terms of public and environmental protection.

The regulatory framework within which NRC proposes to provide a basis for rescission of Subpart I consists of the requirements in 10 CFR Part 20 to limit doses to members of the public to 100 mrem/yr, to maintain these doses as far below this limit as is reasonably achievable (ALARA), and to constrain dose to members of the public from air emissions of radioactive materials from a single source to 10 mrem/yr.

If the licensee estimates or measures a dose to a member of the public expected to receive the highest dose from air effluents to be less than 10 mrem/yr, the licensee would be required to record the dose and the assumption used to calculate it consistent with the requirements of § 20.2103. This data would be made available to inspectors upon request. If the licensee estimates or measures a dose to the member of the public expected to receive the highest dose from air effluents to be greater than 10 mrem/yr, the licensee would be required to report the dose to NRC in writing within 30 days. In addition, the licensee would be required to include in that report the circumstances that led to the greater than 10 mrem/year dose, a description of the corrective steps the licensee has taken or proposes to take to ensure that the constraint is not again exceeded, a timetable for implementing the corrective steps, and the expected results.

The constraint on dose from air emissions is different than a limit. Exceeding this constraint would not result in a Notice of Violation (NOV). Rather, a NOV would be issued only upon failure to report that actual or estimated doses, from air effluent releases from a facility, have exceeded the constraint value and/or failure to institute appropriate measures to correct and prevent further emissions in excess of those which would result in dose exceeding the constraint level.

The proposed rule would apply to airborne releases, other than Radon-222, from all NRC licensees except power reactors. Power reactors are exempt from this proposed rule because they are already required under 10 CFR 50.34a to identify, in their application, design objectives and the means to be employed for keeping doses to members of the public from air effluents ALARA. Appendix I to Part 50 contains the numerical guidelines to meet this requirement.

In addition to the discussion above, the Commission is soliciting comments on the question of whether the 10 mrem constraint should be established in 10 CFR Part 20, as proposed, or whether it should be established separately in each appropriate Part of Title 10 instead.

Regulatory Guide

Regulatory Guide 8.37, —ALARA Levels for Effluents From Materials Facilities,— is being modified to reflect the introduction of the constraint on air emissions in the proposed rule and to identify those methods acceptable to the NRC for implementing the rule. To afford members of the public with an opportunity to comment on the rule and guide as a complete package, publication of the guide for comment is expected to be coincident with publication of the proposed rule, or within a few weeks of the date of publication of the proposed rule.

Agreement State Compatibility

Section 116 of the CAA authorizes individual States to establish more restrictive requirements than those presented in Subpart I. In view of the CAA precedent, the NRC staff is recommending that this rule be a Division 2 matter of compatibility under the existing compatibility policy. As such, Agreement States could choose to adopt a rule which is more restrictive but no less restrictive than the one approved by the Commission.

The NRC is in the process of revising its compatibility policy and has issued a proposed policy for public comment (59 FR 37289; July 21, 1994). Although the compatibility policy has not yet been finalized, the NRC anticipates that a similar level of Agreement State compatibility will be required for air emissions under the new policy as is required under a Division Level 2 designation.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This action is not expected to have any significant environmental impact because the programs would provide equivalent protection. Actual air emissions are not expected to change. The changes would be procedural methods for demonstrating compliance and inspection procedures. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and photocopying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0014), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by January 12, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Charleen T. Raddatz, (301) 415–6215.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule only impacts NRC licensees with emissions of significant quantities of radioactive material. This category of licensee includes only a few small businesses.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because it does not apply to power reactor licensees, and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects In 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f); secs. 201, as amended, 202, 206, 88 stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003, the definition of Constraint is added to read as follows:

§ 20.1003 Definitions.

* * * * *

Constraint (dose constraint) means a value above which specified licensee actions are required.

* * * * *

3. In § 20.1101 paragraph (d) is added to read as follows:

§ 20.1101 Radiation protection programs

* * * * *

(d) To implement the ALARA requirements of § 20.1101(b), and notwithstanding the requirements in § 20.1301 of this part, licensees other than those subject to §§ 50.34a or 50.36b, shall constrain air emissions of radioactive materials other than radon-222 so that the individual member of the public likely to receive the highest dose will not be expected to receive a dose in excess of 10 mrem/yr TEDE from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedence as provided in § 20.2203 and promptly take appropriate corrective action to ensure against recurrence.

4. In § 20.2203 a new paragraph (a)(2)(vi) is added and the section heading and paragraph (b)(1)(iv) are revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

(a) * * *

(2) * * *

(vi) The ALARA constraints for air emissions established under § 20.1101(c); or

(b) * * *

(1) * * *

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

* * * * *

Dated at Rockville, Maryland, this 7th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30334 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for minicomputers.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Minicomputers. A Minicomputer is "a digital computer whose price and capability lies above that of a personal computer or workstation, and below that of a mainframe computer" as defined by the Ralston and Reilly Encyclopedia of Computer Science Third Edition. The SBA adds that most Minicomputers are run in a closed-shop environment, with the user acting as operator, programmer, and application analyst. The basis for a waiver of the Nonmanufacturer Rule for this product is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before December 29, 1995.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, 202–205–6475.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual

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manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Minicomputers (SIC 3571, PSC 7010) and invites the public to comment or provide information on potential small business sources for this product.

In an effort to identify potential small business sources, the SBA has searched the Procurement Automated Source System (PASS) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: November 6, 1995.

Judith A. Roessel,

Associate Administrator for Government Contracting.

[FR Doc. 95–30328 Filed 12–12–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–66]

Airworthiness Directives; Hamilton Standard 14RF and 14SF Series, and Hamilton Standard/British Aerospace Model 6/5500/F Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Hamilton Standard 14RF and 14SF series, and Hamilton Standard/British Aerospace Model 6/5500/F propellers. This proposal would require initial and repetitive inspections of critical components, and removal, and replacement with serviceable parts, of those critical components that do not meet the return to service criteria. This proposal is prompted by failure modes effects analysis (FMEA), certification test data, engineering analysis, and repair actions performed at overhaul depots. The actions specified by the proposed AD are intended to prevent loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft.

DATES: Comments must be received by February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95- ANE–66, 12 New England Executive Park, Burlington, MA 01803- 5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–66." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–66, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) and Hamilton Standard have identified critical aspects of the transfer tube assembly, actuator assembly, and propeller control unit (PCU) for Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21; 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and Hamilton Standard/British Aerospace 6/5500/F propellers. A continuous airworthiness requirement for inspection of those critical aspects of the transfer tube assembly, actuator assembly, and PCU for wear is required to ensure continued safe operation between inspections. The inspection intervals and inspection criteria have been generated by failure modes effects analysis (FMEA), certification test data, engineering analysis, and repair actions performed at overhaul depots. This condition, if not corrected, could result in loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Service Bulletins (SB's), all dated November 29, 1995, that describe procedures for initial and repetitive inspections of critical components: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–25.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections of critical aspects of the transfer tube assembly, actuator assembly, and PCU for wear. This AD would also require, prior to further flight, removing and replacement with serviceable parts those critical components that do not meet the return to service criteria. The actions would be required to be accomplished in accordance with the SB's described previously.

There are approximately 2,900 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,350 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4.3 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $348,300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hamilton Standard: Docket No. 95–ANE–66.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14SF–5, 14SF–7, 14SF–11, 14SF–11L, 14SF–15, 14SF–17, 14SF–19, 14SF–23 and Hamilton Standard/British Aerospace 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120–RT; SAAB–SCANIA SF 340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72; DeHavilland DHC–8–100 series, DHC–8–300 Series; Construcciones Aeronauticas SA (CASA) CN–235 series and CN–235–100; Canadair CL–215T an CL–415; and British Aerospace ATP Airplanes.

Note: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of propeller control due to failure of critical components, which could result in loss of control of the aircraft, accomplish the following:

(a) For those propellers with transfer tube assemblies, actuator assemblies, and propeller control units (PCU's) with greater than or equal to 15,500 hours time in service (TIS), or unknown TIS, on the effective date of this AD, inspect for wear within 1,000 hours TIS after the effective date of this AD. Perform inspections of the critical aspects of these components in accordance with the applicable service bulletins (SB's) listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(b) For those propellers with transfer tube assemblies, actuator assemblies, and PCU's with greater than or equal to 10,500 hours TIS but less than 15,500 hours TIS on the effective date of this AD, inspect for wear within 1,000 hours TIS after the effective date of this AD, or prior to accumulating 16,500 hours TIS, whichever occurs later. Perform inspections of the critical aspects of these components in accordance with the applicable SB's listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(c) For those propellers with transfer tube assemblies, actuator assemblies, and PCU's with less than 10,500 hours TIS on the effective date of this AD, inspect for wear within 6,000 hours TIS after the effective date of this AD, or prior to accumulating 10,500 hours TIS, whichever occurs later. Perform inspections of the critical aspects of these components in accordance with the applicable SB's listed in paragraph (d) of this AD. Thereafter, inspect at intervals not to exceed 10,500 hours TIS since last inspection. Prior to further flight, remove and replace with serviceable parts those components that do not meet the return to service criteria defined in the applicable SB's.

(d) Perform the inspections for wear required by this AD in accordance with, and use the return to service criteria defined in, the following applicable Hamilton Standard SB's, all dated November 29, 1995: 14RF–9–61–64, 14RF–19–61–32, 14RF–21–61–51, 14SF–61–70, and 6/5500/F–61–2.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 6, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–30352 Filed 12–12–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95-NM-124-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires an inspection of the control rods of the outboard leading edge slat, and follow-on actions (including repetitive ultrasonic inspections), if necessary. That AD also requires replacement of the control rod ends and attach bolts for certain airplanes. It also provides for an optional terminating action for follow-on repetitive inspections. That AD was prompted by reports of cracks and worn attach bolts of the control rods of the leading edge outboards slats of the wings due to the high breakout torque in the joint of the control rod end. This action would require installation of the previously optional terminating action. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane and damage in the slat structure or fixed leading edge of the wing, as a result of cracks and worn attach bolts.

DATES: Comments must be received by January 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-124-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227-1760; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-124-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-124-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On September 5, 1990, the FAA issued AD 90-20-16, amendment 39-6726 (55 FR 37858, September 14, 1990), applicable to certain Boeing Model 767 series airplanes, to require a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions, if necessary. Certain of the follow-on actions entail performing repetitive ultrasonic inspections of the control rods. That AD also requires replacement of the control rod ends and attach bolts, for certain airplanes. It also provided for an optional terminating action for the follow-on repetitive inspections. That action was prompted by a report that certain airplanes could be operating with control rods of the outboard leading edge slat that are subject to cracking. The requirements of that AD are intended to prevent the loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane.

Since the issuance of that AD, the FAA has reviewed and approved Revision 5 of Boeing Service Bulletin 767-57-0021, dated June 15, 1995. The one-time visual inspection and the replacement of the control rod ends and attach bolts procedures described in this revision are essentially identical to those described in Revision 1 and Revision 2 of the service bulletin (which were referenced in AD 90-20-16). For certain airplanes, Revision 5 of the service bulletin describes procedures for replacement of the control rod with a control rod that has been manufactured after June 1983. The control rod ends of these newer control rods have improved bearings and chrome plated bolts, and a lower break-out torque, all of which will reduce wear of the attach bolts of the control rods. Accomplishment of this replacement eliminates the need for the (follow-on) repetitive ultrasonic inspections described in Revision 1 and Revision 2 of the service bulletin.

The FAA has determined that accomplishment of the replacement of the control rod with a new control rod that has been manufactured after June 1983, will positively address the unsafe condition identified as loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90-20-16. It would continue to require a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions (i.e., repetitive ultrasonic inspection), if necessary. The proposed AD would also continue to require replacement of the control rod ends and attach bolts, for certain airplanes. For operators accomplishing the (follow-on) repetitive ultrasonic inspections, the proposed AD would require replacement of the control rod with a new control rod manufactured after June 1983; this replacement would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 271 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 193 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 90-20-16 take approximately 21 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,304,680, or $6,760 per airplane.

For certain affected airplanes, the new replacement (terminating) action that is proposed in this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required replacement parts is estimated to be $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $5,560 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6726 (55 FR 37858, September 14, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95-NM-124-AD. Supersedes AD 90-20-16, Amendment 39-6726.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767-57-0021, Revision 1, dated September 14, 1989, or Revision 5, dated June 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane, accomplish the following:

(a) For airplanes having line positions 1 through 235 inclusive: Within the next 1,200 landings or 9 months after October 23, 1990 (the effective date of AD 90-20-16, amendment 39-6726), whichever occurs first, unless accomplished within the last 800 landings or 6 months, whichever occurs later, perform a visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat of the wings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-57-0021, dated August 25, 1988; Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

(1) If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required by this paragraph.

(2) If the date of manufacture is illegible or is prior to June 1983, accomplish paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to further flight, perform an ultrasonic inspection to detect cracks of the control rods in accordance with Figure 1 of Boeing Service Bulletin 767-57-0021, dated August 25, 1988, Revision 1, dated September 14, 1989, or Revision 2, dated July 26, 1990. If any crack or fracture is detected, prior to further flight, replace it in accordance with Figure 2 of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 thereafter at intervals not to exceed 2,000 landings or 15 months, whichever occurs first, until the replacement required by paragraph (a)(2)(ii) of this AD is accomplished.

(ii) Within 3,000 flight hours or 15 months after the effective date of this AD, whichever occurs later, replace the control rod with a new rod manufactured June 1983 or later, in accordance with Boeing Service Bulletin 767-57-0021, Revision 5, dated June 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a)(2)(i) of this AD.

(b) For airplanes having line number 1 through 264 inclusive, and 266 through 273 inclusive: Within the next 2,500 landings or 18 months after October 23, 1990 (the effective date of AD 90-20-16, amendment 39-6726, whichever occurs first, replace the control rod end and attach bolt with a new configuration control rod end and attach bolt on each wing, in accordance with Boeing Service Bulletin 767-57-0221, Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30353 Filed 12-12-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-NM-244-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This proposal would require inspections of the components of the leading edge outboard slat; replacement of the control rod end, if necessary; and various follow-on actions. This proposal is prompted by reports of skewed panels of the outboard leading edge slat due to either corrosion of the rotary actuator, cracking of the control rod, or incorrect clearance of the overtravel stop of the outboard leading edge slat. The actions specified by the proposed AD are intended to prevent such conditions, which could result in reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing.

DATES: Comments must be received by January 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227-1760; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-244-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports of skewed panels of the outboard leading edge slat on several Boeing Model 767 series airplanes. Investigation revealed that the cause of the skewed panels is attributed to either corrosion of the rotary actuator, cracking of the control rod, or incorrect clearance of the overtravel stop of the outboard leading edge slat. These conditions, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the FAA has determined that an airworthiness directive (AD) is warranted to require the following inspections and follow-on actions of the affected airplanes. These actions are necessary in order to ensure that the unsafe condition is corrected, and to provide an acceptable level of safety:

1. A visual inspection to verify proper clearance of the overtravel stop;
2. Adjustment of the stop clearance, and replacement of the rotary actuator and adjacent offset gearbox, if necessary;
3. Repetitive visual inspections to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slat;
4. Replacement of a certain earlier model rotary actuator with a certain later model rotary actuator, for certain airplanes;
5. Visual inspection(s) to verify proper installation of the control rods of the outboard leading edge slats; and
6. Tightening of the bolts or installing a new lockwire, if any bolt is loose or any lockwire is missing.

This proposed AD would require that these actions be accomplished at specific times and in accordance with the procedures specified in the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27-81-20.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition that is the subject of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

There are approximately 612 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $178,920, or $840 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95-NM-244-AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD: Perform a visual inspection to verify proper clearance of the overtravel stop, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27-81-20.

(1) If proper clearance exists, repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(2) If clearance exists, but is incorrect, at the next convenient maintenance interval, but no later than 500 flight hours after accomplishment of the inspection, adjust the stop clearance for the slats in accordance with the AMM. Repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(3) If no clearance exists (i.e., stop contact), prior to further flight, adjust the stop clearance for the slats in accordance with the AMM. After the adjustment, within 3,000 hours time-in-service or 1,500 flight cycles after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs later, replace the rotary actuator and adjacent offset gearbox in accordance with the AMM. After replacement, repeat the inspection for proper clearance at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(b) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD, perform a visual inspection to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slat, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27-81-20.

(1) If no sign of internal corrosion is detected, accomplish paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120-3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120-5 or later. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120-5 or later is installed: Repeat the inspection of the rotary actuator thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any sign of internal corrosion is detected, accomplish paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120-3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120-5 or later. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120-5 or later is installed: Within 6,000 flight hours or 18 months after accomplishing the initial inspection required by paragraph (b) of this AD, replace that rotary actuator with a new rotary actuator having P/N 256T2120-5 or later. After replacement, repeat the inspection required of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(c) Within 500 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD, perform a visual inspection to verify proper installation (including loose bolts and missing lockwires) of the control rods of the outboard leading edge slats, in accordance with the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27-81-20.

(1) If all control rods are installed properly, repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any bolt is loose or any lockwire missing, prior to further flight, tighten the bolt or install a new lockwire, in accordance with the AMM. Repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30354 Filed 12-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 95-AGL-20]

Establishment of Class E Airspace; Bigfork, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a Nondirectional Radio

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Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Bigfork Municipal Airport, Bigfork, MN, to accommodate a Nondirectional Radio Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Bigfork, MN [New]

Bigfork Municipal Airport, MN
(lat. 47°40'44.7" N, long. 93°39'00.6" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Bigfork Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on November 22, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

FR Doc. 95–30370 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial Requirements, Prepayment of Subordinated Debt and Gross Collection of Exchange-Set Margin for Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) proposes to amend: (1) Rules 1.17(a)(1)(i) and (ii) to (a) increase the minimum required dollar amount of adjusted net capital for futures commission merchants (FCMs) from $50,000 to $250,000, (b) increase the minimum required dollar amount of adjusted net capital for introducing brokers (IBs) from $20,000 to $30,000, and (c) make the amount of adjusted net capital required by a registered futures association for its member FCMs and IBs an element of the Commission's minimum financial requirements for FCMs and IBs; (2) Rule 1.17(h)(2)(vii) with respect to the procedure to obtain approval for prepayment of subordinated debt; and (3) Rule 1.58, which governs gross collection of exchange-set margins for omnibus accounts, to make it applicable to omnibus accounts carried by FCMs for foreign brokers. The Commission believes that these amendments will conform the Commission's rules with those of industry self-regulatory organizations (SROs) and therefore should not require changes in the operations of most firms.

DATES: Comments on the proposed amendments must be received on or before January 12, 1996.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Please refer to "Financial Rule Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Minimum Financial Requirements

A. Minimum Financial Requirements for FCMs

Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of: (1) $50,000, (2) four percent of the sum of the amount of funds required to be segregated under Section 4d(2) of the Commodity Exchange Act (Act) [1](*i.e.*, for trading in U.S. markets) and the amount of funds required to be set aside under Commission Rule 30.7 [2] for customers trading foreign markets (referred to as the "secured amount"); or (3) if an FCM is also registered as a securities broker-dealer, the amount of net capital required by the Securities and Exchange Commission (SEC).[3] The $50,000 minimum dollar requirement was established in 1978 [4]and has remained unchanged. On August 27, 1990, the Commission approved amendments to Rule 201 of the Chicago Board of Trade (CBT) and Section 1 of NFA's Financial Requirements increasing their respective FCM members' minimum adjusted net capital requirement to $250,000.[5] The NFA proposed the minimum adjusted net capital increase based upon the growth in trading volume in the industry,[6]the increase in segregated funds per FCM [7]and the decrease in the value of the dollar that had occurred since 1978. The Commission approved these amendments to provide FCM customers with the same degree of protection that was provided by the $50,000 minimum adjusted net capital requirement when it was originally adopted in 1978.

Pursuant to paragraph (a)(2) of Commission Rule 1.17, the Commission's minimum financial requirements are not applicable to a registrant that is a member of an SRO and that conforms to the minimum financial standards set by such SRO. As noted above, all persons required to register as FCMs are required to be NFA members under Commission Rule 170.15. Consequently, when the Commission approved NFA's amendment of the minimum dollar amount of adjusted net capital required of its member FCMs in 1990, the Commission effectively raised the dollar level of minimum adjusted net capital for all FCMs to $250,000.

The Commission nonetheless believes that raising the required minimum dollar amount of adjusted net capital for FCMs under Commission Rule 1.17 to that required by NFA and CBT for their members is necessary and appropriate for the following reasons. Section 8c(a)(1) of the Act, 7 U.S.C. 12c(a)(1) (1994), authorizes the Commission to discipline a member of an exchange in accordance with the rules of that exchange if the exchange fails to do so. Section 17(l)(1) of the Act, 7 U.S.C. 21(1)(1) (1994), authorizes the Commission to suspend a registered futures association that has failed to enforce compliance with its own rules. However, the Commission does not have the authority to discipline an exchange member for violation of an exchange rule in the absence of the exchange's failure to act, or to enforce compliance with a registered futures association's own rule upon a member thereof. This limitation upon the Commission's enforcement remedies in the context of SRO rules does not, of course, exist in the context of violations of the Act or Commission regulations. Section 6c of the Act, 7 U.S.C. 13a–1 (1994), authorizes the Commission, whenever it appears that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule or regulation thereunder, to bring an action to enjoin such act or practice, or to enforce compliance with the Act or any rule or regulation thereunder.

The proposed amendment to Rule 1.17(a)(1)(i)(A) thus would permit the Commission to use its authority under Section 6c of the Act to enforce

[1] 7 U.S.C. 6d(2) (1994).

[2] 17 CFR 30.7 (1995).

[3] Commission Rule 170.15 mandates that each person required to register as an FCM become and remain a member of a futures association which provides for the membership therein of such FCM unless there is no registered futures association. National Futures Association (NFA) is the only registered futures association. It has an FCM membership category and virtually all FCMs are NFA members. However, there are approximately 90 firms registered as FCMs (out of a total of approximately 260) that do not handle customer funds and therefore are not required to register as FCMs. Accordingly, these firms are not required to be NFA members pursuant to Commission Rule 170.15 but almost all of them are NFA members anyway. However, there still are approximately ten registered FCMs that are not members of any SRO and thus have a current minimum dollar adjusted net capital requirement of $100,000 under Commission Rule 1.17(a)(1)(i)(A). Since such a small number of firms are in this category, for ease of discussion we shall assume that all registered FCMs currently have a minimum dollar requirement of adjusted net capital of $50,000 under Commission rules.

[4] See 43 FR 39956 (September 8, 1978).

[5] On November 24, 1992, the SEC also adopted rule amendments to raise its minimum net capital requirement for securities broker-dealers holding customer funds, which had been $25,000, to $250,000 in stages. The requirement increased to $100,000 effective July 1, 1993, $175,000 effective January 1, 1994 and to the current level of $250,000 effective July 1, 1994. *See* 57 FR 56973, 56990 (Dec. 2, 1992); 17 CFR § 240.15c3–1e(a)(1995).

[6] This trend has continued. In fiscal year 1990, 334.2 million futures and option contracts were traded on U.S. contract markets, and that number increased more than 50 percent in the last five years to approximately 504.8 million in fiscal year 1995.

[7] In NFA's 1990 submission, it noted that the average amount of funds in segregation at each FCM more than tripled from 1960 to 1985, increasing from $8.7 million to $28.5 million. That amount more than tripled again in the last ten years and now exceeds $100 million.

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compliance with what is effectively, for the reasons discussed above, the current minimum adjusted net capital requirement applicable to FCMs with the benefit of all of the remedies available to it under the Act for the enforcement of compliance with any provision of the Act and any rule promulgated thereunder. In addition, this amendment would harmonize the Commission's minimum dollar requirement for FCMs with the prevailing standards established by NFA rules and support the objective of assuring that FCMs have a substantial base of liquid capital from which to meet their obligations to customers, an objective for which an increased requirement appears appropriate given the increase in the amount of funds held by FCMs and the change in the value of the dollar since 1978.

The Commission believes it is necessary to clarify its authority to require the transfer of positions at such time as a firm is no longer in compliance with the NFA rule. The Commission further believes that a base minimum adjusted net capital requirement of $250,000 is now essential to providing both an adequate stake in doing business in accordance with Commission rules and otherwise to provide a cushion sufficient with applicable haircuts and segregation of customer funds to permit the Commission to act in an emergency. The Commission also believes that the rule amendment is necessary to eliminate any confusion that may have existed as to whether the Commission could take action where an FCM's adjusted net capital is below $250,000 yet still exceeds $50,000.

Accordingly, the Commission is proposing to amend Rule 1.17(a)(1)(i)(A) to increase the minimum dollar amount of adjusted net capital for FCMs to $250,000.[8] In light of the amount of the proposed increase and the fact that, unlike the situation in 1978, very few FCMs are not members of any SRO and that those few FCMs in that category cannot handle customer funds, the Commission sees no need to maintain a higher dollar amount of required adjusted net capital for an FCM that is not a member of any SRO. In any event, such FCMs would have an increase in their adjusted net capital requirement from the current $100,000 to the proposed $250,000 that would apply to all FCMs.

The Commission further notes that several provisions of the Commission's minimum financial rules for FCMs, as well as one provision of the financial early warning system, contain cross-references to Rule 1.17(a)(1)(i)(A). Certain actions are restricted or required if the specified levels of adjusted net capital, which in all cases exceed 100 percent of the minimum dollar amount, are breached. These include Rule 1.17(e)(1)(i) (restricting the withdrawals of equity capital as well as the following paragraphs of Rule 1.17 concerning subordinated debt: paragraph (h)(2)(vi)(C)(*1*) (restricting the parties to a secured demand note (SDN) agreement from providing in such agreement that the unpaid principal amount of an SDN can be reduced below a floor amount if the value of collateral securing the SDN declines below the unpaid principal amount); paragraphs (h)(2)(vii)(A)(*1*) and (B)(*1*) (restricting prepayments and special prepayments); (h)(2)(viii)(A)(*1*) (requiring suspension of repayment); (h)(3)(ii)(A) (requiring notice of maturity or accelerated maturity); and (h)(3)(v)(A) (restricting use of temporary subordinations). In addition, Rule 1.12(b)(1) establishes the "early warning" minimum dollar level of adjusted net capital as 150 percent of the minimum dollar requirement, triggering notice and follow-up reporting requirements when an FCM's adjusted net capital is below that level. Even though the Commission is not amending the provisions of Rules 1.12 and 1.17 that cross-reference Rule 1.17(a)(1)(i)(A), the proposed amendment of the latter will have a corresponding impact on the various FCM activities or obligations referred to above.[9]

The Commission held a roundtable on capital on September 18, 1995 where several issues were discussed pertaining to minimum financial requirements. One of the issues discussed was whether the second prong of the current requirement, based upon four percent of the sum of segregated customer funds and the secured amount, should be amended in an effort to make an FCM's minimum adjusted net capital requirement reflect more closely the risks to an FCM caused by carrying open positions. The Commission may address that issue in a subsequent release following a review of empirical data being developed by the SROs but is not prepared to do so at this time.

B. Minimum Financial Requirements for IBs

Rule 1.17 also requires introducing brokers (IBs) [10] to maintain certain prescribed minimum amounts of adjusted net capital. Pursuant to Rule 1.17(a)(1)(ii), each person registered as an IB must maintain adjusted net capital equal to or in excess of the greater of: (A) $20,000 ($40,000 for each person registered as an IB who is not a member of an SRO); [11] or, (B) if the IB is also a securities broker-dealer, the amount of net capital required by the SEC.

On October 6, 1992, the Commission approved NFA rule amendments which, among other things, increased the required minimum dollar amount of adjusted net capital for member IBs from $20,000 to $30,000. However, the Commission did not at that time amend Commission Rule 1.17(a)(1)(ii)(A) to conform to NFA's rule amendment. The Commission believes that since it is now proposing to raise the minimum dollar amount of required adjusted net capital for FCMs as discussed above, it is appropriate also to propose an increase in the required minimum dollar amount of adjusted net capital for IBs. Accordingly, the Commission is proposing to amend Rule 1.17(a)(1)(ii)(A) to raise the minimum dollar amount of required net capital for a registered IB to $30,000. For reasons similar to those discussed above concerning FCMs, the Commission would eliminate any higher requirement for an IB that is not a member of an SRO.

[8] The Commission believes, for the reasons discussed above, that an increase from $50,000 to $250,000 is necessary and that it is unnecessary to phase this in over time as the SEC did in that most firms already meet the NFA requirement. The Commission also notes that when it adopted the current $50,000 standard in 1978, that was also a five-fold, one-step increase in the existing standard of $10,000 of working capital originally adopted by the Commission's predecessor agency, the Commodity Exchange Authority, effective March 17, 1969. 34 FR 569 (Jan. 16, 1969).

[9] For example, equity capital withdrawals from an FCM currently cannot reduce the FCM's adjusted net capital below $60,000 (120 percent of the minimum amount); if the amendment proposed herein to Rule 1.17(a)(1)(i)(A) were adopted, equity capital withdrawals would not be permitted to reduce the FCM's adjusted net capital below $300,000. Similarly, the "early warning" level of adjusted net capital would increase from $75,000 to $375,000 despite the fact that Rule 1.12(b)(1) itself would not be amended.

[10] Section 1a(14) of the Act, 7 U.S.C. 1a(14)(1994), defines an IB as "any person (except an individual who elects to be and is registered as an associated person of [an FCM]) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom." Commission Rule 1.3(mm), 17 CFR 1.3(mm) (1995), also includes in the definition of an IB any person required to register as such by virtue of Part 33 of the Commission's rules, 17 CFR Part 33 (1995).

[11] As is the case with FCMs discussed above, virtually all registered IBs are members of NFA. Any IB that is registered but not an NFA member would be precluded from introducing customer accounts to an FCM and thus could not act as an IB.

This proposed amendment, like the proposal applicable to FCMs, would conform the Commission's rule to the general industry standard established by NFA. Therefore, there should be essentially no impact on the operations of IBs as a result of this amendment. In any event, the proposed amendment would only affect the minority of IBs who raise their own capital. Those IBs who have entered into guarantee agreements with FCMs would be unaffected by the proposed amendment.[12]

C. Conforming Commission and Registered Futures Association Rules

The Commission also approved NFA rule amendments on October 6, 1992 which provide that a member IB's minimum adjusted net capital requirement, as well as that of a member FCM, can be determined by the number of offices it operates and the number of APs it sponsors.[13] When NFA presented these provisions to the Commission, NFA stated that the amount of the IB minimum financial requirement should be linked to the size of an IB's operation and that it concluded, after studying several factors related to an IB's business, that the number of offices operated or APs sponsored by an IB were the most relevant factors to be used in a formula establishing an IB's minimum financial requirement. NFA also stated that an FCM's minimum financial requirement should parallel that of an IB in this regard.[14] The Commission believes that it should incorporate the NFA standards concerning the number of offices or APs sponsored into the minimum financial requirements for FCMs and IBs in Rule 1.17, and eliminate the necessity to amend Rule 1.17 each time NFA amends its minimum financial requirements in order to avoid a recurrence of the current situation where NFA's minimum dollar amount of adjusted net capital for an FCM is $250,000 and the Commission's minimum is $50,000. Therefore, the Commission is proposing to redesignate paragraphs (a)(1)(i)(C) and (a)(1)(ii)(B) as paragraphs (a)(1)(i)(D) and (a)(1)(ii)(C), respectively, of Rule 1.17, and to add new paragraphs (a)(1)(i)(C) and (a)(1)(ii)(B) that would provide that "the amount of adjusted net capital required by a registered futures association of which it is a member" is an element of the Commission's minimum financial requirement for FCMs and IBs. The Commission is also proposing conforming amendments to the early warning level of adjusted net capital for FCMs,[15] the restriction on withdrawals of equity capital and the various provisions of Rule 1.17(h) discussed above concerning subordinated debt.[16]

II. Prepayment of Subordinated Debt

For purposes of computing net capital, debt covered by "satisfactory subordinated agreements" can be excluded from liabilities.[17] Rule 1.17(h)(2)(vii)(A) generally prohibits any prepayment of subordinated debt for one year following the date upon which the governing subordination agreement became effective. However, Rule 1.17(h)(2)(vii)(B) permits special prepayment of subordinated debt at any time (even during the first year) provided that, after giving effect thereto, the applicant's or registrant's adjusted net capital does not fall below certain amounts prescribed in the rule, which are approximately one and one-half times the amounts of capital required for a normal prepayment. In addition, no prepayment and no special prepayment may occur unless the registrant has obtained written approval of its designated self-regulatory organization (DSRO), if any, and the Commission.[18]

On September 10, 1985, the Commission's Division of Trading and Markets (Division) advised all registered IBs, FCMs and SROs of its intention to recommend to the Commission that Rule 1.17(h)(2)(vii) be changed to require only the DSRO's approval for prepayment of subordinated debt.[19] "The requirement for dual approval has been in effect for approximately seven years", the Division stated, "[d]uring [which] time, the DSROs have gained greater familiarity regarding subordinated debt and * * * have demonstrated * * * an ability to work together in the area of financial surveillance." This change would "make the treatment of prepayment of subordinated debt consistent with the treatment of approval of new subordinated debt or amendments to subordinated agreements."

The Commission is proposing to implement the change contemplated in Interpretative Letter No. 85–17 by amending Rule 1.17(h)(2)(vii) to require submission of a request for approval of prepayment of subordinated debt by a registrant to the DSRO only, if any, or to the Commission in those rare instances where the registrant is not an SRO member. Dual approval by the DSRO and the Commission would be required, however, should the requested prepayment or special prepayment result in a reduction of 20 percent or more of the registrant's adjusted net capital. Therefore, if a firm's subordinated debt amounts to 25 percent of its adjusted net capital and the firm wishes to prepay all of it and simultaneously enter into new subordinated debt arrangements for the same amount, but at a different maturity or interest rate, dual approval would *not* be required since there would be no net effect on the firm's adjusted net capital. Similarly, if a firm wanted to convert subordinated debt to paid-in-capital, dual approval would not be required so

[12] More than two-thirds of IBs enter into guarantee agreements with FCMs in accordance with Commission Rules 1.17(a)(2)(ii) and 1.10(j) in lieu of raising their own capital.

[13] Section 9 of NFA's Financial Requirements is entitled "Introducing Broker Financial Requirements" and provides as follows:

Each Member IB, except an IB operating pursuant to a guarantee agreement which meets the requirements set forth in CFTC Regulation 1.10(j), must maintain "Adjusted Net Capital" (as defined in Schedule A hereto) equal to or in excess of the greatest of:

(i) $30,000; or,

(ii) $6,000 per office operated by the IB (including the main office); or,

(iii) $3,000 for each AP sponsored by the IB; or

(iv) (for securities brokers and dealers), the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

The corresponding provision for an FCM with respect to offices and APs is based upon "$6,000 for each remote location operated (i.e., proprietary branch offices, main office of each guaranteed IB and branch offices of each guaranteed IB); or, $3,000 for each AP sponsored (including APs sponsored by guaranteed IBs)." Section 1 of NFA's Financial Requirements.

[14] According to discussions with NFA staff, there are currently less than ten FCMs and less than ten IBs whose minimum financial requirement is based upon the number of offices operated or APs sponsored. As of September 30, 1995, of the registered IBs, 1,080 operated pursuant to guarantee agreements with an FCM and 388 were raising their own capital.

[15] *See* proposed new paragraph (b)(3) of Rule 1.12, which is based upon 150% of the amount of adjusted net capital required by a registered futures association, and is proportional to the other elements of Rule 1.12(b).

[16] *See* the following proposed new Rule 1.17(e)(1)(iii) and the proposed new paragraphs of Rule 1.17: (h)(2)(vi)(C)(*3*) (restricting reductions in unpaid principal amount of an SDN); (h)(2)(vii)(A)(*3*) (restricting prepayments); (h)(2)(vii)(B)(*3*) (restricting special prepayments); (h)(2)(viii)(A)(*3*) (requiring suspension of repayment); (h)(3)(ii)(C) (requiring notice of maturity or accelerated maturity); and (h)(3)(v)(C) (restricting use of temporary subordinations). The levels of adjusted net capital set forth in the proposed new paragraphs of Rule 1.17 are 120 percent of the registered futures association's minimum amount, except for the provision concerning special prepayment which would be 200 percent. These percentages correspond to the current levels in those rules that are based upon the minimum dollar amount.

[17] *See* Commission Rule 1.17(h) for a definition of the term "satisfactory subordination agreement".

[18] An applicant for registration must obtain prior written approval of NFA.

[19] CFTC Interpretative Letter No. 85–17, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,738 (Sept. 10, 1985).

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long as such conversion did not result in a reduction of 20 percent or more of the firm's adjusted net capital.

III. Gross Collection of Exchange-Set Margins

Pursuant to Commission Rule 1.58, each FCM which carries a commodity futures or commodity option position for another FCM on an omnibus basis must collect, and each FCM for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with Commission Rule 17.04 at a level no less than that established for customer accounts by the rules of the applicable contract market. Rule 1.58 was proposed in 1981[20] following the bankruptcy of three FCMs who cleared trades solely by means of omnibus accounts. The Commission was concerned that customer funds were "being held by firms that, in comparison to clearing FCMs, generally [had] less capital and [were] less equipped to handle the volatility of the commodity markets".[21] It is also the case, as demonstrated during the collapse of Barings PLC, that net margining of an omnibus account can mask risk to the clearing member. Thus, the primary purposes of Rule 1.58 were to "strengthen the industry and enhance customer protection by moving segregated funds into the normally better-capitalized hands of a clearing member" and to provide the Commission and the SROs with better information with respect to omnibus accounts.[22]

As originally adopted and currently, Rule 1.58 does not apply to omnibus accounts carried by FCMs on behalf of foreign brokers.[23] On November 16, 1988, the Division issued Financial and Segregation Interpretation No. 12 which, among other things, requires FCMs to obtain an agreement from customers who desire to have funds held offshore whereby such customers authorize the subordination of their claims attributable to funds held offshore to the claims of other customers should the FCM be placed in bankruptcy or receivership. Although the Commission is in the process of reviewing this Interpretation from the perspective of certain foreign currency deposits in light of the provisions for settlement of certain contracts traded on U.S. contract markets by means of foreign currency, certain statements made relative to foreign location risk remain relevant today. For example, in support of this Interpretation, the Commission expressed its concern that "in the event of an FCM insolvency, deposits maintained at a foreign depository might not be handled or distributed in accordance with United States bankruptcy law" and that "both the size of the pool of funds available for distribution to customers and the size of individual claims against that pool may vary from day-to-day." The Commission further stated that "to the extent foreign domiciled customers deposit [U.S.] dollars in connection with United States futures or options, such funds should be held in the United States" because "the Commission perceives no administrative necessity for FCMs and customers to incur the location risks attendant to holding such dollar deposits overseas".[24] Likewise, the Commission is concerned that margin deposits maintained by a foreign broker at a foreign depository might become unavailable in the event of a bankruptcy of the clearing FCM due to differences in bankruptcy law among jurisdictions and might be exposed to currency fluctuations during the pendency of the bankruptcy. In addition, the Commission has observed that in times of turbulent markets, such as occurred in October 1987 and October 1989, accounts in the names of owners with foreign addresses had greater difficulty meeting margin calls than did domestic accounts, undoubtedly to some extent due to time zone differences and currency conversion logistics.[25] In this context, the Commission has recognized that foreign brokers' omnibus accounts carried by clearing FCMs can have a substantial impact on the financial condition of clearing FCMs. Further, as a result of the collapse of Barings PLC in February 1995, the Commission's concern has been heightened with respect to FCMs having a clear view of the exposures in omnibus accounts and the ability to assure proper handling and segregation of customer funds.

In view of the increasing internationalization of the financial markets, and in particular the increasing use of foreign omnibus accounts, the Commission believes that foreign broker omnibus accounts should be treated in the same manner as omnibus accounts carried for domestic FCMs. Thus, FCMs carrying foreign broker omnibus accounts would hold a higher level of funds, have less capital exposure and be better able to transfer positions from such accounts in the event of a financial disruption. Accordingly, the Commission is proposing to expand the application of Rule 1.58 to include foreign brokers' omnibus accounts carried by FCMs. As is the case with the proposed amendments to Rule 1.17 concerning the minimum amount of adjusted net capital for FCMs and IBs, the Commission is essentially proposing to conform its rule relating to collection of margins for omnibus accounts to the industry practice since, as a result of staff recommendations in rule enforcement reviews and SRO rule changes, all active U.S. contract markets other than the New York Cotton Exchange and the Philadelphia Board of Trade require that FCMs collect margin for omnibus accounts of foreign brokers as well as other domestic FCMs on a gross basis.

IV. Other Matters

As noted above, the Commission held a roundtable on capital issues on September 18, 1995, during which several matters were discussed. Although the Commission is not presenting any specific rule proposals at this time related to issues discussed at the roundtable, the Commission will be seeking additional information concerning certain of the issues discussed with a view towards possible additional rule amendments. These issues would include greater harmonization of the CFTC/SEC financial requirements in several areas such as reporting requirements and cycles, early warning requirements,[26] risk assessment data elements and the debt-equity ratio requirements with respect to a firm's capital.[27] The Commission is also considering a rethinking of the no-action relief provided to an FCM by the Division with respect to the short options value charge,[28] and the appropriateness of a concentration charge. Separately, the Commission has discussed with the Joint Audit Committee the data necessary to evaluate any proposals for a "risk-based" standard as a component of the minimum adjusted net capital requirements. Although the Commission has no specific proposals in any of these areas at this time, it nonetheless invites commenters to address these matters if they so choose.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and independent IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[29]

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[30] The proposed amendment to Rule 1.17(h)(2)(vii) would generally reduce the burden associated with the procedure to obtain approval for permissive prepayment of subordinated debt. Accordingly, that amendment should impose no additional requirements on an independent IB. In addition, the proposed amendment to the minimum adjusted net capital requirement for an IB would conform the Commission's requirement to that of the NFA and therefore there should be no impact on an IB's financial operations. Thus, if adopted, these proposals would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (PRA) 44 U.S.C. 3501 et seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the amendments proposed herein have no burden,[31] Rules 1.12, 1.17 and 1.58 are parts of groups of rules with the following burdens.

The burden associated with the collection required by Rules 1.12 and 1.17 (3038–0024), including these proposed amendments, is as follows:

Average Burden Hours Per Response: 1.50.
Number of FCM Respondents: 165.00.
Number of IB Respondents: 62.00.
Frequency of Response: 1.00.

The burden associated with the collection required by Rule 1.58 (3038–0026), including these proposed amendments, is as follows:

A. Reporting
Average Burden Hours Per Response: 0.04.
Number of Respondents: 100.00.
Frequency of Response: 50.00.

B. Recordkeeping
Average Burden Hours Per Response: 1.00.
Number of Respondents: 300.00.
Frequency of Response: 1.00.

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 1

Commodity futures, minimum financial requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.12 is amended by removing the word "or" at the end of paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(4), and by adding a new paragraph (b)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(3) 150 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

3. Section 1.17 is amended as follows:

3.1. By revising paragraph (a)(1);

3.2. By removing the word "or" at the end of paragraph (e)(1)(ii), by redesignating paragraph (e)(1)(iii) as (e)(1)(iv), and by adding a new paragraph (e)(1)(iii);

3.3. By removing the word "or" at the end of paragraph (h)(2)(vi)(C)(*2*), by redesignating paragraph (h)(2)(vi)(C)(*3*) as paragraph (h)(2)(vi)(C)(*4*), and by adding a new paragraph (h)(2)(vi)(C)(*3*);

3.4. By removing the word "or" at the end of paragraph (h)(2)(vii)(A)(*2*), by redesignating paragraph (h)(2)(vii)(A)(*3*) as paragraph (h)(2)(vii)(A)(*4*) and, as redesignated, revising it, and by adding a new paragraph (h)(2)(vii)(A)(*3*);

3.5. By removing the word "or" at the end of paragraph (h)(2)(vii)(B)(*2*), by redesignating paragraph (h)(2)(vii)(B)(*3*) as paragraph (h)(2)(vii)(B)(*4*) and, as redesignated, revising it, and by adding new paragraphs (h)(2)(vii)(B)(*3*) and (h)(2)(vii)(C);

3.6. By removing the word "or" at the end of paragraph (h)(2)(viii)(A)(*2*), by redesignating paragraph (h)(2)(viii)(A)(*3*) as paragraph

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[20] 46 FR 62864 (Dec. 29, 1981).

[21] Id.

[22] 47 FR 21026 (May 17, 1982).

[23] Neither the proposing release nor the adopting release for Rule 1.58 discuss omnibus accounts carried on behalf of foreign brokers.

[24] See 53 FR 46911 (Nov. 21, 1988), reprinted in 1 Comm. Fut. L. Rep. (CCH) ¶7122.

[25] See Final CFTC Staff Report, *Stock Index Futures and Cash Market Activity—October 1987, at pp. 192–193 (Jan. 1988) (reprinted in Comm. Fut. L. Rep. (CCH), Special Report No. 321, Feb. 5, 1988) and Commodity Futures Trading Commission, Division of Economic Analysis, Report on Stock Index Futures and Cash Market Activity During October 1989 to the U.S. Commodity Futures Trading Commission*, at p. 143 (May 1990).

[26] The Commission has proposed amendments to its Rule 1.12 to: (1) make paragraph (g), which requires the reporting of certain reductions in adjusted net capital, applicable to all FCMs, rather than just those FCMs subject to the risk assessment reporting requirements of Rule 1.15; (2) require reporting of a margin call that exceeds an FCM's excess adjusted net capital which remains unanswered by the close of business on the day following the issuance of the call; and (3) require reporting by an FCM whenever its excess adjusted net capital is less than six percent of the maintenance margin required to support proprietary and noncustomer positions carried by the FCM. 59 FR 66822 (Dec. 28, 1994).

[27] SEC Rule 15c3–1(d) (17 CFR 240.15c3–1(d) (1995)) requires that at least 30 percent of *all* of a broker-dealer's net capital consist of equity capital. See Report of the Technical Committee of IOSCO, "Capital Requirements for Multinational Securities Firms," XV Annual Conference of the International Organization of Securities Commissions (IOSCO), Santiago, Chile 1990. The general international standard in this connection, as recommended by Working Party No. 3 of the Technical Committee of IOSCO, would also apply the debt-equity requirement to all of a firm's capital. Although the Commission originally proposed a debt-equity requirement for an FCM that would have been similar to that of a broker-dealer under SEC rules (see 42 FR 27166, 27177 (May 26, 1977)), in response to comments that "it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by regulations", the Commission revised the required debt-equity total to which the 30 percent equity capital requirement applies to mean total capital less the excess of the FCM's adjusted net capital, *i.e.*, only the required minimum adjusted net capital. See 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

[28] Commission Rule 1.17(c)(5)(iii), 17 CFR 1.17(c)(5)(iii) (1995); CFTC Interpretative Letter 95–65, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 26,495 (July 26, 1995).

[29] See 47 FR 18618, 18619 (Apr. 30, 1982).

[30] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

[31] The proposed increase in the dollar amount of minimum adjusted net capital for an FCM and an IB would necessitate only a change in line item 23E of the Statement of the Computation of Minimum Capital Requirements on Form 1–FR–FCM and in line item 15 of that Statement on Form 1–FR–IB.

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(h)(2)(viii)(A)(*4*), and by adding a new paragraph (h)(2)(viii)(A)(*3*);

3.7. By removing the word "or" at the end of paragraph (h)(3)(ii)(B), by redesignating paragraph (h)(3)(ii)(C) as paragraph (h)(3)(ii)(D), and by adding a new paragraph (h)(3)(ii)(C); and

3.8. By redesignating paragraphs (h)(3)(v) (C) and (D) as paragraphs (h)(3)(v) (D) and (E) and by adding a new paragraph (h)(3)(v)(C). The revised and added paragraphs read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) Except as provided in paragraph (a)(2)(i) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $250,000;

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

(C) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(D) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a), of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(ii) Except as provided in paragraph (a)(2) of this section, each person registered as an introducing broker must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $30,000;

(B) The amount of adjusted net capital required by a registered futures association of which it is a member; or

(C) For securities brokers and dealers, the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

* * * * *

(e) * * *

(1) * * *

(iii) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(vii) * * *

(A) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(7) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(7)).

(B) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

(*4*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)): *Provided, however,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital.

(C) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, if the requested prepayment or special prepayment will result in the reduction of the registrant's adjusted net capital by 20 percent or more, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, and of the Commission, or, if the requested prepayment or special prepayment will result in the reduction of the registrant's adjusted net capital by less than 20 percent without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(viii) * * *

(A) * * *

(*3*) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(3) * * *

(ii) * * *

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

(v) * * *

(C) 120 percent of the amount of adjusted net capital required by a registered futures association of which it is a member;

* * * * *

4. Section 1.58 is revised to read as follows:

§ 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign broker for which the omnibus account is being carried that each such position is entitled to be so margined.

Issued in Washington, D.C. on December 7, 1995 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30360 Filed 12–12–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010–AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of meeting and extension of comment period.

SUMMARY: The Minerals Management Service (MMS) is scheduling a public meeting to receive comments on a proposed rulemaking, which was published in the **Federal Register** on November 6, 1995 (60 FR 56007). MMS is also extending the public comment period for the proposed rulemaking. The proposed rule would implement the recommendations of the Federal Gas Valuation Negotiated Rulemaking Committee by amending the regulations governing the value of gas produced from Federal leases. MMS will hold the public meeting in Houston, Texas, on January 22, and, if necessary on the 23rd, 1996. The meeting will allow interested parties an opportunity to provide direct feedback to MMS officials regarding the proposed rule. Interested parties are invited to attend and participate at this meeting. MMS is also extending the comment period for the proposed rule from January 5, 1996, to February 5, 1996.

DATES: A public meeting will be held on Monday January 22, and if necessary, on Tuesday January 23, 1996, from 9 a.m. until 5 p.m. Comments must be received on or before February 5, 1996.

ADDRESSES: The meeting will be held in Room 104, first floor, at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas, 77032. Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov. If you plan to attend the meeting, please contact Larry Cobb of the Valuation and Standards Division at telephone (303) 275–7245, fax (303) 275–7227, e-mail Larry__Cobb@smtp.mms.gov prior to January 12, 1996.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public without advance registration. However, anyone that will be attending the meeting is encouraged to call Larry Cobb so MMS can arrange the room seating requirements. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and are encouraged to file written statements for consideration.

Dated: December 6, 1995.

Kenneth R. Vogel,

Acting Associate Director for Royalty Management.

[FR Doc. 95–30351 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 89–014]

RIN 2115–AD23

Implementation of the Shore Protection Act of 1988

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: In May 1989, the Coast Guard began rulemaking to incorporate into regulation certain elements of the Shore Protection Act. Its objective was to help prevent trash, medical debris, and other unsightly and potentially harmful materials from being deposited into the coastal waters of the United States as a result of sloppy waste-handling procedures. Because no additional regulations are needed, the Coast Guard is discontinuing rulemaking under docket number 89–014.

DATES: This discontinuance is effective on December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade L.V. Kabler, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MRO–1), (202) 267–0423.

SUPPLEMENTARY INFORMATION: In a **Federal Register** document published May 24, 1989, (54 FR 22546) the Coast Guard contemplated, at some point in the future, establishing procedures for a regular permit and for suspension-and-revocation proceedings under the Shore Protection Act (33 U.S.C. 2601 *et seq.*). Because the Coast Guard has determined that the current procedures implementing the Act are satisfactory, it has decided to continue issuing conditional permits to vessels carrying waste in the coastal waters of the United States and to discontinue any further rulemaking under docket number 89–014. It will, at some point in the future, re-examine the necessity of further rulemaking and may, at that point, initiate a new rulemaking under a new docket number.

Dated: December 6, 1995.

Joseph J. Angelo,

Director for Standards.

[FR Doc. 95–30400 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 081–4012b; FRL–5326–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Stage II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of approving supplemental provisions that would correct deficiencies in the Pennsylvania Stage II vapor recovery rule that were previously identified by EPA. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 12, 1996.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of

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Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Pennsylvania; Approval of Stage II Vapor Recovery Requirements) which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–30108 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5344–4]

National Emission Standards for Hazardous Air Pollutants for: Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Ethylene Oxide Commercial Sterilization and Fumigation Operations; Perchloroethylene Dry Cleaning Facilities; and Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: This action proposes amendments to certain sections of the following promulgated standards: "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Final Rule" (subpart N); "National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations" (subpart O); "National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities" (subpart M); and "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting" (subpart X). Except in the case of subpart X, today's action proposes to amend the Final Rules' requirement that nonmajor sources obtain title V operating permits. The action being taken today will substantially reduce the unnecessary and undue regulatory burden for States and local agencies, EPA Regional Offices, and the industry during a time when tremendous resources are necessary for the initial implementation of the title V permit program. Because sources are still required to meet all applicable emission control requirements established by the respective MACT standards, this action is not expected to have adverse environmental results. The amendment to subpart X will confirm that existing nonmajor secondary lead smelting facilities will be subject to title V permit requirements.

DATES: *Comments.* Comments must be received on or before January 12, 1996, unless a hearing is requested by December 26, 1995. If a hearing is requested, written comments must be received by January 29, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 26, 1995. If a hearing is held, it will take place on December 28, 1995, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–88–02 (subpart N), or Attention Docket No. A–88–03 (subpart O), or Attention Docket No. A–95–16 (subpart M), or Attention Docket No. A–92–43 (subpart X), as applicable, (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Marguerite Thweatt, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

Docket. Docket No. A–88–02, containing the supporting information for the original subpart N NESHAP and this action, Docket No. A–88–03, containing the supporting information for the original subpart O NESHAP, Docket No. A–88–11, containing the supporting information for the original subpart M NESHAP, and Docket No. A–92–43, containing the supporting information for the original subpart X NESHAP, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the Clean Air Act (Act), as amended in 1990, requires States to develop programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emission standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program. Section 502(a) of the Act requires that major and nonmajor sources subject to 111 and 112 standards obtain operating permits. However, the Administrator may exempt certain categories of nonmajor sources from the requirement to obtain a permit "if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." * * *"

On July 21, 1992, EPA published in the **Federal Register** implementing regulations for the title V permit program (40 CFR part 70). In § 70.3(b)(1), EPA opted to allow States to temporarily exempt nonmajor sources (except for affected sources and solid waste incineration units), including those which were subject to section 111 or 112 standards promulgated as of July 21, 1992, from the requirement to obtain a permit.

This temporary exemption was allowed for several reasons. Under part 70, permitting authorities will process applications and issue permits for tens of thousands of major sources during the early years of the program. The EPA considered it "unnecessarily burdensome" to also require permitting authorities to issue permits to a larger population of nonmajor sources within the same time frame. Such a requirement would stress the permitting system at its most vulnerable time, and hinder timely issuance of permits to both major and nonmajor emitters.

Additionally, the great majority of nonmajor sources are small businesses, and many are not currently subject to State air permit programs. Many small businesses will require greater assistance from the permitting authorities because of a relative lack of technical and legal expertise, resources, and experience in dealing with environmental regulation. If permitting authorities are overburdened from a backlog of permits to be processed, nonmajor sources will be unable to obtain technical and procedural assistance necessary to help them file timely and complete applications. This likely scenario constitutes an unnecessary burden on nonmajor sources, especially considering that by definition they emit less than major sources and that deferring permitting requirements does not defer a source's obligation to comply with the applicable requirements of the Act. [The preamble to the final part 70 regulations (57 FR 32261) provides a more exhaustive discussion of EPA's decision to allow States to temporarily exempt nonmajor sources from title V permitting.]

The part 70 regulations specify that this temporary exemption will expire at such time as EPA completes a rulemaking to determine how the part 70 program should be structured for nonmajor sources. In addition, the rulemaking will consider whether to grant permanent exemptions to any source categories for which there is a sufficient record to support such an exemption.

The part 70 regulations also address applicability for nonmajor sources subject to section 111 or 112 standards promulgated after July 21, 1992. Section 70.3(b)(2) specifies that for nonmajor sources that are subject to a standard or other requirement promulgated under either section 111 or 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated. Thus, decisions regarding permitting exemptions were to be made as each new standard covering nonmajor sources was published. With regard to section 112, EPA has published since July 21, 1992 (in 40 CFR part 63) hazardous air pollutant standards that apply to nonmajor sources in the following five source categories: perchloroethylene dry cleaning facilities (September 22, 1993; 58 FR 49353), halogenated solvent cleaning (December 2, 1994; 59 FR 61801—amended June 5, 1995; 60 FR 29484), ethylene oxide commercial sterilization and fumigation operations (December 6, 1994; 59 FR 62585), hard and decorative chromium electroplating and chromium anodizing tanks (January 25, 1995; 60 FR 4948), and secondary lead smelters (May 31, 1995; 60 FR 32587). Of these five, only the standard for halogenated solvent cleaning contained a temporary permitting exemption. In this standard, States were given the option of permanently exempting small cold cleaners and temporarily exempting all other nonmajor solvent cleaners from title V permit requirements.

The remaining standards did not offer any exemptions from permitting, although the preamble to the dry cleaning standard did state an intention to allow States to defer permitting of nonmajor sources subject to that standard. Nonetheless, in the absence of specific language in that regulation granting States the option to exempt or temporarily exempt nonmajor sources from permit requirements, the General Provisions (subpart A) of part 63 apply, which by default extend the permitting requirement to nonmajor sources subject to post-July 21, 1992, MACT standards.

II. Proposed Changes to Subpart N, Subpart O, and Subpart M

A. State Option to Defer Nonmajor Sources

The final rules, that is subparts N, O, and M, required all affected nonmajor sources to obtain a title V permit from the appropriate permitting authority. All affected nonmajor sources in the above source categories are required to apply for a title V permit within 12 months of the later of the following dates: the effective date of the respective MACT standard or the effective date of a title V program to which an affected source in the above source categories is subject. Major sources in the above source categories are required to apply for and obtain permits according to the transition plans outlined in the title V programs submitted by the State and local permitting authorities for EPA approval.

Several comments were received regarding the title V permit requirements for area sources in the Chromium Electroplating rule (subpart N) before promulgation. The commenters believed that the costs for nonmajor sources to obtain title V permits would be overly burdensome, and the emissions from such sources may be insignificant. However, in responding to these comments in the final rule, EPA believed that requiring area sources to obtain title V permits was important because of the toxicity of chromium compounds and the close proximity of many of these sources to residential areas. Following promulgation of these final rules, discussions were held with States and EPA Regions regarding their permitting strategies for nonmajor sources. As a result, EPA concluded that the Chromium Final Rule imposes an undue burden on the States in requiring the permitting of nonmajor Chromium sources without deferral. In particular, EPA found that permitting such sources during the early stages of the title V program would be particularly burdensome to permitting authorities. In addition to ensuring compliance with the requirements of the standard, permitting authorities would also need to contact and educate owners or operators of nonmajor sources regarding title V requirements. Following the submittal of applications, permitting authorities would then begin processing such applications in conjunction with major source applications. Given that the vast number of Chromium sources (about 5,000 nationwide) are nonmajor sources, requiring a permitting authority to permit nonmajor sources during the early years of implementing a title V program imposes an undue burden.

The EPA believes that the Final Rule as promulgated will also impose an undue hardship on a majority of owners or operators of nonmajor sources because this burden on permitting authorities translates into a burden on sources subject to the program. To require that owners or operators of nonmajor sources meet the requirement of filing a timely and complete application prior to or within the initial implementation period of the Chromium Electroplating MACT Standard would place an undue burden on these sources. As a result, the EPA has concluded that the burden associated with permitting outweighs the enhancement to the enforceability of this standard that would result from inclusion in a title V permit. Therefore, the Final Rule is being amended to allow States to defer for five (5) years all nonmajor Chromium sources from being subject to the requirements of a title V permit program.

The 5-year deferral is determined with respect to the effective date of the first State or local program to defer nonmajor sources from title V permitting. Washington State and local programs within the State of Washington were the first programs approved by EPA which deferred nonmajor sources. Final action on these programs was published on November 9, 1994, and the programs became

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effective on December 9, 1994. As a result, the 5-year deferral ends on December 9, 1999, with Chromium sources becoming subject to title V on that date. Applications from nonmajor Chromium sources are to be filed within 12 months of becoming subject to title V (by December 9, 2000). This also applies to nonmajor sources in subparts O and M for similar reasons. The EPA emphasizes that this deferral applies to nonmajor sources.

The sole standard which will not offer temporary exemptions from part 70 permitting requirements is the secondary lead smelter standard (subpart X, promulgated on May 31, 1995 (60 FR 32587)). In contrast to the hundreds or thousands of sources in the four other source categories, there are a total of only 16 secondary lead smelters and only five of these are nonmajor sources. Additionally, the five nonmajor lead smelters are owned by relatively large companies. These companies should be better equipped to handle the part 70 permitting process than the small businesses characterizing the other source categories. For these reasons, EPA concludes that requiring the five sources to obtain part 70 permits without delay will not be impracticable or infeasible for the State or local permitting authorities involved and will not unnecessarily burden the five companies.

B. Proposed Permanent Exemption of Certain Decorative Chromium Electroplating and Chromium Anodizing Operations

Section 502(a) of the Act expressly gives the Administrator the discretion to exempt one or more nonmajor source categories (in whole or in part) from the requirement to obtain a permit "if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." 42 U.S.C. section 7661a (a). One factor that EPA considers as part of the unnecessarily burdensome criteria is the degree to which the standard is implementable outside of a title V permit, such that the title V permit will provide minimal additional benefit with regard to source-specific tailoring of the standard. To the extent such benefit is minimal, it supports the finding that the burden imposed is "unnecessary." This factor was analyzed when EPA evaluated decorative chrome plating (using hexavalent chromium baths) and chromium anodizing processes that use fume suppressant technology to reduce chromium emissions during operation. The fume suppressant technology inhibits emissions at the source by reducing the surface tension of the plating solution. The standard requires that the surface tension be kept below 45 dynes per centimeter (dynes/cm) in order to comply. In addition, the surface tension must be measured at a certain specified time interval to ensure continuous compliance. This measure of compliance (45 dynes/cm) is directly stated in the standard and is directly enforceable. No judgment or negotiation is required in establishing a directly enforceable monitoring value during a performance test as is the case with the other chromium sources covered by the rule which use add-on controls. Also included in this permitting exemption are the decorative chrome plating operations using the trivalent chrome baths which incorporate the use of wetting agents which inhibit chromium emissions as a bath component. The standard does not have any additional requirements for these sources except for recordkeeping of chemicals bought.

Although sources using fume suppressant technology could be permitted through general permits, thereby reducing the administrative permitting burden for these sources, EPA believes this would add minimally to enforceability of the rule. This is because the reporting, recordkeeping, and annual compliance certification requirements of the rule already approximate those which would be imposed through title V, and which constitute a primary value added by a general title V permit.

Therefore, for the reasons stated above, the EPA is proposing to permanently exempt all hexavalent decorative plating and chromium anodizing operations that use fume suppressants as an emission reduction technology and all trivalent decorative plating operations incorporating wetting agents as a bath component from the requirement of obtaining a title V permit. This is based upon EPA's determination that it will be unnecessarily burdensome for these sources to obtain permits.

All the requirements listed in the final standards (subparts N, O, and M) will continue to be applicable per the schedule that is provided in the respective rules. For example, all sources still must comply with the compliance schedule within the rule, perform monitoring of the required parameters for ensuring compliance, and follow the reporting and recordkeeping requirements. The Administrator or a delegated State or local authority will enforce the requirements of the final rules through appropriate means, and will not be handicapped by the temporary or permanent exemptions from the title V permit requirements. The EPA believes that through the implementation of the final rules, the primary goal of significant reductions in chromium, ethylene oxide, and perchlorocethylene emissions will be achieved.

III. Possible Additional Permanent Exemptions

Although this action proposes temporary exemptions for the subject source categories (except for proposed permanent exemptions for two subcategories within the chrome plating category), EPA will consider promulgating additional permanent exemptions for any of these source categories or subcategories within these source categories if warranted. The EPA specifically solicits comment on whether any of the source categories for which temporary exemptions are being proposed should be permanently exempted from title V requirements and the reasons for such permanent exemptions. Comments should address the Clean Air Act criteria for exempting categories from permitting requirements, which are that it would be "impracticable, infeasible, or unnecessarily burdensome on such source categories." Any comments received and additional information obtained by EPA after this proposal will be considered in determining whether sufficient justification exists to promulgate permanent exemptions.

IV. Typographical Correction

A minor typographical error was discovered in section 63.344 of the subpart N. It is being amended here to correctly present our intention.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed amendments in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed amendments should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section at the address given in the **ADDRESSES** section of this preamble and should refer to the applicable docket number.

A verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA's Air Docket Section in Washington, D.C. (see **ADDRESSES** section of the preamble).

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) were submitted to and approved by the Office of Management and Budget (OMB). Today's proposed changes to the NESHAP would not increase the information collection burden estimates made previously. In fact, they are expected to reduce the required paperwork by providing the opportunity for delays for some sources and exemptions for others from requirements to obtain a title V permit.

C. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it does not consider this to be a "significant regulatory action" within the meaning of the Executive Order. Therefore, the EPA did not submit this action to the OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." A regulatory flexibility analysis (RFA) is required if preliminary analysis indicates "a significant economic impact on a substantial number of small entities." As explained earlier in this notice, the proposed amendments would reduce the impacts on small businesses by allowing States to delay some and exempt others from the requirement to obtain a title V permit.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

As explained earlier in this notice, the proposed amendments would reduce the cost to State, local, and tribal governments and the private sector by allowing States to delay some and exempt others from the requirement to obtain a title V permit. Therefore, EPA has not prepared a budgetary impact statement for the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 1, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—[Amended]

2. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of sources.

* * * * *

(e)(1) The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major sources, as defined under 40 CFR 70.2, is permanently exempt from title V permitting requirements for that operation:

(i) Any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology; and

(ii) Any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient.

(2) An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in section 63.343.

3. Section 63.342 is amended by revising the first sentence of paragraph (c)(2)(i)(B) and introductory text of paragraph (f)(3)(i) to read as follows:

§ 63.342 Standards.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) By accepting a Federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with § 63.346(b)(12) to demonstrate that the limit has not been exceeded. * * *

* * * * *

(f) * * *

(3) * * *

(i) The owner or operator of an affected source subject to the work practices of paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * * *

§ 63.344 [Amended]

4. In § 63.344, paragraphs (e)(3)(v) and (e)(4)(iv) are amended by revising the word "less" to read "more."

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5. Section 63.347 is amended by revising the introductory text in paragraph (e)(2) and paragraph (f)(1) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(e) * * *

(2) If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator a notification of compliance status, signed by the responsible official (as defined in § 63.2) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the appropriate authority. The notification shall list for each affected source:

* * * * *

(f) * * *

(1) If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator the results of any performance test conducted as required by § 63.7 or § 63.343(b). If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the appropriate authority.

* * * * *

6. Table 1 to subpart N of Part 63 is amended by revising the entry for "63.5(a)" to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
.	.	.
63.5(a)	Yes	Except replace the term "source" and "stationary source" in § 63.5(a) (1) and (2) of subpart A with "affected sources."
.	.	.

Subpart O—[Amended]

7. Section 63.360 is amended by revising paragraph (f) to read as follows:

§ 63.360 Applicability.

* * * * *

(f) The owner or operator of a source, subject to the provisions of the title 40, chapter I, part 63 subpart O, using 1 ton (see definition) is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.360.

* * * * *

Subpart M—[Amended]

8. Section 63.320 is amended by adding paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) The owner or operator of any source subject to the provisions of this subpart M is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.320.

Subpart X—[Amended]

9. Section 63.541 is amended by adding paragraph (c) to read as follows:

§ 63.541 Applicability.

* * * * *

(c) The owner or operator of any source subject to the provisions of the title 40, chapter I, part 63 subpart X is required to obtain a title V permit from the applicable permitting authority in which the affected source is located.

[FR Doc. 95–30260 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 5E4598/P638; FRL–4990–5]
RIN 2070–AC18

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance for indirect or inadvertent combined residues of the insecticide (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (referred to in this document as imidacloprid) and its metabolites resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The time-limited tolerance would expire on December 31, 1996.

DATES: Comments, identified by the document control number [PP 5E4598/P638], must be received on or before January 12, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5E4425/P638]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 5E4598 to EPA on behalf of the Agricultural Experiment Stations of California, Florida, Georgia, South Carolina, and Texas. The petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.472 by establishing a tolerance for indirect or inadvertent, combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)-methyl]-*N*-nitro-2-imidazolidinimine, resulting from crop rotational practices in or on the raw agricultural commodities in the cucurbit vegetables crop group at 0.2 part per million (ppm).

The proposed tolerance will not support registration for imidacloprid on cucurbit vegetables. EPA will not consider applications for section 3 or section 24(c) registration of imidacloprid on cucurbit vegetables based the proposed time-limited tolerance. The tolerance would allow growers to produce cucurbit vegetables in rotation with crops that are treated in accordance with registered uses of imidacloprid. Imidacloprid registrations prohibit growers from planting crops which lack an imidacloprid tolerance on ground treated with the insecticide within a 12-month period. In some areas, however, it is a common practice for growers to plant back cucurbit vegetables (melons, squash, and cucumbers) in fields that have been used to produce tomatoes and peppers. Imidacloprid is registered and tolerances are established for the fruiting vegetables crop group (including tomatoes and peppers). There are no established imidacloprid tolerances, however, for the cucurbit vegetables. Crop rotational studies reviewed by EPA indicate that plant-back crops grown in fields treated with imidacloprid may contain measurable amounts of the pesticide residue, if the rotational crop is planted within 12 months of application of the pesticide.

Currently, growers who plan to double crop with cucurbit vegetables must not use imidacloprid, or they must not plant back cucurbit vegetables in fields treated within 12 months of application with imidacloprid. According to the University of Florida Cooperative Extension Service, the inability to double crop because of the imidacloprid plant-back restriction will have a serious financial impact on the South Florida vegetable industry. Approximately 12,000 acres in South Florida are double cropped with cucurbit vegetables. Much of this acreage has been treated with imidacloprid to control sweet potato whitefly (silverleaf whitefly) on tomatoes. Prior to registration of imidacloprid on tomatoes, EPA approved emergency exemptions under Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for its use in California, Florida, South Carolina, and Texas to avert significant economic loss from sweet potato white fly damage.

The proposed tolerance, which would expire on December 31, 1996, should allow IR-4 sufficient time to submit a permanent tolerance for imidacloprid on cucurbit vegetables. IR-4 is developing field residue data in support of a permanent tolerance and registration for use of imidacloprid on cucurbit vegetables. The permanent tolerance will be proposed by IR-4 to cover residues in cucurbit vegetables from application to the growing crop, as well as crop rotational practices.

EPA's policy is to consider tolerance petitions, when requested by the registrants or any interested parties, for pesticide residues on replacement or rotational crops when residues result from pesticide carryover in soil from treatment of previous crops. Such tolerances will be set at levels determined to be appropriate based on evaluations of toxicity and residue data submitted to the Agency by the petitioner. Guidance on how to conduct residue studies on rotation crops can be found in the EPA publication "Pesticide Reregistration Reject Rate Analysis Residue Chemistry/Environmental Fate Follow Up Guidance for Conducting Rotational Crop Studies," February 1993. The procedures for filing a petition, as described in 40 CFR 180.7, should be followed, and each petition must be accompanied by the appropriate fee, as specified in 40 CFR 180.33.

The toxicological data considered in support of the proposed tolerance include:

1. A 1-year chronic feeding study in dogs fed diets containing 0, 200, 500, or 1,250/2,500 ppm (average intake was 0, 6.1, 15, or 41/72 milligrams (mg)/kilogram (kg)/day) with a no-observed-effect level of 1,250 ppm based on increased plasma cholesterol and liver cytochrome P-450 levels in dogs at the 2,500-ppm dose level. The high dose was increased to 2,500 ppm (72 mg/kg/day) from week 17 onward due to lack of toxicity at the 1,250-dose level.

2. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 100, 300, 900, or 1,800 ppm with a NOEL for chronic effects at 100 ppm (5.7 mg/kg/day in males, 7.6 mg/kg/day in females) that included decreased body weight gain in females at 300 ppm (24.9 mg/kg/day) and above; and increased thyroid lesions in males at 300 ppm (16.9 mg/kg/day) and above, and in females at 900 ppm (73 mg/kg/day) and above. There were no apparent carcinogenic effects under the conditions of the study.

3. A 2-year carcinogenicity study in mice fed diets containing 0, 100, 330, 1,000, or 2,000 ppm with a NOEL of 1,000 ppm (208 mg/kg/day in males, 274 mg/kg/day in females) based on decreased food consumption and decreased water intake at the 2,000-ppm dose level. There were no apparent carcinogenic effects observed under the conditions of this study.

4. A three-generation reproduction study with rats fed diets containing 0, 100, 250, or 700 ppm with a reproductive no-observed-effect level

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(NOEL) of 100 ppm (equivalent to 8 mg/kg/day based on decreased pup body weight observed at the 250-ppm dose level.

5. A developmental toxicity study in rat given gavage doses at 0, 10, 30, or 100 mg/kg/day during gestation days 6 to 16 with a NOEL for developmental toxicity at 30 mg/kg/day based on increased wavy ribs observed at the 100-mg/kg/day dose level.

6. A developmental toxicity study in rabbits given gavage doses at 0, 8, 24, or 72 mg/kg/day during gestation days 6 through 19 with a NOEL for developmental toxicity at 24 mg/kg/day based on decreased body weight and increased skeletal abnormalities observed at the 72-mg/kg/day dose level.

7. Imidacloprid was negative for mutagenic effects in all but two of 23 mutagenic assays. Imidacloprid tested positive for chromosome aberrations in an *in vitro* cytogenetic study with human lymphocytes for the detection of induced clastogenic effects, and for genotoxicity in an *in vitro* cytogenetic assay measuring sister chromatid exchange in Chinese hamster ovary cells.

Dietary risk assessments for imidacloprid indicate that there is minimal risk from established tolerances and the proposed tolerance for cucurbit vegetables. A cancer risk assessment is not appropriate for imidacloprid since the pesticide is assigned to "Group E" (no evidence of carcinogenicity) of EPA's cancer classification system. Dietary risk assessments for the pesticide were conducted using the Reference Dose (RfD) to assess chronic exposure and risk.

The RfD is calculated at 0.057 mg/kg/of body weight/day based on a NOEL of 5.7 mg/kg/day from the 2-year rat feeding/carcinogenicity study and 100-fold uncertainty factor. The theoretical maximum residue contribution (TMRC) from existing tolerances utilizes less than 15 percent of the RfD for the general population and less than 30 percent of the RfD for nonnursing infants less than 1 year in age. The proposed tolerance for cucurbit vegetables would utilize less than 1 percent of the RfD for the general population and all population subgroups.

There is no reasonable expectation that secondary residues will occur in milk and eggs, or meat, fat, and meat byproducts of livestock or poultry; there are no livestock feed items associated with the cucurbit vegetables.

The metabolism of imidacloprid in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 5E4598/P638] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, by adding new paragraph (f), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(f) Time-limited indirect or inadvertent tolerance: A time-limited tolerance, to expire on December 31, 1996, is established for indirect or inadvertent combined residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, when present therein as a result of the application of the pesticide to growing crops listed in this section and other nonfood crops as follows:

Commodity	Parts per million
Vegetables, cucurbit	0.2

[FR Doc. 95–30372 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50601G; FRL–4976–3]

Ethane, 1,1,1,2,2-pentafluoro-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for ethane, 1,1,1,2,2-pentafluoro-, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by January 12, 1996.

ADDRESSES: All comments must be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, an additional sanitized copy must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50601G. Unit III of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (OPPTS–50601G). No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551; e-mail: TSCA-Hotline @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44064), EPA issued a SNUR (FRL–4001–2) establishing significant new uses for ethane, 1,1,1,2,2-pentafluoro-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for ethane, 1,1,1,2,2-pentafluoro- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV of this preamble.

PMN Number: P–91–1392

Chemical name: Ethane, 1,1,1,2,2-pentafluoro-.

CAS Registry Number: Not available.

Effective date of revocation of section 5(e) consent order: February 21, 1995.

Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA can no longer support a finding that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance may present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.

Toxicity testing results: The PMN substance P–91–1392 was tested in a cardiac sensitization study (epinephrine challenge in dogs), a 90-day inhalation toxicity study in rats, and a developmental inhalation toxicity study (rats and rabbits). The 90-day subchronic study showed that there were no observable adverse effects at concentrations up to 50,000 parts per million (ppm). There were no observed developmental toxicity effects at concentrations up to 50,000 ppm in the developmental toxicity study. There was evidence of maternal toxicity at 50,000 ppm but no maternal effects noted at 15,000 ppm. The PMN substance P–91–1392 was found to be a cardiac sensitizer when exposures occurred at a 10 percent concentration in air (100,000 ppm) for 10 minutes. Lower exposures did not elicit a sensitization response.

CFR Number: 40 CFR 721.3240

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the

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consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50601 (P–91–1392). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50601G (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at: ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 5, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3240 [Removed]

2. By removing § 721.3240.

[FR Doc. 95–30371 Filed 12–12–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 6]

RIN 2127–AG06

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to petitions for reconsideration of a March 1995 final rule amending Standard No. 121, *Air Brake Systems*, to require, among other things, the installation of antilock brake systems (ABS) on medium and heavy vehicles and the installation of external ABS malfunction indicator lamps on trailers and trailer converter dollies. This document proposes to amend the Standard to specify the location, color, activation protocol, and intensity of the lamps.

DATES: Comments must be received on or before February 12, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5892. FAX (202) 366–4329.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–2992.

I. Background

On March 10, 1995, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121 to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) (60 FR 13216). The final rule also required that these vehicles be equipped with lamps to alert their drivers of ABS malfunctions. Trailers produced during an interim eight-year period are required to be equipped with an external ABS malfunction indicator lamp. That period begins on March 1, 1998, the date on which ABS installation on trailers must also begin. The lamp must "be visible within the driver's forward field of view through the rearview mirrors." (60 FR 13244–13246). Truck tractors and other towing trucks will be required to be equipped with two separate in-cab lamps: one indicating malfunctions in the ABS of the towing truck and the other indicating malfunctions in the ABS of any towed trailer(s) or dolly(ies). All other powered heavy vehicles will be required to be equipped with a single in-cab lamp to indicate ABS malfunctions.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Trucking Associations (ATA), the American Automobile Manufacturers Association (AAMA), the Truck Trailer Manufacturers Association (TTMA), the Heavy Duty Brake Manufacturers Council (HDBC), the United Parcel Service (UPS), vehicle manufacturers, including Chrysler, Navistar, AM General, and brake system suppliers, including Midland-Grau, Jenflo, AlliedSignal, Rockwell WABCO, Rockwell International, Kelsay-Hayes, and Ferodo America.

The petitioners generally agreed with NHTSA's decision to require all heavy vehicles to be equipped with ABS and to comply with the stopping distance requirements, and to require truck tractors to comply with the braking-in-a-curve performance test requirements. Nevertheless, they requested modifications of various aspects of those rules.

This document responds to those petitioners which requested changes in the requirements concerning ABS malfunctions indicators. The agency is responding to other requests for reconsideration in another document published elsewhere in today's **Federal Register**.

Midland-Grau and TTMA petitioned NHTSA to delete the requirement that the external malfunction indicator lamp on a trailer be visible from the driver's seating position "through the rearview mirrors." (see S5.2.3.3). Midland-Grau stated that since truck tractor manufacturers cannot control where the external lamp would be located, requiring tractor manufacturers to ensure that the lamp is visible from the cab of the truck tractor is unreasonable. TTMA stated that since trailer manufacturers cannot control where mirrors are located on tractors, requiring the ABS malfunction lamp on dollies and trailers to be visible "through the rearview mirrors" is not appropriate. That organization also stated that there is no good, practical location for such a lamp on a dolly.

AAMA and TTMA requested that if the agency retains the requirement for an external ABS malfunction indicator lamp on the trailer,[1] then the agency should specify the location, color and intensity of the lamp in Standard No. 108, *Lamps, reflective devices, and associated equipment.*

III. Agency Response and Proposal

In a separate notice published elsewhere in today's **Federal Register**, NHTSA has denied requests by several petitioners to rescind the requirement for external ABS malfunction lamps on trailers and dollies. However, in response to the petitions from Midland-Grau and TTMA, NHTSA has decided to propose requirements concerning the location, color, activation protocol and intensity of the external ABS malfunctions lamps on trailers and dollies.

A. Location

NHTSA is proposing to specify the location for the external ABS malfunction indicator lamp on trailers and dollies. The proposed location for trailers is similar to the one proposed by the agency when it was considering requiring a low air pressure warning lamp on trailers. (55 FR 4453, February 8, 1990) For most trailers, the ABS malfunction indicator lamp would be required to be located on the left side of each trailer, as close to the front as practicable, and at a height as close as practicable to 96 inches above the road surface. (If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, the lamp shall be mounted on a permanent structure on the front face of the trailer as far leftward as practicable and at a height as close as practicable to 96 inches above the road surface). For dollies, the indicator lamp would be required on a permanent structure of the dolly and to be visible to a person standing on the road surface near the location of the indicator.

Standard No. 111, *Rearview mirrors*, specifies requirements for the performance and location of rearview mirrors, but it does not provide a requirement for the height of the mirror relative to the ground. A location requirement would have given some reference for locating the ABS malfunction indicator lamp on the trailer. However, S8.1 of Standard No. 111 specifies that "the mirrors shall be located so as to provide the driver a view to the rear along both sides of the vehicle, * * * " This requirement should ensure that the driver would have a view of an indicator lamp required to be mounted on the left side of the trailer.

NHTSA is basing its proposal regarding the height of the trailer malfunction indicator lamp on a report published by the University of Michigan Transportation Research Institute (UMTRI), "The Influence of Truck Driver Eye Position on the Effectiveness of Retroreflective Traffic Signs," by Sivak, Flannagan, and Gellatly, September 1991. This report includes data on driver eye heights for 188 heavy trucks. The mean driver eye height above the ground for heavy trucks in that study is 2.33 meters or 91.74 inches. Therefore, the location of a side rearview mirror for such vehicles is likely to be slightly above or below this mean driver eye height to ensure that the average driver would be provided "a view to the rear along both sides of the vehicle," as required in S8.1 of Standard No. 111.

NHTSA believes that if the malfunction indicator lamp is located on the left side of the trailer, as far forward as practicable and at a height as close as practicable to 96 inches above the road surface, it would coincide with the mean driver eye height, based on the data from the UMTRI report. In that location, the indicator lamp would be likely to be visible to the driver.

NHTSA recognizes that on some trailers, such as flatbed and platform trailers, there may be no side structure that is sufficiently high to locate the ABS malfunction lamp at or near a height of 96 inches. If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, then locating the lamp on the front face of the trailer would be a more appropriate lamp location for such a vehicle. To increase the likelihood of a lamp on the front face of the trailer being visible through the side rearview mirror, the lamp would be required to be positioned as far leftward as practicable and at a height as close as practicable to 96 inches above the road surface.

In response to notices issued on the ABS rulemaking, TTMA and other

[1] ATA and UPS petitioned the agency to delete the requirements for an external trailer mounted malfunction lamp. They claimed that the external malfunction lamp will lead to less safety because drivers will be looking in their mirrors during braking to see whether the ABS lamp is functioning, instead of looking at traffic conditions ahead of their vehicle.

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commenters stated that requiring a lamp to be visible through the rearview mirrors would make it necessary for such a lamp to protrude from the dolly structure, thereby making it susceptible to damage. They recommended that a dolly be required to indicate an ABS malfunction only at the ECU mounted on the dolly's frame, on the presumption that it would be visible during a walk-around inspection.

NHTSA concludes that the proposed requirement for specifying the location for an ABS malfunction lamp on a dolly must be different from the requirement proposed for trailers. The agency agrees with TTMA's comment that there is "no good, practical location for an ABS malfunction lamp on a dolly," from which the lamp could be viewed by a driver looking through the side rearview mirrors.

Based on the available information, NHTSA proposes that the ABS malfunction lamp on dollies be located on a permanent structure of the dolly so that it would be visible, with or without a trailer attached to the dolly, to a person in a standing position during a walk-around inspection. By permanent structure, the agency means a fixed portion of the vehicle that is inherently part of the dolly as opposed to something that is easily removed. To accomplish this goal, the proposed requirement is specified in objective terms by stating that the lamp must be located on a permanent structure of the dolly and positioned at a height of not less than 15 inches above the road surface. In addition, the malfunction lamp would have to be visible when viewed by a person standing erect and located no more than 10 feet from the dolly. The proposed height of not less than 15 inches for the location of the dolly ABS malfunction lamp coincides with the lower height limit for side marker lamps on the lower edge of a trailer, as specified in Standard 108. Given the differences in dolly configurations and sizes, that proposed minimum lamp height is expected to provide dolly manufacturers with the flexibility to locate the ABS lamp in a protected location. The agency expects that dolly manufacturers would locate the lamp below the fifth-wheel to reduce the potential for damage to the lamp when the dolly is being connected to a trailer.

NHTSA believes that locating the malfunction lamp on the ECU of the ABS would decrease the ability of the driver or inspectors to see the lamp. The ECU is typically placed in a protected location where it would not be easily damaged. Such a location would not be conspicuous enough to ensure that the ECU, and hence the malfunction lamp, is easily seen during a walk-around inspection of the towed vehicle.

B. Color

TTMA requested that NHTSA require the use of a green lamp for the external ABS malfunction lamp on the trailer and the dolly, and that the lamp be lit continuously whenever the ECU is powered, but be extinguished when there is a malfunction.

Standard No. 101, *Controls and displays*, currently requires that in-vehicle ABS malfunction lamps be yellow. This color requirement has been harmonized with the vehicle standards of other countries. NHTSA and regulatory agencies in other countries have historically used a red lamp to indicate a critical system failure and a yellow lamp to indicate a non-critical malfunction. The International Organization for Standardization (ISO) and the Economic Commission for Europe (ECE) recently harmonized European braking requirements with American requirements, agreeing to specify red to indicate brake failure and yellow to indicate ABS malfunction. NHTSA recognizes that these color requirements are applicable to instrument panel lamps and do not address ABS malfunction indicator lamps on the exterior of a vehicle. However, the desirability of having a uniform protocol in this regard is clear. The agency concludes that the same requirements should be applied to external ABS malfunction lamps since they perform the same function as in-vehicle ABS malfunction lamps.

NHTSA notes that Table I of Standard 108 includes a requirement for two amber clearance lamps at the front of a trailer and two red clearance lamps at the rear of a trailer. In addition, Standard No. 108 references the Society of Automotive Engineers (SAE) Recommended Practice J592e (July 1972), *Clearance, Side Marker, and Identification Lamps*. A recent update of this Recommended Practice (SAE J592 JUN92) states in Section 5.1.7 that "the color of light from front clearance lamps * * * shall be yellow." The agency believes that the color of external ABS malfunction lamps should be the same as that used for clearance lamps.

Based on these considerations, NHTSA concludes that the use of a green lamp on the exterior of the trailer for indicating a trailer ABS malfunction would violate the already established convention for ABS malfunction lamps and, therefore, could create confusion among drivers. However, there would be no prohibition against supplementing the required yellow external malfunction lamp on a trailer with a green lamp on the ECU to indicate the status of the trailer ABS. The supplemental lamp would not have to conform to any of the color or protocol requirements specified for the external ABS malfunction lamp.

C. Lamp Protocol

TTMA requested a change in the lamp protocol, which would allow the lamp to be lit continuously when the ABS is functioning properly and to be extinguished when there is a malfunction in the ABS. NHTSA has addressed this issue in detail in previous **Federal Register** notices and in the final rule on heavy vehicle ABS rulemaking. In the final rule, the agency decided to require that the ABS malfunction lamp be lit when a malfunction exists and that it not be lit when the antilock system is functioning properly.

Under the requirement for an external ABS malfunction indicator in S5.2.3.3 of Standard 121, NHTSA requires that the trailer ABS malfunction lamp be lit during the check-of-lamp function only when the vehicle is stationary and power is first supplied to the antilock system. This allows the ABS lamp on a trailer that is moving to undergo the check of lamp function, without the lamp cycling on and off whenever the brakes are applied. This requirement will eliminate any potential distractions for the driver or for drivers of other vehicles nearby, which might be created by the ABS lamp cycling on and off with every brake application. The agency emphasizes that in the event of a malfunction in the trailer antilock system, the malfunction indicator lamp would be lit whenever power is supplied to the trailer antilock system, regardless of whether the vehicle is stationary or moving. Accordingly, the agency has decided to deny TTMA's request for a change in the ABS malfunction lamp protocol and proposes no change to the protocol included in the ABS final rule.

D. Intensity and Photometric Requirements

AAMA and TTMA petitioned the agency to require that the external ABS malfunction lamp have the same photometric requirements as those specified in Standard No. 108. Photometric values specify the amount of light emitted by a lamp, when measured from a specified distance.

NHTSA agrees with the petitioners' recommendation, and proposes that the ABS malfunction lamps meet the requirements specified by the SAE Recommended Practice J592 JUN92 for the clearance lamps. Those requirements are referenced in Standard No. 108.

The photometric performance requirements in SAE J592 JUN92 for the luminous intensity of side marker lamps specify minimum intensity values at test points of 45 degrees along a horizontal axis and 10 degrees along a vertical axis, when measured from a lamp distance of at least three meters. In addition, the agency proposes that the lamp be mounted on the trailer in such a manner that its beam is directed toward the front of the trailer and rotated so that its top and bottom become its sides. Such an orientation of the lamp would ensure that its widest light beam is in a vertical plane just outboard of the side of the trailer, and hence would be more likely to be visible by the driver through the tractor's rearview mirrors.

In addition to providing general comments regarding this issue, commenters are asked to specifically comment on the quantified aspects of the proposed location, color, and photometric requirements of the ABS malfunction lamp on trailers and dollies.

IV. Costs

NHTSA has already evaluated the economic impact of requiring trailers and dollies to be equipped with an external ABS malfunction lamp in the final rule on heavy vehicle ABS published on March 10, 1995. The agency estimated that the unit cost of requiring an ABS lamp on trailers and dollies is $9.43. Since this proposed rule does not require additional equipment, but only specifies location, color and intensity for the ABS malfunction lamp, the proposal should not have any impact on previously estimated costs or benefits.

V. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The impacts of the rule, if adopted, would be so minimal as not to warrant preparation of a full regulation evaluation. As noted above, NHTSA has already evaluated the economic impact of requiring an external ABS malfunction lamp. For details, see the Final Economic Assessment (FEA) titled, "Final Rules FMVSS Nos. 105 & 121 Stability and Control While Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles," published in June 1994.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. Further, as noted above, the proposal would have no impacts on costs or benefits beyond those addressed in the FEA for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and

PART 571—[AMENDED]

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

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Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. § 571.121 would be amended by revising S5.2.3.3, which would read as follows:

§ 571.121 Standard No. 121; Air Brake Systems.

* * * * *

S5.2.3.3 Antilock Malfunction Indicator. (a) In addition to the requirements of S5.2.3.2, each trailer and trailer converter dolly manufactured on or after March 1, 1998, and before March 1, 2006, shall be equipped with an external indicator lamp that meets the requirements of paragraphs (b)(1)–(5) and (c).

(b)(1) The lamp shall be designed to conform to the Society of Automotive Engineers (SAE) Recommended Practice J592 JUN92, *Clearance, Side Marker, and Identification Lamps.*

(i) Except as provided in S5.2.3.3(b)(1)(ii), each trailer that is not a trailer converter dolly shall be equipped with an indicator lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, as close to the front as practicable and at a height as close as practicable to 96 inches above the road surface, when measured from the center of the lamp on the trailer at curb weight.

(ii) If it is impracticable to mount the indicator lamp on the left side of the trailer at a height of 60 inches or more above the road surface, the lamp shall be mounted on a permanent structure on the front of the trailer as far leftward as practicable, at a height as close as practicable to 96 inches above the road surface, when measured from the center of the lamp on the trailer at curb weight.

(2) The lamp required in S5.2.3.3(b)(1)(i) and S5.2.3.3(b)(1)(ii) shall be mounted to provide light toward the front and rotated so that its top becomes its side, as specified in SAE J592 JUN92.

(3) The lamp for a converter dolly shall be mounted on a permanent structure of the dolly so that the lamp is at a height above the road surface of not less than 15 inches when measured from the center of the lamp on the dolly at curb weight. The lamp shall be located such that visual access to it, when viewed by a person standing erect and not more than 10 feet from the dolly, is not obscured by other structures on the dolly.

(4) The color of the lamp shall be yellow.

(c) The lamp shall be illuminated whenever power is supplied to the antilock brake system and there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The lamp shall remain illuminated as long as such a malfunction exists and power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system. The lamp shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The lamp shall also be activated as a check of lamp function whenever power is first supplied to the antilock brake system and the vehicle is stationary. The lamp shall be deactivated at the end of the check of lamp function, unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

* * * * *

Issued on: December 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30378 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 112995F]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, December 13, 1995, at 10 a.m. and on Thursday, December 14 at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

December 13, 1995

The December 13, 1995, session will include reports from the Council's Gear Conflict, Monkfish, and Dogfish Committees. The gear conflict discussion will focus on reviewing and possibly approving a draft plan amendment document for public hearing purposes that contains a framework adjustment procedure to reduce gear conflicts. The intent is to amend several fishery management plans for this purpose. The Monkfish Committee will update the Council on possible monkfish total allowable catches, limited access quotas, and limited access qualification criteria within the context of alternatives already developed as part of a draft fishery management plan. The Dogfish Committee will provide background information on the Mid-Atlantic Fishery Management Council's decision to temporarily delay development of the joint plan.

During the afternoon session of the meeting, the Marine Mammal Committee will report on its efforts to develop time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery. The Sea Scallop Committee will discuss the development of Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (Scallop FMP), a program to allow vessels to consolidate their days at sea. The Council may also approve draft Amendment 6 to the Scallop FMP for public hearing purposes. The amendment proposes to establish a temporary experimental use area 10 miles south of Martha's Vineyard for sea scallop research, enhancement, and aquaculture.

Abbreviated Rulemaking—Atlantic Sea Scallops

At the recommendation of its Scallop Committee, the Council will consider initial action on Framework Adjustment 7 to the Scallop FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 650.40. The Council proposes to extend the current rule specifying a maximum crew size of seven until a plan amendment allows the consolidation of days at sea now allocated to individual scallop vessels, or until the Council changes the crew size through other action.

December 14, 1995

The December 14, 1995, session will begin with an update on the future direction of lobster management. The Northeast Multispecies (Groundfish) Committee will follow with a report on

actions to date to finalize proposed Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (Multispecies FMP).

Abbreviated Rulemaking Action—Northeast Multispecies

The Council will consider action on Framework Adjustment 13 to the Multispecies FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 651.40. The Council proposes to require exempted fishery status for vessels fishing outside of their allocated groundfish or sea scallop days at sea. The Council will consider two additional actions under the framework for abbreviated rulemaking procedure: Initial action on Framework Adjustment 14 to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery through time/area closures in the mid-coast and southern New England regions during the spring, and initial action on Framework Adjustment 15 in which the Council proposes to require that all vessels take a 20-day block of time off from harvesting groundfish during the March through May spawning period.

The Council will consider public comments at a minimum of two Council meetings prior to making any final recommendations to the Director, Northeast Region, NMFS (Regional Director), under the provisions for abbreviated rulemaking cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register**.

The Council will address any other outstanding business at the conclusion of the agenda items described above.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1995

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30360 Filed 12–8–95; 2:17 pm]

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Notices

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–20–95]

Foreign-Trade Zone 21—Charleston, SC Request for Manufacturing Authority Hubner Manufacturing Corporation (Industrial Bellows/Molded Parts)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of the Hubner Manufacturing Corporation (HMC) (a subsidiary of Hubner Gummi-Und Kunststoff GmbH, Germany), to manufacture industrial bellows and plastic/rubber molded parts under zone procedures for the U.S. market and export within FTZ 21. It was formally filed on November 30, 1995.

HMC plans to establish a facility within the Wando Park site of FTZ 21 to manufacture industrial bellows used in buses, trains and airport gangways; and, plastic, rubber, and metal molded parts used in motor vehicles, medical instruments, and sporting goods. Certain components and materials (about 40% the finished products' value) would be sourced from abroad, including: rubberized fabric, trimming bands, articulation/electronic/hydraulic parts, aluminum profiles, treat plate and kinematic systems, plastic resins, and rubber compounds. All foreign merchandise would be admitted to the zone in privileged foreign status (19 CFR 146.41). Up to 80 percent of the finished products are exported.

Zone procedures would exempt HMC from Customs duty payments on the foreign materials used in the export activity. On domestic sales, the company would be able to defer Customs duty payments on the foreign materials until they are transferred from the zone for domestic consumption. A portion of the foreign merchandise which becomes scrap during the production process (e.g., rubberized fabric) may also be exempt from Customs duties (scrap yield ranges up to 25 percent). In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 12, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 29, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230

Dated: November 30, 1995.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 95–30275 Filed 12–12–95; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Katherine Johnson, Office of Antidumping Investigations, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965 or (202) 482–4929, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

Scope of Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the *Harmonized Tariff Schedule of the United States (HTSUS):* (1) The term "unassembled" means fully or partially unassembled or disassembled; (2) the term "incomplete" means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term "unfinished" means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete bicycles or under HTSUS subheadings 8714.91.20–8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Case History

On November 1, 1995 (60 FR 56567, November 9, 1995), the Department of Commerce ("the Department") made its affirmative preliminary determination of sales at less than fair value in the above-referenced investigation. On November 7, 1994, we disclosed our calculations for the preliminary determination to counsel for petitioners, counsel for Bo-An Bike (Shenzhen) Co., Ltd. ("Bo-An"); CATIC Bicycle Co., Ltd. ("CATIC"); China Bicycle Co. (Holdings) Ltd. ("CBC"); Giant China Co., Ltd. ("Giant"); Hua Chin Bicycle (S.Z.) Co., Ltd. ("Hua Chin"); Merida Bicycle (Shenzhen) Co., Ltd. ("Merida"); Shenzhen Overlord Bicycle Co., Ltd. ("Overlord"); and Universal Cycle Corporation (Guangzhou) ("UCC"), and counsel for Shun Lu Bicycle Company ("Chitech"), respondents in this investigation.

On November 9 and 20, 1995, respondents alleged that ministerial errors had occurred in the calculations and requested that these errors be corrected and an amended preliminary determination be issued reflecting these corrections. As discussed below, we find that most of these errors constitute ministerial errors within the meaning of 19 CFR 353.28(d) (hereinafter "ministerial errors").

For all companies, we miscalculated factory overhead in three ways: (1) We mistakenly used cumulative depreciation instead yearly depreciation; (2) we inadvertently included factory overhead, packing and certain SG&A expenses in the denominator of the calculation; and (3) we misapplied the calculation formula to one company's financial statements.

For CATIC and CBC, we inadvertently double-counted the value of certain components. For Hua Chin, we miscalculated the factor valuation for one component. For Merida, we miscalculated brokerage expenses and double-counted certain other expenses. For Universal, we miscalculated packing.

In preparing the recalculations for the ministerial errors described above, we noted several minor unintentional errors in the programming for Bo-An, CBC, Hua Chin, and UCC. These constitute ministerial errors within the meaning of 19 CFR 353.28(d). Although not noted by other parties, we are correcting these errors for those companies whose calculations we are already revising. (See memorandum from The Team to Barbara R. Stafford dated November 29, 1995.)

Amendment of Preliminary Determination

The Department has stated that it will amend a preliminary determination only to correct for significant ministerial errors (*i.e.*, corrections that result in a difference of 5 absolute percentage points and that are at least 25 percent greater or less than the preliminary margin, and corrections resulting in a margin of zero or de minimis). (See Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Disposable Lighters from the People's Republic of China, 60 FR 9008 (February 16, 1995), Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia, 59 FR 51554 (October 12, 1994), and Amendment to Preliminary Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289 (May 9, 1990).)

Given the facts of this investigation, as noted above, the Department hereby amends its preliminary determination to correct for the ministerial errors involved for Hua Chin, Merida, Overlord, and UCC, since the correction of the ministerial errors results in de minimis or zero margins for those companies.

We are not amending the preliminary margins of Chitech and CBC because the corrections of the ministerial errors do not result in a difference of five absolute percentage points from the preliminary margin rates, nor do they result in de minimis margins.

Finally, we are not amending the preliminary margins of Bo-An, CATIC, and Giant because those companies were preliminarily found not to be selling at less than fair value. (*See* memorandum from The Team to Barbara R. Stafford dated November 29, 1995, for a detailed discussion of the ministerial error allegations and the Department's analysis). The revised estimated margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Bo-An	0.00.
CATIC	0.00.
Giant	0.00.
Hua Chin	1.56 (*de minimis*).
Merida	0.00.
CBC	5.69.
Overlord	1.54 (*de minimis*).
Chitech	5.29.
UCC	0.55 (*de minimis*).
PRC-Wide Rate	61.67.

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of a bond for all entries of subject merchandise from the PRC for CBC and Chitech that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department will direct the U.S. Customs Service to terminate suspension of liquidation for Merida, Overlord, UCC, and Hua Chin. Furthermore, any entries by Merida, Overlord, UCC, and Hua Chin which were suspended as a result of the preliminary determination will be liquidated. The "PRC-Wide" rate established in the preliminary determination remains the same. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determination.

Postponement of Final Determination

On November 6 and 9, 1995, respondents representing a significant proportion of exports to the United States of subject merchandise requested a 60-day postponement of the final determination, in accordance with 19 U.S.C. section 1673d(a)(2) and 19 CFR 353.20(b). Pursuant to 19 CFR 353.20(b), because our preliminary determination is affirmative, and no compelling reasons for denial exist, we are postponing the date of the final determination. Because of the federal government shutdown, the date of the final determination will be extended by an additional six days, the number of days of the shutdown, to March 29, 1996.

The deadline for interested parties to submit additional publicly available information concerning surrogate values is February 13, 1996. Rebuttal comments on this information must be submitted no later than February 23, 1996.

The revised deadlines for submitting case briefs and rebuttal briefs are March 1, 1996, and March 8, 1996,

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respectively. On November 20, 1995, petitioners requested that a hearing be held. At this time the hearing is scheduled for March 12, 1996, the time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-30276 Filed 12-12-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-307-807]

Amended Order and Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela.

SUMMARY: On May 15, 1995, the Department of Commerce (the Department) submitted to the Court of International Trade (CIT) the final results of redetermination pursuant to a court remand in *Aimcor, et al.* v. *United States* (Slip Op. 94-192, December 13, 1994). On September 16, 1995, the CIT affirmed our redetermination (Slip Op. 94-192). In accordance with that affirmation, we are hereby amending the *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela* 58 FR 27522 (May 10, 1993). We have recalculated the margin for the sole respondent in the investigation, CVG-Venezolana de Ferrosilicio C.A. (CVG-FESILVEN), as well as the "All Others" rate, as follows:

Manufacturer/exporter	Margin (percent)
CVG-FESILVEN	15.01
All others	15.01

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-1776.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1994, the CIT, in *Aimcor, et al.* v. *United States* (Slip Op. 94-192), remanded to the Department for redetermination the *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela* 58 FR 27522 (May 10, 1993). In its remand order, the Court granted the Department's request to reconsider the issue of CVG-FESILVEN'S depreciation costs, and instructed the Department to determine whether CVG-FESILVEN's depreciation costs should be based on the revalued amount shown in the company's 1991 financial statements.

In the Department's final determination, the dumping margin for CVG-FESILVEN was 9.55 percent. CVG-FESILVEN's dumping margin was based on using CVG-FESILVEN's historical costs of its assets to calculate depreciation expenses.

Final Remand Results

In accordance with the CIT's order, the Department reconsidered its final determination with respect to Ferrosilicon from Venezuela. Upon redetermination, we find that we should base depreciation costs on the revalued amount of CVG-FESILVEN's fixed assets. Accordingly, we revised CVG-FESILVEN's cost of production (COP) to include the depreciation expense related to the company's asset revaluation.

We incorporated the revised COP in our cost test analysis. We also included the revised depreciation amount in our calculation of constructed value (CV) and then incorporated the revised CV into the margin calculations, as appropriate.

Final Results of Redetermination

On September 16, 1995, the CIT affirmed our redetermination (Slip Op. 94-192). Because no party appealed that affirmation to the Court of Appeals for the Federal Circuit, that decision has become the "final and conclusive" decision in this action. *See Timkin* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990). Therefore, in accordance with that affirmation, we are hereby amending the final determination and order with respect to CVG-FESILVEN's and the "all others" rates. The revised weighted-average margin for both is 15.01 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 516(a)(e) of the Tariff Act of 1930, as amended.

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-30277 Filed 12-12-95; 8:45 am]

BILLING CODE 3510-DS-P

Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway with an October semi-annual anniversary date. In accordance with the Commerce Regulations, we are initiating this administrative review.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482-4195/3814.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, in accordance with 19 CFR 353.22(h) (1995), for a new shipper review of an antidumping duty order with an October semi-annual anniversary date.

Initiation of Reviews

In accordance with 19 CFR 353.22(h), we are initiating one new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. We intend to issue the final results of this review not later than August 15, 1996.

Antidumping duty proceeding	Period to be reviewed
Norway:	
Fresh and Chilled Atlantic Salmon, A-403-801, Nordic Group A/L	5/1/95-10/31/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of merchandise (19 CFR 353.22(h)(4)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

This notice is published pursuant to 19 CFR 353.22(h).

Dated: November 29, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95-30280 Filed 12-12-95; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Information Management: Customer Survey

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Catherine McCrary, NOAA Coastal Services Center, 1990 Hobson Ave., Charleston, SC 29405-2623. Telephone: (803) 974-6251, Fax: (803) 974-8224

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration's Coastal Services Center (CSC) was established in 1994 for the purpose of bridging the gap between the scientists and managers in the coastal zone management community. There are two main components of the CSC: Coastal Management Services (CMS) and Coastal Information Services (CIS). The goals of the CIS division are to be an integrator and provider of marine ecosystem and coastal watershed data to coastal resource managers. A survey is being used to learn how we can best meet the needs of the coastal information management community.

The objectives of the survey are: to get feedback from the coastal information management community on the relevance, importance, and need of specific Center proposed products; to give coastal information managers the opportunity to describe other needs and/or programs that they would like the Center to foster; and to obtain information on the hardware and software platforms and capabilities of the coastal information management community. The survey results will provide the Coastal Information Services division of the Coastal Services Center with specific information about the needs of the coastal information management community.

II. Method of Collection

A combination of mail surveys and electronic surveys on the Internet will be used.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Coastal Information Managers from the following programs or agencies: Coastal Zone Management Programs, National Estuarine Research Reserve Sites, National Marine Sanctuaries, Sea Grant Institutions, and Natural Resource Management agencies.
Estimated Number of Respondents: 600.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 198.
Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-30278 Filed 12-12-95; 8:45 am]

BILLING CODE 3510-12-P

[I.D. 112095C]

Small Takes of Ringed Seals Incidental to On-Ice Seismic Activity

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that letters of authorization to take ringed seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska were issued on December 1, 1995 to BP Exploration, Western Geophysical, and Geco-Prakla, all of Anchorage, AK.

EFFECTIVE DATE: These letters of authorization are effective from January 1, 1996, through May 31, 1996.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055 or Ron Morris, Western Alaska Field Office, NMFS, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings

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are made, and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if the Secretary of Commerce finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed seals incidental to on-ice seismic activities were published on January 13, 1993 (58 FR 4091) and remain in effect until December 31, 1997.

Summary of Requests

NMFS received requests for letters of authorization on the dates specified from (1) BP Exploration (Alaska) Inc., 900 East Benson Blvd. P.O. Box 196612, Anchorage, AK 99519–6612 (September 11, 1995); (2) Geco-Prakla, 500 W. International Airport Road, Anchorage, AK 99518 (October 11, 1995) and (3) Western Geophysical/Western Atlas International, Inc. 351 E. International Airport Road, Anchorage, AK 99518–1299 (November 10, 1995). All letters request a take by harassment of a small number of ringed seals incidental to on-ice seismic work in the Beaufort Sea, AK.

Issuance of these letters of authorization is based on findings that the total takings will have a negligible impact on the ringed seal species or stock and will not have an unmitigable adverse impact on the availability of this species for subsistence uses.

Dated: December 1, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–30379 Filed 12–12–95; 8:45 am]

BILLING CODE 3510–22–F

National Weather Service; Automated Surface Observing System

SUBJECT: Notice of Intent.

SUMMARY: The National Weather Service (NWS) implemented the Supplemental Data Program effective October 1, 1995. This program supplements data provided by the Automated Surface Observing System (ASOS). Observations produced through the Supplementary Data Program are transmitted separately from the ASOS operations and provide data to support hydrometeorological operations and climatological applications. This notice explains the reasons for the shift in reporting methods and describes how to obtain and interpret hydrometeorological information that was previously available in the surface aviation observation (SAO) format.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Requests for information should be sent to Steve Pritchett, NWS, Office of Systems Operations, 1325 East-West Highway, Silver Spring, MD 20910 or through electronic mail at suppdata @emtpgate.ssmc.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Steve Pritchett at 301–713–1792.

SUPPLEMENTARY INFORMATION: As part of the NWS modernization, the NWS is undergoing a major shift in the methods used to observe and report surface weather information.

The NWS has developed and is installing ASOS to automate certain observing functions, thereby taking advantage of advances in sensor and microprocessor technology. At approximately 900 airports in the United States during the 1990s, the U.S. Departments of Commerce, Transportation, and Defense are deploying ASOS to support aviation operations and weather forecasting and warnings, as well as general needs of the hydrometeorological, climatological, and meteorological research communities.

ASOS will provide greatly expanded coverage (locations and observing hours), objective observations, a continuous weather watch, and improved operating efficiency. ASOS, when integrated with advances in remote sensing and weather information processing systems, is expected to contribute to improved warning and forecast services. ASOS will perform the basic observing functions necessary to generate a SAO. However, because some weather parameters observed manually today will not initially be observed by ASOS, the NWS is introducing two new classes of observations to the array of meteorological surface observations: the supplementary data observation (SDO) and the supplementary climate data (SCD).

Supplementary observations are *not* appended to the ASOS observation; rather, they are disseminated as separate messages. The NWS will disseminate these reports to a variety of Federal and non-Federal users of NWS data. Supplementary data will be made available through NWS communication systems such as Family of Services, NOAA Weather Wire, and various computer and commercial vendor services.

Surface observational data in the ASOS era will continue to come from many sources. ASOS, along with complementary data derived from remote sensing technologies, such as satellites, will form the backbone of the surface observing network (SAO) system. Surface data from over 20,000 automatic and manual hydrometeorological sites, including cooperative and hydrologic networks, will continue to play an important role in NWS operational forecast programs. They comprise the climatological data bases and supply information to users who currently rely on surface observations from airports, as well as for non-aviation related information.

The NWS Weather Forecast Offices (WFOs) will issue these new supplementary data reports. The SDOs will provide significant, event-driven observations primarily intended to support weather forecasting and general hydrometeorological needs. Elements may be reported in SDOs on an "as-observed" basis and do not imply a continuous or basic weather watch. SDOs will not generally include elements that are in augmented ASOS observations from that location.

The SCD reports may provide routinely scheduled observations useful for climatological applications, as well as hydrometeorological operations. SCDs are routinely issued at designated hours at about the same time as the recorded surface observation (note: the SDOs are issued on an event basis, which may fall "on the hour" only by chance).

Most offices issuing SCDs and SDOs will not issue the full suite of SCD/SDO elements. There will be some variation among individual offices in the elements they report. Elements reported in SCDs will generally not be reported in SDOs. Exceptions are: (1) precipitation type and intensity reported in SCDs may also be reported in SDOs when considered significant by the on-site observer, and (2) volcanic ash reported in SCDs will also be reported in SDOs. Observations of volcanic eruptions and volcanic ash when first noted and severe weather (severe thunderstorms and tornadic activity) when first observed may be included in weather warnings and statements issued by cognizant NWS offices rather than in supplementary data reports. The same elements may be reported in both SDO's and aviation observations from some sites (see enclosures).

In the future, non-Federal observers (volunteers, Cooperative Observers, etc.) are expected to participate as members of the supplementary data network. Their reports will focus on snow depth, snowfall amount, hail and ice pellet occurrences. It is expected that a subset of volunteer observers will report water equivalent of snow on the ground.

Susan F. Zevin,

Deputy Assistant Administrator for Operations.

Report Format and Content

The information in supplementary data reports will follow the syntax and abbreviations used in Federal Meteorological Handbook Number 1 for Surface Observations (FMH–1). (FMH–2 for synoptic cloud reports) where practical. Supplementary data reports differ from surface aviation observations in the following ways:

- Only a limited set of observed elements is included in supplementary data reports. A given supplementary report may contain one or several elements.
- Supplementary data reports are not issued on an hourly basis. Time-scheduled SCDs are issued at main synoptic hours or at other designated hours of the day depending on the variable(s) being reported. Event-driven SDOs are issued when a significant phenomenon is first observed. A follow-up "termination" SDO will be issued after the cessation of certain events.
- Some SDOs will contain a "/", solidus remarks separator. The purpose of the remarks separator is to help computer decoders differentiate between decodable (parsable) remarks and remarks not readily amendable to decoding. SCDs will *not* inclde the "/" remarks separator because all remarks in SCDs are decodable.

Supplementary data reports are encoded as follows:

SID—TYPE—(COR—)TIME—WX/—Decodable RMKS—/—Other RMKS ("—" indicates a required space and "/" indicates a required solidus. The "/" will appear in an observation if and only if one or more "WX" elements are reported *and* are followed by remarks. The "/" remarks separator will appear in an SDO, only if, the SDO contains both decodable *and* noncodable remarks.

SID—Station identifier (3 to 5 alphanumeric characters).

TYPE—Type of observation (either SCD or SDO). If the observation is a correction to a previously disseminated SCD or SDO, the contraction COR will follow the type of observation (in which case the time (TIME) will be the time of the observation being corrected).

TIME—Time of observation in hours and minutes UTC [0000 * * * 2359].

WX—Weather and/or obstructions to vision. This field will be from 1 to 15 characters in length including the precipitation intensity symbol (−,+). The elements to be reported in the "WX" field are given in Table 1 of this guide. Contractions for precipitation types are given in Table 2; contractions for obstructions to vision are in Table 3.

Decodable RMKS, Other RMKS—Remarks are separated from the "WX" group with a solidus and a space. If no "WX" is reported, the remarks are preceded with a space after the time (TIME) element.

SCD remarks are encoded in the following order:

$8NN_hC_LhC_MC_H$—Total cloud cover and synoptic cloud types

931nnn—Depth of new snow (snowfall)

933RRR—Water equivalent of snow on the ground

4/sss—Depth of snow on ground

98xxx—Duration of sunshine

$7R_{24}R_{24}R_{24}R_{24}$—Calendar day total precipitation (from designated sites)

$4s_nT_xT_xT_xs_nT_nT_nT_n$—Calendar day maximum and minimum temperature (from designated sites)

NIL—Nothing to report

SDO remarks are encoded in the following order:

Temination reports for "WX" elements (e.g., END IP)

SNOINCR x/x—Snow increasing rapidly

HLSTO x—Size of largest hailstone observed

" / " remarks separator

Other SDO remarks when considered significant by the on-site staff:

Local variation in visibility (e.g., VSBY N2; F BANK N–E2) (designated stations)

Virga—Precipitation evaporating before reaching ground (designated stations)

Precipitation not at station (e.g., RWU SW; SU OVR MTNS N) (designated stations)

Clouds above 12,000 feet (types and/or layers) (designated stations)

Distant clouds obscuring mountains (designated stations)

Other meteorological information considered significant, such as blowing volcanic ash

The SDO "WX" group, remarks of snow increasing rapidly (SNOINCR), hailstorms (HLSTO), and termination reports for "WX" elements are considered decodable.

Initiation *and* termination reports will be issued for selected "WX" elements (those listed in Table 2 of this guide). An exception is hail, for which only an initiation report will be issued. Termination reports will be issued for any weather and/or obstructions to vision previously reported in the "WX" field of an SDO when the event is determined to have ended. Termination reports are not required for information reported in SDO remarks unless designated by NWS regional headquarters.

- The initiation report for a "WX" element is implicit in the "WX" field (e.g., "MCI SDO 1325 BS" is an initiation report for blowing snow). The initiation report for other significant events carries the information in the SDO remarks section (e.g., "MCI SDO 1325 BD/ RWU SW" may be an initiation report for distant rain showers. The blowing dust, previously reported, continues).
- Termination reports contain the key word "END" followed by a space and a description of the event which ended. All termination information, even for a "WX" element, is considered to be in the remarks category. Termination information for "WX" elements precedes any " / " remarks separator (e.g., "MCI SDO 1445 END BD / END RWU SW").
- Termination reports for items listed under "other SDO remarks when considered significant by the on-site staff" can have several meanings: (1) the event ended, (2) the event is no longer considered significant, but it may still exist, or (3) because of darkness, it is not possible to determine if the event still exists.

Plain language remarks may at times be necessary to clarify changing local conditions. For example, if a fog bank previously reported to the north (e.g., "ANC SDO 1205 F BANK N2") moves over the airport, "ANC SDO 1330 F BANK MOVD OVR ARPT" might be subsequently reported.

Location of phenomena within 10 miles of the station will be reported as "VCNTY STN," followed by the direction from the station. Phenomena between 10 and 30 miles of the station will be located by direction from the station. Phenomena beyond 30 miles will be reported as "DSNT," followed by the direction from the station.

If there are no coded remarks or weather to report in a scheduled SCD,

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the SCD will be transmitted with "NIL" (e.g., "PHL SC 1756 NIL").

Table 1 gives the type of supplementary information reported, the category of the supplementary data report, criteria for reporting, and type of site making the report. It also gives the syntax of the element and one or more examples. Examples of complete supplementary data reports are given in the back of this guide. Except where explicitly stated otherwise, the "WFO" column refers to all WFOs, whether or not they have a collocated ASOS. The "Other NWS Office" column refers to NWS staffed or manual observing sites with responsibility for supplementary data reporting. This table represents the initial supplementary data reporting configuration by office type (augmented elements are excluded).

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
WX—Weather and/or obstructions to vision. —All precipitation types and intensities. —Volcanic ash	.....	X ..... Volcanic ash will not be included in SCDs from sites with a collocated ASOS.	at 6-hrly synoptic times (00, 06, 12, and 18 UTC) and staff is available.	X	Designated Stations.	*Format:* Table 2 gives contractions for precipitation types; Table 3 gives contractions for obstructions to vision. *Where:* "WX" refers to weather and obstructions to vision. Weather refers to precipitation and tornadoes. Obstructions to vision refer to phenomena that reduce visibility but are not precipitation. Weather and obstruction to vision elements included in SCDs and SDOs are given in the "Element" column to the left. *Examples:* VOLCANIC ASH; IF; HLSTO ¼; IP-; END VOLCANIC ASH; END IF *Comments:* Visibility specified by FMH-1 for qualifying intensity of snow and drizzle may not be well resolved at certain WFOs without a collocated ASOS. Consequently, snow and drizzle intensities reported by non-ASOS WFOs must be considered to be estimates. A follow-up "termination" SDO will be issued upon termination of the event (with the exception of hail). The termination SDO will give the event preceded by the key world "END." Volcanic ash will not be reported in supplementary data originating from sites which have collocated ASOS. Volcanic ash is appended directly to the ASOS observations at those sites. Visibility will not be a factor in reporting "VOLCANIC ASH" as present weather (WX) in an SDO. Any observed "VOLCANIC ASH" will be reported.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
WX—Weather and/or obstructions to vision. —Ice pellets ... —Volcanic ash —Other nonaugmented elements when considered significant by the on-site staff (ice crystals, ice fog, smoke, blowing snow, blowing sand, blowing dust, and blowing spray).	X ..... Volcanic ash will not be included in SDOs from sites with a collocated ASOS.	.....	when observed and staff is available.	X	Designated stations.	
Daily total sunshine duration.	.....	X	Once daily at 06 UTC. If the station is closed at 06 UTC, the "98xxx" group will be reported in the first 6-hrly observation after opening. Equipment must be available.	Reported at official NWS sunshine-duration reporting sites. These sites may be moved as required.	.....	*Format:* 98xxx. *Where:* "98" is the code group indicator and "xxx" gives the total minutes of sunshine for the previous calender day. "xxx" is encoded in hundreds, tens, and units. *Example:* 98096; 98000. *Interpretation:* 96 minutes of sunshine; 0 minutes of sunshine. *Missing data indicator:* 98///.
Calendar day total prescription accumulation (water equivalent).	.....	X	24-hour value once daily at 00 LST and staff is available.	Only reported by WFOs which do not have a collocated ASOS.	.....	*Format:* $7R_{24}R_{24}R_{24}R_{24}$. *Where:* "7" is the code group indicator; $R_{24}R_{24}R_{24}R_{24}$ gives precipitation amount encoded in tens, units, tenths, and hundredths of inches. *Example:* 70125. *Interpretation:* 1.25 inches of precipitation (water equivalent) in the preceding 24 hours. *Missing data indicator:* 7////. *Comment:* Note that in the SCD the "7" group refers to a 24-hr precip total ending at midnight LST whereas the "7" group in the remarks of an ASOS observation or a manual surface observation refers to a 24-hr precip total ending at 12 UTC.
Calendar day maximum and minimum temperatures.	.....	X	24-hour value once daily at 00 LST and staff is available.	Only reported by WFOs which do not have a collocated ASOS.	.....	*Format:* $4s_nT_xT_xT_xs_nT_nT_nT_n$. *Where:* "4" is the code group indicator; s_n gives sign of the data ("1" for temperatures below 0°F, "0" for temperatures 0°F or higher); $T_xT_xT_x$ is the maximum temperature in whole degrees F; $T_nT_nT_n$ is the minimum temperature in whole degrees F. *Example:* 400700045. *Interpretation:* 24-hr max temperature of 70°F, 24-hr min temperature of 45°F. *Missing data indicator:* 4/////////.

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TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Snow increasing rapidly.	X	X	Hourly when snow depth increase equals or exceeds 0.5"/hr and staff is available.	Designated stations.	Designated stations.	*Format:* SNOINCR x/x. *Reference:* FMH–1 Table A3–88, 2.e modified to exclude the depth increase since the last 6-hrly report. *Where:* "SNOINCR" is the code group indicator. "x/x" gives the snow depth increase in the past hour/total depth of snow on the ground at time of observation, both of which are reported in whole inches. *Example:* SNOINCR 1/6. *Interpretation:* One inch depth increase in the past hour with 6 inches on the ground at time of observation.
Size of largest hailstone observed.	X		when first observed and staff is available.	Designated stations.	Designated stations.	Format: HLSTOx. Where: "HLSTO" is the group indicator. "x" gives the diameter (in inches) of the largest hailstone observed. Hailstone size is reported in ¼ inch increments. If the hailstone size is less than ⅛ inch, it will be encoded as <¼. Example: HLSTO ½. Interpretation: The largest hailstone observed was ½" in diameter.
Other Significant Weather Information						
Significant local variations in visibility.	X		when observed and staff is available.	Reported at specific, currently staffed NWS observing sites which are determined to be especially problematic with respect to terrain, and multiple visibility sensors are not available or do not suffice.		Format: Description and direction from station. Examples: VSBY N2; F Bank N–E2. Interpretation: (1) Visability to the north is 2 miles. (2) A fog bank exists north through east. Comment: Once reported, significant changes to "local variations in visibility" will be reported in updated SDO reports.
Virga	X		when observed and staff is available..	Reported at specific, currently staffed NWS observing sites in mountainous areas lacking radar coverage which are determined to be especially problematic with respect to terrain.		Format: "VIRGA" and direction from station. Example: VIRGA NW. Comment: Once reported, significant changes to "virga" will be reported in updated SDO reports, e.g., VIRGA VCNTY STN NW MOVG E.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Precipitation not at the station.	X		when observed and staff is available.	Reported at specific, currently staffed NWS observing sites in mountainous areas lacking radar coverage which are determined to be especially problematic with respect to terrain.		Format: Type and intensity (or "U" if unknown) of precipitation and direction from station. Examples: RWU SW; SU OVR MTNS N. Comment: Once reported, significant changes to "precipitation not at the station" will be reported in updated SDO reports, e.g., RWU VCNTY STN SW MOVD NW.
Significant clouds above 12,000 feet AGL and significant cloud types.	X		When observed and staff is available.	Reported at specific, currently staffed NWS observing sites in mountainous areas which are determined to be especially problematic with respect to terrain.		*Format:* "CLD LYR" followed by one or more cloud base heights (generally estimated, hundreds of feet AGL) and amounts (SCT, BKN, or OVC). Ceiling designators ("E" and "M") are not reported as this layer may not be the layer constituting a ceiling. Only significant cloud layers above 12,000 feet AGL are reported. Types of significant clouds associated with orographic features, such as ACSL and rotor clouds, may also be reported. *Example:* CLD LYR 140 OVC; ACSL VCNTY STN SW–W *Interpretation:* A significant overcast cloud layer based at 14,000 feet above ground level was observed. *Comment:* Once reported, significant changes to "cloud layers above 12,000 feet" and "significant cloud types" will be reported in updated SDO reports, e.g., CB W MOVD N.
Significant distant clouds obscuring mountains.	X		When observed and staff is available.	Reported at specific, currently staffed NWS observing sites which are determined to be especially problematic with respect to terrain.		*Format:* Description and direction from station. *Example:* CLD BASES OBSCG MTNS W. *Interpretation:* Cloud bases obscuring mountains to the west. *Comment:* Once reported, significant changes to "distant clouds obscuring mountains" will be reported in updated SDO reports.
Any other meteorological information when considered significant by the on-site staff.	X		When observed and staff is available.	X	X	*Format:* Plain language using FMH–1 contractions where practical. *Comments:* Any significant weather information such as convective cloud types not covered above *may* be entered here if not included in an ASOS observation.

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TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Depth of new snow.	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) when any amount of snow has fallen in the past 6 hours and staff is available.	Designated stations.	Designated stations.	*Format:* 931nnn. *Where:* "931" is the code group indicator for the amount of solid precipitation (i.e., snow, snow pellets, snow grains, ice pellets, ice crystals, and hail) that fell in the past 6 hours, even if some or all of it melted. "nnn" gives the depth in the frozen state to the nearest tenth of an inch using a leading zero if less than 1 inch. Trace amounts are reported as 931000. *Example:* 931012. *Interpretation:* 1.2 inches of new snow fell in the past 6 hours. *Missing data indicator:* The group is not reported if no solid precipitation fell during the past 6 hours or if hail was the only form of solid precipitation.
Water equivalent of snow on the ground.	.....	X	Once daily at 18 UTC if the average snow depth (to the nearest inch) is 2 inches or more and staff is available.	Designated stations.	Designated stations.	*Format:* 933RRR. *Where:* "933" is the code group indicator and "RRR" is the water equivalent of snow on the ground reported in tenths of inches. *Example:* 933125. *Interpretation:* 12.5 inches water equivalent of snow on the ground. *Missing data indicator:* Not reported if no solid precipitation fell during the past 6 hours or if hail was the only form of solid precipitation.
Depth of snow on the ground.	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) and staff is available. See comments.	Designated stations.	Designated stations.	*Format:* 4/sss. *Where:* "4/" is the code group indicator for depth of snow on the ground at observation time. "sss" gives the snow depth encoded in whole inches with leading zeros. *Example:* 4/009. *Interpretation:* The snow depth at observation time was 9 inches. *Missing data indicator:* Not reported if the frozen precipitation was comprised exclusively of hail. *Comments:* Report at 00 and 12 UTC whenever there is more than a trace of snow on the ground and at 06 and 18 UTC if there is more than a trace of snow on wht ground and more than a trace of precipitation (water equivalent) occurred within the past 6 hours.

TABLE 1.—DESCRIPTION OF ELEMENTS REPORTED AS SUPPLEMENTARY DATA—Continued

Element	Type of report		When reported	Reported by		Format, example, comments
	SDO	SCD		WFO	Other NWS offices	
Synoptic total cloud cover and cloud types (low cloud base height; low cloud amount; low, middle, and high cloud types).	.....	X	At 6-hrly synoptic times (00, 06, 12, and 18 UTC) unless the sky is clear.	Designated stations.	.....	*Format:* $8NN_h\ C_L\ hC_M\ C_H$. *Reference:* FMH–2 paragraph 4.2.7 modified to include "N" (total cloud cover) as described in FHM–2 paragraph 4.2.2.1 and "h" (height of lowest cloud) as described in FMH–2 paragraph 4.2.1.3. *Where:* "8" is the code group indicator. "N" is total fraction of oktas (eighths) of the celestial dome covered by clouds, where "9" represents sky obscured by fog and/or other meteorological phenomena and "/" in the "N" position means cloud cover is indiscernible for reasons other than fog or other meteorological phenomena, or the observation was not made. N_h gives the total amount (oktas) of all C_L clouds. If there are no C_L clouds, N_h gives the total amount of all C_M clouds. Otherwise N_h=0. N_h=9 for sky obscured by fog and/or other meteorological phenomena. N_h=/ for cloud cover indiscernible for reasons other than fog or other meteorological phenomena, or if the observation is not made. C_L, C_M, and C_H are types of low, middle, and high clouds respectively. "0" is coded for clouds absent, except that "/" is coded in the cloud layer subfield(s) above on overcast layer if the types are not determinable. "h" gives the height with respect to the surface of the base of the lowest cloud seen. It is a single digit coded in accordance with FMH–2. Table 3–3. "h" and C_L C_M C_H are coded with "/" if there is a total surface based obscuration which prevents an observation of the clouds. *Example:* 8220850. *Interpretation:* N=2 oktas total cloud cover. Scattered middle clouds (N_h=2 oktas cloud coverage and C_L=0) with bases between 7,000 and 8,000 ft AGL (h=8); no low clouds; middle clouds are altocumulus progressively invading the sky; no high clouds. *Missing data indicator:* The "8" group is not reported for clear skies.

Precipitation types			
Weather	Contraction	Weather	Contraction
Rain	R	Snow	S
Rain Showers.	RW	Snow Showers.	SW
Drizzle	L	Snow Pellets.	SP

Precipitation types			
Weather	Contraction	Weather	Contraction
Freezing Rain.	ZR	Snow Grains.	SG
Freezing Drizzle.	ZL	Ice Crystals.	IC

Precipitation types			
Weather	Contraction	Weather	Contraction
Ice Pellets.	IP	Hail	A
Ice Pellet Showers.	IPW		

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TABLE 2.—PRECIPITATION TYPES AND THEIR CONTRACTIONS

Obstructions to vision			
Obstruction	Contraction	Obstruction	Contraction
Volcanic ash.	VOLCANIC ASH.	Blowing Sand.	BN
Ice Fog ...	IF	Blowing Dust.	BD
Smoke	K	Blowing Spray.	BY
Blowing Snow.	BS	Fog	F
Ground Fog.	GF	Dust	D
Haze	H	.....	

Table 3.—Obstructions to Vision and their Contractions

Examples of Supplementary Data Reports

CAESCDCHS
TTAA00 KCHS DDHHMM
CHS SCD 1758 IP-/ 8672// 931024 933009 4/009

This SCD shows the occurrence of weather (ice pellets) along with coded remarks. 8672// indicates overcast low clouds (ragged shreds of stratus or cumulus associated with precipitation) with low cloud base height of 400–600 ft. 931024 represents a 6 hour snowfall amount of 2.4 inches. The water equivalent of snow on the ground was 0.9". The snow depth (4/009) at time of observation was 9 inches.

PHLSCDPHL
TTAA00 KPHL DDHHMM
PHL SCD 0455 70050 400700045

This SCD, issued at midnight EST, is from a WFO which does not have a collocated ASOS. The 24-hour precipitation total (70050) was 0.50 inches water equivalent. The 24-hour maximum and minimum temperatures were 70°F and 45°F respectively.

BISSCDBIS
TTAA00 KBIS DDHHMM
BIS SCD 0755 98096

This SCD from a network sunshine duration station reports 96 minutes of sunshine for the previous calendar day.

STLSDOMCI
TTAA00 KMCI DDHHMM
MCI SDO 0642 IP-

This SDO reports the onset of light ice pellets.

STLSDOMCI
TTAA00 KMCI DDHHMM
MCI SDO 0729 END IP

This SDO reports the cessation of ice pellets.

PHLSDOACY
TTAA00 KACY DDHHMM
ACY SDO 0759 SNOINCR ½

This SDO indicates snow depth increase at a rate of more than 0.5 inches/hour. The snow depth increased 1 inch during the past hour. Two inches of snow were on the ground at observation time.

PHLSDOACY
TTAA00 KACY DDHHMM
ACY SDO 2036 HLSTO ¾

This SDO reports a hail occurrence with the largest observed hailstone size of ¾ inch.

SEASDOSMP
TTAA00 KSMP DDHHMM
SMP SDO 1756 END IP / RWU CAD LYR 140 OVC

This SDO was reported from a mountainous site where terrain is problematic. Ice pellets ended. Rain showers of unknown intensity were observed to the southwest. There was a significant overcast cloud layer based at 14,000 feet above the observer's ground level. The "/ " remarks separator separates decodable and nondecodable remarks.

DENSDODEN
TTAA00 KDEN DDHHMM
DEN SDO 1056 CLD BASES OBSCG MTNS W

This SDO was also reported from a mountainous site where terrain is problematic. Clouds were observed obscuring mountains to the west.

/D ANC SDO HHMM
ANC SDO 1310 IF=

This SDO shows the initiation of ice fog. Notice that a different communications header and message ending code (=) are used in Alaska.

/D ANC SDO HHMM
ANC SDO 1645 END IF=

This SDO terminates the ice fog event.

[FR Doc. 95–30246 Filed 12–12–95; 8:45 am]
BILLING CODE 3510–12–M

[I.D. 111595A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P772#67).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92038 (Principal Investigators: Michael F. Tillman, Ph.D. and Rennie S. Holt, Ph.D.) has applied in due form for a permit to take Antarctic pinnipeds for purposes of scientific research.

DATES: Written comments must be received on or before January 12, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to conduct Level B harassment during census survey activities on Southern elephant seals (*Mirounga leonina*) and Antarctic fur seals (*Arctocephalus gazella*). Other animals that may be harassed are Crabeater seals (*Lobodon carcinophagus*), Leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), and Weddell seals (*Leptonychotes weddellii*). During the 1996 season, up to 200 *A. gazella* will be captured, weighed and released during growth studies at Seal Island. Thereafter, seals may be captured/released up to 5 times per year for a total take of 500 animals. Up to 3,000 animals may be inadvertently harassed during these activities.

Dated: November 30, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–30378 Filed 12–12–95; 8:45 am]
BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Wednesday, January 23, 1996, at the Wilson Inn-Airport, 4301 East Roosevelt, Little Rock, Arkansas 72206. The purpose of the meeting is to hold orientation for new members and plan for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30385 Filed 12–12–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:30 p.m. on Thursday, January 18, 1995, at the Midland Hotel, 172 West Adams Street, Chicago, Illinois 60604. The purpose of the meeting is to hold a consultation: Focus on Affirmative Action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joe Mathewson, 312–360–1110, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30386 Filed 12–12–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, January 25, 1996, at the Hilton Hotel, Poydras at the Mississippi, New Orleans, Louisiana 70140. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–30387 Filed 12–12–95; 8:45 am]
BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limit for Certain Wool Textile Products Produced or Manufactured in Poland

December 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limit.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for category 443 is being adjusted for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 62645, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 12, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to adjust the limit for category 443 to 239,430 numbers [1].

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

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Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-30436 Filed 12-11-95; 12:12 pm]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17337, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 6, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	18,713,748 numbers.
369-S [2]	226,255 kilograms.
Sublevels in Group II	
340	282,043 dozen.
435	57,828 dozen.
638/639	1,906,800 dozen.
640	397,460 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.95-30279 Filed 12-12-95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Supplement to a Final Environmental Impact Statement (EIS) for Proposed Construction of a Water Supply Reservoir on Sugar Creek in Williamson and Johnson Counties, IL

AGENCY: Department of the Army, U.S. Army Engineer District, Louisville, Corps of Engineers, CEORL-PD-R, P.O. Box 59, Louisville, Kentucky 40201-0059.

ACTION: Notice of Intent to Prepare a Draft SEIS.

SUMMARY: The U.S. Army Engineer District, Louisville Corps of Engineers is initiating the preparation of a Draft Supplement to a Final EIS for a regulatory permit application from the City of Marion, Illinois. The proposed action by the City of Marion is the construction of a water supply reservoir on Sugar Creek in Williamson and Johnson Counties, Illinois by the City of Marion, Illinois. The Draft supplement will address only the alternative action of purchase of water from Rend Lake, an existing reservoir in southern Illinois.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the preparation of this Draft Supplement to the Final EIS should be addressed to Mr. Terry Siemsen at the above address or by telephone (502) 582-5550.

SUPPLEMENTARY INFORMATION: The Louisville District prepared a Draft and Final EIS (Final EIS completed July 1995) for this permit application. The Final EIS concluded that purchase of water from Rend Lake by the City of Marion was not a viable alternative since the information available at that time indicated that the available water supply of that reservoir was fully committed. Since that document was completed and circulated for public opinion, additional information has been provided to the Louisville District that indicates that the public water supply capability of Rend Lake has not been fully committed.

Dated: December 1, 1995.

Michael F. Sullivan,

Lieutenant Colonel, Deputy Commander.

[FR Doc. 95-30291 Filed 12-12-95; 8:45 am]

BILLING CODE 3710-JS-M

Chief of Engineers Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92-463, the Federal Advisory Committee Act, this announces the forthcoming Executive Session of the Chief of Engineers Environmental Advisory Board. The meeting will be held from 8:30 a.m. to 3:30 p.m., Wednesday, January 24, 1996. The Executive Session is intended to be a business and planning opportunity; substantive environmental discussions will be limited to a review of the previous meeting on environmental partnering and selection of the topic for the Spring 1996 EAB forum. The meeting location is the Headquarters, U.S. Army Corps of Engineers, Room 8222D, 20 Massachusetts Avenue, NW, Washington, D.C. 20314-1000. The meeting is open to the public and any interested person may attend.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Rubenstein, Office of Environmental Policy, U.S. Army Corps of Engineers, Washington, D.C. 20314-1000, (202) 761-8731.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95-30292 Filed 12-12-95; 8:45 am]

BILLING CODE 3710-92-M

Department of the Army

Movement of Foreign Military Sales (FMS) Shipments—Policy Change

AGENCY: Military Traffic Management Command.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is changing the application of the Guaranteed Traffic (GT) and related freight movement programs to include movement of Foreign Military Sales (FMS) materiel. The policy change is effective 15 Jan 96 for new movements and for resolicited MTMC GT freight solicitations. Effective 15 Mar 96 the policy change will apply to all other applicable effective MTMC GT agreements and related freight movement programs. Carriers performing under existing GT agreements and related freight movement programs will be given the opportunity to voluntarily participate in the FMS movement. FMS movements will only be offered to those carriers who voluntarily participate. This policy change is the result of congressional repeal of most tariff requirements for motor carriers (other than carriers of household goods) in the Interstate Commerce Act.

DATES: This policy change is effective 15 Jan 96 for new movements and for resolicited MTMC GT freight solicitations; and effective 15 Mar 96 for current MTMC GT agreements and related freight movement programs.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP-T-ND, Room 621, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, MTOP-T-ND, (703) 681-6103.

SUPPLEMENTARY INFORMATION: Historically, The Interstate Commerce Act provided that carriers could provide transportation only at the rates set forth in a tariff filed with the Interstate Commerce Commission. A carrier could not charge a shipper any rate different from the filed tariff rate, with the exception that under 49 U.S.C. 10721 the carrier could transport property for the U.S. Government "at reduced rates", meaning rates that were reduced from the common carrier's tariff rates. By Public Law 103-311 (The Trucking Industry Regulatory Reform Act of 1994), effective 26 Aug 94, Congress repealed the requirement that motor carriers (other than carriers of household goods) file a tariff and apply that tariff. With some exceptions, tariffs are no longer filed by motor carriers with the Interstate Commerce Commission, and there is, accordingly, no requirement that carriers apply a tariff rate to FMS traffic. MTMC's policy change in its movement programs will require motor carriers to participate in FMS shipments for new movements and resolicited GT agreements; and, will accommodate motor carrier's voluntary agreements to include FMS shipments in currently effective GT agreements and related freight movement programs.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95-30293 Filed 12-12-95; 8:45 am]

BILLING CODE 3710-08-M

Proposed Amendments to the Courts of Criminal Appeals Rules of Practice and Procedure

AGENCY: U.S. Army Legal Services Agency.

ACTION: Notice.

SUMMARY: A joint committee representing the respective Courts of Criminal Appeals of the Air Force, Army, Navy-Marine Corps, and Coast Guard has drafted proposed changes to the joint Rules of Practice and Procedure for the Courts of Criminal Appeals (formerly named Courts of Military Review). The current rules are published at 32 CFR 150.1. The proposed changes will be submitted to the respective Judge Advocate Generals for approval and promulgation pursuant to Article 66(f) of the Uniform Code of Military Justice. Persons interested in reviewing the proposed amendments may obtain a copy by telephoning the Clerk of Court, U.S. Army Court of Criminal Appeals, Area Code 703, 681-6888.

FOR FURTHER INFORMATION CONTACT: Written comments or suggestions should be sent by mail so as to reach the Clerk of Court, Attention: Mr. Fulton, U.S. Army Court of Criminal Appeals, Nassif Building Room 204A, 5611 Columbia Pike, Falls Church, VA 22041-5013, on or before January 15, 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95-30294 Filed 12-12-95; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96-101-000, et al.]

Entergy Power Inc., et al.; Electric Rate and Corporate Regulation Filings

December 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power, Inc.

[Docket No. ER96-101-000]

Take notice that on November 24, 1995, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Dartmouth Power Associates Ltd

[Docket No. ER96-149-000]

Take notice that on November 30, 1995, Dartmouth Power Associates Ltd tendered for filing an amendment in the above-referenced docket.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER96-361-000]

Take notice that on November 13, 1995, Public Service Company of Colorado tendered for filing comparable transmission service tariffs, including its Point-to-Point Transmission Service Tariff in Docket No. ER95-1268-000.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER96-434-000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow

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Energy Marketing Corporation under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER96–435–000]

Take notice that on November 24, 1995, The Dayton Power and Light Company (Dayton), tendered for filing an executed Interconnection Agreement between Dayton and Ohio Valley Electric Corporation (OVEC).

Pursuant to the rate schedules attached to the Agreement, Dayton will provide to OVEC power and/or energy for resale. Dayton and OVEC are currently parties to an Inter-Company Power Agreement for the sale of surplus power and energy to Dayton from OVEC.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. United Illuminating Company

[Docket No. ER96–436–000]

Take notice that on November 27, 1995, United Illuminating Company (UI), submitted for informational purposes all individual Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2 during the six-month period of May 1, 1995 through October 31, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER96–437–000]

Take notice that on November 27, 1995, Montaup Electric Company (Montaup), tendered for filing: 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and the following companies (Buyers):

1. Braintree Electric Light Department (BELD);
2. Middleborough Gas & Electric Department (MG&E);
3. CNG Energy Service (CNG); and
4. KOCH Power Services, Inc. (KPSI).

The service agreements under Original Volume No. IV with MG&E, CNG, and KPSI allow them, through certificates of concurrence, to provide exchange capacity from one of their units, in order to enable Montaup to make a system sales while maintaining its minimum monthly system capability under the NEPOOL Agreement.

The transactions under the service agreements are purely voluntary and will be entered into only if mutually beneficial and agreeable. Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective November 1, 1995 for the KPSI agreement and October 30, 1995 for the other agreements.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER96–438–000]

Take notice that on November 27, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation; WPS Energy Services, Inc.; WPS Power Development, Inc.

[Docket No. ER96–439–000]

Take notice that on November 22, 1995, Wisconsin Public Service Corporation (WPSC), WPS Energy Services, Inc., and WPS Power Development, Inc., each of Green Bay, Wisconsin, submitted requests for authorization to sell capacity and energy at market-based rates. In support of the requests, WPSC submitted revisions to its comprehensive, open-access transmission tariff (the Tariff). They request a January 22, 1996 effective date.

They state that this filing has been posted in accordance with the Commission's Regulations and that copies of the filing have been served upon the Wisconsin Public Service Commission, the Michigan Public Service Commission, and all persons listed on the official service lists in Docket Nos. ER95–1528–000 and ER95–1546–000.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER96–440–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL), filed the Contract for purchases and Sales of Power and Energy between FPL and Tennessee Power Company. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–441–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Rainbow Energy Marketing Corporation. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER96–442–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and AES Power, Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–445–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Coastal Electric Services Company for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1995, or as soon thereafter as practicable.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER96–446–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and InterCoast Power Marketing Company. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. ER96–447–000]

Take notice that on November 28, 1995, Nevada Power Company (NPC) tendered for filing a Network Integration Transmission Service Tariff (Network Tariff), and a Point-to-Point Transmission Service Tariff (Point-to-Point Tariff).

NPC requests that the Network Tariff and Point-to-Point Tariff become effective upon expiration of the 60-day notice period.

Copies of this filing have been served on the Public Service Commission of Nevada.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER96–448–000]

Take notice that on November 28, 1995 Commonwealth Edison Company (ComEd) submitted Service Agreements establishing Wisconsin Power and Light (WP&L), dated October 20, 1995, Louis Dreyfus Electric Power Inc. (Louis Dreyfus) and Industrial Energy Applications (IEA), dated October 24, 1995, Citizens Lehman Power Sales (Citizens), Catex Vitol Electric L.L.C. (Catex), MidCon Power Services Corp. (MidCon), Wisconsin Public Power Inc. System (WPPI), and Rainbow Energy Marketing Corporation (REMC) ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Point to Point Service Tariff as FERC Electric Tariff, Second Revised Volume No. 3.

ComEd requests an effective date of October 21, 1995 for the Service Agreement with WP&L, an effective date of October 24, 1995 for the Service Agreements between ComEd and Louis Dreyfus and IEA, and an effective date of November 9, 1995 for the Service Agreements between ComEd and Citizens, Catex, MidCon, WPPI, and REMC and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon WP&L, Louis Dreyfus, IEA, Citizens, Catex, MidCon, WPPI, REMC and the Illinois Commerce Commission.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER96–449–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing Amendment Number Two to Short-Term Agreement to Provide Capacity and Energy between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach, Florida.

FPL requests that the amendment be permitted to become effective on January 1, 1996.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER96–450–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) tendered for filing service agreements with Sonat Power Marketing Inc. for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the amendment be permitted to become effective on December 1, 1995, or as soon thereafter as practicable.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER96–451–000]

Take notice that on November 28, 1995, Florida Power & Light Company (FPL) filed the Contract Purchases and Sales of Power and Energy between FPL and Industrial Energy Applications, Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER96–452–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated November 10, 1995 with American Municipal Power-Ohio, Inc. Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds American Municipal Power-Ohio, Inc. as a customer under the Tariff. DLC requests an effective date of November 10, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER96–453–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated October 30, 1995 with PECO Energy Company (PECO) under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds PECO as a customer under the Tariff. DLC requests an effective date of October 30, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER96–454–000]

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated October 26, 1995 with Rainbow Energy Marketing Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Rainbow Energy Marketing Corporation as a customer under the Tariff. DLC requests an effective date of October 26, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

Docket No. ER96–455–000

Take notice that on November 28, 1995, Duquesne Light Company (DLC) filed a Service Agreement dated November 1, 1995 with Stand Energy Corporation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Stand Energy Corporation as a customer under the Tariff. DLC requests an effective date of November 1, 1995 for the Service Agreement.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Power, Inc.

[Docket No. ER96–456–000]

Take notice that Entergy Power, Inc. on November 28, 1995, tendered for filing an Energy Exchange Agreement with the U.S. Department of Energy, and Southwestern Power Administration.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission's notice requirements.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Northern Indiana Public Service Company

[Docket No. ER96–457–000]

Take notice that on November 29, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Sonat Power Marketing Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Sonat Power Marketing Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Sonat Power Marketing Inc. request waiver of the Commission's sixty-day notice

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requirement to permit an effective date of December 1, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER96–406–000]

Take notice that on December 1, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing Transmission Service Tariff No. 8, which provides for Long-Term Firm, Short-Term Firm and Non-Firm point-to-point transmission service and related ancillary services, and Network Transmission Service Tariff No. 3, which provides for network integration transmission service and related ancillary services. NUSCO states that these revised transmission tariffs conform to the pro forma tariffs contained in the Notice of Proposed Rulemaking in Docket No. RM95–8–000. NUSCO also tendered for filing Sale for Resale Tariff No. 7, which provides for the sale of wholesale power outside New England at market-based rates. NU is requesting an effective date of January 30, 1996.

NUSCO states that a copy of this filing has been mailed to all wheeling customers with whom NU has entered into a service agreement under any of its transmission tariffs, to the intervenors in Docket No. ER95–1686–000 and ER95–1698–000, and to the Connecticut, Massachusetts and New Hampshire state public utility commissions.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30348 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–133–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER96–133–000]

Take notice that on November 30, 1995, Nevada Power Company (Nevada Power) tendered for filing an amendment to its October 23, 1995 filing in the above referenced docket. Docket No. ER96–133–000 is a Non-Firm Transmission Service Agreement between Nevada Power Company and Rainbow Energy Marketing Corporation (Rainbow). The amendment provides cost support for the rates and charges contained n the original filing.

Copies of this filing were served on Rainbow and the Nevada Public Service Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Indiana Public Service Company

[Docket No. ER96–406–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Kimball Power Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Kimball Power Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Kimball Power Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER96–407–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Koch Power Services, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Koch Power Services, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Koch Power Services, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER96–408–000]

Take notice that on November 21, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and The Dayton Power and Light Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Dayton Power and Light under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Dayton Power and Light request waiver of the Commission's sixty-day notice requirement to permit an effective date of November 30, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. CINergy Services, Inc.

[Docket No. ER96–409–000]

Take notice that on November 21, 1995, CINergy Services, Inc. tendered for filing the following service agreement under CINergy's Non-Firm Point-to-Point Transmission Service Tariff entered into by: The Wabash Valley Power Association, Rainbow Energy Marketing Corp., Louis Dreyfus Electric Power Inc., and American Municipal Power-Ohio, Inc.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER96–410–000]

Take notice that on November 21, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Service Agreement between NMPC and Industrial Energy Applications, Inc. (IEA). This Service Agreement specifies that IEA has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and IEA to enter into separately scheduled transactions under which NMPC will sell to IEA capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of November 12, 1995. NMPC has requested waiver of the Commission's notice requirements.

NMPC has served copies of the filing upon the New York State Public Service Commission and IEA.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER96–411–000]

Take notice that on November 21, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Service Agreement between NMPC and Koch Power Services, Inc. (Koch Power). This Service Agreement specifies that Koch Power has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Koch Power to enter into separately scheduled transactions under which NMPC will sell to Koch Power capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of November 12, 1995. NMPC has requested waiver of the Commission's notice requirements.

NMPC has served copies of the filing upon the New York State Public Service Commission and Koch Power.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER96–412–000]

Take notice that on November 21, 1995, Commonwealth Edison Company (ComEd) submitted Service Agreements establishing Industrial Energy Applications, Inc. (IEA), dated October 9, 1995, Louisville Gas and Electric Company (LG&E), dated September 15, 1995, Aquila Power Corporation (Aquila), dated September 29, 1995, and The Dayton Power and Light Company (DP&L), dated November 7, 1995 as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of October 21, 1995, for the Service Agreements between ComEd and IEA, LG&E, and Aquila and an effective date of November 7, 1995 for the Service Agreement between ComEd and DP&L and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IEA, LG&E, Aquila, DP&L and the Illinois Commerce Commission.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER96–413–000]

Take notice that on November 20, 1995, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements between PGE and the City of Glendale Public Service Department and Englehard Power Marketing Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective December 1, 1995.

Copies of this filing were served upon the list of entities appearing on the Certificate of Service attachment to the filing letter.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER96–414–000]

Take notice that on November 14, 1995, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule H–4, Supplement No. 11 to KCPL's Rate Schedule FPC No. 34.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER96–415–000]

Take notice that on November 14, 1995, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule E–MPA–4, Supplement No. 26 to KCPL's Rate Schedule FPC No. 56.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER96–416–000]

Take notice that on November 21, 1995, MidAmerican Energy Company (MidAmerican), One River Center Place, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed an Application for Approval of Depreciation Rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

MidAmerican is the surviving corporation and utility of the July 1, 1995, merger of Iowa-Illinois Gas and Electric Company with Midwest Power Systems, Inc. and its exempt holding company parent, Midwest Resources, Inc. MidAmerican states that since July 1, 1995, the effective date of the merger, MidAmerican has used the depreciation rates used by its predecessors immediately prior to the merger. This practice has resulted in the application of two different depreciation rates to depreciable property held in the same account. MidAmerican requests authorization to use a single set of electric depreciation rates for accounting and financial reporting purposes effective on January 1, 1996.

Copies of the filing were served on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

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Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–417–000]

Take notice that on November 22, 1995, Florida Power & Light Company (FPL), tendered for filing an open-access network integration service transmission tariff, Tariff No. 4. FPL proposes to make the tariff effective January 22, 1996.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–418–000]

Take notice that on November 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Aquila Power Corporation (AQUILA), dated November 17, 1995. This Service Agreement specifies that AQUILA has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and AQUILA to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 17, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–419–000]

Take notice that on November 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Dayton Power & Light Company (DPLC), dated November 17, 1995. This Service Agreement specifies that DPLC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and DPLC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 17, 1995 for the Service Agreement.

GPU has served copies of this filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER96–420–000]

Take notice that on November 22, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Vermont Marble Power Division of OMYA, Inc. and Virginia Power, dated November 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Vermont Marble Power Division of OMYA, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of this filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER96–421–000]

Take notice that on November 22, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Commonwealth Edison Company and Virginia Power, dated November 10, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Commonwealth Edison Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and the Illinois Commerce Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96–422–000]

Take notice that on November 22, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 10, 1995, with New York State Electric & Gas Corporation (NYSEG) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NYSEG as a customer under the Tariff.

PECO requests an effective date of November 10, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NYSEG and to the Pennsylvania Public Utility Commission.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER96–423–000]

Take notice that on November 22, 1995, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Energy between South Carolina Electric & Gas Company and Entergy Power, Inc.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves.

Copies of this filing were served upon Entergy Power, Inc.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER96–424–000]

Take notice that on November 22, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and SONAT Power Marketing, Inc. (SONAT).

SDG&E requests that the Commission allow the Agreement to become effective on the 22nd day of January 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and SONAT.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER96–425–000]

Take notice that on November 22, 1995, New England Power Company submitted for filing a letter agreement for transmission service to Indeck Pepperell Power Associates, Inc.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Company

[Docket No. ER96–426–000]

Take notice that on November 22, 1995, New England Power Company (NEP) tendered for filing a Notice of Cancellation of Appendix A to Service Agreement No. 39 between NEP and Canal Electric Company under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket No. ER96–427–000]

Take notice that on November 22, 1995, Boston Edison Company (Edison), filed a standstill agreement between itself and Thirteen Municipal Customers extending the one-year claims limitation provision in the Pilgrim power purchase contract of each of the Municipals with regard to disputes over 1993 and 1994 billings. The purpose of the standstill agreement is to allow the parties to achieve a settlement agreement regarding 1993 and 1994 billing disputes. The standstill agreement makes no other changes to the rates, terms and conditions of the contracts between Edison and the Thirteen Municipals.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER96–428–000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER96–429–000]

Take notice that on November 24, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 16, 1995, with Heartland Energy Services, Inc. (HES) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HES as a customer under the Tariff.

PECO requests an effective date of November 16, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to HES and to the Pennsylvania Public Utility Commission.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Southwestern Public Service Co.

[Docket No. ER96–430–000]

Take notice that on November 24, 1995, Southwestern Public Service Company (Southwestern) and Rainbow Energy Marketing Corporation (Rainbow), have entered into an umbrella service agreement dated October 31, 1995, which allows Rainbow to take non-firm point-to-point transmission service under Southwestern's Transmission Service Tariff (accepted subject to refund on August 1, 1995 in Docket No. ER95–1138–000).

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Kentucky Utilities Company

[Docket No. ER96–431–000]

Take notice that on November 24, 1995, Kentucky Utilities Company (KU), tendered for filing a Service agreement between KU and Illinois Power Company, Inc. under its TS Tariff. KU requests an effective date of October 27, 1995.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER96–432–000]

Take notice that on November 24, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Madison Gas and Electric Company

[Docket No. ER96–433–000]

Take notice that on November 24, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Upper Peninsula Power Company under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: December 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power & Light Company

[Docket No. ER96–443–000]

Take notice that on November 28, 1995, Florida Power & Light Company filed the Contract for Purchases and Sales of Power and Energy between FPL and Sonat Power Marketing Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power & Light Company

[Docket No. ER96–444–000]

Take notice that on November 28, 1995, Florida Power & Light Company filed the Contract for Purchases and Sales of Power and Energy between FPL and LG&E Power Marketing Inc. FPL requests an effective date of December 1, 1995.

Comment date: December 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

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and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30347 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–776–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

December 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP95–776–000]

Take notice that on September 22, 1995 Texas Eastern Transmission Corporation ("Texas Eastern"), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP95–776–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the Pointe Au Chien compressor station and certain short laterals, meter stations and appurtenant facilities, all in Lafourche and Terrebonne Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Two of the compressors at Pointe Au Chien compressor station and the appurtenant facilities were authorized by Commission order dated October 2, 1970 in Docket No. CP70–314. The remaining compressor at Pointe Au Chien compressor station was authorized by Commission order dated July 18, 1975 in Docket No. CP75–128. The laterals and meter stations were constructed and installed during the 1970s and 1980s pursuant to Texas Eastern's Blanket Certificates.

Texas Eastern states that it is no longer utilizing the facilities to transport gas supplies. Further, Texas Eastern submits that the natural gas reserves connected to the Facilities have been depleted, and that Texas Eastern is not aware of any significant prospects of natural gas reserves being developed in the vicinity of the Facilities that could be delivered to Texas Eastern's mainline system through such Facilities.

Comment date: December 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP96–92–000]

Take notice that on December 1, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–92–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in El Paso County, Texas under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to construct and operate a new delivery point. The new delivery point will permit the interruptible transportation and delivery of natural gas for Integrated Services, Inc.'s (ISI) account to associated Milk Producers, Inc. (AMPI). ISI has advised El Paso that AMPI owns and operates a dairy processing plant and utilizes natural gas to fuel boilers and milk dryers. El Paso states that this would provide AMPI with the flexibility of an alternate gas supply source.

Comment date: January 22, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–93–000]

Take notice that on December 1, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approval, on an expedited basis, the partial abandonment by sale of (1) an existing dual twelve-inch skid-mounted metering station with flow control and (2) appurtenant interconnecting piping (Jim Wells Meter), located at the interconnection between Padre Island Pipeline System (PIPS) and Tennessee Gas Pipeline System in Jim Wells County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it proposes to partially abandon by sale to Gasdel Pipeline System Incorporated (Gasdel) a 7.914% ownership interest in the Jim Wells Meter. Gasdel has a 7.914% ownership in PIPS pursuant to a Construction and Ownership Agreement dated April 1, 1982 between Transco and Gasdel. Both Transco and Gasdel continue to transport volumes on PIPS and through the Jim Wells Meter. Gasdel seeks to purchase, and Transco has agreed to sell at net book value on the effective date of the abandonment, a 7.914% ownership interest in the Jim Wells Meter. Transco further states that it seeks authorization for such a partial abandonment by sale of these facilities in order to provide Gasdel with capacity through the Jim Wells Meter equivalent to Gasdel's ownership percentage on PIPS. Transco indicates that the proposed partial abandonment will have no impact on the daily design capacity of or operating conditions on its system, and no service to any of its customers will be impacted by the proposed partial abandonment.

The cost to Gasdel for a 7.914% ownership interest in the Jim Well Meter is estimated to be $22,500.00. Abandonment of the Jim Wells Meter will not require any removal of facilities.

Comment date: December 18, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of

Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30349 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1359–000]

Amoco Power Marketing Corp; Notice of Issuance of Order

December 8, 1955.

On July 11, 1995, as amended September 14, 1995 and October 27, 1995, Amoco Power Marketing Corporation (Amoco Power) submitted for filing a rate schedule under which Amoco Power will engage in wholesale electric power and energy transactions as a marketer. Amoco Power also requested waiver of various Commission regulations. In particular, Amoco Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Amoco Power.

On November 29, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Amoco Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Amoco Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect or any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Amoco Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30345 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–362–000]

Boston Edison Co.; Notice of Filing

December 7, 1995.

Take notice that on November 9, 1995, Boston Edison Company (Edison), tendered for filing for informational purposes the 1994 true-up to actual for the Substation 402 Agreement (FPC Rate No. 149) between Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–517–000.

Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30319 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–37–000]

Boundary Gas, Inc.; Notice of Refund Report

December 7, 1995.

Take notice that on November 29, 1995, Boundary Gas, Inc. (Boundary) submitted a refund report reflecting the flowthrough of the Gas Research Institute ("GRI") refund received by Boundary on September 29, 1995. Boundary states, that pursuant to the 1993 GRI settlement, and in compliance with the Commission order approving such settlement, it has credited such refund proportionally to its firm customers on non-discounted service based on the GRI surcharges those customers paid during the calendar year 1994.

Boundary states that each customer's credit was reflected on its invoice for October, 1995 services issued on or about November 15, 1995.

Boundary states that a copy of this filing is being mailed to each of Boundary's affected customers and the state commissions of New York, Connecticut, New Jersey, Massachusetts, New Hampshire and Rhode Island.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not

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later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30320 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–67–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Sheet Nos. 5, 8 and 14.

Chandeleur states that it is proposing to change its Fuel and Line Loss provision in its FT and IT Rate Schedules from allocation of actual Fuel and Line Loss to a fixed retention percentage based on allocated receipt volumes. This percentage will be retained by Chandeleur each month to cover the actual Fuel and Line Loss. Any differences between the actual Fuel and Line Loss, and the retained volumes will be made up by an annual change/recalculation in the retention percentage. The 1996 Fuel and Line Loss percentage is set at 0.5% on allocated receipt volumes.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Chandeleur has proposed an effective date for the revised tariff sheets of January 1, 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 375.211 to the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30321 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 7, 1995.

Take notice that on November 30, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourteenth Revised Sheet No. 11 reflecting an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from (1.12%) to (0.76%), effective January 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30309 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–5–000]

Dow Pipeline Company; Notice of Petition for Rate Approval

December 7, 1995.

Take notice that on December 1, 1995, Dow Pipeline Company (Dow Pipeline) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.0782 per MMBtu, plus 0.7% in-kind fuel reimbursement, for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Dow Pipeline's mailing address is P.O. Box 4286, Houston, Texas 77210.

Dow Pipeline's petition states it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA. Dow Pipeline provides interruptible transportation service pursuant to Section 311(a)(2) of the NGPA through its facilities located in Wharton, Fort Bend, Brazoria, Whaller, and Matagorda Counties, Texas. This petition is intended to establish a new system-wide maximum transportation rate for Section 311(a)(2) service, and is filed pursuant to the terms of the Stipulation and Agreement of Settlement filed July 8, 1993, in Docket No. PR93–6–000, which required Dow Pipeline to file an application on or before December 1, 1995, to justify its current rate or to establish a new system-wide rate. Dow Pipeline proposes an effective date of December 1, 1995.

Any person desiring to be heard or to protest this filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before December 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30322 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–52–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 29, 1995, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, Volume Nos. 1, 1–A, and 2, the following tariff sheets, to become effective January 1, 1996:

Third Revised Volume No. 1

First Revised Sheet No. 10
Second Revised Sheet No. 200
First Revised Sheet No. 326

Second Revised Volume No. 1–A

Second Revised Sheet No. 1
First Revised Sheet No. 10
3rd Revised Fourth Revised Sheet No. 20
Third Revised Sheet No. 21
2nd Revised First Revised Sheet No. 22
3rd Revised Fourth Revised Sheet No. 23
Third Revised Sheet No. 24
3rd Revised Fourth Revised Sheet No. 25
Third Revised Sheet No. 26
2nd Revised Third Revised Sheet No. 27–29
Second Revised Sheet No. 101–103
Second Revised Sheet No. 111–113
2nd Revised Original Sheet No. 114–115
Second Revised Sheet No. 127–129
First Revised Sheet No. 202
First Revised Sheet No. 210
Second Revised Sheet No. 214
First Revised Sheet No. 216–218
First Revised Sheet No. 225
First Revised Sheet No. 227–228
First Revised Sheet No. 236
First Revised Sheet No. 269–270
First Revised Sheet No. 284
First Revised Sheet No. 330–332
Second Revised Sheet No. 357
Second Revised Sheet No. 401–402
Second Revised Sheet No. 407
Second Revised Sheet No. 416–417
Second Revised Sheet No. 423
Second Revised Sheet No. 434–435
Second Revised Sheet No. 441

Third Revised Volume No. 2

3rd Rev Thirty-Fifth Rev Sheet No. 1–D.2
Twenty-Seventh Revised Sheet No. 1–D.3
Seventh Revised Sheet No. 1–H
Eighth Revised Sheet No. 1–I
Eighth Revised Sheet No. 1–J
Sixth Revised Sheet No. 1049
Second Revised Sheet No. 1815
Second Revised Sheet No. 1973

El Paso states that it is filing pursuant to Section 4 of the Natural Gas Act to terminate gathering services, revise Standards of Conduct, abandon Special Rate Schedules, and place the implementing tariff sheets into effect in order to complete the transfer of El Paso's gas gathering, treating and processing functions to El Paso Field Services Company.

El Paso states that this filing is to comply with the Commission's order issued September 13, 1995 in Docket Nos. CP94–183–000 and 001 which approved the transfer of gathering facilities conditioned upon a tariff filing to implement the proposed changes.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30313 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Eleventh Revised Sheet No. 8A
Sixth Revised Sheet No. 8A.01
Third Revised Sheet No. 8A.02

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The Fuel Reimbursement Charge established pursuant to Section 27 consists of the Current Fuel Reimbursement Charge and the Annual Fuel Surcharge.

The Annual Fuel Surcharge is computed for each twelve-month Recovery Period beginning each January 1 and is designed to refund or collect, on an in-kind basis, the balance of the Deferred Fuel Account as of the preceding August 31. On May 1, 1995 FGT filed in Docket No. TM95–5–34 to adjust its initial Annual Fuel Surcharge to include volumes recorded in the Deferred Fuel Account between September 1, 1994 and February 28, 1995. This was done, in part, to segregate the balance in the Deferred Fuel Account related to pre-Phase III expansion activity from any ovFGT's Phase III expansion was placed in service on March 1, 1995.

Pursuant to Section 27 of the GTC of its Tariff, FGT, is filing herein to revise the Annual Fuel Surcharge to be effective January 1, 1996 to recover the net under recovery of fuel volumes recorded in the Deferred Fuel Account between March 1, 1995 and August 31, 1995. The Annual Fuel Surcharge now will be applicable to all market area shippers on FGT's system, including shippers under FGT's Rate Schedule FTS–2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30309 Filed 12–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Refund

December 7, 1995.

Take notice that on November 30, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing worksheets reflecting the proposed lump sum distribution of Excess Revenues derived from providing service under Rate Schedules ITS and ISS and certain revenues derived from Authorized Overrun Service.

MRT states that the filing provides for the flowthrough of $161,438.91 in Excess Revenues attributable to the twelve month period ended October 31, 1995. MRT states that the filing is being made pursuant to Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Third Revision Volume No. 1.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30306 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–36–000]

Mississippi River Transmission Corp; Notice of Proposed Flowthrough of Account No. 858 Refund

December 7, 1995.

Take notice that on November 28, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Transok, Inc.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on January 23, 1996 each customer's respective portion of the refund including interest through January 22, 1996.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30323 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–2–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 7, 1995.

Take notice that on December 1, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northerns FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective November 1, 1995.

Substitute First Revised Sheet No. 211

Northern states that this filing is being made to comply with the Commission's Letter Order issued October 30, 1995, in Docket No. RP96–2–000.

Northern states that Sheet No. 211 has been revised to retain the existing meter responsibility mechanism as the default mechanism, with additional language allowing for any other mutually agreed upon alternative.

Northern also states that copies of the filing were served upon the companys customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30314 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–608–005 and MT95–12–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 7, 1995.

Take notice that on November 30, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective December 31, 1995:

Third Revised Sheet No. 221

Northern asserts that the purpose of this filing is to comply with the Commission's Order issued November 29, 1995, in the above-referenced dockets.

Northern states that Sheet No. 221 is being modified by addition of a provision for affiliated gathering.

Northern further states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30324 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–86–000]

Pacific Gas Transmission Co; Notice of Compliance Filing

December 7, 1995.

Take notice that on December 1, 1995, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Tenth Revised Sheet No. 4; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Ninth Revised Sheet No. 7. PGT requested the above-referenced tariff sheets become effective January 1, 1996.

PGT asserts that the purpose of this filing is to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively, of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect a reduction in PGT's fuel and line loss surcharge percentage to become effective January 1, 1996. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's judrisdicational customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30307 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–172–006]

Panhandle Easter Pipe Line Co.; Notice of Compliance Filing

December 7, 1995.

Take notice that on November 30, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 30, 1995.

Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued October 31, 1995, in Docket Nos. RP93–172–004, RP93–172–006 and RP94–238–001. 73 FERC ¶ 61,151.

Panhandle states that in compliance with Ordering Paragraph (C) of the Commission's October 31, 1995 order, it has submitted tariff sheets for approval to direct bill its former sales customers certain amounts which previously had been approved for recovery through surcharges pursuant to the provisions of Section 18.12 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle also states that in compliance with Ordering Paragraph (D) of the Commission's October 31, 1995 order, on November 30, 1995 it refunded to its transportation customers the amounts previously collected through the application of the Section 18.12 surcharge which will now be direct billed to its former sales customers, has filed workpapers supporting the revised accounting methodology approved in the order and has filed a workpaper reflecting the status of the direct bill amounts previously approved by the Commission.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and all applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants a party to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30325 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–003]

Tennessee Gas Pipeline Company; Notice of Motion Filing

December 7, 1995.

Take notice that on December 1, 1995, Tennessee Gas Pipeline Company (Tennessee) in accordance with the Commission's Order Accepting Stipulation and Agreement With Modifications issued November 1, 1995 in the captioned docket, filed to move the following tariff sheets into effect as of January 1, 1996:

Second Revised Sheet No. 203
Second Revised Sheet No. 204
Fourth Revised Sheet No. 205
First Revised Sheet No. 205A
Original Revised Sheet No. 205B
First Revised Sheet No. 206
First Revised Sheet No. 209
First Revised Sheet No. 209A
Third Revised Sheet No. 210
Second Revised Sheet No. 211
First Revised Sheet No. 211A
Third Revised Sheet No. 212
First Revised Sheet No. 217
Second Revised Sheet No. 227
Original Sheet No. 227A
Second Revised Sheet No. 314
Original Sheet Nos. 314 A-C
Second Revised Sheet No. 315
First Revised Sheet No. 393
Original Sheet No. 393A
Third Revised Sheet No. 397A
Original Sheet No. 397B
Third Revised Sheet No. 398

Tennessee states that these tariff sheets place into effect Phase I of the Stipulation and Agreement filed on July 25, 1995 and approved in the November 1, Order. Specifically, the filed tariff sheets reflect: (1) adoption of a new "bumping" policy governing the rights of firm shippers to interrupt interruptible shippers with mid-day nomination changes. (2) provision of additional flexibility for hourly

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nominations to certain shippers, (3) reduction of the currently effective "zone proximity" requirements, (4) recovery of third party short term storage costs through the cash out mechanism, and (5) establishment of a Maximum Allowed Volume (AMAV) that addresses unauthorized overruns at delivery points by establishing firm entitlements under Operational Balancing Agreements held by delivery point operators.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20526, in accordance with Section 211 of the Commission Rules of Practice and Procedure, 18 CFR 385.211. Pursuant to Section 154.210 of the Commission's Regulations, all such protests should be field not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30315 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–197–008]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Tennessee Gas Pipeline Company (Tennessee) filed a limited application pursuant to Section 4 of the Natural Gas Act, and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder, to adjust the gas supply realignment costs ("GSR costs") previously reported in Tennessee's past GSR quarterly filings to comply with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued November 1, 1995 in Docket Nos. RP94–197–005, RP93–151–007, RP94–425–003, and RP94–425–004. Tennessee states that the tariff sheets identified below set forth Tennessee's revised GSR-related charges:

Third Revised Sheet No. 20
Fourth Revised Sheet No. 21
Seventh Revised Sheet No. 21A
Twelfth Revised Sheet No. 22
Seventh Revised Sheet No. 22A
Third Revised Sheet No. 23
Original Sheet No. 23A
Twelfth Revised Sheet No. 24
Sixth Revised Sheet No. 25
Third Revised Sheet No. 26
Fourth Revised Sheet No. 26A
Third Revised Sheet No. 26B
Third Revised Sheet No. 27
First Revised Sheet No. 29A
Seventeenth Revised Sheet No. 30

Tennessee states that copies of the filing have been mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30317 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet:

Fifth Revised Sheet No. 126

The proposed effective date of this revised tariff sheet is January 1, 1996.

Texas Eastern states that this revised tariff sheet is being filed pursuant to Section 15.6(E), Applicable Shrinkage Adjustment (ASA), of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern seeks by this interim filing to revise the ASA percentages established in its Annual ASA filing to reflect the increased fuel now projected to be required by Texas Eastern for operation of its pipeline system in providing service to its customers. Texas Eastern proposes to revise by this filing only those ASA percentages to be effective for the period, January 1, 1996 through March 31, 1996, the last three months in the current winter season.

Texas Eastern states that interim revisions to its ASA percentages are specifically permitted by Section 15.6(E) of the tariff.

Texas Eastern states that as a consequence of higher throughput assumptions, Texas Eastern projects that it will require an additional 2.7 MMdth of fuel during the period, December 1, 1995 through March 31, 1996, which higher fuel requirement translates into an increase in the ASA percentages from 5.57% to 6.41% for transportation from the ELA area to M–3. Texas Eastern is requesting to place the revision in effect as of January 1, 1996 rather than at the beginning of the winter season on December 1, 1995 because Customers have already determined and nominated their December 1995 service requirements on Texas Eastern's system utilizing the ASA percentages filed on October 31, 1995.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern, interested state commissions, all interruptible shippers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30312 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–004]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on November 30, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 17, 1995

3rd Revised Sheet No. 83
2nd Revised Sheet No. 84

Transwestern states that the above-referenced tariff sheets are being filed in compliance with the Commission's October 17th Order and set forth revisions to Section 24, "Purchase Gas Adjustment Alternate Rate Recovery Mechanism (PGAR Mechanism)," of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

Specifically, Transwestern has revised three subsections. First, Section 24.1(b) has been revised to provide for the following order of discounting: (1) GRI demand surcharge; (2) base reservation charge; and (3) PGAR reservation surcharge. Second, Section 24.1(c) has been revised to provide that the estimated interest for the period beginning june 1, 1994 shall be CFR 154.67(c)(2)(iii)(A).1 Third, Section 24.3, which was set forth in Pro Forma Sheet No. 84 (filed with Transwestern's Initial Comments) and which included a true-up mechanism, has been revised to delete such true-up mechanism, and to provide for the following: (i) Termination of the PGAR surcharge upon recovery of total PGAR Costs, plus interest, including possible early termination prior to October 31, 1996; (ii) Transwestern's payment of any refunds, plus interest; and (iii) Transwestern's submitting a report demonstrating compliance with the order of discounting set forth in Section 24.1(b).

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed no later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30316 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–43–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1995.

Take notice that on December 1, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 1996:

Second Revised Volume No. 1
Eighth Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Third Revised Sheet No. 250
Original Sheet No. 250A
Original Volume No. 2
Second Revised Sheet No. 362

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1995.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30311 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–38–000]

Williston Basin Interstate Pipeline Co.; Notice of Filing

December 7, 1995.

Take notice that on December 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 1, 1995:

Eighth Revised Sheet No. 778
Tenth Revised Sheet No. 779
Ninth Revised Sheet No. 780
Twelfth Revised Sheet No. 785
Thirteenth Revised Sheet No. 786
Thirteenth Revised Sheet Nos. 787–788
Fourteenth Revised Sheet Nos. 789–790
Thirteenth Revised Sheet No. 791
Fourteenth Revised Sheet Nos. 792–795
Ninth Revised Sheet No. 796
Eleventh Revised Sheet No. 829

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30326 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–146–000]

Yankee Energy Marketing Co.; Notice of Issuance of Order

December 8, 1995.

On October 25, 1995, Yankee Energy Marketing Company (Yankee Energy) submitted for filing a rate schedule under which Yankee Energy will engage in wholesale electric power and energy transactions as a marketer. Yankee Energy also requested waiver of various Commission regulations. In particular, Yankee Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Yankee Energy.

On November 29, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard

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or to protest the blanket approval of issuances of securities or assumptions of liability by Yankee Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Yankee Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Yankee Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30346 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRC–5344–8]

Retrofit Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Appoval of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency certification of equipment for the urban bus retrofit/rebuild program.

SUMMARY: The Agency received a notification of intent to certify equipment signed March 13, 1995 from the Cummins Engine Company (Cummins) with principal place of business at BOX 3005, COLUMBUS, IN 47202–3005, for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR Sections 85.1401–85.1415. The equipment is applicable to Cummins petroleum-fueled LTA10–B model petroleum fueled 4-stroke heavy-duty engines that were originally manufactured between November 1985 and December 1992. On June 21, 1995, EPA published a notice in the **Federal Register** that the notification had been received and made the notification available for public review and comment for a period of 45-days (60 FR 32316). EPA has completed its review of this notification, and the comments received, and the Director of the Engine Programs and Compliance Division [1] has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment effective December 13, 1995.

The certified equipment provides 25 percent or greater reduction in exhaust emissions of particulate matter (PM) for the engines for which it is certified, and meets the life-cycle cost requirements of the urban bus retrofit/rebuild program for certification. As such, it triggers the requirements for operators choosing to comply with compliance program 1 for applicable engines. This equipment may also be used by operators choosing to comply with compliance program 2.

The Cummins' notification, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, category VIII, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The date of this notice December 13, 1995 is the effective date of certification for the equipment described in the Cummins notification. This certified equipment may be used immediately by urban bus operators. Operators who have chosen to comply with Program 1 will be required to utilize this equipment (or other applicable equipment that is certified in the meantime) for any engine that is listed in Table B that undergoes rebuild on or after June 13, 1996.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Technical Support Branch, Engine Programs and Compliance Division (6405]), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

By a notification of intent to certify signed March 13, 1995, Cummins applied for certification of equipment applicable to the LTA10–B model urban bus engines that were originally manufactured between November 1985 and December 1992. Two separate horsepower/torque ratings are to apply for each Control Parts List (CPL), [2] either 270 horsepower and 860 foot-pounds of torque or 240 horsepower and 750 foot-pounds of torque. This equipment will reduce PM emissions 25 percent or more, on petroleum-fueled diesel engines that have been rebuilt to Cummins specifications. Life-cycle cost analysis information was submitted with the Cummins notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling of $2,000 (1992 dollars). Cummins listed the total kit price to be $5,930 including an incremental increase of $1,435 for component parts. Installation costs, maintenance costs and fuel costs were stated to be unchanged. This equipment triggers program requirements for the 25% reduction standard for the applicable engines.

All components of the candidate equipment are contained in a combination of two kits. The first kit is common to both horsepower/torque ratings and consists of a camshaft, cam key, cylinder kits, and a fuel plumbing kit. The second kit contains the injectors, cylinder head, turbocharger and fuel pump and is ordered based on the horsepower/torque rating that is desired. The first kit in combination with one of the second kits is required for the rebuild of an engine.

Using engine dynamometer testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Cummins documented significant reductions in PM emissions. Emission test data supplied by Cummins in the notification are shown in Table A. The data indicate that the applicable engines with the certified equipment installed comply with applicable Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke emissions. These data also demonstrate reductions in PM exhaust emissions.

[1] The Office of Mobile Sources underwent a reorganization in September 1995 in which the responsibility to oversee the Urban Bus Retrofit/Rebuild Program and approve certification was assigned to the Director of the Engine Programs and Compliance Division. Formerly, this responsibility was assigned to the Director of the Manufacturers Operations Division. The regulations at 40 CFR Sections 85.1401–85.1415 will be amended in the near future to reflect this change.

[2] The CPL is a number that identifies a specific Cummins part or component.

TABLE A.—TEST ENGINE EMISSIONS
[g/bhp-hr] [3]

Control Parts List	Engine Baseline Emission Levels				Smoke		
	HC	CO	NO_x	PM	ACC	LUG	PEAK
0780	0.89	3.04	4.97	0.55	13.6	2.2	28.4
0781	0.85	2.05	4.97	0.59	11.5	2.2	19.74
0774	0.68	3.34	6.86	0.46	11.0	1.4	23.3
0777	0.68	2.93	6.49	0.61	12.8	1.8	33.5
0996	1.33	4.73	5.17	0.61	14.9	2.7	37.5
1226	0.69	2.65	4.58	0.45	13.5	1.1	30.6
1441	0.6	2.70	4.7	0.46	10.0	1.0	18.0
1622	0.6	2.70	4.7	0.46	10.0	1.0	18.0
1624	0.69	2.65	4.58	0.45	13.5	1.1	30.6
1994 (240Hp)	1.1	2.3	5.1	0.28	7	2	12
1994 (270Hp)	0.8	2.3	5.4	0.24	6	1	10

[3] The baseline emission level for each pollutant is based on either the certification level or the average test audit result.

Cummins is certifying this equipment to PM emission levels of 0.34 g/bhp-hr for all engine models and years covered under this certification. This certification level represents a PM reduction that ranges between 25 to 44 percent when compared to the original certification PM levels for these engines. The certification levels for this equipment in the urban bus program are indicated in Table B, and apply only to the model numbers listed for engines that were manufactured within the cited manufacture dates.

TABLE B.—RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS EQUIPMENT [4]

Engine family	Control parts list (CPL)	Manufacture dates	Original PM certification level (g/bhp-hr)	Retrofit PM certification level (g/bhp-hr) for 240 and 270 HP ratings
343B	780	11/20/85 to 12/31/87	0.58	0.34
343B	0781	11/20/85 to 12/31/87	0.59	0.34
343C	0774	11/20/85 to 12/31/89	0.46	0.34
343C	0777	11/20/85 to 12/31/89	0.61	0.34
343C	0996	12/04/87 to 08/19/88	0.61	0.34
343C	1226	07/26/88 to 12/31/90	0.50	0.34
343F	1226	07/12/90 to 08/26/92	0.45	0.34
343F	1441	12/18/90 to 12/31/92	0.46	0.34
343F	1822	04/24/92 to 12/31/92	0.46	0.34
343F	1624	04/24/92 to 12/31/92	0.45	0.34

[4] The original PM certification levels are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NO_x standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.8 g/bhp-hr NO_x under the averaging, banking and trading program.

Under Program 1, all rebuilds of applicable engines performed 6 months following the effective date of this certification, must use this Cummins equipment (or other equipment certified in the meantime to reduce PM levels by at least a 25 percent). This requirement will continue for the applicable engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars).

Cummins has established a post-rebuild PM certification level of 0.34 g/bhp-hr for this equipment when installed on engines with either the 240/750 or the 270/860 horsepower/torque rating. Operators who choose to comply with Program 2 and install this equipment, will use the 0.34 g/bhp-hr PM emission level in their calculation of fleet level attained.

II. Summary and Analysis of Comments

EPA received comments from one party on this notification. The Amalgamated Transit Union, Local 998, Milwaukee, Wisconsin stated that this certification will have a significant impact on bus mechanics because local transit authorities will no longer be able to rebuild these engines due to the fact that the information needed to rebuild the engines, i.e., the technology and methods of modification, would not be made available to local transit providers by the certifier. Without the opportunity to rebuild these engines, the workers skill base would erode and their ability in the future to diagnose and repair these engines would be greatly reduced. It was stated that in order to avoid this situation, the technology and methods of modification should be made available to local transit providers so that they have the choice of rebuilding in-house in order to reduce costs and maintain the skill level of the transit workforce.

Although the failure of a certifier to provide rebuild specifications to an operator that would enable the operator to perform engine rebuilds is not a

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criteria that the Agency uses to evaluate an application during the review process, Cummins was contacted to determine whether or not information would be provided to operators that would enable them to rebuild the components of the certified kit and the engine rebuild itself. Cummins' representative stated that the information will be made available to authorized facilities only. Transit operators who desire to rebuild in-house have the option of being qualified as an authorized facility by meeting certain requirements through a Cummins review and approval process. Cummins stated that a few of the larger bus operators have obtained this approval already but noted that it may not be feasible for smaller operators who would not have a sufficient number of engines to justify the investment of time and resources necessary to become an authorized facility. Rebuilds that are not performed by an authorized facility would not be covered under the emissions warranties provided by Cummins under this certification.

Based on the Cummins policy, it will be necessary for an operator to perform the initial retrofit/rebuild of this equipment at an authorized Cummins facility. However, the urban bus retrofit/rebuild regulation allows a bus operator to use retrofit/rebuild equipment beyond the 150,000 mile warranty period. Therefore, a bus operator could perform maintenance (including rebuilding certain parts) on retrofit/rebuild equipment beyond the warranty period. Under these circumstances, the transit operator would be responsible for maintaining the equipment in proper operating condition, assumes responsibility for emissions performance, and is subject to the enforcement penalties associated with noncompliance under the retrofit/rebuild program. Cummins would not be responsible for warranty coverage as stated in 40 CFR Sections 85.1409 (a) and (b) for such engines after the expiration of the initial warranty periods.

In addition, it is noted that certification testing is currently underway for other equipment, including aftertreatment devices, that will allow operators to perform engine rebuilds using current rebuild practices. We anticipate that a number of these applications will be presented to EPA for approval in the near future. Certification of these applications should allow operators to maintain their current rebuild procedures.

III. Certification Approval

The Agency has reviewed this notification, along with comments received from interested parties, and finds that the equipment described in this notification of intent to certify:

(1) Reduces particulate matter exhaust emissions by at least 25 percent, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Will not cause an unreasonable risk to the public health, welfare, or safety;

(3) Will not result in any additional range of parameter adjustability; and,

(4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415).

The Agency hereby certifies this equipment for use in the urban bus retrofit/rebuild program as discussed below in section IV.

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either program 1 or program 2, but must be properly applied. Currently, operators having certain engines who have chosen to comply with program 1 must use equipment certified to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's **Federal Register** notice certifies the above-described Cummins equipment as meeting that PM reduction requirement. Equipment that has been certified to reduce PM by 25% or more must be used by operators with applicable engines who have chosen program 1. Urban bus operators who choose to comply with Program 1 may use the certified Cummins equipment until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with Program 2 and use the Cummins equipment will use the appropriate PM emission level from Table B when calculating their fleet level attained (FLA).

As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements beginning in January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: November 14, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30404 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Johnson Matthey, Inc. (JMI) notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XI–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address below.

Today's notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XI–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before January 29, 1996.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XI—A), Room M–1500, 401 M Street S.W., Washington, DC 20460.
2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6405J), 401 "M" Street S.W., Washington, DC 20460.

The JMI notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance and Programs Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification Of Intent To Certify

By a notification of intent to certify signed September 6, 1995, Johnson Matthey, Inc. (JMI) has applied for certification of equipment applicable to all Detroit Diesel Corporation (DDC) two-cycle engines originally equipped in an urban bus from model year 1979 to model year 1993, exclusive of the DDC 6L71TA 1990 model year engines (see Table A). The notification of intent to certify states that the equipment being certified is a catalytic exhaust muffler (CEM). The CEM contains an oxidation catalyst developed specifically for diesel applications, packaged as a direct replacement for the muffler. The application states that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. The engines may either be rebuilt to original specifications, or not rebuilt but able to meet specified engine calibrations. A 25 percent reduction is also claimed for engines that have been retrofit/rebuilt with certified new rebuild kits that do not include after treatment devices. The latter would apply to the DDC retrofit/rebuild kit which was certified on October 2, 1995 (60 FR 51472).

TABLE A.—CERTIFICATION LEVELS

Engine Models	Model Year	PM Level [1] with CEM	Code	Family
6V92TA MUI	1979–87	0.38	All	All.
	1988–1989	0.23	All	All.
6V92TA DDEC I	1986–89	0.23	All	All
6V92TA DDEC II	1988–91	0.23	All	All.
	1992–93	0.19	All	All.
6V71N	1973–87	0.38	All	All.
6V71N	1988–89	0.38	All	All.
6V71T	1985–86	0.38	All	All.
8V71N	1973–84	0.38	All	All.
6L71TA	1988–89	0.23	All	All.
6LV71TA DDEC	1990–91	0.23	All	All.
8V92TA	1979–87	0.40	All	8V92TA
	1988	0.29	All	8V92TA
8V92TA–DD	1988	0.31	ALL	8V92TA–DDEC II
8V92TA	1989	0.35	9E70	KDD0736FW89
8V92TA	1989	0.29	9A90	KDD0736FW89
8V92TA	1989	0.26	9G85	KDD0736FW89

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TABLE A.—CERTIFICATION LEVELS—Continued

Engine Models	Model Year	PM Level[1] with CEM	Code	Family
8V92TA DDEC	1989	0.31	1A	KDD0736FZH 4
8V92TA DDEC	1990	0.35	9E70	LDD0736FAH 9
8V92TA DDEC	1990	0.37	1A	LDD0736FZH 3
8V92TA DDEC	1991	0.19	1A or 5A	MDD0736FZH 2
8V92TA DDEC	1992–93	0.16	1D	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.22	5A	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.15	5A	NDD0736FZH 1 & PDD0736FZH X
8V92TA DDEC	1992–93	0.19	1A	NDD0736FZH 1 & PDD0736FZH X

[1] The original PM certification levels for the 1991 6V92TA DDEC II, 6LV71TA DDEC and 8V92TA DDEC engine models are based on Federal Emission Limits (FELs) under the averaging, banking and trading program. These limits are higher than the 1991 PM standard of 0.25 g/bhp-hr. The PM level listed in this table for the engines that are equipped with the CEM provide at least a 25% reduction from the original certification levels. The 1992 to 1993 6V92TA DDEC II and 8V92TA DDEC engine models were also certified using FELs under the trading and banking program and likewise the PM levels for the engines equipped with the CEM represent at least a 25% reduction from the original certification levels.

Transit pricing level data has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling of $2,000 in 1992 dollars. JMI indicates that the maximum cost in 1995 dollars will not exceed $2,173.00. Equipment cost is listed to be $1,926.00 and installation costs are not to exceed $247.00 (6.5 hours of labor time maximum). JMI states that there is no fuel economy impact, and that no incremental maintenance will be necessary due to this equipment. Therefore, this equipment may qualify as a trigger for program requirements for the 25% reduction standard. However, it is noted that designation as a trigger is not necessary in this case as trigger technology is already certified for the 25% reduction standard for every engine model for which this technology would be certified. However, in the future this technology may lower the target PM level for bus operators under Program 2 for particular engine models, if the PM level for this technology is lower than the PM certification level for any other certified technology.

JMI presents data from testing the equipment on a 2-stroke 1986 model year DDC 6V92TA engine documenting PM emissions reduction under two different scenarios. In applications involving aftertreatment devices, the use of a "worst case" engine during testing allows the certifier to extrapolate the results to engines known to have engine out PM levels that are equal to or less than the test engine. Based on a pre-rebuild PM level for the 6V92TA of 0.50, from the table in 40 CFR section 85.1403(c)(1)(iii)(A), the 6V92TA qualifies as a "worst case" for all two-stroke/cycle engines with the exception of the 1990 DDC 6L71TA.

In the first test sequence, the baseline test was performed on the engine prior to rebuild. Then the catalytic converter was added to the exhaust system and another test was performed. The results are presented in Table B. When the results of the two tests are compared, the test on the engine that was equipped with the catalytic converter shows a 50% decrease in PM emissions compared to the baseline engine. This test also shows that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X) emissions are within the applicable emission standards.

TABLE B.—CERTIFICATION EMISSION TEST RESULTS

[Pre-Rebuild Composite Test Results (g/bhp-hr)]

	Baseline engine	Engine with CEM	Percent reduction
PM	0.44	0.22	50
HC	0.7	0.4	43
CO	1.0	0.6	40
NOx	10.5	10.2	3
Smoke:			
Accel (percent)	2	1	
Lug (percent)	1	1	
Peak (percent)	4	3	

In the second test sequence, the baseline test was performed on the engine after rebuild. Then, as in the first test sequence, the catalytic converter was added and a comparison test was performed. The results are presented in Table C. When the results of these tests are compared, the test on the engine with the catalytic converter installed shows a 38% reduction in PM emissions when compared with the test results for the baseline engine. The HC, CO, and NO_X emissions for this test are within the applicable emission standards.

JMI also provided smoke emission measurements for the engine in the rebuilt condition with the catalytic converter installed. These measurements indicate that the engine complies with the applicable smoke standards.

TABLE C.—CERTIFICATION EMISSION TEST RESULTS

[Post-Rebuild Composite Test Results (g/bhp-hr)]

	Baseline engine	Engine with CEM	Percent reduction
PM	0.13	0.08	38
HC	0.6	0.3	50
CO	0.7	0.4	43
NO_X	9.7	9.4	3
Smoke:			
Accel (percent)	1	1	
Lug (percent)	1	1	
Peak (percent)	6	5	

The information submitted by JMI shows that this equipment achieves a 25% or greater reduction in PM emissions and will be sold for less than the cost ceiling of $2,000 (1992 dollars). If EPA approves the request for certification of this equipment, urban bus operators will be required to use this equipment or other equipment that is already certified to provide 25% or greater equivalent reductions to comply with Program 1 of this regulation beginning December 1, 1995. This requirement will continue unless other equipment which reduces PM emissions to 0.10 g/bhp-hr is certified at or below the $7,940 life cycle cost ceiling.

If EPA approves JMI's certification request, urban bus operators who chose to comply under Option 2 of this regulation may also use this equipment. If certification is approved by EPA, the emission levels of the JMI equipment may be used to modify the Option 2 post rebuild levels in July 1996, unless other rebuild kits with life cycle costs below the life-cycle cost ceiling and lower PM emission levels are certified before July 1996.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by JMI complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the JMI notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45 day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Dated: December 1, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30403 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5344–6]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Twin Rivers Technologies' (TRT) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. The notification describes equipment consisting of biodiesel fuel additive in combination with a particular exhaust system catalyst. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in category X of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category X, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before January 29, 1996.

ADDRESSES: Submit identical copies of comments to each of the two following addresses: 1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category X), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Group, Engine Programs and Compliance Division (6403J), 401 "M" Street S.W., Washington, DC 20460.

The TRT notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended

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to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 establishes PM emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced. Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

As noted above, operators of affected buses must use equipment which has been certified by EPA. An important element of the certification process is input from the public based on review of notifications of intent to certify. It is expected that engine manufacturers, bus manufacturers, transit operators, and industry associations will be able to provide valuable information related to the installation and use of particular equipment by transit operators. Such information will be useful to the Engine Programs and Compliance Division in its role of determining whether any specific equipment can be certified.

II. Notification Of Intent To Certify

By a notification of intent to certify signed August 18, 1995, and subsequently modified by letter dated October 5, 1995, Twin Rivers Technologies, Limited Partnership (TRT), with principal place of business at 780 Washington Street, Quincy, Massachusetts 02169, applied for certification of equipment applicable to certain urban bus engines manufactured by Detroit Diesel Corporation (DDC). The notification states that the candidate equipment will provide reductions in exhaust PM, as discussed below, dependant upon the configuration used, from petroleum-fueled diesel engines that have been properly calibrated or rebuilt to the original engine manufacturer's specifications.

TRT requests certification for the following two configurations of equipment: (1) Biodiesel fuel additive blended with diesel fuel (the blend is referred to as "B20") in combination with a particular exhaust system oxidation catalyst; and, (2) B20 and the catalyst, plus retarded fuel injection timing. Certification, if approved by the Agency, would apply to the combination of catalyst and biofuel supplied by TRT or its licensed distributors. The fuel B20 (alone) is not candidate for certification under this notification.

One configuration of the candidate equipment, as applied to some engines, provides PM reductions greater than 25 percent and the other configuration does not. This is discussed further below. TRT has not provided life cycle cost information with the notification and has not requested to be certified as being available for less than the life cycle cost ceiling.

A key component of both configurations of the candidate equipment is use of biodiesel as an additive at a 20 percent by volume blend ratio with diesel fuel. Biodiesel is an ester-based fuel oxygenate derived from biological sources for use in compression-ignition (that is "diesel") engines. Biodiesel is the alkyl ester product of the transesterification reaction of biological triglycerides, or biologically-derived oils. Any biological oil source, such as vegetable oils, animal fats or used cooking oils and fats, can produce esters through this reaction. TRT has registered biodiesel under the Agency's Fuel/Fuel Additive Registration Program, which defines Twin Rivers biodiesel (marketed as "EnviroDiesel™" and "EnviroDiesel Plus™") as an alkyl ester containing C1–C4 alcohols and C8–C24 acids. The fuel handling procedure differs from that for diesel fuel only in that it requires mixing by the fuel distributor or bus operator of 20 percent by volume biodiesel with low-sulfur diesel fuel. TRT is a company created specifically for the production of biodiesel.

A key component of both configurations of the candidate equipment is a particular oxidation catalyst-muffler unit (discussed further below) designed to replace the typical noise muffler in the exhaust system of applicable recipient engines. In a report included as an attachment to TRT's notification, it is indicated that the combination of B20 and the catalyst achieve greater PM reductions than with the catalyst alone. Improved PM reduction associated with that combination may be due to an apparent shift in the composition of total exhaust particulates, when using B20, toward a lower soot fraction and higher soluble organic fraction (SOF). It is the SOF portion of the exhaust particulates that an oxidation catalyst is most effective in reducing.

The exhaust catalysts are to be matched to specific urban bus and engine configurations. Further, the maximum allowable exhaust pipe length between engine and catalyst is 108 inches. Exhaust system backpressure is designed to remain within the engine manufacturer's specified limits. The catalyst unit has no additional maintenance requirements for the life of the catalyst.

The second configuration of the candidate equipment includes the retard of fuel injection timing in combination with B20 and the above-described exhaust catalyst. All applicable engines using this second configuration and equipped with mechanical unit injection (MUI) would use a timing retard of four (4) degrees. All applicable engines using this configuration and equipped with electronically-controlled fuel injection would use a timing retard of one (1) degree. The notification states that timing is retarded by a shift of the timing sensor. The Agency requests comment and information concerning the reasonability of these timing specifications.

For its certification testing, TRT used catalytic muffler units that were manufactured by Engelhard Corporation and are the same formulation and configuration that is certified by the Agency for use in the urban bus program (see 60 FR 28402, dated May 31, 1995, for that certification). While an agreement is in place for Engelhard to supply TRT with catalysts, the physical specifications of the catalyst to be used in production are neither part of the

TRT notification of intent to certify nor provided to TRT as part of that agreement. In general, the Agency has concerns when a certifier is not aware of the technical specifications of equipment it wants to certify and when the potential exists for a change in equipment specifications to adversely affect emissions reduction performance. Such a change in specifications may occur, for example, with a change in catalyst production which may not be known to the certifier. In a letter provided to the Agency, Engelhard states that it will notify both TRT and the Agency in the event of changes to specifications of the catalytic converter muffler provided to TRT. The specifications for the catalyst have been provided to the Agency as a confidential part of Engelhard's notification of intent to certify its CMX™ catalyst muffler. A copy of this letter can be found in the public docket at the address indicated above. This provides the Agency with assurance that changes to catalyst specifications will be brought to the Agency's attention, and the Agency proposes to restrict certification for candidate TRT equipment to use of catalyst muffler units supplied by Engelhard and covered by Engelhard's certification, and require that use of catalysts supplied by any other supplier be the subject of a separate notification of intent to certify.

TRT presents exhaust emission data from testing the candidate equipment configurations on three engines using the federal engine-dynamometer test procedures of 40 CFR Part 86, as well as chassis dynamometer testing. A 1977 model year DDC 6V71N and 1988 model year DDC 6V92TA DDEC II were tested on engine dynamometers, and another 1988 model year DDC 6V92TA DDEC II was tested on a chassis dynamometer. The 6V71N engine was selected to represent a "worst case", with respect to PM, for most of the engines for which certification of the equipment is being sought, and also to represent engines equipped with MUI. Based on a pre-rebuild PM level for the 6V71N of 0.50, from the table in 40 CFR section 85.1403(c)(1)(iii)(A), TRT states that the 6V71N qualities as "worst case" for all two-stroke/cycle engines with the exception of the 1990 DDC 6L71TA. The 1988 6V92TA DDEC engines were tested to show the results of the biodiesel fuel on engines having electronic fuel control, and also to represent the "worst case" engine configuration for such engines, based on their "pre-rebuild" level of 0.31 g/bhp-hr. The notification states that the fuel used for testing, both the biodiesel and diesel, are representative of commercially available biodiesel and low-sulfur diesel fuels.

Baseline testing was conducted after two of the test engines were rebuilt to the original engine manufacturer's configurations. A third engine had not been used prior to testing. Baseline testing was conducted using low sulfur test fuel having a maximum sulfur level of 0.05 weight percent. Subsequent testing of the engines was done after the candidate equipment was installed.

Table 1A below summarizes the emission levels from the engine dynamometer testing. Table 1B summarizes the chassis testing in terms of range of impact on exhaust emissions of the candidate equipment from three driving cycles. The driving cycles used for the chassis testing were the Central Business District, New York Bus Composite Cycle, and the Arterial Cycle. A report attached to TRT's notification provides specific emission rates measured for each driving cycle and equipment configuration. Table 2 summarizes, for each test engine, the changes in PM and NO_X emissions with use of each configuration of the equipment. The reductions listed for the chassis testing include double weighting of the emission data from the Arterial Cycle, because TRT believes the resultant combination of the chassis driving cycles is more representative of the Agency's Urban Dynamometer Driving Schedule for Heavy-Duty Vehicles (40 CFR Part 86, Appendix I). Table 3 provides a summary of all engine models for which TRT intends the equipment to apply, and the associated percent reductions in PM emissions for these models, based on the test data. Table 4 summarizes the PM certification levels for each engine model for which certification is sought, based on reductions of Table 3 applied to the pre-rebuild levels established in the program regulations. Additional testing information is provided in reports from the facilities which conducted the emission testing (these reports are attachments to the notification).

TABLE 1A.—TEST ENGINE EMISSIONS

Engine	Gaseous and Particulate				Smoke			Comment
	HC	CO	NO_X	PM	ACC	LUG	Peak	
	g/bhp-hr				percent opacity			
Engine Dyno	1.3	15.5	10.7	0.60	20	15	50	1988 EPA stds.
1977 6V71N MUI	0.86	3.18	11.72	0.282	1.2	1.8	1.8	Baseline (low S, 2D).
1977 6V71N MU	0.38	0.86	12.11	0.166	0.9	1.7	1.7	B20 + cat.
1977 6V71N MU	0.42	0.94	8.47	0.213	2.2	2.8	2.9	B20, cat + 4° retard.
1988 6V92TA DDEC II	0.60	1.60	8.52	0.20	6.0	5.3	8.7	Baseline (low S, 2D).
1988 6V92TA DDEC II	0.21	0.95	9.12	0.11	3.7	1.7	6.9	B20 + cat.
1988 6V92TA DDEC II	0.25	1.05	8.35	0.12	5.1	2.5	8	B20, cat + 1° retard.

TABLE 1B.—CHASSIS TESTING: RANGE OF PERCENTAGE CHANGE[1] IN EMISSIONS FROM BASELINE (LOW SULFUR DIESEL)

Pollutant	B20 + catalyst	B20 + catalyst + 1.5° retard
HC	−59 to −39	−33 to +3
CO	−85 to −54	−38 to −19
NO_X	+4 to +8	−5 to −2
PM	−56 to −22	−46 to −7

[1] Three different chassis driving cycles were used.

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TABLE 2.—EMISSIONS CHANGES FROM TEST ENGINES

Test Engine	Configuration			Per cent PM change	Per cent NO_x change	Test/dyno
	B20	CAT	Timing retard			
1977 6V71N	√	√	None	−41	+3	Engine.
MUI	√	√	4°	−24.5	−28	
1988 6V92TA DDEC	√	√	None	−45	+6	Engine.
II	√	√	1°	−40	−2	
1988 6V92TA DDEC	√	√	None	−40	+4	Chassis.
II	√	√	1.5°	−27	−5	

TABLE 3.—APPLICABLE ENGINES AND PM REDUCTION

Engine model	Model year	Configuration and per Cent PM Reduction	
		B20 + cat	B20, cat + retard
6V92TA MUI	79–87	41.1	24.5
6V92TA MUI	88–89	41.1	24.5
6V92TA DDEC I	86–87	45.0	40.0
6V92TA DDEC II	88–91	45.0	40.0
6V92TA DDEC II	92–93	45.0	40.0
6V71N MUI	73–87	41.1	24.5
6V71N MUI	88–89	41.1	24.5
6V71T MUI	85–86	41.1	24.5
8V71N MUI	73–84	41.1	24.5
6L71TA MUI	90	41.1	24.5
6L71TA MUI	88–89	41.1	24.5
6L71TA DDEC	90–91	45.0	40.0

TABLE 4.—PM CERTIFICATION LEVELS

Engine model	Model year	Equipment Configuration	
		B20 + cat	B20, cat + retard
6V92TA MUI	79–87	0.29	0.38
6V92TA MUI	88–89	0.17	0.23
6V92TA DDEC I	86–87	0.17	0.18
6V92TA DDEC II	88–91	0.17	0.19
6V92TA DDEC II	92–93	0.14	0.15
6V71N MUI	73–87	0.29	0.38
6V71N MUI	88–89	0.29	0.38
6V71T MUI	85–86	0.29	0.38
8V71N MUI	73–84	0.29	0.38
6L71TA MUI	90	0.34	0.44
6L71TA MUI	88–89	0.18	0.23
6L71TA DDEC	90–91	0.17	0.18

Section 85.1406(a) of the program regulations state "The test results must demonstrate that the retrofit/rebuild equipment * * * will not cause the urban bus engine to fail to meet any applicable Federal emission requirements set for that engine in the applicable portions of 40 CFR part 86 * * *". TRT's emission test data indicate that both configurations of the candidate equipment reduce hydrocarbon (HC) and carbon monoxide (CO), when compared with baseline (pre-retrofit) emissions. There is, however, potential for concern with regard to NO_x emissions from other engines with which the candidate equipment might be certified, because an increase of three percent was measured for the MUI test engine when equipped with the B20-catalyst configuration without fuel injection retard, and six percent for the electronically-timed DDEC II test engine. Because test data is not available on all engines for which certification of the equipment is sought, TRT performed analyses to determine whether such increases would indicate that other engines exceed applicable NO_x standards. The analysis, in general, applies each of the measured increases to the NO_x certification levels established by the engine manufacturer for engines tested under the Agency's new engine certification program. (New engine certification testing results are reported yearly by the Agency in its "Federal Certification Test Results".) Three percent increase in NO_x is evaluated for engines equipped with MUI, and six percent increase is evaluated for engines equipped with electronically-timed injection. The increased NO_x level is compared with the relevant standard for the particular engine. TRT's analyses is in the public docket, and discussed below.

TRT's analysis for MUI engines is broken down by engine model year to account for two new engine certification test procedures, each having particular emissions standards. The "13 mode" engine dynamometer test procedure was used for heavy-duty engine testing prior to the 1985 model year, and the "transient" engine dynamometer test procedure is used for 1985 and later model years. For certification under the urban bus program, TRT tested the 1977 model year 6V71N MUI engine using the "transient" procedure. While the "13 mode" test was used for new engine certification of the 1977 model year, the "transient" test is the current standard test procedure for heavy-duty engines and is generally recognized as more representative than the "13-mode" test. Therefore, the Agency believes that the NO_x increase measured by TRT using the "transient" test data is a relevant gauge of the impact of the candidate equipment. TRT's analysis applies the increase to the new engine certification data available for engines of 1984 and earlier model years. Prior to 1985, there was no federal emission standard for NO_x alone. The relevant emission standards (for engines that were certified using the "13-mode" procedure) are 16 g/bhp-hr for 1974 through 1978 model year engines and 10 g/bhp-hr for 1979 through 1984 model year engines, for the sum of HC emissions added to NO_x emissions. TRT's initial analysis applied three percent increase to the new engine certification levels for HC + NO_x emissions for 1982 and later model year engines for which such data is available. This predicts that only one engine (a 325 horsepower version of 1982 model year 6V92TA engine family CGM0552FWG5) would exceed its NO_x standard. Further analysis for this engine, applying three percent increase in its NO_x emission level added to 50 percent decrease in its reported HC certification level, indicates that the combined federal emission standard would not be exceeded for this engine if equipped with the candidate equipment. Based on this analysis and TRT's emission test data indicating significant reductions in HC emissions (at least 50 percent), the Agency believes that for any applicable pre-1985 engine equipped with MUI, an increase in NO_x emissions of the percentage measured on the 1977 6V71N MUI test engine will be more than offset by a decrease in HC emissions, such that the HC + NO_x standard will not be exceeded.

Another part of TRT's analysis pertains to engines equipped with MUI and certified using the "transient" test procedure (that is, the engines of model year 1985 and later). TRT's analysis, applying three percent increase to NO_x levels developed during new engine certification testing, indicates that no 1985 or later engine equipped with MUI would exceed the applicable federal standard if equipped with the candidate equipment. TRT also analyzed the impact of six percent increase in NO_x emissions on electronically-controlled engines, because their data show that NO_x emissions for the 1988 model year 6V92TA DDEC II test engine increase roughly six percent when equipped with the B20-catalyst configuration without injection retard. This increase in NO_x emissions is important, especially because federal standards for NO_x were lowered to 6.0 g/bhp-hr for the 1990 model year and 5.0 g/bhp-hr for the 1991 model year. Therefore, TRT analyzed the impact of six percent increase in NO_x emission levels developed during new-engine certification testing on Detroit Diesel Corporation's DDEC engines. (Under the new engine certification program, all DDEC engines have been tested using the "transient" procedure.) The results indicate that NO_x levels for the engine families in Table 5 would exceed the appropriate federal emission standard. Therefore, the Agency proposes that use of the candidate equipment without fuel injection retard on any urban bus engines of the engine families listed in Table 5 not be covered by certification under the urban bus program.

TABLE 5.—ENGINE FAMILIES NOT COVERED BY CERTIFICATION

Configuration: B20 and Catalyst (without injection retard)		
Model year	Model	Engine family
1990	6V92TA DDEC II	LDD0552FZG6
	6V92TA DDEC II Coach	LDD0552FZL2
1991	6L71TA DDEC ALCC	MDD0426FZFX
	6V92TA DDEC II	MDD0552FZG5
	6V92TA DDEC II	MDD0552FZL1
1992	6V92TA DDEC II	NDD0552FZG4
	6V92TA DDEC II Coach	NDD0552FZL0
1993	6V92TA DDEC II	PDD0552FZG2
	6V92TA DDEC II Coach	PDD0552FZL9

The Agency requests comment, additional analysis, or additional emission test data or for engine families to which the equipment is intended to apply, to determine whether regulatory requirements are met with urban bus engines using the candidate equipment.

While absolute smoke opacity levels during testing of the 1977 6V71N MUI test engine were well below relevant standards, increases were measured between the baseline test and testing using B20, catalyst and retarded timing. This is not of significant concern because the Agency believes the absolute level of increase is more relevant than the percentage increase. Further, the absolute level of increase in opacity is believed not significant in the context of the current smoke test and opacity standards (in other words, there is probably no real increase in smoke opacity, given the nature of the smoke test and level of the standards). Finally, smoke emissions from heavy duty diesel engines, in general, have declined over the years as engines are designed to comply with declining federal PM emissions standards. The Agency believes that even if this test data accurately predicts an increase in smoke emission opacity with other engines for which the equipment is intended to apply, it is not a significant increase. The Agency requests comment regarding the applicability of that data to other engines having MUI for which the equipment is intended to apply.

Smoke emission measurements for the 1988 engine indicate compliance with applicable standards.

As indicated in the notification, the 6V71N test engine qualities as a "worst case" for all two-stroke/cycle engines with exception of the 1990 DDC

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6L71TA. (The 1990 model year DDC 6L71TA has a pre-rebuild PM level of 0.59 g/bhp-hr.) While TRT requests certification coverage for the 1990 DDC 6L71TA and warrants comparable particulate emissions reduction percentages for it as is demonstrated by the 6V71N test engine, the requirement of the program regulations have not been met. Therefore, the Agency believes that the notification lacks sufficient basis for certification of the candidate equipment with the 1990 DDC 6L71TA.

Section 85.1406(d) of the regulations governing urban bus equipment certification states, in part, "* * * installation of any certified retrofit/rebuild equipment shall not cause or contribute to an unreasonable risk to the public health, welfare or safety * * *". Information for considering whether B20 in this context would affect any potential human health risks associated with exposure to conventional diesel emissions has been provided by TRT with its notification of intent to certify. This information will be reviewed by the Agency. The Agency has made this information part of the public docket at the address listed above. Any findings based on this information, together with any other information that may be considered, will be made part of the public docket located at the address noted above, and considered by the Agency in its decision regarding certification of the candidate equipment. The Agency requests additional information, including information on combustion by-products, for considering whether and, if so how, the use of the subject biodiesel blend, that is, B20, in diesel engines would affect any potential health risks associated with exposure to conventional diesel emissions.

Section 211 of the Clean Air Act sets forth fuel and fuel additive prohibitions, and gives the Agency authority to waive certain of those prohibitions. The Agency, however, does not believe that TRT must obtain a fuel additive waiver under Section 211(f)(4) of the Clean Air Act before certifying its additive system for the following reasons.

The Act prohibits the introduction into commerce of any fuel or fuel additive that is not substantially similar to a fuel or fuel additive used in the certification of any model year 1975 or later vehicle or engine under Section 206. The Administrator may waive this prohibition, if she determines that certain criteria are met. The Agency believes that certification of an urban bus retrofit system constitutes the certification of an engine under Section 206 for the purposes of the urban bus retrofit/rebuild program, and, since the additive is used in the certification of the system, a waiver is not required to market the additive in the limited context of use with the certified retrofit system. This determination does not affect whether the additive is "substantially similar to any fuel or fuel additive" outside the context of the urban bus retrofit/rebuild program. The Agency's position on this matter is discussed in additional detail as it relates to use of another fuel additive (Lubrizol Corporation) at 60 FR 36139 on July 13, 1995.

If the Agency certifies the candidate TRT equipment, operators may use it immediately, as discussed below. TRT's notification indicates that the candidate equipment is to be certified for compliance program 2; however, as discussed below, the Agency believes that configurations utilizing the catalytic muffler and reducing PM by at least 25 percent may also be used in compliance with current program 1 requirements.

In a **Federal Register** notice dated May 31, 1995 (60 FR 28402), the Agency certified an exhaust catalyst manufactured by the Engelhard Corporation, as a trigger of program requirements. For urban bus operators affected by this program and electing to comply with program 1 requirements, that certification means that rebuilds and replacements of all applicable urban bus engines, performed 6 months or more after that date of certification (that is, rebuilds or replacements after December 1, 1995), must be performed with equipment certified to reduce PM emissions by 25 percent or more. Under Program 1, operators could use the TRT equipment if certified to reduce PM by at least 25 percent, or other equipment certified to provide at least a 25 percent reduction, until equipment is certified which triggers the 0.10 g/bhp-hr PM standard. For Program 1, operators may also use the B20 blend with the Engelhard catalyst and injection retard only for the following engines: 6V92TA DDEC I and DDEC II, and 6L71TA DDEC.

Operators who choose to comply with Program 2 and install the TRT equipment, would use the PM emission level(s) established during the certification process, in their calculations for target or fleet level as specified in the program regulations.

In accordance with the program requirements of section 85.1404(a), operators using the candidate equipment would have to maintain purchase records of the B20 blend if the operator purchases the premixed blend from a fuel supplier, or, of biodiesel and low-sulfur diesel fuel if the operator mixes the B20. Such records would be subject to review in the event of an audit of a urban bus operator by the Agency. To be in compliance with program requirements, operators must be able to demonstrate that B20 is being used in the proper proportions required by the candidate equipment.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the TRT notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: December 1, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–30405 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180986; FRL–4988–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 22 States as listed below. Crisis exemptions were initiated by various States, United States Departments of Agriculture, Animal and Plant Health Inspection Service, and the United States Department of the Army. One quarantine exemption was granted to the United States Department of Agriculture. These exemptions, issued during the months of June, July, August, and September 1995, except for the one in March and one in April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the Oregon Department of Agriculture and has withdrawn a specific exemption from the Connecticut Department of Environmental Protection. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific, crisis, and quarantine exemptions to the:

1. Arizona Department of Agriculture for the use of avermectin B_1 on melons to control leafminers; June 30, 1995, to June 29, 1996. (Larry Fried)
2. Arizona Department of Agriculture for the use of bifenthrin on cauliflower and leaf lettuce to control whiteflies; September 28, 1995, to May 15, 1996. (Andrea Beard)
3. Arkansas State Plant Board for the use of fomesafen on snap beans to control moringglory and pigweed; June 2, 1995, to September 10, 1995. (Larry Fried)
4. California Environmental Protection Agency for the use of carbofuran on cotton to control aphids; August 22, 1995, to October 15, 1995. (David Deegan)
5. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of Pro-Gro (carboxin/thiram) on onion seed to control onion smut; September 11, 1995, to May 31, 1996. (Andrea Beard)
6. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of myclobutanil on tomatoes to control powdery mildew; September 29, 1995, to June 16, 1996. California had initiated a crisis exemption for this use. (David Deegan)
7. California Environmental Protection Agency for the use of avermectin B_1 on melons to control leafminers; June 30, 1995, to November 1, 1995. (Larry Fried)
8. California Environmental Protection Agency for the use of avermectin B_1 on bell peppers to control leafminers; August 24, 1995, to August 23, 1996. (Larry Fried)
9. California Environmental Protection Agency for the use of cypermethrin on green onions to control thrips; June 15, 1995, to June 14, 1996. (Larry Fried)
10. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of metalaxyl on mustard greens to control white rust; August 21, 1995, to August 20, 1996. (David Deegan)
11. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on escarole, endives, spinach, and parsley to control aphids; September 29, 1995, to June 1, 1996. Florida had initiated a crisis exemption for this use. (Andrea Beard)
12. Florida Department of Agriculture and Consumer Services for the use of lactofen on tomatoes and green peppers to control nightshade; September 1, 1995, to August 31, 1996. A notice of receipt published in the **Federal Register** of July 26, 1995 (60 FR 38335). The use of lactofen has been requested for the past 4 years and was granted. A complete application for registration of the use has not yet been submitted to the Agency. The Florida tomato and green pepper growers are facing an urgent nonroutine situation and will suffer significant economic losses without the use of lactofen. (Margarita Collantes)
13. Idaho Department of Agriculture and Consumer Services for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)
14. Kansas Department of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; June 27, 1995, to September 30, 1995. (Libby Pemberton)
15. Maryland Department of Agriculture for the use of clomazone on snap beans to control broadleaf weeds; August 9, 1995, to September 10, 1995. (David Deegan)
16. Maryland Department of Agriculture for the use of clomazone on summer squash to control broadleaf weeds; August 9, 1995, to September 30, 1995. Maryland had initiated a crisis exemption for this use. (David Deegan)
17. Maryland Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to May 1, 1996. (Margarita Collantes)
18. Michigan Department of Agriculture for the use of fomesafen on dry beans to control weeds; June 28, 1995, to August 15, 1995. (Larry Fried)
19. Michigan Department of Agriculture for the use of avermectin on pears to control mites and psylla; September 5, 1995, to September 30, 1995. Michigan had initiated a crisis exemption for this use. (Larry Fried)
20. Minnesota Department of Agriculture for the use of bentazon on peas to control Canada thistle; June 23, 1995, to July 15, 1995. (Larry Fried)
21. Mississippi Department of Agriculture and Commerce for the use of carbofuran on cotton to control aphids; June 30, 1995, to September 15, 1995. (David Deegan)
22. Montana Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to September 30, 1995. (Larry Fried)
23. Nebraska Department of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; September 6, 1995, to September 30, 1995. (Libby Pemberton)
24. Nevada Division of Agriculture for the use of cymoxanil, dimethomorph, and propamocarb hydrochloride on potatoes to control late blight; August 15, 1995, to September 15, 1995. (Libby Pemberton)
25. Nevada Department of Business and Industry for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids and blue alfalfa aphids; June 16, 1995, to August 31, 1995. (Larry Fried)
26. New Jersey Department of Environmental Protection for the use of metolachlor on spinach to control weeds; August 2, 1995, to November 1, 1995. New Jersey had initiated a crisis exemption for this use. (Margarita Collantes)
27. Ohio Department of Agriculture for the use of cypermethrin on green

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onions to control thrips; June 15, 1995, to June 30, 1995. (Larry Fried)

28. Oklahoma Department of Agriculture for the use of fomesafen on snap beans to control morningglory and pigweed; June 2, 1995, to September 10, 1995. (Larry Fried)

29. Oklahoma Department of Agriculture for the use of carbofuran on cotton to control aphids; June 29, 1995, to October 15, 1995. (David Deegan)

30. Oklahoma Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to March 31, 1996. (Margarita Collantes)

31. Oregon Department of Agriculture for the use of metolachlor on grasses grown for seed to control weeds; August 31, 1995, to November 15, 1995. (David Deegan)

32. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control weeds; August 31, 1995, to January 15, 1996. (David Deegan)

33. Oregon Department of Agriculture for the use of pronamide on grasses grown for seed to control weeds; August 31, 1995, to January 20, 1996. (David Deegan)

34. Oregon Department of Agriculture for the use of lactofen on snap beans to control weeds; April 28, 1995, to July 31, 1995. (Larry Fried)

35. Oregon Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to September 1, 1995. (Larry Fried)

36. Pennsylvania Department of Agriculture for the use of fomesafen on snap beans to control weeds; June 30, 1995, to August 15, 1995. Pennsylvania had initiated a crisis exemption for this use. (Larry Fried)

37. Texas Department of Agriculture for the use of carbofuran on cotton to control aphids; June 9, 1995, to September 30, 1995. (David Deegan)

38. Texas Department of Agriculture for the use of metolachlor on spinach to control weeds; August 2, 1995, to August 15, 1996. (Margarita Collantes)

39. Virginia Department of Agriculture and Consumer Services for the use of clomazone on snap beans to control broadleaf weeds; August 9, 1995, to September 10, 1995. (David Deegan)

40. Virginia Department of Agriculture and Consumer Services for the use of clomazone on summer squash to control broadleaf weeds; August 9, 1995, to September 30, 1995. (David Deegan)

41. Washington Department of Agriculture for the use of pirimicarb on small seeded vegetable seed crops to control aphids; June 30, 1995, to September 15, 1995. (Larry Fried)

42. Washington Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

43. Wyoming Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

Crisis exemptions were initiated by the:

1. California Environmental Protection Agency, Department of Pesticide Regulation, on June 19, 1995, for the use of myclobutanil on tomatoes (fresh and processed) to control powdery mildew. The State requested a specific exemption for this use, which was granted by EPA on September 29, 1995, and will expire on June 16, 1996. (David Deegan)

2. Colorado Department of Agriculture on August 15, 1995, for the use of cypermethrin on green onions to control thrips. This program has ended. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services on July 23, 1995, for the use of naled on utility poles, tree trunks, and other inanimate objects to control the oriental fruit fly. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a quarantine exemption to continue it. (Andrea Beard)

4. Maryland Department of Agriculture on July 31, 1995, for the use of clomazone on summer squash to control broadleaf weeds. This program has ended. (David Deegan)

5. Michigan Department of Agriculture on August 17, 1995, for the use of fosetyl-al on blueberries to control alternaria fruit rot. Since it was anticipated that this program would be needed for more than 15 days, Michigan has requested a specific exemption to continue it. (Larry Fried)

6. Minnesota Department of Agriculture on June 16, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

7. Missouri Department of Agriculture on June 13, 1995, for the use of fomesafen on snap beans to control pig weed. This program has ended. (Larry Fried)

8. Montana Department of Agriculture on June 21, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

9. New Jersey Department of Agriculture on March 23, 1995, for the use of metolachlor on spinach to control weeds. This program has ended. (Margarita Collantes)

10. New Mexico Department of Agriculture on September 2, 1995, for the use of triadimefon on peppers to control powdery mildew. This program has ended. (Larry Fried)

11. North Carolina Department of Agriculture on September 1, 1995, for the use of tebufenozide on cotton to control the beet armyworms. This program has ended. (Larry Fried)

12. North Dakota Department of Agriculture on August 1, 1995, for the use of bifenthrin on canola to control the Bertha armyworm. This program has ended. (Andrea Beard)

13. North Dakota Department of Agriculture on June 17, 1995, for the use of clopyralid on canola to control Canada thistle and perennial sowthistle. This program has ended. (Larry Fried)

14. Oklahoma Department of Agriculture on September 1, 1995, for the use of tebufenozide on cotton to control beet armyworms. This program has ended. (Larry Fried)

15. Texas Department of Agriculture on August 31, 1995, for the use of bifenthrin on grain sorghum grown for seed to control banks grass mites. This program has ended. (Andrea Beard)

16. Texas Department of Agriculture on June 2, 1995, for the use of esfenvalerate on grain sorghum to control sorghum midge. This program has ended. (Libby Pemberton)

17. Virginia Department of Agriculture and Consumer Services on August 28, 1995, for the use of bifenthrin on peanuts to control two-spotted spider mites. This program has ended. (Andrea Beard)

18. Wisconsin Department of Agriculture on July 21, 1995, for the use of bentazon on peas to control weeds. This program has ended. (Larry Fried)

19. United States Department of Agriculture, Animal and Plant Health Inspection Service, on June 6, 1995, for the use of paraformaldehyde in laboratory facilities to control exotic infectious diseases. The need for this program is expected to last until June 6, 1998. (Larry Fried)

20. United States Department of Agriculture, Animal and Plant Health Inspection Service, on August 24, 1995, for the use of permethrin on horses and cattle to control nonindigenous parasites. The need for this program is expected to last until August 24, 1998. (Larry Fried)

21. United States Department of the Army on August 4, 1995, for the use of paraformaldehyde to decontaminate high-security biocontaminent laboratories of microorganisms. This program has ended. (Larry Fried)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of paraformaldehyde in laboratories to control infectious diseases; September 29, 1995, to June 5, 1998. UDSA had initiated a crisis exemption for this use. (Larry Fried)

EPA has denied a specific exemption request from the Oregon Department of Agriculture for the use of pendimethalin on grasses grown for seed. Oregon requested use of metolachlor for the same spectrum of weeds, and due to endangered species concerns with pendimethalin, the Agency denied the exemption. (David Deegan)

EPA has withdrawn a specific exemption from the Connecticut Department of Environmental Protection for the use of avermectin on pears to control pear psylla. Connecticut had initiated a crisis exemption for this use. The use of avermectin ended under the crisis exemption on September 30, 1995. (Larry Fried)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–30114 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–636; FRL–4971–5]

Pesticide Tolerance Petitions; Filings, Amendment, and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings and an amendment and a withdrawal of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-636]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number/e-mail	Address
George LaRocca (PM 13).	Rm. 204, CM #2, 703-305-6100; e-mail: larocca.george @ epamail. epa. gov..	1921 Jefferson Davis Hwy., Arlington, VA
Connie Welch (PM 21).	Rm. 227, CM #2, 703- 305-6226; e-mail: welch. connie @ epamail. epa. gov..	Do.
Phillip Hutton (PM 90).	5th Floor, CS #1, 703-308-8260; e-mail: hutton. phillip @ epamail. epa. gov..	2800 Jefferson Davis Hwy., Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5F4509.* Lakeshore Enterprises, P.O. Box 236-P, Benzonia, MI 49616, has submitted the petition proposing that 40 CFR part 180 be amended to establish an exemption from the requirement of a tolerance for the biochemicals meat meal and red pepper (capsicum) in or on agricultural, vegetable, ornamental, turf, tree, vine, and other terrestrial crops. (PM 90)

2. *PP 5F4588.* Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, has submitted the petition proposing to amend 40 CFR part 180 to establish tolerances for lambda-cyhalothrin, (*S*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*R*,-3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, and epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*S*,-3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-*alpha*-cyano-3-phenoxybenzyl (*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities: lettuce, leaf at 2.0 parts per million (ppm); head and stem brassica crop subgroup (broccoli; broccoli, Chinese; brussels sprouts; cabbage; cabbage, Chinese (napa); cabbage, Chinese mustard; cauliflower; caval broccolo; and kohlrabi) at 0.4

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ppm; alfalfa, forage at 3.0 ppm; and alfalfa, hay at 4.0 ppm. (PM 13)

3. *PP 5F4591.* Ciba Crop Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, has submitted the petition that proposes that 40 CFR 180.434 be amended to establish tolerances for the fungicide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalent in or on the raw agricultural commodities berry crop grouping at 1.0 ppm, carrots at 0.2 ppm, green onions at 5.0 ppm, and dry bulb onions at 0.3 ppm. (PM 21)

Amended Filing

4. *PP 4F4309.* EPA gave notice in the **Federal Register** of July 13, 1994 (59 FR 35719), that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted the petition proposing that 40 CFR 180.436 be amended by establishing a tolerance to permit residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichlorocthenyl)-2,2-dimethyl cyclopropane carboxylate, in or on sweet corn, forage at 54.0 ppm; alfalfa, hay at 10.0 ppm; soybean, forage at 10.0 ppm; alfalfa, forage at 5.0 ppm; soybean, hay at 1.5 ppm; sunflower, forage at 1.0 ppm; sweet corn at 0.05 ppm; soybeans at 0.03 ppm; and sunflower, seed at 0.02 ppm. The company has submitted an amended petition that proposes decreasing the proposed tolerances on sweet corn forage from 54.0 ppm to 30.0 ppm; increasing tolerances for cattle fat, goat fat, hog fat, horse fat, and sheep fat from 0.05 ppm to 5.0 ppm; establishing a tolerance of 15.0 ppm for milkfat (representing 0.5 ppm in whole milk); and withdrawing proposed tolerances for soybean, forage, soybean, hay, and soybeans. (PM 13)

Withdrawn Filing

5. *FAP 4H5686.* EPA gave notice in the **Federal Register** of July 13, 1994 (59 FR 35719), that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted the petition proposing that 40 CFR 186.1250 be amended by establishing a food/feed additive regulation to permit the residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate, in or on sunflower hulls at 2.5 ppm and soybean, hulls at 0.1 ppm. The company has withdrawn the petition without prejudice to a future filing. (PM 13)

A record has been established for this rulemaking under docket number [PF-636] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Feed additives, Food additives, Reporting and recordkeeping requriements.

Authority: 7 U.S.C. 136a.

Dated: November 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-30373; Filed 12-12-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180982; FRL-4985-1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 28 States as listed below. Crisis exemptions were initiated by the Mississippi and Montana Departments of Agriculture. These exemptions, issued during the months of May, June, and July 1995, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied 11 specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)-308-8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. Alabama had initiated a crisis exemption for this use. (Margarita Collantes)

2. Arizona Department of Agriculture for the use of imidacloprid and bifenthrin on melons to control the sweet potato whitefly; June 9, 1995, to June 9, 1996. (David Deegan)

3. Arkansas State Plant Board for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

4. California Environmental Protection Agency for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1995, to July 27, 1996. (David Deegan)

5. Florida Department of Agriculture and Consumer Services for the use of malathion on atemoya and sugar apples to control Annona seed borers; July 12, 1995, to July 12, 1998. (Margarita Collantes)

6. Georgia Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

7. Idaho Department of Agriculture for the use of propamocarb hydrochloride, dimethomorph, and cymoxanil on potatoes to control late blight; July 14, 1995 to September 30, 1995. (Libby Pemberton)

8. Louisiana Department of Agriculture and Forestry for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

9. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; June 21, 1995, to November 1, 1995. (David Deegan)

10. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot; June 21, 1995, to November 1, 1995. (David Deegan)

11. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control purple loose strife; July 26, 1995, to September 15, 1995. (Libby Pemberton)

12. Mississippi Department of Agriculture and Commerce for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. Mississippi had initiated a crisis exemption for this use. (Margarita Collantes)

13. Montana Department of Agriculture for the use of cyhalothrin on small grains to control cutworms; May 17, 1995, to July 1, 1995. (Margarita Collantes)

14. New Jersey Environmental Protection Agency for the use of cymoxanil on tomatoes to control late blight; July 27, 1995, to April 1, 1996. A notice of receipt published in **Federal Register** of August 2, 1995 (60 FR 39387). The situation appears to be urgent; nonroutine; use can be toxicologically supported and hazard to nontarget organisms is not expected; use is not expected to pose a threat to surface and/or ground water. (Libby Pemberton)

15. New Jersey Environmental Protection Agency for the use of propamocarb hydrochloride on tomatoes to control late blight; July 27, 1995, to April 1, 1996. (Libby Pemberton)

16. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control white and gray mold; June 1, 1995, to September 15, 1995. (Kerry Leifer)

17. North Dakota Department of Agriculture for the use of sethoxydim on buckwheat to control volunteer cereal grains; July 18, 1995, to July 30, 1995. (David Deegan)

18. Tennessee Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; July 18, 1995, to September 30, 1995. (Margarita Collantes)

19. Texas Department of Agriculture for the use of carbofuran on cotton to control aphids; June 9, 1995, to September 15, 1995. (David Deegan)

20. Washington Department of Agriculture for the use of propamacarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; July 7, 1995, to September 30, 1995. (Libby Pemberton)

21. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng to control leaf and stem blight; May 23, 1995, to August 31, 1995. (Margarita Collantes)

22. Wyoming Department of Agriculture for the use of pirimicarb on alfalfa grown for seed to control alfalfa aphids, pea aphids, and lygus bugs; June 16, 1995, to August 31, 1995. (Larry Fried)

The following States listed below were granted an emergency exemption for the use of propamocarb hydrochloride on potatoes to control late blight; June 23, 1995, to September 30, 1995, except for Florida and Oregon, whose expiration date is June 22, 1996, and October 31, 1995, respectively. A notice of receipt published in the **Federal Register** of June 21, 1995 (60 FR 32319). The exemption was granted on the basis that the situation appears to be urgent and nonroutine. Limited supplies of recently authorized products indicate need for a third chemical. The use can be toxicologically supported and is not expected to result in hazard to nontarget organisms and should not pose a threat to surface and/or ground water.

1. Delaware Department of Agriculture.
2. Florida Department of Agriculture and Consumer Services.
3. Georgia Department of Agriculture.
4. Maine Department of Agriculture.
5. Maryland Department of Agriculture.
6. Michigan Department of Agriculture.
7. Minnesota Department of Agriculture.
8. New Jersey Department of Environmental Protection.
9. New York Department of Environmental Conservation.
10. North Dakota Department of Agriculture.
11. Ohio Department of Agriculture.
12. Oregon Department of Agriculture.
13. Pennsylvania Department of Agriculture.
14. South Dakota Department of Agriculture.
15. Virginia Department of Agriculture and Consumer Services.
16. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Mississippi Department of Agriculture and Commerce on July 7, 1995, for the use of tebufenozide on cotton to control beet armyworms. This program has ended. (Margarita Collantes)

2. Montana Department of Agriculture on July 15, 1995, for the use of bifenthrin on canola to control diamondback moth larvae. This program has ended. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. California Department of Pesticide Regulations for the use of fenpropathrin on tomatoes to control silverleaf and greenhouse whiteflies. (Margarita Collantes)

2. Montana Department of Agriculture for the use tralkoxydim on wheat to control weeds. The Agency denied the exemption because the situation is routine and not urgent, and significant economic loss is not expected. (Margarita Collantes)

3. Minnesota, North Dakota, and South Dakota Departments of Agriculture for the use of propiconazole on wheat and barley to control fusarium head blight. The request was denied because residue chemistry indicated that the crops would contain carcinogenic residue in processed commodities. This triggered the "Delaney Clause" of the Federal Food, Drug and Cosmetic Act (FFDCA). (Margarita Collantes)

EPA denied the following specific exemption requests for use of Pirate on cotton to control beet armyworms. Pirate is an unregistered chemical which was denied due to risk of unreasonable adverse effects to nontarget birds, aquatic organisms, and the environment. In addition, a registered alternative, tebufenozide, was granted to control this pest on the southeastern cotton belt region.

1. Alabama Department of Agriculture and Industries.
2. Arkansas State Plant Board.
3. Georgia Department of Agriculture.
4. Louisiana Department of Agriculture and Forestry.
5. Mississippi Department of Agriculture and Commerce.
6. Tennessee Department of Agriculture. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Crisis exemptions.

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Dated: November 6, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–30112 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5343–6]

Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Hooker Chemical/Ruco Polymer Site, Hicksville, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), relating to the Hooker Chemical/Ruco Polymer Site (the "Site"), Hicksville, Nassau County, New York. This Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement ("Agreement"), is being entered into by EPA and Occidental Chemical Corporation and Ruco Polymer Corporation (the "Respondents"). Under the Agreement, the Respondents shall pay EPA the sum of $124,665.00 in further reimbursement of EPA's response costs incurred and paid with respect to the Site on or prior to August 18, 1994. In response to EPAs cost recovery demands, Occidental Chemical Corp. had previously reimbursed EPA for $883,813.00 of the Agency's response costs at the Site.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Comments should reference the Hooker Chemical/Ruco Polymer Site and EPA Index No. II–CERCLA–95–0216. Comments and any requests for further information, including requests for a copy of the Agreement, should be sent to: Marla E. Wieder, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3185.

Dated: November 14, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–30104 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5344–1]

Proposed Administrative Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Hudson Coal Tar Site, Hudson, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, relating to the Hudson Coal Tar Site ("Site") in Hudson, New York. This Site is not on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Order on Consent (the "Order"), is being entered into by EPA and Lockwood Properties, Inc. ("Lockwood"). EPA has determined that Lockwood, the owner of a portion of the Site, is eligible for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B).

Under the Order, Lockwood will provide EPA and Niagara Mohawk Power Corp., a potentially responsible party currently undertaking a removal action at the Site, with access to its property in order to permit the performance of response actions there. Lockwood has also agreed, among other things, to cooperate with EPA and Niagara Mohawk in their implementation of response actions at the Site; exercise due care with respect to hazardous substances at Lockwood's property; and provide perimeter fencing to secure the portion of the Site owned by Lockwood. Under the Order, EPA, in turn, covenants not to sue Lockwood for any civil liability for injunctive relief or reimbursement of response costs with regard to the Site, pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), subject to certain reservations of rights.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Comments should reference the Hudson Coal Tar Site and EPA Index No. II–CERCLA–95–0212. Comments and requests for further information, including requests for a copy of the Order, should be sent to: Brian E. Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, telephone: (212) 637–3170.

Dated November 14, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–30103 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5343–9]

De Minimis Settlements Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. § 9622(g), Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of the *de minimis* settlements under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g), Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) has entered into four separate *de minimis* administrative settlements to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). These settlements are intended to resolve the liability of Canam Steel Company, St. Louis Steel Products, Henkel Corporation, and Peerless-Premier Appliance Company for the response costs incurred and to be incurred at the Peerless Industrial Paint Coatings Site, City of St. Louis, St. Louis County, Missouri.

DATES: Written comments must be provided on or before January 12, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Peerless Industrial Paint Coatings Superfund Site, City of St. Louis, St. Louis County, Missouri, EPA Docket Nos. VII–94–F–0022, VII–94–F–0021, VII–94–F–0027, and VII–94–F–0023.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7559.

SUPPLEMENTARY INFORMATION: The settling parties are Canam Steel Company, Henkel Corporation, Peerless-Premier Appliance Company, and St. Louis Steel Products. They are *de minimis* generators of hazardous substances found at the Peerless Industrial Paint Coatings Site, which is the subject Superfund Site. In July and August 1995, Region VII entered into four separate *de minimis* administrative settlements to resolve claims under Section 122(g) of CERCLA, 42 U.S.C. 9622(g).

The Peerless Industrial Paint Coatings Site (the Site) is located in St. Louis at 1265 Lewis Street, St. Louis, Missouri, approximately ¼ mile north of downtown St. Louis in an industrial section of the city. The *de minimis* parties were corporations that manufactured paints. The *de minimis* parties sold paint sludges, paint solids, and paint liquids or semi-liquids to Peerless Industrial Paint Coatings ("Peerless"), a St. Louis corporation, at very low prices. The *de minimis* parties either admitted that they were disposing of hazardous substances through this arrangement, admitted that there was no other customer besides Peerless for such materials, and/or that the sales price was lower than the costs of disposal for hazardous wastes at an authorized permitted facility. Peerless was a manufacturer of paints and magazine coatings that purchased large quantities of paint materials at low prices and accumulated more materials on-site than could be used. In June 1993, the EPA began a removal action at the site. Approximately 3500 drums of hazardous substances that demonstrated the characteristics of ignitability were removed from the facility at the cost of $1,089,062.71.

The settlements have been approved by the U.S. Department of Justice because the response costs in this matter exceed $500,000.00. The EPA estimates the total past and future costs will be approximately $1,206,089.71. Pursuant to the Administrative Orders on Consent, the *de minimis* parties are responsible for the following costs: Peerless-Premier Appliance Company has an attributable share of 1.20% and is responsible for $13,236.45 in past costs and $1,193.24 in future costs; Canam Steel Corporation has an attributable share of 1.29% and is responsible for $14,238.45 in past costs and $1,283.55 in future costs; St. Louis Steel Products has an attributable share of 1.665% and is responsible for $18,412.20 in past costs and $1,659.80 in future costs; and Henkel Corporation has an attributable share of .30% and is responsible for $3,453.48 in past costs and $311.32 in future costs. The EPA determined these amounts to be the *de minimis* parties; fair shares of liability based on the amount of hazardous substances found at the Site and contributed by each of the settling parties. These settlements include contribution protection from lawsuits by other potentially responsible parties as provided for under Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

The *de minimis* settlements provide that the EPA covenants not to sue the *de minimis* parties for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The settlements contain a reopener clause which nullifies the covenant not to sue if any information becomes known to the EPA that indicates that the parties no longer meet the criteria for a *de minimis* settlement set forth in Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The covenant not to sue does not apply to the following matters:

(a) Claims based on a failure to exercise due care with respect to hazardous substances at the Site;

(b) Claims based on a failure to make the payments required by Section IV, Paragraph 1 of this Consent Order;

(c) Claims based on the exacerbation by Respondent of the release or threat of release of hazardous substances from the Site;

(d) Claims based on the introduction of any hazardous substance, pollutant, or contaminant by any person at the Site after the effective date of this Consent Order;

(e) Criminal liability; or

(f) Liability for damages or injury to, destruction of, or loss of the natural resources.

The *de minimis* settlements will become effective upon the date which the EPA issues a written notice to the parties that the statutory public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from the settlements.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–30102 Filed 12–12–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Community Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Community Bankshares, Inc., Concord, New Hampshire to acquire 100 percent of the voting shares of Centerpoint Bank, Bedford, New Hampshire.

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B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Stone Street Bancorp, Inc., Mocksville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Mocksville Savings Bank, Inc., SSB, Mocksville, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central and Southern Holding Company, Milledgeville, Georgia; to acquire Interim Central and Southern Bank of Greensboro, Greensboro, Georgia.

Applicant proposes for its existing bank subsidiary, Central and Southern Bank of Greensboro, to merge with and into an interim thrift subsidiary, Interim Central and Southern Bank of Greensboro, pursuant to § 3(a)(4) of the Bank Holding Company Act. Interim Central and Southern Bank of Greensboro will survive the merger and operate under the name Central and Southern Bank of North Georgia.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin, and its subsidiary, Associated Banc-Shares, Inc., Madison, Wisconsin; to acquire 100 percent of the voting shares of SBL Capital Bank Shares, Inc., Lodi, Wisconsin, and thereby indirectly acquire State Bank of Lodi, Lodi, Wisconsin.

In connection with this application, Associated Banc-Shares, Inc., Madison, Wisconsin, also has applied to become a bank holding company.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. ABNA Holdings, Inc., Dallas, Texas; to become a bank holding company by acquiring 97.6 percent of the voting shares of American Bank, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, December 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30341 Filed 12–12–95; 8:45 am]

BILLING CODE 6210–01–F

First Community Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Knob Noster, Missouri; to engage *de novo* through its subsidiary, First Mortgage Co., Knob Noster, Missouri, in the sale of credit-related life and accident and health insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1995.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Adam Financial Corporation, Bryan, Texas; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1), of the Board's Regulation Y. These activities will be conducted throughout the state of Texas.

Board of Governors of the Federal Reserve System, December 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30342 Filed 12–12–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Reform Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1994 to September 30, 1995. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after January 1, 1996.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 3, 4, 5, 6, 8, 9, and 10 in SIC Group 15, shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 3, 4, 5, 6, 8, 9, and 10 shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 2, 3, 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 2, 3, 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: December 4, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–30392 Filed 12–12–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

General Notice and Delegation of Authority To Review Decisions Issued by Administrative Law Judges in Certain Medicare Claims; Solicitation of Comments on Existing Procedures for These Appeals

SUMMARY: The publication of this notice and delegation of authority is to advise the public that the Department of Health and Human Services' Departmental Appeals Board has been given jurisdiction to review the decisions of Administrative Law Judges with respect to entitlement to coverage and claims for benefits under Medicare Part A, Hospital Insurance, and Medicare Part B, Supplementary Medical Insurance. It also gives notice of mailing and e-mail addresses to provide opportunities for interested parties to make suggestions for improvements in the current appeals procedures for these cases.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Glide B. Morrisson (202) 690–7043, (telephone) (202) 690–5863 (FAX).

Since the inception of the Medicare program, Administrative Law Judges (ALJs) from the Social Security Administration (SSA) have decided requests for ALJ hearings filed by or on behalf of Medicare beneficiaries concerning requests for payment under Part A of Medicare. In section 9341 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, Congress extended similar administrative review rights concerning requests for payment under Medicare Part B for services furnished on or after January 1, 1987. As a result, SSA's ALJs now conduct hearings concerning Medicare claims brought under both Parts A and B. Beneficiaries and other parties dissatisfied with an ALJ decision on either Part A or Part B claim may request that SSA's Appeals Council review the ALJ's decision. The Appeals Council also reviews ALJ hearing decisions concerning an individual's entitlement to hospital insurance (Part A) and supplementary medical insurance (Part B).

On August 15, 1994, the Social Security Independence and Program

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Improvements Act of 1994, Pub. L. 103–296, was enacted, establishing SSA as an independent agency. As a result, the Secretary of Health and Human Services has decided to delegate to the Chair of the Departmental Appeals Board the authority to review ALJ decisions concerning claims for payment under Medicare Part A and B as well as ALJ decisions concerning entitlement to Medicare coverage. The delegation will be effective October 1, 1995. All Medicare cases pending before SSA's Appeals Council on September 30, 1995, will thereafter be the responsibility of the Departmental Appeals Board (DAB). Request for ALJ hearings on claims for payment under Parts A and B and requests for ALJ hearings on entitlement to Medicare coverage will continue to be decided by the ALJs in SSA's Office of Hearings and Appeals.

Until the procedures are modified, the DAB will conduct its review of ALJ decisions under the existing regulations governing appeals of Part A and B claims. Therefore, in conducting its review, the DAB will use the procedures provided in the following authorities, as applicable: 20 CFR Part 404, Subparts J and R, 42 CFR Part 405, Subparts G and H, 42 CFR Part 473, Subpart B (concerning review of decisions on Part A and B determinations made by peer review organizations) and regulations in 42 CFR part 417 governing review of decisions concerning Part A and B claims submitted by enrollees of health maintenance organizations, competitive health plans and health care prepayment plans. For the cases covered by this delegation, where ever the term "Appeals Council" is used, the term "Departmental Appeals Board" should be inserted.

The DAB, in cooperation with the Health Care Financing Administration, will review current procedures for appropriate changes and improvements. Interested parties may send comments and suggestions to the DAB at the following address: Departmental Appeals Board, Department of Health & Human Services, 200 Independence Avenue, S.W., Room 637D, Washington, DC 20201, or at the following e-mail address: gbm@ospahb.ssw.dhhs.gov.

On October 13, 1993, I delegated to the Departmental Appeals Board my authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving, *inter alia*, provider participation and termination under section 1866(b)(2) of the Social Security Act and the other authorities enumerated in that delegation. See 58 Fed. Reg. 58171 (October 29, 1993). The delegation to the Departmental Appeals Board dated October 13, 1993, superseded all previous delegations of authority to review decisions by Administrative Law Judges on the referenced authorities, except that the delegation provided that the Social Security Administration, Office of Hearings and Appeals, Appeals Council continued to have the authority to review, or to decline to review, decisions in cases pending before it. There are still five of those cases pending; they are assigned to the same specialized personnel who are transferring to DAB to process the other Medicare appeals being delegated in this notice. Thus, notice is hereby given that any case pending before SSA's Appeals Council on September 30, 1995 that concerns the authorities referenced in the October 13, 1993 delegation will be transferred to the Departmental Appeals Board effective October 1, 1995.

Delegation of Authority

Notice is hereby given that I have delegated to the Chair of the Departmental Appeals Board my authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration involving Title XVIII, Parts A and B of the Social Security Act, as provided below:

1. The authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving determinations made under section 1869 of the Social Security Act concerning whether an individual is entitled to benefits under Part A or Part B, and concerning claims for benefits under Parts A or B.

2. The authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges involving determinations made under section 1876(c)(5) of the Social Security Act, which affect an individual's right to receive items and services, without additional cost, from a health maintenance organization.

3. The authority to make final decisions on review of, or to decline to review, decisions of Administrative law Judges involving determinations made under section 1155 of the Social Security Act.

I have also delegated to the Chair of the Departmental Appeals Board the authority to make final decisions on review of, or to decline to review, decisions of Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration involving, *inter alia*, provider participation and termination under section 1866(b)(2) of the Social Security Act and the other authorities enumerated in that delegation for any cases pending before SSA's Appeals Council on September 30, 1995 that concern the authorities referenced in my October 13, 1993 delegation. See 58 Fed. Reg. 58171 (October 29, 1993).

These delegations include, but are not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, and to make findings of fact and conclusions of law. These delegations, which supersede all previous delegations of authority to make final decisions on review of, or to decline to review, decisions by Administrative Law Judges on the above-referenced authorities, are effective October 1, 1995. Accordingly, all cases decided pursuant to the above-referenced authorities that are pending with the Appeals Council of the Office of Hearing and Appeals, Social Security Administration on September 30, 1995, will thereafter be the responsibility of the Chair of the Departmental Appeals Board.

Dated: October 24, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–30282 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–M

Food and Drug Administration

[Docket No. 95N–0363]

Medical Devices; Review of Computer-Aided Diagnostic Software Devices; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the appropriate approach to the review of premarket submissions for computer-aided diagnostic (CADx) medical devices. Because there is increasing interest in and development of CADx medical devices, the agency is holding this workshop to obtain public comments and suggestions that may help FDA develop device description and assessment methodologies for reviewer guidance for premarket submissions for these CADx medical devices.

DATES: The workshop will be held on January 26, 1996, from 9 a.m. to 4:30 p.m. Participants and other persons who want to be heard must be present by 9 a.m. Submit written notices of participation on or before January 15, 1996.

ADDRESSES: The workshop will be held at the Parklawn Bldg., conference room D, 5600 Fishers Lane, Rockville, MD. Written comments, identified with the docket number found in brackets in the heading of this document, regarding reviewer guidance for CADx devices may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary P. Anderson, Center for Devices and Radiological Health (HFZ–142), 12720 Twinbrook Pkwy., Rockville, MD 20852, 301–443–5020 ext. 40, FAX 301–443–9101.

Contact Mary Anderson (address above) for a registration form for the workshop. There is no registration fee but advance registration is required. Interested persons are encouraged to register early because space is limited. Persons with disabilities who require special assistance to attend or participate in the workshop can be accommodated if advance notification is provided. If you have a disability that affects your attendance at, or participation in, this meeting, please contact Mary Anderson (address and telephone number above), in writing and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

SUPPLEMENTARY INFORMATION:

I. Background

FDA anticipates receiving increasing numbers of premarket submissions for CADx medical devices. Some of these devices are accessories that analyze data produced by diagnostic medical devices, such as digital radiography systems, and highlight possible findings which assist the device user in interpreting such data. An example of such a device is an automated Pap smear reader. In order to develop reviewer guidance for appropriate device description and assessment methodologies in premarket submissions for these devices, FDA has established a computer-aided diagnostic device working group. This working group is in the process of evaluating the agency's approach to review of premarket submissions for these medical devices.

II. Purpose and Tentative Agenda of the Workshop

The purpose of the public workshop is to obtain suggestions that will help FDA develop reviewer guidance for device description and assessment methodologies in premarket submissions for CADx medical devices.

Presiding over the workshop will be: David G. Brown, Chief Scientist, and Mary P. Anderson, Chief of the Medical Imaging and Computer Applications Branch, Division of Electronics and Computer Systems, Office of Science and Technology, Center for Devices and Radiological Health, FDA. They will be assisted by other FDA officials.

FDA will open the workshop with a summary of the present status of FDA review of these devices. This presentation will provide information on the impetus, objectives, and scope of the FDA's activities in this area. Following FDA's presentation, a specific period of time will be provided for participants to make presentations. Interested persons who wish to participate in the public workshop may, on or before January 15, 1996, submit a written notice of participation to the Dockets Management Branch (address above) identified with the docket number found in brackets in the heading of this document, including name, address, telephone number, business affiliation, a brief summary of the presentation, and an estimate of the amount of the time required for comments.

FDA requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. A schedule of the allotted times will be available at the workshop. Each participant will be notified before the workshop of the approximate time of their presentation. The schedule will be placed on file in the Dockets Management Branch under the docket number found in brackets in the heading of this document. The workshop will also include an opportunity for interested persons who did not submit a notice of participation to make brief statements or comments, if time permits. The workshop will then proceed to a panel discussion of specific issues to be considered in developing FDA's approach to the review of premarket submissions for CADx medical devices. The workshop is informal, and the rules of evidence will not apply. No participant may interrupt the presentation of another participant.

Dated: November 28, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–30333 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired.
Title of Information Collection: Request for Medicare Payment-Ambulance.
Form No.: HCFA–1491.
Use: This form is completed on an "occasional" basis by beneficiaries and/or ambulance services. It is also submitted to a Medicare carrier to request payment for ambulance services.
Frequency: On occasion.
Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.
Number of Respondents: 8,513,300.
Total Annual Hours Requested: 1,418,883.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent

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within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 5, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30393 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection.
Title of Information Collection: Annual Report on Home and Community-Based Waivers.
Form No.: HCFA–372, HCFA–372(S).
Use: States with an approved waiver under section 1915© of the Social Security Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) verify that State assurances regarding waiver cost neutrality are met, and (2) determine the waiver's impact on the type, amount, and cost of services provided under the State plan and health and welfare of recipients.
Frequency: Annually.
Affected Public: State, local, or tribal government.
Number of Respondents: 49.
Total Annual Hours: 18,000.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 4, 1995.

Kathleen B. Larsen,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30290 Filed 12–12–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Request for Nominations to the National Advisory Committee on Rural Health; Extension of Closing Date

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of Closing Date.

SUMMARY: The Health Resources and Services Administration is requesting nominations to fill five vacancies on the Secretary's National Advisory Committee on Rural Health. The closing date is extended to February 2, 1996. All other aspects of the November 7, 1995 **Federal Register** Notice (60 FR 62254) remain the same.

ADDRESSES: Nominations and curricula vitae of nominees should be sent to Dena S. Puskin, SC.D., Executive Secretary to the National Advisory Committee on Rural Health, Room 9–05, 5600 Fishers Lane, Rockville, MD 20857.

Dated: December 7, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–30338 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–15–P

Funding Notice for Grant Programs Funded Under Title VIII of the Public Health Service Act for Fiscal Year 1996; Notice of Extension of Application Due Date

This notice extends the application due date for fiscal year (FY) 1996 grant program for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds (section 827). The application due date is extended to January 12, 1996. All applications must be received in the Parklawn Building by close of business on January 12, 1996. This change is necessary because of difficulties experienced with electronically accessing the program materials and unexpected delays in mailing. All other aspects of the October 20, 1995 **Federal Register** Notice (60 FR 54243) remain the same.

Dated: December 7, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–30337 Filed 12–12–95; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Institutes of Health; Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Action of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH). National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Ruth A. Kleinerman, M.P.H., Epidemiologist, at (301) 496–6600.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Ruth A. Kleinerman, M.P.H., National Cancer Institute. EPN 408, 6130 Executive Boulevard, Rockville, MD 20892–7364. Written comments should be received by [Federal Register insert the date 60 days following the date of publication].

Proposed Project: Cancer Risk in X-ray Technologists: Second Survey for Incidence—renewal—A cohort study will be conducted to quantify the risk of radiation-induced cancer among 135,000 registered x-ray technologists. X-ray technologists will be asked to respond to a mail questionnaire which collects information about incident cancers and risk factors for those cancers to evaluate cancer risk associated with occupational exposure to low-level ionizing radiation, taking into account potentially confounding factors. The information will be used by the National Cancer Institute to determine cancer specific radiation risk estimates. Physicians will be contacted to verify self-reports of cancer by x-ray technologists. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response (hours)
X-ray Technologists	14,000	1	.33
Physicians	500	1	.17

Dated: December 5, 1995.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 95–30305 Filed 12–12–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–70147 and AA–70153]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Calista Corporation for approximately 34,046 acres. The lands involved are in the vicinities of Goodnews, Alaska, and Crooked Creek, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 12, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30288 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–962–1410–00–P; F–14946–B, F–14946–C, F–14946–D F–14946–A2, F–14946–B2]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Teller Native Corporation for approximately 26,801.05 acres. The lands involved are in the vicinity of Teller, Alaska, within:

Kateel River Meridian, Alaska

Ts. 3 and 4 S., Rs. 35 W.
Ts. 3, 4, and 5 S., Rs. 36 W.
Ts. 4 and 5 S., Rs. 37 W.
Ts. 4 and 5 S., Rs. 38 W.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 12, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30386 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[NV–020–02–1990–01]

Winnemucca District, NM; Santa Fe Pacific Gold Corp. Lone Tree Mine Expansion Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca District of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Santa Fe Pacific Gold Corporation's Lone Tree Mine Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by February 16, 1996.

Public meetings to receive oral and written comments have been scheduled for the dates and places listed below. All meetings will begin at 7:00 p.m. each evening.

* January 9, 1996—at the West Hall, Winnemucca Convention Center, Winnemucca, Nevada.

* January 10, 1996—Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

* A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca District Office, ATTN: Gerald Moritz, Project Manager, 705 E. 4th Street, Winnemucca, Nevada 89445.

* The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89520; Humboldt County Library, Winnemucca, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manger at the above Winnemucca District Address or telephone (702) 623–1500.

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SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the expansion of the current gold mining operations at the Lone Tree Mine. Alternatives analyzed include the Proposed Action and No Action. The Lone Tree Expansion would consist of expansion of the existing pit, ore processing facilities, and overburden disposal areas from private land onto public lands.

Dated: November 30, 1995.

Ann J. Morgan,

State Director, Nevada.

[FR Doc. 95-30394 Filed 12-12-95; 8:45 am]

BILLING CODE 4310-HC-M

[CA-063-1150-00]

Public Workshops for the Northern & Eastern Colorado Desert Coordinated Management Plan

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that a series of multi-agency meetings have been scheduled to update the public on the status of the Northern and Eastern Colorado Desert Coordinated Management Plan. The agencies urge interested individuals and organizations to attend these workshops to review progress and offer specific suggestions on the preparation of the draft plan. The following public workshops are scheduled:

Monday, January 8, 7–10 p.m., BLM Riverside District Office, 6221 Box Springs Boulevard, Riverside, CA

Tuesday, January 9, 7–10 p.m., Holiday Inn, 2640 Lakewood Boulevard, Long Beach, CA

Wednesday, January 10, 7–10 p.m., Joshua Tree National Park, Park Headquarters, 54485 Joshua Tree National Park, Twentynine Palms, CA

Thursday, January 11, 7–10 p.m., BLM Palm Springs Resource Area, 630500 Garnet Avenue, Palm Springs, CA

Tuesday, January 16, 7–10 p.m., BLM Needles Resource Area Office, 101 W. Spike's Road, Needles, CA

Wednesday, January 17, 7–10 p.m., Blythe City Council Chambers, 220 North Spring Street, Blythe, CA

Thursday, January 18, 7–10 p.m., Imperial Irrigation District, 1285 Broadway, El Centro, CA

Monday, January 22, 7–10 p.m., U.S. Forest Service, Cleveland National Forest, 10875 Rancho Bernardo Road, Suite 200, Rancho Bernardo, CA

ADDITIONAL INFORMATION: The purpose of the meetings includes: updating the public on the status of the Plan, including the scope and summarized issues that will guide decision making; invite public inspection of some of the information collected on resources and uses that will be used in analyzing values and conflicts and in making decisions focusing on wildlife habitats and the vehicle routes of travel inventories; gathering public comment about the plan's direction and process to date, the information that has been gathered; and advising the public about how to review and study the information gathered and obtain copies of some of the data to be better prepared to review and comment on the draft plan when it is issued.

The Bureau of Land Management is the lead agency and cooperating agencies are: National Park Service, Fish and Wildlife Service, National Biological Service, Marine Corps Air Station, Yuma; and the California Department of Fish and Game.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, External Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (909) 697-5215.

Dated: November 29, 1995.

Jo Simpson,

Acting, District Manager.

[FR Doc. 95-30423 Filed 12-12-95; 8:45 am]

BILLING CODE 4310-40-M

[OR-958-1430-01; GP6-0033; OR-44130, OR-43183-WA]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 3,310 acres of public lands in Oregon, and 1,846.04 acres of public lands in Washington, out of Federal ownership. This action will also open 1,280 acres of reconveyed lands to surface entry. The 640 acres in Oregon are already open to mining and mineral leasing and the mineral estate in the 640 acres in Washington is not in Federal ownership.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-952-6171.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, patents have been issued transferring 3,310 acres in Harney County, Oregon, and 1,846.04 acres in Grant County, Washington, from Federal to private ownership.

In the exchange, the following described lands has been reconveyed to the United States:

Willamette Meridian

T. 5 N., R. 18 E.,
Sec. 27.

The area described contains 640 acres in Klickitat County, Washington.

Willamette Meridian

T. 32 S., R. 32 ⅔ E.,
Sec. 15, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 21, N½NE¼;
Sec. 22, N½ and E½SE¼.

The area described contains 640 acres in Harney County, Oregon.

At 8:30 a.m., on January 18, 1996, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on January 18, 1996, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: December 1, 1995.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 95-30287 Filed 12-12-95; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities; Request for Public Comment

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of policy; Request for public comments.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) propose to issue a policy that will address the conservation needs of species listed, or proposed to be listed, under the Endangered Species Act of 1973, as amended (ESA) while providing for the continuation and enhancement of recreational fisheries. This proposed policy identifies measures the Services will take to ensure consistency in the administration of the Endangered Species Act of 1973, as amended between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries. This policy meets the requirements set forth in Section 4 of Executive Order 12962, Recreational Fisheries.

DATES: Comments on this proposed draft policy must be received on or before February 12, 1996 in order to be considered in the final decision on this proposed policy.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358-2171), or the Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-1401). Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358-2171).

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service (301/713-1401) at the respective addresses.

SUPPLEMENTARY INFORMATION:

Background

The ESA specifically charges the Secretaries of the Interior and Commerce with the responsibility to identify, protect, manage, and recover species of plants and animals in danger of extinction. The ESA also specifically identifies the protection and conservation of ecosystems upon which federally listed species depend as among the legislation's purposes (16 U.S.C. 1531(i).

In addition to the ESA, many Federal laws recognize the importance of aquatic resources (e.g., Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act, Anadramous Fish Conservation Act, Federal Water Project Recreation Act, Federal Aid in Sport Fish Restoration Act, National Wildlife Refuge System Administration Act of 1966, Magnuson Fishery Conservation and Management Act, Marine Sanctuaries Act, Coastal Zone Management Act, National Recreation Act of 1962, National Environmental Policy Act). These laws outline the roles of several Federal agencies to protect, restore, and conserve aquatic resources, and to provide for and enhance fisheries and other recreational uses; some apply only to activities undertaken, permitted, licensed, or funded by a Federal agency.

Most of North America's aquatic environments and biological communities have been significantly altered by human impacts. Degraded habitats have reduced the capacity of aquatic ecosystems to support former diversity and abundance of native fish and other freshwater species. Degraded and altered habitats are among the most commonly cited causes of population extirpation and decline among federally protected endangered and threatened aquatic species. Likewise, losses of suitable aquatic habitats have resulted in significant declines among many native sport and non-game species of fish and other aquatic organisms.

As of November 1, 1995, within the United States, 105 species of fish and 57 species of clams/mussels are on the Federal threatened or endangered species list (50 CFR 17.11 & 17.12). Approximately 36 percent of the fishes, 64 percent of the crayfishes, and 69 percent of the freshwater mussels in the United States are considered imperiled or extinct (Data from the National Network of Natural Heritage Programs and Conservation Data Centers and The Nature Conservancy, Eastern Regional Office, Boston, Massachusetts).

The Services recognize that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well-being. Annually, approximately 50 million anglers spend $24 billion directly on tackle, equipment, food and lodging, and other fishing-related expenses. The total economic output (wholesale, retail, manufacturing, and supply of goods and services) stimulated by angler spending exceeded $69 billion in 1991. Those expenditures generated over $2.1 billion in Federal tax revenues, and provided employment for approximately 1.3 million people nationwide.

Historically, resource managers did not fully understand the effects of some management actions on ecosystems. Habitat alteration and degradation, heavy fishing pressure, and introduction of non-native species often resulted in unexpected negative impacts to other ecosystems components. As today's managers realize more fully the impacts of their actions, they also realize that they must be more cautious in what activities they prescribe in natural ecosystems. The benefits gained by some actions may be paid for with losses to non-target species or habitats. This has led to potential conflicts between efforts to conserve native species and their communities, and obligations to maintain and enhance recreational fishing opportunities. These issues have been of particular concern where the Services' responsibilities for both recreational fisheries and recovery of federally protected species are perceived to be opposed or mutually exclusive.

The present altered condition of many aquatic ecosystems limits their ability to support fish and other aquatic organisms. Successful future management of the Nation's aquatic resources must become more focused on an ecosystem approach to management that recognizes multiple uses of aquatic systems. Management of biological resources must be based on a sound scientific understanding of species' life histories, habitat requirements, and ecosystem processes. Resource managers and administrators must recognize the intrinsic, aesthetic, recreational, and economic importance of these same resources and assess their ability to meet the needs and desires of a variety of interests. Successful future management of aquatic resources requires substantive cooperative partnerships and a willingness to resolve differences among the Services and other Federal agencies, States, Native American governments, and private stakeholders. Such cooperation and problem solving must be based on a framework of mutually recognized concerns and common goals developed by all the stakeholders in a given area.

On June 7, 1995, President Clinton issued Executive Order 12962, Recreational Fisheries. That order requires Federal agencies, to the extent permitted by law and where practical, and in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for

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increased recreational fishing opportunities. Among other actions, the order requires all Federal agencies to aggressively work to promote compatibility and reduce conflict between administration of the ESA and recreational fisheries.

Policy

The Services recognize the primary responsibility of State and Native American governments for the protection and management of fish, wildlife, and plant resources within their jurisdictions. The Services' policy is to work closely with the States and other stakeholders to minimize and resolve conflicts between implementation of the ESA and activities to enhance recreational fisheries. This will be accomplished through cooperative partnerships with other Federal agencies, State and local governments, Native American governments, recreational fisheries interests, conservation organizations, industry, and other interested recreational fisheries stakeholders. Activities to be undertaken by the Services with respect to implementation of the ESA include the following general areas:

1. The Services will increase efforts to work with all stakeholders in a given area to develop mutually understood and accepted goals and objectives among the involved Federal agencies, States, Native American governments, and affected recreational fisheries interests for the conservation of listed species by:

A. Ensuring consistency in ESA implementation between and within the Services;

B. Promoting cooperative interaction with other Federal agencies, States, Native American governments, and recreational fisheries stakeholders at appropriate organizational levels in implementing the ESA;

C. Promoting collaboration and information sharing among other Federal agencies, States, Native American governments, and recreational fisheries stakeholders;

D. Coordinating with all affected partners throughout the decision-making processes on federally listed species issues that may affect recreational fisheries; and

E. Improving and increasing efforts to inform non-Federal entities of the requirements of the ESA with particular reference to Sections 4, 7, 9, and 10.

2. The Services will encourage participation of other Federal agencies, States, Native American governments, and affected recreational fisheries stakeholders in developing, implementing, and reviewing actions identified in approved recovery plans for listed species by:

A. Involving other Federal agencies, States, Native American governments, recreational fisheries stakeholders in recovery planning and implementation;

B. Encouraging proactive conservation, restoration, and improvement projects on public and private lands and waters to conserve federally listed or proposed aquatic species and to support, when possible, similar measures to prevent further decline of species and loss of habitat in order to preclude the need to list additional species under the ESA;

C. Supporting management practices that are consistent with recovery objectives and compatible with existing recreational fisheries;

D. Identifying priorities for the restoration of aquatic habitats needed to conserve and recover federally listed and proposed species and, working to concurrently to support increased recreational fishing opportunities to the maximum extent possible;

E. Encouraging management actions that protect and conserve aquatic habitats, ecological processes and the diversity of aquatic communities;

F. Coordinating the reintroduction of listed species into former habitats within the species' historical range with other Federal agencies, States, and Native American governments, and other interested or affected entities, including recreational fisheries interests;

G. Evaluating the potential impacts of proposed introductions of non-indigenous species or hybrids in drainages supporting federally listed or proposed species. Such introductions must be based on management plans incorporating sound genetics, disease control, ecological principles, and listed species recovery objectives, as well as recreational fisheries and other socio-economic objectives;

H. Ensuring the effectiveness of actions taken to recover listed species by periodically evaluating, and adjusting conservation and recovery strategies and actions accordingly to minimize adverse effects on recreational fisheries where possible;

I. Eliminating unnecessary restrictions affecting recreational fisheries. Priority will be given to reviewing restrictions on recreational fisheries in areas currently unoccupied by a listed species but within known historical range of the listed species, areas unoccupied but designated as critical habitat, and areas that are not viewed as essential to a listed species' recovery. The value of the unoccupied areas as reintroduction sites for federally listed species will be carefully evaluated and balanced with activities needed to enhance recreational fisheries.

J. Encouraging States to become active participants in listed aquatic endangered, threatened, and proposed species recovery through Section 6 grants; and

K. Assisting the States and Native American governments in meeting their recreational fishing goals.

3. The Services, in cooperation with other Federal agencies, States, Native American governments, private organizations, and other recreational fisheries stakeholders will provide the public with a better understanding of the relationship between conservation and recovery of federally listed and proposed species and recreational fisheries by:

A. Involving the public in identifying opportunities to enhance recreational fisheries while providing for the conservation of federally listed species, and in identifying and implementing solutions to aquatic systems degradation;

B. Informing the fishing and non-fishing public about the ESA. Such efforts will include but not be limited to addressing topics such as the incidental take of listed species, the use of 4(d) rules, habitat conservation planning, and other adaptive conservation tools; and

C. Assisting to identify and provide, contingent on appropriations, priorities, and other constraints, comparable alternative recreational opportunities when existing recreational fisheries opportunities are altered or curtailed to meet objectives for conservation of federally listed or proposed species.

4. In order for the Services to meet particular mandates to conserve federally endangered, threatened, or proposed species while providing and enhancing recreational fisheries opportunities, the Services will:

A. Work with the recreational fisheries community in evaluating accomplishments, including those of the Services, toward meeting the prescriptions of this policy; and

B. Restore and enhance aquatic habitats to conserve Federal endangered, threatened, and proposed species and increase recreational fishing opportunities on Federal lands, consistent with agency missions, authorities, and as described in various agency strategic plans and initiatives contingent on appropriations, priorities, and other constraints.

Scope of Policy

This draft policy applies to all pertinent organizational elements of the Services and includes all efforts funded, authorized, or carried out by the Services relative to recreational fisheries and implementation of the ESA.

Public Comments Solicited

The Services intend that any final policy be accurate and effective and take advantage of information and recommendations from all interested parties. Therefore, the Services solicit comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. The final decision on this policy will take into consideration any comments and any additional information received by the Services, and may lead to a policy that differs from this draft. The Services' decision will be published for public information

Author/Editor

The editors of this draft policy are David Harrelson of the Fish and Wildlife Service's Division of Endangered Species, Mail Stop 452 ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703/358–2171), Bob Batky of the Fish and Wildlife Service's Division of Fish Hatcheries, Mail Stop 832 ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703/358–1715), and Marta Nammack of the National Marine Fisheries Service's Endangered Species Division, 1315 East-West Highway, Silver Spring, Maryland 20910 (301/713–1401).

Authorities

Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544), Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), Federal Water Project Recreation Act (16 U.S.C. 460 (L)(12)–460(L)(21), Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801–1862), National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

Dated: December 1, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: December 4, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 95–30485 Filed 12–11–95; 2:13 pm]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–808054

Applicant: Sedgewick County Zoo, Wichita, KS.

The applicant requests a permit to import four male and one female captive-born and captive-held Puerto Rican boas (*Epicrates inornatus*), and five male captive-born and captive-held Jamaican boas (*Epicrates subflavus*) from the Granby Zoo, Canada, to enhance the propagation and survival of the species through captive breeding.

PRT–809370

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant has requested a permit to import blood and tissue samples, and salvaged tissue samples from available carcasses collected in the Campos de Tuyu Wildlife Preserve, Argentina, from free-living pampas deer (*Ozotoceros bezoarticus*) for the purpose of enhancement of the species through scientific research.

PRT–809275

Applicant: Philadelphia Zoological Garden, Philadelphia, PA.

The applicant requests a permit to import three male and three female African wild dogs (*Lycaon pictus pictus*) bred in captivity at the De Wildt Cheetah Centre, De Wildt, South Africa, for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 8, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–30399 Filed 12–12–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–385]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Termination of Investigation and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 8, 1994, based on a complaint filed by Minnesota Mining and Manufacturing Co. (3M). On March 23, 1995, the then presiding administrative law judge (ALJ)(Chief Judge Janet Saxon) issued her final ID in the investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, had occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 (the '152 patent) in the importation or sale of certain products containing microsphere adhesives by Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co. (collectively,

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Kudos). The finding of violation as to Kudos was based on adverse inferences drawn from Kudos' failure to cooperate in discovery. The ID found no violation as to respondents Taiwan Hopax Chemicals Manufacturing, Co., Ltd.; Yuen Foong Paper Co., Ltd.; Beautone Specialties Co., Ltd.; and Beautone Specialties Co. (collectively, Beautone).

On April 17, 1995, 3M, Beautone, and the Commission investigative attorney (IA) filed petitions for review of the ID. On April 27, 1995, they filed responses to each other's petitions. On May 23, 1995, the Commission determined to review the issues of (1) claim interpretation, (2) patent infringement by Beautone and Kudos, (3) patent validity under 35 U.S.C. §§ 102(f), 102(g), and 112, second paragraph, and (4) domestic industry. The Commission determined not to review the remainder of the ID. The Commission also determined to remand the ID to the ALJ for additional findings and for clarification of certain findings made in the ID concerning the issues under review.

Subsequent to remand of the ID, the investigation was reassigned to Judge Paul Luckern, who, on August 8, 1995, issued his ID on remand. 3M and Beautone filed petitions for review on August 18, 1995. 3M, Beautone, and the IA filed responses to the petitions. On September 22, 1995, the Commission determined not to review the remand ID, thereby resolving the issues of claim interpretation and validity under 35 U.S.C. § 112, and the validity of claims 1, 2, 4, and 5. The Commission determined not to review the ALJ's remand ID and requested written submissions on the issues of remedy, the public interest, and bonding. 60 *Fed. Reg.* 50215 (1995)(Sept. 28, 1995). On review the Commission determined that claims 7, 8, and 10 were not invalid under 35 U.S.C. §§ 102(f), 102(g); that Beautone did not infringe any of the '152 patent claims in issue; that Kudos infringed claims 1, 4, and 7, based on adverse inferences; and that there is a domestic industry.

Submissions on remedy, the public interest, and bonding were received from complainant 3M, respondent Beautone, and the IA. Complainant, respondents, and the IA also filed reply submissions on those issues.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing microsphere adhesives, and products containing same, including repositionable notes and products containing repositionable notes, manufactured and/or imported by or on behalf of Kudos. The order applies to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns of Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.58)(1994).

Copies of the Commission order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: December 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30398 Filed 12–12–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32704]

East Cooper and Berkeley Railroad—Construction and Operation Exemption—In Berkeley County, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by East Cooper and Berkeley Railroad (EC&B) of a 1.7-mile rail line running northwest from the terminus of EC&B's line (milepost 14.8) near Wando, in Berkeley County, SC.

DATES: This exemption is effective on December 13, 1995. Petitions to reopen must be filed by January 2, 1996.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32704, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423–0001; and (2) Petitioner's representative: David F. Groose, P.O. Box 279, Charleston, SC 29402–0279.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423–0001. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: December 5, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30389 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32817]

Pine Belt Southern Railroad Company, Inc.—Trackage Rights Exemption—The Western Railway of Alabama

The Western Railway of Alabama (WRA) has agreed to grant overhead trackage rights to Pine Belt Southern Railroad Company, Inc. (PBRR),[1] on WRA's line of railroad as follows: (1) that portion of WRA's Lafayette Line beginning at its point of switch at valuation Station (V.S.) 1005+80, WRA milepost XXB–107.37, and extending north 369 feet (0.07 miles) to the ownership point between WRA and PBRR opposite V.S. 1002+11.0, milepost XXB–107.29; and (2) that portion of WRA's main track beginning at the point of switch of the Lafayette Line at V.S. 1005+80, WRA milepost XXB–107.37, and extending 11,453 feet (2.17 miles) south to the point of switch of Central of Georgia Railroad Company Track No. 24 at V.S. 1120+32.5, WRA milepost XXB–109.55. The total length of trackage rights is 2.24 miles. The trackage rights were to become effective December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,[2] and served on: Andrew C. Rambo, 104 Depot St., P. O. Box 129, Shelbyville, TN 37160.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30390 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The overhead trackage rights between Opelika and Roanoke Junction, AL, will allow PBRR to route traffic between Opelika to Lafayette, AL (Lafayette Line), via a combination of lines purchased from Central of Georgia Railroad Company a wholly owned subsidiary of Norfolk Southern Railway Company, and trackage rights acquired from WRA.

[Finance Docket No. 31102]

Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision modifying historic preservation condition imposed in 1988.

SUMMARY: The Commission has removed a condition, imposed in 1988 in connection with a sale of rail lines, that prevented the railroad from selling, destroying or modifying affected properties until completion of procedures under section 106 of the National Historic Preservation Act. 16 U.S.C. 470f.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 927–6056. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 25, 1994, the Commission issued a **Federal Register** notice (59 FR 60656) concerning a proposal to reopen this proceeding to remove a condition that was imposed 6 years before in this rail line sale proceeding. We noted that the condition is inconsistent with our current procedures and may no longer be necessary. After reviewing the comments, we believe that our proposal should be adopted, and the condition modified.

As we previously noted, Wisconsin Central Ltd. (Wisconsin Central) purchased approximately 1800 miles of rail line from Soo Line Railroad Company (Soo), on October 11, 1987, pursuant to the class exemption for rail line sales, 49 CFR 1150.31 *et seq.*[1] We allowed the sale to proceed under the class exemption, but imposed a historic preservation condition. Rather than delaying the public benefit of the line sale in preserving rail service, we permitted the sale, but ordered the carrier not to take any steps that would affect historic properties until after the National Historic Preservation Act (NHPA) process could be completed. We imposed the following broad historic preservation condition:

The Commission will undertake a section 106 National Historic Preservation Act process in this matter. Pending completion thereof, [Wisconsin Central] shall refrain from taking any action that may jeopardize the historic integrity of sites and structures 50 years old or older.

Because of the large number of properties transferred, our Section of Environmental Analysis (SEA) attempted to reach a "programmatic agreement" (36 CFR 800.13) or "memorandum of agreement" (36 CFR 800.5) with the various State Historic Preservation Officers (SHPOs) involved and the Advisory Council on Historic Preservation (ACHP)[2] to limit this process to historic properties that might actually be adversely affected by the transfer, so that we could craft appropriate mitigation conditions for them. As we detailed in our notice, however, this effort proved unsuccessful. We then used a case-by-case historic preservation process for each particular property that Wisconsin Central has subsequently sought to sell or demolish. This process has typically been very slow, and has often taken several years.

As we pointed out in our notice, the 1991 revisions to our historic preservation rules now require a historic preservation process in line sale cases only where, at the time of the transfer, the applicant plans to dispose of or alter properties subject to our jurisdiction that are 50 years or older.[3] *Implementation of Environmental Laws*, 7 I.C.C.2d 807, 828 (1991). Carriers need not file a historic report for rail line sales "where . . . there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older." 49 CFR 1105.8(b)(1). Nor are historic preservation conditions imposed absent such plans.

In our notice, we explained that, under our new rules, if a condition were imposed in a line sale case such as this one, it would apply only to properties that are used or useful in rail service and that the buyer has plans to dispose of or alter as a result of the acquisition and outside the context of a further abandonment or sale application.[4] As we noted there, these rules have been applied in about 160 cases and have worked well in narrowing the focus of the historic review process to rail properties that may actually be affected by a sale transaction.

The broad condition imposed here has outlived its usefulness. Before Wisconsin Central can dispose of any of the properties it obtained from Soo in 1987, it must complete a lengthy historic preservation process for each particular property. This situation would continue indefinitely, because unless we amend the condition, it would cover all of Wisconsin Central's properties as long as it remains a railroad.[5]

[1] *See Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988). The exemption removes certain regulatory requirements associated with filing a formal application under 49 U.S.C. 10901.

[2] A programmatic agreement, negotiated between the ACHP and the responsible agency official in consultation with the appropriate SHPO, may be used to determine proper historic preservation measures for projects when "effects on historic properties are similar and repetitive." The programmatic agreement is a contract that must be agreed to in writing by ACHP, the SHPO, and the agency, to be effective.

A memorandum of agreement (MOA) may be used, usually for a single project, where the agency and the SHPO agree on a course of action. ACHP must have an opportunity for comment.

[3] These rule changes were made in consultation with the ACHP. It is unclear whether Wisconsin Central would have had to file a historic report or be subject to historic preservation conditions under this new standard, because it is not clear whether Wisconsin Central anticipated disposing of any properties at the time.

[4] If subsequent abandonment or sale authority is required for the disposition of properties, the appropriate NHPA review will take place in the context of those proceedings.

[5] We note that the problem relates to sales of properties that are not part of a line for which abandonment authority is sought. In abandonment proceedings, historic structures would be documented in any event.

[2] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, the parties submitting pleadings should continue to use the current name and address.

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The Comments

In response to our notice, we received comments only from ACHP and from the Minnesota and Michigan SHPOs. ACHP expresses disappointment that it and the Commission were not able to work out some kind of programmatic agreement. ACHP maintains that it would be premature to remove the condition without requiring that the Commission and the Wisconsin Central demonstrate that they have made a good faith effort to reach a programmatic agreement.

The Michigan SHPO argues that removal of the historic preservation condition now would nullify the Commission's compliance with the National Historic Preservation Act, and that the agency should continue to attempt to reach a suitable programmatic agreement. The Minnesota SHPO is concerned that there is at least one historic property on the 20-mile segment of the Wisconsin Central that is in Minnesota that may be adversely affected by the proposal.

Discussion and Conclusions

Eight years have now passed since Wisconsin Central acquired these properties. No comment has been filed challenging our assertion that from this point forward, Wisconsin Central's sale or demolition of properties should no longer be considered to be the result of the original purchase from the Soo. Rather, because of the passage of time, these decisions more appropriately are considered to be the normal result of the carrier's continuing ownership and management of these properties. If this transaction were to take place today, we would impose a historic condition only with regard to particular properties that the carrier identifies at the outset that it contemplates selling or altering. Thus, it would be unfair to continue to impose a greater burden on Wisconsin Central than we would now impose on other railroads.

There would be no point in entering into a programmatic or a memorandum of agreement now, nor do we believe that continuing the condition is necessary for compliance with NHPA. SEA and Wisconsin Central have already undertaken the historic preservation process for every property that the carrier has altered or disposed of since these properties were acquired. That should cover all of the properties that are affected by the sale. Future property dispositions, with the exception set forth in the following paragraph, will not be deemed to result from the sale.

Accordingly, we are reopening this proceeding and modifying the condition to require completion of the historic review process only with regard to specific properties for which that process is already underway or of which the carrier has already informed SEA that it plans to dispose.[6] The disposal or alteration of other properties is outside the scope of this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This proposal should not have any adverse impact on small entities.

Decided: December 1, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30240 Filed 12–12–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States* versus *Wheeling-Pittsburgh Steel Corp.*, Civil Action No. 93–0195W (N.D.WVA), was lodged on December 6, 1995, with the United States District Court for the Northern District of West Virginia. The decree addresses the violations of Wheeling-Pittsburgh ("Wheeling-Pitt"), at its Follansbee Coke Plant in Follansbee, West Virginia, of the West Virginia State Implementation Plan ("SIP"), enforced pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, and certain reporting requirements contained in the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Benzene Emissions from Coke By-Product Recovery Plants, 40 C.F.R. Part 61, Subpart L. Wheeling-Pitt violated the SIP by combusting coke oven gas which had not been desulfurized (as a result of unplanned outages at the Follansbee furnace by-product recovery plant, where hydrogen sulfide is stripped from coke oven gas during normal operations), by allowing raw coke oven gas to be emitted ("vented") into the ambient air during two emergencies caused by elevated gas pressure within coke oven batteries, and by occasional failures to comply with the SIP's pushing standards.

Under the proposed Consent Decree, Wheeling-Pitt will pay a civil penalty of $700,000 and has agreed to detailed injunctive provisions. Wheeling-Pitt has abated all of the SIP violations. As to the SIP's desulfurization requirements, the Decree requires that, within 45 days of entry of the Decree, Wheeling-Pitt must have demonstrated full compliance with the SIP for seven consecutive days. Further, if the continuous emissions monitor ("CEM") used to measure compliance with the desulfurization standards should malfunction, and is out of service for two consecutive hours, then Wheeling-Pitt must use a backup CEM, or, failing that, must measure and report certain parameters of the desulfurization process so that EPA may gauge Wheeling-Pitt's compliance. The Decree contains, in addition, requirements for Wheeling-Pitt to install, and properly operate and maintain, a new hydrogen sulfide scrubber and CEM at the recovery plant. Finally, to ensure that the recovery plant is operated and maintained adequately, the Decree contains detailed requirements regarding preventative maintenance, spare parts inventories, and standard operating procedures.

As to pushing, Wheeling-Pitt must, within 45 days of entry of the Decree, demonstrate compliance with the SIP's pushing standard for five consecutive days. Further, the company must continue to monitor its pushing operations weekly until it has produced twelve consecutive weeks of data showing 100% compliance. To correct its violations of the SIP's pushing standards, Wheeling-Pitt has installed a number of improvements, including tighter boot seals at the top of the coke battery wall and a modified hood for the quench car. To abate its venting violations, Wheeling-Pitt has installed flares at its coke batteries, as now required under the Coke Oven Battery NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Wheeling-Pittsburgh Steel Corp.*, DOJ Ref. #90–5–2–1–1868.

The proposed consent decree may be examined at the office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30395 Filed 12–12–95; 8:45 am]

BILLING CODE 4410–01–M

[6] Wisconsin Central should submit a list of such properties within 30 days.

Antitrust Division

United States v. American Bar Association, Civ. No. 95–1211 (CR) (D.D.C.); Supplemental Response of the United States to Two Additional Public Comments Concerning the Proposed Final Judgment

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the United States publishes below two additional written comments received on the proposed Final Judgment in *United States* v. *American Bar Association*, Civil Action No. 95–1211 (CR), United States District Court for the District of Columbia, together with its response thereto.

Copies of the written comments and the response are available for inspection and copying in Room 3235 of the Antitrust Division, United States Department of Justice, Tenth Street and Constitution Avenue, N.W., Washington, D.C. 20530 (telephone 202/514–2481) and the inspection at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825A, United States Courthouse, Third Street & Constitution Avenue, N.W., Washington, D.C. 20001.

Rebecca P. Dick,

Deputy Director of Operations.

United States' Supplemental Response to Two Additional Public Comments

The United States is filing this Supplemental Response to respond to letters from law professors Marina Angel and Leslie Espinoza to the Attorney General about the proposed Final Judgment. The Antitrust Division's notice under the Antitrust Procedures and Penalties Act ("APPA") directed that public comments be sent to John F. Greaney, Chief, Computers and Finance Section, Department of Justice, Antitrust Division. Because Professors Angel and Espinoza sent their letters to the Attorney General instead of Mr. Greaney, we had not received those letters when we filed our "Response To Public Comments" on October 27. Since the Government's Response states that it will treat as timely all comments received up to the time of filing that response, we provide this Supplemental Response to these two letters from law faculty.[1]

The Government has carefully reviewed the letters from Professors Angel and Espinoza. Entry of the proposed Final Judgment remains in the public interest.

1. Professor Marina Angel (Exhibit 1)

Professor Angel is under the impression that the Antitrust Division seeks to eliminate enforcement of the American Bar Association's ("ABA") antidiscrimination accreditation standards. ABA Accreditation standards 211–213, dealing with discrimination, are not affected by the proposed Final Judgment. Nor is the enforcement of those standards. Law schools will continue to maintain faculty salary records. Accreditation inspection teams may review these records to investigate discrimination complaints. The proposed Final Judgment prevents the ABA, but not other organizations, from collecting and disseminating salary data. Additionally, site inspection teams may not compare salary levels at one law school with those at another, since the Complaint alleges that this had been done to raise salaries illegally, but may review the records of the inspected school to resolve discrimination allegations.

2. Professor Leslie G. Espinoza (Exhibit 2)

Professor Espinoza is concerned that the consent decree would prevent the Society of American Law Teachers from collecting salary data from law schools that may be used to determine if salary levels are discriminatory. The consent decree is not intended to relax the ABA's antidiscrimination accreditation standards, and it will not have that effect. The Society of American Law Teachers procures salary data from law school deans that may be used to ascertain whether salary levels are discriminatory. While the ABA will no longer be permitted to collect and disseminate faculty salary data and to use it in the accreditation process to increase faculty salaries, law schools will continue to maintain salary data and other organizations may collect it. In this regard, we realize that organizations, such as the American Association of University Professors, have collected and published faculty salary data for many years. While the ABA may not collect and use salary data to raise general salary levels, accreditation inspection teams may fully investigate allegations of discrimination at a law school, including allegations of discriminatory salaries, and may review salary records at that law school to resolve the discrimination allegations.

Conclusion

The ABA used the accreditation process to fix and raise faculty salaries. They collected extensive salary data and used it to pressure schools to raise their salaries to an artificial level. The consent decree is narrowly tailored to prevent such illegal collusion in the future. It does not affect the ABA's enforcement of antidiscrimination accreditation standards.

Dated: November 3, 1995.

Respectfully submitted,

Anne K. Bingaman,
Assistant Attorney General, Antitrust Division.
John F. Greaney,
D. Bruce Pearson,
Jessica N. Cohen,
James J. Tierney,
Molly L. DeBusschere,
U.S. Department of Justice, Antitrust Division, Computers and Finance Section, Judiciary Center Building, 555 Fourth Street, N.W., Washington, DC 20001, 202/307–6122.

Temple University, School of Law

1719 N. Broad Street (055–00), A Commonwealth University, Philadelphia, Pennsylvania 19122, (215) 204–7861, Fax: (215) 204–1185

October 16, 1995.

The Honorable Janet Reno,
Attorney General, Department of Justice, R. 4400, Tenth and Constitution Avenue, N.W., Washington, DC 20530, FAX 202–514–4371

Dear Attorney General Reno: I was shocked to learn that the Justice Department is seeking to eliminate enforcement of the antidiscrimination Accreditation Standards of the ABA.

I didn't substantially financially support the election of President Clinton to have you destroy what limited antidiscrimination protection law school faculty, staff and students currently enjoy.

I suggest you explain your antidiscrimination position to your Antitrust Division.

[1] As the deadline for public comments has expired, any future letters received by the Justice Department will be treated as citizen letters and will not be filed with the Court.

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Sincerely,
Marina Angel,
Professor of Law.

MA/tob
Enclosure

Boston College

885 Centre Street, Newton, MA 02159–1163, Law School, (617) 552–8550, FAX (617) 552–2615

By Facsimile: 202–514–4371

October 17, 1995.

The Honorable Janet Reno,
Attorney General, Department of Justice, R. 4400, Tenth and Constitution Avenue, N.W., Washington, D.C. 20530

Dear Attorney General Reno: I am very disturbed that the consent judgment proposed in the matter involving the ABA Accreditation Standards and your antitrust division would eliminate the most important antidiscrimination provision of the ABA standards: review of salary and/or fringe benefits by race and gender.

The ability of the ABA Standards to put teeth in antidiscrimination policy is important. The ability of review teams to have access and to force disclosure of actual data is crucial. Last January, I testified before the ABA Special Commission to review accreditation standards. I have enclosed a copy of my testimony. I hope that it will help illuminate what an important role accreditation plays in the integration of law schools, and ultimately the profession.

I also am a member of the Board of Directors of the Society of American Law Teachers (SALT). SALT has long been concerned about the systematic salary discrimination against women and minorities. Indeed, SALT publishes an annual nationwide salary survey. That survey has been used by many women and minorities to address salary inequity in their own law school. SALT obtains the data from law school deans. The deans are generally willing to release it because it is released in any event in the ABA accreditation process. The deans also are unable to claim they do not have it—because the ABA process requires them to keep it.

I hope that the Clinton administration will take a second look at the proposed consent judgment. As so often happens, those who are most affected by certain provisions are outsiders to the power process that negotiated the proposed judgment. Please do not hesitate to call with any questions.

Sincerely,
Leslie G. Espinoza,
Professor of Law.

AALS Section on Minority Groups Newsletter

May 1995.

Testimony Before the Special Commission To Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools

Professor Leslie G. Espinoza, Chair, AALS Section on Minority Groups, January 6, 1995

Good Afternoon, I would like to thank the Commission for affording the AALS Section on Minority Groups this opportunity to comment on the ABA/AALS Accreditation process. Within the time frame permitted by these hearings, I will make two points.

First, in addressing issues of accreditation the legal community, particularly those of us in the academy, should be mindful of the monopoly power we exercise. Our monopoly control is profound. Indeed, it is protected and perpetuated by us. Persons who engage in the unauthorized practice of law can be prosecuted—under the law.

And the ability to determine who is authorized to practice law is primarily controlled by the law school community. We are the gatekeepers to the profession. For admission to practice, nearly all state bars require graduation from an ABA accredited law school. Admission to law school is controlled by individual law schools through their admissions offices. Admission is also controlled nationally through the consortium of laws schools that forms the Law School Admissions Council. The LSAC is the organization that designs and administers the LSAT. At the other end of the process, law school curriculum largely drives the content of bar examinations—increasingly so since the universalization of the Multistate Bar Examination.

With the privilege of power comes responsibility. Access to law is fundamental for the protection of personal and public rights. Indeed it is often lawyers who are responsible for the recognition or creation of those rights. Lawyers dominate legislatures as both elected officials and legislative staff. It is the duty of law schools, encouraged and enforced through the accreditation process, to ensure that the future legal community is responsive to the society as a whole.

The need to be legally relevant and responsive to the whole community is the second point I will make today. Historically exclusion of persons of color from law was nearly complete. This was particularly true for women of color. Frankly, this is still largely the case. Richard Chused's study in 1986 documented the absence of outsiders in the academy. One third of law schools had no minority professors, one third had only one. In 1992, Professors Merrit and Reskin empirically documented the double standard in the hiring of minority women in the academy. The exclusion of persons of color from the academy continues.

The impact of those outsiders who have gained entry is significant given our small numbers. We have worked to increase the number of and to support minority law students. We have contributed to the legal literature, in theory, substance and method. We have changed the discourse by bringing our voice to the law. Despite these contributions, there is much more work to do.

Accreditation has been the foundation for our inclusion in the academy. It forces accountability. Importantly, accreditation requires law schools to have historic accountability. Self studies and site team reports view processes in the law school. The standards require scrutiny of admissions, placement, curriculum, hiring of faculty, tenuring process and results and administration. Thus the accreditation process has been the only forum for addressing issues of inclusion and discrimination in all aspects of the institution.

I will end with reference to the letter by the consortium of fourteen deans that gave rise to these hearings. The members of the Section on Minority Groups fear that what underlines the deans' challenge to accreditation. The letter questions the need for law schools to explain, "any departure from the pattern that has been prescribed for all schools—why, for instance, the clinical faculty are treated differently than the research faculty in some respect, or what plans exist for increasing square footage in the library, or how the 'right' composition of the faculty will be achieved." The members of the Section on Minorities do not doubt that this is coded language for an attack on the "diversity" or "multicultural" requirements in the ABA standards.

Finally, the letter from the 14 deans indicates that there are some law schools at the apex of the pyramid of all law schools—"schools with unquestionably strong educational programs [that] are not quickly given the ABA's seal of approval * * *" These law schools, the letter implies, should be beyond the review of accreditation. The Second on Minority Groups strongly disagrees. Indeed, the arrogance of many of the elite schools has too often blinded them to their own exclusionary practices in hiring and student composition. The accreditation process must apply uniformly to all law schools in order to ensure a diverse and relevant legal profession for the next century.

[FR Doc. 95–30289 Filed 12–12–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Arrayed Primer Extension (APEX) Research Consortium

Notice is hereby given that, on September 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Arrayed Primer Extension (APEX) Research Consortium, a joint venture formed as a cooperative research consortium by the parties set forth in this notice (the "Joint Venture"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiff to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Pharmacia Biotech, Inc., Piscataway, NJ; Baylor College of Medicine, Houston, TX; Duke University, Durham, NC; and Indentigene, Inc., Houston, TX. The general area of planned activity is to develop and demonstrate arrayed primer extension DNA analysis systems for sequencing in DNA diagnosis.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–30284 Filed 12–12–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production act of 1993—HDTV Broadcast Technology Consortium

Notice is hereby given that, on September 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDTV Broadcast Technology Consortium has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Advanced Modular Solutions, Inc., Acton, MA; Comark Communications, Inc., Southwick, MA; David Sarnoff Research Center, Inc., Princeton, NJ; International Business Machines, Inc., Yorktown Heights, NY; MCI Network Architecture, Richardson, TX; National Broadcasting Company, Inc., New York, NY; Philips Laboratories, Briarcliff Manor, NY; Sun Microsystems Federal, Inc., Mountain View, CA; and Thomson Consumer Electronics, Inc., Washington, DC.

The purpose of the Joint Venture is to develop and demonstrate "HDTV Broadcast Technology". The activities of the Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–30285 Filed 12–12–95; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Realtime-Micro-PCR-Analysis System

Notice is hereby given that, on August 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Realtime-Micro-PCR-Analysis System, a joint venture formed as a cooperative research company by the parties set forth in this notice (the "Joint Venture"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Perkin Elmer Corp., Norwalk, CT; EG&G IC Sensors, Inc., Milpitas, CA; Cornell University Medical College, New York, NY; University of Minnesota, Minneapolis, MN; and Louisiana State University, Baton Rouge, LA. The general area of planned activity is to develop integrated systems for genetic analysis employing micromachined elements.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95–30286 Filed 12–12–95; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice amends a petition document published in the **Federal Register** on November 13, 1995 (60 FR 57025), docket number M–95–156–C, Amax Coal Company and Clipmate Corporation, Chinook Mine (I.D. No. 12–00322). The petitioner filed a petition to modify the application of 30 CFR 77.1303(y) (1) and (2) (explosives, handling and use) instead of 30 CFR 75.1303(y) (1) and (2).

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. R.S. Coal Company

[Docket No. M–95–157–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas not examined and which is currently mixing with the air in the intake haulage slope to ventilate the active working section, and to ensure the maintenance of air quality through the sampling of section intake air for carbon dioxide, methane, and oxygen deficiency at the gangway level during the preshift and on-shift examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. R.S. Coal Company

[Docket No. M–95–158–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. R.S. Coal Company

[Docket No. M–95–159–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

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4. R.S. Coal Company

[Docket No. M–95–160–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. R.S. Coal Company

[Docket No. M–95–161–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. R.S. Coal Company

[Docket No. M–95–162–C]

R.S. Coal Company, 729–B West Shamokin Street, Trevorton, Pennsylvania 17881–1461 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–07108) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–95–163–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Blacksville No. 2 Mine (I.D. No. 46–01968) located in Monongalia County, West Virginia. The petitioner proposes to use a high-voltage (4,160-volt) cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as a part of its longwall mining system. The type of cable would be the CABLE/BICC Anaconda brand, 5 kV, 3/C, Type SHD+GC; Amercable Tiger brand, 3/C, 5 kV, Type SHD-CGC; Pirelli 5 kV, 3/C, Type SHD-CENTER-GC; or similar 5,000-volt cable with center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables accepted by MSHA as flame-resistant. The petitioner states that the cable would be constructed of symmetrical 3/C, 3/G, and 1/GC; the ground check conductor would be insulated flexible center conductor with a cross-sectional area not less than 1,600 circular mils; that all electrical personnel who perform maintenance on the longwall would receive training in the installation and repair of the cable; and that proposed revision(s) for the approved 30 CFR Part 48 training plan would be submitted to the Coal Mine Safety and Health District Manager and would specify task training, including review of the proposed terms and conditions of this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. The Pittsburg & Midway Coal Mining Company

[Docket No. M–95–164–C]

The Pittsburg & Midway Coal Mining Company, 6400 South Fiddler's Green Circle, Englewood, Colorado 80111–4991 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its North River No. 1 (I.D. No. 01–00759) located in Tuscaloosa County, Alabama. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Elk Run Coal Company, Inc.

[Docket No. M–95–165–C]

Elk Run Coal Company, Inc., Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.333(d)(1) (ventilation controls) to its Black King Mine (I.D. No. 46–08230), its White Knight Mine (I.D. No. 46–08055), and its Bishop 2 Mine (I.D. No. 46–08181) all located in Boone County, West Virginia; and its Laurel Alma Mine (I.D. No. 46–08457), and its Laurel Eagle Mine (I.D. No. 46–08383) both located in Raleigh County, West Virginia. The petitioner proposes to use electronically operated Roll-Down Doors constructed of rubber material similar to those used in conveyor belts to control ventilation within the air course in the main entries instead of heavy Metal Doors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Cyprus Plateau Mining Corporation

[Docket No. M–95–166–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the belt entry in its longwall development entries as a return entry during longwall development and to use the belt entry as an intake entry during longwall retreat mining and in some mains during and after development. The petitioner proposes to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Cyprus Plateau Mining Corporation

[Docket No. M–95–167–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use high-voltage (2,400 or 4,160 volt) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Cyprus Plateau Mining Corporation

[Docket No. M–95–168–C]

Cyprus Plateau Mining Corporation, Buchanan Ingersoll Professional Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the belt entry in its longwall development entries as a return entry during longwall development. The petitioner proposes to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 12, 1996. Copies of these petitions are available for inspection at that address.

Dated: December 6, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 95–30396 Filed 12–12–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–112]

Notice of Prospective Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Collier Research & Development Corporation, of 45 Diamond Hill Road, Hampton, Virginia 23666, has applied for an exclusive copyright license for computer software entitled "Structural Thermal Sizer (ST–SIZE)." NASA received assignment of the copyright on September 7, 1995, from Lockheed Engineering and Sciences Company. Written objections to the prospective grant of a license should be sent to Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this Notice must be received by February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3230.

Dated: December 5, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–30271 Filed 12–12–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission (new, revision, or extension): Revision

2. The title of the information collection: 10 CFR Part 20, Proposed Rule, Constraint Level for Air Emissions of Radionuclides.

3. The form number if applicable: N/A

4. How often the collection required: A notification is required if a licensees air emissions exceed a level that would result in a dose in excess of 10 mrem TEDE in any year, to the individual likely to receive the highest dose.

5. Who will be required or asked to report: NRC licensees other than operators of nuclear power reactors.

6. An estimate of the number of responses: 1

7. The estimated number of annual respondents: 1

8. An estimate of the number of hours needed annually to complete the requirement or request: 80

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is proposing to establish a constraint of 10 mrem/yr TEDE for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. This action would provide assurance to the EPA that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. This action is expected to be the final step in providing EPA with a basis upon which to rescind 40 CFR 61 "National Emission Standards for Hazardous Air Pollutants", Subpart I as it applies to NRC licensed facilities other than power reactors, thereby relieving these NRC licensees from unnecessary dual regulations.

Submit by February 12, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC

subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions can be directed by mail to the OMB reviewer by January 12, 1996.

Troy Hillier, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of December, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–30336 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–325 and 324]

Carolina Power and Light Company (Brunswick Steam Electric Plant); Exemption

I.

Carolina Power and Light Company (CP&L, the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62, which authorize operation of Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, at power levels not in excess of 2436 megawatts thermal. The facility consists of two boiling water reactors at the licensee's site in Brunswick County, North Carolina. The operating license provides, among other things, that BSEP is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

Pursuant to 10 CFR 55.35(a), an applicant whose application for an operator license has been denied because of failure to pass the written examination or operating test, or both, may file a new application two months after the date of denial.

III.

By letter dated November 8, 1995, CP&L requested an exemption under 10 CFR 55.11 on behalf of its employee, an applicant for a Senior Reactor Operator license (applicant) under Subpart D of 10 CFR Part 55, from the requirements of 10 CFR 55.35(a). The schedular exemption requested would allow the applicant to file a new application before the two month waiting period expires and, thereafter, to be re-administered a written examination during the week of December 18, 1995. The applicant was notified that he had not passed his written examination (taken the week of October 23, 1995) by letter from Region II dated November 16, 1995, which would make the applicant eligible for re-examination no earlier than January 16, 1995.

The Code of Federal Regulations at 10 CFR 55.11 states that, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

In support of its request for exemption, CP&L indicated that the applicant has entered a remediation process, and will be ready for re-examination the week of December 18, 1995.

IV.

The Commission has determined that, pursuant to 10 CFR 55.11, granting this exemption to the applicant from the requirements in 10 CFR 55.35(a) is authorized by law and will not endanger life or property and is otherwise in the public interest. This one-time exemption will allow the applicant to be administered a written re-examination during the week of December 18, 1995, prior to the expiration of the two month time period from the date of notification of the results of his first written examination. This re-examination would be scheduled to coincide with a previously scheduled NRC initial examination visit. Accordingly, the Commission hereby grants the applicant an exemption on a one-time only basis from the schedular requirements of 10 CFR 55.35(a).

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will not have a significant effect on the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on December 6, 1995 (60 FR 67483).

This exemption is effective upon issuance and expires on January 16, 1996.

Dated at Rockville, Maryland this 7th day of December 1995.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30335 Filed 12–12–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:00 p.m., December 13, 1995.

PLACE: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

STATUS: This meeting will be open to the public from 1:00 p.m. until approximately 1:30 p.m. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: National Partnership Council (NPC) Training and Facilitation Handbook; selection of NPC Award winners.

PORTION OPEN TO THE PUBLIC: Discussion of the NPC Training and Facilitation Handbook and other items referred to in the strategic action plan for 1995 that was adopted at the January 10, 1995, meeting. This portion of the meeting will run from 1:00 p.m. until approximately 1:30 p.m.

PORTION CLOSED TO THE PUBLIC: Under 5 U.S.C. § 552b(c)(9)(B) of the Government in the Sunshine Act, the discussion and selection of NPC Partnership Award winners, beginning at approximately 1:30 p.m., will be closed to the public. Because of the desire to keep the final selection of the NPC award winners confidential until they are officially notified and the awards are announced, disclosure of the NPC's deliberations and final selection of award winners would significantly frustrate implementation of the awards program.

CONTACT PERSON FOR MORE INFORMATION: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Mr. Douglas K. Walker at the address shown above. Written comments should be received by December 8 in order to be considered at the December 13 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–30296 Filed 12–12–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36559; File No. SR–GSCC–95–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying GSCC's By-laws To Provide Indemnification Protection for Members of Committees

December 6, 1995.

On August 25, 1995, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–95–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] Notice of the proposal was published in the **Federal Register** on November 6, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

GSCC has amended its by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC. Article IV, Section 4.1, of GSCC's by-laws currently requires that GSCC indemnify to the full extent permitted by law a present or past director or officer of GSCC who is made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person is or was a director or officer of GSCC.

The indemnification obligation under Article IV, Section 4.1, did not extend to members of committees established by GSCC's Board of Directors if the members of the committees were not directors or officers of GSCC. Thus, for example, the indemnification protection in GSCC's by-laws did not cover most of the members of GSCC's Risk Management Committee who are senior credit officers of GSCC member firms.[3] The amendment provides members of Board-established committees with indemnification protection comparable to the protection currently given to GSCC's directors and officers.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes GSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal, by affording appropriate protection to committee members, should enable GSCC to obtain the services of qualified individuals on its Board-established committees and should help ensure that such individuals may act freely and objectively in the exercise of their duties. By enhancing the selection and objectivity of its committee members, GSCC's committees may better fulfill their obligations to limit credit and market risks to GSCC's system thus assuring GSCC's ability to safeguard securities and funds under its control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–95–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30301 Filed 12–2–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36435 (October 30, 1995), 60 FR 56002.

[3] The Risk Management Committee provides advice to GSCC on the creditworthiness of individual applicants for netting system membership, on the assessment of the financial status of current netting system members, and on market conditions affecting the government securities market.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36557; File No. SR–MBSCC–95–8]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing Relating to Eligibility Changes for Settlement Balance Order Settlement

December 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 17, 1995, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. On November 1, 1995, MBSCC filed an amendment to its proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to MBSCC's Procedures relating to eligibility for Settlement Balance Order (SBO) settlement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will modify MBSCC's Procedures relating to eligibility for SBO settlement. Specifically, the purpose of the proposed rule change is to enable MBSCC to reject trades destined for SBO settlement between multiple accounts of a participant as well as between a participant's account and an account of

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Anthony H. Davidson, MBSCC, to Michele J. Bianco, Division of Market Regulation, Commission (November 1, 1995).

[3] The Commission has modified parts of these statements.

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a related participant.[4] The SBO settlement netting process was not intended for trades between multiple accounts of a participant or between a participant's account and an account of a related participant. The inclusion of these types of trades was not contemplated when the MBSCC cash adjustment procedures were developed, and the inclusion could cause a perception that participants might receive greater or lesser amounts than originally intended depending upon the amount of internal trades submitted. Participants may record such trades on a trade-for-trade basis.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

MBSCC advised participants by an administrative bulletin dated October 6, 1995, that it would file the proposed rule change with the Commission. No written comments relating to the proposed rule change have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] The term "related participant" means any affiliate (as defined in Rule 12b–2 of the Act) or entity that is used or intended to be used in whole or in part to contravene the purposes of the proposed rule change. Letter from Anthony H. Davidson, MBSCC, to Michele J. Bianco, Division of Market Regulation, Commission (November 1, 1995).

[5] 15 U.S.C. § 78q–1 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number SR–MBSCC–95–08 and should be submitted by January 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30300 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36563; File No. SR–NASD–95–57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Policy Statement on Market Closings

December 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 22, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its Policy Statement on Market Closings ("Statement" or "Policy Statement"), adopted pursuant to Article VII, Section 3 of the NASD By-Laws, to: (1) extend the expiration date of the Statement to December 31, 1997; and (2) reflect regulatory developments since the Statement was first adopted in 1988. The amended Statement is as follows (additions are italicized; deletions are bracketed):

NASD Board of Governors Policy Statement on Market Closing

September 20, 1988

Amended [insert date] 1995

In 1988, [T] the Board of Governors of the National Association of Securities Dealers, Inc. [has] carefully considered the numerous proposals resulting from the October 1987 market break including the Report of the NASD Committee on the Quality of Markets and the "circuit breaker" proposal recommended by the President's Working Group on Financial Markets. The Working Group proposal recommend[s]*ed* that all U.S. markets for equity and equity-related products, i.e., stocks, individual stock options, and stock index options and futures, halt trading for [one hour] *certain specified periods* if the Dow Jones Industrial Average [("DJIA")] decline[s]*d* 250 points *or 400 points* from its previous day's closing level [and for two hours if the DJIA declines 400 points]. The proposal also recommend[s]ed specific reopening procedures and consistent index futures price limit requirements. *Subsequently, the major securities exchanges adopted the recommendations of the Working Group as trading halt rules, with uniform criteria established for the coordinated implementation of trading halts across all equity and equity-related markets in the event of extraordinary market movements. The exchanges have, from time-to-time, considered amendments to such rules.*

Having reviewed the [se numerous] *original* proposal[s] *of the Working Group, the trading halt rules adopted by the major securities exchanges and any modifications thereto,* the Board of Governors [has adopted] *reaffirms the position that is set forth below in* this Statement of Policy.

The Board notes that while progress has been made by the markets in areas involving systems capacity, margin requirements and information sharing, a number of recommendations from the various proposals unfortunately have not yet been either fully considered or actively pursued. The Board believes that market closings are not the answer to the potential danger of precipitous declines in market prices and that it is more important to aggressively pursue other initiatives. Among these are:

1. Congress should vest regulatory authority for all equity derivative instruments in the Securities and Exchange Commission.

2. Congress should give the Securities and Exchange Commission authority to oversee the establishment of initial or maintenance margin requirements by self-regulatory organizations for all equity instruments. Relative margin levels for equities and equity derivative instruments should be consistent across all market places.

3. The activities of clearing and settlement systems should be coordinated across market places to reduce financial risk for all participants. Clearing and settlement facilities for all equity derivative instruments should be unified or linked as in the options and securities markets.

4. An intermarket self-regulatory coordinating policy group (with subgroups) composed of persons at the senior management level of all self-regulatory organizations should be established to plan, communicate and coordinate with each other in the surveillance, financial, operational and technology areas and, acting with federal regulators, to formulate contingency plans for market emergencies.

5. To the extent that legislation is needed to accomplish any of these objectives, Congress should be urged by all securities industry organizations to act promptly.

We believe implementation of these recommendations would provide a more permanent and appropriate response to the events of October 1987 than would market closings based upon arbitrary formulae. They should be adopted expeditiously. Because sufficient progress on all of these matters has not yet occurred, the Board recognizes the need to consider the Working Group's proposal on "circuit breakers" *and the trading halt rules adopted by the major securities exchanges* as an interim step.

The Board strongly believes that the Nation's securities markets should remain open and operating during normal market hours whenever possible. The Board is opposed in principle to the implementation of "circuit breakers" that mandate market closings on the basis of arbitrary formulae. The Board supports the [current] practice whereby individual market determine, after coordination with other markets and federal regulators, whether to close based on the character of a particular emergency situation.

The Board of Governors acknowledges that the risks imposed on any single market remaining open while all other U.S. markets have halted trading because of extraordinary price movements could be unacceptable. The Board therefore has determined that, at times when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, the NASD will, upon request from the Securities and Exchange Commission, act to halt domestic trading in all securities quoted in [the NASDAQ system] *The Nasdaq Stock Market* and domestic trading in equity or equity-related securities in the over-the-counter market.

This Policy Statement on Market Closings shall be effective until December 31, [1995] *1997* unless modified or extended prior thereto by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy Statement is adopted as a stated policy of the NASD under Article VII, Section 3 of the NASD By-Laws, which provides the Association with the authority, acting through a designated committee of the NASD Board of Governors, to take appropriate action in the event of an emergency or extraordinary market conditions. Article VII, Section 3 was adopted by the NASD as a result of the events of October 1987, and the provision was enacted to enable the NASD to respond to future crises with a maximum degree of flexibility, providing properly tailored responses to varying situations.[2] As originally approved, the Statement was to expire December 31, 1989, unless modified or extended prior thereto by the NASD Board of Governors.[3] The expiration date of the Policy Statement has previously been extended a number of times.[4]

Other groups, including the President's Working Group on Financial Markets (the "Working Group"), have proposed more specific, formulaic responses to the events of October 1987. One such proposal is the Working Group's proposal for "circuit breakers." The Commission requested the NASD to express its views on that proposal and the Policy Statement was adopted in response to that request.

It should be noted that the Policy Statement expresses the views of the NASD Board of Governors as of November 16, 1995 concerning progress made on the numerous proposals emanating from the October 1987 crisis. From time to time, the Board will review progress made on the recommendations set forth in the Statement as well as other developments as they may occur. The views of the Board may change and the NASD may modify or amplify the Statement accordingly.

It also should be noted that the Policy Statement sets forth the NASD's proposed response to a specific set of circumstances. The Statement does not in any way preclude the NASD from taking any other action that may be appropriate under other circumstances.

The NASD proposes to extend the expiration date of the Policy Statement two years until December 31, 1997. The NASD also proposes to make several minor modifications to the Policy Statement to reflect regulatory developments since the Statement was

[2] Specifically, in its release approving Article VII, Section 3 of the NASD By-Laws, the Commission stated that "the Commission believes the proposal provides the NASD with the flexibility to deal with extraordinary market conditions such as existed in October 1987." *See* Securities Exchange Act Release No. 26072 (September 12, 1988), 53 FR 36143.

[3] Securities Exchange Release No. 26198 (October 19, 1988), 53 FR 41673.

[4] Securities Exchange Act Release Nos. 27370 (October 23, 1989), 54 FR 43881 (approving File No. SR–NASD–89–46, extending expiration date through December 31, 1990); 28694 (December 12, 1990), 55 FR 52119 (approving File No. SR–NASD–90–60, extending expiration date through December 31, 1991); 30113 (December 20, 1991), 56 FR 67341 (File No. SR–NASD–91–70, extending expiration date through January 31, 1992); 30304 (January 29, 1992), 57 FR 4656 (approving File No. SR–NASD–92–02, extending expiration date through December 31, 1993); 33292 (December 6, 1993), 58 FR 65214 (approving File No. SR–NASD–93–70, extending expiration date through December 31, 1994); and 35133 (December 21, 1994), 59 FR 67361 (approving File No. SR–NASD–94–63, extending expiration date through December 31, 1995).

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adopted in 1988. Given the growth of U.S. equity markets since 1988, however, the NASD increasingly is concerned that circuit breakers may be activated based on smaller percentage moves in the Dow Jones Industrial Average ("DJIA").[5] Accordingly, it is the intention of the NASD to reevaluate whether the 250- and 400-point thresholds contained in the circuit breakers are appropriate. Nevertheless, the NASD believes it is appropriate at this time to extend the effectiveness of the Policy Statement.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, by extending the effectiveness of the Policy Statement, market participants will be afforded a reasonable opportunity to assess and rationally react to extreme market conditions. In addition, extension of the Policy Statement will help to ensure that circuit breakers are coordinated across all equity and equity-related markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[5] Specifically, when the 250- and 400-point circuit breakers were implemented in October 1988, a 250-point move in the DJIA was approximately 11.7 percent of the index and a 400-point move was approximately 18.7 percent of the index. However, given the expansion and growth of U.S. equity markets since 1988, 250- and 400-point movements in the NASD now represent a much smaller percentage move in the index. Specifically, with the NASD at 5,000, a 250-point move represents 5 percent of the index and a 400-point move represents 8 percent of the index.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act so that the effectiveness of the Policy Statement can continue uninterrupted. The NASD notes that its other proposals to extend the Statement have been subject to the full notice and comment period and that the Commission has received no adverse comments on the Statement. Accordingly, because the NASD believes that there are no changes to the Policy Statement that would necessitate the solicitation of public comment prior to Commission approval, because no adverse comments have been received in response to prior extensions of the Statement, and because the Policy will otherwise expire on December 31, 1995, the NASD requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Since the Commission approved the NASD's proposal in 1988, the Dow Jones Industrial Average has not experienced a one day market decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and accordingly, the Commission believes that the pilot program should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid one day market decline that could have a destabilizing effect on the nation's financial markets and participants in these markets. Finally, the Commission believes that the proposed changes to the Policy Statement are minor and not of a nature to affect its operation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because there are no material changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable Policy Statement to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 15A and 19(b) of the Act.[6]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1996.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–95–57) is hereby approved until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30355 Filed 12–12–95; 8:45 am]

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[6] The Commission reaffirms its request that the NASD implement its Policy Statement by implementing a trading halt as quickly as practicable whenever the New York Stock Exchange and other equity markets have suspended trading. *See* Securities Exchange Act Release No. 27370, *supra* note 4.

[7] 17 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36558; File No. SR–OCC–95–13]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustments of Options for Ordinary Stock Dividends

December 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 19, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. On October 16, 1995, OCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise OCC's By-Laws to adopt a general rule of not adjusting options for ordinary stock dividends or distributions on the underlying security and will delete references to the review by the Commission of options adjustment decisions made by an OCC adjustment panel.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend Article VI, Section 11 of its By-Laws governing adjustments on options for ordinary stock dividends declared on the underlying security. Article VI, Section 11 sets forth general rules concerning adjustment that OCC may make to the standardized terms of option contracts when certain events occur. A specific adjustment is determined by the vote of an adjustment panel comprised of two designated representatives of each exchange that lists such option and the designee of OCC's Chairman. OCC's designee only votes in the case of a tie.

Currently, Article VI, Section 11(d) contains a general rule requiring that equity option contracts be adjusted in the case of a stock dividend, stock distribution, or stock split where one or more whole shares of the underlying security is issued with respect to each outstanding share. The adjustment is made by reducing the strike price and increasing each option contract by the same number of additional option contracts as the number of shares issued with respect to each outstanding share. The unit of trading stays the same. However, Section 11(c) states that there will be no adjustment for ordinary cash dividends. This is because ordinary cash dividends generally are paid on a quarterly basis and adjusting outstanding options each time a dividend is paid could create a massive proliferation of option series that would dilute market liquidity and would overtax price reporting and other systems.

Article VI, Section 11(j) grants authority to the adjustment panel to make such exceptions to any of the general adjustment rules as it deems to be appropriate. Recently, two adjustment panels exercised their exception authority and determined not to adjust outstanding option contracts to reflect a stock dividend. In both instances, the issuer evidenced a pattern of declaring a small stock dividend in conjunction with a quarterly cash dividend. In determining not to adjust the options, each adjustment panel considered the provision in the Options Disclosure Document that states a stock dividend may be treated as an ordinary cash dividend by an adjustment panel if the issuer of the underlying security announces or exhibits a policy of declaring regular stock dividends that do not individually exceed 10% of the market value of the underlying security.

The adjustment panels involved in making the two recent adjustments have requested that OCC amend its By-Laws to provide for a general rule that no adjustment will be made to reflect ordinary stock dividends. As a result, OCC is proposing to define in its By-Laws ordinary stock dividends as dividends that are paid on a quarterly basis by the issuer of the underlying security and that do not individually exceed ten percent of the market value of the underlying security. Because the proposed change only will apply to recurrent stock dividends, OCC anticipates that it will apply only in a small number of cases. OCC believes that formalizing a policy of not adjusting for recurrent stock dividends will eliminate potential problems associated with the creation of an undesirable proliferation of options series as well as eliminate the need to convene adjustment panels to make discretionary determinations for such dividends on a case-by-case basis.

OCC also proposes to amend its By-Laws to clarify when cash dividends will be considered ordinary. Under the proposal, cash dividends that do not exceed ten percent of the market value of the underlying security will be deemed to be ordinary whether or not they are paid on an ordinary basis.

Finally, pursuant to a request from Commission staff, OCC proposes to delete language from Article VI, Section 11 that provides for Commission review of the determinations made by an OCC adjustment panel.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the proposal will provide for the prompt and accurate settlement of options transactions and will provide for the safeguarding of related securities and funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Written comments were not and are not intended to be solicited with respect

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The original filing required that dividends or distributions (i) not exceed ten percent of the market value of the underlying security and (ii) be paid on a regular basis in order to be deemed "ordinary." OCC amended its proposal with respect to cash dividends by eliminating the requirement that cash dividends of less than ten percent be paid on a regular basis in order to be deemed ordinary for purposes of determining whether to adjust the option. OCC also amended the proposal to require that stock dividends of less than ten percent of the market value of the underlying security be paid on a quarterly basis, as opposed to regularly, in order to be deemed ordinary. Letter from Jacqueline R. Luthringshausen, OCC, to Jerry W. Carpenter, Associate Director, Division of Market Regulation, Commission (October 11, 1995).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] 15 U.S.C. 78q–1 (1988).

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to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–13 and should be submitted by January 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30299 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21571; 811–7105]

CUNA Mutual Funds, Inc.; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

[3] 17 CFR 200.30–3(a)(12) (1994).

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: CUNA Mutual funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 28, 1995 and amended on October 27, 1995, and December 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized under the laws of Maryland. Applicant consists of three portfolios, CUNA Mutual U.S. Government Income Fund, CUNA Mutual Cornerstone Fund, and Mutual Tax-Free Intermediate-Term Fund. On October 8, 1993, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 30, 1993 and applicant began a public offering thereafter.

2. On March 27, 1995, applicant's board of directors approved the liquidation and dissolution of applicant. The board of directors approved the liquidation because, among other things, they did not expect assets under management to rise to a level that would allow applicant to operate productively. At all times, affiliated persons of applicant held a majority of the outstanding shares of each portfolio.

3. Between March 17 and March 30, 1995, letters were sent to all public shareholders notifying them of applicant's intent to liquidate all accounts effective May 12, 1995. On May 12, 1995, the remaining public shareholders of each portfolio received cash distributions equal to the net asset value of their accounts as of the close of business on that day. CMC–T.Rowe Price Management, LLC ("CMC"), applicant's administrator and a shareholder of applicant, made the decision to absorb all the expenses and costs of the liquidation and winding up of the business of applicant. Accordingly, applicant's affiliated persons received their distributions after the public shareholders to ensure that all costs and expenses of the liquidation (such as brokerage, taxes, etc.) would be absorbed by the affiliated parties and not the public shareholders. CMC was the sole remaining shareholder on May 26, 1995, and did in fact bear all expenses and costs of winding up the business of applicant. CMC also paid all of applicant's organizational expenses.

4. The liquidation was approved by CMC, the sole remaining shareholder of applicant's stock, on May 26, 1995. On that date, CMC redeemed its shares at net asset value and received applicant's remaining assets.

5. With one exception, all portfolio securities were sold in the usual course. A total of $2,071.17 in brokerage commissions was incurred. The one exception involved a cross transaction with an affiliated mutual fund which followed the procedures set forth in rule 17a–7 under the Act.[1]

6. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. On June 30, 1995, applicant filed articles of dissolution with Maryland authorities.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

[1] Rule 17a–7 exempts purchase or sales transactions between an investment company and other affiliated investment companies provided that certain conditions are met.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30298 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21586; File No. 812–9386]

Massachusetts Mutual Life Insurance Company, et al.

December 7, 1995.

AGENCY: U.S. Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Massachusetts Mutual Life Insurance Company ("MassMutual"), Massachusetts Mutual Variable Life Separate Account I ("Separate Account") and MML Investors Services, Inc. ("MMLISI").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF THE APPLICATION: Applicants seek an order: (1) to permit them to deduct from premium payments received in connection with certain flexible premium variable life insurance policies ("Policies") issued by MassMutual and any other flexible premium variable life insurance policies ("Other Policies") issued by MassMutual in the future and made available through the Separate Account or any other separate account established in the future by MassMutual to support flexible premium variable life insurance contracts ("Future Accounts"), an amount less than or approximately equal to the amount by which MassMutual's federal tax liabilities will be increased as a result of its receipt of those premium payments; and (2) to permit the deduction from premium payments in amounts less than or equal to the minimum planned premium under the Policies of a sales load that is greater than the sales load previously deducted from premium payments in amounts exceeding the minimum planned premium.

FILING DATES: The application was filed on December 23, 1994, and amended on June 28, 1995, and September 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Thomas F. English, Esq., Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. MassMutual is a mutual life insurance company organized under Massachusetts law.

2. The Separate Account was established as a separate investment account of MassMutual for the purpose of investing net premium payments received under variable life insurance contracts. It is registered under the 1940 Act as a unit investment trust.

3. MMLISI serves as the principal underwriter for the Policies. MMLISI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. MMLISI may serve as principal underwriter for Other Policies issued by MassMutual in the future.

4. The Policies are flexible premium variable life insurance policies available on a "Case" or on an individual basis. Insureds purchasing a Policy on a "Case basis" share a common employment or other institutional relationship. All Policies in any Case are aggregated for purposes of determining issue dates, policy dates, underwriting requirements and sales load percentages. Individual insureds with Case Policies may exercise all rights and privileges under the Policy through their employer or other sponsoring entity acting as Case administrator. After termination of the employment or other relationship, an individual Policy owner may exercise such rights and privileges directly. The minimum Case premium is $250,000 of first year annualized premiums for all Policies in a Case.

5. The sales load component of the premium deduction is based on the aggregate initial premiums paid for all Policies in a Case ("Initial Case Premium"). For Policies issued in a Case with an Initial Case Premium of at least $1,000,000, the sales load remains level over the life of the Policies. For Policies issued in a Case with an Initial Case Premium of less than $1,000,000, the sales load applied to any premium payment not exceeding the minimum planned Policy premium amount will be set at one level for the first five Policy years, and then reset at a lower, level amount after the fifth Policy year. During the first five Policy years, premiums are tracked on an annual cumulative basis for each Policy, and the sales load will be assessed at a higher level for premium payments made at or below the specified minimum planned Policy premium.

6. No surrender charge is imposed under the Policies.

7. MassMutual deducts a state premium tax charge from each premium payment made under the Policies. The level of such charge varies from state to state. Currently, state premium tax rates range from 2% to 3.5%.

8. MassMutual proposes to deduct from premium payments a charge for the federal tax burden imposed by deferred acquisition costs ("DAC tax") in the amount of 1% of premium payments. This amount is, at most, approximately equal to or less than the increase in MassMutual's federal income tax obligations based upon premiums received under the Policies.

9. In the Omnibus Budget Reconciliation Act of 1990 ("OBRA"), Congress amended Section 848 of the Internal Revenue Code of 1986 (the "Code"). In relevant part, Section 848 requires insurance companies to capitalize and amortize over a period of ten years certain general expenses for the current year. Under prior law, those expenses would have been deductible in full from an insurance company's gross income in the current tax year.

10. The amount of deductions that would have to be capitalized and amortized over ten years is based upon "net premiums" received in connection with certain types of insurance contracts ("specified contracts"). More specifically, an amount of expenses equal to a percentage of the current year's net premiums (*i.e.*, gross premiums minus return premiums and

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reinsurance premiums) must be capitalized and amortized for each specified contract. The amount of general deductions that must be capitalized varies, depending upon the type of contract to which the premiums received relate, according to a schedule set forth in Section 848. The Policies fall into the category of individual life insurance contracts under Section 848 for which 7.7% of net premiums received must be capitalized and amortized.

11. The impact of the DAC tax on MassMutual may be quantified as follows. For each $10,000 of premiums received by MassMutual under the Policies in a given year, MassMutual must capitalize $770 (*i.e.*, 7.7% of $10,000); $38.50 (one-half year's portion of the ten-year amortization) of this amount may be deducted in the current year. The remaining $731.50 (*i.e.*, $770 minus $38.50) is subject to taxation at the corporate tax rate of 35 percent. As a result, MassMutual would owe approximately $256.03 more in taxes for the current year than before the OBRA tax changes. However, this current tax increase will be offset partially by deductions allowed during the next ten years as a result of amortizing the remainder of the $770–$77 in each of the following nine years, and $38.50 in year ten. When estimating the economic impact of the tax increase, the benefit to MassMutual of being able to deduct $77.00 per year for each of the subsequent nine years and $38.50 for the tenth year must be discounted, so that only the present value of those deductions would be subtracted from the $256.03.

12. To the extent that capital must be used by MassMutual to satisfy its increased federal tax burden under Section 848, such capital used to satisfy this increased federal tax burden under Section 848 is, in essence, MassMutual's after tax rate of return—*i.e.*, the return MassMutual seeks on invested capital—of at least 8 percent. Accordingly, in the business judgment of MassMutual, a discount rate of at least 8% is appropriate for use in calculating the present value of MassMutual's future tax deductions resulting from the amortization described above. To the extent that the 8% discount rate is lower than MassMutual's actual after tax rate of return, Applicants submit that a measure of comfort is provided that the calculation of MassMutual's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to MassMutual is reduced, or its after tax rate of return is lowered.

13. MassMutual considered a number of factors in determining the expected after tax rate of return used in arriving at this discount rate. For example, MassMutual identified the level of investment return that can be expected to be earned over the long term on various types of fixed income securities, including the expected yield on 30-year U.S. Treasury bonds and high-grade corporate bonds, and adjusted these rates in an amount considered appropriate to compensated it for the risks associated with allocating capital to a lien of business, esp0ecially a newer line of business without a performance history. MassMutual also considered whether this expected after tax rate of return is within the normal range in the life insurance industry.

14. Assuming a corporate tax rate of 35 percent, and applying a discount rate of 8 percent, the present value of the federal income tax effect of the increased deductions allowable in the following ten years is $174.60. Because this amount partially offsets the increased tax burden, Section 848 imposes an increased tax burden on MassMutual with a present value equal to $81.43 (*i.e.*, $256.03 minus $174.60) for each $10,000 of net premiums received.

15. Because state premium taxes are deductible in computing federal income taxes, MassMutual does not incur incremental income tax when it passes on state premium taxes to Policy owners. In contrast, federal income taxes are *not* deductible in computing MassMutual's federal income taxes. To offset fully the impact of Section 848, MassMutual must impose an additional charge that would make it whole not only for the $81.43 additional tax burden attributable to Section 848, but also for the tax on the additional $81.43 itself. This additional charge may be determined by dividing $81.43 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $125.28 for (*i.e.*, 1.25% of) each $10,000 of net premiums.

16. Based on prior experience, MassMutual believes that it is reasonable to expect that virtually all future deductions will be fully taken. MassMutual submits that a charge of 1% will reimburse it for the impact of Section 848 on its federal tax liabilities. Applicants represent that a 1% charge is reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848 and the use by MassMutual of a discount rate of 8% in computing the future deductions resulting from such amortization.

17. Applicants also represent that the charge to be deducted under Other Policies by MassMutual pursuant to the relief requested will be reasonably related to MassMutual's increased federal tax burden under Section 848, taking into account the benefit to MassMutual of the amortization permitted by Section 848, and the use by MassMutual of an appropriate discount rate (*i.e.*, a rate not less than MassMutual's expected after tax rate of return) in computing the cost of the increased tax burden ad the present value of the future deductions resulting from such amortization.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act, in relevant part, authorizes the Commission, by order upon application to exempt any person or transaction or class of persons or transactions from the provisions of the 1940 Act or rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting them from the provisions of Section 27(c)2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit deductions from premium payments received in connection with the Policies and Other Policies an amount that is reasonable in relation to MassMutual's federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than sales load.

3. Applicants also request that the Commission grant an order exempting them from the "stair step" provisions of Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b)(13)(ii) thereunder in connection with the sale of units of interest in the Separate Account under the Policies.

Section 27(c)(2) and Rule 6e–3(T)(c)(4)—DAC Tax Exemption

1. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as if they were the issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, MassMutual (as the depositor for the Separate Account) and MMLISI (as principal underwriter of the Policies)

are deemed to be subject to Section 27 of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Section 26(a) (2) and (3) of the 1940 Act. Sections 27(a)(1) and 27(h)(1) of the 1940 Act limit sales loads on periodic payment plan certificates to 9% of total payments to be made.

3. Rule 6e(3)(T) provides a broad range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Policies and the Other Policies. Paragraph (b)(13)(iii) of Rule 6e–3(T) provides relief from 27(c)(2) of the 1940 Act to the extent necessary to permit "[t]he deduction of premium or other taxes imposed by any state or other governmental entity." Applicants submit that the exemptive relief needed to permit the deduction of a DAC tax charge is provided without regard to whether the taxes are imposed by states or other governmental entities. However, Applicants acknowledge the argument that, although it increases an insurance company's tax liability because of the type of premium payments received, Section 848 of the Code does not purport to impose a tax on life insurance companies. Accordingly, Applicants request an exemption from Section 27(c)(2) to address any concern that the proposed DAC tax charge might not be deemed to be entitled to the exemptive relief from that Section provided by Rule 6e–3(T)(b)(13)(iii).

4. Rule 6e–3(T)(c)(4) defines "sales load" as the excess of premium payments over certain itemized charges and deductions. A deduction for an insurer's DAC tax expense as described above does not fall squarely into any of those itemized charges or deductions. Arguably, then, such a deduction may be treated as "sales load" under a literal reading of Rule 6e–3(T)(c)(4). Applicants request an exemption from Rule 6e–3(T)(c)(4)(v) to permit the proposed DAC tax charge to be assessed without treating the charge as a deduction to cover sales and distribution expenses.

5. Applicants submit that there is no public policy reason for treating as deductions made to pay costs attributable to federal taxes (*e.g.*, the proposed DAC tax charge) as sales load. Applicants also assert that language in the releases in which the Commission adopted and amended Rule 6e–3(T) does not suggest that such a result was intended, despite the literal wording of paragraph (c)(4) of the Rule.

6. Applicants assert that the public policy that underlies Section 27(a)(1) of the 1940 Act is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a DAC tax charge as sales load would not further this legislative purpose. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in paragraph (c)(4) of Rule 6e–3(T).

7. Applicants asset that, in evaluating whether it is consistent with the purposes and policies of the 1940 Act for deductions made to pay federal taxes to be excluded from sales load, it is helpful to examine the definition of "sales load" in Section 2(a)(35) of the 1940 Act. Section 2(a)(35) of the 1940 Act defines "sales load" as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants note that both Section 2(a)(35) and Rule 6e–3(T)(c)(4) define "sales load" derivatively.

8. Applicants further assert that Section 2(a)(35) excludes from the definition of "sales load" under the 1940 Act deductions from payments for "issue taxes." Applicants submit that issue taxes incurred as a result of selling an investment company security would be similar to premium taxes incurred as a result of the sale of a variable life insurance policy. This suggests that it is consistent with the 1940 Act's policies to exclude from the definition of "sales load" in Rule 6e–3(T) deductions made to pay federal tax obligations incurred as a result of receipt of premiums.

9. Applicants submit that the reference in Section 2(a)(35) to administrative expenses or fees that are "not properly chargeable to sales or promotional activities" suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate MassMutual for its increased federal tax burdens attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) indicates that treating the proposed DAC tax charge as other than sales load is consistent with the policies of the 1940 Act.

10. Finally, Applicants state that the limitation to state premium taxes of the premium tax exclusion from the definition of "sales load" in Rule 6e–3(T)(c)(4)(v) probably is an historical accident. When Rule 6e–3(T) was adopted and later amended, the federal government did not impose taxes based upon receipt of premiums. Applicants note that nothing in the Commission releases dealing with Rule 6e–3(T) suggests that the exclusion of premium tax deductions from the definition of sales load was based on the type of governmental entity imposing such taxes.

11. Applicants assert that the requested relief with respect to the Policies or Other Policies issued through the Separate Account or Future Accounts is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for MassMutual to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair MassMutual's ability to take advantage effectively of business opportunities as they arise. In addition, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Mass Mutual was required to seek exemptive relief repeatedly with respect to the same issues addressed in this request for relief, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of MassMutual's increased overhead expenses.

Conditions for Relief

1. Applicants represent that MassMutual will monitor the reasonableness of the 1% charge.

2. Applicants represent that the registration statement for each Policy or Other Policy under which the 1% charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to MassMutual's increased federal tax burden as a result of applying Section 848 of the Code.

3. Applicants represent that the registration statement for each Policy or Other Policy under which the 1%

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charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to MassMutual's increased federal tax burden resulting from the application of Section 848 of the Code; (ii) the reasonableness of the expected after tax rate of return that is used in calculating the charge; and (iii) the appropriateness of the factors used to determine MassMutual's expected after tax rate of return.

Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii)—"Stair Step" Exemption

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales load which may be deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the sales load deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

3. Under MassMutual's proposed sales load structure for Policies issued in a Case with an Initial Case Premium of less than $1,000,000, during the first five Policy years, MassMutual assesses a front-end sales load of 15% of premium payments made which are less than or equal to the minimum planned Policy premium, and 6% of premium payments made which exceed the minimum planned Policy premium. After the fifth Policy Year, the sales load percentages for these Policies will decrease to 6% on all premium payments. Thus, if during the first four years of a Policy for which the Initial Case Premium paid was less than $1,000,000, a Policy owner makes a premium payment which exceeds the minimum planned Policy premium, the percentage of sales load deducted (in the next Policy Year) from that portion of any premium payment which is less than or equal to the minimum planned Policy premium would exceed that deducted from the prior premium payment. Applicants request an exemption from the requirements of Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b0(13)(ii) thereunder because the sales load structure under the Policies appears to violate the "stair-step" provisions articulated in Section 27(a)(3) of the 1940 Act. Moreover, Applicants note, the exemption from Section 27(a)(3) provided by Rule 6e–3(T)(b)(13)(ii) does not appear to cover the case at hand.

4. Applicants represent that MassMutual has designed the Policies so that they comply with Rule 6e–3(T)'s sales load limitations and are "refund proof": i.e., sales load deductions from premium payments will not exceed the sales load limitations specified in Rule 6e–3(T)(b)(13)(i)(A) and will never require the repayment of any sales charges pursuant to Rule 6e–3(T)(b)(13)(v)(A).

5. Applicants further represent that MassMutual has designed the sales load structure under the Policies to give Policy owners significant flexibility with respect to the timing and amount of premium payments, while permitting MassMutual to deduct only those charges deemed necessary to defray distribution expenses and support the benefits under the Policies.

6. Applicants represent that the proposed sales load design provides a significant benefit to Policy owners by passing through to them a portion of MassMutual's savings resulting from the lower distribution costs associated with Policies having an Initial Case Premium of $1,000,000 or less and for which premium payments are made during the first five Policy Years which exceed the minimum planned Policy premium set for that Policy year. Applicants submit that it would not be in the interest of Policy owners to require the imposition of a sales charge on premium payments in excess of the minimum planned Policy premium, or subsequent premium payments that are higher than Applicants deem necessary.

7. Applicants assert that Section 27(a)(3) was designed to address abuses involving periodic payment plans under which large amounts of front-end sales load are deducted so early in life of the plan that an investor redeeming in the early periods would recoup little of his or her investment. MassMutual anticipates that: (i) a substantial number of the Policies will be sold in connection with rollover transactions effectuated pursuant to Section 1035 of the Code; and (ii) under such a scenario, there will be a higher occurrence of premium payments made in the first Policy year which exceed the minimum planned premium payment by Policy owners purchasing Policies having an Initial Case Premium of less than $1,000,000. For these reasons, Applicants submit that the proposed sales load structure would not present the type of abuse that Section 27(a)(3) was designed to prevent.

8. Moreover, Applicants assert that, to the extent that owners of Policies with an Initial Case Premium of less than $1,000,000 make premium payments during the first Policy year which exceed the minimum planned Policy premium, MassMutual's proposed sales load structure will cause a greater proportion of the Policies' sales charges to be deducted later than they otherwise might have been deducted. In this regard, Applicants note that MassMutual could have decided to assess a sales load of 30% on premium payments less than or equal to the minimum planned Policy premium made during the first Policy year, and 7.89% on premium payments made thereafter. Applicants submit that, by spreading sales charges more evenly over the life of a Policy, MassMutual's sales load structure furthers the purposes of Section 27(a)(3) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30356 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9973]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Middleby Corporation, Common Stock, $0.01 Par Value)

December 7, 1995.

The Middleby Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on October 24, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Association of Securities Dealers Automated Quotations National Market System ("Nasdaq/MMS").

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons.

(1) According to the Company, its Board of Directors determined that a listing on Nasdaq/NMS would provide greater coverage for the Security; and

(2) According to the Company, its Board of Directors determined that a listing on the Nasdaq/NMS would provide improved liquidity to the Company's shareholders.

Any interested person may, on or before December 29, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30302 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21573; 811–7476]

The 231 Funds; Notice of Application

December 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The 231 Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 West 55th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a Massachusetts business trust. On February 10, 1993, applicant registered under the Act as an investment company, and filed a registration statement under the Securities Act of 1933 registering an indefinite number of shares. The registration statement was declared effective on August 20, 1993. Applicant issued shares in two portfolios, the Prime Fund ("231 Prime Fund") and the Treasury Fund ("231 Treasury Fund"), each of which issued two classes of shares (Institutional Shares and Service Shares). Institutional Shares were first issued on September 1, 1993 for both portfolios and Service Shares were first issued on March 1, 1994 for the 231 Prime Fund and April 5, 1994 for the 231 Treasury Fund.

2. At a meeting held on June 13, 1995, applicant's Board of Trustees approved on Agreement and Plan of Reorganization (the "Reorganization Agreement") between applicant and Pacific Horizon Funds, Inc. ("Pacific Horizon") whereby Pacific Horizon's Prime Fund ("PH Prime Fund") and Treasury Fund ("PH Treasury Fund") would acquire all of the assets and liabilities of 231 Prime Fund and 231 Treasury Fund, respectively, in exchange for Horizon Shares and Horizon Service Shares of PH Prime Fund and PH Treasury Fund. Applicant's Board of Trustees determined that the interests of applicant's shareholders would best be served by approving the Reorganization Agreement. In reaching this determination, the Board of Trustees considered the anticipated loss of applicant's assets as a result of the sale of the institutional trust business of Bank of America Illinois, applicant's investment adviser ("Adviser"). The Board of Trustees concluded that, among other advantages, the reorganization would be likely to provide shareholders with an interest in a larger and more diversified portfolio while reducing the total expense ratio that would exist absent voluntary reimbursements.

3. Proxy materials were filed with the SEC and were distributed to applicant's shareholders on or about July 21, 1995. At a special meeting held on August 24, 1995, shareholders of the 231 Prime Fund and the 231 Treasury Fund approved the reorganization.

4. On August 25, 1995, the assets and liabilities of the 231 Prime Fund and 231 Treasury Fund were transferred to and assumed by PH Prime Fund and PH Treasury Fund in exchange for full and fractional Horizon Shares and Horizon Service Shares of the PH Prime Fund and PH Treasury Fund. The shares exchanged were equal in number and value to the number of full and fractional Institutional Shares and Service Shares of the 231 Prime Fund and 231 Treasury Fund. Following the transfer, applicant distributed the Horizon Shares and Horizon Service Shares to the holders of Institutional Shares and Service Shares of applicant in liquidation of the 231 Prime Fund and 231 Treasury Fund. Applicant did not incur any brokerage commission in connection with disposition of its portfolio securities and other assets.

5. Aggregate expenses of $50,000 were incurred by applicant in connection with the reorganization. Applicant, Concord Financial Services, Inc. (Pacific Horizon's transfer agent), and the Adviser shall each pay one-third of these expenses. Pacific Horizon, Concord, and the Adviser shall each pay one-third of the expenses incurred by Pacific Horizon in connection with the reorganization.

6. At the time of the filing of the application, applicant had no assets or liabilities, was not a party to any litigation or administrative proceeding, and had no shareholders. Applicant is

neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to terminate its existence as a Massachusetts business trust upon receipt of an order from the SEC Declaring that applicant has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30297 Filed 12–12–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35): SSS Form No. and Title:

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 157, Alternative Service Job Data Form
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three-year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20435.

Dated: December 5, 1995.

Gil Coronado,

Director.

[FR Doc. 95–30397 Filed 12–12–95; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–086]

Merchant Marine Personnel Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a 19-member Federal Advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Membership applications should be received no later than February 12, 1996.

ADDRESSES: Persons interested in applying for membership on MERPAC may obtain an application form by writing to Commandant (G–MOS–1), room 1210, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, or by calling (202) 267–0229 between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: CDR Jon Sarubbi, Executive Director, or Mr. Mark Gould, Assistant Executive Director, MERPAC, room 1210, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC, 20593–0001, (202) 267–0229.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) to advise the Coast Guard on merchant marine personnel issues. Six positions are either vacant or the current appointments will expire in 1996.

Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Shipping company representative.
(b) Deck Officer (inland/river route).
(c) Engineering Officer (limited Chief Engineer or Designated Duty Engineer).
(d) Maritime Academy representative.
(e) Pilot.
(f) Unlicensed Seaman (Able Bodied Seaman).

The membership term is 3 years. No member may hold more than two consecutive 3-year terms.

The Coast Guard is seeking greater representation from the inland and rivers maritime communities, particularly in the positions of Deck Officer (inland/river route) and Engineering Officer (limited Chief Engineer or Designated Duty Engineer). Although the Coast Guard was seeking increased representation from these same communities during the last selection process, it chose to retain the incumbent members due to their special expertise. Individuals who submitted an application for selection to the committee in response to the notice in the May 11, 1995 **Federal Register** (60 FR 25257; CGD 95–020) need not reapply. Their applications will be reconsidered during this selection process.

To achieve the desired balance of membership, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided. The Committee normally meets in Washington, D.C., with working group meetings for specific problems as required.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: December 7, 1995.

J. Angelo,

Director for Standards.

[FR Doc. 95–30401 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Correction to Notice of Intent To Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to **Federal Register** Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invited public comment on the application to use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158) in the **Federal Register** dated November 22, 1995. The PFC application number was misstated as 95–03–U–00–BTR. The correct PFC application number is 96–03–U–OO–BTR.

DATES: The deadline for comments on this application is December 22, 1995.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

Issued in Fort Worth, Texas, on November 29, 1995.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 95–30365 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Little Rock National Airport, Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Deborah S. Ledwell, Manager of Little Rock National Airport, at the following address: Deborah S. Ledwell, Airport Manager, Little Rock National Airport, One Airport Drive, Little Rock, Arkansas 72202.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Little Rock National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 29, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 15, 1996.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Charge effective date: May 1, 1995
Proposed charge expiration date: May 31, 2003
Total estimated PFC revenue: $32,765,055
PFC application number: 96–02–U–00–LIT

Brief description of proposed project(s):

Projects To Use PFC's

Extend Runway 4L–22R, and Relocate Approach Lighting System and Instrument Landing System on Runway 22R.

The class or classes of air carriers to be exempted from collecting PFC's: All Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Little Rock National Airport.

Issued in Fort Worth, Texas, on November 29, 1995.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 95–30364 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Manassas and Prince William County, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed railroad improvement in the City of Manassas and Prince William County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Roberto Fonseca-Martinez, Division Administrator, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, Telephone (804) 281–5100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation and the Virginia Department of Rail and Public Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the Norfolk Southern Railway's and the Virginia Railway Express' operations in the City of Manassas and Prince William County. The proposed improvement will involve the rerouting of the Norfolk Southern Railway's through freight trains onto a new alignment and/or improving the existing corridor.

Improvements to the existing corridor are considered necessary to improve safety and relieve traffic congestion at several at-grade crossings caused by freight operations in the City of Manassas, and the developing areas of Prince William County south and west of the City of Manassas, and to expand commuter train service to Gainsville, Virginia. Alternatives under consideration include (1) taking no action; (2) improving existing rail; and (3) rail relocation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings and a Location Public Hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No

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formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions on this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Edward S. Sundra,

Environmental Specialist, Richmond, Virginia.

[FR Doc. 95–30283 Filed 12–12–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Public Meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, D.C. This meeting is being scheduled due to the cancellation of the previously announced November 16, 1995, CAG meeting.

DATES: The meeting will be held January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia Washburn, C:I, 1111 Constitution Avenue, N.W., Room 7046 IR, Washington, D.C. 20224. Telephone No. (202) 622–5026 (not a toll-free number).

Notice is hereby given that a public meeting of the Commissioner's Advisory Group previously scheduled for November 16, 1995, beginning at 10:00 am in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, was cancelled due to the Federal government shutdown.

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on January 30, 1996, beginning at 10:00 am in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, N.W. Washington, D.C. 20224.

The agenda will include the following topics:

Filing Season Readiness

Improving Services to Customers
Small Business Issues and Initiatives
Compliance Issues
Corporate Education Issues

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Lorenza Wilds, no later than January 23, 1996. Ms. Wilds can be reached on (202) 622–5026 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write: Patricia Washburn, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7046 IR, Washington, D.C. 20224.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30274 Filed 12–12–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Butyl Benzyl Phthalate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that butyl benzyl phthalate be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by February 12, 1996. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1991.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on June 25, 1990. The petitioner is Monsanto Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2917.39.2000
CAS number: 85–68–7

Butyl benzyl phthalate is derived from the taxable chemicals methane, propylene, xylene, toluene, and chlorine and is a liquid produced predominantly by the reaction of n-butanol and phthalic anhydride, followed by a reaction with benzyl chloride in the presence of a catalyst. n-butanol is manufactured by the hydrogenation of n-butyraldehyde, which is derived from propylene and synthesis gas (hydrogen and synthesis gas are derived from natural gas). Benzyl chloride is produced by direct photochemical chlorination of toluene. Phthalic anhydride is produced by the reaction of o-xylene with air in the presence of a catalyst.

The stoichiometric material consumption formula for this substance is:

CH_4 (methane)+C_3H_6 (propylene)+C_8H_{10} (xylene)+3 O_2 (oxygen)+C_7H_8 (toluene)+Cl_2 (chlorine) ——> $C_{19}H_{20}O_4$ (butyl benzyl phthalate)+2 HCl (hydrochloric acid)+H_2 (hydrogen)+2 H_2O (water)

According to the petition, taxable chemicals constitute 77.25 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.54 per ton. This is based upon a conversion factor for methane of 0.05, a conversion factor for propylene of 0.17, a conversion factor for xylene of 0.47, a conversion factor for toluene of 0.32, and a conversion factor for chlorine of 0.26.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–30273 Filed 12–12–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Programs

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of renewal—VA/IRS Match Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Veterans Health Administration (VHA), intends to renew the computer matching program comparing Internal Revenue Service (IRS) and Social Security Administration (SSA) income records with VA patient income data which is contained in the patient medical records.

The goal of these matches is to compare income, social security number, and employment status as reported to VHA with income records maintained by IRS and SSA. For the information of all concerned, a summary report of the VHA matching program describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the computer matching report are being sent to both houses of Congress. These matches are expected to commence on or about January 1, 1996, but start no sooner than 30 days after publication of this notice in the **Federal Register** or 40 days after copies of this notice and the agreement are submitted to Congress and the Office of Management and Budget whichever is later. These matches may be extended by the involved Data Integrity Boards for a twelve month period provided all agencies involved certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not cor tinue past the legislative authorized date to obtain this information. However, expiration of this agreement is June 30, 1997.

ADDRESSES: Interested individuals may comment on the matches by writing to the Chief Administrative Officer (161D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Janice E. Wheeler (202) 273–6276, Program Analyst, Income Verification Match Policy Service.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974, as amended. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: December 4, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Report of Matching Program

Department of Veterans Affairs Patient Medical Records With Income Records Maintained by the Internal Revenue Service and the Social Security Administration

a. *Authority:* Title 38 U.S.C. 5106 and 5317; Pub. L. 101–508 as amended by Pub. L. 102–568.

b. *Program Description:*

(1) *Purpose:* (a) The Department of Veterans Affairs (VA), Veterans Health Administration (VHA) plans to match the household income information contained in the medical records of certain nonservice-connected veterans, with the income records for those persons maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Those nonservice-connected veterans subject to income verification matching are those veterans who are receiving VA medical care in a mandatory eligibility category due to a finding of low income subsequent to means testing.

(b) Currently, information about a veterans household income (i.e., veterans and spouses receipt of wage, self-employment and other income as well as employment status, health insurance coverage and number of dependents) is obtained when the veteran makes application for medical care at a VA medical care facility. The household income and dependent data is evaluated in a "means test" which takes into account deductions of certain income not counted as such for Veterans Health Administration eligibility purposes. Once a net income for the veteran is established, it is applied against means test thresholds, or levels of income establishing mandatory or discretionary eligibility for medical care. If the veterans net income falls below the applicable means test threshold, he or she is eligible for mandatory care (i.e., no-cost care); however, if the net income falls over the applicable threshold, the veteran is given a discretionary eligibility. Veterans who are eligible for discretionary care are provided care if the VA medical facility has the resources to treat discretionary veterans, and if the veteran agrees to make a co-payment for such care. The proposed matching programs will enable VA to verify the accuracy of reported income and employment status and therefore more accurately determine eligibility for medical care.

(2) *Procedures:* VA's Veterans Health Administration has established an Income Verification Match (IVM) Center. The IVM Center will electronically extra demographic and income data from each VA medical care facility's database on nonservice-connected veterans found eligible for mandatory care based solely on low income. The VHA IVM extract file will be matched against IRS and SSA income records. If a VHA record and SSA or IRS record match on social security number and name, the IVM Center will begin an extensive case development and verification process. This process will assure the validity of the matched cases by verifying the IRS/SSA reported income amount with the payer(s) and recipients of the income. Each veteran and/or spouse identified by the match will be contacted in order to notify the veteran and/or spouse of any income discrepancy identified by the match, to verify the discrepancy, and to advise him or her of potential changes to the veterans' medical care eligibility at the VA medical center, and the potential billing action for co-payments. Before any adverse action is taken, the individual(s) identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be referred for prosecution consideration in accordance with existing VA policies.

c. *Records to be Matched.* The VA records involved in the match are patient medical records maintained in the "Patient Medical Record-VA (24VA136)" published at 40 FR 38095 (8/26/75) and amended at 40 FR 52125 (11/7/75), 41 FR 2881 (1/20/76), 41 FR 11631 (3/19/76), 42 FR 30557 (6/15/72),

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44 FR 31058 (5/30/79), 43 FR 77220 (11/21/80), 46 FR 2766 (1/12/81), 47 FR 28522 (6/30/82), 47 FR 51841 (11/17/82), 50 FR 11610 (3/22/85), 51 FR 25968 (7/17/86), 51 FR 44406 (12/9/86), 52 FR 381 (1/5/87), 53 FR 49818 (12/13/90), 55 FR 5112 (2/13/90), 55 FR 37604 (9/12/90), 55 FR 42534 (10/19/90), 56 FR 1054 (1/10/91), 57 FR 28003 (6/23/92), 57 FR 4519 (10/1/92), 58 FR 29853 (5/24/93), 58 FR 40852 (7/30/93) and 58 FR 57674 (10/26/93). The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act system Treas/IRS 22.061. The SSA records are from the Earnings Recording and Self-Employment Income system, HHS/SSA/OSR 09–60–0059.

d. *Period of Match:* The initial data exchanges are expected to begin 40 days after the matching agreements are signed by the Data Integrity Boards (DIB's) and Congressional Offices and OMB have been notified, and 30 days from the date of publication of notice in the **Federal Register** or 40 days from the date this notice is approved, whichever is later. These matches may be extended by the involved DIB's for a twelve month period provided the agencies participating in the match certify to the DIB's, within three months of the determination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the date legislative authority to obtain this information expires.

[FR Doc. 95–30137 Filed 12/12/95 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974; New System of Records—Automated Customer Registration System (ACRS)—VA (87VA045)

AGENCY: Department of Veterans Affairs.

ACTION: Notice, new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Automated Customer Registration System (ACRS)—VA (87VA045)".

Federal computer security regulations require that managers and operators of Government computer systems maintain control over who accesses the resources of those systems. This system of records, which will replace the PROS/Keys system (67VA30), consists of the administrative paperwork involved in adding, modifying or deleting access privileges to the computer resources at the VA Austin Automation Center (AAC), as well as a computer database used to grant access to those resources.

The information maintained in this system of records in hard copy and electronic form will include the names and social security numbers of VA employees, employees of other Government agencies and selected authorized vendors who require access to the computer resources at the AAC. The records will also include business address and telephone number, job title and information relating to data file and computer system access permissions granted to that individual.

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974 for investigatory, judicial and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. All relevant material received before January 12, 1996, will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 I Street NW, Washington, DC 20001, between 9 a.m. and 4 p.m. only, Monday through Friday (except Federal holidays) until January 22, 1996.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine use statements included herein are effective January 12, 1996, and all other provisions included herein are effective January 12, 1996.

SUPPLEMENTARY INFORMATION: A "Report of Intention to Publish a **Federal Register** Notice of New System of Records" and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 522(r) (Privacy Act), guidelines issued by OMB (50 FR 52730), December 24, 1985, Pub. L. 100–503, and follow-up OMB guidelines issued July 25, 1994 (59 FR 37917).

FOR FURTHER INFORMATION CONTACT: Nelda Cook (045/200B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone number (202) 565–8045.

Approved: December 1, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

87VA045

SYSTEM NAME:

Automated Customer Registration System (ACRS)—Department of Veterans Affairs (VA).

SYSTEM LOCATION:

The automated records are maintained by the VA Automation Center, 1615 Woodward Street, Austin, TX 78772. The paper records will be maintained at each VA field station that has a responsibility for ACRS input.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Veterans Affairs employees, employees of other Government agencies and authorized contractor personnel who have requested and have been granted access to the automated resources of the VA's Austin Automation Center (AAC).

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system, in both paper and electronic form, will include the names and social security numbers of all personnel who have requested and been granted access to the automated resources at the AAC. The records will also include business address and telephone number, job title and information relating to data file and computer system access permissions granted to that individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C. 501.

PURPOSE:

The purpose of this system of records is to allow the VA Austin Automation Center (AAC) in Austin, TX, to maintain a current list of all VA employees, employees of other Government agencies and authorized contractor personnel who require access to the computer resources of the AAC, in accordance with Federal computer security requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. At the initiative of VA, pertinent information may be disclosed to appropriate Federal, State or local agencies responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders, where VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. Disclosure of specific information may be made to a Federal agency, in response to its request, to the extent that the information requested is relevant and necessary to the requesting agency's decision in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation on an individual, classifying jobs, awarding a contract or issuing a license, grant or other benefit.

3. Information may be provided to a congressional office in response to an inquiry from that congressional office made at the request of the individual and concerning that individual's record in this system.

4. Disclosure of information may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties, and the request is not in connection with a law enforcement investigation.

5. The Department of Veterans Affairs (VA) may disclose records in this system or records in proceedings before a court or adjudicative body before which VA is authorized to appear when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, *provided*, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

6. The Department of Veterans Affairs (VA) may disclose records in this system of records to the Department of Justice when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by VA to be relevant and necessary to the litigation, *provided*, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. Disclosure may be made during reviews by the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each field station responsible for inputting records into the system will retain the original signed paper copies of requests for system access in locked containers. Data files supporting the automated system are stored in a secure area located at the Austin Automation Center. Data files are stored on magnetic disk and, for archival purposes, on magnetic tape.

RETRIEVABILITY:

Paper records are maintained in alphabetical order by last name of the requester. Automated records are retrieved by individual name or by a specific automated resource.

SAFEGUARDS:

Paper records in progress are maintained in a manned room during working hours. Paper records maintained for archival purposes are stored in locked containers until needed. During non-working hours, the paper records are kept in a locked container in a secured area. Access to the records is on a need-to-know basis only.

Access to the automated system is via computer terminal; standard security procedures, including a unique customer identification code and password combination, are used to limit access to authorized personnel only. Specifically, in order to obtain access to the automated records contained in this system of records, an individual must:

(1) Have access to the automated resources of the AAC. An individual may not self-register for this access. Formal documentation of the request for access, signed by the employee's supervisor, is required before an individual may obtain such access. Authorized customers are issued a customer identification code and one-time password.

(2) Be an authorized official of the ACRS system. Only two individuals per field station may be designated ACRS officials with access to add, modify or delete records from the system. These individuals require a specific functional task code in their customer profile; this functional task can only be assigned by the AAC. A limited number of supervisory or managerial employees throughout VA will have read-only access for the purpose of monitoring ACRS activities.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration and published in Agency Records Control Schedules. Paper records will be destroyed by shredding or other appropriate means for destroying sensitive information. Automated storage records are retained and destroyed in accordance with a disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, VA Austin Automation Center, 1615 Woodward Street, Austin, TX 78772. The phone number is (512) 326–6000.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or who wants to determine the contents of such records should submit a written request or apply in person to the Director, VA Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.

RECORD ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the System Manager.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Individuals who have applied for and been granted access permission to the resources of the Austin Automation Center (AAC).

[FR Doc. 95–30329 Filed 12–12–95; 8:45 am]
BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 239
Wednesday, December 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Friday, December 15, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, December 15, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—International—Title: Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended (File No. I-S-P-95-002). Summary: The Commission will consider action regarding Sprint's Petition for Declaratory Ruling that proposed equity investments by France Telecom and Deutsche Telekom in Sprint do not result in a transfer of control under Section 310(d), are permissible under Section 310(b)(4), and are otherwise consistent with the public interest.

2—Office of Engineering and Technology—Title: Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications (ET Docket No. 94-124, RM- 8308). Summary: The Commission will address standards for operation above 40 GHz for vehicle radar systems and unlicensed general applications. It will also consider restrictions on operation in the 76-77 GHz band, limits on emissions above 200 GHz, and spectrum etiquette standards.

3—Office of Engineering and Technology—Title: Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands (RM-8553); and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz (PP Docket No. 93-253). Summary: The Commission will consider a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0-38.6 GHz band, and the revision of licensing and technical rules for fixed point-to-point microwave operations in the 38.6-40.0 GHz (39 GHz) band.

4—Wireless Telecommunications—Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (PR Docket No. 93-144, RM-8117, RM-8030 and RM-8029); Implementation of Sections 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93-252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253). Summary: The Commission will consider action concerning service, licensing, and auction rules for licensing of the 800 MHz Specialized Mobile Radio (SMR) service.

5—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 93-215); and Adoption of a Uniform Accounting System for Provision of regulated Cable Service (CS Docket No. 94-28). Summary: The Commission will address petitions for reconsideration of the interim rules governing cost of service showings filed by cable operators seeking to establish or justify initial rates for regulated cable services and consider whether to adopt permanent cost of service rules.

6—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring (MM Docket No. 92-260). Summary: The Commission will consider petitions for reconsideraton of the Commission's cable wiring rules.

7—Cable Services and Common Carrier—Title: Telecommunications Services Inside Wiring. Summary: The Commission will consider revisions to the cable and telephone inside wiring rules as the technologies used to deliver cable and telephone service become more similar.

8—Common Carrier—Title: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers (CC Docket No. 94-54). Summary: The Commission will consider action concerning interconnection compensation arrangements between local exchange companies and commercial mobile radio service providers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418-0500.

Dated: December 8, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-30452 Filed 12-11-95; 2:06 pm]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:07 p.m. on Thursday, December 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Personnel matters.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 8, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95-30518 Filed 12-11-95; 3:14 pm]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 61736, December 1, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., December 8, 1995.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting:

- Federal Home Loan Bank of Dallas' CIP Request.
- The Federal Home Loan Bank of Cincinnati Request for an Exception to the Limit on Charitable Contributions.

The following topic was added to the open portion of the meeting.

- Repeal of Finance Board Regulation on Charitable Donations by the FHLBanks.

The Board determined that agency business requires its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95-30444 Filed 12-11-95; 9:46 am]

BILLING CODE 6725-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, December 18, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-30441 Filed 12-8-95; 4:38 pm]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. (EST), December 18, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 20, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director
3. Review of audit reports:
   "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company and the Federal Retirement Thrift Investment Board."
   "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff."
   "Federal Pensions: Thrift Savings Plan has Key Role in Retirement Benefits."

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942-1640.

Dated: December 11, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95-30519 Filed 12-11-95; 3:14 pm]

BILLING CODE 6760-01-M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 20, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Employer Status Determination—Hohorst Transportation Corp.—Request for Waiver of Retroactive RUIA Contributions.

(2) Regulations—Proposing Revisions to Parts 211 and 261 (Finality of Decisions Regarding Railroad Retirement Annuities) and Part 255 (Recovery of Overpayments).

Portion Closed to the Public

(A) Recommended Reassignments of Agency Personnel.

(B) Appeal of Mr. & Mrs. Lawrence Zea.

(C) Appeal of David W. Persinger.

(D) Appeal of Kathleen T. O'Toole.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: December 8, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95-30462 Filed 12-11-95; 2:06 pm]

BILLING CODE 7905-01-M

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federal register

Wednesday
December 13, 1995

Part II

Department of Energy

Request for Expressions of Interest for Tritium Production; Notice

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DEPARTMENT OF ENERGY

Request for Expressions of Interest for Tritium Production

AGENCY: Department of Energy (DOE).

ACTION: Request for expressions of interest.

SUMMARY: Tritium is an essential material in all nuclear weapons in the U.S. nuclear stockpile. Because the U.S. is not currently producing tritium, development of a new tritium supply will be essential for maintaining the U.S. nuclear deterrent. The Department of Energy's preferred strategy for acquiring new supplies of tritium is to pursue the two most promising production alternatives: (1) use of one or more existing Commercial Light Water Reactors (CLWRs); and (2) to design, build and test critical components of an Accelerator-Produced Tritium (APT) system to be used for tritium production. By this Notice, DOE is requesting expressions of interest concerning DOE's possible acquisition of one or more CLWRs, or acquisition of irradiation services from CLWRs, for the production of tritium. In addition, this request will solicit interest regarding the future potential use of mixed oxide fuel from surplus weapons plutonium either coincident with or separate from tritium production. The use of mixed oxide fuel is not part of DOE's preferred strategy for acquiring new supplies of tritium and no firm decisions have been made regarding the use of such fuel. Nevertheless, DOE is seeking to ascertain industry interest in the possible use of mixed oxide fuel for disposal of surplus weapons plutonium.

DATES: Initial expressions of interest should be submitted on or before January 29, 1996. Supplementary information regarding the expressions of interest should be submitted on or before February 26, 1996.

ADDRESSES: Requests for information, and submittal of initial and supplemental expressions of interest (original plus five (5) copies, citing this Notice), should be directed to: Stephen M. Sohinki, Director, Office of Reconfiguration, DP-25, United States Department of Energy, 1000 Independence Ave. SW., Washington D.C. 20585, Attention: Tritium EOI, Telephone: (202) 586-0838.

Answers to questions that, in DOE's judgment, are of general interest and applicability to all potential respondents will be made available for review in DOE's Public Reading Room at DOE Headquarters in Washington, D.C.

I. Purpose

A. Dual Path Strategy for Tritium Supply

Tritium, an essential material in U.S. nuclear weapons, decays at a rate of approximately five percent per year (12.3 year half life). The U.S. is not currently producing tritium. Resumption of tritium production will be essential for maintaining the U.S. nuclear weapons stockpile and the U.S. nuclear deterrent. Tritium could be required as early as 2005 should the START II treaty not be ratified and implemented according to its terms. If the START II treaty is ratified and implemented as written tritium would be required in 2011.

DOE distributed its Tritium Supply and Recycling Programmatic Environmental Impact Statement in October, 1995, in which it announced its preferred "dual path" strategy for acquiring a new supply of tritium. That strategy is to begin work on the two most promising production alternatives: (1) to procure an option or options to purchase or lease one or more existing CLWRs or procure CLWR irradiation services for tritium production; and (2) to design, build and test critical components of an APT system for tritium production. A decision to implement the DOE's preferred dual path strategy for tritium production, based upon the Programmatic Environmental Impact Statement and related cost, schedule and technical analyses, was announced in a Record of Decision issued on December 5, 1995.

The CLWR and APT options present very different approaches and pose fundamentally different technical and institutional issues that must be evaluated to provide a basis for selection. During the next three years, DOE will be undertaking the research and analyses necessary to provide the technical, economic and regulatory bases for the selection of the primary and backup technology approaches by 1998. If the CLWR option is not selected as the primary source of tritium, however, DOE intends to go forward with some form of the CLWR option as a backup for the APT, as a contingency for U.S. national defense requirements.

B. Tritium Target Development

To produce tritium in a reactor, tritium target rods must be inserted into the reactor to capture neutrons and generate tritium. A lithium-aluminate, getter-barrier target design for use in a CLWR is currently under development. Tritium is produced via neutron capture in the lithium and the tritium generated is captured in a Zircaloy getter. The target rod outer cladding is stainless steel which has an aluminide inner coating to prevent tritium release. DOE's target development has focused on PWR technology, with target dimensions sized so that the target can be placed in either burnable poison or fuel rod locations. Following irradiation, target rods would be removed from the reactor as part of the refueling process and shipped to DOE's Savannah River Site where the tritium would be extracted. Depending on production requirements, between 2000 to 5000 target rods would be needed per fuel cycle. A single reactor or multiple reactors could be utilized. Target development work to date indicates that reactor fuel enrichment need not exceed five (5) percent.

DOE's target development work has progressed to the point that it is now appropriate to evaluate potential reactor candidates for the production mission.

C. Acquisition of Option

DOE is interested in acquiring one or more options to purchase or lease an existing commercial reactor or reactors, or to procure irradiation services from one or more such reactors. To accomplish this DOE will consider different types of options, as described in detail below. To facilitate assessing the feasibility of these options, DOE is requesting expressions of interest.

This Request for Expressions of Interest is not intended to be a solicitation for proposals, and it is not anticipated that an award will be made based on the expressions of interest received. Depending on the nature of the responses received and subsequent determinations by DOE, a formal solicitation for competitive proposals may be issued in the future, and awards may be made based upon an evaluation of proposals received pursuant to the evaluation criteria as stated in the solicitation. However, DOE may utilize the information received in response to this request to take any other action as authorized by law to fulfill the government's requirements for the production of tritium, and potential disposition of surplus weapons plutonium, including a noncompetitive process.

For the information of potential respondents, a preliminary procurement schedule is provided as an appendix to this Notice. The preliminary schedule provided in the appendix is tentative and depends upon a number of factors, including the nature of the responses to this Request, meetings which may be conducted with respondents, and the need for and schedule of necessary technical studies and analyses.

Respondents are encouraged to provide comments on the schedule so that DOE may be made aware of any concerns and attempt to alleviate them to the extent consistent with programmatic requirements.

D. Potential Use of Mixed Oxide Fuel From Surplus Weapons Plutonium

DOE is currently examining options for the disposal of surplus weapons plutonium and is preparing a Programmatic Environmental Impact Statement (PEIS) on storage and disposition of weapons-usable fissile materials, scheduled for completion in late 1996. However, to facilitate the Department's ongoing efforts to assess the feasibility of disposal of surplus weapons plutonium through the use of mixed oxide fuel in existing light water reactors, the Department is taking the opportunity of this request for expressions of interest to solicit information regarding the general level of industry interest in the potential future use of mixed oxide fuel from surplus weapons plutonium either coincident with (multipurpose) or separate from tritium production. *A reactor operator need not be interested in use of mixed oxide fuel, however, in order to respond to the request for expressions of interest for tritium production.*

II. Areas of DOE Interest

DOE is considering acquiring in 1997 or 1998 one or more options to:

- Purchase or lease an operating reactor or reactors, including options to purchase a complete facility, purchase a reactor without any power-generating systems, obtain a long-term lease of a facility or part of a facility or other similar arrangements, or purchase an uncompleted reactor or reactors; or
- Purchase target irradiation services, including all possibilities ranging from obtaining all tritium from a single reactor to using several reactors (the number of reactors to be utilized would depend, among other things, on the quantity of tritium required). An option to purchase irradiation services may also include an option to purchase the reactor or reactors being utilized to provide the services.

These options would be exercised after all necessary regulatory approvals have been obtained.

DOE may also desire an option to conduct irradiation and other testing of a Lead Test Assembly (LTA) target as a prelude to tritium production. Follow-on tritium production may be accomplished in the same reactor or reactors that were used for irradiation of the LTA, or in a different reactor or reactors. Reactors to be considered may need to be available for testing of tritium targets not later than July, 1997, and for mission use in about 2003, and would need to have sufficient remaining useful life to meet mission needs. Candidate reactors should have licenses with expiration dates of 2020 or later.

DOE's target development work has focused on targets for use in pressurized water reactors (PWRs). Although tritium targets could be developed for use in boiling water reactors (BWRs), significant additional development work would likely be required at substantial additional cost. DOE does not plan to develop such targets, given existing budget constraints and the need to complete target development and qualification in the required time frame. However, DOE has not ruled out the use of BWRs and would be interested in expressions of interest with respect to both the use of BWR plants and to the development of BWR tritium targets.

In addition to the above, if the option of using existing light water reactors were to be selected for the disposition of surplus weapons plutonium when the DOE completes its Programmatic Environmental Impact Statement (PEIS) on storage and disposition of weapons-usable fissile materials in late 1996, DOE would intend to embark on a mixed oxide fuel (MOX) test and demonstration program including regulatory review and testing of lead test assemblies. Thus, DOE requests that respondents indicate their interest, if any, in participating in such a potential test program.

Respondents should provide information that is as accurate as possible, but information provided will not be considered as binding nor all inclusive.

Respondents are requested to provide expressions of interest in two parts over a 75 day response period:

- Initial expressions of interest due at the end of the first 45 day response period; and
- Supplementary information due 30 days after submission of initial expressions of interest.

Respondents are requested to provide the following information in their initial expressions of interest:

- The reactor(s) it may wish to sell, lease, or offer for irradiation services.
- The reactor(s) age, location, specifications, operating schedule (including the anticipated refueling/outage schedule) and capacity factor for each year of operation.

Respondents are requested to provide as much of the following supplementary information as is feasible 30 days after the due date for initial expressions of interest:

- Proposed arrangements by which DOE would use the reactor or reactors to produce tritium, including a non-binding price estimate (or estimated range of prices), for each arrangement contemplated by respondent, assuming that DOE would begin tritium production in 2005. Discuss important variables that could affect the price or other terms of the arrangements.
- Equity- and debt-structure of owner(s)/co-owners, and approvals that would be needed and requirements (terms/conditions) that must be met before the respondent can enter into an agreement with DOE.
- Potential issues involving decontamination and decommissioning, or other technical or cost issues.
- Interest and issues concerning the potential use of mixed oxide fuel from surplus weapons plutonium.
- Nuclear Regulatory Commission (NRC) license requirements, Securities and Exchange Commission disclosure requirements and requirements of other federal, state or local regulatory authorities.
- The complete operating history of the reactor(s), and respondent's experience in operating the reactor(s).
- The NRC enforcement history with respect to the reactor(s).
- Major maintenance actions taken in the last 10 years and actions expected in the next 15 years for the reactor(s) and their actual or estimated costs, as appropriate.
- Any other issues specifically related to the particular reactor(s), fuel type or assumptions, facility or services identified in the response.
- Any additional information or other requirements necessary for developing a complete response to a future solicitation by DOE for the use of CLWRs to produce tritium, including the potential use of mixed oxide fuel from surplus weapons plutonium either coincident with or separate from the production of tritium.

III. Expressions of Interest Format

There is no minimum length for expressions of interest. Maximum aggregate length is fifty (50) pages for both initial and supplementary responses, including enclosures or attachments. It is left to the respondent to determine how best to use the fifty (50) page maximum. It would, however, facilitate review if initial and supplementary expressions of interest are divided into sections that correspond to the categories of information identified in Section II., above.

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Proprietary Information

If the initial or supplementary expression of interest contains information that is privileged or confidential and which the respondent does not want disclosed to the public, the respondent should place the following notice on the expression of interest:

The information contained in pages _____ of this Expression of Interest has been submitted in confidence and contains trade secrets or commercial or financial information that is confidential or privileged, and such information should be used or disclosed by the Government or its contractors, only for purposes of consideration of this Expression of Interest. This restriction does not limit the Government's right to use or disclose other information obtained without proprietary restrictions from any source, including other information provided by the respondent.

Submission

Each submittal should consist of one original and five (5) photocopies. DOE is under no obligation to pay for any costs associated with the preparation or submission of expressions of interest in response to this Notice. DOE reserves the right to respond, or not respond to all or any portion of any expression of interest submitted in response to this Notice. DOE intends to conduct a public meeting regarding this notice 30 days from the date of its publication. Following receipt of initial or supplementary responses, DOE may also conduct one or more scoping meetings with all respondents to disseminate additional information on this effort, and may also conduct meetings with individual respondents for clarification of their responses or to obtain additional information.

Issued in Washington, D.C. on December 5, 1995.

Hazel R. O'Leary,

Secretary.

APPENDIX—PRELIMINARY PROCUREMENT SCHEDULE

Activity	Completion date
Receipt of Initial Responses.	Jan. 19, 1996.
Receipt of Supplemental Information.	Feb. 20, 1996.
Complete Review of EOIs	Mar. 15, 1996.
Issue Request for Proposals.	Jun. 1, 1996.
Proposals Due Date	Sep. 1, 1996.
Evaluate Proposal's and Select Competitive Range.	Dec. 1, 1996.
Conduct Discussions and Request and Receive Best and Final Offers.	Apr. 1, 1997.
Make Conditional Selection	Jun. 1, 1997.

[FR Doc. 95-30237 Filed 12-12-95; 8:45 am]
BILLING CODE 6450-01-P

federal register

Wednesday
December 13, 1995

Part III

Department of Education

34 CFR Part 646
Student Support Services Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 646

RIN 1840-AC24

Student Support Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Student Support Services Program. The proposed regulations clarify and simplify requirements governing the program. The selection criteria, prior experience criteria, and grantee accountability provisions are affected by these proposed changes.

The Student Support Services Program supports the educational needs of students from disadvantaged backgrounds. Performance outcomes for the program are designed to demonstrate the progress and performance of eligible students in successfully completing their postsecondary education.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Richard T. Sonnergren, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–5249. Comments may also be sent through the Internet to TRIO@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Virginia A. Mason, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600D, Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Student Support Services program provides grants to institutions of higher education for projects offering support services to low-income, first generation, or disabled college students. These support services should enhance their academic skills, increase their retention and graduation rates, facilitate their entrance into four-year colleges or graduate and professional programs, and foster an institutional climate supportive of the success of low-income and first generation college students and students with disabilities.

Projects assisted under this program may provide: (1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school; (2) personal counseling; (3) academic advice and assistance in course selection; (4) tutorial services and peer counseling; (5) exposure to cultural events and academic programs not usually available to disadvantaged students; (6) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; (7) activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education; (8) mentoring programs involving faculty or upper class students, or a combination thereof; and (9) programs and activities specially designed for students of limited proficiency in English.

These proposed regulations have been revised to address the President's regulatory reinvention initiative. Specifically, §§ 646.7, 646.10, 646.20, 646.21, 646.22 and 646.32 simplify the selection criteria and increase grantee accountability through revised prior experience criteria and stronger project evaluation requirements. On October 1, 1993, the Secretary published revisions to the Student Support Services Program regulations to implement changes required by the Higher Education Amendments of 1992 (58 FR 51521–22). This notice of proposed rulemaking proposes program improvements that were not covered by the October 1, 1993 regulations. Major changes in the current regulations are proposed in the following sections:

• *Definitions (§ 646.6).* These regulations would provide definitions for terms used in the program statute and these proposed regulations. The following definitions have been added: academic need, different campus, different population of participants, combination of institutions of higher education, participant, sufficient financial assistance. In addition, we have revised the definition of the term "limited proficiency in English." These definitions are needed to provide standard definitions used in data collection instruments and to implement changes required by the 1992 Higher Education Amendments. Specifically, the definitions for "academic need" and "sufficient financial assistance" are intended to ensure grantees the flexibility to customize their projects to meet the special needs of the participants served. The definitions for "different campus" and "different population of participants" are intended to implement policies and practices that have been used in governing the program. The term "limited proficiency in English" is defined to provide clarity and intended to be more practical.

• *Selection criteria (§ 646.21).* The proposed regulations would revise the application selection criteria to simplify and clarify the requirements and increase grantee accountability by establishing performance indicators and a standard for evaluating project services.

• *Prior experience (§ 646.22).* The proposed regulations would revise the criteria for the evaluation of a grantee's prior experience to focus on project outcomes. The changes are intended to eliminate data requested on administrative compliance matters and collect only the information necessary to assess the impact of services on project outcomes.

• *Other requirements of a grantee (§ 646.32).* The proposed regulations would prohibit a grantee from serving any individual who is simultaneously receiving services from another Federal TRIO program and would clarify provisions for project coordination. In addition, the proposed regulations would require grantees to track student performance and define the basis for determining academic need. These regulations are needed to assist projects with the implementation of the statutory provision to coordinate services with similar programs and provide parameters for collecting the types of information projects need to evaluate services. The uniformity in student service delivery and evaluation are expected to allow the Secretary to more effectively assess the impact of the program.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 646.20 *How does the Secretary decide which new grants to make?* (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education that receive Federal funds under this program.

However, the regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 646.11, 646.21, 646.22, and 646.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Support Services Program—Program Regulations.

Institutions of higher education and combinations of those institutions are eligible to apply for grants under these regulations. The information to be collected includes: assurances to meet certain statutory requirements; a description of each proposed project; specific information regarding each project (such as the need for the project, proposed collaboration with similar or related projects; criteria to be used to measure progress and outcomes, data regarding persons to be served); and information to be included in an annual report to the Secretary. The Department needs and uses the information to make grants.

All information is to be collected annually from each applicant. Annual reporting and recordkeeping burden for this collection of information is estimated to average 20 hours for each response for 706 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 14,120 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

• Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period at 1250 Maryland Avenue, SW., The Portals Building, Suite 600D, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 646

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.042 Student Support Services Program.)

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Dated: November 28, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 646 to read as follows:

PART 646—STUDENT SUPPORT SERVICES PROGRAM

Subpart A—General

Sec.

646.1 What is the Student Support Services Program?
646.2 Who is eligible to receive a grant?
646.3 Who is eligible to participate in a Student Support Services project?
646.4 What activities and services may a project provide?
646.5 How long is a project period?
646.6 What regulations apply?
646.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

646.10 How many applications for a Student Support Services award may an eligible applicant submit?
646.11 What assurances must an applicant include in an application?

Subpart C—How Does the Secretary Make a Grant?

646.20 How does the Secretary decide which new grants to make?
646.21 What selection criteria does the Secretary use?
646.22 How does the Secretary evaluate prior experience?
646.23 How does the Secretary set the amount of a grant?

Subpart D—What Conditions Must Be Met by a Grantee?

646.30 What are allowable costs?
646.31 What are unallowable costs?
646.32 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

Subpart A—General

§ 646.1 What is the Student Support Services Program?

The Student Support Services Program provides grants for projects designed to—

(a) Provide support services to eligible students to enhance their academic skills, increase their retention and graduation rates, and, as appropriate, facilitate their entrance into four-year colleges or graduate and professional programs; and

(b) Foster an institutional climate supportive of the success of low-income and first generation college students and individuals with disabilities through services such as those described in § 646.4.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education are eligible to receive a grant to carry out a Student Support Services project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.3 Who is eligible to participate in a Student Support Services project?

A student is eligible to participate in a Student Support Services project if the student meets all of the following requirements:

(a) Is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance.

(b) Is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a postsecondary educational program.

(d) Is—

(1) A low-income individual;

(2) A first generation college student; or

(3) An individual with disabilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.4 What activities and services may a project provide?

A Student Support Services project may provide the following services:

(a) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond secondary school.

(b) Personal counseling.

(c) Academic advice and assistance in course selection.

(d) Tutorial services and counseling and peer counseling.

(e) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(f) Activities designed to acquaint students participating in the project with the range of career options available.

(g) Activities designed to secure admission and financial assistance for enrollment in graduate and professional programs.

(h) Activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education.

(i) Mentoring programs involving faculty or upper class students, or any combination of faculty members and upper class students.

(j) Programs and activities as described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Student Support Services Program stated in § 646.1.

(Authority: 20 U.S.C. 1070a-14)

§ 646.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Student Support Services program is four years.

(b) The Secretary approves a project period of five years for applicants that score in the highest ten percent of all applicants approved for new grants under the criteria in § 646.21.

(Authority: 20 U.S.C. 1070a–11)

§ 646.6 What regulations apply?

The following regulations apply to the Student Support Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and

(b) The regulations in this part 646.

(Authority: 20 U.S.C. 1970a–11 and 1070a–14)

§ 646.7 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 402(A)(g), 481, or 1201(a) of the Higher Education Act (HEA) of 1965, as amended.

First generation college student.
Institution of higher education.
Low-income individual.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Grant Period
Project
Project period
Public
Secretary
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

Academic need with reference to a student means a student whom the grantee determines needs one or more of the services stated under § 646.4 to succeed in a postsecondary educational program.

Cohort rate means a statistical measure used to compare the characteristics or outcomes of a specified group of students over time with other groups for which similar rates have been calculated.

Combination of institutions of higher education means two or more institutions of higher education that have entered into a cooperative agreement for the purpose of carrying out a common objective, or an entity designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Different campus means an institutional site that is geographically apart from and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Different population of participants means a group of either—

(1) Low-income, first-generation college students; or

(2) Disabled students.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in the educational experiences and opportunities offered by the grantee institution.

Limited proficiency in English with reference to an individual means an individual whose native language is other than English and who has sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 646.3; and

(2) Receives project services on a continual basis for a period of more than one full grading period at the grantee institution.

Sufficient financial assistance means the amount of financial aid offered a Student Support Services student, inclusive of Federal, State, local, private, and institutional aid which, together with parent or student contributions, is equal to the cost of attendance as determined by a financial aid officer at the institution.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications for a Student Support Services award may an eligible applicant submit?

The Secretary accepts more than one application from an eligible applicant so long as each additional application describes a project that serves a different campus, or a different population of participants who cannot readily be served by a single project.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.11 What assurances must an applicant include in an application?

An applicant shall assure in its application that—

(a) At least two-thirds of the students it will serve in its Student Support Services project will be—

(1) Low-income individuals who are first generation college students; or

(2) Individuals with disabilities;

(b) The remaining students it will serve will be low-income individuals, first generation college students, or individuals with disabilities;

(c) Not less than one-third of the individuals with disabilities will be low-income individuals; and

(d) Each student participating in the project will be offered sufficient financial assistance to meet that student's full financial need.

(Authority: 20 U.S.C. 1070a–14)

Subpart C—How Does the Secretary Make a Grant?

§ 646.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1) (i) The Secretary evaluates the application on the basis of the selection criteria in § 646.21.

(ii) The maximum score for all the criteria in § 646.21 is 00 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2) (i) If an application for a new grant proposes to continue to serve substantially the same population or campus that the applicant is serving under an expiring grant, the Secretary evaluates the applicant's prior experience in delivering services under the expiring grant on the basis of the criteria in § 646.22.

(ii) The maximum score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there is insufficient money available to fully fund them both after funding the higher-ranked applications, the Secretary chooses among the tied applications so as to serve geographic areas that have been underserved by the Student Support Services Program.

(d) The Secretary does not make grants to applicants that carried out a Federal TRIO program project that involved the fraudulent use of funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Student Support Services project proposed at the applicant institution on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of students enrolled or accepted for enrollment at the applicant institution who meet the eligibility requirements of § 646.3;

(2) The academic and other problems that eligible students encounter at the applicant institution; and

(3) Students eligible for Student Support Services projects who are less likely to succeed as compared to the total enrollment at the applicant institution based upon the following indicators:

(i) Retention and graduation rates.

(ii) Grade point averages.

(iii) Graduate and professional school enrollment rates (four-year colleges only).

(iv) Transfer rates from two-year to four-year institutions (two-year colleges only).

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to each of the

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purposes of the Student Support Services Program stated in § 646.1;

(2) Address the needs and aspirations of the proposed project participants;

(3) Are clearly described, specific, and measurable; and

(4) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the institutional community (students, faculty and staff) of the goals, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify, select and retain project participants with academic need and ensure their participation without regard to race, color, national origin, or gender.

(3) (4 points) The plan for assessing individual participants' need for specific services and monitoring their academic progress.

(4) (10 points) The plan to provide services that address the goals and objectives of the project.

(5) (10 points) The applicant's plan to ensure proper and efficient administration of the project, including the organizational placement of the project; the time commitment of key project staff; the specific plans for financial management, student records management, and personnel management; and, where appropriate, its plan for coordination with other programs for disadvantaged students.

(d) *Institutional commitment* (16 points). The Secretary evaluates the institutional commitment to the proposed project on the basis of the extent to which the applicant has—

(1) (6 points) Committed facilities, equipment, supplies, personnel, and other resources to supplement the grant and enhance project services;

(2) (6 points) Established administrative and academic policies that enhance participants' retention at the institution and improve their chances of graduating from the institution;

(3) (2 points) Demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources to the extent possible; and

(4) (2 points) Assured the full cooperation and support of the Admissions, Student Aid and Registrar functional components of the institution.

(e) *Quality of personnel* (9 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal education and training in fields related to the objectives of the project, and experience in designing, managing, or implementing Student Support Services or similar projects;

(2) The qualifications required of other personnel to be used in the project, including formal education, training, and work experience in fields related to the objectives of the project; and

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures;

(2) Examine in specific and measurable ways, using appropriate baseline data, the success of the project in improving academic achievement, retention and graduation of project participants; and

(3) Compares project outcomes with institutional data on student cohorts not served by the project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its expiring Student Support Services project. This information may come from performance reports, site visit reports, project evaluation reports, and any other verifiable information submitted by the applicant.

(b) The Secretary evaluates the applicant's prior experience in achieving the goals of the Student Support Services Program on the basis of the following criteria:

(1) (4 points) The extent to which project participants persisted toward completion of the academic programs in which they were enrolled.

(2) (4 points) The extent to which project participants met academic performance levels required to stay in good academic standing at the grantee institution.

(3) (4 points) The extent to which project participants graduated from the grantee institution.

(4) (3 points) The extent to which project participants either transferred from two-year to four-year institutions (two-year colleges only) or enrolled in graduate or professional schools (four-year colleges only).

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1995 at the lesser of—

(1) $170,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Cost of remedial and special classes if—

(1) These classes are not otherwise available at the grantee institution;

(2) Are limited to eligible project participants; and

(3) Project participants are not charged tuition for instruction paid for the classes.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are limited to eligible project participants and not otherwise available at the grantee institution.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development at the institution.

(e) Transportation of participants and staff to and from approved educational and cultural activities sponsored by the project.

(f) Purchase of computer hardware, computer software, or other equipment to be used for student development, student records and project administration if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(g) Professional development travel for staff if directly related to the project's overall purpose and activities, except that these costs may not exceed four percent of total project salaries. The Secretary may adjust this percentage if the applicant demonstrates to the Secretary's satisfaction that a higher percentage is necessary and reasonable.

(Authority: 20 U.S.C. 1070a–14)

§ 646.31 What are unallowable costs?

Costs that may not be charged against a grant under the Student Support Services Program include, but are not limited to, the following:

(a) Costs involved in recruiting students for enrollment at the institution.

(b) Tuition, fees, stipends, and other forms of direct financial support for staff or participants.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project when the individual is selected to participate. The grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(2) A grantee shall determine the low-income status of an individual on the basis of the documentation described in section 402A(e) of the Higher Education Act.

(3) A grantee shall not serve any individual who is receiving services from another Federal TRIO Program.

(b) *Recordkeeping.* A grantee shall maintain participant records that show—

(1) The basis for the grantee's determination that each participant is eligible to participate in the project under § 646.3;

(2) The grantee's basis for determining the academic need for each participant;

(3) The services that are provided to each participant; and

(4) The performance and progress of each participant for the duration of the participant's attendance at the grantee institution.

(c) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (c)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (c)(1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs; or

(ii) Between the programs funded under sections 404A through 410 of the Higher Education Act and similar programs funded through other sources.

(d) *Project coordination.* (1) The Secretary encourages grantees to coordinate project services with other programs for disadvantaged students operated by the grantee institution provided the Student Support Services grant funds are not used to support activities reasonably available to the general student population.

(2) To the extent practical, the grantee may share staff with programs serving similar populations provided the grantee maintains appropriate records of staff time and effort and does not comingle grant funds.

(3) Costs for special classes and events that would benefit Student Support Services students and participants in other programs for disadvantaged students may be proportionately divided among the projects that receive the benefits.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

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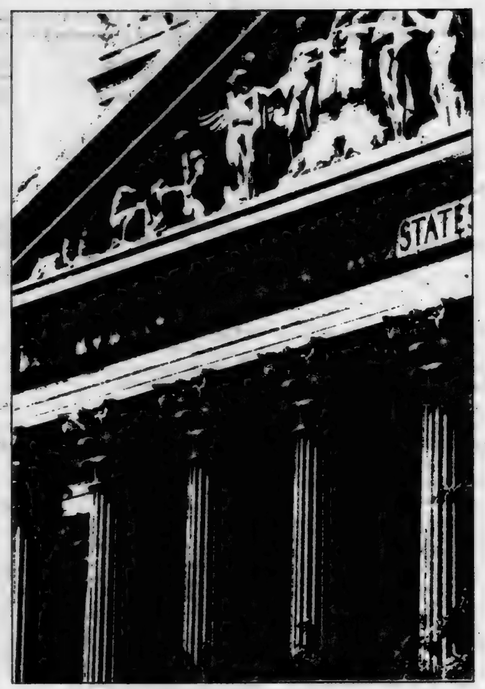
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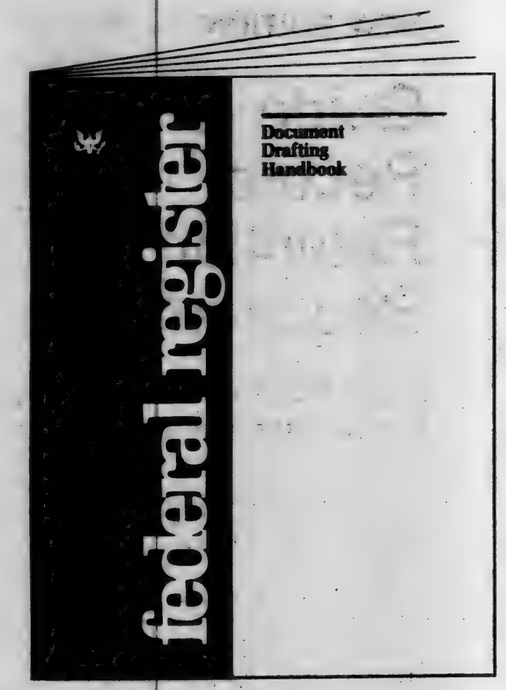
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300, 301, 318–322, 330, 340, 352, 354–356, 360, and 380

9 CFR Parts 1–3, 49–54, 70–75, 77–80, 82, 85, 91–114, 116–118, 124, 130, 145, 147, 151, 156, 160–162, and 166–167

[Docket No. 95–091–1]

Revision of Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to reflect the recent revision of the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs and redelegation to the Administrator, Animal and Plant Health Inspection Service.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 116, Riverdale, MD 20737–1238, (301) 734–8682.

SUPPLEMENTARY INFORMATION:

Background

A final rule effective and published in the **Federal Register** on November 8, 1995 (60 FR 56392–56458) revised the delegations of authority from the Secretary of Agriculture and general officers of the Department due to a reorganization of the Department. This document amends the authority citations in titles 7 and 9 of the Code of Federal Regulations to reflect the changes made by that final rule.

Authority: 5 U.S.C. 301; 7 CFR 2.22 and 2.80.

In 7 CFR parts 300, 301, 318–322, 352, 354–356, 360, and 380 and in 9 CFR parts 1–3, 49–54, 70–75, 77–80, 82, 85, 91–114, 116–118, 124, 130, 145, 147, 151, 156, 160–162, and 166–167 the authority citations are amended by removing "7 CFR 2.17, 2.51" and adding "7 CFR 2.22, 2.80" in its place.

Done at Washington, DC, this 8th day of December 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–30459 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–22]

RIN 1557–AB14

Risk-Based Capital Requirements—Small Business Loan Obligations; Correction

AGENCY: Office of the Comptroller of the Currency.

ACTION: Correction to interim rule with request for comments.

SUMMARY: This document contains a correction to the interim rule which was published Wednesday, September 13, 1995, (60 FR 47455). The interim rule related to the risk-based capital requirements for small business loan obligations.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, (202) 874–5210, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The amendatory instructions to the interim rule did not redesignate existing paragraph (c) of appendix A to part 3, section 3 as paragraph (d) before adding a new paragraph (c).

Correction of Publication

Accordingly, the publication on September 13, 1995 of the interim rule which was the subject of FR Doc. 95–22666, is corrected as follows:

On page 47458, in the first column, amendatory instruction 2 is corrected to read: "In appendix A to part 3, section 3 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:".

Dated: November 30, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30424 Filed 12–13–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS NO. CO–028–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with one exception and additional requirement, a proposed amendment to the Colorado regulatory program (hereinafter referred to as the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions and explanatory information for rules pertaining to the applicability of Colorado's rules; permit application requirements for legal, financial, and related information; permit application requirements for operation and reclamation plans; requirements for special categories of mining; public participation and approval of permit applications; performance standards for revegetation; performance standards for subsidence control; the definition of "road;" adjustments in bond amount; the bond liability period on land reclaimed for industrial or commercial, or residential use; bond forms; terms and conditions of irrevocable letters of credit; the criteria and schedule for release of performance bonds; and erosion control on mine support facilities within areas where the pre- and postmining land use is industrial or commercial. The amendment was intended to revise the Colorado program

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to be consistent with the corresponding Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated July 12, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–670) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative, in response to a February 7, 1990, letter (administrative record No. CO–484) that OSM sent to Colorado in accordance with 30 CFR 732.17(c), and in response to a required program amendment at 30 CFR 906.16(g).

OSM announced receipt of the proposed amendment in the July 28, 1995 **Federal Register** (60 FR 38773), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO–670–4). Because no one requested a public hearing or meeting, none was held. The public comment period ended on August 28, 1995.

During its review of the proposed amendment and previously approved rules for which Colorado proposed further revisions upon promulgation, OSM identified issues and notified Colorado of the concerns by letter dated August 31, 1995 (administrative record No. CO–670–7). Colorado responded in a letter dated September 26, 1995, by submitting additional explanatory information (administrative record No. CO–670–8).

Based upon the additional explanatory information for the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the October 16, 1995, **Federal Register** (60 FR 53562, administrative record No. CO–670–10) and provided an opportunity for a public hearing or meeting on its substantive adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with one exception and additional requirement, that the proposed program amendment submitted by Colorado on July 12, 1995, and as supplemented with additional explanatory information on September 26, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception and additional requirement, the proposed amendment.

1. Nonsubstantive Revisions to Colorado's Rules

Colorado proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes (corresponding Federal regulation provisions are listed in parentheses):

Rule 2.03.7(1) (30 CFR 778.16(a)), concerning lands unsuitable for surface coal mining operations, to correctly cite the reference to 30 CFR part 769;

Rule 2.05.3(8)(c) (30 CFR 784.16(e)), concerning design of coal processing waste dams and embankments, to correctly cite the reference to Rule 4.11.5;

Rule 2.05.6(2)(iii)(A) (30 CFR 780.16(a)(2)), concerning the fish and wildlife plan in a permit application, to correctly cite the reference to Section 33–2–101 *et seq.* of the Colorado Revised Statute;

Rule 2.07.2 (30 CFR 773), concerning public participation and approval of permit applications, to remove the ".2" from "2.07.2" in the Objective title line;

Rule 3.02.4(1)(d) (30 CFR 800.12), concerning alternative bonding systems approved by the Division, to correctly cite the reference to Rule 3.02.4(2)(f);

Rule 4.08.6(1) (30 CFR 816.67(d)), concerning airblast limitations, to correctly cite the reference to Rule 4.08.4(10)(b)(i).

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Colorado rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

Rule 1.04(80) (30 CFR 700.5), concerning the definition of "operator,"

Rule 1.04(92) (30 CFR 700.5), concerning the definition of "person," and

Rule 3.02.2(5) (30 CFR 800.15(c)), concerning when a permittee may request reduction of the required performance bond amount.

Because these proposed Colorado rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Rules 1.04(21), 2.03.3(4), and 2.06.6(2), Definition of "Coal," Water Quality Sampling and Laboratory Analyses, and Application Contents for Prime Farmland

Colorado's proposed definition of "coal" at Rule 1.04(21) and proposed Rule 2.03.3(4), concerning water quality sampling and laboratory analyses, are substantively identical to the respective Federal regulations at 30 CFR 700.5 (definition of "coal") and 30 CFR 780.21(a), with the exception that Colorado is specifying the exact edition of "Standard Specifications for Classification of Coal by Rank" which is referenced in both State rules. Both proposed Rules 1.04(21) and 2.03.3(4) have been revised to incorporate the referenced material with the statement that "[t]his publication is hereby incorporated by reference as it exists on the date of adoption of these regulations."

Proposed Rule 2.06.6(2)(i), concerning permit application contents for prime farmland, is no less effective than 30 CFR 785.17(c). Both State and Federal rules reference the U.S. Natural Resources Conservation Service's "National Soils Handbook" for current acceptable procedures for conducting soil surveys. However, Colorado's proposed Rule 2.06.6(2)(i), which references a 1983 publication of the handbook, has been revised to state that "[t]his rule does not include later amendments to or editions of the incorporated material," and to specify that the handbook is available at, among other places, Colorado's Denver office.

OSM previously approved Colorado's existing Rule 1.01(9) (56 FR 1363, 1364, finding No. 2; January 14, 1991) which states that "[t]he materials incorporated in these rules by reference do not include later amendments to or editions of the incorporated materials." Colorado stated that this rule was necessary to

comply with the terms of Colorado's Administrative Procedures Act at Colorado Revised Statutes (C.R.S.; 1989) 24–4–103(12.5)(c). The effect of Rule 1.01(9) is that any Federal regulations or technical publications incorporated by Colorado's rules would be incorporated as they existed at the time that Colorado initially proposed its rules.

The Director is approving Colorado proposed Rules 1.04(21), 2.03.3(4), and 2.06.6(2), as no less effective than the respective counterpart Federal regulations at 30 CFR 700.5, 780.21(a), and 785.17(c). However, should revisions to these technical publications be incorporated into the Federal program, OSM would require Colorado to submit a program amendment to incorporate the revisions.

4. Rule 1.04(111), Definition of "Road"

Colorado's proposed definition of "road" at Rule 1.04(111) is, with one exception, substantively identical to the Federal definition of "road" at 30 CFR 701.5. The exception is that Colorado's rule specifically excludes "public road."

The Federal definition of "road" at 30 CFR 701.5 does not address the regulation of public roads. However, as discussed below, this issue has been addressed by SMCRA, other OSM regulations, and the court.

Section 506(a) of SMCRA provides in part that "* * * no person shall engage in or carry out on lands within a State any *surface coal mining operations* unless such person has first obtained a permit * * *" (30 U.S.C. 1256(a); emphasis added). The Federal regulations at 30 CFR 773.11(a) contain the same requirement.

Thus, under SMCRA and the corresponding Federal regulations a permit is required before a person may engage in or carry out "surface coal mining operations." Among other things, such "operations" include certain roads. Specifically, under section 701(28)(B) of SMCRA, "surface coal mining operations" include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities [as are specified in paragraph (A) of this section] and for haulage" (30 U.S.C. 1291(28)(B)). The Federal regulations at 30 CFR 700.5, in paragraph (b) of the definition of "surface coal mining operations," contain the same requirement.

In the development of the Federal regulations, a significant issue has been the extent to which the term "roads" in the definition of "surface coal mining operations" applies to public roads. In paragraph (c) of the Federal definition of "affected area" at 30 CFR 701.5, OSM previously interpreted the term "affected area" as not applying to roads for which "there is substantial (more than incidental) public use" (48 FR 14814, 14819, 14822; April 5, 1983). However, that interpretation was successfully challenged in *In re Permanent Surface Mining Regulation Litigation (In re Permanent*, 620 F Supp. 1519, 1581–82 (D.D.C. 1985), *modified sub nom., National Wildlife Federation v. Hodel*, 839 F.2d 694 (D.C. Cir. 1988). The court (in *In re Permanent*) accepted the Secretary's premise that not every road when used to some degree for coal haulage or mine access falls within the definition of "surface coal mining operation." The court then noted that, presumably, when hauling or access are among many uses made of a road, such as an interstate highway, the effect from the mining use is relatively minor, and thus the road need not be included as part of the surface coal mining operation. However, the court held that the Federal definition of "affected area" went beyond what is called for in section 701(28) in exempting essentially all public roads *without regard to the degree of effect that mining use has on the road.* Therefore, the court ruled that roads experiencing substantial public use may also need to be included in the affected area *on a case-by basis, based on the extent of mining-related use.*

Pursuant to court order in *In re Permanent*, OSM modified its interpretation of the extent to which SMCRA applied to public roads. Specifically, OSM suspended the regulatory definition of "affected area" "to the extent that it excludes public roads which are included in the definition of 'surface coal mining operation's" (51 FR 41952, 41953; November 20, 1986). OSM said that "[t]he suspension will have the effect of including in the 'affected area' *all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the regulated activities or for haulage*" (51 FR 41953; emphasis added).

In the preamble to the final rule establishing, among other things, performance standards for roads associated with surface coal mining operations (the November 8, 1988, roads rule), OSM expressed concern "that roads constructed to serve mining operations not avoid compliance with the performance standards by being deeded to public entities" (53 FR 45190, 45193; November 8, 1988). In that preamble, OSM also said that SMCRA jurisdiction over mine roads is best determined on a case-by-case basis and did not adopt a comment that "public roads be excluded from applicability of the performance standards" (*Id.* at 45192). Thus, in determining which mining-related roads are subject to regulation, OSM currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and the Federal regulations at 30 CFR 700.5. This may require, in appropriate circumstances, that OSM and State regulatory authorities issue, and surface coal mine operators obtain, permits for certain public roads.

Colorado previously submitted on June 30, 1993, and revised on November 3, 1994, a definition of "road" and implementing policy that (1) provided for a determination of the jurisdictional reach of its approved program into the public road system, and (2) took into consideration the extent and effect of mining-related use as factors in determining whether a road is subject to the requirement for a permit, as contemplated by the Federal regulations (administrative record Nos. CO–552 and CO–587). The Director of OSM approved on June 1, 1994 (59 FR 28248, administrative record No. CO–624), Colorado's definition of "road" at Rule 1.04(111), as supplemented by the implementing policy for determining when a public road would fall under the jurisdiction of its program.

Colorado's proposed definition of "road" at Rule 1.04(111) now under review unconditionally excludes all "public roads" from regulation as a road under Colorado's rules and is, therefore, less stringent and less effective that, respectively, the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and at 30 CFR 700.5 of the Federal regulations. The Director does not approve Colorado's unconditional exemption for public roads at Rule 1.04(111). To be consistent with SMCRA and the Federal regulations, Colorado must revise the definition of "road" at Rule 1.04(111) to either delete the exemption for public roads or qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

5. Rules 104(132) and 1.05.1(1), Definition of "Surface Coal Mining Operations" and Applicability of Colorado's Rules

a. *Deletion of allowance for a 2-acre exemption.* Colorado proposed to revise Rule 1.05.1(1)(b), concerning applicability of the Colorado program, to delete allowance for an exemption for operations affecting 2-acres or less.

As originally enacted, section 528(2) of SMCRA exempted from the provisions of SMCRA coal extraction

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operations affecting 2 acres or less. However, on May 7, 1987, the President signed Pub. L. 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Colorado's proposed deletion of reference to a 2-acre exemption at Rule 1.05.1(1)(b) is consistent with SMCRA as amended to delete the 2-acre exemption. Therefore, the Director finds that the deletion of the 2-acre exemption from Rule 1.05.1(1)(b) is no less stringent than SMCRA as amended by Public Law 100–34 and approves it.

b. *Deletion of the allowance for an exemption for extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and ⅔ percent of the mineral tonnage removed for commercial use or sale.* Colorado proposed to revise the definition of "surface coal mining operations" at Rule 104(132) and Rule 1.05.1(1)(b), concerning applicability of the Colorado program, by deleting an exemption from the Colorado program for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and ⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale.

The counterpart Federal definition of "surface coal mining operations" at 30 CFR 700.5 and provisions for applicability of the Federal program at 30 CFR 700.11(a)(4) include provisions for this exemption. However, because Colorado's deletion of this provision means that the Colorado program would regulate operations extracting coal incidental to the extraction of other minerals where coal does not exceed 16 and ⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, Colorado's deletion of the provision causes its program to be more inclusive of operations to be regulated than does the Federal program.

The Director finds that proposed Rules 104(132) and 1.05.1(1)(b) are no less effective than the respective Federal regulations at 30 CFR 700.5 and 700.11(a)(4). The Director approves the proposed rules.

6. Rule 2.05.3(3)(c)(iv), Permit Application Requirements in the Operations Plan for Roads, Conveyors, or Rail Systems Within the Permit Area

Colorado's proposed Rule 2.05.3(3)(c)(iv), concerning the required description in a permit application of the measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for roads, conveyors, or rail systems within the permit area, has been revised to reference approval of the culvert design under Rule 4.03.1(4)(e)(vi)(C). Referenced Rule 4.03.1(4)(e)(vi)(C) requires approval of drainage by culverts for haul roads.

The Federal regulations at 30 CFR 780.37(a)(1) and 784.24(a)(1) require that "(a) [e]ach applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Sec. 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall "[i]nclude a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures." There is no Federal counterpart to Colorado's requirement for descriptions of measures to protect the inlet end of a ditch relief culverts for roads, conveyors, or rail systems within the permit area. The Federal regulations concerning permit applications pertain to all roads but include only a general requirement for design of culverts. However, this specificity in the Colorado rule does not cause it to be inconsistent with the Federal regulations and ensures a greater degree of environmental protection than does the Federal regulation.

Therefore, the Director finds that Colorado's proposed Rule 2.05.3(3)(c)(iv) is no less effective than the Federal regulations at 30 CFR 780.37(a)(1) and 784.24(a)(1), and approves the proposed rule.

7. Rules 2.06.8(5)(c)(i) (A) and (B), Criteria for Determining Material Damage to Water Quality or Quantity in Alluvial Valley Floors

Colorado's existing Rule 2.06.8(5)(c)(i) specifies specific conductance, which affects water quality and crop production, as the particular factor to evaluate to determine whether material damage to surface or ground water systems has occurred. The existing rule requires that specific conductance be measured by "Maas, E.V., 'Salt Tolerance of Plants,' Tables 2 and 3." Colorado proposes to delete from Rules 2.06.8(5)(c)(i) (A) and (B) the requirement for the use of Maas' publication to set crop salt tolerance threshold values. Instead, Colorado proposes that published research or testing be used to establish the salt tolerance threshold values for specific crop yields. Colorado's proposed rules further require that probable increases in specific conductance of water supplied to an alluvial valley floor shall not exceed the salt tolerance threshold value of any crop grown on the alluvial valley floor, unless the applicant demonstrates that the projected decrease in productivity is negligible to the production of one or more farms.

The Federal regulations at 30 CFR 822.12(a)(2) essentially prohibit mining operations from causing material damage to the quality or quantity of surface or ground water systems that supply alluvial valley floors. The Federal regulations are more general in scope than Colorado's rules, simply stating that water in alluvial valleys shall not be materially damaged by mining. The Federal regulations do not state how to determine that material damage has occurred. Colorado's proposed Rules 2.06.8(5)(c)(i) (A) and (B) set forth a technically acceptable method for evaluating whether a mining operation will damage the water system of an alluvial valley floor.

Therefore, the Director finds that Colorado's proposed Rules 2.06.8(5)(c)(i) (A) and (B) are consistent with and no less effective than the Federal regulations at 30 CFR 822.12(a)(2). The Director approves the proposed rules.

8. Rule 3.02.3(c), Bond Liability Period for Lands With Approved Industrial or Commercial, or Residential Post-mining Land Use

OSM required, at 30 CFR 906.16(g), that Colorado amend its program by revising Rule 3.02.3(c) to require that prior to release of bond liability, the permittee must demonstrate that development of the industrial, commercial, or residential land use has substantially commenced and is likely to be achieved (59 FR 62574, 62577, finding No. 6.a, December 6, 1994, administrative record No. CO–650).

In response to this required amendment, Colorado proposed to revise Rule 3.02.3(c), concerning the bond liability period for lands with approved industrial or commercial, or residential post-mining land use, by adding the phrase "until the permittee demonstrates that development of such land use has substantially commenced and is likely to be achieved."

Colorado has satisfied the requirement at 30 CFR 906.16(g). Therefore, the Director finds that Colorado's proposed Rule 3.02.3(c) is consistent with and no less effective than the broad requirements of the Federal regulations at 30 CFR 800.13(a)(1), 816.116(b)(4), 816.133(c), 817.116(b)(4), and 817.133(c). The Director approves proposed Rule 3.02.3(c) and removes the required amendment at 30 CFR 906.16(g).

9. Rules 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), Bond Forms

a. *Allowance for use of real property as collateral bond.* Colorado proposed to revise Rule 3.02.4(1) by adding the discretionary allowance, upon approval of the Board, for "conditioned acceptance of performance bonds as described in 3.02.4(2)(c)(ix)." Colorado also proposed to reinstate the previously deleted Rule 3.02.4(2)(c)(ix), concerning use of a perfected first-lien security interest in real property located in Colorado, and to recodify existing Rule 3.02.4(2)(c)(ix), concerning a person's right to request notification of actions pursuant to collateral bonds, as Rule 3.02.4(2)(c)(x). The effect of these revisions is to allow real property as an allowable form of collateral bond in the Colorado program.

The Federal definition of "collateral bond" at 30 CFR 800.5(b)(5) provides that a perfected, first-lien security interest in real property, in favor of the regulatory authority, may be used to support a collateral bond. The Federal regulations at 30 CFR 800.21(c) set forth the conditions applicable to the use of real property as collateral bond.

Colorado's proposed Rules 3.02.4(1) and 3.02.4(2)(c)(ix) are no less effective than the Federal regulations at 30 CFR 800.21(c). Therefore, the Director approves proposed Rules 3.02.4(1) and 3.02.4(2)(c)(ix), and the recodification of 3.02.4(2)(c)(ix) as 3.02.4(2)(c)(x).

b. *Clarification of requirements pertaining to collateral bonds.* Colorado proposed to revise Rule 3.02.4(1)(b), concerning the allowance for collateral bonds, by adding a reference to Rules 3.02.4(2) (c) and (d). Existing Rule 3.02.4(2)(c) contains requirements for all collateral bonds, and existing Rule 3.02.4(2)(d) contains requirements for an irrevocable letters of credit, which is a form of collateral bond specified in Rule 3.02.4(1)(b). The reference provides clarification that collateral bonds are indeed subject to Rules 3.02.4(2) (c) and (d), but does not substantively alter the implementation of the rules.

The Federal regulations at 30 CFR 800.12 provide for the use of a surety bond, a collateral bond, a self-bond, or a combination of any of these bonding methods. The Federal regulations at 30 CFR 800.21(a) sets forth the conditions applicable to collateral bonds, except for letters of credit, cash accounts, and real property. The Federal regulations at 30 CFR 800.21(b) sets forth the conditions applicable to letters of credit. There is no reference at 30 CFR 800.12 to the conditions applicable to each bond form.

The Director finds that Colorado's revision of Rule 3.02.4(1)(b) to reference the conditions set forth at Rules 3.02.4(2) (c) and (d) provides a degree of specificity that is no less effective than the Federal regulations at 30 CFR 800.12 and 800.21 (a) and (b). The Director approves the proposed rule.

10. Rule 3.02.4(d)(i), Irrevocable Letters of Credit

Colorado proposed to revise Rule 3.02.4(d)(i), concerning irrevocable letters of credit, by modifying the requirement that the letter may only be issued by a bank organized or authorized to do business in the United States "and located in the state of Colorado," to state that "the bank need not be located in the state of Colorado if the letter of credit can be exercised at an affiliate or subsidiary located in the State of Colorado."

The counterpart Federal regulation at 30 CFR 800.21(b)(1) requires that letters of credit "may be issued only by a bank organized or authorized to do business in the United States."

Colorado's proposed Rule 3.02.4(d)(i) provides requirements for letters of credit as forms of collateral bond that are in addition to those provided in the Federal program, but that are not inconsistent with the Federal regulations at 30 CFR 800.21(b)(1). The Director finds that proposed Rule 3.02.4(d)(i) is no less effective than the Federal regulation at 30 CFR 800.21(b)(1). The Director approves the proposed rule.

11. Rule 3.03.1(2)(b), Requirements for Establishment of Vegetation Which Must Be Demonstrated Prior to Phase II Bond Release

Colorado proposed to revise Rule 3.03.1(2)(b), concerning requirements for establishment of vegetation which must be demonstrated prior to phase II bond release, to (1) delete the requirement that vegetation must "exhibit[s] seasonality and species composition consistent with the ultimate achievement of the success standards" and (2) add the requirement that vegetation must "support[s] the approved postmining land use."

The seasonality and species composition of vegetation is determined by the approved postmining land use. In effect, Colorado has restated the requirement using somewhat broader language. The counterpart Federal regulation at 30 CFR 800.40(c)(2) does not contain this level of specificity as it refers only to "revegetation [that] has been established on the regraded mined lands in accordance with the approved reclamation plan." Colorado's existing Rule 4.15.8(2) requires that vegetative cover be evaluated for determination of revegetation success; it also requires that the seasonality be the same as that native to the disturbed land or that which supports the approved postmining land use. Therefore, the requirement (for demonstration at phase II bond release) that the vegetation must support the approved postmining land use is consistent with the Federal regulation at 30 CFR 800.40(c)(2) and is consistent with Colorado's requirement at Rule 4.15.8(2) for final determination of revegetation success.

Colorado also proposed to review Rule 3.03.1(2)(b) by adding the requirement that "with the exception of prime farmlands, evaluation of vegetation establishment pursuant to this paragraph is based on statistically valid data collected during a single year of the liability period." This requirement ensures that data collected over several years and averaged, which may compromise the validity of the demonstration, could not be used.

The Federal regulations at 30 CFR 800.40(c)(2), with the exception of the reference to other regulations concerning prime farmlands, do not address a time period during which the data used to demonstrate establishment of revegetation is collected at phase II bond release. Colorado's addition of the requirement that, with the exception of prime farmlands, the data must be collected during a single year is not inconsistent with the Federal regulations.

Therefore, the Director finds that Colorado's proposed revisions of Rule 3.03.1(2)(b) are no less effective than the counterpart requirements in the Federal regulations at 30 CFR 800.40(c)(2). The Director approves the proposed rule.

12. Rule 4.15.10(3), Mine Support Facilities and Commercial or Industrial Postmining Land Use Designations

Colorado proposed to review Rule 4.15.10(3), concerning a variance from the requirement for living ground cover to control erosion for mine support facilities located within areas where the pre- and postmining land use is industrial or commercial, by deleting the requirement that the permittee demonstrate that "retention of mine support facilities will support the approved post-mining land use."

OSM previously approved Rule 4.15.10(3) (59 FR 62574, 62578, finding No. 6.b, December 6, 1994, administrative record No. CO–650) as submitted by Colorado on April 18, 1994 (administrative record No. CO–

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611). Colorado, in its "Statement of Basis, Specific Statutory Authority, and Purpose," for the April 18, 1994, submission, cited the example of an pre-existing rail loadout facility, and stated that in such limited cases, living ground cover could be in conflict with the proposed use and alternative erosion control measures such as gravel surfacing and appropriate site grading would effectively control erosion. While there is no Federal counterpart to the variance proposed in Rule 4.15.10(3), OSM found that it was consistent with OSM's ten day notice appeal decisions and did not conflict with any Federal requirement. However, OSM is concerned that deletion of the required demonstration that "retention of mine support facilities will support the approved post-mining land use" may be interpreted to allow the retention of mine support facilities when they do not support the approved commercial or industrial postmining land use.

The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas shall be restored in a timely manner to conditions that are capable of supporting either (1) the uses they were capable of supporting before any mining, or (2) higher or better uses.

Because Colorado's example discussed in its April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose" does not conflict with the requirements of the Federal regulations at 30 CFR 816.133(a) and 817.133(a), Colorado's proposed revision of Rule 4.15.10(3) does not cause it to be less effective than the requirements of the Federal regulations at 30 CFR 816.133(a) and 817.133(a). Therefore, the Director approves the proposed Rule 4.15.10(3). However, the Director's approval may not be interpreted to allow retention of mine support facilities when they do not support the approved commercial or industrial postmining land use.

13. Rule 4.20.3(2), Subsidence-Caused Damages

Colorado proposed to revise Rule 4.20.3(2) to require that each person who conducts underground mining activities which result in subsidence that causes material damage or reduces the value or reasonably foreseeable use of surface lands shall:

(a) Promptly restore or rehabilitate any renewable resource lands for which the value or reasonably foreseeable use has been reduced or which have been materially damaged. Such lands shall be restored or rehabilitated to a condition capable of maintaining the value and reasonably foreseeable and appropriate uses they were capable of supporting before subsidence, to the extent technologically and economically feasible.

(b)(i) Promptly repair, rehabilitate, restore, or replace damaged occupied residential dwellings and related structures or noncommercial buildings; or (ii) Compensate the owner of the damaged occupied residential dwelling and related structure or noncommercial building in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable, premium-prepaid insurance policy.

(c) Nothing in 4.20.3 shall be deemed to grant or authorize an exercise of power of condemnation or the right of eminent domain by any person engaged in underground mining activities.

Colorado's proposed Rules 4.20.3(2)(a) through (c), concerning repair of damage to renewable resource lands and repair or compensation of damage to occupied residential dwellings and related structures or noncommercial buildings, incorporate, in part, the revised provisions of the Federal regulations at 30 CFR 817.121 concerning subsidence-caused damages.

Colorado's proposed Rule 4.20.3(2)(a), concerning repair of damage to renewable resource lands, is no less effective than the Federal regulations, concerning repair of damage to surface lands, at 30 CFR 817.121(c)(1). Colorado's proposed Rules 4.20.3(2)(b)(i) and (ii) are no less effective than the Federal regulations, concerning repair or compensation of damage to occupied residential dwellings and related structures or noncommercial buildings, at 30 CFR 817.121(c)(2). Colorado's rules do not include the October 24, 1992, date, as do the Federal regulations at 30 CFR 817.121(c)(2), after which the Federal regulation became effective. This is not an issue because Colorado received no legitimate complaints, with respect to this issue, between October 24, 1992, and August 1, 1995, the promulgation effective date of this proposed rule. There is no Federal counterpart to Colorado's proposed Rule 4.20.3(2)(c), concerning powers of condemnation or right of eminent domain by any person engaged in underground mining activities. However, this rule is not inconsistent with the Federal regulations.

For these reasons, the Director finds that Colorado's proposed Rules 4.20.3(2)(a) through (c) are no less effective than the Federal regulations at 30 CFR 817.121(c)(1) and (2) and approves them.

However, the Director notes that Colorado lacks certain counterpart provisions to the Federal regulations that were promulgated on March 31, 1995 (60 FR 16722). Colorado lacks (1) definitions for "material damage," "non-commercial building," and "occupied residential dwelling and structures related thereto;" (2) rules concerning the conditional requirement to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto; (3) rules concerning repair or compensation according to State law of all other structures; (4) rules concerning rebuttable presumption of causation by subsidence and adjustment of bond amount for subsidence damage; and (5) counterparts to the Federal regulations concerning permitting requirements for the presubsidence survey and the subsidence control plan.

In a future 30 CFR Part 732 letter, OSM will notify Colorado of the additional revisions in its program that are necessary to be no less effective than the revised March 31, 1995, Federal regulations concerning subsidence-caused damages.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program.

The U.S. Fish and Wildlife Service responded on July 24, 1995, that it had no comments on the proposed amendment, and on October 31, 1995, that due to budgetary constraints it was unable to comment on the proposed amendment (administrative record Nos. CO–670–2 and CO–670–14).

The U.S. Army Corps of Engineers responded on August 1 and October 25, 1995, that Colorado's proposed revisions were satisfactory (administrative record Nos. CO–670–3 and CO–670–12).

The U.S. Forest Service responded on August 17 and November 11, 1995, that it had no comments on Colorado's proposed amendment (administrative record No. CO–670–5 and CO–670–15).

The U.S. Mine Safety and Health Administration (MSHA) responded on October 24, 1995, that Colorado's proposed amendment did not conflict with current MSHA standards (administrative record No. CO–670–11).

The U.S. Natural Resources Conservation Service responded on October 31, 1995, that it had no comments on Colorado's proposed amendment (administrative record No. CO–670–13).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Colorado proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. CO–670–1). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO–670–1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception and additional requirement, Colorado's proposed amendment as submitted on July 12, 1995, and as supplemented with additional explanatory information on September 26, 1995.

With the requirement that Colorado further revise the definition of "road" at Rule 1.04(111), the Director does not approve, as discussed in finding No. 4, the unconditional exemption for regulation of public roads under Colorado's approved program.

The Director approves, as discussed in:

Finding No. 1, Rules 2.03.7(1), 2.05.3(8)(c), 2.05.6(2)(iii)(A), 2.07.2, 3.02.4(1)(d), and 4.08.6(1), concerning nonsubstantive revisions to previously approved rules that consist of editorial revisions;

Finding No. 2, Rules 1.04(80), 1.04(92), and 3.02.2(5), concerning substantive revisions to previously approved rules that are substantively identical to the Federal regulations;

Finding No. 3, Rules 1.04(21), 2.03.3(4), and 2.06.6(2), concerning the definition of "coal," water quality sampling and laboratory analyses, and application contents for prime farmland;

Finding No. 5, Rules 104(132) and 1.05.1(1), concerning the definition of "surface coal mining operations" and the applicability of Colorado's rules;

Finding No. 6, Rule 2.05.3(3)(c)(iv), concerning permit application requirements in the operations plan for roads, conveyors, or rail systems within the permit area;

Finding No. 7, Rules 2.06.8(5)(c)(i) (A) and (B), concerning criteria for determining material damage to water quality or quantity in alluvial valley floors;

Finding No. 8, Rule 3.02.3(c), concerning bond liability period for lands with approved industrial or commercial, or residential post-mining land use;

Finding No. 9, Rules 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), concerning bond forms;

Finding No. 10, Rule 3.02.4(d)(i), concerning irrevocable letters of credit;

Finding No. 11, Rule 3.03.1(2)(b), concerning requirements for establishment of vegetation which must be demonstrated prior to phase II bond release;

Finding No. 12, Rule 4.15.10(3), concerning mine support facilities and commercial or industrial postmining land use designations as augmented by Colorado's April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose;" and

Finding No. 13, Rule 4.20.3(2), concerning subsidence-caused damages.

The Federal regulations at 30 CFR Part 906, codifying decisions concerning the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Colorado program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Colorado of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a

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substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (s) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(s) With the exception of Rule 1.04(111), concerning the exemption for public roads in the definition of "road," revisions to the following rules, as submitted to OSM on June 12, 1995, and as supplemented with explanatory information on September 26, 1995, are approved effective December 14, 1995:

Definition of "coal"—Rule 1.04(21),
Definition of "operator"—Rule 1.04(80),
Definition of "person"—Rule 1.04(92),
Definition of "road"—Rule 1.04(111),
Definition of "surface coal mining operations"—Rule 104(132),
Applicability of the Colorado program—Rule 1.05.1(1)(b),
Water quality sampling and laboratory analyses—Rule 2.03.3(4),
Lands unsuitable for surface coal mining operations—Rule 2.03.7(1),
Permit application information regarding the measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for roads, conveyors, or rail systems within the permit area—Rule 2.05.3(3)(c)(iv),
Design of coal processing waste dams and embankments—Rule 2.05.3(8)(c),
Permit application contents of the fish and wildlife plan—Rule 2.05.6(2)(iii)(A),
Permit application contents for prime farmland—Rule 2.06.6(2),
The use of published research or testing to establish the salt tolerance threshold values for specific crop yields in order to assess material damage to the quality or quantity of surface or ground water systems that supply alluvial valley floors—Rules 2.06.8(5)(c)(i) (A) and (B),
Public participation and approval of permit applications—Rule 2.07.2,
Reductions in the required performance bond amount—Rule 3.02.2(5),
Bond liability period for lands with approved industrial or commercial, or residential post-mining land use—Rule 3.02.3(c),
Bond forms—Rule 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix),
Alternative bonding systems—Rule 3.02.4(1)(d),
Irrevocable letters of credit—Rule 3.02.4(d)(i),
Requirements for establishment of vegetation which must be demonstrated prior to phase ii bond release—Rule 3.03.1(2)(b),
Airblast limitations—Rule 4.08.6(1),
Mine support facilities and commercial or industrial postmining land use designations—Rule 4.15.10(3), as augmented by Colorado's April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose," and
Subsidence-caused damages—Rule 4.20.3(2).

3. Section 906.16 is amended by removing and reserving paragraph (g) and adding paragraph (h) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(h) By February 12, 1996, Colorado shall revise Rule 1.04(111), to delete the exemption for regulation of public roads under Colorado's program, or otherwise modify its program to qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

[FR Doc. 95–30331 Filed 12–13–95; 8:45 am]
BILLING CODE 4310–05–M

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1415

Rules Implementing the Privacy Act

AGENCY: Assassination Records Review Board.

ACTION: Final rulemaking.

SUMMARY: This part contains the regulations of the Assassination Records Review Board (Review Board) implementing the Privacy Act of 1974. The regulations inform the public that the Review Board is responsible for carrying out the provisions of the Privacy Act and for issuing internal Review Board orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the Review Board and that are retrieved by an individual's name or personal identifier. Elsewhere in today's **Federal Register** appears a notice describing the Review Board's systems of records.

EFFECTIVE DATE: This regulation is effective January 16, 1996.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

SUPPLEMENTARY INFORMATION:

Background

Section 3(f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

Notice and Comment Process

The Review Board received no public comments in response to its Notice of Proposed Rulemaking. The staff, in consultation with the Office of Management and Budget, proposed some technical amendments to the regulations. The following changes have been incorporated into the final rule:

Privacy Act queries will be processed by a new Privacy Act Officer rather than by the General Counsel. See §§ 1415.10, 1415.15, 1415.20, and 1415.25.

The term *person* has been replaced throughout by the term *individual* in order to clarify that corporations and other artificial persons are not covered by the Privacy Act regulations.

The definition of system of records in § 1415.10 has been revised to clarify that assassination records coming into the Review Board's temporary possession during its review are not subject to the Privacy Act.

The procedures for the handling of Privacy Act requests has been modified in § 1415.25(b) to extend somewhat the timing of the Review Board's response. The Privacy Act Officer is now allotted ten (rather than five) days to respond to a request and is also given some latitude for an additional extension of time if one proves warranted. Similarly, the allotted time for the Executive Director's response to an appeal is thirty (rather than twenty) days in § 1415.30. The final rules also provide, in § 1415.35, more specific guidance for amending or correcting errors that may appear in records.

Section 1415.55 has been rewritten to provide more specific guidance on the exemptions applicable to the Review Board's various systems of records.

Paperwork Reduction Act Statement

The rule is not subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* (amended 1995), because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–12, the Review Board certifies that this rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

Review by OMB

The Office of Management and Budget has reviewed the regulation under Executive Order 12866.

List of Subjects in 36 CFR Part 1415

Privacy Act.

The Final Regulations

The Review Board amends chapter XIV in title 36 of the Code of Federal Regulations by adding a new part 1415 to read as follows:

PART 1415—RULES IMPLEMENTING THE PRIVACY ACT

Sec.
1415.5 Scope.
1415.10 Definitions.
1415.15 Systems of records notification.
1415.20 Requests by individuals for access to their own records.
1415.25 Processing of requests.
1415.30 Appeals from access denials.
1415.35 Requests for amendment of records.
1415.40 Appeals from amendment of denials.
1415.45 Disclosure of records to third parties.
1415.50 Fees.
1415.55 Exemptions.

Authority: 5 U.S.C. 552a; 44 U.S.C. 2107.

§ 1415.5 Scope.

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1415.10 Definitions.

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

Assassination records, for the purpose of this regulation only, are records created by Government offices (other than the Review Board), entities, and individuals that relate to the assassination of President John F. Kennedy that may, from time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

Executive Director means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

JFK Act means the President John F. Kennedy Records Collection Act of 1992.

Privacy Act Officer means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

System of records means a group of records that is within the possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Assassination records, as defined above, are not included in the Review Board's systems of records.

§ 1415.15 Systems of records notification.

Any individual who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, Washington, DC 20530, and should be clearly marked "Privacy Act Request."

§ 1415.20 Requests by an individual for access to their own records.

(a) *Requests in writing.* An individual may request access to his or her own records in writing by addressing a letter to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, 2nd Floor, Washington, DC 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester;

(2) Proof of identification, which should be a copy of one of the following: Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) *Requests in person.* Any individual may examine his or her own record on the Review Board's premises. To do so, the individual should call the Review Board's offices at (202) 724–0088 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

§ 1415.25 Processing of requests.

(a) The Privacy Act Officer will process all requests under both the Freedom of Information Act and the Privacy Act.

(b) The Privacy Act Officer will respond to the request within ten working days of its receipt by the Privacy Act Officer. If the Review Board needs additional time to respond, the Privacy Act Officer will provide the requester an explanation as to why the Review Board requires an extension.

(c) Following the initial call from the requester, the Privacy Act Officer will determine: whether the records identified by the requester exist, and whether they are subject to any exemption under § 1415.55 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. At the appointment, the requester will

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be asked to present identification as stated in § 1415.20(a)(2). The requester may be accompanied by one individual of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. In the event that a second individual accompanies the requester, the requester will be asked to provide the Review Board with written consent to disclose his or her records to the second individual.

(d) If a request is received for information compiled in reasonable anticipation of a civil action or proceeding, the Privacy Act Officer will determine whether to disclose the information and will inform the requester whether this information is subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1415.30 Appeals from access denials.

When access to records has been denied in whole or in part by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify those denied records that are still sought and state why the denial by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days after the appeal letter is received in the Review Board's offices, unless, for good cause shown, the Executive Director extends such thirty day period. The appeal determination will explain the basis for continuing to deny access to any requested records and will notify the requester of his or her right to judicial review of the Executive Director's determination.

§ 1415.35 Requests for amendment of records.

(a) *Amendment requests.* Any person is entitled to request amendment of a record pertaining to him or her. This request must be made in writing and should be addressed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The letter should clearly identify the amendments desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* The Privacy Act Officer will acknowledge the request for amendment within ten working days of receipt of the request. The Privacy Act Officer will provide a letter to the requester within thirty working days stating whether or not the request for amendment has been granted or denied. The Privacy Act Officer will amend information that is not accurate, relevant, timely, or complete, unless the record is excluded or exempt. If the Privacy Act Officer decides to deny any portion of the amendment request, the reasons for the denial will be provided to the requester. In addition, the Privacy Act Officer will inform the requester of his or her right to appeal the Privacy Act Officer's determination to the Executive Director.

§ 1415.40 Appeals from amendment of denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will:

(1) Explain the basis for denying amendment of the specified records;

(2) Inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and

(3) Inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOIA regulations, 36 CFR part 1410;

(b) Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for amendment of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. See 36 CFR 1410.35. However, the first 100 pages will be free of charge.

§ 1415.55 Exemptions.

(a) The systems of records entitled "Personal Security Files" and "Subject File" contain some information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(1) of the Privacy Act, 5 U.S.C. 552a(k)(1), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). Disclosure of information properly classified pursuant to an Executive Order would jeopardize the national defense or foreign policy of the United States.

(b) The systems of records entitled "Agency Contacts," "Investigations," "Public Contacts," and "Subject File" consist, in part, of investigatory material compiled by the Review Board for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of the agency's accounting of certain disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d) because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsections (d)(2), (3), and (4) because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the Review Board continuously to retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation.

(5) From subsection (e)(4)(G) and (H), because the Review Board is claiming an exemption for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(6) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to the person dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct of a pending or future investigation. In addition, mere notice of an investigation could inform the subject or others that their activities either are, or may become, the subject of an investigation and might enable the subjects to avoid detection or to destroy assassination records. Since the Review Board is claiming an exemption for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(c) The systems of records entitled "Employment Applications" and "Personal Security Files" consist in part of investigatory material compiled by the Review Board for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are eligible for exemption from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: December 8, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95–30384 Filed 12–13–95; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 9511277–5277–01]

RIN 0651–AA65

Cross-Appeals in Patent and Trademark Office Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending a rule of practice in disciplinary cases to provide a time period for filing a cross-appeal to the Commissioner of Patents and Trademarks after the initial decision of the Administrative Law Judge (ALJ). This amendment will simplify the appeals practice in disciplinary cases by eliminating the need to file contingent appeals.

EFFECTIVE DATE: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Karen L. Bovard, 703–308–5316.

SUPPLEMENTARY INFORMATION: The PTO issued a second notice of proposed rulemaking to amend a rule of practice in practitioner disciplinary proceedings. 60 FR 4395, Jan. 23, 1995. Under the existing practice, after the ALJ's initial decision, a party (either the respondent or the Director of the Office of Enrollment and Discipline) might be obliged to file a contingent appeal to protect cross-appealable issues in the event the opposing party filed an appeal. The amended rule provides a time period for the party to file a cross-appeal after the opposing party has appealed to the Commissioner from the ALJ's initial decision.

No comment to the second notice of proposed rulemaking was received. The proposed rule is adopted.

Other Considerations

This rule change conforms with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12612 and 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule change will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of the rule change is to provide a time period to file a cross-appeal in a PTO disciplinary proceeding. See the first notice of proposed rulemaking. 58 FR at 38996.

The PTO has determined that the rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612. The rule change is not significant for the purposes of Executive Order 12866.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no recordkeeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

Pursuant to the authority contained in 35 U.S.C. 6, the PTO amends 37 CFR part 10 as follows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR part 10 continues to read as follows:

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Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is amended by revising paragraph (a) to read as follows:

§ 10.155 Appeal to the Commissioner.

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. If an appeal is taken, the time for filing a cross-appeal expires 14 days after the date of service of the appeal pursuant to § 10.142 or 30 days after the date of initial decision of the administrative law judge, whichever is later. An appeal or cross-appeal by the respondent will be filed and served with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal or cross-appeal, the Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. A respondent's reply brief shall be filed and served in duplicate with the Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 10.142 of an appeal, cross-appeal or copy thereof. If the Director files a reply brief, the Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the Director shall transmit the entire record to the Commissioner.

* * * * *

Dated: December 7, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95-30340 Filed 12-13-95; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA141-1-7247; FRL-5328-7]

Approval and Promulgation of State Implementation Plans; California—Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving certain provisions in the state implementation plan (SIP) revision submitted by the State of California. The California Air Resources Board (CARB) adopted these provisions on November 15, 1994, as part of "The 1994 California State Implementation Plan for Ozone." The portions of the SIP approved today are commitments by the CARB to adopt regulations for various mobile source and consumer product categories by particular dates to achieve specific emission reductions of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in order to attain the national ambient air quality standards (NAAQS) for ozone.

The effect of EPA's approval of these commitments is to incorporate the commitments into the federally approved SIP. EPA is approving the commitments under provisions of the Clean Air Act (CAA or "the Act") regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP.

EFFECTIVE DATE: This approval is effective on January 16, 1996.

ADDRESSES: Materials relevant to this rulemaking are available for review at the following location: Office of Federal Planning (A-1-2), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Interested persons may make an appointment with Ms. Virginia Petersen at (415) 744-1265, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the SIP submittal is also available for inspection at the address listed below: California Air Resources Board, 2020 L Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Julia Barrow (415) 744-2434, at the Office of Federal Planning (A-1-2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105-3901.

SUPPLEMENTARY INFORMATION: On August 21, 1995 (60 FR 43421), EPA proposed to approve certain State commitments included in Volume II of the California Ozone SIP, "The Air Resources Board's Mobile Source and Consumer Products Elements." These commitments were originally submitted on November 15, 1994, were subsequently updated, corrected, and resubmitted on December 29, 1994, and were found to be complete on January 30, 1995 and April 18, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[1]

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA is today finalizing approval of the State's commitments listed below, in advance of CARB adoption of regulations. EPA is finalizing SIP approval of these enforceable CARB commitments under section 110(k)(3) and 301(a) for their strengthening effect. The CARB commitments approved today are as follows:

Measure M3, Accelerated Ultra-Low Emission Vehicle (ULEV) requirement for Medium-Duty Vehicles (MDVs), adoption 1997, implementation 1998–2002, South Coast reductions in 2010—32 tons per day (tpd) NO_X, 4 tpd reactive organic gases (ROG). These reductions will be achieved by an increase in MDV ULEVs, as currently defined by CARB, from 10 percent of sales of new MDVs in 1998 model year to 100 percent in 2002 and later model years.

Measure M5, Heavy-Duty Vehicles (HDVs)—NO_X regulations, adoption 1997, implementation 2002, South Coast reductions in 2010–56 tpd NO_X, 4 tpd ROG. These reductions will be achieved by CARB adoption of a 2.0 gram per brake horsepower-hour NO_X exhaust emission standard for new heavy-duty truck engines sold in California beginning in 2002, or by implementation of alternative measures which achieve equivalent or greater reductions. Alternatives under consideration include expanded introduction of alternative-fueled and low-emission diesel engines through demand-side programs and incentives, retrofit of aerodynamic devices, reduced idling, and speed reduction.

Measure M8, Heavy-Duty Gasoline Vehicles (HDGVs)—lower emission standards, adoption 1997, implementation 1998–2002, South Coast reductions in 2010—3 tpd NO_X. These reductions will be achieved by application of 3-way catalyst technology in HDGVs will obtain 50 percent reductions of NO_X and ROG emissions from these engines.

Measure M11, Industrial Equipment, Gas & LPG—three-way catalyst technology, adoption 1997, implementation 2000–2004. South Coast reductions in 2010—14 tpd NO_X, 29 tpd ROG. Emission standards for new engines greater than 25 hp and less than 175 hp will be phased in beginning in 2000, based on the use of closed-loop 3-way catalyst systems, which are expected to reduce ROG by 75 percent and NO_X by at least 50 percent.

Measure CP-2, Mid-Term Consumer Products ("Phase II"), adoption July 1997, reductions in 2005—25 percent reduction beyond currently adopted CARB regulations, South Coast reductions in 2010—34 tpd ROG.

Two public comments were received on the proposed approval. Texaco Refining and Marketing recommended that EPA recognize and consider the flexibility that CARB intended for Measure M3, citing the following language from the SIP submittal:

> [t]he heaviest medium-duty vehicles may have problems meeting the ULEV standard. However it may be possible to compensate for this situation through flexible standards which allow credits to be generated by the more populous lighter medium-duty vehicles. In addition, other mixes of vehicles and technologies could provide equivalent emission reductions.

EPA fully supports CARB's statement of its flexibility in developing and implementing this measure.

The Chemical Specialties Manufacturers Association (CSMA) commented on Measure CP-2. CSMA noted that EPA incorrectly identified the measure as "phase III." In the current CARB nomenclature, CP-2 is "phase II" of the State's consumer product element. EPA has revised the measure identification accordingly. CSMA also commented that CARB did not cite its full legislative authority to adopt the measure. EPA believes that CARB has sufficient authority to adopt and implement regulations to achieve the SIP's reduction targets. Finally, CSMA stated that CARB's proposed 25 percent reduction target for the measure is not supported by CARB's data, and CSMA further noted that EPA, CARB, and industry have met recently to discuss refinements to the categorization of consumer products. EPA continues to believe that the State's commitment to adopt the CP-2 measure, including its reduction target, should be approved.

As discussed in the proposed approval, EPA is firmly committed to assisting CARB in its efforts to develop and adopt the associated State regulations, which are essential if the State is to meet the public health goals of the Act. EPA shares the State's dedication, reflected in these commitments, to achieve real and sustainable progress toward clean air at the least cost. EPA intends to work closely with CARB to speed full SIP approval of the regulations eventually adopted by the State.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 22, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(204)(i)(A)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(204) * * *

(i) * * *

(A) * * *

(*5*) Mid-Term Measures, Accelerated Ultra-Low Emission Vehicle (ULEV) requirement for Medium-Duty Vehicles (Measure M3), Heavy-Duty Vehicles NO_X regulations (Measure M5), Heavy-Duty Gasoline Vehicles lower emission standards (Measure M8), Industrial Equipment, Gas & LPG—3-way catalyst technology (Measure M11), Mid-Term Consumer Products (Measure CP–2), as contained in The California State Implementation Plan for Ozone, Volume II: The Air Resources Board's Mobile

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Source and Consumer Products Elements, adopted on Nov. 15, 1994.

* * * * * *

[FR Doc. 95-30511 Filed 12-13-95; 8:45 am]

BILLING CODE 4000-00-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950208040-5040-01; I.D. 120995B]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1995 prohibited species bycatch mortality allowance of Pacific halibut specified for the Pacific cod hook-and-line fishery in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), December 11, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 Pacific halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery, which is defined at § 675.21(b)(2)(ii)(A), is 725 metric tons (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that the Pacific halibut bycatch mortality allowance for the Pacific cod hook-and-line fishery in the BSAI has been reached. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-30468 Filed 12-11-95; 12:34 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 60, No. 240
Thursday, December 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 141, 143

[Docket No. 25910; Notice No. 95-11]

RIN 2120-AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This action extends the comment period on Notice No. 95-11: Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules. The comment period is extended from December 11, 1995, to February 12, 1996. This action is in response to a request from the Helicopter Association International to allow all affected parties additional time to comment. The extension of the comment period is justified because of the unusually large size of the proposal and the numerous technical issues raised.

DATES: The comment period for Notice No. 95-11 is extended until February 12, 1996.

ADDRESSES: Comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel (Attention: Rules Docket, AGC-200), Docket No. 25910, 800 Independence Avenue SW., Washington, DC 20591. Comments on this notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3844.

SUPPLEMENTARY INFORMATION: On August 11, 1995, the Federal Aviation Administration (FAA) issued Notice No. 95-11: Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules [60 FR 41160]. Comments to Notice No. 95-11 were to be received on or before December 11, 1995.

By letter dated November 9, 1995, the Helicopter Association International (HAI) requested that the FAA extend the comment period for Notice No. 95-11 to March 31, 1996. HAI noted that the proposal contains a myriad of far-reaching changes, and that the sheer bulk and detail of those changes warrant more than 120 days to prepare well-reasoned comments.

Due to the unusually large size of the proposal and the numerous technical issues raised in the proposal, general aviation groups were not able to disseminate information to their members in a timely manner. Therefore, the FAA has determined that a 2-month extension of the comment period is in the public interest.

In order to give HAI members and other interested parties sufficient time to comment, the FAA has determined that it is in the public interest to extend the comment period. However, other commenters have urged the FAA to finalize certain areas of the proposal as soon as possible. In an effort to provide interested parties sufficient time to comment, while at the same time ensuring the final rule is published in a punctual manner, the FAA will extend the comment period until February 12, 1996.

Issued in Washington, DC on December 8, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95-30445 Filed 12-11-95; 12:34 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 95-SW-27-AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that currently requires installing a low-rotor RPM caution light and resetting the low-RPM warning unit to activate the warning horn and caution light at 94% to 96% revolutions-per-minute (RPM). This action would require installation of an improved throttle governor; an adjustment to the warning horn threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor inoperative, except in certain situations. This proposal is prompted by an FAA Technical Panel review of Model R22 accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by Janaury 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-27-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James Wang, Helicopter Program Manager, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (310) 627-5303; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified

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above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On April 28, 1983, the FAA issued AD 82–23–51, Amendment 39–4645 (48 FR 21894, May 16, 1983), to require installing a low-rotor RPM caution light and resetting the low-RPM warning unit to activate the warning horn and caution light at 94% to 96% RPM. That action was prompted by several accidents involving M/R blades striking the helicopter tailboom in flight. Some tailboom strikes have been attributed to M/R blade stall at abnormally low RPM. The requirements of that AD are intended to provide early detection of low-rotor RPM to minimize the possibility of severe M/R blade flapping, which could result in the M/R blades striking the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that AD, an FAA Technical Panel review of Model R22 helicopter accident history data revealed that some accidents resulted from pilot mismanagement of the M/R RPM.

One of the Technical Panel's recommendations was for the manufacturer to configure the Model R22 with an improved throttle governor. Robinson has incorporated the improved throttle governor on new production helicopters, and has made the improved throttle governor available as a retrofit kit for all Model R22 helicopters.

The FAA agrees with the Technical Panel's recommendation and has determined that an improved throttle governor should be used to maintain M/R RPM, thereby decreasing the possibility of M/R blade stall resulting in the M/R blades striking the helicopter tailboom in flight. The improved throttle governor will also reduce pilot workload, allowing the pilot to focus more attention on other aspects of flying the aircraft and avoiding possible obstructions. There are four types of governors currently available for installation on the Model R22 helicopters. Three are throttle/collective governor models that will automatically make throttle (RPM) and collective stick position (pitch) corrections. The fourth governor, which is the improved throttle governor, makes only throttle (RPM) corrections and significantly improves the ability to maintain M/R speed control. Some operators find throttle/collective governor corrections of collective stick position to be distracting and routinely fly with the throttle/collective governor selected off, thus defeating the governor's purpose of tighter rotor RPM control. While other operators find these throttle/collective governor collective stick movements acceptable, the FAA is concerned about the different operating characteristics and associated safety implications of a mixed fleet of throttle/collective and improved throttle governors, particularly in the training environment. The differences in flight operating characteristics between the throttle/collective governor and the improved throttle governor are significant and could cause confusion and an unsafe condition for students and low-time pilots when changing between Model R22 helicopters. The FAA therefore proposes to require the installation and use of the improved throttle governor to enhance the ability to maintain M/R speed control on all Model R22 helicopters, to eliminate possibly distracting collective stick position corrections on those aircraft currently equipped with the throttle/collective governor, and to maintain consistent flight operating characteristics of the Model R22 fleet.

A second recommendation made by the Technical Panel was to increase the RPM at which the warning horn and caution light activate, thereby allowing additional time for the initiation of corrective action between the activation of the warning horn and caution light and the onset of M/R blade stall. The installation of the improved throttle governor will allow for this increase in the warning threshold, without unnecessary nuisance activations, due to the governor's ability to maintain tighter control of the M/R RPM.

Based on these recommendations, Robinson issued Robinson Helicopter Company R22 Service Bulletin SB–80A, Revised June 8, 1995, which describes procedures for installation of a KI–67–2 Governor Field Installation Kit on certain serial-numbered Model R22 helicopters, and procedures for increasing the RPM threshold at which the warning horn and caution light activate to avoid inadvertent low M/R RPM. This condition, if not corrected, could result in unrecoverable M/R blade stall and a subsequent loss of control of the helicopter. Since the issuance of this service bulletin, Robinson has manufactured a KI–67–3 Governor Upgrade Kit to incorporate the improved throttle governor on helicopters that have a throttle/collective governor currently installed.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the proposed AD would require: the installation of an improved throttle governor on certain Model R22 helicopters not currently equipped with a governor, or the upgrade to the improved throttle governor on those Model R22 helicopters currently equipped with a throttle/collective governor; an adjustment to the warning horn and caution light threshold from 95± 1% RPM to between 96% and 97% RPM to increase the RPM at which the warning activates; and revisions to the Robinson Helicopter Company R22 Rotorcraft Flight Manual prohibiting flight with the governor selected off, with exceptions for system malfunction and emergency procedures training with an instructor pilot.

The FAA estimates that 1,014 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours to install the improved throttle governor, or 7 hours to upgrade the throttle/collective governor, and approximately 0.2 work hours to accomplish the adjustment of the light/warning horn RPM, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,150 per helicopter to install the improved throttle governor, or approximately $500 for upgrading the throttle/collective governor per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,678,988. This cost estimate assumes that no helicopters are currently equipped with a governor and all will need the improved throttle governor installed.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4645 (48 FR 21894, May 16, 1983), and by adding a new airworthiness directive (AD) to read as follows:

Robinson Helicopter Company: Docket No. 95–SW–27–AD. Supersedes AD 82–23–51, Amendment 39–4645.

Applicability: Model R22 helicopters, serial numbers (S/N) 0002 to 2537, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within the next 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) revolutions-per-minute (RPM), which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–1 or –5 low-RPM warning unit so that the warning horn and caution light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R22 maintenance manual.

(b) For Model R22 helicopters that do not have a governor currently installed, install a Robinson Helicopter Company KI–67–2 Governor Field Installation Kit in accordance with the kit instructions.

(c) For Model R22 helicopters that have a throttle/collective governor currently installed, upgrade the governor with a Robinson Helicopter Company KI–67–3 Governor Upgrade Kit in accordance with the kit instructions.

(d) Upon accomplishment of paragraph (b) or (c) of this AD, insert pages 2–2 and 2–7 of the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual, revised July 6, 1995, into each Model R22 helicopter's flight manual, and make pen-and-ink changes to page 2–7 to delete the phrase "If equipped with RPM governor," and add the phrase "with an instructor pilot" so that the affected limitation will state "Flight prohibited with governor selected off, with exceptions for system malfunction and emergency procedures training with an instructor pilot." Also, delete the phrase "If not equipped with RPM governor," so that the affected limitation will state "Maximum power-on RPM required during takeoff, climb, or level flight below 500 feet AGL or above 5000 feet density altitude."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through FAA Principal Maintenance Inspectors, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 6, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–30422 Filed 12–13–95; 8:45 am]

BILLING CODE 4910–13–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2013

Weekly Allocation of NAFTA Tariff-Rate Quotas for Fresh Tomatoes

AGENCY: Office of the Untied States Trade Representative.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the United States Trade Representative is considering a proposal to allocate on a weekly basis the seasonal tariff-rate quotas for fresh tomatoes which were established under the North American Free Trade Agreement. Public comment is invited.

DATES: Written comments must be received on or before March 13, 1996.

ADDRESSES: Comments should be mailed to Leonard W. Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. Envelopes should be marked: "Tomato ANPR".

FOR FURTHER INFORMATION CONTACT: Leonard W. Condon (202) 395–9564.

SUPPLEMENTARY INFORMATION: Article 302(4) of the North American Free Trade Agreement (NAFTA) provides that each NAFTA party " * * * may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 302.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota."

Section 321(c) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3391(c)) provides that in "implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the

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United States." The President has delegated this authority with respect to the tomato tariff-rate quotas (TRQ's) to the United States Trade Representative (USTR).

Concern has been expressed about the impact on domestic markets of surges in imports of Mexican tomatoes. Allocation of the existing seasonal TRQ's on a weekly basis is an option which could address that concern. USTR is considering that option and seeking public comment.

Mexico typically supplies over 90 percent of U.S. fresh tomato imports. During the winter months, more than 25 percent of the fresh tomatoes consumed in the United States are grown in Mexico.

In accordance with terms of the NAFTA, this proposal would affect only tomatoes imported into the United States from Mexico during the periods March 1 through July 14 through the year 2002 and November 15 through February until February 2003. Tomatoes entered from Mexico eligible for the in-quota tariff would be charged the declining NAFTA rate. All other Mexican tomatoes would be charged the most favored nation rate.

Tariffs on tomatoes imported from Mexico during the period July 15 through November 14 are being phased out over five years. No TRQ's apply from July 15 through November 14. Entries during this period would be unaffected.

Allocation Methodology: One method for allocating the in-quota quantity for each of the tariff-rate quotas would be to distribute the specified quantity evenly on a weekly basis throughout each TRQ period. Since the in-quota quantity for each TRQ increases each year, an annual re-calculation of the weekly TRQ's would be necessary.

The following is an example of how the in-quota quantity could be distributed on a weekly basis:

According to U.S. Note 10 to subchapter VI of chapter 99 of the HTS, for the period November 15, 1995 through February 29, 1996, the in-quota quantity is 177,469,000 kilograms (kg.).

The seasonal TRQ would be divided evenly into weekly allocations. The period from November 15, 1995, through February 29, 1996, includes 14 complete weeks and portions of two weeks at the beginning and end of the period. To calculate the weekly allocation for the season, the total seasonal TRQ of 177,469,000 kg would be divided by 107, the total number of days in the period. A week would be defined as a seven-day period running from Monday through Sunday. The daily amount would be multiplied times 7 to establish an allocation for each of 14 full weeks. For the period November 15 through November 19, the daily amount would be multiplied by 5 and for the February 26 through February 29 period, the daily amount would be multiplied by 4. This establishes a weekly allocation of 11,610,121 kg. for each of the 14 full weeks, an allocation of 8,292,248 kg. for the November 15–18, 1995, period, and 6,634,358 kg. for the February 26–29, 1996, period.

For the period November 15, 1995, through February 29, 1996, the tariff on tomatoes imported form Mexico within the weekly quotas would be 2.6 cents per kilogram. The tariff on any amounts which exceed the weekly quotas would be 3.2 cents per kilogram.

USTR is particularly interested in comments from the public which address the following points:

(a) To what extent do surges in imports of Mexican tomatoes disrupt, or threaten to disrupt, the U.S. market for fresh tomatoes?

(b) Would a weekly allocation of the current seasonal TRQ's be an effective mechanism for moderating any disruption that might otherwise occur?

(c) If the seasonal TRQ is to be sub-divided into weekly TRQ's, how should it be equitably allocated among the weeks?

(d) Are there alternative mechanisms available to cushion the impact of surges in imports of Mexican tomatoes that could be more effective, but still consistent with U.S. obligations under NAFTA?

Written Comments

Comments on the above Advance Notice of Proposed Rulemaking are invited. Written comments should be directed to Leonard W. Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, Washington, DC, 20508. Comments, with two copies, should be received by March 13, 1996.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–30501 Filed 12–13–95; 8:45 am]

BILLING CODE 3190–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: On July 22, 1994, the Commodity Futures Trading Commission (Commission) proposed amendments to Rule 3.34, which governs ethics training for Commission registrants. The Commission has published a release announcing the adoption of those rule amendments in the **Federal Register** on December 13, 1995. The Commission also is proposing to amend Rule 3.34 to require that persons who seek to provide ethics training must present satisfactory evidence that they meet a proficiency testing requirement established by a registered futures association and possess a minimum of three years of relevant experience. The Commission is also proposing to amend Rule 3.34 to eliminate the provision permitting state-accredited entities to provide ethics training without being subject to the requirements pertaining to other providers under the rule.

DATES: Comments must be received by January 16, 1996.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581 and should refer to "Ethics Training for Registrants."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel or Myra R. Silberstein, Attorney-Advisor, Division of Trading and Markets, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act) to mandate ethics training for persons required to be registered under the Act.[1] On April 6, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.[2] In September, 1993, the Commission issued a **Federal Register** release to clarify the procedures to be followed by persons

[1] This provision of the Act is codified at 7 U.S.C. 6p(b) (1994) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[2] 58 FR 19575, 19584–19587, 19593–19594 (Apr. 15, 1993).

seeking to provide ethics training pursuant to Rule 3.34.[3]

Rule 3.34 requires natural persons registered under the Act to attend ethics training to ensure that they understand their responsibilities to the public under the Act. The required training must address the requirements of the Act and all rules concerning the treatment and handling of customer orders and business. Issues to be addressed may include: honesty, fairness and the interests of customers and the integrity of the markets; effective supervisory systems and controls; assessment of financial situations and the investment experience of customers; disclosure of material information; and avoidance of conflicts of interest. New registrants must attend ethics training within six months of being granted registration and every three years thereafter. The initial training must be at least four hours in duration; subsequent training must be of at least one hour in duration. Persons registered when Rule 3.34 became effective on April 26, 1993 were granted until April 26, 1996 to attend an initial training session, of at least two hours in duration, and must thereafter attend a one-hour session every three years. Ethics trainers must maintain records of materials used in such training and of attendees at such training.

In July 1994, the Commission proposed amendments to Rule 3.34 to improve the operation of its ethics training program and furnish additional guidance with respect to the activities of ethics training providers.[4] The Commission has published a release announcing the adoption of those amendments published in the **Federal Register** on December 13, 1995. The amendments adopted will, among other things, require a person seeking to provide ethics training to certify that he is not subject to a statutory disqualification from registration under the Act,[5] barred from service on self-regulatory organization (SRO) governing boards or committees,[6] or subject to a pending proceeding concerning possible violations of the Act or rules or orders promulgated thereunder.

II. Proposed Amendments

A. Proficiency Testing and Minimum Experience Requirements

The Commission is now proposing further amendments to Rule 3.34 to require any person seeking to provide ethics training to furnish satisfactory evidence to a registered futures association that he has met the proficiency testing requirement[7] established by a registered futures association[8] pursuant to Section 17(p)(1) of the Act for the registration of commodity professionals[9] and possesses three years of relevant experience. Currently, the National Commodity Futures Examination (Series 3 Exam) is the proficiency test required to be completed by most commodity professionals.[10]

In commenting on the amendments proposed in July, 1994, NFA suggested that a proficiency testing requirement be incorporated in Rule 3.34 to require ethics training providers to satisfy an objective standard designed to reflect a minimum level of knowledge of the futures industry and the relevant statutory and regulatory structure. NFA and another commenter also recommended that to ensure that an ethics training provider possesses a working knowledge of the futures industry and is capable of teaching relevant rules and regulations, ethics training providers should be required to have at least three years of industry or teaching experience.

The Commission agrees that requiring persons who seek to provide ethics training to provide proof of satisfactory completion of a proficiency testing requirement applicable to registrants and of possession of three years of relevant industry or pedagogical experience provides an objective, readily administered measure for determining knowledge of relevant matters and should not be unduly burdensome. The Commission believes that it would be inconsistent with the Congressional mandate for ethics training and contrary to the public interest for a person to teach others about their responsibilities under applicable laws and rules if such a person is not able to demonstrate at least the same minimum acceptable level of proficiency as is required of those he intends to educate. Further, such requirements would be consistent with the approach followed by the Commission to date in evaluating applications from potential offerors of ethics training. In proposing Rule 3.34, the Commission noted its belief that "pedagogical expertise and knowledge of futures are factors that should be taken into consideration in evaluating potential offerors of ethics training."[11] Consequently, in reviewing applications filed under Rule 3.34 for authorization to provide ethics training, the Commission has endeavored to assure that such providers demonstrate pedagogical experience and knowledge of the futures markets. Should these proposed amendments be adopted, the Commission anticipates that NFA will promulgate rules establishing specific proficiency standards for ethics training providers.

The Commission believes that the proposed requirement of three years of relevant experience may be satisfied not only by pedagogical or teaching experience but, also, by relevant industry experience. For example, such industry experience might be acquired by the practice of law in the fields of futures or securities or employment as a trader or risk manager at a brokerage or end-user firm. The Commission welcomes comments as to the types of experience that should be deemed sufficient for this purpose.

The Series 3 Exam is the only relevant proficiency test currently available for ethics training providers, since it is the proficiency test that is generally applicable to Commission registrants and is designed to assure a broad working knowledge of the futures industry. Successful completion of the Series 3 Exam is required of all natural persons seeking to be registered as a commodity pool operator (CPO), commodity trading advisor (CTA), futures commission merchant, introducing broker, leverage transaction merchant or an associated person (AP)

[3] 58 FR 47890 (Sept. 13, 1993).

[4] 59 FR 37446 (July 22, 1994).

[5] 7 U.S.C. 12a (2) and (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

[6] No person may serve on SRO governing boards or committees who, among other things, has been found within the prior three years to have committed a "disciplinary offense" or entered into a settlement agreement with respect to a charge involving a "disciplinary offense," is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A "disciplinary offense" for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to: (1) decorum or attire; (2) financial requirements; or (3) reporting or recordkeeping, unless resulting in fines aggregating more than $5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

[7] 7 U.S.C. 6p(a)(1994).

[8] Presently, the National Futures Association (NFA) is the only registered futures association.

[9] Section 17(p)(1) of the Act, 7 U.S.C. 21(p)(1)(1994), provides, in part, that a registered futures association must establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the Act, supervisors of such persons, and all persons for whom it has registration responsibilities.

[10] *See* NFA Registration Rule 401.

[11] 58 FR 19575, 19586. However, initially the Commission elected not to establish specific requirements with respect to these matters in Rule 3.34.

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of any of the foregoing.[12] The Commission recently approved an alternative proficiency testing requirement under which general securities representatives whose commodity interest activity will be limited to managed accounts or commodity pool interests may take the Futures Managed Funds Examination (Series 31 Exam) in lieu of the Series 3 Exam. The Commission believes that even if an ethics training provider wishes to instruct only CPOs, CTAs and their APs, the more comprehensive based Series 3 Exam is the appropriate proficiency test.

B. Applicability of Certification, Proficiency Testing and Experience Requirements

Currently, Rule 3.34 requires that any provider of ethics training other than an SRO offering ethics training to its members or employees or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics must be approved by the Commission for this purpose. A comment letter addressing the amendments to Rule 3.34 published in the **Federal Register** on December 13, 1995, suggested that SROs and state-accredited entities should no longer be exempted from the general requirement under Rule 3.34 that entities seeking to provide ethics training submit an application to the Commission summarizing their ethics training program, as all ethics training providers should be subject to equivalent standards. The Commission believes that the business purposes and functions of SROs, the statutory and regulatory requirements applicable to SROs, and the Commission's oversight program for assuring compliance by SROs with their responsibilities under the Act and Commission rules provide sufficient assurance of the expertise and fitness of SROs as ethics training providers without the necessity for imposing additional requirements. Consequently, the Commission's proposals with respect to proficiency training and pedagogical or industry experience do not apply to SROs seeking to provide ethics training to their members or employees. The Commission invites commenters to address the continued appropriateness of this approach for SROs in light of the proposed modifications of the requirements with respect to other types of ethics training providers.

The Commission has determined, however, to propose that state-accredited entities be required to file with the NFA the certification required under Rule 3.34(b)(3)(iii) and to comply with the other relevant provisions of Rule 3.34, including proficiency testing and experience requirements. In the absence of such compliance and in light of the potential for significant variations among state-accreditation regimes, the Commission would have no ready means of assuring that such providers have a minimum level of relevant knowledge or experience.

The Commission is proposing that the proficiency testing and minimum experience requirements apply to the provider or sponsor of the ethics training program, to any instructors or presenters employed by the provider of such ethics training, and to those persons who prepare ethics training videotapes or electronic presentations. Existing providers, instructors and preparers operating pursuant to specific Commission authorization or otherwise in compliance with Rule 3.34 as currently in effect would not be subject to these requirements. However, if an entity whose application to provide ethics training has previously been granted by the Commission seeks to add a new instructor or course preparer, such person would be subject to the proficiency testing and minimum relevant experience standards.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein will not affect SROs who wish to provide ethics training but would affect all others who seek to be included on a list of authorized ethics training providers, including entities accredited to conduct continuing education programs by state professional licensing authorities in the fields of law, finance, accounting or economics. The impact of this proposal on persons seeking to become providers of ethics training should be minimal. At this time, a one-time processing fee for the Series 3 Exam offered by the NFA is seventy-five dollars. This should not constitute an unduly burdensome entry cost for ethics training providers; the same cost is incurred by all the attendees at ethics training as a cost of registration. Requiring a minimum level of experience also should not adversely impact small businesses as this requirement does not impose additional financial cost upon such entities.

Therefore, on behalf of the Commission, the Chairman hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any persons or entities who believe that these proposed rule amendments will have a significant impact on their operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted the proposed rule and its associated information collection requirements to the Office of Management and Budget. While the amendments proposed herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden: Rules 3.16, 3.32 and 3.34 (3038–0023, approved June 2, 1993):

Average Burden Hours Per Response—1.13
Number of Respondents—60,980
Frequency of Response—On Occasion and Triennially

Persons wishing to comment on the information which will be required by these rules as amended should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st St. N.W., Washington, D.C. 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 3

Registration, Ethics Training.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1994), hereby proposes to amend Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

[12] *See also* the 400 Series of the NFA Registration Rules, which sets forth the proficiency requirements for industry professionals and the alternatives to and exemptions from the Series 3 Exam requirements. Currently, floor traders and floor brokers are not required to pass the Series 3 Exam in order to become registered. Most floor traders and floor brokers receive orientation and ethics training from their respective exchanges.

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

§ 3.34 [Amended]

2. Section 3.34 as amended by a final rule published on December 13, 1995, is proposed to be amended by removing and reserving paragraph (b)(3)(ii) and revising the introductory text of paragraph (b)(3)(iii) to read as follows: § 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *

(3) * * *

(ii) [Reserved]

(iii) A person included on a list maintained by a registered futures association who has presented satisfactory evidence to the registered futures association that he has taken and passed the proficiency testing requirements established by a registered futures association for an ethics training provider, possesses a minimum of three years of relevant experience, and who certifies that:

* * * * *

Issued in Washington, D.C. on December 7, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30359 Filed 12–13–95; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK6–1–6587; FRL–5345–7]

State Implementation Plan: Alaska; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal.

SUMMARY: Due to an adverse comment, EPA is withdrawing the effective date for the approval of a moderate nonattainment area state implementation plan revision for Anchorage, Alaska, submitted by the Alaska Department of Environmental Conservation for the purpose of implementing an oxygenated gasoline program in the Municipality of Anchorage. The original action was published in the **Federal Register** on October 24, 1995, as a direct final rule. 60 FR 54435. As stated in the **Federal Register** notice, if adverse or critical comments were received by November 24, 1995, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is withdrawing the final rule and will address the comments received in a subsequent final rule based on the proposed rule also published on October 24, 1995. 60 FR 54465. EPA will not institute a second comment period on this document.

DATES: This withdrawal notice is effective December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air (AT–082), EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101, (206–553–0180).

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the October 24, 1995 **Federal Register**, and in the short informational notice located in the proposed rule section of the October 24, 1995 **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, and Volatile organic compounds.

Dated: December 7, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–30509 Filed 12–13–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 219, 236, 242, 252, and 253

[DFARS Case 95–D039]

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense has suspended the sections of the Defense Acquisition Regulation Supplement (DFARS) that prescribe the set-aside of acquisitions for small disadvantaged businesses (SDBs). The Department of Defense is proposing to amend the DFARS to implement initiatives designed to limit the adverse impact of the suspension. This proposal is an initial response to the suspension. The efforts of a government-wide group to reform affirmative action programs continue. It is expected that further proposals will be published for comment in the near future. This action was reviewed by the Office of Management and Budget under Executive Order 12866.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address below on or before February 12, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D039 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to SDBs while taking account of the Supreme Court's decision in *Adarand Constructors, Inc.* vs. *Pena*, 63 U.S.L.W. 4523 (U.S. June 12, 1995).

B. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite DFARS Case 95–D039 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the proposed rule contains a reporting and recordkeeping requirement. The necessary request for approval of the information collection requirement has been submitted to the Office of

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Management and Budget under Section 3507(d) of the Act.

1. Title for the collection of information, applicable forms, applicable OMB controls number, and type of request.

Approval of the information collection requirement in DFARS 252.219–7003(g) has been requested as a new clearance, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)."

2. Summary of information collection.

DFARS 219.704(a)(4) with its corresponding clause coverage at 252.219–7003(g) adds a notification requirement for contractors that have identified small, small disadvantaged or women-owned small businesses in subcontracting plans. Firms are to notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor specified formats shall be acceptable.

3. Needs and Uses.

Information is collected on an occasional basis as the need arises to keep the administrative contracting officer apprised of a contractor's compliance with approved subcontracting plans. Under the current procedure, the prime contractor proposes, and the contracting officer negotiates, an approved subcontracting plan. Consistent with 10 U.S.C. 2323, these subcontracting plans are evaluated as part of source selection. Under DFARS 215.605, criteria for proposal evaluation may include the extent to which small or small disadvantaged businesses are specifically identified in proposals (expected to be expanded to include women-owned small businesses in a separate DFARS case). Under the proposed rule, when an evaluation includes this criteria, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9. The current procedures do not explicitly provide a vehicle to determine if those small, small disadvantaged or women-owned small business firms which have been identified as subcontractors are actually awarded subcontracts. Small firms have repeatedly raised the issue that prime contractors do not follow through on subcontracting plans as proposed and evaluated. Notification is required for DoD to assess compliance with approved subcontracting plans. Under the proposed rule at DFARS 242.1503, past performance evaluations for previously awarded contracts should consider any notifications under the proposed DFARS 252.219–7003(g).

4. Frequency. On Occasion.

5. Estimate of total annual reporting and recordkeeping burden.

Number or respondents: 41.

Annual responses: 41.

Annual burden hours: 41.

We estimate that 30 percent (1,650) of the total estimated number of subcontracting plans (5,500) include specific names of small businesses, small disadvantaged businesses, and women-owned small businesses. We estimate that substitution occurs in 10 percent (165) of those plans. Since subcontracting plans typically address several years of contract effort, we estimate that 25 percent (41) of the substitutions will occur on an annual basis.

6. Comments. Written comments to OMB, citing DFARS Case 95–D039, are invited. Particular comments are solicited on:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

b. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the collection of information on respondents.

List of Subjects in 48 CFR Parts 215, 219, 236, 242, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 219, 236, 242, 252, and 253 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 215, 219, 236, 242, 252 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.605 is amended by revising paragraph (b)(ii)(E) and by adding paragraph (b)(iv) to read as follows:

215.605 Evaluation factors.

(b) * * *

(ii) * * *

(E) When not otherwise required by 215.608(a)(2), prior performance of the offerors in complying with requirements of the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

* * * * *

(iv) When an evaluation includes the criterion at (b)(ii)(A), the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

* * * * *

3. Section 215.608 is amended by redesignating existing paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

215.608 Proposal evaluation.

(a) * * *

(2) When a past performance evaluation is required by FAR 15.605 and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

4. The heading of Part 219 is revised to read as set forth above.

5. Section 219.704 is amended by adding paragraph (a)(4) to read as follows:

219.704 Subcontracting plan requirements.

(a) * * *

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor specified formats shall be acceptable.

6. Section 219.1006 is amended by revising paragraph (b)(1)(B) to read as follows:

219.1006 Procedures.

(b) * * *

(1) * * *

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

* * * * *

7. Section 219.7001 is amended by revising paragraph (a) to read as follows:

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

* * * * *

8. Subpart 219.72 is added to read as follows:

219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

Sec.

219.7200 Policy.
219.7201 Administration of the Test Program.
219.7202 Applicability.
219.7203 Procedures.
219.7204 Contract Clause.

219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over an eighteen-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBU). Fourteen months after the initiation of this test program, the military departments and defense agencies shall submit a status report to the Director, SADBU. This report shall specify the impact of the evaluation preference over the first twelve months of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity expects that—

(1) The contracting activity will meet its goal for SDB concerns, established pursuant to 10 U.S.C. 2323, during the current fiscal year, without this preference;

(2) The evaluation preference is having a disproportionate impact on non-SDB concerns; or

(3) The preference is otherwise not in the best interest of the Government.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no further preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 36.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219–7010, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference; and

(2) Where work is to be performed inside the U.S., its territories or possession, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

9. Section 236.303–70 is amended by revising the introductory text of paragraph (c)(2) to read as follows:

236.303–70 Additive or deductive items.

* * * * *

(c) * * *

(2) Evaluate all bids, including those using the procedures in 219.703, on the basis of the same additive or deductive bid items.

* * * * *

PART 242—CONTRACT ADMINISTRATION

10. Subpart 242.15 is added to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.

242.1503 Procedures.

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.219–7003 is amended by adding paragraph (g) to read as follows:

252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).

* * * * *

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and

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shall occur within a reasonable period of time after award of the subcontract. Contractor specified formats shall be acceptable.

12. Section 252.219–7010 is added to read as follows:

252.219–7010 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—Test program.

As prescribed in 219.7204, use the following clause:

Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program (Date)

(a) *Definitions.*

As used in this clause—

"Historically black colleges and universities (HBCUs)," means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986. "Minority institutions," means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

"Small disadvantaged business (SDB) concern," means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.* (1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no further preference based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of ten percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; or

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____Offeror elects to waive the preference.

(d) *Agreements.* A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

PART 253—FORMS

13. Section 253.204–70 is amended by revising paragraph (e)(3) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(e) * * *

(3) *Block E3, Next Low Offer.*

(i) Complete Block E3 only if Block E2 is completed, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth at 219.72 is applied. Otherwise, leave Block E3 blank.

(ii) If Block E2 is completed, enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. If the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth at 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

* * * * *

[FR Doc. 95–50469 Filed 12–13–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 242

[DFARS Case 91–065D]

Defense Federal Acquisition Regulation Supplement; Personal Services Compensation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense has decided to withdraw a proposed rule published on December 6, 1994 (59 FR 62704). The rule proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a dollar threshold for DoD contractors for application of the Federal Acquisition Regulation (FAR) requirements for contractor compensation system reviews. After review of public comments, DoD has determined the proposed DFARS revisions are unnecessary.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–30470 Filed 12–13–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 60, No. 240

Thursday, December 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

December 4, 1995.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Rural Utilities Service

- *Title:* Review Rating Summary.

Summary: RUS Form 300, Review Rating Summary, provides ratings of borrower facilities so that the Rural Utilities Service (RUS) can monitor system operations, maintenance, and planning review.

Need and Use of the Information: A periodic operations and maintenance review, using the RUS Form 300 in accordance with RUS Bulletin 161–5 is an effective means for RUS to determine whether the borrowers' systems are being properly operated and maintained, thereby protecting the loans collateral. The review is also used to rate facilities and can be used for appraisal of collateral.

Description of Respondents: Business or other for-profit.

Number of Respondents: 280.

Frequency of Responses: Reporting—Once every 3 years.

Total Burden Hours: 1,120.

Federal Crop Insurance Corporation

- *Title:* 7 CFR Parts 402, 401, 443 and 457—Catastrophic Risk Protection Plan and Related Requirements.

Summary: This submission revises collections previously cleared to now incorporate provision or policy changes relative to proposed rules at 7 CFR Parts 401, 443, and 457 announcing prevented planting coverage changes for the 1996 crop year.

Need and Use of the Information: The data is used to determine program eligibility for crop coverage and prevented planting coverage.

Description of Respondents: Farms.

Number of Respondents: 1,750,015.

Frequency of Responses: Reporting—Annually.

Total Burden Hours: 2,668,750.

Emergency processing of this submission has been requested by December 15, 1996.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–30427 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–062–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 14 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the release into the environment of nonindigenous biological control agents. The environmental assessments provide a basis for our conclusion that the release into the environment of the biological control agents will not present a risk of introducing plant pests into the United States or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896. For copies of the environmental assessment and finding of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act as amended (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act, as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates plant pests under regulations promulaged pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests.

Under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS typically prepares an environmental assessment before issuing a permit for the release in the United States of nonindigenous organisms.

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In accordance with applicable regulations, APHIS has received applications for permits for the release into the environment of nonindigenous biological control agents. In the course of reviewing each permit application, APHIS assessed the plant pest risk posed by each organism and the impact on the environment of releasing each organism under the conditions described in the permit application. APHIS has issued permits for the release into the environment of the organisms listed below after concluding that their release in accordance with conditions on the permits will not present a risk of the introduction or dissemination of plant pests within the United States and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing the biological control agents into the environment.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits for the release into the environment of the following biological control agents:

Organism	Title of environmental assessment	Date of finding of no significant impact
Cirrospilus quadristriatus (Subba Rao and Ramamani).	"Field Release of a Nonindigenous Wasp (*Cirrospilus quadristriatus* (Subba Rao and Ramamani)) for Biological Control of Citrus Leafminer (*Phyllocnistis citrella* Stainton)" (July 1994).	7/25/94.
Anaphes nitens (Girault)	"Field Release of the Nonindigenous Wasp, *Anaphes nitens* (Girault) (Hymenoptera: Mymaridae), for Biological Control of the Eucalyptus Snout Beetle, *Gonipterus scutellatus* Gyllenhal (Coleoptera: Curculionidae)" (August 1994).	8/24/94.
Eretmocerus sp. M94002	"Field Release of a Nonindigenous Species M94002 (*Eretmocerus* sp. M94002) for Biological Control of Silverleaf Whitefly" (September 1994).	9/9/94.
Encarsia inaron Walker	"Field Releases of a Nonindigenous Species (*Encarsia inaron* Walker) for Biological Control of Ash Whitefly" (September 1994).	9/16/94.
Aphytis Species	"Field Releases of Nonindigenous *Aphytis* Species for Biological Control of Armored Scale Insects" (September 1994).	9/16/94.
Tetranychus lintearius Dufour	"Field release of the Nonindigenous Gorse Spider Mite, *Tetranychus lintearius* Dufour (Acari: Tetranychidae), for Biological Control of Gorse, *Ulex europaeus* L. (Leguminosae)" (October 1994).	10/25/94.
Montandaniola moraguesi Puton	"Field Release of a Nonindigenous Species, *Montandaniola moraguesi* Puton (Hemiptera: Anthocoridae) for Biological Control of Cuban laurel thrips" (February 1995).	2/10/95.
Encarsia Species	"Field Releases of Certain *Encarsia* Species (Hymenoptera: Aphelinidae) for Biological Control of Armored Scale Insects and Whitefly" (February 1995).	2/17/95.
Eretmocerus	"Field Releases of Nonindigenous Parasitic Wasps in the Genus *Eretmocerus* (Hymenoptera: Aphelinidae) for Biological Control of Whitefly Pests (Homoptera: Aleyrodidae)" (April 1995).	3/4/95.
Pseudoscymnus Species	"Field Release of a Nonindigenous Lady Beetle, *Pseudoscymnus* sp. (Coleoptera: Coccinellidae), for Biological Control of Hemlock Wolly Adelgid, *Adelges tsugae* (Homoptera: Adelgidae)" (April 1995).	3/4/95.
Wollastoniella rotunda	"Field Release of a Nonindigenous Minute Pirate Bug, *Wollastoniella rotunda* (Hemiptera: Anthocoridae) for Biological Control of Melon Thrips, *Thrips palmi* (Thysanoptera: Thripidae)" (April 1995).	3/4/95.
Catolaccus grandis	"Field Release of a Nonindigenous Parasitic Wasp, *Catolaccus grandis* (Hymenoptera: Pteromalidae), for Biological Control of Boll Weevil" (March 1995).	3/31/95.
Carposina bullata	"Field Release of Nonindigenous Moths, *Carposina bullata* (Lepidoptera: Carposinidae) and *Mompha trithalama* (Lepidoptera: Momphidae), for Biological Control of the Weeds *Clidemia hirta* and *Miconia calvescens* (Melastomataceae) in Hawaii" (May 1995).	5/8/95.
Pseudacteon	"Field Release of Nonindigenous Parasitic Scuttle Flies in the genus *Pseudacteon* (Diptera: Phoridae) for Biological Control of Red Imported Fire Ant, *Solenopsis invicta*, and Black Imported Fire Ant, *S. richteri* (Hymenoptera: Formicidae)" (May 1995).	5/16/95.

The environmental assessments and findings of no significant impact have been prepared in accordance with : (1) NEPA, (2) Regulations of the Council on Environmental Quality for Implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 8th day of December 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–30460 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–34–P

Agriculture Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for Licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. International patent applicants are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, Room 415, Bldg. 005, BARC-West, Beltsville, MD 20705: Phone 301–504–5989 or Fax 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

8–378, 157, Use of Rumen Contents from Slaughter Cattle for the Production Lactic Acid
8–382, 554, Process for Converting Unsaturated Fatty Acids into Estolides
8–404, 007, Monocolnal Antibodies to Hygromycin B and the Method of Making the Same.
8–404,779 Synethic Diet for Rearing the Hymenopterous Ectoparasitoid, Catolaccus grandis
8–415,835, Control of Fluids
8–416,405, Mass or Weight Determination of Arbitrarily-Shaped Dielectric Object by Microwave Resonator Measurements.
8–418,716, Non-Infectious Foot-and Mouth disease viruses
8–418,389, Calcium Formulations for Prevention of Parturient Hypocalcemia
8-432,923, Sex Attractant for the Cranberry Fruitworm
8–490,003, Bacteria and Enzymes for Production of Alternan Fragments
8–499,081, Botcinol: A Natural Product Herbicide
8–499,481, Method and Compositions for Producing Desiccation Tolerant Paecilomyces fumosoroseus Spores
8–499,592, Starch-Based Microcellular Foams
8–499,803, A Monoclonal Antibody to Vitellin of the Corn Earworm, Helicoverpa zea
8–501,526, Composition and Use of Polymerizable Oil for Leather Fatliquor
8–508,358, Avirulent Geotrichum candium for Biological Control of Postharvest Rots on Fruit
8–510,065, A continuous Process for the Production of Lactulose from Lactose Using Boric Acid as a Complexation Agent
8–518,869, Aminoglycoside Binding Proteins for Non-Immunoaffinity Binding and Diagnostic Assay Method for Detection of Aminoglycosides
8–524,668, Chicken Monoclonal Antibodies Specific for Coccidial Antigens Involved in Invasion of Host Lymphocytes
8,529,299, Films Fabricated from Mixtures of Pectin and Poly(Vinyl Alcohol)
8–533,416, Cation Exchange Resin

June Blalock,

Technical Licensing Coordinator.

[FR Doc. 95–30489 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to American Cyanamid Company of Princeton, New Jersey, to Sandoz Agro, Inc. of Palo Alto, California, and to biosys, inc. of Columbia, Maryland, co-exclusive licenses to U.S. Patent No. 5,124,149 issued June 23, 1992, "Compositions and Methods for Biocontrol Using Fluorescent Brighteners." Notice of Availability was published in the **Federal Register** on January 31, 1991.

DATES: Comments must be received by no later than February 12, 1996.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Cyanamid Company, Sandoz Agro, Inc., and biosys, inc. have submitted complete and sufficient applications for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–30490 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on January 16, 1996, in Vancouver, Washington, at the Mark 205 Inn, on 221 NE Chkalov Drive. The meeting will begin at 9 a.m. and continue until 4:30 p.m. Meeting purpose is to utilize the Province Health Matrix, to advise on watershed restoration project priorities for the Cowlitz, Lewis, Wind River, and White Salmon Basins. Agenda items to be covered include: (1) Scientific Review and proposed Forest priorities for watershed restoration; (2) Subcommittee progress with Social/Economic Health Measures and Monitoring program; (3) Update on Cispus Adaptive Management Area; and (4) Public Open Forum.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (1) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs, at (360) 750–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., PO Box 8944, Vancouver, WA 98668–8944.

Dated: December 8, 1995.

Richard C. Stem,

Advisory Committee Staff Officer.

[FR Doc. 95–30464 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–11–M

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National Agricultural Statistics Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Egg, Chicken, and Turkey Surveys.

DATES: Comments on this notice must be received by February 12, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Egg, Chicken, and Turkey Program obtains basic poultry statistics from voluntary cooperators throughout the Nation. The data are used to prepare and issue current State and national estimates. Statistics are published on placement of pullet chicks for hatchery supply flocks, hatching reports for broiler-type, egg-type, and turkey eggs, number of layers on hand, total table egg production, non-federally inspected poultry slaughter, and production, disposition, and income estimates for eggs, chickens, and turkeys. Non-federally inspected poultry slaughter data are obtained from State Department of Agriculture.

The statistical information is used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the school lunch program and in formulation of export-import policy.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,100.

Estimated Total Annual Burden on Respondents: 4,145 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 14th and Independence Avenue SW., Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, December 7, 1995.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 95–30419 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–45–M

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Milk and Milk Products Surveys.

DATES: Comments on this notice must be received by February 12, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Milk and Milk Products Surveys.

OMB Number: 0535–0020.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the Nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 159,000.

Estimated Total Annual Burden on Respondents: 18,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 14th and Independence Avenue SW., Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, December 7, 1995.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 95–30420 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–20–M

Rural Utilities Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Rural Utilities Service's (RUS) intentions to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn D. Wolfgang, Management Analyst, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Avenue, SW., AG Box 1522, Washington, DC 20250–1522, Telephone: (202) 720–0812. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Expiration Date: February 28, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the establishment and maintenance of the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Contraction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

Title 7 Part 1792, Subpart C, Seismic Safety of Federally Assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by RUS or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB. This subpart implements and explains the provisions of the loan contract utilized by the RUS for both electric and telecommunications borrowers and by the RTB for its telecommunications borrowers requiring construction certifications affirming compliance with the standards.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 100

Estimated Number of Responses per Respondent: 2

Estimated Total Annual Burden on Respondents: 300

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support Staff, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 7, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–30488 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–15–P

ASSASSINATION RECORDS REVIEW BOARD

Privacy Act Systems of Records

AGENCY: Assassination Record Review Board.

ACTION: Notice of systems of records.

SUMMARY: The Assassination Records Review Board (Review Board) proposes to establish an inventory of fifteen systems of records that are subject to the Privacy Act of 1974. In this notice, the Review Board provides the required information on these fifteen systems of records.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530, (202) 724–0088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30 day period in which to comment on any new routine use of a system of records. The Office of Management and Budget, which has oversight responsibilities under the Act, requires a 40 day period in which to conclude its review of the new systems. Therefore, please submit any comments by January 16, 1996. The public, OMB, and the Congress are invited to send written comments to T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Review Board has provided a report to OMB and the Congress on the proposed systems of records.

Elsewhere in today's **Federal Register** is a regulation exempting certain

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systems of records from certain requirements of the Privacy Act.

Procedures for all Systems of Records

Notification Procedure:

Requests by an individual to determine if any Assassination Records Review Board system of records contains information about him or her should be directed to the Privacy Act Officer at the Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530. Requesters will be required to provide their complete name and a certification indicating that they are the person they claim to be, to the Privacy Act Officer. To ensure that the Review Board does not make a wrongful disclosure, the Privacy Act Officer may, at any time, require additional information verifying the identity of the requester. Section 1415.15 of the Review Board's Rules Implementing the Privacy Act, printed elsewhere in today's **Federal Register**, establishes procedures for systems of records notification.

Record Access Procedure

The record access procedure is the same as the notification procedure, except that an individual must present to the Privacy Act Officer an official photo identification, such as a driver's license, passport, or Government identification, before viewing records. Sections 1415.20 and 1415.25 of the Review Board's Rules Implementing the Privacy Act, printed elsewhere in today's **Federal Register**, establishes procedures for accessing Privacy Act records.

Contesting Record Procedure

An individual may request amendment of those records covered by the Privacy Act that are not accurate, relevant, timely, or complete. Section 1415.35 of the Review Board's Rules Implementing the Privacy Act, printed elsewhere in today's **Federal Register**, establishes procedures for requesting amendment of Privacy Act records.

Routine Uses for all Systems of Records

Routine Use for Disclosure to the Department of Justice for Use in Litigation

To the Department of Justice when: (a) The Review Board, or (b) any employee of the Review Board in his or her official capacity where the Department of Justice has agreed to represent the employee, or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the Review Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Review Board to be for a purpose that is compatible with the purpose for which the Review Board collected the records.

Routine Use for Other Disclosures in Litigation

To a court or adjudicative body in a proceeding when: (a) The Review Board, or (b) any employee of the Review Board in his or her official capacity, or (c) any employee of the Review Board in his or her individual capacity where the Review Board has agreed to represent the employee, or (d) the United States Government, is a party to litigation or has an interest in litigation, and by careful review, the Review Board determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the Review Board to be for a purpose that is compatible with the purpose for which the Review Board collected the records.

Routine Use for Law Enforcement Purposes

When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, state, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

Routine Use for Disclosure to a Member of Congress at the Request of a Constituent

To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Routine Use for Disclosure to NARA

Records from systems of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

Routine Use for Disclosure to Contractors Under Section (m)

To Review Board contractors, grantees, experts, consultants, or volunteers who the Review Board engages to assist in the performance of a service related to a particular system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

Routine Use for Disclosure to HHS Parent Locator System for Finding Parents Who Do Not Pay Child Support

The name and current address of record of an individual may be disclosed from certain systems of records to the parent locator service of the Department of HHS or authorized persons defined by Pub. L. 93–647. 42 U.S.C. 653.

Routine Use for Use in Employment, Clearances, Licensing, Contract, Grant, or Other Benefits Decisions by the Review Board

Disclosure may be made to Federal, state, local, or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

Routine Use in Employment, Clearances, Licensing, Contract, Grant, or Other Benefit Decisions by Other Than the Review Board

Disclosure may be made to a Federal, state, local, foreign, or tribal or other public authority that certain systems of records contain information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil,

administrative, personnel, or regulatory action.

SYSTEMS OF RECORDS
ARRB–1

SYSTEM NAME:

Address Book on Notes (ARRB–1).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Assassination Records Review Board members and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains electronic mail addresses of Assassination Records Review Board members and staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.8.

PURPOSE:

The purpose of this system is to list the electronic mail addresses of Review Board members and staff to facilitate communication among agency employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

By name of Assassination Records Review Board member or staff.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored. Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

David Marwell, Executive Director, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Review Board Members and Staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–2

SYSTEM NAME:

Agency Contacts (ARRB–2).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Staff members of various Federal Government agencies with whom the Assassination Records Review Board has had contact.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding Review Board contacts with employees of other Federal agencies. Information maintained on individuals in this database may include: Individual's name, organization, title, official duties, business address, business phone number, business electronic mail address, and business fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7 (i) and (j)

PURPOSE:

The purpose of this system is to track Review Board contacts with current employees of other Federal agencies who are acting in their official capacities. In most cases, Review Board staff members contact other Federal agencies in search of assassination records other agencies may have. Review Board staff members also contact employees of other Federal agencies with questions about administration of the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

Full text indexed on computer. Can search by any text.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored.

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Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

David Marwell, Executive Director, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Review Board members and staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption under 5 U.S.C. 552a(k)(2).

ARRB–3

SYSTEM NAME:

Correspondence (ARRB–3).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Any individual who corresponds with the Assassination Records Review Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of the letters that individuals send to the Review Board, and letters that the Review Board sends to individuals. The records may include names, addresses, telephone numbers, and any other information individuals provide to the Review Board in correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7 (i) and (j)

PURPOSE:

The purpose of this system is to keep track of the Review Board's correspondence with individuals who correspond with the Review Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of individual who corresponds with Review Board.

SAFEGUARDS:

This system of records is located in a file cabinet within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level.

RETENTION AND DISPOSAL:

Review Board will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Thomas Samoluk, Associate Director for Communication, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Individual who writes to the Review Board, and Review Board staff members who respond to correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–4

SYSTEM NAME:

Employment Applications (ARRB–4).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals who apply to the Assassination Records Review Board for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes, cover letters, references, correspondence to and from applicants. Individual information may include name, address, telephone numbers, educational history, work history, and any other information the applicant provides.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.8

PURPOSE:

The purpose of this system is to maintain a file of the applications for employment received by the Review Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the routine uses listed at the beginning of this Notice, the Review Board may contact references provided by the applicant for the purpose of verifying information in the application and in the interview.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992).

SYSTEM MANAGER(S) AND ADDRESS:

Tracy Shycoff, Associate Director for Administration, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Information in this system of records is derived, to the greatest extent possible, from the applicants themselves. In addition, applicants provide the Review Board with references and Review Board staff may obtain information from references for the file. Administrative staff and staff with personnel authority may place response letters and interview notes in the files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption under 5 U.S.C. 552a(k)(5).

ARRB–5

SYSTEM NAME:

Freedom of Information Act Requests (ARRB–5).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals who file Freedom of Information Act requests with the Assassination Records Review Board members and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requester letters, agency response letters and enclosures, requester information (name, address, telephone number, fax number), information regarding processing of request (expenses incurred, dates requests are received, and dates requests are due.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 44 U.S.C. 2107.11(b)

PURPOSE:

The purpose of this system is to keep a record of requests that the Review Board has received pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Review Board's responses to those requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database and paper files.

RETRIEVABILITY:

By name of FOIA requester.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Laura Denk, Designated FOIA Officer, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Individual requester, Executive Director of Review Board, Review Board's Designated FOIA Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–6

SYSTEM NAME:

Investigations into Location of Assassination Records (ARRB–6).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals who research events surrounding the assassination, members of the public, prior Federal employees who worked on Congressional committees or Presidential commissions that investigated the assassination, former Federal Government employees who were possible subjects of

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assassination investigations, and individuals who were cooperative witnesses in prior assassination investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on individuals under investigation may include: Name, address, date and place of birth, social security number, last known home address, individual's connection to the assassination of President Kennedy, names of relatives and/or acquaintances, work history, and educational history. Other records in the system include: Correspondence, call reports, interview reports, investigative notes, requests to Financial Crimes Enforcement Network for information and responses, requests to National Personnel Records Centers for information and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7(j)

PURPOSE:

The purpose of this system is to investigate where assassination records may be located. This purpose is accomplished by contacting members of the public, prior Federal employees who worked on committees and commissions that investigated the assassination or who were possible subjects of assassination investigations, individuals who acted as witnesses in prior assassination investigations, and individuals who research events or topics relevant to the assassination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer databases and paper files.

RETRIEVABILITY:

Computer database: Full text is indexed on computer. Can search by any text. Paper files: By subject of investigation.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where parts of this particular system of records are stored. Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

David Montague, Investigator, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Individuals who provide information in response to investigative telephone calls, correspondence, and interviews. Review Board members and staff. Financial Crimes Enforcement Network printouts. National Personnel Records Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption from 5 U.S.C. 552a(k)(2).

ARRB–7

SYSTEM NAME:

Mailing List (ARRB–7).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Names and mailing addresses of individuals who have either asked to receive public mailings or who have written to the Review Board inquiring about general information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual names and addresses of individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7(j)

PURPOSE:

The purpose of this system is to have a central list of names and addresses of individuals who have asked the Review Board to place their names and addresses on the Review Board's mailing list. These individuals receive all press releases and notices that the Review Board prints in the Federal Register.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

By name of person on the mailing list.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored.

Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGERS AND ADDRESS:

Thomas Samoluk, Associate Director for Communication, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Individuals who write the Review Board and request that they be placed on the mailing lists. Review Board staff members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–8

SYSTEM NAME:

Personal Security Files (ARRB–8).

SECURITY CLASSIFICATION:

Top Secret.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Current, former, and pending Assassination Records Review Board staff who have applied for security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

All information the individual supplied for his or her security investigation, including names, current and former addresses, social security number, work history, educational history, names of relatives and acquaintances and references. Results of background investigation. Some staff members were previously employees of other Government agencies and background information in their files may include information from SF–85 forms they completed for a previous job. Fingerprint cards. Letters of adjudication. Privacy Act waivers signed by staff. Records of the individual's security education. Records of any security infractions by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7(c), 2107.8, 5 U.S.C. 732, and Executive Order 10450.

PURPOSE:

The purpose of this system is for the Review Board's security officer to have enough information about Review Board staff members to adjudicate whether staff members are eligible for national security positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the routine uses listed at the beginning of this notice, the Review Board's Security Officer and Deputy Security Officer disclose information from this system of records to security officers at the Department of Justice who aid the Review Board in making determinations about eligibility for security clearances.

The Review Board may disclose a staff member's name and security clearance level to another Federal agency when a member of the staff needs to review another agency's classified material under the JFK Act.

Certain assassination records are classified at the Special Compartmented Information (SCI) level and some Review Board staff members will require SCI clearances to review these types of records. Because the Review Board does not have authority to grant such clearances, the Review Board may disclose the results of a staff member's background investigation to the Central Intelligence Agency (CIA) so that the CIA can adjudicate the staff member's request for a SCI clearance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of Assassination Records Review Board staff member.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Within the Review Board's offices, records are stored in a GSA approved safe in a controlled access area.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992).

SYSTEM MANAGER(S) AND ADDRESS:

David Marwell, Executive Director and Security Officer, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Information in this system of records is derived, to the greatest extent possible, from the applicants themselves. In addition, applicants provide the Review Board with names of individuals, organizations, and geographical locations. The background investigator obtains information from such references for the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption from 5 U.S.C. 552a (k)(1) and (k)(5).

ARRB–9

SYSTEM NAME:

Personnel Files (ARRB–9).

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SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Assassination Records Review Board members, current staff, former staff, and pending staff with active offers of employment from the Review Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The General Services Administration (GSA) keeps the Official Personnel Files (OPF) of Review Board members and staff. The Review Board keeps copies of documents that are in the OPF at GSA, including copies of SF–171 forms (listing individual's name, address, telephone numbers, availability, salary requirements, military service, special skills, accomplishments, awards, names of references, work history, educational background, social security number, names of family members who work for the Government, whether individual has ever been convicted of a felony). In addition, the Review Board keeps staff resumés (which include much of the same information provided in the SF–171), names of references, interview notes, benefits information, employee evaluations, letters to applicants extending offers of employment, and personnel actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.8

PURPOSE:

The purpose of this system is to allow the Review Board to keep effective hiring decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of Assassination Records Review Board member or staff.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Records are stored in locked file cabinets in a controlled access area.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992).

SYSTEM MANAGER(S) AND ADDRESS:

Tracy Shycoff, Associate Director for Administration, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

To the greatest extent possible, records in this system are derived from information that the individual provides to the Review Board. Other sources of information include individual's supervisor, persons who act as references for individual, and administrative staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–10

SYSTEM NAME:

Public Contacts (ARRB–10).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Members of the general public with whom the Assassination Records Review Board has established contact. Members of the public who worked on Presidential commissions or Congressional committees that investigated the assassination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, organization, title, address, telephone, fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7(j)

PURPOSE:

The purpose of this system is to track Review Board contacts with individuals who are not current employees of other Federal agencies acting in their official capacities. (Contacts with current Federal employees who are acting in their official capacities will appear in the Agency Contacts system of records.) In most cases, Review Board staff members contact such individuals in search of assassination records or information about assassination records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

By name of the subject individual.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored. Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Thomas Samoluk, Associate Director for Communication, Assassination Records Review Board, 600 E Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Review Board staff members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption under 5 U.S.C. 552a(k)(2).

ARRB–11

SYSTEM NAME:

Record Identification Form Databases (ARRB–11).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals listed on record identification forms.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record Identification Forms list, in relevant part, the names of individuals who are mentioned in the particular Government record that is the subject of the Record Identification Form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.9 and 2107.7 (i) and (j)

PURPOSE:

The JFK Act requires that each assassination record be accompanied by an electronic identification aid. The National Archives designed the form for these record identification forms, and the Review Board uses these forms regularly in keeping track of assassination records that have been, are being, or need to be processed. The forms have two sections that often contain the names of individuals—the "to/from" section that identifies the author and the addressee of the assassination record and the "subjects" section that identifies the subject matter of the document. Generally, the name is the only personal information that appears on the form, so the effects on the privacy of individuals is minimal. The JFK Act, 44 U.S.C. 2107.9 and 2107.7 (i) and (j), provides authority for maintenance of this system. The documents in this system are generated, in large part, by other Federal agencies and each document in the system refers to a record that originated in another Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database.

RETRIEVABILITY:

Full text indexed on computer. Can search by any text.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored. Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

David Marwell, Executive Director, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

The JFK Act requires that all agencies with assassination records process those records under the JFK Act and create a "record identification form" that identifies the record. The agency sends its electronic version of the record identification forms to the Review Board. The information in the record identification forms originates with the agency that created the form.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–12

SYSTEM NAME:

Research and Analysis Research Aids (ARRB–12).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW. 2nd Floor, Washington, DC 20530.

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CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals relevant to the assassination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, information connection the individual to events surrounding the assassination of President Kennedy.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7 (i) and (j)

PURPOSE:

The Review Board staff is divided into several units, one of which is the Research and Analysis unit. Analysts in this unit, together with the Associate Director of Research and Analysis, develop research aids to assist in identifying individuals and events connected to the assassination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer document.

RETRIEVABILITY:

Documents are on word processor. Can search documents for any text.

SAFEGUARDS:

This system of records is located on a computer system within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Only Review Board members and staff have access to Review Board computers where this particular system of records is stored. Each individual who accesses Review Board computers has two passwords that he or she defines and must use each time he or she logs into a Review Board computer.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

T. Jeremy Gunn, Associate Director for Research and Analysis, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Review Board members and staff, secondary source material concerning the assassination, including articles, books, computer databases, and unclassified Government documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

AARB–13

SYSTEM NAME:

Subject File (ARRB–13).

SECURITY CLASSIFICATION:

Top Secret.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Individuals who are relevant to the assassination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, titles, organizations, current and/or former business and/or home addresses, current and/or former business and/or home telephone numbers, current and/or former business and/or home fax numbers, work history, educational history, and connection to events surrounding the assassination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.7 (i) and (j)

PURPOSE:

In order to locate as many assassination records as possible, staff members on the Review Board must have a full understanding of events connected to the assassination. The Research and Analysis unit of the Review Board staff maintains this system of records to hold information on a variety of assassination-related subjects, such as "Oswald in Mexico City," "Zapruder Film," and "Jack Ruby."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All routine uses for this system of records are located at the beginning of this notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of subject. Subject may be an individual.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

T. Jeremy Gunn, Associate Director for Research and Analysis, Assassination Records Review Board,

600 E Street NW, 2nd Floor, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Secondary source materials, including articles, books, computer databases, and unclassified Government records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Yes. Some portions of this system of records are eligible for exemption under 5 U.S.C. 552a (k)(1) and (k)(2).

ARRB–14

SYSTEM NAME:

Time and Attendance Files (ARRB–14).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Current and former Assassination Records Review Board members and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.8

PURPOSE:

The purpose of this system of records is to keep track of Review Board staff members' time and attendance at work in order to administer payroll, annual leave, and sick leave policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the routine uses listed at the beginning of this Notice, the Associate Director for Administration routinely discloses information from this system to the General Services Administration.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of Assassination Records Review Board member or staff.

SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Records are stored in a locked file cabinet in a controlled access area.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992).

SYSTEM MANAGER(S) AND ADDRESS:

Tracy Shycoff, Associate Director for Administration, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

The Associate Director for Administration fills in the forms in the system based on leave request forms that individual staff members complete.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

ARRB–15

SYSTEM NAME:

Travel and Reimbursement Files (ARRB–15).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Assassination Records Review Board members, staff, and invited speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, telephone numbers, fax numbers, social security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2107.8

PURPOSE:

The purpose of this system of records is to keep track of Review Board members', contractors', and staff members' travel plans, expenses, and reimbursements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the routine uses listed at the beginning of this notice, the Associate Director for Administration and the Assistant Associate Director for Administration routinely use this system of records to arrange and track business travel for Review Board members and staff. In addition, the Associate Director for Administration and the Assistant Associate Director for Administration use the system of records to track expenses of Review Board members and staff and to reimburse Review Board members and staff for expenses. The Review Board discloses information from this system of records to travel agents and travel vendors. In addition, the Review Board discloses information from this system of records to the General Services Administration.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name of individual traveler or individual who requires reimbursement.

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SAFEGUARDS:

This system of records is located within the headquarters offices of the Assassination Records Review Board. The offices are located in a secure Federal building, with Department of Justice guards at all entrances. Within the building, the offices are always locked. Review Board members and staff have encoded cards that allow entry into the offices. Visitors must be accompanied at all times by a Review Board member or staff member. All Review Board members and staff have received security clearances at the top secret level. Records are stored in a locked file cabinet in a controlled access area.

RETENTION AND DISPOSAL:

Review Board records will be retained pursuant to the provisions of *The President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107 (1992). Congress has determined that all Review Board records are permanently valuable and will be retained for inclusion in the JFK Collection at the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Tracy Shycoff, Associate Director for Administration, Assassination Records Review Board, 600 E Street NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

The notification procedure for all systems of records is detailed at the beginning of this Notice.

RECORD ACCESS PROCEDURES:

The record access procedures for all systems of records is detailed at the beginning of this Notice.

CONTESTING RECORD PROCEDURES:

The contesting record procedures for all systems of records is detailed at the beginning of this Notice.

RECORD SOURCE CATEGORIES:

Review Board members and staff. Travel agents. Travel vendors. General Services Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions.

Dated: December 8, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95–30363 Filed 12–13–95; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Employers Survey II.

Form Number(s): None. Automated survey instrument.

Agency Approval Number: 0607–0787.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 600 hours.

Number of Respondents: 3,000

Avg Hours Per Response: 12 minutes.

Needs and Uses: The Bureau of the Census plans to conduct a follow–up to the National Employers Survey (NES) (originally titled the National Training Survey) which was conducted in the Fall of 1994. The NES provided a baseline of information about how employment, training, and hiring practices affect and promote a skilled and proficient workforce. Results were enthusiastically welcomed and accepted by government, business, and academia as filling a need for information on employment, training, and hiring practices and policies. The NES II is a short follow–up survey directed to the original NES respondents to clarify, confirm, and amplify the results of the original survey, as well as address some points raised by those results. Employers will use the results of the NES, augmented with this follow–up information, to formulate employment practices and policies. Government will use the results in legislative and policy–making decisions.

Affected Public: Businesses or other for–profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–30412 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Annual Demographic Survey – Supplement to the Current Population Survey.

Form Number(s): CPS–580, –580(SP), –676, –676(SP).

Agency Approval Number: 0607–0354.

Type of Request: Extension of a currently approved collection.

Burden: 23,442 hours.

Number of Respondents: 58,000.

Avg Hours Per Response: 24½ minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). In the ADS, we collect information in the areas of work experience, migration, personal income and noncash benefits, household noncash benefits, and race. The Bureau of Labor Statistics and the Department of Health and Human Services co–sponsor the supplement along with the Census Bureau and use data gathered in the ADS to determine the official Government poverty statistics. The questions for the 1996 supplement will be the same as those asked in 1995 with some new items and some changes to existing items.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–30413 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

Title: Study of Public Attitudes Toward Administrative Records Use

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and response burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Randall Neugebauer, Bureau of the Census, Room 3587–3, Washington, D.C. 20233–7100, (301) 457–3952.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this survey is to study the public's attitudes regarding: 1) the Census Bureau's planned use of administrative records in the 2000 census and 2) a proposal to collect social security numbers for each household member in the decennial census. In the design for the 2000 census, the Census Bureau plans to expand the use of administrative records to estimate characteristics of nonresponding households, supplement missing data for respondents that return incomplete forms, and estimate the number of persons missed within households. Collection of social security numbers would assist efforts to accurately match administrative records information. This research, in conjunction with results from an earlier survey, will enable the Census Bureau to assess the public's attitudes.

I. Method of Collection

Telephone interviews will be conducted using an automated survey instrument and a random digit dialing sampling design.

III. Data

OMB Number: Not available.

Form Numbers: The automated survey instrument will not have a form number.

Type of Review: Regular submission.

Affected Public: Individuals and households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost: $91,900.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection technique or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 11, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–30504 Filed 12–13–95; 8:45 a.m.]

BILLING CODE 3510–07–P

Address System Information Survey 1998 (ASIS 98); Proposed Agency Information Collection Activity; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instruction should be directed to Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233, telephone (301) 457–1132, or e-mail to "joel.morrison@census.gov."

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau, in preparing a Master Address File (MAF) for the 2000 Decennial Census and on-going census surveys, is collecting data on the prevalence of non-city style addresses and whether governments are establishing or planning to establish city-style addresses by 1998. The Census Bureau will use this information to make decisions about 2000 decennial census enumeration and processing methodologies. Information from the survey also will accelerate their city style addressing in conjunction with the US Postal Service. The information for this survey will come from county personnel in the non-New England states and Minor Civil Division personnel in the New England states. The regional office geographers will conduct the survey by telephone from the regional offices. This is done under authority of Title 13, United States Code, Section 141 and 193.

II. Method of Collection

The data will be collected via telephone interviews.

III. Data

OMB Number: 0607–0772.

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Form Number: Form DC–20a.
Type of Review: Regular.
Affected Public: Functioning county governments in non-New England states and functioning New England states' Minor Civil Divisions that were not completely city-style addressed as of September 1993.
Estimated Number of Respondents: 2150.
Estimated Time Per Response: 5 minutes per response.
Estimated Total Annual Burden Hours: 180 hours.
Estimated Total Annual Cost: $5, 040.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 7, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–30414 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–07–P

[Docket No. 951205287–5287–01]

Transportation Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that 1995 data on operating revenue and expenses are needed for the for-hire trucking and public warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, Services Division, on (301) 457–2766.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on trucking and warehousing services for the period between economic censuses. The next economic census is in 1997. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Bureau of the Census needs reports only from a limited sample of trucking and warehousing firms in the United States. The probability of a firm's selection is based on revenue size (estimated from payroll). The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0607–0798 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that the Transportation Annual Survey be conducted for the purpose of collecting these data.

Dated: December 27, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–30418 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

Order No. 783

Grant of Authority; Establishment of a Foreign-Trade Zone; St. Clair County, Michigan (Port Huron Customs Port of Entry)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Port Huron-St. Clair County Industrial Development Corporation, a Michigan non-profit corporation, (the Grantee), has made application to the Board (FTZ Docket 31–94, 59 FR 53833, 10/25/94), requesting the establishment of a foreign-trade zone in St. Clair County, Michigan, within the Port Huron Customs port of entry; and,

WHEREAS, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 210, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of November 1995.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

ATTEST:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30508 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Oklahoma State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–063. *Applicant:* Oklahoma State University, Stillwater, OK 74078. *Instrument:* Mass Spectrometer, Model VG Isochrom-EA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 40824, August 10, 1995. *Reasons:* The foreign instrument provides continuous flow isotopic analysis with helium carrier gas and an in-line elemental analyzer. *Advice Received From:* National Institutes of Health, October 23, 1995.

Docket Number: 95–067. *Applicant:* The Salk Institute for Biological Studies, La Jolla, CA 92037. *Instrument:* DIP-2000 Imaging Plate X-ray Diffraction Image Processor with Kappa-goniometer and SRA M18XHF Rotating Anode X-ray Generator. *Manufacturer:* MAC Science Co., Ltd., Japan. *Intended Use:* See notice at 60 FR 48505, September 19, 1995. *Reasons:* The foreign instrument provides sensitivity of 1 x-ray photon/per level and a dynamic range of 10^6. *Advice Received From:* National Institutes of Health, October 23, 1995.

Docket Number: 95–070. *Applicant:* Rutgers, The State University, Piscataway, NJ 08855-6999. *Instrument:* Cryogenic Cooling System. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* See notice at 60 FR 49505, September 19, 1995. *Reasons:* The foreign instrument provides: (1) a nitrogen storage vessel operating at atmospheric pressure, (2) a sample stage with flexible configuration and (3) cold head temperature stability of ±2°C. *Advice Received From:* National Institutes of Health, October 25, 1995.

Docket Number: 95–071. *Applicant:* Colorado State University, Fort Collins, CO 80523. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG–Fisons, United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) a high sensitivity ion source yielding low H_3^+ ion production during H/D analysis, (2) a dual inlet, GC, isotope ratio mass spectrometer capable of C,N,H,O and S stable isotope analysis, and (3) data acquisition and integration of the thermal conductivity signal from the elemental analyzer. *Advice Received From:* National Institutes of Health, October 25, 1995.

Docket Number: 95–074. *Applicant:* University of South Florida, St. Petersburg, FL 33701. *Instrument:* Fluorimeter, Model Aquatraka MKIII. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) an immersion capability to depths > 500m, (2) coverage of the spectrum from 220nm to 950nm without resetting and (3) a titanium casing which eliminates electrolytic current interference. *Advice Received From:* National Institutes of Health, October 25, 1995.

Docket Number: 95–075. *Applicant:* Georgetown University, Washington, DC 20057. *Instrument:* Time-Correlated Single Photon Counting Spectrometer, Model FL900. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) time correlated single photon counting method, (2) a sub-ns optical pulse and (3) a 300 mm monochromator for study of fluorescence kinetics. *Advice Received From:* National Institutes of Health, October 25, 1995.

Docket Number: 95–076. *Applicant:* University of Michigan, Ann Arbor, MI 48109-1065. *Instrument:* Stopped-flow Spectrometer System, Model SF-61AFX. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) a sealed waterbath and silica manifold to permit anaerobic analysis, (2) low temperature operation to < 0°C, and (3) a high throughput monochromator with a low stray light rejection system. *Advice Received From:* National Institutes of Health, October 25, 1995.

Docket Number: 95–079. *Applicant:* University of California, San Francisco, CA 94143-0446. *Instrument:* Tandem Mass Spectrometer, Model AUTOSPEC - 5000. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides an ion optical system that provides high energy collision–induced spectra of laser pulse generated maldi pseudo molecular ions with a 100% duty cycle. *Advice Received From:* National Institutes of Health, October 25, 1995.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–30507 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–113. *Applicant:* Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. *Instrument:* Xenon Flash Lamp. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used for liberation of photolabile compounds to study the biological responses to rapid concentration changes of such compounds. In addition, the instrument will be used in the training of medical students, pre-medical students, graduate students and post-doctoral fellows rotating through the laboratory where the instrument will be used. *Application Accepted by Commissioner of Customs:* October 31, 1995.

Docket Number: 95–114. *Applicant:* Research Triangle Institute, 3040 Cornwallis Road, Research Triangle Park, NC 27709. *Instrument:* (2) ICP Mass Spectrometers, Model PlasmaQuad 2. *Manufacturer:* Fisons Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used to analyze environmental, biological, and geological materials and aqueous samples to determine elements ranging from highly toxic heavy metals to radioactive elements including uranium and plutonium. The experiments will include: ultratrace element measurements, isotopic analysis, industrial emissions analysis, metal speciation, and biomedical

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studies. *Application Accepted by Commissioner of Customs:* November 1, 1995.

Docket Number: 95–115. *Applicant:* University of Vermont, Plant & Soil Science Department, Hills Building, Burlington, VT 05405–0082. *Instrument:* Ammonia Emission Measurement Equipment. *Manufacturer:* Swedish Institute of Agricultural Engineering, Sweden. *Intended Use:* The instrument will be used for studies of livestock manure, compost, and other nutrient materials that emit ammonia to determine which method and materials minimize loss of ammonia, thereby increasing the nutrient value for grass hay and other crops. *Application Accepted by Commissioner of Customs:* November 1, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–30506 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

December 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of Jamaica, the Government of the United States has agreed to increase the current guaranteed access level (GAL) for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 8, 1995, you are directed to increase the guaranteed access level for Categories 352/652 to 13,300,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30411 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–DR–F

Increase of a Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of the Dominican Republic, the Government of the United States has agreed to increase the current guaranteed access level (GAL) for Categories 338/638.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective December 11, 1995, you are directed to increase the guaranteed access level for Categories 338/638 to 1,750,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30437 Filed 12–13–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 14 December 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development program which the military proposes to initiate with industry, universities or in the laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1988)), and that accordingly, this meeting will be closed to the public.

Dated: December 11, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30487 Filed 12–13–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are partnership successes within DoD and action items related to the Defense Partnership Council Plan of Action.

DATE: The meeting is to be held Wednesday, January 17, 1996, in room 1E801, Conference Room 4, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by January 12, 1996, in order to be considered at the January 17 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: December 11, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30486 Filed 12–13–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 19 December 1995.

Time of Meeting: 0900–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group will meet to hear selected briefings relative to the study on "A Strategy for Leveraging Commercial Technologies for Future Army Radios." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–30483 Filed 12–13–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12 & 13 December 1995.

Time of Meeting: 0900–1700, 12 & 13 December 1995.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) C4I Ad Hoc Study Group will meet to hear selected briefings relative to the study on "Army Digitization Information Systems Vulnerabilities and Security." These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–30484 Filed 12–13–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–77–000]

Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1995.

Take notice that on December 4, 1995, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Eleventh Revised Sheet No. 4, Third Revised Sheet No. 4A, Eleventh Revised Sheet No. 5, and First Revised Sheet No. 5A, to become effective January 4, 1996. The proposed changes would have no effect on revenues from jurisdictional service.

PGT asserts that the purpose of this filing is to adjust PGT's rates for service on its Medford Extension to reflect the as-built length of the line, as opposed to the length as certificated in the Commission's Order of January 12, 1995. PGT is also clarifying the calculation of rates on its Statement of Rates and Charges.

PGT states that a copy of this filing has been served upon all jurisdictional customers and upon interest state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

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First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30429 Filed 12–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–76–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 8, 1995.

Take notice that on December 4, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective January 1, 1996.

Third Revised Sheet No. 284

Original Sheet No. 284A
Original Sheet No. 284B
Original Sheet No. 284C

First Revised Sheet No. 285

First Revised Sheet No. 286

First Revised Sheet No. 287

First Revised Sheet No. 289

CIG proposes this revision to clarify the allocation of capacity to firm Shippers using Secondary Capacity. Specifically, CIG proposes a non-bump policy in connection with Secondary Capacity. A firm Shipper with quantities allocated through Secondary Capacity shall retain its capacity allocation (subject to certain conditions) until the end of a capacity constraint or the end of the month (whichever occurs first). CIG also proposes that the capacity allocation for a Secondary Point Shipper that fails to tender quantities equal to its capacity allocation during a capacity constraint for two consecutive days will drop to the Shipper's average tenders to CIG at the pertinent location during the two day period.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30430 Filed 12–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–161–005 and RP94–162–005 (Not Consolidated)]

U–T Offshore System, High Island Offshore System; Notice of Compliance Filing

December 8, 1995.

Take notice that on November 17, 1995, in accordance with the Commission's September 18, 1995 letter orders approving settlement, U–T Offshore System (U–T) and High Island Offshore System (HIOS) tendered for filing certain revised tariff sheets that reflect the approved, prospective settlement rates and the conversion of their tariffs from a volumetric to an thermal based tariff. U–T and HIOS state that the tariff sheets are to become effective December 1, 1995.

U–T and HIOS state that copies of the filings have been served on all parties.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protest must be filed no later than December 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to these proceedings. Copies of these filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30431 Filed 12–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–98–014 and RP94–213–011 (Consolidated)]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1995.

Take notice that on December 1, 1995, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, and its FERC Gas Tariff, First Revised Volume No. 2A, various tariff sheets. CNG requests an effective date of July 1, 1994, for certain of these sheets, and a January 1, 1996 effective date for the remainder.

CNG states that the purpose of its filing is to implement, effective as of January 1, 1996, the rates set forth in Appendix B of the June 28, 1995, Stipulation and Agreement filed in the captioned proceedings. CNG further states that the documentation and workpapers in support of the proposed rate reduction have been provided to the Commission, at Appendix B of the June 28 Stipulation. In anticipation of a Commission order approving the June 28 Stipulation with one minor modification, CNG also states that it has also filed certain of the tariff sheets that are included as Appendix G to the June 28 Stipulation.

CNG states that copies of this letter of transmittal and enclosures are being mailed to parties to the captioned proceeding and to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30432 Filed 12–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–97–000]

Eastern Shore Natural Gas Company; Notice of Application

December 8, 1995.

Take notice that on December 5, 1995, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 615, Dover, Delaware 19903–0615, filed an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Eastern Shore to (1) provide additional firm contract demand sales and storage service to several of its existing customers, (2) abandon firm sales service to one of its existing customers, and (3) construct and operate certain new pipeline and compressor facilities required to stabilize capacity on its system and to provide the additional firm sales and storage service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Eastern Shore requests authority to (1) construct and operate a 2,170 HP compressor station in Delaware City, new Castle County, Delaware on its portion of its existing pipeline system known as the "Hockessin Line", such new station to be know as the "Delaware City Compressor Station"; (2) construct and operate .89 miles of 16-inch pipeline in Delaware City, New Castle County, Delaware to tie the suction side of the proposed Delaware City Compressor Station into the Hockessin Line: and (3) increase the maximum allowable operating pressure (MAOP) from 500 PSIG to 590 PSIG on 28.7 miles of Eastern Shore's pipeline from Eastern Shore's existing Bridgeville Compressor Station in Bridgeville, Sussex County, Delaware to its terminus in Salisbury, Wicomico County, Maryland.

Eastern Shore states that the proposed compressor facility and associated piping are needed to stabilize capacity on its system as a result of steadily declining inlet pressures at its Hockessin interconnect with Transcontinental Gas Pipeline Corporation. Construction of the proposed facilities is planned to be undertaken during the 1996 Summer and Fall seasons and completed by a proposed in service date of November 1, 1996.

Eastern Shore further states that the proposed facilities will also enable it to provide additional firm sales and storage service to several of its customers who have executed precedent agreements for the additional firm service for terms of 10 and 20 years. Eastern Shore also requests authorization to abandon 100 Mcf per day of firm sales service to one of its direct sales customers, Playtex Apparel, Inc., effective September 30, 1996.

Eastern Shore estimates the total cost of the additional pipeline and compressor facilities proposed in its application to be $6,788,334. Eastern Shore states that it will finance this amount initially from internally generated funds and short-term notes and that permanent financing will be arranged after construction has been completed.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 29, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act 18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in, and subject to jurisdiction conferred upon the Federal energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Eastern Shore to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30433 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST96–171–000 et al.]

Northern Natural Gas Company; Notice of Self-Implementing Transactions

December 8, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

Pursuant to the Final Rule in Docket No. RM95–4–000, issued on September 28, 1995, the initial report filing requirement under Part 284 of the Commission's Regulations terminates effective November 9, 1995. Because of the change in the filing requirements, this report will be the last Update List of ST Dockets issued by the Commission.

The Final Rule also terminates the Part 284 filing requirement for all pipelines to file subsequent, final, and termination reports, and annual reports for interstate pipelines only. Intrastate pipelines are still required to file annual reports, but such reports are now due on March 31 (instead of March 1) of each year. These annual reports require the use of a slightly revised form which is available from the Commission.

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

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the Commission's regulations and Section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and Section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,
Acting Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 286 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST96–171 .	Northern Natural Gas Co.	Noram Energy Services, Inc.	11–01–95	G–S	100,000	N	I	9–15–95	INDEF.
ST96–172 .	Northern Natural Gas Co.	Tristar Gas Marketing Co.	11–1–95	G–S	10,000	N	F	7–1–95	7–31–95.
ST96–173 .	Northern Natural Gas Co.	NGC Transportation, Inc.	11–1–95	G–S	9,550	N	F	6–5–95	6–9–95.
ST96–174 .	Northern Natural Gas Co.	Aquila Energy Marketing Corp.	11–1–95	G–S	15,250	N	F	10–1–95	10–31–95.
ST96–175 .	Williams Natural Gas Co.	City of Cleveland	11–1–95	G–S	2,000	N	F	10–12–95	INDEF.
ST96–176 .	Williams Natural Gas Co.	Western Resources, Inc.	11–1–95	G–S	11,100	N	F	10–1–95	INDEF.
ST96–177 .	Texas Gas Transmission Corp.	Enron Capital & Trade Res. Corp.	11–2–95	G–S	50,000	N	I	10–10–95	INDEF.
ST96–178 .	Texas Gas Transmission Corp.	Coast Energy Group	11–2–95	G–S	30,000	N	I	10–17–95	INDEF.
ST96–179 .	Texas Gas Transmission Corp.	Highland Energy Co	11–2–95	G–S	50,000	N	I	10–7–95	INDEF.
ST96–180 .	Texas Gas Transmission Corp.	CNG Energy Services Co.	11–2–95	G–S	10,000	N	I	10–5–95	INDEF.
ST96–181 .	Oasis Pipe Line Co .	El Paso Natural Gas Co., et al.	11–2–95	C	50,000	N	I	10–1–95	INDEF.
ST96–182 .	Havre Pipeline Co., L.L.C.	Northern Natural Gas Co., et al.	10–31–95	C	55,468	N	I	10–1–95	10–31–10.
ST96–183 .	Gulf Energy Pipeline Co.	Tennessee Gas Pipeline Co.	11–2–95	C	1,000	N	F	10–13–95	INDEF.
ST96–184 .	Northwest Pipeline Corp.	Enron Capital & Trading Resources.	11–3–95	G–S	89,000	N	F	10–1–95	INDEF.
ST96–185 .	Natural Gas P/L Co. of America.	Torch Gas, L.C	11–3–95	G–S	14,000	N	F	10–4–95	10–31–95.
ST96–186 .	Humble Gas Pipeline Co.	Natural G/P/L Co. of Am., et al.	11–6–95	C	300,000	N	I	9–1–93	INDEF.
ST96–187 .	Pacific Gas Transmission Co.	Westcoast Gas Services.	11–6–95	G–S	30,000	N	I	10–14–95	INDEF.
ST96–188 .	Pacific Gas Transmission Co.	Amoco Energy Trading Corp.	11–6–95	G–S	270,173	N	I	10–4–95	INDEF.
ST96–189 .	Pacific Gas Transmission Co.	Direct Energy Marketing Limited.	11–6–95	G–S	100,000	N	I	10–14–95	INDEF.
ST96–190 .	Pacific Gas Transmission Co.	Dekalb Energy Co ...	11–6–95	G–S	20,000	N	I	10–22–95	INDEF.
ST96–191 .	Pacific Gas Transmission Co.	Portland General Electric Co.	11–6–95	G–S	100,000	N	I	9–21–95	INDEF.
ST96–192 .	Florida Gas Transmission Co.	Transco Gas Marketing Co.	11–7–95	G–S	100,000	N	I	10–6–95	INDEF.
ST96–193 .	Lone Star Pipeline Co.	Arkla Energy Resources, et al.	11–8–95	C	10,000	N	I	10–19–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 286 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST96–194 .	U–T Offshore System.	Noble Gas Marketing, Inc.	11–9–95	K–S	40,000	N	I	10–1–95	INDEF.

[1] Notice of transaction does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 95–30428 Filed 12–13–95; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300404; FRL–4986–5]

Benomyl, Propargite, Thiophanate-Methyl, and Triadimefon; Request for Comment on Petitions to Revoke Certain Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Receipt and Availability of Petitions.

SUMMARY: This document announces the receipt of and solicits comments on three petitions. A petition filed by the International Apple Institute requests revocation of four section 409 feed additive regulations (FARs) established under the Federal Food, Drug and Cosmetic Act (FFDCA) for residues of benomyl, propargite, thiophanate-methyl, and triadimefon in dried apple pomace. A petition filed by Janssen Pharmaceutica requests revocation of the food additive regulation for residues of imazalil in citrus oil. A petition filed by the Mancozeb Task Force requests revocation of the FARs for residues of mancozeb in or on milled feed fractions of barley, oats, rye, and wheat. This notice sets forth the basis for the petitioners' proposals and provides opportunity for public comment.

DATES: Written comments, identified by the document control number [OPP-300304], must be received on or before January 16, 1996.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the petition will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection at the address and hours given above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300404]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in [OPP-300304] of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone: 703-308-8028; e-mail: nazmi.niloufar@epamail.epa.gov.

I. Introduction

Statutory Framework

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 136 et seq.) authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RACs), and section 409 of the Act authorizes promulgation of food additive regulations for pesticide residues in processed foods.

Under section 408 of the FFDCA, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food/feed additive regulations (FARs) setting maximum permissible levels of pesticide residues in processed foods are established under section 409. Section 409 FARs are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 food additive regulation is required if any pesticide residue in a processed food resulting from use on an RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on that RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Federal Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(C)(3)). Section 409 also contains the Delaney clause, which specifically provides that, with limited

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exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(C)(5)).

In setting both section 408 tolerances and section 409 FARs, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances and FARs must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in an RAC based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 FAR is needed depends on whether there is a possibility that the processing of an RAC containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance. EPA makes these determinations based on processing studies.

II. International Apple Institute Petition

The International Apple Institute (IAI) has submitted a petition requesting the revocation of the FAR established under section 409 of the FFDCA for residues of benomyl, propargite, thiophanate-methyl, and triadimefon in dried apple pomace. The FARs for residues of benomyl, propargite, thiophanate-methyl, and triadimefon in dried apple pomace are codified in 40 CFR 186.350, 186.5000, 186.5700, and 186.800, respectively.

Background

EPA requires processing data and sets tolerances and FARs only on animal feeds that are consumed in significant amounts in the United States. Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances or FARs are established. On September 21, 1995, EPA announced the availability of the updated Table II and modified its guidelines regarding which raw commodities and processing byproducts EPA will consider as animal feeds requiring FARs (60 FR 49150). The general cutoff point used by EPA in deciding which feed items are considered "significant", is whether the feed item constitutes greater than 0.04 percent, by weight, of the total feed available to livestock in the U.S.

Based on the above criteria, the Agency has determined that dried apple pomace is not a significant feed item and has removed it from Table II. Subsequently, in the **Federal Register** of September 21, 1995 (60 FR 49141), EPA issued a proposed rule to revoke the FARs for residues of benomyl, propargite, thiophanate-methyl, and triadimefon in dried apple pomace.

III. Janssen Pharmaceutica Petition

Janssen Pharmaceutica is petitioning EPA to revoke the section 409 FAR for imazalil in citrus oil on the grounds that, in the ready-to-eat form, the residue levels are below the section 408 tolerance level established for imazalil in the RAC. The Petitioner argues that by the virtue of the flow-through provision of section 402(a)(2) of the FFDCA, the FAR is unnecessary. The FAR for residues of imazalil in citrus oil is codified in 40 CFR 185.3650.

The Petitioner maintains that citrus oil is used as a flavoring agent in minuscule amounts, and if used in excess, it renders food unpalatable. Included in the petition is a survey of flavoring ingredient usage levels conducted by the Flavoring Extract Manufacturers' Association. These values allegedly represent the quantity of citrus oil added to food to accomplish its intended physical effect. The data presented show that maximum residues of imazalil in ready-to-eat foods are below the section 408 tolerance. Therefore, Janssen Pharmaceutica argues that the section 409 FAR is not needed and should be revoked on the basis that it is not necessary.

Background

In the **Federal Register** of January 18, 1995 (60 FR 3607), EPA issued a proposed rule to revoke the section 409 FAR for imazalil in citrus oil because the Agency has determined that imazalil induces cancer in animals and therefore violates the Delaney clause in section 409 of the FFDCA.

In the **Federal Register** of June 14, 1995 (60 FR 31300), EPA issued its response to a petition filed by the National Food Processors Association that sought the revision of many EPA policies. In that notice, EPA announced its revised approach to the term ready-to-eat (RTE). EPA believes that a food should be considered ready to eat only if it is consumed "as is" or added to other ready-to-eat foods.If EPA finds that a processed food form is not ready to eat, and once diluted to its RTE form the residues are below that of the RAC, then a section 409 FAR would not be needed and the Delaney clause would not apply. The Agency's final rule regarding the residues of imazalil in citrus oil will be published by July 1996.

IV. Mancozeb Task Force Petition

The Mancozeb Task Force (DuPont, Elf Atochem North America, Inc., and Rohm & Haas Co.) has submitted a petition requesting the revocation of the FARs established under section 409 of the FFDCA for residues of mancozeb in or on milled feed fractions of barley, oats, rye, and wheat. This FAR is codified in 40 CFR 186.6300.

As explained in section II above, EPA recently updated Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry. EPA has determined that milled fractions of barley, oats, and rye are not significant feed items, and therefore the section 409 FAR is no longer necessary. In the **Federal Register** of September 21, 1995 (60 FR 4915), EPA issued a proposed rule to revoke the FAR for residues of mancozeb on milled fractions of barley, oats, and rye.

As explained in section III above, on June 14, 1995, EPA announced its revised approach to the term ready-to-eat. Based on this policy, EPA has determined that milled fractions of wheat is not a ready-to-eat feed item, and once diluted, the residues of mancozeb in the RTE animal feeds are unlikely to exceed the section 408 tdlerance level. Therefore, a section 409 FAR is unnecessary. On this basis, in the **Federal Register** of September 21, 1995 (60 FR 49150), EPA revoked the section 409 FAR on milled fractions of wheat.

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petitions or may issue a proposal in response to the petitions and seek further comment. If EPA issues an order in response to the petitions, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after date of the publication of the order (40 CFR 178.20).

A record has been established for this notice under docket number [OPP-300404] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 13, 1995.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

[FR Doc. 95-30502 12-11-95; 3:28 pm]
BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Fulton Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 10, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to merge with Gloucester County Bankshares, Inc., Woodbury, New Jersey, and thereby indirectly acquire The Bank of Gloucester County, The Deptford Township, New Jersey.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pittsburgh Home Financial Corp.*, Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Pittsburgh Home Savings Bank, Pittsburgh, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FABP Bancshares, Inc.*, Pensacola, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank of Pensacola, N.A., Pensacola, Florida.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Crestmark Bancorp, Inc.*, Bloomfield Hills, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Crestmark Bank, Troy, Michigan (in organization).

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Baxter Bancshares, Inc.*, Baxter Springs, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Baxter State Bank, Baxter Springs, Kansas, and 24.99 percent of the voting shares of People's National Bank, Seneca, Missouri (in organization).

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Cullen/Frost Bankers, Inc.*, San Antonio, Texas, and The New Galveston Company, Wilmington, Delaware; to acquire 100 percent of the voting shares of Park National Bank of Houston, Houston, Texas.

2. *Sabine Bancshares, Inc.*, Many, Louisiana; to merge with First Community Bancshares, Inc., Winnfield, Louisiana, and thereby indirectly acquire Winn Bancshares, Inc., Winnfield, Louisiana, and First Community Bank, Winnfield, Louisiana.

Board of Governors of the Federal Reserve System, December 8, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95-30439 Filed 12-13-95; 8:45 am]
BILLING CODE 6210-01-F

Spencer Bancorporation, Inc., Employee Stock Ownership Plan & Trust; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 29, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Spencer Bancorporation, Inc. Employee Stock Ownership Plan & Trust*, Spencer, Wisconsin; to acquire an additional 5.40 percent, for a total of 12.25 percent of the voting shares of Spencer Bancorporation, Inc., Spencer, Wisconsin, and thereby indirectly acquire Spencer State Bank, Spencer, Wisconsin.

Board of Governors of the Federal Reserve System, December 8, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95-30440 Filed 12-13-95; 8:45 am]
BILLING CODE 6210-01-F

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PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss decisionmaking related to the use of investigational drugs and vaccines in the Gulf War and will receive comment from members of the public. Dr. Arthur L. Caplan will chair this panel meeting.

DATES: January 12, 1996, 8:30 a.m.–4:00 p.m.

PLACE: Westin Crown Center, One Pershing Road, Kansas City, MO 64108.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Friday, January 12, 1996

8:30 a.m. Call to order and opening remarks
8:40 a.m. Public comment
10:00 a.m. Break
10:15 a.m. Public comment (cont.)
11:15 a.m. Briefings and discussion on decisionmaking processes
12:15 p.m. Lunch
1:30 p.m. Briefings and discussion on waiver informed consent
2:30 p.m. Break
2:45 p.m. Briefings and discussion on current policy and implications for the future
3:45 p.m. Strategies and next steps
4:00 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, NW., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: December 8, 1995.

C.A. Beck,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 95–30446 Filed 12–13–95; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Collection Requirements Submitted for Public Comment

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR's) intention to request the Office of Management and Budget (OMB) review of two proposed data collection projects. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), the AHCPR invites the public to comment on these proposed information collections.

DATES: Comments on this notice must be received by February 12, 1996.

ADDRESSES: Written comments should be submitted to: Carole Dilliard, Reports Clearance Officer, AHCPR, 2101 East Jefferson Street, Suite 502, Rockville, MD 20852–4908.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed data collections. All comments will also become a matter of public record.

In accordance with the above cited legislation, comments on the data collection proposals are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Carole Dillard, AHCPR's Reports Clearance Officer, (301) 594–1354.

SUPPLEMENTARY INFORMATION:

Proposed Projects

1. Evaluation of the kiosk-based ChoiceCard. This computer program, designed by Benova, Inc. through the Small Business Innovative Research (SBIR) program, assists Medicaid recipients in choosing health plans. A sample of individuals who used the system will be asked questions about the usefulness of the decision-support system. The survey results will help to refine the kiosk-based, ChoiceCard computer program. Burden estimates follow:

	Consumer
Number of respondents	300.
Number of surveys per respondent.	1.
Average burden/response	.5 hours.
Estimated total burden/response	150 hours.

2. Evaluation of decision-support materials for helping consumers to choose health plans. These print and video materials, designed by Abacus through the Small Business Innovative Research Program (SBIR), were developed to help minority and underserved workers and Medicaid recipients and their families in choosing health care plans. The survey will be filled out by consumers after they use the decision-support materials and the results will be used to refine those materials. Burden estimates follow:

	Consumer
Number of respondents	150.
Number of surveys per respondent.	1.
Average burden/response	.25 hours.
Estimated total burden/response	38 hours.

Copies of these data collection plans and instruments can be obtained from AHCPR's Reports Clearance Officer (see above for details).

Dated: December 7, 1995.

Clifton R. Gaus, Sc.D.,

Administrator.

[FR Doc. 95–30478 Filed 12–13–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95G–0389]

Aplin & Barrett Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Aplin & Barrett Ltd., has filed a petition (GRASP 5G0417) proposing to affirm that nisin preparation is generally recognized as safe (GRAS) as an antimicrobial agent in sauces and nonstandardized salad dressings.

DATES: Written comments by February 27, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Aplin & Barrett Ltd., c/o 700 13th St. NW., suite 1200, Washington, DC 20005, has filed a petition (GRASP 5G0417) proposing that nisin preparation be affirmed as GRAS for use as an antimicrobial agent in sauces and nonstandardized salad dressings.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before February 27, 1996, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 21, 1995.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–30500 Filed 12–13–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice (Formerly: Remittance Advice Report) and Prior Quarter Adjustment Statement; *Form No.:* HCFA–304, HCFA–304a; *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug labelers to enter into and have in effect a rebate agreement with HCFA for States to receive funding for drugs dispensed to Medicaid recipients.

The regulation at 42 CFR 447.534 requires labelers to report specific drug rebate data to States when payment is made; *Affected Public:* Business or other for profit; *Number of Respondents:* 520; *Total Annual Responses:* 2,080; *Total Annual Hours Requested:* 170,560. To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collection should be sent within 60 days of this notice direct to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 7, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30475 Filed 12–13–95; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any

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of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Maximizing the Effectiveness of Home Health Care: The Influence of Service Volume and Integration With Other Care Settings on Patient Outcomes; *Form No.:* HCFA-R-189; *Use:* This study will examine (1) the relationship of home health care service volume and patient outcomes, and (2) the relationship of the physician role and integration of other services and patient outcomes; *Frequency:* Other (periodically); *Affected Public:* Not-for-profit institutions, business or other for profit, and individuals or households; *Number of Respondents:* 6,300; *Total Annual Hours:* 3,573.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Certification in the Medicare and/or Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services, Outpatient Physical Therapy Speech Pathology Survey Report; *Form Nos.:* HCFA–1656, HCFA–1893; *Use:* The Medicare Program requires outpatient physical therapy providers to meet certain health and safety requirements. The request for certification form is used by State agency surveyors to determine if minimum Medicare eligibility requirements are met. The survey report form records the result of the onsite survey; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 1,700; *Total Annual Hours:* 446.25.

3. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Certification as Supplier of Portable X-ray Services Under the Medicare/Medicaid Programs, and Portable X-ray Survey Report; *Form Nos.:* HCFA–1880, HCFA–1882; *Use:* The Medicare program requires portable x-ray suppliers to be surveyed for health and safety standards. The HCFA–1882 is the survey form that records survey results. The HCFA–1880 is used by the surveyor to determine if a portable x-ray applicant meets the eligibility requirements; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 520; *Total Annual Hours:* 137.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization's Request for Designation; *Form No.:* HCFA–576; *Use:* The information provided on this form serves as a basis for certifying organ procurement organizations (OPO) for participation in the Medicare and Medicaid programs and will indicate whether the OPO is meeting the specified performance standards for reimbursement of service; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not-for-profit institutions; *Number of Respondents:* 80; *Total Annual Hours:* 160.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Physical Therapist in Independent Practice Request for Certification in the Medicare Program; *Form No.:* HCFA–262; *Use:* The HCFA–262 is used by the surveyors to determine if a physical therapist in independent practice requesting Medicare approval meets the eligibility requirements; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 7,322; *Total Annual Hours:* 1,098.

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Request for Approval as a Hospital Provider of Extended Care Services (Swing-Bed) in the Medicare and Medicaid Programs; *Form No.:* HCFA–605; *Use:* The HCFA–605 is used for facility identification and screening. It will be completed by a hospital that is requesting approval and will initiate the process of determining the hospital's eligibility and for which bed count category the hospital wishes to request approval; *Frequency:* Other (one-time usage for initial application); *Affected Public:* Business or other for profit, not-for-profit institutions, Federal Government; *Number of Respondents:* 1,500; *Total Annual Hours:* 375.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 7, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–30474 Filed 12–13–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Rural Health Services Outreach Grant Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for Rural Health Services Outreach Demonstration Grants to expand or enhance the availability of essential health services in rural areas. Grants for these projects are authorized under Section 301 of the Public Health Service Act.

This program announcement for the above stated program is subject to the appropriation of funds for this activity. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, awards can be made in a timely fashion consistent with the needs of the program. At this time, given a continuing resolution and the absence of FY 1996 appropriations for this program, the amount of funds available cannot be estimated.

NATIONAL HEALTH OBJECTIVES FOR THE YEAR 2000: The Health Resources & Services Administration (HRSA) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a Public Health Service (PHS) national activity for setting priority areas. The Rural Health Services Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–C) or Healthy People 2000 (Summary Report: Stock No. 017–001–

00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

AMOUNT AND DURATION OF GRANT AWARDS: Individual grant awards under this notice will be limited to a total amount of $300,000 (direct and indirect costs) per year. Applications for smaller amounts are encouraged. Applicants may propose project periods for up to three years, but the duration of projects is contingent upon the availability of funds. It is expected that the average grant award will be approximately $180,000 for the first year. However, applicants are advised that continued funding of grants beyond the one year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance. No project will be supported for more than three years.

APPLICATION DEADLINE: Applications for the program must be received by the close of business on March 15, 1996. Completed applications must be sent to The Grants Management Officer, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0189) have been approved by the Office of Management and Budget. To receive an application kit, contact The Grants Management Office, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814 or, in the contiguous U.S., call 1–800/784–0345. Hawaii, Alaska, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia should call 301/656–3100 COLLECT.

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or financial issues should be directed to the Office of Grants Management, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, 301/594–4260. Requests for technical or programmatic information on this announcement should be directed to Eileen Holloran, Office of Rural Health Policy, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

The grant recipient must be a nonprofit or public entity which meets one of the three requirements stated below.

(1) The applicant's central administrative headquarters where the grant will be managed is not located in a Metropolitan Statistical Area as defined by the Office of Management and Budget. A list of the cities and counties that are designated as Metropolitan Statistical Areas is included in the application kit. If your organization's central administrative headquarters is located in one of these areas, you are not eligible for the program unless you meet one of the other two criteria listed below.

(2) Some Metropolitan Statistical Areas on the list are extremely large. We have divided these areas into rural and urban census tracts. Appendix I provides a list of these Metropolitan Statistical Areas and the rural census tracts in each area. If your central administrative headquarters is located within one of these census tracts, you are eligible for the program.

(IF YOU ARE ELIGIBLE UNDER THIS CRITERION, YOU MUST LIST YOUR COUNTY AND CENSUS TRACT UNDER ITEM #8 ON THE FACE PAGE OF THE APPLICATION OR YOUR APPLICATION WILL BE RETURNED. If you do not know your census tract, Appendix II provides the telephone numbers for regional offices of the Census Bureau. You should call the appropriate office to determine your census tract.)

(3) Your organization is constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under Section 329 of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of their administrative headquarters.

In addition to meeting one of the above criteria, the applicant must be capable of receiving the grant funds directly and must have the capability to manage the project. This means that the applicant organization must be able to exercise administrative and program direction over the grant project; must be responsible for hiring and managing the project staff; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent staff at the time a grant award is made. Further, the applicant organization must have an Employer Identification Number from the Internal Revenue Service at the time of the grant award and other proof of organizational viability that may be requested by the Grants Management Office.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia, are eligible to apply.

Applications from organizations that do not meet one of the three requirements described above will not be reviewed.

Current Rural Health Services Outreach grantees who are in the last year of their projects may not reapply for funds to support the same project. Any new proposal they submit must have a different focus from the project that is currently being funded.

Program Objectives

The purpose of the program is to support projects that demonstrate new and innovative models of outreach and health care services delivery in rural areas that lack basic health services. Grants will be awarded either for the direct provision of health services to rural populations that are not currently receiving them, or to enable access to and utilization of existing services.

Applicants may propose projects to address the needs of a wide range of rural population groups, including the poor, the elderly, the disabled, pregnant women, infants, adolescents, rural minority populations, and rural populations with special health care needs. Projects should be responsive to the special cultural and linguistic needs of specific populations.

A central goal of the demonstration program is to develop new and innovative models for more effective integration and coordination of health services in rural areas. It is hoped that some of these models will prove significant in solving rural health problems throughout the country. In order to better integrate the provision of health services in rural areas, participation in the program requires

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the formation of consortium arrangements among three or more separate and distinct entities to carry out the demonstration projects.

A consortium must be composed of three or more health care organizations, or a combination of three or more health care and social service organizations. At least one of the entities must be a health care service delivery organization. Individual members of a consortium might include such entities as hospitals, public health agencies, Area Health Education Centers, home health providers, mental health centers, substance abuse service providers, rural health clinics, social service agencies, health profession schools, local school districts, emergency service providers, community and migrant health centers, civic organizations, etc. Although applicants for the program must be nonprofit or public entities, other consortium members may be for-profit organizations.

The roles and responsibilities of each member organization must be clearly defined and each must contribute significantly to the goals of the project. The process used to ensure compliance with the consortium requirement includes two steps: (1) making sure that at least three organizations, including the applicant, are identified, and that each is a separate legal entity, and (2) ensuring that each member plays a substantial part in accomplishing the objectives of the project.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need can be established through a formal needs assessment or by population specific demographic data. The following are examples of project focus areas that can be supported through this program:

1. Projects that bring ambulatory and mental health care to unserved or underserved rural areas or populations. The HRSA has a special priority to establish primary care programs along the U.S./Mexican border.

2. Projects that provide, or make possible the provision, of emergency medical services within rural areas that lack these services.

3. The creation of new integrated networks of providers to deliver ambulatory care when such networks appear likely to improve access to health care or its quality. The HRSA is especially interested in networks that may become a part of managed care systems in rural areas.

4. Projects that provide services that enable rural populations to better utilize existing health services, including those involving the use of community outreach workers.

5. Projects that provide training for health care professionals and workers, including community outreach workers, when such training may be demonstrated to be likely to lead to higher quality services or more accessible services in rural areas.

6. Projects that enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.

7. Projects that address the needs of rural minority populations.

8. Projects that train rural people in disease prevention and health promotion, when such training addresses critical needs of the area.

9. Telecommunication and telemedicine projects.

10. Projects on adolescent health and on school-based programs.

The focus areas listed above are examples only. All projects must address the demonstrated needs of the community.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

1. The extent to which the applicant has documented and justified the need(s) for the proposed project.

2. The extent to which the applicant has proposed new approaches that will meet the health care needs of the community and has developed measurable goals and objectives for carrying out the project.

3. The extent to which the applicant has clearly defined the roles and responsibilities of each member of the consortium and demonstrated the experience and expertise needed to manage the project.

4. The level of local commitment and involvement with the project, as evidenced by: (1) the extent of cost participation on the part of the applicant, members of the consortium, and other organizations; (2) letters of support from community leaders and organizations; and, (3) the feasibility of plans to sustain the project after federal grant support is ended.

5. The reasonableness of the budget that is proposed for the project.

6. The extent to which the applicant has developed a realistic and workable plan for evaluating the project and for disseminating information about the project.

Geographic Considerations

The HRSA hopes to expand the outreach program into geographic areas not currently served by the program. Consequently, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Grantees will be required to use at least 85 percent of the total amount awarded for outreach and care services, as opposed to administrative costs. At least 50 percent of the funds awarded must be spent in rural areas. This is a demonstration program that will not support projects that are solely or predominantly designed for the purchase of equipment or vehicles. The purchase of equipment and vehicles may not represent more than 40 percent of the total federal share of a proposal. Grant funds may not be used for purchase, construction or renovation of real property or to support the delivery of inpatient services.

Applicants are advised that the entire application may not exceed 70 pages in length including the project and budget narratives, face page, all forms, appendices, attachments and letters of support. Applications that exceed the 70 page limit will not receive consideration. All applications must be typewritten and legible. Margins must be no less than ½ inch on all sides.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—# 0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to state and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424).

b. A summary of the project not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate state or local health agencies.

Executive Order 12372

The Rural Health Services Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more then one state, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Harriet Green, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4260. The due date for state process recommendations is 60 days after the application deadline (May 15, 1996) for competing applications. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements.

State Offices of Rural Health

Applicants should notify their State Office of Rural Health of their intent to apply for this grant program. The State Office can provide information and technical assistance. A list of State Offices of Rural Health will be provided with the application kit.

OMB Catalog of Federal Domestic Assistance number is 93.912

Dated: December 7, 1995.

Ciro V. Sumaya,

Administrator.

Appendix I

*Census tract numbers are shown *below* each county name.

To be eligible under criterion #2 your organization's central administrative headquarters must be located in one of the census tracts that is listed below your county. The county name and the census tract number *must be included in section #8* on the face page of the 424 application.

State

County

Census tract number

Alabama

Baldwin
0071
0072
0073
0074
0077
0078
0079
0080
0081
0082
0083
0084.01
0084.02

Kern
0033.01
0033.02
0034
0035
0036
0037
0040
0041
0042
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0044
0045
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0063

Los Angeles
5990
5991
9001
9002
9004
9012.02
9100
9101
9108.02
9109
9110
9200.01
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9202
9203.03
9301

Monterey
0109
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0113
0114.01
0114.02
0115

Placer
0201.01
0201.02
0202
0203

Mobile
0059
0062
0066
0072.02

Tuscaloosa
0107

Arizona

Maricopa
0101
0405.02
0507
0611
0822.02
5226
7233

Pima
0044.05
0048
0049

California

Butte
0024
0025
0026
0027
0028
0029
0030
0031
0032
0033
0034
0035
0036

El Dorado
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0304.01
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Fresno
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Riverside

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San Bernardino

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San Diego

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San Joaquin

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Santa Barbara

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Santa Clara

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5127

Shasta

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Sonoma

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Stanislaus

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0036.05
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0039.01
0039.02

Tulare

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0040
0043
0044

Ventura

0001
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0046
0075.01

Colorado

Adams

0084
0085.13
0087.01

El Paso

0038
0039.01
0046

Larimer

0014
0017.02
0019.02
0020.01
0022

Pueblo

0028.04
0032
0034

Weld

0019.02
0020
0024
0025.01
0025.02

Florida

Collier

0111
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0114

Dade

0115

Marion

0002
0004
0005
0027

Osceola

0401.01
0401.02
0402.01
0402.02
0403.01
0403.02
0404
0405.01
0405.02
0405.03
0405.05
0406

Palm Beach

0079.01
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Polk

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Kansas

Butler

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Louisiana

Rapides

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Terrebonne

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Minnesota

St. Louis

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Stearns

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Montana

Cascade

0105

Yellowstone

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0016
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Nevada

Clark

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0059

Washoe

0031.04
0032
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0033.03
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0034

New Mexico

Dona Ana

0014
0019

Santa Fe

0101
0102
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New York

Herkimer

0101
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North Dakota

Burleigh

0114
0115

Grand Forks

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0115
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0118

Morton

0205

Oklahoma

Osage

0103
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01050106
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0108

Oregon

Clackamas

0235
0236
0239
0240
0241
0243

Jackson

0024
0027

Lane

0001
0005
0007.01
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0008
0013
0014
0015
0016

Pennsylvania

Lycoming

0101
0102

South Dakota

Pennington

0116
0117

Texas

Bexar

1720
1821
1916

Brazoria

0606
0609
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0625.01
0625.02
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Harris

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Hidalgo

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Washington

Benton

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Franklin

0208

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King
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Snohomish
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Spokane
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0133
0136
0143
Whatcom
0110
Yakima
0018
0019
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0021
0022
0023
0024
0025
0026
Wisconsin
Douglas
0303
Marathon
0017
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0022
0023
Wyoming
Laramie
0016
0017
0018

Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA—404–730–3957
Alabama, Florida, Georgia
Boston, MA—617–424–0501
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC—704–344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL—708–562–1350
Illinois, Indiana, Wisconsin
Dallas, TX—214–767–7105
Louisiana, Mississippi, Texas
Denver, CO—303–969–7750
Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI—313–259–0056
Michigan, Ohio, West Virginia
Kansas City, KS—913–551–6711
Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA—818–904–6339
California
Philadelphia, PA—215–597–8313
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA—206–728–5314
Idaho, Montana, Nevada, Oregon, Washington

[FR Doc. 95–30417 Filed 12–13–95; 8:45 am]
BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: November 1995

AGENCY: Office of Inspector General, HHS.
ACTION: Notice of program exclusions.

During the month of November 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, City, State	Effective date
Program-Related Convictions	
Amigoni, Nicholas A., Beckley, WV	12/20/95
Bethea, Nesbit, Philadelphia, PA	12/20/95
Bordley, Thomas J., Baltimore, MD	12/20/95
Britos-Bray, Anibal, Baltimore, MD	12/20/95
Burl, Shawn, Birmingham, AL	12/17/95
Chernick, Alan J., New City, NY	12/18/95
Crowe, Steven M., Benwood, WV	12/20/95
Darbro, David A., Greenfield, IN	12/11/95
Frederick, Angela Kay, Brighton, CO	12/18/95
Frost, Rosalyn Francine, Severn, MD	12/20/95
Harbert, Charlea, Perry, OH	12/18/95
Haygood, Regina J., Brooklyn, CA	12/18/95
Jefferson, Hilda Diane, Compton, CA	12/19/95
Koh, Yung Hie, Ashland, KY	12/20/95
McAllister, Katrina, Baltimore, MD	12/20/95
McCall, Shirley A., Spokane, WA	12/19/95
Muscari, Pietro J., Broken Arrow, OK	12/12/95
Nappi, Gerald J., Louisville, OH	12/18/95
Ortiz, Ramon, Englewood, CO	12/18/95
Pal, Bimal K., Ellicott City, MD	12/20/95
Patel, Sharad C., Elizabethtown, KY	12/17/95
Pollock, Hamilton D., Baltimore, MD	12/20/95
Polvinale, David A., Brownsville, PA	12/20/95
Rutgard, Jeffrey Jay, Fort Dix, NJ	12/19/95
Sanchez-Galvan, Julio C., Denver, CO	12/18/95
Stevens, Bruce, Mt Vernon, IL	12/18/95
Teresita, Earley, P.C., New York, NY	12/18/95
Tilghman, Anitra D., Essex, MD	12/20/95
Warren, Vinita R., Wheaton, MD	12/20/95
Wertz, David, Philadelphia, PA	12/20/95
Winder, Tyrone D., Baltimore, MD	12/20/95
Patient Abuse/Neglect Convictions	
Brown, Laurie Ann, Waco, TX	12/17/95
Brown, Gaynelle H., Colorado Springs, CO	12/18/95
Crumitie, Audrey E., Baltimore, MD	12/20/95
Davis, Angela Deshawn, Baton Rouge, LA	12/17/95
Desierra, Elvia L., Denver, CO	12/18/95
Fears, Lashandra S., Tyler, TX	12/17/95
Ferguson, Sandra H., Baltimore, MD	12/20/95
Gannie, Osmond Jr., Olympia, WA	12/19/95
Irvin, Violet, Selma, AL	12/17/95
Laury, Amanda Lee, Rockdale, TX	12/17/95
Nachalis, Allan D., Chester, PA	12/20/95
Skavron, Debra, L., Central Falls, RI	12/19/95
Smart, Sheri A., Plattsburgh, NY	12/18/95
Souder, Maria C., Cincinnati, OH	12/18/95
Wilson, Willard M., Spokane, WA	12/19/95
Conviction for Health Care Fraud	
Kones, Richard J., Rochester, MN	12/20/95
Range, Ronald E., Northport, AL	12/17/95
Controlled Substance Convictions	
Rockwell, Randall D., Grand Island, NE	12/17/95
Schlee, Marvin, Sissonville, WV	12/20/95
License Revocation/Suspension/Surrender	
Boucher, Patricia R., Enfield, NH	12/19/95
Boudreau, Susan, Nashua, NH	12/19/95
Butler, Erica K., Henniker, NH	12/19/95
Cherry, David N., Providence, RI	12/19/95
Cordova, Edmund S., Pasadena, MD	12/20/95
Guanzon, Noel A., Bluefield, WV	12/20/95
Jones, William T., Derry, NH	12/19/95
Kazmerski, Theodore W., North Haverhill, NH	12/19/95
Lens, Robert A., Philadelphia, PA	12/20/95
Schwortz, Preston, Glendale, CA	12/19/95
Thurairatnam, Indran Rajpal, Staten Island, NY	12/18/95
West, William G., Marina Del Rey, CA	12/19/95
Winslow, Wendy L., Concord, NH	12/19/95
Federal/State Exclusion/Suspension	
Burney, William W. II, Wichita, KS	12/18/95
Default on Heal Loan	
Baltazar, Rodney, Jamaica, NY	12/18/95
Barry, Patrick G., San Diego, CA	12/19/95
Bentley, Bobetta, Louisville, KY	12/17/95
Burgess, Jonathan E., Vancouver, WA	12/19/95
Bybee, William D., East Moline, IL	12/18/95
Fitzpatrick, Patrick J., Hesperia, CA	12/19/95
Fletcher, Leonard Gene, Santa Ana, CA	12/19/95
Font, David E. Jr., Lorain, OH	12/18/95
Jackson, Cynthia L., Pasadena, CA	12/19/95
Jimerson, Ruthie m., Youngstown, OH	12/18/95
Joergens, Donald W. Jr., Staten Island, NY	12/18/95
Johnston, Mary M., Baldwin, NY	12/18/95
Jones, Wendell C., Providence, RI	12/19/95
Kaminsky, Arthur Louis, Long Grove, IL	12/18/95
Kessler, Michael J., Vallejo, CA	12/19/95
Kirk, Marshall S., Lake Carmen, NY	12/18/95
Lentol, Lawrence A., Boca Raton, FL	12/17/95
Lunquist, Glenn A., Douglasville, GA	12/17/95
Martin, John W., Jr., Canton, GA	12/17/95
Morris, Lynda R., Overland Park, KS	12/18/95
Nicholes, David L., Woodinville, WA	12/19/95
Scampole, James J., Farmington, NY	12/18/95
Scott, Clarence Jr., Sanford FL	12/17/95
Shaw, Gary W., New York, NY	12/18/95
Sheppard, Stuart J., Philadelphia, PA	12/20/95
Siqueiros, Rafael O., Salinas, CA	12/19/95
Smith, Barbara E., Pompano Beach, FL	12/17/95
Stone, Steven D., San Leandro, CA	12/19/95
Theobald, Patrick J., Nebraska City, NE	12/17/95
Tucker, Carol A., Chicago, IL	12/18/95
Wallace-Tibbetts, Mile A., Fremont, NE	12/17/95
Williams, Danny C., Broomfield, CO	12/18/95
Section 1128As	
Better Health, Inc., Indianapolis, IN	08/11/95
Muscari, Sally Jo, Tulsa, OK	04/12/95
Muscari, Mildred B., Broken Arrow, OK	04/12/95
Shawnee Neuro-Musculo-Skeletal, Broken Arrow, OK	04/12/95

Dated: December 6, 1995.
William M. Libercci,
Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.
[FR Doc. 95–30480 Filed 12–13–95; 8:45 am]
BILLING CODE 4150–04–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: December 15, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 5178, Telephone Conference.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.
Name of SEP: Behavioral and Neurosciences.
Date: December 15, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5182, Telephone Conference.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.
Date: February 21–23, 1996.
Time: 8:00 a.m.
Place: The Madison Hotel, Washington, D.C.
Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.
Name of SEP: Biological and Physiological Sciences.
Date: February 23, 1996.
Time: 8:30 a.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Dr. Robert Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1261.
Name of SEP: Biological and Physiological Sciences.
Date: March 1, 1996.
Time: 8:30 a.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Dr. Robert Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1261.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 8, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–30438 Filed 12–13–95; 8:45 am]
BILLING CODE 4140–01–M

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Compact for regulation of Class III gaming between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon which was executed on October 13, 1995.

DATES: This action is effective December 14, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: November 30, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–30466 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on October 20, 1995.

DATES: This action is effective December 14, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: December 5, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–30467 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management Alaska

[AK–962–1410–00–P; F–14918–A]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Pilot Station for 16,413.45 acres. The lands involved are in the vicinity of Pilot Station, Alaska and are within Tps. 21 and 23 N., R. 73 W.; and T. 19 N., Rgs. 75 and 76 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 16, 1996, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30498 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–JA–P

[WY–985–06–0777–72]

Resource Advisory Council Meeting, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Wyoming Resource Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the Wyoming Resource Advisory Council (RAC).

DATES: January 23, 1996, from 8:30 a.m. until 5 p.m. and January 24, 1996, from 8:30 a.m. until 3 p.m.

ADDRESSES: Parkway Plaza Hotel, 123 West "E" Street, Casper, WY 82602.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, RAC Coordinator, Wyoming Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6020.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Status of Green River Basin Advisory Committee
2. Presentation on Proper Functioning Riparian Area
3. Preliminary reports from RAC sub-groups
4. Standards and Guidelines
5. Public Comment

This meeting is open to the public. Interested persons may make oral statements to the Council or file written statements for the council's consideration. Anyone wishing to make an oral statement should notify the RAC Coordinator, at the above address by January 12, 1996.

Depending on the number of persons wishing to make oral statements, a time limit, per person, may be established by the Chair of the Resource Advisory Council.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 95–30463 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially file in the Wyoming State Office, Cheyenne, Wyoming, Thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 51 N., R. 68 W., accepted November 30, 1995
T. 13 & 14 N., R. 108 W., accepted November 30, 1995
T. 25 N., R. 109 W., accepted November 30, 1995

Sixth Principal Meridian, Nebraska

T. 24 N., R. 10 E., accepted November 30, 1995
T. 25 N., R. 10 E., accepted November 30, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 5, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–30477 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–23–M

[NV–930–1430–01; NV–59007]

Notice of Addition of Lands to Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed a request to add 70 acres to their withdrawal application for flood control facilities in Clark County, Nevada. The original Notice of Proposed Withdrawal was published in the **Federal Register**, 59 FR 60998, November 29, 1994, and segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. This notice for additional lands shall not operate to extend the segregation for the lands described in the original notice.

DATES: Comments and requests for meeting should be received on or before March 13, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–785–6507.

SUPPLEMENTARY INFORMATION: On September 21, 1995, the Department of the Army, Los Angeles District, Corps Engineers, filed a request to add certain lands to their existing withdrawal application. These lands are in addition to those published in the **Federal Register**, 59 FR 60998, November 29, 1994. The following described public lands are to be withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 22 S., R. 59 E.,
Sec. 13, SE¼SE¼NW¼, E½NE¼SW¼, and N½NE¼SE¼SW¼.
T. 21 S., R. 60 E.,
Sec. 36, E½SE¼NW¼SE¼, NW¼SE¼NW¼SE¼, and NW¼NE¼SW¼SE¼.
T. 22 S., R. 60 E.,
Sec. 1, NE¼NE¼SE¼NW¼ and NW¼NW¼SW¼NE¼;
Sec. 9, W½NW¼NW¼NW¼, W½SW¼NW¼NW¼, W½NW¼NW¼SW¼, and W½NW¼SW¼SW¼.

The areas described aggregate 70 acres in Clark County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the addition of lands to the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the addition of lands to the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a pubic meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

From the date of publication of this notice in the **Federal Register**, the additional described lands will be segregated until November 29, 1996, as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are rights-of-way, leases, and permits, or discretionary land use authorizations of a temporary nature that do not significantly disturb the surface of the land or impair values of the resources.

The temporary segregation of the additional lands in connection with the withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Corps of Engineers.

Dated: December 5, 1995.

William K. Stowers,

Lands Team Lead.

[FR Doc. 95–30479 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–HC–P

[NM–070–1430–01; NMNM 92843]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 134.68 acres of public lands in San Juan County to protect the Lee Acres Landfill. This notice closes the land for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by March 13, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Farmington District Manager, Bureau of Land Management, 1235 La Plata Hwy., Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, BLM Farmington District Office, 1235 La Plata Hwy., Farmington, NM 87401, (505) 599–6332.

SUPPLEMENTARY INFORMATION: On November 8, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights.

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New Mexico Principal Meridian

T. 29 N., R. 12 W.,
Sec. 21, lots 6 and 7 (everything southeast of County Road #5569);
Sec. 22, lot 5 (everything southeast of County Road #5569); lot 6 W½, lot 11 W½ and lot 12 All;
Sec. 28, lot 2.

The area described contains 138.64 acres in San Juan County.

The purpose of the proposed withdrawal is to protect public health and welfare, and the environment from hazardous materials at the Lee Acres Landfill area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections, in connection with the proposed withdrawal, may present their views in writing to the Farmington District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to Farmington District Manager within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: December 5, 1995.

Joel E. Farrell,

Acting District Manager.

[FR Doc. 95–30476 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–FB–P

National Park Service

Development Concept Plan; Final Environmental Impact Statement; Santa Rosa Island; Channel Islands National Park; Record of Decision

Summary: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the National Park Service, Department of the Interior, has approved a Record of Decision (ROD) for the Santa Rosa Island Development Concept Plan, Final Environmental Impact Statement, Channel Islands National Park, California.

The National Park Service will implement the proposed plan as identified in the Final Environmental Impact Statement, issued in September, 1995.

Copies of the Record of Decision and final environmental impact statement may be obtained from the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, California 93001, or by calling the park at (805) 658–5700.

Dated: December 5, 1995.

Stephen Crabtree,

Field Director, Pacific West Area.

[FR Doc. 95–30409 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Little Bighorn Battlefield National Monument Advisory Committee (a.k.a. Indian Memorial Advisory Committee). Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: January 05–06, 1996, from 10:00 a.m.–5:00 p.m. on 01/05/96, and 8:00 a.m.–5:00 p.m. on 01/06/96.

ADDRESSES: Holiday Inn—Rushmore Plaza, 505 North 5th Street, Rapid City, South Dakota. (605) 348–4000.

THE AGENDA OF THIS MEETING WILL BE: Introduction/opening remarks, administrivia, minutes from last meeting, discuss follow-up actions from last meeting, review of design competition language/draft text of competition document, set design competition timetable, discuss fund-raising strategy and promotional materials. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287 Denver, Colorado 80225–0287, (303) 969–2511.

Dated: December 6, 1995.

Gerard Baker,

Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 95–30410 Filed 12–13–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32805]

Southern Pacific Transportation Company—Corporate Family Reorganization Exemption—The Denver and Rio Grande Western Railroad Company

Southern Pacific Transportation Company (SPT) and The Denver and Rio Grande Western Railroad Company (DRGW),[1] common carriers by railroad, have jointly filed a notice of exemption to exempt a transaction whereby SPT will purchase DRGW's right-of-way, together with adjoining lands and improvements, between (1) DRGW milepost 128.8 at or near Orestod, CO, and DRGW milepost 166.8 at or near Dotsero, CO; (2) DRGW milepost 175.95 at or near Walsenburg, CO, and DRGW milepost 269.72 at or near Monte Vista, CO; (3) DRGW milepost 373.22 at or near Delta, CO, and DRGW milepost 417.83 at or near Oliver, CO; (4) DRGW milepost 603.52 at or near Mounds, UT, and DRGW milepost 17.7 at or near Sunnyside, UT; (5) DRGW milepost 0.00 and DRGW milepost 3.44 near Wellington, UT; (6) DRGW milepost 644.29 at or near Colton, UT, and DRGW milepost 21.57 at or near Clear Creek, UT; (7) DRGW milepost 695.70 at or near Springville Crossover, UT, and DRGW milepost 33.18 at or near Burgin, UT; (8) DRGW milepost 360.91 at or near Glenwood Springs, CO, and DRGW milepost 393.66 at or near Woody Creek, CO; (9) DRGW milepost 373.20 at or near Delta, CO, and DRGW milepost 350.13 at or near Montrose, CO; and (10) DRGW milepost 269.72 at or near Monte Vista, CO, and DRGW milepost 321.0 at or near Creede, CO. DRGW will also grant SPT an easement over the DRGW right-of-way between DRGW milepost 373.45 at or near Delta, CO, and DRGW milepost 424.05 at or near Grand Junction, CO.[2]

The parties state that they intended to consummate these transactions on or after November 13, 1995.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The stated purpose of the transaction is for corporate finance reasons and is intended to result in the prospective reduction of SPT's consolidated income and combined property tax liabilities, thereby improving SPT's financial condition.

As a condition to use of this exemption, any employees adversely affected by this transaction will be protected by conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Louis P. Warchot, Southern Pacific Building, Room 815, One Market Plaza, San Francisco, CA 94105.

Decided: December 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30461 Filed 12–13–95; 8:45 am]

BILLING CODE 7035–01–P

[1] DRGW is within SPT's consolidated group of companies.

[2] DRGW is retaining an easement for rail operations by which DRGW will continue to provide freight rail service over the properties being transferred and easement granted to SPT. Under the purchase and sale agreements entered into by SPT and DRGW, SPT may not commence rail operations over these rail lines without obtaining additional authorization from the Commission.

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Services to Migrant and Seasonal Farmworkers Report and Employment Service Complaint/Referral Record

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of information collection for Services to Migrant and Seasonal Farmworkers Report, Form ETA 5148, and Employment Service Complaint Referral Record, ETA 8429.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 12, 1996. Written comments should evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information.

ADDRESSEE: David Webb, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5174 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

As part of the settlement in the case of NAACP v. Secretary of Labor (Civil Action No. 2010–72, U.S.D.C.), the U.S. Department of Labor (DOL) negotiated with the plaintiffs a series of regulations published June 10, 1980. Employment and Training Administration (ETA) regulations at 20 CFR 651, 653, and 658 under the Wagner-Peyser Act as amended by the Job Training Partnership Act, set forth the role and responsibilities of the United States Employment Services (USES) and the State Employment Services Agencies (SESA) regarding compliance of said regulations.

In compliance with 20 CFR 653.109, DOL established recordkeeping requirements to allow for the efficient and effective monitoring of SESAs regulatory compliance.

The ETA Form 8429, Employment Service Complaint Referral Record, is used to collect and document all individual complaints filed under the ES complaint system.

The ETA Form 5148 Services to Migrant and Seasonal Farmworkers Report, is used to collect data which are primarily used to monitor and to measure the extent and effectiveness of ES services to MSFWS as a high priority target group for ES services.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of

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1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0039. There is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Titles: Services to Migrant and Seasonal Farmworkers Report and Employment Service Complaint Referral Record.

OMB Number: 1205–0039.

Frequency: Quarterly and on occasion, respectively.

Affected Public: State governments.

Number of Respondents: 208.

Estimated Cost Per Respondent: No cost to respondent.

Estimated Burden Hours: 5530.

Complaint Log Maintenance
1. Recordkeeping
Number of recordkeepers—168
Annual hours per recordkeeper—6.3
Recordkeepers hours—1,059
2. Processing ETA Form 8429
Annual number of forms—2,520
Minutes per form—8
Processing hours—327

Outreach Log
1. Recordkeeping
Number of recordkeepers—150
Annual hours per recordkeeper—26
Recordkeepers hours—3,900
2. Data Collection/Reporting ETA 5148
Annual number of reports—208
Minutes per report—70
Recordkeeping hours—244

Comments submitted in response to this notice will be summarized and/or included in the request for Office Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 8, 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment Training Administration.

[FR Doc. 95–30481 Filed 12–13–95; 8:45 am]

BILLING CODE 4510–30–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Forms for Agricultural Recruitment System

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Agricultural and Food Processing Clearance Order, Form ETA–790, Agricultural and Food Processing Clearance Memorandum, Form ETA–795, Migrant Worker Itinerary, Form ETA–785, and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 12, 1996. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESS: David L. Webb, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210, 202–219–5174 (this is not a toll-free number).

I. Background

The Migrant and Seasonal Farmworker regulations at 20 CFR 653.500 establish procedures for agricultural clearance activity. Federal regulations at 20 CFR 653.501 (f) (1) require all local offices to use the interstate clearance forms, as prescribed by ETA.

Local and State Employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicant holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people named on the Migrant Worker Itinerary.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c) (2) (A) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0134. There is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Titles: Agricultural and Food Processing Clearance Order, Agricultural Clearance Memorandum, Migrant Worker Itinerary, and Job Service Manifest Record.

OMB Number: 1205–0134.

Frequency: On occasion.

Affected Public: Individuals and households, employers, and State Governments.

Number of Respondents: 52.

Estimated Time Per Respondent:

Form	Volume per year	Hours per response
ETA–790	2,000	1.0
ETA–795	3,000	.5
ETA–785	3,500	.5
ETA–785A	2,500	.5

Total Estimated Cost: None.

Total Burden Hours:

Form	Hours per year
ETA–790	2,000
ETA–795	1,500
ETA–785	1,750
ETA–785A	1,250
Total	6,500

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 8, 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment Training Administration.

[FR Doc. 95–30482 Filed 12–13–95; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP–CD 90–92]

Distribution of 1990, 1991 and 1992 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180 day arbitration period for the distribution of 1990–92 cable compulsory license royalties, as required by the regulations governing this proceeding.

EFFECTIVE DATE: December 14, 1995.

ADDRESSES: All hearings and meetings for the 1990–92 cable distribution proceeding shall take place in the James Madison Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel or Tanya Sandros, Copyright Arbitration Royalty Panel Specialist, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone:(202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

37 CFR 251.11(b) provides that:

> At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and places of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of § 251.11(b) for the proceeding for the distribution of cable compulsory license royalties for the years 1990–92.

On December 15, 1994, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of controversies to the distribution of the 1990 cable royalty fund. 59 FR 64714 (December 15, 1994). In response to this notice, copyright owners identified the existence of controversies for distribution of the 1990 fund, as well as the 1991 and 1992 funds. The copyright owners requested that the Office consolidate the 1990–92 funds into a single distribution proceeding.

On March 21, 1995, the Office published a notice consolidating the 1990–92 cable royalty distribution proceedings into a single proceeding, and announced the precontroversy discovery schedule. 60 FR 14971 (March 21, 1995). The Office also announced in that notice that controversies to the 1990–92 would be declared, and arbitration initiated, on November 17, 1995. 60 FR 14975. The parties, however, filed a motion with the Office on November 8, 1995, requesting a deferment of the commencement date until December 29, 1995. In response to this motion, the Copyright Office issued an Order which set December 4, 1995, as the new initiation date. Order, dated November 13, 1995.

On November 28, 1995, the Office announced the initiation of the 180 day arbitration period, pursuant to 37 CFR 251.72; the names of the arbitrators who will preside at the 1990–92 cable distribution proceeding; a delay of the initiation of the proceedings until December 4, 1995; and the date, time and place of the initial meeting of the proceeding. 60 FR 58680 (November 28, 1995).

This notice announces the present schedule for the entire proceeding.

II. The Schedule for the Cable Distribution Proceeding

The parties to this proceeding jointly proposed a preliminary schedule for the upcoming hearings to the Copyright Office on November 17, 1995. The Copyright Office, in turn, passed the proposed schedule to the arbitrators for their comments and approval. In response to a request from the arbitrators, the Joint Sports Claimants agreed to shorten their direct case, and rescheduled two of their witnesses for the rebuttal phase of the proceeding. Likewise, the National Association of Broadcasters agreed to conclude their case no later than December 20, 1995. Further refinements to the proposed schedule were made at the meeting on December 4, 1995. This schedule was finalized in an Order issued by the CARP panel. *See* CARP Order, dated December 8, 1995. Thus, the hearing will proceed according to the following schedule:

Presentation of Direct Cases

Joint Sports Claimants
December 5–December 14, 1995
National Association of Broadcasters
December 14–December 20, 1995
Program Suppliers
December 20, 1995–January 12, 1996
Public Broadcasting
January 16–January 19, 1996
Devotional Claimants
January 22–January 26, 1996
Canadian Claimants
January 29–February 2, 1996
Deadline for Filing Written Rebuttal Cases
February 7, 1996
Deadline for Serving Requests for Underlying Documents Related to Rebuttal Cases
February 9, 1996
Deadline for Responses to Requests for Underlying Documents
February 13, 1996
Deadline for Producing Documents
February 15, 1996
Deadline for Filing any Motions Related to Rebuttal Cases
February 15, 1996
Deadline for Filing any Oppositions to Motions
February 20, 1996
Presentation of Rebuttal Cases
February 27–March 15, 1996
Deadline for Filing Proposed Findings of Fact & Conclusions of Law
April 5, 1996
Deadline for Filing Responses to Proposed Findings of Fact & Conclusions of Law
April 17, 1996
Close of 180 day period
June 1, 1996

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding; and all changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

III. Publication of the Original Schedule on Short Notice

The regulations require that the Copyright Office publish the original schedule for the CARP proceeding in the **Federal Register** at least seven calendar days in advance of the first meeting. 37 CFR 251.11(b). Pursuant to 37 CFR 251.11(d), however, the arbitrators voted to waive the seven day notice requirement. The results of the

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vote on the question, whether the requirement for a seven calendar notice should be waived, are:

The Hon. Mel R. Jiganti, Chairperson—Yes
The Hon. John B. Farmakides—Yes
The Hon. Ronald P. Wertheim—Yes

The arbitrators voted to suspend the notice requirement for several reasons. First, all parties to the proceeding had received notice of the proposed schedule approximately two weeks prior to the initiation of the proceeding. Second, the present schedule, which was fine tuned at the meeting on December 4, 1995, did not significantly alter the schedule initially proposed by the parties. Third, the meeting on December 4, 1995, which marks the commencement of the proceeding, was announced in a **Federal Register** notice seven calendar days before the meeting. And finally, the arbitrators and the parties anticipate the proceeding will require the full 180 days for hearing the testimony and preparing the decision. For the foregoing reasons, the arbitrators hereby waive the notice requirement, but comply with all substantive requirements of the rule.

Dated: December 11, 1995.

Marilyn Kretsinger,

Acting General Counsel.

[FR Doc. 95–30499 Filed 12–13–95; 8:45 am]

BILLING CODE 1415–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Record Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 29, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–96–1). Routine criminal investigative records.

2. Department of Education, President's Commission on Foreign Language and International Studies (N1–12–95–2). Administrative correspondence and reference files.

3. Department of State (N1–59–95–14). Routine, facilitative, and duplicative records from the Bureau of Economic Affairs, the Legal Adviser, the Bureau of Near Eastern and South Asian Affairs, and the Bureau of Security and Consular Affairs.

4. Department of the Treasury, Office of Thrift Supervision (N1–483–93–12). System activity and ad hoc reports created by the Holding Company Universe System.

5. Administration for Health Care Policy and Research (N1–510–94–1). Comprehensive records schedule.

6. Air Coordinating Committee (N1–220–94–8). Questionnaires, tabulations, and subcommittee records duplicating information in retained ACC records.

7. Bureau of Alcohol, Tobacco, and Firearms (N1–436–95–1). Certificate of Label Approval output records.

8. Federal Trade Commission (N1–122–95–3). Bureau of Economics Fertilizer Investigation Working Files, 1938–80.

9. Social Security Administration (N1–47–96–1). Reduction in retention period for employer reports of wages paid.

10. Tennessee Valley Authority (N1–142–94–3). Records created by the Internal Energy Management Program.

11. Tennessee Valley Authority (N1–142–95–11). TVA Form 13037, Acceptance of indemnification coverage and waiver of claims.

12. The White House Conference on Small Business (N1–220–95–16). Routine correspondence, working papers to publications, anonymous voting ballots, and press coverage documents.

13. United States Information Agency, Office of the General Counsel (N1–306–95–7). Reduction in retention period for records already approved for destruction.

14. United States Information Agency, Bureau of Management (N1–306–95–8). Routine records of the Office of Technology.

Dated: December 5, 1995.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 95–30471 Filed 12–13–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Company, Crystal River Nuclear Generating Plant, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72 issued to Florida Power Compant (the licensee) for operation of Crystal River Nuclear Generating Plant, Unit 3, located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would include provisions in Technical Specifications (TS) Section 3.7 which allow for the storage of fuel with an enrichment not to exceed 5.0 w/o U–235 in the new and spent fuel storage racks. The proposed action is in accordance with the licensee's application for amendment dated January 26, 1995, as supplemented March 9, 1995, and May 24, 1995.

The Need for Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 megawatt days per metric ton uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Crystal River Nuclear Generating Plant, Unit 3.

Agencies and Persons Consulted

In accordance with its stated policy, on November 16, 1995, the NRC staff consulted with the Florida State official, Dr. Lyle Jerrett of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 26, 1995, and supplements to the application dated March 9, 1995, and May 24, 1995. These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the Crystal River Nuclear Generating Station, Unit 3, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 5th day of December 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30457 Filed 12–13–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 73.55 for Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company, (the licensee), for operation of the D.C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements

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of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken off site.

This environmental assessment has been prepared to address potential environmental issues related to the licensee's application of August 17, 1995.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), "Access Requirements," specifies that "licensee shall control all points of personnel and vehicle access into a protected area." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used of all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. * * *"

Currently, unescorted access into the protected areas of the Cook Nuclear Plant is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges off site. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges off site.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from certain requirements of 10 CFR 73.55(d)(5) is required to permit contractors to take their badges off site instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption would not increase the probability or consequences of accidents previously analyzed and the proposed exemption would not affect facility radiation levels or facility radiological effluents. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276, UC—906 Unlimited Release, printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the false acceptance rate of the proposed hand geometry system is comparable to that of the current system. The licensee stated that the use of the badges with the hand geometry system would increase the overall level of access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge off site, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for D.C. Cook will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges off site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on November 20, 1995, the NRC staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 17, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30456 Filed 12–13–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (American Eco Corporation, Common Stock, No Par Value) File No. 1–10621

December 8, 1995.

American Eco Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors approved resolutions on September 14, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Association of Securities Dealers Automated Quotations National Market System ("Nasdaq/NMS"). The NASD approved the Company's application for initial inclusion on the Nasdaq/NMS on November 3, 1995.

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's shareholders than the present listing on the Amex for the following reasons:

(a) The Company believes that the Nasdaq/NMS system of competing market makers will result in increased visibility and sponsorship for the Security than is presently available on the Amex;

(b) The Company believes that the Nasdaq/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices for share when trading volume is slight;

(c) The Company believes that the Nasdaq/NMS system will offer an opportunity for the Company to secure its own group of market makers and to expand the capital base available for trading in the Security; and

(d) The Company believes that the firms making a market in the Security on the Nasdaq/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 2, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30421 Filed 12–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21587; No. 812–9156]

Safeco Life Insurance Company, et al.

December 7, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Safeco Life Insurance Company ("SAFECO") and Separate Account SL ("Separate Account").

RELEVANT 1940 ACT SECTION: Order requested under Section 26(b) of the 1940 Act.[1]

SUMMARY OF APPLICATION: Applicants seek an order authorizing the substitution of shares of certain portfolios of the Variable Insurance Products Fund and the Variable Insurance Products Fund II ("VIP Trusts") for shares of certain portfolios of The Hudson River Trust ("Hudson Trust") currently held by the Separate Account.

FILING DATE: The application was filed on August 10, 1994, and amended on September 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Leslie Harrison, Counsel, SAFECO Life Insurance Company, P.O. Box 34690, Seattle, Washington 98124–1690.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Brenda Sneed, Assistant Director, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. SAFECO is a stock life insurance company licensed to sell insurance and

[1] Applicants represent that they will amend the application during the notice period to make this representation.

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annuities in the District of Columbia and all states except New York. SAFECO is a wholly-owned subsidiary of SAFECO Corporation, a holding company.

2. *Separate Account.* The Separate Account was established by SAFECO and registered under the 1940 Act as a unit investment trust for the purpose of funding certain flexible premium variable life insurance contracts ("Contracts"). The Contracts have been registered under the Securities Act of 1933.[2] The Separate Account currently has fourteen investment Divisions ("Investment Divisions"), each investing exclusively in the shares of a corresponding portfolio of the Hudson Trust or the VIP Trusts.

3. *The Hudson Trust.* The Hudson Trust is registered under the 1940 Act as an open-end management investment company. The Hudson Trust currently issues twelve series of shares of beneficial interest, each representing a separate investment portfolio. Each Hudson Trust portfolio is a separate open-end diversified management investment company. Shares of six of the twelve Hudson Trust portfolios[3] currently are held by the Separate Account. Alliance Capital Management L.P. ("Alliance") is the manager and investment adviser to the Hudson Trust portfolios. Alliance is an investment adviser registered under the Investment Advisers Act of 1940. Alliance, a publicly-traded Delaware limited partnership, is indirectly owned by Equitable Life Assurance Society of the United States ("Equitable"). Equico Securities, Inc. ("Equico"), a wholly-owned subsidiary of Equitable, is the principal underwriter of the Hudson Trust.

4. *The VIP Trusts.* The VIP Trusts are registered under the 1940 Act as open-end management investment companies. The VIP Trusts currently are issuing ten series of shares of beneficial interest, each representing a separate investment portfolio ("VIP Trust Portfolios"). Each VIP Portfolio is an open-end, diversified management investment company. Fidelity Management & Research Company ("FMR"), the manager of the VIP Trusts, is an investment adviser registered under the Investment Advisers Act of 1940. FMR is indirectly owned by FMR Corporation, a holding company for the Fidelity companies.

[2] Applicants incorporate by reference the registration statement for the Contracts (File No. 33–10248).

[3] The Hudson Trust Portfolios in which the Separate Account invests include: the Common Stock, Money Market, Balanced, Aggressive Stock, High Yield, and Global Portfolios.

5. *The Contracts.* The Contracts provide for minimum initial premium payments and additional subsequent payments. Net premium payments are allocated to the Investment Divisions and to the Guaranteed Interest Division, a part of SAFECO's General Account. Twelve transfers of Contract account value are permitted in a Contract year, without charge; thereafter, a maximum charge of $25 may be imposed for each additional transfer. The current transfer fee of $25 will be allocated equally among the Investment Divisions from which the requested amounts were transferred.

a. *Sales Loads.* The Contracts provide for the deduction of: (1) a 3% sales charge from each premium payment, and (2) a deferred sales charge ("Surrender Charge") from Contract account value if the Contract is partially or fully surrendered in the first ten Contract years. The Surrender Charge is equal to the lesser of: (1) a percentage of the maximum premium for the Contract as follows:

Contract year	Percentage of maximum premium
1 through 6	47.0
7	37.0
8	28.2
9	18.8
10	9.4

or (2) an amount equal to (A) minus (B) where (A) is 27% of the premium payments received during the first Contract year up to the maximum premium for the Contract, plus 6% of all other premium payments received to the time of surrender, and (B) is the amount of any pro rata Surrender Charge previously made under the Contract. A request for a decrease in face amount of insurance is considered to be a partial surrender subject during the first ten contract years to the pro rata deduction of the Surrender Charge from contract account value. An increase in face amount followed by a decrease in face amount will be subject to the deduction of a Surrender Charge only on the amount of decrease below the original face amount of insurance.

b. *Right of Substitution.* Under the Contracts, SAFECO has reserved the right to substitute shares of another mutual or portfolio within the Hudson Trust or the VIP Trusts if share of the Hudson Trust or the VIP Trusts (or any portfolio thereof) become unavailable for investment by the Separate Account, or if in SAFECO's judgment further investment in such shares becomes inappropriate in view of the purposes of the Contracts, subject to applicable state and federal securities laws.

c. *Administration.* SAFECO has primary responsibility for all administration of the Contracts and the Separate Account. Currently, Financial Administrative Services, Inc. ("FAS") (formerly, Fleet Administrative Services, Inc.) has been retained by SAFECO to provide administrative services to SAFECO and its contract owners. FAS is indirectly owned by Phoenix Home Life Mutual Insurance Company ("Phoenix Home Life").[4] Prior to September, 1994, SAFECO had retained Integrity Life Insurance Company ("Integrity"),[5] the principal underwriter for the Hudson Trust, to provide such administrative services, including use of the Hudson Trust as the underlying funding vehicle for the Contracts.[6] On September 30, 1991, the Distribution Agreement between the Hudson Trust and Integrity was terminated.[7] Accordingly, investment in Hudson Trust Portfolios has been restricted to Contracts sold prior to September 30, 1991 ("Pre-September 30 Contracts"). The Hudson Trust no longer is available as an investment option under Contracts sold after September 30, 1991 ("Post-September 30 Contracts"). Consequently, the VIP Trusts were selected as investment alternatives for the variable life programs administered by Integrity.

6. *Proposed Transactions.* Applicants now propose to substitute shares of five VIP Trusts Portfolios for shares of six Hudson Trust Portfolios ("Substitution"). The Portfolios and their investment objectives as stated in their respective prospectuses are as follows:

a. *Shares of the VIP Trusts Money Market Portfolio will be substituted for shares of the Hudson Trust Money Market Portfolio.* The VIP Trusts Money Market Portfolio's investment objective is to seek as high a level of current income as is consistent with preserving capital and providing liquidity by investing only in high quality U.S. dollar denominated money market securities of domestic and foreign issuers. The Hudson Trust Money Market Portfolio's investment objective is to obtain a high level of current income, preserve its assets and maintain liquidity by investing primarily in high quality U.S. dollar denominated money market instruments.

[4] On December 31, 1993, FAS was acquired from Fleet Financial Group by P.M. Holdings, Inc., a holding company owned by Phoenix Home Life.

[5] On November 26, 1993, Integrity was acquired by ARM Financial Group, Inc., a financial services holding company, from The National Mutual Life Association of Australasia, Ltd. ("Australasia"), an Australian life insurance company. Prior to its acquisition in 1988 by Australasia, Integrity had been a wholly-owned subsidiary of Equitable.

[6] At that time, the Hudson Trust was managed by a SAFECO affiliate, which SAFECO believed would assure good service between the administrator and the fund manager.

[7] Under its terms, the Distribution Agreement would continue in effect until September 30, 1991, and thereafter only if reapproved by a majority of independent Trustees of the Hudson Trust. The Trustees did not continue the Distribution Agreement after September 30, 1991.

b. *Shares of the VIP Trusts Growth Portfolio will be substituted for shares of: (1) The Hudson Trust Common Stock Portfolio; and (2) the Hudson Trust Aggressive Stock Portfolio.* The VIP Trusts Growth Portfolio's investment objective is to achieve capital appreciation by investing in common stocks, as well as bonds, preferred stocks, and high-yielding, lower-rated debt securities and foreign securities. The Hudson Trust Common Stock Portfolio's investment objective is to achieve long-term growth of its capital and increased income by investing primarily in common stocks and other equity-type instruments. The Hudson Trust Aggressive Stock Portfolio's investment objective is to achieve long-term growth of capital by investing primarily in common stocks and other equity-type securities issued by quality small and intermediate sized companies with strong growth prospects and in covered options on those securities.

c. *Shares of the VIP Trusts Asset Manager Portfolio will be substituted for shares of the Hudson Trust Balanced Portfolio.* The VIP Trusts Asset Manager Portfolio's investment objective is to seek high total return with reduced risk over the long-term by allocating its assets among domestic and foreign stocks, bonds and short-term, fixed-income instruments. The Hudson Trust Balanced Portfolio's investment objective is to achieve a high return through both appreciation of capital and current income by investing in a diversified portfolio of publicly traded equity and debt securities and short-term money market instruments.

d. *Shares of the VIP Trusts High Yield Portfolio will be substituted for shares of the Hudson Trust High Yield Portfolio.* The VIP Trusts High Yield Portfolio's investment objective is to seek a high level of current income by investing primarily in high-yielding, lower-rated, fixed income securities, while also considering growth of capital. The Hudson Trust High Yield Portfolio's investment objective is to achieve high return by maximizing current income and, to the extent consistent with that objective, capital appreciation by investing primarily in a diversified mix of high yield, fixed income securities involving greater volatility of price and risk of principal and income than high quality fixed income securities. The medium and lower quality debt securities in which the High Yield Portfolio may invest are known as "junk bonds."

e. *Shares of the VIP Trusts Overseas Portfolio will be substituted for shares of the Hudson Trust Global Portfolio.* The VIP Trusts Overseas Portfolio's investment objective is to seek long-term growth of capital primarily through investments in foreign securities. The Hudson Trust Global Portfolio's investment objective is to achieve long-term growth of capital by investing primarily in equity securities of non-United States companies as well as United States issuers.

Applicants assert that the investment objectives and policies of each of the VIP Trusts Portfolios which are to be substituted and the Hudson Trust Portfolios to be substituted are similar, except for the Hudson Trust Aggressive Stock Portfolio and the VIP Trusts Growth Portfolio. Applicants represent that the VIP Trusts Growth Portfolio's investments are all permissible investments of the Hudson Trust Aggressive Stock Portfolio. However, the Aggressive Stock Portfolio permits certain additional investments[8] that are not allowed under the investment policy of the Growth Portfolio. Nevertheless, Applicants submit that Contract owners are seeking long-term growth when they invest in either the Growth Portfolio or the Aggressive Stock Portfolio, that this goal can be achieved by investment in either Portfolio, and that the differences between investment policies are non-material to achievement of these investment goals.

7. *Additional Investments Options.* In addition to the five VIP Trusts Portfolios which are to be substituted for the six Hudson Trust Portfolios, Contract owners will be able to invest in the five additional VIP Trusts Portfolios:

a. *Investment Grade Bond Portfolio,* which seeks high current income by investing primarily in fixed-income obligations of all types by investing at least 65% of its total assets in investment-grade, fixed income securities, such as bonds, notes and debentures.

b. *Asset Manager Growth Portfolio,* which seeks to maximize total return over the long term by allocating its assets among three classes, or types of investments: (1) stock class, consisting of equity securities of all types; (2) bond class, including all varieties of fixed-income instruments with maturities of more than three years; (3) short-term class, including all types of short-term instruments with remaining maturities of three years of less. Applicants state that the difference between this Portfolio and the VIP Trusts Asset Manager Portfolio is the percentage allocation to these three classes of investment.

c. *Equity Income Portfolio,* which seeks reasonable income by investing primarily in income producing equity securities. The Portfolio normally invests at least 65% of its total assets in these securities.

d. *Index 500 Portfolio,* which seeks to match the total return of the S&P 500 while keeping expenses low. The Portfolio normally invests at least 80% (65% if Portfolio assets are below $20 million) of its assets in equity securities of companies that comprise the S&P 500.

e. *Contrafund Portfolio,* which seeks capital appreciation by investing in companies that are believed to be undervalued due to an overly pessimistic appraisal by the public.

8. *Advisory Fees—Hudson Trust Portfolios.* Advisory fees are payable by the Hudson Trust Portfolios at the following annual percentages of values of each Portfolio's average daily net assets:

Portfolio	Daily average net assets		
	First $350 million (percent)	Next $400 million (percent)	Over $750 million (percent)
a. Money market			
b. Balanced	.400	.375	.350
c. Common Stock			
d. Aggressive Stock	.500	.475	.450
e. High Yield			
f. Global	.550	.525	.500

9. *Management Fees—VIP Trust Portfolios.* The management fee for each VIP Trusts Portfolio (excluding the Money Market Portfolio) is calculated by adding a group fee rate to an individual fund fee rate, and multiplying the result by each Portfolio's average net assets. The group fee rate is based on the average net assets of all the mutual funds advised by FMR and can not exceed certain maximum rates. The Management fee for the Money market Portfolio is calculated by multiplying the sum of

[8] The Aggressive Stock Portfolio may invest in foreign securities, write covered call options, purchase call and put options on individual equity securities, security indexes and foreign currencies, and purchase and sell stock index and foreign currency future investments and options thereon.

three components (group fee rate, which drops as total assets under management increase, individual fee rate and an income component) [9] by the fund's average net assets.

Portfolio	Maximum group fee rate (percent)	For 12/31/94 group fee rate (percent)	Individual fee rate (percent)
Money Market	0.37	0.1563	0.03
Growth [10]	0.52	0.3191	0.30
Asset Manger [11]	0.52	0.3191	0.40
High Income	0.37	0.1563	0.45
Overseas	0.52	0.3191	0.45

[10] FMR has directed certain portfolio trades of the Growth Portfolio to brokers who paid a portion of the Portfolio's expenses. For the period ending December 31, 1994, the Portfolio's expenses were reduced by $204,452.

[11] FMR directed certain portfolio trades to brokers who paid a portion of the Asset Manager Portfolio's expenses. For the period ended December 31, 1994, the expenses of the Asset Manager Portfolio were reduced by $131,585 under this arrangement.

10. *Sub-Advisory Agreements—VIP Trusts Portfolios.* FMR, the manager of the VIP Trusts, has entered into various sub-advisory agreements for research, investment advice and portfolio management services. FMR has entered into sub-advisory agreements with Fidelity Management & Research (UK), Inc. ("FMR UK") and Fidelity Management & Research (Far East), Inc. ("FMR Far East") on behalf of the VIP Trusts High Income and Asset Manager Portfolios. FMR also has entered into sub-advisory agreements with FMR U.K., FMR Far East and Fidelity International Investment Advisers ("FIIA") on behalf of the VIP Trusts Overseas Portfolio; FIIA, in turn, has entered into a sub-advisory agreement with its wholly-owned subsidiary Fidelity International Investment Advisors (U.K.) Limited ("FIIAL UK"). FMR has entered into a sub-advisory agreement with FMR Texas, Inc. ("FMR Texas") on behalf of the VIP Trusts Money Market Portfolio. Under these sub-advisory agreements, FMR pays the fees of FMR UK, FMR Far East, FMR Texas and FIIA. FIIA, in turn, pays the fees of FIIAL UK.

a. For providing investment advice and research services, the sub-advisors are compensated as follows: (1) FMR pays FMR U.K. and FMR Far East fees equal to 110% and 105%, respectively, of their costs; (2) FMR pays FIIA 30% of its monthly management fee with respect to the average market value of investments held by the fund for which FIIA has provided FMR with investment advice; and (3) FIIA pays FIIAL UK a fee equal to 100% of its costs.

b. For providing investment management services, the sub-advisors are compensated as follows: (1) FMR pays FMR UK, FMR Far East and FIIA 50% of FMR's monthly management fee with respect to the fund's average net assets managed by the sub-advisor on a discretionary basis; (2) FIIA pays FIIAL UK 100% of its costs; and (3) FMR pays FMR Texas a fee equal to 50% of the management fee payable to FMR under its management contract with the Money Market Portfolio.

11. The following table indicates the amount of assets that were invested in Hudson River Trust Portfolios at the year ended December 31:

	As of 12/31/94	As of 12/31/93	As of 12/31/92	As of 12/31/91	As of 12/31/90
Total Contracts	2,785	1,655	765	357	237
Invested in Hudson Trust	308				

Portfolio	Assets 12/31/94	Assets 12/31/93	Assets 12/31/92	Assets 12/31/91	Assets 12/31/90
Common Stock	$1,011,187	$1,114,766	$1,053,292	$992,549	$437,830
Money Market	376,959	427,557	69,058	146,332	34,025
Balanced	60,865	97,035	108,132	59,470	13,598
Aggressive	68,285	108,403	176,348	141,097	13,361
High Yield	21,162	293,199	275,997	11,819	10,003
Global	154,454	113,683	32,276	25,518	7,377

Proposed Transactions

1. Transactions to implement the proposed Substitution of shares of five VIP Trusts Portfolios for shares of six Hudson Trust Portfolios will take place both at the Separate Account level and at the underlying Fund level.

a. *Separate Account Level.* At the Separate Account level, the Substitution will result in a transfer of Contract account values from one Separate Account Division to another. On the day of the Substitution, SAFECO will determine the Contract account values held in the Investment Divisions which invest in the Hudson Trust Portfolios, redeem those units of interest, purchase units of the Investment Division which invests in the corresponding VIP Trusts Portfolio and credit those units to the Contract. Contract account value will be identical immediately before and after the Substitution. The number of units held in the Contract, however, may vary to reflect the difference in unit values of the various Investment Divisions. All unit values will be valued at the next computed value in a manner consistent with Rule 22c–1 under the 1940 Act.

b. *Fund Level.* On the day of the Substitution, all shares held by the Separate Account in the Hudson Trust will be redeemed and, contemporaneously, an amount equal to the cash proceeds of the redemption will be used to purchase shares of the corresponding VIP Trusts Portfolios.[12] All shares will be purchased and redeemed at prices based on the current net asset values per share next computed after receipt of the redemption request and in a manner consistent with Rule 22c–1 under the 1940 Act.

2. Applicants represent that Contract owners invested in the Hudson Trust have been sent a Supplement to the Hudson Trust Prospectus which explains the proposed Substitution, the anticipated change in SAFECO's administrative support system, and the right to elect to transfer Contract account value to the VIP Trusts. Applicants further represent that a notice has been sent to Contract owners informing them of the new administrator and the new administrative system. If the Commission issues an order regarding the proposed Substitution, a second notice, accompanied by a current prospectus for the VIP Trusts, will be sent to Contract owners informing them of the Commission's order and the proposed date of the Substitution. A third notice will be mailed to each affected Contract owner within five days after the Substitution has been effected confirming that the Substitution has been completed and reflecting the transfer of Contract account values from the Hudson Trust Investment Divisions to the VIP Trusts Investment Divisions. Affected Contract owners will have a period of 30-days after the date of the mailing of the third notice and confirmation of Substitution to exercise the right to make a one-time transfer of Contract account values to any other Division, including the Guaranteed Interest Division, without charge and without the transfer counting as one of the free transfers permitted in a Contract year.

3. All administrative or other transaction costs, except brokerage costs, will be borne by SAFECO. The proposed Substitution will not result in adverse tax consequences to Contract owners, the Separate Account or SAFECO. The Substitution will not result in a change in Contract provisions or alter SAFECO's contractual obligations under the Contracts.

Applicants' Legal Analysis

1. The Applicants request that the Commission issue an order under Section 26(b) of the 1940 Act to the extent necessary to permit the substitution of shares of the VIP Trusts Portfolios for the shares of the Hudson Trust Portfolios currently held by the Separate Account.[13] Thereafter, the VIP Trusts Portfolios will be eligible funding vehicles for the Contracts, including the Pre-September 30 Contracts.

2. Section 26(b) of the 1940 Act prohibits a depositor or trustee of a registered unit investment trust holding the securities of a single issuer from substituting another security for such security unless the Commission approves the substitution, finding that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. SAFECO represents that the Substitution is in the best interests of Contract owners. The Hudson Trust is the only permitted investment option for SAFECO's approximately 308 Pre-September 30 Contracts, which are expected to decrease in the ordinary course of events and, therefore, become more costly and less efficient to administer.[14]

4. Applicants represent that the Contract provides for both guaranteed rates of insurance and current rates of insurance. Under the Contract, the current rates of insurance cannot exceed the guaranteed rate and usually is less. Applicants represent that state insurance laws require SAFECO to establish current rates of insurance that reasonably anticipate future expenses. Accordingly, SAFECO periodically restates its rates of insurance to take into account all expenses incurred in its insurance business. To the extent that expenses reasonable can be reduced, all Contract owners will benefit to the extent to improve current insurance rates. Conversely, insurance rates may increase if expenses increase.

5. Applicants further represent that the additional support provided by the Manager of the VIP Trusts of life insurance companies and their separate accounts ("Participating Companies") by way of fund information is helpful in the sales process and to existing Contract owners as they periodically review their investment decisions. Applicants submit that this support will benefit Contract owners by helping SAFECO enhance Contract size in this product line and keep costs down.

6. Applicants represent that the Hudson Trust no longer is available to new Participating Companies and to new Contract owners of existing Participating Companies, including SAFECO. As a result, the Hudson Trust is not an investment alternative for SAFECO's Contract owners. SAFECO submits that a substitution of the VIP Trust Portfolios for the corresponding Hudson Trust Portfolios would provide more investment opportunities for its Contract owners because the VIP Trusts continuously offer their shares to Participating Companies with an expanding asset base and distribution outlets.

7. Applicants represent that currently, six Hudson Trust Portfolios are available under the Contracts. Applicants further represent that ten VIP Trusts Portfolios are available under the non-Hudson Trust Contracts. The VIP Trusts are intended to fund variable life insurance and variable annuity contracts offered by Participating Companies. Currently, there are in excess of 40 Participating Companies that have elected to use the VIP Trusts as funding vehicles for their variable contracts. Applicants submit that this is a significant distribution outlet for VIP Trusts shares which will result in an expanding asset base for the VIP Trusts and a concomitant reduction in the per share management fees and other expenses and, thus, greater economies of scale.

8. Applicants represent that a comparison of the relative asset sizes of the Hudson Trust and the comparable VIP Trusts Portfolios for the year ended December 31, 1994, indicates that in all cases, except for the Hudson Trust Common Stock Portfolio (which commenced operations on June 16, 1975) compared with the VIP Trusts Growth Portfolio (which commenced operations on October 9, 1986), the corresponding VIP Trusts Portfolio has a larger asset base.

9. Applicants further represent that a comparison of expense ratios for the period ended December 31, 1994, shows that there has been a steady decline in expense ratios of all Portfolios. The VIP Trusts Portfolios have shown a greater decrease; however, on average, the Hudson Trust Portfolios have lower expense ratios.

10. Applicants assert that the performance of the VIP Trusts Portfolios is comparable to or better than the comparable Hudson Trust Portfolios. For example, a comparison of the five year average total return shows that the VIP Trusts Portfolios exceed the total return for the corresponding Hudson Trust Portfolios in four of the six Portfolios: (a) VIP Trusts Money Market Portfolio (5.09%) compared to Hudson Trust Money Market Portfolio (4.98%); (b) VIP Trusts Asset Manager Portfolio (10.71%) compared to Hudson Trust Balanced Portfolio (7.29%); (c) VIP Trusts Growth Portfolio (10.88%) compared to Hudson Trust Common Stock Portfolio (9.82%); and (d) VIP Trusts High Income Portfolio (14.01%) compared to Hudson Trust High Yield Portfolio (10.60%). With respect to the

[9] The income component is 6% of gross income in excess of 8% yield and can not rise above 0.24% of the average net assets.

[12] SAFECO, on behalf of the Separate Account, will make a request for redemption of all Hudson Trust shares. Due to the time needed to process the redemption request, a delay in payment of the cash redemption proceeds is anticipated. Thus, SAFECO will advance an amount in cash equivalent to the redemption proceeds amount, which will be used to purchase VIP Trusts Portfolio shares. Contract account values which were held in Hudson Trust Portfolios will remain fully vested. Subsequently, the Hudson Trust will pay the cash redemption proceeds to SAFECO. No cash will be distributed to Contract owners unless, incidently, a Contract owner requests a surrender.

[13] Applicants state that to the extent that any aspect of the Substitution may be deemed to require approval under Section 11 of the 1940 Act, they intend to rely on the exemptive provisions of Rule 11a–2 under the 1940 Act.

[14] Overhead expenses associated with maintaining investments in the Hudson Trust include costs for determining and maintaining the daily unit values, preparation and mailing to Contract owners of annual and semi-annual reports, proxy statements and other mailings, preparation of performance information, maintenance of bank accounts, reconciliations and other accounting and banking costs associated with the underlying fund.

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other two Portfolios, the Hudson Trust Aggressive Stock Portfolio had an exceptional return of 86.87% in 1991, and in the other case the VIP Trusts Overseas Portfolio experienced a significant loss in 1992 (10.72%) when compared to the Hudson Trust Global Portfolio's return (0.50%). Applicants note further that, as of December 31, 1994, the Hudson Trust Contract owners only had $68,285 in the Hudson Trust Aggressive Stock Portfolio and $154,454 in the Hudson Trust Overseas Portfolio. Applicants submit that this demonstrates that performance is comparable or better in the VIP Trusts Portfolios as compared to the Hudson Trust.

11. Applicants state that the Substitution would permit a Contract owner to remain in the VIP Trusts Portfolios or transfer Contract account values to any other available Investment Division or to the Guaranteed Interest Division without cost and without such transfer counting as a transfer for purposes of assessing a transfer fee. Applicants represent that the notice of Substitution provided to Contract owners will inform them of their rights. Accordingly, Applicants submit that the terms of the proposed Substitution are consistent with the purpose underlying Section 26(b) of preventing investors from being forced to forfeit a sales load already deducted or perhaps to incur additional sales loads upon redemption and purchase of another investment company security.

12. Applicants represent that the Substitution will not alter or affect the Contract. All the terms and conditions of the Contract are the same after the Substitution as before, including surrender and transfer rights. Applicants also represent that after the Substitution, insurance benefits to Contract owners and the contractual obligations of SAFECO are exactly the same as before the Substitution. Contract owners will continue to look to SAFEC with regard to their rights under the Contracts. Applicants further represent that no surrender, transfer or other charge will be imposed at the time of the Substitution or for the first transfer made during the 30 day period following mailing of the confirmation and notice.

13. Applicants note that the Commission has approved a number of substitutions where contract owners assets were reinvested in large funds or investment portfolios in order to mitigate the adverse impact of operating expenses on very small asset bases. Such substitutions have been permitted even where the investment objectives, policies and restrictions of the two portfolios involved were not nearly as similar as in this application, including permitting the substitution of money market portfolio shares for the shares of zero coupon bond, real estate securities and bond portfolios. Further, the Commission also has permitted a substitution which represented a negotiated settlement of a dispute between the parties.

14. Applicants submit that Section 26(b) was designed to forestall the ability of a depositor to present holders of interests in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable, unbargained for underlying security, or to elect a costly, and, in effect, forced redemption. Applicants submit that the proposed Substitution does not present this type of situation. Moreover, under the Contracts, each Contract owner now has the ability to make transfers among a range of underlying investments, and Contract owners will have an ever greater choice of investment options after the Substitution. Further, each Contract owner can make the proposed Substitution temporary, without cost or adverse tax consequences, by transferring the Contract account value to any other Investment Division.

Conditions

Applicants consent to the following terms of and conditions to the issuance of an order granting the requested exemptions:

1. All administrative or other costs of the transactions, except brokerage fees, relating to the Substitution will be borne by SAFECO. SAFECO will assume all expenses and transaction costs (including, among others, legal and accounting fees) relating to the Substitution in a manner that attributes all transaction costs to SAFECO.

2. SAFECO will mail a notice to the affected Contract owners which will include a supplement to the Contract prospectus and a prospectus for the VIP Trusts. The notice and the supplement will describe the proposed Substitution.

3. Upon effecting the Substitution, SAFECO will mail a notice and confirmation to each affected Contract owner informing the Contract owner that the Substitution has been completed and the Contract account value involved. Such confirmation and notice will be mailed to Contract owners within five (5) days after the Substitution.

4. SAFECO will provide that, during a period of 30 days after the date of the mailing of the notice and confirmation of Substitution to affected Contract owners (the Free Transfer Period), the affected Contract owners will have the right to make a one-time transfer of Contract account values (at the value next computed after SAFECO receives the request for transfer) to any other Investment Division and to the Guaranteed Interest Division without charge and without the transfer counting as one of the free transfers permitted in a Contract year. Applicants represent that this 30-day period is sufficient time for Contract owners to determine if they wish to be invested in another Investment Division or the Guaranteed Interest Division.

5. The Substitution will, in all cases, be at net asset value of the respective shares of the affected Portfolios. All transfers of Contract account values will be affected without the imposition of any transfer or other charge.

6. The Substitution in no way will alter the insurance benefits to the Contract owners or the contractual obligations of SAFECO.

7. The Substitution in no way will alter the tax benefits to Contract owners.

8. Contract owners may choose to withdraw amounts credited to them following the Substitution under conditions that currently exist under the Contracts, subject to any applicable deferred sales charge.

9. The Substitution is expected to confer certain economic benefits on Contract owners by virtue of the increase in investment options, a reduction in overall administrative costs thus helping to keep current cost of insurance rates from increasing, and because of increased support from the Manager of the VIP Trusts by way of consumer information.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the exemptive relief requested under Section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and satisfies the purposes underlying Section 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30493 Filed 12–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36566; File No. SR–Amex–95–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Exchange's Arbitration Rules

December 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 28, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rules 600 (Arbitration), 606 (Initiation of Proceedings), 607 (General Provision Governing Prehearing Proceeding), 620 (Schedule of Fees), and add a new rule, 624 (Failure to Honor Award). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules and procedures governing the administration of arbitration. These amendments codify modifications to the Uniform Code of Arbitration already approved by the Securities Industry Conference on Arbitration.

The Exchange is proposing to amend Amex Rule 600 to clarify that all class action claims, including claims involving members, allied members, member organizations, and associated persons, are ineligible for submission to the Exchange's arbitration facility.

Currently, Amex Rule 606(c)(6) provides that decisions concerning the right to arbitrate are made by the Director of Hearings, subject to appeal to the Exchange's Board of Governors. In order to conform the Exchange's rules with the Uniform Code of Arbitration, adopted by the Amex in 1980, the Exchange proposes to delete Amex Rule 606(c)(6). The Exchange believes decisions concerning the right to arbitrate a claim should be made by the panel of arbitrators selected to hear the matter.

The Exchange's proposed amendment to Amex Rule 607(c) would allow parties to provide a list of documents they intend to present at the hearing instead of exchanging copies of documents that have previously been produced to the other side. This would provide for more efficient prehearing exchanges by not requiring the parties to again exchange those documents that have previously been produced. Another aspect of this amendment would require the list identifying witnesses include the address and business affiliation of the witnesses listed. This would allow the parties to receive advance notice as to the background of witnesses and the location of nonparty witnesses. The final aspect of the proposed amendment to Amex Rule 607(c) would require prehearing exchanges to occur twenty calendar days in advance of the hearing, instead of ten days in advance as is presently required. This would serve to avoid surprise and provide the parties with time to organize and present their cases in an efficient manner.

The Exchange is proposing to amend Amex Rule 620 to provide that the filing fee for an industry party shall be $500 when the dispute does not specify a money claim. This would unify the filing fee for all industry claims at $500.

The Exchange is proposing to add a new rule, Amex Rule 624. This new rule would provide that the failure of a member firm or registered representative to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, would subject the firm or registered representative to disciplinary proceedings at the Exchange. This would recognize the enforceability of arbitration awards issued by other self-regulatory organizations and by the American Arbitration Association.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)[3] in particular in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

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public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR-Amex-95-46 and should be submitted by January 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 95-30492 Filed 12-13-95; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

In the Matter of Environmental Chemicals Group, Inc.; Order Suspending Trading

December 12, 1995.

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly-disseminated information about Environmental Chemicals Group, Inc. concerning, among other things, its product lines, business prospects and relationships, and the assets recorded on its financial statements.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Environmental Chemicals Group, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Environmental Chemicals Group, Inc. is suspended for the period commencing 9:00 a.m. (EST) on December 12, 1995 and terminating on 11:59 p.m. (EST) on December 26, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-30563 Filed 12-12-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2811; Amendment #2]

U.S. Territory of the Virgin Islands; Declaration of Disaster Loan Area

The above numbered Declaration is hereby amended, effective November 14, 1995 to extend the termination date for filing applications for physical damage until December 15, 1995. The termination date for economic injury remains the same, June 17, 1995, at the previously designated location.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 7, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95-30448 Filed 12-13-95; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2813; Amendment #2]

Florida; Declaration of Disaster Loan Area

The above numbered Declaration is hereby amended on November 14 and November 28, 1995, respectively, to close the incident period for Lee and Collier Counties effective October 31, 1995; and to extend the deadline for filing applications for physical damage until December 28, 1995. All other information remains the same; i.e., the termination date for filing applications for economic injury, the deadline is July 5, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 7, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95-30447 Filed 12-13-95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice No. 2303]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications and Search and Rescue; Notice of Meetings

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 am on Thursday, January 18, and Wednesday, February 14, 1996. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 1st Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for February 19, 1996, at the IMO headquarters in London, England.

Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety Systems (GMDSS).'

—Maritime Search and Rescue matters.

Further information, including meeting agendas, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center computer bulletin board, accessible by modem by dialing: (703) 313-5910. The computer is also accessible through Internet by entering: "http://www.navcen.uscg.mil."

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G-TTM), Room 6306, 2100 Second Street SW., Washington, DC 20593-0001, by calling: (202) 267-1389, or by sending Internet electronic mail to: cgcomms/g-t@cgsmtp.comdt.uscg.mil.

Dated: December 6, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95-30473 Filed 12-13-95; 8:45 am]

BILLING CODE 4710-07-M

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1996 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684-6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

[4] 17 C.F.R. 200.30-3(a)(12).

Changes in the Final Guideline

On August 29, 1995, the Institute published its proposed FY 1996 Grant Guideline in the **Federal Register** for public comment. 60 FR 44936. At the time the proposed Guideline was published, SJI's FY 1996 appropriation was uncertain; the Guideline accordingly cautioned that the proposed grant program was contingent on the availability of FY 1996 appropriations at about the same $13.55 million level that SJI received from Congress each year from FY 1992 to 1995.

On November 29, 1995, the House and Senate conference committee responsible for determining SJI's appropriation set the Institute's FY 1996 funding level at $5 million. If this amount is approved by Congress and the President, the Institute anticipates the availability of $6-9 million in grants in FY 1996 (after adding grant funds expected to be available from prior years and reserving funds for the administration of the program). This Guideline is contingent on the availability of $5 million in FY 1996 appropriations.

As a result of the anticipated reduction in SJI's appropriation, the Board of Directors has made several significant changes in the final Grant Guideline. They include:

Eliminating the Concept Paper Requirement. In order to facilitate the review and disposition of FY 1996 funding requests, the Board has eliminated the concept paper requirement for new proposals this fiscal year. All applicants will be required to submit formal applications for project grants no later than February 14, 1996. See section VII. for application requirements.

Reducing the Number of Special Interest Categories. The number of Special Interest, i.e., high priority, funding categories has been reduced from 13 in the proposed Guideline to 7 in the final Guideline. The seven categories are: Improving Public Confidence in the Courts; Education and Training for Judges and Other Key Court Personnel; Children and Families in Court; Application of Technology; Improving the Courts' Response to Gender-Related Crimes of Violence; the Relationship Between State and Federal Courts; and Conference Implementation Projects. See section II.B.2.

Within the constraints of the limited funding expected to be available in FY 1996, the Board of Directors also remains interested in proposals seeking to implement projects under the six Special Interest categories that were dropped from last year's Guideline: Dispute Resolution and the Courts; Planning and Managing the Future of the Courts; Resolution of Current Evidentiary Issues; Substance Abuse; Eliminating Race and Ethnic Bias in the Courts; and Assessing the Impact of Health Care-Related Issues on the State Courts, as well as a new category included in the Proposed Guideline, Proving the Security of Courthouses, Judges, Jurors, and Witnesses.

Changing the Types and Amounts of Grants Available. The final Grant Guideline eliminates package grants and reduces the amounts allocated to several other grant programs. As discussed more fully below, the amount allocated for Technical Assistance grants has been reduced from $600,000 in the proposed Guideline to $400,000 in the final Guideline; the amount allocated for Curriculum Adaptation grants has been reduced from $350,000 to $175,000; and the amount allocated for the Scholarship Program has been reduced from $250,000 to $175,000. In addition, the maximum amount contemplated for any single project grant has been reduced from $300,000 to $200,000, and the maximum duration of a project grant has been reduced from 24 months to 15 months.

The types of grants available in FY 1996 and the funding cycles for each program are discussed more fully below:

Project Grants. These grants are awarded to support education, research, evaluation, demonstration, and technical assistance projects to improve the administration of justice in the State courts. With limited exceptions (see sections II.B.2.b.ii. and II.C.), project grants are intended to support innovative projects of lasting national significance. As noted above, FY 1996 project grants may be made in amounts up to $200,000, but grants in excess of $150,000 will be awarded only to support projects likely to have a significant national impact.

The FY 1996 mailing deadline for project grant applications is February 14, 1996. Papers must be postmarked or bear other evidence of submission by that date. All applications will be considered at the Board's June 1996 meeting.

Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline allocates up to $400,000 in FY 1996 funds to support technical assistance grants. See section II.C. The deadlines for submitting letters of application for Technical Assistance grants are December 22, 1995; March 29, 1996; June 17, 1996; and, subject to the availability of sufficient appropriations in FY 1997, September 30, 1996.

Curriculum Adaptation Grants. A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $175,000 for these grants in FY 1996. See section II.B.2.b.ii.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.ii.(c).

Scholarships. The Guideline allocates up to $175,000 of FY 1996 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.iii.

The Guideline establishes three deadlines for scholarship requests: February 1, 1996 for programs beginning between April 13 and July 12, 1996; April 15, 1996 for programs beginning between July 13 and September 30, 1996; and, subject to the availability of FY 1997 appropriations, July 15, 1996 for programs beginning between October 1 and December 31, 1996.

Renewal Grants. There are two types of renewal grants available from SJI: Continuation grants (see section IX.A.) and On-going support grants (see section IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $2 million in FY 1996. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

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Recommendations to Grant Writers

Over the past 9 years, Institute staff have reviewed approximately 3,000 concept papers and 1,400 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing an application.

Applications should, however, be presented in the formats specified in section VII. of the guideline.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold 3 training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Applications should present the criteria that will be used to evaluate the project's effectiveness, identify program elements which will require further modification and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grants funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, include the following information:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000=$25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion. The Institute will provide an illustrative budget and budget form upon request.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

11. *May grant funds be used to purchase equipment?* Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval of the Institute is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations to Grantees

The Institutes staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 1000 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. Thus, the Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report on Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants or package grants?* Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. *What information about project activities should be communicated to SJI?* In general, grantees should provide

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prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guidelines. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance and Management Division staff are always available to answer questions and provide assistance regarding these provisions.

5. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7 *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants?* The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. Thus, the first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as number two, and so on through the final payment request for that grant.

8. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is requires in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. *Are funds granted by SJI "Federal funds?* The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 1070(c)(1). Because SJI receives appropriations from Congress, some grantees auditors have reported SJI funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. *If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?* Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" [see 42 U.S.C. 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

Prior to FY 1994, the Institute did not require grantees to comply with the audit-related provisions of OMB circulars A–110, A–128, or A–133, but did require that grantees, lacking an audit report prepared for a Federal agency, conduct an independent audit in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

The current Guideline makes it clear that SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees who are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guidelines requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.) A copy of the above-noted circulars may be obtained by calling OMB at (202) 395–7250.

12. *Does SJI have a CFDA number?* Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards. Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1996 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees that are required to satisfy either the Single Audit Act, OMB Circulars A–128, or A–133 and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J. of the Grant Guideline.

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The following Grant Guideline is adopted by the State Justice Institute for FY 1996:

State Justice Institute Grant Guideline

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations, and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well to Federal, State or local agencies and institutions other than courts for services that cannot be provided adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation, as amended. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1996 funds. The application submission deadline is February 14, 1996, (See section II.B.2.g) It is anticipated that approximately $6–9 million will be available for award. This Guideline applies to all concept papers and applications submitted, as well as grants awarded in FY 1996.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

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The Institute is supervised by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1996, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act of 1992, the Judicial Training and Research for Child Custody Litigation Act of 1992, and the International Parental Kidnapping Crime Act of 1993.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experience of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14-17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court

systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1996, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in section VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Improving Public Confidence in the Courts.* This category includes research, demonstration, evaluation and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process, and to test innovative methods for increasing the public's confidence in the State courts.

i. The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- Improve service to individual litigants and trial participants, including innovative methods for handling cases involving unrepresented litigants fairly and effectively;
- Test methods for more clearly and effectively communicating decisions and the reasons for them to litigants and the public;
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to define the impact of immigration on State courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; facilitate communication with Federal authorities when illegal aliens are involved in State court proceedings; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved; and
- Increase public understanding of jury decisions and the juror selection and service process; foster positive attitudes toward jury service; and enhance the attractiveness of juror service through, e.g., incentives to participate, modifications of terms of service, and/or juror orientation and education programs.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases. In addition, it is unlikely that the Institute will continue to support development or testing of additional automated kiosks such as those being used by the courts in Arizona, California, Florida and New York.

ii. The Institute also is interested in supporting projects designed to improve the quality of justice including those testing methods for improving court operations based on the research examining "procedural" and "distributive" justice, and those assessing the impact of live television coverage of trials on court proceedings, public understanding, and fairness to litigants.

In addition, the Institute is interest in supporting projects to follow up on the issues, recommendations, and action plans resulting from the National Town Hall Meeting on Improving Public Confidence in the Courts. (See section II.B.2.g., Conference Implementation Projects.)

Previous SJI-supported projects that address these issues include: evaluation of an experimental community court in New York City; development of a manual for management of court interpretation services and materials for training and assisting court interpreters; development of interpreter certification tests in Russian and Hmong; development of touchscreen computer systems, videotapes, and written materials to assist pro se litigants; a demonstration of the use of volunteers to monitor guardianship; studies of effective and efficient methods for providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; and development of a manual for implementing innovations in jury selection, use, and management; technical assistance and training to facilitate implementation of the Standards on Jury Management; development of a guide for making juries accessible to persons with disabilities.

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional, and national levels. Accordingly, this category is divided into three subsections: (i) Development of Innovative Educational Programs; (ii) Curriculum Adaptation Projects; and (iii) Scholarships. All Institute-supported education and training programs should be accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

i. *Development of Innovative Educational Programs.* This category includes support for the development and testing of educational programs for judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or assist local courts or State court systems to develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire; incorporate adult education principles and varying teaching/learning methods;

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and result in the development of a curriculum as defined in section III.K

The Institute is particularly interested in the development of education programs that:

• Offer or comprise a portion of a comprehensive course of study that includes seminars or materials for judges or court personnel at various stages of their careers;

• Include self-directed learning packages such as those using interactive computer-programs, videos, or other visual media supported by written materials or manuals, or distance-learning approaches that could help local courts in creating organization-wide continuing learning opportunities and assist those who do not have ready access to classroom-centered programs;

• Are interdisciplinary or involve collaboration between the judicial and other branches of government or between courts within a metropolitan area or multi-State region;

• Develop judicial leadership abilities, improve teamwork within a court, and enhance service to the public by a court;

• Familiarize faculty with the effective use of technology in presenting information; or

• Incorporate the findings from SJI-supported demonstration, evaluation, or research projects.

ii. *Curriculum Adaptation Projects*

(a) *Description of the Program.* The Board is reserving up to $175,000 to provide support for adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for curriculum adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

The goal of the Curriculum Adaptation Program is to provide State and local courts with sufficient support to prepare and test a model curriculum, course module, national or regional conference program, or other model education program developed with SJI funds by any other State or national organization which has been modified to meet a State's or local jurisdiction's educational needs. Generally, it is anticipated that the adapted curriculum would become part of the grantee's ongoing educational offerings, and that local instructors would receive the training needed to enable them to make future presentations of the curriculum. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix III.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State of local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

(b) *Review Criteria.* Curriculum Adaptation grants will be awarded on the basis of criteria including: the goals and objectives of the proposed project; the need for outside funding to support the program; the likelihood of effective implementation; the appropriateness of the educational approach in achieving the project's educational objectives; the likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making implementation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(c) *Application Procedures.* In lieu of formal applications, applicants for Curriculum Adaptation grants may submit, at any time, a detailed letter, and three photocopies. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

• *Project Description.* What are the project's goals and learning objectives? What is the title of the model curriculum to be tried? Who developed it? What program components would be implemented, and what benefits would be derived from this test? Why is this education program needed at the present time? Who will be responsible for adapting the model curriculum, and what types of modifications, if any, in length, format, and content are anticipated? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)? How many participants are anticipated?

• *Need for Funding.* Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

• *Likelihood of Implementation.* What is the proposed timeline for modifying and presenting the program? Who would serve as faculty and how were they selected? How will the presentation of the program be evaluated and by whom? (Ordinarily, an outside evaluation is not necessary; however, the results of any participant evaluation should be included in the final report.) What measures will be taken to facilitate subsequent presentations of the adapted program?

• *Expressions of Interest By Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

• *Budget and Matching State Contribution.* Applicants should attach a copy of budget Form E (see Appendix V) and a budget narrative (see Section VII.B) that describes the basis for the computation of all project-related costs and the source of the match offered.

• Local courts should attach a concurrence signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix VI.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning. The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The committee anticipates acting upon applications within 45 days after receipt. Formal grant awards will be made only after committee approval and negotiation of the final terms of the grant.

(d) *Grantee Responsibilities.* A recipient of a Curriculum Adaptation grant must:

(1) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L., infra);

(2) Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo, and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline; and

(3) Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes evaluation results and explains how it

intends to replicate the program in the future.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements applications set forth in Section VII or the requirements for renewal applications set forth in Section IX.

iii. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $175,000 to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluation information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and travel up to a maximum total of $1,500 per scholarship. Transportation expenses include round-trip coach airfare or train fare. Recipients who drive to the site of the program may receive $.30/mile up to the amount of the advanced purchase round-trip airfare between their home and the program site. Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship recipients are encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships can be awarded only to full-time judges of State or local trial and appellate courts; to full-time professional, State or local court personnel with management responsibilities; and to supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel will not be eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix IV). Applications must be submitted by:

February 1, 1996, for programs beginning between April 13 and July 12, 1996; and

April 15, 1996, for programs beginning between July 13 and September 30, 1996; and, July 15, 1996, for programs beginning between October 1, and December 31, 1996.

No exceptions or extensions will be granted.

(d) *Concurrence Requirement. All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (Form S2, see Appendix IV).* Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence form (Form S2) may accompany the applications or be sent separately. However, the original signed Concurrence form must be received by the Institute within two weeks after the appropriate application mailing deadline (i.e. by February 15, or April 30, or July 30, 1996). No application will be reviewed if a signed Concurrence has not been received by the required date.

(e) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

• The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;

• The benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of current legal, procedural, administrative, or other problems affecting the State's courts, related to topics to be addressed at the educational program (in addition to submission of a signed Form S2);

• The absence of educational programs in the applicant's State addressing the particular topic;

• How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing inservice training for judges or court personnel at the State or local level);

• The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;

• The likelihood that the applicant would be able to attend the program without a scholarship;

• The unavailability of State or local funds to cover the costs of attending the program;

• The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;

• Geographic balance;

• The balance of scholarships among types of applicants and courts;

• The balance of scholarships among educational programs; and

• The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to

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serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Children and Families in Court.* This category includes education, evaluation, technical assistance, and research projects to identify and inform judges of innovative, appropriate, and effective approaches for handling cases involving children and families. The Institute is particularly interested in projects to:

i. Assist the courts in addressing the special needs of children in cases involving family violence including the development and testing of innovative protocols, procedures, educational programs, and other measures for improving the capacity of courts to:

- Adjudicate child custody cases in which family violence may be involved;
- Determine and address the service needs of children exposed to family violence including the short- and long-term effects on children of exposure to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Adjudicate and monitor child abuse and neglect litigation and reconcile the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family.

ii. Enhance the fairness and effectiveness of the process used to file, hear, and dispose of cases involving family violence, including projects to:

- Determine when it may be appropriate to refer a case involving family violence for mediation, and what procedures and safeguards should be employed;
- Assess the impact of family violence coordinating councils in improving the procedures and practices used by and the services available to courts in family violence cases, in order to identify techniques and procedures for improving their operation and effectiveness;
- Evaluate the effectiveness of the innovative programs, procedures, and strategies used by courts to improve their responsiveness to the needs of victims of family violence, and the fair and effective adjudication and disposition of cases involving family violence.

iii. Improve the effectiveness and operating efficiency of juvenile and family courts, including projects to:

- Develop information for judges and court staff on, and appropriate special procedures for determining release, protecting witnesses, adjudicating, and developing dispositions in cases involving gang members;
- Assess the role and effectiveness of courts with jurisdiction over juveniles and families in light of the upcoming 100th anniversary of the establishment of the first juvenile court, and identify the changes that may be needed as these courts enter the 21st century;
- Define the roles, enhance the training, and assure the effective use of guardians ad litem;
- Develop and test educational materials and curricula to assist judges in determining the best interest of a child when an adoption is contested;
- Improve the capacity of courts, regardless of structure, to expeditiously coordinate multiple cases involving members of the same family, and obtain and appropriately use social and psychological information gathered in one case involving a family member in a case involving another family member; and
- Improve the handling of the criminal and civil aspects of interstate and international parental child abductions.

In previous funding cycles, the Institute supported a national and a State symposium on courts, children, and the family; the development of protocols and a benchbook on the questioning of child witnesses; the preparation of educational materials on making reasonable efforts to preserve families, adjudicating allegations of child sexual abuse when custody is in dispute, child victimization, handling child abuse and neglect cases when parental substance abuse is involved, and on children as the silent victims of spousal abuse; and examinations of supervised visitation programs, effective court responses when domestic violence and custody disputes coincide, and foster care review procedures.

The Institute has also supported a national and several State conferences on family violence and the courts, as well as projects supporting the action plans developed at those conferences; preparation of descriptions of innovative court practices in family violence cases; evaluations of the use of court-order treatment for domestic violence offenders, alternatives to adjudication in child abuse and neglect cases, and the use of a court-enforced treatment program for batterers who are also substance abusers; the exploration of the policy issues related to the mediation of domestic relations cases involving allegations of family violence; the preparation of educational materials for judges on family violence issues; and the testing of videotapes and other educational programs for the parties in divorce actions and their children.

Finally, the Institute has supported a national symposium on enhancing coordination of cases involving the same family that are being heard in different courts; examinations to document the nature and extent of the coordination problem and demonstrations of innovative approaches for improving intra-court coordination; technical assistance to States considering establishment of a family court; development of a State-based training program for guardians ad litem; examination of the authority of the juvenile court to enforce treatment orders and the role of juvenile court judges; and development of innovative approaches for coordinating services for children and youth.

d. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untesting applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and an educational component to assure that the staff is appropriately informed regarding the purpose and use of the new technology. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to determine what benefits and problems may occur as a result of courts entering the "information superhighway," including projects to establish standards for judicial electronic data interchange (EDI); and local, Statewide, and/or interstate demonstrations of the courts' use of EDI (i.e., the exchange of documents or data in a computerized format that enables courts to process or perform work electronically on the documents received) beyond simply image transfer (facsimile or computer-imaging). In addition, the Institute is interested in demonstrations and evaluation of the effective use of management information systems to monitor, assess, and predict evolving court needs; and innovative information system links between courts and criminal justice, social service, and treatment agencies.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that has been thoroughly tested in other jurisdictions such as the establishment of videolinks between courts and jails, the use of optical imaging for recordkeeping, and the creation of an automated management information system. (See section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g., interactive computerized information systems to assist pro se litigants; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases, an automated public information directory of courthouse facilities and services; an automated appellate court bulletin board; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges.

Demonstration and evaluation of records technology, including: the development of a court management information display system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; testing of a document management system for small courts that uses imaging technology, and of automated telephone docketing for circuit-riding judges; and evaluation of the use of automated teller machines for paying jurors.

Court technology assistance services, e.g., circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and an assessment of programs that allow public access to electronically stored court information.

Grants also provided support for national court technology conferences; preparation of guidelines on privacy and public access to electronic court information and on court access to the information superhighway; the testing of a computerized citizen intake and referral service; development of an "analytic judicial desktop system" to assist judges in making sentencing decisions; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

e. *Improving the Court's Response to Gender-Related Crimes of Violence.* This category includes the development, testing, presentation, and dissemination of education programs for State; and local court judges and court personnel on:

- The effective use and enforcement of protective orders and the implications of mutual orders of protection;
- Evidentiary issues arising in gender-related criminal cases, including the use of expert testimony and the application of rape shield laws and their limits on the introduction of evidence of the cross-examination of witnesses;
- The use of self-defense and provocation defenses by alleged victims of gender-related violence accused of assaulting or killing their alleged abusers; and
- Sentencing decision-making in cases involving gender-related crimes of violence.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes.

In previous funding cycles, the Institute supported a national conference on family violence and the courts, and follow-up conferences and technical assistance in several States; development of curricula for judges on handling stranger and non-stranger rape and sexual assault cases and on family violence; evaluation of the effectiveness of court-ordered treatment for family violence offenders; a demonstration of ways to improve court processing of injunctions for protection and a study of ways to improve the effectiveness of civil protection orders for family violence victims; an examination of state-of-the-art court practices for handling family violence cases and of ways to improve access to rural courts for victims of family violence; and preparation of an analysis of the issues related to the use of expert testimony in criminal cases involving domestic violence.

f. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative education, evaluation, demonstration, technical assistance, and research projects that:

i. Build upon the findings and recommendations made at the Institute-supported National Conference on the Management of Mass Tort Cases held in November, 1994. (A summary of the recommendations and findings from the conference was published in the Winter 1995 issue of *SJI NEWS.*)

ii. Develop and test curricula and other educational materials to:

- illustrate effective methods being used at the trial court, State, and Circuit levels to coordinate cases and administrative activities; and
- conduct regional conferences replicating the 1992 National Conference on State/Federal Judicial Relationships.

iii. Develop and test new approaches to:

- handle capital habeas corpus cases fairly and efficiently;
- coordinate related State and Federal criminal cases;
- coordinate cases that may be brought under the Violence Against Women Act;
- exchange information and coordinate calendars among State and Federal courts; and
- share jury pools, alternative dispute resolution programs, and court services.

- In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships, a national conference on mass tort litigation, and the Chief Justices' Special Committee on Mass Tort Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal court cooperation; procedures for facilitating certification of questions of law; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that

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motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a test of assigning specialized law clerks to trial courts hearing capital cases in order to improve the fairness and efficiency of death penalty litigation at the trial level, a clearinghouse of information on State constitutional law decisions, educational programs for State judges on coordination of Federal bankruptcy cases with State litigation, and a seminar examining the implications of the "Federalization" of crime.

g. *Conference Implementation Projects.* In 1995, the Institute sponsored four national conferences on issues of critical importance to the State courts:

- The National Conference on Eliminating Race and Ethnic Bias in the Courts held march 2–5, 1995 in Albuquerque, NM;
- The National Interbranch Conference on Funding the State Courts held September 28–October 1, 1995 in Minneapolis, MN;
- The National Town Hall Meeting on Improving Public Confidence in the Courts convened, via a videoconference, in 11 sites across the country on October 13–14, 1995; and
- The National Symposium on the Implementation and Operation of Drug Courts to be held on December 2–5, 1995 in Portland, OR.

The Institute is interested in supporting education, demonstration, technical assistance, research, and evaluation projects to address the issues or implement the recommendations and State action plans resulting from these conferences. The Institute is particularly interested in supporting:

i. *The National Conference on Eliminating Race and Ethnic Bias in the Courts*—Innovative national, regional, and State projects addressing the non-State specific issues discussed during the Conference, and projects to implement the action plans developed by teams from jurisdictions which were unable to meet the previously announced special October 6, 1995, deadline for concept papers. (For further information about the Conference, contact SJI Program Manager Cheryl D. Reynolds at 703–684–6100, or John Richardson, Research Associate, National Center for State Courts, P.O. Box 7898, Williamsburg, VA 23187–8798, 804–253–2000.)

In previous funding cycles, the Institute has supported several projects to prepare and test curricula and other materials for judges, court personnel, and judicial education faculty on diversity and related issues; and provide information regarding the American justice system for non-English speakers, and improve the quality of court interpreting.

ii. *The National Interbranch Conference on Funding the State Courts*—Innovative projects to develop and test methods for linking assessments of effectiveness, such as the Trial Court Performance Standards, to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting; and test innovative programs and procedures for providing clear and open interbranch communications at the State and local levels. (For further information about this conference, contact SJI Deputy Director, Richard Van Duizend 703–684–6100 or Robert Tobin, Senior Research Associate, National Center for State Courts, 1700 N. Moore Street, Suite 1710, Arlington, VA 22209 703–841–0200.)

In previous funding cycles, the Institute has supported projects that examined State court expenditures and staffing; documented methods for determining judgeship needs; prepared a trial court financial management guide; analyzed differing methods for financing court facilities; evaluated techniques for improving collection and administration of monetary penalties and assessments; and presented regional conferences on improving relations between the judicial and legislative branches of government.

iii. *The National Town Hall Meeting on Improving Public Confidence in the Courts*—Innovative projects to implement the findings, recommendations, strategies, and action plans developed by the local receiving sites as well as at the national broadcast site. (For further information about the National Town Hall meeting, contact SJI Program Manager Cheryl D. Reynolds, 703–684–6100; Dr. Pamela Casey, Senior Research Associate, National Center for State Courts P.O. Box 8798, Williamsburg, VA 23187–8798, 804–253–2000; or Kathleen Sampson, Director, Information and Program Services, American Judicature Society, 25 E. Washington Street, Suite 1600, Chicago, IL 60602, 312–558–6900).

For a list of previously funded projects on topics related to the National Town Hall Meeting, see section 11.B.2.a.

iv. *National Symposium on the Implementation and Operation of Drug Courts*—Innovative projects that address the issues, findings, and recommendations resulting from the Symposium, including, but not limited to:

- The development and testing of educational programs for judges and court personnel concerning the management of treatment-based drug court programs;
- The examination of the judicial ethics concerns that may be involved in operating a treatment-based drug court program;
- The preparation of measures, forms, and other tools for self-evaluation of a treatment-based drug court program;
- The development and testing of innovative information systems to facilitate the efficient sharing of information between the court and the agencies and services involved in the operation of an effective treatment-base drug court program; and
- The evaluation of the applicability of court-enforced treatment programs to substance abuse-related cases involving juveniles and cases requiring treatment services in addition to substance abuse treatment (e.g., spousal abuse, child abuse, or mental health cases).

(For further information contact SJI Program Manager Janice Munsterman 703–684–6100 or Caroline Cooper, Justice Programs Office, The American University, 4400 Massachusetts Avenue NW, Brandywine-Suite 660, Washington, DC 20016–8159, 202–885–2875.)

The Institute will not fund projects focused on developing additional assessment tools, establishing court-enforced treatment programs for adult substance abusers, or providing support for basic court or treatment services.

In previous funding cycles, the Institute has sponsored a National Conference on Substance Abuse and the Courts, and State efforts to implement the plans developed at that Conference. It has also helped to support projects to provide technical assistance to State and local courts; identify successful drug case management strategies; conduct seminars on drug case management; and develop a guidebook for implementing drug case processing initiatives; as well as to conduct regional training programs for State judges and legislators on substance abuse treatment. In addition, SJI has supported the evaluation of: court-enforced treatment programs initiated by the Dade County, Florida, Pulaski County, Arkansas, and New York City courts; special court-ordered programs for women offenders, and other court-based alcohol and drug assessment programs; replication of the Dade County program in non-urban sites; assessments of the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; development of a benchbook and other educational materials to assist judges in child abuse and neglect cases involving parental substance abuse and in developing appropriate sentences for pregnant substance abusers; tests of the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and presentation of local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

C. Technical Assistance Grants

1. *Description of the Program.* The Board will set aside up to $400,000 of Fiscal Year 1996 funds to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $100,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating, or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

2. *Eligibility for Technical Assistance Grants.* Only a State or local court may apply for a Technical Assistance grant. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount.

3. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

4. *Application Procedures.* In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the issues listed below. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

a. *Need for Funding.* What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform and how would they be accomplished? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

d. *Budget and Matching State Contribution.* A completed Form E, "Preliminary Budget" (see Appendix V to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs (e.g., number of days per task times the requested daily consultant rate). In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

e. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix VI) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between September 30 and December 22, 1995 will be notified of the Board's decision by March 22, 1996; those submitting letters between December 23, 1995 and March 29, 1996 will be notified by July

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1, 1996. Notification of the Board's decisions concerning letters mailed between March 30 and June 17, 1996 will be made by August 31, 1996. Subject to the availability of sufficient appropriations for fiscal year 1997, applicants submitting letters between June 18 and September 30, 1996 will be notified by December 17, 1996.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by February 14, 1996; May 29, 1996, and July 11, 1996).

5. *Grantee Responsibilities.* Technical Assistance grant recipients are subject to the same quarterly reporting requirements as other Institute grantees. At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations as well as two copies of the consultant's written report.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the Court or council, if any, it designates to perform the functions described in this Guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

E. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

F. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Institute Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

G. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

H. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

I. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

J. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

K. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; and computer software.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

In addition, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Technical Assistance grants (See section II.C.).
5. Curriculum Adaptation grants (See section II.B.2.b.ii.).
6. Scholarships (See section II.B.2.b.iii).

C. Maximum Size of Awards

1. Except as specified below, applications for new projects and applications for continuation grants may request funding in amounts up to $200,000, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds for on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. Applications for technical assistance grants may request funding in amounts up to $30,000.

4. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 15 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Suspension of the Concept Paper Submission Requirement

Because of its reduced appropriation for FY 1996, the Institute is not using concept papers as part of its funding process this year, except for the special funding cycle announced previously to follow up on the National Conference on Eliminating Race and Ethnic Bias in the Courts. Courts, organizations, and individuals seeking a new grant to support a project must file a full application meeting the requirements set forth in Chapter VII. of this Guideline, unless the applicant is seeking a grant under the Institute's Curriculum Adaptation, Scholarship, or Technical Assistance grant programs. (See sections II.B.2.b. ii and iii, and section II.C., respectively)

VII. Application Requirements for New Projects

An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These required application forms are described below and are included in Appendix VII. They also may be requested via E-mail (SJI@clark.net) or by calling the Institute and requesting a copy (703–684–6100). Applicants may photocopy the forms to make completion easier.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed

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budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas to be Covered

The applicant should list the Special Interest Category(ies) that is(are) addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area(s) that is(are) addressed by the proposed project. (See section II.A.).

3. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom for risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; and how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the applicant should explain the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide on-going or periodic feed back on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many *research* projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating *educational or training* programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a *demonstration* project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For *technical assistance* projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving *human subjects* should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

5. Project Management

The applicant should present a detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

6. Products

The application should contain a description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute.

a. Dissemination Plan. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e. whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (see section X.V.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also must submit a diskette containing a one-page abstract summarizing the products resulting from a project in Word, WordPerfect or ASCII. The abstract should include the grant number and the name of a contact person together with that individual's address, telephone number, and e-mail address (if applicable).

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format.

Twenty copies of all project products, must be submitted to the Institute. A master copy of each videotape, in addition to 20 copies of each videotape product, must also be provided to the Institute.

b. Types of Products, The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

c. Institute Review. Applicants must provide for submitting a final draft of written grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

d. Acknowledgment, Disclaimer, and Logo. Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

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7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any) and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts organizations, agencies or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than February 1, 1996, May 16, 1996, June 28, 1996, or August 22, 1996, respectively).

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days × the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments.

4. Travel

Transporation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds many be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is

essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.

Applicants that do not contemplate making machine contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than February 14, 1996. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted. See section VII.C.11. for receipt deadlines for letters of support.

2. Applicants submitting more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The demonstration of need for the project;

c. The appropriateness of the proposed evaluation design;

d. The applicant's management plan and organizational capabilities;

e. The qualifications of the project's staff;

f. The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the Nation;

g. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

h. The reasonableness of the proposed budget;

i. The demonstration of cooperation and support of other agencies that may be affected by the project; and

j. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.

2. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application,

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and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny and application may not be appealed, but does not prohibit resubmission of a proposal based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $2 million of available FY 1996 grant funds for renewal grants. In reviewing applications for renewal grants, the Board will consider a number of factors in addition to the criteria set forth in section VIII.B., including whether continuing the project would provide assistance in finding solutions to current court problems; whether the project has national impact; whether the project is being run in an efficient and cost-effective manner; and whether the project could operate in the future or its products could be implemented without additional SJI grant assistance.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Application Procedures—Letters of Intent

Unless specifically invited to submit a renewal application by the Institute, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form (from applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products will be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. and the factors listed at the beginning of this Chapter. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also sections IX.B.3.f. and IX.B.4.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

Unless specifically invited to submit a renewal application by the Institute, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* The applicant should demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task Schedule.* The applicant should present a general schedule for

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the full proposed project period and a detailed task schedule for the first year of the proposed new project period as part of the application. If an on-going support grant is awarded, a detailed annual task plan must be submitted no later than 45 days before the end of years one and two of the grant. (See section IX.B.1.)

g. Other Sources of Support. The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period.

If an on-going support grant is awarded, an updated budget and explanatory narrative for the next grant year should be submitted no later than 45 days before the end of the first and second grant years. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B and the factors listed at the beginning of this Chapter. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the persons to contact in each State regarding the administration of Institute grants to State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial; legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk of harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.iii., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problems areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Each recipient must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section XI.J. of the Guideline for the requirements of such audits.)

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

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Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video project, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products;

"This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI-(insert number)] from the Sate Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely review by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

S. Distribution of Grant Products

In addition to the distribution specified in the grant application, grantees shall send:

1. Twenty copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

2. A master copy of each videotape produced with grant funds to the Institute.

3. A one-page abstract to the Institute summarizing the products produced during the project for posting on the Internet together with a diskette containing the abstract in Word, WordPerfect, or ASCII. The abstract should include the grant number, a contact name, address, telephone numbers, and e-mail address (if applicable).

4. One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and Statement of Government Patent Policy).

V. Charges for Grant-Related Products/Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products.

Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.F. and XI.F. for requirements regarding project-related income realized during the project period.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–7250.)

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

h. *Office of Management and Budget (OMB) Circular A–133*, Audits of Institutions of Higher Education and Other Non-profit Institutions.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; shall be responsible for assuring proper administration of Institute funds; and shall be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included with the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

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6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall order their affairs so as to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price intended to recover actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then

amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation and On-Going Support Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number their requests accordingly (i.e. on a grant rather than a project basis). For example, the first request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Recommendations to Grantees in the introduction for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

a. *General Requirements.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Three copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.iii., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

b. *Additional Requirements for Renewal Grants.* Grantees receiving a continuation or on-going support grant should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period. Copies of these circulars may be obtained from OMB by calling (202) 395–7250.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transporation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular

project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building and occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular. Copies of OMB Circulars may be obtained directly from OMB by calling (202) 395–7250.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Implementation

Each non-scholarship grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by the grantee other than a recipient of a scholarship under section II.B.2.b.iii. These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will receive renewal funding through a continuation or on-going support grant.

a. *Financial State Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of 90-day close-out period. Grantees on a check-issued basis, which have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in the name of the grantee organization.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify their SJI program manager, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. The reasons why the change is necessary and the steps being taken to avoid further delays should be explained in detail. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.). Grantees should be aware that the Institute is unlikely to approve more than one limited extension of the grant period.

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to

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be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,
Executive Director.

Appendix I.—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585
Ms. Faith P. Arkin, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 922–5081
Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334–5900, (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8956
Sharon Miyoshiro, Administrative Director of the Courts, Office of the Administrative Director, Post Office Box 2560, Honolulu, Hawaii 96813, (808) 539–4900
Honorable Charles F. McDevitt, Chief Justice, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–3464
Mr. Robert B. Davison, Director, Administrative Office of the Courts, 840 S. Spring Street, Springfield, Illinois 62704, (312) 793–3250
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 822–0792
Ms. Deborah A. Unitus, Assistant State Court Administrator, Administrative Office of the Courts, Rowe Boulevard and Taylor Avenue, Annapolis, Maryland 21401, (301) 974–2141
Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, Massachusetts 02108, (617) 742–5575
Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0136
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Honorable Leslie Johnson, Director, Center for Court Education and Continuing Studies, P.O. Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Ron Larkin, State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585
Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. Donald Goodnow, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275
Honorable E. Leo Milonas, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004
Ms. Deborah Kanter, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Santa Fe, New Mexico 87503, (505) 827–4800
Hon. Jack Cozort, Acting Administrative Director, Administrative Office of the Courts, P.O. Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 986–5500
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000
Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3266
Mr. George A. Markert, Director, South Carolina Court Administration, P.O. Box 50447, Columbia, South Carolina 29250, (803) 734–1800.
Honorable Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville Tennessee 37219, (615) 741–2687
Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration of the Texas Judicial System, P.O. Box 12066, Austin, Texas 78711, (512) 463–1625
Mr. Daniel Becker, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371
Mr. Lee Suskin, Acting Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281
Ms. Viola E. Smith, Clerk of the Court/ Administrator, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext 248
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–B State Capitol, Charleston, West Virginia 25305, (304) 348–0145
Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

Appendix II.—SJI Libraries Designated Sites and Contacts (August 1995)

State: Alabama
Location: Supreme Court Library
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

State: California
Location: Administrative Office of the Courts
Contact: Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621

State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 550, Atlanta, Georgia 30334, (404) 656–5171

State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605

State: Idaho
Location: AOC Judicial Education Library/ State Law Library in Boise
Contact: Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–3316

State: Illinois
Location: Supreme Court Library
Contact: Ms. Brenda I. Larison, Supreme Court Library, Supreme Court Building, Springfield, Illinois 62701–1791, (217) 782–2424

State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557

State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capitol Building, Des Moines, Iowa 50319, (515) 281–6279

State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257

State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848

State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705

State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600

State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–3395

State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148

State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804

State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084

State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590

State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660

State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730

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State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747

State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230

State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850

State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2083

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louis Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28608 (by-courier), 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229

State: Northern Mariana Islands
Location: Supreme Court of the Northern Mariana Islands
Contact: Mr. Honorable Jose S. Delta Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite, 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

State: Oregon
Location: Administrative Office of the Courts
Contact: Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G48 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919

State: Rhode Island
Location: Roger Williams Law School Library
Contact: Ms. Gail Winson, Director, Roger Williams Law School, 10 Metacom Ave., Bristol, RI 02809–5171, (401) 254–4546

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate, Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St Thomas, U.S. Virgin Islands 00804

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial, Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme, Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145

State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

National: American Judicature Society
Contact: Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900

National: National Center for State Courts
Contact: Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

National: Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824, (517) 353–8603

Appendix III—Illustrative List of Model Curricula

The following list includes examples of curricula that have been developed with support from SJI, and that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. A list of all SJI-supported education projects is available from the Institute. Please also check with the JERITT project (517/353–8603) and with your State SJI-designated Library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

"Manual for Judicial Writing Workshop for Trial Judges" (University of Georgia/Colorado Judicial Department: SJI–87–018/019)
"Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Impanelment" (Institute for Court Management/National Center for State Courts: SJI–88–053)
"Caseflow Management Principles and Practices" (Institute for Court Management/National Center for State Courts: SJI–87–056)
"Adjudication of Farm Credit Issues" (Rural Justice Center: SJI–87–059)
"A National Program for Reporting on the Courts and the Law" (American Judicature Society: SJI–88–014)
"Model Judicial Mediation Training Program" (American Arbitration Association: SJI–88–078)
"Domestic Violence: A Curriculum for Rural Courts" from "A Project to Improve Access to Rural Courts for Victims of Domestic Violence" (Rural Justice Center: SJI–88–061)
"Career Writing Program for Appellate Judges" (American Academy of Judicial Education: SJI–88–066–P92–1)

"Judges Media Relations Seminar" from "A Statewide Program for Improving Media and Judicial Relations" (Minnesota Supreme Court: SJI–89–024)
"Minding the Courts into the Twentieth Century" (Michigan Judicial Institute: SJI–89–029)
"Innovative Juvenile and Family Court Training" (Youth Law Center: SJI–87–060, SJI–89–039)
"Troubled Families, Troubled Judges" (Brandeis University: SJI–89–071)
"Judicial Settlement Manual" from "Judicial Settlement: Development of a New Course Module, Film, and instructional Manual" (National Judicial College: SJI–89–089)
"Judicial Training Materials on Spousal Support", "Family Violence: Effective Judicial Intervention"; "Judicial Training Materials on Child Custody and Visitation" from "Enhancing Gender Fairness in the State Courts" (Women Judges' Fund for Justice: SJI–89–062)
"Introduction to the Jurisprudence of Victims' Rights" from "Victim Rights and the Judiciary: A Training and Implementation Project" (National Organization for Victim Assistance: SJI–89–083)
"Fundamental Skills Training Curriculum for Juvenile Probation Officers" (National Council of Juvenile and Family Court Judges: (SJI–90–017)
"Pre-Bench Training for New Judges" (American Judicature Society' SJI–90–028)
"A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts" (National Center for State Courts: SJI–90–052)
"The Crucial Nature of Attitudes and Values in Judicial Education" (National Council of Juvenile and Family Court Judges: SJI–90–058)
"Policy Alternatives and Current Court Practices in the Special Problem Areas of Jurisdiction Over the Family" from "Juvenile and Family Court Key Issues Curriculum Enhancement Project" (National Council of Juvenile and Family Court Judges: SJI–90–066)
"Gender Fairness Faculty Development Workshops" (National Judicial College: SJI–90–077)
"A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts" (Arizona Supreme Court: SJI–90–078)
"National Guardianship Monitoring Program" from "AARP Volunteers: A Resource for State Guardianship Services" (Association for the Advancement of Retired Persons: SJI–91–013)
"Medicine, Ethics, and the Law: Preconception to Birth" (Women Judges Fund for Justice: SJI–89–062, SJI–91–019)
"The Leadership Institute in Judicial Education" and "The Advanced Leadership Institute in Judicial Education" (Appalachian State University: SJI–91–021)
"Managing Trials Effectively: A Program for State Trial Judges" (National Center for State Courts/National Judicial College: SJI–87–066/087, SJI–89–054/055, SJI–91–025/026)
"Faculty Development Instructional Program" from "Curriculum Review" (National Judicial College: SJI–91–039)
"Legal Institute for Special and Limited Jurisdiction Judges" (National Judicial College: SJI–89–043, SJI–91–040)
"Managerial Budgeting in the Courts"; "Performance Appraisal in the Courts"; "Managing Changes in the Courts"; all three from "Broadening Educational Opportunities for Judges and Other Key Court Personnel" (Institute for Court Management/National Center for State Courts: SJI–91–043)
"An Approach to Long-Range Strategic Planning in the Courts" (Center for Public Policy Studies: SJI–91–045)
"Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide" (National Judicial College: SJI–91–054)
"National Judicial Response to Domestic Violence: Civil and Criminal Curricula" (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055)
"Access to Justice: The Impartial Jury and the Justice System" and "When Justice is Up to You" from "Pre-Juror Education Project" (Consortium of Universities of the Washington Metropolitan Area: SJI–91–071)
"Judicial Review of Administrative Agency Decisions" (National Judicial College: SJI–91–080)
"Strengthening Rural Courts of Limited Jurisdiction" and "Team Training for Judges and Clerks" from "Rural Limited Jurisdiction Court Curriculum Project" (Rural Justice Center: SJI–90–014, SJI–91–082)
"Medical/Legal Issues in Juvenile and Family Courts" (National Council for Juvenile and Family Court Judges: SJI–91–091)
"Good Times, Bad Times: Drugs, Youth, and the Judiciary" (Professional Development and Training Center, Inc.: SJI–91–095)
"Judicial Response to Stranger and Nonstranger Rape and Sexual Assault" (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003)
"Interbranch Relations Workshop" (Ohio Judicial Conference: SJI–92–079)
"Legal Institute for Non-Law Trained Judges" (Arizona Supreme Court: SJI–92–146)
"New Employee Orientation Facilitators Guide" from "The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel" (Minnesota Supreme Court: SJI–92–155)
"Magistrates Correspondence Course" (Alaska Court System: SJI–92–156)
"Southwestern Judges' Conference on Environmental Law" (University of New Mexico: SJI–92–162)
"Cultural Diversity Awareness in Nebraska Courts" from "Native American Alternatives to Incarceration Project" (Nebraska Urban Indian Health Coalition: SJI–93–028)
"A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel" (American Judicature Society: SJI–93–068)
"Integrating Trial Management and Caseflow Management" (Justice Management Institute: SJI–93–214)
"Civil and Criminal Procedural Innovations for Appellate Courts" (National Center for State Courts: SJI–94–002)
"Comprehensive ADR Curriculum for Judges" (American Bar Association: SJI–95–002)

BILLING CODE 6820–SC–M

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APPENDIX IV

(Form S1)

STATE JUSTICE INSTITUTE

SCHOLARSHIP APPLICATION

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
_____
City State Zip Code
5. Telephone No. _____
6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

ESTIMATED EXPENSES: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $_____ Transportation: $_____
(Airfare, trainfare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $_____

SJI

1650 King Street, Suite 600, Alexandria, Virginia 22314 (703) 684-6100

ADDITIONAL INFORMATION: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will taking this course benefit you, your court, and the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager?

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ _____
Signature Date

Please return this form and Form S-2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

(Form S2)

STATE JUSTICE INSTITUTE

SCHOLARSHIP APPLICATION

CONCURRENCE

I, _____
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____
Signature

_____
Name

_____
Title

_____
Date

APPENDIX V

CURRICULUM ADAPTATION GRANT & TECHNICAL ASSISTANCE GRANT

BUDGET FORM

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Curriculum Adaptation grant requests. and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

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APPENDIX VI

Form B
(Instructions on Reverse Side)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

APPENDIX VII

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
_____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Name and Telephone Number of Contact Person
_____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
a. State court
b. National State court support organization
c. National state court education/training organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other _____

3. EMPLOYER IDENTIFICATION NO. _____

4. ENTITY TO RECEIVE FUNDS *(If different from applicant)*
a. Name of Responsible Entity _____
_____
b. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
f. Name and Telephone Number of Contact Person
_____

5. TYPE OF PROJECT *(Circle appropriate letter)*
a. Education/Training
b. Research/Evaluation
c. Demonstration
d. Technical Assistance
e. Other _____

6. APPLICATION TYPE *(Circle appropriate letter)*
a. New
b. Supplement
c. Continuation
d. Ongoing Support
e. Curriculum Adaptation
f. Technical Assistance

7. TITLE OF PROPOSED PROJECT

8. PROPOSED START DATE _____

9. PROJECT DURATION (Months) _____

10. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $_____
d. TOTAL PROJECT COST $_____

11. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

12. CONGRESSIONAL DISTRICT OF: _____ _____
Applicant Name of Representative, District Number
Project (if different than applicant) Name of Representative, District Number

13. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and conplete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved and that I am lawfully authorized to make these representations on behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT TITLE DATE
(For application from State and local courts, Form B, Certificate of State Approval, must be attached.)

Form A 12/95

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STATE JUSTICE INSTITUTE
PROJECT BUDGET
(TABULAR FORMAT)

Applicant: _____

Project Title: _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:

Form C 12/95

BILLING CODE 6820-SC-C

STATE JUSTICE INSTITUTE
PROJECT BUDGET
(SPREADSHEET FORMAT)

PAGE __ OF __

Applicant: _____

Project Title: _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs (%)							
SJI Total							
STATE FUNDS*							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total							

Form C1 12/95

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State Justice Institute

Assurances

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage of defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10706(b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk of harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:

This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of review expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. The "SJI" log will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or other wise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

BILLING CODE 6820-SC-M

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ Yes ☐ No **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

BILLING CODE 6820-SC-C

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Instructions—Form A

1. (a)–(g) Legal Name of Applicant court, entity or individual; Name of The Organizational Unit, if any, that will conduct the project; Complete Address of applicant; Name and telephone number of a Contact Person who can provide further information about this application.

2. (a) State or Local Court includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts. Agencies of State and local courts include all governmental offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

(b) National State Court Support Organization include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

(c) National State Court Education/Training Organizations include national non-profit organizations for the education and training of judges and support personnel of the judicial branch of State government.

(d) College or University includes all institutions of higher education.

(e) Other Non-Profit Organization or Agency includes those non-profit organizations and private agencies with expertise in judicial administration not included in sub-paragraphs (b)–(d).

(f) Individual means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

(g) Corporation or Partnership includes for-profit and not-for-profit entities not falling within one of the other categories.

(h) Other Unit of Government includes any governmental agency, office, or organization that is not a State or local court.

3. Employer Identification Number as assigned by the Internal Revenue Service.

4. (a)–(f) Entity to Receive Funds is the court or organization that will receive, administer, and account for any moneys awarded. For example, if the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its designated agency or council in accordance with 42 U.S.C. 10705(b)(4). If the applicant is a special university program, the responsible entity may be the university's structure. Applicants should complete this block only if the entity that will receive the funds is different from the applicant.

5. (a)–(e) Circle the letter of the Type of activities that best characterizes the project. If project funds will be substantially divided among two or more activities, circle the letters for each of those activities.

6. (a) New refers to the first award of State Justice Institute funds for a particular project, whether or not the applicant has received previous awards for different projects from the Institute.

(b) Supplement refers to the award of additional funds to permit an existing project to complete the task originally proposed or to augment the scope of the project within the current project period.

(c) Continuation refers to an extension for an additional funding period.

(d) Ongoing Support refers to an SJI-funded project for which there is a continuing important national need.

7. The Title of the Proposed Project shall reflect the objectives of the activities to be conducted.

8. The Proposed Start Date of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. An explanation should be provided in the Program Narrative if the proposed start date is more than 90 days after the estimated award date set forth in the Application Review Procedures section of the current Grant Guideline.

9. Project Duration refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

10. (a) Insert the Amount Requested from the State Justice Institute to conduct the project.

(b) The Amount of Match is the amount, if any, to be contributed to the project by the applicant, by a unit of State or local governments, by a Federal agency, or by private sources. See 42 U.S.C. 10705(d).

Cash Match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash Match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project. The applicant should describe in detail, both the value it assigns to in-kind contributions and the basis for determining that value.

Total Match refers to the sum of the cash and in-kind contributions to the project.

(c) Total Project Cost represents the sum of the amount requested from the Institute and all match contributions to the project.

11. If this application or an application requesting support for the same project or an essentially similar project has been Previously Submitted to another funding source (Federal or private), the name of the source, the date of the previous submission, the amount of funding sought, and the disposition (if any) should be entered.

12. Enter the number of the applicant's Congressional District and the name of the applicant's Representative and the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific, for example a series of training workshops that will bring together participants from around the State, the country, or from a particular region, enter Statewide, National, or Regional, as appropriate, in the space provided.

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer shall be accountable for those funds.

Instructions—Forms C and C1

Applicants may submit the proposed project budgets either in the tabular format of Form C or in a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12.

In addition to Form C or C1, Applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (See Guidelines section VII.D). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1 columns should be labeled consecutively by tasks, e.g., TASK #1, TASK #2, etc. At the end of each twelve month period or portion thereof beyond month 12 the following four columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

[FR Doc. 95–30363 Filed 12–13–95; 8:45 am]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Challenge 2000 Subcommittee

ACTION: Notice of meeting cancellation.

The FAA is issuing this notice to advise the public that the December 18 meeting of the Challenge 2000 Subcommittee of the Research, Engineering and Development Advisory Committee (60 FR 62288, December 5, 1995) has been cancelled.

For further information contact: Ms. Nancy Lane, Federal Aviation Administration (AIR–510), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7061.

Issued in Washington, DC, on December 8, 1995.

Clyde A. Miller,

Manager, Research Division, AAR–200.

[FR Doc. 95–30450 Filed 12–13–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on January 9, 1996. The session is expected to focus on: (1) Federal Intelligent Transportation Systems (ITS) reports; (2) ITS AMERICA President's report; (3) Dedicated Short Range Communications Standard; (4) Report on Intermodal Transportation Workshop; (5) Update on Outreach Activities to State and Local Governments; (6) Update on ITS AMERICA Committee Action Plans; (7) Update on World Congress activities; (8) Discussion of the ITS AMERICA Sixth Annual Meeting. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on January 9 from 9:30 a.m. to 12:00 noon (Eastern Standard time).

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Chris Body at ITS AMERICA by telephone at (202) 484–4131, or by FAX at (202) 484–3483. The DOT contact is Mr. Whitey Metheny, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–2835. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 6, 1995

Christine M. Johnson,

Director, ITS Joint Program Office.

[FR Doc. 95–30454 Filed 12–13–95; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on January 11, 1996. The session is expected to focus on: (1) Federal ITS program reports; (2) Report of the ITS AMERICA Nominating Committee; (3) Report of the ITS AMERICA Coordinating Council; (4) Report on the ITS Deployment Goal Statement; (5) Update on the ITS AMERICA Sixth Annual Meeting; (6) Report on ITS World Congresses: Yokohama Review (1995), Orlando Plans (1996). ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on January 11 from 1:00 p.m. to 5:00 p.m.

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Chris Body at ITS AMERICA by telephone at (202) 484–4131 or by FAX at (202) 484–3483. The DOT contact is Mr. Whitey Metheny, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–2835. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on December 6, 1995.

Christine M. Johnson,

Director, ITS Joint Program Office.

[FR Doc. 95–30455 Filed 12–13–95; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket 95–41 GR]

Public Meeting; Glazing Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice: (1) Announces a public meeting to discuss NHTSA's research findings to date on advanced glazing materials that may prevent ejection of vehicle occupants through motor vehicle windows during crashes; (2) invites oral presentations at the meeting from industry experts, equipment manufacturers, and vehicle manufacturers; and (3) invites written comments and data from the public on the same subject. To focus the responses in preparation for this technology transfer and information exchange, the agency also provides a list of questions for commenters.

DATES: *Public meeting:* The Advanced Glazing Research Meeting will be held on Thursday, February 1, 1996, from 9:00 a.m. to 4:00 p.m., Eastern Standard Time. The agenda is discussed below.

Written comments: Written comments are due before March 1, 1996.

ADDRESSES: *Public meeting:* The public meeting will be held at the following location: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024, Telephone: (202) 479–4000, Fax: (202) 488–4627.

Written comments: All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street SW., Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Margaret Gill, Office of Vehicle Safety Standards, NPS–12, NHTSA, 400 7th Street SW., Washington, DC 20590 (telephone 202–366–2264, fax 202–366–4329). By electronic mail: MGill@nhtsa.dot.gov

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SUPPLEMENTARY INFORMATION:

I. Background

The Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to initiate rulemaking to address the problems of rollover crashes. To fulfill this requirement, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) on January 2, 1992, (57 FR 242) to solicit information concerning rollover crashes. A Rulemaking Plan entitled "Planning Document for Rollover Prevention and Injury Mitigation" (Docket 91-68 No. 1) was published for public review on September 29, 1992 (57 FR 198). The planning document outlined crash avoidance and crashworthiness rulemaking approaches to reduce rollover-related injuries and fatalities.

As part of the analysis of rollover accidents, the agency determined that a significant number of injuries and deaths was associated with ejection of vehicle occupants out of windows. Accordingly, the agency broadened the goal of an ongoing side-impact research program to include research on preventing ejection through glazing during rollover accidents. The agency also created a cross-agency research team to expedite the research and analysis of the problem of occupants being ejected through glazing. This Advanced Glazing Research Team has developed analytical and research tools to evaluate the problem of ejection, and to assess potential mitigating glazing designs, and has so far:

1. Developed and built an impactor that can project 16 kilograms (40 pounds) at 24 kilometers per hour (15 mph). This represents a maximum force that NHTSA believes is likely to be exerted by the head/shoulder on the side windows in a typical rollover or side impact crash. This impactor is being used in NHTSA's research for testing advanced glazing materials.
2. Developed full-vehicle computer models and finite element material models (FEA) to assess the potential for occupant injury against the glazing encountered in rollover crashes.
3. Monitored technological developments in advanced glazing.
4. Manufactured and tested prototype encapsulated windows, mounted in modified doors.
5. Conducted a cost, weight, and lead-time analysis of the use of alternative glazing materials.
6. Conducted a benefits analysis to determine the number of lives potentially saved by the use of alternative glazing materials.

These activities are detailed in two reports: (1) "Alternative Glazing Cost Study, September 1995 Final Report" and (2) "Ejection Mitigation Using Advanced Glazing, A Status Report, November 1995." Copies of these reports have been placed in docket 95-41-GR. NHTSA encourages commenters to review these reports prior to the public meeting, because they form the basis for many of the questions upon which the agency is requesting comment.

The agency believes that the alternative glazing concepts that it has examined for the front, side windows of light vehicles are capable of preventing approximately 1,300 fatalities per year. Vehicle modifications for these front and side window systems may cost between $42 and $70 per vehicle. Prototype systems have been produced and appear feasible and practical.

II. Questions for the Public

To aid the agency in acquiring the information it needs from its partners who will be submitting written comments, and to focus the discussion at the public meeting, NHTSA is including a list of questions and requests for data within this notice. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they may have information or views. In addition, to facilitate tabulation of the written comments in sequence, please identify the number of each question to which you are responding.

NHTSA requests that commenters provide as specific a rationale as possible, including analysis of safety consequences, for any positions that are taken. NHTSA encourages commenters to provide scientific analysis and data relating to materials, designs, testing, manufacturing and field experience.

The following list of questions does not purport to be an all-inclusive collection of items relevant to this research. NHTSA encourages commenters to provide any other data they believe are relevant.

1. Are the glazing materials selected for computer modeling sufficient to characterize the responses that may be observed from ejection resistant glazing materials? Can you suggest additional materials for use in NHTSA's computer models? If so, can you supply any impact-speed-sensitive material data?
2. Are NHTSA's current retention test equipment and procedures sufficient to characterize a glazing's ability to keep an occupant in a vehicle? Can you suggest additional test techniques that should be investigated? Do you know of any additional research on occupant-glazing impacts?
3. Are the cost data presented in the report accurate? If not, can you supply NHTSA with some better cost data?
4. Please provide any comments and supporting material of your comments on the cost, weight, and lead time analysis conducted by NHTSA.
5. Are the injury criteria discussed in this report sufficient? Can you recommend others? Do you have any injury test data?
6. Do you have any information that addresses the repeatability of glazing impact tests?
7. Does the encapsulation design look practical for production vehicles? Do you know of any movable side window encapsulation systems currently in production? Can you recommend any improvements to the encapsulation system NHTSA used?
8. To what extent of vehicle damage would encapsulated advanced glazing be effective in preventing occupant ejection?
9. Do the current hard coat techniques provide adequate scratch resistance for rigid plastic and glass-plastic glazing to be practicable for side windows and acceptable to consumers? Do you know of any new technologies that should be investigated?
10. Is durability or environmental exposure a problem with any advanced glazing materials?
11. The recently implemented British Standard AU 209 Part 4: 1995, permits laminated security glazing, which will deter unauthorized entry into a motor vehicle. Would an investigation of these security glazings benefit NHTSA's ejection mitigation research program?
12. Are there any quantifiable security or design benefits to these security glazings?
13. Are there any performance benefits, other than preventing ejections, known to be associated with ejection-mitigating glazings?
14. Are there any known disadvantages to ejection-mitigating glazings?
15. Are there any vehicles currently in use that employ advanced glazing materials?
16. Are there any other data, research or analyses available on glazing impacts? Is there any work being done on laceration measurement?
17. Are there any data to support or refute the data or conclusions of the agency's status report?

III. Public Meeting Procedural Matters

As part of the President's initiative to reform the regulatory process, the agency has taken steps to increase technology transfer and exchange with the public and the automotive industry, in various aspects of highway and motor vehicle safety. As part of this goal to promote national and international cooperation, the agency will conduct a public meeting on the ongoing research program concerning mitigation of motor vehicle occupant ejections out of windows. At this public meeting, the agency will present test and analytical data that the agency has gathered to date. The agency's presentation will include:

—Background and Basis for the Research
—Research, including impactor development, prototype ejection-mitigating design development, and component test results.
—Computer modeling of glazing impacts
—Alternative glazing systems cost, weight, lead time
—Benefits analysis

The agency also solicits relevant presentations, research findings, and views from its partners at this meeting. NHTSA especially solicits participation in the form of presentations by technical experts, both in the form of critiques of the agency's research and of independent research. Within the available time, NHTSA will try to accommodate all persons wishing to make oral presentations.

Those wishing to make oral presentations at the meeting should contact the Public Meeting Coordinator, Margaret Gill, at the mailing address, telephone number, fax number, or electronic mail address listed above, by January 17, 1996. If the presentation will include slides, motion pictures, or other visual aids, please so indicate and NHTSA will make the proper equipment available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record. NHTSA will provide "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials or large print materials and/or a magnifying device) to speakers or other participants as necessary. Any person desiring assistance of auxiliary aids should contact Margaret Gill, (202) 366-2264, by close-of-business, January 17, 1996.

The agency estimates that NHTSA's presentations will take approximately three and one-half hours, consuming the morning session of the meeting. The afternoon session will be used for other presenters, and for questions that weren't answered during the morning session. There will be a question period after each presentation. Those speaking at the public meeting should limit the length of their presentations to 20 minutes.

A tentative agenda will be available January 22, 1996. You can obtain the tentative agenda upon request from the agency, or over the Internet on NHTSA's Internet home page at http://www.nhtsa.dot.gov/npa/glazmeet.html. A final schedule of participants making oral presentations will be available at the designated meeting room on the day of the meeting.

The agency intends to conduct the after-presentation portions of the public meeting in an informal manner, in order to promote maximum participation by all who attend. Interested persons may ask questions or provide comments immediately after each party has completed its presentation. If time permits, persons who have not requested time to speak but would like to make a statement or presentation will be afforded an opportunity to do so. There will be further opportunities for questions and information exchange at the end of the meeting.

After the meeting, NHTSA will place a copy of any written statements in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

IV. Submission of Written Comments

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted. Written comments must not exceed 15 pages in length. (See 49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR 512.

All relevant comments received will be reviewed by the agency and will be available for examination in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued on December 8, 1995.

Barry Felrice,
Associate Administrator for Safety Performance Standards.

[FR Doc. 95-30425 Filed 12-13-95; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974; As Amended; System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Amendment to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Department of the Treasury (Treasury), the Office of the Comptroller of the Currency (OCC) is publishing an amendment to an existing system of records. This amendment reflects an ongoing review of an existing system of records pursuant to Appendix I to OMB Circular No. A-130—Revised, which has resulted in changes in nearly all elements of the system of records. In addition, the changes reflect a new proposed interagency suspicious activity reporting process, combining the criminal referral and suspicious financial transactions reporting requirements of the Federal financial regulatory agencies and Treasury, and involving the use of a new computerized database maintained by Financial Crimes Enforcement Network (FinCEN) on behalf of the Federal financial regulatory agencies and Treasury.

DATES: Comments must be received by January 16, 1996. If no comments are received which precipitate changes to the system, the system will become effective on January 23, 1996.

ADDRESSES: Comments should be sent to: Communications Division, Docket No. 95-25, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, or FAX number 202-874-5274. Electronic comments should be sent to REG.COMMENTS.@OCC.TREAS.GOV.

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Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Frank D. Vance, Jr., Disclosure Officer, Communications Division, (202) 874–4700; Robert S. Pasley, Assistant Director, Enforcement and Compliance Division, (202) 874–4800.

SUPPLEMENTARY INFORMATION: The OCC is amending its existing system of records entitled Enforcement and Compliance Information System, Treasury/Comptroller .013, last published in the **Federal Register** at 60 FR 56689 (November 9, 1995) for which it has promulgated exemption rules pursuant to exemptions (j)(2) and (k)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2). Components of the system have been designated as exempt under 5 U.S.C. 552a(j)(2). In addition, because the information in the system consists of investigatory material compiled for law enforcement purposes, the system is exempt under 5 U.S.C. 552a(k)(2).

Certain of the changes to the system reflect an agreement between FinCEN and the Federal Reserve Board (FRB), OCC, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (the Federal financial regulatory agencies) to store Suspicious Activity Reports (SAR), as well as information pertaining to administrative actions taken against individuals, in electronic form in a database maintained by FinCEN and located at the Internal Revenue Service (IRS) Computing Center in Detroit, Michigan. It is proposed that the IRS Computing Center, as a contractor to FinCEN and the Federal financial regulatory agencies, will operate and administer the computer system that supports the SAR database.

The Federal financial regulatory agencies are adopting the SAR as a replacement for the Criminal Referral Form, which has been used by depository institutions to report suspected criminal activity to the Federal financial regulatory agencies and the Federal law enforcement authorities (see FRB and OCC proposed rules at 60 FR 34481 and 60 FR 34476, respectively, July 3, 1995, and OTS proposed rule at 60 FR 36366, July 17, 1995), and by Treasury to implement suspicious financial transaction reporting rules (see Treasury proposed rule at 60 FR 48556, September 7, 1995).

Information from the Criminal Referral Form was included in the existing Enforcement and Compliance Information System, and similar information collected through the SAR will continue to be included in the revised Enforcement and Compliance Information System. In addition to reports of suspected criminal activity, the SAR also allows a bank to report suspicious financial transactions under Federal money laundering statutes, pursuant to Treasury regulations (31 CFR part 103). This information, which may include financial transactions by individuals, is included in the existing system. Only the information collected by the SAR, and its status updates, are located in the database maintained by FinCEN; all other information in the Enforcement and Compliance Information System is located at the OCC.

Pursuant to the inter-agency agreement between FinCEN and the Federal financial regulatory agencies, FinCEN will manage a computerized database containing the SAR, administrative actions against individuals and status updates, which is information currently collected and/or maintained separately by the Federal financial regulatory agencies. With regard to this database, only those records generated under the jurisdiction of the OCC are considered to be OCC records for purposes of the Privacy Act. Access to and use of these OCC records by other agencies continue to be governed by the routine uses in the OCC's Enforcement and Compliance Information System.

Accordingly, the "Routine Uses" element is amended to reflect one new routine use, regarding the sharing among Federal financial regulatory agencies and law enforcement agencies of the information collected by the SAR, the administrative actions and the status updates. In addition, the following "Routine Uses" are being deleted from the existing system: numbers (2), (4), (8), and (10). One of the "Routine Uses," number (7), has been modified to more narrowly define when and under what circumstances the OCC will, in its sole discretion, disclose copies of the SAR. Another "Routine Use," number (9), has been modified slightly. The routine uses have also been renumbered. Additionally, the "Safeguards" element is amended to add that on-line access to the computerized database maintained by FinCEN is limited to authorized individuals specified by each Federal financial regulatory agency and Treasury, and issued a non-transferable identifier or password.

Other amendments reflect organizational changes and are not significant. The exemptions for this system of records continue to be (j)(2) and (k)(2), 5 U.S.C. 552a(j)(2) and (k)(2), because the information consists of investigatory material compiled for law enforcement purposes.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated July 15, 1994.

The proposed altered system of records, Treasury/Comptroller .013, Enforcement and Compliance Information System is published in its entirety below.

Dated: December 5, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/Comptroller .013

SYSTEM NAME:

Enforcement and Compliance Information System.

SYSTEM LOCATION:

Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Computerized records of Suspicious Activity Reports (SAR), administrative actions with status updates, are managed by FinCEN, Department of the Treasury, pursuant to a contractual agreement, and are stored at the IRS Computing Center in Detroit, Michigan. Authorized personnel at the Federal financial regulatory agencies have on-line access to the computerized database managed by FinCEN through individual work stations that are linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, employees, shareholders, agents, and persons participating in the conduct of the affairs of entities regulated by the OCC who have been involved in suspected criminal activity or suspicious financial transactions and referred to law enforcement officials; and/or who have been involved in irregularities, violations of law, unsafe or unsound practices and/or breaches of fiduciary duty and have been the subject of an administrative action taken by the OCC.

CATEGORIES OF RECORDS IN THE SYSTEM:

SAR filed by national banks and/or by national bank examiners or attorneys for the OCC. The SAR contains information identifying the financial institution involved, the suspected person, the type of suspicious activity involved, the amount of loss known, and any witnesses. Also, administrative actions taken by the OCC against directors, officers, employees, shareholders, agents, and persons participating in the conduct of the affairs of entities regulated by the OCC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 481, 1817(j), 1818 and 1820; 15 U.S.C. 78c(a)(34), 78l(i), 78u, 78o–4.

PURPOSE(S):

The overall system serves as a central OCC repository for investigatory or enforcement information related to the responsibility of the OCC to examine and supervise entities regulated by the OCC.

The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the Federal financial regulatory agencies and FinCEN to various law enforcement agencies for possible criminal, civil, or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such Federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used to: (1) Provide the Department of Justice with periodic reports that indicate the number, amount, individual identity, and other details concerning outstanding potential criminal violations of the law that have been referred to the Department; (2) Provide the Federal financial regulatory agencies and FinCEN with information relevant to their operations; (3) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (4) Provide information or records to any appropriate domestic or foreign governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license; (5) Disclose, when considered appropriate, information to a bar association, or other trade or professional organization performing similar functions, for possible disciplinary action; (6) Disclose information, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreements; (7) Disclose the existence, but not necessarily the content, of information or records in cases where the OCC is a party or has direct interest and where the OCC, in its sole discretion, has concluded that such disclosure is necessary; (8) Disclose information to any person with whom the OCC contracts to reproduce, by typing, photocopying or other means, any record within this system for use by the OCC and its staff in connection with their official duties or to any person who is utilized by the OCC to perform clerical or stenographic functions relating to the official business of the OCC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media and in paper and card files.

RETRIEVABILITY:

Computer output, file folders, and card files are retrievable by indexes of data fields, including name of financial institution and individuals' names.

SAFEGUARDS:

Paper and card files are stored in lockable metal file cabinets. Computer disks maintained at the OCC are accessed only by authorized personnel. The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On-line access to the information in the database is limited to authorized individuals who have been specified by each Federal financial regulatory agency and FinCEN, and each such individual has been issued a non—transferable identifier or password.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enforcement and Compliance Division, and Director, Securities and Corporate Practices Division, Law Department, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Certain records in this system are exempt from notification and record—access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a(j)(2) and (k)(2) as relating to investigatory material compiled for law enforcement purposes. Requests relating to records not subject to the exemption should be sent to: Director, Public Affairs, 250 E Street, SW, Washington, DC 20219.

RECORD ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Suspicious activity reports and related historical information and updating forms compiled by the OCC and the other Federal financial regulatory agencies for law enforcement purposes. The OCC will also include information from its Enforcement and Compliance Information System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Components of this system have been designated as exempt from 5 U.S.C. 552(a)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

[FR Doc. 95–30434 Filed 12–13–95; 8:45 am]

BILLING CODE 4810–33–F

Office of Thrift Supervision

Privacy Act of 1974; As Amended; System of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Amendment to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), Office of Thrift Supervision (OTS) is publishing an amendment to an existing system of records. This amendment reflects an ongoing review of an existing system of records pursuant to Appendix I to OMB Circular No. A–130—Revised, which has resulted in changes in nearly all elements of the system of records. In addition, the changes reflect a new proposed interagency suspicious activity reporting process, combining the criminal referral and suspicious financial transactions reporting requirements of the Federal financial regulatory agencies and Treasury, and involving the use of a new computerized database maintained by Financial Crimes Enforcement Network (FinCEN) on behalf of the Federal financial regulatory agencies and Treasury.

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DATES: Comments must be received by January 16, 1996,. If no comments are received which precipitate changes to the system, the system will become effective on January 23, 1996.

ADDRESSES: Send comments to: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. These submissions may be hand–delivered to 1700 G Street, NW, from 9 am to 5 pm on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW, from 1 pm until 4 pm on business days.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Special Counsel, General Law Division, (202) 906–7945.

SUPPLEMENTARY INFORMATION: OTS is amending its existing system of records entitled Confidential Individual Information System, Treasury/OTS .001, last published in the Federal Register at 60 FR 13770, (March 14, 1995) for which it has promulgated exemption rules pursuant to exemptions (j)(2) and (k)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2).

Certain of the changes to the system reflect a proposed agreement between FinCEN, the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the OTS, and the National Credit Union Administration (NCUA) (the Federal financial regulatory agencies) to store Suspicious Activity Reports (SAR) in electronic form in a database maintained by FinCEN and located at the Internal Revenue Service (IRS) Computing Center in Detroit, Michigan. It is proposed that the IRS Computing Center, as a contractor to FinCEN and the Federal financial regulatory agencies, will operate and administer the computer system that supports the SAR database. Except for a limited number of authorized personnel from the Criminal Investigation Division, employees of the IRS will not have access to the SAR database.

The SAR is being adopted by all Federal financial regulatory agencies as a replacement for the Criminal Referral Form, which has been used by depository institutions to report suspected criminal activity to the Federal financial regulatory agencies and the Federal law enforcement authorities (see FRB and OCC proposed rules at 60 FR 34481 and 60 FR 34476, respectively, July 3, 1995, and OTS proposed rules at 60 FR 36366, July 17, 1995), and by Treasury to implement suspicious financial transaction reporting rules (see Treasury proposed rulemaking at 60 FR 46556, September 7, 1995).

Information from the Criminal Referral Form is included in the existing Information System, and similar information will continue to be collected by the SAR. In addition to reports of suspected criminal activity, the SAR will also allow a financial institution to report suspicious financial transactions under Federal money laundering statutes, pursuant to Treasury regulations (31 CFR part 103). This information, which may include financial transactions by individuals, will be included in the existing Information System. Only the information collected by the SAR, and its status updates, will be located in the database maintained by FinCEN; all other information in the Information System is located at the OTS.

Pursuant to the inter–agency agreement between FinCEN and the Federal financial regulatory agencies, FinCEN will manage a computerized database containing the SAR, and status updates, which is information currently collected and/or maintained separately by each of the Federal financial regulatory agencies. With regard to this database, only those records generated under the jurisdiction of the OTS are considered to be OTS records for purposes of the Privacy Act. Access to and use of these OTS records by other agencies continue to be governed by the routine uses in the OTS's Information System.

Accordingly, the "Routine Uses" element is amended to reflect the sharing among Federal financial regulatory agencies and law enforcement agencies of the information collected by the SAR and the status updates. Other changes consist of the following: Three of the system's former routine uses (numbers 1, 3, and 6) are being retained and renumbered as new routine uses 1, 3, and 7. One former routine use (number 4) is being deleted. Two former routine uses (numbers 2 and 5) have been revised and renumbered, respectively, as new routine uses 4 and 5. New routine use number 4 clarifies that system records may be used to make referrals to any appropriate governmental or self-regulatory entity with authority to administer law, rule, policy, or license. New routine use number 5 clarifies that system records may be referred to bar, trade, or professional organizations for possible disciplinary action.

Additionally, the "Safeguards" element is amended to add that on-line access to the computerized database maintained by FinCEN is limited to authorized individuals who have been specified by each participating agency and Treasury, and who have been issued a non-transferable identifier or password. Other amendments reflect organizational changes and are not significant. The exemptions for this system of records continue to be (j)(2) and (k)(2), because the information consists of investigatory material compiled for law enforcement purposes.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated July 15, 1994.

The proposed altered system of records, Treasury/OTS .001, Confidential Individual Information System, is published in its entirety below.

DATED: December 5, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/OTS .001

SYSTEM NAME:

Confidential Individual Information System - Treasury/OTS.

SYSTEM LOCATION:

Enforcement Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by FinCEN pursuant to a contractual agreement, and are stored the Internal Revenue Service's Computing Center in Detroit, Michigan. Authorized personal at the Federal financial regulatory agencies have on–line access to the computerized database managed by FinCEN through individual work stations that are linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, employees, agents, borrowers, and persons participating in the conduct of the affairs of entities regulated by the OTS who have been involved in suspected criminal activity or suspicious financial transactions and referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices

referenced in documents received by OTS in the exercising of its supervisory functions.

These records also contain information concerning individuals who have filed notices of intention to acquire control of a savings association; controlling persons of companies that have applications to acquire control of a savings association; and organizers of savings associations who have sought Federal Savings and Loan Insurance Corporation (FSLIC) or Saving Association Insurance Fund (SAIF) insurance of accounts or federal charters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application information and inter-agency and intra-agency correspondence, memoranda and reports. The SAR contains information identifying the financial institution involved, the suspected person, the type of suspicious activity involved, the amount of loss known, and any witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464; 44 U.S.C. 3101.

PURPOSE(S):

The overall system serves as a central OTS repository for investigatory or enforcement information related to the responsibility of OTS to examine and supervise savings associations. It also serves to store information on applicants to acquire, control, or insure a savings association in connection with OTS's regulatory responsibilities.

The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the Federal financial regulatory agencies and FinCEN to various law enforcement agencies for possible criminal, civil or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such Federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used to: (1) Provide the Department of Justice with periodic reports on the number, amount, individual identity and other details concerning outstanding potential criminal violations of the law that have been referred to the Department; (2) Provide the Federal financial regulatory agencies and FinCEN with information relevant to their operations; (3) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (4) Provide information or records to any appropriate governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license; (5) Discloss, when considered appropriate, information to a bar association, or other professional organizations performing similar functions, for possible disciplinary action; (6) Disclose information when appropriate to international and foreign governmental authorities in accordance with law and formal or informal international agreements; and (7) Provide information to any person with whom the OTS contracts to reproduce, by typing, photocopying or other means, any record within this system for use by the OTS and its staff in connection with their official duties or to any person who is utilized by the OTS to perform clerical or stenographic functions relating to the official business of the OTS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media and in paper files.

RETRIEVABILITY:

Computer output and file folders are retrievable by indexes of data fields, including name of financial institution and individual's name.

SAFEGUARDS:

Paper files are stored in lockable metal file cabinets with access limited to authorized individuals. Computer disks maintained at OTS are accessed only by authorized personnel.The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On–line access to the information in the database is limited to authorized individuals, and each individual has been issued a non-transferable identifier or password.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief Counsel for Enforcement, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

NOTIFICATION PROCEDURE:

The system is exempt from notification and record-access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a(j)(2) and (k)(2) as relating to investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Suspicious activity reports and related historical information and updating forms compiled by financial institutions, the OTS, and other Federal financial regulatory agencies for law enforcement purposes. The OTS will also include information from applicants, inter agency and intra-agency correspondence, memoranda, and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

[FR Doc. 95–30435 Filed 12–13–95; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Study of the United States Summer Institute; Focus on U.S. Society

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Branch for the Study of the U.S. of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program for the Study of the United States Summer Institute: Focus on U.S. Society. Public and private non-profit organizations meeting the provisions described in IRS regulation 26CFR 1.501(c)(3)–1 may apply to develop a six-week graduate-level program designed for a group of 18 foreign university educators from around the world, in order to deepen their understanding of U.S. society, culture, and values by examining key social institutions in the United States,

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and to give participants further grounding in American studies, so that textbooks, curricular materials, and course sin foreign universities will benefit.

USIA is seeking detailed proposals form colleges, universities, consortia of college sand universities, and other not-for-profit academic organizations that have an established reputation in American studies and related sub-disciplines, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. *Applciant institutions must have a minimum of four years of experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in American studies or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–96–08.

DEADLINE FOR PROPOSALS: All copies must be received the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, February 9, 1996. Faxed documents will not be accepted, nor will documents postmarked February 9, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline. Tentative program dates are June 29 to August 9, 1996. Participants will arrive in the U.S. on or about June 28, and depart on August 10, 1996.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package, which includes more detailed award criteria; all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS, Room 256, 301 4th Street., S.W., Washington, D.C. 20547, Attn: Program Officer Ilaya Rome; telephone number (202) 619–4557; fax number (202) 619–6790; internet address irome@usia.gov. Please specify USIA Program Officer Illaya Rome on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov, or from the Internet Gopher at gopher.usia.gov, under "New RFPs on Educational and Cultural Exchanges."

SUBMISSIONS: Applicants must follow all instructions given in the RFP and the complete Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–96–08, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.w., Washington, D.C. 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION: *Overview:* The Study of the U.S. Summer Institute: Focus on U.S. Society is intended to provide foreign university teachers of social studies and/or American studies with opportunities to deepen their understanding of the U.S., especially its society, culture, and values, past and present, through an in-depth examination of key social institutions. It is intended to encourage and support participants' efforts to improve the quality of teaching and curricular materials about the United States at universities abroad.

The program should be six weeks in length, including a residency segment at a U.S. college or university campus (a minimum of four weeks in length), and a study tour segment (a maximum of two weeks in length, including visits to at least one but no more than two other regions of the U.S.). The program should offer participants a specially-designed series of lectures, presentations, discussions, and site visits, each related to the central program theme.

Institute Objectives

—To conduct an intensive, academically rigorous program that presents an in-depth view of the evolution and current role of key U.S. social institutions;
—To offer a multi-dimensional view of contemporary U.S. society that will enable participants to better understand the nature of American social structure, social change, and cultural values; and
—To enhance teaching about the United States in foreign universities by making appropriate scholarly resources, pedagogical materials, and ideas available to participants.

Participants should return home with an ability to communicate a better informed and more thoughtful picture of the U.S. to students and colleagues, thus contributing to broad-based foundation that supports future study, research, and teaching about the United States.

Participants: The program should be designed for a total of 18 highly-motivated foreign university educators, including teachers, administrators, department chairs, curriculum developers and textbook writers, who have expressed interest in enhancing the understanding of the U.S. in their home countries and institutions. Participants will be experienced in fields of social sciences and in the teaching of courses where there is significant U.S. content involved. Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception and structure of the program is entirely the responsibility of the organizers. However, as the possibilities are enormously broad for the design of a program focusing on aspects of institutions in U.S. society, an overarching theme for the Institute should be chosen to focus the content and scope of the program. The best proposals will clearly articulate the overall Institute theme, essential topics and sub-topics to be covered, and the means (activities, schedule) by which the program content will be communicated to participants. Proposals should also provide bibliographies of texts and materials to be used in the program.

Contents

At the outset, the program should review the recent history and current status of the field of social science as an academic discipline, surveying major schools of interpretation and examining any current debates pertinent to the overall theme. The program should also explore how social sciences have informed and been informed by the interdisciplinary and multi-disciplinary approaches to the study of the U.S. represented by the field of American Studies. The program itself should include a balanced mix of traditional and contemporary approaches for examining the Institute theme.

The program should ideally bring in outside presenters (representatives from academia, community and volunteer organizations, media, government) in addition to the core faculty of the host institution. Presenters must be fully briefed about the Institute, its goals, general themes and content, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal narrative.

The program may also be enrich by the occasional engagement of other disciplines and sub-disciplines that make up American studies (e.g. history, political science, economics, geography, sociology, demography, etc.). The program should provide participants with a clearer understanding of the diversity, complexity, and unity of U.S. life and society.

Design

A residential program of a minimum of four weeks on a college/university campus is mandatory. The program should also include or integrated study tour segment of up to two weeks (it must be directly supportive of the academic program content) to one or two other regions of the country. If a visit to Washington, D.C. makes programmatic sense, applicants are encouraged to arrange such a visit which should include a half-day session at the United States Information Agency. The selected grantee organization will be asked to consult closely with USIA in the planning of the Washington itinerary. Day trips to various locations (historical sites, classrooms, community centers) are also encouraged if such trips will further enhance understanding of the U.S. and enrich the participants' experience.

The equivalent of one day a week should be available to participants to pursue individual research interests, curriculum development projects, or to do assigned readings. Participants should be paired with faculty mentors to guide them in their research, and assist them in adjustment to the U.S. academic environment.

It is extremely important that the Institute organizers devise a way to integrate all aspects of the program. Assigned readings, lectures, discussions, and field trips should relate to and further illuminate the central Institute theme, and contribute to a better understanding of the U.S. The Institute should not simply replicate an existing lecture course or a graduate seminar. Rather, through a combination of lectures, presentations, discussions, and site visits, it should be designed to facilitate the development of a collegial atmosphere in which faculty and participants discuss relevant texts, issues, and concepts.

Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

Resources

The program should provide access to leading American scholars and scholarly resources (libraries, archives, databases, computer labs, etc.). An essential element of the program is the exposure to and accumulation of teaching ideas and scholarly resources, including primary texts, supplementary works, and curricular materials (including Internet resources and training). The Summer Institute should facilitate participants' acquisition of the maximum amount of such materials to take back to their home countries, to be used in the development of new courses and programs, and the improvement of existing ones.

Additional Responsibilities

The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangement of all domestic travel, lodging, subsistence, airport reception and ground transportation for participants, orientation and briefing of participants, preparation of any necessary support materials (including a pre-program and post-program mailings to participants), and working with program presenters to achieve maximum program coordination and effectiveness. Please refer to the Solicitation Package for further details on program design and implementation.

Additional Information: Confirmation letters from U.S. co-sponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Visa/Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. Grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

Proposed Budget: Total USIA-funded budget award may not exceed $157,000. USIA-funded administrative costs should be as low as possible and should not exceed $47,000. The U.S. recipient should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as wall as break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions for the Institute program.

REVIEW PROCESS: USIA will acknowledge receipt of all proposals

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and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA geographic Area Offices and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

REVIEW CRITERIA: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the discipline.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The tour component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposal should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

NOTICE: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

NOTIFICATION: All applications will be notified of the results of the review process on or about April 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 5, 1995.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 95–30025 Filed 12–13–95; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute for the Study of the U.S.: The Making of U.S. Foreign Policy

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Branch for the Study of the United States of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a six week graduate level program designed for a group of 18 foreign university educators from around the world on the subject of the making of U.S. foreign policy. The purpose of the institute is to deepen the participants' understanding of the U.S. foreign policy process in order to improve the teaching of international relations in their respective universities.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not for profit academic organizations that have an established reputation in fields directly related to the study of U.S. foreign policy and can demonstrate expertise in conducting graduate level programs for foreign educators. *Applicant institutions must have a minimum of four years' experience in conducting international exchange programs.*

The project director or one of the key program staff responsible for the academic program must have an advanced degree in the field related to the topic of the institute. Staff escorts traveling under the USIA cooperative agreement must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the legislation.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–96–07.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on February 9, 1996. Faxed documents will not be accepted, nor will documents postmarked February 9, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Approximate institute program dates should be June 29–August 9, 1996. Participants will likely be scheduled to arrive in the U.S. on or about June 28, and depart on or about August 10, 1996. In order to assure adequate time for the host institution to make program arrangements and send pre-program materials to grantees, USIA will make every effort to award the approved cooperative agreement by April 1, 1996.

FOR FURTHER INFORMATION: To request a Solicitation Package, which includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget, applicants should contact The Branch for the Study of the United States, E/AAS, room 252, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Attention, Program Officer Gretchen Christison. Tel: (202) 619–4557; FAX: (202) 619–6790; internet address: gchristi@usia.gov.

Please specify USIA Program Officer Ms. Gretchen Christison on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov, or from the Internet Gopher at gopher.usia.gov, under "New RFPs on Educational and Cultural Exchanges."

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 14 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AAS–96–07, Office of Grants Management, E/XE, room 326, 301 4th Street SW., Washington, DC 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The purpose of the Institute, "The Making of U.S. Foreign Policy," is to deepen understanding among participants of how U.S. foreign policy is made and to provide them with a multi-dimensional view of United States, its society, culture, and institutions, past and present. Accordingly, the successful proposal will focus not only on the Constitutional roles and requirements that govern the foreign policy process, but also on the role that other political, economic, social and cultural forces play in the making of U.S. foreign policy. Ultimately, the purpose of the Institute is to improve the teaching of courses abroad that address the subject of U.S. foreign policy. The Institute is a six-week program, involving a minimum of four weeks at a college or university campus in the U.S., followed by up to two weeks of travel to at least one other region of the U.S. with activities designed to directly complement and substantively enrich the academic segment of the institute.

Objectives

(1) To conduct an intensive, academically stimulating program that presents an in-depth view of the complex process by which U.S. foreign policy is conceived, formulated and carried out;

(2) to offer a multi-dimensional view of that process that will enable participants to increase their understanding of the ways in which domestic political, economic, social and cultural factors contribute, directly and indirectly, to that process;

(3) to enhance teaching about the United States in foreign universities by making appropriate scholarly resources, pedagogical materials, and ideas available to participants.

Participants

The 18 participants will be drawn from all areas of the world, and will be experienced in the teaching of courses in fields of Politics and Government, Comparative Politics and International Relations, and History where there is significant U.S. content involved. All will be fluent in the English language. They will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch for the Study of the United States in Washington, D.C. USIA will cover the international travel costs for participants directly.

Guidelines

—The Institute should be specifically designed for experienced foreign university-level teachers. While it is important that the topics and readings of the Institute be clearly organized, the Institute should not simply replicate a lecture course or a graduate seminar. Through a combination of lectures, roundtable discussions, guest presentations, consultations and site visits, the Institute should facilitate the development of a collegial atmosphere in which foreign participants become fully engaged in the exchange of ideas.

—In addition to the core faculty from the host institution, and consistent with the program's design, the Institute should bring in presenters from outside academic life. Such individuals might come from foreign policy institutes, think tanks, lobbying organizations, embassies, consulates, development organizations, media, and government, as appropriate. Presenters should be fully briefed about the Institute, its goals, general themes, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal submission.

—While the overall design and structure of the Institute is entirely the responsibility of the organizers, the Institute should begin by reviewing the recent history and current status of U.S. Foreign Policy studies as an academic discipline, surveying the major schools of interpretation and approaches, and examining the recent trends and current debates within the field and within the area of international relations generally. This part of the program should also explore how the study of U.S. foreign policy has informed and been informed by other scholarly disciplines, e.g., economics, anthropology, history, and address how the study of U.S. foreign policy

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can be used to gain a greater understanding of the development and character of American civilization, past and present. The latest developments in curriculum design, teaching methods, and resources available in the fields of international relations should also be addressed.

—The best proposals will express a high level of thematic articulation in addition to demonstrating clearly the means by which these themes will be concretely communicated to participants for discussion and reflection. It is especially important for the institute organizer to devise ways to integrate all aspect of the program, from the assigned readings, lectures, and discussions, to any site visits and fields trips.

—The equivalent of one day a week should be available to participants to pursue individual research and reading. The Institute should provide access to leading American scholars and research resources (libraries, archives, databases); provision should be made to pair participants with faculty mentors. A key element of the Institute is to expose participants to the full range of scholarly materials, primary and secondary literature, curricular materials and teaching resources, including Internet and computer training, that will allow them to continue their use of such materials in their home countries.

—A residential program of a minimum of four weeks on a college or university campus is mandatory. The program should include an integrated study tour segment of up to two weeks in length to at least one other region of the country outside the area of the host institution. In the event that Washington, D.C. is included in the proposed study tour segment, a half-day session at the U.S. Information Agency should be scheduled. In any case, the study tour segment must be directly supportive of the academic program content. Day trips to various locations are also encouraged if such trips will further enhance understanding of the U.S. and the participants' experience.

—Details of programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

—The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangements for all domestic travel, lodging, subsistence, and group transportation for participants, orientation and briefing of participants, preparation of any necessary support materials including a pre-program mailing and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation.

Additional Information: Confirmation letters from U.S. co-sponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Visa/Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. The grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

Proposed Budget: Total USIA-funded budget award may not exceed $157,000. USIA-funded administrative costs should be as low as possible and should not exceed $47,000. The U.S. recipient should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

REVIEW PROCESS: The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

REVIEW CRITERIA: Technically eligible applications will be competitively reviewed according to the following criteria:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the discipline.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization's professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity, as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

NOTICE: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

NOTIFICATION: All applicants will be notified of the results of the review process on or about April 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 5, 1995.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 95–30026 Filed 12–13–95; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute on the U.S. Political System: Focus on Federalism

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Branch for the Study of the U.S. of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program for the Summer Institute on the U.S. Political System: Focus on Federalism. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a six-week graduate-level program designed for a group of 18 foreign university educators from around the world on the subject of the U.S. political system, with a focus on federalism. The purpose of the Institute is to deepen the participants' understanding of the foundations, development, and current functioning of the U.S. political system by concentrating particularly on the topic of federalism; the ultimate goal of the institute is to improve the teaching of political science and American government at the participants' home institutions.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in political science and related subdisciplines, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. *Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director or one of the key program staff responsible for the academic program must have an advanced degree in political science or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable to Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS–96–05.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, February 9, 1996. Faxed documents will not be accepted, nor will documents postmarked February 9, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline. Tentative program dates are June 29 to August 9, 1996. Participants will likely be booked to arrive in the U.S. on or about June 28, and depart on August 10, 1996.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS, Room 256, 301 4th Street, S.W., Washington, D.C. 20547, Attn: Program Officer Susan Zapotoczny; telephone number (202) 619–4557; fax number (202) 619–6790; internet address szapotoc@usia.gov. Please specify USIA Program Officer Susan Zapotoczny on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov or from the internet Gopher at gopher.usia.gov, under "New RFPs on Educational and Cultural Exchanges."

SUBMISSIONS: Applicants must follow all instructions given in the RFP and the complete Solicitation Package. The original and 14 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–96–05, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants are also requested to submit the "Executive Summary" and "Proposal Narrative" sections of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. If a proposal is selected for funding, USIA will transmit these files electronically to USIS posts overseas to assist in the program participant identification process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural

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life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION: *Overview:* The "Summer Institute on the U.S. Political System: Focus on Federalism" is intended to deepen foreign participants' understanding of the theory and practice of federalism as a central feature of the U.S. political system. Ultimately, the purpose of the Institute is to improve the quality of teaching and curricular materials about the United States at foreign universities.

The program should be six weeks in length, including a residency segment at a U.S. college or university campus (a minimum of four weeks in length), and a study tour segment (a maximum of two weeks in length, including a visit to Washington, D.C. for a program debriefing at USIA).

The program should offer participants a specially-designed series of lectures, presentations, discussions, and site visits, each related to the U.S. political system and/or the topic of federalism.

Objectives

(1) to conduct an intensive, academically stimulating program that presents an in-depth view of the history, development and current status of federalism as a central feature of the American political system.

(2) to offer a multi-dimensional view of federalism that will enable participants to better understand the larger complexities of the American political system as well as other institutions of American society.

(3) to increase participants' understanding of American civilization, past and present, through an integrated series of lectures, readings, interactive discussions, research and independent study opportunities, and site visits.

(4) to enhance teaching about the United States in foreign universities by making appropriate scholarly resources, pedagogical materials, and ideas available to participants.

Participants: The 18 participants will be drawn from all areas of the world and will be experienced in the teaching of courses in the fields of government and politics; they may include university lecturers and scholars, administrators, department chairs, curriculum developers and textbook writers who are currently teaching about the American political system or who plan to do so.

All participants will be fluent in the English language. They will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch for the Study of the United States in Washington, D.C. USIA will cover all international travel costs for participants directly.

Guidelines

—The Institute should be specifically designed for experienced foreign university level teachers. While it is important that the topics and readings of the Institute be clearly organized, the Institute should not simply replicate a lecture course or a graduate seminar. Through a combination of lectures, roundtable discussions, guest presentations, consultations and site visits, the Institute should facilitate the development of a collegial atmosphere in which foreign participants become fully engaged in the exchange of ideas.

—In addition to the core faculty from the host institution, and consistent with the program's design, the Institute should bring in presenters from outside academic life. Such individuals might come from non-government organizations, think tanks, lobbying organizations, media, and all levels of federal, state and local government. Presenters should be fully briefed about the Institute, its goals, general themes, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal submission.

—While the overall design and structure of the Institute is entirely the responsibility of the organizers, the Institute should begin by reviewing the recent history and current status of scholarship in the discipline of political science, specifically in the area of federalism, surveying the major schools of interpretation and approaches, and examining the recent trends and current debates within the discipline. This part of the program should also explore how the study of American federalism has both informed and been informed by other scholarly disciplines, e.g., economics and history, and address how the study of federalism can be used to gain a greater understanding of not only the U.S. political system, but more broadly, the history and character of American life and institutions, past and present. The latest developments in curriculum design, teaching methods, and resources available in the fields of political science should also be addressed.

—Because the possibilities for the design of such an institute, given the complex nature of the topic, are so great, the best proposals will express a high level of thematic articulation, clearly identify major themes and sub-themes, and demonstrate clearly the means by which these themes will be concretely communicated to participants for discussion and reflection. In this regard, it is especially important for the institute organizer to devise ways to integrate all aspects of the program, from the assigned readings, lectures, and discussions, to any site visits and field trips.

—The equivalent of one day a week should be available to participants to pursue individual reading and research. In addition, the Institute should provide access to leading American scholars and research resources (libraries, archives, databases). Provision should also be made to pair participants with faculty mentors. A key element of the Institute is to expose participants to the full range of scholarly materials, curricular materials and teaching resources, including internet and computer training. The summer institute should facilitate participants' acquisition of such materials to take back to their home countries to be used in their courses and programs.

—A residential program of a minimum of four weeks on a college or university campus is mandatory. The program should include an integrated study tour segment of up to two weeks in length to at least one other region of the country outside the area of the host institution, plus a trip to Washington, D.C. to conclude the institute. During the visit to Washington, D.C., a half-day session at the U.S. Information Agency should be scheduled. In any case, the study tour segment must directly support and reinforce the academic program content. Day trips to various locations (historical sites, classrooms, community centers) are also encouraged if such trips will further enhance understanding of the U.S. and the participants' experience.

—Details of the program may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

—The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangements for all domestic travel, lodging, orientation and briefing or participants, preparation of any necessary support materials including a pre-program mailing and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation.

Additional Information: Confirmation letters from U.S. co-sponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Visa/Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. Grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

Proposed Budget: Total USIA-funded budget award may not exceed $157,000. USIA-funded administrative costs should be as low as possible and should not exceed $47,000. The U.S. recipient should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate (USIA decisions on funding. Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions for the Institute program.

REVIEW PROCESS: The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

REVIEW CRITERIA: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the discipline.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conductive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or ongoing activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

NOTICE: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal USIA procedures.

NOTIFICATION: All applicants will be notified of the results of the review process on or about April 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 5, 1995.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 95–30027 Filed 12–13–95; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 240
Thursday, December 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 14, 1995, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

—Farm Credit System Building Association Quarterly Report

Closed Session *

A. New Business

—Enforcement Actions

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: December 11, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95-30544 Filed 12-12-95; 9:32 am]

BILLING CODE 6705-01-P

FEDERAL MARITIME COMMISSION

TIME AND PLACE: 1:00 p.m., December 19, 1995.

PLACE: Room 2C—Commission Meeting Room, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 94-08—*Financial Responsibility Requirements for Nonperformance of Transportation;* and Docket No. 94-21—*Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation*—Consideration of Comments.

2. Docket No. 94-31—*Information Form and Post-Effective Reporting Requirements for Agreements among Ocean Common Carriers Subject to the Shipping Act of 1984*—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary. (202) 523-5725.

Joseph C. Polking,

Secretary,

[FR Doc. 95-30592 Filed 12-12-95; 1:03 pm]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 14, 1995.

PLACE: Room 600, 8th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Energy West Mining Co.*, Docket No. WEST 93-169. (Issues include whether the judge correctly determined that the inspector did not abuse his discretion in issuing a failure to abate order.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/for toll free TDD Relay 1-800-877-8339.

Dated: December 6, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95-30543 Filed 12-12-95; 9:32 am]

BILLING CODE 6735-01-M

federal register

Thursday
December 14, 1995

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Impairment of Long-Lived Assets and Rates of Inflation; Interim Rule and Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–35; FAR Case 95–003]

RIN 9000–AG73

Federal Acquisition Regulation; Impairment of Long-Lived Assets

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule, with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to clarify the allowability of losses recognized when carrying values of impaired assets are written down for financial reporting purposes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* December 14, 1995.

Comment Due Date: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before February 12, 1996.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–35, FAR Case 95–003.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule is intended to clarify cost allowability rules concerning the recognition of gains and losses related to long-lived assets. The rule addresses a cost category which is the subject of a Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS), No. 121, dated March 1995, entitled "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets To Be Disposed Of."

The SFAS applies to long-lives assets (such as land, buildings, and equipment), identifiable intangibles, and related goodwill, and establishes guidance to recognize and measure impairment losses. If impaired assets are to be held for use, the SFAS requires a write-down to fair value when events or circumstances (e.g., environmental damage, idle facilities arising from declining business, etc.) indicate that carrying values may not be fully recoverable.

Impaired assets that are to be disposed of, however, would be reported (with certain exceptions) at the lower of cost or fair value less cost to sell. Once written down, the previous carrying amount of an impaired asset could not be restored if the impairment was subsequently removed.

In contrast to the SFAS provisions, Cost Accounting Standard (CAS) 9904.409, "Depreciation of Tangible Capital Assets", provides quite different criteria and guidance to recognize gains and losses for Government contract purposes. The language at 9904.409–40 (a)(4) and (b)(4), 9904.409–50(j), and related Promulgation Comment 10, "Gain or Loss," makes it clear that gains and losses are recognized only upon asset disposal; no other circumstances trigger such recognition.

FAR 31.205–16 reflects the CAS provisions that an asset be disposed of in order to recognize a gain or loss. The FAR rule applies to both CAS and non-CAS covered contracts. Consequently, for Government contract purposes, an impairment loss is recognized only upon disposal of the impaired asset. Like other losses, it is measured as the difference between the net amount realized and the impaired asset's undepreciated balance. Government contractors, therefore, recover the carrying values of impaired assets held for use by retaining pre-write-down depreciation or amortization schedules as though no impairment had occurred. The rule addresses the treatment of losses for impaired assets by adding a new paragraph (o) at 31.205–11, and revising the title and adding a new paragraph (g) at 31.205.16.

B. Regulatory Flexibility Act

The interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply. An initial Regulatory Flexibility Analysis has, therefore, not been performed.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–35, Far case 95–003) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or record keeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary because the Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of, dated March 1995, requires all publicly owned firms to recognize impairment losses in their financial statements for fiscal years beginning after December 15, 1995. It is likely that Government contractors whose 1996 fiscal year begins after December 15, 1995, will recognize impairment losses for financial reporting and claim a portion of such losses either on current contracts or on those awarded after December 15, 1995. In order to ensure that contractors' impairment losses are not paid by the Federal Government, it is necessary to issue this clarification of existing cost principles expeditiously. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 8, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Number 90–35

Federal Acquisition Circular (FAC) 90–35 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–35 is effective December 14, 1995.

Dated: December 1, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: December 6, 1995.

Ida M. Ustad,

Associate Administrator, for Acquisition Policy.

Dated: December 7, 1995.

Tom Luedtke,

Deputy Associate Administrator for Procurement, NASA.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–11 is amended at the end of paragraph (e) by adding the parenthetical "(but see paragraph (o) of this subsection)."; and by adding paragraph (o) to read as follows:

31.205–11 Depreciation.

* * * * *

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, depreciation of the impaired assets shall not exceed the amounts established on depreciation schedules in use prior to the write-down (see 31.205–16(g)).

3. Section 31.205–16 is amended by revising the section heading and adding paragraph (g) to read as follows:

31.205–16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

* * * * *

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be recognized for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). Depreciation or amortization on pre-write-down carrying value of impaired assets not yet disposed of shall continue to be recoverable under established depreciation or amortization schedules to the extent it is not otherwise unallowable under other provisions of the FAR.

[FR Doc. 95–30442 Filed 12–13–95; 8:45 am]

BILLING CODE 6820–EP–M

48 CFR Part 31

[Federal Acquisition Circular 90–35]

Federal Acquisition Regulation; Rates of Inflation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Annual notice of rates of inflation.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to publish as an information item, the rates of inflation which are used in conjunction with other factors to determine the allowability of IR&D/B&P costs for major contractors under 31.205–18(c)(2)(i)(C)(*2*) during the first three contractor fiscal years beginning on or after October 1, 1992. The following rates of inflation are effective immediately, and shall remain in effect until superseded by the next publication, which is anticipated in January 1996:

Fiscal year	Annual percentage rate
1994	2.5
1995	2.9
1996	3.0
1997	3.0

The above rates are the Price Escalation Indices for the Research, Development, Test & Evaluation (RDT&E) Account, Total Obligation Authority (TOA), issued by the Principal Deputy Under Secretary of Defense (Comptroller) on January 10, 1995. These rates of inflation supersede those published in FAC 90–23, Item XL—Annual Notice of Rates of Inflation, in the **Federal Register** on December 28, 1994.

Dated: December 8, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95–30443 Filed 12–13–95; 8:45 am]

BILLING CODE 6820–EP–M

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Thursday
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Part III

Department of Justice

Bureau of Prisons

List of Bureau of Prisons Institutions; Notice

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DEPARTMENT OF JUSTICE

Bureau of Prisons

List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions. The following institutions have been added to the listing: an administrative maximum United States Penitentiary at Florence, Colorado; Federal Correctional Institutions at Beckley, West Virginia; Coleman, Florida (Low Security); Coleman, Florida (Medium Security); and Waseca, Minnesota; and a Federal Detention Center at Miami, Florida. The existing Federal Correctional Institution at Butner, North Carolina has been designated as medium security, and a new low security facility has been added at the same location. The existing United States Penitentiary at Florence, Colorado has been identified as high security in order to distinguish it from the administrative maximum facility at that same location. The former Metropolitan Correctional Center at Miami, Florida has been redesignated as a Federal Correctional Institution. The independent Federal Prison Camp at Millington, Tennessee has been removed from the list of Federal Prison Camps because it is now to be administered as a satellite camp to the Federal Correctional Institution at Memphis, Tennessee.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 514–6655.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the Federal Register on July 11, 1994 (59 FR 35458).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(q), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Allenwood, Pennsylvania;
(2) Atlanta, Georgia;
(3) Florence, Colorado (ADMAX);
(4) Florence, Colorado (High Security);
(5) Leavenworth, Kansas;
(6) Lewisburg, Pennsylvania;
(7) Lompoc, California;
(8) Marion, Illinois; and
(9) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Allenwood, Pennsylvania (Low Security);
(2) Allenwood, Pennsylvania (Medium Security);
(3) Ashland, Kentucky;
(4) Bastrop, Texas;
(5) Beckley, West Virginia;
(6) Big Spring, Texas;
(7) Butner, North Carolina (Low Security);
(8) Butner, North Carolina (Medium Security);
(9) Coleman, Florida (Low Security);
(10) Coleman, Florida (Medium Security);
(11) Cumberland, Maryland;
(12) Danbury, Connecticut;
(13) Dublin, California;
(14) El Reno, Oklahoma;
(15) Englewood, Colorado;
(16) Estill, South Carolina;
(17) Fairton, New Jersey;
(18) Florence, Colorado;
(19) Fort Dix, New Jersey;
(20) Greenville, Illinois;
(21) Jesup, Georgia;
(22) La Tuna, Texas;
(23) Lompoc, California;
(24) Loretto, Pennsylvania;
(25) Manchester, Kentucky;
(26) Marianna, Florida;
(27) McKean, Pennsylvania;
(28) Memphis, Tennessee;
(29) Miami, Florida;
(30) Milan, Michigan;
(31) Morgantown, West Virginia;
(32) Oakdale, Louisiana (formerly Oakdale I);
(33) Otisville, New York;
(34) Oxford, Wisconsin;
(35) Pekin, Illinois;
(36) Petersburg, Virginia;
(37) Phoenix, Arizona;
(38) Ray Brook, New York;
(39) Safford, Arizona;
(40) Sandstone, Minnesota;
(41) Schuylkill, Pennsylvania;
(42) Seagoville, Texas;
(43) Sheridan, Oregon;
(44) Talladega, Alabama;
(45) Tallahassee, Florida;
(46) Terminal Island, California;
(47) Texarkana, Texas;
(48) Three Rivers, Texas;
(49) Tucson, Arizona; and
(50) Waseca, Minnesota.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin, Florida;
(7) El Paso, Texas;
(8) Montgomery, Alabama;
(9) Nellis, Nevada;
(10) Pensacola, Florida;
(11) Seymour-Johnson, North Carolina; and
(12) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations house inmates who are primarily pre-trial detainees and are designated as:

Federal Detention Centers:
(1) Miami, Florida; and
(2) Oakdale, Louisiana (formerly Oakdale II).

Metropolitan Correctional Centers:
(1) Chicago, Illinois;
(2) New York, New York; and
(3) San Diego, California.

Metropolitan Detention Centers:
(1) Brooklyn, New York;
(2) Guaynabo, Puerto Rico; and
(3) Los Angeles, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carswell, Texas;
(2) Fort Worth, Texas;
(3) Lexington, Kentucky; and
(4) Rochester, Minnesota.

G. The Bureau of Prisons institution at Oklahoma City, Oklahoma is designated as the Federal Transportation Center.

Wallace H. Cheney,

Acting Director, Federal Bureau of Prisons.

[FR Doc. 95–30494 Filed 12–13–95; 8:45 am]

BILLING CODE 4410–05–P

federal register

Thursday
December 14, 1995

Part IV

Federal Election Commission

11 CFR Part 100, et al.
Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates; Final Rule

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 109, 110, and 114

[Notice 1995–23]

Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission is issuing revised regulations regarding expenditures by corporations and labor organizations. The new rules implement the Supreme Court's opinion in *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), by substituting an express advocacy standard for the previous partisan/nonpartisan standard with respect to corporate and labor organization expenditures. Consequently, in many respects, the revised rules permit corporations and labor organizations to engage in a broader range of activities than was permitted under the previous rules. New provisions are also being added to provide corporations and labor organizations with guidance regarding endorsements of candidates, activities which facilitate the making of contributions, and candidate appearances at colleges and universities.

DATES: Further action, including the publication of a document in the Federal Register announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street NW., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 109.1(b)(4), 110.12, 110.13, 114.1 (a) and (j), 114.2, 114.3, 114.4, 114.12(b) and 114.13. These provisions implement 2 U.S.C. 431(17) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the Act or FECA), 2 U.S.C. 431 *et seq.* Also included are conforming amendments to 11 CFR 100.7(b)(21), 100.8 (b)(3) and (b)(23) and 102.4(c)(1). Section 438(d) of Title 2, United States Code, requires that any rule or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on December 8, 1995.

Explanation and Justification

The new and revised rules reflect recent judicial and Commission interpretations of 2 U.S.C. 441b. This section of the FECA prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. The new and amended rules contain the following changes:

1. The partisan/nonpartisan standards in previous 11 CFR part 114 have been replaced by new language at section 114.2, 114.3, and 114.4, prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. This new language applies only to expenditures.

2. The provisions regarding candidate debates, candidate appearances, distributing registration and voting information, voter guides, voting records, and conducting voter registration and get-out-vote drives in sections 110.13, 114.3, 114.4 and 114.13 have been revised and updated.

3. New provisions have been added to sections 110.12, 114.1., 114.2, and 114.4 to define "restricted class," and to address candidate appearances at colleges and universities, endorsements of candidates, and activities which facilitate the making of contributions.

4. New language has been added to 11 CFR 114.2, 114.3 and 114.4 to address the question of when coordination between a candidate and a corporation or labor organization will cause an activity to become a prohibited contribution.

Please note that at an earlier stage of this rulemaking, the Commission revised the definition of express advocacy in accordance with the judicial interpretations found in *Buckley* v. *Valeo*, 424 U.S. 1, 44 n. 52 (1976) (*Buckley*, *MCFL* and *Federal Election Commission* v. *Furgatch*, 807 F 2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987) (*Furgatch*) and moved it to 11 CFR 100.22. *See* Explanation and Justification for 11 CFR 100.17, 100.22, 106.1, 109.1 and 114.10, 60 FR 35292 (July 6, 1995). At that time, the definition of "clearly identified," in 11 CFR 100.17, was also updated. In addition, new section 114.10 was added to allow qualified nonprofit corporations possessing certain essential features to use general treasury funds for independent expenditures, and to set out reporting obligations for qualified nonprofit corporations making independent expenditures. Section 114.10 implements the Supreme Court's decisions in *MCFL* and *Austin* v. *Michigan Chamber of Commerce*, 494 U.S.C. 652 (1990) (*Austin*).

The history of this rulemaking, including the Petition for Rulemaking and the comments and public testimony, are discussed in more detail in the previously published Explanation and Justification at 60 FR 35292 (July 6, 1995), and in the Notice of Proposed Rulemaking at 57 FR 33548 (July 29, 1992) (Notice or NPRM). The promulgation of these regulations, after the close of the thirty legislative day period, will complete the Commission's consideration of the National Right to Work Committee's Petition for Rulemaking.

Section 100.7(b)(21) Contribution

Paragraph (b)(21) of this section is being amended by removing the term "nonpartisan" in describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 111.4(f) to correspond to the renumbering of that section.

Section 100.8 (b)(3) and (b)(23) Expenditure

Paragraph (b)(3) of section 100.8 is being amended to delete the term "nonpartisan" in describing the type of voter drive activity which fall outside the definition of "expenditure." In order for this exception to apply, such activity must still be conducted without any effort to determine party or candidate preference. A reference to section 114.3(c)(4) has also been added for the convenience of readers concerned with corporate or labor organization voter drives aimed at the restricted class.

Paragraph (b)(23) of this section is being amended by removing the term "nonpartisan"In describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 114.4(f) to correspond to the renumbering of that section.

Section 102.4(c)(1) Administrative Termination

The citation to the rules governing debt settlement procedures is being changed from 11 CFR 114.10 to 11 CFR part 116. Section 114.10 now covers qualified nonprofit corporations, not debt settlement.

Section 109.1(b)(4) Coordination with Candidates

The Notice suggested revising 11 CFR 109.1(b)(4) to indicate that the limited types of communication with candidates and their campaign staff which are described in 11 CFR 114.2(c), 114.3 and 114.4 do not constitute coordination if they comply with the requirements of those sections. Upon further reflection, this proposal has been dropped because 11 CFR part 109 covers all persons, and the Commission's concerns regarding the coordination of corporate or labor organization activity is more appropriately addressed in 11 CFR 114.2 through 114.4, which are discussed below.

Section 110.12 Candidate Appearance on Public Educational Institution Premises

New section 110.12 of the regulations addresses candidate appearances on the premises of public educational institutions. This section generally follows new paragraph (c)(7) of section 114.4, which is discussed more fully below. It has been included in the regulations so that public colleges and universities may continue to invite candidates to appear and address either the academic community or the general public in the same manner as incorporated private colleges and universities. A number of commenters pointed out that private schools should be treated the same as public educational institutions. Please note, however, that these institutions are also governed by state law which may impose additional requirements in this area.

Section 110.13 Candidate Debates

The Commission has revised its regulations at 11 CFR 110.13 governing the staging of candidate debates in several respects. First, the previous requirement that debates be "nonpartisan" has been removed. However, the rules continue to specify that candidate debates may not be structured to promote or advance a particular candidate. Also, debates may not be coordinated with a candidate in a manner that would result in the making of an in-kind contribution.

In the NPRM, the Commission has proposed several additional requirements, such as a restriction on discussing campaign strategy and tactics with the candidate or agents of the candidate. The NPRM also included restrictions on giving one candidate more time during the debate or more advance information as to the questions to be asked. Several commenters were critical of these proposals. While this language has been deleted from the final rules, these restrictions are subsumed within the requirement that the debate not be structured to promote or advance a particular candidate over the others.

The Commission also considered including language stating that staging organizations may not expressly advocate the election or defeat of any clearly identified candidate during the debates. That language does not need to be included in the final rule because the rules already state that the debates may not be structured to promote or advance one candidate over another. Please note that no portion of the entire event, including any pre-debate or post-debate commentary and analysis, may be structured to promote or advance a particular candidate. Nevertheless, a news organization that stages a candidate debate may produce a separate editorial containing express advocacy under the news story exception to the definitions of contribution and expenditure in 11 CFR 100.7(b)(2) and 100.8(b)(2).

1. Definition of Staging Organization

Section 110.13(a) addresses several issues that have been raised regarding nonprofit groups and media organizations that wish to be staging organizations for candidate debates. First, this provision was rewritten to clarify that nonprofit organizations described in 26 U.S.C. 501 (c)(3) and (c)(4) may stage debates even if they have not received official confirmation from the Internal Revenue Service of their status as nonprofit organizations. In addition, the previous language may have been confusing because it described these entities as "exempt from Federal taxation", when they may be required to pay taxes on their nonexempt function income. Please note that under section 110.13, it is possible for a candidate debate to be sponsored by multiple staging organizations. The Internal Revenue Service commented that while the requirements in the FEC's rules are not identical to the factors the IRS considers, they do not conflict with the IRS's rules regarding political activity carried out by 501(c) organizations. Another commenter questioned the reason for disqualifying nonprofit organizations from staging debates if they endorsed candidates, as long as the debate is fair. The Commission is retaining this requirement because it is needed to ensure the integrity of candidate debates.

Section 110.13(a)(2) follows the previous provision by indicating that broadcasters and the print media may stage candidate debates, but it does not indicate whether local cable stations or cable networks may stage debates. However, questions involving cable debates will be addressed in a separate NPRM. This area is currently subject to many changes, and the Commission intends to consult further with the Federal Communications Commission before addressing it.

Two comments questioned the use of the term "*bona fide*" to describe newspapers who may qualify as debate staging organizations, and the Commission's authority to determine what is a *bona fide* newspaper or magazine under the First Amendment guarantee of freedom of the press. *Bona fide* newspapers and magazines include publications of general circulation containing news, information, opinion, and entertainment, which appear at regular intervals and derive their revenues from subscriptions and advertising. This term is explained in more detail in the Explanation and Justification for the 1979 rules on funding and sponsorship of federal candidate debates. *See* 44 FR 76734 (December 27, 1979). These rules were transmitted to Congress on December 20, 1979, together with the Explanation and Justification. They became effective on April 1, 1980, after neither house of Congress disapproved them under 2 U.S.C. 438(d)(2). (An earlier version of the candidate debate rules was disapproved by Congress on September 18, 1979. *See* 44 FR 39348 (July 5, 1979).) This is, as the Supreme Court has noted, an "indication that Congress does not look favorably" upon the Commission's construction of the Act. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27, 34 (1981). *See also, e.g., Sibbach* v. *Wilson*, 312 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Accordingly, the revised rules follow the previous provisions by retaining the term "*bona fide*" to describe newspapers and magazines that may stage candidate debates.

Finally, please note that the purpose of section 110.13 and 114.4(f) is to provide a specific exception so that certain nonprofit organizations and the news media may stage debates, without being deemed to have made prohibited corporate contributions to the candidates taking part in debates. This exception is consistent with the traditional role these organizations have played in the political process. Individuals and unincorporated entities wishing to stage debates are not covered by the exception.

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2. Debate Structure and Selection of Candidates

The rules in section 110.13(b)(1) continue the previous policy of permitting staging organizations to decide which candidates to include in a debate, so long as the debate includes at least two candidates. Please note that a face-to-face appearance or confrontation by the candidates is an inherent element of a debate. Hence, a debate does not consist of a series of candidates appearances at separate times over the course of a longer event. *See* AO 1985–37. Nevertheless, the requirement of including two candidates would be satisfied, for example, if two candidates were invited and accepted, but one was unable to reach the debate site due to bad weather conditions, and the staging organization held the debate with only the other candidate present. Other situations will be addressed on a case-by-case basis. The Commission does not intend to penalize staging organizations for going forward with debates when circumstances beyond their control result in only one candidate being present and it is not feasible to reschedule. Please note that in some situations, the rules in 11 CFR 114.4 regarding candidate appearance may also be applicable.

Many comments, and much public testimony, was received on whether the Commission should establish reasonable, objective, nondiscriminatory criteria to be used by staging organizations in determining who must be invited to participate in candidate debates. In the alternative, it was suggested that the Commission could allow staging organizations to use their own pre-established sets of reasonable, objective, nondiscriminatory criteria, provided the criteria are subject to Commission review and are announced to the candidates in advance.

In response to the comments and testimony, new paragraph (c) has been added to section 110.13 to require all staging organizations to use pre-established objective criteria to determine which candidates are allowed to participate in debates. Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. The suggestion that the criteria be "reasonable" is not needed because reasonableness is implied. Similarly, the revised rules are not intended to permit the use of discriminatory criteria such as race, creed, color, religion, sex or national origin.

Although the new rules do not require staging organizations to do so, those staging debates would be well advised to reduce their objective criteria to writing and to make the criteria available to all candidates before the debate. This will enable staging organizations to show how they decided which candidates to invite to the debate. Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rules, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But, in situations where, for example, candidates must satisfy three of five objective criteria, nomination by a major party may be one of the criteria. This is a change from the Explanation and Justification for the previous rules, which had expressly allowed staging organizations to restrict general election debates to major party candidates. *See* Explanation and Justification, 44 FR 76735 (December 27, 1979). In contrast, the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party.

The final rules which follow also continue the previous policy that sponsoring a primary debate for candidates of one political party does not require the staging organization to hold a debate for the candidates of any other party. *See* Explanation and Justification, 44 FR 76735 (December 27, 1979).

Section 114.1 Definitions

1. Contribution and Expenditure

The revised regulations in 11 CFR 114.1 (a)(1) and (a)(2) recognize that the *MCFL* decision necessitates certain distinctions between the terms "contribution" and "expenditure." The previous rules had treated these terms as coextensive. The distinction arises because the Court read an express advocacy standard into the 2 U.S.C. 441b definition of expenditure. However, payments which are coordinated with candidates constitute expenditures and in-kind contributions to those candidates even if the communications do not contain express advocacy. *See* AO 1988–22.

One commenter urged the Commission to continue to interpret the term "contribution or expenditure" to cover the same disbursements. The comment argued that the *MCFL* decision applies equally to contributions and expenditures. The Commission disagrees with this interpretation of *MCFL*, given that the case only involved the issue of whether corporate expenditures were made. In *MCFL*, the parties did not raise, and the Supreme Court did not resolve, the factual question of whether corporate contributions had been made by MCFL, Inc. However, the *MCFL* Court reaffirmed the First Amendment distinction between independent expenditures and contributions, which was recognized in the *Buckley* opinion. In *Buckley*, the Supreme Court generally struck down the Act's limitations on independent campaign expenditures by individuals and organizations (*Buckley*, 424 U.S. at 39–51), but upheld the constitutionality of the Act's restrictions on contributions to candidates. *Id.* at 23–38. Subsequently, the Court stated in *NCPAC* that "there was a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." *Federal Election Comission* v. *National Conservation PAC*, 470 U.S. 480, 497 (1985). Similarly, the Court indicated that "a corporation's expenditures to propagate its views on issues of general public interest are of a different constitutional stature than corporate contributions to candidates." *Id.*, at 495–96. In light of this judicially-recognized distinction, the final version of section 114.1(a)(1) and (a)(2) is being modified to recognize that the terms "contribution" and "expenditure" are not coextensive.

The attached rules also include two technical amendments to section 114.1(a)(1). First, the reference to the National (*sic*) Savings and Loan Insurance Corporation has been deleted, because that entity no longer exists. Paragraph (a)(2)(ii) of section 114.1 is also being amended to remove the reference to "nonpartisan" voter drives.

2. Restricted Class

New paragraph (j) of section 114.1 contains a definition of "restricted class" for purposes of receiving

corporate or labor organization communications containing express advocacy. It has been included to avoid describing everyone in the restricted class in numerous places throughout the regulations where it would be more convenient to simply use the term "restricted class." The definition does not change who is considered to be within the restricted class. It also does not change who is an executive or administrative employee under section 114.1(c) or who is a member of a membership association under section 114.1(e).

For most corporations and labor organizations, the restricted class is the same as the solicitable class. However, for incorporated trade associations and certain cooperatives, there are differences in who can receive solicitations and who can receive express advocacy communications. For example, a trade association's restricted class includes member corporations who are not in its solicitable class, since corporations may not make contributions under section 441b of the FECA. Conversely, however, a trade association may solicit its member corporations' stockholders and executive and administrative personnel, even though these individuals are not in its restricted class, if the member corporations have approved the solicitations. *See, e.g.*, AO 1991–24 and 11 CFR 114.8.

Section 114.2 Prohibitions on Contributions and Expenditures

1. Express Advocacy

The final rules incorporate an express advocacy standard in several sections of 11 CFR part 114. First, new language in paragraphs (a) and (b) of section 114.2 prohibits corporations and labor organizations from making expenditures for communications to the general public that expressly advocate the election or defeat of one or more clearly identified candidates. Please note that some portions of the regulations refer to "communications containing express advocacy." This term has the same meaning as the references elsewhere to "communications expressly advocating the election or defeat of one or more clearly identified candidates."

For the reasons explained above, the express advocacy standard in the revised rules applies to independent expenditures, but not contributions. The prohibition against contributions made by corporations and labor organizations in connection with federal elections remains unaffected by *MCFL*. Most, but not all, commenters supported the adoption of an express advocacy standard for evaluating independent expenditures under section 441b of the FECA.

The provision prohibiting expenditures for communications containing express advocacy applies to all corporations and labor organizations except for qualified nonprofit corporations meeting the criteria set out in new section 114.10. Thus, these qualified nonprofit corporations may use general treasury funds to make independent expenditure communications to the general public which contain express advocacy. These could include registration and voting communications, official registration and voting information, voting records and voter guides. *See also* 11 CFR 114.4(c)(1)(i) and (ii).

2. Coordination With Candidates

A new paragraph (c) has been added to 11 CFR 114.2 to address the topic of coordination of corporate or labor organization activity with candidates or their authorized committees or agents, which results in the making of an in-kind contribution. Previous paragraphs (c) and (d) have been redesignated as paragraphs (d) and (e), respectively.

a. Initial Proposals. In *Buckley* v. *Valeo*, the Supreme Court made a distinction between independent expenditures and contributions. The Court observed, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U.S. at 47. Thus, *Buckley* could be interpreted to prohibit all contacts with candidates. However, the NPRM recognized that it is justifiable to allow some forms of contact to preserve the previous range of permissible activity, such as sponsoring candidate appearances. The prohibition against corporate contributions was expressly reaffirmed in *MCFL*. 479 U.S. at 260. Therefore, the NPRM sought to draw a distinction between permissible contacts with candidates which are necessary to conduct these activities, and more extensive coordination that will result in in-kind contributions in some circumstances. The proposals in the NPRM would have defined coordination to include discussions of specific campaign strategy or tactics.

The proposed rules include new language in section 114.2(c) indicating when corporate and labor organization disbursements will be treated as impermissible in-kind contributions to particular candidates. Prior to the *MCFL* decision, the Commission had not needed to examine the extent to which such payments by corporations and labor organizations could be treated as in-kind contributions, because they were simply treated as prohibited corporate or labor organization expenditures in connection with federal elections, unless permitted by a specific exemption.

b. Comments and Testimony. Numerous commenters expressed a wide variety of views on this topic. Many were confused as to how such a standard would work in practice. Some pointed out that this was an area not addressed by the *MCFL* decision, and that it appeared as though the Commission was trying to find a way to impose new requirements that would be at least as restrictive as the former partisan/nonpartisan standard. They argued that section 441b(b)(2)(A) of the FECA excludes communications with the restricted class on any subject from the definition of contribution or expenditures. Others favored a more restrictive rule allowing no contacts except for arranging the logistics of candidate debates and appearances, or obtaining responses for voter guides.

c. Revised Rules. In response to these concerns, new section 114.2(c) has been rewritten to clarify what types of contacts with candidates are considered impermissible coordination, and what types are permissible. The comments received in response to these proposals illustrated the need to clarify and simplify the operation of these provisions. Under revised section 114.2, a corporation or labor organization that only makes communications to its restricted class does not run the risk of having its expenditures treated as in-kind contributions. On the other hand, a corporation or labor organization that engages in election-related activities directed at the general public must avoid most forms of coordination with candidates, as this will generally result in prohibited in-kind contributions, and will compromise the independence of future communications to the general public. For example, a prohibited in-kind contribution would result if a voter guide is prepared and distributed after consulting with the candidate regarding his or her plans, projects or needs regarding the campaign. Please note that, in the case of a communication just to the restricted class, coordination will not cause that activity or future communications to the restricted class to be considered in-kind contributions.

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However, such coordination may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures to those outside the restricted class in the future.

Additional changes to the rules covering candidate debates, candidate appearances, colleges and universities, voting records, voting guides, voter registration and get-out-the-vote drives, endorsements, trademarks and letterhead, and facilitation are described below.

3. Facilitating the Making of Contributions

As part of the revisions to 11 CFR Part 114, the Commission has reassessed the prohibition against corporations and labor organizations facilitating the making of contributions, and is adding a new provision which modifies its prior interpretation. Previously, in AOs 1987–20, 1986–4 and 1982–2, MUR 3540 and in the 1989 and 1977 Explanation and Justifications of sections 110.6 and 114.3, the Commission has stated that corporations and labor organizations may not facilitate the making of contributions to particular candidates or political committees other than their own separate segregated funds. *Explanation and Justification of Regulations*, H. Doc. No. 95–44, 95th Cong., 1st Sess. at 104–105 (1977); 54 F.R. 34106 (Aug. 17, 1989).

The NPRM contemplated adding new language to 11 CFR 114.3(d) to set forth the current policies regarding facilitating the making of contributions. Please note that the new facilitation rules have been relocated to 11 CFR 114.2(f), since section 114.3 covers activities involving only the restricted class, and facilitation can involve activities that are directed to the restricted class or that go beyond the restricted class.

The comments addressing this topic reflected a diversity of opinion. Some felt it was helpful to include the Commission's policies on facilitation in the regulations. Others felt the proposals would restrict the ability of corporations to engage in activities that were permissible, and would drive political fundraising underground, and thwart public disclosure. Another concern was that the rules would discourage corporations and labor organization from supporting the political activities of their employees in situations where the corporation or labor organizations does not take a position on the election. The Internal Revenue Service found no conflict with its requirements covering nonprofit corporations.

The revised facilitation provisions attempt to address a variety of concerns. First, section 114.2(f)(1) sets out the general prohibition, and explains that facilitation means using corporate resources or facilities to engage in fundraising for candidates. However, this is not intended to negate the range of permissible activities found in other portions of the rules. For example, individual volunteer activity using corporate or labor organization facilities is still permissible under 11 CFR 100.7, 100.8, and 114.9 (a), (b), and (c), provided it meets the conditions set forth in those rules. Similarly, there are no changes to the regulations governing the rental or use of corporate or labor organization facilities or aircraft by other persons. 11 CFR 114.9 (d) and (e).

The new rules at 11 CFR 114.2(f)(1) also explain that commercial vendors, such as hotels or caterers, would not facilitate the making of corporate contributions if in the ordinary course of their business they provide meeting rooms or food for a candidate's fundraiser and receive the usual and normal charge. The term "commercial vendor" is defined in 11 CFR 116.1(c).

In the past, the Commission has also addressed situations where a candidate owns or operates a corporation. *E.g.* AOs 1995–8, 1994–8 and 1992–24. Nothing in the new facilitation rules would modify the conclusions of these opinions that these corporations may serve as a commercial vendor or lessor to the candidate's committee as long as the transactions are consistent with the corporation's ordinary course of business.

New paragraph (f)(2) of section 114.2 gives several examples of facilitation. Some of these include activities that do not fall within the "safe harbors" provided by other regulations. For example, facilitation would occur if a corporation or labor organization makes its meeting room available for a candidate's fundraiser, but has not made the room available for community or civic groups. *Compare* 11 CFR 114.2(f)(2)(i)(D) *with* 11 CFR 114.13. The permissibility of using such room when the corporation or labor organization receives payment would be governed by 11 CFR 114.9(a), (b) or (d). Similarly, facilitation would result if other facilities, such as telephones and copiers, are used by campaign committee staff for a fundraiser, and the corporation is not reimbursed within a commercially reasonable time for the normal and usual rental charge. *Compare* 11 CFR 114.2(f)(2)(i)(B) *with* 11 CFR 114.9(d).

Other examples of facilitation include directing corporate or union employees to work on a fundraiser for a candidate; using a mailing, telephone or computer list of customers, vendors, or others outside the restricted class to distribute invitations and solicit contributions; and providing in-house or external catering and food services for the fundraiser. 11 CFR 114.2(f)(2)(i) (A), (C), and (E). However, in these three situations, the new rules allow either the candidate, or the organization's separate segregated fund, or the official directing the activity to pay the corporation or labor organization in advance for the fair market value of the services or the list. Such payment by a separate segregated fund or official would constitute an in-kind contribution subject to the individual's or the separate segregated fund's contribution limits, and is not treated as facilitation. The candidate's authorized committee must report receiving these in-kind contributions.

A more limited advance payment method was approved by the Commission with regard to employee services in AO 1984–37. The new rules go beyond this advisory opinion with regard to the source of the advance payment and the types of services for which advance payment may be made. "In advance" means prior to when the list is provided, or the catering or food services are obtained, or the employees perform the work. Fair market value consists of the price that would normally be paid in the marketplace where the corporation or labor organization would normally obtain these goods or services, if reasonably ascertainable. However, in no case is the fair market value less than the corporation's or labor organization's actual cost, which includes total compensation earned by all employees directed or ordered to engage in fundraising, plus benefits and overhead.

These new rules modify, to some extent, the interpretation applied in prior enforcement matters, including MUR 3540. The conciliation agreement for MUR 3540 stated that, "[t]he 'individual volunteer activity' exemption does not, however, extend to collective enterprises where the top executives of a corporation direct their subordinates in fundraising projects, use the resources of the corporation, such as lists of vendors and customers, or solicit whole classes of corporate executives and employees. *See* MURs 1690 and 2668. The individual volunteer activity exemption also does not apply when an employee uses the facilities of a corporation in connection with a Federal election and the corporation is *reimbursed* by a political committee or

a candidate's committee [emphasis added]. *See* MUR 2185."

However, the new facilitation regulations now provide another exemption where an individual or a candidate's committee or other political committee pays in advance for the use of corporate personnel who are directed to organize or conduct a fundraiser for the candidate as part of their job, and hence are not volunteers. Although employees may be asked to undertake such activity, under new language in paragraph (f)(2)(iv) of this section, it is not permissible to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. Thus, employees who are unwilling to perform these services as part of their job have a right to refuse to do so.

Under new paragraphs (f)(2)(iii) and (f)(4)(iii), facilitation includes corporate or labor organization solicitation of earmarked contributions that will be collected and forwarded by the organization's separate segregated fund (whether or not deposited in the separate segregated fund's account), unless the earmarked contributions are treated as contributions both by and to that separate segregated fund. The corporation or labor organization may name in the solicitation the candidate(s) for whom an earmarked contribution is sought. Space may be left on the contribution response card for contributors to designate candidates of their choice, but no candidates are suggested in the accompanying solicitation materials. The latter situation was presented in AO 1995–15. In both cases, under new paragraphs (f)(2)(iii) and (f)(4)(iii), the contributions must be counted against the separate segregated fund's limits to avoid facilitation, which is impermissible. Hence these new provisions supersede those portions of AOs 1991–29, 1981–57 and 1981–21 which indicate that a conduit separate segregated fund's contribution limits under 2 U.S.C. 441a are only affected if it exercises direction or control over the choice of the recipient candidate. Please note that 11 CFR 110.6(b)(2)(ii) has not been changed, and therefore continues to prohibit corporations or labor organizations, themselves, from acting as conduits for contributions earmarked to candidates. *See* AO 1986–4. However, in AO 1983–18, the Commission recognized that a trade association political action committee may collect and forward contributions to other trade association political action committees where directed by member corporation executives. A corporation or union employee may still utilize the volunteer exemption found at 11 CFR 100.7(b)(3) to collect earmarked contributions on their own time and forward such contributions to a specific candidate or committee. Such earmarked contributions would not be considered as contributions by the separate segregated fund.

Paragraph (f)(3) lists two examples of separate segregated fund activity that do not constitute corporate or labor organization facilitation. First, separate segregated funds may continue to solicit or make contributions in accordance with the requirements of 11 CFR 110.1, 110.2, and 114.5 through 114.8. Secondly, separate segregated funds may continue to solicit, collect and forward earmarked contributions to candidates under 11 CFR 110.6. The money expended by the separate segregated fund to solicit earmarked contributions must come from permissible funds received under the FECA, and will count against the separate segregated fund's contribution limit for the candidate(s) involved. These examples contrast with new paragraphs (f)(2)(iii) and (f)(4)(iii), under which a solicitation by the corporation or labor organization would either constitute facilitation or result in the contribution being counted against the separate segregated fund's contribution limits.

In addition to the latter example discussed above, paragraph (f)(4) lists two other examples of corporate or labor organization activity which do not result in facilitation. The first preserves the practice of enrolling the restricted class in a payroll deduction plan or check-off system, or an employee participation plan. No changes are being made in the operation of employee participation plans under 11 CFR 114.11 or payroll deduction plans. The second example permits solicitations of the restricted class for contributions that contributors will send directly to candidates, without being bundled or forwarded through the separate segregated fund. This situation was presented in AO 1989–29, and falls within the corporation's or labor organization's right to communicate with its restricted class on any subject under 2 U.S.C. 441b(b)(2)(A).

Section 114.3 Disbursements for Communications to the Restricted Class in Connection With a Federal Election

1. Express Advocacy, Coordination, and Reporting Internal Communications

The revised rules preserve several distinctions between communications and other activities directed solely to the restricted class (set forth at 11 CFR 114.3) and those directed to the general public or other individuals outside the restricted class (set forth at 11 CFR 114.4). Section 114.3 continues to recognize that the FECA permits corporations and labor organizations to communicate with their restricted classes on any subject. 2 U.S.C. 441b(b)(2)(A). However, in light of the *MCFL* decision, the references to "partisan" activities have been replaced with narrower provisions that only apply to communications containing express advocacy. For example, in paragraph (c) of section 114.3, revised language makes clear that communications directed solely to the restricted class may contain express advocacy. In addition, amended section 114.3(b) now states more explicitly that only communications expressly advocating the election or defeat of a clearly identified candidate are subject to the reporting requirements of 11 CFR 100.8(b)(4) and 104.6. Similarly, the revisions delete the more restrictive language in previous section 114.3(a)(1) that had prohibited corporate and labor organization expenditures for "partisan" communications to the general public because revised section 114.4 establishes that such communications are only prohibited if they contain express advocacy or are impermissibly coordinated with candidates or political committees.

In contrast, under revised section 114.3(a)(1), communications directed solely to the restricted class may be coordinated with candidates and political committees. For example, they may involve discussions with campaign staff regarding a candidate's plans, projects, or needs. Such coordination will not transform that restricted class communication into an in-kind contribution. Nor will it affect subsequent activities directed only to the restricted class. However, communications to the restricted class that are based on a candidate's plans, projects and needs may jeopardize the independence of subsequent communications or activities, including those financed from the separate segregated fund, which extend to anyone outside the restricted class.

One witness at the hearing objected to labor organizations' use of general treasury funds which could come from compulsory union dues to subsidize new forms of election-related activity, or even the activities set out in sections 114.3 and 114.4. This is an area over which the Department of Labor has jurisdiction, and recently it issued final rules removing 29 CFR part 470, in response to Executive Order 12836 revoking Executive Order 12800. 58 FR

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15402 (March 22, 1993). The Commission does not have jurisdiction over whether dues and assessments are paid as a condition of employment or whether they are voluntary.

2. Candidate Appearances

Paragraph (c)(2) of 11 CFR 114.3 governs corporate and labor organization funding of candidate appearances before the restricted class. The NPRM sought to resolve several issues not addressed in the previous rules and to clarify language on which the Commission has received a number of questions. For example, the Notice proposed that instead of allowing "limited invited guests and observers" to attend candidate appearances, the rule should refer to guests who are being honored or speaking or participating in the event. This is intended to cover individuals who are part of the program.

One commenter was concerned that this language would interfere with its ability to allow its members to attend a candidate appearance. Under these provisions, which have been retained in the final rules, all those who qualify as members, and are therefore in an organization's restricted class, may attend. As noted above, nothing in the attached revisions to the rules affects the definition of who is a member.

In addition, these amendments do not adversely affect the ability of corporations or labor organizations to invite their restricted class, other employees or the general public to attend a speech given by an officeholder or other prominent individual who is also a federal candidate, if the speech is not campaign-related and the individual is not appearing in his or her capacity as a candidate for Federal office. *See, e.g.*, AOs 1980–22 and 1992–6.

Two issues which generated considerable debate in this area were the solicitation and collection of contributions, and the presence of the news media, during restricted class candidate appearances.

a. Collection of Contributions by Candidates and Party Representatives During the Appearance

The NPRM sought comment on whether candidates and party representatives should continue to be able to solicit contributions during an appearance before the restricted class. This had been specifically allowed under previous section 114.3(c)(2) for appearances before the restricted class. The NPRM sought comments on whether the candidate should be able to collect contributions at appearances, such as by "passing the hat" or placing donation boxes in the meeting room. Given that the proposed rules sought to incorporate the Commission's established policy that corporations and labor organizations are not permitted to facilitate the making of contributions to candidates or political committees other than their separate segregated funds, the NPRM questioned whether allowing candidates to accept contributions during their appearances should be viewed as impermissible facilitation.

Some comments supported allowing candidates to request contributions. The Internal Revenue Service found no conflict between the provisions regarding candidate appearances and its rules.

Section 114.3(c)(2) of the final rules provides that a candidate or party representative may ask for and collect contributions before, during or after the appearance while on corporate or union premises. Candidates and party representatives may also provide information on how to make contributions, such as by giving out a phone number or mailing address or by leaving envelopes or other campaign materials. However, this provision also specifies that corporate or labor organization officials may not collect contributions during the event. The collection of contributions by such officials would go beyond the right to communicate with the restricted class on any subject, and in essence, turn the candidate appearance into a fundraising event sponsored by the corporation or labor organization. As explained above, under new section 114.2(f), corporations and labor organizations may not facilitate the making of contributions to candidates.

b. Presence of the News Media

Several issues have arisen regarding section 114.3(c)(2), which governs the presence of news media representatives at candidate appearances before only the restricted class. For example, a news organization may wish to reprint or broadcast the candidate's appearance in its entirety. Concerns have been raised that a candidate appearance before a corporation's or labor organization's restricted class would be transformed by this type of gavel-to-gavel coverage into a general public appearance. Accordingly, the Commission sought comments on two alternative proposals. Under Alternative C–1, such coverage was contemplated for appearances before the restricted class, provided that two conditions were met. First, if the corporation or labor organization permits one media representative to cover the appearance, all *bona fide* media organizations who request to cover the appearance must be given the opportunity to do so. This could be accomplished through pooling arrangements, if necessary. Secondly, if the corporation or labor organization permits the news media to cover an appearance by one candidate, the news media must be given the opportunity to cover all other candidates who appear on the same or different occasions. Alternative C–2 indicated that the corporation or labor organization may not permit the media to cover such candidate appearances before just the restricted class. Instead, under Alternative C–2, in addition to the two requirements on media access, media coverage of candidate appearances would be permissible only if all rank and file employees may also attend, all candidates for the same seat who request to appear are given a similar opportunity, and the corporation or labor organization does not expressly advocate, or encourage the audience to expressly advocate, the election or defeat of any candidate.

One commenter felt that gavel-to-gavel coverage indicated that the candidate's speech is newsworthy, and that there is no evidence of a problem involving the exclusion of the news media. Others objected that the proposed rule would interfere with their ability to have officeholders address employees on topics of interest to the employees when the officeholders are candidates for office.

The Commission has concluded that a modified version of Alternative C–1 is preferable and has been included in section 114.3(c)(2)(iv). The proposed language of Alternative C–2 which would have required the organization open the event to all rank and file employees, not just the restricted class, has been dropped because this would be administratively difficult to accomplish. However, the requirements in Alternative C–1 that candidates for the same office be treated similarly, and that different news organizations also be treated fairly, have been retained. These new provisions are intended to ensure that the corporation or labor organization does not manipulate the news media coverage of newsworthy events that are subsequently broadcast to the general public in a way that ensures favorable coverage for certain candidates, and no coverage or unfavorable coverage for others. Please note, however, that nothing in the amended rules will force corporations or labor organizations to invite the media to events that they would otherwise prefer to limit to the restricted class.

3. Registration and Get-Out-the-Vote Drives

Section 114.3(c)(4) sets forth provisions governing voter registration and get-out-the-vote drives aimed at a corporation's or labor organization's restricted class. The NPRM included one revision to this provision. The proposed language stated explicitly that express advocacy is permissible in voter drive communications aimed solely at a corporation's or labor organization's restricted class. Consequently, the proposed revisions to section 114.3(c)(4) also retained the former language specifically permitting voter drive communications to urge the restricted class to vote for particular candidates and to register with a particular party. The proposed rules also contemplated continuing the long-standing policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties.

The Internal Revenue Service indicated that while the FEC's proposed rules regarding candidate appearances are more specific than theirs, they do not impinge upon the Internal Revenue Service's "facts and circumstances" test.

Some commenters opposed removing the "nonpartisan" requirement from section 114.3(c)(4) because section 441b(b)(2)(B) of the Act requires that drives aimed at a corporation's or labor organization's restricted class be nonpartisan. The Commission believes the basic purpose of this statutory provision will be maintained by continuing to require corporations and labor organizations to make the same voter registration and voter drive services available to those who do not support the organization's preferred candidates or political party. Consequently, the final voter driver rules in this section follow the previous proposals, with one change. The revised rules specify that voter registration efforts may include transportation to the place of registration in addition to transportation to the polls.

Section 114.4 Disbursement for Communications Beyond the Restricted Class in Connection With a Federal Election

1. Express Advocacy and Coordination

The provisions of section 114.4 regarding communications by corporations and labor organizations to persons outside the restricted class have also been substantially revised and reorganized. First, the nonpartisan standards found in the previous regulations have been replaced by language prohibiting corporations and labor organizations from including express advocacy in communications directed outside the restricted class when: (1) holding candidate appearances; (2) issuing registration and get-out-the-vote communications; (3) distributing registration and voting information, forms, or absentee ballots; (4) producing voter guides or voting records; or (5) conducting voter registration and get-out-the-vote drives.

Second, in response to the concerns expressed by several commenters which are discussed above, the Commission has substantially revised the concept of coordination in section 114.4. The *MCFL* decision addressed the scope of the FECA's prohibition against corporate expenditures. However, the prohibition against corporate contributions was expressly reaffirmed in *MCFL*. 479 U.S. at 260. Accordingly, the final rules which follow preserve the statutory ban on contributions made by corporations and labor organizations in connection with federal elections. Prohibited contributions include in-kind contributions resulting from the coordination of election-related corporate or union communications with candidates, except for certain activities described in this section and 11 CFR 114.3, which may involve limited types of coordination with candidates.

Under revised section 114.4(a), communications to the general public or to employees outside the restricted class that are based on information about a candidate's plans, projects and needs provided by the candidate or the candidate's agent are considered coordinated, and hence, in-kind contributions. Such coordination may also jeopardize the independence of subsequent communications to the general public, but will not affect future communications to the restricted class.

Qualified nonprofit corporations under 11 CFR 114.10 are subject to the same restriction on coordinating their communications directed to the general public. Consequently, they may not include express advocacy in coordinated communications directed beyond the restricted class. Conversely, if they do include express advocacy in communications to the general public, these communications may not be coordinated with any candidate or political party. The purpose of the limited exception the Supreme Court recognized in *MCFL* was to avoid impermissibly infringing on these organizations' First Amendment rights when making independent expenditures.

2. Candidate and Party Appearances

The NPRM sought comments on several questions and possible amendments regarding corporate and labor organization funding of candidate appearances before employees who are not in the restricted class. Section 114.4(b), as set out in the Notice, followed the previous rules at 11 CFR 114.4(a)(2) by allowing rank and file employees who are not in the restricted class to attend candidate appearances organized by corporations or labor organizations. Please note that corporate appearances are covered in paragraph (b)(1), and parallel provisions for labor organizations are found in paragraph (b)(2).

As explained above, certain contacts with the candidate's campaign may be necessary to arrange the appearance. However, because these communications are being made beyond the restricted class, discussions of the candidate's plans, projects or needs relating to the campaign go beyond the permissible level of coordination, and hence would transform the appearance into an in-kind contribution. Likewise, corporations and labor organizations are also not permitted to expressly advocate the election or defeat of any clearly identified candidates in conjunction with the appearance. Nor should they promote or encourage express advocacy by the audience, thereby transforming the appearance into little more than a campaign rally.

a. Notifying and Inviting Other Candidates; Audience

In situations where one candidate appears at a corporate or labor organization event, the proposed rules in section 114.4(b) would have followed the previous provisions by requiring corporations and labor organizations to let the other candidates for that office come and speak if they so request. However, comments were sought on possibly requiring a corporation to notify the other candidates in advance whenever they invite a candidate to appear. The commenters expressed concern that such a requirement would be unworkable. Accordingly, the final rules do not contain a prior notice provision.

Instead, the final rules on candidate appearances generally follow the candidate debate rules in the case of Presidential candidates by requiring corporations and labor organizations to establish, in advance, objective criteria for deciding which Presidential and Vice Presidential candidates may appear, upon request. Under section 114.4(b)(1)(i), appearances by House

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and Senate candidates remain subject to the requirement that all candidates for the seat must be given a similar opportunity to appear, upon request. Similarly, the provisions governing appearances by political party representatives in paragraph (b)(1)(iii) generally follow the previous regulations.

Comments were also requested on new language in section 114.4(b)(1)(vi) that would not allow the corporation or labor organization to favor one candidate through the structure or format of the candidate appearance. One example cited was giving rank and file employees time off to listen to one candidate but not to listen to others. Another example arises where candidates receive unequal time or facilities, unless it is clearly impractical to provide all candidates with similar opportunities, such as where a candidate requests to appear after a labor organization's convention is over. In response to another comment which objected to consideration of the format and timing of a candidate appearance, the Commission is revising the language in section 114.4(b)(1)(vi) to clarify that candidates cannot be given unequal amounts of time or substantially different locations for their appearances, unless the corporation can show it is impractical to give each candidate a similar time and location.

In addition, paragraph (b)(1) of section 114.4 allows guests who are being honored or speaking or participating in the event (i.e. those who are part of the program), to be present during the candidate appearance. This provision follows similar language in 11 CFR 114.3(c)(2)(i).

b. Collection of Contributions by Candidates and Party Representatives During the Appearance

A question presented in the NPRM was whether the candidate or party representative may solicit and collect contributions during an appearance before employees who are not in the restricted class. Although this has been specifically allowed under section 114.3(c)(2) for appearances before the restricted class, there was no provision in former section 114.4 either allowing or disallowing this practice when the audience extends to all employees. The NPRM sought comments on whether the candidate should be able to pass the hat or place donation boxes in the room.

Some comments supported allowing candidates to request contributions, but indicated that the rules needed to clarify that this would not constitute facilitation by the corporation or labor organization. The Internal Revenue Service found no conflict between the provisions regarding candidate appearances and its rules.

Section 114.4(b)(1)(iv) of the final rules provides that a candidate or party representative may ask for contributions, may provide information on how to make contributions, and may leave campaign materials and envelopes for making contributions. *See, e.g.*, AO 1987–20, n. 2. However, this provision also specifies that candidates and party representatives may not collect contributions during the event.

Moreover, the corporation or labor organization, and its officers and employees, may not solicit or collect these contributions. This restriction includes corporate and union officials who may also serve on a fundraising committee for the candidate or otherwise be active in the campaign. The collection of contributions by corporate or union officials would, in essence, turn the candidate appearance into a general fundraising even sponsored by the corporation or labor organization, in violation of the new facilitation regulations of section 114.2(f).

c. Presence of the News Media

The Notice presented several issues regarding the presence of news media at candidate appearances before employees outside the restricted class. For the reasons stated above, the final rules regarding these appearances follow the new regulations applicable to appearances before the restricted class. *See* discussion of 11 CFR 114.3(c)(2)(iv), including NPRM and comments, *supra*.

3. Use of Logos, Trademarks and Letterhead

Another topic addressed in this rulemaking concerns the use of corporate or labor organization logos, trademarks and letterhead. The Commission has encountered situations in which executives of corporations or labor organizations use official corporate or labor organization stationery, whether or not reproduced at the executive's personal expense, to solicit funds or support for a candidate. *E.g.*, MURs 3066, 1690 and 1261. The question presented in the NPRM was whether such a logo, trademark or letterhead may be used if the corporation or labor organization is reimbursed for the intangible value of the item(s), or whether their use (except through ordinary commercial transactions in the usual course of business) should be prohibited.

Comments were sought on two alternative approaches. The first option, Alternative B–1, was to amend the definition in section 114.1(a)(1) to treat logos, trademarks and letterhead as something of value and a contribution or expenditure if provided without charge or at less than the fair market value. That approach would have allowed individuals and candidates to reimburse corporations and labor organizations for the cost of the stationery plus the value of using the corporate or union symbol, name, etc. One difficulty, however, would have been ascertaining the fair market value, given subjective consideration such as goodwill. Thus, the second option, which was set forth as Alternative B–2 in section 114.4(c)(1), was to prohibit such uses, whether or not the corporation or labor organization is reimbursed, with four exceptions for: corporations qualifying for the *MCFL* exception; communications to the restricted class, as described under 11 CFR 114.3; communications beyond the restricted class, as permitted under 11 CFR 114.4; and solicitations made in accordance with 11 CFR 114.5 through 114.8.

The Commission received comments supporting and opposing both options. The Internal Revenue Service stated that alternative B–1 may conflict with the Internal Revenue Code requirements applicable to section 501(c)(3) corporations. Other commenters claimed that logos and letterhead were not corporate resources, or were of no value or of *de minimis* value, or that it is too difficult to assign a monetary value.

The Commission considered the alternatives regarding the use of logos, letterhead and trademarks when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, neither alternative has been included in the final rules.

Both alternatives in the NPRM also indicated that when individuals make communications either by using personal stationery or by appearing in a campaign ad, the letter or advertisement cannot indicate that the individual is acting on behalf of the corporation or labor organization, and cannot include references to the individual's official title at that organization. Thus, these proposals were intended to preclude an individual from including an identification such as "Vice President of XYZ Automobile Corporation." However, a general identification such as "auto maker" would be acceptable.

Several commenters opposed this restriction on various grounds, including that the corporate title is part of the individual's identity, the use of the title enhances disclosure of those who are making the communication and it would encourage fraud if identifications were not allowed, and because the speech of people associated with nonprofit groups would be inhibited.

The Commission considered the use of corporate or labor organization titles in individual communications and advertisements on behalf of a candidate when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, the proposed language has not been included in the final rules.

4. Registration and Voting Communications; Official Registration and Voting Information

The provisions of previous paragraphs (b)(2) and (b)(3) of section 114.4 regarding the distribution of registration and voting communications and information to the general public have been moved to new paragraphs (c)(2) and (c)(3), respectively. In addition to the changes regarding express advocacy and coordination with candidates, which are discussed above, revised paragraph (c)(3)(ii) no longer contains a reference to "applicable state law" permitting voter registration by mail. That language was made obsolete by the National Voter Registration Act of 1993, 42 U.S.C. 1973gg–1 *et seq.*

Please also note that section 114.4(c)(2), regarding voting communications, does not change the Commission's decision in AO 1980–20 that corporations may place newspaper or magazine advertisements simply urging the general public to register to vote.

5. Voting Records

Provisions regarding the dissemination of voting records of Members of Congress are being moved from previous section 114.4(b)(4) to new section 114.4(c)(4). In response to the *MCFL* decision, the NPRM proposed modifying these rules in two respects. First, new language was put forth prohibiting voting records, and all accompanying communications to the general public, from expressly advocating the election or defeat of one or more clearly identified candidates or the candidates of a clearly identified political party. The proposed amendments also sought to disallow coordination with candidates in distributing voting records. The Internal Revenue Service commented that although their standards were different than the FEC's, the FEC's proposed rules do not impinge on the test used by the Internal Revenue Service to determine whether voting records or voter guides constitute political activity. Another commenter believed there was no need to discuss these matters with candidates.

The revised version of section 114.4(c)(4) is substantially similar to the proposed rules. However, new language has been included to indicate that the decision as to the content of a voting record also may not be coordinated with a candidate or political party. The NPRM raised the question of whether to include language preventing corporations and labor organizations from obtaining voting record information directly from Members of Congress or political parties. The Commission has decided not to include such a restriction in the revised regulations.

6. Voter Guides

In *Faucher* v. *Federal Election Commission*, 928 F.2d 468 (1st Cir. 1991), *cert. denied sub nom. Federal Election Commission* v. *Keefer et al.*, 502 U.S. 820 (1991), the Court of Appeals for the First Circuit invalidated the Commission's previous voter guide regulations at 11 CFR 114.4(b)(5)(i). The Court concluded that the previous provisions of section 114.4(b)(5)(i) exceed the regulatory boundaries imposed by the FECA as interpreted by the Supreme Court. 928 F.2d at 472.

Consequently, the NPRM proposed revisions, located in section 114.4(c)(5), to allow corporations and labor organizations to prepare and distribute to the general public their own voter guides or to obtain voter guides prepared by nonprofit organizations that are tax-exempt under 26 U.S.C. 501 (c)(3) or (c)(4). The proposed rules would have required that the same amount of space be provided for each candidate's response, that the voter guide not contain express advocacy, and that contact with candidates be limited to the preparations reasonably necessary to produce the guide, such as written communications regarding the candidate's positions on issues. The proposed revisions also sought to eliminate the previous restrictions on the geographic area in which voter guides could be distributed, and to prohibit coordination of the distribution of voter guides with candidates.

Several commenters and witnesses challenged these proposals as contrary to the intent of the court in *Faucher*. In particular, they questioned the need to reprint the candidates' responses verbatim, the restriction that contacts with campaigns be in writing, the prohibition on coordinating the distribution of the guides, and the prohibition on distributing voter guides prepared by 501(c) organizations that endorse candidates, when the corporation or labor organization can make its own endorsements.

In view of these comments, the Commission has substantially revised the final rules to provide a choice of two different ways of issuing and distributing voter guides, which are intended to comport with *Faucher*. Revised section 114.4(c)(5) begins by explaining that voter guides consist of candidates' positions on campaign issues, and may include biographical information on the candidates. Voter guides are similar to candidate debates in that they must include at least two candidates in the same election. However, no particular format is required for either type of voter guide.

Under the new rules, both types of voter guides may be obtained from nonprofit organizations described in 26 U.S.C. 501 (c)(3) or (c)(4), regardless of whether the nonprofit group endorses candidates. Please note however, that a comment from the Internal Revenue Service indicates that nonprofit corporations organized under 26 U.S.C. 501(c)(3) cannot endorse candidates. The previous rules referred to these groups as "tax exempt," which may be confusing given that they may pay tax on certain categories of income.

The first type of permissible voter guide, which is described in paragraph (c)(5)(i), is one that is prepared and distributed without any contact, cooperation, coordination or consultation with the candidate, the candidate's campaign or the candidate's agent. Hence, the information regarding the candidate's position on issues must be obtained from news articles, voting records, or other non-campaign sources. The voter guide also must not expressly advocate the election or defeat of any clearly identified candidate.

The second type of permissible voter guide, which is described in paragraph (c)(5)(ii), is subject to further restrictions because it contemplates limited written contact with the candidate's campaign committee to obtain the candidate's responses to issues included in the voter guide. For example, further coordination with a candidate or his or her agents, such as a discussion of the candidate's plans, projects, or needs relating to the campaign, does not fall within this limited exception, and would thus result in an in-kind contribution. The *Faucher* decision does not mandate eliminating all restrictions on voter guides save for the prohibition on express advocacy. Accordingly, organizations preparing the second type

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of voter guide must give all candidates in the election (except for Presidential candidates) an equal opportunity to respond to the questions posed. Moreover, no candidate may receive greater prominence or substantially more space than other candidates participating in the voter guide. This requirement is similar to the candidate debate situation in which the forum may not be structured to promote one candidate over others.

The second type of voter guide must not contain an electioneering message. *See, Federal Election Commission* v. *Colorado Republican Federal Campaign Committee*, 59 F. 3d 1015 (1th Cir. 1995), *petition for cert. filed*, No. 95–489 (Sept. 21, 1995) (statement that an office holder has a right to run for the Senate, but doesn't have the right to change the facts constituted an electioneering message); and AOs 1985–14 and 1984–15. Similarly, the voter guide must not score or rate the candidates' responses in a way that conveys an electioneering message, such as by indicating that certain responses are "right" or "wrong" or receive a higher or lower grade than others.

7. Endorsements

The NPRM proposed adding new paragraph (c)(6) to section 114.4 to reflect the Commission's policy regarding public endorsements of candidates by corporations and labor organizations. In AO 1984–23, the Commission permitted a corporation to include an endorsement in a publication directed to its restricted class. In addition, the NPRM indicated that the endorsement could be made during the candidate's appearance before the restricted class. One comment objected to enhancing the publicity corporate endorsements will receive. Another comment opposed these restrictions on corporate endorsements because labor organization endorsements receive wider media coverage. The Commission believes these concerns are misplaced. Media coverage of endorsements by corporations or labor organizations is similar to media coverage of candidate appearances in that both are governed by the news media's determination as to the newsworthiness of the event.

The NPRM also sought comment on two alternative approaches regarding further corporate or labor efforts to publicize the endorsement through press releases and press conferences. Alternative D–1 sought to follow AO 1984–23 by allowing the corporation or labor organization to spend a *de minimis* amount to issue a press release regarding the endorsement to its usual media contacts. This language also explicitly recognized that the press release may be accompanied by a routine press conference. In contrast, Alternative D–2 would have permitted the corporation or labor organization to publicize the endorsement only by responding to quesitons posed during a routine press conference.

Several comments preferred Alternative D–1, believing that Alternative D–2 could be easily manipulated, and is an artificial distinction. The Commission agrees, and has therefore decided to adopt Alternative D–1.

The proposed rules would also have permitted corporations and labor organizations to have contact with candidates to the limited extent necessary to make the endorsement, without treating these communications as impermissible in-kind contributions. The Commission sought comment, however, on whether this limitation on candidate contact would inhibit the corporation's or labor organization's ability to obtain the information needed to make an endorsement decision. While one commenter expressed concern that these discussions with candidates and their campaign staff were unnecessary and provided an opportunity to coordinate endorsements with candidates, another commenter believed that organizations need to know the nature and viability and organization of the campaign, and thus the candidate's likelihood of success.

The Commission agrees that organizations need to discuss various issues with candidates and their staff when deciding who to endorse. Hence, the language in section 114.4(c)(6)(ii) has been revised to allow a greater range of discussion with the candidate or campaign staff prior to the endorsement. However, the public announcement of the endorsement may not be coordinated with the candidate or the candidate's agents or authorized committee.

Finally, the new rules advise consulting the Internal Revenue Code and IRS regulations regarding restrictions and prohibitions on endorsements by nonprofit corporations. The Internal Revenue Service indicated in its comment that nonprofit corporations organized under 26 U.S.C. 501(c)(3) cannot endorse candidates.

8. Candidate Appearances on Educational Institution Premises

The FECA prohibits corporations from making contributions to or giving anything of value to a federal candidate, including free use of facilities, such as halls and auditoriums. Since most private colleges and universities are incorporated, this prohibition applies to them. The NPRM included draft provisions to clarify the Commission's interpretation of this statutory prohibition as it applies to incorporated educational institutions. In the proposed rules, section 114.4(c)(7) included an exception to permit colleges, universities, and other incorporated nonprofit educational institutions which are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups that are associated with the school and wish to invite candidates to address students, faculty and the general public, under certain conditions.

Several comments and witnesses expressed an overall concern that the Commission was attempting to over-regulate political speech on campuses. They pointed out that historically, universities have sought to promote the free exchange and debate of ideas in an intellectual environment, and have tried to stimulate student interest in democratic processes and institutions. They were also concerned that the new rules could affect classroom discussions. The Internal Revenue Service indicated that the proposed FEC rules were more specific than the "facts and circumstances" test used by the IRS, but did not conflict with that test.

The Commission has now revised new paragraph (c)(7) of section 114.4 in a number of respects to clarify the intent of the new rules. First, language has been added at paragraph (c)(7)(i) to clarify that educational institutions may continue to charge candidates the usual and normal charge for the use of their facilities. Secondly, private colleges, universities, and other incorporated nonprofit educational institutions may make their premises available to candidates who wish to address students, faculty, the academic community, or the general public (whomever is invited) at no cost or for less than the usual and normal charge. *See* 11 CFR 114.4(c)(7)(ii). However, the school must make reasonable efforts to ensure that the appearances are conducted as speeches, question and answer sessions, or other academic events, and do not constitute campaign rallies. Incorporated educational institutions may also continue to allow individuals who are candidates to appear in another capacity, such as officeholders or prominent speakers on particular issues, if they do not refer to the campaign or their status as candidates. *See, e.g.*, AO 1992–6. The new rules also do not prevent candidates from participating in campus events in other capacities, such as when the candidate is also a faculty member.

Although the proposed rules in the Notice covered candidate appearances on college campuses, they did not specifically address candidate debates. As noted by the commenters, there is a long tradition of holding candidate debates in college auditoriums. The Commission did not intend to curtail this practice, and the final rules do not prevent such debates from being held. Colleges and universities that qualify for tax-exempt status under 26 U.S.C. 501(c)(3) may stage candidate debates in accordance with the requirements set out in 11 CFR 110.13 and 114.4(f).

The proposed rules in section 114.4(c)(7)(i) would have required educational institutions to have an established policy allowing associated organizations, such as student groups, to sponsor candidate appearances so long as the policy does not favor one candidate or party over any other. Several commenters questioned the need for such a policy, and expressed concern that colleges and universities would be forced to grant access to their facilities to groups not connected with the educational institution. Consequently, the language in new section 114.4(c)(7) is being amended to include a more general requirement that the educational institution does not favor any one candidate or political party in allowing the appearances.

The proposed rules also sought to ensure that admission to a candidate's appearance would not be based on party affiliation, or any other indications of support for or opposition to the candidate by requiring either the educational institution or the sponsoring group to control access to the facility, rather than the candidate's campaign committee. This proposal has been dropped as impracticable.

The NPRM indicated that one objective was to ensure that these candidate appearances will not become campaign rallies, fundraising events, or opportunities for the school or group issuing the invitation to expressly advocate, or encourage the audience to expressly advocate, the election or defeat of the candidate who is appearing. Accordingly, the proposals sought to restrict the presence of campaign banners, posters, balloons and other similar items which would be viewed as indicative of a campaign rally. Several commenters and witnesses recognized the necessity for educational institutions to refrain from express advocacy, so as to avoid jeopardizing their nonprofit status. However, the comments also emphasized the practical difficulties in trying to control expressions of support or opposition by the audience, and trying to ensure that a campaign rally atmosphere does not ensue. They also questioned distinctions between posters and hats or buttons. Finally, they argued that colleges are public fora, and the government's ability to restrict speech in public fora is limited.

The revised rules in paragraph (c)(7)(ii)(B) retain the prohibition against the educational institution engaging in express advocacy. However, the language regarding a campaign rally atmosphere has been modified to require the educational institution to make reasonable efforts to ensure that the appearance does not turn into a campaign rally. This does not require the college or university to monitor buttons or campaign materials brought in or worn by members of the audience. These provisions are consistent with the requirement that exempt organizations under 26 U.S.C. 501(c)(3) refrain from participating in or intervening in political campaigns.

The NPRM also proposed a prohibition against candidates collecting contributions during the appearance, coupled with language allowing candidates to ask for contributions to be sent to their campaign committees. The Notice also suggested a provision barring educational institutions from soliciting contributions. The comments generally supported these proposals as consistent with the nonprofit status of these educational institutions under the Internal Revenue Code. They also suggested that candidates be informed in advance that they may not collect contributions.

It is not necessary to include in the final rules these restrictions on soliciting and collecting contributions. They are already subsumed within the requirement that the educational institution make a reasonable effort to ensure the candidate appearance does not become a campaign rally. In addition, candidate appearances at incorporated private colleges and universities are already subject to additional requirements under the Internal Revenue Code and regulations issued thereunder.

The NPRM also included provisions allowing educational institutions to invite the media to cover these candidate appearances and to broadcast them to the general public, provided the schools follow the same guidelines that would apply to other corporations, as set forth in section 114.3(c)(2)(iii) and section 114.4(b)(1)(viii). The Commission has decided not to include this provision in the final rules and to allow educational institutions and the news media to work out their own arrangements.

9. Candidate Appearances in Churches

The NPRM presented the possibility of issuing rules regarding candidate appearances in churches and religious facilities. However, this topic received little attention from the commenters. The large number of other more immediate issues in this rulemaking may have overshadowed considerations of candidate appearances in religious settings. At this point, the Commission has decided to defer this matter for further consideration.

10. Registration and Get-Out-The-Vote Drives

Voter registration and get-out-the-vote drives aimed at the general public or at employees outside the restricted class have been moved from previous paragraph (c) to renumbered paragraph (d) of section 114.4. The NPRM included several revisions to this provision, most of which are included in the attached final rules. First, the regulations distinguish between the speech and nonspeech components of voter drives. Thus, the rules conform to the MCFL decision by applying an express advocacy standard to the speech components of voter drives. Hence, new language in paragraph (d)(1) indicates that communications containing express advocacy may not be made during voter drives aimed at employees outside the restricted class, or during voter drives aimed more broadly at the general public.

The revised voter drive rules also include changes regarding the nonspeech components of voter drives. Under section 114.4(d), corporations and labor organizations may conduct voter registration and get-out-the-vote drives without the involvement of a nonprofit organization which is described in 26 U.S.C. 501 (c)(3) or (c)(4). To the extent that AO 1978–102 indicates that such drives must be jointly sponsored with a civic or nonprofit organization, that opinion is superseded by the regulatory changes to this section. However, the validity of AO 1980–45, which affirmed the ability of a 501(c)(3) nonprofit corporation to conduct a voter registration drive, is not affected by the revised rules. Paragraph (d)(2) specifies that these drives cannot be coordinated with any candidate or political party. Moreover, under paragraph (d)(5), workers cannot be paid only to register voters supporting a particular candidate or political party.

Both the proposed and the final rules in section 114.4(d)(4) contemplate

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continuing the long-standing policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties. New language in paragraph (d)(6) indicates that those receiving information or assistance must be notified in writing that their party or candidate preferences may not be a basis for refusing them assistance. This requirement can be easily satisfied simply by posting a sign at a voter registration table or in a vehicle used to take voters to the polls.

The comments and testimony revealed little, if any, consensus regarding these proposals. There was opposition to section 114.4(d) on the grounds that voter drives are something of value to candidates, and are therefore contributions or expenditures. There was also concern that the proposals did not contain sufficient safeguards against electioneering and coordination with candidates. On the other hand, others believed that the Commission has no authority to prohibit coordinating voter registration and get-out-the-vote drive communications with candidates, and that the only restriction on this activity should be that the organization must refrain from express advocacy. The provisions requiring certain notifications to the targets of the drive were thought to be unnecessary and expensive. The Internal Revenue Service indicated that while the FEC's rules are more specific than theirs, they do not impinge upon the Internal Revenue Service's "facts and circumstances" test.

After carefully considering the comments, the Commission has decided that the proposals in the NPRM are in keeping with the FECA and the *MCFL* decision. Thus, the final rules follow the proposed rules, with two minor changes. First, paragraph (d)(3) has been modified to clarify that voter registration and get-out-the-vote drives cannot be targeted primarily at individuals who will register with, or vote for, the party preferred by the drive sponsor. Second, the rules specify that voter registration efforts may include transportation to the place of registration in addition to transportation to the polls.

11. Membership Organizations, Trade Associations, Cooperatives and Corporations Without Capital Stock

Paragraph (e) of section 114.4 generally follows previous paragraph (d) by specifying that these organizations may hold candidate appearances under the same conditions as other corporations.

12. Candidate Debates

Provisions governing the funding of candidate debates, which were previously located in section 114.4(e), are now located in section 114.4(f). These rules have been revised in two respects. First, these debates are no longer referred to as "nonpartisan." Second, the term "*bona fide*" has been moved so that it modifies "newspaper, magazine and other periodical publication," instead of modifying "broadcaster." This change conforms to the wording of the candidate debate rules in 11 CFR 110.13.

Section 114.12 Incorporation of Political Committees; Payment of Fringe Benefits

This section has been renamed to make it easier for the reader to locate the topics covered. In addition, paragraph (b) of section 114.12, which pertains to candidates using corporate and labor organization meeting rooms, has been moved to new section 114.13.

Section 114.13 Use of Meeting Rooms

This new section replaces previous 11 CFR 114.12(b). It permits corporations and labor organizations to make meeting rooms available to a candidate or political committee if the room is customarily made available to clubs, civic or community groups, and if the rooms are made available to any other candidate or committee upon request. It differs from the previous rule, however, in that it does not not refer to making rooms available on a "nonpartisan basis." One commenter objected to this provision arguing that it sanctions the political use of labor organization facilities paid for, in part, with the forced dues of employees. Issues involving compulsory union dues are more properly within the jurisdiction of the Department of Labor.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that, few, if any, small entities will be affected by these final rules. In addition, any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising paragraph (b)(21) of section 100.7 to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(21) Funds provided to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f).

* * * * *

3. 11 CFR Part 100 is amended by revising paragraphs (b)(3) and (b)(23) of section 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(3) Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

* * * * *

(23) Funds used to defray costs incurred in staging candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(f).

* * * * *

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

4. The authority citation for Part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

5. 11 CFR part 102 is amended by revising paragraph (c)(1) of section 102.4 to read as follows:

§ 102.4 Administrative termination (2 U.S.C. 433(d)(2)).

* * * * *

(c) * * *

(1) The committee has complied with the debt settlement procedures set forth at 11 CFR part 116.

* * * * *

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

6. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

7. 11 CFR part 109 is amended by revising paragraph (b)(4) of section 109.1 to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(b) * * *

(4) *Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate*—

(i) Means any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made; or

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

8. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(98), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

9. 11 CFR part 110 is amended by adding new section 110.12 to read as follows:

§ 110.12 Candidate appearances on public educational institution premises.

(a) *Rental of facilities at usual and normal charge.* Any unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. In this event, the requirements of paragraph (b) of this section are not applicable.

(b) *Use of facilities at no charge or at less than the usual and normal charge.* An unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the institution's academic community or the general public (whichever is invited) on the educational institution's premises at no charge or at less than the usual and normal charge, if:

(1) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and

(2) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.

10. 11 CFR part 110 is amended by revising section 110.13 to read as follows:

§ 110.13 Candidate debates.

(a) *Staging organizations.* (1) Nonprofit organizations described in 26 U.S.C. 501 (c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters, *bona fide* newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(b) *Debate structure.* The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection.* For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

11. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

12. 11 CFR part 114 is amended by revising paragraphs (a)(1), (a)(2) introductory text and (a)(2)(ii), and by adding paragraph (j) to section 114.1 as follows.

§ 114.1 Definitions.

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 79l(h))—

(1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.7(b)(11)) to any candidate, political

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party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

(2) The terms *contribution* and *expenditure* shall *not* include—

(i) * * *

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families, or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

* * * * * *

(j) *Restricted class.* A corporation's restricted class is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families. A labor organization's restricted class is its members and executive or administrative personnel, and their families. For communications under 11 CFR 114.3, the restricted class of an incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock is its members and executive or administrative personnel, and their families. (The solicitable class of a membership organization, cooperative, corporation without capital stock or trade association, as described in 11 CFR 114.7 and 114.8, may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class.)

13. 11 CFR part 114 is amended by revising section 114.2 to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited form making expenditures as defined in 11 FR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election. Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party.

(c) Disbursements by corporations and labor organizations for the election-related activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions or expenditures, even when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted in those sections. Coordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions or expenditures. However, such coordination may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the corporation, labor organization or its separate segregated fund, and could result in an in-kind contribution. *See* 11 CFR 109.1 regarding independent expenditures and coordination with candidates.

(d) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(e) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

(f) *Facilitating the making of contributions.* (1) Corporations and labor organizations (including officers, directors or other representatives acting as agents of corporations and labor organizations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations and labor organizations. Facilitation means using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election, such as activities which go beyond the limited exemptions set forth in 11 CFR 100.7, 100.8, 114.9(a) through (c) and 114.13. A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with 11 CFR part 116 at the usual and normal charge.

(2) Examples of facilitating the making of contributions include but are not limited to—

(i) Fundraising activities by corporations (except commercial vendors) or labor organizations that involve—

(A) Officials or employees of the corporation or labor organization ordering or directing subordinates or support staff (who therefore are not acting as volunteers) to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate or labor organization resources, unless the corporation or labor organization receives advance payment for the fair market value of such services;

(B) Failure to reimburse a corporation or labor organization within a commercially reasonable time for the use of corporate facilities described in 11 CFR 114.9(d) in connection with such fundraising activities;

(C) Using a corporate or labor organization list of customers, clients, vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser, unless the corporation or labor organization receives advance payment for the fair market value of the list;

(D) Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or

(E) Providing catering or other food services operated or obtained by the corporation or labor organization, unless the corporation or labor organization receives advance payment for the fair market value of the services;

(ii) Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's or labor organization's separate segregated fund, or other similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee;

(iii) Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's or labor organizations's separate segregated fund, except to the extent such contributions also are treated as contributions to and by the separate segregated fund; or

(iv) Using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.

(3) Facilitating the making of contributions does not include the following activities if conducted by a separate segregated fund—

(i) Any activity specifically permitted under 11 CFR 110.1, 110.2, or 114.5 through 114.8, including soliciting contributions to a candidate or political committee, and making in kind contributions to a candidate or political committee; and

(ii) Collecting and forwarding contributions earmarked to a candidate in accordance with 11 CFR 110.6.

(4) Facilitating the making of contributions also does not include the following activities if conducted by a corporation or labor organization—

(i) Enrolling members of a corporation's or labor organization's restricted class in a payroll deduction plan or check-off system which deducts contributions from dividend or payroll checks to make contributions to the corporation's or labor organization's separate segregated fund or an employee participation plan pursuant to 11 CFR 114.11;

(ii) Soliciting contributions to be sent directly to candidates if the solicitation is directed to the restricted class, *see* 11 CFR 114.1(a)(2)(i); and

(iii) Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's or labor organization's separate segregated fund, to the extent such contributions also are treated as contributions to and by the separate segregated fund.

14. 11 CFR part 114 is amended by revising section 114.3 to read as follows:

§ 114.3 Disbursements for communications to the restricted class in connection with a Federal election.

(a) *General.* (1) Corporations and labor organizations may make communications on any subject, including communications containing express advocacy, to their restricted class or any part of that class. Corporations and labor organizations may also make the communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. The activities permitted under this section may involve election-related coordination with candidates and political committees. *See* 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates.

(2) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock may make communications to their restricted class, or any part of that class as permitted in paragraphs (a)(1) and (c) of this section.

(b) *Reporting communications containing express advocacy.* Disbursements for communications expressly advocating the election or defeat of one or more clearly identified candidate(s) made by a corporation, including a corporation described in paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in accordance with 11 CFR 100.8(b)(4) and 104.6.

(c) *Communications containing express advocacy.* Communications containing express advocacy which may be made to the restricted class include, but are not limited to, the examples set forth in paragraphs (c)(1) through (c)(4) of this section.

(1) *Publications.* Printed material expressly advocating the election or defeat of one or more clearly identified candidate(s) or candidates of a clearly identified political party may be distributed by a corporation or by a labor organization to its restricted class, provided that:

(i) The material is produced at the expense of the corporation or labor organization; and

(ii) The material constitutes a communications of the views of the corporation or the labor organization, and is not the republication or reproduction, in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents. A corporation or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views.

(2) *Candidate and party appearances.* (i) A corporation may allow a candidate, candidate's representative or party representative to address its restricted class at a meeting, convention or other function of the corporation, but is not required to do so. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization, but is not required to do so. A corporation or labor organization may bar other candidates for the same office or a different office and their representatives, and representatives of other parties addressing the restricted class. A corporation or labor organization may allow the presence of employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, other guests of the corporation or labor organization who are being honored or speaking or participating in the event, and representatives of the news media.

(ii) The candidate, candidate's representative or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the corporation's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR part 114. The candidate's representative or party representative (other than an officer, director or other representative of a corporation or official, member or employee of a labor organization) or the candidate, may accept contributions before, during or after the appearance at the meeting, convention or other function of the corporation or labor organization.

(iii) The corporation or labor organization may suggest that members of its restricted class contribute to the candidate or party committee, but the collection of contributions by any officer, director or other representative of the corporation or labor organization before, during, or after the appearance while at the meeting, is an example of a prohibited facilitation of contributions under 11 CFR 114.2(f).

(iv) If the corporation or labor organization permits more than one candidate for the same office, or more than one candidate's representative or party representative, to address its restricted class, and permits the news

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media to cover or carry an appearance by one candidate or candidate's representative or party representative, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s) for that office, or the other candidates' representatives or party representatives. If the corporation or labor organization permits a representative of the news media to cover or carry a candidate or candidate's representative or party representative appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that appearance. Equal access is provided by—

(A) Providing advance information regarding the appearance to the representatives of the news media whom the corporation or labor organization customarily contacts and other representatives of the news media upon request; and

(B) Allowing all representatives of the news media to cover or carry the appearance, through the use of pooling arrangements if necessary.

(3) *Phone banks.* A corporation or a labor organization may establish and operate phone banks to communicate with its restricted class, urging them to register and/or vote for a particular candidate or candidates, or to register with a particular political party.

(4) *Registration and get-out-the-vote drives.* A corporation or a labor organization may conduct registration and get-out-the-vote drives aimed at its restricted class. Registration and get-out-the-vote drives include providing transportation to the place of registration and to the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates. Information and other assistance regarding registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates, or a particular political party.

15. 11 CFR part 114 is amended by revising section 114.4 to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

(a) *General.* A corporation or labor organization may communicate beyond the restricted class in accordance with this section. Any communications which a corporation or labor organization may make to the general public under paragraph (c) of this section may also be made to the corporation's or labor organization's restricted class and to other employees and their families. Communications which a corporation or labor organization may make only to its employees (including its restricted class) and their families, but not to the general public, are found in paragraph (b) of this section. Communications which a corporation or labor organization may make only to its restricted class are found at 11 CFR 114.3. The activities permitted under paragraphs (b) and (c) of this section may involve election-related coordination with candidates and political committees only to the extent permitted by this section. *See* 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates. Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock will be treated as corporations for the purpose of making communications beyond the restricted class under this section.

(b) *Communications by a corporation or labor organization to employees beyond its restricted class*— (1) *Candidate and party appearances on corporate premises or at a meeting, convention or other function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other function of the corporation to address or meet its restricted class and other employees of the corporation and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (b)(1)(viii) of this section. Other guests of the corporation who are being honored or speaking or participating in the event and representatives of the news media may be present. A corporation may bar all candidates, candidates' representatives and representatives of political parties from addressing or meeting its restricted class and other employees of the corporation and their families on corporate premises or at any meeting, convention or other function of the corporation.

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or meet employees, all candidates for that office who are seeking the nomination or election, and who meet pre-established objective criteria under 11 CFR 110.13(c), and who request to appear must be given a similar opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given a similar opportunity to appear;

(iv) The candidate's representative or party representative (other than an officer, director or other representative of a corporation) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation be designated for his or her campaign or party. The candidate, candidate's representative or party representative shall not accept contributions before, during or after the appearance while at the meeting, convention or other function of the corporation, but may leave campaign materials or envelopes for members of the audience. A corporation, its restricted class, or other employees of the corporation or its separate segregated fund shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party (see 11 CFR 114.2(f));

(v) A corporation or its separate segregated fund shall not, in conjunction with any candidate, candidate representative or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and shall not promote or encourage express advocacy by employees;

(vi) No candidate, candidate's representative or party representative shall be provided with more time or a substantially better location than other candidates, candidates' representatives or party representatives who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates, candidates' representatives and party representatives with similar times or locations;

(vii) Coordination with each candidate, candidate's agent, and candidate's authorized committee(s) may include discussions of the structure, format and timing of the candidate appearance and the candidate's positions on issues, but shall not include discussions of the candidate's plans, projects, or needs relating to the campaign; and

(viii) Representatives of the news media may be allowed to be present during a candidate, candidate representative or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iv).

(2) *Candidate and party appearances on labor organization premises or at a meeting, convention or other function.* A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet its restricted class and other employees of the labor organization, and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (iii), (vi) through (viii), and paragraphs (b)(2) (i) and (ii) of this section. Other guests of the labor organization who are being honored or speaking or participating in the event and representatives of the news media may be present. A labor organization may bar all candidates, candidates' representatives and representatives of political parties from addressing or meeting its restricted class and other employees of the labor organization and their families on the labor organization's premises or at any meeting, convention or other function of the labor organization.

(i) The candidate's representative or party representative (other than an official, member or employee of a labor organization) or the candidate, may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the labor organization be designated for his or her campaign or party. The candidate, candidate's representative or party representative shall not accept contributions before, during or after the appearance while at the meeting, convention or other function of the labor organization, but may leave campaign materials or envelopes for members of the audience. No official, member, or employee of a labor organization or its separate segregated fund shall, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party. See 11 CFR 114.2(f).

(ii) A labor organization or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate(s), and shall not promote or encourage express advocacy by its members or employees.

(c) Communications by a corporation or labor organization to the general public.

(1) *General.* A corporation or labor organization may make the communications described in paragraphs (c)(2) through (c)(5) of this section to the general public. The general public includes anyone who is not in the corporation's or labor organization's restricted class. The provisions of paragraph (c) of this section shall not prevent a qualified nonprofit corporation under 11 CFR 114.10(c) from including express advocacy in any communication made to the general public under paragraphs (c)(2) through (c)(5)(i) of this section.

(2) *Registration and voting communications.* A corporation or labor organization may make registration and get-out-the vote communications to the general public, provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party. The preparation and distribution or registration and get-out-the-vote communications shall not be coordinated with any candidate(s) or political party. A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletter, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.*

(i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public. A corporation or labor organization may distribute absentee ballots to the general public if permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) The corporation or labor organization shall not, in connection with any such distribution, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and shall not encourage registration with any particular political party.

(v) The reproduction and distribution of registration or voting information and forms shall not be coordinated with any candidate(s) or political party.

(4) *Voting records.* A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party. The decision on content and the distribution of voting records shall not be coordinated with any candidate, group of candidates or political party.

(5) *Voter guides.* A corporation or labor organization may prepare and distribute to the general public voter guides consisting of two or more candidates' positions on campaign issues, including voter guides obtained from a nonprofit organization which is described in 26 U.S.C. 501 (c)(3) or (c)(4), provided that the voter guides comply with either paragraph (c)(5)(i) or (c)(5)(ii) (A) through (E) of this section. The sponsor may include in the voter guide biographical information on each candidate, such as education, employment positions, offices held, and community involvement.

(i) The corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party.

(ii) (A) The corporation or labor organization shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter

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guide, except that questions may be directed in writing to the candidates included in the voter guide and the candidates may respond in writing;

(B) All of the candidates for a particular seat or office shall be provided an equal opportunity to respond, except that in the case of Presidential and Vice Presidential candidates the corporation or labor organization may choose to direct the questions only to those candidates who—

(*1*) Are seeking the nomination of a particular political party in a contested primary election; or

(*2*) Appear on the general election ballot in the state(s) where the voter guide is distributed or appear on the general election ballot in enough states to win a majority of the electoral votes;

(C) No candidate may receive greater prominence in the voter guide than other participating candidates, or substantially more space for responses;

(D) The voter guide and its accompanying materials shall not contain an electioneering message; and

(E) The voter guide and its accompanying materials shall not score or rate the candidates' responses in such a way as to convey an electioneering message.

(6) *Endorsements.* A corporation or labor organization may endorse a candidate and may communicate the endorsement to its restricted class through the publications described in 11 CFR 114.3(c)(1) or during a candidate appearance under 11 CFR 114.3(c)(2), provided that no more than a de minimis number of copies of the publication which includes the endorsement are circulated beyond the restricted class. The corporation or labor organization may publicly announce the endorsement and state the reasons therefor, in accordance with the conditions set forth in paragraphs (c)(6)(i) and (ii) of this section. The Internal Revenue Code and regulations promulgated thereunder should be consulted regarding restrictions or prohibitions on endorsements by nonprofit corporations described in 26 U.S.C. 501(c)(3).

(i) The public announcement of the endorsement may be made through a press release and press conference. Disbursements for the press release and press conference shall be de minimis. The disbursements shall be considered de minimis if the press release and notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing non-political press releases or holding press conferences for other purposes.

(ii) The public announcement of the endorsement may not be coordinated with the candidate, the candidate's agents or the candidate's authorized committee(s).

(7) *Candidate appearances on educational institution premises*—(i) *Rental of facilities at usual and normal charge.* Any incorporated nonprofit educational institution exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university, may make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. In this event, the requirements of paragraph (c)(7)(ii) of this section are not applicable.

(ii) *Use of facilities at no charge or at less than the usual and normal charge.* An incorporated nonprofit educational institution exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university, may sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the institution's academic community or the general public (whichever is invited) on the educational institution's premises at no charge or at less than the usual and normal charge, if:

(A) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and

(B) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.

(d) *Registration and get-out-the-vote drives.* A corporation or labor organization may support or conduct voter registration and get-out-the-vote drives which are aimed at employees outside its restricted class and the general public in accordance with the conditions set forth in paragraphs (d)(1) through (d)(6) of this section. Registration and get-out-the-vote drives include providing transportation to the polls or to the place of registration.

(1) The corporation or labor organization shall not make any communication expressly advocating the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party as part of the voter registration or get-out-the-vote drive.

(2) The registration or get-out-the-vote drive shall not be coordinated with any candidate(s) or political party.

(3) The registration drive shall not be directed primarily to individuals previously registered with, or intending to register with, the political party favored by the corporation or labor organization. The get-out-the-vote drive shall not be directed primarily to individuals currently registered with the political party favored by the corporation or labor organization.

(4) These services shall be made available without regard to the voter's political preference. Information and other assistance regarding registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.

(5) Individuals conducting the registration or get-out-the-vote drive shall not be paid on the basis of the number of individuals registered or transported who support one or more particular candidates or political party.

(6) The corporation or labor organization shall notify those receiving information or assistance of the requirements of paragraph (d)(4) of this section. The notification shall be made in writing at the time of the registration or get-out-the-vote drive.

(e) *Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (viii) of this section.

(f) *Candidate debates.* (1) A nonprofit organization described in 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.

(2) A broadcaster, *bona fide* newspaper, magazine or other periodical publication may use its own

funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and 114.4(f).

16. 11 CFR part 114 is amended by revising the title of section 114.12, and by removing and reserving paragraph (b) of section 114.12 to read as follows:

§ 114.12 Incorporation of political committees; Payment of fringe benefits.

* * * * *

(b) [Reserved]

* * * * *

17. 11 CFR part 114 is amended by adding section 114.13 to read as follows:

§ 114.13 Use of meeting rooms.

Notwithstanding any other provisions of part 114, a corporation or labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms.

Dated: December 8, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–30381 Filed 12–13–95; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 156
Worker Protection Standard; Labeling Revisions Required for Pesticide Products Within the Scope of the Worker Protection Standard; Policy Statement; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP–000111; FRL–4988–6]

Worker Protection Standard; Labeling Revisions Required for Pesticide Products within the Scope of the Worker Protection Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy Statement.

SUMMARY: EPA is issuing a final policy statement on labeling revisions required by the Worker Protection Standard (WPS) for sale or distribution of certain agricultural pesticides after October 23, 1995. This policy addresses pesticide products that are within the scope of the WPS, do not bear full WPS labeling, and are being sold or distributed by any person, other than the registrant. Certain statements are required to be placed on the labeling of all pesticide products within the scope of the WPS. These statements reference the WPS and certain practices intended to reduce or eliminate human exposure to pesticides. In most instances, these statements were required to appear on all WPS products by April 21, 1994. Wholesalers and dealers may have stocks of product that do not have WPS complying labeling. This policy presents options for the registrant to relabel the product or authorize the person(s) holding the product for distribution or sale to relabel the product. This policy statement does not apply to growers, custom applicators, or other persons holding product for their own use, unless they also distribute and sell pesticides or are registrants.

EFFECTIVE DATE: This policy became effective on September 28, 1995. The contents of this statement were issued on September 28, 1995, as Pesticide Regulation (PR) Notice 95-5.

FOR FURTHER INFORMATION CONTACT: James Tompkins, Office of Pesticide Programs (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 239, Arlington, VA, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Agency is issuing a final policy statement that allows registrants or their authorized representatives that sell or distribute pesticides to relabel non-complying pesticide products in their possession. The policy provides examples of mechanisms to bring labels into compliance with WPS requirements, so that such products may be legally sold and distributed after October 23, 1995. The required actions for registrants, wholesalers, and retailers to relabel products are discussed to aid compliance with the policy. All products within the scope of WPS must bear final, printed WPS replacement labeling after October 23, 1996. Except for products that have been canceled, products accompanied only by generic supplemental labeling, as outlined in PR Notice 93–11, are not considered labeled in compliance with the WPS provisions after October 23, 1995.

I. Summary of the Policy

EPA will permit registrants or their authorized representatives to relabel non-complying stocks of products that do not bear full WPS labeling. Under this policy, the registrant has the option to either relabel the product or provide written authorization to the person(s) holding the product for distribution or sale to relabel the product. Both the registrant and the person(s) holding such pesticides are responsible for relabeling these products in accordance with the WPS and this policy statement. This policy statement does not apply to growers, custom applicators, or other persons holding products for their own use, unless they also distribute and sell pesticides or are registrants.

Using the decision diagram presented in this policy statement, registrants may determine if they hold non-complying products that require amended labeling. If a product requires amended labeling, the registrant may conduct or provide written authorization for wholesalers or retailers to do relabeling, and provide product-specific WPS labeling. Options for amended labeling include: a final printed WPS-complying replacement label and supplemental product-specific labeling. Supplemental labeling must be provided to the end-user whenever the product is offered for sale and a "STOP sticker" is affixed to the existing label. Pesticide-specific relabeling may occur at any site without registration of the site as a pesticide-producing establishment. Under the provisions of this policy, relabeling of stocks of products with non-complying labels may be carried out by person(s) acting under the authority of the registrant as an "authorized agent" of the registrant. The policy also addresses how to revise labels of orphaned and deleted use products, products that have been transferred, and dormant products.

II. Background

The 1992 WPS requires that certain statements be placed on the labeling of all pesticide products within the scope of the standard. These statements reference the WPS and certain practices intended to reduce or eliminate human exposure to pesticides. The WPS also established a schedule for meeting these labeling requirements. The schedule required that, by April 21, 1994, all registrants of pesticides covered by the WPS had to amend product labeling in accordance with PR Notice 93-7 and 93-11. Most products sold or distributed by registrants since April 21, 1994, should have WPS-complying labeling. In some instances, wholesalers and retailers may have stocks of products that do not have WPS complying labeling. These stocks could have originated from these sources: (1) Products shipped by registrants before the April 21, 1994 date; (2) products distributed or sold by registrants under the "released for shipment" option allowed under PR Notice 93-11; or, (3) "deleted use" products, for which the registrant has amended the registration to delete certain uses and these deletions place the product outside the scope of the WPS. After April 21, 1994, under the "release for shipment" option, registrants could sell or distribute products without the WPS label if the registrant agreed to either recall and relabel, or relabel products at wholesaler sites through an "authorized agent" by April 1996.

The WPS provides that any person other than a registrant (e.g., pesticide retailers or wholesalers) who has under their ownership, custody or control existing stock of product that is within the scope of the WPS, but does not bear WPS labeling, may *not* legally sell or distribute the product after October 23, 1995. The primary purpose of this policy statement is to describe the process for relabeling to bring products into compliance.

III. Definitions

The following definitions apply for the purposes of this policy statement:

Distribute or sell means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.

Label means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

Labeling means all labels and all other written, printed, or graphic matter (a) accompanying the pesticide or device; or (b) to which reference is made on the label or in literature accompanying the pesticide or device.

Registrant means any person who has registered any pesticide pursuant to the provisions in FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act).

Retailer means any person, other than a registrant, who distributes or sells pesticides to end-users.

Wholesaler means any person, other than a registrant, who distributes or sells pesticides to persons other than end-users.

IV. Policy Provisions

A. Recognition of Product Labels Requiring Amendment to Comply With WPS

If a product has labeling required under the WPS, the labeling will have an Agricultural Use Requirements box and can be sold or distributed after October 23, 1995, without further action. Products accompanied only by generic supplemental labeling as outlined in PR Notice 93-11 are not considered labeled in compliance with the WPS provisions after October 23, 1995. Products that do bear complying WPS labeling include those relabeled in accordance with Supplement D of PR Notice 93-11 (by using a sticker or similar modification to an existing label and full product-specific labeling referenced by the sticker). An example of an Agricultural Use Requirements box follows:

AGRICULTURAL USE REQUIREMENTS

Use this product in accordance with its labeling and with the Worker Protection Standard, 40 CFR 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions for exceptions pertaining to the statements in this labeling about personal protective equipment, restricted-entry intervals, and notification to workers. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard (WPS).

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 48 hours.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is:
Chemicals over long-sleeved shirt and long pants
Chemical-resistant gloves such as barrier laminate or viton
Chemical-resistant footwear plus socks
Protective eyewear
Chemical-resistant headgear for overhead exposure

Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas.

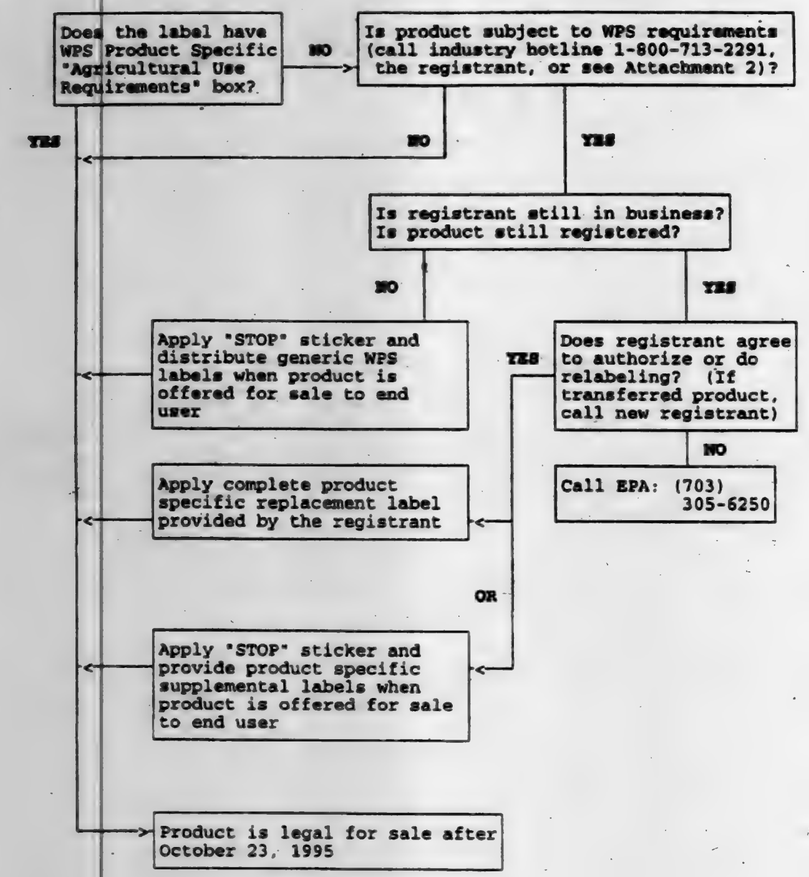
If a product label does not have an Agricultural Use Requirements box, it is necessary to determine whether the product is within the scope of the WPS and, therefore, requires WPS labeling. In some instances, it may be easy to identify a product that requires WPS labeling; the newest shipment of containers of the same product may bear the following: (1) Labeling with an Agricultural Use Requirements box that refers to the WPS; or (2) stickers referring to supplemental replacement labeling which contains such an Agricultural Use Requirements box.

The Agricultural Use Requirements box references the WPS and requires certain practices intended to reduce or eliminate worker and handler exposure from pesticides. The box includes restricted entry intervals, personal protective equipment and the notification requirement for pesticide-treated areas. Retailers and wholesalers may determine whether modifying a product label is necessary by calling the registrant of the product or by using the following diagram and criteria presented in Section B to evaluate each product. For additional assistance, contact the industry-sponsored "WPS Task Force" at 1–800–713–2291.

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WPS RELABELING PROCESS FOR RETAILERS AND WHOLESALERS



BILLING CODE 6560-50-C

B. Scope Criteria and Determining WPS Applicability to Individual Products

In PR Notice 93-7, registrants were to answer a series of questions to determine if their product fell within the scope of WPS. To determine whether pesticide products fall within the scope of this policy (i.e. those that do not already bear labeling containing WPS requirements in an Agricultural Use Requirements box), the following questions must be answered:

Begin here for each product:

1. Does the labeling contain directions for application to:

- Plants grown to produce food, feed, or fiber?
- Turfgrass?
- Ornamental plants, trees, or shrubs?
- Plants grown to produce seedlings or transplants?
- Plants grown to produce cut flowers or cut ferns?
- Trees grown to produce timber?
- Areas where any such plants are growing?
- Areas where such plants will soon be grown (i.e., pre-plant or at-plant application)?
- Areas from which such plants have just been harvested?

If you answered "Yes" to any of these questions, this product may be within the scope of this policy. Go on to question 2.

If you answered "No" to all of these questions, this product is *not* within the scope of this policy statement. Begin again with question 1 for your next product.

2. Does the labeling explicitly limit application *only* to plants intended for aesthetic purposes or climate modification and growing in interior plantscapes, ornamental gardens or parks, or on golf courses or lawns and grounds?

If you answered "Yes" to this question, this product is *not* within the scope of this policy statement. Begin again with question 1 for the next product.

If you answered "No" to this question, this product may be within the scope of this policy statement.

Go on to question 3.

3. Does the labeling explicitly limit uses *only* to those *not* directly related to the production of food, feed, fiber, timber, turfgrass, or ornamentals, such as the following:

- Use on pasture or rangeland?
- Use on rights-of-way or other non-crop areas?
- Use for structural pest control?
- Use for mosquito abatement, Mediterranean fruit fly eradication, or in other wide-area government-sponsored pest control programs?

If you answered "Yes" to this question, this product is *not* within the scope of this policy. Begin again with question 1 for the next product.

If you answered "No" to this question, this product may be within the scope of this policy. Go on to question 4.

4. Does the labeling contain directions only for one or more of the following:

- Control of vertebrate pests?
- Use as an attractant in traps?
- Use on the portions of agricultural plants that have been harvested, including harvested timber?
- Application using a point-source pheromone dispenser of a size easily retrieved from the field, such as a "twist-tie"?

If you answered "Yes" to this question, this product is *not* within the scope of this notice. Begin again with question 1 for the next product.

If you answered "No" to this question, this product may be within the scope of this policy. Go on to question 5.

5. Is the product labeled *primarily* for use in production of plants in homes, home flower or vegetable gardens, home lawns, or home greenhouses? Answer "yes" to this question only if the current labeling meets *all* the following tests:

a. The labeling indicates that the product is intended for use in or around the home, home flower or vegetable garden, home lawn, or home greenhouse.

b. The labeling does *not* include any of the following directions or phrases:

- Skull and crossbones symbol and word "Poison."
- A requirement for users to wear a respirator.
- A requirement for users to wear chemical-resistant, waterproof, or liquid-proof suits or coveralls or "rainsuits."
- The phrase "for professional use."
- The phrase "for commercial use."
- Directions for use on farms, sod farms, forests, nurseries, or greenhouses except home greenhouses.
- Directions for use including the phrases "for crop production" or "for sod production."
- Application rates expressed per acre.
- Dilution rates expressed per hundred gallons.
- Directions for application by aerial, ground-boom, airblast, or other motor-driven vehicles or equipment.
- Directions for use of a "surfactant," "buffer," or "adjuvant," using those words.
- Any reference to chemigation.
- Directions for mechanical agitation.
- Instructions or restrictions concerning livestock grazing.

c. The product is packaged in a container holding no more than 40 pounds if the product is a solid, or 2 gallons if it is a liquid, or 2 pounds if it is an aerosol.

If all three tests (5a, 5b, 5c) above are fully satisfied, this product is *not* within the scope of this policy. Begin again with question 1 for the next product.

If any of these three tests is *not* fully satisfied, this product is within the scope of this policy statement. (If the product does not satisfy all these three tests but you believe it is nonetheless intended primarily for home use or is otherwise limited to use on plants grown for other than commercial or research purposes, check with the registrant. Start again with question 1 for the next product.

C. Registrant Responsibilities in the Revision of Product Labels to Comply with the WPS

Registrants must conduct or authorize any relabeling. If a retailer or wholesaler will relabel products, the registrant must provide a written authorization and provide product-specific WPS labeling.

In conducting or authorizing relabeling, registrants are responsible for ensuring that relabeling of non-complying products takes place in accordance with the WPS and this policy statement. They may choose to conduct relabeling by recalling the product and relabeling with final printed replacement labeling at a registered establishment or relabeling at the location of the product; or authorize a wholesaler or retailer to relabel in accordance with this policy. Options and required specifications for relabeling are outlined in Unit IV.F. of this document.

The registrant must provide a written authorization to any wholesaler or retailer who agrees to relabel non-complying products. The authorization should outline the specific roles of the retailer, wholesaler, and registrant in relabeling. Registrants are fully responsible for ensuring that labeling modifications are carried out correctly by any person or company they authorize. Any limitations on who may be authorized to carry out relabeling under this policy statement must be explicit in the authorization document. The authorization cannot change the responsibilities of any of the parts of terms of this policy statement. Any relabeling of products with WPS labels must be done in cooperation with all involved parties and under the written authorization of the registrant.

The registrant must provide labeling to those they authorize to conduct

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relabeling. The labeling must comply with the WPS and this policy statement. This also includes "STOP stickers" if supplemental labeling is used. A description and specifications for the "STOP stickers" are given in Unit IV.F. of this document.

D. Wholesaler Revision of Product Labels to Comply with the WPS

Wholesalers must take the following actions in order to revise product labels to comply with the WPS: gain registrant authorization for any relabeling at the wholesaler establishment, and distribute non-complying products only permitted by this policy statement. Wholesalers may use industry-sponsored assistance to identify which specific products require WPS-complying labels.

Wholesalers may gain registrant authorization for relabeling at the wholesaler establishment. The registrant may authorize a wholesaler, retailer or other person(s) to perform relabeling. Any relabeling of products must be performed under the written authorization of the registrant. If the registrant will not perform relabeling or authorize the wholesaler or another party to relabel, the wholesaler should contact EPA's Registration Division (703–305–6250) for instructions on how to proceed with these products. Wholesalers must follow the options and required specifications for relabeling in this policy statement.

Wholesalers must not distribute non-complying products, except as permitted by this policy statement. Products within the scope of the WPS that do not bear WPS labeling may not be legally distributed or sold after October 23, 1995. This policy statement, however, allows the wholesaler to ship non-complying product prior to relabeling, if the following conditions are satisfied: (1) The wholesaler has notified and obtained agreement of the receiving person(s) to ensure that WPS relabeling will occur before the product is "offered for sale" or distribution to the end user; and, (2) the registrant will either conduct or has authorized relabeling. For the purposes of this policy statement, pesticides are considered "offered for sale" whenever they are available in areas accessible to customers, unless they are clearly identified as products that may not be sold until relabeled.

Industry-sponsored assistance is available to wholesalers in order to bring products into compliance with WPS. Wholesalers may contact the "WPS Task Force" at 1–800–713–2291. This service will help identify which specific products are covered by the WPS and need WPS-complying labeling and distribute "STOP stickers" and required WPS supplemental labeling for registrants participating in the service. Other requests will be referred to other organizations.

E. Retailer Responsibilities in Revision of Product Labels to Comply with the WPS

Retailers must take the three following actions in order to bring products into compliance with WPS: do not offer for sale or distribute any non-complying products after October 23, 1995. Retailers must obtain registrant written authorization for relabeling at the retailer establishment. Retailers may use industry-sponsored assistance to bring products into compliance.

Retailers must not offer for sale products that do not comply with the WPS after October 23, 1995, except as allowed by this policy statement. This policy statement allows products to be relabeled under certain specifications prior to being "offered for sale." For the purposes of this policy statement, pesticides are considered "offered for sale" whenever they are available in areas accessible to customers, unless they are clearly identified as products that may not be sold until relabeled.

Retailers may gain registrant authorization for relabeling at the wholesaler establishment. The registrant may authorize a wholesaler, retailer or other person(s) to perform relabeling. Any relabeling of products must be performed under the written authorization of the registrant. If the registrant will not perform relabeling or authorize the retailer or another party to relabel, the retailer should contact EPA's Registration Division (703–305–6250) for instructions on how to proceed with these products. Retailers must follow the options and required specifications for relabeling in this policy statement.

Industry-sponsored assistance is available to retailers in order to bring products into compliance with WPS. Retailers may contact the "WPS Task Force" at 1–800–713–2291. This service will help identify which specific products are covered by the WPS and need WPS-complying labeling and distribute "STOP stickers" and required WPS supplemental labeling for registrants participating in the service. Other requests will be referred to other organizations.

F. Options for Relabeling

The following options apply to the majority of products covered by this policy statement, i.e. stocks of registered products subject to WPS which lack required WPS labeling. The options available to bring non-complying product labels into compliance are: final printed WPS-complying replacement labeling and supplemental product-specific labeling with "STOP stickers." Other products, referred to as "Special Products," are described and discussed in Unit IV.H. of this document.

1. *Final printed WPS-complying replacement labeling.* Products may be relabeled by replacing existing labels and labeling with final printed WPS-complying replacement labeling that is securely affixed to the pesticide container. The final printed WPS-complying replacement labeling must be supplied by the registrant of the product. Such labeling must be printed or affixed to the product package. If affixed, it must be difficult to remove without residue or damage to the underlying packaging or labeling it is replacing. If final printed replacement labeling is used, it must meet the above standards as well as those required in the WPS.

Replacement labeling could also be designed only to modify existing labeling by adding the required WPS labeling statements without replacing the entire existing labeling. Although we do not expect this option to be used often, it may provide additional flexibility. If this option is chosen, the replacement labeling must be designed and affixed in such a way that it will not alter or obscure the other portions of the label text that remain unchanged. Under this option, an additional supplement containing WPS requirements cannot be developed. Additionally, replacement labeling must be affixed in such a manner that any existing labeling statements or requirements that are superseded by WPS requirements are no longer visible so there is no confusion as to the appropriate use restrictions for the end user.

If the product bears existing labeling on both an outer packaging or supplement and an immediate container, the replacement labeling must be affixed to both. For inner water soluble packages, the outer package, but not the immediate container, will require replacement labeling.

2. *Supplemental product-specific labeling.* Alternatively, products may be relabeled by using supplemental product-specific labeling that is provided when the product is offered for sale to the end user, provided that a "STOP sticker" is affixed to the label and the sticker meets the requirements as specified below. The supplemental product-specific labeling must be supplied by the registrant of the product.

a. Format of supplemental product-specific labeling.—Supplemental labeling can be presented in two formats:

1. Single-product supplement that contains labeling information for only the specific product the end-user is buying. This labeling must display the (1) full text of current product labeling, or (2) partial text that includes complete WPS-complying labeling (as EPA accepted or registrant-verified). An example of a single-product supplement follows the supplemental labeling specification discussion in Unit IV.F.2.b. of this document.

2. Multi-product supplement that contains labeling information for all products for a specific registrant. WPS information required to appear on all product labels may appear in the brochure only once, along with product-specific WPS information presented for each product covered by the brochure. This option is *not* available for fumigant products because of the specialized nature of the fumigant label. An example of a brochure follows the supplemental labeling specification discussion in Unit IV.F.2.b. of this document.

b. Supplemental product-specific labeling specifications.—Supplemental replacement labeling must meet the following specifications:

- Title. The supplemental labeling must prominently bear the words "SUPPLEMENTAL LABELING WITH WORKER PROTECTION REQUIREMENTS" at the top of the first page or be in a pouch prominently displaying the words "SUPPLEMENTAL LABELING WITH WORKER PROTECTION REQUIREMENTS," attached to the container.

- Content. Supplemental labeling can be presented in a single product supplement or a multi-product brochure.

Single-product supplements include labeling information for only the product the end-user is buying. These supplements will contain either: (1) The full text of current product labeling, or (2) the partial text that includes only the complete WPS product labeling information, a contact phone number for the registrant, and no information unrelated to the products' labeling. An example of a single-product supplement follows:

SINGLE-PRODUCT, PRODUCT-SPECIFIC

(Example)

"Supplemental Labeling With Worker Protection Requirements"

Product Name, Company Name, EPA Reg. No.

For compliance with the Worker Protection Standard (40 CFR Part 170). **Important:** This supplemental labeling does not apply (1) to soil or space fumigant products, (2) to products containing ethyl parathion, or (3) if elsewhere on the product labeling an Agricultural Use Requirements box requires compliance with the Worker Protection Standard (40 CFR Part 170). When this product is used on an agricultural establishment (farm, forest, nursery, or greenhouse) for the commercial or research production of agricultural plants, users must comply with the instructions in this supplemental labeling. Users who must comply with these instructions include owners/operators of the agricultural establishment and owners/operators of commercial businesses that are hired to apply pesticides on the agricultural establishment or to perform crop-advising tasks on such establishments. Failure to comply with the requirements on this supplemental labeling and with the Worker Protection Standard (40 CFR Part 170) is a violation of Federal law, since it is illegal to use a pesticide product in a manner inconsistent with its labeling.

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Use this product in accordance with its labeling and with the Worker Protection Standard, 40 CFR 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and green houses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions for exceptions pertaining to the statements in this labeling about personal protective equipment, restricted-entry intervals, and notification to workers. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard (WPS).

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the Agency responsible for pesticide regulation.

Entry-Restrictions: Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 48 hours/days.

Notification Instructions: (If required) Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas.

Personal Protective Equipment (PPE) Requirements:

Handler PPE: Applicators and other handlers must wear:
Coveralls over long-sleeved shirt and long pants
Chemical-resistant gloves such as barrier laminate or viton
Chemical-resistant footwear plus socks
Protective eyewear
Chemical-resistant headgear for overhead exposure
Chemical-resistant apron when cleaning equipment, mixing, or loading

Early Entry PPE: PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is:
Chemicals over long-sleeved shirt and long pants
Chemical-resistant gloves such as barrier laminate or viton
Chemical-resistant footwear plus socks
Protective eyewear
Chemical-resistant headgear for overhead exposure

Conflicting Instructions: If the requirements of the WPS conflict with instructions listed elsewhere on this product label, users must obey the more protective requirements.

Multi-product brochures must contain complete WPS product labeling information for all products that are within scope of the WPS for the registrant, a contact phone number for the registrant, and no information unrelated to the products' labeling. If a brochure includes multiple products with similar names (e.g., Weed Killer 4EC, Weed Killer 10WP), the brochure must contain an advisory statement located near such a grouping reminding users to carefully match the WPS requirements in the brochure with the particular product they are using. This option is *not* available for fumigant products. An example of a multi-product brochure is provided.

MULTI-PRODUCT, PRODUCT-SPECIFIC

(Example)

"Supplemental Labeling With Worker Protection Requirements"

For compliance with the Worker Protection Standard (40 CFR Part 170):

Important: This supplemental labeling does not apply (1) to soil or space fumigant products, (2) to products containing ethyl parathion, or (3) if elsewhere on the product labeling an Agricultural Use Requirements box requires compliance with the Worker Protection Standard (40 CFR Part 170).

When this product is used on an agricultural establishment (farm, forest, nursery, or greenhouse) for the commercial or research production of agricultural plants, users must comply with the instructions in this supplemental labeling. Users who must comply with these instructions *include* owners/operators of the agricultural establishment and owners/operators of commercial businesses that are hired to apply pesticides on the agricultural establishment or to perform crop-advising tasks on such establishments. Failure to comply with the requirements on this supplemental labeling and with the Worker Protection Standard (40 CFR Part 170) is a violation of Federal law, since it is illegal to use a pesticide product in a manner inconsistent with its labeling.

WPS Product Summary for Company XYZ:

Advisory: Similar names. Match WPS requirements carefully with products.	Weed Killer 10 G Granules	Weed Killer 10 WP	Weed/Insect Killer Super 8EC
Active Ingredient(s)	dicarbamon	tribamocarb tribamocarb	dicarbamon tribamocarb oxyethylion
EPA Reg. No.	9999-1	9999-2	9999-3
REI (hours)	12	48	48 (72 in arid areas)
PPE for Handlers Note: "CR" = Chemical Resistant	Long sleeved shirt Long pants Waterproof gloves Shoes, socks Protective eyewear	**Mixers and loaders:** Coverall over short sleeved shirt, short pants CR footwear, socks CR headgear for overhead exposure CR apron Dust/mist filtering respirator (TC-21C) **Applicators and other handlers:** Coverall over short sleeved shirt, short pants Waterproof gloves CR footwear, socks CR headgear for overhead exposure CR apron when cleaning equipment	**Applicators:** Coverall over long sleeved shirt, long pants CR gloves such as barrier laminate or viton CR footwear CR headgear for overhead exposure Protective eyewear *For exposures in enclosed areas,* either an organic vapor removing cartridge respirator (TC-23C) *or* canister approved for pesticides (TC-14C) *Outdoor exposures:* dust/mist respirator (MSHA/NIOSH TC-21C)

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WPS Product Summary for Company XYZ:—Continued

Advisory: Similar names. Match WPS requirements carefully with products.	Weed Killer 10 G Granules	Weed Killer 10 WP	Weed/Insect Killer Super 8EC
PPE for Early Entry Workers	Coverall Waterproof gloves Shoes, socks Protective eyewear	Coverall over short sleeved shirt, short pants Waterproof gloves CR footwear, socks CR headgear for overhead exposure	Coverall over long sleeved shirt, long pants CR gloves CR footwear, socks CR headgear for overhead exposure Protective eyewear
Double Notification Required?	No Only Oral	No Only Oral	Yes Oral and posting

Supplemental distributors must develop separate brochures because product names will be different. However, "buyout/transferred," "orphaned/canceled," and "dormant" products for which WPS label language has been approved by EPA (all described in Unit IV.H.) may be included in the same brochure if the following conditions are met. "Buyout/transferred" products can be included only if (1) both registration numbers are listed in the reference table, and (2) the brochure cover specifies previous registrants' names represented on the "transferred" products' labels and that these products have been transferred to the existing registrant (i.e., this brochure also contains products previously owned by companies B, C, and D but now owned by company A. . .) This will facilitate end users locating the correct brochure that corresponds to each product. If "orphaned/canceled" products are included, then the reference table should specify "canceled: generic instructions" for each such product and should indicate the specific generic requirements for each particular pesticide's label.

Optional information for both single-product supplements and multi-product brochures includes: complete registrant identification, including company logo; statements clearly connecting the brochure with the "STOP stickered" product; footnotes explaining chemical resistant categories for gloves, respirators, etc.; statements to clarify information given in the brochure; and statements concerning: discarding, washing, or maintenance of personal protective equipment, user safety recommendations, Spanish language warnings, REI's that are longer than those prescribed by the WPS, and Engineering Control Statements.

• Highlighting. If the registrant has chosen to use a multi-product brochure, instead of a single-product supplement, as described in the next sections, EPA strongly encourages that the wholesaler or retailer highlight or clearly identify in the brochure the specific product(s) being sold or distributed to the end user. This will assist the end-user in quickly identifying the requirements for the specific product before pesticide application.

• Location. EPA strongly encourages physically attaching the supplemental labeling to product containers to ensure end-users receive the supplemental labeling. (Note: It is a violation of the WPS and this policy statement to sell or distribute products with non-complying labels or "offer such products for sale," to the end-user without providing the appropriate supplemental labeling.) If the labeling is not attached, it must be located in close physical proximity (e.g., immediately adjacent or next to) and accompany the product when the product is offered for sale to the end-user. When products are "offered for sale" to the end user, the supplemental labeling must be placed in such a way that it is clear which labeling corresponds to which product. Therefore, single-product supplemental labeling for different products and multi-product brochures for different registrants should not be mixed. Whenever feasible, supplemental labeling should accompany the stickered product at every stage of distribution.

• Format. The supplemental replacement labeling may be photocopied, provided all text is legible. Illegible photocopies and faxes are unacceptable. The User Safety Recommendations and Agricultural Use Requirements must each be located in a clearly separate box with lines or other graphic indicators to separate them from the surrounding text.

3. *"STOP sticker" specifications.* If supplemental product-specific labeling will be used (instead of final printed replacement labeling as defined in Unit III.B.1. of this document) a "STOP sticker" must be applied only to those products that bear a label which has not been revised to comply with complete WPS requirements. If multiple products are contained on pallets or in shipping containers, these containers must be opened and a "STOP sticker" must be affixed to each individual product's immediate container and outside container before the product is offered for sale to the end-user. (The immediate containers of water soluble packages do not have to be stickered.)

"Stickering" of products must be carried out according to the following specifications:

• Required Text. "STOP--Use this product only in accordance with the Worker Protection Standard, 40 CFR Part 170, and the "SUPPLEMENTAL LABELING WITH WORKER PROTECTION REQUIREMENTS," which must be provided when the product is offered for sale. Otherwise, you are in violation of FIFRA. For more copies of the labeling, contact your dealer or call 1–800–713–2291.

• Product labels that must not receive stickers. "STOP stickers" must NOT be applied to product labels that already comply with WPS requirements or that do not require a WPS label. For instance, deleted-use products must not receive a sticker or WPS labeling.

• Timing. The sticker must be affixed to the product container prior to the time the product is offered for sale to the end-user.

• Prominence. The sticker must be legible and prominent on the product package through use of contrasting colors or other graphic devices and must be placed on the label of each product container.

• Location. It must be printed on or affixed to the product container. If affixed, it must be difficult to remove without residue or damage to underlying packaging or labeling. It must not be located on the bottom of the package or any other place that will not readily be noticed by users. If the product bears labeling on both outer packaging and immediate container, the sticker must be affixed to both. However, inner water soluble packages need not be modified under this approach.

• Obscuring existing language. The sticker must not obscure any information on the existing label.

• Highlighting specific products in brochures. EPA strongly encourages that the retailer highlight or clearly identify in the brochure the specific product(s) being sold or distributed to the end user. This will assist the end-user in quickly identifying the requirements for the specific product before pesticide application.

G. Relabeling Sites

WPS-related relabeling under this policy statement may occur at any site (such as wholesale or retail sites), by such persons without registration of the site as a pesticide-producing establishment. Relabeling of stocks of products with non-complying labels product under this policy statement may only be carried out by persons acting under the authority of the registrant as an "authorized agent" of the registrant.

H. Amending Product Labels of Special Products to comply with the WPS

1. *Orphaned or canceled products.* "Orphaned" products are those products where the registrants are no longer in business. Canceled products are those products canceled pursuant to FIFRA section 4 or 6 where EPA cancels the registration without transferring it to another person. You may have existing stock of these products that are within the scope of the WPS and do not bear WPS labeling.

EPA will allow sale or distribution of a pesticide product which is an orphaned or canceled product, after October 23, 1995, provided the product labeling is first modified to comply with the requirements below.

Labels of orphan or canceled products must be modified by using a "STOP sticker" and generic supplemental labeling that is provided when the product is being offered for sale to the end-user and meets certain requirements as specified below. WPS-related relabeling under this policy statement, including generic supplemental labeling may occur at any site (such as distribution or retail sites), by any retailer or wholesaler. An example of the supplemental labeling with the generic worker protection requirement is provided.

"Supplemental Labeling With Generic Worker Protection Requirements"

For compliance with the Worker Protection Standard (40 CFR Part 170):

Important: This supplemental labeling does not apply (1) to soil or space fumigant products, (2) to products containing ethyl parathion, or (3) if elsewhere on the product labeling an Agricultural Use Requirements box requires compliance with the Worker Protection Standard (40 CFR Part 170).

When this product is used on an agricultural establishment (farm, forest, nursery, or greenhouse) for the commercial or research production of agricultural plants, users must comply with the instructions in this supplemental labeling. Users who must comply with these instructions *include* owners/operators of the agricultural establishment and owners/operators of commercial businesses that are hired to apply pesticides on the agricultural establishment or to perform crop-advising tasks on such establishments. Failure to comply with the requirements on this supplemental labeling and with the Worker Protection Standard (40 CFR Part 170) is a violation of Federal law, since it is illegal to use a pesticide product in a manner inconsistent with its labeling.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements in this labeling about personal protective equipment, restricted-entry intervals, and notification to workers. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard (WPS).

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

Entry Restrictions: Do not enter or allow worker entry during the restricted-entry interval (REI). The restricted-entry interval for this product is:

- the specific number of hours or days (if any) listed elsewhere on the product labeling as the reentry interval or entry restriction for the crop or site, if 12 hours or more;
- 12 hours, if no specific number of hours or days is listed elsewhere on the product labeling as the reentry interval or entry restriction for the crop or site;

The restricted-entry interval for this product must be at least 12 hours.

Notification Instructions: Follow the rules in the WPS for notifying workers of the application. EXCEPTION: If the instructions about notification (if any) listed elsewhere on the product labeling *require* posting of treated areas (rather than offering a choice), you must notify workers of the application by warning them orally AND by posting signs at entrances to treated areas, following the rules in the WPS.

Personal Protective Equipment (PPE) Requirements:

- *Handler PPE*: Pesticide handlers must wear the PPE listed elsewhere in the product labeling for applicators. If specific PPE is required elsewhere on the product label for specific handling tasks (such as mixing or loading), it must be worn while performing such tasks. In any case, any handler using this product must wear no less than: long-sleeved shirt, long pants, shoes, socks, and chemical-resistant or waterproof gloves.
- *Early Entry PPE*: PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is the same PPE as required elsewhere on this product label for applicators, except that any respirator requirement is waived. In any case, the minimum PPE required for any early entry worker exposed to this product is no less than: coveralls, shoes, socks, and chemical-resistant or waterproof gloves.

Conflicting Instructions: If the requirements of the WPS conflict with instructions listed elsewhere on this product label, users must obey the more protective requirements.

The fumigant generic supplemental labeling must be furnished to purchasers of agricultural fumigants. An example of a generic supplemental label is provided. The non-fumigant generic supplemental labeling must be furnished to purchasers of all other agricultural pesticides, except ethyl parathion products.

"Supplemental Labeling With Generic Worker Protection Requirements For Agricultural Fumigants"

For compliance with the Worker Protection Standard (40 CFR Part 170):

Important: This supplemental labeling applies ONLY to soil or space fumigant products used in the production of agricultural plants. It does not apply if elsewhere on the product labeling an Agricultural Use Requirements box requires compliance with the Worker Protection Standard (40 CFR Part 170).

When this product is used on an agricultural establishment (farm, forest, nursery, or greenhouse) for the commercial or research production of agricultural plants, users must comply with the instructions in this supplemental labeling. Users who must comply with these instructions include owners/operators of the agricultural establishment and owners/operators of commercial businesses that are hired to apply pesticides on the agricultural establishment or to perform crop-advising tasks on such establishments. Failure to comply with the requirements on this supplemental labeling and with the Worker Protection Standard (40 CFR Part 170) is a violation of Federal law, since it is illegal to use a pesticide product in a manner inconsistent with its labeling.

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AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements in this labeling about personal protective equipment, restricted-entry intervals, and notification to workers. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard (WPS).

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

Entry-Restrictions: Follow the applicable entry restrictions listed elsewhere on the product labeling.

Notification Instructions: Follow the rules in the WPS for notifying workers of the application.

Exception: If there are instructions listed elsewhere on the product labeling that requires the posting of specific signs at treated areas, you must notify workers of the application by warning them orally AND by posting the signs specified on the labeling.

Personal Protective Equipment (PPE) Requirements: Follow the applicable PPE instructions (if any) listed elsewhere on the labeling.

Conflicting Instructions: If the requirements of the WPS conflict with instructions listed elsewhere on this product label, users must obey the more protective requirements

Supplemental generic labeling specifications

• Title. The supplemental labeling must prominently bear the words "SUPPLEMENTAL LABELING WITH GENERIC WORKER PROTECTION REQUIREMENTS" at the top of the first page or be in a pouch prominently displaying the words "SUPPLEMENTAL LABELING WITH GENERIC WORKER PROTECTION REQUIREMENTS" attached to the container.

• Content. As appropriate to the type of product, the generic supplemental labeling must contain the complete text of the labeling as provided in the example presented.

• Location. EPA strongly encourages physical attachment of the supplemental labeling to product containers to ensure end-users receive the supplemental labeling. (Note: It is a violation of the WPS and this policy statement to sell or distribute products with non-complying labels or offer such products for sale, to the end-user without providing the appropriate supplemental labeling.) If the labeling is not attached, it must be located in close physical proximity to and accompany the product when the product is offered for sale to the end-user. Whenever feasible, supplemental labeling should accompany the stickered product at every stage of distribution.

• Format. The generic supplemental labeling should be similar to that presented in this policy statement, with all text legible. See Units IV.F. and IV.H. for examples.

Note: Ethyl Parathion Products: Holders of stocks on products without WPS-complying labels may not use the option of generic supplemental labeling described below and should contact the registrant of such products or, if necessary, EPA for guidance.

"STOP Sticker" Specifications for Generic Supplemental Labeling

"Stickering" of orphaned or canceled products is only allowed according to the following specifications:

• Required Text. STOP--Use this product only in accordance with the Worker Protection Standard, 40 CFR Part 170, and the "SUPPLEMENTAL LABELING WITH WORKER PROTECTION REQUIREMENTS," which must be provided when the product is offered for sale. Otherwise, you are in violation of FIFRA. For more copies of the labeling, contact your dealer or call 1–800–713–2291.

• Timing. The sticker must be affixed to the product container whenever the product is offered for sale or distribution to the end user.

• Prominence. The sticker must be legible and prominent on the product package through use of contrasting colors or other graphic devices, and placement on the label of each product container.

• Location. It must be printed on or affixed to product containers. If affixed, it must be difficult to remove without residue or damage to underlying packaging or labeling and must not be located on the bottom of the package or any other place that will not readily be noticed by users. If the product bears labeling on both outer packaging and immediate container, the sticker must be affixed to both. (Exception: STOP stickers need not be affixed directly on inner water soluble packages.)

• Obscuring existing language. The sticker or facsimile must not obscure any information on the existing label.

2. *Buy-out or transferred products.* These are stocks of products that have been transferred to another registrant who has responsibility for the product's registration. The existing stocks have the original company's name and registration number.

The new registrant should choose one of the following options to deal with these products:

• Recall and relabel/repackage. Recalling the products and repackaging them at a registered establishment with final printed replacement labeling, or

• Product-specific relabeling. Conducting or authorizing relabeling of products with either: (i) Final printed product-specific, WPS-complying replacement labeling or (ii) supplemental product-specific replacement labeling and a "STOP sticker" that meets certain requirements.

Relabeling must occur in accordance with the section entitled, "Supplemental Product-Specific Labeling Specifications." This section also contains information about including "transferred" products in multi-product brochures. Generic Supplemental Labeling and STOP stickers may NOT be used for these products.

3. *Deleted-use products.* These are products for which the registrant has amended the registration to delete certain uses (e.g., sod) thereby putting the product outside the scope of the WPS. There may be existing stocks of such products that still have the previous label and are thus within the WPS scope.

The registrant should choose one of the following options to relabel these products. Otherwise, the product may not be distributed or sold after October 23, 1995.

• Recall and relabel/repackage. Recalling the products and relabeling/repackaging them at a registered establishment with the current labeling that has been amended to delete WPS uses.

• Product-specific relabeling. Conducting or providing a written authorization for relabeling of products with the current labeling that has been amended to delete any WPS uses. Products can be relabeled by: (i) Replacing existing labeling with the current final printed replacement labeling, or (ii) marking/blocking out all WPS uses and references to WPS uses (e.g., use directions). If final printed replacement labeling is used, the amended labeling must completely obliterate the previous label so that the previous label does not show. It must be securely affixed to the product package and be difficult to remove without residue or damage to the underlying packing or labeling. If the option to mark/block out of all WPS references is chosen, all WPS uses and references to WPS uses must be completely blocked and no other portions of the label text that remain unchanged must be altered or obscured.

In the event that a retailer or wholesaler is unable to get a registrant to recall and relabel these products, you should contact EPA's Registration Division (703–305–6250) for instructions on how to proceed with those products.

4. *Dormant products.* These are products where no quantity of the product has been produced and distributed after April 21, 1994, and for which registrants elected to defer labeling amendments. If there are products left in the channels of trade, they must not be sold or distributed after October 23, 1995. In this situation, the registrant has several options:

• Product-specific relabeling. Amend the product registration to include the WPS requirements and follow all requirements for relabeling with product-specific replacement labeling.

• Relabeling with non-WPS label. Amend the product registration to delete any WPS uses by either recalling and relabeling/repackaging or by conducting or providing a written authorization for relabeling of products at the product's location with the updated, non-WPS label.

• Generic labeling. Voluntarily cancel the registration and follow all requirements for orphaned or canceled products concerning relabeling with supplemental generic replacement labeling.

V. Deadline for Relabeling and Final Sale

By October 23, 1996, all products being distributed or sold must bear final printed, WPS-complying, replacement labeling that conforms to the requirements outlined in this policy statement. Supplemental product-specific replacement labeling will *not* be allowed after this date.

Retailers or wholesalers of orphan or canceled products may still use generic supplemental replacement labeling and "STOP stickers" in accordance with this policy statement after October 23, 1996.

VI. For Further Information and Assistance

If after reading this policy statement you have questions about what you must do to bring the labeling of any product you hold into compliance, you are encouraged to call the registrants of any such products for assistance. If further assistance is necessary, you may call EPA or any of its regional offices for assistance. The EPA headquarters number for assistance is (703) 305–6250. Additional information also may be obtained from the industry task force at 1–800–713–2291.

List of Subjects in Part 156

Environmental protection and Worker protection.

Dated: November 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

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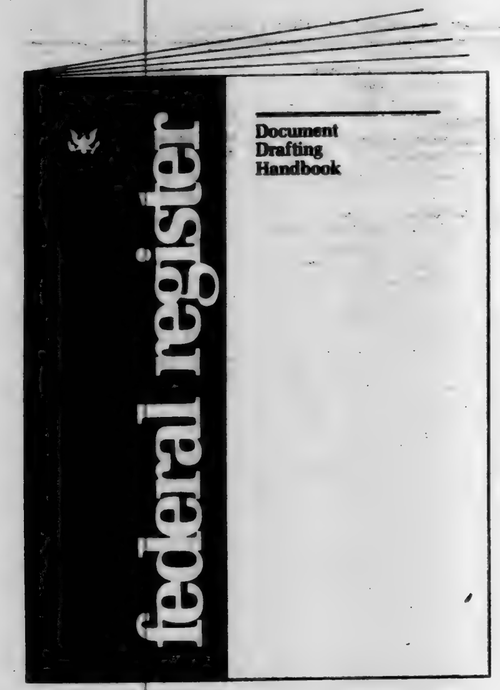
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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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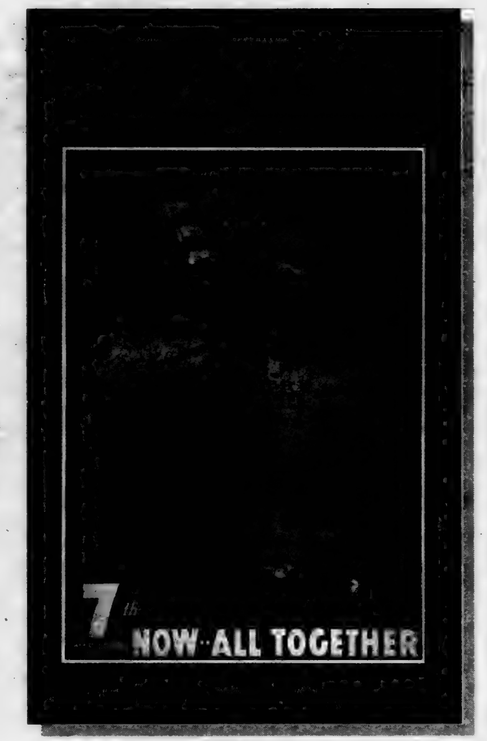
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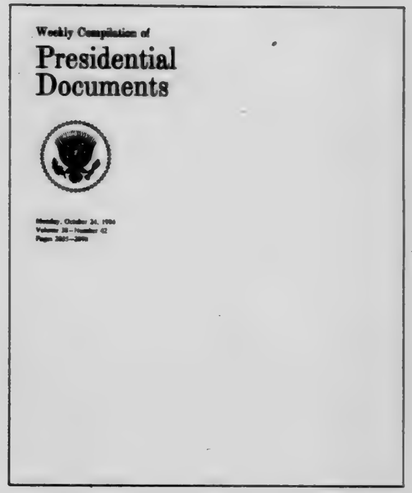
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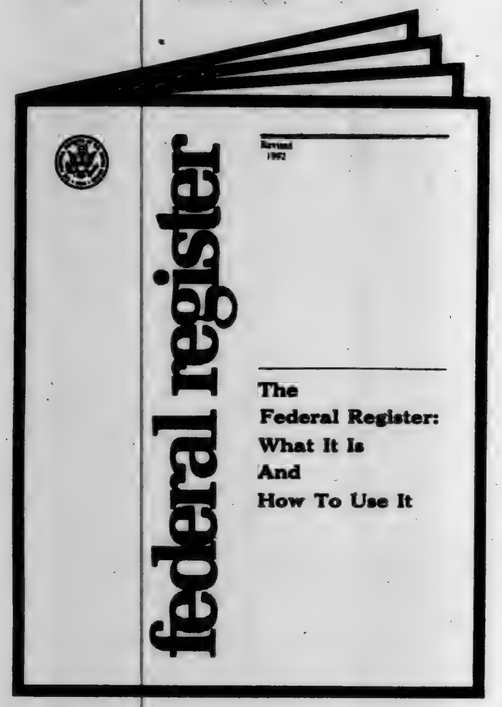
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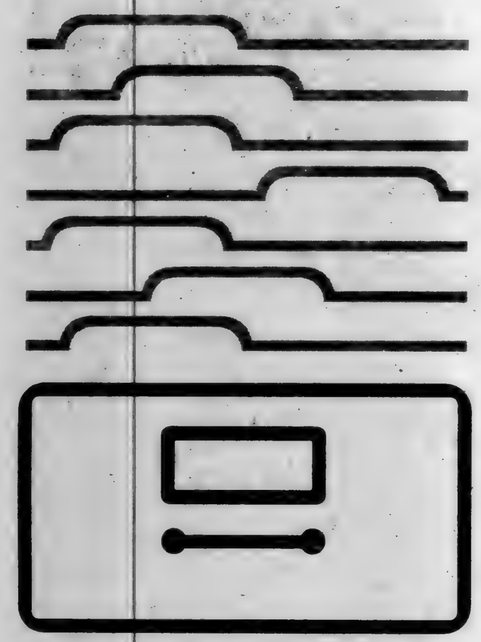
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Chapter VII

Commodity Credit Corporation

7 CFR Chapter XIV

RIN 0560–AE49

Agency Name Change

AGENCIES: Farm Service Agency and Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This document amends the regulations to change the name of the Consolidated Farm Service Agency to the Farm Service Agency as a result of the Department of Agriculture reorganization.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Linda A. Turner, Farm Service Agency, P.O. Box 2415, room 1501–S, Washington, DC 20013, telephone 202–690–1855.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture announced that the agency previously referred to as the Consolidated Farm Service Agency (CFSA) is to be named the Farm Service Agency (FSA). On November 8, 1995, USDA published in the **Federal Register** (60 FR 56392) a final rule which contained redelegations of authority for the Department of Agriculture and changed the name of CFSA to FSA. This rule includes amendments to 7 CFR chapters VII and XIV which are necessary to bring agency regulations into alignment with the departmental reorganization.

Accordingly, 7 CFR Chapters VII and XIV are amended as follows:

1. The heading of 7 CFR chapter VII is revised to read as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

2. In 7 CFR chapters VII and XIV, all references to "Consolidated Farm Service Agency" are revised to read "Farm Service Agency", and all references to "CFSA" are revised to read "FSA".

Signed at Washington, DC on December 8, 1995.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–30534 Filed 12–14–95; 8:45 am]
BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–95–008]

Sheep Promotion, Research, and Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; referendum order.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sheep and Wool Promotion, Research, Education, and Information Order (Order). The U.S. Department of Agriculture (Department) recently completed this process and issued an Order which will become effective if approved by sheep producers, sheep feeders, and importers of sheep and sheep products. Importers who only import raw wool are not eligible to participate in the referendum. This rule sets forth the procedures for conducting the initial referendum and the relevant referendum dates.

DATES: *Effective Date:* This final rule is effective December 15, 1995.

Referendum Dates: In-person voting in the referendum will be on February 6, 1996, at the county Cooperative Extension Service offices. Absentee ballots will be available at those offices from January 16, 1996, through January 26, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456, telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Sheep Promotion and Research Program: Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and request a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceeding in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this final action on small entities.

According to the January 27, 1995, issue of "Sheep and Goats," published

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by the Department's National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States that may be eligible to vote in the referendum. To obtain the estimated number of importers of sheep and sheep products who would be subject to an assessment and who may be eligible to vote in the referendum, the Department consulted with major importer organizations whose members import sheep and sheep products into the United States. Based on its consultations with these organizations, the Department estimates that the number of importers of sheep and sheep products in the United States who would be subject to these rules and regulations is approximately 9,000. Nearly all of the sheep operations in the United States and nearly all of the importers of sheep and sheep products would be classified as small entities by the Small Business Administration (13 CFR 121.601).

This action has also been reviewed under RFA (5 U.S.C. 601 *et seq.*). This final rule would establish procedures for the conduct of a referendum to determine whether an Order promulgated under the Act becomes operational. Such procedures would permit all eligible sheep producers, sheep feeders, and importers of sheep and sheep products, excluding importers who import only raw wool, who have been engaged in sheep production, sheep feeding, or the importation of sheep and sheep products to vote in the referendum. Participation in the referendum is voluntary. Votes may be cast either by mail ballots or in person at polling places. Casting votes by mail or in person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), OMB has approved the information collection requirements contained in this final rule. The control number assigned to the information collection requirements in Part 1280 by OMB pursuant to the Paperwork Reduction Act is OMB 0581–0093. The information collection required by this action and necessary to conduct a referendum includes the following:

(a) For in-person voting:

(1) Each sheep producer, sheep feeder, or importer of sheep and sheep products, except an importer who imports only raw wool, who votes in person in the referendum must sign the In-Person Voter Registration List (Form LS–61–3) and complete a Ballot (Form LS–61) at the county Cooperative Extension Service (CES) office of the Department. The voter must complete the ballot and insert it into the SHEEP BALLOT envelope (Form LS–61–1).

(2) Each producer, feeder, and importer must complete the Registration and Certification Form that is printed on the SHEEP REFERENDUM envelope (Form LS–61–2) and insert the SHEEP BALLOT envelope with the enclosed ballot in the SHEEP REFERENDUM envelope (Form LS–61–2). The estimated average time burden for completing the forms for in-person voting is 6 minutes per voter.

(b) For absentee voting: Each sheep producer, sheep feeder, and importer of sheep and sheep products, except an importer who imports only raw wool, who wants to cast an absentee vote instead of an in-person vote, must complete, in a legible manner, a combined registration/certification and absentee ballot form (Form LS–62). The voting producer, feeder, or importer must complete the registration/certification and absentee ballot form (Form LS–62), remove the ballot portion of the form, insert the ballot in a SHEEP BALLOT envelope (Form LS–61–1)(same as for in-person voting) and then insert the sealed SHEEP BALLOT envelope and the registration/certification form in the SHEEP REFERENDUM envelope (Form LS–62–1). The estimated average time burden for completing this procedure is 6 minutes per voter.

(c) The final rule requires each sheep producer, sheep feeder, or importer of sheep and sheep products who votes in person to record his or her name on the In-Person Voter Registration List (Form LS–61–3) and, if applicable, the name of the entity he or she represents. The estimated average time burden for registering to vote in person is 0.5 minutes per voter. For absentee voters, the county CES agent shall enter on the Absentee Voter Request List (Form LS–62–2) the date the ballot was requested, the voter's name and address, the name of the represented entity, if any, and the date the ballot was mailed from the county CES office. This information may be used to validate ballots and to challenge potentially-ineligible voters. Each county CES agent will fill out one or more of the Absentee Voter Request Lists (Form LS–62–2) per referendum. Because only county CES agents will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to the producer, feeder, or importer voting in the referendum.

Based on previous referendums conducted under the National Wool Act of 1954, the estimated number of producers, feeders, and importers who will vote in the referendum is 25,000, with each voting once.

Background

The Act (7 U.S.C. 7101–7111) provides for the establishment of a coordinated program of promotion, research, education, consumer information, industry information, and producer information designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets, and develop new markets and uses for sheep and sheep products.

The program will be funded by a mandatory assessment on domestic producers, feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers will be assessed 1-cent-per-pound on live sheep, the equivalent of 1-cent-per-pound of live sheep for sheep products as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep and sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessments may be adjusted in accordance with the applicable provisions of the Act.

The Act requires that a referendum be conducted after the issuance of the final Order to determine whether the Order will go into effect. The referendum would be conducted among persons who were sheep producers, sheep feeders, or importers of sheep and sheep products, during a representative period specified by the Secretary. Importers who import only raw wool are not eligible to participate in the referendum because raw wool is exempt from assessments under the Act. The Order would become operational only if it is approved by a majority of the producers, feeders, and importers voting in the referendum or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by persons voting in the referendum. If the Order is not approved by persons voting in the referendum, the program will not become operational. An Order was

published in the **Federal Register** on December 5, 1995 (60 FR 62298).

To vote in the referendum, eligible persons will complete the registration and certification form, mark their ballots and record their volume of production on the ballot if the volume of production is voted. The volume of production will be recorded as the number of live domestic sheep or live sheep equivalents that a person owned or imported during the representative period. The domestic volume of production includes the largest number of head of domestic sheep owned for any single consecutive 30-day period during the representative period. The number of live sheep equivalents for imported sheep products will be calculated based on the amount of such products imported during the representative period. Producers, feeders, and importers who also cast ballots based on volume of production must determine their volume of production before they register and vote in the referendum.

The Act specifies that the Secretary shall determine a method of allocating, by a pro rata percentage of annual projected or actual assessments from importers, the volume of production represented by importers in a referendum conducted pursuant to this subpart. Because an Order implementing the provisions of the Act has not been in effect, imported sheep and sheep products have not been subject to the assessments described in the proposed Order published June 2, 1995 (60 FR 28747). Consequently, there are no projected or actual annual assessments available to use in calculating the volume of production for importers during the representative period. In the absence of that information on annual assessments, the Department has decided that importers of sheep and sheep products will determine their volume of production by converting the volume of those imported products that would have been subject to assessment if an Order had been in effect during the representative period. Imported sheep, sheep meat, and wool and wool products that would have been subject to assessment during the representative period are identified by the Harmonized Tariff Schedule (HTS) classification numbers listed in Table 1—HTS Classification Numbers and Conversion Factors for Imported Sheep and Sheep Products—contained herein, which includes sheep, sheep meat, and wool and wool products. Because the Act exempts imported raw wool from assessments, HTS numbers and corresponding conversion factors are not included for imported raw wool. For the purpose of the initial referendum, importers will use the 1994 HTS classification numbers and conversion factors in Table 1. These HTS numbers for imported sheep and sheep products are published in the Harmonized Tariff Schedule of the United States. To enable importers to convert sheep meat and wool and wool products identified by the HTS numbers for 1994 listed in Table 1, the Department will use the conversion factors listed in the same table that correspond to each listed HTS number. The Department's Economic Research Service (ERS) has developed these conversion factors and maintains them in an import library. For sheep meat, these conversion factors take into account removal of bone, weight loss in processing or cooking, and nonsheep components of the sheep products. The conversion factors for wool products are used to determine the raw fiber content of imported wool products, and take into account fiber loss during processing, fabric trim loss, and cutting loss for wool and other nonsheep components of wool and wool products.

Factors in determining the number of live sheep equivalents include (1) the weight of the imported sheep meat, the weight of imported wool and wool products and the corresponding conversion factors, (2) the average carcass weight of 57 pounds for domestic mature sheep as published by the Department's National Agricultural Statistics Service in the March 1995 edition of the 1994 Livestock Slaughter Summary, (3) a dressing percentage of 50 percent, and (4) an equivalent live weight of 114 pounds for domestic mature sheep (57 lbs. ÷ 50% = 114 lbs.). The dressing percentage of 50 percent is widely recognized as the average dressing percentage for sheep in the United States. The formula for calculating importer volume of production for imported wool and wool products will use the listed conversion factors and a degreased wool yield of 52.8 percent, as published by ERS in the 1992 Weight, Measures, and Conversion Factors for Agricultural Commodities and Their Products, to convert degreased wool to a greasy wool basis. In the absence of official data for carcass weights, live weights, dressing percentages and wool yield percentages of sheep from importing countries, the Department has determined that the initially proposed carcass weight, the dressing percentage, the live weight, and the percentage of degreased wool yield, on the average, would be most representative of carcass weights, dressing percentages, live weights and degreased wool yield percentages of sheep from which imported sheep products are derived.

Imported live sheep require no conversion and each head of imported live sheep will be counted in determining the total volume of production for importers.

The calculation procedures for both imported sheep meat and imported wool and wool products are as follows:

Imported Sheep Meat

To calculate the live sheep equivalents of imported sheep meat, an importer would first multiply the total weight of imported sheep meat for each applicable HTS number by the corresponding conversion factor to determine the total carcass weight equivalent. The importer would then divide the total carcass weight equivalent by the average carcass weight of 57 pounds to determine the equivalent number of live sheep. Because the carcass weight of 57 pounds represents the equivalent live weight of 114 pounds (57 lbs. ÷ 50% = 114 lbs.), it is not necessary to convert the carcass weight to a live weight equivalent. The Department has determined that the number of live sheep equivalents should be rounded to the nearest whole number. If the decimal is 0.5 or greater, the number of head of sheep would be rounded upward (i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49 = 7.0). The following examples illustrate two typical calculations:

Examples I and II

1. Sheep Meat (Bone-in)
HTS 0204100000, Carcasses and half carcasses of lamb, fresh or chilled
Assume: Company X imports 1,000 pounds of bone-in sheep meat
Conversion factor: 1.00
Average carcass weight: 57 pounds
Calculation:

Pounds of sheep meat	1,000 lbs.
Conversion factor	× 1.00
Pounds of carcass weight equivalents.	1,000 lbs.
Average carcass weight	÷ 57 lbs.
Live sheep equivalents	= 17.5 or 18

2. Sheep Meat (Boneless)
HTS 0204232000, Other meat of sheep, fresh or chilled: Boneless: lamb
Assume: Company X imports 1,000 pounds of boneless sheep meat
Conversion factor: 1.52
Average carcass weight: 57 pounds
Calculation:

Pounds of sheep meat	1,000 lbs.
Conversion factor	× 1.52

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Pounds of carcass weight equivalents.	1,520 lbs.
Average carcass weight	÷57
Live sheep equivalents	= 26.7 or 27

Imported Wool and Wool Products

Because assessments of all imported products are based on weight and the referendum vote will include a volume consideration which, for domestic voters, will be based on live sheep, the Department has determined that the 114 pounds of mature sheep weight will be the live sheep equivalent for both imported sheep meat and imported wool. For purposes of the referendum, the domestic vote is based entirely on the number of live sheep with no regard for the wool. However, to provide an equitable voting basis for importers of wool and wool products, an amount of greasy wool equal in weight to a live mature sheep—114 pounds—was established as a —live sheep equivalent— for importers of wool and wool products.

To calculate the number of live sheep equivalents of imported wool products, the importer would first multiply the total weight of imported wool products for each applicable HTS number by the corresponding conversion factor to determine the total weight of degreased wool. The importer would then divide the total weight of the degreased wool equivalent by 52.8 percent, to convert the degreased wool to a greasy wool basis. Finally, the importer would divide the total pounds of greasy wool by the calculated average live weight of 114 pounds to determine the number of live sheep equivalents. The Department has determined that the number of live sheep equivalents should be rounded to the nearest whole number. If the decimal is 0.5 or greater, the number of head of sheep would be rounded upward (i.e., 7.5=8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49=7.0). The following example illustrates a typical calculation:

Example III

HTS 6201110010, Mens or boys overcoats of wool or fine animal hair

Assume: Company X imports 1,000 overcoats weighing 2,000 pounds into the United States.

Conversion factor: 0.9774

Calculation:

Weight of imported product ..	2,000 lbs.
Conversion factor	×0.9774
Pounds of greasy wool	1,954.8 lbs.
Degreased wool yield	÷52.8%
Pounds of degreased wool	3,702.3 lbs.
Equivalent live weight	÷114 lbs.
Number of live sheep equivalents.	=32.5 or 33

The HTS numbers, the conversion factors, and other information used to calculate number of live sheep equivalents apply only to the initial referendum described herein.

The 1994 HTS classification numbers and conversion factors for imported sheep and sheep products and wool and wool products that importers will use in determining their volume of production are as follows:

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS

HTS	CF
Live Sheep:	
0104100000	1.00
Sheep Meat:	
0204100000	1.00
0204210000	1.00
0204222000	1.00
0204224000	1.00
0204232000	1.52
0204234000	1.52
0204300000	1.00
0204410000	1.00
0204422000	1.00
0204424000	1.00
0204432000	1.52
0204434000	1.52
Wool and Wool Products	
5007106030	0.5315
5007906030	0.5315
5103100000	1.0417
5103200000	1.0417
5105100000	1.0309
5105210000	1.1111
5105290000	1.1111
5106100010	1.0417
5106100090	1.0417
5106200000	0.5208
5107100000	1.0417
5107200000	0.5208
5109102000	1.0417
5109902000	1.0417
5111112000	1.0629
5111113000	1.0629
5111117030	1.0629
5111117060	1.0629
5111191000	1.0629
5111192000	1.0629
5111196020	0.5315
5111196040	0.5315
5111196060	1.0629
5111196080	1.0629
5111200500	0.5315
5111201000	0.5315
5111209000	0.5315
5111300500	0.5315
5111301000	0.5315
5111309000	0.5315
5111903000	0.5315
5111904000	0.7972
5111905000	0.5315
5111906000	0.7972
5111909000	0.7972
5112110030	0.5315
5112110060	0.9566
5112111000	0.9566
5112112030	1.0629
5112112060	0.9566
5112192000	1.0629
5112199010	1.0629
5112199020	1.0629
5112199030	1.0629
5112199040	1.0629
5112199050	1.0629
5112199060	1.0629
5112201000	0.5315
5112202000	0.5315
5112203000	0.5315
5112301000	0.5315
5112302000	0.5315
5112303000	0.5315
5112903000	0.6378
5112904000	0.7972
5112905000	0.7972
5112909010	0.5315
5112909090	0.5315
5212111010	0.4783
5212111020	0.4783
5212116010	0.2126
5212121010	0.4783
5212121020	0.4783
5212126010	0.2126
5212131010	0.4783
5212131020	0.4783
5212136010	0.2126
5212141010	0.4783
5212141020	0.4783
5212146010	0.2126
5212151010	0.4783
5212151020	0.4783
5212156010	0.2126
5212211010	0.4783
5212211020	0.4783
5212216010	0.2126
5212221010	0.4783
5212221020	0.4783
5212226010	0.2126
5212231010	0.4783
5212231020	0.4783
5212236010	0.2126
5212241010	0.4783
5212241020	0.4783
5212246010	0.2126
5212251010	0.4783
5212251020	0.4783
5212256010	0.2126
5309212000	0.5315
5309292000	0.5315
5311002000	0.2126
5407910510	0.4783
5407910520	0.4783
5407911000	0.2126
5407920510	0.4783
5407920520	0.4783
5407921010	0.2126
5407921020	0.2126
5407930510	0.4783
5407930520	0.4783
5407931000	0.2126
5407940510	0.4783
5407940520	0.4783
5407941000	0.2126

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5408310510	0.4783
5408310520	0.4783
5408311000	0.2126
5408320510	0.4783
5408320520	0.4783
5408321000	0.2126
5408330510	0.4783
5408330520	0.4783
5408331000	0.2126
5408340510	0.4783
5408340520	0.4783
5408341000	0.2126
5509520000	0.3646
5509610000	0.1563
5509910000	0.3646
5510200000	0.3646
5515130510	0.4783
5515130520	0.4783
5515131010	0.2126
5515131020	0.2126
5515220510	0.4783
5515220520	0.4783
5515221000	0.2126
5515920510	0.4783
5515920520	0.4783
5515921010	0.2126
5515921020	0.2126
5516310510	0.4783
5516310520	0.4783
5516311000	0.2126
5516320510	0.4783
5516320520	0.4783
5516321000	0.2126
5516330510	0.4783
5516330520	0.4783
5516331000	0.2126
5516340510	0.4783
5516340520	0.4783
5516341000	0.2126
5601290020	0.9035
5602109010	1.0629
5602109090	0.5315
5602210000	1.0629
5602903000	0.2657
5603001010	1.0629
5701101300	0.9479
5701101600	0.9479
5702101000	1.0156
5702109010	1.0156
5702311000	0.7708
5702312000	0.6563
5702411000	0.6979
5702412000	0.5729
5702512000	0.9531
5702514000	0.9010
5702912000	0.9531
5702913000	0.9531
5702914000	0.9010
5703100000	0.6313
5704100010	0.2630
5704900010	0.2630
5705002010	0.6313
5801100000	1.0629
5801902090	1.0629
5802300020	1.0629
5803901100	1.0629
5803901200	1.0629
5805001000	0.5315
5805002000	1.0629
5805002500	1.0629

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5806103020	1.0629
5806391000	1.0629
5810990010	1.0629
5811001000	0.5315
5903203010	0.5315
5903903010	1.0629
6001290000	1.0851
6002209000	1.0851
6002410000	1.0851
6002490000	1.0851
6002910000	1.0094
6101100000	0.5047
6101301500	0.5678
6101900020	1.0094
6102100000	0.5047
6102301000	0.5678
6102900010	0.8439
6103110000	0.4823
6103121000	0.1808
6103122000	0.4823
6103191000	0.2411
6103191500	0.1206
6103194010	0.1206
6103194020	0.1206
6103194030	0.4823
6103194040	0.1206
6103194050	0.0603
6103194060	0.2411
6103194080	0.9645
6103210010	0.8439
6103210020	0.9645
6103210030	0.9645
6103210050	0.9645
6103210060	0.9645
6103210070	0.4823
6103230005	0.4823
6103230007	0.4823
6103230010	0.3167
6103230025	0.4823
6103230030	0.4823
6103230035	0.5425
6103292060	0.1206
6103292066	0.1206
6103292068	0.9864
6103310000	0.4932
6103331000	0.1233
6103332000	0.4932
6103391000	0.5549
6103392020	0.8256
6103411010	0.8256
6103411020	0.8256
6103412000	0.4718
6103431010	0.4718
6103431020	0.4718
6103432010	0.4823
6103491010	0.5425
6103493012	0.6028
6103493036	0.8631
6103493060	0.4932
6104110000	0.1233
6104131000	0.4932
6104132000	0.1233
6104191000	0.5549
6104191500	0.8439
6104192050	0.8439
6104210010	0.9645
6104210030	0.9645
6104210040	0.8439
6104210060	
6104210070	

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6104210080	0.9645
6104230010	0.4823
6104230014	0.4823
6104230016	0.4823
6104230020	0.4823
6104230022	0.4823
6104230024	0.4823
6104230026	0.1206
6104230030	0.1206
6104230040	0.1206
6104230042	0.1206
6104291010	0.1206
6104291020	0.1206
6104291060	0.1206
6104291070	0.1206
6104292012	0.5425
6104292024	0.5425
6104292036	0.5425
6104292051	0.5425
6104292067	0.1206
6104292073	0.1206
6104292075	0.5425
6104292083	0.8631
6104310000	0.4932
6104331000	0.1233
6104332000	0.1233
6104391000	0.5549
6104392020	0.9645
6104410010	0.9645
6104410020	0.4823
6104431010	0.4823
6104431020	0.1206
6104432010	0.1206
6104432020	0.4823
6104441000	0.1206
6104442010	0.1206
6104442020	0.5425
6104490020	0.9978
6104531000	0.4989
6104532010	0.1247
6104532020	0.1247
6104591005	0.4989
6104591030	0.1247
6104591060	0.1247
6104592020	0.5612
6104610010	0.8256
6104610020	0.8256
6104610030	0.8256
6104631510	0.4718
6104631520	0.4718
6104692005	0.4823
6104693012	0.5425
6104693024	0.5425
6105201000	0.4617
6105901000	0.8080
6105903020	0.5194
6106201010	0.4617
6106201020	0.4617
6106901010	0.8080
6106901020	0.8080
6106902020	0.4040
6106903020	0.4040
6107190020	0.7077
6107292000	0.8256
6107992000	0.8256
6108391000	0.8167
6108992000	0.8167
6109901510	0.8080
6109901520	0.8080

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TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6109901530	0.8080
6109901540	0.8080
6109902035	0.5772
6110101010	1.2330
6110101020	1.2330
6110101030	1.2330
6110101040	1.2330
6110101050	1.2330
6110101060	1.2330
6110102010	0.8631
6110102020	0.8631
6110102030	0.8631
6110102040	0.8631
6110102050	0.8631
6110102060	0.8631
6110102070	0.8631
6110102080	0.8631
6110301510	0.4932
6110301520	0.4932
6110301530	0.4932
6110301540	0.4932
6110301550	0.4932
6110301560	0.4932
6110303005	0.1850
6110303010	0.1850
6110303015	0.1850
6110303020	0.1850
6110303025	0.1850
6110303030	0.1850
6110303035	0.1850
6110303040	0.1850
6110303045	0.1850
6110303050	0.1850
6110303055	0.1850
6110900012	0.5549
6110900028	0.5549
6110900048	0.5549
6110900050	0.5549
6110900072	0.5549
6110900074	0.5549
6111100010	1.0615
6111100030	1.0615
6112202020	0.8631
6114100020	0.8439
6114100040	0.8439
6114100050	0.8439
6114100060	0.8439
6114100070	0.8439
6114302030	0.4823
6114303012	0.6028
6114303042	0.4823
6114303052	0.4823
6114900050	0.5425
6115190020	1.0651
6115910000	0.8681
6115931010	0.4340
6115932010	0.4340
6115991410	0.4340
6115991810	0.4340
6116109040	0.0800
6116910000	0.9137
6116936400	0.4569
6116937400	0.4569
6116938800	0.1713
6116939400	0.1713
6116998020	0.4569
6116998030	0.3427
6117101000	1.0280
6117102010	0.4569
6117106020	0.2284
6117200019	1.1422
6117200070	0.1713
6117800019	0.9747
6117800025	0.5711
6117800070	0.1713
6117900013	1.1422
6117900023	1.1422
6117900033	1.1422
6117900043	1.1422
6117900055	1.1422
6201110010	0.9774
6201110020	0.9774
6201122010	0.0611
6201122020	0.0611
6201133010	0.4398
6201133020	0.4398
6201134015	0.0489
6201134020	0.0489
6201134030	0.0977
6201134040	0.0977
6201190020	0.5498
6201911000	0.9554
6201912011	0.9554
6201912021	0.9554
6201932511	0.5374
6201932521	0.5374
6201990021	0.5374
6202110010	0.8455
6202110020	0.8455
6202122010	0.0604
6202122020	0.0604
6202133010	0.5562
6202133020	0.5562
6202134005	0.0618
6202134010	0.0618
6202134020	0.1236
6202134030	0.1236
6202190020	0.5562
6202911000	0.9663
6202912011	0.9663
6202912021	0.9663
6202934011	0.5435
6202934021	0.5435
6202990021	0.5435
6203111000	0.6039
6203112000	0.6039
6203121000	0.5435
6203192000	0.5435
6203194040	0.5435
6203210010	0.8455
6203210015	0.8455
6203210020	0.8455
6203210030	0.8455
6203210060	0.8455
6203230010	0.5435
6203230015	0.5435
6203230020	0.5435
6203230030	0.5435
6203230040	0.5435
6203310000	0.5435
6203331010	0.5435
6203331020	0.4831
6203391000	0.5435
6203394020	0.5435
6203411010	0.9448
6203411020	0.9448
6203411030	0.8858
6203412000	1.1810
6203433010	0.5199
6203433020	0.5199
6203433030	0.5199
6203493025	0.5199
6204110000	0.9059
6204131000	0.5435
6204132010	0.1812
6204132020	0.1812
6204191000	0.5435
6204192000	0.1812
6204193050	0.5435
6204210010	0.8455
6204210030	0.8455
6204210040	0.8455
6204210060	0.8455
6204210070	0.8455
6204230015	0.5435
6204230020	0.5435
6204230025	0.5435
6204294012	0.5435
6204294024	0.5435
6204294036	0.5435
6204294072	0.5435
6204294084	0.5435
6204312010	1.0267
6204312020	1.0267
6204332000	0.0604
6204334010	0.4831
6204334020	0.4831
6204335010	0.0604
6204335020	0.0604
6204392010	0.4831
6204392020	0.4831
6204393010	0.0604
6204393020	0.0604
6204398020	0.5549
6204398030	0.1850
6204411000	0.6496
6204412010	1.0039
6204412020	1.0039
6204433010	0.4724
6204433020	0.4724
6204434010	0.4724
6204434020	0.4724
6204434030	0.2953
6204434040	0.2953
6204443010	0.4831
6204443020	0.4831
6204444010	0.4831
6204444020	0.4831
6204495020	0.5435
6204495030	0.1812
6204510010	0.9888
6204510020	0.9888
6204532010	0.4944
6204532020	0.4944
6204592010	0.4944
6204592020	0.4944
6204593010	0.4944
6204593020	0.4944
6204594020	0.5562
6204594030	0.1845
6204610010	0.9243
6204610020	0.9243
6204610030	0.9243
6204610040	0.9243
6204632510	0.4621
6204632520	0.4621
6204692010	0.4621
6204692020	0.4621
6204692030	0.4621
6204693020	0.5199
6204699020	0.5199
6204699030	0.1733
6204699050	0.1733
6205101000	1.1554
6205102010	0.9243
6205102020	0.9243
6205301510	0.4621
6205301520	0.4621
6205902020	0.5777
6205902050	0.0578
6206904020	0.5777
6206904040	0.1155
6206100020	0.5777
6206100050	0.0578
6206201000	1.1554
6206202010	0.6932
6206202020	0.6932
6206203010	0.9243
6206203020	0.9243
6206402510	0.5199
6206402520	0.5199
6206900020	0.5199
6206900030	0.1733
6207290010	0.8572
6207922010	0.5315
6207992000	0.8267
6207994000	0.8267
6208290012	0.9243
6208920010	0.0591
6208920020	0.0591
6208920030	0.0591
6208920040	0.0591
6208992010	0.9448
6208992020	0.9448
6209100000	0.7915
6211202020	0.8455
6211203020	0.8455
6211204030	0.8455
6211205020	0.8455
6211206020	0.8455
6211207030	0.8455
6211310010	0.9059
6211310020	0.9059
6211310030	0.9059
6211310040	0.9059
6211310045	0.9059
6211310051	0.9059
6211330052	0.6039
6211410010	0.9663
6211410020	0.9663
6211410030	0.9663
6211410040	0.9059
6211410050	0.9663
6211410055	0.9663
6211410061	0.9663
6211430064	0.6039
6211430074	0.6039
6212900020	0.7161
6214102000	0.3357
6214200000	0.8951
6214300000	0.1119
6214400000	0.1119
6214900010	0.5559
6215900010	1.1189
6216005410	0.5035
6216005810	0.5035
6216008000	1.1189
6217100020	0.8267
6217100030	0.1181
6217900005	0.8267
6217900010	0.1181
6217900030	0.8267
6217900035	0.1161
6217900055	0.8267
6217900060	0.1181
6217900080	0.8267
6217900085	0.1181
6301200010	0.9219
6301200020	0.9219
6301900030	0.1085
6302390010	0.9219
6304193040	0.8677
6304910050	0.7592
6304991000	1.0846
6304991500	1.0846
6304994000	1.0846
6304996010	1.0846
6501009000	1.3424
6503009000	1.3424
6505903030	0.9965
6505903045	0.5530
6505903090	0.6470
6505904030	0.8297
6505904045	0.4881
6505904090	0.8297
6505906040	0.4429

The Act also requires the Secretary to hold additional referendums if so requested by a representative group comprised of 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, were engaged in the production, feeding, importation, or processing of sheep or sheep products. In any such referendum, if the continuation of the Order is not approved by a majority of producers, feeders, and importers voting in the referendum, or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by the persons voting in the referendum, the Secretary will suspend or terminate the Order. While the proposed rule indicated that the rules would also apply to any additional referendum conducted pursuant to the Act, it has been determined that these rules would apply only to the initial referendum and that rules for additional referendums would be published as necessary. This conforms to recent changes to other research and promotion programs.

The Act specifies that the initial referendum be conducted on a date and location established by the Secretary, under a procedure by which sheep producers, sheep feeders, and importers of sheep and sheep products intending to vote in the referendum shall certify that they were engaged in sheep production, sheep feeding, or importation of sheep and sheep products during the representative period and, on the same day, would vote in the referendum. In addition, the Act provides that the Secretary must provide absentee ballots on request made either in person or by mail. The initial referendum will be conducted at county CES offices. The CES of the Department will coordinate with State and county CES offices concerning their roles in conducting the initial referendum.

The final rule sets forth procedures to be followed in conducting the referendum under the Act, including definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. The Farm Service Agency (FSA) of the Department will assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

On August 8, 1995, AMS published in the **Federal Register** (60 FR 40313) a proposed rule that set forth procedures to be followed in conducting the referendum under the Act. The proposed rule included provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. It also proposed that the initial referendum be conducted at the county CES offices and that FSA, formerly the Agricultural Stabilization and Conservation Service of the Department, assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

The proposed rule was published (60 FR 40313, August 8, 1995) with a request for comments to be submitted by September 7, 1995. The Department received 26 written comments concerning the proposed referendum procedures from individual sheep producers and sheep feeders, as well as producer, feeder, and importer organizations and universities. Twenty-three written comments were filed on time and three comments were filed after the comment period closed. The late comments generally expressed the same views as the timely comments which are responded to herein. The commenters generally supported the proposed rule with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of the

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substantive changes made by the Department upon review of the proposed procedures for the conduct of the referendum. Also, the Department has made other minor changes of a nonsubstantive nature for purposes of clarity and accuracy. For the reader's convenience, the discussion is organized by the topic headings of the proposed rule.

Definitions

Section 1280.621 Raw Wool

Twenty commenters suggested that the definition of "raw wool" should include wooltop, noils of wool, and wool waste. The Department finds that wooltop, noils of wool, and wool waste result from the processing of raw wool as defined in the Act and that to expand the definition would not be consistent with the intent of the Act. Accordingly, this suggestion is not adopted in the final rule.

Section 1280.624 Representative Period

Twenty-one commenters suggested that the representative period should be the 1995 calendar year. The Department has determined that the representative period should be the 12 consecutive months of calendar year 1994 to ensure that importers have ample opportunity to calculate their "volume of production" prior to casting a ballot. This is particularly true for those persons voting absentee. Accordingly, this suggestion is not adopted.

Section 1280.631 Volume of Production

Four commenters suggested that the importer's volume of production should be based on imports for a single consecutive 30-day period within the 12-month representative period, because domestic production is based on a 30-day period. The commenters were concerned that basing importer's volume of production on imports for an entire year would provide importers with an advantage over domestic producers. The Department finds that basing importer's volume of production on import volume for a calendar year is consistent with § 6(c)(4) of the Act. Accordingly, this suggestion is not adopted.

One commenter suggested that lambs younger than 6 months of age should be counted toward a producer's or feeder's volume of production total because all imported sheep products are used to calculate importers' live animal equivalents for the 12-month representative period. The Department determined that this suggestion has merit because all sheep and lambs in the inventory are subject to sale during a calendar year and many are marketed at less than 6 months of age. Accordingly, this suggestion is adopted and we have amended § 1280.631, Volume of Production, to reflect this change.

One commenter questioned whether domestic producers would be required to use a conversion factor to determine domestic volume of production. The Department has determined that domestic volume of production would be based on the number of live sheep owned continuously during a single period of at least 30 days during calendar year 1994, and located in the United States. Accordingly, no conversion factors are necessary for domestic producers or feeders. Two commenters suggested that the Department review the definition of volume of production and revise it to include an actual head count to establish volume of production. The commenter believed this would more accurately reflect the annual flock size of each producer. The Department reviewed this definition and determined that the basis for establishing volume of production is consistent with the intent of the Act. Accordingly, this suggestion is not adopted.

Referendum

Section 1280.650 General

One commenter asked whether two-thirds of the production represented by those persons voting in the referendum, or whether 51 percent of the simple majority vote could approve or defeat the Order. The Act provides that the final Order will become effective if it is approved by either a simple majority of the producers, feeders, and importers voting in the referendum or by those voting who account for at least two-thirds of the production represented by persons voting in the referendum.

One commenter suggested that the simple majority vote and the eligibility requirements that allow any sheep owner to participate in the referendum could mean that a disproportionately high number of hobby sheep owners will participate in the referendum and might lead to the adoption of an Order commercial producers, feeders, and importers are not in favor of it. The Act provides that each person who markets sheep and sheep products is subject to the assessment provisions of the Act. Therefore, all persons who are required to pay an assessment would be entitled to vote in the referendum regardless of the number of sheep they owned. Accordingly, this suggestion is not adopted.

One commenter suggested that the Order should not become operative unless the Secretary finds that at least 40 percent of those eligible to vote have participated in the referendum and that: (1) 65 percent of those voting cast votes in favor of implementation of the Order, and those so voting own the majority of the total quantity of sheep and sheep products in the preceding year owned by all who voted in the referendum, and (2) a majority of those who voted in favor of implementation of the Order, and those so voting owned 65 percent or more of the total quantity of sheep and sheep products in the preceding year owned by all who voted in the referendum. The Act provides that all persons who were engaged in the production, feeding, or importation of sheep or sheep products will be eligible to vote and that each person may cast a vote. Additionally, the Act provides that for the Order to become effective, it has to be approved by either a simple majority of the producers, feeders, and importers voting in the referendum or by those voting who account for at least two-thirds of the production represented by those persons voting in the referendum. Accordingly, this suggestion is not adopted.

Section 1280.652 Eligibility

Twenty-four commenters suggested either that no person under the age of 18 should be allowed to vote or that there should be some age limitation on eligibility to vote in the referendum. The Department finds that any person who is subject to the assessment should be entitled to vote. Accordingly, this suggestion is not adopted.

Nineteen commenters asked if producers who also qualify as feeders could vote once as a producer and once as a feeder. Section 1280.652 of the rule specifically states that each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. The intent is that there is only one vote per individual or legal entity. Thus, an individual who is both a producer and a feeder would have only one vote unless the individual represents more than one legal entity.

One commenter suggested that a person who collects a wool incentive check should be the only person eligible to vote. The Act specifically designates and establishes the requirements of those persons who are eligible to vote in the referendum. Receiving a wool incentive check under the National Wool Act of 1954 is not a requirement of eligibility to vote in the referendum. The Department believes that each person who is subject to the assessment should be entitled to cast a vote. Accordingly, this suggestion is not adopted.

One commenter asked why a person who owned only one sheep for any single consecutive 30-day period in 1994 should have the same voting privileges as a producer who makes his or her living in the sheep business. If the Order is approved in referendum, all sales of domestic sheep and greasy wool will be subject to the assessment under the Order. Thus, the Department finds that any person subject to the assessment should be entitled to vote.

One commenter questioned whether the American producers want importers of sheep and sheep products voting in the referendum. The Act specifies that producers, feeders, and importers, except importers of raw wool, who were engaged in the production, feeding, or importation of sheep and sheep products during the representative period will be eligible to vote.

Two commenters suggested that all votes should be based on the actual volume of production (i.e., one sheep equals one vote). The Act clearly provides for approval of the Order based on a simple majority vote of participants or a two-thirds majority of the production represented by those voting in the referendum. Accordingly, this suggestion is not adopted.

One commenter suggested that voter eligibility needed to be clarified, but did not suggest any particular language. The Department has determined that any person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is eligible to vote and shall be entitled to cast one ballot in the referendum.

Section 1280.655 Registration Form and Ballot.

The Department, after further review of this section, determined that the last sentence in this section beginning with "The ballot * * *" and ending with "* * * volume of production," should be deleted because it duplicates the fourth sentence in this section and thus is not necessary. Accordingly, the last sentence is deleted from this final rule.

Additionally, the Department is clarifying this section to make it clear that producers, feeders, and importers will enter their volume of production on the ballot, only if they intend to also cast their ballot based on their volume of production. Accordingly, we have amended § 1280,655 to reflect this clarification.

Section 1280.656 Registration and Voting.

One commenter suggested that a signature should not be required to request an absentee ballot. The rule does not require a signature, but it is the Department's intent that the request for an absentee ballot be made only by persons who are eligible to vote. It is the Department's expectation that nearly all written requests will be signed. No change in the final rule is required to accommodate this suggestion. The same commenter recommended that requests for an absentee ballot via electronic mail (e-mail) system be accepted. Since e-mail is available at many locations, using this method of communication would likely facilitate requests for absentee ballots for e-mail users in those offices that can receive e-mail. Any requests for absentee ballots by e-mail would be subject to the same conditions that apply to absentee ballots requested by mail or in person. Accordingly, this suggestion is adopted.

Additional Comments

One commenter suggested that the Department use the 63 pound average carcass weight for lambs and yearlings rather than the 57 pound average carcass weight for mature sheep to convert imported sheep meat to a live animal equivalent. The Department finds that the average carcass weight for imported lambs is widely recognized as being less than the average carcass weight of domestically slaughtered lambs and yearlings. Therefore, in the absence of definitive imported carcass weights and dressing percents, the Department believes that the 57 pound mature sheep weight as officially published in 1994 Livestock Slaughter Summary in March of 1995 more nearly reflects the average carcass weight of imported lamb and should be used for the purpose of calculating import volume of production for this initial referendum. Accordingly, this suggestion is not adopted.

Twenty commenters asked which base number the Department would use if a request or petition were made by a representative group comprised of 10 percent or more of the producers, feeders, and importers to conduct a subsequent referendum. The Department would use the most recent officially published Government data available at the time the request is made.

One commenter suggested that the conversion factors for wool products that account for fiber loss during production, fabric trim loss, and cutting loss be clarified to account only for the loss that is not recoverable and cannot be recycled back through the processing system at some point in the future. After discussions with the Department's Economic Research Service (ERS), the Department believes that these suggestions should be considered in any future revisions of the conversion factors that ERS may publish as an import library and maintained and updated. The conversion factors that account for fiber lost during processing are currently established by ERS based on consultation with major wool manufacturers. The Department does not intend to propose any changes to the most recent published conversion factors for the purpose of this initial referendum. Accordingly, this suggestion is not adopted.

Three commenters suggested that the proposed method of converting the weight of wool represented by wool product imports is inherently incorrect in that it (1) uses conversion factors developed for sheep and sheep products, (2) assumes that they translate equally to wool and wool products, and (3) will significantly understate the contribution of wool product imports. The commenters further suggested that the greasy wool equivalent weight of wool products should be determined by fleece weight for both the U.S. producers and importers rather than the live sheep weight for importers and the fleece weight for domestic producers. Additionally, the commenters suggested that the common denominator for determining live sheep equivalents for wool and wool products should be the average weight of greasy wool fleece. Finally, the commenters suggested that the Department use 7.7 pounds of greasy wool per head as published by the Department's National Agricultural Statistics Service in the March 29, 1995, issue of "Wool and Mohair" to calculate the number of live animal equivalents rather than the 114 pound of live weight as proposed by the Department. The Department reviewed these comments carefully and determined that since domestic volume of production is based on the number of live animals and not on wool production that a live weight which more nearly reflects the live weight of imported sheep would be used to calculate the number of live sheep equivalents for both imported sheep meat and wool products. Accordingly, this suggestion is not adopted.

Two commenters suggested that the Department review the conversion factors to ensure that conversion factors are consistent. ERS maintains these conversion factors as an import library, reviews these factors periodically, and

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makes changes whenever new or additional information is available. At this time the Department does not anticipate changes in the conversion factors for the purposes of the vote. Nevertheless, we welcome all information regarding conversion factors with the goal of adding to our knowledge of fiber contents for all wool and wool products.

Three commenters suggested that the Department initiate a fact finding process to identify importers eligible to vote in the referendum to ensure that all importers identified are adequately notified of the referendum. Additionally, one commenter suggested that voting instructions and absentee ballots be mailed to all importers. The Department believes that producers, feeders, and importers will have ample opportunity to learn of the referendum through industry organizations, newspapers, industry publications, **Federal Register**, and other news service resources. The Department will make information concerning the referendum available to a variety of news outlets, including outlets recommended by importers. An absentee voting period will be announced when the in person voting date is announced. Producers, feeders, and importers will request an absentee ballot from the county CES office and mail or personally deliver the absentee ballot to the county CES office where the absentee ballot was requested. Accordingly, we have not adopted these suggestions as proposed.

One commenter requested that the Department permanently establish, through regulatory promulgation, HTS numbers subject to assessment as part of this proposed rule. The Department published in the October 3, 1995, **Federal Register** (60 FR 51737) for public comment implementing rules and regulations, which include HTS classification numbers subject to assessment. Thus, the commenters' proposal has already been proposed in another rulemaking.

One commenter suggested that AMS should use information available from the U.S. Customs Service to calculate the volume vote for each importer in the referendum rather than requiring importers to make this calculation. The Department believes that this information should be readily available to importer businesses through normal recordkeeping processes. Accordingly this suggestion is not adopted.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. An Order which will be the subject of a referendum vote was published in the December 5, 1995, **Federal Register** (60 FR 62298). For the program to become operational, the Order must be approved by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the initial referendum. In order to conduct a referendum in a timely manner, this rule should be made effective as soon as possible. Further, interested persons were afforded a 30 day comment period on the proposed referendum rule, and no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether an Order will become effective if approved by those eligible persons voting in the referendum. In-person voting in the referendum will be on February 6, 1996, at the county Cooperative Extension Service offices. Absentee ballots will be available at those offices from January 16, 1996, through January 26, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

In summary, this final rule adopts provisions of the August 8, 1995 proposed rule with the changes discussed herein and with other minor changes made for purposes of clarity and accuracy.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1280 is added to Chapter XI to read as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Procedures for the Conduct of Referendum

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Authority: 7 U.S.C. 7101–7111.

Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1280.601 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law 103–407; 108 Statute 4210; as approved October 22, 1994, and any amendments thereto.

§ 1280.602 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1280.603 Carbonized wool.

The term *Carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.604 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as "FSA," means the Farm Service Agency of the Department.

§ 1280.605 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as the "FSA County Committee or COC," means the group of persons within a county elected to act as the FSA County Committee or COC.

§ 1280.606 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred as the "FSA County Executive Director," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the county FSA office, or the person acting in such capacity.

§ 1280.607 Cooperative Extension Service.

The term *Cooperative Extension Service*, also referred to as "CES" means the State partner in the Cooperative Extension Service system.

§ 1280.608 Cooperative Extension Service Agent.

The term *Cooperative Extension Servioe Agent*, also referred to as the "CES Agent," means an employee of the Cooperative Extension Service.

§ 1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.

The term *Cooperative Extension Service of the U.S. Department of Agriculture*, also referred to as "CES," means the Federal component of the Cooperative Extension Service.

§ 1280.610 Degreased wool.

The term *Degreased wool* means wool from which the bulk of impurities has been removed by processing.

§ 1280.611 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1280.612 Deputy Administrator.

The term *Deputy Administrator* means the Deputy Administrator for Program Delivery and Field Operations, FSA, U.S. Department of Agriculture or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Deputy Administrator's stead.

§ 1280.613 Feeder.

The term *Feeder* means a person who feeds lambs until the lambs reach slaughter weight.

§ 1280.614 Greasy wool.

The term *Greasy wool* means wool that has not been washed or otherwise cleaned.

§ 1280.615 Importer.

The term *Importer* means any person who imports sheep and sheep products into the United States.

§ 1280.616 Order.

The term *Order* means the Sheep and Wool Promotion, Research, Education, and Information Order.

§ 1280.617 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.618 Producer.

The term *Producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.619 Public notice.

The term *Public notice* means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county FSA offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1280.620 Pulled wool.

The term *Pulled wool* means wool that is pulled from the skin of slaughtered sheep.

§ 1280.621 Raw wool.

The term *Raw wool* means greasy wool, pulled wool, degreased wool, or other carbonized wool.

§ 1280.622 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act where producers, feeders, and importers of sheep and sheep products, except an importer of only raw wool, shall be given the opportunity to vote.

§ 1280.623 Registration period.

The term *Registration period* means a 1 day period to be announced by the Secretary for registration of producers, feeders, and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1280.624 Representative period.

The term *Representative period* means 12 consecutive months of calendar year 1994.

§ 1280.625 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1280.626 Sheep.

The term *Sheep* means ovine animals of any age, including lambs.

§ 1280.627 Sheep products.

The term *Sheep products* means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

§ 1280.628 State.

The term *State* means each of the 50 States.

§ 1280.629 Unit.

The term *Unit* means each State, group of States, or class designation that is represented on the Board.

§ 1280.630 United States.

The term *United States* means the 50 States and the District of Columbia.

§ 1280.631 Volume of production

The term *volume of production* means the largest number of head of domestic sheep that a domestic sheep producer or sheep feeder entity continuously owned and that were located in the United States during any single consecutive 30-day period during the representative period. The term "volume of production" also means the number of head of imported live sheep or the number of live sheep equivalents that an importer imported into the United States during the representative period, excluding imported raw wool.

§ 1280.632 Voting period.

The term *Voting period* means a 1-day period to be announced by the Secretary for voting in the referendum.

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§ 1280.633 Wool.

The term *Wool* means the fiber from the fleece of a sheep.

§ 1280.634 Wool products.

The term *Wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

Referendum

§ 1280.650 General.

(a) A referendum to determine whether eligible sheep producers, sheep feeders, and importers of sheep and sheep products approve the Order. Importers who only import raw wool are not eligible to vote in the referendum.

(b) The Order shall become operational only if the Secretary determines that the Order is approved by a majority of sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum or by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum who account for at least two-thirds of the production represented by those voting in the referendum.

(c) The initial referendum shall be conducted at the county CES offices.

(d) The FSA of the Department shall assist in the conduct of the initial referendum.

§ 1280.651 Supervision of referendum.

The Administrator shall be responsible for conducting the referendum in accordance with this subpart.

§ 1280.652 Eligibility.

(a) Eligible producers, feeders, and importers. Each person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is entitled to register and vote in the referendum. Each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. Importers who only import raw wool are not eligible to register and vote in the referendum.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer, feeder, or importer, or any guardian, administrator, executor, or trustee of a producer's, feeder's, or importer's estate, or an authorized representative of any eligible producer, feeder, or importer entity (other than an individual producer, feeder, or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any producer, feeder, or importer entity shall certify that he or she is authorized by such entity to take such action.

(c) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in sheep production, sheep feeding, or the importation of sheep and sheep products as a producer, feeder, or importer entity, shall be entitled to only one vote, provided, however, that any member of a group may register to vote as a producer, feeder, or importer if he or she is an eligible producer, feeder, or importer separate from the group.

§ 1280.653 Time and place of registration and voting.

The referendum shall be held for one day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1280.656. Except for absentee ballots, registration and voting shall take place during the normal business hours of each county CES office.

§ 1280.654 Facilities for registering and voting.

Each county CES office shall provide:

(a) adequate facilities and space to permit producers, feeders, and importers to register and to mark their ballots in secret,

(b) a sealed box or other suitable receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(c) copies of the Order for review.

§ 1280.655 Registration form and ballot.

A ballot (Form LS–61) and a registration and certification form (Form LS–61–2) shall be used for voting in person. The information required on the registration and certification form includes name, address, telephone number, and county of voter residence. The form also contains the certification statement referenced in § 1280.656(a)(1). The ballot requires producers, feeders and importers to check a "yes" or "no" and provides space to record volume of production. If a producer, feeder, or importer wishes to cast their ballot based on their volume of production, the voter must record their volume of production in the space provided on the ballot. A combined registration/certification and ballot form (Form LS–62) shall be used for absentee voting. The information required on the combined registration/certification and ballot form includes name, address, telephone number, and county of voter residence. Form LS–62 also contains the certification statement referenced in § 1280.656(b)(1) and the absentee ballot.

§ 1280.656 Registration and voting procedures.

(a) Registering and voting in-person.

(1) Each producer, feeder, and importer, except importers who import only raw wool, who wants to vote in a referendum shall register on the day of voting at the county CES office in which the producer's, feeder's, or importer's residence is located, or at the county CES office that serves the county in which the producer's, feeder's, or importer's residence is located. Producer, feeder, or importer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located, or at the county CES office that serves the county in which the entities' headquarters office or business is located. Producers, feeders, and importers will be required to record on the in-person voter registration list (Form LS–61–3) their names and, if applicable, the name of the entity they represent before they receive a registration and certification form and ballot. To register, producers, feeders, or importers shall complete the registration and certification form (Form LS–61–2) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period;

(ii) the person voting on behalf of an entity referred to in § 1280.652 is authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(2) Each eligible producer, feeder, or importer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1280.653 and on a date to be announced by the Secretary. Eligible persons who record their name and the entity they represent on the in-person voter registration list (Form LS–61–3) will receive a registration and certification form (Form LS–61–2) and a ballot (Form LS–61). Voting shall be conducted under the supervision of the county CES agent or designee. Voters will enter the information requested on the registration and certification form (Form LS–61–2) as indicated above. Producers, feeders, and importers will then mark their ballots to indicate "yes" or "no" and if voting volume of production record their volume of production in the space provided on the ballot. Voters shall place their completed ballots in an envelope marked "SHEEP BALLOT," (Form LS–61–1) seal and place it in the completed and signed registration and certification form/envelope marked "SHEEP REFERENDUM," (Form LS–61–2) seal that envelope and personally place it in a box marked "Ballot Box" or other suitable receptacle. A copy of the applicable in-person voter registration list (Form LS–61–3) prepared by the county CES office shall be provided to each FSA county office for in-person voter verification.

(b) Absentee voting. (1) Eligible producers, feeders, and importers who are unable to vote in person may request a combined registration/certification and absentee ballot form (Form LS–62) and two envelopes—one marked "SHEEP BALLOT" (Form LS–61–1) and the other marked "SHEEP REFERENDUM" (LS–62–1), by mail or in person from the county CES office in the county in which they reside or the county CES office that serves the county in which they reside, if individuals, or in which their main office is located, if a corporation or other entity. These forms and envelopes will be mailed by the county CES agent or designee to the address provided by the prospective voter. Only one absentee registration/certification form and absentee ballot will be provided to each eligible producer, feeder, or importer. The forms must be requested during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–62–2) the name, address and entity requesting an absentee ballot and the date the forms were requested. A copy of the applicable absentee voter request list (Form LS–62–2) prepared by the county CES office shall be provided to each FSA county office for absentee voter verification.

(2) To register, eligible producers, feeders, and importers must complete and sign the combined registration/certification form and absentee ballot (Form LS–62) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period,

(ii) if voting on behalf of an entity referred to in § 1280.652; they are authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(3) A producer, feeder, or importer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration/certification and absentee ballot form (Form LS–62) and seal the completed ballot in a separate envelope marked "SHEEP BALLOT" (Form LS–61–1) and place the sealed envelope in a second envelope marked "SHEEP REFERENDUM" (Form LS–62–1) along with the signed registration form. Producers, feeders, and importers shall legibly print their names on the envelope marked "SHEEP REFERENDUM" (Form LS–62–1), and mail or hand deliver it to the local county CES office of the county in which they reside or the county CES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or hand delivered to the county CES office in the county in which its main office is located or the county CES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county CES office by the close of business, 2 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "SHEEP REFERENDUM" envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened in a secure ballot box. The county CES agent or designee shall record receipt of the absentee vote on the absentee voter request list (Form LS–62–2).

(5) A person who casts an absentee ballot that is not recorded as being received or that is received after the deadline specified in this section may vote in person at the appropriate county CES office on the day of the referendum.

§ 1280.657 List of registered voters.

The in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the FSA county office. They shall be posted during regular office hours in a conspicuous public location at the FSA county office on the second business day following the date of the referendum.

§ 1280.658 Challenge of voters.

(a) Challenge period. On the day of the referendum, the names of voters challenged shall be reported to the CES county agent, who will refer them to the FSA county office. After that, the names of the challenged voters shall be referred directly to the FSA county office. A challenge may be made no later than the close of business on the second business day after the date of the referendum.

(b) Who may challenge. Any person may challenge a voter. Any person who wants to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge of a voter must be made separately and each challenge must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) Determination of challenges. The FSA County Committee or its representative, acting on behalf of the Administrator, shall make a determination concerning the challenge and shall notify challenged producers, feeders, or importers as soon as practicable, but no later than five business days after the date of the referendum. If the FSA County Committee or its representative, acting on behalf of the Administrator, is unable to determine whether a person was a producer, feeder, or importer during the representative period, or verify a voter's recorded volume of production, it may require the person challenged to submit records such as sales documents, import documents, or other similar documents in order to demonstrate his or her eligibility or to prove that the person was a producer, feeder, or importer during the representative period and to verify that the recorded volume of production was accurately stated.

(d) Challenged ballot. The registration and certification form (Form LS–61–2) containing the ballots cast by producers, feeders, or importers voting in person who are challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. The SHEEP REFERENDUM envelopes (Form LS–62–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers, feeders, and importers. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative is not appealed within the time allowed for appeal or there has been a determination by FSA after an appeal.

(e) Appeal. A person declared to be ineligible to register and vote or whose recorded volume of production has been questioned by the FSA County Committee or its designee, acting on behalf of the Administrator, may file an appeal at the FSA county office within three business days after notification of such decision. Such person may be required to provide documentation such as sales documents, import documents, or similar documents in order to demonstrate his or her eligibility or

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verify the recorded volume of production. An appeal shall be determined by the FSA County Committee, or its designee, acting on behalf of the Administrator, as soon as practicable, but in all cases not later than the ninth business day after the date of the referendum. The FSA County Committee or its designee's determination on an appeal is final.

§ 1280.659 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) it was cast in person in the county CES office prior to the close of business on the day of the referendum; or

(b) it was cast as an absentee ballot, and was received in the county CES office not later than two business days before the date of the referendum.

§ 1280.660 Canvassing ballots.

(a) Counting the ballots. The county CES agent or designee shall deliver the sealed ballot box, the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to the FSA county office by the close of business on the first business day following the date of the referendum. FSA county Executive Director and the county CES agent or designee shall check the registration forms and ballots of all voters against the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to determine properly registered voters. The ballots of producers, feeders, and importers voting in person whose names are not on the in-person voter registration list (Form LS–61–3), shall be declared invalid. Likewise, the ballots of producers, feeders, and importers voting absentee whose names are not on the absentee voter request list (Form LS–62–2) shall be declared invalid. All ballots of challenged voters declared ineligible or invalid shall be kept separate from the other ballots and shall not be counted as valid ballots. The valid ballots shall be counted on the tenth business day after the referendum date. FSA county office employees shall remove the "SHEEP BALLOT" envelope from the registration/certification form envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. After removing all "Sheep Ballot" envelopes, FSA county employees shall open them and count the ballots. The ballots shall be counted as follows:

(1) Number of eligible producers, feeders, and importers casting valid ballots;

(2) Number of producers, feeders, and importers favoring the Order;

(3) Number of producers, feeders, and importers not approving the Order;

(4) Volume of production recorded by producers, feeders, and importers approving the Order;

(5) Volume of production of producers, feeders, and importers not approving the Order;

(6) Number of challenged ballots;

(7) Number of challenged ballots deemed ineligible;

(8) Number of invalid ballots; and

(9) Number of spoiled ballots.

(b) Invalid Ballots. Ballots shall be declared invalid if a producer, feeder, or importer voting in-person has failed to sign the voter registration list (Form LS–61–3) or an absentee voter's name is not recorded on the absentee voter request list (Form LS–62–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) Spoiled Ballots. Ballots shall be considered spoiled if they are mutilated or marked in such a way that the "yes" or "no" vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) Confidentiality. All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

§ 1280.661 FSA county office report.

The FSA county office shall notify the FSA State office of the results of the referendum. Each FSA county office shall transmit the results of the referendum in its county to the FSA State office. Such report shall include the information listed in § 1280.660(a). The results of the referendum in each county may be made available to the public upon notification from the Deputy Administrator FSA that the final results have been released by the Secretary. A copy of the report of results shall be posted for 30 days in the FSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1280.662 FSA State office report.

Each FSA State office shall transmit to the Deputy Administrator, FSA, a written summary of the results of the referendum received from all the FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State, and shall be certified by the FSA State Executive Director. The FSA State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months beginning upon notification from the Deputy Administrator, FSA, that the final results have been released by the Secretary.

§ 1280.663 Results of the referendum.

(a) The Deputy Administrator, FSA, shall submit the results of the referendum to the Administrator. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons as may be designated by the Deputy Administrator, FSA, or the Secretary.

§ 1280.664 Disposition of ballots and records.

Each FSA county Executive Director shall place in sealed containers marked with the identification of the referendum the in-person voter registration list, absentee voter request list, voted ballots, challenged registration/certification forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the FSA county Executive Director for a period of not less than twelve months after the referendum. If no notice to the contrary is received from the Deputy Administrator, FSA, by the end of such time, the records shall be destroyed.

§ 1280.665 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: December 8, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–30491 Filed 12–14–95; 8:45 am]

BILLING CODE 3410–2–P

Rural Utilities Service

7 CFR Part 1755

RUS General Specification for Digital, Stored Program Controlled Central Office Equipment (Form 522)

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends the RUS General Specification for Digital, Stored Program Controlled Central Office Equipment by eliminating the requirement for multiparty service and certain other technical aspects associated with this service. This amendment does not diminish public telephone service integrity.

EFFECTIVE DATE: This regulation is effective on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, U.S. Department of Agriculture, Rural Utilities Service, room 2836–S, Washington, DC 20250–1500, telephone (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes to the General Specification for Digital, Stored Program Controlled Central Office Equipment in this final rule are updates which have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0059. Comments concerning these requirements should be directed to the United States Department of Agriculture, Clearance Office, OIRM, room 404–W, Washington, DC 20250 or to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

RUS makes loans and loan guarantees to telephone systems to provide and improve telecommunications service in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, (RE Act). RUS issues construction standards and specifications for materials and equipment. In accordance with the RUS loan contract, these standards and specifications apply to facilities constructed by RUS telephone borrowers. The Rural Electrification Loan Restructuring Act of 1993 (RELRA) (107 Stat. 1356) contemplates elimination of multiparty service by telephone companies receiving RUS loans. This final rule eliminates the requirement in 7 CFR 1755.522 for multiparty service along with features which are associated with that service such as revertive calling and multifrequency ringing.

Public comments regarding the proposed rule were received from AT&T and the United States Telephone Association. These comments were taken into consideration in preparing the final rule.

1. *Comment.* One commenter stated that although there was no issue to be taken with the proposed rule as it stands, much of the remainder of RUS Form 522 is counter to the STMP requirements. The commenter recommended that all antiquated requirements be eliminated and an additional requirement be added which limits future funding by RUS to products which demonstrate available technology supporting STMP regulations.

Response. RUS disagrees that the Form 522 is counter to the State Telecommunications Modernization Plan requirements. Form 522 is, and has always been, intended as a basic specification. Traditionally, RUS has left development of specifications for advanced telecommunication features to other sources within the telecommunications industry. RUS believes that the industry has provided, and will continue to provide, appropriate specifications for the necessary advanced features.

2. *Comment.* One commenter commended RUS for proposing the elimination of the multiparty requirement and recommended that RUS conduct a review of all its regulations in order to identify and rescind all obsolete requirements.

Response. RUS continuously reviews and updates regulations to keep them as technologically current as possible.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

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PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1755.522 is amended by revising paragraphs (e)(5), (e)(6), (e)(7), (e)(11), and (e)(19)(vii), removing paragraph (f)(1)(ii), redesignating paragraph (f)(1)(iii) as paragraph (f)(1)(ii), removing paragraphs (g)(2)(ii), (g)(2)(iii) and (g)(8), redesignating paragraphs (g)(2)(iv) through (g)(2)(xv) as paragraphs (g)(2)(ii) through (g)(2)(xiii), and paragraphs (g)(9) through (g)(12) as paragraphs (g)(8) through (g)(11), revising paragraph (i)(2)(ix) and the text preceding the table in paragraph (p)(1)(vi), amending paragraph (p)(3)(i) by removing the entry "Revertive" from the table, removing paragraph (r)(6), redesignating paragraphs (r)(7) and (r)(8) as paragraphs (r)(6) and (r)(7), and revising paragraph (s)(5)(ii)(A), the text preceeding the table in paragraph (s)(5)(ii)(C), and paragraph (s)(6)(ii) to read as follows:

§ 1755.522 RUS general specification for digital, stored program controlled central office equipment.

* * * * *

(e) * * *

(5) The basic switching system shall include the provision of software programming and necessary hardware, including memory, for optional custom calling services such as call waiting, call forwarding, three-way calling, and abbreviated dialing. It shall be possible to provide these services to any individual line (single-party) subscriber. The addition of these services shall not reduce the anticipated ultimate engineered line, trunk, and traffic capacity of the switching system as specified in appendix A of this section.

(6) The requirements in this specification apply only to single party lines. Although only single frequency ringing is required, other types may be requested in appendix A of this section.

(7) Provision shall be made for local automatic message accounting (LAMA), and for traffic service position system (TSPS) trunks, or equivalent, to the operator's office when required either initially or in the future.

* * * * *

(11) Provision shall be made for hotel-motel arrangements, as required by the owner, to permit the operation of message registers at the subscriber's premises to record local outdial calls by guests (see Item 10.5, appendix A of this section).

* * * * *

(19) * * *

(vii) If the 911 service bureau is holding a calling line, it shall be possible for the 911 line to cause the equipment to ring back the calling line. This is done by providing a flash of on-hook signal from the 911 line lasting from 200 to 1,100 milliseconds. The signal to the calling line shall be ringing current if the line is on-hook, or receiver off-hook (ROH) tone if the line is off-hook.

* * * * *

(i) * * *

(2) * * *

(ix) Distinctive tone, when required for alarm calls, or other features, shall consist of high tone interrupted at 200 IPM with tone on 150 ms and off 150 ms.

* * * * *

(p) * * *

(1) * * *

(vi) The traffic capacity in the following table should be used for small trunk groups such as pay station, special service trunks, intercept, and PBX trunks, unless otherwise specified in appendix A of this section:

* * * * *

(s) * * *

(5) * * *

(ii) * * *

(A) The ringing generators shall have an output voltage which approximates a sine wave and, as a minimum, shall be suitable for ringing straight-line ringers. Although not a requirement for RUS listing, decimonic, synchromonic, or harmonic ringing may also be specified in appendix A of this section.

* * * * *

(C) The output of each generator shall have three or more voltage taps or a single tap with associated variable control. Taps or control shall be easily accessible as installed in the field. Software control of ringing generator outputs via I/O devices may be provided in lieu of taps. The taps, or equivalent, shall be designated L, M, and H. The variable control shall have a locking device to prevent accidental readjustment. The outputs at the terminals of the generators with a voltage input of 52.1 volts and rated full resistive load shall be as follows for the ringing frequencies provided:

* * * * *

(6) * * *

(ii) The ringing cycle provided by the interrupter equipment shall not exceed 6 seconds in length. The ringing period shall be 2 seconds.

* * * * *

3. Appendix A to 7 CFR 1755.522 is amended by revising items 6., 7., and 10. to read as follows:

Appendix A to 7 CFR 1755.522—Specification for Digital, Stored Program Controlled Central Office Equipment Detailed Requirements (Host)

* * * * *

6. Line Circuit Requirements (Includes all lines associated with RST's.)

6.1 *Types of Lines*

	No. of lines		No. of EAS areas	Total No. of lines required
	Local service only	both local and EAS service		
6.1.1 Individual—Flat Rate				
6.1.2 Individual—Message Rate				
6.1.3 Pay Station				
6.1.4 Telephone Company Official Lines				
6.1.5 Wire Chief				
6.1.6 911 Emergency Service Bureau Lines				
6.1.7 Number Hunting PBX Groups:				

No. of lines in group	No. of groups	Direct in dial*	Restricted service at COE	Type		No. of lines		No. of EAS areas	Total No. of lines required
				Ground start	Loop start	Local service only	Both local and EAS service		

*Furnish translation information under Item 5.

6.1.8 WATS Lines (Give details in Appendix A, Item 16)
Number of Inward WATS Lines _____
Number of Outward WATS Lines _____
6.1.9 Special Lines Required _____
(Explain in Item 16, Appendix A)
6.1.10 Total Number of Lines Required
Host _____ (Incl. DDI Concentrator Lines)
RST 1 _____
RST 2 _____
RST 3 _____
Total _____
6.1.11 Total Director Numbers Required
_____
(Including RST's) (see Item 7.1, Appendix A)
6.1.12 Pay Station
Type _____
New ___ Reused ___
(Describe in Item 16, Appendix A)
6.1.13 Line Concentrator
6.1.13.1 Supplied by Owner (see Item 16, Appendix A, for details)
___ Yes ___ No
6.1.13.2 Supplied by Bidder (If "Yes", attach REA Form 397g, Performance Specification for Line Concentrators)
___ Yes ___ No

6.2. *Data on Lines Required Range Extension*

6.2.1 Number of non-pay station lines having a loop resistance, including the telephone set, as follows:

	No. of lines
1901–3200 ohms	
3201–3600 ohms	

6.2.2 Number of pay station lines having loop resistance, excluding the telephone set, greater than:

	No. of lines
1200 ohms (For Prepay)	
1000 ohms (For Semi-Postpay Operation).	

6.2.3 Range extension equipment is to be provided:
6.2.3.1 Loop Extenders: Total Quantity _____
By Bidder—Quantity _____
By Owner—Quantity _____
(Explain in Item 16, Appendix A)
6.2.3.2 VF Repeaters: Total Quantity _____
By Bidder—Quantity _____
(Bidder must have information on loading and cable size.)
By Owner—Quantity _____
(Explain in Item 16, Appendix A)
6.2.3.3 Range extension may be furnished as an extended range line circuit at the option of the supplier. If this option is used, the quantities of loop extenders and VF repeaters will be different from the quantities listed above (see Item 6.1.a, Appendix C).
___ Yes ___ No

7. Traffic Data-Line Originating and Terminating Traffic

7.1 Originating Line Traffic—Estimated per Busy Hour (Includes all Lines Associated With RST's):

	(a) CCS per Main Station	(b) No. of Main Stations	(axb) Total CCS	No. of Lines Required[1]
Ind.—Res				
Ind.—Bus				
Special Lines				
Pay Station				
Telco Official				
Wire Chief	[2]	[3]		
No. Htg. or PBX				
WATS				
Data Service				
911 Emerg. Service				[4]
Total		(c)	(d)	(e)

[1] See Appendix A, Item 6.1.
[2] This figure is the CCS per PBX trunk.
[3] This figure is the number of PBX trunks.
[4] This is the total number of line equipments required. The number to be provided will be determined by the equipment design of the system of the selected bidder. See Appendix C, Item 3.1.1.2.

7.2 Average Originating CCS per Line per Busy Hour
(d)/(e)=____/ ____= ____ CCS/Line
This office shall be engineered to handle an initial average originating busy hour traffic of ____ CCS per line. It is anticipated that the average originating busy hour traffic will increase to ____ CCS per line.
Originating Traffic Attributed to Host Only ____ CCS/Line
7.3 Terminating Traffic—Estimated CCS per Busy Hour
It is assumed that the total CCS for terminating traffic is the same as for originating traffic. Since digital switch networks are on a terminal per line basis, the terminating CCS per line will be the same as the originating CCS per line as shown in Item 7.2, Appendix A.
Terminating Traffic Attributed to Host Only ____ CCS/Line
7.4 Percent of Pushbutton Lines ____
7.5 Anticipated Ultimate Capacity (20 years)

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7.5.1 Subscriber Lines
Host _____ (Incl. DDI Concentrator Lines)
RST 1 _____
RST 2 _____
RST 3 _____
Total _____

* * * * *

10. Miscellaneous Operating Features

10.1 *Busy Verification*
10.1.1 By dedicated trunk from toll operator: ____
10.1.1.1 One-Way, inward ____
10.1.1.2 Two-Way (Busy verification inward, intercept outward) ____
10.1.2 By prefix digit over intertoll trunk ____
(Indicate digit(s) dialed) ____
10.1.3 Access by Switchman
10.1.3.1 Dedicated Trunk ____
10.1.3.2 Multiple of Operator Trunk ____
10.2 *Intercept Facilities*
10.2.1 Vacant code, disconnected number, and unassigned number intercept shall be: (Check One)
By recorded announcement:
Without cut-through to operator ____
With cut-through to operator ____
By operator ____
10.2.2 Changed number intercept shall be: (Check One)
By recorded announcement:
Without cut-through to operator ____
With cut-through to operator ____
By operator ____
By automatic intercept system (AIS) in distant office ____
10.2.3 Method of Reaching Operator, if required:
Separate trunk group ____
Regular interoffice toll trunks with idle trunk selecting over at least three trunks when three or more toll trunks are equipped ____
10.2.4 Number of separate intercept trunk circuits ____
10.3 *Line Load Control*
10.3.1 Line load control facilities are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.4 *Service Observing Facilities*
10.4.1 Service observing facilities are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.5 *Hotel-Motel Arrangements*
10.5.1 Hotel-motel arrangements for operation of message registers at the subscriber's premises are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.5.1.1 How are message registers to be activated?
Line Reversal ____
Third Wire ____
Other ____
(Explain in Item 16, Appendix A)
10.6 *Nailed-Up Connections*
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.7 *Vertical Services:* (RST Lines are Included)

	Initially	*Ultimate*
10.7.1 Call Waiting—No. of Lines	_____	_____
10.7.2 Call Forwarding—No. of Lines	_____	_____
____Local ____Remote	_____	_____
(Explain in Item 16, Appendix A).		
10.7.3 Abbreviated Dialing No. of Lines		
No. of Codes per Line ____for ____Lines	_____	_____
No. of Codes per Line ____for ____Lines		
10.7.4 Three-Way Calling—No. of Lines	_____	_____
CCS Per Line	_____	_____

10.7.5 Other ____
(Explain in Item 16, Appendix A)

* * * * *

Appendix B to 7 CFR 1755.522—[Amended]

4. Appendix B to 7 CFR 1755.522 is amended by removing items 1.2 and 1.3 and redesignating items 1.4 through 1.9 as items 1.2 through 1.7, respectively.

5. Appendix C to 7 CFR 1755.522 is amended by revising item 3.1.3.1 to read as follows:

Appendix C to 7 CFR 1755.522—Specifications for Digital, Stored Program Controlled Central Office Equipment Detailed Requirements—Bidder Supplied Information

* * * * *

3.1.3.1 The number of directory numbers provided shall be based on the total directory numbers required (Item 6.1.11, appendix A), as modified by the memory increment of the proposed system.

* * * * *

Dated: October 30, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–27395 Filed 12–14–95; 8:45 am]

BILLING CODE 3410–15–P–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

[Docket No. EE–RM–94–401]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing a rule finalizing amendments to the regulations for the Weatherization Assistance Program for Low-Income Persons that changed the formula used to distribute funds among the States under the Program.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–532, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 426–1698.

SUPPLEMENTARY INFORMATION: DOE issued an interim final rule on June 5, 1995 (60 FR 29469) that amended the formula used to distribute funds among the States under the Weatherization Assistance Program. Those changes were based on direction in the Conference Report on the Department of Interior and Related Agencies Appropriations Act of 1995 which accompanied Public Law 103–332. DOE received no comments on the interim final rule. Accordingly, the interim final rule is adopted as a final rule without change.

List of Subjects in 10 CFR Part 440

Definitions and allocation of funds.

Issued in Washington, DC on December 8, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

10 CFR Part 440—Weatherization Assistance Program for Low-Income Persons

Under the authority of 42 U.S.C. 6861–6871 and 42 U.S.C. 7191, the interim final rule amending 10 CFR Part 440, which was published on June 5, 1995 (60 FR 29469), is adopted as a final rule without change.

[FR Doc. 95–30591 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–112; Special Conditions No. 25–ANM–108]]

Special Conditions: Gulfstream Aerospace Corporation, Model Gulfstream V, High Altitude Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; correction.

SUMMARY: In the October 17, 1995, issue of the **Federal Register**, the Federal Aviation Administration (FAA) published final special conditions No. 25–ANM–108 for the Gulfstream Aerospace Corporation, Model Gulfstream V airplane (High Altitude Operations). The special conditions as published contain two errors; an incorrect paragraph reference, and a mistype made by the **Federal Register**. This document corrects those errors.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald Lakin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–1187.

Adoption of the Correction

Special Conditions No 25–ANM–108, published in the **Federal Register** on October 17, 1995 (60 FR 53691) is corrected as follows:

On page 53691, column 3, under "Novel or Unusual Design Features," paragraph 4, second sentence, remove "grown" and substitute "growth" in its place.

On page 53693, column 3, under "4 Pressurization," subparagraph (c), remove the reference to "paragraphs d.1. and d.2." and substitute "paragraph 4(a) and 4(b)" in its place.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–30552 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–75–AD; Amendment 39–9450; AD 95–25–05]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A airplanes, that requires an inspection to verify if the securing rivet is installed on the rod end of the control push rods of the spoiler flight control system, an inspection to verify if the jam nut is secure on the opposite end of the rod end, and repair of any discrepancy. This amendment is prompted by a report of loss of roll control on the co-pilot's control wheel shortly after takeoff due to a rivet missing from the control push rod. The actions specified by this AD are intended to ensure that the push rod rivets are installed. Missing control push rod rivets could result in the disengagement of the push rod end from the push rod tube; this could lead to loss of roll control and subsequent reduced controllability of the airplane after takeoff.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes was published in the **Federal Register** on August 10, 1995 (60 FR 40782). That action proposed to require a one-time detailed visual inspection to verify if the securing rivet is installed on the push rods of the spoiler flight control system. That action also proposed to require an inspection to verify if the jam nut is secure on the opposite rod end, and repair of any discrepancy.

No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 96 Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $35,040, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

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"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-25-05 Beech Aircraft Corporation: Amendment 39-9450. Docket 95-NM-75-AD.

Applicability: Model 400A airplanes, serial numbers RK-1 through RK-96 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane after takeoff, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to verify if the securing rivet is installed on the control push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite rod end, in accordance with Beechcraft Safety Communique 400A-113, dated March 1995. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with Beechcraft Safety Communique 400A-113, dated March 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register , 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30533 Filed 12-14-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-NM-76-AD; Amendment 39-9451; AD 95-25-06]

Airworthiness Directives; Beech Model 400, 400A, and 400T (Military T-1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400, 400A, and 400T (military T-1A) airplanes, that requires modification of the standby instrument lighting system. This amendment is prompted by a report that, due to the design of the standby instrument lighting system, the lighting for the standby instruments dimmed to an unacceptable level when the main electrical power was turned off. The actions specified by this AD are intended to ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of fire or smoke in the cockpit.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harvey Nero, Aerospace Engineer, Systems and Propulsion Branch, ACE-116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4137; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400, 400A, and 400T (military T-1A) airplanes was published in the **Federal Register** on August 28, 1995 (60 FR 44450). That action proposed to require modification of the standby instrument lighting system.

No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 189 Model 400, and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 189 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of the required parts will range from $21 to as much as $471 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $72,009 (or $381 per airplane) and $157,059 (or $831 per airplane).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-25-06 Beech Aircraft Corporation: Amendment 39-9451. Docket 95-NM-76-AD.

Applicability: Model 400 airplanes, serial number RJ-61; 400A airplanes, serial numbers RK-1 through RK-80 inclusive; and 400T (military T-1A) airplanes, serial numbers TT-1 through TT-108 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of a fire or smoke in the cockpit, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, modify the standby instrument lighting system in accordance with Beechcraft Service Bulletin 2563, dated February 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Beechcraft Service Bulletin 2563, dated February 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30532 Filed 12-14-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-NM-07-AD; Amendment 39-9445; AD 95-25-01]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires various modifications and terminating actions for the passenger door, and repair, if necessary. This amendment requires additional inspections, and replacement of certain parts, if necessary. This amendment also provides for optional terminating action for certain inspections. This amendment is prompted by reports of excessive gaps between lockout cams and crank stops, which resulted in broken power assist triggers. The actions specified by this AD are intended to prevent broken power assist triggers, which could result in an inoperative door opening system during an emergency evacuation.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA),

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Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–07–09, amendment 39–6951 (56 FR 12111, March 22, 1991), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on April 3, 1995 (60 FR 16815). The action proposed to continue to require various inspections and modifications of certain mechanisms of the passenger doors, and replacement of certain parts, if necessary. Additionally, that action proposed to require repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn triggers, and replacement, if necessary; repetitive measurements of the clearance between the lockout cam and the crank stop; and replacement of the lockout cams, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters request that the FAA include a provision for optional terminating action for the requirement to inspect the emergency power assist triggers, as specified in paragraph (d) of the proposal. One commenter states that repetitive actions should only be necessary if there is significant evidence that doors inspected/rectified in accordance with the alert service bulletin deteriorate with time. This commenter points out that paragraph I.D. of the alert service bulletin (that is referenced in the proposal as the appropriate source of service information) indicates that once the door is rigged correctly, the inspections can be discontinued. A second commenter states that Boeing has indicated that modification of the subject lockout mechanism would terminate the proposed repetitive inspections.

The FAA does not concur. Although the Boeing alert service bulletin would allow termination of the repetitive inspections of the power assist trigger if the lockout cam is within specified measurements, the FAA finds that the requirement to repetitively inspect the emergency power assist triggers, as required by paragraph (d) of the final rule cannot be terminated. Failure of the lockout cam is not the only possible failure mode that could result in failure of the emergency power assist trigger, e.g., the power assist trigger function could fail in the event of a door mis-sequencing while being opened.

Two commenters request that the FAA include a provision for optional terminating action for the requirement to repetitively measure the clearance between the lockout cam and the crank stop, as specified in paragraph (e), of the proposal. One of the commenters, Boeing, clarifies that the intent of the alert service bulletin is to specify that no further action is necessary if the clearance between the lockout cam and crank stop is within specified limits and the emergency power assist trigger is not damaged or cracked. Boeing indicates that a phrase stating that "if the clearance is within limits, no more work is necessary" was omitted inadvertently from paragraph I.D. of the alert service bulletin. Boeing adds that no further incidents of failure of the emergency power assist triggers have been reported. Therefore, Boeing recommends that the FAA revise paragraphs (e)(1) and (e)(2) of the final rule accordingly.

The FAA concurs with the commenters' requests. The FAA has determined that measurement of the clearance between the lockout cam and the crank stop need not be accomplished on a repetitive basis. The FAA has revised paragraph (e) of the final rule to remove the requirement to measure repetitively.

Two commenters request that the actions specified in Boeing Telex M–7272–94–6685, "New Redesigned Girt Bar Mechanism and Emergency Power Assist (EPA) System," be considered terminating action for the proposed repetitive inspections. The commenters do not justify this request. The FAA does not concur with the commenters' request. The FAA has confirmed with Boeing that the telex referenced by the commenters is an explanation of proposed design changes that may possibly be made in the future. However, these changes could constitute a major redesign to the escape system and may not be offered as a solution for in-service airplanes. The FAA has determined that, since an unsafe condition exists, the inspections must be conducted to ensure continued safety. Furthermore, the FAA does not consider it appropriate to delay this rulemaking action until such time that these design changes are approved and available.

Three commenters request that, if repetitive inspections will be required, the FAA extend the repetitive inspection intervals to coincide with regularly scheduled "C" checks (i.e., from the proposed 6 months to 8 months). The FAA does not concur with the commenters' request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications and the practical aspect of performing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In consideration of these items, as well as the reports of broken power assist triggers, the FAA has determined that 6 months represents the maximum interval of time allowable wherein the inspections can reasonably be accomplished and an acceptable level of safety can be maintained. However, paragraph (f) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

The FAA has revised the economic impact information, below, to include cost estimates for accomplishment of the actions required currently by AD 91–07–09.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 578 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 323 airplanes (6 passenger doors per airplane) of U.S. registry will be affected by this AD.

The actions that are currently required by AD 91–07–09 take approximately 51 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required by AD 91–07–09 is estimated to be $988,380, or $3,060 per airplane.

The new actions that are required by this new AD will take approximately 12 work hours (2 work hours per passenger door) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $232,560, or $720 per airplane ($120 per door), per inspection cycle.

Should an operator be required to accomplish the replacement of power assist triggers, it will take approximately 18 work hours per airplane (3 work hours per passenger door) to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,800 per airplane ($300 per passenger door). Based on these figures, the cost impact of the replacement action is estimated to be $2,880 per airplane ($480 per passenger door).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6951 (56 FR 12111, March 22, 1991), and by adding a new airworthiness directive (AD), amendment 39–9445, to read as follows:

95–25–01 Boeing: Amendment 39–9445. Docket 95–NM–07–AD. Supersedes AD 91–07–09, Amendment 39–6951.

Applicability: Model 757 series airplanes, as listed in any of the following service bulletins: Boeing Service Bulletin 757–52–0042, dated March 30, 1989; Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the door opening system during an emergency evacuation, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with either service bulletin. Any interference or improper clearance detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with either service bulletin.

(1) Modify the forward right-hand passenger door.

(2) Inspect all passenger doors for evidence of interference between the trigger support housing and the upper hinge arm.

(3) Inspect all passenger doors for proper clearance between the power assist trigger and the door and fuselage skin.

(b) For all airplanes identified in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), and thereafter at intervals not to exceed 6 months, accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with either service bulletin. Any damage, improper adjustment, or improper operation detected during any of the inspection required by this paragraph must be repaired, prior to further flight, in accordance with either service bulletin.

(1) Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

(2) Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

(3) Inspect trigger spring cylinders for proper operation.

(4) Inspect roller arms for damage.

(c) For all airplanes identified in Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990: Within 18 months after April 29, 1991 (the effective date of AD 91–07–09, amendment 39–6951), accomplish paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, in accordance with Section III, Part III, of the service bulletin. Any damage, defect, improper adjustment, or improper operation detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph (b) of this AD.

(1) On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.

(2) On all passenger doors, install the new trigger guard, and inspect the emergency power assist triggers for wear marks, damage, or fracture.

(3) On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.

(4) On all passenger doors, inspect roller arms for damage.

(d) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, perform an inspection to detect wear marks, damage, or cracking on the upper surface of the emergency power assist triggers at all passenger doors, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 6 months.

(1) If any wear mark is detected, prior to further flight, repair in accordance with the alert service bulletin.

(2) If any damage or cracking is detected, prior to further flight, replace the power assist triggers in accordance with the alert service bulletin.

(e) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, measure the clearance between the lockout cam and the crank stop, in accordance with the alert service bulletin.

(1) If the clearance between the lockout cam and the crank stop is within the limits specified in the alert service bulletin, no further action is required by this paragraph.

(2) If the clearance between the lockout cam and the crank stop is beyond the limits

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specified in the alert service bulletin, prior to further flight, accomplish the actions specified by either paragraph (e)(2)(i) or (e)(2)(ii) of this AD.

(i) Adjust the lockout cam until the correct clearance is obtained, in accordance with the alert service bulletin. Or

(ii) If the correct clearance cannot be obtained by adjusting the lockout cam, replace the lockout cam in accordance with the alert service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29302 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–U]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8631]

RIN 1545–AT79

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1477. Responses to this collection of information are required under section 204(h) of ERISA upon the adoption of certain amendments to pension plans.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

The regulations do not involve any issue of confidentiality.

Background

This document contains temporary regulations that provide guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). Section 204(h) of ERISA was added by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Public Law 99–272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Public Law 99–514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

Prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 89–65 (1989–2 C.B. 786) and Rev. Proc. 94–13 (1994–1 C.B. 566), and under Notice 87–21 (1987–1 C.B. 458), Notice 88–131 (1988–2 C.B. 546), Notice 89–92 (1989–2 C.B. 410), and Notice 90–73 (1990–2 C.B. 353). These temporary regulations provide further guidance, in the form of Questions and Answers.

The provisions in this Treasury Decision are needed immediately to provide guidance to the public with respect to the notice requirements of section 204(h) of ERISA. Issues related to section 204(h) arise in connection with a broad range of plan amendments, including amendments prompted by recent changes in the law. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under 5 U.S.C. 553(b).

Explanation of Provisions

Section 204(h) of ERISA applies if a defined benefit plan or an individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, alternate payees, and employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) of ERISA may also be subject to additional reporting and disclosure requirements under title I of ERISA,

such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days in advance of the effective date of an amendment significantly reducing the future rate of benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Section 204(h) of ERISA does not apply to an amendment that does not affect the rate of future benefit accrual. These regulations clarify that an amendment to a defined benefit plan that does not affect the annual benefit commencing at normal retirement age does not affect the rate of future benefit accrual for purposes of section 204(h). Accordingly, the regulations provide that the plan administrator of a defined benefit plan is not required to provide section 204(h) notice with respect to an amendment that does not affect the future annual benefit payable at normal retirement age, even if the amendment affects other forms of payment (such as a single sum distribution) or benefits commencing at a date other than normal retirement age (such as an early retirement benefit).

The regulations also clarify that an amendment to an individual account plan that does not change the amount of future allocations to participants' accounts does not affect the rate of future benefit accrual for purposes of section 204(h) of ERISA. Accordingly, section 204(h) notice is not required with respect to any such amendment.

Even if an amendment affects the rate of future benefit accrual, section 204(h) notice is required only if the amendment significantly reduces the rate of future benefit accrual. Under the regulations, whether an amendment significantly reduces the rate of future benefit accrual is to be determined based on reasonable expectations taking into account all relevant facts and circumstances.

The regulations delegate to the Commissioner of Internal Revenue the authority to provide that section 204(h) notice need not be provided with respect to plan amendments that the Commissioner determines are necessary or appropriate, as a result of a change in federal law, to maintain compliance with the law. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other guidance in the Internal Revenue Bulletin.

In situations in which section 204(h) notice is required with respect to an amendment, the regulations provide guidance on the participants, alternate payees, and employee organizations to whom the notice must be provided. Specifically, the regulations provide that the plan administrator is not required to provide notice to a participant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. For example, notice need not be provided to participants (such as former employees with a vested benefit under the plan) who, prior to the amendment, were not entitled to accrue future benefits under the plan. Moreover, under the regulations, section 204(h) notice is not required to be provided to an employee organization unless it represents one or more participants to whom section 204(h) notice is required to be provided. Finally, the regulations clarify that employees who have not yet become participants in the plan are not taken into account for any purpose under section 204(h) of ERISA.[1] Thus, the plan administrator is not required to provide section 204(h) notice to such employees.

The regulations provide that a plan that is terminated in accordance with title IV of ERISA is deemed to satisfy section 204(h) not later than the date of termination established under section 4048 of ERISA. Accordingly, section 204(h) does not require that any further benefits accrue under the plan after that date. However, if that date of termination is deferred, benefits continue to accrue until the deferred date of termination absent an effective cessation of accruals as of an earlier specified date.

If the plan is not amended to significantly reduce the rate of future benefit accrual prior to the termination, section 204(h) notice is not required. However, the regulations also affirm that section 204(h) applies to an amendment that is effective prior to the termination date and clarify that, if section 204(h) notice is required, it can be provided either with or as part of the notice of intent to terminate or separately.

The regulations also provide two rules applicable in situations in which a plan administrator was required to provide section 204(h) notice with respect to an amendment but failed to provide timely notice to some of the parties to whom notice was required to be provided. The first rule applies when the plan administrator fails to provide timely notice with respect to more than a de minimis percentage of the parties to whom section 204(h) notice was required. In such a situation, the amendment becomes effective in accordance with its terms with respect to a participant to whom notice was required if the participant was provided with timely notice and any employee organization representing the participant was also provided with timely notice. The amendment also becomes effective in accordance with its terms with respect to an alternate payee to whom notice was required if the alternate payee was provided with timely notice.

The second rule applies in a situation in which the plan administrator made a good faith effort to comply with section 204(h) of ERISA with respect to an amendment, failed to provide timely section 204(h) notice to no more than a de minimis percentage of the parties to whom notice was required, and provided timely notice to all employee organizations with respect to whom section 204(h) notice was required. In such a situation, if the plan administrator, promptly upon discovery of the omission, provides section 204(h) notice to all parties who were required to be provided such notice but were omitted, the plan amendment becomes effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required, including those who did not receive notice prior to discovery of the omission.

Effective Dates

These temporary regulations are effective for amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after January 2, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

[1] This is not intended to affect the rights of employees under other provisions of ERISA.

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Drafting Information: The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for Section 1.411(d)–6T to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.411(d)–6T also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

Par. 2. § 1.411(d)–6T is added to read as follows:

§ 1.411(d)–6T Section 204(h) notice.

Q–1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)?

A–1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for the requirements relating to summary plan descriptions and summaries of material modifications.

Q–2: To which plans does section 204(h) of ERISA apply?

A–2: Section 204(h) of ERISA applies to defined benefit plans subject to part 2 of subtitle B of title I of ERISA and to individual account plans subject to such part 2 and to the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q–3: *What is section 204(h) notice?*

A–3: *Action 204(h) notice* is notice that complies with section 204(h) of ERISA and the rules in this section.

Q–4: For which amendments is section 204(h) notice required?

A–4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A–2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A–4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A–5: (a) *In general*—(1) *Defined benefit plans.* For purposes of section 204(h) of ERISA, an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A–5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A–5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A–5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the assumptions used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Q–6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A–6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using the permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A–5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A–6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which equals 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q–7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A–7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted.

Q–8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment?

A–8: No. Employees who have not yet become participants in a plan at the time an amendment to the plan is adopted are not taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q–9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benef . accrual is not reduced by the an endment?

A–9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A–9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A–9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. Assume in *Example 1* that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. Assume the same facts as in *Example 4*, except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q–10: Does a notice fail to comply with section 204(h) of ERISA if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A–10: No, the notice does not fail to comply with section 204(h) of ERISA merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q–11: How may section 204(h) notice be provided?

A–11: A plan administrator may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed along with other notice provided by the employer or plan administrator.

Q–12: If a plan administrator fails to provide section 204(h) notice to more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided, will the plan administrator be considered to have complied with section 204(h) of ERISA with respect to participants and alternate payees who were provided with timely section 204(h) notice?

A–12: The plan administrator will be considered to have complied with section 204(h) of ERISA with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with timely section 204(h) notice. The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was

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provided with timely section 204(h) notice. Accordingly, the amendment will become effective in accordance with its terms with respect to those participants and alternate payees.

Q–13: Will a plan be considered to have complied with section 204(h) of ERISA if the plan administrator provides section 204(h) notice to all but a de minimis percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A–13: The plan will be considered to have complied with section 204(h) of ERISA and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and

(d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q–14: How does section 204(h) of ERISA apply to a plan that is terminated in accordance with title IV of ERISA?

A–14: (a) *On and after termination date.* Notwithstanding paragraph (b) of this Q&A–14 or any other provisions of this section, a plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) of ERISA not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would not require that any additional benefits accrue after such date.

(b) *Amendment effective before termination date.* An amendment that is effective before the termination date (or date of termination, as applicable) established under section 4048 of ERISA is subject to section 204(h). Accordingly, if such amendment provides for a significant reduction in the rate of future benefit accrual, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to the amendment. However, if a plan is not amended to reduce significantly the rate of future benefit accrual before the termination date (for example, the plan continues existing benefit accruals until the termination date), section 204(h) notice is not required.

Q–15: When does section 204(h) of ERISA become effective?

A–15: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) of ERISA generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date.* This section applies to amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after January 2, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding to the table in numerical order the entry "1.411(d)–6T * * * .1545–1477".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30416 Filed 12–12–95; 1:23 pm]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2621 and 2627

Limitation on Guaranteed Benefits in Single-Employer Plans; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Appendix A to the Limitation on Guaranteed Benefits regulation of the Pension Benefit Guaranty Corporation ("PBGC") by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1996. The maximum guaranteeable benefit is computed in accordance with the formula in section 4022(b)(3) of the Employee Retirement Income Security Act of 1974, which provides that the maximum guaranteeable benefit is based on the contribution and benefit base determined under section 230 of the Social Security Act. The latter number is adjusted annually, and that adjustment automatically changes the dollar amount of the maximum guaranteeable benefit paid by PBGC. The effect of this amendment is to advise plan participants and beneficiaries of the increased maximum guaranteeable benefit for 1996. This rule also amends Appendix B to the PBGC's Disclosure to Participants regulation by adding information on 1996 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") provides for certain limitations on benefits guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations set forth in section 4022(b)(3) is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]". This formula is also set forth in § 2621.3(a)(2) of the PBGC's regulation entitled Limitation on Guaranteed Benefits in Single-Employer Plans (29 CFR Part 2621).

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $46,500 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1996. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 2621.3(a)(2) is: $750 multiplied by $46,500/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1996 is $2,642.05 per month in the form of a life annuity beginning at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,642.05 per month.

Appendix A to part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1995. This amendment updates appendix A for plans that terminate in 1996.

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's Disclosure to Participants regulation (part 2627) implements the statutory notice requirement. This rule amends Appendix B to the PBGC's Disclosure to Participants regulation by adding information on 1996 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 1996 maximum guaranteeable benefit amounts for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1996 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1996, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making these amendments effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Parts 2621 and 2627

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, parts 2621 and 2627 of subchapter C, chapter XXVI, title 29, Code of Federal Regulations are hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2621 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to part 2621 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
. . . . .	
1996	2,642.05

PART 2627—DISCLOSURE TO PARTICIPANTS

3. The authority citation for Part 2627 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

4. Appendix B to part 2627 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix B to Part 2627—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1996	$2,642.05	$31,704.60	$2,087.22	$25,046.64	$1,717.33	$20,607.96	$1,188.92	$14,267.04

Issued at Washington, DC this 11th day of December, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30497 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–96 to appendix D. Table I–96 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1996, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1996.

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FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), plans wishing to terminate in a distress termination must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Under § 2619.46, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–95), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–95 in appendix D establish retirement rate categories for the calendar years 1979 through 1995. The table for each year applies only to plans with valuation dates in that year. The PBGC updates these tables annually to reflect changes in the cost of living, etc. This document amends appendix D to add Table I–96 in order to provide an updated correlation, appropriate for calendar year 1996, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–96 will be used to value benefits in plans with valuation dates that occur during calendar year 1996.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1996, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1996. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 2619 is amended by adding Table I–96 as follows:

Appendix D—Tables Used To Determine Expected Retirement Age

* * * * *

TABLE I–96.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
1997	400	400	1,684	1,684
1998	413	413	1,738	1,738
1999	426	426	1,794	1,794
2000	440	440	1,850	1,850
2001	453	453	1,907	1,907
2002	467	467	1,966	1,966
2003	482	482	2,027	2,027
2004	497	497	2,090	2,090
2005	512	512	2,155	2,155

TABLE I–96.—SELECTION OF RETIREMENT RATE CATEGORY—Continued

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
2006 or later	528	528	2,221	2,221

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC this 11th day of December, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30495 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in January 1996, and to multiemployer plans with valuation dates in January 1996. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the January 1996 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during January 1996 and multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1996.

For annuity benefits, the interest rates will be 5.60% for the first 20 years following the valuation date and 4.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50% for the period during which benefits are in pay status, and 4.0% during all years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for December 1995) of .40 percent for the first 20 years following the valuation date and of 1.00 percent thereafter. The lump sum interest assumptions are unchanged (from those in effect for December 1995).

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose

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termination dates fall during January 1996, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 27 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form v^{on}: (as defined in § 2619.49 (b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n^1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form v^{on}: (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
•	•	•	•	•	•	•
January 1996	.0560	1–20	.0475	>20	N/A	... N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 27 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form v^{on}: (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \pm n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i^1 shall apply for the following n1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form v^{on}: (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
•	•	•	•	•	•	•
January 1996	.0560	1–20	.0475	>20	N/A	... N/A

Issued in Washington, DC, on this 11th day of December 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30496 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5346–7]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: On September 29, 1995, the state of Mississippi, through the Department of Environmental Quality, requested that EPA delegate authority for implementation and enforcement of an amended category of the New Source Performance Standards (NSPS). Since EPA's review of Mississippi's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 30, 1995.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations.

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Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: Office of Pollution Control, Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–3555, x4216.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, (NSPS).

On November 10, 1981, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the state of Mississippi. On September 29, 1995, Mississippi requested a delegation of authority for implementation and enforcement of the following NSPS category found in 40 CFR Part 60.

Automobile and Light Duty Truck Surface Coating Operations, as amended by 59 FR 51383 (October 11, 1994), as specified in 40 CFR 60, Subpart MM.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of November 30, 1981. Mississippi sources subject to the requirements of this subpart will now be under the jurisdiction of Mississippi.

Since review of the pertinent Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on October 30, 1995. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, and 7601).

Dated: November 22, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–30553 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5335–3]

RIN 2060–AD98

National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) under Section 112 of the Clean Air Act as amended in 1990 (CAA) for shipbuilding and ship repair (surface coating) operations. The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology (MACT) to control hazardous air pollutants (HAP).

The MACT described herein is based on maximum HAP limits for various categories of marine coatings. Surface coating operations at shipyards are the focus of the NESHAP, and a variety of HAP are used as solvents in marine coatings. The HAP emitted by the facilities covered by this final rule include xylene, toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol, and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eye, nose, throat, and skin and damage to the blood cells, heart, liver, and kidneys. The final rule is estimated to reduce baseline emissions of HAP by 24 percent or 318.5 megagrams per year (Mg/yr) (350 tons per year (tpy)).

The emissions reductions achieved by these standards, combined with the emissions reductions achieved by similar standards, will achieve the primary goal of the CAA, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population". The intent of this final regulation is to protect the public health by requiring the maximum degree of reduction in emissions of volatile organic hazardous air pollutants (VOHAP) from new and existing sources, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

DATES: The effective date is December 15, 1995. Incorporation by reference of certain publications listed in the regulations is approved by the director of the Federal Register as of December 15, 1995.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia, 22161, telephone number (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating)—Background Information Document for Final Standards," EPA–453/R–95–016b. The BID contains (1) a summary of the changes made to the standards since proposal and (2) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

Docket. Docket No. A–92–11, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed Serageldin at (919) 541–2379, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under Section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of this action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Regulatory Background and Purpose
II. The Standards
III. Summary of Impacts
IV. Significant Changes to the Proposed Standards
  A. Public Participation
  B. Comments on the Proposed Standards
  C. Significant Comments/Changes
V. Control Techniques Guidelines (CTG)
VI. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Executive Order 12875
  E. Regulatory Flexibility Act
  F. Unfunded Mandates Act of 1995

I. Regulatory Background and Purpose

Section 112 of the CAA requires the EPA to evaluate and control HAP emissions. The control of HAP is to be achieved through promulgation of emission standards under Sections 112(d) and (f), and of work practice standards under Section 112(h) where appropriate, for categories of sources that emit HAP. Pursuant to Section 112(c) of the CAA, the EPA published in the **Federal Register** the initial list of source categories that emit HAP on July 16, 1992 (57 FR. 31576). This list includes major and area sources of HAP for which the EPA intends to issue regulations between November 1992 and November 2000.

The CAA was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population" 42 U.S.C. § 7401(b). This final regulation will protect the public health by reducing emissions of HAP from surface coating operations at shipbuilding and ship repair facilities (shipyards).

Many shipyards are major sources of HAP emissions, emitting over 23 Mg/yr (25 tpy) of organic HAP, including toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eyes, nose, throat, and skin, irritation and damage to the blood cells, heart, liver, and kidneys. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability, such as genetics, age, health status (e.g., the presence of pre-existing disease), and lifestyle.

The final standards will reduce VOHAP emissions from shipyard surface coating operations by 318.5 Mg/yr (350 tpy) from a baseline level of 1,362 Mg/yr (1,497 tpy). No significant economic impacts are associated with the final standards. No firms or facilities are at risk of closure as a result of the final standards, and there will not be a significant economic impact on a substantial number of small entities.

II. The Standards

The final rule is applicable to all existing and new shipbuilding and repair facilities that are major sources of HAP or are located at plant sites that are major sources. Major source facilities that are subject to this rule must not apply any marine coating with a VOHAP content in excess of the applicable limit and must implement the work practices required in the rule. Section 112(a) of the CAA defines major source as a source, or group of sources, located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tpy) or more of any individual HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are stationary sources that do not qualify as "major." The term "affected source" as used in this rule means the total of all HAP emission points at each shipbuilding and ship repair facility that is subject to the rule. "Potential to emit" is defined in the Section 112 General Provisions (40 CFR 63.2) as "the maximum capacity of a stationary source to emit a pollutant under its physical or operational design."

To determine the applicability of this rule to facilities that are within a contiguous area of other HAP-emitting emission sources that are not part of the source category covered by this rule, the owner or operator must determine whether the plant site as a whole is a major source. A formal HAP emissions inventory must be used to determine if total HAP emissions from all HAP emission sources at the plant site meets the definition of a major source. The actual emissions of HAP from most shipyards are substantially less than the major source cutoff limits [i.e., 9.1 Mg/yr (10 tpy) of any single HAP, or 22.8 Mg/yr (25 tpy) of all HAP combined]. If the source becomes a synthetic minor source through accepting enforceable restrictions that ensure potential and actual HAP emissions will be below the major source cutoffs, the NESHAP does not apply. See promulgation BID Section 2.4 for additional details and the associated recordkeeping provisions (see **ADDRESSES** section of this preamble).

Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit prior to the "compliance date" of the regulation. The "compliance date" for this regulation is defined as December 16, 1996. New major sources are required to comply with the NESHAP requirements upon start up or the promulgation date, whichever is later. Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit that makes the facility an area source prior to the "compliance date" of the regulation. The compliance date for this regulation is December 16, 1996. A facility that has not obtained federally enforceable limits on its potential to emit by the compliance date, and that has not complied with the NESHAP requirements, will be in violation of the NESHAP. New major sources are required to comply with the NESHAP requirements upon start-up or the promulgation date, whichever is later. All sources that are major sources for HAP on the compliance date are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained. All major sources for HAP on the "compliance date" are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained.

The final standards impose limits on the VOHAP content of 23 types of coatings used at shipyards. Compliance with the VOHAP limits must be demonstrated on a monthly basis. The promulgated standards include four compliance options to allow owners or operators flexibility in demonstrating compliance with the VOHAP limits. The final standards also allow for an alternative means of compliance other than using compliant coatings, if approved by the Administrator. The Administrator shall approve the alternative means of limiting emissions if, in the Administrator's judgment,

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(after control) emissions of VOHAP per volume solids applied will be no greater than those from the use of coatings that comply with the applicable VOHAP limits.

The final standards also require that all handling and transfer of VOHAP containing materials to and from containers, tanks, vats, vessels, and piping systems be conducted in a manner that minimizes spills and other factors leading to emissions. (This requirement includes hand- or brush-application of coatings.) In addition, containers of thinning solvent or waste that hold any VOHAP must be normally closed (to minimize evaporation) unless materials are being added to or removed from them.

Owners or operators of existing shipbuilding and ship repair (surface coating) operations subject to the requirements promulgated under Section 112(d) of the CAA are required to comply with the standards within 1 year from December 15, 1995. Owners or operators of new shipbuilding and ship repair (surface coating) operations with initial startup before or after December 15, 1996 are required to comply with all requirements of the standards upon startup. The first requirement is the initial notification due 6 months before start up.

III. Summary of Impacts

These standards will reduce nationwide emissions of HAP from shipbuilding and ship repair (surface coating) operations by approximately 318.5 Mg (350 tons) in 1997 compared to the emissions that would result in the absence of the standards. These standards will also reduce volatile organic compounds (VOC) emissions from those same shipbuilding and ship repair (surface coating) operations by approximately 837 Mg (920 tons) in 1997 compared to the emissions that would result in the absence of the standards. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

Implementation of this regulation is expected to result in nationwide annualized costs for existing shipyards of about $2 million beyond baseline. This estimation is based on an analysis of the application of VOHAP limits on marine coatings at all existing major source facilities not currently controlled to the level of the standards.

The economic impact analysis conducted prior to proposal showed that the economic impacts from the proposed standard would be insignificant. An update of the economic impact analysis (due to revisions to the final rule) indicates that the original conclusion still holds true. Implementation of the rule is not expected to cause significant economic impacts for the 35 major source facilities in this industry.

IV. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed and the preamble was published in the **Federal Register** on December 6, 1994 (59 FR 62681). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the TTN (see **SUPPLEMENTARY INFORMATION** section of this preamble).

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on January 18, 1995 in Research Triangle Park, North Carolina. The public comment period was from December 6, 1994 to February 17, 1995. In all, 22 comment letters were received (including one duplicate). The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 22 commenters; the commenters were comprised mainly of States, shipyard owners or operators, marine coating manufacturers, environmental groups, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. (Some additional changes have been made to clarify the standards and improve their organization.) Most of the comment letters contained multiple comments. For summary purposes, the comments were grouped into several topic areas.

C. Significant Comments/Changes

Several changes have been made since the proposal of these standards. The majority of the changes have been made to clarify portions of the rule that were unclear to the commenters. A summary of the major comments and changes is presented below.

(1) Applicability to Coating Manufacturers

Several commenters asked the EPA to regulate the manufacture and sale of marine coatings rather than the end users (shipyards). While this approach has some obvious advantages, the EPA does not have authority to regulate (with this NESHAP) the manufacture and sale of coatings under Section 112(d). The EPA plans to address requirements for coating manufacturers under Section 183(e) of the CAA by March 1997 through either a national rule or a control techniques guidelines (CTG).

(2) Number of Major Sources/MACT Floor

Some commenters thought the EPA underestimated the number of major source shipyards, and thereby erred in the MACT floor determination. Although the EPA based the proposed number of major sources on the best available information at the time, there has been recent additional information provided by the Louisiana Department of Environmental Quality (Louisiana having more shipyards than any other State) showing there are four other shipyards with HAP emissions greater than the major source cutoffs. At the same time, however, the same additional information indicated that one of the shipyards identified in the original list of 25 has HAP emissions well below the major source cutoffs (based on recent operating permit data).

This information along with other State permit data on annual paint usage and VOC/VOHAP emissions indicates that there are 35 major sources, instead of the estimated 25 discussed in the proposal preamble. Even though 10 additional major sources have been identified, the MACT floor would not change. At proposal, the EPA based the MACT floor on the control achieved by the best-performing 5 sources, as required by Section 112 (d)(3) of the CAA when there are less than 30 sources in the category. If there are 35 sources in the category, the MACT floor would be based on the best-performing 4.2 sources (12 percent of the 35) as required by Section 112 (d)(3). Under both situations, the MACT floor is the same.

Another point to be considered is that even if there are 45 major source shipyards, the best 12 percent is still represented by the best $0.12 \times 45 = 5.4$ or best 5 yards. Both the MACT floor and the associated marine coating VOHAP limits would be identical. Since the NESHAP proposal date, the Navy has adopted VOC limits identical to (or more stringent than) the 1992 California limits for all Naval shipyards and Navy-related work. Since at least two of the Naval shipyards qualify as major sources, if the MACT floor were to be recalculated today, the limits would be identical to the proposed (and promulgated) limits, regardless of the approach used to determine the mean or median level of control. The Louisiana limits, which are less stringent for the major use categories of coatings, would not enter into any of the floor calculations.

Recent indications from the Navy and other industry representatives reveal that fewer affected sources exist today because of base closings and consolidation efforts. The original estimation of 25 major source shipyards was based on annual paint and solvent usage, type of work conducted (new construction versus repair), number of employees, and type (size) of vessels serviced. The (weighted) average HAP concentration of all marine coatings is an integral part of emissions estimates and determining if a shipyard qualifies as a major source facility. Other HAP-emitting processes at most shipyards such as welding, metal forming/cutting, and abrasive blasting exist, but the vast majority of HAP emissions come from organic solvents used in marine paints and solvents used for thinning and cleaning.

(3) Elimination of Compliance Option 1

Proposed compliance option 1 required that each and every container of coating be tested or certified prior to application. Based on comments pertaining to its impracticality and the unrealistic costs associated with testing/certifying every container of coating, compliance option 1 was eliminated from the final rule. The flow diagram (included as Figure 1 in the regulation) summarizing the various compliance options was similarly revised and simplified.

(4) Training Requirements

In the proposed rule, the EPA required training and certification for all personnel involved with paints and/or solvents. There were several comments regarding the inappropriate amount and level of detail involved with the training and annual personnel certifications. Some commenters indicated that there was a high turnover rate involving personnel, and the proposed training requirements would impose a significant impact for very little reduction in HAP emissions. The EPA has determined that it is appropriate to leave the details of training to the individual shipyards who can best define the real needs of their specific locations and applications. Affected sources are responsible for complying with the standards, and it is in their own best interest to ensure that workers are aware of the associated requirements. Therefore, all training requirements related to painting/thinning, handling/transfer of VOHAP-containing materials, and certification of all personnel involved with surface coating operations have been eliminated from the final rule.

(5) Definition of Pleasure Craft

A definition of pleasure craft has been added to ensure that the standards apply only to those coatings (and solvents) used on commercial and military vessels. Some commenters were concerned that, as proposed, the rule could be interpreted to regulate coatings used on pleasure crafts. Other commenters suggested that pleasure crafts should be included. The EPA did not intend to include coatings used on pleasure crafts in these standards. Such coatings (applications) will be considered under the development of the Boat Manufacturing NESHAP.

(6) Definition of Affected Source

The definition of affected source was modified to ensure that the requirements of the standards apply only to those sources (major source shipyards) with a minimum annual marine coating usage of 1,000 L (264.2 gal). The primary focus of this NESHAP is surface coating operations and this clarification will minimize/eliminate the impact on shipyards with minimal surface coating emissions.

(7) Reporting and Notification Changes

Changes have also been made to the notification and reporting schedules. The initial notification deadline has been extended from 120 to 180 days. The frequency of reporting has also been reduced from the proposed quarterly requirement to semiannual. This change was made to allow shipyards to be consistent with current/upcoming Title V permit requirements. The first compliance certification report is due 6 months after the compliance date.

(8) Exemptions

Several commenters recommended that the EPA adopt some of the exemptions provided in various State regulations. Since the MACT floor was based on three shipyards located in California and those yards have exemptions similar to those requested, the EPA determined there would be no significant impact and adopted the following exemptions:

a. Any individual coating with annual usage less than 200 liters (52.8 gallons) is exempt from the requirements of the standards (i.e., the applicable VOHAP limit). The total amount of all coatings exempted in any given year cannot exceed 1,000 liters (264.2 gallons); and

b. Any coating applied via nonrefillable hand-held aerosol cans is exempt from the requirements of the standards.

(9) Revision of Equations

The equations used with compliance options 2 and 3 (proposed options 3 and 4) have been changed so that calculations are based on volume solids. The revised equations require the VOHAP limits based on volume solids be used in place of the VOHAP limits based on volume of coating less water and non-HAP exempt solvents. This change was made to provide a uniform basis for calculating emission reductions (i.e., associated with thinning additions or add-on control devices).

(10) Weather-related VOHAP limits

The proposal preamble requested comments on how to handle thinning issues for various climatic conditions. The EPA reviewed the comments and collected additional information on both cold-and hot/humid-weather thinning practices. As a result of this information, cold-weather VOHAP limits are included as part of the final rule. If the temperature is below 4.5°C (40°F) at the time the coating is applied and the source needs to thin that coating beyond the applicable VOHAP limit, the date, time, and temperature (including units) must be documented, and the applicable cold-weather VOHAP limit may be used. The cold-weather VOHAP limits on a solids basis were increased equivalently, but the actual values vary for each coating category. The cold-weather VOHAP limits are applicable only to as-supplied coatings that are greater than 40 percent solids by volume.

With regards to hot/humid weather conditions, the data and responses to Section 114 information requests sent by EPA to nine shipyards and other information received did not provide a basis for including a humid weather thinning allowance. Respondents identified meteorological conditions under which coatings must be thinned

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or not applied at all. Only one shipyard, which uses large quantities of water-based preconstruction primer, maintained that a humid weather thinning allowance should be adopted. However, the shipyard did not explain how hydrocarbon-based thinners would relate to its water-based operation.

Hot and humid weather conditions appear to inhibit coating operations work less frequently than does cold weather. The different responses can best be understood as they relate to the specifications for thinning under different climatic conditions, which are dependent on paint type and manufacturer. Some coating formulations lose at high temperature more organic solvent than others which could lead to thickening (increase in viscosity) of the paint. This occurs where the rate of application is low and paint containers remain uncovered. Nevertheless, beginning in September 1994, shipyards performing work for the Navy in humid climates such as Louisiana, Florida, and Virginia are required by the Navy to use paints with VOHAP contents levels that are in compliance with the limits in the NESHAP, without provision for additional thinning. There is no reason that VOHAP limits that are achievable for paints used by the Navy cannot also be achieved for paints used by commercial shipyards located in humid climates and that, therefore, a thinning allowance for hot/humid weather conditions is not necessary. If conditions necessitate application of small amount of noncompliant coatings, the regulation provides a low usage exemption of 1,000 liters of coating per year.

D. Minor Changes

This section contains a list of several of the minor changes to the final rule. A discussion of these changes can be found in the promulgation BID. (See ADDRESSES section of this preamble.)

(1) Revisions to definitions and phrasing have been made to clarify the regulation.

(2) Based on comments received and on changes to the notification and recordkeeping and reporting requirements, those sections of the standard have been reorganized and overlapping requirements clarified or eliminated.

(3) Table 2, which contains the VOHAP limits for the various coating categories, has been simplified to contain only one set of units (metric). The conversion factor for English units is included as a footnote to the table.

V. Control Techniques Guidelines (CTG)

Section 183(b)(4) of the CAA requires the Administrator to issue a CTG document for limiting VOC and particulate matter emissions from coatings (paints) and solvents used in the shipbuilding and ship repair industry. Since VOHAP emissions from this industry are generally a subset of VOC emissions, the control techniques evaluated for the MACT standard are also applicable to VOC emissions. Therefore, the EPA has developed the CTG concurrently with the NESHAP and will be issuing final guidance under a separate notice. As explained in the proposal notice (AD–FR–), no CTG is being issued for particulate matter emissions.

VI. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the Docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)].

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) is currently reviewing the information collection request (ICR) requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0330 and EPA ICR number 1712.2.

The information required to be collected by this rule is needed as part of the overall compliance and enforcement program. It is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the Act. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The total annual reporting and recordkeeping burden for this collection averaged over the first 3 years is estimated to be $26,218 per year. The average burden, per respondent, is 772 hours per year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The rule requires an initial one-time notification from each respondent and subsequent notification every 6 months to indicate their compliance status. At the time of the initial notification each respondent would also be required to submit an implementation plan that describes compliance procedures. A respondent would also be required to keep necessary records of data to determine compliance with the standards in the regulation. The data would be recorded monthly. A report would need to be submitted semi-annually by each respondent. There would be an estimated 35 respondents to the proposed collection requirements.

Send comments on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE

Regulatory Information Division; U. S. Environmental Protection Agency (2136); 401 M Street SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW.; Washington, DC 20503; marked "Attention: Desk Officer for EPA." Include the OMB number and the EPA ICR number in any correspondence.

C. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA is required to judge whether a regulation is "significant" and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

D. Executive Order 12875

To reduce the burden of federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled Enhancing the Intergovernmental Partnership. In particular, this executive order is designed to require agencies to assess the effects of regulations that are not required by statute and that create mandates upon State, local, or tribal governments. Two methods exist for complying with the requirements of the executive order: (1) Assure that funds necessary to pay direct costs of compliance with a regulation are provided, or (2) provide OMB a description of the communications and consultations with State/local/tribal governments, the nature of their concerns, any written submission from them, and the EPA's position supporting the need to issue the regulation.

The EPA has always been concerned about the effect of the cost of regulations on small entities; the EPA has consulted with and sought input from public entities to explain costs and burdens they may incur.

The EPA advised interested parties on July 16, 1992 (57 FR 21592), of the categories considered as major and area sources of HAP, and shipbuilding and ship repair (surface coating) industry was listed as a category of both major and area sources. The EPA made significant effort to hear from all levels of interest and all segments of the shipbuilding and ship repair industry. To facilitate comments and input, the EPA conducted comprehensive mailouts of draft and proposal package materials in 1993 and 1994 to shipyards, Department of the Navy (Naval Sea Systems Command), marine coating manufacturers, and State and local government officials. All were given opportunity to comment on the presented regulatory development activities of the standard. Throughout the regulatory development process and more specifically in consultation meetings, industry representatives from commercial/private shipyards, the U.S. Navy, and various trade associations were given an opportunity to comment on the proposed regulatory approach and the MACT alternatives being developed. The major topic areas resulting from these discussions included the need for cold-weather thinning limits, flexibility in compliance approaches, and the need for additional data regarding certain coating categories (i.e., inorganic zincs). Some of these meetings were held at EPA, while others were conducted at shipyard locations. In addition, individual consultations were conducted with three local (air quality management) districts in California regarding the use of the mass of VOHAP/volume of solids for determining compliance when the coating is thinned.

The EPA addressed many of the suggestions and comments received from State and local agencies during the public comment period, many of which will reduce the impact to small businesses. Some of these suggestions resulted in changes to the rule, including modification of the definition of pleasure craft to clarify that the standards apply only to coatings (and solvents) used on commercial and military vessels and not to boats in non-military shipyards less than 20 meters in length; modification of the definition of affected source to ensure that the requirements of the standards apply only to those sources (major source shipyards) with a minimum annual marine coating usage of 1,000 Liters (264.2 gallons); exemption of any individual coating with annual usage less than 200 liters (52.8 gallons) (i.e., the applicable VOHAP limit); exemption of any coating applied via nonrefillable hand-held aerosol cans; making the equations used to determine thinning allowance the same for all options to provide a uniform basis for calculating emission reductions (i.e., associated with thinning additions or add-on control devices); extension of the initial notification deadline from 120 to 180 days and reduction of the frequency of reporting from the proposed quarterly requirement to semiannual, which allows shipyards to be consistent with current/upcoming Title V permit requirements; reorganization and clarification of the notification and recordkeeping and reporting requirement, including revision of the definitions and phrasing to ensure that the terminology is understandable; and the addition of 10 major sources based on data provided by Louisiana and Texas State agencies.

Some of the other major concerns that were noted in the State and/or local agency comments and that were considered by the EPA in developing the proposed and final rule involved realistic work practice standards, multiple compliance options to provide flexibility for shipyard owners/operators and State regulators, and streamlining (or eliminating) any overlapping recordkeeping and reporting requirements. Documentation of all meetings and public comments can be found in Docket A–92–11.

The EPA has considered the purpose and intent of Executive Order 12875 and has determined that shipbuilding and ship repair facility NESHAP are needed. The rule is generally required by statute under Section 112 of the CAA because shipbuilding and ship repair facilities emit significant quantities of air pollutants. Through meetings and consultations during project development and proposal, efforts were made to inform entities of the costs required to comply with the regulation; in addition, modifications were made to reduce the burden to small entities.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a

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significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared. The EPA's analysis of these impacts was provided in the preamble to the proposed rule (59 FR 62681) and no negative impacts for small businesses will result from the changes incorporated into the final rule.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

F. Unfunded Mandates Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Incorporation by reference, Marine coating limits, Reporting and recordkeeping requirements, Shipbuilding and ship repair standards.

Dated: November 14, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SHIPBUILDING AND SHIP REPAIR (SURFACE COATING)

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

2. Section 63.14 is amended by adding paragraph (b)(4) through (b)(14) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(4) ASTM D523–89, Standard Test Method for Specular Gloss, IBR approved for § 63.782.

(5) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products, IBR approved for § 63.788 appendix A.

(6) ASTM D2369–93, Standard Test Method for Volatile Content of Coatings, IBR approved for § 63.788 appendix A.

(7) ASTM D3912–80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(8) ASTM D4017–90, Standard Test Method for Water and Paints and Paint Materials by Karl Fischer Method, IBR approved for § 63.788 appendix A.

(9) ASTM D4082–89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(10) ASTM D4256–89 [reapproved 1994], Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(11) ASTM D3792–91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for § 63.788 appendix A.

(12) ASTM D3257–93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(13) ASTM E260–91, Standard Practice for Packed Column Gas Chromatography, IBR approved for § 63.786(b).

(14) ASTM E180–93, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for § 63.786(b).

3. Part 63 is amended by adding subpart II to read as follows:

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

Secs.

63.780 Relationship of subpart II to subpart A of this part.
63.781 Applicability.
63.782 Definitions.
63.783 Standards.
63.784 Compliance dates.
63.785 Compliance procedures.
63.786 Test methods and procedures.
63.787 Notification requirements.
63.788 Recordkeeping and reporting requirements.
Table 1 to Subpart II of Part 63—General Provisions of Applicability to Subpart II
Table 2 to Subpart II of Part 63—Volatile Organic HAP (VOHAP) Limits for Marine Coatings
Table 3 to Subpart II of Part 63—Summary of Recordkeeping and Reporting Requirements
Appendix A to Subpart II of Part 63—VOC Data Sheet
Appendix B to Subpart II of Part 63—Maximum Allowable Thinning Rates As a Function of As Supplied VOC Content and Thinner Density

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

§ 63.780 Relationship of subpart II to subpart A of this part.

Table 1 of this subpart specifies the provisions of subpart A of this part that apply to owners and operators of sources subject to the provisions of this subpart.

§ 63.781 Applicability.

(a) The provisions of this subpart apply to shipbuilding and ship repair operations at any facility that is a major source.

(b) The provisions of this subpart do not apply to coatings used in volumes of less than 200 liters (52.8 gallons) per year, provided the total volume of coating exempt under this paragraph does not exceed 1,000 liters per year (264 gallons per year) at any facility. Coatings exempt under this paragraph shall be clearly labeled as "low-usage exempt," and the volume of each such coating applied shall be maintained in the facility's records.

(c) The provisions of this subpart do not apply to coatings applied with hand-held, nonrefillable, aerosol containers or to unsaturated polyester resin (i.e., fiberglass lay-up) coatings. Coatings applied to suitably prepared fiberglass surfaces for protective or decorative purposes are subject to this subpart.

(d) The provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions and continuous monitoring do not apply to this source category unless an add-on control system is used to comply with this subpart in accordance with § 63.783(c).

§ 63.782 Definitions.

Terms used in this subpart are defined in the Clean Air Act (CAA), in subpart A of part 63, or in this section as follows:

Add-on control system means an air pollution control device such as a carbon absorber or incinerator that reduces pollution in an air stream by destruction or removal prior to discharge to the atmosphere.

Affected source means any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons [gal]) annual marine coating usage that is subject to this subpart.

Air flask specialty coating means any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

Antenna specialty coating means any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

Antifoulant specialty coating means any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

As applied means the condition of a coating at the time of application to the substrate, including any thinning solvent.

As supplied means the condition of a coating before any thinning, as sold and delivered by the coating manufacturer to the user.

Batch means the product of an individual production run of a coating manufacturer's process. A batch may vary in composition from other batches of the same product.

Bitumens mean black or brown materials that are soluble in carbon disulfide and consist mainly of hydrocarbons.

Bituminous resin coating means any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

Certify means, in reference to the volatile organic compounds (VOC) content or volatile organic hazardous air pollutants (VOHAP) content of a coating, to attest to the VOC content as determined through analysis by Method 24 of appendix A to 40 CFR part 60 or through use of forms and procedures outlined in appendix A of this subpart, or to attest to the VOHAP content as determined through an Administrator-approved test method. In the case of conflicting results, Method 24 of Appendix A to 40 CFR part 60 shall take precedence over the forms and procedures outlined in appendix A to this subpart for the options in which VOC is used as a surrogate for VOHAP.

Coating means any material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film.

Cold-weather time period means any time during which the ambient temperature is below 4.5°C (40°F) and coating is to be applied.

Container of coating means the container from which the coating is applied, including but not limited to a bucket or pot.

Cure volatiles means reaction products which are emitted during the chemical reaction which takes place in some coating films at the cure temperature. These emissions are other than those from the solvents in the coating and may, in some cases, comprise a significant portion of total VOC and/or VOHAP emissions.

Epoxy means any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

Exempt compounds means specified organic compounds that are not considered VOC due to negligible photochemical reactivity. Exempt compounds are specified in 40 CFR 51.100(s).

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

General use coating means any coating that is not a specialty coating.

Hazardous air pollutants (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Heat resistant specialty coating means any coating that during normal use must withstand a temperature of at least 204°C (400°F).

High-gloss specialty coating means any coating that achieves at least 85 percent reflectance on a 60 degree meter when tested by ASTM Method D523 (incorporation by reference—see § 63.14).

High-temperature specialty coating means any coating that during normal use must withstand a temperature of at least 426°C (800°F).

Inorganic zinc (high-build) specialty coating means a coating that contains 960 grams per liter (8 pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than 2 mil dry film thickness.)

Major source means any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAP.

Maximum allowable thinning ratio means the maximum volume of thinner that can be added per volume of coating without violating the standards of § 63.783(a), as determined using Equation 1 of this subpart.

Military exterior specialty coating or Chemical Agent Resistant Coatings ("CARC") means any exterior topcoat applied to military or U.S. Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

Mist specialty coating means any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

Navigational aids specialty coating means any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

Nonskid specialty coating means any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

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Nonvolatiles (or volume solids) means substances that do not evaporate readily. This term refers to the film-forming material of a coating.

Normally closed means a container or piping system is closed unless an operator is actively engaged in adding or removing material.

Nuclear specialty coating means any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082–89 [incorporation by reference—see § 63.14]), relatively easy to decontaminate (ASTM D4256–89 [reapproved 1994] [incorporation by reference—see § 63.14]), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM D3912–80 [incorporation by reference—see § 63.14]). [For nuclear coatings, see the general protective requirements outlined by the U.S. Nuclear Regulatory Commission in a report entitled "U.S. Atomic Energy Commission Regulatory Guide 1.54" dated June 1973, available through the Government Printing Office at (202) 512–2249 as document number A74062–00001.]

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Organic zinc specialty coating means any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (8 pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

Pleasure craft means any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to or chartered by individuals for such purposes shall be considered a pleasure craft.

Pretreatment wash primer specialty coating means any coating that contains a minimum of 0.5 percent acid, by mass, and is applied only to bare metal to etch the surface and enhance adhesion of subsequent coatings.

Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating) means any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

Rubber camouflage specialty coating means any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes. Sealant for thermal spray aluminum means any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of 1 dry mil.

Ship means any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. For purposes of this subpart, pleasure crafts and offshore oil and gas drilling platforms are not considered ships.

Shipbuilding and ship repair operations means any building, repair, repainting, converting, or alteration of ships.

Special marking specialty coating means any coating that is used for safety or identification applications, such as markings on flight decks and ships' numbers.

Specialty coating means any coating that is manufactured and used for one of the specialized applications described within this list of definitions.

Specialty interior coating means any coating used on interior surfaces aboard U.S. military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

Tack specialty coating means any thin film epoxy coating applied at a maximum thickness of 2 dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

Thinner means a liquid that is used to reduce the viscosity of a coating and that evaporates before or during the cure of a film.

Thinning ratio means the volumetric ratio of thinner to coating, as supplied.

Thinning solvent: see Thinner.

Undersea weapons systems specialty coating means any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

Volatile organic compounds (VOC) is as defined in § 51.100(s) of this chapter.

Volatile organic hazardous air pollutants (VOHAP) means any compound listed in or pursuant to section 112(b) of the CAA that contains carbon, excluding metallic carbides and carbonates. This definition includes VOC listed as HAP and exempt compounds listed as HAP.

Weld-through preconstruction primer (specialty coating) means a coating that provides corrosion protection for steel during inventory, is typically applied at less than 1 mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters [0.5 inch]), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

§ 63.783 Standards.

(a) No owner or operator of any existing or new affected source shall cause or allow the application of any coating to a ship with an as-applied VOHAP content exceeding the applicable limit given in Table 2 of this subpart, as determined by the procedures described in § 63.785 (c)(1) through (c)(4). For the compliance procedures described in § 63.785 (c)(1) through (c)(3), VOC shall be used as a surrogate for VOHAP, and Method 24 of Appendix A to 40 CFR part 60 shall be used as the definitive measure for determining compliance. For the compliance procedure described in § 63.785(c)(4), an alternative test method capable of measuring independent VOHAP shall be used to determine compliance. The method must be submitted to and approved by the Administrator.

(b) Each owner or operator of a new or existing affected source shall ensure that:

(1) All handling and transfer of VOHAP-containing materials to and from containers, tanks, vats, drums, and piping systems is conducted in a manner that minimizes spills.

(2) All containers, tanks, vats, drums, and piping systems are free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

(c) *Approval of alternative means of limiting emissions.* (1) The owner or operator of an affected source may apply to the Administrator for permission to use an alternative means (such as an add-on control system) of limiting emissions from coating operations. The application must include:

(i) An engineering material balance evaluation that provides a comparison of the emissions that would be achieved using the alternative means to those that would result from using coatings that comply with the limits in Table 2 of this subpart, or the results from an emission test that accurately measures the capture efficiency and control device efficiency achieved by the control system and the composition of the associated coatings so that the emissions comparison can be made;

(ii) A proposed monitoring protocol that includes operating parameter values to be monitored for compliance and an explanation of how the operating parameter values will be established through a performance test; and

(iii) Details of appropriate recordkeeping and reporting procedures.

(2) The Administrator shall approve the alternative means of limiting emissions if, in the Administrator's judgment, postcontrol emissions of VOHAP per volume applied solids will be no greater than those from the use of coatings that comply with the limits in Table 2 of this subpart.

(3) The Administrator may condition approval on operation, maintenance, and monitoring requirements to ensure that emissions from the source are no greater than those that would otherwise result from this subpart. § 63.784 Compliance dates.

(a) Each owner or operator of an existing affected source shall comply within 1 year after the effective date of this subpart.

(b) Each owner or operator of an existing unaffected area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply within 1 year after the date of becoming a major source.

(c) Each owner or operator of a new or reconstructed source shall comply with this subpart according to the schedule in § 63.6(b).

§ 63.785 Compliance procedures.

(a) For each batch of coating that is received by an affected source, the owner or operator shall (see Figure 1 of this section for a flow diagram of the compliance procedures):

(1) Determine the coating category and the applicable VOHAP limit as specified in § 63.783(a).

(2) Certify the as-supplied VOC content of the batch of coating. The owner or operator may use a certification supplied by the manufacturer for the batch, although the owner or operator retains liability should subsequent testing reveal a violation. If the owner or operator performs the certification testing, only one of the containers in which the batch of coating was received is required to be tested.

(b)(1) In lieu of testing each batch of coating, as applied, the owner or operator may determine compliance with the VOHAP limits using any combination of the procedures described in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section. The procedure used for each coating shall be determined and documented prior to application.

(2) The results of any compliance demonstration conducted by the affected source or any regulatory agency using Method 24 shall take precedence over the results using the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section.

(3) The results of any compliance demonstration conducted by the affected source or any regulatory agency using an approved test method to determine VOHAP content shall take precedence over the results using the procedures in paragraph (c)(4) of this section.

(c)(1) *Coatings to which thinning solvent will not be added.* For coatings to which thinning solvent (or any other material) will not be added under any circumstance or to which only water is added, the owner or operator of an affected source shall comply as follows:

(i) Certify the as-applied VOC content of each batch of coating.

(ii) Notify the persons responsible for applying the coating that no thinning solvent may be added to the coating by affixing a label to each container of coating in the batch or through another means described in the implementation plan required in § 63.787(b).

(iii) If the certified as-applied VOC content of each batch of coating used during a calendar month is less than or equal to the applicable VOHAP limit in § 63.783(a) (either in terms of g/L of coating or g/L of solids), then compliance is demonstrated for that calendar month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(2) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch as follows:

$$R = \frac{(V_s)(\text{VOHAP limit}) - m_{VOC}}{D_{th}} \quad \text{Eqn. 1}$$

where:

R=Maximum allowable thinning ratio for a given batch (L thinner/L coating as supplied);

V_s=Volume fraction of solids in the batch as supplied (L solids/L coating as supplied);

VOHAP limit=Maximum allowable as-applied VOHAP content of the coating (g VOHAP/L solids);

m_{VOC}=VOC content of the batch as supplied [g VOC (including cure volatiles and exempt compounds on the HAP list)/L coating (including water and exempt compounds) as supplied];

D_{th}=Density of the thinner (g/L).

If V_s is not supplied directly by the coating manufacturer, the owner or operator shall determine V_s as follows:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \quad \text{Eqn. 2}$$

where:

$m_{volatiles}$=Total volatiles in the batch, including VOC, water, and exempt compounds (g/L coating); and

D_{avg}=Average density of volatiles in the batch (g/L).

The procedures specified in § 63.786(d) may be used to determine the values of variables defined in this paragraph. In addition, the owner or operator may choose to construct nomographs, based on Equation 1 of this subpart, similar or identical to the one provided in appendix B of this subpart as a means of easily estimating the maximum allowable thinning ratio.

(ii) Prior to the first application of each batch, notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch of the coating by affixing a label to each container of coating or through another means described in the implementation plan required in § 63.787(b).

(iii) By the 15th day of each calendar month, determine the volume of each batch of the coating used, as supplied, during the previous month.

(iv) By the 15th day of each calendar month, determine the total allowable volume of thinner for the coating used during the previous month as follows:

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$$V_{th} = \sum_{i=1}^{n}\left(R \times V_b\right)_i + \sum_{i=1}^{n}\left(R_{cold} \times V_{b-cold}\right)_i \quad \text{Eqn. 3}$$

where:

V_{th}=Total allowable volume of thinner for the previous month (L thinner);

V_b=Volume of each batch, as supplied and before being thinned, used during non-cold-weather days of the previous month (L coating as supplied);

R_{cold}=Maximum allowable thinning ratio for each batch used during cold-weather days (L thinner/L coating as supplied);

V_{b-cold}=Volume of each batch, as supplied and before being thinned, used during cold-weather days of the previous month (L coating as supplied);

i=Each batch of coating; and

n=Total number of batches of the coating.

(v) By the 15th day of each calendar month, determine the volume of thinner actually used with the coating during the previous month.

(vi) If the volume of thinner actually used with the coating [paragraph (c)(3)(v) of this section] is less than or equal to the total allowable volume of thinner for the coating [paragraph (c)(3)(iv) of this section], then compliance is demonstrated for the coating for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(3) *Coatings to which the same thinning solvent will be added—group compliance.* For coatings to which the same thinning solvent (or other material) is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Designate a single thinner to be added to each coating during the month and "group" coatings according to their designated thinner.

(ii) Prior to the first application of each batch, calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating in the group using the equations in paragraph (c)(2) of this section.

(iii) Prior to the first application of each "batch," notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch in the group by affixing a label to each container of coating or through another means described in the implementation plan required in § 63.787(b).

(iv) By the 15th day of each calendar month, determine the volume of each batch of the group used, as supplied, during the previous month.

(v) By the 15th day of each calendar month, determine the total allowable volume of thinner for the group for the previous month using Equation 3 of this subpart.

(vi) By the 15th day of each calendar month, determine the volume of thinner actually used with the group during the previous month.

(vii) If the volume of thinner actually used with the group [paragraph (c)(3)(vi) of this section] is less than or equal to the total allowable volume of thinner for the group [paragraph (c)(3)(v) of this section], then compliance is demonstrated for the group for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(4) *Demonstration of compliance through an alternative (i.e., other than Method 24 of Appendix A to 40 CFR part 60) test method.* The owner or operator shall comply as follows:

(i) Certify the as-supplied VOHAP content (g VOHAP/L solids) of each batch of coating.

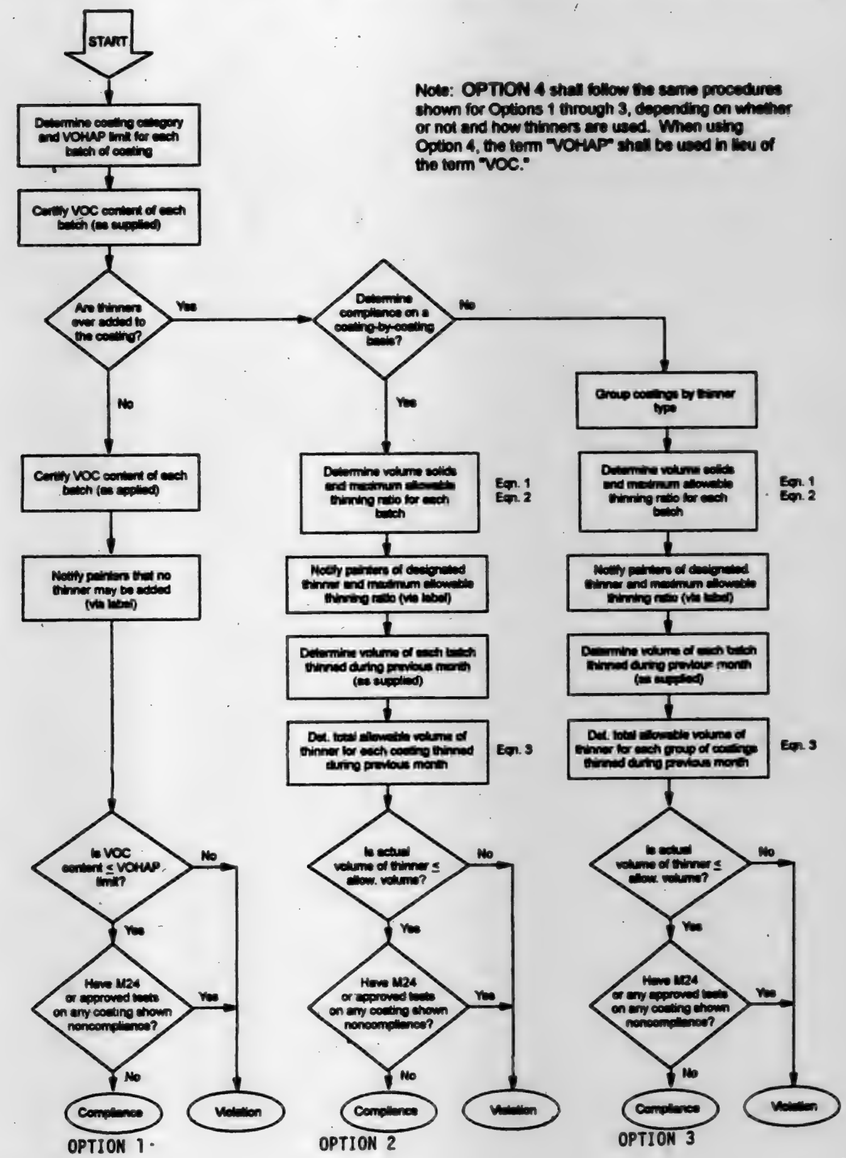
(ii) If no thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(1), except that VOHAP content shall be used in lieu of VOC content.

(iii) If thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(2) or (3), except that in Equation 1 of this subpart: the term "m_{VOC}" shall be replaced by the term "m_{VOHAP}," defined as the VOHAP content of the coating as supplied (g VOHAP/L coating) and the term "D_{th}" shall be replaced by the term "$D_{th(VOHAP)}$" defined as the average density of the VOHAP thinner(s) (g/L).

(d) A violation revealed through any approved test method shall result in a 1-day violation for enforcement purposes. A violation revealed through the recordkeeping procedures described in paragraphs (c)(1) through (c)(4) of this section shall result in a 30-day violation for enforcement purposes, unless the owner or operator provides sufficient data to demonstrate the specific days during which noncompliant coatings were applied.

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Figure 1 to §63.785 Flow diagram of compliance procedures



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§ 63.780 Test methods and procedures.

(a) For the compliance procedures described in § 63.785(c) (1) through (c)(3), Method 24 of 40 CFR part 60, appendix A, is the definitive method for determining the VOC content of coatings, as supplied or as applied. When a coating or thinner contains exempt compounds that are volatile HAP or VOHAP, the owner or operator shall ensure, when determining the VOC content of a coating, that the mass of these exempt compounds is included.

(b) For the compliance procedure described in § 63.785(c)(4), the Administrator must approve the test method for determining the VOHAP content of coatings and thinners. As part of the approval, the test method must meet the specified accuracy limits indicated below for sensitivity, duplicates, repeatability, and reproducibility coefficient of variation each determined at the 95 percent confidence limit. Each percentage value below is the corresponding coefficient of variation multiplied by 2.8 as in the ASTM Method E180–93: Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals (incorporation by reference—see § 63.14).

(1) *Sensitivity.* The overall sensitivity must be sufficient to identify and calculate at least one mass percent of the compounds of interest based on the original sample. The sensitivity is defined as ten times the noise level as specified in ASTM Method D3257–93: Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography (incorporation by reference—see § 63.14). In determining the sensitivity, the level of sample dilution must be factored in.

(2) *Repeatability.* First, at the 0.1–5 percent analyte range the results would be suspect if duplicates vary by more than 6 percent relative and/or day to day variation of mean duplicates by the same analyst exceeds 10 percent relative. Second, at greater than 5 percent analyte range the results would be suspect if duplicates vary by more than 5 percent relative and/or day to day variation of duplicates by the same analyst exceeds 5 percent relative.

(3) *Reproducibility.* First, at the 0.1–5 percent analyte range the results would be suspect if lab to lab variation exceeds 60 percent relative. Second, at greater than 5 percent range the results would be suspect if lab to lab variation exceeds 20 percent relative.

(4) Any test method should include information on the apparatus, reagents and materials, analytical procedure, procedure for identification and confirmation of the volatile species in the mixture being analyzed, precision and bias, and other details to be reported. The reporting should also include information on quality assurance (QA) auditing.

(5) Multiple and different analytical techniques must be used for positive identification if the components in a mixture under analysis are not known. In such cases a single column gas chromatograph (GC) may not be adequate. A combination of equipment may be needed such as a GC/mass spectrometer or GC/infrared system. (If a GC method is used, the operator must use practices in ASTM Method E260–91: Standard Practice for Gas Chromatography (incorporation by reference—see § 63.14).)

(c) A coating manufacturer or the owner or operator of an affected source may use batch formulation data as a test method in lieu of Method 24 of Appendix A to 40 CFR part 60 to certify the as-supplied VOC content of a coating if the manufacturer or the owner or operator has determined that batch formulation data have a consistent and quantitatively known relationship to Method 24 results. This determination shall consider the role of cure volatiles, which may cause emissions to exceed an amount based solely upon coating formulation data. Notwithstanding such determination, in the event of conflicting results, Method 24 of appendix A of 40 CFR part 60 shall take precedence.

(d) Each owner or operator of an affected source shall use or ensure that the manufacturer uses the form and procedures mentioned in appendix A of this subpart to determine values for the thinner and coating parameters used in Equations 1 and 2 of this subpart. The owner or operator shall ensure that the coating/thinner manufacturer (or supplier) provides information on the VOC and VOHAP contents of the coatings/thinners and the procedure(s) used to determine these values.

§ 63.787 Notification requirements.

(a) Each owner or operator of an affected source shall comply with all applicable notification requirements in § 63.9(a) through (d) and (i) through (j), with the exception that the deadline specified in § 63.9(b) (2) and (3) shall be extended from 120 days to 180 days. Any owner or operator that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall comply with the applicable requirements of § 63.9(e) through (h).

(b) *Implementation plan.* The provisions of § 63.9(a) apply to the requirements of this paragraph.

(1) Each owner or operator of an affected source shall:

(i) Prepare a written implementation plan that addresses each of the subject areas specified in paragraph (b)(3) of this section; and

(ii) Not later than 180 days after the effective date of this subpart, submit the implementation plan to the Administrator for approval along with the notification required by § 63.9(b) (2) or (5), as applicable.

(2) The Administrator may require revisions to the initial plan where the Administrator finds that the plan does not adequately address each subject area listed in paragraph (b)(3) of this section or that the requirements in the plan are unclear.

(3) *Implementation plan contents.* Each implementation plan shall address the following subject areas:

(i) *Coating compliance procedures.* The implementation plan shall include the compliance procedure(s) under § 63.785(c) that the source intends to use.

(ii) *Recordkeeping procedures.* The implementation plan shall include the procedures for maintaining the records required under § 63.788, including the procedures for gathering the necessary data and making the necessary calculations.

(iii) *Transfer, handling, and storage procedures.* The implementation plan shall include the procedures for ensuring compliance with § 63.783(b).

(4) *Major sources that intend to become area sources by the compliance date.* Existing major sources that intend to become area sources by the compliance date December 16, 1996 may choose to submit, in lieu of the implementation plan required under paragraph (b)(1) of this section, a statement that, by the compliance date, the major source intends to obtain and comply with federally enforceable limits on their potential to emit which make the facility an area source. § 63.788 Recordkeeping and reporting requirements.

(a) Each owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in § 63.10 (a), (b), (d), and (f). Any owner that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall also comply with the applicable requirements of § 63.10 (c) and (e). A summary of recordkeeping and reporting requirements is provided in Table 3 of this subpart.

(b) *Recordkeeping requirements.* (1) Each owner or operator of an unaffected major source, as described in § 63.781(b), shall record the total volume of coating applied at the source to ships. Such records shall be compiled monthly and maintained for a minimum of 5 years.

(2) Each owner or operator of an affected source shall compile records on a monthly basis and maintain those records for a minimum of 5 years. At a minimum, these records shall include:

(i) All documentation supporting initial notification;

(ii) A copy of the affected source's approved implementation plan;

(iii) The volume of each low-usage-exempt coating applied;

(iv) Identification of the coatings used, their appropriate coating categories, and the applicable VOHAP limit;

(v) Certification of the as-supplied VOC content of each batch of coating;

(vi) A determination of whether containers meet the standards as described in § 63.783(b)(2); and

(vii) The results of any Method 24 of appendix A to 40 CFR part 60 or approved VOHAP measurement test conducted on individual containers of coating, as applied.

(3) The records required by paragraph (b)(2) of this section shall include additional information, as determined by the compliance procedure(s) described in § 63.785(c) that each affected source followed:

(i) *Coatings to which thinning solvent will not be added.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(1) shall contain the following information:

(A) Certification of the as-applied VOC content of each batch of coating; and

(B) The volume of each coating applied.

(ii) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(2) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids (nonvolatiles) in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch of the coating, as supplied, during these dates;

(D) The volume used of each batch of the coating, as supplied;

(E) The total allowable volume of thinner for each coating, including calculations; and

(F) The actual volume of thinner used for each coating.

(iii) *Coatings to which the same thinning solvent will be added—group compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(3) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch in the group, as supplied, during these dates;

(D) Identification of each group of coatings and their designated thinners;

(E) The volume used of each batch of coating in the group, as supplied;

(F) The total allowable volume of thinner for the group, including calculations; and

(G) The actual volume of thinner used for the group.

(iv) *Demonstration of compliance through an alternative (i.e., non-Method 24 in appendix A to 40 CFR part 60) test method.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(4) shall contain the following information:

(A) Identification of the Administrator-approved VOHAP test method or certification procedure;

(B) For coatings to which the affected source does not add thinning solvents, the source shall record the certification of the as-supplied and as-applied VOHAP content of each batch and the volume of each coating applied;

(C) For coatings to which the affected source adds thinning solvent on a coating-by-coating basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(ii) of this section; and

(D) For coatings to which the affected source adds thinning solvent on a group basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(iii) of this section.

(4) If the owner or operator of an affected source detects a violation of the standards specified in § 63.783, the owner or operator shall, for the remainder of the reporting period during which the violation(s) occurred, include the following information in his or her records:

(i) A summary of the number and duration of deviations during the reporting period, classified by reason, including known causes for which a Federally-approved or promulgated exemption from an emission limitation or standard may apply.

(ii) Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents that the monitoring protocol failed to perform in accordance with the design of the protocol or produced data that did not meet minimum data accuracy and precision requirements, classified by reason.

(iii) Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period.

(iv) If, pursuant to paragraph (b)(4)(iii) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the monitoring report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred and:

(A) The magnitude of each deviation;

(B) The reason for each deviation;

(C) A description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence; and

(D) All quality assurance activities performed on any element of the monitoring protocol.

(c) *Reporting requirements.* Before the 60th day following completion of each 6-month period after the compliance date specified in § 63.784, each owner or operator of an affected source shall submit a report to the Administrator for each of the previous 6 months. The report shall include all of the information that must be retained pursuant to paragraphs (b) (2) through (3) of this section, except for that

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information specified in paragraphs (b)(2) (i) through (ii), (b)(2)(v), (b)(3)(i)(A), (b)(3)(ii)(A), and (b)(3)(iii)(A). If a violation at an affected source is detected, the source shall also report the information specified in paragraph (b)(4) of this section for the reporting period during which the violation(s) occurred. To the extent possible, the report shall be organized according to the compliance procedure(s) followed each month by the affected source.

TABLE 1 TO SUBPART II OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART II

Reference	Applies to subpart II	Comment
63.1(a)(1)–(3)	Yes.	
63.1(a)(4)	Yes	Subpart II clarifies the applicability of each paragraph in subpart A to sources subject to subpart II.
63.1(a)(5)–(7)	Yes.	
63.1(a)(8)	No	Discusses State programs.
63.1(a)(9)–(14)	Yes.	
63.1(b)(1)	Yes	§63.781 specifies applicability in more detail.
63.1(b)(2)–(3)	Yes.	
63.1(c)–(e)	Yes.	
63.2	Yes	Additional terms are defined in §63.782; when overlap between subparts A and II occurs, subpart II takes precedence.
63.3	Yes	Other units used in subpart II are defined in that subpart.
63.4	Yes.	
63.5(a)–(c)	Yes.	
63.5(d)	Yes	Except information on control devices and control efficiencies should not be included in the application unless an add-on control system is or will be used to comply with subpart II in accordance with §63.783(c).
63.5(e)–(f)	Yes.	
63.6(a)–(b)	Yes.	
63.6(c)–(d)	Yes	Except §63.784(a) specifies the compliance date for existing affected sources.
63.6(e)–(f)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then these paragraphs do apply.
63.6(g)	No	§63.783(c) specifies procedures for application and approval of alternative means of limiting emissions.
63.6(h)	No	Subpart II does not contain any opacity or visible emission standards.
63.6(i)–(j)	Yes.	
63.7	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.8	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.9(a)–(d)	Yes	§63.787(a) extends the initial notification deadline to 180 days. §63.787(b) requires an implementation plan to be submitted with the initial notification.
63.9(e)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.9(f)	No	Subpart II does not contain any opacity or visible emission standards
63.9(g)–(h)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c) then these paragraphs do apply.
63.9(i)–(j)	Yes.	
63.10(a)–(b)	Yes	§63.788(b)–(c) list additional recordkeeping and reporting requirements.
63.10(c)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.10(d)	Yes.	
63.10(e)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.10(f)	Yes.	
63.11	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.12–63.15	Yes.	

TABLE 2 TO SUBPART II OF PART 63.—VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS

Coating category	VOHAP limits[a,b,c]		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids[d]	
		t ≥ 4.5° C	t < 4.5° C[e]
General use	340	571	728
Specialty:			
Air flask	340	571	728
Antenna	530	1,439	
Antifoulant	400	765	971
Heat resistant	420	841	1,069
High-gloss	420	841	1,069
High-temperature	500	1,237	1,597

TABLE 2 TO SUBPART II OF PART 63.—VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS—Continued

Coating category	VOHAP limits[a,b,c]		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids[d]	
		t ≥ 4.5° C	t < 4.5° C[e]
Inorganic zinc high-build	340	571	728
Military exterior	340	571	728
Mist	610	2,235	
Navigational aids	550	1,597	
Nonskid	340	571	728
Nuclear	420	841	1,069
Organic zinc	360	630	802
Pretreatment wash primer	780	11,095	
Repair and maint. of thermoplastics	550	1,597	
Rubber camouflage	340	571	728
Sealant for thermal spray aluminum	610	2,235	
Special marking	490	1,178	
Specialty interior	340	571	728
Tack coat	610	2,235	
Undersea weapons systems	340	571	728
Weld-through precon. primer	650	2,685	

[a] The limits are expressed in two sets of equivalent units. Either set of limits may be used for the compliance procedure described in §63.785(c)(1), but only the limits expressed in units of g/L solids (nonvolatiles) shall be used for the compliance procedures described §63.785(c) (2) through (4).

[b] VOC (including exempt compounds listed as HAP) shall be used as a surrogate for VOHAP for those compliance procedures described in §63.785(c) (1) through (3).

[c] To convert from g/L to lb/gal, multiply by (3.785 L/gal)(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.

[d] VOHAP limits expressed in units of mass of VOHAP per volume of solids were derived from the VOHAP limits expressed in units of mass of VOHAP per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.

[e] These limits apply during cold-weather time periods, as defined in §63.782. Cold-weather allowances are not given to coatings in categories that permit over a 40 percent VOHAP content by volume. Such coatings are subject to the same limits regardless of weather conditions.

TABLE 3 TO SUBPART II OF PART 63.—SUMMARY OF RECORDKEEPING AND REPORTING REQUIREMENTS[a,b,c]

Requirement	All Opts.		Option 1		Option 2		Option 3	
	Rec	Rep	Rec	Rep	Rec	Rep	Rec	Rep
Notification (§63.9(a)–(d))	X	X						
Implementation plan (§63.787(b))[d]	X	X						
Volume of coating applied at unaffected major sources (§63.781(b))	X							
Volume of each low-usage-exempt coating applied at affected sources (§63.781(c))	X	X						
ID of the coatings used, their appropriate coating categories, and the applicable VOHAP limit	X	X						
Determination of whether containers meet the standards described in §63.783(b)(2)	X	X						
Results of M–24 or other approved tests	X	X						
Certification of the as-supplied VOC content of each batch	X							
Certification of the as-applied VOC content of each batch			X					
Volume of each coating applied			X	X				
Density of each thinner and volume fraction of solids in each batch					X	X		
Maximum allowable thinning ratio(s) for each batch					X	X	X	X
Volume used of each batch, as supplied					X	X	X	X
Total allowable volume of thinner					X	X	X	X
Actual volume of thinner used					X	X	X	X
Identification of each group of coatings and designated thinners							X	X

[a] Affected sources that comply with the cold-weather limits must record and report additional information, as specified in §63.788(b)(3) (ii)(C), (iii)(C), and (iv)(D).

[b] Affected sources that detect a violation must record and report additional information, as specified in §63.788(b)(4).

[c] OPTION 4: the recordkeeping and reporting requirements of Option 4 are identical to those of Options 1, 2, or 3, depending on whether and how thinners are used. However, when using Option 4, the term "VOHAP" shall be used in lieu of the term "VOC," and the owner or operator shall record and report the Administrator-approved VOHAP test method or certification procedure.

[d] Major sources that intend to become area sources by the compliance date may, in lieu of submitting an implementation plan, choose to submit a statement of intent as specified in §63.787(b)(4).

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Appendix A to Subpart II of Part 63—VOC Data Sheet [1]

Properties of the Coating "As Supplied" by the Manufacturer [2]

Coating Manufacturer: _____
Coating Identification: _____
Batch Identification: _____

[1] Incorporation by reference—see § 63.14.
[1] Adapted from EPA–340/1–88–016 (July 1988), p. II–2.
[2] The subscript "s" denotes each value is for the coating "as supplied" by the manufacturer.

Supplied To: _____

Properties of the coating as supplied [1] to the customer:

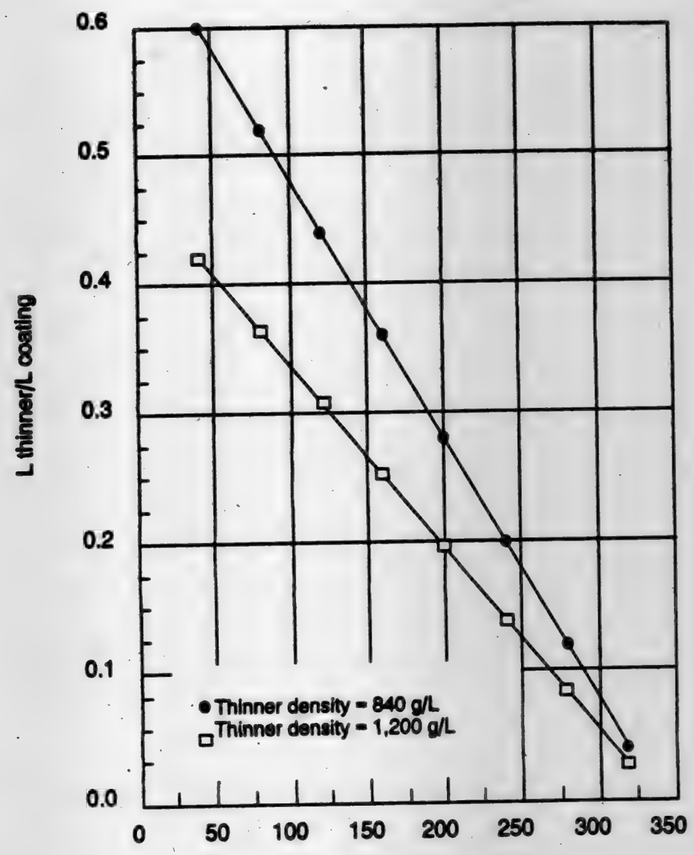
A. Coating Density: (D_c), ____ g/L
[ ] ASTM D1475–90 [4] [ ] Other [3]
B. Total Volatiles: (m_v), ____ Mass Percent
[ ] ASTM D2369–93 [4] [ ] Other [3]
C. Water Content: 1. (m_w), ____ Mass Percent
[ ] ASTM D3792–91 [4] [ ] ASTM D4017–90 [4] [ ] Other [3]
2. (v_w), ____ Volume Percent

[3] Explain the other method used under "Remarks."

[ ] Calculated [ ] Other [3]
D. Organic Volatiles: (m_{os}), ____ Mass Percent
E. Nonvolatiles: (v_s), ____ Volume Percent
[ ] Calculated [ ] Other [3]
F. VOC Content $(VOC)_s$:
1. ____ g/L solids (nonvolatiles)
2. ____ g/L coating (less water and exempt compounds)
G. Thinner Density: D_s, ____ g/L
ASTM ____ [ ] Other [3]
Remarks: (use reverse side)
Signed: _____ Date: ____

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Appendix B To Subpart II of Part 63 -- Maximum Allowable Thinning Rates As A Function Of As Supplied VOC Content And Thinner Density [a,b]



[a] These graphs represent maximum allowable thinning ratios for general use coatings without water or exempt compounds.
[b] The average density of the volatiles in the coating was assumed = 840 g solvent/L solvent.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 94-32; FCC 95-454]

In-Flight Phone Corporation's Pioneer's Preference Request

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Third Report and Order (Third R&O)*, the Commission denies In-Flight Phone Corporation's (In-Flight's) request for a pioneer's preference in the General Wireless Communications Service (GWCS) at 4660–4685 MHz. The Commission finds that the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal, that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660–4685 MHz band, and that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. This action is intended to affirm the Commission's policy of awarding pioneer's preferences only for innovations of some significance.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, (202) 418–2451 or Rodney Small, (202) 418–2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third R&O* adopted November 1, 1995, and released December 5, 1995. This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third R&O

1. In-Flight originally filed its pioneer's preference request in the narrowband Personal Communications Services proceeding, ET Docket No. 92–100. It sought a preference in the 901–902 MHz and 940–941 MHz bands for a live ground-to-air audio news, information, and entertainment programming service for airline passengers. However, because the rules adopted in Docket 92–100 were not related to In-Flight's proposal, no action was taken on its pioneer's preference request.

2. In February 1995, the Commission adopted a *First Report and Order and Second Notice of Proposed Rulemaking* in Docket 94–32, 60 FR 13102 (March 10, 1995), reallocating 50 megahertz of Federal Government spectrum at 2390–2400, 2402–2417, and 4660–4685 MHz to non-Government use; and proposing that the 4660–4685 MHz band be used by the General Wireless Communications Service (GWCS).

3. In March 1995, In-Flight filed a Petition for Declaratory Ruling, requesting that its pending pioneer's preference request be considered in the GWCS. In-Flight also stated that it would provide video, as well as audio, services as a GWCS licensee. The Petition was placed on Public Notice on April 28, 1995; however, no comments were filed on the Public Notice.

4. On June 8, 1995, in response to the Commission's *Third Report and Order* in the pioneer's preference review proceeding, ET Docket No. 93–266, 60 Fed. Reg. 32116 (June 20, 1995), In-Flight filed a Supplement to its pioneer's preference request. In its Supplement, In-Flight argued that it was not likely to recover its investment in developing what it now referred to as its "aircraft audio and video programming service" unless it received a pioneer's preference, and also requested that its preference request be placed on public notice. On June 16, 1995, In-Flight's preference request, including the Supplement, was placed on Public Notice and assigned file number PP–88 in Docket 94–32.

5. On July 3, 1995, Claircom Licensee Corporation filed an opposition to PP–88, in which it stated that In-Flight's programming service is not innovative. On July 13, 1995, In-Flight filed a reply to Claircom's opposition. On July 31, 1995, the Commission adopted a *Second Report and Order* in Docket 94–32, 60 Fed. Reg. 40712 (August 9, 1995), allocating the 4660–4685 MHz band for the GWCS and adopting service rules.

6. In the *Third R&O*, the Commission found that—inconsistent with the pioneer's preference rules—the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal. Additionally, the Commission found that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660–4685 MHz band. The Commission stated that In-Flight's technical achievements in developing and testing equipment in the 901–902 MHz and 940–941 MHz bands are not directly relevant to the 4660–4685 MHz band, due to differences in propagation. Finally, the Commission found that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. The Commission concluded that In-Flight did not demonstrate that its technological developments are innovative given the state-of-the-art technologies used in providing 800 MHz air-ground radiotelephone service.

7. Accordingly, *it is ordered*, That the pioneer's preference request (PP–88) filed by In-Flight Phone Corporation in this proceeding is denied. *It is further ordered*, That the request for pioneer's preference filed by In-Flight Phone Corporation in ET Docket No. 92–100 *is dismissed as moot. It is further ordered*, That the petition for declaratory ruling filed by In-Flight Phone Corporation is granted in part and denied in part.

List of Subjects in 47 CFR Part 1

Pioneer's preference, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30550 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 88–40; RM–6085, RM–6349, RM–6360]

Radio Broadcasting Services; Jacksonville, Pine Knoll Shores, and Harkers Island, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Down East Radio to the extent of deleting Channel 272A from Pine Knoll Shores, North Carolina. *See* 57 FR 19809, May 8, 1992. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 88–40, adopted November 9, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1919 M Street, NW., Room 246, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Pine Knoll Shores, Channel 272A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30515 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–123; RM–8669]

Radio Broadcasting Services; Winona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of OARA, Inc., allots Channel 274A to Winona, Texas, as the community's first local aural transmission service. *See* 60 FR 38785, July 28, 1995. Channel 274A can be allotted to Winona, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Winona are 32–29–22 and 95–10–01. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–123, adopted November 27, 1995, and released December 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Winona, Channel 274A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30513 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–124; RM–8573]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wireless Communications Corp., allots Channel 239C3 to Atlantic, Iowa, as the community's first local FM service. *See* 60 FR 39308, August 2, 1995. Channel 239C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–24–00 North Latitude and 95–00–54 West Longitude. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–124, adopted November 14, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Atlantic, Channel 239C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30514 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930932–3314; I.D. 120795B]

Summer Flounder Fishery; Commercial Quota Transfer from Maryland to New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of Maryland is making two transfers totaling 50,000 lb (22,680 kg) of commercial summer flounder quota to the State of New York. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: December 12, 1995.

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FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,456 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, Maryland was allocated a quota of 299,551 lb (135,874 kg), and New York was allocated a quota of 1,123,374 lb (509,554 kg). On November 17, 1995, Maryland transferred 50,000 lb (22,680 kg) of its commercial quota to New York (60 FR 57685). As a result of that transfer, the commercial quotas for Maryland and New York were set to equal 249,551 lb (113,194 kg), and 1,173,374 lb (532,233 kg), respectively.

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

Section 625.20(f)(3) further states that a state may not submit a request to transfer or combine quota if a request to which it is a party is pending before the Regional Director. While New York is receiving two transfers from Maryland, the Regional Director considered and approved the first transfer request before the second transfer request was submitted. For efficiency's sake, these two transfers are being filed together.

Maryland has agreed to make two additional transfers of commercial quota to New York. The first is for 30,000 lb (13,608 kg) and the second for 20,000 lb (9,072 kg). The original transfer of 30,000 lb (13,608 kg) was arranged to prevent a state closure and allow federally-permitted vessels to land summer flounder that would otherwise be discarded. Subsequently, landings reports indicated that 30,000 lb (13,608 kg) would not be sufficient to prevent a closure, and therefore, a second transfer was agreed upon. As a result, NMFS is filing these transfers totalling 50,000 lb (22,680 kg). The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1995 are: Maryland, 199,551 lb (90,515 kg); and New York, 1,223,374 lb (554,913 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30599 Filed 12–14–95; 2:06 pm]

BILLING CODE 3510–22–F

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50 CFR Part 641

[Docket No. 950610020–5286–04; I.D. 082395A]

RIN 0648–AG29

Reef Fish Fishery of the Gulf of Mexico; Amendment 11; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement certain provisions of Amendment 11 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These provisions revise the framework procedure for modifying management measures, restrict the sale/purchase of reef fish harvested from the exclusive economic zone (EEZ) to permitted reef fish vessels/dealers, allow transfer of reef fish permits and fish trap endorsements under specified circumstances, implement a new reef fish permit moratorium, and require charter vessel and headboat permits. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirement contained in this rule. The intended effects of the final rule are to improve procedures for timely management, relieve restrictions and hardships, and enhance enforceability of the regulations.

EFFECTIVE DATES: The amendments in this rule are effective January 1, 1996, except for the amendments to, or additions of, the following sections, which are effective April 1, 1996: In § 641.4, paragraph (a)(3), the new paragraph (o), and the second amendment of paragraph (a)(4); in § 641.7, paragraphs (g), (r), and (x), (gg), and (jj)(1), and the second amendment of paragraph (bb); § 641.10, paragraphs (b)(4), (b)(6), and (b)(7).

ADDRESSES: Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen or Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Based on a preliminary evaluation of Amendment 11 at the beginning of formal agency review, NMFS disapproved three of its measures after determining that they were inconsistent with the provisions of the Magnuson Act and other applicable law. NMFS published a proposed rule to implement

the remaining measures of Amendment 11 (60 FR 47341, September 12, 1995). The rationale for the remaining measures of Amendment 11, as well as the reasons for the disapproval of the three Amendment 11 measures at the beginning of formal agency review, are contained in the preamble of the proposed rule and are not repeated here. On November 24, 1995, NMFS approved the remaining measures of Amendment 11; this final rule implements those approved measures.

Comments and Responses

Eight individuals submitted comments on Amendment 11 and the proposed rule as follows.

Comment: One commenter opposed allowing fish trap endorsements to be transferred. This final rule permits a fish trap endorsement in effect on September 12, 1995, to be transferred to an otherwise ineligible vessel if that vessel participated in the fishery and reported landings of reef fish from traps in the EEZ from November 20, 1992, through February 6, 1994. The commenter noted that NMFS had provided information on the moratorium prior to these fishermen entering the fishery. Therefore, these fishermen should have known that they may be ineligible for a fish trap endorsement under Amendment 5 and should not be allowed to qualify for a transfer under Amendment 11.

Response: NMFS agrees that proper notice of the moratorium was provided. However, the Council is free to revisit previously decided issues any time new information or considerations become available. Indeed, as noted on page 29 of Amendment 11, whatever permanent measure replaces the moratorium may be more restrictive, including a possible ban on fish traps altogether. However, the amendment further states that some of the current fish trap endorsements are not being used, and certain fishermen invested in gearing up for this fishery unaware of the moratorium notwithstanding its widespread announcement. The limited ability to transfer which is implemented here will restrain effort at the level which the Council previously established, yet provide an equitable resolution of these issues.

Comment: One commenter indicated that the new reef fish permit moratorium on January 1, 1996, would prohibit him from entering the fishery. Therefore, the start of the new moratorium should occur after a window of opportunity was provided for him to get a reef fish permit.

Response: The existing reef fish permit moratorium, which was imposed to prevent continued speculative entry while the Council considered other reef fish effort management alternatives, expires on December 31, 1995. The alternative for red snapper chosen by the Council and approved by NMFS, was contained in Amendment 8, which established an individual transferable quota system. The Council is now considering establishing a limited access system for the other species in the reef fish complex. The Council determined that imposing a new moratorium effective upon expiration of the old moratorium was needed to stabilize participation in the fishery during these considerations. The Council considered options, including allowing the moratorium to expire, but felt that this would unnecessarily disrupt the fishery. The Council also recognized that the new moratorium should not be continued indefinitely. In Amendment 11, the Council proposed and NMFS implemented a new moratorium to be in effect for not more than 5 years, that is, through December 31, 2000.

Comment: Three commenters supported the one-time transfer of existing fish trap endorsements.

Response: NMFS agrees with these commenters and has approved these management measure for the reasons previously stated.

Comment: Four commenters supported allowing the transfer of reef fish permits and two supported allowing the transfer of fish trap endorsements in the event of death or disability.

Response: NMFS agrees with these comments and has approved these management measures.

Comment: One commenter objected to the charter vessel/headboat permit requirement. The commenter believes that (1) the current regulations adequately define when a vessel is operating as a charter vessel or headboat and (2) headboats can be readily identified by their required U.S. Coast Guard Certificate of Inspection.

Response: NMFS does not dispute the information contained in the comment. For-hire vessels (i.e., charter vessels and headboats) constitute an important part of the recreational fishery for reef fish. However, accurate information is not available on how many for-hire vessels are engaged in the reef fish fishery. As stated in Amendment 11, the Council perceives the following benefits of a charter vessel/headboat permit: (1) Determination of the number and distribution of charter vessels/headboats, (2) compilation of a mailing list that could be used to distribute information of interest to the recreational fishery, (3) identification of the universe of recreational for-hire vessels in the event that logbooks or other data collection systems are implemented or that limited access for the recreational for-hire sector of the fishery is implemented, and (4) creation of a means of curbing the activities of repeat violators, that is, through permit sanctions. Accordingly, NMFS implemented the Council's requirement for charter vessel/headboat permits.

Comments Outside the Scope of the Proposed Rule

Comment: One commenter supported the 2.0 biological generation time provision for the framework procedure that was previously disapproved by NMFS based on a preliminary review of Amendment 11. The commenter felt that the existing 1.5 generation time limit was arbitrary.

Response: NMFS disapproved this provision based on a preliminary review of Amendment 11. This comment, therefore, is outside the scope of the proposed rule.

Changes from the Proposed Rule

Publication of the final rule to implement Amendment 8 to the FMP (60 FR 61200, November 29, 1995) requires changes from the proposed rule in this final rule. In this final rule, some of the changes that are effective January 1, 1996, recodify, restate, or otherwise modify paragraphs that are being changed in the Amendment 8 final rule with an effective date of April 1, 1996. For clarity, this final rule contains revisions/additions, effective April 1, 1996, that supersede revisions/additions contained in the final rule to implement Amendment 8 that were to be effective April 1, 1996, as follows: (1) Amendment 8's revised first sentence of § 641.4(a)(2) is superseded by this final rule's revised first sentence of § 641.4(a)(4); (2) Amendment 8's revised § 641.7(g), (r), and (bb) are superseded by this final rule's § 641.7(g), (r), and (bb); and (3) Amendment 8's added § 641.7(q) is superseded by this final rule's added § 641.7(o).

For compatibility with the final rule to implement Amendment 8, this final rule changes the designation of paragraphs in § 641.7.

At § 641.4(a)(3), the requirement for a charter vessel/headboat permit is clarified. A vessel that is used as a charter vessel or headboat in a fishery other than reef fish is not required to have a reef fish charter vessel/headboat permit, in addition to its reef fish commercial permit, to fish for reef fish under the commercial quota. A prohibition is added at § 641.7(x)

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regarding the requirement for charter vessel/headboat permits.

At § 641.4(n)(8), the criteria for eligibility to receive a transferred fish trap endorsement is clarified. An owner of a vessel that had qualifying landings for such transfer may obtain by transfer a fish trap endorsement for that vessel even if the owner currently has a fish trap endorsement based on the landings of another vessel.

This final rule removes § 641.24(g). The management measure currently in § 641.24(g) is included in § 641.28(a) in this final rule.

Classification

The Regional Director, Southeast Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law, with the exception of those measures that were previously disapproved. (See the proposed rule (60 FR 47341, September 12, 1995) for a discussion of the disapproved measures.)

This action has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of its regulatory impact review of Amendment 11. The IRFA described the impacts the proposed rule would have on small entities, if adopted. Those impacts were summarized in the proposed rule. NMFS has adopted the IRFA as a final regulatory flexibility analysis without change.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, specifically, applications for charter vessel/headboat permits. This collection has been approved by OMB under OMB control number 0648–0205. The public reporting burden for this collection of information is estimated to average 20 minutes per response. This rule revises the collections of information relating to applications for commercial vessel permits and applications for fish trap endorsements, which are currently approved under OMB control number 0648–0205 and have public reporting burdens estimates of 20 minutes per response, each. The reporting burden estimates are unchanged. This rule repeats the collection-of-information requirement for dealer permits, which is currently approved under OMB control number 0648–0205 and has a public reporting burden estimate of 5 minutes per response. Each of the above reporting burden estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding any of these reporting burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

The provisions in this final rule that implement a new reef fish permit moratorium must be effective January 1, 1996, immediately following the current permit moratorium. Otherwise, the number of vessels with reef fish permits could increase, thus subverting the intended effects of the new moratorium, as discussed in Amendment 11 and the proposed rule. Accordingly, under section 553(d)(3) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of the provisions for a new reef fish permit moratorium.

The provisions in this final rule that allow transfer of reef fish permits and fish trap endorsements relieve restrictions. Accordingly, under section 553(d)(1) of the APA, a 30-day delay in effectiveness of these provisions is not required.

All permitted reef fish dealers and all owners of permitted reef fish vessels were advised in writing on or about December 1, 1995, that the provisions in this final rule that restrict the sale/purchase of reef fish harvested from the EEZ to permitted reef fish vessels/dealers would be implemented on January 1, 1996. Thus, actual notice approximately 30 days prior to effectiveness has been provided to persons affected. In view of the proliferation of effective dates for changes to the reef fish regulations under Amendments 8 and 11, that is, November 24, 1995, and April 1, 1996, under Amendment 8 and January 1 and April 1, 1996, under Amendment 11, avoidance of yet another effective date is highly desirable for ease of understanding and transition to the new management measures for reef fish. Accordingly, under section 553(d)(3) of the APA, the AA finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of the restrictions on sale/purchase of reef fish harvested from the EEZ.

To allow time for the dissemination, completion, receipt, and processing of applications, and for issuance of permits, NMFS makes the provisions of this final rule requiring charter vessel/headboat permits effective on April 1, 1996.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 7, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.4, paragraphs (o) and (p) are removed; paragraphs (a) and (b), the first sentence of paragraph (f)(1), the first sentence of paragraph (h), and paragraphs (m) and (n) are revised to read as follows. (Note: This amendment supersedes the amendment to §641.4(a)(2) that was published on November 29, 1995 (60 FR 61207.))

§ 641.4 Permits and fees.

(a) *Applicability*—(1) *Commercial vessel permits.*

(i) As a prerequisite to selling reef fish in or from the EEZ and to be eligible for exemption from the bag limits specified in § 641.24(b) for reef fish in or from the EEZ, an annual commercial vessel permit for reef fish must be issued to the vessel and must be on board. However, see paragraph (m) of this section regarding a moratorium on commercial vessel permits.

(ii) To obtain or renew a commercial vessel permit, the owner or operator of the vessel must have derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, or from charter or headboat operations during either of the 2 calendar years preceding the application. (See paragraph (m)(3) of this section for a limited exception to this requirement.) For a vessel owned by a corporation or partnership, the earned income requirement must be met by an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator. A commercial vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(iii) A qualifying owner or operator of a charter vessel or headboat may obtain a commercial vessel permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

(2) *Fish trap endorsements.* To possess or use a fish trap in the EEZ, a commercial vessel permit for reef fish with a fish trap endorsement must be issued to the vessel and must be on board. However, see paragraph (n) of this section regarding a moratorium on fish trap endorsements. In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director—see § 641.6.

(3) [Reserved]

(4) *Dealer permits.* A dealer who receives from a fishing vessel reef fish harvested from the EEZ must obtain an annual dealer permit. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Application for a vessel permit*—(1) An application for a commercial vessel permit or a charter vessel/headboat permit must be submitted to the Regional Director and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. After receipt of a complete application, at least 30 days must be allowed for processing the application and issuing a permit. All permits are mailed to owners, whether the applicant is an owner or an operator.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) The vessel's name and official number.

(iii) The name, address, telephone number, and other identifying information of the owner and of the applicant, if other than the owner.

(iv) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director.

(v) Any other information that may be necessary for the issuance or administration of the permit.

(3) In addition, an applicant for a commercial vessel permit—

(i) Must provide documentation of earned income that meets the criteria of paragraph (a)(1)(ii) of this section; and

(ii) If fish traps will be used to harvest reef fish, must provide the following information:

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used; and

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

* * * * *

(f) * * * (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of an application for a commercial vessel permit, the applicant meets the earned income requirement specified in paragraph (a)(1)(ii) of this section. * * *

* * * * *

(h) * * * A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided under paragraph (m) of this section for a commercial vessel permit or as provided under paragraph (n) of this section for a fish trap endorsement. * * *

* * * * *

(m) *Moratorium on commercial vessel permits.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit or as provided in paragraphs (m)(2) and (m)(3) of this section, no applications for commercial vessel permits will be accepted.

(2) An owner of a permitted vessel may transfer the commercial vessel permit to another vessel owned by the same entity by returning the existing permit with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the Regional Director with an application for a commercial vessel permit for his or her vessel. Such new owner may receive a commercial vessel permit for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(1)(ii) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) A commercial vessel permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

(n) *Moratorium on fish trap endorsements.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with a fish trap endorsement, except as follows:

(i) A fish trap endorsement is transferable when the change of ownership of the permitted vessel is from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a fish trap endorsement, temporarily or permanently, with the reef fish commercial permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial reef fish permit for the vessel under the new owner.)

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(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit whose owner has a record of landings of reef fish from fish traps in the EEZ, as reported on fishing vessel logbooks received by the Science and Research Director from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for such vessel under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial permit and the unendorsed permit to the Regional Director with an application for a fish trap endorsement for his or her vessel. Revised commercial permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or (n)(4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. A fish trap endorsement is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

3. In § 641.4, effective April 1, 1996, paragraphs (a)(3) and (o) are added, and the first sentence of newly revised paragraph (a)(4) is revised to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(3) *Charter vessel/headboat permits.* For a person on board a vessel that is operating as a charter vessel or headboat to fish for or possess a reef fish in or from the EEZ, a charter vessel/headboat permit for reef fish must be issued to the vessel and must be on board.

(4) * * * A dealer who receives from a fishing vessel reef fish harvested from the EEZ, or red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit issued under this section, must obtain an annual dealer permit. * * *

* * * * *

(o) *Permit conditions.* (1) As a condition of a commercial vessel permit issued under this section, without regard to where red snapper are harvested or possessed, a vessel with a commercial permit—

(i) Must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

(ii) May not transfer or receive red snapper at sea.

(iii) Must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 641.21(b)(3) and (b)(4) do not apply to red snapper. Such red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) As a condition of a dealer permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

§ 641.5 [Amended]

4. In § 641.5, in the first sentence of paragraph (c), the phrase "reef fish permit" is removed and the phrase "commercial reef fish permit" is added in its place.

5. In § 641.7, paragraphs (a), (s), (y), and (bb) are revised and new paragraphs (ll) and (mm) are added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(a) Falsify information specified in § 641.4(b) or (c) on an application for a permit or endorsement, or information regarding transfer or revision of a permit or endorsemgnt.

* * * * *

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish—

(1) Harvested from the EEZ by a vessel that does not have a valid commercial permit, or

(2) Possessed under the bag limits—as specified in § 641.28(a).

* * * * *

(y) Use or possess in the EEZ a fish trap without a valid fish trap endorsement, as specified in § 641.4(a)(2).

* * * * *

(bb) Without a dealer permit, receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ, as specified in § 641.4(a)(4).

* * * * *

(ll) Sell, trade, or barter or attempt to sell, trade, or barter reef fish harvested on board a vessel for which a commercial permit has been issued under § 641.4 to a dealer that does not have a permit issued under § 641.4, as specified in § 641.28(b).

(mm) As a permitted dealer, purchase, trade, or barter or attempt to purchase, trade, or barter reef fish harvested on board a vessel that does not have a commercial permit issued under § 641.4, as specified in § 641.28(c).

6. In § 641.7, effective April 1, 1996, paragraphs (g), (r), and newly revised (bb) are revised and paragraph (x) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b); or a red snapper without its head and fins intact, as specified in § 641.4(o)(1)(iii).

* * * * *

(r) Transfer reef fish at sea, as specified in § 641.24(f); or transfer or receive red snapper at sea, as specified in § 641.4(o)(1)(ii).

* * * * *

(x) Own or operate a vessel that fishes for or possesses reef fish in or from the EEZ, when such vessel is operating as a charter vessel or headboat without a charter vessel/headboat permit, as specified in § 641.4(a)(3).

* * * * *

(bb) Without a dealer permit, receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ, or red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit, as specified in § 641.4(a)(4).

* * * * *

§ 641.24 [Amended]

7. In § 641.24, paragraph (g) is removed.

§§ 641.28 and 641.29 [Redesignated as §§ 641.29 and 641.30]

8. Sections 641.28 and 641.29 are redesignated as §§ 641.29 and 641.30, respectively, and new § 641.28 is added to read as follows:

§ 641.28 Restrictions on sale/purchase.

(a) A reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit, as required by § 641.4(a)(1), or possessed under the bag limits specified in § 641.24(b), may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

(b) A reef fish harvested on board a vessel for which a valid commercial permit has been issued under § 641.4 may be sold, traded, or bartered or attempted to be sold, traded, or bartered only to a dealer who has a valid permit issued under § 641.4.

(c) A reef fish harvested in the EEZ may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered by a dealer who has a valid permit issued under § 641.4 only from a vessel for which a valid commercial permit has been issued under § 641.4.

§§ 641.2, 641.23, 641.24, 641.25, and 641.27 [Amended]

9. In addition to the amendments set forth above, effective January 1, 1996, in 50 CFR part 641 remove the word "permit" and add, in its place, the words "commercial permit" in the following places:

(a) Section 641.2, in the definitions of "Charter vessel" and "Headboat";

(b) Section 641.23(d)(2)(iii);

(c) Section 641.24(a)(1)(ii)(A);

(d) Section 641.25 introductory text; and

(e) Section 641.27(a).

§§ 641.7 and 641.10 [Amended]

10. Effective April 1, 1996, in 50 CFR part 641 remove the word "permit" and add, in its place, the words "commercial permit" in the following places:

(a) Section 641.7(gg);

(b) Section 641.7(jj)(1);

(c) Section 641.10(b)(4);

(d) Section 641.10(b)(6), first occurrence only; and

(e) Section 641.10(b)(7), second occurrence only.

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Proposed Rules

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108, 116, 120, 122, 131

Business Loan Programs

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory review directive, SBA has completed a page-by-page and line-by-line review of all of its existing regulations. SBA determined that it could eliminate some regulations and consolidate, clarify, and simplify the remainder. This proposed rule consolidates five current CFR parts into one Part to be known as Part 120. The surviving Part 120 covers virtually all policies and regulations, other than size standards, applicable to SBA's business (non-disaster) loan programs. Almost all provisions have been reworded, renumbered, and relocated. There are a few new or revised policies. Several sections have been deleted. However, most of the revisions merely streamline and clarify the regulations and do not represent substantive change.

DATES: Comments must be submitted on or before January 16, 1996.

ADDRESSES: Address written comments to David R. Kohler, Associate General Counsel for General Law, (120) Small Business Administration, 409 3rd Street S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Ronald Metzner, Associate Deputy General Counsel, Office of General Counsel, at (202) 205–6882.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all federal agencies to conduct a page-by-page, line-by-line review of their existing regulations to determine which could be eliminated or streamlined. The President's directive complemented SBA's ongoing reinvention effort, which had already targeted portions of the business loan programs for streamlining and simplification. From its review of its business loan programs, SBA is proposing to eliminate many pages of business loan regulations and consolidate and simplify the remainder.

The proposed rule combines Parts 108, 116, 120, 122 and 131 of 13 CFR into one new Part to be known as Part 120. The new Part 120 will regulate all of SBA's non-disaster financial assistance to small businesses under its general business loan program ("7(a) loans"), its microloan demonstration program ("Microloans"), and its development company program ("504 loans").

Many repetitive and overlapping sections from the current regulations will be eliminated. The remaining provisions will be easy to find and easy to understand. Formerly, provisions applicable to a business loan program were often located in different Parts. Sometimes unintended differences developed between the loan programs in the interpretation or implementation of similar program policies because of minor inconsistencies in the language of the provisions in the several Parts. These inconsistencies have been eliminated.

In the proposed rule, the basic requirements that apply to all of the business loan programs are located in subpart A. These include elements currently found in portions of Parts 108, 116, and 120. Policies specific to a particular program are in the separate subpart applying to that program. Rules specific to 7(a) loans will be in subpart B and include elements currently in portions of Parts 116, 120, and 122. Regulations applying to SBA's special purpose loans currently in Part 122 and a portion of Part 116 will be in subpart C. Subparts D, E, and F will contain rules regarding lenders, program administration, and the secondary market currently found primarily in Part 120. The loan moratorium provisions presently in Part 131 will also be in subpart E. Subpart G will contain rules specific to Microloans currently in Part 122. Finally, regulations applying only to 504 loans currently located in Part 108 will be in subpart H. The following chart summarizes the proposed rule:

Subpart	Subject matter covered	Section numbers
Introduction	Overview of Part 120; definitions.	120.1 to 120.99.
A	Policies applicable to all business loans.	120.100 to 120.199.
B	Loanmaking policy specific to Guarantees and Direct 7(a) Loans.	120.200 to 120.299.
C	Special Purpose Loans.	120.300 to 120.399.
D	Lenders	120.400 to 120.499.
E	Loan Administration.	120.500 to 120.599.
F	Secondary Market.	120.600 to 120.699.
G	Microloan Demonstration Program.	120.700 to 120.799.
H	Development Company Loan Program (504).	120.800 to 120.899.

The most noticeable change in the proposed regulation is in the format. The rule is written in a "user-friendly", "plain-language" style. Provisions have been grouped in logical sequences. Descriptive headings make it easier to find sections. Hyphenated section numbers are no longer used. Questions and answers are sometimes used. Wherever possible, ordinary language is used instead of "government-speak".

SBA's intent was to write regulations that provide easy-to-comprehend notice of the general content of a policy, rather than detailed information explaining or expounding upon that policy. Much explanatory material currently in the regulations and used primarily by SBA personnel to implement SBA's programs has been eliminated from the proposed rule, but is available to the public and may be found in SBA policy guidances, Standard Operating Procedures ("SOPs"), and other SBA materials.

Most of the revisions do not represent policy changes. In many cases, the wording of the regulation has been changed to conform to actual conduct. Although SBA is not aware of any instances, SBA requests comments regarding any inadvertent substantive changes which may have been caused by rewording and format changes.

There are a few substantial policy changes in the proposed rule, however. For example, the "alter ego" rule has been completely revised making more Passive Companies eligible for financial assistance, and new provisions are being proposed allowing Certified Development Companies ("CDCs") to expand into other areas not being adequately serviced by the existing CDCs in those areas. These and other substantive policies are explained in detail below in the section by section analysis.

Comments to this proposed rule are invited, including suggestions for further clarification and streamlining. Send them to the person and address noted above, within the time specified.

Each subpart is addressed separately below. Conversion tables are provided detailing all deletions, consolidations, relocations, and policy changes. Immediately below is a chart showing the location of surviving material by Parts.

Former part #	Subject matter	New 120 subpart	New section number(s)
108	Development Company Loans	H	120.800–899
116	Subpart A—Veterans	N/A	120.104
116	Subpart B—Flood Insurance	N/A	120.170
116	Subpart C—Lead-based Paint	N/A	120.173
116	Subpart D—Floodplain Management and Woodlands Protection.	N/A	120.172
116	Subpart E—Coastal Barrier Resources Act	N/A	120.175
120	Subpart—General; Subpart A—Loan-Making Policy	Dispersed in Intro., Subpart A, Subpart B.	120.1
120	Subpart B—Loan Administration	Subpart E	120.500–599
120	Subpart C—Loan Participants	Subpart D	
120	Subpart D	Subpart D	
120	Subpart E	Subpart D	
120	Subpart F	Subpart F	
120	Subpart G	Subpart F	
122	Subpart A—General Provisions	Dispersed in Introduction, Subpart A, Subpart B	
122	Subpart B—Special Purpose Loans	Subpart C	
131	Loan Moratorium	Subpart E	120.532–536

Definitions applicable to all business loans are located in § 120.10, combining separate definitions previously in Parts 108 and 120. Nearly all have been reworded. Some definitions have been added, and some have been eliminated because they were redundant or were incorporated into the text. Of particular note is the definition of "Associate," which was broadened. Conversely, the definition of "close relative" was limited to the closest family relationship. The net effect of the changes is to pinpoint more effectively the individuals subject to the ethical requirements and conflict of interest prohibitions of the regulations. Terms which are defined in the proposed rule are capitalized in this preamble for consistency. In addition, references to SBA Regional offices and officers have been eliminated and usually, but not always, replaced with a reference to District Director because of SBA's recent restructuring.

A detailed listing of changes specific to each subpart follows.

120 Subpart A and B—General Loan Policy and Guaranteed and Direct 7(a) Loans

The following is a conversion table for Subparts A and B:

Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
116.1–116.3	120.104	Revised; Subpart was split; provisions moved to program Parts.	Minor policy change; explanatory material and definitions will be in SOP or other policy material.
116.10–116.12	120.170	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.20–116.23	120.173	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.30–116.35	120.172	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.40–116.41	120.175	Revised; provisions condensed	No policy change.
116 Appendix A	N/A	Deleted	No policy change. Material no longer needed.
116 Appendix B	N/A	Deleted	No policy change. Material no longer needed.
120.1–1	120.1	Revised; some deletion; material moved	No policy change. Some explanatory material no longer valid.
120.1–2	120.4	Revised	No policy change.
120.1–3	120.180	Revised	No policy change.
120.1–4	N/A	Deleted. Unnecessary	No policy change.
120.2	120.10	Rewritten	No policy change. New definitions are added; an owner is now considered an "Associate."
120.2–1	120.1	Rewritten	No policy change.
120.2–2	120.10	Revised	See Policy Note above.
120.2–3	N/A	Deleted	No policy change. Definition will no longer be used.

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Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
120.2–4	120.10	Revised	Minor policy change. This definition has been dropped, but sub-definitions were modified and included elsewhere.
120.2–5	120.10	Revised	Minor policy change. Definition of Lending Institution was dropped.
120.2–6	120.10	Revised	Minor policy change. Both definitions were dropped.
120.2–7	N/A	Deleted	Minor policy change. Definition was dropped, as no longer used.
120.2–8	120.470	Rewritten	No policy change.
120.3–1	120.2	Rewritten	No policy change.
120.3–2	120.2(a)	Rewritten	No policy change.
120.3–3	120.2	Rewritten	No policy change.
120.3–4	120.101	Consolidated with 120.103–1	No policy change.
120.100	N/A	Deleted	No policy change. Section not needed.
120.101–1(a)	120.100(d)	Rewritten	No policy change.
120.101–1(b)	120.103	Rewritten	No policy change.
120.101–1(c)	120.110(j)	Revised	No policy change. Section now combined with another.
120.101–2	120.110	Revised	No policy change.
120.101–2(a)	120.110(k)	Revised	Clarifies policy regarding promotion of religion. See Note 1, below.
120.101–2(b)	120.110(g)	Revised	No policy change. explanatory material will be in SOP or other policy material.
120.101–2(c)	120.110(h)	Revised	No policy change. Needless wording was deleted.
120.101–2(d)	120.110(b)(c), 120.111	Revised; new rule included	Major policy changes. See Note 2, below.
120.101–2(d) (1) through (7).	120.111	Revised; New Rule.	Major policy changes. See Note 2, below.
120.101–2(d)	120.110(g)	Revised	No policy change.
120.101–2(f)	120.110(f)	Rewritten	No policy change.
120.101–2(g)	120.110(m)	Revised	No policy change.
120.102	120.120	Revised	No policy change.
120.102–1	120.130(f), 120.201	Revised	No policy change.
120.102–2	120.207, 120.130(d)	Revised	No policy change.
120.102–3	120.130(a)	Revised	No policy change.
120.102–4	120.104, 120.130(b)	Revised	No policy change.
120.102–4(a)	120.104	Revised	No policy change.
120.102–4(b)	120.104	Revised	No policy change.
120.102–5	120.130(c)	Revised	No policy change.
120.102–6	120.202	Revised	No policy change. Wording changed to reflect agency policy.
120.102–7	120.110(i)	Revised	Minor policy change. See Note 3 below.
120.102–8	120.130, 120.130(e)	Revised	No policy change.
120.102–9	None	Deleted	Minor policy change. Provision was not used.
120.102–10, 120.102–10 (a)–(f).	120.140, 120.110(o)	Revised; new Rule	Major policy change. See Note 4 below.
120.102–11	120.130	Revised	Minor new policy. 180-day parameter added.
120.102–12 (a)–(d)	120.110(q)	Revised	Minor policy change. See Note 5 below.
120.103–1(a), 120.103–1(b).	120.101, 120.102	Rewritten	Major policy change. See Note 6 below.
120.103–2	120.150	Revised	No policy change.
120.103–2(a)	120.150	Revised	No policy change.
120.103–2(b)	120.150(f)	Rewritten	No policy change.
120.103–2(c)	120.160(a), 120.201	Revised	Minor policy change or clarification. See Note 7 below.
120.103–2(d)	120.160(b)	Revised	No policy change.
120.103–2(e)	120.160(c), 120.170	Revised	No policy change. Though not now specifically mentioned in the regulation, life insurance may still be required as part of prudent lending.
120.103–2(f)	120.170, 120.172–73, 120.175–76.	Revised	No policy change.
120.103–2(g)	120.160(d)	Revised	Minor policy change—depository plan no longer required.
120.103–2(h)	120.200	Revised	No policy change.
120.103–3 (a)–(e)	120.193	Revised	No policy change.
120.104–1 (a)–(e)	120.220	Rewritten	No policy change.
120.104–1(f)	N/A	Deleted	Eliminated from statute.
120.104–2(a)(1)	N/A	Deleted	No policy change; policy will now be contained in SOP or other policy guidance.

Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
120.104–2(a)(2)	N/A	Deleted	Major policy change; deleted from the Act.
120.104–2(a)(3)	N/A	Deleted	Provision eliminated by statute (and had never been implemented by SBA).
120.104–2(b)	120.221(e)(f)	Rewritten	No policy change.
120.104–2(c)	120.221(b)	Rewritten	No policy change.
120.104–2(d)	120.222	Revised	No policy change.
120.104–2(e)(1)	120.222	Revised	No policy change.
120.104–2(e)(2)	120.221(a)	Revised	No policy change.
120.104–2(e)(3)	120.223(a), 120.222(e), 120.221(d).	Revised	No policy change.
120.104–2(e)(4)	120.222(c)	Rewritten	No policy change.
120.104–2(f)	120.195	Rewritten	No policy change—Clarified that does apply to 504 loans. See Note 8.
120.105	120.176	Rewritten; consolidated	No policy change. Note that recent regulatory additions appear in 120.171 and 174. More guidance can be found in SOP.
120 Appendix A	N/A	Deleted	No policy change. Terms of the agreement are in effect. Agreement will appear in SOP or other policy material.
122.1	120.1	Combined	No policy change.
122.2	N/A	Deleted	No policy change.
122.3–1	120.180	Consolidated	No policy change.
122.3–2	N/A	Deleted	No policy change.
122.4	120.176	Consolidated	No policy change.
122.5–1	120.101	Revised; combined	No policy change.
122.5–2	120.191	Revised	No policy change.
122.5–3	120.101, 120.190(d)	Consolidated; rewritten	No policy change.
122.5–4	120.192	Rewritten	No policy change.
122.5–5	120.192 (definition.)	Revised	No policy change.
122.6–1(a)(b)	120.212	Revised	No policy change.
122.6–2	120.530	Moved; revised	No policy change.
122.6–3, Part 131	120.532–535	Moved; combined; revised	No policy change.
122.7	120.151	Rewritten	No policy change.
122.7–1	120.211(a)(b)	Revised	No policy change.
122.7–2	120.211(c)	Rewritten	Reference to District Director's authority to make exceptions will be in SOP.
122.7–3	120.151	Rewritten	No policy change.
122.7–3(a)	120.210(a)	Revised	Minor policy change; increase approval will be by AA/FA.
122.7–3(b)	120.210(b)	Revised	No policy change.
122.7–3(c)	120.210(c)	Revised	No policy change.
122.8–1	120.213(b)	Revised	No policy change.
122.8–2	120.213(b)	Revised	No policy change.
122.8–3	120.213(a)	Revised	No policy change.
122.8–4	120.214	Rewritten	No policy change.
122.8–4(a)	120.214(a)	Rewritten	No policy change.
122.8–4(b)	120.214(a)	Rewritten	No policy change.
122.8–4(c)	120.214(b)	Revised	Clarifies that movement in amount of loan must equal movement in base rate.
122.8–4(d)	120.214(c)	Moved	No policy change.
122.8–4(e)	120.214(d)	Moved	No policy change.
122.8–4(f)	120.214(e)	Moved	No policy change.
122.8–4(g)	120.214(f)	Rewritten	No policy change.
122.8–4(h)	120.214(g)	Revised	No policy change.

The following chart lists additions to Part 120:

Section number	Subject matter covered
120.110(r)	Prohibition for businesses engaged in political and lobbying activities.
120.110(o)	Prohibition for businesses engaged in pornographic or sexually-oriented (non-medical) activities. See Note 1 below.
120.171	Compliance with Child Support Obligations as a condition of an SBA loan.
120.174	Earthquake hazards notice.
120.190	Where a business applies for a loan.
120.193	Use of computer generated forms.

Note 1. SBA often receives eligibility questions from Borrowers and Lenders. In the proposed rule, SBA has attempted to delineate clearly and succinctly the businesses that are ineligible for SBA financial assistance. In particular, SBA field offices, loan applicants, Lenders, development corporations and other SBA intermediaries have requested guidance concerning the eligibility of businesses which may be engaged in religious activities. After consulting with the Department of Justice, SBA proposes to provide such guidance through these new regulations.

The present regulation states that churches and religious organizations are ineligible for SBA financial assistance. It does not specify

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whether the prohibition extends to businesses principally engaged in promoting religion through their activities. Nonetheless, such businesses in the past have been found to be ineligible.

SBA's primary focus is to provide financial assistance to for-profit small businesses that can contribute to job growth and economic development in the United States. Within the limits set by the Establishment Clause of the Constitution, SBA does not disqualify otherwise eligible small businesses from receiving financial assistance merely because they offer religious books, articles, or other products for sale or because they support or encourage moral and ethical values based upon religious beliefs. At the same time, SBA does not make financial assistance available to religious entities or their affiliates for use in directly promoting or teaching religion.

The Establishment Clause of the First Amendment, which states "Congress shall make no law respecting an establishment of religion," serves as a limitation on governmental activities with regard to religion. The Establishment Clause primarily proscribes "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz* v. *Tax Commission*, 397 U.S. 664, 668 (1970). "Neither a state nor the Federal Government * * * can pass laws which aid one religion, aid all religions, or prefer one religion over another * * * No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." *Everson* v. *Bd. of Educ.*, 330 U.S. 1, 15–16 (1947); see also *Grand Rapids School Dist.* v. *Ball*, 473 U.S. 373, 381 (1985) (quoting this language); *McCollum* v. *Bd. of Educ.*, 333 U.S. 203, 210 (1948) (same).

Under the proposed rule, SBA would not provide financial assistance to businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs. While incidental or indirect support of religious objectives might be permissible, SBA would not provide financial assistance to a newspaper, broadcasting business, day care center, or private school principally engaged in such activities.

Some of the more difficult eligibility inquiries received by SBA field offices have involved businesses which engage in activities in a secular setting which may be considered to be religious in nature. The U.S. Supreme Court has held that aid used to fund specifically religious activities in an otherwise substantially secular setting, has the primary effect of advancing religion, and therefore violates the Establishment Clause. *Hunt* v. *McNair*, 413 U.S. 734 (1973); *Bowen* v. *Kendrick*, 487 U.S. 589, 613 (1988). The facts of each situation must be carefully examined. With the above Supreme Court standard in mind, SBA proposes to include among ineligible businesses those principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether the setting is religious or secular, because, in SBA's view, financial assistance to such small businesses would violate the Establishment Clause.

SBA field office personnel and others also have sought guidance on the eligibility of small businesses which sell sexually oriented products or services, or engage in sexually oriented activities. The present regulation is silent regarding obscene, pornographic, or sexually oriented activities. A business engaging in any such activity that is illegal is ineligible under § 120.110(h) of this regulation. However, SBA receives inquiries regarding businesses engaged in activities which, while not illegal, may be considered by the average person to be obscene or pornographic.

"Obscene" material is not protected by the First Amendment. It has been defined by the United States Supreme Court in the context of a criminal case, *Miller* v. *California*, 413 U.S. 15, 24 (1973), as follows: "* * * whether a work which depicts or describes sexual conduct is obscene is [determined by] whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

Under Supreme Court precedent, "[w]hen the government appropriates funds to establish a program, it is entitled to define the limits of that program." *Rust* v. *Sullivan*, 114 L.Ed.2d 233, 256 (1991). In implementing its programs, SBA must also follow the Congressional mandate set forth in Section 4(d) of the Small Business Act (15 U.S.C. 633(d)) ("the Act") to consider the public interest in granting or denying an application for SBA financial assistance.

Having considered the legal precedent and the Congressional mandate, SBA has determined that it may exclude small businesses engaging in lawful activities of an obscene, pornographic, or prurient sexual nature. Under the proposed rule, SBA would not provide financial assistance to small businesses which present live performances of a prurient sexual nature or which derive significant gross revenue from the sale, on a regular basis, of products or services, or the presentation of depictions or displays, of a pornographic, obscene, or prurient sexual nature. Thus, an establishment featuring nude dancing, or a book, magazine or video store containing merchandise of a prurient sexual nature would not be eligible for SBA financial assistance if the obscene, pornographic, or prurient activity contributed to the generation of a significant portion of the gross revenue of the business.

SBA considers this proposed rule to be consistent with its obligation to direct its limited resources and financial assistance to small businesses in ways which will best accomplish SBA's mission, serve its constituency, and serve the public interest. Applicants' First Amendment freedoms are in no way abridged. They may still express their views, exercise their freedoms, operate their businesses, and obtain any other aid available to them.

SBA is considering the use of a percentage of gross revenue instead of "significant" in the final formulation of this rule and requests commenters to focus particularly on the relative merits of the two approaches and what percentage would be appropriate.

Note 2. The proposed regulation establishes a new "Eligible Passive Company" rule replacing the current "alter ego" rule. The new rule will be found at § 120.111. An "Eligible Passive Company" is defined as an entity which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's operations. SBA generally makes business loans only to small businesses engaged in regular business activities, and prohibits such assistance to entities engaged in passive investment or real estate development, or which do not engage in regular and continuous activity as an operating business. SBA calls such entities "passive businesses." At the same time, SBA recognizes that valid business reasons may exist for an Operating Company not to own the real estate and fixed assets used to conduct its business. This proposed rule would allow certain passive businesses to be eligible for SBA assistance if that assistance is used only to acquire and/or improve real or personal property leased to a small business and is used in that small business' operations. The proposed rule would eliminate certain requirements and restrictions which presently limit the use of real estate holding entities in SBA's business-loan and development company programs.

For purposes of these regulations, an Operating Company is defined in section 120.100 as a small business actively currently involved in conducting business operations or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations, personal property owned by an Eligible Passive Company.

Many years ago, SBA agreed to assist eligible Operating Companies seeking SBA financial assistance through their affiliated "mirror image" passive businesses by creating an exception for such "alter egos". Subsequent modifications to the mirror image requirement permitted variations in ownership percentages between the operating business and the alter ego for immediate family members. Such variances led to conflicting interpretations of the policy, which have frustrated its original intent and confused both the public and SBA personnel. Such variances limited the effectiveness of the intended assistance. In addition, the variances caused inconsistencies between the 7(a) loan program and the development company loan program.

On February 22, 1994, SBA published (59 FR 8425) a proposed rule ("1994 proposal") to eliminate the conflicting interpretations and inconsistencies and to revise the family member common ownership threshold to extend the alter ego exception to additional passive businesses. SBA received more than twenty detailed comments suggesting changes in the proposal. It also has received many other suggestions and recommendations from small business owners, development companies, lending institutions and SBA employees at regulatory partnership meetings and other outreach activities conducted by SBA. After considering these comments and suggestions, SBA has revised its thinking sufficiently to warrant publication of this new proposed rule, included here as an integral part of SBA's overall regulatory streamlining.

In its 1994 proposal, SBA suggested reducing the common ownership threshold for any passive business and Operating Company to 20 percent. Most of the comments suggested that, as an exception to a "mirror image" requirement, a 20 percent threshold was insufficient to support a nexus between a passive business and an Operating Company. Some suggested that the nexus be increased to 50 percent, others to 80 percent. However, others suggested that SBA eliminate the "mirror image" rule altogether. After carefully considering all of the options, the goals and the objectives of SBA's loan programs, SBA proposes to eliminate the present alter ego rule, and allow such a loan whenever it essentially represents financial assistance to an Operating Company.

Many small businesses utilize separate entities to hold the real estate or leasehold improvements used in the operation of their businesses. SBA now believes that an Eligible Passive Company, without regard to its ownership interests, should be an eligible entity for SBA financial assistance if it only uses such assistance to acquire and/or improve real or personal property which it leases to an Operating Company for the conduct of its operations.

SBA's new proposed "Eligible Passive Company" rule recognizes that an Eligible Passive Company may be an individual, sole proprietorship, corporation, limited liability company, an irrevocable trust or any form of partnership. Under the current rule, trust ownership of any part of an Eligible Passive Company is prohibited in the SBA business loan program. The development company program permits the use of trusts as eligible owners. In this proposed rule (as in its 1994 proposal), SBA proposes to eliminate the inconsistency between the 7(a) loan program and the development company loan program. SBA believes that there is no reason to prohibit a small business concern using the SBA's business loan programs from taking advantage of the tax and planning benefits which may be inherent in the use of an irrevocable trust. Trust eligibility shall be determined by the eligibility status of the trustor (grantor/settlor), with all donors to the trust being presumed conclusively to have trustor status for eligibility purposes.

SBA welcomes comments on whether use of a revocable trust should also be permitted. While this would give Borrowers greater planning flexibility, the trustor's reserved authority to amend the trust might lead to fronts or other abuses. Under this proposed rule, an Operating Company must be an eligible small business under SBA's standards, and the proposed use of proceeds by the Eligible Passive Company would have to be an eligible use if the Operating Company were obtaining the financing directly. This ensures that the Eligible Passive Company will utilize SBA's financial assistance in the same manner as an eligible small business. As suggested by several comments on the 1994 proposal, both the Eligible Passive Company and the Operating Company must meet SBA's size standards (13 CFR Part 121).

In response to other comments on the 1994 proposal, the new rule clarifies that the lease between the Eligible Passive Company and the Operating Company must be subordinated to SBA's security interest, mortgage or trust deed lien and the Eligible Passive Company (as landlord) must pledge as collateral an assignment of rents derived from the lease. The requirement for an assignment of the lease has been eliminated, but an assignment may be required by SBA when necessary to perfect a lien under applicable law.

Several comments urged SBA not to require the Operating Company to be a co-Borrower on a loan to an Eligible Passive Company, suggesting that legitimate tax and business reasons exist in many cases for the Operating Company to be a guarantor instead of a co-Borrower. Believing this to be a credit and business decision best left to the discretion of SBA loan officers, the Borrower, and (in the development company program) the development company, SBA has provided that the Operating Company may be either a guarantor or a co-Borrower in most cases. An exception is created for loans in the 7(a) loan programs in which working capital funding is included, in which case the Operating Company must be a co-Borrower.

When an Operating Company applies for SBA loan assistance, each 20 percent or more ownership interest holder in the Operating Company must guarantee the loan. Since the Operating Company will be a co-Borrower or guarantor when an Eligible Passive Company is the Borrower, the proposed rule would extend the same requirement to ownership interests of both the Operating Company and the Eligible Passive Company.

Several comments noted that it is common for an Operating Company to need working capital when the Eligible Passive Company applies for a loan primarily to finance the acquisition of real or personal property. In the past, SBA has required the Eligible Passive Company to use the loan proceeds solely to acquire and improve property for lease to an Operating Company. Thus, two separate SBA loans would be needed—one to the Eligible Passive Company for the real property and the other to the Operating Company for working capital. The commenters suggested that SBA permit proceeds of a single loan to the Eligible Passive Company to be used for working capital in the Operating Company. This proposed rule adopts these suggestions for the 7(a) loan program, provided that the Operating Company is a co-Borrower. The loan proceeds for working capital would be allocated to the Operating Company, while those for acquisition and improvement of property for lease to the Operating Company would be allocated to the Eligible Passive Business. Under this approach, small businesses would no longer incur duplicate costs and would benefit by reduced paperwork and a streamlined loan process.

Several comments noted that a trust, established to take advantage of tax and planning benefits inherent in the trust form, may have a need to engage in other activities. They argued that SBA should not prohibit a trust which qualifies as an Eligible Passive Company from engaging in activities other than the leasing of property to the Operating Company. SBA agrees. Accordingly, under this proposed rule, a trust qualifying as an Eligible Passive Company may engage in other activities authorized under its trust documents. The Trustee will need to certify to SBA (and provide pertinent language from the trust document) that the Trustee has authority to act, and that the trust has the authority to borrow funds, pledge trust assets and lease the property to the Operating Company. The Trustee also will need to provide SBA with a list of all trustors and donors.

Note 3. To be eligible for SBA financial assistance, the products and services of a business must be available to the general public. Because the current rule refers only to recreational and amusement enterprises, it is misleading and confusing, and is not uniformly enforced by SBA field offices. The proposed rule clarifies that private clubs and businesses that limit the number of members for reasons other than capacity are ineligible for SBA financial assistance.

Note 4. The current regulations have separate conflict-of-interest sections for Lenders and development companies. SBA has re-written and consolidated the sections. The prohibitions are clear and consistent for all business loan program participants. The proposed rule expands the categories of individuals subject to the requirements and may encompass additional acts not specifically enumerated.

Note 5. The prohibition against assisting a business which previously has caused SBA to sustain a loss is currently stated explicitly only in the 7(a) regulations, although it is applied in all of SBA's business loan programs. Its inclusion in subpart A clarifies that the policy applies to all business loans. Considerable explanatory material currently in the 7(a) regulation has been removed and will be placed in an SOP or other policy guidance.

Note 6. SBA may provide financial assistance only if the applicant shows that the desired credit is needed and not otherwise available on reasonable terms. In § 120.101, SBA clarifies its present policy. The current provision, § 120.103–1 uses the language "not otherwise available on reasonable terms" without indicating any factors which should be considered in determining what is reasonable. Section 3(h) of the Act defines "credit elsewhere" as the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, for similar purposes and periods of time. SBA believes the language in section 3(h) clarifies the credit elsewhere test and proposes to include the language in § 120.101. In addition, the current regulation provides that the certification made by a Lender in its application for an SBA guarantee is generally accepted as sufficient documentation that the desired credit is unavailable to the applicant. In the proposed § 120.101, SBA clarifies and reaffirms its existing policy that the Lender or CDC must have examined the availability of credit to the applicant, have based its

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certification upon that examination, and have documentation in its file to support the certification.

In the 7(a) program, SBA often required applicant principals and owners to use personal assets before granting financial assistance, unless undue hardship would result. In the 504 program, SBA did not enforce this policy and rarely required applicants to use their own personal resources.

In this proposed rule, SBA clarifies that there is no difference between the business loan programs regarding evidence of need. SBA will consider the personal wealth and resources of the principals and owners in determining an applicant's need for SBA financial assistance in all business loan programs, and SBA may require the principals and owners of the applicant to use their personal resources before SBA will grant financial assistance.

Note 7. Current regulations require owners of 20 percent or more of a business to guarantee an SBA loan. Under SBA's current SOP, SBA may require owners of between 5 and 20 percent of a business to guarantee a loan. Since the public is not always aware of its SOP, SBA is including the latter policy in this proposed rule. Rather than set an arbitrary lower limit of 5 percent (or any other number), SBA proposes that the rule state that SBA may require holders of interests of less than 20 percent of an applicant to guarantee an SBA loan, when appropriate under prudent underwriting criteria.

Note 8. The use of SBA Form 159 (Compensation Agreement) in the 504 program has been a subject of controversy for some time. The Act requires 7(a) applicants to certify the names of and fees paid to all professionals or other representatives engaged by the applicant in connection with the SBA financial assistance. Current section 120.104–2(f) implements the statutory requirement. Title V of the Small Business Investment Act, 15 U.S.C. 695 ("Title V") does not have a corresponding provision. Despite this, SBA, citing section 7(a)(13) of the Act, has generally extended the requirement to the development company program. Current section 108.503–6(e) requires the loan application submitted to SBA by a Certified Development Company (CDC) to disclose the amount of all fees paid, the names of the fee recipients, and a description of the services rendered. Most SBA field offices require in 504 loan authorizations that Form 159 be submitted. Many Lenders in the 7(a) program and CDCs in the 504 Program contend that Form 159 has become a burden upon the Borrowers, the Lenders and the CDCs. The 504 industry, in particular, has asked SBA to eliminate the form.

President Clinton has directed Federal agencies to reduce the paperwork burden upon the public whenever possible. However, this requirement is contained in the Act. Therefore, SBA may not eliminate the regulation with respect to the 7(a) program without a statutory change. Congress has recently held hearings regarding the disclosure of fees because of concern about the increased number of investigations of fraud by applicant representatives. As a result, SBA believes it is prudent to continue to require full disclosure of all fees. Since SBA sees no reason to differentiate among the various business loan programs regarding this issue, SBA is proposing in this Rule to maintain the requirement for all business loans until such time that Congress revisits the issue.

120 Subpart C—Special Purpose Loans

The proposed new Subpart C reorganizes and consolidates the current subpart B of Part 122, "Special Purpose Loans" with a portion of Part 116.

In §§ 122.51 through 122.51–6, currently known as "Handicapped Assistance Loans," the word "Disabled" replaces the word "Handicapped" wherever it appears. Section 122.60 "Rural Loans" is deleted since this special program expired on September 30, 1995. The section currently beginning at § 122.61, "Microloan Demonstration Project," has been reorganized as subpart G of Part 120 to separate it from 7(a) Special Loan Programs. There are no major substantive changes in the remaining eleven Special Loan Programs. A new revolving credit program—CapLines—replaces the GreenLine program and is outlined in § 120.395.

In the proposed rule, this subpart outlines the significant policies of each program in a streamlined format while deleting superfluous and repetitious material.

120 Subpart D—Lenders

Proposed subpart D reorganizes and consolidates current Part 120 subparts C ("Loan Participants"), D ("Preferred Lenders Program"), and E ("Certified Lenders Program"). Sections have been grouped together to aid the reader in locating information. There are only a few substantive changes in subpart D.

Proposed new § 120.430 states specifically that SBA may review a Lender's records relating to SBA guaranteed loans during normal business hours. In addition, § 120.420, which is the former § 120.301–7, contains a new provision (120.420(c)) restricting the use of SBA loans by Non-Depository Lenders.

(a) Certified Lenders Program ("CLP"). The proposed rule deletes the definitions found now at § 120.501. Some of the terms are not used in the subpart. Others apply to the entire Part and will appear in § 120.10.

The proposed rule streamlines the procedure for obtaining CLP status. Thus, current § 120.502–1 will be deleted and replaced with new § 120.441 authorizing SBA District Directors (whose decision is final) to approve and renew CLP Lenders. Section 120.441(c) clarifies that CLP status applies only in the SBA office which approved that status.

The proposed rule will eliminate current § 120.502–2, which specifies factors which SBA will consider in deciding whether a Lender should become a CLP lender. Its replacement, § 120.441(a), retains several of the current seven considerations. SBA may consider other factors as well.

Proposed § 120.442, "Suspension or revocation of CLP status" is new, and follows the mechanism and procedure established for PLP lenders.

(b) Preferred Lenders Program ("PLP"). The proposed PLP regulations delete superfluous information and have been reorganized into a more logical sequence. They also will reflect SBA reorganization and program changes, including the establishment of the centralized PLP processing office located in Sacramento, California.

The proposed rule deletes the definitions found now at § 120.401. Some of the terms are not used in the subpart. Others apply to the entire Part and will appear in § 120.10.

Current § 120.402–1 describes how a Lender initially may become a PLP Lender. Proposed § 120.451(a) describes new procedures following SBA's structural reorganization. The branch or district office will forward its nomination of a Lender or the Lender's request for PLP status to the loan processing center rather than to a regional office. The district office's recommendation and the loan processing center's recommendation are forwarded to the AA/FA who makes the final determination. This section also provides for expansion and recertification of PLP status by the AA/FA after a review of the PLP Lender by SBA.

The section clarifies that if a PLP Lender is not already a CLP Lender in a territory into which it seeks to expand its PLP status, it will automatically obtain CLP status in the territory when it is granted an extension of its PLP status into that territory without approval from the District Office.

Proposed § 120.451(b)(current § 120.402–2) describes the factors SBA will consider in evaluating PLP nominations. SBA has eliminated the requirement that the Lender be a Certified Lender before being considered as a PLP Lender.

Proposed § 120.451(c) is a new provision providing that the AA/FA will designate the "area" in which a PLP Lender can make PLP loans. SBA believes that centralizing this function in the AA/FA will result in a uniform policy and practice.

The proposed rule consolidates the current § 120.403–1 (statutory ceiling), § 120.403–5 (interest rates), and § 120.403–6(b)(fees) into §§ 120.151, 120.213, 120.214, 120.221 and 120.222 respectively. The proposed rule deletes the current § 120.403–3 (credit allocation) because it is no longer used.

The proposed rule deletes the current § 120.403–6(a), which limits the fees a PLP lender can charge if it sells the guaranteed portion of a loan within six months of disbursement, because SBA feels there is no need to retain a cap on this fee. It consolidates the current § 120.403–7(c) into § 120.430.

The current § 120.403–7 has been rewritten as the new § 120.452(a) specifying the requirements of PLP loan processing. The section specifying the percentage of a PLP loan that SBA will guarantee has been moved from the current § 120.403–2 to § 120.452(a)(3). In proposed § 120.452(b), SBA describes the new procedures for approving a PLP loan by submitting documents to the loan processing center, which issues an SBA loan number.

The proposed rule consolidates the current §§ 120.404–1 through 120.405–1 concerning servicing and liquidation into proposed § 120.453, and deletes current §§ 120.405–2 through 120.405–4 because they are redundant or adequately described in SBA's SOP.

In proposed § 120.451(f), SBA has added a new provision to allow a PLP Lender to submit a request to expand its territory to the SBA loan processing center.

(c) Small Business Lending Companies ("SBLC"). The proposed rule revises the SBLC regulations for clarity and to eliminate details of the program better suited to an SOP. The sections have been renumbered, reorganized in a more logical structure, and presented in a question and answer format.

Finally, a provision on SBA's authority to suspend or revoke an SBLC's license is proposed at § 120.475.

120 Subpart E—Loan Administration

New subpart E proposes general loan administration rules. Basically, these proposed rules reflect existing SBA policies. Any SBA field office can provide more detailed guidance concerning any aspect of these proposed rules.

Proposed §§ 120.510 and 120.511 describe the servicing responsibilities of the parties making loans. SBA services direct loans that it makes without the participation of a Lender, while Lenders service loans they make with the SBA guarantee. After SBA honors its guarantee, the Lender generally continues to service the loan. Proposed § 120.512 describes this arrangement.

Proposed § 120.513 lists the servicing actions that require the concurrence of the Lender and the SBA because of their importance to the effective and efficient operation of SBA's loan program. The list includes the provisions contained in the participation agreement which a Lender executes with SBA to allow it to make 7(a) guaranteed loans, such as the alteration of terms and conditions of any loan instrument, the release of collateral with a value over 20 percent of the original amount of the loan, the acceleration of the maturity of a note, and the initiation of litigation.

SBA has the authority to purchase the guaranteed portion of a loan at any time, and proposed § 120.520 provides that a Lender may ask SBA to purchase the guaranteed portion when the Borrower has been continuously in default on its installment payments to the Lender for more than 60 days. If a Borrower cures a default (see § 120.523) before SBA purchases, the Lender's right to request purchase lapses. If SBA honors its guarantee, it does not waive any right it may have against the Lender because of the Lender's negligence, misconduct, or violation of the regulations, the guarantee agreement between the lender and SBA, or any of the loan instruments. SBA may sue to recover the amounts paid and may assert as a basis for recovery any of the grounds set forth in § 120.524.

A Borrower's obligation to pay principal and interest continues after SBA honors its guarantee. Proposed § 120.521 prescribes that the interest rate for which the Borrower is liable after the purchase continues to be the rate stated in the note if it is a fixed rate note. If a loan carries a fluctuating interest rate, the Borrower is obliged for the rate in effect at the time of the earliest uncured default (where there has been a default), or the rate in effect at the time when SBA purchases (where there has been no default). This means that no further fluctuations of interest can occur after SBA honors its guarantee.

Proposed § 120.522 provides that the interest rate for which SBA is liable when it purchases the guaranteed portion is the rate in the note if it is a fixed rate loan, or the rate in effect on the date of the earliest uncured default (if a default has occurred) or when SBA purchases (if there has been no default). The section provides that SBA pays a Lender no more than 120 days interest from the date of a Borrower's uncured default, plus any deferment period or time it takes for SBA to process a request to purchase. This cut-off period encourages a Lender to make timely demand on SBA to purchase. Because extenuating circumstances may occur, the proposed section authorizes SBA to extend the 120 day time period for good cause.

Proposed § 120.523 defines "earliest uncured default" as the date on which a Borrower fails to pay a regular installment payment which remains unpaid for 60 days. If a Borrower makes a payment before a Lender requests SBA to honor its guarantee, the earliest uncured default date advances to the next unpaid installment date. This means that if a Borrower cures early defaults, the earliest uncured default date continues to move forward.

SBA does not have to honor its guarantee, under proposed § 120.524, if a Lender, amongst other things, fails to make, close, service, or liquidate an SBA guaranteed loan in a prudent fashion. The regulation contemplates that a Lender will comply with all the provisions of the regulations, the loan guarantee agreement it executed with SBA, the loan authorization (which is the document SBA issues to state that it is providing its guarantee for a specific loan request), and other loan documents. A Lender's failure to disclose material facts, a Lender's making material misrepresentations to SBA, or the Lender's failure to use SBA provided forms or exact computerized facsimile copies also justifies denial of liability under the guarantee. Other Lender actions which would support SBA's denial of liability on its guarantee include Lender's failure to pay the guarantee fee, Lender's late demand on SBA to purchase, or if the Borrower has paid the loan in full.

In order to assure the successful establishment and operation of a Borrower, proposed § 120.530 authorizes SBA to defer a Borrower's initial payments for a stated period of time. Under proposed § 120.531, SBA could extend the maturity of a loan for up to ten years beyond its stated maturity if the extension would aid in the orderly liquidation of the loan. Proposed § 120.532 defines "Moratorium" to be the period of time during which SBA assumes a Borrower's obligation to make installment payments on a guaranteed loan.

Under proposed § 120.533, SBA could grant a Moratorium if the business would become or remain insolvent without it; if the business would become or remain viable with a Moratorium; if a deferment is not available; if all the parties agree that SBA could stop making payments at any time; if the Borrower executes a demand

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note to repay SBA's Moratorium payments; and if SBA obtains security which it deems necessary. These conditions supporting a Moratorium ensure that the parties know that their obligations continue and that SBA expects to be reimbursed for its advances under this procedure.

Proposed § 120.534 allows SBA to continue a Moratorium for six months. SBA may extend a Moratorium for up to five years if a Borrower could demonstrate its eventual ability to repay the original note (and the demand note required for the Moratorium). Proposed § 120.535 lists the repayment terms for a Moratorium. Under this section, the interest rate on the demand note is the same as for the guaranteed loan; SBA will apply repayments first to accrued interest and then to principal; and SBA may demand payment in full under the demand note or accept a repayment schedule.

Proposed § 120.540 establishes SBA's policy concerning the liquidation of collateral. Ordinarily, SBA does not liquidate collateral if there is any reasonable prospect that the Borrower or guarantor (other than SBA) may repay the loan within a reasonable period of time. Without the Borrower's consent, SBA has the authority to sell a direct loan, convert a direct loan to a guaranteed or immediate participation loan, or convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender. Importantly, this authority enables SBA to take appropriate steps to resolve issues and problems concerning a loan. The proposed section also provides that SBA will generally use competitive bids or a negotiated sale to dispose of collateral. Under the proposed section, SBA and the Lender would share all loan payments and recoveries, all reasonable expenses, and any security or guarantee which the Lender or SBA may receive in connection with a loan. The proposed section provides that guarantors of financial assistance have no rights of contribution against SBA on a direct or guaranteed loan. The proposed section makes clear that SBA is not a co-guarantor with any other guarantor, and that SBA's guarantee is unique, distinctive, and of a totally different character than the guarantees offered by other parties.

Under applicable federal law, homestead protection for a farmer-Borrower covers a residence and a reasonable amount of adjoining real property ("the collateral") that are still occupied by the farmer-Borrower after being acquired by SBA as a result of foreclosure, a voluntary conveyance, or conveyance to the government by a trustee in bankruptcy. The homestead protection provisions in the proposed rules cover SBA direct and guaranteed loans, as well as SBA disaster loans. Proposed § 120.550 specifies that a farmer-Borrower who defaults on an SBA loan would be allowed to lease the collateral from SBA. Under proposed § 120.551, SBA must notify the farmer-Borrower of the homestead protection rights within 30 days after SBA acquires the property. Under the proposed rule, the farmer-Borrower has to apply to the local SBA office for homestead protection within 90 days after SBA acquires the property, provide evidence that the farm produces farm income reasonable for the area and economic conditions, show that at least 60 percent of the farmer's gross annual income came from farm or ranch operations in at least 2 out of the last 6 years, that the farmer-Borrower has resided on the property during the preceding 6 years, and that the farmer is personally liable for the debt. This last point means that the SBA loan could have been made to any individual or entity, so long as the farmer-Borrower was personally liable for the debt.

Under proposed § 120.552, the farmer, under a lease with SBA, has to occupy the residence and pay a reasonable rent to SBA. The lease can be for a period of up to 5 years, and can be renewed for up to another 5 years. During the lease, or at its end, the lessee-farmer has the right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser. If the sale of the homestead property is an installment sale, the purchase agreement has to require a down payment of no less than 20 percent of the purchase price. The option price to the lessee-farmer must be the appraised fair market value determined by an independent appraisal. SBA cannot demand a payment for the homestead property that exceeds the appraised value.

Under proposed § 120.553, a farmer-Borrower can appeal denial of a homestead protection application to the AA/FA. Until a final decision is made, the farmer would be allowed to remain on the property. If a conflict exists between state law and the SBA homestead provisions, state law prevails.

120 Subpart F—Secondary Market

SBA has consolidated subparts F, G, and H of Part 120 into one new Subpart F, governing SBA's secondary market for SBA guaranteed portions of loans. Subpart F covers central registration requirements, the pooling and sale of SBA guaranteed portions, and the sale of individual SBA guaranteed portions that do not comprise part of a Pool. Provisions currently found in separate subparts have been consolidated for ease of understanding. SBA has renumbered and reordered the resulting provisions, but there are no substantive or policy changes.

The following is a conversion chart explaining where the current sections of subparts F, G, and H of 120 will be placed:

New section	Old section
120.600	120.601, 120.700, 120.800.
120.601	120.602, 120.702, 120. 800, 120.802.
120.610	120.706 and 120.803.
120.611	120.707.
120.612	120.710 and 120.807.
120.613	120.301–2.
120.620	120.711 and 120.701.
120.621	120.801.
120.630	120.703.
120.631	120.704.
120.640	120.709 and 120.806.
120.641	120.713 and 120.809.
120.642	120.708.
120.643	120.805.
120.644	120.804.
120.645	120.605,120.605–1.
120.650	120.603, 120.604, 120.604–1, and 120.604–2.
120.651	120.605–3.
120.652	120.712 and 120.808.
120.680	120.605–2, 120.705, and 120.810.

Proposed § 120.600 describes the secondary market. Section 120.601 contains definitions used in subpart F. Proposed § 120.610 provides that each Certificate representing either the entire individual guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans ("Certificate") must be in registered form only. This means that there are no bearer Certificates. The section also specifies payment terms for Certificates.

Proposed § 120.611 describes the Pools which back Pool Certificates, including Pool characteristics and Pool Certificate interest rates. In § 120.612, SBA specifies conditions which must be met for an SBA guaranteed portion of a loan to be eligible to back a Certificate. Among other things, a loan must be current.

Proposed § 120.613 describes a secondary participation guarantee agreement (SPGA). Before an SPGA may be executed, the Lender must disburse the full amount of the loan, pay SBA's guarantee fee, and give SBA copies of the SPGA and note.

Proposed § 120.620 describes the extent of SBA's guarantee of a Pool Certificate. SBA guarantees the timely payment, whether or not collected, of principal and interest, and any prepayment of principal on the loans. SBA's guarantee to a Registered Holder in a Pool of SBA guaranteed portions of loans is backed by the full faith and credit of the United States.

Proposed § 120.621 describes the extent of SBA's guarantee of an individual guaranteed portion. SBA guarantees to purchase from the Registered Holder the guaranteed portion equal to the unpaid principal and interest, less deductions for the servicing fees of the Lender and the fiscal and transfer agent ("FTA"). SBA does not guarantee timely payment on individual guaranteed portions. SBA's guarantee to a Registered Holder is unconditional and is backed by the full faith and credit of the United States. SBA's guarantee is triggered when the Borrower defaults on installments of principal or interest, the Lender fails to send to the FTA any payments it received from the Borrower, or the FTA fails to send to the Registered Holder any payments it received from the Lender.

Proposed § 120.630 specifies the qualifications that an entity must possess to be a Pool Assembler. Among other things, the entity must be subject to regulation by an appropriate agency, have the financial capability to assemble acceptable guaranteed portions, and be in good standing with SBA. In proposed § 120.631, SBA specifies reasons for suspending a Pool Assembler from the secondary market.

Proposed § 120.640 describes the administration of the Pools and individual guaranteed portions. The FTA maintains a registry of Certificate owners. Each Pool is self-liquidating, which means that there is no substitution of guaranteed portions of loans that are paid off by the borrower or SBA. If SBA pays a claim under a guarantee with respect to a Certificate, it is subrogated to the rights satisfied by the payment. This means that SBA can take any and all steps to be reimbursed for payments it makes. Absent an express statutory change, no federal, state or local law can preclude or limit SBA's exercise of its ownership rights in the portions of loans constituting the Pool against which Certificates are issued.

Proposed § 120.641 requires the Pool Assembler, Registered Holder of a Certificate representing an individual guaranteed portion, or any subsequent seller to disclose to the purchaser information on the Certificate's terms, conditions, and yield. Section 120.642 specifies the documents that a Pool Assembler must deliver to the FTA before the FTA can issue a Certificate, such as a Pool application form and documents which evidence the guaranteed portions which comprise the Pool. Section 120.643 specifies the documents that a seller must provide the FTA before the FTA can issue the initial Certificate for an individual SBA guaranteed portion, including documentation of ownership and a copy of the note that represents the guaranteed loan.

Proposed § 120.644 describes certain conditions applying to the sale of individual guaranteed portions. Each Certificate which represents the guaranteed portion of a single loan must be for the entire amount of the guaranteed portion. A Lender (or its Associate) cannot purchase the guaranteed portion of a loan which it has made.

In § 120.645, SBA describes how to transfer a Certificate and what information a seller must supply to the FTA. Transfers must comply with Article 8 of the Uniform Commercial Code of New York State.

Under § 120.650 the FTA registers, issues, transfers title to, and redeems Certificates. Proposed § 120.651 tells a Registered Holder what information it must give to the FTA to replace a Certificate because of loss, theft, destruction, mutilation or defacement. Section 120.652 authorizes the FTA to collect fees approved by SBA.

Proposed § 120.660 specifies the reasons for SBA to suspend or revoke the privilege of a lender, broker, dealer, or Registered Holder to participate in the secondary market.

Subpart G—Microloan Demonstration Program

This proposed subpart revises, amends, and reorganizes the rules covering the microloan demonstration program ("microloans") currently located in Part 122. Substantive changes include: (1) § 120.708(c) provides a clearer understanding of how SBA determines the interest rate charged to an intermediary; (2) § 120.708(e) makes it clear that SBA loans to intermediaries are non-recourse unless an intermediary causes a loss to SBA by fraud or negligence; and (3) § 120.710 requires an intermediary to maintain accurate and current books and records, and to report periodically to SBA the status of its microloan portfolio.

The following conversion chart shows where to find the current Part 122 microloan sections:

Existing section	Action	New section
§ 122.61 (a) and (b)	Revised	§ 120.700 (a)–(c)
§ 122.61–2 (a)–(c)	Retained	§ 120.701 (a)–(c)
§ 122.61–2(d)	Revised	§ 120.701(d)
§ 122.61–2 (e)–(g)	Retained	§ 120.701 (e)–(g)
	New	§ 120.701(h)
§ 122.61–3(a)	Revised	§ 120.700(d)
§ 122.61–3(b)	Revised	§ 120.703
§ 122.61–3(c)	Revised	§ 120.703(c)
§ 122.61–4 (a) and (b)	Revised	§ 120.705
§ 122.61–4(c)	Deleted	
§ 122.61–5	Revised	§ 120.704
§ 122.61–6 (a)–(c)	Revised	§ 120.707
§ 122.61–6(d)	Revised	§ 120.707
§ 122.61–6(e)	Revised	§ 120.707
§ 122.61–6(f)	Deleted	
§ 122.61–7	Revised	§ 120.708
§ 122.61–8 (a)–(c)	Revised	§ 120.710
§ 122.61–8(d)	Deleted	§ 120.710
§ 122.61–9 (a) and (b)	Revised	§ 120.710
§ 122.61–10	Retained	§ 120.712
§ 122.61–11(a)	Revised	§ 120.712
§ 122.61–11(b)	Revised	§ 120.702

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Existing section	Action	New section
§ 122.61–11(c)	Retained	§ 120.712
§ 122.61–12	Revised	§ 120.711

Subpart H—Development Company (504) Loan Program

This proposed rule makes current Part 108 a subpart of Part 120. The following conversion chart details the restructuring, subsection-by-subsection. Those sections of Part 108 applicable to all business loans have been consolidated with the corresponding 7(a) provisions and placed in subpart A ("Policies Applying to All Business Loans"). Sections of Part 108 that apply only to the Development Company Loan Program ("504 loans") will be in this subpart H. Finally, some sections of Part 108 have been deleted as delineated in the chart.

Part I—Section-by-Section Analysis of Part 108

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.1(a)	Condensed and moved to § 120.800	No policy change.
§ 108.1(b)	Condensed and moved to § 120.800	No policy change.
§ 108.1(c)	Rewritten and moved to § 120.860–§ 120.862	No policy change.
§ 108.1(d)	Incorporated into § 120.862	No policy change.
§ 108.1(e)	Eliminated as redundant; incorporated into § 120.176	No policy change; eliminated because policy covered by other parts.
§ 108.2	Definitions applying to all business loans are in § 120.10. Those applying solely to 504 loans are in § 120.801. Some terms applying only to a certain subsection are defined in the subsection.	See comments below on specific definitions.
§ 108.3(a)	Rewritten and placed into § 120.881(a). Definition of Substantial Increase in Unemployment is found in § 120.801.	No policy change.
§ 108.3(b)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.3(c)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.3(d)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.4(a)	Eliminated	No change of policy; rule eliminated because inherent in standard business practice.
§ 108.4(b)	Eliminated, but covered in § 120.826	No change in policy; will be covered in SBA's Standard Operating Procedure (SOP) or other policy guidance.
§ 108.4(c)	Eliminated, but covered in § 120.826	No change in policy; will be covered in SBA's SOP or other policy guidance.
§ 108.4(d)	Rewritten, clarified, and broadened. Most provisions consolidated with corresponding sections of current Part 120 into proposed § 120.140. See Note 4, subparts A and B. Those applying only to 504 loans are in § 120.855.	Minor policy change: SBA may waive prohibition on member of CDC Board of Directors being on another CDC's Board.
§ 108.4(e)	Consolidated with § 108.4(d) and placed in § 120.40. Specific examples of conflicts of interest will be found in SOP. Prohibition against debt refinancing is in § 120.884.	No policy change.
§ 108.4(f)	Eliminated	Consolidated into § 120.176.
§ 108.5(a)	Covered in § 120.826; specific explanations and details in SOP	No policy changes.
§ 108.5(b)	Covered in § 120.826; specific explanations and details in SOP	Miniaturized reproductions of CDC records no longer referenced. Other technologies now available. Specific details will be in SOP.
§ 108.5(c)	Condensed into § 120.830(c)	No policy change.
§ 108.5(d)	Condensed into § 120.830(d) and (e)	Policy change -means of delivery will be detailed in SOP.
§ 108.5(e)	Eliminated	Report considered unnecessary under Presidential directive to reduce paperwork.
§ 108.5(f)	Eliminated	No policy change. Not required as regulation.
§ 108.6	Eliminated	Reserved sections were removed.
§ 108.7(a)	Consolidated in § 120.140	No policy change.
§ 108.7(b)	Eliminated. Provision covered in note and other closing documents	No policy change.
§ 108.8(a)	Credit elsewhere test consolidated and placed in § 120.101; evidence of need and use of personal resources by principals placed in § 120.102.	Major change of policy emphasis. See Note 6, subparts A and B.
§ 108.8(b)	Consolidated into § 120.150 and § 120.160	No policy change.
§ 108.8(c)	Sound business purpose is addressed in § 120.120 and § 120.150. Size requirements is addressed in § 120.100(c) and § 120.880(b).	No policy change.

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.8(d)	Replaced by § 120.111	Major policy change. See Note 2, subparts A and B.
§ 108.8(e)	Condensed and placed in § 120.870	No policy change.
§ 108.8(f)	Included in § 120.881. Financial and investment businesses addressed in § 120.110.	Clarifies policy. Ineligibility of project because relocation will cause unemployment may be rebutted if the relocation is crucial to the continued existence, economic wellbeing or competitiveness of the applicant, and the benefit to new community outweighs injury to old.
§ 108.8(g)	This subject is consolidated into § 120.110 and § 120.130	No policy change.
§ 108.9	Rewritten and placed in § 120.923(c)	No policy change.
§ 108.10	Eliminated. Not necessary to include in regulation	No policy change.
§ 108.501	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.501–1	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.502	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.502–1	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.503(a)	Eliminated	No policy change; covered in § 120.1.
§ 108.503(b)	Rewritten and incorporated into § 120.2, § 120.860, § 120.861, and § 120.862.	No policy change.
§ 108.503(c)	Rewritten and placed in § 120.829	Minor policy change. $45,000 is substituted for 25% increase, which was $43,750. Specific instructions and details in SOP and program guidance.
§ 108.503(d)	Condensed and placed in § 120.829(b) and (c)	No policy change; specific instructions and details in SOP and policy guidance.
§ 108.503–1(a)	Description of the program incorporated into § 120.2(c) and § 120.801. Eligible projects are in § 120.120, and applications for certification are in § 120.810.	No policy change
§ 108.503–1(b)	Rewritten and placed in § 120.820 through § 120.826, and § 120.855(a)	No policy change; incidental benefit to CDC Associate clarified to allow relationship in the regular course of business.
§ 108.503–1(c)	Rewritten and placed in § 120.821. See definition of Area of Operations in § 120.802. Extending a CDC's Area of Operations is in § 120.835 and § 120.836. Expiration of existing, temporary Expansions is in § 120.837. Case-by-case extensions are in § 120.838.	Important policy changes—see comments below.
§ 108.503–1(d)	Consolidated into § 120.822. Member or Board representation in another CDC is in § 120.855(b).	Policy change. See Note under current § 108.4(d) above. Specific details and instructions will be in SOP
§ 108.503–1(e)	Rewritten and placed in § 120.826 and § 120.827. SBIC limitation addressed in § 120.820.	No policy change; Specifics addressed in SOP.
§ 108.503–1(f)	Incorporated in § 120.827	No policy change
§ 108.503–1(g)	Rewritten and placed in § 120.855(b)	Policy change. See Note under current § 108.4(d) above.
§ 108.503–2(a)	Rewritten and placed in § 120.810	Small substantive change. Regional offices removed from process because of SBA reorganization. More information in SOP.
§ 108.503–2(b)	Rewritten and placed in § 120.811	Minor procedural changes. 10 day period to submit notice to SBA eliminated; officer and director addresses no longer required in notice.
§ 108.503–2(c)	Rewritten and placed in § 120.981	No policy changes.
§ 108.503–2(d)	Rewritten and placed in § 120.812	No policy change.
§ 108.503–2(e)	Rewritten and placed in § 120.980	No policy change.

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Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.503–3(a)	Rewritten and placed in § 120.827	No policy change.
§ 108.503–3(b)	Covered by § 120.827(a)	No policy change. Will be expounded upon in SOP.
§ 108.503–3(c)	Rewritten and placed in § 120.828	Policy change. The number of loan approvals required to satisfy the minimum level of activity will now be specified in annual program announcement. See major policy change note (a) below.
§ 108.503–3(d)	Covered by § 120.826	No policy change. Specifics in SOP.
§ 108.503–3(e)	Eliminated.	Deleted reserved section.
§ 108.503–3(f)	Rewritten and placed in § 120.830(a) and (b)	No policy change. SBA streamlining paperwork requirements under Presidential directive. Specifics in SOP.
§ 108.503–3(g)	Rewritten and placed in § 120.140(c).	No policy change.
§ 108.503–3(h)	Rewritten and placed in § 120.983	No policy change.
§ 108.503–4(a)	Rewritten and placed in § 120.120, § 120.110, § 120.150 and § 120.193. See § 120.871 and § 120.872 for portions of new construction or existing building that may be leased.	No policy changes.
§ 108.503–4(b)	Rewritten and placed in § 120.130 and § 120.881	Policy change. Airplanes in Alaska and Hawaii no longer eligible. Reference to assets limited in potential use or marketability deleted. This is part of the credit decision. The rule clarifies the eligibility status of heavy construction equipment. See comment (d) below.
§ 108.503–4(c)	Rewritten and placed in § 120.882(a)(2) and § 120.884(a) and (c). Statutory ceiling discussed in § 120.931; SBIC participation in § 120.103 and § 120.913; and administrative ceiling in § 120.932..	Policy change. Any expenditure made toward a project in anticipation of SBA assistance within 6 months of receipt by SBA of an application is eligible. No notice is required. See comment (b) below.
§ 108.503–5(a)	Rewritten and placed in § 120.120 and § 120.882	No policy change.
§ 108.503–5(b)	Rewritten and placed in § 120.883	No policy change.
§ 108.503–5(c)	Rewritten and placed in § 120.130 and § 120.884	No policy change.
§ 108.503–5(d)	Discussed in § 120.882(a)(2). Land contributions in § 120.911	See comment under current § 108.503–4(c) above and policy comment discussion (b) below. Specific instructions and explanations will be in SOP.
§ 108.503–6(a)	Rewritten and placed in § 120.883(c), § 120.961(a), and § 120.971(a)(1)	No policy change. Omits reference to $2,500 in discussion of legal fees. See note (c). Specifics in SOP.
§ 108.503–6(b)	Rewritten and placed in § 120.936	No policy change.
§ 108.503–6(c)	Rewritten and placed in § 120.961(b)	No policy change.
§ 108.503–6(d)	Rewritten and placed in § 120.971(a)(3)	No policy change.
§ 108.503–6(e)	Eliminated	Policy change. See Note 8, subparts A and B.
§ 108.503–7(a)	Rewritten. Certification of project completion placed in § 120.891. Certifications of no adverse change are in § 120.892..	No policy change. Specifics in SOP.
§ 108.503–7(b)	Rewritten and placed in § 120.890	No policy change.
§ 108.503–7(c)	Rewritten and placed in § 120.962	No policy change.
§ 108.503–8(a)	Rewritten and placed in § 120.900	No policy change, but (3) is now called "Borrower contribution" instead of "the 503 Company injection".
§ 108.503–8(b)	Rewritten and placed in § 120.920 through § 120.925. Newly published (1/20/95) "other real estate owned" provision placed in § 120.923(a).	No policy change, but § 120.923(b) clarifies that some payments made by lienholder are allowed to maintain and protect the lien position.
§ 108.503–9	Loan conditions are detailed in § 120.930 through § 120.941. Description of program is in § 120.3 and § 120.801.	No policy change.
§ 108.503–10	Rewritten and placed in § 120.910 through § 120.913	No policy change. Some specifics left for SOP.
§ 108.503–11	Eliminated. Consolidated with current § 108.504(e) into § 120.954	No policy change.
§ 108.503–12	Rewritten and placed in § 120.960	No policy change. Specifics in SOP.
§ 108.503–13(a) and (b)	Rewritten and placed in § 120.970. Quarterly reports discussed in § 120.830(f).	No policy change. Specifics moved to SOP.
§ 108.503–13(c)	Placed in 120.970. Incorporates § 120.513	No policy changes. Specifics in SOP.
§ 108.503–13(d)	Rewritten and placed in § 120.971(a)(1)	No policy change.
§ 108.503–13(e)	Rewritten and placed in § 120.962	No policy change.
§ 108.503–13(f)	Rewritten and placed in § 120.963	No policy change.

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.503–13(g)	Rewritten and placed in § 120.938	No policy change.
§ 108.503–13(h)	Consolidated into § 120.530	No policy change. Specific information and explanatory material will be in SOP.
§ 108.503–14	Rewritten and placed in § 120.970	No policy change. Specific information and explanatory material will be in SOP.
§ 108.503–15(a) and (b)	Rewritten and placed in § 120.972	No policy change—specifics in SOP.
§ 108.503–15(c) and (d)	Eliminated	Deleted all reserve sections.
§ 108.503–15(e)	Rewritten and placed in § 120.984	No policy change.
§ 108.504 (a), (b) and (c)	Consolidated into § 120.801	No policy change.
§ 108.504(d)	Placed in § 120.934	No policy change.
§ 108.504(e)	Rewritten and placed in § 120.954	No policy change.
§ 108.504(f)	Rewritten and placed in § 120.941	No policy change.
§ 108.504(g)	Eliminated. More suitable for inclusion in SOP	No policy change.
§ 108.504(h)	Rewritten and placed in § 120.941	No policy change.
§ 108.504(i)	Consolidated into § 120.962	No policy change.
§ 108.504(j)	Rewritten and placed in § 120.939	No policy change.
§ 108.504(k)	Placed into § 120.941	No policy change.
§ 108.504(l)	Eliminated	No policy change. Debentures are sold through Pools.
§ 108.504–1	Condensed and placed in § 120.194	Computer generated forms now may be used for all business loans, not just 504 loans.
§ 108.505(a)	Consolidated into § 120.1	No policy change.
§ 108.505(b)	Consolidated into § 120.2 and § 129.801	No policy change.
§ 108.505(c)	SBA guarantee discussed in § 120.801; timely payment on Certificate is in § 120.942; effect of other laws is in § 120.991.	No policy change.
§ 108.505(d)	Condensed and placed in 120.941	No policy change.
§ 108.505(e)	Condensed and placed in § 120.942	No policy change.
§ 108.505(f)	Placed in § 120.950, § 120.951 (selling agent), § 120.952 (fiscal agent), § 120.953 (trustee), and § 120.954 (central servicing agent). Bond/insurance requirement moved to § 120.956(a).	No policy change, but reference to "Transfer Agent" has been deleted. "Trustee" has been used since 1986.
§ 108.505(g)	Eliminated. Regulations not necessary	No policy change, but "Pooler" is now referred to as "Underwriter" and specific conditions and duties will be in SOP.
§ 108.505(h)	Consolidated and placed in § 120.955	No policy change.
§ 108.505(i)	Consolidated and placed in § 120.971(c)	No policy change.
§ 108.505(j)	Included in § 120.942(b)	No policy change.
§ 108.505(k)	Condensed into § 120.940	No policy change.
§ 108.505(l)	Condensed into § 120.956	No policy change.
§ 108.506	Condensed and consolidated into § 120.140(i)	No policy change.
§ 108.507	Rewritten and placed in § 120.850	No policy change.
§ 108.507–1	Merged into § 120.850	No policy change.
§ 108.507–2	Consolidated into § 120.851	Minor policy change. ADCs may be for-profit, as well as non-profit status. SBA's purpose is to encourage more organizations to aid small businesses.
§ 108.507–3	Condensed into § 120.851	No policy change. Specifics will be in SOP.
§ 108.507–4	Consolidated into § 120.850(a)	No policy change.
§ 108.507–5	Reviews and audits consolidated into § 120.972. Suspension and revocation discussed in § 120.852.	No policy change.
§ 108.508–1	This new program, published 4/26/95, was condensed and placed at § 120.840.	No policy change.
§ 108.509	This new program, published 4/26/95, was condensed and placed at § 120.845.	No policy change.
New	120.831	Minor policy change. CDCs would disclose to SBA & Borrower any compensation or remuneration received from a Lender or other party involved in a 504 loan to monitor any inducements.

Part II—Major Policy Changes

(a) Area of Operations. During the policy review accompanying the regulatory rewriting, SBA focused much of its attention on the question of what constitutes adequate service in an Area of Operation. Throughout the history of the 504 program there has been a great divergence among CDCs in the number of loan approvals each year. While some CDCs have exhibited continued growth measured by their loan approvals and

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ability to package, process and service loans, other CDCs have lagged behind. There are many complicated reasons for this, but the net result has been a patchwork of 504 service (measured by loan approvals) across the country, with many small businesses in some areas receiving 504 assistance while in other areas few, if any, small businesses have received such assistance.

SBA attempted to address this issue by permitting CDCs to expand temporarily into adjacent areas, and then, in 1993, by designating a minimum number of loan approvals per year which a CDC must average over the previous two fiscal year periods to retain certification as a CDC. The current number of required loan approvals is two. SBA also established the status of an Associate Development Company ("ADC"). Those CDCs unable or unwilling to meet the minimum number of loan approvals may become ADCs, thereby continuing to participate in the program goals of economic and community development without having to make loans. A number of CDCs have been decertified as a result of this policy and have opted for ADC status.

However, a focus on removal from CDC status does not address the real question of adequacy of service within an Area of Operations. What constitutes adequate service within a community? The statutory objectives of the 504 program are to provide a portion of long term fixed-asset financing for small business projects that provide jobs and result in economic development. Clearly, these goals cannot be met in an Area of Operations unless loans are being packaged, processed, approved, closed and serviced by one or more CDCs. Unfortunately, SBA is aware of too many locations across the country in which present CDCs are unable or unwilling to meet the small business demand for 504 loans. Transferring an existing CDC to ADC status does not address this inadequacy. SBA has concluded that the answer lies not in decertification, but in competition and customer service.

Therefore, in § 120.835, SBA is proposing that existing CDCs be permitted to expand into Areas of Operations that are not being adequately serviced. The expanding CDC would have to show that the proposed Area of Operations is not being adequately served by the existing CDCs and that the expanding CDC is well-qualified to serve it. SBA is not proposing any geographic or size limitation on CDCs applying to service a location, but such factors will be considered in evaluating the application. A CDC must apply in writing to the SBA district office serving the geographic area in which the CDC proposes to expand.

In this context, SBA has concluded that there is no minimum loan approval number appropriate to every CDC in every location across the country. A small CDC with a rural Area of Operations and slow economic activity may be providing adequate service at a low level of approvals while a larger CDC in a metropolitan region with much economic activity may be providing inadequate service, despite having a greater number of loan approvals.

SBA has also concluded that adequate service includes adequate servicing of loans, as well as the number of loan approvals. Thus, any CDC seeking to expand will have to show that it has a history of adequate experience and expertise in both loan packaging and servicing, and that the existing CDCs in the proposed area of expansion have not been adequately packaging or servicing loans. Even if the number of loan approvals does not accurately represent the competence of a CDC, it does accurately reflect the adequacy of the market penetration of 504 financing in the proposed area of expansion.

In general, SBA will consider an Area of Operations inadequately served if the existing CDCs in the Area of Operations have not averaged, over the last two fiscal years, sufficient loan approvals for the population, as published by SBA in an annual program announcement. SBA will establish the initial formula in a program announcement upon publication of the final rule, but would like the benefit of comments on this subject before committing any specific numbers to print. SBA is considering a two or three tier formula based on the current national averages for CDC loan approvals per number of population. Suggestions have been received that the formula should be based not on population, but on the number of small businesses in the Area of Operations or some other factor. SBA is interested in comments and would like recommendations on how, if at all, to incorporate a servicing component into its approach.

SBA is proposing (§ 120.837) that all existing, temporary expansions of Areas of Operations will expire automatically 6 months after the effective date of these regulations, unless a CDC applies for permanent expansion into that Area before the expiration date. SBA believes that CDCs will best serve the small business community by making a permanent commitment to an Area of Operations. Upon showing good cause, a CDC will still be able to apply to SBA to make an individual loan for a Project outside its Area of Operations in an area not being adequately served by other CDCs (§ 120.838). Note also that the Borrower may write to the AA/FA (but not the District Director) to request the servicing of a CDC not currently serving the area. SBA has added this provision to give Borrowers more flexibility if they have a concern about the services of a particular CDC.

(b) Expenditures in Anticipation of Project. In the current regulations, costs incurred by a Borrower in anticipation of receiving a 504 loan are not eligible to be included in Project costs unless the applicant has filed a written notice with the CDC and SBA within 60 days of incurring the expense and SBA gives written approval. As a result, CDCs and SBA receive notices from many potential borrowers considering 504 financing who desire to maximize potential financing. Many of these businesses never actually apply or their applications are denied. In those cases, the written notices are a useless paperwork burden on SBA, the CDC and the applicant.

Therefore, SBA is proposing (§ 120.882(a)(2)) to eliminate the requirement for written notice. Any expense incurred toward a Project within six months of receipt by SBA of a complete loan application will be an eligible Project cost.

(c) Legal Fees. The Borrower's closing costs, including legal fees, are eligible for inclusion in the 504 loan. Typically, legal services are provided by the CDC's counsel, who is usually experienced in closing 504 loans and thus, is able to do so cost effectively. Sometimes, a Borrower will also retain an attorney. Under the current regulations, the CDC may charge the Borrower up to $2,500 for the legal services performed by the CDC counsel, unless SBA approves a higher fee in a complex case. If the fee is more than $2,500, the CDC must pay the difference. The CDC collects the fee at closing and forwards it to the closing attorney.

The $2,500 figure in the regulation has engendered much debate within the industry. Many CDCs feel the figure establishes a minimum base for attorney services and is, therefore, anti-competitive. On the other hand, during the past five months, SBA has conducted several expedited closing training sessions for CDC counsel. Many attorneys feel that the figure establishes a ceiling for attorney services and is, therefore, anti-competitive. There appears to be a wide range of prices charged by CDC counsel for closing services. Most CDCs try to minimize

counsel fees to reduce costs to the Borrower.

SBA has determined that there is no reason for SBA to refer to any legal fee amount. Whether it is viewed as a ceiling or a base, the $2,500 reference has apparently caused misunderstanding and may have had an effect on legal fees charged. SBA believes legal fees should be determined by the competitive market. Therefore, proposed §§ 120.883(d) and 120.961(a), omit any reference to amount.

(d) Eligible Use of Proceeds. In the current regulations, airplanes are not eligible for 504 loans, except that Alaskan and Hawaiian Projects may include airplanes not exceeding 20 percent of the Project cost, if they are indispensable to the Project. SBA proposes to eliminate this exception (§ 120.884(d)(2)), previously justified because of the great distances people must travel in those states. But distances are great in many mainland states, as well, and airplanes simply are not directly attributable and necessary for a Project.

Also, in the current regulations there is no direct reference to the eligibility of construction equipment as a distinct sub-category of equipment and machinery. CDCs and SBA often receive questions from potential Borrowers as to whether construction equipment is eligible for 504 financing. The proposed rule in § 120.884(d)(3) clarifies that construction equipment is ineligible for 504 financing unless it is heavy duty equipment integral to the operation of a business and meeting the IRS definition of capital equipment. Note also that § 120.884(d)(1) clarifies SBA policy that short term equipment is a permitted use of loan proceeds if the equipment is essential to the Project and reflects a minor percentage of the loan. This is not a change in policy.

(e) Definitions. SBA has created several new definitions to help make the regulation easier to understand. Comments and suggestions will be appreciated.

Several definitions clarify terms long associated with the 504 program which were included in the regulations, but were not defined. These include "Area of Operations," "Certificate," "Debenture," "Job Opportunity," and "Substantial Increase in Unemployment."

Finally, some key words have been replaced with more useful and apt words. A "Small Business Concern" is now a "Small Business." The term "Underwriter" has replaced "Pooler." The term "Project" has replaced "Plant." "Project Property" is a new definition previously undefined in the regulation.

(f) Minor Policy Changes. In proposed § 120.828, the minimum level of CDC lending activity is no longer set at a specific number; SBA will retain the ability to change this number through its program announcements based on program performance and the economy. In proposed § 120.939(b), CDCs will be liable for SBA losses incurred by "wrongful CDC conduct" as well as in cases of fraud and negligence.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 108

Equal employment opportunity, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 116

Coastal Zone, Flood insurance, Flood plains, Lead poisoning, Small businesses, Veterans.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 122

Community development, Employee benefit plans, Energy conservation, Environmental protection, Exports, Individuals with disabilities, Loan programs-business, Loan programs-energy, Loan programs-veterans, Microloans, Reporting and recordkeeping requirements, Small businesses, Solar energy, Trusts and trustees, Veterans.

13 CFR Part 131

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5 (b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636 (a) and (h), SBA hereby proposes to amend Chapter I of Title 13, Code of Federal Regulations (CFR), as follows:

1. Part 120 would be revised to read as follows:

PART 120—BUSINESS LOANS

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Authority: 15 U.S.C 634(b)(6) and 636 (a) and (h).

General Descriptions of SBA's Business Loan Programs

§ 120.1 Which loan programs does this part cover?

This Part regulates SBA's financial assistance to small businesses under its general business loan programs ("7(a) loans") authorized by section 7(a), 15 U.S.C. 636(a) of the Small Business Act ("the Act"), its microloan demonstration loan program ("Microloans") authorized by section 7(m), 15 U.S.C. 636(m) of the Act, and its development company program ("504 loans") authorized by Title V of the Small Business Investment Act, 15 U.S.C. 695 to 697f ("Title V"). These three programs constitute the business loan programs of the SBA.

§ 120.2 Descriptions of the business loan programs.

(a) *7(a) loans.* (1) 7(a) loans provide financing for general business purposes and may be:

(i) A direct loan by SBA;

(ii) An immediate participation loan by a Lender and SBA; or

(iii) A guaranteed loan (deferred participation) by which SBA guarantees a portion of a loan made by a Lender.

(2) A guaranteed loan is initiated by a Lender agreeing to make an SBA guaranteed loan to a small business and applying to SBA for SBA's guarantee under a blanket guarantee agreement (participation agreement) between SBA and the Lender. If SBA agrees to guarantee (authorizes) a portion of the loan, the Lender funds and services the loan. If the small business defaults on the loan, SBA's guarantee requires SBA to purchase its portion of the outstanding balance, upon demand by the Lender and subject to specific conditions. Regulations specific to 7(a) loans are found in subpart B of this part.

(b) *Microloans.* SBA makes loans and loan guarantees to non-profit intermediaries that make short-term loans up to $25,000 to eligible small businesses for general business purposes, except payment of debts. SBA also gives grants to intermediaries for use in providing management assistance and counseling to small businesses. Regulations specific to these loans are found in subpart G of this part.

(c) *504 loans.* Projects involving 504 loans require long-term fixed-asset financing for small businesses. A Certified Development Company (CDC) provides the final portion of this financing with a 504 loan made from the proceeds of a Debenture issued by the CDC, guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to investors. The regulations specific to these loans are found in subpart H of this part.

§ 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the **Federal Register** explaining the reasons for these actions.

Definitions

§ 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

Associate. (1) An Associate of a Lender or CDC is:

(i) An officer, director, member, or key employee, or an agent involved in the loan-making process;

(ii) A Close Relative of any individual in paragraph (1)(i) of this definition; and

(iii) Any entity in which one or more individuals referred to in paragraphs (1)(i) and (ii) of this definition own or control at least 10 percent.

(2) An Associate of a small business is:

(i) An officer, director, member, owner, principal, key employee, or agent authorized to act on behalf of the small business;

(ii) A Close Relative of any individual in paragraph (2)(i) of this definition;

(iii) Any entity in which one or more individuals referred to in paragraphs (2)(i) and (ii) of this definition owns or controls at least 10 percent; and

(iv) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company ("SBIC") licensed by SBA).

(3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

Authorization is SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

Borrower is the obligor of an SBA business loan.

Certified Development Company ("CDC") is an entity authorized by SBA to deliver 504 financing to small businesses.

Close Relative is a spouse; a parent; or a child or sibling, or the spouse of any such person.

Eligible Passive Company is a small entity which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in § 120.111.

Intermediary is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to $25,000.

Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Loan Instruments are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

Operating Company is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by a Passive Company, or using or about to use in its business operations personal property owned by a Passive Company.

Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making of a business loan with respect to such things as repayment, collateral, guarantees, control, maintainance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

Rural Area is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

Service Provider is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

Subpart A—Policies Applying to All Business Loans

Eligibility Requirements

§ 120.100 What are the basic requirements for all Borrowers?

To be an eligible Borrower for an SBA loan, a small business must:

(a) Be an operating business (except for loans to Passive Companies);

(b) Be organized for profit;

(c) Be located in the United States;

(d) Be small under the size requirements of Part 121 of this chapter (including affiliates). See subpart H of this part for the size standards of Part 121 of this chapter which apply only to 504 loans; and

(e) Must demonstrate a need for the desired credit.

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal sources. SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal sources without SBA assistance, taking into consideration the prevailing rates and terms in the community in or near where the applicant conducts business, for similar purposes and periods of time. Submission of an application to SBA by a Lender or CDC constitutes certification by the Lender or CDC that it has examined the availability of credit to the applicant, has based its certification upon that examination, and has documentation in its file to support the certification.

§ 120.102 Funds not available from alternative sources, including personal resources of principals.

An applicant for a business loan must show that the desired funds are not available from the personal resources of the applicant's principals or other sources such as the sale of the applicant's assets or securities. SBA may require the use of personal resources before a loan will be granted, unless SBA determines that undue hardship would result or if the loan is to an employee trust.

§ 120.103 Are farm enterprises eligible?

Federal financial assistance to agricultural enterprises is generally made by the United States Department of Agriculture (USDA), but may be made by SBA under the Memorandum of Understanding signed by SBA and USDA. Farm-related businesses are eligible businesses under SBA's business loan programs.

§ 120.104 Are businesses financed by SBICs eligible?

SBA may make or guarantee loans to a business financed by an SBIC if SBA's collateral position will be superior to that of the SBIC. SBA may also make or guarantee a loan to an otherwise eligible small business which temporarily is owned or controlled by an SBIC under the regulations in part 107 of this chapter. SBA neither guarantees SBIC loans nor makes loans jointly with SBICs.

§ 120.105 Special consideration for veterans.

SBA will give special consideration to a small business owned by a veteran or, if the veteran chooses not to apply, to a business owned or controlled by one of the veteran's dependents. If the veteran is deceased or permanently disabled, SBA will give special consideration to one survivor or dependent. SBA will process the application of a business owned or controlled by a veteran or dependent promptly, resolve close questions in the applicant's favor, and pay particular attention to maximum loan maturity. For SBA loans, a veteran is a person honorably discharged from active military service.

Ineligible Businesses and Eligible Passive Companies

§ 120.110 What businesses are ineligible for SBA business loans?

The following types of businesses are ineligible:

(a) Non-profit businesses (for-profit subsidiaries are eligible);

(b) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);

(c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);

(d) Life insurance companies;

(e) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);

(f) Pyramid sale distribution plans;

(g) Businesses deriving more than one-third of gross annual income from legal gambling activities);

(h) Businesses engaged in any illegal activity;

(i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(l) Consumer and marketing cooperatives (producer cooperatives are eligible);

(m) Loan packagers earning 30 percent or more of their gross annual revenue from packaging SBA loans;

(n) Businesses with an Associate considered to have control under Part 121 who is incarcerated, on probation, on parole, or subject to pending felony charges;

(o) Businesses in which the Lender or CDC, or any of its Associates owns an equity interest (unless waived by SBA for good cause in the case of minor ownership interests);

(p) Businesses which:

(1) Present live performances of a prurient sexual nature; or

(2) Derive significant gross revenue through the sale of products or services, or the presentation of depictions or displays, of a prurient sexual nature;

(q) Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted

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on a Federal loan and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss; and

(r) Businesses primarily engaged in political or lobbying activities.

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to an Operating Company for the conduct of the Operating Company's business. Any ownership structure or legal form may qualify as a Eligible Passive Company, except revocable trusts and other grantor trusts.

(a) Conditions that apply to all legal forms:

(1) The Operating Company is an eligible small business, and the proposed use of the proceeds would have been an eligible use if the Operating Company were obtaining the financing directly;

(2) Both the Eligible Passive Company and the Operating Company must be small under the appropriate size standards in part 121 of this chapter;

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease;

(4) The lease, including options to renew exercisable solely by the Operating Company, must have a remaining term at least equal to the term of the loan;

(5) The Operating Company must be a guarantor or a co-borrower (with the Eligible Passive Company) of the loan; and

(6) Each holder of an ownership interest constituting at least 20 percent of the Eligible Passive Company or the Operating Company must guarantee the loan (the trustee shall execute the guarantee on behalf of any trust).

(b) Additional conditions that apply to irrevocable trusts. A trust qualifying as a Eligible Passive Company may engage in other activities as authorized by its trust agreement. For purposes of this section, the trustee shall certify to SBA that:

(1) The trustee has authority to act;

(2) The trust is irrevocable, and is not regarded as a grantor trust for tax purposes;

(3) The trust has the authority to borrow funds, pledge trust assets, and lease the property to the Operating Company;

(4) The trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

(5) The trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

Uses of Proceeds

§ 120.120 What are eligible uses of proceeds?

A small business must use an SBA loan for sound business purposes. The uses of proceeds are prescribed in each loan's Authorization.

(a) A Borrower may use loan proceeds from any SBA loan to:

(1) Acquire land (by purchase or lease);

(2) Improve a site (grading, streets, parking lots, landscaping);

(3) Purchase an existing building;

(4) Convert, expand or renovate an existing building;

(5) Construct a new building; and/or

(6) Acquire (by purchase or lease) and install machinery and equipment (in the 504 program, with a useful life of at least 10 years and at a fixed location, unless essential to the Project).

(b) A Borrower may also use 7(a) and microloan proceeds for:

(1) Inventory;

(2) Supplies;

(3) Raw materials;

(4) Working capital; and

(5) Refinancing certain outstanding debts.

§ 120.130 Restrictions on uses of proceeds.

SBA will not authorize nor may a Borrower use loan proceeds for the following purposes (including the replacement of funds used for any such purpose):

(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company ("SBIC");

(c) Speculation in any kind of real or personal property;

(d) Floor plan financing or other revolving line credit, except under § 120.390;

(e) Investments in real or personal property acquired and held primarily for sale, lease, or investment and not used within 3 years in an otherwise eligible business (except for a loan to an Eligible Passive Company or to a small contractor under § 120.310);

(f) A purpose which does not benefit the small business; or

(g) Any use restricted by §§ 120.201–120.203 and 120.884 (specific to 7(a) loans and 504 loans respectively).

Ethical Requirements

§ 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, CDCs, Associate Development Companies ("ADCs") and their Associates (in this section "Participants") must act ethically and exhibit good character. Ethical indiscretion of an Associate shall be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

(a) Self-deal;

(b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates) or SBA;

(c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);

(d) Be incarcerated, on parole, or on probation;

(e) Knowingly misrepresent or make a false statement to SBA;

(f) Engage in conduct reflecting a lack of business integrity or honesty;

(g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the CDC, ADC, or Intermediary may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates, the Participant, and/or the lenders financing the Project;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Lender in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant;

(3) Repay or refinance a debt due a Participant;

(4) Require the small business, or an Associate, to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association); or

(5) Involve a Lender, CDC or Associate that has issued a commitment to make or consider the loan prior to receipt of the loan application, including a forward commitment to a builder or developer; or

(k) Engage in any activity which taints its objective judgment in evaluating the loan.

Credit Criteria for SBA Loans

§ 120.150 What are SBA's lending criteria?

The Borrower (and the Operating Company) must be creditworthy. Loans must be so sound as to assure repayment. SBA will consider:

(a) Character, reputation, and credit history of the Borrower (and the Operating Company, if applicable), its Associates, and guarantors;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow, and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis;

(g) Potential for long-term success; and

(h) Nature and value of collateral. (Inadequate collateral will not be the sole reason for denial of a loan request.)

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in part 121 of this chapter, shall not exceed $750,000, except as otherwise authorized by statute for a specific loan program.

§ 120.160 Loan conditions.

The following requirements are normally required by SBA for all business loans:

(a) *Personal guarantees.* Associates and holders of at least a 20 percent ownership interest generally must guarantee the loan. SBA, in its discretion, may require holders of interests of less than 20 percent to guarantee the loan.

(b) *Appraisals.* SBA may require professional appraisals of the applicant's and principals' assets, a survey, or a feasibility study.

(c) *Hazard Insurance.* SBA requires hazard insurance on all collateral.

(d) *Taxes.* If any portion of the loan proceeds will be used for working capital, the applicant may not use any of the proceeds to pay past-due Federal and state payroll taxes.

§ 120.161 Lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the business loan programs covered by this Part must not exceed $750,000 (except as otherwise authorized for a specific loan program).

Requirements Imposed Under Other Laws and Orders

§ 120.170 Flood insurance.

Under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Public Law 93–234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)), a loan recipient must obtain flood insurance if any building (including mobile homes), machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. The requirement applies also to any inventory (business loan program), fixtures or furnishings contained or to be contained in the building. Mobile homes on a foundation are buildings. SBA, Lenders, CDCs, and Intermediaries must notify Borrowers that flood insurance must be maintained.

§ 120.171 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of an SBA loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

(a) An administrative order;

(b) A court order;

(c) A repayment agreement between the recipient and the custodial parent; or

(d) A repayment agreement between the recipient and a State agency providing child support enforcement services.

§ 120.172 Flood-plain and wetlands management.

(a) All loans must conform to requirements of Executive Orders 11988, "Flood Plain Management" (3 CFR, 1977 Comp., p. 117) and 11990, "Protection of Wetlands" (3 CFR, 1977 Comp., p. 121). Lenders, Intermediaries, CDCs, and SBA must comply with requirements applicable to them. Applicants must show:

(1) Whether the location for which financial assistance is proposed is in a floodplain or wetland;

(2) If it is in a floodplain, that the assistance is in compliance with local land use plans; and

(3) That any necessary construction or use permits will be issued.

(b) Generally, there is an 8-step decision making process with respect to:

(1) Construction or acquisition of anything, other than a building;

(2) Repair and restoration equal to more than 50% of the market value of a building; or

(3) Replacement of destroyed structures.

(c) SBA may determine for the following types of actions, on a case-by-case basis, that the full 8-step process is not warranted and that only the first step (determining if a proposed action is in the base floodplain) need be completed:

(1) Actions located outside the base floodplain;

(2) Repairs, other than to buildings, that are less than 50% of the market value;

(3) Replacement of building contents, materials, and equipment;

(4) Hazard mitigation measures;

(5) Working capital loans; and

(6) SBA loan assistance of $1,500,000 or less.

§ 120.173 Lead-based paint.

If loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of 7.

§ 120.174 Earthquake hazards.

When loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the "National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings," obtainable from the Interagency Committee on Seismic Safety in Construction.

§ 120.175 Coastal barrier islands.

SBA and Intermediaries may not make or guarantee any loan within the Coastal Barrier Resource System.

§ 120.176 Compliance with other laws.

All SBA loans are subject to all applicable laws, including (without limitation) the civil rights laws (see Parts 112, 113, 117 and 136 of this chapter), prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age. SBA requests agreements or evidence to support or document compliance with these laws, including reports required by applicable statutes or the regulations in this chapter.

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Enforceability Despite Rule Changes

§ 120.180 Are rules enforceable if they are changed later?

Regulations and contractual provisions in effect at the time of a transaction govern an SBA loan financing transaction, notwithstanding subsequent rule or contract changes. SBA may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

Loan Applications

120.190 Where does an applicant apply for a loan?

An applicant for a loan should apply to:

(a) A Lender for a guaranteed or immediate participation loan;

(b) A CDC for a 504 loan;

(c) An Intermediary for a Microloan; or

(d) SBA for a direct loan.

§ 120.191 The contents of a business loan application.

SBA requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements (or tax returns if appropriate) for the past three years, and a business plan, when applicable. Personal histories and financial statements will be required from principals of the applicant (and the Operating Company, if applicable).

§ 120.192 Approval or denial.

Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued.

§ 120.193 Reconsiderstion after denial.

An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of denial. Applicants denied due to a size determination can appeal that determination under part 121 of this chapter. All others, including those requesting modification of an existing loan condition, can only appeal to the office that denied the initial loan application or request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after denial, a new application is required. If the reconsideration is denied, an applicant may request a final reconsideration by the AA/FA, whose decision is final.

Computerized SBA Forms

§ 120.194 Use of computer forms.

Any applicant or other party involved in SBA Business Loan Programs may use computer generated SBA application forms, closing forms, and other forms designated by SBA if the forms are exact reproductions of SBA forms.

§ 120.195 Duty of Lender, CDC, Intermediary Lender, and Borrower to report fees.

(a) A Lender, CDC, or Intermediary Lender must report to SBA all fees of which it has knowledge or which it charges the applicant, including insurance fees. It must refund to the applicant any fees that SBA considers excessive. Failure to do so may result in an action by SBA to suspend or revoke the Lender's participation status.

(b) An applicant for a business loan must certify to SBA the name of each individual or entity (attorney, loan packager, broker, accountant, Service Provider, Lender) that helped the applicant obtain the loan, describing the services performed, and disclosing the amount of each fee.

Subpart B—Policies Specific to 7(a) Loans

Bonding Requirements

§ 120.200 What bonding requirements exist during construction?

On 7(a) loans where the SBA guarantee covers a period of construction, the Borrower must supply a 100 percent payment and performance bond and builder's risk insurance, unless waived by SBA.

Limitations on Use of Proceeds

§ 120.201 Refinancing unsecured or undersecured loans.

A Borrower may not use 7(a) loan proceeds to pay off an inadequately secured creditor, including a Lender, causing a shift to SBA of all or part of a potential loss from an existing debt.

§ 120.202 Restrictions on loans for changes in ownership.

A Borrower may not use loan proceeds to purchase a portion of a business or a portion of another owner's interest. One or more current owners may use loan proceeds to purchase the entire interest of another current owner, or a Borrower can purchase ownership of an entire business.

§ 120.203 Revolving credit.

SBA may not use its regular 7(a) program for a revolving line of credit, such as "floor plan" financing. (See § 120.390 for special Caplines program.)

Maturities; Interest Rates; Loan and Guarantee Amounts

§ 120.210 What percentage of a loan may SBA guarantee?

SBA's guarantee percentage must not exceed the applicable percentage established in section 7(a) of the Act. The maximum allowable guarantee percentage on a loan will be determined by the *loan amount*. As of October 31, 1995, the percentages are: Loans of $100,000 or less may receive a maximum guarantee of 80 percent. All other loans may receive a maximum guarantee of 75 percent, not to exceed $750,000.

§ 120.211 What limits are there on the amounts of direct loans?

(a) The statutory limit for direct loans made under the authority of section 7(a)(1)–(19) of the Small Business Act is $350,000. SBA has established an administrative limit of $150,000 for direct loans. The Associate Administrator for Financial Assistance (AA/FA) may authorize acceptance of an application up to the statutory limit.

(b) The statutory limit for direct loans made under the authority of section 7(a)(20) is $750,000. SBA has established an administrative limit of $150,000. The Associate Administrator for Minority Enterprise Development may authorize the acceptance of an application that exceeds the administrative limit.

(c) The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan or $350,000. The administrative limit is the lesser of 75 percent of the loan or $150,000. The AA/FA may authorize exceptions to the administrative limit up to $350,000.

§ 120.212 What limits are there on loan maturities?

The term of a loan shall be:

(a) The shortest appropriate term, depending upon the Borrower's ability to repay;

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years; and

(c) A maximum of 25 years, including extensions. (A portion of a loan used to acquire or improve real property may have a term of 25 years plus an additional period needed to complete the construction or improvements.)

§ 120.213 What fixed interest rates may a Lender charge?

(a) *Fixed Rates for Guaranteed Loans.* A loan may have a reasonable fixed interest rate. SBA periodically publishes the maximum allowable rate in the **Federal Register**.

(b) *Direct loans.* A statutory formula based on the cost of money to the Federal government determines the interest rate on direct loans. SBA publishes the rate periodically in the **Federal Register**.

§ 120.214 What conditions apply for variable interest rates?

A Lender may use a variable rate of interest, upon SBA's approval. SBA's maximum allowable rates apply only to the initial rate on the date SBA received the loan application. SBA shall approve the use of a variable interest rate under the following conditions:

(a) *Frequency.* The first change may occur on the first calendar day of the month following initial disbursement, using the base rate (see paragraph (c) of this section) in effect on the first business day of the month. After that, changes may occur no more often than monthly.

(b) *Range of fluctuation.* The amount of fluctuation shall be equal to the movement in the base rate. The difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(c) *Base rate.* The base rate shall be the prime rate in effect on the first business day of the month, printed in a national financial newspaper published each business day, or the SBA Optional Peg Rate which SBA publishes quarterly in the **Federal Register**.

(d) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(e) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(f) *Higher interest rates for smaller loans.* For a variable rate loan over $25,000 but not exceeding $50,000, the interest rate may be one percent more than the maximum interest rate described above. For a variable rate loan of $25,000 or less, the maximum interest rate described above may be increased by two percentage points.

(g) *Amortization.* Initial amortization of principal and interest may be recomputed as interest rates fluctuate, as directed by SBA. With prior approval of SBA, the Lender may use certain other amortization methods.

Fees for Guaranteed Loans

§ 120.220 Guarantee fees that Lender pays SBA.

(a) The Lender pays a guarantee fee to SBA for each loan as follows:

Guaranteed portion of loan	Fee measured as percentage of guaranteed portion	When payable	Lender may get fee from borrower	When SBA refunds fee from borrower
Under 12 months	.25%	With guarantee application.	When SBA approves loan.	If application withdrawn or denied [1]
More than 12 months and total guaranteed portion is $80,000 or less.	2.0% of guaranteed portion.	Within 90 days of SBA approval.	After First disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan that is $250,000 or less.	3%	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan between $250,000 and $500,000.	3.0% of 1st $250,000 plus 3.5% of balance.	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan exceeding $500,000.	3.0% of 1st $250,000 plus 3.5% of next $250,000 plus 3.875% of the amount exceeding $500,000.	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed.

[1] Also, if SBA substantially changes the Lender's loan terms and approves the loan, but the modified terms are unacceptable to the Borrower or Lender. (The Lender must request refund in writing within 30 calendar days of the approval).

(b) The Lender shall also pay SBA an annual fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan.

(c) If the guarantee fee is not paid, SBA may terminate the guarantee. The Borrower may use loan proceeds to reimburse the Lender for the guarantee fee. Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the Lender's misconduct or violation of any provision of this part, the guarantee agreement, the Authorization, or other loan documents.

§ 120.221 Fees which the Lender may collect from a loan applicant.

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

(b) *Commitment fee for Export Working Capital loan.* After SBA approves a loan under the Export Working Capital Program, the Lender may charge the borrower a commitment fee of ¼ of 1 percent (or $200 minimum) of the loan.

(c) *Extraordinary servicing.* Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge the applicant a service fee not to exceed 2 percent per year on the outstanding balance of the part requiring special servicing.

(d) *Out-of-pocket expenses.* The Lender may collect from the applicant

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necessary out-of-pocket expenses such as filing or recording fees.

(e) *Late payment fee.* The Lender may charge the Borrower a late payment fee not to exceed 5 percent of the regular loan payment.

(f) *No prepayment fee.* The Lender may not charge a fee for full or partial prepayment of a loan.

§ 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.

The Lender or its Associate may not:

(a) Require the applicant or Borrower to pay the Lender, an Associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining an SBA guaranteed loan (unless permitted by this part);

(b) Charge an applicant any commitment, bonus, broker, commission, or similar fee;

(c) Charge points or add-on interest;

(d) Share any premium received from the sale of an SBA guaranteed loan in the secondary market with either a packager or other loan-referral source; or

(e) Charge the Borrower for legal services, unless they are hourly charges for requested services actually rendered.

Subpart C—Special Purpose Loans

§ 120.300 Statutory authority.

In addition to the general 7(a) business loan program, Congress has authorized several special purpose programs in various subsections of the Act. Generally, the regular 7(a) loan policies, eligibility requirements and credit criteria apply. The sections of this subpart prescribe the special conditions applying to each special purpose program. As with other business loans, special purpose loans are available only to the extent funded by annual appropriations.

Disabled Assistance Loan Program (DAL)

§ 120.310 What assistance is available for the disabled?

Section 7(a)(10) of the Act authorizes SBA to guarantee or make direct loans to the disabled. SBA distinguishes two kinds of assistance:

(a) *DAL–1.* DAL–1 Financial Assistance is available to non-profit public or private organizations for the disabled that employ the disabled; or

(b) *DAL–2.* DAL–2 Financial Assistance is available to:

(1) Small businesses wholly owned by the disabled; and

(2) Disabled individuals to establish, acquire, or operate a small business.

§ 120.311 Definitions.

(a) *Organization for the disabled* means one which:

(1) Is organized under federal or state law to operate in the interest of the disabled;

(2) Is non-profit;

(3) Employs disabled individuals for seventy-five percent of the time needed to produce commodities or services for sale; and

(4) Complies with occupational and safety standards prescribed by the Department of Labor.

(b) *Disabled individual* means a person who has a permanent physical, mental or emotional impairment, defect, ailment, disease or disability which limits the type of employment for which the person would otherwise be qualified.

§ 120.312 DAL–1 use of proceeds and other program conditions.

(a) DAL–1 applicants must submit appropriate documents to establish program eligibility.

(b) Generally, applicants may use loan proceeds for any 7(a) loan purposes. Loan proceeds may not be used:

(1) To purchase or construct facilities if construction grants and mortgage assistance are available from another Federal source; or

(2) For supportive services (expenses incurred by a DAL–1 organization to subsidize wages of low producers health and rehabilitation services, management, training, education, and housing of disabled workers).

(c) SBA does not consider a DAL–1 organization to have a conflict of interest if one or more of its Associates is an Associate of the Lender.

§ 120.313 DAL–2 use of proceeds and other program conditions.

(a) The DAL–2 loan proceeds may be used for normal 7(a) loan purposes.

(b) An applicant may use DAL–2 loan proceeds to acquire an eligible small business without complying with the change of ownership conditions in § 120.206.

(c) A DAL–2 applicant must submit evidence from a physician, psychiatrist, or other qualified professional as to the permanent nature of the disability and the limitation it places on the applicant.

§ 120.314 Resolving doubts about creditworthiness.

For the purpose of the DAL Program, SBA shall resolve doubts concerning the creditworthiness of an applicant in favor of the applicant. However, the applicant must present satisfactory evidence of repayment ability. Personal guarantees of Associates are not required.

§ 120.315 Interest rate and loan limit.

The interest rate on direct DAL loans is three percent. There is an administrative limit of $150,000 on a direct DAL loan.

Businesses Owned by Low Income Individuals

§ 120.320 Policy.

Section 7(a)(11) of the Act authorizes SBA to make or guarantee loans to establish, preserve or strengthen small business concerns:

(a) Located in an area having high unemployment according to the Department of Labor;

(b) Located in an area in which a high percentage of individuals have a low income inadequate to satisfy basic family needs; and

(c) More than 50 percent owned by low income individuals.

Energy Conservation

§ 120.330 Who is eligible for an energy conservation loan?

SBA may make or guarantee loans to assist a small business to design, engineer, manufacture, distribute, market, install, or service energy devices or techniques designed to conserve the Nation's energy resources.

§ 120.331 What devices or techniques are eligible for a loan?

Eligible energy conservation devices or techniques include:

(a) Solar thermal equipment;

(b) Photovoltaic cells and related equipment;

(c) A product or service which increases the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy;

(d) Equipment producing energy from wood, biological waste, grain or other biomass energy sources;

(e) Equipment for cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectural, consulting, or other professional services necessary or appropriate for any of the devices or techniques in paragraphs (a) through (g) of this section.

§ 120.332 What are the eligible uses of proceeds?

(a) *Acquire property.* The Borrower may use the loan proceeds to acquire land necessary for imminent plant construction, buildings, machinery, equipment, furniture, fixtures, facilities, supplies, and material needed to accomplish any of the eligible program purposes in § 120.330.

(b) *Research and development.* Up to 30% of loan proceeds may be used for research and development:

(1) Of an existing product or service; or

(2) A new product or service.

(c) *Working capital.* The Borrower may use proceeds for working capital for entering or expanding in the energy conservation market.

§ 120.333 Are there any special credit criteria?

In addition to regular credit evaluation criteria, SBA shall weigh the greater risk associated with energy projects. SBA shall consider such factors as quality of the product or service, technical qualifications of the applicant's management, sales projections, and financial status.

Export Working Capital Program (EWCP)

§ 120.340 What is the Export Working Capital Program?

Under the EWCP, SBA guarantees a revolving line of credit for export purposes (section 7(a)(14) of the Act). Loan maturities may be for up to three years with annual renewals. Proceeds can be used only to finance export transactions. Loans can be for single or multiple export sales.

§ 120.341 Who is eligible?

In addition to the criteria applicable to all 7(a) loans, an applicant must be in business for one full year at the time of application, but not necessarily in the exporting business. SBA may waive this requirement if the applicant has sufficient export trade experience or other managerial experience.

§ 120.342 What are eligible uses of proceeds?

Loan proceeds may be used:

(a) To acquire inventory;

(b) To pay the manufacturing costs of goods for export;

(c) To purchase goods or services for export;

(d) To support standby letters of credit;

(e) To develop or penetrate foreign markets;

(f) For pre-shipment working capital; and

(g) For post-shipment exposure coverage.

§ 120.343 Collateral.

A Borrower must give SBA a first security interest sufficient to cover 100 percent of the EWCP loan amount (such as insured accounts receivable or letters of credit). Collateral must be located in the United States, its territories or possessions.

§ 120.344 Cash flow projections.

An applicant must submit cash flow projections to support the need for the loan and the ability to repay. After the loan is made, the loan recipient must submit monthly progress reports.

International Trade Loans

§ 120.345 Policy.

Section 7(a)(16) of the Act authorizes SBA to guarantee loans to small businesses that are:

(a) Engaged or preparing to engage in international trade; or

(b) Adversely affected by import competition.

§ 120.346 Eligibility.

(a) An applicant must establish that:

(1) The loan proceeds will significantly expand an existing export market or develop new export markets; or

(2) The applicant business is adversely affected by import competition; and

(3) Upgrading facilities or equipment will improve the applicant's competitive position.

(b) The applicant must have a business plan reasonably supporting its projected export sales.

§ 120.347 Use of proceeds.

The Borrower may use loan proceeds to acquire, construct, renovate, modernize, improve, or expand facilities and equipment to be used in the United States to produce goods or services involved in international trade.

§ 120.348 Amount and percentage of guarantee.

SBA can guarantee up to $1,250,000 for a combination of fixed-asset financing and working capital, supplies and EWCP assistance. The non-fixed-asset portion cannot exceed $750,000.

Qualified Employee Trusts (ESOP)

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust ("ESOP") to:

(a) Help finance the growth of its employer's small business; or

(b) Purchase ownership or voting control of the employer.

§ 120.351 Definitions.

All terms specific to ESOPs have the same definition for purposes of this section as in the Internal Revenue Service (IRS) Code (title 26 of the United States Code) or regulations (26 CFR chapter I).

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.353 Eligibility.

SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury and DOL regulations. In addition, the following conditions apply:

(a) The small business must provide the funds needed by the trust to repay the loan; and

(b) The small business must provide adequate collateral.

§ 120.354 Creditworthiness.

In determining repayment ability, SBA shall not consider the personal assets of the employee-owners of the trust. SBA shall consider the earnings history and projected future earnings of the employer small business. SBA may consider the business and management experience of the employee-owners. SBA must have evidence that financial assistance is not otherwise available by utilizing:

(a) The personal resources and credit of the principals of the small business;

(b) The resources and credit of the small business; or

(c) The sale of the assets of the small business.

Veterans Loan Program

§ 120.360 Which veterans are eligible?

SBA may make a direct loan to a small business 51 percent owned by one or more of the following eligible veterans:

(a) Vietnam-era veterans who served for a period of more than 180 days between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably;

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or

(c) A veteran of any era who was discharged for disability.

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§ 120.361 Other conditions of eligibility.

(a) Management and daily operations of the business must be directed by one or more of the veteran owners whose veteran status was used to qualify for the loan.

(b) This direct loan program is available only if private sector financing and guaranteed loans are not available.

(c) A veteran may qualify only once for this direct loan program.

Pollution Control Program

§ 120.370 Policy.

Section 7(a)(12) of the Act authorizes SBA to guarantee loans up to $1,000,000 to an eligible small business to plan, design or install a pollution control facility. An applicant must meet the eligibility requirements for 7(a) loans.

Loans to Participants in the 8(a) Program

§ 120.375 Policy.

Section 7(a)(20) of the Act authorizes SBA to provide direct (unilaterally or together with Lenders) or guaranteed loans to firms participating in the 8(a) Program.

§ 120.376 Special requirements.

The following special conditions apply (otherwise, the general 7(a) eligibility criteria apply):

(a) The Associate Administrator of Minority Enterprise Development ("MED") may waive the direct loan administrative ceiling of $150,000, and raise it to $750,000.

(b) The SBA portion on a guaranteed loan must not exceed $750,000.

(c) The interest rate on a guaranteed loan shall be the same as on regular 7(a) guarantee loans. The interest rate on a direct loan shall be one percent less than on a regular direct loan.

(d) For a direct loan or SBA's portion of an immediate participation loan, SBA shall subordinate its security interest on all collateral to other debt of the applicant.

§ 120.377 Use of proceeds.

The loan proceeds shall not be used for debt refinancing. A manufacturing concern may use loan proceeds for working capital.

Defense Economic Transition Assistance

§ 120.380 Program.

Section 7(a)(21) of the Act authorizes SBA to guarantee loans to help eligible small businesses transition from defense to civilian markets, or eligible individuals adversely impacted by base closures or defense cutbacks to acquire or open and operate a small business.

§ 120.381 Eligibility.

(a) *Eligible small businesses.* A small business is eligible if it has been detrimentally impacted by the closure (or substantial reduction) of a Department of Defense installation, or the termination (or substantial reduction) of a Department of Defense Program on which the small business was a prime contractor, subcontractor, or supplier at any tier.

(b) *Eligible individual.* An eligible individual, for purposes of this program, includes the following persons involuntarily separated from their position or voluntarily terminated under a program offering inducements to encourage early retirement:

(1) A member of the Armed Forces of the United States (honorably discharged);

(2) A civilian employee of the Department of Defense; or

(3) An employee of a prime contractor, sub-contractor, or supplier at any tier of a Department of Defense program.

§ 120.382 Repayment ability.

SBA shall resolve reasonable doubts concerning the small business' proposed business plan for transition to non-defense-related markets in favor of the loan applicant in determining the sound value of the proposed loan.

§ 120.383 Restrictions on loan processing.

Since greater risk may be associated with a loan to an applicant under this program, a Certified Lender or Preferred Lender shall not make a defense economic assistance loan.

CapLines Program

§ 120.390 Revolving credit.

CapLines finances small businesses' short-term, revolving working-capital needs. Generally, SBA regulations governing the 7(a) program also govern this program. Under CapLines, SBA generally can guarantee up to $750,000.

Small General Contractors

§ 120.391 What is the Small General Contractor Program?

SBA may make or guarantee loans to finance small general contractors to construct or rehabilitate residential or commercial property for resale (section 7(a)(9) of the Act). This program provides an exception under specified conditions to the general rule against financing investment property. "Construct" and "rehabilitate" mean only work done on-site to the structure, utility connections and landscaping.

§ 120.392 Who may apply?

A construction contractor or home-builder with a past history of profitable construction or rehabilitation projects of comparable type and size may apply. An applicant may subcontract a portion of the work. Subcontracts in excess of $25,000 may require 100 percent payment and performance bonds.

§ 120.393 Are there special application requirements?

(a) An applicant must submit letters from:

(1) A mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;

(2) A real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and

(3) An architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.

(b) The Borrower may substitute a letter from a Lender for one or more of the letters.

§ 120.394 What are the eligible uses of proceeds?

A Borrower must use the loan proceeds solely to acquire, construct or substantially rehabilitate an individual residential or commercial building for sale. "Substantial" means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application. A Borrower may use up to 20 percent of the proceeds to acquire land, and up to 5 percent for community improvements such as curbs and sidewalks.

§ 120.395 What is SBA's collateral position?

SBA will require a lien on the building which must be in no less than a second position.

§ 120.396 What is the term of the loan?

The loan must not exceed thirty-six months plus the estimated time to complete construction or rehabilitation.

§ 120.397 Are there any special restrictions?

The borrower must not use loan proceeds to purchase vacant land for possible future construction or to operate or hold rental property for future rehabilitation. SBA may allow rental of the property only if the rental will improve the ability to sell the property. The sale must be a legitimate change of ownership.

Subpart D—Lenders

§ 120.400 Participation agreements.

SBA may enter into participation agreements with Lenders to make deferred participation (guaranteed) loans. Participation agreements do not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a participation agreement does not limit SBA's rights to deny a specific loan or establish general policies.

Participation Criteria

§ 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, and service small business loans;

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140; and

(d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA.

§ 120.411 Preferences.

No agreement to participate under the Act shall establish any Preferences in favor of the Lender.

§ 120.412 Other services Lenders may provide Borrowers.

Subject to the conflict of interest provision in subpart A of this part, Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Charges made cannot exceed those charged by established professional consultants providing similar services.

§ 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

(a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;

(b) Be false or misleading; or

(c) Make use of SBA's seal.

Pledging Notes or Transferring Unguaranteed Portion

§ 120.420 Financings by Nondepository Lenders.

(a) A Small Business Lending Company regulated by SBA or a Business and Industrial Development Company ("Nondepository Lender") may pledge the notes evidencing SBA guaranteed loans or sell the unguaranteed portions of such loans if SBA, in its sole discretion, gives its prior written consent. The Lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements.

(b) The Nondepository Lender, SBA, and any third party involved in the transaction, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA acknowledging SBA's interest as guarantor of the subject loans and accepting that all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's blanket Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) The Nondepository Lender, SBA, or a third party custodian agreeable to SBA, will hold all pertinent Loan Instruments, and the Nondepository Lender will continue to service the loans after the pledge or transfer is made;

(2) The Nondepository Lender must continue to retain an economic risk in and bear the ultimate risk of loss on the unguaranteed portions. The Nondepository Lender must demonstrate to SBA's satisfaction and in SBA's sole discretion the retention of economic risk by:

(i) In the case of the sale of unguaranteed portions:

(A) Establishing a sufficient reserve fund at time of sale;

(B) Retaining a sufficient level of insurance; and/or

(C) Agreeing to reacquire the unguaranteed portion of a guaranteed loan or the note evidencing a guaranteed loan if the loan goes into default; or

(ii) In the case of the pledge of notes, retaining all of the economic interest in the unguaranteed portion of any loans which the notes evidence.

(c) The Nondepository Lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for the borrowing of any related enterprise or for any other purpose inconsistent with this part.

Miscellaneous Provisions

§ 120.430 SBA access to Lender files.

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

§ 120.431 Suspension and revocation of eligibility to participate.

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

Certified Lenders Program (CLP)

§ 120.440 What is the Certified Lenders Program?

Under the Certified Lenders Program (CLP), designated Lenders process, close, and service, and may liquidate, SBA guaranteed loans. SBA gives priority to applications and servicing actions submitted by Lenders under this program. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

§ 120.441 How does a Lender become a CLP Lender?

(a) An SBA field office may nominate a Lender or a Lender may request a field office to consider it for CLP status. SBA district directors may approve and renew a Lender's CLP status. The district director will consider whether the Lender:

(1) Has the ability to process, close, service and liquidate loans; and

(2) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guarantee application packages;

(3) Has an acceptable SBA purchase rate; and

(4) Has shown the ability to work well with the local SBA office.

(b) If the district director does not approve a request for CLP status, the Lender may appeal to the AA/FA, whose decision will be final. If SBA grants CLP status, it applies only in the field office that approved the CLP designation. A CLP Lender must execute a Supplemental Guarantee Agreement that will specify a term not to exceed two years.

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§ 120.442 Suspension or revocation of CLP status.

The AA/FA may suspend or revoke CLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include a loan performance record unacceptable to SBA, failure to make the required number of loans under the expedited procedures,or violations of applicable statutes, regulations or published SBA policies and procedures. A CLP Lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Preferred Lenders Program (PLP)

§ 120.450 What is the Preferred Lenders Program?

Under the Preferred Lenders Program (PLP), designated Lenders process, close, service, and liquidate SBA guaranteed loans with reduced requirements for documentation to and prior approval by SBA.

§ 120.451 How does a Lender become a PLP Lender?

(a) An SBA field office serving the area where a CLP Lender's office is located can nominate a CLP Lender or a CLP Lender can request a field office to consider it for PLP status. The SBA field office will forward its recommendation to an SBA centralized loan processing center which will submit its recommendation and supporting documentation to the AA/FA for final decision.

(b) In making its decision, SBA will consider whether the CLP Lender:

(1) Has the required ability to process, close, service and liquidate loans; and

(2) Has the ability to develop and analyze complete loan packages; and

(3) Has a satisfactory performance history with SBA.

(c) If the Lender is approved, the AA/FA will designate the area in which it can make PLP loans.

(d) Before it can operate as a PLP Lender, the approved CLP Lender must execute a Supplemental Loan Guarantee Agreement, which will specify a term not to exceed two years.

(e) When a PLP's Supplemental Loan Guarantee Agreement expires, SBA may recertify it as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies and procedures. The recertification decision of the AA/FA is final.

(f) A PLP Lender may request an expansion of the territory in which it can process PLP loans by submitting its request to a loan processing center. The center shall obtain the recommendation of each SBA office in the area into which the PLP Lender would like to expand its PLP operations. The center shall forward the recommendations to the AA/FA for final decision. If a PLP Lender is not already a CLP Lender in a territory into which it seeks to expand its PLP status, it will automatically obtain CLP status in the territory without approval from the District Office when it is granted its extension of PLP status into that territory .

§ 120.452 What are the requirements of PLP loan processing?

(a) Subparts A and B of this part govern the making of PLP loans, except for the following:

(1) Certain types of businesses, loans, and loan programs are not eligible for PLP, as detailed in published SBA policy and procedures.

(2) A Lender may not use the PLP procedure to reduce its existing credit exposure for any Borrower.

(3) SBA will guarantee no more than the specified statutory percentage of any PLP loan. (b) A PLP Lender notifies SBA of its approval of a PLP loan by submitting to SBA's loan processing center appropriate documentation signed by two of the PLP's authorized representatives. SBA will attach the SBA guarantee and notify the PLP Lender of the SBA Loan Number (if it does not identify a problem with eligibility, and funds are available).

(c) The PLP Lender is responsible for the correctness of all PLP loan decisions regarding eligibility (including size), creditworthiness, loan closing, and compliance with all requirements of law or SBA regulations.

§ 120.453 What are the requirements of PLP loan servicing and liquidation?

The PLP Lender must service and liquidate its SBA guaranteed loan portfolio (including its non-PLP loans) using generally accepted commercial banking standards employed by prudent lenders. The PLP Lender must liquidate any defaulted SBA guaranteed loan in its portfolio unless SBA advises in writing that SBA will liquidate the loan. The PLP Lender must submit a liquidation plan to SBA prior to commencing liquidation action, if possible. The PLP Lender may take any necessary servicing action, or liquidation action consistent with a plan, for any SBA guaranteed loan in its portfolio, except it may not:

(a) Take any action that confers a Preference on the Lender;

(b) Accept a compromise settlement without prior written SBA consent; and

(c) Sell or pledge more than 90 percent of a PLP loan.

§ 120.454 PLP performance review.

SBA may review the performance of a PLP Lender. SBA may charge the PLP Lender a fee for this review.

§ 120.455 Suspension or revocation of PLP status.

The AA/FA may suspend or revoke PLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A PLP Lender may appeal the suspension or revocation made under this section under procedures found in Part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Small Business Lending Companies (SBLC)

§ 120.470 What is an SBLC?

A Small Business Lending Company (SBLC) is a nondepository lending institution engaged solely in the making of loans under section 7(a) (except section 7(a)(13)) of the Act in participation with SBA. SBA supervises, examines, and regulates SBLCs. An SBLC is subject to all applicable SBA regulations, including those governing Lenders. This program has been closed to new licenses since January, 1982. In addition to complying with § 120.400–120.413, an SBLC must meet the following requirements:

(a) *Business structure.* It must be a corporation (profit or non-profit).

(b) *Written agreement.* It must sign a written agreement with SBA with terms satisfactory to SBA.

(c) *Capital structure.* It must have unencumbered paid-in capital and paid-in surplus of at least $1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital impairment.* It must avoid capital impairment at all times. Impairment exists if the retained earnings deficit of an SBLC exceeds 50 percent of combined paid-in capital and paid-in-surplus, excluding treasury stock. An SBLC must give SBA prompt written notice of any capital impairment within 30 calendar days of the month-end financial report that first reflects the impairment. Until the impairment is cured, an SBLC may not present any loans to SBA for guarantee.

(e) *Issuance of securities.* Without prior written SBA approval, it must not issue any securities (including stock options and debt securities) except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary capital reduction.* Without prior written SBA approval, it must not voluntarily reduce its capital, or purchase and hold more than 2 percent of any class or combination of classes of its stock.

(g) *Reserves for losses.* It must maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Internal control.* It must adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and to maintain the accuracy of its financial data.

(i) *Dual control.* It must maintain dual control over disbursement of funds and withdrawal of securities. An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer. There must be two or more bonded officers, of one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing these control procedures.

(j) *Fidelity insurance.* It must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a Certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. 6–13.

(k) *Common control.* It must not control, be controlled by, or under common control with, another SBLC. Without prior written SBA approval, an Associate of one SBLC shall not be an Associate of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(l) *Management services.* An SBLC must employ full time professional management.

(m) *Borrowed funds.* Without SBA's prior written approval, it must not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock shall not use borrowed funds to purchase the stock unless the net worth of the shareholders is at least twice the amount borrowed or unless the shareholders receive SBA's prior written approval for a lower ratio.

§ 120.471 Records.

Each SBLC must comply with the following requirements concerning records:

(a) *Maintenance of Records.* It must maintain accurate and current financial records, including books of account, minutes of stockholder, directors, or executive committee meetings, and all documents and supporting materials relating to the SBLC's transactions at its principal business office. Securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) *Preservation of records.*

(1) It must preserve in a manner permitting immediate retrieval the following documentation for the financial statements required by § 120.472 (and of the accompanying independent public accountant's opinion), for the following specified periods:

(i) Preserve permanently:

(A) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(B) All general and special journals (or other records forming the basis for entries in such ledgers); and

(C) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock Certificates or stubs, stock ledgers, and stock transfer registers;

(ii) Preserve for at least 6 years following final disposition of the related loan:

(A) All applications for financing;

(B) Lending, participation, and escrow agreements;

(C) Financing instruments; and

(D) All other documents and supporting material relating to such loans, including correspondence.

(2) Records and other documents referred to in this section may be preserved electronically or by reproduction if the SBLC makes and stores duplicate originals separately from the original for the time required.

§ 120.472 Reports to SBA.

An SBLC must submit the following to the AA/FA:

(a) An audited financial statement prepared by an independent public accountant within three months after the close of each fiscal year, and interim financial reports when requested by SBA;

(b) A report of any legal or administrative proceeding, by or against the SBLC, or against an officer, director, or employee of the SBLC for an alleged breach of official duty, within 10 days after initiating or learning of the proceeding, as well as notification of the terms of any settlement or final judgment (in addition to any reporting under applicable SBA Forms);

(c) Copies of any report furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of the SBLC);

(d) A summary of any changes in the SBLC's organization or financing, such as:

(1) Any change in its name, address or telephone number;

(2) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on an approved SBA form);

(3) Any changes in capitalization not otherwise required by § 120.470 to be reported to SBA;

(4) Any changes affecting the eligibility of the SBLC to continue to participate as an SBLC; and

(5) Notice of a pledge of stock within 30 calendar days of the transaction if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve a transfer for which prior written approval of SBA is required under § 120.473; and

(e) Such other reports as SBA may require from time to time by written directive.

§ 120.473 Change of ownership or control.

(a) Any change of ownership or control without prior written approval of SBA is prohibited. An SBLC must request approval of any such change from the AA/FA. Pending the approval, the SBLC may not register the proposed new owners on its transfer books nor permit them to participate in any manner in the conduct of the SBLC's affairs. Change of ownership or control shall include:

(1) Any transfer of 10 percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of its

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stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that transfers control of the SBLC.

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the SBLC's principal office is located.

§ 120.474 Prohibited financing.

An SBLC may not make a loan to a small business that has received financing (or a commitment for financing) from an SBIC that is an Associate of the SBLC.

§ 120.475 Suspension or revocation.

SBA may revoke or suspend an SBLC for a violation of law, these regulations, or any agreement with SBA. An appeal can be made following the procedures set forth in part 134 of this chapter.

Subpart E—Loan Administration

§ 120.500 General.

This subpart outlines the general loan administration policies applicable to SBA financial assistance.

Servicing

§ 120.510 Servicing direct and immediate participation loans.

SBA services the direct loans that it makes. Generally, the Lender services immediate participation loans that it makes and in which SBA participates.

§ 120.511 Servicing guaranteed loans.

The Lender services guaranteed loans, holds the Loan Instruments and receives the Borrower's payments of principal and interest.

§ 120.512 Who services the loan after SBA honors its guarantee?

Generally, after SBA honors its guarantee, the Lender must continue to hold the Loan Instruments and service the loan, and the Lender must execute a Certificate of Interest showing SBA's percentage of the loan. If SBA elects to service the loan, the Lender must assign the Loan Instruments to SBA.

§ 120.513 What servicing actions require the prior written consent of the SBA?

SBA must give its prior written consent before the Lender takes any of the following actions:

(a) Alter substantially the terms or conditions of any Loan Instrument (for example, any increase in the principal amount or change in the interest rate, or conferring a Preference on the Lender);

(b) Release collateral having a cumulative value in excess of 20 percent of the original loan amount;

(c) Accelerate the maturity of the note;

(d) Sue upon any Loan Instrument;

(e) Compromise or waive any claim against any Borrower, guarantor, obligor or standby creditor arising out of any Loan Instrument; or

(f) Increase the amount of any prior lien held by the Lender on the collateral securing the loan.

SBA'S Purchase of a Guaranteed Portion

§ 120.520 When does SBA honor its guarantee?

(a) SBA, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses.

(b) When SBA purchases the guaranteed portion, it does not waive any of its rights to recover money paid on the guaranty, based upon the Lender's negligence, misconduct, or violation of this part, including the those actions listed in § 120.524(a), the guarantee agreement or the Loan Instruments.

§ 120.521 What interest rate applies after SBA purchases its guaranteed portion?

When SBA honors its guarantee for a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured default (where a default has occurred), or the rate in effect at the time of purchase (where no default has occurred).

§ 120.522 How much accrued interest does SBA pay to the Lender or Registered Holder when SBA purchases the guaranteed portion?

(a) *Rate of interest.* If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary market), it will pay accrued interest at:

(1) The rate in the note if it is a fixed rate loan; or

(2) The rate in effect on the date of the earliest uncured default (if a default has occurred) or of SBA's purchase (if there has been no default).

(b) *Payment to Lender.* SBA calculates the accrued interest due a Lender from the date of the Borrower's earliest uncured default, but interest may not accrue for more than 120 days (plus any deferment period which SBA had approved). In addition, if a Lender requests SBA to purchase within 120 days of the earliest uncured default, SBA will pay accrued interest to the Lender for any SBA time spent in making payment in excess of 120 days, plus interest from the last paid-to date to the earliest uncured default date.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

(d) *Extension of the 120 day period.* Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only SBA's AA/FA or his designee can extend the period.

§ 120.523 What is the "earliest uncured default"?

Default occurs when a Borrower violates any provision in the Loan Instruments. The default date is the date the violation occurred. The "earliest uncured default" is the earliest violation not yet cured. If the violation is the failure by a Borrower to pay a regular installment of principal and interest when due, payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured default. If the installment is paid in full, the earliest uncured default date will advance to the next unpaid installment date. If a Borrower makes any payment after a Lender makes its request to SBA to purchase, the earliest uncured default date does not change because the Lender has already exercised its right to request purchase.

§ 120.524 When is SBA released from liability on its guarantee?

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender's improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guarantee;

(7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guaranty plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA prior to Lender's request for SBA to honor its guarantee shall not prejudice SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

Deferment, Extension of Maturity and Loan Moratorium

§ 120.530 Deferment of payment.

SBA may agree to defer payments for a stated period of time, and use such other methods as it considers necessary and appropriate to help in the successful establishment and operation of the Borrower. This policy applies to all business loan programs, including 504 loans.

§ 120.531 Extension of maturity.

SBA may agree to extend the maturity of a loan for up to 10 years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

§ 120.532 What is a loan Moratorium?

SBA may assume a Borrower's obligation to repay principal and interest on a loan by agreeing to make the payments to the Participating Lender on behalf of the Borrower. This relief is called a "Moratorium."

§ 120.533 When will SBA grant a Moratorium?

SBA normally will grant a Moratorium if:

(a) Without it, the small business will become or remain insolvent;

(b) With it, the small business will become or remain viable;

(c) Alternative remedies, such as a deferment, are not available;

(d) The Lender has already granted deferments equal to at least six (6) monthly installments, and the Lender and SBA agree that the deferments have been beneficial;

(e) The Borrower, Lender, obligors, and guarantors execute a "Moratorium Agreement" giving SBA absolute discretion to discontinue making the payments at any time;

(f) The Borrower (and co-Borrowers) execute a demand note to repay SBA's Moratorium advances;

(g) All guarantors or other obligors of the guaranteed loan execute guarantee agreements and any other instruments required by SBA to protect its interests under the demand note;

(h) The Borrower and other obligors provide such security as SBA considers necessary or appropriate; and

(i) The collateral securing the demand note includes at least the collateral securing the guaranteed loan, and the collateral position for the demand note is subject only to the lien position on the guaranteed loan.

§ 120.534 How long can a Moratorium continue?

Generally, SBA will continue a Moratorium for six months, although SBA may authorize an initial Moratorium for up to one year. SBA may continue a Moratorium for additional periods (to a maximum total of five (5) years) only if the Borrower can demonstrate the eventual ability to repay from earnings the original note and the demand note.

§ 120.535 What are the repayment terms of a Moratorium?

(a) The interest rate for the demand note is the same as for the guaranteed loan. SBA advances to a Participating Lender during the Moratorium period accrue interest from the date of each disbursement.

(b) SBA has the right to demand payment at any time. If not previously demanded, payment in full will be due immediately after the Borrower has fully paid the guaranteed loan.

(c) SBA may demand payment in full under the demand note or SBA may accept a repayment schedule. If the loan has been paid, the frequency and amount of the repayments must be at least equal to the amount and frequency that were due under the loan.

(d) SBA will apply repayments first to accrued interest and then to principal.

(e) A loan may be extended beyond the statutory limit for a period of time corresponding to the time of the Moratorium.

Liquidation of Collateral

§ 120.540 What are SBA's policies concerning liquidation of collateral?

(a) *Liquidation policy.* SBA or the Lender may liquidate collateral securing a loan if there is no reasonable prospect that the Borrower or a guarantor (other than SBA) can repay the loan within a reasonable period.

(b) *Sale and conversion of loans.* Without the consent of the Borrower, SBA may:

(1) Sell a direct loan;

(2) Convert a guaranteed or immediate participation loan to a direct loan; or

(3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

(c) *Dispose of collateral and assets acquired through foreclosure or conveyance.* SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan that is in default in accordance with the provisions of the related security instrument (see § 120.550 for Homestead Protection for Farmers).

(1) *Competitive bids or negotiated sale.* Generally, SBA or the Lender will offer loan collateral and acquired assets for public sale through competitive bids at an auction or a sealed bid sale, although a negotiated sale may be utilized under appropriate circumstances.

(2) *Lease of acquired property.* Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA will consider proposals for a lease if it appears a property cannot be sold advantageously and it is in the government's interest, but SBA may terminate the lease upon receipt of a favorable purchase offer.

(d) *Recoveries and security interests shared.* SBA and the Participating Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, all reasonable expenses

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(including advances for the care, preservation, and maintenance of collateral securing the loan), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

(e) *Guarantors.* Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

Homestead Protection for Farmers

§ 120.550 What is homestead protection for farmers?

SBA may lease to a farmer-Borrower the farm residence occupied by the Borrower and a reasonable amount of adjoining property (no more than 10 acres and seven farm buildings), if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA (see the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, for qualifying loan purposes).

§ 120.551 Who is eligible for homestead protection?

SBA must notify the Borrower in possession of the availability of these homestead protection rights within 30 days after SBA acquires the property. A farmer-Borrower must:

(a) Apply for the homestead occupancy to the SBA field office which serviced the loan within 90 days after SBA acquires the property;

(b) Provide evidence that the farm produces farm income reasonable for the area and economic conditions;

(c) Show that at least 60 percent of Borrower's gross annual income came from farm or ranch operations in at least any two out of the last six calendar years;

(d) Have resided on the property during the previous six years; and

(e) Be personally liable for the debt.

§ 120.552 Lease.

If approved, the applicant must personally occupy the residence during the term of the lease and pay a reasonable rent to SBA. The lease shall be for a period not to exceed 5 years, renewable for up to another 5 years. During or at the end of the lease period, the lessee has a right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser.

§ 120.553 Appeal.

If the application is denied, the Borrower may appeal the decision to the Regional Administrator in the region in which the field office which denied the application is located. Until the conclusion of any appeal, the Borrower may retain possession of the homestead property. If there is a conflict between state law and this section, state law prevails.

Subpart F—Secondary Market

§ 120.600 What is the SBA Secondary Market?

The SBA secondary market ("Secondary Market") consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. By the terms of the Certificate, SBA guarantees a Registered Holder timely payment of principal and interest to which the Registered Holder is entitled from the loan or loans underlying the Certificate. Transactions involving interests in Pools or the sale of individual guaranteed portions are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5 (f), (g) and (h) of the Small Business Act (15 U.S.C. 634 (f), (g) and (h)).

§ 120.601 Definitions.

The definitions in this section apply throughout this subpart.

(a) *Certificate* is the document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan that is sold separately.

(b) *Current* means that no repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

(c) *FTA* is the SBA's fiscal and transfer agent.

(d) *Note Rate* is the interest rate on the Borrower's note.

(e) *Net Rate* means the interest rate on an individual guaranteed portion in a Pool.

(f) *Payment date* is the date that the FTA deposits checks in the U.S. mail. SBA may change the date or method of payment by publishing a document in the **Federal Register**.

(g) *Pool* is an aggregation of SBA guaranteed portions of loans made by Lenders.

(h) *Pool Assembler* is a financial institution that:

(1) Organizes and packages a Pool by acquiring the SBA guaranteed portions of loans from Lenders;

(2) Resells fractional interests in the Pool to Registered Holders; and

(3) Directs the FTA to issue Certificates.

(i) *Pool Rate* means the interest rate on a Certificate.

(j) *Registered Holder* is the Certificate owner listed in FTA's records.

Certificates

§ 120.610 Description of Certificates.

(a) *General form and content.* Each Certificate must be registered with the FTA (no bearer Certificates). SBA must approve the terms of the Certificate.

(b) *Face amount of Pool Certificate.* The face amount of a Pool Certificate cannot be less than a specified minimum amount and must be in increments which SBA may specify (except for one Certificate in each Pool). SBA may change these requirements by issuing a document in the **Federal Register** after analyzing market conditions and program experience.

(c) *Payment Terms for Pool Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the portion of the Pool represented by a Pool Certificate. All prepayments on loans in the Pool must be passed through to the Registered Holders on the payment date.

(d) *Payment Terms for Certificates which represent individual guaranteed portions.* Principal installments and interest payments are based on the unpaid principal balance of the entire SBA guaranteed portion of the loan. The Certificate must provide for a pro rata pass through to the Registered Holder of payments which the FTA receives from a Lender or any entity servicing the loan.

§ 120.611 Description of Pools backing Pool Certificates.

(a) *Pool characteristics.* (1) When the FTA issues a Pool Certificate, each Pool must have:

(i) A minimum number of guaranteed portions of loans;

(ii) A minimum aggregate principal balance of the guaranteed portions;

(iii) A maximum percentage of the Pool which an individual guaranteed portion may constitute;

(iv) A maximum allowable difference between the highest and lowest note interest rates;

(v) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool; and

(vi) A minimum weighted average maturity at Pool formation.

(2) SBA may adjust the Pool characteristics periodically based upon program experience and market conditions.

(b) *Interest rate on Pool Certificate.* The interest rate on a pool Certificate must be equal to the lowest net rate on any individual guaranteed portion in the pool.

(c) *Redemption of Certificate.* The FTA and SBA may redeem a pool Certificate because of prepayment or default of all loans constituting the pool.

§ 120.612 What loans are eligible to back Certificates?

(a) Pool Certificates are backed by the SBA guaranteed portions of loans comprising the Pool. An individual Certificate is backed by the entire SBA guaranteed portion of a single loan. Each such loan must:

(1) Be current as of the date the Pool is formed or the individual loan is initially sold in the Secondary Market;

(2) Be guaranteed under the Act; and

(3) Meet such other standards as SBA may determine to be necessary for the successful operation of the pooling program.

(b) With respect to any Pool, the loans must meet the SBA standards in effect at the time the Pool is formed.

§ 120.613 What is a Secondary Participation Guarantee Agreement?

When a Lender wants to sell the guaranteed portion of a loan, it enters into a Secondary Participation Guarantee Agreement ("SPGA") with SBA and the purchaser of the guaranteed portion. The terms of sale between the Lender and the purchaser cannot require the Lender or SBA to repurchase except in accordance with the terms of the SPGA. Before execution of the agreement, the Lender must:

(a) *Documents.* Submit to SBA a copy of the SPGA, the note, and such other documents as SBA may require;

(b) *Full Disbursement.* Disburse to the Borrower the full amount of the loan; and

(c) *Guarantee Fees Paid.* Pay SBA all guarantee fees in full.

The SBA Guarantee of a Certificate

§ 120.620 The SBA guarantee of a Pool Certificate.

(a) *Extent of Guarantee.* SBA guarantees to a Registered Holder the timely payment of principal and interest installments and any prepayment or other recovery of principal on the underlying loans to which the Registered Holder is entitled. If the Borrower of a loan in a Pool backing the Certificates does not make a required installment payment, SBA through the FTA must make advances to maintain the schedule of interest and principal payments to the Registered Holders until SBA purchases the guaranteed portion.

(b) *SBA guarantee backed by full faith and credit.* SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

§ 120.621 The SBA guarantee of a Certificate representing an individual guaranteed portion.

(a) *Extent of SBA guarantee.* With respect to individual SBA guaranteed portions sold in the Secondary Market, SBA guarantees to purchase from the Registered Holder the guaranteed portion for an amount equal to the unpaid principal and accrued interest due on the guaranteed portion of the note as of the date of SBA's purchase, less deductions for applicable fees. As opposed to the SBA guarantee with respect to pooled loans, SBA does not guarantee timely payment on individual guaranteed portions.

(b) *What triggers the SBA guarantee.* SBA's guarantee to the Registered Holder may be called upon when:

(1) The Borrower remains in uncured default for 60 days on payments of principal or interest due on the note;

(2) The Lender fails to send to the FTA payments it received from the Borrower; or

(3) The FTA fails to send to the Registered Holder any payments it has received from the Lender.

(c) *Full faith and credit.* SBA's guarantee to the Registered Holder is unconditional and is backed by the full faith and credit of the United States.

Pool Assemblers

§ 120.630 Qualifications to be a Pool Assembler.

(a) *Application to become Pool Assembler.* The application to become a Pool Assembler is available from the AA/FA. In order to qualify as a Pool Assembler, an entity must send the application to the AA/FA, with an application fee, and certify that it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securities Act of 1986, as amended (Pub. L. 99–571, 100 Stat. 3208);

(3) Has the financial capability to assemble acceptable and eligible guaranteed loan portions in sufficient quantity to support the issuance of Pool Certificates; and

(4) Is in good standing with SBA (as the AA/FA determines), the Office of the Comptroller of the Currency ("OCC") if it is a national bank, the Federal Deposit Insurance Corporation if it is not a national bank, or the National Association of Securities Dealers.

(b) *Approval by SBA.* After SBA approves the application to become a Pool Assembler, the entity may submit Pool applications to the FTA.

(c) *Conduct of business by Pool Assembler.* An entity continues to qualify as a Pool Assembler so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards; and

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities.

§ 120.631 Suspension or termination of eligibility of Pool Assembler.

(a) *Suspension or termination.* The AA/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its eligibility, if the Pool Assembler (and/or its Associates):

(1) Does not comply with any of the requirements in § 120.630(a) and (c);

(2) Has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony;

(3) Has received an adverse final civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;

(4) Has not formed a Pool for at least 3 years; or

(5) Is under investigation by its regulating authority for activities which may affect its ability to participate in the Secondary Market.

(b) *Suspension procedures.* The AA/FA shall notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend and the reasons therefore at least 10 business days prior to the effective date of the suspension. The Pool Assembler may appeal the suspension made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(c) *Notice of termination.* In order to terminate a Pool Assembler's eligibility, the AA/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler's participation in the Secondary Market. The Pool Assembler may appeal the termination made under this section

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pursuant to procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Sale of Certificates

§ 120.640 Administration of the Pool and individual guaranteed portions.

(a) *FTA responsibility.* The FTA has the responsibility to administer each Pool or individual guaranteed portion. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) *Self-liquidating.* Each Pool or individual guaranteed portion in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. There is no substitution of the guaranteed portions of existing loans for defaulted loans.

(c) *SBA's right to subrogation.* If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) *SBA ownership rights not limited.* No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

§ 120.641 Disclosure to purchasers.

(a) *Information to purchaser.* Prior to any sale, the Pool Assembler, Registered Holder of a Certificate representing an individual guaranteed portion, or any subsequent seller must disclose to the purchaser, either orally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) *Information on transfer document.* The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) *Information in prospectus.* If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information in (a) above to investors through a prospectus and other promotional material if a Certificate or Pool Certificate is placed into or used as the backing for the investment vehicle.

§ 120.642 Requirements before the FTA issues Pool Certificates.

Before the FTA issues any Pool Certificate, the Pool Assembler must deliver to it the following documents:

(a) A properly completed Pool application form;

(b) Either:

(1) Certificates evidencing the guaranteed portions comprising the Pool; or

(2) An executed SPGA and related documentation for the loans whose guaranteed portions are to be part of the Pool; and

(c) Any other documentation which SBA may require.

§ 120.643 Requirements before the FTA issues the Certificate for an individual guaranteed portion.

(a) *FTA issuance of initial Certificate.* Before the FTA can issue the initial Certificate for a particular guaranteed portion, the original seller must provide the following documents to the FTA:

(1) An executed SPGA;

(2) A copy of the note representing the guaranteed loan; and

(3) Any other documentation which SBA may require.

(b) *Review of documentation.* SBA may review or require the FTA to review any documentation before the FTA issues a Certificate.

§ 120.644 Sale of individual SBA guaranteed portion.

(a) *Amount of Certificate.* Each Certificate which represents the guaranteed portion of a single loan must be for the entire amount of the guaranteed portion.

(b) *General rule on transferability of Certificate.* Each such Certificate is transferable only on the books and records of the FTA or SBA.

(c) *Lender cannot purchase guaranteed portion of loan it made.* The Lender (or its Associate) that made the loan cannot purchase the guaranteed portion in the Secondary Market. If a Lender does purchase the guaranteed portion of one of its own loans, it shall not have the unconditional guarantee of SBA.

(d) *Prepayment or default.* The prepayment of the underlying loan or a default on such loan will trigger the redemption of the Certificate by FTA/SBA in accordance with the procedures prescribed in the SPGA.

§ 120.645 Transfers of Certificates.

(a) *General rule.* Certificates are transferable. Transfers in the Secondary Market must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller must use the detached form of assignment (SBA Form 1088), unless the seller and purchaser choose to use another form which the SBA approves. The FTA may refuse to issue a Certificate until it is satisfied that the documents of transfer are complete.

(b) *Transfer on FTA records.* In order for the transfer of a Certificate to be effective the FTA or SBA must reflect it on their records.

(c) *Contents of letter of transmittal accompanying the transfer of Certificates.* (1) A letter of transmittal must accompany each Certificate which a Registered Holder submits to the FTA for transfer. The Registered Holder must supply the following information:

(i) Pool number, if applicable;

(ii) Certificate number;

(iii) Name of purchaser of Certificate;

(iv) Address and tax identification number of the purchaser;

(v) Name and telephone number of the person handling or facilitating the transfer;

(vi) Instructions for the delivery of the new Certificate.

(2) With this information, the seller of the Certificate must send the fee which the FTA charges for this service. The FTA will supply fee information to the seller.

Fiscal and Transfer Agent (FTA)

§ 120.650 Registration duties of FTA in Secondary Market.

The FTA registers all Certificates. This means it issues, transfers title to, and redeems them. All financial transactions relating to a guaranteed portion of a loan flow through the FTA. The FTA must keep the central registry current, using the following information required for each registration:

(a) The Lender that made and sold the loan;

(b) The interest rate paid by the Borrower to the Lender (including whether the rate is fixed or variable);

(c) The Lender's servicing fee;

(d) The purchaser;

(e) The price paid by the purchaser;

(f) The interest rate paid on the Certificate or Pool Certificate;

(g) The fees which the FTA charges to register and issue Certificates; and

(h) Any other information which SBA requires.

§ 120.651 Claim to FTA by Registered Holder to replace Certificate.

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and

(4) Use an affidavit of loss (form available from the FTA) to report:

(i) The name and address of the Registered Holder (and the name and capacity of any representative actually filing the claim);

(ii) The Certificate by Pool number, if applicable;

(iii) The Certificate number;

(iv) The original principal amount;

(v) The name in which the Certificate was registered;

(vi) Any assignment, endorsement or other writing on the Certificate; and

(vii) A statement of the circumstances of the theft or loss.

(b) When the FTA receives notice of the theft or loss, it will stop any transfer of the Certificate. The Registered Holder must send to the FTA all available portions of a mutilated or defaced Certificate. When the Registered Holder completes these steps, the FTA will replace the Certificate.

§ 120.652 FTA fees.

The FTA may charge reasonable servicing fees, transfer fees, and other fees as the SBA and FTA may negotiate under contract.

Suspension or Revocation of Participant in Secondary Market

§ 120.660 Suspension or revocation.

(a) *Suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The AA/FA may suspend or revoke the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) Committing a serious violation, in SBA's discretion, of:

(i) The rules and regulations of the Secondary Market; or

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1085, 1086, 1088 and 1454; or

(2) Knowingly submitting false or fraudulent information to the SBA or FTA.

(b) *Additional rules for suspension or revocation of broker or dealer.* In addition to acting under paragraph (a) of this section, the AA/FA may suspend or revoke any broker or dealer from selling or otherwise dealing in Certificates in the Secondary Market if:

(1) Its supervisory agency has revoked or suspended the broker or dealer from engaging in the securities business, or is investigating the firm or broker for a practice which SBA considers, in its sole discretion, to be relevant to the broker's or dealer's fitness to participate in the Secondary Market;

(2) The broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony which bears on its fitness to participate in the Secondary Market; or

(3) A final civil judgment is entered holding that the broker or dealer has committed a breach of trust or a violation of any law or regulation protecting the integrity of business transactions or relationships.

(c) *Notice to suspend or revoke.* The AA/FA shall notify the affected party in writing, providing the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal. Revocation shall last a minimum of 5 years.

Subpart G—Microloan Demonstration Program

§ 120.700 What is the Microloan Program?

(a) The Microloan Demonstration Program assists women, low income individuals, minority entrepreneurs, and other small businesses ("Microloan Borrowers") who need smaller amounts of financial assistance, but still have limited access to credit. The program has been authorized through September 30, 1997.

(b) Under this program, SBA makes direct and guaranteed loans to Intermediaries (as defined below) who use the proceeds to make loans to Microloan Borrowers. SBA also may make grants to these Intermediaries to be used for marketing, management, and technical assistance to the Microloan Borrowers.

(c) SBA also may make grants to qualified non-profit entities, who are not Intermediaries, to provide marketing, management and technical assistance to Microloan Borrowers seeking to start or enlarge small businesses.

(d) An Intermediary cannot operate in more than one state unless the AA/FA determines that it would be in the best interests of the small business community to operate across state lines.

§ 120.701 Definitions.

(a) *Deposit account* is a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

(b) *Economically Distressed Area* is a county or equivalent division of local government of a state in which, according to the most recent available data from the United States Bureau of the Census, 40 percent or more of the residents have an annual income that is at or below the poverty level.

(c) *Grant* is a Federal award of money, or property in lieu of money (including cooperative agreements) to an eligible grantee that must account for its use. The term does not include the provision of technical assistance, revenue sharing, loans, loan guarantees, interest subsidies, insurance, direct appropriations, or any fellowship or other lump sum award.

(d) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(e) *Intermediary* is an entity participating in the Microloan Demonstration Program which has made and serviced microloans to small businesses for at least one year, and which provides marketing, management, and technical assistance to its Microloan Borrowers. It may be:

(1) A private, nonprofit community development corporation or other entity;

(2) A consortium of private, nonprofit community development corporations or other entities;

(3) A quasi-governmental economic development entity, other than a State, county, municipal government or any agency thereof; or

(4) An agency of or a non-profit entity established by a Native American Tribal Government.

(f) *Microloan* is a short-term, fixed interest rate loan of not more than $25,000 made by an Intermediary to an eligible small business.

(g) *Non-Federal sources* are funds acquired from sources other than the Federal Government and may include indirect costs or in-kind contributions paid for under non-Federal programs.

(h) *Specialized Intermediary* means an Intermediary which maintains a portfolio of microloans averaging $7,500 or less.

§ 120.702 Are there limits on Intermediaries or loans?

(a) SBA will not allow a quasi-governmental Intermediary to participate in the program unless:

(1) No otherwise eligible organization applies; or

(2) SBA determines that participation by a quasi-governmental Intermediary is in the public interest.

(b) In selecting Intermediaries, SBA will give priority to Specialized Intermediaries.

(c) SBA will not loan more than $2.5 million collectively per year to the

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Intermediaries operating in any one State.

§ 120.703 How do I apply to become an Intermediary?

(a) *Application Process.* SBA periodically will solicit applications from prospective Intermediaries in a Program Announcement or Request For Proposal informing you:

(1) Where to obtain an application package;

(2) The deadline for submitting your application;

(3) Where to deliver your completed application.

(b) *Documentation in support of your application.* Your application must include a detailed narrative statement describing:

(1) The types of businesses which you have assisted in the past and those you intend to assist with Microloans;

(2) The average size of the loans which you have made in the past and the average size of your intended Microloans;

(3) The extent to which you will make loans to small businesses in rural areas;

(4) The geographic area in which you intend to operate, including a description of the economic and demographic conditions existing in your intended area of operations;

(5) The availability and cost of obtaining credit for small businesses in your area;

(6) Your experience and qualifications in providing marketing, management, and technical assistance to small businesses;

(7) Any plan you may have to use other technical assistance (such as counselors from the Service Corps of Retired Executives) to help your microloan borrowers.

(c) *Evaluation.* In evaluating applications to become Intermediaries, SBA shall select applicants that ensure the appropriate availability of Microloans for small businesses in all industry and business sectors located in both rural and urban areas.

§ 120.704 What is my financial contribution?

You must contribute from non-Federal sources an amount equal to 15% of any loan that you receive from SBA. The contribution may not be borrowed.

§ 120.705 Microloan Revolving Fund.

You must establish a Microloan Revolving Fund ("MRF") in an interest-bearing Deposit Account into which you must deposit your contributions from non-Federal sources, the proceeds from SBA loans, and payments from your Microloan Borrowers. You may only withdraw from this account the money needed to establish the Loan Loss Reserve Fund (§ 120.706), proceeds for each Microloan you make, and any payments which you owe to SBA.

§ 120.706 Loan Loss Reserve Fund.

(a) *General.* You must establish a Loan Loss Reserve Fund ("LLRF") in an interest-bearing Deposit Account. The purpose of the LLRF is to account for any shortage in the MRF caused by delinquencies or losses on your microloans. You must maintain the LLRF until you have repaid all obligations which you owe to SBA.

(b) *Level of Loan Loss Reserve Fund in first year.* In your first year as an Intermediary, the balance on deposit in the LLRF must equal not less than 15% of the total outstanding balance of all notes receivable owed by your Microloan Borrowers.

(c) *Level of Loan Loss Reserve Fund in subsequent years.* In subsequent years as an Intermediary, you must maintain a balance on deposit in the LLRF at a level which reflects your loss experience as determined by SBA. The maximum amount is 15% of the total outstanding balance owed by your Microloan Borrowers.

§ 120.707 What are the terms and conditions of my Intermediary SBA loan?

(a) *Loan Amount.* You, together with your affiliates, cannot borrow more than $750,000 in the first year of your participation in this program. In subsequent years, your obligations owed to SBA cannot exceed an aggregate of $2,500,000.

(b) *Repayment terms.* During the first year of your loan, you do not have to make any payments, but interest accrues from the date that SBA disburses the loan proceeds to you. After that, SBA will determine your periodic payments. The loan must be repaid within 10 years.

(c) *Interest rate.* If you are a Specialized Intermediary, your interest rate is equal to the rate applicable to 5-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 2 percent; otherwise, your interest rate is equal to the rate applicable to 5-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 1.25 percent.

(1) In determining the applicable interest rate, SBA will measure the average size of the microloans for each of your sites or offices. For purposes of this section, the terms "office" or "site" shall mean a fixed, existing, geographic location established at a specific address.

(2) At the end of your first year of participation in this program, SBA determines whether your actual lending practices qualify you as a Specialized Intermediary. SBA then applies the applicable interest rate retroactively (making adjustments to interest accrued on your loan).

(3) On the anniversary date of the first year interest rate calculation (second and all later years), SBA will determine whether your cumulative actual lending practices qualify you as a Specialized Intermediary. SBA will apply the applicable rate for that year.

(d) *Collateral.* As security for repayment of your SBA loan, you must pledge to SBA a first lien position in your MRF, LLRF, and all notes receivable from your Microloans.

(e) *Default.* If for any reason you are unable to pay SBA when due, SBA may accelerate maturity of your loan and demand payment in full. In this event, or if you violate this part or the terms of your loan agreement, you must surrender possession of all collateral described in paragraph (d) of this section to SBA. You are not obligated to pay SBA any loss or deficiency which may remain after liquidation of the collateral unless the loss was caused by your fraud, negligence, violation of any of the ethical requirements of § 120.140, or violation of any other provision of this part.

(f) *Fees.* SBA does not charge you any fees for a loan under this program. You may, however, pay minimal closing costs to third parties, such as filing and recording fees.

§ 120.708 What conditions apply to my loans to Microloan Borrowers?

(a) *General.* You may make Microloans to any small business eligible to receive financial assistance under this Part. You may allow your Borrower to use loan proceeds only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. You must exercise prudent lending practices because SBA will not review your Microloans for creditworthiness.

(b) *Amount and maturity.* Generally, you should not loan more than $10,000 to any Borrower. You may loan more than $10,000 only if you are satisfied that your Borrower is unable to obtain financing on comparable terms elsewhere and has good prospects for success. You must not loan more than $25,000 to any Borrower, including affiliates. Each of your Microloans must be repaid within 6 years.

(c) *Interest rate.* (1) The maximum interest rate that you can charge your Microloan Borrowers is:

(i) On loans of more than $7,500, the interest rate charged on your SBA loan, plus 7.75 percentage points;

(ii) On loans of $7,500 or less, the interest rate charged on your SBA loan, plus 8.5 percentage points.

(2) Until the determination of your interest rate by SBA at the end of the first year, you should quote Microloan Borrowers two possible interest rates. You may collect interest at the higher rate. After your interest rate is established at the end of your first year, the actual interest rate for your borrowers' loans will be set and their interest payments during the first year adjusted.

§ 120.709 What records and reports does SBA require?

You must operate in accordance with applicable statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in your application. You must supply to SBA current and accurate information about all operational requirements, and maintain records as required by SBA.

§ 120.710 How does an Intermediary get a grant to assist Microloan Borrowers?

(a) *General.* If you receive a loan from SBA, you are eligible to receive a grant from SBA equal to 25 percent of the outstanding balance of all loans made to you by SBA. You must contribute, solely from non-Federal sources, an amount equal to 25 percent of the grant, unless you make at least 50 percent of your loans to small businesses located in or owned by residents of an Economically Distressed Area. If you make at least 25 percent of your loans to small businesses located in or owned by residents of an Economically Distressed Area, you will be eligible to receive an additional grant from SBA equal to 5 percent of the outstanding balance of all loans which you have received from SBA (with no obligation to contribute additional matching funds). You may not borrow your contribution. You may only use grant funds to provide your Microloan Borrowers with marketing, management, and technical assistance, except that you may use up to 15 percent of the grant funds to provide information and technical assistance to prospective Microloan Borrowers. You may not contract to have any other person or entity provide these services.

(b) *Specialized Intermediary.* If you are a Specialized Intermediary, you are eligible for an additional grant equal to 5 percent of the total outstanding balance of all loans which you have received from SBA. You are not required to contribute additional matching funds. You must use the grant proceeds only for marketing, management and technical assistance.

(c) *Determining eligibility.* SBA will determine your eligibility for a grant under this section separately for each loan-making office or site. SBA will measure the average size of your Microloans for each site to see if you qualify for the extra 5 percent.

§ 120.711 Does SBA provide technical assistance to Intermediaries?

SBA may procure technical assistance for an Intermediary to improve its knowledge, skill, and understanding of microlending by awarding a grant to a more experienced Intermediary. SBA may also obtain such assistance for prospective Intermediaries in areas of the country that are either underserved or not served by an existing Intermediary.

§ 120.712 How does a non-Intermediary get a grant?

(a) *Grant procedure for non-Intermediaries.* Any nonprofit entity that is not an Intermediary may apply to SBA for a grant. To qualify, it must submit information regarding its ability to provide marketing, management, and technical assistance to Microloan Borrowers. If approved, the grant agreement will establish the terms and conditions of the grant.

(b) *Number and amounts of grants.* In each year of the Microloan program, SBA may make no more than 25 grants to non-Intermediaries for terms of up to 5 years. A grant may not exceed $125,000.

(c) *Contribution by nonprofit entity.* The nonprofit entity must contribute an amount equal to 20 percent of the grant. The contribution from the nonprofit entity shall come solely from non-Federal sources, and may include direct costs or in-kind contributions paid for under non-Federal programs.

§ 120.713 Does SBA guarantee any loans an Intermediary obtains from another source?

(a) SBA may guarantee not less than 90 percent of no more than 10 loans by for-profit or non-profit entities (or an alliance of such entities) to intermediaries in urban areas and no more than 10 loans by such entities to intermediaries in Rural Areas.

(b) Any loan under this section shall have a term of 10 years. If you receive such a loan, you will not need to repay any principal or interest during the first year, although the interest will accrue. During the second through fifth years, you will pay interest only. During the sixth through tenth years you will pay interest and fully amortize the principal.

(c) The interest rate on any loan under this section shall be calculated as described in § 120.707.

Subpart H—Development Company Loan Program (504)

§ 120.800 What is the purpose of the 504 program?

As authorized by Congress, SBA has established this program to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses.

§ 120.801 How is a 504 Project financed?

A small business may apply for 504 financing through the CDC servicing the area in which the business is located. SBA issues an Authorization if it agrees to guarantee part of the funding for a Project. Usually, a Project requires interim (construction) financing from an interim lender (often the same lender that later provides a portion of the permanent financing). Generally, permanent financing of the Project consists of a private sector loan in the amount of 50 percent of the Project costs which is collateralized by a first lien on the Project Property, a loan made with the proceeds of a CDC Debenture in the amount of 40 percent of the Project costs, collateralized by a second lien on the Project Property, and a contribution by the small business in the amount of 10 percent of the Project costs. The Debenture is guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to Underwriters who form Debenture Pools. Investors purchase interests in Debenture Pools and receive Certificates representing ownership of all or part of a Debenture Pool. SBA and CDCs use various agents to facilitate the sale and service of the Certificates and the orderly flow of funds among the parties.

§ 120.802 Definitions.

The following terms have the same meaning wherever they are used in this subpart. Defined terms are capitalized wherever they appear.

Area of Operations is a geographic area in which a CDC conducts its activities.

Associate Development Company (ADC) is an entity approved by SBA to assist CDCs to deliver 504 financing.

Central Servicing Agent (CSA) is an entity that receives and disburses funds among the various parties involved in 504 financing under a master servicing agent agreement with SBA.

Certificate is a document issued by SBA or its agent representing ownership of all or part of a Debenture Pool.

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Debenture is an obligation issued by a CDC and guaranteed 100 percent by SBA, the proceeds of which are used to fund a 504 loan.

Debenture Pool is an aggregation of Debentures formed by an Underwriter.

Job Opportunity is a full time (or equivalent) permanent job created within two years of receipt of 504 funds, or retained in the community because of a 504 loan.

Net Debenture Proceeds are the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).

Project is the purchase or lease, and/or improvement or renovation of long-term fixed assets by a small business, with 504 financing, for use in its business operations.

Project Property is one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved by a small business, with 504 financing, for use in its business operations.

Substantial Increase in Unemployment is:

(1) A reduction of one-third or more in the workforce of a relocating small business; or

(2) An increase in unemployment in a redevelopment area (as designated by the Department of Commerce), a Labor Surplus Area (designated by the Department of Labor), or in an area which has an unemployment rate at least 20 percent higher than the national average.

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source obtained by the Borrower as part of the Project financing.

Underwriter is an entity approved by SBA to form Debenture Pools and arrange for the sale of Certificates.

Certificaiton Procedures To Become a CDC

§ 120.810 Applications for certification as a CDC.

(a) Applicants for certification as a CDC must apply to the SBA District Office serving a proposed Area of Operations. An applicant must demonstrate that it satisfies the certification and operating criteria in §§ 120.820–120.829, as well as:

(1) The need for 504 services (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap);

(2) A budget, approved by its Board of Directors; and

(3) A plan to meet CDC operating requirements (without specializing in a particular industry).

(b) The AA/FA, with the recommendation of each District Office in the applicant's proposed Area of Operations, shall make the certification decision.

§ 120.811 Public notice of CDC certification application.

(a) As part of the application process, the applicant must publish a notice in a general circulation newspaper in the proposed Area of Operations, including the name and location of the proposed CDC, its purpose and Area of Operations, and the names of its officers and directors. The applicant shall send a copy of the notice to SBA. The notice shall provide the public at least 30 days to submit written comments to the District Office. The SBA shall consider the comments in making its decision on the application.

(b) CDCs serving the proposed Area of Operations shall be directly notified and given at least 30 days to comment.

§ 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years, at the end of which the CDC must petition for:

(1) Permanent CDC status;

(2) A single, one-year extension of probation; or

(3) ADC status.

(b) SBA shall consider failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects ADC status or withdrawal, it must transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

Requirements for CDC Certification and Operation

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation (or limited liability company) in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

§ 120.821 CDC Area of Operations.

A CDC must have a designated Area of Operations, specified by the CDC and approved by SBA. There can be only one statewide CDC in each state, which must foster economic development throughout the state and provide 504 assistance to areas not adequately served by other CDCs.

§ 120.822 CDC membership.

A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(a) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(b) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(c) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(d) Businesses in the Area of Operations.

§ 120.823 CDC board of directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors. If there is a vote on loan approval or servicing actions, at least one Board member with commercial loan experience approved by SBA must be present and vote. As an alternative, the Board may obtain the recommendation of another person approved by SBA and possessing commercial lending experience.

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations.

(a) *Contracting out to third parties.* CDCs may obtain, under contract, marketing, packaging, processing, and servicing services from qualified Service Providers located in the Area of Operations, subject to SBA's prior written approval. CDCs may contract for outside legal and accounting services without SBA approval. Compensation under all such contracts must be reasonable and customary for similar services in the Area of Operations. SBA may audit the contracts.

(b) *Contracting out to other CDCs.* CDCs may contract with other CDCs for specific services, subject to SBA's prior written approval.

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors).

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with applicable statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

§ 120.827 Services a CDC provides to small businesses.

(a) A CDC must operate in and adequately service its Area of Operations. It must market the 504 program, package and process 504 loan applications, and close and service 504 loans. A CDC's loan portfolio must be diversified by business sector.

(b) A CDC may help small businesses obtain financial and technical assistance from other sources, including preparing, closing, and servicing loans under contract with Lenders in SBA's 7(a) program.

(c) A CDC also may loan amounts to the Borrower equal to the value of all or part of the Borrower's contribution to a Project in the form of cash or land, including site improvements, previously acquired by the CDC.

§ 120.828 The minimum level of CDC lending activity.

Each full fiscal year, a CDC must provide at least the minimum number of 504 Loans set by SBA in an annual program announcement.

§ 120.829 The Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must reflect an average of one Job Opportunity per $35,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per $45,000 for good cause in:

(1) Alaska;

(2) Hawaii;

(3) Redevelopment areas as defined in 42 U.S.C. 3161;

(4) State designated urban jobs and enterprise zones;

(5) Empowerment Zones and Enterprise Communities; and

(6) Labor Surplus Areas listed in the Department of Labor's publication "Area Trends".

(b) A CDC must indicate in its annual report the Job Opportunities actually or estimated to be provided by each Project.

(c) If a CDC does not maintain the required average, it may retain its certification if it justifies to SBA's satisfaction its failure to do so in its annual report and shows how it intends to attain the required average.

§ 120.830 Reports a CDC must submit.

A CDC must submit the following reports to SBA:

(a) An annual report within 90 days after the end of the CDC's fiscal year, and such interim reports as SBA may require;

(b) Resumes for all new Associates and staff;

(c) Reports of involvement in any legal proceeding;

(d) Changes in organizational status;

(e) Changes in any condition that affects its eligibility to continue to participate in the 504 program; and

(f) Quarterly service reports on each loan in its portfolio which is 60 days or more past due (and interim reports upon request by SBA).

§ 120.831 Disclosure of referral fees or other payments by or to a CDC.

The CDC must disclose to SBA and the Borrower any referral fees, remuneration, or payment made by the CDC to or received by the CDC from the Lender or any other party to the 504 transaction.

Extending a CDC's Area of Operations

§ 120.835 Application to extend an Area of Operations.

SBA may expand a CDC's Area of Operations for good cause shown including a showing that the proposed Area of Operations is not being served adequately by the existing CDCs and that the expanding CDC is well-qualified to serve it. SBA shall not consider an Area of Operations adequately served if the existing CDCs in the Area of Operation have not averaged, over the last two fiscal years, sufficient loan approvals for the population in the CDC's Area of Operations, as set by SBA in an annual program announcement. The CDC must apply in writing to the SBA District Office serving the geographic area in which the CDC proposes to expand. The District Office shall submit its recommendation to the AA/FA for final decision.

§ 120.836 Public notice of application for extension.

SBA must notify all CDCs servicing the proposed area of expansion, allowing at least 30 days for comment. The CDC also must publish a notice in a general circulation newspaper in the proposed area of expansion, giving the public at least 30 days to comment.

§ 120.837 Expiration of existing, temporary expansions.

All existing, temporary expansions of Areas of Operation shall expire 6 months after the effective date of the final regulations, unless a CDC applies for permanent expansion before the expiration date.

§ 120.838 Case by case extensions.

(a) A CDC may apply to make an individual loan for a Project outside its Area of Operations in an area not adequately served by other CDCs to the District Office serving the area in which the Project will be located. The District Director may approve the request for good cause shown.

(b) A Borrower may request the services of a CDC not presently servicing its area by writing to the AA/FA.

Accredited Lenders Program (ALP)

§ 120.840 Accredited Lenders Program.

The SBA may designate a CDC as an Accredited Lender. SBA will provide an Accredited Lender with expedited loan processing or servicing action (within three days of receiving a completed application).

(a) *Applications.* CDCs may apply to the SBA field office with which it is most active. The SBA office will send its recommendation and the application to the AA/FA.

(b) *Eligibility.* SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(c) *Term of designation.* CDCs will be designated as ALPs for a two year period, and are eligible to renew the designation for additional two year periods.

(d) *Suspension and revocation.* The AA/FA may suspend or revoke ALP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA or violations of applicable statutes,

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regulations or published SBA policies and procedures. An ALP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Premier Certified Lenders Program

§ 120.845 Premier Certified Lenders Program.

The SBA has established a pilot program to designate a number of CDCs as Premier Certified Lenders ("PCLPs"), which will be able to process, approve, close and service 504 loans.

(a) *Characteristics.* Loans processed through the PCL Program will be subject to the same provisions as other 504 loans, including final approval by SBA.

(b) *Applications.* A CDC may obtain information concerning this program from SBA's Office of Pilot Operations in Washington, D.C. A CDC may apply to the SBA field office with which it is most active. The SBA office will send the application with a recommendation to the AA/FA.

(c) *Eligibility.* SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(d) *Loss reserve.* A PCLP must establish a loss reserve, secured by its segregated assets in favor of SBA, in the amount of the PCLP's historic loss rate or 10 percent of its exposure under the PCLP program, whichever is greater. The PCLP must contribute to the loss reserve every time a Debenture is issued, in intervals set by SBA.

(e) *Review.* The SBA shall review a PCLP's financings at least annually.

(f) *Suspension and revocation.* The AA/FA may suspend or revoke PCLP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to meet loss reserve or eligibility criteria, or violations of applicable statutes, regulations or published SBA policies and procedures. A PCLP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this title. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(g) *Program period.* On October 1, 1997, the PCLP pilot program ends.

Associate Development Companies (ADCs)

§ 120.850 ADC functions.

(a) An ADC must support local economic development efforts. An ADC may package, close, and service loans for a CDC under a written contract approved by SBA. Such contracts must meet Service Provider criteria, and specify the rights and responsibilities of the parties (including payment terms). The CDC remains solely responsible to SBA for the processing, closing, and servicing of the loan. It may not charge the Borrower a higher fee because it is using the ADC's services.

(b) An ADC must operate in accordance with statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records required by SBA.

§ 120.851 ADC eligibility and operating requirements.

(a) An ADC must demonstrate to SBA and maintain the following:

(1) Adequate management ability;

(2) A Board of Directors meeting at least quarterly and chosen from the membership by the members;

(3) A professional staff, including at least one qualified full-time professional with small business lending experience available during regular business hours; and

(4) A budget or financial statements showing the financial capability and funding to sustain continuing operations.

(b) An ADC may contract out for staff services only if SBA gives prior approval. The contract, subject to SBA audit, may not be self-serving, and compensation must be reasonable and customary.

§ 120.852 Suspension and revocation of ADCs.

SBA may require corrective action, or the AA/FA may suspend or revoke ADC status upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include violations of applicable statutes, regulations or published SBA policies and procedures. An ADC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Ethical Requirements

§ 120.855 CDC and ADC ethical requirements.

CDCs and ADCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to an Associate or the Associate's employer from the Associate's activities as an Associate shall be merely incidental (this requirement does not prevent an Associate or an Associate's employer from engaging in a business relationship with the CDC and/or the Borrower in the regular course of business, including providing interim financing or Third-Party loans); and

(b) Unless waived by SBA, an Associate may not be an officer, director, or manager of more than one CDC or ADC (except that the membership or Board of Directors of a broader-based CDC may include a member or director of a local CDC within its Area of Operations).

Project Economic Development Goals

§ 120.860 Required objectives.

A Project must achieve at least one of the economic development objectives set forth in § 120.861 or § 120.862.

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity for every $35,000 guaranteed by SBA.

§ 120.862 Other economic development objectives.

A Project that achieves any of the following community development or public policy goals is eligible if the CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required Job Opportunity average. Applications for assistance must indicate how the Project will meet the specified economic development objective.

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community; or

(4) Assisting manufacturing firms (Standard Industrial Classification Manual (SIC) Codes 20–49).

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written redevelopment plan;

(2) Expanding exports;

(3) Expanding Minority Enterprise development (See § 124.103(b) of this chapter.);

(4) Aiding rural development;

(5) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(6) Modernizing or upgrading facilities to meet health, safety, and environmental requirements;

(7) Assisting businesses affected by Federal budget reductions, such as base closings; or

(8) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

Leasing Policies Specific to 504 Loans

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by the CDC or an unrelated lessor if:

(1) The remaining term of the lease, including options to renew, exercisable solely by the lessee, equals or exceeds the term of the Debenture, or, in the case of machinery or equipment, equals or exceeds the useful life of the property or the term of the Debenture, whichever is lesser;

(2) The Borrower assigns its interest in the lease to the CDC with right of reassignment to SBA; and

(3) The 504 loan is secured by a recorded lien against the leasehold estate and other collateral as necessary.

(b) If a CDC leases property to a small business, the rent paid by the small business during the term of the Debenture must be enough to pay principal and interest on all debt incurred by the CDC to finance the Project, and all related expenses. The rent also may include a reasonable return on the CDC's investment.

§ 120.871 Leasing part of a new construction Project to another business.

If a Project is the construction of a new building, a Borrower may lease up to 33% of the square footage of the rentable property (total square footage of all buildings or facilities used for business operations) for a short term to any third party if reasonable growth projections show that the Borrower will need additional space within three years and will use all of the additional space within ten years. If the Borrower is an Eligible Passive Company leasing 100 percent of the Project space to an Operating Company, the Operating Company may sublease up to 33 percent to a third party under the same conditions.

§ 120.872 Leasing part of an existing building to another business.

If a Project involves the acquisition, renovation, or reconstruction of an existing building, the Borrower (or Operating Company) must occupy at least 51 percent of the Rentable Property. The balance of the Rentable Property may be leased out to any third party, if the 504 loan proceeds were not used to remodel or convert the space to be leased out. The costs of interior finishing of the space to be leased out are not eligible Project costs, and third-party loan proceeds used to renovate the leased space shall not count towards the 504 first mortgage requirement or the Borrower's contribution.

Loan-Making Policies Specific to 504 Loans

§ 120.880 Basic eligibility requirements.

In addition to the eligibility requirements specified in subpart A, to be an eligible Borrower for a 504 loan, a small business must:

(a) Use the Project Property (except for loans to Passive Companies); and

(b) Together with its affiliates, meet one of the following size standards:

(1) It does not have a net worth in excess of $6 million, and does not have an average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2 million; or

(2) It meets the size standards in Part 121 of this chapter for the industry in which it is primarily engaged.

§ 120.881 Ineligible Projects for 504 loans.

In addition to the ineligible businesses and uses of proceeds specified in subpart A of this part, the following Projects are ineligible for 504 financing:

(a) Relocation of any of the operations of a small business which will cause a Substantial Increase in Unemployment, unless the CDC can justify the loan because:

(1) The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

(2) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving;

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions); and

(c) Speculative Projects (such as oil wildcatting).

§ 120.882 Eligible Project costs for 504 loans.

Eligible Project costs which may be paid with the proceeds of 504 loans are:

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan):

(1) To acquire land used in the Project prior to applying to SBA for the 504 loan; or

(2) For any other expense toward a Project within six months of receipt by SBA of a complete loan application;

(b) In construction Projects, a contingency reserve for cost overruns not to exceed 10 percent of construction cost;

(c) Professional fees directly attributable and essential to the Project, such as title insurance, architecture, engineering, accounting, legal fees and environmental studies; and

(d) Repayment of interim financing including points, fees and interest.

§ 120.883 Eligible administrative costs for 504 loans.

The following costs and fees are not part of Project costs but may be paid with the proceeds of the 504 loan and the Debenture:

(a) SBA guarantee fee;

(b) Funding fee (to cover cost of public issuance of securities);

(c) CDC processing fee;

(d) Closing costs, including legal fees; and

(e) Underwriters fee.

§ 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

(a) Debt refinancing (other than interim financing);

(b) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing);

(c) Ancillary business expenses, such as:

(1) Working capital;

(2) Counseling or management services fees;

(3) Incorporation/organization costs;

(4) Franchise fees; and

(5) Advertising;

(d) Non fixed-asset project components, such as:

(1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);

(2) Automobiles, trucks, and airplanes; and

(3) Construction equipment (except for heavy duty construction equipment integral to a business' operations and meeting the IRS definition of capital equipment).

Interim Financing

§ 120.890 Source of interim financing.

A Project may use interim financing for all Project costs except the

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Borrower's contribution. Any source (including a CDC) may supply interim financing provided:

(a) The financing is not derived from any SBA program, directly or indirectly;

(b) The terms and conditions of the financing are acceptable to SBA;

(c) The source is not the Borrower or an Associate of the Borrower; and

(d) The source has the experience and qualifications to monitor properly all construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

§ 120.891 Certifications of disbursement and completion.

Before the Debenture is issued, the interim lender must certify that the interim financing has been disbursed in a manner consistent with the terms of the Authorization. Also, the CDC must certify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.962).

§ 120.892 Certifications of no adverse change.

Following completion of the Project, the following certifications must be made before the 504 loan closing:

(a) The interim lender must certify to the CDC that it has no knowledge of any adverse change in the condition of the small business since the application;

(b) The Borrower (or Operating Company) must certify to the CDC that there has been no adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 90 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since SBA's approval of the loan application.

Permanent Financing

§ 120.900 What are the sources of permanent financing?

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party Loans 50 percent and the 504 loan 40 percent.

The Borrower's Contribution

§ 120.910 How much must the Borrower contribute?

The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property) valued at 10 percent or more of the Project cost (exclusive of administrative cost). The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

§ 120.911 Land contributions.

The Borrower's contribution may be land, including site improvements, previously acquired by the Borrower or the CDC. The amount of the contribution shall be the value of the contributor's equity in the land, excluding the value of any structures, under SBA's policy guidelines.

§ 120.912 Borrowed contributions.

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

§ 120.913 May an SBIC provide the contribution?

Subject to part 107 of this chapter, SBIC's may provide financing for all or part of the Borrower's contribution to the project. SBA shall consider SBIC funds to be derived from federal sources if the SBIC has leverage (as defined in part 107 of this chapter). If the SBIC does not have leverage, the investment will be considered to be from private funds. SBIC financing must be subordinated to the 504 loan and may not be repaid at a faster rate than the Debenture.

Third Party Loans

§ 120.920 The first lien position.

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

§ 120.921 Terms of Third Party loans.

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the **Federal Register** a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

§ 120.922 Pre-existing debt on the Project Property.

In addition to its share of Project cost, a Third Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third Party Loan.

§ 120.923 What are the policies on subordination?

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as "other real estate owned" by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) By participating, Third Party Loan lienholders subordinate to the CDC/SBA lien future advances in excess of the Third Party Loans except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(c) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made from the proceeds of the tax-exempt obligation.

§ 120.924 Prepayment of subordinate financing.

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

§ 120.925 Preferences.

No Third Party Lender shall establish a Preference.

504 Loans and Debentures

§ 120.930 Amount.

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) Generally, the minimum 504 loan must be $50,000, although, upon good cause shown, SBA may permit a 504 loan as small as $25,000. The amount of the Debenture must equal the amount of the 504 Loan. If the cost of the completed Project is less than 98 percent of the authorized Debenture amount, the amount of the Debenture to be issued shall be reduced by the difference. If the cost of the completed project is at least 98 percent of the authorized Debenture amount, the full authorized amount of the Debenture shall be disbursed.

§ 120.931 504 lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this Part must not exceed $750,000 ($1,000,000 if one or more of the public policy goals enumerated in § 120.861(b) applies to the Project).

§ 120.932 Interest rate.

The interest rate of the 504 Loan and the Debenture which funds it is set by the Underwriter and approved by the Secretary of the Treasury. Each 504 loan must have a fixed interest rate.

§ 120.933 Maturity.

The term of a 504 Loan and the Debenture which funds it shall be either 10 or 20 years.

§ 120.934 Collateral.

The CDC/SBA takes at least a second lien position on the Project collateral. In rare circumstances, collateral other than the Project collateral may be accepted by SBA. Sometimes secondary collateral is required. All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

§ 120.935 Deposit.

At the time of application for a 504 loan, the CDC may require a deposit from the Borrower of $2,500 or 1 percent of the Net Debenture Proceeds, whichever is less. The deposit may be applied to the loan processing fee if the application is accepted, but must be refunded if the application is denied. If the small business withdraws its application, the CDC may deduct from the deposit reasonable costs incurred in packaging and processing the application.

§ 120.936 Subordination to CDC.

SBA, in its sole discretion, may permit subordination of the Debenture to any other obligation of the CDC, except debt incurred by the CDC to obtain funds to loan to the Borrower for the Borrower's required contribution to the Project financing.

§ 120.937 Assumption.

A 504 loan may be assumed with SBA's prior written approval.

§ 120.938 Default.

(a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

(b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud or negligence by the CDC.

§ 120.939 Borrower prohibition.

Neither a 504 loan recipient nor its Small Business Associate may purchase the Debenture that funded its 504 loan.

§ 120.940 Prepayment of the 504 loan or Debenture.

The Borrower may prepay its 504 loan, if it pays the entire principal balance, unpaid interest, any unpaid fees, and any prepayment premium established in the note. If the Borrower prepays, the CDC must prepay the corresponding Debenture with interest and premium. If one of the Debentures in a Debenture Pool is prepaid, Certificate holders must be paid pro rata, and SBA's guarantee on the entire Debenture Pool must be proportionately reduced. If the entire Debenture Pool is paid off, SBA may call all Certificates backed by the Pool for redemption.

§ 120.941 Certificates.

(a) The face value of a Certificates must be at least $25,000. Certificates are issued in registered form and transferred only by entry on the central registry maintained by the Trustee. No transfer may take place within 10 business days of a payment date. SBA guarantees the timely payment of principal and interest on the Certificates.

(b) Before the sale of a Certificate, the seller, or the broker or dealer acting as the seller's agent, must disclose to the purchaser the terms, conditions, yield, and premium and other characteristics not guaranteed by SBA.

Debenture Sales and Service Agents

§ 120.950 SBA and CDC must appoint agents.

SBA and the CDC must appoint the following agents to facilitate the sale and service of the Certificates and disbursement of the proceeds.

§ 120.951 Selling agent.

The CDC, with SBA approval, shall appoint a Selling Agent to select underwriters, negotiate the terms and conditions of Debenture offerings with the underwriters, and direct and coordinate Debenture sales.

§ 120.952 Fiscal agent.

SBA shall appoint a Fiscal Agent to assess the financial markets, minimize the cost of sales, arrange for the production of the Offering Circular, Debenture Certificates, and other required documents, and monitor the performance of the transfer agent and the underwriters.

§ 120.953 Trustee.

SBA must appoint a Trustee (known as a Transfer Agent for the December 1986 Debenture sale) to:

(a) Issue Certificates;

(b) Transfer the Certificates upon resale in the secondary market;

(c) Maintain physical possession of the Debentures for SBA and the Certificate holders;

(d) Establish and maintain a central registry of:

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(1) Debenture Pools, including the CDC obligors and the interest rate payable on the Debentures in each Pool;

(2) Certificates issued or transferred, including the Debenture Pool backing the Certificate, name and address of the purchaser, price paid, the interest rate on the Certificate, and fees or charges assessed by the transferror; and

(3) Brokers and dealers in Certificates, and the commissions, fees or discounts granted to the brokers and dealers;

(e) Receive semi-annual Debenture payments and prepayments;

(f) Make regularly scheduled and prepayment payments to Registered Holders of Debentures or Certificates; and

(g) Assure before any resale of a Debenture or Certificate is recorded in the registry that the seller has provided the purchaser a written disclosure statement approved by SBA.

§ 120.954 Central Servicing Agent.

(a) SBA has entered into a Master Servicing Agreement designating a Central Servicing Agent (CSA) to support the orderly flow of funds among Borrowers, investors, CDCs, and SBA. The CDC and Borrower must enter into an individual Servicing Agent Agreement with the CSA for each 504 loan, constituting acceptance by the CDC and the Borrower of the terms of the Master Servicing Agreement.

(b) The CSA has established a master reserve account. All funds related to the 504 loans and Debentures flow through the master reserve account under the provisions of the Master Servicing Agreement. The master reserve account shall be funded by a reserve deposit, a funding fee to be published from time to time in the **Federal Register**, and by principal and interest payments of 504 loans. At SBA's direction, the CSA uses the funds in the master reserve account to defray program expenses. In the event a Borrower defaults and the 504 note is accelerated, SBA shall add funds under its guarantee to ensure the full and timely payment of the Debenture which funded the 504 loan. The CSA shall pay to the CDC servicing each loan the interest accruing in the master reserve account on loan payments made by each Borrower between the date of receipt of each monthly payment and the date of disbursement to investors. The CSA may disburse such interest periodically to CDCs on a pro rata basis. SBA may use interest accruals in the account earned prior to October 1991 on such payments (not previously distributed to the CDCs) for 504 program administration.

§ 120.955 Agent bonds and records.

(a) Each agent (in §§ 120.951–120.955) must provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(b) SBA must have access at the agent's place of business to all books, records and other documents relating to Debenture activities.

§ 120.956 Suspension or revocation of brokers and dealers.

The AA/FA may suspend or revoke the privilege of any broker or dealer to participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation of ADC status. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal. SBA may suspend or revoke of the opportunity for a hearing under part 134 of this chapter.

Closings

§ 120.960 Responsibility for closing.

The CDC is responsible for the 504 Loan closing. The Debenture closing is the joint responsibility of the CDC and SBA.

§ 120.961 CDC closing fees.

(a) The CDC may charge the Borrower an amount sufficient to reimburse it for reasonable legal fees related to closing the 504 loan. The legal fees and other professional fees and closing costs are administrative costs eligible for reimbursement from the debenture proceeds.

(b) The CDC may charge a finder's fee of up to 1.5 percent of the 504 loan if the CDC secured the lender for the Borrower under a written contract. Either the Borrower or the lender may pay the fee. It may not be reimbursed from the Debenture proceeds.

§ 120.962 Construction escrow accounts.

The CSA, title company, or bank may hold Debenture proceeds in escrow to complete Project components such as landscaping and parking lots, and acquire machinery and equipment if the component or acquisition is a minor portion of the total Project and has been contracted for completion or delivery at a specified price and specific future date. The escrow agent must disburse funds upon approval by the CDC and the SBA, supported by invoices and payable jointly to the small business and the designated contractor.

Servicing and Post-Closing Fees

§ 120.970 Servicing of 504 loans and Debentures.

The CDC must service the 504 loan in accordance with the Loan Authorization, these regulations, SBA policies and procedures, and prudent lending standards until paid in full, including review of the small business's financial statements, tax filings, insurance, and security filings. CDCs must comply with the provisions of § 120.513. In addition, the CDC must comply with the servicing requirements set forth in SBA's SOP. The CDC must report promptly to SBA any adverse trend, condition or information. Upon request by a CDC, SBA may agree to defer a Borrower's monthly payment. SBA may negotiate agreements with CDCs to liquidate loans.

§ 120.971 Post-closing fees paid by Borrower.

(a) *CDC fees.* CDCs may charge the following fees to the Borrower:

(1) *Service fee.* A service charge of not less than 0.5 percent nor more than 2 percent per annum on the outstanding balance of the 504 loan measured at 5 year anniversary intervals. A service charge in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The CDC's monthly service fee shall be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made;

(2) *Late fees.* Payments received after the 15th of each month may be subject to a late payment fee of 5 percent of the late payment or $100, whichever is greater, collected by the CSA on behalf of the CDC; and

(3) *Assumption fee.* Upon SBA's written approval, a CDC may charge an assumption fee equal to no more than 1 percent of the outstanding principal balance of the loan being assumed.

(b) *CSA fees.* The CSA may charge an initiation fee on each loan and a monthly service fee under the terms of the Master Servicing Agreement.

(c) *Other agent fees.* Agent fees and charges necessary to market and service Debentures and Certificates may be assessed to the Borrower or the investor. The fees must be approved by SBA and published periodically in the **Federal Register**.

(d) *SBA fees.* The Borrower shall pay SBA an annual fee of 0.125 percent of the outstanding balance of each 504 loan approved after October 1, 1995.

§ 120.972 Oversight and evaluation of CDCs and ADCs.

SBA may conduct an operational review of a CDC or ADC. The SBA Office of Inspector General may conduct, supervise or coordinate compliance audits pursuant to the Inspector General Act. The CDC or ADC must cooperate and make its staff, records, and facilities available.

CDC Transfer, Suspension and Revocation

§ 120.980 Transfer of CDC to ADC status.

SBA shall transfer to ADC status any CDC that fails to meet the activity level required by SBA, on average over two consecutive fiscal years. SBA shall notify the CDC in writing of the action and of the opportunity for a hearing pursuant to part 134 of this chapter at least 10 business days prior to the transfer. During the pendency of a hearing, SBA's action will remain in effect.

§ 120.981 Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

§ 120.982 Correcting CDC servicing deficiencies.

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the CDC up to $250 per day for expenses incurred by SBA to correct the deficiencies. If non-compliance continues for 90 days, SBA may take the fees as compensation for its efforts to obtain compliance.

§ 120.983 Transfer of CDC servicing to SBA or another CDC.

If a CDC fails to correct servicing deficiencies, or is unable or unwilling to service its portfolio, SBA may assume the servicing or require the transfer of all or part of the CDC's portfolio to another CDC within or adjoining the deficient CDC's Area of Operations. If there is no suitable CDC, SBA may approve a transfer to another entity. Future service fees from transferred loans will be paid to the transferee. In addition, the CDC's processing authority will be temporarily suspended.

§ 120.984 Suspension or revocation of CDC certification.

(a) *Suspend or revoke.* SBA may suspend or revoke the CDC's certification if a CDC:

(1) Violates a statute, an SBA regulation, or the terms of a Debenture, authorization, or agreement with SBA;

(2) Makes a material false statement, knowingly misrepresents, or fails to state a material fact;

(3) Fails to maintain good character;

(4) Fails to operate according to prudent lending standards;

(5) Fails to correct servicing, collection, reporting, or other deficiencies; or

(6) Is unable or unwilling to operate in accordance with the requirements of this part.

(b) *Transfer portfolio.* Upon suspension or revocation, the CDC must transfer its remaining portfolio and any 504 applications or financings in process to another CDC designated or approved by SBA. If a pending 504 financing is completed after a transfer, any deposit must also be transferred. Any fees must be apportioned by SBA between the two CDCs in proportion to services performed.

(c) *Provide written notice.* SBA must give written notice to the CDC at least 10 business days prior to the effective date of a suspension or revocation, informing the CDC of the opportunity for a hearing pursuant to part 134 of this chapter.

Enforceability of 501, 502 and 503 Loans and Other Laws

§ 120.990 501, 502, and 503 loans.

SBA has discontinued loan programs for 501, 502, and 503 loans. Outstanding loans remain under these programs, and Borrowers, CDCs, and SBA must comply with the terms and conditions of the corresponding notes and Debentures, and the regulations in effect when the obligations were undertaken or last in effect, if applicable.

§ 120.991 Effect of other laws.

No State or local law may preclude or limit SBA's exercise of its rights with respect to notes, guarantees, Debentures and Debenture Pools, or of its enforcement rights to foreclose on collateral.

PARTS 108, 116, 122, AND 131—[REMOVED]

2. Parts 108, 116, 122, and 131 are removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–30327 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–34–95]

RIN 1545–AT78

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Section 204(h) of ERISA applies to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by March 14, 1996.

ADDRESSES: Send submissions to CC:DOM:CORP:R (EE–34–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (EE–34–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed

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rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 13, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in § 1.411(d)–6T which implements the statutory requirement of section 204(h) of ERISA that a plan administrator provide notice to participants and certain other parties if certain pension plans are amended to provide for a significant reduction in the rate of future benefit accrual. This collection of information is required to assure that the rights of participants in plans subject to section 204(h) of ERISA are protected. The likely respondents are small businesses. Responses to this collection of information are required under section 204(h) of ERISA in order for certain amendments to qualified plans to become effective.

These regulations do not involve any issues of confidentiality.

Estimated total annual reporting burden: 15,000 hours.

The estimated annual burden per respondent varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) (relating to section 411(d)). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.411(d)–6 also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

Par. 2. Section 1.411(d)–6 is added to read as follows:

§ 1.411(d)–6 Section 204(h) notice.

[The text of this proposed section is the same as the text of § 1.411(d)–6T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30415 Filed 12–12–95; 1:23 pm]

BILLING CODE 4830–01–U

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26 CFR Part 301

[DL–01–95]

RIN 1545–AT48

Disclosure of Returns and Return Information to Procure Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations relate to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes. The amendments would authorize the Department of Justice, including offices of United States Attorneys, to make such disclosures. Current disclosure authority within the Department of Justice rests only with the Tax Division. The amendments also reflect a change to the law made by the Omnibus Budget Reconciliation Act of 1990 regarding the type of services about which disclosures may be made.

DATES: Comments and requests for a public hearing must be received by March 14, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (DL–01–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (DL–01–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622- 4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103(n) of the Internal Revenue Code (Code) authorizes the disclosure of returns and return information, pursuant to regulations prescribed by the Secretary of the Treasury, "to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration."

Existing regulations promulgated under this section prescribe the persons who may make such disclosures, the situations under which such disclosures may be made and the notification and safeguarding procedures to be followed when such disclosures are made. Among the persons who may make such disclosures are officers and employees of the Tax Division of the Department of Justice. The amendments would authorize such disclosures by the Department of Justice (not solely the Tax Division) to third parties who provide services for tax administration purposes under the conditions and restrictions of the regulations. The amendments would provide that, for the purpose of this section, the "Department of Justice" includes offices of United States Attorneys.

The amendments would also conform the regulation to the language of section 6103(n), which was amended by the Omnibus Budget Reconciliation Act of 1990 to clarify that the disclosures authorized by this section included those in connection with "the providing of other services" (i.e., services other than those related to the mechanical processing of returns and return information).

Explanation of Provisions

As currently written, 26 CFR 301.6103(n)–1 authorizes the Tax Division of the Department of Justice, among other entities and individuals, to make disclosures of returns and return information pursuant to section 6103(n) of the Internal Revenue Code. This authority allows the Tax Division to disclose tax information incident to its contracts to private parties for, among other purposes, automated litigation support services.

The Department of Justice has indicated its intention to establish an expanded automated tracking system for all monetary judgments in favor of the United States, which will be operated by a private company under contract with the Department. Although the majority of tax cases are handled by the Tax Division, there are several United States Attorneys' offices that also have litigation responsibility in the civil tax area. In addition, the Tax Division refers some judgments in tax cases to the United States Attorneys for collection. Existing regulations arguably would not permit these offices, which are technically not part of the Tax Division, to disclose tax information incident to their inclusion of tax judgments in the automated tracking system.

The proposed amendment would authorize the Department of Justice, including offices of United States Attorneys, to make disclosures to procure property and services for tax administration purposes. Any such disclosures will be made under the same conditions and restrictions already set forth in the existing regulations. By definition, any office within the Department of Justice without tax administration duties will not have occasion or authority pursuant to these regulations to make such disclosures.

The proposed amendment would also authorize disclosures in connection with "the providing of other services," i.e., services not related to the strict mechanical processing or manipulation of tax returns or return information. This would conform the regulations to the language of the statute, as amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–353).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Department of Justice and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Para. 2. Section 301.6103(n)–1 is amended as follows:

1. The first sentence of paragraph (a) introductory text is amended by removing the language "Tax Division,".

2. Paragraph (a)(2) is amended by removing the language "or to".

3. Paragraph (a)(2) is further amended by adding the language "or the providing of other services," immediately following the text "other property,".

4. The concluding text following paragraph (a)(2) is amended by removing the language "Tax Division,".

5. The second sentence of paragraph (d) introductory text is amended by removing the language "Tax Division,".

6. Paragraph (d)(2) is amended by removing the language "Tax Division,".

7. Paragraph (e)(1) is amended by removing the language ", and" at the end of the paragraph and adding a semicolon in its place.

8. Paragraph (e)(2) is amended by removing the period at the end of the paragraph and adding "; and" in its place.

9. Paragraph (e)(3) is added.

10. The authority citation immediately following § 301.6103(n) is removed.

The addition reads as follows:

§ 301.6103(n)–1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

* * * * *

(e) * * *

(3) The term *Department of Justice* includes offices of the United States Attorneys.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30505 Filed 12–14–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL-5348-8]

Clean Air Act (CAA) Proposed Interim Approval of Operating Permits Program and Delegation of 112(l) Authority; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the state of Missouri for the purpose of complying with Federal requirements for states which develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. This notice explains EPA—s rationale for the proposed action, and identifies revisions to the program which must be made before EPA can take final action to fully approve it.

DATES: Comments on this proposed action must be received in writing by January 16, 1996.

ADDRESSES: Comments should be addressed to Joshua A. Tapp, U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the Missouri submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act (the Act) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program, and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim period, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for 18 months following the effective date of final interim approval and could not be renewed. During the interim approval period, the state of Missouri would be protected from sanctions for failure to have an approved program, and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for Missouri. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following the final interim approval, if Missouri has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, an 18-month clock for mandatory sanctions would commence. If Missouri then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the state of Missouri had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove Missouri's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Missouri had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

If EPA has not granted full approval to Missouri's program by the expiration of an interim approval, EPA must promulgate, administer, and enforce a Federal permits program for Missouri upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of Submission by State Authority

The analysis contained in this notice focuses on specific elements of the Missouri Department of Natural Resources (MDNR) Title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

The Governor of Missouri submitted an administratively and technically complete Title V Operating Permit Program on January 13, 1995. The EPA deemed the program submittal complete on March 2, 1995. At EPA's request, the State provided supplemental program information on August 14, 1995; September 19, 1995; and October 16, 1995.

The program submittal includes a legal opinion from the Attorney General of Missouri stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the state intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, permit application forms, a data management system, and a permit fee demonstration.

2. Program Description

The Governor's letter states that the entire geography of Missouri will be covered by this program. There are no Indian tribal lands in Missouri. The letter also states that MDNR will be the official permitting authority responsible for implementation of the program. Finally, the state requested approval and delegation of authority to implement section 112(l) of the Act.

In addition to the state's part 70 permit rules, the state has established a State Implementation Plan (SIP) based permit system for creating Federally enforceable limitations, called the intermediate program. This permit mechanism will allow qualifying sources to avoid having to obtain a part

70 operating permit. The EPA published a direct final approval of this program in the **Federal Register** on September 25, 1995 (60 FR 49340). Finally, Missouri will issue a third class of permit to all other air emission sources that meet or exceed the de minimis levels, yet fall below the major source threshold. This third class of source will require a basic permit. The basic operating permit program is not a Federal program and has not been submitted to EPA for approval.

The state has been collecting emission fees for two years, which have been used for "ramp-up" activities, including the hiring of additional staff. The state emissions fee is currently set at $25.70 per ton, which may be adjusted by the Missouri Air Conservation Commission through an administrative revision of rule 10 CSR 10–6.110. The state provided a resource demonstration, discussed later, to justify deviating from the presumptive minimum of $25 per ton, Consumer Price Index (CPI) adjusted. The state is also authorized under its statute to collect fees for non-Title V program activities.

The program submittal also contains information on the organizational structure and function of the components of the air program, including the regional and local offices which are available to assist in implementation of the program.

3. Regulations and Program Implementation

The Missouri program, including the core operating permit regulations, 10–CSR 6.065 (Division 10, Chapter 6, MDNR) substantially meets the minimum requirements for interim approval as they are denoted in 40 CFR part 70.4(d)(3). These requirements pertain to: (1) Adequate fees, (2) applicable requirements, (3) fixed terms, (4) public participation, (5) EPA and affected state review, (6) permit issuance, (7) enforcement, (8) operational flexibility, (9) streamlined procedures, (10) permit application, and (11) alternative scenarios.

However, Missouri must make the following program revisions for full approval: (1) Revise its definitions rule, 10 CSR 10–6.020 to: (a) revise (2)(I)7 to update a reference to the Standard Industrial Classification Manual, and (b) revise (3)(B), Table 2—List of Named Installations, to make it consistent with the list in the definition of major source in 70.2; (2) revise rule 10 CSR 10–6.065, Operating Permits by: (a) revising (1)(D)2 to clarify the meaning of "fugitive air pollutant" as it relates to part 70 installations; (b) revise (3)(D) to clarify part 70 applicability with respect to emissions from exempt installations and emission units; (c) revise (6)(C)1.C.(II)(b) to clarify the retention of record requirements in permits, consistent with 70.6(a)(3); (d) revise (6)(C)1.G.(I) to clarify the general requirements for permit compliance and noncompliance, consistent with 70.6(a)(6); (e) revise (6)(C)4.A. to correct a citation error and to clarify that the requirement for EPA and affected state review applies to general permits, consistent with 70.6(d)(1); (f) revise (6)(C)7.B.(IV) to make the emergency provision notice consistent with 70.6(g)(3); (g) revise (6)(C)8, operational flexibility provisions, to clarify the term "emissions allowable under the permit"; (h) revise (6)(E)5.B.(I), minor permit modification criteria, to be consistent with 70.7(e)(2)(I)(A)(3); (i) revise (6)(E)5.B.(I) to add a paragraph (b) to incorporate the economic incentive provisions consistent with 70.7(e)(2)(I)(B); (j) revise (6)(E)5.C.(I)(b) to correct the threshold for group processing of minor permit modifications to be consistent with 70.7(e)(2)(I)(B); and (k) revise (6)(E)5.D.(II)(a), significant permit modification procedures, to be consistent with 70.4(b)(2) and 70.5(c), and make minor citation corrections to rules (6)(B)3.I.(IV), (6)(E)5.B.(II)(a), (6)(E)5.C.(V), and (6)(E)6.C. A detailed discussion of the necessary rule revisions is included in the TSD, and in the docket for this rulemaking. In addition, the rule changes proposed by Missouri to meet the requirements noted above are included in the docket.

Missouri has the authority to issue a variance from state requirements under section 643.110 of the state statutes. This provision was not included by the state in its operating permit program submittal, and EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of state law. The EPA has no authority to approve provisions of state law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain or comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements, notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

4. Fee Demonstration

The state provided a detailed fee demonstration because the emissions fee, $25.70 per ton (not adjusted), is below the presumptive minimum of $25 plus CPI. The fee demonstration included a detailed analysis of projected hourly program requirements and costs for each of the next four years. An emission inventory of Title V sources for two preceding years (1993 and 1994) and emissions fees collected was also provided. Missouri describes a cash receipts system that identifies Title V fee receipts, a time accounting system that tracks Title V program labor costs, and an accounts payable system that tracks Title V program expenses.

5. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. Missouri has demonstrated in its program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Missouri's enabling legislation and in regulatory provisions defining "applicable requirements," and states that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Missouri to issue permits that ensure compliance with all section 112 requirements. The EPA is interpreting the above legal authority to mean that Missouri is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Section 112(g) Case-by-Case Maximum Achievable Control Technology (MACT) For Modified/Constructed and Reconstructed Major Toxic Sources.

The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability.

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The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Missouri must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Missouri lacks a program designed specifically to implement section 112(g). However, Missouri does have a program for review of new and modified hazardous air pollutant sources that can serve as an adequate implementation vehicle during the transition period, because it would allow Missouri to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

The EPA is proposing to approve Missouri's preconstruction permitting program under the authority of Title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a state rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the Federal requirements.

c. Section 112(l)—State Air Toxics Programs.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Missouri has demonstrated that it meets these requirements. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs, that are unchanged from Federal rules as promulgated. Missouri has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. In addition, EPA is also proposing delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.

d. Title IV/Acid Rain. The legal requirements for approval under the Title V operating permits program for a Title IV program were cited in EPA guidance distributed on May 21, 1993, titled "Title V-Title IV Interface Guidance for States." Missouri has met the criteria of this guidance and has adopted by reference acid rain rules at 40 CFR 72.

B. Options for Approval/Disapproval and Implications

1. The EPA is proposing to grant interim approval for two years to the operating permits program submitted by the state of Missouri. In order to receive full approval, the state must adopt and submit to the EPA the rule changes identified above within 18 months of receiving final interim approval. Specifically, the state must amend rules 10 CSR 10–6.020, Definitions, and 10 CSR 10–6.065, Operating permits, for consistency with part 70.

2. Program for Straight Delegation of Section 112 Standards.

As discussed above, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under section 112 that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards under 40 CFR parts 61 and 63 for both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the state's submittal and other information relied upon for the proposed approval are contained in a docket maintained at EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process, and

2. To serve as the record in case of judicial review. The EPA will consider any comments received by January 16, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state operating permit program the state has elected to adopt the program provided for under Title V of the CAA. These rules may bind the state government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: December 6, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–30554 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400097B; FRL–4991–4]

Toxic Chemical Release Reporting; Community Right-to-Know; Reopening of Public Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period; correction.

SUMMARY: In the **Federal Register** of October 27, 1995, EPA published an administrative stay of the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), for 2,2-dibromo-3-nitrilopropionamide (DBNPA) (Chemical Abstracts Service (CAS) No. 10222–01–2). The administrative stay also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. The period for accepting comments on EPA's review of the petition ended on November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this document corrects an error in the October 27, 1995 notice. The green algal toxicity value was incorrectly listed.

DATES: All comments must be received on or before January 29, 1996.

ADDRESSES: Written comments should be submitted in triplicate to : OPPT Docket Clerk (7407), TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400097. No CBI should be submitted through e-mail. Electronic comments on the information presented in this document may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202–260–9592, e-mail: doa.maria@epamail.epa.gov for specific information on this action. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 27, 1995 (60 FR 54949), EPA published an administrative stay of the reporting requirements under section 313 of EPCRA and section 6607 of the Pollution Prevention Act of 1990 (PPA) for DBNPA. EPA issued the administrative stay because EPA had incorrectly categorized the effects observed in certain data relating to DBNPA prior to promulgation of the final rule adding DBNPA to the EPCRA section 313 list of toxic chemicals.

The document also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. EPA preliminarily determined that DBNPA can reasonably be anticipated to cause subchronic gastrointestinal effects, and can reasonably be anticipated to cause toxicity to freshwater green algae, chronic effects on freshwater invertebrates and chronic effects on oysters at relatively low concentrations. The period for accepting comments on EPA's review of the petition ended November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this notice corrects an error in the October 27, 1995 document. The green algal toxicity value was incorrectly listed.

I. Reopening of Public Comment Period

In the **Federal Register** of October 27, 1995, EPA requested public comment on the information presented in the document regarding the continued listing of DBNPA on the EPCRA section 313 list of toxic chemicals. In that notice, EPA stated that all comments must be received on or before November 27, 1995. In response to a request from Dow Chemical Company to extend the comment period, EPA is reopening the comment period for an additional 45 days. All comments must be received on or before January 26, 1996.

II. Green Algal Toxicity Value Correction

In the October 27, 1995 **Federal Register**, on page 54951, first column, second full paragraph, 24th line, the green algal 96-hour EC_{50} (median effective concentration) for DBNPA was incorrectly listed as "0.010 mg/L "; the value should have read 0.08 mg/L.

III. Public Docket

A record has been established for the administrative stay under docket number "OPPTS–400097" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the administrative stay, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting

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and recordkeeping requirements, and Toxic chemicals.

Dated: December 8, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95-30601 Filed 12-14-95; 8:45 am]

BILLING CODE 6560-50-F

48 CFR Parts 1535 and 1552

[FRL-5332-5]

Acquisition Regulation; Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise its acquisition regulation by revising both the prescription for use of solicitation provisions and contract clauses regarding collection, use, access, treatment, and disclosure of confidential business information (CBI), and adding solicitation provisions and contract clauses on CBI.

DATES: Written comments should be submitted to the contact listed below not later than February 13, 1996.

ADDRESSES: Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260-6204.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

C. Regulatory Flexibility Act

The EPA certifies that this proposed rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, record-keeping, or any compliance costs.

D. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities, or others.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1535 and 1552

Government procurement.

Therefore, Chapter 15 of title 48, Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for parts 1535 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1535.007 is revised to read as follows:

1535.007 Solicitations.

(a) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

(1) 1552.235-72 Control and Security of Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information; and

(2) 1552.235-73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information.

(b) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*)

(1) 1552.235-74 Control and Security of Toxic Substances Control Act Confidential Business Information; and

(2) 1552.235-75 Access to Toxic Substances Control Act Confidential Business Information.

3. Subsection 1535.007-70 is amended by revising paragraphs (b) and (c) and adding paragraph (d) through (f) to read as follows:

1535.007-70 Contract clauses.

(a) * * *

(b) The Contracting Officer shall insert the clause at 1552.235-71, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish confidential business information to the contractor obtained from third parties under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 301 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), and provision 1552.235-70, Release of Contractor Confidential Business Information. EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B, require that the contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the contractor.

(c) The Contracting Officer shall insert the clause at 1552.235-76, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish the contractor with confidential business information obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B, require that the contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the contractor.

(d) The Contracting Officer shall insert the clause at 1552.235-77 Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information, when the contract involves access to confidential business information related to the Federal Insecticide, Fungicide, Rodenticide Act and the Treatment of Confidential Business Information clause (1552.235-71) and the Screening Business Information for Claims of Confidentiality clause (1552.235-70) are included.

(e) The Contracting Officer shall insert the clause at 1552.235-78 Data Security for Toxic Substances Control Act Confidential Business Information, when the contract involves access to confidential business information related to the Toxic Substances Control Act and the Treatment of Confidential Business Information clause (1552.235-76) and Screening Business Information for Claims of Confidentiality clause (1552.235-70) are included.

(f) Contracting Officers shall insert the clause 1552.235-79 Release of Contractor Confidential Business Information in all solicitations and contracts in order to authorize the Agency to release confidential business information under certain circumstances.

4. Subpart 1552.2, is amended by revising section 1552.235-72, and adding sections 1552.235-73 through 1552.235-79 to read as follows:

1552.235-72 Control and Security of Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(a), insert the following provision:

Control and Security of Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

The offeror certifies that—

—The Contractor and its employees have read and are familiar with the requirements for the control and security of Federal Insecticide, Fungicide, Rodenticide Act confidential business information contained in the manual entitled "Federal Insecticide, Fungicide, Rodenticide Act Information Security Manual". (See also 1552.235-77 elsewhere in this solicitation.)

(End of Provision)

1552.235-73 Access to Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(a), insert the following provision:

Access to Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled "FIFRA Information Security Manual". These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235-70, 1552.235-71, and 1552.235-77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

1552.235-74 Control and Security of Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(b), insert the following provision:

Control and Security of Toxic Substances Control Act Confidential Business Information (XXX 1995)

The offeror certifies that—

—The Contractor and its employees have read and are familiar with the requirements for the control and security of Toxic Substances Control Act confidential business information contained in the manual entitled "Toxic Substances Control Act Confidential Business Information Security Manual". (See also 1552.235-78 elsewhere in this solicitation.)

(End of Provision)

1552.235-75 Access to Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(b), insert the following provision:

Access to Toxic Substances Control Act Confidential Business Information (XXX 1995)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled "TSCA Confidential Business Information Security Manual". These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235-70, 1552.235-71, and 1552.235-78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

1552.235-76 Treatment of Confidential Business Information (XXX 1995).

As prescribed in 1535.007-70(c), insert the following clause:

Treatment of Confidential Business Information (XXX 1995)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

1552.235-77 Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007-70(d), insert the following clause:

Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

The Contractor shall handle Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality," the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including

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CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall submit a certification statement to the Chief of the ISB, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA "Contractor Employee Confidentiality Agreement" from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a "Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority". The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–70 Data Security for Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007–70(e), insert the following clause:

Data Security for Toxic Substances Control Act Confidential Business Information (XXX 1995)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality."

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 401 M Street, SW, Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall submit a certification statement to the Director of the EPA OPPT/Office of Program Management and Evaluation, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740–6, "TSCA CBI Access Request, Agreement, and Approval" from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740–18, "Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority". The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–79 Release of contractor confidential business information (XXX 1995).

As prescribed in 1535.007–70(f), insert the following clause:

Release of Contractor Confidential Business Information (XXX 1995)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C.1251 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*);

(5) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Enrollee (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or Court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled "Screening Business Information for Claims of Confidentiality" and "Treatment of Confidential Business Information.") Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (5), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235–71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of Clause)

Dated: October 30, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–30357 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–60–P

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Notices

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Public Hearings on the Effects of Lifting the Export Ban on Alaskan North Slope Crude Oil

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Department of Commerce's Bureau of Export Administration (BXA) is holding public hearings to determine the effects on the environment and the economy of lifting the ban on the export of Alaskan North Slope (ANS) crude oil. BXA is conducting the hearings pursuant to the legislation that the President signed on November 28, which, among other things, requires him to conduct an environmental review, as well as to examine the effect of exports on jobs, consumers, and supplies of oil. This notice identifies the issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in Washington, DC, on January 3, 1996; Seattle, Washington, on January 5, 1996; Anchorage, Alaska on January 8, 1996; and Bakersfield, California on January 10, 1996. Requests to speak must be submitted by December 22, 1995. The hearing in Washington, DC will be held in the main auditorium of the Herbert Hoover Building, which is located at 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230. The hearing in Seattle will be held in Building 9 Auditorium, at the NOAA Western Regional Center, which is located at 7600 Sand Point Way, N.E., Seattle, Washington 98115. The hearing in Anchorage will be held in the auditorium of the Anchorage Museum of History and Art, which is located at 121 West 7th Avenue, Anchorage, Alaska. The hearing in Bakersfield will be held at the Sheraton Bakersfield, in the Belridge Room which is located at 5101 California Avenue, Bakersfield, California 93309.

ADDRESSES: Send requests to speak and written copies of the oral presentation to Steven C. Goldman, Acting Director, Office of Chemical and Biological Controls and Treaty Compliance, Room 2093, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Room 2089, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230, Telephone (202) 482–0894.

SUPPLEMENTARY INFORMATION:

I. Background and Specific Comments Requested

A. Background

On November 28, 1995, the President signed legislation (S. 395) authorizing exports of Alaskan North Slope (ANS) crude oil when transported in U.S.-flag tankers, unless the President determines that such exports would not be in the national interest. The statute requires the President to consider the results of an "appropriate environmental review" and other issues prior to making his national interest determination.

As amended by S. 395, Section 28(s)(1) of the Mineral Leasing Act (30 U.S.C. 185) provides that:

In evaluating whether exports of this oil are in the national interest, the President shall, at a minimum consider:

1. whether exports of ANS crude oil would diminish the total quantity or quality of petroleum available to the United States;

2. the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential effects of exports of this oil on the environment, which shall be completed within four months of the date of enactment; and

3. whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

B. Specific Comments Requested

The U.S. Department of Commerce is holding public hearings as part of its environmental review. The Department is soliciting public comments on the environmental and oil supply and pricing issues described above to ensure that the public has a meaningful opportunity to address the issues identified in the legislation. The Department has decided to conduct four public hearings in order for the public to provide suggestions to the Administration as early as practicable about issues that should be considered in preparing the required review of environmental and economic factors for the President's consideration.

The Department is particularly interested in comments and information on the following questions:

1. Whether exports of ANS crude oil would diminish the total quantity or quality of petroleum available to the United States;

2. Whether exports of ANS crude oil would result in changes in tanker movements out of Valdez, Alaska, and whether such movements would pose any substantial new risks to the environment beyond the risks that may exist under current tanker movements to the U.S. west coast and Hawaii;

3. Whether exports of ANS crude oil would increase imports of foreign oil impacting air quality in PADD V by affecting the level of refinery emissions;

4. Whether exports of ANS crude oil and the projected increases in Alaska and California onshore oil production would affect air quality by affecting oil field emissions and terminal facilities, and;

5. Whether exports of ANS crude oil are likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment affects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

II. Public Hearings and Comment Procedures

The hearings will be held in Washington, D.C. on January 3, 1996; Seattle, Washington, on January 5, 1996; Anchorage, Alaska on January 8, 1996; and Bakersfield, California on January 10, 1996. The hearings will commence at 8:30 a.m. and end at 5:30 p.m. Requests to speak must be submitted by December 22, 1996. The hearing in Washington, DC will be held in the main auditorium of the Herbert Hoover Building which is located at 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230. The hearing in Seattle will be held in Building 9 Auditorium, at the NOAA Western Regional Center which is located at 7600 Sand Point Way, NE, Seattle, Washington 98115. The hearing in the auditorium of the Anchorage Museum of History and Art which is located at 121 West 7th Avenue, Anchorage, Alaska. The hearing in Bakersfield will be held at the Sheraton Bakersfield, Belridge Room, which is located at 5101 California Avenue, Bakersfield, California 93309.

The Department encourages interested participants to present their views orally at the hearings. Any person wishing to make an oral presentation at the hearings must submit a brief written request to the Department of Commerce at the address indicated in the **ADDRESSES** section of this notice. The written requests to participate in the public hearings should describe the individual's interest in the hearing and, where appropriate, explain why the individual is a proper representative of a group or class of person that has such an interest. The written request must be received no later than December 22, 1995. In addition, the request to speak should contain a daytime phone number where the person who will be making the oral presentation may be contacted before the hearing. On the day of the hearing, speakers should bring 2 copies of the summary of their oral presentation to the hearing address indicated in the **DATES** section of this notice.

Persons may submit written comments for the record if they are unable to attend the hearings.

Copies of the request to participate in the public hearings will be maintained at the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records may be obtained from Mr. Ted Zois, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Each speaker may be limited to 5 or 10 minutes depending on the number of presenters. Comments may respond to the questions posed in Section I of this notice or any other related issue.

A Commerce official will preside at the hearings. Representatives from other Federal agencies participating in the review also will attend the hearings. Only those conducting the hearing may ask questions.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Dated: December 13, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–30647 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under § 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than November 30, 1996.

Antidumping duty proceedings	Period to be reviewed
KOREA:	
Circular Welded Non-Alloy Steel Pipe	
A–580–809	
Dongbu Steel Co., Ltd	11/01/94–10/31/95
Hyundai Pipe Co., Ltd.	
Korea Iron and Steel Co., Ltd.	
Korea Steel Pipe Co., Ltd.	
Pusan Steel Pipe Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
MEXICO:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Hysla, S.A. de C.V. Tuberia Nacional	11/01/94–10/31/95
THE PEOPLE'S REPUBLIC OF CHINA:	
Fresh Garlic	
A–570–831	
Anhui Cao Hu Regional Foreign Trading Corp	07/11/94–10/31/95
Anhui Cereals, Oils and Foodstuffs Imp./Exp. (Group) Corp.	
Anhui Clothing Imp./Exp. Corp.	
Anhui Dong Zhi County Foreign Trade Corp.	
Anhui Medical and Health Care Products Imp./Exp. Corp.	
Anhui Su Xian Foreign Trade General Corp.	
Anhui Wu Hu Imp./Exp. Corp.	
Beijing Cereals, Oils and Foodstuffs Imp./Exp. Corp.	
Beijing Foreign Trade Foodstuffs Supply Corp.	
Beijing Jingda Development Corp.	
Beijing Native Produce Imp./Exp. Corp.	
Beijing Nanguang General Foreign Trade Corp.	
Beijing Xinlisng Imp./Exp. Co., Ltd.	
Cangshan County	
Cangshan Gadex Foods Co. Lt.	
China Cereal Heilongjiang Cereal, Oil and Food Imp./Exp. Corp.	
China Cereal International Storage and Transportation Corp. (Beijing)	
China Cereal, Oil and Food Imp./Exp. General Corp. (Beijing)	
China Cereal, Pork, Poultry and Other Animal Meat Imp./Exp. Corp.	
China Cereal, Shandong Cereal and Oil Imp./Exp. Corp.	
China Cereal Trade Development Corp. (Beijing)	
China Commerce Foreign Trade Corp. (Qing Dao)	
China C.R.C. Joint Co.	
China Export Bases Development Corp. Shaanxi Corp.	
China Export Commodity Base Construction Corp. (Beijing)	
China Export Commodity Base Construction Corp. (Saanxi)	
China Fruit, Vegetable and Seafood Imp./Exp. Corp. (Beijing)	
China Full Imp./Exp. Co. (Beijing)	
China Light Industrial Materials Supply and Sales General Corp. (Beijing)	
China Livestock and Poultry Associated Co.	
China Mechaco Qingdao Import and Export Corp.	
China Military Materials General Corp. (Beijing)	
China National Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
China National Cereals, Oils & Foodstuffs Imp./Exp. Corp., Fujian Branch	
China National Electronics Imp./Exp. Corp.	
China National Native Produce & Animal By-Products Imp./Exp. Corp.	
China Native and Animal Products Imp./Exp. Corp.	
China New Era Corp.	
China Overseas Trading General Corp.	
China Processed Food Imp./Exp. Co.	
China Seed Corp. (Beijing)	
Chongqing Cereal, Oil and Food Products Imp./Exp. Corp.	
Da Qing Heilongjiang Foreign Trade Corp.	
Fujian Cereals, Oils and Foodstuffs Imp. & Exp. Corp.	
Green Xingye Imp./Exp. Co., Ltd.	
Guangdong Native Produce Imp./Exp. Corp.	
Guangxi Cereal, Oil, Food Products Imp./Exp. Corp.	
Guizhou Cereal, Oil and Food Products Imp./Exp. Corp.	
Haerbin Cereal, Oil and Food Imp./Exp. Corp.	
Hebei Foodstuffs Imp./Exp. Corp.	
Heilongjiang Cereal and Oil Trading Corp.	
Heilongjiang Cereals, Oils and Foodstuffs Imp./Exp. Corp.	
Heilongjiang Electrical Power Foreign Trade Corp.	
Heilongjiang Imp./Exp. Corp.	
Heilongjiang Industrial and Commercial Imp./Exp. Corp.	
Heilongjiang International Economical and Trading Corp.	
Heilongjiang International Trading and Transportation Co., Ltd.	
Heilongjiang Materials Imp./Exp. Corp.	
Heilongjiang Native and Animal Products Imp./Exp. Corp.	
Heilongjiang Nongkeng Foreign Trading Corp.	
Heilongjiang Supplier and Sales Cooperations Foreign Trade Corp.	
Heilongjiang Supplier and Sales Cooperations Foreign Trade General Corp.	
Henan Cereals, Oils & Foodstuffs Imp. & Exp. (Group) Corp.	
Henan International Counter Trade Co.	
Henan International Economic Trade Co.	
Henan Light Industrial Products & Exports Corp.	

Antidumping duty proceedings	Period to be reviewed
Henan MINMETAL Imp./Exp. Co.	
Henan Native Produce Imp./Exp. Corp.	
Henan Xin Yang Foreign Trade Corp.	
Henan Zhou Kou Regional Trading Corp.	
Henan Zhoukou Foreign Trade Company	
Hunan Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Hunan Wall Shine Imp./Exp. Corp.	
Jiangsu Cereals, Oils and Foodstuffs Imp. & Exp. (Group) Corp.	
Jiangsu Dong Tai Foreign Trading Corp.	
Jiaonan Cereal & Oil Co.	
Jiaonan Imp./Exp. Corp. (Qing Dao)	
Jinan Import/Export Corp.	
Jinan Xuijiang Food Co. Ltd.	
Jining Food Foreign Trade Co.	
Jining Imp./Exp. Co.	
Jining Medicines & Health Products Imp./Exp. Co.	
Jinxiang	
Jinxiang Foreign Trade Co.	
Jinxiang Yinfeng Co.	
Kai Feng Henan Imp./Exp. Corp.	
Liaoning Food Imp./Exp. Corp.	
Lianyungang Wanrun Foodstuff Co.	
Ling Yi Shangdong Imp./Exp. Corp.	
Linyi Cangshan Huangpu Refrigeration Plant	
Linyi Foreign Trade Refrigeration Plant	
Longkou Fook Huat Tong Kee Refrigeration Co., Ltd.	
Longkou Fufazhongji Refrigeration Co., Ltd.	
Luo Yang Foreign Trade Corp.	
Luxing Industrial Co. Ltd.	
Mou Ping Shandong Foreign Trade Corp.	
Nantong Tongming Food Co.	
Nanjing Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Ning Bo Cereal, Oil and Food Imp./Exp. Corp.	
OAG International Inc.	
Panyu Fruits & Vegetables Import & Export Corporation	
Pingdu Resource Cereal & Oil Co.	
Qian An Hebei Imp./Exp. Corp.	
Qing Dao Imp./Exp. Corp.	
Qingdao Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Qinghuangdao China Cereal Products Imp./Exp. Corp.	
Quing Dao Native and Animal Products Imp./Exp. Corp.	
Saanxi Cereal, Oil and Food Imp./Exp. Corp.	
Saanxi Fuyuan Imp./Exp. Corp.	
Saanxi Imp./Exp. Corp.	
Saanxi Native Products Imp./Exp. Corp. (Xi An)	
Saanxi Xian Yang Imp./Exp. Corp.	
Shandong Commercial Group General Corp.	
Shandong Construction Material Imp./Exp. Co.	
Shandong Dongyue General Corp.	
Shandong Economic Cooperation Co.	
Shandong Foodstuffs Imp./Exp. Corp.	
Shandong Foreign Trade Co.	
Shandong Lai Wu Imp./Exp. Corp.	
Shandong Linju County	
Shandong Medicines & Health Products Imp./Exp. Co.	
Shandong Native Products Imp./Exp. Corp.	
Shandong Ri Zhao Imp./Exp. Corp.	
Shandong Tai An Imp./Exp. Corp.	
Shang Qiu Henan Foreign Trade Corp.	
Shanghai Foodstuffs Imp./Exp. Corp.	
Shanghai New Dragon Imp./Exp. Co., Ltd.	
Shengyu (Tianjin) Engineering Services Co., Ltd.	
Shenzhen Wanghai International Trading Corp.	
Sichuan Native Products Imp./Exp. Corp.	
Sinjiang Jimusaer County Foreign Trade Co.	
Tai Chang Foreign Trade Corp.	
Taicang Foreign Trade Company	
Tiajin Food Imp./Exp. Group, Ltd.	
Tiajin Foreign Trade General Corp.	
Tibet Native and Animal Products Imp./Exp. Corp. (La Sha)	
Top Pearl Ltd.	
Weishan County Foreign Trade Co.	
Wing Man Trading Co. Ltd.	

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Antidumping duty proceedings	Period to be reviewed
Wu Han China Cereal Imp./Exp. Corp.	
Huhu Imp./Exp. Co.	
Xi An Native and Animal Products Imp./Exp. Corp.	
Xiamen Huashun Food Indust. Ltd.	
Xin Xian Henan International Trading Corp.	
Xin Xiang Henan International Trading Corp.	
Xinyang Prefectural Foreign Trade Corporation of Henan Province	
Xing Tai, Hebei Imp./Exp. Corp.	
Xinjiang Cereal, Food, Medical Products Imp./Exp. Corp. (Urumuqi)	
Xuzhou Foreign Trade Corp.	
Xuzhou Cereals, Oils and Foodstuffs Imp. & Exp. Corp.	
Xuzhou Foreign Trade Company	
Yantai Development Zone Imp./Exp. Co.	
Yantai Foodstuffs Imp./Exp. Corp.	
Yantai Hualin Food Industrial Co. Ltd.	
Yantai Native Produce & Animal By-Products Imp./Exp. Corp.	
Zhonghai Trading (Chongqing) Overseas Trading Corp.	
Zhongji Jiahua Imp./Exp. Corp.	
Zhongyuan International Economic Trade Co.	
Zhun Hua Hebei Imp./Exp. Corp.	
Zaoshuang MINMETAL Imp./Exp. Corp.	
All other exporters of fresh garlic from the People's Republic of China are conditionally covered by this review.	
ARGENTINA:	
Oil Country Tubular Goods	
C–357–403	
Siderca S.A.I.C.	01/01/94–12/31/94
Suspension Agreements SINGAPORE:	
Certain Refrigeration Compressors	
C–559–001	04/01/94–03/31/95

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: December 8, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30607 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–605]

Silicon Metal From Argentina; Final Results of Antidumping Duty Administrative Review and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review, and Termination in Part.

SUMMARY: On August 9, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Argentina, and its termination in part (60 FR 40566). Since petitioners withdrew their request for review of Andina Electrometalurgical (Andina) within 90 days from the date of publication of the notice of initiation in accordance with 19 CFR 353.22(a)(5), and no other party requested a review of Andina, we terminated the review with respect to this firm. This review covers Silarsa, S.A. (Silarsa), a manufacturer/exporter of this merchandise to the United States. We have now completed this review and have continued to assign to Silarsa the BIA rate of 24.62 percent for the period September 1, 1993 through August 31, 1994.

We gave interested parties the opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have concluded that Silarsa's margin should remain at 24.62 percent

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1995, the Department published in the **Federal Register** (60 FR 40566) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Argentina (56 FR 48779, September 26, 1991). The Department has not completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this administrative review are shipments of silicon metal from Argentina. During this less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00, but less than 99.99 percent silicon by weight. In response to a request by petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher aluminum content containing between 89 and 96 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the LTFV investigation (Final Scope Rulings-Antidumping Duty Orders on Silicon Metal from the People's Republic of China, Brazil, and Argentina (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon metal and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The written description remains dispositive.

This review covers one manufacturer/exporter of the subject merchandise to the United States, Silarsa, and the period September 1, 1993 through August 31, 1994.

Best Information Available (BIA)

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Silarsa. Our regulations that is selecting BIA we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Silarsa did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review of any firm for the same class or kind of merchandise from the same country. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.; Final Results of Antidumping Administrative Review, 57 FR 28360, 28379 (June 24, 1992), and *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals & Alloys, Inc., the petitioners, and Silarsa, S.A., a respondent. On September 15, 1995, we received written rebuttal comments from petitioners and Hunter Douglas, an importer of silicon metal from Argentina and an interested party as defined in section 771(9)(A).

Comments on the Use of BIA

The petitioners assert that Silarsa's failure to participate in this third administrative review occurred within the context of a continuing pattern of noncooperation by Silarsa in this proceeding, and they point out that their allegation of sales below cost with respect to Silarsa in the 1991–1992 period of review (the first administrative review) precipitated Silarsa's withdrawal. The Department subsequently assigned a BIA rate of 54.67 percent, which was computed from constructed value information submitted by the petitioners and Silarsa's reported U.S. sales data. The petitioner state that the Department explained in the final results of that review that it could not "presume that the highest prior margins (were) the best information available and that following the two-tier methodology would be significant to induce the respondent to cooperate." See Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review, 58 FR 65336 (December 14, 1993) (Argentina Silicon Metal I). On remand, the Department recalculated the margin taking into account Silarsa's ministerial error allegations, and derived a margin of 24.62 percent which was affirmed by the Court of International Trade (CIT) on March 24, 1994.

The petitioners note that Silarsa failed to respond by the deadline date to the Department's questionnaire for the second administrative review, covering the period September 1, 1992 through August 31, 1993, and has had no subsequent contact with the Department with respect to the second administrative review.

For this third administrative review the petitioners reiterate their objection to Silarsa's request to be "excused from responding to" the Department's questionnaire because it (1) exported only 331 metric tons of subject imports during the period of review (POR) in October 1993; (2) had stopped manufacturing silicon metal in January 1994, and had no near-term plans to resume production; (3) would contact the Department should it resume production; and (4) did not have the personnel to prepare the response. See Letter from Alberto Stein, President, Silarsa, to the Department of Commerce (December 29, 1994) Letter from Silarsa) on file in Central Records, Room B–099. Petitioners note that PIERS data and Census Bureau import data indicate that Silarsa did import silicon metal into the United States during the POR and that a temporary cessation of production does not relieve Silarsa of its obligation to respond to the questionnaire.

Petitioners state that to be an effective tool, the application of BIA to a recalcitrant party must result in a margin that is less desirable to the respondent than that which would have been obtained had the party chosen to cooperate. Citing *N.A.R., S.p.A.* v. *United States*, 741 F.Supp. 936 (CIT 1990), in support of their argument, petitioners assert that the best information rule may be used to prevent a respondent from controlling the results of an antidumping investigation "by selectively providing the ITA with information", (*Id.* at 941). Petitioners state that the Department normally includes within the pool of BIA rates (1) the highest rate assigned to any company in a previous review of investigation and (2) the highest rate for a responding company with shipments during the review period. Petitioners contend, however, that the Department has gone beyond these rates when the higher of the two was not "sufficiently adverse to induce respondents to submit timely, accurate, and complete responses" (Sodium Thiosulfate From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 57 FR 58792 (December 11, 1992) (PRC Sodium Thiosulfate)).

According to petitioners, Silarsa's failure to cooperate in the first, second, and in this third administrative review demonstrates that the current rate, the BIA rate from the first administrative review, is not sufficiently adverse to induce Silarsa's cooperation. Since the rates established in the investigation and prior completed reviews are no more adverse than the 24.62 percent deposit rate currently in effect, the petitioners assert that the Department must go beyond those rates to find a rate sufficiently adverse to induce cooperation. Citing Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review, 56 FR 47454 (September 19,

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1991) (Canadian Replacement Parts) and *Krupp Stahl A.G. v. United States*, 822 F. Supp. 789 (CIT 1993) (Krupp Stahl) as precedent, the petitioners believe the Department must expand its choices and include the petition rates in its BIA pool.

The petitioners point out that in Certain Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review, 60 FR 41876 (August 14, 1995) (Brazil Cast Iron Pipe Fittings) the Department assigned as BIA the average of the petition rates, as adjusted by the Department, reasoning that

> [in] not responding to our requests for information, [the respondent] could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate. Such a capped BIA rate would allow [the respondent] to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences. With such a capped rate, [the respondent] would no longer have an incentive to participate in an administrative review which would determine the extent to which [the respondent] is actually dumping subject merchandise in the United States.

The petitioners state that similarly in this review Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding. Therefore, in the petitioners' opinion, the Department should assign to Silarsa, as BIA, the average of the petition rates, 81.31 percent, or, at a minimum, the lowest petition rate of 49.35 percent.

Silarsa counters that it generally supports the Department's preliminary results and urges the Department to assign to Silarsa in the final results a rate no greater than the highest rate ever established by the Department in Argentine Silicon Metal I, *i.e.*, 24.62 percent. Silarsa maintains that the Department's use of this rate as BIA is firmly rooted in established agency practice and is commonly referred to as the two-tiered BIA methodology. In this case the Department uses as BIA the highest previous margin ever established by the Department in Silicon Metal from Argentina. Silarsa cites *Allied Signal Co. v. U.S.* (996 F.2d 1185, 1192 (Fed. Cir. 1993), aff'd, 28 F.3d 1188, cert denied, 115 S. Ct. 722(1995)) as evidence that the Department's two-tiered BIA methodolgy and its application in administrative reviews have been upheld by the Court of Appeals for the Federal Circuit.

Silarsa dismisses the petitioners' claim that Silarsa's failure to cooperate in the second and third administrative reviews demonstrates that the current rate is not sufficiently adverse to induce Silarsa's cooperation, contending that this conclusion is clearly refuted by the record. In fact, Silarsa maintains that the 24.62 percent margin constitutes an insurmountable barrier, which precluded Silarsa from participating in the U.S. silicon metal market, and precipitated the company's decision to cease production of silicon metal effective January 1, 1994. According to Silarsa, economic constraints and the lack of a sufficient administrative structure have precluded Silarsa's participation in the administrative proceedings, not the petitioners' purported ineffectiveness of the margin. Silarsa characterizes the petitioners' claim that the use of the 24.62 percent margin as BIA would "reward" Silarsa for its inability to participate in the administrative proceedings as baseless, stating that this margin is not "neutral or even favorable" to Silarsa.

Silarsa contends that the Department has no basis to assign to Silarsa a rate greater than the 24.62 percent rate determined to constitute BIA in the first administrative review. Silarsa asserts that the petitioners' cite to Canadian Replacement Parts to support the application of a rate from the petition as the BIA rate for purposes of an administrative review is incorrect. In that case, the Department "included the petition rate in the BIA pool," as petitioners contend, but ultimately rejected this rate and applied the BIA rate in effect for the respondent in a preceding review.

Silarsa states that the petitioners' cite to PRC Sodium Thiosulfates is "equally inapt" because, unlike that case where the petitioner placed on the record documentation indicating that costs and prices had changed substantially since the investigation, the petitioners in this case have not introduced evidence of increased costs or prices that might warrant the application of a higher dumping margin. Silarsa also rejects the petitioners' cite to Krupp Stahl, where the CIT upheld the Department's choice of the rate established in the preliminary phase of the LTFV investigation as BIA. Silarsa points out that the administrative review at issue in Krupp Stahl was the first review and the only BIA alternatives available to the Department were the petition-based preliminary LTFV rate for the respondent and the respondent's own final LTFV rate. The Court specified that "under the circumstances of limited BIA data in [that] review," the Department's use of the only other information available, *i.e.*, the preliminary LTFV rate, was not arbitrary. Silarsa argues that this is the third administrative review of silicon metal from Argentina and the information available to the Department is not "limited." In addition, Silarsa notes that the rate used by the Department as BIA in Krupp Stahl was a rate established in the preliminary LTFV investigation, not a petition rate as proposed by the petitioners in this case.

Silarsa also distinguishes the facts in Brazil Cast Iron Pipe Fittings from those in this review. In Brazil Cast Iron Pipe Fittings there was only one respondent, with a relatively low margin, who failed to respond to the Department's questionnaire subsequent to the initial LTFV investigation. The petitioner argued that so long as the company chose not to respond to the Department's questionnaire, the relative low margin for the respondent would not change under the Department's regular BIA practice. Silarsa points out that due to the "unusual situation" in that case the Department deviated from its "normal BIA practice," the two-tiered methodology. Silarsa argues that this "unusual situation" is not applicable in this review, where there are two companies, there is more than one rate in the selection pool, and the rate currently in effect for Silarsa, *i.e.*, 24.62 percent, is a BIA rate itself and is more adverse and prejudicial than the calculated rate in Brazil Cast Iron Pipe Fittings.

Silarsa concludes that the petitioners have failed to establish a reasonable basis for the Department to deviate from its accepted, established methodology to determine a BIA rate for Silarsa. Silarsa, therefore, urges the Department to utilize as BIA for Silarsa in the final results of this administrative review a rate no greater than the BIA rate currently in effect for Silarsa, *i.e.*, 24.62 percent.

In rebuttal the petitioners argue that Silarsa's characterization of its current BIA rate as "extremely adverse and prejudicial" does not alter the fact that Silarsa failed to cooperate in this review; this noncooperation demonstrates that the current rate is not sufficiently adverse or prejudicial to achieve the central purpose of the BIA rule which is to provide a strong enough incentive to cooperate that the respondent will submit the information necessary to determine the actual margin of dumping on its U.S. sales. The petitioners urge the Department not to rely upon selected, unverified facts submitted by an uncooperative respondent as the basis for a decision benefiting that respondent. They maintain that the most important of the selective facts submitted by Silarsa in its brief was its contention that it had made only one exportation to the United States during the POR and, therefore, its current rate should not be increased. The petitioners claim that the only reason Silarsa provided any information in this review regarding its shipments to the United States is the petitioners' challenge to Silarsa's erroneous claim that it had made only one shipment of silicon metal to the United States during the POR. According to the petitioners, the fact that Silarsa is willing to accept the 24.62 percent rate rather than provide the requested information demonstrates that the rate is neither adverse not prejudicial.

The petitioners argue that since Silarsa is the only company being reviewed in this administrative review, under the Department's normal methodology Silarsa's current rate is the highest possible BIA rate. The petitioners maintain that it is the Department's practice to go beyond the rates specified by its normal methodology when the highest of those rates is not "sufficiently adverse to induce respondents to submit timely, accurate, and complete responses" (PRC Sodium Thiosulface, 57 FR at 58792). Since the current rate has proven to be too low to induce Silarsa's cooperation, the petitioners conclude that, in accordance with Krupp Stahl, the Department must assign a higher BIA rate, the petition rate, as BIA for Silarsa. The petitioners cite Brazil Cast Iron Pipe Fittings, 60 FR at 41878, wherein the Department reasoned that "such a capped BIA rate would allow (the respondent) to practice injurious price discrimination of a greater degree than at the time of the LTFV investigation without fear of adverse consequences" (*id.*, 41878), as precedent for the Department's use of petition-based rates when the only available rate under the Department's standard practice is the respondent's own LTFV margin. Since Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding, the petitioners contend that Silarsa's rate will be capped at the current rate. Therefore, the petitioners reiterate their contention that the Department should assign to Silarsa, as BIA, the average of the petition rates (81.31%) or, at a minimum, the lowest petition rate (49.35%).

Hunter Douglas agrees with Silarsa that there is no reason for the Department to deviate from its two-tiered BIA methodology in this review, stating that the petitioners cannot realistically claim that the 24.62 percent rate is not sufficiently adverse when it has prevented Silarsa from exporting to the Untied States and also has induced Silarsa to discontinue production of silicon metal altogether.

Hunter Douglas argue that the sole impact of an increase in the BIA rate would be to punish unrelated U.S. importers who must actually pay the antidumping duties even though they have no control over foreign exporters or their decisions about whether to cooperate in the Department's antidumping administrative reviews. Therefore, Hunter Douglas urges the Department to apply a BIA rate no higher than 24.62 percent to Silarsa's merchandise in this review.

Department's Position: We agree with Silarsa. In the preliminary results of this administrative review we followed our established two-tiered methodology, as set out above, and assigned to Silarsa, a noncomplying respondent, the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review. As the petitioners explain in their brief, in the final results of Argentina Silicon Metal I we assigned to Silarsa, as BIA), a rate of 54.67 percent, computed using constructed value information submitted by petitioners and based on Silarsa's financial statements and its reported U.S. sales data. On remand, the Department recalculated this margin, taking into account ministerial error allegations filed by Silarsa, and derived a BIA rate of 24.62 percent which was subsequently affirmed by the CIT on March 24, 1994.

We disagree with the petitioners that the 24.62 percent BIA rate assigned to Silarsa in the first administrative review was not sufficiently adverse to induce Silarsa's cooperation in the second and third administrative reviews and, therefore, a more adverse rate should be assigned in this review to induce the desired cooperation. The BIA rate from the first administrative review appears to have precluded Silarsa's participation in the U.S. silicon metal market (see Letter from Silarsa). Accordingly, there is no need to resort to any higher BIA rate, as the petitioners suggest.

The petitioners are correct in their assertion that the Department tries to select an appropriate BIA rate to encourage future compliance with the Department's requests for information. However, in the present case, Silarsa maintains that it has ceased producing and exporting the subject merchandise. As such, in this instance, Silarsa is in no way advantaged by the present rate, and use of an even higher BIA rate would not induce Silarsa to respond to the Department's questionnaire.

The petitioners' reliance on Canadian replacement Parts and Krupp Stahl to support the use of the petition rates for BIA is misleading. In Canadian Replacement Parts we considered the petition rate in the pool of possible BIA rates, but ultimately rejected the rate alleged in the petition as a BIA rate because the respondent did make "several attempts to respond to our request for data" and "the selection of the most adverse BIA rate (was) not warranted under (those) circumstances" (see Canadian Replacement Parts, 56 FR 47454). In Krupp Stahl the CIT concluded that the Department's choice of BIA (*i.e.*, the preliminary LTFV margin) was "within its discretion" and "in accordance with law" given the "special circumstance of (that) case, that is, Krupp's destruction of the records during the process of litigation and the limited BIA data available for use" (*Id.*, 822 F. Supp., at 796). There are no parallel "special circumstances" in this review. There were special circumstances in the first administrative review which persuaded the Department to go beyond the two-tiered BIA methodology and use the rate the petitioners derived from Silarsa's own financial statements and submitted sales information. That rate is currently the highest rate for any respondent during the investigation and in subsequent administrative reviews. There are no special circumstances in this third administrative review that warrant rejecting that rate and going beyond the standard two-tiered BIA methodology.

The petitioners' fear that the Department's use of the traditional two-tiered methodology in this instance would result in a "capped BIA rate" which "would allow (the respondent) to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences" (Brazil Cast Iron Pipe Fittings, 60 FR at 41876) is unwarranted. While the Department did find it appropriate to use a higher petition-based rate as BIA in the Brazil Cast Iron Pipe Fittings review, there is no need to do so here. Unlike Brazil Cast Iron Pipe Fittings, there are other exporters of the subject merchandise which may receive a higher rate in subsequent proceedings. Moreover, as discussed above, Silarsa attests that it is no longer producing or exporting the subject merchandise. There is no evidence to indicate that, if Silarsa resumes production, the current rate is insufficient to ensure Silarsa's cooperation in a subsequent review. Therefore, we believe that Silarsa's BIA

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rate from the first administrative review is sufficient for the purposes for which BIA is intended. There is no indication that Silarsa is engaging in injurious price discrimination to a greater degree than at the time of the first administrative review. Should such evidence come to light in a future review, and the Department determines that a BIA rate is appropriate, it is not precluded from evaluating the rate in order to assign one that would accomplish the purpose for which a BIA rate is intended.

Finally, we also disagree with the petitioners' argument that PRC Sodium Thiosulfate supports the conclusion that a higher BIA rate is warranted in this instance. In PRC Sodium Thiosulfate the Department reconsidered the BIA rate because the petitioner presented evidence that costs and prices in the industry had changed substantially since the investigation, making the BIA rate from the investigation "no longer sufficiently adverse." See PRC Sodium Thiosulfate: Final Results of Antidumping Duty Administrative Review, 58 FR 12934 (March 8, 1993). That is not the case in this review. There is no evidence on the record that costs or prices have changed, let alone changed substantially, that would warrant a reconsideration of the current BIA rate assigned to Silarsa.

As explained above, the present BIA rate is sufficiently adverse to Silarsa. Therefore, since we see no reason to deviate from our well-established two-tiered BIA methodology in this review, we have continued to use 24.62 percent as Silarsa's first-tier BIA rate for this third administrative review.

Final Results of Review

As a result of comments received, we have not revised our preliminary results. Therefore, we determine that the following margin exists for the period September 1, 1993 through August 31, 1994:

Manufacturer/Exporter	Margin (percent)
Silarsa, S.A.	24.62

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company, Silarsa, will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 17.87 percent, the "all other" rate established in the final Results of Redetermination Pursuant to Court Remand, *American Alloys, Inc.* v. *United States*, Ct. No. 91–10–00782, p. 4 (April 7, 1995).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)(B)) as amended and 19 CFR 353.22.

Dated: December 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30606 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 120695A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Shrimp Advisory Panel (AP).

DATES: The meeting will be held on January 9, 1996 beginning at 9:00 a.m. and will conclude at 4:30 p.m.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will review scientific information on the cooperative shrimp closure with the State of Texas, royal red shrimp regulatory amendment (tentative) and comparison of shrimp vessel effort and bycatch characterization effort. The AP consists principally of commercial shrimp fishermen, dealers and association representatives. The AP will develop recommendations to the Council regarding the extent of the closure of Federal waters off Texas in 1996 concurrent with the closure of Texas waters. If Amendment 8 to the Shrimp Fishery Management Plan is approved, the AP will review a regulatory amendment that would provide a procedure for setting a total allowable catch of royal red shrimp. The AP will also develop recommendations regarding the level of effort in the shrimp fishery after reviewing information that compares levels of effort collected using the current method and effort collected from the bycatch characterization study.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 2, 1996.

Dated: December 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30600 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Sponge, Olive Drab

7920–01–383–7936

NPA: Mississippi Industries for the Blind Jackson, Mississippi

Undershirt, Man's Brown

8420–01–112–1472
8420–01–112–1473
8420–01–112–1474
8420–01–112–1475
8420–01–112–1476
8420–01–112–1477
8420–01–112–1478
8420–01–112–1479

(1,600,000 annually in any combination of the above NSNs)

NPA: Mississippi Industries for the Blind, Jackson, Mississippi; BESB Industries, West Hartford, Connecticut

Vest, Load Bearing Equipment

8465–00–NSH–0014 thru -0028

NPA: Chautauqua County Chapter, NYSARC Jamestown, New York

Service

Janitorial/Custodial

Camp H. M. Smith
Oahu, Hawaii

NPA: Opportunities for the Retarded, Inc. Wahiawa, Hawaii

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–30609 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 50559) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Basin, Wash

6530–01–075–2723

Insert, Foam, Laminated

8135–00–NSH–0004

(Requirements for the Bureau of Mint, Washington, DC.)

This action does not affect current contracts awarded prior to the effective

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date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–30606 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 55244) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Targets

6920–00–Z85–9240
6920–00–Z85–9241
6920–00–Z85–9248
6920–00–Z85–9249
6920–00–Z86–9768
6920–00–Z86–9769
6920–00–Z86–9770
6920–00–Z88–2857
6920–01–Z87–6646
6920–01–Z87–6649
6920–00–Z85–9237
6920–00–Z85–9236
6920–01–Z88–2858
6920–01–Z88–2859
6920–01–NSH–9018
6920–01–Z88–2861
6920–01–Z87–6650
6920–01–Z88–2862
6920–01–NSH–9017
6920–01–NSH–9019
6920–01–Z88–2869
(Requirements for Fort Stewart, Georgia only.)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–30657 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Board of Trade for Designation as a Contract Market in Futures and Options on the CBOT Latin American Brady Bond Index and the CBOT Mexico Brady Bond Index and Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on the CME Mexican Brady Bond Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has applied for designation as a contract market in futures and futures options on the CBOT Latin American Brady Bond Index and the CBOT Mexico Brady Bond Index. The Chicago Mercantile Exchange (CME) has applied for designation as a contract market in futures and futures options on the CME Mexican Brady Bond Index.

The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 16, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Reference should be made to the CBOT Latin American Brady Bond Index and the Mexico Brady Bond Index contracts or to the CME Mexican Brady Bond Index contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CBOT and CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT and CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre,

21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 8, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–30562 Filed 12–14–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 14 December 1995.

Time of Meeting: 1300–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's Research and Development (R&D) Sub-panel for the Ad Hoc Study on "Reengineering the Acquisition and Modernization Processes of the Institutional Army" will meet for briefings and discussions on the R&D processes and ways to improve efficiency. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–30542 Filed 12–14–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-77, for the transfer of 14 grams of uranium containing 0.588 grams of the isotope uranium-235 (4.2 percent enrichment) and 8.5 grams of uranium containing 0.357 grams of the isotope uranium-235 (4.2 percent enrichment) from EURATOM to Japan for use in calibration of mass spectrometers.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–30588 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

Draft Environmental Impact Statement for the Plutonium Finishing Plant Stabilization, Hanford Site, Richland, Benton County, WA, Notice of Availability and Announcement of Public Hearing

AGENCY: Department of Energy.

ACTION: Extension of comment period.

SUMMARY: The Department of Energy (DOE) announced the availability of the Draft Environmental Impact Statement (EIS) for the Plutonium Finishing Plant (PFP) Stabilization, Hanford Site, Richland, Benton County, in the **Federal Register** on December 5, 1995 (60 FR 62244). This announcement extends the date for the end of the comment period provided in that **Federal Register** announcement.

DATES: DOE invites comments on the Draft PFP Stabilization EIS (DOE/EIS–0244–D) from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the Draft EIS will be considered in preparing the Final EIS and should be submitted (postmarked) by January 23, 1996. Written comments received after that date will be considered to the degree practicable.

ADDRESSES: Written comments or questions concerning the Draft PFP Stabilization EIS should be directed to: Mr. Ben F. Burton, U.S. Department of Energy, Richland Operations Office, Attn: PFP Stabilization EIS, P.O. Box 550, MSIN B1–42, Richland, Washington 99352, (509) 946–3609, (800) 249–8181.

Ben F. Burton,

PFP Document Manager.

[FR Doc. 95–30589 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Eastern Idaho Community Reuse Program

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy's (DOE) Office of Worker and Community Transition through the DOE Idaho Operations Office intends to negotiate and award on a noncompetitive basis, Cooperative Number DE–FG07–96ID13398 to Eastern Idaho Economic Development Council (EIEDC) of Idaho Falls, Idaho. The award has an estimated overall total value of up to $10,000,000, of which DOE's share of the estimated two year award will be approximately 100%. The award will assist the efforts of the EIEDC to transition the economy of Eastern Idaho away from a significant level of dependency on the Idaho National Engineering Laboratories (INEL) through diversification.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, Contract Specialist, (208) 526–0014; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The non-competitive award justification is Criterion (A) of 10 CFR 600.7(b)(2)(i), as follows:

(A) The activity to be funded (EIEDC) is necessary for the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The EIEDC was established specifically for the purpose of formulating and implementing strategies to confront the impacts of the changing missions at the INEL.

Statutory Authorities for the new award are Public Laws 95–224 and 97–258.

PROCUREMENT REQUEST NUMBER: 07–96ID13398.000.

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Dated: December 6, 1995.

Brad G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 95-30500 Filed 12-14-95; 8:45 am]

BILLING CODE 6450-01-P

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Department of Energy (DOE).

ACTION: Amendment of one existing system of records.

SUMMARY: Federal Agencies are required by the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) to publish notice in the **Federal Register** of proposed amendments to the routine uses of existing systems of records. The Department of Energy proposes to amend the routine uses of one of its systems of records, DOE-15, Payroll and Pay-Related Data For Employees Of Terminated Contractors, to permit disclosure of certain categories of records in the system for epidemiological and other health studies and surveys and to health studies advisory entities as routine uses of these categories of records.

DATES: The proposed revisions will become effective without further notice 40 days after publication in the **Federal Register** (January 24, 1996), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, FOIA/Privacy Act Division, Office of Executive Secretariat, U.S. Department of Energy, HR-78, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Heather Stockwell, Acting Director, Office of Epidemiologic Studies, EH-62, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, (301) 903-3721 or (2) GayLa D. Sessoms, Director, FOIA/Privacy Act Division, HR-78, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955 or (3) Harold Halpern, Office of General Counsel, GC-80, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7406.

SUPPLEMENTARY INFORMATION: The Department of Energy proposes to amend the routine uses of one of its systems of record, DOE-15, Payroll and Pay-Related Data For Employees Of Terminated Contractors, to permit disclosure of certain categories of records in this system for epidemiological and other health studies and surveys and to health studies advisory entities as routine uses of these categories of records.

Previously, the Department amended 12 other systems of records to permit disclosure of all categories of records in the 12 systems for health studies and to health studies advisory entities. See 60 FR 33510 (June 28, 1995). The Department received no comments concerning that proposal. The currently proposed amendments, as detailed below, would permit only certain categories of records in this system to be disclosed for health studies and to advisory entities.

Categories of records in DOE-15 to be made available for the new routine uses include employment history, job titles, and discrete portions of payroll data reflecting attendance, illness, or other matters of the type described above. Records that could reflect adversely on their subjects, such as disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices and similar matters, will not be made available for the proposed new routine uses.

The Department's epidemiology and health surveillance program was established to determine the health effects of the Department's activities on workers and populations having access, or in proximity, to the Department's facilities. Epidemiological studies are an important means of determining the status of, and improving, public health. Epidemiological studies permit the scientific evaluation of the effects of exposure to potentially harmful materials by determining and quantifying health effects associated with such exposures. Health surveys, which are used to assess immediate health issues, are designed to discover the occupational source of outbreaks of illness, injury, or death, and to describe the extent of exposure to specific substances at a single point in time. Surveillance is used to identify new and emerging health problems by monitoring groups of workers, who have the same job or exposures, for changes in their illness and injury patterns over time.

The proposed health study routine use amendments to the system will assist the Department in studying and monitoring individual employee and aggregate population health risks from exposures to radiation or other hazards that may have occurred as a result of the Department's operations.

Pursuant to Memoranda of Understanding with the Department of Health and Human Services ("HHS"), and the Agency for Toxic Substances and Disease Registry ("ATSDR"), studies, surveys and surveillances will be conducted for DOE by units of the Public Health Service, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and ATSDR, and their contractors, grantees, and cooperative agreement holders. States also may perform studies as the Department's or the Department of Health and Human Services' contractors, grantees, or cooperative agreement holders.

The studies are focussed on a variety of areas that are important for assessing the real and potential health risks to workers and the public resulting from the Department's energy-related technologies and activities. The studies should provide information that is necessary for long-range energy planning pursuant to continued development of the national energy strategy. The health studies include all Department facilities and workers and other special populations that have relevance to the Department's mission.

The proposed new routine uses of records in this system of records are:

(1) Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

(2) Subject to the same Privacy Act limitations applicable to employees of the Department, discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record: to Federal, State, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

(3) Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents, and similar matters, may be disclosed to members of Department advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government, or government-sponsored entities, authorized to provide advice to the Department concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

The proposed health studies amendments should not have adverse privacy consequences. Health studies tend to benefit persons in the studied populations by identifying possible increases in adverse health effects following exposure to toxic agents. Individuals are never identified in published studies and the studies are not used to support determinations concerning any individual's rights, benefits or privileges.

Furthermore, in addition to the withholding of records that may adversely reflect upon individual employees, privacy interests will be protected by a number of means. As a condition of releasing individually identifiable information for studies, surveys, or surveillances conducted for DOE, persons conducting studies will be required to: (1) Keep personal information confidential; (2) use personal information only for purposes of studies in which there is no publication of the identity of any individual subject; (3) consult with DOE prior to any release of personally identifiable information obtained from DOE; (4) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record; (5) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions and with written authorization from the Department, (c) for disclosure to an authorized person for the purpose of an audit related to the research project, and (d) when required by law. Additionally, the Department will secure a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions. The provisions in this paragraph apply to DOE collaborating researchers, not those studies being performed by the Department of Health and Human Services.

Privacy safeguards are in place regarding the studies to be conducted pursuant to the Memoranda of Understanding with Department of Health and Human Services or its components. Department of Health and Human Services has agreed: (1) Not to use or disclose any personally-identifiable information obtained from DOE or its contractors and grantees except for research purposes and other public health activities required by law; (2) not to use information in identifiable form to make any determination about the rights, benefits, or privileges of any individual; (3) to use and disclose information in accord with agreements under which the personally-identifiable information was obtained by the Department or its contractors and provided such use or disclosure is consistent with applicable law; (4) to notify the Department of any efforts to use or obtain personally-identifiable information for purposes other than research or other public health activities required by law; (5) to take appropriate steps to prevent improper disclosure; (6) to establish or modify Privacy Act systems of records broadening the "Categories of Individuals" section to specifically address information provided by DOE, as necessary, and consult with the Department concerning provisions of Privacy Act systems of records notices. Additionally, Department of Health and Human Services requires its contractors, grantees and cooperative agreement holders performing epidemiological studies or other public health activities required by law to abide by conditions similar to those imposed by the Department, as described in this paragraph.

The Department is also adding its (1) authority for maintaining this record system, and (2) Savannah River Operations Office as one of the locations of records contained in DOE-15.

The Department is submitting the report required by Office of Management and Budget Circular A-130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act, 5 U.S.C 552a(e)(4)(d).

Issued in Washington, DC this 11th day of December, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE-15

SYSTEM NAME:

Payroll and Pay-Related Data for Employees of Terminated Contractors.

SYSTEM LOCATION:

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

U.S. Department of Energy, Albuquerque Operations Office, PO

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Box 5400, Albuquerque, N.M. 87185–5400
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831–8501
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29802
U.S. Department of Energy, Western Area Power Administration, PO Box 4302, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll data from terminated contractors, employment history, job titles, complaints, salary reviews, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act.

PREVIOUS ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used to verify past earnings, job titles, periods of employment, and pay status for Government agencies, litigation and medical decisions, plus the following:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates, or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

PROPOSED AMENDED ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

11. Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record: To Federal, State, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

13. Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents, and similar matters, may be disclosed to members of Department advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government, or government-sponsored entities, authorized to provide advice to the Department concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in DOE records holding area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of Contractor Human Resource Management, (HR–54) 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The directors of contractors industrial relations at the location where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA/Privacy Act Division, Department of Energy, Washington, DC 20585, or the Privacy Act Officer at the appropriate address identified under the heading "System location", above, in accordance with the Department's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

DOE contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–30587 Filed 12–14–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EC96–5–000]

Old Dominion Electric Cooperative; Notice of Application

December 11, 1995.

Take notice that on December 11, 1995, Old Dominion Electric Cooperative ("Old Dominion" or "Applicant") filed an application seeking an order under Section 203 of the Federal Power Act authorizing Old Dominion to enter a lease and leaseback transaction that includes its 50% undivided interest in certain jurisdictional transmission facilities related to Unit 1 at the Clover Power Station located in Halifax County, Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30526 Filed 12–14–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–95–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

December 11, 1995.

Take notice that on December 4, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–95–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations, under Koch Gateway's blanket certificate issued in Docket No.

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CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable it to provide transportation under its blanket transportation certificate through an existing delivery tap serving Entex, Inc. a local distribution company, in Polk County, Texas.

Koch Gateway asserts that it will operate the delivery tap in compliance with 18 CFR Part 157, Subpart F and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30525 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–96–000]

Michigan Gas Storage Company; Notice of Request Under Blanket Authorization

December 11, 1995.

Take notice that on December 4, 1995, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed a prior notice request with the Commission in Docket No. CP96–96–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by sale to Consumers Power Company (Consumers) approximately 18 miles of 8-inch diameter pipe, under MGSCo's blanket certificate issued in Docket No. CP84–451–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

MGSCo proposes to abandon by sale approximately 18 miles of 8-inch diameter pipe (Line 200) in Isabella and Midland Counties, Michigan. MGSCo would sell all of the properties, rights-of-way, and facilities associated with the above described pipeline to Consumers at the net book value of $1,500. MGSCo also states that it would continue to serve Consumers in the area via the Mt. Pleasant Station and the Midland City Gate, which would relieve MGSCo of the obligation to operate and maintain the pipeline facilities without a reduction in service to Consumers. MGSCo further states that Consumers would also have the flexibility to use the pipeline facilities as a high pressure line or as a low pressure distribution line for serving customers in the developing bi-county area.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30524 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–99–000]

Natural Gas Pipeline Company of America; Notice of Application

December 11, 1995.

Take notice that on December 6, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–99–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, requesting authority to abandon by sale to High Plains Gathering System, LLC ("High Plains"), a non-affiliate, certain certificated facilities that, along with certain other non-certificated facilities, comprise the High Plains system of Natural, currently owned and operated by it in Eastern Colorado (the "System").

Natural states that, if the abandonment authorization sought herein is granted, Natural will be requesting, in a subsequent NGA Section 4 filing, to terminate the services which it has performed by means of the System. All of the System will be sold to High Plains for $750,000 dollars. Natural is requesting the prompt issuance of an order granting the abandonment sought herein so that Natural may be relieved of certain gas purchase obligations that are being assigned to High Plains in connection with the sale of these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30523 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–21–000]

Cleveland Public Power of the City of Cleveland, Ohio v. The Cleveland Electric Illuminating Company; Notice of Filing

December 8, 1995.

Take notice that on November 29, 1995, Cleveland Public Power of the City of Cleveland, Ohio (CPP) tendered for filing a complaint against The Cleveland Electric Illuminating Company (CEI) seeking an order requiring CEI to provide transmission service to CPP for a 40 Mw purchase of power by CPP from Ohio Power Company as independently required by: (1) CEI's Tariff No. 1 on filed with the Commission, and (2) Antitrust License Conditions imposed upon CEI by the United States Nuclear Regulatory Commission. CPP also requests that this Complaint be consolidated with any proceedings in Docket No. EL96–9–000 on the Petition of CEI for Declaratory Order that Company Is Not Required to Provide Requested Transmission Service, filed by CEI on November 2, 1995, that the relief requested in this Complaint be summarily granted, and that expedited procedures be adopted for the resolution of both proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be filed on or before January 8, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30522 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–29–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

December 11, 1995.

Take notice that on December 7, 1995, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 237.13, to be effective December 1, 1995.

National states that the tariff sheet is being submitted in compliance with the letter order issued November 30, 1995, by the Commission in Docket No. RP96–29–000. This order directed National to revise its tariff filing to eliminate the reference to a minimum term of service contained in its bid evaluation criteria.

National states that it is serving copies of the filing to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–30521 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL87–51–007, et al.]

Gulf States Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

December 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket Nos. EL87–51–007 and ER88–477–007]

Take notice that on November 30, 1995, Gulf States Utilities Company tendered for filing revised copies of its compliance filing in the above referenced dockets.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Mock Resources, Inc.

[Docket No. ER95–300–004]

On October 30, 1995, as amended on November 15, 1995, Mock Resources, Inc. filed a notice of succession changing its name from Wickland Power Services to Mock Resources, Inc.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER95–1268–002]

Take notice that on November 13, 1995, Public Service Company of Colorado tendered for filing revised sheets to the point-to-point transmission service tariffs.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER96–104–000]

Take notice that on November 27, 1995, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Company

[Docket No. ER96–196–000]

Take notice that on December 6, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Alabama Power Company

[Docket No. ER96–307–000]

Take notice that on December 6, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Company

[Docket No. ER96–478–000]

Take notice that on November 30, 1995, Canal Electric Company (Canal) filed under § 205 of the Federal Power Act two supplements (a Capacity Acquisition Commitment and an Amendment to Participation Agreements) to existing Canal Rate Schedules FERC Nos. 21, 25 and 35, which specify the terms under which Canal may act as the wholesale purchaser for its retail affiliates Commonwealth Electric Company and Cambridge Electric Light Company and will purchase on their behalf capacity and/or energy from Hydro Quebec on an opportunity type basis.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

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8. Central Vermont Public Service Corporation

[Docket No. ER96–679–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Power Company, et al.

[Docket No. ER96–480–000]

Take notice that on November 30, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an agreement for the sale of capacity to East Kentucky Power Cooperative, Inc. The agreement establishes the terms and conditions of power supply, including provisions relating to service conditions, scheduling procedures, appointment of operating representatives, and other matters related to the administration of the agreement.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER96–481–000]

Take notice that on November 30, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement (the Agreement) between PP&L and Tenneco Energy Marketing Company, dated November 20, 1995.

The Agreement supplements a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of the date of execution, because service will be provided under an umbrella tariff and the service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements, for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to Tenneco Energy Marketing Company and to the Pennsylvania Public Utility Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER96–482–000]

Take notice that on November 30, 1995, Portland General Electric Company (PGE), tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 34.15 mills/kWh effective April 1, 1995. The Bonneville Power Administration determined the ASC rate for PGE to be 34.15 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER96–483–000]

Take notice that on November 30, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Citizens Lehman Power Sales. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (the APS Companies)

[Docket No. ER96–484–000]

Take notice that on November 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add National Fuel Resources, Inc., Northeast Utilities Service Company, and Virginia Electric and Power Company as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the proposed rate schedule is November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. East Texas Electric Cooperative, Inc.

[Docket No. ER96–485–000]

Take notice that on November 30, 1995, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing a proposed rate schedule change other than a rate increase. The proposed rate schedule change affects ETEC's competitive rate, Rate Schedule C–1. The proposed rate schedule change affects Rate Schedule C–1 which is available to ETEC's three member generation and transmission cooperative (G&T's) (Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.) for resale to the G&T's member distribution cooperatives that, in turn, are intending to attract or maintain large load retail customers. In order for a large load retail customers to qualify under ETEC's present Rate Schedule C–1, it must, inter alia: (1) Add a monthly load of not less than 2,500 kW, and (2) provide certain data to ETEC demonstrating its qualifications to take service under Rate Schedule C–1. The only affect of the proposed rate schedule change is to liberalize these qualifying requirements for potential retail customers.

Copies of the filing were served upon the public utility's customers, and the Public Utility Commission of Texas.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Connecticut Valley Electric Company, Inc.

[Docket No. ER96–486–000]

Take notice that on November 30, 1995, Connecticut Valley Electric Company, Inc. (Connecticut Valley) tendered for filing the determination of the 1995 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94–637–000 and designated at Rate Schedule FERC No. 12.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER96–487–000]

Take notice that on November 30, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Sonat Power Marketing Inc. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER96–495–000]

Take notice that on December 1, 1995, Florida Power & Light Company tendered for filing depreciation rates for use in its transmission tariffs, wholesale electric service tariffs, and 49 transmission and power sales contracts.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30579 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–4–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 8, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. EC96–4–000]

Take notice that PSI Energy, Inc., formerly named Public Service Company of Indiana, Inc., on December 5, 1995, filed an Application with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act for authorization to exchange certain transmission facilities with Hoosier Energy Rural Electric Cooperative, which, except for their ownership, would be subject to this Commission's jurisdiction.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Empresa de Generación Eléctrica de Lima S.A.

[Docket No. EG96–21–000]

On November 30, 1995, Empresa de Generación Eléctrica de Lima S.A., c/o Entergy Power Group, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly and exclusively in owning and operating electric generating units in Peru. The facilities consist of five hydroelectric facilities located at various remote sites, one oil-fired facility located on the outskirts of Lima, and 576 kilometers of associated transmission lines.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Vesta Energy Alternatives Company and ICPM, Inc.

[Docket No. ER94–1168–006, ER95–640–002, Not Consolidated]

Take notice that the following information filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 30, 1995, Vesta Energy Alternatives Company filed certain information as required by the Commission's July 6, 1994, order in Docket No. ER94–1168–000.

On November 30, 1995, ICPM, Inc. filed certain information as required by the Commission's March 31, 1995, order in Docket No. ER95–640–000.

4. The Washington Water Power Company

[Docket No. ER95–966–000]

Take notice that on November 29, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment to the above referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Utilities Company

[Docket No. ER95–1601–001]

Take notice that on November 13, 1995, Kentucky Utilities Company (KU) tendered for filing the rates and terms for transactions made pursuant to KU's Power Services Tariff and Service Agreement executed pursuant thereto with Electric Clearinghouse, Inc. filed with the Commission in Docket No. ER95–1601–001.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Company

[Docket No. ER95–1678–000]

Take notice that on November 13, 1995, New York State Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

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7. Texaco Natural Gas Inc.

[Docket No. ER95–1787–000]

Take notice that on November 29, 1995, Texaco Natural Gas Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER95–1847–000]

Take notice that on November 22, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER96–112–000]

Take notice that on November 17, 1995, Central Illinois Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Greenwich Energy Partners, L.P.

[Docket No. ER96–116–000]

Take notice that on November 16, 1995, Greenwich Energy Partners, L.P. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket Nos. ER96–136–000, ER96–137–000 and ER96–154–000]

Take notice that on November 13, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to the filings made on October 23 and October 26, 1995 in the above-referenced dockets. These dockets concern NYSEG power sales agreements with:

ER96–136–000: North American Energy Conservation, Inc.
ER96–137–000: National Fuel Resources, Inc.
ER96–154–000: Aquila Power Corp.

This filing corrects a typographical error in the rate ceiling applicable to buy-sell transactions to allow NYSEG to charge mutually agreeable rates up to a ceiling rate that includes a transmission component based on NYSEG's embedded cost of transmission. This filing will not change the requirement that NYSEG and the Purchaser reach mutual agreement as to the rates and terms of each Transaction in advance of each Transaction.

NYSEG requests that the agreement, and this filing become effective on the following dates:

Docket Nos. ER96–136 and ER96–137: October 24, 1995
Docket No. ER96–154: October 27, 1995

NYSEG has requested waiver of the notice requirements for good cause shown.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Enerserve, L.C.

[Docket No. ER96–182–000]

Take notice that on November 27, 1995, Enerserve, L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Vermont Electric Power Company, Inc.

[Docket No. ER96–194–000]

Take notice that on November 13, 1995, Vermont Electric Power Company, Inc. tendered for filing supplemental information to its October 31, 1995 filing in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PowerMark, L.L.C.

[Docket No. ER96–332–000]

Take notice that on December 6, 1995, PowerMark, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER96–333–000]

Take notice that on December 1, 1995, Portland General Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Westar Electric Marketing, Inc.

[Docket No. ER96–458–000]

Take notice that on November 29, 1995, Westar Electric Marketing, Inc. (Westar Electric), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Westar Electric requests an order accepting its rate schedule, effective as of the date of filing or at the earliest possible date, but not later than January 28, 1996.

Westar Electric intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Westar Electric sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Westar Electric is not currently in the business of generating, transmitting, or distributing electric power.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER96–459–000]

Take notice that on November 29, 1995, Western Resources, Inc. (Western Resources), tendered for filing a proposed flexible point-to-point transmission tariff and a proposed network integration transmission tariff. Western Resources proposes that these tariffs become effective upon filing or at the earliest possible date, but not later than January 28, 1996.

Copies of this filing were served upon all parties to Docket No. ER95–1515–000.

Comment date: December 22 1995, in accordance with Standard Paragraph E at the end of this notice.

18. The Washington Water Power Company

[Docket No. ER96–460–000]

Take notice that on November 29, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Southern Energy Marketing, Inc. Also submitted with this filing is a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER96–461–000]

Take notice that on November 29, 1995, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of energy and capacity to Tennessee Power Company (TPCO).

PSE&G requests the Commission to waive its notice requirements under

§ 35.3 of its Rules and to permit the Energy Sales Agreement to become effective as of November 30, 1995. Copies of the filing have been served upon TPCO.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER96–462–000]

Take notice that on November 29, 1995, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule with Roosevelt County Electric Cooperative, Inc. (Roosevelt).

The proposed amendment adds an additional delivery point for service to Roosevelt.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER96–463–000]

Take notice that on November 29, 1995, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of energy and capacity to Rainbow Energy Marketing Corporation (REMC).

PSE&G requests the Commission to waive its notice requirements under Section 35.3 of its Rules and permit the Energy Sales Agreement to become effective as of November 30, 1995. Copies of the filing have been served upon REMC.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corporation

[Docket No. ER96–464–000]

Take notice that on November 2, 1995, Florida Power Corporation filed three revised tariff sheets containing corrections to errors in the corresponding tariff sheets previously accepted by the Commission as part of the settlement in these dockets approved by the Commission on September 14, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER96–465–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Missouri Public Service, a division of Utilicorp United, Inc. (MPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MPS as a customer under the Tariff.

PECO states that copies of this filing have been supplied to MPS and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. PECO Energy Company

[Docket No. ER96–466–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Westplains Energy—Kansas, a division of Utilicorp United, Inc. (WPEK) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPEK as a customer under the Tariff.

PECO requests an effective date of November 20, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPEK and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER96–467–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Westplains Energy—Colorado, a division of Utilicorp United, Inc. (WPEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPEC as a customer under the Tariff.

PECO requests an effective date of November 20, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPEC and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Companyy (the APS Companies)

[Docket No. ER96–468–000]

Take notice that on November 29, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add Coastal Electric Services Company, Industrial Energy Application, Inc., and Koch Power Services, Inc. as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the proposed rate schedule is November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER96–470–000]

Take notice that on November 29, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 6 to add seven (7) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and energy service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing: Coastal Electric Services Company, Industrial Energy Applications, Inc., KCS Power Marketing, Inc., Koch Power Services, Inc., LG&E Power Marketing, Inc., National Fuel Resources, Inc., and Rainbow Energy Marketing Corporation. The APS Companies request a waiver of notice requirements to make service available as of November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

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28. The Montana Power Company

[Docket No. ER96–471–000]

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement Between Montana and Morgan Stanley Capital Group (Morgan Stanley).

A copy of the filing was served upon Morgan Stanley.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. The Montana Power Company

[Docket No. ER96–472–000]

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement Between Montana and Sonat Power Marketing Inc. (Sonat).

A copy of the filing was served upon Sonat.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER96–473–000]

Take notice that on November 30, 1995, New England Power Company (NEP), submitted for filing an amendment to a service agreement, dated August 25, 1967, between NEP and Green Mountain Power Corporation entered into under NEP's FERC Electric Tariff, Original Volume No. 1.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. New England Power Company

[Docket No. ER96–474–000]

Take notice that on November 30, 1995, New England Power Company (NEP) filed an Interconnection System Study Agreement between Green Mountain Power Corporation and NEP, under which NEP has agreed to conduct an interconnection study related to the interconnection of a 6 MW facility in Searsburg, Vermont with NEP's transmission system. NEP requests an effective date of sixty (60) days following the date of filing.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Northern States Power Company (Minnesota Company)

[Docket No. ER96–475–000]

Take notice that on November 30, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing Supplement No. 5 to the Transmission Services Agreement between NSP and the State of South Dakota (State), serving the South Dakota State Penitentiary. The Commission has assigned Rate Schedule No. 385 to previously filed agreements between NSP and the State.

Supplement No. 5 to the Transmission Services Agreement provides for an increase in the power allocation from the Western Area Power Administration (WAPA). NSP requests the Commission to waive its Part 35 notice requirements and accept the Supplement for filing effective December 1, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Morgan Stanley Capital Group, Inc.

[Docket No. ER96–476–000]

Take notice that on November 30, 1995, Morgan Stanley Capital Group Inc. (Morgan Stanley) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Morgan Stanley had completed all the steps for pool membership. Morgan Stanley requests that the Commission amend the WSPP Agreement to include it as a member.

Morgan Stanley requests an effective date of December 1, 1995, for the proposed amendment. Accordingly, Morgan Stanley requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon counsel for the WSPP and the WSPP Executive Committee.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

34. Public Service Company of Oklahoma

[Docket No. ER96–477–000]

Take notice that on November 30, 1995, Public Service Company of Oklahoma (PSO) hereby submits the Emergency Transmission Maintenance Agreement (Agreement) between PSO and the Oklahoma Municipal Power Authority (OMPA). Pursuant to the Agreement, PSO will provide emergency repairs or replacements of, and in certain circumstances operate, electrical equipment in substations in electric transmission lines owned by OMPA which are located in PSO's control area. PSO will provide the services reflected in the Agreement upon specific request from OMPA.

PSO requests an effective date of December 1, 1995 for the Agreement. Accordingly, PSO requests waiver of the Commission's notice requirements. Copies of this filing have been served upon OMPA and the Oklahoma Corporation Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30580 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5231–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 260–7153. Weekly receipt of Environmental Impact Statements Filed December 04, 1995 Through December 08, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950565, Draft EIS, FRC, WA, Cushman Hydroelectric Project (FERC No. 460), Relicensing, North Fork Skokomish River, Mason County, WA, Due: January 29, 1996, Contact: John Blair (202) 219–2845.

EIS No. 950566, Draft EIS, FHW, CA, Arden Garden Connector Project, Arden Way in North Sacramento to Garden Highway in South Natomas across the Natomas East Main Drainage Canal, Funding, Sacramento County, CA, Due: January 31, 1996, Contact: Dennis Scovill (916) 498–5034.

EIS No. 950567, Draft EIS, AFS, AR, Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker, Amendment No. 22 to the Ouachita National Forest Land and Resource Management Plan, Scott and Polk Counties, AR, Due: March 01, 1996, Contact: John Cleeves (501) 321–5251.

EIS No. 950568, Draft EIS, FAA, NY, LaGuardia Airport East End Roadway Improvements Project, Four New Ramps at the 102nd Street Bridge Construction, Airport Layout Plan Approval and Funding, Queens County, NY, Due: February 14, 1996, Contact: Philip Brito (516) 227–3800.

EIS No. 950569, Final EIS, USN, HI, Bellows Air Force Station Land Use and Development Plan, Implementation, Waimanalo, Honolulu County, HI, Due: January 16, 1996, Contact: Gary Kasaoka (808) 474–4890.

EIS No. 950570, Draft EIS, AFS, CA, Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA, Due: January 29, 1996, Contact: Susan Frankel (415) 705-2651.

EIS No. 950571, Draft Supplement, COE, AK, Chignik Small Boat Harbor Development and Construction, Updated Information concerning Alternatives, Anchorage Bay, Alaska Peninsula, AK, Due: February 02, 1996, Contact: Guy R. McConnell (907) 753–2640.

EIS No. 950572, Final EIS, BLM, CA, NV, Alturas 345 Kilovolt (KV) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Due: January 16, 1996, Contact: Peter Humm (916) 257–0456.

EIS No. 950573, Draft EIS, BLM, NV, Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV, Due: February 16, 1996, Contact: Gerald Moritz (702) 623–1500.

EIS No. 950574, Draft Supplement, FHW, UT, West Valley Highway/Norman H. Bangerter Highway Transportation Improvements, 9000 South to 12600 South, Additional Information concerning 9800 South at Bangerter Highway, Funding, Salt Lake County, UT, Due: January 30, 1996, Contact: Tom Allen (801) 963–0182.

EIS No. 950575, Final EIS, FHW, NC, US 1 Improvements, Secondary Road 1853 at Lakeview to Secondary Road 1180 south of Sanford, Funding and COE Section 404 Permit Issuance, Lee and Moore Counties, NC, Due: January 29, 1996, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950576, Draft EIS, SFW, CA, Programmatic EIS—Natural Community Conservation Plan/Habitat Conservation Plan, Implementation and Associated Incidental Take Permit Issuance, Central and Coastal Subregion, Orange County, CA, Due: January 29, 1996, Contact: Linda R. Dawes (714) 834–2252.

Amended Notices

EIS No. 950493, Draft EIS, USN, CA, Camp Pendleton Marine Corps Air Stations (MCAS) Tustin and EL Toro Marine Corps Base (MCB) Realignment, Implementation and COE Section 404 Permit, San County Diego, CA, Due: January 18, 1996, Contact: Harry Roberts (714) 726–3383. Published FR 11–03–95—Review period extended.

EIS No. 950500, Draft EIS, FHW, FL, Miami Intermodal Center (MIC) Construction, Bounded by FL–112 on the north, FL–836 on the south, Miami International Airport landside terminal NW 27th Avenue on the east, along FL–836 that extends West to NW 57th Avenue, Dade County, Due: December 18, 1995, Contact: J.R. Skinner (904) 942–9579. Published FR 11–03–95—Correction to EIS Title.

Dated: December 12, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–30604 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5346–5]

Montana Board of Oil and Gas Conservation; Underground Injection Control; Primacy Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has received an application from the Montana Board of Oil and Gas Conservation requesting primary responsibility for administration and enforcement of the Underground Injection Control (UIC) Program for Class II injection wells, that EPA has determined the application contains all the required elements, and that EPA is rescheduling the public hearing originally scheduled for November 14, 1995. Montana's application for primacy is available for inspection and copying at the addresses appearing below, and public comments are requested. The November 14 hearing was canceled due to budgetary circumstances that resulted in a temporary shutdown of EPA.

Section 1422 (b) (4) of the Safe Drinking Water Act (SDWA) requires that prior to approving, disapproving, or approving in part, a State's UIC program, the Administrator provide opportunity for a public hearing. This notification advises the public of the date, time and location of this required public hearing.

The public comment period and public hearing is intended to help provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part the application from the Montana Board of Oil and Gas Conservation to regulate Class II injection wells under provisions of Section 1425 of the SDWA.

DATES: Requests to present oral testimony must be received by Wednesday, January 10, 1996; the public hearing will be held on Thursday, January 18, 1996, at 7:00 p.m. (MST). The hearing will be held in the Galletin meeting room in the Holiday Inn, 5500 Midland Road, Billings, Montana. All written comments must be received by Friday, January 26, 1996.

ADDRESSES: Written comments and requests to testify should be mailed to Dan Jackson, Ground Water Unit (8P2–W-GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the application and related materials are available between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Ground Water Unit, 4th Floor Terrace, 999 18th Street, Denver, CO 80202–2466, PHN: (303) 312–6125

Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102, PHN: (406) 656–0040

Environmental Protection Agency, Region VIII, Montana Operations Office, Federal Office Building, 301 South Park, Helena MT 59626–0026, PHN: (406) 449–5486

FOR FURTHER INFORMATION CONTACT: Paul S. Osborne, Ground Water Unit (8P2–W-GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500,

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Denver, CO 80202–2466, (303) 312–6125.

SUPPLEMENTARY INFORMATION: The UIC program was implemented under the federal, Safe Drinking Water Act to prevent contamination of all underground sources of drinking water (USDW), which are aquifers capable of yielding a significant amount of water containing less than 10,000 mg/liter of total dissolved solids. If the application by the Montana Board of Oil and Gas Conservation is approved, the State would be responsible for preventing endangerment of USDWs by the following activities: (1) Disposal (via injection wells) of fluids produced in conjunction with primary oil and gas development and production, including gas plant waste; (2) injection for the purpose of storing liquid hydrocarbons; and (3) injection of fluids for the purpose of enhanced recovery of oil and gas. The program proposed by the State will regulate Class II injection activities by establishing state permits which will include technical requirements for the protection of USDWs. Such requirements include criteria for construction, testing, operation, monitoring and abandonment of injection wells.

At present, there are approximately 1,232 Class II injection wells in Montana. The USEPA has held primary administrative and enforcement authority for the UIC program in Montana since the program was implemented in 1984. The application from the Montana Board of Oil and Gas Conservation requests that EPA delegate to the State primary authority for the regulation of all Class II injection wells on all lands subject to the State's police power and taxing authority and all lands owned or under the jurisdiction of the United States, except those wells located within the exterior boundaries of an Indian Reservation pursuant to 40 CFR Section 144.3. The application includes program description, copies of all applicable rules and forms, a quality assurance plan, a statement of legal authority and appropriate memoranda of agreement.

Dated: December 7, 1995.

Stephen Tuber,

Acting Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance Region VIII, US Environmental Protection Agency.

[FR Doc. 95–30556 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operation, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: January 8, 9, 10, 1996 (Monday through Wednesday).

ADDRESSES: University of California at Berkeley, Lawrence Hall of Science (LHS), Auditorium, 2951 Centennial Drive (¼ mile west of Grizzly Park Blvd.), Berkeley, California 94720.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes at 202–622–1582, Operational Requirements Subcommittee: Paul H. Wieck at 515–281–5261, Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617, Technology Subcommittee: Alfred Mello at 401–738–2220, Transition Subcommittee: Ronnie Rand at 904–322–2500 or 800–949–2726 ext. 600.

For more information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: The five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Monday through Wednesday, January 8, 9, 10, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

January 8, 1995: The *Technology* and *Transition* Subcommittee will meet consecutively starting at 9:00 a.m.

January 9, 1995: The *Interoperability* and *Spectrum Requirements* Subcommittee will meet consecutively starting at 9:00 a.m.

January 10, 1995: The *Operational Requirements* Subcommittee will meet starting at 9:00 a.m.

The agenda for each meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The tentative schedule and general location of future meetings of the Subcommittees of the Public Safety Wireless Advisory Committee are as follows:

February 28, 29, March 1 in Orlando, Florida
April, 1996 in San Diego, CA
May, 1996 at Scott AFB, Illinois (near St Louis, MO)
June, 1996 in Washington, D.C.

The tentative schedule and general location of the next full meetings of the Public Safety Wireless Advisory Committee are:

December 15, 1995, (reference Public Notice No. WT 95–32) in Washington, D.C.; June 1996, in Washington, D.C.

The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designed WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–20551 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program; Rebating Agents' Commissions

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Notice.

SUMMARY: The Federal Insurance Administration (FIA) gives notice that it has rescinded Policy Issuance 5–95, Rebating Agents' Commissions, issued on October 4, 1995, and requests public comments on rebating of insurance agents' commissions to consumers under the National Flood Insurance Program (NFIP).

DATES: We invite your comments which should be submitted within March 14, 1996.

ADDRESSES: Please submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Chief, Claims and Underwriting Division, the Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: Where the practice is permitted by State law, licensed insurance agents may rebate a portion of the commission they earn for the sale of a given policy to the insured. This practice typically is used as a sales incentive and marketing tool. While the practice is prohibited in most States, a few States permit the practice. With more insurance producers and agents beginning to sell flood insurance policies, FIA wants the comments of as large a number of interested parties as possible in order to set policy on this issue.

During the past year, FIA received a number of inquiries from producers and Write Your Own (WYO) Companies concerning the rebating of insurance agents' commissions on NFIP policies. FIA consulted with the following three committees that advise the FIA on insurance-related issues: the Flood Insurance Producers National Committee; the Insurance Institute for Property Loss Reduction Flood Insurance Committee; and the Write Your Own Marketing Committee. The Insurance Institute for Property Loss Reduction Flood Insurance Committee did not comment as a committee, but two member companies on that committee responded as individual companies.

On October 4, 1995, FIA issued National Flood Insurance Program (NFIP) Policy Issuance 5–95 which prohibited, under the NFIP, the practice of agents' rebating commissions to consumers. We now rescind Policy Issuance 5–95. Since October 4 interested parties from within and outside the insurance industry have expressed divergent views on how FIA should treat the issue of rebating agents' commissions. In light of the diversity of opinion on this issue, FIA has decided to increase the circle of its advisers and to solicit comments and recommendations from a wider audience than before on the most appropriate policy on the rebating issue.[1]

Dated: December 12, 1995.

Elaine A. McReynolds,

Federal Insurance Administrator.

[FR Doc. 95–30612 Filed 12–14–95; 8:45 am]

BILLING CODE 6718–03–P

[1] Not published in the Federal Register.

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–095.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Hapag-Lloyd Aktiengesellschaft, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nedlloyd Lijnen B.V., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-land Service, Inc.

Synopsis: The proposed amendment modifies Article 8.5—Voting and Quorum Requirements to provide that service contracts entered into on or after January 5, 1996, may be amended by majority vote, rather than by unanimous less one vote as currently required for service contract amendments.

Agreement No.: 232–011321–003.

Title: Maersk/Sea-Land Pacific Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment expands the foreign geographic scope of the Agreement to include all of Asia, excluding Asia Mediterranean ports. It also increases the maximum number of line-haul vessels, and revises Articles 9.2 and 9.3 respectively—Duration and Termination by (1) redefining the "initial period" of the Agreement to a time which will expire four years after the effective date of this amendment and (2) increases the notice period required for withdrawal from 9 months to 12 months.

Agreement No.: 224–200133–004.

Title: Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement.

Parties: Port Authority of New York & New Jersey, Sea-Land Service, Inc. ("Sea-Land").

Synopsis: The proposed amendment provides for the incorporation of a sub-surface environmental baseline at Sea-land's Elizabeth, New Jersey Container Terminal.

Agreement No.: 224–200963.

Title: Alabama State Docks Department/Middle Gulf Stevedoring, Inc. Terminal Agreement.

Parties: Alabama State Docks Department ("Port"), Middle gulf Stevedoring, Inc. ("Middle Gulf").

Synopsis: The proposed Agreement permits Middle Gulf to provide freight handling services at the Port.

Dated: December 12, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30582 Filed 12–14–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Change in Marriage and Divorce Data Available From the National Center for Health Statistics

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: Beginning January 1, 1996, the availability of marriage and divorce data collected by the National Center for Health Statistics (NCHS), CDC, will change. NCHS will continue to collect marital status in all of its population surveys, will continue to obtain detailed information on out-of-wedlock births, and will work with States to obtain summary counts of marriages and divorces. However, detailed data from

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States participating in the marriage and divorce components of the Vital Statistics Cooperative Program (VSCP) will no longer be obtained. This change is being made to prioritize programs in a period of tightened resource constraints.

DATES: Written comments regarding these changes in the collection of marriage and divorce data must be received on or before January 15, 1996.

ADDRESSES: Written comments can be sent to the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics, Attention: FR Response, Division of Vital Statistics, Room 840, 6525 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Mary Anne Freedman, Director, Division of Vital Statistics, NCHS, CDC, telephone (301) 436–8951, ext. 112.

SUPPLEMENTARY INFORMATION: Viewed at either the individual level or the population level, marital status is a key variable in health, demographic, and policy research. As a result, data on current marital status and on change in marital status have been collected through a variety of Federal surveys and data systems. Among these systems are health surveys conducted by NCHS, the Current Population Survey conducted by the U.S. Bureau of the Census, and the records-based vital registration system conducted as a cooperative venture (the VSCP) between NCHS and the States. Within the VSCP, current marital status data are collected from birth certificates in the birth registration system, resulting, for example, in data on out-of-wedlock births. Marital status is also collected from death certificates in the death registration system. Data on change in marital status are obtained from marriage and divorce certificates.

NCHS plans to discontinue payments to the States and other vital registration areas for the collection of detailed data from marriage and divorce certificates, but will continue to request counts of marriages performed and divorces granted from all vital registration areas of the U.S. All other NCHS efforts to collect marital status information, including marital status for mothers on birth certificates, will continue.

NCHS data systems are continually being reviewed in light of resource constraints to assure that efforts are focused on the highest priority data needs. At a time when policy issues related to families are of great interest, NCHS has exercised caution to assure that data systems will be available to support monitoring and research interests in key priority areas. Over the last year, NCHS has systematically reviewed the availability and uses of detailed data on marriages and divorces. This review has led to the conclusion that the data most needed for setting policy (e.g., information on family formation, out-of-wedlock births, children living in single parent families) can be obtained through other sources, such as the birth registration system, other NCHS surveys, and the Current Population Survey.

The discontinuation of collection of detailed data from marriage and divorce certificates will result in a loss of data to researchers who currently rely on this data source for information on annual changes in the collective marriage and divorce behavior of the population, including trends and differentials in the propensity to marry, to divorce, and to remarry after divorce or widowhood. However, much of this information is available on a five year cycle from the June Marital History Supplement of the Current Population Survey.

Long-standing concerns about the completeness and quality of detailed marriage and divorce data from the VSCP were an important consideration in reaching the conclusion to discontinue payments to the States. Although the United States Government has collected marriage and divorce data through various methods since 1867, it was not until 1957 that a formal Registration Area was created for reporting detailed marriage data to NCHS; a similar Registration Area was created for divorces in 1958. These Registration Areas include States with adequate programs for collecting marriage and divorce statistics and which meet specific registration and reporting criteria for participation. More recently, NCHS has included marriage and divorce statistics in the VSCP, a contractual arrangement by which NCHS provides support to the State vital statistics programs and through which NCHS receives vital statistics data for analysis and dissemination at the national level.

Working with State vital registration offices and with various users of marriage and divorce data, NCHS has established standard certificates of marriage and divorce. These certificates contain selected data items about marriages and divorces, and certain of these items are required for admission to the registration areas. Due to variation in State laws on registration of marriage and divorce, not all States obtain these basic required items, and not all States have central registration facilities for marriages or divorces or both. At present, 41 States, the District of Columbia, Puerto Rico, and the Virgin Islands participate in the Marriage Registration Area and 31 States, the District of Columbia, and the Virgin Islands participate in the Divorce Registration Area. Detailed data are currently obtained from relatively small systematic samples of marriage and divorce records for these Areas. Although this system has been in place for many years, it has never been completed. Detailed data represent approximately 77 percent of marriages in the nation and 49 percent of divorces. For this reason, in addition to the detailed data, NCHS obtains counts of the number of marriages performed and the number of divorces granted from all States, the District of Columbia, Puerto Rico, and the Virgin Islands.

Fiscal constraints on State vital statistics programs have put stress on state-level quality assurance programs. As a result, in addition to the problem of coverage completeness, the quality of detailed marriage and divorce data has deteriorated. This deterioration is reflected mostly by the fact that, in some States, the response rates for certain key variables have fallen well below the minimum level acceptable to NCHS.

These coverage and quality concerns, the lack of identified resources to upgrade the system, and the availability of marital status data for high-priority needs from other sources have led NCHS, in consultation with data users, to conclude that resources currently devoted to the marriage and divorce component of the VSCP should be redirected to other priority uses.

Dated: December 8, 1995.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–30566 Filed 12–14–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95M–0396]

Datascope Corp.; Premarket Approval of the VasoSeal Vascular Hemostasis Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Datascope Corp., Montvale, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VasoSeal Vascular Hemostasis Device (VHD). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christopher M. Sloan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On February 3, 1992, Datascope Corp., Montvale, NJ 07645, submitted to CDRH an application for premarket approval of the VasoSeal Vascular Hemostasis Device. The device is a vascular hemostasis device and is indicated for use in reducing time to hemostasis at the femoral arterial puncture site in patients who have undergone diagnostic angiography or percutaneous transluminal coronary angioplasty (PTCA) procedures using an 8 French or smaller procedural sheath. The VasoSeal VHD is also indicated for use in PTCA patients when immediate sheath removal is desired.

On May 8, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30610 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0396]

Karl Storz Endoscopy-America, Inc.; Premarket Approval of Storz Modulith Lithotripter, Model SL20

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Karl Storz Endoscopy-America, Inc., Kennesaw, GA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Storz Modulith Lithotripter, Model SL20. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 17, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On November 24, 1993, Karl Storz Endoscopy-America, Inc., Kennesaw, GA 30144, submitted to CDRH an application for premarket approval of the Storz Modulith Lithotripter, Model SL20. The device is an extracorporeal shock wave lithotripter and is indicated for use in the noninvasive fragmentation of urinary calculi in the kidney and upper ureter.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On February 17, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's

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action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30611 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–082–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act

October 1995.

AGENCY: Health Care Financing Administration (HCFA, HHS).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of October 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of October 1995

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of October.

2. Pending Proposals

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency, P.O. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Georgia Behavioral Health Plan—Georgia.

Description: Georgia proposes to provide behavioral health services under a managed care system through a

section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who are not otherwise eligible for Medicaid.

Date Received: September 1, 1995.

State Contact: Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street, NW, Suite 27–100, Atlanta, GA 30303–3159, (404) 657–2012.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, IL 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and, Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low- income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses.

Date Received: March 17, 1995.

State Contact: Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: State of Texas Access Reform (STAR)—Texas.

Description: Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

Date Received: September 6, 1995.

State Contact: Cathy Rossberg, State Medicaid Office, P.O. Box 13247, Austin, TX 78711, (512) 502–3224.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level

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(subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact: Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending).

No conceptual proposals were approved during the month of October.

4. Approved Grant Proposals (Award of Waivers Pending).

No grant proposals were awarded during the month of October.

5. Approved Proposals.

The following comprehensive health reform proposals were approved during the month of October.

Demonstration Title/State: Kentucky Partnership Plan—Kentucky.

Description: The State was awarded a demonstration to implement the "Kentucky Partnership Plan," an amendment to its original proposal. Under the demonstration, the State will be divided into eight managed care regions incorporating both public and private providers into a single managed care network which will offer the standard State Medicaid benefit package to all non-institutionalized Medicaid beneficiaries. Mental health and long-term care services will continue to be offered through the fee-for-service system.

Date Received: June 19, 1995.

Date Approved: October 6, 1995.

State Contact: Larry A. McCarthy, Commonwealth of Kentucky, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621, (502) 564–8196.

Federal Contact: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma will implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

Date Approved: October 12, 1995.

State Contact: Leigh Brown, Oklahoma Health Care Authority, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3269.

Federal Project Officer: Patricia Selinger, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

6. Disapproved Proposals

No comprehensive health reform proposals were disapproved during the month of October.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of October.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following proposal was received during the month of October:

Demonstration/Title: Medicaid Family Planning Services for Women of Childbearing Age—Arkansas.

Description: Arkansas seeks to extend Medicaid eligibility for family planning services only to postpartum women under 133 percent of the Federal poverty level who would have lost benefits 60 days after delivery. The demonstration will streamline the application process for these women and make income requirements less stringent. Women will be eligible for family planning benefits for 5 years or the length of the demonstration.

Date Received: October 2, 1995.

State Contact: David Rickard, Arkansas Department of Human Services, 329 Donaghey Building, P.O. Box 1437, Little Rock, AK 72203–1437, (501) 682–8650.

Federal Contact: Rosemarie Hakim, Ph.D, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact: Dann Milne, Director, Department of Health Care Policy, and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer: Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration/Title: Integrated Care and Financing Project Demonstration—Colorado.

Description: Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

Date Received: September 28, 1995.

State Contact: Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Contact: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled "Georgia Children's Benefit Plan" to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing, Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995.

State Contact: Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of October.

4. Approved Proposals

The following proposal was approved during the month of October.

Demonstration Title/State: Demonstration of Integrated Care Management Systems for High-Cost/High-Risk Medicaid Beneficiaries—Maryland.

Description: Maryland is testing a new case management delivery system for high-cost/high-risk Medicaid beneficiaries and those at risk to become high-cost. The program seeks to maintain or improve access to providers and the quality of the care provided. The demonstration also should lower health care costs by reducing hospital readmission rates and by maintaining patients in the lowest-cost medically appropriate setting. The University of Maryland Baltimore County Center for Health Program Development and Management, under contract to the State, is responsible for the demonstration's operations.

Date Received: July 8, 1994.

Date Approved: October 6, 1995.

State Contact: Martin P. Wasserman, M.D., J.D., Department of Health and Mental Hygiene, State of Maryland, 201 West Preston Street, Baltimore, MD 21201, (410) 225–6500.

Federal Project Officer: William D. Clark, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

5. Disapproved Proposals

No proposals were disapproved during the month of October.

6. Withdrawn Proposals

No proposals were withdrawn during the month of October.

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IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: December 8, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30559 Filed 12–14–95; 8:45 am]

BILLING CODE 4120–01–P

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Harry L. June, Ph.D., Indiana University-Purdue University at Indianapolis: On November 21, 1995, ORI found that Harry L. June, Ph.D., Indiana University-Purdue University (IUPUI) at Indianapolis, committed scientific misconduct by falsifying three letters of recommendation submitted with and in support of a FIRST Award application to the Public Health Service (PHS).

Dr. June has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning November 21, 1995, from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

In addition, Dr. June has voluntarily agreed to accept the administrative sanctions imposed by IUPUI, which include requirements that Dr. June:

(1) Take a course in research ethics;

(2) Be supervised by a senior faculty member for not less than three years; and

(3) Submit all grant applications to his supervisor for review for at least one month prior to the agency deadline and to the Dean's office at least two weeks prior to the agency deadline.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–30602 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–17–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under OMB Review

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–0525.

Evaluation of High Risk Youth Substance Abuse Prevention Initiatives—New—The Center for Substance Abuse Prevention (CSAP) will conduct a cross-site evaluation of approximately 50 demonstration projects targeting high risk youth to assess the effectiveness of the demonstration program in: (1)preventing and/or reducing substance abuse among at-risk youth; and (2) intervention strategies for reducing selected risk factors and enhancing protective factors. Youth participating in the programs and comparison group youth will complete self-administered questionnaires at four points in time, including baseline, program exit, and 6 months and 18 months following program exit. The annual burden estimate is shown below:

	Number of Respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Youth	12,000	1	0.433 hrs	5,205 hrs

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: December 11, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–30565 Filed 12–14–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–66]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding utilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available, or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of Transportation: Ronald Keefer, Director of Administrative services and Property Management, 400 7th Street, SW, Room 10319, Washington, DC 20590; (202) 366–4246; General Services Administration: Brian K. Polly, Assistant Commissioner, Office of Property Disposal, 18th and F streets, NW, Washington, DC 20585; (202) 501–0052; (These are not toll-free numbers).

Dated: December 8, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/15/95

Suitable/Available Properties

Buildings (by State)

New Mexico

Magdalena Dormitory
Poplar and 8th Streets
Magdalena Co: Socorro NM 87825–
Landholding Agency: GSA
Property Number: 549540006
Status: Excess
Comment: 14 bldgs. consisting of dormitory/dining & storage facilities, apartments & garages, vacant for 8 years, needs rehab, potential utilities
GSA Number: 7–I–NM–0543

Ohio

Natl. Weather Met. Observatory
Huber Heights Co: Montgomery OH
Landholding Agency: GSA
Property Number: 549540005
Status: Excess
Comment: 1100 sq. ft., 1 story, most recent use—office/admin.
GSA Number: 2–C–OH–796

Washington

Hanford Site, 3000 Area
1st Street
Richland Co: Benton WA 99352–
Location: ¼ mile east of Stevens Drive
Landholding Agency: GSA
Property Number: 549540007
Status: Excess
Comment: 16 bldgs. on 70 acres, buildings are concrete block/asbestos siding/wood frame, used for offices/storage, 122,931 sq. ft. total site, pres. of asbestos, Bldg. 1154 on Natl. Register
GSA Number: 10–B–WA–523–B

Land (by State)

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats

Washington

Second Stadium Home Site
1701 Martin Luther King Blvd.
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549540008
Status: Excess
Comment: 1.5061 acres of unimproved land, most recent use—temporary storage for construction equipment
GSA Number: 9–GRI–WA–543

[FR Doc. 95–30426 Filed 12–14–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–056–06–1610–00]

Availability of an Environmental Assessment and Proposed Arcata Resource Management Plan Amendment for the Mattole Estuary and Inclusion of Additional Lands into the Existing Mattole ACEC

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that an environmental assessment (EA) written by the Bureau of Land Management (BLM) is available for public comment. The Environmental Assessment proposes to amend the existing Arcata Resource Management Plan (RMP) to do the following: (a) Change the designation of lands acquired in 1994 on the north side of the Mattole River, plus any lands which may be acquired by the BLM in the future that are contiguous to or in the general vicinity of the Mattole Estuary from Scattered Tracts Management Area to the King Range Vicinity Management Area; (b) include the aforesaid lands into the existing Mattole Beach Area of Critical Environmental Concern (ACEC);

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and (c) withdraw the lands from all forms of mineral entry.

DATES: Public comments must be submitted by February 13, 1996.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, Bureau of Land Management, Arcata Resource Area, 1695 Heindon Road, Arcata, CA 95521–4573. Telephone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The EA was prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5) to amend the Arcata Resource Area Management Plan.

The issues and concerns addressed in the EA focus on changing the status of lands north of the Mattole River Estuary as outlined in the above summary.

The King Range Vicinity Management Area contains a more suitable management prescription for public lands contiguous to and in the general vicinity of the King Range National Conservation Area (KRNCA) than does the Scattered Tracts Management Area.

Inclusion of these lands into the Mattole ACEC and withdrawal from all forms of mineral entry would protect the resource values of the lands consistent with the existing ACEC lying within the boundaries of the KRNCA, which was withdrawn from mineral entry by Act of Congress, October 21, 1970 (Pub. L. 91–475).

The EA is available to the public for review. Availability has also been published in local and county newspapers. There will be a 60-day comment period beginning with publication of this notice. Public comments must be in writing and mailed to the above address.

Following the 60-day comment period, action will be taken by the California State Director to approve or disapprove the proposed addition to the ACEC and make a recommendation to withdraw the lands from all forms of mineral entry. Approval of the proposed Arcata RMP amendment by the California State Director will constitute formal designation of the ACEC.

Lynda J. Roush,

Arcata Area Manager.

[FR Doc. 95–29647 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–40–P

[NV–930–1430–01; N–80033]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of Pub. L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,
Sec. 14, S½SE¼,
Sec. 23, NE¼NE¼, NW¼NE¼, N½NW¼, SW¼NW¼, SE¼NW¼,
Sec. 24, SW¼SW¼SW¼SW¼.

Containing 282.5 acres, more or less.

This parcel of land is being offered as a non-competitive sale to Las Vegas Motor Speedway, Inc. which proposes to use the land for parking, storage, and related uses for and in conjunction with a motor speedway to be built on privately owned property. The land is not required for any federal purpose. The non-competitive sale is consistent with current Bureau planning for this area and would be in the public interest.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil, gas, sodium, potassium, and saleable minerals in the land so patented, and to it, its permittees, licensees, and lessees the right to prospect for mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement for roads, public utilities, and flood control purposes in accordance with the transportation plan for Clark County.

2. Those rights for a roadway which have been granted to Nevada Department of Transportation by no. Nev-057852 under the Act of August 27, 1958 [72 Stat. 916; 23 U.S.C. 317(A)].

3. Those rights for a power transmission line which have been granted to Nevada Power Company by grant no. N–53399 under the Act of December 21, 1928 (45 Stat. 1057; 43 USC 617D).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral material disposal laws. This segregation will terminate upon issuance of a patent of 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579 or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: December 17, 1995.

Mason K. Hall,

Acting District Manager, Las Vegas, NV.

[FR Doc. 95–30540 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; N–59007]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal insofar as it affects 317.50 acres of public land requested by the Department of the Army, Corps of Engineers for flood control facilities in Clark County, Nevada. This action will open the 317.50 acres to surface entry and mining, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 59 FR 60998, November 29, 1994, which temporarily segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Corps of Engineers has determined that certain lands will not be needed in connection with the flood control facilities and has cancelled its application for those lands. The lands are described as follows:

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Sec. 8, E½W½SW¼NW¼ and E½W½NW¼SW¼;
Sec. 17, N½SE¼SW¼NE¼, NE¼SE¼NE¼, W½SW¼NE¼SW¼, NE¼SW¼NE¼SW¼, NW¼NE¼SW¼, E½SE¼NW¼SW¼, and W½NW¼SW¼;
Sec. 18, S½NE¼SE¼, SW¼NW¼SE¼, W½SE¼NW¼SE¼, E½NW¼NW¼SE¼, E½NE¼NE¼SW¼, E½NE¼NW¼, E½SE¼NW¼, E½W½NE¼NW¼, E½W½SE¼NW¼, W½NE¼, W½SE¼NE¼, W½NE¼NE¼, W½SE¼NE¼NE¼, and W½E½SE¼NE¼.

The lands described aggregate 317.50 acres in Clark County.

At 9 a.m. on January 16, 1996 the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 16, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on January 16, 1996 the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 1, 1995

William K. Stowers

Lands Team Lead.

[FR Doc. 95–30539 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Endangered and Threatened Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that Region 1 of the U.S. Fish and Wildlife Service has issued the following permits, between April 1, 1995 and September 30, 1995, for incidental take of threatened or endangered species from applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (Act). Each permit listed as issued was granted only after it was determined to be applied for in good faith, and that it was consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Fieldstone/La Costa Associates and City of Carlsbad	795759	6/7/95
City of Waterford, CA.	801047	6/9/95
Murray Pacific Corporation	777837	6/26/95
Clark County; Cities of Las Vegas North Las Vegas, Henderson, Boulder City, and Mesquite, NV.; Nevada Department of Transportation	801045	7/11/95
Estate of Edward V. Regli	803749	8/30/95
Nevada Division of State Parks	804120	9/1/95

FOR FURTHER INFORMATION CONTACT: Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6241). Please refer to the permit number listed above when requesting information.

Dated: December 8, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

[FR Doc. 95–30567 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement/Environmental Impact Report and Receipt of Applications for Incidental Take Permits Associated With a Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion, Orange County, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

SUMMARY: Orange County (lead applicant), the University of California at Irvine, the Transportation Corridor Agency, Metropolitan Water District, Santiago County Water District, Irvine Ranch Water District, The Irvine Company, Chandis-Sherman Companies, and Southern California Edison each have applied to the Fish and Wildlife Service (Service) for 75-year incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). In addition, the Service anticipates that the cities of Anaheim, Costa Mesa, Irvine, Laguna Beach, Laguna Niguel, Lake Forest, Newport Beach, Orange, and Tustin also will apply for individual permits. This notice advises the public that the application package for these related permits is available for public review. The package includes a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) for the Central and Coastal Subregion of Orange County, a draft Implementing Agreement (IA), and a draft joint programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

The proposed incidental take would occur due to habitat loss resulting from residential, commercial, and recreational developments with associated infrastructure. The proposed permits would authorize the incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) and endangered peregrine falcon (*Falco peregrinus*). Under special conditions, incidental take also would be authorized for the endangered Riverside fairy shrimp (*Streptocephalus woottoni*), southwestern arroyo toad (*Bufo microscaphus californicus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Pacific pocket mouse (*Perognathus longimembris pacificus*).

The permit applicants also request coverage of an additional 35 unlisted

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species (9 plant, 26 animal), including 3 proposed species that occur within the NCCP/HCP area. The NCCP/HCP proposes to conserve all 35 species according to standards required for listed species under the Act. Unlisted covered species would be named on the permits with delayed effective dates. Barring unforeseen circumstances, incidental take of the unlisted covered species would be authorized upon their listing under the Act. Concurrent with the proposed issuance of the Federal permits, the California Department of Fish and Game proposes to issue management authorizations for the 42 species under section 2081 of the California Endangered Species Act.

Although the NCCP has focused on coastal sage scrub (CSS) habitat, in keeping with the legislative intent of the California NCCP Act of 1991 to protect multiple habitat types, the applicants propose to protect 4 additional habitat types to the extent that no additional mitigation or compensation would be required of participating landowners should any species dependent on these habitats be listed during the 75-year permit. These habitat types are: oak woodlands, Tecate cypress forest, cliff and rock, and chaparral (coastal subarea only). Should any species dependent on these habitats be listed, the 10(a)(1)(B) permits would become effective as described above.

Federal approval of the NCCP/HCP is required as part of the special 4(d) rule for the coastal California gnatcatcher (58 FR 65088). Incidental take of the gnatcatcher is allowed under section 4(d) of the Act if take results from activities conducted pursuant to the NCCP Act, NCCP Process Guidelines, and NCCP Southern California Coastal Sage Scrub Conservation Guidelines.

An EIS/EIR has been prepared in order for the Service to comply with the National Environmental Policy Act (NEPA) and for the County and cities to comply with the California Environmental Quality Act (CEQA). The EIS/EIR evaluates the effects on the human environment of the proposed action: issuance of incidental take permits and management authorizations, and approval of the NCCP/HCP and IA. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Comments are requested on the NCCP/HCP, IA, and EIS/EIR. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the permit application and EIS/EIR should be received on or before January 29, 1996.

ADDRESSES: Comments should be addressed to Mr. Gail C. Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008; facsimile 619–431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Linda R. Dawes, Ph.D., Fish and Wildlife Biologist, at the above address (619–431–9440), or Mr. Tim Neely, Planning and Zoning Administrator, Orange County Environmental Management Agency (714–834–2252).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application and EIS/EIR for review should immediately call Dr. Dawes or Mr. Neely at the above telephone numbers. These documents will be available for public inspection at local libraries and at the above offices, by appointment, during normal business hours. Please call Mr. Neely for a list of libraries housing the documents.

Background

The "take" of threatened and endangered species is prohibited under section 9 of the Act and its implementing regulations. Take is defined, in part, as killing, harming, or harassing listed species, including significant habitat modification that results in death of or injury to listed species. Under limited circumstances, the Service may issue permits to take listed species if such taking is incidental to otherwise lawful activities. Regulations governing permits are found at Title 50 Code of Federal Regulations 17.22 and 17.32.

The NCCP/HCP subregional planning area covers 208,000 acres, with 104,000 acres remaining as natural lands which are subject to intense development pressure. Exclusive of the Cleveland National Forest, the subregion contains 30,833 acres of CSS supporting approximately 600 pairs of California gnatcatchers. The NCCP/HCP proposes the conversion of 7,395 acres (24%) of CSS habitat which could result in incidental take of approximately 109 pairs of California gnatcatchers by participating landowners. This level of take is considered fully mitigated by the NCCP/HCP. Twenty additional pairs of gnatcatchers potentially may be taken by non-participating landowners. These landowners would have the option of paying a mitigation fee, or undertaking an individual HCP or Section 7 consultation under the Act.

As mitigation for the proposed incidental take, the applicants propose the establishment of a 38,738-acre reserve, including 12 of 13 major vegetative communities present within the subregion. The reserve would contain more than 18,800 acres of CSS, 7,300 acres of chaparral, 6,100 acres of grasslands, 1,800 acres of riparian habitat, 950 acres of woodland, and 200 acres of forest. The NCCP/HCP contains a comprehensive management plan including, but not limited to, fire management, grazing management, management of recreation and public access, and habitat restoration. The foregoing actions would be funded through the creation by participating landowners of an endowment in excess of $10.6 million, and by mitigation fees contributed by non-participating landowners who elect to use this option rather than pursue an individual HCP. Additionally, to supplement the reserve, 3,990 acres would be designated as either special linkage or existing use areas and 3,960 acres would remain as public open space. The application also proposes planning guidelines for the North Ranch area which are protective of the reserve and subregional biodiversity.

Incidental take of other listed species which potentially occur within the subregion would be subject to conditions specific for each species. In general, minor occurrences would be mitigated by habitat enhancement or restoration within the reserve. Occurrences which represent significant conservation value would be handled on a case-by-case basis. No take would be authorized in the North Ranch policy plan area. Specific provisions for the pocket mouse include the creation of a temporary 22-acre reserve on the Dana Point headlands and $700,000 to study alternative conservation measures.

In compliance with NEPA, the EIS/EIR examines the environmental impacts of issuing the proposed incidental take permit and the effects of implementing the proposed habitat conservation plan and alternative conservation plans. Although dozens of alternative conservation configurations and mechanisms were considered, the EIS/EIR analyzes 4 alternatives in detail, including the proposed action.

All individuals and agencies are urged to comment on the EIS/EIR, NCCP/HCP, and IA. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: December 6, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

[FR Doc. 95–30350 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and principal office is: ARR–MAZ PRODUCTS, L.P., 621 Snively Avenue, Winter Haven, FL 33880, 941–293–7884.

2. The wholly owned subsidiary which will participate in the operation is: AMP Trucking, Inc., 1001 American Superior Blvd., Winter Haven, FL 33880, 941–293–7884.

States of Incorporation are: Delaware, Florida, Louisiana, North Carolina.

Vernon A. Williams,

Secretary.

FR Doc. 95–30560 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32814]

Gateway Western Railway Company; Trackage Rights Exemption; The Atchison, Topeka and Santa Fe Railway Company

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant limited local trackage rights to Gateway Western Railway Company (GWWR) over approximately 8.3 miles of rail line from milepost 1.7 at Santa Fe Junction in Kansas City, MO, to milepost 10.0 at Morris, KS.[1]

GWWR contends that the trackage rights will allow it access to two shippers on ATSF's line in Kansas City, KS. Accordingly, those two shippers will obtain additional rail service options and GWWR will have new potential sources of traffic. The trackage rights were to become effective on December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission[2] and served on: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30561 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–P

[1] On December 1, 1995, GWWR filed a corrected statement with regard to the milepost markers and the approximate total mileage involved in this transaction. This notice includes the updated figures.

[2] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–30]

Harold R. Schwartz, M.D.; Denial of Application

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harold R. Schwartz, M.D., (Respondent) of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) In February 1992, a DEA audit of a Houston area pharmacy, and a subsequent review of prescription records, revealed that in 1991 and early 1992, the Respondent routinely prescribed combinations of Tylenol with codeine, Valium, and Phenergan with codeine, to numerous individuals when he knew or should have known that the combination of these drugs was highly abused on the streets.

(2) On March 24, April 7, and April 21, 1992, the Respondent prescribed 24 Tylenol No. 4 and 18 Valium 10 mg. to an undercover officer for no legitimate medical reason.

(3) Following the execution of a Federal search warrant at the Respondent's office of July 7, 1992, the Respondent voluntarily surrendered his DEA Certificate of Registration, AS0873198, as well as his State of Texas Controlled Substances Registration Certificate. However, on February 1, 1993, his Texas Controlled Substances Registration Certificate was reinstated.

On March 31, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Houston, Texas, on November 9, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On March 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's application be denied. Neither party filed exceptions to her decision, and on April 5, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact of law.

The Deputy Administrator finds that on January 19, 1993, the Respondent Prepared an Application for Registration under the Controlled Substances Act of 1970 as a practitioner for handling controlled substances in Schedules II through V. The Respondent has practiced medicine in Houston, Texas, since 1951. At the hearing before Judge Bittner, the Respondent testified that he maintained a solo practice in internal medicine consisting mostly of poor patients, some of whom were covered by Medicare or Medicaid. The Respondent further stated that his wife had died in 1987, and that he resided with his son, who suffered from panic disorder and was unable to leave home.

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He testified that he was the sole provider for his son.

At the hearing, a DEA Diversion Investigator testified that during an audit of a Houston Pharmacy on January 27, 1992, he discovered that several individuals had received prescriptions from the Respondent for a combination of Tylenol No. 4 or Phenergan with codeine, and Valium or Xanax. The Investigator testified that the prescriptions were unusual because of the combination of substances prescribed, and because many of the prescriptions were written to different patients claiming the same address. Further, the Respondent had issued these prescriptions to individuals who were also receiving prescriptions for controlled substances from other physicians. Tylenol No. 4 with codeine, Phenergan with codeine, Valium, and Xanax are all controlled substances. The investigator also stated that the combination of controlled substances prescribed by the Respondent were popular with crack cocaine users, who take these drugs to ease the "high" induced by cocaine.

In February 1992, the Investigator performed surveys of prescriptions issued by the Respondent from March 1991 through April 1992, at seven Houston-area pharmacies, finding that the Respondent wrote seventy-nine prescriptions for a total of 3,851 dosage units of controlled substances. As a result of this information, the Investigator implemented an undercover investigation of the Respondent with the assistance of a Detective from the Harris County, Texas, Sheriff's Department. On all of the detective's undercover visits to the Respondent's office, the Detective wore a transmitter, and transcripts of his conversations with the Respondent were in evidence.

At the hearing, the Detective testified that on March 24, 1992, he went to the Respondent's office, he did not complain of any medical ailments, but that he did tell the Respondent that he wanted Tylenol No. 4 because "I just kinda chill out, I feel good, it makes me feel real good." The Respondent took the Detective's blood pressure and conducted a very brief examination. After providing the Detective with a warning about the use of the controlled substances he had requested, the Respondent gave the Detective a prescription for 24 Tylenol No. 4, 18 Valium 10 mg., and Procardia, a non-controlled substance, for high blood pressure. The Respondent prescribed the Tylenol No. 4 for "lower back pain," although the Detective did not complain of this condition.

On April 7, 1992, the Detective again visited the Respondent, who took his blood pressure, but did not examine him. The Respondent again admonished the Detective about the addictive potential of Valium and Tylenol No. 4, but then issued prescriptions for 18 Valium 10 mg., 24 Tylenol No. 4, and for a non-controlled substance. Also, on April 21, 1992, the Detective visited the Respondent, who again admonished him regarding the use of Tylenol No. 4, asked him if he needed Valium, and prescribed 18 Valium 10 mg., 24 Tylenol No. 4, and a non-controlled substance. The Detective testified that the Respondent did not examine him beyond taking his blood pressure, and when asked, the Detective had told him that he did not have back pain.

On July 7, 1992, the Investigator executed a search warrant and a grand jury subpoena, seizing various records from the Respondent's office, to include the patient chart for the Detective as well as other patients' charts. The Investigator informed the Respondent of the reason for the execution of both the subpoena and the search warrant, and following these discussions, the Respondent voluntarily surrendered his DEA Certificate of Registration, as well as his Texas State controlled substances registration.

At the hearing before Judge Bittner, Dr. Joseph Coppola, an associate professor of emergency medicine and internal medicine at the University of Texas Medical School, testified that on July 22, 1992, he had reviewed several of the Respondent's records, including the Detective's treatment record. Dr. Coppola then testified about his findings as to individual patient's records, concluding that in six instances the Respondent had prescribed controlled substances in "inappropriate and [in some instances] dangerous" combinations, and that the Respondent's charts contained incomplete histories and lacked physical examination notations adequate to justify the prescriptions issued to the patients. Dr. Coppola stated that in some charts the patient would make multiple visits, complain of the same symptoms each visit, and yet the Respondent would prescribe controlled substances without conducting tests or using other diagnostic techniques to determine the cause of the patient's continuing condition. Dr. Coppola testified that in some instances the patients' conditions did not justify the controlled substances prescribed over the extended period of time reflected in the patients' records. He observed that in many of the cases he had reviewed, the controlled substances prescribed by the Respondent were not appropriate, "[b]ecause of their propensity toward habituation, addiction, withdrawal syndromes, harm to the patient, inability to perform normal, everyday functions to include driving an automobile * * * certainly this combination of medications in a person is detrimental and harmful on a long-term basis." Dr. Coppola stated that in several instances the patients' records indicated that the patients were exhibiting drug-seeking behavior.

Dr. Coppola, after reviewing the chart entries for the Detective, testified that if he had had a patient who acted in the manner of the Detective, "[i]n a dignified, professional way, I would throw him out of my office * * * because he is drug-seeking." Further, he testified that Tylenol No. 4 and Valium were not substances prescribed to treat high blood pressure, and that the transcripts of the Detective's subsequent visits reinforced his opinion that the Detective was engaging in drug-seeking behavior. Dr. Coppola also testified that the Respondent's prescribing of controlled substances in the combinations prescribed to the Detective, a non-addicted person, could result in symptoms ranging from extreme somnolence, motor inability, respiratory arrest, to even death. Finally, Dr. Coppola concluded that the Respondent did not prescribe controlled substances in the usual course of professional practice, nor for a legitimate medical purpose.

The Respondent testified that he prescribed tranquilizers as stress-reducers for hypertensive patients, and that even if he had known the Detective was a law enforcement officer he would have prescribed Valium and Tylenol, because the Respondent "found he was a sick man." The Respondent also stated that Dr. Coppola was "right to a degree" with respect to the Respondent's treatment of the other patients, because the controlled substances he prescribed were addictive, but he "really didn't know that these were street substances." He testified that he had not knowingly treated anyone who used crack concaine, and he averred that he did not use very good judgment: "I was too trusting. I was taken advantage of." Further, the Respondent conceded that he kept poor records, and that he would not repeat his misconduct.

However, he also testified that he "really didn't agree" with the Texas State Board of Medical Examiners' finding that he had prescribed controlled substances to the Detective for a nontherapeutic purpose or in a nontherapeutic manner. Further, he stated that he had surrendered his controlled substances registrations because the Investigator had advised him that he could probably avoid action by a grand jury if he so acted, but that by signing the surrenders, he had not intended to admit to any wrongdoing. Finally, the Respondent testified about his need for his DEA Certificate of Registration in order to continue effectively his medical practice.

The record also demonstrates that on December 15, 1992, the grand jury had advised the Texas court that it had failed to find a bill of indictment against the Respondent, and on February 1, 1993, the Respondent's state privileges to handle controlled substances were restored. Further, on March 18, 1994, the Respondent appeared before the Medical Board, and on April 14, 1994, the Respondent and the Medical Board entered into an Agreed Order. The Agreed Order reflected that the Respondent had practiced medicine in Texas for forty-nine years with no documented problems or disciplinary actions. However, the Medical Board found that the Respondent had prescribed or administered a drug or treatment "that was nontherapeutic in nature or in the manner in which [it] was administered or prescribed," and that he had, thereby, violated the Medical Practice Act of Texas. The Medical Board then ordered that the Respondent's medical license be restricted for three years, and that various conditions be imposed upon his practice, including that he attend at least fifty hours per year of continuing medical education, to include at least six hours pertaining to recordkeeping or risk management. Further, another physician was to monitor or supervise his medical practice.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, the Deputy Administrator agrees with Judge Bittner that factors one, two, and four are relevant in determining whether granting the Respondent's pending application would be inconsistent with the public interest.

As to factor one, "recommendation of the appropriate state licensing board," relevant evidence includes the agreement signed by the Respondent and the Medical Board, wherein the Medical Board found that the Respondent's conduct in prescribing controlled substances to the Detective violated the Medical Practice Act of Texas. In response, in April 1994, the Medical Board placed restrictions upon the Respondent's license to practice medicine, to include requiring the acquisition of continued medical education. The restrictions are in effect for three years. Further, the record demonstrates that the Texas Department of Public Safety has reissued the Respondent's controlled substances registration, but evidence detailing the circumstances surrounding the reinstatement are not in the record.

As to factor two, "the applicant's experience in dispensing * * * controlled substances," the preponderance of the evidence demonstrates that the Respondent dispensed controlled substances to a Detective without a legitimate medical purpose and outside the usual course of professional practice. Specifically, Dr. Coppola provided that conclusion after reviewing the Detective's medical chart and the transcript of the conversations between the Detective and the Respondent preceding the Respondent's issuing prescriptions to the Detective. Further, after reviewing medical charts and prescription patterns in five other cases, Dr. Coppola also concluded that the Respondent prescribed controlled substances to these patients in "inappropriate and [in some instances] dangerous" combinations, despite the fact that these patients were exhibiting drug-seeking behavior.

As to factor four, "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the record reflects that the Grand Jury declined to issue an indictment seeking criminal prosecution against the Respondent after reviewing evidence of his behavior during the same period as reviewed in this proceeding. However, the Medical Board found that the Respondent's conduct did, in fact, violate the Medical Practice Act of Texas, and it levied discipline under that statute in response to its finding.

The Deputy Administrator has previously found that under Federal law, for a controlled substance prescription to be valid, "it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose." Harlan J. Borcherding, D.O., 60 FR 28796, 28798 (1995). Although the Respondent was authorized to prescribe controlled substances at the time he issued prescriptions to the Detective, the preponderance of the evidence demonstrates that the prescriptions of Valium and Tylenol No. 4 were issued without a legitimate medical purpose and outside the scope of normal professional practice. Specifically, the Detective dictated which controlled substances he wanted and ultimately received, rather than the Respondent, as the practitioner, determining the medication appropriate for the clinical condition presented by the Detective. As Dr. Coppola testified, such prescribing lacked a legitimate medical purpose and was not in the usual course of professional medical practice. See Borcherding, supra. Therefore, the Deputy Administrator finds, in light of the foregoing, that the Government has met its burden of proof as to factors one, two, and four.

However, the Respondent provided evidence of rehabilitation, including the Texas Department of Public Safety's reinstatement of his controlled substances registration in February 1993, and the agreement with the Medical Board. Further, he acknowledged his recordkeeping failings, and he requested consideration be given to his full cooperation with the investigation. The Respondent also requested the Deputy Administrator consider his lengthy medical career free of prior disciplinary action, and his need for his DEA Certificate of Registration.

However, even acknowledging the Respondent's rehabilitative efforts, the Deputy Administrator agrees with Judge Bittner's conclusions: "With respect to the likelihood of a recurrence of misconduct, I realize that Respondent asserted that he would be more careful in the future. However, in light of both the extent of his misconduct and his attempts to rationalize his behavior, I am not persuaded that such conduct will not recur." The Respondent's

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testimony disagreeing with the Medical Board's findings concerning his past conduct, makes questionable his commitment to change in his future medical practices to include his prescribing of controlled substances. Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at the present time. See, e.g., *Sokoloff v. Saxbe*, 501 F.2d 571, 576 (2nd Cir. 1974) (stating that "permanent revocation" of a DEA Certificate of Registration may be "unduly harsh").

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Harold R. Schwartz, M.D., be, and it hereby is, denied. This order is effective January 16, 1996.

Dated: December 11, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–30578 Filed 12–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the David-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume VI

OREGON
OR950017 (DEC. 15, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950003 (FEB. 10, 1995)
NJ950004 (FEB. 10, 1995)
NJ950007 (FEB. 10, 1995)
NJ950015 (FEB. 10, 1995)
New York
NY950003 (FEB. 10, 1995)
NY950009 (FEB. 10, 1995)
NY950039 (FEB. 10, 1995)
NY950040 (FEB. 10, 1995)

Volume II

Pennsylvania
PA950004 (FEB. 10, 1995)
PA950040 (FEB. 10, 1995)

Volume III

Florida
FL950001 (FEB. 10, 1995)
FL950009 (FEB. 10, 1995)
FL950014 (FEB. 10, 1995)
FL950017 (FEB. 10, 1995)
FL950032 (FEB. 10, 1995)
Georgia
GA950032 (FEB. 10, 1995)
GA950039 (FEB. 10, 1995)
Tennessee
TN950005 (FEB. 10, 1995)

Volume IV

Illinois
IL950001 (FEB. 10, 1995)
IL950002 (FEB. 10, 1995)
IL950003 (FEB. 10, 1995)
IL950008 (FEB. 10, 1995)
IL950011 (FEB. 10, 1995)
IL950012 (FEB. 10, 1995)
IL950013 (FEB. 10, 1995)
IL950014 (FEB. 10, 1995)
Illinois
IL950016 (FEB. 10, 1995)
Indiana
IN950024 (FEB. 10, 1995)
Michigan
MI950001 (FEB. 10, 1995)
MI950002 (FEB. 10, 1995)
MI950007 (FEB. 10, 1995)
MI950012 (FEB. 10, 1995)
MI950017 (FEB. 10, 1995)
MI950030 (FEB. 10, 1995)
MI950031 (FEB. 10, 1995)
MI950034 (FEB. 10, 1995)
MI950046 (FEB. 10, 1995)
MI950049 (FEB. 10, 1995)
MI950062 (FEB. 10, 1995)

Volume V

Iowa
IA950004 (FEB. 10, 1995)
Kansas
KS950005 (FEB. 10, 1995)
Nebraska
NE950001 (FEB. 10, 1995)
NE950059 (FEB. 10, 1995)
Texas
TX950001 (FEB. 10, 1995)
TX950002 (FEB. 10, 1995)
TX950007 (FEB. 10, 1995)
TX950008 (FEB. 10, 1995)
TX950013 (FEB. 10, 1995)
TX950014 (FEB. 10, 1995)
TX950019 (FEB. 10, 1995)
TX950069 (FEB. 10, 1995)
TX950081 (FEB. 10, 1995)

Volume VI

Alaska
AK950001 (FEB. 10, 1995)
Colorado
CO950002 (FEB. 10, 1995)
CO950003 (FEB. 10, 1995)
CO950005 (FEB. 10, 1995)
CO950006 (FEB. 10, 1995)
CO950007 (FEB. 10, 1995)
CO950008 (FEB. 10, 1995)
CO950009 (FEB. 10, 1995)
CO950010 (FEB. 10, 1995)
CO950023 (FEB. 10, 1995)
CO950025 (FEB. 10, 1995)
Oregon
OR950001 (FEB. 10, 1995)
Utah
UT950015 (FEB. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 8th day of December 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–30391 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 26, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of December, 1995.

Russel Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 12/04/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,664	AE Clevite (Wkrs)	Wauseon, OH	11/16/95	Replacement Auto Parts.
31,665	AT&T Microelectronics (IBEW)	Clark, NJ	11/13/95	Underwater Communication Repeaters.
31,666	Allied Signal (Wkrs)	Eatontown, NJ	10/20/95	Printed Circuit Boards.
31,667	Amity Leather Products Co (Comp)	Albuquerque, NM	11/22/95	Men's & Ladies' Leather Products.
31,668	Amity Leather Products Co (Comp)	Goldsboro, NC	11/21/95	Men's & Ladies Leather Products.
31,669	Arco Corp. (Wkrs)	Dallas, TX	11/06/95	Oil and Gas.
31,670	B&B Shoe Co (Comp)	Paoli, IN	11/15/95	Slippers.
31,671	Boise Cascade (CJA)	LaGrande, OR	11/20/95	Saw Mill—Pine & Fir.
31,672	CMC Apparel (Comp)	Evergreen, AL	11/17/95	Sew Bras.
31,673	Central Operating Co. (Wkrs)	New Haven, WV	11/14/95	Electricity.
31,674	Columbia Natural Resource (Comp)	Charleston, WV	11/20/95	Oil and Gas.
31,675	Excel Products (Wkrs)	Clifton, NJ	11/14/95	Soap & Air Freshners.
31,676	Fluor Daniel (NPOSR), Inc (Wkrs)	Casper, WY	11/17/95	Crude Oil.
31,677	HBC Barge Inc. Plant #80 (Wkrs)	Brownsville, PA	11/17/95	River Barges.
31,678	Horowitz/Rae Book Mfg. ()	Fairfield, NJ	10/31/95	Printing & Binding of Books.
31,679	Hydra-Co Enterprises (Wkrs)	Syracuse, NY	10/25/95	Electricity.
31,680	Indian Creek Apparel (Wkrs)	Okolona, MS	11/16/95	Men's Pants/Slacks
31,681	Ithaca Industries, Inc (Comp)	Chadbourn, NC	11/16/95	Men's Briefs & T-Shirts
31,682	Ithaca Industries, Inc (Comp)	Robersonville, NC	11/16/95	Men's Briefs & T-Shirts
31,683	Ithaca Industries, Inc (Comp)	Lakeland, GA	10/30/95	Ladies' Panties

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APPENDIX—Continued

[Petitions instituted on 12/04/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,684	Lamsteel Corp of America (IUE)	Hartsville, TN	11/13/95	Sewing Machine Tops & Legs & Tables.
31,685	Lee Apparel (UFCW)	St. Joseph, MO	11/13/95	Denim Jeans
31,686	Maxless Technologies (IBEW)	Pontiac, MI	11/13/96	Wood, Steel & Concrete Floor Panels.
31,687	Mead Products ()	Salem OR	11/09/95	Trimmers, Envelope Machines.
31,688	Monarch Tile, Inc (Comp)	Marshall, TX	11/10/95	Glazed Ceramic Wall tiles.
31,689	Panola Mills of Fruit of (Wkrs)	Batesville, MS	11/08/95	Men's & Boys' T-Shirts & Briefs.
31,690	Philips Consumer Elec. (Wkrs)	Greenville, TN	11/10/95	Televisions.
31,691	Rad Woodworking (Wkrs)	Nescopeack, PA	11/13/95	Van Flooring—Table Tops.
31,692	Reatta Tenn-Partners (Wkrs)	Maynardville, TN	11/13/95	Knitted T-Shirts.
31,693	J.T. Ryerson & Son, Inc (Wkrs)	Jersey City, NJ	11/23/95	Steel Service.
31,694	Snyder Oil Corp (Comp)	Fort Worth, TX	11/17/95	Crude Oil, Natural Gas.
31,695	Snyder Oil Corp (Comp)	Denver, CO	11/17/95	Crude Oil, Natural Gas.
31,696	Southern Apparel Co (Comp)	Robersonville, NC	11/18/95	Kids Jeans.
31,697	Superior Pants Co. (Comp)	Athens, GA	11/17/95	Formal & Casual Coats & Pants.
31,698	The Topps Co. (IBT)	Duryea, PA	11/17/95	Gum and Cards.
31,699	The Topps Company (IBT)	Scranton, PA	11/17/95	Ring Pops Candy.
31,700	Wrangler (Wkrs)	Lonoke, AR	11/17/95	Wrangler Jeans.
31,701	Dressing for Two (Comp)	New York, NY	11/10/95	Ladies' Apparel.
31,702	Onan Corporation (Wkrs)	Fridley, MN	11/17/95	Electrical Generators & Switchgears.
31,703	Carter & Mayes (Comp)	Summerville, GA	11/10/95	Shirts.
31,704	Parker & Parsley (Wkrs)	Midland, TX	11/30/95	Oil Drilling.
31,705	Sierra Technologies (Wkrs)	Buffalo, NY	11/22/95	Flight Inspection Systems.
31,706	Covington Needleworks (Comp)	Mt. Olive, MS	11/20/95	Children's Sportswear.
31,707	Americana Art China (Wkrs)	Sebring, OH	11/21/95	Cups, Mugs.
31,708	Northeast Pager Care (Wkrs)	Totowa, NJ	11/22/95	Pagers.

[FR Doc. 95–30598 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,368; TA–W–31,369]

Roxanne of New Jersey, Artsan Corporation, Neptune, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Roxanne of New Jersey and Artsan Corporation, Neptune, New Jersey. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,368 & TA–W–31,369; Roxanne of New Jersey & Artsan Corporation, Neptune, New Jersey (December 7, 1995)

Signed at Washington, D.C. this 7th day of December, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30597 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

IBM Corporation Enterprise Systems Large Scale Computing Systems Division and its Successors; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Poughkeepsie, New York—TA–W–29,743
Wappingers Falls, New York—TA–W–29,743A
Kingston, New York—TA–W–29,743B
Somers, New York—TA–W–743C
Hopewell, Junction, New York—TA–W–29,743D
White Plains, New York—TA–W–29,743E
and
TA–W–29,743F—Kingston Software Manufacturing Division of Software Solutions, Kingston, New York

On March 23, 1995, the Department of Labor issued a Notice of Revised Determination on Reconsideration, applicable to all workers at IBM Corporation, Poughkeepsie, New York. The notice was published in the **Federal Register** on April 5, 1995 (60 FR 17371). The certification was subsequently amended to include other locations of the subject firm. The amended notice was published in the **Federal Register** on June 29, 1995 (60 FR 33850).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that workers of the Kingston Software Manufacturing Division of Software Solutions located in Kingston, New York provided administrative and support services to IBM's Enterprise System. The Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of IBM Corporation, the Enterprise Systems, Large Scale Computing Systems Division, and its successors who are adversely affected by imports.

The amended notice applicable to TA–W–29,743 is hereby issued as follows:

"All workers of Enterprise Systems, Large Scale Computing Systems Division, and its successors, of IBM Corporation located in Poughkeepsie, Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York; and workers Kingston Software Manufacturing Division of Software Solutions located in Kingston, New York providing administrative and support services to IBM's Enterprise System who became totally or partially separated from employment on or after March 23, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, on this 5th Day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30596 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,669]

ARCO Corporation Dallas, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 1995 in response to a worker petition which was filed November 6, 1995 on behalf of workers at ARCO Corporation, Dallas, Texas (TA–W–31,669).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–29,431). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 4th day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30595 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,431]

ARCO Oil and Gas Company, Atlantic Richfield Company, a/k/a ARCO Corporation, Dallas, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 1995, applicable to all workers of ARCO Oil and Gas Company, Atlantic Richfield Company, Dallas, Texas. The notice was published in the **Federal Register** on May 11, 1994 (59 FR 24483).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some of the workers at Atlantic Richfield had their unemployment insurance (IU) taxes paid to ARCO Corporation. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–29,431 is hereby issued as follows:

"All workers of ARCO Oil and Gas Company, Atlantic Richfield Company, a/k/a ARCO Corporation, Dallas, Texas who became totally or partially separated from employment on or after February 21, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 4th day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30594 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–113]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 62481 Notice Number 95–109, December 6, 1995.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 13, 1995, 8:30 a.m. to 4:30 p.m. The meeting will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

Dated: December 11, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–30603 Filed 12–14–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences, Subcommittee on Transformations to Quality Organizations; Notice of Meeting

Name: Advisory Committee for Social, Behavioral and Economic Sciences, Subcommittee on Transformations to Quality Organizations.

Date & Time: January 4, 1996, 9:00 am–12:00 noon.

Place: Boardroom North, Hyatt Regency, Albuquerque, NM.

Type of Meeting: Open.

Contact Person: Marietta Baba, Program Director, Transformations to Quality Organizations, Room 910, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. 703 306–1757 x7210.

Minutes: May be obtained from contact person above.

Meeting Purpose: Review 1995 Status and Discuss Future Directions

Agenda

1. Welcome and Greetings
2. Review Agenda
3. 1995 Status Report
4. Research Presentations
5. Future Direction
6. Next Steps
7. Next Meeting
8. Adjourn

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30573 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research will be holding panel meetings for the purpose of reviewing proposals submitted to the Office of Multidisciplinary Activities in the area of Optical Science and Engineering. In order to review the large volume of proposals, panel meetings will be held on January 4–5, 1996 (10). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 a.m. to 5:00 p.m. each day.

Contact Person: Dr. John Weiner, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson-Boulevard, Arlington, VA 22230, (703) 306–1800.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30572 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

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463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering

Date and Time: January 4–5, 1996; 8:30 am to 5:00 pm

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Mr. David A. Staudt, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1949).

Purpose of Meeting: To provide advice and recommendations concerning program proposal processing and handling.

Agenda: To review and evaluate program procedures for the Committee of Visitors, NSFNET Program and Collaborative Activities.

Reason for closing: The information being reviewed includes information of a proprietary or confidential nature, including technical information; and financial data. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30571 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated June 9, 1995, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for facility changes made under 10 CFR 50.59 for the BSEP. Under the proposed exemption the licensee would schedule updates to the single, unified FSAR for the two units that comprise BSEP based on the refueling cycle of BSEP Unit 1.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their FSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since BSEP Units 1 and 2 share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Allowing the exemption would maintain the BSEP FSAR current within 24 months of the last revision and would not exceed a 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the exemption will have either no significantly different environmental impact, or greater environmental impact.

The principal alternative would be to deny the requested exemption. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to Brunswick Steam Electric Plant, dated January 1974.

Agencies and Persons Contacted

In accordance with its stated policy, on December 5, 1995, the staff consulted with the North Carolina State official, Mr. J. James of the Division of Radiation Protection, North Carolina Department of Environmental, Commerce and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for the exemption dated June 9, 1995, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina, 28403.

Dated at Rockville, Maryland this 8th day of December 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30583 Filed 12–14–95; 8:45 am]

BILLING CODE 7590–01–P

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued two final reports on estimating pressurized water reactor (PWR) decommissioning costs. They are NUREG/CR–5884, "Revised Analyses of the Decommissioning for the Reference Pressurized Water Reactor Power Station," and NUREG/CR–6054, "Estimating Pressurized Water Reactor Decommissioning Costs." The reports discuss and provide methods for estimating decommissioning costs for PWRs. They also provide background information to support rulemaking activities to modify funding assurance requirements for power reactor licensees. Companion reports addressing boiling water reactor decommissioning costs will be published in the near future.

Copies of NUREG/CR–5884 and NUREG/CR–6054 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Copies are available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 F31, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 7th day of December, 1995. For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–30584 Filed 12–14–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 1, 1995 (60 FR 55613). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1995, and October 31, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established in October 1995.

The following exception was revoked:

Department of Treasury

U.S. Customs Service, positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impracticable. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year. Effective October 11, 1995.

Schedule B

No Schedule B authorities were established or revoked in October 1995.

Schedule C

The following Schedule C authorities were established in October 1995.

Commission on Civil Rights

Special Assistant to the Staff Director. Effective October 11, 1995.

Department of Agriculture

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective October 13, 1995.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective October 17, 1995.

Department of Commerce

Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 12, 1995.

Deputy Director to the Director, White House Liaison. Effective October 23, 1995.

Special Assistant to the Director, Minority Business Development Agency. Effective October 26, 1995.

Special Assistant to the General Counsel. Effective October 30, 1995.

Special Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service. Effective October 31, 1995.

Department of Defense

Defense Fellow to the Deputy Assistant Secretary of Defense, African Affairs. Effective October 16, 1995.

Associate Director, Communications to the Senior Director, Communications, National Security Council. Effective October 19, 1995.

Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement). Effective October 25, 1995.

Department of Education

Executive Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective October 10, 1995.

Special Assistant to the Director, Office of Public Affairs. Effective October 13, 1995.

Confidential Assistant to the Secretary's Regional Representative, Region IX. Effective October 23, 1995.

Department of Energy

Special Assistant to the Assistant Secretary for Policy. Effective October 10, 1995.

Staff Assistant to the Chief Financial Officer. Effective October 10, 1995.

Department of Health and Human Services

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective October 10, 1995.

Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective October 19, 1995.

Department of Housing and Urban Development

Special Assistant to the Secretary of Housing and Urban Development. Effective October 31, 1995.

Department of the Interior

Special Assistant to the Secretary of Interior. Effective October 5, 1995.

Department of Labor

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 17, 1995.

Department of State

Legislative Management Officer to the Assistant Secretary, Legislative Affairs. Effective October 16, 1995.

Special Assistant to the Director of the Policy Planning Staff. Effective October 19, 1995.

Department of Transportation

Special Assistant to the Secretary of Transportation. Effective October 3, 1995.

Department of the Treasury

Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division. Effective October 17, 1995.

Environmental Protection Agency

Senior Policy Advisor to the Director, Common Sense Initiative Program Staff. Effective October 31, 1995.

Federal Maritime Commission

Counsel to the Chairman, Federal Maritime Commission. Effective October 24, 1995.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective October 10, 1995.

General Services Administration

Congressional Liaison Officer to the Associate Administrator for

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Congressional and Intergovernmental Affairs. Effective October 31, 1995.

National Mediation Board

Confidential Assistant to a Board Member. Effective October 31, 1995.

Office of National Drug Control Policy

Director, Communications Planning to the Director, Office of National Drug Control Policy. Effective October 19, 1995.

Small Business Administration

Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective October 31, 1995.

Press Secretary and Special Assistant to the Assistant Administrator for Communications. Effective October 31, 1995.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective October 11, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–30605 Filed 12–14–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–21583; 812–9632]

Wellington Underwriting plc; Notice of Application

December 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Wellington Underwriting plc.

RELEVANT ACT SECTION: Exemption requested under Section 6(c).

SUMMARY OF APPLICATION: Applicant, a United Kingdom company engaged in the business of insurance, seeks an order granting it a conditional exemption from all provisions of the Act. Because of its listing on the London Stock Exchange as an "investment company," Applicant seeks to clarify its status prior to a proposed offer and sale of its American Depositary Shares in the United States to assure that it will not be required to register as an investment company under the Act.

FILING DATES: The application was filed on June 16, 1995, and amended on October 17, 1995. Counsel for Applicant has agreed to file a further amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 2 Minster Court, Mincing Lane, London, EC3R 7FB, England.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a public holding company incorporated under the laws of England and Wales, was formed for the purpose of allowing investors to participate with limited liability in underwriting insurance risks at Lloyd's of London ("Lloyd's"). Applicant underwrites at Lloyd's through five wholly-owned subsidiaries (the "Subsidiaries"). The Subsidiaries have received approval from Lloyd's as "Corporate Members," *i.e.*, corporations acting as insurance underwriters through syndicates at Lloyd's. The only securities which the Applicant will own are those of the Subsidiaries.

2. On November 23, 1994, Applicant completed a placement of 17,250,000 Ordinary Shares. This included a private placement in the United States of 127,094 American Depository Shares (representing 1,270,940 Ordinary Shares) to eleven "accredited investors" within the meaning of Regulation D under the Securities Act of 1933 (the "1933 Act"). The balance of Applicant's Ordinary Shares were placed with 76 holders outside the United States.

3. Applicant's shares are traded on the London Stock Exchange ("LSE"), where Applicant is listed as an "investment company." To be listed on the LSE, an issuer must have three years of audited financial statements unless it lists as an "investment company."[1] Applicant sought to be listed under this category in order to facilitate an immediate listing on the LSE which otherwise would not have been possible for a new issuer. Applicant is not otherwise treated as an investment company in the United Kingdom.

4. The Subsidiaries commenced operations on January 1, 1995, engaging exclusively in the insurance business of acting as Corporate Members of syndicates underwriting insurance at Lloyd's. The Subsidiaries underwrite insurance at Lloyd's through syndicates managed by Wellington Underwriting Agencies Limited, a wholly-owned subsidiary of Wellington Underwriting Holdings Limited. Pursuant to the LSE Listing Rules and the rules of the Council of Lloyd's (the "Council"), the central body that regulates the affairs of the Lloyd's market, the Subsidiaries will not transact any other business.

5. The Subsidiaries are regulated in the U.K. as insurance companies, not investment companies. Because they are Corporate Members of Lloyd's, the Subsidiaries must comply with various provisions of the U.K. Insurance Companies Act 1982 and are subject to oversight by the Secretary of State for Trade and Industry. Most notably, U.K. regulation focuses on solvency, the fundamental principle of insurance regulation, by requiring audited statements and actuarial certificates for Members' accounts, trust funds for premiums, and margins of solvency. The British Department of Trade and Industry also has significant powers to regulate the market and affairs of Members in the event that either Lloyd's underwriters taken as a whole or any Member fails to satisfy regulatory requirements. These powers include, among others, the ability to regulate the investment and custody of assets at Lloyd's, to limit (or terminate) the writing of insurance, and to direct the actions of the Council or other persons at Lloyd's.

[1] To qualify as an "investment company" under LSE rules, no more than 20% of the Applicant's assets on a consolidated basis may be invested in the securities of any one company—including its own subsidiaries, and the Applicant must be a passive investor and not control the companies in which it invests, other than companies through which it invests (*i.e.*, the Subsidiaries).

6. At the present time, the Applicant's shares are beneficially owned by fewer than one hundred persons in the United States, and the Applicant is not making, and does not presently propose to make, a public offering of its securities in the United States. The Applicant intends, however, to raise additional capital, which may include another offering of American Depository Shares to additional United States investors through a further private placement.

Applicant's Legal Analysis

1. Section 3(a)(1) defines "investment company" to mean, as here relevant, any issuer that holds itself out as being engaged primarily in the business of investing or trading in securities. Because the Applicant is listed on the LSE as an "investment company," it arguably has held itself out as an investment company within the meaning of section 3(a)(1).[2]

2. Applicant requests an exemption from all provisions of the Act pursuant to section 6(c). Section 6(c) provides, as here relevant, that the SEC, by order upon application, may exempt any person from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant submits that the requested relief meets the exemptive standards established by section 6(c). It asserts primarily that it is engaged through the Subsidiaries in the business of an insurance company, and does not operate as an investment company for purposes of the Act. In this regard, even though the Applicant's memorandum of association gives it the power to carry on the business of both an investment company and an insurance business, it is not treated as an investment company under the U.K. Companies Act or as an investment trust for tax purposes. Similarly, the Applicant is not treated as a collective investment scheme or an authorized unit trust scheme under the U.K. Financial Services Act or as an undertaking for collective investment in transferable securities ("UCITS") under directives of the European Union. In addition, the daily trading price of the Applicant's shares on the LSE is quoted in the Financial Times under the caption "Insurance" and not "Investment Trusts." While the 1994 prospectus for the Applicant's shares introduced it as an investment company, the stated purpose of the offering was to enable investors to underwrite insurance with limited liability through Lloyd's syndicates managed by Wellington Underwriting Agencies Limited. Based on the foregoing, Applicant argues that the Act's purpose would not be served by applying it to the Applicant merely because it is listed, for reasons of convenience, as an investment company on the LSE.

4. Applicant also submits that exemptive relief would be consistent with the purposes intended by specific policies and provisions of the Act. Section 3(c)(3) of the Act excludes from the definition of "investment company" domestic insurance companies. Rule 3a–6 provides that foreign insurance companies are also not subject to the provisions of the Act. Applicant represents that its Subsidiaries fall within the requirements of rule 3a–6.[3] Applicant notes that United States holding companies for insurance companies are excepted from the definition of investment company by section 3(c)(6). Because of its status as a holding company whose only operations are the ownership of the Subsidiaries, the Applicant is a foreign insurance company holding company. The SEC, upon adopting rule 3a–6, made it clear that foreign insurance company holding companies should be treated under the Act on the same basis as United States insurance company holding companies.[4]

Applicant's Conditions

Applicant agrees that any order of the SEC granting the exemptive relief requested by the application may be made subject to the following conditions:

1. No Subsidiary will be an "investment company" as defined by the Act.

2. Applicant will continue to operate, either directly or indirectly, only in the business of insurance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30527 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The Applicant's assets consist entirely of securities of the wholly-owned Subsidiaries, which in turn hold assets in the form of a Lloyd's deposit that is invested in securities. Thus, the Subsidiaries, and consequently the Applicant itself, would be deemed investment companies under section 3(a)(3), except for, as discussed below, the Subsidiaries' status as foreign insurance companies under rule 3a–6.

[3] Rule 3a–6 defines "foreign insurance company" as an insurance company organized under the laws of another country that is regulated as such by that country's government, that is engaged predominantly in writing or reinsuring insurance agreements of the type specified in section 3(a)(8) of the 1933 Act, and that is not operated for purposes of evading the provisions of the Act. Applicant intends to rely on an opinion of counsel to the effect that its Subsidiaries are exempt from registration under the Act because they are foreign insurance companies within the meaning of the rule. Applicant does not request SEC review or approval of counsel's opinion, and acknowledges that the SEC takes no position as to its availability.

[4] See Investment Company Act Release No. 16381 (Oct. 29, 1991).

[Release No. 35–26427]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8733)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Mobile Energy Services Holdings, Inc. ("Mobile Energy"), Southern Electric International, Inc. ("Southern Electric"), SEI Holdings, Inc. ("Holdings"), Southern Electric Wholesale Generators, Inc. ("Domestic Holdings"), and SEI

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Europe, Inc. ("Foreign Holdings"), each of 900 Ashwood Parkway, Atlanta, Georgia 30338, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13, 32 and 33 of the Act and rules 43, 45, 53, and 54 thereunder.

Consolidation of Ownership of Exempt Projects

Southern proposes to consolidate all of its direct and indirect ownership interests in all exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs", and, together with EWGs, "Exempt Projects") (each as defined in the Act), various intermediate subsidiaries through which it holds investments in EWGs and FUCOs ("Project Parents"), and activities and functions related to these projects, under one of its subsidiaries, Holdings.[1]

Pursuant to the Orders and preliminary to the proposed reorganization, Southern organized and contributed to Holdings all of the outstanding stock of Domestic Holdings, an EWG that holds Southern's ownership interests in other domestic EWGs, and of Foreign Holdings, a Project Parent that holds Southern's interest in a FUCO in England. Southern will then contribute to Foreign Holdings its interests in other existing FUCOs, foreign EWGs, and Project Parents.

In this proceeding, Southern proposes to take the following additional steps to effect the proposed reorganization: (1) Southern will contribute to Holdings the common stock of Southern Electric[2], and Southern Electric will become a subsidiary of Holdings; (2) Southern Electric will sell to Foreign Holdings or its subsidiaries the securities of Southern Electric International-Asia, Inc., and Southern Electric international GmbH, two Southern electric subsidiaries that conduct preliminary project development activities in foreign countries[3]; (3) Southern Electric will transfer to Foreign Holdings all of the common stock of SEI Operadora de Argentina S.A., a FUCO[4]; and (4) Mobile Energy will create a new class of nonvoting preferred stock and distribute all outstanding shares of such stock to Southern; Southern will transfer such stock to Holdings, which, in turn, will transfer such stock to Domestic Holdings, as a capital contribution.[5]

After the reorganization, Southern expects that future investments in power projects will be made through Holdings and its subsidiaries, and that Holdings and its subsidiaries will conduct all other related project activities. Holdings will use available funds, including the proceeds of financing by Southern and third-party borrowings that are guaranteed by Southern[6], together with internally generated funds and proceeds of securities sold to third parties, to make these investments and to finance the costs of other authorized and permitted activities.

Acquisition of Energy-Related Companies

Holdings also requests authority to acquire, directly or indirectly through subsidiaries, in one or more transactions from time to time through December 31, 2000, the securities of or other interests in one or more companies that derive or will derive substantially all of their revenues from the ownership and/or operation of one or more of the following categories of energy-related businesses: (a) "Qualifying facilities", as defined under the Public Utility Regulatory Policies Act of 1978, as amended, and ownership and operation of incidental facilities; (b) production, conversion and distribution of thermal energy products; (c) brokering and marketing of energy commodities; and (d) other energy-related businesses to the extent that acquisition of interests in such businesses are exempt under a rule subsequently adopted by the Commission.[7]

Formation of New Subsidiaries

Holdings, Domestic Holdings and Foreign Holdings propose to organize one or more intermediate subsidiaries to make investments in Exempt Projects, other power projects, and energy-related companies and to provide project development and management services to projects and companies held by them ("Intermediate Subsidiaries"), and to organize one or more special purpose subsidiaries to engage in any of the activities in which Southern Electric is currently authorized to engage ("Special Purpose Subsidiaries").[8]

Financial Guaranties

Southern has existing authorization with respect to guaranties of subsidiary obligations.[9] Southern now requests an order that would supersede this guaranty authorization. Southern proposes to guaranty the securities of Holdings or any of its direct or indirect subsidiaries, from time to time through December 31, 2000, in an aggregate principal amount at any one time outstanding of not more than $1.2 billion, provided that the aggregate outstanding principal amount of such guaranties, when added to Southern's "aggregate investment", as defined in rule 53(a), in all Exempt Projects, shall not exceed 50% of Southern's "consolidated retained earnings," as so defined.[10]

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to guaranty the securities issued by any of their direct or indirect subsidiaries (provided that the issue and sale of such securities are

[1] The authorization of the transactions proposed in this file would supercede Southern's current authorization to organize Project Parents to hold investments in EWGs and FUCOs. Holding Co. Act Release Nos. 26096 (Aug. 3, 1994) and 26338 (July 25, 1995) ("Orders").

[2] Southern Electric engages in preliminary project development activities and the sale of operating, construction, project management, administrative and other services to associates and nonassociates, pursuant to Holding Co. Act Release No. 26212 (Dec. 30, 1994) ("December 1994 Order"). After the proposed reorganization, Southern Electric would continue to engage in these activities, and any additional investment in Southern Electric would be made indirectly through Holdings.

[3] The sales price for the shares will equal Southern Electric's investment in the two companies, which currently is less than $50,000 in the aggregate.

[4] Southern Electric will distribute the stock of this subsidiary to Holdings, and Holdings will concurrently transfer the stock to Foreign Holdings

[5] The purpose of these transactions is to direct some or all of the cash flow and income from Mobile Energy to support the operations and future financing by Holdings and Domestic Holdings. Mobile Energy holds a 99% interest in Mobile Energy Services Company, L.L.C., an Alabama limited liability company that owns a cogeneration complex in Mobile.

[6] The applicants state that Southern will make additional investments in Holdings from time to time, to finance the business of Holdings and its subsidiaries, pursuant to the exemptions in rules 52 and 45(b)(4), provided that (a) any additional investment in Holdings to enable Holdings to acquire directly or indirectly an interest in an Exempt Project will be subject to the limitations of rule 53 and any other applicable rules, and (b) the aggregate amount of financing provided to Holdings by Southern that will be invested directly or indirectly in energy-related companies will not exceed $300 million or such greater amount as may be permitted under a rule subsequently adopted by the Commission.

[7] The Commission has proposed a rule that would exempt from the requirement of prior Commission approval under the Act acquisitions of securities of companies that derive all or substantially all of their revenues from specified activities closely related to the core utility business of a registered holding company system. See Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995).

[8] The activities of such special purpose subsidiaries would be subject to all terms, conditions and limitations in the December 1994 Order that are applicable to Southern Electric.

[9] Holding Co. Act Release No. 26340 (Aug. 3, 1995), authorizing guaranties of the securities of Exempt Projects from time to time through December 31, 1999, in an aggregate amount at any one time outstanding not to exceed $1.2 billion, subject to certain conditions and limitations.

[10] In a separate proceeding in File No. 70–8725, Southern has requested authorization to increase this limit to 100% of its "consolidated retained earnings". The issuance of an order in that filing would amend Southern's guaranty authority as in effect at the date of issuance of such order.

exempt from the requirement of prior Commission approval under section 6(a) of the Act), from time to time through December 31, 2000, in an aggregate amount not to exceed $1.2 billion at any one time outstanding.

Guaranties may take the form of direct guaranties, standby equity funding commitments, obligations under capital maintenance agreements or reimbursement agreements in respect of bank letters of credit, or other similar financial instruments or undertakings.

Pledge of Securities

Southern proposes to pledge the shares of Holdings, and Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary propose to pledge the shares of their respective subsidiaries, as security in connection with the sale of debt securities by Holdings and such subsidiaries.

Performance Guaranties

Southern is currently authorized by the December 1994 Order to guaranty performance by or act as indemnitor or surety with respect to contractual obligations of Southern Electric, any subsidiary of Southern Electric or any project entity in which Southern directly or indirectly holds an interest, in an aggregate amount not to exceed $800 million at any one time outstanding through December 31, 2003[11]. Southern requests that this authorization be modified so that it may provide such performance guaranties on behalf of Holdings and any direct or indirect subsidiary of Holdings, including Southern Electric, any Exempt Project, other power project, energy-related company or Intermediate Subsidiary.

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to provide performance guaranties on behalf of any of their direct and indirect subsidiaries. The amount of these guaranties will be included in calculating the above maximum amount of performance guaranties provided by Southern only if they are supported by an agreement or undertaking of Southern.

Services and Goods

The applicants propose that Special Purpose Subsidiaries of Holdings, Domestic Holdings or Foreign Holdings may render services or sell goods to associate companies. Such services will be rendered and goods will be sold at cost, in compliance with the Act and the rules thereunder, unless the Special Purpose Subsidiary complies with the conditions specified in the December 1994 Order with respect to Southern Electric, in which case services or goods may be sold at market prices.

Reporting

The applicants propose that a single consolidated quarterly report be filed by Southern and Holdings pursuant to rule 24 with respect to all activities of Holdings and its subsidiaries authorized in this file. This report would replace the combined report currently being filed pursuant to the December 1994 Order and the Orders with respect to the activities of Southern Electric and the Project Parents.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30528 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[11] The aggregate amount of such guarantees and indemnification of sureties is reduced by similar undertakings made or incurred by Southern in connection with activities of certain other subsidiaries.

[Investment Company Act Release No. 21590; 812–9534]

Managed Accounts Services Portfolio Trust and Mitchell Hutchins Asset Management Inc.; Notice of Application

December 11, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Managed Accounts Services Portfolio Trust (the "Trust") and Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins").

RELEVANT ACT SECTIONS: Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 thereunder.

SUMMARY OF APPLICATION: The Trust is a registered investment company advised by Mitchell Hutchins. Mitchell Hutchins oversees the selection of other investment advisers for the Trust's series, monitors such investment advisers, and allocates assets among them. The order would permit an investment adviser other than Mitchell Hutchins to serve as an investment adviser to one or more series of the Trust without receiving prior shareholder approval.

FILING DATE: The application was filed on March 16, 1995, and amended on August 9, and December 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1996, and should be accompanied by proof of service on applicants, in the form of an addidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574 or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized as a Delaware business trust. The Trust is currently composed of twelve separate investment portfolios (each a "Portfolio," and collectively, the "Portfolios"). The Trust was organized by Mitchell Hutchins and its parent, PaineWebber Incorproated ("PaineWebber"), to provide to participants in the PaineWebber PACE Program (the "PACE Program") a cost-effective investment method (i.e., a series of pooled investment funds) to invest their assets in a variety of different asset classes managed by investment advisers selected and monitored by Mitchell Hutchins.

2. Mitchell Hutchins, a Delaware corporation that is registered as an investment adviser, acts as the investment manager and administrator to the Trust pursuant to an Investment Management and Administration Agreement with the Trust (the "Management Agreement") and is responsible for the selection or termination of investment advisers ("Sub-Advisers") for each of the Portfolios. Mitchell Hutchins also serves as the adviser to the PACE Money Market Investment Portfolio, one of the

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Trust's Portfolios. None of the Sub-Advisers has any affiliation with Mitchell Hutchins or PaineWebber. Each Portfolio will pay Mitchell Hutchins a management fee for investment management services provided to the Trust, and an administrative fee for administrative services provided to each Portfolio. Mitchell Hutchins compensates each Sub-Adviser from the management fees that it receives from the applicable Portfolio.

3. The purchase of shares of the Trust by a PACE Program participant must be made through a brokerage account maintained with PaineWebber.[1] As described in the Trust's prospectus and marketing materials, under the PACE Program, PaineWebber Managed Accounts Services ("PMAS"), a division of PaineWebber, will provide participants with asset allocation recommendations and related services with respect to their investments in the Portfolios for a fee, which will be charged directly to the participant's brokerage account. These recommendations are based on an evaluation of each participant's identified investment objectives and risk tolerances. PMAS will provide each participant with written recommendations appropriate to that participant, but the participant is under no obligation to act on the recommendations, and PMAS will not have investment discretion over the participant's account. Participants in the PACE Program are expected to include individuals, institutional investors, individual retirement accounts and qualified employee benefit plans.

4. An important element of the PACE Program, as disclosed in the Trust's prospectus[2] and emphasized in the PACE Program marketing materials, is the use of a significant number of different Sub-Advisers evaluated, selected and monitored by Mitchell Hutchins. This structure is often referred to as a "multi-manager fund." An explanatory supplemental sales literature brochure titled "Investment Manager Profiles" provided to each PACE Program participant describes the Sub-Adviser selection process and the Sub-Advisers employed currently by the Trust.

5. Initially, each Portfolio, with the exception of the PACE Money Market Investments Portfolio which will be advised by Mitchell Hutchins, will have one Sub-Adviser. Mitchell Hutchins anticipates that it may recommend the use of two or more Sub-Advisers for some, and perhaps most, Portfolios as assets of the Portfolios increase and it becomes cost-effective to allocate a Portfolio's assets among several Sub-Advisers. Each Sub-Adviser would pursue a distinct but complementary investment process.

6. Under the Management Agreement, Mitchell Hutchins manages the investment operations of the Trust, administers the Trust's affairs, and, except as provided below, makes recommendations for each Portfolio to the Board of Trustees of the Trust regarding (a) the investment strategies and policies of each Portfolio and (b) the selection and retention of Sub-Advisers who will exercise investment discretion with respect to the assets of each Portfolio. Mitchell Hutchins' services do not include recommendations regarding the purchase of individual securities, but consist of professional advice as to the Sub-Advisers that are most likely, over time, to achieve the investment objectives of the Portfolios.

7. Mitchell Hutchins provides investment advisory services for the PACE Money Market Investments Portfolio, although the Trust reserves the right to hire another Sub-Adviser to provide investment advisory services to the PACE Money Market Investments Portfolio if Mitchell Hutchins recommends, and the Board of Trustees approves, such action.

8. Applicants request an exemption from section 15(a) and rule 18f–2 to permit a Sub-Adviser to serve as an investment adviser to one or more Portfolios under a written contract that has not been approved by a vote of the majority of the outstanding voting securities of the Portfolios, including a contract that has terminated as a result of its "assignment." Although shareholders will not vote on Sub-Adviser changes, applicants will provide shareholders with all the information that would be included in a proxy statement within 90 days of the hiring of any new Sub-Adviser or the implementation of any proposed material change in a Sub-Adviser contract.

9. The Trust will rely on Mitchell Hutchins to monitor the performance of each Sub-Adviser employed by the Trust, as well as other attributes that could affect a Sub-Adviser's future performance. Applicants believe that it is in the best interest of the Trust's shareholders for the Trust's Trustees to be able to respond promptly to Mitchell Hutchins' recommendations by negotiating changes in Sub-Advisers' contracts or, if necessary, by adding one or more new Sub-Advisers.

Applicants' Legal Conclusions

1. Section 15(a) makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. The Trust holds itself out as a multi-manager fund whereby investors obtain Mitchell Hutchins' services as a professional organization that will evaluate and determine which Sub-Advisers are most likely to make portfolio securities selections that will achieve the investor's defined objectives. Applicants believe that investors choosing to invest in the Trust have determined that they are unable or unwilling to select and/or monitor) effectively the best Sub-Advisers for a Portfolio and, therefore, desire that a professional organization with substantial experience and resources conduct these services on their behalf. Under the Trust's structure, applicants assert that the selection or change in a Sub-Adviser is not an event that significantly alters the nature of the shareholder's investment and thus does not implicate the policy concerns requiring shareholder approval.

3. Applicants assert that, unlike the conventional investment company, the structure of the Trust provides complete independence from the Sub-Advisers. By contracting with Mitchell Hutchins for corporate management and distribution functions, the Trust provides investors with the full services of a conventional investment company, but also retains complete freedom to select or change investment advisers. Applicants believe that there are no compelling policy reasons that require the Trust, any more than shareholders of the conventional investment company should approve its adviser's change of a portfolio manager or revision of that portfolio manager's employment contract.

4. Applicants assert that the Trust's investors will be able to exercise control over their relationship with Mitchell Hutchins, the party the investors have chosen to hold accountable for investment results, through the voting rights pursuant to section 15(a) of the Act and rule 18f–2 thereunder concerning the Trust's Management Agreement with Mitchell Hutchins. Applicants believe that a shareholder vote concerning a Sub-Advisory Agreement prior to its effective date should not be required, particularly when doing so will (i) increase the Trust's expenses and (ii) may delay prompt implementation of the action Mitchell Hutchins (and ultimately the investors themselves) has determined is most beneficial to the Trust's shareholders. Therefore, applicants contend that requiring the Trust to obtain immediate and costly shareholder approval for every change in control of a Sub-Adviser is unreasonably burdensome, particularly where shareholders have chosen Mitchell Hutchins to determine the impact of the proposed change on their behalf.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested exemption is subject to the following conditions:

1. Mitchell Hutchins will not enter into a Sub-Advisory Agreement with any Sub-Adviser that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust or Mitchell Hutchins other than by reason of serving as a Sub-Adviser to one or more of the Portfolios (an "Affiliated Sub-Adviser") without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

2. At all times, a majority of the Trustees of the Trust will be persons each of whom is not an "interested person" of the Trust (as defined in section 2(a)(19) of the Act) (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be placed with the discretion of the then existing Independent Trustees.

3. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Trustee of the Trust, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which Mitchell Hutchins or the Affiliated Sub-Adviser derives an inappropriate advantage.

4. Mitchell Hutchins will provide general management and administrative services to the Trust, and, subject to review and approval by the Trust's Trustees, will: (a) Set the Portfolios' overall investment strategies; (b) select Sub-Advisers; (c) allocate and, when appropriate, reallocate the Portfolios' assets among Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the Trust's investment objectives, policies, and restrictions.

5. Before a future Portfolio that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the multi-manager structure before Portfolio shares are offered to the public.

6. Within 90 days of the hiring of any new Sub-Adviser or the implementation of any proposed material change in a Sub-Advisory Agreement, the Trust will furnish shareholders all information about a new Sub-Adviser or Sub-Advisory Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Sub-Adviser or any proposed material change in a Portfolio's Sub-Advisory Agreement. The Trust will meet this condition by providing shareholders, within 90 days of the hiring of a Sub-Adviser or the implementation of any material change to the terms of a Sub-Advisory Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). The information statement also will meet the requirements of Schedule 14A under the Exchange Act.

7. No Trustee or officer of the Trust or Mitchell Hutchins will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such Trustee or officer) any interest in a Sub-Adviser except for: (a) ownership of interests in Mitchell Hutchins or any entity that controls, is controlled by, or is under common control with Mitchell Hutchins; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. The Trust will disclose in all prospectuses relating to any Portfolio the existence, substance, and effect of any order granted pursuant to the application.

9. Shares of the Trust will be offered exclusively to participants in the PACE Program or other asset allocation services offered by professional asset managers who, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30569 Filed 12–14–95; 8:45 am]

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[1] Shares of the Portfolios may also be available at some future date for purchase through other asset allocation programs offered by professional asset managers (e.g. banks, trust companies, or registered investment advisers) who, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities.

[2] The Trust's prospectus has also disclosed, since the effective date of the Trust's registration statement on June 21, 1995, that the Trust was seeking an exemptive order from the SEC exempting it from the requirement that each agreement between the Trust and a Sub-Adviser be approved by a vote of a majority of the shareholders of the affected Portfolio.

[Release No. 34–36567; File No. SR-Amex–95–35]

Self-Regulatory Organizations; Order Granting Partial Approval to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Members' Compliance With Position and Exercise Limits for Non-Amex Listed Options

December 8, 1995.

On August 25, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend (1) Amex Rule 900(a), "Applicability," to confirm the Exchange's enforcement authority over Amex members' options transactions effected on another options exchange; and (2) Amex Rules 904, "Position Limits," and 905, "Exercise Limits," to require Amex members who trade non-Amex listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[3] The Amex

[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors

Continued

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subsequently filed Amendment No. 1 to the proposal.[4]

Notice of the proposed rule change and Amendment No. 1 were published for comment and appeared in the **Federal Register** on October 20, 1995.[5] No comments were received on the proposal. This order grants partial approval of the portion of the proposal amending Amex Rules 904 and 905.[6]

Currently, Amex Rule 904 prohibits Amex members from effecting, for any account in which the member has an interest or for any customer account, transactions in option contracts dealt in on the Exchange that would exceed the Amex's established position limits. Similarly, Amex Rule 905 prohibits members from exercising, for any account in which the member has an interest or for any customer account, a long position in option contracts dealt in on the Exchange that would exceed the Amex's established exercise limits. As presently written, Amex Rules 904 and 905 apply only to option classes traded on the Amex and not to opening transactions or exercises in option classes traded on another options exchange. Since each options exchange has jurisdiction only over its own members, a jurisdictional loophole exists where, for example, an Amex member exceeds position or exercise limits on another options exchange of which it is not a member in an option class not listed on the Amex. Under those circumstances, the Amex could not take disciplinary action against its member for violating the position and exercise limit rules in an option class traded on another options exchange. Similarly, the options exchange where the option class is traded could not bring an action since it does not have jurisdiction over a non-member.

In order to close this jurisdictional loophole, the Amex proposes to extend its disciplinary jurisdiction to include members' violations of the position and exercise limits of other options exchanges. Specifically, the Amex proposes to amend Amex Rule 904 to prohibit Amex members who are not members of the exchange where the options transactions are effected from effecting, for any account in which the Amex member has an interest or for any customer account, transactions in option contracts that would exceed the position limits established by the exchange where the options are traded. Similarly, the Amex proposes to amend Exchange Rule 905 to prohibit Amex members who are not members of the exchange where the options transactions are effected from exercising, for any account in which the Amex member has an interest or for any customer account, a long position in option contracts that would exceed the exercise limits established by the exchange where the options are traded.

The Amex notes that the proposed extension of jurisdiction will apply only when the Amex member is not a member of the other options exchange. In addition, the Amex will apply the applicable position and exercise limit rules of the other exchange, as well as its interpretations and policies.[7]

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 (b) (5)[8] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Amex has noted that Exchange Rules 904 and 905 currently apply solely to option contracts dealt in on the Amex and do not prohibit Amex members from exceeding the position and exercise limits set by another exchange for non-Amex listed option contracts. Thus, if an Amex member exceeds the position and exercise limits of another options exchange, and the Amex member is not a member of the exchange which lists the options, then neither the Amex or the exchange that lists the options is able to enforce its position and exercise limits against the Amex member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring an Amex member who trades non-Amex listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.[9]

As the Commission has noted in the past,[10] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations[11] and for corners or squeezes of the underlying market. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by Amex members by bringing an Amex member's customer transactions in non-Amex exchange listed options within the Amex's jurisdiction for position and exercise limit purposes.

Finally, the Commission notes that the Amex's proposal to amend Amex Rules 904 and 905 is identical to proposals recently approved by the Commission.[12]

acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five conservative business days.

[4] In Amendment No. 1, the Amex indicated that it will apply the interpretations and policies of another exchange when applying that exchange's position and exercise limit rules to an Amex member's transactions on that exchange. In addition, the Amex stated that it will take disciplinary action pursuant to its own rules if the Amex finds that an Amex member has violated the position and exercise limit rules of another exchange. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation, Commission, dated September 19, 1995 ("Amendment No. 1").

[5] Securities Exchange Act Release No. 36353 (October 10, 1995), 60 FR 54286.

[6] In partially approving the Amex's proposal, the Commission is not approving, at this time, the portion of the proposal amendment Amex Rule 900(a).

[7] See Amendment No. 1, *supra* note 4. The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

[8] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[9] Under the proposal, the Amex will also apply the interpretations and policies of the exchange where the options transactions are effected. The Amex will take disciplinary action pursuant to its own rules when it finds that an Amex member has violated the position and exercise limit rules of another exchange. See Amendment No. 1, *supra* note 4.

[10] See, *e.g.*, Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 69204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

[11] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[12] See Securities Exchange Act Release Nos. 36242 (September 18, 1995), 60 FR 49305 (September 22, 1995) (order approving File No. SR–CBOE–95–22); 36257 (September 20, 1995), 60 FR 50220 (September 28, 1995) (order approving File No. SR–PHLX–95–31); and 36350 (October 6, 1995), 60 FR 53654 (October 16, 1995) (order approving File No. SR–PSE–95–17).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the portion of the proposed rule change (SR–Amex–95–35) amending Amex Rules 904 and 905 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30529 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36568; File No. SR–SCE–95–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Relating to the Definitions of Public and Professional Agency Orders

December 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend the definition of public agency order and professional agency order as follows, with added language in italics and deletions in brackets:

Rule 11.9 National Securities Trading System

(a) No Change.
(1) through (6) No Change.
(7) The term "public agency order" means any order for *an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934* [the account of a person other than a member, an Approved Dealer, or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System], which is represented, as agent, by a User.
(8) The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer *or for an account which is not covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.*
(b) through (u) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CSE Rule 11.9(*l*) grants "public agency" orders a special time priority on the CSE, *i.e.*, public agency orders have priority over professional agency orders at the same price. The intent of the proposed rule change is to ensure that the privilege of this super-priority is granted only to those for whom it was originally intended by clarifying the distinction between "public agency" and professional agency" order flow.[1]

Paragraph (1)(E) in Section 11(a) of the Act, which addresses certain issues related to trading by Exchange members, segregates for special treatment "any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person." The New York Stock Exchange ("NYSE") utilizes this definition of public agency business in NYSE Rule 80A, its rule for limiting trading during significant market declines. Specifically, NYSE Rule 80A(e)(iii) defines an "account of an individual investor" as "an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934." The CSE is proposing to incorporate Section 11(a)(1)(E) into its definition of public and professional agency orders. The Exchange believes that it is appropriate to articulate definitions of agency business that are consistent with the general understanding and practice of the securities industry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CSE informed the other Intermarket Trading System participants of its intent to file this rule proposal, and no comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the purposed rule change between the Commission and any person, other than those that maybe withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[1] The Commission notes that several of the Exchanges' rules, such as its order guarantee and preferencing rules, distinguish between public and professional agency orders. Thus, the proposed rule change would affect certain orders in these contexts as well. See, *e.g.*, CSE Rules 11.9(c) and (u).

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should refer to File No. SR–CSE–05–10 and should be submitted by January 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30530 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36570; File No. SR–NSCC–95–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending NSCC's By-Laws to Provide for an Additional Member of the Board of Directors

December 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on November 3, 1995, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Article II, Section 2.1 of NSCC's by-laws to allow for an additional member of its board of directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When NSCC was originally formed, the number of directors on its board was sixteen. In order to provide a greater representation by participants in the management of NSCC, this number was increase to seventeen in 1984, to eighteen in 1989, and to nineteen in 1994.[3] Since that time, NSCC has continued to expand its list of participants, and NSCC believes that it is in its participants' interest that the number of directors again be increased.[4] NSCC's by-laws permit the number of directors to be increased from time to time.[5] The proposed rule change consists of an amendment to the by-laws which increases the number of directors on the board from nineteen to twenty. The additional participant director will further the opportunity for participants to be represented on the board.

The proposed rule change is consistent with Section 17A of the Act in that it increases the opportunity for NSCC's participants to be involved in the administration of NSCC's affairs.[6]

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) states that the rules of a clearing agency must assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.[7] The Commission believes that the proposed increase in the number of directors on the board is consistent with NSCC's obligations under Section 17A because the result will be a board which better reflects NSCC's participants. As a result, participants will be afforded additional opportunities to raise, discuss, and help resolve issues that affect them.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because it will give NSCC the opportunity to have the additional participant member elected prior to and possibly participate in NSCC's next board meeting, which is scheduled for December 14, 1995.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5. U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–NSCC–95–14 and should be submitted January 5, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–14) be and hereby is approved.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 27984 (May 2, 1990), 55 FR 19400 and 33852 (April 13, 1994), 59 FR 17634.

[4] Pursuant to NSCC's shareholders agreement, one director represents each of NSCC's shareholders (the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers), one director represents management, and the remaining directors are selected from NSCC's participants. Thus, the additional director will be selected from NSCC's participants.

[5] The number of directors may be increased or decreased at any time by amendment of the by-laws by either a vote of the shareholders entitled to vote for election of directors or by majority of the entire board.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(b)(3)(C) (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30568 Filed 12–14–95;8:45am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Central District of California, dated July 1, 1976, the United States Small Business Administration hereby revokes the license of , a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/14-0012 issued to Investcal Small Business Investment Company on June 30, 1972 and said license is hereby declared null and void as of December 11, 1995.

Dated: December 11, 1995.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30535 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Eastern District of California, dated October 6, 1995, the United States Small Business Administration hereby revokes the license of Yosemite Capital Investment Co., Inc., a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5236 issued to Yosemite Capital Investment Co., Inc. on July 17, 1979 and said license is hereby declared null and void as of December 11, 1995.

Dated: December 11, 1995.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment

[FR Doc. 95–30536 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

Providence Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, January 5, 1996 at 8:00 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the office of the District Director, Providence District Office, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: December 8, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–30520 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/ 8/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–902
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0725 dated December 1, 1995 r1–8
TC23 Reso/P 0728 dated December 1, 1995 r9–15
Expedited Middle East-TC3 resos
Intended effective date: expedited January 31/February 1, 1996

Docket Number: OST–95–903
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0715 dated November 24, 1995 r1–6
TC23 Reso/P 0716 dated November 24, 1995 r7
TC23 Reso/P 0717 dated November 24, 1995 r8–9
Europe-Japan/Korea Expedited Resos
Intended effective date: expedited January 15, 1996

Docket Number: OST–95–904
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1871 dated December 1, 1995 r1
TC2 Reso/P 1872 dated December 1, 1995 r2–7
Expedited Middle East-Africa resos
Intended effective date: expedited January 14/15, 1996

Docket Number: OST–95–913
Date filed: December 6, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0722 dated December 1, 1995 r1
TC23 Reso/P 0723 dated December 1, 1995 r2–6
Expedited Africa-TC3 resos
Intended effective date: expedited January 31/February 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–30574 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 8, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–900
Date filed: December 4, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 1, 1996
Description: Application of Piedmont Aviation Services, Inc., pursuant to 49 U.S.C. 41101 and 204.5 and Subpart Q of the Regulations, requests a fitness determination and issuance of a certificate of public convenience and necessity to engage in charter foreign air transportation of persons, property and mail.

Docket Number: OST–95–907
Date filed: December 5, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1996
Description: Application of Time Air Inc., pursuant to 49 U.S.C. 41304 and

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Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit to operate scheduled and nonscheduled foreign air transportation of persons, property and mail to and from any point in the territory of Canada to and from any point in the territory of the United States, including at its option two or more points in the territory of the United States in a through-service carrying no local passengers or cargo between points in the territory of the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–30575 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 and 1993 Mercedes-Benz 500SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 and 1993 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 and 1993 Mercedes-Benz 500SEL passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 16, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1992 and 1993 Mercedes-Benz 500SEL (Model ID 140.051) passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the 1992 and 1993 Mercedes-Benz 500SEL passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt warning symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.- model headlamps and front sidemarkers; (b) installation of U.S.- model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side convex rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that all non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars built prior to September 1993 are equipped with driver's side air bags and knee bolsters, and that those built after September 1993 are equipped with both driver's and passenger's side air bags and knee bolsters. The petitioner further states that these vehicles are equipped with Type 2 seat belts in both front and rear outboard seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–30576 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–88; Notice 1]

Isis Imports Ltd. Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards No. 208 and 214

Isis Imports Ltd. of San Francisco, California, ("Isis") has applied for a temporary exemption of two years from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, and of three years from Federal Motor Vehicle Safety Standard No. 214 *Side Impact Protection*. The basis of the application is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

The make and type of passenger car for which exemption is requested is the Morgan open car or convertible. Morgan Motor Company ("Morgan"), the British manufacturer of the Morgan, has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. It is the business of Isis to buy incomplete Morgan cars from the British manufacturer and import them as motor vehicle equipment, completing manufacture by the addition of engine and fuel system components. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their fuel system components and engines, which are propane fueled. As the party completing manufacture of the vehicle, Isis certifies its conformance to all applicable Federal safety and bumper standards. The vehicle completed by Isis in the U.S. is deemed sufficiently different from the one produced in Britain that NHTSA considers Isis the manufacturer, not a converter, even though the brand names are the same.

Morgan itself produced around 470 cars in 1994, while in the year preceding the filing of its petition in September 1995, Isis produced 14 cars for sale in the United States. Twice previously NHTSA has exempted Isis from compliance with the automatic restraint requirements of Standard No. 208 on hardship grounds, the latest exemption expiring November 1, 1995. The staff of Isis consists of three full time employees and one part time employee. Its cumulative net income for the years 1992–94 totals $34,694.

Application for Exemption From Standard No. 208

Isis received NHTSA Exemptions Nos. 89–4 and 92–7 from S4.1.2.1 and S4.1.2.2 of Standard No. 208, respectively expiring October 1, 1992 and November 1, 1995 (54 FR 43647 and 57 FR 60564). Under the first exemption, it had sought to comply through a motorized belt system, then concluded that an air bag system would be preferable. At the time that its second exemption was granted, Isis had received proposals from air bag suppliers that it deemed prohibitive in cost. However, it hoped to have access to a system under development by Range Rover, or to aftermarket retrofit components.

According to the applicant, sufficient progress has been made during its second three-year exemption period that it can foresee compliance in only two more years. Morgan itself intends to equip its cars with air bags and has begun a test program towards this end. To date, 5 of 6 Hy-ge sled tests have been conducted. Body modifications are being engineered. Morgan is currently negotiating for "multi-point sensor air bag components", and estimates that it will take 12 to 18 months to complete the project "once we are given permission to use the components, most of which have already been sourced." Until such time, Isis will continue to use manual three-point restraint systems in its cars.

Application for Exemption from Standard No. 214

Isis claims that it has insufficient resources to work towards compliance with those requirements until its work on complying with Standard No. 208 is completed. It has had discussions with the British Motor Industry Research Association to identify the components that may require alteration, such as the door latches and interior padding. In its view, "it would not be prudent to test for side impact until we complete our modifications of the seating area and knee bolster assembly and finalize the air bag configuration, as changes in this area would be reflected in the performance of the vehicle in side-impact testing." It does, however, meet the previous side door strength requirements of the standard, and will work towards compliance during the three-year exemption period for which it has asked. Were the phase-in requirement of S8 applied to it, calculated on the basis of its limited

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production, only very few cars would be required to meet the standard.

Safety and Public Interest Arguments

Because of the small number of vehicles that the applicant produces and its belief that they are used as second or third cars for short mileage open air excursions rather than for daily commuting, and because of the three-point restraints and side impact protection currently offered, Isis argues that an exemption would be in the public interest and consistent with safety. An exemption would allow it to "maintain the existing diversity of motor vehicles available in this country." Finally, because of its expertise in the use of propane as a fuel, Isis is "in a position to contribute to the growth of the alternative fueled vehicle industry."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 16, 1996.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: November 28, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30577 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revised Time Frames Regarding Test of Reconciliation for Adjustments Made to the Price of Imported Merchandise by Related Party Companies Under 26 U.S.C. 482

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revised time frames for test.

SUMMARY: This document announces Customs decision to revise the time frames regarding the test Customs plans to conduct involving the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. In a prior **Federal Register** notice (60 FR 46141), Customs set out the eligibility requirements for voluntary participation in the test and described the basis on which Customs will select participants. This notice revises the time frames for both applicants to volunteer and for the commencement and conclusion of the planned test.

DATES: Applications to participate in this reconciliation test must be filed with and approved by Customs on or before May 1, 1996. The test will commence no earlier than May 1, 1996, and will cover entry summaries filed by selected participants from May 1, 1996, to December 31, 1996, or the end of the participant's tax year, whichever comes first. Participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by July 31, 1997, whichever comes first.

ADDRESSES: To be considered for voluntary participation in this test, applications should be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2311, Washington, D.C. 20229–0001. Once the test is underway, reconciliation summaries shall be filed to the attention of Mr. Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Matthew Krimski, (202) 927–0411.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1995, Customs published a document in the **Federal Register** (60 FR 46141) announcing plans to conduct a test regarding the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. The document described the objectives of the test, the application process to participate, the eligibility criteria, selectivity criteria and test evaluation criteria. The document invited public participation in the test and set forth a deadline for applications at no later than October 1, 1995. The planned commencement of the test was October 1, 1995.

Customs is now revising certain elements of the September 5, document. Customs now plans to begin the test no earlier than May 1, 1996, and the test will cover entry summaries filed by the selected participants from May 1, 1996, to December 31, 1996, or the end of the participant's tax year, whichever comes first.

Participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by July 31, 1997, whichever comes first. Further, by applying, applicants agree that the value for merchandise covered by all entry summaries filed by them or on their behalf on or after May 1, 1996, until the end of the tax year or December 31, 1996, whichever comes first, shall be finally determined by the liquidation of the reconciliation filed in accordance with the test.

The time frame for Customs acceptance and approval of applications to participate in the test has been revised to May 1, 1996. Applications shall be addressed to Mr. William F. Inch as indicated above in this document.

To be eligible to participate in the test, a participant's tax year must end between May 1, 1996 and December 31, 1996.

For purposes of the reconciliation test, reconciliation summaries shall be filed to the attention of Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Aside from the revised information set forth in this document, all other information regarding the reconciliation test set forth in the **Federal Register** document of September 5, 1995, is still applicable.

Dated: December 6, 1995.

Karen J. Hiatt,

Acting Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 95–30516 Filed 12–14–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Receipt of Cultural Property Request From the Government of Nicaragua

AGENCY: United States Information Agency.

ACTION: Notice of Receipt of Cultural Property Request from the Government of Nicaragua.

The Government of Nicaragua has submitted a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on November 27, 1995, by the United States Information Agency. The request seeks U.S. protection of certain categories of archaeological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Nicaragua. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq*) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: November 28, 1995.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 95–30585 Filed 12–14–95; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at Hialeah City Hall, 501 Palm Avenue, Hialeah, Florida on Thursday, December 14, 1995, at 6:00 p.m.

The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting, Thursday, December 14, 1995

Agenda

Part One—Closed to the Public

Technical Operations Update

Part Two—Open to the Public

I. Update on Radio and T.V. Martí
II. Presentations
III. Approval of Minutes
IV. Report on Congress
  (a) Budget
  (b) Relocation to Miami
V. Investigations Update
VI. External Review Panels
VII. USIA International Programs
VIII. Public Testimony
IX. Old Business
X. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Due to the limited availability of Advisory Board members and other scheduling problems and the need to move the project forward, this announcement will appear for less than 15 days.

Determination to Close Portions of the Advisory Board Meeting of December 14, 1995

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 6:00 p.m. to 6:30 p.m. portion of the meeting should be closed to the public.

The Advisory Board has requested that the Technical Operations Update of the December 14, 1995, meeting be closed to the public. This item will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions.

Dated: December 8, 1995.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 95–30586 Filed 12–14–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Marriott Copley Place, 110 Huntington Avenue, Boston, MA, January 9 through January 11, 1996. The session on January 9, 1996, is scheduled to begin at 1:00 p.m. and end at 5:00 p.m. (EST). The sessions scheduled for January 10 and 11 are scheduled to begin at 8:00 a.m. and end at 5:00 p.m. (EST). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

This meeting will be open to the public (to the seating capacity of the room) at the start of the January 9 session for approximately a half an hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Public law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC 20420 (phone: 202–565–7425) at least five days before the meeting.

Dated: December 7, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–30531 Filed 12–14–95; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, December 12, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a personnel matter; (2) matters relating to the Corporation's corporate and supervisory activities; and (3) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 12, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95-30662 Filed 12-13-95; 2:31 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 19, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and/or by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Establishment of a New System of Records (Vacancy Announcement Tracking System).

Memorandum and resolution re: Withdrawal of a proposed rule prescribing by regulation that certain liabilities of an insured depository institution are deposit liabilities by general usage.

Memorandum re: Contract to Provide Management Services.

Discussion Agenda

Memorandum re: The Corporation's 1996 Budget.

Memorandum re: Alternative Dispute Resolution Report.

Memorandum and resolution re: Final amendments to Part 360 of the Corporation's rules and regulations, entitled "Resolution and Receivership Rules," which include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities within the definition of "qualified financial contracts" (QFCs) under the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: December 12, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95-30663 Filed 12-13-95; 2:31 pm]

BILLING CODE 6714-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

Notice of Meeting

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 10:30 a.m.–1:00 p.m.—Friday, January 12, 1996.

STATUS: Open.

ADDRESS: The Madison Hotel, 15th and M Streets, NW, Washington, DC 20005, 202/862-1740.

FOR FURTHER INFORMATION CONTACT: Elsa Mezvinsky, Special Assistant to the Director, Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506 (202) 606-8536.

SUPPLEMENTARY INFORMATION:

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, January 12 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506 (202) 606-8536 TDD (202) 606-8636 at least seven (7) days prior to the meeting date.

65th Meeting of the National Museum Services Board the Madison Hotel, Friday, January 12, 1996, 10:30 a.m.—1:00 p.m.

Agenda

I. Chairman's Welcome and Approval of Minutes
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. IMS Programs Report
VI. Twentieth Anniversary Report

Dated: December 7, 1995.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 95-30703 Filed 12-13-95; 3:44 pm]

BILLING CODE 7036-01-M

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federal register

Friday
December 15, 1995

Part II

Department of Education

34 CFR Part 361
The State Vocational Rehabilitation Services Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB12

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing The State Vocational Rehabilitation Services Program. These amendments are needed to implement changes to the Rehabilitation Act of 1973 (Act) made by the Rehabilitation Act Amendments of 1992, enacted on October 29, 1992, as amended by the 1993 technical amendments (hereinafter collectively referred to as the 1992 Amendments).

DATES: Comments must be received on or before February 23, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, U.S. Department of Education, 600 Independence Avenue SW., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments transmitted by facsimile should be sent to (202) 205–9772. Comments can be transmitted in an electronic format either through the electronic bulletin board system (BBS) of the Rehabilitation Services Administration (RSA) or through internet. The internet address is "State_VR@ed.gov". The access number for the RSA BBS is (202) 205–5574 for low speed (2400 BPS or lower) modems and (202) 205–6174 for high speed (9600 BPS and higher) modems. Comments can also be transmitted to the RSA BBS through Fedworld via internet using the telnet command. Telnet to: "Fedworld.gov". All comments transmitted in an electronic format should be sent to the following RSA BBS mailbox: "RSADPPES". To facilitate the analysis of comments, electronic transmission of comments is preferred. Also, comments should be specific and identified by proposed regulatory citation. Comments received by RSA after the due date for comments will not be considered.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 600 Independence Avenue SW., Room 3014, Mary E. Switzer Building, Washington, D.C. 20202–2531. Telephone (202) 205–8831. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5538.

SUPPLEMENTARY INFORMATION: The State Vocational Rehabilitation Services Program (program) is authorized by Title I of the Act (29 U.S.C. 701–744). This program provides support to each State to assist it in operating a comprehensive, coordinated, effective, efficient, and accountable State program to assess, plan, develop, and provide vocational rehabilitation (VR) services to individuals with disabilities so that those individuals may prepare for and engage in gainful employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Regulations for this program were last published in their entirety on May 12, 1988 (53 FR 16978) to implement the 1986 amendments to the Act and are codified in 34 CFR Part 361. In addition, a notice of proposed rulemaking (NPRM) for this program was published on July 3, 1991 (56 FR 30620) (1991 NPRM), but it was never finalized.

In the 1991 NPRM, the Secretary proposed amendments to the regulations for this program that were designed to reduce regulatory burden on States and to place greater administrative discretion at the State level. More specifically, the 1991 NPRM proposed to remove or reduce certain State plan, paperwork, and reporting requirements not mandated by statute, to clarify the regulations through more precise definitions, and generally to simplify and condense the regulations. At the request of the Congress, the proposed regulations in the 1991 NPRM were not finalized because the Rehabilitation Act Amendments of 1992 were being developed at that time.

The 1992 Amendments made extensive changes to Title I of the Act that have far-reaching implications for the program. One of the major themes of the 1992 Amendments is the empowerment of individuals with disabilities in terms of influence on the State plan and State vocational rehabilitation policy through membership on the State Rehabilitation Advisory Council or an independent commission and increased participation in the development, implementation, and evaluation of their individualized written rehabilitation programs through informed choice. The statute also requires that designated State units (DSUs) provide for the use of appropriate modes of communication and accessible formats to ensure equal access for individuals with disabilities who need this assistance.

A related theme is the integration of individuals with disabilities into the full spectrum of American life. The 1992 Amendments requires both that vocational rehabilitation services be provided in the most integrated settings possible and that employment outcomes be in the most integrated settings possible.

Another key theme of the 1992 Amendments is to improve access to the vocational rehabilitation system. The amendments streamline the process for making eligibility determinations by requiring the use of existing information to the extent possible, by adding a presumption of benefit from services, and by providing a 60-day time limit for making eligibility determinations.

The 1992 Amendments also focuses on expanding and improving the quality of services by requiring States to develop a strategic plan, by requiring States to develop a comprehensive system of personnel development to ensure that DSU personnel are adequately trained and meet the State's highest standards, and by requiring the development of standards and indicators to evaluate the performance of State programs. The evaluation standards and performance indicators are being developed separately and are not addressed in this NPRM.

Finally, the 1992 Amendments focuses on expanding and improving services to certain groups of individuals with disabilities. The amendments include new order of selection and eligibility provisions that are designed to increase and improve services for individuals with severe disabilities, particularly individuals with the most severe disabilities. The amendments also contain new outreach requirements that are designed to increase services to individuals with disabilities who are members of groups that are currently unserved and underserved, including members of minority groups. In addition, the amendments contain provisions that are designed to increase coordination between education agencies and DSUs to better serve individuals with disabilities who are transitioning students.

This NPRM proposes changes to implement the 1992 Amendments to Title I Parts A, B, and C of the Act (with the exception of the strengthened order

of selection requirements in sections 12(d) and 101(a)(5)(A) of the Act, the evaluation standards and performance indicator requirements in section 106 of the Act, and the client assistance program requirements in section 112 of the Act, which are being implemented in separate rulemaking documents) and proposes to incorporate some of the changes that were previously proposed in the 1991 NPRM to reduce the administrative burden on States. This NPRM also proposes other changes that the Secretary believes are important to update, consolidate, clarify, and in other ways improve the regulations for this program.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, prior to drafting this NPRM, RSA, on March 31, 1994, made draft proposed regulations (draft regulations) available in accessible formats, including an electronic format, to a broad spectrum of parties for informal review and comment. Over 600 letters of comments on the draft regulations were analyzed. RSA also gathered public input on the draft regulations through public meetings held in Washington, D.C. on April 19, May 12, and May 17, 1994; Chicago on April 26, 1994; and Oakland, California on May 4 and May 5, 1994; and through public teleconferences on April 20, May 13, May 18, and June 8, 1994. In addition, three separate focus groups were convened in June 1994 to allow for further discussion of three discrete issues: eligibility under the program, informed choice in the selection of services and service providers, and the standards related to the achievement and maintenance of an employment outcome.

The following is a section-by-section summary of the regulations proposed in this NPRM, including an explanation of the major provisions, how they differ from the existing and the draft regulations, and the reasons the Secretary is proposing them. In addition, in order to clarify proposed organizational changes, the summary identifies the sections of the current regulations, as well as the sections of the statute, on which every section of the proposed regulations is based.

Changes to the draft regulations that appear in this NPRM were made in response to public comments received by RSA and input provided during the public meetings, teleconferences, and focus groups. Significant changes to the draft regulations are discussed in the section-by-section summary. However, minor technical and structural changes that do not significantly alter the provisions of the draft regulations are not discussed.

In response to public commenters who viewed some of the paperwork requirements in the draft regulations as unduly burdensome, the Secretary has proposed in the NPRM eliminating or consolidating documentation requirements wherever feasible. Those requirements that would remain in the proposed regulations are considered essential to the proper administration of the program. Paperwork requirements in the following sections of the draft regulations have been removed or reduced: §§ 361.13(c), 361.19, 361.20(b), 361.21 (a) and (b), 361.22(a)(1), 361.29 (a)(2) and (a)(4), 361.33(b), 361.46, 361.47, 361.52, and 361.53(a)(3).

In addition, the draft regulations have been reviewed and revised in accordance with the Department's principles for regulating, which were developed as part of the Administration's regulatory reinvention initiative under the National Performance Review II. The principles are designed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. As a result of that review, additional non-statutory requirements in the draft regulations have been eliminated or modified to reduce paperwork or process requirements on States and to increase State flexibility in meeting statutory requirements. These proposed changes are identified in the section-by-section summary.

The proposed regulations, like the draft regulations, provide guidance through examples in the following three areas: permissible expenses under the definition of "maintenance"; permissible expenses under the definition of "transportation"; and meeting the final eligibility criterion (an individual with a disability must require VR services) under § 361.42. Some public commenters on the draft regulations opposed the use of examples on the grounds that they would interfere with individual counselor judgment, whereas other commenters supported their use as an effective means of ensuring that counselors had ready access to information typically found in guidance materials. By including the examples in the regulations, the Secretary intends to make the regulations more comprehensive and useful. The Secretary emphasizes, both here and throughout the section-by-section summary, that the examples are provided solely for the purposes of illustration, do not address all situations that a rehabilitation counselor may face, and are not intended to preclude individual counselor judgment on a case-by-case basis. The examples are merely guidance material to which rehabilitation professionals can quickly refer.

References in the section-by-section summary to the "proposed regulations," as opposed to the "draft regulations," refer to regulatory provisions included in this NPRM.

Section-by-Section Summary

Section 361.1—Purpose

This proposed new section of the regulations would incorporate the language in section 100(a)(2) of the statute, which emphasizes the goal of gainful employment for individuals with disabilities and the responsibility of States to operate comprehensive, coordinated, effective, efficient, and accountable programs that are designed to assess, plan, develop, and provide vocational rehabilitation services. The Secretary interprets the statutory term "gainful employment" to have the same meaning as the term "employment outcome," as it is defined in the proposed regulations.

Section 361.2—Eligibility for a Grant

This new section is proposed for clarification. A similar section was proposed in the 1991 NPRM.

Section 361.3—Authorized Activities

This new section is proposed to clarify how the funds under this program can be used. A similar section was proposed in the 1991 NPRM. It also incorporates the new statutory provision in section 111(a)(1) of the Act that funds may be used to develop and implement the strategic plan.

Section 361.4—Applicable Regulations

This proposed section would revise § 361.1(b)(1) of the existing regulations to clarify that the reference to 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) applies only to the award of subgrants by vocational rehabilitation agencies to entities that are not State or local governments or Indian tribal organizations and to remove the reference to 34 CFR Part 78 (The Education Appeal Board) because it has been deleted from the Education Department General Administrative Regulations (EDGAR). In addition, the proposed section would add references to 34 CFR Parts 80, 81, 82, 85, and 86 because those parts have been added to EDGAR since the regulations for this program were last revised, and they are applicable to this program.

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Section 361.5—Applicable Definitions

This proposed section is taken from § 361.1(c) of the existing regulations. It has been revised to incorporate changes in the definitions in section 7 of the Act that were made by the 1992 Amendments. The definitions are organized alphabetically and are numbered for purposes of quick identification.

The following definitions from the current regulations are not included in the proposed regulations since the terms have been removed or replaced in the Act: "employability," "evaluation of vocational rehabilitation potential," "initial expenditure," "rehabilitation facility," and "time-limited services." In addition, the term "workshop" is not used or defined in the proposed regulations. Statutory definitions of the following terms have been added to the proposed regulations without substantive change: "assistive technology device," "assistive technology service," "extended services," "impartial hearing officer," "ongoing support services," "personal assistance services," "rehabilitation technology," "supported employment," "supported employment services," and "transition services. In addition, definitions of "American Indian" and "State" have been revised to reflect statutory changes made by the 1992 Amendments.

Definitions of the terms "community rehabilitation program" and "employment outcome," which are defined in the Act, have been revised to clarify or elaborate on the statutory definitions. The proposed definition of "community rehabilitation program" incorporates the definition in section 7(25) of the Act, but would add a definition of the word "program" to clarify that community rehabilitation programs do not include individual practitioners, such as physicians or physical therapists, who provide VR services but are not affiliated with an agency, organization, or institution that provides VR services as one of its major functions. This clarification is based on the Secretary's view that Congress did not intend for the assessment of the capacity and effectiveness of community rehabilitation programs and related requirements to include every individual person who provides VR services. However, the Secretary interprets the term community rehabilitation program and the associated requirements to apply to a vocational rehabilitation services unit of a hospital. In addition, in response to public comment on the draft regulations, the Secretary proposes to broaden the meaning of the term "program" from an entity that provides or facilitates the provision of VR services as its primary function to an entity that provides or facilitates the provision of VR services as one of its major functions. This change would enable, for example, a local affiliate of the United Cerebral Policy Foundation that provides VR services, in addition to disseminating information and providing educational services, to be considered a "community rehabilitation program" under the definition.

The proposed definition of "employment outcome" elaborates on the definition in section 7(5) of the Act by incorporating into the definition the concept in the Act that an employment outcome must be consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The proposed definition would replace the definition of "employability" in § 361.1 of the existing regulations. In response to the draft regulations, several commenters expressed concern about the scope of permissible employment outcomes under the definition. Although the proposed definition, unlike the current regulatory definition of "employability," does not identify a full range of permissible employment outcomes under the vocational rehabilitation services program, the Secretary does not intend the proposed definition to exclude any employment outcome that has been permitted in the past. Thus, for example, homemaker, extended employment, and self-employment remain acceptable employment outcomes. The proposed definition does, however, recognize competitive employment as the optimal employment outcome under the program, and language emphasizing this has been added to the definition.

The Secretary proposes new definitions or revisions to the definitions in the existing regulations for the following terms that are not defined in the Act: "administrative costs," "applicant," "appropriate modes of communication," "comparable services and benefits," "competitive employment," "construction of a facility for a public or nonprofit community rehabilitation program," "establishment, development, or improvement of a public or nonprofit community rehabilitation program," "establishment of a facility for a public or nonprofit community rehabilitation program," "extended employment," "family member," "individual's representative," "integrated setting," "maintenance," "post-employment services," "transitioning student," and "transportation."

The proposed definition of "administrative costs" is based on existing RSA subregulatory guidance and definitions of the term that are used in other RSA programs. The definition, which is substantially the same as the definition of "administrative costs" in the draft regulations, lists, as examples, certain types of expenses that would constitute administrative costs. Several commenters on the draft regulations suggested adding other items to the definition. In response, the Secretary has amended the definition of "administrative costs" to clarify that the types of expenses listed in the definition are intended only as examples and that other expenditures would be considered administrative costs as long as those expenditures relate to program planning, development, monitoring, and evaluation.

The Secretary proposes to define "applicant" for clarification by referencing the requirements for submitting an application in § 361.41(b)(2) of the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the term "special modes of communication" to "appropriate modes of communication" to ensure consistency with the Americans with Disabilities Act (ADA). In addition, the Secretary proposes to eliminate references in the definition to individuals who are blind, deaf, or hearing-impaired to clarify that the proposed definition is not limited by type of disability and that it includes all appropriate modes of communication necessary to enable any individual with a disability to comprehend information being communicated.

Finally, the Secretary has expanded the list of examples of communication services and materials in the proposed definition. However, the Secretary does not consider the list to be all-inclusive and emphasizes that other appropriate modes of communication not specified in the proposed definition are also available.

The proposed definition of "comparable services and benefits" is based on a definition of that term that was proposed in the 1991 NPRM. It is intended to support the statutory purpose of conserving rehabilitation funds, while ensuring the provision of appropriate and timely services in lieu of those provided by the DSU. The proposed definition revises the definition proposed in the 1991 NPRM to remove private agencies (i.e., community, philanthropic, and other private entities that are not VR service providers but do provide financial or other assistance to individuals with disabilities to help meet VR needs, such as scholarship assistance from a local Lions Club) as one of the sources of comparable services and benefits because the Secretary interprets the reference in the statute to "other programs" to mean other public programs. In addition, the Secretary believes it would be too burdensome to require State agencies to determine the availability of comparable services and benefits from private agencies prior to providing services and benefits under this program. The Secretary would, however, continue to encourage State agencies to use services and benefits that are available from private agencies to the extent they are known. In response to public comment on the draft regulations, the Secretary has further amended the term by clarifying that comparable services and benefits must be available "within a reasonable period of time" and must be commensurate with the services that the individual would otherwise receive from the VR agency.

In response to public comment on the draft regulations, the Secretary has consolidated the definitions of "competitive employment" and "competitive work" from the draft regulations into a single proposed definition of "competitive employment." The consolidated definition recognizes that integration (i.e., an employment outcome in an integrated job setting) is an element of competitive employment, rather than a separate concept. It would establish a general requirement that individuals must receive compensation that is at or above the minimum wage, but not less than the prevailing community wage for non-disabled individuals performing the same or similar work.

The consolidated definition would apply to supported employment as well as to other kinds of competitive employment outcomes. Under the proposed definition, however, an employment outcome in a supported employment setting in which an individual receives wages below the minimum wage in accordance with section 14(c) of the Fair Labor Standards Act (FLSA) (i.e., wages based on individual productivity) would no longer be considered competitive employment. Although this proposed change would represent a significant departure from longstanding RSA regulatory policy, the Secretary agrees with those public commenters who suggested that competitive employment outcomes should be limited to those in which individuals are compensated at or above the minimum wage. In addition, this proposed change is consistent with section 101(a)(16) of the Act, which requires DSUs annually to review and reevaluate the status of each individual in an employment setting under section 14(c) of the FLSA in order to determine the individual's readiness for competitive employment. This statutory requirement indicates that supported employment settings in which individuals are compensated below minimum wage in accordance with the FLSA do not constitute competitive employment. The Secretary also notes that the proposed change would have the effect of requiring individuals in supported employment to earn at least the minimum wage in order to receive services under Title VI, Part C of the Act. Finally, so that the impact of this proposed change can be appropriately evaluated, the Secretary requests public comment on the extent to which individuals currently in supported employment earn less than the minimum wage.

The proposed definition of the term "construction of a facility for a public or nonprofit community rehabilitation program" is based on the definition of the term "construction of a rehabilitation facility" in § 361.1(c) of the existing regulations and the definition of the term "construction" in section 7(1) of the Act. The proposed regulations also incorporate the 1992 Amendments, which replaced the concept of rehabilitation facilities with "community rehabilitation programs." The word "facility" is used in the proposed regulations only to refer to a "building" or "structure." In addition, the Secretary proposes to fold into this definition all authorized construction expenditures under this program, which are currently contained in § 361.74(a) of the existing regulations.

The Secretary proposes to define the term "eligible individual" for clarification throughout the regulations by referencing the basic eligibility criteria in proposed § 361.42(a).

The proposed definition of the term "establishment, development, or improvement of a public or nonprofit community rehabilitation program" elaborates on the statutory definition of the term "establishment of a community rehabilitation program" by incorporating all of the types of expenditures for which a State unit can receive Federal financial participation. These provisions are taken from § 361.73(a) of the existing regulations and include the limitations on staffing costs initially proposed in the 1991 NPRM.

The Secretary proposes to define separately the term "establishment of a facility for a public or nonprofit community rehabilitation program" for purposes of clarification. The proposed definition covers only those authorized activities contained in the definition of "establishment, development, or improvement of a public or nonprofit community rehabilitation program" that involve facilities. In response to public comment about these three terms, the Secretary wishes to emphasize that funds under this program cannot be used to support community rehabilitation programs that are profitmaking organizations.

In response to public comment on the draft regulations, the Secretary has amended the proposed definition of the term "extended employment" to clarify that it means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act as well as any on-the-job support services the individual might require. In response to several commenters who expressed concern with language in the draft definition that stated that some individuals in extended employment "are not ready for competitive employment," the Secretary has modified the proposed definition to clarify that the purpose of extended employment is to enable individuals to continue to train or otherwise prepare for competitive employment, unless the individual makes an informed choice to remain in extended employment.

In response to public comment, the definition of the term "family member" has been revised to mean any individual (1) who is a relative or guardian, or who lives in the same household as an applicant or eligible individual regardless of their interpersonal relationship; (2) who has a substantial interest in the well-being of that individual; and (3) who needs vocational rehabilitation services to enable the applicant or eligible individual to achieve an employment outcome.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "impartial hearing officer" to clarify that a member of the DSU's rehabilitation advisory council may not serve as an impartial hearing officer for that same DSU. Under the proposed definition, however, a member of the State Rehabilitation Advisory Council could serve as an impartial hearing officer in cases involving another DSU within the same State. For example, a member of the State Rehabilitation

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Advisory Council for a State unit serving individuals who are blind would not be precluded, solely on the basis of that membership, from serving as an impartial hearing officer in cases involving the State unit that serves individuals other than individuals with visual disabilities.

The Secretary proposes to include the term "individual with a most severe disability" in the definitions to clarify that States are required to define the term as a subset of and consistent with the definition of the statutory term "individual with a severe disability."

The Secretary proposes to define the term "individual's representative," consistent with the list of potential representatives in the Act, so that the defined term, rather than the long list of potential representatives, can be referenced throughout the regulations. In response to public comment on the draft regulations, the Secretary proposes to amend the definition to clarify that it means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the interests of the individual, in which case the court-appointed representative is the individual's representative.

The proposed definition of the term "integrated setting" is designed to implement the intent of the statute that individuals receive VR services and achieve employment outcomes in the most integrated settings possible, consistent with the individual's informed choice. In the draft regulations the term was defined broadly to mean a setting in which the majority of individuals with whom individuals with disabilities interact meaningfully, excluding service providers, are non-disabled individuals. In response to public comment on the draft regulations, the Secretary proposes to amend the term by requiring that applicants or eligible individuals need only be given the opportunity to interact with non-disabled individuals, excluding service providers, on a regular basis for a setting to be considered integrated. This proposed change would permit employment at a center for independent living, for example, to be considered integrated as long as the employee has the opportunity to regularly interact with non-disabled persons, even though the Act requires that a majority of a center's employees be disabled. The proposed definition also applies to supported employment placements. A separate definition of "integration" for supported employment placements is, therefore, no longer needed and is not included in the proposed regulations.

"Maintenance" would be defined to clarify that it includes living expenses (e.g., food, shelter, and clothing) only to the extent that they are in excess of an individual's normal expenses and that it is available only for eligible individuals and individuals receiving extended evaluation services. The proposed definition reflects statutory language in section 103(a)(5) of the Act that limits the provision of maintenance to "additional costs while participating in rehabilitation." The Secretary considers an individual to be participating in rehabilitation if the individual is receiving services under an individualized written rehabilitation program (IWRP) or under a written plan for providing extended evaluation services. The provision of maintenance must be tied to other needed services. Maintenance, however, cannot be used to pay the expenses of all applicants receiving assessment services, as several commenters urged. As discussed later in the definitions section of the preamble, the Secretary believes, however, that the short-term costs of food and shelter of applicants who are required to travel to receive assessment services, and who are not receiving extended evaluation services, could be covered as a transportation expense. In addition, the Secretary proposes a note following the proposed definition of maintenance that provides examples of permissible maintenance expenses. The last example was added in response to public comment and indicates that maintenance can be used to cover the costs of food, shelter, and clothing of homeless or recently deinstitutionalized individuals until other financial assistance can be secured for those costs. The Secretary emphasizes that the examples are provided solely for the purposes of illustration and do not preclude designated State units from providing maintenance in other appropriate situations.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "ongoing support services" by removing the requirement that the assessment of an individual's employment stability include one monthly contact with the individual's employer whenever the IWRP of an individual in supported employment provides for off-site monitoring. The Secretary emphasizes, however, that contacts with employers are authorized as follow-up services under paragraph (iii)(F) of the proposed definition and could be provided as often as necessary to reinforce a supported employment placement.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "physical and mental restoration service" by deleting from the proposed definition certain services that are not specifically identified in the statute. For example, "convalescent or nursing home care" has been deleted since it is not specified in section 103(a)(4) of the Act and is viewed as a type of long-term care rather than a restoration service.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "physical or mental impairment" to mean an injury, disease, or other condition that materially limits, or if not treated will result in materially limiting, mental or physical functioning.

The Secretary proposes to define "post-employment services" based on existing subregulatory guidance. In response to public comment on the draft regulations, the Secretary has amended the proposed definition to clarify that post-employment services are any vocational rehabilitation services for individuals that are provided subsequent to the achievement of an employment outcome and that are necessary to enable the individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. In addition, the Secretary proposes to amend the note following the proposed definition in order to further explain the circumstances under which post-employment services may be provided.

In response to public comment on the draft regulations, the Secretary has amended the definition of the term "substantial impediment to employment," as used in the criteria for determining eligibility under § 361.42(a)(1), to mean a physical or mental impairment that hinders (rather than "prevents") an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities. The Secretary proposes to delete the provision in the draft regulations that the impairment hinder the individual from employment that is consistent with the individual's interests. The purpose of this change is to clarify that an individual with an impairment who is not interested in his or her current employment does not, based on that lack of interest alone, have a substantial impediment to employment.

In response to public comment on the draft regulations and consistent with section 103(a)(14) of the Act, the

Secretary proposes to amend the definition of the term "transition services" to clarify that transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the transitioning student's IWRP.

In response to public commenters who sought further clarification of the term "transitioning student" in the draft regulations, the Secretary proposes to define the term to mean a student who is eligible to receive vocational rehabilitation services and is receiving "transition services" as defined in the regulations.

The Secretary proposes to define the term "transportation" on the basis of existing subregulatory guidance. In addition, the Secretary has included a note following the proposed definition that provides examples of permissible transportation expenses. One of these examples covers the short-term, travel-related expenses (i.e., food and shelter) of applicants receiving assessment services. These expenses, as discussed previously, cannot be provided under the maintenance authority. The Secretary also emphasizes that these examples are provided solely for the purposes of illustration and do not preclude DSUs from providing transportation costs in other appropriate situations.

Finally, the following nomenclature changes from the Act have been incorporated into the definitions and throughout the regulations: references to all forms of the word "handicap" have been changed to the corresponding form of the word "disability;" certain references to the word "disability" have been replaced by the word "impairment" (e.g., physical or mental impairment); and the word "client" has been removed and replaced with other appropriate terms, including "applicant," "eligible individual," "individual," or "individual with a disability."

The Secretary also notes that proposed changes to supported employment definitions included in this NPRM would also affect those definitions in 34 CFR Parts 363, 376, and 380.

Section 361.10—Submission, Approval, and Disapproval of the State Plan

Proposed § 361.10 contains certain requirements from §§ 361.2 and 361.3 of the existing regulations relating to the purpose, duration, development, submission, and approval of the State plan. Many of the other requirements in §§ 361.2 and 361.3 of the existing regulations have been relocated to other sections of the proposed regulations because they deal with the substance and administration of the State plan. Proposed § 361.10 also incorporates the new statutory provision that authorizes the Secretary to approve the submission of a State plan for a period other than three years if it corresponds to the period required for another plan required under Federal law. Proposed paragraph (j) of this section provides the procedures for disapproval of the State plan. The procedural protections would be the same as those that are currently provided when the Secretary withholds funds.

Paragraphs (e) and (f) of § 361.2 of the existing regulations, which contain provisions regarding the designation of and transition to a new State agency or State unit, would be removed from the proposed regulations. The 1991 NPRM proposed removal of these requirements because of the paperwork burden, and they have been omitted in this NPRM for the same reason.

Section 361.11—Withholding of Funds

Proposed § 361.11 revises § 361.4 of the existing regulations to make withholding hearings under this program subject to the jurisdiction of and the procedural requirements governing the Department's Office of Administrative Law Judges in EDGAR, 34 CFR Part 81, rather than program specific hearing procedures in current §§ 361.170 through 361.186, which would be repealed. This is consistent with the changes proposed in the 1991 NPRM.

Section 361.12—Methods of Administration

This proposed section is taken from § 361.10 of the existing regulations. The proposed regulations add a clause to clarify that proper and efficient administration of the State plan includes procedures to ensure accurate data collection and financial accountability.

Section 361.13—State Agency for Administration

This proposed section consolidates information contained in §§ 361.5, 361.6, and 361.8 of the existing regulations regarding the designation of the State agency, the organizational level and status of the State unit, and the full-time director requirement.

In an effort to reduce the regulatory burden and increase State flexibility in accordance with the Department's principles for regulating, the Secretary proposes to delete the requirement in § 361.13(a)(1)(i) of the draft regulations and § 361.5(b)(1) of the current regulations that a designated State agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities also "have the authority, subject to the supervision of the Governor, if appropriate, to define the scope of the program within the provisions of State and Federal law and to direct its administration without external administrative controls." Elimination of this non-statutory requirement, which applies currently to only one of the three sole State agency options identified in the regulations, is intended to increase State flexibility in locating and administering its vocational rehabilitation program.

Several commenters on the draft regulations requested clarification of the requirement in § 361.13(b)(1)(iii) that at least 90 percent of the State unit staff work full-time on the rehabilitation work of the organizational unit, which must be primarily concerned with vocational rehabilitation or vocational rehabilitation and other rehabilitation. This requirement means that if the organizational unit provides other rehabilitation services, in addition to vocational rehabilitation, the 90 percent staffing requirement applies to all unit staff providing rehabilitation services, not to just the vocational rehabilitation staff. "Other rehabilitation" includes, but is not limited to, other programs that provide medical, psychological, educational, or social services to individuals with disabilities. For example, a State unit with 90 percent of its staff working on independent living services, programs for the developmentally disabled, disabled children's services, services for individuals who are deaf or hearing-impaired, services for individuals who are blind or visually impaired, Social Security disability determinations, or some other type of program related to individuals with disabilities, in addition to vocational rehabilitation, would satisfy the 90 percent requirement. The Secretary also notes that Federal funds under this program may be used only to pay the salaries of the State unit staff that are working full-time or part-time on vocational rehabilitation.

In accordance with the Department's principles for regulating, the Secretary also proposes to delete the requirement in § 361.13(c) of the draft regulations and § 361.6(a) of the current regulations that the State plan describe the organizational structure of the State agency and its organizational units. The Secretary instead would rely on an assurance, required by statute, that a State agency that is required to have a vocational rehabilitation unit locate that

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unit at an organizational level comparable to other organizational units within the State agency. This proposed change is intended to reduce paperwork burdens on State agencies in developing their State plans.

The Secretary is not proposing any substantive changes in paragraph (d) of this section to the requirements in current § 361.5(e) with regard to the responsibility of the designated State unit for administration of the vocational rehabilitation program, but is soliciting public comment on the need for changes.

The current regulations specify certain program functions or activities (determinations of eligibility, development of IWRPs, and decisions regarding the provision of services) that must be the responsibility of the DSU and that cannot be delegated to any other agency or individual. This non-delegation provision has been interpreted by RSA to mean that the DSU must carry out these functions or activities using its own staff. The draft proposed regulations, consistent with RSA subregulatory policy, specified additional program functions that must be carried out by the DSU: determinations that service recipients have achieved appropriate employment outcomes, the formulation and implementation of program policy, and the allocation and expenditure of program funds. The draft proposed regulations also would have strengthened the role of the State unit by requiring that the unit have a substantial role in all decisions affecting the administration of the VR program whenever management functions within the State agency are centralized.

Public comment on these draft proposed changes was neither extensive nor consistent. Some State VR directors supported a strengthening of the role and authority of the DSU but thought the draft proposed regulations were not strong enough, while other commenters thought the regulations were too prescriptive and believed that the only program function that must be carried out directly by DSU staff is eligibility determinations.

In light of the mixed public comment received thus far and the Administration's regulatory reinvention initiative, which is intended to increase State flexibility in administering Federally funded programs whenever permitted by statute, the Department is soliciting additional public comment on the following questions: Should the regulations expand or otherwise clarify essential program functions for which the DSU must be responsible in order to meet the statutory requirement in section 101(a)(2)(A) that it be responsible for the VR program? Must these essential program functions be carried out by DSU staff or should the regulations provide States as much flexibility as possible to determine how to carry out these functions as long as the DSU retains administrative oversight in these areas? Any changes made to provide increased flexibility to States would not require DSUs to change their current administrative practices but would provide States additional flexibility to restructure, consolidate, or contract out program operations as long as the DSU retains ultimate responsibility.

Section 361.14—Substitute State Agency

This proposed section revises certain requirements regarding the selection of a substitute State agency (§ 361.7 of the existing regulations) in order to simplify the process and reduce the paperwork burden. The existing regulations permit applications from a potentially unlimited number of substitute State agency applicants, from which the Secretary selects the substitute State agency based on detailed criteria in the existing regulations. The proposed regulations place the authority and responsibility for the selection of a substitute State agency on the State so that the Secretary would need only to review and approve a State plan from one substitute State agency prior to providing funds.

Section 361.15—Local Administration

This proposed section simplifies § 361.9 of the current regulations by removing the requirements related to a written agreement between a sole local agency and the State unit in order to reduce the paperwork burden on States. It proposes to replace the written agreement requirements with assurances from the State unit in the State plan relating to the administration and supervision of a sole local agency.

Section 361.16—Establishment of an Independent Commission or a State Rehabilitation Advisory Council

This proposed new section implements the new requirements related to the State Rehabilitation Advisory Council (Council) in section 101(a)(36) of the Act. The proposed section clarifies that a State does not need to establish a Council or meet the requirements related to a Council if the State agency is a consumer-controlled independent commission. The proposed section also clarifies that if the State has a separate State agency for individuals who are blind, four options regarding the possible combinations of the two State agencies exist. Although only three options are identified in the Act, the section-by-section analysis of the Act in the Conference Report clarifies that the fourth option, a mirror image of the third combination identified in the Act, is also acceptable. This option is contained in proposed paragraph (b)(4) of this section.

Section 361.17—Requirements for a State Rehabilitation Advisory Council

This proposed new section incorporates the new statutory requirements in section 105 of the Act with the clarification that the director of the DSU is a nonvoting member of the State Rehabilitation Advisory Council. Since the purpose of the Council is to advise the State unit, and the statute is clear that the director is an ex-officio member of the Council, the Secretary does not believe that Congress intended that the director of the State unit provide advice to herself or himself by voting on Council decisions. Similarly, the Secretary has clarified the regulations to state that any employee of the designated State agency may serve only as a nonvoting member of the Council.

Several commenters on the draft regulation sought clarification with respect to the appointment of Council representatives from the Client Assistance Program (CAP) and the Statewide Independent Living Council (SILC). In response, the Secretary proposes to amend the regulations to clarify that the role of the CAP and SILC is to recommend to the Governor, or other appropriate appointment authority designated by State law, Council representatives for their respective organizations. Based on these recommendations, the Governor or other State-designated authority determines who will be the Council appointees, since the statute clearly vests appointment authority in those entities. The Secretary also notes that those individuals recommended for Council membership by the CAP or SILC need not be CAP or SILC members.

In addition, in response to public comment on the draft regulations, the Secretary emphasizes that, although the Council must be composed of at least 13 members (unless the State qualifies for an exception under paragraph (b)(4) of this section), a State is not precluded from having more than 13 individuals serve on its Council.

The Secretary also encourages States to consider appointing Council members from minority backgrounds consistent with the 1992 Amendments to the Act, which emphasizes outreach

to individuals from minority backgrounds and the need for rehabilitation programs to better reflect the culturally diverse population of the United States.

Finally, in response to public comment on the draft regulations, the Secretary proposes to amend the annual reporting requirements of the Council by requiring the Council to submit to the Governor, or other appropriate State entity, and to the Secretary an annual report of the status of the State's vocational rehabilitation programs within 90, rather than 60, days from the end of the fiscal year and by requiring that the report be available through appropriate modes of communication.

Section 361.18—Comprehensive System of Personnel Development

This proposed new section incorporates the new statutory requirements in sections 101(a)(7) and 101(a)(35) of the Act. The requirements in section 101(a)(7) of the Act are virtually identical to requirements for a comprehensive system of personnel development under the Individuals with Disabilities Education Act (IDEA). For this reason, this section of the proposed regulations closely tracks the regulations implementing the IDEA requirements (34 CFR 300.380 through 300.383), with modifications to better reflect the context of the State Vocational Rehabilitation Services Program.

Some commenters on the draft regulations questioned the basis for requiring the involvement of the State Rehabilitation Advisory Council in the development of personnel standards. The Act requires that the Council generally advise the State unit in connection with the carrying out of its programmatic responsibilities. In addition, the State agency is required to consult, and seek advice from, the Council on issues affecting the development of the State plan. Because an effective system of personnel development is an essential part of the State plan and a critical element to the success of the State Vocational Rehabilitation Services Program, the Secretary considers it necessary for the Council to participate in the development of State personnel standards.

Paragraph (a) of this section requires that the State plan include, on an annual basis, a description of a system for collecting and analyzing personnel data. Several commenters on the draft regulations expressed concern about the amount of data that must be provided to the Secretary under this provision. In response, the Secretary emphasizes that, although annual data collection and analysis requirements are statutorily imposed, the proposed regulations require only that the State plan include a description of the system used to collect the data on personnel needs and personnel development and do not require the State to submit the actual data to the Secretary.

In response to public comment on the draft regulations, the Secretary proposes to broaden the definition of the term "highest requirements in the State applicable to that profession or discipline," as used in the development and maintenance of personnel standards by the State, to mean the highest entry-level academic degree or equivalent experience needed to meet any national- or State-recognized certification, licensing, registration, or other comparable requirements that apply to a profession or discipline. The purpose of this change is to recognize that some States base their personnel standards, in part, on relevant work experience by substituting equivalent work experience for certain academic credentials. State standards of this type would meet this definition. This change, however, would not allow work experience to substitute for academic requirements if the existing State standard is based only on academic credentials.

The Secretary also believes that permitting States to base highest personnel standards in the State on equivalent experience, as well as on academic degrees, stresses the significance of relevant work experience and will diversify further the pool from which qualified personnel can be selected.

Several commenters on the draft regulations suggested areas of training in addition to rehabilitation technology that should be required in the regulations as part of the State's program of staff development. The Secretary believes that the specific training areas for staff development adopted by a State unit must be based on the particular needs of that State unit. The Secretary recognizes, however, that staff development may include, but is not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations. A provision to this effect has been added to the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the reference in paragraph (e) of this section from "special communication needs personnel" to "personnel to address individual communication needs" and has clarified this provision by requiring the State unit to describe in the State plan how it includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability. That personnel may include State agency staff, family members of an applicant or eligible individual, community volunteers, and other individuals able to communicate in the appropriate native language. The State unit also must describe how it ensures that appropriate modes of communication are used for all applicants and eligible individuals.

In response to public comment on the draft regulations, the Secretary wishes to stress the importance of requiring in the State plan a description of the State's personnel performance evaluation system that facilitates, and does not impede, the purposes and policies of the vocational rehabilitation services program outlined in the Act. More precisely, the proposed regulations require that the evaluation system further the statutory policy of serving individuals with the most severe disabilities. In support of this requirement, the Senate Committee on Labor and Human Resources states in its report that it "is concerned that in some States, procedures used for evaluating performance of counselors may have the unintended consequence of providing a disincentive to serve individuals with the most severe disabilities and those clients requiring complex services." The performance evaluation system required under the Act and included in the proposed regulations is designed to address these disincentives.

The Secretary proposes to modify paragraph (g) of this section to track section 101(a)(7)(A)(ii) of the Act, which requires the State agency to describe the activities it will undertake to coordinate its comprehensive system of personnel development with personnel development under IDEA. This proposed change is intended to increase the flexibility of State agencies to implement the most effective procedures for coordinating the development of personnel under both statutes. An example of how a State may address this coordination requirement would be to establish a joint continuing education program for both DSU personnel and personnel under IDEA that deals with the provision of VR services, including transition services, to transitioning students.

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Section 361.19—Affirmative Action for Individuals With Disabilities

This proposed section, which is based on section 101(a)(6)(A) of the Act and § 361.15 of the existing regulations, requires the State agency to take affirmative action to employ and advance in employment qualified individuals with disabilities. In accordance with the Department's principles for regulating, the Secretary proposes to delete the non-statutory requirement in the draft regulations and the current regulations that the State unit develop an affirmative action plan that provides for specific goals, action steps, timetables, evaluation criteria for measuring progress, and complaint and enforcement procedures. By not requiring a formal affirmative action plan or specifying the minimum requirements a State must incorporate into that plan, the proposed provision would give State agencies greater flexibility to take those steps it considers most appropriate for increasing the number of qualified individuals with disabilities that it employs or advances in employment. The proposed changes also would reduce State paperwork burdens.

Section 361.20—State Plan Development

This proposed section revises § 361.18 of the existing regulations to implement new requirements in section 101(a)(23) of the Act.

Consistent with section 101(a)(23) of the Act, paragraph (a)(1) of this section of the regulations would require the State unit to conduct public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its development and to comment on any revisions to the State plan. In accordance with the Department's principles for regulating, the Secretary believes that States should have the latitude to develop their own procedures for ensuring that interested parties are afforded a meaningful opportunity to comment on the State plan before it is developed and when it is revised. Additionally, in order to satisfy the statutory requirement that the State unit, prior to conducting public meetings throughout the State, provide appropriate and sufficient notice of the public meetings, the proposed regulations would require the State unit to follow notice requirements established under State law or, in the absence of those requirements, to consult with the State Rehabilitation Advisory Council to develop notice procedures. The proposed regulations would not impose any specific minimum Federal requirements for what constitutes "appropriate and sufficient notice."

In response to those commenters who sought regulatory clarification of the public participation and notice requirements of this section, the Secretary provides the following examples as suggested ways a DSU might meet these requirements. A State unit could satisfy the public participation requirement, for example, by soliciting input from the public before developing a preliminary draft State plan and making the preliminary draft plan available to the public 30 days prior to the public meetings. An example of "appropriate and sufficient notice" of public meetings would be notice that is provided at least 30 days prior to a public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the State unit, in consultation with the State Rehabilitation Advisory Council. An example of how a State unit could meet the statutory requirement that it "conduct public meetings throughout the State," would be to hold public meetings in at least two different geographic locations that are among the State's most densely populated areas and at sites that are accessible to individuals with disabilities.

Some commenters on the draft regulations suggested that larger States be required to hold a greater number of public meetings than smaller States, while other commenters suggested that States make use of emerging technologies that enable individuals to participate in public meetings without having to be in attendance. The Secretary encourages each State to hold as many public meetings as are necessary to ensure meaningful participation of all interested persons and organizations in that State. The Secretary also urges States to consider using alternative or emerging technologies that allow for wider public participation. The proposed regulations are intended to provide each State with the flexibility to choose the manner in which it conducts public meetings (e.g., in person, satellite broadcasts, teleconferences, or a combination thereof) as long as the meetings are truly interactive and are designed to maximize the opportunity for meaningful participation.

The proposed section also would implement the new statutory provision in section 105(c)(2) of the Act that requires the State Rehabilitation Advisory Council to advise the State unit on the preparation of the State plan by requiring the State unit to consult with the Council in the development of the State plan. Finally, the proposed section implements the new statutory requirement in section 101 (a)(32) of the Act that the State plan describe the manner in which it will modify State policy and procedures in response to consumer satisfaction surveys.

Section 361.21—Consultations Regarding the Administration of the State Plan

This proposed section is also taken from § 361.18 of the existing regulations. It incorporates section 101(a)(18) of the Act, including the new statutory requirement regarding consultation with the director of the CAP. It would also require consultation with the State Rehabilitation Advisory Council, consistent with the Council functions in new section 105(c) of the Act. It proposes to remove provisions in the existing regulations that list examples of matters of general policy development and implementation. Finally, this proposed section, as well as the previous section, would implement new section 101(a)(32) of the Act, which requires the State plan to describe the manner in which the State will modify State policy and procedures in response to consumer satisfaction surveys.

Section 361.22—Cooperation With Agencies Responsible for Transitioning Students

This proposed new section combines § 361.19(b) of the existing regulations, which requires the State plan to provide for the coordination of services for individuals who are eligible both for vocational rehabilitation services and for services under IDEA, with the new statutory provisions in sections 101(a)(11) and (a)(24) of the Act. The new statutory provisions require formal interagency agreements to facilitate the transfer of responsibilities for transitioning students who are receiving special education services from the agency responsible for providing a free appropriate public education to the State unit responsible for providing vocational rehabilitation services. In addition, proposed paragraph (b) of this section implements the new requirement in section 101(a)(30) of the Act regarding the availability of vocational rehabilitation services to students who are individuals with disabilities and who are not in special education programs.

Some commenters on the draft regulations viewed the required content of formal interagency agreements between State units and State educational agencies as unduly burdensome. In response, the Secretary proposes to amend the regulations to require that formal interagency agreements need only identify provisions for determining State lead agencies and qualified personnel responsible for transition services, in addition to identifying those policies and practices that can be coordinated between the agencies, including eligibility standards, referral policies, outreach procedures, and evaluation procedures. The formal interagency agreement may, as appropriate, identify available resources, the financial responsibilities of each agency, dispute resolution procedures, and other cooperative policies.

Other commenters expressed concern that the draft regulations required State agencies to shoulder more of the responsibility for transitioning students than is contemplated under the Act. In response, the Secretary proposes to add a note in the regulations to clarify the roles of the rehabilitation and educational agencies in facilitating the transition of students who are eligible for VR services. As stated by the Senate Committee on Labor and Human Resources, the role of the State agency is primarily one of planning for the student's years after leaving school.

Section 361.23—Cooperation With Other Public Agencies

This proposed section is taken from paragraphs (a), (c), and (d) of § 361.19 of the existing regulations and has been revised to incorporate the new requirements in section 101(a)(11) of the Act regarding the content of formal interagency cooperative agreements. The proposed section is also reorganized to clarify that the long list of programs under existing § 361.19(a) refers to Federal, State, and local public programs and agencies providing services related to the rehabilitation of individuals with disabilities.

Section 361.24—Coordination With the Statewide Independent Living Council

This proposed new section incorporates the new requirement in section 101(a)(33) of the Act that the State unit coordinate and establish working relationships with the Statewide Independent Living Council and independent living centers within the State.

Section 361.25—Statewideness

This proposed new section contains the requirement in § 361.2(a) of the existing regulations that the State plan be in effect in all political subdivisions of the State.

Section 361.26—Waiver of Statewideness

This proposed section revises § 361.12 of the existing regulations to clarify that a waiver of statewideness is necessary if the State unit wants to provide through local financing increased services or an expanded scope of services that is different from the services available statewide. The procedural requirements relating to a request for a waiver would remain substantially the same.

Section 361.27—Shared Funding and Administration of Joint Programs

This proposed section revises § 361.11 of the existing regulations to clarify that these programs involve shared funding and administrative responsibility, that a request for the Secretary's approval must be included in the State plan, and that a request for waiver of statewideness also must be included in the State plan, if necessary. The proposed regulations would also remove the specific requirements relating to a written agreement that are in the existing regulations. The 1991 NPRM proposed to remove the written agreement requirements as part of the effort to reduce paperwork burden, and the requirements are omitted in this NPRM for the same reason.

Section 361.28—Third-Party Cooperative Arrangements Involving Funds From Other Agencies

This proposed section revises § 361.13 of the existing regulations to reduce the requirements related to third-party cooperative arrangements, including the requirements for a written agreement, an annual program budget, and an annual review of program operations. The proposed regulations would also clarify that applicants, as well as eligible individuals, can receive services under these cooperative arrangements. This section would be placed organizationally in the regulations next to the proposed section on shared funding and administration to emphasize the differences between joint programs and third-party cooperative arrangements.

Some commenters on the draft regulations suggested that third-party cooperative arrangements be jointly administered by the State unit and the cooperating agency, i.e., administered in the same way as joint programs under proposed § 361.27. In response, the Secretary notes that section 101(a)(2) of the Act requires the designated State unit to be responsible for the vocational rehabilitation program. Third-party cooperative arrangements provide a framework for cooperating agencies to provide vocational rehabilitation services and contribute to the State's non-Federal financial share under the program. Thus, third-party arrangements are considered part of the vocational rehabilitation program for which the State unit must retain administrative responsibility. In contrast, State units that are parties to joint programs share funding and administrative responsibility with other agencies.

In response to public comment on the draft regulations, the Secretary has clarified that services provided by the cooperating agency under a cooperative arrangement must either be new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus. These requirements are consistent with longstanding RSA subregulatory guidance.

Section 361.29—Statewide Studies and Evaluations

This proposed section revises and expands § 361.17 of the existing regulations to identify and clarify the timelines for all of the study and evaluation requirements, some of which are currently contained in other sections. It also expands the requirement in § 361.2(a)(2)(i) of existing regulations that the State plan describe changes in policy resulting from the statewide studies and the annual evaluation to also require a description of activities undertaken and changes in the State plan, the strategic plan, and plan amendments that result from the studies and evaluations. Proposed paragraph (d) of this section incorporates the new requirement in section 105(c)(2) of the Act regarding the role of the State Rehabilitation Advisory Council in the preparation of the statewide studies and evaluation.

Section 361.30—Services to Special Groups of Individuals With Disabilities

This proposed section combines §§ 361.37 and 361.38 of the existing regulations regarding special services for civil employees of the United States and for American Indians, along with paragraph (c) of § 361.36 of the existing regulations, which provides for special consideration for public safety officers. In addition, the Secretary proposes to clarify in this section that special consideration means that a public safety

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officer would receive priority for services over other individuals in the same priority category of an order of selection. The proposed section would also incorporate the statutory definitions of "criminal act" and "public safety officer" from section 7 of the Act.

Section 361.31—Utilization of Community Resources

This proposed section is substantially the same as § 361.56 of the existing regulations. It has been relocated to group it with other utilization sections in the part of the regulations that contains general administration requirements, rather than in the part of the regulations that addresses provision of services requirements.

Section 361.32—Utilization of Profitmaking Organizations for On-The-Job Training in Connection With Selected Projects

This proposed section revises § 361.57 of the existing regulations to increase State unit flexibility by authorizing, rather than requiring, a State unit to use profitmaking organizations if it determines that those organizations are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

Section 361.33—Utilization of Community Rehabilitation Programs

This proposed section revises §§ 361.21 and 361.22 of the existing regulations and replaces the term "rehabilitation facilities" with the term "community rehabilitation programs," consistent with the 1992 Amendments. It also incorporates changes in the State plan requirements in sections 101(a)(5) and 101(a)(15) of the Act and new requirements in sections 101(a)(27) and 101(a)(28) of the Act.

In accordance with the Department's principles for regulating, the Secretary proposes to eliminate current non-statutory requirements for a rehabilitation facilities plan and for an inventory of community rehabilitation programs and requirements in the draft regulations for a justification in the State plan for using funds for the support of community rehabilitation programs, including the construction of facilities, and for a prioritized list in the State plan of proposed activities. The removal of these provisions would substantially reduce paperwork burdens on designated State units.

Section 361.34—Supported Employment Plan

This proposed new section incorporates sections 101(a)(25) and 635(a) of the Act, which require a State to assure that it has an acceptable plan for providing supported employment services and to submit that plan as a State plan supplement.

Section 361.35—Strategic Plan

This proposed new section would require that the strategic plan to expand and improve vocational rehabilitation services be provided as a supplement to the State plan. Section 101(a)(34)(A) of the Act requires the State plan to include an assurance that the State has a strategic plan to expand vocational rehabilitation services in accordance with Part C of Title I. In addition, section 120 of the Act requires States to submit their strategic plans to the Secretary prior to receiving funding under Part B of the Act, which includes the allotment for this program. The Secretary believes that requiring the strategic plan as a supplement to the State plan is the simplest and least burdensome approach.

Section 361.36—Reserved

This section is reserved for the order of selection regulations, which are being implemented in a separate rulemaking document.

Section 361.37—Establishment and Maintenance of Information and Referral Resources

The provision proposed in the draft regulations was substantially the same as § 361.20 of the existing regulations. However, commenters on both the draft regulations and the July 16, 1993 NPRM on order of selection have requested that State units operating under an order of selection be permitted to provide non-purchased services (e.g., information and referral) to eligible individuals who do not qualify for services under the State unit's priority categories. An order of selection is required under section 101(a)(5)(A) of the Act if a State unit determines that it is unable to provide services to all eligible individuals who apply for services. In response to public comment, the Secretary proposes to address this concern by amending the regulations to authorize any State unit that has implemented an order of selection to establish an expanded information and referral program that includes the provision of job referral services to eligible individuals who are not being served under a State unit's order of selection, provided that certain State plan requirements are met. These requirements include a description in the State plan of the level of commitment of staff and other resources for this purpose and an assurance that in carrying out this program, the State unit will not use case services funds that are needed to provide VR services to eligible individuals who are able to be served under the State unit's order of selection.

Section 361.38—Protection, Use, and Release of Personal Information

This proposed section is substantially the same as § 361.49 of the existing regulations with the clarification in proposed paragraph (e)(3) that a State unit is required to release personal information if required by Federal regulations or Federal law.

In addition, some commenters on the draft regulations expressed concern that the State unit could release harmful personal information to a representative not chosen by the applicant or eligible individual. In response, the Secretary has clarified that the State unit may release information that it determines to be harmful to the individual only to a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional.

In response to public comment on the draft regulations, the Secretary also proposes to amend the regulations by clarifying that State units shall release personal information in response to an "order issued by a judicial officer." The Secretary believes that the use of the term "judicial order" in both the current and draft regulations is confusing and that the clarification is necessary to ensure that a judge, magistrate, or other authorized judicial officer appropriately weighs the factors necessitating release of personal information against the individual's rights to privacy and protection from unauthorized use before ordering a State unit to release the information.

In addition, the proposed section has been relocated to group it with other sections of the regulations that contain the administrative requirements since it does not relate to the provision and scope of services.

While the confidentiality of personal information from applicants and eligible individuals under this program is considered essential to protect individual privacy, the Secretary specifically requests public comment on whether the provisions of this section are unduly burdensome or inconsistent with State laws governing the protection, use, or release of personal information.

Section 361.39—State-Imposed Requirements

This proposed section is taken from § 361.25 of the existing regulations. The

draft regulations would have required State units to identify State-imposed requirements at the public meetings to develop and revise the State plan. In response to public comment, the Secretary proposes to clarify this section of the regulations by requiring State units to identify upon request those regulations and policies relating to the administration or operation of the vocational rehabilitation program that are State-imposed. In making these changes the Secretary recognizes that the scope of State-imposed requirements is broader than those included in the State plan and that the Act requires the application of any State rule or policy relating to the administration or operation of the vocational rehabilitation program to be identified as a State-imposed requirement. The proposed section would require State units to identify those requirements upon request, including, but not limited to, requests made at public meetings.

Section 361.40—Reports

This proposed section is substantially the same as § 361.23 of the current regulations, except that it would add cross-references to sections 13, 14, and 101(a)(10) of the Act to distinguish the reporting requirements under this section from the reporting requirements related to statewide studies and evaluations under proposed § 361.29.

Section 361.41—Processing Referrals and Applications

This section expands § 361.30 of the current regulations to incorporate the new statutory requirement in section 102(a)(5)(A) of the Act that an eligibility determination be made within 60 days of the date on which an application is submitted, with limited exceptions. The Secretary proposes to require the State unit to establish timelines for making good faith efforts to contact individuals who have been referred for services to minimize delay at the pre-application stage.

Under the draft regulations, an individual was considered to have "submitted an application" if the individual, or the individual's representative, as appropriate, had submitted a completed agency application or a signed written request for services. In an effort to ensure that agencies are provided with all information necessary to make eligibility determinations, some commenters on the draft regulations stated that completion of an agency application should be the sole method for requesting services. In contrast, other commenters supported the use of alternative methods for requesting services as a means of avoiding unnecessary delays if a particular application form was not used. In response, the Secretary proposes to clarify the regulations by interpreting the term "submitted an application" to include any request for services as long as the individual has provided information necessary for the DSU to initiate an assessment to determine eligibility and priority for services. Once an individual or the individual's representative, as appropriate, requests services, it is expected that State units will make good faith efforts to obtain this information as quickly as possible. For example, if a potential applicant has requested services in writing, the State unit may need to telephone the individual in order to obtain the necessary information in a timely manner. In addition, the proposed regulations require State units to make application forms readily available throughout the State.

Section 361.42—Assessment for Determining Eligibility and Priority for Services

This section combines §§ 361.31 and 361.32 of the existing regulations, which are the sections on eligibility and preliminary diagnostic study. The 1992 Amendments combined in the statute all of the evaluation steps that are currently required by those sections and by §§ 361.33 and 361.40 of the existing regulations into one assessment for determining eligibility and vocational rehabilitation needs, which is defined in section 7(22) of the Act. The Secretary proposes to divide that assessment into two steps in the regulations—an assessment for determining eligibility and priority for services, addressed in this section, and an assessment for determining vocational rehabilitation needs through the development of the IWRP, addressed by proposed § 361.45.

In response to public comment on the draft regulations, the Secretary proposes to amend this section by requiring that the assessment for determining eligibility and priority for services be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice.

Proposed paragraph (a) of this section incorporates the changes in the eligibility criteria that were made by the 1992 Amendments, including the presumption that an individual with an impairment that constitutes a substantial impediment to employment can benefit from vocational rehabilitation services, the presumption that Social Security beneficiaries meet the first two eligibility criteria, and the new requirement that an individual with a disability require vocational rehabilitation services in order to achieve an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

Some commenters questioned the absence of a regulatory provision identifying who is qualified to determine the existence of a physical or mental impairment. Section 361.32 of the existing regulations requires that the preliminary diagnostic study, for purposes of determining an individual's eligibility for services, must include medical information and, in the case of individuals with mental and emotional disorders, an examination by a physician or by a licensed or certified psychologist. Proposed paragraph (a)(1)(i) of this section is based on amendments to section 103(a) of the Act, which substituted the standard that "qualified personnel in accordance with State licensure laws" make these determinations in lieu of particular medical professionals. The proposed regulatory provision broadens this concept to also encompass individuals who are certified under State law and individuals licensed or certified under State regulations. The Secretary believes that this broader interpretation is necessary to ensure that existing data and determinations made by other agencies, particularly education agencies, are used by DSUs in determining whether an individual is an individual with a disability under section 7(8)(A) of the Act or an individual with a severe disability under section 7(15)(A) of the Act. Under the proposed regulations, the determination of who is qualified to determine the existence of an impairment will vary from State to State depending on State licensure and certification requirements. Although the proposed regulations do not require a medical diagnosis for a DSU to determine that an impairment exists, the Secretary anticipates that in most instances those determinations will be supported by medical documentation.

Paragraph (a)(2) of § 361.42 in the draft regulations required a DSU to presume that an applicant can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting from VR services as a result of the severity of his or her disability. In response to public comment, the Secretary proposes to delete the phrase "as a result of the severity of his or her disability" from the NPRM in order to clarify that individuals may be found incapable of

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benefitting from VR services for reasons other than severity of disability. This change is consistent with section 102(a)(4)(A) of the Act. Nevertheless, the Secretary expects that the overwhelming majority of determinations under this requirement will be based on the severity of the individual's disability and specifically requests public commenters to identify reasons other than severity of disability that would support a determination that an individual is incapable of benefitting from VR services. If a determination that an individual cannot benefit from VR services is based on the severity of the individual's disability, section 102(a)(4)(B) of the Act and proposed paragraph (d)(1) of this section would also require the DSU to conduct an extended evaluation before reaching this conclusion. Finally, the Secretary proposes to further amend paragraph (a)(2) of this section to clarify that the presumption of benefit applies only to those applicants who meet the first two eligibility criteria.

In response to public comment on paragraph (b)(1) of this section of the draft regulations, the Secretary proposes to amend the regulations to prohibit States from imposing any duration of residence requirement for the receipt of services on any applicant who is present, rather than resides, in the State. The amended provision closely tracks the statutory language of section 101(a)(14) of the Act.

Paragraph (c) of this section incorporates the new statutory provisions that require the State unit to use existing data, to the extent possible, to determine eligibility and vocational rehabilitation needs.

Some public commenters on the draft regulations inquired as to the scope of vocational rehabilitation services that DSUs must provide during an extended evaluation. In response, the Secretary proposes to amend the regulations to require the State unit to develop a written plan during the extended evaluation period for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The provision of services under the plan must be limited to those services needed to make these two determinations. It should be noted that this change represents a departure from the current regulations, which required DSUs to develop an IWRP for individuals in extended evaluation. The Act, however, requires only that IWRPs be developed for eligible individuals. The written plan requirements of this section are, therefore, intended to lessen the burden on State units of developing IWRPS for individuals in an extended evaluation, while ensuring that the specific services to be provided during an extended evaluation are clearly identified.

The proposed regulations also contain a note on clear and convincing evidence that is based on legislative history from the Senate Committee Report. In response to public comment, the Secretary proposes to amend the note to clarify that determinations under the "clear and convincing evidence" standard must be made on a case-by-case basis.

Finally, the Secretary views the new eligibility criterion that an individual must require vocational rehabilitation services in order to achieve or retain an employment outcome as a limiting factor that is intended to screen out individuals who can prepare for, enter into, engage in, or retain gainful employment consistent with their strengths, resources, priorities, concerns, abilities, and capabilities without assistance from the vocational rehabilitation program. The proposed regulations contain a second note that provides several examples for guidance to State agencies regarding situations in which an individual may or may not require vocational rehabilitation services. The Secretary emphasizes that the examples are provided solely for the purposes of illustration, do not address all situations under which an individual may be eligible or ineligible for services, and are not intended to substitute for individual counselor judgment on a case-by-case basis.

Section 361.43—Procedures for Ineligibility Determination

The Secretary proposes this new section to consolidate overlapping provisions relating to procedures for ineligibility determinations that are currently contained in several different sections of the regulations. Specifically, it would consolidate paragraph (e) of current § 361.34, which contains termination provisions for an extended evaluation to determine rehabilitation potential, paragraph (c) of current § 361.35, which contains the requirements for a certification of ineligibility, and paragraph (d) of current § 361.40, which contains the requirements regarding review of ineligibility determinations.

The Secretary proposes to require DSUs to review all ineligibility determinations once within 12 months unless exceptions apply. In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (d) of this section to clarify that each year after the initial review, DSUs must, upon request, review any ineligibility determination that is based on the inability of the individual to achieve an employment outcome.

Section 361.44—Closure Without Eligibility Determination

The Secretary proposes to create this new section from the provisions contained in paragraph (e) of § 361.35 of the current regulations, which is the section that contains the certification requirements. Although the certification requirements have been removed from the proposed regulations because they overlap with the documentation requirements in the case record (referred to as record of services in proposed § 361.47), the substantive requirements related to closure without an eligibility determination are substantially the same as they are in existing § 361.35(e).

In response to public comment on the draft regulations, the Secretary has clarified the regulations to authorize the State unit to close an applicant's case if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services. In either situation, the State unit is required to make a reasonable number of attempts to contact the individual or, if appropriate, the individual's representative prior to closing the applicant's case.

§ 361.45—Development of the Individualized Written Rehabilitation Program

In response to public comment, this section, entitled "Assessment for determining vocational rehabilitation needs" in the draft regulations, has been renamed for purposes of clarification. The Secretary believes this proposed retitling better reflects the full scope of requirements under the IWRP development process, of which the assessment represents an essential part. The Secretary also proposes to clarify the purpose clause under paragraph (a) of this section for the same reason.

This proposed section would combine the provisions in §§ 361.33 and 361.40 of the current regulations regarding thorough diagnostic study and IWRP procedures. It incorporates new statutory requirements created by the 1992 Amendments, including requirements regarding informed choice, integrated settings, and the use of existing data.

Some public commenters suggested that the term "counseling and guidance" be defined in the proposed regulations. The Secretary declines to define the term, but proposes to revise paragraph (b)(1) of this section to

emphasize the development of a counseling and guidance relationship between the vocational rehabilitation counselor and the individual during assessment. That relationship is intended as a means of fostering collaboration between the counselor and the individual in identifying, preparing for, and achieving meaningful vocational outcomes for the individual. The Secretary envisions that the counselor, based on his or her expertise, will provide the individual with comprehensive information relevant to the individual needs of the individual and that the counselor and individual will jointly discuss the values, needs, desires, and realities facing both individuals. It also should be noted that, in response to public comment, the Secretary has deleted the requirement in the draft regulations that counseling and guidance be provided throughout the development and implementation of the IWRP. As discussed in the following paragraph, IWRPs are developed on an individual basis, and while some individuals may request or require counseling and guidance services throughout the development and implementation of their IWRPs, others may not. By making this change, the Secretary emphasizes that the provision of counseling and guidance during the development and implementation of the IWRP is dependent on the particular circumstances affecting each individual.

Several commenters on the draft regulations were concerned that this section required State units to impose strict timelines for developing IWRPs without considering the particular needs of the individual. In response, the Secretary proposes to amend the regulations to require State units to establish and implement standards for the prompt development of IWRPs, including timelines that take individual needs into consideration. The Secretary agrees that the development of the IWRP is a highly individualized process and must be conducted in a manner consistent with the individual's strengths, priorities, concerns, abilities, capabilities, and career interests. Nevertheless, the Secretary believes that these timelines, which are not absolute and operate as guidelines, are consistent with the legislative intent that individuals with disabilities receive services as quickly as possible and, therefore, are necessary to guard against delays in the development of the IWRP once an individual is determined eligible for VR services.

Section 361.46—Content of the IWRP

This proposed section contains the IWRP content requirements, which are in § 361.41 of the existing regulations.

Several commenters on the draft regulations viewed certain requirements under this section and § 361.47 (Record of services) as duplicative of one another and, therefore, unduly burdensome. In response, the Secretary proposes to reduce the paperwork requirements in each section of the regulations by eliminating certain requirements that are non-statutory or redundant. The Secretary emphasizes, however, that the elimination of certain documentation requirements in these sections is intended solely as a means of reducing paperwork burdens on the State unit and does not diminish the responsibility of the State unit to fully develop the IWRP and to be able to document or otherwise support its determinations affecting each individual should those determinations be questioned within the context of a compliance review or audit. Each IWRP content or record of services requirement eliminated from the draft regulations is, the Secretary believes, sufficiently addressed elsewhere in the regulations.

For example, the Secretary proposes to delete the requirement that the IWRP include statements supporting the basis on which individuals are determined eligible or ineligible for services. The Secretary agrees that those statements are burdensome given comparable case record requirements in proposed § 361.47 (a) and (b) that the State unit maintain documentation supporting determinations of eligibility and ineligibility.

In paragraph (c) of this section, the Secretary proposes to clarify the regulations by consolidating the IWRP content requirements that relate to post-employment services.

Some public commenters on the draft regulations suggested that the State unit attach the Individualized Education Plan (IEP) to the IWRP, rather than summarize the IEP, when coordinating with education agencies to serve transitioning students. In response, the Secretary emphasizes that the Secretary does not consider coordination between the IWRP and IEP to represent a documentation requirement. Rather, the requirement in the draft regulations that the IWRP include a summary of the transitioning student's IEP was intended to ensure that the State unit review the vocational goals, rehabilitation objectives, and nature and scope of services identified in the transitioning student's IEP during the course of developing the IWRP. Requiring that review is consistent with the legislative intent that State units coordinate with education agencies to serve transitioning students in the most effective and efficient manner possible. In an effort to clarify the regulations, however, the Secretary proposes to amend this section to require the State unit to ensure that the transitioning student's IWRP is consistent with the student's IEP in terms of goals, objectives, and services. Although the IWRP need not include a summary or an attached copy of the IEP, it is expected that, for transitioning students, State units will closely review the IEP in the course of IWRP development. In addition, the Secretary proposes to amend § 361.47(f) to require the State unit to maintain documentation from the needs assessment to support the goals, objectives, and services identified in the IWRP and in the IEP of transitioning students.

Finally, in response to public comment, the Secretary proposes to add paragraph (e) to this section to require State units to ensure that a determination that an individual is ineligible for services after an IWRP has been developed is made in accordance with the procedures in proposed § 361.43 and is included as an amendment to the IWRP.

Section 361.47—Record of Services

This proposed section revises § 361.39 of the existing regulations. References to the "case record" would be replaced with the term "record of services" to discourage characterizing individuals with disabilities as "cases." The proposed section would incorporate the choice and integration requirements in the 1992 Amendments.

As previously discussed, the Secretary has significantly revised this section to reduce paperwork requirements in response to commenters on the draft regulations who viewed many of the record of services requirements as unduly burdensome or duplicative of other requirements in the regulations.

In response to public comment, the Secretary proposes to simplify paragraphs (a) and (b) of this section to require State units to maintain documentation to support determinations of eligibility or non-eligibility made in accordance with proposed § 361.42 or § 361.43. The Secretary also proposes to require State units to include, as part of an individual's record, documentation supporting the determination that an individual has a severe or most severe disability. This requirement is

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particularly important to support an individual's receipt of services from a State unit operating under an order of selection or to support the individual's placement in a supported employment setting. In addition, this requirement is consistent with the intent of the Act to expand and improve services to individuals with the most severe disabilities.

In paragraph (d) of this section, the Secretary proposes to simplify the requirements relating to extended evaluations by requiring State units to maintain documentation to support the need for an extended evaluation and to support the periodic assessments conducted during the extended evaluation. Documentation maintained under this paragraph would also include the written plan developed during the extended evaluation in accordance with § 361.42(d)(3).

In an effort to better coordinate rehabilitation services for transitioning students, the Secretary also proposes to amend paragraph (f) of this section to specify that the State unit must document the development of the individual's long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services, as identified in the transitioning student's IWRP and IEP.

Finally, the Secretary proposes to delete a number of requirements from the draft regulations on the basis that the requirements are unduly burdensome or unnecessarily duplicative of other provisions in the regulations. For example, because the IWRP is included as part of the individual's record of services that must be maintained under this section, requirements that are duplicative of IWRP content requirements in proposed § 361.46 have been deleted from the record of services. For each record of services requirement that the Secretary considers duplicative of other requirements in the regulations, specific references to those other requirements are provided.

Accordingly, the Secretary proposes to delete the following documentation requirements from this section of the draft regulations: (1) Documentation of the manner in which the individual was provided information necessary to make informed choices as to vocational goals, rehabilitation services, and service providers (addressed by § 361.46(a)(6) and § 361.52). (2) Documentation of the manner in which the individual was provided information regarding the level of integration of service provision and job placement options (addressed by § 361.46(a)(7)(iii) and § 361.52). (3) Documentation supporting the determination that the clinical status of the individual is stable or slowly progressive if physical and mental restoration services are provided (addressed by § 361.46(a)(3)). (4) Documentation to support any decision to provide services to family members (addressed by § 361.46(a)(3)). (5) Documentation relating to the individual's participation in the cost of any vocational rehabilitation services, the eligibility of the individual for any comparable services and benefits, and the availability and use of those comparable service and benefits (addressed by § 361.46(a)(7)). (6) Documentation that the individual has been advised of the confidentiality of all information pertaining to the individual and that any information about the individual has been released with the individual's informed written consent (addressed by § 361.46(a)(7) and § 361.38). (7) Documentation of any plans to provide post-employment services after the employment outcome has been achieved (addressed by § 361.46(c)). (8) Documentation of any review of the determination that an individual is no longer capable of achieving an employment outcome after services under an IWRP have already been provided (addressed by § 361.43(d)).

The Secretary is particularly interested in public comment on whether the proposed provisions cover all key decision points in the rehabilitation process for which documentation is needed.

Section 361.48—Scope of Vocational Rehabilitation Services for Individuals With Disabilities

This proposed section revises § 361.42 of the existing regulations.

The phrase "counseling and guidance" in the current regulations has been changed in proposed § 361.48(a)(3) to "vocational counseling and guidance" in order to clarify that counseling and guidance services that are provided as discrete vocational rehabilitation services are vocational in nature and specifically designed to assist the individual in reaching an employment outcome. Vocational counseling and guidance is, therefore, distinguishable from the more generalized counseling and guidance that an individual may need at any point during the rehabilitation process in connection with the provision of services.

A number of paragraphs from the current regulatory section have been revised to remove definitional text, and definitions for those services have been added to proposed § 361.5. For example, proposed § 361.48(a)(5), providing for physical and mental restoration services, has been revised to remove all definitional material, which is now in proposed § 361.5(b)(35). Proposed paragraph (a)(7) of this section, providing for maintenance, has been modified to remove the current regulatory provisions that describe maintenance in terms of subsistence or basic living expenses, and a proposed definition of maintenance has been included in proposed § 361.5(b)(31) to clarify that maintenance costs are those expenses that are in excess of normal living expenses and that are necessitated by participation in a vocational rehabilitation program. Similarly, proposed paragraph (a)(8) of this section provides for transportation in connection with the rendering of any vocational rehabilitation service, and a definition of transportation has been added to proposed § 361.5(b)(49), which clarifies that transportation must be necessary to enable an applicant or eligible individual to participate in a program of vocational rehabilitation services. This change was proposed in the 1991 NPRM.

Proposed paragraph (a)(9) of this section clarifies that the services available to family members are vocational rehabilitation services necessary to enable the applicant or eligible individual to achieve an employment outcome.

Some commenters on the draft regulations requested that the provision of "note-taking services" not be limited to individuals who are deaf or blind. In response, the Secretary agrees that note-taking services should be available to any eligible individual in need of those services to achieve an employment outcome. Therefore, the Secretary proposes to delete "note-taking" from proposed paragraphs (a)(10) and (a)(11) of this section and emphasizes that these services are available under proposed paragraph (a)(20) of this section as "other services" whenever necessary for an eligible individual to achieve an employment outcome.

Proposed paragraph (a)(13) of this section, which provides for job search, placement assistance, and job retention services, clarifies the scope of services currently available under existing paragraph (a)(12) of § 361.42, which provides for placement in suitable employment. Proposed paragraphs (a)(14) and (a)(15) of this section incorporate new requirements in the statute for supported employment and personal assistance services. Proposed paragraph (a)(16) of this section revises the paragraph in the existing regulations on post-employment services by referring to the proposed definition of post-employment services in § 361.5(b)(37). That definition incorporates the language in the 1992 Amendments regarding advancement in employment and individual choice. Finally, proposed paragraph (a)(18) of this section revises the paragraph in the existing regulations on rehabilitation engineering services, consistent with the 1992 Amendments, to provide for rehabilitation technology services.

Section 361.49—Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities

This proposed section would consolidate provisions from several sections of the existing regulations, including the definition of vocational rehabilitation services for the benefit of groups of individuals in § 361.1(c) of the existing regulations and §§ 361.50, 361.51, 361.52, and 361.53 of the existing regulations. In addition, it would incorporate new requirements imposed by the 1992 Amendments, such as replacing the concept of the "establishment of a rehabilitation facility" with the concept of the "establishment, development, or improvement of a public or other nonprofit community rehabilitation program," restricting the construction of a rehabilitation facility to special circumstances, and adding the newly authorized service of technical assistance and support services for businesses that are not subject to the Americans with Disabilities Act and are seeking to employ individuals with disabilities.

In response to public comment on the draft regulations, the Secretary proposes to amend paragraph (a)(5) of this section to clarify that the establishment of small business enterprises operated by individuals with the most severe disabilities under the State unit's supervision includes vending facilities established under the Randolph-Sheppard program. In addition, the Secretary proposes to amend this paragraph to clarify that management services and supervision in support of a small business enterprise may be provided by the State unit beyond the initial establishment period of six months. The Secretary also proposes to clarify the draft regulations to state that initial stock and supplies and operational costs for small business enterprises may be provided only during the initial six-month establishment period. These changes are consistent with section 103(b)(1) of the Act, as well as with the Randolph-Sheppard Act and its implementing regulations in 34 CFR Part 395.

Section 361.50—Written Policies Governing the Provision of Services

This section contains material from paragraph (b) of § 361.42 of the existing regulations, which requires written State policies on the scope of vocational rehabilitation services for individuals, and § 361.44 of the existing regulations, which is the section on authorization of services. The Secretary proposes to require that a State unit have policies regarding the provision of services for groups of individuals with disabilities, as well as the availability of services for individuals with disabilities.

In the draft regulations, this proposed section incorporated new provisions, based on existing policy and subregulatory guidance, to clarify that no absolute caps or limits, in terms of location, cost, or duration, could be placed on the availability of services that would effectively deny an individual a necessary service. Although these provisions are maintained in the proposed regulations, some public commenters were concerned that insufficient emphasis was placed on the requirement that policies governing the provision of services must be designed to meet the rehabilitation needs of each individual served by the State unit. In response, the Secretary proposes to amend the regulations to specify that the policies required to be developed under this section must ensure that the provision of services is based on the individual's rehabilitation needs as identified in the IWRP. As in the draft regulations, the proposed section would also prohibit State units from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome.

Some commenters on the draft regulations opposed the ability of State units to establish preferences for in-State services on the basis that those preferences are inconsistent with principles of individual choice. In response, the Secretary proposes to amend the regulations to permit individuals to choose out-of-State services over in-State services. However, if an individual selects an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit would be required to pay only an amount equal to the cost of the in-State service.

The draft regulations would have required State units to provide written authorization of services either before or at the same time as the purchase of services, except in emergency situations when oral authorization, followed by prompt written confirmation, was permitted. In response to those commenters on the draft regulations who believed that the State unit should have greater flexibility in developing policies governing the authorization of services to individuals, the Secretary proposes to simplify the regulations to require State units to establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

Section 361.51—Written Standards for Facilities and Providers of Services

This proposed section would incorporate § 361.45 of the existing regulations, would expand the requirement for standards to ensure accessibility of facilities, and would require new standards regarding qualified personnel and fraud, waste, and abuse, consistent with the 1992 Amendments.

In response to public comment on the draft regulations, the Secretary interprets the accessibility of facilities requirement broadly so as not to prevent any individual with a disability, including the multi-chemically disabled, from receiving services at a facility. In response to public comment, the Secretary also proposes to amend the qualified personnel requirements in paragraph (b)(1) of this section to reflect the personnel standards included in the State agency's comprehensive system of personnel development under section 361.18(c).

Section 361.52—Opportunity To Make Informed Choices Regarding the Selection of Services and Providers

This proposed new section would implement section 12(e)(1) of the Act, which was added by the 1992 Amendments and requires the Secretary to promulgate regulations establishing criteria pertaining to the selection of vocational rehabilitation services and providers by an individual with a disability.

In response to public comment on the draft regulations, the Secretary proposes to amend this section of the regulations to clarify that the concept of informed choice applies to all aspects of the vocational rehabilitation process, including the selection of vocational goals, intermediate objectives, VR services, and service providers. This provision is closely related to the requirement in proposed § 361.46(a)(6) that the IWRP include a statement from the individual describing the manner in which the individual exercised informed choice in selecting among

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alternative goals, objectives, services, providers, and methods used to procure or provide services. The proposed regulations also would require that the State unit consult with its State Rehabilitation Advisory Council, if it has one, when developing its policies for facilitating informed choice.

Several commenters opposed the requirement in the draft regulations that State units develop indicators regarding the quality of service providers on the basis that such a requirement is overly burdensome and likely to lead to disputes, and potentially litigation, between State units and providers of VR services. In response, the Secretary proposes to amend the regulations to require State units to provide individuals, or assist individuals in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. Thus, it is expected that State units will provide, or facilitate access to, information concerning cost and accessibility of services, level of consumer satisfaction with services, qualifications of service providers, and other information necessary to enable the individual to make an informed choice among alternative services and providers.

It should also be noted that in response to public comment and in the interest of reducing the burden on State units, the proposed regulations would not require DSUs to provide a list of available services and the potential providers of those services to each individual. Lists of this type, as well as resource materials such as consumer satisfaction surveys, are, however, included in the regulations as examples of possible sources of information that may be used by DSUs to satisfy the information requirements of this section.

Section 361.53—Availability of Comparable Services and Benefits

This proposed section revises § 361.47(b) of the existing regulations.

As provided for in the draft regulations, the availability of comparable services and benefits is based on whether services and benefits exist under another program for the individual and whether the individual is eligible for these services or benefits. However, the use of comparable services and benefits under the draft regulations was dependent upon whether the comparable services and benefits were "currently available" to the individual. In response to public commenters who expressed confusion as to the meaning of this phrase, the Secretary proposes to delete the word "currently" from this section and to amend the regulations to require DSUs to use comparable services and benefits if available to the eligible individual within a reasonable period of time that is appropriate for the achievement of the intermediate rehabilitation objectives identified in the individual's IWRP. What constitutes a reasonable period of time would vary according to the services identified in each individual's IWRP. By making this change, the Secretary emphasizes that the use of comparable services and benefits should not unreasonably delay the individual in meeting his or her rehabilitation objectives.

In the event comparable services and benefits exist but are not available to the individual within a reasonable period of time, the proposed regulations would require the State unit to provide VR services during the interim period until they become available. In an effort to respond to public comment and reduce the burden on DSUs, the Secretary proposes to delete the requirement in the draft regulations that State units obtain reimbursement for any overlap in benefits once the comparable services and benefits become available.

In response to public comment on the draft regulations, the Secretary also proposes to revise the regulations to clarify that a determination as to the availability of comparable services and benefits is not required in connection with the provision of those services listed under paragraph (b) of this section. Although DSUs are free to provide these services without pursuing the availability of comparable services and benefits, the Secretary encourages State units to use known comparable services and benefits whenever possible in order to maximize the use of funds provided under this program.

In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (b) of this section by including taped texts and computer accessible formats (sometimes referred to as E-text) among those services for which comparable services and benefits do not need to be sought. This addition is consistent with the Act's legislative history, specifically Conference Report No. 102–973.

Section 361.54—Participation of Individuals in Cost of Services Based on Financial Need

This proposed section is taken from § 361.47(a) of the existing regulations. It would clarify the requirements that a State unit must meet if it chooses to consider the financial need of individuals to determine the extent of their participation in the cost of vocational rehabilitation services. The Secretary proposes to clarify the draft regulations to require State units to ensure that its policies governing financial need be applied uniformly to all individuals in similar circumstances. The Secretary interprets this provision, which is modeled after existing regulations, to require a State unit to apply its financial needs test to each individual in need of a service covered by the test without regard to the type of the individual's disability. The proposed regulations would also clarify that this uniform application requirement does not prohibit setting different levels of need for different geographic regions in the State, but requires uniform application of the standard to all individuals within each geographic region or to all individuals within the State if the State unit does not establish geographical differentials. Finally, the proposed regulations would clarify that the level of an individual's financial participation in the cost of VR services must be reasonable, based on the individual's financial need and ability to pay, and must not be so high as to effectively deny the individual a necessary service.

Section 361.55—Review of Extended Employment in Community Rehabilitation Programs or Other Employment Under Section 14(c) of the Fair Labor Standards Act

This proposed section is taken, in part, from § 361.58 of the existing regulations. In addition to the review of extended employment outcomes, the 1992 Amendments require the review of employment outcomes in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act to determine the individual's needs and interests related to competitive employment. This section would also incorporate the emphasis in the 1992 Amendments on employment and training in integrated settings and would elaborate on the meaning of the "maximum effort" required of State units in the existing regulations to clarify that State units are required to provide services to promote movement from extended employment to integrated employment.

Section 361.56—Individuals Determined To Have Achieved an Employment Outcome

This proposed section, which has been renamed to conform to the changes discussed in the following paragraphs, is taken from § 361.43 of the existing regulations. It has been revised to make the requirements in the current regulations more outcome-oriented, rather than process-oriented, and to incorporate the new statutory emphases on choice and integrated settings.

In an effort to better reflect whether an individual has successfully achieved an employment outcome, the draft regulations would have extended the period for which an employment outcome must be maintained from 60 to 180 days. Several commenters, however, opposed the 180-day standard as unduly burdensome and inconsistent with individual choice. Some commenters believed that the standard for closing an individual's case should be based on the particular circumstances of the individual's employment situation, while others indicated that the determination as to whether the individual is successfully employed should be made jointly by the individual, the rehabilitation counselor or coordinator, and, in some cases, the employer. In response to these comments and to the views expressed by members of the focus group that discussed this issue, the Secretary proposes to delete the draft requirement that an employment outcome must be maintained for 180 days. In its place, the Secretary proposes a standard under which the individual must maintain the employment outcome for the duration of any probationary period that the employer has established for its employees, or, if the employer does not have an established probationary period, for a period of at least 90 days. In addition, the individual and the rehabilitation counselor or coordinator must agree that the employment outcome is satisfactory and that the individual is performing well on the job. Like the draft regulations, this section would also require the State unit to assure that the employment outcome is in the most integrated setting possible and is consistent with the individual's abilities, capabilities, interests, and informed choice. Finally, in response to public comment, the Secretary proposes to amend this section to require that the provision of services under the individual's IWRP contribute to, rather than result in, the achievement of the employment outcome.

The proposed standard, like that in the draft regulations, is intended to strengthen the current minimum 60-day standard for maintaining a job placement in an effort to better reflect whether an individual has, in fact, successfully achieved an employment outcome. The Secretary agrees with those commenters who suggested that achievement of an employment outcome should be based, in part, on the stability of the individual's employment. In addition, the proposed changes from the current regulations are also intended to condition the achievement of an employment outcome on the satisfaction of the individual, the counselor, and the employer. The Secretary believes that the best measure of an employer's satisfaction with an individual's job performance is whether the individual has met the employer's probationary period. For those individuals whose employers have not established a customary probationary period, the Secretary views the 90-day minimum as an adequate safeguard to ensure that the individual is performing well and is likely to maintain the employment outcome. Consistent with the Act's emphasis on informed choice, the proposed regulations would also base the decision that an individual has achieved an employment outcome on the individual's, as well as the counselor's or coordinator's, satisfaction with the employment outcome. The Secretary emphasizes that a satisfactory employment outcome, at a minimum, must meet the provisions of this section, and the Secretary is particularly interested in public comment concerning whether further standards for defining "satisfactory" should be developed at the Federal level.

The Secretary is continuing to consider issues concerning outcome measures for the vocational rehabilitation program, including the proposed time standard in these regulations for maintaining a job placement in order to achieve an employment outcome (the duration of the employer's probationary period or, in the absence of an employer policy in this area, at least 90 days). The Secretary believes that the high level of Federal funding for this program—over 78 percent—warrants close attention to accountability measures to ensure that employment outcomes are maintained over time. The Secretary is particularly interested in receiving comments on whether the proposed job retention standard is strong enough to achieve this result.

The Secretary is also interested in receiving comments about the relationship between closure requirements for the vocational rehabilitation program and other programs, including those under the Job Training Partnership Act (13 weeks), the Social Security beneficiary rehabilitation program (9 months of substantial gainful activity), and other State manpower development and job training programs. Finally, the Secretary is interested in comments on the impact of the proposed new employment outcome standard and whether, in comparison to the current standard, it would likely increase or decrease the number of individuals with disabilities achieving long-term employment outcomes.

Section 361.57—Review of Rehabilitation Counselor and Coordinator Determinations

This proposed section is taken from § 361.48 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to delete all non-statutory timelines from this section of the draft regulations. In place of specific time limits, the proposed regulations would require each DSU, in consultation with its State Rehabilitation Advisory Council, if it has one, to develop reasonable timelines for key stages of the appeal process to ensure that appeals are handled promptly. Specifically, DSU's would be required to develop timelines to ensure that hearings are held within a reasonable time after an individual's request for review, that the initial decision of the impartial hearing officer is rendered within a reasonable time after the hearing is completed, and that the final decision of the DSU director is rendered within a reasonable time after notifying the individual of the director's intent to review the initial decision. These changes are intended to provide DSU's with increased flexibility to develop appropriate timelines, while protecting individuals against unreasonable delays in the review process. Like the current regulations, this proposed provision also would permit a DSU to establish an informal process to resolve a request for review without conducting a formal hearing, but would require the DSU to conduct a hearing within the relevant State-developed timeline if informal resolution is unsuccessful. The Secretary particularly requests public comment on whether a specific overall time limit for completing the entire formal review process (e.g., 125 days) should be required under the regulations.

This section would incorporate the requirement in the 1992 Amendments that prohibits the State unit from instituting a suspension, reduction, or termination of services pending a final State hearing determination unless the agency has evidence that the services were obtained through fraud, misrepresentation, collusion, or criminal conduct on the part of the individual, or the individual so requests. The Secretary interprets this provision to mean that services may be suspended, reduced, or terminated

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pending a final determination if there is "substantial evidence" of that conduct.

This proposed section also incorporates the requirement in the 1992 Amendments that the director not overturn or modify the decision of an impartial hearing officer unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is "contrary to Federal or State law, including policy." The Secretary interprets this statutory language to include a decision that is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy.

It should be noted that the Secretary has changed the term "calendar day" from the draft regulations to "day" in the proposed regulations in response to public commenters who inquired as to the difference in meaning between the two terms. Procedural time limits in this section and throughout the regulations are, therefore, measured in terms of "days," which the Secretary intends to mean "calendar days" rather than "working days."

Finally, in response to public comment on the draft regulations, the Secretary proposes to add to paragraph (f) of this section a requirement that the DSU inform applicants and eligible individuals of the manner in which it selects impartial hearing officers.

Section 361.60—Matching Requirements

This proposed new section would clarify the matching requirements by consolidating all of the Federal and non-Federal share provisions. Proposed paragraph (a) of this section contains the general Federal share provision, which is in § 361.86(a) of the existing regulations and was revised by the 1992 Amendments to be 78.7 percent. Proposed paragraph (a) of this section also contains the 50 percent Federal share provision for construction projects, which is in § 361.74(b) of the existing regulations, and the 90 percent Federal share provision for innovation and expansion grant activities, which is addressed in § 361.153 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to simplify the requirements relating to the non-Federal share in the draft regulations by removing from the regulations a list of permissible sources of expenditures to meet the non-Federal share and instead cross-referencing the applicability of the matching or cost sharing requirements in 34 CFR 80.24 of EDGAR with certain exceptions. The proposed regulations would specify that third party in-kind contributions, which are a permissible source of matching funds under EDGAR, may not be used as part of the non-Federal share under the VR program. In addition, the proposed regulations would continue, but clarify, existing regulatory requirements that prohibit earmarked donations that benefit the donor from being used to meet the non-Federal share. The Secretary wishes to emphasize that the changes proposed with regard to meeting the non-Federal share would not prohibit the use of any funding sources that are currently allowable.

Section 361.61—Limitation on Use of Funds for Construction Expenditures

This proposed new section sets out in a separate section the requirement in paragraph (d) of § 361.85 of the existing regulations that no more than 10 percent of a State's allotment may be used for construction.

Section 361.62—Maintenance of Effort Requirements

This proposed section is taken from § 361.86 of the existing regulations. It incorporates provisions in the 1992 Amendments, which changed the standard on which the maintenance of effort level is based from the average of the three prior fiscal years to the second prior fiscal year. It also folds into the same section a separate maintenance of effort requirement relating to the construction of facilities that is contained in both § 361.52(e) and § 361.85(d) of the existing regulations. This proposed section clarifies the procedures the Secretary follows for determining whether maintenance of effort requirements have been met and for reducing the amount payable in the case of a maintenance of effort deficit if there is a separate State agency for vocational rehabilitation services for individuals who are blind.

Section 361.63—Program Income

This proposed new section consolidates in one place all of the provisions related to program income. Proposed paragraph (a) of this section incorporates the definition of program income from EDGAR (34 CFR 80.25(b)). Proposed paragraph (b) of this section incorporates existing subregulatory guidance regarding the sources of program income. Proposed paragraph (c)(1) of this section incorporates the general EDGAR requirement that program income must be used in the program in which it is earned, but makes an exception for Social Security reimbursements as provided in section 108 of the Act. Proposed paragraph (c)(1) of this section would clarify that program income is considered earned when it is received.

In response to public comment on the draft regulations, the Secretary proposes to delete from proposed paragraph (c)(3)(ii) of this section the requirement that the State notify the Secretary prior to using the deduction method for accounting for program income. By removing this condition, the Secretary emphasizes that the State is free either to use program income to expand its vocational rehabilitation program or to deduct it from its total allowable costs, without seeking prior Federal approval.

Proposed paragraph (c)(4) of this section would clarify that program income may not be used to meet the non-Federal share requirement.

Section 361.64—Obligation of Federal Funds and Program Income

This proposed new section incorporates the amendment to section 19 of the Act, which clarifies that both Federal funds, including reallotted funds, and program income from all sources may be carried over for obligation from the year in which the funds are received until the end of the following year.

In response to public comments on the draft regulations, the Secretary proposes to amend paragraph (b) of this section to clarify that the State unit may carry over any portion of unobligated Federal funds that it has matched by obligating non-Federal funds during the fiscal year for which the Federal funds were appropriated. This clarification is consistent with section 19 of the Act, which allows for carryover of Federal funds "to the extent" that recipients comply with Federal share requirements.

Section 361.65—Allotment and Payment of Federal Funds for Vocational Rehabilitation Services

This proposed section is taken from §§ 361.85 and 361.87 of the existing regulations.

Section 361.70—Purpose of the Strategic Plan

This proposed section implements new section 120 of the Act, which makes grants under Part B of the Act, as well as innovation and expansion grants under Part C of the Act, contingent on the preparation and submission of a statewide strategic plan.

Section 361.71—Procedures for Developing the Strategic Plan

This proposed new section implements new section 122 of the Act, which requires the State to hold public forums and meet with members of the State Rehabilitation Advisory Council and the Statewide Independent Living Council prior to developing the strategic plan. The Secretary interprets the public forum requirement in the statute to require the same procedures for public input on the strategic plan that are required for the development of the State plan under § 361.20 of the proposed regulations.

Section 361.72—Content of the Strategic Plan

This proposed new section incorporates the new requirements in section 121 of the Act with no substantive changes.

Section 361.73—Use of Funds

This proposed new section incorporates the requirements in new sections 101(a)(34)(B) and 123 of the Act. The Secretary interprets 101(a)(34)(B) to require that at least 1.5 percent of the funds received under Part B of the Act be used for the activities identified in section 123. The Secretary has clarified that all funds received under Part C of the Act must be used for activities identified in a State's strategic plan, which may include, but are not limited to, the activities identified in section 123 of the Act.

Section 361.74—Allotment of Federal Funds

This proposed new section incorporates by reference the requirements of new section 124 of the Act without substantive change.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the potential costs and benefits of these proposed regulations is contained in the summary at the end of this section of the preamble.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of potential benefits relative to potential costs of the regulatory provisions discussed previously in this preamble:

The Secretary believes that the NPRM would substantially improve The State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary also believes that the proposed regulations represent the least burdensome way to implement the 1992 Amendments to Title I of the Act and fulfill important policy objectives that the Secretary considers essential to the success of the program. As stated previously in this preamble, the NPRM has been revised consistent with the Department's principles for regulating, which were developed during the Administration's regulatory reinvention initiative, to further reduce paperwork or process requirements and to enhance the flexibility of DSUs to meet non-statutory requirements. Increased flexibility of DSUs and other benefits resulting from the proposed regulations are discussed in the following paragraphs of this section and throughout the section-by-section summary of the preamble.

Improved Organization of Regulations

The NPRM would substantially reorganize and clarify the current program regulations in order to make the regulations easier to understand and more useful. In response to requests from members of the vocational rehabilitation community, the proposed regulations also would include definitions of a number of previously undefined terms, including "comparable services and benefits," "maintenance," and "post-employment services."

Notes and Examples

The Secretary has provided additional clarifying information in the proposed regulations through the use of notes and examples. Many commenters to the draft regulations stated that they find this information more accessible and more useful when it is included in the regulations rather than issued separately by RSA as subregulatory guidance. As stated previously throughout this preamble, the Secretary emphasizes that the limited notes and examples in the proposed regulations are purely illustrative and are not intended to restrict State flexibility.

Reduction of Grantee Burden

Non-statutory paperwork requirements have been eliminated or consolidated throughout the NPRM in an effort to reduce the regulatory burden on States. For example, previously duplicative requirements under § 361.46 (Content of the IWRP) and § 361.47 (Record of services) have been consolidated to reduce the paperwork burden on States and to ensure efficient administration of the program. A list of other sections in which paperwork burden on grantees has been removed or reduced in response to public comment on the draft regulations precedes the section-by-section summary in this preamble. Also, additional burden-reducing steps taken by the Secretary in accordance with the Department's principles for regulating are explained throughout the section-by-section summary in the preamble. For example, the proposed deletion of the requirement that the State plan describe the organizational structure of the State agency and its organizational units is discussed under § 361.13 (State agency for administration) in the section-by-section summary. Those paperwork requirements that would remain in the proposed regulations are considered essential to the proper administration of the program.

Enhanced Protections for Individuals With Disabilities

The proposed regulations include provisions intended to ensure that individuals with disabilities are not improperly denied necessary VR services. In particular, § 361.50 (Written policies governing the provision of services) would require DSUs to ensure that the provision of VR services for an eligible individual is based on the individual's particular rehabilitation needs and would prevent DSUs from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome. In addition, § 361.54 (Participation of individuals in cost of services based on financial need) would require DSUs to

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apply a State financial needs test to each individual in need of a service covered by the test without regard to type of disability. This section would also require DSUs to ensure that the level of an individual's financial participation in the cost of VR services is reasonable, based on the individual's ability to pay, and not so high as to effectively deny the individual a necessary service.

Increased Flexibility of Grantees to Satisfy Statutory Requirements

A number of provisions in the proposed regulations have been revised in an effort to enhance the flexibility of States in meeting specific statutory requirements. For example, proposed § 361.20 (State plan development) would allow States to determine what constitutes appropriate and sufficient notice under the Act for purposes of providing notice of public meetings on State plan development. Although the proposed regulations would not impose any specific minimum Federal requirements for what constitutes "appropriate and sufficient notice," the section-by-section summary of this proposed section identifies suggested ways a DSU might meet these requirements. Similarly, § 361.52 (Opportunity to make informed choices regarding the selection of services and providers) of the proposed regulations identifies possible methods a DSU may follow or sources of information a DSU may maintain to ensure that each eligible individual is afforded an opportunity, as required under the Act, to make an informed choice in selecting vocational rehabilitation services and providers. Finally, proposed § 361.57 (Review of rehabilitation counselor and coordinator determinations) would allow States to establish their own timelines for key stages of the statutorily-mandated fair hearing process.

Additional Benefits

The proposed regulations reflect the policy in the 1992 Amendments of ensuring that individuals are provided necessary information through appropriate modes of communication to enable them to participate in a rehabilitation program or to influence DSU rehabilitation policy development. For example, proposed § 361.20(d) requires a DSU, in developing its State plan, to provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 361.5 Applicable definitions.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Sections 361.10, 361.13, 361.14, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.26, 361.27, 361.29, 361.33, 361.34, 361.35, 361.37, 361.40, 361.46, 361.48, 361.49, 361.50, 361.51, 361.52, 361.54, 361.57, 361.71, and 361.72 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these regulations. The information to be collected includes State plan assurances and descriptions to meet statutory requirements. The Department needs and uses the information to review State plans to determine whether they can be approved. Approval of a State plan is necessary to receive a grant under this program.

All information is to be collected and reported once every three years, with the exception of the following information, which is required annually: advice provided by the State Rehabilitation Advisory Council under § 361.16; collection and analysis of data on qualified personnel needs and personnel development under § 361.18; analysis of characteristics of individuals determined to be ineligible for services and reasons for their ineligibility, evaluation of the effectiveness of the State's vocational rehabilitation program, any changes adopted in State policy or in the State plan as a result of statewide studies and the annual program evaluation, and the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities under § 361.29; revisions to the supported employment plan under § 361.34; a description of the manner in which rehabilitation technology services will be provided throughout the rehabilitation process, the personnel training that will be provided to facilitate the provision of rehabilitation technology services, and the manner in which personal assistance services will be provided to individuals with disabilities under § 361.48. Annual reporting and recordkeeping burden for this collection of information is estimated to average 221.2 hours per response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 18,138.4 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Laura Oliven.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214, 330 C Street SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: August 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.
361.1 Purpose.
361.2 Eligibility for a grant.
361.3 Authorized activities.
361.4 Applicable regulations.
361.5 Applicable definitions.

Subpart B—State Plan for Vocational Rehabilitation Services

361.10 Submission, approval, and disapproval of the State plan.
361.11 Withholding of funds.

State Plan Content: Administration

361.12 Methods of administration.
361.13 State agency for administration.
361.14 Substitute State agency.
361.15 Local administration.
361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.
361.17 Requirements for a State Rehabilitation Advisory Council.
361.18 Comprehensive system of personnel development.
361.19 Affirmative action for individuals with disabilities.
361.20 State plan development.
361.21 Consultations regarding the administration of the State plan.
361.22 Cooperation with agencies responsible for transitioning students.
361.23 Cooperation with other public agencies.
361.24 Coordination with the Statewide Independent Living Council.
361.25 Statewideness.
361.26 Waiver of statewideness.
361.27 Shared funding and administration of joint programs.
361.28 Third-party cooperative arrangements involving funds from other public agencies.
361.29 Statewide studies and evaluations.
361.30 Services to special groups of individuals with disabilities.
361.31 Utilization of community resources.
361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
361.33 Utilization of community rehabilitation programs.
361.34 Supported employment plan.
361.35 Strategic plan.
361.36 [Reserved].
361.37 Establishment and maintenance of information and referral resources.
361.38 Protection, use, and release of personal information.
361.39 State-imposed requirements.
361.40 Reports.

State Plan Content: Provision and Scope of Services

361.41 Processing referrals and applications.
361.42 Assessment for determining eligibility and priority for services.
361.43 Procedures for ineligibility determination.
361.44 Closure without eligibility determination.
361.45 Development of the individualized written rehabilitation program.
361.46 Content of the individualized written rehabilitation program.
361.47 Record of services.
361.48 Scope of vocational rehabilitation services for individuals with disabilities.
361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
361.50 Written policies governing the provision of services.
361.51 Written standards for facilities and providers of services.
361.52 Opportunity to make informed choices regarding the selection of services and providers.
361.53 Availability of comparable services and benefits.
361.54 Participation of individuals in cost of services based on financial need.
361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.
361.56 Individuals determined to have achieved an employment outcome.
361.57 Review of rehabilitation counselor or coordinator determinations.

Subpart C—Financing of State Vocational Rehabilitation Programs

361.60 Matching requirements.
361.61 Limitation on use of funds for construction expenditures.
361.62 Maintenance of effort requirements.
361.63 Program income.
361.64 Obligation of Federal funds and program income.
361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

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Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

361.70 Purpose of the strategic plan.
361.71 Procedures for developing the strategic plan.
361.72 Content of the strategic plan.
361.73 Use of funds.
361.74 Allotment of Federal funds.

Authority: 29 U.S.C. 711(c), unless otherwise noted.

Subpart A—General

§ 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program (program), the Secretary provides grants to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program that is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Sections 12(c) and 100(a)(2) of the Act; 29 U.S.C. 711(c) and 720(a)(2))

§ 361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Act; 29 U.S.C. 721(a))

§ 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the State plan;

(b) Administrative costs under the State plan; and

(c) The costs of developing and implementing the strategic plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§ 361.4 Applicable regulations.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

(2) 34 CFR Part 76 (State-Administered Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for § 80.24(a)(2).

(6) 34 CFR Part 81 (General Education Provisions Act-Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 361.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(2) *Administrative costs under the State plan* means expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, quality assurance; budgeting, accounting, financial management, statistical systems, and related data processing; providing information about the program to the public; technical assistance to other State agencies, private nonprofit organizations, and businesses and industries; the State Rehabilitation Advisory Council and other advisory committees; professional organization membership dues for State unit employees; the removal of architectural barriers in State agency offices and facilities; operating and maintaining State unit facilities, equipment, and grounds; supplies; administration of the comprehensive system of personnel development, including personnel administration, administration of affirmative action plans, and training and staff development; administrative salaries, including clerical and other support staff salaries, in support of these functions; travel costs related to carrying out the program, other than travel costs related to the provision of services; and legal expenses required in the administration of the program.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Section 7(20) of the Act; 29 U.S.C. 706(20))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C.711 (c))

(5) *Appropriate modes of communication* means specialized media systems and devices for individuals with disabilities that enable an individual to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, and augmentative communication devices.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(6) *Assistive technology device means* any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(23) of the Act; 29 U.S.C. 706(23))

(7) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(24) and 12(c) of the Act; 29 U.S.C. 706(24) and 711(c))

(8) *Community rehabilitation program.*

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) *For the purposes of this definition, the word program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Sections 7(25) and 12(c) of the Act; 29 U.S.C. 706(25) and 711(c))

(9) *Comparable services and benefits* means services and benefits that are—

(i) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(ii) Available to the individual within a reasonable period of time in accordance with § 361.53; and

(iii) Commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(10) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the prevailing wage for the same or similar work in the local community performed by individuals who are not disabled.

(Authority: Sections 7(5), 7(18), and 12(c) of the Act; 29 U.S.C. 706(5), 706(18), and 711(c))

(11) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The acquisition of existing buildings;

(iii) The remodeling, alteration, or renovation of existing buildings;

(iv) The construction of new buildings and expansion of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(1) and 12(c) of the Act; 29 U.S.C. 706(1) and 711(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 706(3)(A) and 721(a)(1)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation, as its primary function.

(Authority: Sections 7(3)(B) and 101(a)(2)(A) of the Act; 29 U.S.C. 706(3)(B) and 721(a)(2)(A))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(8)(a) and 102(a)(1) of the Act; 29 U.S.C. 706(8) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(5) and 12(c) of the Act; 29 U.S.C. 706(5) and 711(c))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community

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rehabilitation program as defined in paragraph (b)(17) of this section;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness, but are not ongoing operating expenses of the program.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 706(6) and 711(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program means*—

(i) The acquisition of an existing building, and if necessary the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of the acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(19) *Extended services*, as used in the definition of "Supported employment," means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, 34 CFR part 363, 34 CFR part 376, or 34 CFR part 380, after an individual with a most severe disability has made the transition from support provided by the designated State unit.

(Authority: Section 7(27) of the Act; 29 U.S.C. 706(27))

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(21) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(a)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(3) of the Act; 29 U.S.C. 711(c) and 723(a)(3))

(22) *Impartial hearing officer.*

(i) Impartial hearing officer means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Advisory Council for the designated State unit;

(C) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual shall not be considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(28) of the Act; 29 U.S.C. 706(28))

(23) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Section 7(21) of the Act; 29 U.S.C. 706(21))

(24) *Individual who is blind* means a person who is blind within the meaning of the applicable State law.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(25) *Individual with a disability*, except in §§ 361.17(a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

(26) *Individual with a disability*, for purposes of §§ 361.17 (a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

(27) *Individual with a most severe disability* means an individual with a severe disability who meets the designated State unit's criteria for an individual with a most severe disability. This criteria must be consistent with the requirements in § 361.36(c)(3).

(Authority: Section 101(a)(5) of the Act; 29 U.S.C. 721(a)(5))

(28) *Individual with a severe disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(15)(A) of the Act; 29 U.S.C. 706(15)(A))

(29) *Individual's representative* means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(30) *Integrated setting*, with respect to the provision of services or an employment outcome, means a setting typically found in the community in which applicants or eligible individuals have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(31) *Maintenance* means monetary support provided to an eligible individual or an individual receiving extended evaluation services for those living expenses, such as food, shelter, and clothing, that are in excess of the normal living expenses of the individual and that are necessitated by the individual's participation in a program of vocational rehabilitation services.

(Authority: Sections 12(c) and 103(a)(5) of the Act; 29 U.S.C. 711(c) and 723(a)(5))

Note: The following are examples of expenses that would meet the definition of maintenance.

Example: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job seeking activities.

Example: The cost of short-term shelter that is required in order for an individual to participate in vocational training at a site that is not within commuting distance of an individual's home.

Example: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Example: The costs of food, clothing, and shelter for homeless or recently deinstitutionalized individuals until other financial assistance is secured for those costs.

(32) *Nonprofit*, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(Authority: Section 7(10) of the Act; 29 U.S.C. 706(10))

(33) *Ongoing support services*, as used in the definition of "Supported employment"—

(i) Means services that are—

(A) Needed to support and maintain an individual with a most severe disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, twice-monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this part;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(33) and 12(c) of the Act; 29 U.S.C. 706(33) and 711(c))

(34) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if

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the individual did not have a disability. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(11) and 103(a)(15) of the Act; 29 U.S.C. 706(11) and 29 U.S.C. 723)

(35) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic, orthotic, or other assistive devices, including hearing aids;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(4) of the Act; 29 U.S.C. 711(c) and 723(a)(4))

(36) *Physical or mental impairment* means an injury, disease, or other condition that materially limits, or if not treated will probably result in materially limiting, mental or physical functioning.

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(37) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

Note: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized written rehabilitation program; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(38) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sections 7(13) and 12(c) of the Act; 29 U.S.C. 706(13) and 711(c))

(39) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(13) of the Act; 29 U.S.C. 706(13))

(40) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Section 130(c) of the Act; 29 U.S.C. 750(c))

(41) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Section 7(9) of the Act; 29 U.S.C. 706(9))

(42) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(16) of the Act; 29 U.S.C. 706(16))

(43) *State plan* means the State plan for vocational rehabilitation services or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.10(c).

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 711(c) and 721)

(44) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(45) *Supported employment* means—

(i) Competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work; or

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(Authority: Section 7(18) of the Act; 29 U.S.C. 706(18)(A))

(46) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most severe disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(34) and 12(c) of the Act; 29 U.S.C. 706(34) and 711(c))

(47) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's individualized written rehabilitation program (IWRP).

(Authority: Section 7(35) and 103(a)(14) of the Act; 29 U.S.C. 706(35) and 723(a)(14))

(48) *Transitional employment*, as used in the definition of "Supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

(49) *Transitioning student* means a student who is an eligible individual in accordance with the requirements of § 361.42(a)(1) and who is receiving transition services as defined in paragraph (b)(47) of this section.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(50) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in any vocational rehabilitation service.

(Authority: Sections 12(c) and 103(a)(10) of the Act; 29 U.S.C. 711(c) and 723(a)(10))

Note: The following are examples of expenses that would meet the definition of transportation.

Example: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example: Short-term travel-related expenses, such as food and shelter, incurred by an applicant participating in evaluation or assessment services that necessitates travel.

Example: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

Example: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

(51) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sections 103(a) and (b) of the Act; 29 U.S.C. 723(a) and (b))

Subpart B—State Plan for Vocational Rehabilitation Services

§ 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* In order for a State to receive a grant under this part, the designated State agency shall submit to the Secretary, and obtain approval of, a State plan that contains a description of the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan that includes the State plan for vocational rehabilitation services and the State's plan for its program for persons with developmental disabilities. The State planning and advisory council for developmental disabilities and the agency administering the State's program for persons with developmental disabilities must concur in the submission of a consolidated rehabilitation plan. A consolidated rehabilitation plan must comply with, and be administered in accordance with, the Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended.

(d) *Public participation.* The State shall develop the State plan with input from the public, through public meetings, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan must cover a three-year period or, with the prior approval of the Secretary, some other period that corresponds to the period for which the State submits a plan under another Federal law, such as Part B of the Individuals with Disabilities Education Act (IDEA).

(f) *Submission of the State plan.* The State shall submit the State plan to the Secretary for approval—

(1) No later than July 1 of the year preceding the first fiscal year for which the State plan is submitted; or

(2) With the prior approval of the Secretary, no later than the date on which the State is required to submit a State plan under another Federal law.

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(g) *Revisions to the State plan.* The State shall submit to the Secretary for approval revisions to the State plan in accordance with the requirements of this part and 34 CFR 76.140.

(h) *Interim State plan.* The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the publication of final regulations.

(i) *Approval.* The Secretary approves a State plan and revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(j) *Disapproval.* The Secretary disapproves a State plan that does not conform to the requirements of this part and section 101(a) of the Act, in accordance with the following procedures:

(1) *Informal resolution.* Prior to disapproving a State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR Part 81, Subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 6, 101(a) and (b), and 107(d) of the Act; 29 U.S.C. 705, 721(a) and (b), and 727(d))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under sections 111, 124, or 632(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement and the strategic plan supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106 of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

State Plan Content: Administration

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Section 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is an independent State commission, board, or other agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(ii) The State agency administering or supervising the administration of education or vocational education in the State, provided that it includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(iii) A State agency that includes a vocational rehabilitation unit, as provided in paragraph (b) of this section, and at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.* (1) If the designated State agency is of the type specified in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, or if the designated State agency specified in paragraph (a)(3) of this section does not have as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan, including those responsibilities specified in paragraph (d) of this section;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency or, in the case of an agency described in paragraph (a)(1)(ii) of this section, is so located and has that status or has a director who is the executive officer of the State agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services are made by the designated State unit or the sole local agency under the supervision of the State unit. This responsibility may not be delegated to any other agency or individual.

(Authority: Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency shall submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

§ 361.15 Local administration.

(a) If the State plan provides for local administration, it must—

(1) Identify each local agency;

(2) Assure that each local agency is under the supervision of the designated State unit and is the sole local agency responsible for the administration of the program within the political subdivision that it serves; and

(3) Describe the methods each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the State agency is an independent State commission that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities;

(iii) Includes individuals representing family members, advocates, and authorized representatives of individuals with mental impairments; and

(iv) Conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers in the State, in accordance with the provisions in § 361.17(h)(3).

(2) An assurance that—

(i) The State has established a State Rehabilitation Advisory Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit seeks and seriously considers, on a regular and ongoing basis, advice from the Council regarding the development, implementation, and amendment of the State plan, the strategic plan, and other policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services in the State;

(iii) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under the Act to be submitted to the Secretary;

(B) Copies of all written policies, practices, and procedures of general applicability provided to or used by rehabilitation personnel; and

(C) Copies of due process hearing decisions in a manner that preserves the confidentiality of the participants in the hearings; and

(iv) The State plan summarizes annually the advice provided by the Council, including recommendations from the annual report of the Council, the survey of consumer satisfaction, and other reports prepared by the Council, and the State agency's response to the advice and recommendations, including the manner in which the State will modify its policies and procedures based on the survey of consumer satisfaction and explanations of reasons for rejecting any advice or recommendations of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency, under § 361.13(a)(3), to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State plan must contain one of the following four assurances:

(1) An assurance that an independent commission in accordance with paragraph (a)(1) of this section is responsible under State law for

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operating or overseeing the operation of the vocational rehabilitation program of both the State agency that administers the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind and the State agency that administers the remainder of the State plan.

(2) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for all individuals with disabilities, except individuals who are blind.

(3) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and that conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitstion program in the State for individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals with disabilities, except for individuals who are blind.

(4) An assurance that—

(i) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating or overseeing the operation of the vocational rehabilitation services for all individuals in the State, except individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals who are blind.

(Authority: Sections 101(a)(32) and 101(a)(36) of the Act; 29 U.S.C. 721(a)(32) and 721(a)(36))

§ 361.17 Requirements for a State Rehabilitation Advisory Council.

If the State plan contains an assurance that the State has established a Council under § 361.16(a)(2), (b)(3)(ii), or (b)(4)(ii), the State plan must also contain an assurance that the Council meets the following requirements:

(a) *Appointment.* (1) The members of the Council shall be—

(i) Appointed by the Governor; or

(ii) If State law vests appointment authority in an entity other than, or in conjunction with, the Governor (such as one or more houses of the State legislature or an independent board that has general appointment authority), appointed by that entity or entities.

(2) The appointing authority shall select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(b) *Composition.* (1) *General.* Except as provided in paragraph (b)(3) of this section, the Council shall be composed of at least 13 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson of, or other individual recommended by, the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 631(e)(1) of IDEA;

(iii) At least one representative of the Client Assistance Program (CAP), established under 34 CFR part 370, who must be the director of, or other individual recommended by, the CAP;

(iv) At least one vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty representing themselves due to their disabilities;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services; and

(ix) The director of the designated State unit as an ex officio, nonvoting member.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself due to disabilities.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 13 members, the separate Council is deemed to be in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members shall be individuals with disabilities who are not employed by the designated State unit.

(d) *Chairperson.* The chairperson shall be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) If the Governor does not have veto power pursuant to State law, selected by the Governor, or by the Council if required by the Governor, from among the voting members of the Council.

(e) *Terms of appointment.* (1) Each member of the Council shall be appointed for a term of no more than three years and may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council shall—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities to achieve rehabilitation goals and objectives under this part;

(2) Advise and, at the discretion of the State agency, assist the State unit in the preparation of applications, the State plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required by this part;

(3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by State agencies and other public and private entities responsible for serving individuals with disabilities; and

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities from funds made available under the Act or through other public or private sources;

(4) Prepare and submit to the Governor, or appropriate State entity, and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(5) Coordinate with other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 613(a)(12) of IDEA, the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the State mental health planning council established under section 1916(e) of the Public Health Service Act;

(6) Advise the designated State agency and provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(7) Perform other comparable functions, consistent with the purpose of this part, that the Council determines to be appropriate.

(i) *Resources.*

(1) The Council, in conjunction with the designated State unit, shall prepare a plan for the provision of resources, including staff and other personnel, that may be necessary for the Council to carry out its functions under this part.

(2) In implementing the resources plan, the Council must rely on existing resources to the maximum extent possible.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary must be resolved by the Governor or other appointing entity, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council shall, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council shall—

(1) Convene at least four meetings a year to conduct Council business that are publicly announced, open and accessible to the public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 130 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Act; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Advisory Council, this description must, at a minimum, provide for the involvement of the Council in the development of personnel standards in accordance with paragraph (c) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with severe disabilities, the number of personnel

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expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that professional and paraprofessional personnel needed within the State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or recognized certification, licensing, registration, or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent those standards are not based on the highest requirements in the State applicable to that profession or discipline, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step.

(2) As used in this section—

(i) "Highest requirements in the State applicable to that profession or discipline" means the highest entry-level academic degree or equivalent experience needed for any national or State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) "Profession or discipline" means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State; and

(C) Has a specified scope of responsibility.

(d) *Staff development.* (1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security work incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Performance evaluation system.* The State plan must describe how the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State unit facilitates, and in no way impedes, the accomplishment of the purpose and policy of the program as described in sections 100(a)(2) and 100(a)(3) of the Act, including the policy of serving, among others, individuals with the most severe disabilities.

(g) *Coordination with personnel development under IDEA.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under IDEA.

(Authority: Sections 101 (a)(7) and (a)(35) of the Act; 29 U.S.C. 721 (a)(7) and (35))

Note: Under the Act and the regulations in this part, the State agency is required to collect and analyze data regarding personnel needs by type or category of personnel. The personnel data must be collected and analyzed according to personnel category breakdowns that are based on the major categories of staff in the State unit. Similarly, the data from institutions of higher education must be broken down by type of program to correspond as closely as possible with the personnel categories of the State unit.

§ 361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities.

(Authority: Section 101(a)(6)(A) of the Act; 29 U.S.C. 721(a)(6)(A))

§ 361.20 State plan development.

(a) *Public participation requirements.* (1) *Plan development and revisions.* The State plan must assure that the State unit conducts public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its development and to comment on any revisions to the State plan.

(2) *Notice requirements.* The State plan must assure that the State unit, prior to conducting public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(i) State law governing public meetings; or

(ii) In the absence of State law governing public meetings, procedures developed by the State unit in consultation with the State Rehabilitation Advisory Council.

(3) *Plan revisions based on consumer satisfaction surveys.* The State plan must describe the manner in which the State plan will be revised based on the results of consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16.

(b) *Special consultation requirements.* The State plan must assure that, as appropriate, the State unit actively consults in the development and revision of the State plan with the CAP director, the State Rehabilitation Advisory Council, and, as appropriate, those Indian tribes, tribal organizations, and native Hawaiian organizations that represent significant numbers of individuals with disabilities within the State.

(c) *Summary of public comments.* The State plan must include a summary of the public comments on the State plan, including comments on revisions to the State plan and the State unit's response to those comments.

(d) *Appropriate modes of communication.* The State unit shall provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

(Authority: Sections 101(a)(20), 101(a)(23), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(20), (23), and (32) and 725(c)(2))

§ 361.21 Consultations regarding the administration of the State plan.

(a) The State plan must assure that, in connection with matters of general policy development and implementation arising in the administration of the State plan, the State unit seeks and takes into account the views of—

(1) Individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;

(2) Personnel working in the field of vocational rehabilitation;

(3) Providers of vocational rehabilitation services;

(4) The CAP director; and

(5) The State Rehabilitation Advisory Council, if the State has a Council.

(b) The State plan must specifically describe the manner in which the State unit will take into account the views regarding State policy and administration of the State plan that are expressed in the consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16(a)(1).

(Authority: Sections 101(a)(18), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(18), 721(a)(32), and 725(c)(2))

§ 361.22 Cooperation with agencies responsible for transitioning students.

(a) *Transitioning students who are receiving special education services.* (1) *General.* The State plan must contain plans, policies, and procedures that are designed to facilitate the transition of students who are receiving special education services from the provision of a free appropriate public education under the responsibility of an educational agency to the provision of vocational rehabilitation services under the responsibility of the designated State unit. These plans, policies, and procedures must be designed to facilitate the development and accomplishment of long-term rehabilitation goals, intermediate rehabilitation objectives, and goals and objectives related to enabling a transitioning student to live independently before leaving a school setting, to the extent the goals and objectives are included in an individualized education program of the transitioning student.

(2) *Formal interagency agreement.* The State plan must assure that the State unit enters into formal interagency agreements with the State education agency and, as appropriate, with local education agencies, that are responsible for the free appropriate public education of transitioning students who are receiving special education services.

(i) Formal interagency agreements must, at a minimum, identify—

(A) Policies, practices, and procedures that can be coordinated between the agencies, including definitions, standards for eligibility, policies and procedures for making referrals, procedures for outreach to and identification of youth who are receiving special education services and are in need of transition services, and procedures and timeframes for evaluation and follow-up of those transitioning students; and

(B) The roles of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services.

(ii) Formal interagency agreements may, as appropriate, identify—

(A) Available resources, including sources of funds for the development and expansion of services;

(B) The financial responsibility of each agency in providing services to transitioning students who are receiving special education services, consistent with State law;

(C) Procedures for resolving disputes between the agencies that are parties to the agreement; and

(D) All other components necessary to ensure meaningful cooperation among agencies, including procedures to facilitate the development of local teams to coordinate the provision of services to individuals, sharing data, and coordinating joint training of staff in the provision of transition services.

Note: The following excerpt from page 33 of Senate Report No. 102–357 further clarifies the provision of transition services by the State vocational rehabilitation agency:

The committee intends that students with disabilities who are eligible for, and who need, vocational rehabilitation services will receive those services as soon as possible, consistent with Federal and State law. These provisions are not intended in any way to shift the responsibility of service delivery from education to rehabilitation during the transition years. School officials will continue to be responsible for providing a free and appropriate public education as defined by the IEP. The role of the rehabilitation system is primarily one of planning for the student's years after leaving school. (S. Rep. No. 357, 102d Cong., 2d. Sess. 33 (1992))

(b) *Transitioning students who are not receiving special education services.* The State plan must contain plans, policies, and procedures, including cooperation with appropriate agencies, designed to ensure that transitioning students who are not receiving special education services have access to and can receive vocational rehabilitation services, if appropriate, and to ensure outreach to and identification of those individuals.

(Authority: Sections 101(a)(11)(C), 101(a)(24) and 101(a)(30) of the Act; 29 U.S.C. 721 (a)(11), (a)(24), and (a)(30))

§ 361.23 Cooperation with other public agencies.

(a) *Coordination of services with vocational education and Javits-Wagner-O'Day programs.* The State plan must assure that specific arrangements or

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agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under the Carl D. Perkins Vocational and Applied Technology Education Act or the Javits-Wagner-O'Day Act.

(b) *Cooperation with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities.* (1) The State plan must assure that the State unit cooperates with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities, including, as appropriate, establishing interagency working groups or entering into other interagency cooperative agreements with, and using the services and facilities of—

(i) Federal agencies providing services related to the rehabilitation of individuals with disabilities, including the Social Security Administration, the Office of Workers' Compensation Programs of the Department of Labor, and the Department of Veterans Affairs; and

(ii) State and local public agencies providing services related to the rehabilitation of individuals with disabilities, including State and local public agencies administering the State's social services and financial assistance programs and other State programs for individuals with disabilities, such as the State's developmental disabilities program, veterans programs, health and mental health programs, education programs (including adult education, higher education, and vocational education programs), workers' compensation programs, job training and placement programs, and public employment offices.

(2) Interagency cooperation under paragraph (b)(1) of this section, to the extent practicable, must provide for training for staff of the agencies as to the availability, benefits of, and eligibility standards for vocational rehabilitation services.

(3) Interagency cooperation under paragraph (b)(1) of this section also must identify policies, practices, and procedures that can be coordinated among the agencies (particularly definitions, standards for eligibility, the joint sharing and use of evaluations and assessments, and procedures for making referrals); identify available resources and define the financial responsibility of each agency for paying for necessary services (consistent with State law) and procedures for resolving disputes between agencies; and include all additional components necessary to ensure meaningful cooperation and coordination.

(c) *Reciprocal referral services with a separate agency for individuals who are blind.* If there is a separate State unit for individuals who are blind, the State plan must assure that the two State units establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Sections 101(a)(11) and 101(a)(22) of the Act; 29 U.S.C. 721(a)(11) and 721(a)(22))

§ 361.24 Coordination with the Statewide Independent Living Council.

The State plan must assure that the State unit will coordinate and establish working relationships with the Statewide Independent Living Council established under 34 CFR part 364 and with independent living centers within the State.

(Authority: Section 101(a)(33) of the Act; 29 U.S.C. 721(a)(33))

§ 361.25 Statewideness.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.26 Waiver of statewideness.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) The State includes in its State plan, and the Secretary approves, a request for a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.27 Shared funding and administration of joint programs.

(a) In order to carry out a joint program involving shared funding and administrative responsibility with another State agency or a local public agency to provide services to individuals with disabilities, the designated State unit must request approval from the Secretary in the State plan.

(b) If a proposed joint program does not comply with the statewideness requirement in § 361.25, the State unit shall obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) If the designated State unit enters into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, the State plan must assure that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in § 361.25, the State unit shall obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.29 Statewide studies and evaluations.

(a) *Statewide studies.* The State plan must assure that the State unit conducts continuing statewide studies to determine the current needs of individuals with disabilities within the State and the best methods to meet those needs. The continuing statewide studies, at a minimum, must include—

(1) A triennial comprehensive assessment, as part of the development of the State plan, of the rehabilitation needs of individuals with severe disabilities who reside in the State;

(2) A review of the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved and underserved by the vocational rehabilitation system;

(3) An annual analysis of the characteristics of individuals determined to be ineligible for services and the reasons for the ineligibility determinations; and

(4) A review of a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most severe disabilities, including individuals receiving supported employment services under 34 CFR Part 363.

(b) *Annual evaluation.* The State plan must assure that the State unit conducts an annual evaluation of the effectiveness of the State's vocational rehabilitation program in providing vocational rehabilitation and supported employment services, especially to individuals with the most severe disabilities. The annual evaluation must analyze the extent to which—

(1) The State has achieved the goals and priorities established in the State plan and annual amendments to the plan;

(2) The State has achieved the objectives of the strategic plan and revisions to the plan developed under Subpart D of this part;

(3) The State is in compliance with the evaluation standards and performance indicators established by the Secretary, pursuant to section 106 of the Act; and

(4) The State unit has adopted and is implementing procedures and activities to improve staff effectiveness and has made reasonable progress toward meeting the personnel standards established in accordance with § 361.18(c).

(c) *Reporting requirements.* (1) The State plan must describe annually those changes that have been adopted in policy, in the State plan and its amendments, and in the strategic plan and its amendments as a result of the statewide studies and the annual program evaluation.

(2) The State plan must contain an annual description of the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities, including the State unit's criteria for determining which individuals are individuals with the most severe disabilities.

(3) The State unit shall submit summaries or copies of the statewide studies and the annual evaluations as attachments to the State plan.

(d) *Role of the State Rehabilitation Advisory Council.* The State plan must assure that the State unit seeks the advice of the State Rehabilitation Advisory Council, if the State has a Council, regarding the continuing statewide studies and the annual evaluation and, at the discretion of the State agency, seeks assistance from the Council in the preparation and analysis of the studies and evaluation.

(Authority: Sections 101(a)(5) (A) and (B), 101(a)(9)(D), 101(a)(15) (B) and (D), 101(a)(19), and 105(c)(2) of the Act; 29 U.S.C. 721(a) (5), (9), (15), and (19) and 725(c)(2))

§ 361.30 Services to special groups of individuals with disabilities.

(a) *Civil employees of the United States.* The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in the line of duty, under the same terms and conditions applied to other individuals with disabilities.

(b) *Public safety officers.* (1) The State plan must assure that special consideration will be given to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(2) For the purposes of paragraph (b) of this section, "special consideration" for States under an order of selection means that those public safety officers who meet the requirements of paragraph (b)(1) of this section must receive priority for services over other eligible individuals in the same priority category of the order of selection.

(3) For the purposes of paragraph (b) of this section, "criminal act" means any crime, including an act, omission, or possession under the laws of the United States, a State, or a unit of general local government that poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(4) For the purposes of paragraph (b) of this section, "public safety officer" means a person serving the United States or a State or unit of local government, with or without compensation, in any activity pertaining to—

(i) The enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces;

(ii) A correctional program, facility, or institution if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

(iii) A court having criminal or juvenile delinquent jurisdiction if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

(iv) Firefighting, fire prevention, or emergency rescue missions.

(c) *American Indians.* (1) The State plan must assure that vocational rehabilitation services are provided to American Indians with disabilities residing in the State to the same extent that these services are provided to other significant groups of individuals with disabilities residing in the State.

(2) The State plan also must assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities who reside on reservations and are eligible for services by a special tribal program under 34 CFR part 371.

(Authority: Sections 7, 101(a)(13), 101(a)(20), and 130(b)(3) of the Act; 29 U.S.C. 706, 721(a)(13), 721(a)(20), and 750(b)(3))

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§ 361.31 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, public or other vocational or technical training programs or other appropriate community resources are used to the maximum extent feasible.

(Authority: Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or programs in the State.

(Authority: Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.33 Utilization of community rehabilitation programs.

(a) The State plan must assure that the designated State unit uses community rehabilitation programs to the maximum extent feasible to provide vocational rehabilitation services in the most integrated settings possible, consistent with the informed choices of the individuals.

(b) The State plan must contain a description of—

(1) The capacity and effectiveness of community rehabilitation programs, including programs under the Javits-Wagner-O'Day Act, based on the utilization patterns of those programs; and

(2) The methods used to ensure the appropriate use of community rehabilitation programs, including methods for entering into agreements with the operators of those programs and for entering into cooperative agreements with private nonprofit vocational rehabilitation service providers.

(Authority: Sections 101(a)(5)(A), 101(a)(12)(B), 101(a)(15)(B), 101(a)(27), and 101(a)(28) of the Act; 29 U.S.C. 721(a) (5), (12), (15), (27), and (28))

§ 361.34 Supported employment plan.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including annual revisions, must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(25) and 635(a) of the Act; 29 U.S.C. 721(a)(25))

§ 361.35 Strategic plan.

(a) The State plan must assure that the State—

(1) Has developed and implemented a strategic plan for expanding and improving vocational rehabilitation services for individuals with disabilities on a statewide basis in accordance with subpart D of this part; and

(2) Will use at least 1.5 percent of its allotment under this program for expansion and improvement activities in accordance with § 361.73(b).

(b) The strategic plan must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(34) and 120 of the Act; 29 U.S.C. 721(a)(34) and 740)

§ 361.36 [Reserved]

§ 361.37 Establishment and maintenance of information and referral resources.

(a) *General provisions.* The State plan must assure that—

(1) The designated State unit will establish and maintain information and referral programs adequate to ensure that individuals with disabilities within the State are given accurate information about State vocational rehabilitation services, independent living services, vocational rehabilitation services available from other agencies, organizations, and community rehabilitation programs, and, to the extent possible, other Federal and State services and programs that assist individuals with disabilities, including client assistance and other protection and advocacy programs;

(2) The State unit will refer individuals with disabilities to other appropriate Federal and State programs that might be of benefit to them; and

(3) The State unit will use existing information and referral systems in the State to the greatest extent possible.

(b) *Appropriate modes of communication.* The State plan further must assure that information and referral programs use appropriate modes of communication.

(c) *Special Circumstances.* If the State unit is operating under an order of selection for services, the State unit may elect to establish an expanded information and referral program that includes referral for job placements for those eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection. If a State unit elects to establish this kind of program, the State plan must include—

(1) A description of how the expanded information and referral program will be established and how it will function, including the level of commitment of State unit staff and resources;

(2) An assurance that, in carrying out this program, the State unit will not use case services funds that are needed to provide vocational rehabilitation services under individualized written rehabilitation programs for eligible individuals in the priority category or categories receiving services under the State unit's order of selection; and

(3) A description of the method to be used by the State unit to track the results of the expanded information and referral program, including the State unit's procedures for identifying those eligible individuals who achieve an employment outcome through participation in the expanded information and referral program.

(Authority: Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.38 Protection, use, and release of personal information.

(a) *General provisions.*

(1) The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(i) Specific safeguards protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and shall establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit shall release all requested information in that individual's record of services to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit shall release personal information if required by Federal law or regulations.

(4) The State unit shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6)(A))

§ 361.39 State-imposed requirements.

The State plan must assure that the designated State unit identifies upon request those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 716)

§ 361.40 Reports.

The State plan must assure that the State unit—

(a) Will submit reports in the form and detail and at the time required by the Secretary, including reports required under sections 13, 14, and 101(a)(10) of the Act; and

(b) Will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Authority: Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

State Plan Content: Provision and Scope of Services

§ 361.41 Processing referrals and applications.

(a) *Referrals.* The State plan must assure that the designated State unit has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) The State plan must assure that once an individual has submitted an application for vocational rehabilitation services, an eligibility determination will be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the agency preclude a determination within 60 days and the individual is so notified and agrees that an extension of time is warranted; or

(ii) An extended evaluation is necessary, in accordance with § 361.42(d).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed and signed an agency application form or has otherwise requested services and has provided

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information necessary to initiate an assessment to determine eligibility and priority for services.

(3) The designated State unit shall ensure that its application forms are widely available throughout the State.

(Authority: Sections 101(a)(6)(A) and 102(a)(5)(A) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(5)(A))

§ 361.42 Assessment for determining eligibility and priority for services.

The State plan must assure that, in order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements. (1) Basic requirements.* The State plan must assure that the State unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements:

(i) A determination that the applicant has a physical or mental impairment, as determined by qualified personnel licensed or certified in accordance with State law or regulation.

(ii) A determination that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(iv) A determination that the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(2) *Presumption of benefit.* The State plan must assure that the designated State unit will presume that an applicant who meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.

(3) *Limited presumption for Social Security beneficiaries.* The State plan must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the designated State unit will presume that the applicant—

(i) Meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section; and

(ii) Has a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome.

(b) *Prohibited factors.* The State plan must assure that—

(1) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(2) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;

(3) The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

(4) The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(c) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (d) of this section, the designated State unit shall base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(1) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

(d) *Extended evaluation for individuals with severe disabilities.* (1) Prior to any determination that an individual with a severe disability is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the State unit shall conduct an extended evaluation to determine whether or not there is clear and convincing evidence to support such a determination.

(2) During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice of the individual.

(3) During the extended evaluation period, the State unit shall develop a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The State unit may provide during this period only those services that are necessary to make these two determinations.

(4) The State unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

(5) The State unit shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the State unit determines that—

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome.

(e) *Data for determination of priority for services under an order of selection.* If the State unit is operating under an order of selection for services, as provided in § 361.36, the State unit shall base its priority assignments on—

(1) A review of the data that was developed under paragraphs (c) and (d) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(22)(A)(ii), 7(22)(C)(iii), 101(a)(9)(A), 101(a)(14), 101(a)(31), 102(a)(1), 102(a)(2), 102(a)(3), and 102(a)(4) of the Act; 29 U.S.C. 706(22)(A)(ii), 706(22)(C)(iii), 721(a)(9)(a), 721(a)(14), 721(a)(31), 722(a)(1), 722(a)(2), 722(a)(3), and 722(a)(4))

Note: "Clear and convincing evidence" means that the designated State unit must have a high degree of certainty before it can conclude that an individual is incapable of benefitting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Note: Under the statute and paragraph (a)(1)(iv) of § 361.42, an individual with a disability is not eligible for vocational rehabilitation services if the individual does not require the services to prepare for, enter, engage in, or retain gainful employment. The following examples illustrate how an individual with a disability may or may not meet this final eligibility criterion. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment. State units shall determine eligibility for vocational rehabilitation services on a case-by-case basis, taking into account those individual circumstances relating to an individual's strengths, resources, priorities, concerns, abilities, and capabilities.

Example: An individual with a disability who is not currently employed and is unable to obtain employment consistent with the individual's abilities and capabilities would likely meet this eligibility criterion.

Example: An individual with a disability who is already employed in a setting consistent with the individual's abilities and capabilities, but who desires to change jobs for reasons unrelated to the individual's disability, would likely not meet this eligibility criterion.

Example: An individual with a disability who is already employed, but not in a setting consistent with the individual's abilities and capabilities, and who desires to obtain new employment that is consistent with his or her abilities and capabilities, would meet this eligibility criterion.

Example: An individual with a disability who is currently employed, but is in jeopardy of losing that employment due to disability-related factors (e.g., the individual's disability is progressive and results in additional functional limitations), would meet this eligibility criterion.

Example: An individual with a disability who was previously employed in a setting consistent with the individual's abilities and capabilities, who lost that employment for reasons unrelated to the disability, and whose job skills are transferable would likely not meet this eligibility criterion.

Example: An individual with a disability whose disability is of a temporary nature (e.g., an allowed Social Security beneficiary who has been assigned a diaried date (date of a follow-up review to determine whether the individual has recovered medically) because his or her disability is expected to improve within 12 months) might not meet this eligibility criterion.

§ 361.43 Procedures for ineligibility determination.

The State plan must assure that if the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized written rehabilitation program is no longer eligible for services, the State unit shall—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, or by appropriate modes of communication, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program; and

(d) Review the ineligibility determination—

(1) Within 12 months, unless the individual has refused the review, is no longer present in the State, or the individual's whereabouts are unknown; or

(2) In the case of an ineligibility determination based on a determination that the individual is incapable of achieving an employment outcome, within 12 months in accordance with paragraph (d)(1) of this section and annually thereafter if requested by the individual or, if appropriate, by the individual's representative.

(Authority: Sections 101(a)(9)(D), 102(a)(6), and 102(c) of the Act; 29 U.S.C. 721(a)(9), 722(a)(6), and 722(c))

§ 361.44 Closure without eligibility determination.

The State plan must assure that the State unit may not close an applicant's case prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Development of the individualized written rehabilitation program.

(a) *Purpose.* The State plan must assure that the State unit conducts an assessment for determining vocational rehabilitation needs for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the long-term vocational goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services to be included in the IWRP, which must be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, and career interests.

(b) *Procedural requirements.* The State plan must assure that—

(1) The IWRP is developed jointly, agreed to, and signed by the vocational rehabilitation counselor or coordinator and the individual or, as appropriate, the individual's representative within the framework of a counseling and guidance relationship;

(2) The State unit has established and implemented standards for the prompt development of IWRPs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individual;

(3) The State unit advises each individual or, as appropriate, the individual's representative of all State unit procedures and requirements affecting the development and review of an IWRP, including the availability of appropriate modes of communication;

(4) In developing an IWRP for a transitioning student, the State unit considers the student's individualized education program;

(5) The State unit reviews the IWRP with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in meeting the objectives identified in the IWRP;

(6) The State unit incorporates into the IWRP any revisions that are necessary to reflect changes in the individual's vocational goal, intermediate objectives, or vocational rehabilitation needs, after obtaining the agreement and signature of the individual or, as appropriate, the

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agreement and signature of the individual's representative; and

(7) The State unit promptly provides each individual or, as appropriate, the individual's representative, a copy of the IWRP and its amendments in the native language, or appropriate mode of communication, of the individual or, as appropriate, of the individual's representative.

(c) Data for preparing the IWRP.

(1) *Preparation without comprehensive assessment.* To the extent possible, the vocational goal, intermediate objectives, and the nature and scope of rehabilitation services to be included in the individual's IWRP must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to prepare the IWRP, the designated State unit shall conduct a comprehensive assessment of the unique strengths, resources, priorities, interests, and needs, including the need for supported employment services of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

(ii) The comprehensive assessment must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IWRP and may, to the extent needed, include—

(A) An analysis of pertinent medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, and related functional limitations, that affect the employment and rehabilitation needs of the individual;

(B) An analysis of the individual's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(C) An appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance; and

(D) An assessment, through provision of rehabilitation technology services, of the individual's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the individual's informed choice.

(iii) In preparing a comprehensive assessment, the State unit shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

(Authority: Sections 7(22)(B), 102(b)(1)(A), and 102(b)(2); 29 U.S.C. 706(5), 721(a)(9), 722, and 723(a)(1))

§ 361.46 Content of the individualized written rehabilitation program.

(a) *General requirements.* The State plan must assure that each IWRP includes, as appropriate, statements concerning—

(1) The specific long-term vocational goal, which must be based on the assessment for determining vocational rehabilitation needs, including the individual's career interests, and must be, to the extent appropriate and consistent with the informed choice of the individual, in an integrated setting;

(2) The specific and measurable intermediate rehabilitation objectives related to the attainment of the long-term vocational goal, based on the assessment for determining vocational rehabilitation needs and consistent with the informed choice of the individual;

(3) The specific rehabilitation services under § 361.48 to be provided to achieve the established intermediate rehabilitation objectives, including, if appropriate, rehabilitation technology services and on-the-job and related personal assistance services;

(4) The projected dates for the initiation of each vocational rehabilitation service, the anticipated duration of each service, and the projected date for the achievement of the individual's vocational goal;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving intermediate rehabilitation objectives based upon objective criteria and a record of these reviews and evaluations;

(6) How, in the words of the individual or, as appropriate, in the words of the individual's representative, the individual was—

(i) Informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services; and

(ii) Provided information regarding the availability and qualifications of alternative providers of services;

(7) The terms and conditions for the provision of vocational rehabilitation services, including—

(i) The responsibilities of the individual in implementing the IWRP;

(ii) The extent of the individual's participation in the cost of services;

(iii) The extent to which goods and services will be provided in the most integrated settings possible, consistent with the informed choices of the individual;

(iv) The extent to which comparable services and benefits are available to the individual under any other program; and

(v) The entity or entities that will provide the services and the process used to provide or procure the services;

(8) The rights of the individual under this part and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.57;

(9) The availability of a client assistance program established under 34 CFR part 370; and

(10) The basis on which the individual has been determined to have achieved an employment outcome.

(b) *Supported employment placements.* The State plan must assure that the IWRP for individuals with the most severe disabilities for whom a vocational goal in a supported employment setting has been determined to be appropriate will also contain—

(1) A description of the supported employment services to be provided by the State unit; and

(2) A description of the extended services needed and identification of the source of extended services or, in the event that identification of the source is not possible at the time the IWRP is developed, a statement explaining the basis for concluding that there is a reasonable expectation that services will become available.

(c) *Post-employment services.* The State plan must assure that the IWRP for each individual contains statements concerning—

(1) The expected need for post-employment services, based on an assessment during the development of the IWRP;

(2) A reassessment of the need for post-employment services prior to the determination that the individual has achieved an employment outcome;

(3) A description of the terms and conditions for the provision of any post-employment services, including the anticipated duration of those services, subsequent to the achievement of an employment outcome by the individual; and

(4) If appropriate, a statement of how post-employment services will be provided or arranged through cooperative agreements with other service providers.

(d) *Coordination of services for transitioning students.* The State plan must assure that the IWRP for a transitioning student is coordinated with the individualized education program (IEP) for that individual in terms of the goals, objectives, and services identified in the IEP.

(e) *Ineligibility.* The State plan must assure that the decision that an individual is not capable of achieving an employment outcome and is no longer eligible to receive services under an IWRP is made in accordance with the requirements in § 361.43. The decision, and the reasons on which the decision was based, must be included as an amendment to the IWRP.

(Authority: Sections 101(a)(9), 102(b)(1), 102(c), and 635(b)(6) of the Act; 29 U.S.C. 721(a)(9), 722, and 795n)

§ 361.47 Record of services.

The State plan must assure that the designated State unit maintains for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(a) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements in § 361.42.

(b) If an applicant has been determined to be ineligible, documentation supporting that determination in accordance with the requirements of § 361.43.

(c) Documentation supporting the determination that an individual has a severe disability or a most severe disability.

(d) If an individual with a severe disability requires an extended evaluation in order to determine whether the individual is an eligible individual, documentation supporting the need for an extended evaluation, documentation supporting the periodic assessments conducted during the extended evaluation, and the written plan developed during the extended evaluation, in accordance with the requirements in § 361.42(d).

(e) The IWRP, and any amendments to the IWRP, containing the information required under § 361.46.

(f) In accordance with § 361.45(a), documentation supporting the development of the long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services included in the individual's IWRP and, for individuals who are transitioning students, in the individual's IEP.

(g) In the event that an individual's IWRP provides for services or a job placement in a non-integrated setting, a justification for that non-integrated setting.

(h) Documentation of the reason for terminating services to an individual and, if an individual has achieved an employment outcome, the basis on which the requirements of § 361.56 were determined to be met.

(i) Documentation concerning any action and decision resulting from a request by an individual for review of a rehabilitation counselor or coordinator determination under § 361.57.

(Authority: Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

(a) The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following vocational rehabilitation services are available:

(1) Assessment for determining eligibility and priority for services in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs in accordance with § 361.45.

(3) Vocational counseling and guidance.

(4) Referral and other services necessary to help applicants and eligible individuals secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) Physical and mental restoration services in accordance with the definition of that term in § 361.5(b)(35).

(6) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in § 361.5(b)(31).

(8) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(50).

(9) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services for individuals who are deaf and tactile interpreting services for individuals who are deaf-blind.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment.

(13) Job search and placement assistance and job retention services.

(14) Supported employment services in accordance with the definition of that term in § 361.5(b)(46).

(15) Personal assistance services in accordance with the definition of that term in § 361.5(b)(34).

(16) Post-employment services in accordance with the definition of that term in § 361.5(b)(37).

(17) Occupational licenses, tools, equipment, initial stocks, and supplies.

(18) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(39), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(19) Transition services in accordance with the definition of that term in § 361.5(b)(47).

(20) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(b) The State plan also must describe annually—

(1) The manner in which a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process and on a statewide basis;

(2) The training that will be provided to vocational rehabilitation counselors, client assistance personnel, and other related services personnel on the provision of rehabilitation technology services; and

(3) The manner in which on-the-job and other related personal assistance services will be provided to assist individuals while they are receiving vocational rehabilitation services, including a description of strategies for developing statewide capacity to provide those services to an increasing number of individuals to improve their employment potential.

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(Authority: Sections 101(a)(5)(C), 101(a)(26), and 103(a) of the Act; 29 U.S.C. 721(a)(5)(C), 721(a)(26), and 723(a))

§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The State plan may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide services that promote integration and competitive employment, including under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide recorded material for individuals who are blind, captioned television, films or video cassettes for individuals who are deaf, tactile materials for individuals who are deaf-blind, and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services, such as job site modification and other reasonable accommodations, to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of small business enterprises operated by individuals with the most severe disabilities under the supervision of the State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with the most severe disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.

(ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which shall not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which shall not exceed six months.

(iv) If the State plan provides for these services, it must contain an assurance that only individuals with the most severe disabilities will be selected to participate in this supervised program.

(v) If the State plan provides for these services and the State unit chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State plan also must assure that the State unit maintains a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the IWRP of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(b) If the State plan provides for vocational rehabilitation services for groups of individuals, the State plan must assure that the designated State unit maintains information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefitting from those services.

(Authority: Section 103(b) of the Act; 29 U.S.C. 711(c), 723(b), 721(a)(6))

§ 361.50 Written policies governing the provision of services.

The State plan must assure that the State unit develops and maintains written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and § 361.49 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IWRP. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(a) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish an absolute prohibition on the provision of out-of-State services.

(b) *Payment for services.* (1) The State unit shall establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a reasonable fee schedule designed to ensure the lowest reasonable cost to the program for each service, provided that the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(c) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IWRP.

(d) *Authorization of services.* The State unit shall establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

(Authority: Sections 12(c), 12(e)(2)(A), and 101(a)(6) of the Act and 29 U.S.C. 711(c), 711(e)(2)(A), and 721(a)(6))

§ 361.51 Written standards for facilities and providers of services.

The State plan must assure that the designated State unit establishes, maintains, makes available to the public, and implements written minimum standards for the various types of facilities and providers of services used by the State unit in providing vocational rehabilitation services, in accordance with the following requirements:

(a) *Accessibility of facilities.* Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing regulations in 41 CFR part 101, subpart 101–19.6, the American National Standards Institute, No. A117.1–1986, the Americans with Disabilities Act of 1990, and section 504 of the Act.

(b) *Personnel standards.* (1) *Qualified personnel.* Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or State-approved or recognized certification, licensing, registration or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

(2) *Affirmative action.* Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

(3) *Special communication needs personnel.* Providers of vocational rehabilitation services shall—

(i) Include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(ii) Ensure that appropriate modes of communication for all applicants and eligible individuals are used.

(c) *Fraud, waste, and abuse.* Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

(Authority: Sections 12(e)(2) (B), (D), and (E) and 101(a)(6)(B) of the Act; 29 U.S.C. 711(e) and 721(a)(6)(B))

§ 361.52 Opportunity to make informed choices regarding the selection of services and providers.

The State plan must describe the manner in which the State unit will provide each applicant, including individuals who are receiving services during an extended evaluation, and each eligible individual the opportunity to make informed choices throughout the vocational rehabilitation process in accordance with the following requirements:

(a) Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement policies and procedures that enable each individual to make an informed choice with regard to the selection of a long-term vocational goal, intermediate rehabilitation objectives, vocational rehabilitation services, including assessment services, and service providers.

(b) In developing an individual's IWRP, the State unit shall provide the individual, or assist the individual in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. This information must include, at a minimum, information relating to the cost, accessibility, and duration of potential services, the level of consumer satisfaction with those services, the qualifications of potential service providers, the types of services offered by those providers, and the degree to which services are provided in integrated settings.

(c) In providing, or assisting the individual in acquiring, the information required under paragraph (b) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) State or regional lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, local consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(Authority: Sections 12(e)(1) and 12(e)(2)(C) of the Act; 29 U.S.C. 711(e))

§ 361.53 Availability of comparable services and benefits.

(a) The State plan must assure that—

(1) Prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual's family, except those services listed in paragraph (b) of this section, the State unit shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual;

(2) If comparable services or benefits exist under any other program and are available to the eligible individual within a reasonable period of time so that the intermediate rehabilitation objectives of the individual's IWRP can be met, the State unit shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services; and

(3) If comparable services or benefits exist under any other program, but are not available to the individual within a reasonable period of time, the State unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

(b) A prior determination of the availability of comparable services and benefits is not required in connection with the provision of any of the following services:

(1) Assessment for determining eligibility and priority for services.

(2) Assessment for determining vocational rehabilitation needs.

(3) Vocational counseling, guidance, and referral services.

(4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with § 361.48(a)(6).

(5) Placement services.

(6) Rehabilitation technology.

(7) Post-employment services consisting of the services listed under paragraphs (b) (1) through (6) of this section.

(c) The requirements of paragraph (a) of this section also do not apply if—

(1) The determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) An immediate job placement would be lost due to a delay in the

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provision of comparable services and benefits.

(Authority: Section 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services during an extended evaluation for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It shall maintain written policies covering the determination of financial need;

(ii) The State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test;

(iii) The policies must be applied uniformly to all individuals in similar circumstances;

(iv) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(v) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The State plan must assure that no financial needs test is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

(i) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation for an individual with a severe disability under § 361.42(d).

(ii) Assessment for determining vocational rehabilitation needs.

(iii) Vocational counseling, guidance, and referral services.

(iv) Placement services.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.

The State plan must assure that the State unit—

(a) Reviews and re-evaluates at least annually the status of each individual determined by the State unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act. This review or re-evaluation must include input from the individual or, in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for employment in, or training for, competitive employment in an integrated setting in the labor market;

(b) Makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting; and

(c) Provides services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation.

(Authority: Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

§ 361.56 Individuals determined to have achieved an employment outcome.

The State plan must assure that an individual is determined to have achieved an employment outcome only if the following requirements are met:

(a) The provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

(b) The employment outcome is consistent with the individual's abilities, capabilities, interests, and informed choice.

(c) The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

(d) The individual has maintained the employment outcome for the duration of the probationary period established by the employer for its employees or, if the employer does not have an established probationary period, for a period of at least 90 days.

(e) The individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of rehabilitation counselor or coordinator determinations.

The State plan must contain procedures established by the director of the designated State unit to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request timely review of those determinations. The procedures established by the director of the State unit must be in accordance with the following provisions:

(a) *Informal resolution.* The State unit may establish an informal process to resolve a request for review without conducting a formal hearing. However, a State's informal process must be conducted and concluded within the time period established under paragraph (c)(1) of this section for holding a formal hearing. If informal resolution is not successful, a formal hearing must be conducted by the end of this same period, unless the parties jointly agree to a delay.

(b) *Formal hearing procedures.* Except as provided in paragraph (e) of this section, the State unit shall establish formal review procedures that provide that—

(1) A hearing by an impartial hearing officer, selected in accordance with paragraph (d) of this section, must be held within the time period established under paragraph (c)(1) of this section, unless informal resolution was achieved prior to the expiration of the time period or the parties jointly agreed to a delay;

(2) The State unit may not institute a suspension, reduction, or termination of services being provided under an IWRP pending a final determination of the formal hearing under this paragraph or informal resolution under paragraph (a) of this section, unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual;

(3) The individual or, if appropriate, the individual's representative shall be afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(4) The impartial hearing officer shall make a decision based on the provisions of the approved State plan, the Act, and Federal and State vocational rehabilitation regulations and policies and shall provide to the individual or, if appropriate, the individual's representative and to the director of the designated State unit a full written report of the findings and grounds for the decision within the time period established under paragraph (c)(2) of this section;

(5) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(6) If the director of the designated State unit fails to provide the notice required by paragraph (b)(5) of this section, the impartial hearing officer's decision becomes a final decision;

(7) The decision of the director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(8) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;

(9) The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy;

(10) The director of the designated State unit shall make a final decision and provide a full report in writing of the decision, and of the findings and grounds for the decision, to the individual or, if appropriate, the individual's representative within the time period established under paragraph (c)(3) of this section;

(11) The director of the designated State unit may not delegate responsibility to make any final decision to any other officer or employee of the designated State unit; and

(12) Except for the time limitations established in paragraphs (b)(5) and (c)(1) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

(c) *Timelines.* Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement reasonable timelines for the prompt handling of appeals, including, at a minimum, timelines for—

(1) Holding a formal hearing after an individual's request for review;

(2) Rendering the decision of the impartial hearing officer after completion of the formal hearing; and

(3) Rendering the final decision of the director of the designated State unit after providing notice of intent to review the decision of the impartial hearing officer in accordance with paragraph (b)(5) of this section.

(d) *Selection of impartial hearing officers.* Except as provided in paragraph (e) of this section, the impartial hearing officer for a particular case must be selected—

(1) From among the pool of persons qualified to be an impartial hearing officer, as defined in § 361.5(b)(22), who are identified by the State unit, if the State unit is an independent commission, or jointly by the designated State unit and the State Rehabilitation Advisory Council, if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the individual or, if appropriate, the individual's representative.

(e) *State fair hearing board.* The provisions of paragraphs (b), (c), and (d) of this section are not applicable if the State has a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the director of the designated State unit under this section.

(f) *Informing affected individuals.* The State unit shall inform, through appropriate modes of communication, all applicants and eligible individuals of—

(1) Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

(2) The manner in which an impartial hearing officer will be selected consistent with the requirements of paragraph (d) of this section.

(g) *Data collection.* The director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) The number of appeals to impartial hearing officers and the State director, including the type of complaints and the issues involved.

(2) The number of decisions by the State director reversing in whole or in part a decision of the impartial hearing officer.

(3) The number of decisions affirming the position of the dissatisfied individual assisted through the client assistance program, when that assistance is known to the State unit.

(Authority: Sections 102(b) and 102(d) of the Act; 29 U.S.C. 722(b) and 722(d))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share.* (1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Federal share for expenditures made by the State unit under the State plan, including expenditures for the provision of vocational rehabilitation services, administration of the State plan, and the development and implementation of the strategic plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(3) *Innovation and expansion grant activities.* The Federal share for the cost of innovation and expansion grant activities funded by appropriations under Part C of Title I of the Act is 90 percent.

(b) *Non-Federal share.* (1) *General.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the following requirements are met:

(i) The funds are earmarked for meeting in whole or in part the State's

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share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes.

(ii) If the funds are earmarked for any other purpose under the State plan, the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(7), 101(a)(3), and 104 of the Act; 29 U.S.C. 706(7), 721(a)(3) and 724)

Note: The Secretary notes that contributions may be earmarked in accordance with paragraph (b)(3)(ii) of this section for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., transitioning students), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan. However, if a contribution is earmarked for a restricted geographic area, expenditures from that contribution may be used to meet the non-Federal share requirement only if the State unit requests and the Secretary approves a waiver of statewideness, in accordance with § 361.26.

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

§ 361.62 Maintenance of effort requirements.

(a) *General requirements.* (1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year two years prior to the previous fiscal year. For example, for fiscal year 1996, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1994. Thus, if the State's non-Federal expenditures in 1996 are less than they were in 1994, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 1997 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year two years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue; and

(ii) Result in—

(A) A general reduction of programs within the State; or

(B) The State making substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition.* Program income means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services, the administration of the State plan, and developing and implementing the strategic plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for rehabilitating Social Security beneficiaries may also be used to carry out programs under Part B of Title I of the Act (client assistance), Part C of Title I of the Act (innovation and expansion), Part C of Title VI of the Act (supported employment) and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income may not be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§ 361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State unit by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State unit by the beginning of the succeeding fiscal year must remain available for obligation by the State unit during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State unit met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 716)

§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

§ 361.70 Purpose of the strategic plan.

The State shall prepare a statewide strategic plan, in accordance with § 361.71, to develop and use innovative approaches for achieving long-term success in expanding and improving vocational rehabilitation services, including supported employment services, provided under the State plan, including the supported employment supplement to the State plan required under 34 CFR part 363.

(Authority: Section 120 of the Act; 29 U.S.C. 740)

§ 361.71 Procedures for developing the strategic plan.

(a) *Public input.* (1) The State unit shall meet with and receive recommendations from members of the State Rehabilitation Advisory Council, if the State has a Council, and the Statewide Independent Living Council prior to developing the strategic plan.

(2) The State unit shall solicit public input on the strategic plan prior to or at the public meetings on the State plan, in accordance with the requirements of § 361.20.

(3) The State unit shall consider the recommendations received under paragraphs (a)(1) and (a)(2) of this section and, if the State rejects any recommendations, shall include a written explanation of the reasons for those rejections in the strategic plan.

(4) The State unit shall develop a procedure to ensure ongoing comment from the Council or Councils, if applicable, as the plan is being implemented.

(b) *Duration.* The strategic plan must cover a three-year period.

(c) *Revisions.* The State unit shall revise the strategic plan on an annual basis to reflect the unit's actual experience over the previous year and input from the State Rehabilitation Advisory Council, if the State has a Council, individuals with disabilities, and other interested parties.

(d) *Dissemination.* The State unit shall disseminate widely the strategic plan to individuals with disabilities, disability organizations, rehabilitation professionals, and other interested persons and shall make the strategic plan available in accessible formats and appropriate modes of communication.

(Authority: Section 122 of the Act; 29 U.S.C. 742)

§ 361.72 Content of the strategic plan.

The strategic plan must include—

(a) A statement of the mission, philosophy, values, and principles of the vocational rehabilitation program in the State;

(b) Specific goals and objectives for expanding and improving the system for providing vocational rehabilitation services;

(c) Specific multi-faceted and systemic approaches for accomplishing the objectives, including interagency coordination and cooperation, that build upon state-of-the-art practices and research findings and that implement the State plan and the supplement to the State plan submitted under 34 CFR part 363;

(d) A description of the specific programs, projects, and activities funded under this subpart, including how the programs, projects, and activities accomplish the objectives of the subpart, and the resource allocation and budget for the programs, projects, and activities; and

(e) Specific criteria for determining whether the objectives have been achieved, including an assurance that the State will conduct an annual evaluation to determine the extent to which the objectives have been achieved and, if specific objectives have not been achieved, the reasons that the objectives have not been achieved and a description of alternative approaches that will be taken.

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(Authority: Section 121 of the Act; 29 U.S.C. 741)

§ 361.73 Use of funds.

(a) A State unit shall use all grant funds received under Title I, Part C of the Act to carry out programs and activities that are identified under the State's strategic plan, including but not limited to those programs and activities that are identified in paragraph (b) of this section.

(b) A State unit shall use at least 1.5 percent of the funds received under section 111 of the Act to carry out one or more of the following types of programs and activities that are identified in the State's strategic plan:

(1) Programs to initiate or expand employment opportunities for individuals with severe disabilities in integrated settings that allow for the use of on-the-job training to promote the objectives of Title I of the Americans with Disabilities Act of 1990.

(2) Programs or activities to improve or expand the provision of employment services in integrated settings to individuals with sensory, cognitive, physical, and mental impairments who traditionally have not been served by the State vocational rehabilitation agency.

(3) Programs or activities to maximize the ability of individuals with disabilities to use rehabilitation technology in employment settings.

(4) Programs or activities that assist employers in accommodating, evaluating, training, or placing individuals with disabilities in the workplace of the employer consistent with the provisions of the Act and Title I of the Americans with Disabilities Act of 1990. These programs or activities may include short-term technical assistance or other effective strategies.

(5) Programs or activities that expand and improve the extent and type of an individual's involvement in the review and selection of his or her training and employment goals.

(6) Programs or activities that expand and improve opportunities for career advancement for individuals with severe disabilities.

(7) Programs, projects, or activities designed to initiate, expand, or improve working relationships between vocational rehabilitation services provided under Title I of the Act and independent living services provided under Title VII of the Act.

(8) Programs, projects, or activities designed to improve functioning of the system for delivering vocational rehabilitation services and to improve coordination and working relationships with other State agencies and local public agencies, business, industry, labor, community rehabilitation programs, and centers for independent living, including projects designed to—

(i) Increase the ease of access to, timeliness of, and quality of vocational rehabilitation services through the development and implementation of policies, procedures, systems, and interagency mechanisms for providing vocational rehabilitation services;

(ii) Improve the working relationships between State vocational rehabilitation agencies and other State agencies, centers for independent living, community rehabilitation programs, educational agencies involved in higher education, adult basic education, and continuing education, and businesses, industry, and labor organizations, in order to create and facilitate cooperation in—

(A) Planning and implementing services; and

(B) Developing an integrated system of community-based vocational rehabilitation services that includes appropriate transitions between service systems; and

(iii) Improve the ability of professionals, advocates, business, industry, labor, and individuals with disabilities to work in cooperative partnerships to improve the quality of vocational rehabilitation services and job and career opportunities for individuals with disabilities.

(9) Projects or activities that ensure that the annual evaluation of the effectiveness of the program in meeting the goals and objectives in the State plan, including the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State, facilitates and does not impede the accomplishment of the purpose of this part, including serving individuals with the most severe disabilities.

(10) Projects or activities to support the initiation, expansion, and improvement of a comprehensive system of personnel development.

(11) Programs, projects, or activities to support the provision of training and technical assistance to individuals with disabilities, business, industry, labor, community rehabilitation programs, and others regarding the implementation of the Rehabilitation Act Amendments of 1992, of Title V of the Act, and of the Americans with Disabilities Act of 1990.

(12) Projects or activities to support the funding of the State Rehabilitation Advisory Council and the Statewide Independent Living Council.

(Authority: Sections 101(a)(34)(B) and 123 of the Act; 29 U.S.C. 721(a)(34)(B) and 743)

§ 361.74 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under Title I, Part C of the Act are computed in accordance with the requirements of section 124 of the Act.

(b) If at any time the Secretary determines that any amount will not be expended by a State in carrying out the purpose of this subpart, the Secretary makes that amount available to one or more other States that the Secretary determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for that fiscal year.

(Authority: Section 124 of the Act; 29 U.S.C. 744)

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Part III

The President

Proclamation 6857—To Modify the Harmonized Tariff Schedule of the United States, To Provide Rules of Origin Under the North American Free Trade Agreement for Affected Goods, and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 6857 of December 11, 1995

To Modify the Harmonized Tariff Schedule of the United States, To Provide Rules of Origin Under the North American Free Trade Agreement for Affected Goods, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") (19 U.S.C. 3005(a)) directs the United States International Trade Commission ("the Commission") to keep the Harmonized Tariff Schedule of the United States ("HTS") under continuous review and periodically to recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection.

2. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS, based on the recommendations of the Commission under section 1205 of the 1988 Act (19 U.S.C. 3005), that he determines are in conformity with the obligations of the United States under the International Convention on the Harmonized Commodity Description and Coding System ("the Convention") and do not run counter to the national economic interest of the United States.

3. (a) Presidential Proclamation No. 6641 of December 15, 1993, implemented the North American Free Trade Agreement ("the NAFTA") with respect to the United States and, pursuant to sections 201 and 202 of the North American Free Trade Agreement Implementation Act ("the NAFTA Implementation Act") (19 U.S.C. 3331 and 3332), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

(b) Because the substance of the changes to the Convention will be reflected in slightly differing form in the national tariff schedules of the three parties to the NAFTA, the rules of origin and interpretative rules set forth in Appendix 6.A of Annex 300-B, Annex 401, and other annexes to the NAFTA must be modified to ensure that the agreed tariff and certain other treatment accorded under the NAFTA to originating goods will continue to be provided under the tariff categories affected by the modifications to the Convention. The NAFTA parties agreed, on November 6, 1995, to the text of necessary revisions to the NAFTA.

4. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides certain rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim the rules of origin set out in the NAFTA and any additional subordinate tariff categories necessary to carry out the NAFTA Implementation Act consistent with the NAFTA.

5. Pursuant to section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) and section 202 of the NAFTA Implementation Act (19 U.S.C. 3332), I have determined (1) that the modifications to the HTS being proclaimed pursuant to section 1206(a) of the 1988 Act are in conformity with the obligations

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of the United States under the Convention and do not run counter to the national economic interest of the United States; and (2) that the modifications to the HTS being proclaimed pursuant to section 202 of the NAFTA Implementation Act must be incorporated in the HTS in order to ensure that the tariff and certain other treatment accorded under the NAFTA will continue to be given to NAFTA originating goods. The report and layover requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)) and section 202(q)(2) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) have been complied with.

6. (a) Presidential Proclamation No. 6763 of December 23, 1994, implemented with respect to the United States the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, entered into pursuant to sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), including Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 ("Schedule XX"). Certain provisions set forth in annexes to that proclamation contain technical errors in the instructions for implementing particular changes.

(b) Sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)) authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreements entered into under those sections. Section 111(a) of the Uruguay Round Agreements Act ("the URAA") (19 U.S.C. 3521(a)) authorizes the President to proclaim such other modification of any duty, such other staged rate reduction, or such additional duties as the President determines to be necessary or appropriate to carry out Schedule XX. To clarify the intent of the changes previously proclaimed, I have decided that such technical errors should be corrected.

7. Section 604 of the Trade Act of 1974, as amended ("the 1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 604 of the 1974 Act (19 U.S.C. 2483), sections 1102, 1205, and 1206 of the 1988 Act (19 U.S.C. 2902, 3005, and 3006), sections 201 and 202 of the NAFTA Implementation Act (19 U.S.C. 3331 and 3332), and section 111(a) of the URAA (19 U.S.C. 3521(a)), do hereby proclaim:

(1) In order to modify the rules of origin under the NAFTA to reflect the amendments agreed to by the NAFTA parties, and to make certain conforming changes, the general notes to the HTS are modified as set forth in Annex I to this proclamation.

(2) In order to make changes in the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories to carry out modifications to the rules of origin under the NAFTA, and to make technical and conforming changes to existing provisions, the HTS is modified as set forth in Annex II to this proclamation.

(3) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1-General subcolumn under section 111(a) of the URAA (19 U.S.C. 3521(a)), as provided in Presidential Proclamation No. 6763 of December 23, 1994, for goods in the provisions modified in Annex II to this proclamation that are entered or withdrawn from warehouse for consumption on or after the dates specified in section A of Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-General subcolumn for each of the HTS subheadings enumerated in section A of Annex III shall be deleted and the rate of duty provided in such section A inserted in lieu thereof.

(4) In order to provide for the continuation of previously proclaimed tariff modifications and staged duty reductions under section 201 of the NAFTA Implementation Act (19 U.S.C. 3331), as implemented with respect to the United States in Presidential Proclamation No. 6641 of December 15, 1993, for goods of Canada and of Mexico under the terms of general note 12 to the HTS classifiable in the tariff provisions set forth in or affected by Annex II to this proclamation that are entered or withdrawn from warehouse for consumption on or after the dates specified in sections B and C, respectively, of Annex III to this proclamation, the appropriate rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" or "MX", respectively, for each of the HTS subheadings enumerated in sections B and C of Annex III shall be deleted and the rate of duty provided in such sections inserted in lieu thereof.

(5) (a) In order to make technical corrections to certain provisions of the annexes to Presidential Proclamation No. 6763 of December 23, 1994, such provisions are modified as set forth in Annex IV to this proclamation.

(b) All provisions of previous proclamations and Executive orders inconsistent with the actions taken in this proclamation are hereby superseded to the extent of such inconsistency.

(6) (a) The modifications to the HTS made by Annexes I and II to this proclamation shall be effective with respect to goods entered or withdrawn from warehouse for consumption on and after the later of (i) January 1, 1996, or (ii) the date that is 15 days after the date of publication of this proclamation in the **Federal Register.**

(b) The modifications to the HTS made by Annexes III and IV to this proclamation shall be effective with respect to goods entered or withdrawn from warehouse for consumption on and after the dates specified in such annexes to this proclamation for each action specified.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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ANNEX I

MODIFICATIONS TO THE GENERAL NOTES TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS)

Effective with respect to articles that are entered, or withdrawn from warehouse for consumption, on or after the later of (1) January 1, 1996, or (2) the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as provided herein:

Modifications to general note 12 to the HTS, other than to subdivision (t) of such note:

1. General note 12(c)(iv)(D)(4) is modified by deleting "8469.10.40" and by inserting in lieu thereof "8469.11".

2. General note 12(f)(iii)(D) and 12(r)(v)(A) are each modified by deleting "2101.10.21" and by inserting in lieu thereof "2101.11.21".

Modifications to the tariff classification rules ("TCRs") of subdivision (t) of general note 12:

1. TCR 1 for chapter 15 is modified by adding after the word "chapter" the expression ", except from heading 3823".

2. TCRs 2 through 6, inclusive, for chapter 15 are deleted, TCR 7 is redesignated as TCR 3, and the following new TCR 2 is inserted in numerical sequence:

"2. A change to heading 1520 from any other heading, except from heading 3823."

3. TCR 7 for chapter 19 is deleted and the following new TCRs are inserted in lieu thereof:

"7. A change to headings 1902 through 1905 from any other chapter.

8. A change to subheading 1904.10 from any other chapter.

9. A change to subheading 1904.20 from any other subheading, except from chapter 20.

10. A change to subheading 1904.90 from any other chapter.

11. A change to heading 1905 from any other chapter."

4. TCR 1 for chapter 21 is modified by deleting "2101.10.21" and by inserting in lieu thereof "2101.11.21".

5. TCR 13 for chapter 21 is redesignated as TCR 14, and the following new TCR 13 is inserted in numerical sequence:

"13. A change to tariff items 2106.90.12, 2106.90.15 or 2106.90.18 from any other tariff item, except from headings 2203 through 2209."

6. TCR 7 for chapter 22 is modified by adding after "group" the following:

", except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18".

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7. TCR 1 for chapter 24 is modified to read as follows:

"1. A change to headings 2401 through 2403 from tariff items 2401.10.21, 2401.20.14 or 2403.91.20 or any other chapter."

8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 2801.10 through 2801.30 from any other subheading, including another subheading within that group.

2. A change to headings 2802 through 2803 from any other heading, including another heading within that group.

3. A change to subheadings 2804.10 through 2804.50 from any other subheading, including another subheading within that group.

4. (A) A change to subheadings 2804.61 through 2804.69 from any subheading outside that group; or

(B) A change to subheadings 2804.61 through 2804.69 from any other subheading within that group, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5. A change to subheadings 2804.70 through 2804.90 from any other subheading, including another subheading within that group.

6. A change to subheadings 2805.11 through 2805.40 from any other subheading, including another subheading within that group.

7. (A) A change to subheading 2806.10 from any other subheading, except from subheading 2801.10; or

(B) A change to subheading 2806.10 from subheading 2801.10, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

8. A change to subheading 2806.20 from any other subheading.

9. A change to headings 2807 through 2808 from any other heading, including another heading within that group.

10. A change to subheadings 2809.10 through 2814.20 from any other subheading, including another subheading within that group.

11. (A) A change to subheadings 2815.11 through 2815.12 from any other heading; or

(B) A change to subheadings 2815.11 through 2815.12 from any other subheading within heading 2815, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

12. A change to subheading 2815.20 from any other subheading.

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8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof (continued):

13. (A) A change to subheading 2815.30 from any other subheading, except from subheading 2815.11 through 2815.20; or

(B) A change to subheading 2815.30 from subheadings 2815.11 through 2815.20, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

14. A change to subheadings 2816.10 through 2818.30 from any other subheading, including another subheading within that group.

15. (A) A change to subheading 2819.10 from any other heading; or

(B) A change to subheading 2819.10 from subheading 2819.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

16. A change to subheading 2819.90 from any other subheading.

17. (A) A change to subheading 2820.10 from any other heading; or

(B) A change to subheading 2820.10 from subheading 2820.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

18. A change to subheading 2820.90 from any other subheading.

19. (A) A change to subheadings 2821.10 through 2821.20 from any other heading; or

(B) A change to subheadings 2821.10 through 2821.20 from any other subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

20. A change to headings 2822 through 2823 from any other heading, including another heading within that group.

21. (A) A change to subheadings 2824.10 through 2824.90 from any other heading; or

(B) A change to subheadings 2824.10 through 2824.90 from any other subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof (continued):

22. A change to subheadings 2825.10 through 2828.90 from any other subheading, including another subheading within that group.

23. A change to subheading 2829.11 from any other subheading.

24. (A) A change to subheadings 2829.19 through 2829.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2829.19 through 2829.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

25. A change to subheadings 2830.10 through 2835.39 from any other subheading, including another subheading within that group.

26. A change to subheading 2836.10 from any other subheading.

27. (A) A change to subheadings 2836.20 through 2836.30 from any subheading outside that group; or

(B) A change to subheadings 2836.20 through 2836.30 from any other subheading within that group, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

28. A change to subheadings 2836.40 through 2836.99 from any other subheading, including another subheading within that group.

29. A change to subheadings 2837.11 through 2850.00 from any other subheading, including another subheading within that group.

30. (A) A change to heading 2851 from any other chapter, except from chapters 28 through 38; or

(B) A change to heading 2851 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 2901.10 through 2901.29 from any other subheading, including another subheading within that group.

2. A change to subheadings 2902.11 through 2902.44 from any other subheading, including another subheading within that group.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

3. (A) A change to subheading 2902.50 from any other subheading, except from subheading 2902.60; or

(B) A change to subheading 2902.50 from subheading 2902.60, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

4. A change to subheadings 2902.60 through 2902.90 from any other subheading, including another subheading within that group.

5. (A) A change to subheadings 2903.11 through 2903.30 from any other subheading, including another subheading within that group, except from headings 2901 or 2902; or

(B) A change to subheadings 2903.11 through 2903.30 from headings 2901 or 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.11 through 2903.30, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

6. (A) A change to subheadings 2903.41 through 2903.69 from any other subheading, including another subheading within that group, except from headings 2901 or 2902; or

(B) A change to subheadings 2903.41 through 2903.69 from headings 2901 or 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.41 through 2903.69, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

7. (A) A change to subheadings 2904.10 through 2904.90 from any other subheading, including another subheading within that group, except from headings 2901 through 2903; or

(B) A change to subheadings 2904.10 through 2904.90 from headings 2901 through 2903, whether or not there is also a change from any other subheading, including another subheading within subheadings 2904.10 through 2904.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

8. (A) A change to subheadings 2905.11 through 2905.45 from any other subheading, including another subheading within that group; or

(B) A change to esters of glycerol formed with acids of heading 2904 from glycerol of subheading 2905.45.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

9. (A) A change to tariff item 2905.49.20 from any other tariff item, except from headings 2901 through 2903; or

(B) A change to tariff item 2905.49.20 from headings 2901 through 2903, whether or not there is also a change from any other tariff item, provided there is a regional value content of not less than:

(1) 60 per cent where the transaction value method is used, or

(2) 50 per cent where the net cost method is used.

10. A change to subheading 2905.49 from any other subheading.

11. A change to subheading 2905.50 from any other subheading.

12. A change to subheadings 2906.11 through 2907.30 from any other subheading, including another subheading within that group.

13. (A) A change to subheadings 2908.10 through 2908.90 from any other heading, except from heading 2907; or

(B) A change to subheadings 2908.10 through 2908.90 from any other subheading within that group or heading 2907, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

14. (A) A change to subheadings 2909.11 through 2909.20 from any other heading; or

(B) A change to subheadings 2909.11 through 2909.20 from any other subheading within heading 2909, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

15. A change to subheading 2909.30 from any other subheading.

16. (A) A change to subheadings 2909.41 through 2909.60 from any other heading; or

(B) A change to subheadings 2909.41 through 2909.60 from any other subheading within heading 2909, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

17. A change to subheadings 2910.10 through 2911.00 from any other subheading, including another subheading within that group.

18. A change to subheading 2912.11 from any other subheading.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

19. (A) A change to subheading 2912.12 from any other subheading, except from subheading 2901.21; or

(B) A change to subheading 2912.12 from subheading 2901.21, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

20. A change to subheadings 2812.13 through 2912.50 from any other subheading, including another subheading within that group.

21. (A) A change to subheading 2912.60 from any other subheading, except from subheading 2912.11; or

(B) A change to subheading 2912.60 from subheading 2912.11, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

22. (A) A change to heading 2913 from any other heading, except from heading 2912; or

(B) A change to heading 2913 from heading 2912, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

23. A change to subheadings 2914.11 through 2914.70 from any other subheading, including another subheading within that group.

24. A change to subheading 2915.11 from any other subheading.

25. (A) A change to subheading 2915.12 from any other subheading, except from subheading 2915.11; or

(B) A change to subheading 2915.12 from subheading 2915.11, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

26. A change to subheading 2915.13 from any other subheading.

27. (A) A change to subheading 2915.21 from any other subheading, except from subheading 2912.12; or

(B) A change to subheading 2915.21 from subheading 2912.12, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

28. (A) A change to subheadings 2915.22 through 2915.31 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.22 through 2915.31 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

29. A change to subheading 2915.32 from any other subheading.

30. (A) A change to subheadings 2915.33 through 2915.34 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.33 through 2915.34 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

31. A change to subheading 2915.35 from any other subheading.

32. (A) A change to subheadings 2915.39 through 2915.40 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.39 through 2915.40 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

33. A change to subheadings 2915.50 through 2915.70 from any other subheading, including another subheading within that group.

34. (A) A change to subheading 2915.90 from any other subheading; or

(B) A change to valproic salts of subheading 2915.90 from valproic acids of subheading 2915.90.

35. A change to subheadings 2916.11 through 2917.39 from any other subheading, including another subheading within that group.

36. A change to subheadings 2918.11 through 2918.21 from any other subheading, including another subheading within that group.

37. (A) A change to subheadings 2918.22 through 2918.23 from any other subheading, including another subheading within that group, except from subheading 2918.21; or

(B) A change to subheadings 2918.22 through 2918.23 from subheading 2918.21, whether or not there is also a change from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

38. (A) A change to subheadings 2918.29 through 2918.30 from any other subheading, including another subheading within that group; or

(B) A change to parabens of subheading 2918.29 from p-hydroxybenzoic acid of subheading 2918.29.

39. (A) A change to subheading 2918.90 from any other subheading, except from subheadings 2908.10 or 2915.40; or

(B) A change to subheading 2918.90 from subheadings 2908.10 or 2915.40, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

40. A change to heading 2919 from any other heading.

41. A change to subheadings 2920.10 through 2920.90 from any other subheading, including another subheading within that group.

42. (A) A change to subheadings 2921.11 through 2921.12 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.11 through 2921.12 from any other subheading within heading 2921, including another subheading within that group, or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

43. A change to subheading 2921.19 from any other subheading.

44. (A) A change to subheadings 2921.21 through 2921.29 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.21 through 2921.29 from any other subheading within heading 2921, including another subheading within that group, or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

45. A change to subheading 2921.30 from any other subheading.

46. (A) A change to subheadings 2921.41 through 2921.59 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.41 through 2921.59 from any other subheading within heading 2921, including another subheading within that group, or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

47. (A) A change to subheadings 2922.11 through 2922.50 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.11 through 2922.50 from any other subheading within that group or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

48. A change to subheadings 2923.10 through 2923.90 from any other subheading, including another subheading within that group.

49. A change to subheading 2924.10 from any other subheading.

50. (A) A change to subheading 2924.21 from any other subheading, except from subheading 2917.20; or

(B) A change to subheading 2924.21 from subheading 2917.20, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

51. (A) A change to subheadings 2924.22 through 2924.29 from any subheading outside that group, except from subheading 2917.20; or

(B) A change to subheadings 2924.22 through 2924.29 from any other subheading within that group or subheading 2917.20, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

52. A change to subheadings 2925.11 through 2928.00 from any other subheading, including another subheading within that group.

53. (A) A change to subheadings 2929.10 through 2929.90 from any other subheading, including another subheading within that group, except from heading 2921; or

(B) A change to subheadings 2929.10 through 2929.90 from heading 2921, whether or not there is also a change from any other subheading, including another subheading within that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

54. A change to subheadings 2930.10 through 2930.90 from any other subheading, including another subheading within that group.

55. A change to heading 2931 from any other heading.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

56. (A) A change to subheadings 2932.11 through 2932.99 from any other heading; or

(B) A change to subheadings 2932.11 through 2932.99 from any other subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

57. (A) A change to subheadings 2933.11 through 2933.69 from any other heading; or

(B) A change to subheadings 2933.11 through 2933.69 from any other subheading within heading 2933, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

58. (A) A change to subheading 2933.71 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 2933.71 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

59. (A) A change to subheadings 2933.79 through 2933.90 from any other heading; or

(B) A change to subheadings 2933.79 through 2933.90 from any other subheading within heading 2933, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

60. (A) A change to subheadings 2934.10 through 2934.90 from any other subheading, including another subheading within that group; or

(B) A change to nucleic acids of subheading 2934.90 from other heterocyclic compounds of subheading 2934.90.

61. A change to heading 2935 from any other heading.

62. (A) A change to subheadings 2936.10 through 2936.90 from any other heading; or

(B) A change to subheadings 2936.10 through 2936.90 from any other subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

63. (A) A change to subheadings 2937.10 through 2937.99 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2937.10 through 2937.99 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

64. (A) A change to subheadings 2938.10 through 2938.90 from any other heading, except from heading 2940; or

(B) A change to subheadings 2938.10 through 2938.90 from any other subheading within that group or heading 2940, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

65. A change to subheadings 2939.10 through 2939.90 from any other subheading, including another subheading within that group.

66. (A) A change to heading 2940 from any other heading, except from heading 2938; or

(B) A change to heading 2940 from heading 2938, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

67. (A) A change to subheadings 2941.10 through 2941.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2941.10 through 2941.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

68. (A) A change to heading 2942 from any other chapter, except from chapter 28 through 38; or

(B) A change to heading 2942 from any other heading within chapter 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

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10. TCRs 1 through 6, inclusive, for chapter 30 are deleted and the following new TCRs are inserted in lieu thereof:

"1. (A) A change to subheadings 3001.10 through 3001.20 from any other heading; or

(B) A change to subheadings 3001.10 through 3001.20 from any other subheading within heading 3001, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

2. A change to subheading 3001.90 from any other subheading.

3. A change to subheadings 3002.10 through 3002.90 from any other subheading, including another subheading within that group.

4. (A) A change to subheadings 3003.10 through 3003.90 from any other heading; or

(B) A change to subheadings 3003.10 through 3003.90 from any other heading within heading 3003, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5. (A) A change to subheadings 3004.10 through 3004.32 from any other heading, except from heading 3003; or

(B) A change to subheadings 3004.10 through 3004.32 from heading 3003 or any other subheading within heading 3004, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

6. A change to subheading 3004.39 from any other subheading.

7. (A) A change to subheadings 3004.40 through 3004.50 from any other heading, except from heading 3003; or

(B) A change to subheadings 3004.40 through 3004.50 from heading 3003 or any other subheading within heading 3004, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

8. A change to subheading 3004.90 from any other subheading.

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10. TCRs 1 through 6, inclusive, for chapter 30 are deleted and the following new TCRs are inserted in lieu thereof (continued):

9. (A) A change to subheadings 3005.10 through 3005.90 from any other heading; or

(B) A change to subheadings 3005.10 through 3005.90 from any other heading within heading 3003, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

10. (A) A change to subheading 3006.10 from any other heading; or

(B) A change to subheading 3006.10 from any other subheading within heading 3006, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

11. A change to subheading 3006.20 from any other subheading.

12. (A) A change to subheadings 3006.30 through 3006.60 from any other heading; or

(B) A change to subheadings 3006.30 through 3006.60 from any other subheading within heading 3006, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

11. TCR 1 for chapter 31 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to heading 3101 from any other heading.

2. A change to subheadings 3102.10 through 3105.90 from any other subheading, including another subheading within that group."

12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 3201.10 through 3202.90 from any other heading, including another subheading within that group.

2. A change to heading 3203 from any other heading.

3. A change to subheadings 3204.11 through 3204.16 from any other subheading, including another subheading within that group.

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12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof (continued):

4. (A) For any color, as defined under the Color Index, identified in the following list of colors, a change to subheading 3204.17 from any other subheading:

Pigment yellow: 1, 3, 16, 55, 81, 62, 65, 73, 74, 75, 81, 97, 120, 151, 152, 154, 156, and 175;

Pigment orange: 4, 5, 13, 34, 36, 60, and 62;

Pigment red: 2, 3, 5, 12, 13, 14, 17, 18, 19, 22, 23, 24, 31, 32, 48, 49, 52, 53, 57, 63, 112, 119, 133, 146, 170, 171, 175, 176, 183, 185, 187, 188, 208, and 210; or

(B) For any color, as defined under the Color Index, not identified in the list of colors:

(1) a change to subheading 3204.17 from any other subheading, except from within chapter 29; or

(2) a change to subheading 3204.17 from any subheading within chapter 29, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(I) 60 percent where the transaction value method is used, or

(II) 50 percent where the net cost method is used.

5. (A) A change to subheading 3204.19 from any other heading; or

(B) A change to subheading 3204.19 from any other subheading within heading 3204, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

6. (A) A change to subheadings 3204.20 through 3204.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3204.20 through 3204.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

7. A change to heading 3205 from any other heading.

8. (A) A change to subheadings 3206.11 through 3206.50 from any other chapter, except from chapter 28 through 38; or

(B) A change to subheadings 3206.11 through 3206.50 from any other subheading within chapter 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof (continued):

9. A change to subheadings 3207.10 through 3207.40 from any other subheading, including another subheading within that group.

10. A change to headings 3208 through 3210 from any heading outside that group.

11. A change to heading 3211 from any other heading.

12. A change to subheadings 3212.10 through 3212.90 from any other subheading, including another subheadings within that group.

13. A change to heading 3213 from any other heading.

14. A change to subheadings 3214.10 through 3214.90 from any other subheading, including another subheading within that group.

15. A change to heading 3215 from any other heading."

13. TCRs 1 through 4, inclusive, for chapter 33 are deleted and the following new TCRs are inserted in lieu thereof¶

"1. A change to subheading 3301.11 from any other subheading.

2. (A) A change to subheadings 3301.12 through 3301.13 from any other chapter; or

(B) A change to subheadings 3301.12 through 3301.13 from any other subheading within chapter 33, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

3. A change to subheading 3301.14 from any other subheading.

4. (A) A change to subheading 3301.19 from any other chapter; or

(B) A change to subheading 3301.19 from any other subheading within chapter 33, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5. A change to subheadings 3301.21 through 3301.26 from any other subheading, including another subheadings within that group.

6. (A) A change to subheadings 3301.29 through 3301.90 from any other chapter; or

(B) A change to subheadings 3301.29 through 3301.90 from any other subheading within chapter 33, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

7. A change to heading 3302 from any other heading, except from headings 2207 through 2208.

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13. TCRs 1 through 4, inclusive, for chapter 33 are deleted and the following new TCRs are inserted in lieu thereof (continued):

8. (A) A change to heading 3303 from any other chapter; or

(B) A change to heading 3303 from any other heading within chapter 33, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

9. (A) A change to subheadings 3304.10 through 3305.90 from any heading outside that group, except from headings 3306 through 3307; or

(B) A change to subheadings 3304.10 through 3305.90 from any other subheading within that group or headings 3306 through 3307, whether or not there is also a change from any heading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

10. (A) A change to subheading 3306.10 from any other heading, except from headings 3304 through 3305 or 3307; or

(B) A change to subheadings 3306.10 from headings 3304 through 3305 or 3307, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

11. A change to subheading 3306.20 from any other subheading, except from headings 5201 through 5203, chapter 54 or headings 5501 through 5507.

12. (A) A change to subheading 3306.90 from any other heading, except from headings 3304 through 3305 or 3307; or

(B) A change to subheading 3306.90 from headings 3304 through 3305 or 3307, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

13. (A) A change to subheadings 3307.10 through 3307.90 from any other heading, except from headings 3304 through 3306; or

(B) A change to subheadings 3307.10 through 3307.90 from headings 3304 through 3306, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

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14. TCRs 2 through 6, inclusive, for chapter 34 are deleted, TCR 7 is renumbered as TCR 10, and the following new TCRs are inserted in numerical sequence:

"2. (A) A change to subheadings 3402.11 through 3402.12 from any other heading, except to linear alkylbenzene sulfonic acid or linear alkylbenzene sulfonates of subheading 3402.11 from linear alkylbenzene of subheading 3817.10; or

(B) A change to subheadings 3402.11 through 3402.12 from any other subheading, including another subheading within heading 3402, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

3. A change to subheading 3402.13 from any other subheading.

4. (A) A change to subheading 3402.19 from any other heading; or

(B) A change to subheading 3402.19 from any other subheading within heading 3402, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5. (A) A change to subheadings 3402.20 through 3402.90 from any subheading outside that group; or

(B) A change to subheadings 3402.20 through 3402.90 from any other subheading within that group, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

6. A change to subheadings 3403.11 through 3403.99 from any other subheading, including another subheading within that group.

7. A change to subheadings 3404.10 through 3404.90 from any other subheading, including another subheading within that group.

8. A change to subheadings 3405.10 through 3405.40 from any other subheading, including another subheading within that group.

9. (A) A change to subheading 3405.90 from any other heading; or

(B) A change to subheading 3405.90 from any other subheading within heading 3405, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

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15. TCRs 1 and 2 for chapter 35 are deleted, TCR 6 is deleted, TCRs 3 through 5 are renumbered as 4 through 6, respectively, and the following new TCRs 1 through 3, inclusive, and 7 for chapter 35 are inserted in numerical sequence:

"1. A change to subheadings 3501.10 through 3501.90 from any other subheading, including another subheading within that group.

2. A change to subheadings 3502.11 through 3502.19 from any subheading outside that group.

3. A change to subheadings 3502.20 through 3502.90 from any other subheading, including another subheading within that group.

7. A change to subheadings 3507.10 through 3507.90 from any other subheading, including another subheading within that group."

16. TCR 4 for chapter 36 is deleted and the following new TCRs for chapter 36 are inserted in lieu thereof:

"4. A change to subheading 3606.10 from any other subheading.

5. (A) A change to subheading 3606.90 from any other heading; or

(B) A change to subheading 3606.90 from any other subheading within heading 3606, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof:

"1. A change to subheadings 3801.10 through 3801.90 from any other subheading, including another subheading within that group.

2. (A) A change to subheadings 3802.10 through 3802.90 from any other heading; or

(B) A change to subheadings 3802.10 through 3802.90 from any other subheading within heading 3802, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

3. A change to headings 3803 through 3804 from any other heading, including another heading within that group.

4. A change to subheadings 3805.10 through 3805.90 from any other subheading, including another subheading within that group.

5. A change to subheadings 3806.10 through 3806.90 from any other subheading, including another subheading within that group.

6. A change to heading 3807 from any other heading.

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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

7. A change to heading 3808 from any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used and the good contains no more than one active ingredient, or 80 percent where the transaction value method is used and the good contains more than one active ingredient; or

(B) 50 percent where the net cost method is used and the good contains no more than one active ingredient, or 70 percent where the net cost method is used and the good contains more than one active ingredient.

8. (A) A change to subheading 3809.10 from any other subheading, except from subheading 3505.10; or

(B) A change to subheading 3809.10 from subheading 3505.10, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the not cost method is used.

9. A change to subheadings 3809.91 through 3809.92 from any other subheading, including another subheading within that group.

10. (A) A change to subheading 3809.93 from any other heading; or

(B) A change to subheading 3809.93 from any other subheading within heading 3809, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the not cost method is used.

11. (A) A change to subheadings 3810.10 through 3810.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3810.10 through 3810.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

12. (A) A change to subheadings 3811.11 through 3811.19 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3811.11 through 3811.19 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

13. A change to subheadings 3811.21 through 3811.29 from any other subheading, including another subheading within that group.

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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

14. (A) A change to subheading 3811.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 3811.90 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

15. (A) A change to subheadings 3812.10 through 3812.30 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3812.10 through 3812.30 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

16. A change to headings 3813 through 3814 from any other heading, including another heading within that group.

17. A change to subheadings 3815.11 through 3815.90 from any other subheading, including another subheading within that group.

18. (A) A change to heading 3816 from any other chapter, except from chapters 28 through 38; or

(B) A change to heading 3816 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

19. A change to subheadings 3817.10 through 3817.20 from any other subheading, including another subheading within that group.

20. A change to headings 3818 through 3819 from any other heading, including another heading within that group.

21. (A) A change to heading 3820 from any other heading, except from subheading 2905.31 or 2905.49; or

(B) A change to heading 3820 from subheading 2905.31 or 2905.49, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

22. (A) A change to heading 3821 from any other heading, except from heading 35.03; or

(B) A change to heading 3821 from heading 3503, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

23. (A) A change to heading 3822 from any other chapter, except from chapters 28 through 38; or

(B) A change to heading 3822 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

24. A change to subheadings 3823.11 through 3823.13 from any other heading, except from heading 1520.

25. A change to subheading 3823.19 from any other subheading.

26. A change to subheading 3823.70 from any other heading, except from heading 1520.

27. A change to subheadings 3824.10 through 3824.20 from any other subheading, including another subheading within that group.

28. (A) A change to subheading 3824.30 from any other subheading, except from heading 2849; or

(B) A change to subheading 3824.30 from heading 2849, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

29. A change to subheadings 3824.40 through 3824.60 from any other subheading, including another subheading within that group.

30. (A) A change to subheadings 3824.71 through 3824.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3824.71 through 3824.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

18. TCRs 5 and 8 for chapter 39 are each modified by deleting the word "percentage".

19. TCR 2 for chapter 54 is modified by deleting "5407.60.11, 5407.60.21 or 5407.60.91" and by inserting in lieu thereof "5407.61.11, 5407.61.21 or 5407.61.91".

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20(a). TCR 27 for chapter 61 is modified to read as follows:

"27. (A) A change to subheading 6107.21 from tariff item 6002.92.10, provided that the good, exclusive of collar, cuffs, waistband or elastic, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6107.21 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

(b). TCR 30 for chapter 61 is modified to read as follows:

"30. (A) A change to subheading 6108.21 from tariff item 6002.92.10, provided that the good, exclusive of waistband, elastic or lace, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6108.21 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

(c). TCR 32 for chapter 61 is modified to read as follows:

"32. (A) A change to subheading 6108.31 from tariff item 6002.92.10, provided that the good, exclusive of collar, cuffs, waistband, elastic or lace, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6108.31 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

21. TCR 4 for chapter 68 is modified by deleting "other" and by inserting in lieu thereof "any".

22(a). The Heading rule for chapter 71 is deleted and the following new Heading rule is inserted in lieu thereof:

"Heading rule: Pearls, permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall be treated as an originating good only if the pearls were obtained in the territory of one or more of the Parties.".

(b). TCR 2 for chapter 71 is modified by adding after "group" the following expression:

", except from tariff items 7101.10.30 or 7101.22.30".

23. TCR 7(D) for chapter 73 is modified by deleting the semicolon after the first appearance of "I-sections" and by inserting in lieu thereof a comma.

24. TCR 27 for chapter 73 is modified by deleting "other".

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25(a). The following new Subheading rule is inserted immediately before TCR 1 for chapter 83:

"Subheading rule: The underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 8301.20 for use in a motor vehicle of chapter 87."

(b). The designations "1.", "(A)" and "(B)" in TCR 1 for chapter 83 are underscored, and the word "other" is inserted after "any" in subdivision (A).

26. Chapter rules 2 and 3 for chapter 84 are redesignated as chapter rules 3 and 4, respectively, and new chapter rule 2 is inserted in numerical sequence:

"Chapter rule 2: For purposes of subheading 8471.49, the origin of each unit presented within a system shall be determined in accordance with the rule that would be applicable to such unit if it were presented separately; and the special rate of duty applicable to each unit presented within a system shall be the rate that is applicable to such unit under the appropriate tariff item within subheading 8471.49.

For purposes of this rule, the term "unit presented within a system" shall mean:

(a) a separate unit as described in note 5(B) to chapter 84 of the tariff schedule; or

(b) any other separate machine that is presented and classified with a system under subheading 8471.49."

27. Chapter rule 3 for chapter 84 (as redesignated) is modified by deleting "8471.92" and by inserting in lieu thereof "8471.60".

28. TCR 11 for chapter 84 is modified by deleting "8406.19" and by inserting in lieu thereof "8406.82".

29. TCR 33(A) and (B) for chapter 84 are modified by deleting "8415.81" at each instance and by inserting in lieu thereof "8415.20", and subdivision (B) is modified by deleting the word "other".

30. TCR 103(A) and (B) for chapter 84 are modified by deleting "8443.50" at each instance and by inserting in lieu thereof "8443.59".

31. TCR 130 for chapter 84 is modified by deleting "8456.90" and by inserting in lieu thereof "8456.99".

32. TCR 187(A) and (B) for chapter 84 are modified by deleting "tariff item 8469.10.40" at each instance and by inserting in lieu thereof "subheading 8469.11".

33. TCR 188 for chapter 84 is deleted and the following new TCR 188 is inserted in lieu thereof:

"188. (A) A change to subheadings 8469.12 through 8469.30 from any other heading, except from heading 8473; or

(B) A change to subheadings 8469.12 through 8469.30 from heading 8473, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

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34. TCRs 191 through 204, inclusive, for chapter 84 are deleted; TCR 213 is deleted; TCRs 205 through 212, inclusive, are redesignated as TCRs 206 through 213, respectively; and the following new TCRs are inserted in numerical sequence:

"191. A change to subheadings 8471.30 through 8471.41 from any subheading outside that group, except from subheadings 8471.49 or 8471.50.

Subheading 8471.49 rule: The origin of each unit presented within a system shall be determined as though each unit were presented separately and were classified under the appropriate tariff provision for that unit.

192. A change to subheading 8471.50 from any other subheading, except from subheadings 8471.30 through 8471.49.

193. A change to tariff item 8471.60.35 from any other subheading, except from subheadings 8471.49 or 8540.40 or tariff item 8540.91.15.

194. A change to tariff items 8471.60.51 or 8471.60.61 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.10, 8473.30.30 or 8473.30.60.

195. A change to tariff item 8471.60.52 or 8471.60.62 from any other tariff item, except from subheading 8471.49 or tariff item 8473.30.10.

196. A change to tariff items 8471.60.53 or 8471.60.63 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.10, 8473.30.30 or 8473.30.60.

197. A change to tariff items 8471.60.54 or 8471.60.64 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

198. A change to tariff items 8471.60.55 or 8471.60.65 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

199. A change to tariff items 8471.60.56 or 8471.60.66 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

200. A change to subheading 8471.60 from any other subheading, except from subheading 8471.49.

201. A change to subheading 8471.70 from any other subheading, except from subheading 8471.49.

202. A change to tariff item 8471.80.10 from any other tariff item, except from subheading 8471.49.

203. A change to tariff item 8471.80.40 from any other tariff item, except from subheading 8471.49.

204. A change to any other tariff item within subheading 8471.80 from tariff items 8471.80.10 or 8471.80.40 or any other subheading, except from subheading 8471.49.

205. A change to subheading 8471.90 from any other subheading."

35. The following new TCR 208A for chapter 84 is inserted immediately after TCR 208 (as redesignated):

"208A. A change to subheading 8473.10 from any other heading."

36. The text for TCR 213 for chapter 84 is deleted.

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37. The following new TCRs for chapter 84 are inserted immediately after TCR 215 for chapter 84:

"215A. A change to tariff item 8473.50.30 from any other tariff item.

215B. A change to tariff item 8473.50.60 from any other tariff item.

Subheading rule: Subdivision (B) of rule 215C does not apply to a part or accessory provided for in subheading 8473.50 if that part or accessory is used in the production of a good provided for in subheading 8469.11 or heading 8471.

215C. (A) A change to subheading 8473.50 from any other heading; or

(B) No required change in tariff classification to subheading 8473.50, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

38. TCR 218(A) and (B) for chapter 84 are modified by deleting "8475.20" at each instance and by inserting in lieu thereof "8475.29".

39. TCR 220(A) and (B) for chapter 84 are modified by deleting "8476.11" at each instance and by inserting in lieu thereof "8476.21", and by deleting "8476.19" at each instance and by inserting in lieu thereof "8476.89".

40. Chapter rule 5 for chapter 85 is modified by inserting in subdivision (a) immediately after "television picture tube" the expression "(including video monitor or video projector cathode-ray tube)", and by inserting in subdivision (b) immediately after "picture tube" the expression "(including video monitor or video projector cathode-ray tube)".

41. TCR 5 for chapter 85 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to tariff items 8504.40.60 or 8504.40.70 from any other tariff item, except from subheading 8471.49."

42. TCR 8 for chapter 85 is redesignated as TCR 8A, and the following new TCR 8 is inserted immediately after TCR 7 for such chapter:

"8. A change to tariff item 8504.90.70 from any other tariff item."

43. TCRs 11 through 14, inclusive, for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence:

"11. (A) A change to subheadings 8506.10 through 8506.80 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) A change to subheadings 8506.10 through 8506.80 from subheading 8506.90, whether or not there is also a change from any other heading, except from tariff items 8548.10.05 or 8548.10.15, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

12. A change to subheading 8506.90 from any other heading, except tariff items 8548.10.05 or 8548.10.15.

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43. TCRs 11 through 14, inclusive, for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence (continued):

13. (A) A change to subheadings 8507.10 through 8507.80 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) A change to subheadings 8507.10 through 8507.80 from subheading 8507.90, whether or not there is also a change from any other heading, except from tariff items 8548.10.05 or 8548.10.15, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

14. A change to subheading 8507.90 from any other heading, except from tariff items 8548.10.05 or 8548.10.15."

44. TCR 15 for chapter 85 is modified by deleting from subdivision (A) the word "other" and by deleting from subdivision (B) the word "other" and by inserting after "subheading" and before the succeeding comma the expression "outside that group".

45. TCR 17 for chapter 85 is modified by deleting from subdivision (A) the word "other" and by deleting from subdivision (B) the word "other" and by inserting after "subheading" and before the succeeding comma the expression "outside that group".

46. TCR 20(A) and (B) for chapter 85 are modified by deleting "8510.20" at each instance and by inserting in lieu thereof "8510.30".

47. TCR 50 for chapter 85 is deleted and the following new TCRs are inserted in numerical sequence:

"50. A change to subheading 8517.11 from any other subheading, except from tariff items 8517.90.12, 8517.90.36, 8517.90.38 or 8517.90.44.

50A. A change to tariff item 8517.19.40 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.12, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subdivision (B) of this rule, for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

50B. A change to subheading 8517.19 from any other subheading, except from tariff items 8517.90.12, 8517.90.36, 8517.90.38 or 8517.90.44."

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48(a). TCR 51 for chapter 85 is modified by deleting "8517.20" and by inserting in lieu thereof "8517.22".

(b). TCRs 52 through 56, inclusive, for chapter 85 are deleted and the following new TCRs for chapter 85 are inserted in numerical sequence:

"52. A change to subheading 8517.21 from any other subheading, except from tariff item 8517.90.04."

53. A change to tariff item 8517.50.10 from any other subheading.

54. A change to tariff item 8517.50.50 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subparagraph (B) of this rule, for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

55. A change to subheading 8517.50 from any other subheading.

56. A change to tariff item 8517.80.10 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subparagraph (B), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

56A. A change to subheading 8517.80 from any other subheading."

49. The following new TCR 79A for chapter 85 is inserted immediately after TCR 79 for such chapter:

"79A. A change to subheading 8525.40 from any other subheading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19 or 8529.90.23."

50. TCR 82 for chapter 85 is modified by deleting "8527.11" and by inserting in lieu thereof "8527.12".

51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence:

"84. A change to tariff items 8528.12.12, 8528.12.16, 8528.12.20 or 8528.12.24 from any other heading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36, 8529.90.39, 8529.90.43, 8529.90.46 or 8529.90.49.

85. A change to tariff items 8528.12.28 or 8528.12.32 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff item 8540.11.10 or except from tariff items 7011.20.10 and 8540.91.15.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

Tariff item rule: Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1999, the text of subdivision 85 shall be replaced by the following:

A change to tariff items 8528.12.28 or 8528.12.32 from any other heading, except from tariff items 8529.90.43, 8529.90.46, 8529.90.49 or 8540.11.10 or except from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.12.36 or 8528.12.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass panel referred to in subparagraph (b) of note 5 to chapter 85 and a glass cone provided for in tariff item 7011.20.10.

86. A change to tariff items 8528.12.36 or 8528.12.40 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.12.99 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.12.36 or 8528.12.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 of chapter 85.

87. A change to tariff items 8528.12.36 or 8528.12.40 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

88. (A) A change to tariff items 8528.12.44 or 8528.12.48 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the television receiver component, may be non-originating; or

(B) A change to tariff items 8528.12.44 or 8528.12.48 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

89. (A) A change to tariff items 8528.12.52 or 8528.12.56 or Mexican tariff item 8528.12.05 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff item 8542.13.40, 8542.14.40 or 8542.19.40, used in the television receiver component, may be non-originating; or

(B) A change to tariff items 8528.12.52 or 8528.12.56 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

90. A change to tariff items 8528.12.62, 8528.12.64, 8528.12.68 or 8528.12.72 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff item 8529.90.53.

91. A change to tariff items 8528.12.04 or 8528.12.08 from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

92. A change to subheading 8528.12 from tariff items 8528.12.04 or 8528.12.08 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used.

92A. A change to subheading 8528.13 from any other heading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36 or 8529.90.39

(A) except as provided in subparagraph (b), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

92B. A change to tariff items 8528.21.16, 8528.21.19, 8528.21.24 or 8528.21.29 from any other heading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36, 8529.90.39, 8529.90.43, 8529.90.46 or 8529.90.49.

92C. A change to tariff items 8528.21.34 or 8528.21.39 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff item 8540.11.10 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1999, the text of subdivision 92C shall be replaced by the following:

A change to tariff items 8528.21.34 or 8528.21.39 from any other heading, except from tariff items 8529.90.43, 8529.90.46, 8529.90.49 or 8540.11.10 or from tariff items 7011.20.10 or 8540.91.15.

92D. A change to tariff items 8528.21.41 or 8528.21.42 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.10 or 8540.12.50 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.21.41 or 8528.21.42 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 to chapter 85.

92E. A change to tariff items 8528.21.41 or 8528.21.42 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

92F. (A) A change to tariff items 8528.21.44 or 8528.21.49 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video monitor component, may be non-originating; or

(B) A change to tariff items 8528.21.44 or 8528.21.49 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

926. (A) A change to tariff items 8528.21.51 or 8528.21.52 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video monitor component, may be non-originating; or

(B) A change to tariff items 8528.21.51 or 8528.21.52 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

92H. A change to tariff items 8528.21.55, 8528.21.60, 8528.21.65 or 8528.21.70 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff item 8529.90.53.

92I. A change to tariff items 8528.21.05 or 8528.21.10 or from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

92J. A change to subheading 8528.21 from tariff items 8528.21.05 or 8528.21.10 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used.

92K. A change to subheading 8528.22 from any other heading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36 or 8529.90.39:

(A) except as provided in subparagraph (b), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

Tariff item rule: The following rule applies to a good of tariff items 8528.30.30 or 8528.30.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass panel referred to in subparagraph (b) of note 5 to chapter 85 and a glass cone provided for in tariff item 7011.20.10.

92L. A change to tariff items 8528.30.30 or 8528.30.40 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.10 or 8540.12.50 or tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.30.30 or 8528.30.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 of chapter 85:

92M. A change to tariff items 8528.30.30 or 8528.30.40 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

92N. (A) A change to tariff items 8528.30.50 or 8528.30.60 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video projector component, may be non-originating; or

(B) A change to tariff items 8528.30.50 or 8528.30.60 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

92O. A change to tariff items 8528.30.62, 8528.30.64, 8528.30.66 or 8528.30.68 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff item 8529.90.53.

92P. A change to tariff items 8528.30.10 or 8528.30.20 from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

92Q. A change to subheading 8528.30 from tariff items 8528.30.10 or 8528.30.20 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used."

52. TCR 123(A) and (B) for chapter 85 are modified by deleting "8539.40" at each instance and by inserting in lieu thereof "8539.49".

53. TCRs 135 and 136 for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence:

"135. A change to subheadings 8540.40 through 8540.60 from any subheading outside that group, except from tariff item 8540.91.15.

136. A change to subheadings 8540.71 through 8540.79 from any subheading outside that group, except from tariff item 8540.99.40."

54. The subheading rule immediately preceding TCR 142 for chapter 85 is modified by deleting "8542.11 through 8542.80" and by inserting in lieu thereof "8542.12 through 8542.50".

55. TCR 143(A) and (B) for chapter 85 are modified by deleting at each instance "8543.10 through 8543.30" and by inserting in lieu thereof "8543.11 through 8543.81".

56. TCR 144(A) and (B) for chapter 85 are modified by deleting at each instance "8543.80.85" and by inserting in lieu thereof "8543.89.80".

57. TCR 145(A) and (B) for chapter 85 are modified by deleting at each instance "8543.80" and by inserting in lieu thereof "8543.89".

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58(a). TCR 149 for chapter 85 is modified by deleting "8548" and by inserting in lieu thereof "8547".

(b). The following new TCRs for chapter 85 are inserted in numerical sequence:

"150. A change to subheading 8548.10 from any other chapter.

151. A change to subheading 8548.90 from any other heading."

59. TCR 15 for chapter 90 is deleted and the following new TCR 15 is inserted in lieu thereof:

"15. (A) A change to subheading 9007.20 from any other heading; or

(B) A change to subheading 9007.20 from subheading 9007.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost is used."

60. TCR 25(A) and (B) for chapter 90 are modified by deleting at each instance "9010.30" and by inserting in lieu thereof "9010.60".

61. New TCR 41A for chapter 90 is inserted immediately after TCR 41 for such chapter:

"41A. A change to subheadings 9018.12 through 9018.14 from any other heading."

62. TCR 48 for chapter 90 is deleted and the following new TCR 48 is inserted in lieu thereof:

"48. A change to subheadings 9022.12 through 9022.14 from any subheading outside that group, except from tariff item 9022.90.05."

63. TCR 74 for chapter 90 is modified by deleting "9031.40.40" and by inserting in lieu thereof "9031.49.40"; TCRs 74 and 75 are redesignated as TCRs 75 and 75A, respectively; and the following new TCR 74 is inserted immediately before redesignated TCR 75:

"74. (A) A change to subheading 9031.41 from any other heading; or

(B) A change to subheading 9031.41 from subheading 9031.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost is used."

64. TCR 75A(A) and (B) for chapter 90 (as redesignated) are modified by deleting at each instance "9031.40" and by inserting in lieu thereof "9031.49".

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65. TCRs 12 and 13 for chapter 96 are deleted and the following new TCRs are inserted in numerical sequence:

"12. A change to tariff item 9614.20.10 from any other chapter.

13. A change to subheading 9614.20 from tariff item 9614.20.10 or any other subheading, except from subheading 9614.90."

Other modifications to the general notes to the HTS:

1. General note 18 is modified by inserting after the expression "MPa - megapascals" the following expression: "MW - megawatts".

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Annex II

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of the proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior texts are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (1) January 1, 1996, or (2) the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as provided herein:

1(a). The superior text to subheading 0105.11.00 reading "Weighing not over 185 g each:" is modified to read "Weighing not more than 185 g:".

(b). Subheadings 0105.19.00 through 0105.91.00 are superseded by the following:

	[Live...:]			
	[Weighing...:]			
"0105.12.00	Turkeys	1.6¢ each	Free (E,IL,J,MX) 0.4¢ each (CA)	4¢ each
0105.19.00	Other	1.6¢ each	Free (E,IL,J,MX) 0.4¢ each (CA)	4¢ each
	[Other:]			
0105.92.00	Chickens, weighing not more than 2,000 g	3.6¢/kg	Free (E,IL,J,MX) 0.8¢/kg (CA)	17.6¢/kg
0105.93.00	Chickens, weighing more than 2,000 g	3.6¢/kg	Free (E,IL,J,MX) 0.8¢/kg (CA)	17.6¢/kg"

2. Subheadings 0207.10 through 0207.50.00 are superseded by the following:

	[Meat...:]			
	"Of chickens:			
0207.11.00	Not cut in pieces, fresh or chilled	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.12.00	Not cut in pieces, frozen	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.13.00	Cuts and offal, fresh or chilled	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.14.00	Cuts and offal, frozen	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
	Of turkeys:			
0207.24.00	Not cut in pieces, fresh or chilled	17.5¢/kg	Free (E,IL,J,MX) 3.7¢/kg (CA)	22¢/kg
0207.25	Not cut in pieces, frozen:			
0207.25.20	Valued less than 88¢/kg	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.25.40	Valued 88¢ or more per kg	11.7%	Free (E,IL,J,MX) 2.5% (CA)	25%

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2. (con.):

	[Meat...:] [con.]			
	Of turkeys (con.):			
0207.26.00	Cuts and offal, fresh or chilled	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.27.00	Cuts and offal, frozen	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
	Of ducks, geese or guineas:			
0207.32.00	Not cut in pieces, fresh or chilled	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.33.00	Not cut in pieces, frozen	10.3¢/kg	Free (A,E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.34.00	Fatty livers, fresh or chilled	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.35.00	Other, fresh or chilled	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.36.00	Other, frozen	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg"

3. The article description of heading 0209.00.00 is modified to read as follows:

"Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, fresh, chilled, frozen, salted, in brine, dried or smoked"

4. The article description of subheading 0301.91.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

5. The article description of subheading 0302.11.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

6. The article description of subheading 0302.12.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)"

7. The article description of subheading 0303.10.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), excluding livers and roes"

8. The article description of subheading 0303.21.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

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9. The article description of subheading 0305.41.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)"

10. Notes 2 and 3 to chapter 4 are renumbered as 3 and 4, respectively, and the following new note 2 is inserted:

"2. For the purposes of heading 0405:

(a) The term "butter" means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless lactic-acid-producing bacteria.

(b) The expression "dairy spreads" means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39 percent or more but less than 80 percent by weight."

11. The following new subheading note 2 to chapter 4 is inserted:

"2. For the purposes of subheading 0405.10 the term "butter" does not include dehydrated butter or ghee (subheading 0405.90)."

12. Heading 0405.00 and subheadings 0405.00.05 through 0405.00.90, inclusive, are superseded by the following:

"0405	Butter and other fats and oils derived from milk; dairy spreads:				
0405.10	Butter:				
0405.10.05	Described in general note 15 of the tariff schedule and entered pursuant to its provisions	12.3¢/kg	Free (E,IL,J,MX) 2.4¢/kg (CA)	30.9¢/kg
0405.10.10	Described in additional U.S. note 6 to this chapter and entered pursuant to its provisions	12.3¢/kg	Free (E,IL,J) 2.4¢/kg (CA)	30.9¢/kg
0405.10.20	Other	$1.722/kg	See 9906.04.75-9906.04.77 (MX)	$1.813/kg
0405.20	Dairy spreads: Butter substitutes, whether in liquid or solid state: Containing over 45 percent by weight of butterfat:			
0405.20.10	Described in general note 15 of the tariff schedule and entered pursuant to its provisions	15.4¢/kg	Free (E,IL,J,MX) 3¢/kg (CA)	31¢/kg
0405.20.20	Described in additional U.S. note 14 to this chapter and entered pursuant to its provisions	15.4¢/kg	Free (E,IL,J) 3¢/kg (CA)	31¢/kg
0405.20.30	Other	$2.231/kg	See 9906.06.40-9906.06.42 (MX)	$2.348/kg

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12. (con.):

0405 (con.)	Butter and other fats and oils derived from milk; dairy spreads (con.):			
0405.20 (con.)	Dairy spreads (con.): Butter substitutes, whether in liquid or solid state (con.):			
0405.20.40	Other	14.6¢/kg	Free (E,IL,J) 3¢/kg (CA) 10.7¢/kg (MX)	31¢/kg
	Other: Dairy products described in additional U.S. note 1 to chapter 4:			
0405.20.50	Described in general note 15 of the tariff schedule and entered pursuant to its provisions	10%	Free (E,IL,J,MX) 2% (CA)	20%
0405.20.60	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions	10%	Free (E,IL,J) 2% (CA)	20%
0405.20.70	Other	78.7¢/kg + 9.5%	See 9906.06.43-9906.06.45 (MX)	82.8¢/kg + 10%
0405.20.80	Other	8.8%	Free (A,E,IL,J,MX) 2% (CA)	20%
0405.90	Other:			
0405.90.05	Described in general note 15 of the tariff schedule and entered pursuant to its provisions	10%	Free (E,IL,J,MX) 2% (CA)	20%
0405.90.10	Described in additional U.S. note 14 to this chapter and entered pursuant to its provisions	10%	Free (E,IL,J) 2% (CA)	20%
0405.90.20	Other	$2.084/kg + 9.5%	See 9906.04.78-9906.04.80 (MX)	$2.194/kg + 10%"

Conforming changes:

(a). Additional U.S. note 6 to chapter 4 is modified by deleting "0405.00.20" and by inserting in lieu thereof "0405.10.10".

(b). Additional U.S. note 10 to chapter 4 is modified by inserting "0405.20.60," immediately after "0404.90.30,".

(c). Additional U.S. note 14 to chapter 4 is modified by deleting "0405.00.60" and by inserting in lieu thereof "0405.20.20, 0405.90.10".

(d)(1). The superior text to subheadings 9904.04.09 through 9904.04.21 beginning with the word "Butter," is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(2). Subheading 9904.04.21 is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(e). The superior text to subheadings 9904.04.50 through 9904.05.01 beginning with the word "Dairy" is modified by inserting "0405.20.70," immediately after "0404.90.50,".

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12. (con.)

Conforming changes (con.):

(f). The immediately superior text to subheadings 9904.04.59 through 9904.04.66 is modified by inserting " 0405.20.70," immediately after "0404.10.15,".

(g). Subheading 9904.04.99 is modified by deleting "subheading 2106.90.66" and inserting in lieu thereof "subheadings 0405.20.70 or 2106.90.66".

(h)(1). The superior text to subheadings 9904.05.37 through 9904.05.47 beginning with the word "Butter" is modified by deleting "0405.00.90," and inserting in lieu thereof "0405.20.30, 0405.90.20,".

(2). Subheading 9904.05.46 is modified by deleting "0405.00.90" and inserting in lieu thereof "0405.90.20".

(3). Subheading 9904.05.47 is modified by inserting "0405.20.30," immediately before "2106.90.26".

(i). Subheading 9905.21.10 is modified by inserting "0405.20.80," immediately before "2106.90.82".

(j). The superior text to subheadings 9906.04.75 through 9906.04.77 that begins with the word "Butter" is modified by inserting "; dairy spreads" immediately after "milk", and the immediately superior text to subheading 9906.04.75 is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(k). The immediately superior text to subheadings 9906.04.78 through 9906.04.80 is modified by deleting "0405.00.90" and inserting in lieu thereof "0405.90.20".

(l). U.S. note 5 to subchapter VI of chapter 99 is modified by inserting ", 9906.06.40" immediately after "9906.04.78".

(m). U.S. note 7 to subchapter VI of chapter 99 is modified by inserting "9906.06.43," immediately before "9906.15.01,".

(n). Subchapter VI of chapter 99 is modified by inserting the following provisions immediately after subheading 9906.06.39:

	[Goods of Mexico,...:]		
	"Butter and other fats and oils derived from milk; dairy spreads:		
	Provided for in subheading 0405.20.30:		
9906.06.40	Subject to the quantitative limits specified in U.S. note 5 to this subchapter.....		Free (MX)
	Other:		
9906.06.41	Valued not over $1.57/kg.....		$1.054/kg (MX)
9906.06.42	Other.....		67% (MX)
	Provided for in subheading 0405.20.70:		
9906.06.43	Subject to the quantitative limits specified in U.S. note 7 to this subchapter.....		Free (MX)
	Other:		
9906.06.44	Valued not over 74.8¢/kg.....		49.2¢/kg (MX)
9906.06.45	Other.....		65.7% (MX)"

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13. The article description of heading 0504.00.00 is modified to read as follows:

"Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked"

14. Subheadings 0602.91.00 through 0602.99.90 and the immediately preceding superior text "Other:" are superseded by the following:

	[Other...:]				
"0602.90	Other:				
	Herbaceous perennials:				
0602.90.20	Orchid plants.....	Free			25%
	Other:				
0602.90.30	With soil attached to roots....	1.4%	Free (A,E,IL,J, MX) 0.4% (CA)		30%
0602.90.40	Other.....	4.8%	Free (A,E,IL,J, MX) 1.1% (CA)		30%
	Other:				
0602.90.50	Mushroom spawn.....	1.9¢/kg	Free (CA,E,IL,J, MX)		2.2¢/kg
	Other:				
0602.90.60	With soil attached to roots....	1.9%	Free (A,E,IL,J, MX) 0.6% (CA)		25%
0602.90.90	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)		25%"

15. Subdivisions (c) and (d) of note 3 to chapter 7 are modified to read as follows:

"(c) flour, meal, powder, flakes, granules and pellets of potatoes (heading 1105);

(d) flour, meal and powder of the dried leguminous vegetables of heading 0713 (heading 1106)."

16(a). Subheading 0712.10.00 is deleted.

(b). The following new subheading 0712.90.30 is inserted in numerical order:

	[Dried...:]				
	[Other...:]				
"0712.90.30	Potatoes whether or not cut or sliced but not further prepared.....	2.7¢/kg	Free (A,CA,E,IL, J) 1.1¢/kg (MX)		6¢/kg"

17(a). The article description of heading 0714 is modified to read as follows:

"Cassava (manioc), arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith:"

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(b). Subheadings 0714.10.00 and 0714.20.00 are superseded by the following:

	[Cassava...:]			
"0714.10	"Cassava (manioc):			
0714.10.10	Frozen.....	7.9%	Free (A,E,IL,J, MX)	35%
			3.5% (CA)	
0714.10.20	Other.....	11.3%	Free (A*,E,IL,J, MX)	50%
			5% (CA)	
0714.20	Sweet potatoes:			
0714.20.10	Frozen.....	6.7%	Free (A,E,IL,J, MX)	35%
			1.4% (CA)	
0714.20.20	Other.....	8.2%	Free (A*,E,IL,J, MX)	50%"
			2% (CA)	

Conforming changes: The immediately superior text to subheading 0714.90.10 reading "Fresh:" is modified to read "Fresh or chilled:", and general note 4(d) is modified by deleting "0714.10.00 Costa Rica" and "0714.20.00 Dominican Republic" and by inserting in numerical sequence "0714.10.20 Costa Rica" and "0714.20.20 Dominican Republic".

(c). The following new subheading 0714.90.45 is inserted in numerical sequence:

	[Cassava...:]			
	[Other:]			
"0714.90.45	Frozen.....	6.7%	Free (A,E,IL,J, MX)	35%"
			1.4% (CA)	

18. Subheadings 0801.10.00 through 0801.30.00 are superseded by the following:

	[Coconuts,...:]			
	"Coconuts:			
0801.11.00	Desiccated.....	Free		7.7¢/kg
0801.19.00	Other.....	Free		7.7¢/kg
	Brazil nuts:			
0801.21.00	In shell.....	Free		9.9¢/kg
0801.22.00	Shelled.....	Free		9.9¢/kg
	Cashew nuts:			
0801.31.00	In shell.....	Free		4.4¢/kg
0801.32.00	Shelled.....	Free		4.4¢/kg"

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19. Subheadings 0807.10 through 0807.10.80, inclusive, are superseded by the following:

	[Melons...:]				
	"Melons (including watermelons):				
0807.11	Watermelons:				
0807.11.30	If entered during the period from December 1, in any year, to the following March 31, inclusive.....	16.3%	Free (A,E,IL,J, MX)	35%	
			4% (CA)		
0807.11.40	If entered at any other time.....	19%	Free (E,IL,J)	35%	
			4% (CA)		
			See 9906.08.09-9906.08.11 (MX)		
0807.19	Other:				
	Cantaloupes:				
0807.19.10	If entered during the period from August 1 to September 15, inclusive, in any year.....	17.6%	Free (E,IL,J)	35%	
			4% (CA)		
			14% (MX)		
0807.19.20	If entered at any other time...	33.3%	Free (A,E,IL,J)	35%	
			7% (CA)		
			See 9906.08.07-9906.08.08 (MX)		
	Ogen and Galia melons:				
0807.19.50	If entered during the period from December 1, in any year, to the following May 31, inclusive.....	2.9%	Free (A,CA,E,IL, J,MX)	35%	
0807.19.60	If entered at any other time...	11.4%	Free (A,E,IL,J, MX)	35%	
			2.8% (CA)		
	Other:				
0807.19.70	If entered during the period from December 1, in any year, to the following May 31, inclusive.....	7.5%	Free (A,CA,E,IL, J)	35%	
			See 9906.08.12-9906.08.13 (MX)		
0807.19.80	If entered at any other time...	32.7%	Free (E,IL,J)	35%"	
			7% (CA)		
			28% (MX)		

20. The following new subheading 0810.50.00 is inserted in numerical order:

	[Other...:]			
"0810.50.00	Kiwi fruit.....	Free		2.8¢/kg"

Conforming changes: Subheading 0810.90.20 is redesignated as 0810.90.25, and the article description of that subheading is modified to read as follows: "Berries and tamarinds".

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21. Subheadings 0901.30.00 and 0901.40.00 are superseded by the following:

	[Coffee,...:]			
"0901.90	Other:			
0901.90.10	Coffee husks and skins.....	Free		10%
0901.90.20	Coffee substitutes containing coffee.....	2.7¢/kg	Free (CA,E,IL,J, MX)	6.6¢/kg"

22. Subdivision (A) of note 2 to chapter 11 is modified by adding after the last sentence the following new sentence:

"However, germ of cereals, whole, rolled, flaked or ground is always classified in heading 1104."

23. The article description of heading 1105 is modified to read as follows:

"Flour, meal, powder, flakes, granules and pellets of potatoes:"

24. The article description of subheading 1105.10.00 is modified to read as follows:

"Flour, meal and powder"

25. The article description of heading 1106 is modified to read as follows:

"Flour, meal and powder of the dried leguminous vegetables of heading 0713, of sago or of roots or tubers of heading 0714 or of the products of chapter 8:"

26. The article description of subheading 1106.10.00 is modified to read as follows:

"Of the dried leguminous vegetables of heading 0713"

27. The article description of subheading 1106.20.00 is modified to read as follows:

"Of sago or of roots or tubers of heading 0714"

28. The article description of subheading 1106.30 is modified to read as follows:

"Of the products of chapter 8:"

29. The article description of heading 1212 is modified by deleting the expression "fresh or dried," and inserting the expression "fresh, chilled, frozen or dried," in lieu thereof.

30. Subdivision (d) of note 1 to chapter 13 is modified to read as follows:

"(d) Vegetable saps or extracts constituting alcoholic beverages (chapter 22);"

31. Subdivision (h) of note 1 to chapter 13 is modified to read as follows:

"(h) Essential oils, concretes, absolutes, resinoids, extracted oleoresins, aqueous distillates or aqueous solutions of essential oils or preparations based on odoriferous substances of a kind used for the manufacture of beverages (chapter 33); or"

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32. The article description of heading 1301 is modified to read as follows:

"Lac; natural gums, resins, gum-resins and oleoresins (for example, balsams):"

33. Subheading 1402.91.00, the superior text thereto, and subheading 1402.99.00 are superseded by the following:

	[Vegetable...:]			
"1402.90	Other:			
1402.90.10	Vegetable hair.....	0.5¢/kg	Free (CA,E,IL,J, MX)	2.2¢/kg
1402.90.90	Other.....	Free		20%"

34. Subdivision (e) of note 1 to chapter 15 is modified by deleting the expression "in an isolated state".

35. The article description of heading 1501.00.00 is modified to read as follows:

"Pig fat (including lard) and poultry fat, other than that of heading 0209 or 1503"

36. The article description of heading 1502.00.00 is modified to read as follows:

"Fats of bovine animals, sheep or goats, other than these of heading 1503"

37. Heading 1519 and subheadings 1519.11.00 through 1519.20.60 are deleted.

Conforming change: General note 4(d) is modified by deleting "1519.11.00 Malaysia" and "1519.12.00 Malaysia", and by inserting in numerical sequence "3823.11.00 India; Malaysia" and "3823.12.00 India; Malaysia" in lieu thereof.

38. Heading 1520 and subheadings 1520.10.00 and 1520.90.00 are superseded by the following:

"1520.00.00	Glycerol, crude; glycerol waters and glycerol lyes.....	Free		2.2¢/kg"

39. Note 1 to chapter 16 is modified by inserting the expression "or heading 0504" after the expression "chapter 2 or 3".

40. The following new subheading is inserted in numerical order:

	[Other...:]			
	[Of...:]			
"1602.32.00	Of chickens.....	8.8%	Free (A,E,IL,J, MX) 2% (CA)	20%"

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41. Subheading 1702.10.00 is superseded by the following:

	[Other...:]				
	"Lactose and lactose syrup:				
1702.11.00	Containing by weight 99 percent or more lactose, expressed as anhydrous lactose, calculated on the dry matter....	8.8%	Free (E,IL,J,MX) 2% (CA)	50%
1702.19.00	Other.....	8.8%	Free (E,IL,J,MX) 2% (CA)	50%"

42(a). Subheading 1704.90.20 is superseded by the following:

	[Sugar...:]			
	[Other:]			
	[Confections...:]			
	"Other:			
1704.90.25	Cough drops.....	Free		30%
1704.90.35	Other.....	6.5%	Free (A,E,IL,J, MX) 1.4% (CA)	40%"

(b). The following new additional U.S. note 11 is inserted in chapter 17:

"11. For the purposes of subheading 1704.90.25, "cough drops" must contain a minimum of 5 mg per dose of menthol, of eucalyptol, or of a combination of menthol and eucalyptol."

43. Note 3 to chapter 19 is modified to read as follows:

"3. Heading 1904 does not cover preparations containing more than 6 percent by weight of cocoa calculated on a totally defatted basis or coated with chocolate or other food preparations containing cocoa of heading 1806 (heading 1806)."

44. The article description of heading 1901 is modified to read as follows:

"Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:"

45. The article description of heading 1904 is modified by deleting the language following the semicolon and inserting the following in lieu thereof:

"cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included:"

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46. The following new subheadings 1904.20, 1904.20.10 and 1904.20.90 are inserted in numerical order:

	[Prepared...:]				
"1904.20	Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:				
1904.20.10	In airtight containers and not containing apricots, citrus fruits, peaches or pears.....	6.5%	Free (E,IL,J) 1.4% (CA) 4.9% (MX)	35%	
1904.20.90	Other.....	16.6%	Free (E,IL,J) 3.5% (CA) 7% (MX)	35%"	

47. The article description of heading 2004 is modified to read as follows:

"Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006:"

48(a). The article description of heading 2005 is modified to read as follows:

"Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:"

(b). Subheading 2005.30.00 is deleted.

(c). The following new subheading 2005.90.30 is inserted in numerical order:

	[Other...:]				
	[Other...:]				
"2005.90.30	Sauerkraut.....	6.6%	Free (E,IL,J) 1.5% (CA) 3% (MX)	50%"	

49. The article description of heading 2006.00 is modified to read as follows:

"Vegetables, fruit, nuts, fruit-peel and other parts of plants preserved by sugar (drained, glacé, or crystallized):"

50. Subdivision (f) of note 1 to chapter 21 is deleted, and subdivisions (g) and (h) are redesignated as (f) and (g), respectively.

51(a). The numerical subheading code "2101.10" is deleted; the article description is modified to read as follows:

"Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee".

(b). The superior text reading "Extracts, essences and concentrates:" is designated as subheading 2101.11, and subheadings 2101.10.21 and 2101.10.29 are redesignated as 2101.11.21 and 2101.11.29, respectively.

(c). The superior text reading "Other:" is designated as subheading 2101.12 and is modified to read as follows:

"Preparations with a basis of extracts, essences or concentrates or with a basis of coffee:"

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(d). Subheadings 2101.10.32, 2101.10.34, 2101.10.38, 2101.10.44, 2101.10.48, 2101.10.54, 2101.10.58, and 2101.10.90 are redesignated as 2101.12.32, 2101.12.34, 2101.12.38, 2101.12.44, 2101.12.48, 2101.12.54, 2101.12.58, and 2101.12.90, respectively; additional U.S. note 7 to chapter 17 is modified by deleting "2101.10.44" and inserting in lieu thereof "2101.12.44"; additional U.S. note 8 to chapter 17 is modified by deleting "2101.10.54" and inserting in lieu thereof "2101.12.54"; and additional U.S. note 9 to chapter 17 is modified by deleting "2101.10.34" and inserting in lieu thereof "2101.12.34".

52. The following new subheadings are inserted in numerical order:

	[Food...]			
	[Other:]			
	"Compound alcoholic preparations of an alcoholic strength by volume exceeding 0.5 percent vol., of a kind used for the manufacture of beverages:			
2106.90.12	Containing not over 20 percent of alcohol by weight.....	5.8¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	44¢/kg + 25%
2106.90.15	Containing over 20 percent but not over 50 percent of alcohol by weight.....	11.6¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	88¢/kg + 25%
2106.90.18	Containing over 50 percent of alcohol by weight.....	23.3¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	$1.76/kg + 25%"

53. The article description of heading 2206.00 is modified by inserting a comma after the expression "non-alcoholic beverages".

54(a). The article description of heading 2208 is modified to read as follows:

"Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol; spirits, liqueurs and other spirituous beverages:"

(b). Subheadings 2208.10 through 2208.10.90 are deleted.

(c). The following new subheadings are inserted in numerical order:

	[Undenatured...:]			
"2208.60	Vodka:			
	In containers each holding not over 4 liters:			
2208.60.10	Valued not over $2.05/liter.....	59.5¢/pf. liter	Free (A,CA,E,IL, J,MX)	$1.78/pf. liter
2208.60.20	Valued over $2.05/liter.....	11.6¢/pf. liter	Free (A,CA,E,IL, J,MX)	$1.78/pf. liter
2208.60.50	In containers each holding over 4 liters.....	29¢/pf. liter	Free (A*,CA,E, IL,J,MX)	$1.32/pf. liter
2208.70.00	Liqueurs and cordials.....	11.6¢/pf. liter	Free (A,CA,E,IL, J,MX)	$3.08/pf. liter"

Conforming change: General note 4(d) is modified by deleting "2208.90.70 Russia" and by inserting in numerical sequence "2208.60.50 Russia".

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(d). Subheading 2208.90.45 is redesignated as 2208.90.46, and the text of that subheading is modified to read "Kirschwasser and ratafia".

(e). Subheadings 2208.90.60 through 2208.90.70, inclusive, and the immediately preceding superior text "Vodka:" and "In containers each holding not over 4 liters:" are deleted.

55. The following new subheading is inserted in numerical order:

	[Oilcake...:]			
"2306.70.00	Of corn (maize) germ.....	0.57¢/kg	Free (A,CA,E, IL,J,MX)	0.7¢/kg"

56. Subheading 2401.20.20 is superseded by the following:

	[Unmanufactured...:]			
	[Tobacco,...:]			
	[Not...:]			
	[Other:]			
	"Containing over 35 percent wrapper tobacco:			
2401.20.14	Wrapper tobacco.....	Free		$6.45/kg
2401.20.18	Other.....	Free		$6.45/kg"

57. Subdivision (g) of note 2 to chapter 25 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

58. Subheadings 2503, 2503.10.00 and 2503.90.00 are superseded by the following:

"2503.00.00	Sulfur of all kinds, other than sublimed sulfur, precipitated sulfur and colloidal sulfur.....	Free	Free"

59. Subheadings 2513.21.00 and 2513.29.00 and the immediately preceding superior text "Emery, natural corundum, natural garnet and other natural abrasives:" are superseded by the following:

	[Pumice;...:]			
"2513.20	Emery, natural corundum, natural garnet and other natural abrasives:			
2513.20.10	Crude or in irregular pieces.....	Free		Free
2513.20.90	Other.....	0.4¢/kg	Free (A,CA,E, IL,J,MX)	2.2¢/kg"

60. Subheading 2530.30.00 is deleted, the rate of duty in rate column numbered 2 of subheading 2530.90.00 is deleted, and the rate of duty of "0.3¢/kg" is inserted in lieu thereof.

61. Subdivision (e) of note 1 to chapter 26 is modified to read as follows:

"(e) Waste or scrap of precious metal or of metal clad with precious metal; other waste or scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal (heading 7112); or"

Conforming change: Subheadings 2620.90.70, 2620.90.80 and 2620.90.90 are redesignated as 2620.90.60, 2620.90.75 and 2620.90.85, respectively.

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62. The article description of heading 2602.00.00 is modified by deleting the expression "manganiferous iron ores" and inserting the expression "ferruginous manganese ores" in lieu thereof.

63. The following new additional U.S. note 8 is inserted in numerical sequence in the additional U.S. notes to chapter 27:

"8. Subheading 2712.10.00 does not include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold at retail for such use (subheading 3304.99.10)."

64. Subheading 2707.60.00 is superseded by the following:

	[Oils...:]				
"2707.60	Phenols:				
2707.60.10	Metacresol, orthocresol, paracresol and metaparacresol, all the foregoing having a purity of 75 percent or more by weight	1¢/kg + 3.4%	Free (A,CA,E, IL,J,MX)	15.4¢/kg + 42.5%
2707.60.20	Other	2.9¢/kg + 12.5%	Free (A,CA,E, IL,J,MX)	7.7¢/kg + 29.5%"

Conforming change: Subheading 2707.99.30 is deleted.

65. Subdivision (d) of note 1 to chapter 28 is modified by inserting the expression "(including an anticaking agent)" after the word "stabilizer".

66. Subdivision (e) of note 3 to chapter 28 is modified by deleting the expression "heading 3823" at each instance, and inserting the expression "heading 3824" in lieu thereof.

67. Subdivision (g) of note 3 to chapter 28 is modified to read as follows:

"(g) The metals, whether or not pure, metal alloys or cermets, including sintered metal carbides (metal carbides sintered with a metal), of section XV; or"

68(a). Subheading 2827.37.00 is deleted.

(b). The following new subheading 2827.39.25 is inserted in numerical order:

	[Chlorides,...:]				
	[Other...:]				
	[Other:]				
"2827.39.25	Of tin	4.2%	Free (A*,CA,E, IL,J,MX)		25%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2827.37.00 India" and by inserting in numerical sequence "2827.39.25 India" in lieu thereof.

69(a). Subheading 2835.21.00 is deleted.

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(b). The following new subheading 2835.29.20 is inserted in numerical order:

	[Phosphinates...:]				
	[Phosphates:]				
	[Other:]				
"2835.29.20	Of triammonium	1.5%	Free (A*,E,IL,J, MX) 0.3% (CA)		8.5%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2835.21.00 India" and by inserting in numerical sequence "2835.29.20 India".

70(a). Subheading 2836.93.00 is deleted.

(b). The following new subheading 2836.99.20 is inserted in numerical order:

	[Carbonates;...:]				
	[Other:]				
	[Other:]				
"2836.99.20	Bismuth carbonate	6.4%	Free (A*,CA,E, IL,J,MX)		35%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2836.93.00 India" and by inserting in numerical sequence "2836.99.20 India".

71. Subheading 2841.60.00 is superseded by the following:

	[Salts...:]				
	"Manganites, manganates and permanganates:				
2841.61.00	Potassium permanganate	5%	Free (A*,CA,E,IL, J,MX)		25%
2841.69.00	Other	5%	Free (A*,CA,E,IL, J,MX)		25%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2841.60.00 India" and by inserting in numerical sequence "2841.61.00 India" and "2841.69.00 India".

72. Heading 2848 and subheadings 2848.10.00 and 2848.90.00 are superseded by the following:

"2848.00	Phosphides, whether or not chemically defined, excluding ferrophosphorus:				
2848.00.10	Of copper (phosphor copper), containing more than 15 percent by weight of phosphorus	2.6%	Free (A*,CA,E, IL,J,MX)		32.5%
2848.00.90	Of other metals or of nonmetals	Free			25%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2848.10.00 India" and by inserting in numerical sequence "2848.00.10 India".

73. Subdivision (f) of note 1 to chapter 29 is modified by inserting the expression "(including an anticaking agent)" after the word "stabilizer".

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74(a). Subdivision (a) of note 2 to chapter 29 is modified to read as follows:

"(a) Goods of heading 1504 or crude glycerol of heading 1520;"

(b). Subparagraph (ij) of note 2 to chapter 29 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

75. Subdivision (b) of note 5 to chapter 29 is modified by deleting the expression "or glycerol", and subdivision (d) of such note 5 is modified by deleting the expression "and glycerol".

76. Subheadings 2903.40, 2903.40.10 and 2903.40.40 are superseded by the following:

	[Halogenated...:]				
	"Halogenated derivatives of acyclic hydrocarbons containing two or more different halogens:				
2903.41.00	Trichlorofluoromethane	3.7%	Free (A*,CA,E,IL,J,MX)	25%	
2903.42.00	Dichlorodifluoromethane	3.7%	Free (A*,CA,E,IL,J,MX)	25%	
2903.43.00	Trichlorotrifluoroethanes	3.7%	Free (A*,CA,E,IL,J,MX)	25%	
2903.44.00	Dichlorotetrafluoroethanes and chloropentafluoroethane	3.7%	Free (A*,CA,E,IL,J,K,MX)	25%	
2903.45.00	Other derivatives perhalogenated only with fluorine and chlorine	3.7%	Free (A*,CA,E,IL,J,K,MX)	25%	
2903.46.00	Bromochlorodifluoromethane, bromotrifluoromethane and dibromotetrafluoroethanes	3.7%	Free (A*,CA,E,IL,J,K,MX)	25%	
2903.47.00	Other perhalogenated derivatives	3.7%	Free (A*,CA,E,IL,J,MX)	25%	
2903.49	Other:				
2903.49.10	Bromochloromethane	Free		25%	
2903.49.90	Other	3.7%	Free (A*,CA,E,IL,J,K,MX)	25%"	

Conforming changes: General note 4(d) is modified by deleting "2903.40.40 India" and by inserting in lieu thereof the following: "2903.41.00 India", "2903.42.00 India", "2903.43.00 India", "2903.44.00 India", "2903.45.00 India", "2903.46.00 India", "2903.47.00 India", and "2903.49.90 India".

77(a). Subheading 2905.21.00 is deleted.

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77. (con.)
(b). Subheading 2905.29.00 is superseded by the following:

	[Acyclic...:]				
	[Unsaturated...:]				
"2905.29	Other:				
2905.29.10	Allyl alcohol	6.7%	Free (A*,CA,E,IL,J,MX)	45%	
2905.29.90	Other	3.7%	Free (A*,CA,E,IL,J,K,MX)	25%"	

Conforming changes: General note 4(d) is modified by deleting "2905.21.00 India" and "2905.29.00 India" and by inserting in numerical sequence "2905.29.10 India" and "2905.29.90 India".

78. The following new subheading is inserted in numerical order:

	[Acyclic...:]				
	[Other...:]				
"2905.45.00	Glycerol	0.5¢/kg	Free (A*,CA,E,IL,J,MX)	4.4¢/kg"	

Conforming change: General note 4(d) is modified by inserting in numerical sequence "2905.45.00 India".

79. Subheadings 2914.30, 2914.30.10, and 2914.30.50 are superseded by the following:

	[Ketones...:]				
	"Aromatic ketones without other oxygen function:				
2914.31.00	Phenylacetone (Phenylpropan-2-one)	10.6%	Free (A*,CA,E,IL,J,MX)	15.4¢/kg + 50%	
2914.39	Other:				
2914.39.10	7-Acetyl-1,1,3,4,4,6-hexamethyl-tetrahydronaphthalene; 1-(2-Naphthalenyl)ethanone; and 6-Acetyl-1,1,2,3,3,5-hexamethyl-indan	Free		15.4¢/kg + 50%	
2914.39.90	Other	10.6%	Free (A*,CA,E,IL,J,K,MX)	15.4¢/kg + 50%"	

Conforming changes: General note 4(d) is modified by deleting "2914.30.50 India" and by inserting in numerical sequence "2914.31.00 India" and "2914.39.90 India".

80. Subheading 2914.41.00 (and the superior text thereto) and subheadings 2914.49 through 2914.49.90 are superseded by the following:

	[Ketones...:]				
"2914.40	Ketone-alcohols and ketone-aldehydes:				
2914.40.10	4-Hydroxy-4-methylpentan-2-one (Diacetone alcohol)	4%	Free (A*,CA,E,IL,J,MX)	25%	

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80. (con.):

	[Ketones...:] [con.]			
2914.40 (con.)	Ketone-alcohols and ketone-aldehydes (con.):			
	Other:			
	Aromatic:			
2914.40.20	1,2,3-Indantrione monohydrate (Ninhydrin).....	9.9%	Free (A*,CA,E, IL,J) 7.7% (MX)	15.4¢/kg + 42%
2914.40.40	Other.....	9.9%	Free (CA,E,IL,J, K) 7.7% (MX)	15.4¢/kg + 42%
	Other:			
2914.40.60	1,3-Dihydroxyacetone.....	Free		20%
2914.40.90	Other.....	4.8%	Free (A*,CA,E,IL, J,K,MX)	20%"

Conforming change: General note 4(d) is modified by deleting "2914.41.00 India", "2914.49.20 India", and "2914.49.90 India" and by inserting in numerical sequence "2914.40.10 India", "2914.40.20 India", and "2914.40.90 India".

81. Subheadings 2916.33 through 2916.33.50 are superseded by the following:

	[Unsaturated...:]			
	[Aromatic...:]			
"2916.34	Phenylacetic acid and its salts:			
2916.34.10	Phenylacetic acid (o-Toluic acid).....	6.6%	Free (CA,E,IL, J,MX)	15.4¢/kg + 40.5%
	Other:			
2916.34.15	Odoriferous or flavoring compounds.....	10.8%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 58%
	Other:			
2916.34.25	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.34.55	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.35	Esters of phenylacetic acid:			
2916.35.15	Odoriferous or flavoring compounds.....	10.8%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 58%
	Other:			
2916.35.25	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.35.55	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%"

Conforming change: General note 4(d) is modified by deleting "2916.33.20 India" and by inserting in numerical sequence "2916.34.15 India" and "2916.35.15 India".

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82. The following new subheadings 2922.43, 2922.43.10 and 2922.43.50 are inserted in numerical order:

	[Oxygen-function...:]			
	[Amino-acids...:]			
"2922.43	Anthranilic acid and its salts:			
2922.43.10	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 50%
2922.43.50	Other.....	3¢/kg + 13.8%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 50%"

83. The article description of subheading 2922.49.10 is modified by inserting the following chemical name in alphabetical order:

"ß-(ß-Methoxyethoxyethyl)-4-aminobenzoate;"

84. The article description of subheading 2922.50.10 is modified by deleting the chemical name, "ß-(ß-Methoxyethoxyethyl)-4-aminobenzoate;".

85. The article description of subheading 2922.50.13 is modified by deleting the chemical name, "Propranolol hydrochloride;".

86. The following new subheading 2924.22.00 is inserted in numerical order:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
"2924.22.00	2-Acetamidobenzoic acid.....	3¢/kg + 15.8%	Free (CA,E,IL, J) 2.5¢/kg + 12.6% (MX)	15.4¢/kg + 58%"

87. Subheadings 2932.90 through 2932.90.90 are superseded by the following:

	[Heterocyclic...:]			
	"Other:			
2932.91.00	Isosafrole.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 52%
2932.92.00	1-(1,3-Benzodioxol-5-yl)propan-2-one.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 52%
2932.93.00	Piperonal (heliotropin).....	4.8%	Free (CA,E,IL, J,MX)	45%
2932.94.00	Safrole.....	6.9%	Free (A*,CA,E, IL,J,MX)	45%
2932.99	Other:			
	Aromatic:			
	Pesticides:			
2932.99.04	2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb).....	Free		15.4¢/kg + 40.5%
2932.99.08	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranylmethanesulfonate...	6.7%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 40.5%
2932.99.20	Other.....	10.2%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 40%

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87. (con.):

	[Heterocyclic...:] [con.]			
	Other (con.):			
	Other (con.):			
	Aromatic (con.):			
2932.99.32	Benzofuran (Coumarone); and Dibenzofuran (Diphenylene oxide).....	Free		Free
2932.99.35	2-Hydroxy-3-dibenzofuran-carboxylic acid.....	7.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 66.5%
2932.99.39	Benzointetrahydropyranyl ester; and Xanthen-9-one.....	5.8%	Free (CA,E,IL, J,MX)	15.4¢/kg + 39.5%
2932.99.55	Bis-O-[(4-methylphenyl)-methylene]-D-glucitol (Dimethylbenzylidene sorbitol); and Rhodamine 2C base.....	Free		15.4¢/kg + 52%
	Other:			
2932.99.60	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 52%
2932.99.70	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,K,L,MX)	15.4¢/kg + 52%
	Other:			
2932.99.80	Paraldehyde, USP grade.....	Free		25%
2932.99.90	Other.....	3.7%	Free (A*,CA,E, IL,J,K,MX)	25%"

Conforming changes: General note 4(d) is modified by deleting "2932.90.08 India", "2932.90.20 India", "2932.90.37 India", and "2932.90.90 India" and by inserting in numerical sequence "2932.94.00 India", "2932.99.08 India", "2932.99.20 India", and "2932.99.90 India".

88(a). The article description of heading 2933 is modified to read as follows:

"Heterocyclic compounds with nitrogen hetero-atom(s) only:"

(b). The following new subheadings 2933.32 through 2933.32.50 are inserted in numerical order:

	[Heterocyclic...:]			
	[Compounds...:]			
"2933.32	Piperidine and its salts:			
2933.32.10	Piperidine.....	3¢/kg + 14.3%	Free (CA,E,IL,J) 1.4¢/kg + 6.4% (MX)	15.4¢/kg + 52%
2933.32.50	Other.....	12.1%	Free (CA,E,IL,J) 5.4% (MX)	15.4¢/kg + 52%"

Conforming change: Subheadings 2933.39.60 and 2933.39.90 are redesignated as 2933.39.61 and 2933.39.91, respectively.

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88. (con.)

(c). The superior text immediately preceding subheading 2933.51 and appearing at the same level of indentation as the article description of subheading 2933.40 is modified to read as follows:

"Compounds containing a pyrimidine ring (whether or not hydrogenated) or piperazine ring in the structure:"

89(a). The article description of heading 2934 is modified to read as follows:

"Nucleic acids and their salts; other heterocyclic compounds:"

(b). The following new subheading 9906.29.40 is inserted in numerical sequence in subchapter VI of chapter 99:

	[Goods of Mexico,...:]			
"9906.29.40	Nucleic acids and their salts (provided for in subheading 2934.90.39).....		5.4% (MX)"	

90. Subheading 2939.40.00 is superseded by the following:

	[Vegetable...:]			
	"Ephedrines and their salts:			
2939.41.00	Ephedrine and its salts.....	Free		15.4¢/kg + 59%
2939.42.00	Pseudoephedrine and its salts.....	Free		15.4¢/kg + 59%
2939.49.00	Other.....	Free		15.4¢/kg + 59%"

91. Subheading 2939.60.00 is superseded by the following:

	[Vegetable...:]			
	"Alkaloids of rye ergot and their derivatives; salts thereof:			
2939.61.00	Ergometrine and its salts.....	Free		25%
2939.62.00	Ergotamine and its salts.....	Free		25%
2939.63.00	Lysergic acid and its salts.....	Free		25%
2939.69.00	Other.....	Free		25%"

92(a). Notes 2 and 3 to chapter 30 are redesignated as notes 3 and 4, respectively, and the following new note 2 is inserted:

"2. For the purposes of heading 3002, the expression "modified immunological products" applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

(b). Note 3 to chapter 30 (as redesignated above) is modified by deleting the expression "note 3(d)" and inserting the expression "note 4(d)" in lieu thereof.

93(a). The article description of heading 3002 is modified by deleting the expression "blood fractions;" and inserting the following expression in lieu thereof: "blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes;".

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93. (con.)

(b). The article description of subheading 3002.10.00 is modified by adding at the end thereof the expression "and modified immunological products, whether or not obtained by means of biotechnological processes".

(c). Subheadings 3002.31.00, the superior text thereto reading "Vaccines for veterinary medicine:", and 3002.39.00 are superseded by the following:

	[Human...:]			
"3002.30.00	Vaccines for veterinary medicine.....	Free		Free"

94. The article description of heading 3006 is modified to read as follows:

"Pharmaceutical goods specified in note 4 to this chapter:"

95. Subdivision (c) of note 1 to chapter 31 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

96(a). Subheading 3201.30.00 is deleted.

(b). Subheading 3201.90.20 is redesignated as 3201.90.25, and the article description of such subheading 3201.90.25 is superseded by the following:

"Extracts of camaigre, chestnut, curupey, divi-divi, eucalyptus, gambier, hemlock, larch, mangrove, myrobalan, oak, sumac, tara, urunday or valonia"

97. Subheading 3206.10.00 is superseded by the following:

	[Other...:]			
	"Pigments and preparations based on titanium dioxide:			
3206.11.00	Containing 80 percent or more by weight of titanium dioxide calculated on the dry weight.....	6%	Free (A*,CA,E, IL,J,MX)	30%
3206.19.00	Other.....	6%	Free (A*,CA,E, IL,J,MX)	30%"

Conforming change: General note 4(d) is modified by deleting "3206.10.00 India" and by inserting in lieu thereof "3206.11.00 India" and "3206.19.00 India".

98. The article description of subheading 3214.10.00 is modified to read as follows:

"Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings".

99. Subparagraph (a) of note 1 to chapter 33 is superseded by the following:

"(a) Natural oleoresins or vegetable extracts of heading 1301 or 1302;"

100. Notes 2 and 3 to chapter 33 are redesignated as notes 3 and 4, respectively, and the following new note 2 is inserted:

"2. The expression "odoriferous substances" in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics."

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101. The article description of heading 3301 is modified by inserting the expression "extracted oleoresins;" after the expression "resinoids;".

102(a). The article description of heading 3302 is modified to read as follows:

"Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:".

(b). Subheading 3302.10.30 is superseded by the following:

	[Mixtures...:]				
	[Of...:]				
	[Containing...:]				
	"Containing over 20 percent of alcohol by weight:				
	Preparations requiring only the addition of ethyl alcohol or water to produce a beverage suitable for human consumption:				
3302.10.40	Containing over 20 percent but not over 50 percent of alcohol by weight.....	11.6¢/kg + 2.6%	Free (A*,CA,E, IL,J,MX)	88¢/kg + 25%	
3302.10.50	Containing over 50 percent of alcohol by weight.....	23.3¢/kg + 2.6%	Free (A*,CA,E, IL,J,MX)	$1.76/kg + 25%	
3302.10.90	Other.....	3.8%	Free (CA,E,IL, J,MX)	50%"	

Conforming change: General note 4(d) is modified by inserting in numerical sequence "3302.10.40 India" and "3302.10.50 India".

103. Subheading 3304.99.00 is superseded by the following:

	[Beauty...:]				
	[Other:]				
"3304.99	Other:				
3304.99.10	Petroleum jelly put up for retail sale.....	Free			75%
3304.99.50	Other.....	2.9%	Free (A*,E,IL, J,MX) 0.9% (CA)		75%"

Conforming change: General note 4(d) is modified by deleting "3304.99.00 India" and by inserting in lieu thereof "3304.99.50 India".

104(a). The article description of heading 3306 is modified to read as follows:

"Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages:".

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104. (con.)
(b). The following new subheading 3306.20.00 is inserted in numerical order:

	[Preparations...:]			
"3306.20.00	Yarn used to clean between the teeth (dental floss).....	3.3%	Free (A*,E,IL, J,MX). 1.1% (CA)	88¢/kg + 75%"

Conforming change: General note 4(d) to the HTS is modified by inserting in numerical sequence "3306.20.00 India".

105. Subdivision (a) of note 5 to chapter 34 is modified by deleting the expression "heading 1516, 1519 or 3402" and inserting the expression "1516, 3402 or 3823" in lieu thereof.

106. Subheadings 3502.10 through 3502.90.00 are superseded by the following:

	[Albumins,...:]			
	"Egg albumin:			
3502.11.00	Dried.....	55.5¢/kg	Free (E,IL,J,MX) 11.9¢/kg (CA)	59.5¢/kg
3502.19.00	Other.....	11.3¢/kg	Free (E,IL,J,MX) 2.4¢/kg (CA)	24.3¢/kg
3502.20.00	Milk albumin, including concentrates of two or more whey proteins.....	Free		Free
3502.90.00	Other.....	Free		Free"

107. Note 1 to chapter 37 is modified by deleting the word "materials".

108. Note 2 to chapter 37 is modified to read as follows:

"2. In this chapter the word "photographic" relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces."

109(a). The superior text immediately preceding subheading 3702.31.00 and after subheading 3702.20.00 is modified by deleting the expression "without sprocket holes," and inserting the expression "without perforations," in lieu thereof.

(b). The superior text immediately preceding subheading 3702.41.00 and after subheading 3702.39.00 is modified by deleting the expression "without sprocket holes," and inserting the expression "without perforations," in lieu thereof.

110. The following new subdivision (d) of note 1 to chapter 38 is inserted:

"(d) Spent catalysts of a kind used for the extraction of base metals or for the manufacture of chemical compounds of base metals (heading 2620), spent catalysts of a kind used principally for the recovery of precious metal (heading 7112) or catalysts consisting of metals or metal alloys in the form of, for example, finely divided powder or woven gauze (section XIV or XV)."

111. Note 2 to chapter 38 is modified by deleting the expression "Heading 3823" and inserting the expression "Heading 3824" in lieu thereof.

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112. The article description of subheading 3806.20.00 is modified to read as follows:

"Salts of rosin, of resin acids or of derivatives of rosin or resin acids, other than salts of rosin adducts"

113(a). The article description of heading 3822.00 is modified to read as follows:

"Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006:"

(b). The following new subheading is inserted in numerical sequence in subchapter VI of chapter 99:

	[Goods of Mexico,...:]		
"9906.38.22	Diagnostic or laboratory reagents on a backing of paper (provided for in subheading 3822.00.50).....		Free (MX)"

114. The following heading and subheadings are redesignated as follows:

Present number	New number
3823.....	3824
3823.10.00.....	3824.10.00
3823.20.00.....	3824.20.00
3823.30.00.....	3824.30.00
3823.40.....	3824.40
3823.40.10.....	3824.40.10
3823.40.20.....	3824.40.20
3823.40.50.....	3824.40.50
3823.50.00.....	3824.50.00
3823.60.00.....	3824.60.00
3823.90.....	3824.90
3823.90.11.....	3824.90.11
3823.90.19.....	3824.90.19
3823.90.21.....	3824.90.21
3823.90.22.....	3824.90.22
3823.90.25.....	3824.90.25
3823.90.26.....	3824.90.26
3823.90.28.....	3824.90.28
3823.90.31.....	3824.90.31
3823.90.32.....	3824.90.32
3823.90.33.....	3824.90.33
3823.90.34.....	3824.90.34
3823.90.35.....	3824.90.35
3823.90.36.....	3824.90.36
3823.90.39.....	3824.90.39
3823.90.40.....	3824.90.40
3823.90.45.....	3824.90.45
3823.90.46.....	3824.90.46
3823.90.47.....	3824.90.47
3823.90.70.....	3824.90.70
3823.90.90.....	3824.90.90

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114. (con.)

Conforming changes: General note 4(d) to the HTS is modified by deleting the subheadings and countries set forth in the column labelled "Present provision" and by inserting in numerical sequence the subheadings and countries set forth in the column labelled "New provision":

Present provision		New provision	
3823.20.00	India	3824.20.00	India
3823.30.00	India	3824.30.00	India
3823.60.00	India	3824.60.00	India
3823.90.19	India	3824.90.19	India
3823.90.22	India	3824.90.22	India
3823.90.25	India	3824.90.25	India
3823.90.31	India	3824.90.31	India
3823.90.32	India	3824.90.32	India
3823.90.33	India	3824.90.33	India
3823.90.34	India	3824.90.34	India
3823.90.36	India	3824.90.36	India
3823.90.40	Brazil; India; Malaysia	3824.90.40	Brazil; India; Malaysia
3823.90.46	India	3824.90.46	India

115. The following new heading 3823 and its subheadings are inserted in numerical order:

"3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:			
	Industrial monocarboxylic fatty acids; acid oils from refining:			
3823.11.00	Stearic acid.....	2.9¢/kg + 5.3%	Free (A*,E,IL,J,MX) 0.6¢/kg + 1.2% (CA)	6.6¢/kg + 25%
3823.12.00	Oleic acid.....	2.9¢/kg + 4.4%	Free (A*,E,IL,J,MX) 0.6¢/kg + 1% (CA)	6.6¢/kg + 20%
3823.13.00	Tall oil fatty acids.....	4.4%	Free (CA,E,IL,J,MX)	20%
3823.19	Other:			
3823.19.20	Derived from coconut, palm-kernel or palm oil.....	4.1%	Free (A*,E,IL,J,MX) 1% (CA)	20%
3823.19.40	Other.....	4.4%	Free (E,IL,J,MX) 1% (CA)	20%
3823.70	Industrial fatty alcohols: Derived from fatty substances of animal or vegetable origin:			
3823.70.20	Oleyl alcohol.....	7%	Free (E,IL,J,MX) 1.5% (CA)	39.5%
3823.70.40	Other.....	4%	Free (E,IL,J,MX) 1% (CA)	25%
3823.70.60	Other.....	3.3%	Free (E,IL,J,MX) 0.7% (CA)	25%"

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115. (con.)

Conforming change: General note 4(d) is modified by inserting in numerical sequence "3823.19.20 India".

116. The following new subheadings 3824.71.00 and 3824.79.00 are inserted in numerical order:

	[Prepared...:] "Mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens:			
3824.71.00	Containing acyclic hydrocarbons perhalogenated only with fluorine and chlorine.....	3.7%	Free (CA,E,IL,J,MX)	25%
3824.79.00	Other.....	3.7%	Free (CA,E,IL,J,MX)	25%"

117(a). Subdivision (d) of note 2 to chapter 39 is modified to read as follows:

"(d) Solutions (other than collodions) consisting of any of the products specified in headings 3901 to 3913 in volatile organic solvents when the weight of the solvent exceeds 50 percent of the weight of the solution (heading 3208); stamping foils of heading 3212;"

(b). Subdivisions (g) through (v) of note 2 to chapter 39 are redesignated as (h) through (w), respectively, and the following new subdivision (g) is inserted:

"(g) Diagnostic or laboratory reagents on a backing of plastics (heading 3822);"

118. Note 4 to chapter 39 is modified to read as follows:

"4. The expression "copolymers" covers all polymers in which no single monomer unit contributes 95 percent or more by weight to the total polymer content.

For the purposes of this chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit. For the purposes of this note, constituent comonomer units of polymers falling in the same heading shall be taken together.

If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration."

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119. Subheading note 1 to chapter 39 is modified to read as follows:

"1. Within any one heading of this chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions:

(a) Where there is a subheading named "Other" in the same series:

(1) The designation in a subheading of a polymer by the prefix "poly" (e.g., polyethylene and polyamide-6,6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95 percent or more by weight of the total polymer content.

(2) The copolymers named in subheadings 3901.30, 3903.20, 3903.30 and 3904.30 are to be classified in those subheadings, provided that the comonomer units of the named copolymers contribute 95 percent or more by weight of the total polymer content.

(3) Chemically modified polymers are to be classified in the subheading named "Other", provided that the chemically modified polymers are not more specifically covered by another subheading.

(4) Polymers not meeting (1), (2) or (3), above, are to be classified in the subheading, among the remaining subheadings in the series, covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series of subheadings under consideration are to be compared.

(b) Where there is no subheading named "Other" in the same series:

(1) Polymers are to be classified in the subheading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared.

(2) Chemically modified polymers are to be classified in the subheading appropriate to the unmodified polymer.

Polymer blends are to be classified in the same subheading as polymers of the same monomer units in the same proportions."

120. Subheading 3901.90.50 is superseded by the following:

	[Polymers...:]			
	[Other:]			
	"Other:			
3901.90.55	Ethylene copolymers	11.3%	Free (A,CA,E, IL,J,MX)	43%
3901.90.90	Other	1.3¢/kg + 7.2%	Free (A,CA,E,IL, J,K,MX)	2.2¢/kg + 33.5%"

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121. Subheadings 3905.11.00 through 3905.90.80 are superseded by the following:

	[Polymers...:]			
	"Polyvinyl acetate:			
3905.12.00	In aqueous dispersion	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.19.00	Other	4%	Free (A,CA,E,IL, J,MX)	37.5%
	Vinyl acetate copolymers:			
3905.21.00	In aqueous dispersion	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.29.00	Other	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.30.00	Polyvinyl alcohol, whether or not containing unhydrolyzed acetate groups	3.2%	Free (A,CA,E,IL, J,MX)	37.5%
	Other:			
3905.91	Copolymers:			
3905.91.10	Containing by weight 50 percent or more of derivatives of vinyl acetate	4%	Free (A,CA,E,IL, J,K,MX)	37.5%
3905.91.50	Other	5.3%	Free (A,CA,E,IL, J,K,MX)	43.5%
3905.99	Other:			
3905.99.30	Polyvinyl carbazole (including adjuvants)	Free		43.5%
3905.99.80	Other	5.3%	Free (A,CA,E,IL, J,K,MX)	43.5%"

122. Subheadings 4010.10 through 4010.99.50 are superseded by the following:

	[Conveyor...:]			
	"Conveyor belts or belting:			
4010.11.00	Reinforced only with metal	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.12	Reinforced only with textile materials:			
4010.12.10	With textile components in which vegetable fibers predominate by weight over any other single textile fiber	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.12.50	Of a width exceeding 20 cm	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.12.55	Other	7.4%	Free (A,E,IL,J) MX) 1.6% (CA)	74%
4010.12.90	Other	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%

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122. (con.):

	[Conveyor...:]			
	Conveyor belts or belting (con.):			
4010.13.00	Reinforced only with plastics.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.19	Other:			
	Combined with textile materials:			
4010.19.10	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.19.50	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.19.55	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.19.80	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.19.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
	Transmission belts or belting:			
4010.21	Endless transmission belts of trapezoidal cross section (V-belts), whether or not grooved, of a circumference exceeding 60 cm but not exceeding 180 cm:			
4010.21.30	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX) 1% (CA)	30%
4010.21.60	Other.....	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.22	Endless transmission belts of trapezoidal cross section (V-belts), whether or not grooved, of a circumference exceeding 180 cm but not exceeding 240 cm:			
4010.22.30	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX) 1% (CA)	30%
4010.22.60	Other.....	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	25%

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122. (con.):

	[Conveyor...:]			
	Transmission belts or belting (con.):			
4010.23	Endless synchronous belts of a circumference exceeding 60 cm but not exceeding 150 cm:			
	Combined with textile materials:			
4010.23.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.23.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.23.45	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.23.50	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.23.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.24	Endless synchronous belts of a circumference exceeding 150 cm but not exceeding 198 cm:			
	Combined with textile materials:			
4010.24.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.24.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.24.45	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.24.50	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.24.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%

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122. (con.):

	[Conveyor...:]			
	Transmission belts or belting (con.):			
4010.29	Other:			
	Of trapezoidal cross section (V-belts and V-belting):			
4010.29.10	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX)	30%
			1% (CA)	
4010.29.20	Other.....	3.6%	Free (A,E,IL,J, MX)	25%
			0.8% (CA)	
	Other:			
	Combined with textile materials:			
4010.29.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX)	30%
			1% (CA)	
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.29.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX)	74%
			1.6% (CA)	
4010.29.45	Other.....	7.4%	Free (A,E,IL,J, MX)	74%
			1.6% (CA)	
4010.29.50	Other.....	2.2%	Free (E,IL,J)	25%
			0.4% (CA)	
			1.6% (MX)	
4010.29.90	Other.....	3.8%	Free (A,E,IL,J, MX)	25%"
			0.8% (CA)	

123. The article description of subheading 4104.31 is modified by deleting the expression "grain splits:" and inserting the expression "full grain splits:" in lieu thereof.

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124. Note 2 to chapter 42 is deleted and the following new note 2 inserted in lieu thereof:

"2. (A) In addition to the provisions of note 1, above, heading 4202 does not cover:

(a) Bags made of sheeting of plastics, whether or not printed, with handles, not designed for prolonged use (heading 3923);

(b) Articles of plaiting materials (heading 4602).

(B) Articles of headings 4202 and 4203 which have parts of precious metal or metal clad with precious metal, of natural or cultured pearls, of precious or semiprecious stones (natural, synthetic or reconstructed) remain classified in those headings even if such parts constitute more than minor fittings or minor ornamentation, provided that these parts do not give the articles their essential character. If, on the other hand, the parts give the articles their essential character, the articles are to be classified in chapter 71."

125. Note 1 to chapter 43 is modified by inserting the expression "or wool" after the expression "hair".

126. Subdivision (b) of note 2 to chapter 43 is modified by inserting the expression "or wool" after the expression "hair".

127. Subdivision (b) of note 1 to chapter 44 is superseded by the following:

"(b) Bamboo or other materials of a woody nature of a kind used primarily for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length (heading 1401);"

128. Note 6 to chapter 44 is modified to read as follows:

"6. Subject to note 1 above and except where the context otherwise requires, any reference to "wood" in a heading of this chapter applies also to bamboo and other materials of a woody nature."

129. The following new subheading note 1 to chapter 44 is inserted after note 6 to chapter 44:

"Subheading Note

1. For the purposes of subheadings 4403.41 to 4403.49, 4407.24 to 4407.29, 4408.31 to 4408.39 and 4412.13 to 4412.99, the expression "tropical wood" means one of the following types of wood:

Abura, Acajou d'Afrique, Afromosia, Ako, Alan, Andiroba, Aningré, Avodiré, Azobé, Balau, Balsa, Bossé clair, Bossé foncé, Cativo, Cedro, Dabema, Dark Red Meranti, Dibétou, Doussié, Framiré, Freijo, Fromager, Fuma, Geronggang, Ilomba, Imbuia, Ipé, Iroko, Jaboty, Jelutong, Jequitiba, Jongkong, Kapur, Kempas, Keruing, Kosipo, Kotibé, Koto, Light Red Meranti, Limba, Louro, Maçaranduba, Mahogany, Makoré, Mansonia, Mengkulang, Meranti Bakau, Merawan, Merbau, Merpauh, Mersawa, Moabi, Niangon, Nyatoh, Obeche, Okoumé, Onzabili, Orey, Ovengkol, Ozigo, Padauk, Paldao, Palissandre de Guatemala, Palissandre de Para, Palissandre de Rio, Palissandre de Rose, Pau Marfim, Pulai, Punah, Ramin, Sapelli, Saqui-Saqui, Sepetir, Sipo, Sucupira, Suren, Teak, Tiama, Tola, Virola, White Lauan, White Meranti, White Seraya, Yellow Meranti."

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130. Subheadings 4403.31.00 (and the superior text thereto reading "Other, of the following tropical woods:") through 4403.35.00, inclusive, are superseded by the following:

	[Wood...:]			
	"Other, of tropical wood specified in subheading note 1 to this chapter:			
4403.41.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau	Free		Free
4403.49.00	Other	Free		Free"

131. Subheadings 4407.21.00 (and the superior text thereto reading "Of the following tropical woods:"), 4407.22.00 and 4407.23.00 are superseded by the following:

	[Wood...:]			
	"Of tropical wood specified in subheading note 1 to this chapter:			
4407.24.00	Virola, Mahogany (Swietenia spp.), Imbuia and Balsa	Free		$1.27/m^3
4407.25.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau	Free		$1.27/m^3
4407.26.00	White Lauan, White Meranti, White Seraya, Yellow Meranti and Alan	Free		$1.27/m^3
4407.29.00	Other	Free		$1.27/m^3"

132. Subheading 4408.20.00 is superseded by the following:

	[Veneer...:]			
	"Of tropical wood specified in subheading note 1 to this chapter:			
4408.31.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau	Free		20%
4408.39.00	Other	Free		20%"

133. Subheading 4410.10.00 is superseded by the following:

	[Particle...:]			
	"Of wood:			
"4410.11.00	Waferboard, including oriented strand board	2.4%	Free (A,CA,E,IL,J,MX)	40%
4410.19.00	Other	2.4%	Free (A,CA,E,IL,J,MX)	40%"

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134. Subheadings 4412.11 through 4412.99.90 are superseded by the following:

	[Plywood,...:]			
	[Plywood...:]			
"4412.13	With at least one outer ply of tropical wood specified in subheading note 1 to this chapter:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.13.05	With a face ply of birch (Betula spp.)	1.8%	Free (A*,CA,E,IL,J,MX)	50%
4412.13.25	With a face ply of Spanish cedar (Cedrela spp.) or walnut (Juglans spp.)	8%	Free (A*,CA,E,IL,J,MX)	40%
4412.13.30	Other	8%	Free (A*,CA,E,IL,J,MX)	40%
4412.13.55	Other	8%	Free (A*,CA,E,IL,J,MX)	40%
4412.14	Other, with at least one outer ply of nonconiferous wood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.14.05	With a face ply of birch (Betula spp.)	1.8%	Free (A,CA,E,IL,J,MX)	50%
4412.14.25	With a face ply of Spanish cedar (Cedrela spp.) or walnut (Juglans spp.)	6.8%	Free (A*,CA,E,IL,J,MX)	40%
4412.14.30	Other	8%	Free (A*,CA,E,IL,J,MX)	40%
4412.14.55	Other	8%	Free (A*,CA,E,IL,J,MX)	40%
4412.19	Other, with both outer plies of coniferous wood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.19.10	With a face ply of Parana pine (Araucaria angustifolia)	3%	Free (A*,E,IL,J,MX) 1% (CA)	40%
4412.19.30	With a face ply of European red pine (Pinus silvestris)	4.5%	Free (A*,E,IL,J,MX) 1% (CA)	40%
4412.19.40	Other	15.2%	Free (A*,E,IL,J,MX) 4% (CA)	40%

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134. (con.):

	[Plywood,...:] [con.]			
	[Plywood...:] [con.]			
4412.19 (con.)	Other, with both outer plies of coniferous wood (con.):			
4412.19.50	Other.....	6.8%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	40%
	Other, with at least one outer ply of nonconiferous wood:			
4412.22	With at least one ply of tropical wood specified in subheading note 1 to this chapter:			
4412.22.05	Containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
	Other:			
	Plywood:			
	Not surface covered, or clear surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.22.10	With a face ply of birch (Betula spp.).....	1.8%	Free (A,CA,E, IL,J,MX)	50%
4412.22.30	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.22.40	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.22.50	Other.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.23.00	Other, containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.29	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.29.15	With a face ply of birch (Betula spp.).....	1.8%	Free (A,CA,E, IL,J,MX)	50%
4412.29.35	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.29.45	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.29.55	Other.....	2.4%	Free (A,CA,E, IL,J,MX)	40%

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134. (con.):

	[Plywood,...:] [con.]			
	Other:			
4412.92	With at least one ply of tropical wood specified in subheading note 1 to this chapter:			
4412.92.05	Containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.92.10	With a face ply of of Parana pine (Araucaria angustifolia).....	3%	Free (A*,E,IL,J, MX) 1% (CA)	40%
4412.92.30	With a face ply of European red pine (Pinus silvestris)...	4.5%	Free (A,E,IL,J, MX) 1% (CA)	40%
4412.92.40	Other.....	15.2%	Free (A*,E,IL,J, MX) 4% (CA)	40%
4412.92.50	Other.....	6.8%	Free (A,E,IL,J, MX) 1.6% (CA)	40%
4412.92.90	Other.....	2.4%	Free (A,E,IL,J, MX) 0.8% (CA)	40%
4412.93.00	Other, containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.99	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.99.15	With a face ply of Parana pine (Araucaria angustifolia).....	3%	Free (A*,E,IL,J, MX) 1% (CA)	40%

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134. (con.):

	[Plywood,...:] [con.] Other (con.):			
4412.99 (con.)	Other (con.):			
	Plywood (con.): Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply (con.):			
4412.99.35	With a face ply of European red pine (Pinus silvestris).....	4.5%	Free (A,E,IL,J, MX) 1% (CA)	40%
4412.99.45	Other.....	15.2%	Free (A*,E,IL,J, MX) 4% (CA)	40%
4412.99.55	Other.....	6.8%	Free (A,E,IL,J, MX) 1.6% (CA)	40%
4412.99.95	Other.....	2.4%	Free (A,E,IL,J, MX) 0.8% (CA)	40%"

Conforming changes: General note 4(d) is modified by deleting the subheading and countries referenced in Column A below and by inserting in numerical sequence the subheadings and countries referenced in Column B below:

Column A		Column B	
4412.11.10	Indonesia	4412.13.05	Indonesia
4412.11.20	Indonesia	4412.13.25	Brazil; Indonesia
4412.11.50	Indonesia	4412.13.30	Brazil; Indonesia
4412.12.15	Brazil	4412.13.55	Brazil; Indonesia
4412.12.20	Brazil; Indonesia	4412.14.25	Brazil
4412.12.50	Brazil; Indonesia	4412.14.30	Brazil; Indonesia
4412.29.30	Brazil; Indonesia	4412.14.55	Brazil; Indonesia
4412.29.40	Brazil; Indonesia	4412.22.30	Brazil; Indonesia
4412.99.10	Brazil	4412.22.40	Brazil; Indonesia
4412.99.40	Indonesia	4412.29.35	Brazil; Indonesia
		4412.29.45	Brazil; Indonesia
		4412.92.10	Brazil
		4412.92.40	Indonesia
		4412.99.15	Brazil
		4412.99.45	Indonesia

135. The article description of heading 4415 is modified by deleting the expression "load boards, of wood:" and inserting the expression "load boards, of wood; pallet collars of wood:" in lieu thereof.

136. The article description of subheading 4415.20 is modified by deleting the expression "load boards:" and inserting the expression "load boards; pallet collars:" in lieu thereof.

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137. Note 1 to chapter 46 is modified by deleting the expression "strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark," and inserting the expression "strips of other vegetable material (for example, strips of bark, narrow leaves and raffia or other strips obtained from broad leaves)," in lieu thereof.

138. The title of section X is modified by deleting the expression "WASTE AND SCRAP OF PAPER OR PAPERBOARD" and inserting the expression "RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD" in lieu thereof.

139. The title of chapter 47 is modified by deleting the expression "WASTE AND SCRAP OF PAPER OR PAPERBOARD" and inserting the expression "RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD" in lieu thereof.

140(a). The article description of heading 4706 is superseded by the following:

"Pulps of fibers derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material:"

(b). The following new subheading is inserted in numerical order:

	[Pulps...:]		
"4706.20.00	Pulps of fibers derived from recovered (waste and scrap) paper or paperboard.....	Free	Free"

141(a). The article description of heading 4707 is modified to read as follows:

"Recovered (waste and scrap) paper and paperboard:"

(b). The article description of subheading 4707.10 is modified to read as follows:

"Unbleached kraft paper or paperboard or corrugated paper or paperboard".

(c). The article description of subheading 4707.20 is modified by deleting "Of other" and by inserting in lieu thereof "Other", and the article description of subheading 4707.30 is modified by deleting "Of paper" and by inserting in lieu thereof "Paper".

142. Subdivisions (f) through (o) of note 1 to chapter 48 are redesignated as (g) through (p), respectively, and the following new subdivision (f) is inserted in alphabetical order:

"(f) Paper impregnated with diagnostic or laboratory reagents (heading 3822);"

143. Note 2 to chapter 48 is modified by deleting the expression ", for example, by coating or impregnation".

144. Note 3 to chapter 48 is modified to read as follows:

"3. In this chapter, the expression "newsprint" means uncoated paper of a kind used for the printing of newspapers, of which not less than 65 percent by weight of the total fiber content consists of wood fibers obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 MPa) on each side exceeding 2.5 micrometers (microns), weighing not less than 40 g/m^2 and not more than 65 g/m^2."

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145(a). Note 4 to chapter 48 is modified by deleting the sentence reading "* Brightness is to be measured by the Elrepho, GE or any equivalent internationally recognized brightness testing method." and by deleting the "*" symbol wherever it appears in such note.

(b). Such note 4 to chapter 48 is further modified by deleting the expression "2.5 kPa/g/m^2" at each appearance and by inserting the expression "2.5 kPa•m^2/g" in lieu thereof.

146. Note 6 to chapter 48 is modified to read as follows:

"6. Except where the terms of the headings otherwise require, paper, paperboard, cellulose wadding and webs of cellulose fibers answering to a description in two or more of the headings 4801 to 4811 are to be classified under that one of such headings which occurs last in numerical order in the tariff schedule."

147. Note 7 to chapter 48 is modified to read as follows:

"7. (A) Headings 4801, 4802, 4804 to 4808 and 4811 apply only to paper, paperboard, cellulose wadding and webs of cellulose fibers:

(a) In strips or rolls of a width exceeding 15 cm; or

(b) In rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state.

Except that hand-made paper and paperboard in any size or shape as made directly and having all its edges deckled remains classified, subject to the provisions of note 6, in heading 4802.

(B) Headings 4803 and 4809 apply only to paper, cellulose wadding and webs of cellulose fibers:

(a) In strips or rolls of a width exceeding 36 cm; or

(b) In rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

148. Subdivision (a) of subheading note 2 to chapter 48 is modified by deleting the expression "38" and inserting the expression "3.7 kPa•m^2/g" in lieu thereof.

149. Subheading note 3 to chapter 48 is modified by deleting the expression "20 kgf" and inserting the expression "196 newtons" in lieu thereof.

150. Subheading note 4 to chapter 48 is modified by deleting the expression "15" and inserting the expression "1.47 kPa•m^2/g" in lieu thereof.

151. The article description of heading 4803.00 is modified to read as follows:

"Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibers, whether or not creped, crinkled, embossed, perforated, surface-colored, surface decorated or printed, in rolls or sheets:"

152. The article description of heading 4805 is modified to read as follows:

"Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in note 2 to this chapter:"

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153. Subheadings 4807.91.00 (and the superior text thereto reading "Other:") and 4807.99 through 4807.99.40 are superseded by the following:

	[Composite...:]				
"4807.90	Other:				
4807.90.10	Straw paper and paperboard, whether or not covered with paper other than straw paper	2.2%		Free (A,CA,E, IL,J,MX)	30%
	Other:				
4807.90.20	Cloth-lined or reinforced paper	1.9%		Free (A,CA,E, IL,J,MX)	22.5%
4807.90.40	Other	Free			30%"

154. The article description of heading 4808 is modified to read as follows:

"Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803:"

155. The article description of heading 4809 is modified to read as follows:

"Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets:"

156. The article description of heading 4811 is modified to read as follows:

"Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or sheets, other than goods of the kind described in heading 4803, 4809 or 4810:"

157. The article description of heading 4818 is modified to read as follows:

"Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:"

158(a). Subheading 4823.30.00 is deleted.

(b). The following new subheading 4823.90.30 is inserted in numerical order:

	[Other...:]				
	[Other:]				
	[Other:]				
"4823.90.30	Cards, not punched, for punchcard machines, whether or not in strips	3.1%		Free (A,CA,E, IL,J,MX)	30%"

159(a). Subdivision (e) of note 1 to section XI is superseded by the following:

"(e) Articles of heading 3005 or 3006 (for example, wadding, gauze, bandages and similar articles for medical, surgical, dental or veterinary purposes, sterile surgical suture materials); yarn used to clean between the teeth, in individual retail packages (dental floss), of heading 3306;"

(b). Subdivision (s) of note 1 to section XI is modified by deleting the word "or".

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(c). Subdivision (t) of note 1 to section XI is modified by deleting the period (".") at the end thereof and inserting a semicolon (";") in lieu thereof.

(d). The following new subdivisions (u) and (v) of note 1 to section XI are inserted in alphabetical sequence:

"(u) Articles of chapter 96 (for example, brushes, travel sets for sewing, slide fasteners and typewriter ribbons); or"

(v) Articles of chapter 97."

160. Subdivision (b) of note 5 to section XI is modified to read as follows:

"(b) Dressed for use as sewing thread; and"

161. Subdivision (f) of note 7 to section XI is modified to read as follows:

"(f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length."

162. Note 8 to section XI is modified to read as follows:

"8. For the purposes of chapters 50 to 60:

(a) Chapters 50 to 55 and 60 and, except where the context otherwise requires, chapters 56 to 59 do not apply to goods made up within the meaning of note 7 above; and

(b) Chapters 50 to 55 and 60 do not apply to goods of chapters 56 to 59."

163. Note 13 to section XI is modified by inserting the following new final sentence:

"For the purposes of this note, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211."

164. Subdivision (B)(c) of subheading note 2 to section XI is modified to read as follows:

"(c) In the case of embroidery of heading 5810 and goods thereof, only the ground fabric shall be taken into account. However, embroidery without visible ground, and goods thereof, shall be classified with reference to the embroidering threads alone."

165. Note 1 to chapter 52 is modified to read as follows:

"For the purposes of subheadings 5209.42 and 5211.42, the expression "denim" means fabrics of yarns of different colors, of 3-thread or 4-thread twill, including broken twill, warp faced, the warp yarns of which are of one and the same color and the weft yarns of which are unbleached, bleached, dyed grey or colored a lighter shade of the color of the warp yarns."

Conforming change: The title "Note" is deleted and the title "Subheading Note" is inserted in lieu thereof.

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166. Subheading 5205.25.00 is superseded by the following:

	[Cotton...:]			
	[Single...:]			
"5205.26.00	Measuring less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.27.00	Measuring less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.28.00	Measuring less than 83.33 decitex (exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%"

167. Subheading 5205.45.00 is superseded by the following:

	[Cotton...:]			
	[Multiple...:]			
"5205.46.00	Measuring per single yarn less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.47.00	Measuring per single yarn less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.48.00	Measuring per single yarn less than 83.33 decitex (exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%"

168. The article description of subheading 5209.42.00 is modified by deleting the expression "Blue denim" and inserting the word "Denim" in lieu thereof.

169. The article description of subheading 5211.42.00 is modified by deleting the expression "Blue denim" and inserting the word "Denim" in lieu thereof.

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170. Subheadings 5407.60 through 5407.60.99 are superseded by the following:

	[Woven...:]				
	Other woven fabrics, containing 85 percent or more by weight of polyester filaments:				
5407.61	Containing 85 percent or more by weight of non-textured polyester filaments:				
	Dyed, measuring less than 77 cm in width or less than 77 cm between selvages, the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling:				
5407.61.11	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter	23.3¢/kg + 21.6%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.8% (MX)	24.3¢/kg + 81%	
5407.61.19	Other	23.3¢/kg + 21.6%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.8% (MX)	24.3¢/kg + 81%	
	Of yarns of different colors, the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling:				
5407.61.21	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter	21.9¢/kg + 20.3%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%	
5407.61.29	Other	21.9¢/kg + 20.3%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%	

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	[Woven...:]				
	Other woven fabrics, containing 85 percent or more by weight of polyester filaments (con.):				
5407.61 (con.)	Containing 85 percent or more by weight of non-textured polyester filaments (con.):				
	Other:				
5407.61.91	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%	
5407.61.99	Other	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%	
5407.69	Other:				
5407.69.10	Unbleached or bleached	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%	
5407.69.20	Dyed	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%	
	Of yarns of different colors:				
5407.69.30	The thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling	19.4¢/kg + 18%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%	
5407.69.40	Other	15.3%	Free (IL) 3.4% (CA) 8.4% (MX)	81%	
5407.69.90	Printed	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%*	

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171. Heading 5603.00 and subheadings 5603.00.10 through 5603.00.90 are superseded by the following:

"5603	Nonwovens, whether or not impregnated, coated, covered or laminated:			
	Of man-made filaments:			
5603.11.00	Weighing not more than 25 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.12.00	Weighing more than 25 g/m^2 but not more than 70 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.13.00	Weighing more than 70 g/m^2 but not more than 150 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.14	Weighing more than 150 g/m^2:			
5603.14.30	Laminated fabrics	9.6%	Free (IL) 3.2% (CA) 8% (MX)	83.5%
5603.14.90	Other	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
	Other:			
5603.91.00	Weighing not more than 25 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.92.00	Weighing more than 25 g/m^2 but not more than 70 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.93.00	Weighing more than 70 g/m^2 but not more than 150 g/m^2	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.94	Weighing more than 150 g/m^2:			
5603.94.10	Floor covering underlays	2.7%	Free (B,IL) 0.6% (CA) 1.9% (MX)	40%
	Other:			
5603.94.30	Laminated fabrics	9.6%	Free (IL) 3.2% (CA) 8% (MX)	83.5%
5603.94.90	Other	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%"

172. The article description of heading 5804 is modified by deleting the expression "in motifs:" and inserting the expression "in motifs, other than fabrics of heading 6002:" in lieu thereof.

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173. Note 4 to chapter 59 is modified by inserting the word "and" after the semicolon in subdivision (b); replacing "; and" in subdivision (c) with a period; deleting subdivision (d); and inserting the following new second paragraph after subdivision (c) and appearing at the same indentation level as that subdivision designation:

"This heading does not, however, apply to plates, sheets or strip of cellular rubber, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 40), or textile products of heading 5811."

174. Subdivision (a)(i) of note 7 to chapter 59 is modified to read as follows:

"(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);"

175. The article description of heading 5910.00 is modified to read as follows:

"Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated, covered or laminated with plastics, or reinforced with metal or other material:"

176. The article description of subheading 5911.10 is modified to read as follows:

"Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams):"

177. Subdivision (a) of note 3 to chapter 61 is modified to read as follows:

"(a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

If several separate components to cover the lower part of the body are presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

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177. (con.):

The term "suit" includes the following sets of garments, whether or not they fulfill all the above conditions:

- morning dress, comprising a plain jacket (cutaway) with rounded tails hanging well down at the back and striped trousers;
- evening dress (tailcoat), generally made of black fabric, the jacket of which is relatively short at the front, does not close and has narrow skirts cut in at the hips and hanging down behind;
- dinner jacket suits, in which the jacket is similar in style to an ordinary jacket (though perhaps revealing more of the shirt front), but has shiny silk or imitation silk lapels."

178. Notes 5 through 9 to chapter 61 are redesignated as notes 6 through 10, respectively, and the following new note 5 is inserted:

"5. Heading 6109 does not cover garments with a drawstring, ribbed waistband or other means of tightening at the bottom of the garment."

179. Subheading 6115.12.00 is superseded by the following:

	[Panty...:]				
	[Panty...:]				
"6115.12	Of synthetic fibers, measuring per single yarn 67 decitex or more:				
6115.12.10	Surgical panty hose with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%	
6115.12.20	Other	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	72%	

180. Subheadings 6115.19.10 and 6115.19.90 are superseded by the following:

[Panty...:]				
[Panty...:]				
[Of other...:]				
"6115.19.20	Surgical panty hose with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%
	Other:			
6115.19.40	Containing 70 percent of more by weight of silk or silk waste	14.1%	Free (E,IL,J) 3.4% (CA) 8.4% (MX)	90%
6115.19.80	Other	16.8%	Free (E*,IL) 3.4% (CA) 8.4% (MX)	90%"

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181. Subheadings 6115.92.10 and 6115.92.20 are superseded by the following:

	[Panty...:]				
	[Other:]				
	[Of cotton:]				
"6115.92.30	Surgical stockings with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%	
	Other:				
6115.92.60	Containing lace or net	18%	Free (IL) 4% (CA) 9.6% (MX)	90%	
6115.92.90	Other	14.2%	Free (IL) 2.8% (CA) 7.3% (MX)	51%"	

182. Subheadings 6115.93.10, 6115.93.15 and 6115.93.20 are superseded by the following:

	[Panty...:]				
	[Other:]				
	[Of synthetic fibers:]				
"6115.93.30	Surgical stockings with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%	
	Other:				
6115.93.60	Containing lace or net	19.6%	Free (IL) 4% (CA) 9.6% (MX)	90%	
6115.93.90	Other	15.3%	Free (IL) 3.1% (CA) 7.6% (MX)	51%"	

Conforming change: The article description of subheading 9905.90.09 is modified by deleting the expression "subheading 9021.19" and inserting the expression "subheading 6115.12.10, 6115.19.20, 6115.92.30, 6115.93.30 or 9021.19" in lieu thereof.

183. The article description of subheading 6116.10 is modified to read as follows:

"Impregnated, coated or covered with plastics or rubber:"

184. Subdivision (a) of note 3 to chapter 62 is modified to read as follows:

"(a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and
- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

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184. (con.):

All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

If several separate components to cover the lower part of the body are presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

The term "suit" includes the following sets of garments, whether or not they fulfill all the above conditions:

- morning dress, comprising a plain jacket (cutaway) with rounded tails hanging well down at the back and striped trousers;
- evening dress (tailcoat), generally made of black fabric, the jacket of which is relatively short at the front, does not close and has narrow skirts cut in at the hips and hanging down behind;
- dinner jacket suits, in which the jacket is similar in style to an ordinary jacket (though perhaps revealing more of the shirt front), but has shiny silk or imitation silk lapels."

185. Subheading 6305.31.00 is superseded by the following:

	[Sacks...:]				
	[Of man-made...:]				
"6305.32.00	Flexible intermediate bulk containers....	9.3%	Free (IL) 1.9% (CA) 5.1% (MX)	103%	
6305.33.00	Other, of polyethylene or polypropylene strip or the like.....	9.3%	Free (IL) 1.9% (CA) 5.1% (MX)	103%"	

186(a). Subdivision (a) of note 1 to chapter 64 is modified to read as follows:

"(a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;"

(b). Subdivisions (b) through (e) of note 1 to chapter 64 are redesignated as subdivisions (c) through (f), respectively, and the following new subdivision (b) is inserted:

"(b) Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI);"

187. Note 2 to chapter 64 is modified to read as follows:

"2. For the purposes of heading 6406, the term "parts" does not include pegs, protectors, eyelets, hooks, buckles, ornaments, braid, laces, pompons or other trimmings (which are to be classified in their appropriate headings) or buttons or other goods of heading 9606."

188. Note 3 to chapter 64 is modified to read as follows:

"3. For the purposes of this chapter:

(a) The terms "rubber" and "plastics" include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting change of color; and

(b) The term "leather" refers to the goods of headings 4104 to 4109."

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189(a). Subheading note 1 to chapter 64 is modified by deleting the expressions "6402.11" and "6403.11" and substituting the expressions "6402.12" and "6403.12", respectively, in lieu thereof.

(b). Subdivision (b) of such subheading note 1 is modified by inserting the expression "snowboard boots," after the expression "cross-country ski footwear,".

190. The article description of subheading 6401.92.30 is modified to read as follows:

"Ski-boots and snowboard boots"

191. Subheading 6402.11.00 is superseded by the following:

	[Other...:]				
	[Sports...:]				
"6402.12.00	Ski-boots, cross-country ski footwear and snowboard boots.....	3.6%	Free (IL,MX) 1.2% (CA)	35%"	

192. Subheadings 6403.11, 6403.11.30 and 6403.11.60 are superseded by the following:

	[Footwear...]				
	[Sports...:]				
"6403.12	Ski-boots, cross-country ski footwear and snowboard boots:				
6403.12.30	Welt footwear.....	Free		20%	
6403.12.60	Other.....	6%	Free (IL,MX) 2% (CA)	20%"	

193. Subheading 6810.20.00 is deleted.

194. The article description of heading 6815 is modified by deleting the expression "including articles of peat)" and inserting the expression "including carbon fibers, articles of carbon fibers and articles of peat)" in lieu thereof.

195. Subdivisions (b) through (l) of note 2 to chapter 69 are redesignated as subdivisions (c) through (m), respectively, and the following new subdivision (b) is inserted:

"(b) Articles of heading 6804;"

196. The article description of subheading 6903.10.00 is modified to read as follows:

"Containing by weight more than 50 percent of graphite or other carbon or of a mixture of these products"

197. The following new subheading 6909.12.00 is inserted in numerical sequence:

	[Ceramic...:]				
	[Ceramic...:]				
"6909.12.00	Articles having a hardness equivalent to 9 or more on the Mohs scale.....	6.4%	Free (A,E,IL,J, MX) 1.6% (CA)	45%"	

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198. Subdivision (c) of note 2 to chapter 70 is modified to read as follows:

"(c) The expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infrared light; or which improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."

199(a). The article description of heading 7003 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7003.11.00 is redesignated as subheading 7003.12.00, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

200(a). The article description of heading 7004 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7004.10 is redesignated as subheading 7004.20, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(c). Subheading 7004.10.10 is redesignated as 7004.20.10, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(d). Subheadings 7004.10.20 and 7004.10.50 are redesignated as 7004.20.20 and 7004.20.50, respectively.

201(a). The article description of heading 7005 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7005.10 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

202. Subheadings 7010.90 and 7010.90.05 through 7010.90.50 are superseded by the following:

	[Carboys,...:]				
*7010.20	Stoppers, lids and other closures:				
7010.20.20	Produced by automatic machine.....	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%	
7010.20.30	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%	

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202. (con.):

	[Carboys,...:] [con.]				
	Other, of a capacity:				
7010.91	Exceeding 1 liter:				
7010.91.05	Serum bottles, vials and other pharmaceutical containers.....	Free			50¢/ gross
	Containers (with or without their closures) of a kind used for the conveyance or packing of perfume or other toilet preparations; other containers if fitted with or designed for use with ground glass stoppers:				
7010.91.20	Produced by automatic machine.....	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%	
7010.91.30	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%	
7010.91.50	Other containers (with or without their closures).....	Free			4.9%
7010.92	Exceeding 0.33 liter but not exceeding 1 liter:				
7010.92.05	Serum bottles, vials and other pharmaceutical containers.....	Free			50¢/ gross
	Containers (with or without their closures) of a kind used for the conveyance or packing of perfume or other toilet preparations; other containers if fitted with or designed for use with ground glass stoppers:				
7010.92.20	Produced by automatic machine.....	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%	
7010.92.30	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%	
7010.92.50	Other containers (with or without their closures).....	Free			4.9%
7010.93	Exceeding 0.15 liter but not exceeding 0.33 liter:				
7010.93.05	Serum bottles, vials and other pharmaceutical containers.....	Free			50¢/ gross

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202. (con.):

	[Carboys,...:] [con.]				
	Other, of a capacity (con.):				
7010.93 (con.)	Exceeding 0.15 liter but not exceeding 0.33 liter (con.):				
	Containers (with or without their closures) of a kind used for the conveyance or packing of perfume or other toilet preparations; other containers if fitted with or designed for use with ground glass stoppers:				
7010.93.20	Produced by automatic machine	3.2%	Free (A,E,IL,J,MX) 0.7% (CA)	25%	
7010.93.30	Other	6.6%	Free (A,E,IL,J,MX) 1.5% (CA)	75%	
7010.93.50	Other containers (with or without their closures)	Free		4.9%	
7010.94	Not exceeding 0.15 liter:				
7010.94.05	Serum bottles, vials and other pharmaceutical containers	Free		50¢/gross	
	Containers (with or without their closures) of a kind used for the conveyance or packing of perfume or other toilet preparations; other containers if fitted with or designed for use with ground glass stoppers:				
7010.94.20	Produced by automatic machine	3.2%	Free (A,E,IL,J,MX) 0.7% (CA)	25%	
7010.94.30	Other	6.6%	Free (A,E,IL,J,MX) 1.5% (CA)	75%	
7010.94.50	Other containers (with or without their closures)	Free		4.9%*	

203. Subheadings 7019.10 through 7019.90.50 are superseded by the following:

	[Glass...:]				
	*Slivers, rovings, yarn and chopped strands:				
7019.11.00	Chopped strands, of a length of not more than 50 mm	5.7%	Free (A,CA,E,IL,J,MX)	50%	
7019.12.00	Rovings	5.5%	Free (A,E,IL,J,MX) 1.2% (CA)	50%	

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203. (con.):

	[Glass...:] [con.]				
	Slivers, rovings, yarn and chopped strands (con.):				
7019.19	Other:				
	Yarns:				
	Not colored:				
7019.19.05	Fiberglass rubber reinforcing yarn, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%	
7019.19.15	Other	7.2%	Free (CA,IL) 4.1% (MX)	50%	
	Colored:				
7019.19.24	Fiberglass rubber reinforcing yarn, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		60%	
7019.19.28	Other	9.1%	Free (CA,IL) 5.2% (MX)	60%	
7019.19.30	Chopped strands, of a length more than 50 mm	5.7%	Free (A,CA,E,IL,J,MX)	50%	
7019.19.70	Fiberglass rubber reinforcing cord, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%	
7019.19.90	Other	4.2%	Free (CA,E*,IL,J*) 2.4% (MX)	50%	

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203. (con.):

	[Glass...:] [con.]			
	Thin sheets (voiles), webs, mats, mattresses, boards and similar nonwoven products:			
7019.31.00	Mats	5.4%	Free (A,B,CA,E, IL,J,MX)	50%
7019.32.00	Thin sheets (voiles)	5.4%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.39	Other:			
7019.39.10	Insulation products	5.7%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.39.50	Other	5.7%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.40	Woven fabrics of rovings:			
	Of a width not exceeding 30 cm:			
7019.40.05	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%
7019.40.15	Other	6%	Free (IL) 1.2% (CA) 3.3% (MX)	50%
	Other:			
	Not colored:			
7019.40.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%
7019.40.40	Other	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)	50%
	Colored:			
7019.40.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		60%
7019.40.90	Other	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)	60%

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203. (con.):

	[Glass...:] [con.]			
	Other woven fabrics:			
7019.51	Of a width not exceeding 30 cm:			
7019.51.10	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%
7019.51.90	Other	6%	Free (IL) 1.2% (CA) 3.3% (MX)	50%
7019.52	Of a width exceeding 30 cm, plain weave, weighing less than 250 g/m^2, of filaments measuring per single yarn not more than 136 tex:			
	Not colored:			
7019.52.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		50%
7019.52.40	Other	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)	50%
	Colored:			
7019.52.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free		60%
7019.52.90	Other	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)	60%

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203. (con.):

	[Glass...:] [con.]				
	Other woven fabrics (con.):				
7019.59	Other:				
	Not colored:				
7019.59.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free			50%
7019.59.40	Other	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)		50%
	Colored:				
7019.59.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds	Free			60%
7019.59.90	Other	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)		60%
7019.90	Other:				
7019.90.10	Woven	6.1%	Free (E,IL,J,MX) 1.3% (CA)		60%
7019.90.50	Other	5.4%	Free (A,B,E,IL, J,MX) 1.2% (CA)		50%"

Conforming change: Additional U.S. note 6 to chapter 70 is deleted.

204(a). Subdivisions (d) through (o) of note 3 to chapter 71 are redesignated as (e) through (p), respectively, and the following new subdivision (d) is inserted:

"(d) Supported catalysts (heading 3815);"

(b). Subdivision (e) (as redesignated) of note 3 to chapter 71 is modified to read as follows:

"(e) Articles of heading 4202 or 4203 referred to in note 2(B) to chapter 42;"

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205. Notes 8, 9 and 10 to chapter 71 are redesignated as notes 9, 10 and 11, respectively, and the following new note 8 is inserted in numerical sequence:

"8. Subject to note 1(a) to section VI, goods answering to a description in heading 7112 are to be classified in that heading and in no other heading of the tariff schedule."

Conforming change: Note 11 (as redesignated) to chapter 71 is modified by deleting the expression "note 8" and inserting the expression "note 9" in lieu thereof.

206(a). The article description of heading 7101 is modified by deleting the expression "ungraded".

(b). Subheadings 7101.10.00 and 7101.22.00 are superseded by the following:

	[Pearls,...:]				
"7101.10	Natural pearls:				
7101.10.30	Graded and temporarily strung for convenience of transport	Free			10%
7101.10.60	Other	Free			10%
	[Cultured pearls:]				
7101.22	Worked:				
7101.22.30	Graded and temporarily strung for convenience of transport	1.3%	Free (A,CA,E, IL,J,MX)		10%
7101.22.60	Other	1.3%	Free (A,CA,E, IL,J,MX)		10%"

207. The article description of heading 7112 is modified by deleting the expression "clad with precious metal:" and inserting the following in lieu thereof:

"clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal:"

208. Subheadings 7116.10.15 and 7116.10.20 are superseded by the following:

	[Articles...:]				
	[Of...:]				
"7116.10.25	Cultured	8.8%	Free (A,CA,E IL,J,MX)		110%"

209. Notes 3 through 6 to section XV are redesignated as 5 through 8, respectively, and the following new section notes 3 and 4 are inserted in numerical sequence:

"3. Throughout the schedule, the expression "base metals" means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanedium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

4. Throughout the schedule, the term "cermets" means products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term "cermets" includes sintered metal carbides (metal carbides sintered with a metal)."

210. Note 6 and note 7(b) (as redesignated) to section XV are each modified by deleting the expression "note 3" and inserting the expression "note 5" in lieu thereof.

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211. Additional U.S. note 1 to section XV is deleted, and additional U.S. note 2 is redesignated as additional U.S. note 1 and the title "Additional U.S. Notes" modified to read "Additional U.S. Note".

212(a). Subdivision (l) of note 1 to chapter 72 is modified to read as follows:

"(l) Bars and rods, hot-rolled, in irregularly wound coils

Hot-rolled products in irregularly wound coils, which have a solid cross-section in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). These products may have indentations, ribs, grooves or other deformations produced during the rolling process (reinforcing bars and rods)."

(b). Subdivision (m) of note 1 to chapter 72 is modified to read as follows:

"(m) Other bars and rods

Products which do not conform to any of the definitions at (ij), (k) or (l) above or to the definition of wire, which have a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). These products may:

- have indentations, ribs, grooves or other deformations produced during the rolling process (reinforcing bars and rods);

- be twisted after rolling."

213. Subdivision (e) of subheading note 1 to chapter 72 is modified to read as follows:

"(e) Silico-manganese steel

Alloy steels containing by weight:

- not more than 0.7 percent of carbon,

- 0.5 percent or more but not more than 1.9 percent of manganese, and

- 0.6 percent or more but not more than 2.3 percent of silicon, but no other element in a proportion that would give the steel the characteristics of another alloy steel."

214. Subheadings 7201.30.00 and 7201.40.00 are superseded by the following:

	[Pig...:]				
"7201.50	Alloy pig iron; spiegeleisen:				
7201.50.30	Alloy pig iron.....	Free			$1.11/t
7201.50.60	Spiegeleisen.....	0.1%	Free (CA,E,IL,J, MX)		0.5%"

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215. Heading 7208 (including its subordinate provisions) is superseded by the following:

"7208	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:			
7208.10	In coils, not further worked than hot-rolled, with patterns in relief:			
7208.10.15	Pickled.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
	Other:			
7208.10.30	Of a thickness of 4.75 mm or more.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.10.60	Of a thickness of less than 4.75 mm.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
	Other, in coils, not further worked than hot-rolled, pickled:			
7208.25	Of a thickness of 4.75 mm or more:			
7208.25.30	Of high-strength steel.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.25.60	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7208.26.00	Of a thickness of 3 mm or more but less than 4.75 mm.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7208.27.00	Of a thickness of less than 3 mm.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
	Other, in coils, not further worked than hot-rolled:			
7208.36.00	Of a thickness exceeding 10 mm.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.37.00	Of a thickness of 4.75 mm or more but not exceeding 10 mm.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.38.00	Of a thickness of 3 mm or more but less than 4.75 mm.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
7208.39.00	Of a thickness of less than 3 mm.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
7208.40	Not in coils, not further worked than hot-rolled, with patterns in relief:			
7208.40.30	Of a thickness of 4.75 mm or more.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.40.60	Of a thickness less than 4.75 mm.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%

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215. (con.):

7208 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated (con.): Other, not in coils, not further worked than hot-rolled:				
7208.51.00	Of a thickness exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7208.52.00	Of a thickness of 4.75 mm or more but not exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7208.53.00	Of a thickness of 3 mm or more but less than 4.75 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
7208.54.00	Of a thickness of less than 3 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
7208.90.00	Other	4%	Free (E,IL,J) 1% (CA) 3.5% (MX)	20%"	

216. Heading 7209 (including its subordinate provisions) is superseded by the following:

"7209	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated: In coils, not further worked than cold-rolled (cold-reduced):				
7209.15.00	Of a thickness of 3 mm or more	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.16.00	Of a thickness exceeding 1 mm but less than 3 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.17.00	Of a thickness of 0.5 mm or more but not exceeding 1 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.18	Of a thickness of less than 0.5 mm:				
7209.18.15	Of high-strength steel	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
	Other:				
7209.18.25	Of a thickness of less than 0.361 mm (blackplate)	2.6%	Free (E,IL,J) 0.6% (CA) 2.2% (MX)	20%	
7209.18.60	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	

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216. (con.):

7209 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated (con.): Not in coils, not further worked than cold-rolled (cold-reduced):				
7209.25.00	Of a thickness of 3 mm or more	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.26.00	Of a thickness exceeding 1 mm but less than 3 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.27.00	Of a thickness of 0.5 mm or more but not exceeding 1 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.28.00	Of a thickness of less than 0.5 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.90.00	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%"	

217. Subheadings 7210.31.00 and 7210.39.00 and the superior text thereto reading "Electrolytically plated or coated with zinc:" are superseded by the following:

	[Flat-rolled...:]				
"7210.30.00	Electrolytically plated or coated with zinc	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%"	

218. Subheading 7210.60.00 is superseded by the following:

	[Flat-rolled...:] "Plated or coated with aluminum:				
7210.61.00	Plated or coated with aluminum-zinc alloys	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%	
7210.69.00	Other	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%"	

219. Heading 7211 (including its subordinate provisions) is superseded by the following:

"7211	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated: Not further worked than hot-rolled:				
7211.13.00	Universal mill plate	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7211.14.00	Other, of a thickness of 4.75 mm or more	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	

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219. (con.):

7211 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated (con.):				
	Not further worked than hot-rolled (con.):				
7211.19	Other:				
	Of a width of less than 300 mm:				
7211.19.15	Of high-strength steel.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
	Other:				
7211.19.20	Of a thickness exceeding 1.25 mm.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
7211.19.30	Other.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
	Other:				
7211.19.45	Of high-strength steel.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
	Other:				
7211.19.60	Pickled.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7211.19.75	Other.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
	Not further worked than cold-rolled (cold-reduced):				
7211.23	Containing by weight less than 0.25 percent of carbon:				
	Of a width of less than 300 mm:				
	Of a thickness exceeding 1.25 mm:				
7211.23.15	Of high-strength steel.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
7211.23.20	Other.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
7211.23.30	Of a thickness exceeding 0.25 mm but not exceeding 1.25 mm.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
7211.23.45	Of a thickness not exceeding 0.25 mm.....	1.9%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%	
7211.23.60	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	

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219. (con.):

7211 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated (con.):				
	Not further worked than cold-rolled (cold-reduced) (con.):				
7211.29	Other:				
	Of a width of less than 300 mm:				
7211.29.20	Of a thickness exceeding 0.25 mm.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
7211.29.45	Other.....	1.9%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%	
7211.29.60	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7211.90.00	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	20%*	

220. Subheadings 7212.21.00 and 7212.29.00 and the superior text thereto reading "Electrolytically plated or coated with zinc:" are superseded by the following:

	[Flat-rolled...:]				
"7212.20.00	Electrolytically plated or coated with zinc.....	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%*	

221. Heading 7213 (including its subordinate provisions) is superseded by the following:

"7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or nonalloy steel:				
7213.10.00	Concrete reinforcing bars and rods.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
7213.20.00	Other, of free-cutting steel.....	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%	
	Other:				
7213.91	Of circular cross section measuring less than 14 mm in diameter:				
7213.91.30	Not tempered, not treated and not partly manufactured.....	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%	
	Other:				
7213.91.45	Containing by weight 0.6 percent or more of carbon.....	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%	
7213.91.60	Other.....	1.8%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	6%	
7213.99.00	Other.....	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%*	

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222. Subheadings 7214.30.00 through 7214.60.00 are superseded by the following:

	[Other...:]				
"7214.30.00	Other, of free-cutting steel.....	3.8%		Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%
	Other:				
7214.91.00	Of rectangular (other than square) cross section.....	3.8%		Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%
7214.99.00	Other.....	3.8%		Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%"

223. Subheadings 7215.20.00, 7215.30.00, and 7215.40.00 are superseded by the following:

	[Other...:]				
"7215.50.00	Other, not further worked than cold-formed or cold-finished.....	6%		Free (E,IL,J) 1.5% (CA) 5.2% (MX)	0.3¢/kg + 20%"

224. Subheadings 7216.60.00 and 7216.90.00 are superseded by the following:

	[Angles,...:]				
	"Angles, shapes and sections, not further worked than cold-formed or cold-finished:				
7216.61.00	Obtained from flat-rolled products.....	3.9%		Free (A,E,IL,J,MX) 0.9% (CA)	20%
7216.69.00	Other.....	3.9%		Free (A,E,IL,J,MX) 0.9% (CA)	20%
	Other:				
7216.91.00	Cold-formed or cold-finished from flat-rolled products.....	3.5%		Free (E,IL,J) 0.8% (CA) 3% (MX)	20%
7216.99.00	Other.....	3.5%		Free (E,IL,J) 0.8% (CA) 3% (MX)	20%"

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225. Heading 7217 (including its subordinate provisions) is superseded by the following:

"7217	Wire of iron or nonalloy steel:				
7217.10	Not plated or coated, whether or not polished:				
	Containing by weight less than 0.25 percent of carbon:				
	Flat wire:				
7217.10.10	Of a thickness not exceeding 0.25 mm.....	3.4%		Free (E,IL,J) 0.8% (CA) 2.9% (MX)	25%
7217.10.20	Of a thickness exceeding 0.25 mm but not exceeding 1.25 mm	2.6%		Free (E,IL,J) 0.6% (CA) 2.2% (MX)	25%
7217.10.30	Of a thickness exceeding 1.25 mm.....	4.1%		Free (E,IL,J) 1% (CA) 3.5% (MX)	25%
	Round wire:				
7217.10.40	With a diameter of less than 1.5 mm.....	4.2%		Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
7217.10.50	With a diameter of 1.5 mm or more.....	1.2%		Free (E,IL,J) 0.3% (CA) 1% (MX)	7%
7217.10.60	Other wire.....	4.4%		Free (E,IL,J) 1.1% (CA) 3.8% (MX)	25%
	Other:				
7217.10.70	Flat wire.....	2.6%		Free (E,IL,J) 0.6% (CA) 2.2% (MX)	25%
7217.10.80	Round wire.....	4.2%		Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
7217.10.90	Other wire.....	4.4%		Free (E,IL,J) 1.1% (CA) 3.8% (MX)	25%
7217.20	Plated or coated with zinc:				
7217.20.15	Flat wire.....	4.2%		Free (E,IL,J) 1% (CA) 3.6% (MX)	26%
	Round wire:				
7217.20.30	With a diameter of 1.5 mm or more and containing by weight less than 0.25 percent of carbon.....	1.2%		Free (E,IL,J) 0.3% (CA) 1% (MX)	7%
7217.20.45	Other.....	4.2%		Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
	Other:				
7217.20.60	Containing by weight less than 0.25 percent of carbon.....	4.5%		Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%
7217.20.75	Other.....	4.2%		Free (E,IL,J) 1% (CA) 3.6% (MX)	26%

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225. (con.):

7217 (con.)	Wire of iron or nonalloy steel (con.):				
7217.30	Plated or coated with other base metals:				
7217.30.15	Flat wire	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%	
	Round wire:				
7217.30.30	With a diameter of 1.5 mm or more and containing by weight less than 0.25 percent of carbon	1.2%	Free (E,IL,J) 0.3% (CA) 1% (MX)	7%	
7217.30.45	Other	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	25%	
	Other:				
7217.30.60	Containing by weight less than 0.25 percent of carbon	4.5%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
7217.30.75	Other	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%	
7217.90	Other:				
7217.90.10	Coated with plastics	0.7%	Free (E,IL,J) 0.1% (CA) 0.6% (MX)	2%	
7217.90.50	Other	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	35%*	

226. Subheading 7218.90.00 is superseded by the following:

	[Stainless...:]				
	"Other:				
7218.91.00	Of rectangular (other than square) cross-section	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	29%	
7218.99.00	Other	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	29%*	

227. Subheading 7222.10 is superseded by the following:

	[Other...:]				
	"Bars and rods, not further worked than hot-rolled, hot-drawn or extruded:				
7222.11.00	Of circular cross-section	8.5%	Free (E,IL,J) 2.1% (CA) 7.4% (MX)	29%	
7222.19.00	Other	8.5%	Free (E,IL,J) 2.1% (CA) 7.4% (MX)	29%*	

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228. Subheading 7225.10.00 is superseded by the following:

	[Flat-rolled...:]				
	"Of silicon electrical steel:				
7225.11.00	Grain-oriented	4.6%	Free (CA,E,IL,J,MX)	28%	
7225.19.00	Other	4.6%	Free (CA,E,IL,J,MX)	28%*	

229. Subheading 7225.90.00 is superseded by the following:

	[Flat-rolled...:]				
	"Other:				
7225.91.00	Electrolytically plated or coated with zinc	4.6%	Free (A,E,IL,J,MX) 1.1% (CA)	28%	
7225.92.00	Otherwise plated or coated with zinc	4.6%	Free (A,E,IL,J,MX) 1.1% (CA)	28%	
7225.99.00	Other	4.6%	Free (A,E,IL,J,MX) 1.1% (CA)	28%*	

230. Subheadings 7226.10, 7226.10.10 and 7226.10.50 are superseded by the following:

	[Flat-rolled...:]				
	"Of silicon electrical steel:				
7226.11	Grain-oriented:				
7226.11.10	Of a width of 300 mm or more	4.6%	Free (CA,E,IL,J,MX)	28%	
7226.11.90	Of a width of less than 300 mm	5.6%	Free (CA,E,IL,J,MX)	33%	
7226.19	Other:				
7226.19.10	Of a width of 300 mm or more	4.6%	Free (CA,E,IL,J,MX)	28%	
7226.19.90	Of a width of less than 300 mm	5.6%	Free (CA,E,IL,J,MX)	33%*	

231. The following new subheadings 7226.93.00 and 7226.94.00 are inserted in numerical sequence:

	[Flat-rolled...:]				
	[Other:]				
"7226.93.00	Electrolytically plated or coated with zinc	5%	Free (E,IL,J) 1.2% (CA) 4.4% (MX)	33%	
7226.94.00	Otherwise plated or coated with zinc	5%	Free (E,IL,J) 1.2% (CA) 4.4% (MX)	33%*	

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232. Subheadings 7304.20 through 7304.20.80 are superseded by the following:

	[Tubes,...:]				
	"Casing, tubing and drill pipe, of a kind				
	used in drilling for oil or gas:				
7304.21	Drill pipe:				
7304.21.30	Of iron or nonalloy steel.....	6.4%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	25%	
7304.21.60	Of alloy steel.....	6%	Free (E,IL,J) 1.5% (CA) 5.2% (MX)	35%	
7304.29	Other:				
	Casing:				
	Of iron or nonalloy steel:				
7304.29.10	Threaded or coupled.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7304.29.20	Other.....	0.4%	Free (E,IL,J) 0.1% (CA) 0.3% (MX)	1%	
	Of alloy steel:				
7304.29.30	Threaded or coupled.....	5%	Free (E,IL,J) 1.2% (CA) 4.3% (MX)	28%	
7304.29.40	Other.....	2.6%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	8.5%	
	Tubing:				
7304.29.50	Of iron or nonalloy steel.....	6.4%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	25%	
7304.29.60	Of alloy steel.....	6%	Free (E,IL,J) 1.5% (CA) 5.2% (MX)	35%"	

233. The article description of heading 7305 is modified by deleting the expression "internal and external" before the expression "circular cross sections".

234. Subheadings 7314.11 (including its immediately superior text reading "Woven products:") through 7314.50.00, inclusive, are superseded by the following:

	[Cloth...:]				
	"Woven cloth:				
7314.12	Endless bands for machinery, of stainless steel:				
7314.12.10	With meshes not finer than 12 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL,J,MX) 0.9% (CA)	35%	
7314.12.20	With meshes finer than 12 but not finer than 36 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL,J,MX) 0.9% (CA)	50%	

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234. (con.):

	[Cloth...:] [con.]				
	Woven cloth (con.):				
7314.12 (con.)	Endless bands for machinery, of stainless steel (con.):				
	With meshes finer than 36 wires to the lineal centimeter in warp or filling:				
	Fourdrinier wires, seamed or not seamed, suitable for use in papermaking machines:				
7314.12.30	With 94 or more wires to the lineal centimeter.....	Free		75%	
7314.12.60	Other.....	8%	Free (A,E,IL,J,MX) 2% (CA)	75%	
7314.12.90	Other.....	5.8%	Free (A,B,E,IL,J,MX) 1.4% (CA)	60%	
7314.13.00	Other endless bands for machinery.....	3.9%	Free (A,B,E,IL,J) 0.9% (CA) 3.4% (MX)	60%	
7314.14	Other woven cloth, of stainless steel:				
7314.14.10	With meshes not finer than 12 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL,J,MX) 0.9% (CA)	35%	
7314.14.20	With meshes finer than 12 but not finer than 36 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL,J,MX) 0.9% (CA)	50%	
	With meshes finer than 36 wires to the lineal centimeter in warp or filling:				
	Fourdrinier wires, seamed or not seamed, suitable for use in papermaking machines:				
7314.14.30	With 94 or more wires to the lineal centimeter.....	Free		75%	
7314.14.60	Other.....	8%	Free (A,E,IL,J,MX) 2% (CA)	75%	
7314.14.90	Other.....	5.8%	Free (A,B,E,IL,J,MX) 1.4% (CA)	60%	
7314.19.00	Other.....	3.9%	Free (A,B,E,IL,J) 0.9% (CA) 3.4% (MX)	60%	
7314.20.00	Grill, netting and fencing, welded at the intersection, of wire with a maximum cross-sectional dimension of 3 mm or more and having a mesh size of 100 cm^2 or more.....	4.6%	Free (A,E,IL,J,MX) 1.1% (CA)	45%	

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234. (con.):

	[Cloth...:] [con.] Other grill, netting and fencing, welded at the intersection:				
7314.31	Plated or coated with zinc:				
7314.31.10	Wire fencing coated or plated with zinc, whether or not covered with plastics material	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg	
7314.31.50	Other	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%	
7314.39.00	Other	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%	
	Other cloth, grill, netting and fencing:				
7314.41.00	Plated or coated with zinc	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg	
7314.42.00	Coated with plastics	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg	
7314.49	Other:				
7314.49.30	Not cut to shape	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%	
7314.49.60	Cut to shape	3.8%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%	
7314.50.00	Expanded metal	3%	Free (A,CA,E,IL, J,MX)	45%"	

235. Subheading 7414.10 is redesignated as subheading 7414.20, the article description "Endless bands, for machinery:" is deleted and "Cloth:" is inserted in lieu thereof, and subheadings 7414.10.30, 7414.10.60, and 7414.10.90 are redesignated as 7414.20.30, 7414.20.60, and 7414.20.90, respectively.

236. Subheadings 7418.10 through 7418.10.50 are superseded by the following:

	[Table,...:] "Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:				
7418.11	Pot scourers and scouring or polishing pads, gloves and the like:				
7418.11.20	Of copper-zinc base alloys (brass)	3.4%	Free (A,E,IL,J, MX) 0.7% (CA)	40%	
7418.11.40	Other	4.1%	Free (A,E,IL,J, MX) 0.9% (CA)	40%	
7418.19	Other:				
7418.19.10	Coated or plated with precious metals	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	50%	

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236. (con.):

	[Table,...:] [con.] Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like (con.):				
7418.19 (con.)	Other (con.):				
	Other:				
7418.19.20	Of copper-zinc base alloys (brass)	3.4%	Free (A,E,IL,J, MX) 0.7% (CA)	40%	
7418.19.50	Other	4.1%	Free (A,E,IL,J, MX) 0.9% (CA)	40%"	

237. The following new subheading note 2 to chapter 75 is added, and the title "Subheading Note" is modified to read "Subheading Notes":

"2. Notwithstanding the provisions of chapter note 1 (c), for the purposes of subheading 7508.10 the term "wire" applies only to products, whether or not in coils, of any cross-sectional shape, of which no cross-sectional dimension exceeds 6 mm."

238. Heading 7508.00 and subheadings 7508.00.10 and 7508.00.50 are superseded by the following:

"7508	Other articles of nickel:				
7508.10.00	Cloth, grill and netting, of nickel wire	4.5%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%	
7508.90	Other:				
7508.90.10	Stranded wire	4%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%	
7508.90.50	Other	4.5%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"	

239. The following new subheading note 2 to chapter 76 is added, and the title "Subheading Note" is modified to read "Subheading Notes":

"2. Notwithstanding the provisions of chapter note 1 (c), for the purposes of subheading 7616.91 the term "wire" applies only to products, whether or not in coils, of any cross-sectional shape, of which no cross-sectional dimension exceeds 6 mm."

240. Subheadings 7615.10 through 7615.10.90, inclusive, are superseded by the following:

	[Table,...:] "Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:				
7615.11.00	Pot scourers and scouring or polishing pads, gloves and the like	3.5%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%	

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240. (con.):

	[Table,...:] [con.] Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like (con.):				
7615.19	Other:				
	Cooking and kitchen ware:				
	Enameled or glazed or containing nonstick interior finishes:				
7615.19.10	Cast	3.6%	Free (A*,E,IL,J, MX) 0.7% (CA)	45.5%	
7615.19.30	Other	4.7%	Free (A,E,IL,J, MX) 1.1% (CA)	45.5%	
	Not enameled or glazed and not containing nonstick interior finishes:				
7615.19.50	Cast	3.6%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%	
7615.19.70	Other	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	45.5%	
7615.19.90	Other	3.5%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%"	

Conforming change: General note 4(d) is modified by deleting "7615.10.10 Thailand" and by inserting in lieu thereof "7615.19.10 Thailand".

241. Subheading 7616.90 and subheadings 7616.90.10 and 7616.90.50 are superseded by the following:

	[Other:] "Other:				
7616.91.00	Cloth, grill, netting and fencing, of aluminum wire	4.4%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%	
7616.99	Other:				
7616.99.10	Luggage frames	Free		45%	
7616.99.50	Other	4.4%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"	

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242. Heading 7907 is redesignated as 7907.00, and subheadings 7907.10.00 through 7907.90.60 are superseded by the following:

	[Other...:]				
"7907.00.10	Articles of a type used for household, table or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof of zinc	3.2%	Free (A,E,IL,J, MX) 0.6% (CA)	40%	
7907.00.60	Other	4.6%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"	

243. Heading 8005 is redesignated as 8005.00, and subheadings 8005.10.00 and 8005.20.00 are redesignated as 8005.00.10 and 8005.00.20, respectively.

244. Subheading 8202.32.00 is redesignated as 8202.39.00, and its article description is modified to read as follows:

"Other, including parts"

245(a). Subheadings 8207.11.00, 8207.12, 8207.12.30, and 8207.12.60 are redesignated as 8207.13.00, 8207.19, 8207.19.30, and 8207.19.60, respectively.

(b). The article description of subheading 8207.13.00 (as redesignated) is modified to read as follows:

"With working part of cermets"

(c). The article description of subheading 8207.19 is modified to read as follows:

"Other, including parts:"

246. The article description of heading 8209 is modified by deleting "sintered metal carbides or".

247(a). The article descriptions of subheadings 8211.91 and 8211.92 are each modified by deleting the expression ", and parts thereof".

(b). The article description of subheading 8211.91.60 is modified by deleting the expression "(including parts)"; such subheading is redesignated as 8211.91.80; and subheading 8211.92.80 is redesignated as 8211.92.90.

(c). The article description of subheading 8211.93.00 is modified by deleting the expression ", and parts thereof (except blades)".

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247. (con.)

(d). The following new subheadings are inserted in numerical sequence:

	[Knives...:]			
	[Other:]			
"8211.95	Handles of base metal:			
8211.95.10	For table knives having fixed blades.....	0.4¢ each + 5.6%	Free (A,E,IL, J,MX) 1.2% (CA)	8¢ each + 45%
8211.95.50	For other knives having fixed blades.....	0.4¢ each + 6.1%	Free (A,E,IL, J,MX) 1.2% (CA)	8¢ each + 45%
8211.95.90	Other.....	3¢ each + 5.4%	Free (A,E,IL, J,MX) 0.5¢ each + 0.9% (CA)	35¢ each + 55%"

248. Subdivision (o) of note 1 to section XVI is modified by deleting the expression "Interchangeable tools of heading 8207 or brushes of a kind used as parts of machines of heading 9603;" and by inserting in lieu thereof the following:

"Interchangeable tools of heading 8207 or brushes of a kind used as parts of machines (heading 9603);"

249(a). Subdivision (a) of note 2 to section XVI is modified by deleting the expression "(other than headings 8485 and 8548)" and inserting the expression "(other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548)" in lieu thereof.

(b). Subdivision (b) of note 2 to section XVI is modified by deleting the expression "of that kind" and inserting the expression "of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate".

(c). Subdivision (c) of note 2 to section XVI is modified to read as follows:

"(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548."

250. Subdivision (b) of note 1 to chapter 84 is modified to read as follows:

"(b) Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (chapter 69);"

251. The following new last paragraph of note 2 to chapter 84 is inserted:

"Heading 8424 does not cover:

Ink-jet printing machines (heading 8443 or 8471)."

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252. Note 4 to chapter 84 is modified to read as follows:

"4. Heading 8457 applies only to machine tools for working metal, other than lathes (including turning centers), which can carry out different types of machining operations either:

(a) by automatic tool change from a magazine or the like in conformity with a machining program (machining centers),

(b) by the automatic use, simultaneously or sequentially, of different unit heads working on a fixed position workpiece (unit construction machines, single station), or

(c) by the automatic transfer of the workpiece to different unit heads (multi-station transfer machines)."

253. Subdivision (B) and the final paragraph of note 5 to chapter 84 are modified to read as follows:

"(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:

(a) It is of a kind solely or principally used in an automatic data processing system;

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471.

(D) Printers, keyboards, X-Y coordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading 8471.

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."

254. The following new note 8 to chapter 84 is inserted in numerical sequence:

"8. For the purposes of heading 8470, the term "pocket-size" applies only to machines the dimensions of which do not exceed 170 mm x 100 mm x 45 mm."

255. Subheading note 1 to chapter 84 is redesignated as subheading note 2, the existing title thereto is modified to read "Subheading Notes", and the following new subheading note 1 is inserted thereafter:

"1. For the purposes of subheading 8471.49, the term "systems" means automatic data processing machines whose units satisfy the conditions laid down in note 5(B) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer)."

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256. Subheadings 8406.11 (and the superior text thereto reading "Turbines:"), 8406.11.10, 8406.11.90, 8406.19, 8406.19.10 and 8406.19.90 are superseded by the following:

	[Steam...:]			
"8406.10	Turbines for marine propulsion:			
8406.10.10	Steam turbines	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.10.90	Other	2.7%	Free (A,CA,E,IL, J,MX)	27.5%
	Other turbines:			
8406.81	Of an output exceeding 40 MW:			
8406.81.10	Steam turbines	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.81.90	Other	2.7%	Free (A,CA,E,IL, J,MX)	27.5%
8406.82	Of an output not exceeding 40 MW:			
8406.82.10	Steam turbines	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.82.90	Other	2.7%	Free (A,CA,E,IL, J,MX)	27.5%"

257. The following new subheading 8415.20.00 is inserted in numerical sequence:

	[Air...:]			
"8415.20.00	Of a kind used for persons, in motor vehicles	1.9%	Free (A,B,CA,E, IL,J,MX)	35%"

258. The article description of heading 8422 is modified to read as follows:

"Dishwashing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages; parts thereof:"

259. The article description of subheading 8422.30 is modified to read as follows:

"Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages:"

260. The article description of subheading 8422.40 is modified to read as follows:

"Other packing or wrapping machinery (including heat-shrink wrapping machinery):"

261(a). The article description of heading 8443 is modified to read as follows:

"Printing machinery, including ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:"

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261. (con.)

(b). Subheadings 8443.50, 8443.50.10 and 8443.50.50 are superseded by the following:

	[Printing...:]			
	"Other printing machinery:			
8443.51	Ink-jet printing machinery:			
8443.51.10	Textile printing machinery	4.1%	Free (A,CA,E,IL, J,MX)	40%
8443.51.50	Other	2%	Free (A,CA,E,IL, J,MX)	25%
8443.59	Other:			
8443.59.10	Textile printing machinery	4.1%	Free (A,CA,E,IL, J,MX)	40%
8443.59.50	Other	2%	Free (A,CA,E,IL, J,MX)	25%"

262. Subheadings 8456.90 through 8456.90.80 are superseded by the following:

	[Machine...:]			
	"Other:			
8456.91.00	For dry etching patterns on semiconductor materials	Free		35%
8456.99	Other:			
	For working metal:			
8456.99.10	Focused ion beam milling machines designed to produce or repair masks and reticles of semiconductor device designs	Free		30%
8456.99.30	Other	4%	Free (A,CA,E,IL, J,MX)	30%
8456.99.50	Other	2.7%	Free (A,CA,E,IL, J,MX)	35%"

263. The article description of heading 8458 is modified by inserting the expression "(including turning centers)" after the word "Lathes".

264. The article description of heading 8459 is modified by inserting the expression "(including turning centers)" after the word "lathes".

265. The article description of heading 8460 is modified by deleting the expression ", sintered metal carbides".

266. The article description of heading 8461 is modified by deleting the expression ", sintered metal carbides".

267. The article description of heading 8463 is modified by deleting the expression ", sintered metal carbides".

268. The article description of heading 8467 is modified by inserting the word ", hydraulic" after the word "pneumatic".

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269(a). The article description of heading 8469 is modified to read as follows:

"Typewriters other than printers of heading 8471; word processing machines:"

(b). Subheadings 8469.10 through 8469.39.00 are superseded by the following:

	[Typewriters...:] "Automatic typewriters and word processing machines:			
8469.11.00	Word processing machines	1.3%	Free (A,CA,E,IL,J,MX)	35%
8469.12.00	Automatic typewriters	1.3%	Free (A*,CA,E,IL,J,MX)	35%
8469.20.00	Other typewriters, electric	Free		Free
8469.30.00	Other typewriters, nonelectric	Free		Free"

Conforming change: General note 4(d) is modified by deleting "8469.10.80 Indonesia" and by inserting in lieu thereof "8469.12.00 Indonesia".

270(a). The article description of heading 8470 is modified to read as follows:

"Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers:"

(b). The article description of subheading 8470.10.00 is modified by deleting the expression "external source of power" and inserting the expression "external source of electric power and pocket-size data recording, reproducing and displaying machines with calculating functions" in lieu thereof.

271. Subheadings 8471.20.00 through 8471.99.90 are superseded by the following:

	[Automatic...:]			
"8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display	3.1%	Free (A,C,CA,E,IL,J,MX)	35%
	Other digital automatic data processing machines:			
8471.41.00	Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined	3.1%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49	Other, entered in the form of systems:			
8471.49.10	Digital processing units entered with the rest of a system, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units	3.1%	Free (A,C,CA,E,IL,J,MX)	35%
	Input or output units, entered with the rest of a system, whether or not containing storage units in the same housing:			
8471.49.15	Combined input/output units	2.2%	Free (A,C,CA,E,IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.] Other digital automatic data processing machines (con.):			
8471.49 (con.)	Other, entered in the form of systems (con.):			
	Input or output units, entered with the rest of a system, whether or not containing storage units in the same housing (con.):			
	Other:			
8471.49.21	Keyboards	Free		35%
	Display units:			
8471.49.24	Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm	Free		35%
	Other:			
8471.49.26	With color cathode-ray tube (CRT)	2.2%	Free (A*,C,CA,E,IL,J,MX)	35%
8471.49.29	Other	2.2%	Free (A*,C,CA,E,IL,J,MX)	35%
	Printer units:			
	Laser:			
8471.49.31	Capable of producing more than 20 pages per minute	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.32	Other	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.33	Light bar electronic type	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.34	Ink jet	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.35	Thermal transfer	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.36	Ionographic	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.37	Other	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
	Other:			
8471.49.42	Optical scanners and magnetic ink recognition devices	2.2%	Free (A,C,CA,E,IL,J,MX)	35%
8471.49.48	Other	2.2%	Free (A,C,CA,E,IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
	Other digital automatic data processing machines (con.):			
8471.49 (con.)	Other, entered in the form of systems (con.):			
8471.49.50	Storage units, entered with the rest of a system.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.49.60	Control or adapter units.....	Free		35%
8471.49.70	Power supplies.....	1.8%	Free (A,CA,E, IL,J,MX)	35%
	Other:			
8471.49.85	Units suitable for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
8471.49.95	Other.....	2.2%	Free (A,CA,E, IL,J,MX)	35%
8471.50	Digital processing units other than those of subheadings 8471.41 and 8741.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units:			
8471.50.40	Digital processing units for automatic data processing machines, unhoused, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in automatic data processing machines of subheading 8471.30 or 8471.41.....	Free		35%
8471.50.80	Other.....	3.1%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60	Input or output units, whether or not containing storage units in the same housing:			
8471.60.10	Combined input/output units.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.60.20	Keyboards.....	Free		35%
	Display units:			
8471.60.30	Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm.....	Free		35%
	Other:			
8471.60.35	With color cathode-ray tube (CRT).....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%
8471.60.45	Other.....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
8471.60 (con.)	Input or output units, whether or not containing storage units in the same housing (con.):			
	Other (con.):			
	Printer units:			
	Assembled units incorporating at least the media transport, control and print mechanisms:			
8471.60.51	Laser: Capable of producing more than 20 pages per minute.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.52	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.53	Light bar electronic type.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.54	Ink jet.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.55	Thermal transfer.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.56	Ionographic.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.57	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.60.61	Laser: Capable of producing more than 20 pages per minute.....	Free		35%
8471.60.62	Other.....	Free		35%
8471.60.63	Light bar electronic type.....	Free		35%
8471.60.64	Ink jet.....	Free		35%
8471.60.65	Thermal transfer.....	Free		35%
8471.60.66	Ionographic.....	Free		35%
8471.60.67	Other.....	Free		35%
	Other:			
8471.60.70	Units suitable for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
	Other:			
8471.60.80	Optical scanners and magnetic ink recognition devices.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.90	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
8471.70	Storage units:			
	Magnetic disk drive units:			
	For a disk of a diameter exceeding 21 cm:			
8471.70.10	Without read-write unit assembled therein; read-write units entered separately	Free		35%
8471.70.20	Units for physical incorporation into automatic data processing machines or units thereof	Free		35%
8471.70.30	Other	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.70.40	Not assembled in cabinets, and without attached external power supply	Free		35%
8471.70.50	Other	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other storage units:			
8471.70.60	Not assembled in cabinets for placing on a table, desk, wall, floor or similar place	Free		35%
8471.70.90	Other	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.80	Other units of automatic data processing machines:			
8471.80.10	Control or adapter units	Free		35%
	Other:			
8471.80.40	Units suitable for physical incorporation into automatic data processing machines	Free		35%
8471.80.90	Other	2.2%	Free (A,CA,E, IL,J,MX)	35%
8471.90.00	Other	2.2%	Free (A,CA,E, IL,J,MX)	35%"

Conforming changes: General note 4(d) is modified by deleting "8471.92.32 Malaysia; Thailand" and "8471.92.34 Malaysia; Thailand" and by inserting in lieu thereof "8471.49.26 Malaysia; Thailand", "8471.49.29 Malaysia; Thailand", "8471.60.35 Malaysia; Thailand" and "8471.60.45 Malaysia; Thailand".

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272. The following new provisions are inserted after subheading 8473.40.90:

	[Parts...:]			
"8473.50	Parts and accessories equally suitable for use with machines of two or more of the headings 8469 to 8472:			
8473.50.30	Printed circuit assemblies	Free		35%
8473.50.60	Parts and accessories, including face plates and lock latches, of printed circuit assemblies	Free		35%
8473.50.90	Other	Free		35%"

Conforming changes:

(a). Subheading 8473.30.10 is modified by deleting ", other than for power supplies for automatic data processing machines".

(b). Subheadings 8473.30.35, 8473.30.45 and 8473.30.50 and the superior texts reading "Other:" and "Parts of power supplies for automatic data processing machines:" are deleted and the following new provision is inserted in lieu thereof:

	[Parts...:]			
	[Parts...:]			
	[Not...:]			
"8473.30.50	Other	Free		35%"

273. Subheading 8475.20.00 is superseded by the following:

	[Machines...:]			
	"Machines for manufacturing or hot-working glass or glassware:			
8475.21.00	Machines for making optical fibers and preforms thereof	2.3%	Free (A,CA,E, IL,J,MX)	35%
8475.29.00	Other	2.3%	Free (A,CA,E, IL,J,MX)	35%"

274. Subheadings 8476.11.00 and 8476.19.00 (and the superior text thereto reading "Machines:") are superseded by the following:

	[Automatic...:]			
	"Automatic beverage-vending machines:			
8476.21.00	Incorporating heating or refrigerating devices	2.3%	Free (A,CA,E,IL, J,MX)	35%
8476.29.00	Other	2.3%	Free (A,CA,E,IL, J,MX)	35%
	Other machines:			
8476.81.00	Incorporating heating or refrigerating devices	2.3%	Free (A,CA,E,IL, J,MX)	35%
8476.89.00	Other	2.3%	Free (A,CA,E,IL, J,MX)	35%"

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275. The following new subheadings are inserted in numerical sequence in heading 8479:

	[Machines...:]			
"8479.50.00	Industrial robots, not elsewhere specified or included	3.2%	Free (A,CA,E, IL,J,MX)	35%
8479.60.00	Evaporative air coolers	3.6%	Free (A,CA,E, IL,J,MX)	40%"

276(a). The article description of heading 8483 is modified by deleting the expression "ball screws;" and inserting the expression "ball or roller screws;" in lieu thereof.

(b). The article description of subheading 8483.40 is modified by deleting the expression "ball screws;" and inserting the expression "ball or roller screws;" in lieu thereof.

(c). The article description of subheading 8483.40.80 is modified to read as follows: "Ball or roller screws".

277(a). The article description of heading 8484 is modified by inserting the expression "; mechanical seals" after the expression "similar packings".

(b). The following new subheading is inserted in numerical sequence in heading 8484:

	[Gaskets...]			
"8484.20.00	Mechanical seals	5%	Free (A,B,CA,E, IL,J,MX)	45%"

278. The first sentence of the second paragraph of note 4 to chapter 85 is modified to read as follows:

"The term "printed circuits" does not cover circuits combined with elements other than those obtained during the printing process, nor does it cover individual, discrete resistors, capacitors or inductances."

279. The following new note 7 to chapter 85 is inserted:

"7. For the purposes of heading 8548, "spent primary cells, spent primary batteries and spent electric storage batteries" are those which are neither usable as such because of breakage, cutting up, wear or other reasons, nor capable of being recharged."

280. The following new subheading note 1 to chapter 85 is inserted:

"Subheading Note

1. Subheadings 8519.92 and 8527.12 cover only cassette players with built-in amplifier, without built-in loudspeaker, capable of operating without an external source of electric power and the dimensions of which do not exceed 170 mm x 100 mm x 45 mm."

281. Subheading 8502.30.00 is superseded by the following:

	[Electric...:]			
	"Other generating sets:			
8502.31.00	Wind-powered	2.8%	Free (A,B,C,CA, E,IL,J,MX)	35%
8502.39.00	Other	2.8%	Free (A,B,C,CA, E,IL,J,MX)	35%"

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282(a). The article description of heading 8504 is modified to read as follows:

"Electrical transformers, static converters (for example, rectifiers) and inductors; power supplies for automatic data processing machines or units thereof of heading 8471; parts thereof:"

(b). The article description of subheading 8504.40 is modified to read as follows:

"Static converters; power supplies for automatic data processing machines or units thereof of heading 8471:"

(c). Subheading 8504.40.80 is deleted and the following new subheadings are added in numerical sequence:

	[Electrical...:]			
	[Static...:]			
	"Power supplies for automatic data processing machines or units thereof of heading 8471:			
8504.40.60	Suitable for physical incorporation into automatic data processing machines or units thereof of heading 8471	Free		35%
8504.40.70	Other	1.8%	Free (A,CA,E, IL,J,MX)	35%
8504.40.90	Other	2.4%	Free (A,B,C,CA, E,IL,J,MX)	35%"

(d). Subheadings 8504.90.60 and 8504.90.90 are superseded by the following:

	[Electrical...:]			
	[Parts:]			
	"Of power supplies for automatic data processing machines or units thereof of heading 8471:			
8504.90.20	Printed circuit assemblies	Free		35%
8504.90.40	Other	Free		35%
	Other:			
8504.90.70	Printed circuit assemblies	2.9%	Free (A,B,CA,E, IL,J,MX)	35%
8504.90.95	Other	2.9%	Free (A,B,CA,E, IL,J,MX)	35%"

283. Heading 8506 (including its subordinate provisions) is superseded by the following:

"8506	Primary cells and primary batteries; parts thereof:			
8506.10.00	Manganese dioxide	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.30	Mercuric oxide:			
8506.30.10	Having an external volume not exceeding 300 cm^3	4.3%	Free (A,CA,E, IL,J,MX)	35%
8506.30.50	Other	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%

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283. (con.):

8506 (con.)	Primary cells and primary batteries; parts thereof (con.):			
8506.40	Silver oxide:			
8506.40.10	Having an external volume not exceeding 300 cm³	4.3%	Free (A,CA,E, IL,J,MX)	35%
8506.40.50	Other	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.50.00	Lithium	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.60.00	Air-zinc	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.80.00	Other	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.90.00	Parts	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%*

284(a). The article description of heading 8510 is modified to read as follows:

"Shavers, hair clippers and hair-removing appliances, with self-contained electric motor; parts thereof:"

(b). The following new subheadings 8510.30.00 and 8510.90.55 are inserted in numerical sequence:

	[Shavers,...:]			
*8510.30.00	Hair-removing appliances	4.2%	Free (A,E,IL,J, MX) 0.8% (CA)	40%*
	[Parts:]			
*8510.90.55	Other	4.2%	Free (A,CA,E,IL, J,MX)	40%*

285. The article description of heading 8515 is modified by deleting the expression "sintered metal carbides" and inserting the word "cermets" in lieu thereof.

286(a). The article description of heading 8517 is modified to read as follows:

"Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:"

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286. (con.)

(b). Subheading 8517.10.00 is superseded by the following:

	[Electrical...:]			
	"Telephone sets; videophones:			
8517.11.00	Line telephone sets with cordless handsets	3.6%	Free (A,B,C,CA,E, IL,J,MX)	35%
8517.19	Other:			
8517.19.40	Videophones	8.5%	Free (A*,B,CA,E, IL,J,MX)	35%
8517.19.80	Other	8.5%	Free (A*,B,CA,E, IL,J,MX)	35%*

Conforming change: General note 4(d) is modified by deleting "8517.10.00 Thailand" and by inserting in lieu thereof "8517.19.40 Thailand" and "8517.19.80 Thailand".

(c). Subheading 8517.20.00 is superseded by the following:

	[Electrical...:]			
	"Facsimile machines and teleprinters:			
8517.21.00	Facsimile machines	4.7%	Free (A*,CA,E, IL,J,MX)	35%
8517.22.00	Teleprinters	4.7%	Free (A,CA,E, IL,J,MX)	35%*

Conforming change: General note 4(d) is modified by deleting "8517.82.40 Thailand" and by inserting in numerical sequence "8517.21.00 Thailand".

(d). Subheadings 8517.40, 8517.40.10, and 8517.40.50 are redesignated as 8517.50, 8517.50.10, and 8517.50.50, respectively; the article description of subheading 8517.50 (as redesignated) is modified by deleting the expression "systems:" and inserting the expression "systems or for digital line systems:" in lieu thereof.

(e). Subheading 8517.40.70 is deleted and the following new provisions are inserted in numerical sequence in lieu thereof:

	[Electrical...:]			
	[Other...:]			
	[Other:]			
	"Telegraphic:			
8517.50.60	For carrier-current line systems	3.7%	Free (A,CA,E,IL, J,MX)	35%
8517.50.90	Other	4.7%	Free (A,CA,E,IL, J,MX)	35%*

(f). Subheadings 8517.81.00 (and the superior text thereto reading "Other apparatus:"), 8517.82, 8517.82.40 and 8517.82.80 are deleted and the following new provisions are inserted in lieu thereof:

	[Electrical...:]			
*8517.80	Other apparatus:			
8517.80.10	Telephonic	8.5%	Free (A,B,CA,E, IL,J,MX)	35%
8517.80.20	Telegraphic	4.7%	Free (A,CA,E, IL,J,MX)	35%*

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286. (con.)

(g). The superior text immediately preceding subheading 8517.90.16 reading "Parts for articles of subheadings 8517.20, 8517.30, 8517.40.50 and 8517.81:" is modified by deleting provisions "8517.20," and "8517.40.50 and 8517.81" and inserting provisions "8517.22," and "8517.50.50 and 8517.80.10", respectively, in lieu thereof.

287. Subheading 8519.91 is superseded by the following:

	[Turntables,...:] [Other...:]			
*8519.92.00	Pocket-size cassette players	2.2%	Free (A,E,IL,J,MX) 0.7% (CA)	35%
8519.93	Other, cassette type:			
8519.93.40	Designed exclusively for motor-vehicle installation	3.7%	Free (A,B,CA,E,IL,J,MX)	35%
8519.93.80	Other	2.2%	Free (A,E,IL,J,MX) 0.7% (CA)	35%*

288. Subheading 8520.31.00 is superseded by the following:

	[Magnetic...:] [Other...:]			
*8520.32.00	Digital audio type	2.3%	Free (A,B,E,IL,J,MX) 0.7% (CA)	35%
8520.33.00	Other, cassette type	2.3%	Free (A,B,E,IL,J,MX) 0.7% (CA)	35%*

289. The article description of heading 8522 is modified to read as follows:

"Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521:"

290. The following new subheading 8523.30.00 is inserted in numerical order:

	[Prepared...:]			
*8523.30.00	Cards incorporating a magnetic stripe	2.5%	Free (A,E,IL,J,MX) 0.8% (CA)	80%*

291. Subheadings 8524.10.00 through 8524.90.40 are superseded by the following:

	[Records,...:]			
*8524.10.00	Phonograph records	2.9%	Free (A,E,IL,J,MX) 0.7% (CA)	30%
	Discs for laser reading systems:			
8524.31.00	For reproducing phenomena other than sound or image	5.8¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface

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291. (con.):

	[Records,...:] [con.] Discs for laser reading systems (con.):			
8524.32.00	For reproducing sound only	5.8¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.39.00	Other	4.3%	Free (A,E,IL,J,MX) 1% (CA)	80%
8524.40.00	Magnetic tapes for reproducing phenomena other than sound or image	7.7¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
	Other magnetic tapes:			
8524.51	Of a width not exceeding 4 mm:			
8524.51.10	News sound recordings relating to current events	Free		Free
8524.51.30	Other	7.7¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.52	Of a width exceeding 4 mm but not exceeding 6.5 mm:			
8524.52.10	Video tape recordings	0.53¢/lin. m	Free (A,E,IL,J,MX) 0.1¢/lin. m (CA)	3.3¢/lin. m
8524.52.20	Other	7.7¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.53	Of a width exceeding 6.5 mm:			
8524.53.10	Video tape recordings	0.4¢/lin. m	Free (A,E,IL,J,MX) 0.1¢/lin. m (CA)	3.3¢/lin. m
8524.53.20	Other	7.7¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.60.00	Cards incorporating a magnetic stripe	5.8¢/m^2 of recording surface	Free (A,E,IL,J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface

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291. (con.):

	[Records,...:] [con.]			
	Other:			
8524.91.00	For reproducing phenomena other than sound or image.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.99	Other:			
8524.99.20	Master records or metal matrices therefrom for use in the production of sound records for export; recordings on wire.....	Free		Free
8524.99.40	Other.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface"

292(a). The article description of heading 8525 is modified by deleting the expression "cameras:" and inserting the following in lieu thereof:

"cameras; still image video cameras or other video camera recorders:"

(b). Subheadings 8525.20.50 and 8525.20.60 (and the superior text thereto reading "Other:") are deleted, and the following new subheading is inserted in lieu thereof:

	[Transmission...:]			
	[Transmission...:]			
"8525.20.90	Other.....	3.6%	Free (A,B,C,CA, E,IL,J,MX)	35%"

(c). The following new subheading is inserted in numerical sequence:

	[Transmission...:]			
"8525.40.00	Still image video cameras and other video camera recorders.....	3.4%	Free (A,CA,E, IL,J,MX)	35%"

293. Subheadings 8527.11 through 8527.11.60 and the intervening superior text reading "Other:" are superseded by the following:

	[Reception...:]			
	[Radiobroadcast...:]			
"8527.12.00	Pocket-size radio cassette players.....	2.2%	Free (A,CA,E, IL,J,MX)	35%
8527.13	Other apparatus combined with sound recording or reproducing apparatus:			
8527.13.11	Combinations incorporating tape players which are incapable of recording.....	2.2%	Free (A,CA,E, IL,J,MX)	35%

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293. (con.):

	[Reception...:] [con.]			
	[Radiobroadcast...:] [con.]			
8527.13 (con.)	Other apparatus combined with sound recording or reproducing apparatus (con.):			
	Other:			
8527.13.20	Radio-tape recorder combinations.....	2.9%	Free (CA,E,IL, J,MX)	35%
8527.13.40	Radio-phonograph combinations.....	2.6%	Free (CA,E,IL, J,MX)	35%
8527.13.60	Other.....	2.2%	Free (A,CA,E, IL,J,MX)	35%"

294(a). The article description of heading 8528 is modified to read as follows:

"Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:"

(b). Subheadings 8528.10 through 8528.20.00, inclusive, are superseded by the following:

	[Reception...:]			
	"Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:			
8528.12	Color:			
	Incomplete or unfinished (including assemblies for television receivers consisting of all the parts specified in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.12.04	Incorporating video recording or reproducing apparatus.....	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.08	Other.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm:			
	Incorporating video recording or reproducing apparatus:			
8528.12.12	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.16	Other.....	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.12 (con.)	Color (con.):			
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm (con.):			
	Other:			
8528.12.20	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.24	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal exceeding 35.56 cm:			
8528.12.28	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.32	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, projection type, with a cathode-ray tube:			
8528.12.36	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.40	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	High definition, non-projection type, with a cathode-ray tube:			
8528.12.44	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.48	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.12 (con.)	Color (con.):			
	High definition, projection type, with a cathode-ray tube:			
8528.12.52	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.56	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	With a flat panel screen:			
	Incorporating video recording or reproducing apparatus:			
8528.12.62	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.64	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.12.68	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.72	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Other:			
	Incorporating video recording or reproducing apparatus:			
8528.12.76	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.80	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.12.84	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.88	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.13.00	Black and white or other monochrome.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Video monitors:			
8528.21	Color:			
	Incomplete or unfinished (including assemblies consisting of the parts specified in subdivisions (a), (b), (c) and (e) in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.21.05	Incorporating video recording or reproducing apparatus.....	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.21.10	Other.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm:			
	Incorporating video recording or reproducing apparatus:			
8528.21.16	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
8528.21.19	Other.....	3.9%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
	Other:			
8528.21.24	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.21.29	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Video monitors (con.):			
8528.21 (con.)	Color (con.):			
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal exceeding 35.56 cm:			
8528.21.34	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.39	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	Non-high definition, projection type, with a cathode-ray tube:			
8528.21.41	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
8528.21.42	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	High definition, non-projection type, with a cathode-ray tube:			
8528.21.44	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.49	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	High definition, projection type, with a cathode-ray tube:			
8528.21.51	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.52	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	With a flat panel screen:			
	Incorporating video recording or reproducing apparatus:			
8528.21.55	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.21.60	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Video monitors (con.):			
8528.21 (con.)	Color (con.):			
	With a flat panel screen (con.):			
8528.21.65	Other: With a video display diagonal not exceeding 33.02 cm	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.21.70	Other	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Other:			
	Incorporating video recording or reproducing apparatus:			
8528.21.75	With a video display diagonal not exceeding 33.02 cm	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.21.80	Other	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.21.85	With a video display diagonal not exceeding 33.02 cm	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.21.90	Other	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.22.00	Black and white or other monochrome	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.30	Video projectors:			
	Color:			
	Incomplete or unfinished (including assemblies consisting of the parts specified in subdivisions (a), (b), (c) and (e) in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.30.10	Incorporating video recording or reproducing apparatus	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.30.20	Other	3%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
8528.30 (con.)	Video projectors (con.):			
	Color (con.):			
	Non-high definition, with a cathode-ray tube:			
8528.30.30	Incorporating video recording or reproducing apparatus	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.30.40	Other	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	High definition, with a cathode-ray tube:			
8528.30.50	Incorporating video recording or reproducing apparatus	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.30.60	Other	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	With a flat panel screen:			
	Incorporating video recording or reproducing apparatus:			
8528.30.62	With a video display diagonal not exceeding 33.02 cm	2.3%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.30.64	Other	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
	Other:			
8528.30.66	With a video display diagonal not exceeding 33.02 cm	3%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.30.68	Other	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	Other:			
8528.30.72	Incorporating video recording or reproducing apparatus	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.30.78	Other	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.30.90	Black and white or other monochrome	5%	Free (B,E,IL,J, MX) 1% (CA)	35%**

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294. (con.)
(b). (con.)
Conforming changes: General note 4(d) is modified by deleting "8528.10.04 Hungary", "8528.10.11 Malaysia", "8528.10.13 Malaysia", and "8528.10.34 Malaysia" and by inserting in numerical sequence the following subheadings and countries:

"8528.12.04	Hungary	8528.21.16	Malaysia
8528.12.12	Malaysia	8528.21.19	Malaysia
8528.12.16	Malaysia	8528.21.41	Malaysia
8528.12.36	Malaysia	8528.30.10	Hungary
8528.21.05	Hungary	8528.30.30	Malaysia"

295. The article description of heading 8537 is modified to read as follows:

"Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:"

296(a). The following new subheading 8539.32.00 is inserted in numerical order:

	[Electrical...:]			
	[Discharge...:]			
"8539.32.00	Mercury or sodium vapor lamps; metal halide lamps	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	20%"

(b). Subheadings 8539.40, 8539.40.40 and 8539.40.80 are superseded by the following:

	[Electrical...:]			
	"Ultraviolet or infrared lamps; arc lamps:			
8539.41.00	Arc lamps	3.4%	Free (A,CA,E, IL,J,MX)	35%
8539.49.00	Other	3.2%	Free (A,CA,E, IL,J,MX)	35%"

297. Subheadings 8540.30.00 through 8540.49.00 are superseded by the following:

	[Thermionic,...:]			
"8540.40.00	Data/graphic display tubes, color, with a phosphor dot screen pitch smaller than 0.4 mm	4.8%	Free (B,CA,E, IL,J,MX)	35%
8540.50.00	Data/graphic display tubes, black and white or other monochrome	4.8%	Free (B,CA,E, IL,J,MX)	35%
8540.60.00	Other cathode-ray tubes	4.8%	Free (B,CA,E, IL,J,MX)	35%
	Microwave tubes (for example, magnetrons, klystrons, traveling wave tubes, carcinotrons), excluding grid-controlled tubes:			
8540.71	Magnetrons:			
8540.71.20	Modified for use as parts of microwave ovens	Free		35%
8540.71.40	Other	4%	Free (CA,E,IL, J,MX)	35%

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297. (con.):

	[Thermionic,...:] [con.]			
	Microwave tubes (for example, magnetrons, klystrons, traveling wave tubes, carcinotrons), excluding grid-controlled tubes (con.):			
8540.72.00	Klystrons	3.8%	Free (CA,E,IL, J,MX)	35%
8540.79.00	Other	4%	Free (CA,E,IL, J,MX)	35%"

298. Subheadings 8542.11 (and the superior text thereto reading "Monolithic integrated circuits:") through 8542.90.00 are superseded by the following:

	[Electronic...:]			
	"Monolithic digital integrated circuits:			
8542.12.00	Cards incorporating electronic integrated circuits ("smart" cards)	Free		35%
8542.13	Metal oxide semiconductors (MOS technology):			
8542.13.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.13.80	Other	Free		35%
8542.14	Circuits obtained by bipolar technology:			
8542.14.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.14.80	Other	Free		35%
8542.19	Other, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology):			
8542.19.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.19.80	Other	Free		35%
8542.30.00	Other monolithic integrated circuits	Free		35%
8542.40.00	Hybrid integrated circuits	Free		35%
8542.50.00	Electronic microassemblies	Free		35%
8542.90.00	Parts	Free		35%"

299(a). Subheading 8543.10 is superseded by the following:

	[Electrical...:]			
	"Particle accelerators:			
8543.11.00	Ion implanters for doping semiconductor materials	Free		35%
8543.19.00	Other	3.1%	Free (A,CA,E, IL,J,MX)	35%"

(b). The following new subheading 8543.40.00 is inserted in numerical sequence:

	[Electrical...:]			
"8543.40.00	Electric fence energizers	3.4%	Free (A,CA,E, IL,J,MX)	35%"

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299. (con.)

(c). Subheadings 8543.80 through 8543.80.98 are superseded by the following:

	[Electrical...:]			
	"Other machines and apparatus:			
8543.81.00	Proximity cards and tags.....	3.4%	Free (A,CA,E, IL,J,MX)	35%
8543.89	Other:			
8543.89.40	Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft.....	3.4%	Free (A,C,CA,E, IL,J,MX)	35%
8543.89.60	Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%
8543.89.70	Electric luminescent lamps.....	2%	Free (A,CA,E, IL,J,MX)	20%
	Other:			
8543.89.80	Microwave amplifiers.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%
	Other:			
8543.89.85	For electrical nerve stimulation.....	2.3%	Free (A,CA,E, IL,J,MX)	35%
8543.89.90	Other.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%"

300. Heading 8548.00.00 is superseded by the following:

"8548	Waste and scrap of primary cells, primary batteries and electric storage batteries; spent primary cells, spent primary batteries and spent electric storage batteries; electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter:			
8548.10	Waste and scrap of primary cells, primary batteries and electric storage batteries; spent primary cells, spent primary batteries and spent electric storage batteries:			
	Spent primary cells, spent primary batteries and spent electric storage batteries:			
8548.10.05	For recovery of lead.....	1.4% on the value of the lead content	Free (A,CA,E, IL,J,MX)	11.5%
8548.10.15	Other.....	Free		Free
	Other:			
8548.10.25	For recovery of lead.....	1.4% on the value of the lead content	Free (A,CA,E, IL,J,MX)	11.5%
8548.10.35	Other.....	Free		Free
8548.90.00	Other.....	2.3%	Free (A,B,E, IL,J,MX) 0.7% (CA)	35%"

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301. Note 4 to section XVII is modified to read as follows:

"4. For the purposes of this section:

(a) Vehicles specially constructed to travel on both road and rail are classified under the appropriate heading of chapter 87;

(b) Amphibious motor vehicles are classified under the appropriate heading of chapter 87;

(c) Aircraft specially constructed so that they can also be used as road vehicles are classified under the appropriate heading of chapter 88."

302. Note 2 to chapter 87 is modified by adding the following new second paragraph:

"Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it."

303. The following new subheading note is inserted in chapter 88:

"Subheading Note

1. For the purposes of subheadings 8802.11 to 8802.40, the expression "unladen weight" means the weight of the machine in normal flying order, excluding the weight of crew and of fuel and equipment other than permanently fitted items of equipment."

304(a). The article description of heading 8802 is modified to read as follows:

"Other aircraft (for example, helicopters, airplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles:"

(b). The article description of subheading 8802.50 is modified to read as follows, and such subheading is redesignated as 8802.60:

"Spacecraft (including satellites) and suborbital and spacecraft launch vehicles"

(c). Subheadings 8802.50.30 and 8802.50.90 are redesignated as 8802.60.30 and 8802.60.90, respectively, and general note 4(d) is modified by deleting "8802.50.90 Russia" and by inserting in lieu thereof "8802.60.90 Russia".

305. The article description of heading 8804.00.00 is modified to read as follows:

"Parachutes (including dirigible parachutes and paragliders) and rotochutes; parts thereof and accessories thereto"

306. Subdivision (h) of note 1 to chapter 90 is modified by inserting the following new text after the expression "(heading 8522);":

"still image video cameras and other video camera recorders (heading 8525);"

307(a). Subheading 9007.21 and the superior text thereto reading "Projectors:" are superseded by the following:

"9007.20	Projectors:	
	For film of less than 16 mm:"	

(b). Subheadings 9007.21.40 and 9007.21.80 are redesignated as subheadings 9007.20.20 and 9007.20.40, respectively.

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307. (con.)

(c). The numerical subheading code number "9007.29" is deleted; the article description "Other:" is retained at its existing level of indentation.

(d). Subheadings 9007.29.40 and 9007.29.80 are redesignated as 9007.20.60 and 9007.20.80, respectively.

308(a). The article description of heading 9010 is modified by deleting the expression "apparatus for the projection" and inserting the expression "apparatus for the projection or drawing" in lieu thereof.

(b). Subheadings 9010.20 through 9010.30.00 are superseded by the following:

	[Apparatus...:]				
	"Apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials:				
9010.41.00	Direct write-on-wafer apparatus.....	Free			35%
9010.42.00	Step and repeat aligners.....	Free			35%
9010.49.00	Other.....	Free			35%
9010.50	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes:				
9010.50.10	Contact printers.....	1.3%	Free (A,CA,E, IL,J,MX)		35%
9010.50.20	Developing tanks.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)		45%
	Photographic film viewers, titlers, splicers and editors, all the foregoing and combinations thereof:				
	Articles containing an optical lens or designed to contain such a lens:				
9010.50.30	Editors and combination editor-splicers, for cinematographic film.....	6.2%	Free (A,CA,E, IL,J,MX)		45%
9010.50.40	Other.....	7.2%	Free (A,CA,E, IL,J,MX)		45%
9010.50.50	Other.....	2.8%	Free (A,CA,E, IL,J,MX)		35%
9010.50.60	Other.....	Free			35%
9010.60.00	Projection screens.....	3.4%	Free (A,CA,E, IL,J,MX)		50%"

309. The following new subheadings are inserted in numerical sequence:

	[Instruments...:]				
	[Electrodiagnostic...:]				
"9018.12.00	Ultrasonic scanning apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)		35%
9018.13.00	Magnetic resonance imaging apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)		35%
9018.14.00	Scintigraphic apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)		35%"

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310. Subheading 9022.11.00 is superseded by the following:

	[Apparatus...:]				
	[Apparatus...:]				
"9022.12.00	Computed tomography apparatus.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%
9022.13.00	Other, for dental uses.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%
9022.14.00	Other, for medical, surgical or veterinary uses.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%"

311(a). Subheadings 9025.20 through 9025.20.80 are deleted.

(b). The following new subheading 9025.80.15 is inserted in numerical sequence:

	[Hydrometers...:]				
	[Other...:]				
	[Other:]				
"9025.80.15	Barometers, not combined with other instruments.....	2.1%	Free (A,C,E, IL,J,MX) 0.5% (CA)		40%"

312. Subheadings 9030.81 through 9030.89.80, inclusive, are superseded by the following:

	[Oscilloscopes,...:]				
	[Other...:]				
"9030.82.00	For measuring or checking semiconductor wafers or devices.....	Free			40%
9030.83.00	Other, with a recording device.....	3.6%	Free (A,B,C,E, IL,J,MX) 0.9% (CA)		40%
9030.89.00	Other.....	3.6%	Free (A,B,C,E, IL,J,MX) 0.9% (CA)		40%"

313. Subheadings 9031.40 through 9031.40.90, inclusive, are superseded by the following:

	[Measuring...:]				
	"Other optical instruments and appliances:				
9031.41.00	For inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices.....	Free			50%
9031.49	Other:				
9031.49.40	Coordinate-measuring machines.....	7.4%	Free (A,CA,E, IL,J,MX)		50%
9031.49.80	Other.....	7.4%	Free (A,CA,E, IL,J,MX)		50%"

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313. (con.)
Conforming change: The article description for subheading 9031.90.45 is modified by deleting "9031.40.40" and by inserting in lieu thereof "9031.49.40".

314(a). The superior text immediately preceding subheading 9101.11 is modified by deleting the expression "battery powered" and inserting the expression "electrically operated" in lieu thereof.

(b). The article description, "Battery powered:", in subheading 9101.91 is replaced by the article description, "Electrically operated:".

315(a). The superior text immediately preceding subheading 9102.11 is modified by deleting the expression "battery powered" and inserting the expression "electrically operated" in lieu thereof.

(b). The article description, "Battery powered:", in subheading 9102.91 is replaced by the article description, "Electrically operated:".

316. The article description, "Battery powered:", in subheading 9103.10 is replaced by the article description, "Electrically operated:".

317(a). The article description, "Battery or AC powered:", in subheading 9105.11 is replaced by the article description, "Electrically operated:".

(b). The article description, "Battery or AC powered:", in subheading 9105.21 is replaced by the article description, "Electrically operated:".

(c). The article description, "Battery or AC powered:", in subheading 9105.91 is replaced by the article description, "Electrically operated:".

318. The superior text, "Battery powered:", immediately preceding subheading 9108.11 is replaced by the article description, "Electrically operated:".

319. The superior text, "Battery or AC powered:", immediately preceding subheading 9109.11 is replaced by the article description, "Electrically operated:".

320. Subdivision (m) of note 1 to chapter 95 is superseded by the following:

"(m) Pumps for liquids (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (heading 8504) or radio remote control apparatus (heading 8526);"

321(a). Subheading 9614.10.00 is deleted.

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321. (con.)
(b). Subheading 9614.20.40 is superseded by the following:

	[Smoking...:]				
	[Pipes...:]				
	"Of wood or root:				
9614.20.10	Roughly shaped blocks of wood or root, for the manufacture of pipes.....	Free			10%
9614.20.15	Other.....	0.5¢ each + 3.7%	Free (A,E,IL,J, MX) 0.1¢ each + 0.8% (CA)		5¢ each + 60%"

322. Note 3 to chapter 97 is modified to read as follows:

"Heading 9703 does not apply to mass-produced reproductions or works of conventional craftsmanship of a commercial character, even if these articles are designed or created by artists."

323. Conforming changes in chapters 98 and 99 of the tariff schedule and other modifications:

(A). Modifications to chapter 98 of the tariff schedule--
(1). U.S. note 6 to subchapter X of chapter 98 is modified by deleting:

(a). from subdivision (a)(vii) the expression "subheading 7508.00.50" and by inserting in lieu thereof the expression "subheadings 7508.10 and 7508.90.50";

(b). from subdivision (a)(viii) the expression "subheading 7616.90" and by inserting in lieu thereof the expression "subheadings 7616.91 and 7616.99.50";

(c). from subdivision (a)(x) the subheading number "7907.90.60" and by inserting in lieu thereof "7907.00.60";

(d). from subdivision (a)(xiv) the expression "and 8548.00;" and by inserting in lieu thereof "and 8548.90;"; and

(e). from subdivision (a)(xv) the subheading number "8802.50.90" at each instance and by inserting in lieu thereof "8802.60.90".

(2). U.S. note 2 to subchapter XVII of chapter 98 is modified by deleting:
(a). from subdivision (f) the expression "7018.90 and 7019.20" and by inserting in lieu thereof "7018.90, 7019.40, 7019.51, 7019.52 and 7019.59";

(b). from subdivision (o) the expression "(except subheading 7907.10)" and by inserting in lieu thereof "(except gutters, roof capping, skylight frames and other fabricated building components, of zinc)"; and

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323. (con.):
(A). (con.)--
(2). (con.):
(c). from subdivision (u) the expression "8519.91" and by inserting in lieu thereof "8519.92"; such subdivision is further modified by deleting the expression "subheadings 8532.90, 8539.90, 8543.10, 8543.20, 8543.30, 8543.80.60, 8543.80.85, 8543.80.94, 8543.80.98, 8543.90, 8544.70, 8546.90, 8547.20 and 8548.00)" and by inserting in lieu thereof "subheadings 8532.90 and 8539.90, subheadings 8543.11 through 8543.81, subheadings 8543.89.60, 8543.89.80, 8543.89.85, 8543.89.90, 8543.90, 8544.70, 8546.90, 8547.20 and 8548.90)".

(3). The superior text immediately preceding subheading 9817.00.80 is modified by deleting the expression "section VI or in chapter 26" and by inserting in lieu thereof "section VI, chapter 26 or subheading 8548.10".

(4). Heading 9817.82.01 is modified by deleting "8207.12.60" and by inserting in lieu thereof "8207.19.60".

(B). Modifications to chapter 99 of the tariff schedule--

(1). The article description of heading 9901.00.50 is modified by deleting the subheading number "3823" and by inserting in lieu thereof "3824".

(2). The article description of heading 9902.08.07 is modified by deleting the subheading number "0807.10.20" and by inserting in lieu thereof "0807.19.10".

(3). The article description of subheading 9903.23.20 is modified by deleting the subheading number "2101.10.21" and by inserting in lieu thereof "2101.11.21".

(4). The article description of subheading 9903.41.15 is modified by deleting the subheading number "8471.20" and by inserting in lieu thereof "8471.30 or 8471.41".

(5). The article descriptions of subheadings 9903.41.20 and 9903.41.25 are each modified by deleting the subheading number " 8471.91" and by inserting in lieu thereof "8471.49.10 or 8471.50".

(6). The article descriptions of subheadings 9903.41.40 and 9903.41.45 are each modified by deleting the subheading numbers "8528.10.28, 8528.10.48, 8528.10.77 or 8528.10.79" and by inserting in lieu thereof "8528.12.32, 8528.12.48 or 8528.12.88".

(7)(a). The superior text to subheadings 9904.17.17 through 9904.17.48 beginning with the word "Articles", the superior text immediately preceding subheading 9904.17.31, and the article description of subheading 9904.17.46 are each modified by deleting the subheading number "2101.10.48" and by inserting in lieu thereof "2101.12.48".

(b). The superior text to subheadings 9904.17.49 through 9904.17.65 beginning with the word "Articles" and the article description of subheading 9904.17.59 are each modified by deleting the subheading number "2101.10.58" and by inserting in lieu thereof "2101.12.58".

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323. (con.):
(B). (con.)--
(7). (con.)
(c). The superior text to subheadings 9904.17.66 through 9904.17.84 beginning with the word "Blended" and the article description of subheading 9904.17.81 are each modified by deleting the subheading number "2101.10.38" and by inserting in lieu thereof "2101.12.38".

(8). The article description of subheading 9905.00.00 is modified by deleting the subheading numbers "4010.10", "7318.23", "7508.00", "7616.90", "8520.31", "8548.00", and "9030.81" from the listing of headings and subheadings and by inserting the following numbers in numerical sequence therein:

"4010.21.30	7616.91
4010.21.60	7616.99
4010.22.30	8520.32
4010.22.60	8520.33
4010.29.10	8548.90
4010.29.20	9030.83"
7508.10	
7508.90	

(9). The article description of subheading 9905.00.20 is modified by inserting after "4412.19" the subheading number ", 4412.92".

(10). The article description of subheading 9905.00.30 is modified by deleting the subheading numbers "5407.60.91" and "5407.60.99" from the enumeration of headings and subheadings and by inserting in numerical sequence the following numbers: "5407.61.91", "5407.61.99", "5407.69.20", "5407.69.40", and "5407.69.90".

(11). The article description of subheading 9905.40.15 is modified by deleting the subheading number "4010.99" and by inserting in lieu thereof "4010.23 or 4010.29".

(12). The article descriptions of subheadings 9905.56.10 and 9905.56.20 are each modified by deleting "5603.00" and by inserting in lieu thereof "5603".

(13). The article description of subheading 9905.70.10 is modified by deleting the expression "heading 7019.20" and by inserting in lieu thereof "subheading 7019.40, 7019.51, 7019.52 or 7019.59".

(14). The article description of subheading 9905.72.10 is modified by deleting the subheading numbers "7217.13, 7217.23 or 7217.33" and by inserting in lieu thereof "7217.30".

(15). The article description of subheading 9905.72.20 is modified by deleting the subheading number "7217.31.30" and by inserting in lieu thereof "7217.10.80".

(16). The article description of subheading 9905.72.30 is modified by deleting the subheading number "7217.32.10" and by inserting in lieu thereof "7217.20.45".

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323. (con.):
(B). (con.)--
(17). The article description of subheading 9905.76.30 is modified by deleting the subheading number "7616.90.50" and by inserting in lieu thereof "7616.99.50".

(18). The article description of subheading 9905.79.10 is modified by deleting the subheading number "7907.90.60" and by inserting in lieu thereof "7907.00.60".

(19). The article description of subheading 9905.82.35 is modified by deleting the expression "or 8211.91.60" and by inserting in lieu thereof ", 8211.91.80 or 8211.95.10".

(20). The article description of subheading 9905.85.21 is modified by deleting the subheading number "8506.11.00" and by inserting in lieu thereof "8506.10 having an external volume not exceeding 300 cm^3".

(21). The article description of subheading 9905.85.22 is modified by deleting the subheading number "8506.19.00" and inserting in lieu thereof "8506.50 having an external volume not exceeding 300 cm^3".

(22). The article description of subheading 9905.85.23 is modified by deleting the subheading number "8506.20.00" and by inserting in lieu thereof "8506.10 through 8506.80 having an external volume exceeding 300 cm^3".

(23). The article description of subheading 9905.85.25 is modified--
(a). by deleting the subheading number "8506.11.00" and by inserting in lieu thereof "8506.10 having an external volume not exceeding 300 cm^3";

(b). by deleting the subheading numbers "8506.12.00 or 8506.13.00" and by inserting in lieu thereof "8506.30.10 or 8506.40.10"; and

(c). by deleting the expression "parts of dry cell batteries of subheading 8506.20.00 other than 6 volt alkaline lantern batteries" and by inserting in lieu thereof "parts of dry cell batteries having an external volume exceeding 300 cm^3 of subheadings 8506.10 through 8506.80 other than 6 volt alkaline lantern batteries".

(24). The article description of subheading 9905.85.55 is modified by deleting the subheading number "8527.11," and by inserting in lieu thereof "8525.40, 8527.12, 8527.13,".

(25). The immediately superior text to subheading 9906.08.07 is modified by deleting "0807.10.20" and by inserting in lieu thereof "0807.19.20".

(26). The immediately superior text to subheading 9906.08.09 is modified by deleting "0807.10.40" and by inserting in lieu thereof "0807.11.40".

(27). The immediately superior text to subheading 9906.08.12 is modified by deleting "0807.10.70" and by inserting in lieu thereof "0807.19.70".

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323. (con.):
(B). (con.)--
(28)(a). The immediately superior text to subheading 9906.21.01 is modified by deleting "2101.10.48" and by inserting in lieu thereof "2101.12.48".

(b). The immediately superior text to subheading 9906.21.04 is modified by deleting "2101.10.38" and by inserting in lieu thereof "2101.12.38".

(c). The immediately superior text to subheading 9906.21.07 is modified by deleting "2101.10.58" and by inserting in lieu thereof "2101.12.58".

(29). The immediately superior text to subheading 9906.38.03 is modified by deleting "3823.90.45" and by inserting in lieu thereof "3824.90.45".

(30). Subheading 9906.56.01 and heading 9907.56.01 are each modified by deleting "subheading 5603.00.90" and by inserting in lieu thereof "heading 5603".

(31). The article description of heading 9907.48.03 is modified by deleting "4823.30" and by inserting in lieu thereof "4823.90.30".

(32). Heading 9907.84.15 is modified by deleting "8471.92.52" and by inserting in lieu thereof "8471.49.37 or 8471.60.57".

(33). Heading 9907.85.02 is modified by deleting "8524.23.10" and by inserting in lieu thereof "8524.53.10".

(C). Other modifications
(1). The Chemical Abstracts Service (CAS) registry number "8063-82-9" listed in the Pharmaceutical Appendix to the HTS for the product described by the International Non-proprietary Name of Hypromellose is deleted and the CAS number "9004-65-3" is inserted in lieu thereof.

(2). Headings 9902.29.28 and 9902.38.23 are deleted.

(3). Subheadings 9906.29.25 through 9906.29.27, inclusive, are deleted.

(4). Heading 9907.38.02 is deleted.

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Annex III

Section A. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-General subcolumn.

(1). For each of the following subheadings, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting, on January 1, the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) on January 1 for each of the subsequent dated columns the rates of duty in the Rates of Duty 1-General subcolumn are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003	2004
2101.12.38	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.48	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.58	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.90	9.5%	9.2%	9%	8.8%	8.5%	8.5%	8.5%	8.5%	8.5%
2208.90.46	11.6¢/pf. liter	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2933.39.61	12.1%	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2933.39.91	3¢/kg + 14.3%	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
3824.40.10	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.60.00	5.5%	5.4%	5.2%	5%	4.9%	4.9%	4.9%	4.9%	4.9%
3824.90.19	8.6%	7.9%	7.2%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.22	3¢/kg + 14.3%	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
3824.90.25	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.90.28	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.90.31	6.8%	6.7%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.32	15.3%	14.2%	13.1%	12%	10.9%	9.8%	8.7%	7.6%	6.5%
3824.90.35	8.6%	7.9%	7.2%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.36	7%	6.9%	6.7%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.45	6.8%	6.7%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.46	15.7%	14.6%	13.4%	12.2%	11.1%	10%	8.8%	7.6%	6.5%

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Section A. (continued)

(1). (con.)

HTS Provision	1996	1997	1998	1999	2000	2001	2002	2003	2004
7003.12.00	1.6%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
7004.20.10	2.9%	2%	1%	Free	Free	Free	Free	Free	Free
7004.20.20	1.2¢/kg + 1.8%	1.1¢/kg + 1.8%	1¢/kg + 1.7%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%
7414.20.60	7.2%	5.8%	4.4%	3%	3%	3%	3%	3%	3%
7414.20.90	3.7%	3.4%	3.2%	3%	3%	3%	3%	3%	3%
8005.00.10	5.4%	4.6%	3.8%	3%	3%	3%	3%	3%	3%
8005.00.20	3.6%	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
8202.39.00	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8207.13.00	5.8%	5%	4.3%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%
8207.19.30	6.3%	5.9%	5.4%	5%	5%	5%	5%	5%	5%
8207.19.60	3.4%	3.2%	3.1%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
8211.91.80	0.4¢ each + 5.6%	0.3¢ each + 5.4%	0.3¢ each + 5.1%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%
8517.50.10	3.7%	3.3%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%
8802.60.90	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9007.20.20	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9007.20.40	6.2%	5.7%	5.3%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
9007.20.60	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9007.20.80	5.6%	4.9%	4.2%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%

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Section A. (continued)

(2). For each of the following provisions, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting, on January 1, the rate of duty specified for such provision in the first dated column in the table below in lieu thereof, and (ii) on January 1 for each of the subsequent dated columns the rates of duty in the Rates of Duty 1-General subcolumn are deleted and the following rates of duty are inserted in such provisions in lieu thereof on the date specified.

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
0105.12.00	1.5¢ each	1.3¢ each	1.1¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each
0105.19.00	1.5¢ each	1.3¢ each	1.1¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each
0105.92.00	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg
0105.93.00	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg
0207.11.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.12.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.13.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.14.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.24.00	16.9¢/kg	16.2¢/kg	15.6¢/kg	15¢/kg	15¢/kg	15¢/kg	15¢/kg	15¢/kg
0207.25.20	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.25.40	11.3%	10.8%	10.4%	10%	10%	10%	10%	10%
0207.26.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.27.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.32.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.33.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.34.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.35.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.36.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0405.10.20	$1.677/kg	$1.632/kg	$1.586/kg	$1.541/kg	$1.541/kg	$1.541/kg	$1.541/kg	$1.541/kg
0405.20.30	$2.172/kg	$2.113/kg	$2.055/kg	$1.996/kg	$1.996/kg	$1.996/kg	$1.996/kg	$1.996/kg
0405.20.40	14.3¢/kg	13.9¢/kg	13.5¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg
0405.20.70	76.6¢/kg + 9.2%	74.5¢/kg + 9%	72.5¢/kg + 8.8%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%
0405.20.80	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
0405.90.20	$2.03/kg + 9.2%	$1.975/kg + 9%	$1.92/kg + 8.8%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%
0602.90.40	4.5%	4.2%	3.8%	3.5%	3.5%	3.5%	3.5%	3.5%

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
0602.90.50	1.8¢/kg	1.7¢/kg	1.5¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg
0712.90.30	2.6¢/kg	2.5¢/kg	2.4¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg
0714.20.10	6.5%	6.3%	6.2%	6%	6%	6%	6%	6%
0714.20.20	7.3%	6.3%	5.4%	4.5%	4.5%	4.5%	4.5%	4.5%
0714.90.45	6.5%	6.3%	6.2%	6%	6%	6%	6%	6%
0807.11.30	14.5%	12.7%	10.8%	9%	9%	9%	9%	9%
0807.11.40	18.5%	18%	17.5%	17%	17%	17%	17%	17%
0807.19.10	16.4%	15.2%	14%	12.8%	12.8%	12.8%	12.8%	12.8%
0807.19.20	32.4%	31.5%	30.7%	29.8%	29.8%	29.8%	29.8%	29.8%
0807.19.50	2.6%	2.2%	1.9%	1.6%	1.6%	1.6%	1.6%	1.6%
0807.19.60	10.2%	8.9%	7.6%	6.3%	6.3%	6.3%	6.3%	6.3%
0807.19.70	7%	6.4%	5.9%	5.4%	5.4%	5.4%	5.4%	5.4%
0807.19.80	31.5%	30.3%	29.2%	28%	28%	28%	28%	28%
0901.90.20	2.4¢/kg	2.1¢/kg	1.8¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg
1602.32.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1702.11.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1702.19.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1704.90.35	6.3%	6.1%	5.8%	5.6%	5.6%	5.6%	5.6%	5.6%
1904.20.10	6.3%	6.1%	5.8%	5.6%	5.6%	5.6%	5.6%	5.6%
1904.20.90	16.2%	15.8%	15.3%	14.9%	14.9%	14.9%	14.9%	14.9%
2005.90.30	6.2%	5.7%	5.2%	4.8%	4.8%	4.8%	4.8%	4.8%
2106.90.12	5.4¢/kg + 2.5%	5¢/kg + 2.3%	4.6¢/kg + 2.1%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%
2106.90.15	10.8¢/kg + 2.5%	10¢/kg + 2.3%	9.2¢/kg + 2.1%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%
2106.90.18	21.8¢/kg + 2.5%	20.2¢/kg + 2.3%	18.6¢/kg + 2.1%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%
2208.60.10	55.4¢/pf. liter	51.4¢/pf. liter	47.4¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter

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Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
2208.60.20	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2208.60.50	27.1¢/pf. liter	25.1¢/pf. liter	23.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter
2208.70.00	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2306.70.00	0.51¢/kg	0.45¢/kg	0.38¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg
2513.20.90	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2707.60.10	1¢/kg + 3.3%	0.9¢/kg + 3.1%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%
2836.99.20	6.1%	5.8%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
2905.29.10	6.3%	5.9%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
2914.31.00	10%	9.3%	8.7%	8.1%	7.4%	6.8%	6.1%	5.5%
2914.39.90	10%	9.3%	8.7%	8.1%	7.4%	6.8%	6.1%	5.5%
2914.40.20	9.4%	8.8%	8.2%	7.7%	7.2%	6.6%	6%	5.5%
2914.40.40	9.4%	8.8%	8.2%	7.7%	7.2%	6.6%	6%	5.5%
2916.34.10	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2916.34.15	10.3%	9.7%	9.2%	8.7%	8.1%	7.6%	7%	6.5%
2916.34.25	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2916.34.55	2.6¢/kg + 12.5%	2.2¢/kg + 10.7%	1.8¢/kg + 9%	1.5¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.4¢/kg + 1.8%	Free
2916.35.15	10.3%	9.7%	9.2%	8.7%	8.1%	7.6%	7%	6.5%
2916.35.25	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2916.35.55	2.6¢/kg + 12.5%	2.2¢/kg + 10.7%	1.8¢/kg + 9%	1.5¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.4¢/kg + 1.8%	Free
2922.43.10	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2922.43.50	2.6¢/kg + 12.9%	2.2¢/kg + 12%	1.8¢/kg + 11%	1.5¢/kg + 10.1%	1.1¢/kg + 9.2%	0.7¢/kg + 8.3%	0.4¢/kg + 7.4%	6.5%
2924.22.00	2.6¢/kg + 14.6%	2.2¢/kg + 13.5%	1.8¢/kg + 12.3%	1.5¢/kg + 11.1%	1.1¢/kg + 10%	0.7¢/kg + 8.8%	0.4¢/kg + 7.7%	6.5%
2932.91.00	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.92.00	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.94.00	6.8%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
2932.99.08	6.6%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2932.99.20	9.7%	9.3%	8.8%	8.3%	7.9%	7.4%	7%	6.5%
2932.99.35	7%	6.8%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2932.99.60	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.99.70	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.32.10	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.32.50	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
3302.10.40	10.8¢/kg + 2.5%	10¢/kg + 2.3%	9.2¢/kg + 2.1%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%
3302.10.50	21.8¢/kg + 2.5%	20.2¢/kg + 2.3%	18.6¢/kg + 2.1%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%
3302.10.90	2.5%	1.3%	Free	Free	Free	Free	Free	Free
3304.99.50	2%	1%	Free	Free	Free	Free	Free	Free
3306.20.00	2.2%	1.1%	Free	Free	Free	Free	Free	Free
3502.11.00	53.6¢/kg	51.6¢/kg	49.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg
3502.19.00	10.9¢/kg	10.5¢/kg	10.1¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg
3823.11.00	2.7¢/kg + 4.9%	2.5¢/kg + 4.5%	2.3¢/kg + 4.2%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%
3823.12.00	2.7¢/kg + 4.1%	2.5¢/kg + 3.8%	2.3¢/kg + 3.5%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%
3823.13.00	4.1%	3.8%	3.5%	3.2%	3.2%	3.2%	3.2%	3.2%
3823.19.20	3.6%	3.2%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%
3823.19.40	4.1%	3.8%	3.5%	3.2%	3.2%	3.2%	3.2%	3.2%
3823.70.20	6.5%	6%	5.6%	5.1%	5.1%	5.1%	5.1%	5.1%
3823.70.40	3.5%	3%	2.5%	2%	2%	2%	2%	2%
3823.70.60	3.1%	2.8%	2.6%	2.4%	2.4%	2.4%	2.4%	2.4%
3901.90.55	10.7%	10.1%	9.5%	8.9%	8.3%	7.7%	7.1%	6.5%
3901.90.90	0.9¢/kg + 7%	0.4¢/kg + 6.7%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
4010.11.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
4010.12.10	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.12.55	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.12.90	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.13.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.19.10	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.19.55	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.19.80	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.19.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.21.30	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.21.60	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.22.30	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.22.60	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.23.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.23.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.23.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.23.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.24.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.24.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.24.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.24.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.29.10	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.29.20	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.29.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.29.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.29.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.29.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4410.11.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4410.19.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.13.05	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.14.05	1.2%	0.6%	Free	Free	Free	Free	Free	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
4412.14.25	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.19.10	2%	1%	Free	Free	Free	Free	Free	Free
4412.19.30	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.19.40	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.19.50	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.22.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.22.10	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.22.50	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.23.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.29.15	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.29.55	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.92.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.92.10	2%	1%	Free	Free	Free	Free	Free	Free
4412.92.30	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.92.40	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.92.50	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.92.90	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.93.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.99.15	2%	1%	Free	Free	Free	Free	Free	Free
4412.99.35	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.99.45	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.99.55	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.99.95	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4807.90.10	2%	1.7%	1.4%	1.1%	0.8%	0.6%	0.3%	Free
4807.90.20	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
4823.90.30	2.7%	2.3%	2%	1.6%	1.2%	0.8%	0.4%	Free
5407.61.11	22.8¢/kg + 21.2%	22.3¢/kg + 20.7%	21.8¢/kg + 20.2%	21.4¢/kg + 19.8%	20.9¢/kg + 19.4%	20.4¢/kg + 18.9%	19.9¢/kg + 18.4%	19.4¢/kg + 18%
5407.61.19	22.8¢/kg + 21.2%	22.3¢/kg + 20.7%	21.8¢/kg + 20.2%	21.4¢/kg + 19.8%	20.9¢/kg + 19.4%	20.4¢/kg + 18.9%	19.9¢/kg + 18.4%	19.4¢/kg + 18%
5407.61.21	20.7¢/kg + 19.1%	19.5¢/kg + 18%	18.2¢/kg + 16.9%	17¢/kg + 15.8%	15.8¢/kg + 14.7%	14.6¢/kg + 13.5%	13.4¢/kg + 12.4%	12.2¢/kg + 11.3%

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
5407.61.29	20.7¢/kg + 19.1%	19.5¢/kg + 18%	18.2¢/kg + 16.9%	17¢/kg + 15.8%	15.8¢/kg + 14.7%	14.6¢/kg + 13.5	13.4¢/kg + 12.4%	12.2¢/kg + 11.3%
5407.61.91	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.61.99	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.10	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.20	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.30	17¢/kg + 15.8%	14.6¢/kg + 13.5%	12.2¢/kg + 11.2%	9.7¢/kg + 9%	7.3¢/kg + 6.8%	4.9¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.69.40	14.4%	13.6%	12.8%	11.9%	11%	10.2%	9.4%	8.5%
5407.69.90	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5603.11.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.12.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.13.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.14.30	6.4%	3.2%	Free	Free	Free	Free	Free	Free
5603.14.90	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.91.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.92.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.93.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.94.10	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
5603.94.30	6.4%	3.2%	Free	Free	Free	Free	Free	Free
5603.94.90	5%	2.5%	Free	Free	Free	Free	Free	Free
6115.12.10	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.12.20	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
6115.19.20	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.19.40	12.7%	11.2%	9.8%	8.4%	6.9%	5.5%	4%	2.6%
6115.19.80	16.7%	16.6%	16.5%	16.4%	16.3%	16.2%	16.1%	16%
6115.92.30	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.92.60	17%	16%	15%	14%	13%	12%	11%	10%
6115.92.90	14.1%	14%	14%	13.9%	13.8%	13.7%	13.6%	13.5%
6115.93.30	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.93.60	19.6%	19.5%	19.4%	19.3%	19.2%	19%	18.9%	18.8%
6115.93.90	15.2%	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
6305.32.00	9.2%	9.1%	9%	8.8%	8.7%	8.6%	8.5%	8.4%
6305.33.00	9.2%	9.1%	9%	8.8%	8.7%	8.6%	8.5%	8.4%
6402.12.00	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6403.12.60	4%	2%	Free	Free	Free	Free	Free	Free
6909.12.00	5.6%	4.8%	4%	4%	4%	4%	4%	4%
7010.20.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.20.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.91.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.91.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.92.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.92.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.93.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.93.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.94.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.94.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7019.11.00	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.12.00	5.3%	5%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
7019.19.15	7.1%	7%	7%	6.9%	6.8%	6.7%	6.6%	6.5%
7019.19.28	8.8%	8.6%	8.3%	8%	7.8%	7.5%	7.3%	7%
7019.19.30	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.31.00	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7019.32.00	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7019.39.10	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.39.50	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.40.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.40.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%
7019.52.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.52.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%
7019.59.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.59.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%

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Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7019.90.10	5.6%	5.2%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
7019.90.50	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7101.22.30	0.8%	0.4%	Free	Free	Free	Free	Free	Free
7101.22.60	0.8%	0.4%	Free	Free	Free	Free	Free	Free
7116.10.25	7.7%	6.6%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
7201.50.60	0.1%	Free	Free	Free	Free	Free	Free	Free
7208.10.15	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.10.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.10.60	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.25.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.25.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.26.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.27.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.36.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.37.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.38.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.39.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.40.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.40.60	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.51.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.52.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.53.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.54.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.90.00	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.15.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.16.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.17.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.18.15	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.18.25	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7209.18.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7209.25.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.26.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.27.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.28.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.90.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7210.30.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7210.61.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7210.69.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7211.13.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.14.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.19.15	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.19.20	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.19.30	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.19.45	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7211.19.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.19.75	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7211.23.15	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.23.20	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.23.30	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.23.45	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
7211.23.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.29.20	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.29.45	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
7211.29.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.90.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7212.20.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7213.10.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7213.20.00	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7213.91.30	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7213.91.45	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7213.91.60	1.6%	1.4%	1.2%	0.9%	0.7%	0.5%	0.2%	Free
7213.99.00	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7214.30.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7214.91.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7214.99.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7215.50.00	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7216.61.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7216.69.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7216.91.00	3.1%	2.6%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7216.99.00	3.1%	2.6%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7217.10.10	2.9%	2.5%	2.1%	1.7%	1.3%	0.8%	0.4%	Free
7217.10.20	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7217.10.30	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.10.40	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.10.50	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.10.60	3.8%	3.3%	2.8%	2.2%	1.6%	1.1%	0.6%	Free
7217.10.70	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7217.10.80	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.10.90	3.8%	3.3%	2.8%	2.2%	1.6%	1.1%	0.6%	Free
7217.20.15	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.20.30	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.20.45	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.20.60	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.6%	Free
7217.20.75	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.30.15	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.30.30	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.30.45	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.30.60	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.6%	Free
7217.30.75	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.90.10	0.6%	0.5%	0.4%	0.4%	0.3%	0.2%	0.1%	Free

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7217.90.50	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7218.91.00	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7218.99.00	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7222.11.00	7.4%	6.4%	5.3%	4.2%	3.2%	2.1%	1.1%	Free
7222.19.00	7.4%	6.4%	5.3%	4.2%	3.2%	2.1%	1.1%	Free
7225.11.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.19.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.91.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.92.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.99.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.11.10	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.11.90	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7226.19.10	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.19.90	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7226.93.00	4.4%	3.8%	3.2%	2.5%	1.9%	1.3%	0.6%	Free
7226.94.00	4.4%	3.8%	3.2%	2.5%	1.9%	1.3%	0.6%	Free
7304.21.30	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.21.60	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7304.29.10	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.20	0.4%	0.3%	0.2%	0.2%	0.2%	0.1%	Free	Free
7304.29.30	4.3%	3.7%	3.1%	2.5%	1.9%	1.2%	0.6%	Free
7304.29.40	2.3%	2%	1.6%	1.3%	1%	0.7%	0.3%	Free
7304.29.50	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.29.60	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7314.12.10	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.12.20	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.12.60	7%	6%	5%	4%	3%	2%	1%	Free
7314.12.90	5%	4.3%	3.6%	2.9%	2.2%	1.4%	0.7%	Free
7314.13.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.14.10	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free

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Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7314.14.20	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.14.60	7%	6%	5%	4%	3%	2%	1%	Free
7314.14.90	5%	4.3%	3.6%	2.9%	2.2%	1.4%	0.7%	Free
7314.19.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.20.00	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.31.10	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.31.50	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.39.00	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.41.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.42.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.49.30	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.49.60	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7314.50.00	2.7%	2.3%	1.9%	1.5%	1.1%	0.8%	0.4%	Free
7418.11.20	3.3%	3.1%	3%	3%	3%	3%	3%	3%
7418.11.40	3.6%	3.4%	3%	3%	3%	3%	3%	3%
7418.19.10	3.4%	3.2%	3%	3%	3%	3%	3%	3%
7418.19.20	3.3%	3.1%	3%	3%	3%	3%	3%	3%
7418.19.50	3.6%	3.4%	3%	3%	3%	3%	3%	3%
7508.10.00	4%	3.5%	3%	3%	3%	3%	3%	3%
7508.90.10	3.7%	3.3%	3%	3%	3%	3%	3%	3%
7508.90.50	4%	3.5%	3%	3%	3%	3%	3%	3%
7615.11.00	3.4%	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.10	3.4%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.30	4.1%	3.6%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.50	3.4%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.70	3.5%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.90	3.4%	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7616.91.00	3.8%	3.1%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7616.99.50	3.8%	3.1%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7907.00.10	3.2%	3.1%	3%	3%	3%	3%	3%	3%

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7907.00.60	4.1%	3.5%	3%	3%	3%	3%	3%	3%
8211.95.10	0.3¢ each + 5.4%	0.3¢ each + 5.1%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%
8406.10.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.10.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.81.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.81.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.82.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.82.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8415.20.00	1.7%	1.6%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
8443.51.10	3.6%	3.1%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8443.51.50	1.3%	0.7%	Free	Free	Free	Free	Free	Free
8443.59.10	3.6%	3.1%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8443.59.50	1.3%	0.7%	Free	Free	Free	Free	Free	Free
8456.99.30	3.9%	3.7%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
8456.99.50	2.5%	2.4%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
8469.11.00	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8469.12.00	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8471.30.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.41.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.49.10	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.49.15	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.26	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.29	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.31	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.32	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.33	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.34	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.35	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.36	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.37	1.5%	0.7%	Free	Free	Free	Free	Free	Free

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8471.49.42	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.48	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.50	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.70	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8471.49.95	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.50.80	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.60.10	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.35	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.45	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.51	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.52	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.53	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.54	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.55	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.56	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.57	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.80	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.30	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.50	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.80.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.90.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8475.21.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8475.29.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.21.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.29.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.81.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.89.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8479.50.00	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8479.60.00	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
8484.20.00	4.6%	4.3%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%
8502.31.00	2.7%	2.6%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
8502.39.00	2.7%	2.6%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
8504.40.70	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8504.40.90	2.1%	1.8%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
8504.90.70	2.8%	2.6%	2.5%	2.4%	2.4%	2.4%	2.4%	2.4%
8504.90.95	2.8%	2.6%	2.5%	2.4%	2.4%	2.4%	2.4%	2.4%
8506.10.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.30.10	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.30.50	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.40.10	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.40.50	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.50.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.60.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.80.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.90.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8517.11.00	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8517.50.60	3.3%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%
8519.92.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8519.93.80	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8520.32.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8520.33.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8523.30.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8524.10.00	2.6%	2.2%	1.8%	1.8%	1.8%	1.8%	1.8%	1.8%
8524.31.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.32.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.39.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8524.40.00	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.51.30	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.52.10	0.46¢/lin. m	0.4¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m
8524.52.20	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.53.10	0.26¢/lin. m	0.13¢/lin. m	Free	Free	Free	Free	Free	Free
8524.53.20	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.60.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.91.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.99.40	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8525.20.90	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.40.00	2.9%	2.5%	2.1%	2.1%	2.1%	2.1%	2.1%	2.1%
8527.12.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8527.13.11	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8527.13.20	2%	1%	Free	Free	Free	Free	Free	Free
8527.13.40	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8527.13.60	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8528.12.04	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.08	2%	1%	Free	Free	Free	Free	Free	Free
8528.12.12	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.20	2%	1%	Free	Free	Free	Free	Free	Free

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8528.12.62	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.68	2%	1%	Free	Free	Free	Free	Free	Free
8528.12.76	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.84	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.10	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.16	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.24	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.55	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.65	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.75	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.85	2%	1%	Free	Free	Free	Free	Free	Free
8528.30.10	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.30.20	2%	1%	Free	Free	Free	Free	Free	Free
8528.30.62	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.30.66	2%	1%	Free	Free	Free	Free	Free	Free
8539.32.00	2.9%	2.7%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
8539.41.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8539.49.00	2.9%	2.7%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
8540.40.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.50.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.60.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.71.40	3.9%	3.8%	3.7%	3.7%	3.7%	3.7%	3.7%	3.7%
8540.72.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
8540.79.00	3.9%	3.8%	3.7%	3.7%	3.7%	3.7%	3.7%	3.7%
8543.19.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8543.40.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.81.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.40	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.60	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%

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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8543.89.80	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.85	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8543.89.90	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8548.10.05	0.9% on the value of the lead content	0.5% on the value of the lead content	Free	Free	Free	Free	Free	Free
8548.10.25	0.9% on the value of the lead content	0.5% on the value of the lead content	Free	Free	Free	Free	Free	Free
8548.90.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9010.50.10	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9010.50.20	1.5%	0.8%	Free	Free	Free	Free	Free	Free
9010.50.30	5.5%	4.7%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%
9010.50.40	6.3%	5.4%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
9010.50.50	1.9%	0.9%	Free	Free	Free	Free	Free	Free
9010.60.00	3.2%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
9018.12.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9018.13.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9018.14.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9022.12.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9022.13.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9022.14.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9025.80.15	1.7%	1.4%	1%	1%	1%	1%	1%	1%
9030.83.00	3%	2.3%	1.7%	1.7%	1.7%	1.7%	1.7%	1.7%
9030.89.00	3%	2.3%	1.7%	1.7%	1.7%	1.7%	1.7%	1.7%
9031.49.40	6.1%	4.8%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
9031.49.80	6.1%	4.8%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
9614.20.15	0.4¢ each + 3.5%	0.4¢ each + 3.4%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%

Annex III (con.)
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Section A. (continued)

(3). For each of the following subheadings, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting the rate of duty specified for such subheading in the first column in the table below in lieu thereof, and (ii) for each of the subsequent columns the rates of duty in the Rates of Duty 1-General subcolumn are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the dates announced for each column in this table by the United States Trade Representative in the Federal Register, at any time after the United States Trade Representative has determined that other major countries provide adequate entity coverage under the Agreement on Government Procurement, entered into on April 15, 1994, or under another binding international agreement.

HTS Subheadings	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
8517.19.40	7.6%	6.8%	5.9%	5.1%	4.2%
8517.19.80	7.6%	6.8%	5.9%	5.1%	4.2%
8517.21.00	4.2%	3.7%	3.3%	2.8%	2.3%
8517.22.00	4.2%	3.7%	3.3%	2.8%	2.3%
8517.50.50	6.8%	5.1%	3.4%	1.7%	Free
8517.50.90	4.2%	3.7%	3.3%	2.8%	2.3%
8517.80.10	7.6%	6.8%	5.9%	5.1%	4.2%
8517.80.20	4.2%	3.7%	3.3%	2.8%	2.3%

Section B. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-Special subcolumn on certain goods of Canada under terms of general note 12 to the HTS.

Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, the Rates of Duty 1-Special subcolumn is modified on or after the dates as specified in this section.

(1). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998
2101.12.32	2%	1%	Free
2101.12.54	2%	1%	Free
2101.12.90	2%	1%	Free
7414.20.60	2%	1%	Free

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Section B. (continued)
(1). (con.)

HTS Subheading	1996	1997	1998
7414.20.90	0.8%	0.4%	Free
8211.91.80	1.2%	0.6%	Free
8211.92.90	1.2%	0.6%	Free
9007.20.20	0.4%	0.2%	Free
9007.20.40	1.4%	0.7%	Free

(2). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1997	1998
0105.12.00	0.2¢ each	Free
0105.19.00	0.2¢ each	Free
0105.92.00	0.4¢/kg	Free
0105.93.00	0.4¢/kg	Free
0207.11.00	1.1¢/kg	Free
0207.12.00	1.1¢/kg	Free
0207.13.00	2.2¢/kg	Free
0207.14.00	2.2¢/kg	Free
0207.24.00	1.8¢/kg	Free
0207.25.20	1.1¢/kg	Free
0207.25.40	1.2%	Free
0207.26.00	2.2¢/kg	Free
0207.27.00	2.2¢/kg	Free
0207.32.00	1.1¢/kg	Free
0207.33.00	1.1¢/kg	Free
0207.34.00	2.2¢/kg	Free
0207.35.00	2.2¢/kg	Free
0207.36.00	2.2¢/kg	Free
0405.10.05	1.2¢/kg	Free
0405.10.10	1.2¢/kg	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
0405.20.10	1.5¢/kg	Free
0405.20.20	1.5¢/kg	Free
0405.20.40	1.5¢/kg	Free
0405.20.50	1%	Free
0405.20.60	1%	Free
0405.20.80	1%	Free
0405.90.05	1%	Free
0405.90.10	1%	Free
0602.90.30	0.2%	Free
0602.90.40	0.5%	Free
0602.90.60	0.3%	Free
0602.90.90	0.7%	Free
0714.10.10	1.7%	Free
0714.10.20	2.5%	Free
0714.20.10	0.7%	Free
0714.20.20	1%	Free
0714.90.45	0.7%	Free
0807.11.30	2%	Free
0807.11.40	2%	Free
0807.19.10	2%	Free
0807.19.20	3.5%	Free
0807.19.60	1.4%	Free
0807.19.80	3.5%	Free
1602.32.00	1%	Free
1702.11.00	1%	Free
1702.19.00	1%	Free
1704.90.35	0.7%	Free
1904.20.10	0.7%	Free
1904.20.90	1.7%	Free
2005.90.30	0.7%	Free
2835.29.20	0.1%	Free
3304.99.50	0.4%	Free
3306.20.00	0.5%	Free
3502.11.00	5.9¢/kg	Free
3502.19.00	1.2¢/kg	Free
3823.11.00	0.3¢/kg + 0.6%	Free
3823.12.00	0.3¢/kg + 0.5%	Free
3283.19.20	0.5%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
3823.19.40	0.5%	Free
3823.70.20	0.7%	Free
3823.70.40	0.5%	Free
3823.70.60	0.3%	Free
4010.11.00	0.4%	Free
4010.12.10	0.5%	Free
4010.12.50	0.8%	Free
4010.12.55	0.8%	Free
4010.12.90	0.2%	Free
4010.13.00	0.4%	Free
4010.19.10	0.5%	Free
4010.19.50	0.8%	Free
4010.19.55	0.8%	Free
4010.19.80	0.2%	Free
4010.19.90	0.4%	Free
4010.21.30	0.5%	Free
4010.21.60	0.4%	Free
4010.22.30	0.5%	Free
4010.22.60	0.4%	Free
4010.23.30	0.5%	Free
4010.23.41	0.8%	Free
4010.23.45	0.8%	Free
4010.23.50	0.2%	Free
4010.23.90	0.4%	Free
4010.24.30	0.5%	Free
4010.24.41	0.8%	Free
4010.24.45	0.8%	Free
4010.24.50	0.2%	Free
4010.24.90	0.4%	Free
4010.29.10	0.5%	Free
4010.29.20	0.4%	Free
4010.29.30	0.5%	Free
4010.29.41	0.8%	Free
4010.29.45	0.8%	Free
4010.29.50	0.2%	Free
4010.29.90	0.4%	Free
4412.19.10	0.5%	Free
4412.19.30	0.5%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
4412.19.40	2%	Free
4412.19.50	0.8%	Free
4412.92.10	0.5%	Free
4412.92.30	0.5%	Free
4412.92.40	2%	Free
4412.92.50	0.8%	Free
4412.92.90	0.4%	Free
4412.99.15	0.5%	Free
4412.99.35	0.5%	Free
4412.99.45	2%	Free
4412.99.55	0.8%	Free
4412.99.95	0.4%	Free
5205.26.00	1.2%	Free
5205.27.00	1.2%	Free
5205.28.00	1.2%	Free
5205.46.00	1.2%	Free
5205.47.00	1.2%	Free
5205.48.00	1.2%	Free
5407.61.11	2.4¢/kg + 2.2%	Free
5407.61.19	2.4¢/kg + 2.2%	Free
5407.61.21	2.4¢/kg + 2.2%	Free
5407.61.29	2.4¢/kg + 2.2%	Free
5407.61.91	1.7%	Free
5407.61.99	1.7%	Free
5407.69.10	1.7%	Free
5407.69.20	1.7%	Free
5407.69.30	2.4¢/kg + 2.2%	Free
5407.69.40	1.7%	Free
5407.69.90	1.7%	Free
5603.11.00	1.2%	Free
5603.12.00	1.2%	Free
5603.13.00	1.2%	Free
5603.14.30	1.6%	Free
5603.14.90	1.2%	Free
5603.91.00	1.2%	Free
5603.92.00	1.2%	Free
5603.93.00	1.2%	Free
5603.94.10	0.3%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
5603.94.30	1.6%	Free
5603.94.90	1.2%	Free
6115.12.10	0.5%	Free
6115.12.20	1.7%	Free
6115.19.20	0.5%	Free
6115.19.40	1.7%	Free
6115.19.80	1.7%	Free
6115.92.30	0.5%	Free
6115.92.60	2%	Free
6115.92.90	1.4%	Free
6115.93.30	0.5%	Free
6115.93.60	2%	Free
6115.93.90	1.5%	Free
6305.32.00	0.9%	Free
6305.33.00	0.9%	Free
6402.12.00	0.6%	Free
6403.12.60	1%	Free
6909.12.00	0.8%	Free
7010.20.20	0.3%	Free
7010.20.30	0.7%	Free
7010.91.20	0.3%	Free
7010.91.30	0.7%	Free
7010.92.20	0.3%	Free
7010.92.30	0.7%	Free
7010.93.20	0.3%	Free
7010.93.30	0.7%	Free
7010.94.20	0.3%	Free
7010.94.30	0.7%	Free
7019.12.00	0.6%	Free
7019.32.00	0.6%	Free
7019.39.10	0.6%	Free
7019.39.50	0.6%	Free
7019.40.15	0.6%	Free
7019.40.40	0.8%	Free
7019.40.90	1.1%	Free
7019.51.90	0.6%	Free
7019.52.40	0.8%	Free
7019.52.90	1.1%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7019.59.40	0.8%	Free
7019.59.90	1.1%	Free
7019.90.10	0.6%	Free
7019.90.50	0.6%	Free
7208.10.15	0.5%	Free
7208.10.30	0.6%	Free
7208.10.60	0.4%	Free
7208.25.30	0.6%	Free
7208.25.60	0.5%	Free
7208.26.00	0.5%	Free
7208.27.00	0.5%	Free
7208.36.00	0.6%	Free
7208.37.00	0.6%	Free
7208.38.00	0.4%	Free
7208.39.00	0.4%	Free
7208.40.30	0.6%	Free
7208.40.60	0.4%	Free
7208.51.00	0.6%	Free
7208.52.00	0.6%	Free
7208.53.00	0.4%	Free
7208.54.00	0.4%	Free
7208.90.00	0.5%	Free
7209.15.00	0.5%	Free
7209.16.00	0.5%	Free
7209.17.00	0.5%	Free
7209.18.15	0.5%	Free
7209.18.25	0.3%	Free
7209.18.60	0.5%	Free
7209.25.00	0.5%	Free
7209.26.00	0.5%	Free
7209.27.00	0.5%	Free
7209.28.00	0.5%	Free
7209.90.00	0.5%	Free
7210.30.00	0.6%	Free
7210.61.00	0.6%	Free
7210.69.00	0.6%	Free
7211.13.00	0.6%	Free
7211.14.00	0.6%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7211.19.15	0.5%	Free
7211.19.20	0.5%	Free
7211.19.30	0.3%	Free
7211.19.45	0.4%	Free
7211.19.60	0.5%	Free
7211.19.75	0.4%	Free
7211.23.15	0.3%	Free
7211.23.20	0.5%	Free
7211.23.30	0.3%	Free
7211.23.45	0.2%	Free
7211.23.60	0.5%	Free
7211.29.20	0.3%	Free
7211.29.45	0.2%	Free
7211.29.60	0.5%	Free
7211.90.00	0.5%	Free
7212.20.00	0.6%	Free
7213.10.00	0.4%	Free
7213.20.00	0.1%	Free
7213.91.30	0.1%	Free
7213.91.45	0.1%	Free
7213.91.60	0.2%	Free
7213.99.00	0.1%	Free
7214.30.00	0.4%	Free
7214.91.00	0.4%	Free
7214.99.00	0.4%	Free
7215.50.00	0.7%	Free
7216.61.00	0.4%	Free
7216.69.00	0.4%	Free
7216.91.00	0.4%	Free
7216.99.00	0.4%	Free
7217.10.10	0.4%	Free
7217.10.20	0.3%	Free
7217.10.30	0.5%	Free
7217.10.40	0.5%	Free
7217.10.50	0.1%	Free
7217.10.60	0.5%	Free
7217.10.70	0.3%	Free
7217.10.80	0.5%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7217.10.90	0.5%	Free
7217.20.15	0.5%	Free
7217.20.30	0.1%	Free
7217.20.45	0.5%	Free
7217.20.60	0.5%	Free
7217.20.75	0.5%	Free
7217.30.15	0.5%	Free
7217.30.30	0.1%	Free
7217.30.45	0.5%	Free
7217.30.60	0.5%	Free
7217.30.75	0.5%	Free
7217.90.10	Free	Free
7217.90.50	0.5%	Free
7218.91.00	0.5%	Free
7218.99.00	0.5%	Free
7222.11.00	1%	Free
7222.19.00	1%	Free
7225.91.00	0.5%	Free
7225.92.00	0.5%	Free
7225.99.00	0.5%	Free
7226.93.00	0.6%	Free
7226.94.00	0.6%	Free
7304.21.30	0.8%	Free
7304.21.60	0.7%	Free
7304.29.10	0.6%	Free
7304.29.20	Free	Free
7304.29.30	0.6%	Free
7304.29.40	0.3%	Free
7304.29.50	0.8%	Free
7304.29.60	0.7%	Free
7314.12.10	0.4%	Free
7314.12.20	0.4%	Free
7314.12.60	1%	Free
7314.12.90	0.7%	Free
7314.13.00	0.4%	Free
7314.14.10	0.4%	Free
7314.14.20	0.4%	Free
7314.14.60	1%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7314.14.90	0.7%	Free
7314.19.00	0.4%	Free
7314.20.00	0.5%	Free
7314.31.50	0.5%	Free
7314.39.00	0.5%	Free
7314.49.30	0.5%	Free
7314.49.60	0.4%	Free
7418.11.20	0.3%	Free
7418.11.40	0.4%	Free
7418.19.10	0.4%	Free
7418.19.20	0.3%	Free
7418.19.50	0.4%	Free
7508.10.00	0.5%	Free
7508.90.10	0.4%	Free
7508.90.50	0.5%	Free
7615.11.00	0.3%	Free
7615.19.10	0.3%	Free
7615.19.30	0.5%	Free
7615.19.50	0.3%	Free
7615.19.70	0.4%	Free
7615.19.90	0.3%	Free
7616.91.00	0.5%	Free
7616.99.50	0.5%	Free
7907.00.10	0.3%	Free
7907.00.60	0.5%	Free
8211.95.10	0.6%	Free
8211.95.50	0.6%	Free
8211.95.90	0.2¢ each + 0.4%	Free
8506.10.00	0.5%	Free
8506.30.50	0.5%	Free
8506.40.50	0.5%	Free
8506.50.00	0.5%	Free
8506.60.00	0.5%	Free
8506.80.00	0.5%	Free
8506.90.00	0.5%	Free
8510.30.00	0.4%	Free
8519.92.00	0.3%	Free
8519.93.80	0.3%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8520.32.00	0.3%	Free
8520.33.00	0.3%	Free
8523.30.00	0.4%	Free
8524.10.00	0.3%	Free
8524.31.00	0.9¢/m^2 of recording surface	Free
8524.32.00	0.9¢/m^2 of recording surface	Free
8524.39.00	0.5%	Free
8524.40.00	0.9¢/m^2 of recording surface	Free
8524.51.30	0.9¢/m^2 of recording surface	Free
8524.52.10	Free	Free
8524.52.20	0.9¢/m^2 of recording surface	Free
8524.53.10	Free	Free
8524.53.20	0.9¢/m^2 of recording surface	Free
8524.60.00	0.9¢/m^2 of recording surface	Free
8524.91.00	0.9¢/m^2 of recording surface	Free
8524.99.40	0.9¢/m^2 of recording surface	Free
8528.12.04	0.3%	Free
8528.12.08	0.5%	Free
8528.12.12	0.3%	Free
8528.12.16	0.3%	Free
8528.12.20	0.5%	Free
8528.12.24	0.5%	Free
8528.12.28	0.3%	Free
8528.12.32	0.5%	Free
8528.12.36	0.3%	Free
8528.12.40	0.5%	Free
8528.12.44	0.3%	Free
8528.12.48	0.5%	Free
8528.12.52	0.3%	Free
8528.12.56	0.5%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8528.12.62	0.3%	Free
8528.12.64	0.3%	Free
8528.12.68	0.5%	Free
8528.12.72	0.5%	Free
8528.12.76	0.3%	Free
8528.12.80	0.3%	Free
8528.12.84	0.5%	Free
8528.12.88	0.5%	Free
8528.13.00	0.5%	Free
8528.21.05	0.3%	Free
8528.21.10	0.5%	Free
8528.21.16	0.3%	Free
8528.21.19	0.3%	Free
8528.21.24	0.5%	Free
8528.21.29	0.5%	Free
8528.21.34	0.3%	Free
8528.21.39	0.5%	Free
8528.21.41	0.3%	Free
8528.21.42	0.5%	Free
8528.21.44	0.3%	Free
8528.21.49	0.5%	Free
8528.21.51	0.3%	Free
8528.21.52	0.5%	Free
8528.21.55	0.3%	Free
8528.21.60	0.3%	Free
8528.21.65	0.5%	Free
8528.21.70	0.5%	Free
8528.21.75	0.3%	Free
8528.21.80	0.3%	Free
8528.21.85	0.5%	Free
8528.21.90	0.5%	Free
8528.22.00	0.5%	Free
8528.30.10	0.3%	Free
8528.30.20	0.5%	Free
8528.30.30	0.3%	Free
8528.30.40	0.5%	Free
8528.30.50	0.3%	Free
8528.30.60	0.5%	Free

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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8528.30.62	0.3%	Free
8528.30.64	0.3%	Free
8528.30.66	0.5%	Free
8528.30.68	0.5%	Free
8528.30.72	0.3%	Free
8528.30.78	0.5%	Free
8528.30.90	0.5%	Free
8539.32.00	0.3%	Free
8548.90.00	0.3%	Free
9010.50.20	0.3%	Free
9022.12.00	0.2%	Free
9022.13.00	0.2%	Free
9022.14.00	0.2%	Free
9025.80.15	0.2%	Free
9030.83.00	0.4%	Free
9030.89.00	0.4%	Free
9614.20.15	0.4%	Free

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Section C. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-Special subcolumn on certain goods of Mexico under terms of general note 12 to the HTS.

Effective with respect to goods of Mexico, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, the Rates of Duty 1-Special subcolumn is modified on or after the dates as specified in this section.

(1). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "MX" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MX" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2933.39.61	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.39.91	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
3824.40.10	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3824.40.50	2%	1%	Free	Free	Free	Free	Free	Free
3824.90.28	2.5¢/kg + 9.5%	2.2¢/kg + 8.1%	1.8¢/kg + 6.8%	1.4¢/kg + 5.4%	1.1¢/kg + 4%	0.7¢/kg + 2.7%	0.3¢/kg + 1.3%	Free
3824.90.90	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

Section C. (continued)

(2). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "MX" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MX" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
0405.20.40	9.2¢/kg	7.7¢/kg	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free
0712.90.30	0.5¢/kg	Free	Free	Free	Free	Free	Free
0807.19.10	12%	10%	8%	6%	4%	2%	Free
0807.19.80	25.6%	23.3%	21%	18.6%	16.3%	14%	11.6% 1/
1904.20.10	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
1904.20.90	3.5%	Free	Free	Free	Free	Free	Free
2005.90.30	1.5%	Free	Free	Free	Free	Free	Free
2914.40.20	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
2914.40.40	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
2924.22.00	2.2¢/kg + 10.8%	1.8¢/kg + 9%	1.4¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.3¢/kg + 1.8%	Free
2933.32.10	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.32.50	2.7%	Free	Free	Free	Free	Free	Free
4010.12.90	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.19.80	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.23.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

1/ For subheading 0807.19.80, the rates of duty after 2003 will be as follows:
Effective with respect to articles entered on or after January 1, 2004-- 9.3%
Effective with respect to articles entered on or after January 1, 2005-- 7%
Effective with respect to articles entered on or after January 1, 2006-- 4.6%
Effective with respect to articles entered on or after January 1, 2007-- 2.3%
Effective with respect to articles entered on or after January 1, 2008-- Free

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Section C. (continued)

(2). (con.)

HTS subheading	1997	1998	1999	2000	2001	2002	2003
4010.24.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.29.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4412.19.50	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5205.26.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.27.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.28.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.46.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.47.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.48.00	4.2%	2.1%	Free	Free	Free	Free	Free
5407.61.11	7.2%	3.6%	Free	Free	Free	Free	Free
5407.61.19	7.2%	3.6%	Free	Free	Free	Free	Free
5407.61.21	7.1%	3.5%	Free	Free	Free	Free	Free
5407.61.29	7.1%	3.5%	Free	Free	Free	Free	Free
5407.61.91	5.6%	2.8%	Free	Free	Free	Free	Free
5407.61.99	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.10	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.20	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.30	7.1%	3.5%	Free	Free	Free	Free	Free
5407.69.40	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.90	5.6%	2.8%	Free	Free	Free	Free	Free
5603.11.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.12.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.13.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.14.30	5.3%	2.6%	Free	Free	Free	Free	Free
5603.14.90	4.3%	2.1%	Free	Free	Free	Free	Free
5603.91.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.92.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.93.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.94.10	1.3%	0.6%	Free	Free	Free	Free	Free
5603.94.30	5.3%	2.6%	Free	Free	Free	Free	Free

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Section C. (continued)

(2). (con.)

HTS subheading	1997	1998	1999	2000	2001	2002	2003
5603.94.90	4.3%	2.1%	Free	Free	Free	Free	Free
6115.12.20	5.6%	2.8%	Free	Free	Free	Free	Free
6115.19.40	5.6%	2.8%	Free	Free	Free	Free	Free
6115.19.80	5.6%	2.8%	Free	Free	Free	Free	Free
6115.92.60	6.4%	3.2%	Free	Free	Free	Free	Free
6115.92.90	4.9%	2.4%	Free	Free	Free	Free	Free
6115.93.60	6.4%	3.2%	Free	Free	Free	Free	Free
6115.93.90	5.2%	2.6%	Free	Free	Free	Free	Free
6305.32.00	3.4%	1.7%	Free	Free	Free	Free	Free
6305.33.00	3.4%	1.7%	Free	Free	Free	Free	Free
7019.19.15	2.7%	1.3%	Free	Free	Free	Free	Free
7019.19.28	3.4%	1.7%	Free	Free	Free	Free	Free
7019.19.90	1.2%	Free	Free	Free	Free	Free	Free
7019.40.15	2.2%	1.1%	Free	Free	Free	Free	Free
7019.40.40	3%	1.5%	Free	Free	Free	Free	Free
7019.40.90	3.9%	1.9%	Free	Free	Free	Free	Free
7019.51.90	2.2%	1.1%	Free	Free	Free	Free	Free
7019.52.40	3%	1.5%	Free	Free	Free	Free	Free
7019.52.90	3.9%	1.9%	Free	Free	Free	Free	Free
7019.59.40	3%	1.5%	Free	Free	Free	Free	Free
7019.59.90	3.9%	1.9%	Free	Free	Free	Free	Free
7208.10.15	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.10.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.10.60	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.25.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.25.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.26.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.27.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.36.00	3.6%	3%	2.4%	1.8%	1.2%	0.6	Free
7208.37.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

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Section C. (continued)

(2). (con.)

HTS subheading	1997	1998	1999	2000	2001	2002	2003
7208.38.00	2.9	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.39.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.40.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.40.60	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.51.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.52.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.53.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.54.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.15.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.16.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.17.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.18.15	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.18.25	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7209.18.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.25.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.26.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.27.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.28.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7210.30.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.61.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.69.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7211.13.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.14.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.19.15	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.19.20	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.19.30	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.19.45	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.19.60	3%	2.5%	2%	1.5%	1%	0.5%	Free

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Section C. (continued)

(2). (con.)

HTS subheading	1997	1998	1999	2000	2001	2002	2003
7211.19.75	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.23.15	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.23.20	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.23.30	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.23.45	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.23.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.29.20	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.29.45	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.29.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7212.20.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7213.10.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7213.20.00	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.30	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.45	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.60	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
7213.99.00	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7214.30.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.91.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.99.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7215.50.00	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7216.91.00	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7216.99.00	2.5%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7217.10.10	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7217.10.20	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7217.10.30	3%	2.5%	2%	1.5%	1%	0.5%	Free
7217.10.40	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.10.50	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.10.60	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.10.70	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free

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Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7217.10.80	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.10.90	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.20.15	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.20.30	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.20.45	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.20.60	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.20.75	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.30.15	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.30.30	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.30.45	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.30.60	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.30.75	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.90.10	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7217.90.50	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7218.91.00	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7218.99.00	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7222.11.00	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7222.19.00	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7226.93.00	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7226.94.00	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7304.21.30	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.21.60	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.29.10	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.20	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7304.29.30	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.40	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7304.29.50	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.29.60	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7314.13.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7314.19.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free

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Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7314.31.10	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.41.00	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.42.00	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
9906.06.41	90.3¢/kg	75.3¢/kg	60.2¢/kg	45.2¢/kg	30.1¢/kg	15.1¢/kg	Free
9906.06.42	57.4%	47.9%	38.3%	28.7%	19.1%	9.6%	Free
9906.06.44	42.2¢/kg	35.2¢/kg	28.1¢/kg	21.1¢/kg	14.1¢/kg	7¢/kg	Free
9906.06.45	56.3%	47%	37.6%	28.2%	18.8%	9.4%	Free
9906.29.40	2.7%	Free	Free	Free	Free	Free	Free

(3). On January 1, 2003, the Rates of Duty 1-Special subcolumn for subheadings 0405.10.20, 0405.20.30, 0405.20.70, 0405.90.20, 2101.12.38, 2101.12.48 and 2101.12.58 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "Free" rate of duty followed by the symbol "MX" in parenthesis.

(4). On January 1, 2003, the Rates of Duty 1-Special subcolumn for subheadings 0807.11.40, 0807.19.70 and 3824.90.45 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "MX" symbol, alphabetically, in the parenthesis following the "Free" rate of duty in such subcolumn.

(5). On January 1, 2008, the Rates of Duty 1-Special subcolumn for subheading 0807.19.20 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "MX" symbol, alphabetically, in the parenthesis following the "Free" rate of duty in such subcolumn.

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ANNEX IV

TECHNICAL MODIFICATIONS TO PROCLAMATION 6763
OF DECEMBER 23, 1994

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective dates in such proclamation:

The Annex to Presidential Proclamation 6763 of December 23, 1994, is modified as follows:

In section A of such Annex:

1. Item 26 is modified by deleting ", the designation "b" for the remaining text, subdivisions (b)(1) and (2) shall then be redesignated as "(a)" and "(b)",".

2. Item 32(d) is modified by inserting after "(a)(i)" the expression "of additional U.S. note 5".

3. Item 36 is modified by deleting "subdivision (a) of additional U.S. note 3" and by inserting in lieu thereof "subdivision (a) of additional U.S. note 1".

4. Item 38 is modified by deleting "subdivision (a) of additional U.S. note 4" and by inserting in lieu thereof "subdivision (a) of additional U.S. note 3".

4. Item 119(a) is modified by deleting "2-(N-Benzyl-N-tert-butylamino)-4'-hydroxy-3'-hydromethylacetophenone hydrochloride;" from the article description of subheading 2922.50.07.

5. Item 321 is modified by adding a conforming change as follows:

"Conforming change: The article description for subheading 8529.90.53 is modified by deleting "8528.10.64 and 8528.10.68" and inserting "8528.10.61, 8528.10.63, 8528.10.67 and 8528.10.69" in lieu thereof."

In section B(1) of such Annex by deleting "Additional U.S. note 5 to chapter 20: Countries identified in additional U.S. note 6 to chapter 20" and inserting in lieu thereof "Additional U.S. note 5 to chapter 20: Countries or territories identified in additional U.S. note 6 to this chapter combined (aggregate)".

In section E(2) of such Annex by inserting "2925.20.90" in numerical sequence.

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federal register

Friday
December 15, 1995

Part IV

Federal Communications Commission

47 CFR Part 36
Federal-State Joint Board Extension of Indexed Cap on Total Level of Universal Service Fund; Proposed Rule
Establishment of a Joint Board; Final Rule

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286, FCC 95J-1]

Federal-State Joint Board; Extension of Indexed Cap on Total Level of Universal Service Fund

AGENCY: Federal Communications Commission.

ACTION: Recommended decision of Federal-State Joint Board.

SUMMARY: The Federal-State Joint Board recommends the extension of the duration of the interim indexed cap on the total level of the Universal Service Fund (USF) for an additional six months. The cap was intended as an interim measure moderating the growth of the USF during the pendency of a broader rulemaking revising the Part 36 jurisdictional separations rules governing the USF. The Federal-State Joint Board recommends the extension of the interim cap, which expires January 1, 1996, for an additional six months while that rulemaking is completed.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, 202–418–0844, Deborah A. Dupont, 202–418–0873, Accounting and Audits Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board's Recommended Decision CC Docket No. 80–286, FCC 95J–1, adopted December 7, 1995, and released December 8, 1995.

The full text of Recommended Decisions of the Joint Board are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington DC. The full text of this Recommended Decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington DC 20037.

Summary of Recommended Decision

In 1993, the Commission imposed a two-year indexed cap (cap) on the total level of the Universal Service Fund (USF) for the purpose of moderating growth in the USF during the pendency of a planned rulemaking that would address permanent changes in the Commission's rules governing the USF. 58 FR 69239, Dec. 30, 1993. On October 3, 1995, the Commission issued a Notice of Proposed Rulemaking, proposing a six-month extension of the cap in order to continue to moderate growth in the USF while the Commission completed its USF rulemaking. 60 FR 52359, Oct. 6, 1995. The Commission explained that the duration of the cap had been limited to two years in the belief that the USF rulemaking would be completed within that period and that an additional six months would be sufficient to complete the USF rulemaking in view of the progress made to date. *Id.* at 52361. The Commission referred the issues raised in its Notice of Proposed Rulemaking to the Federal-State Joint Board for a Recommended Decision and invited interested parties to propose extensions of the cap for longer or shorter periods than six months. *Id.* at 52360–61.

Following review of comments and reply comments filed by interested parties, the Joint Board recommends that the cap be extended for an additional six months in order to continue to moderate growth in the USF while the USF rulemaking is completed. The Joint Board reiterates its conclusion, stated during earlier deliberations in the same proceeding, that the cap would minimize dislocation should the Commission's ongoing USF rulemaking result in revisions to the USF rules. In response to contentions of the parties that the proposed extension is unnecessary, because recent NECA submissions showed total USF payments in 1996 below the level of the USF as limited by an extension of the cap, the Joint Board explains that no one would be harmed if total claims for USF assistance remain below an extended cap, but that an extended cap would protect against unanticipated and unwanted growth in the fund during the pendency of the USF rulemaking should total claims substantially exceed NECA's current calculations. The Joint Board reiterates its concerns, stated earlier in the proceeding, regarding the pattern of growth and the overall rate of growth in the USF, explaining that moderating the level of the USF during the pendency of the USF rulemaking would serve the public interest.

The Joint Board concludes that six months should be sufficient to complete the USF rulemaking and recommends an extension of the cap for six additional months. The Joint Board rejects arguments to broaden the scope of the USF rulemaking as beyond the scope of the Notice of Proposed Rulemaking.

Ordering Clause

28. For all of the reasons discussed in this Recommended Decision, this Federal-State Joint Board recommends, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the Federal Communications Commission extend, until July 1, 1996, the current interim rules prescribing an indexed cap on the total level of the Universal Service Fund, 47 CFR 36.601, 36.622.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30453 Filed 12–14–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286, FCC 95–494]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These regulations enact a six-month extension of the interim indexed cap on the total level of the Universal Service Fund ("USF"). The cap was intended to be effective as an interim measure moderating the growth of the USF during the pendency of a broader rulemaking that revises the Part 36 jurisdictional separations rules governing the USF. The interim cap is scheduled to expire on January 1, 1996. The extension will maintain the interim cap while the rulemaking is completed.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanine Poltronieri, (202) 418–0866, Deborah A. Dupont, (202) 418–0873, Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Report and Order in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, FCC 95–494, CC Docket No. 80–286, adopted December 11, 1995, and released December 12, 1995. The Commission has made the full text of the Order available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, and will publish it in the FCC Record. The full text of the Order may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C., (202) 857–3800.

The Commission adopted the two-year indexed cap for the purpose of moderating growth in the USF during the pendency of a rulemaking that addresses possible permanent changes to the Part 36 jurisdictional separations rules. Previous changes to the rules had involved lengthy phase-in periods to ease the transition for affected carriers. By moderating the growth in the USF and consequently individual carriers' draw from that fund, the interim cap was intended to enable the Commission to implement new rules in a timely manner. The two-year period was selected in the belief that the rulemaking would be completed within that time. The interim cap is scheduled to expire on January 1, 1996.

On August 30, 1994, the Commission released an initial Notice of Inquiry, 59 FR 46606, Sept. 9, 1994, requesting comment on several policy questions relating to the goals and effects of high-cost assistance and on two alternative approaches to the high-cost assistance mechanisms of Part 36. On July 13, 1995, the Commission subsequently released a Notice of Proposed Rulemaking and Notice of Inquiry ("Notice"), 60 FR 46803, Sept. 8, 1995, inviting comment on proposals for revising the Part 36 jurisdictional separations rules. On August 31, 1995, in response to requests from interested parties, the deadlines for comments and reply comments on the issues raised in the Notice were extended four additional weeks. In granting the extension, the Commission explained that the extension would serve the public interest by facilitating more detailed analysis by interested parties, which should prove helpful to the ultimate resolution of the complex issues presented in the Notice.

On October 3, 1995, we issued a notice of proposed rulemaking, ("*Extension Notice*"), 60 FR 52359, Oct. 6, 1995, proposing the extension of the interim cap for an additional six months. We referred the issues raised in the *Extension Notice* to the Joint Board for a recommended decision. In the *Extension Notice*, we noted that we had limited the duration of the interim cap to two years in the belief that two years would be sufficient for the completion of the Part 36 USF jurisdictional separations rulemaking. We also emphasized that because of the complexity of the issues in the rulemaking, the rulemaking would take more time than the anticipated two years to complete, despite diligent effort by the Commission and Joint Board staff and interested parties. The Joint Board has recently released a recommended decision recommending that the Commission extend the interim cap. In view of the scope of the proposals under consideration in the current rulemaking, the process may conclude with new USF rules retargeting assistance. Consequently, the rationale articulated by the Commission in support of the original interim cap during the pendency of the rulemaking remains valid. Given the progress in the rulemaking process to date, the Commission believes that an additional six months should be sufficient to complete it and that the extension is essential to allow full analysis of the complex issues raised in this rulemaking. We believe that extending the interim cap for an additional six months will allow growth in the USF to be moderated while the rulemaking revising the USF jurisdictional separations rules is completed. To continue to moderate the growth of the USF effectively during the entire rulemaking period, the six-month extension must be effective by the January 1, 1996, expiration of the interim cap. In addition, the Commission has reserved the discretion to consider a longer extension of the interim cap, without further notice, if it becomes clear that the rulemaking will not be completed by July 1, 1996, on the basis of the record already developed.

These rule changes will become effective immediately upon their publication in the **Federal Register**. Pursuant to 5 U.S.C. 553 (d)(3) the Commission found good cause to have the rule amendments take effect immediately upon publication in the **Federal Register**. The revised rules must be effective in less than 30 days so that the extended interim cap is in place by the expiration date of the interim cap, January 1, 1996.

Accordingly, pursuant to Sections 1, (4)(i), 221(c), and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 221(c), and 410(c), it is ordered That Part 36 of the Commission's Rules and Regulations, 47 C.F.R. Part 36, Subpart F—Universal Service Fund, is amended as shown in the rule changes below.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Telephone, Universal System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. Section 36.601 is amended by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) During an interim period commencing on January 1, 1996, and terminating on July 1, 1996, the annual amount of the total Universal Service

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Fund shall not exceed the amount of the total Universal Service Fund for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar year preceding the June filing. The total Universal Service Fund shall consist of the Universal Service expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the year preceding the June filing and the number of total working loops on December 31 of the second year preceding that filing, both calculated pursuant to § 36.611(a)(8).

3. Section 36.622 is amended by revising the first sentence of paragraph (a) and paragraph (c) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

(a) National Average Unseparated Loop Cost per Working Loop. Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 36.621(a) divided by the sum of the working loops reported in § 36.611(a)(8) for each study area in the country.

* * *

* * * * * *

(c) During an interim period commencing on January 1, 1996, and terminating on July 1, 1996, the National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum total Universal Service Fund allowable pursuant to § 36.601(c).

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Part V

The President

Proclamation 6858—Wright Brothers Day

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Presidential Documents

Title 3—

The President

Proclamation 6858 of December 13, 1995

Wright Brothers Day, 1995

By the President of the United States of America

A Proclamation

Ninety-two years ago, Orville Wright manned the first sustained and controlled, machine-powered flight in an airplane he designed and built with his brother Wilbur. This extraordinary journey, though only 12 seconds long, was the first great achievement of a partnership that revolutionized aviation and made remarkable contributions to aerodynamics, mechanical engineering, and practical flight techniques. The Wright brothers' pioneering efforts remain enduring examples of American ingenuity and perseverance.

Today, the United States aviation industry helps to drive our economy and provides business and recreational opportunities to our citizens that were unthinkable just a century ago. Our reliance on air transit grows each year, challenging the aviation community and the Federal Aviation Administration (FAA) to meet new safety and operational demands.

Our air transportation system, already the safest and most efficient in the world, continues to improve. In fact, efforts are underway to craft reforms that enhance the efficiency of the FAA so that America's leadership in air transportation, begun with the Wright brothers' historic flight on December 17, 1903, can continue well into the next century.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1995, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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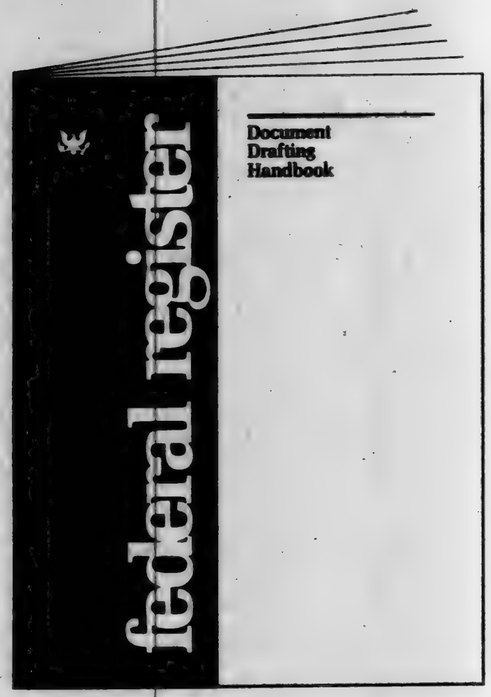
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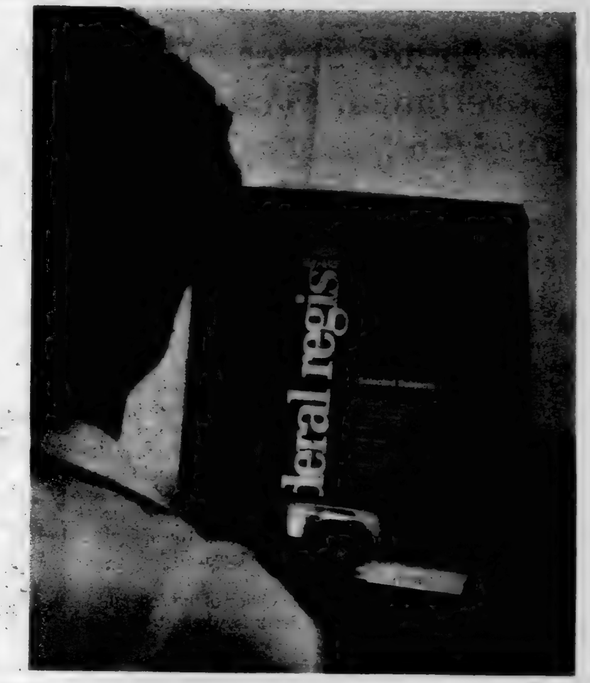
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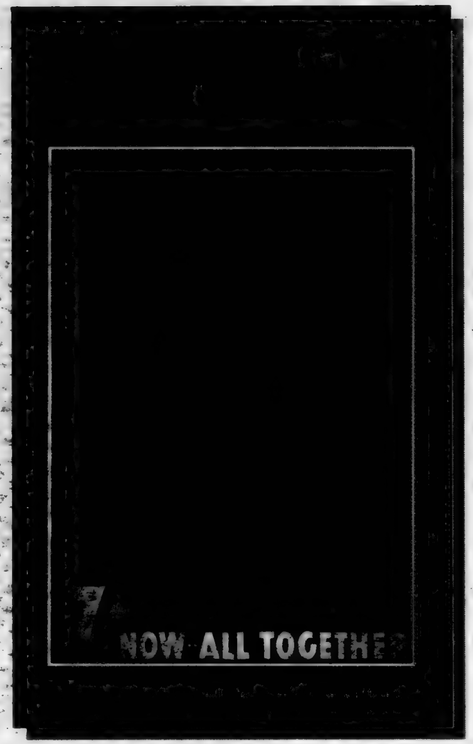
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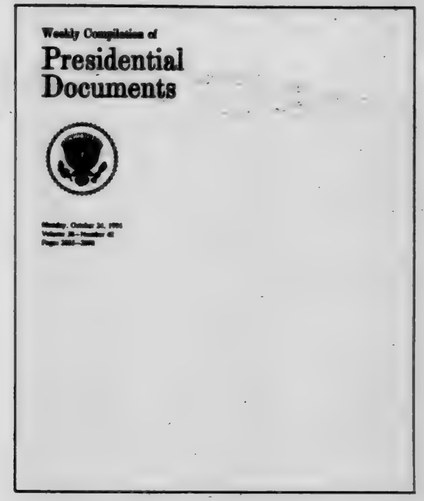
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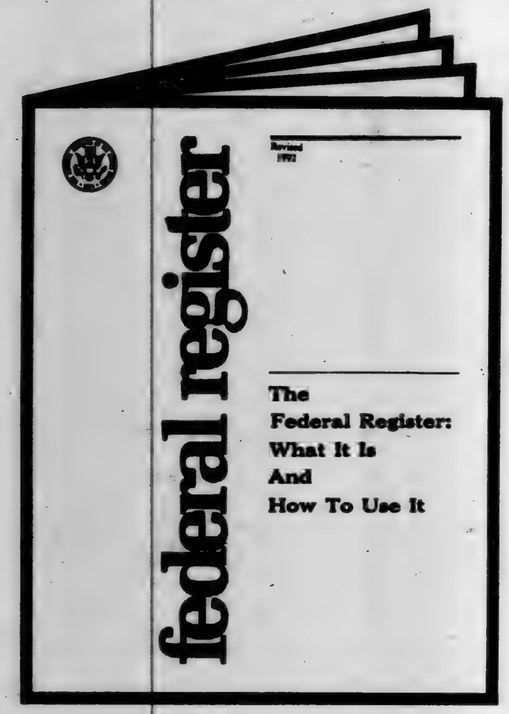
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV95-906-3-FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Final Rule To Temporarily Relax Size Requirements for Texas Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which temporarily relaxed the minimum size requirements for Texas grapefruit for the entire 1995–96 season. This interim final rule is designed to help the Texas citrus industry successfully market the 1995–96 season grapefruit crop.

EFFECTIVE DATE: January 17, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–690–3670; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906 (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 citrus handlers subject to regulation under the order covering oranges and grapefruit grown in Texas, and approximately 1,500 producers of these citrus fruits in Texas. Small agricultural service firms, which includes grapefruit handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities.

This rule finalizes the temporary relaxation of the minimum size requirements for grapefruit as prescribed under the Texas citrus marketing order. The rule provides that pack size 112 grapefruit may be shipped throughout the entire 1995–96 season if such grapefruit grade at least U.S. No. 1. This relaxation is similar to the relaxations which were issued for the 1993–94 and 1994–95 seasons. This relaxation was unanimously recommended by the Texas Valley Citrus Committee (TVCC).

The interim final rule was issued on October 17, 1995, and published in the October 23, 1995, **Federal Register** (60 FR 54291), providing a 30-day comment period ending November 22, 1995. No comments were received.

Minimum grade and size requirements for fresh grapefruit grown in Texas are in effect under § 906.365 (7 CFR 906.365). This rule amends § 906.365 by revising paragraph (a)(4) to permit shipment of grapefruit measuring at least 3$^{5}/_{16}$ inches in diameter (pack size 112) and grading at least U.S. No. 1 for the entire 1995–96 season ending June 30, 1996.

Section 906.365 establishes minimum size requirements for Texas grapefruit. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, that is the minimum diameter for the grapefruit in any lot is 3$^{9}/_{16}$ inches. At other times, grapefruit that is pack size 112, except that the minimum diameter for grapefruit in any lot is 3$^{5}/_{16}$ inches, may be shipped if it grades at least U.S. No. 1. The minimum grade requirement for grapefruit is Texas Choice.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the remainder of the 1995–96 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida.

The relaxation is expected to help the Texas citrus industry successfully market its 1995–96 season grapefruit crop and have a positive effect on producer returns. Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the entire 1995–96

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season will enable Texas grapefruit handlers to meet market needs. This final rule is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments began in late September this season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is found that finalizing this rule without change, as published in the **Federal Register** (60 FR 54291, October 23, 1995) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 60 FR 54291 on October 23, 1995, is adopted as a final rule without change.

Dated: December 12, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30672 Filed 12–15–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 984

[Docket No. FV95–984–2FIR]

Walnuts Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Walnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Mark A. Hessel, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California walnuts are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts handled during the 1995–96 marketing year, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of California walnuts under this marketing order, and approximately 65 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 marketing year was prepared by the Walnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Because that rate will be applied to the actual quantity of certified merchantable walnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met September 8, 1995, and unanimously recommended a 1995–96 budget of $2,280,175, $109,403 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Field travel and relates expenses, $17,000 ($13,000), general insurance, $6,800 ($6,400), social security and hospital insurance taxes, $9,286 ($8,129), audit, $8,900, ($8,700), group life, retirement, and medical, $45,861 ($44,370), office salaries, $41,740 ($40,740), office rent, $27,168 ($26,419), office supplies and miscellaneous, $20,000 ($15,000), postage, $7,000 ($5,000), furniture, fixtures, and automobiles, $25,000 ($5,000), domestic market research and development, $998,000 ($953,000), walnut production research, $718,420 ($718,302), crop estimate, $67,000 ($60,000), and $30,000 for the reserve for contingencies, for which no funding was recommended last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Administrative salaries, $99,000 ($101,712), and production research director, $34,000 ($40,000). All other items are budgeted at last year's amounts.

The Board also unanimously recommended an assessment rate of $0.0116 per kernelweight pound of merchantable walnuts certified, $0.0005 more than the previous year. This rate, when applied to anticipated shipments of 1,980,000 kernelweight pounds of merchantable walnuts, will yield $2,296,800 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

An interim final rule was published in the **Federal Register** on October 30, 1995 (60 FR 55178). That interim final rule added § 989.346 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through November 29, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on August 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable walnuts handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 60 FR 55178 on October 30, 1995, is adopted as a final rule without change.

Dated: December 12, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–30673 Filed 12–15–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1212

[FV–95–703]

Lime Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This document removes the Lime Research, Promotion, and Consumer Information Order (Order) in its entirety. A referendum was conducted in November 1995 to determine whether continuance of the Order was favored by a majority of the producers, producer-handlers, and importers voting in the referendum. A majority of the persons voting in the referendum did not favor continuance of the Order.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Richard B. Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, Box 96456, Room 2535–S, Washington, D.C. 20090–6456, telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this termination order.

This action is governed by section 1960 of the Lime Research, Promotion, and Consumer Information Act of 1990, as amended (Act). Section 1960 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum not later than 30 months after the date on which the collection of assessments begins to determine whether the issuance of the Order is favored by a majority of the producers, producer-handlers, and importers voting in the referendum. Paragraph (b) of section 1960 of the Act requires that the Order continue in effect only if favored by such majority.

Background

The Lime Research, Promotion, and Consumer Information Act of 1990 (1990 Act) (Pub. L. 101–624, 7 U.S.C. 6201–6212) was enacted on November 28, 1990, for the purpose of establishing an orderly procedure for the development and financing of an effective and coordinated program of research, promotion, and consumer information to strengthen the domestic and foreign markets for limes. The Order required by the 1990 Act became effective on January 27, 1992 (57 FR 2985), after notice and comment rulemaking.

In March 1992 the Department conducted nomination meetings to nominate lime producers and importers for appointment to the Lime Board (Board). The Board members were appointed by the Secretary in September 1992 and the Board conducted its first meeting at the Department in Washington, D.C. in October 1992. During the course of this meeting, the Board and the Department concluded that a technical amendment to the 1990 Act was needed before an order could be implemented. Consequently, full implementation of the Order was delayed until the enactment of such technical amendment.

The Lime Research, Promotion, and Consumer Information Improvement Act (1993 Act) (Pub. L. 103–194, Dec. 14, 1993) contained the necessary technical amendment to properly cover the regulated commodity. The 1993 Act also provided for increasing the exemption level from less than 35,000

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pounds annually to less than 200,000; terminating the initial Board; changing the size and composition of the Board; and delaying the initial referendum date.

A proposed rule was published in the April 7, 1994, issue of the **Federal Register** (58 FR 3446) inviting comments on amending the Order to reflect the provisions of the 1993 Act. A final rule was published in the February 8, 1995, issue of the **Federal Register** (60 FR 7435).

In March 1995, as a result of terminating the initial Board under the 1993 Act, the Department conducted nomination meetings to nominate lime producers and importers for appointment to the new Board. The Board members were appointed by the Secretary in June 1995 and the newly constituted Board met at the Department in Washington, D.C. in August 1995. At this meeting, amid concern over the changing character of the lime industry, the Board voted that a referendum be conducted before the Order is fully implemented to determine industry support.

Since the enactment of the 1990 Act, the character of the lime industry has significantly changed. As a result of the extensive damage to lime orchards in Florida by Hurricane Andrew in August 1992, domestic production has plummeted and the volume of imports has increased dramatically. Domestic production is not expected to reach pre-Hurricane Andrew levels for several more years because Florida accounted for a majority of domestic production. Imports currently represent roughly 94 percent of lime shipments in the United States.

In response to the Board's vote, an interim final rule with request for comments containing a referendum order and procedures was published in the October 11, 1995, issue of the **Federal Register** (60 FR 52835). No comments were received.

A representative period from September 1, 1994, through August 31, 1995, was established to determine voter eligibility in the referendum. Persons who produced, produced and handled, or imported 200,000 more pounds of limes for the fresh market during this period were eligible to vote. A voting period from November 1, 1995, through November 15, 1995, was established to allow eligible persons an opportunity to vote.

Continuance of the Order was favored by only 28 percent of the producers, producer-handlers, and importers casting valid ballots in the referendum. Thus, it is found and determined that a majority of persons casting valid ballots in the referendum do not favor continuance of the Order. Accordingly, it is found and determined that the Order does not tend to effectuate the declared policy of the Act. For these reasons, in accordance with the provisions of the Act, this action will terminate 7 CFR 1212 in its entirety.

It is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) A continuance referendum was conducted in November 1995 and a majority of persons voting in the referendum did not favor continuance of the Order; (2) it has been determined that the Order does not tend to effectuate the declared policy of the Act; and (3) no useful purpose would be served in delaying the effective date of the termination order.

Termination Order

It is, therefore, ordered, That 7 CFR part 1212 is hereby terminated effective on December 18, 1995.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

PART 1212—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6201–6212, 7 CFR Part 1212 is removed.

Dated: December 12, 1995.

Lon Hatamiya,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–30671 Filed 12–15–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–29]

Amendment of Class E Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Bullhead City, AZ. Additional controlled airspace is required for aircraft executing instrument approach procedures at Laughlin/Bullhead International Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Laughlin/Bullhead International Airport, Bullhead City, AZ.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Bullhead City, AZ (60 FR 54205).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Bullhead City, AZ. The intended effect of this action is to provide adequate Class E Airspace for aircraft executing the Standard Instrument Approach Procedure at Laughlin/Bullhead International Airport, Bullhead City, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Bullhead City, AZ [Revised]

Laughlin/Bullhead International Airport, AZ
(lat. 35°09'27" N, long. 114°33'34" W)
Needles VORTAC, CA
(lat. 34°45'58" N, long, 114°28'27" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Laughlin/Bullhead International Airport and within 3 miles each side of the Needle VORTAC 350° radial extending from the 6-miles radius to 10 miles south of the Laughlin/Bullhead International Airport. That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning a lat. 34°55'00" N, long. 114°36'00" W; to lat. 35°07'00" N, long. 115°00'00" W; to lat. 35°16'00" N, long, 115°10'00" W; to lat. 35°30'00" N, long. 114°47'00" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 1, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–30692 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 682

Federal Family Education Loan Program eligible borrowers

CFR Correction

In Title 34 of the Code of Federal Regulations, part 400 to end, revised as of July 1, 1995, on page 680, second column, the text designated as § 682.201 (a)(8) is correctly designated as § 682.201 (b)(8) and should appear on page 681, in the second column before paragraph (c).

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–174; RM–8263]

Radio Broadcasting Services; Owensville and Versailles, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 236C3 for Channel 236A at Versailles, Missouri, and modifies the license for Station KLGS(FM), in response to a petition filed by Twin Lakes Communications, Inc. *See* 58 FR 35421, July 1, 1993. The coordinates for Channel 236C3 at Versailles are 38–23–27 and 92–38–06. We shall also make an editorial change in the FM Table of Allotments for Owensville, Missouri, deleting Channel 237C2 and adding Channel 237A in accordance with the Commission's Rules. *See* letter dated March 17, 1995, from the Chief, Audio Services Division, cancelling the construction permit for Station KLZE(FM), Channel 237C2. Public notice of this action was given on March 29, 1995. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 93–174, adopted November 30, 1995, and released December 11, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 237C2 and adding Channel 237A at Owensville and by removing Channel 236A and adding Channel 236C3 at Versailles.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Docs. 95–30616 Filed 12–15–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–78; RM–8472; RM–8525]

Radio Broadcasting Services; Cloverdale, Montgomery and Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition for rule making to Channel 254A to Cloverdale, Alabama, as that locality's first local aural transmission service as requested by Pulaski Broadcasting, Inc. (RM–8472). The proposal is dismissed based upon the failure of the petitioner or any other interested party to demonstrate that Cloverdale constitutes a *bona fide* community for purposes of Section 307(b) of the Communications Act for allotment objectives. *See* 59 FR 36735, July 19, 1994. Additionally, in response to a mutually exclusive joint counterproposal, this document substitutes Channel 254C1 for Channel 254C3 at Warrior, Alabama, and modifies the license of North Jefferson Broadcasting Company, Inc. for Station WLBI(FM). Further, to accommodate the

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Warrior allotment, Channel 255C1 is substituted for Channel 255C at Montgomery, Alabama, and the license of Deep South Broadcasting Company, Inc. for Station WBAM-FM is modified accordingly (RM–8525).

Coordinates used for Channel 254C1 at Warrior, Alabama, are 33–44–30 and 86–48–30. Coordinates used for Channel 255C1 at Montgomery, Alabama, are 32–14–45 and 86–07–30. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–78, adopted November 30, 1995, and released December 11, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 255C and adding Channel 255C1 at Montgomery; and by removing Channel 254C3 and adding Channel 254C1 at Warrior.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30614 Filed 12–15–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 242
Monday, December 18, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1011, and 1046

[Docket No. AO–388–A8 et al.; DA–94–12]

Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO–388–A8
1011	Tennessee Valley	AO–251–A39
1046	Louisville-Lexington-Evansville.	AO–123–A66

SUMMARY: This final decision proposes to amend the pooling standards of the Tennessee Valley and Carolina orders; modifies the marketing areas of the Tennessee Valley and Louisville-Lexington-Evansville orders; changes the location adjustment under the Carolina order for plants located in the Middle Atlantic marketing area; and changes the base-paying months under the Carolina order. The decision is based upon industry proposals presented at a public hearing in Charlotte, North Carolina, on January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued November 21, 1994; published November 25, 1994 (59 FR 60574).

Recommended Decision: Issued August 17, 1995; published August 24, 1995 (60 FR 43986).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Charlotte, North Carolina, on January 4, 1995. Notice of such hearing was issued on November 21, 1994, and published November 25, 1994 (59 FR 60574).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 17, 1995, issued a recommended decision containing notice of the opportunity to file written exceptions thereto. Two comments were received in response to the notice, both of which fully support the findings and conclusions of the recommended decision.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, with no material modifications.

The material issues on the record of the hearing relate to:

1. Marketing area modifications to the Tennessee Valley and Louisville-Lexington-Evansville orders;
2. Where to regulate a distributing plant that meets the pooling standards of more than one order;
3. Supply plant pooling standards under the Tennessee Valley order;
4. Distributing plant pooling standards under the Carolina order;
5. Location adjustments under the Carolina order; and
6. Base-paying months under the Carolina order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Marketing Area Modifications to the Tennessee Valley (Order 11) and Louisville-Lexington-Evansville (Order 46) Orders

Six now-unregulated Kentucky counties between the Order 11 and Order 46 marketing areas should be added to the Order 11 marketing area and one county that is now part of the Order 46 marketing area should be removed and added to the Order 11 marketing area.

A spokesman for Southern Belle Dairy Company, Inc., testified that the six unregulated counties—Clay, Jackson, Laurel, McCreary, Owsley, and Rockcastle—and the one Order 46

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county—Pulaski—are in an area that is closely associated with the Tennessee Valley marketing area. He pointed out, for example, that two Order 11 pool plants—the Flav-O-Rich plant at London and the Southern Belle plant at Somerset—are in Laurel and Pulaski Counties, respectively.

The witness indicated that Southern Belle had sales in each of the counties proposed to be added to the marketing area. He also introduced data showing that 79 percent of the fluid milk sales in the seven-county area came from the Southern Belle and Flav-O-Rich plants. He said that a majority of the sales in Pulaski County also came from Order 11 plants.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The six now-unregulated Kentucky counties should be added to the Order 11 marketing area and Pulaski County should be removed from the Order 46 marketing area and added to the Order 11 marketing area. This seven-county area is closely associated with the Tennessee Valley market and its addition to the Order 11 marketing area, in conjunction with the pooling standards adopted in this decision, will add regulatory stability for the plants with sales in this area. There are no plants in this seven-county area other than the Southern Belle and Flav-O-Rich plants and none outside of this area that would become regulated as a result of the addition of this territory to the Tennessee Valley marketing area.

A conforming change should be made in § 1011.52(a)(3) to include the counties of Jackson, Owsley, and Rockcastle with the other Kentucky counties now included in the minus 32-cent location adjustment zone. Although there are no plants located in these three counties, should a plant be built there the appropriate location adjustment should be minus 32 cents, the same location adjustment that is applicable in the neighboring counties of Laurel, Pulaski, Clay, and Breathitt.

2. Where To Regulate a Distributing Plant That Meets the Pooling Standards of More Than One Order

The pooling standards of the Tennessee Valley and Carolina orders should be modified to fully regulate a distributing plant that is located within their respective marketing areas and that meets the pooling standards of §§ 1011.7(a) or 1005.7(a), respectively, even if the plant meets the pooling standards of another order and has more route disposition in such other order's marketing area.

These amendments will allow a distributing plant at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order to be regulated under that order rather than under the Carolina order, despite the plant's having greater sales in the Carolina marketing area. Similarly, they will allow a distributing plant located at Somerset, Kentucky—which, as recommended under Issue No. 1, would be part of the Order 11 marketing area—to be regulated under Order 11 even if the plant should develop greater sales in the marketing area of Order 46 or some other order's marketing area. Finally, the amendments will permit a plant located at Greenville, South Carolina (in the Order 5 marketing area), to be regulated under Order 5 even if the plant has more sales in the Southeast marketing area (Order 7).

These amendments and the proposals which prompted them stem from various pricing problems under these orders that have come about for a variety of reasons, including the fact that the marketing areas may not have grown as fast as handlers' distribution areas. The pricing problems identified on the record of this proceeding relate to Land-O-Sun Dairies, Inc., at Kingsport, Tennessee; Southern Belle Dairy Company at Somerset, Kentucky; and Superbrand Dairy Products, Inc., at Greenville, South Carolina.

Land-O-Sun Dairies, Inc., operates a plant at Kingsport, Tennessee, which is in the Tennessee Valley marketing area. Because of this plant's greater route disposition in the Carolina marketing area, it has been regulated under that order. During the past three years (January 1992–November 1994), the blend price at Kingsport under Order 5 has averaged 14 cents below the blend price at that location under Order 11. In some months, the difference has been as high as 32 cents. Although the Class I price at Kingsport is identical under both of these orders, the Tennessee Valley order's higher Class I utilization—e.g., 82.03 percent for Order 11 compared to 77.96 percent for Order 5 during the first 10 months of 1994—has led to a higher blend price under that order at Kingsport during nearly every month for the past three years.

A spokesman for Land-O-Sun testified that the Kingsport plant handles approximately 12 million pounds of milk per month and that about one-third of its Class I sales are distributed on routes within the Tennessee Valley marketing area and the remaining two-thirds within the Carolina marketing area.

The witness testified that Land-O-Sun purchases its raw milk supply from 140 dairy farmers located in northeast Tennessee and southwest Virginia within 100 miles of the Kingsport plant. He noted that this area is also the supply area for other Order 11 pool plants. As a result, he said, any blend price difference to producers in this common supply area leads to market instability. Because the Order 11 blend price is higher than the Order 5 blend price, he stated, Land-O-Sun is forced to pay over-order prices to retain its producers. He indicated that Land-O-Sun could not consistently pay these higher prices and remain a viable business entity.

Southern Belle Dairy at Somerset, Kentucky, has been regulated under Order 11 since 1989. In recent years, the plant has had nearly equal sales in the Order 46 and Order 11 marketing areas. If regulation of the plant had shifted to Order 46, the applicable Class I differential price would be 19 cents lower than under Order 11 (i.e., $2.26 compared to $2.45), but the blend price difference would be even more substantial. For example, in the past 35 months (January 1992–November 1994), the Order 46 blend price averaged 30 cents below the Order 11 blend price at Somerset. In some months during this period, the difference in blend prices was as much as 67 cents.

At the hearing, a Southern Belle spokesman testified that the handler sought the marketing stability that would be provided by regulating the plant under Order 11 based upon its location within the Order 11 marketing area. The spokesman stated that Southern Belle would experience procurement problems if it could only pay its producers the Order 46 blend price in competition with Order 11 handlers—such as the Flav-O-Rich plant at London, Kentucky, 37 miles east of Somerset—which also procure milk from the same supply area. He also cited the marketing instability that would result from the plant shifting back and forth between the two orders, particularly in view of the differing base and excess payment plans to producers in each of these orders.

Superbrand Dairy Products at Greenville, South Carolina, has been regulated under the Georgia order since May 1992 despite the fact that it is located within the marketing area of the Carolina order and meets the pooling standards of that order.

A spokesman for Mid-America Dairymen, Inc. (Mid-Am), which has a full supply contract with the Superbrand plant, testified that the Carolina order should be amended to

provide the same type of pooling standard that has been proposed for the Tennessee Valley order and that was incorporated in the Department's recommended [and final] decisions for the new Southeast order.[1] Inclusion of this provision in each of these orders will provide regulatory compatibility throughout the Southeast, he said.

The witness stated that the Mid-Am proposal would return the Superbrand plant to its former status as a pool plant under Order 5. In terms of its sales and procurement pattern, the plant is more closely associated with the Carolina market, he added.

The Mid-Am spokesman testified that the proposed change in pooling standards is a departure from the traditional method of determining where a distributing plant should be regulated when it meets the pooling standards of more than one order. The traditional method, he explained, regulated a plant wherever it had the most sales. He said that the principle behind that practice was to insure that all handlers having sales in an order area were subject to the same regulatory provisions as their competition. However, he added, with the advent of large processing plants with sales distribution over wide geographic areas, the traditional method of pooling distributing plants has become obsolete.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

For the most part, Federal milk orders have traditionally regulated plants according to where they had the most sales. The reasoning behind that policy has been to ensure that all handlers having sales in a Federal order marketing area were subject to the same minimum prices (adjusted for plant location) and other regulatory provisions as their competition. When these provisions were first incorporated in orders, markets were primarily local in nature. At any given location, it was common for Class I prices to differ among orders, and it was common for each order to have a unique set of provisions.

Most of the provisions in Federal milk orders today are standardized. For example, all orders have uniform classification and allocation provisions. Similarly, most Federal order Class I prices are properly aligned. As noted above, for example, the Class I price at Kingsport, Tennessee, is the same whether Land-O-Sun's plant is regulated under Order 5 or Order 11; the Southern Belle plant at Somerset, Kentucky, would be subject to a higher Class I price under Order 11 than would apply at the plant under Order 46; and the Superbrand plant at Greenville would be subject to the same Class I price whether it was regulated under Order 5 or Order 7.

Consequently, it must be concluded that the competitive equity that was, and continues to be, sought by having competing handlers subject to the same rules and Class I prices can be achieved in these marketing areas by pooling distributing plants under the orders applicable to the marketing areas in which the plants are located. Specifically, the pooling standards of the Tennessee Valley and Carolina orders should be amended to fully regulate all distributing plants that meet the orders' pooling standards and that are located within their respective marketing areas.

Under the provisions adopted here for the Carolina and Tennessee Valley orders, a plant that qualifies as a pool distributing plant and which is located within the marketing area will be regulated under the order applicable to that marketing area even if it meets the pooling standards of another order and has greater sales in such other order's marketing area. The nearby Southeast order, Louisville-Lexington-Evansville order, and Upper Florida order contain provisions (§§ 1007.7(g)(4), 1046.7(e)(3), and 1006.7(d)(3), respectively) that conform to the proposed provisions by yielding regulation of such plants to the other order.

Orders 5 and 11 also should be modified to recognize another order's primacy to regulate a plant that meets such other order's pooling standards and that is within the other order's marketing area. This is accomplished in §§ 1005.7(e)(3) and 1011.7(e)(3).

A clarifying change should also be made to §§ 1005.7(e)(5) and 1011.7(e)(5). At present, these paragraphs, which are designated as §§ 1005.7(d)(4) and 1011.7(d)(4), state that "the term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order." A problem could arise with this language because during certain months of the year a supply plant may qualify as a pool plant by shipping less than 50 percent of its receipts to distributing plants. For example, if a supply plant shipped 40 percent of its receipts to pool distributing plants under Order 5 and 40 percent of its receipts to distributing plants under Order 11, both orders, pursuant to the language quoted above, would yield regulation of the plant to the other order, leaving the plant in a state of regulatory limbo. To prevent this unlikely event from occurring, the paragraph should be modified to read: "The term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order."

3. Supply Plant Pooling Standards Under the Tennessee Valley Order

The supply plant pooling provisions for the Tennessee Valley order should be amended to provide automatic pooling status for a supply plant which met the order's shipping standards during the preceding months of July through February.

Armour Food Ingredients Company (Armour) proposed the change in supply plant pooling standards. A spokesman for Armour testified that the company operates a supply plant at Springfield, Kentucky, that has been a pool plant under Order 11 since August 1992. He said that the facility is a "dual Grade A/Grade B plant." The Grade A part of the plant is used to assemble Grade A milk from producers' farms for transshipment to pool distributing plants, while the Grade B facility is used to process surplus milk into Class III products, he explained.

The witness testified that Order 11 now requires Armour to ship milk to distributing plants every month of the year. However, much less milk is needed from Armour during the spring than during the other months of the year, he said. Consequently, he concluded, Armour and its distributing plant customers are incurring receiving and hauling costs for no other purpose than to satisfy the order's shipping requirements.

The witness introduced an exhibit which showed that from August 1992 through October 1994 Armour shipped a monthly average of 71 percent of its receipts to pool distributing plants. The exhibit also showed that when shipments of surplus milk from these same pool distributing plants to Armour were subtracted from the receipts from Armour, the distributing plants, on average, kept 34 percent of the milk that was sent to them.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The provision proposed by Armour is included in many Federal milk orders

[1] Official notice is taken of the final decision for the Southeast order issued on May 3, 1995 (60 FR 25014).

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because of the seasonal variation in milk production. This variation is also evident in the Tennessee Valley market. In 1993, the average daily production per producer in this market was 2,220 pounds. However, this daily average reached a low of 1,941 pounds during the month of July and peaked at 2,481 pounds during May. As a group, the months of March through June had a daily average of 2,375 pounds, compared to 2,149 pounds during the months of July through February.

There is no merit in requiring supply plants to receive, reload, and ship milk to distributing plants if the milk is not needed or if closer milk is available directly from producers' farms. In addition to the statistics suggesting that supply plant shipments during the months of March through June are unnecessary, the lack of any contradictory testimony from Order 11 distributing plant operators must be interpreted as concurrence with the view that supply plant shipments are simply not needed during the months of March through June. In view of this evidence, the proposal should be adopted.

Section 1011.7(b)(3) of the Tennessee Valley order, as proposed to be amended here, also should be modified to clarify what would happen if a shipping requirement were instituted during the months of March through June pursuant to § 1011.7(b)(4). First, it should be understood that a new supply plant or one that did not meet the order's shipping requirements during the months of July through February would be subject to the 40 percent supply plant shipping requirement now in the order.

If the market is short of milk during the "free-ride" months of March through June and the market administrator determines that additional milk is needed from pool supply plants pursuant to § 1011.7(b)(4), any increase in shipping percentage would be added to the percentage that is then applicable to the plant. For instance, if the market administrator determines that a 10-percentage point increase in shipments is needed, a plant that would have had to ship 40 percent of its receipts would be required to ship 50 percent. However, a plant in "free-ride" status, which normally would not have had to make any shipments, would have to ship 10 percent. The market administrator's ability to require additional milk from supply plants, even during the free-ride period of March through June, will help to ensure that the market has adequate supplies of milk for fluid use during all months of the year.

At the present time, §§ 1005.7(b) and 1011.7(b) of the Carolina and Tennessee Valley orders, respectively, authorize the Director of the Dairy Division to adjust supply plant shipping standards to obtain needed shipments of milk or to prevent uneconomic shipments. This provision was not an issue at the hearing. However, in conjunction with the other changes in pooling provisions that were adopted, the recommended decision stated that authority to adjust supply plant shipping standards should be given to the market administrator of Orders 5 and 11. Although interested parties were invited to comment on this, as on other recommendations, no comments were received in opposition to this suggestion.

With all of the marketing information immediately available to him or her, the market administrator is in an ideal position to sense the changing needs of the market and to obtain industry views concerning the desirability of adjusting supply plant shipping requirements. As a result, the market administrator will be able to attend to the need for such temporary revisions in a timely fashion and will be able to better serve the changing needs of handlers and producers under the Carolina and Tennessee Valley orders.

A similar conforming change also should be made in § 1011.13(e)(3) of the Tennessee Valley order for the same reasons. This change will allow the market administrator to increase or decrease, by 10 percentage points, the diversion limitations applicable to a proprietary bulk tank handler.

4. Distributing Plant Pooling Standards Under the Carolina Order

Proposals to amend the Order 5 in-area route disposition requirement for pool distributing plants should not be adopted.

At the present time, a distributing plant must dispose of at least 60 percent of its fluid milk product receipts in Class I during the months of August through November, January, and February and at least 40 percent in each of the other months to qualify as a pool plant under Order 5. In addition, at least 15 percent of the plant's route disposition must be in the marketing area.

Milkco, Inc., testified in support of its proposal to change the in-area route disposition standard of Order 5 from 15 percent to 10 percent. At the hearing, Milkco modified its proposal to the lesser of 1500 pounds daily or 10 percent of a plant's fluid milk receipts sold as Class I.

A witness representing Milkco, Carolina Dairies, Hunter Farms, Inc., Dairy Fresh, Inc., and Pine State Creamery testified that the original proposal had been modified to include language similar to that contained in the recommended decision of the proposed Southeast Federal order.

The witness testified that the reason for proposing a change in the in-area route disposition requirement was that partially regulated handlers were constantly increasing their Class I distribution into the Order 5 marketing area. He estimated that the average distribution for 1994 was between 25 million and 35 million pounds. He claimed that this distribution is attributed to sales from partially regulated plants located in Virginia.

The witness explained that the Virginia State Milk Commission prices Class I sales made outside the State of Virginia at the Federal order Class II price. He said that this creates a problem of accountability for those Class I sales moving from Virginia to another state. He claimed that the possibility exists that, in some instances, not all of those sales may be accounted for and paid for at the appropriate price.

The witness stated that the proposed amendment would provide uniformity between Order 5 and surrounding orders. He also claimed that the proposed change would not be burdensome to handlers located in Virginia if these handlers are already paying prices equivalent to, or greater than, the Order 5 Class I price.

The general manager for Carolina Virginia Milk Producers Association (CVMPA) also testified in support of the revised proposal. He stated that the proposal would provide uniformity between Order 5 and neighboring orders and that it would eliminate potential inequities between Order 5 handlers and handlers regulated by the Virginia Milk Commission.

The CVMPA representative asserted that the proposal would regulate some partially regulated plants that may be subject to a lower price for milk used in fluid milk products than fully regulated plants under Order 5. He explained that handlers regulated under Order 5 must pay at least the minimum Federal order class prices for their milk. He claimed that plants located in Virginia and regulated by the Virginia Milk Commission have a competitive advantage on raw milk costs compared to handlers fully regulated under Order 5. The witness indicated that the Class I price established and regulated by the Virginia Milk Commission has historically been higher than the Order 5 price but that the Commission requires that only the Class II price be paid for sales out of the State.

The CVMPA witness testified that sales from partially regulated handlers located in Virginia into the Carolina marketing area have a significant impact on the market. Since January 1992, he pointed out, sales from these plants have ranged from one to three million pounds of Class I sales or between .84 and 2.26 percent of total route disposition in Order 5. He said that while these Class I sales from Virginia partially regulated plants are confined to a small portion of the marketing area, they have had a disruptive effect on the market in eastern North Carolina.

The CVMPA representative testified that Federal orders contiguous to the Carolina marketing area have more restrictive pool plant requirements than the Carolina order. He noted that the Tennessee Valley order's in-area route disposition requirement was 10 percent and that the recommended Southeast order would fully regulate handlers if a plant distributed either 10 percent of its total fluid milk receipts or at least 1500 pounds of Class I sales per day in the marketing area. Such requirements are appropriate for orders with relatively high Class I utilization, he said.

Maryland & Virginia Milk Producers Cooperative Association, Inc. (MVMPCA), proposed a change to the Order 5 in-area route disposition requirement that would have exactly the opposite effect of Milkco's proposal. The MVMPCA proposal would base the in-area requirement on 15 percent of "dairy farmer receipts" rather than 15 percent of "total route disposition." Because dairy farmer receipts would be larger than total route disposition, the proposal would have the effect of making it more difficult to qualify for full regulation under Order 5.

A spokesman for MVMPCA testified that the proposed change would amend the Order 5 provision to conform more closely with the provisions of the Middle Atlantic order (Order 4). He said that these definitions should be more closely aligned to allow distributing plants in the Commonwealth of Virginia, which are partially regulated under both Orders 4 and 5, to be subject to the same in-area route distribution standard under either Federal order.

Without alignment of these provisions, he said, there could be results which are neither intended nor orderly. For instance, he stated, a plant could have more route sales in Order 4 but become fully regulated under Order 5.

The witness stated that there are currently three dairies partially regulated in both Orders 4 and 5: Richfood at Richmond, Virginia; Land-O-Sun Dairies, Inc., at Portsmouth, Virginia; and Marva Maid Dairy at Newport News, Virginia. He said that these Virginia plants are the only partially regulated distributing plants subject to Order 5 other than the several plants which distribute long-shelf-life fluid milk products in a broad geographic area over most of the United States. Consequently, he concluded, the MVMPCA proposal would not have a substantial impact upon any other plants.

A witness representing Richfood Dairy, Inc. (Richfood), Richmond, Virginia, testified in opposition to Milkco's proposal to reduce the Order 5 in-area route disposition requirement and in support of Richfood's proposal to increase the requirement from 15 percent to 20 percent.

The witness stated that Richfood has about 83 percent of its fluid milk product sales in that part of Virginia that is outside the Middle Atlantic (Order 4) marketing area. The plant has approximately 12 percent of its sales in the Carolina marketing area, 4 percent in the Order 4 marketing area, and the remaining 1 or 2 percent in the Ohio Valley marketing area. Richfood's sales into the Carolina marketing area account for about 1 percent of the market's total in-area sales, according to the witness.

The Richfood witness stated that Richfood primarily has fluid milk sales in the eastern Virginia market with some in the western Virginia market. During October 1994, the witness noted, the eastern and western markets' Class I prices were $16.29 and $16.02, respectively. He said that these Virginia prices, based on the way in which Federal order Class I prices are set, would represent October Class I differentials of $4.56 for the eastern market and $4.29 for the western market. Federal order Class I differentials of this magnitude, he emphasized, are not even found in Miami, the highest priced location under the Federal order system. These facts, he claimed, show that purchasers of raw milk in Virginia do not have an unfair competitive advantage over handlers regulated under a Federal order. He concluded that a plant with 10 percent of its sales in the Carolina marketing area and 80 percent in Virginia should not be forced to be fully regulated under Order 5.

The administrator of the Virginia State Milk Commission (the Commission) testified in opposition to Milkco's original proposal. The administrator stated that pooling Virginia plants that have less than 15 percent of their total sales in a Federal order marketing area would be disruptive to the Commission's ability to price and pool milk in the Virginia marketing areas. He argued that there are less intrusive ways to accomplish class price integrity for pooling producer milk.

The witness stated that the Commission was willing to assist the Department to ensure proper reporting and pricing within Federal milk marketing areas to alleviate the concerns of those who have doubts that Virginia's out-of-area prices are being enforced. The witness explained that the Commission has the ability to report sales by Virginia plants into Federal orders in a timely and accurate manner, and is willing to provide such information to the appropriate Federal order market administrator to help enforce proper pricing.

Neither Milkco's proposal, which would make it easier to fully regulate an out-of-area plant, nor MVMPCA's or Richfood's proposal, which would make it harder to fully regulate an out-of-area plant, should be adopted.

Proponents of Milkco's proposal argued that the amount of sales into the Carolina marketing area from partially regulated plants located in Virginia is constantly increasing due to the presence of these plants. Record evidence does not support this argument. For instance, route disposition in Order 5 by partially regulated plants during the months of July through October 1994 was lower than for the same period of 1993. In addition, statistics show that in-area route disposition into Order 5 from partially regulated plants located in Virginia have been at a relatively constant level over the past two years. For example, in 1993 and 1994, the average share of total Order 5 Class I route disposition from these plants was 2.05 and 1.95 percent, respectively.

No evidence presented at the hearing supported the arguments advanced by Milkco and CVMPA concerning the alleged competitive advantage that partially regulated plants in Virginia have in the Carolina marketing area. The record is devoid of any data to support this claim.

With respect to proponents' arguments that changes in Order 5 would bring this order into conformance with the Middle Atlantic order or the Southeast order, marketing conditions in the Carolina order do not warrant any change to the in-area route disposition requirement for this reason. Moreover, it is not clear why differences in the in-area route disposition requirements of these orders would matter in most circumstances. The only area where this

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issue seems to be particularly acute is in Virginia. Even in Virginia, however, there is an insufficient basis to conclude that any competitive advantage exists that would warrant undermining of the Virginia State Milk Commission regulation.

The in-area route disposition requirement is a locally tailored standard that indicates when a plant is sufficiently associated with a market to warrant full regulation under the order regulating that marketing area. Whether the standard should be 10 percent or 15 percent depends upon particular circumstances in that area and the demonstrated need for one standard or the other. Based on the testimony and data in this hearing record, the present 15 percent in-area route disposition requirement under Order 5 should remain unchanged.

MVMPCA submitted comments in support of the findings and conclusions of the recommended decision regarding the Order 5 in-area route disposition requirement.

5. Location Adjustments Under the Carolina Order

The location adjustment under the Carolina order for a location within the Middle Atlantic Federal order marketing area should be determined by subtracting the Order 4 Class I price at that location from the base zone Class I price specified in Order 5.

At the present time, the Order 5 location adjustment for a plant located in the State of Maryland is based upon the shortest hard-surfaced highway distance, as determined by the market administrator, that such plant is from Greensboro, North Carolina. Once that distance is determined, it is broken down into 10-mile increments (except for the last increment, which may be smaller than 10 miles), which are then multiplied by 2.5 cents to determine the location adjustment. Thus, for example, the location adjustment for a plant that is located 295 miles from Greensboro would be 75 cents (i.e., 30 × 2.5 = .75).

Maryland and Virginia Milk Producers Cooperative Association proposed a change in the location adjustment applicable to its butter/powder plant at Laurel, Maryland. Initially, the cooperative proposed treating the Laurel plant as if it were within the State of Virginia; this would result in a zero location adjustment at Laurel. However, at the hearing a spokesman for the cooperative stated that it would support an alternative proposal that would subtract the Order 4 Class I differential price at Laurel (i.e., $3.03) from the Order 5 Class I price at Greensboro (i.e., $3.08), which results in a location adjustment of minus 5 cents. The witness stated that "our only caveat to this pricing formula is that the Order 5 language should be amended so that the price at Strasburg, Virginia, is established on the same basis as the price at Laurel, Maryland."

The cooperative's spokesman testified that MVMPCA supplies the Kroger Westover Dairy Order 5 pool distributing plant at Lynchburg, Virginia, on a year-round basis. In addition, he said that since 1992 the cooperative has supplied supplemental milk to nine other Order 5 distributing plants on a seasonal basis.

The witness said that MVMPCA has served as a seasonal balancing agent in supplying Order 5 plants. He introduced an exhibit showing that MVMPCA's monthly sales to Order 5 plants reach a peak during the short production months of July through October.

The witness stated that when producers' milk is not needed by Order 5 plants, it is diverted to MVMPCA's butter-powder plant at Laurel, which serves as a major balancing plant for the Middle Atlantic region. The witness also noted that there is another balancing facility for Order 5 surplus milk—the Valley Milk butter/powder plant located at Strasburg, Virginia—which is approximately 80 miles west of Laurel and outside of any Federal order marketing area. He said that Order 5 now prices milk in an inequitable manner by providing a base zone uniform price for milk that is diverted to Strasburg, but a minus 75-cent location adjustment for milk that is diverted to Laurel.

There was no opposition to this proposal either at the hearing or in the post-hearing briefs that were filed.

MVMPCA's argument and alternative proposal for pricing milk at Laurel is persuasive and should be adopted. The location adjustment at Laurel clearly should not be minus 75 cents. It should be minus 5 cents, the difference between the Order 5 base zone Class I price and the Order 4 Class I price at Laurel.

The appropriate Federal order Class I price at Laurel, Maryland, is the price established for that location under the Middle Atlantic Federal order, which encompasses Laurel. Thus, if a distributing plant located at Laurel were to become regulated under Order 5, its Class I price would be the same as the price that would apply under Order 4. This would ensure competitive pricing among competing handlers. Determining location adjustments for plants in this manner helps to assure the proper alignment of Class I prices throughout the Federal order system and to minimize procurement problems for plants that are located in one Federal order marketing area but regulated under a different order.

The evidence introduced by MVMPCA shows that its producers supplying the Order 5 market are located as far south as the Virginia/North Carolina border and as far north as Cumberland County, Maryland. The exhibit, for example, shows that MVMPCA has producers in Halifax County, Virginia, just north of the Order 5 base zone. When producer milk from Halifax is delivered to a distributing plant at Lynchburg or to a North Carolina handler in the base zone, the milk is priced at the base zone price. Yet, under present order provisions, if the milk is not needed for fluid use by an Order 5 distributing plant and must be diverted to MVMPCA's butter-powder plant at Laurel, 247 miles away, it receives 75 cents less than the base zone price. Consequently, not only does MVMPCA receive a much lower price for this milk, it also absorbs the hauling cost to get the milk to Laurel.

A location adjustment of minus 5 cents at Laurel will narrow the difference to 5 cents between the Laurel and Strasburg plants. This adjustment should alleviate the inequity that now exists in pricing between the two plants. To further reduce the difference in price by imposing a minus 5-cent location adjustment at Strasburg, as suggested by MVMPCA, would entail changing location adjustments throughout the State of Virginia, which goes beyond the scope of the hearing proposals.

MVMPCA filed comments supporting the Order 5 proposed location adjustment change.

6. Base-Paying Months Under the Carolina Order

Maryland & Virginia Milk Producers Cooperative Association, Inc., originally submitted a proposal to delete the month of June from the base-paying period of the Order 5 base and excess payment plan. At the hearing, however, the cooperative modified its proposal to add the month of February as well as delete the month of June. As modified, the base-paying months would be February through May.

The MVMPCA witness stated that the purpose of the base-excess plan is to provide producers with an incentive to level their production on a seasonal basis. He indicated that the plan encourages production during the months when milk is needed for fluid use and discourages production during flush production months. Under current marketing conditions, he contended, June is not a surplus month but a month when supplemental supplies are frequently needed by Order 5 distributing plants. Likewise, he asserted that February is a month of substantial surplus production and should be added to the base-paying period rather than remain a base neutral month.

During 1992 and 1993, the MVMPCA witness noted, daily average production per Order 5 producer from May to June declined about 8 percent, from 4,259 pounds per day to 3,978, and from 4,424 to 4,076, respectively. However, he indicated that daily average production in Order 5 in February 1993 of 4,684 pounds was the highest production month of the year, and production in February 1992 was the third highest month.

The witness also testified that a collateral consequence of including June as a base-paying month is that when supplemental supplies are needed under Order 5, unnecessary and inefficient movements of milk are required to avoid the penalty of absorbing the excess price for supplies of milk that are required for the market's Class I needs. The witness explained that when supplemental milk is needed during the month of June, MVMPCA avoids the penalty of receiving only the excess price for milk delivered directly from producers' farms by instead delivering plant milk from its Laurel plant. To do this, however, the cooperative must receive the milk at Laurel, reload it onto a tank truck, and ship it to an Order 5 distributing plant. He said that the modified proposal would eliminate unnecessary and inefficient movements of milk for the sole purpose of avoiding the order's excess price.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The modified proposal to change the base-paying period from March through June to February through May should be adopted. The removal of June and the addition of February to the base-paying period will bring the base-paying months into closer conformity with the Class I needs of the market.

For the past three years, the average Class I utilization in January has been 77.8 percent while the June Class I utilization has averaged 79.8 percent for this same time period. By comparison, the average Class I utilization for the months of February through May has been 75.6, 75.7, 73.9, and 75.1 percent, respectively. The record also shows that June is a month in which supplemental supplies of milk are needed to meet the Class I needs of the market.

On the basis of the statistical data and the testimony presented at the hearing, the month of February should be included in the base-paying period and June deleted to change the base-paying period to February through May. These changes should result in a base and excess plan that better serves the needs of the market and that will avoid the unnecessary and inefficient movements of needed supplemental milk described by MVMPCA.

Several conforming changes in order language have been made in response to the addition of February and the removal of June as a base-paying month. In § 1005.32(a), dealing with "other reports," the words "March through June" should be changed to "February through May". In the introductory text of § 1005.61(a) and in § 1005.61(a)(5), the words "July through February" must be changed to "June through January", and in § 1005.61(b) the words "March through June" must be changed to "February through May". In §§ 1005.90, 1005.91, and 1005.93(b) the words "March through June" must be changed to "February through May", and the words "February 1" in § 1005.93(b) and § 1005.94 should be changed to "January 1" to maintain the existing relationship between the start of the base-paying period and the time when transfers must be completed without the imposition of conditions concerning the receipt or transfer of additional base. Finally, "March 1" should be changed to "February 1" in § 1005.93(e).

MVMPCA submitted comments in support of the proposed modifications to the Order 5 base-excess plan.

Motion for a New Hearing

Purity Dairy and Fleming Dairy, both of Nashville, Tennessee, argued that the remedies proposed at this hearing were not sufficient to address some major problems. They maintain that while the proposed amendments would temporarily correct some problems, in the long run these remedies would only make the problems worse. They urged the Secretary to hold a new hearing to consider a merger of Orders 5, 11, and 46 or the merger of Orders 5 and 11 with the proposed Southeast marketing area.

A major study of Orders 5, 11, and 46 and other marketing areas is currently underway at Cornell University. One of the purposes of this study is to develop recommendations for a merged order in this area.

There have been several major changes in cooperative representation, supply arrangements, and plant ownership in these markets. Milk has been shifting among the markets. The alleged problem in south central Kentucky of misaligned uniform prices causing Purity and Fleming to be at a competitive disadvantage for milk supplies has been corrected by the association of additional milk with Order 11, which has lowered that order's Class I utilization. There is no point in considering a merger of orders in this area until such time as producers and handlers propose such a merger. For all of these reasons, the motion to hold a new hearing is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

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(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

No exceptions were received in opposition to the proposed amendments set forth in the recommended decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

August 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1005, 1011, and 1046

Milk marketing orders.

Dated: December 4, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the specified orders' marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and orders amending each of the specified orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 17, 1995, and published in the **Federal Register** on August 24, 1995 (60 FR 43986), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority citation for 7 CFR parts 1005, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 1005.7, the reference "(d)" in the introductory text is revised to read "(e)", in paragraph (b) the words "Director of the Dairy Division" and "Director" are revised to read "market administrator" wherever they appear, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1005.7 Pool plant.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1005.32 [Amended]

3. In § 1005.32(a), the words "March through June" are revised to read "February through May" wherever they appear.

4. In § 1005.53, paragraph (a)(6) is redesignated as paragraph (a)(7) and revised, and a new paragraph (a)(6) is added to read as follows:

§ 1005.53 Plant location adjustments for handlers.

(a) * * *

(6) For a plant located within the Middle Atlantic Federal Order Marketing Area (part 1004), the adjustment shall be computed by subtracting the base zone Class I price specified in § 1005.50(a) from the Class I price applicable at such plant under the Middle Atlantic Federal Order; and

(7) For a plant located outside the areas specified in paragraphs (a)(1) through (a)(6) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

§ 1005.61 [Amended]

5. In § 1005.61 paragraphs (a) introductory text and (a)(5), the words "July through February" are revised to read "June through January" and in paragraph (b) introductory text the words "March through June" are revised to read "February through May".

§§ 1005.90 and 1005.91 [Amended]

6. In §§ 1005.90 and 1005.91, the words "March through June" are revised to read "February through May" wherever they appear.

§ 1005.93 [Amended]

7. In § 1005.93 paragraph (b), the words "March through June" are revised to read "February through May" wherever they appear, the words "February 1" are revised to read "January 1", and in paragraph (e) the words "March 1" are revised to read "February 1".

§ 1005.94 [Amended]

8. In § 1005.94, the words "February 1" are revised to read "January 1".

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

9. Section 1011.2 is amended by revising paragraph (b) to read as follows:

§ 1011.2 Tennessee Valley marketing area

* * * * *

(b) In Kentucky, the counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and Whitley.

* * * * *

10. In § 1011.7, the reference "(d)" in the introductory text is revised to read "(e)", paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1011.7 Pool plant.

* * * * *

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to plants described in paragraph (a) of this section subject to the following additional conditions:

(1) During the months of August through November, January and February, such shipments must equal not less than 60 percent (40 percent during the months of December and March through July) of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from handlers described in § 1011.9 (c) and (d) and from dairy farmers, including milk that is diverted from the plant pursuant to § 1011.13 but excluding milk diverted to the plant;

(2) The operator of a plant described in this paragraph may include milk diverted from the plant to plants described in paragraph (a) of this section for up to one-half of the shipments required pursuant to this paragraph;

(3) A plant which meets the shipping requirements specified in this paragraph during the months of July through February shall be a pool plant during the following months of March through June unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (b)(4) of this section, or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and for each subsequent month through June during which it would not otherwise qualify as a pool plant; and

(4) The shipping requirements described in paragraph (b)(1) and (b)(3) of this section may be increased or decreased up to 10 percentage points by the market administrator if he or she finds that revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either at his or her own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1011.13 [Amended]

11. In § 1011.13 paragraph (e)(3), the words "Director of the Dairy Division" and "Director" are revised to read "market administrator" wherever they appear.

12. Section 1011.52(a)(3) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) * * *

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and

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Whitley, the Class I price shall be decreased by 32 cents; and

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.2 [Amended]

13. In § 1046.2, in the list of Kentucky counties, the word "Pulaski" is removed.

[Note: The following appendix will not be published in the Code of Federal Regulations.]

Appendix—Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the said marketing areas (7 CFR part _____[2]) which is annexed hereto; and

II. The following provisions:

§ _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

Attest

[FR Doc. 95-30670 Filed 12-15-95; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RuleNet Communication Program; Fire Protection Regulations—Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: RuleNet announcement; Correction.

SUMMARY: This document corrects a notice of availability appearing in the **Federal Register** on November 15, 1995 (60 FR 57370), that listed the electronic address for accessing the RuleNet program. This action is necessary to correct a printing error in the RuleNet address.

FOR FURTHER INFORMATION CONTACT: Francis Cameron, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1642.

On page 57370, under the **ADDRESSES** heading, in the fifth line, the electronic address that reads "http:/nssc.llnl.gov/RuleNet" should read "http://nssc.llnl.gov/RuleNet."

Dated at Rockville, Maryland, this 13th day of December, 1995.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch.

[FR Doc. 95-30666 Filed 12-15-95; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-86-AD]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that currently requires inspections to detect cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. That AD was prompted by reports of fatigue cracks in the caps of the wing rear spar inboard of inner wing station 346. The actions specified by that AD are intended to prevent rupture of the rear spar, which could result in extensive damage to the wing and fuel spillage. This action would add various improved inspections and follow-on actions, and would require that the initial inspections be accomplished at reduced thresholds.

DATES: Comments must be received by February 13, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-88-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-88-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-88-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 26, 1993, the FAA issued AD 93-17-10, amendment 39-8681 (58 FR 54947, October 25, 1993), which is applicable to all Lockheed Model L-1011-385 series airplanes. That AD requires inspections to detect cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. That action was prompted by reports of fatigue cracks in the caps of the wing rear spar inboard of inner wing station (IWS) 346. The requirements of that AD are intended to prevent rupture of the rear spar, which could result in extensive damage to the wing and fuel spillage.

Since the issuance of that AD, the FAA has received additional reports of fatigue cracking in the subject areas on these airplanes. The airplanes on which the cracking occurred had accumulated fewer landings than the number of landings specified as the inspection thresholds in AD 93-17-10.

Discussion of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued, and the FAA reviewed and approved, Lockheed L-1011 Service Bulletin 093-57-203, Revision 4, dated March 27, 1995. The revised service bulletin describes procedures for inspections to detect cracking in certain areas of the rear spar caps, web, skin, and certain fastener holes at earlier inspection thresholds than those specified previously. The service bulletin revision describes the following various improved inspection procedures and follow-on actions:

1. Repetitive X-ray (radiographic) inspections to detect cracking of the upper and lower caps of the rear spar and of the associated web and skin areas between IWS 231 and IWS 343. The inspection procedure specified in the revised service bulletin has been changed from that described in Revision 3 to clarify the location for the X-ray tube head for certain exposures.

2. Repetitive eddy current surface scan inspections to detect cracking of the upper spar cap-to-skin and the upper spar cap-to-web attachment areas around the fasteners from IWS 310 to the main landing gear (MLG) trunnion fitting at approximately IWS 343.

3. A bolt hole eddy current inspection to detect cracking in the 1⅛-inch diameter fastener hole located inboard of IWS 343. The service bulletin specifies that this inspection is accomplished at an initial inspection threshold only. (However, the service bulletin also specifies that this inspection must be accomplished on any fastener hole where the fastener is removed for repair or replacement.)

4. For airplanes on which cracking is found during the bolt hole eddy current inspection of the 1⅛-inch diameter fastener hole located inboard of IWS 343, the service bulletin describes procedures for a bolt hole eddy current inspection to detect cracking at the four ⅝-inch fastener locations directly below the 1⅛-inch fastener.

5. For airplanes on which Option iv or v of Lockheed Repair Procedure LCC-7622-368 has not been accomplished, the service bulletin describes procedures for subsequent repetitive ultrasonic inspections to detect cracking in the fastener hole. These inspections are performed in conjunction with eddy current surface scan inspections to detect cracking of the upper horizontal edge of the rear spar web, ½-inch each side of the inboard edge of the MLG trunnion fitting.

6. Repetitive low frequency eddy current ring probe inspections to detect cracking of the upper cap/skin of the rear spar between IWS 310 to IWS 326 and the cap/web fasteners.

Since the issuance of AD 93-17-10, the FAA has also reviewed and approved later revisions of certain service information specified in paragraph (d) of that AD as an alternative method of repairing confirmed findings of cracking, as follows:

1. Lockheed L-1011 Service Bulletin 093-57-196, Revision 6, dated December 6, 1994, and Lockheed L-1011 Service Bulletin Change Notification 093-57-196, R6-CN1, dated August 22, 1995.

2. Lockheed L-1011 Service Bulletin 093-57-184, Revision 7, dated December 6, 1994, and Lockheed L-1011 Service Bulletin Change Notification 093-57-196, R7-CN1, dated August 22, 1995.

These service bulletins describe procedures for modification of the rear spar upper and lower caps between IWS 228 and 346. Among other things, these service bulletin revisions were issued to standardize the rework of fastener holes, add new instructions to refer to drawings to accomplish the modification, clarify miscellaneous information, and to reference certain service information for web damage extending beyond IWS 327.

Discussion of the Proposed Action

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93-17-10 to continue to require inspections to detect cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. The proposed AD would add various improved inspections and follow-on actions, and would require that the initial inspections be accomplished at reduced thresholds. The inspections, follow-on actions, and modification would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA or in accordance with the Lockheed Model L-1011 Structural Repair Manual.

Operators should note that only the inspection procedures (and follow-on actions) described in Lockheed L-1011 Service Bulletin 093-57-203 would be required by this proposal. In a separate AD action [AD 94-05-01, amendment 39-8839 (59 FR 10275, March 4, 1994)], the FAA previously addressed the portion of that service bulletin that deals with the modification

Cost Impact

There are approximately 236 Model L-1011-385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 93-17-10 take

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approximately 21 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $148,680, or $1,260 per airplane.

The new actions that are proposed in this AD action would take approximately 64 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. [This work hour estimate assumes that X-ray inspections are done of both upper and lower caps, and that the ultrasonic inspection indicates cracking in each of five bolt holes (per wing), thus requiring subsequent bolt hole eddy current inspections to confirm crack findings. The estimate includes inspections of both wings.] Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $453,120, or $3,840 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8681 (58 FR 54947, October 25, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Lockheed Aeronautical Systems Company: Docket 95–NM–88–AD. Supersedes AD 93–17–10, Amendment 39–8681.

Applicability: All Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraphs (a)(1) and (b) of this AD restate the requirement for repetitive inspections and follow-on actions contained in paragraphs (a) and (b) of AD 93–17–10. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 93–17–10, paragraphs (a)(1) and (b) of this AD require that the next scheduled inspection be performed within 2,000 flight cycles after the last inspection performed in accordance with paragraphs (a) and (b) of AD 93–17–10.

To prevent rupture of the rear spar, which could result in extensive damage to the wing and fuel spillage, accomplish the following:

(a) Perform inspections and various follow-on actions to detect cracking in the areas specified in and in accordance with Part II of the Accomplishment Instructions of the Lockheed service documents listed below. After the effective date of this AD, the inspections and follow-on actions shall be performed only at the times specified in and in accordance with Revision 4 of Lockheed L–1011 Service Bulletin 093–57–203. [The inspections and follow-on actions include: repetitive X-ray (radiographic) inspections; repetitive eddy current surface scan inspections; bolt hole eddy current inspections at various locations; repetitive ultrasonic inspections in conjunction with eddy current surface scan inspections (for certain airplanes); and repetitive low frequency eddy current ring probe inspections.]

- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, as amended by Lockheed L–1011 Service Bulletin Change Notification 093–57–203, R3–CN1, dated June 22, 1992; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 4, dated March 27, 1995.

(1) For airplanes on which the inspections required by AD 93–17–10, amendment 39–8681, have been initiated prior to the effective date of this AD: Perform the inspections and follow-on actions at the times specified in Table I of Lockheed L–1011 Service Bulletin Change Notification 093–57–203, R3–CN1, dated June 22, 1992, or within 6 months after November 24, 1993 (the effective date of AD 93–17–10, amendment 39–8681), whichever occurs later.

Note 3: As allowed by the phrase, "unless accomplished previously," if the inspections and follow-on actions required by this paragraph were conducted prior to November 24, 1993, in accordance with Lockheed L–1011 Service Bulletin 093–57–203, Revision 2, dated January 25, 1991, those inspections need not be repeated.

(2) For airplanes on which the inspections required by AD 93–17–10, amendment 39–8681, have not been initiated prior to the effective date of this AD: Perform the inspections and follow-on actions at the times specified in Table I of Lockheed L–1011 Service Bulletin 093–57–203, Revision 4, dated March 27, 1995, or within 6 months after the effective date of this AD, whichever occurs later.

(b) If no cracking is found, perform the repetitive inspections and follow-on actions specified in the Accomplishment Instructions of the Lockheed service documents listed below thereafter at intervals not to exceed 2,000 flight cycles. After the effective date of this AD, the inspections and follow-on actions shall be performed only in accordance with Revision 4 of Lockheed L–1011 Service Bulletin 093–57–203.

- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, as amended by Lockheed L–1011 Service Bulletin Change Notification 093–57–203, R3–CN1, dated June 22, 1992; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 4, dated March 27, 1995;

(c) If any finding of cracking is confirmed, prior to further flight, accomplish paragraph (c)(1), (c)(2), or (c)(3) of this AD.

(1) Repair the cracked area in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Thereafter, perform the repetitive inspections and follow-on actions required by paragraph (b) of this AD. Or

(2) Repair the rear spar upper and lower caps between IWS 228 and 346 in accordance with the Lockheed Model L–1011 Structural Repair Manual. Thereafter, perform the repetitive inspections and follow-on actions required by paragraph (b) of this AD. Or

(3) Modify the rear spar upper and lower caps between IWS 228 and 346 in accordance with the Lockheed service bulletins listed below, as applicable. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

- Lockheed L–1011 Service Bulletin 093–57–184, Revision 7, dated December 6, 1994, as amended by Change Notification 093–57–184, R7–CN1, dated August 22, 1995; or
- Lockheed L–1011 Service Bulletin 093–57–196, Revision 6, dated December 6, 1994, as amended by Change Notification 093–57–196, R6–CN1, dated August 22, 1995; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 4, dated March 27, 1995.

Note 4: Accomplishment of the modification specified in paragraph (c)(3) of this AD prior to the effective date of this AD in accordance with the following Lockheed service bulletins, as applicable, is considered to be in compliance with this paragraph:

- Lockheed L–1011 Service Bulletin 093–57–184, Revision 6, dated October 28, 1991;
- Lockheed L–1011 Service Bulletin 093–57–184, Revision 7, dated December 6, 1994;
- Lockheed L–1011 Service Bulletin 093–57–196, Revision 5, dated October 28, 1991;
- Lockheed L–1011 Service Bulletin 093–57–196, Revision 6, dated December 6, 1994;
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or
- Lockheed L–1011 Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, as amended by Change Notification 093–57–203, R3–CN1, dated June 22, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 11, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30646 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–41]

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF34 series turbofan engines. This proposal would reduce the allowable operating cyclic life limit for affected high pressure compressor (HPC) stage 1 rotor disks. This proposal is prompted by an updated stress and life analysis. The actions specified by the proposed AD are intended to prevent HPC stage 1 rotor disk rupture, engine failure, and damage to the aircraft.

DATES: Comments must be received by February 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–41." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has reviewed and approved an updated stress and life analysis for high pressure compressor (HPC) stage 1 rotor disks installed in General Electric Company (GE) CF34 series turbofan engines. Although the FAA has not received any reports of cracked or failed HPC stage 1 rotor disks, the stress and life analysis was performed using new, improved methodology. This analysis revealed that the published cyclic life limits were higher than updated calculated lives, which could result in the operation of an HPC stage 1 rotor disk beyond its cyclic life. This condition, if not corrected, could result in HPC stage 1 rotor disk rupture, engine failure, and damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would reduce the allowable operating cyclic life limit for affected HPC stage 1 rotor disks.

There are approximately 440 engines of the affected design in the worldwide fleet. The FAA estimates that 150 engines installed on aircraft of U.S. registry would be affected by this

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proposed AD, that it would take zero additional work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,667 per engine, based on the estimated current part cost, prorated downward by a factor equal to the quotient of the difference between the original cyclic life limit (9000 cycles) and the revised cyclic life limit (6000 cycles) divided by the original cyclic life limit. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,150,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 95–ANE–41.

Applicability: General Electric Company (GE) Models CF34–1A, –3A, and –3A2 turbofan engines, with high pressure compressor (HPC) stage 1 rotor disks, part number 6040T79G01, installed. These engines are installed on but not limited to Canadair Limited Model CL–600–2A12 and CL–600–2B16 aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent HPC stage 1 rotor disk rupture, engine failure, and damage to the aircraft, accomplish the following:

(a) Remove from service HPC stage 1 rotor disks prior to accumulating 6,000 cycles in service since new, and replace with a serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on December 8, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–30645 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–128–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require an inspection to verify the proper position of "door open" placards on the inside of the main entrance door, and replacement with new placards appropriately positioned, if necessary. This proposal is prompted by a report that the "door open" placards on the inside of the main entrance door, as currently installed, may not be visible to passengers or flightcrew when the door handle is in the open position. The actions specified by the proposed AD are intended to ensure that certain placards on the inside of the main entrance door are clearly visible and perform their intended function in the event of an emergency evacuation.

DATES: Comments must be received by January 23, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that the "door open" placards on the inside of the main entrance door may not be properly installed (that is, aligned with the door handle when it is in the "open" position), as required by section 25.811 (e) of the Federal Aviation Regulations (14 CFR 25.811), "Emergency exit marking." The placards are currently installed at imprecise locations, since the type design data was not explicit in defining the installation locations. Therefore, these placards may not be visible to the passengers or flightcrew during an emergency evacuation, and consequently, do not fulfill the intent of the regulations, which is to ensure that these placards are visible and properly aligned with the door handle when it is in the "open" position. This condition, if not corrected, could delay or impede the evacuation of passengers during an emergency.

Jetstream has issued Service Bulletin J41–11–007, dated May 10, 1995, which describes procedures for a one-time visual inspection to verify the proper position of certain placards on the inside of the main entrance door, and removal of the placard and installation of a new placard, if necessary. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist on other airplanes of the same type design, the proposed AD would require a one-time visual inspection to verify the proper position of certain placards on the inside of the main entrance door, and removal of the placard and installation of a new placard, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,500, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 95–NM–128–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41046 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition

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addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that certain placards on the inside of the main entrance door are clearly visible and properly aligned, accomplish the following:

(a) Within 4 months after the effective date of this AD, perform a one-time visual inspection to verify the proper position of the door open placards on the inside of the main entrance door, in accordance with Jetstream Service Bulletin J41–11–007, dated May 10, 1995. If any placard is found to be improperly positioned, prior to further flight, remove the placard and install a new placard in the specified position, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 11, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30844 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–61–AD]

Airworthiness Directives; Brackett Aircraft Company, Inc. Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 95–03–02, which currently requires repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket on airplanes incorporating certain Brackett air filter assemblies. The proposed action retains the repetitive inspection and possible replacement requirements as contained in AD 95–03–02, and would incorporate additional Brackett air filter assemblies to the applicability of that AD. Additionally, it would provide a terminating action for the repetitive inspection. The Federal Aviation Administration's determination that these additional Brackett air filter assemblies should be inspected and replaced prompted this AD action. The actions specified by the proposed AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which, if not detected and corrected, could result in partial or complete loss of engine power and loss of control of the airplane.

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5265; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 95–03–02 was published in the **Federal Register** on August 25, 1994 (59 FR 43784) and applies to airplanes that have a certain Brackett air filter neoprene gasket installed in accordance with Supplemental Type Certificate (STC) SA71GL. The action requires repetitively inspecting (visually) the air filter frame for a loose or deteriorated gasket, and replacing any gasket found loose or deteriorated.

The FAA's continuing investigation of these Brackett neoprene gasket air filter's failure and the continuing unsafe condition described in AD 95–03–02 suggests that a superseding action be proposed. The FAA has discovered that additional Brackett air filters with the same neoprene gasket design are installed as original equipment and in accordance with STC SA693CE on certain additional airplanes. These airplanes would also be subject to air filter assembly failure.

After examining the circumstances and reviewing all available information related to the information described above, the FAA has determined that AD action should be taken to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power.

Since an unsafe condition has been identified that is likely to exist or develop in other Brackett air filter frame assemblies of the same type design, the proposed AD would supersede AD 95–03–02 with a new AD that would require incorporating additional Brackett air filter assemblies to the applicability paragraph of AD 95–03–02,

retain the repetitive inspection at intervals not to exceed 100 hours time-in-service (TIS) with replacement of the air filter if damaged, and mandatory replacement of the air filter assembly at 500 hours TIS, terminating the repetitive inspection requirement contained in AD 95–03–02.

The FAA estimates that 50,000 airplanes in the U.S. registry would be affected by the proposed AD. To accomplish the proposed repetitive inspection and possible replacement of a damaged air filter would take approximately 1 hour per airplane, and that the average labor rate is approximately $60 an hour. To install a new gasket cost approximately $3 per airplane. Based on these figures, the total cost impact of the proposed repetitive inspection and replacement on U.S. operators is estimated to be $63 per airplane. The FAA knows that each owner/operator would have to repetitively inspect four times before the mandatory replacement of the air filter assembly, and based on the assumption that no operator would incorporate the modification prior to the 500 hours TIS, the total cost of four repetitive inspections with possible replacement of the air filter gasket would be $252 per airplane plus the cost of the proposed terminating action. Based on these figures the total cost impact of the proposed AD on U.S. operators is estimated to be $12,600,000.

In comparison, the cost to incorporate the modification is about 1 workhour per airplane at approximately $60 per workhour. The air filter assembly replacement is estimated to be $40 per airplane. The total estimated cost for the proposed modification required at 500 hours TIS would be $100 per airplane and the total cost impact of the modification is estimated to be $5,000,000 thereby reducing the total cost of the proposed AD by $7,600,000 from $12,600,000 to $5,000,000. The FAA has no way to determine how many owners/operators have completed the repetitive inspections and replacements or the terminating action modification and must calculate the cost impact based on the entire U.S. fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–03–02, Amendment 39–9139, and by adding a new AD to read as follows:

Brackett Aircraft Company: Docket No. 95–CE–61–AD; Supersedes AD 95–03–02, Amendment 39–9139.

Applicability: Air filter assemblies presented in the following chart that utilize a neoprene gasket installed on, but not limited to the following airplanes, certificated in any category:

Note 1: These air filters could be installed as original equipment or in accordance with Supplemental Type Certificate (STC) SA71GL or STC SA693CE.

Air filter assembly	Airplanes installed on
BA–2010	Beechcraft Model 77 Airplanes.
BA–4106	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–18S, PA–18–"125" (Army L–21A), PA–18AS–"125", PA–18S–"125", PA18AS–"135", PA–18S–"135", PA–18–"135", PA–18–"150", PA–18A–"150" (SN 18–1 through 18–6963), PA–18S–"150", PA–19, PA–18A (Restricted), PA–18A–"135" (Restricted), and PA–18A–"150" (Restricted) (SN 18–1 through 18–18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
BA–4106–1	Aviat, Inc. Model (Christian) A–1.
BA–4210	Gulfstream Models AA–1, AA–1A, AA–1B, AA–1C, and AA–5.
BA–5110	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL–Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.
BA–5110A	Cessna Models 172N and 172P; Reims Aviation Models (Cessna) F172N and F172P.
BA–6110	Maule Models M–4, M–4C, M–4S, M–4T, M–4–220, M–4–220C, M–4–220S, M–4–220T, M–4–180C, M–4–180S, M–4–180T, M–5–220C, M–5–235C, M–5–180C, M–5–210TC, M–6–180, M–6–235, M–7–235, MX–7–180, MXT–7–160, MXT–7–180, MX–7–160, MX–7–235, and MX–8–235; Mooney Models M20, M20A, M20B, M20C, M20D, and M20G.
BA–8910	Dynac Models (Aero Commander) 100 and 100A.

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Air filter assembly	Airplanes installed on
AAF–117	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–18S, PA–18–"125" (Army L–21A), PA–18AS–"125", PA–18S–"125", PA–18AS–"135", PA–18S–"135", PA–18–"135", PA–18–"150", PA–18A–"150" (SN 18–1 through 18–6963), PA–18S–"150", PA–19, PA–18A (Restricted), PA–18A–"135" (Restricted), and PA–18A–"150" (Restricted) (SN 18–1 through 18–18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Aion) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S, F22B, and F22C; Univair Models (Aion) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
AAF–118	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL–Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or within the next 100 hours (TIS) after the last inspection accomplished in accordance with AD 95–03–02, whichever occurs first, and thereafter as indicated in the body of this AD, unless already accomplished in accordance with paragraph (c) of this AD.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power, accomplish the following:

(a) Inspect (visually) the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Document I–194, dated March 16, 1994. Continue this repetitive inspection at intervals not to exceed 100 hours TIS, until accomplishment of the terminating action required in paragraph (c) of this AD.

(b) If the gasket is found to be damaged, prior to further flight, replace the air filter assembly with one having a retaining lip in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane:

Air filter assembly	Replace with assembly	Instruction sheet
BA–2010	BA–2010 Revision A	BA–2004, dated 6/6/95.
BA–4106	BA–4106 Revision D	BA–4105, dated 6/15/95.
BA–4106–1	BA–4106–1 Revision A	RM–1, dated 7/6/95.
BA–4210	BA–4210 Revision B	BA–4205, dated 6/14/95.
BA–5110	BA–5110 Revision H	BA–5105, dated 5/8/95.
BA–5110A	BA–5110A Revision D	BA–5111, dated 5/8/95.
BA–8110	BA–8110 Revision C	BA–8105, dated 6/5/95.
BA–8910	BA–8910 Revision B	BA–8910–3, dated 6/6/95.
AAF–117	BA–4106 Revision D	BA–4105, dated 6/15/95.
AAF–118	BA–5110 Revision H	BA–5105, dated 5/8/95.

(c) Within the next 500 hours TIS after the effective date of this AD, replace the air filter assembly as a terminating action to this AD in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane as specified in paragraph (b) of this AD.

(d) The replacement in paragraphs (b) and (c) are considered terminating action for the repetitive inspection required by this AD.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance adjustment of the repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 95–03–02, Amendment 39–9139.

Issued in Kansas City, Missouri, on December 11, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30675 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANE–60]

Proposed Amendment to Class D and Class E Airspace; New England Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class D airspace areas at Beverly, MA (BVY); Bedford, MA (BED); Danbury, CT (DXR); Norwood, MA (OWD); Lebanon, NH (LEB); and Nashua, NH (ASH); and to amend the associated Class E airspace areas at Beverly (BVY), Lebanon (LEB), and Nashua (ASH). The FAA has determined after a review of the elevation of the surrounding terrain in the vicinity of these airports that the lateral limits of the Class D areas at these airports may be reduced and the appropriate changes made to the Class E airspace areas.

DATES: Comments must be received on or before January 17, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, Docket No. 95–ANE–60, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, System Management Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, System Management Branch, ANE–533, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed first under **ADDRESSES** above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–ANE–60." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reduce the lateral limits of the Class D airspace areas at Beverly, MA (BVY); Bedford, MA (BED); Danbury, CT (DXR); Norwood, MA (OWD); Lebanon, NH (LEB); and Nashua, NH (ASH); and, as a consequence to those changes, to make the necessary changes to the associated Class E airspace areas at Beverly (BVY), Lebanon (LEB), and Nashua (ASH). This action is the result of an extensive review of the elevation of the surrounding terrain at airports in the New England region with Class D airspace areas. That review came in response to concerns expressed by operators and other interested parties over recent changes to the lateral limits of Class D airspace areas in the New England Region. By using more detailed topographical charts and more precise calculations, the FAA has determined that reductions in the lateral limits of the Class D airspace areas at BVY, BED, DXR, OWD, LEB, and ASH are appropriate and will not affect aviation safety. As a result of the reductions to the Class D airspace areas at BVY, LEB, and ASH, the FAA must also make minor adjustments to the associated Class E areas at those airports. Class D airspace designations, and Class E airspace designations for airspace areas extending upward from the surface of the earth defined as extensions to Class D airspace areas, are published in paragraphs 5000 and 6004, respectively, of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, these proposed regulations—(1) are not "significant regulatory actions" under Executive Order 12866; (2) are not "significant rules" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) do not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation, it is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

MANE MA D Beverly, MA [Revised]

Beverly municipal Airport, MA
(Lat. 42°35'05" N, long. 70°55'01" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.1-mile radius of Beverly Municipal Airport, excluding that airspace within the Boston, MA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE MA D Bedford MA [Revised]

Bedford, Lawrence G. Hanscom Field, MA
(Lat. 42°28'12" N, long. 71°17'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of Lawrence G. Hanscom Field, excluding that airspace within the Boston, MA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE CT D Danbury, CT [Revised]

Danbury Municipal Airport, CT
(Lat. 41°22'17" N, long. 73°28'56" W)
Carmel VORTAC
(Lat. 41°16'48" N, long. 73°34'53" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 6-mile radius of Danbury Municipal Airport, and within 1.2 miles on each side of the Carmel VORTAC 039° radial, extending from the 6-mile radius to the Carmel VORTAC. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE MA D Norwood, MA [Revised]

Norwood Memorial Airport, MA
(Lat. 42°11'27" N, long. 71°10'23" W)

That airspace extending upward from the surface to and including 2,600 MSL within a 4.5-mile radius of the Norwood Memorial Airport, excluding that airspace within the Boston, MA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(Lat. 43°37'35" N, long. 72°18'15" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.8-mile radius of Lebanon Municipal Airport, and within 1.8 miles each side of the extended centerline of Runway 36, extending from the 4.8-mile radius to 6 miles north of the end of Runway 36. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE NH D Nashua, NH [Revised]

Nashua Boire Field, NH
(Lat. 42°46'54" N, long. 71°30'53" W)
Sports Center Airport, Pepperell
(Lat. 42°41'45" N, long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Boire Field; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester Airport, NH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Subpart E—Class E Airspace

* * * * *

Paragraph 6004 Class E airspace areas extending from the surface of the earth defined as extensions to Class D airspace areas.

* * * * *

ANE MA E4 Beverly MA [Revised]

Beverly Municipal Airport, MA
(Lat. 42°35'03" N, long. 70°55'01" W)

That airspace extending upward from the surface within 3.2 miles on each side of the Topsfield NDB 317° bearing extending from a 4.1-mile radius of Beverly Municipal Airport to 7 miles northwest of the Topsfield NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE NH E4 Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(Lat. 43°3735" N, long. 72°18'15" W)
BURGR OM
(Lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(Lat. 43°42'08" N, long. 72°10'39" W)

That airspace extending upward from the surface within 3.3 miles each side of the BURGR OM 352° bearing from a 4.8-mile radius of Lebanon Municipal Airport to 8 miles north of the BURGR OM, and within 2.4 miles each side of the Hanover NDB 051° bearing extending from the 4.8-mile radius to 7 miles northeast of the Hanover NBD. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE NE E4 Nashua, NH [Revised]

Nashua, Boire Field, NH
(Lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(Lat. 42°49'54" N, long. 71°30'53" W)
Manchester VORTAC
(Lat. 42°52'06" N, long. 71°22'10" W)

That airspace extending upward from the surface within 2.6 miles on each side of the CHERN NDB 303° bearing extending from a 5-mile radius of Boire Field to 7 miles northwest of the CHERN NDB, and that airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 231° radial extending from the 5-mile radius to 8.4 miles northeast of Boire Field. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on December 7, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–30689 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–28]

Proposed Establishment of Class E Airspace; Willcox, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Wilcox, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21 and RWY 3 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cochise County Airport, Willcox, AZ.

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–28, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace area at Willcox, AZ. The development of GPS SIAPs at Cochise County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 21 and RWY 3 SIAP at Cochise County Airport, Willcox, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Willcox, AZ [New]

Cochise County Airport, AZ
(Lat. 32°14'39" N, long. 109°53'38" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Cochise County Airport.

* * * * *

Issued in Los Angeles, California, on December 1, 1995.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–30690 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–43]

Proposed Amendment of Class E Airspace; Vacaville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Vacaville, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 20 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Nut Tree Airport, Vacaville, CA.

DATES: Comments must be received on or before January 24, 1996.

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ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–43, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–43." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Vacaville, CA. The development of a GPS SIAP at Nut Tree Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 20 SIAP at Nut Tree Airport, Vacaville, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Vacaville, CA [Revised]

Nut Tree Airport, CA
(Lat. 38°22'37" N, long. 121°57'45" W)
Sacramento VORTAC
(Lat. 38°26'38" N, long. 121°33'02" W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Nut Tree Airport and within 2.5 miles radius of the Nut Tree Airport and within 2.2 miles each side of the Sacramento VORTAC 259° radial, extending from the 5-mile radius to 11.3 miles west of the VORTAC and 2.5 miles each side of the 034° bearing from the Nut Tree Airport, extending from the 2.6 mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Los Angeles, California, on December 1, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–30691 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–06]

Proposed Establishment of Class E Airspace; Stevensville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Stevensville, MD. A standard instrument approach procedure (SIAP), based on the Global Positioning System (GPS), has been developed for Runway (RWY) 11 at Bay Bridge Airport, Stevensville, MD. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–06 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AEA–06." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Stevensville, MD. A GPS RWY 11 SIAP has been developed for Bay Bridge Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Stevensville, MD

Bay Bridge Airport, MD
(Lat. 38°58'35" N, long. 76°19' 47"W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Bay Bridge Airport.

* * * * *

Issued in Jamaica, New York, on November 30, 1995.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 95–30693 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–39]

Proposed Amendment of Class E Airspace; Columbia, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Columbia, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 35 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight (IFR) operations at Columbia Airport, Columbia, CA.

DATES: Comments must be received on or before January 19, 1996.

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ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–39, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–39." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A. which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Columbia, CA. The development of a GPS SIAP at Columbia Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 35 SIAP at Columbia Airport, Columbia, CA. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Columbia, CA [Revised]

Columbia Airport, CA
(Lat. 38°01'50" N, long. 120°24'53" W)
Columbia NDB
(Lat. 38°01'52" N, long. 120°24'46" W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Columbia Airport and within 2.6 miles radius of each side of the 211° bearing from the Columbia NDB extending from the 5-mile radius to 10.4 miles south of the NDB and within 2 miles east of the 189° bearing from the Columbia NDB extending from the 5-mile radius to 7.8 miles south of the NDB.

* * * * *

Issued in Los Angeles, California, on December 1, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–30694 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Release Nos. 33–7246, 34–36572, 35–25428, 39–2337, IC–21591, IA–1540; File No. S7–33–95

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Public comments are due by January 31, 1996.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 6184, Stop 6–9, Washington, D.C. 20549. All submissions should refer to File No. S7–33–95, and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, Office of the General Counsel, Securities and Exchange Commission 202–942–0954.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA") (Pub. L. 96–354, 94 Stat. 1165 (September 19, 1980) requires that each agency review every ten years each of its rules that has a significant economic impact upon a substantial number of small entities. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities" (5 USC 610(a)).

The RFA stipulates the following specific considerations that must be addressed in the review of each rule: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 USC 610(c)).

Pursuant to the RFA, the rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The rules are grouped according to which Division or Office of the Commission has responsibility for, and will review, each rule:

Rules and Forms To Be Reviewed by the Division of Corporation Finance

Title: Form S–4 (for registration of securities issued in business combination transactions).
Citation: 17 CFR 239.25.
Authority: 15 U.S.C. 77a *et seq.*

Title: Form F–4 (for registration of securities of foreign private issuers issued in certain business combinations).
Citation: 17 CFR 239.34.
Authority: 15 U.S.C. 77a *et seq.*

Title: General rules and regulations pursuant to Section 9(a) of the African Development Bank Act.
Citation: 17 CFR Part 288.
Authority: 15 U.S.C. 77a *et seq.*; 22 U.S.C. 290i–9a.

Title: Regulation 14A; Regulation 14C.
Citation: 17 CFR 240.14a–1 through 240.14a–104 (Regulation 14A); 17 CFR 240.14c–1 through 240.14c–101 (Regulation 14C).
Authority: 15 U.S.C. 78a *et seq.*

Rules and Forms To Be Reviewed by the Division of Investment Management

Title: Rule 2a19–1 (investment company limited partners not deemed affiliated persons).
Citation: 17 CFR 270.2a19–1.
Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Rule 10b–1 (definition of regular broker or dealer)
Citation: 17 CFR 270.10b–1.
Authority: 15 USC 80a–37(a).

Title: Rule 22e–2 (pricing of redemption requests in accordance with Rule 22c–1).
Citation: 17 CFR 270.22e–2.
Authority: 15 USC 80a–6(c), 80a–22(e), and 80a–37(a).

Title: Rule 20a–1 (solicitations of proxies, consents and authorizations).
Citation: 17 CFR 270.20a–1.
Authority: 15 USC 80a–20(a).

Title: Rule 30a–1 (annual reports).
Citation: 17 CFR 270.30a–1.
Authority: 15 USC 80a–29.

Title: Rule 30b1–1 (semi-annual report).
Citation: 17 CFR 270.30b1–1.
Authority: 15 USC 80a–29.

Title: Rule 30b1–2 (semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company).
Citation: 17 CFR 270.30b1–2.
Authority: 15 USC 80a–29.

Title: Rule 30f–1 (applicability of Section 16 of the Exchange Act to Section 30(f)).
Citation: 17 CFR 270.30f–1,
Authority: 15 USC 78p.

Title: Rule 34b–1 (sales literature deemed to be misleading).
Citation: 17 CFR 270.34b–1.
Authority: 15 USC 77j, 77*l*, 78j(b), and 80a–33(b).

Title: Form N–2 (registration statement of closed-end management investment companies).
Citation: 17 CFR 274.11a–1.
Authority: 15 USC 77f, 77g, 77h, 77j, 77s, 80a–8, 80a–24, 80a–29, and 80a–37.

Title: Form N–14 (for the registration of securities issued in business combination transactions).
Citation: 17 CFR 239.23.
Authority: 15 USC 77f, 77g, 77h, 77j, 77s, 80a–8, 80a–24, 80a–29, and 80a–37.

Title: Rule 203(b)(3)–1 (definition of "client" of an investment adviser for certain purposes relating to limited partnership).
Citation: 17 CFR 275.203(b)(3)–1.
Authority: 15 USC 80b–6A.

Title: Rule 205–3 (exemption from the compensation prohibition of Section 205(1) for registered investment advisers).
Citation: 17 CFR 275.203(b)(3)–1.
Authority: 15 USC 80b–6A.

Title: Rule 6c–3 (exemptions for certain registered variable life insurance separate accounts).
Citation: 17 CFR 270.6c–3.
Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Rule 6c–6 (exemption for certain registered separate accounts and other persons).
Citation: 17 CFR 270.6c–6.
Authority: 15 USC 80a–6(c), 80a–11(a), and 80a–37(a).

Title: Rule 6c–7 (exemptions from certain provisions of Sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program).
Citation: 17 CFR 270.6c–7.
Authority: 15 USC 80a–6(c); 80a–37(a).

Title: Rule 6c–8 (exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administration charges)
Citation: 17 CFR 270.6c–8.
Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Rule 6e–3(T) (temporary exemptions for flexible premium variable life insurance separate accounts).
Citation: 17 CFR 270.6e–3(T).
Authority: 15 USC 80a–6(e) and 80a–37(a).

Title: Rule 11a–2 (offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval).
Citation: 17 CFR 270.11a–2.
Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Rule 22d–2 (exemption from section 22(d) for certain registered separate accounts).
Citation: 17 CFR 270.22d–2.

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Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Rule 26a–1 (payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts).
Citation: 17 CFR 270.26a–1.
Authority: 15 USC 80a–6(c), 80a–26(a), and 80a–37(a).

Title: Rule 26a–2 (exemptions from certain provisions of sections 26 and 27 for registered separate accounts and others regarding custodianship of and deduction of certain fees and charges from the assets of such accounts).
Citation: 17 CFR 270.26a–2.
Authority: 15 USC 80a–6(c) and 80a–37(a).

Title: Form N–3 (registration statement of separate accounts organized as management investment companies).
Citation: 17 CFR 274.11b.
Authority: 15 USC 77g, 77j, 77s, 80a–8, 80a–29, and 80a–37.

Title: Form N–4 (registration statement of separate accounts organized as unit investment trusts).
Citation: 17 CFR 274.11c.
Authority: 15 USC 77g, 77j, 77s, 80a–8, 80a-29, and 80a-37.

Title: Rule 7 (companies deemed not to be electric gas utility companies).
Citation: 17 CFR 250.7.
Authority: 15 U.S.C. 79b.

Title: Rule 14 (exemption of acquisitions of securities of power supply companies from section 9(a)(2) of the Act).
Citation: 17 CFR 250.14.
Authority: l5 U.S.C. 79i(a)(2).

Title: Rule 15 (exemption of holding company and subsidiary companies under section 3(a)(2) of the Act).
Citation: 17 CFR 250.15.
Authority: 15 U.S.C. 79c(a)(2).

Title: Rule 16 (exemption of non-utility subsidiaries and affiliates).
Citation: 17 CFR 250.16.
Authority: 15 U.S.C. 79b(a)(8) and 79b(a)(11).

Title: Rule 20 (prescribed forms and amendments).
Citation: 17 CFR 250.20.
Authority: 15 U.S.C. 79f.

Title: Rule 21 (filing of documents).
Citation: 17 CFR 250.21.
Authority: 15 U.S.C. 77s *et. seq.*, 78s *et. seq.*, and 77sss *et.seq.*

Title: Rule 22 (applications and declarations).
Citation: 17 CFR 250.22.
Authority: 15 U.S.C. 77s, 78m, 78o, 78w, 79o, 77eee, 77ggg, 77nnn, 77sss, 80a–37, 80a–38, 79c and 79t, 80b–3, 80b–4, and 80b–11.

Title: Rule 41 (exemption of public utility subsidiaries with respect to limited subsidiaries with respect to limited acquisition of utility assets).
Citation: 17 CFR 250.41.
Authority: 15 U.S.C. 78m.

Title: Rule 52 (exemption of issue and sale of certain securities).
Citation: 17 CFR 250.52.
Authority: 15 U.S.C. 79f and 79h.

Title: Rule 53 (certain registered holding company financings in connection with the acquisition of one or more exempt wholesale generators).
Citation: 17 CFR 250.53.
Authority: 15 U.S.C. 79z–5a.

Title: Rule 54 (effect of exempt wholesale generators on other transactions).
Citation: 17 CFR 250.54.
Authority: 15 U.S.C. 79c, 79f(b), and 79-i(c)(3).

Title: Notices and reports to be filed under Section 33.
Citation: 17 CFR 250.57.
Authority: 15 U.S.C. 79z–5b.

Title: Rule 63 (Approval of reorganization fees.
Citation: 17 CFR 250.63.
Authority: 11 U.S.C. 608.

Title: Rule 64 (scope of applications for approval of reorganization plans).
Citation: 17 CFR 250.64.
Authority: 15 U.S.C. 79k.

Title: Rule 72—Filing of statements pursuant to Section 17(a).
Citation: 17 CFR 250.72.
Authority: 15 U.S.C. 79q.

Rules To Be Reviewed by the Division of Market Regulation

Title: Exemption of certain direct participation program securities from Sections 7(c) and 11(d)(1).
Citation: 17 CFR 240.3a12–9.
Authority: 15 U.S.C. 78c(a)(12), 78g, 78k and 78w.

Title: Options disclosure document.
Citation: 17 CFR 240.9b–1.
Authority: 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78(o) and 78w(a).

Title: Exemptions from Section 12(g).
Citation: 17 CFR 240.12g–1.
Authority: 15 U.S.C. 78l, 78m, 78o and 78w.

Title: Tender offers by issuers.
Citation: 17 CFR 240.13e–4; 17 CFR 240.14e-1.
Authority: 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78w(a) and 80a–23(c).

Title: Annual reporting requirements for registered transfer agents.
Citation: 17 CFR 240.17Ac2–2.
Authority: 15 U.S.C. 78q, 78q–1 and 78w(a).

Title: Depository shipment control list transfer instructions; Definition of item.
Citation: 17 CFR 240.17Ad–1.
Authority: 15 U.S.C. 78b, 781, 78q–1 and 78w.

Title: Written inquiries and requests.
Citation: 17 CFR 240.17Ad–5.
Authority: 15 U.S.C. 78c, 78q–1 and 78w.

Rule To Be Reviewed by the Office of the Chief Accountant

Title: Article 4 of Regulation S–X (Rules of General Application).
Citation: 17 CFR 210.4.
Authority: 15 U.S.C. 77f, 77g, 77s(a), 77aa(25) to (26), 78l, 78m, 78o(d), 78w(a), 79e(b), 79n, 79t(a), 80a–8, and 80a–29.

The Commission invites public comment on both the list and the rules to be reviewed.

Dated: December 12, 1995.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–30659 Filed 12–15–95; 8:45 am]
BILLING CODE 8010-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SPATS No. WY–022]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition and revision of statutes and rules pertaining to shrub density stocking requirements and wildlife habitat. The amendment is intended to revise the Wyoming program to be consistent with SMCRA and the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 17, 1996. If requested, a public hearing on the proposed amendment will be held on January 12, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., January 2, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Room 2128, 100 East "B" Street, Casper, Wyoming 82601–1918

Dennis Hemmer, Director, Department of Environmental Quality, Herschler Building—4th Floor West, 125 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7938

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated November 29, 1995, Wyoming submitted a proposed amendment to is program (administrative record No. WY–031–1) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the proposed amendment in response to the required program amendments at 30 CFR 950.16(q) and (bb) through (gg). The provisions of the Wyoming Environmental Quality Act that Wyoming proposes to revise are: Wyoming Statue (W.S.) 35–11–103, definitions, and W.S. 35–11–402, establishment of reclamation standards. The provisions of the coal rules and regulations of the Department of Environmental Quality, Land Quality Division, that Wyoming proposes to revise are: chapter I, section 2, definitions; chapter II, section 2, permit application requirements for surface coal mining operations; chapter IV, section 2, general environmental protection performance standards for surface coal mining operations; chapter X, section 4, coal exploration and reclamation performance standards; chapter XI, section 5, self-bonding; chapter XIII, section 3, notice and opportunity for public hearing on surface coal mining permit revisions; chapter XVII, section 1, definitions for designation of areas unsuitable for surface coal mining; and appendix A, vegetation sampling methods and reclamation success standards for surface coal mining operations.

Specifically, Wyoming proposes to delete the definitions for "Agricultural lands," "Critical habitat," and "Important habitat" or "crucial habitat" at W.S. 35–11–103(e) (xxviii), (xxix), and (xxx).

Wyoming proposes to revise W.S. 35–11–402(b) to indicate that this statutory provision addresses, to the extent required by Federal law or regulations, State wildlife agencies' approval, rather than consultation and approval, of reclamation standards for fish and wildlife habitat. It proposes to further revise W.S. 35–11–402(b) to require that the Wyoming Game and Fish Department shall consider "fish and wildlife habitat" to be that defined at W.S. 35–11–103(e)(xxvi) and not to include grazing land as defined in W.S. 35–11–103(e) (xxvii) "unless the grazingland has been designated as critical habitat by the United States Fish and Wildlife Service" or "crucial habitat by the Wyoming Game and Fish Department prior to submittal of the initial permit application or any subsequent amendments to the permit application." Wyoming proposes to revise W.S. 35–11–402(c) to require that native shrubs shall be reestablished on grazing land and that no shrub species shall be required to be more than one-half of the shrubs in the postmining standard.

Wyoming also proposes several revisions to its rules and regulations. In chapter I, Wyoming proposes to revise the definition for "Critical habitat" at section 2(v) to be "those areas essential to the survival and recovery of species listed by the Secretary of the Interior or Commerce as threatened or endangered; (50 CFR Parts 17 and 226)." It proposes to add a definition for "Crucial habitat" at section 2(w) to be "those areas, designated as such by the Wyoming Game and Fish Department, which determine a population's ability to maintain and reproduce itself at a certain level over a long term." It proposes to add a definition for "Eligible land" at section 2(ac) to be

All land to be affected by a mining operation after the shrub standard set forth at Chapter IV, Section 2.(d)(x)(E) is approved by the Office of Surface Mining. Cropland, pastureland, or treated grazingland approved by the Administrator which is to be affected by a mining operation after the shrub standard set forth at chapter IV, section 2.(d)(x)(E) is approved by the Office of Surface Mining is not 'eligible land'.

Wyoming proposes to revise the definition for "Important habitat" at recodified section 2(ax) to be

That habitat which, in limited availability, supports or encourages a maximum diversity of wildlife species or fulfills one or more living requirements of a wildlife species. Examples of important habitat include, but are not limited to, wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

It proposes to revise section 2(bc)(iii) to indicate that "Grazingland includes rangelands and forest lands where the indigenous native vegetation is actively managed for grazing, browsing, and occasionally hay production, and occasional use by wildlife." Wyoming proposes to revise section 2(bc)(viii) to indicate that "Fish and wildlife habitat means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife." It proposes to add at section 2(bc)(xi) a provision to indicate that

"Treated grazingland" means grazingland which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazingland altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazingland.

Wyoming proposes to recodify the definitions in chapter 1, section 2, to reflect the additions of new terms as discussed above.

In chapter II, Wyoming proposes to revise section 2(a)(vi)(G)(II) to require that, if crucial habitat, in addition to critical or important habitat, disruption is likely, the Wyoming Game and Fish Department shall be contacted to determine the types and numbers of wildlife likely to be disturbed or displaced. It also proposes to revise section 2(b)(iv)(C), regarding revegetation plans, to require that (1) the Wyoming Game and Fish Department shall be consulted, and its approval received, for minimum stocking and planting arrangements of trees and shrubs, including species composition

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and ground cover for crucial and critical habitat, (2) the Wyoming Game and Fish Department shall be consulted for minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover for important habitat, and (3) the Wyoming Department of Agriculture shall be consulted on cropland and erosion control techniques.

In chapter IV, Wyoming proposes to revise section 2(d)(x)(E) to include a requirement that the postmining density, composition, and distribution of shrubs shall be based upon site-specific evaluation of premining vegetation and wildlife use. It proposes to revise section 2(d)(x)(E)(I) to require that (1) except where a lesser density is justified from premining condition in accordance with appendix A, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average density of one shrub per square meter, (2) patches shall be no less than .05 acres each and shall be arranged in a mosaic that will optimize habitat interspersion and edge effect, (3) criteria and procedures for establishing the standard are specified in appendix A, and (4) this standard shall apply upon approval by OSM to all lands affected thereafter. It also proposes to revise section 2(d)(x)(E)(II) to require that approved shrub species and seeding techniques shall be applied to all remaining grazingland. Finally, it proposes to revise section 2(d)(x)(E)(III) to require that (1) for areas containing designated critical or crucial habitat, the Wyoming Game and Fish Department shall be consulted about, and its approval received for, minimum stocking and planting arrangements of shrubs, including species composition, and (2) for areas determined to be important habitat, the Wyoming Game and Fish Department shall be consulted for recommended minimum stocking and planting arrangements of shrubs, including species composition, that may exceed the programmatic standard discussed above.

In chapter X, Wyoming proposes to revise section 4(e) to require that coal exploration operations that will substantially disturb the natural land surface shall not disturb critical or crucial habitats and that they shall consult the Wyoming Game and Fish Department prior to disturbing important habitat.

In chapter XI, Wyoming proposes to revise section 5(a) to require that the Administrator of the Division of Land Quality shall require the substitution of a corporate surety for a self-bond if the financial information submitted or requested under section 4(a)(ii), rather than section 3(a)(ii), indicates that the operator no longer qualifies under the self-bonding program.

In Chapter XIII, Wyoming proposes to revise section 3(a) to require that (1) the operator's newspaper notice of application for permit revision shall include the information required by W.S. 35–11–406(j) and the permit number and date approved, and (2) the operator shall mail a copy of the application mine plan map to the Wyoming Oil and Gas Commission in accordance with W.S. 35–11–406(j).

In chapter XVII, Wyoming proposes to revise its rules concerning designation of areas unsuitable for surface coal mining at section 1(a) to define "Fragile lands" to include crucial habitats for fish or wildlife.

In appendix A, Wyoming proposes to revise section II.C.3, suggested sampling procedures for "shrub habitat characteristics," to indicate that (1) the postmining density composition and distribution of shrubs shall be based upon site-specific evaluation of the premining vegetation and wildlife use, (2) except where a lesser density is justified from premining conditions, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average density of one shrub per square meter, (3) the baseline vegetation "shall," instead of "should," include premining shrub distribution data, (4) shrub density and cover data "shall," instead of "should," be components of the shrub distribution information, (5) when shrub density data are estimated, they "shall," instead of "should," be gathered from each community, but not from control areas, reference areas, or extended reference areas, (6) "shrubs" "shall," instead of "should," be divided into woody species (full shrubs) and suffrutescent species (subshrubs) for sampling purposes, (7) shrub density counts shall be performed within a 50 square meter area using a plot shape appropriate to the community, (8) data "shall," instead of "should," be recorded by species, (9) data "shall," instead of "should," be reported as number per square meter and per acre, (10) all shrub density data collected after the effective date specified in chapter IV, section 2(d)(x)(E) of the rules and regulations shall be subject to the sample adequacy tests specified in appendix A, section IV, although all shrub density data collected on land affected prior to the effective date shall not be subject to sample adequacy tests unless that shrub density data is being used to fulfill the 20 percent shrub density standard, and (11) when sampling, which is not subject to sample adequacy, is conducted, the number of shrub density sample points should correspond to the number of cover samples in each community type.

In appendix A, Wyoming proposes to revise table 1 to include parameter values to be used for 50 square meter shrub density plots in assessing sample adequacy, (2) to revise table 2, minimum and maximum sample sizes for various sampling methods, to delete the belt transect sampling method, and (3) to revise table 2 to require, for 50 square meter shrub density plots, a minimum of 15 samples and to indicate that, if sample adequacy cannot be achieved after sampling 50 shrub density plots, the operator shall contact the Land Quality Division for guidance.

In appendix A, Wyoming proposes to revise section IV.D to require that, with respect to maximum and minimum sampling sizes, shrub density be estimated using a 50 square meter plot.

In appendix A, Wyoming proposes to revise section VII.F, restoration of shrubs, subshrubs, and trees, to require that (1) the postmining density, composition, and distribution of shrubs shall be based upon site-specific evaluation of the premining vegetation and wildlife use and (2) except where a lesser density is justified from premining conditions, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average density of one shrub per square meter. In this section, Wyoming also proposes to delete various shrub density criteria.

In Appendix A, Wyoming proposes to add in section VIII.E various and numerous standards and criteria for the evaluation of shrub density.

Lastly, in appendix A, Wyoming proposes to revise the glossary at appendix VII to define "dominant" as the species with the greatest density relative to all other species sampled and "primary shrub species" as

All full shrub species which comprise at least 10 percent of the relative density of full shrubs. However, if an operator selects option IV, the community-specific full shrub and approved subshrub density standard, then 'primary shrub species' means all full shrub and approved subshrub species which comprise at least 10 percent of the relative density of full shrubs. It is further provided under option IV that in order to be considered as a "primary shrub species," fringed sagewort must comprise at least 20 percent of the relative shrub and approved subshrub species composition.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become a part of the Wyoming program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., January 2, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meeting will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining

Dated: December 7, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–30649 Filed 12–15–95; 8:45 am]

BILLING CODE 4310–05–M

POSTAL RATE COMMISSION

[Docket No. RM95–4; Order No. 1094]

39 CFR Part 3001

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Proposed rulemaking; extension of time.

SUMMARY: The Commission is extending the time for the filing of comments on draft rules of practice and procedure published at 60 FR 54981–89.

DATES: Comments on the draft rules of practice and procedure must be submitted on or before January 8, 1996.

ADDRESSES: Comments and correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone 202/789–6820).

SUPPLEMENTARY INFORMATION: On October 27, 1995, Order No. 1084, a Notice of Proposed Rulemaking, was published at 60 FR 54981–89. This Notice presented draft rules that were founded on rules initially proposed by the United States Postal Service in a Petition filed April 13, 1995. However, the Commission's draft rules incorporated views expressed and suggestions made in comments filed by twenty-one participants. The deadline established for comments on the Commission's draft rules was December 26, 1995. Notice is hereby given that the deadline for filing comments on the draft rules is extended to January 8, 1996.

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The Commission is concerned that the initial deadline for filing comments, December 26, 1995, falls at an inconvenient time, in the midst of the holiday season. As a courtesy to those planning to file comments on the draft rules and in the interest of obtaining comments based on a thorough review of the draft rules, the Commission has conferred this extension. It is Ordered:

1. Comments addressing the draft rules published at 60 FR 54981–89 are now due on January 8, 1996.

2. The Secretary shall publish this Notice and Order in the **Federal Register.**

Issued by the Commission on December 12, 1995.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–30640 Filed 12–15–95; 8:45 am]

BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–141; RM–8642]

Radio Broadcasting Services; Frederiksted, VI and Culebra and Carolina, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the petition for rule making filed by Jose J. Arzuaga, proposing the allotment of Channel 298B1 at Frederiksted, Virgin Islands, as its third local FM transmission service (RM–8642). *See* 60 FR 46563, September 7, 1995. We also dismiss petitioner's counterproposal to allotment Channel 293B in lieu of Channel 298B1 at Frederiksted, Virgin Islands, and to allot Channel 298B1 at Culebra, Puerto Rico. The petitioner has abandoned his interest in a Class B1 allotment at Frederiksted, Virgin Islands, and there are no other timely expressions of interest for the channel. In addition, petitioner's counterproposal is not consistent with the Commission's technical requirements. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–141, adopted November 30, 1995, and released December 11, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30615 Filed 12–15–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Parts 73 and 76

[MM Docket No. 95–176; FCC 95–484]

In the Matter of Closed Captioning and Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry solicits comment on the current availability, cost, and uses of closed captioning and video description of television video programming. This information will provide the Commission a record on these important services, which benefit individuals with disabilities. It will also enable the Commission to assess what further actions may be appropriate to promote these services.

DATES: Interested parties may file comments on or before January 29, 1996, and reply comments on or before February 14, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Charles Logan, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 95–176, FCC 95–484, adopted December 1, 1995 and released on December 4, 1995. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Notice of Inquiry

1. The Notice seeks information on the current availability, cost, and uses of closed captioning and video description, and also asks comment on what further Commission actions may be appropriate to promote these services. It also seeks comment on the appropriate means of promoting their wider use in programming delivered by television broadcasters, cable operators, and other video programming providers.

I. Background

2. Captioning is similar to subtitles in that it displays the audio portion of a television signal as printed words on the television screen. To assist viewers who are hearing disabled, captions also identify speakers, sound effects, music, and laughter. Video description provides audio descriptions of a program's key visual elements that are inserted during the natural pauses in the program's dialogue.

3. Both the Senate and the House of Representatives have passed bills (H.R. 1555 and S. 652), which, if enacted, would require the Commission to adopt regulations to ensure that video programming is accessible to persons with hearing disabilities through the provision of closed captioning, including requiring "video programming providers or owners" to maximize the accessibility of previously published or exhibited programs by adding closed captioning. Both bills would allow the Commission to exempt programs from these requirements in certain circumstances, including circumstances where the closed captioning would impose an unreasonable financial burden. The House bill would require the Commission to conduct an inquiry into the current extent of closed captioning as well as other issues. In addition, both bills would require the Commission to study the use of video description. The House bill further provides that the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

II. The Public Interest Benefits of Closed Captioning and Video Description

4. The Notice asks parties to elaborate on the importance and nature of the public interest benefits of closed captioning and video description. It asks parties to submit information regarding the number of individuals with hearing and vision disabilities in this country who can benefit from these innovations, including the basis for such estimates.

Are the number of persons with hearing and vision disabilities expected to grow in the coming years, particularly due to the aging of the population? What proportion of the persons with such disabilities require closed captioning or video description to enjoy television programming, and what proportion currently utilize these technologies? In addition, the Commission requests comment on the number of children with hearing and vision disabilities that can benefit from either closed captioning or video description, and the nature of these benefits. The Notice also seeks comments on other public interest benefits of closed captioning and video description, such as teaching literacy skills to children and illiterate adults.

III. Availability of Closed Captioning and Video Description

5. The Notice asks commenters to provide data regarding the current availability of closed captioning of television video programming. Has the amount of closed captioning been increasing in recent years, or has it reached a plateau? The Commission is particularly interested in data on availability and any discernible trends regarding the following categories: (1) *Program Source.* What is the current availability of closed captioning according to the source of the programming—broadcast network, basic cable and premium cable networks, syndicated programming, locally-produced programming, local and nationally produced public television programming? (2) *Other Delivery Systems.* To what extent is programming carried on wireless cable, satellite master antenna systems, direct-to-home satellite services (including direct broadcast satellite), and local exchange carriers/video dialtone services closed captioned? (3) *Program Type.* To what extent are each of the following types of programs closed captioned (on the media within the scope of FCC jurisdiction): entertainment programs, local and national news, documentaries, public affairs programming, children's educational programming, other types of children's programming; sports, movies, cable public access programming, and live vs. pre-recorded programming? (4) *Previously Published Programming.* The Commission solicits comment on the extent of closed captioning of previously published or exhibited programs, such as reruns and movies, that will be shown to television audiences again. (5) *Market Size and Other Factors.* The Commission also requests comment on the degree to which closed captioning varies by the size of the video programming provider or producer, by market size, and by whether an entity is affiliated with a broadcast network or multiple cable system operator.

6. The Commission also seeks comment on the current availability of video description, including its availability within each of the categories described in its discussion of the availability of closed captioning. It also requests comment on the estimated number of U.S. households that have stereo television receivers, a VCR, or television adaptor capable of receiving video descriptions via the Second Audio Program channel.

7. The Commission asks parties to comment on the impact that implementation of Advanced Television ("ATV"), and the use of digital technology, may have on the provision of closed captioning and video description on video programming carried by broadcasters and other program providers.

IV. The Cost of Closed Captioning and Video Description

8. The Notice requests information on the current costs of providing closed captioning and video description of new as well as previously published or exhibited television programming. What is the cost of the computer hardware and software, as well encoding and other equipment, necessary for these services? What are the current rates for closed captioning and video description services for both prerecorded and live, "real-time" programming? Are these rates uniform throughout the country? Do the rates vary by program type, the type of delivery system, or other factors? What is the overall cost of providing closed captioning or video description of different types of programs?

9. The Commission also requests comment on the adequacy of the supply of closed captioning and video description services. In addition, it seeks comment on the governmental and nongovernmental funding sources for these services.

V. Market Incentives for Closed Captioning and Video Description

10. The Notice solicits comment on the role free-market forces have played and can play in promoting the provision of closed captioning of video programming. For example, are advertisers actively seeking to market to individuals with hearing impairments, which could in turn encourage closed captioning of television programming? How does the audience size of a particular program influence the likelihood that the program will be closed captioned? Are there presently a sufficient number of decoder-equipped television receivers in the market to provide the hoped-for incentive for the television industry to provide closed captioning? The Commission also requests comment on the role market-based incentives can play in fostering video description.

VI. Inquiry Regarding Mandatory Captioning and Video Description Requirements

11. As noted, there is legislation pending in Congress that generally would require closed captioning of video programming and which would require the Commission to examine the means of promoting video description. Before these mandatory requirements become law, the legislation must pass both Houses of Congress and be signed by the President. Alternatively, the Commission could assess the possibility of adopting regulatory requirements in this area under it existing statutory authority. The Commission is not presently proposing such action, but it requests comment on the general form any mandatory closed captioning or video description requirements should take if they are deemed necessary. It particularly seeks comment on the following matters: (1) The application of mandatory requirements (i.e., which entities (e.g., program producers, video programming distributors) should be subject to any mandatory requirements); (2) Exemptions to any mandatory requirements due to financial burden or other factors; (3) Technical and quality standards; (4) The appropriate timetables for implementing any closed captioning or video description requirements that may be imposed; (5) Strategies to improve competition and innovation in the provision of these services.

12. The pending Senate and House bills, if enacted, would provide express statutory authority for imposing mandatory closed captioning requirements. The House bill would also permit the Commission to adopt regulations to promote the accessibility of video programming to persons with visual disabilities after conducting an inquiry into video description. However, the Commission seeks comment on the scope of its authority under current law to adopt regulations imposing either closed captioning or video description requirements on broadcast television licensees, cable operators, wireless cable systems, SMATV operators, direct-to-home satellite services, and local exchange carrier/video dialtone systems, as well as on producers/owners and other distributors of such programming.

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Commenters should address with specificity the basis for their views concerning the Commission's authority, and also address any other legal constraints that they believe may apply in this area.

Administrative Matters

13. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before January 29, 1996, and reply comments on or before February 14, 1996. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR § 1.1204(a)(4).

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-30549 Filed 12-15-95; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATOIN

48 CFR Parts 8, 10, 15, 31, 32, 42, 45, 52 and 53

[FAR Case 90-017, 90-054, 91-039, 91-057, 91-093, 91-111, 91-114, 91-117, 92-033, & 92-044]

Federal Acquisition Regulation; Withdrawal of Proposed Rules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule withdrawals.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have decided to withdraw ten proposed rules without further action. The actual text of the Federal Acquisition Regulation is unaffected by this document.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1995, the Councils agreed to withdraw the following five proposed rules because the Director of Defense Procurement is conducting an initiative to rewrite FAR Part 45, Government Property, to make the Government property regulations easier to understand and less burdensome for both Government and industry. The issues addressed by these rules will be considered under the Part 45 Rewrite initiative.

FAR Case 91-057, Disposal of Hazardous Government Property

Published at 59 FR 14464, March 28, 1994, to provide guidance relating to the identification and appropriate disposition of hazardous Government property. [RIN 9000-AF62]

FAR Case 91-093, Special Tooling Under Fixed-Price Contracts

Published at 59 FR 14462, March 28, 1994, to amend the Government's policy on managing and controlling special tooling for which the Government has the right to title. [RIN 9000-AF66]

FAR Case 91-111, Commercially Available Government-Furnished Material

Published at 59 FR 46557, September 2, 1994, to require contractors to provide all material for performing Government contracts, except when Government-furnished material is necessary to achieve significant economy, standardization, or expedited production, or when it is otherwise in the Government's interest. [RIN 9000-AF95]

FAR Case 91-114, Use of Government Facilities on a No-Charge Basis

Published at 59 FR 45657, September 2, 1994, to include two clauses to provide controls on the use of Government property by identifying the items of property furnished under a contract or used on a no-charge basis, and by describing the obligation of both parties with regard to the property. [RIN 9000-AF96]

FAR Case 91-117, Use and Charges Clause

Published at 60 FR 22442, May 5, 1995, to clarify current language pertaining to rental payments for Government-owned real property and equipment. [RIN 9000-AG23]

The councils agreed to withdraw the following two proposed rules because the Department of Defense decided to retain the guidance in the Defense Federal Acquisition Regulation supplement.

FAR Case 91-39, Voluntary Refunds

Published at 56 FR 40716, August 15, 1991, to establish guidance on solicitation and acceptable of voluntary refunds from contractors. [RIN 9000-AE11]

FAR Case 90-54, Defective Pricing

Published at 55 FR 50534, December 6, 1990, to revise policies affecting defective pricing reductions. [RIN 9000-AE23]

The councils also agreed to withdraw the following three proposed rules because the issues addressed in these rules have been superseded by other regulations including regulations implementing the Federal Acquisition Streamlining Act of 1994.

FAR Case 90-017, Exemptions from Cost or Pricing Data

Published at 55 FR 36774, September 6, 1990, to minimize administrative impediments in the procedures for claiming and granting exemptions from the requirements for submission of certified cost or pricing data, and the

policies regarding price negotiations. [RIN 9000-AD89]

FAR Case 92-033, Price Competition Exemption

Published at 59 FR 114458, March 28, 1994, to address unnecessarily requiring the submission of cost or pricing data and to clarify when adequate price competition exists. [RIN 9000-AF81]

FAR Case 92-044, Reconditioned Material

Published at 59 FR 46019, September 6, 1994, to combine two clause as an acquisition streamlining measure. [RIN 9000-AG08]

List of Subjects in 48 CFR Parts 8, 10, 15, 31, 32, 42, 45, 52, and 53

Government procurement.

Dated: September 12, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 95-30651 Filed 12-15-95; 8:45 am]

BILLING CODE 6820-EP-M

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Notices

Federal Register
Vol. 60, No. 242
Monday, December 18, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Boulder River Watershed, Montana

AGENCY: Natural Resources conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Boulder River Watershed project in Jefferson County, Montana.

FOR FURTHER INFORMATION CONTACT: Richard J. Gooby, State Conservationist, Natural Resource Conservation Service, 10 East Babcock Street Room 442, Bozeman, Montana 59715, telephone: 406–587–6813.

Boulder River Watershed, Montana

Notice of Intent to Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by Richard J. Gooby that the proposed works of improvement for the Boulder River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Richard J. Gooby, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: December 6, 1995.

Christine Peterson,

Acting State Conservationist.

[FR Doc. 95–30658 Filed 12–15–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

ACTION: Notice.

SUMMARY: On October 27, 1995, the Secretary of Commerce released a report to Congress entitled, *Secretary's Report to Congress on Adequacy of NEXRAD Coverage and Degradation of Weather Services under the National Weather Service Modernization for 32 Areas of Concern.* This report was prepared by a Departmental team with expertise in radar meteorology, operational weather services, employee relations, and strategic planning. The Secretary's report applied the criteria developed in the National Research Council's (NRC) study, *Toward a New National Weather Service—Assessment of NEXRAD Coverage and Associated Weather Services,* which was delivered to the Secretary in June, 1995. The Modernization Transition Committee (MTC), a Federal advisory committee established by the Weather Service Modernization Act (WSMA), 15 U.S.C. 313 note, P.L. 102–567, was consulted on the Secretary's Report on October 30, 1995.

The Secretary's report assessed the adequacy of Doppler weather surveillance radar (WSR–88D), also known as NEXRAD, coverage and degradation of weather services under the National Weather Service (NWS) modernization plan for 32 geographical areas of concern and identified mitigation actions for areas where degradation was indicated. Late last year, comments from the public were solicited to identify community concerns about possible degradation of weather services under the NWS modernization plan (published November 4, 1994, 59 FR 55254). Over 67,000 public comments were received from 32 different geographical areas. These 32 areas were then established as areas of concern to receive in depth analysis based on the NRC's assessment criteria (published February 23, 1995, 60 FR 10086).

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413 or Nick Scheller at 301–713–0454.

SUPPLEMENTARY INFORMATION: *Mitigation Recommendations:* The mitigation recommendations contained in the report and the Secretary's transmittal letter are:

Additional WSR–88Ds and/or WFO—The Secretary's team recommends the acquisition and siting of three additional WSR–88Ds and one Weather Forecast Office (WFO) to provide coverage for:

"(1) Northern Indiana and Northwest Ohio. The Team recommends that the National Weather Service install a WSR–88D, along with a fully staffed WFO, to provide forecast and warning services to the citizens of northern Indiana and northwestern Ohio. The Team finds that this combined area experiences a high frequency of especially severe weather, and that the present NEXRAD configuration will not provide the low level surveillance necessary for detecting reflectivity and velocity signatures associated with tornado formation and other severe weather phenomena. It is the opinion of the Team that the frequency of severe weather, areal extent of radar coverage degradation, increased work load associated with a large spotter network, argues for the establishment of a full-service WFO. In addition, the Team recommends that the NWS re-examine the distribution of county warning responsibility throughout northern Indiana and northwestern Ohio following placement of the WSR–88D. The Team further recommends that the Fort Wayne Weather Service Office and WSR–74C remain in service until the new WSR–88D and WFO are operational.

(2) Northern Alabama and Southeast Tennessee. The Team recommends the addition of a WSR–88D optimized for coverage of severe weather phenomena (particularly mini-supercells and

macrobursts) in the northern Alabama, southeastern Tennessee, and northwestern Georgia region. The climatology of severe weather for this area is such that there are a significant number of tornadoes whose genesis is observable only from low level radar information. The recommended WSR–88D may be operated as a remote radar due to the accessibility of locations in the region, and reliability of commercial communications. The NWS should re-evaluate the county warning area distribution for future WFOs Nashville, TN, Birmingham, AL, Atlanta, GA, and Morristown, TN in order to determine which WFOs are best positioned to provide primary warning responsibilities for counties assumed from the Chattanooga and Huntsville areas. The Team further recommends that the Chattanooga and Huntsville WSR–74C's remain in service until the NWS commissions the new WSR–88D and achieves confirmation of services with users.

(3) Northwest Arkansas/Eastern Oklahoma. The Team recommends that an additional WSR–88D be installed to the southwest of Fort Smith and operated with dedicated communications to both WFO Tulsa and WFO Little Rock. The Fort Smith area experiences a very high frequency of severe thunderstorms and flash floods. The southern portion of the Fort Smith county warning area, comprising the counties of Le Flore, Scott and Polk, is beyond the range of reliable detection of the low, mid and upper altitude radar features used to identify the severe thunderstorms and weak to moderate tornadoes associated with squall lines and intersecting outflow boundaries. Many of the storms move into the area from the southwest of these counties—an area also too far from surrounding WSR–88Ds for reliable severe weather identification. The Team further recommends that the Fort Smith WSR–74C remain in service until the NWS commissions the new WSR–88 and achieves confirmation of services with users."

Continuation of Office Operations—The Secretary's team recommends the continuation of office operations at the following sites:

(1) Caribou, Maine. The Team recommends continued operations at Caribou, Maine, until the NWS can: (a) Validate reliable communications and maintenance for the Hodgdon WSR–88D site; and (b) certify that other distance- and time-sensitive service considerations have been reconciled, including maintenance of equipment and the coordination of northern Maine emergency management requirements and community outreach. If solutions to remote radar (and other equipment) communications and maintenance reliability concerns cannot be found, and if adequate community coordination and outreach cannot be assured, the Team recommends that a nearby WFO be established. The office should incorporate, at a minimum, adequate staffing for maintaining and operating the radar for severe weather observations and the dissemination of warnings, and for coordinating outreach activities with northern Maine communities.

(2) Key West, Florida. The Team recommends continued operations at Key West, Florida, until the NWS can validate reliable communications and maintenance between the Key West WSR–88D site and WFO Miami. If solutions to remote radar communications and maintenance reliability concerns cannot be found, the Team recommends a continued NWS presence at Key West, with, at a minimum, adequate staffing for maintaining and operating the radar for severe weather observations and the dissemination of warnings."

Continuation of Radar Operations—The Secretary's team recommends continued radar operations at the following sites, in addition to those listed above:

"(1) Erie, Pennsylvania. As a result of the degraded radar coverage for certain lake-effect snow events, the Team recommends the continued operation of WSO Erie's WRS–74C pending the results of "The Lake Effect Snow Study." This assessment should compare the adequacy of existing WSR–88D information, and other data sources (the composite system) with the local warning radar to determine capabilities for lake effect snow identification. The Team recommends that the NWS remote the WSR–74C data to WFO Cleveland in order to facilitate the schedule spindown of WSO Erie.

(2) South Bend, Indiana. As a result of the degraded radar coverage for certain lake-effect snow events, the Team recommends continued radar operations at WSO South Bend pending the results of the lake effect snow study. This assessment should compare the adequacy of existing WSR–88D information, and other data sources (the composite system) with the local warning radar to determine capabilities for lake effect snow identification."

Continuation of Office and Radar Operations—The Secretary decided to continue office and radar operations in the Williston, North Dakota, area. The following was extracted from the Secretary's transmittal letter:

"However, I remain concerned about the team's finding of significant degradation of radar coverage at the lower levels for the Williston, North Dakota, area. In this location, the team concluded that weather services should not be degraded, although their assessment included the finding that low-altitude radar coverage would be degraded over portions of all eight counties of the county warning area for certain weather phenomena. The geographic area which would experience some level of degradation of radar information is far more extensive than for any of the other areas examined. Therefore, I have decided that the NWS will maintain the operations of the Williston Weather Service Office and its associated radar for a period of two years before implementing the team's recommendation to proceed with planned radar decommissioning and weather office closure. During this time, the NWS will conduct an operational evaluation to assess whether mid- and upper-altitude NEXRAD data and information from composite system sources provide adequate information to detect, and warn for, all weather phenomena of concern. The team concurs with my decision."

Funding for Mitigation Recommendations: There are no resources (dollars or work force positions) in the current NWS budget for additional radars or offices beyond those already identified in the strategic plan for NWS modernization. Additional radars and offices identified in the Secretary's report will require additional funding authority and appropriations. Recommended mitigation actions, identified in the Secretary's report, will be reflected in the normal budget process beginning in fiscal year 1997.

Release of Remaining Areas of Concern: Actions to close, consolidate, relocate, or automate any field office or decommission any NWS radar in an area of concern were prohibited until the Secretary had reported to Congress that he believed that such actions would not result in a degradation of service and a 30-day grace period had elapsed. The Secretary's report was submitted to Congress on October 27, 1995, and the 30-day grace period elapsed on November 27, 1995. Thus the prohibition on actions to close, consolidate, relocate, or automate any field office or decommission any NWS radar in an area of concern is removed for the following areas of concern where the Secretary's report found no degradation of service:

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WSO Asheville, NC
WSO Astoria, OR
WSO Athens, GA
WSO Baton Rouge, LA
WSO Cape Hatteras, NC
WSO Charlotte, NC
WSO Colorado Springs, CO
WSO Del Rio, TX
WSO Elkins, WV
WSO Evansville, IN
WSO Grand Island, NE
WSO Greensboro, NC
WSO Harrisburg, PA
WSO International Falls, MN
WSO Kalispell, MT
WSO Lexington, KY
WSO Montgomery, AL
WSO Redding, CA
WSO Toledo, OH
WSO Wichita Falls, TX
WSO Wilmington, DE
WSO Hondo, TX
Central Oregon/Central Washington

The Secretary is still required to satisfy the requirement of sec. 706(b) of the WSMA to certify no degradation of service when she/he restructures a filed office. If the field office is located in an area of concern, the Secretary is required to provide all public comments relating to that area of concern to the Modernization Transition Committee during the certification process.

Obtaining Copies of the Secretary's Report: The Secretary's report consists of two volumes. Volume 1 provides the overall report and includes the methodology used by the Secretary's team and a summary of assessment results for each of the 32 areas of concern. Volume 2 consists of an individual package of information for each of the 32 areas of concern. Each package includes all the detailed information considered by the team in making its assessment of potential degradation of service. The report has been submitted to the U.S. Government Printing Office for printing. Copies should be available in February 1996. Distribution of Volume 1 is planned throughout NWS and to Congress and people who submitted the public comments that established the areas of concern. Volume 2 will be available by request only. If you would like a copy of Volume 1 and/or Volume 2 mailed to you, please specify which area(s) of concern you want and send your name and address to: National Weather Service, 1325 East-West Highway, Silver Spring, MD 20910–3283, Attn: Wx21–Patricia Daenecke.

In the interim, copies of the report are available to the public at centrally located libraries in each of the 32 areas of concern. A list of these libraries is attached to this notice.

Dated: December 7, 1995.

Louis J. Boezi,

Deputy Assistant Administrator for Modernization.

List of Libraries

Pack Memorial Library, 67 Haywood Street, Asheville, NC 28801
Astoria Public Library, 459 Tenth Street, Astoria, OR 97103
Athens/Clark County Library, 2025 Baxter Street, Athens, GA 30606
East Baton Rouge Parish, Main Library, 7711 Goodwood Boulevard, Baton Rouge, LA 70806
Dare County Library Hatteras Branch, Hatteras Community Center, P.O. Box 309, Hatteras, NC 27943
Caribou Public Library, 30 High Street, Caribou, ME 04736
Deschutes County Library, 507 NW Wall Street, Bend, OR 97701
Yakima Valley Regional Library, 102 North 3rd Street, Yakima, WA 98901
The Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, NC 28202
Chattanooga/Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, TN 37402
Pikes Peak Library District, 5550 North Union Boulevard, Colorado Springs, CO 80901
Val Verde County Public Library, 300 Spring Street, Del Rio, TX 78840
Elkins-Randolph Public Library, 416 Davis Avenue, Elkins, WV 26241
Erie County Library, 27 South Park Row, Erie, PA 16501–1102
Evansville-Vanderburgh County Public Library, 22 Southeast Fifth Street, Evansville, IN 47708–1604
Fort Smith Public Library, 61 South 8th Street, Fort Smith, AR 72901
Allen County Public Library, P.O. Box 2270, Fort Wayne, IN 46801
Edith Abbott Memorial Library, 211 North Washington, Grand Island, NE 68801–5855
Greensboro Public Library, 201 North Greene Street, P.O. Box 3178, Greensboro, NC 27402
Dauphin County Library System, 101 Walnut Street, Harrisburg, PA 17101, 717–234–4961
Hondo Public Library, 1011 19th Street, Hondo, TX 78861
Huntsville/Madison County Public Library, 915 Monroe Street, Huntsville, AL 35801
International Falls Public Library, 750 Fourth Street, International Falls, MN 56649
Flathead County Library, 247 1st Avenue East, Kalispell, MT 59901
Monroe County Library, 700 Fleming Street, Key West, FL 33040–6897
Lexington Public Library, 140 East Main, Lexington, KY 40507–1376
Montgomery City/County Library, 245 High Street, Montgomery, AL 36104
Shasta County Public Library, 1855 Shasta Street, Redding, CA 96001
Saint Joseph County Public Library, 304 South Main, South Bend, IN 46601–2125
Toledo-Lucas County Public Library, 325 North Michigan Street, Toledo, Ohio 43624
Wichita Falls Public Library, 1300 Lamar, Wichita Falls, TX 76301
Williston Community Library, 1302 Davidson Drive, Williston, ND 58801
Wilmington Institute Library, 10th and Market Street, Wilmington, DE 19801

FR Doc. 95–30627 Filed 12–15–95; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Beginning on January 1, 1996, the Government of the Republic of Singapore will begin issuing a new export visa stamp for shipments of textile products, produced or manufactured in Singapore and exported from Singapore on and after January 1, 1996. There will be a one-month grace period from December 1, 1995 through December 31, 1995, during which goods exported from Singapore may be accompanied by either the old or the new export visa stamp. Goods exported from Singapore on or after January 1, 1996 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 47 FR 6663, published on February 16, 1982; 47 FR 53446, published on November 26, 1982; and 51 FR 43454, published on December 12, 1986.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 10, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore.

Effective on January 1, 1996, you are directed to amend further the directive dated February 10, 1982 to provide for the use of a new export visa stamp issued by the Government of the Republic of Singapore to accompany shipments of textile products, produced or manufactured in Singapore and exported from Singapore on and after January 1, 1996.

Goods exported from Singapore during the period December 1, 1995 through December 31, 1995 may be accompanied by either the old or the new export visa stamp. Goods exported from Singapore on or after January 1, 1996 must be accompanied be the new export visa stamp.

A facsimile of the visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by the appropriate export visa stamp shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30713 Filed 12–13–95; 4:24 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 16, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 11, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement
Type of Review: New
Title: Baccalaureate and Beyond Longitudinal Study: Second Follow-up (B&B: 93/97)
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden and Recordkeeping:
Responses: 11,500
Burden Hours: 7,935
Abstract: This study will collect and report data about student who completed a bachelor's degree in 1992–93. Specifically, this follow-up will collect data concerning post-baccalaureate degree attendance, persistence, and completion; transition into and experience after early entry into the work force; and career path of those who entered teaching at the elementary/secondary level.

Office of Special Education and Rehabilitative Services
Type of Review: Extension
Title: Programs Authorized by the Rehabilitation act Amendments of 1992
Frequency: Annually
Affected Public: Not-for-profit institutions; State, Local or Tribal Government
Reporting Burden and Recordkeeping:
Responses: 1000
Burden Hours: 40,000
Abstract: Discretionary Grant application package for the use of program authorized by the Rehabilitation Act Amendments of 1992.

Office of Postsecondary Education
Type of Review: Revision
Title: Confirmation Report for the Patricia Robert Harris Fellowship Program—Fellowship Rep.
Frequency: Annually
Affected Public: Not for Profit institutions
Reporting Burden and Recordkeeping:
Responses: 1
Burden Hours: 1100
Abstract: Institutions of Higher Education that have received PRH grants are required to demonstrate their compliance with statutory requirements for distribution to fellowships information collected will be used by institutions of higher education to document the eligibility characteristics of students who are

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scheduled to receive fellowships under the program and the amount of each student stipend.

Office of Postsecondary Education
Type of Review: Revision
Title: Confirmation Report for the Patricia Robert Harris Fellowship Program—Fellowship Rep.
Frequency: Annually
Affected Public: Not for Profit institutions
Reporting Burden and Recordkeeping: Responses: 1
Burden Hours: 1100
Abstract: Institutions of Higher Education that have received PRH grants are required to demonstrate their compliance with statutory requirements for distribution to fellowships information collected will be used by institutions of higher education to document the eligibility characteristics of students who are scheduled to receive fellowships under the program and the amount of each student stipend.

[FR Doc. 95–30685 Filed 12–15–95; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–89–000]

CNG Transmission Corporation; Notice of Application

December 12, 1995.

Take notice that on November 14, 1995, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–89–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of a storage service provided to Long Island Lighting Company (LILCO) under Part 157 of the Commission's regulations and instead provide additional storage service under Part 284 blanket authorization, all as more fully set forth in the application on file with the Commission and open to public inspection.[1]

CNGT proposes to abandon 101,342 Dt of the Storage Capacity that has been allocated to LILCO under an October 1, 1993, Part 157 Service Agreement, and provided under CNGT's Rate Schedule GSS, in order that 101,342 Dt of additional Storage Capacity may be provided under CNGT's Part 284 blanket authorization.

[1] CNGT filed corrected pages 1, 3 and 4 of the application on December 1, 1995.

CNGT states that the Commission originally authorized CNGT to provide this storage capacity to Texas Eastern Transmission Corporation on behalf of LILCO, for a three-year term, as part of the storage services that were approved in Docket No. CP83–386 (25 FERC ¶61,355 (1983)). CNGT further states that the term of this certificated storage service was subsequently extended by Commission order in Docket No. CP84–306 (29 FERC ¶61,032 (1984)). CNGT also states that these Part 157 entitlements were transferred to LILCO as part of CNGT's Order No. 636 restructuring proceeding, in Docket No. RS92–14–005, *et al.* (64 FERC ¶61,303 (1993)).

CNGT additionally states that the proposed partial abandonment of this service is consistent with the Stipulation and Agreement filed June 28, 1995, in CNGT Docket No. RP94–96–012, *et al.*, particularly the settlement mitigation for Phase II Billing Determinants more fully described in Appendix "D" of CNGT's filing, and will result in an increase in LILCO's GSS Billing Determinants from 34,137 Dt/d to 35,814 Dt/d, which will be offset by a decrease in LILCO's FTNN Billing Determinants from 27,689 Dt/d to 26,012 Dt/d.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNGT to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30620 Filed 12–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–25–000]

Coral Power, L.L.C.; Notice of Issuance of Order

December 12, 1995.

On October 3, 1995, as amended October 31, 1995, Coral Power, L.L.C. (Coral Power) submitted for filing a rate schedule under which Coral Power will engage in wholesale electric power and energy transactions as a marketer. Coral Power also requested waiver of various Commission regulations. In particular, Coral Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Coral Power.

On December 6, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Coral Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Coral Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Coral Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30621 Filed 12–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–94–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

December 12, 1995.

Take notice that on December 4, 1995, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96–94–000 pursuant to Sections 157.205, 157.212 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish a bi-directional point and to abandon certain facilities, authorized in blanket certificate issued in CP82–412–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

At the request of Citizens Gas Utility (Citizens), East Tennessee proposes to modify an existing receipt meter station on its system to establish a bi-directional point for both receipts from and deliveries to Citizens to accommodate a gas storage facility operated by Citizens. To accomplish this, East Tennessee proposes to convert their existing station (#75–9123 "Citizens Gas") by abandoning the receipt meter and removing it. East Tennessee would then install the requested bi-directional meter (#75–9012 "Morgan County No. 1") by installing two 4-inch meter tubes in parallel to the existing tube. East Tennessee states that they would continue to own, operate, and maintain the existing side valve measurement. The meter station would be located on the existing site provided by Citizens adjacent to the right-of-way.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30619 Filed 12–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–127–000]

Nordic Electric, L.L.C.; Notice of Issuance of Order

December 12, 1995.

On October 20, 1995, as amended November 1, 1995, Nordic Electric, L.L.C. (Nordic) submitted for filing a rate schedule under which Nordic will engage in wholesale electric power and energy transactions as a marketer. Nordic also requested waiver of various Commission regulations. In particular, Nordic requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Nordic.

On December 1, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Nordic should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Nordic is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Nordic's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30622 Filed 12–15–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–1–000]

Powertec International, L.L.P.; Notice of Issuance of Order

December 12, 1995.

On October 2, 1995, as amended October 23, 1995, Powertac International, L.L.P. (Powertec) submitted for filing a rate schedule under which Powertec will engage in wholesale electric power and energy transactions as a marketer. Powertec also requested waiver of various Commission regulations. In particular, Powertec requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Powertec.

On December 1, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Powertec should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Powertec is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither

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public nor private interests will be adversely affected by continued approval of Powertec's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30623 Filed 12–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–105–000]

U.S. Power & Light, Inc.; Notice of Issuance of Order

December 12, 1995.

On October 17, 1995, U.S. Power & Light, Inc. (U.S. Power & Light) submitted for filing a rate schedule under which U.S. Power & Light will engage in wholesale electric power and energy transactions as a marketer. U.S. Power & Light also requested waiver of various Commission regulations. In particular, U.S. Power & Light requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by U.S. Power & Light.

On December 6, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by U.S. Power & Light should file a motion of intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, U.S. Power & Light is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of U.S. Power and Light's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30624 Filed 12–15–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5346–8]

Public Meeting of the Sanitary Sewer Overflows Dialogue

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening a public meeting of the Sanitary Sewer Overflows (SSOs) Dialogue. The meeting will be held on January 11 and 12, 1996. The purposes of the meeting are to discuss: (1) The draft SSO framework; (2) permit and compliance priorities; and (3) the overall SSO strategy flowchart. The meeting is open to the public without need for advance registration.

DATES: The SSO meeting will be held on January 11 and 12, 1996. On January 11, the meeting will run from 8:30 am to 5:00 pm EST. On January 12, the meeting will run from about 8:30 am until completion.

ADDRESSES: The SSO meeting will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia. The telephone numbers for the hotel are: 1–800–228–9290, or (703) 920–3230.

FOR FURTHER INFORMATION CONTACT: Lam Lim of EPA's Office of Wastewater Management, at (202) 260–7371.

Dated: December 8, 1995.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 95–30557 Filed 12–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

December 11, 1995.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before February 16, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0171.

Title: 73.1125 Station main studio location.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 135.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 68 hours.

Needs and Uses: Section 73.1125 requires AM, FM or TV licensees to locate their main studio at any point within the station's principal community countours. If the station relocates its main studio from one point to another within the principal community contour or from a point outside the principal community contour to one within it, the licensee is required to notify the FCC. The data is used by FCC staff to assure that the station main studio is located within the principal community contour and serves to notify use of a change in the mailing address.

OMB Approval Number: 3060–0160.

Title: 73.158 Directional Antenna Monitoring Points.

Form No.: N/A.

Type of Review: Business or other for-profit.

Number of Respondents: 80.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 320 hours.

Needs and Uses: Section 73.158 requires a licensee of an AM station using a directional antenna system to file an informal application to modify their station license to specify a new location for the field monitoring point when circumstances occur which make the present location no longer accessible or unsuitable. Section 73.158 also requires the licensee to file a request for a corrected station license when the descriptive routing to reach any of the monitoring points as shown on the station license is no longer correct due to road or building construction or other changes. These filings provide up-to-date directions for use by the Complaints and Investigations Bureau's inspectors in accurately locating the monitoring points and obtaining field strength measurements relevant to the Commission's enforcement program aimed at keeping electromagnetic interference to a minumum.

OMB Approval Number: 3060–0321.

Title: 73.68 Sampling Systems for Antenna Monitoring.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Needs and Uses: Section 73.68(b) requires that licensees of existing AM broadcast stations with antenna monitor sampling systems, meeting the performance standards specified in the rules, may file informal requests for approval of their sampling systems. Section 73.68(d) requires that a request for modification of the station license be submitted to the FCC when the antenna sampling system is modified or components of the sampling system are replaced. The informal request for approval of sampling systems is used by FCC staff to maintain complete technical information regarding licesees to insure that the sampling system is in full compliance with the Commission's Rules and will not cause interference to other facilities, thus reducing the service provided to the public. The request for modification of station license is used to issue a new station license.

OMB Approval Number: 3060–0387.

Title: Field Disturbance Sensors, Authorization and On-Site Verification (Section 15.201(d)).

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 200.

Estimated Time Per Response: 18 hours.

Total Annual Burden: 3,600 hours.

Needs and Uses: To monitor non-licensed field disturbance sensors operating in the low VHF television bands, equipment testing is required at each installation. Data is retained by the holder of the equipment authorization issued by the Commission, and made available only at the request of the Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Docs. 95–30653 Filed 12–15–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Amerford FMS, Inc., 441 N. Oak Street, Inglewood, CA 90302, Officers: Michael O Elze, President, Samuel Young, Treasurer

Mark Fromm, 882 Fair Acres Avenue, Westfield, NJ 07090, Sole Proprietor

All American Worldwide, Inc., 211 West Comstock, Dallas, TX 75208, Officers: Judson H. Good, President, Robert A. Nero, Vice President

Pacific Multi-Modal, Inc., 840 W. 12th Street, Long Beach, CA 90813, Officers: Abraham R. Walker, CEO, Karen L. Walker, President

Pactrans Marine Inc., 9520 La Cienega Blvd., Inglewood, CA 90301, Officers: Jesse Domingo, Director, C.T. Tsui, Vice President

Interpacific Airmarine, Inc., 555 Redondo Beach Blvd. #160, Gardena, CA 90248, Officer: Jae H. Chang, President

Robinson Expediters, Inc., 9675 NW 13th Street, Miami, FL 33172, Officers: Jorge Robinson, President, Ebba Robinson, Vice President

Distribution Support Management, Inc., 75 Northcrest, Newman, GA 30265, Officers: Arthur G. Neil, Jr., President, Joan H. Neil, Secretary

JRM International Forwarding, Inc., 1743 Christie Drive, Marietta, GA 30066, Officers: Rose-Marie Miller, President, James Ivey Miller, Secretary

Ace Forwarding, Inc., 510 Plaza Drive, Suite #2760, Atlanta, GA 30349, Officers: Kim McGurgan, President, Frank Petillon, Director

Dated: December 12, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30618 Filed 12–15–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administrtion on Aging (AoA), OS.

ACTION: Extension of deadline to apply for funds under the Older Americans Act, Title VI, Grants for Native Americans, Part A—Indian Program.

SUMMARY: Due to the recent shut down of many components of the Federal government, including the AoA, the Administration is extending the date for which the Title VI grant applications for the grant period April 1, 1996–March 31, 1999 are due.

DATES: All applications must be received or postmarked on or before December 20, 1995.

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FOR FURTHER INFORMATION CONTACT: Your local AoA Regional Administration as listed in the original **Federal Register** announcement dated September 6, 1995 on pages 46283–46287.

Fernando M. Torres-Gil,
Assistant Secretary for Aging.
[FR Doc. 95–30667 Filed 12–15–95; 8:45 am]
BILLING CODE 4130–01–M

Administration for Children and Families

Child Welfare Waiver Demonstrations Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Public notice.

SUMMARY: This notice amends the Public Notice published in the **Federal Register** on September 7, 1995 (60 FR 46616), by extending the December 31, 1995 due date for accepting new child welfare waiver demonstration proposals for any Second Round of proposals. A new **Federal Register** announcement will be published in January, 1996, to provide a new deadline for submission of additional child welfare waiver demonstration proposals if it is determined that additional proposals will be considered.

FOR FURTHER INFORMATION CONTACT: Michael W. Ambrose at (202) 205–8618.

SUPPLEMENTARY INFORMATION: On September 7, 1995, the Administration on Children, Youth and Families published a Public Notice in the **Federal Register** that summarized the child welfare waiver demonstration proposals submitted to date and established December 31, 1994 as a due date for the submission of proposals for Round Two. This amendment cancels the December 31, 1995 due date. Any new **Federal Register** announcement providing a new deadline for child welfare waiver demonstration proposals will be published in January, 1996.

(Catalog of Federal Domestic Assistance Program Numbers 93.645, Child Services-State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance)

Dated: December 11, 1995.
Olivia A. Golden,
Commissioner, Administration on Children, Youth and Families.
[FR Doc. 95–30650 Filed 12–15–95; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Lummi Nation, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Lummi Nation and the State of Washington, which was executed on September 21, 1995.

DATES: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: November 13, 1995.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 95–30339 Filed 12–15–95; 8:45 am]
BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Second Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Second Amendment to the Winnebago Tribe of Nebraska and the State of Iowa Gaming Compact between the Winnebago Tribe of Nebraska and the State of Iowa, which was executed on September 12, 1995.

EFFECTIVE DATES: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: November 13, 1995.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 95–30655 Filed 12–15–95; 8:45 am]
BILLING CODE 4310–02–P

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Establishing the Closing Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Competitive Cooperative Agreements Program for Fiscal Year (FY) 1996

AGENCY: U.S. Geological Survey. Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1996.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Competitive Cooperative Agreements Program is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that will promote more cost-effective production, ready availability, and greater use of high quality geospatial data. The NSDI Competitive Cooperative Agreements Program is intended to encourage resource-sharing projects, between and among the public and private sector through the use of technology, networking, and enhanced interagency coordination efforts. Proposals must involve two or more organizations and participants are expected to cost share in the project. Activities initiated under this program will promote development and maintenance of and access to data sets that are needed for national, regional, state, and local analyses. Authority for this program is contained in the Department of the Interior and Related Agencies Appropriations Act of 1996.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or state-recognized Native American tribes or groups.

DATES: The program announcement and application forms are expected to be available on or about January 15, 1996. Applications must be received on or before March 29, 1996.

ADDRESSES: Copies of Program Announcement 08187 may be obtained by writing to Kathleen Craig, U.S. Geological Survey, Office of Procurement and Contracts, Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (703) 648–7357.

FOR FURTHER INFORMATION CONTACT: Jennifer Snyder, FGDC, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone number (703) 648–5514; facsimile (703) 648–5755. Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Under this FY 1996 program announcement, proposals are to be directed towards four components of the NSDI. The first component deals with creation of a distributed clearinghouse for finding and accessing geospatial data. Efforts considered applicable include the creation (inventory, evaluate, catalog data, and establish Internet access) and management of a node within the National Geospatial Data Clearinghouse that provides users with a means for finding, accessing, and sharing geospatial data; establish, develop, or expand programs or projects, through development of training programs, information guides and other explanatory materials, that increase the contributions of local, regional, or national data sets to the National Geospatial Data Clearinghouse; and, design, develop, or implement tools to assist in the inventory, evaluation, documentation, cataloging, serving, maintenance, and sharing of geospatial data or metadata.

The second component involves development and promulgation of the use of FGDC-endorsed standards in data collection, documentation, transfer, and search and query. Applicable efforts include conducting programs to increase user comprehension and adoption of the FGDC Content Standards for Digital Geospatial Metadata and the Spatial Data Transfer Standard; developing software tools or techniques to aid the collection, comparison, evaluation, and maintenance of metadata; and stimulating the development of applicable geospatial data standards in partnership with the FGDC Subcommittees and Working Groups.

The third component focuses on the initial implementation of creating a geospatial data framework that provides a base on which to collect, register, or integrate information accurately. Applicable efforts include conducting feasibility projects for implementing technical and institutional aspects of the framework; and, expanding programs or projects to incorporate data content, technical, operational, and business characteristics of the framework.

The fourth component addresses developing and implementing educational outreach programs to increase awareness and understanding of the major NSDI components among members of the broader community. Applicable efforts involve providing programs and services to educate and train constituents on the purpose, benefits, and application of NSDI initiatives, networks, and standards.

Dated: December 11, 1995.
William Gossman,
Acting Chief, Office of Program Support.
[FR Doc. 95–30630 Filed 12–15–95; 8:45 am]
BILLING CODE 4310–31–M

National Park Service

General Management Plan; Lava Beds National Monument; Notice of Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) assessing the potential impacts of the proposed Draft General Management Plan (DGMP) for Lava Beds National Monument, Modoc and Siskiyou Counties, California. Once approved, the DGMP/EIS will guide the management of the monument over the next fifteen (15) years.

This DGMP/EIS presents a proposal and two alternatives for the management, use, and development of Lava Beds National Monument. The proposed alternative, Alternative B: Minimum Requirements, provides for staffing, facilities, and boundary changes to provide for long-term resource protection, and facilities and programs sufficient to provide for essential visitor services. Physical features of the plan include boundary additions at Petroglyph Point, improvements at that area to reduce damage to the petroglyphs from wind erosion and vandalism, a small-scale research facility to facilitate the recruitment of volunteers for cost-effective research and resource-management projects, a visitor contact station at the north end of the monument, improvements at the existing visitor center, and minor increases in administrative support facilities.

Alternative A: No Action, would continue the current situation at Lava Beds. Lands at Petroglyph Point would not be acquired, resources would not be adequately protected, and no additional steps would be taken to accommodate visitor interest and use. Resource quality and visitor use experience quality would decline.

Alternative C: Enhanced Visitor Experience, would be similar to Alternative B in terms of resource management and protection, but would provide a broader range of visitor service. Increased interpretive and law enforcement staffing would allow a wider range of interpretive programs and faster response to emergency situations. A visitor center at the north end of the monument and a new and larger visitor facility at the Indian Well area would increase the range of exhibits and visitor services. Additional administrative facilities would be needed to support the greater staffing.

The environmental consequences of the proposed action and the alternatives are fully documented, and mitigation provided as appropriate to minimize impacts. No significant impacts are anticipated as a result of implementing the proposed action.

SUPPLEMENTARY INFORMATION: Written comments on the DGMP/EIS should be directed to the Superintendent, Lava Beds National Monument, P.O. Box 867, Tulelake, California 96134. Comments on the DGMP/EIS must be received by March 1, 1996.

A public meeting will be held January 10 at the home economics building at the Tulelake-Butte Valley Fairgrounds from 7:00–10:00 p.m. National Park Service personnel will be available to explain the planning alternatives, answer questions, and receive public comments.

Inquiries on the DGMP/EIS and requests for copies of the DGMP/EIS should be directed to Lava Beds National Monument, address as above, or by telephone at (916) 667–2282. Copies of the DGMP/EIS will be available for public inspection at the Monument and at area libraries.

Dated: December 6, 1995.
Stephen Crabtree,
Field Director, Pacific West Area.
[FR Doc. 95–30613 Filed 12–15–95; 8:45 am]
BILLING CODE 4310–70–P

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Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project 1029–0083, Washington, DC 20503, telephone 202–395–7340.

Title: Application for Blaster Certification in Federal Program States and on Indian Lands, 30 CFR 955.

Abstract: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.

Bureau Form Number: OSM–74.

Frequency: Every three years.

Description of Respondents: Individuals seeking certification as Blasters.

Estimated Completion Time: 50 minutes.

Annual Responses: 35.

Annual Burden Hours: 30.

Bureau Clearance Officer: John A. Trelease (202) 208–2817.

Dated: October 25, 1995.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 95–30648 Filed 12–15–95; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket NO. AB–6 (Sub-No. 368X)]

Burlington Northern Railroad Company—Abandonment Exemption—In Clatsop County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Burlington Northern Railroad Company of 5.04 miles of railroad in Clatsop County, OR, subject to standard labor protective conditions, an environmental condition, and a trail use condition.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on January 17, 1996. Formal expressions of intent to file financial assistance offers [1] under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking must be filed by December 28, 1995. Petitions to stay must be filed by January 2, 1996. Requests for a public use condition must be filed by January 8, 1996. Petitions to reopen must be filed by January 12, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 368X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[2] 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 5, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30656 Filed 12–15–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[2] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *American Color & Chemical Corporation et al.*, Civil Action No. 4: CV–92–1352, was lodged on November 30, 1995 in the United States District Court for the Middle District of Pennsylvania. The consent decree settles an action brought under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 et seq., against American Color & Chemical Corporation ("AC&C") and Beazer East, Inc. ("Beazer") for reimbursement of response costs incurred in connection with clean-up of the Drake Chemical Superfund Site located in Lock Haven, Pennsylvania.

Under the proposed settlement, AC&C and Beazer agree to finance and perform the groundwater cleanup for Drake Site. In addition, the settling defendants will reimburse the United States and the Commonwealth of Pennsylvania for past costs in the amounts of $3.6 million and $400,000, respectively. Additionally, the settling defendants will co-ordinate the Drake Site groundwater cleanup with a corrective action ongoing at the neighboring AC&C facility pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq.

In consideration of settling defendants' groundwater remediation and their reimbursement of $4 million in past costs incurred by the United States and the Commonwealth, AC&C and Beazer will receive a covenant not to sue under Sections 106 and 107(a) of CERCLA for the Drake Site and for CERCLA Section 107 costs associated with RCRA management at the AC&C facility. With respect to future liability for the remedial action to be performed, the covenant not to sue for Section 106 of CERCLA becomes effective upon certification of completion of the remedial action by EPA. In addition, the covenants not to sue are conditioned upon the complete and satisfactory performance by each settling defendant of its obligations under the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American Color & Chemical Corporation et al.*, DOJ Ref. # 90–11–2–7A.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, 1162 Federal Building, 228 Walnut Street Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the body of the proposed decree, please refer to the referenced case and enclose a check in the amount of $52.75 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30629 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *Casings, et al.*, Civil Action No. 92–0284 (NPM), was lodged on November 27, 1995, with the United States District Court for the Northern District of New York. The Consent Decree requires defendants to pay to the United States $120,000 within thirty days of entry of the Consent Decree to reimburse Environmental Protection Agency response costs incurred at the Catskill Tire Fire Superfund Site. Total Site costs incurred by EPA were approximately $375,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Casings, et al.*, DOJ Ref. #90–11–3–872.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of New York, 100 South Clinton Street, Syracuse, New York 13261; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Beverly Kolenberg); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30633 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, notice is hereby given that on November 28, 1995, a proposed consent decree in *United States* v. *County of Milwaukee, Wisconsin*, Civil Action No. 95–C–1210, was lodged with the United States District Court of the Eastern District of Wisconsin. This consent decree represents a settlement of claims brought against Milwaukee County under CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607, for the recovery of costs incurred and to be incurred by the United States in responding to the release and threatened release of hazardous substances at and from the Moss-American Superfund Site in Milwaukee, Wisconsin.

Under the proposed settlement, Milwaukee County will be required to: (1) Relinquish a potential takings claim; (2) withdraw a motion to intervene that is pending before the Court; (3) withdraw its opposition to entry of a proposed consent decree between the United States and Kerr-McGee Chemical Co. ("Kerr-McGee") that was lodged in 1991 ("Remedial Action Decree"), under which Kerr-McGee would be obligated to perform the final remedial action for the Site, at a cost of $26 million, and pay $1 million of the United States' past costs of $1.8 million (as of January 31, 1991); and (4) grant the United States and its assigns irrevocable access to the Moss-American Superfund Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *County of Milwaukee, Wisconsin*, D.J. Ref. 90–11–2–590A.

The proposed Consent Decree may be examined at: (1) The Mill Road Library, 6431 N. 76th St., Milwaukee, Wisconsin; (2) U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd, Chicago, Illinois 60604 (contact Mr. Russell D. Hart (312–886–4844)); and (3) the U.S. Department of Justice's Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20010, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20010. In requesting a copy, please enclose a check in the amount of $8.25 (consent decree only) or $46.75 (consent decree and appendices) (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environment Enforcement Section, Environmental and Natural Resources Division.

FR Doc. 95–30631 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on September 29, 1995, a proposed Consent Decree in *United States of America* v. *The Port of Seattle, et al.*, Civil Action No. C95–1495–Z, was lodged with the United States District Court for the Western District of Washington.

The Complaint in this action was brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, to require the defendants to implement EPA's selected cleanup for the Site, and to recover costs incurred by the United States in response to releases of hazardous

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substances at the Harbor Island Superfund Site in Seattle, Washington.

The proposed Consent Decree that is the subject of this Notice requires the defendants to complete the cleanup selected by EPA for the Soil and Groundwater Operable Units of the Site. The United States estimates that the cleanup expense will be approximately $40 million. The Consent Decree also requires the defendants to reimburse the United States for all costs it shall incur in overseeing the completion of the cleanup.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. Comments should refer to *United States of America* v. *the Port of Seattle, et al.*, Civil Action No. C95–1495–Z, DOJ Ref. No. 90–11–2–970A.

The proposed Consent Decree may be examined at the Office of Regional Counsel, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington (206) 553–1504; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30632 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Stipulation of Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 24, 1995, a proposed Stipulation of Settlement in *In re St. Johnsbury Trucking Company, Inc.*, Civil Action No. 93–43136, was lodged with the United States Bankruptcy Court for the Southern District of New York. The proposed Stipulation of Settlement concerns the response to the existence of hazardous substances at the Pine Street Canal Site located in Burlington, Vermont pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Stipulation of Settlement, the United States Environmental Protection Agency will be reimbursed $35,000 for administrative expenses incurred in connection with property formerly owned by St. Johnsbury. St. Johnsbury also agrees to an allowed unsecured claim in the amount of $3,000,000 for costs incurred and to be incurred by the United States in connection with response actions at the Site and in the amount of $150,000 for natural resource damages for resources under the trusteeship of the Department of Interior.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Ben Franklin Station, Washington, D.C. 20044, and should refer to In re St. Johnsbury Trucking Company, Inc., D.J. Ref. 90–11–2–978.

The proposed Stipulation may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30628 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on August 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), CommerceNet Consortium, (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Justsystem, Inc., Menlo Park, CA; Defense Logistics Agency, U.S. Government, Alexandria, VA; and NASA, Federal Government, Moffett Field, CA.

The following organizations have joined the Consortium as associate members: Concurrent Technologies Corporation, Oakland, CA; DigiCash, New York, NY; Hamilton Hallmark, Culver City, CA; Online Computer Market, Southboro, MA; Hummingbird Software Corporation, Incline Village, NV; Golf Web, Saratoga, CA; The Document Center, Belmont, CA; Media Circus, New York, NY; InterCom-University of Virginia, Computer Science Department, Charlottesville, VA; Sholink Corporation, Mt. View, CA; and Tradewinds Technologies Incorporated, Winston-Salem, NC.

The following organizations have joined as international associate members: Justsystem Corporation, Tokushima, JAPAN; British Telecommunications, London, UNITED KINGDOM; Toshiba Corporation, Tokyo, JAPAN; and Kokusai Denshin Denwa Company, Ltd., Tokyo, JAPAN.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on June 9, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 1995 (60 FR 62259).

Constance K. Robinson,

Director of Operations, Antitrust Division.

FR Doc. 95–30636 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Diode Laser Welding Consortium

Notice is hereby given that, on November 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), parties to a joint venture collectively referred to as the "Diode Laser Welding Consortium" filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: SDL, Inc., San Jose, CA; Teledyne Brown Engineering, Huntsville, AL; and Utilase Systems, Detroit, MI. The objective of the joint venture is the development of a fiber-coupled direct diode laser system for the cutting and welding of steel and aluminum parts in the automotive industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30635 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on October 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, filed notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amkor Electronics, Chandler, AZ; MCC, Austin, TX; Motorola, Schaumberg, IL; and Texas Instruments, Villensuve, FRANCE have become members of HDP User Group International, Inc. Combitech, Jonkoping, SWEDEN; Digital Equipment Corporation, Maynard, MA; and ESEC, Phoenix, AZ are no longer members.

No other changes have been in either the membership or the planned activity of the joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(a) of the Act of March 23, 1995 (60 FR 15306–07). The last notification was filed on February 27, 1995. A notice was published in the **Federal Register** on May 11, 1995 (60 FR 25251).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30638 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute

Correction

In notice document 95–15787 appearing on page 33432 in the issue of Wednesday, June 28, 1995, in the first column, in the third paragraph, in the eleventh (11th) line, "65 FR 15307" should read "60 FR 15307".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30634 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wilfred Baker Engineering, Inc. Petroleum/Chemical Processing Joint Agreement

Notice is hereby given that, on June 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Wilfred Baker Engineering, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hoechst Celanese Chemical Group, Dallas, TX has joined the joint venture. No other changes have been made in either the membership or planned activities of the venture.

On March 14, 1995, Wilfred Baker Engineering, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 11, 1995 (60 FR 25252).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–30639 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on September 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new member of the Corporation is: Georgia Institute of Technology, Atlanta, GA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59737). The last notification was filed with the Department on June 6, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 1995 (60 FR 33649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30637 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–32]

Richard M. Koenig, M.D., Revocation of Registration

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard M. Koenig, M.D., (Respondent) of Riverhead, New York, notifying him of an opportunity to

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show cause as to why DEA should not revoke his DEA Certificate of Registration, AK6455237, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that the Respondent had been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a), as evidenced by, but not limited to the following:

(a) Between March 1986 and January 1990, (the Respondent) submitted false or fraudulent medical services claims to the New York State Medical Assistance Program, commonly known as Medicaid, and as a result of such submissions (he) obtained approximately $150,000.00 in funds to which (he) was not entitled.

(b) On or about April 19, 1991, (the Respondent) was convicted in the County of Rockland, State of New York, of twenty counts of offering a false instrument for filing, in violation of New York Penal Code, Section 175.35. On or about June 28, 1991, (the Respondent) was sentenced to five years probation with the conditions that, *inter alia*, (he) serve six months in jail and pay a $25,000.00 fine.

(c) Effective on or about March 5, 1992, the Office of the Inspector General, United States Department of Health and Human Services, excluded (the Respondent) from participating in the Medicare program and any State health care program for a period of five years.

On April 11, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia, on October 4, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On February 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's DEA registration be revoked and that any pending applications be denied. Neither party filed exceptions to her decision, and on March 6, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and the filings of the parties, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a Board-certified psychiatrist in private practice in Riverhead, New York, and is also a part-time consultant for North Fork Counseling, a mental health clinic in Mattituck, New York. On June 28, 1991, the Respondent was sentenced in a New York state court to six months imprisonment, fines totalling $25,000, and probation for five years as a result of a jury verdict of guilty to 20 counts of offering a false instrument for filing. Specifically, the Respondent was convicted of filing, with the intent to defraud the State of New York, written instruments containing false statements and false information that he had provided services to certain Medicaid recipients, and that he had not been paid for such services, when in fact he was paid a salary to render such services. On January 24, 1994, the Respondent was discharged from probation.

On February 13, 1992, the Director of the U.S. Department of Health and Human Services Health Care Administrative Sanctions Office of Investigations advised the Respondent that, pursuant to 42 U.S.C. 1320a–7(a), he was mandatorily excluded from Medicare and state health care programs because of his conviction for a criminal offense related to the delivery of an item or service under the Medicaid Program. The letter also advised the Respondent that the exclusion would be in effect for five years. The Respondent did not appeal this revocation.

Pursuant to a Notice of Hearing and Statement of Charges dated December 9, 1992, a hearing was held before a Hearing Committee of the New York State Board For Professional Medical Conduct (Medical Board) on January 20, 1993. By order dated February 5, 1993, the Medical Board found that the Respondent had knowingly submitted invoices to Medicaid representing that he had provided certain services that, in fact, he had not rendered as represented on the invoice. The Medical Board suspended the Respondent's medical license for four months and ordered him to perform one hundred hours of community service.

At the hearing before Judge Bittner, the Respondent testified that the conviction he received concerning "false instruments" or Medicaid billings, resulted from "errors in judgment on (his) part," based upon his performing a service on one day and billing for that service as if it had been performed on another day. He also stated that "I can't tell you how much I regret them," but that "(i)t was an error in thinking. It was a reflection that people would understand and it's not a system that understands and that was at the worst, pathological naivete on my part." He further testified that he needed a DEA registration in order to prescribe benzodiazapines as tranquilizers, and Dexedrine and Cylert for attention deficit disorder. Benzodiazepines and Cylert (trade name for pemoline) are Schedule IV controlled substances, and Dexedrine (trade name for dextroamphetamine), is a Schedule II controlled substance. The Respondent further testified that without a DEA registration, he would feel obliged to leave North Fork because of his inability to render appropriate treatment.

Karen Malcolmsen, Ph.D., the Clinical Director of Family Service League, North Fork Counseling (North Fork), testified that North Fork is the only licensed mental health clinic within a forty-mile radius and is located in a very rural community. Further, North Fork provides counseling and psychiatric services primarily to the poor and working poor in the local community, many of whom are migrant farm workers who cannot afford to pay substantial sums for mental health care.

Dr. Malcolmsen testified that she had known the Respondent for six years, for he had performed his community service at North Fork, plus an additional hundred hours of service, and she had supervised him, worked with him on the treatment team, and referred clients to him when they needed medication or if therapists sought a second opinion. Dr. Malcolmsen stated that the Respondent is still a consulting psychiatrist for North Fork, that he is paid a "very small salary" by the clinic based on his working seven hours per week, when in fact he actually provided ten to thirteen hours per week of services to the clinic. Dr. Malcolmsen opined that the Respondent's work was excellent, that clients always reported positively about him, and that she found him very caring and honest. Dr. Malcolmsen also testified that the Respondent had told her about the charges against him before the indictment was handed down, that he had told her that he had never intentionally done anything illegal but had made some errors, and that several times in meetings with her he had expressed remorse for his actions and had taken responsibility for them. Finally, Dr. Malcolmsen testified that the Respondent had never abused his authority to handle controlled substances. She explained that if the Respondent's DEA registration were revoked or suspended, the clinic would not be able to function in emergency situations because the Respondent would be unable to prescribe the appropriate controlled medications needed by the patients. However, since the Respondent's exclusion from Medicare or Medicaid, North Forks has the services of another psychiatrist who works three hours a week and sees the Medicare patients.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or a pending application for registration denied. See Henry J. Schwarz, Jr., M.D. Docket No. 88–42, 54 FR 16,422 (1989). In addition, 21 U.S.C. 824(a)(5) specifies that a DEA registration may be revoked or suspended if the registrant "has been excluded * * * from participation in a program pursuant to (42 U.S.C. 1320a–7(a))." Here, the record demonstrates that the Respondent has been so excluded. Although the Respondent attempted to contest elements of this exclusion in these proceedings, the Deputy Administrator agrees with Judge Bittner's findings that:

> The letter advising Respondent of his exclusion from Medicare and state health programs specified that his exclusion was mandated by 1320a–7(a), and Respondent did not appeal that ruling. He is therefore precluded from attacking that finding collaterally in this proceeding. In light of the above, I conclude that Respondent was excluded from programs pursuant to 1320a–7(a) and that the exclusion constitutes grounds to revoke Respondent's DEA registration pursuant to 42 U.S.C. 824(a)(5).

Next, as to the public interest issue, factors one and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. Specifically, as to factor one, "(t)he recommendation of the appropriate state licensing board," the Medical Board, after conducting a hearing and reviewing the evidence submitted, found that the Respondent had knowingly submitted false invoices for payment by the State. Accordingly, the Medical Board sanctioned the Respondent by suspending his medical license and ordering him to perform community service.

Further, as to factor five, "(s)uch other conduct which may threaten the public health or safety," the Respondent's conduct of submitting false invoices placed into question his trustworthiness and credibility. Also, Judge Bittner found that the Respondent's testimony before her lacked credibility: "I note at the outset that I did not find Respondent to be a credible witness. He seemed more interested in tailoring his testimony to his defenses than in accurately portraying relevant events." Such lack of credibility in 1994 causes concern as to the Respondent's future conduct if entrusted with protecting the public interest in administering controlled substances. The Respondent argued that since his conviction did not involve controlled substances, the Government had not shown that his continued registration would be inconsistent with the public interest. However, the Deputy Administrator agrees with Judge Bittner who wrote "(i)t is well established that misconduct involving controlled substances is not a *sine qua non* for revocation of a DEA registration * * *." See also Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

Yet the Respondent has submitted evidence concerning his rehabilitation. Specifically, Dr. Malcolmsen testified extensively about the Respondent's excellent, honest and caring work, often voluntarily provided to the patients at North Fork, and about the Respondent's statements of remorse for his actions. Dr. Malcolmsen also testified that she believed the Respondent had taken responsibility for his past misconduct, and that she had never observed the Respondent abuse his authority to handle controlled substances. She further explained that if the Respondent's DEA registration was revoked, the clinic would suffer a loss of services because the Respondent would be unable to prescribe controlled substances needed by many of North Fork's patients.

The Respondent also testified about his remorse for his misconduct and his need for his DEA Certificate of Registration. However, Judge Bittner, directly observing the Respondent's testimony, noted that "(a)lthough counsel for Respondent asserts that Respondent has expressed remorse for his conduct, * * * Respondent's only testimony to that effect in this proceeding was his comment that 'I'm extremely remorseful about it and I've said that.' However, the thrust of his testimony in this proceeding appeared to be that having to go through 'another trial' was unfair and tiring. In these circumstances, I conclude that his purported expressions of remorse are less than reliable."

Given Judge Bittner's doubts as to the Respondent's credibility and sincerity, and the egregious nature of his conduct in intentionally filing false documents with the State, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration and denying and pending registration application at the present time. See *Sokoloff* v. *Saxbe*, 501 F.2d 571, 576 (2 Cir. 1974) (stating that "permanent revocation" of a DEA Certificate of Registration may be "unduly harsh"). Like Judge Bittner, after reviewing the record in total, the Deputy Administrator questions whether the Respondent is currently willing or able to meet the responsibilities inherent in a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AK6455237, issued to Richard M. Koenig, M.D., be, and it hereby is, revoked, and any pending application submitted by the Respondent is denied. This order is effective January 18, 1996.

Dated: December 11, 1995.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 95–30654 Filed 12–15–95; 8:45 am]

BILLING CODE 4410–09–M

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—00303; Lucas, Iowa, NAFTA—00303A; Mt. Ayr, Iowa, NAFTA—00303B; Osceola, Iowa, and NAFTA—00303C]

Iowa Assemblies, Inc., Murray, Iowa; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on January 12, 1995, applicable to all workers at Iowa Assemblies, Inc. in Lucas, Mt. Ayr and Osceola, Iowa.

At the request of the State Agency on behalf of the company, the Department reviewed the subject certification. The company reports worker separations will occur at the subject firm's manufacturing facilities in Mt. Ayr, Osceola, and Murray, Iowa. The workers produce among other products, automotive wiring harnesses and wiring assembly. The Department's review of the certification for workers of the subject firm found that workers in Mt. Ayr and Osceola, Iowa are currently covered under the certification. When the certification was issued, the Mt. Ayr and Osceola locations of the subject firm were not separately assigned a suffix number. The intent of the Department's certification is to include all workers of Iowa Assemblies, Inc. adversely affected by increased imports of wiring harnesses and assembly from Mexico or Canada. Therefore, the Department is amending the certification for workers of the subject firm to separately identify the Mt. Ayr and Osceola, Iowa locations, and provide for the worker separations in Murray, Iowa.

The amended notice applicable to NAFTA–00303 is hereby issued as follows:

"All workers of Iowa Assemblies, Inc., Lucas (NAFTA–303), Mt. Ayr (NAFTA–303A), Osceola (NAFTA–303B), and Murray (NAFTA–0303C) Iowa engaged in employment related to the production of wiring harnesses and assembly who became totally or partially seperated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC., this 5th day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30652 Filed 12–15–95; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95–8]

Copyright, Cable Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

SUMMARY: The Copyright Office of the Library of Congress is announcing a policy decision with respect to the examination and reporting of local broadcast signals in light of the amendment to section 111 of the Copyright Act made by the Satellite Home Viewer Act of 1994. For examining cable statements of account, the Office will use the same ADI list used by the Federal Communications Commission for its must-carry/retransmission consent election, and will treat a broadcast signal as local for copyright purposes only within that station's ADI.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 1994, the President of the United States signed into law the Satellite Home Viewer Act of 1994. Public Law No. 103–369. In addition to extending and amending the compulsory license for satellite carriers in 17 U.S.C. 119, the Home Viewer Act expanded the cable compulsory license definition of the "local service area of a primary transmitter" in 17 U.S.C. 111 to include a broadcast station's "television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations" (parenthetical in original). The amendment was made effective beginning with the second accounting period of 1994.

The definition of the "local service area of a primary transmitter" in 17 U.S.C. 111(f) determines whether a broadcast station is local or distant to a cable system and consequently when it must submit a royalty fee for retransmission of that signal. Cable systems pay royalties for carriage of distant signals and may retransmit local broadcast signals to their subscribers without incurring copyright liability.[1] Prior to the passage of the Home Viewer Act, the local service area definition provided that a broadcast station was local in the area that it could "insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations and authorizations of the Federal Communications Commission in effect on April 15, 1976* * *" 17 U.S.C. 111(f) (1976). This was a reference to the Commission's must-carry rules in effect in 1976, and the Copyright Act fixed these rules for all future copyright determinations. Although these must-carry rules were ultimately declared unconstitutional, *see Quincy Cable T.V., Inc.* v. *FCC*, 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986) and *Century Communications* v. *FCC*, 835 F.2d 292 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988), they remain in effect for purposes of 17 U.S.C. 111. *See Quincy*, 768 F.2d at 1454 n. 42. However, because of the passage of time and changes in telecommunications law and policy, the 1976 must-carry rules no longer reflect the realities of the current marketplace. Congress, therefore, amended the local service area definition in the Home Viewer Act to provide an additional means of determining the local/distant copyright status of broadcast stations.

The Home Viewer Act amendment provides that, in addition to the area encompassed by the 1976 must-carry rules, a broadcast station is local for copyright purposes in the area that comprises that station's television market as defined in § 76.55(e) of the FCC's rules, and any subsequent modifications made by the FCC to that market. In many circumstances, a station's television market under § 76.55(e) creates a larger local service area than under the 1976 must-carry rules. Cable systems may use either the television market or the 1976 must-carry rules, or both, in determining the local service area of each broadcast station they retransmit to their subscribers.

Section 76.55(e) of the FCC's rules defines a television market for purposes of the Commission's new must-carry rules adopted to implement the Cable Television Consumer Protection and Competition Act of 1992. Public Law 102–385. The section provides in its entirety:

(e) Television market. For purposes of the must-carry rules:

(1) A local commercial broadcast television station's market shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in its *Television ADI Market Guide* or any successor publication, as noted below, except that for areas outside the contiguous 48 states the area of dominant influence may be defined using Nielsen's Designated Market Area (DMA), where applicable, and that Puerto Rico, the U.S. Virgin Islands and Guam will each be considered one ADI;

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located;

(3) In addition, the county in which a station's community of license is located will be considered within its market.

Note: For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991–1992 *Television ADI Market Guide*, available from the Arbitron Ratings Co., 312 Marshall Ave., Laurel MD, will apply. ADI assignments will be updated at three year intervals. For the 1996 election period, the 1994–1995 ADI list will be used; the applicable list for the 1999 election will be the 1997–1998 list, etc.

47 CFR 76.55(e) (1993). The Home Viewer Act fixes 47 CFR 76.55(e) as of September 18, 1993, but expressly includes any subsequent modifications to television markets made under § 76.55(e) or § 76.59 of the Commission's rules. Modifications were recognized by the Home Viewer Act because, at the time of its passage, the Arbitron Company had discontinued its publication of the Television ADI Market Guide and had filed for bankruptcy.

Subsequent to the enactment of the Home Viewer Act, the Copyright Office amended its cable and satellite carrier compulsory license rules and discussed the changes brought about by the Act. 59 FR 67635 (December 30, 1994). The new definition of the "local service area of a primary transmitter" did not require amendment of the rules; however, the Office described the change in the definition:

The other change to the cable compulsory license made by the 1994 Home Viewer Act is the broadening of the section 111(f) definition of the "local service area of a primary transmitter." The definition is used to determine when a broadcast station is local or distant to a cable operator, which in turn determines whether the operator must pay a royalty fee for that station. Effective July 1, 1994, the local service area of a broadcast station for copyright purposes also includes the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules.

Id. To date, this is all the Office has said regarding the change made to the local service area definition by the Home Viewer Act.

II. Policy Issues

Amendment of the definition of the "local service area of a primary transmitter" has led to questions in the administration of the cable compulsory license. Two of these questions must be resolved in order for the Copyright Office to administer the cable compulsory license. The first question involves the Copyright Office's use of ADI in its examination of cable statements of account. As discussed above, the amendment to the local service area definition was made effective beginning with the second accounting period of 1994, and cable systems are now using broadcast stations' ADI for determining the local/distant status of the signals. The question has arisen, however, as to the appropriate ADI information to consider in calculating the local service area of a broadcast signal. The Note to 47 CFR 76.55(e) states that the FCC is using the 1991–1992 Television ADI Market Guide for the 1993 must-carry/retransmission consent election, and that ADI assignments will be updated at three year intervals.[2] Should cable systems use the 1991–1992 Television ADI Market Guide for the 1994/2 accounting period and the 1995 accounting year, or should they apply the current ADI list to the corresponding accounting period—i.e. the 1994 list to the 1994 accounting year and the 1995 list to the 1995 accounting year, where such information is available?

The second question involves the determination of a broadcast station's "television market" for a cable system that serves a community or communities in more than one county where those counties are assigned to different ADIs. Is the broadcast station local for copyright purposes only in those counties assigned to its ADI, or are there circumstances where the station may be reported as local outside of its ADI?

III. Policy Decision

As part of its responsibility to administer the cable compulsory license, the Copyright Office is resolving both the issues raised in this Notice. With respect to which ADI (or subsequent) list to use in examining statements of account, the Office will use only the list designated by the Commission for the must-carry/retransmission consent election. For determinations of the local/distant status of a broadcast station, the Office is clarifying the circumstances under which a station may be reported as local for copyright purposes.

A. The ADI list

The amended local service area definition expressly adopts Arbitron's ADI list in effect on September 18, 1993, plus any subsequent modifications made to that list pursuant to § 76.55(e) or § 76.59 of the FCC's rules. Section 76.55(e) provides that the ADI list in effect on September 18, 1993, is the list appearing in the 1991–1992 Television ADI Market Guide. 47 CFR 76.55(e)(Note). It is further provided that 1991–1992 Television ADI Market Guide list will remain in effect until the time of the 1996 must-carry/retransmission consent, when the 1994–1995 ADI list will be used. While it is presumed that the ADI list applicable for 1996 will account for the termination of publication of the Television ADI Market Guide, § 76.55(e) makes it clear that the Commission will only revise the ADI list at three-year intervals. Because of the Home Viewer Act's direct reference to 47 CFR 76.55(e), the Copyright Office believes that it is consistent with legislative intent to use only the ADI (or replacement) list used by the Commission for the must-carry/retransmission consent election. Thus, for the 1994/2 accounting period, and both accounting periods for 1995, the Copyright Office will use the 1991–1992 Television ADI Market Guide in determining the local/distant status of broadcast signals. Cable operators should use only this list for these accounting periods; in examining Statements of Account, the Copyright Office will not recognize the ADI of a broadcast station derived from any source other than the 1991–1992 Television ADI Market Guide. For the

[1] There is one exception to this rule: a cable system which retransmits only local broadcast signals must nonetheless submit a minimum royalty fee under 17 U.S.C. 111. However, if the system carries one or more distant signals, royalties are only paid for those distant signals, and the local signals carried are copyright-free. As a practical matter, there are very few cable systems which only carry local broadcast signals and no distant signals.

[2] The Note further states that the 1994–1995 ADI list will be used for the 1996 election, the 1997–1998 list for the 1999 election, etc. Arbitron, however, discontinued the *Market Guide* after publication of the 1993–1994 edition. New criteria, presumably Nielsen's Designated Market Area, must be adopted before the 1996 must-carry/retransmission consent election, and the Commission has stated that it will address the issue before October 1, 1996. *See Opinion & Order in MM Docket No. 92–259* at 10 n. 45 (November 4, 1994).

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1996, 1997 and 1998 accounting years, cable operators should use the list adopted by the Commission for the 1996 must-carry/retransmission consent election, and, for subsequent years, the list adopted by the Commission for each must-carry/retransmission consent election period. If the Commission should make modifications to television markets in accordance with §§ 76.55(e) and/or 76.59, or should generate a television market list for the must-carry/retransmission consent election other than at three-year intervals, those modifications should be applied to their corresponding compulsory license accounting periods in determining the local service area of a broadcast station.

B. Local/Distant Status

In the December 30, 1994, adjustment of our regulations to account for the statutory changes made by the Home Viewer Act, we described the Act's amendment to the local service area definition in 17 U.S.C. 111(f) as "includ[ing] the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules." 59 FR 67635 (December 30, 1994). We believe we need to clarify this statement as it relates to cable systems that serve communities in more than one county assigned to different ADIs.

Cable carriage by one system across one or more ADIs does not appear to be an uncommon occurrence. Each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing. Because many larger cable systems typically serve several counties, a "straddle" situation can occur where a cable system carries a broadcast signal assigned to one market in communities within counties assigned to other markets. This situation is further complicated when such carriage is pursuant to the FCC's new must-carry rules. How should cable systems straddling different markets report carriage of broadcast signals in those markets for compulsory license purposes?

The Home Viewer Act amendment to the 17 U.S.C. 111(f) local service area definition makes it clear that a broadcast station's television market is its ADI. The Home Viewer Act defines "television market" by reference to § 76.55(e) of the FCC's rules, which provides that a broadcast station's television market is "its Area of Dominant Influence (ADI) as determined by Arbitron and published in its *Television ADI Market Guide* * * *" 47 CFR 76.55(e)(1). A broadcast station's ADI is also the area in which it is entitled to assert mandatory carriage rights on cable systems located in that ADI. *See Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976–2977 (1993). Thus, the Office acknowledged in its December 30, 1994, **Federal Register** notice the correspondence between a broadcast station's must-carry area and its ADI; however, it did not describe what application, if any, this would have to cable systems straddling more than one ADI.

After reviewing the provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Public Law No. 102–385, and the FCC's implementing rules, it is apparent that there are circumstances, e.g., the "straddle" situation, where the must-carry zone of a broadcast station exceeds its ADI. The FCC stated in its *Report & Order* implementing the 1992 Cable Act's must-carry requirements that in circumstances where a cable system serves a community or communities in more than one county and those counties are assigned to different ADIs, "all broadcast stations in both ADIs will be considered 'local' for must-carry purposes." 8 FCC Rcd at 2976.

We do not believe that the application of the must-carry rules adopted pursuant to the 1992 Cable Act have any direct bearing in determining the size of the local service area of a broadcast station for copyright purposes. The copyright local service area is a broadcast station's television market as defined in 47 CFR 76.55(e), which means that it is the station's ADI, plus any modifications made to the ADI by the Commission under § 76.55 or § 76.59 of its rules.[3] The Office should not have stated in the December 30, 1994, **Federal Register** notice that the local service area was equal to the station's must-carry zone, since such zone can, in certain circumstances, be considered to extend beyond a station's ADI. Thus, in the "straddle" situation, a cable system may only report carriage of a broadcast station as local under 17 U.S.C. 111 in those communities assigned to the station's ADI, even though the system may have must-carry obligations to deliver the signal to communities located in other ADIs.

We believe that this interpretation is consistent with Congress' intent in amending the local service area definition. The legislative history to the Home Viewer Act does not indicate any intention to equate the copyright local service area with the must-carry obligation, and to do so would do violence to 17 U.S.C. 111(d)(1)(B) by substantially reducing the occurrence of partially local/partially distant signals. Furthermore, Congress expressly recognized in the 1992 Cable Act that broadcast stations could be considered distant signals for copyright purposes in communities where they enjoyed must-carry rights. 1992 Cable Act, section 614(h)(1)(b)(ii). Nothing in the Home Viewer Act indicates an intention to change this result.

Dated: December 4, 1995.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–30458 Filed 12–15–95; 8:45 am]

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[3] We acknowledge that changes made to a station's ADI under 47 CFR 76.55(e) or 76.59 will undoubtably be for reasons related to the must-carry rules; however, it is only changes made to a station's ADI under these two rules that matter for copyright purposes.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36568; File No. SR–CBOE–95–62]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Book-Entry Settlement of Securities Transactions and Depository Eligibility Requirements

December 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 19, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by CBOE. On October 26, 1995, CBOE filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] CBOE amended its proposal to correct a typographical error in the filing. Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Mark Steffensen, Division of Market Regulation ("Division"), Commission (October 26, 1995).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change[4]

CBOE proposes to adopt new Rules 30.136 and 30.137 in order to conform its rules to those of other self-regulatory organizations regarding book-entry settlement of transactions in depository eligible securities and regarding the establishment of depository eligibility requirements for issuers that apply to list securities on CBOE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

The purpose of the proposed rule change is to encourage book-entry settlement of securities transactions by adding two new rules to Chapter XXX of the CBOE rules.[4] Both of the proposed new rules are substantially the same as rules previously adopted by six other national securities exchanges and the National Association of Securities Dealers ("NASD") in response to recommendations of the Group of Thirty, U.S. Working Committee ("U.S. Working Committee"), Clearance and Settlement Project ("Project"), regarding book-entry settlement of securities transactions.[5] In connection with the Project, several years ago the U.S. Working Committee recommended that settlements and other movements of corporate and municipal securities for transactions among financial intermediaries (brokers, dealers, and banks) and between financial intermediaries and their institutional clients be effected only by book-entry movements within a depository. Thereafter, six national securities exchanges and the NASD adopted uniform rules in conformity with the U.S. Working Committee's recommendation.[6]

Because CBOE did not then provide a market in depository-eligible securities, it did not adopt the uniform rule. It now is proposing the adoption of Rule 30.136, which would implement such a book-entry settlement requirement for securities listed on CBOE. The addition of Rule 30.136 will conform the rules of CBOE to those of other U.S. self-regulatory organizations, which rules are designed to ensure that the vast majority of securities transactions effected in the U.S. markets will be settled by book-entry.

Subject to certain exceptions set forth in the text of the rule and described below, Rule 30.136 will require the use of the facilities of a registered securities depository for the book-entry settlement of all transactions in depository eligible securities between a member firm and a financial intermediary or a member of a national securities exchange or a registered securities association. The rule also will apply to transactions in depository eligible securities between member firms and their clients if settlement is to be effected on a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") basis. As is the case under comparable rules adopted by other self-regulatory organizations, Rule 30.136 will not apply to or affect the manner in which member firms settle transactions with traditional retail customers,[7] the settlement of transactions in securities that are not depository eligible,[8] or transactions in which settlement occurs outside the U.S. Rule 30.136 also will not apply to transactions where the securities to be delivered in settlement of a transaction are not on deposit at a securities depository and (1) the transaction is for same-day settlement and the deliverer cannot by reasonable efforts deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities or (2) the deliverer cannot by reasonable efforts deposit the securities prior to a cut-off date time established for that issue of securities by the depository. The latter exception is intended to address corporate reorganizations and other extraordinary activities.

The second rule being proposed by CBOE, Rule 30.137, also reflects a response to a directive from the Group of Thirty to address the need to raise clearing and settlement standards. The rule is substantially identical to a uniform depository eligibility rule that was developed through the coordinated effort of six national securities exchanges and the NASD and that has been incorporated into the rules of those self-regulatory organizations.[9]

Rule 30.137 will require that before a domestic issuer's issue of securities is listed that the issuer represent to CBOE that the CUSIP number identifying the issue has been included in the file of eligible issues maintained by a registered securities depository. This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all registered securities depositories. In addition, the rule will not apply to American Depository Receipts for securities of a foreign issuer.

Rule 30.137 also sets forth additional requirements that must be met before a security will be deemed to be "depository eligible" within the meaning of the rule. The rule specifies different requirements for depository

[3] The Commission has modified the text of the summaries provided by CBOE.

[4] The rules in Chapter XXX govern the listing and trading of debt and equity securities, warrants, UIT interests, and such other securities as may be determined by CBOE's Board of Directors. Chapter XXX does not apply to the trading of option contracts.

[5] The Group of Thirty is an independent, nonpartisan, nonprofit organization established in 1978. In its March 1989 report, the Group of Thirty made nine recommendations for harmonizing clearance and settlement practices worldwide. The U.S. Working Committee, comprised of representatives from brokerage firms, banks, other financial intermediaries, and major industry organizations was formed to study the existing U.S. clearance and settlement system and to recommend reforms consistent with the Group of Thirty recommendations. After reviewing the nine Group of Thirty recommendations, the U.S. Working Committee concluded that at that time the U.S. substantially complied with all but two of those recommendations, T+3 settlement and same-day funds settlement. In order to achieve T+3 settlement, the U.S. Working Committee recommended requiring book-entry settlement between financial intermediaries and between financial intermediaries and their institutional clients and depository eligibility for all new issuances. U.S. Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990). The U.S. Working Committee's recommendations were supported strongly by the report of the Bachmann Task Force. Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the Securities and Exchange Commission (May 1992).

[6] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (order approving proposed rule change of the American Stock Exchange ("Amex"), Boston Stock Exchange ("BSE"), Midwest Stock Exchange (now the Chicago Stock Exchange) ("CHX"), New York Stock Exchange ("NYSE"), Pacific Stock Exchange ("PSE"), Philadelphia Stock Exchange ("PHLX"), and NASD regarding the book-entry settlement of securities transactions).

[7] Because retail customers do not settle their trades on a DVP/RVP basis, the rule will not alter their current method of settlement.

[8] Under proposed Rule 30.136(d), depository eligible securities means securities that (i) are part of an issue (as identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

[9] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (order approving proposed rule change of Amex, BSE, CHX, NYSE, PSE, PHLX, and NASD regarding uniform depository eligibility rules).

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eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members (*i.e.*, a "flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identify of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and in certain circumstances will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue must be depository eligible before commencement of trading on CBOE.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that by reducing the number of transactions in depository eligible securities for which settlement is effected by the delivery of physical securities, by requiring that transactions between member firms and transactions between member firms and clients that settle on a DVP or RVP basis generally occur in a book-entry environment, and by requiring securities listed in CBOE be depository eligible, the efficiency of the U.S. clearance and settlement system will be enhanced and the potential for systemic risk will be reduced. Furthermore, the proposal is designed to foster cooperation and coordination with persons engaged in regulatory, clearing, settling, and facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–95–62 and should be submitted by January 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

[10] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30661 Filed 12–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36573; File No. 600–27]

Self-Regulatory Organizations; Clearing Corporation for Options and Securities; Order Approving Application for Exemption From Registration as a Clearing Agency

December 12, 1995.

On December 14, 1992, the Clearing Corporation for Options and Securities ("CCOS")[1] filed with the Securities and Exchange Commission ("Commission") an application for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Act")[2] and rule 17Ab2–1 thereunder.[3] Notice of CCOS's application was published in the **Federal Register** on June 23, 1993.[4] Fourteen comment letters were received in response to the notice of filing of the CCOS application.[5] On October 7, 1993, CCOS filed an amendment to its application[6] setting forth its intention to register Chicago Board Brokerage, Inc. ("CBB") as a U.S. government securities broker pursuant to Section 15C of the Act[7] and to proceed with CBB's membership with the National Association of Securities Dealers ("NASD") as required by that section.[8] Notice of the amendment was published in the **Federal Register** on April 22, 1994, to solicit comments.[9] One hundred eleven comment letters were received in response to the notice of filing of the amendment.[10] This Order grants CCOS's application for

[1] CCOS is a wholly-owned subsidiary of the Board of Trade Clearing Corporation ("BOTCC") which provides clearing services for futures and commodities transactions executed on the Board of Trade of the City of Chicago ("CBOT").

[2] 15 U.S.C. § 78q–1 (1988).

[3] 17 CFR 240.17Ab2–1 (1994).

[4] Securities Exchange Act Release No. 32481 (June 16, 1993), 58 FR 34105 [File No. 600–27] (notice of filing of application for exemption from registration as a clearing agency) ("CCOS Release").

[5] A complete list of comment letters for File No. 600–27 is available for review in the Commission's Public Reference Room.

[6] Letter from Dennis Dutterer, Executive Vice President and General Counsel, BOTCC, to Jonathan Katz, Secretary, Commission (October 6, 1993). Letter from Fred Grede, Vice President, Board of Trade of the City of Chicago ("CBOT"), to Brandon Becker, Director, Division of Market Regulation ("Division"), Commission (October 6, 1993).

[7] 15 U.S.C. § 78o–5 (1988).

[8] 15 U.S.C. § 78o–5(e)(1) (1988).

[9] Securities Exchange Act Release No. 33911 (April 15, 1994) 59 FR 19263 [File No. 600–27] (notice of filing of amendment to application for exemption from registration as a clearing agency).

[10] *Supra* note 5.

exemption from registration as a clearing agency subject to certain limitations and conditions as set forth below.

I. Description

A. Trade Clearance and Settlement

1. Overview

CCOS will provide clearance and settlement facilities for trades executed by CBB and its customers in the CBB trading system.[11] As described in the amendment,[12] CBB's business will be limited to acting as an intermediary for U.S. government securities transactions paired through its computer system.[13]

The CBB trading system is designed to offer CBOT members an opportunity to execute a customized package of transactions related to Treasury futures contracts traded on the CBOT.[14] The system will permit the trading of government securities, independently and in conjunction with CBOT futures on government securities ("basis trades"),[15] and repurchase and reverse repurchase agreement contracts in government securities ("dollar rolls").[16]

Using the CBB trading system, therefore, CBOT traders in government securities will be able to buy and sell the government securities underlying CBOT futures contracts and using dollar rolls will be able to execute trades that help inventory management. CBB will execute transactions for system participants as broker. All trades will be effected through the CBB's electronic network. The settlement date for outright purchase and sale transactions will be the next business day except for when-issued ("WI") securities which will settle on the day of issuance by the U.S. Treasury.

Under the terms of the proposal, any CCOS participant or any customer of a CCOS participant that is also a CBOT member or member firm (hereinafter collectively referred to as a CBOT member) will be able to obtain a CBB trading terminal.[17] Each CCOS participant will be required to enter into an agreement with CBB setting forth the terms and conditions of access to and use of CBB's terminals. Using a CBB terminal, a terminal operator will be able to view the terminal displays to see the prices and quantities of current bids and offers, which are displayed on an anonymous basis, and to review its trading activity.

CBB is developing several methods for market participants to access the CBB trading system. CBB will: (1) provide CBOT work station terminals which will access the CBB trading system and include other market information and trading systems available through the CBOT;[18] (2) provide an interface between CBB's central computer and a CBOT member's internal computer network; and (3) provide access through an interface with quotation vendors.[19]

The system will permit users to execute basis trades as a single transaction where the price will reflect the spread in basis points between the futures contract and the underlying government securities. The government securities will be priced at a certain number of basis points above or below the futures contract.[20]

The system also will provide users with the ability to execute dollar roll transactions. Dollar roll transactions are designed to facilitate the financing of government securities through the lending of government securities in exchange for cash and to facilitate the lending of funds in exchange for government securities.[21] Dollar rolls will result in the creation of two simultaneous government trades.

CBB will have a morning trading session for dollar rolls from the opening of trading at 8:00 a.m. to 11:00 a.m. and an afternoon session for dollar rolls from 3:15 p.m. to 5:00 p.m.[22] For dollar rolls executed during the morning session, the first leg will be for same day ("T") settlement, and the second leg will be for next day ("T+1") settlement. For dollar rolls executed during the afternoon session, the first leg will settle on T+1, and the second leg will settle on the following business day ("T+2").

CBB will match member trades and will submit the matched trades to CCOS on a real time basis so that trade data executed through CBB immediately flows to CCOS.[23] CCOS will perform the

[11] CBB is a wholly-owned subsidiary of the CBOT and has requested no-action relief from the Commission staff with respect to the operation of the automated trading system for government securities. Letter from Mark D. Young, Kirkland and Ellis, Counsel for CBB, to Richard R. Lindsey, Division Director, Commission (December 11, 1995). The staff issued a no-action letter to CBB granting the relief requested and the Commission is issuing this order based on its belief that CBB is in compliance with the terms and conditions of the no-action letter. Letter from Richard R. Lindsey, Division Director, Commission, to Mark D. Young, Kirkland and Ellis, Counsel for CBB (December 12, 1995).

[12] *Supra* note 6.

[13] The government securities listed for purchase or sale through the CBB system will consist of U.S. Treasury bills, notes, and bonds in their various maturities which are deliverable under financial futures contracts traded on the CBOT.

[14] Only CBOT individual members, employees of individual members, and employees of CBOT member firms will be permitted to operate terminals. Each terminal will be uniquely identified in its communication with the central site, and each terminal operator will be assigned an identification number. CBB will maintain complete, time-sequenced electronic audit trails on all orders entered on, and all transactions executed through, the CBB trading system. The recorded activity will indicate, for a given order or transaction, the identity of the terminal operator entering, changing, or cancelling orders, the time such entry or change was effected, and the date, time, volume, security, and price of each transaction executed through the trading system.

[15] A basis trade is a trade in which the participants agree to simultaneously buy or sell government securities against the offsetting equivalent CBOT treasury futures contract. The basis represents the price differential between a government security and the futures delivery price.

[16] In a dollar roll transaction, the seller of the contract delivers notes or bonds to the buyer in exchange for cash. Settlement occurs the same day. At the time of execution, the seller and buyer also agree to reverse the transaction at a price that includes a financing interest amount with settlement occurring the next day.

[17] The Board of Directors of CCOS may permit other clearing agencies registered with the Commission or that are exempted from registration by the Commission access to some or all of the services offered by CCOS according to terms and conditions prescribed by the Board of Directors. Clearing agencies that are granted access to CCOS's services pursuant to CCOS Rule 309 will not be considered participants of CCOS under the rules except as determined by the Board of Directors. Letter from John C. Hiatt, President and Chief Executive Officer, BOTCC, to Jonathan Kallman, Associate Director, Commission (September 13, 1994).

[18] The CBB trading system is based on a modification of the CBOT's Project A trading system. Project A, available to CBOT members, is an electronic order entry facility developed to allow trading over a local area network (for example, within the CBOT building) of CBOT's futures contracts, options on futures contracts, and other financial products. The Project A system is designed to facilitate trading by active order matching or through the posting of bids/offers on an electronic bulletin board.

[19] Quotation vendors will offer CBB trading screens and order entry capability through their terminals which are served by national telecommunications networks. CBB will contract on a nonexclusive basis with one or more quotation vendors, each having interactive capabilities, to carry the CBB system for use by CBOT members.

[20] The futures leg of the basis trade will take the last reported trade price from the CBOT trading floor as the futures transaction price. The transaction ticket for the government securities leg of basis trades will include the commission charges and accrued interest. Settlement for the government securities leg will occur on the next business day in the same manner as outright government securities trades.

[21] The CBB terminals will list the dollar roll spreads through bid and offer financing rates reflecting the annualized interest rates paid or received on the transactions. The transaction amount or value price on the trade date will reflect the settlement value of the first leg of the dollar roll. The settlement value is the amount of funds required to make or take delivery of the security. The transaction amount for the second leg of the dollar roll will reflect the fact that the holder of the overnight bond will not earn the coupon interest during the term of the transaction.

[22] Unless otherwise noted, all times stated are Eastern Standard Time.

[23] CBB will create, operate, and maintain the computer system that enables orders to be entered and executed. CBB has developed trade matching

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clearance and settlement functions for transactions executed through CBB, including: delivery versus payment processing, position consolidation, and original and variation margin calculation and processing as discussed below.

2. CCOS & BOTCC Cross-Margining Agreement

CCOS and BOTCC will establish a cross-margining arrangement whereby all CCOS members, all of which are BOTCC members or CBOT members affiliated with a BOTCC member, will hold certain futures and government securities cleared by the respective clearing organizations in special cross-margin accounts.[24] All futures positions will be held at BOTCC, and all government securities will be held at CCOS. Government securities and futures held in the cross-margin accounts at the respective clearing organization will be margined as if held in a single account based upon the net risk of the positions. To facilitate the cross-margining arrangement, CCOS and BOTCC will establish procedures whereby CCOS and BOTCC each will have a security interest in the positions held in the cross-margin accounts to secure all obligations of the clearing members arising in connection with those positions.

B. System Safeguards

1. Margin Payment/Collection

CCOS will adopt, as one of its principal safeguards, a practice of collecting original margin and variation margin on participant obligations.[25] In essence, CCOS will use the margin calculation and payment time frames currently used by BOTCC in connection with its clearance of CBOT futures contracts.[26] CCOS will modify BOTCC's margining system to address risks specific to the U.S. government securities market.

CCOS will calculate margin requirements at least twice daily, with one calculation reflecting trading activity occurring from the 8:00 a.m. opening to 1:30 p.m. and with another calculation reflecting trading activity from 1:30 p.m. to 5:00 p.m. CCOS will collect margin deficiencies arising from participants' morning trading activity at 4:00 p.m. on that trade date ("T") and will collect margin deficiencies arising from participants' afternoon trading activities at 7:40 a.m. on T+1. In the event a clearing member fails to perform its obligations to CCOS, the original margin will be used to cover any financial liabilities which may result from the failed obligation. CCOS will retain the authority to collect additional margin at any time.[27]

In order to margin government securities and futures positions in a parallel fashion, CCOS will convert government securities to futures contract equivalents prior to original margin determination.[28] CCOS will convert government securities positions to futures-equivalents based upon conversion factors established and published by the CBOT for the most similar futures delivery month and the most similar futures contract par amounts (*i.e.*, face values).[29] CCOS will net the futures-equivalent positions of all government securities deliverable with the corresponding futures contracts to produce a net futures-equivalent position.[30] The performance bond for all trades generally will be collected at 7:40 a.m. on T+1.

CCOS will calculate each participant's variation margin pay/collect amount and transmit the data to BOTCC for margin payment or collection. Payment or collection amounts for each participant will include the combined variation effects of the government securities and futures positions in the participant's cross-margined account. Participants will pay or collect midday variation margin in same-day funds by 4:00 p.m. each day, through their settlement banks. BOTCC will pay out 80% of variation gains in excess of original margin deficits[31] and will collect 100% of variation losses.

2. Settlement Values

At 3:00 p.m., CCOS will establish a settlement value for government securities trades executed between 8:00 a.m. and 1:30 p.m. That value will be based on the prices collected at 2:30 p.m. from GovPx, a government securities pricing vendor. CCOS will mark new positions from their transaction value,[32] which will be established at the execution of the trade, to their settlement value,[33] which will reflect gains or losses in the interim period, and CCOS will mark open positions that were previously marked to the prior day's settlement value to the new settlement value.

Trades executed from 1:30 p.m. through the 5:00 p.m. end of the day's trading session will be marked to the 3:00 p.m. settlement value, and the variation margin on the entire position will be calculated at the end of the day. Participants will pay or collect the second variation margin obligation the following morning at 7:40 a.m. CCOS will send delivery instructions for normal settlement of government securities transactions executed on T to the participants' settlement banks at 11:30 a.m. on T+1.[34]

3. Loss Allocation and Liquidity Sources

CCOS will begin operations with an initial capitalization of $2 million. Together with CCOS's earnings, BOTCC will commit to provide CCOS with additional capital as necessary to cover CCOS's continuing costs of operations. Because CCOS will rely on BOTCC for certain liquidity resources and because BOTCC's capital and credit lines are committed to its futures business, BOTCC has agreed to dedicate specific credit and financial resources to CCOS, and CCOS and BOTCC have established a framework for allocating losses arising from cross-margined accounts between the two entities.

With respect to liquidity, CCOS will establish a committed credit facility which will be guaranteed by BOTCC. The credit facility initially will be $5 million and will be increased in increments of $5 million for each $1 billion increase in CCOS's daily average net settlements of government securities transactions over a ninety day period. When the credit facility reaches $30 million as a result of daily average net settlements of government securities reaching $6 billion, CCOS will review the size of the credit facility in consultation with the Division staff.[35]

With respect to loss allocation, under the cross-margining arrangement between CCOS and BOTCC, all government securities positions cleared by CCOS will be maintained in a cross-margin account for which BOTCC and CCOS have agreed to assume joint responsibility in the event that a default or failure to settle occurs and there is a shortfall in that account. BOTCC and CCOS each are guaranteeing up to 50% of the obligations owed to each other with respect to a defaulting participant's cross-margin account after use of the original margin deposits of the participant and proceeds from the liquidation of the participant's positions. Therefore, CCOS will have adequate resources to protect itself and to fulfill its settlement obligations for a loss up to at least $60 million.[36]

II. Comment Letters

Public comment both supported and opposed CCOS's application.[37] More than sixty commenters, including several common members of the Government Securities Clearing Corporation ("GSCC") and CCOS, supported the proposal. More than forty commenters opposed the proposal, raising three basic arguments as to why the Commission should deny the exemption request.[38] These arguments include the potential fragmentation of clearance and settlement facilities for the U.S. Treasury market the concern that exempting CCOS will mean ineffective and unequal regulation of clearing facilities for those securities, and the concern that approval of CCOS will not promote fair competition among clearing agencies. CCOS filed several responses to the comments.[39]

The Commission received two letters from the Commodity Futures Trading Commission ("CFTC") regarding CCOS's application.[40] BOTCC, as a futures clearing organization, is subject to regulation by the CFTC under the Commodity Exchange Act ("CEA"); therefore, the Commission carefully considered the comments of the CFTC regarding CCOS's application. In its first letter to the Commission,[41] the CFTC noted that because of its position as the regulator of BOTCC, it would have to consider and address the potential impact of CCOS's activity on the financial integrity of BOTCC and on the futures market for which it clears. Specifically, the CFTC was concerned with BOTCC's role as a guarantor of CCOS's obligations and the impact on BOTCC's financial integrity of any minimum capitalization or other requirements imposed on CCOS by the Commission.[42] The CFTC also stated that any arrangements presenting cross-jurisdictional issues between the CFTC and the Commission would require approval by both agencies. This would include cross-margining programs, the imposition of clearing limits and/or minimum margin requirements, and futures/cash basis trades traded on the CBB and cleared through BOTCC and CCOS. The CFTC urged a cooperative effort between itself and the Commission to avoid duplicative or inconsistent regulation being imposed on the affected entities.

The CFTC's second letter[43] responded to CCOS's amended application in which CBOT set forth its intention to register CBB as a government securities broker and its willingness to enter into certain linkage arrangements with GSCC. The CFTC noted that the proposal to enter into a linkage

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software for U.S. Treasury bills, notes, and bonds, including when-issued securities, basis trades, and dollar rolls.

[24] Because all CCOS members are also BOTCC members or CBOT members affiliated with a BOTCC member, all accounts at CCOS are cross-margin accounts.

[25] Original margin represents a performance bond that both buyers and sellers must post when executing trades to assure that their respective contractual obligations will be satisfied. Variation margin is a mark to the market payment collected on a twice daily basis to account for changes in the value of the positions before the delivery process.

[26] BOTCC collects clearing member margin on a portfolio, or net basis, reflecting the overall risk to the clearing corporation associated with the totality of contracts in that clearing member's portfolio. BOTCC uses a portfolio-based simulation model, the Standard Portfolio Analysis ("SPAN") system, which establishes parameters to collect original margins based on the simulated losses of clearing member portfolios under various scenarios.

[27] BOTCC, as facilities manager, will perform all margin collection/payment functions on behalf of CCOS. CCOS will collect commissions and settlement payments through its agent, the Bank of New York.

[28] In establishing the original margin for government securities it clears, CCOS began with the premise that cross-margined government securities and futures products have essentially the same market and credit risks. Therefore, CCOS will use the original margin rates for futures contracts established by the Board of Governors of BOTCC following recommendations of the BOTCC Risk Management Committee.

The BOTCC Risk Management Committee is comprised of five of the nine Governors of the BOTCC Board of Governors. All nine Governors are owners or officers of BOTCC clearing member firms. The BOTCC Risk Management Committee meets once a month or at the call of the BOTCC Board Chairman or the Risk Management Committee Chairman. The Committee bases its recommendation upon review by BOTCC and CBOT staff of the conditions of the market place, including: statistical analysis of central tendencies, dispersion, and correlations between price changes of different commodities. Additionally, the Committee draws upon the experiences of its members and uses their judgement to predict market conditions in the near future. From this information, the Risk Management Committee will typically set margin rates that cover approximately the 99th percentile of absolute daily price changes over the previous one, three, and six month periods.

[29] The formula for the conversion of government securities is:

Futures-Equivalents=*Government Securities Par Amounts*×*Conversion Factor*=Futures Par Amount

Since bonds being delivered into futures contract obligations will have greater or lesser value than the futures, the conversion factor is a means of equating bonds with various coupons and maturity dates with the standard bond set by BOTCC. The standard bond, which is equal to the corresponding future, has an 8% coupon and a conversion factor of 1.

For example, assume there are two bonds, Bond X and Bond Y. Bond X is the standard bond having an 8% yield to maturity and conversion factor of 1 (Bond X is equal to the corresponding future). Bond Y is worth 1.5 times Bond X (Bond Y could have greater coupon rates or a longer period to maturity). If the future is trading at 85, then Bond X is worth 85, and Bond Y is worth 1.5 times 85. Therefore, 1.5 is the conversion factor for Bond Y. In order to determine the number of futures that equate with Bond Y, the face amount of Bond Y is multiplied by the conversion factor, producing the futures value amount. The futures value amount is then divided by 100,000 (each futures contract equals $100,000) to give the number of futures contracts equal to the bond.

[30] Futures on government securities act as an index of the many bonds deliverable into them. Treasury bonds ("T-bonds") having at least fifteen years remaining to maturity are deliverable into the T-bond future. Ten-year Treasury notes ("T-notes") must have maturities between six and one-half and ten years to be deliverable into the ten-year T-note future. Five-year T-note futures accept Treasury notes with time to maturity between four years, three months and five years, three months. Two-year notes having maturities between one year, nine months and two years are deliverable into the two-year T-note future.

[31] CCOS will withhold distribution of any variation margin gains from participants with original margin requirement deficits.

[32] The transaction value provided by CBB to CCOS will include the accrued interest paid or received on each transaction. For normal deliveries the accrued interest at the time of the transaction and at marking to market are the same amount, but for failed deliveries, the seller will have to pay the incremental accrued interest for each day the fail continues. The daily variation margin payments will include this incremental accrued interest.

[33] Settlement values will reflect the settlement price established twice a day and will include accrued interest but will not include commissions and finance charges from dollar rolls.

[34] Participants may transact dollar rolls (with same-day settlement for the first leg) between 8:00 a.m. and 11:00 a.m. on T+1 to offset delivery obligations due to settle on T+1.

[35] As discussed below, $6 billion is the maximum average daily net settlements of transactions in government securities agreed to by CCOS and the Division during the exemptive period. Also as agreed to by CCOS and the Division, CCOS's operations will be limited to a maximum of $24 billion average daily net settlements of dollar rolls.

These limits represent approximately five percent or less of government securities and average daily volumes in dollar rolls. The Commission believes these limits are appropriate at this time in that they are large enough to allow CCOS to commence effective operations yet of a limited nature that allows the Commission to observe the effects of the CCOS clearing and settlement activities on the government securities market.

[36] *I.e.*, $30 million from CCOS's guaranteed credit facilities (repayment of which is guaranteed by BOTCC) plus $30 million from BOTCC under its guarantee of cross-margining losses.

[37] *Supra* note 5.

[38] Commenters raised additional issues in opposition to CCOS's application. These issues included the concern that the introduction of CCOS as another government securities clearing agency would result in an increase in costs for U.S. Treasury brokers and the concern that in the future decisions at GSCC will be made based on the fear of losing potential customers to CCOS rather than based on the best interest of the participants. With regard to the first point, the Commission believes that if in fact any increase in costs results from granting CCOS's exemption application, the benefits to the government securities market, such as innovation arising from competition, will outweigh any such costs. With regard to the second point, while the Commission believes that GSCC will continue in the future to base its decisions on what is in the best interest of its participants and the government securities market and not on any fear of losing current or potential participants, commenters should be comforted by the fact that GSCC is subject to Section 19(b) of the Act which requires SROs to file with the Commission any proposed changes to their procedures, operations, or rules.

[39] The comment letters and CCOS's responses are discussed in detail in the Discussion section of this order.

[40] Letters from Jean A. Webb, Secretary, CFTC, to Jonathan G. Katz, Secretary, Commission (July 23, 1993 and May 31, 1994).

[41] Letter from Jean A. Webb (July 23, 1993), *supra* note 40.

[42] Ultimately, this concern was alleviated by changing the general BOTCC guarantee to a guarantee of a limited committed credit facility. Refer to "BOTCC Guarantee" above.

[43] Letter from Jean A. Webb (May 31, 1994), *supra* note 40.

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arrangement with GSCC could have positive effects on the government securities market, that the CBB/CCOS amended proposal could increase competition among market participants, that the CBB electronic trading system would provide government securities market participants with easier access to market information, and that the registration of CCOS as a clearing agency might lower the level of risk present in the government securities market. While the CFTC's comments were generally positive, it also reiterated its regulatory interests and the need to review the potential impact of the various arrangements on BOTCC's financial integrity and to assure compliance with the CEA.

The Commission recognizes the validity of the CFTC's concerns and understands the importance of coordinating efforts among all regulators concerned with the government securities market. The Commission will continue to coordinate with these regulatory agencies to safeguard one of the world's largest securities markets.

III. Discussion

A. Overview

The Commission is granting CCOS's application for exemption subject to the conditions described below. The Commission believes such action is consistent with the Act including the goals of fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and protecting investors and the public interest.

As noted above, CCOS proposes to provide clearing facilities in support of CBB's and CBOT's proposals. CBB's proposed automated trading system for government securities represents an effort to make government securities more readily available to CBOT members that trade futures on government securities and thereby improves the efficiency of arbitrage between the futures and cash markets and potentially increases liquidity in both of those markets. Traders in these markets often are called upon to accept position or market risks from participants in the market for government securities. The market for U.S. Treasury bonds, bills, and notes is the deepest, most liquid market in the world. While these securities are traded all over the world, the primary U.S. marketplace involves a core group of dealers, brokers' brokers, banks, and institutional investors that trade extensively among themselves over-the-counter. These market participants often rely on futures markets, such as the CBOT, for their derivative products as a way to transfer to traders on these markets position and market risks related to U.S. government securities. Traders on the futures exchanges, in turn, must be able to buy and sell government securities to help manage their own risk and position exposures efficiently.

Approval of the CCOS application will allow CCOS and its parent, BOTCC, to provide the clearance and settlement services that are necessary to support the CBB and CBOT proposals. This in turn should help foster greater integration of clearing facilities that serve the futures market and the underlying cash markets and should facilitate the development of cross-margin facilities between those markets. BOTCC already has extensive arrangements with its clearing bank network to receive and deliver government securities among its clearing members, and its clearing members maintain government securities at those banks for their proprietary and customer accounts. As described above, CCOS plans to build on those arrangements in providing its services in support of CBB. Exempting CCOS from clearing agency registration should allow CBB to move forward with its proposal and should allow CCOS and BOTCC to obtain greater experience in managing risk exposures before taking on self-regulatory responsibilities that would otherwise accompany clearing agency registration.

Because many of CCOS's likely users are GSCC members and use GSCC's services to clear and settle trades among themselves, a linkage among CCOS, BOTCC, and GSCC to facilitate efficient clearance of trades is essential.[44] To this end, the Boards of Directors of GSCC, BOTCC, and CCOS have been requested to establish a joint user committee to settle the outstanding linkage and cross-margining issues and to report to the GSCC, BOTCC, and CCOS Boards the committee's proposal for linkage and cross-margining within three months of formation of the committee.[45]

The Commission will monitor closely efforts in this regard and expects prompt action to implement linkages and cross-margin systems that are acceptable to the common membership so that appropriate linkages are in place when warranted. If it does not appear after six months that the parties are able to agree to establish appropriate linkage and cross-margining facilities, the Commission will consider whether to mandate the development of linkage and cross-margining facilities. If necessary, the Commission will use its authority under the Act to direct that the responsible parties act in their best interests to establish "linked or coordinated facilities for clearance and settlement of transactions in securities * * * [and] contracts of sale for future delivery * * * "[46]

Approval of the application also should help foster innovation in clearance and settlement of government securities. The CCOS proposal will provide central clearing facilities for dollar rolls, which represent a type of repurchase agreement transaction. CCOS's proposal was one of the first formal responses to the recommendations of the 1992 Joint Report on the Government Securities Market,[47] and the Commission believes that the CCOS proposal may well have encouraged others, including GSCC, to develop similar or wider services.

B. Section 17A of the Act

1. Grant of Exemption

Section 17A(b)(1) of the Act authorizes the Commission to exempt applicants from some or all of the clearing agency requirements of Section 17A if the Commission finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[48] While the

[44] *Market Reform Act of 1990*, S. Rep. 101–300 at 58–62. President's Working Group on Financial Markets, Interim Report, Appendix D (May 1988).

[45] Letter from Richard R. Lindsey, Division Director, Commission, to John G. Macfarlane III, Chairman of the Board, GSCC, and David Johnson, Chairman of the Board, BOTCC (December 12, 1995). The Commission believes it is appropriate for CCOS to begin limited operations prior to the implementation of such arrangements because these arrangements, while important to coordinating GSCC's and CCOS's systems, are not necessary for CCOS to commence operations.

[46] 15 U.S.C. §§ 78q–1 (a)(2)(A)(ii) and (d)(1)(1988).

[47] *Joint Report on the Government Securities Market*, issued by the Department of Treasury, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System (January 1992) at 31 (recommending that an efficient processing system for government securities repo activity be developed).

[48] For legislative history concerning Section 17A of the Act, *see, e.g.*, Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess., 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

Commission has never exercised its authority to exempt an applicant entirely from the requirements of Section 17A, it has granted newly registered clearing agencies narrowly drawn, temporary exemptions from specific statutory requirements imposed by Section 17A in a manner that achieves those statutory goals.[49]

The market break in October 1987 and the markets' decline in October 1989 demonstrated the central role of clearing agencies in U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.[50] In light of the foregoing, the Commission believes it is appropriate for applicants requesting exemption from clearing agency registration to meet standards substantially similar to those required of registrants in order to assure that the fundamental goals of Section 17A (*i.e.*, safe and sound clearance and settlement) will be achieved.

Because the Commission believes that CBB and CCOS will promote innovation in the trading and clearing of government securities and will further the integration of the futures and government securities markets, it is approving CCOS's application for exemption in order that CCOS may begin limited operations without meeting the entire panoply of clearing agency registration requirements.[51] Although, as described below, CCOS is being held to substantially the same standards as other registered clearing agencies, certain areas of CCOS's operation require further development before CCOS can be considered for registration under Section 17A of the Act. The Commission believes that granting CCOS an exemption from registration subject to the regulatory requirements and Commission oversight on CCOS during the exemptive period should allow CCOS to further develop its system for clearing and settling government securities in a safe and sound manner before its seeks full registration as a clearing agency. In granting CCOS an exemption from clearing agency registration, the Commission believes that such an exemption is consistent with the requirements of Section 17A and that the framework of the exemption is such that the Commission retains adequate regulatory power and oversight to ensure that CCOS's services do not pose a threat to the stability of the government securities markets.

The Commission is imposing significant limits on CCOS as set forth below.[52] Should CCOS determine that a change in its operations or procedures is necessary, CCOS will be required pursuant to this exemptive order to amend its CA–1 and request that the Commission modify the exemptive order. The Commission's oversight of CCOS, in conjunction with the CFTC's oversight responsibilities of BOTCC, should help nurture the establishment of safety mechanisms, such as cross-margining, that further the goals of competition and integration in the government securities and futures markets. Furthermore, as competition leads to innovation and progress, the Commission believes CCOS's entry into the clearance and settlement of government securities should be a positive step towards the continued development of the world's largest government securities market.

2. Registration Standards

Before granting registration to a clearing agency, Section 17A of the Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules. Paragraphs (A) through (F) of Section 17A(b)(3) set forth general criteria which a clearing agency must satisfy in order to be registered. Congress reserved to the Commission the task of making specific determinations as to whether an applicant's organization, capacity, and rules satisfy the general criteria. In Securities Exchange Act Release No. 16900, the Division set forth its views and positions concerning satisfaction of the general criteria ("Standards Release").[53]

These statutory standards are designed to assure the safety and soundness of the clearance and settlement system. As previously stated, the Commission, in granting CCOS's exemption is requiring CCOS to meet in substantial form these same statutory standards and is satisfied that CCOS's operation will not be a threat to the safety or soundness of the national market system. Furthermore, the Commission will continue to monitor CCOS's operations to assure its soundness in the clearance and settlement of government securities.

a. Safeguarding of Securities and Funds

Sections 17A(b)(3) (A) and (F) of the Act require a clearing agency be organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.[54] The Commission believes that CCOS meets these standards. Among other things, CCOS will maintain appropriate audit and internal controls[55] and will make available

[49] *E.g.*, in the Commission's order approving GSCC's temporary registration as a clearing agency, the Commission temporarily exempted GSCC from compliance with the statutory standards of Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act regarding a clearing agency's rules designating classes of participants and the standards used by the clearing agency to determine participation. The Commission also exempted GSCC from Section 17A(b)(3)(C) regarding fair representation of clearing agency participants in the selection of its directors. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

[50] Gerald Corrigan, President of the Federal Reserve Bank of New York ("FRBNY"), noted: "[T]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default in one of these clearing and settlement systems." Luncheon Address: Perspectives on Payment System Risk Reduction by E. Gerald Corrigan, President, FRBNY, *reprinted in The U.S. Payment System: Efficiency, Risk and the Role of the Federal Reserve* 129–30 (1990).

[51] Section 17A, as amended by the Market Reform Act, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. [Market Reform Act of 1990, § 5, amending § 17A(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1 (1990)].

[52] The limits are described in Section III., Part D., Conditions.

[53] Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 41920 (announcement of standards for the registration of clearing agencies) and 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

Refer also to Section 19 of the Act, 15 U.S.C. 78s (1988), and Rule 19b–4, 17 CFR 240.19b–4 (1992), setting forth certain procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[54] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

In addition to BOTCC's responsibilities as facilities manager, CCOS must assure itself that BOTCC complies with all of the safeguards, as appropriate, set forth in the section of the Standards Release regarding the safeguarding of securities and funds and prompt and accurate clearance and settlement of securities transactions; and that these operations will be subject to examination by CCOS's independent public accountant, the Commission and the appropriate regulatory agency to the same extent as in the case of a clearing agency which carries out its own processing. Standards Release, supra note 53.

[55] Clearing agencies should have an audit committee which selects or makes recommendations to the Board of Directors of the clearing agency regarding the selection of the clearing agency's public accountant. CCOS Rule 213 requires the establishment of an audit committee consisting of at least three nonmanagement directors of CCOS. The committee will, among other things, make recommendations to the Board of Directors regarding the selection of CCOS's independent public accountants.

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reports to participants concerning its internal accounting controls.[56] In addition, CCOS has developed several procedures to safeguard securities and funds; prevent loss or destruction of securities, funds, or data; and to recover from losses that do occur.[57]

i. Organization and Processing Capacity

A clearing agency should be organized in a manner that effectively establishes operational and audit controls while fostering director independence.[58] As in the example set forth in the Standards Release, CCOS meets these standards by keeping its Board of Directors informed of its operations and the impact that new or expanded services or volume increases would have on its processing capacity. CCOS also will keep its Board of Directors informed by reporting on periodic risk assessments of CCOS's operations, automated data processing systems, and facilities and by supervising the establishment, maintenance and updating of safeguards.[59] The Commission is satisfied that CCOS's organizational and processing capacity meets the requirements of the Act, explained in the Standards Release, by providing a necessary flow of information to its Board of Directors which will allow it to oversee management's performance and to assure the operational capability and integrity of CCOS.

ii. Financial Reports

Participants that have made clearing fund contributions or have money or securities in a clearing agency's system should receive timely, audited annual financial statements. CCOS meets the requirements regarding financial reports, and the distribution of financial statements will enable CCOS's Board of Directors and participants to remain apprised of the clearing agency's financial condition and the adequacy and accuracy of its records.[60] By making the financial statements available, CCOS is assisting the Commission and other appropriate regulatory agencies in the discharge of their regulatory responsibilities by facilitating access to important information that is necessary in evaluating the safety and soundness of clearing agencies.

b. Fair Representation

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

CCOS is a privately owned for profit corporation run for the benefit of its sole shareholder, BOTCC. Therefore, the Board of Directors of CCOS will be selected from members of the Board of Governors of BOTCC, and the officers of CCOS will be elected by the Board of Directors. While CCOS participants will have the opportunity to provide input to the CCOS Board through the CCOS Participant's Advisory Committee, this committee is only advisory in nature and its advice or recommendations is not binding on CCOS.[61]

The Commission believes that neither the method in which CCOS's directors are selected nor the method for participant input meets the requirements of fair representation under Section 17A(b)(3)(C) of the Act but that the request for an exemption is appropriate in this context, as it was in the context of Delta Government Options Corp. CCOS expects that if its clearing volumes grow, it will file with the Commission for full registration as a clearing agency. At that time, the Commission will reevaluate whether CCOS's methods for assuring participants representation in the selection of its Board of Directors and in the administration of its affairs is consistent with the Act. If in its reevaluation the Commission believes that because of changed circumstances an exemption that does not comport with the fair representation requirement is no longer justified, the Commission will modify the conditions or terminate CCOS's clearing agency exemption.[62]

c. Financial Risk Management

Commenters expressed concern about the financial resources available to CCOS in the event of liquidity problems. Because CCOS will rely on BOTCC for certain liquidity resources and because BOTCC's capital and credit lines are committed to its futures business, commenters expressed concern that a shortfall could occur if a member common to BOTCC and CCOS were to fail. In response, BOTCC has agreed to dedicate specific credit and financial resources to CCOS, and CCOS and BOTCC have established a framework for allocating losses between the two entities. As a condition to its exemption, CCOS has agreed to evaluate its capital and liquidity resources periodically, and BOTCC has agreed to supplement, in consultation with the Commission and the CFTC, CCOS's liquid resources as necessary to meet prudential standards.

In addition to its financial resources, CCOS has facilities to identify its potential financial exposure from its participants and to collect margin deposits or other collateral adequate to address that exposure. As discussed above, CCOS in conjunction with BOTCC will calculate margin requirements and collect margin deposits from its participants for open positions. CCOS will obtain information from its participants regarding their financial condition and will have the authority to collect additional margin or collateral if it deems it appropriate. CCOS and BOTCC also will cooperate in sharing risk management information, to the extent possible, with securities and futures clearing organizations where CCOS and BOTCC members also are members.

The Commission believes that entering into additional information sharing agreements is an area in which CCOS should explore in order to help ensure the safety and soundness of the clearance and settlement system and to promote financial risk management. The Commission recommends that CCOS become a part of the information sharing system established between all of the commodities clearing houses.[63] In addition, the Commission encourages CCOS to pursue obtaining membership in the Securities Clearing Group ("SCG").[64] The Commission believes that CCOS's membership in both of these information sharing systems should permit CCOS and other clearing organizations to be more aware of common member risks and to implement effective crisis management procedures if needed.

The Commission believes that CCOS's rules and procedures are adequately designed to protect CCOS and its participants against financial losses associated with its services. CCOS's financial risk management initiatives, including its initial capitalization, its twice daily margin collection,[65] and its committed credit facility, are aimed at preventing financial loss by participants and CCOS.[66] As a result, the Commission believes that CCOS's rules and procedures and the methods by which CCOS proposes to safeguard the financial security of its clearing facilities adequately satisfies the requirements of the Act.

d. Participation standards

Section 17A(b)(3)(B) of the Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services. Section 17A(b)(4)(B) of the Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in Section 17A(b)(3)(B). The Commission believes that an exempt clearing agency should impose the same standards. In addition, the Act recognizes that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience and competence.

CCOS Rule 301 requires each member to maintain personnel and facilities adequate to ensure the expeditious and orderly transaction of business with CCOS or other participants. In addition, CCOS Rule 302 requires participants in CCOS to meet initial and continuing financial and operational standards as determined by the CCOS Board of Directors and administered by CCOS management.[67] Participation in CCOS will be open to members of BOTCC and members of the CBOT that are affiliated with members of BOTCC.[68] The Board of Directors also may approve access by other clearing agencies that are regulated by the Commission or are excepted from regulation by the Commission.[69]

CCOS proposes to employ outside independent auditors rather than establish an internal audit department for CCOS. The outside independent auditors will perform those duties typically performed by an internal audit department and will report to the audit committee, and conduct audit reviews as requested by the audit committee, but not less than once per fiscal year. The Commission believes that CCOS's method of establishing an audit committee and its use of outside independent auditors meets the requirements of the Act. Although the Standards Release recommends the use of an internal audit department, the Commission has on previous occasions found the use of outside auditors acceptable and falling within the requirements of the Act. *See* Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890 (order granting Delta Government Options Corp. temporary registration as a clearing agency).

[56] The Standards Release noted that the objectives of internal accounting control are presumed to be a fundamental aspect of management's responsibilities. CCOS proposes to direct its independent public accountants to prepare an annual report on CCOS's system of internal accounting controls, and present the report to the CCOS Board of Directors. CCOS's proposal to use independent public accountants to produce an annual report on its system of internal accounting controls meets the requirements of the Act with regard to the security and accuracy requirements under Section 17A(b)(3) (A) and (F) because it aids in assessing the safety and integrity of the clearing agency operations and promotes confidence and increased participation in the national clearance and settlement system.

[57] CCOS proposes three levels of safeguards to prevent or minimize interruption of service as a result of hardware, systems software, or applications software failures. The first level addresses procedural practices within CCOS to control migration of changes in application systems to the production environment and the implementation of new systems. The second and third levels address interruptions in service due to equipment and systems software failures at different levels of severity, i.e. short and long term interruptions.

[58] *Standards Release*, *supra* note 53.

[59] For a detailed description of the Commission's policy on self-regulatory organization systems reviews, refer to Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 [File No. S7–12–91] (release setting forth the Commission's second automation review policy statement ["ARP II"]).

[60] CCOS Rule 214 states that within 60 days after the end of each of the Corporation's fiscal years, CCOS shall deliver to each participant unconsolidated audited financial statements for the fiscal year then ended covered by a report prepared by CCOS's independent public accountants. CCOS Rule 214 also states that upon request by any participant, CCOS shall deliver unconsolidated, unaudited quarterly financial statements.

[61] As provided in CCOS Rule 501, the Participant's Advisory Committee will be comprised of three to ten participants who may advise CCOS on matters pertaining to the operation of CCOS. The purpose of the Participant's Advisory Committee is to provide representation to participants on matters which are of concern to them. In addition, participants will have prior notice of changes to rules that may affect their rights, obligations, or clearing requirements. CCOS will accept comments from participants with respect to any such changes; however, the Participant's Advisory Committee serves only in an advisory capacity and any advice or recommendation of the Committee is not binding on CCOS.

[62] Because CCOS is being granted full exemption from registration as a clearing agency, a specific exemption is not being issued with regard to fair representation. Rather, the exemption from these requirements is included within the grant of a complete exemption from registration as a clearing agency.

[63] Since 1980, the Chicago Mercantile Exchange ("CME") and BOTCC have been sharing original margin and pay/collect information. In 1987, an information sharing agreement was executed between all U.S. commodity clearing houses. The Options Clearing Corporation ("OCC") became a party to this information sharing agreement in 1993. Letter from Dennis Dutterer, Executive Vice President and General Counsel/Secretary, BOTCC, to Margaret R. Blake, Attorney, Division of Market Regulation, Commission (May 5, 1995). Pursuant to the information sharing agreement, each commodity clearing house and the OCC send its margin requirements and daily cash flow information to BOTCC every night. The following morning, BOTCC sends the information back to the clearing houses so they can compare the margin account excesses, deficits, and cash flows.

[64] The SCG was established in 1989 as a result of developments surrounding the October 1987 Market Break and subsequent studies on the causes of the Market Break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. While SCG membership is limited to registered clearing agencies, the Commission encourages SCG to review its membership standards and consider whether certain clearing agencies with conditional registration exemptions should be eligible for membership.

[65] *Supra* note 28. The Commission believes that the method by which CCOS converts government securities to futures equivalents in its margin calculations is a prudent risk management measure.

[66] As discussed above, CCOS will begin operations with an initial capitalization of $2 million and BOTCC's commitment to provide additional capital as necessary to cover CCOS's continuing costs of operations. CCOS will calculate margin requirements at least twice daily and will collect margin deficiencies from participants on T and on T+1 while retaining the authority to collect additional margin at any time. CCOS will establish a committed credit facility guaranteed by BOTCC. The credit facility initially will be $5 million and will be increased in increments of $5 million for each $1 billion increase in CCOS's daily average net settlements over a 90 day period.

[67] CCOS will monitor each participant's financial condition as measured by its financial stability, the level and quality of its earnings, and other generally accepted measures of liquidity, capital adequacy, and profitability.

[68] BOTCC's by-laws require BOTCC members to be CBOT members, approved by the CBOT board of directors for BOTCC membership. In addition, the BOTCC board of directors sets, from time to time, BOTCC membership requirements, including, but not limited to, financial and operational requirements, continuing compliance with CBOT and BOTCC rules, financial and other reporting, and such other factors as the BOTCC board may consider necessary or appropriate in assessing an applicant's suitability for participation in BOTCC. BOTCC also has the authority to require additional capital on a discretionary basis and parental guarantees on member proprietary positions. *See, e.g.*, BOTCC By-Law 401.

BOTCC's minimum financial requirements for BOTCC corporate futures commission merchants ("FCM") include the greater of a specified amount of capital or a percentage of funds required to be segregated and secured pursuant to the Commodities Exchange Act, 7 U.S.C. §§ 1, *et seq.* (1988), combined with non-customer margin requirements for proprietary trading. Once admitted, a clearing member may operate below the initial minimum, but must maintain a specific minimum amount of capital with no formal action taken (Level I). When the clearing member's initial minimum falls below the Level I minimum, but remains above the Level II minimum, the clearing member is subject to detailed financial analysis with a written report provided to senior management recommending no action or a change in status to Level III. At Level III the clearing member must maintain a minimum amount of capital and is immediately subject to 125% of normal margin requirements and provision of pro forma weekly capital computations for one month. If the capital ratios do not meet Level I standards by the next month, the clearing member will be moved to Level IV status. The Risk Management Committee is notified when the firm is subject to Level III requirements. When the clearing member falls below the Level III minimum they will be immediately subject to 150% of normal margin requirements. A formal report will be prepared for the Risk Management Committee outlining the problem with a recommendation for appropriate action which may include a further increase in margin requirements, restrictions on business activities or suspension or termination of clearing privileges. Letter from Dennis A. Dutterer, General Counsel, BOTCC, to Margaret R. Blake, Attorney, Division of Market Regulation, Commission (May 1, 1995).

[69] Clearing agencies that are granted access to CCOS's services are not considered participants of CCOS for the purposes of CCOS's Rules except to the extent determined by the Board of Directors.

Continued

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The Commission believes that temporarily exempting CCOS from Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act is appropriate. CCOS rules do not meet the requirements of Section 17A(b)(3)(B) of the Act with regard to participants because CCOS rules do not provide for membership by all of the enumerated categories of persons. In addition, CCOS rules do not specify applicant and member financial standards as contemplated in Section 17A(b)(4)(B) of the Act.[70] Financial and operational membership standards depend on factors that CCOS will develop based on the scope of CCOS's operations. CCOS's Board of Directors will review these factors from time to time and establish membership standards based on its findings. Presently, however, the participant standards have not been determined as required by the Act, and an exemption from participation requirements is appropriate.

C. Comments and the Commission's Responses

1. Fragmentation of the Clearance and Settlement of Government Securities

Some commenters believe that approval of CCOS's exemption application will result in fragmentation of the clearance and settlement of government securities and will preclude one account settlement. These commenters believe allowing CCOS to settle government securities trades in a manner not effectively integrated with the existing registered clearing corporation process would be deleterious to the systemic risk management currently provided by GSCC by causing lowered overall netting capability, incomplete management of the risk exposure presented by individual firms, and impairment of crisis management. The commenters argue that government securities transactions will operate in the safest and most efficient manner if participants have all of their government securities trades netted, margined, and settled through one central facility ("one account settlement").[71]

Although commenters fear fragmentation in the clearance and settlement of government securities, the clearance and settlement of government securities transactions already is subject to diverse clearing arrangements. While GSCC is the only registered clearing agency providing clearance and settlement services in the government securities market, it is not the sole government securities clearing facility. Banks currently clear and settle substantial amounts of government securities transfers among themselves through the Federal Reserve System's book-entry wire system without any involvement by GSCC. Furthermore, BOTCC provides clearance and settlement services for futures and options on government securities including the physical delivery of government securities to satisfy futures delivery obligations.

Section 17A(a)(2) of the Act directs the Commission, having due regard for the maintenance of fair competition among clearing agencies, to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.[72] Moreover, the requirement in Section 17A(b)(3)(B)(ii) that clearing agencies admit other clearing agencies as participants appears to indicate that Congress, and the Commission which worked with Congress in developing the 1975 Amendments,[73] contemplated a national system for the clearance and settlement of securities transactions in which there could be multiple clearing agencies serving a securities market.

Where more than one clearing agency for a market exists, the Commission believes that the linking of these clearing agencies, such as the envisioned linkage of CCOS, BOTCC, and GSCC, promotes competition and innovation while still allowing for one-account settlement. The Commission believes that one-account settlement can be achieved in a multiple-clearing agency environment through the use of interclearing agency links and interfaces.[74]

The approach to one-account processing for the clearance and settlement of government securities transactions advocated by GSCC, where one clearing agency compares, nets, and settles all trades in government securities, is not the approach taken by the Commission when establishing the National System for clearance and settlement. The Commission believes that rather than mandate centralized clearance and settlement in the government securities market, it should encourage the coordination of any competing systems through economically efficient linkages that ultimately will foster both competition and investor confidence. For these reasons, the Commission, as a part of its granting CCOS an exemption from clearing agency registration, is urging CCOS, BOTCC, and GSCC to develop settlement interface and cross-margining programs.[75]

2. Illusory Regulatory Oversight

As stated above, BOTCC will be the sole shareholder and will act as the facilities manager for the CCOS operations. Because of the relationship between CCOS and BOTCC, some commenters expressed concern that the Commission would be unable to oversee appropriately the operations of CCOS. Furthermore, these commenters stated that the Commission's regulatory authority over CCOS would be illusory because CCOS would be controlled and operated by BOTCC. These commenters stated that CCOS is merely a shell for BOTCC and that approval of CCOS's application will allow BOTCC to provide clearance and settlement services for government securities. Finally, several commenters noted their concern with and objection to CCOS performing the services of a registered clearing agency without the federal oversight imposed upon all other registered clearing agencies. These commenters argued that for the safety and soundness of the national clearance and settlement system, CCOS should be subject to the same standards and requirements as all other registered clearing agencies.

Under the proposal, CCOS will share office space and staff with BOTCC, and BOTCC will perform all margin calculations and collection and payment

Following Commission approval of its application and upon receipt of a bona fide request for access, CCOS will prepare and submit to the Commission for review, rules providing broader access to CCOS services for persons other than those currently envisioned by the CCOS Rules, consistent with the requirements of Section 17A of the Act.

[70] CCOS Rule 302 and Rule 309 anticipate the determination of participant financial standards by the Board of Directors. At this time, however, the standards remain undefined.

[71] One-account settlement enables a market participant to settle all of its trades through one clearing agency regardless of the location of the other parties to the trades and regardless of the markets in which the trades were executed.

[72] *Standards Release, supra* note 53.

[73] Securities Acts Amendments of 1975, Pub. L. No. 94–29 § 17A(a), 89 Stat. 97.

[74] In the Commission release addressing conditions for the National Securities Clearing Corporation's ("NSCC") approval as a clearing agency, the Commission stated that "even though a broker-dealer would be able to achieve one account processing through any one of the clearing corporation components of the National System, a broker-dealer would be able to use more than one clearing corporation if the broker-dealer chose to do so." Later in that same release the Commission stated, "The development and expansion of interfaces during the past year, particularly the establishment of regional interfaces for the processing of over-the-counter transactions, has made one-account processing almost universally available." Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49722.

[75] *Supra* note 45.

functions for CCOS. Sharing office space and staff among clearing agencies and contracting out certain clearing agency functions is not unusual.[76]

The standards established for registration of a clearing agency that hires a facility manager to perform data or other processing functions requires the clearing agency to maintain appropriate procedures to insure the prompt and accurate clearance and settlement of securities transactions.[77] The clearing agency also should assure itself that the facilities manager complies with all of the appropriate safeguards set forth in the Standards Release. The Standards Release also requires any such clearing agency to assure itself that its facility manager will cooperate fully with clearing agency auditors, Commission examiners, independent public accountants, and any other appropriate regulatory agency to the same extent as a clearing agency which conducts its own processing functions.

The Commission's experience with facilities management arrangements is that the Commission can carry out its clearing agency oversight responsibilities through its jurisdiction over the clearing agencies. Facilities managers cannot, for example, unilaterally make systems changes that would alter the rules of the clearing agency or the rights and obligations of clearing agency participants without having those changes filed by the clearing agency with the Commission.[78] To the extent that the Commission needs access to a facilities manager's premises or personnel, the Commission expects and has found clearing agencies and their facilities managers to be cooperative with Commission staff.[79]

Regarding commenters' concerns about the need for uniform federal oversight, in granting its application for exemption the Commission is requiring CCOS to meet basically the same standards as those registered clearing agencies must meet, and believes that CCOS has set forth a plan to enable it to meet those standards.[80] CCOS recognizes that it must comply with the regulatory standards governing the operations of clearing agencies in a manner consistent with its operational structure and with the specific services it will offer. CCOS has represented that it intends to comply fully with all relevant regulatory requirements applicable to other clearing agencies.[81]

3. Fair Competition

Some commenters believe that the approval of CCOS's application will not promote fair competition among clearing agencies as contemplated by Section 17A of the Act because CCOS will have exclusive access to cross-margining with BOTCC with respect to government securities. The Commission recognizes that to promote competition among clearing agencies, the benefits of CCOS's operations (*e.g.*, greater access to the government securities market by persons other than primary dealers, the development of improved systems capabilities and new services, and perhaps lower prices to participants) must not "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the federal securities laws.[82]

Since approval of the first cross-margining program in 1988,[83] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act. As the Commission has previously noted, cross-margining programs, among other things, tend to enhance clearing member and systemic liquidity both in times of normal trading and in times of stress.[84] Under routine trading, clearing members that participate in cross-margining programs have lower margin requirements which help clearing members manage their cash flows by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower margin requirements could prove crucial in maintaining the liquidity of clearing members and thus could enhance liquidity in the market as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[85]

Because CCOS and BOTCC have proposed a cross-margining plan between themselves, the Commission has encouraged CCOS, BOTCC, and GSCC to create and implement a cross-margin arrangement so that fair competition in the clearing of government securities will exist. The Commission believes that competition among clearing agencies should not be based on margin levels but should be based on technology, services, or product types offered by the competing clearing agencies. Therefore, the Commission views the implementation of a cross-margining arrangement among CCOS, BOTCC, and GSCC as vital to the satisfaction of the statutory goals of Section 17A of the Act. Towards this end, CCOS, BOTCC, and GSCC have entered into negotiations regarding cross-margining and linkage agreements. However, because such an agreement has not yet been finalized, the Commission believes it is appropriate to allow CCOS to begin operations with certain limits in place prior to the implementation of cross-margining and linkage agreements.[86]

D. Conditions

This Order exempts CCOS from registration as a clearing agency under Section 17A of the Act subject to certain conditions which the Commission believes are appropriate for an entity operating under an exemptive framework. As explained in detail below, these conditions include:

[76] In 1986, GSCC began operations with a facilities management agreement with NSCC whereby NSCC provides GSCC with the necessary administrative and technical services. GSCC continues to share staff and office space with its affiliates, NSCC and International Securities Clearing Corporation. In fact, NSCC and GSCC do not operate their own clearance and settlement systems; instead, they contract that function out to the Securities Industry Automation Corporation.

[77] *Standards Release, supra* note 53.

[78] As discussed below, because CCOS will operate under an exemption from registration as a clearing agency, it will not file rule changes under the Section 19(b) process. Rather, CCOS will have to file amendments to its Form CA–1 exemption application and request modification of its exemptive order to change its rules or procedures.

[79] The Commission generally has not required that facilities management contracts specifically grant the Commission unlimited access to a facilities manager's premises. If in the future the Commission perceives a need for express authority for such access, it will revisit the issue at that time.

[80] *Id.*

[81] Letters from John C. Hiatt, President and Chief Executive Officer, BOTCC, to Jonathan G. Katz, Secretary, Commission (May 23 and June 22, 1994).

[82] 15 U.S.C. 78q–1(b)(3)(I) (1988).

[83] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving nonproprietary cross-margining program between OCC and ICC).

[84] *E.g.*, Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/BOTCC cross-margining program for proprietary positions); 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME cross-margining program for proprietary positions).

[85] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross-margining arrangements, would "help ensure that a securities market failure does not become a credit market failure." *The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs*, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[86] *Supra* note 45.

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1. Establishment of acceptable linkage and cross-margining agreements between CCOS, BOTCC, and GSCC;
2. The Commission's access to CCOS and related BOTCC facilities and records in order to inspect CCOS's operations and to insure CCOS's compliance with the federal securities laws and this Order;
3. The requirement that all proposed material changes to CCOS's rules, operations, and systems be submitted as proposed amendments to its Form CA–1;
4. The requirement that CCOS notify the Commission of participant defaults;
5. The establishment of sound automation review programs including system change notification procedures and system outage notification procedures; and
6. Until the establishment of acceptable linkage and cross-margining agreements between CCOS, BOTCC, and GSCC, the requirement that CCOS limit its activity to no more than $3 billion net daily settlement for government securities and $12 billion for dollar rolls.

1. Linkage and Cross-Margining

Throughout this Order, the Commission has emphasized the importance of linkage and cross-margining agreements between CCOS, BOTCC, and GSCC. While the Commission recognizes that such agreements will entail substantial negotiations among the parties, the Commission also recognizes the importance of allowing CCOS to begin operations without further delay.[87] Therefore, the Commission is approving CCOS's application for exemption and will allow CCOS to commence operating with a volume cap of $3 billion net daily settlement for government securities and $12 billion for dollar rolls.[88] During CCOS's initial period of operation, the Commission anticipates that CCOS, BOTCC, and GSCC will finalize linkage and cross-margining agreements pursuant to the Commission's recommendations at which time CCOS will be permitted to proceed to its exemptive limits of $6 billion and $24 billion.[89] Either upon CCOS's request or by its own initiative, the Commission may review whether the current volume limitations should be modified or removed. Such review may be conducted even if the linkage and cross-margining agreements among CCOS, BOTCC, and GSCC have not been finalized.

2. Inspection

As noted above, pursuant to this Order the Commission has the authority to inspect at any time the operations of CCOS in order to insure its compliance with its obligations to safeguard securities and funds and to provide prompt and accurate clearance and settlement of securities transactions. As facilities manager for CCOS, BOTCC's facilities and operations as they pertain to CCOS are also subject to inspection by the Commission in order that the Commission may assure itself that BOTCC's operations with regard to CCOS are in compliance with the safety and soundness requirements set forth in the Act. The Commission expects to coordinate any inspections of BOTCC with the CFTC.

3. Rule Changes

Under Section 19(b)(1) of the Act,[90] a registered clearing agency as a self-regulatory organization must file proposed rule changes with the Commission for approval. The Commission uses the rule filing process as a method to monitor and regulate the operations of clearing agencies. Because CCOS is not a registered clearing agency, amendments to its rules need not be made through use of the Section 19(b) process. As a condition to this Order, however, should CCOS desire to amend its rules, it must submit proposed amendments to its Form CA–1 for Commission review.[91] The Commission believes that this method of notifying the Commission of proposed changes at CCOS will allow the Commission to conduct a thorough examination of each proposed change and its potential effects on CCOS and the clearance and settlement of government securities. Submission by CCOS of a proposed amendment to its Form CA–1 each time it proposes to make a change in its rules, operations, or systems is an appropriate method by which the Commission can exercise its regulatory responsibilities with regard to CCOS.

4. Notice of Defaults

CCOS will be required to notify the Commission of any defaults by participants so that the Commission can monitor the situation and determine if all appropriate methods of recovery are being utilized. Failure by a participant or user could create or exacerbate systemic risks. Prompt notification should help facilitate cooperation and coordination among regulators and market participants.

5. Automation Review

CCOS also will be required to establish a sound automation review program based upon the Commission's second automation review policy statement ("ARP II").[92] The automation review program should include appropriate planning processes (i.e., contingency planning and security assessment), independent reviews by CCOS of its systems, notification to the Commission of significant systems changes, and procedures for timely notification of significant system outages. The Commission believes the automation review program is essential for the safety and soundness of CCOS's operations and the national market system because it will require, among other things, CCOS to evaluate regularly its processes related to the capacity and vulnerabilities of its automated systems.

6. Limits on Activity

The Commission believes that until acceptable linkage and cross-margining plans are in place, CCOS's clearing activity should be limited to one half of the maximum daily net settlement amounts agreed to by CCOS and the Division. These limit amounts are no more than $3 billion in net daily settlement for government securities, and $12 billion for dollar rolls. Once the linkage and cross-margining plans are in place, CCOS's activity may proceed to the full amounts agreed to in this Order.

The Commission reserves the right to modify by order the terms, scope, or conditions of CCOS's exemption from registration as a clearing agency, including such terms, scope, or condition that the Commission may issue in the future regarding amendments to CCOS's Form CA–1, if the Commission determines that such modification is appropriate for the protection of investors or in the public interest. Furthermore, the Commission reserves the right to suspend or revoke this exemption or to censure or impose limitations upon the activities, functions, and operations of CCOS if the Commission finds that CCOS has violated or is unable to comply with any of the provisions set forth in this Order or in its own rules or that CCOS has failed without reasonable justification to enforce compliance with any provision of its own rules by one of its participants.

[87] As noted, a joint user committee established by the Boards of Directors of GSCC, BOTCC, and CCOS will provide to the respective Boards within three months of formation of the committee a report of its analysis and proposed resolutions to the outstanding linkage and cross-margining issues. The Commission expects prompt action with regard to the establishment of linkage and cross-margining facilities, and if necessary, the Commission will use its authority under the Act to direct that such facilities be established. *Supra* notes 45–46 and accompanying text.

[88] These amounts are half of the maximum daily net settlement amounts agreed to by CCOS and the Division, as discussed in note 35. The Commission believes these limits are large enough to allow CCOS to begin effective operations while it works with GSCC to develop linkage and cross-margining facilities to advance efficient clearance and settlement.

[89] These are the maximum average daily net settlements agreed to by CCOS and the Division during the exemptive period. In addition, limits on CCOS's clearing capacity must be considered in light of the limits to be placed on CBB as a government securities broker. CCOS will be limited to clearing $6 billion in net daily cash securities and $24 billion in dollar rolls on an average basis over a ninety-day period. *Supra* note 35.

[90] 15 U.S.C. § 78a(b)(1) (1988).

[91] CCOS will be required to amend its CA–1 application for any proposed changes to its stated policies, practices, or interpretations as that phrase is defined in Rule 19b-4 (17 CFR 240.19b-4).

[92] Securities Exchange Act Release Nos. 27445 (November 16, 1989) [54 FR 48704] ("ARP I"), and 29185 (May 9, 1991) [56 FR 22489], ("ARP II").

IV. Conclusion

The Commission finds that CCOS's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption including those standards set forth under Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(a)(1) of the Act, that the application for exemption from registration as a clearing agency filed by the Clearing Corporation for Options and Securities (File No. 600–27) be, and hereby is, approved subject to the conditions listed in this Order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30660 Filed 12–15–95; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Office of Women's Business Ownership Year End Follow Up Survey

Type of Request: New Information Collection

Description of Respondents: Women-owned businesses

Annual Responses: 2,750

Annual Burden: 825

Comments: Send all comments regarding this information collection to Harriet Fredman, Small Business Administration, Women's Business Ownership, 409 3rd Street, S. W., Suite 6200, Washington, D. C. 20416. Phone No. 202–205–6673. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: December 13, 1995.

Jacqueline White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–30679 Filed 12–15–95; 8:45 am]

BILLING CODE 8025–01–P

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Prime Contracts Program Quarterly Report.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: Procurement Center Representatives.

Annual Responses: 1,340.

Annual Burden: 670.

Comments: Send all comments regarding this information collection to Susan Monge, Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Washington, DC 20416. Phone No.: 202–205–6471.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–30680 Filed 12–15–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–084]

Review of Icebreaking Program for the East Coast of the United States

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is reviewing its domestic icebreaking mission along the east coast of the United States from Maine to Virginia. Consistent with the President's effort to reinvest government, this review is necessary to assess the effectiveness of the present program, the impacts resulting from changes in the Coast Guard's icebreaking fleet, and the needs of the future. The Coast Guard is requesting comments and data to assist in this review.

DATES: Comments must be received on or before February 16, 1996.

ADDRESSES: Written comments may be mailed to the Chief, Ice Operations Division, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC 20593–0001, or may be delivered to room 1202A at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1450.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Garrett, Icebreaker Facilities Branch, Ice Operations Division, Office of Navigation Safety and Waterway Services between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Telephone (202) 267–1460, telefax (202) 267–4425.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this review by submitting written views and data on icebreaking operations on the east coast of the United States. Persons submitting comments should include their names and addresses, identify this docket (CGD 95–084), identify the aspect of icebreaking operations on

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which comments are submitted, and state the expected impacts on current icebreaking operations and the reasons for those impacts. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background

Under Executive Order No. 7521 of December 21, 1936, the Coast Guard has assisted as practicable in keeping the channels and harbors along the northeast and mid-Atlantic coast of the United States open to shipping during the winter and in preventing flooding from ice jams. In doing so, the Coast Guard has attempted to meet the reasonable demands of commerce and to support other agencies in their icebreaking efforts.

To accomplish this mission, the Coast Guard maintains a fleet of icebreaking tugs, ice-capable buoy tenders, and ice-reinforced boats. This fleet has undergone substantial changes since the 1960's. Replacement cutters and boats generally have been larger and more capable of meeting the changing requirements of their primary mission areas. However, they are fewer in number and may not have all of the icebreaking capabilities of the vessels they replaced. For example, the physical size of the larger cutters and boats may restrict their ability to operate in the upper reaches of rivers where ice jams typically form.

On occasion, private interests have operated or hired commercial tugs for icebreaking services. [Coast Guard policy prohibits if from competing with commercial icebreaking concerns.] However, commercial concerns apparently have not been able to meet worst-year ice conditions.

The Review

Consistent with the President's effort to reinvent government, the Coast Guard is now reviewing its East Coast icebreaking program to assess its effectiveness, to identify the impacts resulting from changes in the Coast Guard's icebreaking fleet, and to determine the program's needs for the future. The Coast Guard is particularly interested in receiving comments and data on the following subjects:

1. The Coast Guard's present ability to satisfy the reasonable demands of commerce for icebreaking along the East Coast.

2. The continuing need for the Coast Guard to maintain icebreaking capabilities along the East Coast.

3. The impact and alternatives available should the Coast Guard no longer provide icebreaking services along the East Coast.

4. Private industry's ability to provide icebreaking services.

5. The need, if any, to replace the Coast Guard's 65 foot icebreaking tugs and the capabilities required of the replacement vessels to minimize costs while maintaining necessary support.

This list of subjects is not intended to suggest that the Coast Guard's role or level of service should or will change. It is intended to assist the Coast Guard in evaluating the costs and benefits of its present icebreaking program and its needs for the future.

Dated: December 12, 1995.

J. A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–30678 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Announcing the Thirteenth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the thirteenth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. Discussions at this meeting will include NHTSA's research programs, including critical injury control issues facing the agency.

DATE AND TIME: The meeting is scheduled to begin at 9:00 a.m., on Wednesday, January 17, 1996, and conclude at 1:00 p.m., on Thursday, January 18, 1996.

ADDRESSES: The meeting will be held in Rooms 6244–48 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, S.W., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairperson.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, S.W., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coleman, Office of Research and Development, 400 Seventh Street, S.W., Room 6206, Washington, DC 20590, telephone: (202) 366–1537.

Issued on: December 13, 1995.

William A. Boehly,

Chairperson, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 95–30687 Filed 12–15–95; 8:45 am]

BILLING CODE 4910–58–P

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of a public meeting at which NHTSA was scheduled to describe and discuss specific research and development projects. Further, the notice requests comments regarding a proposed schedule change from quarterly meetings to biannual meetings.

BACKGROUND: The National Highway Traffic Safety Administration holds quarterly public meetings devoted primarily to detailed presentations of specific research and development projects. Three meetings each year are held in Detroit, Michigan, and a fourth meeting is held in Washington, DC, in conjunction with the National Highway Traffic Safety Administration's quarterly meetings on safety performance standards and safety assurance programs.

MEETING CANCELLATION: The National Highway Traffic Safety Administration's public meeting devoted primarily to presentations of specific research and development projects as announced in the **Federal Register** (Vol. 60, No. 212, page 55752) for December 19, 1995, has been canceled. The meeting on safety performance standards and safety assurance programs, scheduled for December 20, 1995, and announced in the same **Federal Register** notice has not been canceled and will be held as scheduled.

ADDRESSES: Requests for further information and comments may be directed to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The telefax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA provides detailed presentations about its research and development programs in a series of public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. The twelfth meeting in the series will be held on March 12, 1996, in Detroit, Michigan. Thereafter, the meetings on the agency's research and development programs only will be held biannually, with the meeting sites alternating between Washington, DC, and Detroit, Michigan, scheduled to be held in conjunction with the agency's quarterly meetings on safety performance standards and safety assurance programs. No other changes to the format for the research and development programs meetings are planned. Each meeting will be announced in the **Federal Register** along with a request for suggested presentation topics and deadlines for submission of topics and questions. Before the meeting, the agenda for the meeting listing the research and development topics to be presented will be published in the **Federal Register**.

NHTSA requests comments from interested parties on the proposed schedule change from quarterly to biannual meetings. Comments should be submitted by 4:15 p.m. on January 17, 1996, to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The telefax number is 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: December 12, 1995.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 95–30688 Filed 12–13–95; 4:25 pm]

BILLING CODE 4910–58–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitation. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 1995. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1996, which began on October 1, 1995.

DATES: These COLAs are effective December 1, 1995. The headstone or marker allowance rate is effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Public Law 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17–90), VA's General Counsel held at that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1995 under the above computation method was $101. Therefore, effective October 1, 1995, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1996 is $101.

Cost-of-Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.6 percent cost-of-living increase in social security benefits effective December 1, 1995. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1995:

TABLE 1.—IMPROVED PENSION

[Maximum annual rates]

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):	
Veteran with no dependents	$8,246
Veteran with one dependent	$10,801
For each additional dependent	$1,404
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):	
Veteran with no dependents	$13,190
Veteran with one dependent	$15,744
For each additional dependent	$1,404
(3) Veterans who are house bound (38 U.S.C. 1521):	
Veteran with no dependents	$10,080
Veteran with one dependent	$12,634
For each additional dependent	$1,404
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):	
Neither veteran in need of aid and attendance or housebound	$10,801
Either veteran in need of aid and attendance	$15,744
Both veteran in need of aid and attendance	$20,686
Either veteran housebound	$12,634

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TABLE 1.—IMPROVED PENSION—Continued

[Maximum annual rates]

Both veterans housebound, $14,489
One veteran housebound and one veteran in need of aid and attendance, $17,575
For each dependent child, $1,404
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,527
Surviving spouse and one child in his or her custody, $7,240
For each additional child in his or her custody, $1,404
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $8,839
Surviving spouse and one child in his or her custody, $10,546
For each additional child in his or her custody, $1,404
(7) surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $6,758
Surviving spouse and one child in his or her custody, $8,466
For each additional child in his or her custody, $1,404
(8) Surviving child alone (38 U.S.C. 1542), $1,404

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,867. (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

TABLE 2

[*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $391 reduced on the basis of the parent's annual income according to the following formula:]

For each $1 of annual income		
The $391 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.08	800	9,381

No DIC is payable under this table if annual income exceeds $9,381.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determing the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $281 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $281 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.06	800	900
0.7	900	1,100
.08	1,100	9,381

No DIC is payable under this table if annual income exceeds $9,381.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $264 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $264 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$1,000
.03	1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	12,611

No DIC is payable under this table if annual income exceeds $12,611.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Table 2 through 4 shall be increased by $209 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $9,381 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $9,881 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $12,611 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $13,111 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $7,668 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $2,992 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,211 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $11,840 (Pub. L. 95–588, section 306(b)).

Dated: December 8, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–30643 Filed 12–15–95; 8:45 am]

BILLING CODE 8320–01–M

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of the weighted average poverty threshold in 1994 for one person (unrelated individual) as established by the Bureau of the Census.

DATES: The 1994 poverty threshold is for consideration effective October 5, 1995,

the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: VA published a final regulation amendment 38 CFR 4.16(a) in the **Federal Register** on August 3, 1990, pages 31579–80. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. VA noted that the weighted average poverty threshold in 1988 for one person (unrelated individual) as established by the Bureau of Census was $6.024 and stated we would publish subsequent poverty threshold figures as notices in **Federal Register**.

The Bureau of the Census recently published the weighted average poverty thresholds for 1994. The threshold for one person (unrelated individual) is $7,547.

Dated: December 8, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–30642 Filed 12–15–95; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 242
Monday, December 18, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, December 21, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to Regulation K (International Banking Operations) concerning general consent authority (proposed earlier for public comment; Docket No. R–0896).

2. Publication for comment of proposed amendments to Regulation K (International Banking Operations) concerning interstate banking operations of foreign banking organizations.

3. Any items carried forward from a previously announced meeting.

Discussion Agenda: PLEASE NOTE THAT NO DISCUSSION ITEMS ARE SCHEDULED FOR THIS MEETING.

Note: If an item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30817 Filed 12–14–95; 3:09 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Thursday, December 21, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30818 Filed 12–14–95; 3:09 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 60, No. 242
Monday, December 18, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, 676, and 677

[Docket No. 95112820–5280–01; I.D. 111495A]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access; Foreign Fishing; Proposed 1996 Initial Harvest Specifications

Correction

In proposed rule document 95–29722 beginning on page 62373 in the issue of Wednesday, December 6, 1995, make the following corrections:

1. On page 62378, in Table 3, in the first column, the second and third entries should be combined to read "Hook-and-line/Pot-gear".

2. On page 62380, in Table 5, in the fourth column, "725" should appear opposite "Pacific cod Hook-and-line"; and "175" should appear opposite "Other nontrawl:".

3. On page 62381, in the third column, the Date above the signature should read "December 1, 1995".

BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AE21

When You Are A Full-Time Elementary or Secondary Student

Correction

In proposed rule document 95–29534 beginning on page 62783 in the issue of Thursday, December 7, 1995, make the follwing correction:

§ 404.369 [Removed]

On page 62786, in the second column, the heading above amendatory instruction 7 should read as set forth above.

BILLING CODE 1505–01–D

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Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 123 and 1240
Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 123 and 1240

[Docket No. 93N–0195]

RIN 0910–AA10

Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting final regulations to ensure the safe and sanitary processing of fish and fishery products (hereinafter referred to as seafood), including imported seafood. The regulations mandate the application of Hazard Analysis Critical Control Point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control that can be used by processors to ensure the safety of their products to consumers. FDA is issuing these regulations because a system of preventive controls is the most effective and efficient way to ensure that these products are safe.

DATES: Effective December 18, 1997. Submit written comments on the information collection requirements by February 16, 1996.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip C. Spiller, Center for Food Safety and Applied Nutrition (HFS–401), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

For further information concerning the guidance entitled "Fish and Fishery Products Hazards and Controls Guide," contact: Donald W. Kraemer (address above).

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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I. Background

A. The Proposal

In the **Federal Register** of January 28, 1994 (59 FR 4142), FDA published a proposed rule to establish requirements relating to the processing and importing of seafood for commercial distribution in the United States. The requirements involved the application of HACCP principles by processors and importers to ensure food safety to the maximum extent practicable. HACCP is a system by which food processors evaluate the kinds of hazards that could affect their products, institute controls to keep these hazards from occurring or to significantly minimize their occurrence, monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

In addition to publishing the proposed rule, FDA published in the **Federal Register** of April 7, 1994 (59 FR 16655), a notice of availability of draft guidelines, primarily directed toward processors, on how to develop HACCP controls for specific types of processing operations. The notice of availability requested comments on the draft. Among other things, these draft guidelines, which were titled the "Fish and Fishery Products Hazards and Controls Guide" (the Guide), inventoried known likely food safety hazards associated with many species of seafood and many processing methods and made recommendations on ways to control those hazards. Comments received by FDA on the draft Guide are under review. The agency intends to publish the first edition of the Guide before the effective date of these regulations.

FDA established on the proposed rule a comment period of 90 days, to end on April 28, 1994. The agency also asked for comment on the draft guidelines by the same date. During that comment period, FDA held public meetings in nine cities to help ensure that the public was aware of the proposal, to answer questions about its contents, and to encourage participation in the rulemaking process through the submission of comments. In addition, at these meetings, FDA staff explained to the public how to use the draft guidelines to develop HACCP controls in specific processing operations.

The agency received several written requests for an extension of the comment period. After considering these requests, FDA published a notice in the **Federal Register** on April 7, 1994 (59 FR 16578), announcing a 30-day extension of the comment period to May 31, 1994, for both the proposed rule and the draft guidelines.

B. Factual Basis for the Proposal—Summary

In the preamble to the proposed rule, FDA stated five principal reasons for this initiative: (1) To create a more effective and efficient system for ensuring the safety of seafood than currently exists; (2) to enhance consumer confidence; (3) to take advantage of the developmental work on the application of HACCP-type preventive controls for seafood that had already been undertaken by industry, academia, some States, and the Federal government; (4) to respond to requests by seafood industry representatives that the Federal government institute a mandatory, HACCP-type inspection system for their products; and (5) to provide U.S. seafood with continued access to world markets, where HACCP-type controls are increasingly becoming the norm.

The preamble to the proposal cited the conclusion of a 1991 study on seafood safety by the National Academy of Sciences' (NAS) Institute of Medicine that, while most seafoods on the market are unlikely to cause illness to the consumer, there are significant areas of risk and illnesses that do occur. The study concluded that improvements in the current system of regulatory control are needed and repeatedly recommended the application of HACCP controls where warranted.

Ensuring the safety of seafood presents special challenges to both the industry and the regulator. Seafood consists of hundreds of edible species from around the world. Depending upon species and habitat, seafood can be subject to a wide range of hazards before harvest, including bacteria and viruses, toxic chemicals, natural toxins, and parasites. The harvesting of previously underutilized species—a practice that is increasing because of the depletion of traditionally harvested species—can be expected to create new source and process hazards that must be identified and controlled.

Unlike beef and poultry, seafood is still predominately a wild-caught flesh food that frequently must be harvested under difficult conditions and at varying distances from processing, transport, and retail facilities. It is also subject to significant recreational harvest, some of which finds its way into commercial channels. As fish farming (aquaculture) increases, new problems emerge as a result of habitat, husbandry, and drug use.

An additional complicating factor in ensuring the safety of seafood is the fact that no other flesh food is imported in the quantity, or from as many countries, as seafood. Over 55 percent of seafood consumed in this country is imported from approximately 135 countries. Several of these countries have advanced regulatory structures for seafood safety, but many others are developing nations that lack infrastructures capable of supporting national programs for seafood regulations comparable to those in more developed nations.

To ensure safety, it is of utmost importance that those who handle and process seafood commercially understand the hazards associated with this type of food, know which hazards are associated with the types of products with which they are involved, and keep these hazards from occurring through a routine system of preventive controls. For the most part, however, seafood processors and importers are not required, through licensure or examination, to demonstrate an understanding of seafood hazards as a prerequisite to being able to do business. In fact, there is evidence that such an understanding does not exist in a significant portion of the industry. A survey conducted by FDA from 1992 to 1993 of manufacturers of ready-to-eat seafood products revealed that, in significant measure, firms have not been employing the types of preventive processing controls necessary to ensure a safe product by design. FDA and State surveys have also revealed that many

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processors of smoked and smoke-flavored fish are operating outside of the parameters that have been demonstrated through scientific research to be necessary to ensure that the hazard from botulism is adequately controlled.

Because of seafood's unique characteristics (e.g., the fact that it is predominantly wild caught and presents a wide range of possible hazards), FDA began to question whether the current Federal regulatory system, which was developed for the general food supply, is best suited for the seafood industry. Seafood processors are subject to periodic, unannounced, mandatory inspection by FDA. These inspections provide the agency with a "snapshot" of conditions at a facility at the moment of inspection, but assumptions must be made about conditions before and after that inspection. Concern about the reliability of these assumptions over the intervals between inspections creates questions about the adequacy of the system.

Inspections today verify the industry's knowledge of hazards and controls largely by inference. Whether a company produces products that are adulterated, or whether conditions in its plant are consistent with current good manufacturing practice (CGMP), are measures of how well the company understands what is necessary to produce a safe and wholesome product. This system places a burden on the Government to find a problem and to prove that it exists, rather than on the firm to establish for itself, for the regulator, and for consumers, that it has adequate controls in place to ensure safety.

Given the nature and frequency of the current inspection system for seafood, it has failed to produce a situation in which the public has full confidence in the safety and wholesomeness of these products. There has been a similar failure with respect to imports.

Media and other public attention on seafood safety, and on the adequacy of the current regulatory program for seafood, has been substantial in recent years. Many hearings on the sufficiency and direction of the Federal seafood safety program have been held in both Houses of Congress since the late 1980's, and numerous bills have been considered for the stated purpose of improving seafood safety. This public concern has motivated representatives of the U.S. seafood industry to request that FDA develop a HACCP-based program for these products.

Although not a public health issue, international trade is also a major consideration in determining the advisability and benefits of a new system of seafood regulation. Participation in the international trade in seafood is critical to U.S. consumers and to the U.S. seafood industry. The United States is the world's second largest seafood importing nation and the second largest exporter of fishery products.

The international movement toward harmonization, coupled with the Codex Alimentarious Commission's adoption of HACCP for international use, clearly argue for the adoption of this approach in the United States for seafood. Failure by the United States to adopt a mandatory, HACCP-based system could ultimately undermine its export success, with considerable economic consequences. Such failure also would undermine the United States ability to meet growing international expectations that it enter into mutual recognition-type agreements with trading partners based on HACCP.

II. The Comments

FDA received over 250 submissions from over 200 commentors on both the proposed regulations and the draft Guide. Individual companies, the majority of which are in the seafood business, submitted slightly over half of the comments. Nearly 40 trade associations submitted comments. As with the companies, the majority of these associations represent seafood interests, but a significant minority have memberships reflecting a range of food products.

Comments were also received from consumer advocacy and similar groups, and coalitions of such groups. All totaled, the views of over 50 organizations were represented in these comments.

Other commenters included State agencies, the Association of Food and Drug Officials (AFDO), the Interstate Shellfish Sanitation Conference (ISSC), several scientific associations and bodies, departments of three universities, foreign governments, and about 25 individuals.

Overall, the comments covered virtually every aspect of the proposal and guidelines. FDA appreciates the effort, interest, and thoughtfulness reflected by these comments.

The following materials address the significant comments that were received on the proposed regulations, both on the specific provisions of the proposal and on related matters. The materials on the provisions of the proposed regulations explain, among other things, why the agency did or did not modify the provisions based on the comments. Any provisions not addressed below were not changed substantively or were not the subject of significant comment.

FDA will respond to those comments that relate solely to the draft Guide when the first edition of that document is completed and made available to the public. The agency intends to address those comments in a notice of availability to be published in the **Federal Register**.

A. Legal Basis

1. Introduction

About 25 comments addressed the legal basis for these regulations. Nearly half of these comments were either companies that process foods other than seafood or trade associations that represent such companies, some of who indicated that they were motivated to comment, at least in part, by the possible precedent that these regulations could set for HACCP programs beyond seafood. Some of these comments deferred comment on the legal basis for the HACCP regulations for seafood but commented on whether the legal basis that FDA was proposing for seafood would be appropriate for mandatory HACCP programs for other kinds of foods.

FDA is issuing these HACCP regulations for seafood under various sections of the Federal Food, Drug, and Cosmetic Act (the act), including, most significantly, sections 402 (a)(1) and (a)(4) and 701(a) (21 U.S.C. 342 (a)(1) and (a)(4) and 371(a)). Section 402(a)(1) of the act states that a food is adulterated if it bears or contains any poisonous or deleterious substance that may render the food injurious to health. Section 402(a)(4) of the act states that a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health. It is important to recognize that section 402(a)(4) of the act addresses conditions that may render a food injurious to health, rather than conditions that have actually caused the food to be injurious. See *United States* v. *1,200 Cans, Pasteurized Whole Eggs, Etc.*, 339 F. Supp. 131, 141 (N.D. Ga. 1972). The question is thus whether the conditions in a plant are such that it is reasonably possible that the food may be rendered injurious to health. The agency believes that, if a seafood processor does not incorporate certain basic controls into its procedures for preparing, packing, and holding food, it is reasonably possible that the food may be rendered injurious to health and, therefore, adulterated under the act. Section 701(a) of the act authorizes the agency to adopt regulations for the efficient enforcement of the act.

2. General Authority

1. One comment stated that FDA had not met its responsibility to present the shortcomings in the existing law when demonstrating the need for these regulations.

FDA believes that this comment is misguided. The agency's statutory authority is not deficient in this area. FDA does have a responsibility, however, to demonstrate that there is a need for the regulations, and that the regulations are reasonably related to the purposes of the act that they are designed to advance. FDA has fulfilled this responsibility.

As outlined above, the act provides a broad statutory framework for Federal regulation to ensure human food will not be injurious to health and to prevent commerce in adulterated foods. As the record in this proceeding amply demonstrates, there is a range of circumstances and conditions that have raised concerns about how the safety of seafood sold in this country is ensured. Given these concerns and its responsibility under the act, FDA has concluded that it is necessary to require that firms incorporate certain basic measures into how they process seafood. The agency also concludes that failure to incorporate these measures into a firm's processing procedures would mean that the firm would be producing the product under insanitary conditions whereby it may be rendered injurious to health. (See *United States* v. *Nova Scotia Food Products Corp.*, 568 F.2d 240, 247 (2d Cir. 1977).)

2. A few comments took the view that FDA lacked the authority to issue these regulations because Congress had considered legislation relating to seafood safety in recent years but had not enacted it. Much of this legislation contained provisions authorizing the establishment of a mandatory Federal inspection program based on HACCP-type principles. According to the comments, Congress' failure to authorize this program after considering doing so indicated that the contents of FDA's seafood HACCP regulations remain within the domain of Congress and have not been delegated to FDA to implement.

FDA does not agree with this contention. Unquestionably, seafood safety has received considerable attention from Congress in recent years, most notably in the late 1980's through the early 1990's. Many hearings were held on the subject in both the House of Representatives and the Senate during this period, and several bills were introduced in both chambers. The high water mark for this activity occurred at the end of the 101st Congress when differing seafood safety bills passed both chambers. These bills could not be reconciled before the end of the term, however, so nothing was enacted. Legislation introduced in the 102d Congress did not pass either chamber.

The fact that Congress has considered the issue of seafood safety, however, does not preclude FDA from implementing a mandatory seafood HACCP program. The effect of legislation that was never enacted on a Federal agency's initiatives was considered in *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 n.9 (D.C. Cir. 1978), a case involving a challenge to FDA's statutory authority to issue good manufacturing practice regulations for candy making. The court rejected an argument that the existence of legislation that was not enacted that would have given FDA express authority to require some of the things that the agency included in its regulations indicated that Congress intended to exclude such authority from the act as it was then written. Instead, as will be discussed below, in upholding the validity of the regulations, the court looked at whether the statutory scheme as a whole justified the promulgation of the regulations.

It is true that a deliberate refusal by Congress to authorize a specific program would at least be one factor to be weighed in determining the validity of a regulation. See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158 (1967). The expiration of the 101st Congress before competing seafood bills could be reconciled did not, however, amount to a refusal on the part of Congress to authorize a mandatory HACCP program, including HACCP-based inspections for seafood. Thus, FDA concludes that there is no merit to the comments' assertion.

3. Insanitary Conditions

3. Several comments, most of whom were trade associations or companies involved in the processing of products other than seafood, questioned whether section 402(a)(4) of the act was an appropriate authority upon which to base a mandatory HACCP program. Most of the concern hinged on whether a failure to have a HACCP plan, or to keep HACCP records, could really be considered an "insanitary" condition under section 402(a)(4) of the act. Some questioned whether safety issues relating to chemical or physical hazards, or to pesticides, unapproved additives, and drug residues, as included in the proposed regulations, could be deemed to have been the result of insanitary conditions. Two comments expressed the view that section 402(a)(4) of the act does not concern food safety generally but only safety problems caused by insanitary conditions.

The relevant case law supports a broad reading of "insanitary." In *Nova Scotia, supra*, 568 F.2d at 247, the court read "insanitary" to cover a wide set of circumstances necessary to ensure that food was not produced under conditions that may render it injurious to health. Specifically, the court concluded that FDA's regulations mandating time-temperature-salinity requirements for smoked fish products were within the agency's statutory authority under section 402(a)(4) of the act. The court rejected the argument that "insanitary" limited coverage under section 402(a)(4) of the act only to bacterial hazards that could enter the raw fish from equipment in the processing environment and not to proper processing to kill bacteria that entered the processing facility in the raw fish itself.

Acceptance of a restrictive reading of section 402(a)(4) of the act, the court in *Nova Scotia* noted, would probably invalidate several existing FDA regulations, including those relating to the thermal processing of low-acid canned foods in part 113 (21 CFR part 113). When dealing with the public health, the court concluded, the statute should not be read too restrictively but consistent with the act's overall purpose to protect the public health. (See also *United States* v. *Bacto-Unidisk*, 394 U.S. 784, 798 (1969); *United States* v. *Dotterweich*, 320 U.S. 277, 280 (1943).)

4. Notwithstanding these cases, one comment cited the case of *United States* v. *General Foods Corp*, 446 F. Supp 740 (1978), *aff'd* 591 F.2d 1332 (2d Cir. 1978), for the proposition that a failure to have a HACCP plan could not alone be a violation of section 402(a)(4) of the act because it would not constitute insanitation.

FDA does not agree that the *General Foods* case stands for this proposition. Rather, the court in *General Foods* explicitly recognized that "[b]ecause the purpose of 402(a)(4) is to prevent contamination, or nip it in the bud, actual contamination of the finished product need not be shown." *Id.* at 752. Significantly, the court appeared to be impressed with the preventive controls that were in place in the defendant's plant and took these into consideration in deciding that the agency had failed to prove that section 402(a)(4) of the act had been violated. However, the court did not deal at all with the limits on

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FDA's authority to do rulemaking under sections 402(a)(4) and 701(a) of the act to establish standards for such preventive controls.

Thus, it is not inconsistent with *General Foods* for FDA to adopt HACCP regulations that are designed to define the minimum steps that a seafood processor must take to ensure that the food that it produces is not prepared under conditions that may render it injurious to health. Clearly, given the risks inherent in many seafood operations, if a processor does not identify the critical control points in its process, and does not monitor what goes on at those points, there is a reasonable possibility that the food that it produces will be injurious to health.

A primary objective of the seafood HACCP regulations is to establish a system of preventive controls for human food safety. The HACCP plan is a fundamental step in the development of these controls. It is the step in which the manufacturer analyzes its process, identifies the points at which problems may occur, and establishes the parameters that must be met if those problems are to be avoided. Thus, failure to have a HACCP plan would, in fact, constitute an "insanitary condition" as this term must be understood in light of the relevant case law.

Section 402(a)(4) was added to the act to ensure "the observance of those precautions which consciousness of the obligation imposed upon producers of perishable food products should require in the preparation of food for consumption by human beings." Hearings before the Senate Committee on Commerce, S. 2800, 73d Cong., 2d Sess., Mar. 1934, as cited in *United States* v. *1,200 Cans, Pasteurized Whole Eggs, Etc., supra*, 339 F. Supp. 140–141. Clearly, HACCP reflects the emerging, internationally recognized understanding of the precautions necessary to produce safe food. These regulations embrace HACCP and provide processors with directions for establishing HACCP systems and operating them as a matter of routine custom and habit that will ensure the safety of the food that they produce. Thus, FDA finds that operation under an effective HACCP system is necessary to meet a processor's obligation under section 402(a)(4) of the act.

4. Records

In *Confectioners*, the court upheld FDA's authority to issue regulations under section 402(a)(4) of the act that included recordkeeping requirements. The recordkeeping provisions of the regulations were challenged on the grounds that they would permit prosecution where processing conditions were completely sanitary, but the records were deficient. Such an outcome, it was argued, would be beyond the scope of section 402(a)(4) of the act.

Citing *Toilet Goods*, the court rejected this argument and held that the primary consideration was whether the statutory scheme as a whole, not just section 402(a)(4) of the act, justified the agency's regulations. The court pointed out that this consideration involved an inquiry into practicalities as well as statutory purpose, i.e., enforcement problems encountered by FDA and the need for various forms of supervision in order to accomplish the goals of the act.

5. Two comments expressed the view that the holding in *Confectioners* should be limited to the specific facts in that case. One comment stated that the case only upheld FDA's authority to impose recordkeeping requirements on firms to facilitate recalls of potentially dangerous products. The other comment noted that the case only granted FDA access to shipping records. The comment pointed out that FDA already has access to such records from carriers under section 703 of the act.

While it is true that the records that FDA was requiring, and to which the agency claimed access under the regulations involved in *Confectioners*, were source coding and distribution records in order to facilitate recalls, the court's ruling involved broad principles relating to the validity of the regulations generally and was not limited to recalls or shipping records. The court stated that in light of the statutory scheme as a whole, "we find no basis for the Association's distinction between the FDA's role in preventing and remedying commerce in adulterated foods. The agency believes that the Act imposes on the FDA an equal duty to perform each role." *Id.* at 684. This statement simply is not consistent with the narrow reading suggested by the comment. Rather, it fully supports FDA's authority to adopt regulations to prevent the introduction of adulterated foods into interstate commerce. Clearly, compliance with FDA's seafood HACCP regulations will help to achieve that end.

It is also true, as one comment pointed out, that section 703 of the act expressly grants FDA access to shipping records and not to the kinds of processing records required in these regulations. FDA cannot agree, however, that *Confectioners* stands for the proposition that FDA should have access only to food manufacturers' shipping records because those are the only kinds of records to which FDA has access under section 703 of the act. The court concluded that the narrow scope of section 703 of the act is not a limitation on the right of the agency to require recordkeeping and have access to records that are outside the scope of section 703 of the act, so long as the recordkeeping requirement is limited, clearly assists the efficient enforcement of the act, and the burden of recordkeeping is not unreasonably onerous (569 F.2d at 693 n.9).

The recordkeeping required under these regulations passes the *Confectioners* test. First, the recordkeeping requirements are limited. The HACCP recordkeeping and record access requirements in the final rule are tied specifically to the critical control points (CCP's) in the manufacturing process. In other words, the recordkeeping requirements are limited to those points in the process at which control is essential if assurance that the resultant product will not be injurious to health is to be achieved.

Second, the recordkeeping assists in the efficient enforcement of the act. The recordkeeping requirements, by focusing on the CCP's, ensure that the processor and the agency focus on those aspects of processing that most jeopardize food safety. Unlike the current inspection system, recordkeeping in a HACCP-type system documents that preventive controls are being followed and enables the regulator to verify this fact. Such a system, therefore, assists in effective and efficient enforcement of the act.

Finally, the HACCP-recordkeeping burden is not unduly onerous. It is limited to those aspects of processing that are critical to food safety. Documentation that control is being maintained over these aspects of processing need only be a minor additional step in most instances. The documentation required in the final rule is narrowly tailored to ensure that only essential information needs to be recorded.

6. Several comments questioned whether FDA may have access to HACCP records and plans on the grounds that the act does not explicitly authorize such access. Some of these comments pointed to the lack of authorization in section 704 of the act (21 U.S.C. 74), the provision that authorizes the inspection of food processors and other types of establishments. The comments pointed out that section 704 of the act authorizes agency access to certain records relating to prescription drugs and medical devices during the course of those inspections but not to records relating to foods. One comment felt that the specific grant of records access for drugs and devices in section 704 of the act precluded expansion of access to records not specifically mentioned in the act. Other comments felt that FDA was barred from access simply because the act does not expressly grant it.

FDA does not agree, as the agency's authority under sections 402 and 701(a) of the act to issue these regulations provides ample authority for records access. The line of cases cited above stands for the proposition that a lack of explicit delegated authority does not invalidate agency regulations so long as the regulations are consistent with the act's overriding purpose. In *Confectioners*, the court upheld FDA's authority to adopt recordkeeping requirements in the absence of an explicit delegation of authority. In that case, moreover, the court found no evidence that Congress intended to immunize food processors from limited recordkeeping (569 F.2d at 695). Similarly, the court in *Nova Scotia* concluded, in the absence of such evidence, that there was no impediment to a broad reading of the statute based on the general purpose of the Congress in protecting public health (568 F.2d at 248).

FDA has concluded, therefore, that these regulations are consistent with section 704 of the act and with the act as a whole. Because the preventive controls required by HACCP are essential to the production of safe food as a matter of design, the statutory scheme is benefited by agency access to records that demonstrate that these controls are being systematically applied. The case law supports FDA's authority to require such recordkeeping and to have access to such records.

Other countries, including Canada, the European Union (EU) Norway, Australia, and New Zealand, which have already implemented HACCP-type systems, have deemed it necessary to the success of their systems to provide for recordkeeping and record access along the lines of this regulation (for either their entire seafood industries or seafood export industries). Thus, it is widely accepted that recordkeeping and inspectional access are essential components of a HACCP-type seafood system. In addition, in order to maintain other countries' faith in the safety standards of U.S. seafood exports, FDA needs similar access to records showing HACCP implementation.

7. One comment expressed the view that the copying of records by FDA, as authorized by these regulations, is beyond the scope of section 704 of the act.

FDA points out that it is not acting under section 704 of the act. To effectuate the broad purposes of the act, there may be some circumstances in which access to the records would be meaningless without the opportunity to copy them. While the agency does not anticipate that copying will be necessary in most instances, perhaps the most readily predictable circumstance in which copying would be necessary is when an investigator needs assistance from relevant experts in headquarters to evaluate the record. Without copying, it would be necessary for the agency to rely solely on the notations and report of the investigator.

This reliance may not be adequate in many circumstances. For example, there may be a deviation from a critical limit (CL) that poses no health risks. Without the ability to show a copy of the records to someone within the agency with the necessary expertise in the area, an investigator would have to cite the company for a violation. If, however, an agency expert determined that the deviation posed no safety risks, the agency could use its enforcement discretion not to pursue a violation.

8. One comment expressed the view that the act does not support a mandatory HACCP program that includes access to records for the entire seafood industry. According to the comment, the act permits FDA access to records only under extreme conditions where there is a potential for injury, but, the comment noted, hazards are only associated with a small percentage of fish.

FDA cannot agree. While it is true that those seafood-related illnesses that are reported to public health authorities tend to be associated with a limited number of species, potential hazards are much broader. As indicated above, the 1991 NAS report on seafood safety provides an extensive inventory of hazards.

For the benefit of the commentor it is worth noting that if a processor is involved with species and processes for which there are no food safety hazards that are reasonably likely to occur, a HACCP plan will not be necessary under these regulations. As will be discussed later in this preamble, the agency anticipates a post-implementation dialog with firms on whether they have hazards that must be controlled in accordance with these regulations and, if so, how many.

9. One comment expressed the view that the authority to inspect ordinary food records has not been asserted before. This statement was made in support of the contention that there is no statutory basis for FDA access to ordinary food records.

The legal basis for FDA's access to records has already been fully addressed in this preamble. It is important to note that the agency is not claiming a right of access to food records coextensive with that for drugs and devices under section 704 of the act. Rather, FDA is asserting a right to access to records that is narrowly tailored to advance the purposes of the sections of the act that it is implementing here, i.e., records relating to the CCP's in a firm's process.

While the agency is not sure what the comment meant by "ordinary" food records, it is worth pointing out that the position in this regulation on agency access to records is a longstanding interpretation for regulations of this type. Agency access to processing and production records has been required since the early 1970's in FDA's regulations for thermally processed low-acid foods packaged in hermetically sealed containers (part 113) and for acidified foods part 114 (21 CFR 114). As discussed in the new section, these regulations were issued primarily under the authority of both sections 402(a)(4) and 404 of the act (21 U.S.C. 344), neither of which specifically mention access to records.

5. Relevance of Section 404 of the Act

10. Several comments expressed the view that FDA should base HACCP regulations on section 404 of the act rather than on section 402(a)(4) of the act. Some of these comments were referring to these seafood HACCP regulations, while others were primarily concerned with any HACCP regulations that FDA might issue for other foods. Other comments expressed the view that FDA's existing low-acid canned food regulations should serve as a model for new HACCP programs. Because some of the low-acid canned food regulations have been issued under section 404 of the act, all of these comments may have been making the same general point.

Most of those that advocated use of section 404 of the act as the legal basis expressed concerns about the appropriateness of relying on section 402(a)(4) of the act and the narrow grants of access to records in the act, especially in section 704 of the act, and concluded that the act only grants the agency access to records under extreme situations. One comment urged that FDA issue the seafood HACCP regulations under the authority of section 404 of the act in order to enhance the agency's ability to achieve compliance through the permit system.

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Section 404 of the act is entitled "Emergency Permit Control." It authorizes FDA to establish a permit system for processors of food that may be injurious to health when two conditions are met: (1) Contamination is with microorganisms, and (2) the injurious nature of the product cannot be adequately determined after the product enters interstate commerce. Section 404 of the act authorizes FDA to inspect firms that operate under this permit system but does not mention records or FDA access to records.

As indicated previously, FDA has issued regulations under this authority. Regulations at part 108 (21 CFR part 108) subpart A establish the permit system generally. Regulations at part 108 subpart B establish that acidified foods and thermally processed low-acid foods in hermetically sealed containers (i.e., low-acid canned foods, or "LACF") meet the criteria in section 404 of the act and are therefore subject to the permit system. Subpart B requires processors of these foods to register with FDA and to submit detailed information to FDA on their manufacturing processes.

As an adjunct to these regulations, FDA has also issued the regulations, referred to previously, at part 113 and part 114 for these products. These latter regulations require the maintenance of day-to-day processing records that are retained by the processor and are in addition to the processing information that must be sent to FDA. FDA investigators have access to, and may copy, these records (§§ 108.25(g) and 108.35(h)).

While the permit system may have some compliance advantages, as pointed out by one comment, there are other considerations in this case that are more important. The permit system is, as the title of section 404 of the act declares, an "emergency" system. Because it is an extreme remedy for extreme situations, FDA has used section 404 of the act relatively sparingly.

In the case of seafood, although FDA strongly believes that a HACCP system will correct deficiencies in the current system and provide significant further assurance of safety, the agency cannot conclude that seafood is in an overall state of emergency from a public health standpoint. This conclusion is consistent with the position taken by the NAS. The NAS' Institute of Medicine, in its 1991 report entitled "Seafood Safety," devoted hundreds of pages to areas of risk and made numerous recommendations about control measures, including the application of HACCP where appropriate. However, the NAS also concluded that most seafood in the U.S. marketplace is unlikely to cause illness.

FDA believes that, for seafood at least, HACCP should be the norm rather than an exceptional remedy for an extreme situation. A functioning HACCP system reflects an understanding of the wide range of hazards to which seafood may always be subject and provides for a systematic application of the preventive controls necessary to minimize the occurrence of those hazards. It is the most effective and efficient way known of ensuring food safety as a matter of design. In this regard, FDA has concluded that, for seafood, the efficient enforcement of the act should not have to depend on a finding of an emergency under section 404 of the act.

It is also worth noting that section 404 of the act would limit the application of HACCP to hazards by reason of contamination from microorganisms. FDA is not aware of any HACCP expert or authoritative body, including the National Advisory Committee for Microbiological Criteria for Foods (NACMCF), which advocates limiting HACCP to these hazards only. A full discussion of hazards to which seafood HACCP should apply appears later in this preamble.

FDA does not agree that section 404 of the act is the only basis for these seafood HACCP regulations, or that it would be a more appropriate basis. It is not clear, moreover, how section 404 of the act can be cited as supporting the proposition that the agency only has access to records in extreme situations. As indicated earlier, section 404 of the act contains no express grant of access to records. Again, FDA has concluded from the case law that, under appropriate circumstances, the agency has access to specific types of records on foods and food processing for specific purposes, where such access is not expressly provided for in the act, but the agency cannot conclude that this right is limited to extreme situations. Some of the comments provided examples of extreme situations to which HACCP regulations should be limited from their standpoint. These examples raise important issues that will be addressed elsewhere in this preamble.

11. Two comments expressed the view that the LACF regulations should serve as a model for the types of records that would be accessible under HACCP regulations.

FDA did in fact use the LACF regulations as a model in that regard. The HACCP plan required here is similar to the scheduled processes that processors must submit in the LACF regulations. Likewise, there is little difference between the HACCP-monitoring records required here and the day-to-day processing records that are required in LACF regulations.

B. HACCP Pro and Con

1. Overview

Nearly half of the comments included specific statements of support or opposition for the concept of a mandatory HACCP program to ensure the safety of seafood. The supporters outnumbered the opponents by over 10 to 1.

Nearly all of those who supported the approach also had technical comments on various provisions in the proposal. Some conditioned their support on the availability of additional enforcement authorities or resources for FDA. These aspects of their comments will be responded to elsewhere in this preamble. A small number of these comments supported the concept of a mandatory HACCP program for seafood but opposed the proposal as drafted.

The supporters of the concept included most of the seafood trade associations that commented, businesses, consumer advocacy organizations, Federal and State agencies, professional societies, academics, and a member of Congress. The reasons for this support included: Enhancement of consumer confidence, the superiority of HACCP-type preventive controls over traditional CGMP-type controls and end-product sampling, the view that HACCP is the most efficient and effective way to ensure safety, and the view that a mandatory HACCP system reflects an appropriate assigning of primary responsibility to industry for producing safe food. Other reasons included a leveling of the competitive playing field, both domestically and internationally; the need for prompt adoption of a mandatory HACCP program by FDA to enable the seafood industry to maintain its market position in Europe and elsewhere throughout the world; greater productivity; and increased industry control over processing.

One large seafood trade association stated:

> [The association] strongly supports the adoption of a comprehensive regulatory program by the FDA which is designed for fish and seafood using HACCP principles. HACCP systems have been applied successfully by individual firms in our industry, and they have been shown to be a very cost-effective way of controlling safety hazards. Of equal importance, the adoption of a HACCP-based regulatory program should lead to more effective and efficient use of FDA resources, and less disruption of the processing and importing of seafood for consumers.

A small number of comments expressed opposition to the mandatory HACCP approach for seafood, however. One State comment expressed the view that HACCP would not have any significant effect on reducing illnesses from molluscan shellfish. Another comment stated that, overall, seafood-related illness data do not justify mandatory HACCP for seafood. (Several other comments questioned the need for these regulations in light of the NAS' conclusion that commercial seafood is generally safe. These comments either generally opposed the proposed regulations as drafted, or opposed its application to the comments' segments of the seafood industry, but did not express opposition to mandatory HACCP as a concept.) None of these comments supplied any new seafood-related illness data.

2. The Significance of the Illness Data

The preamble to the proposed regulations described broadly what is known and not known about the extent of seafood-related illness in the United States. Foodborne illnesses tend to be significantly underreported to public health authorities. Consequently, precise data on the numbers and causes of foodborne illness in this country do not exist. FDA does know, however, that illness from seafood does occur, and that a wide variety of hazards have been identified that could cause illness from seafood (see Ref. 7, pp. 1–13). The overwhelming majority of these hazards are amenable to preventive controls. FDA's draft Guide addresses controls for over 20 specific types of safety hazards.

The primary purpose of these regulations is to ensure that preventive controls are systematically applied in seafood processing as a matter of routine custom and usage, and in a way that can be verified by company management as well as by regulatory authorities. Thus, while the reported illness data are highly relevant to whether these regulations should be issued, they are not the sole basis for the regulations.

For molluscan shellfish in particular, FDA agrees with the commenters who believe that the principles of the National Shellfish Sanitation Program (NSSP) should continue to form the basis for the molluscan shellfish safety program in this country. There is no clear alternative to proper water classification and patrol by State authorities as the basis for molluscan shellfish safety. HACCP provides processors with an excellent system for ensuring that these preventive-type controls are adhered to in a systematic way.

It may be argued—and some comments made the point—that the best way to reduce the overall number of illnesses from raw molluscan shellfish is to provide additional resources to the States to enhance their water classification and monitoring abilities. Classifying and patrolling shellfish harvesting waters are important means of preventing molluscan shellfish that have been contaminated from sewage from entering the marketplace. However, additional Federal resources will probably not be available for this purpose in the foreseeable future. It is imperative, therefore, that the system that is in place be made as efficient as possible.

It would be incongruous to exempt from a national system of preventive controls the processors of products identified by the NAS as the source of the greatest numbers of seafood-associated illnesses. FDA strongly believes that HACCP controls will help shellfish processors and regulators alike to better focus on potential safety problems and less on tangential matters than historically has been the case. A full discussion of the application of HACCP to raw molluscan shellfish appears later in this preamble.

3. Exempt Specific Industry Segments?

12. Comments stating that HACCP systems should not be mandated for specific industry segments usually referred to either the crab processing or the catfish industries. These comments generally expressed the view that HACCP requirements for these industries were not necessary.

FDA advises that these regulations are flexible enough so that HACCP-type controls are not required where they are not necessary, i.e., where it is reasonably likely that hazards do not exist. It is the agency's experience, however, that there are reasonably likely hazards associated with crabmeat as a cooked, ready-to-eat product, including the growth of pathogens as a result of time-temperature abuse of the product and the potential for pathogen survival from inadequate pasteurization. There are reasonably likely hazards associated with the processing of catfish (e.g., contamination from agricultural chemicals, improperly used aquaculture drugs, and a variety of hazards resulting from the in-plant processing operations). It is incumbent on processors of these products to know and control such hazards.

The agency recognizes that whether reasonably likely hazards exist involves case-by-case determinations. As will be discussed in the "HACCP plan" section of this preamble, processors will be given every opportunity to demonstrate why no hazards exist in their operations.

4. Would Voluntary HACCP Be Superior?

13. Some comments believed that a voluntary approach to HACCP for seafood would be preferable to a mandatory approach. One reason given for this view was that, under a mandatory system, the risk of regulatory action by FDA would compel processors to design HACCP controls that were the minimum necessary to comply with the rule. There would be a significant disincentive for processors to design HACCP plans that have the greatest practical impact on food safety out of fear that occasional failure to meet those higher standards would trigger a regulatory response.

If voluntary HACCP systems were already universal, or nearly so in the seafood industry, and they generally applied safety controls that were beyond the minimum needed for safety, FDA would see little reason to establish a mandatory system. However, HACCP is not the norm, and given the current situation in the seafood industry, FDA finds that making HACCP mandatory is necessary to ensure that safe, wholesome, and unadulterated product is produced. Thus, FDA is adopting part 123 (21 CFR part 123).

The agency acknowledges the possibility that, under a mandatory system, firms will perceive that they are on safer ground with FDA if they establish minimum acceptable controls that are more easily met, rather than more stringent controls that are beyond the minimum necessary to ensure safety and, therefore, are harder to meet. For example, in deciding what CCP's to identify in a HACCP plan, a processor might err on the side of inclusion under a voluntary plan but keep the number of CCP's down to the minimum acceptable to FDA if having a plan is mandatory.

It remains to be seen whether processors will really choose to behave this way under a mandatory system. The choices that processors will make may depend, in part, on FDA policy toward HACCP plans that are beyond the minimum. The logic in favor of the agency initiating regulatory action when a processor fails to meet its own CL but succeeds in meeting a minimum level that would have been an acceptable CL to FDA, would be that the firm is out of control vis a vis its own preventive process. The logic against initiating regulatory action would be that the processor is still in control in terms of meeting minimum necessary safety parameters, and that the product is, in

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FDA's opinion, safe to eat. As an additional factor, FDA does not want to discourage firms from establishing preventive controls for themselves that are beyond the minimum necessary to ensure safety.

In evaluating monitoring records, FDA will first determine whether the recorded values are within the processor's critical limits as set out in its HACCP plan. Where values are found that are outside the CL's, the agency will determine the cause and extent of such occurrences, and what corrective action, if any, the processor has taken. Where product that was involved in a CL deviation was distributed without first being subjected to appropriate corrective action, FDA will determine the cause and extent of the control failure.

In determining the appropriate agency regulatory response to CL deviations, FDA will assess the public health risk that the product poses. This assessment will, in part, involve a determination of whether the minimum limit necessary to ensure safety was breached. FDA acknowledges that this level and the processor's CL may not always be the same. The agency is not likely to take action against a product that it finds poses no significant public health risk, regardless of whether it has or has not met the processor's CL.

Nonetheless, processors must establish controls to ensure that appropriate corrective actions are taken when their CL's are breached. Where such controls fail, FDA expects processors to redesign their control mechanisms as necessary. Chronic failure to appropriately respond to CL deviations demonstrates that a processor's HACCP system is inadequate, and that fact could cause FDA to have some regulatory concern.

14. Another comment urged that HACCP for seafood should be voluntary on the grounds that FDA lacks the resources and statutory enforcement authorities to operate a mandatory system. Other comments expressed the same types of concerns about FDA resources and enforcement authorities without concluding that a voluntary system would be preferable. One comment, from a consumer advocacy organization representing several other organizations, supported the concept of a mandatory HACCP system but expressed reservations about FDA's ability to adequately perform HACCP-based inspections of processors without additional resources. Other commenters expressed the same kinds of concerns. The comment pointed out that because HACCP inspections will take longer than current inspections, the intervals between inspections will increase significantly, creating "an unenforced industry honor system." The commenter, and some others, also advocated additional enforcement authorities.

The success of this program will depend on a number of factors. One of these factors, unquestionably, will be the ability of a regulatory authority, or authorities, to adequately monitor processors' HACCP systems through inspections. If the frequency of inspections is too low, safety may not be ensured, consumer confidence may be eroded, and the accusation that the program is self-regulatory may have merit, even though a HACCP-based inspection allows the investigator to view a firm's critical operations over time, not just at the moment of the inspection.

The use of a HACCP-based system bears on the adequacy of FDA's inspection resources in two important respects. The first is the effect of the use of HACCP-based inspections on inspection frequencies. The time needed to conduct a HACCP-based inspection will undoubtedly vary depending on the number of hazards, complexity of the operation, and other factors. The first round of HACCP inspections will likely take longer—possibly as much as twice as long in high-risk and complex operations—as the CGMP-based inspections FDA presently conducts, but the time-per-inspection is likely to drop significantly thereafter. It remains to be seen whether inspection times will eventually shorten to current times, or whether HACCP-based inspections will always take longer on average. In any event, FDA finds some merit in the comments' basic concerns about inspection frequencies.

Second, as a countervailing matter, a HACCP-based inspection can be a more efficient and effective inspection than a CGMP-based inspection, largely because it can be highly focused on matters that are critical to safety, and because access to key safety monitoring records allows the investigator to evaluate the process over time. Thus, some compensation for increased intervals between inspections will be provided by the fact that the investigator gets not merely a snapshot of the operation of the plant in time but a broad view of how the plant has been operated over the preceding months or even years, as reflected in the plant's records. Thus, FDA concludes that, on balance, the somewhat longer inspection intervals that might occur under a HACCP-based system would be fully compensated for by the broader view provided by a HACCP-based inspection.

In addition, FDA intends to increase the frequency and improve the consistency of processor inspections through HACCP-based work sharing partnerships with the States. One of the agency's goals is for these regulations to serve as a basis for partnerships that involves a pooling of resources.

While FDA acknowledges the comments' concerns about resources, the agency would not agree that the HACCP program should be abandoned because of resource constraints. Quite the contrary, resource constraints make it imperative that FDA seafood inspections be based on the most effective and efficient system devised to date. HACCP is that system. Moreover, the agency believes that there is enough flexibility in a HACCP-based inspection system to permit gradations in implementation (e.g., focusing on the most extreme hazards; selectively reviewing records) to accommodate whatever resource situation exists at any given moment.

With regard to enforcement authorities, as made clear above, the act provides ample authority for the establishment and implementation of a HACCP-based system by FDA. Regardless of whether additional authorities might be desirable, there simply is no reason for FDA not to proceed to establish and implement a HACCP-based system forthwith.

15. Another comment expressed opposition to mandatory HACCP for the seafood industry on the grounds that HACCP diverts the responsibility for ensuring a safe product from the government to the fish processors.

FDA's intent is not to transfer its legitimate responsibilities with regard to food safety to the regulated industry. In point of fact, the industry already has responsibility under the law to produce a safe product. HACCP helps to clarify, however, how responsibility for human food safety is divided between industry and the regulator.

Industry, as stated above, must take primary responsibility for the production of safe food, while the regulator must be responsible for setting standards (including program regulations such as these), verifying that the industry is doing its job, and taking remedial action when it is not. HACCP requires that the industry be aware of the human food safety hazards that are reasonably likely to occur, and that industry operate under a system that is designed to ensure that those hazards are not realized. Thus, HACCP enables the industry to demonstrate that it is meeting its legitimate responsibilities.

5. Other Issues

16. One comment supported the concept of HACCP but expressed the view that the regulation drafting process should be started over by forming a committee consisting of representatives from various segments of the seafood industry, and appropriate government and university personnel. A few other comments expressed the view that FDA had acted too quickly in issuing the proposed regulations and also requested that FDA start over by engaging in discussions with industry, foreign regulatory agencies, academia, and consumers. These latter comments, which were mostly from companies not primarily involved in the processing of seafood, preferred a voluntary approach to HACCP, with mandatory applications only in exceptional situations. FDA did not act too quickly, or without appropriate consultation, in issuing the proposal in this proceeding. As the preamble to the proposed rule documented at some length, the proposal was the culmination of an extensive process by FDA and others, including the seafood industry itself, that led major representatives of that industry to request the issuance of the proposal. Before that, industry trade associations testified repeatedly before Congress in the late 1980's through the early 1990's in support of legislation that would have required a mandatory inspection system for seafood based on HACCP principles.

FDA participated in pilot programs in the past such as the seafood HACCP pilot conducted jointly by FDA and the National Marine Fisheries Service (NMFS) of the Department of Commerce (DOC) in 1990 to 1991. In addition, FDA ran programs with seven other countries. In developing these regulations, the agency also took advantage of information from the Model Seafood Surveillance Project (MSSP). The MSSP was conducted by the DOC at the request of Congress in 1986 to design an inspection system for seafood consistent with HACCP principles. As part of the MSSP project, 49 workshops were conducted involving 1,200 industry, State, and university participants. Canada currently has a HACCP system, and the EU has issued directives that move in that direction. The agency has concluded that sufficient field trials have already taken place to conclude that HACCP is a viable method of hazard control for the seafood industry.

Public input into the development of the HACCP approach contained in these regulations has been substantial. As described earlier in this preamble, FDA engaged in a series of "town meetings" in nine cities across the country shortly after the proposal was published in order to answer questions about the proposed regulations and encourage comments. The public response to FDA's proposal contributed substantially to the contents of the final regulations.

C. *Should Some Types of Processors Be Exempt?*

In the preamble to the proposed regulations FDA asked for comment on whether either processors of "low-risk" products or small processors, or both, should be exempted from the requirements of the final regulations. The agency asked for information on whether the regulatory burden could be reduced without compromising the public health protection goals of the regulations, and whether there exists a rational way to distinguish "high risk" from "low risk," and big processors from little processors, for purposes of HACCP.

1. Exempt Low Risk?

The most obvious way of distinguishing high-risk products from low-risk products would be on the basis of reported, confirmed, seafood-related illnesses. The preamble to the proposed regulations pointed out some problems with this approach. First, the agency pointed out that the underreporting and skewed reporting that occurs with respect to foodborne illness creates significant concern as to whether reported illnesses represent a reliable enough factor to serve as the basis for an exemption to these regulations. Second, FDA stated that it was concerned that there could be a significant potential for harm that could be controlled by HACCP but that would not have shown up in the data that is relied on to establish risk. For example, while there may be no reported cases of botulism associated with some products that have the potential for *Clostridium botulinum* toxin, the severity of the consequences of the hazard warrant preventive controls. Likewise, while there may be no reported cases of domoic acid intoxication associated with shellfish from a particular area, preventive controls are warranted as soon as a such a case is made public. Thus, the preamble asked whether potential for harm might be a reasonable way to distinguish high-risk from low-risk products for purposes of an exemption. FDA was interested in whether comments could provide usable criteria for such an exemption.

About 45 comments addressed the question of whether the regulations should apply to high-risk products only. Roughly two-thirds of these comments preferred a high-risk approach. For the most part, they either did not define "high risk," or defined it as including essentially the top three reported seafood- related illnesses (virus-related from raw molluscan shellfish, scombrotoxin, and ciguatoxin). For the most part, other hazards were assumed to represent a low risk.

17. One comment recommended that the regulations initially cover the hazards reported at the highest levels of to the Centers for Disease Control and Prevention (CDC) because these hazards are at least known to be causing illness, and that the agency should phase in other hazards as appropriate if the foodborne-illness reporting system were to reveal a need to do so.

Few comments were received on whether there could be a basis for distinguishing high risk from low risk other than reported illnesses. Some comments suggested that the agency should consider severity of illness as a criterion. Some of these comments specifically cited smoked and smoke-flavored fish as products that should be covered on this basis because of the devastating effects of botulism. A few comments expressed the view that mandatory HACCP should be limited to hazards that can cause loss of life or irreversible injury.

Several comments objected to a "low risk" exemption in any form. Some pointed out that, given the underreporting and skewed reporting that exists, the CDC foodborne-illness reporting system does not provide a suitable basis for making determinations of comparative risk (i.e., high risk versus low risk). These comments expressed concern that linking the requirements of these regulations to illness reporting that has already occurred would have the effect of exempting emerging hazards, at least until they caused reported illness.

Other comments stated that there is no significant advantage to exempting low-risk products because processors of these products will have simpler HACCP plans than those who process products with more potential safety hazards. One comment stated that a high risk-only approach made some sense but, as a practical matter, would negate the added assurance to consumers from HACCP that seafood is safe and processed under some form of regulation. According to this comment, from a large seafood trade association, it is more important that the entire food category be recognized as having been subjected to modern safety assurance

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procedures than that the regulations exempt the low risk end of the industry.

FDA has considered these points of view and has concluded that, at least for now, there is no reasonable way to divide seafood products into high risk and low risk for purposes of these regulations. The comments that suggested defining "high risk" in terms of the most frequently reported illnesses are correct that the volume of reporting tends to concentrate substantially in the three hazard areas mentioned above. Because illnesses that are confirmed and reported tend to be those that are the most easily traced or diagnosed, however, the relative significance of the high level of reporting in these three areas—as well as the drop-off in reporting in other areas—is not fully known. Moreover, illnesses associated with chronic hazards are virtually unreported because of the difficulties in associating such illnesses to specific food sources.

The comments did not include any new data that would reveal whether the risks associated with the most reported illnesses are actually the highest risks or only the most apparent. No new information was provided to allow FDA to determine whether distinguishing high risk from low risk on the basis of reported illnesses would constitute a rational division for purposes of these regulations. Nor has FDA been supplied with information that would allow it to conclude whether other valid criteria exist.

FDA agrees with the comments that pointed out that the requirements of HACCP are less when risks are low. Moreover, as will be discussed later in this preamble, FDA has revised the final regulations to provide that HACCP plans are not required when there are no reasonably likely safety hazards to control. Thus, HACCP inherently tends to distinguish between high- and low-risk products without the need for explicit exemptions.

FDA also agrees that broad exemptions would put at risk some of the principal objectives of these regulations. Explicit exemptions make the system less flexible and might not cover emerging situations for which preventive controls are necessary to keep illnesses from occurring in the first place. A system that includes such exemptions would likely not provide as much consumer confidence as would a complete HACCP system. In addition, FDA notes that the benefits to the industry in international trade from adopting a HACCP system might be minimized if such exemptions were adopted because the United States' international trading partners are opting for complete systems.

2. Exempt Small Processors?

18. Over 60 comments addressed the question of whether the regulations should exempt small businesses. About five out of six of these comments opposed an exemption.

Those that supported an exemption for small businesses expressed concern about the effect of the general costs of implementation, particularly the costs of training and recordkeeping. One comment observed that many small businesses are economically-strapped, old, family enterprises that support an often fragile local economy. Another comment expressed the view that small businesses should be exempt because they are not involved in international trade. One comment noted that the highest volume producers (i.e., large businesses) are where a mistake affects the most consumers.

One comment recommended that FDA develop exemption procedures to relieve small companies of paperwork and training requirements, especially if they produce low-risk products. A few comments suggested that small businesses, or at least small businesses with good records, be exempt from "positive" recordkeeping, i.e., recording the results of each monitoring. Under this kind of exemption, small businesses would only record unusual occurrences and corrective actions.

The majority of comments that argued against exempting small businesses provided a number of reasons. One comment pointed out that as much as half of seafood consumed in the United States is from small firms. Several comments stated that size is not related to risk. Small firms are the major producers of many high-risk products (e.g. cooked, ready-to-eat and raw molluscan shellfish). Thus, according to the comment, the final regulations would represent a futile exercise if small firms were not included. One comment observed that small companies sometimes represent more of a risk potential than large companies due to lack of enough trained quality control personnel. Other comments pointed out that small businesses with simple operations would have simple plans and a minimum of recordkeeping.

One comment pointed to difficulties that FDA would have in administering exemptions to the regulations, particularly in distinguishing between firms that were and were not entitled to an exemption. Another concern expressed by comments was the potential unfairness of exempting some companies while requiring HACCP of others.

One State that has implemented mandatory HACCP for seafood processors observed that HACCP requirements had not proven to be an excessive burden to small businesses in that State.

Some comments that supported including small businesses in the coverage of the HACCP requirement recommended, nonetheless, that FDA should provide assistance to small businesses through guidelines, model plans, and technical and financial assistance. Some comments acknowledged that small firms can work through trade groups on common plans and training.

Other comments felt that dropping small firms from the final regulations would adversely affect consumer confidence. One comment expressed fear that the international standing of FDA's seafood safety program would be in jeopardy if the regulations were to exempt some firms.

FDA does not know how to exempt small business without jeopardizing the public health objectives of the regulations. An exemption for small processors of "low-risk" products would run into the difficulties explained above in the discussion of whether these regulations should only apply to "high-risk" products. FDA agrees with the comments that, in the seafood industry, the size of the operation often does not coincide with the number or type of hazards that must be controlled in order to ensure a safe product (i.e., small size does not automatically mean minimal hazards). For example, cooked, ready-to-eat seafood processing, a relatively complex manufacturing operation, typically requiring a larger than average number of CCP's, is concentrated in the small business portion of the seafood industry. Additionally, the processing of raw molluscan shellfish, a product identified by NAS as being associated with a disproportionately large percentage of the seafood-borne illnesses, is most commonly performed by small firms. FDA also agrees that, because seafood businesses tend to be small, an exemption for small businesses could make HACCP the exception, rather than the rule, in this industry.

The concerns expressed in the comments about the possible adverse consequences of these regulations on small business, however, should not be taken lightly, and the agency has not done so. FDA has no desire to establish a mandatory regime that cannot be met by otherwise responsible companies,

small or otherwise, that are producing safe food. Indeed, these regulations are based on the premises that: (1) Preventive controls for safety should be within the reach of anyone who is producing seafood for commerce (i.e., preventive controls should not be prohibitively burdensome, either financially or conceptually); and (2) it is in the public interest that everyone who is producing seafood for commerce should practice preventive control for human food safety. The fundamental question that the issue of whether to exempt small business raises is whether these premises are valid.

Having fully considered the comments on this issue, FDA is not persuaded that awareness of likely food safety hazards would cause financial hardship to small businesses, or that having reasonable, practical controls for those hazards will cause undue harm. As will be discussed in the "Records" section of this preamble, the costs associated with the recordkeeping requirements of HACCP are really incidental to the cost of monitoring and need not place a significant burden on small businesses. For example, after checking the temperature of a refrigerator, the observer need only take an additional moment to document the result of the observation. The agency cannot emphasize too strongly that, in most instances, only very simple recordkeeping is needed to adequately serve the purposes of the system. The question from the agency's standpoint, therefore, is whether the actual monitoring of critical operations, at reasonable frequencies, would be prohibitively expensive to the small operator. FDA has not been provided with a basis for such a conclusion.

This leaves plan development and training as costs. The guidelines that FDA is making available on plan development should help substantially to keep development costs down. FDA is also aware that trade associations and others are interested in developing model plans that, when used in concert with the guidelines, should further reduce the resources that a firm will need for plan development. The creation of a HACCP plan does require some thought and effort by the processor to ensure that hazards and controls are understood and identified. Nonetheless, the guidelines and model plans will enable small processors to be able to apply the thought and effort necessary to create a HACCP plan with maximum efficiency and minimum cost.

FDA is requiring that all processors either employ at least one trained individual or contract for services from at least one trained individual, as needed. There are unavoidable costs associated with this requirement. It is imperative that these costs be affordable to small business and be no greater than necessary. As discussed at length in the "Training" section of this preamble, FDA has been extensively involved with a consortium called the "Seafood HACCP Alliance" (the Alliance) consisting of representatives from Federal and State agencies, industry, and academia, to create a uniform, core training program that will meet the requirements of these regulations and will cost very little. The agency is also aware of HACCP training that has been provided for years for members of industry by NMFS and others. As an additional matter, FDA is allowing job experience to serve as a form of training in order to avoid the unnecessary expense to a processor of having to pay for a HACCP course when at least one employee already has knowledge that is equivalent to that provided by the course.

These efforts should alleviate the concerns of those who believe that the training requirement will be too burdensome on small business. The agency will monitor the situation closely once this training gets underway. If costs turn out to be significantly higher than FDA anticipates, the agency will consider some modification to the requirement.

While the agency regrets that grant monies are not available to small businesses from FDA, the effort that the agency is investing in guidelines and training development is a form of subsidy that should keep costs down generally.

D. Definitions

1. General

In addition to relying on the definitions contained in the act and those in the umbrella good manufacturing practice regulations at part 110 (21 CFR 110), FDA proposed at § 123.3 (a) through (t) to define 20 terms that are essential to the interpretation of part 123. Approximately 100 comments addressed various aspects of the proposed definitions at § 123.3.

The majority of the comments on definitions were concerned with the meanings that FDA proposed for "processor" (§ 123.3(n)) and "processing" (§ 123.3(m)). These comments generally asked for clarification about the applicability of the definitions to a given commercial activity, or contended that the definitions should be amended to either include or exclude certain activities. Most of the other comments that addressed the definitions were primarily concerned with the meanings proposed for "fish," fishery product," "critical control point," "cooked ready-to-eat," and "importer." As a result of the comments as well as agency decisions to modify other provisions in part 123, FDA has deleted, revised, and added definitions to those proposed at § 123.3.

2. Cooked, Ready-To-Eat Fishery Product

19. The proposed regulations contained a definition for "cooked, ready-to-eat fishery product" at § 123.3(b). The term was used at proposed § 123.10(a) and in the appendices to the proposed regulations. The final regulations no longer contain this term, and the appendices are not being codified. For these reasons, FDA has eliminated the definition of "cooked, ready-to-eat fishery product" from the final regulations.

Nonetheless, a large number of comments expressed concerns about the definition as it was proposed. In general, the comments urged that certain products be excluded from the definition of "cooked, ready-to-eat fishery products;" those that are not fully cooked by the processor or that will be recooked by the consumer, and low-acid canned foods subject to the provisions of part 113.

FDA recognizes the significance of the use of the term. Because the agency has excluded use of the term in these final regulations, it will defer consideration of the comments until drafting of the Guide.

3. Critical Control Point (CCP)

FDA proposed at § 123.3(c) to define a critical control point as "a point in a food process where there is a high probability that improper control may cause, allow, or contribute to a hazard in the final food." The word "hazard" in this definition was intended to refer primarily to food safety hazards. It could also have applied to quality and economic hazards, however, because the agency was proposing at § 123.6(c) to encourage processors to apply HACCP to these hazards as well.

20. A significant number of comments urged the agency to modify the definition so that it clearly addresses only food safety. These comments recommended that the word "hazard" should be prefaced with either "food safety" or "health," or that FDA should codify the definition for "hazard" that has been recommended by the NACMCF.

Several of the comments urged FDA to adopt the NACMCF definition for

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"critical control point" so that the agency's regulations would be consistent with nationally and internationally agreed upon HACCP definitions. One objected to the phrases: "high probability," because of its connotation in statistical applications; "improper control," because of a lack of a standard for proper control; and "cause, allow, or contribute," because it could allow the elevation of trivial concerns to critical control point status.

FDA is persuaded by those comments that urged consistency with the NACMCF definition for "critical control point." The agency has, therefore, modified proposed § 123.3(c) (redesignated as § 123.3(b)) to read, "*Critical control point* means a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels." The modified language is consistent with the agency's decision to limit the HACCP provisions of part 123 to the avoidance of food safety hazards (see the "HACCP Plan" section of this preamble for discussion). It is also compatible with modifications described elsewhere in this preamble aimed at greater consistency with the NACMCF recommendations. The wording change will not have any practical impact on the requirements of the regulations because the definition still reflects the agency's intent to require that seafood be processed in a way that eliminates, to the extent possible, the chance that it will be rendered injurious to health by procedures that are under the control of the processor.

The NACMCF definition does not contain the phrases that were objected to by one of the comments as described above. Thus, the concerns raised by this comment have been resolved.

21. A few comments, however, stated that the definition should also apply to the control of all decomposition because it is a major problem associated with seafood.

FDA acknowledges that, because of the highly perishable nature of fish, decomposition is probably the most common problem associated with seafood. The agency further acknowledges the comments that expressed concern that failure to control this problem will continue to adversely affect consumer confidence. The industry especially should heed this concern and consider the application of HACCP principles to decomposition, if necessary, to help maintain the quality of its products.

Nonetheless, decomposition that is not associated with safety is not appropriately a part of these mandatory HACCP regulations but should remain subject to traditional good manufacturing practices controls (see, e.g., § 110.80(b) (21 CFR 110.80(b))). As discussed earlier, these regulations are being issued, in part, under section 402(a)(4) of the act. That section provides that a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health. While decomposition in some species can be injurious to health and is therefore within the scope of section 402(a)(4) of the act, most decomposition affects the quality of seafood but not its safety. Decomposition that affects quality but not safety is subject to section 402(a)(3) of the act. Therefore, FDA is not subjecting decomposition that is not safety related to the requirements of these final regulations but will continue to regulate decomposition under traditional CGMP control.

FDA points out that it has defined "food safety hazard," a term that the agency uses in the definition of "critical control point," in § 123.3(f). The agency discusses this definition, which is consistent with the NACMCF recommended definition, later in this section.

4. Critical Limit (CL)

FDA proposed in § 123.3(d) to define a "critical limit" as "the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk of occurrence of the identified hazard." In the preamble to the proposed regulations, the agency explained that the proposed definition was intended to be consistent with the concept of the NACMCF recommended definition, which reads, "a criterion that must be met for each preventive measure associated with a critical control point." However, the proposed definition was also intended to be more explanatory than is the NACMCF definition, especially as it relates to the assignment of a minimum or maximum value and in the relationship of these values to a minimization of the risk, rather than to an absolute elimination of risk.

22. Several comments stated that the proposed definition of a "critical limit" should be modified to be the definition recommended by the NACMCF. The comments asserted that the NACMCF definition is the internationally accepted standard, and that its use in the regulations would avoid confusion. A few comments argued that FDA's use of the phrase "minimize the risk" implies that the CL must be set to attain the lowest possible risk, unlike the "reduce to an acceptable level" standard in the NACMCF definition for CCP.

Although FDA agrees that the definitions in these regulations should closely adhere to the NACMCF's recommended definitions, the agency concludes that, in this instance, FDA's wording is more descriptive for regulatory purposes and more useful to processors. However, FDA has been persuaded that the phrase "minimize the risk" may be misinterpreted as requiring outcomes that are not realistically achievable by a processor. To provide clarification and consistency with the revised definition of "critical control point," FDA has replaced the phrase "minimize the risk" with the phrase "prevent, eliminate, or reduce to an acceptable level" in the final regulation (now codified as § 123.3(c)). As noted previously, this language also appears in the NACMCF definition of "critical control point." The new language correctly provides for the making of scientific judgments about appropriate degrees of hazard reduction, based on the nature of the hazard and the availability of controls, and is more consistent than the proposed language with accepted HACCP convention.

23. One comment stated that the word "identified" should be deleted from the proposed definition.

FDA is not persuaded to make any modification to the definition in response to this comment. The "identified hazard" refers to the hazard identified in the HACCP plan.

24. One comment stated that the phrase "in the end product" should be added following the word "hazard" in the proposed definition.

FDA is not persuaded to make any modification to the definition in response to this comment. Food safety hazards are, by definition, those that cause "a food to be unsafe for human consumption." This definition implies a consideration of the end product that will be offered for human consumption.

25. One comment objected to the phrase "the maximum or minimum value" in the definition, stating that, as in the case of certain food additives, there are situations where both a maximum and a minimum value exist, and a processor is required to maintain the process between these values.

FDA is not persuaded to make any changes to the proposed language in response to this comment. The word "or," which the agency uses in the definition, is inclusive. Thus, properly read, § 123.3(c) states that a CL is the maximum value, the minimum value, or both the maximum and minimum values within which the parameter must be controlled to protect against the occurrence of a food safety hazard.

For consistency with the definition of "critical control point," FDA has added the phrase "food safety" before the word "hazard" in the text of § 123.3(c). The language in the final regulation now reads, "*Critical limit* means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard."

5. Fish

26. FDA proposed to define "fish" as "fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals." A significant number of comments suggested that FDA should modify this definition to clarify whether it includes species such as sea snails, abalone, frogs, alligators, turtles, other reptiles, amphibians, sea cucumbers, plants, or algae.

FDA agrees that this type of clarification would be helpful and has modified the definition at § 123.3(d) to read:

Fish means fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin) other than birds or mammals, and all mollusks, where such animal life is intended for human consumption.

The term "mollusks" includes abalone, sea snails, and land snails (e.g., escargot and any other terrestrial gastropods, such as the giant African land snail (*Achatina fulica*)). The addition of examples of aquatic animal life and the mention of mollusks are intended to make clear which species are covered by the term "fish." Water-dwelling reptiles and amphibians other than alligators, turtles, and frogs have not been specifically listed because they are not significant commercial food sources in the United States. Finally, FDA notes that, consistent with the proposed definition, aquatic plants (including algae) are excluded. This definition is consistent with the traditional treatment of these products by FDA.

The new language also serves to emphasize that these regulations apply only to those products that are intended for human consumption. This point was explicit in the proposed definition for "fishery product" but was inadvertently not mentioned in the proposed definition of "fish."

27. Two comments contended that there should be separate definitions for finfish and shellfish, to differentiate between relative levels of safety concerns (e.g., high and low risk).

FDA disagrees with this comment. Such a differentiation would serve no purpose in these regulations. The purpose of these regulations is to set up a unitary system that responds to a particular product based on the risks it presents, not to establish a system that is divided up based on risk presented. The merits of differentiating between products on the basis of risk is addressed in the section of the preamble entitled "Should Some Types of Processors be Exempt?"

6. Fishery Product

FDA proposed to define "fishery product" as "any edible human food derived in whole or in part from fish, including fish that has been processed in any manner." The preamble to the proposed regulations stated that the intent of the definition was to include products that contain seafood as an ingredient as well as those products that are comprised of seafood alone, because hazards derived from seafood are reasonably likely to occur in both types of products.

28. A few comments urged that FDA exclude from the meaning of "fishery product" any product that is made in whole or in part from commercially sterilized fishery products subject to the requirements of parts 113 and 114, (i.e., thermally processed low-acid canned foods and acidified foods).

FDA disagrees with this comment. Although such foods are required to be produced in accordance with certain HACCP-type control procedures to reduce the risk of the hazard of *C. botulinum* toxin production, these control measures do not address other potential hazards. For example, part 113 provides no assurance that the raw material used in the canning of tuna will be free from contamination with dangerous levels of histamine. Likewise, products made in part from low-acid canned foods and acidified foods can also present hazards that must be addressed. For example, a salad made in part from canned tuna can be subjected to recontamination with pathogenic microorganisms and time-temperature abuse during preparation.

Although FDA cannot exclude those products made in whole or in part from low acid canned foods or from acidified foods from the definition of a "fishery product," it is worth noting that the agency has exempted processors who are following the requirements of part 113 or part 114 from having to include controls for *C. botulinum* in their HACCP plans. This hazard is already addressed by the requirements in those parts (see § 123.6(e) of these regulations and the "HACCP Plan" section of this preamble).

29. One comment suggested that the language of the proposed definition inappropriately excludes fish roe.

FDA points out that the phrase "any edible human food product derived in whole or in part from fish," in the proposal was intended to cover these products. FDA, however, has modified the definition of "fishery product," and it no longer includes this language. Therefore, to make clear that roe are covered, FDA has made explicit in the definition of "fish" that the roe of the covered animals are included.

30. A significant number of comments urged that the definition exclude products that contain only a minimal amount of fish. These comments suggested various standards that FDA should apply to exclude such foods from the definition. These included: Products that contain less than 50 percent fish; products that contain less than 10 percent fish; products that contain 2 percent or less of cooked, or 3 percent or less of raw, fish; products in which fish is not a characterizing ingredient; and products that contain any nonfish ingredient unless a hazard analysis identifies a significant hazard associated with the fish ingredient. The comments provided no justification for the percentages suggested.

FDA agrees that foods that contain inconsequential amounts of fish, such as Worcestershire sauce, are not the types of foods that should come under the purview of these regulations. It is doubtful that they pose reasonably likely hazards associated with their fish components. Moreover, these products are neither represented nor perceived as being fish-based foods.

The comments provided FDA with no basis, however, upon which to select a specific minimum content of fish ingredient for the definition of "fishery product." There is no obvious minimum percentage of fish on which to exempt a food that contains only a small amount of fish from the provisions of these regulations.

Instead, the agency accepts the comment that, to meet the definition of a "fishery product," a food should be characterized by the qualities of the fish that it contains. Thus, these regulations will apply to those foods whose basic nature is defined by the fish that they contain. Accordingly FDA has modified the proposed definition (§ 123.3(e)) to read in part, "*Fishery product* means any edible human food product in

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which fish is a characterizing ingredient." This revision will serve to ensure that mandatory HACCP requirements do not apply to products that contain inconsequential amounts of fish from a public health standpoint.

31. One comment stated that fish oil that is intended for use in human food should not be subject to the requirements of these regulations until it has been separated, through initial processing, from the oil that will be used for animal feeds and other industrial purposes. FDA does not find that the comment provided sufficient justification to treat this product differently from other human food products processed from fish. The agency acknowledges that the hazards associated with these products may be minimal. If that is the case, the fish oil processor's burden will also be minimal, perhaps limited to training expenses and the performance of a hazard analysis. Moreover, these regulations do not apply to products that are not for human consumption and fish oil processors that are confident that their production will not be used for human consumption need not apply the requirements of these regulations.

7. Food Safety Hazard

32. A number of the comments recommended that FDA define "safety hazard" or "food safety hazard." Several of these comments recommended that FDA adopt a definition that is consistent with the NACMCF recommended definition for "hazard." The comments were primarily concerned with the coverage of these regulations. They urged that the regulations be clear that only food safety hazards need be addressed by the HACCP plan and argued that a definition would help to accomplish that.

The NACMCF definition of "food safety hazard" reads, "A biological, chemical, or physical property that may cause a food to be unsafe for consumption." While FDA provided no definition of "food safety hazard" in the proposed regulations, it did raise the issue of the coverage of the regulations in proposed § 123.6(b) (redesignated as § 123.6(c)), which mandated coverage of food safety hazards only and listed nine types of food safety hazards posed by the various types of fish and fishery products. This list included examples of biological, chemical, and physical hazards. Additionally, the preamble to the proposed regulations discussed at length the significance of a number of these types of hazards.

FDA agrees that the meaning ascribed by the agency to a food safety hazard should be as clear as possible in these regulations. The examples of hazards in the proposed regulations—and codified in these final regulations—are consistent with the NACMCF definition for a food safety hazard. Therefore, for the sake of clarity, FDA has decided to characterize these examples in a definition § 123.3(f), which reads, "*Food safety hazard* means any biological, chemical, or physical property that may cause a food to be unsafe for human consumption." The only difference between this definition and the NACMCF recommendation is the addition of the word "human." FDA has included this word to prevent confusion about the application of these regulations to pet or animal feed.

In keeping with the new definition, and to provide further clarification about the nature of the hazards that are required to be addressed by these regulations, the term "hazard" has been changed to "food safety hazard" where it appears throughout the codified portion of this document.

8. Harvester

FDA proposed to define "harvester" as "a person who has an identification number issued by a shellfish control authority for commercially taking molluscan shellfish by any means from a growing area." After review, the agency has concluded that it was not necessary to limit "harvesters" to those persons who have an identification number, primarily because in some jurisdictions, identification numbers may not be issued by a shellfish control authority. Without this limitation, FDA has concluded that there is no need to establish a particular meaning for this term for the purposes of these regulations. Therefore, the agency has removed this definition from the final regulations.

9. Importer

FDA proposed to define "importer" as "a person, or his representative in the United States, who is responsible for ensuring that goods being offered for entry into the United States are in compliance with all laws affecting the importation." The preamble to the proposed regulations explained that the importer is the owner of the imported goods or the owner's representative in the United States. The preamble further noted that freight forwarders, food brokers, food jobbers, carriers, and steamship representatives would not usually be considered to be the importer of the product for the purposes of these regulations because they are not usually in a position to make decisions that can ensure the safety of the product. However, the preamble did not categorically rule out that these individuals could be the importer because sometimes they may be in a position to make decisions relevant to safety.

33. Several comments stated that FDA should modify the definition of "importer" to specifically exclude intermediary agents involved in the importing process, such as freight forwarders, licensed U.S. customs brokers, food brokers, food jobbers, carriers, and steamship representatives. These comments noted that, although imported products may enter the United States under the name of an intermediary, this practice is done for convenience in handling the paperwork at the port of entry. The comments stated that the intermediary has little responsibility for conducting the negotiations with an overseas producer and rarely takes possession of the products. Therefore, the comments stated, the intermediary has limited influence on the safety of the imported goods. Two comments pointed out, for example, that customs brokers that provide their clients with the service of using the broker's customs bond are listed as the "importer of record" and may thereby, unintentionally, be regarded as importers under the proposed definition, even though they do not own or control the product being imported.

Conversely, two comments argued that agents, such as food brokers, should be included in the definition of an "importer" because they bring product into the United States and sell it. The comments argued that the brokers should, therefore, be held responsible for ensuring that the foreign processor complies with the provisions of these regulations, to avoid an unfair advantage over domestic processors.

FDA concludes, based on the information provided in the comments, that these intermediaries can neither be categorically included or excluded. However, the agency recognizes that the number and type of comments on this issue demonstrate that the language of proposed § 123.3(h) was inadequate to convey the agency's intent, as articulated in the preamble. For this reason, FDA has clarified the definition of "importer" in § 123.3(g) to read, in part:

Importer means either the U.S. owner or consignee at the time of entry into the United States, or the U.S. agent or representative of the foreign owner or consignee at the time of entry into the United States, who is responsible for ensuring that goods being offered for entry into the United States are in compliance with all laws affecting the importation.

Reference to the owner or consignee of the imported goods parallels the language in section 801 of the act (21 U.S.C. 381).

Because the ownership of imported products can change many times in a relatively short period of time after entry, the party who is the owner or consignee at the time that these products are offered for entry must be identified as the importer. As the person that has the ability to decide whether to offer the product for entry, this person is in a position to ensure that the product is processed under appropriate controls and to demonstrate this fact to FDA.

FDA must be able to verify the existence of the evidence of compliance by the foreign processor. This evidence, according to the provisions of § 123.12, is to be in the possession of the "importer." It must be available in the United States, however, if FDA is to consider the information in deciding whether to admit the products. Thus, where products are offered for entry by a U.S. owner or consignee, that owner or consignee will, for purposes of these regulations, be considered the importer because it will have control of this evidence. Where products are often offered for entry without a U.S. owner or consignee, the U.S. agent of the foreign owner or consignee will be considered the "importer" for purposes of these regulations to make clear who will be expected to have this evidence for such products.

FDA recognizes that the U.S. owner or consignee of the product, or the U.S. representative of the foreign owner or consignee, at the time of entry into the United States may also serve other functions. For example, it may also be a food broker for, or warehouser or processor of, the product. It may, in some instances, also be the freight forwarder, customhouse broker, or carrier for the product. These other functions will not matter, however, if the person is the U.S. owner or consignee of the product, or the U.S. representative of the foreign owner or consignee, at the time of entry into the United States. From FDA's experience, while certainly not impossible, it is at least unlikely that this qualification will be met by the customhouse broker, the freight forwarder, the carrier, or the steamship representative.

The agency has attempted to clarify this definition by including a sentence that reads, "For the purposes of this definition, ordinarily the importer is not the custom house broker, the freight forwarder, the carrier, or the steamship representative." Further, FDA does not intend to rely exclusively upon the assignment of the "Importer of Record" or the holder of the U.S. Customs Surety Bond in determining the "importer" for the purposes of these regulations, as was suggested in the preamble to the proposed regulations. In some instances the "Importer of Record" or the holder of the U.S. Customs Surety Bond will not meet the qualifications of an importer that are set out in § 123.3(g).

10. Lot of Molluscan Shellfish

FDA proposed to define a "lot of molluscan shellfish" as "a collection of shellstock or containers of shellstock of no more than 1 day's harvest from a single, defined growing area harvested by one or more harvesters." Because of language changes that FDA has made in subpart C of part 123, this term isno longer used in the regulations. Consequently, FDA has decided that there is no need to define this term and has eliminated the definition.

11. Molluscan Shellfish

34. Comments from a number of State agencies, trade associations, seafood processors, and the ISSC objected to the use of the term "fresh or frozen" in the proposed definition of "Molluscan shellfish." The comments were concerned because this definition would have the effect of exempting canned and any other heat-processed molluscan shellfish from the source control, recordkeeping, and tagging provisions of proposed subpart C of part 123 and proposed § 1240.60(b).

The comments stated that limiting these provisions to raw products would allow foreign firms to continue to heat-treat or can molluscan shellfish that are harvested from foreign waters that do not meet National Shellfish Sanitation Program (NSSP) standards and to export them to the United States. The comments stated that this situation was not in the best interest of the public health because of the potential for the presence of heat-stable natural toxins, such as paralytic shellfish poison or amnesiac shellfish poison, as well as chemical contaminants. The comments also complained that, because State laws and regulations require that all molluscan shellfish harvested in the United States come from waters approved by a shellfish control authority regardless of whether they are to be consumed raw or cooked,continuing to allow foreign processors who export cooked shellfish to the United States to use molluscan shellfish from unapproved growing waters places the domestic shellfish industry at a competitive disadvantage.

FDA believes that these comments are generally valid but are beyond the scope of this rulemaking. The point of this rulemaking it to determine whether FDA should require that HACCP be followed in the processing of seafood. The question of whether cooked molluscan shellfish that is being offered for import into this country is being harvested in a manner that creates public health concerns and unfair competitive advantages is a separate matter that the agency will address, if necessary, in the future.

Similar issues with respect to the use of the term "fresh or frozen" and the term "raw" in proposed subpart C of part 123 of these regulations and in proposed part 1240 are discussed in the "Molluscan Shellfish" section of this preamble (see comment 144).

12. Potable Water

FDA proposed to define "potable water" as "water which meets the U.S. Environmental Protection Agency's Primary Drinking Water Regulations as set forth in 40 CFR part 141." Because of changes that the agency has made in proposed § 123.10 (redesignated as § 123.11), the term is no longer used in these regulations. Consequently, FDA has eliminated the definition.

Nonetheless, a significant number of comments questioned when it would be necessary for processing water to meet the definition of "potable water." Because it is likely that both terms (i.e., processing water and potable water) will be used in the first edition of the Guide, FDA will consider these comments during the redrafting of the Guide.

13. Preventive Measure

FDA has added a definition for the term "preventive measure" at § 123.3(i). Although the term was not used in the proposal, the concept of preventive measures was a fundamental part of the hazard analysis that was implicit in proposed § 123.6(b). "Preventive measure" is used in the final regulations in § 123.6(a) in the description of a hazard analysis.

FDA proposed to require that all processors create a HAACP plan. Based on comments received, however, as explained below, FDA has decided to require that processors conduct hazard analyses to determine whether they need to develop a HACCP plan. This decision necessitates that FDA define "preventive measure." In accordance with the recommendations of the NACMCF (see Ref. 34, p. 189), a hazard analysis must identify both the food safety hazards that are reasonably likely to occur and the preventive measures that are available to the processor to control such hazards.

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Identifying the preventive measures is necessary in order to determine whether a processing step is a CCP for that hazard. A processing step cannot be a CCP for a hazard if no preventive measure is available at that step to control the hazard. The definition of "preventive measure" in these regulations is essentially the same as that recommended by the NACMCF.

14. Process Monitoring Instrument

The term "process control instrument" was used in the proposal for consistency with the phrase "the procedures * * * that will be used to control and monitor each of the critical control points." For consistency with the NACMCF principles of HACCP, FDA has modified the language of § 123.6(c)(4) to eliminate the word "control." In order to achieve consistency within these regulations, the agency has concluded that the appropriate term for such instruments is, therefore, a "process monitoring instrument."

15. Processing and Processor

Along with the term "importers," the terms "processor" and "processing" collectively define who is subject to these regulations.

FDA proposed to define "processing" as:

[W]ith respect to fish or fishery products, handling, storing, preparing, heading, gutting, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, or holding. Practices such as heading or gutting intended solely to prepare a fish for holding on board a harvest vessel are excluded. This regulation does not cover the operation of a retail establishment.

FDA proposed to define "processor" as:

[A]ny person engaged in commercial, custom, or institutional processing of fish or fishery products, either in the United States or in a foreign country. Persons engaged in the production of foods that are to be used in market or consumer tests are also included. Persons who only harvest or transport seafood, without otherwise engaging in processing, are not covered by these regulations.

a. *Vessels, carriers, and retail.* As explained in the preamble to the proposed regulations, the definitions of "processor" and "processing" excluded fishing vessels that essentially only harvest, transportation companies that carry but do not otherwise process fish and fishery products, and retail establishments. FDA invited comment on these exclusions.

In the preamble, FDA acknowledged that food safety hazards can be introduced at these three points in the commercial distribution chain. However, FDA tentatively decided to exclude fishing vessels, carriers, and retailers from the definition of "processor"—and thus from direct coverage under these regulations—because of practical considerations, such as the fact that the large size of the U.S. fishing fleet and the large numbers of carriers and retailers would overwhelm any rational Federal inspection system, and because the agency believed that the public health goals of the regulations could still be met.

FDA expressed its tentative view that the HACCP regulations would affect fishing vessels and carriers indirectly though the controls that processors impose to meet their obligations under HACCP. As for retail establishments, the preamble explained that, historically, they have been the regulatory responsibility of State and local governments. FDA traditionally has provided support through training, technical assistance, and the development of model codes. Since the issuance of the proposal, FDA has published its retail and institutional "Food Code," with the recommendation that it be adopted by State and local jurisdictions. The Food Code covers handling and receiving practices at retail, and its most recent version includes HACCP elements.

FDA's approach to these issues is based on agency discretion and does not derive from a lack of statutory authority. FDA has broad authority to regulate Food that is shipped in interstate commerce. While carriers are exempt from most direct FDA regulation in accordance with section 703 of the act (21 U.S.C. 373), the food being transported is not exempt. Moreover, FDA has authority under the Public Health Service Act (the PHS Act) (42 U.S.C. 264) to take such measures as it deems necessary to prevent the introduction, transmission, or spread of communicable disease from foreign countries into the States or from one State or possession into any other State or possession.

FDA received a significant volume of comment on the question of coverage by these regulations of fishing vessels, carriers, and retail establishments. The majority of comments strongly favored inclusion of these entities within the scope of the these regulations.

35. The arguments relating to vessels and carriers tended to overlap. Those who favored inclusion noted that hazards—particularly those associated with time-temperature abuse and insanitation—can originate with fishing vessels and carriers. The comments argued that not controlling the conditions under which seafood is harvested and transported would amount to leaving CCP's unregulated. One comment observed that carriers have an incentive to turn off refrigeration units to save gas.

Several comments expressed the view that exclusion of vessels and carriers from the coverage of these regulations unfairly makes processors responsible for these aspects of seafood production. One comment pointed out that vessels, especially those that harvest scombroid toxin-forming species, should be legally responsible for any safety hazards that they cause through improper handling. Some comments asserted that HACCP can be practiced on fishing vessels and by carriers, at least with regard to temperature controls.

One State agency expressed the view that holding processors responsible for the behavior of fishing vessels has, in its experience, not worked, nor has education of fishing vessel owners or voluntary compliance by owners. The comment did not document the basis for these conclusions, however. Some comments argued that, while it would be difficult to include all vessels and carriers, those involved with high-risk products should be included.

Comments in favor of excluding vessels and carriers from these HACCP regulations noted that FDA's rationale for exclusion was prudent given the number, location, and diversity of the U.S. fishing fleet and the complexity of transport arrangements. For carriers, one comment noted that partial loads that are dropped off in different locations would be especially difficult to control. Some comments asserted that direct regulation of these entities was not necessary because processors could establish minimum requirements as a condition of purchase, as part of their HACCP systems. Some comments urged, however, that fishing vessels be subject to HACCP requirements when they deliver directly to an entity that is not subject to these regulations (e.g., a restaurant). One comment argued that receiving firms should require that product be in the same condition that it was in when it left the previous processor.

Some comments questioned the ability of fishing vessels and carriers to comply with HACCP requirements. A number of comments favored alternatives to HACCP, such as guidelines and standard operating procedures (SOP's).

FDA is impressed by the strong support for inclusion, of fishing vessels and carriers in the coverage of these regulations. Some of this support was based on concern over the loss of quality because of poor handling practices (e.g., the effect of time-temperature abuse on shelf life and spoilage unrelated to safety) rather than on food safety considerations. Nonetheless, members of these two industries should be aware that significant concerns have been expressed with regard to their practices.

For some species and products, the practices of fishing vessels and transporters can have significant public health consequences. These practices can put pressure on a processor who is receiving these products to carefully scrutinize the condition of incoming materials. The practices can also put pressure on a processor to determine whether carriers are suitable to transport their finished products (e.g., that carriers have proper refrigeration).

The agency appreciates the argument that all entities that can affect safety in the distribution chain should accept and share this responsibility. These points notwithstanding, FDA received no comment that provided information about how the agency could operate an inspection program for carriers and harvest vessels with its current resources. For this reason, the agency concludes that such a program is impractical at this time.

When processors accept raw materials for processing, especially from vessels, they assume some responsibility for the condition of the incoming materials, regardless of how others are regulated. This is true under both general commercial law and the laws administered by FDA. Carriers likewise have responsibilities. If a carrier fails to exercise such controls as are necessary, food that it carries may be rendered adulterated and the owner of the product, i.e., the processor, could suffer product loss. Food handlers generally should exercise sufficient control over the products in their custody to ensure that any food safety hazards that are reasonably likely to occur during that period are being addressed.

As an additional matter, FDA agrees with those comments that advocated a step-wise regulatory approach to these entities.

Mandatory HACCP for seafood is a pioneering venture. While the groundwork has been prepared for it through pilot projects and other efforts over the years, there is no substitute for actual experience once it is operating. The agency would prefer, therefore, to construct the system through a series of manageable steps if it needs to do so, rather than to risk overextending itself and the system initially. While these regulations exempt carriers and harvest vessels from direct coverage, experience with the application of a mandatory HACCP program may, at some later date, cause the agency to reconsider its approach.

For fishing vessels, FDA intends, for the time being, to issue good handling practice guidelines. To that end, the agency is studying those issued by the State of Alaska and by the Codex Alimentarius Commission of the Food and Agriculture Organization/World Health Organization, among other such available guidance. FDA will evaluate the effect of these guidelines, in addition to any requirements that States have or may adopt regarding fishing vessel practices, and reassess at a later date whether there is a need for mandatory Federal controls. The agency invites continued correspondence and the sharing of views on this matter.

The comments that recommended that vessels that sell directly to "non-HACCP" establishments (e.g., restaurants) should be required to have HACCP plans are advised that the Food Code addresses the subject of source control for retail establishments and recommends the requirement of HACCP plans for retail establishments in some circumstances. This matter relates principally to State and local laws and is addressed below in the discussion of retail establishments.

For carriers, the situation is complicated by the restriction in section 703 of the act that was described previously. As one comment recommended, FDA has had conversations with other Federal agencies on the subject of transportation of food and will continue to do so. In the meantime, FDA strongly recommends that processors review the material in the Guide on how they can exercise control over incoming raw materials as well as over shipments of their own products. One emerging area that the agency is monitoring—and processors should consider also—is the development of inexpensive time-temperature sensors that indicate whether proper temperatures have been maintained over a period of time.

36. The question of the inclusion of retail establishments within the mandatory seafood HACCP system involves some different considerations. Processors have less influence, if any, over how their products are handled at retail than they do over how their products are handled by vessel operators or carriers. Some comments pointed out, for example, that a processor's best efforts could be for naught if the product is subsequently mishandled at retail.

Several comments pointed out that many retail establishments carry out activities that meet the definition of "processing." According to these comments, such establishments should not be exempt from HACCP requirements.

Other comments took the view that these regulations should not apply to retail establishments, primarily for the reasons provided in the preamble to the proposal. Some recommended that retail establishments should not be subject to the regulations so long as the Food Code applies to them. Others suggested that HACCP should apply if the retail establishment buys directly from a fishing vessel or from sport fishermen. Some suggested better consumer education and voluntary HACCP-type programs.

FDA agrees that there are hazards that occur at the retail level that can render meaningless the controls that may have been in place elsewhere in the chain of production and distribution. The NAS has cited retail and food service establishments as sources of seafood-related illnesses (see Ref. 7, p. 27). FDA is convinced—and the comments support—that proper controls at the retail level are imperative to ensuring a safe product.

Nonetheless, FDA's observation in the preamble to the proposed regulations remains valid that retail establishments pose an inspection burden well beyond the capacity of FDA. No comments have provided any basis for the agency to conclude otherwise or would justify the significant shift of resources that would be necessary for FDA to even begin to address the retail sector in a meaningful way. FDA notes that State and local governments provide significant regulation of the retail food sector. FDA has committed the resources that it has available for addressing retail problems, by providing training and technical assistance to State and local governments. Most significantly, FDA has provided guidance in the form of the Food Code, which provides the latest and best scientifically based advice about preventing foodborne illness for adoption by those jurisdictions that have regulatory responsibility for food service, retail, and vending operations.

It is worth noting that the Food Code suggests the use of HACCP controls at retail in some circumstances where comments argued for such controls as part of these regulations. Under the regulatory controls suggested in the Food Code, a retail establishment that purchases a scombroid toxin forming species of fish from a recreational harvester, for example, would need a HACCP plan relating to how it will ensure that fish had been handled so as to avoid time-temperature abuse. Under

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the Food Code, fish caught recreationally generally require the approval of a regulatory authority in order to be sold to a retail establishment. The States should be aware that the Food Code is responsive to concerns raised by comments in these respects. FDA urges the States to consider adopting the Food Code for retail and institutional operations.

It is worth noting that the Food Code applies HACCP requirements to retail establishments as an exception for extreme situations, rather than as the rule. There is still much to be learned about the application of HACCP to retail establishments. Also, it may not be wise to single out seafood for the application of HACCP at retail. Retail operations can be complex and involve the handling of many types of foods. Trying to operate a HACCP system solely for seafood could divert attention away from important safety practices for high-risk products other than seafood.

For all these reasons, therefore, the agency concludes that FDA should not mandate HACCP systems for the seafood component of retail establishments at this time. Also, the agency has not been provided with any information on how an FDA inspection program for such establishments would be feasible. Nonetheless, the agency will take all comments on retail establishments under advisement for future consideration as the system evolves.

It is important to note, however, that where a processor engages in mixed operations (i.e., some retail and some wholesale), as in the case of cash-and-carry warehouses noted by one of the comments, the wholesale portion of the operations will be subject to the provisions of these regulations. As a further point of clarification in response to one comment, FDA has traditionally, and will continue to, classify central kitchens that distribute product to retail outlets that are owned by the same firm as a retail operation.

b. *Warehouses.* In the preamble to the proposed regulations FDA stated that the definition of "processor" included warehouses. Warehouses store fish and fishery products, one of the operations included in the proposed definition of "processing." A "processor" is simply an entity that engages in processing.

There are food safety hazards that can be introduced while storing a product (e.g., in a warehouse). These hazards include, among other things, pathogen growth in cooked, ready-to-eat products and histamine development in scombroid toxin-forming species, as a result of improper storage temperatures. Nonetheless, the warehouse environment usually has few hazards compared to complex processing operations. Consequently, the preamble to the proposed regulations invited comment on whether warehouses should be exempted from the definition of "processor" and, by implication, whether "storing" should not be included in the definition of "processing," as one way of scaling the regulations back in terms of cost and burden.

37. The comments split about evenly on this subject. Those that gave a reason for including warehouses cited the need to monitor storage temperatures for species that are prone to safety hazards if they are temperature abused. Those that opposed and provided a reason tended to argue that storage alone should not subject an establishment to the requirements of the regulations. A related concern was the view that warehouse operators do not have a thorough knowledge of the products that they handle and only store products that are provided to them by others. This concern was expressed both by those who objected to the inclusion of warehouses and those who simply asked for clarification about the role of warehouses. Others who asked for clarification expressed the view that warehouses could be responsible for conditions during storage.

After consideration of these comments, FDA has decided to retain warehouses (e.g., public storage warehouses, foodservice distribution warehouses, and wholesale grocers) within the definition of "processor" and to retain "storing" within the definition of "processing." It is important to recognize that section 402(a)(4) of the act covers storage along with other forms of processing. It states that a product is adulterated if it is "prepared, packed, or held under unsanitary conditions * * * whereby it may have been rendered injurious to health." These regulations are being issued for the efficient enforcement of section 402(a)(4) of the act. Moreover, as described above, hazards can be introduced as well as controlled during storage. HACCP is an appropriate system for the control of these hazards.

FDA believes that the burden on warehouses will be minimal given the simplicity of the operation and the fact that, in most cases, a warehouseman's responsibility under HACCP will only extend to conditions within the warehouse that could cause a safety hazard to occur.

For the most part, hazards deriving from the environment (pesticides, etc.) will be controlled during the initial processing of the product (i.e., by the first processor to take possession). As a result, subsequent processors will receive products that are generally free of environmental hazards and thus will not need to establish HACCP controls for them. More often than not, storing will not be the first processing operation. Thus, a warehouse will not usually be responsible for environmental hazards. The same principle holds true for hazards arising during processing operations that occur before storage in a warehouse. Those hazards must be controlled during the prior processing and generally not during storage.

There may be occasions, however, when storage is the first processing operation (e.g., when a warehouse will be the first processor to receive raw material fish from a fisherman or aquacultural producer). Under these circumstances, the warehouse, rather than a distant owner of the product, may be in the best position to obtain information that may be needed about harvest site, fishing practices, and transportation to the dock that would be germane to safety. There should be some arrangement between the warehouse and the owner on this matter to ensure that environmental hazards are properly addressed.

38. One comment objected to the inclusion of storage within the definition of processing on the grounds that FDA should not dictate where CCP's should be.

The agency is not attempting to do so. FDA acknowledges that whether storage is a CCP will depend on the circumstances. For example, refrigerated storage of a scombroid species will likely be designated as a CCP, whereas dry storage of canned fish will not likely be considered as such.

39. Another comment objected to including "airline warehousing" within these regulations.

If airlines hold product as part of their usual course of business as carriers, they are exempt from having HACCP plans in accordance with section 703 of the act.

c. *Other processing operations.* 40. A few comments requested clarification on whether waterfront facilities that unload vessels and pack the catch for shipment to buyers are engaging in processing and thus meet the definition of "processor."

These firms perform activities such as handling and storing that are included in the definition of processing and fall within the purview of the "prepared, packed, or held" clause of section 402(a)(4) of the act. Additionally, these activities warrant coverage under these regulations because of their relationship to reasonably likely hazards. For example, these firms are, by design, usually the first processors to receive the product from the fisherman or aquacultural producer. As such, they are often in the best position to control environmental hazards, as was previously discussed. They also often store the product, at least for short periods of time. In this capacity, they may be responsible for ensuring that the product is not exposed to time-temperature abuse, a phenomenon that critically affects the safety of some products.

For these reasons, FDA has clarified the definition of "processing" at proposed § 123.3(m) (redesignated as § 123.3(k)) to specifically include dockside unloading.

41. One comment took the view that only processors who own the products that they are processing should be subject to these regulations and suggested that the term "processor-owner" be substituted for "processor." Several other comments questioned whether custom processors that do not own the product, should be subject to the provisions of these regulations.

The definition of "processor" does not hinge on ownership. As indicated earlier, whether a product is adulterated under section 402(a)(4) of the act depends on the condition under which it was "prepared, packed, or held." Ownership is not a relevant factor. Consistent with this principle, these regulations define a processor as simply an entity that engages in processing. "Processing" is defined as including a number of activities, such as manufacturing and packing, that are normally performed by a custom packer.

Like warehouses that store products for distant owners, custom packers are often in the best position to exercise HACCP controls for the products that they process. Because of the real-time nature of HACCP (i.e., because monitoring provides immediate feedback as to whether a hazard is being controlled), the processor can most effectively apply HACCP monitoring controls to a food being processed, regardless of whether the processor is the actual owner of the food. FDA recognizes that it will often be beneficial for the custom processor and the owner of the product to fully discuss and agree upon the HACCP controls that will be effected by the custom processor while the product is in its possession.

42. One comment argued that custom packers should be included within the scope of these regulations because these processors often can or smoke recreationally caught products and are often the only commercial entity that can assure the safety of such products. While the definition of "processing" clearly covers the kinds of activities performed by custom packers, it is not the intent of these regulations to address arrangements between a recreational fisherman and a custom packer for the processing of fish for the personal use of the fisherman. The regulations only cover custom packing that is performed on behalf of an owner who intends to introduce the fish into interstate commerce. Nonetheless, the agency does not believe that clarification to the regulations is needed on this point.

43. One comment urged that aquacultural producers that also eviscerate the fish before delivery to a processing plant be required to comply with the requirements of these regulations.

FDA agrees with the comment and further states that the process of eviscerating is specifically included in the definition of "processing." Eviscerating is excluded from the definition only when it occurs on a harvest vessel for the purpose of preparing the fish for holding en route to the processor.

44. A few comments objected to FDA including labeling in the definition of "processing." The comments argued that labeling operations are unlikely to introduce hazards to the product. FDA has considered these comments but finds that there is potential during some labeling operations for the development of hazards. For example, improperly controlled labeling operations for scombroid species could result in time-temperature abuse of the product, increasing the risk of histamine contamination. Cooked, ready-to-eat products could similarly be subjected to time-temperature abuse, resulting in the potential for pathogen growth. The inclusion of labeling in the list of processing operations is not intended to imply that this step should always, or even frequently, be considered a CCP. That can only be determined through the conduct of a hazard analysis.

FDA proposed to exempt "heading or gutting intended solely to prepare a fish for holding on board a harvest vessel" from the definition of "processing." In drafting the proposed regulations, FDA was concerned that, in the absence of such an exemption, harvest vessels that are presently heading or gutting fish would stop the practice to avoid being subject to the requirements of these regulations. FDA did not want an inadvertent consequence of these regulations to be a reduction in product quality. In addition, FDA tentatively concluded that safety hazards introduced by these operations are generally minimal.

45. One comment noted that FDA should include the practice of freezing fish on harvest vessels in the list of exempted operations.

FDA agrees that freezing is an operation that is routinely used onboard a harvest vessel in order to preserve the quality of the fish until it is landed for further processing (e.g., freezing performed onboard tuna harvesting vessels). For this reason, the agency has revised the definition of "processing" to include an exemption for onboard freezing.

46. One comment suggested that FDA also exempt onboard scallop shucking operations.

Unlike shucking other molluscan shellfish, shucking scallops involves eviscerating, a procedure that falls within the exemption in § 123.3(k). Consequently, onboard shucking of scallops does not constitute processing for purposes of these regulations. The agency does not believe that a change in the definition is necessary in this regard.

47. One comment suggested that, with respect to molluscan shellfish, "processors" should include shellfish shippers, reshippers, shucker-packers, repackers, and depurators.

The persons that perform all of these types of operations are "processors" under § 123.3(k)(1) and subject to the provisions of these regulations. Thus, the agency has concluded that no change in the definition is necessary.

16. Scombroid Toxin-Forming Species

The term "scombroid toxin-forming species" appears in § 123.6(c)(1)(vi) of this final rule. While FDA did not propose to define this term in the codified portion of the proposed regulations, it did propose to define it in part 123 appendix B as:

> [T]una, bluefish, mahi mahi, mackerel, sardines, herring, kahawai, anchovies, marlin, and other species, whether or not of the family Scombridae, in which significant levels of histamine may be produced in the fish flesh by decarboxylation of free histidine as a result of exposure of the fish after capture to temperatures that permit the growth of mesophilic bacteria.

Appendix B of part 123 is no longer included in these regulations, as is discussed elsewhere in this preamble. Consequently, FDA is transferring the definition from part 123 appendix B to § 123.3(m) to clarify the meaning of § 123.6(c)(1)(vi).

48. A number of comments objected to the inclusion of herring in the list of scombroid toxin-forming species, arguing that there has been no association between herring and cases of histamine poisoning.

In response to the comments, FDA has modified the definition of scombroid

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toxin forming species to make specific reference to only tuna, bluefish, and mahi mahi, since the overwhelming majority of scombroid poisonings are associated with these types of fish. Processors should assess the potential of other species to product histamine. The key to the definition is whether significant levels of histamine may be produced in the flesh of the fish.

17. Shellfish Control Authority

FDA proposed to define "shellfish control authority" as "a Federal or State health authority, or foreign government health authority, legally responsible for the administration of a program that includes classification of molluscan shellfish growing areas, enforcement of harvesting controls, and certification of molluscan shellfish processors."

49. A few comments pointed out that the definition should not require that a shellfish control authority be a State "health" authority because in some States the responsibility is vested in other than a health agency, such as a resource management agency.

FDA recognizes that these comments are correct. For this reason, the agency has modified the language in § 123.3(o) to read, in part, "State agency." FDA believes that this term is sufficiently broad to encompass any of the present State arrangements. FDA has made a parallel change with respect to foreign government authorities, in order to accommodate the same kind of variations in regulatory arrangements. These final regulations similarly refer to a "foreign agency."

50. One comment, from a State regulatory agency, stated that within the United States, FDA should be the responsible shellfish control authority and should mandate that processors register with FDA, much as it has done with low-acid canned foods and medical devices. The comment further stated that a requirement in Federal regulations that State agencies perform this function may be unconstitutional.

The comment misconstrued the provision. The provision is intended to define the term "shellfish control authority" rather than to provide substantive requirements. Furthermore, these regulations at no point mandate that States perform certain functions.

51. Some comments expressed concern that the proposed definition of "shellfish control authority" was too narrow in that it did not include any entities that could serve the function of a shellfish control authority for Federal waters. The effect of the proposal, the comments pointed out, would be to close unnecessarily all molluscan shellfish harvesting in Federal waters.

It was never FDA's intent to close Federal waters to molluscan shellfish harvesting. These waters are beyond the jurisdiction of State shellfish control authorities, and no Federal agency classifies them in the same way that States classify their own waters. FDA is seeking a means to classify Federal waters. An agreement with NMFS relating to the classification of Federal waters is one possible solution. For this reason, FDA has modified proposed § 123.3(o) to state that a shellfish control authority may be "a Federal agency." This subject is also discussed in the "Molluscan Shellfish" section of this preamble.

52. One comment urged that FDA provide for the possibility of sovereign tribal governments serving as shellfish control authorities.

FDA recognizes that the proposed definition was deficient because it failed to include tribal governments in the list of possible shellfish control authorities. The agency, the State of Washington, and 19 Indian tribes have recently entered into a settlement that will likely result in such an arrangement in the State of Washington (Ref. 202). When such governments meet the necessary criteria, it is the intent of the agency to formally recognize them for purposes of classifying shellfish growing waters and certifying shellfish processing plants for inclusion on the Interstate Certified Shellfish Shippers List. To provide for this situation, FDA has modified the definition of "shellfish control authority" to include "sovereign tribal governments."

FDA has also recognized that in many cases the functions of "classification of molluscan shellfish growing areas, enforcement of harvesting controls, and certification of molluscan shellfish," as listed in the proposed regulations, are not carried out by a single agency. To provide for such a situation, FDA has modified the proposed language at § 123.3(o) to read, "program that includes activities such as," rather than simply "program that includes."

18. Smoked and Smoke-Flavored Fishery Products

The terms such as "smoked fishery products," "smoked fish," "smoked and smoke-flavored fishery products" were used in the proposed regulations and throughout appendix 1 to the proposal. As a result of decisions discussed elsewhere in this preamble, reference to "smoked and smoke-flavored fishery products" has been eliminated in these regulations except in part 123, subpart B.

While no definition of "smoked and smoke-flavored fishery products" was included in the definitions section of the proposed regulations, the terms "smoke-flavored fish" and "smoked fish" were separately defined in appendix 1 to the proposal as: "*Smoked-flavored fish* means fish that is prepared by treating it with salt (sodium chloride) and then imparting to it the flavor of smoke by other than the direct action of smoke, such as immersing it in a solution of liquid smoke," and "*Smoked fish* means fish that is prepared by treating it with salt (sodium chloride) and then subjecting it to the direct action of smoke from burning wood, sawdust, or similar material." FDA solicited comment on the materials in appendix 1. Because the term is used in these final regulations and FDA is concerned that there may be confusion about its application, the agency has determined that a definition of "smoked and smoke-flavored fishery products" is needed in the codified portion of these regulations. FDA has included one at § 123.3(s) that is consistent with those proposed in the appendix 1 to the proposal. Section § 123.3(s) reads:

Smoked or smoke-flavored fishery products means the finished food prepared by: (1) Treating fish with salt (sodium chloride), and (2) subjecting it to the direct action of smoke from burning wood, sawdust, or similar material and/or imparting to it the flavor of smoke by a means such as immersing it in a solution of wood smoke.

FDA received numerous comments on the regulatory treatment of smoked and smoke-flavored fishery products, but none that would affect this definition.

E. The HACCP Plan

Approximately 100 comments addressed one or more of the provisions of proposed § 123.6. This section of the proposed regulations set out who must write and implement a HACCP plan, and what the HACCP plan must include.

1. Preliminary Steps

FDA proposed in § 123.6 to require that all processors of fish and fishery products prepare and implement a HACCP plan that identifies the hazards that are reasonably likely to occur and thus that must be controlled for that product. In the proposal, FDA acknowledged the process recommended by the NACMCF for developing a HACCP plan but did not propose to require that processors follow it. The process recommended by the NACMCF includes: Assembling a HACCP team, describing the food and its distribution, identifying the intended use and consumers of the food, developing a flow diagram, verifying the

flow diagram, and performing a hazard analysis (Ref. 34, pp. 187–188). All but the last of these have been identified by NACMCF as the "five preliminary steps" of HACCP.

It was, and still is, the agency's belief that processors would benefit from a process that included these five steps as well as a hazard analysis in order to successfully arrive at an appropriate HACCP plan. Nonetheless, the agency did not propose to require adherence to the "five preliminary steps," or explicitly propose to require that a hazard analysis be performed. So long as the processor had, in the end, a HACCP system that was appropriate for species and process, and was being implemented effectively, the agency tentatively concluded that these regulations did not need to manage the process any further.

53. A number of the comments contended that FDA should require that firms adhere to these procedures in preparing a HACCP plan. Specifically, a few comments argued that the proposed rule significantly diminished the potential effectiveness of HACCP by not requiring that processors engage in the "five preliminary steps." The comments argued that inclusion of the preliminary steps would facilitate international trade and reduce confusion on the part of seafood importers and exporters through consistency with an internationally recognized standard for HACCP.

Several other comments urged that the NACMCF recommendation for the development of a process flow diagram, in particular, by a processor be made mandatory. These comments identified several benefits from such a requirement: To facilitate employee implementation of the plan, to facilitate processor verification activities, to reduce the time needed for regulators to review the manufacturing process, and to enable the regulator to determine whether the processor properly considered the entire manufacturing process. One comment stated that FDA's assumption that flow diagrams are burdensome or unnecessary is contrary to the 1992 NACMCF Report which notes that flow diagrams could be simple representations that accurately depict the steps in a process, rather than detailed, technical drawings.

FDA acknowledges that, for the reasons stated in the comments, many processors will find that the development of a flow diagram is a useful preliminary step to the preparation of a HACCP plan. Other processors may find, however, that, because of the simplicity of their operations, the preparation of a written flow diagram is an unnecessary step. In either case, FDA is convinced that a processor's decision to develop or not to develop a flow diagram will be, and should be, driven by its perception of the benefits of doing so. The comments received on this subject were not sufficiently persuasive for the agency to conclude that a flow diagram should be made mandatory. The comments provided no basis to find that in the absence of a flow diagram, a processor could not properly develop a HACCP plan, or that a plan, so developed, would likely cause the HACCP program to fail.

As some of the comments pointed out, there may be some benefit to the regulator to have access to a flow diagram during an inspection, but this convenience is not a sufficient reason to mandate it. FDA investigators will likely develop their own flow diagrams during their in-plant inspections and compare them with the decisions reached by the processor in the development of the HACCP plan (e.g., the identification of hazards and CCP's). While it may be beneficial for the investigator to be able to compare his or her flow diagram with that of the processor, it is not essential to the conduct of the inspection.

FDA agrees with the comments that stated that the other four elements of the "five preliminary steps" are desirable attributes of the HACCP development process. However, the agency has not been persuaded that, in the absence of a regulatory requirement that they be followed, the HACCP program is unlikely to succeed. In order to write an appropriate plan some or all of these steps will likely have to be performed, even without a regulatory requirement to do so. However, if a processor can write a plan without these steps, the goals of the regulations will still have been met. For FDA to require them to be performed and documented in every case would add burden and reduce flexibility unnecessarily. Moreover, FDA is unconvinced that any inhibition to foreign trade is likely to occur if adherence to these steps is not required. FDA believes that foreign trading partners will be satisfied by the presence of a successful HACCP system and will not reject U.S. exports because steps preliminary to HACCP were not documented.

Even without a requirement mandating specific preliminary steps, FDA believes that most processors will follow the spirit, if not the exact letter, of the recommended procedures. These procedures provide the processor with a recognized method of plan development that will help lead to a successful outcome. FDA is primarily interested in that outcome. The NACMCF recommendation for the assembly of a HACCP team, in particular, could be a significant burden for the many small businesses operating in the seafood industry. For these reasons, the final regulations do not mandate any preliminary steps that processors must perform as a prerequisite to conducting a hazard analysis or drafting a HACCP plan.

2. Conducting a Hazard Analysis

54. A number of comments from trade associations and processors objected to the requirement in the proposal that every processor have and implement a written HACCP plan. These comments contended that FDA should revise this provision to require that a processor first conduct a hazard analysis to determine whether any food safety hazards exist that can be controlled through HACCP and then prepare and implement a HACCP plan only when the hazard analysis identifies at least one such food safety hazard. One comment stated that conducting a hazard analysis is the first step in a two-step process, with developing a HACCP plan being the second step. The comments urged consistency with the NACMCF recommendations in this regard.

FDA agrees with the approach suggested by the comments and believes that it is essentially consistent with what the agency proposed. Although FDA did not explicitly propose to require that every processor conduct a hazard analysis, completion of such an analysis by every processor was implicit in the requirement in proposed § 123.6(b)(1) and (b)(2) that processors identify both the hazards that are reasonably likely to occur and the CCP's for each of these hazards.

In response to the comments, FDA has decided to clarify its regulations to make the requirement that a hazard analysis be conducted explicit rather than implicit in order to clarify the steps that are required as part of a HACCP system. Moreover, this change allows the agency to make clear that conducting the analysis may or may not lead to the preparation of a HACCP plan.

Thus, FDA is providing in § 123.6(a) that processors shall conduct a hazard analysis or have one conducted on their behalf. It is the agency's expectation that most seafood processors will, after performing a hazard analysis, find it necessary to control for at least one hazard and, therefore, be obligated to prepare a HACCP plan. However, when no hazard is reasonably likely to occur, there is no reason to prepare a HACCP plan. Therefore, § 123.6(b) states, in

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part, "(b) *The HACCP plan.* Every processor shall have and implement a written HACCP plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, as described in paragraph (a) of this section."

The agency does not believe that the methodology of conducting hazard analyses is sufficiently standardized at this time to justify mandating what the analysis must include. FDA encourages processors to utilize the NACMCF document as guidance in performing this activity. In addition, the agency recognizes that the best way for it to verify a processor's hazard analysis is indirectly, through its own evaluations of whether a processor ought to have a HACCP plan, and whether a HACCP plan appropriately identifies the food safety hazards and CCP's that are reasonably likely to occur. In other words, it is the end product of the hazard analysis, the HACCP plan and its implementation, that should be judged by the regulator. For this reason, the agency is not requiring that hazard analyses be performed according to a standardized regimen, or that they be documented in writing for FDA review.

Even though FDA is not requiring that the hazard analysis be available to the agency, there may be cases in which it would be to the processor's advantage to have a carefully documented written hazard analysis to show to FDA. Such documentation may prove useful in resolving differences between the processor and the agency about whether a HACCP plan is needed and about the selection of hazards, CCP's, and CL's. Written hazard analyses may also be useful to processors in that they may help provide the rationale for the establishment of critical limits and other plan components. Having the basis for these decisions available may be helpful when processors experience changes in personnel, especially those associated with the HACCP process, and in responding to unanticipated CL deviations.

3. Types of Hazards

FDA received a number of comments on the types of hazards that a mandatory HACCP system should control, and that the hazard analysis should examine. The proposed regulations did not distinguish among hazards but proposed to require that HACCP plans identify all food safety hazards that are reasonably likely to occur. The comments that addressed the question of what types of hazards mandatory HACCP should address generally preferred that its focus be on some subset of hazards, rather than on the entire spectrum that could cause seafood to be adulterated. The comments argued that the hazards that were not the focus of the HACCP regime established by the regulations could be covered by more traditional food safety mechanisms. A review of these comments follows.

55. Several comments, from processors and trade associations, stated that the hazard analysis should only be used to identify those food safety hazards that have the potential to cause "serious adverse health consequences." These comments stated that such consequences included those that would trigger a "Class I" recall as defined by FDA, particularly those that involve contamination of the food with pathogenic microorganisms. A Class I recall involves a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death and would not be used to respond to situations in which the health consequences are temporary, medically reversible, or remote (21 CFR 7.3(m)(1) and (m)(2)). Other processor comments suggested the use of the phrase "significant food safety hazard" to limit the scope of the HACCP regime without proposing a definition for the phrase.

One comment stated that focusing on truly serious hazards is the only way to keep the number of CCP's to a minimum, so that a HACCP plan can realistically be implemented. The comment also stated that having too many CCP's, or CCP's that are not related to serious health risks, would so burden food processing personnel that effective compliance with the HACCP plan would be undermined, and it would be significantly more difficult to control truly critical processes.

Several of these comments argued that hazards should have immediate, as well as serious, health consequences before being required to be identified in a HACCP plan. These and several other processor comments generally expressed the view that hazards that can cause a food to be adulterated under the act, but that do not have the potential to cause acute illness, should not be required to be included in a HACCP plan. For example, two of the comments stated that FDA should not use the HACCP regulations to ensure conformity with food additive regulations, pesticide residue tolerances, or action levels for environmental contaminants. One comment stated that although process controls that are similar to HACCP controls are often used by food manufacturers to monitor these kinds of contaminants, the controls should not be regarded as part of HACCP because they do not address acute health hazards. A few comments suggested that existing regulatory programs are adequate to address these types of hazards.

On the other hand, comments from one trade association and a number of individuals acknowledged that drug residues and pesticide residues should be addressed by HACCP plans; where they are likely to occur at levels over tolerance. Comments from a number of processors of aquaculture-raised finfish acknowledged that drug and pesticide residues are food safety hazards that affect their industry, but these comments questioned the appropriateness of the control mechanisms provided in FDA's draft Guide. Finally, comments from several consumer advocacy groups expressed continued concern for the hazards posed by environmental contaminants.

Having considered these comments, FDA confirms its tentative view, reflected in the proposal, that HACCP should be the norm, rather than the exception, for controlling safety related hazards in the seafood industry. Existing standards for such contaminants as drug residues, pesticides, and industrial contaminants, are established to ensure that their presence in foods does not render the food unsafe. Processors of fish and fishery products are obliged to produce foods that meet these standards.

Processors are obliged to exercise control over all food safety hazards that are reasonably likely to occur. A failure to do so would mean that the food was prepared under insanitary conditions whereby it may have been rendered injurious to health or is otherwise adulterated. The criteria for including a food safety hazard in a processor's HACCP plan should be the degree to which the hazard is likely to develop in that product (e.g., based on the processing technique, the harvest location, the species) and not the nature or immediacy of the illness or injury that it is likely to cause.

FDA views as highly speculative the concerns, expressed by a few comments from the food industry, that inclusion in HACCP of those hazards that generally require chronic exposure to produce disease will dilute HACCP systems to the point of shifting industry resources away from acute toxicity hazards. No evidence was submitted to support such claims. The pilot HACCP program conducted jointly by FDA and NMFS, the current NMFS voluntary HACCP program, and the NMFS Model Seafood Safety Program all included controls for food additives, primarily a nonacute

food safety hazard, and there has been no diminution of control of acute hazards as a result. Moreover, the agency is convinced that when determining, in accordance with § 123.6(a), what contaminant hazards are "reasonably likely" to occur in a particular type of product, most processors will have very few, if any, of these chronic exposure-type hazards to manage through HACCP as opposed to through some other method of control.

FDA intends to monitor the progress of the seafood HACCP program to judge, among other things, whether the application of HACCP to food safety hazards generally, rather than to the most extreme acute hazards, overloads the HACCP system and dilutes its effectiveness for all hazards. Until such an effect is actually found to occur, FDA is persuaded that the systematic application of preventive controls to food safety hazards generally will provide the American consumers with the most effective and efficient food safety system that has been devised to date. If FDA were to determine that HACCP needs to be scaled back in order to make it work, the agency will take appropriate steps to make such a change.

One other factor bears mention in this regard. FDA has long been aware of consumer concern about environmental contaminants in fish and fishery products. As previously mentioned, this concern was expressed in the comments to the proposed regulations. The chance that these regulations will increase consumer confidence in the safety of seafood products would be greatly diminished if these regulations did not require processors to consider the risks from these contaminants as part of their hazard analysis.

56. A comment from a trade association stated that, while there is potential for an unapproved direct or indirect food or color additive to be a health hazard, the use of an additive that has not been listed for use in fish but is routinely used throughout the food industry would not necessarily be likely to cause harm to human health. The comment said that a control for use of the additive should not be required to be included in a HACCP plan.

Under the act, certain products, such as food additives, new animal drugs, including new animal drugs intended for use in aquaculture, and pesticides, require premarket approval before they may be legally used. Moreover, this approval can be limited so that the product may only be used legally on or with specific foods, or for specific purposes, for which approval has been obtained. This limitation reflects a longstanding realization that the safety of these types of products is variable and must be established on a use-by-use basis. Whether an additive, drug, or pesticide is safe for a particular use, in a particular food, at a particular level, depends on factors such as the amount of the food that is consumed and, if the additive, drug, or pesticide is ingested in a living animal before capture, how the product is metabolized in that animal.

Therefore, a food additive that has been approved for use in some foods, but not fish and fishery products, is deemed by the act to be unsafe for use with fish and fishery products. FDA is not in a position to change this aspect of the law through regulations. Consequently, the agency has not created an exemption from the requirement for HACCP controls for safety hazards caused by the presence of unapproved additives or other products that lack premarket approval for fish or fishery products.

The agency is aware that it is possible that some of these products may pose no meaningful risk in fish and fishery products at levels approved or allowed in other foods. It is the obligation of the proponent of the use of the substance to follow applicable statutory procedure to establish this fact to FDA's satisfaction.

57. In the preamble to the proposed regulation, FDA specifically invited comment on whether, in order to reduce the burden of HACCP on the industry, as in the Canadian fishery products HACCP regulation, the agency should limit its HACCP approach to cover only those hazards that are introduced within the confines of the processing plant. This type of limitation would eliminate mandatory control of environmental hazards such as pesticides, natural toxins, industrial contaminants, and aquaculture drugs through the HACCP system.

One comment contended that a processor of fishery products would be in a difficult position attempting to exercise control over problems that occur during harvesting. The comment stated that the purpose of HACCP is to require that each processor be responsible for minimizing those serious hazards that it is in the best position to control, but that the proposed regulations would force the processor to take responsibility for hazards that it may be poorly suited to control. The comment argued that FDA's intent was to deploy HACCP solely as a way of reducing the agency's inspectional burden. The comment further stated that the focus should be on finding those few CCP's within a specific process where a serious hazard can best be controlled. Several other comments expressed confusion about the application of HACCP to environmental hazards.

The preamble to the proposed regulations described the link between environmental hazards, such as natural toxins (e.g., ciguatera toxin, domoic acid, and saxitoxin), histamine, and various viral and bacterial pathogens, and human disease. The NAS' "Seafood Safety" report (Ref. 7, p. 1) suggested that the most significant reduction in illness from seafood would come from the control of environmental hazards. To eliminate coverage of such hazards from these regulations would be to eliminate the greatest share of anticipated benefits.

The preamble to the proposed regulations provided a number of ways in which the processor can exercise control over environmental hazards. This control derives from the fact that responsible processors already exercise discretion in obtaining their raw materials. Control is achieved by checking tags on containers of molluscan shellfish to ensure that they are harvested only from approved waters, checking with fishermen to ensure that finfish do not originate from harvest areas that are closed due to the presence of excessive agricultural or industrial contaminants, and physically examining incoming histamine-forming species for evidence of decomposition and insisting that harvest vessels exercise control over the time and temperature of storage for these species. Similarly, processors of aquaculture-raised species can audit or otherwise insist on a producer controls over the use of animal drugs or other hazards resulting from inappropriate husbandry practices. In a HACCP system, these are examples of controls that can be applied at the first CCP, i.e., at the receipt of raw materials.

FDA concludes that the measures that a processor takes to ensure that its raw materials are free of environmental hazards are a critical part of a seafood HACCP program. Responsible processors already exercise the kind of control necessary to ensure that their raw materials do not present such a hazard. If a likely hazard exists, it would not be sufficient to use the price offered for raw materials to be the only measure to protect against the hazard.

For these reasons, FDA has retained environmental hazards in the list of food safety hazards that processors should consider in § 123.6(c)(1). To clarify that there are hazards that occur before receipt of raw materials that can be controlled nonetheless by examination or discretion at the

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receiving CCP, FDA has modified § 123.6 by including the following sentence in § 123.6(a), "Such food safety hazards can be introduced both within and outside the processing plant environment, including food safety hazards that can occur before, during, and after harvest."

For consistency, § 123.6(c)(2) needs a space here provides for both types of CCP's, and now reads:

(2) List the critical control points for each of the identified food safety hazards, including, as appropriate: (i) Critical control points designed to control food safety hazards that could be introduced in the processing plant environment, and (ii) Critical control points designed to control food safety hazards introduced outside the processing plant environment, including food safety hazards that occur before, during, and after harvest.

Because most of the environmental hazards to which fish are exposed will be controlled by the first processor to take possession of the fish from the fisherman or aquacultural producer, whether that processor is located in the United States or in another country, subsequent processors need not focus on these hazards in their HACCP plans. For example, pesticide contamination of inland and near shore finfish can be effectively controlled by the first processor by purchasing from fishermen who do not harvest in areas that have been closed by regulatory authorities, and drug residue contamination can be effectively controlled by the first processor by purchasing from aquaculture producers who use animal drugs properly.

4. When Is a Hazard Reasonably Likely To Occur?

In the proposal, FDA identified nine categories of safety hazards that might occur in fishery products. The agency tentatively concluded that a processor must establish HACCP controls when one or more of the listed hazards is reasonably likely to occur.

58. A number of comments, from processors and a trade association, questioned whether certain of these nine hazard categories by themselves justify a HACCP plan. The comments challenged the likelihood that some of these hazards would cause harm and asked for clarification on how a processor is to determine whether a hazard is "reasonably likely to occur." One comment held that, if the term "reasonably likely to occur" is linked to actual incidents of illness caused by a given hazard, it would be inappropriate to define some of the listed hazard categories as reasonably likely to occur. This comment also requested that FDA clarify whether the hazards identified in its draft Guide are those that the agency believes are reasonably likely to occur under all conditions for the listed species and processing methods. The comment further noted that residues of industrial or agricultural chemicals present in seafood are usually not present at levels that are reasonably likely to be a safety hazard, even in many of those species that are listed in the Guide as presenting that hazard.

As discussed in the preamble to the proposed regulations, FDA recognizes that HACCP need not be used to control every theoretical hazard, no matter how remote the likelihood of its occurrence. Moreover, as discussed earlier in this preamble, case law interpreting section 402(a)(4) of the act has held that conditions must be such as to create a reasonable possibility that a hazard will occur in order for product to be adulterated under that section of the law. (See *United States* v. *1,200 Cans, Pasteurized Whole Eggs, Etc.*, 339 F. Supp. 140–141.)

Unquestionably, historical occurrence of reported illness is an appropriate starting place for the identification of food safety hazards that are reasonably likely to occur in the absence of controls. For example, illness from scombrotoxin in those species that form the toxin if subjected to time and temperature abuse after harvest is one of the most frequently reported illnesses from seafood. Moreover, the relationship between abuse after harvest and the formation of the toxin is well established. FDA can say with comfort, therefore, that scombrotoxin poisoning is a hazard that is reasonably likely to occur in the absence of appropriate controls for scombrotoxin-forming species of fish.

For some hazards, however, the incidence of reported illness is very low. A good example is illness from the consumption of raw fish species that are prone to parasites. The low number of reported illnesses is probably attributable to underreporting and to the fact that controls for this hazard (e.g., commercial blast freezing that kills parasites) generally exist. However, it is well established that in the absence of controls, infection from parasites is a hazard that is reasonably likely to occur when a species that is prone to parasites is consumed raw.

The incidence of reported illness that is linked to a specific food is virtually nonexistent when the illness is the result of chronic exposure to a chemical contaminant. It is extremely difficult, for example, to link a specific case of cancer to a specific contaminant in food. However, where public health officials have determined that a contaminant represents a chronic health hazard, the standard control strategy to be employed by processors for such contaminants is to ensure that their presence in food remains below specific levels.

Processors are advised of such chronic health hazard determinations through FDA action levels, publications (e.g., **Federal Registers** at 55 FR 14359, April 17, 1990; 58 FR 11609, February 26, 1993; and 58 FR 48368, September 15, 1993), or other similar guidance documents. If the contaminant is present in food in an amount that is above that level, the food represents a hazard to health that the evidence from the chronic studies shows is reasonably likely to occur. The question, then, is whether the likelihood of finding a fish in which the contaminant is at a higher than acceptable level is an event that is reasonably likely to occur. For open ocean species of fish, for example, a finding of pesticide residues above nationally established tolerances can be a very rare event. For near shore species in certain locations, however, a finding above tolerance can occur often enough so as to warrant controlling for it as a matter of reasonable prudence.

The incidence of reported illness for a particular hazard may also be nonexistent or very low because the hazard may be too new to have generated reported illnesses. The emergence of natural toxins harmful to humans in species or in locales where the toxin has not been found before is a well known phenomenon in seafood. While FDA does not expect that HACCP controls should be in place to control for the possibility of such hazards—the hazard may or may not ever occur—the agency strongly believes that once a hazard does emerge and is identified, HACCP controls are highly appropriate to keep illnesses from occurring. For the duration of the a hazard, it must be treated as one that is reasonably likely to occur.

To provide clarification on the above points, FDA has modified § 123.6 by including the following sentence in new § 123.6(a):

A food safety hazard that is reasonably likely to occur is one for which a prudent processor would establish controls because experience, illness data, scientific reports, or other information, provide a basis to conclude that there is a reasonable possibility that it will occur in the particular type of fish or fishery product being processed in the absence of those controls.

To reinforce that it was not FDA's intent to suggest that all of the nine hazard categories that it listed in § 123.6(c)(1) are reasonably likely to occur in all circumstances, the agency has modified the language in this provision to read in part, "Consideration should be given to whether any food safety hazards are reasonably likely to occur as a result of the following:" (the list of nine categories follows in the text).

The Guide is not intended as a definitive list of the hazards that are reasonably likely to occur, under all conditions, for those species and processing methods listed.

HACCP is a operation-specific process. For this reason, the processor must decide on a case-by-case basis what hazards it needs to address; that is, what hazards are reasonably likely to occur. The purpose of the hazards portion of the Guide is to provide a listing of hazards, by fish species and by finished product type, that FDA knows to have a reasonable potential for occurrence in the product.

FDA encourages processors to use the Guide, as well as any other available information, to decide what hazards need to be addressed in any particular plan. Processors need to recognize that they need to use judgment in applying the Guide to their own particular circumstances. For example, a processor of one species of fish may find that pesticide contamination is listed as a hazard for the species, but may be aware of credible data that demonstrate that the water from which it obtains its fish is free of such contamination. In that case, the processor is free to deviate from the guidance. FDA intends to clarify the Guide on this point by distinguishing between hazards that are reasonably likely to occur all of the time (e.g., histamine in species that are prone to it) and hazards that are reasonably likely to occur under certain circumstances (e.g., certain toxins when a "bloom" is occurring).

5. The Plan: Specific Considerations

59. FDA proposed that HACCP plans be specific to each processing location and to each kind of fish and fishery product processed by a processor, except that the plan may group kinds of fish and fishery products together if the hazards, CCP's, CL's, and procedures required to be included in the plan are identical. A few comments from processors and trade associations suggested that production methods should also be allowed to be grouped together so long as the hazards and the control procedures for the production methods are identical. The comments suggested that grouping would reduce the paperwork burden on some processors without altering the benefits attainable through HACCP.

FDA agrees with the suggestion for the reason presented by the comments and has modified § 123.6(b) accordingly, to read, in part:

A HACCP plan shall be specific to: (1) Each location where fish and fishery products are processed by that processor; and (2) Each kind of fish and fishery product processed by the processor. The plan may group kinds of fish and fishery products together, or group kinds of production methods together, if the food safety hazards, critical control points, critical limits, and procedures required to be identified and performed in paragraph (c) of this section are identical for all fish and fishery products so grouped or for all production methods so grouped.

60. In the proposal, FDA specified that a HACCP plan must identify: The applicable food safety hazards; the CCP's; the CL's; the control and monitoring procedures; and the recordkeeping procedures. A few comments suggested that FDA use the word "list" or "include" rather than "identify" to describe a requirement for an item to appear in the HACCP plan. The comments suggested that it is not clear from the word "identify" whether the regulations are intended to require that the plan contain or include the actual values (e.g., the temperature of a refrigerator) or a description of the procedures, or whether it is permissible simply to make reference to their existence in a guideline or other source.

FDA's intent is that a HACCP plan explicitly include the value or a description of the procedures for each of the required HACCP elements. FDA agrees that a word such as "list" would be less ambiguous. Therefore, FDA has revised § 123.6 (c)(1), (c)(2), (c)(3), and (c)(4) by substituting the word "list" where the word "identify" appeared in the proposed regulations.

FDA has also revised § 123.6(c) by making another clarifying change. The agency has added the phrase "at a minimum" to the introductory statement to make clear that the required plan contents do not restrict a processor from including additional information in the plan, where it may be appropriate.

61. Two comments requested that FDA specify that decomposition, listed as one of the hazard categories in the proposal, is a hazard only in scombroid toxin-forming species.

These comments stated that decomposition in other species is not a safety hazard but is an economic and aesthetic problem.

FDA agrees with the comments in part. FDA's intent was to require control of decomposition in a HACCP plan only when it represents a food safety hazard. As described in the preamble to the proposed regulations, histamine (scombroid toxin) development as a result of microbiological decomposition in certain species of fish is a well recognized food safety hazard (Ref. 5, p. 24). There are some early indications, however, that the development of putrescine and cadaverine, also byproducts of decomposition of fish, under certain circumstances, may also represent food safety hazards (Ref. 203, p. 240). For this reason, FDA is hesitant to limit the safety concern associated with decomposition to the production of histamine. Accordingly, FDA has modified § 123.6(c)(1)(vi) to read, "Decomposition in scombroid toxin-forming species or in any other species where a food safety hazard has been associated with decomposition."

62. Comments from two State government agencies and a trade association stated that FDA should eliminate parasites as a safety hazard that must be considered for inclusion in a processor's HACCP plan. The comments noted that, with respect to pathogens, FDA makes the assumption that raw fish will be further processed by cooking, and that, therefore, that the pathogens will be destroyed and not pose a health hazard. The comments urged that the same rationale be applied to raw fish that may contain parasites. The comments further suggested that the retail level is appropriate point of control for parasites, and that the provisions of the Food Code are adequate to address this issue.

The comments further argued that parasites pose a hazard only in certain species that are consumed raw, and that mandatory control procedures for all fish that are consumed raw would create an enormous economic hardship for some segments of the industry. In particular, one of the comments contended that parasites have never been a problem in the large tunas that are eaten raw, and that it should not be necessary to freeze such fish before they are sold for raw consumption.

FDA's intent is to require control of parasites in a HACCP plan only in those instances when parasites are reasonably likely to occur in the portion of the flesh that is consumed, and the presence of the parasites will present a food safety hazard (e.g., where the fish is offered for raw consumption). To clarify this intent, FDA has modified § 123.6(c)(1)(vii) to read:

Parasites, where the processor has knowledge or has reason to know that the parasite-containing fish or fishery product will be consumed without a process sufficient to remove the hazard, or where the processor represents, labels, or intends for the product to be so consumed.

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With regard to the comparison made by comments that FDA is requiring control of parasites in raw fish but not pathogens in raw fish, the characterization of FDA's policy towards pathogens is inaccurate. The sanitation provisions of these regulations are designed, in large part, to minimize the presence of pathogens in fish and fishery products, whether they are raw or further processed. The major opportunity for the introduction of enteric pathogens to processed fish and fishery products is from the processing environment as a result of insanitary practices rather than by the carcass of the animal (Refs. 3, p. 267; and 7, p. 33). For this reason, sanitation controls designed to prevent contamination of fish flesh are important to minimize the levels of enteric pathogens found on processed fish (Refs. 3, p. 10; 7, p. 27; 204; and 205). The agency is convinced that, if followed, these controls will be effective in minimizing the presence of such pathogens. Moreover, FDA has long enforced a zero tolerance for the presence of *Salmonella* on raw fish, based, in part, on the avoidability of such contamination through the application of CGMP's.

63. One comment stated that the term "physical hazards" in the proposal could be interpreted to include nonsafety related hazards.

In § 123.6(c), physical hazards are one of nine listed causes of "food safety hazards" that processors should consider for listing in their HACCP plans (§ 123.6(c)(1)(ix)). Thus, the agency believes that the language of this section clearly applies to food safety hazards only, and no modification of the provision is necessary in response to this comment.

FDA proposed that HACCP plans include the CL's that must be met at each CCP. FDA received no significant comment on this section (§ 123.6(c)(3)) and has made no substantive changes to it.

FDA proposed to require that HACCP plans include the procedures for both "monitoring" and "controlling" the CCP's. FDA recognizes that monitoring and controlling serve different purposes, and that the appropriate HACCP principle is the monitoring of CCP's to ensure conformance with the CL (Ref. 34, p. 197). How a processor exercises control is not critical to product safety so long as the CL is not exceeded. There are many ways to maintain control. No one way or list of ways needs to be stated in the plan so long as monitoring is taking place at an appropriate frequency to ensure that control is occurring and to detect CL deviations when they occur. For this reason, FDA has modified § 123.6(c)(4) to read, "(4) List the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits."

FDA has also eliminated the reference in § 123.6(c)(4) to consumer complaints as a monitoring tool. As explained in more detail in the "Consumer Complaints" section of this preamble, FDA has concluded in response to comments that consumer complaints generally do not provide the processor with the kind of immediate feedback about whether the process is under control that monitoring should provide in a HACCP system. Consumer complaints may provide the processor with information that would be useful for verification purposes, however. These regulations therefore require processors to take consumer complaints into account as verification tools (§ 123.8(a)(2)(ii).

Likewise, FDA has moved the reference in the proposed regulations to the calibration of process monitoring instruments to the new "Verification" section of these regulations (§ 123.8), and it has eliminated the specific reference to computer software validation. As explained in more detail in the "Verification" section of this preamble, FDA has concluded in response to comments that calibration is a verification function that provides the processor with information about whether its monitoring equipment is functioning properly. Computer software validation is a form of calibration and need not be addressed separately in these regulations.

64. In the preamble to the proposed regulations, FDA asked for comment on whether guarantees from suppliers should be considered as an acceptable way of meeting the proposed monitoring requirement. Comments from a number of processors responded that a certificate from a producer that a lot of raw material fish is free from unacceptable levels of pesticide and drug residues should be an acceptable means of monitoring the hazards of animal drug and pesticide residues in aquaculture-raised fish. The comment held that reliance on suppliers' certificates may be necessary because of the logistical problems that could be associated with analyzing raw materials for pesticides and drug residues. Of particular concern, the comments said, is the time necessary to analyze the samples. The comments further stated that the certificates should be based on participation in an industry-wide quality assurance program designed to ensure that the raw materials are free from these hazards.

FDA believes that caution is warranted on the subject of supplier guarantees. Where more direct controls are available, they should be used. In the case of aquaculture-raised fish, more definitive controls than the acceptance of a certificate attesting to the absence of unapproved drug residues alone are available to a processor, and these controls are not unduly burdensome. They include the review of the supplier's animal drug control records when the lot is offered for sale and a system of onsite audits of the supplier, either by the processor or by a third party. Such alternatives are also available for most raw material hazards (e.g., checking container tags and harvester licenses as a means of controlling microbiological contamination in molluscan shellfish, and checking vessel storage records as a means of controlling histamine development in scombroid species). However, the agency recognizes that there may be some instances in which such controls are not possible, and suppliers' certificates or guarantees are the only available monitoring tool. In those cases, verification of the effectiveness of the certificates may be critical. Thus, the extent to which suppliers' guarantees can be relied upon will have to be considered on a case-by-case basis. However, FDA has made no change in § 123.6(c)(4) in response to the comments.

FDA has added § 123.6(c)(5) that describes requirements of the HACCP plan with regard to corrective actions. As explained in more detail in the "Corrective Actions" section of this preamble, FDA has concluded in response to comments that these regulations should provide the processor with the option of predetermining corrective actions. Predetermined corrective action procedures have the potential to enable a processor to take faster action when a deviation occurs than would be possible in the absence of such procedures, and to make a more timely response to the deviation when trained or otherwise qualified individuals are not readily available.

FDA has also added § 123.6(c)(6), which describes the requirements of the HACCP plan with regard to verification. As explained in more detail in the "Verification" section of this preamble, FDA has concluded in response to comments that a processor needs to specifically include in its HACCP plan the verification procedures that it will use and the frequency with which it will use those procedures. FDA finds

that inclusion of this information in the plan is necessary to underscore that a processor has an ongoing obligation to be sure that the verification steps that it has determined are necessary are readily ascertainable by the processor and its employees as well as by regulatory officials.

FDA proposed to require that HACCP plans provide for a recordkeeping system that documents the monitoring of CCP's. The proposed regulations also provided that the records must include the actual values obtained during monitoring and any consumer complaints that relate to the operation of CCP's or possible CL deviations. FDA has removed the latter provision, relating to consumer complaints, from § 123.6(c)(7). As explained above, these final regulations treat consumer complaints as verification tools rather than monitoring tools. Consequently, consumer complaints need not be included in a recordkeeping system that documents the monitoring of CCP's. A full discussion of issues relating to consumer complaints is presented in the "Consumer Complaint" section of this preamble.

6. Positive Versus Negative Recordkeeping

The preamble to the proposed regulations invited comment on whether it was necessary for the results of monitoring (i.e., the actual values) to be recorded regardless of whether a CL was met (positive recordkeeping), or whether it was only necessary to record information when a CL was not met (negative recordkeeping). The agency noted that negative recordkeeping is presumably less expensive than positive recordkeeping.

65. A substantial number of comments addressed this issue. Approximately two-thirds of these comments, including those from trade associations, processors, Federal, State, and foreign government agencies, consumer advocacy groups, and a professional society, supported requiring positive records. The remaining one-third of the comments that addressed this issue, from trade associations, processors, and Federal and State government agencies, argued that records should only be required when a CL deviation occurs, or that positive records should be required or encouraged, but that FDA should be granted access to only the negative records.

In general, the comments supporting the need for positive records recognized that monitoring records serve two major purposes: To facilitate the identification of trends that would lead to a loss of control if not caught in time and to document compliance with, or deviations from, CL's. Comments from a large processor and a trade association stated that, based on their extensive experience with HACCP, positive monitoring records provide a pattern of results and values that is much more meaningful than sporadic negative records alone. Several comments stated that positive recordkeeping facilitates the taking of corrective action before the CL's are exceeded.

Several comments stated that a provision that required only negative records would penalize the firms that already maintain records of all CCP observations. A few comments suggested that neither firm management nor FDA could verify that the monitoring procedures specified in a processor's HACCP plan are being carried out if only records of deviations from CL's are kept, because there would be no records to indicate that the other checks were actually being made. A comment from a consumer group further argued that allowing the use of negative records alone could create the opportunity for processors to limit their monitoring, because no records would be needed to demonstrate that such monitoring was performed.

Most comments that supported the use of negative records alone stated that positive recordkeeping and the review of positive records was overly burdensome for both the industry and the regulator. A few comments stated that positive records generate massive databases that disguise CL deviations, rather than illuminate them. No examples of this phenomenon were provided, however. One comment suggested that since FDA inspects most processors once a year or less, it is questionable whether the agency would be in a position to pick up trends in the data from a review of all the positive records that would be retained. Another comment stated that it is just as unrealistic to expect FDA investigators to review all positive records as it is for FDA to inspect all fish. A few comments argued that the sheer volume of the paperwork produced with positive recordkeeping would result in technical or clerical errors by processors that could result in products being deemed by FDA to be adulterated.

Several comments suggested that a system where CL deviations trigger remedial actions, which are properly documented, should be sufficient for FDA's verification purposes. One comment suggested that because processors can falsify positive records as well as negative records, FDA was mistaken if its motive for proposing to require positive records over negative records was to help prevent unscrupulous processors from circumventing the system. An additional comment supported limiting mandatory HACCP recordkeeping to negative records because FDA could not rule out the possibility that future court decisions or changes in FDA policy might permit the disclosure of HACCP records in FDA's possession, and negative recordkeeping would reduce a company's potential exposure.

FDA's reasons for proposing positive records match those in the comments that support these kinds of records. As the preamble to the proposed regulations noted, recordkeeping is the key to HACCP, enabling the processor and the regulator to see the operation through time. Negative records alone do not allow this assessment over time and do not provide assurance that the appropriate monitoring was even performed.

FDA cannot conclude from the comments that supported negative records that the burden of positive recordkeeping is excessive or otherwise outweighs the benefits. The agency acknowledges that a requirement for positive records may be more burdensome than one that only requires negative records. However, FDA received no new data on this issue. Positive recordkeeping can be extremely simple and need not take much longer to perform than the monitoring necessary to determine whether the process is in control (e.g., noting the temperature of a refrigerator in a logbook located next to the refrigerator). The agency is convinced that this minimal additional effort greatly increases the chances that a processor's HACCP program will be successful.

Based largely on FDA's experience with the positive recordkeeping requirements in the low-acid canned food and the acidified food industries, FDA does not agree that the volume of positive records that a system will generate will defeat the system by hiding CL deviations or trends toward such deviations. FDA's regulations at parts 113 and 114 require that these industries perform positive recordkeeping at identified CCP's. The industry itself requested this requirement.

FDA has found that these processors have no trouble making positive records, and that both the processors themselves and the regulators become adept at reviewing them and deriving benefits from them that would not have been available from negative records. These benefits have included being able to pinpoint with confidence when a

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deviation began and ended, being able to react to trends toward a loss of control, and being able to prove that CCP's were actually being monitored as often as necessary to ensure control. The relative volume of records has not served as a roadblock in this regard.

It is unlikely that FDA investigators will review all monitoring records during routine inspections, except in highly unusual circumstances. As has been the case with FDA inspections of low-acid canned foods and acidified foods, the agency will, in most cases, select records to represent the production since the last inspection. This technique has proven to be both effective and efficient.

As for the concern that the agency will declare product adulterated on the basis of technical or clerical errors in positive-type records, the agency advises that it is not its intent to pursue regulatory action against product solely because of clerical or related errors in mandatory records. FDA does not take such actions against processors of low-acid canned foods or acidified foods, and it will not do so against seafood processors. FDA will consider the entire situation, and its potential for impact on human health, in formulating a response to deviations from these regulations.

As for the comment that FDA might as well mandate negative records because positive records can be successfully falsified, FDA advises that the possibility that records will be falsified—and that falsifiers will get away with it—is an issue that involves the fundamental credibility of the system. From FDA's standpoint, the agency's decades-long experience reviewing positive records on low-acid canned foods and acidified foods gives it confidence that its investigators can detect falsifications. However, FDA did not propose positive records for the purpose of catching falsifiers. FDA proposed positive records because this approach confers benefits on both the industry and the regulator that outweigh the additional work of maintaining them. Aside from the view, to which FDA strongly adheres, that most processors are honest and will not falsify records, the agency strongly believes that most processors will quickly see the benefits to themselves of a properly operating HACCP system based on positive records and will insist that their records be accurately completed.

One such benefit should be a more motivated workforce. HACCP monitoring and recordkeeping can and should be done by the workers who operate the system at the CCP's, not by quality control personnel. To the extent that these workers experience a sense of responsibility and pride associated with making accurate daily notations, the processor can expect to benefit.

Regarding public disclosure of records as mentioned by one of the comments, FDA continues to believe that possession of monitoring records by the agency will be more the exception than the rule, and that these kinds of records are protected from public disclosure in any event. The protection of records is addressed in detail in the "Records" section of this preamble.

FDA has therefore not modified the requirement that processors' monitoring records include the actual values obtained during the monitoring.

7. Signing the Plan

66. In the preamble to the proposed regulations, FDA specifically invited comment on whether HACCP plans should be required to be signed by a representative of the firm and, if so, by whom. Approximately 30 comments responded to the inquiry. About two-thirds of these comments, from processors, trade associations, professional associations, and Federal, State, and foreign national governmental agencies, supported the need for a signature. The remaining comments, mostly from processors and trade associations, argued that a signature was unnecessary.

Those that favored a requirement for a signature on HACCP plans stated that the signature does the following: Demonstrates formal adoption of the HACCP plan, solidifies responsibility for adherence to the plan, and fosters a sense of management ownership. The comments made the following suggestions with regard to who should be the signatory (in order of preference): Onsite manager, most responsible individual of the firm, any senior manager, HACCP coordinator, and all HACCP team members. Those comments that argued against a mandatory signature on the plan stated that the existence of a HACCP plan itself constitutes management support for the plan.

FDA agrees with the comments that recommended a requirement for HACCP plans to be signed by a representative of the firm. As suggested by the comments, such a signature will provide direct evidence of management's acceptance of the plan for implementation. FDA cannot stress enough that for HACCP to succeed, there must be a clear commitment to it from the top of the firm on down. Management must set a strong example in this regard. A signature requirement will remind management of this important responsibility and will signal to all employees that the firm regards the HACCP plan as a document to be taken seriously. Additionally, the representative's signature, along with the date of signing, would serve to minimize potential confusion over the authenticity of any differing versions or editions of the document that might exist. FDA has concluded that the burden of such a requirement would be minimal, and has added a new paragraph at § 123.6(d), that reads:

(d) *Signing and dating the HACCP plan.* (1) The HACCP plan shall be signed and dated, either by the most responsible individual onsite at the processing facility or by a higher level official of the processor. This signature shall signify that the plan has been accepted for implementation by the firm. (2) The HACCP plan shall be dated and signed: (i) Upon initial acceptance; (ii) Upon any modification; and (iii) upon verification of the plan * * *."

As will be discussed fully in the "Verification" section of this preamble, the adequacy of the HACCP plan must be reassessed, and modified as needed, whenever significant changes in the firm's operations occur, but no less than once per year. These reassessments and modifications are necessary to ensure that the plan remains current and is responsive to emerging problems. The signature of the firm representative will be valuable in documenting that these reassessments and modifications are performed as required. Particularly if no modification of the plan is needed, reassessment can be verified by FDA only if documentation, such as a signature, is maintained by the firm.

8. Relationship to Parts 113 and 114

67. A few comments urged that the final regulations provide that if a processor of low-acid canned fishery products is in compliance with FDA's regulations for these products under part 113, it would also be in compliance with these HACCP regulations with respect to the control of the hazard of *C. botulinum* toxin production. The regulations at part 113 establish HACCP-type controls for this hazard.

FDA agrees that there is no need for a processor to restate in its HACCP plan the requirements of part 113 or 114. It is also not necessary for such a processor to institute controls in addition to those specified in parts 113 and 114 in order to control the hazard of *C. botulinum* toxin production. Consequently, processors who must comply with the requirements of part 113 or 114 need not address this hazard at all in their HACCP plans. However, it is important to note that other hazards may be reasonably likely to occur in an acidified or low-acid canned fishery product. These hazards must be addressed in the HACCP plan, as appropriate. For example, processors of canned tuna will likely need to identify in their HACCP plans how they will control the development of histamine before the canning process. Accordingly, to clarify what is required of processors of acidified and low-acid canned fishery products, FDA has added § 123.6(e), which reads:

For fish and fishery products that are subject to the requirements of part 113 or 114 of this chapter, the HACCP plan need not list the food safety hazard associated with the formation of *Clostridium botulinum* toxin in the finished, hermetically sealed container, nor list the controls to prevent that food safety hazard. A HACCP plan for such fish and fishery products shall address any other food safety hazards that are reasonably likely to occur.

9. Sanitation in the Plan

The question of the role of processing plant hygiene (i.e., traditional sanitation controls) in HACCP is addressed at length in the "Sanitation" section of this preamble. As explained in that section, FDA is requiring that processors address plant sanitation by monitoring for certain key sanitation conditions and practices apart from critical control point monitoring activities, or by including sanitation controls as part of the HACCP plan, or by adopting some combination of these two approaches, at the option of the processor. To reflect this approach, in paragraph (f) in § 123.6 on the inclusion of sanitation controls in the HACCP plan FDA has stated: "(f) Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitoring in accordance with § 123.11(b), they need not be included in the HACCP plan and vice versa."

FDA recognizes that, in many processing operations (e.g., cooked, ready-to-eat fishery products, smoked fishery products, and molluscan shellfish) sanitation controls, such as hand and equipment washing and sanitizing, are critical to the safety of the food because they serve to minimize the risk of pathogen introduction into finished products that may not be further cooked before consumption (Ref. 3, p. 267). For this reason, some processors may elect to include the control of sanitation conditions and practices in their HACCP plan in addition to, or in place of, monitoring for such conditions and practices apart from the HACCP plan. Based in part on experience gained from the seafood HACCP pilot project operated jointly by FDA and DOC, however, FDA also recognizes that sanitation controls may be difficult to fit in HACCP plans, with appropriate CL's and corrective actions sometimes being elusive. For this reason, some processors may elect to rely exclusively on sanitation controls that are not part of the HACCP plan. FDA considers either approach to be acceptable, so long as whatever approach is chosen is fully implemented and followed.

10. Nonsafety Issues

68. FDA proposed in § 123.6(c) to recommend, but not to require, that HACCP plans include controls for such nonsafety hazards as economic adulteration and decomposition that are not related to safety. Additionally, FDA proposed to append to the regulations at Appendix D guidance on how a processor can use a HACCP-based approach to ensure that fish and fishery products are in compliance with the economic adulteration and misbranding provisions of the act. Approximately 75 comments addressed these proposed provisions. The vast majority of these comments urged that proposed § 123.6(c) and proposed Appendix D of part 123 be eliminated from the regulations. Some of these comments suggested that it might be appropriate for the contents of proposed Appendix D to be included in the Guide.

Those that argued for removal of the recommendation that HACCP be used to control nonsafety hazards from the regulations stated that: (1) HACCP for safety purposes will be a big enough challenge for both the industry and regulators, and that inclusion of nonsafety hazards might be overwhelming; (2) nonsafety hazards, such as economic fraud and decomposition, are covered adequately by existing FDA regulations and standards and by industry quality control programs; (3) inclusion of nonsafety hazards deviates from the internationally recognized NACMCF recommendations; and (4) inclusion of nonsafety hazards, even as a recommendation, would dilute and jeopardize a desirable industry focus on safety. One comment stated that processing plant personnel and supervisors should be trained to expect serious consequences when CL deviations occur because this heightens their attention to monitoring and control. However, the comment further argued, the consequence of violating a nonsafety CL is likely to be relatively minor. The comment argued that, as a result, plant personnel and supervisors will become confused about the significance of CL deviations.

A significant minority of the comments favored the treatment of nonsafety hazards such as economic fraud and decomposition in the same manner in which safety hazards are treated in these regulations, with mandatory HACCP controls. These comments argued that: the same conditions of processing that affect the occurrence of safety hazards affect the occurrence of such nonsafety hazards as decomposition and economic fraud, making the two control systems compatible; an improvement in consumer confidence in seafood cannot be achieved without improvements relative to economic deception and decomposition; decomposition is the number one cause of FDA legal action with respect to seafood; decomposition is a good indication of time and temperature abuse, which has a significant impact on the growth of pathogens; the seafood industry considers economic fraud to be the most significant hazard affecting the marketing of its products; species substitution can be safety related, as in the case of the substitution of a scombroid species for a nonscombroid species; HACCP controls would likely enhance compliance with existing nonsafety standards; and inclusion of controls for economic fraud and decomposition would not significantly increase the costs to industry.

FDA concludes that the HACCP system will have to mature, and much will have to be learned, before it can be determined whether a mandatory HACCP program should include nonsafety matters. Because these regulations reflect a first step in terms of mandating HACCP, the agency is comfortable as a matter of policy that they should initiate a system that focuses on food safety. Additionally, the statutory provisions that form the basis for these regulations are safety provisions. FDA's application of HACCP is intended for the effective enforcement of sections 402(a) (1) and (a)(4) of the act, which apply to products that contain substances that may render the product injurious to health and to processing conditions that are insanitary and that could render a product injurious to health. Thus, the only real issue is whether the final regulations should retain the recommendations with regard to the application of HACCP to nonsafety matters.

FDA is persuaded by the comments that the proposed recommendations for HACCP controls of nonsafety matters, coupled with the presence of proposed Appendix D of part 123, have the potential for causing confusion about the agency's expectations and

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enforcement policies. FDA recognizes the point raised by a number of comments that advisory provisions are often confused with or misapplied as requirements. Given this fact and the emerging nature of HACCP, FDA has decided to eliminate proposed § 123.6(c) and Appendix D of part 123. FDA will consider including the concepts that underlay these provisions in the first edition of the Guide, however, because the Guide is understood as being the repository for recommendations relating to seafood HACCP.

The agency's decision to eliminate reference to nonsafety hazards from these regulations notwithstanding, such hazards as economic adulteration, decomposition not normally associated with human illness, general unfitness for food, and misbranding constitute violations of the act and are subject to regulatory action by FDA (see sections 402(a)(3) and 403 of the act (21 U.S.C. 343)). When inspections by FDA investigators reveal violations of these provisions of the act, FDA will take enforcement action as it deems appropriate. Processors who are able to accommodate a HACCP system that covers both safety and nonsafety hazards may find advantage in doing so, in order to better ensure compliance with existing nonsafety regulations and standards.

11. "Shall Render Adulterated"

FDA proposed to provide that: Failure of a processor or importer to have and implement an HACCP plan that complies with this section or to operate in accordance with the requirements of this part, shall render the products of that processor or importer adulterated under section 402(a)(4) of the act.

The preamble to the proposed regulations explained that the proposed regulations set out those requirements that the agency had tentatively concluded are the minimum necessary to ensure that the processing of fish and fishery products will not result in product that is injurious to health. FDA tentatively determined that such minimum requirements include the establishment of HACCP preventive controls. The preamble further explained that section 402(a)(4) of the act, among other things, deems a food to be adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health.

69. A significant number of comments, primarily from processors and trade associations, opposed the proposed language of this provision. The comments urged that the word "may" replace the word "shall" in order to establish that instances of noncompliance with the regulations do not automatically constitute adulteration. They contended that, because FDA will not be preapproving HACCP plans, a negative finding on the first FDA inspection could, under the language that was proposed, cause the agency to consider all product produced to that point to be adulterated. The comments stated that each case of noncompliance should be evaluated on its own merits.

FDA fully agrees that each case should be judged on its merits but does not agree that it is necessary to change the regulations in order to establish this principle. The purpose of § 123.6(g), which sets out this language, is not to create a legal presumption that food is adulterated if there is not perfect adherence to these regulations but to make clear that certain types of preventive controls are so fundamental to ensuring the safety of seafood that if there is not adherence to them, the food cannot be considered to have been produced in accordance with section 402(a)(4) of the act.

As a practical matter, FDA expects to exercise broad regulatory discretion in deciding when violations of these regulations warrant regulatory action, just as it does now for other situations. The agency will analyze each case on its merits, based at least in part on the potential for harm that exists.

The agency's primary concern is that processors develop HACCP plans that address the hazards that are reasonably likely to occur. When deficiencies in HACCP plans are detected during FDA inspections, the agency usually will first attempt to seek voluntary correction of the situation. Only when such voluntary correction is not forthcoming is it likely that FDA will elect to pursue regulatory action. It must be noted, however, that, where HACCP plan deficiencies result in significant potential for consumer harm, the agency will evaluate the need for corrective action with respect to the product that has been produced as well as to the HACCP plan itself.

In this regard, FDA notes that a change from "shall" to "may" in the provision would be more compatible with guidelines than with regulations. Consequently, the agency has retained the term "shall" in § 123.6(g). However, to clarify that a decision on whether to take regulatory action will involve discretion based on the public health significance of the violation, a sentence has been added to indicate that when a violation occurs, FDA will evaluate the processors overall implementation of its HACCP plan in deciding how best to remedy the violation.

Consistent with the revisions to the requirements for imported products contained in § 123.12, the word "importers" has been eliminated from § 123.6. As described in the "Imported Products" section of this preamble, the proposed requirement that an importer develop a HACCP plan (§ 123.11) has been eliminated in favor of a requirement for importer verification procedures. This change eliminated the relevance of § 123.6 to importers.

Consistent with the revision to § 123.6(a) and (b) that processors have HACCP plans only when a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, § 123.6(g) has been amended to state that a processor's failure to have a HACCP plan shall render the fish or fishery products adulterated only when a HACCP plan is necessary.

F. Corrective Actions

The fifth HACCP principle, as articulated by the NACMCF, is that processors establish the corrective actions that they will take should monitoring show that a CL has been exceeded. The NACMCF's expectation is that these corrective actions should be predetermined and written into the processor's HACCP plan.

In the proposed regulations, FDA tentatively chose to incorporate the principle of corrective action without requiring predetermined corrective action plans in the processor's HACCP plan. Instead, FDA proposed minimum, generic corrective action procedures for processors to follow. In so doing, FDA was trying to minimize the burden of the mandatory requirements of HACCP, especially for small processors. FDA tentatively concluded that the procedures set out in proposed § 123.7 represented the minimum requirements necessary to ensure that processors respond effectively to deviations that could affect safety, and that if those procedures were followed, specific corrective action plans, although desirable, would not be necessary.

FDA proposed in § 123.7 to require that deviations from CL's trigger a series of actions, including: Segregating and holding the product, making a determination of the acceptability of the product for distribution, taking appropriate remedial action with respect to the product and the cause of the deviation, and documenting the actions taken. In the preamble to the proposed regulations, FDA invited comment on the wisdom of this approach as opposed to requiring that predetermined corrective action plans be made part of the HACCP plan. A large number of comments responded to

that request. Additional comments addressed the specifics of the proposed generic-type requirements in § 123.7.

1. Should Corrective Actions Be Predetermined?

70. Approximately half of the comments supported the corrective action system proposed by the agency or a variation of it, and the other half called for mandatory predetermined corrective action plans. Many of those that supported mandatory corrective action plans urged consistency with the HACCP recommendations of the NACMCF. These comments noted that the NACMCF recommendations are consistent with Codex Alimentarius Commission standards. They predicted that compatibility of the final regulations with such international standards would minimize confusion for processors and importers, smooth international adoption of HACCP principles, and facilitate trade. The comments stressed that predetermining corrective action is an essential component of a processor's HACCP program, with the seven principles being so closely intertwined that overall success is probable only if all are intact.

A number of comments argued that a processor's implementation of a corrective action plan would eliminate indecision and confusion about what corrective action should be taken in the event of a deviation from a CL. For example, one comment pointed out that corrective actions written into the HACCP plan would eliminate the need for employees to substantiate to management the correctness of their response to a deviation, because the corrective action plan would provide the right actions to be taken for each particular deviation. A few comments stated that, if the appropriate corrective actions are detailed in the HACCP plan, responses by employees to CL failures are more likely to be immediate (reducing product losses) and effective (reducing wasted effort). These comments further noted that corrective action plans are particularly necessary when individuals qualified to make product safety evaluations are not readily available.

One comment asserted that the strength of the HACCP system is that it is preventive, and that corrective action plans are fundamental in preventing a product, for which there is a safety concern, from reaching the consumer. The comment further stated that written corrective action plans should provide for the documentation of the following: (1) The cause of the deviation, (2) the action taken to ensure that the deviation does not reoccur, (3) the results of the risk evaluation, and (4) product disposition.

Many comments did not agree that corrective action plans should be required. A few comments argued that developing a corrective action plan is impractical and can be unduly restrictive because of the diversity and complexity of seafood products and of seafood processing operations. One comment noted that many situations exist in which the appropriate response to a CL failure is not apparent until the details of the particular situation are known. Several stated that a corrective action plan is less preferable than having responsible and knowledgeable personnel, adequately trained in HACCP, available to evaluate a deviation from a CL. If such personnel are available, one comment noted, deviations can be handled on a case-by-case basis, with appropriate documentation of the disposition of the affected product.

Several comments argued that the lack of a corrective action plan is not sufficient evidence to demonstrate that a product is adulterated. The comments argued that the proposed requirement that a processor establish CL's and perform and record appropriate corrective actions when these limits are exceeded, provides sufficient demonstration of hazard control.

A number of comments that advocated the concept of predetermined corrective action plans urged that processors be given the option of writing such plans or of following a series of minimum mandatory actions, like those proposed by FDA, when CL failures occur. In the preamble to the proposed regulations the agency did, in fact, encourage processors to predetermine corrective actions as part of the preparation of a HACCP plan.

On this issue, the merits of the various approaches tend to balance. Consequently, FDA agrees with those comments that urged that the regulations provide processors with the option of developing their own corrective action plans as part of their HACCP plans or of following a generic model corrective action plan, provided in the regulations, should a deviation occur.

The agency accepts the view that predetermined plans have the potential to provide processors with benefits, as pointed out by the comments, such as faster action when a deviation occurs, less need to justify to management the appropriateness of the corrective action after it has been taken, and a more timely response to the deviation when trained or otherwise qualified individuals are not readily available to make determinations. On the other hand, FDA has not been provided with information on which it can conclude that these benefits—as desirable as they may be—need to be mandated in order to protect the public health. Processors can build them into their HACCP systems if they so choose, but the public health will be protected so long as shipment of the affected product into commerce does not occur until the significance of the deviation has been assessed and appropriately resolved.

This outcome is assured both with specific predetermined corrective action plans and with the minimum generic model that FDA is requiring as an alternative. Without additional evidence from actual experience, which was not provided by the comments, FDA cannot conclude that the overall success of HACCP depends on whether processors have specific predetermined plans for events that might not necessarily occur.

Consequently, FDA has revised § 123.7 to permit, but not to require, processors to include in their HACCP plans any written corrective action plans that they develop. When a deviation from a CL occurs, § 123.7(a) requires that processors either: (1) Follow a corrective action plan that is appropriate for the particular deviation, or (2) follow the series of actions provided in § 123.7(c). The steps in § 123.7(c) constitute a minimum generic model for corrective actions and, as will be explained below, closely match those that were contained in the proposed regulations.

The final regulations at § 123.7(b) define an appropriate corrective action plan as one that addresses both the safety of the product that was being processed when the CL failure occurred and the cause of the deviation. In this respect, the contents of the corrective action plan are consistent with the views of the NACMCF (Ref. 34, pp. 199–200). The corrective action must ensure that any unsafe product is not distributed.

FDA advises that action necessary to correct the product may involve any one or more of the following steps: Immediately reprocessing the product; diverting the product to another use where it can be used safely; segregating the product, holding it, and having it evaluated by a competent expert; or destroying the product. In order to ensure that subsequent product is not subjected to the same deviation, the corrective action must be sufficient to bring the process back under control (Ref. 34, pp. 199–200). FDA advises that such action may involve, where appropriate: adjustments to those process parameters that have an effect

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on the relevant CL (e.g., flow rate, temperature, source of raw materials); temporarily diverting product around a point in the process at which problems are being encountered; or temporarily stopping production until the problem can be corrected.

Section 123.7(c) describes the steps that a processor must take whenever there is a deviation from a CL but no corrective action plan to follow. As stated above, these steps constitute a minimum generic-type corrective action plan. The objectives of these steps are the same as those of a preconceived plan: To ensure that adulterated product does not enter commerce and to correct the cause of the deviation. Because it is a generic-type plan that is intended to be applicable to any situation, some of the steps, such as segregating and holding the affected product (§ 123.7(c)(1)), might not be necessary if the corrective action had been predetermined. This aspect of the generic-type plan may provide processors with an incentive to predetermine corrective actions whenever practical.

Another such incentive is the requirement, at § 123.7(c)(5), that the processor reassess the adequacy of its HACCP plan when a deviation occurs. This requirement does not exist where a corrective action plan exists. The reason for the distinction is that, on one hand, if a processor has assessed its process and decided that CL failures are likely to occur from time to time at particular points, those failures, when they occur, do not represent a failure of the plan but a foreseeable occurrence. On the other hand, if the processor has not made such an assessment, and a failure occurs, it is not possible to say what the failure means. The processor must assess whether the deviation is the result of a system-wide problem that is not being properly addressed by the plan or simply a failure that could be expected to occur in the normal course of things. The failure must be fully assessed, and if it represents a failure of the plan, the plan must be modified to reduce the risk of reoccurrence.

The agency is convinced that the corrective action approach contained in the final regulations (i.e., predetermined corrective action plans at the option of the processor) adheres to the principles of HACCP as recommended by NACMCF (Ref. 34, pp. 199–200) and will not result in undue burden, confusion, or trade difficulties. At the same time, these regulations will provide the flexibility needed to accommodate the varying levels of HACCP sophistication within the industry. FDA is satisfied that employee indecision in responding to CL deviations will not result in a public health problem in the absence of corrective action plans because the final regulations contain a set of well defined actions that are to be followed if a deviation occurs and no predetermined plan exists. The actions outlined in § 123.7(d) ensure that no unsafe product will enter commerce, and that a normalization of processing conditions will be effected as quickly as possible. While the agency sees merit in the argument that predetermined corrective action plans will, in many cases, be economically beneficial to a processor (e.g., minimize product loss and wasted effort), such economic factors will, in and of themselves, motivate processors to predetermine appropriate corrective actions, but they do not mean that the agency needs to require the adoption of predetermined plans.

71. A few comments recommended that FDA review corrective action plans for adequacy during, or in advance of, the first regulatory visit. This review, the comments asserted, would help to avoid a situation in which the processor takes a corrective action in conformance with its HACCP plan, but the agency later determines that the action was inadequate.

FDA agrees that these comments reflect a desirable ideal but must acknowledge that such a review ordinarily will not be feasible. If processors complete their HACCP plans, including any corrective action plans that they choose to develop, before the effective date of these regulations, they may be able to obtain a review of those plans as part of a routine FDA inspection.

In any event, the agency intends to review corrective action plans that a processor includes as part of its HACCP plan during routine regulatory inspections. Where the investigator finds a shortcoming in the corrective action plan, the investigator will discuss it with the processor. As with a failure to meet any other provision of these regulations, in determining its response to such a shortcoming, the agency will consider the totality of the situation and the likelihood that the shortcoming will have an adverse impact on the safety of the product. If a corrective action plan has not actually been used as of the time of the investigator's review, and as a consequence of its review the agency advises the processor that the corrective action plan needs to be improved, it is likely that FDA will advise the processor to follow the alternative procedure in these regulations until the upgrade occurs.

2. Assessing the Product for Safety

72. FDA received comments on specific aspects of the generic-type corrective action plan provided in proposed § 123.7(a). A significant number of comments opposed the provision that would have required an "immediate" safety assessment when a CL deviation occurs. One comment stated that, because an appropriately trained individual may not be immediately available to make a determination of the acceptability of the lot, the provision should be modified to require segregation and holding of the affected product until either a timely safety review by a properly trained individual has been completed, or a determination has been made that the appropriate predetermined corrective action plan has been followed. A number of other comments also suggested that the phrase "immediate review" be revised to "timely review." One comment recommended that FDA specify a maximum amount of time in which to evaluate the product, for example within 24 hours. Another comment advised that FDA permit processors to cook or freeze fresh product involved in a CL deviation, until an evaluation can be completed.

FDA agrees that immediate review is not necessary. As long as the review occurs before the product is distributed, the public health will be sufficiently protected. Consequently, while § 123.7(c)(2) requires a review to determine the acceptability of the affected product for distribution, it does not require that the review be immediate, nor does it otherwise specify a timeframe for review. If there is a chance that the product is still fit for commerce, FDA expects that economic considerations will dictate the timing of the review. FDA agrees that, in many cases, it would be advantageous for a processor to cook or freeze a product pending results of a safety evaluation. The agency has no objection to such an action as long as the processor maintains the identity of, and its control over, the lot.

FDA has also modified § 123.7(c)(2) from the proposal to require that the review of the product be conducted by someone with adequate training or experience, although FDA is not tying adequate training to training in HACCP (see § 123.10) as it did in the proposal. FDA made this change because, as comments pointed out, a 3-day course in HACCP would not necessarily qualify someone to make many public health determinations of this nature. The basis for this modification is more fully described in the "Training" section of this preamble.

3. Documenting Corrective Actions

In § 123.7(d), FDA is retaining the proposed requirement that records of corrective actions be kept. As with the proposal, such records are subject to the general recordkeeping requirements of § 123.9. The records must document the actions taken in following either a predetermined corrective action plan or the corrective action procedures specified in § 123.7(c).

73. One comment suggested that the absence of written corrective action plans would make it more difficult to document a response to a deviation. It went on to explain that, with a plan, the processor could simply note, for example, that "the product was recooked in accordance with 'Section B of the Plan.'" It pointed out that more extensive documentation would be necessary if a processor did not have a predetermined plan.

FDA does not agree with this comment. Section § 123.7(d) requires that the corrective action taken by a processor be fully documented. It is the agency's intent that such documentation provide the specifics about the actions that were taken and not simply refer to a written procedure. In the example given, records of the recooking operation, equivalent to monitoring records for such an operation, i.e., cooking, would be necessary to document that the operation was performed in a manner that would render the product safe. Thus, similar documentation would be necessary whether a plan exists or not.

It is worth noting that § 123.7(d) now states that corrective action records are subject to verification in accordance with § 123.8(a)(3)(ii). This requirement is not new but reflects the fact that record review is deemed to be a verification activity in the final regulations but was not classified as such in the proposal. A further discussion of this matter can be found in the section of this preamble that follows.

G. Verification

1. Overview

Verification is one of the seven commonly recognized principles of HACCP. In the preamble to the proposed regulations, FDA acknowledged and discussed the recommendations of the NACMCF as they relate to verification. According to the NACMCF, verification essentially involves: (1) Verifying that the CL's are adequate to control the hazards; (2) ensuring that the HACCP plan is working properly, e.g., that it is being followed, and that appropriate decisions are being made about corrective actions; and (3) ensuring that there is documented, periodic revalidation of the plan to make sure that it is still relevant to raw materials as well as to conditions and processes in the plant.

2. Need for Verification Requirement in Regulations

In the preamble to the proposed regulations, FDA encouraged processors to adopt verification practices but did not propose to require that a processor's HACCP plan specify the verification procedures. Rather, the agency tentatively concluded that verification of a HACCP plan would effectively occur through: (1) Comparison of the plan to guidance documents such as FDA's draft Guide; (2) technical assistance provided through trade associations, universities, and government agencies; (3) mandatory review of monitoring and corrective action records by trained individuals before product distribution; (4) mandatory reassessment of the adequacy of the HACCP plan as a consequence of CL deviations; (5) reliance on the recommendations in FDA guidelines that processors of cooked, ready-to-eat seafood products use the expertise of "processing authorities," i.e., third-party experts; (6) mandatory training; and (7) investigator review of the entire HACCP system during routine agency inspections. FDA requested comment on whether this approach is adequate to ensure that the verification principle was being properly addressed.

74. A large number of comments responded to this request. Approximately one-third of these comments stated that FDA's proposed approach to HACCP verification was adequate. The other comments argued that verification should be specifically mandated as a part of a firm's HACCP program.

A few of the comments favoring the proposed approach contended that a HACCP plan lacking verification procedures should not be grounds for FDA to consider a product to be adulterated. Several comments stated that processors will engage in verification activities without a requirement, as a natural outgrowth of a HACCP program, because without such activities, HACCP will not work. For this reason, they argued, it is not necessary to mandate that verification procedures be included in processor's HACCP plans.

Of the comments that supported the need for specifically-mandated verification activities, a significant number urged the agency to adopt such a requirement to be consistent with the HACCP recommendations of the NACMCF. These comments noted that the NACMCF recommendations are consistent with Codex Alimentarius Commission standards. They predicted that compatibility of the final regulations with such international standards would minimize confusion for processors and importers, smooth international adoption of HACCP principles, and facilitate trade. The comments stressed that verification is an essential component of a processor's HACCP program, and that the seven principles are so closely intertwined that overall success is probable only if all are intact.

One of the comments stated that verification should involve a continual review and improvement of the HACCP system. The comment added that verification is a primary responsibility of processors, one that is equivalent in importance to plan development. Several comments stated that the benefits of HACCP verification include: Assurance that all CCP's are identified, assurance that the plan is being followed, a mechanism for third party oversight of the plan development process, a means of measuring the success of a HACCP system, and information on trends in the frequency and reasons for CL deviations. One comment suggested that firms should be required to perform verification activities at least annually.

A few comments stated that although the proposed regulations included some required practices that could be deemed to be verification, such as the calibration of process-monitoring instruments and plan reassessment and modification in response to a CL failure, the entire concept of verification should be addressed more fully in a separate section of the final regulations. One of these comments suggested that the following verification activities be specifically mandated: Calibration of process control instruments, validation of software for computer control systems, and daily review of monitoring records.

One comment stated that, without a requirement for specific verification activities, processors would rely strictly on end-product testing to evaluate the success of the HACCP plan, and that such an approach would diminish the effectiveness of the entire HACCP system. Several comments stated that HACCP plan verification procedures

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should include detailed government and industry audits and product analyses.

One comment, from a consumer advocacy organization, challenged whether effective verification would really occur through the measures cited in the preamble. The comment stated that "third-party technical assistance" is not a mandatory part of the HACCP program and, therefore, can not be counted on as a verification procedure. It added that such technical assistance would tend to be performed during plan development, and that verification must be an ongoing procedure. The comment stated that a "review of all HACCP-monitoring records by trained individuals before distribution of product" is not verifiable by the agency because a firm can cut corners by having their employees sign the records without reviewing them. The comment argued that FDA auditing of consumer complaints and mandatory in-process and end-product testing are important verification procedures.

A few comments suggested that FDA should include a requirement that written verification procedures be in place, but that the agency need not prescribe specific verification activities, or should do so only sparingly.

FDA notes that the proposed regulations contained specific provisions identified by many of the comments as appropriate verification steps. For example, the proposed requirement that the HACCP plan adequately address the food safety hazards that are reasonably likely to occur (§ 123.6(c) in this final rule) is a continuing, rather than a one-time requirement. Thus, to continually be in compliance with it, a responsible processor would have to engage in some form of reassessment. Other provisions in the proposal that comments identified as verification steps included: The required calibration of process monitoring instruments; the required validation of computer software; the requirement that consumer complaints be reviewed to assess whether they indicate a problem at a CCP; and the requirement that HACCP-monitoring and corrective action records be reviewed before distribution of the product. FDA now realizes, however, that by not specifically requiring verification as such, the proposal generated considerable confusion about whether FDA intended to include or exclude the principle of verification from processors' HACCP programs. FDA has concluded, therefore, that verification is important enough to be an explicit part of the regulations. FDA has made it such in the final rule at § 123.6(c)(6) and in a new section for verification, § 123.8.

Section 123.6(c)(6) requires that processors include in their HACCP plans a list of the verification procedures that they will use and the frequency of those procedures. This provision is consistent with the view of the NACMCF that a processor's verification procedures should be addressed in the HACCP plan (Ref. 34, pp. 200–202). FDA does not expect that this requirement will be particularly burdensome for the processor for two reasons. First, the requirement that verification procedures be listed in the HACCP plans is really only a variation of the proposal in that FDA proposed to require a number of the activities that it is now designating as verification activities in § 123.6(b)(4) (e.g., calibration of monitoring instruments and review of consumer complaints). Second, a list of the steps that a processor determines are appropriately a part of the annual reassessment of the HACCP plan need not be extensive or detailed. FDA recognizes that, at least initially, much of the annual verification procedure could take the form of meetings and discussion, and may not lend itself well to a detailed listing of steps. FDA believes that the annual verification procedure should be allowed to evolve, and that a requirement that the listing of steps in the plan be detailed before an annual verification ever occurs could adversely affect that evolution.

The new section on verification, § 123.8, describes the minimum components of a processor verification program. Among other things, the agency has consolidated there those aspects of the proposal that, according to comments, should be designated as verification activities. Section § 123.8 contains little in the way of detail that was not included in the proposed regulations. In addition, it is designed to be generally consistent with the verification concepts expressed by the NACMCF, as requested by comments, and at the same time, not unduly burdensome.

3. Verifying the HACCP Plan

Section 123.8(a) requires that processors with HACCP plans verify two aspects of their HACCP systems: (1) That their HACCP plans are adequate to control food safety hazards that are reasonably likely to occur, and (2) that their plans are being effectively implemented. Verifying these two aspects is, essentially, what the NACMCF refers to as the first and second of the four processes of verification (Ref. 34, p. 201).

Second, § 123.8(a)(1) requires that a reassessment of the HACCP plan occur whenever there are any changes of the type listed in these regulations that could alter the plan, or at least annually. The NACMCF takes the view that verification must occur on a periodic, regular basis (Ref. 34, p. 202), although no specific timeframes are suggested. FDA agrees with the NACMCF and the comments that verification of the adequacy of the HACCP plan should be conducted on a regular basis, even in the absence of a recognized change, to ensure that the plan continues to address all of the reasonably likely food safety hazards with appropriate CL's and monitoring procedures. It is essential that processors verify the adequacy of their plans and that this verification occur on a periodic basis. Processors should conduct the review at intervals that are appropriate for their processes. FDA agrees with one of the comments, however, that this interval be no more than a year in order to ensure that the plan remains adequate to address the hazards associated with the species and processes (Ref. 206, p. 1084).

The regulations at § 123.8(a)(1) provide examples of changes that could trigger a reassessment. These include changes in raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product. These examples are derived from the NACMCF materials on the "five preliminary steps" that form the basis for the HACCP plan (Ref. 34, pp. 188 and 201). A change in any of these areas could necessitate a change in the plan in order to respond to any new hazards that may have been introduced or to maintain preventive control over existing ones. It is important to recognize that this list is not all inclusive.

Section 123.8(a)(1) requires that the plan reassessment be performed by an individual that has been trained in HACCP in accordance with § 123.10. This requirement is a logical outgrowth of the proposed requirement in § 123.9 that a HACCP-trained individual be responsible for the initial development of, and subsequent modifications to, the HACCP plan. These kinds of activities require an understanding of the principles of HACCP and plan development as obtained through training that is at least equivalent to the course required in § 123.10.

Section 123.8(a)(1) also requires that, where a reassessment reveals that the HACCP plan is inadequate, the processor shall immediately modify the

plan. Failure of a processor to immediately modify its HACCP plan after it has determined that the plan is inadequate would result in the processor operating under a plan that is not in conformance with these regulations.

FDA recognizes that the methods that processors will use to verify that the plan is still adequate will vary, based on individual preferences and past experience. FDA agrees with comments that urged the agency to permit maximum flexibility in the development of verification procedures that are tailored to individual operations. Nonetheless, the agency encourages processors to consider the guidance in the March 20, 1992, NACMCF publication, "Hazard Analysis and Critical Control Point System."

Moreover, FDA believes that the best way for the agency to judge the merits of a processor's annual verification will be through its own continuing determinations of whether the processor's overall HACCP system remains appropriate for the circumstances. These determinations will occur as a product of the agency's ongoing inspection program.

On this subject, FDA is sensitive to the comment that the absence of verification procedures from a HACCP plan should not, in and of itself, cause a food to be deemed adulterated under 402(a)(4) of the act. Nonetheless, the absence of verification could jeopardize the likelihood of success of the overall program. For example, monitoring a critical cooking step with a thermometer that has not been calibrated provides little assurance that the CL is actually being met, and failure to review records may allow the absence of monitoring or improper corrective action to go unnoticed for extended periods of time. Should the agency find itself in the position of having to react to the absence of adequate verification procedures in a processor's HACCP plan, in deciding whether to bring regulatory action, the agency will consider the totality of the situation, and the likelihood that it would have an adverse impact on the final food, as it would in considering a processor's failure to meet any specific provision.

4. Verifying the Implementation of the Plan

The regulations at § 123.8(a)(2) and (a)(3) require ongoing verification activities in addition to the annual reassessment. These ongoing activities are in keeping with the NACMCF's view that verification must also take the form of "frequent reviews" (Ref. 34, p. 201). Frequent reviews relate primarily to whether the HACCP plan is functioning effectively on a day-to-day basis. It is important to note that, for the most part, the requirements in these sections were proposed in other parts of the regulations and are now being compiled in § 123.8(a)(2) and (a)(3). Several comments on these provisions pointed out that they were verification steps and should be referred to as such. FDA agrees and has brought them together in this new verification section of the final regulations. Section 123.8(a)(2) requires that processors review consumer complaints (proposed at § 123.6(b)(4)), calibrate process monitoring instruments (proposed at § 123.6(b)(4)), and perform periodic end-product or in-process testing, as appropriate, in accordance with written procedures for these activities in the HACCP plan.

Section II H. of this preamble addresses the review of consumer complaints at some length.

The provision on the calibration of monitoring instruments (§ 123.8(a)(2)(ii)) is brought forward with no substantive change from the proposal. Calibration is an important activity and involves readily defined procedures that can easily be provided in the plan.

Calibration can include the validation of computer hardware and software. FDA proposed to require that the HACCP plan detail the methods of computer software validation to be used by the processor. FDA received a small number of comments both for and against computer software validation as a worthwhile part of verification. Two comments supported the need for consumer software verification. But two comments suggested that computer software verification would be an unnecessary expense because it would result in only marginally improved reliability.

The agency has worked extensively with the low-acid canned food industry to verify computer hardware and software that the industry is now using to operate or control various processing functions. That experience has demonstrated to FDA both the desirability and the feasibility of verifying computer hardware and software. For low-acid canned foods, the industry is using computers to perform several functions, including monitoring compliance with CL's, controlling the processing operations, taking corrective actions, and recordkeeping (Ref. 221).

In a HACCP system such as that being established for seafood by these regulations, FDA is interested in ensuring that hardware and software for computers that monitor compliance with a CL be verified. However, when computers are used as process-monitoring instruments, they must be calibrated in accordance with § 123.8(a)(2)(ii). The other functions that a computer can perform, as listed above, can be verified through procedures required elsewhere in these regulations (e.g., recordkeeping can be verified through the review of records by a trained individual in accordance with § 123.8(a)(3)). Consequently, the agency has concluded that it is not necessary for these final regulations to include a specific requirement for computer validation.

Instead, the agency acknowledges that the proper frequency of equipment calibration is entirely dependent upon the type of instrument and the conditions of its use. Therefore, FDA is not being prescriptive in this regard. FDA has, however, provided guidance on the subject in the draft Guide. Additional guidance should be obtainable from the manufacturer of the instrument. The nature and frequency of the calibration effort should be determined at the time of HACCP plan development and should be included in the plan to ensure that it is regularly and appropriately done. The agency is convinced that without such formalization, calibration, which, for some instruments, may be done as infrequently as once per year, may be overlooked.

5. Product Testing

75. Section 123(8)(a)(2)(iii), which lists the performing of end-product or in-process testing, is a new provision. FDA requested comment on what tests, including or in place of end-product testing, should be used to measure the success of the HACCP program, both in terms of individual firms and the national program as a whole, and how frequently such tests should be administered (Ref. 208 at 4183). A large number of respondents addressed FDA's request for comment. Approximately half of these comments supported the need for an end-product testing requirement. The other half objected to such a requirement or suggested that the need should be determined on a case-by-case basis.

A number of consumer advocacy organizations suggested that end product testing is essential because no other verification mechanism provides public confidence that HACCP programs are actually resulting in a safer product. Several comments stated that regular microbiological testing would help a processor determine whether there are sources of contamination that are not being controlled.

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A few comments suggested that such testing should be performed more frequently during plan development and validation, and then reduced to some lower level as part of a firm's verification efforts. Another comment suggested that testing should be performed quarterly by those processors with a poor record of compliance and annually by those with a good record.

Several comments suggested that the need for and frequency of product analysis should be established as part of the HACCP plan development process. One of these comments noted that the frequency of testing may fluctuate depending, in part, upon changes in personnel, raw materials, equipment, and product formulation.

A number of comments stated that end-product testing is a questionable method for measuring the success of a HACCP system. One of these comments stated that end-product testing measures the effectiveness of the plan for a small, finite portion of production and has limited value in measuring the success of the HACCP plan overall.

One comment stressed that finished product testing is contrary to the concept of HACCP, i.e., a reliance upon preventive controls at critical points throughout the system. Another comment contended that mandatory microbiological analysis of foods would be inappropriate because: (1) Statistically valid sampling programs for pathogens are not economically feasible because of the low incidence of pathogens in most foods; (2) the use of indicator organisms to predict the presence of pathogens is not always reliable and, where it is not, can become merely a test for aesthetics; and (3) microbiological analysis of foods is often costly, imprecise, and slow, and, therefore, not suitable for real time data generation.

The agency acknowledges the shortcomings of product testing, especially microbiological testing, used for process control as pointed out by the comments. The NACMCF, in its comments in response to FDA's questions about product testing, reiterated its view that, while verification is essential to the success of HACCP, end-product testing has limited value for measuring the success of a HACCP system. Comments also noted that in-process or finished product testing should not normally be a prerequisite for lot release under a HACCP program.

However, FDA recognizes that many processors will find that product testing has a role to play in the verification of HACCP systems, and the agency wishes to encourage incorporation of testing into HACCP plans, where appropriate. Consequently, the regulations at § 123.8(a)(2)(iii) list end-product and in-process testing as a verification activity at the option of the processor.

The agency provided guidance concerning appropriate attributes for product testing in the draft Guide and intends to elaborate on it in the first edition of the Guide.

6. Records Review

Section § 123.8(a)(3) requires that a trained individual review all records that document monitoring of CCP's, the taking of corrective actions, the calibrating of any process control instruments, and the performing of any end-product or in-process testing. The review of HACCP records by a trained individual was included in the proposed regulations at § 123.8(b). In response to comments that urged consistency with the recommendations of the NACMCF, FDA has designated this review a verification function for purposes of the final regulations and has included it in the section on verification. Specifically, the proposed regulations provided that a HACCP-trained individual review the monitoring records, sanitation control records, and corrective action records before distribution of the product to which the records relate. Under the proposal, the individual's review would include records of process monitoring instrument calibration, because the agency characterized these records as monitoring records.

The comments that FDA received on these provisions focused on the proposed requirement that the review by the trained individual occur before the product could be shipped. Several comments objected, stating that such a review before shipment was unnecessary, because under the corrective action provisions of the proposed regulation, any CL deviation caught by the observer/operator would necessitate the segregation and holding of the affected product before shipment until the safety of the product could be assured. One comment further stated that linking lot release to record review before shipment underestimates the level of control attainable through the monitoring and corrective action principles of HACCP.

Comments from several processors and trade associations stated that, for some processors, it would be impractical to withhold the shipment of every lot until HACCP records could be verified and signed. These comments noted that, with the use of today's high speed processing lines, it is normal practice for some processors to begin shipping products before the end of the shift (lot). Several comments also stated that holding a product until the HACCP records could be reviewed could result in a product being subjected to unfavorable conditions during storage, which could compromise both quality and safety.

Several comments urged that processors be permitted to review the HACCP records at the end of the day or at the end of the shift, even if this review occurred after distribution. Others suggested that record review should be performed within a "reasonable time" of production of the record.

The agency remains convinced that the coupling of lot release with verification-type record review provides a valuable added level of safety assurance. This kind of record review before shipment is a regulatory requirement for low-acid canned foods and acidified foods. FDA's experience with these industries is that record review before distribution has been instrumental in preventing the introduction of potentially hazardous foods into commerce (Ref. 221). The agency encourages processors to institute such a program whenever possible.

However, FDA accepts from the comments that the proposed requirement would cause certain processors to delay shipping perishable products and thus present an unacceptable burden to them. The agency therefore is not requiring that record review occur before shipment.

Uncoupling record review from lot release leaves as the primary purpose for record review the periodic verification that the HACCP plan is appropriate and is being properly implemented. Record review needs to occur with sufficient frequency so as to ensure that any problems in the design and implementation of the HACCP plan are uncovered promptly and to facilitate prompt modifications. The concept is roughly that of a "feedback loop," with information coming out of the record review process in such a timely manner that it can have impact on the production of subsequent lots of the product.

FDA is convinced that a weekly review of HACCP monitoring and corrective action records would provide the industry with the necessary flexibility to handle highly perishable commodities without interruption, while still facilitating speedy feedback of information. FDA is reluctant to allow the level of flexibility provided by such language as "reasonable time," out of concern for the confusion that it would generate. FDA's experience with low-acid canned foods and acidified foods has demonstrated that review of these kinds of records is a critical verification tool. FDA is, therefore, adopting the proposed provision as § 123.8(a)(3) with one revision. As set out in the final rule, it requires that the HACCP-trained individual review the monitoring records of CCP's and the records that document the taking of corrective actions within 1 week of the making of the records, rather than before shipment, as a part of a processor's verification activities (§ 123.8(a)(3) (i) and (ii)).

FDA agrees, on the other hand, that this principle need not apply to the review of records of such verification activities as process control instrument calibration and product testing. The frequency of these activities will be variable and dependent upon the HACCP plan development process. Consequently, setting a specific review frequency for these records is not warranted. Section 123.8(a)(3)(iii) reflects this conclusion. It requires that the HACCP-trained individual review the calibration records within a reasonable time after the records are made, rather than before any additional products are shipped. It also applies the same "reasonable time" standard to any end-product testing records that are made.

The proposed regulations did not address the review of end-product testing records by a trained individual. The requirement in these final regulations for a review of such records reflects the principle contained in the proposal that there be a verification-type review by a trained individual of the HACCP records that are being created by the processor. In this respect, the responsibilities of the trained individual are unchanged from those that were contemplated in the proposal, although details relating to those responsibilities have been modified based on the comments.

Section § 123.8(b) requires that processors take appropriate corrective action whenever a review of a consumer complaint, or any other verification procedure, reveals the need to do so. This provision is essentially a restatement of the proposal regarding consumer complaints, expanded to include the results of verification procedures for purposes of emphasis. Verification was not specifically included in the proposal. FDA is including a reference to it here to remind processors not to preclude the possibility that information obtained through verification could lead to the taking of a corrective action. This possibility exists even though, more often than not, verification will not provide the kind of immediate feedback that the processor will receive from monitoring. Corrective actions based on information received through verification will be exceptions to the rule. However, processors should be mindful of the possibility.

7. Verifying the Hazard Analysis

Section 123.8(c) requires that, whenever a processor does not have a HACCP plan because a hazard analysis has not revealed any food safety hazards that are reasonably likely to occur and that can be controlled through HACCP, the processor must reassess the hazard analysis whenever a change occurs that could reasonably affect whether such a hazard exists. FDA has included examples of such changes in § 123.8(c). The list is identical to that provided in § 123.8(a)(1), for when a plan must be reassessed. Consequently, any change in these factors should warrant a reassessment to be certain that a plan is still not needed.

FDA has concluded that, under a mandatory HACCP system, the principle of verification applies equally to a decision that a HACCP plan is not necessary as it does to a decision that the plan continues to be adequate. Circumstances change, and processors must be alert to whether the exemption from the requirement to have a plan continues to apply to them.

Section 123.8(d) requires that processors document calibration and product testing in records that are subject to the recordkeeping requirements of the regulations at § 123.9. The requirement that records be kept of process monitoring instrument calibration was included in the proposed regulations at § 123.6(b)(5). The requirement that records of end-product testing be kept is consistent with the general recordkeeping principles of HACCP. The one exception is that FDA is not requiring records that document the review of consumer complaints. The agency is satisfied that the requirement for a processor to review consumer complaints relating to potential safety concerns will be sufficient for this kind of verification activity. Moreover, as explained in the discussion of consumer complaints elsewhere in this preamble, FDA is persuaded that most consumer complaints will involve matters unrelated to the mandatory HACCP system.

H. Consumer Complaints

1. Background

In the proposed regulations, FDA tentatively concluded that each processor's HACCP system had to utilize any consumer complaints that the processor receives that allege a problem with product safety. Several provisions described how consumer complaints were to be used. In one, FDA proposed to require that a processor's monitoring efforts include the use of consumer complaints, and that its HACCP plan reflect how they will be used. In a second provision, FDA proposed to require that, when a processor receives a consumer complaint that may be related to the performance of a CCP or that may reflect a CL deviation, the processor determine whether a corrective action is warranted, and, if so, take one in accordance with the specified corrective action procedures. FDA also proposed to require that the taking of such corrective actions be fully documented in records. Finally, FDA proposed to require that consumer complaints that relate to the operation of a CCP or to a possible CL deviation be included as part of the processor's HACCP records and be available for agency review and copying.

FDA's rationale for proposing these requirements was that consumer complaints may be the first alert that a processor has that problems are occurring that are not being detected or prevented by the processor's HACCP controls. While the goal of a HACCP system is to prevent all likely hazards from occurring, no system is foolproof. The agency tentatively concluded,therefore, that each HACCP system should take advantage of consumer complaints as they relate to the operation of CCP's. FDA also tentatively concluded that it might be necessary for the agency to review those complaints in order to be able to verify whether a processor is taking necessary steps to review its HACCP controls and take corrective actions as necessary in response to consumer complaints. The agency emphasized that it was referring solely to complaints relating to the operation of the HACCP CCP's (i.e., those that allege a problem with human food safety) and not to consumer complaints generally.

2. Consumer Complaints as Verification Tools

76. FDA received a large number of comments on the advisability of handling consumer complaints in the manner that the agency proposed. Generally speaking, the comments

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addressed two broad issues: Whether consumer complaints are relevant to a HACCP system, and if they are relevant, how they should be used. The question of whether FDA should have access to consumer complaints was a significant concern that comments found germane to both issues. Approximately one-fifth of the comments supported the proposed system or a variant of the system (i.e., they believed that consumer complaints are relevant to a HACCP system). Some of those who voiced general support urged more comprehensive agency access to consumer complaints, and others urged that some restriction on agency access be put in place. The remaining approximately four-fifths of the comments, principally from seafood and other food processors and trade associations, argued that consumer complaints have no place in a HACCP system.

Those comments that opposed the mandatory use of consumer complaints in a HACCP system provided a variety of reasons. The comments argued that consumer complaints are generally: (1) Unrelated to the safety of the product; (2) not received in a timely manner that would facilitate control of the process and are, in this way, akin to finished product testing; (3) erroneous and sometimes exaggerated or fraudulent; (4) vague; (5) subjective and nonscientific; (6) associated with hazards that develop during transportation, storage, and retail marketing, rather than processing, if they identify food safety hazards of any kind; (7) not traceable to a specific processing plant or lot of product; and (8) not readily associated with a specific CCP or CL failure, even where it is likely that they are the result of a problem during processing. These comments asserted that, therefore, consumer complaints are not an appropriate monitoring tool.

A number of these comments suggested that, given the problems listed above, sorting through the large volume of consumer complaints that are received by most large firms to identify those few that might be able to be linked to the performance of a specific CCP would be a waste of both the processor's and the agency's time. These comments stated that such a review of consumer complaints would divert their efforts from more productive tasks.

Several comments raised additional questions about consumer complaints as a HACCP verification tool. They suggested that there are better, more effective means of verifying that the HACCP plan is working properly. These suggestions are covered in the "Verification" section of this preamble. These comments further argued that consumer complaints are not identified in the NACMCF recommendations as a useful verification tool.

A relatively small, diverse group of comments, including those from a seafood processor, a seafood trade association, a State regulatory agency, an individual, and a professional organization, supported the handling of consumer complaints as proposed. One of these comments suggested that consumer complaints could be useful in FDA's efforts to verify that processors' HACCP programs are effective.

Another group of comments, from consumer advocacy organizations and a State regulatory agency, agreed that consumer complaints are an appropriate part of HACCP. One of the comments noted that the consumer performs the final quality control check, and that if a consumer finds a problem egregious enough to take the time to write a letter, the information contained in that letter should be considered in any evaluation of the adequacy of the relevant HACCP plan. The comment further argued that consumer complaints could bring to light unidentified CCP's. This benefit, the comment contended, would not be possible under the proposed regulations because the agency limited consumer complaints in a HACCP system to those that may be related to a CL deviation at an existing CCP. Finally, one of the comments noted that the inclusion of consumer complaint access in the proposed regulations is the one area in which the agency delivers on its "water to table" commitment.

FDA is persuaded that consumer complaints generally will not make an effective monitoring tool in a HACCP system, primarily because they tend not to provide the kind of immediate, reliable feedback expected of a HACCP-monitoring system. FDA agrees with the comments that suggested that monitoring procedures under HACCP must provide the processor with immediate feedback on whether the process is under control and be scientifically sound.

FDA is not persuaded, however, that consumer complaints are irrelevant to HACCP systems. The agency received no comments that were able to demonstrate that outside sources of information should not, where appropriate, supplement a processor's own monitoring as a way of determining whether the process is in control. Moreover, a number of comments stated that they go to some lengths to examine the consumer complaints that they receive. The question, then, is whether consumer complaints can serve some legitimate verification purpose in a HACCP system.

While consumer complaints are not specifically addressed in the NACMCF HACCP recommendations, the verification portion of that document states, in part, that verification inspections should be conducted, "When foods produced have been implicated as a vehicle of foodborne disease." This statement is a recognition that information from sources outside the processing plant can and should be considered in the verification of a HACCP plan. In fact, it is FDA's experience that consumer injury or illness complaints to the agency occasionally point out problems traceable to defective controls at the food processing facility (Ref. 207). Where information that has potential relevance to food safety is available to a processor as a result of its own consumer complaint system, it is entirely appropriate for the processor to consider that information in assessing the adequacy of its HACCP program. FDA accepts the possibility that many, if not most, consumer complaints that a processor receives will not be germane to safety, that many will turn out not to be valid, and that others will relate to events at retail or that are otherwise beyond the ability of the processor to control. Nonetheless, FDA strongly believes—and the comments support this view—that a responsible processor will at least review consumer complaints to determine their potential value and take steps to correct the product or the process, when such steps are warranted.

FDA has concluded, therefore, that processors should evaluate the consumer complaints that they receive to determine whether the complaints relate to the performance of CCP's, or reveal the existence of unidentified CCP's, as part of their HACCP verification procedures. The agency acknowledges that the absence of consumer complaints does not, by itself, verify the adequacy of a HACCP system. However, after taking into account all the concerns raised by the comments, the agency is of the view that those consumer complaints that a processor does receive, and that allege a safety problem, can be of value as a verification tool and should serve that purpose. This conclusion is reflected in the requirements of § 123.8 of these final regulations (see discussion in the "Verification" section of this preamble), which lists the review of consumer complaints as an appropriate verification activity (§ 123.8(a)(2)(i)).

As explained earlier in this preamble, because the agency regards consumer complaints as a verification tool rather than a monitoring tool, FDA has modified § 123.6(c)(4) to eliminate the proposal requirement that the HACCP plan describe how consumer complaints will be used in the monitoring of CCP's. The agency has also modified § 123.6(c)(7) to eliminate the proposed requirement that consumer complaints be part of a processor's HACCP-monitoring records.

FDA has concluded that when a review of a consumer complaint reveals a need for the processor to take corrective action (e.g., recall, destruction, or reprocessing of the product or modification of the process to reduce the risk of reoccurrence of the problem), such action must be taken in conformance with the applicable corrective action procedures of these regulations. This conclusion is reflected in of § 123.8(b) which states that processors shall immediately follow the procedures in § 123.7 whenever a review of a consumer complaint, or any other verification procedure, reveals the need to take a corrective action. The corrective action provisions are discussed in the "Corrective Actions" section of this preamble.

As suggested by several of the comments, records of corrective action relative to consumer complaints need not include the original consumer complaint. However, it is unlikely that a comprehensive record of the corrective action taken could be generated without at least the critical information contained in the complaint, such as the nature of the complaint and identification of the product in question. Identification of the complainant is not likely to be critical.

3. Agency Access to Consumer Complaints

77. Many comments questioned whether FDA should have access to consumer complaints. Several comments argued that no other food industry is required to provide access to consumer complaints. A few specifically cited the absence of such a requirement in the low-acid canned foods regulations (part 113).

One comment noted that FDA has methods other than access to a company's consumer complaint file to obtain information about product defects that affect safety, including direct calls from consumers and health professionals, MedWatch, and reporting to the Center for Disease Control and Prevention (CDC). Another comment suggested that it would be more efficient to devise a system whereby consumers are encouraged to submit complaints about product safety directly to FDA rather than to mandate access to corporate files.

Several comments suggested that consumer complaint files should remain a private company matter, and that open access to these files is likely to result in regulatory abuse. A few comments further argued that, by mandating complaint file access, the agency would penalize those firms with good consumer complaint gathering systems and possibly deter others from developing such systems.

A relatively small, diverse group of comments, including seafood processors, a seafood trade association, and a Federal government agency, submitted that, while it is appropriate for FDA to mandate that processors utilize consumer complaints in assessing the effectiveness of their HACCP program, it is not necessary for the agency to have direct access to the firms' complaint files. The comments suggested two alternatives to providing direct access to complaint files: (1) Allowing processors to prepare Notices of Unusual Occurrence and Corrective Action (NUOCA) that described the action taken in response to consumer complaints that relate to product safety; or (2) allowing processors to prepare a matrix of complaints, as is currently used in the voluntary, fee-for-service HACCP program being operated by NMFS.

Others in this group suggested that FDA have access only to written complaints, or only to consumer complaints, as opposed to trade complaints, which the comment argued are often submitted for commercial advantage only. One comment noted that it would be impossible for processing vessels to retain consumer complaints on board the vessel, and that provision should be made for these to be stored at the corporate office. Other comments urged that FDA access to consumer complaints not include the right to copy them, or that, in some other way, they be protected from public disclosure.

Another group of comments, composed of consumer advocacy organizations and a State regulatory agency, urged that all consumer complaints, regardless of their potential relationship to product safety, be included in a processor's HACCP records and be available for FDA review. These comments suggested that the FDA investigator should make the determination of which complaints are relevant for follow up rather than the firm. They further suggested that the investigator can ignore any complaints that are not relevant to safety controls at the processing facility.

Unquestionably, FDA has an essential role to play as a regulatory verifier of HACCP. As described earlier, the agency received a number of comments that raised concerns about the veracity of a mandatory HACCP system in the absence of adequate regulatory review. Moreover, FDA has concluded that this role cannot be carried out without the ability to review HACCP plans and a narrow category of processor's records (i.e., those that relate to how a processor is controlling the critical safety aspects of its operations). The agency is not interested in expanding this access beyond those records that are the minimum necessary to carry out this responsibility.

With regard to consumer complaints, FDA is persuaded by the comments that, especially when used as HACCP verification records rather than HACCP-monitoring records as originally proposed, the public health benefits that may accrue from agency access to these kinds of records would probably be minimal and are outweighed by the concerns that have been expressed.

FDA is satisfied that agency review of a processor's overall verification scheme, plus access to records that document any corrective actions that were taken as a result of information obtained through consumer complaints, review of those complaints that consumers regularly send to the agency, the ability to conduct unannounced inspections, and access to monitoring records and plans, should be enough for FDA to adequately verify processor's HACCP systems.

FDA also accepts that the burden on processors if they had to segregate complaints that have a potential relationship to product safety from those that relate to product quality, economic issues, customer satisfaction, and other nonsafety issues, would be great and is not warranted by any potential gain in product safety. Many firms would have to take this step to make safety-related complaints available to FDA. Similarly, the agency recognizes that a significant burden would be placed upon its inspectional force if it had to verify that a processor had properly categorized its complaints.

The alternative of FDA having access to all consumer complaints and making its own determinations about which relate to safety, as some comments suggested, is simply not practicable. In addition, it is not the desire of FDA to penalize those firms that have large, expensive complaint gathering systems, by mandating that they provide all information so gathered for agency review, or to discourage others from developing such systems.

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In the preamble to the proposed regulations, FDA stated that more than half of the seafood-related consumer complaints that it receives relate to product quality, filth, and economic deception concerns. Access to all consumer complaints is, therefore, unnecessary to ensure product safety.

FDA has, therefore, removed from what is now § 123.9(c) the requirement that consumer complaints relating to safety be available to the agency. The agency reiterates, however, that processors should utilize all available information as they evaluate the adequacy of their HACCP plans and their implementation. Consumer complaints are one potential source of information, and a significant group of comments recognized the value of consumer complaints in the verification process.

I. Records

FDA proposed that records required by the regulations: (1) Contain certain information, (2) be completed at the time of the activity, (3) be signed by the operator or observer, (4) be reviewed for completeness and compliance with the HACCP plan and signed and dated by the reviewer, (5) be retained for specified periods of time, and (6) be available for review and copying by FDA.

FDA received a large number of comments that addressed these proposed recordkeeping requirements. These comments were from a diverse group of commenters, including large and small processors, trade associations, individuals, Federal, State, and foreign government agencies, consumer advocacy groups, professional societies, and academics. Several comments provided arguments that support the need in a mandatory HACCP program for records in general, and none specifically argued in opposition to that concept. Most of the comments addressed specific issues that relate to recordkeeping.

Those comments that supported the need for records stated that recordkeeping is a key component of HACCP. One processor's comment noted that HACCP records must be kept in good order so that problems can be easily tracked to their root cause. One comment stated that HACCP records facilitate an evaluation of safety conditions over time, rather than through a "snap shot" inspection. Another processor noted that HACCP recordkeeping is not overly burdensome, and that the proposed regulations would not require it to maintain any records in addition to those that it already maintains.

1. Details and Signatures

78. FDA proposed that all HACCP-monitoring records (including records of process-monitoring instrument calibration), sanitation control records, and corrective action records identify the date of the activity that the record reflects. One comment recommended that the final regulations should also require that the time of each observation be recorded, to make it easier to link records to specific lots of product. A comment from a trade association requested that the records be required to identify the establishment where the activity occurred to reduce the potential for confusion in firms with multiple processing facilities.

FDA agrees with both comments that the date and time on records will help to connect information on the records to specific lots of product, and that the name and location of the processor will help link information to a specific processing facility.

The agency has, therefore, modified § 123.9(a)(1) and (a)(2) to state, in part, that the required records must include: "(1) The name and location of the processor or importer; (2) The date and time of the activity that the record reflects."

79. FDA proposed to require that HACCP-monitoring records (including records of process-monitoring instrument calibration) and sanitation control records be signed by the observer/operator. A few comments supported the proposed requirement on the grounds that it fosters accuracy and accountability in the recordkeeping process. One comment opposed the proposed requirement, raising concern about the legal liability that it imposed upon the workers that sign the records. A few comments suggested that the observer/operator be allowed to initial, instead of sign, the records.

FDA agrees with the comments that suggested that a signature on monitoring and sanitation control records is necessary to ensure accountability in the recordkeeping process. FDA also hopes that it will enhance workers' sense of responsibility and pride in their participation in the HACCP system of preventive controls. Regarding worker liability, those that deliberately falsify records are liable whether they sign the records or not. In any event, the falsification of records cannot be condoned and should not be tolerated by processors.

FDA further agrees that the purpose for the observer/ operator's signature is achieved if the observer/operator either signs or initials the monitoring records.

FDA proposed to require the signature of the observer/operator on all records involving observations or measurements made during processing or related activities. This specification of the kinds of records in which signatures were required would have had the effect of exempting consumer complaints, which were considered to be monitoring records in the proposal from this requirement. However, the use of consumer complaints as monitoring records has not been carried forward to these final regulations. Consequently, limiting the records that must be signed to involving observations or measurements is no longer necessary, and FDA has deleted it for purposes of clarification (see § 123.9(a)).

FDA has also deleted the proposed provision that the observer/operator need not sign corrective action records. The agency proposed to require that only a trained individual sign these records. FDA is requiring the signature or initials of the observer/operator on corrective action records in order to be consistent with the corrective action provisions of these regulations. In § 123.7, for example, processors may now predetermine their corrective actions in ways that empower observer/operators to take corrective measures, especially in the absence of a trained individual. The likelihood that a trained individual might not be present at the moment when a corrective action must be initiated is enhanced by the fact that such an individual need not be an employee of the processor (see § 123.10). Conversely, the presence of a trained individual during the initiation of a corrective action need not preclude the observer/operator from taking corrective steps, as appropriate. Finally, the agency has concluded that the burden imposed by requiring the signature or initials of the observer/operator whenever that individual participates in the making of a corrective action record is inconsequential.

80. Several comments questioned whether the proposed requirement that monitoring records include the "identity of the product, product code * * *," meant that all fish and fishery products were required to bear a product code.

It was not the intent of the agency to require product codes on such products, only to require that they be listed on appropriate records when they are used. The purpose of the proposed requirement was to facilitate linkage between records and product. To clarify this point, FDA has modified what is now § 123.9(a)(4) to read, "(4) Where appropriate, the identity of the product and the production code, if any."

81. Several comments suggested that FDA not specify the components of required records. These comments argued that many processors have existing forms that can appropriately be used as HACCP records.

It is not FDA's intent in § 123.9(a) to specify record format or content, beyond certain minimum, essential components. Processor's are encouraged to use existing records, making modifications only as necessary to meet the previously described requirements.

2. Retention and Storage

FDA proposed to require that processors retain monitoring (including process monitoring instrument calibration), sanitation control, and corrective action records for 1 year after the date that they were prepared for refrigerated products and for 2 years for frozen or preserved products. FDA also proposed that records used to substantiate the adequacy of equipment or processes be retained for 2 years after the date that they apply to products being processed.

82. Several comments stated that these proposed retention times were too long. Most of these comments suggested record retention times of from 90 days to 1 year for refrigerated products and from 6 months to 1 year for frozen products. One comment argued that 1 year is a sufficient period for record retention unless the records relate to a CL deviation, in which case they should be held for 3 years. Another comment urged that the agency not mandate record retention times but require processors to identify appropriate retention time requirements in their HACCP plans.

FDA rejects those comments that requested a reduction in the proposed mandatory record retention period. While it may be true that most refrigerated products will be unusable within 90 days, as suggested by one of the comments, retention times of less than 1 year do not provide for sufficient access for the processor's or FDA's verification activities. (See revised § 123.8(a)(1) and the accompanying preamble discussion of the minimum 1-year frequency of plan reassessment.) No new, substantive comment was provided relative to record retention times for frozen or preserved products that would warrant a reduction for those products.

Thus, FDA has made no changes to § 123.9(b).

83. FDA proposed that, in the case of processing facilities that close between seasonal packs, records could be transferred to another accessible location between seasonal packs, as long as they were returned during the next active season. Comments from several processors and trade associations urged the agency to modify the requirement to: (a) Allow for permanent transfer from the facility and (b) include both remote processing sites and processing vessels regardless of whether they close seasonally. Comments from operators of processing vessels and remote processing sites and from a trade association requested that FDA allow HACCP records to be kept on the processing vessel or remote site for a period of time and then be transferred permanently to the processor's corporate, or closest business office. The comments argued that the records in those locations would be more easily stored, safer, and more readily accessible to regulators than they would be at remote sites and on processing vessels. Additionally, they argued that corporate verification activities often would be performed at the land-based facilities. Transfer of the records to these facilities would promote verification in these circumstances. Comments opposing the requirement that the records be returned to a seasonally closed facility once the facilities reopened expressed concern that return of the records to the reopened locations could result in lost records.

FDA has been persuaded to accommodate the difficulties associated with record storage on processing vessels and remote processing sites by allowing HACCP records to be moved from such facilities to another reasonably accessible location at the end of the seasonal pack without requiring that the records all be returned for the following season (§ 123.9(b)(3)). Additionally, the agency will, as proposed, allow HACCP records from any facility that is closed between seasonal packs to be permanently transferred to another reasonably accessible location. However, FDA points out that, in most instances, the agency will need to examine processing records onsite in order to conduct an effective verification inspection. For this reason, records must be so stored that they can be promptly returned to the processing facility upon demand by FDA. In order to maintain inspectional efficiency, the time period between an FDA request for the records and their arrival should not ordinarily exceed 24 hours.

84. Several comments urged FDA to provide for the use of computers to maintain HACCP records.

It was not the intent of the agency to preclude such records. To make this fact clear, FDA has added a new paragraph, § 123.9(f), to the final regulation, which reads, "(f) *Records maintained on computers.* The use of records maintained on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and signatures."

In the **Federal Register** of August 31, 1994 (59 FR 45160), FDA proposed separate regulations at 21 CFR 11 that, if adopted, will become the standard for determining what constitutes appropriate controls for electronic records, electronic signatures, and handwritten signatures executed to electronic records. In the interim, processors are encouraged to look to industry standards for guidance.

3. Confidentiality of Records

85. In the preamble to the proposed regulation, FDA stated that, as a preliminary matter, HACCP plans and monitoring records appear to fall within the bounds of trade secret or commercial confidential information and would, therefore, be protected from public disclosure by section 301(j) of the act (21 U.S.C. 331) and by the Freedom of Information Act (FOIA) and the Department of Health and Human Services (DHHS) and FDA regulations promulgated pursuant to these laws. FDA specifically invited comment on the issue of public disclosure of HACCP records and on whether FDA has any discretion about the releasability of any HACCP records that it may eventually have in its possession. A large number of comments responded to FDA's request for comment, especially in the context of the provision in the regulations (§ 123.9(c) in this final rule), that provides that all required records and plans must be available for review and copying.

A large number of comments, from processors, trade associations, professional associations, State and Federal agencies, and individuals, contended that HACCP records and plans are trade secrets and should under no circumstances be released to the public. Comments from several consumer advocacy groups countered that in many cases HACCP records and plans will not contain trade secret information or will contain only limited trade secret information, and that the nonsecret parts (i.e., most of their contents) should, therefore, be available to the public.

Many of the comments that supported protection from public disclosure urged that the final regulations contain controls over the agency's access to, and

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copying of, HACCP plans and records as the only guaranteed way to ensure confidentiality. The comments argued that the potential harm from exposure of HACCP plans and records to competitors or to the public is considerable and carries the threat of increased costs, misuse, and damage to the integrity of a firm and its products.

Several comments contended that HACCP records will be trade secret because they will be process-specific and, therefore, will contain such information as processing times and temperatures. They stated that these processing parameters may differ from company to company based on product formulas.

A few comments argued that there is no precedent for public access to industry-generated records. Some of these comments stated that processing records are regarded as trade secret under the LACF regulations, and they noted that § 108.35(d)(3)(ii) deems processing information submitted to FDA to be trade secret within the meaning of 301(j) of the act and within the meaning of the FOIA. Other comments asked that FDA protect HACCP plans and records in the same way that the agency protects processing and quality control data that are submitted to FDA under cooperative quality assurance agreements (i.e., manufacturing methods or processes, including quality control procedures, are deemed not to be releasable unless the information that they contain has already been released or is otherwise no longer trade secret or confidential commercial per §§ 20.111(d)(2) and 20.114 (21 CFR 20.111(d)(2) and 20.114)).

Several comments suggested that FDA specifically declare that: (1) HACCP plans and records are trade secrets; (2) section 301(j) of the act and the FOIA prohibit disclosure of trade secret or confidential commercial information and give the agency no discretion whether to release these types of records; and (3) § 20.81 provides for disclosure of trade secret or confidential commercial information only if the information has been previously disclosed to the public.

One comment proposed that, if FDA felt obliged to release some HACCP-related information pursuant to FOIA requests, reports of regular inspections be released instead of HACCP plans and records, because such reports are likely to contain less sensitive information. Another comment suggested that, to avoid releasing proprietary information, the agency should describe or explain information that is contained in HACCP plans and records in general terms rather than release the records themselves. The comment asserted that this step would serve to inform consumers about the relative safety of the product and the effectiveness of the HACCP system, while not divulging specific process parameters that are trade secret or confidential commercial.

Conversely, comments from consumer advocacy groups argued that, for the most part, HACCP plans and records are not trade secret or confidential commercial. The comments asserted that much of the information contained in these plans and records involves the application of basic sanitary engineering and is already in the public domain, as evidenced by the draft FDA Guide.

The consumer advocacy groups argued that, given the limited resources that FDA can devote to monitoring HACCP compliance, public access to HACCP records should be as broad as allowed under the law, so that consumer confidence in, and understanding of, the seafood supply can be fostered. One comment asserted that the public's right and need to know about matters involving public health should be the basis from which the agency formulates public access policy. Another comment stated that consumers are the intended beneficiaries of the HACCP seafood proposal and therefore should have the right to determine through record inspection whether processors are properly implementing the HACCP requirements. These comments urged FDA to routinely collect HACCP plans and records from processors to facilitate agency verification activities and public review of the effectiveness of the HACCP system. One comment from a consumer advocacy group asserted that *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280 (D.C. Cir. 1983) narrowly defined trade secrets in such a way that HACCP plans and the records at issue in this rulemaking could not be considered trade secret.

Unquestionably, adoption of a mandatory HACCP system will place significant documentation requirements on seafood processors. As a result, they will produce records that reflect processing designs and equipment and certain types of day-to-day operations. They will be available to FDA. FDA strongly believes that it is in the public interest to require that these records be maintained, and that the agency have access to them. Such records and access are necessary to effectuate a mandatory system of preventive controls for safety. As stated in the preamble to the proposed regulations, FDA expects to take possession of records on a case-by-case basis, and only when there is a specific need to do so. The agency categorically rejects the view that FDA should be a collection point for HACCP records and plans so that they may be made publicly available. Nevertheless, the apprehension expressed by many comments about the consequences of public disclosure of these new types of records is certainly understandable.

FDA agrees with the views expressed by consumer advocacy organizations that the public needs ways to be able to judge how and whether it is benefiting from a HACCP system. Neither the agency nor the industry can reasonably expect that the public will simply take the government's word for it. It remains to be seen, however, whether public access to information about processors that processors have traditionally held as protected is the only way, or the best way, to provide the public with information about this system.

FDA is considering how meaningful data can be extracted from the inspectional process and prepared in such a manner that it could be released without jeopardizing trade secret and confidential commercial information and yet be useful to both FDA and the public in evaluating this program. FDA is considering developing standardized reports that would be completed by investigators at the conclusion of routine HACCP-based inspections and become part of agency files. As presently conceived, these reports would contain a summary of the status of the HACCP program in effect at the firm, similar to the suggestion of two of the comments.

Nonetheless, the question is whether, as FDA preliminarily concluded, most plans and records to be generated under this program will be subject to protection under existing law and FOIA regulations. FDA's experience in seafood processing plants, its experience with HACCP, and its understanding from the cost-benefit modeling that has been done in the preparation of these regulations is that HACCP plans will take each processor some time and money to develop. Thus, the agency concludes that HACCP plans generally will meet the definition of trade secret, including the court's definition in *Public Citizen Health Research Group* v. *FDA, supra*. Plans that incorporate unique time-temperature regimens to achieve product safety, or other parameters that are processor-specific and that are the result of considerable research and effort, will surely meet this definition.

Moreover, there is value in a plan to a company that produces it for no other reason than that it took work to write. The equity in such a product is not readily given away to competitors. FDA knows from its own experience that plant configurations tend to be unique to individual processors, or at least have unique features (Ref. 222). While generic plans will have great utility in many circumstances, they serve primarily as starting points for processors to develop their own plans. FDA expects that its Guide will help serve that purpose, but firms will still need to expend time and money to tailor HACCP to their individual circumstances.

Additionally, the agency has come to the conclusion, as a matter of policy, that records and plans should be protected to the extent possible in order to promote the implementation of HACCP across the seafood industry. FDA has concluded that the public will benefit from the protection of records because it will actually strengthen the HACCP system. So long as the legitimate public need to be able to evaluate the system can be met through other means, the confidentiality of HACCP records and plans generally will foster the industry's acceptance of HACCP. Even though HACCP may be mandatory under these regulations, in order for it to succeed, processors must be committed to it because they see value in it for themselves. Fear of public disclosure of matters that have long been regarded as confidential business matters could significantly undermine that commitment. FDA concludes, therefore, that it is in the public interest to foster tailored HACCP plans that demonstrate understanding and thought, rather than promote the use of rote plans and minimally acceptable standards due to fear of public disclosure.

FDA understands that it cannot make promises of confidentiality that exceed the permissible boundaries established under FOIA, nor does the agency wish to do so in this case. The agency still does not expect that it will be in possession of a large volume of plans and records at any given moment. However, given the significant interest in this subject as conveyed by the comments, FDA has concluded that the final regulations should reflect the fact that the HACCP plans and records that do come into FDA's possession will generally meet the definition of either trade secret or commercial confidential materials. A statement to this effect in the final regulations will help to make this fact as widely understood as possible and will clarify the agency's position on this matter. This fact is codified at § 123.9(d)(1), which reads as follows:

(d) *Public disclosure.* (1) Subject to the limitations in paragraph (d)(2) of this section, all plans and records required by this part are not available for public disclosure unless they have been previously disclosed to the public as defined in § 20.61 of this chapter, or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 20.61 of this chapter.

The agency acknowledges that there could be exceptions to this general rule. The nature of information in HACCP plans and records varies. Some of it could be generally available processing methodology or procedures, based on generic or model HACCP plans or guidelines developed by the agency or some other public source, that is sufficiently reflective of an industry standard that it has little if any proprietary value. In such a case, in response to an FOIA request, there may not be a valid reason for protecting this information. The agency has concluded that there should be a provision that makes clear that it will make information available in appropriate circumstances. Consequently, the final regulations in § 123.9(d)(2), state:

(2) However, these records and plans may be subject to disclosure to the extent that they involve materials that are otherwise publicly available, or that disclosure could not reasonably be expected to cause a competitive hardship, such as generic-type HACCP plans that reflect standard industry practices.

There is precedent for describing in regulations the records that have protected status. The low-acid canned food regulations at § 108.35(l) provide that, except under certain limited situations, filed scheduled processes submitted to FDA are not available for public disclosure. Additionally, § 108.35(d) provides that data submitted to the agency to support these processes are to be treated as trade secret. These materials are analogous to HACCP plans, and their treatment is consistent with the agency's views relative to the protected status of HACCP plans. The comments that suggested that the low-acid canned foods regulations grant trade secret status to the monitoring records that are required to be kept by part 113 are incorrect. These records are not provided any special status in those regulations.

4. Agency Access to Records

86. Several comments suggested that the final regulations should require processors to provide access by FDA to HACCP records only after the submission by the agency of a written request for specific records it deems necessary to review. The comments noted that this approach would be similar to § 108.35(h) in the LACF regulations, because processors are familiar and satisfied with such procedures.

FDA remains convinced that access to HACCP documents is essential to the agency's verification of a firm's HACCP system. A key feature of the HACCP verification process is access by government investigators to the HACCP plan, to monitoring records kept according to the plan, and to records of corrective actions that were taken in response to CL deviations. Examination of HACCP records enables an investigator to see how the processing facility or the importer operates over time rather than how it is functioning at one particular moment in time. Additionally, it will enable the regulator to review the adequacy of the processor's or the importer's preventive control system itself.

FDA rejects the idea of being required to request in writing access to HACCP plans and records. The agency is convinced that it has sufficiently limited its access to those records and plans that are minimally necessary to adequately evaluate the adequacy of a firm's HACCP system. Section 123.9(c) has been modified slightly to clarify to which records FDA is required to be granted access.

The comments are correct that the emergency permit regulations for low-acid canned foods at § 108.35 require that FDA issue a written request for access to monitoring records. However, the written request has proven to be merely a mechanical exercise. It has not in any way served to affect the outcome of FDA access to records, nor is it associated with any managerial control over the activities of FDA investigators, with respect to the kind or numbers of records to which they seek access. Moreover, the bottled water regulations at § 129.80(h), promulgated subsequent to the low-acid canned food regulations, do not contain a requirement for the issuance of a written request for records. FDA is not aware of any undue concerns expressed by the bottled water industry relative to agency abuse of its records access authority as a result of the lack of a written request requirement in those regulations. FDA further notes that its investigators are required to present a written notice of inspection to management of the firm at the start of each inspection. The notice explains the authority of the investigator to conduct an inspection of the facility. The agency has concluded that there is no need to further encumber the efficient enforcement of these regulations with a

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written request for those records to which it is entitled to have access. It has chosen to use the more recent regulations, bottled water, as the model for these regulations with respect to records access.

5. Agency Copying of Records

87. A large number of comments opposed the provision in the proposal that provided for FDA copying of HACCP plans and records, mostly because of concern about public disclosure. Several comments stated that the agency should be permitted to obtain copies only to support a regulatory action and only after FDA has obtained a subpoena. Several other comments suggested that FDA be permitted to copy only those records that relate to a CL failure.

Several comments requested that FDA provide safeguards to control potentially abusive regulatory practices by establishing rules to be followed when copying records. The comments stated that the rules should accomplish the following: Identify investigators authorized to copy records, limit copying to records pertaining directly to CCP's, require prior written authorization for copying from the investigator's supervisor, require that the authorization identify the specific records to be copied and the reason that they are needed, require that a responsible company executive receive each request before any copying is permitted, and permit the company to question the purpose for the request before records are copied.

Comments from several consumer advocacy groups, on the other hand, supported the agency's need to copy records.

There are two primary reasons for the agency to copy HACCP plans and records: (1) To facilitate expert review of such issues as the identification of appropriate hazards and CL's in HACCP plans and the evaluation of the adequacy of corrective actions taken in response to CL failures; and (2) to document suspected inadequacies of the HACCP plan or the firm's implementation of the plan for possible regulatory followup.

Limiting the copying of records to those situations in which regulatory action is contemplated or in which a subpoena could be obtained would serve neither the needs of the industry nor the agency. Resolution of differences in food safety control strategies through scientific review and dialog, where possible, is superior to reliance solely upon the legal system for such resolution. Similarly, limiting the copying of records to instances involving CL deviations would inappropriately restrict the agency's ability to evaluate potential problems in the identification of CCP's, the establishment of CL's, and other scientific issues, which, in some cases, may be beyond the expertise of agency investigators.

Industry comments have expressed considerable concern, as discussed in the "Compliance" section of this preamble, that there will be no mechanism for dialog with the agency if a firm disagrees with an investigator's findings with regard to the sufficiency of HACCP plans and records. The agency is strongly committed to dialog whenever possible. Provision of a means by which senior reviewers at agency headquarters will have access to HACCP plans and records will facilitate that process.

FDA has concluded that the restrictions on copying of records suggested by the comments would significantly interfere with that access. It would be highly inefficient for FDA to identify a special class of investigators that are permitted to copy HACCP records and plans. FDA investigators are responsible for conducting inspections and investigations to enforce a wide array of regulations, and FDA field managers need the flexibility to assign work in an efficient and effective manner. Copying, like record access, is limited to the records specified in § 123.9(c). It would be highly impractical for supervisory preapproval to be accorded to an investigator for the copying of specific records. Until an investigator has evaluated a HACCP plan and validated the operations of the plant, it is not likely that the investigator will know with any certainty what HACCP records are appropriate for review. Additionally, inspections are often done in remote locations and under highly flexible itineraries that preclude close contact between the investigator and particular supervisor. Certainly, FDA investigators will make every effort to obtain HACCP plans and records from responsible individuals of the firm and will, if necessary, explain the relevance of the requested records to the recordkeeping requirements of these regulations.

The agency is unconvinced of the need to modify § 123.9(c) in response to the aforementioned comments, except that reference to consumer complaints in this section has been eliminated as discussed in the "Consumer Complaints" section of this preamble.

88. Several comments questioned the phrase "duly authorized officers and employees" used in this section. Some felt that it referred, at least in part, to employees of the firm, and others felt that it excluded officials of State regulatory agencies that may adopt these regulations by reference.

The intent of the proposed regulations was to grant records access to regulatory agency officers and employees, not officers or employees of a firm. The language was intended to be flexible enough to cover State officials if their agency adopted the regulations by reference. FDA has changed the wording of the regulations to address these concerns.

The modified paragraph in § 123.9(c) reads:

(c) *Official review.* All records required by this part and all plans and procedures required by this part shall be available for official review and copying at reasonable times.

J. Training

A large number of comments addressed the proposed training requirements. FDA proposed to require that each processor and importer employ at least one individual who has successfully completed a training course that has been approved by FDA on the application of HACCP to fish and fishery products processing. FDA also proposed that the trained person or persons be responsible for, at a minimum, developing and modifying the HACCP plan, evaluating the adequacy of corrective actions taken in response to CL deviations, and reviewing monitoring records before shipment.

In the preamble to the proposed regulations, FDA specifically requested comment on: (1) Whether the need for training could be satisfied by different gradations of training (e.g., based on complexity or size of operation or on the degree of risk posed by the products being produced); (2) whether other training formats, such as video tapes, might be effective, at least under some circumstances (e.g., a small business whose processing involved few hazards); (3) whether, assuming the regulations are adopted by FDA, training in HACCP received before they are effective should be "grandfathered" as fulfilling the training requirement; and (4) whether some or all of the training requirements should be deleted or modified as a means of reducing the burden on the industry.

1. The Need for Mandatory Training

89. Most of the comments that addressed the question of whether there should be a mandatory training requirement expressed support for it. A significant portion of these comments acknowledged the need for at least one trained individual at each processing facility. Those that provided reasons for their support contended that properly trained personnel are essential to the development and effectiveness of HACCP controls, and that training is necessary to ensure consistency of approach.

Those few comments that expressed reservations about the overall HACCP training requirement generally acknowledged the need for a trained individual in the plant but opposed a compulsory training program. Two comments, from State governments, expressed concerns about the financial burden of training on small businesses and questioned the need for making such a provision mandatory.

The overwhelming support in the comments for HACCP training is indicative of the nearly universal view that training is essential to the effective implementation of a HACCP system. As stated in the preamble to the proposed regulations, this view is shared by the NAS based on the success of the training requirement in FDA's HACCP-based regulations for low-acid canned foods at part 113 (Ref. 54). The primary concern expressed about mandatory training is the cost.

The agency is convinced that its efforts with the Alliance will facilitate the development and implementation of a low cost training program. As mentioned above, the Alliance is a cooperative effort between Federal and State food regulatory agencies, academia, and the fish and fishery products industry to provide support to the industry in meeting its needs relative to HACCP training, technical assistance, and research. Presently, the Alliance Steering Committee is comprised of representatives of FDA, the U.S. Department of Agriculture (USDA), NMFS, AFDO and its six regional affiliates, the Sea Grant Colleges, the ISSC, the National Fisheries Institute, and the National Food Processors Association (NFPA).

The goals of the Alliance are to develop: a HACCP training course that will meet the requirements of these regulations, a mechanism for delivering the training to the fish and fishery products industry, a compendium of established methods for controlling hazards in the fish and fishery products industry, and a mechanism for coordinating the research efforts of the participating agencies to facilitate the development of improved methods of hazard identification and control.

The training course materials are in an advanced stage of development and are expected to be publicly available shortly after the publication of these regulations. The AFDO regional affiliates have agreed to work within their regions to identify regulatory and industry training needs and qualified trainers who are interested in participating in the Alliance-sponsored training. They have also agreed to serve as the course coordinators for the Alliance-sponsored training, which will be conducted on a cost-recovery basis.

The Alliance is developing a 3-day course, divided about equally among: (1) The fundamentals of HACCP, based on the recommendations of the NACMCF; (2) the requirements of these regulations and the recommendations of the Guide; and (3) a practical exercise in HACCP plan development.

FDA is sensitive to the concerns expressed about the cost of training but is optimistic that training will not be unnecessarily burdensome on small business, either in actual out- of-pocket expenses or in lost productivity. As was previously mentioned, FDA is working with the Alliance to produce a low cost, 3-day HACCP-training course for the seafood industry, that is intended to meet the requirements of these regulations. Current plans are for the course to be offered through a variety of public institutions, including Sea Grant colleges. As indicated earlier, in this setting the course is expected to be offered on a cost recovery basis. It is likely that the course will also be offered by private institutions, using their own fee structure.

The other cost associated with the training requirement is the lost productivity for the duration of the course. FDA is convinced that, with the flexibility in course structure, described elsewhere in this section, training can be taken at times when it would least affect the operations of the firm (e.g., during an off-season, at night). Moreover, FDA is convinced by the comments that, as a general rule, the benefits of training will significantly outweigh the burden. The agency has concluded that with certain modifications from the proposal as described below, training should remain a feature of these regulations.

The agency has made one modification in response to requests that it modify the training requirement to reduce financial burden, especially on smaller processors. FDA acknowledges that a short course in HACCP has its limitations. For example, a 3-day course might not have anything important to offer to an individual who has significant job experience working with or for an individual who is well-versed in HACCP. In such a situation, if the processor loses the trained individual, it should be able to replace him or her with the individual who has, in effect, apprenticed with the trained individual without having to send the apprentice to a course in HACCP training, assuming, of course, that the apprenticeship has imparted a level of knowledge at least equivalent to that that could be provided by the training. The agency has modified the regulations to provide for this kind of situation by permitting adequate job experience to qualify and individual to perform the functions of the trained individual.

Note that all references in this preamble to a trained individual mean an individual who meets the requirements of § 123.10 through either completion of a course or job experience that provides an equivalent level of knowledge.

2. Who Should Provide Training?

90. A significant number of comments identified organizations or individuals that they considered to be qualified to conduct or develop HACCP-training courses. The majority of the comments, which included remarks from processors, trade associations, and State governments, suggested that FDA should either conduct such training or at least approve the relevant course material. A few of the comments that recommended that FDA conduct the courses also recommended that FDA provide the courses at no cost or financially support the training. The comments that endorsed FDA approved courses asserted that this approach would result in a standardized, comprehensive training program that emphasizes the minimum acceptable HACCP requirements.

Other comments recommended that training programs could be conducted by NFPA or other trade associations, ISSC, Sea Grant colleges and other academic institutions, consultants, and State and local regulatory agencies. The comments acknowledged the cost savings that could be realized with trade association- provided training and through the HACCP training experience already possessed by the NFPA. One comment suggested that allowing many training programs would offer hundreds of professionals the opportunity to contribute to the development of HACCP. A few comments suggested that FDA publish a listing of approved training courses.

A comment from the ISSC cautioned that organization does not support the shifting of public health training in the area of molluscan shellfish away from itself. The comment further stated that the organization would work cooperatively with the Alliance in the development of a HACCP-training

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course, which it suggested should be Federally subsidized and ISSC endorsed.

A few comments suggested that the Alliance be permitted to develop the standard for HACCP training, and that the results be shared with all prospective trainers. A few additional comments urged that HACCP training be based on the recommendations of NACMCF, because such efforts would result in a training program that was well defined.

FDA generally agrees with these comments. The agency does not intend to run HACCP-training courses for the industry. Rather, FDA must, of necessity, focus its HACCP training on government investigators. The agency anticipates that industry training will be conducted privately and through academia. This division of labor is based on the model that has worked well for the training requirement for low-acid canned foods.

FDA agrees, moreover, that there should be widespread opportunity for conducting HACCP training. It is not the agency's intent to specify or limit the field of qualified trainers.

The training course that is under development by the Alliance is based on the recommendations of the NACMCF. After reviewing the final draft of the Alliance training materials, FDA intends to publish a notice of availability of the documents in the **Federal Register**. It is the agency's intent to utilize the Alliance materials as the standard against which other course materials may be judged.

The agency strongly encourages trainers to evaluate their courses, past, present, and future, against the Alliance materials when they become available and to modify or adapt curricula, where necessary, to ensure that they are consistent with, and provide at least an equivalent level of instruction to, the Alliance course. Where previously conducted training fails to meet this standard, it may suffice to provide supplemental materials or instruction so that the cumulative training is at least equivalent to the Alliance course. FDA also encourages the fish and fishery products industry to confirm with past or prospective trainers that a particular course is equivalent to and consistent with the Alliance materials. The agency has no plans to publish a list of "approved" courses other than the Alliance course materials.

Finally, it should be noted that FDA resources will not be sufficient to fund the training of all appropriate regulators (i.e., State or local regulators). The agency is confident, however, that Alliance training will provide a low cost opportunity for high quality HACCP training for State or local regulators as well as for processors.

Because FDA will not be approving in advance specific courses other than the Alliance curriculum, and in response to comments, the final regulations have been modified at § 123.10 to require that training courses be "at least equivalent to the standardized curriculum recognized as adequate by the U.S. Food and Drug Administration." FDA had proposed to require that training courses be "approved by the Food and Drug Administration."

3. Should Training Be "Grandfathered?"

91. A large number of comments addressed the question of whether training in HACCP received before the effective date of these regulations should be "grandfathered" as fulfilling the training requirement. All of these comments supported the grandfathering of such training. Many of the these comments recommended specific training courses that FDA should grandfather. Approximately half of these comments requested that those trained under NMFS' HACCP training program be grandfathered. Those that provided reasons referenced the large number that had been trained at the time of the writing of the comment (1,310 domestically and 394 overseas) and stressed that NMFS' training was more comprehensive than that which would be necessary under FDA's HACCP approach, especially because the NMFS program covers nonsafety hazards in addition to safety hazards.

Other comments supported grandfathering HACCP courses conducted by NFPA, Sea Grant colleges, State regulatory agencies and those organizations sanctioned by such agencies to provide HACCP training, and Pacific Fisheries Services. One comment suggested that graduation from a Better Process Control School, as required by parts 113 and 114 for processors of acidified and low-acid canned foods, should be considered to meet the requirements of these regulations. Another comment urged that any training program based on the HACCP principles recommended by the NACMCF should be grandfathered.

One comment suggested that, in order to grandfather courses, FDA would need to develop a system to determine the effectiveness of the training that has been conducted. The comment recommended the use of testing or curriculum review as evaluation tools. The comment further encouraged the development of a formal approval process for previously conducted training.

FDA has concluded that it is not in a position to grandfather HACCP training received before the issuance of these regulations. Blanket grandfathering would pose the risk of sanctioning training that does not fully prepare processors for operating under these regulations, and case-by-case grandfathering would be unduly demanding on agency resources.

On the other hand, the agency will not presume that HACCP training received prior to the issuance of these regulations will have to be repeated. FDA will challenge the adequacy of prior training only when a processor's performance demonstrates a lack of understanding of HACCP principles.

Nonetheless, FDA encourages processors to update any prior training to ensure that they have a thorough understanding of the requirements of these regulations. It may well be that many traditional HACCP courses will need only minimal supplementation to accommodate them to the provisions of these regulations, and that there will be no need for a processor to repeat an entire course. As mentioned above, partial, supplemental courses may be offered, or reading materials developed by the course offerer and sent to the processor may suffice. There are numerous possibilities.

FDA is also not in a position to make determinations in advance about the acceptability of courses that will be offered after the issuance of these regulations. FDA agrees with the comment that, in order to do so, the agency would have to develop a system for course evaluation. Review of course materials, auditing of course presentations; testing, and other evaluation tools that FDA might have to employ are labor intensive and are not the most efficient use of agency resources. Rather, the adequacy of courses will have to be evaluated by FDA on a case-by-case basis, when inspectional or other evidence causes the agency to question whether the course meets the requirements of § 123.10.

The ultimate determination of the success of training is whether processors are operating effective HACCP systems. In the initial stages of the program, at least, FDA's primary focus will have to be on whether HACCP plans are adequate, and the systems are being effectively implemented. FDA's interest in the adequacy of training will increase when plans and systems fail to demonstrate an adequate understanding of HACCP and its application to seafood.

Nonetheless, FDA can state that the Better Processing School curriculum for acidified and low-acid canned foods will not be adequate to meet the training requirement of these regulations. The Better Processing School was developed to instruct acidified and low-acid canned food processors in how to safely process such products to control the hazard of the development of botulinal toxin in accordance with the requirements of parts 113 and 114. The course does not provide instruction in the principles of HACCP or address other hazards (e.g., histamine development) to which these products might also be exposed.

4. Course Curriculum

92. A few comments suggested that the training be divided into a basic HACCP core and interchangeable segments based on the portions of the industry of interest to the students (e.g., vessels, cooked, ready-to-eat fishery products, molluscan shellfish, and smoked fish).

As mentioned previously, the Alliance course includes three segments: A basic HACCP core, the requirements of these regulations, and the development of a HACCP plan. The first two segments are applicable to the entire fish and fishery products industry. The Alliance has acknowledged the need to develop industry-specific features for the third segment. The agency is in agreement with the Alliance and with the comment in this regard and would encourage the development of such directed courses.

93. In response to FDA's invitation to comment on the advisability of alternate training formats, several comments expressed support for the use of video tapes by small processors of low-risk products. A few additional comments did not specifically address video taped training but stated that, while it is desirable to have uniform training, ultimately training should involve "whatever it takes." One comment suggested that home study courses and education via television might be acceptable alternatives to more formal, for-fee training mechanisms. A few comments opposed courses that consist exclusively of video tapes, based on concern for a potential limitation in the level of understanding that could result from this type of noninteractive training method.

FDA agrees with the comments that expressed concern with teaching methods, such as video tapes, that lack instructor/student interaction. However, in the interest of providing flexibility in meeting the training requirement of these regulations, the agency has concluded that any teaching format is acceptable so long as it provides a level of understanding at least equivalent to that provided by the Alliance training program. FDA is aware that video tape training is widely used for a variety of purposes. The agency cannot conclude that video-based HACCP training will not accomplish the purposes of the training requirement. For remote site processors, video-based training may be the only practical method available.

It is unlikely, however, that two or three 2-hour video tapes, as one comment suggested, will provide an equivalent level of training to the 3-day Alliance course under development. On the other hand, a series of video presentations, perhaps in conjunction with a 1-day workshop, may be adequate.

94. A few comments addressed the length of the training course. One suggested that 3 days would be overly burdensome on small businesses because of the loss of manpower during the course. Another suggested that 3 days was not long enough to furnish the needed information. One comment suggested that the length of training should be based on the level of experience of the student and the level of complexity of the processing operation.

FDA has concluded, based, in part, on its participation in the Alliance, that the 3-day Alliance curriculum is the minimum necessary to develop an adequate understanding of HACCP principles and essentials of HACCP plan development. If the curriculum were reduced any further, processors would risk having to take more time later to implement their HACCP systems as a result of trial and error, and as a result, the quality of their HACCP programs would be jeopardized.

Nonetheless, FDA is not specifying in the regulations how long the course must take, only that it be equivalent in terms of curriculum to the standardized curriculum recognized as adequate by the agency. If true equivalency can be achieved in less time, FDA would have no objection. Moreover, depending upon the circumstances, FDA would have no objection to training that can be imparted in segments at convenient times so as to cause only a minimal disruption to the work schedule.

Section 123.10, therefore, states that the training must be "at least equivalent to the standardized curriculum recognized as adequate by the U.S. Food and Drug Administration." This provision will also accommodate the use of food processing experts, who have received training in HACCP that is far more extensive than that planned by the Alliance. FDA recognizes that it would be inappropriate to limit the universe of experts to those who have taken a course based on the Alliance 3-day curriculum. The issue of the use of consultants and other experts will be further discussed later in this section.

5. Do Importers Need Training?

95. A few comments suggested that FDA should provide separate or specialized training aids for importers. Two of these comments noted that importers have not, historically, been involved with the processing of seafood commodities. The comments requested that FDA work with trade associations that represent importers in setting up workshops, developing specialized training materials for importers, and recognizing training provided by foreign institutions.

FDA has reassessed the need for training to accomplish the HACCP functions assigned to importers, especially in light of changes in the imports provisions of these final regulations. These changes are fully discussed in the "Imports" section of this preamble. In summary, importers are now required to conduct verification activities but are no longer required to have full HACCP plans of their own unless they also meet the definition of a "processor." FDA has concluded that HACCP training, while desirable, is not essential to the preparation of importers' verification procedures, as specified at § 123.12(a)(2). For this reason, training is not required for importers, and all reference to required training for importer functions has been dropped from § 123.10.

Nonetheless, the agency is aware that importers may be unfamiliar with the technical aspects of fish and fishery product processing and HACCP control procedures. Knowledge about these matters would be helpful for purposes of verification. To meet this need, FDA plans to include in the Guide specific materials relating to importers' verification procedures. In addition, as has traditionally been the case, the agency intends to continue to interact with, and provide information to, the import industry through trade associations and other forums, within the limits of budget constraints. Moreover, importers may want to participate in the training courses that are offered by the Alliance.

Finally, the agency agrees with the comment that suggested that training overseas should be conducted by foreign institutions recognized for their expertise in seafood processing and HACCP control. This issue will be further discussed in the "Imports" section of this preamble.

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6. Testing and Retraining

96. Several comments supported the mandatory use of testing to assess whether an individual has successfully completed HACCP training. Two comments further recommended that the agency could consider the training requirement to be met if a person successfully passes an examination.

The agency is not opposed to testing at the end of a course but prefers not to mandate that courses include tests. Trainers will be free to include or not include testing as part of their training efforts. The issue of student evaluation is one that is still being debated in the Alliance relative to Alliance-sponsored training courses.

However, testing alone does not provide the kind of exposure to the concepts of HACCP that is necessary to result in company understanding and commitment. The function of training is to prepare industry to meet the requirements of the regulations, not to test competency. The true test will be whether processors are able to implement their HACCP systems. Processors will be judged as plans are reviewed, and plant operations are evaluated, during inspections.

97. A few comments recommended mandatory retraining or continuing education. The comments stated that as new information about the science of fish and fishery products hazards and the technology of their control becomes available, there will need to be some method for introducing this information to previously trained individuals. One comment, on the other hand, urged that training be limited to a single event and not be subject to periodic renewal.

The primary purpose of the training is to teach the fundamentals of HACCP. These are unlikely to change over time. A comprehensive discussion of seafood hazards and controls is far too extensive for inclusion in a 3-day training session. The agency has concluded that information about the technology that is available to control hazards should be made available to the industry through the Guide, the Alliance Compendium of Established Processes, and other modes of technical assistance. FDA supports the idea of continuing education and will encourage it, but the agency is not prepared to mandate it in these final regulations.

98. A comment suggested that the regulations mandate remedial or enhanced training for a first time violator whose infractions have resulted from a misunderstanding of HACCP principles.

Whenever an infraction occurs, the nature of the remedy that is warranted depends on factors such as the public health significance of the infraction. The agency has administrative warnings and, when necessary, a range of regulatory actions available to it. (See the "Compliance" section of this preamble for a more thorough discussion of compliance philosophy under HACCP and available remedies.) Ultimately, however, it will be the processor who will be responsible for correcting the deficiencies in its HACCP system. Part of that responsibility will be determining the most appropriate method of resolving any failure to fully understand HACCP principles, whether through remedial training, hiring a consultant, or taking some other step. So long as an appropriate outcome can be obtained, FDA would prefer not to mandate any particular method of remediation in these regulations. Processors certainly may wish to consider additional education as an option, however.

7. Gradations of Training

99. Several comments addressed whether the HACCP training requirement could be satisfied by different gradations of training, depending on the complexity or size of the operation or on the degree of risks posed by the product being produced. The majority of these comments supported the concept of variable levels of HACCP training. Most did not provide the basis of their support. Those that did suggested that small or large scale processing of low-risk products would not likely require any special training, and that small scale processing of even high-risk products would allow for individual examination of every fish, an option that is not possible in large scale processing. One comment further suggested the use of variances to exclude certain industry members from the training requirement, rather than providing a blanket exemption for a segment of the industry.

A minority of the comments on this subject opposed any variations in the level of training. Several of these comments stated that the necessity for HACCP education and training does not vary based on the size of a company, and that a standard training curriculum should be developed for all companies, regardless of their size. Some of these comments stated that smaller processing operations may be inherently less safe, and that, cumulatively, they represent a large amount of the seafood making its way to the consumer. One comment stated that smaller processing operations may actually have a greater need for employee training, compared to some larger processing operations that may already have trained staff.

The agency agrees with the comments that suggested that the need for HACCP training does not vary solely by the size of the processor. An understanding of the principles of HACCP is essential for the successful implementation of a HACCP program, regardless of establishment size. The agency agrees with the assertion that, in many cases, the training needs of small businesses may, in fact, be greater than those of large firms, because they frequently lack the trained quality control and research and development staffs that are common in large firms. Moreover, small businesses comprise a significant portion of certain high-risk segments of the fish and fishery products industry, such as processors of molluscan shellfish and cooked, ready-to-eat products. Training will be critical to ensure the success of HACCP in these segments.

Although the agency expects that the complexity of HACCP plans will vary with the number and type of hazards associated with a processing operation, an understanding of the basic principles of HACCP, and how to apply those principles to the processor's operations, will remain essential. The curriculum under development by the Alliance is designed to provide a very basic grounding in these matters. As stated earlier, the Alliance has acknowledged a need to tailor part of the course so that it can be directed toward specific industry segments. This approach may be the best way to provide flexibility in the program, so that training can match the degree of complexity and risk that is encountered by the processor. FDA will continue to encourage the development of industry-specific training features.

The agency is not persuaded that the ability of a processor to individually examine all fish because of the small scale of operations will reduce the processor's need to understand the hazards associated with seafood and the specifics of a systematic approach for controlling them. FDA has long taken the position that observing each fish on an assembly line is an inappropriate way to ensure seafood safety (Ref. 208, p. 4146). While matters relating to the quality of the fish can be observed in this manner, safety matters often cannot.

8. Duties of the Trained Individual

100. Several comments suggested that a firm be permitted to hire a consultant, or an outside expert, who is not an employee of the firm, to perform the functions required of a trained individual. Two trade associations argued that contracting for the development of a HACCP plan by a professional consultant could be more efficient and cost effective, especially for many small companies. Related comments pointed out that some of the proposed functions of the trained individual either did not require a person to be onsite continually (e.g., plan development) or required expertise that could not realistically be obtained in a 3-day course (e.g., making decisions about whether product that has been subject to a deviation is safe to release into commerce).

While the agency considers training employees to be preferable to hiring outside consultants in terms of fostering the appropriate corporate culture and commitment to HACCP, FDA recognizes the importance of ensuring the flexibility that firms, especially small businesses, may need to comply with the regulations in a cost-effective manner. The agency also accepts that for some processors, the expertise that may be needed from time to time could best be provided by an expert consultant. Consequently, the agency is modifying § 123.10 to read as follows: "* * * the following functions shall be performed by an individual who has successfully completed a course of instruction * * *." The requirement that processors employ a trained individual has been eliminated. Moreover, FDA has modified § 123.10(c) to state, "The trained individual need not be an employee of the processor."

101. A number of comments asked whether the regulations would require a separate trained individual for each processing location of each company or just one per company.

FDA intends that the functions enumerated in § 123.10 be performed by a trained individual. The number of employees a processor must train, or the consultants that must be hired, in order to ensure that trained individuals perform these functions is left to the judgment of the processor. For some firms, one individual will be sufficient. Others will need to secure the services of more than one such individual, either as employees or as consultants. Whether these individuals are located at each facility, at a corporate headquarters, at a consulting firm, or at some combination of these arrangements is to be determined by each individual processor.

102. A few comments were concerned about the logistics of the routine functions that the agency proposed must be performed by someone with HACCP training (i.e., record review and deviation handling). Specifically, they argued that the proposed requirements would actually require each firm to have more than one trained individual because of work weeks that routinely exceed 40 hours, vacations, illnesses, and employee turnover. The consequence, the comments suggested, would drive up the cost of training.

FDA acknowledges that, for certain situations, these comments may be correct. However, the agency has made three changes in the final regulations to minimize this possibility. First, as stated above, a processor may hire trained consultants on an as-needed basis. Second, as discussed in the "Verification" section of the preamble, the regulations do not include the proposed requirement that a trained individual review monitoring records before the product to which the records relate is shipped. These final regulations require only a weekly review. As a result, the need to have a trained individual onsite every day has become substantially reduced. Third, as described below, FDA has decided not to require that the trained individual evaluate CL deviations and corrective actions. This modification reduces still further the need to have a trained individual onsite at all times. In addition, as described previously, the agency is allowing processors to employ individuals whose training has been obtained through on-the-job experience. Thus, for example, a processor that needs the services of two trained individuals could satisfy the requirements of these regulations by employing an individual who has been trained in an adequate course and a second individual who has apprenticed sufficiently with the first individual to have mastered the subject.

As a related matter, the provision in the final regulations that provides for the development of corrective action plans (see the "Corrective Actions" section of this preamble) could eliminate the need to bring an expert onto the scene in many instances in which corrective action is necessary. The processor may be able to follow the corrective action plan without having to rely on an expert or trained individual. This procedure could permit further savings.

103. Some comments suggested that there should be different categories of trained individuals, with different responsibilities. These comments, from individuals, processors, and trade associations, asserted that a firm should have one HACCP trained person capable of conducting or overseeing the routine operation of the HACCP program, but that this individual should not necessarily be responsible for designing a firm's HACCP plan or making complex scientific evaluations.

Another comment suggested that it was unrealistic to expect that a training program would provide the level of expertise necessary for a person to make a determination on whether a deviation may have rendered a product injurious to health or otherwise adulterated.

FDA generally agrees with these comments. It was never the agency's intent to limit the processor's use of experts to employees whose training included the course prescribed by these regulations, especially in the areas of HACCP plan development and the evaluation of CL deviations and corrective actions (i.e., making evaluations about whether product that has been subject to a deviation is safe to ship). While FDA is convinced that a short course in HACCP principles is important to the success of the overall program, the agency also recognizes that such a course has its limitations.

FDA has deleted the proposed requirement that the HACCP-trained individual be required to evaluate CL deviations and corrective actions to allow for the use of experts in other appropriate scientific disciplines that have not been trained in accordance with these regulations. For example, the agency does not expect that a processor will be able to determine the public health consequences of every possible deviation without the assistance of experts. The kind of expertise necessary would likely involve disciplines other than HACCP. Moreover, the agency agrees that it is unreasonable to expect that successful completion of a 3-day HACCP course alone would qualify an individual to make determinations about the safety of products involved in a CL failure. HACCP training in such a situation could only reasonably be expected to help ensure that appropriate corrective action measures are taken and recorded from a HACCP perspective. Consistent with this change, FDA has modified § 123.7(c)(2) to state that a determination of acceptability for distribution into commerce of products that may have been affected by a deviation must be made by individuals with the expertise to make such a determination, and that such individuals need not be those who meet the requirements of § 123.10.

Nonetheless, FDA expects that, at a minimum, an individual trained in accordance with these regulations will perform the verification function of reviewing records of corrective actions to ensure that they are complete, and that an appropriate corrective action was taken (i.e., one that was predetermined in the HACCP plan, or

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one that was determined by a qualified expert to be sufficient to render the product safe). Section 123.10(c) requires that the trained individual perform certain record reviews associated with the verification principle of HACCP, including reviews of corrective action records (see § 123.8(a)(3)(ii)).

FDA has modified § 123.10 from the proposal to clarify and to conform this section to other features of the regulations. A summary of these modifications follows.

FDA has revised § 123.10(a) to clarify that when a trained individual develops an HACCP plan for a processor, this effort may involve adapting a model or generic-type plan for use by that processor. FDA received a significant number of comments on the pros and cons of model or generic-type HACCP plans. This subject is addressed in various places in the preamble, most notably in the section entitled "Other Issues." In summary, the development of model plans can be of great benefit to the industry, especially small businesses, so long as the model plans are tailored by processors to meet their individual situations and are not simply copied verbatim. The agency is convinced that, in most cases, generic or model plans will need to be modified to some extent to fully accommodate the specifics of the processor's operations.

Section 123.10(b) provides, in part, that the trained individual is responsible for reassessing and modifying the HACCP plan in accordance with corrective action procedures specified in § 123.7(c)(5). This requirement is not new. It should be noted, however, that, unlike the proposal, the final rule requires the trained individual to perform these functions only when the processor does not have a predetermined corrective action plan that addresses the specific deviation. As explained in the "Corrective Action" section of this preamble, a review and reassessment of the plan should not ordinarily be necessary when a corrective action was anticipated, as reflected by the existence of a predetermined corrective action plan.

Section 123.10(b) also requires that a trained individual perform the annual reassessment of the processor's HACCP plan as required by § 123.8(a)(1). A new feature of the regulations, this requirement parallels the mandate that each processor engage in verification activities (see § 123.8(a)). It is a logical outgrowth of the principle, central to both the proposal and this final rule, that plan development be performed by individuals who possess the knowledge and skills that are obtained through training in HACCP.

Section 123.10(c) requires that a trained individual perform certain record reviews as enumerated in § 123.8(a)(3). This requirement is not new except for the review of records of end-product testing, if any. End-product testing was not addressed in the proposal but, as explained in the "Verification" section of the preamble, has been added as an optional verification activity. The review of end-product testing records by a trained individual is a logical outgrowth of the principle that was reflected in the proposal in § 123.8(b) that a trained individual review all HACCP records for completeness and consistency with written HACCP procedures.

Finally, it should be noted that the requirement in the proposed regulations that trained individuals perform certain functions for importers has been dropped entirely. This deletion is consistent with the changes that FDA is making in the provisions that applied to importers in this final rule. These revisions are described elsewhere in this preamble. In summary, importers are given alternatives to having HACCP plans and are not required to take the kinds of actions for which a trained individual has been determined to be essential.

K. Sanitation

1. Background

FDA proposed to require that processors conduct sanitation inspections at specified frequencies to ensure that each of up to 18 specified sanitation conditions are maintained in the processing facility where they are relevant to the type of processing being performed. The agency also proposed to require that processors maintain sanitation control records, and that they take and document corrective actions when the specified conditions were not met. In addition, FDA encouraged, but did not propose to require, processors to make use of written SSOP's to ensure that the necessary sanitation measures were implemented.

FDA tentatively concluded that sanitation controls are necessary in these regulations because: (1) Sanitation practices directly affect the microbiological safety of seafood products that are not further cooked by the consumer, such as cooked, ready-to-eat products, smoked products, raw molluscan shellfish, and other fish that are consumed raw; (2) sanitation practices are relevant to the microbiological safety of seafood products even where these products are to be cooked by the consumer; (3) sanitation practices directly affect the chemical and physical safety of seafood products; (4) nearly half the consumer complaints relating to seafood that FDA receives in a typical year are related to plant or food hygiene; and (5) inspections conducted by FDA and NMFS demonstrate that a significant portion of seafood processors operate under poor sanitation conditions.

The MSSP, conducted by NMFS, concluded that sanitation controls could be included in HACCP plans without overloading HACCP. Moreover, the FDA/NMFS HACCP-based seafood pilot program included sanitation CCP's. Nonetheless, FDA tentatively concluded that monitoring and recordkeeping for the 18 specific sanitation conditions specified in the proposal should be permitted to occur outside of a processor's HACCP plan so as not to overload it. Because these sanitation controls relate to an entire facility, not just to a limited number of CCP's, FDA felt that they would not all fit well within an HACCP plan.

FDA took this prescriptive approach to sanitation to assist processors so that they would not have to figure out how, or whether, to include sanitation in their HACCP plans and to help them resolve the sanitation problems that the seafood industry has chronically experienced. By requiring a specific, daily sanitation regime that incorporates HACCP-type features (i.e., monitoring and recordkeeping) to help the processor track sanitation in its plant, FDA hoped to foster a culture of, and commitment to, good sanitation practices that has been lacking in a significant portion of the industry.

2. Should the Regulations Deal With Sanitation?

FDA requested comment on whether sanitation control measures should be addressed by processors in accordance with the proposed approach, or whether the regulations should require that processors address sanitation in their HACCP plans.

More than 250 comments addressed various aspects of the proposed sanitation requirements, more comments than addressed any other aspect of the proposed regulations. Approximately 100 of these comments addressed FDA's questions about the approach to sanitation control in these regulations. The remaining comments focused on specific sanitation provisions.

104. Approximately 10 percent of those that responded to the requests supported the proposed approach. These comments were from processors, consumer advocacy groups, State, Federal, and foreign government agencies, and a trade association. Approximately five percent of the comments, from processors, trade associations, and State government agencies, objected to the inclusion of any explicit sanitation controls in these regulations. It is not clear, however, whether the latter comments were objecting to sanitation controls as part of HACCP where appropriate for safety or to any sanitation approach beyond HACCP. The remaining approximately 85 percent of the comments, principally from processors, trade associations, and State and Federal government agencies, generally acknowledged the need for these regulations to address sanitation in seafood processing plants but objected to one or more of the specifics of the proposal.

Those that supported the proposed approach argued that sanitation controls are a critical component of the regulations because: (1) Addressing the insanitary practices in the seafood processing industry is essential to improved consumer confidence; (2) effective sanitation controls are a prerequisite to the proper functioning of a HACCP system; and (3) sanitation controls are critical to the management of microbiological hazards in both products that will not be cooked by the consumer and those that will be cooked, the latter because of the potential for cross-contamination in the kitchen. The comments suggested that a prescriptive approach to sanitation is warranted because the FDA and NMFS inspection results cited in the preamble to the proposal documented the failure of a significant percentage of the industry to control key sanitation conditions and practices. Moreover, these comments continued, the enumeration of specific controls relieves the industry of the burden of identifying the most significant areas of concern.

Several comments stated that sanitation requirements for seafood processors are necessary because guidelines do not have the force of regulation and therefore are more difficult to enforce. One comment stated that including sanitation requirements in these regulations would simplify compliance for seafood processors because the HACCP and sanitation requirements would be in one place. One comment stated that some processors would be more inclined to implement sanitation control measures if all processors were subject to the same mandatory requirements.

Many of the comments that objected to the manner in which FDA proposed to treat sanitation acknowledged that effective sanitation controls are essential to the proper functioning of a HACCP system. As with comments that supported the proposed approach, a few of these comments identified sanitation as a prerequisite to HACCP.

The comments that objected to the inclusion of any sanitation requirements in these regulations provided reasons that the agency believes are more relevant to the question of how these regulations should address sanitation than to whether they should address the issue. For this reason, the arguments presented in these comments are addressed later in this section.

FDA accepts the view expressed by the overwhelming majority of comments (i.e., those that advocated the proposed approach and those that advocated other sanitation control mechanisms) that sanitation is relevant to the goals of these regulations and should be addressed in them. The primary source of pathogenic microorganisms for most fish (i.e., wild-caught fish) is the processing plant environment (Ref. 3, p. 267). The control of sanitation in the plant is the most effective way to minimize pathogens, and, for products that are not given a final heat treatment after packaging, it is the only way to minimize them at that stage in the chain of distribution (Refs. 3, p. 10; 7, p. 27; 204; and 205). This situation is nearly the reverse of that for red meat and poultry, where pathogens are likely to have originated from the raw materials before they enter the plant (Refs. 36, p. 197; 209; and 210, p. 1).

A significant body of opinion holds, moreover, that good sanitation is a necessary foundation for HACCP. This view was articulated in comments to this rulemaking and in the proposed rule to establish HACCP and other requirements for the beef and poultry industries issued by USDA (Ref. 211). USDA proposed both SOPs for sanitation as a prerequisite to a HACCP plan and sanitation as part of HACCP where critical for safety (Ref. 211, p. 6789).

FDA concludes, therefore, that these regulations cannot fully address all matters relevant to safety, or significantly contribute to the restoration of consumer confidence in seafood without providing for major improvements in sanitation. Therefore, these regulations address sanitation.

3. Why Isn't Part 110 (21 CFR Part 110) Adequate To Deal With Sanitation Concerns?

105. Some comments asserted that it would be adequate to rely on the existing CGMP's in part 110, which provide guidance of general applicability to all foods. A variation on that concern was the view that the sanitation standards in part 110 need not be codified in these regulations because they are adequately expressed in that part. The NACMCF pointed out that the CGMP's have proven adequate for a wide variety of processed foods under FDA's jurisdiction. Some comments stated that part 110 should be made mandatory for seafood and fully enforced.

Good sanitation is already mandatory for all foods. Section 402(a)(4) of the act deems food to be adulterated if processed under insanitary conditions. The CGMP's in part 110 articulate the kinds of conditions and practices that need to be followed in order to avoid producing an adulterated product under section 402(a)(4) of the act.

Nevertheless, while FDA has been enforcing the sanitation standards contained in part 110 for many years, as indicated earlier, it has not succeeded in developing a culture throughout the seafood industry in which processors assume an operative role in controlling sanitation in their plants. The statistics relating to the incidence of insanitation cited in the preamble to the proposed regulations (Ref. 208 at 4161–4162) clearly demonstrate that such a culture is not adequately in place. The following observation about culture in the preamble to USDA's proposed HACCP rules for beef and poultry is applicable here as well:

> • • • Identification of sanitation requirements has been viewed by some establishment owners and personnel as the inspector's responsibility. Such establishments often fail to take the initiative to find and remedy insanitary conditions, relying instead on the inspector to find deficiencies. (Ref. 211, p. 6788)

Moreover, FDA points out that while the CGMP's state that sanitation controls should occur as frequently as necessary, they are silent with regard to monitoring by the processor to ensure for itself that sanitation controls are being followed.

For these reasons, FDA concludes that part 110 alone has not proven to be adequate for the seafood industry. In order to ensure that firms take full responsibility for sanitation in their plants, which is strongly related to the production of safe and wholesome seafood, FDA has concluded that it is necessary to include sanitation requirements in these regulations.

4. Why Isn't the Proposed Approach Appropriate?

106. Many comments that agreed that sanitation should be addressed in the regulations, as well as some that opposed addressing it, objected that the

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proposal was too prescriptive. These comments asserted that: (1) The proposed 18 sanitation controls are overly prescriptive and inflexible and are not appropriate for all processors; (2) the codification of prescriptive sanitation requirements as regulations limits the ability of processors to keep pace with advances in science and technology; (3) the proposed sanitation controls have the effect of establishing eighteen CCP's, which are not always appropriate; and (4) the proposed sanitation provisions duplicate or contradict existing State or NSSP requirements. FDA will respond to these criticisms.

Many comments that argued that the 18 specific sanitation controls that FDA proposed were too prescriptive provided examples of how this approach could deny processors the flexibility necessary to develop and implement sanitation programs that are effective for the specific conditions in which they are to be used. Some of these examples are as follows:

(1) A few comments challenged the proposed "easily cleanable" standard for equipment, suggesting that in some applications (e.g., at sea processing and old equipment) this standard may not be attainable and may not be necessary as long as the equipment is, in fact, cleaned;

(2) A large number of comments challenged the proposed 4-hour equipment cleaning frequency, suggesting that it is unwarranted in some situations (e.g., refrigerated processing facilities) because it is inconsistent with actual microbiological growth rates. It is unduly burdensome in other situations (e.g., surimi processing facilities), according to the comments, because it would limit shifts to 4 hours, would interrupt production, and would require hours of equipment breakdown time;

(3) A few comments challenged the proposed "impermeable" standard for gloves and outer garments that contact food or food contact surfaces, suggesting that in some instances it was impractical (e.g., filleting fish);

(4) A significant number of comments challenged the proposed 4-hour hand sanitizer strength test frequency, suggesting that replacement of dips rather than checking concentration may be appropriate, as may be the use of automated hand washing and sanitizing systems; and,

(5) A number of comments challenged the proposed requirement that hand washing and sanitizing stations be located in processing areas, suggesting that they need only be easily accessible.

These comments have general merit and have persuaded the agency that a less prescriptive approach is appropriate to ensure that the regulations do not impose impractical, unduly burdensome, or excessively rigid requirements.

107. Another concern with FDA's approach was that codifying specific sanitation control procedures would not enable processors to keep their sanitation programs updated with advances in science and technology. As an example, the NACMCF comment cited recent industry experience with other foods that has shown that the proposed requirement of midshift cleaning and sanitizing in packaging rooms for ready-to-eat foods, may with many current sanitation practices actually be counterproductive to the control of *Listeria monocytogenes*. The NACMCF advised that codification of a midshift cleaning requirement would have prevented these industries from modifying their cleaning procedures to adjust to the new information.

FDA agrees that sanitation requirements should be sufficiently flexible to permit the incorporation of new information and better procedures.

108. A number of the comments, including more than half of those that opposed any new form of sanitation controls, argued that the sanitation control approach proposed by FDA would effectively establish eighteen mandatory sanitation CCP's that may not always be appropriate.

These comments may have been the result of a misunderstanding of the relationship between processor HACCP plans and the proposed sanitation controls. While the proposed controls involved monitoring and recordkeeping, they were not proposed as part of a processor's HACCP system. FDA did not intend to designate them as CCP's. FDA believes that the provisions of these final rules make clear that the necessary sanitary controls need not be considered to be CCP's.

109. A large number of the comments that objected to the manner in which FDA proposed to handle sanitation argued that the proposed sanitation provisions are redundant with State and local regulations and, with respect to molluscan shellfish, with the NSSP.

FDA acknowledges that the NSSP and most State seafood control programs include provisions, much like FDA's CGMP's, that are designed to control processing plant sanitation. These other provisions, like the CGMP's, serve as baseline standards for sanitation. However, the rates of noncompliance with existing CGMP standards, as detailed in the preamble to the proposed regulations (Ref. 208 at 4161–4162), demonstrate a need for a system in which processors are responsible for not only meeting these baseline standards but also routinely auditing their facilities and operations to ensure that they are meeting them. In this way, the sanitation requirements of these regulations build upon existing sanitation requirements, at the Federal, State, and local levels.

The more generalized nature of these final regulations with respect to sanitation should mitigate the concerns of the comments that complained about the conflict between, and duplication with, existing sanitation standards.

As discussed elsewhere in this preamble, FDA encourages adoption of these regulations by State and local regulatory agencies. FDA is convinced that, in many cases, the regulations can be quite easily overlaid on existing State, local, and NSSP requirements.

5. What Is the Appropriate Approach to Sanitation?

Based on its review of the comments, FDA has been convinced that a modification of its approach to sanitation is appropriate. FDA concludes that its approach in the proposal was too inflexible and could have made it more difficult in certain circumstances to incorporate new technologies and information.

The comments argued for one or more of several approaches that they identified as being more appropriate than FDA's proposed approach: (1) Requiring that each processor develop and follow a SSOP that is specifically tailored to a processing operation; (2) including sanitation controls in the HACCP plan where they are critical to product safety; and (3) retaining the general approach of the proposed regulations but somehow reducing the number of specific requirements. Approximately 85 percent of those that opposed the way that sanitation was treated in the proposal advocated one or a combination of the first two of the approaches, with the recommendations evenly split between the two. The small number of comments that objected to including any specific sanitation requirements in the regulations may also have been arguing that sanitation should not be part of HACCP but should be controlled solely through CGMP's.

a. *Inclusion of sanitation controls in HACCP plans.*

110. There was strong support in the comments for the inclusion of sanitation controls in HACCP plans, particularly where the controls are necessary to protect the safety of the product. The comments stated that a processor's hazard analysis may reveal the need to control certain aspects of sanitation in the HACCP plan, especially to control hazards involving microbiological contamination. One comment noted that sanitation controls are likely to be components of the HACCP plans of molluscan shellfish processors.

Given the strong support that sanitation controls should be included in HACCP plans where they are critical to safety, FDA has no objection to processors including sanitation controls in their HACCP plans. Consequently, these final regulations state in § 123.6(f) and § 123.11(d) that sanitation controls for safety may be included in HACCP plans.

The agency has concerns, however, as to whether including sanitation controls in a HACCP plan will be adequate to ensure that appropriate conditions exist in a plant. The conditions that would be addressed in the HACCP plan will likely be those that are most critically and directly related to product safety. Other situations that are relevant to safety, but in a less direct way, would probably not be controlled through HACCP. For example, following the NACMCF recommendations for hazard analysis and HACCP plan development would likely result in the identification of a number of equipment and hand washing controls at CCP's in the HACCP plan for the processing of a cooked, ready-to-eat product to minimize the risk of microbiological contamination but not in the identification of these same controls in the HACCP plan for a raw finished product that would normally be cooked before consumption. In the latter case, however, attention to sanitation would still be important in the processing plant to prevent contamination of the product, given that the ultimate consumer cook may be inadequate, or that the product, once contaminated, could be a source of cross-contamination to other foods.

Likewise, the potential for contamination of either a cooked, ready-to-eat product or a raw product as a result of rodent activity in a processing plant, or as a result of improper use of pesticides on or near the product, would not likely be identified in a HACCP plan. All of these conditions are relevant to the safety of the product and should be addressed by processors. It is not clear whether HACCP can fully succeed in plants that are not in control of general sanitation practices. The inclusion of sanitation in HACCP—as desirable as it may be—will not fully resolve this problem.

b. *SSOP.*

111. As indicated above, a significant number of comments that addressed alternatives to the prescriptive approach to sanitation in the proposal preferred a SSOP, either alone or in combination with critical sanitation controls in HACCP. Significantly, the NACMCF was among those that made this suggestion. NMFS' comment stated that, in its experience, the development of SSOP's by processors in its voluntary program has been associated with marked improvement in sanitation. Many comments stated that much of the seafood processing industry already has SSOP's, and that those that do not should develop them.

FDA agrees that the development by processors of an SSOP would be a beneficial step. FDA therefore is recommending in § 123.11(a) that:

> Each processor should have and implement a written sanitation standard operating procedure (herein referred to as SSOP) or similar document that is specific to each location where fish and fishery products are produced.

An SSOP places the primary burden for identifying relevant controls on the food processor. To meet this burden, it will be necessary for the processor to think through each operation and identify where, and how frequently, appropriate sanitation measures are necessary. The process of doing so will foster the type of culture that FDA is trying to promote, in which processors assume an operative role in controlling sanitation in their plants.

FDA is adopting § 123.11 pursuant to sections 402(a)(4) and 701(a) of the act to ensure that seafood is not produced under insanitary conditions whereby it may be rendered injurious to health. It grows directly out of proposed § 123.10, but, as stated above, it reflects the agency's efforts to make the sanitation requirements more flexible.

FDA has not elected to make the development of an SSOP mandatory because it recognizes that some processors may be able to achieve satisfactory sanitation conditions and practices without having to commit their sanitation control procedures to writing. The agency remains convinced however, that such satisfactory conditions are unlikely to be achieved without periodic monitoring of the operations. For this reason the agency has retained at § 123.11(b) the mandatory sanitation monitoring requirements proposed at § 123.10(c). Sanitation monitoring will be further discussed in the next section of this preamble.

Where a processor elects to develop an SSOP it should specify how it will meet those sanitation conditions and practices that are to be monitored in accordance with § 123.11(b). These conditions and practices will also be discussed in the next section.

Both § 123.11(d) and § 123.6(f) provide that sanitation controls that are monitored in accordance with § 123.11(b) need not be included in the HACCP plan and vice versa. The purpose of these provisions is to allow processors to incorporate those sanitation controls into their HACCP plans that they believe are appropriately addressed through HACCP, without having to duplicate those controls in a separate sanitation program.

6. Monitoring and Corrective Actions

The regulations no longer contain specific monitoring frequencies to ensure that proper sanitation conditions are being met, as was proposed at § 123.10(c). In keeping with the agency's decision to reduce the prescriptive nature of the sanitation requirements, § 123.11(b) now requires that each processor monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with certain key sanitation conditions and practices as specified in part 110.

112. The agency arrived at this approach in response to the comments. As part of the agency's efforts to achieve flexibility, it examined the 18 sanitation controls that it proposed at § 123.10(a) in light of the comments that argued that they were overly prescriptive. FDA proposed the 18 sanitation controls to ensure that, where relevant to the processing operation, important areas of concern were addressed in each plant. The preamble addressed at some length why each of them was significant and relevant to safety. Moreover, although considerable comment was received that challenged the manner in which a particular processor should address these sanitation conditions and the situations in which they should be considered applicable, only two comments challenged the significance of these conditions or the need for them to be controlled when they are determined to be germane, and neither comment provided a basis for doubting the significance of these controls.

FDA concludes that, where relevant to a processor's operation, the processor should monitor sanitation conditions and practices relating to the general subject areas reflected by the 18 specific sanitation controls because they are important for ensuring the safety of the product. As in the proposal, each processor will be responsible for determining which of the subject areas are relevant to its plant and process. However, unlike the proposal, the

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processor will be free to tailor the sanitation controls to the circumstances of its operation, as long as it does so in a manner that ensures the effectiveness of those controls. The regulations do not specify the manner in which control must be achieved. FDA will provide guidance on how to ensure appropriate sanitation control in the Guide. FDA is deferring consideration of the comments that it received on the specific sanitation control measures that it described in the proposal until it prepares the Guide.

In order to ensure that processors monitor the general subject areas reflected by the 18 specific sanitation controls listed in the proposal, FDA has concluded that it is appropriate to list in the regulations the sanitation controls that should be considered. This list will ensure that the most significant sanitation controls are considered by the processor in formulating the measures that it will institute in its plant.

The controls that FDA is listing in § 123.11(b) no longer contain sanitation standards that are beyond part 110 or repeat specific standards that are contained in that part. Instead, § 123.11(b) now states that the processor shall ensure that actions are taken to ensure that those sanitary conditions that are contained in part 110 and that are relevant to the plant are maintained in eight general areas:

(1) The safety of the water that comes into contact with food or food contact surfaces or is used in the manufacture of ice (§ 123.11(b)(1)). This control derives from proposed § 123.10 (a)(1) and (a)(2) relating to water quality and treatment and to cross connections between potable and nonpotable water systems.

Water is used in virtually all seafood processing facilities for washing product, equipment, and employees' hands, for transporting fish in flumes, and as an ingredient. Contaminated water can serve as a vehicle for contamination of the product, both directly and indirectly (Refs. 63; 64; 65, p. 49; 66; 67; and 68, pp. 1 and 2). Cross connections, which include situations that allow for back siphonage into a potable system from a nonpotable system under negative pressure conditions, can result in the chemical or microbiological contamination of the potable water system (Refs. 64; 65, pp. 50 and 51; 68; 71; and 72).

This matter was one of the two, as indicated above, about which FDA received a comment that challenged the need for a sanitation control. A comment suggested that the safety of the water supply is within the jurisdiction of local health authorities, and that a processor should not have to deal with that issue.

FDA acknowledges that many State and local jurisdictions exercise control over both public and private water supplies. In the case of private wells, they often permit and inspect the construction of the well and collect periodic water samples for microbiological and chemical attributes. Where such is the case, it may be reasonable for the processor to rely upon these measures. However, in the absence of appropriate controls by a public authority, FDA has concluded that the processor must exercise whatever control is necessary to ensure that the water supply is safe. To do otherwise would be to subject the product to an unacceptable safety risk from the contaminants that may be introduced by the water.

(2) The condition and cleanliness of food contact surfaces, including utensils, gloves, and outer garments (§ 123.11(b)(2)). This control derives from proposed § 123.10 (a)(3) through (a)(5) relating to the design, workmanship, materials, and maintenance of food contact surfaces; the cleaning and sanitizing of these surfaces, including the frequency of cleaning and sanitizing; the impermeability of gloves and outer garments that contact food; and the maintenance of gloves and outer garments.

Utensils, equipment, aprons, gloves, outer garments, and other food contact surfaces can be vehicles for microbial contamination of both the raw and finished products. Food contact surfaces that contain breaks, pits, cuts, or grooves, or that are porous or corroded, may harbor pathogenic microorganisms that can migrate to the product and contaminate it. These kinds of surfaces are difficult to clean (Refs. 65, pp. 20, and 36–48; 72, pp. 166–167; 73; and 83). Where food contact surfaces are constructed of toxic materials, the product may be directly contaminated (Ref. 74). Inadequately cleaned food contact surfaces can serve as a reservoir for pathogenic microorganisms, especially if biofilms are allowed to form, in which microorganisms can be entrapped and shielded from the action of cleaning and sanitizing compounds.

(3) The prevention of cross-contamination from insanitary objects to food, food packaging material, and other food contact surfaces, including utensils, gloves, and outer garments, and from raw product to cooked product (§ 123.11(b)(3)). This control derives from proposed § 123.10 (a)(6), (a)(7), (a)(13), and (a)(18), relating to employee practices to prevent contamination, to physical separation of raw and cooked product, and to plant design to prevent contamination.

Employees and food contact surfaces can serve as vectors in the transmission of pathogenic microorganisms to the food. These microorganisms can be introduced to the product from outside areas, rest rooms, contaminated raw materials, waste or waste receptacles, floors, and other insanitary objects. In the processing of cooked products, the raw material may also serve as a reservoir of pathogenic microorganisms. Employees or equipment that touch the raw material can transmit these microorganisms to the cooked product (Refs. 7, 63, 64, 73, 74, 84, and 85). Finally, proper construction of the processing plant is essential if other sanitary measures are to be successful. For example, incompatible operations, such as handling of raw materials and handling of cooked product, should be isolated (Refs. 71, 74, 87, and 88).

(4) The maintenance of hand washing, hand sanitizing, and toilet facilities (§ 123.11(b)(4)). This control derives from proposed § 123.10 (a)(8) and (a)(16), relating to the location and maintenance of hand washing and sanitizing facilities, and toilet facilities.

Employee's hands can serve as a vector for the transmission of pathogenic microorganisms to the food. Hand washing and sanitizing, when performed using suitable preparations are effective means of preventing such transmission. Toilet facilities eliminate from the processing environment pathogenic microorganisms shed in fecal material (Refs. 63, 64, 73, 74, 84, and 85).

(5) The protection of food, food packaging material, and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants (§ 123.11(b)(5)). This control derives from proposed § 123.10(a)(9), (a)(11), and (a)(12), relating to the protection of food from various microbiological, chemical, and physical contaminants.

The use of toxic compounds (e.g., pesticides, cleaning and sanitizing agents, and lubricants) is frequently necessary in the processing environment. Food and food packaging materials should be protected or removed from areas where pesticides are used, and caustic cleaning compounds should be thoroughly removed from food contact surfaces before processing begins (Ref. 74). Condensate which forms on an insanitary surface and then falls on the product may carry with it pathogenic microorganisms (Ref. 65, pp. 24–25).

This measure is the second about which FDA received a comment that challenged the value of having a sanitation control. A comment suggested that preventing the formation of condensate on ceilings above processing is, in some situations, physically impossible. The comment did not suggest that condensate is irrelevant to safety.

FDA reasserts that condensate is relevant but acknowledges that there are instances in which it may be impractical for it to be fully eliminated. In these instances, after taking all reasonable measures to minimize the development of condensate, the processor will need to take steps to protect the product from the dripping condensate or to ensure that the surface from which it is dripping is sanitary. The development of a written SSOP processor should tailor its sanitation controls to its particular situation in order to accomplish this objective.

(6) The proper labeling, storage, and use of toxic compounds (§ 123.11(b)(6)). This control derives from proposed § 123.10(a)(10), relating to the overall handling of toxic compounds to protect against contamination of food. Improper use of toxic compounds is a frequent cause of product adulteration throughout the food industry. Proper labeling, storage, and use of the compounds is necessary to minimize the risk of occurrence of such incidents (Ref. 74).

(7) The control of employee health conditions that could result in the microbiological contamination of food, food packaging materials, and food contact surfaces (§ 123.11(a)(7)). This control derives from proposed § 123.10(a)(15), relating to the exclusion of persons who appear to have an illness, wound, or other affliction that could be a source of microbial contamination.

Employees can serve as a reservoir of diseases, such as salmonellosis, shigellosis, and hepatitis, that can be transmitted to consumers by foods. Additionally, open sores, boils, or infected wounds present the potential for contamination of the food with such pathogenic microorganisms as *Staphylococcus aureus* (Refs. 22, 74, and 84).

(8) Exclusion of pests from the food plant (§ 123.11(b)(8)). This control derives from the proposed requirements at § 123.10(a)(17). Pests, such as rodents, birds, and insects carry a variety of human disease agents, which they can introduce to the processing environment (Refs. 63, 64, 73, and 84).

113. FDA proposed at § 123.10(a)(14) that, "Refrigeration units that store raw materials, in-process, or finished fish or fishery products that are cooked, ready-to-eat, smoked, or made in whole or in part from scombroid toxin forming species shall be operated at a temperature of 40 °F (4.4 °C) or below." The purpose of the proposed requirement was to ensure that processors control the microbiological hazards associated with refrigerated storage for these particularly susceptible products. A significant number of comments argued the control of temperature in refrigerated storage is a processing hazard rather than a sanitation issue, and should be covered by a firm's HACCP plan.

FDA agrees with these comments and has not included a provision on refrigeration in the sanitation section of these regulations. A large number of comments were received relative to the appropriateness of a 40 °F (4.4 °C) limit. These comments are no longer relevant to these regulations but will be addressed in the redrafting of the Guide.

FDA has also incorporated the corrective action requirement relative to sanitation conditions proposed at § 123.10(d) in § 123.11(b). Section 123.11(b) the processor shall, correct in a timely manner those sanitation conditions and practices that are not met. The phrase "in a timely manner" did not appear in the language of proposed § 123.10(d). However, it was implicit that corrections should be made as quickly as possible so as not to subject subsequently processed product to conditions that could both jeopardize their safety and render them adulterated. FDA has added the phrase for clarity.

Note that the other corrective action requirements in these regulations, i.e., those in § 123.7, do not apply to sanitation controls that are exclusively addressed in § 123.11. The controls in § 123.7 apply to a processor's HACCP system only.

7. Records

114. FDA received approximately 20 comments that addressed the issue of sanitation records. Many others discussed recordkeeping in general but did not specifically mention records of sanitation controls. These latter comments have already been addressed in the "Records" section of this preamble.

Of those that commented specifically on sanitation records, approximately three-fifths, from processors and trade associations, objected to the proposed requirement that processors maintain records that demonstrate compliance with the appropriate sanitation standards. In fact, a number of comments listed this issue as a significant reason for their objection to the overall proposed approach to sanitation control. The comments suggested that sanitation recordkeeping is costly and has not been demonstrated to be effective. None of these comments provided any data in support of their statements. Some argued that, while they accepted the notion of records for CCP monitoring, they opposed records of sanitation monitoring.

The remaining comments that addressed the issue of sanitation records, from consumer advocacy groups, an individual, a Federal government agency, a trade association, and a seafood broker, supported the need for such records. These comments argued that sanitation records are essential to ensure that processors adhere to established sanitary standards, and that they need not be extensive.

FDA does not find the arguments against the requirement for sanitation control records to be compelling. The agency concludes that the burden will be minimal. Checklist type or simple notation records will suffice in most instances. Creating them should be incidental to monitoring. Monitoring to ensure that sanitation is under control is the responsibility of all processors.

Monitoring and recording of sanitation conditions is as much a key to the success in improving those conditions, and, hence, to increasing consumer confidence in the seafood processing industry, as is the development by a processor of an SSOP. As in the case of HACCP records, sanitation records require that processors engage in systematic monitoring of their own sanitation practices and conditions. It enables them to see trends. Moreover, participation in recordkeeping helps empower the work force and foster responsibility. It also allows the regulator to assess a processor's compliance over a period of time, not just at the time of an inspection.

FDA believes that the records bearing on the monitoring of relevant sanitation conditions and practices and FDA's access to such records are all essential if § 123.11 is to be an effective regulatory strategy. Therefore, FDA has concluded that the recordkeeping requirement proposed at § 123.10(b) will be retained. To reflect other modifications in this section, § 123.11(c) has been modified to read, "Each processor shall maintain sanitation control records that, at a minimum, document the monitoring and corrections prescribed by paragraph (b)

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of this section. These records are subject to the requirements of § 123.9."

Additionally, FDA has moved the requirement that sanitation corrections be documented from proposed § 123.10 (d) to § 123.11 (b).

Finally, FDA notes that § 123.11 does not contain any mention of importers. The lack of a mention of importers in this section reflects the position that the agency is taking in these regulations that, to the extent that importers are also processors, they would be subject to the sanitation requirements in this section. To the extent that they serve as importers only, the sanitation provisions are not relevant to their operations.

L. Imports

1. Background

The majority of seafood consumed in the United States is imported. FDA's surveillance system for imports largely consists of reviewing the customs entries for fish and fishery products being offered for entry into the United States, engaging in wharf examinations and sample collections for laboratory analysis, and placing products with a history of problems on automatic detention. As with domestic inspections, this method is basically a "snapshot" approach that places a significant burden on the government to uncover problems. It has failed to result in full compliance or consumer confidence in the safety of imported seafood. Consequently, the agency tentatively concluded that HACCP controls should apply to imported fish and fishery products as well as to domestic products. Among other things, FDA proposed that the definition of "processor" explicitly include those who process seafood in foreign countries.

In addition, FDA tentatively concluded that the importer should share some responsibility with the foreign processor for safety. More often than not, it is an U.S. importer, rather than the foreign processor, who actually offers imported fish and fishery products for entry into the United States. The preamble noted that, while many importers are conscientious about the safety of the products that they import, others have little understanding of the potential hazards associated with their products. Thus, the agency tentatively concluded that the existing system of import controls had not promoted a sense of responsibility in the import industry.

Therefore, in addition to proposing to require that foreign processors that export to the United States comply with part 123, FDA proposed that importers of fish and fishery products take steps to ensure that their shipments are obtained from such processors. Specifically, FDA proposed that importers: (1) Have and implement a HACCP plan that describes how the product will be processed while under their control; (2) maintain a copy of the foreign processor's HACCP plan; and (3) take affirmative steps to ensure that the imported fish or fishery product was produced in conformance with the foreign processor's HACCP plan and with the proposed sanitation requirements. The agency also proposed that importers need not take affirmative steps if the fish or fishery product was imported from a country with which FDA has a MOU documenting the equivalency of the foreign inspection system with the U.S. system.

2. Should Imports Be Subject to These Regulations?

115. Approximately 70 comments addressed various aspects of the proposed requirements for imports. Approximately half of the comments that addressed the import provisions argued that it is necessary to subject imported products to the same regulatory requirements as domestically processed products. These comments were submitted by processors, trade associations, State and foreign government agencies, professional associations, and individuals. Many of these comments argued that exempting foreign processors from the requirements of these regulations would put the domestic industry at an unfair economic disadvantage. Other comments stated that the import requirements would increase consumer confidence in seafood because they would ensure that imported fishery products have been produced under the same HACCP requirements and held to the same sanitation standards as domestically produced product. A few comments suggested that imported products are more likely to present safety hazards than domestically-produced products because of a lack of understanding of CGMP's on the part of foreign processors. One comment asserted that a number of countries, including Canada, the EU, Iceland, and Thailand are in varying stages of establishing HACCP programs for their own domestic seafood processors.

Most of the remaining comments (approximately one-half) did not comment on whether HACCP controls should be required for imported fish and fishery products but discussed aspects of the agency's proposed approach. These comments will be addressed later in this section.

FDA did not receive any comments that persuaded it that imports should be exempt from the requirements of these regulations. On the contrary, the comments reflect a nearly universal recognition that the safety of seafood cannot be adequately ensured if the majority of products (that is, imports) are not subject to the same controls as domestic products.

Therefore, the agency has not modified the regulations' basic approach for imports.

116. Only two comments objected to the concept that imported fish or fishery products should meet the same requirements as those for domestic products. One of these comments argued that FDA should be tolerant of a foreign processor that may not have the knowledge or time to develop a HACCP plan before its product is ready for export and urged the agency to develop a temporary waiver system to accommodate such firms.

FDA is convinced that a 2-year implementation period, as discussed in the "Effective Date and Compliance" section of this preamble, will provide sufficient time for processors, both within and outside the United States, to develop and implement HACCP plans and otherwise come into compliance with the provisions of these regulations. The comment provided no basis for treating foreign processors any differently than domestic processors in this regard.

117. Another comment suggested that raw material fish and fishery products imported for further processing in the United States should be exempt from the requirements of the regulations but provided no reason to support that position.

The exemption requested by the comment would make it difficult, if not impossible, to control environmental hazards that may be associated with these products. This preamble and the preamble to the proposed regulations fully discuss the conclusions of the NAS, which identified raw material hazards, such as microbiological contamination in molluscan shellfish and natural toxins in both shellfish and finfish, as among the most pressing problems that must be addressed to ensure seafood safety. For the most part, these hazards are best addressed at the time of harvest and by primary processors, through HACCP, at the time of receipt. In many cases, there is little opportunity for control beyond the latter point. Raw material fish and fishery products for further processing comprise a substantial portion of fish and fishery products imported into the United States (Ref. 212, p. 49). Thus, to exempt foreign processing of such products from the requirements of these regulations would be to greatly diminish the scope and, therefore, the overall effectiveness of these regulations.

118. One comment that supported the need for equitable treatment of imported and domestically produced products urged the agency to provide the same opportunities for processors abroad to familiarize themselves with the requirements of these regulations as it does the domestic industry. The comment argued that just printing the regulations in the **Federal Register** would not fulfill that responsibility. The comment further suggested that FDA send copies of guidance materials to all known foreign seafood processors, preferably in their native language.

FDA acknowledges the difficulty in reaching foreign processors with information about the requirements of these regulations. However, mass mailings to, and multiple translations of, these regulations and the Guide for all foreign seafood processors that export to the United States would not be practicable for FDA.

The agency intends to reach foreign processors primarily by briefing foreign embassy staffs and by communicating with U.S. importers during public and trade association meetings. Based on experience in disseminating information about U.S. requirements to the import community, the agency expects that these two groups will provide the necessary information and guidance materials (in the appropriate languages) to the foreign processors that they represent. This same approach was used in disseminating information about the proposed regulations. In fact, FDA became aware of a Japanese translation of the proposal shortly after it issued.

In addition, FDA traditionally has provided training and technical assistance for foreign processors and government officials on a variety of food control topics, within the constraints of budget and manpower. These projects have principally been conducted in developing countries, often those in which the agency has become aware of a particular problem that threatens the safety of products offered for entry into the United States. FDA anticipates that these kinds of projects will continue, and that they will focus more closely on HACCP. FDA also expects that HACCP training, performed in accordance with the standardized training materials under development by the Alliance (see the "Training" section of this preamble), will provide further opportunity for foreign processors to be exposed to the requirements of these regulations.

3. Should Importers Be Subject to These Regulations?

119. Approximately half of those who commented on the import provisions addressed whether the importer should be required to take steps to ensure that its shipment originates from a foreign processor that operates under HACCP. Approximately half of these comments favored the concept and half opposed it, with both groups being diverse in their representation.

Of those who opposed it, many argued that these requirements should be the responsibility of the government, and that FDA should not require that importers enforce them. A number of these comments further argued that equivalent foreign government inspection systems cannot be presumed to be in place, and that the only way to achieve a "level playing field" is for FDA to perform inspections of foreign processors at the same frequency, and using the same standards, that the agency applies to domestic processors. One comment suggested that it may be necessary to obtain legislative authority to perform foreign inspections, as a condition of importation. Another comment suggested that FDA auditing of foreign processor compliance would give importers assurance that the products that they obtain from such sources had been produced in accordance with appropriate U.S. standards.

One comment, while not opposed to mandatory importer responsibilities, nonetheless argued that FDA should spend as much time and effort inspecting foreign processors as it does on domestic processors because over 50 percent of the seafood consumed in the United States is imported. The comment continued that, "to do any less would be an unfair burden to domestic processors and would not accomplish the stated goal to significantly improve the safety of seafood consumed in the U.S."

One comment argued that there is no real cost savings in assigning importers the responsibility of verifying foreign processor compliance rather than assigning that responsibility to FDA, because importers will merely pass along the additional costs to the consumer. Another comment noted that many small importers obtain products from over 25 countries, and that they cannot afford to provide the surveillance necessary to ensure compliance.

Another comment argued that many importers function simply as brokers, connecting a buyer with a seller, and that they lack the expertise, manpower, and facilities to evaluate the adequacy of a processor's HACCP controls. One comment stated, "Many of the people involved in importing never see the product and know nothing about fish—these are people in a small room with a battery of phones!" Another comment argued against placing reliance for assuring the safety of imported seafood on persons who have a financial interest in the product but lack the required knowledge about seafood safety.

One comment argued that requiring importers to exercise control over their suppliers has no parallel in the proposed domestic HACCP scheme. The comment stated that domestic processors must control the hazards that are introduced during their processing operations but need not be involved in verifying the control of those hazards associated with their supplier's operations. Some comments argued that the responsibility for controlling hazards that are reasonably likely to occur should be assigned to the foreign processor, while others argued that it should be assigned to the U.S. processor to whom the importer sells the product. One comment asserted that importers are not in a position to exercise control over the processing of products in foreign plants any more than they are in a position to exercise control over how the products are handled by their customers.

Most of those comments that supported the concept of importer responsibility provided no reason. However, one comment stated that requirements on importers would ensure that someone in the United States would be legally responsible for the safety and wholesomeness of each imported product.

FDA recognizes that requiring importers to take steps to ensure that foreign processors from whom they purchase seafood products are in compliance with these regulations could necessitate significant changes in the operations of importers who have limited their activities to matching buyers with sellers based on product specifications that may have had little to do with safety. However, for two reasons, FDA cannot agree that responsibility with regard to safety is inappropriate for importers.

First, it has always been the importer's responsibility to offer for entry into this country products that are not adulterated under U.S. law. It is a prohibited act, under section 301(a) of the act, to introduce into interstate commerce an adulterated food. Thus, an importer would be committing a prohibited act if it failed to ensure that

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the food that it is offering for import into the United States is not adulterated under section 402 of the act, including section 402(a)(4), one of the principal provisions on which these regulations are based.

Currently, however, the importer is not required to operate in a proactive manner to ensure that it is meeting this responsibility. Rather, the importer need only offer products for entry into commerce and thereby place the burden on the government to find a problem. Many importers traditionally have purchased "FDA rejection insurance" to hedge against that possibility. The government can shift the burden to the importer by placing the importer's products on automatic detention if it finds problems that warrant such a step, but in most instances the burden remains on the government.

Second, responsible importers understand the issues related to the safety of the seafood products that they import and customarily require that foreign suppliers conform to their product specifications and applicable U.S. regulations relating to safety. These importers take various measures to ensure that a foreign processor can comply with their specifications and safety requirements before they agree to purchase products from the foreign processor.

Thus, it is feasible for importers to take steps to ensure that they are not offering adulterated products for entry into U.S. commerce. Requiring such measures will not be a significant added burden for many importers, particularly as HACCP principles become more widely used and understood in international commerce. Foreign processors that want to participate in the export market, not only to the United States but to the EU, Canada, and an increasing number of other countries, will implement HACCP and sanitation control programs and will be prepared to address an importer's needs for verification.

FDA does not agree that there is no parallel in the domestic scheme to the importer's responsibility to ensure that the goods it is offering were produced under HACCP. Domestic processors, like importers must work with their suppliers (e.g., fishermen) to ensure that all reasonably likely hazards (e.g. natural toxins and agricultural and industrial chemical contaminants) are controlled. FDA is confident that importers, like processors, will realize that ensuring that foreign processors institute preventive control systems is a cost effective means of ensuring that the products that they offer for entry into the United States will consistently meet FDA's entry requirements and will be safe for consumption. FDA also disagrees with those comments that suggested that a requirement that importers take steps to ensure that the products they offer for entry have been produced under a HACCP plan is an abrogation of FDA's responsibilities. As stated previously, the industry has a responsibility to ensure that the food that it introduces into interstate commerce is not adulterated. FDA has a responsibility to verify that industry is meeting its obligation and to take remedial action if industry fails to do so. Importers, who are usually the owners of the products that they are offering into commerce, are a part of that industry. FDA cannot accept that importers have no responsibility to ensure that their products are not adulterated.

The agency recognizes that probably the most effective way for a regulatory agency to evaluate a processor's compliance with the HACCP and sanitation requirements is through onsite inspection of facilities, practices, and records. FDA has performed a limited number of inspections of foreign processors and, within its budgetary limitations, will continue to do so to enforce these regulations. However, such inspections are costly, and any attempt to significantly increase their number would require additional resources.

FDA will continue its traditional import surveillance role, utilizing entry document review, wharf examinations, sample collections, and automatic detentions as screening tools. These tools indirectly evaluate the adequacy of HACCP and sanitation controls and will continue to be useful in detecting significant problems. While end-product testing and evaluation are not adequate substitutes for preventive controls in ensuring the safety of a product, they can provide verification where appropriate (Ref. 34, pp. 201–202).

FDA has concluded that requiring HACCP controls, together with import surveillance and periodic inspections of importers to ensure their compliance with the requirements of § 123.12, will better ensure the safety of imports than the current system.

In a related matter, § 123.3(g) makes clear that, under ordinary circumstances, freight forwarders, custom house brokers, carriers, or steamship representatives will not be required to fulfill the obligations of an importer. It is possible, although FDA has no way to know with any certainty, that some of those that objected to being required to fulfill those obligations would, as a result of these clarifications, find that they would not be expected to do so.

4. Memoranda of Understanding (MOU's)

120. Many of the comments that objected to the importer responsibility provisions of the proposal on the grounds that the government is the appropriate entity to ensure foreign processor compliance, stated that the most effective means of ensuring such compliance would be for FDA to enter into MOU's with the governments of exporting nations. Approximately one-third of those that commented in any way on the importer provisions urged FDA make the negotiation of MOU's a high priority. Only one comment objected to the development of MOU's.

Several comments argued that FDA should develop MOU's with all countries from which seafood is imported. One of these comments pointed out that to do otherwise would unfairly cause the obligations of importers to vary considerably. A few comments argued that the existence of an MOU should be a prerequisite for the importation of seafood products from a country. One of these comments stated that mandatory MOU's would reduce the complexity of the present import surveillance situation, reduce the number of countries exporting seafood to the United States, and encourage the development of improved food safety programs in exporting countries. Another comment asserted that MOU development is appropriate because government-to-government relationships and audits can be free of influence from packers and importers, whereas foreign suppliers may be prone to provide false assurances about their programs to prospective importers.

One comment urged FDA to fully describe the process and criteria for developing and evaluating MOU's and expressed concern about the process because of the varying level of sophistication of foreign seafood control programs. One comment stated that the foreign government should be responsible for evaluating the foreign processor's HACCP plan, inspecting the foreign processor, periodically analyzing products produced by the foreign processor, and issuing health certificates. A few comments stated that FDA should monitor the effectiveness of the foreign government's control program in a manner that is authorized in the MOU. These comments stated that, under the MOU's, the foreign government should provide FDA with periodic lists of processors that meet the requirements of these regulations, or, alternately, that all seafood processors in the country would be required to meet the requirements.

One comment urged FDA to publish periodic reports on the status of MOU's on seafood products and to make them available to all importers. This comment and others argued that it should be FDA's responsibility to notify importers about changes in the status of MOU's, rather than be the responsibility of the importer to find out about any changes. One of these comments noted that, because a change in the status of an MOU could be very detrimental to importers, there must be sufficient lead time to allow importers to develop alternate verification procedures when changes do occur.

Another comment urged FDA to coordinate with U.S. importers and exporters in developing a schedule for MOU development. The same comment urged FDA to assign more resources to the development of MOU's.

On the other hand, one comment stated that the MOU development process is overly open-ended and could result in inconsistencies between domestic and foreign requirements. The comment argued that this inconsistency could result in an economic disadvantage for domestic processors.

FDA agrees with those comments that urged that the agency give high priority to the establishment of MOU's with U.S. seafood trading partners. In the absence of significant numbers of agency inspections of foreign processing facilities, FDA acknowledges that an MOU can be the most efficient and effective mechanism for ensuring that foreign processing plants are operating in compliance with the requirements of these regulations. FDA also agrees that the potential for signing an MOU with FDA is likely to serve as an incentive for the improvement of regulatory food control programs and processing conditions in seafood exporting countries, especially where the existence of an MOU serves to excuse the importer of products from that country from certain verification activities.

FDA has concluded that the development of MOU's or similar agreements with foreign regulatory agencies is an appropriate method for ensuring that foreign processors that export to the United States are in compliance with the requirements of these regulations. Moreover, as suggested by several comments, the agency has determined that, where an MOU exists, there is no need for the importer to perform any independent verification procedures for purposes of these regulations. In this situation, the importer should be able to rely upon the foreign regulatory authority to ensure compliance by foreign processors.

FDA is therefore retaining the provision on MOU's from the proposal but modifying it to provide that, where an importer elects to obtain a fish or fishery product from a country with which FDA has an active MOU or other similar agreement, the importer need not engage in any independent verification activities.

The agency has developed an internal protocol for developing MOU's and is negotiating agreements with several countries. FDA is committed to negotiating as many MOU's as possible. Also in the **Federal Register** of June 15, 1995 (60 FR 31485), FDA published the notice of availability of a new Compliance Policy Guide on MOU's.

However, it is not reasonable to expect that an agreement could be reached with all countries from which seafood is imported into the United States. The barriers to achieving such a result include the inadequacy of foreign regulatory programs and the lack of interest on the part of some foreign governments in entering into an agreement. The availability of FDA resources also can affect at least how long it takes FDA to enter into a particular MOU.

For these reasons, the existence of an MOU or similar agreement as a requirement of entry of fish or fishery products into the United States would result in an enormous negative economic impact to a major segment of the U.S. seafood industry. Moreover, such a restriction is not warranted from a public health perspective given the alternative means of verifying the existence of HACCP controls that are provided in these regulations.

Experience obtained in part in the international portion of the FDA/NMFS seafood HACCP pilot project has demonstrated that foreign seafood regulatory programs vary considerably, both in their capabilities and in their structures. Likewise, foreign seafood processing conditions are highly variable. Thus, FDA cannot simply follow a boiler plate format in negotiating MOU's. Rather, they must be tailored to the specifics of the situation presented by a particular country. It is possible that some agreements can provide simply for the submission of lists of approved processors to FDA at regular intervals; others may require much more extensive FDA involvement before and after goods flow under the agreement. Some agreements may cover all of a country's seafood processors, while others may be targeted to specific species or product forms, depending on factors such as the capability of the foreign regulatory authority.

In any case, all agreements can be expected to provide for FDA verification of the effectiveness of the foreign programs, including onsite visits. FDA is principally interested in two- way agreements, that is, agreements that acknowledge the acceptability of the U.S. regulatory system to the foreign government as well as the acceptability of the foreign regulatory system to the U.S. government.

The agency will make every reasonable effort to communicate with the industry about changes in the status of MOU's through **Federal Register** notifications and other means. FDA is open to suggestions about the best ways to communicate in this regard.

Nevertheless, it will ultimately be the importer's responsibility to keep appraised of any changes in the status of MOU's.

The agency is also receptive to the views of the seafood industry and others about how countries should be prioritized for the purpose of negotiating MOU's. Any information that the agency receives on this topic will be coupled with existing information concerning the likelihood of negotiation success and the types and quantity of products typically offered for entry from the country in question.

5. Importer Verification Procedures

121. The remaining comments discussed specific aspects of the proposed importer requirements. Some of these comments argued that the responsibilities that were proposed for importers are onerous, unworkable, and inefficient but offered nothing in support of these assertions.

A number of comments objected to the proposed requirement that all importers have and implement a HACCP plan. Several of these comments contended that an importer's plan can only address the hazards that occur during the time that products are under the importer's control (i.e., from the time the importer takes possession of the product until it is shipped to its customer), and that requiring that the plan cover this point is inconsistent with the principles of HACCP. One comment agreed that an importer should be required to develop a plan if it also processes the product, as in the case of an importer who stores the product. The comment asserted that, in such a case, however, the importer's HACCP plan would be minimal. The comment further asserted that the foreign processor should be the party responsible for developing a HACCP plan that addresses the hazards

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introduced during processing in the foreign plant. The comment recommended that, as an alternative to having a HACCP plan, an importer should be able to develop SOP's that outline the steps that it will take to determine whether to purchase the product from a foreign supplier.

A number of comments supported the proposed requirement for importer HACCP plans but provided no reasons for their support.

The agency agrees that it would be inappropriate to require that importers have and implement a HACCP plan regardless of whether they process the products they import. As stated elsewhere in this preamble, HACCP is a system that provides immediate feedback, through the monitoring of CCP's, as to whether a process is under control. Unless an importer is also a processor, there are no CCP's in the classic sense for the importer to monitor, and from which to obtain real-time feedback. Consequently, only where importers also process in accordance with the definition of that term at § 123.3(k) will they be required to have and implement a HACCP plan that meets the requirements of § 123.6. Those food safety hazards that can be controlled by the foreign processor must be addressed in the foreign processor's HACCP plan in accordance with § 123.6.

Consequently, FDA has revised the regulations to limit the responsibilities of importers. Instead of having to maintain their own HACCP plan, under § 123.12(a), in the absence of an MOU or similar agreement, importers only need to maintain and implement written verification procedures for ensuring that the fish and fishery products that they offer for import into the United States have been processed in accordance with the requirements of these regulations. The only exception to this rule would be if the importer itself engages in processing, such as holding food, in which case the importer would, as stated above, also be a processor and subject to § 123.6.

122. In determining the nature of the verification procedures that an importer must have and implement, FDA considered the comments that addressed the appropriate functions and existing procedures of importers. Several comments noted that importers routinely purchase products according to specifications and observed that these specifications could be the basis for reasonable control measures for importers. The NACMCF recommended that importers be required to maintain product specifications that are relevant to product safety for fish and fishery products that they import. The NACMCF listed water activity, pH, histamine content, and, perhaps, pathogen limits as examples of specifications that importers might set in an effort to ensure product safety.

The agency agrees with the comments that product specifications can be useful tools with which importers can exercise some control over the products that they purchase and offer for entry into the United States. In fact, FDA stated in the preamble to the proposed regulations that the purpose of an importer's plan was, in part, to include criteria for how the importer will decide to purchase seafood. FDA is also encouraged by the fact that the comments generally agreed that having product specifications would not constitute a new burden for many importers.

For these reasons, the agency in § 123.12(a)(2)(i), is requiring that the importer's written verification procedures include product specifications that are designed to ensure that the product is not adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act because it may be injurious to health or have been processed under insanitary conditions. These are the adulteration sections that relate to the safety of fish.

In many cases, importers will find existing Federal food safety standards, including tolerances and guidelines, to be useful specifications. In other cases, specifications may need to be tailored to the circumstances. For example, the importer might need to ensure that the temperature of a modified atmosphere packaged product, when it comes off a ship, is 38 °F (in such foods there is a risk of *C. botulinum* type E growth and toxin development which can occur at temperatures as low as 38 °F), although the CGMP's at § 110.80(b)(3)(i) state only that refrigerated foods should be stored at 45 °F or below. The importer is encouraged to seek the advice of qualified experts, as needed, in setting specifications. The same resources available to help domestic processors in setting CL's are available to importers, including the Guide; Sea Grant Institution and other academics; Federal, State, and local food safety regulatory agencies; consultants; the Alliance and other training courses; and published literature.

6. Affirmative Steps: General

As a second part of the importer's verification procedure, FDA is essentially retaining from the proposal, in § 123.12(a)(2)(ii), the requirement that the importer take affirmative steps to ensure that the products being offered for entry are actually being produced under controls that meet the requirements of these regulations. In order for product specifications to be meaningful, importers must take steps to establish that their suppliers are in fact operating in a manner that can reasonably be expected to produce a product that meets those specifications. Effective verification involves scrutinizing the standard, much like evaluating whether the HACCP plan continues to be appropriate, and scrutinizing performance to determine whether the standard is consistently reached, much like reviewing monitoring records (Ref. 34, p. 201). FDA is adopting this approach in § 123.12(a)(2)(ii).

Among the affirmative steps that FDA proposed that a processor take were: (1) Obtaining the foreign processor's HACCP-monitoring records; (2) obtaining a certificate from a foreign government inspection authority certifying that the firm is operating under a valid HACCP plan or certification on a lot-by-lot basis; (3) regularly inspecting a supplier's facilities; (4) periodic end-product testing by the importer or a private laboratory hired by the importer; or (5) other such verification measures as appropriate. FDA listed these affirmative steps as examples of the types of measures that would be acceptable to the agency. FDA does not wish to predetermine all the possible ways that an importer could perform affirmative steps.

123. A number of comments objected to each of the affirmative steps that FDA listed in the proposed regulations, and a few expressed support for each. However, few of the comments provided any reasons for their positions.

One comment suggested that the best means by which an importer can ensure that the conditions at a foreign processing facility are at least equivalent to those required of domestic processors is for the importer to verify the adequacy and implementation of the foreign processor's HACCP plan during a visit to the facility. Another comment stated that, "without both audits and HACCP records, foreign plants (possibly domestic facilities too) will not adhere to the letter of the FDA regulation and assure safe product in the market."

Conversely, a number of comments argued that it would be unworkable for importers to conduct inspections of foreign processors. One of these comments stated that to justify the expense of such an undertaking would necessitate that a highly trained, competent individual perform the function.

As stated earlier, FDA remains convinced that importers must exercise sufficient control over the fish and fishery products that they offer for entry into their country to ensure that the products are produced pursuant to the requirements of these regulations. The agency recognizes that any one of the affirmative steps may not be appropriate or feasible for a particular importer or foreign processor. The regulations allow importers to select an affirmative step that is workable for their circumstances and to develop appropriate affirmative steps other than those listed in the regulations (see § 123.12(a)(2)(ii)(F)). However, such measures must provide at least an equivalent level of assurance of foreign processor compliance as that provided by the listed affirmative steps.

Additionally, FDA has modified the importer requirements to allow for the performance of any of the affirmative steps by a competent third party (§ 123.12(b)). This provision provides even greater flexibility to importers in meeting the requirements of these regulations.

Thus, FDA is not persuaded that the affirmative steps are not feasible or appropriate and has included them in these final regulations.

124. A comment argued that government certificates should not be acceptable unless they are issued by countries with which FDA has signed an MOU or similar agreement. The comment asserted that, especially in developing countries, there may be different interpretations of the regulations, and differences in competency, credibility, infrastructure, intent, and uniformity that might bring the utility of such certificates into question.

FDA acknowledges that it is likely to have a higher level of confidence in certificates received from a government entity with which it has signed an agreement than with one with which no agreement exists. However, as discussed above, it is unlikely that the agency will be able to negotiate an MOU with every country that exports seafood to the United States. Thus, there may be countries that have excellent certification programs with which FDA, for a variety of reasons, simply does not have an opportunity to enter into an agreement. Moreover, if the agency learns, either through its own routine surveillance activities, consumer complaints, or other means, that there is evidence that a country is routinely issuing certificates inappropriately, the agency will try to inform firms that import fish or fishery products from that country that it will expect them to use other means of verification if they want to avoid the appearance that those products are adulterated under section 402(a)(4) of the act (see § 123.12(d)).

125. One comment urged that certification be permitted on a continuing basis rather than requiring lot-by-lot certification.

FDA agrees that continuing certification is appropriate and notes that the language and intent of the proposed regulations would have allowed for it. Nonetheless, in an effort to further clarify this situation, the agency provided in § 123.12(a)(2)(ii)(B) that: "Obtaining either a continuing or lot-by-lot certificate * * *" will be one way to satisfy the requirement that an importer take affirmative steps to ensure that the product is produced in accordance with the requirements of this part.

7. Foreign Processor HACCP Plans

126. Approximately 15 comments addressed whether importers should be required to have on file copies of the HACCP plans of each of their foreign processors. Approximately half of these comments supported such a requirement, although for the most part they provided no reasons for their support. The other half objected to the requirement. One of these comments argued that possession of a foreign processor's HACCP plan would be cumbersome for the importer and would provide no assurance that product shipped by that processor was processed in accordance with the plan. One comment cautioned that it would be unrealistic to expect that importers could make any but a rudimentary judgment as to the adequacy of foreign processors' HACCP plans. Such judgments, these comments asserted, should be reserved for the regulator when the plans are assessed during inspections of importers' records.

One comment cited the possibility of breaches in confidentiality because commercially sensitive material would be supplied to importers. A related comment suggested that, to solve the confidentiality problem, the foreign processors' HACCP plans should be filed directly with FDA rather than with importers.

Although the agency continues to believe that a foreign processor's HACCP plan provides a useful basis for verification, FDA is persuaded by the comments that there are logistical and other issues that could render the retention of HACCP plans by importers unmanageable in some cases. FDA has also concluded that, in most cases, affirmative steps such as those listed in § 123.12(a)(2)(ii) (e.g., onsite inspection by the importer and certification by a foreign government agency) will be adequate to enable an importer to verify that the products being imported are safe in accordance with the requirements of these regulations.

As described previously, the NACMCF recommendations describe two primary goals of verification: (1) Ensure that the plan is adequate to address the hazards that are likely to affect the product; and (2) ensure that the plan is being consistently implemented. The affirmative steps listed in § 123.12(a)(2)(ii) are designed to address both of these functions. For example, obtaining HACCP and sanitation monitoring records from the foreign processor (§ 123.12(a)(2)(ii)(A)) enables the importer to confirm that the foreign processor has addressed the relevant hazards and sanitation concerns (i.e., those for which there are monitoring records), and that it is monitoring to ensure that these concerns are under control during the production of lots that are shipped to the importer. Similarly, obtaining governmental or third party certification of foreign processor compliance with the requirements of these regulations (§ 123.12(a)(2)(ii)(B)) or inspecting the foreign processor directly (§ 123.12(a)(2)(ii)(C)) enables the importer to confirm that the foreign processor has an adequate HACCP plan and SSOP, and that the relevant sanitation and safety concerns are being controlled for those lots that are shipped to the importer. The affirmative step options provided for by § 123.12(a)(2)(ii)(D) and (a)(2)(ii)(E) are discussed later in this section.

Consequently, FDA has not included a requirement that importers of fish and fishery products have on file the HACCP plans of each of their foreign suppliers in these final regulations.

Nonetheless, FDA points out that maintaining copies of these plans could be one of several measures that an importer could incorporate into its affirmative steps. Therefore, these final regulations in § 123.12(a)(2)(ii)(D) incorporate the concept as one of the affirmative steps that an importer may choose to use for verification purposes.

127. One comment noted that the plans of foreign processors would normally be prepared in the native language of the country of origin and asked whether FDA would require that these documents be translated into English. On the other hand, another comment recommended that HACCP plans be maintained in both the language of the native country and in English.

FDA agrees with the comment that argued that a copy of a processor's HACCP plan would not, by itself,

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provide adequate assurance that a given shipment of imported product was processed in compliance with that HACCP plan or that the sanitation requirements of § 123.11 were met. One additional thing is needed to provide such assurance: a written guarantee from the foreign processor that the products shipped to the importer are processed in accordance with these regulations. The guarantee is necessary to demonstrate that the HACCP and sanitation control systems are being implemented for products shipped to the importer. An importer should be able to make a reasonable judgement about the validity of the guarantee through a rudimentary review of the plan, as described below. Therefore, FDA is including these requirements in § 123.12(a)(2)(ii)(D).

FBA is also providing in § 123.12(a)(2)(ii)(D) that the foreign processors' HACCP plans that are maintained by importers be written in English, so that they will be meaningful to the importer and will allow for regulatory review.

128. As stated above, one comment cautioned the agency about the ability of many importers to evaluate the adequacy of HACCP plans that they might retain.

FDA acknowledges that many importers may not have the technical expertise to evaluate the adequacy of seafood HACCP plans. However, the agency is convinced that, as a result of the importers' assessment of the food safety hazards that are reasonably likely to be presented by the product, the importer should have developed some general expectations about the content of the HACCP plan (e.g., which hazards should be addressed). The importer should be able to spot any obvious shortcomings and to discuss them with the foreign processor. It is not enough that importers simply file away the documents upon receipt. Importers may find it advantageous to make a judgment about the likelihood that their product specifications will be met and to insist that they be given a guarantee that contains assurances that the specifications will be met.

129. Regarding the comment that complained about the potential loss of confidentiality of foreign processor HACCP plans that are provided to importers, since the agency has eliminated the requirement that all importers retain copies of foreign processor plans, the significance of this issue has been minimized. In the case where a foreign processor does not wish to share its plan with the importer, the processor and the importer would need to agree upon another means of providing for importer verification.

130. Regarding the comment that suggested that all foreign processors file their plans with FDA, the resource demands on the agency that would come with such an undertaking would be prohibitive. FDA cannot accept this suggestion.

8. Other Affirmative Steps

As a related matter, FDA has determined that, in the absence of a requirement that importers maintain a copy of the foreign processor's HACCP plan, finished product tests alone are insufficient as an importer affirmative step to ensure that the foreign processor is operating in accordance with these regulations. Finished product testing alone has a small statistical likelihood of detecting defects in a product, especially when the occurrence of such a defect is an uncommon event, as is the case with most seafood hazards (Ref. 213). The proposed requirement for the importer to obtain a copy of the foreign processor's HACCP plan, in addition to performing finished product testing, would have provided indirect evidence that HACCP controls are in place and would have lent support to a conclusion, based upon the analytical findings, that the relevant hazards are under control. In the absence of such evidence, the importer cannot reasonably conclude that the hazards are being controlled based solely on a negative analytical finding. For this reason FDA has required in § 123.12(a)(2)(ii)(E) that such sampling be accompanied by a written guarantee from the foreign processor that products being shipped to the importer are processed in a manner consistent with the requirements of these regulations. The guarantee provides the importer with reasonable assurance that HACCP and sanitation controls are in place and are being implemented, in a manner similar to the way that the foreign processor's HACCP plan would have under the requirements of the proposed regulations. Under this alternative, the importer would not have to maintain a copy of the HACCP plan.

For clarification and consistency within the document, FDA has revised the language of two of the affirmative steps to include reference to the sanitation provisions of the regulations. In both the proposed regulations and these final regulations the stated purpose of the affirmative steps is to enable the importer to verify that the fish or fishery product was processed under conditions that meet both the HACCP and sanitation requirements of these regulations. However, the formulations of two of the affirmative steps in the proposal did not make specific reference to sanitation. To avoid confusion over what the affirmative steps should cover, § 123.12(a)(2)(ii)(A) now reads "Obtaining from the foreign processor the HACCP and sanitation monitoring records * * *" and § 123.12(a)(2)(ii)(B) reads "* * * certifying that the imported fish or fishery product is or was processed in accordance with the requirements of this part."

131. Several comments asked the agency to specify the frequency with which the importer affirmative steps must be taken. A few comments suggested that the frequency should be no greater than the frequency of equivalent FDA verification activities.

It would not be practical for the agency to specify frequencies for affirmative steps that would be appropriate in all circumstances. Consistent with the frequency of monitoring by processors, importers should take affirmative steps to monitor their suppliers with sufficient frequency to accomplish its purpose—that is, to provide the importer with reasonable assurance that the foreign processor is operating in compliance with these regulations.

It would be inappropriate to tie importer affirmative step frequencies to average FDA sampling and inspection frequencies. FDA sample collection and inspection frequencies are determined, in part, by the compliance history of individual firms, agency priorities, and overall agency resources, not simply on a desired average minimum rate of verification. Thus, FDA's rate of inspection has no bearing on how frequently an importer should monitor a supplier.

132. A number of comments urged that the agency permit importers to contract with third parties to perform verification activities on their behalf. Two comments opposed such a provision but did not provide reasons for their position.

Several comments urged that certificates by nongovernmental third parties be accepted as an affirmative step. One of these comments, from a trade association, suggested that an equivalent arrangement has been accepted by FDA in controlling the importation of canned mushrooms from the Peoples Republic of China. This same comment argued that a system where individual importers inspect each of their suppliers is highly inefficient. The comment suggested that a single, technically competent party should perform the inspections. The trade association offered to serve as a clearinghouse for the reports of such inspections. Likewise, the association offered to serve as a clearinghouse for finished product sample results for imported products, reducing the number of samples needed when the same product is imported by a number of importers. The comment further suggested that the association be permitted to hold foreign processor HACCP plans for its members, and perhaps for nonmembers. The comment argued that acceptance of this suggestion would reduce the number of duplicate records for the same product stored by various importers.

The agency accepts that third party verification can be an appropriate and efficient control mechanism. Such a system is consistent with the use of third parties by processors for plan development, record review, and CL deviation evaluation. Therefore, FDA has added a new provision at § 123.12(b), that reads, "An importer may hire a competent third party to assist with or perform any or all of the verification activities specified in paragraph (a)(2) of this section, including writing the importer's verification procedures on the importer's behalf." It is worth pointing out that where an importer uses the services of a third party, the importer remains responsible for the verification procedures that are performed. The importers must be able to demonstrate that appropriate verification measures have been performed. This step may involve providing an FDA investigator with a copy of the foreign processor's HACCP plan, results of end-product sampling, results of an onsite inspection, the foreign processor's monitoring records, or the foreign processor's written guarantee. Third parties must, of course, be competent to perform the duties in question, and FDA reserves the right to challenge such competency. The agency has no objection to the use of clearinghouses for importer verification activities, as long as the forgoing requirements are met.

9. Importer Records

As previously mentioned, the proposed regulations would have required that importers develop and implement a HACCP plan. One effect of such a requirement would have been that importers would have had to maintain appropriate records. As has been explained, FDA is adopting only those essential components of the proposed approach that the agency considers to be practicable for importers. One such component is recordkeeping. Recordkeeping is essential in documenting for the benefit of importers and the agency the affirmative steps of importers, in the same way that it is essential in documenting the monitoring, corrective action, and verification activities of processors. For this reason, the agency has retained the recordkeeping aspect of the proposal for importers, in a manner that is consistent with the overall approach for importers in these final regulations. Section 123.12(c), which treats importer records identically to processor records, reads, "The importer shall maintain records, in English, that document the performance and results of the affirmative steps specified in paragraph (a)(2)(ii) of this section. These records shall be subject to the applicable provisions of § 123.9."

133. FDA proposed that importers encourage foreign processors to obtain HACCP training. A few comments urged the agency to make it clear that foreign processors must comply with the same training requirements as are applicable to domestic processors. One comment urged the agency to permit HACCP-training courses for foreign processors to be conducted in the country of origin by "an official agency."

FDA agrees that the need for training is the same for foreign processors as it is for domestic processors. The intended benefits of the training requirements are fully discussed in the "Training" section of this preamble. Nonetheless, the agency finds that the proposed requirement that importers encourage foreign processors to obtain training is unnecessary. Foreign processors that ship seafood products to the United States are advised of the training requirement of these regulations in the same way that they are advised of the other requirements of these regulations, through publication of the regulations. In addition, as mentioned elsewhere in this preamble, FDA intends to provide the embassies of seafood exporting countries with information concerning these regulations in order that they may in turn provide it to the processors in their countries. Consequently, FDA is not adopting this provision.

FDA has no objection to HACCP training being performed in the country of origin by "an official agency" or other entity, as long as the course of instruction is at least equivalent to that provided by the standardized course under development by the Alliance.

10. Determination of Compliance

FDA proposed to require that there be evidence that imported fish and fishery products were processed under conditions that comply with the requirements of these regulations, and that if assurances that this was the case did not exist, the product would appear to be adulterated and would be denied entry. This section of the proposed regulations provided five types of evidence that the agency would consider as adequate to provide such assurance.

134. A few comments supported these provisions. However, a few comments suggested that, if the importer is unable to provide assurance that a HACCP system is in place, the importer should be permitted to conduct finished product testing rather than having the product denied entry. One comment urged that importers be held only to a "best efforts" standard in determining whether their suppliers are in compliance with these regulations. This comment suggested that if an importer cannot determine that such compliance exists after using its best efforts, the importer's product should not be banned from the United States.

The purpose of these regulations is to cause processors of fish and fishery products, both domestic and foreign, to develop and implement HACCP systems of preventive controls to ensure the safety of their products. The importer requirements are designed to impose an obligation on importers to ensure that, like domestic products, the products that they are importing are not adulterated within the meaning of section 402(a)(4) of the act. This requirement means that importers must be able to satisfy themselves, and ultimately FDA, that the fish and fishery products that they are offering for import were produced subject to a HACCP system and sanitation controls designed to prevent insanitary processing conditions that may render the food injurious to health. If an importer does not have evidence that shows that the products were produced subject to such controls, it should not offer the product for import into this country. The lack of such evidence creates the appearance of adulteration that cannot be overcome by the collection and analysis of a finished product sample by an importer. Given the problems that can arise in seafood processing if HACCP and sanitation controls are not in place, under sections 402(a)(4), 701(a), and 801(a) of the act, FDA is adopting § 123.12(d), which provides that if evidence does not exist that an imported fish or fishery product has been processed under conditions that are equivalent to those required of domestic processors, the product will appear to be adulterated.

Section 123.12(d) derives from proposed § 123.12 (a) and (b). FDA has combined these provisions and, as

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suggested by a comment, has used terminology consistent with the rest of the regulation in § 123.12(d). While proposed § 123.12 (a)(1) through (a)(5), which described the types of evidence that could be used to demonstrate compliance with the proposed regulations, reflected important principles for the importation of fish, based on the comments, FDA finds that these provisions were causing confusion, and that the statute can appropriately be implemented without including them in the final rule. For this reason, FDA has not adopted these provisions.

135. One comment asked what documents, if any, would have to be presented to FDA at the time of entry concerning the status of the foreign processor. Another comment suggested that importers should note on the entry documents that a HACCP plan is available for the foreign processor. This comment stated that FDA would have an opportunity to review the plan as part of its determination of whether to allow entry of the product.

FDA is not requiring that evidence of the importers' affirmative steps be presented along with the existing U.S. Customs Service entry documents as a matter of routine practice. It is possible that, in some circumstances, such a step will be necessary (e.g., where the agency has reason to believe that inappropriate conditions exist in the foreign processing facility). However, typically, the importer will be able to retain such evidence in its files and to make it available to the agency when FDA performs an inspection at the importer's place of business. Such a system is necessary because of the time that is necessary for the agency to properly review the importer's documentation of its affirmative steps and of the foreign processors' HACCP plans. Nonetheless, the agency is willing to explore alternate methods of implementing the import requirements of these regulations, such as that suggested by the comment. FDA welcomes a continuing public dialog about this matter.

136. One comment asked whether FDA would maintain an approved list of foreign processors.

The agency has no plans to maintain such a list, nor is it apparent upon what basis such a list would be prepared. A possible exception would be as part of an MOU arrangement, where the foreign country would agree to provide a list of "approved" firms to FDA. In such a situation, FDA would use reasonable means to inform the import industry of the purpose and contents of the list and update them as rapidly as possible when changes are made.

137. One comment expressed concern that the same foreign processor HACCP plan might be reviewed by different FDA investigators in different ports of entry, and that these investigators might reach different conclusions as to its adequacy. The comment urged that the agency coordinate such reviews, as well as reviews of importers' affirmative steps, in a way that would minimize inconsistencies.

FDA acknowledges that the situation might well arise where different investigators review the same foreign processor HACCP plan as a part of different importer inspections. To minimize inconsistencies in such reviews, the agency intends to train its inspectional staff in the requirements of these regulations and the application of HACCP principles to seafood processing, including training on the Guide. The agency also intends to develop guidance relative to importer verification activities.

M. Guidelines or Regulations?

1. Background

FDA recognizes that many processors will need guidance in the preparation of HACCP plans, and that HACCP plans will vary in complexity. The agency is committed to providing the industry with technical assistance that includes general guidelines for HACCP plans and the contents of plans for specific types of products and processes.

As part of FDA's seafood HACCP proposal, the agency included guidelines, in the form of appendices, on how processors of cooked, ready-to-eat products and products involving scombrotoxin-forming species could meet various provisions of the proposed regulations relating to the development and implementation of HACCP plans. FDA regards these products as being high-risk relative to other seafoods. They involve special considerations or special hazards for which additional guidance would likely be useful.

Cooked, ready-to-eat fishery products present an elevated risk of a microbiological hazard compared to most other seafood products. They are cooked as part of processing and might not receive additional cooking by consumers before consumption. Consequently, to be safe, these products must not contain pathogens at a level that will cause disease and must not be subjected to time-temperature abuse that would allow any existing pathogens to grow to unacceptable levels.

Scombrotoxin-forming species are fish that can form a toxin if exposed after death for significant periods to temperatures that permit the growth of certain bacteria. Scombrotoxin can result in a mild to severe allergic response in humans.

The guidelines for these products contained advice about hazards that are reasonably likely to occur and on details for HACCP plans for the control of these hazards. In addition to asking for comments on the substance of the guidelines, the agency asked for comment on whether these guidelines should remain as guidelines, or whether some or all of them should be adopted as regulations. As regulations, they would, essentially, tell processors that certain hazards must be controlled in their HACCP plans, identify in advance critical points in the processing of these products that processors must control to minimize these hazards, and tell processors what they would have to do, at a minimum, to maintain proper control of those critical points.

In another appendix to the proposed regulations, FDA published excerpts from the draft Guide, mentioned earlier in this preamble, for the stated purposes of publicizing the existence of that draft Guide and of providing processors with information about the types of guidance that the agency expected would be available in it.

One of the excerpts that FDA published was guidance on the processing of smoked and smoke-flavored fish. These products represent a significant hazard relative to contamination with *C. botulinum*, especially when packaged in reduced oxygen atmosphere packaging. FDA requested comment on whether this guidance should remain solely within the Guide, whether it should be provided an appendix to the regulations, or whether it should be adopted as regulations. The effect of adopting these materials as regulations would be the same as for the appendices described above.

If these materials remained in the form of guidelines, processors would be free to adopt them or not, so long as measures that provide an equivalent or superior degree of safety are implemented.

138. Approximately 55 comments responded to FDA's request for comment on whether these materials should remain as guidelines or be adopted as regulations. The majority of comments preferred guidelines. A few comments suggested that FDA initially issue guidelines, then possibly convert them to regulations after gaining experience with them as adjuncts to a functioning HACCP system or after pilot testing them. A few comments preferred to retain some of the materials as guidelines and convert others to regulations.

Over one-third of those who commented on this subject supported guidelines in general, without distinguishing among the three guidelines. They argued that guidelines are in keeping with the general philosophy of HACCP that processors assume responsibility for the safety of their products. Some stated that detailed regulations for processors to follow would not provide an adequate incentive to processors to develop a full understanding of the hazards associated with their products or processes. The result could be the development of rote HACCP plans that might be inadequate for safety in specific situations.

Some comments pointed out that, while guidelines can assist processors to identify controls, guidelines probably could never properly identify the CCP's and limits for all processors given the uniqueness of individual processing methods. In the case of regulations, processors would be obliged to adhere to the presented limits regardless of their appropriateness to the operation. Many of these comments preferred the flexibility that guidelines provide in permitting HACCP controls to evolve with a changing knowledge base and new technologies. Some expressed concern that if the guidelines were adopted as regulations, the industry would bear an unnecessary burden of having to petition FDA for amendments in order to accommodate new products or processes. Modifications to the regulations could take considerable time.

Several comments specifically objected to adopting either the guidelines for cooked, ready-to-eat products or the guidelines for scombroid toxin-forming species, or both, as regulations. The reasons were generally the same as those given by those comments that supported the use of guidelines generally.

One comment did express the concern that adopting the scombroid guideline as regulations would have the effect of adopting a policy action level for histamine as a defacto regulation without a formal notice and comment rulemaking.

Several comments requested that guidelines only appear in the Guide, and not in appendices to the regulations, to alleviate confusion.

However, FDA did receive a number of comments that urged the agency to adopt these guidelines as regulations. These comments cited a need for minimum enforceable standards for these products to ensure the protection of the public health. The comments argued that minimum standards would avoid confusion about what is enforceable, and what is not. They pointed out that as regulations, these provisions could be more readily enforced.

FDA believes that all of these comments have merit. Guidelines can provide flexibility that regulations sometimes lack. Moreover, because they are advisory in nature, guidelines are less likely to be followed by rote.

FDA thus agrees that, ideally, HACCP should serve as a catalyst for processors to develop a full understanding of the relationships between their products and processes and human food safety and to devise controls for ensuring safety. There may well be more than one way to reach an appropriate safety endpoint. Regulations might not always take such alternatives into account.

On the other hand, in those cases involving high-risk products where adherence to scientifically established minimum standards or procedures is necessary to ensure a safe product by design, and those minimums are not likely to change, there is good reason to make those minimums something more than advisories. In those types of situations, it makes no sense to act as if the work that scientifically established the minimum processing conditions had not been done.

2. Cooked, Ready-To-Eat Products and Scombroid Species

These, then, are the considerations that FDA has weighed. In the case of cooked, ready-to-eat products and products made in whole or in part from scombroid toxin-forming species, FDA is persuaded that the guidelines should remain as guidelines, at least until there is enough experience with them to determine whether a change to regulations is warranted. The agency has concluded that processors should be given maximum flexibility, at least initially, to identify the reasonably likely hazards and the CCP's and CL's for those hazards that are most appropriate for their manufacturing processes. FDA will examine over time whether processors are achieving an adequate degree of preventive control for these products under the guidelines, and whether they are doing so by following the guidelines exactly or partially or by relying on alternative approaches.

FDA acknowledges that many comments objected to the details of the appendices. These comments will be addressed when the first edition of the Guide is published. FDA recognizes that these materials will be more easily modified and improved if they remain as guidelines, at least for the time being.

FDA agrees that all of these guidelines should appear solely in the Guide. There are no appendices to these final regulations.

3. Smoked and Smoke-Flavored Fishery Products

The guidance for smoked and smoke-flavored fish contained specific processing parameters (i.e., time and temperature of smoking and finished product salt and nitrite concentrations) to be met in the processing of such products, and control mechanisms for ensuring that they are met. *C. botulinum* toxin production is prevented in smoked and smoke-flavored fish by controlling these interrelated variables, as well as by controlling the temperature of the product throughout the chain of distribution.

139. Approximately 25 comments addressed whether these materials should be regulations or guidelines. About half of the comments, representing State and Federal regulatory agencies, professional associations, and others, urged that the materials be codified as regulations. The remainder, representing processors and trade associations, requested that the guidelines remain as guidelines.

A number of the comments that urged that the smoked and smoke-flavored fish guidelines be issued as regulations asserted that regulations are more easily enforceable, would provide clear direction to the industry, and would provide much needed nationwide uniformity in the processing of smoked fish. One comment from a State regulatory agency observed that processors are not adhering to existing guidelines, such as the 1991 recommendations for these products by AFDO, and are unlikely to change their operations in response to another guideline. Several comments argued that the States need Federal regulations to support their own efforts to regulate the industry and to foster uniformity among the various existing State requirements. One of these comments also stated that such regulations are needed to ensure the safety of smoked fish, because the product has a history of involvement in botulism outbreaks, is handled more than most other products, increasing the risk of microbiological contamination, and is frequently not cooked prior to consumption. One comment suggested that the guidelines be tested in pilot programs before making them mandatory, and that research information on smoked fish be disseminated to industry through

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technical bulletins, workshops, and meetings.

Several of the comments that suggested that the proposed guidelines remain as guidelines argued that FDA has not demonstrated that present practices in the smoked fish industry are causing risks that would justify regulations, and that there have been no recent incidents of botulism attributable to smoked fish. Several comments stated that most of the problems with smoked fish in the past have resulted from abuse of the product at retail or by the consumer.

A few comments objected to FDA's contention that large portions of the industry do not conduct final product testing and to the inference that all smoked fish processors do not monitor the composition of their products. The comments stated that responsible companies do conduct product testing on a regular and routine schedule, have scheduled processes, and are aware of what they are doing.

Other comments recommended that FDA enforcement of the current CGMP's, coupled with State and local enforcement of the Food Code for smoked products that are produced in restaurants, retail, and food service establishments, would make it unnecessary to treat smoked fish products any differently than other products under these HACCP regulations. One comment suggested that guidelines would have the same impact as regulations because HACCP plans would be rejected by FDA if they do not contain the recommended controls, and because States would adopt the guidelines as regulations.

One comment argued that the issuance of prescriptive regulations would eliminate the diversity in the types of smoked fish products available and result in a "homogeneous" market. Another comment counseled that the issuance of a regulation would cause Alaskan native salmon processors to abandon their traditional trade.

The agency remains convinced that smoked and smoke-flavored fish is a potentially hazardous food. While cases of botulism have not been attributed to commercially prepared smoked or smoke-flavored fish in over 30 years, the outbreaks of the 1960's clearly demonstrate the potential for such occurrence. Virtually all the research that has been conducted establish that processors need to control time, temperature, and salinity (T-T-S) parameters and other matters for these products in order to provide adequate barriers to toxin production (Ref. 214).

As the preamble to the proposed regulations pointed out, FDA and a number of States have longstanding concerns that the actions of a significant portion of the smoked fish industry do not demonstrate a full appreciation for the nature of the risks. FDA and New York State surveys of the smoked fish industry in the late 1980's, for example, showed that many processors did not routinely control their T-T-S parameters.

The comments have not persuaded FDA that, even without regulations, processors will employ preventive controls to ensure the safety of these products as a matter of design and not of chance. Botulism derives from one of the most dangerous toxins known to exist. Controls to prevent the formation of this toxin cannot be left to chance. HACCP controls for this hazard are highly appropriate because HACCP requires that the processor analyze its operation to determine how hazards affecting its product can arise, and that it institute specific controls to prevent those hazards. The majority of comments that addressed smoked and smoke flavored fish products either supported the concept of HACCP controls or did not argue against them.

140. The question, therefore, is whether, in addition to requiring HACCP plans for these products, FDA should mandate specific CCP's, minimum CL's, monitoring frequencies, and other matters that processors would have to include in their HACCP plans. If the agency were to codify draft guidelines as regulations, the agency would be answering that question in the affirmative. The preamble to the proposed regulations identified the T-T-S parameters in the draft guidelines as being scientifically established minimums for ensuring that toxin produced by *C. botulinum* will not be produced over the shelf life of the product under refrigerated conditions and under conditions of moderate temperature abuse. FDA has been urged for years to mandate such T-T-S parameters for these products. In 1988 and 1989, for example, AFDO passed resolutions asking FDA to expedite the development of regulations for the safe processing of smoked fish. The comments to this rulemaking that supported regulations over guidelines support the mandating of specific T-T-S parameters.

However, a significant number of other comments challenged whether some of the parameters in the guidelines were actually minimums, as FDA had contended. They specifically objected to the minimum water-phase salt levels in the draft guidelines for air packaged smoked and smoke-flavored fish. Generally, these comments stated that there is little safety concern with air-packaged smoked or smoke-flavored fish (hot or cold smoked) containing as little as 2.5 percent water phase salt (less than the minimum stated in the guidelines), and requested that FDA reexamine the existing scientific data. A few comments stated that air-packaged smoked fish has a limited shelf life in the refrigerated state and that NMFS research has shown that spoilage occurs before toxin production. One comment stated that NMFS, New York State Department of Agriculture and Markets, and AFDO all consider a minimum water-phase salt content of 2.5 percent to be acceptable for air-packaged products.

A few comments suggested that an alternative to specifying T-T-S parameters would be to require that all processors have a scheduled process for air-packaged products. The comment stated that this requirement has been successful in the State of New York and has enabled industry to produce products with water-phase salt concentrations that are lower than those proposed by FDA. A few comments suggested that the high salt levels proposed by FDA for smoked and smoke-flavored products would be counterproductive to those government programs aimed at reducing salt in the human diet and would be unacceptable, or only marginally acceptable, to consumers. Other comments suggested that the necessary minimum salt levels for smoked and smoke-flavored fish might be reduced by shortening the shelf life of the product or by storing and distributing the product frozen.

The comments have persuaded FDA that it may be possible for processors to use parameters other than those in FDA's draft guidelines and still produce a safe product. Moreover, the NACMCF has recently endorsed AFDO's recommended parameters for smoked and smoke-flavored fish. Most notably, these recommendations differ from those in FDA's draft guidelines in that they provide for a minimum finished product water phase salt content in air-packed product of 2.5 percent, whereas the FDA proposal provided for a range of minimum values of from 2.5 percent to 3.5 percent, depending upon other processing parameters.

The agency acknowledges, therefore, that some recommended T-T-S parameters differ from those in FDA's draft guidelines. FDA acknowledges the possibility that other safe T-T-S parameters exist as well. It is reasonable to suppose that there is more to be learned about how the development of *C. botulinum* toxin is controlled in these products, given the lack of reported illnesses in recent years. Thus, while FDA strongly believes that the T-T-S parameters in its draft guidelines provide effective controls for botulism, the agency accepts that they are not necessarily the only effective controls, or that all effective controls have been identified.

Consequently, the agency has concluded that, at least for now, the most appropriate place for such guidance on T-T-S parameters and related matters is the Guide, and that it would not be appropriate to adopt specific parameters for the processing of smoked fish by regulation. However, because of the extreme nature of the hazard, and in response to comments, FDA has chosen to codify a rudimentary performance standard for the control of botulism in these products from the draft guidelines (item number 11). As incorporated at subpart B, § 123.16, the performance standard reads:

> In order to meet the requirements of subpart A of this part, processors of smoked and smoke-flavored fishery products, except those subject to the requirements of part 113 or 114 of this chapter, shall include in their HACCP plans how they are controlling the food safety hazard associated with the formation of toxin by *C. botulinum* for at least as long as the shelf life of the product under normal and moderate abuse conditions.

This requirement responds in part to the comments that proposed that FDA require that all processors scientifically establish scheduled processes for smoked and smoke-flavored fish, rather that mandate specific T-T-S parameters and other matters. It requires processors to establish CL's that are both appropriate to their operation and scientifically sound. Because botulism is undoubtedly a hazard that must be controlled in the production of these products, subpart B of part 123 does not impose a requirement that would not exist in its absence. It has been included for emphasis and as a reminder to processors. The Guide will provide processors with assistance with regard to specific T-T-S parameters and related matters.

141. FDA proposed that, with certain exceptions, fish to be smoked or salted be eviscerated and free of residual viscera. The preamble to the proposed regulations explained that salted or smoked uneviscerated fish present a potential hazard for the development of *C. botulinum* toxin production. The viscera of fish contain the majority of *C. botulinum* normally present.

One comment argued that the entire evisceration provision should be moved to the Guide. Another comment suggested that specific evisceration requirements be codified but not as part of sanitation.

These regulations require in subpart B of part 123 that the processors of smoked and smoke-flavored fish describe in their HACCP plans how they are controlling the food safety hazard associated with the formation of toxin by *C. botulinum*. Specific types of controls will be provided in the Guide. Because evisceration is one form of control for this toxin, it will be covered in the Guide as well and need not be included in the regulations. Consequently, FDA has not included this proposed provision in these final regulations.

N. Molluscan Shellfish

1. Background

In addition to the general HACCP provisions in subpart A of part 123, FDA proposed subpart C of part 123—"Raw Molluscan Shellfish," which set forth specific requirements for the processing of fresh or frozen molluscan shellfish. Proposed subpart C of part 123 described certain types of controls that processors of these products must include in their HACCP plans in order to meet the requirements of subpart A of part 123.

Specifically, FDA proposed to require that processors of raw molluscan shellfish identify in their HACCP plans how they are controlling the origin of the molluscan shellfish that they process. FDA proposed to require that these controls include accepting only molluscan shellfish that originated from growing waters that are approved by a shellfish control authority, that are from harvesters that are licensed or from processors that are certified by a shellfish control authority, and that are properly tagged or labeled. In addition, FDA proposed to require that processors maintain records to document that each lot of raw molluscan shellfish meets these requirements. FDA also proposed to amend § 1240.60 (21 CFR 1240.60) to provide for a system of tagging for shellstock and labeling for shucked molluscan shellfish as a means of source identification.

It is important to note that shellfish control authorities in the United States are generally agencies of State governments, and that the tagging of molluscan shellfish is an important aspect of State shellfish control programs. As discussed below, reference to aspects of existing State programs in these Federal regulations is not intended to supplant or override the State programs in any way. Rather, these provisions are intended to strengthen the Federal system in ways that will complement, and thereby better support, State programs.

Molluscan shellfish consumed raw or partially cooked pose unique public health risks. As the preamble to the proposed regulations noted, they probably cause the majority of all seafood-related illnesses in the United States. This situation is not unexpected, given the nature of the product and the way that it is consumed. The preamble documented a relationship between the microbiological quality of molluscan shellfish growing waters and the incidence of molluscan shellfish-borne disease. It also noted that naturally occurring toxins may accumulate in molluscan shellfish because they are filter-feeding animals.

The NSSP was established as a cooperative program among FDA, State regulatory agencies, and the molluscan shellfish industry, relying on section 361 of the PHS Act (42 U.S.C. 264), to provide for the classification and patrol of shellfish growing waters and the inspection and certification of shellfish processors. The preamble to the proposal reaffirmed FDA's support for the NSSP but noted the difficulties that are associated with ensuring the safety of these uncooked products. As the preamble stated, FDA tentatively determined that it could strengthen and provide additional support for the cooperative program through these regulations.

2. Should There Be Specific Requirements for Raw Molluscan Shellfish?

FDA received approximately 45 comments about the proposed requirements for raw molluscan shellfish. The responses were from processors, trade associations, State and Federal government agencies, individuals, consumer advocacy groups, and a foreign country. Approximately half of these comments urged FDA to eliminate proposed subpart C of part 123 and the proposed amendment to § 1240.60, while the other half acknowledged the advisability of including these kinds of provisions but commented on, or questioned, various specifics of them.

The comments that generally supported the need for specific requirements for raw molluscan shellfish were from trade associations, molluscan shellfish industry members, consumer advocacy groups, Federal and State government agencies, individuals, and a professional organization. A number of comments noted that special requirements for molluscan shellfish are warranted because of the association of these products with illness. One

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comment in particular stated that, with respect to seafood, molluscan shellfish "serve as the primary source of illness due to ingestion." One comment noted that Federal regulations relating to source of origin controls for raw molluscan shellfish would enable FDA to lend support to the States in the administration of the NSSP. Another comment suggested that the proposed regulations would improve FDA's regulatory effectiveness with regard to molluscan shellfish control. The comment from the ISSC stated that "The Conference has long recognized and supported expansion of FDA authority to assist States in assuring the safety of molluscan shellfish."

The comments that suggested that subpart C of part 123 and the amendment to § 1240.60 be deleted were from State government agencies and seafood processors. A number of the comments that suggested deletion of the proposed provisions stated that the tagging and labeling requirements of the NSSP are designed not to serve as a control to prevent harvesting from closed areas but to assist States in tracing shellfish that are implicated in illness outbreaks back to the harvest area. The comments went on to state that harvesters who illegally harvest from closed waters do not identify the shellfish as originating from the closed area. The comments maintained that preventing illegal harvesting is the key to reducing the incidence of illness, and that the only known method to achieve this goal is through effective law enforcement, including the patrol of closed waters.

A number of these comments argued that increased FDA funding and support for State molluscan shellfish control and patrol efforts would do more than the proposed rule to deter illegal harvesting, to increase States' compliance with the NSSP, and reduce the number of illnesses caused by molluscan shellfish. The comments went on to state that the proposed regulations unnecessarily duplicate the requirements now in place in the Manual of Operations for the NSSP. They contended that formal adoption of NSSP requirements into Federal regulations would release State agencies from their cooperative relationship with FDA under the NSSP.

One comment noted that the weaknesses in State molluscan shellfish control programs are in areas not addressed by the proposed regulations, such as improperly classified growing waters; the ability of State growing water classification programs to respond to breakdowns at waste water treatment facilities or unexpected climatic events that affect the quality of molluscan shellfish growing waters; and improper handling by caterers and consumers. The comment concluded that the proposed HACCP provisions for molluscan shellfish will, therefore, not reduce the incidence of illness attributable to such products.

As previously mentioned, FDA is a partner with State and foreign regulatory authorities and with industry in the NSSP. The NSSP Manual of Operations provides the standards for State and foreign molluscan shellfish regulatory programs that belong to the cooperative program, as well as for processors. The participating States routinely adopt those standards as law or regulations, but the NSSP itself has neither Federal nor State regulatory stature.

Each participating State and foreign nation classifies and monitors its molluscan shellfish growing waters, controls harvesting, inspects molluscan shellfish processors, and issues certificates for those that meet the shellfish control authority's criteria. FDA evaluates State and foreign molluscan shellfish control programs and publishes monthly the "Interstate Certified Shellfish Shippers List," which lists the molluscan shellfish processors that are certified under the cooperative program. States that are in the program are not willing to receive shellfish from noncertified shippers.

FDA disagrees with the comments that suggest that establishment of the proposed source controls in Federal regulations would supplant the similar and, in some cases more stringent, requirements of participating States and foreign nations or the standards set forth in the NSSP. Rather, the agency is convinced that they will reinforce and support these requirements and standards.

The molluscan shellfish industry is subject to significant regulatory oversight in those States that participate in the NSSP. However, the quality and effectiveness of State laws and enforcement activities can vary considerably as a function of the financial and administrative support available to the responsible State units (Ref. 7, p. 15). For example, FDA documented discrepancies in State enforcement practices during its 1994 evaluation of State programs to determine compliance with the NSSP standards (Ref. 215). Moreover, although all harvesting States participate in the NSSP, many other States do not.

Based on these factors, FDA proposed, and is now adopting, subpart C of part 123 and amendments to § 1240.60 to support and strengthen the shellfish program in two ways. First, these provisions will complement the efforts of the States. FDA recognizes that while States are making significant and important efforts to ensure that all shellfish harvested in their jurisdiction are taken only from open waters and then properly tagged, some shellfish that do not meet these requirements inevitably escape State control. The new provisions will allow FDA to take action against shellfish that are not harvested from open waters or that are not properly tagged if it encounters such shellfish in interstate commerce and make the gravamen of such action the origination from unopen waters or the lack of proper tagging itself, rather than evidence that the shellfish are injurious to health.

Second, the regulations require that processors only use shellfish that originate from growing waters that have been approved for harvesting and that have been properly tagged. Failure to do so can result in Federal regulatory action against the product or against the processor itself. This fact should provide a significant incentive to processors to ensure that they are not receiving shellfish that do not meet these requirements.

Taken as a whole, rather than diminishing in any way the importance of State programs, FDA's regulations elevate the importance of those programs. These regulations make proper origin and tagging—concepts that derive directly from the NSSP—keys to the unimpeded movement of shellfish in interstate, as well as intrastate, commerce.

Moreover, these requirements extend these control measures to imported products, enabling FDA to more efficiently and effectively ensure the safety of imported raw molluscan shellfish. At present, the agency must resort to advising State regulatory authorities of the prospective entry of raw molluscan shellfish from an uncertified source (Ref. 216, part V, p. 5). While States normally take action against uncertified imported raw molluscan shellfish, FDA is aware that uncertified imports enter interstate commerce (Ref. 107).

FDA acknowledges that uniform Federal tagging and record-keeping requirements will not completely eliminate illegal harvesting. The agency agrees with the comments that rigorous enforcement of closed area restrictions by State regulatory agencies will always be needed. Unquestionably, increased funding would help State efforts to classify and patrol growing areas. However, FDA does not have resources for this purpose. Nonetheless, the agency remains convinced that there are significant, positive steps that can be taken to strengthen source controls as part of HACCP, and thereby to support the cooperative program.

A processor's most significant safety control for raw molluscan shellfish is at the point of receipt. If processors refuse to accept molluscan shellfish for which there is no assurance that they have been legally harvested, the incentive for illegal harvesting would be eliminated. FDA participation in a number of covert investigations into illegal molluscan shellfish harvesting in recent years has convinced the agency that, in many cases, processors are aware of the illegal harvesting activity of their suppliers (Ref. 217). If the provisions of these regulations can help foster a culture change in that respect, shellfish safety will be significantly enhanced.

Based on these considerations, the agency proposed that, as a universal aspect of the HACCP plans for these products, molluscan shellfish processors engage in certain activities to ensure that the products that they receive originate only from waters that have been approved by a shellfish control authority (e.g., checking tags on containers of shellstock, licenses of fishermen, and certification of suppliers). Molluscan shellfish that are clearly improperly tagged or from questionable sources must be rejected by processors as a requirement of their HACCP plans. It is reasonable to conclude that, as more processors adopt HACCP and exercise greater control over their suppliers, the amount of illegally harvested shellfish offered for sale will decrease, because the market for such product will decline.

While it is true that the tagging requirements of the NSSP were primarily designed as a means of tracing back molluscan shellfish involved in incidences of illness to their harvest area, they have also served as a key component in efforts by FDA and State regulators and industry to ensure that molluscan shellfish that are placed in commerce originate from areas that are approved by a shellfish control authority. It is certainly true that the tags on containers of molluscan shellfish that are harvested from closed waters are often falsified to disguise their true origin. However, such falsification carries potential Federal and State penalties and is a focus of current molluscan shellfish control programs.

Regarding the comments that pointed to weaknesses in State programs, at retail, in the classification of molluscan shellfish growing waters, and elsewhere, which are not directly addressed by these regulations, the agency acknowledges that HACCP plans and specific source control requirements cannot serve as a substitute for improvements in the food safety system that directly address these weaknesses. Regulatory systems will always have their strengths and weaknesses, and research to better understand and control hazards will always be needed. Nonetheless, these comments provide no reason for FDA to abandon its efforts to remedy existing agency weaknesses and, in particular, to lend support to the States in those areas to which these regulations do relate.

141. One comment stated that references cited in the preamble to the proposed regulations in support of the tagging requirements (Refs. 102 through 109) do not provide convincing evidence of a need for such a measure. The comment stated that, for the most part, the references that FDA cited document corrective actions taken by State regulatory agencies that would likely be the same measures that FDA officials would take under the proposed regulations. In addition, the comment stated that a failure to have properly tagged shellfish does not always mean that the shellfish were harvested illegally. The comment pointed out that the absence of a tag could mean simply that the tag was lost.

The references in the question contain examples of problems associated with molluscan shellfish tagging, recordkeeping, and harvesting. FDA cited these references to demonstrate that, in some cases, the deterrent effect of existing State tagging requirements and sanctions is inadequate to prevent problems from arising (Refs. 102, 103, and 109). The problems documented in the references helped persuade FDA to propose Federal source control requirements to help deter the interstate shipment of shellfish from unapproved harvest areas. FDA did not intend to imply that the State actions that were documented in these references were incorrect, or that FDA would have responded in a different manner. FDA continues to believe that the references are relevant and supportive to its intended assertion.

A few comments maintained that a better strategy for decreasing illness from the consumption of molluscan shellfish would be to increase the education efforts of FDA and of the ISSC that are directed toward consumers and the medical community to alert susceptible individuals to the risks associated with the consumption of raw molluscan shellfish.

The agency agrees that consumer education can play a vital role in reducing illnesses associated with the consumption of raw molluscan shellfish, particularly in medically compromised individuals. During the period of 1984 through 1994, the agency expended nearly $1 million to alert the public to the risks of raw molluscan shellfish consumption by distributing brochures to consumer groups, groups that represent those with special medical conditions, and consumers; developing a video news release; issuing press releases; and establishing the toll-free, FDA Seafood Hotline. Included in this expenditure is the agency's efforts to inform the medical community about the illnesses associated with the consumption of raw molluscan shellfish by providing informative articles to medical bulletins and journals and by mailing brochures and news articles to target professional groups. The agency will continue its consumer education efforts, but such efforts alone will be insufficient to address the hazards posed by the consumption of raw molluscan shellfish harvested from unapproved growing waters. The existing and planned consumer education efforts are geared toward individuals in high-risk consumer groups, advising them to avoid molluscan shellfish that have not been fully cooked. The risks posed by viruses, toxins, and many bacteria are to the population as a whole. There is little advice that the agency could provide that would enable consumers to protect themselves from these kinds of hazards in molluscan shellfish.

143. Several comments questioned the validity of FDA's statement that molluscan shellfish consumed raw or partially cooked pose unique public health risks and probably cause the majority of all seafood-related illnesses in the United States.

The comments provided no data upon which to conclude that either the NAS or FDA is wrong in this regard. FDA remains convinced that the statements made in the preamble to the proposed regulations are valid, and that the references support these statements.

3. Cooked Versus Raw Molluscan Shellfish

144. Comments from a number of State agencies, trade associations, seafood processors, and the ISSC objected to the use of the terms "raw" and "fresh or frozen" in the title of part 123 subpart C and the text of the proposed regulations on shellfish. These comments were concerned because these terms would have the effect of exempting canned and any other heat-processed molluscan shellfish from the source control, recordkeeping, and

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tagging provisions of subpart C of part 123 and § 1240.60(b).

The comments stated that limiting these provisions to raw products would allow foreign firms to continue to heat-treat or can molluscan shellfish that are harvested from foreign waters that do not meet NSSP standards and to export them to the United States. The comments stated that this situation was not in the best interest of the public health because of the potential for the presence of heat-stable natural toxins, such as paralytic shellfish poison or amnesiac shellfish poison, as well as chemical contaminants. The comments also complained that, because State laws and regulations require that all molluscan shellfish harvested in the United States come from waters approved by a shellfish control authority regardless of whether they are to be consumed raw or cooked, continuing to allow foreign processors who export cooked shellfish to the United States to use molluscan shellfish from unapproved growing waters places the domestic shellfish industry at a competitive disadvantage. Other comments requested that FDA clarify whether canned shellfish were included in subpart C of part 123 but did not suggest that canned and other heat-processed shellfish be included.

FDA has responded to these comments generally in response to comment 34, *supra*. The agency adds the following points:

It is important to recognize that foreign processors who export cooked molluscan shellfish to the United States now will have to have HACCP systems through which they identify and control hazards that are reasonably likely to occur. These hazards include heat stable toxins and chemical contaminants that would cause these products to be adulterated under U.S. law.

To further clarify that the requirements of subpart C of part 123 apply only to the processing of molluscan shellfish that are not heat treated or treated in some other manner by the processor to eliminate microorganisms of public health concern, FDA has modified the language at § 123.20 to read, "This subpart augments subpart A of this part by setting forth specific requirements for processing fresh or frozen molluscan shellfish, where such processing does not include a treatment that ensures the destruction of vegetative cells of microorganisms of public health concern."

4. Shellfish Control Authorities

FDA proposed to require that processors only process molluscan shellfish that originate from waters approved for harvesting by a shellfish control authority. The term "shellfish control authority" is defined at § 123.3(o) to include foreign government health authorities that are legally responsible for the administration of a program that includes classification of molluscan shellfish growing areas.

145. Two trade associations questioned how a processor could evaluate the competency of a foreign shellfish control authority. They stated that FDA should require that a foreign country that exports shellfish to the United States have an agreement with the agency that establishes that a competent shellfish control authority exists in that country, and that the foreign shellfish program meets NSSP standards. One comment from a seafood processor argued that it would be unreasonable to require processors to verify that molluscan shellfish from all over the world are caught or cultivated in waters that meet NSSP standards. The comment stated, moreover, that a processor could not keep abreast of which countries have current shellfish agreements with FDA and which countries do not.

FDA acknowledges the merits of requiring that a foreign country that exports shellfish to the United States have an agreement with the agency but has concluded that, given the significance of such a requirement and the agency's failure to raise the possibility of imposing it in the proposal, it is beyond the scope of this rulemaking. Even though FDA is not imposing such a requirement, it is the case that the only means by which a processor can ensure that the molluscan shellfish of foreign origin that it receives are in compliance with the requirements of subpart C of part 123 of these regulations is by determining whether the foreign shellfish control authority is formally recognized by FDA. It is not likely that the processor could employ any other process that would give it assurance that molluscan shellfish harvesting waters that are approved by the shellfish control authority are properly classified. Such a determination is appropriately performed through government to government audit.

5. Shellfish From Federal Waters

146. Comments from a significant number of trade associations and seafood processors stated that a requirement that shellfish originate only in waters "approved for harvesting by a shellfish control authority" would preclude harvesting in Federal waters unless the Federal government introduced a formal approval process for waters under its purview through a Federal shellfish control authority.

Under the current system, State agencies are responsible for approving molluscan shellfish growing waters. However, State jurisdiction extends only to waters that are within three miles of the shore. Waters beyond that point but up to 200 miles offshore are under the jurisdiction of the Federal government. The comments pointed out that the harvesting of molluscan shellfish is permitted in all of the oceanic waters under Federal control unless there is a specific Federal action to declare an area unsafe under the provisions of the Magnuson Fishery Conservation and Management Act. The comments further noted that large volumes of molluscan shellfish are harvested in Federal waters.

How Federal waters will be classified, and by whom, has not been fully resolved. The comments are correct that the proposed requirement, if incorporated into the final rule, would pose significant problems for molluscan shellfish processors who receive product harvested from Federal waters. Therefore, FDA has modified § 123.28(b) to allow for the receipt of molluscan shellfish that are harvested in U.S. Federal waters except where such waters are specifically closed to harvesting by an agency of the Federal government. This provision is consistent with the provisions of the Magnuson Act.

It is worth noting that, by allowing Federal waters to be open unless they are specifically closed, this system is the opposite of the State system, under which waters are closed unless they are affirmatively classified so as to be open. This difference is reasonable from a public health standpoint because there is less likelihood that Federal waters will be affected by pollution than will near shore State waters.

Furthermore, because there is no Federal authority to license shellfish harvesters who fish in Federal waters, FDA has modified § 123.28(c) to require only that a harvester be in compliance with such licensure requirements as may apply to the harvesting of molluscan shellfish, rather than specifically requiring licensure.

6. Tagging and Recordkeeping Requirements

147. FDA proposed recordkeeping requirements for processors to follow with respect to shellstock and shucked molluscan shellfish in § 123.28 and requirements for the information to be included on the shellstock tag in § 1240.60. A few comments stated that

the proposed molluscan shellfish tag and record requirements were too specific, and that placing such requirements in the form of regulations would make it difficult to make timely changes to these requirements as future needs may dictate. The comments asserted that FDA or the ISSC may wish to modify the content or form of molluscan shellfish tags or records to improve product traceability. They suggested that FDA write the tagging and recordkeeping requirements at § 123.28 and § 1240.60 in general terms and allow the specific form and information required on the tags to be addressed by the NSSP. The comments went on to urge that, if the agency were determined to include specific tagging and recordkeeping requirements as part of the final regulations, they should be fully consistent with current NSSP guidelines.

It is not the agency's intent that the provisions of § 123.28 and § 1240.60 would preclude the ISSC or State agencies from adopting additional recordkeeping or tagging requirements. The recordkeeping and tagging requirements in these regulations are the minimum necessary to ensure that shellfish can be traced through distribution channels, back to the harvest source. FDA explained why each of the specific requirements is necessary in the preamble to the proposed regulations, and the comments did not take issue with the agency's explanation with respect to any of the particulars. Therefore, FDA disagrees with the comments that the recordkeeping or tagging requirements are more restrictive than they need to be, or that they would interfere with the NSSP tagging program.

Moreover, as stated previously, the agency has drafted the regulations broadly enough so as not to conflict with any improvements that the ISSC may wish to make in the form that a tag may take or in how information on tags is to be stored. The definition of the word "tag" at § 123.3(t) (added at § 1240.3(u) for consistency) reads, in part, "a record of harvesting information attached to a container of shellstock * * *." This definition is sufficiently broad to include such systems as bar codes, embossed plastic, or other nontraditional methods of identification that may be used by the industry in the future. The agency is supportive of efforts to improve the existing methods of recording harvesting information.

Nonetheless, it is important for the regulations to identify the minimum specific information that must appear on a tag. During past illness outbreaks, FDA, State regulatory agencies, and industry have had difficulty tracing the implicated shellfish to their sources, especially after they have been in the possession of several different processors (Refs. 99; 100; 102–106; 109; 218; and 219, pp. 37–39). These difficulties in tracing the shellfish have occurred because the shellfish were not in compliance with the tagging and recordkeeping provisions of the NSSP. The requirements at § 123.28 will enable FDA to help the States to enforce minimum tagging and recordkeeping requirements for imported and domestic products. Moreover, the agency believes that placing the tagging and recordkeeping requirements in Federal regulations will emphasize the nationwide importance of this information in protecting the public health, as described earlier.

148. One comment noted that the NSSP does not specify that the name of the harvester must be on a molluscan shellfish tag, but that the proposed regulations would require this information.

The NSSP specifies that the number assigned to the harvester by the shellfish control authority must be listed on the tag. The agency recognizes that there may be a variety of effective ways to identify the harvester of the molluscan shellfish, depending on the method of harvest, State requirements, and local tradition. For this reason, the agency has modified § 1240.60(b) to read that the tag shall disclose:

* * * by whom they were harvested (i.e., the identification number assigned to the harvester by the shellfish control authority or, if such identification numbers are not assigned, the name of the harvester or the name or registration number of the harvester's vessel).

For consistency, FDA has made a similar change in § 123.28(c)(5).

149. A significant number of comments recommended that FDA modify § 1240.60(b) to allow bills of lading or other shipping documents to accompany bulk shipments of shellstock in lieu of tags, as long as they provide the same information. A few comments suggested that bills of lading or other shipping documents be used in lieu of tags on individual containers of shellstock when a shipment consists of a large volume of shellstock in sacks or boxes. Several comments asked for clarification of the impact of the proposed requirements on current repacking operations that commingle shellstock from various harvesters into one container.

FDA recognizes that an inconsistency existed between proposed § 123.28 and proposed § 1240.60 because the former would have allowed shipping documents to provide the required information for bulk shipment, and the latter would not. FDA agrees with the comments that recommended providing for the use of shipping documents and has modified § 1240.60(b) to provide the needed consistency. Under existing industry practice the truck, cage, or vessel hold serve the same purpose as a container for the shellstock, making tagging impractical. In that case, the shipping document serves the same function as the tag.

However, the agency does not agree with the suggestion that containers of shellstock in large shipments be allowed to be covered by shipping documents in lieu of tags. FDA cannot justify treating shellstock in large shipments differently than shellstock in smaller shipments, nor could the terms "large" or "small" be readily defined. Large shipments can be subdivided, perhaps many times, or commingled with other lots of molluscan shellfish. The source information would, therefore, be necessary on each container to ensure proper identification. Without tags, the identity of individual containers could be lost. FDA is requiring that all shellstock, even after repacking, bear a tag that identifies the prescribed information, including the identification of the harvesters to ensure that all shellstock is readily traceable (§ 1240.60).

7. Other Considerations

150. Comments from a few trade associations and from seafood processors stated that FDA should require a production code on each container of shucked molluscan shellfish. The comments suggested that the code consist of an identifying mark that allows the processor to determine where the remainder of the lot was shipped, and where and when the relevant shellstock was harvested.

FDA agrees that production codes can be useful on containers of shucked molluscan shellfish to facilitate trace back of questionable product. The agency encourages the use of codes by molluscan shellfish processors. However, such a requirement is not within the scope of the proposed regulations. The agency will consider whether such a requirement should be pursued in a separate rulemaking.

151. Comments from several consumer groups stated that if a warning label is not mandated by FDA on raw molluscan shellfish to alert at-risk consumers of the danger to health posed by the product, FDA should require that Gulf Coast oyster processors adequately cook the product to

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eliminate risks from *Vibrio vulnificus* during periods when shellfish cannot be harvested free from this bacterium. They further stated that cooking should not be required when the shellfish are free from this bacterium.

FDA agrees that effective controls are needed to protect consumers from the hazard posed by *V. vulnificus* in Gulf Coast oysters during certain times of the year. The agency is evaluating the potential effectiveness of a variety of control mechanisms. Mandating specific mechanisms, however, would be outside the scope of this rulemaking. FDA is therefore taking these comments under advisement.

152. A few comments urged that the word "processor" be changed to "certified dealer and licensed harvester" throughout § 123.28 to make the terminology consistent with the NSSP and to clarify that these requirements apply to everyone who buys and sells shellfish before the shellfish reach the retail marketplace. The comments also recommended changing the word "shipper" to "processor or packer" in the provision that is codified at § 123.28(d)(3) in these final regulations to include the shucker, repacker, shipper, reshipper, or depurator.

As mentioned in the "Definitions" section of this preamble, the agency has concluded that the definition for "processor" covers all NSSP classifications of shellfish dealers, without specifically naming each one. For consistency throughout the regulations, use of the term will remain unchanged.

FDA agrees, however, that the word "shipper," as the agency used it in the proposed regulations, could cause confusion because that term has a different meaning in the NSSP Manual of Operations. Therefore, FDA has changed the language of the final regulations to read "packer or repacker." The certification number of the packer or repacker is readily available to the processor since it is required, under the NSSP standards, on each label of shucked product. For consistency, FDA has modified § 1240.60(c) to also read "packer or repacker" where it had previously read "processor."

153. A few comments stated that proposed § 123.28(b), which referred to molluscan shellfish that "originate from growing areas that are approved for harvesting," appears to prohibit processors from using products from harvest waters classified under the NSSP as "conditionally restricted." Under the NSSP, shellstock taken from such waters cannot be directly marketed for human consumption but can be "relayed" to an open growing area for harvest at a later date. In addition, the comments pointed out that the word "approved" is a formal classification designation used in the NSSP. These comments said that harvesting is permitted from areas with other than "approved" classifications but would appear to be prohibited under the provisions of proposed § 123.28(b). The comments suggested use of the term "open" growing waters, which would apply to several different NSSP harvest area classifications.

FDA agrees that the word "originate", as used in proposed § 123.28(b), is too restrictive and has revised this section to say "harvested from." With regard to the word "approved," FDA concludes that no change is warranted. The proposal neither adopted nor referenced the NSSP growing water classification system. The phrase "approved for harvesting" should not be construed to be limited to those waters classified by a State under the NSSP as "approved" areas. The phrase "approved for harvesting" is used in the final regulations for its common sense meaning (i.e., those areas from which harvesting is allowed), which FDA believes is appropriate.

154. For clarification purposes, definitions for the terms "certification number", "shellfish control authority", and "tag" have been added at § 1240.3(s), (t), and (u), respectively. These definitions are taken directly from § 123.3.

155. One comment urged that the regulations be modified to specifically state that a HACCP plan for raw molluscan shellfish that contains the controls specified in subpart C of part 123 is deemed to meet the requirements of § 123.6.

The agency disagrees with this comment. The requirements of subpart C of part 123 are designed to control the environmental hazards associated with the harvest waters from which molluscan shellfish are taken, particularly those relating to sewage-related pathogens, chemical contaminants, and natural toxins. For this reason, they must be included in the HACCP plans of all raw molluscan shellfish processors. However, they are not intended to control process-related hazards resulting from, for example, time-temperature abuse of the product, improper use of food additives, or metal fragments. To control these hazards, the processor needs to follow the general approach set out in subpart A of part 123. The agency has developed the two subparts to be complementary and has strived to eliminate any redundancy in their provisions. Thus, it is theoretically possible that a HACCP plan that contains the controls specified in subpart C alone of part 123 still might not meet all the requirements of § 123.6.

FDA has made two modifications in § 1240.60(b) for clarity only. Where the proposed regulations required that the tag identify the "* * * place where harvested * * *," FDA has added, "(by State and site)." This change makes § 1240.60(b) consistent with § 123.28(c)(2). Additionally, where the proposed regulations stated that improperly tagged or labeled product would be "subject to seizure and destruction," FDA has amended the language to read, "subject to seizure or refusal of entry, and destruction." This change is to make clear that, for imported products, the appropriate regulatory procedure is refusal of entry, rather than seizure.

O. Compliance and Effective Date

1. Effective Date

FDA proposed that these final regulations be effective and enforced 1 year after the date that they are published in the **Federal Register**. The purpose of this proposed effective date was to provide processors with enough time to develop and implement HACCP plans. The agency invited comment on whether 1 year would be adequate.

156. FDA received more than 60 comments about the proposed effective date. Virtually all comments agreed that the agency should provide some period before the regulations become effective. The comments either agreed with a 1-year implementation period or requested a longer period of 2 years or more. There were also a number of comments that responded to the agency's question about whether implementation dates should be staggered based on such factors as size of firm and level of risk.

A minority of comments stated that 1 year for implementation is adequate. These comments argued that after 1 year, the industry would have had 3-years notice of the requirements. The comments argued that 3 years was sufficient total time to be informed about impending regulations. Another comment stated that one year might be sufficient for the seafood industry, but other food industries could need considerably more time.

Several comments recommended that FDA provide an implementation period of longer than 1 year but did not recommend a specific alternative. These comments were concerned that HACCP training would not be completed in time for a 1-year implementation date; that foreign processors would need more

time to implement HACCP; and that 1 year after Canada required HACCP for its seafood industry, only half of its firms had complied.

The largest number of comments on this topic recommended that FDA make the regulations effective 2 years after publication. The reason most often cited was that it will be more than 1 year before most of the affected firms can complete HACCP training. The next most frequently cited reason was that firms and trade associations needed more time for HACCP plan development. Several comments also discussed the time required to modify equipment and raise capital; to respond to initial, voluntary reviews of HACCP plans by regulatory agencies; and for Federal, State, and local officials to understand HACCP and how to enforce it and to arrange for cooperative enforcement. A few comments stated that FDA needs sufficient time to develop agreements with foreign countries.

Several comments contended that more than 2 years should be allowed to implement the regulation. These comments mentioned the cultural change that HACCP will require and concern about the impact that the regulations will have on small firms as well as on large firms with multiple products and lines. They also mentioned the time needed for training.

Over 20 comments recommended that FDA stagger effective dates. A majority of these comments stated that such a phased-in start-up should be based on product risk. The remainder of the comments split in favor of either considering both the size of a firm and the risk from the products it makes or just the size of a firm.

A smaller number of comments argued against a staggered start. These comments expressed the view that small firms and foreign products should not be treated differently and pointed out that all firms will already have had 3 years of notice. Some of these comments stated that it would be hard to justify staggering implementation based on risk when the illness data are so incomplete. Others expressed the view that administering a staggered start would use up valuable resources and only result in confusion; that staggering would put some firms at a competitive disadvantage; and that it might encourage procrastination.

After fully considering all of these comments, FDA agrees with the comments that suggested that a 2-year effective date is appropriate. Based on FDA's participation with the Alliance that is developing training materials for this program, FDA has come to realize that 2 years must be provided to establish training programs and to give participants enough time to take them. Two years is also the minimum time necessary to train regulatory personnel. The additional time is also necessary so that the States will have a full opportunity to understand and respond to the effects of these regulations. It will also increase the likelihood that more agreements with other countries will exist.

The additional year will also increase the opportunity for processors to engage in "voluntary" HACCP inspections in advance of the effective date in order to obtain preliminary, nonregulatory feedback from the agency on their progress.

The agency acknowledges that it has urged the industry to begin preparing for HACCP well before the issuance of these final regulations. However, as this preamble amply demonstrates, a significant number of questions were raised as a result of the proposal that could not be answered until now. Moreover, the entire support structure for HACCP, including the issuance of the first edition of the Guide and the development of training courses, model plans, and other forms of technical assistance that will be useful to the industry, and especially to small businesses, will not be in place in time to permit a 1-year effective date.

On the other hand, more than 2 years does not appear at this time to be warranted. The agency is concerned that additional time would adversely affect the momentum for this program without adding significantly to the likelihood that it will succeed.

On the other hand, FDA is sensitive to the need to ensure that small businesses will not incur an unreasonable threat to their survival by an effective date that is too short. The agency intends to monitor the progress of the industry after the regulations are published and invites feedback on this subject. If FDA determines that the effective date is placing a significant and unreasonable burden on the industry, particularly on small businesses, the agency would be willing to consider an extension for as much as one additional year or some form of additional technical assistance. The agency would consider whether the delay is needed for training, drafting plans, or taking other measures that directly relate to the installation of a HACCP system, or whether the time is needed to comply with existing CGMP's, which are a prerequisite for HACCP. FDA will likely be reluctant to give firms an extended period of time to achieve compliance with existing requirements.

FDA also finds that there is not an adequate basis at this time for staggering the starts based on size or risk. The arguments for and against staggering generally parallel those for and against exempting firms from these regulations altogether on the basis of either size or risk. These arguments are discussed in the section of this preamble entitled "Should Some Types of Processors Be Exempt?" In summary, a good case can be made that implementation by small firms should not be delayed because such firms account for much of the products with significant potential for risk, such as cooked, ready-to-eat products. Moreover, most seafood processors are small firms. Risk-based, as opposed to size-based, criteria for staggering firms would inevitably be arbitrary to some degree because data from foodborne illness reporting systems tend to skew the reports toward more easily diagnosable illnesses.

The comments received on the subject of staggering do not provide a ready way to overcome these problems. Moreover, the 2-year effective date (rather than 1 year as proposed), guidance, technical assistance, and training that will be available to all processors should make staggering much less necessary than it otherwise might have been.

As stated above, however, the agency welcomes feedback on the progress that processors are making to implement HACCP that could have a bearing on whether staggering or an extension of the effective date would be appropriate, especially for small businesses.

157. Several comments asked for a form of staggering based on when an inspection occurs before the effective date. These comments stated that processors who voluntarily submit to inspection under the regulations before the effective date and are advised that their HACCP systems are not yet in compliance with the regulations should have at least a 6-month grace period to correct the problems. The example given in these comments was that of a processor who is so advised 1 day before the effective date and thus is inevitably out of compliance on the effective date.

As reflected in the comments, inspections of HACCP systems before the effective date will occur because a firm desires feedback and volunteers for it when an FDA investigator arrives for an inspection. That feedback will constitute informal advice only and will provide training for the investigator as well as for the processor. There may be some advantage to a processor to obtain feedback and training sooner rather than

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later, but the results will have no formal status with the agency and would not warrant an extension of the effective date.

The agency has heard considerable concern that it will automatically seek to seize or otherwise remove from commerce all products being produced under a HACCP system that is determined to be deficient in any respect. That concern is unfounded. The consequence of being out of compliance with HACCP requirements, on the first inspection after implementation or otherwise, is addressed throughout this section. In summary, FDA's reaction will depend, as it does today, on the overall public health significance of the deficiency.

2. Public Meetings

158. One comment suggested that FDA conduct public meetings to explain the requirements of these regulations to the seafood processing industry between the publication date and effective date of these regulations. The comment also encouraged a coordination of research, training, and educational efforts between industry and FDA in order to facilitate the implementation of this HACCP program.

FDA fully agrees with the comment. It is the intent of the agency to engage in a dialog with industry, through a combination of public meetings and discussions at trade association meetings, to facilitate a thorough understanding of the regulations. FDA's affiliation with the Alliance reflects the agency's commitment to a cooperative relationship among industry, government (Federal and State), and academia in the areas of research, training, and technical assistance.

3. Penalties for Noncompliance

159. A significant number of comments, from processors and trade associations, requested that FDA address how noncompliance with the mandatory sanitation control procedures will be handled. Several of these comments also requested that FDA describe the penalties that can be imposed upon a processor and its officers for: Failure of a processor to have and implement a HACCP plan; noncompliance with sanitation control procedures; and failure to meet minor requirements of the regulations, such as the lack of a signature on a document. One comment stated that FDA's legal authorities and enforcement procedures do not provide a means for the agency to respond in a manner that is related to the severity of deficiencies—that is, a less severe response to a less significant deficiency.

FDA has a longstanding practice of tailoring its regulatory response to the facts. A deviation from any of the provisions of these regulations, including those involving the control of sanitation, carries the potential for regulatory action pursuant to section 402(a)(4) of the act. However, FDA intends to enforce these regulations in a manner that focuses on those deviations that have the greatest potential for causing harm. It is not FDA's intent to pursue regulatory action against a product or a processor exclusively for clerical errors or minor errors of omission. To do so would certainly not be an efficient use of agency resources, nor would it be in the best interests of the consuming public.

The penalty provisions for food found to be adulterated are described at "Prohibited Acts and Penalties," in chapter III of the act. The statutory sanctions that FDA may seek include seizure and condemnation of a food and injunction and criminal penalties against a person (i.e., a firm and its responsible management).

FDA may also use existing administrative procedures, such as warning letters and conferences with a processor, to bring instances of noncompliance to the processor's attention as it frequently does under its current inspection programs.

The agency cannot state precisely what type of action it will take when it detects a deficiency because FDA evaluates each deficiency on a case-by-case basis to determine the public health significance of the violation and the appropriate response.

4. Preapproval of HACCP Plans

In the preamble to the proposed regulations, FDA tentatively concluded that HACCP plans would not have to be submitted to the agency or otherwise preapproved before their implementation by processors. The reasons for the agency's tentative conclusion included: (1) HACCP plans should be judged in the context of the processing plant, a process best accomplished during routine FDA inspections of processing facilities; and (2) the agency does not have sufficient resources to review HACCP plans from all domestic and foreign seafood processors in advance of either HACCP implementation by the processor or the conduct of HACCP-based inspections by FDA.

160. Approximately 20 comments addressed this issue. About two-thirds of these comments, from consumer advocacy groups, processors, trade associations, and State government agencies, contended that a processor should be required to file a HACCP plan and obtain approval from FDA before implementing the plan. The remaining comments, from processors, trade associations, and a foreign government, agreed with FDA's tentative conclusion that HACCP plans need not be submitted to the agency or preapproved before they are implemented.

Some of the comments favoring preapproval argued that FDA should have control over the design of each plan before it is implemented to ensure that all of the CCP's are identified, and that appropriate records will be kept. Other comments contended that, in the absence of a preapproved plan, a processor may implement a plan that FDA would later judge to be inadequate, possibly raising concerns about the product already produced under the plan.

Several comments in opposition to preapproval argued that it would be too expensive and difficult for both FDA and the processors (the latter because implementation would be delayed while processors waited for FDA to preapprove the plan and every subsequent change to the plan). One comment expressed concern that, in formally approving a HACCP plan, regulatory authorities would assume some responsibility for the HACCP system of an individual processor.

A few comments stated that HACCP plans will evolve as operations are adjusted, based on the processor's verification activities. These comments argued that a requirement for the preapproval of HACCP plans would encumber a processor's ability to update its HACCP plan.

The resource situation since the proposal was issued in January, 1994, has not changed in any way that would make the preapproval of HACCP plans by FDA practicable. Thus, FDA's analysis of the comments has focused on whether a lack of preapproval raises significant implementation problems that the agency must address. The comments have not convinced the agency that it does. FDA finds that a preapproval system would unduly burden the agency's resources, without providing significant advantages to the public health. The effectiveness of a HACCP plan, including monitoring, recordkeeping, and verification, can best be evaluated under actual operating conditions.

The preapproval of HACCP plans is distinguishable from the situation for low acid canned foods, where FDA reviews submissions of scheduled processes and revisions to these processes without hinging that review on a visual inspection of the facility. For low-acid canned foods, the submission relates solely to the adequacy of the cooking process to control one hazard (*C. botulinum*). This process lends itself to a paper evaluation.

FDA agrees with the comments that suggested that a requirement for agency approval of a processor's changes to an existing HACCP plan would unnecessarily slow the process of plan improvement. The ability to modify the plan quickly based on feedback from verification activities is an important aspect of HACCP that could be degraded by a preapproval requirement.

With regard to the concern that the lack of plan preapproval will expose a processor to risk of product loss if a HACCP plan, under which it had been operating, is deemed by FDA to be inadequate, the agency advises that there are several issues that should mitigate this concern. First, the agency is committed to providing guidance, in the form of the Guide, to assist processors in the development of HACCP plans that are likely to be acceptable to the agency. The Guide will be further discussed later in this section.

Second, FDA is convinced that the training requirements of these regulations will serve to inform the regulated industry about the expectations of the agency with respect to HACCP plan content. FDA is working closely with the Alliance to ensure that training reflects FDA policy.

Third, FDA recognizes and accepts that, for HACCP plans to be effective and efficient, they must be tailored to the operating conditions of the individual processor. Of necessity, this fact means that there may be multiple ways to control an individual hazard. Consequently, FDA investigators will be trained to objectively evaluate the processor's HACCP plan from the standpoint of whether it accomplishes its intended function (i.e., hazard control), rather than whether it follows any preconceived model.

Finally, as described earlier, for the HACCP program, FDA intends to respond proportionally to deficiencies that it finds during inspections. The nature of the agency's response will depend on the totality of the situation and on the public health implications of the deficiency. When circumstances permit, the processor will be given the opportunity to make appropriate corrections.

5. Filing Plans With FDA

161. A few comments stated that FDA should require processors to file HACCP plans with the agency, not necessarily to obtain preapproval, but to allow FDA to compile HACCP plans from all seafood processors. The comments suggested that FDA selectively audit a sample of processor HACCP plans from the file copies, perhaps based on product risk, the presence or absence of certain CCP's, or other relevant factors. Some of these comments recommended that FDA request voluntary submission of plans prior to the implementation deadline.

A file, or library, of HACCP plans of all seafood processors would likely present various benefits from the standpoint of trend analysis and program evaluation. The agency finds, however, that the burdens would outweigh the benefits, largely for the same reasons that rule out the preapproval of plans by FDA. For example, the library would have to be updated every time that any processor updated its plan. Therefore, FDA is not requiring that processors file their plans with the agency.

6. Third Party-Approval

162. Several comments urged FDA to include a provision requiring third-party approval of processors' HACCP plans, especially if preapproval by FDA is not required. The comments suggested that the lack of a requirement for a processor to use a disciplinary team approach to develop a HACCP plan, as suggested by the NACMCF, coupled with infrequent FDA inspections, could mean that a processor might operate for years without an appropriate plan. The comments noted that competent processing authorities are available to provide third-party plan approvals and audits.

On the other hand, one comment argued that a requirement for third party HACCP plan approval is not necessary. This comment stated that a nonregulatory first inspection would obviate any form of preapproval.

FDA recognizes that some processors may benefit from obtaining third-party assistance in developing their HACCP plans and in evaluating their implementation. An independent audit is often helpful in locating problems in a system and offers the benefit of bringing in expertise not always possessed by many seafood processors. FDA is aware that some processors have engaged in these kinds of arrangements in the past and encourages their use.

However, the agency cannot agree that third party assistance should serve as an "approval" for regulatory purposes. First, to maximize consistency and fair treatment, the responsibility for the initial HACCP plan evaluation (outside of the processor's own verification activities) belongs to FDA, through routine inspections of processing plants. Second, establishing, certifying, and auditing a network of third parties whose approvals FDA would automatically accept would impose significant burdens on the agency that FDA could not accommodate.

As discussed above, FDA is engaging in significant efforts to facilitate the development of appropriate HACCP plans. The overall high level of policy guidance and technical assistance that will be available to processors from FDA and a variety of other sources should minimize the incidence of processors developing and implementing plans that do not address those hazards that are reasonably likely to occur. Therefore, FDA is not providing for third-party approval of HACCP plans.

7. The First Inspection

In the preamble to the proposed regulations, FDA tentatively concluded that, after the effective date of these regulations, FDA's review of processors' HACCP plans and procedures would occur at the time of the routine establishment inspection. FDA requested comment on whether the first HACCP review should be nonregulatory, even though the inspection of the processor would otherwise be regulatory.

163. Approximately 30 comments, mostly representing processors and trade associations, addressed this issue. All but one of the comments asked that the first review of a processor's HACCP plan and procedures be nonregulatory. Approximately one-fourth of these comments further asked that the second such evaluation also be nonregulatory.

The comments stated that a nonregulatory visit by FDA would assist the processor in determining deficiencies in its plan without fear of enforcement action and would provide FDA investigators with hands-on experience in a HACCP-based inspection. The comments suggested that this arrangement would foster a cooperative spirit between the agency and the industry and would provide the time necessary for the investigator to discuss with the processor how the plan should be tailored to address the details of the processor's operation.

One comment stated that the initiation of a sweeping, new program will generate many questions and will necessitate innumerable judgments on the part of both processors and investigafors. The comment suggested that it would be preferable for these questions and judgments to occur during nonregulatory visits.

On the other hand, one comment suggested that the first review of a processor's HACCP plan should be

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regulatory, because once the effective date has been reached, compliance with the regulations should be enforced.

FDA agrees with the comments that suggested that a smooth transition to a mandatory HACCP system of preventive controls is more likely the result of dialogue than regulatory action. For HACCP to succeed, processors must be committed to it because they perceive benefits to themselves from its use other than simply the avoidance of regulatory sanctions.

FDA has concluded that a 2-year effective date, rather than the 1-year date that was proposed, will provide substantial opportunity for dialogue. Moreover, the proportional response to problems that FDA intends to employ, taking into account the newness of the system, should obviate many of the comments' concerns about excessive regulatory sanctions early in the process. Consequently, FDA concludes that an officially designated, nonregulatory first inspection is not necessary.

FDA has concluded that 2 years is sufficient time for a processor to train employees or secure properly trained consultants, perform a hazard analysis, develop a HACCP plan, and implement and evaluate HACCP control procedures that will comply with these regulations. The additional year will enable the agency's field investigative force and the industry to begin sorting out many of the issues that are likely to develop during implementation.

As stated earlier, the agency intends to perform informal HACCP evaluations of willing processors during routine inspections conducted during the 2-year implementation period. These evaluations should serve to aid the development of both the industry's HACCP programs and the agency's HACCP inspectional skills. They will also largely take the place of the proposed type of nonregulatory inspections.

FDA agrees with the comment that pointed out that the initiation of this program will generate many questions and issues that will have to be worked out between processors and the agency. Moreover, FDA accepts that, despite the years of groundwork and the pilot programs that have been the basis for agency policy decisions to date, there will be details that will have to evolve over time as the program is implemented. It is highly likely that this evolution will continue well after the effective date of these regulations. FDA will take this factor into account in its initial interactions with processors after the effective date. The agency may find it appropriate to use its regulatory discretion when it finds a basis for concern about a processor's HACCP plan or procedures that relate to a matter about which policy is still being formulated.

However, the agency is concerned that there could be significant problems if it officially designated its HACCP review during the first inspection as being nonregulatory. First, such a step could create unfair situations. For example, FDA could find itself in the position of pursuing regulatory action against one processor for failure to adequately control a particular hazard while, at the same time, treating a similar deficiency by another processor as "nonregulatory." Second, it could foster actions by firms to avoid application of the regulations, such as name changes or reorganizations to create the argument that the "new firm" is entitled to a nonregulatory inspection. Third, it is not clear how long such a policy should last. Arguably, the reasons in support of a nonregulatory first inspection become much weaker in the case of a firm that goes into business for the first time a number of years after the effective date of the program.

For all of the foregoing reasons, FDA has concluded that it can accomplish the things that led it to inquire about the possibility of, and the comments to support, designating the first HACCP inspection as a nonregulatory inspection without making such a designation and creating the problems that such a designation could cause.

6. Role of the FDA Investigator

164. In the preamble to the proposal, FDA stated its tentative conclusion that its investigators would, among other things, evaluate the adequacy of processors' HACCP plans during routine inspections. A few comments objected to this role for the investigators. These comments stated that investigators should be responsible for verifying that the processor has performed a hazard analysis; developed a HACCP plan where warranted; implemented the HACCP plan; and recognized, corrected, and recorded deviations from the HACCP plan. The comments further stated that investigators should not be in a position to challenge the adequacy or design of a HACCP plan.

The comments pointed out that HACCP plans are tailored for each operation, designed by either a company team or a knowledgeable individual thoroughly familiar with the operation. They questioned whether an FDA investigator would have the expertise to determine the acceptability of the plan.

Many FDA investigators already have considerable training in HACCP and food science, and most have an academic background in the sciences. They will also receive training during the implementation period that focuses on compliance with these regulations. The investigators will be exposed to the Guide, among other sources, for information about potential hazards to be considered for particular products and processes. This exposure, coupled with investigators' experience with the industries with which they work, will give them a sound basis for making screening determinations about the adequacy of processors' HACCP plans. There is little doubt that the caliber of investigator screening decisions will improve with experience with these regulations and with exposure to more and varied processor HACCP programs. FDA is confident that its field investigative staff will quickly adjust to the task of fostering compliance with these regulations, as they have to past initiatives.

Where investigators are unsure about the adequacy of a processor's HACCP plan, they will have ready access to, and will be encouraged to consult with, district, regional, and headquarters experts. Investigators will also be instructed to discuss with plant management the reasons and scientific support for hazard analysis and HACCP plan decisions that are in question. Where, because of the complexity of a particular situation, the investigator cannot reach a decision about the adequacy of a particular aspect of a processor's HACCP plan, the investigator will be instructed to collect as much information, including supporting data, as is necessary in order to facilitate further agency review.

Therefore, FDA concludes that the existing system adequately addresses the concerns of the comments.

9. Disagreements and Appeals

165. A significant number of comments, primarily from processors and trade associations, stated that FDA should have a mechanism to resolve differences between an FDA investigator and a processor regarding the adequacy of the processor's HACCP plan, especially given the subjective nature of the determination as to what the hazards are that are reasonably likely to occur and that therefore must be controlled through HACCP. The comments contended that a cooperative discussion between FDA and the processor's HACCP experts would be preferable to an enforcement confrontation, and that this discussion would allow a processor to explain its decisions and procedures. Other comments urged FDA to formalize an appeal process in the regulations that would establish a processor's rights to contest any HACCP compliance action by FDA. Moreover, these comments stated that FDA should not take enforcement action based on a disagreement in the field between an investigator and the developers of the plan.

As previously mentioned, agency investigators will be instructed to discuss their concerns about potential inadequacies in processor HACCP plans with the management of the firm in an effort to learn the basis of the firm's decisions. If the investigator retains concern that a plan is inadequate in some regard even after discussing it with the firm, the investigator will list findings on the report that is provided to the management of the firm at the conclusion of the inspection (Inspectional Observations, FDA483). The FDA483 only represents the opinion of the investigator and is not necessarily the final opinion of the agency. The investigator will document the processor's response to, or explanation of, the findings listed on the FDA483 report.

It has been longstanding FDA policy to conduct an internal review of investigators' inspectional findings before initiating regulatory action. There is an opportunity at each stage for discussion between the firm and the agency. These FDA review practices will not change under a HACCP-based system.

Based on the foregoing, the agency concludes that the concern expressed in the comments about possible precipitous compliance action as a result of the findings of FDA investigators is unwarranted. It is worth repeating that the agency intends to engage in conflict resolution through dialogue wherever possible and appropriate. Given these facts, FDA has concluded that a provision for a special appeals process for matters concerning these regulations is not necessary.

10. Status of the "Guide"

In the preamble to the proposed regulations, FDA discussed the "five preliminary steps" to HACCP recommended by the NACMCF. These steps lead a processor through a logical process for identifying hazards that are likely to occur in a product and for developing a HACCP plan. In an effort to facilitate this process, especially for the many small businesses involved in seafood processing, FDA is developing the Guide, a draft of which was made available shortly after publication of the proposed regulations. The draft Guide provides information on hazards and appropriate controls by species and by product type. The preamble said that the information contained in the draft Guide is the kind of information that would likely result in a HACCP plan that is acceptable to the agency. FDA received considerable comment on the contents of the draft Guide and intends to publish a redrafted first edition shortly after the publication of these regulations.

166. A number of comments expressed concern about how the Guide would be used by FDA investigators when evaluating a processor's HACCP plan. The commenters were troubled by the prospect that FDA investigators would not be trained to evaluate HACCP plans that differ from the Guide, and that, therefore, they would take exception to a HACCP plan that deviates from the Guide. The comments stated that industry experience with HACCP demonstrates the need to provide flexibility so that HACCP plans can be tailored to the specific operating conditions of a processor.

Other comments stated that the Guide did not provide express guidance on the meaning of the key phrase "reasonably likely to occur." The comments stated that the Guide should clarify whether it is FDA's intention that the hazards identified in the Guide are the "reasonably likely" hazards under all conditions for the specific species and processing operations that are listed.

Several comments cautioned that the Guide should not be characterized as a "safe harbor," i.e., that FDA should not promote strict adherence to the Guide regardless of the circumstances. Such a characterization, they argued, could cause processors to omit the critical hazard analysis step in HACCP plan development and risk developing plans that do not fit the conditions of their processes.

The Guide is, in the agency's opinion, a compilation of the best available information on the subject of hazards and controls in seafood processing. It contains FDA's recommendations as to the hazards that it believes are "reasonably likely" to occur in specific species and finished product forms under ordinary circumstances, but it also provides information on rarer hazards as well. FDA recognizes that the first edition of the Guide must clearly distinguish between the two.

The term "reasonably likely" is now effectively defined in § 123.6(a). It is worth noting that, under § 123.6(a), whether a hazard is "reasonably likely" will depend, at least in part, on the circumstances that exist at the time that the hazard analysis is conducted. For example, a certain toxin might be rare, but if it starts presenting itself in fish and becomes known, it may warrant a new hazard analysis that may identify it as "reasonably likely" for a period of time.

FDA also recognizes that circumstances may occur in which hazards will exist that are not identified in the Guide. These hazards may be the result of a previously unidentified phenomenon (e.g., the identification of a natural toxin in a species previously not associated with that toxin) or of unique conditions in the way that the product is handled by a particular processor (e.g., unusual equipment or processing methods). Thus, a definitive determination of "reasonably likely to occur" can come only as a result of a carefully conducted hazard analysis performed for a specific product under specific processing conditions.

FDA recognizes that a HACCP approach requires flexibility and will endeavor to make the Guide consistent with such flexibility. FDA will provide training to its investigators so that they will be prepared to evaluate a HACCP plan that is not consistent with the Guide and to evaluate the effectiveness of controls that differ from those suggested in the Guide. The agency agrees that the Guide is not a "safe harbor" for all situations. Processors who utilize the Guide should compare it to their own circumstances and make whatever adjustments in the approach suggested in the Guide that are necessary.

11. Trade With the EU

167. One comment suggested that, because of directives issued by the EU, many processors may need early recognition of their HACCP programs by FDA. The comment further suggested that early recognition could be used by the agency as a means of training FDA inspectional personnel.

FDA is aware of the directives of the EU. The agency intends to consider how it can best help processors respond to those directives, among other factors, as it formulates its plans for implementation of these regulations.

12. Measuring Program Success

In the preamble to the proposed regulations, FDA asked for comment on what tests should be used to measure the success of the HACCP program as a whole, and how often those tests should be conducted.

168. A significant number of comments stated that indicators of the success of the seafood HACCP program could include: A reduction in the number of seafood-borne illnesses; improved consumer confidence in

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seafood consumption; and a reduction in the number of violative products that enter the marketplace. Several comments stated that periodic inspections of, and sampling at, processors and importers by FDA, State, and foreign officials, coupled with illness reporting from a strengthened CDC program, would provide adequate verification of the effectiveness of the program. However, two other comments stated that the success of the seafood HACCP program cannot be measured solely by a decrease in illnesses, because many food-borne illnesses are the result of problems in the retail sector, which is neither covered by these regulations nor adequately regulated by the States.

The agency agrees with those comments that suggested that the ultimate goal of these regulations should be the improved safety of fish and fishery products—a reduction in the actual number of seafood-related illnesses. FDA will continue to closely monitor the CDC system, as well as reports of illness and death attributable to the consumption of seafood that it receives from other sources, for trends that may indicate an emerging problem or the intensification or modification of an existing problem. However, the agency also agrees with those comments that suggested that, because many of the seafood-related illnesses are attributable to recreational or subsistence fishing or to problems in the retail and food-service sectors (Ref. 7, pp. 2; 15; 27; and 28), improvements in process controls that result from the implementation of HACCP may not be fully reflected by a reduction in the number of illnesses. Additionally, as has been previously discussed, the CDC system encompasses only reported illnesses and is an imperfect means of judging reductions in actual numbers of illnesses. FDA is supportive of a strengthening of the CDC reporting system.

Based in part on the comments received, the agency will be looking at ways to assess a relationship between success of the HACCP program and levels of consumer confidence, levels of violative product in the marketplace, improvements in the quality and quantity of preventive controls throughout the industry; and the results of FDA and cooperating State and foreign inspections. As indicated in the summary of the Regulatory Impact Analysis elsewhere in this preamble, FDA is planning to evaluate key features of this program within the first several years of implementation. This evaluation will include an assessment of its effectiveness.

169. One comment suggested that end-product testing should be used by FDA for program surveillance purposes, particularly for imports. This comment encouraged FDA to conduct statistically reliable baseline and monitoring surveys, modeled after those used in the MSSP, conducted by NMFS, to: (1) Determine how often consumer hazards occur; (2) set specific goals, objectives, and operational strategies for the HACCP program; and (3) provide a means by which the program's success can be measured.

FDA has historically collected and analyzed surveillance samples during and outside the course of its routine inspections. The purposes for these sample collections, in many ways, align with those suggested by the comment. The agency is committed to continued surveillance sampling and intends to use such sampling in an assessment of the HACCP program.

170. Another comment suggested that HACCP will only be successful in improving confidence in seafood if the program is accompanied by a consumer education effort that explains the benefits of HACCP. The comment encouraged FDA to perform a baseline study that assesses the level of consumer anxiety with respect to seafood consumption and compare it to the results of a study that it performs sometime in the future.

FDA agrees that another major goal of these regulations is to increase consumer confidence in the safety of seafood. The agency recognizes that publication and enforcement of regulations aimed at improving seafood safety alone will not achieve that goal. Consumers must be informed of the benefits of producing products under HACCP preventive controls. Within its budgetary constraints, the agency intends to engage in a program of consumer education for that purpose. The prospect of baseline and followup studies of consumer confidence (or anxiety) will also be considered.

P. Other Issues

FDA received a number of additional comments that did not address any specific provision of the proposal, although some of them were in response to invitations in the preamble to comment on various subjects.

1. Relationship to Other Programs

In the preamble to the proposed regulations, FDA invited comment on how FDA's HACCP program for seafood processors should mesh with existing State HACCP programs for seafood, in order to avoid imposing inconsistent Federal and State HACCP requirements. In the preamble, FDA acknowledged that many States are under considerable pressure to cut back on programs where there is an overlapping Federal program. Nonetheless, the agency urged States to maintain, if not strengthen, their seafood programs and to work with FDA to develop an integrated Federal/State, HACCP-based seafood control program.

171. Approximately 12 comments, representing processors, trade associations, and State government agencies, recommended that FDA coordinate its HACCP program with existing State and Federal seafood control programs. Several comments emphasized that a coordinated effort would ensure uniform application and interpretation of HACCP principles, while preventing duplication of effort that wastes limited enforcement resources. One comment stated that such a coordinated effort would be facilitated if only a single HACCP plan were required for each processing facility, rather than one that was designed to meet FDA requirements and another that would meet State requirements. Another comment noted that a multitude of differing HACCP regulations would only serve to confuse processors and dilute the effectiveness of the Federal program. The comment further recommended that FDA work with AFDO to promote State laws and regulations that are compatible with FDA's HACCP program.

One comment suggested the formation of a task force representing the food industry, FDA, USDA, and DOC to work towards the goal of reducing regulatory duplication.

The agency agrees that there is a need for Federal/State partnership to facilitate the efficient implementation of HACCP programs. FDA believes that coordination with the States would permit both the agency and the States to leverage their inspectional resources. FDA, as well as the States, would benefit by dividing the workload and sharing data and other information. Such coordination would also benefit industry through consistent inspections and regulatory requirements.

The agency has already begun to coordinate its efforts with the States on seafood. The formation of the Alliance, to which AFDO is a member, is one such endeavor. The Alliance is described in detail in the "Training" section of this preamble.

With FDA's support, AFDO passed a resolution supporting the development of FDA/State partnership agreements at its 1994 meeting in Portland, ME (Ref. 220). The resolution specifically recommended that HACCP be the basis of such partnerships and noted the shared roles of FDA and State regulators in seafood safety, the limited resources of both levels of government, and the existence and the potential impact of the Alliance.

Meanwhile, FDA is increasing its use of partnership agreements with State enforcement agencies. For instance, the Northeast Region of FDA has entered into a threeway partnership agreement with the Northeast Food and Drug Officials Association and individual States to provide industry with HACCP training at the retail level. FDA also expects to enter into partnership agreements with States to implement HACCP pilot programs for foods other than seafood. FDA's Northeast Region has already signed such an agreement with the Commonwealth of Massachusetts, and more are anticipated.

These initiatives demonstrate the agency's desire to coordinate its efforts with the States. The agency's cooperative efforts in the area of HACCP reflect a trend. The agency has used cooperative efforts in other areas, such as pesticide sampling and workplan sharing. FDA will continue to explore ways to coordinate the Federal and State role in the regulation of seafood.

172. A number of comments recommended that States act as the primary enforcement agencies for these HACCP regulations, while FDA's responsibility would be to evaluate the States' compliance with HACCP inspection protocols. Some of these comments suggested that such a program could be patterned after the NSSP.

FDA is adopting these HACCP regulations to implement and enforce the act. While FDA plans to work cooperatively with the States in all ways possible, the agency cannot delegate its authority under the act. It is possible that in some aspects of seafood processing, the States will serve as the primary enforcement agencies, with FDA serving primarily an auditing function. However, responsibility for enforcing the act and these regulations must remain with FDA.

173. A number of comments, from processors, trade associations, and one consumer advocacy group, maintained that FDA's HACCP regulations should preempt any existing State HACCP programs. The comments contended that Federal preemption would ultimately reduce confusion caused by conflicting State programs, reduce costs, and promote uniformity. Examples of the specific areas of conflict were not provided by the comments.

As was previously stated, FDA intends to work through AFDO and through Federal/State partnerships to seek consistency in State regulatory approaches to HACCP for seafood inspection and through the NSSP process and the ISSC to attain this goal specifically for molluscan shellfish. Moreover, processors in each State must comply with Federal HACCP requirements if their product moves in interstate commerce. For these reasons, the agency has concluded that there is no need for Federal preemption of State regulatory requirements.

174. Several comments encouraged FDA to work closely with NMFS to coordinate FDA's program with the existing NMFS' HACCP program. The comments noted that cooperation with NMFS would help the two agencies avoid wasteful duplication of effort and would reduce the burden on those firms already operating under the NMFS program.

FDA agrees with these comments and notes that FDA and NMFS are coordinating their HACCP programs to ensure compatibility. Nonetheless, FDA advises that the NMFS program is a voluntary, fee-for-service program and is likely to continue to include features that go beyond the requirements of these regulations, especially in the area of preventive controls for economic fraud and plant and food hygiene.

A 1974 MOU between FDA and NMFS recognizes the respective roles of the two agencies and commits the two agencies to consistency and cooperation. FDA will continue to work with NMFS to maintain a coordinated Federal effort.

2. "Whistleblower" Protection

175. A few comments urged that these regulations include "whistleblower" protection for employees of seafood processors. Whistleblower protection is designed to protect workers from being fired or otherwise discriminated against for revealing wrongdoing by their employers. The wrongdoing in this case, presumably, would likely involve the falsification of HACCP records. The comments argued that: "Whistleblowers are iispensable as the eyes and ears for overextended FDA personnel making limited spot checks. The public's line of defense will be no stronger than the shield protecting industry worker's rights to obey and help enforce this law."

One concern that FDA has heard about the credibility of a HACCP system is that important records can be falsified. It is alleged that, without whistleblower protection, it is much less likely that the agency will know about falsifications.

While the agency is confident, based in part on its experience reviewing records in the low-acid canned food program, that it can detect falsification, FDA also expects from experience that it will be alerted to possible wrongdoing from time to time by employees of processors even in the absence of whistleblower protection. FDA has received, and acted upon, confidential information from employees of regulated firms for decades. This assistance has proven invaluable on many occasions. The only protection to these employees available from FDA has been confidentiality.

The question raised by the comments is whether, in addition to the actions against the product or the processor that would be available to FDA as a result of violations of the requirements of the act and these regulations, there must be specific protection for employees in order for the program to succeed. The agency has concluded that, like other FDA programs, this program can be successful in the absence of specific whistleblower protection, and that congressional action would be necessary to provide protection other than confidentiality.

FDA cannot provide whistleblower protection in these regulations. FDA believes—and case law bears out—that there must be a nexus between the conduct being required by regulations and the focus of the underlying statute, in this case primarily section 402(a)(4) of the act. An analysis of the application of section 402(a)(4) of the act to these regulations can be found in the "Legal Basis" section of this preamble.

While FDA has determined that an assessment of processing risks and a plan that ensures that these risks are minimized has the requisite nexus to section 402(a)(4) of the act, and that this nexus justifies adopting these regulations, the agency does not see a sufficient nexus between whistleblower protection and the prevention of adulteration of food. If a firm retaliates against an employee who brings complaints or other information about the firm to FDA, the implication of such an action is that there is a condition at the firm that may need investigation, not that the products produced by the firm are necessarily adulterated. It may be the case that the products are adulterated, but such a conclusion does not flow as directly from section 402(a)(4) of the act as does the conclusion that seafood products not produced under a HACCP plan have been produced under insanitary conditions whereby they may have been rendered injurious to health. For this reason, FDA concludes that it lacks

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clearcut authority to provide whistleblower protection in these regulations.

3. Separation of Quality Control (QC) and Production

176. A few comments requested that the regulations mandate structural independence within a processing firm between "HACCP QC [quality control] personnel" and "production" personnel. Otherwise, according to the comments, "HACCP QC personnel could still be hired and fired by a production supervisor."

FDA does not believe that a change in the regulations would be beneficial in this regard. It is important to recognize that, under HACCP, production personnel are the observer/operators who perform the initial monitoring of CCP's as well as the recordkeeping that documents the results of this monitoring. The operation of the HACCP system must involve the whole organization, not just QC personnel.

However, it is reasonable to expect that, where practical, verification activities should be performed by individuals other than those who made the records in the first place. For verification, the agency encourages the kind of organizational separation that is being urged in the comments.

The agency recognizes, however, that many seafood companies will not be large enough to have distinct, independent organizational units that can verify each other's work. The seafood industry is characterized by small businesses. FDA has concluded that such a requirement is not practical for this industry.

It is worth noting that the regulations at parts 113 and 114 for low-acid canned foods and acidified foods contain recordkeeping requirements and some verification requirements that are similar to the provisions of these regulations. In certain respects, parts 113 and 114 served as models for the seafood HACCP program. Those regulations have succeeded even though they do not require a separation between QC personnel and production personnel. Given this history, the agency is reluctant to mandate the internal structure of seafood processors.

4. Education

177. FDA received a number of comments on the subject of seafood safety education. These comments were in response to an invitation in the preamble to the proposed regulations for comments on risk reduction activities that could be regarded as complementary to HACCP, primarily directed toward postprocessing handling. In addition, FDA asked for comment on appropriate education and information that should be directed toward consumers and recreational fishermen, even though education aimed at these groups is actually outside the scope of this rulemaking. FDA made this request based on a recognition that HACCP cannot reasonably be expected to solve every problem. The agency recognizes that HACCP must be integrated into a comprehensive program for seafood safety. Education is another important component of that program. As one comment noted:

> * * * the responsibility for seafood safety should be met at every level of seafood distribution, from harvesters to processors to retailers, restaurants and, finally, the consumers themselves. Regulations are not a substitute for informed and responsible behavior and it is impractical to extend the scope of the proposed regulations to everyone involved in handling and consuming seafood.

The comments overwhelmingly endorsed the value of education. They strongly supported education for: (1) Consumers on the handling and purchasing of seafood, especially through brochures at the point of purchase and information available at pharmacies, and on the significance of HACCP, especially with regard to the government's verification role; (2) recreational fishermen, provided by the State during licensure (with guidance from the Federal government) and through articles in popular fishing and outdoors magazines; (3) subsistence fishermen; (4) retailers, including food service and restaurants.

FDA greatly appreciates these comments. The agency agrees that education is an essential complementary activity to HACCP as well as to other aspects of FDA's overall seafood program. The comments will be taken into account as the agency develops its educational program.

178. FDA also invited comment on whether the agency should consider proposing to require handling instructions for consumers on the labeling of seafood. Any action that FDA were to take along these lines would be as part of a separate rulemaking.

The agency received about 20 comments on this issue. Approximately half of those comments supported the notion of mandatory safe handling instructions. One business noted that safe handling instructions would help to ensure the safety of a product through the distribution chain, while another business said that such instructions had a real potential to decrease seafood-related illness. One individual commented that safe handling instructions would increase consumer confidence in these products. One industry comment noted that a task force composed of industry, Federal and State agencies, and consumers should agree on the appropriate statement. Some comments indicated that safe handling instructions might be appropriate for high-risk products.

The remainder of the comments on this issue disagreed that safe handling instructions for seafood should be required by FDA. Many of these comments noted that most seafood products include such instructions voluntarily. One trade association commented that such a requirement would limit retailers' flexibility and creativity and impose significant new costs on retailers and consumers. Most of those comments noted that requiring new information would detract from other labeling requirements.

FDA appreciates these comments and the different points of view that they represent. The agency will use the comments in its deliberations on this issue.

179. Finally, FDA described some of its educational efforts aimed at medically compromised individuals about avoiding raw molluscan shellfish and invited comment on types of education and information activities that might be useful in this regard. The agency received about a dozen comments on this subject.

Most of these comments addressed whether there should be mandatory warning labeling for raw molluscan shellfish. A majority of the comments stated that the agency should require warning labeling. Three comments from consumer groups stressed the need to protect high-risk individuals. One State government commented that warnings for raw molluscan shellfish should be tied to specific locations and times of year. One professional association requested that the warning state that the shellfish should only be eaten if it is certified and tagged.

Three comments stated that warning labels would be inappropriate. One comment noted that shellfish are not consumed in enough quantity to be a problem. Another comment stated that warning labels would unduly alarm those not at risk and that better channels exist for educating those at risk.

A few comments did not specifically address warning labels but recommended that FDA target advice directly to compromised individuals. Those comments suggested that FDA direct information to the medical community involved in the treatment of those individuals.

Again, FDA thanks the comments for providing views on a matter that is outside the scope of this rulemaking. FDA is working to provide information to at-risk populations and its strategy on how best to do so is evolving. The agency will take the comments into account as it develops policy in this area.

In summary, the agency agrees that education is an essential complementary activity to HACCP as well as to other aspects of FDA's overall seafood program. The comments relating to education will be useful to the agency as it develops its education programs.

5. Traceback Mechanisms

180. One comment recommended that FDA develop and incorporate methods to trace back fish and mandate such traceback in these regulations. The comment described the use of bar codes and computer-based tracking numbers by a meat products company that enable it to trace a specific cut of meat from a store or restaurant to its source.

The agency acknowledges that traceback to the water would be useful for certain species of fish associated with certain hazards, e.g., ciguatoxin. On the other hand, traceback to the water for scombrotoxin would not be particularly useful, although traceback through the distribution chain to find out the source of mishandling would be useful. The agency urges the industry to consider this comment. FDA advises that it is willing to explore this idea further, although not as part of this rulemaking.

6. Tribal Governments

181. FDA received a few comments on the effect of these regulations on tribal governments. The preamble to the proposed regulations noted that Executive Order 12875 of October 26, 1993, requires, among other things, consultation with tribal governments before the formal promulgation of regulations containing unfunded Federal mandates. While FDA does not believe that these regulations impose an unfunded Federal mandate, the agency wishes to foster consultation on matters that might significantly affect tribal communities. Consequently, FDA requested comment on the economic effect of the regulations on tribal governments.

FDA received no comments from tribal governments. One comment, from a tribal business, stated that the impact of the regulations on tribal governments will be beneficial because they will result in safe products, positive consumer perceptions, and positive market impacts. The other comment that mentioned this subject was from an academic, who expressed the view that the regulations will have a major impact on tribal groups involved in fisheries and contains unfunded Federal mandates. The comment did not elaborate. Neither of these comments justifies any change in these regulations.

The agency remains interested in fostering consultation with tribal communities as they see fit and encourages correspondence from tribal governments.

7. HACCP System Improvements

182. A comment urged that there be a process to continually amend or update these regulations.

FDA points out that such a mechanism exists in its regulations. Under § 10.30 (21 CFR 10.30), interested persons are provided with a process by which they can petition the agency to amend and update these regulations.

From a less mechanistic viewpoint, the agency recognizes that these regulations represent a pioneering program that has not been attempted before. While the agency believes that sufficient groundwork has been laid to adopt these regulations and to begin to implement them, FDA also acknowledges that full scale implementation will reveal modifications that may be necessary, both in the short and long terms. Consequently, the agency will be highly receptive to feedback from all parties who are affected by these regulations and will remain open to changes that are necessary in the regulations. The "Verification" section of this preamble reflects the agency's interest in evaluating this program.

183. A number of comments asked for improvements in the foodborne-illness reporting system operated by CDC. Some comments urged collaboration between FDA and CDC. One comment advocated the creation of an active reporting system.

These comments are essentially outside the scope of this rulemaking. Nonetheless, the agency recognizes that the strength of the foodborne-illness reporting system bears directly on the ability of the agency to measure the public health impact of HACCP. Both FDA and CDC agree that underreporting is an undesirable feature of the current system. FDA and CDC have been collaborating on an active-type reporting system. The limiting factor, however, will always be resources. Significant improvements in the current system will involve considerable expense.

184. One comment provided views on factors that would limit the effectiveness of HACCP. The comment cited:

> [P]oor commitment by company management and lack of allocation of necessary resources; improper training; lack of understanding and planning in all stages of implementation of a plan[,] and failure to recognize the need to understand the corporate culture change which must accompany an effective HACCP program.

FDA agrees with this comment but hopes that company management will embrace HACCP and recognize the benefits that it offers to the firm.

III. Paperwork Reduction Act of 1995

This final rule contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below along with an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and recordkeeping requirements for processors and importers of fish and fishery products under the provisions of 21 CFR parts 123 and 1240. Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products.

Description: This regulation implements the use of Hazard Analysis and Critical Control Point (HACCP) methodology to ensure that processed and imported fish and fishery products are safe within the meaning of sections 402(a)(1) and 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and 342(a)(4)).

Description of Respondents: Businesses or other for profit organizations.

Although the January 28, 1994, proposed rule provided a 60 day comment period (extended to 90 days in the April 7, 1994, **Federal Register**, 59 FR 16578) under the Paperwork Reduction Act of 1980, and this final rule incorporates the comments received, as required by 44 U.S.C. section 3507(d), FDA is providing additional opportunities for public comment under the Paperwork Reduction Act of 1995, which applies to this final rule and was enacted after the expiration of the comment period.

Therefore, the agency solicits public comment on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper

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performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Individuals and organizations may submit comments on the information collection requirements by February 16, 1996, and should direct comments to FDA's Dockets Management Branch (address above).

Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** when the information collection requirements in this rule are submitted for OMB approval, and again when OMB makes a decision to approve, modify or disapprove the information collection requirements.

Sections of this final rule require that certain businesses collect information and keep records. Under Public Law 104–13 Federal agencies are required to estimate the hours and costs attributable to collections of information, as defined in 44 U.S.C. 3502(3), that are required by Federal regulation. Table 1 sets forth an estimate of the hours that are required annually for compliance with each section in part 123 that requires regulated entities to collect or record information.

TABLE 1.—ESTIMATED AVERAGE ANNUAL INFORMATION COLLECTION AND RECORDKEEPING BURDEN

21 CFR	No. of respondents	No. of responses per respondent[1]	Hours per response[2]	Total hours
123.6(a),(b),(d)	4,850	1	16	77,600[3]
123.6(c)(5)	4,850	4	0.3	5,280
123.8(a)(1),(c)	4,850	1	4	19,400
123.12(a)(2)(ii)	1,000	80	0.2	16,000
123.6(c)(7)	4,850	280	0.3	470,400
123.7(d)	1,940	4	0.1	1,940
123.8(d)	4,850	47	0.1	22,795
123.11(c)	4,850	280	0.1	135,800
123.12(c)	1,000	80	0.1	8,000
123.12(a)(2)	20	1	20	4,000[3]
123.10	24	1	24	116,400[3]
First year total burden hours				877,615
Annual recurring total hours				679,615

[1] Based on an estimated average of 280 working days per year.
[2] Estimated average time per 8 hour work day unless one time response.
[3] Nonrecurring burdens.
The above estimates include the information collection requirements in the following sections:
123.15 Smoked Fish—process controls (see 123.6(b))
123.28(a) Source Controls—Molluscan Shellfish (see 123.6(b))
123.28(c),(d) Records—molluscan shellfish (see 123.6(c)(7))
123.9 Records control general (see recording and records)

The time and costs of these activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using the typical small seafood processing firm as a model because these firms represent a significant proportion of the industry.

The burden estimate in Table 1 includes only those collections of information under this rule that are not already required under current statutes and regulations and are being added by this rule. For example, the current good manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures.

In addition, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labelling of molluscan shellfish (§ 1240.60) is a customary and usual practice among seafood processors. Consequently, the estimates in Table 1 accounts only for new information collection and recording requirements attributable to part 123.

There are no additional capital costs associated with this regulation that are not also attributable to the preexisting requirements of part 110.

FDA estimated in the proposal that the total burden to all respondents would be 2,826,850 hours. That estimate, however, significantly overestimated the burden because it included activities performed by domestic processors that are not related to information collection and recordkeeping, and, more significantly, did not account for existing regulatory requirements and usual and customary business practices, as described above.

The agency has recalculated the recordkeeping burden in a manner that is more consistent with the intent of Public Law 104–13. Therefore, the burdens presented in Table 1 are those actually associated with collecting and recording the pertinent HACCP information. The burdens for HACCP plan development, plan reassessment, and record review are also included in the recalculated burden. In estimating the time for the preparation of a HACCP plan, the agency believes that a significant portion of the training hours can also be characterized as time spent on preparation of the plan.

Additionally, the agency recognizes that the regulations will place a burden on seafood importers. For this reason, FDA has included in the burden

estimate the time necessary for importers to develop a written verification plan, verify compliance of imports, and keep records of their verification activities.

Few comments provided information on the number of hours that a processor would expend on information collection and recordkeeping, as described in the preamble to the proposed regulation. One comment estimated that the annual burden would vary from 200 to over 700 hours, depending on the type of product, and another comment suggested that one hour per day, or 365 hours per year, would be required. One comment stated that the agency's estimate of 650 hours per year was reasonable. Another comment estimated four to five hours per day, or 1,820 hours per year as the likely burden. None of these comments provided information to support how the commenters arrived at their estimates.

It seems likely that the estimates suggested by the comments were calculated based on the same errors that the agency made in the proposal, that is, by combining the burdens associated with HACCP data collection and recordkeeping with other HACCP activities unrelated to information collection and recordkeeping, with usual and customary information collection and recordkeeping practices, and with collections of information required by the provisions of the Federal Food, Drug, and Cosmetic Act and implementing regulations. This conclusion is supported by the fact that some of the comments expressed agreement with the agency's calculations. For these reasons, FDA concludes that no changes in its corrected calculations are necessary to respond to the comments.

IV. Economic Impact

A. Introduction

In accordance with Executive Order 12866 and the Regulatory Flexibility Act, FDA has examined the impacts of the final rule. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses.

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation). The Unfunded Mandates Reform Act also requires (in section 205) that the agency identify and consider a reasonable number of regulatory alternatives and, from these alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. Even though FDA finds that the costs of this final rule may be below $100 million a year, estimating these costs is a difficult task involving uncertainties. This analysis, together with the preamble published in the **Federal Register** and supporting analysis and materials, constitutes a final RIA. Therefore, FDA has treated the final rule as an economically significant regulatory action under Executive Order 12866. Consequently, the agency has completed this full RIA which demonstrates that this rule is consistent with the principles set forth in the Executive Order and in these two statutes. In addition, this document has been reviewed by the Office of Management and Budget as an economically significant regulatory action under Executive Order 12866. FDA has concluded that the net benefits of this rule (benefits minus costs) are largest for the regulatory option selected as specified by Executive Order 12866. FDA has also concluded that, pursuant to the Unfunded Mandates Act, the regulatory option selected is the least burdensome option to accomplish the goal of controlling all physical, chemical, and microbiological hazards reasonably likely to be present in seafood.

As a part of the preamble to the proposed regulation, FDA published a summary of the Preliminary Regulatory Impact Analysis (PRIA) and placed on file with FDA's Docket Managements Branch the complete PRIA. In addition, FDA has placed the full final Regulatory Impact analysis on file at Dockets Management Branch (address above).

FDA has fully reviewed the information on which the PRIA was based, the comments on the PRIA, and other available information on the costs and benefits of HACCP for the seafood industry. Based on this review, FDA has arrived at two estimates of the costs in this final rule as well as upper and lower estimates of benefits. As can be seen in the agency's summary of costs and benefits are summarized in Table 2, FDA believes that the costs of the final rule will range from $677 million to $1.488 while the benefits will range from $1.435 to $2.561 billion. In its final analysis, the agency maintains that the total benefits of this mandatory seafood HACCP rule will exceed the total costs.

Regulatory Options

The agency raised and received comment on a number of regulatory options in the PRIA. The most significant two options raised were regulating only high risk products or the most serious hazards and providing regulatory relief for small businesses. The first option is inconsistent with the objective of this regulation, to control all physical, chemical or microbiological hazards reasonably likely to be found in seafood products. Although FDA has not granted relief only for small business, the agency has extended the compliance date for all firms from 1 year to 2 years.

TABLE 2.—SUMMARY OF TOTAL COSTS AND BENEFITS

Year	Costs from FDA models (millions)	Costs adjusted from NMFS model (millions)	Benefits lower (millions)	Benefits upper (millions)
1	569	$162	$73	$108
2	42	9173	108	
3	41	83	85	158
4	38	80	87	158
Total[1]	677	1,482	1,435	2,561

[1] The total defines the total discounted costs and benefits beyond the 4th year and discounted at 6 percent.

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B. Costs

In the PRIA, FDA was reluctant to rely only on results of the limited experiance with HACCP in the seafood industry. FDA balanced the reports of some seafood firms, which showed that the costs of HACCP were low, with a study of the costs of HACCP that had been done under contract with NMFS by A. T. Kearney, Inc. (Contract No. NA88AA–H–SK000). This study showed significantly higher costs (as reflected in the range of cost estimates summarized above) but had several flaws that engender skepticism about its results as well. For example, none of the plants that were the subjects of the study had actually implemented HACCP, and the system whose costs were studied was significantly more demanding than the system embodied in the 21 CFR part 123. Despite these facts, the cost estimates in the PRIA were based on the results of the NMFS study because FDA considered it to represent the best evidence available at that time.

As explained more fully below, FDA used modeling technique and the experience reported about seafood firms to produce estimates that are in general agreement and that are approximately one-fourth of those estimated in the NMFS study reported in the PRIA.

In estimating the costs in this PRIA, there are three checks that have helped ensure the accuracy of the costs that would be imposed by adoption of this regulation. The first is the cost comments, but these, the agency's analysis revealed, were in most cases rather general, not well supported, and of only marginal assistance. The second is modeling by FDA experts based on their experience with the use of HACCP in the seafood industry; working with aquatic species and the public health problems that they present; inspecting and studying both seafood plants and low acid canned food plants (which have operated under HACCP principles for almost two decades); and participating in the FDA–NMFS seafood pilot. The results of this modeling are detailed below. The third source is information that FDA received from firms that have actually implemented HACCP. Even though FDA finds that the costs of this final rule may be below $100 million, estimating these costs is a difficult task involving some uncertainties. The agency recognizes that the rule may affect in a material way a sector of the economy. Therefore, FDA has treated the final rule as a significant regulatory action under Executive Order 12866. Consequently, the agency has completed a full Regulatory Impact Analysis.

The agency received approximately 230 comments on issues involving the PRIA. These comments are fully summarized and addressed in the full RIA which is included in the record as Reference 229. However, because of the problems with these comments noted above, FDA did not generally use them in the revised estimates reported here and in the full RIA. The reasons for this are more fully explained in the full RIA.

These adjusted NMFS model cost estimates result in per plant costs for domestic manufacturers of $23,000 in the first year and $13,000 in subsequent years. Total costs for compliance with these regulations using the adjusted NMFS data are shown in Table 3. FDA has also concluded that the PRIA represents a reasonable upper estimate of the costs of HACCP. Table 3 also summarizes the specific cost estimates that FDA arrived at using data from the NMFS model with cost refinements received from commenters and FDA seafood industry experts.

TABLE 3.—DISAGGREGATED COSTS FROM ADJUSTED NMFS MODEL

	Million
1st Year:	
Domestic manufacturers and Importers	$112
Major plant repair and renovation	13
Sea Grant expertise	1
Repackers and warehouses	14
Harvesters for rejected raw product	1
Shellfish vessels	3
Foreign processors	18
Total	162
2d Year:	
Domestic manufacturers	65
Sea Grant expertise	1
Repackers and warehouses	14
Shellfish vessels	1
Foreign processors	10
Total	91
3d Year:	
Domestic manufacturers	65
Sea Grant expertise	1
Repackers and warehouses	14
IQF Shellfish plants	3
Total	83
4th Year:	
Domestic manufacturers	65
Sea Grant expertise	1
Repackers and warehouses	14
Total	80

Total discounted costs beyond the 4th year and discounted at 6 percent, the costs are $1,482 million.

1. Alternative Model for Estimating the Costs

In addition to the cost estimate based on the NMFS modeling, FDA is presenting a second cost estimate for these regulations. The uncertainties associated with the choices made by seafood processors to control hazards justify providing a range of potential costs based on more than one model.

In examples created by seafood experts within FDA, the cost of compliance with these regulations was estimated for two small hypothetical seafood processors that the agency believes to be representative of a significant portion of the seafood industry. One of the plants is assumed to be in substantial compliance with existing CGMP requirements. Therefore, the costs experienced by that plant are attributable exclusively to the establishment and maintenance of a HACCP system. The other plant has some CGMP deficiencies that the agency believes are typical of those displayed by seafood processors. This plant is identical to the first plant except for the CGMP deviations. The costs calculated for this second plant represent the cost associated with the establishment and maintenance of HACCP as well as costs associated with the correction and monitoring of sanitation conditions.

The models concern two plants that cut and package tuna which is received frozen and that also distribute orange roughy fillets. The complexity of the processing operations, and the nature and number of hazards, are assumed to be roughly equivalent to that of the other types of operations. FDA recognizes the difficulty in validating these assumptions. Nonetheless, the results demonstrate that processors may have costs that are significantly below the averages estimated by means of the NMFS report. As discussed later, data received from firms that have implemented HACCP are generally supportive of the results of this modeling.

a. *Small plant cost example 1.* This is the example of a firm that is a processor of frozen tuna steaks and distributor of imported orange roughy fillets who receives all fish frozen. This plant is located in a major seafood processing region, so there is no need for plant personnel to travel to other cities to receive training as it would be available locally. This processor operates 280 days per year. The plant manager is paid $15 per hour and production workers are paid $8.50 per hour. No food safety hazards are reasonably likely to occur in orange roughy, so a written hazard analysis shows hazards for tuna only. This processor has no need to make CGMP improvements so the plant costs are limited to the following:

(1) Training—($760). This is calculated as follows: $400 tuition plus the opportunity cost of training time ($24 hours x $15 per hour). The processor is expected to do most of the hazard analysis during the class.

(2) HACCP Plan Refinement—($240). This is calculated by taking 16 hours billed at $15 per hour using the FDA Fish and Fishery Products Hazards and Controls Guide.

(3) Plant Sanitation Audit—($0). This is done 3 times daily for 20 minutes each time. However, because the firm is modeled as being in compliance with existing CGMP's, it is assumed that these audits are already being done. It is assumed that there is a negligible cost for recordkeeping.

i. *Critical Control Points (CCP).* (4) Receiving CCP (histamine)—($3,200). This processor gets a freezing log from the tuna harvester and makes a visual check of the fish to see that they are frozen. The processor keeps a copy of the freezing log and makes a note of the visual check. The fish are then transferred to a plant freezer. The monitoring takes 15 minutes per lot for 4 lots per day. Similar monitoring is already occurring and the marginal cost for the recordkeeping is negligible.

The processor drills a representative sample of each lot and performs an organoleptic examination for decomposition of the tuna. It is assumed that this monitoring is not being done previous to this regulation and takes 20 minutes per lot for 4 lots per day. Monitoring is billed at $8.50 per hour. Also, there is a cost for a new drill ($50) and it is assumed that recordkeeping costs are negligible.

(5) Cutting CCP (metal fragments)—($0). A worker checks the saw blade at every break to look for broken saw teeth and keeps a log of checking on the teeth. Monitoring takes a few minutes per break. It is assumed that there is a negligible marginal cost for the monitoring and recordkeeping. Fish is weighed, packed, labeled and returned to the freezer.

ii. Corrective actions. (6) Problems with incoming product—($0). It is expected that product rejects in the first year would be higher but they would return to current levels in the second year as harvesters became aware of the processor's new requirements. The total cost for the industry is $1 million for the first year and zero in the following years. Because harvesters and not processors bear the cost of rejected raw product, this cost is included in Table 4 as a separate line item and not in Table 3 which includes only costs borne by processors.

(7) A saw tooth breaks every two years—($20). A worker needs to examine potentially affected product every 2 years. This is expected to take 4 hours billed at $8.50 to check two hours worth of cutting.

iii. *Verification.* (8) Record review—($400). This involves a review of five sanitation records, five receiving records, and a log book for the cutting operation. These are expected to be very simple (e.g., check mark records). Consequently, this review is expected to take 30 minutes per week billed at $15 per hour.

(9) Review hazard analysis & HACCP plan—($60). This is expected to take 4 hours per year at $15 per hour.

(10) Administrative changes—20 percent of all of the other costs in the first year and 10 percent in the second year.

b. *Small plant cost example 2.* The categories of costs that are different from Example 1 are explained below.

(1) Plant Sanitation Audit—($2,600). This will need to be done 3 times daily taking approximately 20 minutes for each audit. It is assumed that some minimal sanitation assessment is already being done once per day, but an additional 40 minutes would be required to perform three adequate audits. Again, it is assumed that there is a negligible cost for recordkeeping.

(2) Extra Equipment Cleaning and Sanitizing—($2,480). This is assumed to take 1 hour per day billed at $8.50 per hour. Also, additional water, and cleaning and sanitizing materials are assumed to cost $100.

(3) Eliminate Fly Infestation—($330). Torn screens need to be repaired taking 2 hours billed at $8.50 per hour. Also, screening materials assumed to cost $15 are needed. An exterminator to apply pesticides costs $300.

Table 4 represents the models described above in tabular form.

TABLE 4.—FDA MODELS OF SMALL PLANTS

Category	Small plant 1 (no GMP costs)		Small plant 2 (GMP costs)	
	Year 1	Year 2—	Year 1	Year 2—
Training	760	0	760	0
HACCP plan refinement	240	0	240	0
Sanitation audit	0	0	2,800	2,800
Receiving CCP	3,200	3,200	3,200	3,200
Cutting CCP	0	0	0	0
Sawtooth monitoring	20	20	20	20
Record review	400	400	400	400
HACCP plan review	60	60	60	60
Equipment cleaning	0	0	2,500	2,500
Eliminate pests	0	0	330	0
Administration	940	370	2,100	900
Per plant costs	$5,500	$4,000	$12,400	$9,900

In order to estimate an average plant cost from these FDA model plants, FDA assumed that, based on the results of the agency's 1990/1991 survey of the seafood industry, 20 percent of small firms are similar to the model plant that requires some GMP improvements (Small Plant 2) and that 80 percent of the small firms are similar to the model plant that is in compliance with current CGMP's (Small Plant 1). The agency has also assumed that the cost of

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compliance for large firms is the same as that of small firms. There are offsetting considerations that have led the agency to make this assumption in this model. For example, agency experience suggests that it is likely that small firms will, on average, have larger sanitation costs and thus incur greater expenses to rectify existing CGMP deviations. Large firms, on the other hand, are more likely to have a greater number of products and processing lines, resulting in greater costs of plan development and monitoring. However, the agency believes that large firms are more likely to already have preventive controls, formalized sanitation programs, and record keeping systems in place than small firms. Additionally, large firms are more likely to take on new monitoring regimes with their existing quality control and production staffs than are small firms. The agency believes that these considerations would counteract each other and should result in fairly equal costs for large and small firms.

To complete the FDA model, FDA assumed that exporters (one- half of the 1,000 large firms) would only need to spend $1,000 in order to comply with this rule. Combining the two plant total costs as reported in Table 4 and weighting the proportion of the industry they are assumed to represent, average plant costs are estimated to be $6,400 in the first year and $4,800 in subsequent years.

The foreign processor costs associated with this rule and passed on to U.S. consumers are estimated to be 13 percent of the average domestic plant costs. The total cost of this regulation using this method of cost modeling is $71 million in the first year and $38 million in the fourth year and beyond.

Total costs for compliance with these regulations using the FDA model are shown in Table 5.

TABLE 5.—DISAGGREAGATED COSTS FROM FDA MODEL

1st Year Costs:	
Domestic manufacturers and importers	$32 million.
Major plant repair and renovation	13 million.
Sea Grant expertise	1 million.
Repackers and warehouses	14 million.
Harvesters for rejected raw product	1 million.
Shellfish vessels	3 million.
Foreign processors	5 million.
Total	69 million.
2d Year Costs	
Domestic manufacturers	$ 23 million.
Sea Grant expertise	1 million.
Repackers and warehouses	14 million.
Shellfish vessels	1 million.
Foreign processors	3 million.
Total	42 million.
3d Year Costs:	
Domestic manufacturers	23 million.
Sea a grant expertise	1 million.
Repackers and warehouses	14 million.
IQF Shellfish plants	3 million.
Total	41 million.
4th Year (and subsequent years) Costs	
Domestic manufactures	23 million.
Sea Grant expertise	1 million.
Repackers and warehouses	14 million.
Total	38 million.
Total Discounted Costs:	
Beyond the 4th year and discounted at 6 percent, the costs are $677 million.	

There are a number of explanations that would account for the uncertainty between the FDA and NMFS models. Virtually all of the difference can be explained by the two different estimates of what it would take to come into compliance with 21 CFR part 110 (FDA's CGMP regulations). In the case of the NMFS study, the contractors estimated the cost of coming into full compliance with all CGMPs. Using this methodology, they found that approximately 80 percent of the plants were out of compliance. On the other hand, the FDA model uses the results of FDA's own survey of the industry, which only listed plants as being out of compliance if the CGMP violations were related to potential contamination of the seafood product. In this case, FDA found that only about 20 percent of the firms were out of compliance. In addition, the FDA cost model assumes the simplest, least expensive corrective action to solve the CGMP violation. The NMFS model did not use the same approach in all cases.

2. Other Cost Reports

Reports received by FDA on the cost of implementing HACCP discussed below appear generally to support the results of FDA modeling across the seafood industry. While the modeling was limited to certain types of small operations, the firms for which FDA has information on reported costs represent a cross section of processing operation types, including canned, fresh, frozen, smoked/salted, molluscan shellfish, and cooked, ready-to-eat products as well as warehouses and repacking operations. It should be noted that these costs are reported only as an additional source of information. They were not used to generate FDA's model plants.

The cost information obtained from industry includes responses to a 1991 evaluation questionnaire from four firms that participated in the FDA/NOAA seafood HACCP pilot in 1990–1991. It also includes information provided to FDA from seven firms through the assistance of the National Food Processors Association. (These 7 firms operate a total of 44 processing plants.) It further includes information from two seafood trade associations, the National Fisheries Institute and the New England Fisheries Development Association

(NEFDA), which provided FDA with summary information about member firms that had implemented HACCP systems. The 2 seafood trade associations provided information on 16 firms. NEFDA operated a HACCP pilot with member firms through a Federal grant. All of this information was received by FDA before the publication of the proposed regulations and was reported in the PRIA. After the publication of the proposal, FDA received information from a large processor-exporter on its HACCP start-up costs. This processor reported start up costs of $1,000 per plant. In total, FDA has information on 86 plants (Refs. 129 and 223).

Many of these firms have implemented HACCP as participants in either pilot programs, the NOAA fee-for-service program, or the State of Alaska program, and therefore their HACCP systems have been subject to some form of third party verification. Virtually all of these plants have developed HACCP plans, many of which included critical control points for quality or economic fraud or both in addition to safety. In this respect, many firms implemented a more extensive form of HACCP than is being mandated by FDA.

More complete information on start-up costs received from 22 firms who have implemented HACCP is summarized in Table 6. Some of these costs are for multi-plant firms and some for firms operating only one plant.

TABLE 6.—START-UP COSTS

No. of firms	Start-up costs ($)
4	<1,000
15	1,000–5,000
1	5,000–10,000
1	10,000–15,000
1	>20,000

FDA notes that there are several uncertainties with these data. The agency does not have sufficient information to extrapolate the costs observed by these firms to the entire industry. FDA also does not know the extent of previous HACCP-type activities in these firms so that they may have different incremental costs than the industry average. Additionally, for subsequent year costs, some of the firms reported costs that exceeded the start-up costs shown in the table although some were below, and it is not clear if costs that might be incurred in order to comply with CGMP's are represented.

Nevertheless, the range of reported costs, are consistent with the FDA model for a processing operation that does not incur such costs. Notably, the estimates developed for NMFS of the costs of operating HACCP systems for small businesses are consistent with the FDA model and with the reports to FDA by trade associations discussed above.[1] Thus, three independent sources of information suggest that annual HACCP costs, at least for small businesses, are within a range of $3,000 to $6,000 per plant if sanitation costs are not included. Although the HACCP cost estimates made for NMFS did not include certain aspects of a HACCP system such as HACCP plan development, plan verification, and taking corrective actions, the estimates did include the costs of operating HACCP systems for quality and economic adulteration in addition to safety. These costs were not included in the NMFS cost estimates reported here. The FDA HACCP system involves safety only and is therefore less expensive.

It is also worth noting that three independent sources (FDA's own inspection experience, NMFS inspection experience with plants purchasing its voluntary inspection services, and the contractor's report for NMFS) confirm the existence of sanitation deficiencies in some seafood plants. Because FDA holds that these conditions must be corrected under existing requirements, the costs associated with these corrections will be borne by processors regardless of whether sanitation provisions are included in the seafood HACCP regulations or somewhere else. Sanitation controls for processors may address a number of enteric pathogens discussed elsewhere in this analysis including Salmonella, *Shigella*, hepatitis A, *L. monocytogenes*, *campylobacter*, and *C. botulinum*. Contamination may come from either the raw product or from poor hygiene practices such as insufficient control of vermin (flies and rodents) or insanitary water. In addition, poor sanitation may cause contamination of the product with pesticides, lubricants, cleaning compounds, or other toxic substances because of improper labeling, storage or use. The system in the seafood HACCP regulations is based on the monitoring of sanitation conditions by processors. FDA is not aware of any method for processors to take control of the sanitation conditions within their plants other than by a method that involves routine monitoring. Recording the results of these observations, as required by the regulations, need involve only minimal additional cost.

[1] The costs referred to here are those estimated for NMFS for the type of HACCP system it was studying. For the purposes of the PRIA and RIA, FDA made adjustments to the costs estimated for NMFS so as to be consistent with FDA's own regulation. These adjusted costs from the NMFS models are the estimates presented earlier in this document.

3. Seafood Prices

A number of comments referred to the effect that the regulation will have on the price of seafood that consumers experience at the retail level. In the PRIA, it was presumed that most of the cost of compliance of the proposed regulations would be passed on to consumers. In the PRIA, it was calculated that if the domestic industry passed on to consumers all of the costs estimated in the PRIA, prices for domestically produced seafood would increase by less than 1 percent in the first year and less than one-half of 1 percent in succeeding years. It was noted in the PRIA that price changes of such magnitude are unlikely to have a significant impact on general seafood purchases.

Some commenters claimed that all of the cost of the regulation would be born by processors, and that none of the increase in cost would be passed on to consumers. These commenters explained that seafood is currently at a disadvantage compared to other flesh foods for consumers' food dollars because seafood has a higher price per pound. If the relative price of seafood were to increase further, consumers would eat less seafood. The commenter also explained that domestic seafood processors are at a competitive disadvantage compared with seafood that can be imported at low cost (i.e., lower wages). If domestic processors were to raise their prices, seafood imports would take an even larger part of the seafood market away from domestically produced seafood.

Other comments said that processors will pass on all of the cost of the regulation, and that the regulation will cause the consumer price of seafood to rise. Some said that the price increase would be large enough to cause a decrease in seafood consumption.

Both theories have some merit, although neither is completely correct. The agency agrees that, all other things remaining the same, an increase in the price of seafood will decrease seafood consumption and increase the consumption of other fresh foods. However, the decision of a consumer to purchase a product depends on a number of factors.

Seafood includes many invertebrate and vertebrate species which vary in price per pound, often by over 100 percent, for a particular species (depending, in part, on seasonal supply). Such diversity, compared with

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meat and poultry, makes it clear that there is not perfect substitution among the flesh foods. Nevertheless, data bases on food consumption are equally clear at showing that as people have increased their consumption of various seafood products, they have reduced their consumption of meat and poultry.

There are other nonprice factors in the consumption decision. A consumer survey found that taste, quality, and freshness were rated above price ("moderately important") in decisions to order seafood in a restaurant or to purchase for preparation at home. In a survey of retailers' experiences, consumers ranked quality ahead of price in making seafood selections and rated the need for information on cooking as a concern equal to price (Refs. 244 and 223).

Another relevant consideration is the fact that a disproportionate percentage of seafood is consumed in restaurants as a luxury item where the cost of the raw material is not as important a factor in the purchasing decisions made by these consumers.

All of this information is consistent with other data in this analysis that suggests that a 1 percent change in price results in less than one-half of one percent change in seafood consumption.

Another major factor that lessens any competitive cost advantage meat and poultry products might experience from an increase in seafood cost is that USDA is proposing similar HACCP regulations for meat and poultry. USDA's proposal, if finalized for meat and poultry products, suggests that all segments of the flesh food market may face cost increases in the near future. It is entirely possible that the price of seafood relative to meat and poultry will not change. The agency agrees that some seafood imports have a cost advantage over domestically produced seafood, primarily due to lower labor and capital costs of production. However, because the regulation applies to imports as well as domestic products and because importers from EU member nations will soon be under HACCP requirements and experiencing increased costs, it is reasonable to assume that the price of imported seafood relative to domestic seafood will not change.

In the short run, the ability of producers to pass on cost increases is largely determined by the elasticity of demand (the degree to which consumers reduce their consumption of a good in response to a given increase in price) and the elasticity of supply (the degree to which producers increase their production of a good in response to a given increase in price). The elasticity of demand is determined in turn by, among other things, the presence or absence of close substitutes. Thus, for example, if there are close substitutes and the price of a good goes up, consumers will not continue to consume the higher priced good but switch to one of the substitutes.

If manufacturers know that consumers will not switch to a substitute when there is a price increase, then they are free to pass along all of the increased costs (from complying with the regulation) in the form of price increases. However, where there are close substitutes for seafood, such as other flesh foods, consumers respond to price increases by reducing their consumption of the high priced good. Rather than attempting to pass on all of the costs of the regulation in the form of higher prices, producers must accept reduced profits and bear some, if not all, of the burden of the cost increase.

In very competitive markets, such as the market for flesh food, where meat, fish, and poultry are considered substitutes, producers bear the entire burden of any increases in fixed costs. Fixed costs are costs that do not change, despite the size of the firm and changes in the level of output. Examples of fixed costs are costs of plant, equipment, and management; much of these costs are expected to be borne by processors. Because large firms spread fixed costs over larger output, they may be able to pass on these costs when smaller firms cannot.

In addition, also in the short run, producers may bear some portion of the variable costs that cannot be profitably passed on to consumers. Variable costs are costs that vary with changes in the amount of output. Examples of variable costs are costs of raw materials and hourly labor. However, it is likely that much of the variable costs will be passed on to consumers.

When firms in a competitive market cannot pass on all of a cost increase in the short run, profits decline. Beyond some point profits become either so low or negative that the firm is forced to close (discussed more fully in the Regulatory Flexibility Analysis below). In the long run, the exit of these marginal firms reduces the industry supply (of seafood) and permits the remaining firms to raise prices to cover the full costs of production, both variable and fixed costs. Thus, in the long run, seafood prices will rise by the full cost of the regulation.

A few comments requested a better analysis of price changes. These commenters criticized the approach used to estimate price increases in the Executive Summary of the PRIA. Rather than dividing the estimated domestic cost of the regulation by the total domestic production, the commenters suggested estimating price changes for each market segment. The advantages of this approach are that different types of seafood are treated separately (the change in the price of raw tuna might be very different from the change in the price of ready-to-eat shrimp cocktail) and that different sized firms are treated separately (small firms may be forced to raise prices more than large firms).

FDA agrees that this method of determining price changes is more legitimate than the method employed in the PRIA. However, FDA did not receive any information from commenters that would enable the agency to calculate prices in this manner. It is worth noting, however, that the contractor that performed the study upon which many of the estimated costs in this RIA are based did take product type into account when estimating cost increases. That contractor estimated a range of cost increases from negligible to 1.3 percent, depending on the product. Again, it is important to note that that study included costs for the control of types of hazards not covered by this final regulation.

Finally, while the methodology used in the PRIA might not produce accurate price changes, it suggests that overall price increases due to this regulation could well have a negligible effect on demand.

C. Benefits

In the PRIA, FDA estimated that the proposed option, which is being adopted in this final rule, would: (1) Reduce the amount of foodborne illness that results from consumption of seafood and; (2) generate significant nutrition benefits as a result of the increased consumption of seafood (brought about by a decrease in consumer anxiety) with a concomitant decrease in the consumption of meat and poultry; (3) reduce the amount of rent seeking (rent seeking is a term economists have applied to activities which do not contribute to societal welfare but only seek to transfer resources from one party to another); and (4) generate export benefits by allowing U.S. exporters to continue to export to countries requiring HACCP.

The last benefit, the export benefit, is characterized as the benefit to firms exporting to countries that require federal oversight and certification of HACCP programs. In addition to the benefits cited in the PRIA, the agency is addressing benefits derived from reduced enforcement costs, and is discussing other unquantified benefits of adopting the seafood HACCP

regulations. The agency has fully considered all of the comments on benefits. These estimates are more fully explained in the full RIA. What follows is FDA's conclusion as to how these benefits should be valued.

1. Safety Benefits

In the tables below, FDA presents revised estimates of the benefits of mandatory HACCP for seafood processors. Several changes from the preamble to the proposal are noteworthy. First, based on the comment that said that FDA had underestimated the number of cases, FDA has reestimated the baseline numbers of cases for certain illnesses (Ref. 226). Next, some changes were made to the valuations of particular cases, as better information was obtained concerning the probabilities of death per type of illness. Finally, as mentioned above, some changes have been made to the estimates of the percentages of the illnesses reduced.

Although Canada, for example, has mandatory HACCP for its seafood processors, no data exist on the efficacy of HACCP. Therefore, for the percentages of the illnesses reduced, FDA used three different types of its experts (seafood experts, epidemiologists familiar with microbial hazards, and microbiologists) to address the efficacy of seafood HACCP. Each of these experts reviewed the literature on each type of hazard as well as the requirements of HACCP. The ranges reflect likely upper and lower bounds on how effective HACCP will be at controlling production deficiencies by processors, including indirect controls exerted by processors on the owners of harvesting vessels. In addition, the tables reflect the fact that some of the cases of illness are not addressable by this rule as they are caused by either consumer or restaurant mishandling or poor fishing practices by recreational fishermen.

In order to calculate the number of cases (annual cases resulting from exposure to hazards associated with seafood consumption) that would be reduced by HACCP, each of the four experts followed a series of methodical steps. The first was to determine the types of seafood associated with each hazard. The second step consisted of reviewing the various aspects of the rule to determine the areas of seafood harvesting and processing that the rule could affect. The third step was to eliminate those cases that could not be affected by the rule.

These would be cases that seafood processors could neither eliminate through processing nor prevent from being introduced, either by their own staff or by control over raw materials. Cases caused or controlled by factors outside of the HACCP system include recreational harvest (approximately 20 percent of all seafood harvested) that does not pass through processing plants and problems caused by restaurant, supermarket or consumer improper cooking or mishandling. In addition, there will be some types of hazards that will not, for the foreseeable future, be controllable by means other than avoiding contaminated waters, which will not be 100 percent effective (ciguatera, for example). Until rapid, inexpensive tests are developed, HACCP cannot be 100% effective at controlling these hazards.

Once each expert had accounted for those cases that could not potentially be reached by this rule, the experts then assessed the likely effectiveness of control steps associated with broad sanitation improvements and mandatory controls on specific hazards and specific species.

Ciguatera: Both the lower and upper bound reductions in illness are relatively small in the near term because there does not yet exist a rapid, inexpensive test for this toxin. Processors and commercial fishermen must rely on information about whether geographic areas are ciguatoxic. Moreover, many illnesses are attributable to recreational harvest.

Hepatitis A virus: This illness derives mostly from molluscan shellfish. For molluscan shellfish, the controls are harvesting from approved waters and good sanitation in the plant. These regulations specifically involve both types of controls. The upper bound number is 50 percent of the total estimated number of illnesses largely because of the problems that states have in patrolling and controlling illegally harvested molluscan shellfish.

Norwalk virus: This illness derives from raw molluscan shellfish that are contaminated from human pollution in harvesting areas. Control involves harvesting from approve waters. These regulations include this kind of control. The upper bound number is 50 percent of the total estimated number of illnesses largely because of the problems that states have in patrolling and controlling illegally harvested molluscan shellfish and because of the uncertainty of the control of sewage from harvesting and recreational vessels.

Vibrio vulnificus: This illness essentially derives from eating raw molluscan shellfish from the Gulf of Mexico. Vibrio vulnificus is a naturally occurring, ubiquitous, marine organism. The lower and upper bound numbers reflect the fact that controls are newly emerging for this organism and still have uncertainties associated with them.

Table 6a sets out the new estimates of baseline cases of foodborne disease related to HACCP and the range of cases averted by HACCP.

TABLE 6a.—ESTIMATE OF ANNUAL CASES AVERTED

Hazard	Estimated number of cases [1]	Number of cases averted (lower) [2]	Number of cases averted (upper) [1]
Anasakis	100	25	50
Campylobacter jejuni	200	100	150
Ciguatera	1,600	96	200
Clostridium botulinum	10	3	5
Clostridium perfringens	200	100	150
Diphyllobothrum latum	1,000	250	600
Giardia	30	15	23
Hepatitis A Virus	1,000	150	500
Other Marine Toxins	20	.....	1
Norwalk Virus	100,000	15,000	50,000
Other Vibrio's	1,000	200	500
Paralytic Shellfish Poisoning	10	.....	1
Salmonella non typhi	200	100	150
Scombrotoxin	8,000	4,000	6,000

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TABLE 6a.—ESTIMATE OF ANNUAL CASES AVERTED—Continued

Hazard	Estimated number of cases [1]	Number of cases averted (lower) [2]	Number of cases averted (upper) [1]
Shigella	200	100	150
Vibrio vulnificus (3d year)	60	12	30
Total	113,630	20,151	58,520

[1] These numbers were determined in consultation with representatives from the Centers for Disease Control and Prevention.
[2] The upper and lower bounds were determined by a panel of scientists at CFSAN (Dr. George P. Hoskin, Dr. Karl C. Klontz, Dr. Kaye I Wachsmuth and Dr. Thomas C. Wilcox.

Table 7 reflects revised estimates of the total cost of seafood illness.

TABLE 7.—ANNUAL COST OF SEAFOOD ILLNESS

Hazard	Value per case	Total cost of seafood illness
Anasakis	$1,703	$170,332
Campylobacter jejuni	9,390	1,877,924
Ciguatera	15,247	24,395,438
Clostridium botuli num	223,252	2,232,524
Clostridium perfrin gens	6,551	1,310,164
Diphyllobothrum latum	2,753	2,752,617
Giardia	6,104	183,112
Hepatitis A Virus	22,669	22,668,870
Other Marine Toxins	269	5,380
Norwalk Virus	575	57,500,000
Other Vibrio's	2,955	2,954,842
Paralytic shellfish poisoning	92,356	1,200,628
Salmonella non-typhi	8,199	1,639,755
Scombrotoxin	339	2,708,755
Shigella	16,750	3,349,961
Vibrio vulnificus	2,008,917	120,535,039
Total		245,485,342

Table 8 shows the estimates of the efficacy of mandatory seafood HACCP at reducing foodborne disease in the third year following the date of implementation (undiscounted).

TABLE 8.—ESTIMATE OF THE EFFICACY OF MANDATORY HACCP AT REDUCING FOODBORNE DISEASE IN THE THIRD YEAR

Hazards	Lower bound estimate (3d year)	Upper bound estimate (3d year)
Anasakis	$42,583	$102,199
Campylobacter jejuni	938,962	1,408,443
Ciguatera	1,463,726	3,049,430
Clostridium botulinum	558,131	1,116,262
Clostridium perfringens	655,082	982,623
Diphyllobothrum latum	688,154	1,651,570
Giardia	91,556	137,334
Hepatitis A Virus	3,400,331	11,334,435
Other Marine Toxins		269
Norwalk Virus	8,625,000	28,750,000
Other Vibrio's	590,968	1,477,421
Paralytic Shellfish Poisoning		46,178
Salmonella non-typhi	819,878	1,229,817
Scombrotoxin	1,354,377	2,031,566
Shigella	1,674,981	2,512,471
Vibrio vulnificus (3d year)	24,107,004	60,267,519
Total	45,010,733	116,097,537

Finally, in response to the comments, FDA has attempted in Table 9 to associate particular hazards with categories of seafood (to the extent the data allow).

TABLE 9.—ASSOCIATION OF PARTICULAR HAZARDS WITH CATEGORIES OF SEAFOOD

Hazards	Estimated number of cases	Affected species
Anasakis	100	Raw Finfish.
Campylobacter jejuni	200	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Ciguatera	1600	Tropical, reef associated species of finfish.
Clostridium botulinum	10	Vacuum Packaged Fish, Smoked and Salted Fish.
Clostridium perfringens	200	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Diphyllobothrum latum	1000	Raw Finfish.
Giardia	30	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Hepatitis A Virus	1000	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Other Marine Toxins	20	Molluscan Shellfish.
Norwalk Virus	100,000	Molluscan Shellfish.
Other Vibrio's	1,000	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Salmonella non-typhi	200	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Scombrotoxin	8,000	Scombroid Species of Finfish.
Paralytic Shellfish Poisoning	10	Molluscan Shellfish.
Shigella	200	Cooked Ready-to-Eat Fish, Smoked Fish, Molluscan Shellfish.
Vibrio vulnificus	60	Molluscan Shellfish.
Total	113,630	

2. Summary of Safety Benefits

The safety benefits are shown by year in Table 10 (undiscounted).

TABLE 10.—SAFETY BENEFITS

Year	Lower bound benefits	Upper bound benefits
1	32,957,233	67,897,751
2	32,957,233	67,897,751
3	45,010,733	116,097,537
4 and beyond	45,010,733	116,097,537

3. Nutrition Benefits From Mandatory Seafood HACCP and Increased Consumer Confidence

In the PRIA, FDA estimated what the potential nutrition benefits might be if reduced consumer anxiety over seafood safety led to increased sales. FDA hypothesized that this might lead to consumers eating lower fat meals (on average) as they replaced higher fat meat and poultry with lower fat seafood.

The agency has considered this issue in greater detail in the full RIA. FDA acknowledged in the PRIA that the entire estimate of nutrition benefits resulting from increased sales of seafood at the expense of meat and poultry sales is speculative. Although the agency believes that increased consumer confidence would result from having a state-of-the-art HACCP system in place for the seafood industry, no data were received to confidently predict the ultimate increase in the quantity of seafood sold as a result of this regulation. Sales data of this type were also not available before or after the agency initiated its low acid canned food regulations. Finally, the agency was unable to determine if any increase in consumer confidence would offset a price increase resulting from HACCP costs.

The agency was equally concerned about possible nutrition benefits as to whether there would be an exact exchange in the nutrient profile between fish as prepared and meat and poultry. The agency finds that some fish dishes as consumed are eaten fried or served with heavy sauces, and that different species of fish have different fat profiles. Thus, for some consumers who make substitutions of fish meals for meat and poultry, it is not totally clear if there will be a favorable decrease in fat intake. Because there are too many unknown variables surrounding these substitutes and the lack of sales data, the agency is unable to quantify this benefit.

4. Rent Seeking

Rent seeking activities were characterized in the proposal as "public and private resources (which) have been expended in attempts to alter the level of regulatory effort toward seafood safety, as well as alter which Federal agency should oversee the industry." "Rent seeking" is a term economists have applied to activities that do not contribute to societal welfare but only seek to transfer resources from one party to another. An example often given is lobbying to change the ownership of a government granted special privilege so that profits change hands. In many cases, however, it is difficult to distinguish between activities that ultimately indirectly benefit society from those that only transfer profits. The proposal hypothesized that one benefit of the regulation was to reduce the social costs of rent seeking.

One commenter noted that the reason large firms support HACCP is because they must have HACCP to export to Europe. The commenter noted that mandated HACCP would "ensure that all domestic processing firms face the same costs, thereby reducing any competitive disadvantage."

FDA does not agree that this is a justification for HACCP. The reason for implementing HACCP is to reduce the incidence of foodborne disease. However, FDA agrees that this "rent-seeking" argument may explain some support for HACCP by larger exporting firms. It is important to note, however, that there are small firms who export to Europe as well.

5. Export Benefits

In the PRIA, FDA asserted that one benefit (unquantified) of the rule was to allow firms now exporting to the EU to continue to do so because of the EU requirement for a federally overseen voluntary HACCP program. Several commenters noted that some countries that import seafood from the United States are beginning to require HACCP. One commenter noted that more than 30 percent of seafood produced in the United States is exported. The same commenter noted the disruption in trade when French authorities did not coordinate their seafood safety requirements with "other officials." Several commenters noted the need for more Memoranda of Understandings (MOU's) between the United States and other countries for seafood. One suggested that such MOU's be based upon HACCP as defined by various international bodies. Finally, one commenter noted that FDA "should take into account how the international

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community is implementing HACCP before the agency imposes regulations that may create unnecessary trade barriers."

As discussed in the PRIA, this program will benefit those seafood processors who are exporting to nations requiring HACCP. However, as also noted in the PRIA, there is in place a federally overseen HACCP program, specifically, the program being offered to processors by the National Marine Fisheries Service (NMFS).

FDA has made an estimate of the cost savings to exporting firms of being in FDA's mandatory program in lieu of the NMFS program. The alternative to NMFS review (if FDA were not to adopt this regulation) would be inspection of product that is offered for entry into the EU on an entry-by-entry basis and the payment of a significant fee for these inspection services. With approximately 2 billion pounds being exported each year, this savings of resources amounts to, at a minimum, $20 million per year.

In addition, although the EU has announced the requirement that HACCP be in place by January 1, 1996, adoption of a U.S. plan reduces some of the uncertainty for U.S. firms and firms exporting to the United States concerning the ultimate form of an internationally agreed upon HACCP requirement.

6. Reduced Enforcement Costs

Comments qualitatively mentioned other benefits including fewer product recalls and other enforcement actions. FDA agrees that there will be fewer product recalls, seizures, injunctions and detentions of seafood and seafood products. As examples of what benefits could have accrued in 1994, the agency has calculated the value of each of these actions and addressed them below.

a. *Seizures.* A seizure is a civil action designed to remove violative goods from consumer channels. Table 11 shows the actions and their associated costs that follow a determination that a violation exists and that goods should be seized.

TABLE 11.—SEIZURE STEPS

Action	Hours/Other	Cost
Federal personnel collect and analyze samples, write up recommendations (program and general counsel), review the case and make recommendations to the U.S. attorney.	120	$12,840
U.S. attorney files complaint and Court orders goods arrested	16	1,712
U.S. Marshal and other federal official seizes goods at location	8	856
	Travel	200
Firm hires attorney to contest/accept action	16	1,712
Food is reconditioned by firm	16 firm	1,712
	16 Federal lower valued food[3]	1,712
Food is denatured (converted to a non-food use) or;	16 firm	1,712
	8 Federal lower valued food[2]	856
Food is destroyed	8 firm	856
	8 Federal lost food[1]	856

[1] The rate of $107 per hour represents the cost of a loaded (including equipment and benefits) employee plus headquarters support of approximately 70 percent.
[2] Total seizure costs are calculated in Table 12.

Table 12 shows the seizures in 1994. Assuming that half of all seizures are prevented each year, the benefits are expected to be approximately $290,000 each year.

TABLE 12.—SEIZURES IN 1994

Problem	No.	Administrative costs[1]	Action[2]	Total
Decomposition (Destroy)	5	$17,320	$46,565	$320,925
Filth (Denature)	3	17,320	8,709	78,087
Chemicals (Destroy)	2	17,320	10,108	54,856
Other (Destroyed)	4	17,320	14,212	126,128
Total	14			[3]579,996

[1] Costs of items (1) through (4) in the preceding Table totaled are $17,320.
[2] The actions that are typically taken for each type of hazard are listed in the PROBLEM column. Costs include the value of destroyed food multiplied by the number of actions or, in the case of denaturing, it is assumed that 10 percent of the value of the product is retained. No food was reconditioned.
[3] This number may well underestimate the benefit. FDA recently completed a seizure proceeding (not filed in 1994) in which $5 million of product was condemned. Thus, preventing seizure can have a significantly higher value than that reflected in this table.

b. *Detentions.* A detention is a procedure for preventing violative products from entering the United States. Table 13 shows the actions and their associated costs that follow a determination that a sample is violative, the following actions take place.

TABLE 13.—DETENTION STEPS

Action	Hours/other	Cost[2]
Federal personnel send a detention notice to the importer with an opportunity to introduce testimony	2	$214
Importer hires attorney and introduces evidence. Submits response application	16	1,712
Determination of action to take	24	2,568
Reshipment allowed, or	10	1,070
	Travel, Cost to Reship	200

TABLE 13.—DETENTION STEPS—Continued

Action	Hours/other	Cost[2]
Product is denatured, or	8, Loss of value,[2] Cost of denaturing,[2], Reselling costs[2].	856
Goods are destroyed under Federal supervision	16, Loss of product[1].	

[1] These costs are calculated in table 14 which gives estimates of the numbers and estimated costs for detentions in 1994.
[2] Seizure can have a significantly higher value than that reflected in this table.

TABLE 14.—DETENTIONS IN 1994

Reason	Number of detentions	Quantity[1]	Dollars[1]	Detention disposition[2]	Detention admin[3]
Borates	25	21,484	1,827,173	183,017	112,350
C. botulinum	1	113,790	363,434	363,434	4,494
E.coli/coliforms	14	254,774	742,786	149,413	62,916
Histamines	2	98,023,014	1,361,714	273,199	5,988
Lead	2	102,188	87,440	9,044	8,988
Listeria/Other Pathogens	51	2,792,806	21,369,692	4,274,794	229,194
Mercury	11	7,338,900	12,720,272	1,272,327	49,434
Poisonous/Deleterious sub-nec	7	180,000	446,025	446,025	31,458
Salmonella/arizona	129	221,543,300	76,137,973	15,228,451	579,726
Staphylocci	6	55,810	199,550	40,766	26,964
Sulfites	23	713,653	8,100,620	810,362	103,362
Unsafe food additives—NEC	5	67,160	540,201	540,201	22,470
Total	276			23,591,033	1,240,344

[1] Quantity and dollars include the total amount of both detentions and automatic detentions and are shown to illustrate how detentions were calculated.
[2] Disposition included reshipping which was estimated to be 10 percent times the number of shipments (quantity) times the value per shipment (dollars/quantity); reconditioning which was estimated to be 20 percent of the value of the shipment (dollars) or destruction which was estimated to be 100 percent of the value of the shipment.
[3] Administrative costs are estimated to be $4,494 per detention, the sum of the first three rows of the previous table.

Assuming just half of these detentions are prevented by HACCP, benefits to the federal government and industry would be approximately $12 million per year.

c. *Automatic detentions.* Automatic detentions place each lot of imported products on detention upon arrival at the border until the importer has demonstrated that the products do not violate the Federal Food, Drug, and Cosmetic Act. This is normally done by the importer hiring independent labs to sample each lot. Table 15 shows the number and types of relevant automatic detentions that took place in 1994.

TABLE 15.—AUTOMATIC DETENTIONS IN 1994

Reason	Number of automatic detentions	Sample cost[1]	Storage cost[2]
Borates	53	$132,500	$182,717
C. botulinum	104	260,000	36,343
E.coli/coliforms	8	20,000	74,279
Histamines	63	157,500	136,171
Lead	1	2,500	8,744
Listeria/Other Pathogens	236	590,000	2,136,969
Mercury	397	992,500	1,272,027
Pesticide chlorothalanil	1	2,500	50
Poisonous and Deleterious sub-nec	4	10,000	44,603
Salmonella/arizona	759	1,897,500	7,613,797
Staphylocci	0	0	19,955
Sulfites	12	30,000	810,062
Underprocessed	3	7,500	15,454
Unsafe food additives—NEC	3	7,500	54,020
Total	1,644	4,110,000	12,405,191

[1] 1 Calculation of costs assumes that, for each product placed on automatic detention, 10 lots per year will be analyzed with 1 sample each at a cost of $250 per sample.
[2] Assumes storage costs equals 10 percent of the stated value of the goods.

Again assuming that half of the above automatic detentions are eliminated each year, then the benefits will be approximately $6 million per year.

d. *Recalls.* The costs of recalls to a firm vary from inexpensive notification

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of consignees to several million dollars, depending on the nature of the hazard, the type of seafood, the cost and amount of product involved, and the distribution chain of the product. The costs of a recall include searching for the recalled products, removing them from retail and wholesale outlets, replacing the adulterated product, effectiveness checks, and disposal or reconditioning. In some cases recalls cause marketing disruptions, loss of shelf space, and subsequent losses in sales via publicity.

FDA costs include investigative and analytical time and expenses, administrative costs, cost of samples, and auditing time.

FDA assumes that the costs of recalls borne by firms are directly related to the distribution costs associated with the products and to the size of the contaminated lots. Distribution costs account for about one-third of the final value of seafood. FDA assumes that the firm must bear the full amount of the distribution costs of the recall. In addition, the other costs listed above raise the total cost of recalls borne by firms to one-half the value of the product. FDA uses one-half the value of the product as the base for the estimate of total recall costs. The total recall cost of seafood processing firms in 1994 is estimated to be $2,461,906, as shown in table 16. FDA audit checks for seafood took 474 hours in 1994. FDA assumes that total FDA costs per recall were proportional to audit hours. The cost per hour of an audit check is $107, giving an FDA audit cost of $50,718 (474 x 107). FDA collected 72 samples at $250 per sample, giving sample costs of $18,000 (72 x 250). FDA thus estimates additional costs due to recalls to be $68,718 ($50,718 + $18,000). The total recall cost is estimated to be $2,530,624 ($2,461,906 + $68,718). Again, the estimate for the purpose of this benefits analysis assumes that half of all recalls will be prevented or about $1,250,000.

TABLE 16.—RECALLS IN 1994

Fish	Hazards	Amount	Total
Canned tuna	Filth, decomposed, punctured cans, short weight.	6,599 cases	$150,687
Crab	L. monocytogenes	16,156 lbs	54,624
Escolar fish	Decomposed, sc ombroid, illness	1,719 lbs	1,614
Herring, salted Schmaltz	L. monocytogenes	1,200 lbs	1,740
Hilsha fish	Salmonella	2,000 lbs	2,100
Lobster	L. monocytogenes, salmonella	25,920 lbs	243,648
Mahi mahi, fresh	Decomposed	575 lbs	834
Nova chips	L. monocytogenes	54 lbs	157
Oysters, shellstock	V. vulnificus	9,219,430 lbs	1,843,886
Oysters, shucked	V. vulnificus	21,944 lbs	87,776
Sardines, flat filets	Rusty, leaky, decomposed	33,600, 13 oz cans	50,400
Smoked catfish, salmon, sturgeon, tuna	L. monocytogenes	1,060 lbs	2,963
Tuna steaks	Decomposed	7,110 lbs	11,477
Total			2,461,906.00

e. *Injunctions.* Injunctions are the most severe form of domestic penalties whereby a firm is enjoined from producing/distributing a product until a violation is remedied. There are approximately 5 injunctions by FDA against seafood products each year costing the firm an average of about $70,000 and FDA an average of about $30,000 each or about $500,000 per year. These costs include court costs, analytical testing costs, inspections costs, and lost production costs. Again, if this rule reduced injunctions by half, societal savings would be $250,000.

Total enforcement benefits are the sum of all of the reduced enforcement costs estimated to be approximately $20 million per year.

7. Other Benefits

Commenters also mentioned benefits including better process control (resulting in lower production costs) and improved employee morale.

FDA believes that there may be "re-engineering" types of benefits associated with these regulations. For both seafood and other foods for which HACCP has been implemented, FDA has received information that firms have found cost-saving innovations in other areas as they implement HACCP. These innovations are considered trade secrets by firms and thus, their description (actual process innovations) and quantification is impossible as firms have not released this data into the public domain. This phenomenon involves unexpected savings and efficiencies as a result of establishing a new system in a processing operation. The majority of firms that have previously instituted HACCP reported that they believed that the advantages they derived from HACCP were worth the costs to them in terms of better control over their operations, better sanitation, and greater efficiencies, such as reduced waste. Virtually all foresaw long-term benefits from operating under HACCP.

Improved employee morale depends on how HACCP is implemented. If, for example, employees are (1) participating in day-to-day monitoring of critical control points, (2) allowed through corrective action plans to participate in corrective actions including shutting down a line when a critical limit has been exceeded, and (3) are rewarded for this decision rather than penalized or forced to rigorously defend their actions, then employee morale may increase. Such an increase in morale, if valid, may lead to greater productivity. However, it is in the direct financial interest of every company to maintain employee morale such that any additional benefit from this regulation is likely to be small.

A final benefit will be realized for finfish where processing plants and vessels, in an effort to control for histamine formation, keep fish cooled from harvest to retail. This will simultaneously decrease the decomposition rate that causes seafood to be thrown out because of organoleptic problems. The same situation exists relative to cooked, ready-to-eat products and smoked fish. One retailer cited losses of 4 percent to 8 percent of all seafood because of decomposition. If some of this decomposition begins prior to arrival at the retail level and is reduced in any degree by this regulation, benefits could potentially be large.

However, FDA recognizes that there is also a short term cost (e.g., as molluscan shellfish harvesters attempt to supply processors with untagged shellfish or from vessels without sanitary facilities aboard and find the harvest rejected). The same will also be true for finfish which have not been properly temperature controlled from harvest to processor. These harvests will be discarded although this behavior is not expected to occur often, or more than once in any instance.

D. Costs and Benefits of Sanitation

A portion of the costs and benefits of this rule derive from the improvements in the facilities and CGMP's in seafood plants. Although all food manufacturing plants are required to produce food under sanitary conditions now, FDA's experience, and that of others, indicate that many seafood processors are not producing seafood under those conditions. The sanitation, monitoring, and recordkeeping provisions of this rule are expected to drive processors to improve their sanitation conditions and thus reduce the need for FDA to enforce CGMP's through regulatory actions. These provisions will produce net increases in societal welfare with accompanying costs and benefits.

Current goods manufacturing practices include such things as cleanliness and habits of personnel, the conditions of buildings and facilities, equipment, production and process controls, and conditions of warehousing and distribution of the product. It is difficult to differentiate between costs and benefits that are HACCP-related and those that are sanitation-related. For example, processors are required under HACCP to keep records that show that CGMP's such as "Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH or controlling a_w that are taken to destroy or prevent the growth of undesirable microorganisms, particularly those of public health significance, shall be adequate under the conditions of manufacture, handling, and distribution to prevent food from being adulterated within the meaning of the act" are being followed (see 21 CFR 110.80(a) (2) and (4)). However, the benefits derive from making plant and processing changes, uncovering problems in processing due to recordkeeping and taking corrective action which prevents hazardous seafood from being sold. Thus, HACCP and CGMP's are inextricably intertwined and it is difficult to calculate the marginal benefits and marginal costs of each.

E. Costs and Benefits Attributable to Foreign Governments

FDA has reported the portion of the increased costs that are expected to be passed on to U.S. consumers by foreign processors. The justification for this action is that FDA has not included safety benefits that foreign consumers may enjoy when foreign firms that export to the United States introduce HACCP into their plants. FDA has also included, as a benefit of this regulation, reduced enforcement actions toward products produced by foreign firms and reduced illnesses that U.S. consumers suffer from imported seafood.

In a benefit-cost analysis, costs and benefits are attributable to choices made among competing options. However, in this rule, there are difficulties in assigning the costs and benefits to choices made by FDA to require HACCP of domestic and foreign seafood processors. This difficulty arises because other countries either already require HACCP or have indicated that they will do so in the near future—for both their domestic and imported seafood products. No costs or benefits should be ascribed to choices made by the U.S. Government in this rule that affect firms already complying with foreign regulations, if the regulations are the same and no changes need to be made to be in compliance with the U.S. regulation.

Thus, foreign firms in those countries who export to the United States may be required to comply first with the U.S. plan or first with their own country's plan; the timing is impossible to predict. However, FDA does have evidence from the European Union that the seafood produced by the following countries (at least seafood for export) have met the EU standard for HACCP— Albania, Australia, Austria, Belgium, Brazil, Canada, Chile, Columbia, Denmark, Ecuador, England, Faro Is., Finland, France, Germany, Greece, Holland, Iceland, Indonesia, Ireland, Italy, Japan, Luxembourg, Mexico, Morocco, New Zealand, Norway, Peru, Philippines, Sweden, Taiwan, Thailand, and Turkey.

F. Conclusion

As the above analysis demonstrates, FDA finds that the estimated benefits exceed the estimated costs. The estimated costs are approximately one third of those in the PRIA, ranging from $677 million to $1.488 billion. These estimated costs were based primarily on the reports of some seafood firms and modeling done by FDA experts based on their experience with HACCP but also considered the study done under contract with NMFS. The benefits range from $1.435 billion to $2.561 billion and include benefits from safety, nutrition, increased consumer confidence, rent seeking activities, exports, and reduced enforcement costs.

G. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses. In the PRIA, FDA listed for comment a series of regulatory options on how to grant regulatory relief for small firms. In that document, FDA defined small firms as having less than $1 million in annual gross revenue (for non-shrimp processors) and less than $2 million for shrimp processors. In the PRIA, regulatory options for small business relief included:

(1) Requiring HACCP-type controls for those critical control points in individual plants that have a history of failure.

(2) Exempting very small processors from the requirements in the proposed regulatory option.

(3) Allowing a longer implementation period such that HACCP requirements may be phased in over a longer period of time.

(4) Providing generic HACCP plans (without mandatory control points) for certain types of operations, providing federal verification, or less frequent monitoring of critical control points.

FDA received a large number of comments on these options and on the costs that small businesses would incur as a result of the proposed option.

The agency has fully considered all of the comments received on its regulatory flexibility analysis and has responded to these comments in the full RIA. What follows is a summary of FDA's major conclusions from the analysis.

FDA received comments on whether there should be exemptions for processors based on either the size of the processor or the degree of risk associated with the product or process. For example, one commenter supported the exemption of small firms on the basis that small firms that represent 75 percent of the industry in terms of the number of plants, produce less than 10 percent of the seafood consumed.

FDA has concluded that there should be no exemptions for small firms. Small processors often engage in relatively high risk seafood processing, and an exemption based on size could inappropriately exempt high risk operations. An exemption based on risk might entail knowing which seafood might be responsible for a reported and confirmed illness. The agency finds however that because underreporting and skewed reporting of foodborne

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illnesses occurs it is not always directly possible to relate the reported illnesses to risk. This subject is also discussed at length in the preambles to both the proposed and final rule.

One comment recommended that no firms be completely exampt, but that some firms be subject to different HACCP requirements depending on size. The smaller the firm, the less strict the record-keeping, testing, and monitoring requirements. The use of a short form for recordkeeping and informal monitoring was supported in some comments.

Again, this is a topic that is extensively covered in the preamble to the final rule. FDA notes that HACCP depends on the degree of risk and complexity of processing and that HACCP requirements for each plant are calibrated based on these factors. Whether the plant is large or small, if there are few hazards and simple processes, HACCP requirements are inherently minimal. If there are no hazards, no HACCP plan is required. Overall, however the agency believes that many smaller firms are associated with simpler processes and that the HACCP system already accommodates the commenter's concern.

In the long run, as processors adopt HACCP and attempt to pass costs on to consumers, the retail price of seafood will rise by less than 1 percent. In the absence of an increase in consumer demand that may result from this regulation, as the price of seafood rises, consumers will purchase less seafood. As producers fail to sell all of the seafood offered at the higher price, output must fall. Moreover, output must decrease in the highest cost sector of the industry, generally small processors. Although it is possible that small processors will cut back production but stay in business, the small profit margins of some small seafood producers strongly imply that the reduction in output will come about because small processors go out of business. For every one percent increase in the price of seafood, approximately 140 small processors could go out of business. The estimated number comes from the following calculation. FDA has estimated that as costs are passed on, HACCP will raise the price of seafood to consumers. The price elasticity of demand, which is the percentage change in quantity purchased divided by the percentage change in price, is estimated to be −0.37 for seafood (Ref. 227). A one percent increase in the price consumers pay for seafood should therefore reduce the quantity purchased by 0.37 percent (1 percent times −0.37). FDA believes that the entire reduction in output attributable to HACCP will be borne by small processors who go out of business. Although close to 80 percent of seafood processors are classified as small, small processors account for only 10 percent of total industry output (Ref. 228). In the case of a 0.37 percent decline in total processing output represents a decline in the output of small processors of 3.7 percent (0.37 percent divided by 0.10). If the decline in the number of processors were proportional to the decline in the output of small processors, the reduction in the number of processors would be 3.7 percent in the case of a 1 percent price increase. FDA is uncertain as to what price increase will actually occur.

The agency finds that the number of small seafood processors that go out of business will be determined by the cost per unit (or per plant) of implementing HACCP, the effect of HACCP on seafood prices, the ability of small plants to pass costs on to consumers, the current practices of the plants and the implementation time. The analysis has assumed that the regulation will have no positive effect on the demand for seafood. If the regulation in fact increases consumer confidence in seafood sufficiently to increase the demand for seafood, then the effect on small business would be less.

Although the economic impact on small firms is difficult to predict, many small firms should be able to implement HACCP at low cost, as they have already fulfilled many of its basic requirements. The closer a firm's current practices are to HACCP, the lower the cost of HACCP and the more likely is firm survival. Some small firms occupy market niches that allow them to pass on more of their costs than the industry average, increasing their likelihood of survival.

The effect of HACCP on small seafood processors depends on their costs of compliance and on the changes in the relative price of seafood. FDA expects the relative price increase attributable to HACCP to be small. For many small firms, the flexibility built into the regulation strongly implies that HACCP costs will be low. In consideration of small firms, the agency has extended the effective date to 2 years from publication. FDA will also be publishing a Guide that will provide small processors with valuable information for developing and implementing HACCP. Additionally, the agency, in cooperation with Sea Grant Universities and others through the Seafood HACCP Alliance, will be providing to small firms assistance on training and other needs.

FDA recognizes that HACCP is an innovative regulatory system that has not been applied on a large scale to ongoing commercial enterprises in the United States. For this reason all of the agency's estimates of firm behavior, costs and benefits necessarily involve substantial uncertainty. As explained in this Regulatory Impact Analysis, FDA has used modeling techniques and informed judgements rather than firm empirical data to estimate many effects. In order to determine the accuracy of these estimates, and also to assist in possible mid-course corrections, FDA and HHS plan to conduct an evaluation study during the first few years after the effective date of these regulations. This study could focus on each major type of one-time or continuing compliance cost, on different types of firms, on different sizes of firms (with particular attention to the smallest firms), and on both costs required by the regulation and on costs that firms may incur unnecessarily. It could also address the ability of firms to understand and implement HACCP properly, and any other problems that may impede rapid and inexpensive implementation. This study could also include an exploratory analysis of benefits, addressing both improvements in processing as measured by elimination of hazards and, to the extent permitted by existing data systems, early trends in reported incidence of illness caused by seafood.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (59 FR 4142, January 28, 1994). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

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List of Subjects

21 CFR Part 123

Fish, Fishery products, Imports, Reporting and recordkeeping requirements, Seafood.

21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, title 21 CFR chapter I is amended as follows:

1. New part 123 is added to read as follows:

PART 123—FISH AND FISHERY PRODUCTS

Subpart A—General Provisions

Sec.

123.3 Definitions.
123.5 Current good manufacturing practice.
123.6 Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) plan.
123.7 Corrective actions.
123.8 Verification.
123.9 Records.
123.10 Training.
123.11 Sanitation control procedures.
123.12 Special requirements for imported products.

Subpart B—Smoked and Smoke-Flavored Fishery Products

123.15 General.
123.16 Process controls.

Subpart C—Raw Molluscan Shellfish

123.20 General.
123.28 Source controls.

Authority: Secs. 201, 402, 403, 406, 409, 701, 704, 721, 801, 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 346, 348, 371, 374, 379e, 381, 393); secs. 301, 307, 361 of the Public Health Service Act (42 U.S.C. 241, 242l, 264).

Subpart A—General Provisions

§ 123.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) and in part 110 of this chapter are applicable to such terms when used in this part, except where they are herein redefined. The following definitions shall also apply:

(a) *Certification number* means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish processor.

(b) *Critical control point* means a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels.

(c) *Critical limit* means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

(d) *Fish* means fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, where such animal life is intended for human consumption.

(e) *Fishery product* means any human food product in which fish is a characterizing ingredient.

(f) *Food safety hazard* means any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

(g) *Importer* means either the U.S. owner or consignee at the time of entry into the United States, or the U.S. agent or representative of the foreign owner or consignee at the time of entry into the United States, who is responsible for ensuring that goods being offered for entry into the United States are in compliance with all laws affecting the importation. For the purposes of this definition, ordinarily the importer is not the custom house broker, the freight forwarder, the carrier, or the steamship representative.

(h) *Molluscan shellfish* means any edible species of fresh or frozen oysters, clams, mussels, or scallops, or edible portions of such species, except when the product consists entirely of the shucked adductor muscle.

(i) *Preventive measure* means physical, chemical, or other factors that can be used to control an identified food safety hazard.

(j) *Process-monitoring instrument* means an instrument or device used to indicate conditions during processing at a critical control point.

(k)(1) *Processing* means, with respect to fish or fishery products: Handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding.

(2) The regulations in this part do not apply to:

(i) Harvesting or transporting fish or fishery products, without otherwise engaging in processing.

(ii) Practices such as heading, eviscerating, or freezing intended solely to prepare a fish for holding on board a harvest vessel.

(iii) The operation of a retail establishment.

(l) *Processor* means any person engaged in commercial, custom, or institutional processing of fish or fishery products, either in the United States or in a foreign country. A processing includes any person engaged in the production of foods that are to be used in market or consumer tests.

(m) *Scombroid toxin-forming species* means tuna, bluefish, mahi mahi, and other species, whether or not in the family Scombridae, in which significant levels of histamine may be produced in the fish flesh by decarboxylation of free histidine as a result of exposure of the fish after capture to temperatures that permit the growth of mesophilic bacteria.

(n) *Shall* is used to state mandatory requirements.

(o) *Shellfish control authority* means a Federal, State, or foreign agency, or sovereign tribal government, legally responsible for the administration of a program that includes activities such as classification of molluscan shellfish growing areas, enforcement of

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molluscan shellfish harvesting controls, and certification of molluscan shellfish processors.

(p) *Shellstock* means raw, in-shell molluscan shellfish.

(q) *Should* is used to state recommended or advisory procedures or to identify recommended equipment.

(r) *Shucked shellfish* means molluscan shellfish that have one or both shells removed.

(s) *Smoked or smoke-flavored fishery products* means the finished food prepared by:

(1) Treating fish with salt (sodium chloride), and

(2) Subjecting it to the direct action of smoke from burning wood, sawdust, or similar material and/or imparting to it the flavor of smoke by a means such as immersing it in a solution of wood smoke.

(t) *Tag* means a record of harvesting information attached to a container of shellstock by the harvester or processor.

§ 123.5 Current good manufacturing practice.

(a) Part 110 of this chapter applies in determining whether the facilities, methods, practices, and controls used to process fish and fishery products are safe, and whether these products have been processed under sanitary conditions.

(b) The purpose of this part is to set forth requirements specific to the processing of fish and fishery products.

§ 123.6 Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan.

(a) *Hazard analysis.* Every processor shall conduct, or have conducted for it, a hazard analysis to determine whether there are food safety hazards that are reasonably likely to occur for each kind of fish and fishery product processed by that processor and to identify the preventive measures that the processor can apply to control those hazards. Such food safety hazards can be introduced both within and outside the processing plant environment, including food safety hazards that can occur before, during, and after harvest. A food safety hazard that is reasonably likely to occur is one for which a prudent processor would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the particular type of fish or fishery product being processed in the absence of those controls.

(b) *The HACCP plan.* Every processor shall have and implement a written HACCP plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, as described in paragraph (a) of this section. A HACCP plan shall be specific to:

(1) Each location where fish and fishery products are processed by that processor; and

(2) Each kind of fish and fishery product processed by the processor. The plan may group kinds of fish and fishery products together, or group kinds of production methods together, if the food safety hazards, critical control points, critical limits, and procedures required to be identified and performed in paragraph (c) of this section are identical for all fish and fishery products so grouped or for all production methods so grouped.

(c) *The contents of the HACCP plan.* The HACCP plan shall, at a minimum:

(1) List the food safety hazards that are reasonably likely to occur, as identified in accordance with paragraph (a) of this section, and that thus must be controlled for each fish and fishery product. Consideration should be given to whether any food safety hazards are reasonably likely to occur as a result of the following:

(i) Natural toxins;

(ii) Microbiological contamination;

(iii) Chemical contamination;

(iv) Pesticides;

(v) Drug residues;

(vi) Decomposition in scombroid toxin-forming species or in any other species where a food safety hazard has been associated with decomposition;

(vii) Parasites, where the processor has knowledge or has reason to know that the parasite-containing fish or fishery product will be consumed without a process sufficient to kill the parasites, or where the processor represents, labels, or intends for the product to be so consumed;

(viii) Unapproved use of direct or indirect food or color additives; and

(ix) Physical hazards;

(2) List the critical control points for each of the identified food safety hazards, including as appropriate:

(i) Critical control points designed to control food safety hazards that could be introduced in the processing plant environment; and

(ii) Critical control points designed to control food safety hazards introduced outside the processing plant environment, including food safety hazards that occur before, during, and after harvest;

(3) List the critical limits that must be met at each of the critical control points;

(4) List the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) Include any corrective action plans that have been developed in accordance with § 123.7(b), to be followed in response to deviations from critical limits at critical control points;

(6) List the verification procedures, and frequency thereof, that the processor will use in accordance with § 123.8(a);

(7) Provide for a recordkeeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

(d) *Signing and dating the HACCP plan.* (1) The HACCP plan shall be signed and dated, either by the most responsible individual onsite at the processing facility or by a higher level official of the processor. This signature shall signify that the HACCP plan has been accepted for implementation by the firm.

(2) The HACCP plan shall be dated and signed:

(i) Upon initial acceptance;

(ii) Upon any modification; and

(iii) Upon verification of the plan in accordance with § 123.8(a)(1).

(e) *Products subject to other regulations.* For fish and fishery products that are subject to the requirements of part 113 or 114 of this chapter, the HACCP plan need not list the food safety hazard associated with the formation of *Clostridium botulinum* toxin in the finished, hermetically sealed container, nor list the controls to prevent that food safety hazard. A HACCP plan for such fish and fishery products shall address any other food safety hazards that are reasonably likely to occur.

(f) *Sanitation.* Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with § 123.11(b) they need not be included in the HACCP plan, and vice versa.

(g) *Legal basis.* Failure of a processor to have and implement a HACCP plan that complies with this section whenever a HACCP plan is necessary, otherwise operate in accordance with the requirements of this part, shall render the fish or fishery products of that processor adulterated under section 402(a)(4) of the act. Whether a processor's actions are consistent with ensuring the safety of food will be determined through an evaluation of the processors overall implementation of its HACCP plan, if one is required.

§ 123.7 Corrective actions.

(a) Whenever a deviation from a critical limit occurs, a processor shall take corrective action either by:

(1) Following a corrective action plan that is appropriate for the particular deviation, or

(2) Following the procedures in paragraph (c) of this section.

(b) Processors may develop written corrective action plans, which become part of their HACCP plans in accordance with § 123.6(c)(5), by which they predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

(1) No product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; and

(2) The cause of the deviation is corrected.

(c) When a deviation from a critical limit occurs and the processor does not have a corrective action plan that is appropriate for that deviation, the processor shall:

(1) Segregate and hold the affected product, at least until the requirements of paragraphs (c)(2) and (c)(3) of this section are met;

(2) Perform or obtain a review to determine the acceptability of the affected product for distribution. The review shall be performed by an individual or individuals who have adequate training or experience to perform such a review. Adequate training may or may not include training in accordance with § 123.10;

(3) Take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

(4) Take corrective action, when necessary, to correct the cause of the deviation;

(5) Perform or obtain timely reassessment by an individual or individuals who have been trained in accordance with § 123.10, to determine whether the HACCP plan needs to be modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as necessary.

(d) All corrective actions taken in accordance with this section shall be fully documented in records that are subject to verification in accordance with § 123.8(a)(3)(ii) and the recordkeeping requirements of § 123.9.

§ 123.8 Verification.

(a) *Overall verification.* Every processor shall verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include, at a minimum:

(1) *Reassessment of the HACCP plan.* A reassessment of the adequacy of the HACCP plan whenever any changes occur that could affect the hazard analysis or alter the HACCP plan in any way or at least annually. Such changes may include changes in the following: Raw materials or source of raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product. The reassessment shall be performed by an individual or individuals who have been trained in accordance with § 123.10. The HACCP plan shall be modified immediately whenever a reassessment reveals that the plan is no longer adequate to fully meet the requirements of § 123.6(c).

(2) *Ongoing verification activities.* Ongoing verification activities including:

(i) A review of any consumer complaints that have been received by the processor to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points;

(ii) The calibration of process-monitoring instruments; and,

(iii) At the option of the processor, the performing of periodic end-product or in-process testing.

(3) *Records review.* A review, including signing and dating, by an individual who has been trained in accordance with § 123.10, of the records that document:

(i) The monitoring of critical control points. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that they document values that are within the critical limits. This review shall occur within 1 week of the day that the records are made;

(ii) The taking of corrective actions. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with § 123.7. This review shall occur within 1 week of the day that the records are made; and

(iii) The calibrating of any process control instruments used at critical control points and the performing of any periodic end-product or in-process testing that is part of the processor's verification activities. The purpose of these reviews shall be, at a minimum, to ensure that the records are complete, and that these activities occurred in accordance with the processor's written procedures. These reviews shall occur within a reasonable time after the records are made.

(b) *Corrective actions.* Processors shall immediately follow the procedures in § 123.7 whenever any verification procedure, including the review of a consumer complaint, reveals the need to take a corrective action.

(c) *Reassessment of the hazard analysis.* Whenever a processor does not have a HACCP plan because a hazard analysis has revealed no food safety hazards that are reasonably likely to occur, the processor shall reassess the adequacy of that hazard analysis whenever there are any changes that could reasonably affect whether a food safety hazard now exists. Such changes may include, but are not limited to changes in: Raw materials or source of raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product. The reassessment shall be performed by an individual or individuals who have been trained in accordance with § 123.10.

(d) *Recordkeeping.* The calibration of process-monitoring instruments, and the performing of any periodic end-product and in-process testing, in accordance with paragraphs (a)(2)(ii) through (iii) of this section shall be documented in records that are subject to the recordkeeping requirements of § 123.9.

§ 123.9 Records.

(a) *General requirements.* All records required by this part shall include:

(1) The name and location of the processor or importer;

(2) The date and time of the activity that the record reflects;

(3) The signature or initials of the person performing the operation; and

(4) Where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on records at the time that it is observed.

(b) *Record retention.* (1) All records required by this part shall be retained at the processing facility or importer's place of business in the United States for at least 1 year after the date they were prepared in the case of refrigerated products and for at least 2 years after the date they were prepared in the case of frozen, preserved, or shelf-stable products.

(2) Records that relate to the general adequacy of equipment or processes being used by a processor, including the

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results of scientific studies and evaluations, shall be retained at the processing facility or the importer's place of business in the United States for at least 2 years after their applicability to the product being produced at the facility.

(3) If the processing facility is closed for a prolonged period between seasonal packs, or if record storage capacity is limited on a processing vessel or at a remote processing site, the records may be transferred to some other reasonably accessible location at the end of the seasonal pack but shall be immediately returned for official review upon demand.

(c) *Official review.* All records required by this part and all plans and procedures required by this part shall be available for official review and copying at reasonable times.

(d) *Public disclosure.* (1) Subject to the limitations in paragraph (d)(2) of this section, all plans and records required by this part are not available for public disclosure unless they have been previously disclosed to the public as defined in § 20.61 of this chapter or they relate to a product or ingredient that has been abandoned and they no longer represent a trade secret or confidential commercial or financial information as defined in § 20.61 of this chapter.

(2) However, these records and plans may be subject to disclosure to the extent that they are otherwise publicly available, or that disclosure could not reasonably be expected to cause a competitive hardship, such as generic-type HACCP plans that reflect standard industry practices.

(e) *Tags.* Tags as defined in § 123.3(t) are not subject to the requirements of this section unless they are used to fulfill the requirements of § 123.28(c).

(f) *Records maintained on computers.* The maintenance of records on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and signatures.

§ 123.10 Training.

At a minimum, the following functions shall be performed by an individual who has successfully completed training in the application of HACCP principles to fish and fishery product processing at least equivalent to that received under standardized curriculum recognized as adequate by the U.S. Food and Drug Administration or who is otherwise qualified through job experience to perform these functions. Job experience will qualify an individual to perform these functions if it has provided knowledge at least equivalent to that provided through the standardized curriculum.

(a) Developing a HACCP plan, which could include adapting a model or generic-type HACCP plan, that is appropriate for a specific processor, in order to meet the requirements of § 123.6(b);

(b) Reassessing and modifying the HACCP plan in accordance with the corrective action procedures specified in § 123.7(c)(5), the HACCP plan in accordance with the verification activities specified in § 123.8(a)(1), and the hazard analysis in accordance with the verification activities specified in § 123.8(c); and

(c) Performing the record review required by § 123.8(a)(3); The trained individual need not be an employee of the processor.

§ 123.11 Sanitation control procedures.

(a) Sanitation SOP. Each processor should have and implement a written sanitation standard operating procedure (herein referred to as SSOP) or similar document that is specific to each location where fish and fishery products are produced. The SSOP should specify how the processor will meet those sanitation conditions and practices that are to be monitored in accordance with paragraph (b) of this section.

(b) *Sanitation monitoring.* Each processor shall monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in part 110 of this chapter that are both appropriate to the plant and the food being processed and relate to the following:

(1) Safety of the water that comes into contact with food or food contact surfaces, or is used in the manufacture of ice;

(2) Condition and cleanliness of food contact surfaces, including utensils, gloves, and outer garments;

(3) Prevention of cross-contamination from insanitary objects to food, food packaging material, and other food contact surfaces, including utensils, gloves, and outer garments, and from raw product to cooked product;

(4) Maintenance of hand washing, hand sanitizing, and toilet facilities;

(5) Protection of food, food packaging material, and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants;

(6) Proper labeling, storage, and use of toxic compounds;

(7) Control of employee health conditions that could result in the microbiological contamination of food, food packaging materials, and food contact surfaces; and

(8) Exclusion of pests from the food plant.

The processor shall correct in a timely manner, those conditions and practices that are not met.

(c) *Sanitation control records.* Each processor shall maintain sanitation control records that, at a minimum, document the monitoring and corrections prescribed by paragraph (b) of this section. These records are subject to the requirements of § 123.9.

(d) *Relationship to HACCP plan.* Sanitation controls may be included in the HACCP plan, required by § 123.6(b). However, to the extent that they are monitored in accordance with paragraph (b) of this section they need not be included in the HACCP plan, and vice versa.

§ 123.12 Special requirements for imported products.

This section sets forth specific requirements for imported fish and fishery products.

(a) *Importer verification.* Every importer of fish or fishery products shall either:

(1) Obtain the fish or fishery product from a country that has an active memorandum of understanding (MOU) or similar agreement with the Food and Drug Administration, that covers the fish or fishery product and documents the equivalency or compliance of the inspection system of the foreign country with the U.S. system, accurately reflects the current situation between the signing parties, and is functioning and enforceable in its entirety; or

(2) Have and implement written verification procedures for ensuring that the fish and fishery products that they offer for import into the United States were processed in accordance with the requirements of this part. The procedures shall list at a minimum:

(i) Product specifications that are designed to ensure that the product is not adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act because it may be injurious to health or have been processed under insanitary conditions, and,

(ii) Affirmative steps that may include any of the following:

(A) Obtaining from the foreign processor the HACCP and sanitation monitoring records required by this part that relate to the specific lot of fish or fishery products being offered for import;

(B) Obtaining either a continuing or lot-by-lot certificate from an appropriate foreign government inspection authority or competent third party certifying that the imported fish or fishery product is or was processed in accordance with the requirements of this part;

(C) Regularly inspecting the foreign processor's facilities to ensure that the imported fish or fishery product is being processed in accordance with the requirements of this part;

(D) Maintaining on file a copy, in English, of the foreign processor's HACCP plan, and a written guarantee from the foreign processor that the imported fish or fishery product is processed in accordance with the requirements of the part;

(E) Periodically testing the imported fish or fishery product, and maintaining on file a copy, in English, of a written guarantee from the foreign processor that the imported fish or fishery product is processed in accordance with the requirements of this part or,

(F) Other such verification measures as appropriate that provide an equivalent level of assurance of compliance with the requirements of this part.

(b) *Competent third party.* An importer may hire a competent third party to assist with or perform any or all of the verification activities specified in paragraph (a)(2) of this section, including writing the importer's verification procedures on the importer's behalf.

(c) *Records.* The importer shall maintain records, in English, that document the performance and results of the affirmative steps specified in paragraph (a)(2)(ii) of this section. These records shall be subject to the applicable provisions of § 123.9.

(d) *Determination of compliance.* There must be evidence that all fish and fishery products offered for entry into the United States have been processed under conditions that comply with this part. If assurances do not exist that the imported fish or fishery product has been processed under conditions that are equivalent to those required of domestic processors under this part, the product will appear to be adulterated and will be denied entry.

Subpart B—Smoked and Smoke-flavored Fishery Products

§ 123.15 General.

This subpart augments subpart A of this part by setting forth specific requirements for processing smoked and smoke-flavored fishery products.

§ 123.16 Process controls.

In order to meet the requirements of subpart A of this part, processors of smoked and smoke-flavored fishery products, except those subject to the requirements of part 113 or 114 of this chapter, shall include in their HACCP plans how they are controlling the food safety hazard associated with the formation of toxin by *Clostridium botulinum* for at least as long as the shelf life of the product under normal and moderate abuse conditions.

Subpart C—Raw Molluscan Shellfish

§ 123.20 General.

This subpart augments subpart A of this part by setting forth specific requirements for processing fresh or frozen molluscan shellfish, where such processing does not include a treatment that ensures the destruction of vegetative cells of microorganisms of public health concern.

§ 123.28 Source controls.

(a) In order to meet the requirements of subpart A of this part as they apply to microbiological contamination, chemical contamination, natural toxins, and related food safety hazards, processors shall include in their HACCP plans how they are controlling the origin of the molluscan shellfish they process to ensure that the conditions of paragraphs (b), (c), and (d) of this section are met.

(b) Processors shall only process molluscan shellfish harvested from growing waters approved for harvesting by a shellfish control authority. In the case of molluscan shellfish harvested from U.S. Federal waters, the requirements of this paragraph will be met so long as the shellfish have not been harvested from waters that have been closed to harvesting by an agency of the Federal government.

(c) To meet the requirements of paragraph (b) of this section, processors who receive shellstock shall accept only shellstock from a harvester that is in compliance with such licensure requirements as may apply to the harvesting of molluscan shellfish or from a processor that is certified by a shellfish control authority, and that has a tag affixed to each container of shellstock. The tag shall bear, at a minimum, the information required in § 1240.60(b) of this chapter. In place of the tag, bulk shellstock shipments may be accompanied by a bill of lading or similar shipping document that contains the information required in § 1240.60(b) of this chapter. Processors shall maintain records that document that all shellstock have met the requirements of this section. These records shall document:

(1) The date of harvest;

(2) The location of harvest by State and site;

(3) The quantity and type of shellfish;

(4) The date of receipt by the processor; and

(5) The name of the harvester, the name or registration number of the harvester's vessel, or an identification number issued to the harvester by the shellfish control authority.

(d) To meet the requirements of paragraph (b) of this section, processors who receive shucked molluscan shellfish shall accept only containers of shucked molluscan shellfish that bear a label that complies with § 1240.60(c) of this chapter. Processors shall maintain records that document that all shucked molluscan shellfish have met the requirements of this section. These records shall document:

(1) The date of receipt;

(2) The quantity and type of shellfish; and

(3) The name and certification number of the packer or repacker of the product.

PART 1240—CONTROL OF COMMUNICABLE DISEASES

2. The authority citation for 21 CFR part 1240 continues to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

3. Section 1240.3 is amended by revising paragraph (r), and by adding new paragraphs (s), (t), and (u) to read as follows:

§ 1240.3 General definitions.

* * * * *

(r) *Molluscan shellfish.* Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the product consists entirely of the shucked adductor muscle.

(s) *Certification number* means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish processor.

(t) *Shellfish control authority* means a Federal, State, or foreign agency, or sovereign tribal government, legally responsible for the administration of a program that includes activities such as classification of molluscan shellfish growing areas, enforcement of molluscan shellfish harvesting controls, and certification of molluscan shellfish processors.

(u) *Tag* means a record of harvesting information attached to a container of shellstock by the harvester or processor.

4. Section 1240.60 is amended by revising the section heading, by

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redesignating the existing text as paragraph (a) and adding the word "molluscan" before the word "shellfish" the two times that it appears, and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 1240.60 Molluscan shellfish.

* * * * *

(b) All shellstock shall bear a tag that discloses the date and place they were harvested (by State and site), type and quantity of shellfish, and by whom they were harvested (i.e., the identification number assigned to the harvester by the shellfish control authority, where applicable or, if such identification numbers are not assigned, the name of the harvester or the name or registration number of the harvester's vessel). In place of the tag, bulk shellstock shipments may be accompanied by a bill of lading or similar shipping document that contains the same information.

(c) All containers of shucked molluscan shellfish shall bear a label that identifies the name, address, and certification number of the packer or repacker of the molluscan shellfish.

(d) Any molluscan shellfish without such a tag, shipping document, or label, or with a tag, shipping document, or label that does not bear all the information required by paragraphs (b) and (c) of this section, shall be subject to seizure or refusal of entry, and destruction.

Dated: October 3, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc 95–30332 Filed 12–11–95; 10:40 am]

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Monday
December 18, 1995

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 540

Correspondence Between Confined Inmates; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1042–F]

RIN 1120–AA38

Correspondence: Correspondence Between Confined Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on correspondence to provide unit managers with the authority to approve correspondence in certain circumstances between inmates in different federal institutions. These amendments are intended to provide for the continued efficient and secure operation of the institution.

EFFECTIVE DATE: December 18, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540, subpart B). A final rule on this subject was published in the **Federal Register** October 1, 1985 (50 FR 40109) and was amended on February 1, 1991 (56 FR 4159).

Current provisions in § 540.17 specify that in instances where correspondence is permissible between inmates confined in separate institutions, the Wardens of both institutions must approve of the correspondence. In order to make better use of staff resources, the Bureau is revising the introductory text and paragraph (b) of this section to designate the unit managers in both institutions as the approving officials in instances where both inmates are housed in federal institutions and both inmates are either members of the same immediate family or are parties or witnesses in a legal action in which both inmates are involved. As revised, paragraph (b) designates the Wardens of both institutions as the approving officials where one of the inmates is housed in a non-federal institution or if approval is being granted on the basis of exceptional circumstances. As a conforming change, reference in the introductory text to the Warden as the approving official in exceptional circumstances has been removed.

Because the circumstances permitting the approval by the unit manager of correspondence between inmates are ordinarily fact specific (i.e, the other inmate is either a member of the immediate family, or is a party or witness in a legal action in which both inmates are involved), no adverse impact on inmates is anticipated. Approval based upon other exceptional circumstances remains with the Warden.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

The Bureau is publishing this regulation as an interim rule in order to implement streamlining measures through more efficient use of staff while still soliciting public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.17, the introductory text and paragraph (b) are revised to read as follows:

§ 540.17 Correspondence between confined inmates.

An inmate may be permitted to correspond with an inmate confined in any other penal or correctional institution if the other inmate is either a member of the immediate family, or is a party or witness in a legal action in which both inmates are involved. Such correspondence may be approved in other exceptional circumstances, with particular regard to the security level of the institution, the nature of the relationship between the two inmates, and whether the inmate has other regular correspondence. The following additional limitations apply:

* * * * *

(b)(1) The appropriate unit manager at each institution must approve of the correspondence if both inmates are housed in Federal institutions and both inmates are members of the same immediate family or are a party or witness in a legal action in which both inmates are involved.

(2) The Wardens of both institutions must approve of the correspondence if one of the inmates is housed at a non-Federal institution or if approval is being granted on the basis of exceptional circumstances.

[FR Doc. 95–30641 Filed 12–15–95; 8:45 am]

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Part IV

Environmental Protection Agency

Workshop on Trace Metals Analysis; Notice

40 CFR Parts 136 and 141

Method Flexibility and Streamlining Approval of Analytical Methods; Public Meeting; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5346–4]

Workshop on Trace Metals Analysis

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Office of Water is sponsoring two workshops to aid attendees in resolving the problems associated with the sampling and analysis of trace metals, including the difficulty in precluding contamination. These workshops will be held in conjunction with the Public Meetings on Method Flexibility and Streamlining Approval of Analytical Methods at 40 CFR Part 136 announced concurrently in the **Federal Register**.

DATES: EPA will conduct the Trace Metals Workshops on Wednesday, January 24, 1996, in Boston, Massachusetts and on Tuesday, February 13, 1996, in Chicago, Illinois. Registration for each workshop will begin at 10:00 AM. Each workshop will be held from 12:00 PM to 5:00 PM.

ADDRESSES: The workshop on January 24, 1996, will be held in the O'Neill Auditorium, Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts. The workshop on February 13, 1996, will be held in the Morrison Room, Metcalfe Building, 77 West Jackson, Chicago, Illinois

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Marion Thompson by phone at (202)260–7117 or by facsimile at (202)260–7185.

SUPPLEMENTARY INFORMATION: Meeting arrangements are being coordinated by DynCorp, Inc. For information on registration, contact Cindy Simbanin, 300 N. Lee Street, Suite 500, Alexandria, VA 22314. Phone: (703)519–1386. Facsimile number: (703)684–0610. Space is limited and reservations are being taken on a first come, first served basis. No fees will be charged to attend.

Hotel reservations for Massachusetts may be made by contacting the Holiday Inn-Government Center in Boston at (617)742–7630. Guest rates are $101 single and $121 double occupancy, including tax. Reservations must be made by January 5, 1996, and you must specify that you are affiliated with USEPA/TM to qualify for the quoted rate.

For the Chicago meeting, hotel reservations may be made by contacting Marriott Reservations at (800)228–9290. Guest rates are $91 single and double occupancy. These rates are subject to applicable state and local taxes. Reservations must be made by January 20, 1996, and you must reference the event as the EPA TM Meeting and request the Chicago Marriott-Downtown in order to qualify for the group rate.

Accommodations are limited at each location, so please make your reservations early. The hotels are within walking distance of the meeting facilities.

Background

The USEPA Office of Water's interest in trace metals determinations has been driven by the development of ambient water quality criteria (WQC) in response to Congressional mandates in the 1987 Water Quality Act. Ambient water quality criteria require determinations of metals at levels significantly lower than those required by technology-based effluent limits or achievable by routine environmental laboratory analyses.

Agenda Topics

The Office of Water's purpose in sponsoring these workshops is to assist State and Regional authorities, regulated community, and commercial laboratories in understanding the requirements and techniques necessary to determine trace metals at EPA's ambient WQC levels. These workshops will focus on sampling and analysis techniques, data review, and quality assurance measures necessary to support reliable trace metals measurements for data gathering and compliance monitoring purposes.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–30570 Filed 12–15–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 141

[FRL–5346–3]

A Public Meeting on Method Flexibility and Streamlining Approval of Analytical Methods

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting two public meetings on approaches to method flexibility and streamlining the proposal and promulgation of analytical methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act and 40 CFR Part 141 of the Safe Drinking Water Act. These 304(h) streamlining public meetings will be held in conjunction with the Trace Metals Workshops announced concurrently in the **Federal Register**.

These two public meetings follow the first public meeting on this topic held on September 28, 1995, in Seattle, Washington. The Seattle meeting was announced in an FR notice titled, "A Public Meeting and Availability of Documents on Streamlining Approval of Analytical Methods at 40 CFR Part 136 and flexibility in Existing Test Methods" [FRL–5294–6]. This FR notice provided extensive supplementary information regarding the 304(h) streamlining effort and made available several supporting documents. The supporting documents and a summary of the Seattle meeting can be obtained through the address given in this notice.

DATES: EPA will conduct the public meetings on 304(h) streamlining on Thursday, January 25, 1996, in Boston, Massachusetts and on Wednesday, February 14, 1996, in Chicago, Illinois. Registration for each meeting will begin at 8:00 AM. Each meeting will be held from 9:00 AM to 5:00 PM.

ADDRESSES: The meeting on January 25, 1996, will be held in the O'Neill Auditorium, Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts. The meeting on February 14, 1996, will be held in the Morrison Room, Metcalfe Building, 77 West Jackson, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Marion Thompson by phone at (202) 260–7117 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: Meeting arrangements are being coordinated by DynCorp, Inc. For information on registration, contact Cindy Simbanin, 300 N. Lee Street, Suite 500, Alexandria, VA 22314. Phone: (703) 519–1386. Facsimile number: (703) 684–0610. Space is limited and reservations are being taken on a first come, first served basis. No fees will be charged to attend.

Hotel reservations for Massachusetts may be made by contacting the Holiday Inn-Government Center in Boston at (617) 742–7630. Guest rates are $101 single and $121 double occupancy, including tax. Reservations must be made by January 5, 1996. When making reservations, you must specify that you are affiliated with USEPA/TM to qualify for the quoted rate.

For the Chicago meeting, hotel reservations may be made by contacting Marriott Reservations at (800) 228–9290. Guest rates are $91 single and double occupancy. These rates are subject to applicable state and local taxes. Reservations must be made by January 20, 1996, and you must reference the event as the EPA TM Meeting and request the Chicago Marriott-Downtown in order to qualify for the group rate.

Accommodations are limited at each location, so please make your reservations early. The hotels are located within walking distance of the meeting facilities.

Background

Under Section 304(h) of the Clean Water Act, EPA is responsible for promulgating analytical methods at 40 CFR Part 136 for use in monitoring pollutant discharges. EPA uses these methods to support development of effluent guidelines promulgated at 40 CFR Parts 400–499, and both EPA and the regulated community use the methods for establishing compliance with National Pollutant Discharge Elimination System (NPDES) permits and other monitoring purposes. The methods approved for use at 40 CFR Part 136 have been developed by EPA, by industrial associations such as the American Society for Testing Materials, and by other governmental agencies such as the U.S. Geological Survey. In the past, the methods proposal and promulgation process has been cumbersome, and has not provided the flexibility to take advantage of new analytical technologies in a timely manner. In response to the Administration's Environmental Technology Initiative, EPA is proposing a comprehensive Section 304(h) streamlining initiative to increase method flexibility to allow use of emerging technologies and to expedite the method approval process, to encourage development of new methods and technologies by organizations outside of EPA.

Agenda Topics

The purpose of the public meetings on 304(h) streamlining is to outline plans for method flexibility and for streamlining proposal and promulgation of new methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act, and to elicit stakeholder views regarding these plans. The following topics will be addressed at the public meetings:

• Increasing method flexibility to allow use of new technologies and to identify modifications that are acceptable within the scope of existing methods and do not require proposal of an alternate method—

—Interpretation of flexibility in existing 40 CFR part 136 methods

—Advantages and disadvantages of method flexibility (no flexibility, limited flexibility, and unlimited flexibility)

—Proposal to allow nearly unlimited "front-end" method modifications as long as the determinative technique is not changed and method performance is demonstrated to be equivalent

• Establishing standardized quality control (QC) and QC acceptance criteria to support determination of method equivalency

• Streamlining the method proposal process to take advantage of emerging analytical technologies in a timely manner—

—Standardized format for preparing new methods

—Three-tiered method validation process based on method use

—OST coordination of method submission and approval

• Harmonization of 40 CFR Part 136 methods with other EPA methods to allow standardization of methods across EPA programs

• Other streamlining issues—

—Standardized data elements for reporting, to allow access to Agency databases in a standardized data format

—Withdrawal of 40 CFR Part 136 methods that contain outdated technologies

—Incorporating new methods into the **Federal Register** by reference and making them available through other suitable venues, to reduce publication expense

The Office of Ground Water and Drinking Water, which is within EPA's Office of Water, is also developing approaches to increasing method flexibility and streamlining the approval of analytical methods at 40 CFR Part 141

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under sections 1401 and 1445 of the Safe Drinking Water Act (SDWA). To better coordinate these efforts within the Office of Water, EPA will discuss flexibility and streamlining approaches for 304(h) and drinking water methods at these two public meetings. EPA believes the public will benefit from a joint meeting, because the flexibility and method approval issues, the regulated contaminants and the methods currently approved at Parts 136 and 141 are very similar. EPA notes, however, that the supporting documents that are available with this notice were developed only for 304(h) methods and within the requirements of the CWA. The approaches and specifically allowing unlimited "front-end" modifications might not be appropriate for methods approved under the SDWA. In contrast to the 304(h) documentation, less front end flexibility in sample collection and work-up procedures and more flexibility in the determinative measurement steps may be appropriate for SDWA compliance methods. Despite these potential differences in method flexibility approaches between 304(h) and SDWA methods, EPA believes there is a significant benefit in conducting public meetings on the perspectives of both programs.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–30555 Filed 12–15–95; 8:45 am]

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Monday
December 18, 1995

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 106

Direct Final Rule Procedure; Petitions for Rulemaking; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 106

[Docket No. RSP–1, Notice No. 95–15]

RIN 2137–AC75

Direct Final Rule Procedure; Petitions for Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: To further the goals of Executive Order 12866 on Regulatory Planning and Review, and in response to the recommendations of the National Performance Review and the Administrative Conference of the United States, RSPA is proposing to implement a new and more efficient procedure for adopting noncontroversial rules. This "direct final rule" procedure involves issuing a final rule that provides notice and an opportunity to comment, with a statement that if RSPA does not receive a significant adverse comment or notice of an intent to file a significant adverse comment, the rule will become effective on a specified date without further publication of the text of the rule. RSPA would publish a subsequent document in the Federal Register to confirm that no significant adverse comment was received, and reiterate the effective date. If a significant adverse comment or notice of an intent to file a significant adverse comment were received, RSPA would publish a document in the Federal Register before the effective date of the direct final rule withdrawing the rule or a part of the rule.

RSPA also proposes to amend its rulemaking procedures to: Specify in more detail the required contents of a petition for rulemaking; and provide that petitions for rulemaking and petitions for reconsideration will be reviewed and acted upon by the Associate Administrator and that decisions of the Associate Administrator may be appealed to the Administrator.

DATES: Comments must be submitted no later than February 16, 1995.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590–0001. Office hours are 8:30 am to 5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001; Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION: In Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of limited government resources for carrying out its regulatory functions. Furthermore, "Improving Regulatory Systems," an Accompanying Report of the National Performance Review, recognized the need to streamline the regulatory process and recommended the use of "direct final" rulemaking procedures to reduce needless double review of noncontroversial rules.

The former Administrative Conference of the United States (ACUS) adopted Recommendation 95–4, "Procedures for Noncontroversial and Expedited Rulemaking," which endorses direct final rulemaking as a procedure that can expedite rules in appropriate cases. (*See* 60 FR 43108; August 18, 1995.) ACUS studied the efficiency, adequacy and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and made recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. ACUS found direct final rulemaking appropriate where a rule is expected to generate no significant adverse comment. ACUS defined a significant adverse comment as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Under the direct final rulemaking procedure, an agency would issue a final rule with a statement that, if the agency received no significant adverse comments, the rule becomes effective automatically at a specified time after publication of the direct final rule without going through another round of intra- and inter-agency review. If a significant adverse comment were received, the agency would withdraw the rule before the effective date and issue a notice of proposed rulemaking. As noted in the report, "this approach avoids the second round of clearances and review, which otherwise delays rules, wastes time, and should be superfluous * * * Theoretically, the second review ought to be very quick, but clearing any document through numerous government offices takes time. The paper shuffling also wastes reviewers' time by requiring them to look at something twice when once would have sufficed." ("Improving Regulatory Systems," p. 42.)

In responding to both the letter and the spirit of the Executive Order and the NPR Recommendations, the Secretary of Transportation has directed administrations within the Department of Transportation to focus on improvements that can be made in the way in which they propose and adopt regulations.

RSPA is proposing to adopt a new § 106.39 that provides for the use of direct final rule procedures for noncontroversial rules, such as minor, substantive changes to regulations; incorporation by reference of the latest edition of technical or industry standards; extensions of compliance dates; and other noncontroversial rules. RSPA intends to continue issuing certain final rules with no opportunity for comment; these include editorial changes and designation of hazardous substances as hazardous materials, as required by the Comprehensive Environmental Response, Compensation, and Liability Act. RSPA solicits comment on the advisability of using direct final rules for these categories of rules, as well as suggestions for other types of rules that could be issued as direct final rules.

When RSPA believes that a rulemaking in these categories is unlikely to result in significant adverse comment, it would use the direct final rule procedure. The direct final rule would advise the public that no significant adverse comments are anticipated and unless significant adverse comment or intent to submit a significant adverse comment is received, in writing, within a certain period of time (generally 60 days), the rule will become effective on a specified date (generally 90 days after publication). If no significant adverse comments are received, RSPA would issue a subsequent document advising the public that no significant adverse comments were received, and that the rule will become, or did become, effective on the date previously specified in the direct final rule. Direct final rules would not be subject to petitions for reconsideration under 49 CFR 106.35.

If RSPA received a significant adverse comment or notice of intent to file a significant adverse comment, RSPA would publish a document in the Federal Register withdrawing the direct final rule, in whole or in part. If RSPA believed it could incorporate the adverse comment in a subsequent direct final rulemaking, without generating further significant adverse comment, it could do so. If RSPA believed that the significant adverse comment raised an issue serious enough to warrant a substantive response in a notice-and-comment process, it could publish a notice of proposed rulemaking, following the procedures provided in 49 CFR 106.11–106.29. Publishing the rule as a proposal gives an opportunity to comment to persons who may not have commented earlier because they wanted the rule to go into effect immediately. If a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (for example where a rule deletes several unrelated regulations), RSPA would adopt as final those parts of the rule that were not the subject of a significant adverse comment.

RSPA is proposing to adopt ACUS's definition of "significant adverse comment." (The U.S. Coast Guard adopted this definition in its recently issued final rule on direct final rulemaking, 60 FR 49222; Sept. 22, 1995.) Specifically, a significant adverse comment would be one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

RSPA would amend § 106.3 to clarify that RSPA's Chief Counsel has the delegated authority to conduct rulemaking proceedings. This authority has been delegated to the Chief Counsel in RSPA Order 1100.2A (May 19, 1992.) Specifically, the Chief Counsel has been delegated authority to "develop and issue rulemaking documents, other than final rules, for procedural rules, such as enforcement, preemption, general definitions, etc."

RSPA also proposes to amend § 106.17 to clarify the procedures for participation by interested parties in the rulemaking process.

RSPA also is proposing to amend § 106.31 to specify in more detail the required contents of a petition for rulemaking. In this way, RSPA hopes to provide clear guidance to those who would like to participate in the rulemaking process by availing themselves of this mechanism. Establishing clear procedures will reduce the number of incomplete petitions filed with RSPA; furthermore, well-prepared, detailed petitions will ease RSPA's job and enable it to process petitions in a timely and efficient manner. In particular, proposed § 106.31(c) would state that, if the proposed action has a potential impact on the regulated industry or other entities, the Associate Administrator may request the petitioner to submit information and data concerning that impact to assist in rulemaking analyses required under Executive Orders 12866 and 12612, the Regulatory Flexibility Act, the Paperwork Reduction Act and the National Environmental Policy Act. This proposal is consistent with ACUS Recommendation 86–6, Petitions for Rulemaking, which suggests how agencies may improve the handling of petitions for the issuance of rules. *See* 51 FR 46985; Dec. 30, 1986.

RSPA also proposes to amend 49 CFR 106.31, 106.33, 106.35 and 106.37 to provide that petitions for rulemaking and petitions for reconsideration be filed with the appropriate Associate Administrator, who will review and issue determinations granting or denying the petitions in whole or part. RSPA also proposes to add a new § 106.38 to provide that any interested party may appeal a decision of the Associate Administrator, issued under § 106.33 or § 106.37, to the Administrator.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Because of the minimal economic impact of this proposed rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"), and RSPA has determined that preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

There are no information collection requirements in this proposed rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

In consideration of the foregoing, 49 CFR Part 106 is proposed to be amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for part 106 would continue to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 40113, 60101–60125; 49 CFR 1.53.

§§ 106.31, 106.33, 106.35, 106.37 [Amended]

2. Sections 106.31(a), 106.33, 106.35(b), (c), and (d) and 106.37 would be amended by adding the word "Associate" immediately before the word "Administrator" wherever it appears.

3. In § 106.3, a new paragraph (d) would be added to read as follows:

§ 106.3 Delegations.

* * * * *

(d) Chief Counsel.

4. In § 106.17, paragraph (a) would be revised to read as follows:

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§ 106.17 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceedings by submitting comments in writing containing information, views or arguments in accordance with instructions for participation in the rulemaking document.

* * * * *

5. In § 106.31, paragraph (b) would be revised and new paragraphs (c) and (d) would be added to read as follows:

§ 106.31 Petitions for rulemaking.

* * * * *

(b) Each petition filed under this section must—

(1) Summarize the proposed action and explain its purpose;

(2) State the text of the proposed rule or amendment, or specify the rule proposed to be repealed;

(3) Explain the petitioner's interest in the proposed action and the interest of any party the petitioner represents; and

(4) Provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner, and any specific known cases that illustrate the need for the proposed action.

(c) If the potential impact of the proposed action is substantial, and information and data related to that impact are available to the petitioner, the Associate Administrator may request the petitioner to provide—

(1) The costs and benefits to society and identifiable groups within society, quantifiable and otherwise;

(2) The direct effects (including preemption effects) of the proposed action on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government;

(3) The regulatory burden on small businesses, small organizations and small governmental jurisdictions;

(4) The recordkeeping and reporting requirements and to whom they would apply; and

(5) Impacts on the quality of the natural and social environments.

(d) The Associate Administrator may return a petition that does not comply with the requirements of this section, accompanied by a written statement indicating the deficiencies in the petition.

6. Section 106.35 would be amended by revising the first sentence of paragraph (a) to read as follows:

§ 106.35 Petitions for reconsideration.

(a) Except as provided in § 106.39(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this part. * * *

* * * * *

7. Part 106 would be amended by adding a new § 106.38 to read as follows:

§ 106.38 Appeals.

(a) Any interested person may appeal a decision of the Associate Administrator, issued under § 106.33 or § 106.37, to the Administrator.

(b) An appeal must be received within 20 days of service of written notice to petitioner of the Associate Administrator's decision, or within 20 days from the date of publication of the Associate Administrator's decision in the **Federal Register**.

(c) It is requested, but not required, that three copies of the appeal be submitted to the Administrator.

(d) Unless the Administrator otherwise provides, the filing of an appeal under this section does not stay the effectiveness of any rule.

8. Part 106 would be amended by adding a new § 106.39 to read as follows:

§ 106.39 Direct final rulemaking.

(a) Where practicable, RSPA will use direct final rulemaking to issue the following types of rules:

(1) Minor, substantive changes to regulations;

(2) Incorporation by reference of the latest edition of technical or industry standards;

(3) Extensions of compliance dates; and

(4) Other noncontroversial rules where RSPA determines that use of direct final rulemaking is in the public interest and that a regulation is unlikely to result in adverse comment.

(b) The direct final rule document that is published in the **Federal Register** will state that unless RSPA receives a significant adverse comment, or notice of intent to file a significant adverse comment, within a specified time, generally 60 days after publication, the rule will become effective on a specified date, generally 90 days after publication.

(c) For purposes of this section, a significant adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

(d) If no significant adverse comment or notice of intent to file a significant adverse comment is received, RSPA will issue a subsequent document advising the public of that fact and that the rule will become, or did become, effective on the date previously specified. Direct final rules issued under this section are not subject to petitions for reconsideration under § 106.35.

(e) If RSPA receives a significant adverse comment or notice of intent to file a significant adverse document, RSPA will publish a document in the **Federal Register** withdrawing the direct final rule in whole or in part, and may incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking. A notice of proposed rulemaking will provide an opportunity for public comment, generally a minimum of 60 days, and will be processed in accordance with §§ 106.11–106.29.

Issued in Washington, D.C. under the authority delegated in 49 CFR part 1.53 and RSPA Order 1100.2A (May 19, 1992).

Dated: December 12, 1995.

Judith S. Kaleta,

Chief Counsel.

[FR Doc. 95–30869 Filed 12–15–95; 8:45 am]

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Monday
December 18, 1995

Part VI

Department of the Treasury

Office of the Under Secretary for Domestic Finance

17 CFR Parts 400 and 420

Government Securities Act Regulations: Large Position Rules; Proposed Rule

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DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 400 and 420

RIN: 1505–AA83

Government Securities Act Regulations; Large Position Rules

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") is publishing for comment proposed rules that would establish a new Part 420 providing recordkeeping and reporting requirements pertaining to large positions in certain Treasury securities. The proposed regulations are being issued pursuant to the Government Securities Act Amendments of 1993, which authorized the Secretary of the Treasury to prescribe rules requiring persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and file reports of such large positions.

The proposed recordkeeping rules require any person or entity that controls a position equal to or greater than $2 billion in a Treasury security to maintain and preserve certain records that enable the entity to record, compile, aggregate and report large position information. The proposed reporting rules require entities to file a large position report with the Federal Reserve Bank of New York if their reportable position equals or exceeds the large position threshold in a particular Treasury security as specified by the Treasury in a notice requesting large position information. The Department's proposed large position rules are intended to provide the Treasury and other securities regulators with information on concentrations of control that would enable them to better understand the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities.

DATES: Comments must be received on or before February 16, 1996.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street, N.W., Room 515, Washington, D.C. 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Ken Papaj, Director, or Don Hammond, Assistant Director, Government Securities Regulations Staff, at 202–219–3632. (TDD for the hearing impaired is 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Authority

In response to certain events that occurred in the government securities market in 1990–1991—short squeezes in the two-year Treasury notes issued in April and May 1991 and bidding improprieties in several auctions of Treasury securities in 1990–1991 [1]—Congress included in the Government Securities Act Amendments of 1993 (GSAA) [2] a provision granting the Department the authority to write rules for large position reporting in certain Treasury securities. Specifically, Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934,[3] authorizes the Treasury to adopt rules requiring specified persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to maintain records and file reports regarding such positions.[4] This provision is intended to improve the information available to the Treasury and other regulators regarding very large positions of recently-issued Treasury securities held by market participants and to ensure that regulators have the tools necessary to monitor the Treasury securities market.

The GSAA gave the Department wide latitude and discretion in determining several key features and conditions that would form the underpinnings of the large position recordkeeping and reporting rules. Among the most significant of these features were: defining which persons (individually or as a group) hold, maintain or control large positions; determining the minimum size of positions to be reported; determining what constitutes "control" for the purposes of the rules; prescribing the manner in which positions and accounts are to be aggregated; identifying the types of positions to be reported; determining the securities that would be subject to the rules; and developing the form, manner and timing of reporting. The proposed rules address these points.

Participation in Rulemaking Process/ Solicitation of Comments

In formulating the process to be used to develop large position rules, the Department, early on, made a decision to obtain the views of the market participants who would be directly affected by such regulations. We also decided that it would be useful to explain the Department's initial thoughts on the structure and purposes of the rules, to explore various conceptual approaches to designing a large position recordkeeping and reporting system and to obtain industry comment and feedback before actually drafting proposed rules. We believed that market participant involvement in the rulemaking initiative from its outset would facilitate greater understanding of, and support for, the final rules when implemented.

Accordingly, in order to involve market participants and other interested parties at the earliest phase of the rulemaking process, the Department issued an Advance Notice of Proposed Rulemaking (ANPR) on January 24, 1995.[5] The ANPR addressed several key issues, concepts and approaches to be considered in developing large position recordkeeping and reporting rules, and solicited comments, suggestions and recommendations regarding how the requirements should be structured. Rather than repeating that information here, readers are encouraged to review the ANPR to familiarize themselves with these issues. The ANPR also contains a detailed historical background that provides a fuller understanding of the events and circumstances that resulted in the establishment of this regulatory authority, the purposes and objectives to be achieved from large position rules, and the Congressional intent behind this legislation.

The 90-day comment period on the ANPR was extended, in response to an industry request, for an additional 30 days through May 24, 1995.[6] In response to the ANPR, the Department received seven comment letters which are summarized in the next section of the preamble.

[1] For a discussion of the events that gave rise to the establishment of large position reporting authority, see the *Joint Report on the Government Securities Market*, Department of the Treasury, Securities and Exchange Commission and Board of Governors of the Federal Reserve System, (1992); Salomon Brothers Inc. Press Releases dated August 9 and 14, 1991; S. Rep. No. 103–109 (July 27, 1993); H.R. Rep. No. 103–255 (September 23, 1993); and 60 FR 4576 (January 24, 1995).

[2] Pub. L. No. 103–202, 107 Stat. 2344 (1993).

[3] 15 U.S.C. 78o-5.

[4] Pub. L. No. 103–202, Sec. 104; 107 Stat. 2344, 2346–2348; 15 U.S.C. 78o-5(f).

[5] 60 FR 4576 (January 24, 1995).

[6] 60 FR 20065 (April 24, 1995).

In addition to considering the views expressed by the commenters to the ANPR, Department staff has also consulted with various regulatory agencies (i.e., staff of the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York (FRBNY)) in developing this proposal. We intend to continue to involve interested market participants and the regulatory agencies in the development of the large position regulations through the completion of the rulemaking process. Accordingly, the Department welcomes and strongly encourages market participants to submit comments on the proposed rules and any suggestions for reducing burdens on the industry while still achieving the objectives of the rules.

Balancing of Regulatory and Market Needs

The Department has attempted to strike a balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. For the following reasons, we believe that the rules being proposed successfully achieve this balance.

First, the proposed rules envision reports to be submitted only in response to a specific request by the Treasury for large position information on a particular Treasury security issue. Under this approach, reporting should be an infrequent event required primarily in response to pricing anomalies in a specific Treasury security rather than a regular, on-going process resulting from a certain pre-determined large position threshold being exceeded in a broader range of securities.

Second, the proposed rules establish a minimum large position threshold of $2 billion below which the Treasury would not request large position reports. As a result, we believe that very few entities would be required to file large position reports.

Third, the recordkeeping requirements would generally not apply to any reporting entity (as defined in the rules) that did not control a position that equalled or exceeded $2 billion in a Treasury security.

Fourth, for those entities currently subject to recordkeeping rules of the SEC, the Treasury or the bank regulatory agencies, the proposed rules impose only minor additional recordkeeping requirements and only if certain conditions are present. Finally, the proposed rules adopt several concepts from the Treasury's auction rules (e.g., positions to be included in a reportable large position, definition of a reporting entity and method of aggregating positions) which have been in effect since March 1993 and are understood by many of the major participants in the Treasury securities market.[7] This should reduce the time and costs that affected entities will need for training their employees on the large position rules.

Scope of Large Position Rules

It is important for all market participants to recognize that large position rules create a requirement to maintain records and report information about such positions. However, these requirements only apply to entities that hold or control (i.e., exercise investment discretion) large positions, as determined by the Department, in specific Treasury security issues. Accordingly, there is no obligation on executing brokers and dealers to report large trades nor is there an affirmative duty to inform their customers of the large position recordkeeping and reporting requirements being proposed as part of this rulemaking.

The Department reiterates that large positions are not inherently harmful and there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because a position is large enough to be subject to the Treasury rules. In addition, the proposed rules do not establish trading or position limits or require the identification of large traders or the reporting of large trades. Finally, the GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act.[8]

II. Comments Received in Response to ANPR

Seven comment letters were received in response to the ANPR. The letters were submitted by two trade organizations, one primary dealer, a Federal Reserve Bank, a bank regulatory agency, a commercial bank and an insurance company.[9] While all comments are summarized below, each letter did not necessarily address all aspects of the ANPR.

Six commenters were largely supportive of a large position reporting system provided that such a reporting system would not be overly burdensome for market participants. However, one commenter opposed the concept of large position reporting entirely. This party believed that "the current auction reporting rules have already addressed adequately the prior problems with market manipulation," and that an unintended consequence of large position rules could be fewer participants in the government securities market, which, in turn, would result in higher borrowing costs.

On-Demand vs. Automatic Reporting

Five commenters supported an on-demand reporting system which would be triggered by specific requests from the Treasury for large position information on a particular Treasury security. One respondent, however, favored an automatic, regular reporting system triggered whenever a reporting entity's holdings in a security reached a certain threshold.

The primary reason expressed by those commenters favoring an on-demand reporting system was that this approach would be significantly less burdensome and costly than an automatic reporting system. Many commenters noted that an automatic reporting method would impose more complex systems development requirements and greater operational costs due to the need for daily monitoring of positions across multiple securities. In addition, automatic reporting could create a disincentive to buy and hold large positions that exceed a fixed reporting threshold. Finally, on-demand reporting was viewed by several respondents as being better able to address price distortions and provide more useful information since the request for large position information would be targeted to specific market situations and security issues.

The respondent favoring an automatic reporting system argued that on-demand reporting "would be difficult and costly to communicate to all relevant parties." The commenter also felt that on-demand requests might trigger unwanted market reactions, while a regular reporting system "would provide more consistent monitoring of the market and would be less confusing to the market over time."

Definition of Reporting Entity

Six commenters were in agreement that the definition of "reporting entity" should conform with the definition of "bidder" as defined in the uniform

[7] Uniform Offering Circular for the Sale and Issue of Treasury Bills, Notes and Bonds, 31 CFR Chapter II, Subchapter B, Part 356.

[8] 5 U.S.C. 552(b)(3)(B).

[9] Public Securities Association, Investment Company Institute, Chemical Securities Inc., the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve System, Chemical Bank, and CNA Insurance Companies, respectively.

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offering circular.[10] The aggregation rule with regard to affiliates, for example, is a concept with which many market participants are already familiar and provides an appropriate model for a large position reporting rule. Similarly, the commenters supported a process, similar to the "separate bidder" process provided for in the uniform offering circular, by which separately managed entities within a corporate or partnership structure can request that Treasury recognize them as separate reporting entities.

Definition of "Control"

There was similar concurrence on the definition of "control." Nearly all parties that addressed this issue expressed the view that control should be evidenced by either proprietary ownership or investment discretion over a Treasury security. The commenters were in similar agreement that the concept of "control" should not be extended to merely beneficial ownership or custodians. Specifically, the commenters held that entities acting as custodians should not be required to report positions in Treasury securities over which they have no investment discretion.

Definition of "Large" Position

The commenters generally felt that the large position threshold should be large enough to both detect concentrations of control and avoid overly burdensome, frequent reporting by market participants. Opinions were fairly evenly divided on whether a securities position should be defined as "large" based on a percentage of the total outstanding issue size or a specific dollar amount.

Those preferring a percentage standard commented that this method is a better indicator of concentration of control than a straight dollar standard, given the large range of issue sizes among various maturities. Suggested percentages ranged from 10 percent to 25 percent of a particular issue. One commenter felt that, if an automatic reporting system is implemented, the percentage should be consistent with the Treasury's auction rules, i.e., "large" should be defined as 35 percent of the securities awarded in an auction.

Those favoring a fixed-dollar threshold did so on the basis of clarity, ease of administration, and, consequently, improved compliance. Suggested dollar thresholds ranged from $2 billion, to correspond to the net long position reporting threshold for auctions,[11] to $4–5 billion. Some commenters also expressed the view that the threshold should be larger under an automatic reporting system than under an on-demand system to minimize the compliance burden associated with automatic reporting. One commenter said that there is no need to define "large position" in advance under an on-demand reporting system (the large position threshold would be specified in the Treasury notice requesting large position reports), and there may be no "one-size-fits-all" threshold.

Definition of "Recently-Issued"

The scope of Treasury's large position reporting authority is limited to recently-issued and to-be-issued Treasury securities. Discretion to define the term "recently-issued" was given to the Treasury. Although the commenters differed somewhat on the specifics of the preferred meaning of "recently-issued," all agreed that it should include the "on-the-run" [12] (most-recently issued) security of a particular type. Opinions were fairly evenly divided on whether "recently-issued" also should include only the most recent "off-the-run" issue or the two most recent "off-the-run" issues. One commenter said that there is no need to define "recently-issued" under an on-demand reporting system.

Types of Securities Covered

Based largely upon the presumption that Treasury note and bond issues are more likely to be "on special" [13] (in short supply) than bills, two commenters said that bills should be excluded from large position reporting. One such commenter also cited the complexity, burdens and costs "associated with implementing systems to track positions on weekly-issued securities * * *." One commenter, however, said that all types of Treasury securities (bills, notes and bonds) should be eligible for reporting, "since any type of Treasury security could be the subject of a concentration of control." Another commenter took a more neutral position, saying that excluding bills may be appropriate, "but a good case will need to be made that short interest is always small relative to the net supply, or that supply conditions and price movements preclude sustained and possibly injurious squeezes."

Components of a Position

The four commenters addressing this issue agreed as a starting point that net long settled cash positions should be included in a "large position."

Two commenters said that the definition of "large position" should be consistent with the definition of "net long position" in the uniform offering circular.[14] Both felt that financing transactions (repos, securities borrowed, etc.) should be excluded from the large position calculation since it is too difficult to apply the concept of control to securities used in such transactions. Calculating a net financing position is particularly difficult, according to one of the commenters. Examples provided included the problems of differentiating deliver-out from hold-in-custody and tri-party repurchase agreements, and of separating overnight repos from term repos, particularly those with mandatory substitution provisions. Both of these commenters, however, could support a requirement to report financing transactions on a gross basis if Treasury believes financings need to be included.

The other two commenters felt that financing transactions should be included in the definition of a reportable position to encompass a wider range of transactions from which an entity can exert immediate control over a Treasury security. Both advocated reporting such transactions on a gross basis. One commenter noted that a position that might look flat on a net basis may in fact be exposed if fails become a problem. Moreover, the commenter contended, matched-book and tri-party repo activity might result in a small net position, and yet be used as a tool to achieve a short squeeze.

Recordkeeping Requirements

The issue of what records should be kept by reporting entities was largely unaddressed except that the commenters felt that these records, and their associated retention periods, should closely correspond to records already required to be maintained by reporting entities under existing securities and banking laws. Most respondents stated that reporting entities should not be required to keep records in electronic form, since such a requirement could be burdensome for entities that do not have systems for electronic recordkeeping.

[10] 31 CFR 356.2 and Appendix A.

[11] 31 CFR 356.13(a).

[12] A Treasury security is considered to be "on-the-run" when it is the newest security issue of its maturity (e.g., in October the two-year note issued September 30 would be "on-the-run" while the two-year note issued August 31 would be "off-the-run"). An on-the-run security is normally the most liquid issue for that maturity.

[13] When securities are "on special," market participants desiring to borrow the particular security must accept an interest rate significantly lower than the prevailing repo rate for unspecified collateral. Conversely, the owners of the securities can finance their position at exceptionally low interest rates.

[14] 31 CFR 356.13(b).

III. Section-by-Section Analysis of Proposed Regulations

A. Section 400.1. Scope of Regulations

A new paragraph is proposed to be added to Part 400 to describe the statutory basis for the large position rules. The paragraph also states that the large position rules are located in Part 420.

B. Part 420. Large Position Reporting

1. Section 420.1

Applicability. This section sets out the scope of the large position recordkeeping and reporting rules by identifying the types of Treasury securities covered and by defining the universe of entities potentially affected. Section 420.1 reflects the Department's initial determination that all marketable Treasury securities—bills, notes and bonds—should be included within the scope of the rules. However, arguments have been made that features and characteristics of the bill market, such as the frequency of issues (i.e., weekly) and reopenings, the size of bill auctions and the availability of several instruments that are close substitutes for bills (e.g., various money market instruments), make it more difficult to accumulate concentrations of ownership of Treasury bills. Comments are specifically requested on whether Treasury bills should be included in the large position recordkeeping and reporting rules.

On its face, part 420 applies to any type of entity, foreign or domestic, that might control a large position in a specific Treasury security. This broad construct of potential application is consistent with the statutory purpose: "Large position reporting also would be useful in assuring that regulators can monitor the positions of major market participants other than government securities brokers or dealers under certain circumstances. In particular, it will provide assurance that the government can compel disclosure of position information when necessary from all large market participants, including a group of relatively unregulated entities called 'hedge funds.'" [15] As described in the preamble discussion of sections 420.3 and 420.4, the number of entities that may actually be affected by large position rules is significantly narrowed when the minimum size for a large position is applied.

We believe it is appropriate to exclude certain entities from the application of the rules based on the existing availability of position information on these organizations and/or concerns about the confidentiality of this information. Accordingly, paragraphs (b) and (c) of section 420.1 provide exemptions from part 420 to the holdings of foreign central banks, foreign governments, international monetary authorities and Federal Reserve Banks (FRBs). The exemptions for the foreign entities are limited to their respective positions maintained at the FRBNY. The exemptions are also consistent with the position expressed by the Senate and House during consideration of the legislation.[16]

One commenter, responding to the ANPR, expressed concern about granting exemptions specifically to these foreign entities. However, the Department believes the proposed approach is appropriate since the exemptions are limited in their scope by applying only to the portion of the organization's position that is maintained at the FRBNY. Any positions held by the exempt entities at locations other than the FRBNY are not exempted and will be subject to the large position recordkeeping and reporting rules. The proposed exemption for those Treasury securities that FRBs hold and control for their own accounts is also based on the Department's access to this information.

The Department recognizes that on rare occasions it may be necessary to request large position information on Treasury securities that are not within the parameters of the proposed definition of recently-issued (paragraph 420.2(g)) but that are within the scope of the intent of the statute. For example, in August 1991, Treasury might have sought large position information on the April 1991 two-year note, given that the security was still "on special" in the repurchase agreement market and there was a significant concentration of ownership. While this security, at that time, would have been outside the scope of the currently proposed definition, the Department believes it is necessary to reserve the right to collect large position information in such circumstances. Accordingly, we have included within the rule a reservation to request information on additional Treasury security issues consistent with the purposes of the GSAA.

2. Section 420.2

Definitions. This section provides for the definitions of terms that are integral to the large position rules. Unless otherwise defined in this section, terms used in part 420 have the same meanings provided in section 400.3.

"Control"—The concept of control revolves around three elements: beneficial ownership, possession (custody) and investment discretion. The beneficial owner is the party with the actual ownership interest in the Treasury security. The beneficial owner may or may not always be aware of its ownership position in a given security if it does not manage its own investments and it may not have possession of the Treasury securities even if it makes its own investment decisions (especially likely with book-entry Treasury securities). Possession or custody is evidenced by an organization's ability to service the securities directly (e.g., transfer the securities, receive interest and principal payments). The beneficial owner may perform this function for its own holdings, but the mechanics of book-entry Treasury securities require that a depositary institution act in this capacity on behalf of others at some level in the custody chain for all Treasury securities. Additionally, book-entry Treasury securities may involve more than one custodian in the holding of a specific security entitlement.[17] Investment discretion is the authority to make and execute decisions about the purchase, sale and retention of securities. In the institutional market for Treasury securities, which is of critical importance in developing large position reporting rules, the granting of investment discretion to an investment adviser to manage all or some portion of an entity's portfolio is common.

It is our view that, for the purposes of large position reporting, the most important criterion in the definition of control is that of investment discretion. While beneficial owners receive the economic benefit of holding a Treasury security, frequently, they do not make the decision to purchase/sell/retain the Treasury security and, as mentioned, may not, on a day to day basis, be aware

[15] H.R. Rep. 103–255, September 23, 1993, at pg. 25.

[16] 139 Cong. Rec. H–10967 (daily ed. November 22, 1993) Statement of Chairman Dingell on S. 422.

[17] The Federal Reserve Banks maintain book-entry security accounts for depository institutions and other entities such as government and international agencies and certain foreign central banks. In their book-entry accounts at the Federal Reserve, the depository institutions may maintain their own security holdings and holdings for customers, which may include other depository institutions, dealers, brokers, institutional investors and individuals. In turn, the depository institution's customers may maintain accounts for their customers. This creates a tiered chain of custodial relationships.

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of their ownership interest. Since a purpose of large position reporting is to understand better any pricing anomalies for a particular Treasury security issue in a timely fashion, defining control based on beneficial ownership would not be particularly useful because a reporting entity could have difficulty assembling the information needed to file a large position report and would be potentially unaware of the reasons why the security involved was purchased.

Likewise, custody (without investment discretion) does not provide a good basis for determining control. A definition based on custody would most certainly involve multiple reporting of the same security position since each tier in the custody chain would be required to report. This approach would diminish the value of any large position reports received. Also, because under these circumstances the custodian would not be a party to the investment decision, reporting on the positions held in safekeeping would shed very little light on the objectives of the investor.

Therefore, Treasury has decided to define control as the authority to exercise investment discretion. This definition is supported in six of the seven comment letters. Investment discretion can be exercised by the beneficial owner, a custodian or an investment adviser. The party responsible for making investment decisions, regardless of where it is in the tiered system, is the most relevant reporting entity for large position reporting since the actions and objectives of the decision maker are what we are trying to determine. A single party exercising investment discretion for multiple beneficial owners could control a potentially large amount of Treasury securities without any single beneficial owner having a reportable position. Additionally, such investment advisers could possibly distribute custody of the securities in a manner that would keep any individual custodian below the reporting threshold. However, using the exercise of investment discretion as a measure of control, an investment adviser's aggregate positions would be reportable regardless of the number of beneficial owners or custodians involved and would be treated separately from any positions over which the beneficial owners had retained investment discretion. Finally, a definition of control based on investment discretion is consistent with the treatment of investment advisers under the uniform offering circular.[18]

[18] Treasury intends to clarify this treatment in a proposed rule in the near future.

Following this definition, an investor would only be responsible for reporting its proprietary holdings if it retained investment discretion over the positions. This approach would avoid double reporting of these positions. Additionally, a custodian would only have responsibility for reporting on any large positions for which it had investment discretion. A custodian would not have any obligation to report on positions for which it maintained securities solely in a safekeeping capacity.

"Reporting Entity"—This term is defined to be consistent with the definition of a bidder in the uniform offering circular.[19] This concept provides for the treatment of all affiliated entities as a single entity for purposes of determining the quantity of Treasury securities controlled. Additionally, the definition permits specific affiliates to be treated separately or "carved-out" from the reporting entity based on stated principles of separateness.

Applying this approach, a "reporting entity" will aggregate each of the positions in a specific Treasury security that is held by itself and all affiliates that control positions, and will report a single position to the FRBNY. Any affiliate that exercises independent investment discretion, and whose position information is not available to other affiliates, will be permitted to report separately from the overall entity provided it has requested such a "carve-out" and received written recognition from the Treasury. Merely establishing "Chinese walls" or similar procedures is not sufficient. If an entity has already received such written recognition under the uniform offering circular, it will not have to reapply for the purposes of large position reporting.

Defining the term "reporting entity" based on the bidder concept from the auction rules has the advantage of relying on an existing body of regulations, thus minimizing confusion and the need for market participants to learn new rules. The bidder definition is well known to most large participants in the Treasury market (from their auction participation) and has functioned effectively since March 1993 when the rules were implemented. This approach was also endorsed in four comment letters.

This definition also introduces a new term, "aggregating entity," which is defined separately. An aggregating entity is a single legal entity (e.g., a parent company or affiliate within a reporting entity) that may control

[19] *See supra* note 10.

elements of a large position. If an aggregating entity has no affiliates, then it is also a reporting entity. Each component of a reporting entity is individually an aggregating entity.

"Reportable Position"[20]—The scope of the definition of reportable position directly affects the complexity of calculating such a position and the amount of time needed to file a large position report. The definition of a reportable position should be broad enough to encompass the most significant ways that an investor may control a Treasury security issue, balanced against the difficulty and cost of compiling the information. Additionally, because of the complexity in defining this term, it is useful to base the definition, to the maximum extent feasible, on concepts familiar to market participants.

For participants in the Treasury securities market, a familiar concept is that of "net long position" in the uniform offering circular.[21] The uniform offering circular definition includes the par amount of: (1) Immediate (cash) positions; (2) when-issued positions for to-be-issued and reopened issues; (3) forward settling positions; (4) positions in futures contracts requiring delivery of the specific security; and (5) STRIPS (Separate Trading of Registered Interest and Principal of Securities) principal components of the specific security. This is an appropriate place to begin development of a reportable position because it is not only familiar to many market participants but also includes the most common elements of control in the cash market. The combination of these five elements is defined as the net trading position—the first component of a reportable position.

The Department is requesting that commenters specifically address the treatment of forward positions. While forward positions are a component of the net long position defined in the uniform offering circular, there may be reasons to exclude them from the definition of reportable position because forward positions may be less effective in controlling a security or may act to conceal settled positions. For example, the proposed large position rules permit a reporting entity to reduce the size of its settled position by the amount of a

[20] A reportable position for the purposes of the large position rules differs from a reportable position for purposes of the uniform offering circular. In the uniform offering circular, a reportable net long position is a position that has met the necessary criteria to be reported on a tender. In the context of the large position rules, a reportable position defines the components of a potential large position.

[21] See supra note 14.

short forward settling position. Should this treatment be permitted? Treasury especially welcomes the views of market participants on this subject.

Options and certain futures contracts (i.e., cash-settled or those requiring delivery of securities other than the specific security that is the focus of large position reporting) continue to be excluded because they do not provide the holder with either immediate control or an effective way to manipulate the price of a specific security. For options, an entity would only gain control of the security at the time the position is exercised, at which time the security would become a component of a reportable position. Large positions in the excluded futures contracts are already reported to the Commodity Futures Trading Commission.[22] Thus, this information will be available to the Department and other regulatory agencies, if needed, without imposing additional reporting requirements.

Financing transactions are proposed to be included in a reportable position because of the important influence they have on the available supply of a Treasury security. The legislative history behind the large position reporting authority supports the inclusion of financings, especially repurchase agreements.[23] The approach for including financing transactions is addressed below in the definition of a gross financing position. The gross financing position is the second component of a reportable position.

Finally, the Department believes that a third component—"fails"—should be included in the definition of reportable position. An investor's net fails position (fails to receive less fails to deliver) indicates ownership rights to a security without the cost of financing. All fail positions should be included without differentiating between types of counterparties (i.e., broker-dealers, customers). A large "fail-to-receive" position may exacerbate, or benefit from, a squeeze by maintaining high demand for a specific security. In analyzing existing market discontinuities, the knowledge of the existence of any large net fail-to-receive positions could help determine the cause and potential resolution of a tight supply condition.

Commenters are also requested to address the treatment of fails. Specifically, the Department is interested in receiving comments on whether the proposed treatment of fails positions is more appropriate than excluding fails from the determination of a large position and instead requiring submitters of large position reports to disclose information about fails as a memorandum entry. Since a position that remains unsettled after its scheduled settlement date is not included in the computation of a net trading position, including fails may act to artificially increase the size of the reported position. This result is apparent if fails-to-deliver were to be a positive addition to a reportable position since a past settlement date short trade, unlike a short forward position, would not reduce the size of an entity's reportable position. Additionally, commenters are asked to consider whether fails should be treated differently from forwards given their similarities.

The sum of the net trading position, gross financing position and the net fails position is a reporting entity's total reportable position.

"Gross Financing Position"—To achieve the statutory intent, financing transactions should be included in a reportable position. The more difficult question is how to include them. Within the generic construct of financing transactions, there are multiple types of transactions including: repurchase and reverse repurchase agreements, securities borrowed and loaned, securities pledged and received in pledge, and any other form of credit collateralized by Treasury securities.

Since the intent of large position reporting is to obtain information about the control of Treasury security positions, an effective approach for incorporating financing transactions is to include them on a gross basis (no netting) in the reportable position of the entity that has received the securities. Under this approach, the seller/lender of the securities would not include the financing transaction in its calculation of the gross financing position since it would already have reflected the positions that provided it with control of the securities (i.e., cash positions, reverse repos) in the calculation. Reporting in this manner would provide regulators with information about the broader universe of market participants that had possible control of the Treasury security, regardless of how they might have subsequently financed or transferred it.

No differentiation is made in the computation between the types of financing transactions (e.g., repos, securities lending) since, despite different legal frameworks, they are generally equally effective ways of obtaining control. The first part of the gross financing position computation also does not differentiate between types of repos (e.g., overnight, term). As an example, a security that has been received through a reverse repo and contemporaneously reposed out to a third party will be included at the gross par amount of the reverse in the entity's long position. Gross reporting yields this result even though the security was no longer in the possession of the reporting entity since it had been contemporaneously reposed out. The proposed approach will result in the potential for multiple entities including a position for the same specific Treasury security in their respective computations and reportable positions. However, the resultant double counting is not considered to be a problem because it provides additional information about entities that have various legal claims to the security and that may potentially benefit from any possible market disruptions.

An optional exclusion is proposed that will permit a reporting entity to voluntarily exclude from the computation of its gross financing position certain securities received through financing transactions. This exclusion would apply to situations in which the securities received were subject to a right of substitution on behalf of the delivering counterparty, tri-party custodial relationships, or custody of the securities being retained by the party granting the legal interest in the securities (hold-in-custody). These Treasury securities would be eligible for exclusion based on a presumption that the receiving organization did not have effective control of the securities despite having "received" them. The exclusion is optional because its use, while benefiting the entity taking advantage of it, does not diminish the usefulness of the resultant large position reports. If it were made mandatory, many potential reporting entities might find it too costly and burdensome to differentiate information on financings at this level of detail. If the amount excluded is large enough to cause the reporting entity to fall below the reporting threshold, then a report should not be filed.

The gross financing position is then combined with the other two components of a reportable position to determine the total reportable position held by a reporting entity. For purposes of the calculation, all positions would be valued at the par amount of the securities involved.

"Large Position Threshold"—The large position threshold is the dollar amount of a reportable position at or above which the requirement to file a large position report is triggered. Since

[22] 17 CFR Parts 15 to 18.

[23] *See supra* note 15 at pg. 44.

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the large position rules take an "on-demand" approach to reporting, the specific large position threshold for any given Treasury security issue may vary. However, since the threshold would not be known in advance, we believe that it will be beneficial to provide some certainty to market participants by setting a minimum dollar amount ("floor")—$2 billion—below which reports would not be requested. Establishing a floor should minimize compliance costs. For example, many entities, based on this level of the floor, may decide that no modifications would be needed to their computer systems or trading strategies since the rule would not apply to them (i.e., the firms would not expect their positions ever to reach the floor amount). Of the six commenters who addressed this issue, three endorsed a variable threshold method (one respondent actually supported a fixed percentage method, which would lead to a variable dollar level since it would be based on the amount issued of a specific security).

"Recently-Issued".—Despite the determination that any large position reporting would be done on an on-demand basis, the Department believes that it is useful to set out a general description of which Treasury securities would be within the scope of the rule. For convenience, the definition of recently-issued includes when-issued securities from the time of announcement of the issue. Thus, when-issued securities would be considered the most recent issue of a security type. In response to the commenters and in consideration of the Treasury securities that could be of most interest to regulators, we have proposed that as a regular matter, recently-issued would be limited to the three most recent issues of a Treasury security (bill, note or bond) if issued quarterly or more frequently and the two most recent issues if issued less frequently. Currently, this latter condition exists only for the 30-year bond. The definition of recently-issued for this security, which is currently issued semi-annually, was limited to the two most recent issues because a three-most-recent definition would have, on a regular basis, encompassed a time period of nearly a year and a half. As discussed earlier, the Department intends to reserve the right to broaden the scope of this definition, on a limited exception basis, consistent with the purposes of the GSAA.

3. Section 420.3

Reporting. The provisions of this section require large position reports to be filed by the designated filing entity of any reporting entity that has a reportable position that equals or exceeds the large position threshold in a particular Treasury security issue as specified by the Department. This section also specifies the method by which Treasury will provide notice to the marketplace requesting large position reports, the specific information that must be provided on the large position reports, where they must be filed and the time frame for their submission. This section also permits either the Treasury or the FRBNY, acting as the Treasury's agent, to request additional information from a reporting entity if either organization, after analyzing the large position reports, requires further data to gain a more complete understanding of the extent and nature of the concentration of positions in a particular Treasury security. A sample reporting format for large position information is illustrated in Appendix B to the rule.

Analysis of Alternative Reporting Methods

The method of reporting large positions is a central issue in the development of large position rules, since the method selected will significantly affect the compliance burdens of, and costs incurred by, the entities subject to the large position regulations.

The Department evaluated two distinct approaches for reporting large position information: an "automatic" or regular reporting method and an "on-demand" reporting method. Under an automatic, regular reporting process, large position reports would be required to be filed whenever a reporting entity equalled or exceeded the large position threshold stated in the rules for any covered Treasury security. Depending upon the particular method used in a regular reporting system, reports could either be required on a one-time basis or they could continue to be required each day the entity exceeded the large position threshold and would cease only when its positions in the Treasury security fell below the threshold level. In contrast, in an on-demand reporting system, reports would be triggered by a notice from the Treasury requesting large position information on a specific issue of a Treasury security from those reporting entities whose positions at that time equalled or exceeded the large position threshold specified in the notice.

In evaluating the method of reporting that should be employed, the Department took into consideration the events that gave rise to Congress' grant of authority to prescribe large position reporting rules as well as the purposes and objectives of the statutory authority underlying such rules. The main focus of our analysis involved selecting the approach that best balanced the purposes of the statute and any new regulatory burdens that would be created. (Readers are referred to the ANPR for a more detailed discussion of these issues and other background information pertaining to large position reporting.)[24]

The primary purpose of any large position reporting system is to enable the Treasury and the other regulators to understand better the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities. Large position reports are also intended to provide regulators with information on concentrations of control for market surveillance purposes and for enforcement of the securities laws, as well as to enable Treasury policy makers to make better decisions concerning any possible government actions that might be taken in response to apparent price anomalies. A critical factor in evaluating the two alternative large position reporting methods was the extent to which they would meet the overriding legislative and policy objective of strengthening the ability of the regulatory agencies to deter possible manipulation of the Treasury securities market.

On-Demand Reporting System

The requirements outlined in paragraph 420.3(a) reflect the Department's decision to propose an on-demand reporting system for large position information. Reports would be required in response to a specific request, issued by the Treasury, for large position information.

An on-demand reporting approach will enable the Department to target large position reporting to a specific issue of a Treasury security in response to particular circumstances or unusual market activity. This would ensure the availability of information for market surveillance and enforcement purposes in those specific instances where it is most needed, thus satisfying the primary objective of this regulatory authority, while obviating the need to collect information on securities that are not of interest. In contrast, under a regular reporting system, reports would be required when the large position threshold had been exceeded; therefore, reports would be filed even in situations where there were no price distortions, anomalies or evidence of possible

[24] *See supra* note 5.

market manipulation. This would result in unnecessary costs for, and burdens on, both market participants and the government. In addition, a regular reporting method could increase the possibility that investors would take deliberate actions to reduce their holdings of Treasury securities to avoid exceeding the "large" position reporting threshold. This could result in decreased market participation, reduced liquidity and increased borrowing costs.

An on-demand reporting system would avoid the need to set a uniform large position threshold that would apply to some or all Treasury issues as would be required under an automatic reporting approach. The Treasury would have the flexibility and latitude to establish a tailor-made large position threshold each time it requests large position reports. This permits a large position threshold to be based on the latest supply of, and market conditions for, a specific Treasury security, which can vary considerably.

On-demand reporting should be less onerous and costly for market participants. Any modifications to existing computer systems to compile, summarize, compare and report the positions would be less complex than for the required continual review of multiple securities positions under a regular reporting method. Under a regular reporting approach, firms would need to modify existing computer systems or develop entirely new systems to continuously collect, monitor and report positions in when-issued and recently-issued Treasury securities. Since reports would need to be filed whenever positions equalled or exceeded the large position threshold, the systems would have to be designed to compute the overall positions in a large number of separate Treasury security issues (approximately 23 separate CUSIPs[25] based on the definition of recently-issued in paragraph 420.2(g)) and then compare the amount of the positions to the large position threshold on a daily basis to determine if reports would have to be produced. There would be an even greater burden on those entities that would manually compile this information.

Recognition of the costs that would be imposed on market participants has been a critical consideration in our attempt to develop large position rules that strike a balance between regulatory oversight and market efficiency. We believe that an on-demand reporting system significantly minimizes the regulatory costs and burdens on market participants compared to those that would be incurred if the Treasury were to require regular reporting.

In analyzing the different reporting models, the Treasury also took into consideration the fact that a large segment of market participants who are likely to be subject to Treasury's large position reporting rules—the 37 primary dealers—already submit regular position reports to the FRBNY on a voluntary basis for on-the-run Treasury notes and bonds. By adopting an on-demand reporting system, we have attempted to minimize, as much as possible, any duplicate reporting by these entities.

Triggering Event: Treasury Request for Information

The provisions of paragraph 420.3(a) propose that the requirement to report large position information would be triggered by a notice issued by the Treasury specifically requesting such information. The notice would identify the specific Treasury security issue to be reported, the applicable large position threshold (in no case less than $2 billion) for that issue and the date or dates[26] as of which the large position information must be reported.

The notice requesting large position reports would be communicated by issuing a press release and subsequently publishing the notice in the **Federal Register**. Given the relatively short reporting deadline in the proposed rules, this two-pronged notice approach satisfies the dual objectives of operational efficiency and legal sufficiency. A Treasury press release has the advantage of achieving wide, timely distribution of the notice without a significant time lag. Although this approach relies on third-party services over which the Treasury has no control, it is reasonable to expect that the major news and financial publications and the various electronic financial wire services (e.g., Telerate, Reuters, Bloomberg, Knight-Ridder) would disseminate the Treasury notice as quickly as their respective technological capabilities allow. The electronic financial wire services and news publications can also be relied upon to accurately present the Treasury's request for large position information. We believe that any market participant, including a foreign entity, that may control a large position in a Treasury security is likely to subscribe, or have access, to one or more of the electronic financial wire services. Thus, the likelihood that the Treasury notice requesting large position reports would fail to come to the attention of a potential reporting entity is extremely remote.

The press release would include information about how to obtain a sample large position report and the name and telephone number of a Departmental contact person to answer questions about the report.

Since the **Federal Register** is the designated federal publication for providing official notice, publishing the Treasury notice in that document is legally sufficient for "constructive notice" of the request despite lagging the issuance of the press release.

Designated Filing Entity

Under paragraph 420.3(b), the designated filing entity is responsible for preparing and submitting the large position reports on behalf of a reporting entity in response to a Treasury notice requesting large position information. The identity of the designated filing entity must be given on any large position report submitted.

Each reporting entity, as defined in paragraph 420.2(i), whose reportable position equals or exceeds the large position threshold, must have one, and only one, designated filing entity. A reporting entity that consists of only one component is the designated filing entity. For those reporting entities that consist of multiple affiliates or aggregating entities, one entity must be selected to be the designated filing entity. That entity is responsible for receiving and compiling the large position information from each of the aggregating entities, computing the reportable position and preparing and filing the large position report.

An official authorized to file reports on behalf of the designated filing entity shall sign the large position report and certification attesting to the accuracy, completeness and reliability of the information being reported. This official must be one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity. The contact person named on the large position report should also be a representative of the designated filing entity but need not be the authorized official.

Further, any designated filing entity is required, under the applicable provision in section 420.4, to make and maintain

[25] The CUSIP number is the unique identifying number assigned to each separate security issue and each separate STRIPS component.

[26] To understand the price and supply dynamics of the security under scrutiny better, the Treasury reserves the right to request that entities submit positions covering a multi-day, historical time frame rather than just one day.

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additional records on behalf of the entire reporting entity.[27]

Information Required on Large Position Reports

Paragraph 420.3(c), together with Appendix B, sets forth the specific information that must be provided in the large position report. For those reporting entities that have a number of aggregating entities or affiliates, the amount to be reported for each of the positions is the total, combined net amount. All positions are to be reported as of the close of the business/transaction day for the date specified. In those instances where Treasury requests positions covering multiple dates, separate reportable position calculations must be submitted for each date. The rule does not require, nor does the Treasury intend, for firms to calculate their positions as of some specific point during the trading day. However, in order to meet the deadline for reporting, the designated filing entity may need to determine a cut-off time for foreign entities.

The following administrative information must be provided on the large position report:

(a) The name of the reporting entity;

(b) The address of the principal place of business of the reporting entity;

(c) The name and address of the designated filing entity;

(d) The description of the Treasury security being reported, including the CUSIP number;

(e) The date or dates for which the information is being reported (which should be the same date(s) as that (those) stated in the Treasury notice requesting the large position reports);

(f) The date the report was submitted;

(g) The name and telephone number of a contact person of the designated filing entity to whom questions can be directed regarding any information on the report;

(h) The name and title of the person authorized to submit the report (as previously described);

(i) A certification statement attesting to the accuracy, completeness and reliability of the information being submitted; and

(j) The signature of the authorized official specified in (h).

The following large position information must be reported in the exact order as noted:

(a) Line 1, cash/immediate net settled positions;

(b) Line 2, net when-issued positions for to-be-issued and reopened issues;

(c) Line 3, net forward settling positions, including next-day settling positions;

(d) Line 4, net positions in futures contracts that require delivery of the specific security that is the subject of the large position report (but not futures contracts for which the security that is the subject of the large position report is one of several securities that may be delivered and not futures contracts that are cash-settled);

(e) Line 5, net holdings of STRIPS principal components of the specific security that is the subject of the large position report;

(f) Line 6, the gross financing position, which is the sum of the gross par amounts of a security issue received from financing transactions (e.g., reverse repurchase transactions, bonds borrowed, securities received in pledge and collateralized credit extended);

(g) Line 7, net fails position, which is fails to receive less fails to deliver in the specific security issue; and

(h) Line 8, Total Reportable Position, which is the sum of lines 1–7.

All amounts must be reported in millions at par value. See Appendix B for a sample reporting format.

The large position report provides for two memoranda entries. Memorandum Entry #1 is the sum of the gross par amounts of a security issue delivered as part of a financing transaction (e.g., repurchase agreements, securities loaned, securities pledged and collateralized loans). This amount should not be included in the gross financing position (line 6) as noted in item (f) above. Memorandum Entry #1 is required.

Memorandum Entry #2 is to be reported by those entities that take the voluntary exclusion pursuant to paragraph 420.2(c) to reduce the gross financing position reported on line 6. The amount shown is the amount of securities received from financing positions over which the reporting entity does not have effective control due to arrangements such as third-party custodial structures, hold-in-custody relationships or substitution rights. This amount should not be included in the amount reported on line 6.

Lines 1–5 of the large position report are consistent with the items that determine the net long position for auction reporting purposes.[28] As with the auction rules, the amounts to be reported for each of the items on lines 1–5 are the net of any long and short positions, so that the entry can be a positive number (long position), a negative number (short position), which should be shown in parentheses, or zero (flat position). Only securities trades that have actually settled should be included in line 1, cash/immediate net settled positions. Accordingly, auction purchases that have not yet been settled or issued should be included in the total reported on line 2, when-issued positions.

For line 6, Gross Financing Position, netting of these positions is not permitted although certain items may be excluded. (See paragraph 420.2(c).) For reporting entities that take advantage of this limited exclusion, the gross financing position should not include the amount of security issues received from financing positions over which the reporting entity does not exercise control. Rather, the amount associated with the exclusion should be reported in the Memorandum Entry #2.

Line 7, Net Fails Position, can only be reported as a positive number (which indicates fails to receive exceed fails to deliver) or zero (which reflects fails to receive are totally offset by, or are less than, fails to deliver).

Reporting Format

Rather than designing and mandating a specific reporting form, the Treasury is proposing to allow the reporting entities to develop their own large position reports, provided the reports contain all of the required information as prescribed in the rules, in the order stated in Appendix B. By permitting the reporting entities to design their own large position report, firms will be able to integrate the report into their existing systems as they see fit and avoid the unnecessary burden of transferring the information from internally generated reports to a Treasury-mandated form. While firms will have a certain amount of latitude and discretion in designing a large position report, the information on the various positions that constitute the total reportable position must be reported in the order shown in paragraph 420.3(c) and in the sample/prototype report in Appendix B. This will facilitate analysis of the data. Failure to include any of the required information, including administrative information, on the large position report will constitute non-compliance with the rule.

Filing of Large Position Reports: Where, When and How

Pursuant to paragraph 420.3(d) the large position report must be submitted to the FRBNY. The report must be received before 12:00 noon, Eastern time, on the second business day after the issuance of the Treasury press release requesting large position reports. Given that large position reports would generally be requested by the Department in response to certain market conditions or activity, the proposed rule has a fairly short response time for submission of the reports. The one and one-half day reporting deadline balances the need for timely information with the recognition that some time is required to compile the information. The reporting time frame should not present significant problems since the information would be derived from records required to be maintained by the reporting entities. Additionally, we understand that most large firms engaged in the securities business compile their positions on a daily basis. Finally, since reporting is "on-demand," the filing of a large position report will be an exceptional event not requiring regular preparation.

The Treasury requests comments from market participants on the proposed reporting time frame, specifically concerning any potential obstacles, burdens or other factors that would make meeting the deadline problematic, and the extent of any extra costs that would be incurred.

The rule, in paragraph 420.3(d), also provides that the large position report may be filed in any manner or media (i.e., hard copy, facsimile or other electronic transmission) that is acceptable to the FRBNY. As mentioned earlier, the reporting entities are permitted to produce or generate their own large position reports.

Follow-up Inquiries

The requirement to file a large position report in response to a specific Treasury notice requesting this information is expected to be an occasional event. The requirement is satisfied upon receipt of the report by the FRBNY within the required time frame and in the required format as prescribed in paragraph 420.3. The proposed rule does not impose a continuous reporting requirement. However, the Treasury and the FRBNY staff may contact a designated filing entity after receiving a large position report to discuss any aspect of the report, seek clarification of the information provided or request additional documents or information. The purpose of such inquiries or requests for data would be to understand the concentration of positions better. The Treasury or the FRBNY staff may also request further detail on any position reported, such as breaking out the gross financing position into its component parts or identifying repurchase agreements by their terms or types (e.g., overnight repos, term repos, tri-party repos, hold-in-custody repos). Reporting entities are required to make good faith attempts to respond to inquiries and provide any additional data requested in an expeditious manner.

Testing of Large Position Reporting Systems

The Department wishes to underscore the importance of accurate, reliable and timely reporting of large position information by affected market participants. As the agency of the Federal government most concerned with minimizing the interest cost on the public debt, the Treasury believes that the United States is best served by a liquid and efficient market for Treasury securities that is not overburdened with regulation, but, at the same time, is not viewed as being subject to manipulation. In developing these proposed rules, the Treasury has attempted to pursue a modest approach that balances the need for additional regulation with a desire to minimize the burdens on, and costs to, the industry and to preserve the efficiency of the Treasury securities market.

Compliance with these large position rules—the maintenance of reliable records and the accurate and timely reporting of large position information—is essential to preserving and strengthening the integrity of the Treasury securities market. One of the primary concerns with an on-demand reporting system is the increased potential for inaccurate or incomplete information on large positions due to unfamiliarity by market participants with the reporting requirements. Large position information will be extremely important for policymakers at Treasury, in consultation with other regulatory officials, in determining whether, and what course of, action should be taken to alleviate a concentration of control in a particular Treasury security. Thus, it is imperative that market participants fully understand and comply with the large position recordkeeping and reporting requirements.

To ensure that market participants remain knowledgeable about the rules, specifically how to calculate and report a reportable position, the Treasury intends to "test" the reporting system by requesting large position reports at least annually, regardless of market conditions for a particular security. The Treasury does not intend to notify market participants that its request for large position reports is merely a test. Commenters are asked to address this proposed treatment of "test" reporting. The notice and reporting requirements are proposed to be identical to a call for large position information in which the Department is concerned about price anomalies and concentrated ownership. "Test" reporting is consistent with the statutory purpose since the Department believes it is both necessary and appropriate to help ensure that an on-demand program of large position reporting is conducted effectively.

4. Section 420.4

Recordkeeping. Section 15C(f)(2) of the Securities Exchange Act of 1934 authorizes the Secretary to promulgate rules requiring large position holders to make and preserve records related to large position reporting requirements. Section 420.4 sets forth the proposed recordkeeping rules supporting large position reporting under that authority. The proposed recordkeeping rules are divided into two classes: (1) records required for entities that are currently subject to recordkeeping rules of federal securities or federal bank regulators (paragraph 420.4(b)); and (2) records required for all other entities, such as hedge funds, insurance companies, and pension funds (paragraph 420.4(c)).

Under paragraph 420.4(a)(1), the recordkeeping rules would apply to all aggregating entities that may control components of their respective reporting entity's reportable position as of the effective date of the final large position rules, but only if the aggregating entities' respective reporting entity had a reportable position in any Treasury security equal to or in excess of $2 billion (the minimum large position threshold) at any time during the prior two-year period ending 90 days after publication of the final rule. Thus, all reporting entities (through their respective aggregating entities) will be responsible for determining whether they have controlled a reportable position of at least $2 billion in a Treasury security during the two-year period. For some firms, this will necessitate a thorough review of their records to determine if their reportable positions reached that level.

In addition, under paragraph 420.4(a)(2), in instances where a reporting entity controlled a reportable position of at least $2 billion in a Treasury security during the two-year period, its designated filing entity will be required to submit a letter to the FRBNY certifying that it has in place, or will have in place by the effective date of the final rules, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the requisite records. This

[27] Since designated filing entities are also aggregating entities, they would also be required under §§ 420.4(b) or (c) to maintain records pertaining solely to their own securities transactions.

[28] *See supra* note 14.

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letter must be signed by one of the following officials of the designated filing entity: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent. The letter must be received by the FRBNY within 120 days after publication of the final rule.

The Department believes this requirement would ensure that entities having a history of controlling large Treasury securities positions would have supporting records in place in the event their reportable positions reach an announced large position threshold for a specific issue, thereby triggering the submission of a large position report. Those potential large position holders would have several months to develop methods to meet the proposed recordkeeping requirements since there will be a delayed effective date for the rules. Subsequent to the effective date of the rules, aggregating entities within a reporting entity that had not previously had a reportable position in a Treasury security equal to or greater than $2 billion but whose reportable position reaches or exceeds $2 billion would be subject to the large position recordkeeping requirements from that point forward.

Regardless of the date aggregating entities become subject to the recordkeeping rules, their being subject to the rules is based on whether the reportable position of their reporting entity reaches the large position threshold, not on whether the position of the aggregating entity itself reaches that threshold. Thus, an aggregating entity may be subject to the recordkeeping rules even though its own position has been substantially below the threshold.

Entities Subject to Recordkeeping Rules of Federal Securities or Federal Bank Regulators (Paragraph 420.4(b))

In developing the proposed recordkeeping rules, the Department sought to strike an appropriate balance between ensuring that large position holders maintain records that document and facilitate the generation of accurate reports and minimizing recordkeeping burdens on large position holders. Accordingly, the Department examined existing securities-related recordkeeping rules of the SEC, the Treasury, and the bank regulatory agencies to determine if the records required under those rules include the type of information necessary to create large position reports.

Specifically, the Department examined the following recordkeeping regulations: SEC recordkeeping regulations applicable to registered broker-dealers, registered investment advisors, and registered investment companies; Treasury recordkeeping rules applicable to registered government securities broker-dealers, financial institutions that have filed or should file notice as government securities broker-dealers, and depository institutions that hold government securities as custodians; and bank regulatory agency recordkeeping rules applicable to banks that conduct securities transactions for customers.[29]

The Department has determined that all of these recordkeeping rules require the affected entities to make and keep records of original entry (i.e., journals, blotters, or similar records) containing itemized records of all of the entities' securities transactions, including information pertaining to the amount and identification of each security or instrument. Records of original entry are basic, detailed records that cover, among other things, all transactions related to the components of a reportable position. Most of the existing regulations of the federal securities and federal bank regulators also require the affected entities to maintain order tickets or memos and various ledgers containing much of the same information required in the records of original entry.[30]

The proposed treatment of depository institutions that exercise investment discretion warrants specific discussion with respect to recordkeeping requirements because such entities are potential reporting entities. Depository institutions that exercise investment discretion are generally subject to the securities recordkeeping requirements of the bank regulatory agencies (12 CFR 12, 12 CFR 208, or 12 CFR 344), regardless of whether or not they exercise investment discretion within their trust departments.

In addition, for those rare cases in which depository institutions exercise investment discretion and act as custodians of government securities outside of their trust departments, the recordkeeping provisions of paragraph 450.4(c) of the GSA regulations also apply.[31] The Department views the information required by the recordkeeping rules of paragraph 450.4(c) as comparable to the basic information required in the records of original entry under the existing rules of the SEC, the Treasury, and the bank regulatory agencies.

The Department believes that reportable positions can be constructed relatively easily from the aforementioned records required by the federal regulatory agencies. As a result, the Department has decided, with respect to large position rules, not to propose any new recordkeeping rules for aggregating entities that are: (1) subject to the existing federal recordkeeping requirements, and (2) not designated filing entities.

However, an aggregating entity that is also a designated filing entity would be required to maintain specific large position-related records in addition to its existing securities-related records. (Each reporting entity would have only one designated filing entity.) First, the designated filing entity would be required to make and maintain copies of all of the large position reports it filed. Also, since the designated filing entity, in some cases, would have to collect and combine information received from other aggregating entities within its reporting entity, the designated filing entity would be required to make and maintain supporting documents or schedules (e.g., worksheets) that are used to compute the reportable position and to prepare large position reports. The designated filing entity would also be required to make and keep a chart showing the organizational entities (e.g., aggregating entities, if applicable) whose data is combined for purposes of calculating a reportable position.

The Department believes that requiring supporting schedules would enhance the ability of the designated filing entity to produce accurate and timely large position reports. Moreover, the retention of supporting schedules and organizational charts would be indispensable in responding to follow-up inquiries from the regulatory agencies and in the course of any in-depth review or reconstruction of a reporting entity's reportable position conducted by the Treasury, the FRBNY, or the SEC.

[29] 17 CFR 240.17a–3, 240.17a–4, and 240.17a–7 (for registered brokers and dealers); 17 CFR 275.204–2 (for registered investment advisers); 17 CFR 270.31a–1, 270.31a–2, and 270.31a–3 (for registered investment companies); 17 CFR 404.2 and 404.3 (for registered government securities brokers and dealers); 17 CFR 404.4 (for noticed financial institutions); 17 CFR 450 (for depository institution custodians that exercise investment discretion); and 12 CFR Part 12, Part 208, or Part 344 (for banks conducting securities transactions for customers), respectively.

[30] Most of the existing recordkeeping rules also require affected entities to maintain position records, which provide a composite listing of the long and short positions in each security for which the broker-dealer or other entity is responsible. However, position records do not include information on positions resulting from certain unsettled and off-balance sheet transactions (e.g., when-issued trades and futures).

[31] Recordkeeping requirements for depository institutions acting solely as custodians were not considered because these entities do not meet the proposed definition of having control under paragraph 420.2(b).

Designated filing entities would be required to retain the additional records for the same period specified in their existing securities-related recordkeeping rules.[32] In instances where recordkeeping rules contain more than one retention period (e.g., SEC Rule 17a-4), paragraph 420.4(b)(4) of the proposed rule specifies that the longest retention period will apply.

Other Entities (Paragraph 420.4(c))

Certain entities that have the potential to control large positions, or portions thereof, in Treasury securities within a reporting entity (e.g., hedge funds and insurance companies) are not currently subject to federal requirements to make and preserve securities-related records. To ensure that such entities make and preserve records that document and facilitate the generation of accurate large position reports—while minimizing the burden on those entities—the Department proposes that all aggregating entities (within their respective reporting entities) in this category make and maintain records of original entry (the equivalent of blotters or journals). These documents should be relatively easy for large, sophisticated investors to implement. In fact, it is our understanding that most such investors already produce and maintain such records as part of their on-going business and accounting control systems.

Like the recordkeeping system applicable to entities that are subject to federal securities-related recordkeeping rules, an aggregating entity that is also a designated filing entity would be required to make and maintain the following large position-related records in addition to its records of original entry: copies of all of the large position reports it filed, supporting documents or schedules (e.g., worksheets) used to prepare large position reports, and a chart showing the organizational entities (e.g., aggregating entities, if applicable) whose data is aggregated in order to calculate a reportable position. Such records would have to be preserved by the designated filing entity for at least six years, the first two in an easily accessible place.

5. Section 420.5

Effective Date. Section 420.5 sets out the effective date for both the recordkeeping and reporting provisions of the large position rules. The rule provides for a delayed effective date approximately six months after publication of the final rule. This period of time is provided in order to give affected entities sufficient time to make the necessary preparations for compliance. Only subsection 420.4(a) is not subject to this date but instead contains its own specific dates for compliance.

[32] *See supra* note 29.

IV. Special Analysis

The proposed rules reflect the Treasury's interest in meeting regulators' informational needs while minimizing the costs and burdens on market participants. The rules propose to adopt an on-demand reporting system, which will significantly minimize operational and compliance costs for market participants compared with the costs that would have been incurred if a regular reporting system were required. Further, in an effort to avoid imposing new requirements, the proposed regulations adopt, for the most part, existing federal recordkeeping requirements for the largest segment of market participants that would be subject to the rules. The proposal requires limited records to be maintained by those entities that are not currently subject to federal rules to make and preserve securities-related records. Additionally, the establishment of a minimum floor of $2 billion for the large position threshold will also greatly reduce the number of market participants potentially subject to the proposed rules. Therefore, based on the very limited impact of the proposal, it is the Department's view that the proposed regulations are not a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act,[33] it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities since the proposal establishes a minimum large position threshold of $2 billion. This assures market participants that the Treasury would not request large position reports for positions below that minimum amount. The Department does not believe that small entities will control positions of $2 billion or greater in any Treasury security. Accordingly, the inapplicability of the proposed regulations to small firms indicates that there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget for review and approval.[34] In accordance with this requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C. 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collection of information in this proposed regulation is contained in proposed §§ 420.3 and 420.4. The proposed reporting requirements in § 420.3 would require the designated filing entity of any market participant, whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security, to report information to FRBNY. Although the Treasury cannot be certain of the number of market participants that would have large reportable positions for a specific issue on which information is requested, we believe that very few entities would likely have to file reports because the proposed minimum reporting threshold is $2 billion. Further, Treasury expects that its requests for information will be relatively infrequent, and estimates that there will only be an average of five reports filed in response to any particular request.

The proposed recordkeeping requirements in § 420.4 require any aggregating entity to make and preserve certain records as of the effective date, but only if it has, during a specified period, controlled a portion of its reporting entity's reportable position in any Treasury security when that reportable position is equal to or in excess of the $2 billion minimum large position threshold specified in § 420.2(d). For each reporting entity subject to the recordkeeping rules as of the effective date, the designated filing entity will be required to submit a letter, on a one-time basis, certifying that it has in place, or will have in place, a recordkeeping system capable of making, verifying the accuracy of, and preserving the requisite records. As mentioned above, while Treasury expects that very few entities would likely control positions in excess of the stated threshold that would require reporting, a larger group of entities will

[33] 5 U.S.C. 601, *et seq.*

[34] 44 U.S.C. 3507(d).

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be required to submit the one-time letter.

For aggregating entities currently subject to, and in compliance with, recordkeeping rules of federal securities or federal bank regulators, and subject to the large position recordkeeping rules, there are no additional recordkeeping requirements, with one exception. If the aggregating entity is the designated filing entity for its reporting entity, then it is required to make and maintain copies of any large position reports filed; supporting documents or schedules used to compute data for such large position reports, including any information received from aggregating entities within the reporting entity; and an organizational chart showing the entities that are aggregated in developing a reportable position.

Those aggregating entities that must comply with the proposed rules but are not subject to paragraph 420.4(b) must make and preserve journals, blotters or other records of original entry containing an itemized record of all transactions that fall within the definition of a reportable position. This provision accounts for the greatest percentage of estimated recordkeeping burden hours. However, this requirement is significantly less than the full range of books and records requirements currently applicable to entities subject to federal securities-related recordkeeping requirements. If the aggregating entity is also a designated filing entity, the requirements for a designated filing entity are also applicable.

The collection of information is intended to enable the Treasury and other regulators to understand better the possible reasons for any apparent significant price distortions and the possible causes of market shortages in certain Treasury securities. The collection of information will help ensure that the Treasury securities market remains liquid and efficient, and is not viewed as subject to manipulation. The proposed rules apply to all market participants controlling large positions, as defined in the rules. Per paragraph 420.3(c), it is a mandatory requirement that reporting entities with reportable positions that equal or exceed the specified threshold in a Treasury notice respond through their designated filing entities by filing a report in the required format and within the specified reporting time frame.

In developing the proposed rules, we have consulted with affected entities and regulatory agencies, and expect that this process will continue through the development of a final rule. As previously mentioned, Treasury published an ANPR[35] which requested comments on a number of specific issues, including the approach and structure for a large position recordkeeping and reporting system. The estimated reporting and recordkeeping burden hours are based on a review of tenders submitted in Treasury auctions, position reports that primary dealers already complete and voluntarily submit to FRBNY, recordkeeping requirements that are already in place for federally-regulated participants in the government securities market and discussions with the industry and other regulators.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of functions of the Treasury, including the practical utility of the information; (2) the accuracy of the Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting and recordkeeping burden: 4,940 hours.

Estimated annual number of recordkeepers: 100.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Chapter IV, subchapter A is proposed to be amended as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for part 400 is revised to read as follows:

Authority: 15 U.S.C. 78*o*–5.

2. In § 400.1, paragraph (e) is added as follows:

§ 400.1 Scope of regulations.

* * * * *

(e) Section 104 of the Government Securities Act Amendments of 1993 (Pub. L. 103–202, 107 Stat. 2344) amended Section 15C of the Act (15 U.S.C. 78*o*–5) by adding a new subsection (f), authorizing the Secretary of the Treasury to adopt rules to require specified persons holding, maintaining or controlling a large position in to-be-issued or recently-issued Treasury securities to report such a position and make and keep records related to such a position. Part 420 of this subchapter contains the rules governing large position reporting.

* * * * *

3. Part 420 is added to read as follows:

PART 420—LARGE POSITION REPORTING

Sec.

420.1 Applicability.
420.2 Definitions.
420.3 Reporting.
420.4 Recordkeeping.
420.5 Effective Date.

Appendix A to Part 420—Separate Reporting Entity

Appendix B to Part 420—Sample Large Position Report

Authority: 15 U.S.C. 78*o*–5(f).

§ 420.1 Applicability.

(a) This part, including the Appendices, is applicable to all persons that participate in the government securities market, including, but not limited to, government securities brokers and dealers, depository institutions, registered investment companies, registered investment advisers, pension funds, hedge funds and insurance companies, that may control a reportable position in a recently-issued Treasury bill, note or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, foreign central banks, foreign governments and international monetary authorities are exempt from this part for the portion of any reportable position they control that is held at the Federal Reserve Bank of New York.

(c) Notwithstanding paragraph (a) of this section, Federal Reserve Banks are exempt from this part for the portion of any reportable position they control for their own account.

(d) Notwithstanding the definition of recently-issued, the Department reserves the right to collect large position information on Treasury security issues that are older than those specified, provided that such action is consistent

[35] *See supra* note 5.

with the purposes of the Act (15 U.S.C 78*o*–5(f)).

§ 420.2 Definitions.

For the purposes of this part:

(a) "Aggregating entity" means a single entity (e.g., a parent company or affiliate) that is combined with other entities, as specified in paragraph (i) of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

(b) "Control" means having the authority to exercise investment discretion over the purchase, sale, retention or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

(c) "Gross financing position" is the sum of the gross par amounts of a security issue received from financing transactions, including, but not limited to, reverse repurchase transactions, bonds borrowed, securities received in pledge, and collateralized credit extended. In calculating the gross financing position, a reporting entity may not net its positions against repurchase transactions, securities loaned, securities pledged or other deliveries of the security issue. However, a reporting entity may elect to reduce its gross financing position by the par amount of the security received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody reverse repurchase agreements.

(d) "Large position threshold" means, with respect to a reportable position, the dollar par amount such position must equal or exceed in order for a reporting entity to be required to submit a large position report. The large position threshold will be announced by the Department and may vary with each notice of request to report large position information and with each specified Treasury security. However, under no circumstances will a large position threshold be less than $2 billion.

(e) "Net fails position" is the net par amount of "fails to receive" less "fails to deliver" in the same security. The net fails position, as reported, may not be less than zero.

(f) "Net trading position" is the net sum of the following respective positions in the specific security issue:

(1) Cash/immediate net settled positions;

(2) Net when-issued positions;

(3) Net forward positions, including next-day settling;

(4) Net futures contract positions that require delivery of the specific security; and

(5) Net holdings of STRIPS principal components of the security.

(g) "Recently-issued" means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security (e.g., in early April, the January, February, and March 2-year notes).

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the reopened security is reissued by the Department (or scheduled to be reissued for when-issued securities).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(h) "Reportable position" is the sum of the net trading positions, gross financing positions and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.

(i) "Reporting entity" means any corporation, partnership, person or other entity and its affiliates. For the purposes of this definition, an affiliate is any: entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in Appendix A, one or more aggregating entities, either separately or together with one or more other aggregating entities, may be recognized as a separate reporting entity. Any entity that previously has received recognition from the Treasury as a separate bidder in Treasury auctions pursuant to Appendix A of 31 CFR Part 356 is also recognized as a separate reporting entity without further action.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of, Treasury securities are considered, collectively, to be one reporting entity.

§ 420.3 Reporting.

(a) A reporting entity is subject to the reporting requirements of this section only when its reportable position equals or exceeds the large position threshold specified by the Department for a specific Treasury security issue. The Department shall provide notice of such threshold by issuance of a press release and subsequent publication of the notice in the **Federal Register**. Such notice will identify the Treasury security issue to be reported; the date or dates (as of close of business) for which the large position information must be reported; and the applicable large position threshold for that issue. It is the responsibility of a reporting entity to take reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by the Department and for maintaining the additional records prescribed in the applicable paragraph of § 420.4.

(c) (1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position, as follows:

(i) net trading position comprising:

(A) cash/immediate net settled positions,

(B) net when-issued positions,

(C) net forward positions, including next-day settling,

(D) net futures contracts that require delivery of the specific security, and

(E) net holdings of STRIPS principal components of the security;

(ii) gross financing position; and

(iii) net fails position.

(2) The large position report should include the following two additional items as memoranda:

(i) A total that includes the amounts of securities delivered through repurchase agreements, securities loaned, securities pledged, and collateralized loans and other securities deliveries. This total should not be reflected in the gross financing position; and

(ii) If the reporting entity has elected to exercise the option available in

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§ 420.2(c) to reduce the amount of the gross financing position by the par amount of securities received but over which the reporting entity did not have effective control, the amount not included. The total amount of reduction should be deducted from the gross financing position prior to determining the reportable position.

(3) An illustration of a sample report is contained in Appendix B. Each of the net trading position elements shall be netted and reported as the applicable positive or negative number (or zero). The gross financing position and net fails position should each be reported as a single entry. If the amount of the net fails position is zero or less, report zero. All of these items should be reported in the order specified above. All position amounts and their components should be reported at par in millions of dollars.

(4) All balances must be reported as of the close of business of the reporting date(s) specified in the notice.

(5) Each submitted report must include the following administrative information in addition to the reportable position: the name of the reporting entity, the address of the principal place of business, the name and address of the designated filing entity, the Treasury security that is being reported, the CUSIP number, the report date or dates for which information is being reported, the date the report was submitted, the name and telephone number of the person to contact regarding information reported, and the name and position of the authorized individual submitting this report. The report must also be signed by the authorized individual, who must be one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity. The designated filing entity must also include in its report, immediately preceding the signature, a statement of certification as follows:

> The reporting entity submitting this report and the person(s) by whom it is executed hereby certify that all information contained in the report is accurate and complete and that the reporting entity is in compliance with the requirements of 17 CFR Part 420.

(6) The report must be filed before noon Eastern time on the second business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) will be considered filed when received by the Federal Reserve Bank of New York. The report may be filed in any manner acceptable to the Federal Reserve Bank of New York.

(e) A reporting entity that has filed a report pursuant to paragraph (c) shall, at the request of the Department or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

§ 420.4 Recordkeeping.

(a)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity must make and maintain records pursuant to this part as of its effective date, but only if the aggregating entity has controlled a portion of its reporting entity's reportable position in any Treasury security when such reportable position of the reporting entity has equaled or exceeded the minimum large position threshold specified in § 420.2(d) (i.e., $2 billion) during the prior two-year period ending [90 days after publication of the final rule]. Subsequent to the effective date, an aggregating entity that controls a portion of its reporting entity's reportable position in a recently-issued Treasury security, when such reportable position of the reporting entity equals or exceeds the minimum large position threshold, shall be responsible for making and maintaining the records prescribed in this part.

(2) In the case of a reporting entity whose reportable position in any Treasury security has equaled or exceeded the minimum large position threshold during the prior two-year period ending [90 days after publication of the final rule], each such reporting entity's designated filing entity shall submit a letter to the Federal Reserve Bank of New York certifying that it has in place, or will have in place by the effective date, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section.

(3) The letter specified in paragraph (a)(2) of this section must be signed by one of the following: the chief financial officer, the chief operating officer, the chief executive officer, or the managing partner or equivalent of the designated filing entity and must be received by the Federal Reserve Bank of New York no later than [120 days after publication of the final rule].

(b) Records to be made and preserved by entities that are subject to the recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions. As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment advisor, or registered investment company with the applicable recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that if such entity is also the designated filing entity it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1)-(3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) Records to be made and kept by other entities. (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that fall within the definition of a reportable position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: the type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition it shall make and preserve the following records:

(i) copies of all large position reports filed pursuant to this part;

(ii) supporting documents or schedules used to compute data for the large position reports filed pursuant to this part; and

(iii) a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position.

(3) With respect to the records required by paragraphs (c) (1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

§ 420.5 Effective Date.

The provisions of this part, except for § 420.4(a), shall be first effective on [180 days from the date of publication of the final rule. If the date does not fall on the last day of the month, then move the date to the end of the month.].

Appendix A to Part 420—Separate Reporting Entity

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent or subsidiary) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from the Department pursuant to the procedures outlined in § 400.2(c) of this title. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

"[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

"(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to acquire in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

"(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

"The above-named entity agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid."

Any entity that previously has received recognition as a separate bidder in Treasury auctions from the Department pursuant to 31 CFR Part 356 is also recognized as a separate reporting entity without further action.

Appendix B to Part 420—Sample Large Position Report.

Formula for Determining a Reportable Position

[$ Amounts in millions at par value]

Date For Which Information Is Being Reported: _____	
1. Cash/Immediate Net Settled Positions	$____
2. Net When-Issued Positions for To-Be-Issued and Reopened Issues	+$____
3. Net Forward Settling Positions Including Next Day Settling	+$____
4. Net Positions in Futures Contracts Requiring Delivery of the Specific Security	+$____
5. Net STRIPS Principal Components of the Specific Security	+$____
6. Gross Financing Position (Includes total of securities received through reverse repos, bonds borrowed, securities received in pledge, collateralized credit extended.)	+$____
7. Net Fails Position (Fails to Receive less Fails to Deliver. If equal to or less than 0, report 0.)	+$____
8. Total Reportable Position	=$____

Formula for Determining a Reportable Position—Continued

[$ Amounts in millions at par value]

Memorandum #1: Report one total which includes the gross par amounts of securities delivered through repurchase agreements, securities loaned, securities pledged, and collateralized loans. Not included in item #6 (Gross Financing Position) as reported above.	$____
Memorandum #2: If the optional exclusion was taken to reduce the amount of the Gross Financing Position by the amount of securities received but that the reporting entity did not have effective control over (e.g., third party custodial structures, hold-in-custody relationships, counterparty retained contractual right to substitute), indicate the total amount of reduction here. Deduct from item #6 (Gross Financing Position).	$____

Administrative Information To Be Provided in the Report

Name of Reporting Entity:
Address of Principal Place of Business:
Name and Address of the Designated Filing Entity:
Treasury Security Reported on:
CUSIP Number:
Date or Dates for Which Information Is Being Reported:
Date Report Submitted:
Name and Telephone Number of Person to Contact Regarding Information Reported:
Name and Position of Authorized Individual Submitting this Report (Chief Financial Officer, Chief Operating Officer, Chief Executive Officer, or Managing Partner or Equivalent of Designated Filing Entity):
Statement of Certification: "The reporting entity submitting this report and the person(s) by whom it is executed hereby certify that all information contained in the report is accurate and complete and that the reporting entity is in compliance with the requirements of 17 CFR Part 420."
Signature of Authorized Person Named Above:
* * * * *
Date:

Darcy Bradbury,

Deputy Assistant Secretary (Federal Finance).

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Part VII

The President

Proclamation 6859—To Modify the Tariff-Rate Quota on Italian-Type Cheeses From Poland

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Presidential Documents

Title 3—

The President

Proclamation 6859 of December 13, 1995

To Modify the Tariff-Rate Quota on Italian-Type Cheeses From Poland

By the President of the United States of America

A Proclamation

1. On May 17, 1995, the United States and Poland signed a Record of Understanding Between Poland and the United States of America on Agricultural Items, which provides for an increase in the allocation to Poland of the in-quota quantity of the tariff-rate quota on Italian-type cheeses.

2. Section 404(d)(3) of the Uruguay Round Agreements Act ("the URAA")(19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate.

3. Accordingly, pursuant to section 404(d)(3) of the URAA, I have determined that it is appropriate to proclaim an increase in the allocation to Poland of the in-quota quantity of the tariff-rate quota for Italian-type cheeses.

4. Section 604 of the Trade Act of 1974, as amended ("the 1974 Act")(19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States ("the HTS") the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. The modification of the allocation to Poland of the in-quota quantity of the tariff-rate quota for Italian-type cheeses is such an action.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 404(d)(3) of the URAA (19 U.S.C. 3601(d)(3)) and section 604 of the 1974 Act (19 U.S.C. 2483), do proclaim that:

(1) Additional U.S. note 21 to chapter 4 of the HTS is modified by deleting the quantity "1,100,000" set out opposite Poland and inserting "1,325,000" in lieu thereof.

(2) This proclamation is effective with respect to goods entered or withdrawn from warehouse for consumption on or after the date of signature of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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Virginia; comments due by 12-27-95; published 11-27-95
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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-026-00001-8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869-026-00002-6)	40.00	¹ Jan. 1, 1995
4	(869-026-00003-4)	5.50	Jan. 1, 1995
5 Parts:			
1-699	(869-026-00004-2)	23.00	Jan. 1, 1995
700-1199	(869-026-00005-1)	20.00	Jan. 1, 1995
1200-End, 6 (6 Reserved)	(869-026-00006-9)	23.00	Jan. 1, 1995
7 Parts:			
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27-45	(869-026-00008-5)	14.00	Jan. 1, 1995
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52	(869-026-00010-7)	30.00	Jan. 1, 1995
53-209	(869-026-00011-5)	25.00	Jan. 1, 1995
210-299	(869-026-00012-3)	34.00	Jan. 1, 1995
300-399	(869-026-00013-1)	16.00	Jan. 1, 1995
400-699	(869-026-00014-0)	21.00	Jan. 1, 1995
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8	(869-026-00026-3)	23.00	Jan. 1, 1995
9 Parts:			
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200-End	(869-026-00028-0)	23.00	Jan. 1, 1995
10 Parts:			
0-50	(869-026-00029-8)	30.00	Jan. 1, 1995
51-199	(869-026-00030-1)	23.00	Jan. 1, 1995
200-399	(869-026-00031-0)	15.00	⁴ Jan. 1, 1993
400-499	(869-026-00032-8)	21.00	Jan. 1, 1995
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11	(869-026-00034-4)	14.00	Jan. 1, 1995
12 Parts:			
1-199	(869-026-00035-2)	12.00	Jan. 1, 1995
200-219	(869-026-00036-1)	16.00	Jan. 1, 1995
220-299	(869-026-00037-9)	28.00	Jan. 1, 1995
300-499	(869-026-00038-7)	23.00	Jan. 1, 1995
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14 Parts:			
1-59	(869-026-00042-5)	33.00	Jan. 1, 1995
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15 Parts:			
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300-799	(869-026-00048-4)	26.00	Jan. 1, 1995
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16 Parts:			
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240-End	(869-026-00056-5)	30.00	Apr. 1, 1995
18 Parts:			
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19 Parts:			
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141-199	(869-026-00062-0)	21.00	Apr. 1, 1995
200-End	(869-026-00063-8)	12.00	Apr. 1, 1995
20 Parts:			
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21 Parts:			
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170-199	(869-026-00069-7)	22.00	Apr. 1, 1995
200-299	(869-026-00070-1)	7.00	Apr. 1, 1995
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22 Parts:			
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24 Parts:			
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43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-99	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
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1926	(869-022-00114-1)	33.00	July 1, 1994
*1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1-199	(869-026-00119-7)	25.00	July 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
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700-799	(869-026-00128-6)	21.00	July 1, 1995
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33 Parts:			
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34 Parts:			
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*400-End	(869-026-00135-9)	37.00	July 5, 1995
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53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
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81-85	(869-022-00145-1)	23.00	July 1, 1994
86-99	(869-022-00146-9)	41.00	July 1, 1994
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150-189	(869-026-00151-1)	25.00	July 1, 1995
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*260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
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43 Parts:			
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45 Parts:			
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*500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
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46 Parts:			
1-40	(869-022-00171-0)	20.00	Oct. 1, 1994
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140-155	(869-022-00175-2)	12.00	Oct. 1, 1994
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166-199	(869-022-00177-9)	17.00	Oct. 1, 1994
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47 Parts:			
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49 Parts:			
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50 Parts:			
1-199	(869-022-00200-7)	25.00	Oct. 1, 1994
200-599	(869-022-00201-5)	22.00	Oct. 1, 1994
600-End	(869-022-00202-3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
Complete 1995 CFR set		883.00	1995
Microfiche CFR Edition:			
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Individual copies		1.00	1995
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Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

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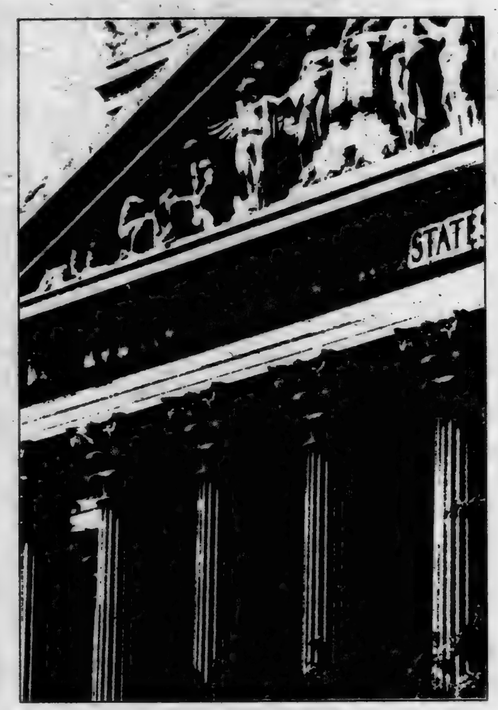
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending portions of Part 800, General Regulations under the United States Grain Standards Act, as amended (USGSA). The action is being taken to reinstate the regulations contained in 7 CFR Part 800 prior to the effective date of the direct final rule that was published in the **Federal Register** on August 2, 1995 (60 FR 39242). The action is necessary because we received adverse comments on the direct final rule, and we were unable to withdraw it before the effective date. We will follow this action with a proposed rule to provide adequate opportunity to comment on proposed changes contained in the direct final rule.

DATES: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA–GIPSA, Room 0623–South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20090–6454, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purpose of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restriction concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and Recordkeeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

The direct final rule published August 2, 1995, (60 FR 39242) notified the public of amendments to those regulations that prohibit official agencies to provide official weighing service when they provide similar unofficial service. GIPSA had planned to allow agencies to do both official and unofficial weighing within their assigned areas. Two written adverse comments in response to the direct final rule were received. The direct final rule was inadvertently not withdrawn prior to its effective date. The rule became effective on October 2, 1995. This final rule amends the regulations by reinstating the regulations that were in effect prior to the effective date of the direct final rule. The agency now plans to publish a proposed rule for public comment before taking further action to change the regulations.

Pursuant to 5 U.S.C. 553, it also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to implementing this action and that good cause exist for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action reinstates the regulations prior to effective date of the direct final rule the was inadvertently not withdrawn; and (2) a proposed rule will be published before any further changes to the regulations are made and the public will be afforded the opportunity to comment.

Final Action

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

2. Section 800.76(a) is revised as follows:

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any function or provide any service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

* * * * *

(c) * * *

(3) Engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.195(f)(5)(ii) is revised to read as follows:

§ 800.195 Delegations.

* * * * *

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(f) * * *

(5) * * *

(ii) *Unofficial activities.* The delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

5. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Delegations

* * * * *

(g) * * *

(6) * * *

(ii) *Unofficial activities.* The agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: December 6, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–30593 Filed 12–18–95; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing this Order pursuant to which Option Contracts on a spot foreign exchange operation between the Deutsche Mark and the French Franc (DEM/FRF) traded on the Marche a Terme International de France (MATIF) may be offered or sold to persons located in the United States. This Order makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States and the procedures established by the Mutual Recognition Memorandum of Understanding (MRMOU) with the French Commission des Operations de Bourse.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Warren R. Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. Telephone: (202) 418–5435.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Pursuant to the Mutual Recognition Memorandum of Understanding with the French Commission des Operations de Bourse and Rule 30.3(a) Permitting Option Contracts on the DEM/FRF Traded on the Marche a Terme International de France (MATIF) to Be Offered or Sold to Persons Located in the United States Thirty Days After Publication of This Notice in the Federal Register Absent Further Notice

By Order issued on December 17, 1991 (Initial Order) [1], the Commission authorized, pursuant to the Mutual Recognition Memorandum of Understanding (MRMOU) [2] and Commission rule 30.3(a),[3] certain option products traded on the MATIF to be offered or sold in the United States.

By letter dated October 24, 1995, MATIF notified the Commission that on October 23, 1995 it would be introducing Option Contracts based on the DEM/FRF and requested that the Commission supplement its Initial Order authorizing the offer and sale in the United States of Options on the Notional Bond, the 3-month PIBOR, the 3-month EURODEM Futures Contracts; a Supplemental Order, 57 FR 10987 (April 1, 1992), authorizing the offer and sale in the United States of Options on the Long-Term ECU Bond Futures Contracts; a Supplemental Order, 59 FR 22971 (May 4, 1994), authorizing the offer and sale in the United States of Options on the USD/DEM and USD/FRF; and a Supplemental Order, 60 FR 34458 (July 3, 1995), authorizing the offer and sale in the United States of Options on the GBP/DEM and the DEM/ITL by also authorizing the MATIF's Option Contracts on the DEM/FRF to be offered or sold to persons located in the United States.[4] Based upon the foregoing, and pursuant to the terms of the MRMOU, the Commission hereby publishes this Order in the **Federal Register** pursuant to which the particular Option Contracts specified herein may be offered or sold thirty days after the publication of this Order.

Accordingly, pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), and Article II, paragraph 6(b) and Article V, paragraph 6 of the MRMOU signed by the Commission on June 6, 1990 (55 FR 23902 (June 13, 1990)), and subject to the terms and conditions specified in the MRMOU, the Commission hereby issues this Order pursuant to which Option Contracts based on the DEM/FRF traded on the MATIF may be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**, unless prior to that date the Commission receives any comments which may result in a determination to delay the effective date of the Order pending review of such comments. Under such circumstances the Commission will provide notice.

Contract Specifications

DEM/FRF Option

Type

European style

Underlying Interest

Spot currency transaction DEM against FRF

Contract Size

DEM 100,000

Strike Price

Expressed in FRF, with 2 decimals.
Strike price intervals: 1 Centime (3.40–3.41)

Quotation

Premium in % of the DEM nominal, with 2 decimals.
Ex: 0.45% stands for 100,000 × 0.45/100 = DEM 450.
In specific cases, premium with 3 decimals.

Tick

Size: 0.01%
Value: 0.01/100 × 100,000 = DEM 10

Expiration

3 monthly + 3 quarterly expirations from March (H), June (M), September (U), December (Z)

Last Trading Day

Thursday following the 3rd Wednesday of expiration month at 9:00 am (New York time)

First Trading Day

First business day following an expiration date

Exercise

After settlement of a spot-fixing on the expiration date, automatic exercise of in-the-money options.
Exercise: exchange of underlying currencies

Trading Hours

Open outcry: 9:15 am to 5:00 pm (Paris time)
THS (after hours trading): 5:00 pm to 9:15 am

[1] See 56 FR 66345 (December 23, 1991).

[2] See 55 FR 23902 (June 13, 1990). Among other things, this arrangement provides a mechanism pursuant to which certain option products traded on the Marche a Terme International de France (MATIF) may be offered or sold to customers resident in the United States thirty days after publication in the **Federal Register** of a notice specifying the particular option contracts to be offered or sold.

[3] Commission rule 30.3(a), 17 CFR 30.3(a), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[4] See letter dated October 24, 1995 from Catherine Langlais, MATIF, to Jane C. Kang, Esq., Division of Trading and Markets. See also letter dated November 6, 1995 from Frederic Perier, Commission des Operations de Bourse, to Andrea M. Corcoran, Director, Division of Trading and Markets.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for the "Marche a Terme International de France" to read as follows:

Appendix B to Part 30—Option Contracts Permitted to be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
Marche a Terme International de France	Option Contracts on the Deutsche Mark and the French Franc (DEM/FRF).	December 19, 1995; 60 FR 65237
.	. . . .	. .

Issued in Washington, D.C. on December 6, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–30361 Filed 12–18–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8634]

RIN 1545–AT12

Withholding on Distributions of Indian Gaming Profits to Tribal Members

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Internal Revenue Code of 1986. Those affected by the regulations are persons, including Indian tribes, making payments to members of Indian tribes from net revenues of certain gaming activities conducted or licensed by the tribes. Also affected are members of Indian tribes who receive the payments.

DATES: These regulations are effective December 19, 1995.

For date of applicability, see § 31.3402(r)–1(b).

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3402(r). Section 3402(r) was added by section 701 of the Uruguay Round Agreements Act, which approved the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the Statement of Administrative Action to implement the Agreements.

On December 22, 1994, temporary regulations (TD 8574) relating to withholding on distributions of Indian gaming profits to tribal members under section 3402(r) were published in the **Federal Register** (59 FR 65939). A notice of proposed rulemaking (EE–60–94) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 65982). No public hearing was requested or held.

Also on December 22, 1994, the IRS mailed a copy of Notice 1026, providing withholding tables for use in 1995, to Indian tribes and gaming establishments listed with the National Indian Gaming Commission. For 1996 and subsequent years, tables will be printed in a supplement to Circular E.

The IRS received written comments responding to the notice of proposed rulemaking. After consideration of the comments, the regulations proposed by EE–60–94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The regulations contain no substantive changes.

Explanation of Provisions

1. *Indian Gaming Regulatory Act.* Net revenue from certain gaming activities conducted or licensed by an Indian tribe may be used to make taxable distributions to members of the Indian tribe. The tribe must notify its members of the tax liability at the time the payments are made. 25 U.S.C. 2710 (b)(3) and (d)(1).

2. *Prior law.* Prior to the addition of section 3402(r) in 1994, a tribe was not required to withhold on these distributions to tribal members except to the extent backup withholding rules applied under section 3406.

3. *Code section 3402(r).* Section 3402(r) generally requires that, for payments made after December 31, 1994, persons, including Indian tribes, making payments to members of Indian tribes from the net revenues of certain gaming activities conducted or licensed by the tribes deduct and withhold income taxes from those payments. Section 3402(r) provides that the withholding amount be calculated assuming that the taxpayer is single and has one exemption.

4. *Legislative history.* The legislative history of section 3402(r) indicates that the goal of the new withholding requirement was to make it easier for tribal members who receive gaming distributions to meet their tax responsibilities:

Distributions of net revenues from gaming activity by an Indian tribe may result in significant tax liability to the tribe's members. Establishing withholding on such payments will more closely match estimated tax payments to ultimate tax liability. For some tribal members, this change may eliminate the need to make quarterly

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estimated tax payments. For others, it will reduce the likelihood that they will face penalties for underpayment of tax at the time of tax filing.

H.R. Rep. No. 826, 103d Cong., 2d Sess., pt.1, at 170–171 (1994).

5. *Proposed regulations.* The proposed regulations implement the withholding method prescribed by section 3402(r). They also permit additional withholding by agreement between the tribal member and the tribe.

6. *Comments and final regulations.* The IRS received only two written comments on the proposed regulations. After consideration of both comments, the proposed regulations are adopted with no substantive changes.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of the regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for section 31.3402(r)–1T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3402(r)–1 also issued under 26 U.S.C. 3402(p) and (r). * * *

Par. 2. Section 31.3402(r)–1 is added to read as follows:

§ 31.3402(r)–1 Withholding on distributions of Indian gaming profits to tribal members.

(a) (1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year. For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly, a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures*—(i) *In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the amount to be deducted and withheld under section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

(5) *Additional withholding permitted.* Consistent with the provisions of section 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)–1 (with respect to voluntary withholding agreements between employees and employers).

(b) Effective date. This section applies to payments made after December 31, 1994.

§ 31.3402(r)–1T [Removed]

Par. 3. Section 31.3402(r)-1T is removed.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–30683 Filed 12–18–95; 8:45 am]
BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 20

Interim Rule Amending International Mail Manual Subchapter 790, Items Mailed Abroad by or on Behalf of Senders in the U.S. and Certain Other Countries

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: On March 10, 1994, the Postal Service published in the **Federal Register** (59 FR 11188–11193) amendments to certain rules in International Mail Manual (IMM) subchapter 790 to clarify when a mailing in a foreign country is by or on behalf of a resident of the United States for the purposes of collecting U.S. domestic postage; and to authorize the collection of U.S. domestic postage on certain mail posted in a foreign country by or on behalf of a person who is not a resident of that foreign country. This document amends IMM subchapter 790 to remove the threshold of 1,000 pieces mailed abroad in a 30-day period by a U.S. resident and to remove the standards relative to the collection of U.S. domestic postage on "A-B-C remail".The basis for the amended rules is contained in article 25, Posting Abroad of Letter-Post Items, of the Universal Postal Convention (Washington, 1989).

DATES: The interim rule is effective January 1, 1996. Comments must be received on or before January 18, 1996.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Pricing, U.S. Postal Service, 475 L'Enfant Plaza SW RM 4400–EB, Washington, DC 20260–6500. Copies of all written comments will be available at the above address for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–4071.

SUPPLEMENTARY INFORMATION: In 1994, the Universal Postal Union (UPU) met in Congress in Seoul, Korea, to amend and adopt the Acts of the Universal Postal Union. The Acts come into force on January 1, 1996. The United States is a member of the UPU. By virtue of that membership, the U.S. Postal Service must adhere to the Agreements of the UPU to which it is a signatory.

The UPU adopted revisions to the Acts of the Universal Postal Union, including article 25 of the Universal Postal Convention. Article 25 no longer contains a provision permitting the Postal Service to collect U.S. domestic postage from a resident of the United States when mailings made abroad for that resident exceed 1,000 pieces in a 30-day period without regard to whether the postage paid in the foreign country is less than the applicable U.S. domestic postage. In addition, article 25 no longer grants authority to the Postal Service to collect U.S. domestic postage for items for delivery in the United States from a mailer who posts, or causes to be posted, such items in a country other than the country of that mailer's residence. Rather, any charge will be due from the dispatching postal administration.

As a result of the revisions to article 25, the Postal Service is amending IMM subchapter 790 to remove the threshold of 1,000 pieces mailed abroad in a 30-day period by a U.S. resident and to remove the standards relative to the collection of U.S. domestic postage on "A–B–C remail" (that is, a method of mailing in which a person or firm mails from a country other than the one of which it is a resident to a third country in order to benefit from lower international postage rates in the country of mailing).

Specifically, the 1994 Congress amended article 25, Posting Abroad of Letter-Post Items, which contains four paragraphs. Paragraphs 1 through 3 relate to items mailed from abroad back into the country of residence of the sender. Paragraph 4 relates to items mailed by residents of one country from a second country for delivery in a third country. This method of mailing (as discussed above) is commonly referred to as "A–B–C remail."

Paragraph 1 was amended to remove the provision that permitted postal administrations to invoke action against a person or firm mailing to that person's or firm's country of residence from another country solely on the basis of the number of items mailed. Article 25, paragraph 1, requires that the mailing be made "with the object of profiting by more favorable rate conditions there." To comply with this revision, the Postal Service is removing from IMM subchapter 790 the provision that provides that applicable U.S. domestic postage is due when "1,000 or more such items are mailed in a 30-day period regardless of whether the foreign postage is lower than the comparable U.S. postage."

Paragraph 4 regulates "A–B–C remail." This method of mailing occurs when a resident of country A mails from country B mail destinating in country C. This method is generally economically feasible because of differences in the terminal dues system provided by the Universal Postal Convention. Most developing countries (which generally originate small volumes of outgoing international mail) are assigned a lower terminal dues rate than developed countries (which generally originate large volumes of outgoing international mail).

Under the current terminal dues system, for example, two countries each annually exchanging more than 150 tons of mail would pay terminal dues equivalent to 25 cents for a ½-ounce item. By contrast, two countries each annually exchanging 150 tons or less of mail would pay terminal dues equivalent to only 6 cents for the same ½-ounce item.

When "A–B–C remail" is used, that mailing method harms both country A (because it loses revenue and mail volume) and country C (because it receives less in terminal dues from country B than it would receive from country A). This lower rate of terminal dues generally does not compensate the delivering country for the actual cost of handling such mail.

To correct this situation, the 1994 Universal Postal Congress adopted a new terminal dues system and introduced a separate rate for "bulk mail," regardless of where that mail originates. The delivering country will be able to collect the same rate in terminal dues without regard to the country originating the mail. This revised system should reduce considerably the volume of mail migrating from developed countries to developing countries solely to take advantage of lower international rates made possible from different terminal dues rates.

In some cases, the 1994 Congress recognized that even this "bulk mail" rate of terminal dues would not provide full compensation to the delivering postal administration and that migration of mail might continue. Accordingly, article 25, paragraph 4, allows the delivering postal administration to collect the equivalent of "bulk mail" terminal dues from the dispatching postal administration if the delivering administration is not receiving appropriate remuneration. However, the delivering administration will no longer be able to collect extra compensation from the sender of the items. Remuneration is strictly between the dispatching and delivering postal administrations. Therefore, the Postal Service is eliminating its rules in IMM subchapter 790 concerning the collection of U.S. domestic postage from the sender of so-called "A–B–C remail."

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites public comment.

The Postal Service adopts on an interim basis, pending receipt and consideration of public comment, the following amendments to subchapter 790 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended by revising subchapter 790, Items Mailed Abroad by or on Behalf of Senders in the U.S. and Certain Other Countries, to read as follows:

790 Items Mailed Abroad by or on Behalf of Senders in the United States

791 Postage Payment Required

Payment of U.S. postage is required to secure delivery of mail when the mailing is by or on behalf of a person or firm that is a resident of the United States and the foreign postage rate applied to such items is lower than the comparable U.S. domestic postage rate.

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792 Definition of Terms

792.1 Resident

A resident of the United States includes any firm that has a place of business in the United States or is incorporated or otherwise organized in the United States, its territories, or its possessions.

792.2 By or on Behalf

A mailing is made by or on behalf of a person or firm that is a resident of the United States if such a resident seeks or expects to derive economic benefit or advantage from that mailing.

792.3 Place of Business

A place of business in the United States is any location in the United States, its territories, or its possessions where a firm's employees or agents regularly have personal contact with other individuals for conducting the firm's business. For the purposes of this section, a firm whose employees or agents have personal contact with others for conducting the firm's business in different places in the United States for short periods (for example, at hotels in different cities for 1 or 2 days at a time) is considered to have a place of business in the United States if the aggregate amount of time spent in the United States is 180 days or more within 12 consecutive months.

792.4 Agent

The use of a nonexclusive agent in the United States for the sole purpose of accepting orders and remissions for transmission to a firm in another country or for the sole purpose of distributing merchandise manufactured in another country and shipped to the United States in bulk does not by itself establish a place of business in the United States.

793 Advance Payment Required

793.1 Sample Mailpiece

A sender affected by the provisions in 791 must submit a sample mailpiece (envelope and contents) from the proposed mailing; a statement about the number of items to be mailed, the date of mailing, and the place of mailing; and a check, made payable to the U.S. Postal Service, to cover the amount of the applicable U.S. postage. The sample mailpiece, statement, and check must be sent to: Manager, International Pricing, U.S. Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260–6500.

793.2 Headquarters Notification

Headquarters provides notification of postage acceptance and approval of the mailing to the sender and to the receiving U.S. exchange office. This notification permits the items in the mailing to go forward to the addressees without delay when the items reach the United States.

794 Advance Payment Not Made

794.1 Return or Disposal of Items

Items may be returned to origin or disposed of in accordance with postal regulations if U.S. postage is not paid.

794.2 Mailings Without Advance Payment

A mailing subject to the provisions in 791 received without advance payment of U.S. domestic postage is held at the receiving U.S. exchange office. The exchange office reports the mailing to the manager of International Pricing, USPS Headquarters. (The exchange office is advised to release the mail when the applicable postage is paid.) The report must contain the following information:

a. Title and/or nature of the items.
b. Identity of the sender.
c. Number of items detained.
d. Weight of a single item.
e. Foreign postage paid per item.
f. Country of mailing.

795 Report of Mailings

The receiving U.S. exchange office must report any mail appearing to be subject to the provisions of this subchapter to the manager of International Pricing, USPS Headquarters.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–30668 Filed 12–18–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA44–1–7167a; A–1–FRL–5314–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Best Available Controls for Consumer and Commercial Products (Including Architectural and Industrial Maintenance Coatings)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires VOC emission standards for architectural and industrial maintenance coatings and 10 categories of consumer products. The intended effect of this action is to approve a revision to Massachusetts SIP which reduces VOC emissions from architectural and industrial maintenance coatings and 10 categories of consumer products. This action is being taken in accordance with Section 183(e) of the Clean Air Act.

DATES: This action is effective February 20, 1996, unless notice is received by January 18, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act, EPA is required to (1) study emissions of VOCs from consumer and commercial products; (2) list those categories of products that account for at least 80 percent of the total VOC emissions from consumer and commercial products in areas of the country that fail to meet the national air quality standards set for ground-level ozone; and (3) divide the list into four groups, and regulate one group every two years using best available controls, as defined by the Clean Air Act.

In March 1995, EPA issued a report to Congress, *Study of Volatile Organic Compound Emissions from Consumer and Commercial Products*, which evaluated the contribution of VOC emissions from consumer and commercial products on ground-level ozone levels, and established criteria and a schedule for regulating these products under the Clean Air Act. Architectural coatings and consumer and commercial products (24 categories of household products) are in the first group of products to be regulated by EPA no later than March 1997. Massachusetts decided to adopt rules for consumer and commercial products in advance of a federal rule, to get credit for reductions from this category in its 15% plan.

Massachusetts was required to submit, by November 15, 1993, a SIP revision for Reasonable Further Progress (RFP) for 15% reduction of VOCs as necessary for moderate areas and above. The entire state of Massachusetts is classified as serious nonattainment area, therefore the 15% plan must cover the entire state.

On May 6, 1994, the Massachusetts DEP submitted to EPA for comment, proposed amendments to the SIP to address the RFP requirements including new air pollution control regulations entitled "Control of Volatile Organic Compounds from Consumer and Commercial Products" and "Control of VOCs from Architectural and Industrial Maintenance Coating." Massachusetts held a public hearings on May 6, 10, 11, and 13, 1994 throughout the State for its proposed architectural and industrial maintenance coatings rule. Public hearings were held June 22 and 24 for Massachusetts' proposed consumer and commercial products rule. EPA submitted written comments regarding the proposed regulations on May 19, 1994 and June 22, 1994. Subsequent to the public hearings, Massachusetts decided to consolidate the architectural and industrial maintenance coatings rule and the consumer and commercial products rule into a single rule. The consolidated rule was effective on November 18, 1994, upon publication in the Massachusetts Register.

On January 9, 1995, the Commonwealth Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision amends 310 CMR 7.00 by adding Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products .

The adopted regulation 310 CMR 7.25, "Best Available Controls for Consumer and Commercial Products," regulates the VOC content of consumer and commercial products. The regulation applies to any person who sells, offers for sale, or manufactures for sale within Massachusetts consumer and commercial products and architectural or industrial maintenance coatings specified in 310 CMR 7.25.

Summary of SIP Revision

"Consumer product" is defined by Massachusetts as: "A chemically formulated product used by household, commercial, and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products. This definition of "consumer product" excludes architectural coatings."

"Architectural Coating" is defined as: "Any coating which is applied to stationary structures or their appurtenances, mobile homes, pavements, or curbs."

The consumer products portion of the rule, section 7.25(12), contains limits that specify the maximum allowed VOC content (%VOC by weight) for the following categories of commercial and consumer products: air fresheners, cleaners, engine degreasers, floor polishes/waxes, furniture maintenance products, general purpose cleaners, glass cleaners, hair spray, insecticides, laundry prewash, antiperspirants and deodorants. Manufacturers must comply with these limits by October 1, 1995.

The Architectural and Industrial Maintenance portion of the rule, section 7.25(11), requires manufacturers to comply with VOC limits (grams VOC/liter or lbs VOC/gal) by October 1, 1995, for the following categories of Architectural coatings: flat coatings, non-flat coatings, anti-graffiti coating, bituminous pavement sealer, bond breakers, calcimine recoating product, concrete curing compound, concrete/masonry conditioner, dry fog coating, fire retardant coating, form release compound, graphic arts coating (sign paint), high temperature industrial maintenance coating, industrial maintenance coating, lacquer, magnesite cement coating, mastic texture coating, metallic pigmented coating, multicolor coating, pretreatment wash primer, primer/sealer/undercoat, quick dry primer/sealer/undercoat, roof coating, sanding sealer, shellac, stains, opaque, swimming pool coating, tile-like glaze, traffic coating, varnish, waterproofing sealer, wood preservative, and any other architectural coating not otherwise specified.

EPA's evaluation is detailed in a memorandum, entitled "Technical Support Document for Massachusetts Air Pollution Control Regulation , 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products (including Architectural and Industrial Maintenance Coatings)."

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 20, 1996 unless adverse or critical comments are received by January 18, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 20, 1996.

Final Action

EPA is approving Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Madates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 183(e) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that

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this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusett was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 21, 1995.

John P. DeVillars,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(108) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 9, 1995.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated January 9, 1995 submitting a revision to the Massachusetts State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the Commonwealth of Massachusetts effective on November 18, 1994: 310 Code of Massachusetts Regulations Section 7.25 *U Best Available Controls for Consumer and Commercial Products.*

3. In § 52.1167, Table 52.1167 is amended by adding a new entry for 310 CMR 7.25 in numerical order to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.25 ..	Best available controls for consumer and commercial products.	11/18/94	December 19, 1995 ..	60 FR 65242	108	Includes architectural & industrial maintenance coatings.

[FR Doc. 95–30797 Filed 12–18–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5399–3]

Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification to the final rule.

SUMMARY: This document provides clarification regarding the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. It is intended to address common questions regarding situations where one or more layers which may contain asbestos are present, and supplement the January 5, 1994 **Federal Register** clarification (59 FR 542).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: For copies, contact Mr. Larry Tessier at 1–800–368–5888 or at (703) 305–5938. For questions about the clarification, please contact Mr. Tom Ripp at (202) 564–7003.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, 55 FR 48406. The asbestos NESHAP applies to any facility as defined in 40 CFR 61.141. The Agency has learned that some of the regulated community have further questions concerning the analysis of samples which may contain multiple layers, any or all of which may be asbestos containing materials (ACM) under the asbestos NESHAP. Because these questions are frequently asked, EPA is making this clarification.

I. Clarification of Multi-Layered ACM System

At the time the original asbestos NESHAP was promulgated (April 6, 1973), a standardized reference method had not been developed to determine quantitatively the content of asbestos in a material. The definition for "friable asbestos material" was added in the October 14, 1975 asbestos NESHAP, but still did not specify an analytical method. EPA's unwritten policy based on the definition of "friable asbestos material" was that each layer in a multi-layered system was to be analyzed as a separate material (no averaging or dilution by combining layers of asbestos-containing material with nonasbestos-containing material was allowed). The November 20, 1990 revision of the asbestos NESHAP finally specified that Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM method) be used to determine whether or not a material contains greater that one percent asbestos. Section 1.7.2.1 of the PLM method states that "* * * When discrete strata are identified, each is treated as a separate material so that fibers are first quantified in that layer only, and then the results for each layer are combined to yield an estimate of asbestos content for the whole sample." This language has led to considerable confusion as to how to analyze multi-layered samples for NESHAP purposes. EPA published a clarification regarding the analysis of multi-layered systems in the January 5, 1994 **Federal Register**. This clarification basically stated that all multi-layered systems except for wall systems where joint compound was used only at the joints and nail holes must be analyzed as separate materials, and results were not allowed to be combined to determine average asbestos content (continuing the policy that dilution of an asbestos-containing material is not allowed).

The Environmental Protection Agency has received many questions about analyzing multi-layered systems for asbestos content to determine the applicability of the asbestos NESHAP since its January 5, 1994 clarification (59 FR 542). This clarification reiterates EPA's position for analysis of multi-layered samples for applicability of the asbestos NESHAP.

This clarification applies to all multi-layered systems (other than wallboard systems where asbestos-containing joint compound is used only at the joints and nail holes) under both the NESHAP and the Asbestos Hazard Emergency Response Act (AHERA) (40 CFR Part 763) programs.

Any source sending multi-layered bulk samples to a lab may request that certain sample(s) or portions of sample(s) be composited for analysis first (to potentially reduce time and cost of sampling).

(**Note:** A composite sample does not mean that multiple samples may be composited into one sample. It means that multiple layers of one core sample may be composited for analysis.)

If this alternative method is chosen, then the following requirements must be followed. To analyze the composite sample, the procedures in EPA/600–93/116 "Method for the Determination of Asbestos in Bulk Building Materials" ("the Method"), specifically Section 2.3 "Gravimetry," must be used. Additionally, for the composite sample, the recommendations in Appendix D of the method must be followed. This procedure is consistent with the procedures outlined in 40 CFR Part 763, Appendix E to Subpart E (formerly Appendix A to Subpart F), which is referenced in the asbestos NESHAP (40 CFR 61.141 and 61.146), but the procedures in the new method are more clear. EPA finds that this method is an acceptable alternative method of compliance under section 61.13(h)(1)(ii). EPA intends to amend the asbestos NESHAP in the near future to refer specifically to these procedures. When using the gravimetric procedures, the result may be recorded as percent asbestos by weight.

If the result of the composite analysis shows that the average content for the multi-layered system (across the layers) is greater than one percent, then the multi-layered system must be treated as asbestos-containing and analysis by layers is not necessary. If the result of the composite sample analysis indicates that the multi-layered system as a whole contains asbestos in the amount of one percent or less, but greater than none detected, then analysis by layers is required to ensure that no layer in the system contains greater than one percent asbestos. If any layer contains greater than one percent asbestos, that layer must be treated as asbestos-containing. This will have the effect of requiring all layers in a multi-layered system to be treated as asbestos-containing if the layers can not be separated without disturbing the asbestos-containing layer. Once any one layer is shown to have greater than one percent asbestos, further analysis of the other layers is not necessary if all the layers will be treated as asbestos-containing. If several of the layers will be removed without removing the entire system, then all layers that will be disturbed must be analyzed. This includes the material being removed; however, the material being removed may be analyzed using the composite analysis procedures. Please note that the same requirements to perform point counting as stated in our May 8, 1991 clarification (see enclosed memorandum) still apply for any layers being analyzed individually.

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Dated: September 28, 1995.

Richard Bisnti,

Acting Director, Manufacturing, Energy, and Transportation Division, Office of Compliance.

[FR Doc. 95–30790 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–468; RM–7380]

Radio Broadcasting Services; Wickenburg and Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This documents grants a Petition for Reconsideration filed by Interstate Broadcasting System of Arizona, Inc., licensee of Station KRDS-FM, Channel 287C2, Wickenburg, Arizona, directed to the *Report and Order* in this proceeding which had upgraded the Station KRDS-FM license to specify operation on Channel 287C1. *See* 56 FR 43884, September 5, 1991. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90– 468, adopted December 6, 1995, and released December 12, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 287C1 and adding Channel 287C2 at Wickenburg.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30757 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register

Vol. 60, No. 243

Tuesday, December 19, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH27

Prevailing Rate Systems; Redefinition of Certain Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule that would redefine several Federal Wage System (FWS) wage areas for pay-setting purposes. OPM is engaged in an ongoing project to review the geographic definitions of selected FWS wage areas. Based on recent reviews of wage and survey area boundaries in a number of wage areas, OPM proposes redefinitions and/or renamings affecting the following FWS wage areas: Hagerstown-Martinsburg-Chambersburg, MD; Biloxi, MS; Columbus-Aberdeen, MS; Jackson, MS; Meridian, MS; Great Falls, MT; Pittsburgh, PA; Eastern Tennessee; Corpus Christi, TX; San Antonio, TX; and West Virginia.

DATES: Comments must be received on or before January 18, 1996.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: OPM is engaged in an ongoing project to review the geographic definitions of selected FWS appropriated fund wage areas. Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria for consideration when OPM defines FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

As part of the system-wide review of wage area boundaries, OPM is also considering whether the survey areas within each wage area should be expanded or reduced in size.

OPM recently completed reviews of the definitions of several FWS wage areas and, based on analyses of the regulatory criteria for defining wage areas, is proposing the changes described below. The Federal Prevailing Rate Advisory Committee, the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with all of the changes described in this proposed rule.

Hagerstown-Martinsburg-Chambersburg, MD: OPM proposes to remove Fulton County, PA, from the Pittsburgh, PA, area of application and redefine the county to the Hagerstown-Martinsburg-Chambersburg, MD, area of application. An analysis of the regulatory criteria for defining FWS wage areas shows that, while other regulatory criteria are indeterminate, distance and commuting pattern criteria strongly favor definition of Fulton County to the Hagerstown-Martinsburg-Chambersburg wage area instead of to the Pittsburgh wage area. For example, an analysis of the distances between Fulton County and the Hagerstown-Martinsburg-Chambersburg and Pittsburgh survey areas shows that Fulton County is about 232 km (144 miles) away from Pittsburgh, but is only about 37 km (23 miles) away from Chambersburg, PA, the closest of the three main population centers in the Hagerstown-Martinsburg-Chambersburg survey area. Also, an analysis of the commuting patterns of Fulton County's resident workforce shows that about 55 percent of Fulton County's resident workforce commutes to work in the Hagerstown-Martinsburg-Chambersburg survey area, and less than 1 percent of Fulton County's resident workforce commutes to work in the Pittsburgh survey area.

This change would be effective for the next full-scale wage survey in the Hagerstown-Martinsburg-Chambersburg wage area, which is scheduled to begin in January 1996. There are currently no FWS employees stationed in Fulton County. No other changes are proposed for the Hagerstown-Martinsburg-Chambersburg wage area.

Biloxi, MS: For the following reasons, OPM proposes that Stone County, MS, be removed from the Biloxi survey area: No FWS employees are stationed in Stone County; the county is no longer defined as part of a Metropolitan Statistical Area (MSA); and the wage survey data yield from private industrial establishments located in Stone County accounted for less than 1 percent of the Biloxi wage area's survey data during the last full-scale wage survey in the wage area.

This change would be effective for the next full-scale wage survey in the Biloxi wage area, which is scheduled to begin in November 1997. Stone County would remain in the Biloxi area of application. No other changes are proposed for the Biloxi wage area.

Columbus-Aberdeen, MS: Based on current FWS employment patterns in the Columbus-Aberdeen wage area, OPM proposes to add Grenada and Leflore Counties, MS, to the Columbus-Aberdeen survey area. Grenada and Leflore Counties are currently defined to the Columbus-Aberdeen area of application. A majority of the FWS employees currently stationed in the Columbus-Aberdeen wage area—about 70 percent—work in the Columbus-Aberdeen wage area's area of application rather than its survey area. Grenada and Leflore Counties are located in the central and western portions of the Columbus-Aberdeen wage area and are the only non-surveyed counties in the wage area with substantial FWS employment. With the addition of Grenada and Leflore Counties to the Columbus-Aberdeen survey area, about 82 percent of wage area employees would be included within the survey area.

This proposed survey area expansion would not create an undue survey burden on the lead agency for the wage area (the Department of Defense) and is strongly justified by the geographic distribution of local FWS employment. To more accurately reflect the broader geographic coverage of the expanded survey area, OPM proposes to rename the Columbus—Aberdeen wage area "Northern Mississippi." These changes

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would be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in February 1996. No other changes are proposed for this wage area.

Jackson, MS: OPM proposes to remove Adams, Claiborne, and Jefferson Counties, MS, from the Jackson survey area. In 1973, the Civil Service Commission, based on the consensus recommendation of FPRAC, added Adams, Claiborne, and Jefferson Counties to the Jackson survey area. FPRAC recommended this change to allow the inclusion in local wage surveys of counties along the Mississippi River that had experienced recent industrial growth. Regional commuting patterns and transportation facilities were also cited as factors favoring expansion of the survey area.

Based on current FWS employment patterns in the Jackson wage area and the large size of the current Jackson survey area, OPM considers it unnecessary to continue surveying Adams, Claiborne, and Jefferson Counties. Only about nine FWS employees, or less than 2 percent of the Jackson wage area total, are currently stationed in the three counties considered for removal from the survey area. The wage survey data yield from Adams, Claiborne, and Jefferson Counties has been relatively low in past surveys; only about 11 percent of the Jackson survey data during the last full-scale wage survey came from private industrial establishments located in these three counties. Also, the three counties considered for removal from the survey area are inconveniently located for survey purposes. For example, the surveyable private industrial establishments in Adams County are located approximately 185 km (115 miles) away from the city of Jackson, the main population center and the main FWS employment location in the Jackson wage area.

This change in the Jackson survey area would be effective for the next full-scale wage survey in the Jackson wage area, which is scheduled to begin in February 1997. As explained below for the Meridian, MS, wage area, OPM also proposes to remove Lamar County, MS, from the Jackson area of application and redefine the county to the Meridian survey area. No other changes are proposed for the Jackson wage area.

Meridian, MS: OPM proposes to remove Lamar County, MS, from the Jackson, MS, area of application and redefine the county to the Meridian FWS survey area. An analysis of the regulatory criteria for defining FWS wage areas shows that, while other regulatory criteria are indeterminate, distance and commuting pattern criteria strongly favor definition of Lamar County to the Meridian wage area instead of the Jackson wage area. For example, an analysis of the distances between Lamar County and the Meridian and Jackson survey areas shows that Lamar County is about 179 km (111 miles) away from Jackson, but is only about 27 km (17 miles) away from Hattiesburg, MS, the closest of the two main population centers in the Meridian survey area. Also, an analysis of the commuting patterns of Lamar County's resident workforce shows that about 50 percent of Lamar County's resident workforce commutes to work in the Meridian survey area, but less than 1 percent of Lamar County's resident workforce commutes to work in the Jackson survey area.

While there are currently no FWS employees stationed in Lamar County, the addition of Lamar County to the Meridian survey area would provide a desirable increase in the number of surveyable private sector industrial establishments in the Meridian survey area—about 14 percent more than in the current Meridian survey area. Also, Lamar County is one of the two counties of the Hattiesburg, MS MSA. The other county of the Hattiesburg MSA, Forrest County, is already defined to the Meridian survey area.

This change would be effective for the next full-scale wage survey in the Meridian wage area, which is scheduled to begin in February 1997. No other changes are proposed for the Meridian wage area.

Great Falls, MT: The survey area of the Great Falls wage area explained in 1973 with the addition of Yellowstone County, MT, and again expanded in 1981 with the addition of Lewis and Clark County, MT. Because the Great Falls survey area currently includes both the Great Falls, MT MSA and the Billings, MT MSA, OPM proposes to rename the wage area "Montana" to better reflect the broader geographic coverage of the current survey area than is suggested by the current wage area name.

This change would be effective for the next full-scale wage survey in the wage area,which is scheduled to begin in July 1996. No other changes are proposed for this wage area.

Pittsburgh, PA: Based on current FWS employment patterns in the Pittsburgh wage area, OPM proposes to add Butler County, PA, to the Pittsburgh survey area. Butler County is currently defined to the Pittsburgh area of application. There are currently about 170 FWS employees—about 8 percent of the Pittsburgh wage area total—stationed in Butler County. Butler County is currently a non-surveyed part of the Pittsburgh, PA MSA. Three of the counties of the Pittsburgh MSA (Beaver, Washington, and Westmoreland) are currently included in the Pittsburgh survey area, but far fewer FWS employees are stationed in those three counties than in Butler County.

This proposed survey area expansion would not create an undue survey burden on the lead agency for the Pittsburgh wage area (the Department of Veterans Affairs) and is strongly justified by the geographic distribution of local FWS employment. This change in the Pittsburgh survey area definition would be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in August 1997.

Also, as explained above for the Hagerstown-Martinsburg-Chambersburg, MD, wage area, OPM proposes to remove Fulton County, PA, from the Pittsburgh area of application and redefine the county to the Hagerstown-Martinsburg-Chambersburg, MD, area of application. No other changes are proposed for the Pittsburgh wage area.

Eastern Tennessee: As explained below for the West Virginia wage area, OPM proposes to remove Norton city from the Eastern Tennessee area of application and redefine the city to the West Virginia area of application. No other changes are proposed for the Eastern Tennessee wage area.

Corpus Christi, TX: OPM proposes to remove Brooks, Cameron, Hidalgo, Kenedy, Starr, and Willacy Counties, TX, from the San Antonio, TX, area of application and define these six counties to the Corpus Christi area of application. An analysis of the regulatory criteria for defining FWS wage areas shows that the distance criterion favors the definition of these counties to the Corpus Christi wage area much more than to the San Antonio wage area. Also, because the most favorable routes by road from the counties go through the present Corpus Christi wage area before reaching the San Antonio survey area, transportation facilities and geographic features criteria strongly favor the Corpus Christi wage more than the San Antonio wage area. Although all the other regulatory criteria are indeterminate, the redefinition of Brooks, Cameron, Hidalgo, Kenedy, Starr, and Willacy Counties to the Corpus Christi area of application is strongly justified by the extent to which the distance, transportation facilities, and geographic features criteria favor the Corpus Christi wage area.

The following agencies currently have FWS employees stationed in the six Texas counties proposed for redefinition to the Corpus Christi area of application: The Department of Agriculture; the Department of the Army; the General Services Administration; the Department of the Interior; the International Boundary and Water Commission, United States and Mexico; and the Department of Justice. These changes would become effective when the final rule following this proposed rule becomes effective. No other changes are proposed for the Corpus Christi wage area.

West Virginia: OPM proposes to remove Norton city, an independent Virginia city, from the Eastern Tennessee area of application and redefine the city to the West Virginia area of application. Although Norton city is currently defined to the Eastern Tennessee area of application, the city is completely surrounded by Wise County, which is defined to the West Virginia area of application. Because of their special geographic relationship, Wise County and North city should be defined to the same area of application.

This change would be effective for the next full-scale wage survey in the West Virginia wage area, which is scheduled to begin in March 1997. There are no FWS employees currently stationed in North city. No other changes are proposed for the West Virginia wage area.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for Hagerstown-Martinsburg-Chambersburg, MD; Biloxi, MS; Columbus-Aberdeen, MS; Jackson, MS; Meridian, MS; Great Falls, MT; Pittsburgh, PA; Eastern Tennessee; Corpus Christi, TX; San Antonio, TX; and West Virginia to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas.

* * * * *

Maryland

* * * * *

Hagerstown-Martinsburg-Chambersburg

Survey Area

Maryland:
  Washington
Pennsylvania:
  Franklin
West Virginia:
  Berkeley

Area of Application. Survey Area Plus

Maryland:
  Allegany
  Garrett
Pennsylvania:
  Fulton
Virginia (cities):
  Harrisonburg
  Winchester
Virginia (counties):
  Clarke
  Culpeper
  Frederick
  Greene
  Madison
  Page
  Rappahannock
  Rockingham
  Shenandoah
  Warren
West Virginia:
  Hampshire
  Hardy
  Jefferson
  Mineral
  Morgan

* * * * *

Mississippi

Biloxi

Survey Area

Mississippi:
  Hancock
  Harrison
  Jackson

Area of Application. Survey Area Plus

Mississippi:
  George
  Pearl River
  Stone

Jackson

Survey Area

Mississippi:
  Hinds
  Rankin
  Warren

Area of Application. Survey Area Plus

Mississippi:
  Adams
  Amite
  Attala
  Claiborne
  Copiah
  Covington
  Franklin
  Holmes
  Humphreys
  Issaquena
  Jefferson
  Jefferson Davis
  Lawrence
  Lincoln
  Madison
  Marion
  Pike
  Scott
  Sharkey
  Simpson
  Smith
  Walthall
  Wilkinson
  Yazoo

Meridian

Survey Area

Mississippi:
  Forrest
  Lamar
  Lauderdale
Alabama:
  Choctaw

Area of Application. Survey Area Plus

Mississippi:
  Clarke
  Greene
  Jasper
  Jones
  Kemper
  Leake
  Neshoba
  Newton
  Perry
  Wayne
Alabama:
  Sumter

Northern Mississippi

Survey Area

Mississippi:
  Clay
  Grenada
  Leflore
  Lee
  Lowndes
  Monroe
  Oktibbeha

Area of Application. Survey Area Plus

Mississippi:
  Alcorn
  Bolivar
  Calhoun
  Carroll
  Chickasaw
  Choctaw
  Coahoma
  Itawamba
  Lafayette [15]
  Montgomery
  Noxubee
  Panola
  Pontotoc [15]
  Prentiss
  Quitman
  Sunflower
  Tallahatchie

Tishomingo
Union [19]
Washington
Webster
Winston
Yalobusha
* * * * *
Montana
Montana
Survey Area
Montana:
Cascade
Lewis and Clark
Yellowstone
Area of Application. Survey Area Plus
Montana:
Beaverhead
Big Horn
Blaine
Broadwater
Carbon
Carter
Chouteau
Custer
Daniels
Dawson
Deer Lodge
Fallon
Fergus
Flathead
Gallatin
Garfield
Glacier
Golden Valley
Granite
Hill
Jefferson
Judith Basin
Lake
Liberty
Lincoln
McCone
Madison
Meagher
Mineral
Missoula
Musselshell
Park
Petroleum
Phillips
Pondera
Powder River
Powell
Prairie
Ravalli
Richland
Roosevelt
Rosebud
Sanders
Sheridan
Silver Bow
Stillwater
Sweet Grass
Teton
Toole
Treasure
Valley
Wheatland
Wibaux
Wyoming:
Big Horn

[19] Excluding Holly Springs National Forest.

Park
* * * * *
Pennsylvania
* * * * *
Pittsburgh
Survey Area
Pennsylvania:
Allegheny
Beaver
Butler
Washington
Westmoreland
Area of Application. Survey Area Plus
Pennsylvania:
Armstrong
Bedford
Blair
Cambria
Cameron
Centre
Clarion
Clearfield
Clinton
Crawford
Elk
Erie
Fayette
Forest
Greene
Huntingdon
Indiana
Jefferson
Lawrence
McKean
Mercer
Potter
Somerset
Venango
Warren
Ohio:
Belmont
Carroll
Harrison
Jefferson
Tuscarawas
West Virginia:
Brooke
Hancock
Marshall
Ohio
* * * * *
Tennessee
Eastern Tennessee
Survey Area
Tennessee:
Carter
Hawkins
Sullivan
Unicoi
Washington
Virginia (city):
Bristol
Virginia (counties):
Scott
Washington
Area of Application. Survey Area Plus
Tennessee:
Cocke
Greene
Hancock
Johnson
Virginia:
Buchanan
Grayson
Lee
Russell
Smyth
Tazewell
North Carolina:
Alleghany
Ashe
Watauga
Kentucky:
Harlan
Letcher
* * * * *
Texas
* * * * *
Corpus Christi
Survey Area
Texas:
Nueces
San Patricio
Area of Application. Survey Area Plus
Texas:
Aransas
Bee
Brooks
Calhoun
Cameron
Goliad
Hidalgo
Jim Wells
Kenedy
Kleberg
Live Oak
Refugio
Starr
Victoria
Willacy
* * * * *
San Antonio
Survey Area
Texas:
Bexar
Comal
Guadalupe
Area of Application. Survey Area Plus
Texas:
Atascosa
Bandera
De Witt
Dimmit
Duval
Edwards
Frio
Gillespie
Gonzales
Jim Hogg
Karnes
Kendall
Kerr
Kinney
La Salle
McMullen
Maverick
Medina
Real
Uvalde
Val Verde
Webb

Wilson
Zapata
Zavala
* * * * *
West Virginia
West Virginia
Survey Area
West Virginia:
Cabell
Harrison
Kanawha
Marion
Monongalia
Putnam
Wayne
Ohio:
Lawrence
Kentucky:
Boyd Greenup
Area of Application. Survey Area Plus
West Virginia:
Barbour
Boone
Braxton
Calhoun
Clay
Doddridge
Fayette
Gilmer
Grant
Greenbrier
Jackson
Lewis
Lincoln
Logan
McDowell
Mason
Mercer
Mingo
Monroe
Nicholas
Pendleton
Pleasants
Pocahontas
Preston
Raleigh
Randolph
Ritchie
Roane
Summers
Taylor
Tucker
Tyler
Upshur
Webster
Wetzel
Wirt
Wood
Wyoming
Ohio:
Athens
Gallia
Jackson
Meigs
Monroe
Morgan
Noble
Pike
Scioto
Vinton
Washington
Kentucky:
Carter
Elliott
Floyd
Johnson
Lawrence
Lewis
Magoffin
Martin
Pike
Virginia (city):
Norton
Virginia (counties):
Dickenson
Wise
* * * * *

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FEDERAL RESERVE SYSTEM

5 CFR Chapter LVIII

12 CFR Part 264

[Docket No. R-0900]

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Board of Governors of the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Board that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed regulation is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Board. The regulation as proposed would establish rules relating to: financial interests and transactions; borrowing and extensions of credit; employment relationships of immediate family members; and outside employment. The Board is also proposing to replace its old employee conduct regulation with a residual cross-reference to the new provisions.

DATES: Comments are invited and must be received on or before February 20, 1996.

ADDRESSES: Comments should refer to Docket No. R-0900, and may be mailed to Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Cary Williams, Managing Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, telephone (202) 452-3295, FAX (202) 452-3101. For the hearing impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees in the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. The Executive Branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Board, with OGE's concurrence, has determined that the following proposed supplemental regulations are necessary to implement the Board's ethics program successfully, in light of the Board's unique programs and operations. The proposed supplemental rule addresses issues relevant to the Board's roles with respect to monetary policy and banking regulation. The Board is also proposing to delete the existing provisions of 12 CFR part 264 that its supplemental regulation, once finally adopted, and the Executive Branch-wide Standards supersede and to add in their place a residual cross-reference to the current provisions.

II. Analysis of the Proposed Regulations

Section 6801.101 General

Section 6801.101 explains that the proposed regulations contained in the rule would apply to all Board employees, including Board members, and are supplemental to the Executive Branch-wide Standards.

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Section 6801.102 Definitions

For purposes of interpreting the provisions in this part, § 6801.102 sets forth a proposed definition of the terms "affiliate," "debt or equity interest," "dependent child," "depository institution," "employee" and "primary government securities dealer" and "supervisory employee."

Proposed § 6801.102 would include as an *affiliate* companies that control, are controlled by, or are under common control with, a depository institution. This definition was taken from the Bank Holding Company Act of 1956 and is intended to include any holding companies, subsidiaries or other affiliated companies of depository institutions.

The term *debt or equity interest* as proposed would include "secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock." It would extend to any right to acquire or dispose of any such debt or equity interest and to beneficial or legal interests derived from a trust. The proposed term does not, however, include deposit accounts, future interests created by someone other than the employee or the employee's spouse or dependent, or any right as a beneficiary of an estate that has not been settled.

The term *dependent child* is to be given the same meaning as in OGE's financial disclosure regulation at 5 CFR 2635.105(d).

The term *depository institution* is defined in proposed § 6801.102 as any institution that accepts deposits. This would include thrifts and foreign banks.

The term *employee* would include all Board employees, including Board members, but would not include special Government employees.

The term *primary government securities dealer* as proposed is defined as a firm with which the Federal Reserve conducts its open market operations.

The term *supervisory employee* would encompass Board members, all professional staff in the Division of Banking Supervision and Regulation, and professional staff in other divisions who participate substantially in supervisory matters involving depository institutions.

Section 6801.103 Prohibited Financial Interests

Section 6801.103(a) as proposed would prohibit a Board employee, and the spouse and minor child of a Board employee, from owning or controlling any debt or equity interest in a depository institution or its affiliates or of a primary government securities dealer or its affiliates. Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the holding of a financial interest by its employees and the spouses and minor children of those employees based on the agency's determination that the acquisition or holding of such financial interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. The Board has determined that, in light of the Board's sensitive bank regulatory and monetary policy functions, the restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the Board executes its regulatory and monetary policy functions; (2) eliminate any concern that sensitive information provided to the Board might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might result in the Board's inability to fulfill its mission.

The Board's current rule prohibits employees from holding equity interests in banks or their affiliates. 12 CFR 264.735–6(d). This rule does not apply to debt interests in banks, such as bonds, or to equity interests in thrifts. The proposed prohibition in § 6801.103(a) would extend to debt and equity interests in all depository institutions regardless of whether the depository institution is regulated by the Board. The Board believes that this is appropriate in light of the Board's broad regulatory and supervisory authority. For example, the Board is responsible for setting reserve requirements for all depository institutions, and the Federal Reserve System provides liquidity to all depository institutions through the discount window. In connection with a discount window advance, the Board is authorized to examine any depository institution.

The Board's current rule also prohibits employees from holding equity interests in government securities dealers. 12 CFR 264.735–6(d). The proposed rule would clarify and expand this prohibition by extending to debt and equity interests in primary government securities dealers and their affiliates. The Federal Reserve conducts business with primary government securities dealers, which in turn are expected to facilitate the Federal Reserve's open market operations and to provide the Federal Reserve with information to assist it in performing its duties. Primary government securities dealers are required to submit reports reflecting their activities to the Federal Reserve on a regular basis, and must meet qualification requirements of the System and the Treasury Department.

The proposed prohibition in § 6801.103(a) would apply to the spouse and minor children of a Board employee. In the past, spouses and minor children of Board employees have not been subject to the Board's rule on prohibited financial interests. As a result, there has been a need to disqualify employees from official matters in order to avoid violations of the criminal laws (18 U.S.C. 208) and in order to maintain public confidence in the objectivity and impartiality with which Board programs are carried out. Under 5 CFR 2635.403(a), any restriction on the holdings of financial interests by the spouses or minor children of agency employees must be based on the agency's determination that there is a direct and appropriate nexus between the restriction as applied to spouses and minor children and the efficiency of the service. Based on the experiences outlined above, and in order to avoid the potential appearance that an employee's spouse could trade on information obtained through the employee's position with the Board, the Board has determined that such a nexus exists.

Section 6801.103(b) as proposed would provide several exceptions to the proposed prohibition in § 6801.103(a) on financial interests. The proposed exceptions are intended to ease the restrictions on the financial interests of Board employees, their spouses and minor children, and to permit interests of a character unlikely to raise questions regarding the objective or impartial performance of Board employees' official duties or the possible misuse of their positions. The exception proposed for nonbanking holding companies would permit an employee to own stock in an automobile manufacturer or a retail company, for example, that owned a credit card bank or other depository institution, provided the company's principal line of business was not banking. The next two proposed exceptions would permit employees to own interests in depository institutions indirectly through investments in a publicly traded or available mutual fund (so long as it does not have a stated policy of concentrating in the financial services industry), or in a widely held, diversified pension plan.

Section 6801.103(c) of the proposed rule would authorize the Board's Designated Agency Ethics Official (DAEO), in consultation with Division

management, to waive the prohibition in § 6801.103(a) under certain limited circumstances. In general, a request for a waiver could be considered if the prohibited interest is acquired without specific intent, particularly if the owner of the interest is the employee's spouse or minor child. However, the standards for granting a waiver would be based, in part, on the policies of each division and, therefore, could vary among divisions. For example, because of the greater potential for an actual conflict of interest arising from depository institution stock ownership, the Board's Division of Banking Supervision and Regulation could be less inclined to consider a waiver request for these interests than another division having no regulatory responsibilities.

Proposed § 6801.103(d) would require employees to consult with the DAEO concerning the need for recusal as a result of holding any debt or equity interest based on an exception or a waiver exception in 6801.103(b)(1) or (c).

Section 6801.104 Speculative Dealings [Reserved]

A provision of the Board's current ethics rules prohibits Board employees from engaging in speculative dealings. See 12 CFR 264.735–6(d)(iii). The Office of Government Ethics has voiced concern regarding this provision's lack of notice to employees as to what constitutes speculative dealings. The Board is in discussion with OGE about this rule and may amend its supplemental rule, once it is adopted as a final rule, to include a provision on speculation at some point in the future. Board employees continue to be prohibited by the Standards of Ethical Conduct from engaging in a financial transaction using, or appearing to use, nonpublic information to further their own private interests or those of another. 5 CFR 2635.101(b)(14) and 2635.703.

Section 6801.105 Prohibition on Preferential Terms From Regulated Institutions

Proposed § 6801.105 would prohibit a Board employee from entering into a financial relationship with an entity regulated by the Board if such relationship is governed by terms more favorable than those available in like circumstances to members of the public. This provision has always been a part of the Board's ethics regulation (12 CFR 264.735–6(b)(2)(i)), and the Board has found that it has helped to remind employees of their responsibility to avoid receiving preferential treatment in their personal dealings with regulated entities.

Section 6801.106 Prohibition on Supervisory Employees From Seeking Credit From Institutions Involved in Work Assignments

Section 6801.106 as proposed would apply only to "supervisory employees." The term "supervisory employee" is defined in proposed § 6801.102(g) as all professional staff at the Board with responsibilities in the area of banking supervision and regulation. This would include all professional staff in the Division of Banking Supervision and Regulation, the Legal Division, and the Division of Consumer and Community Affairs; professional staff in the Division of Research and Statistics who have responsibility for applications; professional staff in the Office of the Inspector General who are involved in evaluating the Supervision and Regulation function; and the Board members.

Section 6801.106(a) as proposed would prohibit a supervisory employee from seeking credit from, or renegotiating or rolling over existing credit with, a depository institution if the employee is assigned to a matter affecting that institution or if the employee is aware of the pendency of the matter and knows that he or she will participate in the matter. This prohibition would also apply for three months after the employee's participation in the matter has ended. In addition, proposed § 6801.106(b) provides that a supervisory employee must be disqualified from a matter if he or she learns that his or her spouse or other related persons or entities have borrowed from a depository institution that is a party to the matter while the matter is pending. Section 6801.106(c) provides a proposed exception to the application of these provisions with respect to borrowing through the use of a credit card on terms and conditions available to the general public, or to borrowing through overdraft protection. The Board's DAEO may grant a waiver of these provisions. The proposed temporary ban on seeking credit is necessary to prevent the potential appearance that supervisory employees might use their official position or their contacts with a depository institution resulting from their work on a matter involving that institution, to obtain loans or extensions of credit on favorable terms. The Board's current rule does not contain restrictions in this area.

Section 6801.107 Disqualification of Supervisory Employees From Matters Involving Lenders

A supervisory employee would be restricted by proposed § 6801.107 from participating in any matter in which a depository institution or an affiliate of a depository institution is a party if the supervisory employee or the spouse or dependent child of the supervisory employee, or certain related entities are indebted to the depository institution or its affiliate. Typical consumer credit, such as home mortgage loans and credit card debt, would not give rise to the disqualification requirement.

Section 6801.107 would supplement § 2635.502 of the Executive Branch-wide Standards. The restriction is necessitated by the frequent contact that supervisory employees have with lending institutions. The restriction as proposed is designed to ensure that supervisory employees do not benefit or appear to benefit from their official positions and do not lose or appear to lose their impartiality.

Exceptions to the proposed restriction related to borrowing relationships are set forth in § 6801.107(b). Under the exceptions, a supervisory employee could participate in matters involving depository institutions to which the supervisory employee, or the supervisory employee's spouse or dependent child, is indebted under one of the conditions indicated in subsection (b)(1)(i)–(iv) as proposed. The exceptions proposed in § 6801.107(b) are intended to ease the restrictions on supervisory employees' participation in particular matters in situations where a loan or extension of credit is unlikely to raise issues regarding the motivation of the lender or the objective or impartial performance of official duties by supervisory employees.

Proposed § 6801.107(c) would give the Board's DAEO authority to grant a written waiver from the prohibitions in § 6801.107 in accordance with 5 CFR 2635.502(d).

Section 6801.108 Restrictions Resulting From Employment of Family Members

Section 6801.108(a) as proposed would require a supervisory employee (as defined in § 6801.101(b)(2)) to report the employment of an immediate family member (spouse, child, parent or sibling) if the immediate family member is employed by a depository institution or a depository institution affiliate. The reporting requirement would be triggered immediately upon the

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supervisory employee's discovery of the employment relationship.

Under proposed § 6801.108(c), a supervisory employee would be disqualified from participating in any matter involving an immediate family member's employer unless the supervisory employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards. This proposed requirement would eliminate the potential for any appearance of preferential treatment in those instances where employment of a family member would be likely to raise questions regarding the appropriateness of actions taken by the employee.

Section 6801.109 Prior Approval for Compensated Outside Employment

5 CFR 2635.803 provides that an agency may, by supplemental regulations, require its employees to obtain prior approval before engaging in outside employment when it has determined that such a requirement is necessary or desirable for the purpose of administering its ethics program. The Board's current regulation at 12 CFR 264.735–6(c) imposes a requirement for prior approval for outside business and teaching. Based on its finding that this requirement has helped to ensure that employees' outside activities conform to applicable statutes and regulations, the Board has determined to continue this requirement in a somewhat modified form. The proposed provision requires prior written approval before engaging in any compensated outside employment, a defined term that may provide more specific guidance to employees than "outside business or teaching," the scope of which has not always been clear.

III. Proposed Repeal of the Board's Regulations on Employee Responsibilities and Conduct

The Board is also proposing to repeal its regulations on the Responsibilities and Conduct of Board Employees, 12 CFR part 264, and to add a residual cross-reference to the new provisions.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60 -day comment period.

Regulatory Flexibility Act

The Board has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Board employees.

Paperwork Reduction Act

The Board has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6801

Conflict of interests, Government employees.

12 CFR Part 264

Conflict of interests, Federal Reserve System.

Dated: November 3, 1995.

William W. Wiles,

Secretary, Board of Governors of the Federal Reserve System.

Approved: November 13, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Board, with the concurrence with the Office of Government Ethics, is proposing to amend title 5 and chapter II of title 12 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LVIII, consisting of part 6801, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LVIII—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 6801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sec.

6801.101 Purpose.
6801.102 Definitions.
6801.103 Prohibited financial interests.
6801.104 Speculative dealings. [Reserved]
6801.105 Prohibition on preferential terms from regulated institutions.
6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.
6801.107 Disqualification of supervisory employees from matters involving lenders.
6801.108 Restrictions resulting from employment of family members.
6801.109 Prior approval for compensated outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 244, 248; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p.215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p.306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.803.

§ 6801.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch found at 5 CFR part 2635. They apply to members and other employees of the Board of Governors of the Federal Reserve System ("Board").

§ 6801.102 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common corporate control with another company.

(b) (1) *Debt or equity interest* includes secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock. The term encompasses both current and contingent ownership interests therein; any such beneficial or legal interest derived from a trust; any right to acquire or dispose of any long or short position in debt or equity interests; any interests convertible into debt or equity interests; and any options, rights, warrants, puts, calls, straddles, and derivatives with respect thereto.

(2) *Debt or equity interest* does not include deposits; credit union shares; any future interest created by someone other than the employee, his or her spouse, or dependent; or any right as a beneficiary of an estate that has not been settled.

(c) *Dependent child* means an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a "dependent" on the employee's income tax return.

(d) *Depository institution* means a bank, trust company, thrift institution, or any institution that accepts deposits, including a bank chartered under the laws of a foreign country.

(e) *Employee* means an officer or employee of the Board, including a Board member. It does not include a special Government employee.

(f) *Primary government securities dealer* means a firm with which the Federal Reserve conducts its open market operations.

(g) *Supervisory employee* means an employee who is a member of the professional staff at the Board with responsibilities in the area of banking supervision and regulation.

§ 6801.103 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee, or an employee's spouse or minor child, shall not own or control, directly or indirectly, any debt or equity interest in:

(1) A depository institution or any of its affiliates; or

(2) A primary government securities dealer or any of its affiliates.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the ownership or control of a debt or equity interest in the following:

(1) *Nonbanking holding companies.* A publicly traded holding company that:

(i) Owns a bank and either the holding company or the bank is exempt under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, (for example, a credit card bank, a nonbank bank or a grandfathered bank holding company), and the holding company's predominant activity is not the ownership or operation of banks and thrifts;

(ii) Owns a thrift and its predominant activity is not the ownership or operation of banks and thrifts; or

(iii) Owns a primary government securities dealer and its predominant activity is not the ownership and operation of banks, thrifts or securities firms.

(2) *Mutual funds.* A publicly traded or publicly available mutual fund or other collective investment fund if:

(i) The fund does not have a stated policy of concentration in the financial services industry; and

(ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over the financial interests held by the fund or their selection.

(3) *Pension plans.* A widely held, diversified pension or other retirement fund that is administered by an independent trustee.

(c) *Waivers.* The Board's Designated Agency Ethics Official, in consultation with Division management, may grant a written waiver permitting the employee to own or control a debt or equity interest prohibited by paragraph (a) of this section if:

(1) Extenuating circumstances exist, such as that ownership or control was acquired:

(i) Through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee, spouse, or minor child to acquire the debt or equity interest; or

(ii) By an employee's spouse as part of a compensation package in connection with the spouse's employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the interest;

(3) The employee's disqualification from participating in any particular matter having a direct and predictable effect on the institution or any of its affiliates does not unduly interfere with the full performance of the employee's duties; and

(4) Granting the waiver would be consistent with Division policy.

(d) *Disqualification.* If an employee or an employee's spouse or minor child holds an interest in a holding company under paragraph (b)(1) or (c) of this section, the employee must consult the Designated Agency Ethics Official in order to determine whether the employee must be disqualified from participating in any particular matter involving that holding company or affiliate under the conflicts of interest rules of the Office of Government Ethics.

§ 6801.104 Speculative dealings. [Reserved]

§ 6801.105 Prohibition on preferential terms from regulated institutions.

An employee may not accept a loan from, or enter into any other financial relationship with, an institution regulated by the Board, if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public.

§ 6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.

(a) *Prohibition on supervisory employee's seeking credit.* (1) A supervisory employee may not, on his or her own behalf, or on behalf of his or her spouse or child or anyone else (including any business or nonprofit organization), seek or accept credit from, or renew or renegotiate credit with, a depository institution or any of its affiliates if the institution or affiliate is a party to an application, enforcement action, investigation, or other particular matter involving specific parties pending before the Board and:

(i) The supervisory employee is assigned to the matter; or

(ii) The supervisory employee is aware of the pendency of the matter and knows that he or she will participate in the matter by action, advice or recommendation.

(2) The prohibition in paragraph (a)(1) of this section also applies for three months after the supervisory employee's participation in the matter has ended.

(b) *Credit sought by spouse and other related persons.* A supervisory employee must disqualify himself or herself from participating (by action, advice or recommendation) in any application, enforcement action, investigation or other particular matter involving specific parties to which a depository institution or any of its affiliates is a party as soon as the supervisory employee learns that any of the following related persons are seeking or have sought or accepted credit from, or have renewed or renegotiated credit with, the depository institution or any of its affiliates while the matter is pending before the Board:

(1) The employee's spouse or dependent child;

(2) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(3) A partnership if the employee, or the employee's spouse or dependent child is a general partner.

(c) *Exception.* The prohibition in paragraph (a) of this section and the disqualification requirement in paragraph (b) of this section do not apply with respect to credit obtained through the use of a credit card or overdraft protection on terms and conditions available to the public.

(d) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant division director, may grant a written waiver from the prohibition in paragraph (a) of this section, or the disqualification requirement in paragraph (b) of this section, based on a determination that participation in matters otherwise prohibited by this section would not create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) or prohibited by law.

§ 6801.107 Disqualification of supervisory employees from matters involving lenders.

(a) *Disqualification required.* A supervisory employee may not participate by action, advice or recommendation in any application, enforcement action, investigation, or other particular matter involving specific parties to which a depository institution or its affiliate is a party if any of the following are indebted to the depository institution or any of its affiliates:

(1) The employee;

(2) The spouse or dependent child of the employee;

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(3) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(4) A partnership if the employee or the employee's spouse or dependent child is a general partner.

(b) *Exceptions*—(1) *Consumer credit on nonpreferential terms.* Disqualification of a supervisory employee is not required by paragraph (a) of this section for the following types of indebtedness if payment on the indebtedness is current and the indebtedness is on terms and conditions offered to the public:

(i) Credit extended through the use of a credit card;

(ii) Credit extended through use of an overdraft protection line;

(iii) Amortizing consumer credit (e.g., home mortgage loans, automobile loans); and

(iv) Credit extended under home equity lines of credit.

(2) *Indebtedness of a spouse or dependent child.* Disqualification is not required with respect to any indebtedness of the employee's spouse or dependent child, or a company, business or partnership in which the spouse or dependent child has an interest described in paragraphs (a)(3) and (a)(4) of this section, if:

(i) The indebtedness represents the sole financial interest or responsibility of the spouse, child, company, business or partnership and is not derived from the employee's income, assets or activities; and

(ii) The employee has no knowledge of the identity of the lender.

(c) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant division director, may grant a written waiver from the disqualification requirement in paragraph (a) of this section using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.106 Restrictions resulting from employment of family members.

(a) *Reporting certain employment relationships.* A supervisory employee who has knowledge that his or her spouse, child, parent or sibling is employed by a depository institution or its holding company shall report such employment to his or her supervisor and the Ethics Office within thirty days of the commencement of the supervisory employee's employment at the Board or promptly upon learning of the employment relationship.

(b) *Disqualification.* A supervisory employee may not participate in any particular matter to which a depository institution or its affiliate is a party if the depository institution or affiliate employs his or her spouse, child, parent or sibling unless the supervising officer, with the concurrence of the Board's Designated Agency Ethics Official, has authorized the employee to participate in the matter using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.109 Prior approval for compensated outside employment.

(a) *Approval requirement.* An employee shall obtain prior written approval from his or her division director (or the division director's designee) and the concurrence of the Board's Designated Agency Ethics Official before engaging in compensated outside employment.

(b) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) *Definition of employment.* For purposes of this section, the term compensated outside employment means any form of compensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker.

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

2. 12 CFR part 264 is revised to read as follows:

PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§ 264.101 Cross-reference to employees' ethical conduct standards and financial disclosure regulations.

Employees of the Board of Governors of the Federal Reserve System (Board) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Board's regulation at 5 CFR part 6801, which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Authority: 5 U.S.C. 7301; 12 U.S.C. 244.

[FR Doc. 95–30581 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 25787; Notice No. 95–16]

RIN 2120–AF92

Definitions of Special Use Airspace; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to the notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (NPRM), 60 FR 58494, published on Npvember 27, 1995. The correction to the address in the preamble reads as follows: Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments delivered must be marked Docket No. 25767. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

Issued in Washington, DC on December 13, 1995.

Harold W. Becker,

Acting Program Director for Air Traffic Rules and Procedures.

[FR Doc. 95–30777 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–141–AD]

Airworthiness Directives; Beech Model BAe 125–1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Beech Model BAe 125–1000A and Hawker 1000 series airplanes. This proposal would require a detailed visual inspection to detect chafing damage to the hydraulic pipes adjacent to the hydraulic module, and various follow-on actions. This proposal is prompted by reports of chafing damage between hydraulic pipes at three locations in the rear equipment bay adjacent to the hydraulic module. The actions specified by the proposed AD are intended to prevent such chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems.

DATES: Comments must be received by January 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–141–AD." The postcard will be date stamped and returned to the commenter. Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Beech Model BAe 125–1000A and Hawker 1000 series airplanes. The CAA advises that it has received several reports of chafing damage between hydraulic pipes at three locations in the rear equipment bay adjacent to the hydraulic module. Investigation revealed the cause of such chafing damage has been attributed to the vibratory movement of the hydraulic pipes and their close proximity to other pipe runs, adjacent equipment, and structure in the rear equipment bay. These conditions, if not corrected, could result in chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems.

The manufacturer has issued Hawker Service Bulletin SB.29–95, dated March 24, 1995, which describes procedures for:

1. Performing a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module;

2. Performing a visual inspection to determine if adequate clearance exists between the pipes, and with other equipment or structure, if no chafing damage is detected;

3. Adjusting the pipe connections and/or clipping, if the clearance is inadequate;

4. Replacing the pipes with new pipes, if any chafing is detected beyond certain limits; and

5. Performing a pressure test, if any chafing damage is detected within certain limits, and replacement of the pipe with a new pipe, if necessary.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module, and various follow-on actions (i.e., visual inspection, adjustment, replacement, pressure test). The actions would be required to be accomplished in accordance with the service bulletin described previously. If any chafing damage to other equipment or structure is found, repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation (Formerly DeHavilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Docket 95–NM–141–AD.

Applicability: All Model BAe 125–1000A and Hawker 1000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the hydraulic pipe and subsequent hydraulic fluid leakage; this condition may lead to failure of essential airplane systems; accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a detailed visual inspection to detect chafing damage to the hydraulic pipes located aft of frame 21 and adjacent to the hydraulic module, in accordance with Hawker Service Bulletin SB.29–95, dated March 24, 1995.

(1) If no chafing damage is detected, prior to further flight, perform a visual inspection to determine if adequate clearance exists between the intersecting pipe runs, and between pipes and adjacent equipment or structure, in accordance with the service bulletin.

(i) If the clearance is adequate, no further action is required by this AD.

(ii) If the clearance is inadequate, prior to further flight, adjust the pipe connections and/or clipping in accordance with the service bulletin.

(iii) If any chafing damage to other equipment or structure is found, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If any chafing damage is detected and it is beyond the limits specified in paragraph 2.B.(4) of the service bulletin, prior to further flight, replace the damaged pipe with a new pipe in accordance with the service bulletin.

(3) If any chafing damage is detected within the limits specified in paragraph 2.B.(4) of the service bulletin, prior to further flight, perform a pressure test or replace the damaged pipe with a new pipe in accordance with the service bulletin.

(i) If the pipes are satisfactory, no further action is required by this AD.

(ii) If any pipe leaks and/or if any distortion occurs in or around the area of chafing damage, prior to further flight, replace the pipe with a new pipe in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30748 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–172–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time measurement during refueling to determine the pressure in each collector tank; for certain airplanes, non-destructive test (NDT) inspections to detect cracking or deformations of the collector tank ribs on each wing, and repair, if necessary; and modification of top-hat stringers in each outer wing tank. This proposal is prompted by a report of damage to the ribs of the wing collector tank caused by over-pressure in the collector tank during refueling. The actions specified by the proposed AD are intended to prevent cracking and deformation of the wing collector tanks due to over-pressure, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by January 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–172–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises, that during scheduled maintenance on a Model F28 Mark 0100 series airplane, the ribs in the right-hand wing collector tank were found to be damaged. Investigation revealed that the damage was caused by over-pressure in the collector tank during refueling.

The top-hat stringers between the wing collector tank and the outer wing tank contain restriction blocks that are intended to close off, but still ventilate the collector tank. The four forward most top-hat stringers (2.32, 2.33, 2.34, and 2.35) should not contain these restriction blocks, which would enable fuel to flow from the wing collector tank to the outer wing tank. Subsequent investigation revealed that the over-pressure was due to the installation of restriction blocks in these four top-hat stringers, which adversely affected the fuel transfer capacity of these airplanes. This condition, if not corrected, could result in cracking and deformation of the ribs in the wing collector tank, which could lead to reduced structural integrity of the wing.

Fokker has issued Service Bulletin SBF 100–57–030, dated December 17, 1994, which describes procedures for conducting a one-time measurement during refueling to determine the pressure in each collector tank. The service bulletin also describes procedures for conducting non-destructive test (NDT) inspections of certain airplanes to detect cracking and deformations of the collector tank ribs at wing stations 1825, 2230, and 2635.

Fokker has also issued Service Bulletin SBF 100–57–029, Revision 1, dated March 23, 1995, which describes procedures for modification of the four top-hat stringers (2.32, 2.33, 2.34, and 2.35) in the outer wing tank area. This modification entails removal of the restriction blocks in the top-hat stringers.

The RLD classified both of these service bulletins as mandatory and issued the Netherlands airworthiness directive BLA 1994–172 (A), dated December 23, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time measurement during refueling to determine the pressure in each collector tank; and modification of the four top-hat stringers in the outboard wing tank area. For certain airplanes, this proposed AD would require non-destructive test (NDT) inspections of the collector tank ribs to detect cracking or deformations. The actions would be required to be accomplished in accordance with the service bulletins described previously.

This AD also proposes to require repair of any cracking or deformations in accordance with a method approved by the FAA.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 85 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $295,800, or $5,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

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39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–172–AD.

Applicability: Model F28 Mark 0100 airplanes, serial numbers 11244 through 11277 inclusive, 11279, 11281 through 11287 inclusive, and 11289 through 11400 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent over-pressurization and/or damage to the wing collector tanks, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a one-time measurement during refueling to determine the pressure in each collector tank in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

Note 2: Pressure Limits Categories are defined in Table 2 of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(b) For Pressure Limits Category 1: Within 2 years after the effective date of this AD, modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(c) For Pressure Limits Categories 2 through 5: Except as provided by paragraph (d) of this AD, prior to the number of accumulated total flight cycles or within the time specified in Table 1 of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994, whichever occurs earlier, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform the Non-Destructive Test (NDT) inspections specified in Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994, to detect cracking or deformations of the collector tank ribs on each wing at wing stations 1825, 2230, and 2635. These inspections are to be performed in accordance with Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(d) For Pressure Limits Category 6, and for airplanes having pressure limits within the limits specified in Categories 3 through 5 and that have exceeded the number of accumulated total flight cycles specified in Table 1: Within 100 flight cycles, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD.

(1) Perform the NDT inspections in accordance with the procedures of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994. The fueling pressure must not exceed 25 pounds per square inch (PSI) during refueling.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(e) For Pressure Limits Category 7: Prior to further flight following the measurement required by paragraph (a) of this AD, accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD.

(1) Perform the NDT inspections in accordance with the procedures of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–030, dated December 17, 1994.

(2) Modify the four affected top-hat stringers (2.32, 2.33, 2.34, and 2.35) in each outer wing tank area by removing the restriction blocks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–029, Revision 1, dated March 23, 1995.

(f) If any cracking or deformation is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30746 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–133–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require replacement of the flexible cables of the power and condition controls of the engines with new flexible cables. The proposal would also require installation of protective tape on the outside case of these flexible cables, and reidentification of the cables. This proposal is prompted by reports of stiff operation of the power and condition controls of the engines due to heat damage to and moisture contamination of the flexible cable. The actions specified by the proposed AD are intended to prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control.

DATES: Comments must be received by January 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received reports of stiff operation of the power and condition controls of the engines on these airplanes. Investigation revealed that a protective sheath on the flexible cables can become damaged by heat, which allows water to enter the flexible cable. The water may then drain along the flexible cable to the cold area in the leading edge of the wing and freeze. These conditions, if not corrected, could result in stiff operation of the power and condition controls, and subsequent reduced engine control.

Jetstream has issued Service Bulletin J41–76–013, dated May 5, 1995, which describes procedures for checking the aircraft records to determine if any reports of stiff operation in freezing conditions have been recorded. The service bulletin also describes procedures for replacement of the flexible cables of power and condition controls of the engines with new flexible cables. The service bulletin also describes procedures for installation of protective tape on the outside case of the flexible cables of the power and condition controls of the engines, and reidentification of the assembly number of the cable. The service bulletin specifies that both the replacement of the flexible cables and installation of protective tape need to be accomplished on certain airplane, but specifies that only the protective tape installation needs to be accomplished on certain other airplanes. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of the flexible cables of power and condition controls of the engines with new flexible cables. The proposed AD would also require simultaneous installation of protective tape on the outside case of the new flexible cables of the power and condition controls of the engines, and reidentification of the assembly number of the cable. The actions would be required to be accomplished in accordance with the procedures contained in the service bulletin described previously.

Operators should note that, unlike the recommendations of the service bulletin, the proposed AD would not require checking the aircraft records to determine if any reports of stiff operation in freezing conditions have been recorded. The FAA finds that the Airplane Maintenance Log is the appropriate source of aircraft records for reports of stiff operation of the power and condition controls. However, operators are not required to retain these records [reference part 121 or 135 of the Federal Aviation Regulations (FAR) (14 CFR 121 or 135).]. Therefore, the FAA has determined that these aircraft records may not be available for review by maintenance personnel if attempting to comply with a requirement to accomplish such a review.

Operators should also note that, unlike the recommendations of the service bulletin, the proposed AD would require that the replacement of the flexible cables and installation of the protective tape be accomplished on *all* affected airplanes. The FAA finds that damage to the flexible cable sheath and subsequent moisture contamination to the flexible cables may still exist or develop even though there have been no previous reports of stiff operation of the power and condition controls. Airplanes with moisture contamination in the flexible cables may not yet have encountered the environmental conditions necessary to freeze the moisture and subsequently cause stiff operation. Therefore, the FAA has determined that accomplishing only the installation of the protective tape on cables (if no stiff operations have been reported) would not eliminate the unsafe condition, since water contamination of the flexible cable may still exist.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,500, or $660 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

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accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 95–NM–133–AD.

Applicability: Model 4101 airplanes on which Jetstream Modification JM41478 or JM41485A has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent heat damage and moisture contamination to the flexible cable, which could result in stiff operation of the power and condition controls and subsequent reduced engine control, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Jetstream Service Bulletin J41–76–013, dated May 5, 1995. Both requirements must be accomplished at the same time.

(1) Replace the flexible cables of power and condition controls of the left and right engines with new flexible cables, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin; and

(2) Install protective tape on the outside case of the flexible cables of the power and condition controls of the left and right engines; and reidentify the assembly number of the cable; in accordance with paragraph 2.D. of the Accomplishment Instructions of the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30747 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products To Protect Children and Adolescents; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in **Federal Register** of August 11, 1995 (60 FR 41314). The document proposed new regulations governing the sale and distribution of nicotine-containing cigarettes and smokeless tobacco products to children and adolescents in order to address the serious public health problems caused by the use of and addiction to these products. The agency has identified some proofreading inaccuracies in the references listed in the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

In FR Doc. 95–20051 appearing on page 41314 in the **Federal Register** of Friday, August 11, 1995, the following corrections are made:

1. On page 41316, in Ref. 2, in the second column, in line 2, "pp. 645–649" is corrected to read "pp. 77–81".
2. On page 41316, in the second column, in Ref. 4, in line 4, "pp. 645–649" is corrected to read "pp. 77–81".
3. On page 41316, in Ref. 16, in the third column, in line 2, "p. 32–47" is corrected to read "pp. 31–47".
4. On page 41319, in the third column, in Ref. 5, in line 3, "No. 50" is corrected to read "No. 20".
5. On page 41321, in the first column, in Ref. 76, in line 16, "No. 2" is corrected to read "No. 1".
6. On page 41321, in the first column, in Ref. 83, in lines 6 and 7, "pp. 100, 197" is corrected to read "pp. 100, 197–198".
7. On page 41342, in the third column, in Ref. 41, in line 4, "p. 23" is corrected to read "p. 24".
8. On page 41343, in the first column, in Ref. 67, "pp. 225–226" is corrected to read "pp. 224–226".

9. On page 41343, in the first column, in Ref. 68, beginning in line 3, "A3, col. 2" is corrected to read "A2, col. 3".
10. On page 41343, in the first column, in Ref. 70, in line 4, "pp. 21–26, 1988" is corrected to read "pp. 21–26, January/February, 1988."
11. On page 41343, in the second column, in Ref. 74, "'Wall Street Journal,'" October 26, 1994, at p. A14, col. 5" is corrected to read "'How A Tobacco Giant Doctors Snuff Brands to Boost Their 'Kick'," *Wall Street Journal*, October 26, 1994, at p. A1."
12. On page 41343, in the second column, in Ref. 75, "'The New York Times,'" January 13, 1984, at p. D4, col. 5." is corrected to read "'Moving Smokers to Sniff,'" *The New York Times*, January 13, 1984, at p. 4, section D, col. 5."
13. On page 41343, in the second column, in Ref. 84, "'American University Studies'" is added before the phrase "Peter Lang Publishing Inc.," and "vol. 30, Series X, pp. 150–153," is added after that same phrase.
14. On page 41343, in the second column, in Ref. 85, in line 5, pp. "545–573" is corrected to read "pp. 545–570".
15. On page 41343, in the second column, in Ref. 87, in line 4, "September 28" is added before "1985".
16. On page 41343, in the second column, in Ref. 88, in line 3, "No. 2" is added after "vol. 77,".
17. On page 41343, in Ref. 89, in the third column, in line 2, "No. 6" is added after "vol. 82," and in line 7, "No. 7" is added after "vol. 84," and "July" is added after "pp. 1148–1150,".
18. On page 41343, in the third column, in Ref. 92, in line 3, "*Am J Prev Med*, 1994 (in press)." is corrected to read "*Am. J. Prev. Med.*, vol. 10, (6), pp. 319–326."
19. On page 41343, in the third column, in Ref. 93, beginning in line 3, "University of California, San Diego, La Jolla, CA, 1994" is corrected to read "La Jolla, Calif: University of California, San Diego, 1994."
20. On page 41343, in the third column, in Ref. 95, in line 7, "May 1976" is corrected to read "Annex 2, May 1978", and in line 11, "p. 33" is corrected to read "p. 33–34", and in lines 13 and 14, "WHA 43.16, May 17, 1990" is corrected to read "WHA 43.16, May 17, pp. 1–2, 1990".
21. On page 41344, in the first column, in Ref. 106, in line 1, "Olsen" is corrected to read "Olson".
22. On page 41344, in the third column, in Ref. 141, "Id." is corrected to read "'Youth 1987,' The Creative Research Group Limited, for RJR Macdonald Inc., General Report, June 8, 1987."
23. On page 41345, in the first column, in Ref. 157, beginning in line 6, "School-children" is corrected to read "Schoolchildren".
24. On page 41345, in the first column, in Ref. 158, in line 7, "a" is corrected to read "A", and in line 11, "Triers" is corrected to read "'Triers,'".
25. On page 41345, in the first column, in Ref. 162, in line 1, "Botvin, G.," is corrected to read "Botvin, G.J.," and in line 6, the "Prevalence".
26. On page 41345, in the first column, in Ref. 166, in line 2, "Cigarette" is corrected to read "Cig".
27. On page 41345, in the first column, in Ref. 167, in line 1, "Pierce, J., et al." is corrected to read "Pierce, J.P., et al.", and in line 5, "p. 3145–3148" is corrected to read "pp. 3154–3158".
28. On page 41345, in the second column, in Ref. 169, beginning in line 1, "'The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children,'" is corrected to read "'Trade Character Recognition and Attitude Toward the Product by 3 to 6-Year Old Children'", and in line 5, "May 13–14, 1994" is corrected to read "June 4–5, 1993."
29. On page 41345, in the second column, in Ref. 170, in line 1, "Pierce, J., et al.," is corrected to read "Pierce, J.P., et al."
30. On page 41345, in the second column, in Ref. 175, in line 1, "Pierce, J., et al.," is corrected to read "Pierce, J.P., et al.,".
31. On page 41345, in the third column, in Ref. 188, in lines 5 and 6, the phrase "Economics, and Operational Research Division" is corrected to read "Economics and Operational Research Division".
32. On page 41345, in the third column, in Ref. 189, in lines 9 and 10, "'An Empirical Analysis of Dynamic, Nonprice Oligopolistic Industry,'" is corrected to read "'An Empirical Analysis of Dynamic, Nonprice Competition In An Oligopolistic Industry'".
33. On page 41345, in the third column, in Ref. 190, in the second line from the bottom, "'Smoldering'" is corrected to read "'Smouldering'".
34. On page 41346, in the first column, in Ref. 192, in line 2, the phrase "'and Sometimes They Don't.'" is corrected to read "'and somethimes they don't.'"
35. On page 41346, in the first column, in Ref. 193, in lines 1 and 8, "Rossiter, J." is corrected to read "Rossiter, J.R.", and in line 4, "Lutz, K., and R. Lutz," is corrected to read "Lutz, K.A. and R.J. Lutz,".
36. On page 41346, in the first column, in Ref. 194, in line 1, "Rossiter, J.," is corrected to read "Rossiter, J.R.,".
37. On page 41346, in the first column, in Ref. 195, in line 4, "pp. 249–255" is corrected to read "pp. 249–254".
38. On page 41346, in the first column, in Ref. 201, in line 2, the word "'Among'" is removed.
39. On page 41346, in the second column, in Ref. 213, in line 2, "for 1993" is removed.
40. On page 41346, in the second column, in Ref. 222, in line 5, "pp. 915–916" is corrected to read "pp. 913–917".
41. On page 41346, in the second column, in Ref. 233, in line 3, "&" is removed and the word "and" is inserted in its place.
42. On page 41372, in the first column, in Ref. 30, in line 4, "pp. 663–666" is corrected to read "pp. 1–13".
43. On page 41372, in the first column, in Ref. 31, "Id., p. 663" is corrected to read "Id. p. 10."

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–30814 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Second meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the dates of the second meeting of the "Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act" (the Committee). A Notice of Intent to form the Committee was published in the **Federal Register** on August 31, 1995, 60 F.R. 45388, and a Notice of Establishment of the Committee was published in the **Federal Register** on October 20, 1995, 60 F.R. 54207. The Committee had its first meeting on December 6–7, 1995 in Washington, DC.

DATES: The second meeting will be held on January 23–24, 1996, beginning at 10:00 a.m. on January 23. It is anticipated that the meeting will last for two days. The session of January 24, 1996 will commence at 9:00 a.m.

ADDRESSES: The meeting will be held at the EEOC Headquarters, 1801 L Street, NW., Washington, DC 20507.

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FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: All Committee meetings, including the meeting of January 23–24, 1996, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda: At the second meeting, the Committee will continue to discuss the unsupervised waiver legal issues that will be considered by the Committee in drafting a recommended notice of proposed rulemaking for EEOC approval.

Dated: December 12, 1995.

Gilbert F. Casellas,

Chairman.

[FR Doc. 95–30774 Filed 12–18–95; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA44–1–7167b; A–1–FRL–5314–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Best Available Controls for Consumer and Commercial Products (including Architectural and Industrial Maintenance Coatings)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires VOC emission standards for architectural and industrial maintenance coatings and 10 categories of consumer products . In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before January 18, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove , (617) 565–3246.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q

Dated: September 21, 1995.

John P. DeVillars,

Regional Administrator, EPA New England.

[FR Doc. 95–30796 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition from Mr. Philip Sweeney to require audible exterior back-up warning signals on large motor vehicles such as school buses and city maintenance vehicles. After analyzing the petition and data on back-up accidents, NHTSA concludes that mandating audible backup warning signals may not be effective in minimizing collisions with pedestrians, especially young children. The Agency has research underway on other means to reduce such deaths and injuries.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366–5276. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: At present, none of the Federal Motor Vehicle Safety Standards requires that a motor vehicle sound an audible warning signal when the vehicle is driven in reverse or backing up. By letter dated August 7, 1995, Mr. Philip Sweeney of San Diego, California, petitioned the agency to issue a standard to require an audible exterior maintenance vehicles. Mr. Sweeney stated in his petition that drivers of large vehicles have limited rear visibility, that young children can sometimes act impulsively, disregarding safety rules, and that young children have limited ability to anticipate safety risks.

The agency has reviewed the circumstances associated with the petitioner's desired solution. It has found that pedestrian response to exterior audible back-up alarms already on large vehicles has been studied. This study looked at the human factors involved in relation to conventional backing-up audible warning systems. The study, *"The Consideration of Human Factors in the Design of a Backing-up Warning System"* by Duchon, James C. and Laage, Linneas W., U.S. Bureau of Mines, is from the

"Proceedings of the Human Factors Society—30th Annual Meeting—1986." The authors looked at human behavior associated with back-up alarms. The specific vehicles were front-end loaders in the mining industry. The findings were that vehicle operators lose the perception of responsibility for vigilant behavior and that the pedestrians in the area predictably become habituated to the alarm. The authors also discussed a discernible alarm that would activate only when there was a target in danger behind the vehicle, which might be more effective because it sounded when an object was in proximity to the rear of the vehicle. Unfortunately, while possibly reducing habituation, such an alarm does not resolve the fundamental problem with alarms—the change in behavior of the driver towards being less responsible for the backing maneuver.

Another research effort looked at pedestrian back-up accidents and evaluated if an audible exterior back-up alarm would have been effective in preventing the accident. The study, *"An Audible Automobile Back-up Pedestrian Warning Device—Development and Evaluation"*, DOT–HS–802–083, November 1976, found that accidents where no benefit would be expected from an audible exterior alarm included those where the pedestrian saw the vehicle but was unable to or did not avoid it (e.g. if the vehicle was backing too fast), where the vehicle was unoccupied, and when the victim was a child less than 5 years old. This last item was added because, as the petitioner appears to support, children have limited abilities to recognize danger signals and risky situations. It should be noted that children are over-represented in backing accidents most likely because of this limitation and because they cannot be seen easily behind a vehicle, even if standing.

Thus, any solution of the back-up accident problem should be able to address the deaths and injuries to children age 5 years and under. It would appear that an audible exterior warning signal as proposed by the petitioner would have little value in addressing backing accidents, given the above findings.

The agency is currently conducting research to investigate the feasibility of equipping motor vehicles with cost effective countermeasures to assist drivers in safely carrying out backing, lane change and merging maneuvers. The objectives are to determine the performance of one or more feasible countermeasures and to define specifications in performance terms without constraining the solutions to particular devices or technologies. Should the Agency find that there are cost effective solutions available when that research is completed, it would consider beginning a rulemaking seeking to mandate those performance oriented solutions.

Concerning the petitioner's specific reference to school buses, in 1995 an industry-developed standard requiring audible exterior back-up alarms for all school buses was promulgated by the National Standards Conference on School Transportation. Thirty-one states have chosen to mandate back-up alarms on school buses or recommend voluntary installation. Other regulatory and standards setting organizations such as the states can mandate audible exterior back-up alarms on such state and locally owned government vehicles, regardless of the level of effectiveness and regardless of whether the buses are new or in service. Thus, audible exterior back-up alarm installations on school buses are likely to increase at a significant rate.

In addition, many new large trucks are voluntarily equipped with audible exterior back-up alarms because of Occupational Safety and Health Administration (OSHA) regulations for work site safety that require a person outside of a vehicle to direct backing operations or that vehicles in work sites to be equipped with audible exterior back-up alarms. Vehicle manufacturers, in response to purchasers, appear to be increasing the number of installations of back-up alarms on large trucks for the purpose of complying with the OSHA rules.

In sum, although NHTSA continues to be concerned about collisions between pedestrians and vehicles that are backing up, the agency is not convinced that mandating audible back-up alarms on large vehicles is the most effective means to minimize collisions with pedestrians. In particular, the data do not appear to show that mandating audible backup alarms would result in minimizing collisions with small children. NHTSA therefore intends to continue its research efforts and to look into possible alternatives, such as the effectiveness of mirrors installed specifically for backing maneuvers. It is premature for NHTSA to make any decision about mandating any particular solution at this time.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the specific requirement requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies Mr. Sweeney's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: December 11, 1995.

Barry Felice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30558 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–59–M

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Notices

Federal Register
Vol. 60, No. 243
Tuesday, December 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Japan (60 FR 10900). On September 25, 1995, the Court of International Trade (CIT) ordered the Department to correct two ministerial errors in the final results with respect to AFBs from Japan sold by Izumoto Seiko Co., Ltd. (IKS). Accordingly, we are amending our final results of administrative review of the antidumping duty orders on AFBs from Japan with respect to IKS. The reviews cover the period May 1, 1992, through April 30, 1993. The "classes or kinds" of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Michael F. Panfeld or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" of the final results referenced above.

One respondent, IKS, challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Japan. On September 25, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the **Federal Register**.

The CIT ordered the Department to make the following corrections to its analysis for IKS: 1) to correct the erroneous calculation of a negative United States price (USP) for certain observations; and 2) to correct the erroneous inclusion of movement expenses incurred in Japan in the calculation of movement expenses (MOVT) for further manufactured merchandise. We have corrected the ministerial errors in IKS's margin calculations for the amended final results of review for the period May 1, 1992, through April 30, 1993.

Based on the correction of the ministerial errors in our calculations for IKS, we have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/exporter, and country	BBs	CRBs	SPBs
IKS, Japan	4.65	(1)	(1)

[1] No U.S. sales during the review period.

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30955 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On August 2, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on Certain Cold-Rolled Carbon Steel Flat Products from Germany (A–428–814) (*Preliminary Results*). The review covers sales from one manufacturer of the subject merchandise to the United States and the period August 18, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Department published in the **Federal Register** (60 FR 39355) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Germany (58 FR 44170, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of these Reviews

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1010, 7209.24.1050, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7075, 7211.41.7085, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one exporter of certain cold-rolled carbon steel flat products, Thyssen AG (TAG). The review period is August 18, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Petitioners and Thyssen requested a public hearing but later withdrew their requests. Petitioners and Thyssen filed case briefs and rebuttal briefs on September 1, 1995, and September 12, 1995, respectively.

Comment 1: Petitioners argue that fundamental and pervasive flaws in Thyssen's responses require the use of total best information available ("BIA"). Petitioners argue that the failure of the Department to apply total BIA provides a significant disincentive for respondents to comply with the Department's instructions and information requests in the future, and encourages them to respond selectively in accordance with what would be to their benefit in the margin calculation.

Thyssen counters that the Department correctly determined in its July 20, 1995, memorandum on the use of BIA ("July 20, 1995, memorandum") that the use of total BIA is not warranted in this case, and that petitioners' "total BIA" argument grossly mischaracterizes the record and does not provide any new information which would warrant a departure from the Department's preliminary results. Thyssen argues that total BIA is reserved for those respondents who have been truly uncooperative or whose submissions have been so replete with errors as to make application of partial or neutral BIA impossible. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France; et al; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10908 (February 28, 1995). Thyssen argues that the Department's use of BIA should not unfairly penalize a respondent who substantially cooperates. *See, e.g., Allied-Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America* v. *United States*, Slip Op. 93–129 (CIT July 13, 1993).

Department's Position: As discussed in the Department's July 20, 1995, memorandum, the Department applies total BIA when a respondent fails to submit information in a timely manner, or when the submitted data is sufficiently flawed, so that the response as a whole is rendered unusable. The Department considers the errors and inconsistencies in Thyssen's submission of such a nature that they have had a limited effect upon the analysis and, as appropriate, can be dealt with on an individual basis. Individual issues which petitioners argue warrant the use of total BIA, and Thyssen's rebuttals, are addressed below in Comments 2 through 4.

Comment 2: Petitioners argue that Thyssen's reporting of product characteristics was replete with mistakes and omissions and could not be conclusively verified by the Department given Thyssen's failure or refusal to provide mill certificate information. Petitioners argue that Thyssen's unreliable product comparisons and erroneous reporting preclude an accurate determination of the true dumping margin in this review, as demonstrated by the home market verification report. Furthermore, petitioners argue that product characteristics could not be conclusively verified because of Thyssen's failure to provide mill certificates or similar information that would conclusively demonstrate the physical properties of the merchandise in question. Petitioners argue that order documentation, product brochures, and Thyssen's "List of Analysis" directory do not indicate the particular specifications to which each transaction in fact conforms. Petitioners note that

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while Thyssen has attempted to justify its failure to produce such documentation at verification by claiming that these documents generally are not requested by Thyssen's home market customers because of the extra charge, Thyssen's price list in its Section III response indicates that Thyssen does not always charge extra for preparation of information typically provided on mill certificates or similar documentation.

Thyssen responds that, as the Department noted in its July 20, 1995, memorandum, almost all of Thyssen's home market product characteristic errors involved products with the quality classification of "other high strength" that would not be used for matching purposes. Thyssen also argues that, as noted in the Department's July 20, 1995, memorandum, the only errors in Thyssen's U.S. sales product characteristics involved sales to specific customers which Thyssen brought to the Department's attention at the beginning of the product characteristic review in Germany, and which Thyssen had corrected by the beginning of the U.S. verification.

Thyssen argues that mill certificates were never required, as the Department's July 20, 1995, memorandum also noted, and that the Department properly did not demand access to Thyssen's magnetic tape records for whatever mill certificate information might have been available. Thyssen argues that it does not maintain mill certificates in its current "database" for more than three months after shipment for two reasons: these documents generally are not requested by Thyssen's customers, and so database access is not required; and the volume of business makes retention in the database impractical. Thyssen notes that the mill certificate information was and remains available on magnetic tape, but that retrieval of isolated pieces of data from this medium is time consuming. Thyssen notes that it was able to provide from its "database," immediately upon request, a mill certificate for a sale in February 1995 for the only shipment where this document was requested by the customer. Thyssen argues that it provided the Department with mill certificates for all of its U.S. sales, where mill certificates are an order requirement, and argues that the Department confirmed that the ordered material corresponded to that which was produced and sold. Finally, Thyssen argues that petitioners' citation of a price list showing that some minimal information will be provided free of charge "if selected and precisely ordered by the purchaser" does not contradict the Department's finding that Thyssen charges extra for "the vast majority of test certificates."

Department's Position: Petitioners have questioned several aspects of Thyssen's reporting of product characteristics. First, we disagree with petitioners regarding the errors in reported product characteristics for home market sales involving the quality "other high strength." These errors were discovered in a review of observations that Thyssen had designated with this specific quality. The specific sales in which errors were discovered were not used for matching purposes. After the discovery of this error, the Department examined additional "high strength" sales; no discrepancies were identified.

Regarding the majority of product characteristic errors for U.S. sales, the Department verified that Thyssen had identified the correct product characteristic information. We instructed Thyssen to incorporate those corrections in its final tape submission, and Thyssen did so in a satisfactory manner. Regarding mill certificates, the Department indicated in its verification outline of March 8, 1995, and throughout its review of product characteristics of home market and U.S. sales during verification in Germany, that it would be preferable if we were able to review the appropriate mill certificates for the observations in question. Thyssen indicated at verification that an attempt to locate available information for the period of review ("POR") from magnetic tape would be very burdensome. In any case, the Department remains satisfied with Thyssen's presentation of documentation regarding the product characteristics of its reported sales. Although the documentation reviewed at verification in Germany indicated several errors committed by Thyssen in its reporting of product classifications, nothing was noted at verification that indicated that Thyssen shipped merchandise, as specified in its commercial invoices, that differed from the specifications noted in the corresponding purchase orders and in Thyssen's general production standards by grade. (Contrary to Thyssen's assertion, most of the mill certificates provided during the verification in Detroit were not used for purposes of product characteristic verification, as the verification of the product characteristics of pre-selected and surprise sales for both markets had already been completed during the verification in Germany.) As noted in the Department's July 20, 1995, memorandum, the Department did not insist that Thyssen's magnetic tape records be reviewed because the retrieval of isolated pieces of data from Thyssen's magnetic tape records would have been inordinately burdensome for Thyssen to have accomplished during verification.

Comment 3: Petitioners claim that the numerous corrections and clarifications provided by Thyssen demonstrate that Thyssen's response cannot be deemed reliable or usable. Petitioners argue that the nature of the errors precludes proper product matching, distorts claimed expenses and adjustments, and prevents an accurate analysis and substantiation of costs overall.

Thyssen argues that the clerical errors identified and corrected by Thyssen during the course of the review were inconsequential when compared to the millions of bits of information reported; that the Department noted numerous instances, in its verification reports, where no discrepancies were found; and that the Department correctly concluded in its July 20, 1995, memorandum that the problems found were not sufficient to render Thyssen's submission unreliable or unusable.

Department's Position: We disagree with petitioners. As reflected in the Department's July 20, 1995, memorandum and elsewhere in this final determination in regard to particular areas of concern, the Department properly allowed Thyssen to make corrections to its submissions. We determined that the remaining errors and inconsistencies did not warrant disregarding Thyssen's submission as a whole, and could be dealt with on an individual basis.

Comment 4: Petitioners assert that Thyssen failed to report cost information as requested by the Department, thereby rendering the company's responses unusable for the purposes of our final results. Specifically, petitioners first argue that Thyssen failed to provide a schedule of production quantities, thereby preventing the Department from tying control number specific cost of production ("COP") and constructed value ("CV") figures to Thyssen's accounting records. Petitioners argue that the verification of production quantities was crucial in determining the accuracy of Thyssen's reported COP and CV amounts because the company used production quantities to compute (1) the average per-unit costs contained in its cost center expense reports, (2) the per-ton basis costs that were common to all products within each cost center, and (3) all product-specific basis costs within each cost center as part of the "tons per hour" factor. Petitioners note that the Department has stated that the

failure of a respondent to show that the product-specific costs included in COP and CV are tied to the company's accounting records results in a failed verification. *See Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof From the Federal Republic of Germany); Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31707 (July 11, 1991) (*AFBs From Germany*). Petitioners argue that, despite the Department's specific request for such a schedule, Thyssen refused to provide this information, claiming that it would be extremely burdensome, but failing to show why that was the case. Petitioners claim that the Department appears to have contradicted the record, including its own cost verification report, when it stated that "Thyssen did report product-specific costs in that it computed actual product-specific costs using production quantities at each stage of the production process" and that "[t]hese production quantities were reviewed and tested at verification." Petitioners believe the cost verification report indicates that product-specific production quantity information was not provided to the Department at verification. Petitioners argue that the Department's "alternative verification procedures," *i.e.,* the examination of fiscal-year ending inventory balances and movements in and out of a single warehouse, cannot be deemed to have demonstrated a link between production quantity information and Thyssen's financial records.

Petitioners also argue that Thyssen failed to identify product-specific costs as standard or actual costs, thereby preventing the Department from tying "basis costs" to actual production quantities. Petitioners argue that the Department has determined that it cannot use the cost response of a respondent which failed to provide actual costs and was unable to support its standard costs. *See Final Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, from Canada,* 54 FR 31984, 31985–86 (August 3, 1989).

Petitioners argue that throughout the review Thyssen has failed to conclusively identify whether its reported cost figures are based on standard or actual cost amounts. Petitioner contends that all of the information on the record indicates that Thyssen's product-specific manufacturing costs for the COP and CV figures are based on standards for which variances must be calculated. Petitioners assert that the information on the record is inconsistent with statements from the Department's cost verification report that it "tested that the standard costs were fully adjusted by the variances incurred and thus the submitted costs reflect the actual costs incurred during the respective fiscal periods."

Petitioners conclude that Thyssen's failure to report cost information as requested requires the Department to reject the company's questionnaire responses and apply total BIA. Petitioners argue that the flaws in Thyssen's reporting of COP and CV preclude the Department from conducting its sales-below-cost test and prevent the Department from having confidence in the difference-in-merchandise ("difmer") data, which are needed in the Department's margin calculations. Petitioners argue that, if the Department determines not to reject Thyssen's responses on the whole, the Department must, at the very least, apply as BIA to Thyssen's cost information the highest cost of manufacturing for all COP and CV values from sales in this review.

Thyssen counters that there is no doubt that the Department verified the company's actual production costs and actual production quantities. The Department utilized an exacting standard to verify Thyssen's submitted costs and the results of the Department's verification are supported by substantial evidence. Respondent argues that petitioners' claims must be rejected.

Thyssen argues that the Department's statements in its July 20, 1995, memorandum regarding this issue are accurate, contrary to the assertions of petitioners. Thyssen argues that its own submissions and the Department's cost verification report confirm that the actual production quantities were provided and verified. The actual costs were incurred by each processing cost center, based upon actual production, actual yield, actual work time and standard performance.

Furthermore, Thyssen argues that petitioners have mischaracterized the purpose of the Department's request for product-specific quantity information which was provided by alternative means. According to Thyssen, the request for quantity information pertained not to the compilation of production costs, but rather was designed to allow the Department to reconcile to Thyssen's inventory.

Department's Position: We disagree with petitioners' allegation that Thyssen failed the cost verification. The Department's verification provided reasonable assurance of the accuracy of Thyssen's reported costs, and our cost verification report outlined all of the testing which we performed and noted any exceptions or deficiencies in the results of that testing. As stated recently by the Court of Appeals for the Federal Circuit, the Act "gives Commerce wide latitude in its verification procedures." *American Alloys Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994). The standard for verification is not to verify all information or to require perfect accuracy. "Verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information." *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT December 14, 1994). Accordingly, as detailed below, we are satisfied that the shortcomings identified in the cost verification report regarding Thyssen's data do not undermine the reliability of Thyssen's submission as a whole and do not warrant resort to BIA.

Contrary to petitioners' assertions, we do not believe that Thyssen's omission of product-specific (*i.e.,* control number-specific) production quantities renders the company's questionnaire response unreliable for purposes of calculating COP and CV. As Thyssen explained in its response and as we observed at verification, the company does not maintain production quantities on such a product-specific basis as part of its normal accounting system. Instead, Thyssen relies on total production quantity figures at each of its steel production stages to compute an average per-unit coil cost for all products. Thyssen then converts this average coil cost to a product specific cost based on a standard table of "extras," which are discussed further below. Thus, the total production quantities at each production stage are determinative, as relied upon by Thyssen to calculate the per-stage costs which are then accumulated to determine the coil production cost.

As part of our verification testing, we required Thyssen to provide accounting records showing actual production quantities at each stage of production. In order to verify the accuracy of Thyssen's reported per-unit costs we examined production quantities and total production costs for selected cost centers within specific production stages. We found no discrepancies between the production quantities used by Thyssen to compute the actual weighted-average cost reported to the Department and the company's normal production records.

In contrast to Thyssen, the respondent in question in *AFBs From Germany,* the case cited by petitioners, was able to report the relevant information (regarding labor, overhead and other

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expenses) on a model- or product-specific basis. The Department determined, however, that it could not tie the reported model-specific amounts to the respondent's internal accounting records and financial statements, information which was successfully verified. *AFBs From Germany*, 56 FR at 31707. Being unable to devise a methodology to better allocate labor and overhead costs, the Department relied upon total BIA. *Id.* Following a challenge by respondent, the CIT remanded the *AFBs From Germany* determination, stressing that the actual information provided by respondent was accurate and verified. The CIT required the Department to further explain why, instead of relying upon total BIA, it had not supplied its own methodology or that of another respondent. *Nippon Pillow Block Sales Co.* v. *United States*, 820 F. Supp. 1444, 1455 (CIT 1993). Following remand, the CIT upheld the Department's determination that it could not develop an allocation methodology or use that of another respondent which would allow it to use the previously verified data. *Nippon Pillow Block Sales Co.* v. *United States*, 837 F. Supp. 434, 436 (CIT 1993).

Hence, as demonstrated by both the Department's initial determination and the CIT's two decisions, *AFBs From Germany* stands for the principle that the Department should rely upon a party's information to the extent possible. Here, because we found Thyssen's cost information as well as its accounting methodology reasonable and verifiable, we see no reason for resorting to BIA.

With respect to petitioners' claim that it is unclear whether Thyssen reported standard or actual costs, it is clear from the computer tape submitted by Thyssen and from the verification report that Thyssen reported the actual weighted-average cost of producing cold-rolled coil. The adjustments Thyssen made to adjust the base cost to actual cost are described in the cost verification report at pages 5–7. Thyssen adjusted the average cost of coil by three factors on the computer tape: the computer variables CREXT1 and CREXT2 ("extras") accounted for composition, size, width, and form differences between the average product and the unique product; the computer variable THMOADJ adjusted the average coil cost for year-end accruals, price and overhead variances. These three computer variables adjusted the average coil cost to actual product-specific cost.

Petitioners' reliance upon *New Steel Rail From Canada* is misplaced. In that case, the Department rejected the respondent's COP information after determining that it could not be verified. The Department found, among other deficiencies, that the respondent had developed information for the investigation based on the standard product costs used by the company, "which were not part of the normal financial accounting system and which were for a period subsequent to the period of investigation." *New Steel Rail From Canada*, 54 FR at 31985. Despite having a cost system which reported actual costs, the company in question "chose not to use this information for its response." *Id.* By contrast, there is no evidence in the record of this review indicating that Thyssen deviated from its normal accounting methodology except to the extent necessary to meet the Department's reporting requirements.

We also disagree with petitioners' contention that it is inappropriate to use standard machine times as a basis on which to compute labor cost for specific products. The use of standard machine times as a reasonable and appropriate allocation basis is well substantiated in both accounting and Departmental practice. *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Welded Stainless Steel Pipes from the Republic of Korea*, 57 FR 27731, 27733 (June 22, 1992). Machine hours effectively relate the labor cost incurred to the specific product. We find it reasonable and not distortive to use standard machine hours to allocate actual processing costs to specific products.

In sum, Thyssen supported its COP and CV figures with substantial evidence on the record as is indicated by the company's questionnaire responses, supplemental responses and verification exhibits. We reviewed and tested the accuracy and completeness of Thyssen's submitted COP and CV data and did not identify any problems which would cast doubt on the company's response as a whole. Accordingly, we have relied on Thyssen's cost response as the basis for our final results of this administrative review.

Comment 5: Petitioners argue that, should the Department determine not to disregard Thyssen's cost response, it must still account for Thyssen's failure to provide actual costs of material inputs from related parties. Petitioners argue that this failure prevents the verification of the valuation of materials acquired from related suppliers and requires the application of BIA.

Petitioners first contend that Thyssen's provision of financial statements or reports for a related iron ore supplier and a related ferrous scrap supplier in lieu of actual costs was insufficient for determining whether transfer prices are above or below the cost of production. Petitioners cite the final determination in the underlying investigation, which stated that "[f]or the Department to be assured that the transfer prices are above costs, the Department must be able to test the transfer prices against the actual costs of production of the inputs. * * *" *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany*, 59 FR 37136, 37151 (July 9, 1993) (*Steel from Germany*). Petitioners argue that the Department's verification of Thyssen's related iron ore supplier was inadequate to show whether transfer prices were above costs, and did not account for the fact that the overall profit on that supplier's income statement may obscure the fact that it incurs costs, on sales to Thyssen that are most likely not incurred on other sales, such as transportation and additional processing costs. Petitioners argue that the COP information provided by the related scrap supplier are also insufficient to demonstrate that the merchandise was sold above the cost of production. Furthermore, petitioners argue that Thyssen failed to distinguish between the cost of merchandise sold to Thyssen and the cost of merchandise sold to other customers. Consequently, petitioners argue that Thyssen failed to demonstrate that the transfer prices paid were above the supplier's cost of production, and therefore the application of BIA is warranted.

Thyssen responds that petitioners' claims ignore the cost verification report, the accompanying exhibits and analysis, as well as the substantial documentation provided by Thyssen. Thyssen points to its March 8, 1995, submission at 8–17 and accompanying exhibits 11–15, and pages 12–16 and exhibit G of the Department's May 17, 1995, cost verification report. Thyssen argues that the Department did not base its decision to accept related party input suppliers' prices solely on profit information in the financial statements. Further, Thyssen provided extensive information relating to sales quantities and production costs for its related iron ore supplier which established that transfer prices were above actual production costs. Thyssen counters that given its related iron ore suppliers'

product mix, petitioners' suggestion that potentially differing terms of sale could have resulted in production costs exceeding transfer prices is absurd on its face.

In regard to scrap sales, Thyssen quotes the cost verification report at 16 which concluded that the "Rhine region scrap division, the only division providing scrap to Thyssen Stahl AG ("TSAG"), was profitable on a DM per ton basis." Thyssen states the Department acted reasonably in using the transfer prices submitted in determining COP and CV in the absence of any evidence that the cost data supplied was unreliable or any evidence of record more probative than that which Thyssen and its related suppliers submitted.

Further, Thyssen contends that the cost information submitted by petitioners cannot be considered because it consists of factual information available to petitioners prior to publication of the preliminary determination and therefore was not timely filed. *See NSK Ltd.* v. *United States*, 798 F. Supp. 721, 725 (CIT 1992).

Department's Position: The Department disagrees with petitioners. Thyssen submitted evidence that the prices paid to related suppliers for the most significant inputs identified by the Department were at arm's length and were not at prices below the related suppliers' cost of production. The Department tested the submitted prices from a major related iron ore supplier and a major related scrap supplier. The Department found that the iron ore prices from unrelated and related suppliers were the same. The Department found that scrap prices from unrelated and related suppliers were comparable. The Department also tested that the prices were above the cost of production. The Department computed a cost per ton of iron ore from the constant currency income statements of the major related iron ore supplier for the years ending December 31, 1993 and December 31, 1994. We compared this amount to the average sales price, noting that the transfer price was higher than the average cost. It was appropriate in this case to use the average cost calculation because the major iron ore supplier's sole business is the sale of iron ore; therefore, financial results are not affected by other lines of business. Petitioners' argument that the profit on domestic sales may far exceed the profit on export sales is speculative and not supported by evidence on the record. Export sales constituted the majority of the related suppliers' sales. Export sales commanded significantly higher prices than domestic sales; this higher price should reflect any additional processing or transportation costs envisioned by petitioners.

In addition, at verification we reviewed the profit analysis of the major scrap supplier's Rhine region division, which supplies Thyssen with its ferrous scrap, and concluded that the division was profitable and therefore its sales of scrap were at prices above the cost of production.

Comment 6: Petitioners assert that the Department should use BIA for the CV of material inputs. Petitioners argue that for purposes of calculating CV, it is not sufficient that the transfer prices of major inputs reflect market value. Rather, section 773(e)(2) of the Act requires the Department to disregard the transfer price of a major input and use the actual cost of producing the input if the transfer price is below the related supplier's COP for that input. *See Antifriction Bearings From France, supra*, 60 FR at 10924. Petitioners argue that Thyssen's failure to provide credible evidence that the transfer price for iron ore was above the cost of production despite numerous requests from the Department for this information constitutes reasonable grounds to believe or suspect that the transfer prices paid by Thyssen were less than the cost of production. With respect to "non-major" inputs, petitioners argue that Thyssen failed to demonstrate that its transfer prices were at arm's length as, except for scrap, which the Department examined at verification, Thyssen provided only self-selected invoices which cannot be considered representative of prices.

Department's Position: The Department disagrees with petitioners. As discussed above in response to comment 5, the Department's testing at verification revealed that Thyssen's related party did not offer preferential pricing to related suppliers for major inputs. Moreover, we verified that major inputs were purchased at prices that were not below their cost of production. We are satisfied with Thyssen's submissions regarding this issue, as verified. With respect to materials purchased from related suppliers which consisted of a small part of the cost of manufacturing—so-called "non-major" inputs—the Department elected not to verify these amounts. We determined that these inputs had a minimal effect on the total cost of manufacturing. Given this fact, the constraints of time, and the nature of verification (see response to comment 4), we did not consider it necessary to verify these amounts individually.

Comment 7: Thyssen argues that, for purposes of its COP and CV calculations, the Department incorrectly reduced Thyssen's reported interest income by interest/dividends earned on security investments of working capital. Thyssen disputes the Department's rationale that "the Department does not generally allow dividends as an offset to financing expense because dividends are not considered to be short-term in nature." According to Thyssen, only short-term income from current assets was included in the interest income offset. Thyssen argues that, since this income was attributable to Thyssen's "short term investments of its working capital," it should not have been excluded from the interest income offset. *See, e.g., Antifriction Bearings From France*, 60 FR at 10926; *and Television Receivers, Monochrome and Color from Japan; Final Results of Administrative Review*, 56 FR 23281, 23282–83 (May 21, 1991). Thyssen argues that a cost verification exhibit confirms that its claim was limited to income from current assets and did not include interest from long term securities and interest other than from current assets.

Petitioners agree with the Department's preliminary determination that Thyssen has not demonstrated that the source of the claimed income is short-term in nature.

Department's Position: Thyssen has not demonstrated that it is entitled to an offset to interest expenses for income derived from dividends. The Department's long-established practice is to deny an offset for income of this nature. *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 57 FR 42942, 42953 (September 17, 1992); *Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea*, 59 FR 58826, 58828 (November 15, 1994). The CIT recently affirmed the Department's general standard in *NTN Bearing Corp.* v. *United States*, Slip Op. 95–165 (CIT Oct. 2, 1995). Relying on its earlier decision in *Timken Co.* v. *United States*, 852 F. Supp. 1040, 1048 (CIT 1994), the court clarified that to qualify for an offset, interest income must be related to the "ordinary operations of a company." *NTN Bearing* at 32. While this standard does not require that interest income be tied directly to the production of the subject merchandise, a respondent must show "a nexus between the reported interest income" and its "manufacturing operation." *Id.* at 33; *see Timken* at 1048. Unlike interest income earned from the short-term investment of working capital,

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only rarely will dividend income earned from a company's investment activities meet this standard. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994).

Thyssen argues in its brief that its dividend income qualifies as an offset because it is "short-term" income from current assets, such as "interest on current bank accounts, interest on time and fixed-term deposits and interest on short-term securities." However, the verification exhibit referred to by Thyssen as support actually characterizes the income in question as "dividends from securities of working capital." Cost Verification Report, Exhibit K. This is very similar to the facts in *NTN Bearings*, where the CIT upheld the Department's denial of the offset. *NTN Bearing* at 33. *See also Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 34180, 34184 (July 26, 1991). Indeed, Thyssen made little if any effort to demonstrate why its dividend income qualified as an offset. Therefore, because Thyssen failed to show the necessary nexus between its dividend income and manufacturing operations, we have denied the claimed offset.

Comment 8: Thyssen reported separate cost and allocated expense data for sales observations according to the fiscal year in which the sales took place. The Department conformed its computer programs so that they could utilize these fiscal year data. Thyssen argues that the Department incorrectly calculated one weighted-average home market direct selling expense and one weighted-average home market indirect selling expense for the entire POR. Thyssen argues that this is inconsistent with the Department's utilization of separate fiscal year costs and expenses for all of the other elements utilized in calculating constructed value.

Petitioners argue that calculating two such general expenses per control number ("CONNUM"), as requested by Thyssen, would improperly separate the class or kind into two categories, each of which has a separate cost. Petitioners argue more generally that the reporting of two costs and/or expenses per CONNUM conflicts with the statute and Department practice, distorts the effects of the costs and expenses, and is administratively burdensome. Consequently, petitioners argue that the Department should re-calculate a single weighted average for all costs and expenses covering the two fiscal periods.

Department's Position: We disagree with petitioners' assertion that the reporting of costs for the two fiscal periods covered by the POR violates the antidumping statute which directs the Department to calculate for constructed value, the "general expenses and profit equal to that usually reflected in sales of merchandise in the same general class or kind as the merchandise under consideration." Thyssen did calculate general expenses for the same class or kind of merchandise in accordance with the statute for the two fiscal periods encompassed within the POR. We have determined that computing general expenses by fiscal period does not, in effect, divide the class or kind of merchandise because the calculation for each period covers the entire class or kind. Using expenses associated with each fiscal period has not distorted our analysis because we have used contemporaneous prices and expenses. Contrary to petitioners' assertions, attempting to recalculate a single weighted average for all costs and expenses covering the two fiscal periods would be extraordinarily burdensome. We inadvertently did not account for two fiscal years in the instance noted by Thyssen, and have adjusted the programming language for weighted-average home market direct and indirect selling expenses so those calculations are in accordance with the Department's general use of separate fiscal year data. In this instance we have used the reported data.

Comment 9: Thyssen argues that the Department, through clerical error, improperly calculated Thyssen's fiscal 1992/93 cost of manufacture for cost of production. Thyssen argues that the Department failed in one instance, due to a missing zero, to follow its June 16, 1995, COP, CV, and Further Manufacturing Concurrence Memorandum in correcting Thyssen's thirteenth month adjustment.

Department's Position: We agree with Thyssen, and have incorporated the correct information in the programming for the final results.

Comment 10: Thyssen asserts that the Department improperly failed to adjust for physical differences in merchandise when comparing U.S. sales to home market sales falling within the same control number (or CONNUM, identified in the sales data bases as CONNUMU and CONNUMH, respectively).

According to Thyssen, it reported its variable manufacturing costs on a weighted-average basis for each CONNUMU and CONNUMH, with the weighted average derived from actual costs attributable to each individual invoice. Consequently, Thyssen argues that the material costs, labor costs and overhead expenses were not necessarily identical for all sales within a particular CONNUM. Similarly, because the physical characteristics of the merchandise grouped together in the U.S. sales listing often differed from the physical characteristics of merchandise grouped together in the home market sales listing, the variable cost of manufacturing for U.S. sales (VCOMU) often differed from variable cost of manufacturing for home market sales (VCOMH) for product groupings with the same identifying CONNUM.

As noted in the May 17, 1995, cost verification report at 22, "the variable cost of manufacturing in the home market sales listing and the U.S. sales listing was computed by calculating a variable cost of manufacturing for each sale and weight averaging all sale specific model costs within the control number." Thyssen asserts that the Department verified that Thyssen had quantified its product-specific cost differences resulting from differences in physical characteristics not reflected in the model matching characteristics upon which the determination of specific CONNUMs is based. Therefore, according to Thyssen, the Department established that the differences in the VCOMH and VCOMU for product groupings with the same identifying CONNUM were based on the physical differences in the merchandise actually falling within each group.

As support, Thyssen refers to section 771(16)(A) of the Act, which uses the phrase "identical in physical characteristics." Because this phrase is not defined, Thyssen argues that it must be construed in accordance with its common meaning, *i.e.*, "exactly the same." Thyssen cites various cases where the Department noted that its product groupings are not necessarily limited to a single "identical" product. *See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28364–66 (June 24, 1992); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Determination of Sales at Less than Fair Value*, 54 FR 18992, 19072 (May 3, 1989). Thyssen concludes that the Department has refused to make adjustments for differences in costs of producing merchandise only when the products in question had identical physical characteristics. *See Import Administration Policy Bulletin*, No. 93.2 (July 29, 1992).

In response, petitioners argue that it is well established in the cold-rolled carbon steel flat products cases that all products which have the same CONNUM are considered by the Department to be "identical" for the purpose of applying Section 773(a)(4)(C). For example, Appendix V of the questionnaire from the underlying investigation states that "[f]or purposes of these investigations, products will be considered 'identical' in thickness if they fall within the same thickness range * * * regardless of the actual thickness of the products"; "products will be considered 'identical' in width if they fall within the same width range identified * * * regardless of the actual width of the merchandise"; "and "[n]o difference in merchandise adjustment (difmer) may be claimed for products that are within the same thickness or width range, but differ in actual measurement." Similarly, the Department stated that, in following such an approach for determining which sales are of "identical" merchandise, "if there are 'identical' matches according to our designated criteria, we will not make an adjustment for any additional differences in merchandise (difmer)."

Petitioners argue that, in the present review, CONNUMs have been defined such that each CONNUM has a unique set of identifiers for the matching criteria established by the Department. As a result, products sold in the United States and home markets which have the same CONNUM would share the same "identifier" for all of the Department's product-matching criteria and, accordingly, the Department was correct in not making difmer adjustments for U.S. and home market products with the same CONNUM.

Department's Position: We disagree with respondent. As explained below, the Department correctly declined to make difmer adjustments when U.S. sales were matched to what we determined to be home market sales of identical merchandise (*i.e.*, when the U.S. and home market sales in question possessed the same product characteristics as set forth by the Department in its model matching criteria).

Section 771(16) of the Act directs the Department to compare sales of home market merchandise which are "such or similar" to merchandise sold in the United States. In accordance with section 771(16)(A), the Department first identifies and compares that merchandise which is "identical" in physical characteristics, followed by sales of merchandise which is most "similar" in physical characteristics. To make these determinations, the Department devises a hierarchy of commercially meaningful characteristics suitable to each class or kind of merchandise. The Department considers merchandise to be identical within the meaning of section 771(16)(A) when all the relevant characteristics match.

The courts have recognized that the Department has broad discretion "to choose the manner in which 'such or similar' merchandise shall be selected." *Koyo Seiko Co.* v. *United States*, 66 F.3d 1204, 1209 (Fed. Cir. 1995). This discretion extends to determining which products properly should be considered identical.

However, the Department is not authorized to grant difmer adjustments within identical product categories. Under section 773(a)(4)(C) of the Act, the Department may only adjust for cost differences between two products which are "similar" in physical characteristics, and in this way compensate for any difference in the price derived solely from the physical difference between the two products compared.

Basing its product matching criteria on commercially meaningful characteristics permits the Department to draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in certain classes or kinds of merchandise. Given the tremendous number of variations between products in the various flat-rolled carbon steel product categories, including cold-rolled steel, the Department has followed this approach in the present case, beginning with the original less-than-fair-value investigation. As such, the Department may define certain products as being "identical" within the meaning of section 771(16)(A), even though they contain minor differences. *See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Mexico*, 55 FR 29244, 29247–48 (July 18, 1990). Similarly, the Department need not account for every conceivable physical characteristic of a product in its hierarchy. Thus, a range of products may be considered "identical" within the meaning of the statute.

For instance, as Thyssen correctly notes in its case brief, many steel products would have been treated by the Department as identical (*i.e.*, in the same CONNUM) even when their widths differed from one another, because this product characteristic is identified in terms of ranges (*e.g.*, 40 to 60 inches as identifier "F" for the width product characteristic). In other words, two sales could be classified in the same CONNUM even if one was of merchandise with a width of 41 inches and the other was of merchandise with a width of 59 inches because both would fall within the width category identified as "F".

At the outset of the present review, when it had an opportunity to comment on the hierarchy of product matching criteria, Thyssen failed to argue that it considered the Department's width and thickness product categories overly broad, nor did Thyssen argue that additional product characteristics should be included within the hierarchy. Because the products within each CONNUM are identical within the meaning of the statute, the VCOMH and VCOMU reported by Thyssen within individual CONNUMs do not provide a basis for making difmer adjustments.

Comment 11: Thyssen contends that the Department improperly compared U.S. sales of seconds to constructed value, rather than to home market sales of seconds. Thyssen acknowledges that home market seconds were sold at prices below cost. However, Thyssen cites the Senate Report accompanying the Trade Reform Act of 1974 to argue that neither the statute nor the Department's regulations mandate that all below cost home market sales be disregarded in calculating foreign market value. *See* S.Rep. No. 1298, 93d Cong., 2nd Sess. 173 (1974). Thyssen argues that in the steel industry it is normal business practice for all companies, including Thyssen, to sell secondary steel at less than the cost of producing prime steel of the same grade. At the same time, however, sales of seconds are relatively infrequent in comparison to sales of prime material and do not prevent a steel manufacturer from recovering production costs on all steel sales, primes and seconds, within a reasonable period in the normal course of trade. Thyssen contends that this result is directly contrary to the intent of Congress.

Thyssen argues that *IPSCO, Inc.* v. *United States*, 965 F.2d 1056, 1060 (Fed. Cir. 1992), which the Department cites at page 3 in its April 19, 1995, memorandum on treatment of non-prime merchandise (from Roland MacDonald to Joseph Spetrini, General Issue Case No. A–100–003), merely *permits* the Department to compare the prices of seconds to constructed value in appropriate circumstances; *IPSCO* does not mandate that result. Thyssen contends that the particular issue which it has raised, the question of whether Thyssen's sales of seconds were in sufficiently large quantities over a significantly lengthy period, is fact-

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specific to the instant review and was not presented to the *IPSCO* court.

Petitioners respond that it is inappropriate to combine prime and non-prime merchandise in determining whether the quantity of below cost sales is sufficiently large to warrant disregarding those sales in determining FMV. Petitioners contend that Thyssen has taken the inconsistent positions that the Department should separate prime and non-prime merchandise for the arm's length test, but combine both types of merchandise for the cost test. Petitioners argue that the comparison of U.S. sales with CV is mandated by statute whenever such or similar home market merchandise fails the COP test, that Thyssen admits that its sales of seconds fail this test, and that, accordingly, U.S. sales of non-prime merchandise should be compared to CV. Petitioners add that Thyssen did not provide any evidence that the costs of the merchandise consisting of a combination of both prime and non-prime merchandise would be recovered over a reasonable period of time, even if such an analysis were relevant.

Department's Position: Thyssen is essentially requesting that the Department modify the below-cost test it applied in the preliminary results to include sales of seconds for matching purposes whenever the corresponding sales of prime were at above cost prices. In this regard, Thyssen mistakenly relies on the Senate report accompanying the 1974 Trade Reform Act to contend that the Department should not disregard sales of seconds, regardless of whether they were at prices below cost. We disagree.

The Act requires the Department to determine whether a respondent's sales were made over an extended period of time and in substantial quantities so as to warrant disregarding those sales in determining FMV. This test applies across sales of a model as a whole, whether they be prime, seconds or otherwise. *See* 19 U.S.C. § 773(b). The 1974 Senate report did list several exceptions to this test, including obsolete and end-of-model year merchandise, which the Department should not disregard regardless of the whether they were below cost.

This category of exceptions is narrow, however, and is designed only to permit the inclusion of below-cost sales which can be expected to occur on an "infrequent" basis. S. Rep. No. 1298, 93d Cong., 2d Sess. 173 (1974); *see also Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductor of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993). It is possible to verify whether merchandise claimed to be obsolete or end-of-model year actually falls within the exception. The exception does not include seconds, however, which tend to occur more frequently and which a party would be more inclined to "systematically" sell at prices which will not permit recovery of all costs. *See* S. Rep. 1298 at 173. It would also be more difficult to verify whether a product was properly classified as a "second."

In past cases, the Department has considered prime and secondary merchandise to be separate models for matching purposes. "To do otherwise would distort the margins, since sales prices are dependent on the quality of the merchandise." *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 43327, 43328 (August 16, 1993). In *IPSCO*, the Court of Appeals upheld the Department's approach of applying the same cost to prime and secondary merchandise. *See IPSCO*, 965 F.2d at 1061. In this case, we computed the cost of Thyssen's secondary merchandise using a methodology consistent with that applied in the *IPSCO* case. Based on these cost figures, we found insufficient quantities of above cost sales and, accordingly used CV as FMV.

Comment 12: Thyssen argues that the Department improperly combined sales of prime and secondary merchandise in its arm's length test. According to Thyssen, the Department should conduct separate arm's length tests and calculate separate customer-specific weighted-average price ratios for prime and secondary merchandise. In support of its argument, Thyssen asserts that such treatment would be consistent with the Department's April 19, 1995, memorandum on the treatment of non-prime merchandise.

Petitioners respond that Thyssen misrepresents the Department's statements on this matter, indicating a serious misunderstanding on Thyssen's part as to how the arm's length test was applied in the present case. Petitioners describe the Department's arm's length test as first comparing the net price of sales of a CONNUM sold to a related customer with the net price of sales of a CONNUM sold to unrelated customers. Only then, petitioners argue, is the related customer-specific weighted-average price ratio calculated, by combining all CONNUMs, consisting of all prime and non-prime merchandise sold to both related and unrelated customers. The Department's test separates prime and non-prime merchandise in making the initial comparison of related and unrelated prices on a CONNUM-specific basis. It is this initial comparison to which the Department refers in its memorandum when it states that "prime and seconds should be separated." Prime and non-prime merchandise are necessarily separated for this initial CONNUM-specific comparison because prime and non-prime merchandise do not share the same CONNUM. The separation of products on a CONNUM-specific basis for the initial price comparison is necessary because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or non-prime merchandise. Petitioners argue that the objective of the Department's arm's length test is to determine whether sales to individual related customers are made at the same or greater prices than those at which sales of the same products are made to unrelated customers. To make this customer-specific determination, all sales of all CONNUMs, both prime and non-prime, must be combined, and, so, the Department combined all CONNUMs sold to related customers which are also sold to unrelated customers to determine the customer-specific weighted average price ratios.

Department's Position: We disagree with Thyssen. The Department's April 19, 1995, seconds memorandum, states that "if sales of seconds to related parties are compared to sales of prime (or prime and seconds combined) to unrelated parties, the results of the arm's length test could be distorted." The memorandum concludes that, consequently, "prime and seconds should be separated for purposes of conducting the arm's length test. . . ." The recommendation section of the memorandum goes on to clarify, however, that the separation of prime and secondary merchandise is done on what amounts to a CONNUM-specific basis. In cases where sales of prime and secondary merchandise were reported together in the same CONNUM, the Department treated them as separate CONNUMs for purposes of the arm's length test. As petitioners point out, the Department would ordinarily follow this approach in the initial steps of conducting the arm's length test because there are understandable differences in prices among CONNUMs, irrespective of whether the different CONNUMs consist of prime or secondary merchandise. *See* April 19, 1995, memorandum at 2–3. In this specific case, Thyssen's seconds were already classified in separate CONNUMs distinct from sales of prime merchandise, meaning that the Department was not required to make such an initial separation.

The purpose of the Department's arm's length test is to determine if total sales to a related party are at arm's length. To make this determination, we calculate, by CONNUM, prices to each related party as a percentage of prices of sales to unrelated parties. We then take a weighted average of this ratio for all CONNUMs sold to a given related party, including seconds and prime, to determine if sales to that related party are at arm's length. Thyssen has not demonstrated that the approach resulted in a distortion of the arm's length test. *See Usinor Sacilor* v. *United States*, 872 F.Supp. 1000, 1004 (CIT 1994).

Comment 13: Thyssen contends that the Department improperly calculated the VAT adjustment. Thyssen argues that in *Zenith Electronics Corporation* v. *United States*, 988 F.2d 1573 (Fed. Cir. 1993), the Federal Circuit held that the Department's practice of making a circumstance of sale adjustment to FMV to achieve tax neutrality was contrary to law, reasoning that "Section 1677a(d)(1)(C), the section dealing with tax adjustments, does not provide for any adjustment to FMV to correct for tax-related distortion of the dumping margin," and that "the specific provision of Title 19 for tax adjustments does not permit changes to FMV." *Id.* at 1580. Thyssen adds that in *Daewoo Electronics* v. *International Union*, 6 F.3d 1511, 1519–20 (Fed. Cir. 1993), the Federal Circuit held that the tax should be applied at the sale price at which the tax was actually assessed.

Thyssen argues that, in *Federal Mogul Corp.* v. *United States*, CAFC No. 94–1097 (Fed. Cir. August 28, 1995), the Federal Circuit expressly held that the Department had the authority to calculate the adjustment by taking the paid tax *amount* in the home market for the same merchandise, and adding "that amount to the price actually paid in the United States." Slip Op. at 9. According to Thyssen, the Court reasoned that the tax neutral methodology which results from adding the identical tax amount to both the home market and the United States sides of the dumping equation "clearly accords with international understandings, negotiated by this country regarding unfair trade policy," whereas any alternative methodology which artificially increases dumping margins may "read a GATT violation into the statute." *Id.* at 22–23.

Thyssen argues that the Department's preliminary results are contrary to *Zenith* in that it adjusted FMV by the tax relating to expenses that were deducted from FMV. Thyssen argues that the Department's preliminary results are contrary to *Daewoo* in that its calculation methodology resulted in the tax being applied to an ex-factory price, rather than the sales price at which the tax was actually assessed. Thyssen argues that both *Zenith* and *Daewoo* prevent the Department from making any secondary adjustments in calculating the tax pursuant to section 772(d)(1)(C), and even if the Department had this authority, it must be limited to those isolated instances in which the primary tax adjustment created margins where none had previously existed. Thyssen argues that in the case of Thyssen a secondary adjustment could never be authorized, since Thyssen's deductible U.S. expenses exceed its deductible home market expenses, and since the Department's secondary adjustment artificially and significantly inflates dumping margins, in direct contravention to *Federal Mogul*.

Thyssen concludes that the Department's preliminary results methodology, which applies the VAT to a different point in the chain of commerce than the point at which the tax is assessed, and which creates a secondary tax adjustment to FMV, is directly contrary to *Federal Mogul*, *Zenith*, and *Daewoo*. Thyssen argues that the Department should add to USP the exact amount of the tax added to FMV, as authorized by *Federal Mogul*, or, alternatively, calculate the tax added to FMV in the manner reported by Thyssen (gross price less discounts, times 0.15) and calculate the tax added to USP by multiplying TINC's net sales price (gross price less cash discount, where applicable) times the tax rate.

Petitioners assert that the Department properly calculated the VAT adjustment in accordance with its statutory mandate and existing legal authority, which requires that an adjustment be made to USP to account for any VAT that may have been charged on the corresponding home market sale. To do this, the Department applied the rate from the home market to the U.S. sale and added this amount to USP.

Petitioners argue that, because *Federal Mogul* does not require that any particular methodology be used, the Department's methodology in this case is not precluded by the Court's decision. While Thyssen is correct in pointing out that the Court of Appeals did rule on the issue of the VAT adjustment methodology, and clearly upheld the Department's previous methodology of calculating the amount of tax paid on the home market sale and adding the amount of the tax to USP, the opinion does not indicate that this is the only methodology that the Department may use. To the contrary, petitioners argue, the Court does not state that use of this methodology is required by the statute, but rather that it is not precluded by the statute. Furthermore, petitioners argue, as demonstrated by its use in several earlier determinations by the Department, the methodology used in this review is entirely reasonable. *See, e.g., Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 59 FR 13700, 13701 (March 23, 1994); *Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 1374, 1376 (January 10, 1994).

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul*, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith*, 988 F. 2d at 1582, and which was suggested by that Court in footnote 4 of its decision. The CIT overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

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The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act, (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its long standing policy of tax-neutrality and with the GATT.

Comment 14: Thyssen argues that the Department, through clerical error, improperly failed to correct certain reported home market product characteristics. Thyssen argues that the Department did not in its arm's length test program make all of the product characteristics corrections made in its model match program.

Department's Position: We agree with Thyssen that the arm's length test program did not contain all of the product characteristic corrections made in the model match program. However, we note that this oversight had no effect upon the Department's analysis because CONNUMs, rather than product characteristics, are used within the arm's length computer program, and the merchandise in question would still be classified in the same distinct CONNUMs even if the product characteristics were corrected. Consequently, we have removed any reference to product characteristic corrections from the arm's length program.

Comment 15: Thyssen argues that the Department improperly excluded home market sales prior to February 1993 from its calculations. Thyssen argues that it is inconsistent for the Department to include in its analysis shipments to Thyssen's U.S. customers with dates of shipment from Germany during the POR regardless of the date of the requirements contract, while at the same time excluding all home market shipments with sale dates prior to February 3, 1993, even though the date of shipment from the mill, the functional equivalent of the shipment date from Germany for U.S. sale observations, is within the POR.

Thyssen argues that this is particularly egregious, given that the Department has resorted to BIA for certain of Budd's U.S. resales because Thyssen did not report home market sales back far enough; it argues that the Department cannot penalize Thyssen for underreporting and at the same time exclude transactions for being prior to the requested reporting period.

Department's Position: We disagree with Thyssen. The Department is applying BIA to the Budd sales with dates of sale in 1992 because Thyssen failed to report home market sales back far enough to provide home market sales contemporary with those Budd sales (see Comment 31). Normally we request home market sales for the entire period from the earliest U.S. sale date forward and would apply the arm's length test to all sales reported. However, Thyssen selectively reported sales prior to February 1993. Thyssen might have reported home market sales for an intervening period between the 1992 Budd sales and February 1993 based solely upon the effects of such reporting on the arm's length test. Therefore, to avoid the risk of distorting the arm's length test results, we disregarded those sales, which were not contemporaneous with any U.S. sales.

Thyssen's argument that some of the excluded home market sales were shipped during the POR, like the U.S. sales, is unpersuasive. The Department reviews shipments to the U.S. during the period of review. However, in order to make the price-to-price comparison, we look at the date of sale for the U.S. transaction, which may or may not be different than the date of shipment to the United States, and match it to a home market sale with a contemporaneous date of sale, which may or may not be the date of shipment in the home market. The fact that Thyssen considers the shipment to its home market customers the equivalent of shipment from Germany to the United States is not relevant for purposes of identifying home market sales for matching purposes.

Comment 16: Petitioners argue that the Department should deduct all direct and indirect selling expenses incurred on further manufactured sales made in the U.S. market from the gross prices associated with those sales. Petitioners argue that the Department's calculation of a share of U.S. direct and indirect selling expense variables is appropriate for purposes of calculating the ESP cap, but that for purposes of calculating U.S. price, all direct and indirect selling expenses should be deducted.

Thyssen counters that the computer programming language in question was present in the version of the program disseminated to all interested parties on October 13, 1994. Petitioners filed extensive comments on that program with the Department, but did not object to the Department's proposed reduction of U.S. price by only a share of U.S. direct and indirect selling expenses.

Department's Position: We agree with petitioners that the methodology followed by the Department in the preliminary results, to reduce U.S. price by only a share of U.S. direct and indirect selling expenses, was inappropriate. The Department inadvertently included this language in its computer program. Such a share should only be used in the calculation of the ESP cap or offset for further manufactured sales in order to capture the portion of the indirect selling expenses attributable to foreign manufacturing. We have corrected the programming to reflect the correct methodology. The fact that petitioners failed to comment on this issue prior to the preliminary results does not alter the fact that they have identified a program error that should be corrected.

Comment 17: Petitioners argue that, for U.S. sales observations which the Department determined required the use of BIA, the Department should not have applied what petitioners describe as neutral BIA, the deposit rate from the underlying investigation. Petitioners claim that Thyssen's submissions reflect widespread omissions and insufficiencies by Thyssen that require application of, at the least, adverse BIA. In support, petitioners emphasize the CIT's statement that, "[a]lthough the ultimate purpose of BIA is not to punish, BIA is intended to be adverse and requires the use of adverse assumptions." *National Steel Corp.* v. *United States*, 870 F. Supp. 1130, 1136 (CIT 1994) (*National Steel*). Petitioners argue that, given Thyssen's numerous omissions and insufficiencies, it is highly probable that there remain other, undiscovered problems with Thyssen's submission.

Petitioners also assert that should the Department continue to apply neutral partial BIA in its final results, respondents would have no reason to comply with the Department's requests for information knowing that the worst they could receive as BIA for any missing or incomplete information is the rate from the underlying investigation. Petitioners cite the CIT's reasoning that using "BIA for only those segments of a submission that are rejected could permit a party * * * to select the data it believed would be to its benefit, leaving Commerce only to fill in the blanks." *Tatung Co.* v. *United States*, Slip. Op. 94–195 at 13 (December 14, 1994) (citing *Chinsung Indus.* v. *United States*, 705 F. Supp. 598, 601 (CIT 1989)). Petitioners argue that an appropriately adverse partial BIA would be either the higher of the margin from the investigation or the highest non-aberrant margin calculated for Thyssen's sales in this review; because the latter figure is not known to respondents until the final calculation of the margin at the end of the review, respondents would be unable to perform the cost/benefit analysis to allow them to selectively disclose only certain information.

Thyssen responds that the Department has broad discretion in choosing BIA, and need only give a reasonable explanation of its choice. *See Neuweg Fertigung GmbH* v. *United States*, Slip Op. 92–137 (CIT August 20, 1992). Thyssen argues that, contrary to petitioners' claims, the Department is not required to utilize the highest non-aberrant margin from a respondent's sales for respondents who comply with the Department's information requests, but provide information which is incomplete or inaccurate in some regard. Thyssen argues that in *National Steel* the Court affirmed the Department's decision to apply respondents' weighted-average margin as BIA where respondent fully cooperated in the investigation and the misreporting was limited in nature. Thyssen argues that the Department's choice of BIA in its preliminary results was identical to that utilized in *Antifriction Bearings From Germany*, 56 FR at 31705.

Thyssen also argues that petitioners mistakenly presume that additional, undiscovered errors exist in Thyssen's database. Thyssen notes that it provided clerical error corrections to the Department, and the Department did additional spot checks at verification confirming errors had been corrected and were limited to isolated sales as reported by Thyssen. Thyssen concludes that the Department's use of a benign BIA would not encourage a future respondent to selectively report information.

Department's Position: As we determined in the preliminary results, Thyssen's revised database did contain unauthorized changes and other unexplained problems, but the sales affected were minimal in quantity relative to the size of the entire data base. As a result, the Department did not apply "the most adverse partial BIA" to such observations, but chose instead to apply Thyssen's weighted-average margin from the original investigation. Contrary to the position taken by the petitioners, this approach was approved by the CIT in *National Steel. See also Usinor Sacilor* v. *United States*, 872 F.Supp. 1000, 1007 (CIT 1994). At the same time, we do not consider this rate to be neutral, as argued by petitioners. It is considerably higher than the rate assigned to most of Thyssen's sales during this review which are based on the company's own data.

Comment 18: Petitioners argue that the Department should multiply the total volume of the BIA sales by the BIA rate to calculate the total BIA margin, then combine the resulting BIA margin with the total dumping margin calculated for the other sales to arrive at the weighted-average dumping margin. Petitioners argue that contrary to its normal practice, the Department incorrectly used the value of most of the BIA sales in the calculation of the weighted-average dumping margin. That sales information, petitioners note, is inherently unreliable, given that they are BIA sales, and reduces the dumping margin.

Thyssen acknowledges that the Department could use either methodology, assuming the use of BIA was appropriate. Thyssen argues, however, that use of the price information in the calculation of the weighted-average margin constitutes the most reasonable method because there were not price-related errors in the BIA sales in question.

Department's Position: We agree with petitioner. We have decided to calculate the overall margin for the final determination by weight-averaging the non-BIA and BIA margins by quantity alone because that is the Department's normal practice. Moreover, we note that, contrary to Thyssen's assertions, a few of the BIA observations in question did involve unauthorized changes in price.

Comment 19: Thyssen argues that the Department's resort to BIA because of clerical errors or arguably incomplete analyses contained in summary worksheets presented at the commencement of the U.S. sales verification constitutes "a clear abuse of administrative discretion." Thyssen contends that the CIT has held that the DOC has abused its discretion in the past by rejecting a respondent's post preliminary determination submission as untimely. *See Usinor Sacilor* v. *United States*, 872 F.Supp. 1000, 1008 (CIT 1994) (*Usinor Sacilor*). Thyssen cites the CIT decision in *RHP Bearings* v. *United States*, 875 F.Supp. 854, 857 (CIT 1995) (*RHP Bearings*) that "[a]n error, although untimely filed, is eligible for correction if the error is obvious from an examination of the administrative record which is before Commerce at the time of the preliminary results and the newly submitted information is obviously correct." Thyssen also cites *Brother Industries, Ltd.* v. *United States*, 771 F. Supp. 374, 384 (CIT 1991) (*Brother*), wherein the CIT ordered the Department to correct a respondent's clerical error, which respondent had brought to the Department's attention prior to publication of the preliminary results in an administrative review.

Thyssen claims that these cases demonstrate that the Department's resort to BIA was inappropriate. Thyssen argues that all of the errors in question consisted of clerical errors in summary worksheets, the correct data were reported in its computer database, and the clerical errors were brought to the Department's attention immediately upon discovery and prior to publication of the preliminary results.

Petitioners counter that, as the Department and Thyssen have both recognized, the information provided by Thyssen at and after verification was clearly erroneous and incomplete. Petitioners also argue that the erroneous information provided by Thyssen after verification did affect the veracity of the database as a whole. Petitioners argue that since the majority of errors were not identified until after verification, corrections made to the data base after verification obviously were not verified by the Department. Petitioners state that Thyssen did not identify the errors made in its submissions, supplying corrections only after petitioners had identified them, and that Thyssen's first attempt at clarification, the June 13, 1995, submission, included additional erroneous information. Petitioners assert that isolated verification of so-called corrected information does not negate the pervasive errors throughout groups of sales within Thyssen's database, and that a worksheet indicating an invoice "change" does not constitute sufficient notice to the Department because it does not identify the type or number of "changes" made to these invoices.

Petitioners add that it is not the Department's duty or obligation to

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correct a respondent's errors. *See NSK Ltd.* v. *United States*, 825 F. Supp. 315, 319 (CIT 1993); *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews*, 59 FR 42805, 42812 (August 19, 1994). Petitioners contend that Thyssen has failed to satisfy its burden of providing reliable information. Petitioners explain that the various cases cited by Thyssen do not proscribe the application of BIA in the circumstances of this proceeding.

Department's Position: We disagree with Thyssen's assertion that the Department's use of BIA was inappropriate. Thyssen failed to make changes it proposed at verification which the Department had authorized. Thyssen also made changes which the Department did not authorize. This called into question the accuracy of the information reported for those observations. Thyssen was given the opportunity to explain how the changes in its final tape submission reflected the changes authorized by the Department's May 15, 1995, and May 17, 1995, memoranda to the file. Where Thyssen's explanation was not satisfactory, BIA was applied, as described elsewhere in this notice, in the preliminary notice, and the Department's analysis memoranda.

Furthermore, we agree with petitioners that the cases cited by Thyssen do not require a different outcome. For example, in *Usinor Sacilor*, the Court found the Department had abused its discretion by rejecting a post-preliminary results submission from the respondent. A controlling consideration for the Court, however, was that the Department's questionnaire had been misleading, which is not the case here. In *RHP Bearings*, also cited by Thyssen, the Court emphasized that it may be appropriate to correct respondent's errors if the errors are obvious from the record prior to the preliminary results and the new information is obviously correct. Thyssen's errors were neither obvious nor was the "newly submitted information" correct.

Finally, *Brother* is distinguishable from the current situation as well. There, the Court only required the Department to consider respondent's revised data because it was "clerical" in nature and because the Court was ordering remand on other issues. The Court stressed that its decision should not be construed as undermining the Department's authority to disregard untimely information. *Brother*, 771 F.Supp. at 384. In Thyssen's case, most of the information was provided after verification and none of Thyssen's unauthorized changes could be verified by the Department. Indeed, as petitioners argue, in *Brother* the Court emphasized the need for proper analysis and verification for such information, stating that the statute may require that inadequate submissions be corrected if received in time to permit proper analysis and verification of the information concerned. Such was not the case here.

Comment 20: Thyssen provided information at the beginning of the U.S. verification to correct sales that it stated had been reported twice in its U.S. database. The Department determined that Thyssen's efforts to correct the problem involving the "duplicates" at verification and in its final tape submission were unsatisfactory. Accordingly, the preliminary results reflected a BIA margin for the total quantity of steel in any of the invoices listed by Thyssen as "duplicates" and not appearing in its final tape submission.

Petitioners contend that the Department should assign a BIA margin to the total volume of the duplicate U.S. sales deleted by Thyssen from its U.S. market database. Petitioners argue that this amount is handwritten on Thyssen's June 13, 1995, submission, one of Thyssen's submissions intended to explain changes reflected in Thyssen's final tape submission.

Thyssen asserts that petitioners have ignored the methodology used by the Department. Thyssen argues that, once the decision was made to use BIA in this situation, the Department cannot accept post-verification corrections which were adverse to Thyssen, while at the same time, rejecting all other corrections as sufficiently unreliable to justify the use of BIA.

Thyssen argues that the Department improperly applied BIA to U.S. invoices identified by Thyssen at verification as duplicates. Thyssen argues that it provided the list to the Department prior to verification, it advised the Department of clerical errors contained in the list, and it explained the reason for the discrepancies.

Department's Position: We disagree with Thyssen, and have continued to apply BIA in this situation. The numerous errors in Thyssen's proposed deletions call into question whether or not any of the invoices in question should actually have been deleted. In the preliminary results, we inadvertently failed to increase the U.S. sales database by the quantities reported for any of the invoices listed in the "deletion of alleged duplicates" section of the relevant verification exhibit that were deleted in Thyssen's final tape submission; these quantities could very well have reflected distinct, unduplicated sales. The actual invoice and quantity information is included in the Department's December 12, 1995, Final Analysis Memorandum from Steve Bezirganian to the File (December 12, 1995, analysis memorandum). We have corrected this error in these final results.

We agree with Thyssen that it would be inappropriate to base the quantity to which BIA is applied upon the amount cited by petitioners. We were unable to determine how the handwritten number to which petitioners allude was calculated. Therefore, because we have no basis from which to conclude that the handwritten number represents the total quantity for the deleted invoices, we have not used that amount.

Comment 21: Petitioners argue that the Department should ensure that the BIA dataset it creates contains all of the invoices for which a BIA margin is to be used. For example, the Department stated in its June 16, 1995, memorandum that its preliminary results reflected the use of a BIA margin for sales to which Thyssen made unauthorized changes in quantity and/or price in its last tape submission. The Department applied BIA in the preliminary results to four such "quantity/price" observations because they reflected unauthorized price and/or quantity changes for these observations. Petitioners argue that the Department failed to include three invoices containing similar unauthorized changes to quantity and/or price. Petitioners also argue that the Department inadvertently left out of its BIA programming one of the four quantity/price invoices by adding an extra zero to the invoice number in its programming.

Petitioners also argue that the Department inadvertently did not include three Richburg Division invoices in its BIA list because the spaces indicated in these invoice numbers were not reported by Thyssen in the Sales Verification exhibit in question.

Thyssen responds that for the first quantity/price invoice cited by petitioners, the change in quantity was minimal and it was explained by Thyssen. Thyssen notes that the invoice contained three separate lines, and therefore is divided into three distinct U.S. sales observations. Thyssen argues that the change in question only affected one line, so any BIA should only be applied to the observation reflecting that line of the invoice.

For the second quantity/price invoice cited by petitioners, left out of the Department's BIA list because of clerical error, Thyssen argues that BIA is improper because the errors, for this and other Richburg sales, related solely to the summary worksheet provided to the Department at verification and did not affect the veracity of the data submitted in the database. Thyssen notes that the Department did not find an error in quantity during the sales trace of one observation that appeared as an addition on the summary list, and that the quantity observed for another sales trace observation corresponded to the corrected quantity in Thyssen's June 13, 1995, submission. Petitioners counter by noting that examples of sales with correct quantity information do not negate the pervasive errors throughout the whole group of sales in question.

For the third quantity/price invoice cited by petitioners, Thyssen argues that it did report the changes in U.S. Sales Verification Exhibit 24A1 and 24A3.

Thyssen claims that it also identified at verification as requiring correction the four quantity/price observations to which the Department chose to apply BIA in its preliminary results, two of which were listed in its column of changes entitled "Deletion of Duplicate Invoices." The other two were listed in the column of changes entitled "Misc. Corrections." Petitioners counter that a worksheet indicating an invoice "change" does not constitute sufficient notice to the Department because it does not identify the type or number of "changes" made to these invoices.

Regarding the quantity/price invoice for which the Department added an extra zero, Thyssen argues that it had identified this invoice as a "change," and provided the Department with corrected information immediately upon discovery of the summary worksheet error.

Regarding the other three Richburg invoices which petitioner argues should be included in the BIA dataset, Thyssen again argues that BIA is not appropriate for the sales in question because the errors related solely to the summary worksheet provided to the Department at verification.

Thyssen concludes that the Department should treat Thyssen's clerical mistakes in the same manner as petitioners have suggested the Department should correct the Department's own clerical errors. Thyssen argues that the limited burden of correcting the mistakes is far outweighed by the preference for accuracy in final dumping determinations, and that it would be both paradoxical and a clear abuse of discretion for the Department to punish Thyssen for its attempt to create as error-free and as accurate a margin calculation as possible.

Department's Position: The Department is not applying BIA to the first quantity/price invoice in question. That invoice is referred to on page 9 of the U.S. Sales Verification report as having an error in reported actual weight. The Department did not instruct Thyssen to make the correction to that invoice in its post-verification database; however, applying BIA to the invoice in question because Thyssen unilaterally corrected an error amounting to roughly two-tenths of one percent that the Department identified at verification, would be inappropriate.

The Department is applying BIA to the second quantity/price invoice in question, as it did for other Richburg Division invoices which Thyssen attempted to correct at U.S. verification. As noted in the Department's June 16, 1995, analysis memorandum, Thyssen provided a number of changes to the U.S. sales database with respect to sales from Richburg, but some of these changes differed from those provided at verification; differences included incorrect quantities, deletion of non-existing invoices or portions thereof, and incorrect shipping dates. The numerous errors and inconsistencies in Thyssen's presentation of changes involving Richburg sales created doubts about the observations in question. The errors in Thyssen's proposed changes only became apparent after verification, when Thyssen submitted its post-verification database on May 22, 1995. Furthermore, the fact that the verification report seems to indicate that a sale was reported accurately is not dispositive, and we agree with petitioners that the numerous errors called into question the reliability of the Richburg observations as a whole.

Regarding the third quantity/price invoice in question, the Department agrees with Thyssen that it provided the appropriate changes to the Department at verification in U.S. Sales Verification Exhibit 24A1 and 24A3.

We are applying BIA to the four quantity/price observations, consistent with our preliminary results, because there was no indication in the correction exhibits provided by Thyssen at the U.S. verification that quantity and/or price of these observations would be changed in Thyssen's final tape submission. These observations differ from the first quantity/price change observation cited by petitioners as inappropriately left out of the Department's BIA dataset. The latter observation involved an extremely small error precisely identified during a sales trace at verification, while the former four observations involve previously unidentified and unexplained changes to quantity and/or price. We note that for one of these four invoices, as noted by petitioners, we inadvertently included an extra zero in the invoice number, and have corrected this error.

Regarding the other three Richburg invoices cited by petitioners, we are including these in the BIA dataset, in accordance with the explanation above regarding the Richburg observation changes presented at verification.

Thyssen's general argument that the burden to correct its mistakes is limited is unfounded. The mistakes in question are of such nature that the accuracy of the observations involved is called into question. It is unclear whether the "corrected" data actually are correct, and the Department cannot be expected to take the steps necessary (*i.e.*, an additional verification) to make that determination. Thyssen had numerous opportunities to correct its mistakes. One such opportunity was at the beginning of verification, when Thyssen did in fact provide lengthy lists of changes. Review of these corrections proved very time consuming, particularly when errors in the "corrections" were discovered. Any changes that were not authorized by the Department prior to Thyssen's final tape submission, or that were not clearly explained as resulting from such an authorized change, were rightfully subject to adverse BIA.

Comment 22: Thyssen argues that the Department incorrectly applied a 16.56 percent BIA margin to all U.S. observations relating to several shipments of steel covered by a single order. Thyssen contends that the Department believes the data provided in Thyssen's post-verification database submission did not reflect the changes provided to the Department at verification. Those changes involved Thyssen's attempt to update its database to account for what previously had been unshipped balances. Thyssen contends that, in its June 13, 1995, submission, it advised the Department of a typographical error in the relevant correction sheet provided at verification, and that the actual quantity shipped and the actual unshipped balances were correctly reported in the United States database.

Petitioners argue that the Department properly applied BIA to this order, for which information was inaccurately reported.

Department's Position: We disagree with Thyssen. After reviewing these data issues at verification, and after allowing Thyssen to provide a post-verification submission to clarify

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changes to its database. We have determined that these errors are not fully explained by the typographical error identified by Thyssen. It is still not clear how each of the invoice numbers and shipment quantities listed under the order in question relate to each other and to specific observations in Thyssen's post-verification database submitted on May 22, 1995. Consequently, we have continued to apply a margin based on BIA to the U.S. observations relating to the order in question.

Comment 23: Petitioners argue that the Department, in its preliminary results, improperly treated Thyssen's reported "trader discounts" granted to trading companies for sales made to customers that were end-users. Petitioners argue that, since the trading company never receives title to or takes possession of the merchandise, these deductions should be treated as a commission expense to Thyssen, rather than as a price discount. Moreover, given that the trading companies serve only as facilitators, there is no evidence that the prices charged the end-user customers in these transactions are altered or affected by the commission.

Citing *Industrial Phosphoric Acid from Israel*, 52 FR 25440, 25442 (July 7, 1987), Thyssen responds that the reduction in price on these end-user sales should properly be considered discounts granted to the trading companies. Respondent acknowledges initially having characterized these as commissions, but argues that it later clarified that they are discounts because the trading company is invoiced, it is responsible for paying Thyssen, and it bears the risk of loss if the customer does not pay. Thyssen argues that the trader discount is a reduction on the invoice of the invoice amount, for which no separate payment by TSAG is made, and that it reduces the net price received by TSAG, since it is a deduction from the amount paid by the trading company. Thyssen argues further that the Department noted, in its July 20, 1995 memorandum, that it verified that if the traders were invoiced and responsible for payment, they did in fact receive the "discount."

Department's Position: Generally speaking, a commission is a payment to a sales representative for engaging in sales activity, normally on behalf of the seller but occasionally on behalf of the customer. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10,900, 10,914 (Feb. 28, 1995); *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the Peoples Republic of China*, 58 FR 7537, 7543 (Feb. 8, 1993)(*Sulfur Dyes*). A discount is a reduction in price to a customer. *See Sulfur Dyes From the PRC.* Therefore, the key question here is whether there was one transaction between Thyssen and the ultimate purchaser in which the trading companies acted as Thyssen's sales representatives for a commission; or whether there were two transactions, one in which the trading companies bought from Thyssen and received a discount on the price for that initial sale and the ultimate purchaser then bought from the trading companies.

In addressing this question, we looked first to the manner in which Thyssen reported its sales. Significantly, Thyssen identified the transactions involving the trading companies as sales made by Thyssen itself to the ultimate customer. This indicates that in Thyssen's view, there were no separate sales to the trading companies; instead, the first and only sale was to the ultimate purchaser. Thus, the role of the trading companies must have been that of a commissionnaire. Thyssen's claim that the trading companies are intermediate purchasers who receive a price discount is inconsistent with its reporting of sales to the ultimate customers.

Thyssen's acknowledgement that it conducted the price negotiations with the ultimate customers also supports the conclusion that there was a single sale between Thyssen and the ultimate customer. In addition, as petitioners stressed, Thyssen originally referred to the amounts in question as "commissions," then used the term "discount" after the Department requested supplemental information on the commissions.

On the other hand, information in the record appears to indicate that Thyssen invoices the trading companies, and the trading companies invoice the ultimate customer. This suggests the presence of two transactions. Moreover, the Department did verify that the actual invoices to the trading companies referred to the amounts in question as discounts. Although there is conflicting evidence on the record, it is most reasonable to treat this issue consistently with Thyssen's reporting of its home market sales. Accordingly, we have revised the preliminary results in this respect and have treated these deductions as commissions.

Comment 24: Petitioners contend that the Department should deny Thyssen's claimed indirect selling expense adjustment for home market technical services expenses. The home market verification report describes the technical services expenses claimed by Thyssen as consisting primarily of research and development (R&D), which petitioners argue are generally considered production expenses rather than selling expenses. Petitioners conclude that these R&D expenses cannot be tied directly to sales of the subject merchandise, and so do not qualify as technical services expenses.

Thyssen argues that the Department noted in its Home Market Sales Verification at 21 that the technical services expenses claimed by Thyssen are related to customer-specific testing (not to be confused with the R&D expenses claimed as indirect expenses), and that, as such, these expenses are product-specific.

Department's Position: We disagree in part with petitioners. Thyssen's January 17, 1995, submission, at page 56, and Exhibit 31 of that submission describe the technical services identified on page 16 of Thyssen's November 21, 1994, Section IV submission. Exhibit 31 depicts the costs of assorted functions, including the provision of advice regarding potential new products and adjustments in production processes. However, home market verification report Exhibit XXI indicates that the cost center from which the costs were derived was identified as "material complaints." As the verification report confirms, the category material complaints pertains to testing costs related to warranty claims. Because the information in Exhibit XXI referring specifically to R&D is not reflected in the technical services expense data reported by Thyssen, we reject petitioners' assertion that these data include R&D costs.

However, we do agree with petitioners that the expenses in question cannot be tied to subject merchandise, and we note that Thyssen's allocation methodology, as presented at verification, was deficient. Verification Report Exhibit XXI indicates that Thyssen derived its reported DM/ton expense by dividing total technical services expenses by shipments in Germany. Thyssen's total expenses, as is clear from the exhibit, include those for all cold-rolled material, including that which was further processed out of the scope of this review. Thyssen's total expenses also include those for merchandise produced for all customers, not just those in Germany. Consequently, we have reduced this expense amount by that amount which we estimate pertains to non-covered merchandise. *See* the Department's December 12, 1995, analysis memorandum.

Comment 25: Petitioners assert that the interest rate used by the Department to calculate Thyssen's home market credit and inventory carrying cost adjustments should be based solely upon the company's short-term borrowings from unrelated parties. Petitioners note that the Department has recognized that expenses paid to related parties in the home market may sometimes be priced above the market rate for those expenditures, and, in such instances, the market rate of interest should be employed in the calculation of the adjustments to home market price. *See Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 37915, 37922–23 (Sept. 14, 1990) *(Color Picture Tubes from Japan); High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final determination; Recission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32393 (July 16, 1991)(*Flat Panel Displays*). Petitioners suggest that the market "expense" of Thyssen's borrowings should be determined by using interest rates of Thyssen's borrowings from unrelated parties.

According to Thyssen, the information on the record confirms that the interest rates charged for intra-company loans were consistent with other loans. Thyssen notes that it was the nature of the loan, rather than the relationship of the lender to Thyssen, which was the critical factor in determining Thyssen's interest rates during the POR.

Thyssen also argues that, in the fair value investigation, the Department rejected a similar claim by petitioners that the Department should ignore Thyssen's related company borrowings, where differences in rates were not significant. *Steel from Germany*, 58 FR at 37149. Thyssen adds that in *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13705 (April 17, 1992), the Department rejected a respondent's attempt to disregard a related-party loan, stating that "there was no evidence that the interest rate on the related-party loan did not reflect market interest rates."

Department's Position: We disagree with petitioners. As in the original investigation, *Steel from Germany* at 37149, we have determined that information on the record indicates that the intracompany loans in question were made at what could be considered market rates.

The situation here differs from that in both determinations relied upon by petitioners. In *Color Picture Tubes from Japan*, the Department determined at verification that the related party charged the respondent more for freight than the related party was charged by the trading company that actually delivered the merchandise. In *Flat Panel Displays from Japan*, the Department found that, rather than being a market price, the price charged by the related party was established for respondent's internal bookkeeping purposes only. By contrast, in the present case, neither the information in Exhibit XIV of the Home Market Sales Verification, which provides interest rates on loans of varying duration from related and unrelated parties, nor the Department's May 2, 1995, Home Market Sales Verification Report, support the contention that interest rates on concurrent loans of similar duration provided to Thyssen by related parties differed in any meaningful way from those offered by unrelated parties.

However, we note that in the preliminary results we did not account for the fact that Thyssen incorrectly reported home market credit expenses that were calculated based on a price that does not net out discounts that are not on the invoice. While Thyssen has stated that it pays these discounts every quarter, there is no information on the record indicating that Thyssen pays the customers such "discounts" for a particular sale before the customer pays for the merchandise. Thyssen confirmed on page 13 of its June 23, 1995, submission that it "does not incur any financing expenses from date of shipment to date of payment for these out of invoice discounts." Consequently, we have adjusted home market credit expenses for the final results and are calculating this expense net of discounts not on the invoice. *See* the Department's December 12, 1995, analysis memorandum.

Comment 26: Petitioners argue that the Department should exclude the R&D and general and administrative (G&A) costs from the miscellaneous indirect selling expense variable amounts claimed by Thyssen. Petitioners reiterate that expenses pertaining to R&D are generally not selling expenses, but, rather, production costs, and that such expenses should be classified as non-sales-related general and administrative expenses. Petitioners also argue that none of the various G&A expenses claimed by Thyssen qualify as indirect selling expenses, since they are not associated with selling activities. Finally, petitioners argue that should the Department decide to include Thyssen's claimed R&D in the indirect selling expenses deducted from USP and FMV, it must correct the allocation of those R&D expenses to the home and U.S. markets.

Thyssen responds that the record clearly establishes that it correctly included these expenses in its home market indirect selling expenses. Thyssen argues that the R&D expenses categorized as indirect selling expenses include items related to selling, not production activities. *See Antifriction Bearings from France*, 60 FR at 10920. Thyssen argues that the same is true for the various G&A expenses included as indirect selling expenses. Finally, Thyssen argues that the Department confirmed at verification that the R&D expenses in question had been allocated to each market on the identical basis as were selling expenses, verified by the DOC.

Department's Position: We disagree with petitioners regarding G&A expenses. Our verification indicated that the expenses in question were indirect selling expenses. The type of costs which Thyssen listed include meals and transportation for Thyssen's customers. These are costs which we reasonably consider to be selling expenses.

However, petitioners are correct that the Department does not normally consider R&D expenses to be costs associated with selling the merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28415 (June 24, 1992). There are exceptions to this policy. *See Antifriction Bearings From France*, 60 FR at 10920. However, we have determined that Thyssen has not shown that the R&D costs in question constitute selling expenses. We have therefore adjusted Thyssen's miscellaneous home market indirect selling expense variable to reflect this finding. *See* the Department's December 12, 1995, analysis memorandum.

Comment 27: Petitioners argue that Thyssen's reported home market warranty expenses for the POR are aberrational and that the Department should instead use a weighted-average for these indirect selling expenses based on Thyssen's reported data for calendar years 1990 and 1991, and fiscal years 1991/92, 1992/93, and 1993/94. Petitioners cite *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 38417, 38421 (Aug. 13, 1991)*(Television Receivers from Japan)*; and *Final*

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Determination of Sales of Less Than Fair Value: Certain Carbon And Alloy Steel Wire Rod from Canada, 59 FR 18791, 18795–6 (April 20, 1994) (*Steel Wire Rod from Canada*).

Petitioners argue that for U.S. warranty expenses, the Department should employ BIA in place of Thyssen's claimed adjustment. Petitioners argue that for both its automotive and non-automotive divisions Thyssen provided U.S. warranty expense information which pertains to products well beyond the scope of this review, and that Thyssen's use of total warranty expenses over total sales does not conform to the CIT's ruling that the Department must "develop a methodology which removes technical services and warranty expenses incurred on sales of out of scope merchandise." *Federal-Mogul Corp.* v. *United States*, 862 F. Supp. 384, 406–07 (CIT 1994). Petitioners also argue that the reliability of Thyssen's reported warranty expenses are further undermined by Thyssen's failure to provide information on its "historical experience of warranty/guarantee expenses for U.S. sales in each of the five years preceding the period of review," as requested by the Department.

Petitioners argue that the Department should recalculate Thyssen's per-unit U.S. warranty expense adjustment by dividing the total warranty expense amounts reported by Thyssen for fiscal years 1992/93 and 1993/94, by the total volume of subject merchandise sold by Thyssen in the U.S. market in each of those fiscal years, respectively. Furthermore, petitioners argue that, because Thyssen did not provide information on its warranty experience for the five years preceding the POR, the Department should apply the higher of the two fiscal year amounts as BIA to all U.S. sales.

Petitioners conclude that, should the Department use the reported home market warranty expenses in question without weight-averaging, at a minimum it must also use the U.S. warranty expense data from the same exhibit.

Thyssen responds that the Department generally uses warranty expenses incurred during the POR, and will only resort to historical experience in those instances in which: (1) a respondent is not able to demonstrate a relationship between POR sales and its warranty expense claim, by tying actual warranty expenses to POR sales; and (2) a historical average would be a more representative proxy of eventual warranty expenses on POR sales than warranty expenses actually incurred during the review period. *See Steel Wire Rod from Canada*, 59 FR at 18795–96, and *Television Receivers from Japan*, 56 FR at 38421–22. Thyssen argues that the Department properly relied upon Thyssen's home market warranty expenses incurred in fiscal year 1993/94, and that these expenses were only slightly higher than those for fiscal year 1992/93 on either an absolute or a percentage [of sales] basis. Thyssen also argues that, for the last three fiscal years, Thyssen's home market warranty expenses reflected a relatively steady aggregate amount.

Regarding its U.S. warranty expenses, Thyssen argues that it did in fact provide adequate historical information. It also argues that *Federal Mogul* does not preclude the Department from accepting the warranty expense allocation methodology presented by Thyssen, and that the Department accepted a similar methodology in *Antifriction Bearings from France*, 60 FR at 10910. Thyssen argues that even petitioners acknowledge that the Department verified both the amount of U.S. warranty expenses incurred during the POR and the total value of sales upon which warranty expenses were allocated. Thyssen argues that, contrary to petitioners' claim, the Department never explicitly instructed Thyssen to report only those warranty expenses applicable to cold-rolled steel, but rather requested that it do so or clarify why it could not do so; and the Department confirmed in its U.S. sales verification report at 12–14 that the necessary records were not maintained, either by supplier or product type.

Thyssen argues that petitioners' suggestion that the Department should apply 100 percent of Thyssen's verified warranty expenses to cold-rolled shipments must be rejected, since the Department has confirmed that the expenses relate to all products, and the Department cannot penalize a respondent for failing to maintain business records in a particular manner or for utilizing an allocation method which subsequently may be rejected by the Department. *See, e.g., Industrial Quimica del Nalon, S.A.* v. *United States*, 15 CIT 240, 244 (CIT 1991).

Finally, Thyssen also argues that petitioners' alternative of applying a deutsche marks per metric ton warranty expense to Thyssen's U.S. shipments based on a home market sales verification exhibit is flawed, since the document upon which petitioners rely does not include data for fiscal year 1992/93. Thyssen argues that if the Department does decide to use BIA for U.S. warranty expenses, it should rely on data utilized in its fair value investigation, which were purportedly accepted by petitioners and verified by the Department from both a historical and actual perspective.

Department's Position: We disagree with petitioners' arguments that we should use weighted-averaged expenses calculated for earlier years because Thyssen's reported home market warranty expenses were aberrational. As noted in *Television Receivers from Japan*, the Department generally uses warranty expenses incurred during the POR. As the Department's May 2, 1995, Home Market Sales Verification Report indicates, there were no problems observed with Thyssen's reported home market warranty expenses. Various factors may lead to some variation in warranty expenses, and the variations in Thyssen's expenses do not appear to be abnormal.

Regarding Thyssen's reported U.S. warranty expenses, we agree with Thyssen that it would not be appropriate to apply Thyssen's total warranty expenses over total sales of subject merchandise, as suggested by petitioners. Given Thyssen's substantial U.S. sales of non-subject merchandise relative to its U.S. sales of subject merchandise, such an approach would be inappropriately adverse.

However, Thyssen did submit, as noted by petitioners, warranty expenses for U.S. shipments of cold-rolled flat products made during fiscal year 1993/94. The data for 1993/94 U.S. shipments, contained in Home Market Verification Exhibit XIX, were reviewed at the home market verification, and found to be reasonable. Thus, we are able to use this figure for calculating the adjustment, a methodology which is consistent with the CIT's directive in *Federal Mogul*. Thyssen did not submit similar data in a timely fashion for fiscal year 1992/93. However, there is no indication on the record that Thyssen's 1992/93 fiscal year warranty expenses for U.S. sales of subject merchandise were any higher or lower than those for fiscal year 1993/94. Therefore, we have used the 1993/94 data for all of Thyssen's U.S. sales, regardless of fiscal year.

Comment 28: Petitioners argue that the Department should reject all of the cash discount information supplied by Thyssen and employ instead, as BIA, an *ad valorem* cash discount for all U.S. sales based on the highest discount granted to a U.S. customer. Petitioners argue that the Department recognized in its May 11, 1995, memorandum from Richard O. Weible to Roland L. MacDonald (May 11, 1995, discount memorandum), that the cash discount information provided by Thyssen is highly unreliable and subject to serious deficiencies, and that it is possible that there are other inaccuracies in the U.S. discount data that remain undetected. Petitioners argue that the fact that the errors found at verification were limited to certain customers does not indicate that such errors were not more widespread, but rather suggests that the contrary may be true, since the errors noted were self-produced by Thyssen. Furthermore, petitioners argue that Thyssen has failed to explain why at times its customers took the discount when eligible, at other times they did not take the discount when eligible, and at still other times they took the discount when they were technically not eligible.

Thyssen argues that the Department's verification confirmed that Thyssen had properly reported its cash discounts for all of its U.S. customers other than those specifically referred to in the Department's May 11, 1995 discount memorandum. Thyssen also argues that the Department verified the total discounts granted by TINC as a percentage of sales. Consequently, Thyssen argues that the Department must reject petitioners' call for use of BIA beyond that applied for U.S. cash discounts in the preliminary results.

Department's Position: We disagree with petitioners. Our review of U.S. discounts at verification included the pre-selected and surprise sales trace observations, as well as a thorough review of Thyssen's changes to its discounts, which were proposed in a timely manner. As noted in the Department's July 20, 1995, memorandum at 5, the only problems noted were limited to a few specific customers, and discounts reported for other customers were found to be accurate. *See also* May 11, 1995, discount memorandum. The only relevant issue is the total amount of the discounts, which has been determined as noted above. The reasons why a discount was offered or accepted for specific transactions is irrelevant to this inquiry.

Comment 29: Petitioners argue that the Department should deny Thyssen's attempt to include interest income in the calculation of its U.S. short-term interest rate. Petitioners argue that the calculation of a respondent's imputed credit and inventory carrying costs should be based on the short-term interest rate either actually or potentially incurred by the respondent in financing its accounts receivable. For purposes of calculating its imputed credit and inventory carrying costs, Thyssen's borrowing costs during the POR are fully and accurately represented by its weighted-average gross interest expense. Petitioners argue that the Department should base Thyssen's U.S. imputed credit and inventory carrying cost amounts upon the short-term interest rates reported by the company prior to verification.

Thyssen argues that it properly reduced its borrowing rate to account for short-term interest income in order to avoid a double deduction of interest resulting from the fact that Thyssen included an amount equal to TINC's allocated share of the interest expense of Thyssen AG in its U.S. indirect selling expense deduction from USP. Thyssen argues that a similar adjustment was made to avoid double-counting in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from West Germany*, 56 FR 31692, 31721 (July 11, 1991). Because the Department's questionnaire does not provide for this particular deduction, if interest income is not deducted from interest paid, interest expenses deducted from USP will be greater than Thyssen's actual borrowing costs for the POR.

Department's Position: We have denied Thyssen's claim for an adjustment to its borrowing rate to offset short-term interest income against the deduction of credit expenses and inventory carrying costs from U.S. price. The Department does not normally allow an offset of this type outside the context of a COP or CV calculation. As explained in Comment 7, in a COP or CV calculation, the Department does generally offset interest expenses for short-term interest income earned through a company's "general operations," which excludes unrelated and long-term interest income such as that earned from investment activities. *NTN Bearing Corp.*, Slip Op. 95–165 at 33; *Timken Co.*, 852 F.Supp. at 1048.

By contrast, in a sales calculation, respondents must demonstrate a more direct relationship between the interest income and the sales under review in order to qualify for an offsetting adjustment.

See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 1374, 1378 (January 10, 1994). In accordance with this standard, the Department has offset interest income actually shown to reduce the respondent's cost of extending credit to its customers. For instance, the Department granted an offset for interest earned on a respondent's sales of the subject merchandise pursuant to a special arrangement with another party. *Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 42835, 42836 (August 17, 1995); *see also Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3178 (January 28, 1992). The Department has also permitted an offset for interest earned from pre-shipment advance money, *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan*, 60 FR 16608, 16615 (March 31, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion Resistant Carbon Steel Flat Products From Japan*, 58 FR 37154, 37173 (July 9, 1993) (*Steel From Japan*), and for interest earned on late payments. *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12571 (April 15, 1988). The Department has also determined that pre-payment funds for which a party claims to have received interest income may not be used to finance ongoing operations. *Steel From Japan* at 37173.

Thyssen did not claim the offsetting adjustment for interest income until verification. Thus, the Department was never able to investigate the basis of its claim. The verification report, which contains the only explanation regarding the funds, states only that Thyssen received income "attributed to interest that was part of a legal settlement." U.S. Verification Report at 10. An accompanying verification exhibit provides some detail as to the origin of the interest income, in chart form, but contains no indication that the funds were derived from sales of the subject merchandise. *Id.* at Exhibit 19.

Based on the record evidence we are unable to determine whether the interest income claimed as an offset was associated with actual sales of the subject merchandise. It was the responsibility of Thyssen to demonstrate entitlement to this adjustment to U.S. price and we find that Thyssen has failed to meet the Department's standard, as set forth above. We have, therefore, revised our preliminary results to eliminate the offset for Thyssen's claimed interest income.

Comment 30: Petitioners argue that the Department should adhere to its decision not to allow Thyssen's claimed currency hedging adjustment. Petitioners agree with the Department's

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determination that the veracity of the currency hedging gain information is called into question by unexplained changes involving this information in Thyssen's post-verification database. Petitioners also argue that the adjustment should be denied on legal grounds. Petitioners cite the CIT's decision involving this adjustment in the underlying investigation, in which the court was "not persuaded that the law presently permits any adjustment in the computation of dumping margins for either gains or losses which result from the hedging of currencies." *Thyssen Stahl AG* v. *United States*, 886 F.Supp. 23, 32 (CIT 1995). Petitioners conclude that the accuracy of Thyssen's reported data for this adjustment is largely irrelevant since the CIT has ruled expressly on this issue.

Thyssen responds that the Department improperly denied its currency hedging adjustment. Thyssen argues that the Department verified that Thyssen's currency exchange contracts were tied directly to its U.S. sales. Regarding the variations in the adjustment, Thyssen also points to its previous explanation that "a change in any field used in the formula to calculate the exchange gain * * * changes the exchange gain."

Thyssen also argues that the CIT's decision in *Thyssen Stahl AG* is not final, since Thyssen has the opportunity to appeal that decision to the Court of Appeals for the Federal Circuit, and, moreover, that decision is directly contrary to *Torrington Company* v. *United States*, 832 F. Supp. 379 (CIT 1993).

Department's Position: We disagree with Thyssen. As noted in the preliminary results, Thyssen's post-verification database contained numerous unexplained and unauthorized changes in the currency exchange expense variable. While the Department recognized that this variable would change if one of many other variables changed, we were unable to reconcile all of the changes to the changes Thyssen was authorized to make in its final tape submission. Furthermore, the largest changes were clearly unauthorized by the Department, and were very much in Thyssen's favor. Consequently we are continuing to disallow this adjustment. For purposes of this review, therefore, petitioners' and Thyssen's arguments regarding the CIT's decision are moot.

Comment 31: Petitioners agree with the Department's preliminary determination that BIA was warranted for those Budd sales in the United States for which Thyssen failed to report contemporaneous home market sales. Petitioners also argue, however, that the Department should apply BIA to all of Thyssen's remaining reported Budd sales to U.S. customers and to an additional estimated quantity of Budd sales to U.S. customers which Thyssen failed to report.

Petitioners note that, contrary to Thyssen's assertions, the volume of the unreported home market sales relative to that of the Budd sales for which they were needed is irrelevant. Petitioners argue that the Department's longstanding practice is to compare each U.S. sale to the weighted-average FMV associated with all home market sales made in the ordinary course of trade within the same six-month period as the U.S. sale. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 56 FR 5975, 5976 (Feb. 14, 1991). Petitioners argue that, for the Budd sales given BIA because of Thyssen's failure to report shipment dates from Germany, Thyssen failed to offer any explanation in its brief as to why those shipment dates were not provided.

Petitioners also contend that the Department should apply adverse BIA to all of the Budd sales which Thyssen did report because Thyssen did not adequately address any of the Department's questions regarding U.S. further processing by Budd. Specifically, petitioners argue that Thyssen did not describe the further manufacturing processes performed by Budd or the overhead factors or cost accounting methodology; Thyssen also failed to indicate whether manufacturing processes were performed in-house or by outside contractors, or what equipment or personnel were used.

Finally, petitioners argue that the Department should apply BIA for sales by Budd that Thyssen failed to report. Petitioners argue that the Department is required by section 751 of the Act to determine the amount of the antidumping duty by determining "the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order." Petitioners provide a methodology for estimating Budd's unreported sales, and argue that the Department apply as BIA for these sales the higher of either the margin rate from the underlying investigation or the highest non-aberrant margin rate calculated for sales in this review.

Thyssen asserts that the Department improperly applied a 16.56 percent BIA margin to the 1992 Budd sales for which Thyssen did not report contemporaneous home market sales. Thyssen argues that it would be absurd to require it to report an enormous number of additional home market sales simply because a small amount of Budd sales involved requirements contracts consummated in 1992. Thyssen also argues that such a reporting burden is not appropriate given the inherent difficulty in calculating meaningful margins when comparing the home market sales price for cold rolled steel to the adjusted U.S. prices of motor vehicle component parts such as those sold by Budd. Thyssen concludes that the Department should exclude these Budd sales from the U.S. database, citing the CIT decision in *Sonco Steel Tube Div.* v. *United States*, 12 CIT 745, 748 (1988); or alternatively, the Department should apply Thyssen's weighted average margin for Budd resales, as determined in this review, citing *Nat'l Steel Corp.* v. *United States*, 870 F.Supp. 1130 (CIT 1994).

Thyssen acknowledges that the data submitted for Budd was not presented in the identical format as that submitted by TINC. But Thyssen argues that the Department accepted Budd's submission as complete, as evidenced by the fact that the Department did not advise Thyssen that additional information for Budd was required or that the manner in which Budd reported its costs failed to conform to Department reporting requirements. Thyssen argues that the information necessary for the Department's analysis was provided, and that the Department has a degree of latitude in implementing its verification procedures. Thyssen also counters petitioners' argument that the highest non-aberrant margin from this review should be applied to petitioners' estimate of unreported Budd sales. According to Thyssen, the Department never questioned Budd's interpretation of its reporting instructions, thereby precluding resort to BIA. *See, e.g., SKF USA, Inc.* v. *United States*, Slip Op. 95–85 (CIT May 8, 1995).

Finally, Thyssen argues that, contrary to petitioners' contention, the Department is not required to examine every U.S. sale made by respondents during the POR. *See, e.g., Sonco Steel*, 12 CIT at 748. The potentially unreported Budd resales, Thyssen argues, consist of merchandise which was shipped by TINC to Budd prior to the POR. Petitioners' methodology for estimating unreported Budd sales assumes that all of Budd's material costs consist of cold rolled steel exported from Germany by Thyssen, which ignores the fact that the majority of steel sold by TINC to Budd was not subject cold rolled steel, and that only a *de minimis* amount of Budd's material costs consisted of cold rolled steel purchased from Thyssen.

Department's Position: The Budd Company, like TSAG and TINC, is wholly-owned by TAG. Thyssen reported sales in the U.S. by Budd after initially refusing to do so. However, Thyssen continued to refuse to provide the contemporaneous home market sales needed for matching to the earliest Budd sales. Because these Budd sales were made pursuant to requirements contracts, the necessary home market sales were dated in 1992. We disagreed with Thyssen's request that the Budd's 1992 U.S. sales be completely excluded from the analysis or, alternatively, assigned the weighted average margin for other Budd sales in this review. *See Preliminary Results*, 60 FR at 39356. The Department requires respondents to report contemporaneous home market sales. Thyssen failed to do so for the sales in question, which included some observations for which Thyssen had failed to report a shipment date from Germany. Consequently, an adverse BIA is appropriate for the 1992 Budd sales in question, and we have continued to apply the margin from the investigation. *See Id;* the Department's June 16, 1995, Analysis Memo from Steve Bezirganian to the File.

We disagree with petitioners' contention that the Department should assign BIA to all of those U.S. sales by Budd which Thyssen did report because of what petitioners contend was Thyssen's failure to provide sufficient answers to the Department's further manufacturing questionnaire. The Budd sale submission contained the variables needed for the Department's calculations, albeit in an unwieldy format. Moreover, the Department did not request more detailed information on Budd's sales, because they constituted a very small portion of Thyssen's total U.S. sales. For those Budd sales which were reported, the only information lacking was the contemporaneous home market sales data discussed previously.

The Department repeatedly requested that Thyssen report U.S. sales made by Budd. When Thyssen finally reported Budd sales, this reporting was incorrectly on shipments during the POR from TINC to Budd, rather than Budd sales to the first unrelated customer during the POR (or, in the case of requirements contracts between Budd and its customers, shipments from Germany during the POR). Petitioners are correct that this leaves open the possibility that Thyssen failed to report all sales by Budd.

We agree with petitioners' suggestion that the Department assume that some percentage of Budd's sales during the POR were unreported, and that we should apply BIA to these "estimated unreported" sales. However, applying petitioners' methodology for estimating unreported sales by Budd would grossly overestimate this possibility. Therefore, we have determined that applying BIA in the manner suggested by petitioners would be unreasonable. Instead, we have adjusted petitioners' methodology to reflect our observation that very few of TINC's sales were to Budd. Therefore, for the final results, we have calculated a different estimate of the number of tons associated with these potentially unreported Budd sales, which we have added to the data base. As BIA, we have applied the rate from the original investigation to this estimated amount. *See* the Department's December 12, 1995, analysis memorandum.

Comment 32: Petitioners argue that the Department should account for unreported post-sale warehousing for certain U.S. spot sales. Spot sales were made from existing TINC inventories, and were normally shipped immediately after the sale took place. Thyssen conceded that, in certain limited instances, its U.S. spot sales were shipped ten days or more after the reported sale date. However, Thyssen argues that it advised the Department of this possibility in its November 22, 1994, questionnaire response. Thyssen argues that the Department verified that Thyssen reported all of its warehousing costs in the warehousing expense variable which the Department, as required by law, deducted from the sales price in calculating USP.

Department's Position: The post-sale expenses to which petitioners refer constitute a small portion of the overall amount reported by Thyssen in its pre-sale warehousing expense variable. Because this post-sale expense is being deducted from U.S. price, and because this expense is very small for most sales in question, even if the Department attempted to separate it into a separate variable and chose to reclassify it as a direct selling expense, the effect upon Thyssen's final calculated margin would be negligible. Consequently, we have chosen not to make any adjustments to Thyssen's pre-sale warehousing expense variable.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period August 18, 1993, through July 31, 1994:

Manufacturer/exporter	Margin (percent)
Thyssen	5.88

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Thyssen will be the rate established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.03 percent, the all others rate established in the final results of the first administrative review (58 FR 44170, August 19, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

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This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-30784 Filed 12-18-95; 8:45 am]

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[A-580-815]

Certain Cold-Rolled Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by two respondents, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States during the period of review ("POR") from August 18, 1993, through July 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value ("FMV"). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price ("USP") and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-3793 or fax (202) 482-1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993, the Commerce Department published in the **Federal Register** (58 FR 37176) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Korea, for which we published an antidumping duty order on August 19, 1993 (58 FR 44159). On August 3, 1994, the Department published the "Notice of Opportunity to Request an Administrative Review" of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). We received a request for an administrative review from Dongbu Steel Co., Ltd. ("Dongbu") and Union Steel Manufacturing Co., Ltd. ("Union"). We initiated the administrative review on September 8, 1994 (59 FR 46391).

In a letter dated February 1, 1995, petitioners formally requested that the Department consider Union and Dongkuk Industries Co., Ltd. ("DKI"), which was not a respondent initially, as related parties and "collapse" them as a single producer of cold-rolled carbon steel flat products.

In accordance with section 771(13) of the Tariff Act of 1930, as amended ("the Act"), the Department, in determining whether parties are related, considers whether the alleged related party:

1. Is an agent or principal of the exporter, manufacturer, or producer;
2. Owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer or producer;
3. Is a party in whose business the exporter, manufacturer, or producer owns or controls, directly or indirectly, any interest, through stock ownership or control or otherwise; or
4. Owns or controls, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, 20 percent or more in the aggregate of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer or producer.

Factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with Dongkuk Steel Mill ("DSM"). The record shows that DSM holds, directly or indirectly, a controlling share in Union's equity. DSM is in turn controlled by the Korean family which owns the largest block of shares in the company. That same family controls, directly or indirectly, a majority of DKI's equity. The Department therefore determined that Union and DKI are related to each other by virtue of their common affiliation with the same "parents." (*See* the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated May 22, 1995, and entered onto the record of this proceeding on September 28, 1995—hereinafter referred to as "the collapsing memo").

It is the Department's practice to collapse related parties when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of antidumping law. In determining whether to collapse related parties, the Department considers the following factors:

1. The level of common ownership;
2. Whether there are interlocking officers and directors, (e.g., whether managerial employees or board members of one company sit on the board(s) of directors of the other related party(ies));
3. The existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and
4. Whether the operations of the companies are intertwined (e.g., sharing of sales information; involvement in production and pricing decisions; sharing of facilities or employees; transactions between companies).

With respect to the first factor, the Department has determined that there is a significant level of common ownership of both Union and DKI through DSM and the family that controls it. As noted above, factual information provided on the record by Union, and supplemented by petitioners, indicates that DKI and Union are both affiliated with the DSM group. The same family owns by far the largest block of shares in DSM and is listed in DSM's annual filing to the Korean Securities and Exchange Commission ("KSEC") as "controlling" the company. DSM, in turn, directly and indirectly (through its affiliated companies), own a majority of the equity in Union. The same family also owns, directly and indirectly, a controlling share of DKI's equity.

With respect to the second factor, evidence on the record demonstrates that Union, DSM and DKI have interlocking officers and directors. Two of DKI's board are family members and members of DSM's board. Five of Union's 18 board members are members of DSM's board; of those five, one is a member of the family in question. The president of DKI sits on the boards of both DKI and Union. These interlocking board members and officers participate in board meetings, vote, and voice their opinions on proposals before the board. Because the interlocking directors actively participate in the decision-making process, the potential for these interlocking directors to influence pricing and production decisions for both Union and DKI exists.

With respect to the third factor, the Department has recently clarified that, although not necessarily determinative, this factor is essential. The information presented indicates that DKI and Union produce the identical types of products for the major characteristics that are relevant to production and price decisions for cold-rolled material. They make the same grades and qualities of cold-rolled steel, and material in overlapping thicknesses and thickness tolerances. In regards to thickness tolerances, DKI can relax its rolling practices to make material to Union's tolerances, and Union has the capability to produce material comparable to DKI, yet is not supplying it in the home market. The very existence of DKI suggests that there is a domestic market for tight tolerance material in many of the grades and qualities of steel being supplied by Union. With Union not supplying this material in the home market, it indicates that DKI is meeting domestic demand for this material.

With respect to the fourth factor, Union and DKI have overlapping board members who serve in multiple roles. KSEC filings indicate that both DKI and Union are controlled by DSM. Union's 1993 financial data was combined with DSM's on an "equity-method" basis. (The equity method is used when an investor has the ability to exercise significant influence over the operating and financial policies of the investment.) Union sold subject merchandise through DKI during the POR, and DKI slit sheet into narrower widths for Union during the POR.

On May 22, 1995, for the reasons outlined above, the Department decided to "collapse" Union and DKI for purposes of this review. (For further details, *see* the collapsing memo.)

The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The POR is August 18, 1993 through July 31, 1994. This review covers sales of certain cold-rolled carbon steel flat products by Dongbu and Union.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

United States Price

The Department used purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States. As described below in the "Foreign Market Value" section of this notice, we added the Korean value-added tax to USP.

Dongbu

All of Dongbu's U.S. sales were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772(b) of the Act, was the appropriate basis for calculating USP. Depending on the channel of trade, we treated the date of either the purchase order, the internal confirmation or the date of the production order as date of sale. We made adjustments to purchase price, where appropriate, for home-market value-added tax, foreign inland freight, foreign brokerage, ocean freight, containerization, U.S. duty and U.S. brokerage and handling.

No other adjustments were claimed or allowed.

Union

All of Union's U.S. sales were based on the price to the first unrelated purchaser in the United States. The Department determined that purchase price, as defined in section 772(b) of the Act, was the appropriate basis for calculating USP. Because quantities were not finalized until the merchandise was actually shipped to the United States, we treated the date of shipment as date of sale (*see* the Department's analysis memorandum dated September 28, 1995). We made adjustments to purchase price, where appropriate, for cash discounts and rebates, home-market value-added tax, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. brokerage and handling, U.S. inland freight, and duty drawback. Because Union had understated its U.S. credit expenses by not including bank charges therein, we increased Union's U.S. credit expense by the amount of those charges, which we obtained from the audited financial statement of Union's U.S. subsidiary.

No other adjustments were claimed or allowed.

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Foreign Market Value

Based on a comparison of the volume of home-market sales and third-country sales, we determined that Dongbu's and Union's home markets were viable. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market, using the date of the invoice as the date of sale.

Based on a review of Dongbu's and Union's submissions, the Department determined that only a small percentage of those companies' home-market sales were made to related parties who, in turn, resold the merchandise ("downstream sales"). The Department determined that Dongbu and Union need not report their home-market downstream sales because of their low volume.

On December 15, 1994, petitioners alleged that Dongbu and Union sold cold-rolled carbon steel flat products in the home market at prices below their cost of production ("COP"). Based on this allegation, the Department determined, on January 17, 1995 (for Dongbu), and on January 18, 1995 (for Union), that it had reasonable grounds to believe or suspect that Dongbu and Union had sold the subject merchandise in the home market at prices below the COP. We therefore initiated cost investigations, in accordance with section 773(b) of the Act. As a result, we investigated whether Dongbu and Union sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR § 353.51(c) we calculated COP for Dongbu and Union as the sum of reported materials, labor, factory overhead, and general expenses, and compared COP to home-market prices, net of price adjustments, discounts and movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home-market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home-market sales during the POR were priced below the COP of the merchandise, we excluded from the calculation of FMV those home-market sales which were priced below the COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home-market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Act, we used the constructed value ("CV") of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home-market sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 64720, 64729 (December 8, 1993).

Because Dongbu and Union provided no indication that their below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home-market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home-market model at or above COP.

Finally, where we found, for certain of Dongbu's and Union's models, home-market sales for which less than 10 percent were made below COP, we used all home-market sales of those models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture ("COM"), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses. Based on our verification of Dongbu's and Union's cost response, we adjusted Dongbu's, Union's, and DKI's reported COP and CV to reflect certain adjustments to general and administrative expenses and interest expenses. *See* the Department's separate cost calculation memoranda for Dongbu (dated August 10, 1995) and Union/DKI (dated September 21, 1995).

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home-market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade ("CIT") overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the *"Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home-market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade ("GATT") and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the *"Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act ("URAA") explicitly amended the antidumping law to remove consumption taxes from the home-market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the *"Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home-market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Dongbu

In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, f.o.b., ex-factory, or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for certain rebates tied to specific sales, post-sale inland freight, home-market value-added tax, and for home market direct selling expenses, *i.e.*, credit and warranty expenses. We also adjusted FMV for differences in physical characteristics of the merchandise. Finally, we adjusted FMV for differences in packing by deducting home-market packing expenses from, and adding U.S. packing expenses to, FMV.

Union

Because the Department is treating Union and DKI as a single producer of certain cold-rolled carbon steel flat products for purposes of this review, we combined Union's and DKI's home-market sales and cost-of-production data bases in our preliminary calculations. In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, f.o.b., ex-factory, or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for post-sale inland freight, home-market value-added tax, and for home-market direct selling expenses, *i.e.*, credit expenses.

We treated Union's warehousing expense as an indirect selling expense, rather than direct, as Union had claimed, because Union evenly allocated this expense to all home-market sales across-the-board, rather than calculating a discrete warehousing expense for each home-market sale.

We also treated Union's pre-sale inland freight as an indirect selling expense, rather than direct, as Union had claimed, pursuant to the decision by the Court of Appeals for the Federal Circuit in *Ad Hoc Committee* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994). The Department considers pre-sale movement expenses as direct selling expenses only if the movement expenses in question are directly related to the home-market sales under consideration. In order to determine whether pre-sale movement expenses are direct under the facts of a particular case, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse must also be indirect. Conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that, although pre-sale warehousing expenses in most cases have been found to be indirect selling expenses, these expenses may be deducted from FMV as a circumstance-of-sale adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration. In the instant review, Union did not distinguish between pre- and post-sale warehousing expenses, nor did it demonstrate that these expenses were directly tied to the home-market sales under consideration. The Department, therefore, determined to treat home-market warehousing expenses as indirect selling expenses.

We also adjusted FMV for differences in packing by deducting home-market packing expenses from, and adding U.S. packing expenses to, FMV.

During the verification of Union's responses, the Department was unable to fully verify the accuracy of Union's reported home-market product characteristics, because Union did not retain the relevant information in its records. It is the Department's preference to calculate antidumping duties on the basis of price-to-price comparisons whenever possible. It is also the Department's preference to use as much of respondent's data as possible. For purposes of these preliminary results, therefore, the Department has decided to use Union's model-matching product characteristics, but to apply to all of Union's price-to-price sales comparisons a flat, across-the-board adjustment for differences in physical characteristics of the merchandise ("difmer") of 20 percent as the best information otherwise available ("BIA"). Twenty percent is the maximum difmer allowed between U.S. and home-market models for the purposes of comparison. *See* the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated August 8, 1995.

We were able, by contrast, to verify DKI's reported product characteristics. In the model-match program, therefore, we programmed the computer, whenever DKI sales were used as a basis for comparison with Union's U.S. sales, to apply the difmers reported by DKI, rather than an across-the-board difmer of 20 percent, as we did when Union's home-market sales were used as a basis for comparison. We disagree, however, with DKI's categorization of its thickness tolerances as "standard." Based on the Department's model-matching criteria, we have concluded that DKI's thickness tolerances are much closer to U.S. "half-mill" tolerances than to Union's "standard" tolerances. We have therefore created a new category of thickness tolerance—called "other"—for DKI, permitting the

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comparison of Union's U.S. sales of "half-mill" to DKI's home-market sales.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following margins exist for the period August 18, 1993, through July 31, 1994:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/manufacturer/exporter	Weighted-average margin (percent)
Dongbu	6.07
Union	1.21

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act. A cash deposit of estimated antidumping duties shall be required on shipments of certain cold-rolled carbon steel flat products from Korea as follows: (1) The cash deposit rates for the reviewed company will be the rate established in the final results of this review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for this case will be 14.53 percent, which is the "all others" rate for the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 58 FR 37176 (July 9, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22.

Dated: December 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30799 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 1, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–405
Argentina
Barbed Wire and Barbless Fencing Wire
Objection Date: November 30, 1995; November 20, 1995
Objector: Oklahoma Steel & Wire Co.; Insteel Industries, Inc.; Keystone Steel & Wire Company
Contact: Tom Killiam at (202) 482–2704

A–357–007
Argentina
Carbon Steel Wire Rods
Objection Date: November 30, 1995
Objector: GS Industries, Inc.; GST Steel Company; North Star Steel Texas, Inc.; Co-Steel Raritan, Inc.; Atlantic Steel Company
Contact: Tom Killiam at (202) 482–2704

A–559–502
Singapore
Light-Walled Rectangular Pipe and Tube
Objection Date: November 20, 1995
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–588–090
Japan
Certain Small Electric Motors of 5 to 150 Horsepower
Objection Date: November 24, 1995
Objector: Reliance Electric Industrial Company
Contact: Nancy Decker at (202) 482–5811

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 95–30801 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–818]

Certain Cut-to-Length Carbon Steel Plate From Brazil; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: On September 15, 1995 (60 R 47930), in response to a request from Companhia Siderurgica de Tubarao (CST), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Brazil for CST. In accordance with 19 CFR 355.22(a)(3)(1994), the Department is now terminating this review because CST has withdrawn its request for review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, the Department received a request for an administrative review of this countervailing duty order from CST, a Brazilian exporter of the subject merchandise, for the period January 1, 1994, through December 31, 1994. Although an importer of the subject merchandise, Wirth Ltd., requested a review of the scope of this order on the same date, no interested party other than CST requested a review of the countervailing duty rate. On September 15, 1994, the Department published in the **Federal Register** (60 FR 47930) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review of CST for that period. On November 13, 1995, CST withdrew its request for review .

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, CST has withdrawn its request for review within the 90-day period. Further, no other interested party requested a review of the countervailing duty rate in this case, and we have received no submissions regarding CST's withdrawal of its request for review. Therefore, we are terminating the review of the countervailing duty order on certain cut-to-length carbon steel plate from Brazil for CST.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30800 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–002]

Cotton Yarn From Peru; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: On June 25, 1993, (58 FR 34414) the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on cotton yarn from Peru for the period January 1, 1992 through December 31, 1992. The Department has now decided to terminate this review.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

Background

On February 25, 1993, the Department received a request for an administrative review of this countervailing duty order from the American Yarn Spinners Association (AYSA) for the period January 1, 1992 to December 31, 1992. No other interested party requested an administrative review. On June 25, 1993 the Department published, in the **Federal Register** (58 FR 34414), a notice of "Initiation of Countervailing Duty Administrative Review." On December 1, 1995, AYSA withdrew its request for review.

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because no significant work has been completed on this review, the aforementioned request for withdrawal does not unduly burden the Department. Therefore, under the circumstances presented in this review, we are waiving the 90-day requirement in section 355.22(a)(3). Accordingly, we are terminating this review.

This notice is published in accordance with section 355.22(a)(3) of the Department's regulations.

Dated: December 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30802 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Olympic Coast National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; Meeting of the Olympic Coast National Marine Sanctuary Advisory Council.

SUMMARY: The Advisory Council was established in December 1995 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Olympic Coast National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Thursday, January 18, 1996, from 9 a.m. until 5 p.m. The meeting will be held at the Clallam

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County Courthouse, Room 160, 223 East 4th Street, Port Angeles, Washington.

AGENDA: This is the first meeting of the Advisory Council and will serve as an orientation for the members. General subjects to be covered will include swearing in of Council members; introductions of Sanctuary staff and Council members; an overview of the Olympic Coast National Marine Sanctuary and the National Marine Sanctuary Program; and a review of Council operating procedures and requirements.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Nancy Beres at (360) 457–6622 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: December 12, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–30765 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–08–M

National Telecommunications and Information Administration

Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC)

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on January 19, 1996 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Land Mobile Spectrum Planning Options Report;

(2) Public and Private Understanding of NTIA's Mission;

(3) Results of WRC–95;

(4) Public Safety Wireless Advisory Committee (PSWAC) Update;

(5) Update of Automated ITU Spectrum Management System.

The meeting will be open to public observations. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before January 11, 1996. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4487.

Dated: December 12, 1995.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 95–30730 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. These limits are being reduced for carryforward applied to the 1995 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	384,921 dozen.
331	975,182 dozen pairs.
334	117,430 dozen.
335	210,847 dozen.
336/636	377,317 dozen.
338/339	1,093,045 dozen.
340/640	2,470,896 dozen.
341	2,046,913 dozen.
342/642	354,148 dozen.
347/348	1,842,220 dozen.
351/651	562,460 dozen.
352/652	8,391,323 dozen.
363	20,965,242 numbers.
369–S [1]	1,405,316 kilograms.
634	410,836 dozen.
635	266,173 dozen.
638/639	1,386,181 dozen.
641	857,100 dozen.
645/646	325,529 dozen.
647/648	1,158,630 dozen.
847	615,190 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30810 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17318, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 18, 1995, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Sublevels in the aggregate	
218	5,853,092 square meters.
219	19,649,429 square meters.
225	10,242,909 square meters.
300/301	7,938,138 kilograms.
338/339/638/639	1,575,054 dozen.
347/348	1,137,539 dozen.
350	163,615 dozen.
369–D [2]	567,267 kilograms.
410/624	11,706,183 square meters of which not more than 3,021,972 square meters shall be in Category 410.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30803 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

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Request for Public Comments on Bilateral Textile Consultations with the Government of Bulgaria on Certain Wool Textile Products

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 29, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Bulgaria with respect to women's and girls' wool suits in Category 444, produced or manufactured in Bulgaria.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Bulgaria, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Bulgaria and exported during the twelve-month period which began on November 29, 1995 and extends through November 28, 1996, at a level of not less than 59,569 numbers.

A statement of serious damage concerning Category 444 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 444, or to comment on domestic production or availability of products included in Category 444, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Bulgaria.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 444. Should such a solution be reached in consultations with the Government of Bulgaria, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Bulgaria

Women's and Girls' Wool Suits—Category 444

November 1995

Import Situation and Conclusion

U.S. imports of women's and girls' wool suits, Category 444, from Bulgaria reached 59,569 units for the year-ending August 1995, almost 14 times the 4,305 units imported during the same period a year earlier. Bulgaria shipped 41,624 units during 1994 and 1,161 units in 1992. There were no imports from Bulgaria in 1993. Imports from Bulgaria were 4.6 percent of total U.S. imports of Category 444 in the year-ending August 1995, and were equivalent to 1.5 percent of U.S. production of Category 444 for the year-ending June 1995.

U.S. imports of women's and girls' wool suits from Bulgaria in Category 444 during the first eight months of 1995 was $50.27 per unit, 65 percent below the average U.S. producers' price for women's and girls' wool suits.

The sharp and substantial increase of low-valued Category 444 imports from Bulgaria is causing serious damage to the U.S. domestic industry producing women's and girls' wool suits.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool suits, Category 444, fell from 6,286,000 units in 1992 to 4,309,000 units in 1994, a decline of 31 percent. Domestic production of women's and girls' wool suits continued to decline in 1995, falling to 3,961,000 units in the year-ending June 1995, 22 percent below the year-ending June 1994 level. In contrast, imports of Category 444 increased from 943,000 units in 1992 to 1,093,000 units in 1994, a 16 percent increase. Category 444 imports surged to 1,307,000 units in the year-ending August 1995, 24 percent above the year-ending August 1994 level.

The ratio of imports to domestic production increased from 15 percent in 1992 to 25 percent in 1994 to 31 percent in the year-ending June 1995. The share of the U.S. market for women's and girls' wool suits held by domestic manufacturers fell from 92 percent in 1992 to 88 percent in 1994, and to 82 percent in the year-ending June 1995.

[FR Doc. 95–30812 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated March 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China establishes limits for the period beginning on January 1, 1996 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limits for Categories 336, 362 and 642 in Group I have been reduced for carryforward applied in 1995.

These limits may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). On the date that China becomes a member of the World Trade Organization and the United States applies the Uruguay Round Agreements to China, the restraint limits will be modified in accordance with the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated March 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C[1], 359–V[2], 360–363, 369–D[3], 369–H[4], 369–L[5], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C[6], 659–H[7], 659–S[8], 666, 669–P[9], 670–L[10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,431,618,042 square meters equivalent.
Sublevels in Group I	
200	655,730 kilograms.
218	10,878,344 square meters.
219	2,255,185 square meters.
226	10,240,181 square meters.
237	1,761,510 dozen.
239	2,762,764 kilograms.
300/301	3,700,967 kilograms.
313	41,216,950 square meters.
314	47,544,226 square meters.
315	150,495,467 square meters.
317/326	19,743,397 square meters of which not more than 3,777,300 square meters shall be in Category 326.
331	4,861,921 dozen pairs.
333	90,718 dozen.
334	305,459 dozen.
335	375,032 dozen.
336	153,702 dozen.
338/339	2,370,396 dozen of which not more than 1,799,390 dozen shall be in Categories 338–S/339–S[11].
340	816,568 dozen of which not more than 408,284 dozen shall be in Category 340–Z[12].
341	652,595 dozen of which not more than 391,557 dozen shall be in Category 341–Y[13].
342	256,222 dozen.
345	128,260 dozen.
347/348	2,404,650 dozen.
350	154,357 dozen.
351	500,983 dozen.
352	1,801,164 dozen.
359–C	559,672 kilograms.
359–V	815,151 kilograms.
360	7,176,252 numbers of which not more than 4,894,897 numbers shall be in Category 360–P[14].
361	4,012,966 numbers.
362	6,978,163 numbers.
363	29,977,812 numbers.
369–D	4,480,901 kilograms.
369–H	4,645,985 kilograms.
369–L	3,070,837 kilograms.
410	1,958,724 square meters of which not more than 1,570,129 square meters shall be in Category 410–A[15] and not more than 1,570,129 square meters shall be in Category 410–B[16].
433	22,823 dozen.
434	13,004 dozen.
435	23,885 dozen.
436	14,862 dozen.
438	26,007 dozen.
440	37,155 dozen of which not more than 21,231 dozen shall be in Category 440–M[17].
442	41,401 dozen.
443	133,754 numbers.
444	200,831 numbers.
445/446	284,340 dozen.
447	77,298 dozen.
448	21,729 dozen.
607	3,038,521 kilograms.
611	5,193,696 square meters.
613	7,128,602 square meters.
614	11,202,088 square meters.
615	23,320,711 square meters.
617	16,293,945 square meters.
631	1,184,416 dozen pairs.
633	53,496 dozen.
634	582,000 dozen.
635	607,949 dozen.
636	525,752 dozen.
638/639	2,365,174 dozen.
640	1,437,870 dozen.
641	1,293,980 dozen.
642	300,013 dozen.
643	485,182 numbers.
644/844	3,474,297 numbers.
645/646	820,148 dozen.
647	1,509,521 dozen.
648	1,078,543 dozen.
649	876,418 dozen.
650	109,116 dozen.

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Category	Twelve-month limit
651	736,428 dozen of which not more than 129,653 dozen shall be in Category 651–B[18].
652	2,513,085 dozen.
659–C	389,873 kilograms.
659–H	2,683,454 kilograms.
659–S	580,290 kilograms.
666	3,376,561 kilograms.
669–P	1,894,083 kilograms.
670–L	15,074,868 kilograms.
831	503,383 dozen.
833	26,336 dozen.
835	119,061 dozen pairs.
836	264,027 dozen.
840	463,151 dozen.
842	255,783 dozen.
845	2,420,585 dozen.
846	165,581 dozen.
847	1,222,614 dozen.
Group II	
330, 332, 349, 353, 354, 359–O[19], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O[20], as a group.	121,132,059 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V[21], 224–O[22], 225, 227, 229, 369–O[23], 400, 414, 464, 485, 469, 600, 603, 604–O[24], 606, 618–622, 624–629, 665, 669–O[25] and 670–O[26], as a group.	255,798,114 square meters equivalent.
Sublevel in Group III	
224–V	3,393,051 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,030,580 square meters equivalent.
Levels not in a Group	
369–S[27]	610,158 kilograms.
863–S[28]	8,532,986 numbers.
870	32,771,172 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.69.8010, 6114.20.0052, 6203.42.2090, 6211.32.0010, 6211.42.0010, 6103.42.2025, 6104.62.1020, 6114.20.0048, 6203.42.2010, 6204.62.2010, 6211.32.0025 and 6211.42.0070.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.30.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–O).

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[26] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period has been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

Should China become a member of the World Trade Organization (WTO) and the United States applies the Uruguay Round Agreements to China, the limits set forth above may be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing, the Uruguay Round Agreements Act and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30807 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Limits and Establishment of Special Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending import limits and establishing special access levels.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995, Special Access Levels are being established for textile products in Categories 352/652 and 444 under the Andean Special Access Textile Program for textile products which are assembled in Colombia from fabric wholly formed and cut in the United States that are intended for re-export to the United States during the periods April 1, 1995 through December 31, 1995 (Categories 352/652) and January 1, 1995 through December 31, 1995 (Category 444). There is a sublimit for products that are not assembled from U.S. formed and cut fabrics.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a Special Access Level at 22,500,000 dozen for Categories 352/652 and 201,000 numbers for Category 444. The current limits for Categories 352/652 and 444 shall be amended to become sublimits to the Special Access Levels at

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levels of 2,250,000 and 80,400 numbers, respectively.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 45144, published on August 30, 1995; 60 FR 45145, published on August 30, 1995; 60 FR 53762, published on October 17, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the periods April 1, 1995 and through December 31, 1995 (Categories 352/652) and January 1, 1995 and through December 31, 1995 (Category 444).

Effective on December 20, 1995, you are directed, pursuant to Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia, and under the terms of the Special Access Textile Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), to establish a Special Access Level for properly certified textile products in Categories 352/652 and 444 which are assembled in Colombia from fabric formed and cut in the United States and re-exported to the United States from Colombia during the periods April 1, 1995 through December 31, 1995 (Categories 352/652) and January 1, 1995 through December 31, 1995 (Category 444).

Also pursuant to the MOUs, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to amend the current limits for Categories 352/652 and 444 to become sublimits to the Special Access Levels for textile products not assembled from U.S. formed and cut fabrics.

The new Special Access Levels and their sublimits are listed below:

Category	Special Access Level
352/652 (Special Access).	22,500,000 dozen.
352/652 (non-Special Access sublimit).	2,250,000 dozen.
444 (Special Access)	201,000 numbers.
444 (non-Special Access sublimit).	80,400 numbers.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of December 5, 1995, shall be denied entry unless the Government of Colombia authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30804 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in El Salvador and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to Memoranda of Understanding (MOUs) dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits and guaranteed access levels for 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the September 26, 1994 and July 6, 1995 MOU's, the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	953,391 dozen.
351/651	366,000 dozen.
352/652	6,603,774 dozen.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 (Categories 340/640) and March 27, 1995 through December 31, 1995 (Categories 351/651 and 352/652) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Pursuant to Memoranda of Understanding dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1996, you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in El Salvador from fabric formed and cut in the United States and re-exported to the United States from El Salvador during the period beginning on January 1, 1996 and extending through December 31, 1996:

Category	Guaranteed access level
340/640	1,000,000 dozen.
351/651	500,000 dozen.
352/652	30,000,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 6, 1995, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30809 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in India

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 15, 1995, you are directed to amend the directive dated February 9, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
326	7,302,661 square meters.
369–D [2]	1,116,233 kilograms.
369–S [3]	677,185 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30805 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

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EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	416,025 dozen.
360	3,004,625 numbers.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30808 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640, 342/642, 638/639 and 647/648 are being increased for swing, reducing the limits for Categories 352 and 847 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17339, published on April 5, 1995; and 60 FR 36787, published on July 18, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 18, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted limit [1]
340/640	326,868 dozen.
342/642	250,517 dozen.
352	106,261 dozen.
638/639	212,778 dozen.
647/648	288,696 dozen.
847	161,599 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–30806 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1996

December 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Committee for the Implementation of Textile Agreements (CITA) announces that the 1996 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in late January 1996. Prior assessibility may be available on the Internet via the Wide World Web. The Office of Textiles and Apparel (OTEXA) Homepage address is http://ita.doc.gov/industry/textiles/.

The delay in publication of the 1996 Correlation is due to a number of changes in the Harmonized Tariff Schedule resulting from a December 1995 Presidential Proclamation.

Copies of the Correlation may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–30811 Filed 12–18–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Notice of availability of the 1995–96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools

SUMMARY: The Secretary announces that the 1995–96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1995–96 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1995–96 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Patricia Reese, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 4621), Washington, DC 20202–5447, Telephone (202) 708–6726. Information concerning deferment and cancellation of a National Direct or Federal Perkins loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Regional Office Building 3, Room 4310), Washington, DC 20202–5447, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education, including its regional offices.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures set forth in 34 CFR 674.53, 674.54 and 674.55 of the Federal Perkins Loan Program regulations.

The Secretary has determined that, for the 1995–96 academic year, full-time teaching in the schools set forth in the 1995–96 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1995–96 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct and Federal Perkins Loan Cancellations)

Dated: December 13, 1955.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–30760 Filed 12–18–95; 8:45 am]

BILLING CODE 4000–01–F

DEPARTMENT OF ENERGY

Extension of the Public Comment Period for the Draft Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Extension of the Public Comment Period.

SUMMARY: This notice extends the public comment period for the Department of Energy's (DOE) Draft Waste Management Programmatic Environmental Impact Statement (PEIS) for sixty days, from December 21, 1995 through February 19, 1996. All comments received by that date will be considered in preparing the final PEIS. A Notice of Availability of the draft was published on September 22, 1995 (60 FR 49264) and amended on October 25, 1995 (60 FR 54670) to revise the schedule of public hearings. All other information contained in the Notice of

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Availability as amended remains unchanged.

ADDRESSES: Written comments on the draft PEIS should be mailed to the following address:

U.S. Department of Energy, Waste Management PEIS Comments, P.O. Box 3790, Gaithersburg, MD 20885–3790.

Requests for information about and copies of the draft PEIS should be directed to:

Center for Environmental Management Information, P.O. Box 23769,Washington, DC 20026–3769, 1–800–736–3282 or in Washington, D.C.: 202–863–5084.

For information on the DOE National Environmental Policy Act process, contact:

Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42),U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave message at 1–800–472–2756.

DATES: The comment period on the draft PEIS will continue through February 19, 1996. Comments postmarked after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, the Department issued a Notice of Availability (60 FR 49264) on the draft PEIS that included: a brief description of the contents of the document and alternatives analyzed; a list of reading rooms where the full document is available to the public; information on how to obtain additional copies of the document and submit public comments; and a schedule of public hearings. This Notice also announced a ninety-day public comment period extending from September 22, 1995 to December 21, 1995.

On October 25, 1995, the Department issued an amendment (60 FR 54670) to the Notice of Availability. This amendment revised the schedule of public hearings in order to increase accessibility to the hearings. The amendment listed new hearing times and locations in the states of Illinois, New Mexico, New York, Oregon and Washington.

The public comment period is being extended to February 19, 1996, in response to public requests for additional time to review the document and prepare comments. Except as otherwise specified above, all information contained in the September 22, 1995 Notice of Availability as amended remains unchanged.

Issued in Washington, DC, December 13, 1995.

David F. Hoel,

PEIS Document Manager, Office of Waste Management, Environmental Management.

[FR Doc. 95–30751 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–P

Oak Ridge Operations Office; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE). Oak Ridge Operations Office, pursuant to 10 CFR 600.7(b)(2), announces its intent to issue on a noncompetitive basis a renewal award to the United States Automotive Materials Partnership (USAMP) for a project entitled, "Automotive Lightweight Materials Program". USAMP is a consortium of Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The period of performance for this project is four years with operating funds in the amount of $15,000,000 being allocated for this effort. These funds will be matched equally by USAMP under this cooperative agreement.

PROCUREMENT REQUEST NO.: 05–96OR22363.001.

PROJECT SCOPE: The USAMP mission is to continue to define and conduct pre-competitive, vehicle-related research and development (R&D) in materials and materials processing which will improve the competitiveness of the U.S. automotive industry. USAMP goals are to develop several families of automotive materials that will impact strategic needs of the industry. These needs include improved fuel economy through vehicle weight reduction, improved reliability and durability, reduced friction, noise and vibration, lower cost materials and manufacturing processes, flexibility of design and styling, and reduced emissions. The project participants, including Chrysler, Ford, General Motors, and their suppliers, are making available for this effort their internal automotive R&D facilities, as well as demonstration facilities in manufacturing operations and at suppliers. These capabilities are world class and cannot be matched and/or duplicated except at other automotive manufacturer R&D sites. The recipient's resources, capabilities, facilities, and situation in the private sector are unsurpassed. There exists no other similar company or consortium with the capabilities and supplier base with which to competitively bid this work. Therefore, in accordance with 10 CFR 600.7(b)(2)(i), it has been determined that the activity to be funded is necessary for the satisfactory completion of an activity that will enhance the public benefit derived and for which competition would have a significant adverse effect on completion of the activity. In addition, based upon the consortium partner's and their supplier's unique facilities, equipment, proprietary data, and technical expertise, the recipient has exclusive domestic capability to perform the activities successfully. Eligibility for renewal of this award is, therefore, restricted to USAMP.

FOR FURTHER INFORMATION CONTACT: Mark A. Million, Contract Specialist, U.S. Department of Energy, Oak Ridge Operations Office, Procurement and Contracts Division, AD–423, Oak Ridge, TN 37831–8758, (423) 576–7814.

Issued in Oak Ridge, Tennessee, on December 6, 1995.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 95–30753 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Operations Office; Interim Management of Nuclear Materials at Savannah River Site

AGENCY: Department of Energy.

ACTION: Record of decision and notice of preferred alternatives.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), "Interim Management of Nuclear Materials", (DOE/EIS–0220, October 20, 1995) to assess the potential environmental impacts of actions necessary to manage nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. The actions evaluated in the EIS would stabilize SRS materials that represent environment, safety and health vulnerabilities in their current storage condition or which may represent a vulnerability within the next 10 years. These vulnerabilities are the result of the suspension of nuclear materials production and processing operations which accompanied the end of the Cold War. Although DOE has initiated programmatic and project specific environmental evaluations on the ultimate disposition of the nuclear materials in the DOE complex which are now surplus to national defense requirements, the implementation of decisions regarding ultimate disposition will take several years. In the interim, DOE wants to eliminate vulnerabilities associated with certain current nuclear material storage configurations in order to protect the environment and the health and safety of workers and the public.

Several reviews conducted by DOE and the Defense Nuclear Facilities Safety Board (DNFSB) have identified environment, safety and health vulnerabilities associated with the continued storage of certain nuclear materials at the SRS in their current location and physical condition. The Final EIS evaluates alternatives for managing these materials. In making the decisions announced in this Record of Decision, DOE considered environmental and other factors, such as costs, security and nuclear nonproliferation, facility usage, technology availability, required new facilities, skilled labor availability, minimization of continuing custodial care for the materials, the need for maintenance or modifications to aging SRS facilities, and, to the greatest possible extent, stakeholder concerns and preferences.

DOE organized the nuclear materials at the SRS into one of three categories: stable, programmatic, and candidates for stabilization. The nuclear materials, the alternatives, and the potential environmental impacts of implementing the alternatives are all described in detail in the Final EIS. DOE is announcing its decisions with respect to most of these nuclear materials today. With respect to the neptunium-237 solutions and targets and the plutonium-239 solutions, DOE has determined that stabilization is necessary and has narrowed the alternatives under consideration regarding how to stabilize these materials. Upon completion of further analysis, DOE will issue a subsequent Record of Decision to further specify the final stabilization strategy for these materials. With respect to the Mark-16 and Mark-22 fuels, and other aluminum-clad targets, DOE has designated new preferred alternatives and will announce its decision on the management of these materials in an amended Record of Decision no sooner than 30 days from the availability of this notice.

RECORD OF DECISION: DOE has decided to initiate actions which will stabilize certain of the SRS materials that represent environment, safety and health vulnerabilities in their current storage condition or which may represent a vulnerability within the next 10 years. Based on the analysis in the Final EIS, and the other factors identified above, DOE has made the following decisions:

Stable Materials

DOE has decided that stable materials can be safely managed in their existing physical and chemical forms over the next several years. Programs and projects to consolidate storage of stable materials in order to reduce surveillance and maintenance costs will continue. These materials will remain stored at SRS until DOE makes decisions relative to their future use or disposition.

Programmatic Materials

DOE identified nuclear materials at SRS which may be required to support ongoing or planned programs after consultation with national laboratories and other appropriate federal agencies, such as the National Aeronautics and Space Administration (NASA). The bulk of the following programmatic nuclear materials at the SRS are contained in acidic solutions stored in tanks in the canyon facilities and would otherwise be considered Candidates for Stabilization.

Plutonium-242

DOE has decided to process plutonium-242 solutions stored in the H-Canyon facility to an oxide using the HB-Line facility. The plutonium-242 oxide will be packaged into containers and stored at the SRS until DOE makes programmatic decisions on its use or disposition.

Americium and Curium

DOE has decided to process solutions of americium and curium isotopes stored in the F-Canyon facility into a glass matrix within small stainless steel canisters, and to store the resulting canisters at the SRS until programmatic decisions on use or disposition are made by DOE. Vitrification equipment will be installed in an existing portion of the F-Canyon facility (previously called the Multi-Purpose Processing Facility). DOE has decided to continue the storage of metal reactor targets and slugs containing americium and curium isotopes in existing SRS basin facilities until DOE makes programmatic decisions on their use or disposition.

Neptunium-237

DOE will dissolve, chemically separate and process neptunium contained in the nine (9) obsolete reactor targets and will process existing solutions in the H-Canyon to either a glass matrix using the same vitrification equipment installed in F-Canyon or to an oxide using the HB-Line facility. The final form of the neptunium-237 depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in a recently issued DOE staff report entitled Facility Utilization Strategy for the Savannah River Site Chemical Separation Facilities (December 1995) . The study principally considers what effect the consolidation of two primary processing areas to one would have on the ability to stabilize nuclear materials at the SRS. Budgetary pressures and safety requirements as well as preserving capability for future missions necessitates a thorough examination of the options for these facilities. The report is available to the public (see below). At this time, DOE is narrowing the potential stabilization alternatives for the neptunium-237 from the four considered in the EIS to either the oxide or vitrified (F-Canyon) form. As noted above, DOE will issue a subsequent Record of Decision to specify which of these two alternatives will be used to stabilize these materials.

To vitrify the neptunium solutions in F-Canyon, DOE would develop or procure a container suitable for transporting the solutions from H-Canyon to F-Canyon and make minor modifications to each facility to support loading and unloading operations. DOE is currently evaluating the feasibility of using a container designed for transport of radioactive solutions which is licensed by the International Atomic Energy Agency (IAEA). In order to process the solutions to an oxide, DOE would start up a new portion of the HB-Line facility (Phase II) which has never been operated. Neptunium recovered from the targets will be processed along with the existing neptunium solutions into either a glass or an oxide. The glass canisters or containers of oxide would be stored inside the shielded canyon facilities or in a new Actinide Packaging and Storage Facility until DOE makes programmatic decisions on their future use or disposition.

Candidates for Stabilization

Materials that are candidates for stabilization are in forms (e.g., liquid) that present inherent management risks, are stored in facilities that were not designed for long-term storage, or both. Generally, these materials currently present, or can be expected to present over the interim period (approximately 10 years), environmental, worker or public safety and health concerns or vulnerabilities.

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Highly Enriched Uranium (HEU) Solutions

DOE has decided to stabilize highly enriched uranium solutions stored in H-Area by blending them with depleted uranium at the SRS to produce solutions containing low enriched uranium (LEU). DOE will make minor modifications to the F-Canyon and H-Canyon facilities to enable loading and unloading of the uranium solutions into containers for transport between the facilities and install a spare dissolver in FA-Line. The LEU solutions will either be stored in existing tanks at SRS or converted to a low enriched uranium oxide using the FA-Line facility. The final form of the HEU solutions after they are blended down will be dependent upon the timing of DOE decisions related to the disposition of surplus HEU and upon facility utilization considerations related to cost and schedule.

Plutonium and Uranium Stored in Vaults

DOE has decided to stabilize plutonium and uranium materials stored in vaults by (1) heating or repackaging the material into better containers, and (2) dissolving some materials to chemically remove impurities or radioactive decay products, converting the resulting purified solutions to a metal, an oxide or a glass. DOE will determine the appropriate method to use upon inspection and analysis of the material in each package. DOE will use the H-Canyon, HB-Line, F-Canyon and FB-Line facilities to process the materials and remove impurities that contribute to the stability concerns. DOE will use the FB-Line facility to convert resulting plutonium-239 solutions to a metal, HB-Line to convert resulting plutonium-238 and plutonium-239 solutions to an oxide, and a modified portion of F-Canyon to convert plutonium-239 solutions to a glass matrix. The use of the modified portion of the F-Canyon will be subject to the successful vitrification of the solutions containing americium and curium isotopes (see above) and additional analytical laboratory work. DOE will use a glove box being installed in FB-Line to package the plutonium metal. DOE has decided to construct a new Actinide Packaging and Storage Facility in F-Area to enable heating and repackaging of plutonium metals and oxides to meet new storage criteria (DOE Criteria for Safe Storage of Plutonium Metals and Oxides (DOE-STD–3013–94)) and to provide space for consolidated storage of plutonium and special actinide materials at SRS. The storage standard imposes stringent requirements regarding the chemical stability of plutonium metals and oxides along with requirements for design and construction of packages used for storage of the material. The standard identifies such measures as residual moisture content allowed in the plutonium metal or oxide, materials to be avoided in contact with the plutonium or used in the packaging configuration, thermal loading limitations, and packaging seals, closures and containment features. DOE will incorporate requirements of the IAEA into the design and construction of the new Actinide Packaging and Storage Facility to provide the latitude for placing the nuclear materials under international safeguards in the future. DOE is also pursuing declassification of information related to the amount of plutonium that would be stored in the new facility.

Mark-31 Targets

DOE has decided to stabilize Mark-31 targets (short cylindrical metal slugs fabricated with depleted uranium and, if irradiated, containing plutonium) by dissolving them in the F-Canyon facility and chemically separating the plutonium and depleted uranium from fission products and other constituents. The resulting plutonium solutions will be converted to a metal using the FB-Line facility. Upon installation of a new glove box in FB-Line, the metal will be packaged in accordance with DOE's storage standard. DOE will use the depleted uranium recovered from the Mark-31 targets for blending with highly enriched uranium solutions in H-Area (see above).

Aluminum-clad Taiwan Research Reactor (TRR) Fuel and Experimental Breeder Reactor (EBR)-II Slugs

DOE has decided to stabilize 81 canisters of failed fuel from the Taiwan Research Reactor and one failed canister of de-clad metal slugs from the Experimental Breeder Reactor-II by dissolving the materials in F-Canyon and processing them in conjunction with the Mark-31 targets. The failed fuel and de-clad metal slugs contain natural or depleted uranium and plutonium, similar to the Mark-31 targets. The resulting solutions containing plutonium recovered from the fuel and slugs will be converted to a metal using the FB-Line facility. The plutonium metal will be packaged in accordance with DOE's storage standard. The depleted and natural uranium recovered from the fuel and slugs will be used for blending with the highly enriched uranium solutions stored in H-Area.

Plutonium-239 Solutions

DOE has decided to stabilize plutonium-239 solutions stored in the H-Canyon facility to either a glass using the vitrification equipment installed in a modified F-Canyon, an oxide using the HB-Line facility, or a metal using the FB-Line facility. At this time, DOE is narrowing the potential stabilization alternatives from the five considered in the EIS to either the vitrified (F-Canyon), metal, or oxide form. The final stabilization strategy would depend in part on actions taken, if any, to consolidate certain activities in the F-Canyon as described above for the neptunium-237 stabilization activities. As with the neptunium-237 materials, a subsequent Record of Decision will be issued to specify the final strategy for stabilizing the plutonium-239 solutions.

To vitrify the solutions in F-Canyon, DOE would move the solutions from H-Canyon to F-Canyon using the same container as described above for the transport of the neptunium solutions and also use the same facility modifications for loading and unloading the container. The use of the modified portion (the vitrification equipment) of the F-Canyon would be subject to the successful vitrification of the solutions containing americium and curium isotopes (see above) and additional analytical laboratory work. In order to process the existing solutions to an oxide in HB-Line, DOE would have to start up a new portion of the facility which has never been operated. To process the solutions to metal, DOE would move the solutions from H-Canyon to F-Canyon as described for the vitrification alternative and would use FB-Line to convert the solutions to metal.

Notice: Announcement of Preferred Stabilization Alternatives. DOE also is announcing today new preferred alternatives for managing the Mark-16 and Mark-22 fuels, and the "other aluminum-clad targets." In the Final EIS, DOE identified continued storage (i.e., No Action) as the preferred alternative for managing the Mark-16 and Mark-22 fuels (aluminum-clad, highly enriched uranium fuel from SRS reactors) and the other aluminum-clad targets (irradiated in SRS reactors) pending further review of cost, schedules, and technical uncertainties associated with dry storage techniques for failed fuel. DOE has since completed its review of these issues and is now announcing the designation of processing and blending down to low enriched uranium as the preferred alternative for stabilizing the Mark-16 and Mark-22 fuels. DOE is also announcing the designation of Processing and Storage for Vitrification in the Defense Waste Processing Facility as the preferred alternative for stabilizing the other aluminum-clad targets. DOE will issue a subsequent Record of Decision on the Mark-16 and Mark-22 fuels and the other aluminum-clad targets no sooner than thirty (30) days from the availability of this notice.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials at the SRS or to receive a copy of the Final EIS, the Facility Utilization Strategy Study, or this Record of Decision contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8259, Internet: andrew.grainger@srs.gov.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Atomic Energy Commission, a predecessor agency of the Department of Energy (DOE), established the Savannah River Site in the early 1950's. The SRS occupies approximately 800 square kilometers (300 square miles) adjacent to the Savannah River, mostly in Aiken and Barnwell Counties of South Carolina, about 40 kilometers (25 miles) southeast of Augusta, Georgia, and about 32 kilometers (20 miles) south of Aiken, South Carolina. The SRS mission for the past 40 years has been the production of special radioactive isotopes to support national programs. The primary mission was the production of strategic isotopes (plutonium-239 and tritium) used in the development and production of nuclear weapons for national defense. The Site produced other special isotopes (e.g., californium-252, plutonium-238, americium-241) to support research in nuclear medicine, space exploration, and commercial applications. To produce the isotopes, DOE fabricated selected materials into metal targets and irradiated them in the SRS nuclear reactors. After irradiation and cooling, the targets and reactor fuel were dissolved in acid and the special isotopes were chemically separated and converted to a solid form, either an oxide powder or a metal. The oxide or metal was fabricated into a usable form at the SRS or at other DOE sites. The final form of the material depended on the application (nuclear weapon component, encapsulated medical source, power source, etc.).

Due to the large scale chemical separation capabilities at the SRS, materials containing significant quantities of plutonium-239, uranium-235, and other special isotopes were shipped to the Site for processing and recovery. The materials were in a wide variety of physical shapes and forms, including (1) small encapsulated plutonium sources returned after use by national laboratories and domestic universities; (2) cans or drums of scrap metals and oxides from weapons manufacturing operations at other DOE sites; (3) irradiated metal fuel rods, tubes, plates, or assemblies from experimental DOE reactors, university research reactors, and foreign research reactors; and (4) cans, bottles, or drums containing residues or samples used in laboratory experiments at other DOE sites. All the materials were stored until they could be dissolved and processed in the chemical separations facilities (F-Canyon or H-Canyon). The small sources, scrap metals, oxides, residues, and samples were typically stored in cans, bottles, or drums in safeguarded concrete vaults. The irradiated fuel and targets were stored under water in metal racks or buckets. The offsite materials were typically processed in conjunction with the materials produced at the SRS.

In March 1992, DOE suspended chemical processing operations in the F- and H-Canyon facilities to address a safety concern regarding the capacity of the F- and H-Canyon ventilation systems to withstand an earthquake. That concern, involving the potential failure of the canyon exhaust stack liner in the event of a severe earthquake, was addressed through the preparation of appropriate response procedures, training, and response drills. However, in April 1992, before operation of the F- and H-Canyons could resume, the Secretary of Energy directed that the SRS phase out defense-related chemical separations activities in these facilities. World events in the late 1980's and early 1990's resulted in the end of the Cold War and a reduction in the demand for new material for nuclear weapons. As a result, DOE stopped operating the SRS reactors to produce strategic isotopes. After the Secretarial decision in April 1992, DOE did not process nuclear materials at the SRS chemical separations facilities to recover special isotopes, with the exception of scrap materials containing plutonium-238. DOE continued the processing of plutonium-238 for use as a thermal power source by the National Aeronautics and Space Administration (NASA) in exploratory space missions.

By September 1992, SRS had developed plans to phase out chemical reprocessing. The plans included actions for removing the material that remained in the canyons, spent fuel basins, and storage vaults as a result of the suspension of chemical separation activities in March 1992. In February 1993 the Site requested approval from DOE to restart F-Canyon after the completion of operational readiness reviews conducted as part of the response to the March 1992 safety concern. The SRS made this startup request in light of the Secretary's direction to accelerate the transition of F-Area reprocessing facilities to a standby condition and because all contemplated actions were typical of ongoing or previous facility operations.

During this same time period, DOE was developing new requirements for the performance of operational readiness reviews prior to the startup (or restart) of nuclear facilities. Under these requirements, facilities had to be able to demonstrate the capability to perform satisfactorily in relation to a broad range of topics associated with the safe operation of a nuclear facility. DOE promulgated these requirements in DOE Order 5480.31, "Startup and Restart of Nuclear Facilities", which it issued in September 1993. DOE decided that the SRS should apply these requirements to the F and H-Canyons and, in November 1993, determined that the Site should hold the proposed F-Canyon (and FB-Line) restart in abeyance until it had completed a restart review in accordance with the new Order. In part due to stakeholder concerns, DOE decided in January 1994 that absent an emergency condition, there should be no further material processed in the canyons (beyond processing of plutonium-238 for NASA) before completion of an environmental impact statement.

On March 17, 1994, DOE published a Notice of Intent (NOI) (59 FR 12588) to prepare an environmental impact statement on the interim management of nuclear materials at the SRS. The proposed DOE interim management actions are to stabilize those nuclear materials at the SRS that represent a health or safety concern for the public, workers, and the environment and to convert certain materials to a usable form to support DOE program needs. These interim actions are necessary while DOE makes and implements long-term decisions on the disposition of nuclear materials. DOE is addressing

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long-term decisions in the Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials, for which it issued an NOI on June 21, 1994 (59 FR 31985), and in the Disposition of Surplus Highly Enriched Uranium EIS (60 FR 17344, April 5, 1995) (for which the draft EIS was issued in October 1995 (60 FR 55021, October 27, 1995)).

The NOI for the Interim Management of Nuclear Materials EIS requested public comments and suggestions for DOE to consider in its determination of the scope of that EIS, and announced a public scoping period that ended on May 31, 1994. DOE held scoping meetings in Savannah, Georgia, North Augusta and Columbia, South Carolina, on May 12, 17, and 19, 1994, respectively.

In May 1994, the Manager of the Savannah River Operations Office recommended that the DOE Assistant Secretary for Defense Programs seek alternative methods pursuant to the emergency provisions of 10 CFR 1506.11 to comply with the National Environmental Policy Act (NEPA) to allow stabilization of plutonium solutions stored in F-Canyon and Mark-31 targets stored in the L-Reactor Disassembly Basin.

In June 1994, the DOE Office of Environment, Safety and Health performed an independent evaluation of the SRS request for alternative arrangements for compliance with NEPA. DOE evaluated the SRS request in light of the Office of Environment, Safety and Health's report and determined that the appropriate action would be to accelerate the evaluation of stabilization alternatives for the F-Canyon plutonium solutions by preparing a separate expedited environmental impact statement on this subject. In February 1995, following completion of the F-Canyon Plutonium Solutions EIS and issuance of that Record of Decision, DOE resumed F-Canyon operations to eliminate the risks involved in storing plutonium in solution form.

DOE issued a Draft EIS on the Interim Management of Nuclear Materials for public review and comment on March 17, 1995 (60 FR 14432). DOE has revised the Draft EIS in response to the comments received in letters and electronic messages from individuals, organizations, Federal and state agencies and comments received during public hearings held in Savannah, Georgia (April 11, 1995) and North Augusta, South Carolina (April 13, 1995). On October 20, 1995, EPA published a Notice of Availability of the Final EIS on the Interim Management of Nuclear Materials in the **Federal Register** (60 FR 54226), following distribution of approximately 400 copies to government officials and interested groups and individuals.

DOE prepared this Record of Decision in accordance with the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR 1021). This Record of Decision is based on DOE's Final Environmental Impact Statement on the Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina (DOE/EIS–0220).

II. Studies of Vulnerabilities of Storage of Nuclear Materials at SRS

The cessation of processing activities resulted in a large inventory of nuclear materials being caught in various stages of the production cycle (fabrication, irradiation, reprocessing, and isotope recovery). These materials include irradiated and unirradiated reactor fuel, targets, and components; solutions containing dissolved nuclear materials and recovered isotopes in stainless-steel tanks; and product and scrap forms of metals or oxides in containers (cans, drums, etc.) typically used for temporary storage or shipment off the Site.

Between November 1993 and November 1994, DOE completed two nationwide reviews of how nuclear materials are stored at the SRS and other sites: Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and Other Reactor Irradiated Nuclear Materials and Their Environment, Safety and Health Vulnerabilities, and Plutonium Working Group Report on Environment, Safety and Health Vulnerabilities Associated with the Department's Plutonium Storage. The reviews identified vulnerabilities with the continued storage of several nuclear materials at SRS: corroded spent fuel and targets stored in water-filled basins; tanks with thousands of gallons of acidic solutions containing plutonium, neptunium, americium and curium isotopes stored in the canyon facilities; and packages containing plutonium-bearing materials stored in vaults. The reviews defined vulnerabilities as conditions or weaknesses that might lead to radiation exposure to the public, unnecessary or increased exposure to workers, or release of radioactive materials to the environment.

The Defense Nuclear Facilities Safety Board (DNFSB) is an independent organization established by Congress to provide oversight of DOE. In May 1994, the DNFSB transmitted Recommendation 94–1 to the Secretary of Energy. In its recommendation, the Board observed that the halt in production of nuclear weapons had frozen the manufacturing pipeline in a state, that for safety reasons, should not be allowed to persist unremediated. The Board concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected. The Board expressed special concern about specific liquids and solids containing fissile materials and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture. On August 3, 1995, the Chairman of the DNFSB transmitted a staff report to the Assistant Secretary for Environmental Management identifying concerns with leaking containers of corroded spent fuel stored in the Receiving Basin for Offsite Fuel at SRS. The staff report from the Board expressed concerns with DOE having previously identified all of the nuclear materials in the basin as "stable" in the Draft EIS issued for public comment.

III. Categories of Nuclear Materials at the Savannah River Site

DOE used information from the two nationwide reviews on spent fuel and plutonium storage, an SRS site-wide review, and input from the DNFSB to categorize the nuclear materials at SRS as either Stable or Candidates for Stabilization. Stable materials have physical and chemical forms that, combined with their storage configurations, do not currently pose environmental, safety, or health concerns and are not likely to pose a concern over the next 10 years. Candidates for Stabilization are materials that exhibit or could be expected to exhibit over the next 10 years, health, safety or environmental vulnerabilities because of their physical condition, chemical composition, or the manner in which they are stored.

DOE categorized materials containing plutonium-242, neptunium-237 and various isotopes of americium and curium as Programmatic after consultation with national laboratories and other appropriate federal agencies, such as NASA. The bulk of these Programmatic nuclear materials are contained in acidic solutions stored in tanks in the canyon facilities and would otherwise be considered Candidates for Stabilization. Programmatic materials contain special isotopes that could be needed to support DOE programs. In their current forms these materials are not usable and may not be suitable for continued safe storage. DOE may use plutonium-242 in the nuclear weapons stockpile stewardship program. Americium-243 and curium-244 are considered national assets for potential support of research in nuclear medicine, nuclear chemistry, solid-state chemistry, and nuclear physics. The higher isotopes of curium (curium-244 through -248) are irreplaceable feedstocks for the production of californium-252, which is used as a neutron source for both military and industrial applications. DOE may use neptunium-237 in the future production of plutonium-238 to provide a power source for remote terrestrial and space applications. Future DOE decisions will determine if these Programmatic materials will actually be used. Table 1 lists the nuclear materials at SRS in each category.

IV. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for managing the nuclear materials: (a) Continued Storage (i.e., "No Action" within the context of NEPA), (b) Processing to Metal, (c) Processing to Oxide, (d) Blending Down to Low Enriched Uranium, (e) Processing and Storage for Vitrification, (f) Vitrification, and (g) Improving Storage. As shown in Table 2, DOE has evaluated the environmental impacts of managing the nuclear materials using one or more of these alternatives. The following is a brief description of each alternative.

A. Continuing Storage (No Action)

Under this alternative, DOE would continue to store materials in their current physical form. DOE would relocate, repackage, or re-can nuclear materials stored in vaults, tanks or basins to consolidate the material or to respond to an immediate safety problem. Periodic sampling, destructive and non-destructive examination, weighing, visual inspection and similar activities would continue in order to monitor the physical and chemical condition of the nuclear material. Chemicals would be added to existing solutions in order to maintain concentration and chemistry within established parameters. Repackaging would include removing materials from a damaged storage container and placing them in a new container or placing the damaged container in a larger container. Re-canning would primarily entail placing damaged or degraded fuel or targets in metal containers, sealing the containers, and keeping them in wet storage.

Many activities would be required by DOE irrespective of the management alternative used. For example, DOE would maintain facilities in good working condition and would continue to provide utilities (water, electricity, steam, compressed gas, etc.) and services (security, maintenance, fire protection, etc.) for each facility. Training activities would ensure that personnel maintain the skills necessary to operate the facilities and equipment. DOE would continue with ongoing projects to alleviate facility-related vulnerabilities associated with storage of the nuclear materials and projects to upgrade or replace aging equipment (ventilation fans, etc.).

As shown in Table 2, DOE designated Continuing Storage as the preferred alternative for managing all stable nuclear materials and metal targets containing isotopes of americium and curium. DOE also designated Continuing Storage as the preferred alternative for managing Mark-16 and Mark-22 fuels and other aluminum-clad targets until additional reviews on dry storage technologies, costs and schedules versus chemical processing techniques could be completed.

B. Processing to Metal

Under this alternative, DOE would convert plutonium nitrate solutions to plutonium metal using the FB-Line facility. After conversion, the metal would be packaged and stored in accordance with DOE's storage standard. A new glove box is being installed in FB-Line to provide the equipment necessary to meet the storage standard criteria for packaging of plutonium metal. The plutonium metal would be stored at SRS until programmatic decisions are made by DOE on long-term storage or disposition.

The plutonium would come from existing nitrate solutions in H-Canyon or would be generated as a result of dissolving and chemically processing plutonium-bearing material in the F-Canyon. Existing nitrate solutions in H-Canyon contain plutonium-239 and plutonium-242. Additional plutonium-239 solutions would be generated by dissolving and processing plutonium-bearing metals and oxides stored in SRS vaults, Mark-31 targets, canisters of failed Taiwan Research Reactor fuel, and a failed canister of de-clad Experimental Breeder Reactor-II metal slugs.

DOE would design or procure a container to transport the existing plutonium-239 and plutonium-242 solutions from H-Canyon to F-Canyon. Some degree of uncertainty exists on the ability to transfer these solutions from one canyon to the other. Minor modifications would be made to the canyon facilities to support loading and unloading of the solutions into the transport container.

As shown in Table 2, DOE designated Processing to Metal as the preferred alternative for stabilizing some of the plutonium and uranium vault materials, the Mark-31 targets, failed Taiwan Research Reactor fuel, and the failed canister of Experimental Breeder Reactor-II slugs.

C. Processing to Oxide

Under this alternative, DOE would convert plutonium to an oxide in HB-Line or FB-Line. The plutonium would come from existing nitrate solutions in H-Canyon or would be generated as a result of dissolving and chemically processing material in H-Canyon or F-Canyon. Existing nitrate solutions in H-Canyon contain plutonium-239 and plutonium-242 and would be converted to an oxide in HB-Line. Additional plutonium-239 nitrate solutions would be generated by dissolving and processing Mark-31 targets, canisters of failed Taiwan Research Reactor fuel, and a failed canister of de-clad slugs from the Experimental Breeder Reactor-II. FB-Line would require modification to convert the resulting plutonium-239 solutions to an oxide. Plutonium-239 solutions and a small quantity of plutonium-238 solution could also be generated by dissolving plutonium-bearing metals and oxides currently stored in SRS vaults. This material would be dissolved and processed in H-Canyon/HB-Line and converted to an oxide in HB-Line. After conversion, the plutonium oxide would be packaged and stored in accordance with the DOE Criteria for Safe Storage of Plutonium Metals and Oxides (DOE–STD–3013–94). Modifications would be made to the FB-Line facility to provide the equipment necessary to heat and package the oxide in accordance with the DOE storage standard or a new Actinide Packaging and Storage Facility would be constructed.

DOE would convert neptunium-237 solutions to an oxide in HB-Line. The neptunium would come from existing solutions in H-Canyon and from dissolving and processing the obsolete reactor targets containing neptunium in H-Canyon. Additionally, if one of the alternatives involving dissolution and chemical separation (Processing to Oxide or Blending Down to Low Enriched Uranium) were implemented for stabilization of irradiated SRS reactor fuels (Mark-16 and Mark-22), neptunium would be recovered. After

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conversion of the neptunium solutions to an oxide, the oxide would be packaged and stored in the Actinide Packaging and Storage Facility.

DOE would convert the americium and curium solutions in F-Canyon to an oxide. DOE would modify an existing portion of F-Canyon to provide the necessary equipment. After conversion, the americium and curium oxide would be packaged and stored in an existing vault or the new Actinide Packaging and Storage Facility. DOE could also transport the obsolete targets and slugs containing americium and curium isotopes to F-Canyon, dissolve them and convert the resulting solutions in a similar manner.

DOE would convert highly enriched uranium solutions to highly enriched uranium oxide. To provide conversion capability, DOE would complete the partially constructed Uranium Solidification Facility (USF) in H-Canyon. DOE would also dissolve Mark-16 and Mark-22 fuels containing highly enriched uranium in H-Canyon and convert the resulting solutions to an oxide in the same manner. The highly enriched uranium oxide would be packaged and stored in a vault in USF until DOE makes long-term management and disposition decisions.

As shown in Table 2, DOE designated Processing to Oxide as the preferred alternative in the Final EIS for stabilizing plutonium-242 solutions, neptunium-237 solutions and targets, plutonium-239 solutions, and some of the plutonium and uranium vault materials.

D. Blending Down to Low Enriched Uranium

This alternative is only relevant to materials containing highly enriched uranium. Existing solutions of highly enriched uranium stored in H-Area would be blended with existing depleted uranium at SRS. DOE would modify the canyon facilities to support loading and unloading of tanks used for transport and install a spare oxide dissolver in FA-Line. The highly enriched and depleted uranium would be blended to produce a low enriched uranium solution.

Mark-16 and Mark-22 fuels containing highly enriched uranium would be transported to either H-Canyon or F-Canyon by rail casks, dissolved in nitric acid, and the highly enriched uranium separated from fission products and other materials. The highly enriched uranium solutions would be blended with natural or depleted uranium to produce low enriched uranium solutions. The low enriched uranium solutions would be converted to an oxide using FA-Line. The oxide would be stored in drums in existing facilities or in a new warehouse constructed at SRS.

Dependent upon the timing of future DOE decisions, the highly enriched uranium solutions and the uranium recovered from the dissolution of Mark-16 and Mark-22 fuels could also be dispositioned in conjunction with other highly enriched uranium (by commercial sale, etc.).

As shown in Table-2, DOE designated Blending Down to Low Enriched Uranium as the preferred alternative for stabilizing highly enriched uranium solutions.

E. Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF)

DOE would perform research and development work to develop a method for chemically adjusting existing solutions in the canyons in order to transfer them to the high level waste tanks in F- or H-Area. The research and development work would be to ensure nuclear criticality safety due to the large amounts of plutonium-239 and uranium-235 contained in the existing solutions and to evaluate the effects on the systems and facilities used to store and treat the liquid high level waste. Upon completion of the studies, existing solutions containing plutonium-239, plutonium-242, highly enriched uranium, neptunium-237, and americium and curium isotopes would be chemically adjusted and transferred to the high level waste tanks via underground pipelines.

Plutonium-bearing vault materials would be dissolved in either a canyon or B-Line dependent upon the amount of material and the chemical composition. The degraded reactor components (fuel and targets) stored in water-filled basins would be transported by rail casks to F- or H-Canyon and dissolved in nitric acid. The resulting solutions from dissolution of the vault materials and reactor components would be chemically adjusted and transferred to the high level waste tanks along with existing canyon solutions. The solutions would be mixed with the existing volume of high level waste stored in the F- and H-Area tanks. The bulk of the radioactivity in the solutions would eventually be immobilized in borosilicate glass by the Defense Waste Processing Facility (DWPF). The glass would be contained within stainless steel canisters that would be stored in an adjacent facility to the DWPF awaiting geological disposal by DOE. The bulk of the liquid would be immobilized by the Saltstone facility into a grout containing very low levels of radioactivity. The grout would be poured into concrete vaults located at the Saltstone facility.

As shown in Table-2, Processing and Storage for Vitrification in DWPF was not designated by DOE as a preferred alternative for any of the materials.

F. Vitrification (in F-Canyon)

This alternative would involve modifying existing space in the F-Canyon, providing equipment to vitrify radioactive solutions using a process similar to that developed for the DWPF. The equipment would be much smaller in scale to that of the DWPF and the stainless-steel canisters of glass produced would contain much higher concentrations of actinides, including fissile isotopes. After completing the modifications, DOE would vitrify existing solutions of plutonium-242, plutonium-239, neptunium-237, and americium and curium isotopes. The solutions stored in H-Canyon would be transported to F-Canyon for vitrification upon development (or procurement) of a suitable shipping container and upon completion of modifications to the canyon facilities for loading and unloading.

Plutonium-bearing vault materials would be dissolved in either a canyon or a B-Line and vitrified in the same manner. Similarly, degraded reactor components (Mark-31 targets, canisters of failed TRR fuel and the failed canister of EBR-II slugs) would be transported by rail cask to F-Canyon, dissolved in nitric acid, and the plutonium vitrified. The depleted or natural uranium contained in the reactor components would be chemically separated and stored in tanks or used for blending with highly enriched uranium (see description of Blending Down to Low Enriched Uranium).

The obsolete reactor targets and slugs containing neptunium, americium and curium would be transported to F-Canyon, dissolved in nitric acid, and the programmatic isotopes chemically separated from fission products and other materials. The resulting neptunium, americium and curium solutions would be vitrified in conjunction with the existing solutions containing those same isotopes.

Neptunium separated from Mark-16 and Mark-22 fuels processing in F-Canyon for blending down to low enriched uranium would be vitrified in conjunction with the existing neptunium solutions.

As shown in Table-2, DOE designated Vitrification in F-Canyon as the preferred alternative for stabilizing americium and curium solutions and some of the plutonium and uranium vault materials.

G. Improving Storage

This alternative would be applicable to plutonium-bearing materials stored in vaults and degraded reactor components stored in water-filled basins. Based on earlier DOE decisions to stabilize plutonium solutions stored in F-Canyon (see background), DOE is modifying the FB-Line facility by installing a glove box to enable handling and packaging of plutonium without the use of plastic and other organic materials (rubber, elastomeric seals, etc.). The existing plutonium metal stored in vaults would be repackaged in FB-Line to meet the DOE storage standard. DOE would provide the capability to heat, repackage, and store plutonium oxide by modifying an existing facility (FB-Line or Building-235) or by building a new Actinide Packaging and Storage Facility in F-Area. The plutonium-bearing vault materials would be repackaged to meet the DOE storage standard and would be stored at SRS until DOE makes long-term storage or disposition decisions.

For degraded reactor components (Mark-31 targets, Mark-16 and -22 fuels, other aluminum-clad targets, failed TRR fuel, and the failed canister of EBR-II metal slugs), DOE would remove the materials from the basins and place them in dry storage. Because of technical uncertainties (e.g., potentially pyrophoric hydrides of uranium, elimination of potential reactive material) associated with the dry storage of failed fuel and targets, DOE would perform additional research to demonstrate concepts for drying and placing the materials into canisters for storage. Work related to the dry storage of low enriched uranium and commercial spent nuclear fuel has already been done in the United States and other countries. This work has not focused on aluminum-clad highly enriched uranium fuels. In conjunction with this work, DOE would design and construct a Dry Storage Facility at SRS.

A typical dry storage facility would be a Modular Dry Storage Vault. This facility would consist of four major components: a receiving/unloading area, fuel storage canisters, a shielded container handling machine, and a modular vault for storing the fuel in storage canisters. As a variation, canisters could be stored in dry storage casks rather than a vault. The degraded fuel and target materials would be removed from the basins and dried; canned or placed directly in canisters; the cans or canisters would be filled with an inert gas to inhibit further corrosion; and if cans were used, loaded into storage canisters. This process could be varied as dictated by the condition of the material. After the targets were loaded in a canister, a machine would transport the canister to the modular storage vault. The vault would consist of a large concrete structure with an array of vertical tubes to hold the canisters. The canister transport machine would move into the vault and load the canister into a storage tube. A shielded plug would be placed on top of the tube. The transport machine and the vault storage tubes would be heavily shielded to reduce radiation levels from the canister. To use dry storage casks, the machine would transport the canister to a cask (horizontal or vertical) and discharge the canister into the cask, and then the cask would be sealed.

DOE evaluated the potential environmental impacts associated with two variations for implementing this alternative. The first involved the use of a traditional project schedule for design and construction of the facility, estimated to take about ten years. The second was an accelerated schedule for design and construction, estimated to take about five years. Until the Dry Storage Facility was completed, DOE would store the materials in existing basins, as described under Continued Storage (No Action).

As shown in Table-2, DOE designated Improving Storage as the preferred alternative for stabilizing some of the plutonium and uranium vault materials.

V. Environmental Impacts of Alternatives

The Final EIS for Interim Management of Nuclear Materials evaluated alternative stabilization methods for each category of nuclear materials at the Savannah River Site, as shown in Table 2. DOE analyzed the potential environmental impacts that would result from implementation of the alternatives and believes there would be little or no impact from implementation of any of the alternatives for any material group in the areas of geologic resources, ecological resources (including threatened or endangered species), cultural resources, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the Savannah River Site. DOE anticipates that the existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives. As a result, DOE expects negligible socioeconomic impacts from implementation of any of the alternatives.

Management alternatives requiring the use of the large chemical separations facilities (the canyons and B-Lines) would have greater environmental impacts during the time dissolving, processing or conversion activities are underway than when these facilities are storing nuclear materials. After materials have been stabilized, impacts of normal facility operations related to management of those materials would decline, and potential impacts of accidents associated with those materials would be reduced with certain kinds of accidents eliminated. Potential health effects from normal operations from any of the alternatives, including those involving the operation of the canyon facilities, would be low and well within regulatory limits. Alternatives requiring the use of the canyons are: Processing to Metal, Processing to Oxide, Blending Down to Low Enriched Uranium, Processing and Storage for Vitrification in the DWPF, and Vitrification (F-Canyon).

Improving Storage alternatives generally have lower impacts in the near term because they involve only heating, drying and repackaging the nuclear materials. These alternatives also potentially involve the use of new facilities, such as an Actinide Packaging and Storage Facility and a Dry Storage Facility. The newer facilities would incorporate improved designs for remote handling, shielding, containment, air filtration, etc.; these improvements could reduce worker exposures and releases to the environment below levels associated with existing storage basins and vaults.

Annual impacts from normal operations and potential accidents associated with material storage would be reduced after material stabilization alternatives are implemented. Stabilization alternatives requiring longer periods of time to complete are estimated to have relatively higher impacts from normal operation and potential accidents than alternatives requiring less time to complete.

Continuing Storage (or "No Action") alternatives are estimated to result in relatively low annual environmental impacts, but the impacts would continue for an indefinite period of time. Stabilization alternatives typically are estimated to result in slightly higher annual environmental impacts than "No Action" in the near-term, but upon completion of the stabilization action, result in lower annual impacts. Under Continuing Storage alternatives, no actions would be taken to chemically or

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physically stabilize the storage conditions and reduce the potential for accidents. All of the stabilization alternatives, upon completion of the actions required, are estimated to reduce the potential for accidents and the associated consequences. Several of the stabilization alternatives would involve a short-term increase in the risks from accidents until the required actions are completed.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents for any of the alternatives would be within applicable federal standards and existing regulatory permits for the SRS facilities. Similarly, high level liquid waste, transuranic waste, mixed hazardous waste and low level solid waste generated by implementation of any of the alternatives would be handled by existing waste management facilities. All of the waste types and volumes are within the capability of the existing SRS waste management facilities for storage, treatment or disposal.

SRS facilities that will be used to stabilize and store the nuclear materials incorporate engineered features to limit the potential impacts of facility operations to workers, the public and the environment. All of the engineered systems and administrative controls are subject to DOE Order requirements to ensure safe operation of the facilities. No other mitigation measures have been identified; therefore DOE need not prepare a Mitigation Action Plan.

VI. Other Factors

In addition to comparing the environmental impacts of implementing the various alternatives, DOE considered other factors in reaching the decisions announced here. These other factors included issues addressed by the National Academy of Sciences in the 1994 report, Management and Disposition of Excess Weapons Plutonium; the Office of Technology Assessment's 1993 report, Dismantling the Bomb and Managing the Nuclear Materials; comments received during the scoping period for the EIS on the Interim Management of Nuclear Materials, and comments received on the Draft and Final EIS's. The other factors considered are briefly summarized in the following paragraphs.

Implementation of certain alternatives would require construction and operation of new facilities. The new facilities described in the EIS are: (1) F-Canyon Vitrification Facility (for the Vitrification (F-Canyon) Alternative), (2) a Dry Storage Facility (for the Improving Storage Alternative for degraded reactor fuel and targets currently stored in basins), (3) a Uranium Solidification Facility (for the Processing to Oxide Alternative for highly enriched uranium solutions in H-Area and the Mark-16 and -22 fuel stored in basins), (4) an Actinide Packaging and Storage Facility (for the Processing to Metal and Processing to Oxide Alternatives for plutonium-bearing materials, for the Improving Storage Alternative for plutonium-bearing vault materials, for the Processing to Oxide Alternative for neptunium-237 materials, and for the Vitrification (F-Canyon) Alternative for materials containing plutonium and neptunium). Implementation of some alternatives would require minor modifications of existing facilities, as described in the EIS. Examples include minor modifications to the F-Canyon and H-Canyon facilities to provide the capability to load and unload radioactive solutions into containers for transport between facilities and installation of a spare dissolver in the FA-Line facility.

Preventing the spread of nuclear weapons has been a fundamental national security and foreign policy goal of the United States since 1945. The current U.S. policy is summarized in the White House Fact Sheet on Nonproliferation and Export Control Policy, dated September 27, 1993. This policy makes it clear that the United States does not encourage the civil use of plutonium and, accordingly, does not itself engage in plutonium reprocessing (that is, separation of plutonium from spent nuclear fuel) for either nuclear power or nuclear explosives purposes. In addition, it is U.S. policy to seek to eliminate where possible the accumulation of stockpiles of highly enriched uranium and plutonium. The stabilization alternatives vary in regard to the attractiveness of the stabilized plutonium or highly enriched uranium for use in nuclear weapons (either by the U.S. or an adversary). None of the alternatives would denature or eliminate the plutonium from the current inventory; it would still exist in some form. Of the alternatives for stabilization of highly enriched uranium, only Processing and Storage for Vitrification in the Defense Waste Processing Facility and Blending Down to Low Enriched Uranium would reduce the inventory of highly enriched uranium. Because of the potential concern regarding any processing and consolidating plutonium or highly enriched uranium from the SRS inventory, the Secretary of Energy has committed that any separated or stabilized plutonium-239 and highly enriched uranium would be prohibited from use for nuclear explosive purposes. This prohibition would apply to plutonium-239 and highly enriched uranium stabilized through actions implemented by this Record of Decision.

In the EIS on the Interim Management of Nuclear Materials, DOE examined the potential impacts associated with an integrated implementation schedule for management of nuclear materials. DOE examined several combinations of alternatives, or management scenarios, including continued storage of all the materials (No Action), stabilization using the preferred alternatives for each material, and alternatives requiring a minimum of chemical processing. DOE expects that it will take at least 6 to 7 years to stabilize all of the nuclear materials at SRS under any scenario due to the resources (primarily trained personnel) required and the time required to make facility modifications or construct new facilities. DOE has developed an optimum schedule of proposed actions in response to DNFSB Recommendation 94–1. DOE will revise and update the schedule as stabilization actions proceed and as future budget considerations dictate.

DOE considered technology availability and technical feasibility in reaching decisions on management alternatives. DOE considered the extent to which technology development would be required and the likelihood of success of such endeavors. All of the alternatives are technically feasible. In general, however, the more alternatives vary from the historical processes and facilities used at SRS, the greater the technical uncertainty and extent to which new facilities or modifications to existing facilities would have to be made.

DOE evaluated labor availability and the existence of core competency at the SRS in reaching decisions on management alternatives. DOE expects to use the existing workforce at SRS to implement the management alternatives selected. There would be differences between the level of personnel knowledge and training required for each alternative. In general, as an alternative varies from historical processes and facilities used at the SRS for material management, additional training of personnel may be required. The more unique or extensive the differences from past facility operations, the more training may be required.

In reaching decisions on management alternatives, DOE considered the fact that many SRS facilities are 30 to 40 years old and do not meet all current DOE requirements for the design and construction of new nuclear facilities. DOE and the DNFSB have conducted many reviews to evaluate facility vulnerabilities and assess facility compliance with current requirements. One vulnerability common to many older facilities is that the facility could sustain structural damage in the event of a severe earthquake. Rather than initiate extremely expensive modifications, DOE has chosen to mitigate the potential consequences of a severe earthquake by using engineering safeguards, such as structurally reinforcing tanks, and administrative controls, such as limiting the amount of radioactive material that can be stored in a facility. Ultimately, removal of nuclear materials from vulnerable facilities would reduce the risks. All of the alternatives except Continued Storage (No Action) would support DOE's objective of removing nuclear materials from vulnerable facilities in preparation for decontamination and decommissioning.

Some level of custodial care will be required for the nuclear materials as long as they are stored at the SRS, and DOE considered minimizing the level of custodial care in reaching management decisions. Radioactive solutions require the greatest amount of custodial care to ensure safe storage, and radioactive materials in a glass matrix (i.e., vitrified) are expected to require the least. Many alternatives would produce concentrated oxide or metal forms that would be packaged and stored in compliance with new DOE standards for storage of nuclear materials. Compliance with the storage criteria will reduce the need to handle and repackage the material and is intended to minimize the future level of custodial care required.

In reaching decisions on management alternatives, an important consideration for DOE was cost. DOE evaluated the costs of implementing the various management alternatives for each type of material on both an individual basis and collectively, as part of an integrated stabilization program. DOE estimates it will cost approximately $3 billion to operate and staff the facilities used to stabilize and store the SRS nuclear materials over the next 10 years. A large fraction of this cost (approximately $2.8 billion) would be required for continued storage of the nuclear materials even if DOE implemented no stabilization alternatives (i.e., No Action). DOE expects annual costs of operating and maintaining the facilities to decrease as nuclear materials are removed, stabilized and consolidated for interim management. DOE expects further reductions in costs as, and if, facilities are deactivated.

VII. Environmentally Preferable Alternatives

As described in the Final EIS for Interim Management of Nuclear Materials, certain management alternatives are expected to result in lower environmental impacts than others. However, a single alternative was rarely estimated to have lower impacts for all environmental factors evaluated by DOE. For example, an alternative might be expected to result in lower releases of hazardous pollutants to air or water than the other alternatives, but might generate slightly higher amounts of radioactive waste. DOE reviewed the environmental impacts estimated for the alternatives evaluated for each type of nuclear material and identified the following as the environmentally preferable for each. The health effects from any of the alternatives are all low and well within regulatory limits. Included below is a qualitative description of how the identified environmentally preferable alternative compared with the other stabilization alternatives for the environmental factors that generally are of most interest.

Plutonium-242—Processing and Storage for Vitrification (DWPF)

Processing and Storage for Vitrification in DWPF is the environmentally preferable alternative for stabilizing the plutonium-242 solutions stored in H-Canyon. Processing and storage for vitrification in DWPF is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; result in air and water emissions of hazardous pollutants comparable to the other alternatives; and result in the least amount of transuranic and mixed waste generated among the alternatives with comparable amounts of high level and low level waste.

Americium and Curium—Processing and Storage for Vitrification (DWPF)

Processing and storage for vitrification in the DWPF is the environmentally preferable alternative for stabilizing solutions and metal targets and slugs containing americium and curium isotopes. Of the stabilization alternatives, processing and storage for vitrification in DWPF is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; have the lowest level of hazardous pollutant emissions to the air with comparable levels of liquid effluent emissions; and result in the least amount of high level, transuranic and mixed waste with comparable amounts of low level waste.

Neptunium-237—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing solutions and targets containing neptunium. Although vitrification in F-Canyon is estimated to result in slightly higher radiological doses to the SRS workers, it is estimated to result in the lowest radiological doses to the offsite public. Similarly, although it could result in higher airborne emissions of hazardous pollutants, the levels of liquid effluent emissions would be comparable to the other alternatives. Vitrification (F-Canyon) would generate the least amount of high level, transuranic and mixed waste, and would generate comparable amounts of low level waste to the other alternatives.

Plutonium-239 Solutions—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing the plutonium-239 solutions stored in H-Canyon. Of the stabilization alternatives, Vitrification in F-Canyon is estimated to result in the lowest radiological doses to the offsite public and SRS workers; result in comparable levels of hazardous pollutant emissions to the air and water; and result in the least amount of transuranic, mixed, and low level waste with comparable amounts of high level waste.

Highly Enriched Uranium Solutions—Processing to Oxide

Processing to Oxide is the environmentally preferable alternative for stabilizing highly enriched uranium solutions stored in H-Area facilities. Although it is estimated to result in slightly higher radiological doses to the offsite public and SRS workers, the Processing to Oxide alternative has comparable levels of air and water emissions to the other alternatives and would generate the least amount of high level, transuranic, mixed and low level waste.

Plutonium and Uranium Vault Materials—Improving Storage

Improving Storage in the environmentally preferable alternative for stabilizing plutonium and uranium vault materials. Although it is estimated to result in higher radiological doses to the offsite public and SRS workers, the Improving Storage alternative has comparable levels of air and water emissions to the other alternatives and

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would generate the least amount of high level and mixed waste, with comparable amounts of transuranic and low level waste.

Mark-31 Targets—Improving Storage (Accelerated Schedule)

Improving Storage on an accelerated schedule is the environmentally preferable alternative for stabilizing the Mark-31 targets. Improving storage is estimated to result in lower radiological doses to the offsite public with doses to the SRS workers comparable to other alternatives; have the lowest estimates of air and water emissions; and result in the generation of the least amount of high level and transuranic waste with comparable levels of mixed and low level waste. However, improving storage will not reverse or arrest the corrosion of these targets and the release of fission products and radionuclides to the basin water for the several years prior to the construction and operation of the improved storage capability.

Failed TRR Fuel and EBR–II Slugs—

Improving Storage (Accelerated Schedule) Improving Storage on an accelerated schedule is the environmentally preferable alternative for stabilizing failed TRR fuel and EBR–II slugs stored in canisters in the Receiving Basin for Offsite Fuels. Improving Storage is estimated to result in the lowest radiological doses to the offsite public with doses to the SRS workers comparable to other alternatives; have the lowest estimates of air and water emissions; and, result in the generation of the least amount of high level, transuranic, mixed, and low level waste. However, as with the Mark-31 targets, improving storage will not reverse or arrest the corrosion of the fuel or slugs and the release of fission products and radionuclides to the basin water for the several years prior to the construction and operation of the improved storage capability.

VIII. Decision

After completion of the Final EIS, DOE received several letters from stakeholders on issues related to the interim management of nuclear materials at the SRS. Letters were received from the following individuals and organizations: DNFSB, U.S. Senator Strom Thurmond, U.S. Representative Charlie Norwood, U.S. Representative Lindsey Graham, U.S. Representative Edward J. Markey, U.S. Representative Frank Pallone, Jr., the Energy Research Foundation (ERF), the Natural Resources Defense Council (NRDC), and Governor David M. Beasley of South Carolina. Two principal issues were raised in the letters: (1) the method to be used for the interim- to long-term management of spent nuclear fuel, and (2) the operational status of the F- and H-Canyon processing facilities. The DNFSB, Congressional, and Governor Beasley letters recommended that DOE stabilize the Mark-16 and Mark-22 fuels through chemical treatment (processing), and that both the F- and H-Canyon facilities be maintained in support of DOE missions and tasks. The ERF/NRDC joint letter urged the Department to thoroughly consider alternatives, to include the development of new methods, for the management of spent nuclear fuel, and to consider carefully all factors, particularly safety, environmental, nonproliferation, and budgetary issues, in making its materials management and facility utilization decisions. Congressmen Markey and Pallone's joint letter urged the Department to pursue the closing of the H-Canyon at the earliest possible date on the understanding that substantial savings to taxpayers could be achieved. After careful consideration of the issues identified in these letters (addressed below), along with the analyses of environmental impacts and other factors identified in the Final EIS, DOE has made the following decisions for the interim management of the nuclear materials at the Savannah River Site:

Stable Material—Continuing Storage

DOE will continue storage of the stable materials in their existing physical and chemical forms. Programs and projects to consolidate material storage in order to reduce surveillance and maintenance costs to DOE will continue.

Plutonium-242—Processing to Oxide

DOE has decided to process the existing plutonium-242 solutions stored in H-Canyon to a purified oxide in HB-Line. The plutonium-242 oxide will be packaged and stored at the SRS. Processing to Oxide was selected for many reasons. First, the facilities and equipment to implement the alternative already exist, with HB-Line specifically designed for converting purified plutonium nitrate solutions to an oxide. The portions of the HB-Line facility required to convert the solutions to an oxide are already fully staffed and operational, nearing completion of plutonium-238 work in support of NASA. Although DOE could transfer the solutions to the adjacent high level waste tanks in H-Area along with other liquid high level waste for processing, storage and eventual vitrification in DWPF (the environmentally preferable alternative), the concentration of plutonium-242 would be significantly diluted due to the existing volume of liquids contained in the high level waste tanks (approximately 1 million gallons in each tank). The dilution and mixing of the plutonium-242 with cesium, strontium and other long-lived fission products contained in the high level waste tanks would effectively render any future recovery or use of the material impractical due to cost and technical complexity. In order not to preclude its recovery while the future use of plutonium-242 is being decided, DOE considers it prudent to stabilize the material to a concentrated oxide form, thereby preserving its availability for potential use. In evaluating the alternatives, DOE determined Processing to Oxide could be implemented sooner than the other alternatives, thus eliminating the need to further extend storage of the solutions. Although Processing to Oxide is not the environmentally preferable alternative, it is estimated to result in a similar level of impacts. Processing to Oxide is estimated to have slightly higher radiological doses to the public and worker populations, but result in the least amount of high level waste for the stabilization alternatives.

Americium and Curium—Vitrification (F-Canyon)—Solutions; Continued Storage (No Action)—Metal Targets and Slugs

DOE has decided to process the existing solutions containing americium and curium isotopes in F-Canyon to a glass contained within small stainless steel canisters. DOE will modify an existing portion of F-Canyon (previously called the Multi-Purpose Processing Facility) to install the necessary vitrification equipment. The glass canisters will be stored at the SRS until DOE makes programmatic decisions on the use of the americium and curium. DOE has also decided to continue wet storage of the reactor targets and slugs until such programmatic decisions are made.

DOE selected vitrification in F-Canyon for several reasons. First, no capability currently exists in either F-Canyon or its associated facilities (FA-Line or FB-Line) to convert the americium and curium solutions to a solid physical form suitable for continued safe storage. DOE could transfer the solutions via underground pipelines to the adjacent high level waste tanks in F-Area. The solutions, however, would have to remain stored in the high level waste tanks until they could be vitrified into glass by the DWPF (the environmentally preferable alternative). Vitrification of the solutions by DWPF would not occur within the next 10 years due to the large existing inventory (34 million gallons) of high level waste which must be vitrified in DWPF. Transfer of the solutions to the high level waste tanks would result in significant dilution of the concentration of the americium and curium isotopes due to the large volume of the tanks (approximately 1 million gallons). The americium and curium isotopes would also be mixed with long-lived fission products such as cesium and strontium if transferred to the high level waste tanks. The vitrified glass form produced in DWPF would contain very dilute quantities of americium and curium combined with highly radioactive fission products. This would render use of the americium and curium isotopes impractical due to the technical complexity and cost of future recovery.

To maintain the americium and curium in a concentrated physical form, thus preserving their potential future use, DOE evaluated alternatives for converting the solutions to either an oxide or glass. Either form could support future use of the material, if required. The conversion process associated with the two alternatives would require a similar level of modifications and new equipment to be installed in F-Canyon. However, DOE found that the glass form offers significant advantages over the oxide form for future storage and handling. The glass matrix produced by the vitrification process provides some "self-shielding" compared to oxide. This reduces the radiation levels associated with the glass form, thereby reducing exposure to workers. The glass matrix is also a much less dispersible form of radioactive material compared to the oxide in the event of a severe facility-related accident, such as a major fire. Americium and curium isotopes do not pose a nonproliferation concern, irrespective of their physical form. Existing personnel at SRS will be used to operate the facilities and equipment required, and the level of additional training required would be similar whether DOE selected conversion to oxide or glass.

DOE has decided to maintain storage of the metal targets and slugs containing significant quantities of americium and curium isotopes in the existing storage basins at SRS primarily because there is not an immediate need for the isotopes. The targets are stored in the Receiving Basin for Offsite Fuel (RBOF). The RBOF facility has excellent water chemistry and the targets are in good physical condition, capable of being safely stored over the next 10 years. The metal slugs represent a very small amount of nuclear material whose continued storage can be accommodated by relocation to either the RBOF facility or the K-Reactor disassembly basin. DOE has made physical upgrades to the K-Reactor disassembly basin to provide storage conditions comparable to those in RBOF. By maintaining the targets and slugs in storage at the SRS, DOE can preserve the option of recovering, if needed, the americium and curium isotopes at a later date for programmatic use. The targets and slugs contain varying amounts and isotopes of americium and curium. It would not necessarily be advantageous for DOE to process and recover all of the americium and curium isotopes into a single physical form for continued storage, because such an operation would result in the mixing of many isotopes, increasing the technical complexity of their future separation and recovery or making it impractical.

Neptunium-237—Vitrification (F-Canyon) or Processing to Oxide

DOE has narrowed its alternatives under consideration for the stabilization of the neptunium-237 materials (neptunium contained in the H-Canyon solutions and nine (9) obsolete reactor targets) into either one of two physical forms: (1) a glass matrix using the same modified portion of F-Canyon used to vitrify the americium and curium solutions (the environmentally preferable alternative), or (2) a purified oxide using the HB-Line facility. Only one of these stabilization methods will be used. Both the vitrified glass and oxide forms can be stored safely pending DOE's decision on use or disposition. To implement the vitrification alternative, DOE would move the neptunium solutions from H-Area to F-Area using a special truck container designed for transport of highly radioactive solutions. The nine (9) obsolete reactor targets containing neptunium would be transported to F-Canyon in shielded casks, dissolved and the neptunium chemically separated from radioactive decay products and other impurities. The resulting purified neptunium solution would be vitrified in F-Canyon. SRS would store the canisters of neptunium glass until programmatic decisions on neptunium's use are made by DOE. To implement the Processing to Oxide alternative, DOE would start up and operate the Phase II portion of the HB-Line facility and would dissolve and process the obsolete reactor targets in H-Canyon.

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities.

The final form of the neptunium depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in the facility utilization strategy report. The study principally considers what effect the consolidation of two primary processing areas to one would have on the ability to stabilize nuclear materials at the SRS. Budgetary pressures and safety requirements as well as preserving capability for future missions necessitates a thorough examination of the options for these facilities. The report is available to the public. A subsequent Record of Decision will be issued when DOE's review of the utilization strategy, the EIS, and the other relevant factors is complete.

Highly Enriched Uranium Solutions—Blending Down to Low Enriched Uranium

DOE has selected Blending Down to Low Enriched Uranium for stabilization of highly enriched uranium (HEU) solutions. These include existing HEU solutions stored in H-Area facilities and any HEU solutions produced in conjunction with the stabilization of other materials (e.g., plutonium and uranium vault materials). DOE will modify portions of the F- and H-Canyon facilities to provide the capability to load and unload containers for the transport of depleted, natural or low enriched uranium solutions. DOE will dissolve depleted uranium oxide in FA-Line. DOE will transport depleted uranium solutions to H-Area for blending with the highly enriched uranium solutions. The resulting low enriched uranium solutions will be transported back to F-Area and converted to an oxide in FA-Line. The low enriched uranium oxide will be stored at SRS until disposition decisions can be implemented.

DOE selected this stabilization alternative for several reasons. Blending down the highly enriched uranium will reduce DOE's inventory of this weapons-useable fissile material. This alternative can be implemented expeditiously at relatively low cost. Processing the solutions to a highly enriched uranium oxide (the environmentally preferable alternative) would require the completion and startup of the Uranium Solidification Facility. Processing for storage and vitrification in the DWPF would extend

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the period of HEU solution storage with its attendant vulnerabilities while mechanisms are developed to assure the safe transfer and stabilization of this fissile material through the affected facilities.

Plutonium and Uranium Stored in Vaults—Improving Storage, Processing to Metal, Processing to Oxide, and Vitrification (F-Canyon)

DOE has decided to use a variety of alternatives to stabilize plutonium and uranium materials stored in vaults at SRS. DOE is installing a glove box in FB-Line (based upon previous decisions to stabilize F-Canyon plutonium solutions—see "Background") to provide the capability to handle and package plutonium metal without the use of plastic and other organic materials (rubber, plastomeric seals, etc.). This will provide SRS the capability to package (or repackage) plutonium metal in accordance with the DOE storage standard. Upon completion of the FB-Line modifications, DOE will repackage plutonium metal stored at SRS in accordance with the storage standard. This implements the environmentally preferable alternative for the candidate plutonium metals.

DOE will dissolve some of the existing vault materials that are Candidates for Stabilization in FB-Line and F-Canyon, and H-Canyon and HB-Line, chemically separate the plutonium from impurities that contribute to the stability concerns and radioactive decay products, and process the plutonium to a metal in FB-Line and an oxide in HB-Line. After vitrification of the americium and curium solutions in F-Canyon (see above) and subject to successful analytical laboratory work, timing and facility availability, and future decisions on plutonium disposition, DOE may stabilize some of the plutonium-bearing vault materials by vitrification in F-Canyon. DOE will dissolve vault materials containing scrap amounts of plutonium-238 that require chemical stabilization in HB-Line, chemically separate the plutonium-238 from impurities that contribute to the stability concerns and radioactive decay products, and convert the plutonium-238 to an oxide in HB-Line. The plutonium-238 oxide will be stored in an existing SRS vault.

DOE has decided to construct an Actinide Packaging and Storage Facility to provide the capability for handling, heating and packaging of plutonium oxide and metal in accordance with the storage standard (the environmentally preferable alternative) and to provide space necessary to consolidate storage of plutonium and special actinides at the SRS. DOE will incorporate requirements of the IAEA into the design and construction of the facility to provide the latitude for future international safeguards inspections. DOE is also pursuing declassification of information related to the amount of plutonium resulting from stabilization actions at the SRS that will be stored in the new packaging and storage facility.

The plutonium oxide and existing SRS vault materials that do not require chemical processing for stabilization, will be heated and repackaged in the Actinide Packaging and Storage Facility to meet criteria in the DOE storage standard. The amount of vault materials stabilized using each of the methods will be dependent upon: (a) the physical condition and chemical composition of the material (which DOE will determine upon opening each of the containers or packages inside a glove box in either FB-Line or HB-Line) and, (b) the availability of the required facilities. The plutonium will be stored at SRS until DOE can implement long-term storage or disposition decisions. Uranium recovered from the chemical stabilization of any vault materials will be blended down to low enriched uranium and the solutions will be stored or converted to an oxide, as described under the stabilization of highly enriched uranium solutions.

As previously discussed, the Improving Storage alternative is the environmentally preferable alternative. The environmental impacts associated with the other alternatives selected for stabilization of vault materials which require chemical processing (i.e., Processing to Metal, Processing to Oxide, and Vitrification in F-Canyon) all involve slightly higher but similar levels of impacts.

As explained in the Final EIS, some of the containers stored in vaults at SRS have internal packaging configurations which are unknown and the exact chemical composition of the material inside the containers may also be unknown, with the exception of its content of special nuclear materials. Because of the unknown content of some of the vault containers, and in light of pending DOE decisions on long-term management or disposition of surplus materials, several stakeholder groups have raised concerns regarding DOE's current and future compliance with the Resource Conservation and Recovery Act (RCRA). DOE has provided existing information on the vault materials and other materials stored at SRS to the applicable regulatory agency for RCRA at SRS, the South Carolina Department of Health and Environmental Control (SCDHEC). DOE is continuing the dialog with SCDHEC on the applicability of RCRA to any of the nuclear materials that will be stabilized as a result of this Record of Decision and will take appropriate management actions, as necessary to ensure compliance with RCRA.

Mark–31 Targets—Processing to Metal

DOE has selected Processing to Metal for stabilization of the Mark–31 targets stored in the F-Canyon basin, reactor disassembly basins and the Receiving Basin for Offsite Fuels (RBOF). DOE will dissolve the Mark–31 targets in F-Canyon and chemically separate the plutonium and depleted uranium from fission products and other materials. The plutonium solutions will be processed to metal in FB-Line. After modification of the FB-Line (see vault materials above), the metal will be packaged to meet the DOE storage standard. The plutonium metal will remain at SRS until DOE can implement long-term storage or disposition decisions on weapons usable forms of plutonium. The depleted uranium solutions recovered from dissolving the targets will be used to blend-down the highly enriched uranium solutions in H-Area (see highly enriched uranium solutions discussion above).

The stabilization of the Mark–31 targets by processing to metal can be accomplished one and one-half to nine years earlier than the other stabilization alternatives (four to nine years earlier than Improved Storage (the environmentally preferable alternative)). DOE believes further delay in removing the Mark–31 targets from wet basin storage where they have undergone significant corrosion and release of fission and radioactive products would serve no practicable purpose. This selected stabilization alternative relies upon existing operating equipment and trained personnel; the stabilized plutonium metal will be repackaged in conformance with DOE's storage standard within 3 years using the FB-Line bagless transfer facility. The technical uncertainty for this alternative is very low and the associated costs are well established. Potential waste generation impacts are comparable to the other alternatives, but greater than the environmentally preferable alternative for high level and transuranic waste, but lower for hazardous/mixed and low level radioactive wastes. Potential safety and health impacts to workers and the public are comparable for all the stabilization alternatives. Potential impacts to air and water resources are comparable to the other processing alternatives, and greater, but well within regulatory and management control limits, than the Improved Storage alternatives. Processing and Storage for Vitrification in DWPF would make the plutonium more difficult to recover than the selected alternative. However, this alternative would also require the extended wet storage of these targets, continuing their corrosion and the release of fission and radioactive products to the basin water.

The selected stabilization action will result in plutonium metal, a weapons-useable product. However, the quantity produced will be a small fraction of DOE's existing inventory of plutonium metal, and DOE believes this small amount does not present nuclear proliferation concerns. None of the stabilization alternatives would denature the plutonium to preclude its recovery and use in nuclear weapons manufacture. The plutonium metal produced from this stabilization action will be prohibited for use in nuclear weapons. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

Taiwan Research Reactor Fuel and Experimental Breeder Reactor-II Slugs—Processing to Metal

The 81 canisters of failed Taiwan Research Reactor fuel and a single canister of Experimental Breeder Reactor-II slugs will be dissolved in F-Canyon and the plutonium recovered will be converted to a metal in FB-Line. The processing of these materials will be done in conjunction with processing of the Mark–31 targets (see above). Upon installation of the new glove box in FB-Line, the plutonium metal will be packaged in accordance with the DOE storage standard and be placed in an SRS vault until long-term storage or disposition decisions can be implemented on weapons usable plutonium. Natural or depleted uranium recovered by processing the fuel and slugs located in a failed canister will be stored at SRS in tanks or used to support blending down of highly enriched uranium solutions (see above).

DOE selected processing to metal for the Taiwan Research Reactor fuel and Experimental Breeder Reactor-II slugs for similar reasons as described for the Mark–31 targets. These materials are very similar in composition to the Mark–31 targets and can be stabilized concurrently, four to nine years earlier than the environmentally preferred alternative (Improving Storage—Accelerated Schedule). Potential waste generation impacts from the selected alternative are greater than those of the environmentally preferable alternative, but less than potential high-level waste impacts (equivalent DWPF canisters) from the Processing and Storage for Vitrification in DWPF alternative. The Processing and Storage for Vitrification in DWPF would make the plutonium more difficult to recover. However, this alternative would require the extended wet storage of these elements, continuing their corrosion and the release of fission and radioactive products to the basin water.

As with the Mark–31 targets, the plutonium metal produced would be in a form that is weapons-useable. None of the stabilization alternatives would denature the plutonium to preclude its recovery and use in nuclear weapons manufacture. The quantity of plutonium to be produced is such a small amount (a very small fraction) of DOE's current plutonium metal inventory that, standing alone, it does not present nuclear proliferation concerns. The plutonium metal produced will be prohibited for use in nuclear weapons. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

If after removing the Mark–31 targets, failed TRR fuel, and the failed canister of EBR-II slugs from RBOF, DOE determines that additional fuel, targets, or canisters have failed, as indicated by gas releases from a canister, or visible failure of cladding or canisters, DOE would categorize those materials as Candidates for Stabilization. DOE would perform the appropriate National Environmental Policy Act review and evaluation for the stabilization of any additional materials in RBOF that may be determined at a later date to have failed (e.g., Supplement Analysis).

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities. DOE is considering this study and the results of the Interim Management of Nuclear Materials EIS, and at this time is announcing a narrowing of potential stabilization alternatives for the following materials.

Plutonium–239 Solutions—Processing to Metal, Processing to Oxide, or Vitrification (F-Canyon)

DOE will stabilize the existing plutonium–239 solutions stored in H-Canyon using one of three alternatives: (1) Processing the solutions to an oxide in HB-Line, (2) processing to a glass matrix by vitrifying the solutions in F-Canyon (the environmentally preferable alternative), or (3) processing to a metal in FB-Line. Only one of these stabilization methods will be used. To implement the processing to oxide alternative, DOE would start up and operate Phase II of the HB-Line facility. The oxide produced would be packaged and stored in an existing vault at SRS until the new Actinide Packaging and Storage Facility is constructed. To implement the vitrification alternative, DOE would transport the solutions from H-Canyon to F-Canyon using a special truck/container as described above for the movement of the neptunium solutions and the modifications made to F– and H–Canyon for loading/unloading of the solutions. The plutonium would be vitrified in F–Canyon using the equipment installed for vitrification of the americium and curium solutions. The canisters of plutonium glass would be stored in an existing SRS vault or the Actinide Packaging and Storage Facility, upon construction. To implement the processing to metal alternative, DOE would transfer the solutions to F-Canyon in the same manner as the vitrification alternative. The plutonium would be converted to a metal using the currently operating F-Canyon and FB-Line facilities. The metal would be packaged in conformance with DOE's storage standard and stored in an existing vault at SRS until the new Actinide Packaging and Storage Facility is available. Using any of these methods, the form of the plutonium (metal, glass matrix or oxide) will remain stored at SRS until DOE implements long-term storage and disposition decisions on weapons usable forms of plutonium. If vitrification of the plutonium solutions cannot be supported for technical or programmatic reasons, but the solutions are transferred to F-Canyon, then DOE will stabilize the plutonium by conversion to metal using the F-Canyon and FB-Line facilities.

One of the stabilization alternatives remaining under consideration (Processing to Metal) would result in plutonium metal, a weapons-useable product. However, the quantity produced will be a small fraction of DOE's existing inventory of plutonium metal, and DOE believes this small amount does not present nuclear proliferation concerns. None of the stabilization alternatives would denature the plutonium to preclude its recovery and used in nuclear weapons manufacture. The plutonium metal produced from this stabilization action will be prohibited to be used for nuclear

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explosive purposes. In addition, DOE is pursuing options for placing this material under international safeguards (e.g., International Atomic Energy Agency).

Potential environmental impacts, as detailed in the Interim Management of Nuclear Materials EIS, of implementing any of the stabilization alternatives, irrespective of location, are low and well within acceptable regulatory and management limits. In addition, there are no substantial differences in potential environmental impacts should DOE operate either or both canyon facilities.

The final form of the plutonium solutions depends on actions taken, if any, to consolidate certain activities in the F-Canyon as outlined in the facility utilization strategy report. A subsequent Record of Decision will be issued when DOE's review of the utilization strategy, the EIS, and the other relevent factors is complete.

IX. Preferred Alternatives for Stabilizing Mark–16 and Mark–22 Fuels and Other Aluminum-clad Targets

In addition to reaching decisions on the management and alternatives under consideration for the materials described above, DOE is now designating its preferred alternatives for stabilization of the Mark–16 and Mark–22 fuels and Other Aluminum-clad Targets. As explained in the Final EIS, DOE identified Continued Storage (No Action) as the preferred alternative for management of these materials pending further analysis of whether alternatives involving chemical processing or dry storage were preferable as a stabilization method. The additional reviews were prompted by public comments that DOE received on potential stabilization alternatives involving technologies other than chemical processing. Based on these additional reviews (discussed in Attachment 2 of the Facility Utilization Strategy), DOE is designating the following as preferred stabilization alternatives:

Mark–16 and Mark–22 Fuels—Blending Down to Low Enriched Uranium

DOE is designating Blending Down to Low Enriched Uranium as its preferred alternative for stabilization of the Mark–16 and Mark–22 fuels. Under this alternative, DOE would remove the Mark–16 and Mark–22 fuels from the water- filled basins in which they are stored and transport them to one, or both, of the canyons using the existing SRS rail casks. All of the cask shipments would be confined within the boundaries of SRS, occurring near the center of the site. The fuel assemblies would be dissolved in nitric acid. The highly enriched uranium contained in the fuel would be chemically separated from fission products and other materials. The highly enriched uranium would be blended with existing SRS inventories of depleted uranium to produce a low enriched uranium solutions. The resulting low enriched uranium solution will be stored or converted to an oxide in FA-Line. The low enriched uranium will be stored at SRS until disposition decisions can be made. The neptunium separated during the processing of the fuels would be stabilized with the other neptunium solutions.

DOE is designating Blending Down to Low Enriched Uranium as the preferred alternative for several reasons. Stabilization of the fuels with their removal from basin wet storage and elimination of the wet storage vulnerabilities through processing can be accomplished two to seven years earlier than the improved storage alternatives. Blending down to LEU reduces the HEU inventory and eliminates nonproliferation and security issues associated with the indefinite storage of HEU fuel which is not self-protecting. Cost and cost uncertainties have also played a significant role in the selection of the preferred stabilization alternative. Near-term annual costs to process and blend down the HEU to LEU are estimated at $20 million to $95 million less than for the improved storage alternatives. Substantial uncertainty exists concerning the disposition of dry-stored (improved storage) HEU spent fuel. Little uncertainty exists with the stabilization of the fuels through blending down to LEU. Life-cycle costs evaluations favor blending down to LEU ($38 million to greater than $1 billion advantage)[Facility Utilization Strategy, Attachment 2]. The potential environmental impacts from any of the stabilization alternatives are acceptable and well below any regulatory or management control limits. Projected impacts evaluated in the Final EIS are several times lower for the improved storage alternatives than the preferred blending down to LEU alternative.

Other Aluminum-clad Targets—Processing and Storage for Vitrification in the DWPF

DOE is designating Processing and Storage for Vitrification in the DWPF as its preferred alternative for stabilization of the other aluminum-clad targets stored in reactor disassembly basins at SRS. Under this alternative, DOE would remove the other aluminum-clad targets stored in reactor disassembly basins and transport them to one of the canyons via SRS rail casks. The targets would be dissolved, the resulting solutions chemically adjusted, and transferred to the adjacent underground high level waste tanks. The solutions would be stored in the high level waste tanks until they could be processed in conjunction with the other high level waste in the tanks. The high level waste would eventually be vitrified in the DWPF. The stainless steel canisters of glass would be stored in a facility adjacent to the DWPF, awaiting geological disposal by DOE. DOE is designating this alternative as its preferred stabilization alternative for several reasons. These targets contain little or no fissile material, yet are in a variety of physical forms and shapes. Their dissolution and transfer for vitrification in DWPF (the environmentally preferable alternative) has a minimal impact on all processing facilities and places these many forms into a single physical form suitable for future emplacement in a geological repository. Improved storage would require the development of one or more packaging configurations for repository emplacement. Although vitrification in DWPF will not occur for several years, processing and storage for vitrification in DWPF can be implemented one to six years earlier than the improved storage alternatives. This will remove the targets and their deteriorating condition from the reactor disassembly basins, precluding further release of radioactivity to the basin water. As with the improved storage alternatives for the Mark–16 and Mark–22 fuels, near-term costs are considerably less for the processing alternative as compared with the improved storage alternative. The potential environmental impacts from any of the stabilization alternatives are acceptable and well below any regulatory or management control limits. As with the Mark–16 and Mark–22 fuels, projected impacts for the improved storage alternatives are lower than the preferred alternative of processing and storage for vitrification in DWPF.

Decisions on facility utilization will determine the canyon location(s) for implementing the preferred stabilization alternatives for the Mark-16 and Mark-22 fuels, and the other aluminum-clad targets. DOE will issue a Record of Decision(s) for the stabilization of these materials no sooner than thirty (30) days following the availability of this notice.

X. Conclusion

While the Final EIS focuses on the interim management of nuclear materials at the Savannah River Site, the decisions associated with the safe management of these materials directly affect the operational status of the nuclear material processing facilities at the Site. These decisions have been made in the context of then Secretary Watkins' 1992 decision to phase out reprocessing at the Savannah River Site. The decisions in this ROD are structured to effect the earliest completion of actions necessary to stabilize or convert nuclear materials into forms suitable for safe storage and prepare the facilities for subsequent shutdown and deactivation. The actions being implemented will support the consolidation of the storage of nuclear materials at the SRS. To a great extent, the alternatives will result in stabilization of the nuclear materials and alleviation of associated vulnerabilities within the time frame recommended by the DNFSB.

The stabilization decisions utilize existing facilities and processes to the extent practical; can be implemented within expected budget constraints and minimal additional training to required personnel; rely upon proven technology; and using an integrated approach, represent the optimum use of facilities to stabilize the materials in the shortest amount of time. Although minor modifications of a few facilities will be required, only two new facilities will be needed: (a) design and construction of an Actinide Packaging and Storage Facility in F-Area, and (b) a small vitrification facility within the existing F-Canyon. The decisions in this ROD do not imply or contribute to any poential decision to change the baseline canyon operating strategy from the current two-canyon approach.

DOE expects to make decisions related to the future management of foreign research reactor fuel and on strategies for the disposition of surplus nuclear materials within the next year. Similarly, DOE is evaluating alternatives for stabilizing nuclear materials stored at other locations in the DOE complex. Several years will be required to achieve stabilization of the nuclear materials within the scope of this Record of Decision. Stabilization of the nuclear materials at SRS will entail the operation of many portions of the chemical processing facilities. Consistent with DNFSB Recommendation 94–1, this will preserve DOE's capabilities related to the management and stabilization of other nuclear materials until such decisions are made.

In summary, the Department has structured its decisions on interim actions related to management of the nuclear materials at SRS to achieve stabilization as soon as possible, consistent with earlier decisions to phase out processing activities at the Savannah River Site, while supporting U.S. nonproliferation policies in a safe and cost effective manner.

Issued at Washington, DC, December 12, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

TABLE 1.—NUCLEAR MATERIALS AT THE SAVANNAH RIVER SITE

[From DOE/EIS–0220, "Interim Management of Nuclear Materials"]

Description	Quantity[a]	Location(s)
Stable		
Spent fuel	3,000 items	Receiving Basin for Offsite Fuel (RBOF).
Unirradiated fuel, targets, reactor components, and scrap from fabrication operations.	315,000 items	Buildings 305A, 313–M, 315–M, 320–M, 321–M, 322–M, 341–M, K- and L-Reactor Assembly Areas.
Unirradiated fuel, targets, and reactor components.	6,900 items	K- and L-Reactors.
Unirradiated and irradiated reactor components and control rods.	420 items	C-, K-, L- and P-Reactors.
Depleted uranium oxide	36,000 drums	R-Reactor, Buildings 221–1F, 221–12F, 221–21F, 221–22F, 707–R, 714–7N, 728–F, 730–F, and 772–7B.
Depleted uranium solutions	300,000 liters (78,000 gallons)	F-Canyon, F-Area Outside Facilities, and TNX.
Sources, standards, and samples.	20,000 items	Sitewide.
Laboratory materials used in research and development.	260 items	Savannah River Technology Center (SRTC).
Programmatic		
Plutonium-242 solutions	13,000 liters (3,500 gallons)	H-Canyon.
Americium and curium solutions and targets.	14,000 liters (3,800 gallons)	F-Canyon.
	65 assemblies	RBOF.
	60 slugs	P-Reactor disassembly basin.
	114 slugs	RBOF.
Neptunium solutions and targets.	6,100 liters (1,600 gallons)	H-Canyon.
	9 targets	Building 321–M.
Candidates for Stabilization		
Plutonium-239 solutions	34,000 (9,000 gallons)	H-Canyon.
Highly enriched uranium solutions.	228,000 liters (60,000 gallons)	H-Canyon and H-Area Outside Facilities.
Plutonium vault materials	2,800 packages	FB-Line, HB-Line, Building 772–F, Building 235–F, and SRTC.
Mark-31 targets	16,000 slugs	K-Reactor, L-Reactor, F-Canyon, and RBOF.
Mark-16 and Mark-22 fuels	1,900 assemblies	K-, L-, and P-Reactors and H-Canyon.
Other aluminum-clad targets	1,800 slugs and assemblies	K-, L-, and P-Reactors.

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TABLE 1.—NUCLEAR MATERIALS AT THE SAVANNAH RIVER SITE—Continued
[From DOE/EIS–0220, "Interim Management of Nuclear Materials"]

Description	Quantity[a]	Location(s)
Failed TRR[b] and EBR–II[c] slugs.	82 canisters	RBOF.

[a] Quantities of materials shown are approximate. Quantities of radioactive solutions stored in tanks fluctuate due to natural evaporation and the addition of materials (e.g., nitric acid) to maintain chemistry within established parameters.
[b] Taiwan Research Reactor—31 canisters.
[c] Experimental Breeder Reactor–II—1 canister.

TABLE 2.—ALTERNATIVES FOR THE INTERIM MANAGEMENT OF NUCLEAR MATERIALS AT THE SRS
[From DOE/EIS–0220, "Interim Management of Nuclear Materials"]

Material	Alternatives						
	Continuing storage (no action)	Processing to metal	Processing to oxide	Blending down to low enriched uranium	Processing and storage for vitrification (DWPF)[a]	Vitrification (F-canyon)	Improving storage
Stable	✔						
Plutonium-242	x	x	✔		x	x	
Americium and curium	✔[i]		x		x	✔[e]	
Neptunium	x		✔		x	x	
Plutonium-239 solutions	x	x	✔		x	x	
Highly enriched uranium solutions	x		x	✔	x		
Plutonium and uranium in vaults[d]	x	✔	✔		x	✔	✔
Mark-31 targets	x	✔	x		x	x	x
Mark-16 and Mark-22 fuels	✔		x	x	x		x
Other aluminum-clad targets	✔				x		x
Failed TRR fuel and EBR–II slugs[c]	x	✔	x		x	x	x

x=alternative evaluated.
✔=preferred alternative designated by DOE in Final EIS.
[a] DWPF=Defense Waste Processing Facility.
[b] Targets.
[c] Solutions.
[d] For the plutonium and uranium stored in vaults, there were four preferred alternatives. DOE will base its choice of the applicable alternative for a particular solid upon inspection of the material.
[e] TRR=Taiwan Research Reactor, EBR–II—Experimental Breeder Reactor–II.

[FR Doc. 95–30750 Filed 12–18–95; 8:45 am]
BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. CF96–095–007]

Piney Creek Limited Partnership; Notice of Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 13, 1995.

On November 28, 1995, Piney Creek Limited Partnership (Piney Creek) of 25 West 3rd Street, Suite 803, Williamsport, Pennsylvania, 17701 submitted for filing an application for recertification of a facility as a qualifying small Power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the bituminous coal refuse-fueled small power production facility is located in Clarion County, Pennsylvania. The Commission previously certified the capacity of the facility to be 29.9 MW. The facility consists of a fluidized bed boiler and an extraction/condensing steam turbine generator. The instant application for recertification was submitted to report a change in ownership of the facility and an increase in the maximum net electric power production capacity from 29.9 MW to 33 MW. In addition, applicant requests that the Commission certify certain proposed fuel sources as "waste".

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–30715 Filed 12–18–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP96–111–003 and CP96–26–000]

Great Lakes Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed St. Clair River Crossing Project and Request for Comments on Environmental Issues

December 13, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the St. Clair River Crossing Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes Gas Transmission Limited Partnership (Great Lakes) seeks authority to amend its Presidential Permit (under Docket No. CP66–111–003) and construct, connect, operate, and maintain (under Docket No. CP96–26–000) about 1,500 feet of 36-inch-diameter pipeline loop at the international border between the United States and Canada, in St. Clair County, Michigan.

Great Lakes states that the proposed border facilities would be used to provide 50,000 thousand cubic feet per day of winter firm transportation service to TransCanada Pipelines Limited (TransCanada). Great Lakes indicates that the facilities, along with additional facilities TransCanada would build on its system, would provide TransCanada with greater system security and reliability of service.

The proposed river crossing would be directionally drilled. Great Lakes proposes to operate the drill rig on the United States side of the river, on land owned by Great Lakes. The pipeline would be strung and staged on the Canadian side.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require a staging area about 150 feet by 250 feet. No additional permanent right-of-way would be required after construction. An existing cleared area north of Puttygut Road would be used as a contractor yard. This area was used for this purpose during construction of the RG&E III Project (Docket No. CP92–595–000).

[1] Great Lakes Transmission Limited Partnership's application was filed with the Commission under section 3 of the Natural Gas Act, sections 153.10 through 153.12 of the Commission's Rules of Practice and Procedure, and Executive Order 10485 (as amended by Executive Order 12038 and Secretary of Energy Delegation Order No. 0204–112).

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Permanent aboveground facilities would consist of a mainline valve and a "pig launcher" in the vicinity of Great lakes' existing mainline valve.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. Keep in mind that this is a preliminary list:

- Noise generated during the continuous operation of the directional drill rig used to install the pipeline under the St. Clair River may significantly impact nearby residences.
- Drilling mud and fluids must be handled and disposed of properly or significant impact on the St. Clair River and nearby wetland could result.
- Construction activities may impact the wetland located near the proposed staging area.
- There may be visual impacts associated with the permanent aboveground facilities.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket Nos. CP66–111–003 and CP96–26–000;
- Send a *copy* of your letter to: Mr. Howard Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 19, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of

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Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Howard Wheeler, EA Project Manager, at (202) 208–2299.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30712 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–16–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sunbelt Expansion Project and Request for Comments on Environmental Issues

December 13, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the SunBelt Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Transcontinental Gas Pipe Line Corporation (Transco) wants to expand the capacity of its facilities in Mississippi, Alabama, Georgia, and South Carolina to transport an additional 145,666 thousand cubic feet per day of natural gas to nine local distribution companies and one electric cogeneration plant. Transco seeks authority to construct and operate:

- 14.9 miles of 42-inch-diameter pipeline loop (Loop D) from milepost (MP) 1222.66 to MP 1237. 58 in Cherokee County, South Carolina;
- 15,000 horsepower (hp) of compression (gas turbine) at a new station, to be known as Compressor Station 105 in Coosa County, Alabama;
- 15,000 hp of compression (gas turbine) at a new station to be known as Compressor Station 125 in Walton County, Georgia; and
- 15,000 hp of compression (gas turbine) at the existing Compressor Station 80 in Jones and Jasper Counties, Mississippi.

Transco also seeks to uprate:

- A compressor (gas turbine) from 14,100 hp to 15,000 hp at Compressor Station 100 in Chilton County, Alabama; and
- One compressor (gas turbine) from 12,600 hp to 15,000 hp at each of three stations: Compressor Station 110 in Randolph County, Alabama; Compressor Station 130 in Madison County, Georgia; and Compressor Station 140 in Spartanburg County, South Carolina.

The general location of the project facilities and specific locations for Loop D and the new compressor stations are shown in appendix 1.[2]

Land Requirements for Construction

Loop D would be constructed adjacent to Transco's existing right-of-way. Transco has proposed an 85-foot-wide construction right-of-way, which includes 35 feet of its existing right-of-way. Consequently, about 50 feet of new clearing would be required in most areas. Following construction, about 25 feet of the newly cleared right-of-way would be allowed to revert to former uses and 25 feet would be retained as new permanent right-of-way.

Additional work space would be required adjacent to the construction right-of-way at crossings of roads, railroads, streams, wetlands, and other utility lines. In addition, Transco proposes to use two off-right-of-way parcels of land for staging and pipe fabrication and storage. Construction of Loop D would require about 171.9 acres, including 63.3 acres of existing maintained right-of-way. Following construction, about 45.2 acres would be maintained as new permanent right-of-way. The remaining 126.7 acres would be allowed to revert to former land uses.

Transco currently owns the properties that would be developed for the two new compressor stations. Construction would require a total of about 28.0 acres of land, of which about 16.0 acres would be fenced for operation of the new compressor stations. All additions and modifications at the other compressor stations would occur inside the fencelines on existing compressor station property.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. Keep in mind that this is a preliminary list:

- Blasting is expected to be required at the crossings of the Broad River and Peoples Creek and possibly at occasional locations along the proposed pipeline route.
- The proposed pipeline would cross a number of waterbodies, including the 546-foot-wide Broad River. In addition, several wetlands would be crossed.
- Four federally listed endangered or threatened species potentially occur in the counties in which the proposed facilities would be constructed.
- The proposed Loop D crosses the Cooperville Ironworks, a National Register of Historic Places District (District) and one of the sites that makes up the District.
- Twelve residences are within 50 feet of the proposed construction right-of-way.
- New compression at new and existing compressor stations would result in impacts on air and noise quality.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional electric cogeneration plant. We will briefly describe its location and status in the EA. This facility is in Cherokee County, South Carolina, and it has received most of the relevant permits. Its construction should begin in January 1996.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address and send your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–16–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., 11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 15, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Jensen at the above address.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Mark Jensen, EA Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30719 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–15–000]

Iroquois Gas Transmission System, L.P.; Notice of Refund Report

December 13, 1995.

Take notice that on October 20, 1995, Iroquois Gas Transmission System, L.P. (Iroquois Gas) tendered for filing a refund report pursuant to the Commission's February 22, 1995, Order in Docket No. RP95–124–000.

Iroquois Gas states that it received $180,446.00 from Gas Research Institute (GRI) in payment of the 1994 Tier 1 refund. Pipelines receiving a refund were required to credit such refunds to their customers. Iroquois states that it provided credits to its customers in the invoices that were remitted on October 6, 1995. Because some of the shippers on Iroquois' system did not receive invoices on that date, shippers otherwise entitled to credits were issued refund checks. Iroquois requests any waivers that may be necessary to permit such a result.

In addition, while the February 22 Order spoke only of credits to firm customers, Iroquois had interruptible customers that are entitled to credits. Iroquois therefore requests any waivers necessary to accomplish this as well; the amount involved is de minimis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30716 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–493–000]

The Montana Power Company; Notice of Filing

December 13, 1995.

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Form of Electric Tariff, Second Revised Volume No. 1, a revised Index of Purchasers under said Tariff, and a Certificate of Concurrence from Cenergy.

A copy of the filing was served upon Cenergy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

[1] Transcontinental Gas Pipe Line Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Room, 886 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30716 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–100–000]

Natural Gas Pipeline Company of America, Mississippi River Transmission Corporation; Notice of Application

December 13, 1995.

Take notice that on December 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP96–100–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Section 157.7 and 157.18 of the Commission's Regulations thereunder, a joint application requesting permission and approval for abandonment, effective January 1, 1996, a sale/purchase/exchange service performed under Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13 authorized in Natural's Docket No. CP75–224, as amended, and MRT's Docket No. CP75–226, as amended, all as more fully set forth in the application on file with the Commission.

Natural and MRT state that they are parties to a gas exchange agreement and sales agreement dated December 23, 1974, as amended (Agreement), which became Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13. It is also stated that pursuant to the agreement, as amended, Natural: 1) received in Wheeler County, Texas MRT's reserves on a firm basis up to 15,000 Mcf of natural gas per day which MRT purchases in the Mills Ranch Field in Wheeler County, Texas and 2) redeliver to MRT in Clinton County, Illinois, Randolph County, Arkansas and Harrison County, Texas, eighty nine percent (89%) of the volumes delivered by MRT to Natural commencing April 1 each year and forty three percent (43%) of the volumes delivered by MRT to Natural during the six (6) months commencing October 1 each year. Natural and MRT further state that MRT sold and Natural purchased the remainder of the volumes received from MRT.[1]

[1] The percentage of gas purchased and transported by Natural varies according to the time of the year and the year in question. Natural's purchase obligation is subject to a cap of the applicable percentage applied to 15,000 Mcf of gas per day.

Natural and MRT state that by a letter agreement dated October 27, 1995, they agreed to terminate the Agreement, as amended, effective January 1, 1996. Therefore, by the present joint application, Natural and MRT request authority to abandon, effective January 1, 1996, the sale/purchase/exchange service performed under the Agreement, as amended, and Natural's Rate Schedule X–57 and MRT's Rate Schedule X–13 authorized in Natural's Docket No. CP75–224, as amended, and MRT's Docket No. 75–226, as amended.

Natural and MRT state that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural or MRT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30714 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–501–000]

Ohio Power Company; Notice of Filing

December 13, 1995.

Take notice that on December 1, 1995, the American Electric Power Service Corporation (ARPSC), on behalf of Ohio Power Company (OPCO), tendered for filing as an initial rate schedule, a Power Supply Agreement between OPCO and Cleveland Public Power (CPP).

The Power Supply Agreement provides CP up to 50 MW of limited term power for 5 years.

Copies of the filing were served upon CPP, Cleveland Electric Illuminating Company, and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30717 Filed 12–18–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–03: Computational Structural Biology

AGENCY: Office of Energy Research, Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), supports a comprehensive research program in the area of environmental sciences, health effects and life sciences, and medical applications. Major program research emphasis is placed on characterization of human and microbial genomes, structural biology, cellular and molecular biology, global climate change, improved technology for cleanup of DOE contaminated sites, advanced imaging technologies, and molecular nuclear medicine. With the explosion of nucleic acid and amino acid sequence data that stems from genome projects, there is an immediate need for greatly improved experimental and computational approaches for protein structure determination. To help meet this need, and in support of diverse missions of DOE, OHER is initiating a new program in computational structural biology. The purpose of this program is to support research that will enhance understanding of structure-function relationships in biological macromolecules. These relationships are very important for diverse applications in biotechnology, including development of drugs for diseases, new and improved biomaterials, design of enzymes for effective and efficient removal of environmental contaminants, and the development and conversion of bio-mass for fuels. In particular, research applications that integrate existing software tools in novel ways and/or develop new computational strategies to exploit databases of macromolecular structural information towards furthering our understanding of the relationships between sequence and structure are of particular interest to the program at this time. This includes the goals of predicting the structure and function of newly discovered gene sequences and the prediction or design of the chemical properties and architectural arrangement of proteins or nucleic acids needed for a particular functional application. Examples of existing approaches that fall into this category are knowledge-based or molecular extension methods (e.g., homology model building or multiple sequence alignment), ab initio folding (finding structures that fit sequences) and the development of tools to assign existing or new sequences to specific structures (e.g., finding sequences that fit structures through threading or inverse folding algorithms). Attention should be also focussed on the problem of negative design, the identification of aspects of a sequence that precludes its fitting a known structure. More generally, the integration and joint utilization of the growing body of sequence, structural and physical information is an area that offers new opportunities that are of interest to the program. Studies that rigorously compare existing tools and/or exploit the latest advances in multiple approaches (in algorithms, simulation, modeling and graphical representation/visualization) or that include the development of new computational and visualization techniques for application to the prediction of protein and nucleic acid structure and the exploitation of structure to predict function, will also be considered particularly responsive. Collaborative projects with two to five principal investigators, of complementary expertise and each with independent funding, aimed at achieving a synergistic effect in improving structure prediction accuracy through such activities as evaluation of different potential functions, the development of shared code, or an integrated attack on a set of problems in an area of prediction or in testing current modeling techniques are also encouraged. Funds for such projects would be comparable to individual awards, but could be used to nucleate a larger group effort.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 25, 1996, to be accepted for a June merit review and to permit timely consideration of award in Fiscal Year 1996.

ADDRESSES: Formal applications referencing Program Notice 96–03 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 96–03. The same address as above must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, telephone: (301) 903–3209, Fax: (301) 903–0567, (E-mail: matesh.varma@mailgw.er.doe.gov).

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants must submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs for the computational structural biology program.

Preapplications referencing Program Notice 96–03 should be received by January 23, 1996, and sent to Dr. Matesh N. Varma, Office of Health and Environmental Research, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–3209. Telephone and fax numbers and e-mail addresses are required to be part of the preapplication. A response to the preapplication discussing potential relevance of a formal application will be communicated by February 20, 1996. It is anticipated that approximately $2.0 million will be available for grant awards during Fiscal Year 1996 contingent upon availability of funds. We expect to award several grants in this area of research up to a few hundred thousand dollars per year. Information about development, submission, and the selection process, and other polices and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental, ER–73, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–5349. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following E-mail address: http://www.er.doe.gov/

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on December 11, 1995.

D. D. Mayhew,

Associate Director, Office of Resource Management, Office of Energy Research.

[FR Doc. 95–30749 Filed 12–18–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5398–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

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ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1100.08.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutant (OMB Control No. 2060–0191; EPA ICR No. 1100.08). "This is a request for extension of a currently approved collection."

Abstract: On December 15, 1989 pursuant to Section 112 of the Clean Air Act as amended in 1977 (42 U.S.C. 1857), the Environmental Protection Agency promulgated NESHAPs to control Radionuclide emissions from several source categories. The regulations were published in 54 FR 51653, and are codified at 40 CFR Subparts B, H, I, K, R, T, and W, and imposes the following radionuclide dose and emission standards:

Subpart B—Underground Uranium Mines
10 mrem/yr
Subpart H—Department of Energy
10 mrem/yr, 20 pci/m^2-s
Subpart I—Non-DOE not licensed by NRC
10 mrem/yr, 3 mrem/yr; iodine
Subpart I—Licensed by NRC
10 mrem/yr, 3 mrem/yr iodine
Subpart K—Elemental Phosphorous
2 curies/yr
Subpart R—Phosphogypsum Stacks
20 pci/m^2-s
Subparts T and W—Uranium Mill Tailings Piles
20 pci/m^2-s

Information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with these. If the information were not collected, it is unlikely that violation of the standards would be identified and no corrective action would be initiated to bring the facilities back into compliance. Compliance is demonstrated through emission testing and/or dose calculation. Results are submitted to EPA Regional office annually or when required for verification of compliance and maintained for a period of 5 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08/25/95 (FR Doc. 95–21169).

Burden Statement: The annual public reporting and Record keeping burden for this collection of information is estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 6112.

Estimated Number of Respondents: 412.

Frequency of Responses: Annually or less than annually.

Estimated Total Annual Hour Burden: 188,708 hours.

Estimated Total Annualized Cost Burden: $1,758,559.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1100.08 and OMB Control No. 2060–0191 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: December 5, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30793 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–2]

Agency Information Collection Activities Under OMB Review; EPA Indoor Environmental Quality Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for "EPA Indoor Environmental Quality Questionnaire" abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1619.02.

SUPPLEMENTARY INFORMATION:

Title: EPA Indoor Environmental Quality Survey (OMB Control No. 2060–0244; EPA ICR No. 1619.02). This is a request for an extension of a currently approved collection.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA Building Assessment Survey and Evaluation (BASE) program. In this program, EPA is conducting an indoor air quality (IAQ) study of 100–200 large commercial and public office buildings. The purpose of this tudy is to develop a national baseline assessment of the indoor air in such buildings. The activities EPA will conduct under this survey include Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g., ventilation rates, concentrations of indoor air pollutants), and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ and the incidence of certain IAQ-related health and comfort problems. The Indoor Environmental Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working conditions, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Questionnaire will be used to compare the measured building parameters and health effects.

EPA has piloted this study in three buildings and has conducted the study in 29 other buildings to date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 13, 1995 (FRL–5295–7).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Occupants of commercial facilities in a wide variety of fields and SIC codes.

Estimated Number of Respondents: 2800.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 654 hours.

Estimated Total Annualized Cost Burden: $14,720.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1619.02 and OMB Control No. 2060–0244 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: December 7, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30794 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–1]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Automobile Manufacturing, Iron and Steel, and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed with the three Sector Subcommittee announcements below.

(1) Automobile Manufacturing Sector Subcommittee—January 10, 1996

The Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC–AMS), pending resolution of EPA's FY 1996 appropriation, is convening an open meeting on January 10, 1996. The meeting will begin at approximately 9:30 a.m. EST and run until about 3:30 p.m. EST. The meeting will be held at the Summit Building, 10th floor conference room 10A and 10B, 410 West Peachtree Street, Atlanta, Georgia.

The CSIC–AMS has formed three project teams: Regulatory Initiatives, Alternative Sector Regulatory System/Community Technical Assistance and Life Cycle Management/Supplier Partnership. The Regulatory Initiatives project team's most recent meetings have focused on issues within the Clean Air Act's New Source Review Program. The Alternative Sector Regulatory System/Community Technical Assistance project team is currently identifying and discussing principles and attributes desirable in a new alternative regulatory system. The Life Cycle Management/Supplier Partnership project team has identified a portion of the supply chain to participate in the development of a framework for a supplier partnership that encourages the consideration of environmental impacts in product development. The project teams will report progress on these ongoing projects and present deliverables, if applicable.

Seating may be limited; therefore, advance registration is recommended. An Agenda will be available January 5, 1996. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Official (DFO), no later than January 8, 1996, at (404) 347–3555 extension 4222. Each individual or group wishing to make oral presentations will be allowed a total of three minutes. For further meeting information contact Carol Kemker, DFO on (404) 347–3555 extension 4222, or Keith Mason, Alternate DFO, on (202) 260–1360.

(2) Iron and Steel Sector Subcommittee—January 18, 1996

Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Iron and Steel Sector Subcommittee on Thursday, January 18, 1996. The meeting will begin at 8:00 a.m. CST and run until 4:00 p.m. CST. It will be held at the Metcalf Federal Building, Great Lakes Conference Center, Lake Michigan room (12th floor), 77 West Jackson Boulevard, Chicago, Illinois, telephone number 312–886–9494. A picture identification will be needed to enter the building. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Iron and Steel Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee, for its review and approval, potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved seven projects and their work plans, and is considering several others. The purpose of the January meeting is to discuss in detail the status of projects sponsored by the Compliance and the Innovative Technology work groups, to hear brief status updates from the Permits and Brownfields work groups, to discuss a potential community involvement project, and to discuss the role of pollution prevention in the industry.

For further information regarding this Iron and Steel Sector Subcommittee Meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago,

Illinois, or Ms. Judith Hecht at 202–260–5682 in Washington, DC.

(3) Computers and Electronics Sector Subcommittee—January 22 and 23, 1996

Notice is hereby given that the Computers and Electronics Sector Subcommittee, pending resolution of EPA's 1996 appropriation, will hold an open meeting on Monday, January 22, 1996, from 8:30 a.m. EST to 5:00 p.m. EST and Tuesday, January 23, 1996, from 8:30 a.m. EST to 3:00 p.m. EST, at the Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314. Seating will be available on a first-come, first-served basis.

The first day of the meeting, January 22, will be devoted primarily to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics); the second day, January 23, will consist primarily of reports to the full subcommittee from those workgroups and discussion of issues of interest to the full subcommittee. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Computers and Electronics Sector Subcommittee, please contact Gina Bushong, U.S. EPA (202) 260–3797, FAX (202) 260–1096 or by mail at U.S. EPA (MC 7405), 401 M Street, SW, Washington, DC 20460; Mark Mahoney, Region 1, U.S. EPA (617) 565–1155; or David Jones, Region 9, U.S. EPA (415) 744–2266.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherine@epamail.gov.

Dated: December 13, 1995.

Prudence Gelarth,

Designated Federal Officer.

[FR Doc. 95–30791 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2115]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 13, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 3, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the use of 200 Channels Outside the Designated Filing Area in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553).

Implementation of Sections 3(n) and 332 of the Communications Act (GN Docket No. 93–252).

Number of Petitions Filed: 2.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Rosendale, New York) (MM Docket No. 93–17, RM–8170).

Number of Petitions Filed: 1.

Subject: Petition for *Computer III* Waiver (CC Docket No. 90–623).

Number of Petitions Filed: 1.

Federal Communications Commision.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30696 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2117]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 14, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 3, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Willows and Dunnigan, CA) (MM Docket No. 94–29, RM–8416).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30756 Filed 12–18–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Carolina First Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than January 2, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to acquire Blue Ridge Finance Company, Inc., Greenville, South Carolina, and thereby indirectly engage in purchasing sub-prime automobile chattel receivables from automobile dealers, the subsequent servicing of such receivables, and other activities related to such receivables and their associated servicing (such as the foreclosed activities), pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; in making, acquiring, and servicing loans or other extensions of credit in a manner typical of finance companies (including direct auto lending) and other activities typically associated with consumer finance operations, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; and in acting as agent or broker for insurance directly related to an extension of credit by a finance company, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. Comments on this application must be received by December 29, 1995.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Swanton Agency, Inc., Swanton, Nebraska; to acquire Plymouth Investment Company, Plymouth, Nebraska, and thereby engage in the sale of general insurance in a town of less an 3,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. This activity will be conducted in Plymouth, Nebraska.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-30724 Filed 12-18-95; 8:45 am]

BILLING CODE 6210-01-F

Citi-Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 12, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citi-Bancshares, Inc., Leesburg, Florida; to merge with Citizens First Bancshares, Inc., Ocala, Florida, and thereby indirectly acquire Citizens First Bank of Ocala, Ocala, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Beulah Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 94.04 percent of the voting shares of Fairview Bank, Fairview, Montana.

Board of Governors of the Federal Reserve System, December 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30727 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

First National Bank Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First National Bank Employee Stock Ownership Plan, San Benito, Texas; to acquire an additional 4.28 percent, for a total to 14.27 percent, of the voting shares of First San Benito Bancshares, Inc., San Benito, Texas, and thereby indirectly acquire First National Bank, San Benito, Texas.

2. Joe E. Sharp, Dallas, Texas; to acquire an additional 16.39 percent, for a total of 25.11 percent, of the voting shares of First Baird Bancshares, Inc., Baird, Texas, and thereby indirectly acquire First National Bank, Baird, Texas, and First National Bank, Weatherford, Texas.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30723 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

First American Corporation; Application to Engage in Nonbanking Activities;

First American Corporation, Nashville, Tennessee (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) of its intention to engage *de novo* through it indirect subsidiary, The SSI Group, Inc., Mobile, Alabama (Company),[1] in processing and transmitting medical payment data between health care providers (Providers) and insurance companies and other entities responsible for providing medical benefits (Payers). Providers would enter claims information (such as patient identification, coverage eligibility, and a description of the medical services provided) into Company's medical claims network, and Company would

[1] Applicant proposes to acquire 40.25 percent of the voting shares of Company from Southern Medical Health Systems, Inc., Mobile, Alabama (zCo-Venturer2), which would retain 49 percent of the voting shares. Co-Venturer's sole shareholder would retain an additional 1.75 percent of the voting shares. Applicant also would acquire an option to purchase up to an additional 17.75 percent of the voting shares from Co-Venturer.

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transmit claims information to the proper Payers and transmit Payers' coverage decisions to Providers for posting on Providers' books as accounts receivable. In addition, Company would arrange for electronic funds transfers from Payers to Providers through an affiliate, First American National Bank, Nashville, Tennessee (Bank), offer medical service credit cards, issued by Bank, to Providers' patients to be used to pay for all medical expenses not covered by Payers, and operate a collection agency for Providers to collect past-due accounts. Company also would perform general data processing services, including maintaining medical records and scheduling the provision of medical services, for Springhill Hospitals, Inc., Mobile, Alabama, which is affiliated with Applicant's co-venturer and would serve as a beta site for the testing and development of data processing and transmission software and facilities offered by Company to Providers. Applicant also proposes that Company would provide electronic storage and retrieval of financial documents and information to insured depository institutions and other financial companies. The scope of Company's activities would be nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed services, that banks generally provide services that are operationally or functionally similar to the proposed services so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that providing certain financial, banking, or economic data processing and data transmission services and facilities and providing access to such services and facilities by any technological means are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(7). Applicant maintains that the transmission of claims from providers to payers and the payers' responses to such claims constitutes the transmission of financial data.

Applicant also contends that, to the extent the proposed activities involve transmitting nonfinancial data (such as patient identification, coverage eligibility, and a description of the medical services provided), a bank holding company may engage in these activities as incidental to the transmitting of Providers' requests for payment. *See Banc One Corporation*, 80 Federal Reserve Bulletin 139 (1994). Applicant contends that Providers' requests for payment and Payers' remittance decisions on those requests are financial data, even in the absence of an actual transfer of funds. *See Citicorp*, 72 Federal Reserve Bulletin 497 (1986).

Applicant states that the Board previously has determined by regulation that operating a collection agency for overdue accounts receivable, either retail or commercial, is closely related to banking for purposes of section 4(c)(8) of the BHC Act, provided the collection agency does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies and does not provide preferential treatment to an affiliate or customers of an affiliate seeking collection of an outstanding debt. *See* 12 CFR 225.25(b)(23). Applicant states that its proposed collection agency activities would solely be for overdue accounts as required by the Board's regulation.

In order to approve the proposal, the Board also must determine that the proposed activities to be engaged in by Company are a proper incident to banking that "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that its proposal would produce public benefits, including gains in efficiency, that outweigh any potential adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 2, 1996. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30728 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

Middlefork Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 11, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Middlefork Financial Group, Inc., Hyden, Kentucky; to acquire 100 percent of the voting shares of Farmers & Traders Bank of Campton, Campton, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to merge with First Commercial Holding Corporation, Asheville, North Carolina, and thereby indirectly acquire First Commercial Bank, Asheville, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with First Citizens BancStock, Inc., Morgan City, Louisiana, and thereby indirectly acquire First National Bank in St. Mary Parish, Morgan City, Louisiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CCB Bancorp, Inc., Santa Ana, California (a subsidiary of First Banks, Inc., Creve Coeur, Missouri); to merge with QCB Bancorp, Long Beach, California (a subsidiary of First Banks, Inc., Creve Coeur, Missouri), and thereby indirectly acquire Queen City Bank, N.A., Long Beach, California.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of The Bank of Douglas County, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, December 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30722 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

Julie Christine Yarbrough, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Julie Christine Yarbrough, Shawnee, Kansas; to acquire an additional 7.31 percent, for a total of 31.93 percent, of the voting shares of B.B. Bancshares, Inc., Shell Knob, Missouri, and thereby indirectly acquire The Community Bank of Shell Knob, Shell Knob, Missouri.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Richard F. Wartman, Ashland, Wisconsin; and Eugene A. Halker, Ashland, Wisconsin (as trustee), to each acquire an additional 7.32 percent, for a total of 30.96 percent; Laura G. Halker, Ashland, Wisconsin (as trustee), to acquire an additional 6.15 percent, for a total of 26.01 percent; Dennis K. Christensen, Ontonagon, Michigan, to acquire an additional 7.31 percent, for a total of 30.90 percent; and Halker Joint Revocable Trust, Ashland, Wisconsin, to acquire an additional 6.15 percent, for a total of 26.01 percent, of the voting shares of UP Financial, Inc., Ontonagon, Michigan, and thereby indirectly acquire First National Bank in Ontonagon, Ontonagon, Michigan.

Board of Governors of the Federal Reserve System, December 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30729 Filed 12–18–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Announcement of Dates for Public Workshop Regarding "Made in USA" Claims in Product Advertising and Labeling and Procedure for Requesting to Participate

AGENCY: Federal Trade Commission.

ACTION: Announcement of dates for public workshop on the use of "Made in USA" claims in product advertising and labeling and procedures for requesting to participate.

SUMMARY: On October 18, 1995 the Federal Trade Commission (Commissioner Roscoe B. Starek, III dissenting) published a **Federal Register** Notice seeking public comments through January 16, 1996 in connection with its comprehensive review of consumers' perceptions of "Made in USA" claims in product advertising and labeling. As part of this review, the Commission announced that it would invite representatives of consumers, industry, government agencies, and other groups to attend a public workshop to exchange views on the issues, including those raised by the comments received. Among other things, in its review the Commission will be considering (i) whether it should alter its legal standard regarding the use of unqualified "Made in USA" claims, and (ii) how domestic content should be measured under any future standard.

The Commission has scheduled the workshop for March 26–27, 1996 at its headquarters at Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. If necessary to accommodate the number of issues raised by the comments, the workshop may be continued through March 28. Today's **Federal Register** Notice discusses, among other matters, the procedure to be followed by those who wish to participate in the workshop. The Commission also announces that it will hold the record of this proceeding open for approximately one month (until April 30, 1996) for workshop participants and other interested parties to submit clarifying or rebuttal comments on the issues discussed at the workshop.

DATES: Requests to participate in the workshop must be submitted on or before January 16, 1996.

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ADDRESSES: Six paper copies of each request to participate should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests should include the requester's telephone number and a FAX number if available. Requests should be captioned: "Made in USA Workshop—Request to Participate," FTC File No. P894219. You may include this request with your comment.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, telephone 202–326–2823.

SUPPLEMENTARY INFORMATION:

A. Background

The October 18, 1995 **Federal Register** Notice (60 FR 53922, hereafter referred to as the "first Notice") announced the public workshop and requested comment on a number of specific questions relating to advertising and labeling claims of "Made in USA." The first Notice described in detail the substance of the issues to be discussed at the workshop and the issues on which written comments were requested. The first Notice, however, left open the specific dates and location for the workshop. This second Notice addresses these matters, as well as the procedure for requesting the opportunity to participate.

As stated in the first Notice, the intent of the workshop will not be to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in this proceeding. However, the Commission will consider the views and suggestions made during the workshop, in addition to any written comments, in formulating its future policy regarding "Made in USA" claims.

B. The Workshop

The Commission expects the workshop to be conducted over two days, with separate morning and afternoon panels on each day. A third day of the workshop will be held if there is a need to do so. The subjects to be discussed at each of the panels will be determined after reviewing the substantive comments received pursuant to the first Notice. An agenda for each panel will be announced as soon as practical. The workshop will be open to the public.

As mentioned in the first Notice, the Commission is currently conducting a consumer research project regarding consumer perception of "Made in USA" claims. Results of the project will be made available to participants and the public before the workshop. Participants who wish to discuss the consumer perception study at the workshop will be asked to submit an outline or short statement of their views prior to the workshop for the purpose of arranging the workshop's agenda. Others who wish to submit comments on the study are welcome to do so.

The record of the proceeding will be open for a month after the workshop is concluded for the receipt of any additional comments on the study or other issues discussed at the workshop. This will allow workshop participants and others to clarify any views expressed at the workshop or to rebut the comments and views of others in the event that there is insufficient time to fully address all pertinent issues.

A neutral, third-party facilitator may be retained for the public workshop. The discussion during the workshop will be transcribed and the transcript will be placed on the public record.

C. Selection of Workshop Participants

If the number of parties who request to participate in the workshop is so large that including all requesters would inhibit effective discussion among the participants, Commission staff will select as participants a limited number of parties to represent the interests of those who submit written comments. Selection will be based on the following criteria:

1. The party must have submitted a substantive written comment by January 16, 1996 in response to the first **Federal Register** notice (60 FR 53922, Oct. 18, 1995).
2. The party must have submitted a request to participate pursuant to this **Federal Register** notice by January 16, 1996.
3. The party's attendance would promote the representation of a balance of interests at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the workshop.
5. The party has expertise in issues raised in the workshop.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity, if at all possible, at the end of one or more sessions to present statements during a limited time period. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after January 16, 1996 if they have been selected to participate. To assist in making this notification, please include in your request to participate a telephone number and a FAX number if available.

D. Date, Time and Location of Workshop

The workshop is scheduled to be held in room 432 of the FTC headquarters building, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. on March 26 and 27, 1996, from 8:30 a.m. until 5 p.m. Depending on the number of issues raised by the comments, the workshop may be extended through an additional day, March 28, 1996. The workshop is open to the public.

E. Procedure for Requesting Opportunity to Participate in Workshop

To be eligible to participate at the workshop, you must:

1. File a written substantive comment by January 16, 1996 pursuant to the first **Federal Register** notice.
2. File a written request to participate by January 16, 1996 pursuant to this **Federal Register** notice.

You may combine the written substantive comment and the written request to participate in one document.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission, Commissioner Starek dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 95–30833 Filed 12–18–95; 8:45 am]

BILLING CODE 6750–01–P

[File No. 951 0072]

Devro International PLC; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition allegedly arising from the acquisition by Devro International of Teepak International. Devro and Teepak are the two largest producers of collagen sausage casings (the skins into which various meat products are stuffed before being cooked or smoked) in the United States. The consent agreement, among other things, would require Devro to divest Devro North America, the assets it uses to manufacture and distribute collagen sausage casings in the United States and Canada. The assets to be divested include a manufacturing plant in Somerville, New Jersey, and a finishing plant in Ontario, Canada. The divestiture would have to be completed within three months of the date the order becomes final, and the assets would have to be sold to a buyer (1) that does not already produce collagen sausage casings for sale in the United States, and (2) that is approved by the Commission. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete it.

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, DC 20580 (202) 326–2932; Ronald Rowe, FTC/S–2602, Washington, DC 20580 (202) 326–2610; or Joseph Brownman, FTC/S–2108, Washington, DC 20580 (202) 326–2950.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Devro International plc and Devro Inc. of the outstanding voting securities of Teepak International, Inc. and it now appearing that Devro International plc and Devro Inc. (hereinafter sometimes referred to as the "Proposed Respondents") are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

It is hereby agreed by and between the Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission, that:

1. Proposed Respondent Devro International plc is a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, G69 OJE, Scotland.

2. Proposed Respondent Devro Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Southside Avenue, Somerville, New Jersey.

3. Teepak International, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Three Westbrook Corporate Center, Suite 1000, Westchester, Illinois 60153.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed Respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

d. any claim under the Equal Access to Justice Act.

6. Proposed Respondents shall submit, within five (5) days of the date this Agreement is signed by Proposed Respondents, an initial compliance report, as contemplated by Rules 2.33 and 4.9(b)(7) of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.33 and 4.9(b)(7), duly signed by the Proposed Respondents, setting forth in precise detail the manner in which Proposed Respondents will comply with Parts II and III of the proposed consent order, when and if entered, the Agreement to Condition Acquisition, and the Agreement to Hold Separate. Among other things, the report shall include:

a. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Hold Separate, including:

(1) The names, telephone numbers, and business affiliations of the persons that Proposed Respondents intend to appoint, or are considering appointing, or have appointed, as members of the Management Team, pursuant to Paragraph 4 (a) of the Agreement to Hold Separate;

(2) the name(s), telephone number(s), and business affiliation(s) of the person(s) that Proposed Respondents intend to appoint, are considering appointing, or have appointed, as independent auditor/manager, pursuant to Paragraph 4 (b) of the Agreement To Hold Separate; and

(3) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Hold Separate.

b. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Condition Acquisition, including:

(1) The resolution, or draft resolution, that Devro International plc will present to its shareholders;

(2) the date that Devro International plc anticipates that its shareholders will vote on the resolution;

(3) the date that Devro International plc anticipates learning the outcome of the vote by the shareholders on the resolution; and

(4) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Condition Acquisition.

c. A full and complete description of the efforts planned or underway to comply with the terms and conditions of the proposed order, including:

(1) A list of the firms to which Proposed Respondents (i) have offered, and (ii) intend to offer, the Assets To Be Divested;

(2) the names and telephone numbers of the representatives of the firms listed in response to part c. (1) of this Paragraph that Proposed Respondents have already contacted to offer the Assets To Be Divested;

(3) the names, addresses, telephone numbers and business affiliations of at least three (3) potential trustees that would be acceptable to Proposed Respondents should the appointment of a trustee be deemed appropriate by the Commission;

(4) the procedures that Proposed Respondents will employ in finding a

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proposed acquirer of the Assets To Be Divested;

(5) all criteria that Proposed Respondents will employ for choosing a proposed acquirer of the Assets To Be Divested in the event that offers for these assets are made by more than one firm;

(6) a full and complete description of all of the Assets To Be Divested;

(7) all descriptions, characterizations, and explanations of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers;

(8) a full and complete description of the financial condition and potential viability as an independent business of the Assets To Be Divested;

(9) all descriptions, characterizations, and explanations of the financial condition and potential viability as an independent business of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers; and

(10) copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture.

7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the Proposed Respondents' counsel at the address as stated in this Agreement shall constitute service. The Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. The Proposed Respondents have read the proposed complaint and order contemplated hereby. The Proposed Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. The Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

11. Proposed Respondents agree to be bound by all of the terms of the Agreement to Condition Acquisition and the Agreement to Hold Separate, attached to this Agreement and made a part hereof as Appendix I and Appendix II, respectively, upon acceptance by the Commission of this Agreement Containing Consent Order for public comment.

12. Proposed Respondents agree to notify the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of the action taken by the shareholders of Devro International plc regarding (a) the proposed acquisition by Devro International plc of Teepak International, Inc. ("the Acquisition"), (b) the divestiture of the Assets To Be Divested under the terms of this Agreement Containing Consent Order ("the Divestiture"), and (c) the unlimited indemnification of the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to the Agreement to Condition Acquisition and the Agreement to Hold Separate ("the Retroactive Indemnification").

13. Subsequent to approval of this Agreement Containing Consent Order and acceptance for public comment of the Consent Order by the Commission and unconditional approval by the shareholders of Devro International plc of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

14. In the event the shareholders of Devro International plc, prior to the expiration of the sixty (60) day public comment period, fail unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Proposed Respondents, having no authority to consummate the Acquisition, will, within twenty-four (24) hours of the failure of the shareholders of Devro International plc unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, notify the Commission of such failure and withdraw any Hart-Scott-Rodino Premerger Notification and Report Form that may have been filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. After such timely notification and withdrawal, pursuant to the terms of this Paragraph, the Commission will not issue the following divestiture order.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. "Devro International plc" means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro International plc, and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

B. "Devro Inc." means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

C. "Devro Canada" means DCI Devro Canada Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by DCI Devro Canada Inc. and its respective directors, officers, employees, agents, and

representatives, and the respective successors and assigns of each.

D. "Teepak" means Teepak International, Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Teepak International, Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each. The definition of "Teepak" specifically excludes Devro International plc, Devro Inc., and Devro Canada. For purposes of Parts VII and VIII of this Order, after the Acquisition, Teepak will be regarded as part of Respondent Devro International plc.

E. "Respondents" means Devro International plc and Devro Inc.

F. "Acquisition" means the proposed acquisition by Devro International plc of the outstanding voting securities of Teepak International, Inc.

G. "Assets To Be Divested" means:

1. All assets related to the collagen sausage casings business of Devro Inc. and Devro Canada, including, but not limited to:

a. All production and finishing facilities, plant, and equipment of Devro Inc., including the plant located at Somerville, New Jersey, and, wherever located, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

b. All production and finishing facilities, plant, and equipment of Devro Canada, including the plant located in Markham, Ontario, Canada, and, wherever located, and to the extent they exist, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

c. All intellectual property, including product and process patents, patent rights, patent improvements, process improvements, trademarks, service marks, copyrights, technology, knowhow, basic research, trade secrets, goodwill, or trademarks that Devro Inc. or Devro Canada use, license, have rights to, or otherwise have an interest in; provided, however, that Devro International may retain all rights to the trademark Devro®, tradename "Devro", and the stylized letter "D";

d. All Devro Inc. and Devro Canada inventory and storage capacity;

e. All rights, titles, and interest in and to real property owned or leased by Devro Inc. and Devro Canada, together with all appurtenances, licenses, and permits;

f. All rights, titles, and interests in and to contracts entered into in the ordinary course of business between Devro Inc. and Devro Canada with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

g. All rights of Devro Inc. and Devro Canada, under warranties and guarantees, express or implied;

h. All books, records, and files of Devro Inc. and Devro Canada;

i. All items of prepaid expense to Devro Inc. and Devro Canada; and

2. From Devro International plc:

a. On a non-exclusive basis, with no right to sub-license to a third party, all rights to any information or intellectual property relating to Devro International (but not any information or intellectual property of Teepak in existence at the time of the Acquisition) in development or already developed by Devro International at the time of the divestiture, plus all enhancements, improvements or perfections thereof within twenty-four (24) months of the divestiture, including information or intellectual property relating to product and process patents, patent rights, patent improvements, technology, knowhow, basic research, or trade secrets regarding any research and development programs or activities, wherever located, to the extent that such information or intellectual property relate to the manufacture, finishing, distribution, or sale of collagen sausage casings; and

b. All additional tangible and intangible assets of Devro International, wherever located, reasonably necessary to enable the acquirer of the Assets To Be Divested to manufacture, finish, distribute, and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture, other than any tangible or intangible assets of Teepak in existence at the time of the Acquisition.

H. "Excluded Assets" means the following entities: Devro Limited, Devro Holdings Limited, Devro Pty Limited, Devro BV, Devro Asia Limited, Devro GmbH, and Devro KK, and Teepak and its tangible and intangible assets in existence at the time of the Acquisition. The term "Excluded Assets" does not include (that is, the following assets are not Excluded Assets) specifically identifiable tangible and intangible assets of these excluded entities (other than those of Teepak at the time of the divestiture) related to the manufacture and finishing of collagen sausage casings.

I. "Commission" means the Federal Trade Commission.

II

It is further ordered That:

A. Within three (3) months of the date the order becomes final, Respondents shall divest, absolutely and in good faith, at no minimum price, the Assets To Be Divested.

B. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested as a viable, competitive, and independent business, in the same business in which the Assets To Be Divested are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

C. The proposed acquirer shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States.

D. The Assets To Be Divested shall be divested only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

III

It is further ordered That:

A. If Respondents have not divested the Assets To Be Divested, absolutely and in good faith, with the Commission's prior approval, within three (3) months of the date this Order becomes final, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the

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Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, and consistent with the provisions of Paragraphs II. B.–D. of this Order, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have six (6) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times for up to an additional twelve (12) months each time.

5. The trustee shall, to the extent not prohibited by United States or Canadian law, have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Part II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this Order.

10. In the event the trustee is unable to divest the Assets To Be Divested, the trustee may divest such additional assets of Respondent Devro International, other than the Excluded Assets, as may be reasonably necessary to enable the trustee to divest the Assets To Be Divested.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That:

A. Upon reasonable notice to Respondents from the acquirer approved by the Commission pursuant to this Order, Respondents shall provide such assistance to the acquirer as is reasonably necessary to enable the acquirer to manufacture, finish, distribute and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture. Such assistance shall include reasonable consultation with knowledgeable employees of Respondents and training at the acquirer's facility for a period of time sufficient to ensure that the acquirer's personnel are appropriately trained in the manufacture, finishing, distribution, and marketing of collagen sausage casings in the manner carried on by Devro Inc. and Devro Canada prior to the divestiture. Respondents, however, shall not be required to continue providing such assistance for more than two (2) years from the date of the divestiture. Respondents may charge the acquirer at a rate no greater than their direct costs for providing such technical assistance.

B. Respondents shall facilitate and not interfere with the hiring by the acquirer approved by the Commission of employees of Devro Inc. and Devro Canada who may desire to undertake employment.

C. Pending divestiture of the Assets To Be Divested, Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the Assets To Be Divested and to prevent their destruction, removal, wasting, deterioration or impairment of any kind, except for ordinary wear and tear.

V

It is further ordered That Respondents shall continue to comply with all terms of the Agreement to Hold Separate attached to this Order and made a part hereof as Appendix II. Said Agreement shall remain in force and effect until the Assets To Be Divested have been divested as required by this Order.

VI

It is further ordered That:

Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Parts II, III, and IV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, and their compliance with the terms and conditions of the Agreement To Condition Acquisition and the Agreement To Hold Separate, and set forth the monthly sales of Devro Inc. and Devro Canada during the preceding two months and compared to the monthly sales during the same months in the preceding calendar year. Respondents shall include in their compliance reports copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture and the manner in which the Assets To Be Divested are being held separate.

VII

It is further ordered That, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and reasonable notice, each Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to the appropriate Respondent, and without restraint or interference, to interview officers, directors, or employees of the Respondent, who may have counsel present.

VIII

It is further ordered That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of the Order.

Appendix I

Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification

This Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification ("Agreement To Condition Acquisition") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International Inc. ("Teepak"), a Delaware corporation (hereinafter "the Acquisition");

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas Devro International plc and Devro Inc. are willing (a) to enter into an Agreement Containing Consent Order requiring them to divest certain Assets To Be Divested, as defined in Part I of the proposed Consent Order of the Agreement Containing Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto (hereinafter "the Divestiture"); (b) to enter into an Agreement To Hold Separate requiring that the Assets To Be Divested be held separate and apart from the remainder of the assets of Devro International pending their divestiture; and (c) to arrange and provide for the unlimited indemnification for the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to this Agreement To Condition Acquisition and the Agreement To Hold Separate (hereinafter "the Retroactive Indemnification");

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of the Assets To Be Divested, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Rule 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is advised and concerned that, under the applicable law of the United Kingdom, Devro International will be unable to commit to, or be bound by, certain of the terms of the Agreement Containing Consent Order and the Agreement To Hold Separate unless and until those terms are approved by the shareholders of Devro International plc;

Whereas the Commission is advised that, under the applicable law of the United Kingdom, Devro International plc will not be able to seek shareholder approval for (a) the Divestiture or (b) the Retroactive Indemnification, until after all of the terms of the Agreement Containing Consent Order, the Agreement To Hold Separate, and this Agreement To Condition Acquisition are made known to the shareholders of Devro International plc, which can only happen after the Commission accepts the Agreement Containing Consent Order for public comment, and the Agreement To Hold Separate and the Agreement To Condition Acquisition;

Whereas the Commission will not accept for public comment an Agreement Containing Consent Order or an Agreement to Hold Separate that is not binding on the Proposed Respondents;

Whereas the undersigned officials of Devro International plc and Devro Inc. and their attorneys at this time are authorized to make the following binding commitments:

1. Devro International plc and Devro Inc. will seek shareholder approval for, at the same time, as part of a single package, and as a mutually contingent matter, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

2. the shareholder approval will be sought, and if unconditionally obtained, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the

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Agreement Containing Consent Order will have been placed on the public record;

3. Devro International plc and Devro Inc. will advise the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of all actions taken by the shareholders in connection with the effort to obtain approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and

4. Devro International plc, Devro Inc., and all entities controlled by either of them will not acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification;

Whereas Devro International plc represents to the Commission that (1) the directors of Devro International plc will officially recommend to the shareholders of Devro International plc that they approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (2) Devro International plc will use its best efforts to obtain shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (3) in light of (1) and (2) above, it would be highly unusual if the shareholders of Devro International plc were to reject (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and (4) Devro International plc fully expects the shareholders of Devro International plc to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

Whereas shareholder approval of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be presented to the shareholders for their approval as part of a single resolution, to be voted upon as a package only, and Devro International plc and Devro Inc. will not be authorized to consummate the Acquisition unless and until they are also authorized (a) to make the Divestiture and (b) to grant the Retroactive Indemnification;

Whereas shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be sought, and determined, prior to the time that the Commission will consider whether to accept the final Agreement Containing Consent Order under the Commission's Rules;

Whereas the Commission is concerned that if an agreement is not reached regarding the nature and timing of the shareholder approval and the commitment on the part of Devro International and Devro Inc. not to consummate the acquisition unless and until the requisite shareholder approvals are obtained, appropriate divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the Divestiture and the continued viability and competitiveness of the Assets To Be Divested;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Hold Separate, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. The Acquisition by Devro International plc or Devro Inc. of Teepak is contingent upon shareholder approval.

2. Devro International plc and Devro Inc. will not seek shareholder approval for the Acquisition without, at the same time, and as part of the same package, also seeking mutually contingent shareholder approval for (a) the Divestiture and (b) the Retroactive Indemnification.

3. Unconditional shareholder approval will be sought, and if obtained, be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the Agreement Containing Consent Order will have been placed on the public record.

4. In no event will Devro International plc or Devro Inc. or any entity controlled by either acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification.

5. Unless and until unconditional shareholder approval is obtained for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International plc and Devro Inc., or any entity controlled by either, will not acquire, directly or indirectly, Teepak or any of its assets.

6. At such time as the shareholders of Devro International may unconditionally approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International and Devro Inc., by and through their authorized representatives, shall notify the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the action taken.

7. Devro International and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Condition Acquisition and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

8. This Agreement shall be binding when approved by the Commission.

Appendix II

Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International, Inc. ("Teepak"), a Delaware corporation (hereinafter "Acquisition");

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of certain Assets To Be Divested, as defined in Part I of the Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is concerned that if an understanding is not reached preserving the *status quo ante* of the Assets To Be Divested during the period prior to the acceptance of the final Consent Order by the Commission, after the 60-day notice period, divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets To Be Divested and the continued viability and competitiveness of the Assets To Be Divested;

Whereas the purpose of this Agreement and the Consent Order is to:

1. Preserve and maintain the Assets To Be Divested as a viable, competitive and independent business engaged in the manufacture, finishing, distribution and sale of collagen sausage casings pending divestiture;

2. Limit the potential for interim competitive harm during the period between the Acquisition and the required divestiture; and

3. Remedy any anticompetitive effects of the Acquisition;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Condition Acquisition, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. Devro International plc and Devro Inc. agree to execute the Agreement Containing Consent Order and be bound by the Consent Order.

2. Devro International plc and Devro Inc. agree to execute and be bound by the Agreement To Condition Acquisition.

3. Devro International plc and Devro Inc. agree that until the earlier of the dates listed in subparagraphs 3(a) and 3(b) of this Paragraph, they will comply with the provisions of Paragraph 4 of this Agreement:

(a) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. 2.34; or

(b) The day after the divestiture required by the Consent Order has been completed.

4. To ensure the complete independence and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, and to further ensure that no competitive information is exchanged between Devro International plc and Devro Inc., Devro Canada, and the persons responsible for maintaining and operating the Assets To Be Divested, Devro International plc shall hold Devro Inc., Devro Canada, and the Assets To Be Divested, as defined in the Consent Order, separate and apart from all of its other operations, on the following terms and conditions:

(a) Devro International plc will appoint three persons to manage and maintain the business and assets of Devro Inc., Devro Canada, and the Assets To Be Divested. These persons ("the Management Team") shall agree to be bound by this Agreement and shall manage Devro Inc., Devro Canada, and the Assets To Be Divested independent of the management of Devro International plc's other business operations, including those of Teepak, after Devro International plc acquires Teepak. The persons on the Management Team shall not be involved in any way in the manufacture, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak. The management team shall conduct the business operations of Devro Inc., Devro Canada, and the Assets To Be Divested.

(b) The Management Team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Devro International plc. The independent auditor/manager, who shall not be an employee or agent of Devro International plc or a person likely to be an employee or agent of Devro International plc within two years of the divestiture, shall have expertise in the manufacture, finishing, distribution, or sale of collagen sausage casings. The independent auditor/manager shall agree to be bound by this Agreement and shall have exclusive control over the operations of Devro Inc., Devro Canada, and the Assets To Be Divested, with responsibility for their management and maintaining their independence. The independent auditor/manager shall not be involved in any way in the business of manufacturing, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak.

(c) Devro International plc shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager, or the Management Team, or Devro Inc., Devro Canada, or the Assets To Be Divested, other than as may reasonably be necessary to assure compliance with this Agreement and with all applicable laws.

(d) Devro International plc shall not change the composition of the Management Team without the consent of the independent auditor/manager.

(e) Devro International plc shall maintain the viability, competitiveness, and marketability of the Assets To Be Divested and shall neither cause nor permit the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except as may occur in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability, competitiveness, or marketability.

(f) Except for the Management Team, Devro International plc shall not permit any Devro International plc Board Member, officer, director, employee, or agent to be involved in the business operations of the Assets To Be Divested.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, complying with requirements of the London Stock Exchange and independent auditors, defending investigations or defending or prosecuting litigation, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, Devro International plc shall not receive or have access to, or use or continue to use, any material confidential information about Devro Inc., Devro Canada, or the Assets To Be Divested, in connection with the operation of Devro International plc or its operation of the Teepak business. "Material confidential information" means competitively sensitive or proprietary information not in the public domain, including, but not limited to, customer lists, price lists, marketing methods, patent rights, knowhow, technologies, processes, process improvements or other trade secrets or confidential business information.

(h) Devro International plc, Devro Inc. and Devro Canada shall circulate to all employees of Devro Inc. and Devro Canada, and display in a conspicuous place at Devro Inc. and Devro Canada manufacturing facilities, notice of this Agreement to Hold Separate and the proposed Consent Order in the form attached hereto as Attachment A.

(i) Devro International plc shall give funds to the Management Team for all capital expenditures relating to Devro Inc. and Devro Canada previously planned or approved by Devro International plc to the extent Devro Inc. does not generate sufficient cash flow to fund such capital expenditures. The Management Team shall expend the funds for these previously planned capital expenditures.

(j) The Management Team shall take all steps reasonably necessary to optimize the profitable operations and continued viability of Devro Inc., Devro Canada, and the Assets To Be Divested, including, but not limited to:

(1) Paying all direct costs and indirect overheads relating to the business of Devro Inc., Devro Canada, and the Assets To Be Divested;

(2) Making available funds for advertising and other marketing and promotional activities at no less than the level for the comparable period in the preceding calendar year;

(3) Providing no less than the same level of sales commissions or incentives for sales personnel as were provided for the comparable period in the preceding calendar year;

(4) Maintaining the same level of resources involved in sales and marketing as was the case in the normal course of business prior to the Acquisition; and

(5) Expending funds sufficient to perform all reasonably necessary routine maintenance to, and replacements of, the Assets To Be Divested.

In the event that Devro Inc., Devro Canada, and the Assets To Be Divested do not generate sufficient cash flow to fund the activities reasonably necessary to optimize the profitable operations and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, Devro International plc shall advance such sums as are reasonably necessary to pay for same, to be repaid by the acquirer at no interest within two (2) years.

(k) The compensation and expenses of the independent auditor/manager shall be the responsibility of Devro International plc. Devro Inc., Devro Canada, and the Assets To Be Divested shall not be charged by Devro International plc with those costs and expenses.

(l) Devro International plc shall indemnify the independent auditor/manager against any

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losses or claims of any kind that might arise out of his or her involvement under this Agreement, not to exceed $5 million, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts or bad faith; provided however, upon shareholder approval of the unlimited indemnification of the auditor/manager, retroactive as of the date of the appointment of the auditor/manager, the $5 million liability limitation shall become null and void, under the terms of the Agreement to Condition Acquisition.

(m) If the independent auditor/manager fails to act, or ceases to act, diligently, a substitute auditor/manager shall be appointed by Devro International plc in the manner provided in Paragraph 4 (b) of this Agreement.

(n) The independent auditor/manager shall have access to, and be informed about, the names of the companies who may inquire about, or seek or propose to buy, Devro Inc., Devro Canada, or the Assets To Be Divested. Devro International plc may require the independent auditor/manager to sign a confidentiality agreement prohibiting the auditor/manager from disclosing any material confidential information obtained as a result of his or her role as independent auditor/manager, to anyone other than the Commission.

(o) All material transactions other than those in the ordinary course of business, if not precluded by this Paragraph, shall be subject to a majority vote of the Management Team. In the event of a tie vote, the independent auditor/manager shall cast the deciding vote.

5. Should the Federal Trade Commission seek in any proceeding to compel Devro International plc or Devro Inc. to divest any of the Assets To Be Divested, or any additional assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, as defined in the draft complaint attached to the Agreement Containing Consent Order, Devro International plc and Devro Inc. shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission permitted the Acquisition. Devro International plc and Devro Inc. also waive all their rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires Devro International plc or Devro Inc. to take, or prohibits them from taking, certain actions that otherwise may be required or prohibited by contract, Devro International plc and Devro Inc. shall abide by the terms of this Agreement and the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel, Devro International plc and Devro Inc. shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Dévro International plc and Devro Inc., and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in their possession or under their control relating to compliance with this Agreement; and

(b) Upon five (5) days' notice to counsel, and without restraint or interference from counsel, to interview officers or employees of Devro International plc and Devro Inc., who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission. Devro International plc and Devro Inc. acknowledge that from the date they sign this Agreement until such time as the Commission may approve this Agreement, they will undertake to maintain the Assets To Be Divested in a viable condition.

9. Subsequent to acceptance for public comment of the Agreement Containing Consent Order by the Commission and after the unconditional approval by the shareholders of Devro International obtained not less than seven (7) days prior to the end of the 60-day public comment period, of (a) the Acquisition, (b) the divestiture of the Assets To Be Divested under the terms of the Agreement Containing Consent Order, and (c) the retroactive indemnification, under the definitions and terms of the Agreement To Condition Acquisition and this Agreement to Hold Separate, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

10. This Agreement shall be binding when approved by the Commission.

11. Devro International plc and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Hold Separate and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

Attachment A

Important Notice

As you know, Devro International plc has entered into an agreement with the Federal Trade Commission (FTC) in connection with the proposed acquisition of Teepak International, Inc. Under the terms of the agreement with the FTC, Devro International must sell Devro Inc. and DCI Devro Canada Inc. to a third party that is acceptable to the FTC. We anticipate that this will occur within the next several months.

The agreement with the FTC also requires that, until Devro Inc. and Devro Canada are sold, Devro International must preserve and maintain them as competitive and independent businesses separate from Devro International.

To ensure that Devro Inc. and Devro Canada are kept separate from Devro International, a three-person management team, composed of _____, _____, and _____, will assume the management of Devro Inc. and Devro Canada. This management team, which will operate totally independently of Devro International, will report directly and exclusively to _____, an independent auditor/manager.

The effect of Devro International's agreement with the FTC is that, for all intents and purposes, Devro International will no longer be playing any role in the management and operation of Devro Inc. and Devro Canada. Until such time as the future owners of Devro Inc. and Devro Canada are determined, it is the responsibility of every employee of Devro Inc. and Devro Canada to cooperate with the new management team and to help to preserve Devro Inc. and Devro Canada as competitive and independent businesses.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Devro International plc and its United States subsidiary, Devro Inc. (collectively referred to as "Devro") an Agreement Containing Consent Order. This agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Devro and Teepak International, Inc. ("Teepak") are competitors, nationwide and worldwide, in the manufacture of collagen sausage casings. Sausage casings are the skins into which various sausage-meat products are stuffed before being cooked or smoked. Among the sausage products using collagen sausage casings are beef jerkys, small sausages, and frankfurters. Unlike other types of synthetic sausage casings, such as fibrous sausage casings, used principally to make salamis and hams, and cellulose sausage casings, used principally to make skinless frankfurters, most collagen sausage casings are edible. Edible sausage casings produce a "bite" to a sausage when eaten.

The Commission's draft of complaint states that Devro entered into an agreement with Hillside Industries, Inc., the current owners of Teepak, for Devro to acquire all of Teepak for approximately $135 million. The Commission is concerned that the proposed merger would eliminate substantial competition between Devro and Teepak, increase concentration in the highly concentrated collagen sausage casings markets, and lead to higher prices and fewer customer services. The Commission stated it has reason to believe that the proposed acquisition would have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's draft complaint, the anticompetitive effects of the proposed acquisition will be felt in an all-collagen sausage casings product market as well as in an edible collagen sausage casings product market, in both the United States and the world as a whole. In the United States all-collagen sausage casings and edible sausage casings markets, only four firms sell collagen sausage casings, and Devro and Teepak are the nation's top two producers. The proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI"), the customary measure of industry concentration, by a substantial amount. For example, in the United States all-collagen sausage casings market, the HHI will increase by approximately 2000 points and produce an industry concentration of approximately 4700 points. In the United States edible collagen sausage casings market, the HHI would increase by approximately 3300 points and produce an industry concentration of approximately 6800 points. In the world all-collagen and edible sausage casings markets, the proposed acquisition would affect concentration as measured by four-firm concentration and the HHI by very similar orders of magnitude.

The Agreement Containing Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the proposed consent order, Devro will be required to divest all of its collagen sausage casings business assets in the United States and Canada ("Devro North America") to an acquirer acceptable to the Commission. Devro North America consists primarily of a collagen sausage casings manufacturing plant in Somerville, New Jersey, and a collagen sausage casings finishing plant in Markham, Ontario, Canada. Because the Canadian and United States facilities constitute a single operation, Devro is required to divest the Canadian facility along with the United States plant. This will insure that the divested assets will continue to operate as a viable, competitive business. Devro will also be required to make available to the acquirer of these assets, on a non-exclusive basis, any new technology that Devro may develop related to collagen sausage casings for a period of two (2) years following the final entry of the order.

Devro will be required to complete the required divestiture within three (3) months of the Commission's final issuance of the consent order. In the event Devro does not divest Devro North America to an acquirer acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

An additional feature of the consent order accepted for public comment is that it limits to some extent the class of potential acquirers for Teepak that would be acceptable to the Commission. Firms already producing collagen sausage casings for sale in the United States are excluded as prospective acquirers of Devro North America. The purpose of this exclusion is to preclude Devro from attempting to divest Devro North America to a competitor where there are likely to be further anticompetitive effects.

Accompanying the Agreement Containing Consent Order are two ancillary agreements. The first is an Agreement to Condition Acquisition and the second is an Agreement to Hold Separate.

The Agreement to Condition Acquisition requires that Devro may not acquire Teepak until Devro is authorized by its shareholders to divest Devro North America and related assets. The purpose of this agreement is to ensure that the Commission, through the appointed trustee, will have an enforceable divestiture remedy available should Devro acquire Teepak and not divest Devro North America. For reasons related to United Kingdom procedure and practice, Devro believes it cannot seek shareholder approval for the proposed acquisition of Teepak, or for the proposed divestiture of Devro North America, unless and until the Commission accepts the Agreement Containing Consent Order for public comment. Under the terms of the Agreement to Condition Acquisition, Devro is required to seek shareholder approval of the divestiture at the same time that it seeks shareholder approval of the acquisition, and these approvals must be obtained unconditionally and at least 7 days before the end of the 60-day public comment period. Devro will not be permitted to acquire Teepak unless it has shareholder approval to divest Devro North America. Also, when the Commission decides whether to issue the final order, the Commission will know whether the conditions have been satisfied. If the Devro shareholders reject the proposed resolution that, if passed, would authorize Devro to acquire Teepak and divest Devro North America, no anticompetitive acquisition will occur and the Commission will not issue the final consent order.

The Agreement to Hold Separate requires that Devro preserve Devro North America's assets and operate Devro North America as a separate, ongoing business apart from Devro and Teepak. The purpose of this agreement is to help insure that the competitive value of Devro North America will be maintained after Devro acquires Teepak but before the assets are actually divested.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Devro International PLC

[File No. 951–0072]

Although I have voted to accept the proposed consent order requiring divestiture for public comment, I have reservations about the provision of the order that excludes some incumbent firms from eligibility to acquire the assets to be divested.[1] According to the Notice to Aid Public Comment, the "purpose of this exclusion is to preclude Devro from attempting to divest Devro North American to a competitor where there are likely to be further anticompetitive effects." Since any proposed divestiture under the order must be approved by the Commission,[2] an attempt by Devro to make an anticompetitive divestiture likely would be fruitless. In addition, Devro would risk appointment under the order of a trustee to accomplish

[1] Order Paragraph II.C of the proposed order states that the proposed acquirer of the assets to be divested "shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States."

[2] Order Paragraph II.D.

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divestiture and incurring civil penalties for failure to make a timely divestiture.

Attempts to define in advance the field of eligible acquirers under a divestiture order are unnecessary, at best, potentially inefficient and possibly even anticompetitive. It is an inefficient use of resources to attempt to assess in advance the competitive effects of a transaction that Devro might or might not propose (especially if the exclusion covers more than one firm), even if the transaction-specific information necessary to our merger analysis were available. As a practical matter, any such exclusions will be based on something less than an adequate factual examination of the various possible proposed divestitures and will necessarily involve the risk of excluding firms that might have been acceptable and even procompetitive acquirers. That risk is unnecessary and should be unacceptable in view of the requirement to obtain the Commission's approval before any divestiture can take place and the availability of other sanctions for failing to make a timely divestiture.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging (AoA), as follows: continues the Office of the Assistant Secretary for Aging; establishes two Offices, the Office of Program Operations and Development, and the Office of Governmental Affairs and Elder Rights; the operating grant programs (Titles III and VI) and the developmental grant program (Title IV) are placed under the Office of Program Operations and Development; all inter- and intra-governmental cooperative programs, domestic and international, as well as the elder rights services of Titles II and VII are placed under the Office of Governmental Affairs and Elder Rights; the executive secretariat and policy coordination functions are moved to the Office of the Assistant Secretary; supervision of the Regional Offices is moved to the Director, Office of Program Operations and Development; planning functions are moved to the Office of Management; and the former Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs, Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs, Office of Field Operations, and Office of Policy Coordination and Analysis and the division structure under the Office of State and Community Programs and the sub-offices under the Office of Program Development are abolished.

The language to implement these changes is as follows: Part B, Chapter B, "The Administration on Aging," as published in the **Federal Register** on September 13, 1991 (56 FR 46620); amended on December 24, 1992 (57 FR 61433); and further amended on March 2, 1993 (58 FR 12040) is amended as follows.

Delete B.00 and replace with the following:

B.OO Mission

The Administration on Aging, an Operating Division of the Department of Health and Human Services, is the principal agency designated to carry out the provisions of the Older Americans Act ("OAA" or "The Act") of 1965, as amended, 42 U.S.C. 3001 *et seq.* Serves as the effective and visible advocate for older persons within the Department of Health and Human Services and with other Federal departments and agencies. Directly assists the Secretary in all matters pertaining to problems of the aging. Advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies. Gives priority to older persons in greatest economic or social need. Develops standards and issues best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services funded by the Department and provided to older persons. Advises the Secretary, Department components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare; under Title III of the Act (45 CFR Part 1321) administers a program of formula grants to States to establish State and community programs for older persons; administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under Title VI of the Act (45 CFR parts 1326 and 1328). Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American administered, community-based systems of comprehensive social services for older persons. Administers long term care ombudsman and protective services programs, legal services development programs, and outreach, counseling and assistance programs for older people under Title VII of the Act. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration under Title IV of the Act. Administers national centers for service development and assistance, and information dissemination benefitting older persons. Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations and nutrition providers to support Titles III and VI nutrition services and disseminate nutrition education material.

Delete B.10 and replace with the following:

B.10 Organization

The Administration on Aging is headed by the Assistant Secretary for Aging and consists of:

Office of the Assistant Secretary
- Congressional and White House Liaison
- Executive Secretariat and Policy Coordination

Office of Governmental Affairs and Elder Rights
- Office of Elder Rights Protection

Office of Management
- Division of Budget and Finance
- Division of Personnel and Planning
- Division of Grants and Contracts Management
- Division of Information Resources Management

Office of Program Operations and Development
- Regional Offices on Aging
- Office of State and Community Programs
- Office for American Indian, Alaskan Native and Native Hawaiian Programs
- Office of Program Development

Delete B.20, A–I, and replace with the following:

B.20. Functions

A. Office of the Assistant Secretary (BA)

The Office of the Assistant Secretary serves as the focal point for OAA programs through the development, coordination and administration of those programs nationwide. Serves as the effective and visible advocate within the Federal government to ensure the rights and entitlement of the elderly. Conducts active public education of officials, citizens, and the aged to ensure broad understanding of the needs and capabilities of the aged.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by AoA. Advises the Secretary, HHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Deputy Assistant Secretary is the Assistant Secretary's primary associate in carrying out the mission of the agency, particularly in the advocacy and policy negotiation role within the Federal government.

Serves as an advocate for older people with voluntary and private organizations. Collaborates with other Federal agencies to assist older persons by the development and implementation of interagency agreements. Coordinates joint interests and initiation of projects with other Federal agencies and State and local government entities. Provides liaison with the Federal Council on the Aging and other Federal advisory committees focused on the aging. Works with national aging organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to meet the needs of older persons. Ensures affirmative action throughout the Aging Network in employment and services delivery.

Congressional and White House Liaison (BA1)

Coordinates all liaison activities with Congress and with the print and electronic media. Manages AoA's media relations and legislative liaison activities.

Develops legislative proposals, testimony, background statements, and other policy documents for use by the Assistant Secretary in activities related to legislation. In coordination with the DHHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people, including legislation directly affecting OAA programs. Through an automated legislative information system tracks bills related to the aging. Develops and issues status reports regarding key legislative developments to Headquarters and Regional Office staff, the network of State and Area Agencies on Aging, and Indian Tribal Organizations.

Coordinates with the Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media; initiates media outreach activities and responds to all media inquiries concerning AoA programs and related issues.

Executive Secretariat and Policy Coordination (BA2)

Responsible for policy coordination concerning programs and services under the OAA, including long-term care initiatives and services. Serves as the communications center for AoA, ensuring that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretary or AoA Executive Council are identified on a timely and coordinated basis. Monitors the response of other AoA units in developing necessary documents for the Assistant Secretary's review and provides assistance to staff on the content and style of special assignments. Operates the agency-wide paper and electronic correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and reviews documents for consistency with the Assistant Secretary's and the Secretary's assignments, previous decisions on related matters, and editorial standards. Refers unprecedented policy questions to the appropriate subject matter office. Develops and maintains agency-wide mailing lists.

In conjunction with the Immediate Office of the Assistant Secretary, implements public education activities for Headquarters and Regional Offices to achieve AoA program objectives in coordination with other AoA units; develops and distributes publications and audiovisual materials about older people and prepares and issues brochures, fact sheets, exhibits and films on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population.

Develops special information campaigns to inform older people and the general public about issues, problems and benefits important to older people. Fosters, plans and coordinates ceremonies and celebrations related to the elderly. Prepares the AoA Annual Report to the President and Congress.

Maintains official copies of all policy and information issuances and data collection instruments; ensures their proper clearance before issuance and annually reviews them for currency and compliance with law and regulations. Reviews all materials prepared for **Federal Register** publication and ensures their compliance with guidelines. Serves as AoA's liaison with the Executive Secretariats in the Office of the Secretary and other HHS units regarding AoA program, policy and special administrative matters. Receives and sorts internal mail for AoA headquarters components.

Provides liaison with OMB for the management of the agency paperwork burden reduction program. Coordinates clearance of OAA Titles II, III, IV, VI and VII program regulations within AoA and with appropriate HHS offices, and review of those regulations by OMB. Prepares and processes clearances for collection of information, and assures compliance with related standards, procedures and policies.

Serves as liaison with the Office of the General Counsel, Office of the Inspector General and the General Accounting Office on all program matters other than those related to grants or procurement management. Reviews requests for information under the Freedom of Information Act and arranges for appropriate responses, in coordination with the HHS Freedom of Information Act Officer.

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging.

B. Office of Governmental Affairs and Elder Rights (BA–1)

Develops and maintains effective relationships with government entities and their representatives at the Federal, State and local levels to develop a unified policy toward, and promote, the aims of the Older Americans Act, especially as they relate to a community-based system of long-term care for the aging and disabled; oversees development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns. Coordinates AoA fraud, waste and abuse investigation and elimination, and related activities. Chairs the Assistant Secretary's Business and Aging Leadership Roundtable of representatives from private industry and national business and aging organizations. Oversees the international liaison and coordination functions of AoA. Stimulates and coordinates AoA international activities

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and coordinates AoA international activities with Departmental and other Federal agencies and State and national organizations concerned with international aging matters. At all levels, from national to the local service delivery level, develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with those organizations to be more sensitive and responsive to age-related needs and issues.

Directs intergovernmental affairs activities and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates, and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships and ventures that address policies and services affecting the aging population.

Implements Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA. These activities are focused primarily on older individuals (particularly low-income minority older people) and the functions and responsibilities of the State and Area Agencies on Aging.

The Director carries out the functions of the Office of Long-Term Care Ombudsman Programs established in Section 201(d)(1) of the OAA. Serves as the effective and visible advocate within the Department and with other departments and agencies of the Federal Government regarding all Federal policies affecting older residents of long term care facilities; reviews Federal legislation, regulation, and policy respecting long-term care ombudsman programs and makes recommendations to the Secretary and Assistant Secretary; coordinates the activities of AoA with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; investigates the operations of any Federal law administered by HHS that may adversely affect the health, safety, welfare, or rights of older individuals; and establishes standards for the training of State long-term care ombudsman staff.

B.2 Office of Elder Rights Protection (BA–11)

Develops and carries out the ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII-A of the OAA throughout the Aging Network, including administration of the National Ombudsman Resource Center and the National Center on Elder Abuse, and advising the Assistant Secretary on the operation of those Centers. Reviews State Plans to determine eligibility for funding under Sec. 705 of the OAA and recommends approval or disapproval to the Assistant Secretary. Implements Title VII-A in the field through provision to Regional Office staff guidance and information concerning AoA programs, and the development and interpretation of Title VII program regulations and policy; ensures the implementation of guidance and instructions concerning long-term care ombudsman, prevention of elder abuse, elder rights and legal assistance development and outreach, counseling and assistance programs.

Implements Title VII-A in the field by the provision to Regional Office staff of guidance and information concerning the ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII-A of the OAA, and interpretation of regulations and policy implementing those programs. Fosters, oversees, assists, and assesses the development of State-administered long term care ombudsman, elder abuse prevention, legal assistance development, and benefit counseling programs for the elderly as authorized under Title VII-A of the OAA. Establishes, administers and evaluates the National Ombudsman Resource Center and the National Center on Elder Abuse.

Provides specialized input on Title VII-A programs to long range planning, operational plans and the budget process. Responsible for the implementation of regulations and policy on Title VII-A of the OAA. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve the Title VII-A protection and representational programs funded under the OAA.

C. Office of Management (BE)

Reports to the Deputy Assistant Secretary for Aging. Advises the Assistant Secretary in the areas of internal administration and management of AoA. In response to Federal statutes, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management throughout AoA, including such areas as budget, finance, grants administration, personnel management, procurement, material and facilities management, management systems, information resources management, telecommunications and similar administrative management facilitation services. Responsible for all management and administrative reviews, analyses and controls within AoA required by statute or regulation, such as the Federal Managers Financial Integrity Act (FMFIA). The Director serves as the AoA Chief Financial Officer (CFO) and, on behalf of the Assistant Secretary for Aging, performs the duties assigned to AoA under the Chief Financial Officers Act of 1990, including the development of the CFO 5-year plan and status report. Manages all planning activities in AoA, including those responsibilities assigned by the Government Performance and Results Act of 1993 (GPRA). Conducts management analysis and automated systems development activities for AoA and serves as the principal AoA staff examining the AoA organization. Provides technical assistance and guidance to Headquarters and Regional Office units in the development, implementation and maintenance of administrative and grants management systems and audit resolution.

Division of Budget and Finance (BE1)

Provides and coordinates management support services involving budget formulation and execution, and financial management. In coordination with AoA program offices, formulates and presents budget estimates; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Prepares budget documents on behalf of the Assistant Secretary for presentation to Departmental management, the Office of Management and Budget (OMB), and Congress. Assists in planning for and presenting the budget before OMB and the Congress. Solicits, obtains and consolidates information and data from other AoA offices for testimony at hearings before these bodies in coordination with the Office of the Assistant Secretary. Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Assistant Secretary's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all formula, discretionary grant accounts, and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances, and certifies funds availability for all AoA accounts. Prepares requests for apportionment of appropriated funds. Maintains control of allotted funds against current obligations, and maintains separate financial operating plans for each of the Regional Offices. Prepares spending plans and status-of-funds reports for the Assistant Secretary.

Acts as AoA's coordination point with the Office of the Secretary and AoA organizational units on policy and regulatory issues involving travel management, develops and interprets AoA policies on travel, and provides support services to AoA components for travel management.

Provides analysis and coordinates accounting reports for AoA. Manages funds for salary and expense accounts. Tracks financial status of all AoA program and salary and expense funds.

In meeting the Assistant Secretary's priorities and instructions, with appropriate input from AoA organizational units, develops financial operating procedures and manuals, including directing the implementation within AoA (headquarters and regions) of Departmental and other Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the AoA liaison with the Office of the Secretary and OMB on all budgetary matters.

Division of Personnel and Planning (BE2)

Develops and interprets AoA goals, priorities, and strategies. Prepares the AoA strategic plan, long and short-range plans, operational plans; implements the Government Performance and Results Act of 1993, and customer service activities AoA-wide; provides interpretation and guidance for implementation of these plans and activities to all AoA units; and reviews all new and changed policy documents for consistency with AoA long-range goals and strategies. Adjusts goals and strategies accordingly. Provides guidance and technical assistance to AoA units in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance. Coordinates with the Office of the Assistant Secretary and all AoA units, and Departmental staff offices on planning issues and development. By means of this system, coordinates the development of implementation strategies and subsidiary plans as well as processes for monitoring progress toward stated objectives.

Develops, recommends and implements a management review system for the purpose of assessing organizational progress in implementing GPRA, strategic and customer service priorities, and of encouraging appropriate action by managers at all levels; provides analysis of individual organization and AoA-wide progress; identifies problems and issues for action by the Assistant Secretary and Senior Staff; suggests alternatives for resolving issues where progress is unsatisfactory and provides the Assistant Secretary with recommendations to facilitate decision-making.

Initiates and develops AoA administrative and human resource management policies, procedures and instructions. Plans, organizes and conducts management studies of the AoA program, staff and organization.

Plans, organizes and conducts in-depth studies of organization structures, functional statements, job structure, staffing patterns, management and administrative information systems, relevant legislative and regulatory authorities and/or workloads to analyze staff, equipment, and systems resources and needs and/or to determine and measure work elements. Recommends to the Assistant Secretary organization changes; alternate staffing patterns; job structure and/or functional statement modifications; and staff, workload and equipment distribution.

Manages the AoA management improvement program. Assesses AoA's management methods and recommends improvements to the Assistant Secretary. Monitors AoA's progress toward approved goals. Incorporates performance measures used to implement GPRA.

Consistent with relevant OMB Circulars, develops, defines and implements management analysis and reporting systems to provide for better informed management decisions and more equitable distribution of resources, and through the Division of Information Resources Management implements these within the AoA automated information system; manages official AoA administrative oversight systems, such as the personnel data base and the administrative issuance process. Performs assessments of paperwork processing, reporting, and other systems needs in AoA.

Monitors AoA's compliance with the Federal Manager's Financial Integrity Act (FMFIA), as defined by OMB Circular A–123 (Management Accountability and Control). Develops protocols, develops and evaluates self-assessment models, and recommends corrective actions. Monitors AoA's compliance with FMFIA instructions and findings. Acts as the AoA liaison with Assistant Secretary for Management and Budget (ASMB) and Office of the Inspector General (OIG) on FMFIA matters. Prepares the AoA annual FMFIA report to the Secretary, the President and Congress.

Develops, implements and assesses strategies on use of human resources and the assignment of full-time equivalent employment (FTE) ceilings. Develops and administers the AoA Position Management Plan and functional statements. Acts as liaison with ASMB and ASPER in coordinating preparation of organizational proposals requiring approval by the Secretary. Maintains official organizational, functional statement and delegation files for AoA. Develops formal program, administrative and personnel delegations of authority for AoA based on continuing management assessment and on review and analysis of legislation and regulations.

Provides technical assistance and guidance to AoA managers and staff regarding personnel management matters. Reviews proposed requests for personnel action and recommends approval/disapproval of such requests.

Develops and monitors the annual AoA employee training strategy and budget, assuring that the common training needs of AoA employees are identified and implemented. Coordinates Presidential Management Intern, Federal Women's and other developmental programs with high AoA/HHS priorities. Oversees AoA training contracts.

Develops, manages, and assesses the effectiveness of AoA employee performance management, incentive and award systems. Provides training and technical assistance on current and demonstration systems.

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Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving real and personal property, space management, occupational safety and health, material management, postal management, and forms and records management. Provides oversight and direction to meet the administrative needs of AoA components. Serves as liaison with the Office of the Secretary, the General Services Administration (GSA), and outside vendors to provide facilities services including acquisition of facilities and equipment, personal property management, inventory control, and labor services. Administers AoA's personal and capitalized property management program, including the establishment and maintenance of property accountability systems, the storing and distribution of supplies, and the movement of furniture and equipment associated with the relocation of offices. Develops and implements AoA's plans, guidelines and activities for space and facilities management, including identification of and negotiations for space, and planning and design of office layouts. Responsible for the acquisition, disposition, allocation, and budgeting of space for AoA.

Serves as the AoA records manager, providing guidance and assistance to both Headquarters and Regional Office staff regarding filing practices, retention and disposition of records.

Division of Grants and Contracts Management (BE3)

Serves as AoA's focal point for management, leadership and administration of discretionary and formula grants, and cooperative agreements. Provides national policy oversight and development for grant management and administration matters. Ensures that all grant awards conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate AoA and HHS organizations to ensure consistency between AoA discretionary and formula grant award activities, and the Department's various payment systems for grants.

For discretionary grants, ensures that the administrative and financial management aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents and negotiates grant budgets, and makes all awards for AoA Headquarters and Regional Offices. Reviews discretionary grants after input from AoA program offices, and coordinates AoA grantee financial management matters as necessary with appropriate HHS and AoA units.

Issues and maintains control over formula grant awards under the OAA, and makes adjustments to previously issued formula grant awards.

In coordination with all AoA Headquarters and Regional Offices having grant administrative responsibilities: reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for grantee financial monitoring; and, reviews activities at the field level for all AoA discretionary and formula grant programs.

Following consultation with all Headquarters and Regional Offices having grant administrative responsibilities, and with the approval of the Assistant Secretary: develops AoA instructions and procedures for the administration of all discretionary and formula grants, including those approved in AoA Regional Offices. Provides training and technical assistance to AoA staff regarding grants and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of administrative and financial management of grants.

Has primary responsibility for developing policy issuances for grants management in AoA, and reviews all proposed AoA instructions and policy issuances pertaining to grant matters which are derived from Departmental, OMB or other government-wide issuances to ensure consistent policy and interpretation within AoA concerning grants management.

Functions as AoA liaison with the General Accounting Office (GAO), the HHS Office of the Inspector General and the Department's Office of Grants and Acquisition Management on grant matters. Assists at discretionary and formula grant hearings before the Departmental Appeals Board in response to disallowances and other financial claims by AoA or State Agencies on Aging and other grantees.

For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of 45 CFR Parts 74 and 92 to AoA staff. Based on formula grants management policies and procedures approved by the Department, reprogram formula grant funds as required under the OAA.

Responds to audit issues raised by Department and General Accounting Office audit reviews and ensures the proper analysis and resolution of audit findings by Regional Offices for final action by the Assistant Secretary. Coordinates receipt and processing of all grant and contract related materials.

Division of Information Resources Management (BE4)

Manages AoA's Information Resources Management (IRM) Program and develops policies, plans, budgets, standards and procedures related to it. The IRM Director serves as the principal IRM Official, responsible for delegations of procurement authority and the annual five-year long-range plan. Plans, manages, maintains and operates AoA's automated information system, including the LAN, personal computers, software, and support systems and services. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Provides or contracts for training of users in all AoA systems, hardware and software. In coordination with the Executive Secretariat carries out the activities required under the Paperwork Reduction Act of 1980, as amended, as the Federal Information Resources Management Regulations, other Federal regulations and Executive Orders and DHHS/OS policies and procedures apply the Paperwork Reduction Act to automated information resources management. Represents AoA on the OS IRM Policy and Planning Board.

Responsible for IRM reviews; Federal Information Processing resources retirement and disposal; and conducting and reporting of information resource inventories.

Acts within the overall strategy, annual workplan and budget approved by the AoA Information Resources Management Board, composed of management representatives from each major component of AoA.

Assesses the need for, and defines the specifications for procurement of all Headquarters and Regional Office IRM hardware and software. Reviews and recommends to the Director, OAM, the decision for Headquarters and Regional Office requests for Automatic Data Processing (ADP) equipment and services. Assesses, recommends and defines the need to share ADP services through inter-government, inter-department and interagency agreements.

Surveys specifications and other literature, initiates requests for services, and defines AoA's need for support services from private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the AoA corporate data enterprise. Designs and institutes procedures for the protection, security and integrity of the AoA data, hardware and software. Develops automation-based solutions to improve efficiency and effectiveness of methods used by AoA staff to carry out work assignments and responsibilities.

The Division is responsible for establishing and maintaining a secure Internet presence. The Internet presence will be used to provide a variety of services to agency customers including a World Wide Web Home Page containing the latest information on AoA activities, sending and receiving grantee financial and performance reports, and supporting an International Aging Information Network that will pull together various private non-profit and federal/state/local/government resources addressing aging related issues. This network will be integrated with the National Aging Information Center (NAIC) which will provide on-line, direct public access to the NAIC's substantial data analysis capability for professional aging services providers.

Provides telecommunications planning, budgeting and management for AoA Headquarters' facilities, including procurement, installation, alterations, and maintenance. Provides liaison with HHS and GSA on telecommunications matters, and provides assistance to AoA components to identify telecommunications needs and to use communications equipment and systems.

D. Office of Program Operations and Development (BF)

Reports to the Assistant Secretary for Aging. Plans, directs and evaluates agency program operations, including the development and implementation of a comprehensive, coordinated system of services for older Americans. Coordinates all AoA cross-cutting program activities and initiatives. Assures internal coordination of programs. Assesses the need for, develops strategies and priorities about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people.

Provides leadership on behalf of Titles III, IV and VI of the OAA, and those parts of Title II of the OAA for which the Office is responsible. Plans, directs and evaluates the programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles III and VI of the OAA. Assures the successful collection of data and its analysis to demonstrate program effectiveness. Assures that program and service information and trends are disseminated to advocates for older persons. Provides technical assistance to and education for State and Area Agencies on Aging and Tribal grantees in the development of plans, goals, and system development activities. Assures that statutory requirements, regulations, policies, and instructions are implemented for Titles III and VI, and for the functions under Title II for which the Office is responsible.

Performs the following functions under Title II: issues and enforces regulations regarding conflicts of interest in arranging the provision of services under the Act, including prohibiting such conflicts on the part of Area Agencies on Aging; provides direction to service providers to improve data collection and analysis; designs uniform data collection procedures; assists State and Area Agency volunteer coordinators, as necessary, and encourages the effective use and training of volunteers; consults with State and Area Agencies and Tribal grantees in the development of goals, regulations, instructions and policies; oversees the Nutrition Officer who provides technical assistance and guidance to Regional Offices, States, Area Agencies on Aging and service providers; establishes and convenes a nutrition guidance council to assess program effectiveness and to promote nutrition and dietary standards; and assures planning for and completion of studies and evaluations.

Provides program expertise to the Assistant Secretary for policy development, advocacy and program initiatives within its assigned program areas.

Provides technical assistance to the Headquarters and Regional Offices, State and Area Agencies on Aging, and other organizations on their statistical data needs, uses of data, and methods of collecting the data.

Funds and administers the National Aging Information Center, which compiles, publishes and disseminates information on programs funded under the Act, as well as demographic data on the elderly population and data from other Federal agencies on the health, social and economic status of older persons, and provides technical assistance and training to State and area agencies and to service providers on State and local data collection and analysis.

Assesses results of these activities to develop utilization strategies. Promotes information dissemination in professional fields. Develops and manages AoA technical information clearinghouse to ensure dissemination of information such as best practice models, to exchange program experience with the network of State and Area Agencies on Aging, and to coordinate technical information dissemination requirements with other national organizations in the field of aging.

Supervises and provides technical guidance to the Regional Offices as they implement the national programs of the OAA. Ensures that clear and consistent guidance is given to all Regional Offices on program and policy directives. Issues substantive operating procedures to guide Regional Office staff of AoA in the conduct of their responsibilities; establishes standards for performance plans in the Regional Offices; regularly assesses the performance of AoA Regional Office staff against the established standards.

E. Regional Offices on Aging (BFD1 to BFDX)

Regional Offices on Aging are headed by a Regional Administrator (RA) who reports to the Director, Office of Program Operations and Development.

Serve as the focal point for the development, coordination and administration of OAA programs within the designated HHS region. Represent the Assistant Secretary for Aging within the region, and provide information for, and contribute to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish field program goals and objectives.

Serve as the effective and visible advocates for the elderly to Federal agencies in their geographic jurisdiction to ensure the rights and entitlement of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the nation; conduct active public education of officials and citizens and the aged to ensure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering

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programs supported under Titles II, III and VII of the OAA, and Indian Tribal Organizations administering projects under Title VI. Review OAA State Plans on Aging and approve acceptable plans or recommend disapproval to the Assistant Secretary for Aging, as appropriate. Recommend approval or disapproval of regional Title IV applications to the Assistant Secretary. Review applications and recommend approval or disapproval of Title VI applications to the Assistant Secretary.

Advise the Assistant Secretary of problems and progress of programs through the Director, Office of Program Operations and Development; recommend to the Assistant Secretary changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Region and recommend to the Assistant Secretary or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional Office, State and Tribal levels to enhance resources and assistance available to the elderly. Disseminate and provide technical assistance regarding nutrition guidelines and developments to State and Area Agencies, Indian Tribal Organizations and nutrition service providers.

Monitor and assist State and Area Agencies and Indian Tribal Organizations in the implementation and execution of the long-term care ombudsman, elder abuse prevention, elder rights and legal assistance development, and outreach, counseling and assistance programs, and the implementation of elder rights under Title VII of the OAA.

Office of State and Community Programs (BF1)

Serves as the focal point within AoA for the operation, administration, management and assessment of the programs authorized under Title III of the OAA. Also carries out the following responsibilities of Title II: encourages and assists in the provision of information to older people with the need for Supplemental Security Income, Medicaid and Food Stamps; implements and oversees the supportive services and nutrition programs; implements and oversees the uniform data collection procedures for States; implements and oversees the responsibilities for consultation with other Federal agencies and with State and Area Agencies on Aging.

Implements Title III of the OAA through the development of regulations, policies and guidance governing the development and enhancement of comprehensive and coordinated home and community-based care service delivery systems by State and Area Agencies on Aging. Provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III funds among States. In the field, implements Title III through the provision to Regional Office staff of guidance and information concerning AoA programs, and interpretation of Title III program regulations and policy. In addition, fosters, oversees, and assesses the implementation of Title III by States and Area Agencies through guidance and direction to Regional Office staff regarding program reviews, compliance monitoring, program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Develops and designs the criteria for collecting, analyzing and distributing program performance data on State and Area Agencies' implementation of OAA programs, and prepares that data for reporting to Congress, the public and the National Aging Information Center.

Provides specialized input on Title II and III programs to long-range planning, operational plans and the budget process. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve Title III programs and to ensure that the objectives of the OAA in fostering independence and life with dignity are met.

Develops policies, guidance and technical assistance to State and Area Agencies on Aging with respect to programs under Title III of the OAA, including the development and implementation of comprehensive and coordinated systems for supportive services, congregate and home-delivered nutrition services, the development and operation of multipurpose senior centers and the delivery of legal assistance; provides guidance and technical assistance to AoA Regional Office Staff in the effective implementation of programs under Title III of OAA; designs, implements and provides guidance and technical assistance to State and Area Agencies on Aging and service providers on data collection and analysis (Section 202(b)(28)) and on uniform data collection procedures for State Units on Aging (Section 202(b)(29)); consults with State and Area Agencies on Aging, service providers and other appropriate stakeholders in the development of goals, regulations, program instructions and policies regarding comprehensive and coordinated supportive and nutrition systems of services for older individuals.

Develops regulations for use by State and Area Agencies on Aging and local service providers responsible for programs under Title III of the OAA. Carries out the functions of the designated nutrition officer, who coordinates nutritional services under the Act and develops the regulations and guidelines, and provides technical assistance regarding nutrition to the AoA Regional Offices, State and Area Agencies, nutrition service providers, and other organizations; in coordination with the Office of Governmental Affairs and Elder Rights, serves as the liaison to the United States Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

Administers the State plan hearing process required by Section 307(c)(1) of the OAA and provides the analysis and recommendations for the Assistant Secretary's decision resulting from the hearing.

Provides timely and accurate responses to requests for policy interpretation and technical assistance from Congress, State and Area Agencies on Aging, and the general public.

Develops and operates a National Aging Program Information System focused on the information needs of AoA and the Network on Aging to both manage and advocate for the delivery of effective and efficient services to the elderly. Coordinates and conducts operational studies, program analyses, and evaluations on special issues of concern to the Secretary, the Assistant Secretary, Regional Offices, and State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Assistant Secretary, other AoA offices, the Secretary, the President, Congress and the public.

Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential Title III program and management issues and develops recommendations to the Assistant Secretary on possible solutions.

Carries out the Title II responsibilities related to facilitating the continuing development, expansion and improvement of home and community-based service systems to be more responsive at the community level to meet the social and human service needs of the elderly. Develops and implements special initiatives at the national level for building strong interagency, intergovernmental and private sector partnerships to address age-related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

Directs and assesses the development under Title III of the OAA of State-administered, home and community-based long-term care systems, and social and supportive services for the elderly. Initiates and encourages expansion of the capacities of home and community-based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community-based social services systems for the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at enhancing the capabilities of State and Area Agencies and local service delivery programs to improve their service to older people.

Assists State and Area Agencies and local service delivery agencies to analyze program trends and project needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs in the future. Develops policies, guidance and technical assistance to the Aging Network of States, Area Agencies, service providers, national organizations, state organizations, local organizations and academia. Focuses primarily on the development of systems of care at the community or local level. Coordinates with the Division of Program Management and Analysis to achieve a fully integrated approach for the enhancement of systems of care throughout the nation.

Assists in the collection and analysis of demographic and socio-economic information related to the aging. Maintains a knowledge of data generated by a wide range of organizations; provides liaison with the Federal Task Force on Aging Statistics; in support of planning and program requirements, performs routine and special statistical analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BF2)

On behalf of individuals who are older Native Americans, serves as the effective and visible advocate within the Department, with other Departments and agencies of the Federal Government, and with State, local and tribal governments regarding all Federal policies affecting Native American elders. Additionally, advocates and promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders.

Recommends to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination. Carries out the following responsibilities of Title II: evaluates the outreach under Title III and Title VI and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services; encourages and assists the provision of information to older Native Americans with need for Supplemental Security Income, Medicaid, food assistance, housing assistance, and transportation assistance; develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans; develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Chairs the Interagency Task Force on Older Indians which is comprised of representatives from the Federal departments and agencies with an interest in the welfare of individuals who are older Indians and makes recommendations to the Assistant Secretary at six month intervals, to facilitate coordination among Federally funded programs and improve services to older Indians.

Provides the Native American input to the Office of Program Development for inclusion in AoA's research plan. In addition, collaborates with the Office of State and Community Programs on Title VI—Title III coordination.

Provides input and feedback to the Office of Program Development for the development and operation of Resource Centers on Native American Elders which gather information, perform research, provide for dissemination of results of the research, and provide technical assistance and training to those who provide services to Native American elders.

Provides specialized input on Title VI programs and the Native American components of Title II and Title VII–B programs to other Offices for long range planning, operational plans, research and training, and the budget process. Determines the Title VI grant amounts from annual appropriations. Develops testimony and background documents concerning Native Americans for use by the Assistant Secretary.

Serves as the AoA focal point for the administration and assessment of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Implements the American Indian, Alaskan Native and Native Hawaiian programs in the field through provision of program and policy direction, training and oversight to the Regional Offices in the execution of the Native American components of their Title II, Title VI and Title VII–B responsibilities. Oversees the Regional Offices' monitoring of Title VI grantees. Arranges for and manages on-going training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by the Office Program Development.

Office of Program Development (BF3)

Develops AoA plans and priorities for evaluation of programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units.

Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to research, demonstration and training strategies.

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Plans, directs and evaluates activities authorized under Title IV of the OAA. Conducts activities for the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, and training activities.

Prepares the planning documents for, and coordinates the development of, the annual discretionary funds program announcement. Provides technical input for Congressional and budget presentations related to the research and demonstration program. Evaluates research, demonstration and training grant and contract proposals; and recommends approval/disapproval, monitors progress, gives technical guidance to and evaluates the performance of grantees and contractors. Analyzes and interprets project results and recommends technical applications. Promotes coordination of research and demonstrations with other national, field and local programs related to aging.

Within overall AoA strategy and long range plans, conducts continuing studies and periodic reviews of personnel needs and resources in the field of aging. Plans and assesses AoA's activities to ensure trained staff for programs serving older Americans. Develops and monitors a national plan for increasing these resources, and prepares reports thereon for AoA, the Federal Council on the Aging, the Secretary, the President and Congress.

Administers a program through grants and contracts for developing curricula and providing training related to preparation for professional, teaching, research, and paraprofessional careers in the field of aging. Makes grants for planning, developing, and operating multi-disciplinary centers of gerontology designed to serve the purposes set forth under Title IV of the OAA, including the monitoring of such grants on a continuing basis.

Develops standards, optional models, and "best practice" suggestions on services to the elderly for use by the Regional Offices, and State and Area Agencies on Aging. Develops technical assistance material and in-service training curricula concerning these standards, models, and best practice suggestions.

Provides technical input on research, demonstration and training programs to the AoA planning and policy development activities, legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities which concern health and social services; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long term care services.

Manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Develops and coordinates initiatives with other Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging.

Reviews all products from AoA, the OAA network, and other sources of information on aging to identify new findings which will be useful to older people and professionals operating in the field of aging. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users.

Dated: December 12, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–30732 Filed 12–18–95; 8:45 am]

BILLING CODE 4130–01–P

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Friday, January 26, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 1177 5th Street, NW., Washington, DC 2005.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, or (301) 594–6665 no later than January 19, 1996.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriations, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Robert A. Berenson, M.D.; F. Marian Bishop, Ph.D.; Linda Burnes Bolton, Dr. P.H.; John W. Danaher, M.D.; Helen Darling, M.A.; Nancy J. Kaufman, M.S.; William S. Kiser, M.D.; Robert M. Krughoff; Risa J. Lavizzo-Mourey, M.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Barbara J. McNeil, M.D.; Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Louis F. Rossiter, Ph.D.; Albert L. Sui, M.D.; and Ellen B. White. M.B.A.

There also are Federal ex-officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Friday, January 26, 1996, the meeting will begin at 8:30 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives. Council will then discuss the issues of health services research work force and education, public/private sector collaboration, and the large grant review process. The meeting will adjourn at 5:00 p.m.

Agenda items are subject to change as priorities dictate.

Dated: December 7, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–30742 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95M–0397]

Progressive Angioplasty Systems, Inc.; Premarket Approval of the PAS Lacrosse™ PTCA Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Progressive Angioplasty Systems, Inc., Menlo Park, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the PAS LaCrosse™ PTCA Catheter. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 27, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm . 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Veronica Price, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On April 4, 1994, Progressive Angioplasty Systems, Inc., Menlo Park, CA 94025–1516, submitted to CDRH an application for premarket approval of the PAS LaCrosse™ PTCA Catheter. The device is a percutaneous transluminal coronary angioplasty (PTCA) dilatation catheter and it is indicated for balloon dilatation of the stenotic portion of a coronary artery or bypass graft stenosis for the purpose of improving myocardial perfusion.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicated information previously reviewed by this panel. On September 27, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30743 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0393]

Bioetica, Inc.; Premarket Approval of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bioetica, Inc., Westbrook, ME, on behalf of Coletica, S. A., Lyon, France, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 15, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frances M. Curtis, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION: On August 30, 1993, the U.S. representative, Bioetica, Inc., Westbrook, ME 04092, on behalf of Coletica, S. A., Lyon, France, submitted to CDRH an application for premarket approval of HEMOSTAGENE® Absorbable Collagen Hemostatic Sponge. The device is an absorbable hemostatic agent and is indicated for use in surgical procedures (other than in neurosurgical, ophthalmic, and urological) as an adjunct to hemostasis when control of bleeding by ligature or conventional procedures is ineffective or impractical.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the General and Plastic Surgery Devices Panel of the

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Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 15, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30697 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0396]

Cochlear Corp.; Premarket Approval of New Indication for Use for the Nucleus 22–Channel Cochlear Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Cochlear Corp., Englewood, CO, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of a new indication for use for the Nucleus 22–Channel Cochlear Implant. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Address written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn Flack, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On August 8, 1992, Cochlear Corp., Englewood, CO 80112, submitted to CDRH a supplemental application for premarket approval of an expanded indication for use for the Nucleus 22–Channel Cochlear Implant. The device was originally approved in 1985 for use in adults who demonstrated postlinguistic, bilateral, sensorineural hearing loss and obtained little or no benefit from conventional amplification. It was approved in 1990 for use in children who demonstrated bilateral, profound, sensorineural hearing loss and obtained little or no benefit from conventional amplification or vibrotactile hearing aids. The expanded indication for use now includes patients, 18 years and older, who have bilateral, postlinguistic, sensorineural hearing impairment and obtain limited benefit from appropriate binaural hearing aids. Limited benefit from amplification is defined by test scores of 30 percent correct or less in the best-aided listening condition on tape-recorded tests of open-set sentence recognition. These patients typically have low frequency residual hearing in the moderate-to-profound range and profound (greater than or equal to 90 dBHL) hearing loss in the mid-to-high speech frequencies.

On April 20, 1995, the Ear, Nose and Throat Devices Advisory Panel, an FDA advisory panel, reviewed and recommended approval of the supplemental application.

On August 21, 1995, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this supplemental application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and

place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30815 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0395]

Pharmacia, Inc.; Premarket Approval of Model WS–100 Pliolens Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmacia, Inc., Dublin, OH, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Model WS–100 Pliolens ultraviolet-absorbing silicone posterior chamber intraocular lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 20, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On February 28, 1994, Pharmacia, Inc., Dublin, OH 43017, submitted to CDRH an application for premarket approval of Model WS–100 Pliolens ultraviolet-absorbing silicone posterior chamber intraocular lens. The device is a posterior chamber intraocular lens and is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by extracapsular cataract extraction.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On July 20, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30698 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0253J]

Analysis Regarding The Food and Drug Administration's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; analysis regarding agency jurisdiction; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 11, 1995 (60 FR 41453). In the notice, FDA published a document entitled "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act," and announced the availability of appendices to this document. The agency has identified some proofreading inaccuracies in the references listed in the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Phillip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

In FR Doc. 95–20052, appearing on page 41453 in the **Federal Register** of

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August 11, 1995, the following corrections are made:

1. On page 41556, in footnote 89, "1588" is corrected to read "1558," and on the same page, in footnote 90, in line 1, "MDG" is corrected to read "MDB".

2. On page 41557, in footnote 91, in line 1, the phrase "of behavioral dependence" is corrected to read "of and behavioral dependence".

3. On page 41558, in footnote 93, in line 4, "*Parmacol. Biochem. Behav.*" is corrected to read "*Pharmacol. Biochemistry & Behav.*"

4. On page 41560, in footnote 101, in line 4, "Page 50" is corrected to read "Pages 50–51."

5. On page 41561, in footnote 105, in line 2, "231–234" is corrected to read "231–241."

6. On page 41588, in footnote 172, in line 8, "12641–45" is corrected to read "02641–02646".

7. On page 41621, in footnote 240a, in line 13, "July 25, 2995" is corrected to read "July 25, 1995)."

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–30745 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 59 FR 17106, April 11, 1994) is amended to reflect the following reorganization within the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA).

The Center for Devices and Radiological Health is abolishing the Office of Health Physics (OHP), the Office of Health Affairs (OHA), and the Office of Standards and Regulations (OSR) and realigning their functions into existing line and staff offices within the Center. The goal of this realignment is to more effectively manage the resources invested in these functional areas, consolidate similar functions, realign medical expertise closer to program needs, and streamline the current organizational structure.

Under section HF-B, Organization:

1. Delete subparagraphs Office of Health Physics (HFW12), the Office of Health Affairs (HFW13), and the Office of Standards and Regulations (HFW14) under paragraph Center for Devices and Radiological Health (HFW), in their entirety.

2. Insert the following new subparagraphs under paragraph *Office of Operations (HFA9), Center for Devices and Radiological Health (HFW)* reading as follows:

Office of Systems and Management (HFW11). Advises the Center Director regarding all administrative management matters.

Plans, develops, and implements Center management policies and programs concerning financial and human resource management, contracts and grants management, conference management, occupational safety, organizational, and general office services support.

Develops and implements the Center's long-range, strategic, and operational plans.

Develops and applies evaluation techniques to measure the effectiveness of Center programs.

Provides general information and technical publication services to the Center.

Plans, conducts, and coordinates Center committee management activities.

Determines and implements Center strategy and utilization of information management resources.

Designs administrative, scientific, and technical information systems in support of Center programs.

Provides assistance to Center staff in accessing information necessary to carry out the Center's mission.

Coordinates requests and Center activities pertaining to the Freedom of Information and Privacy Acts.

Office of Health and Industry Programs (HFWG). Analyzes medical device and radiation-emitting product user-related problems and conducts research, applying systems analysis and human factors to problem identification and solution strategies. Implements and evaluates user-related solution strategies.

Conducts and evaluates programs to provide technical and other nonfinancial assistance to small manufacturers of medical devices to promote their understanding of compliance with the medical device amendments and regulations.

Provides, maintains, and applies expertise in communications technology in support of Center and FDA programs.

Develops and implements strategies for obtaining, analyzing, and incorporating the views and needs of health professionals, lay device users, and industry into the Center policy and decision-making processes as well as in problem analysis, resolution strategy development, implementation, and evaluation processes.

Establishes and operates a program to implement the Mammography Quality Standards Act of 1992.

Provides leadership and technical expertise to the Center and other Departmental components in applying health physics procedures and radiation protection principles.

Advises the Center Director and appropriate Agency officials on FDA regulation development responsibilities relating to medical devices and radiological health activities. Serves as the Center focal point for liaison on regulations development activities with the Office of General Counsel.

Coordinates the development, review and submission of **Federal Register** publications for the Center. Prepares position statements for the Center on standards promulgated by other organizations.

Coordinates international relations activities as required by the Safe Medical Devices Act of 1990.

Office of Science and Technology (HFWE). Provides scientific support and laboratory analyses in response to the program needs of other Center and Agency components.

Plans, develops, and implements an intramural science program covering key areas of engineering, physics, and biology; develops, modifies, and validates test methods and measurement techniques, risk assessments and hazard analyses, and generic techniques to enhance product safety and usefulness.

Provides scientific and engineering support in the review of regulatory documents, the development of regulatory decisions, and the analysis of postmarket surveillance issues.

Plans, conducts, or stimulates research on the human health effects of radiation and medical devices.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate standards committees; coordinates with other standards-setting groups representing national and international standards-setting organizations; conducts the review and analysis of performance standards, guides and documents related to the Center's mission.

Establishes official liaisons with Standards Development Organizations. Coordinates the liaison within the Center. Establishes and maintains records on committee participation and status of medical device standards used by the Center.

3. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: November 28, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–30813 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 60 FR 53382, October 13, 1995) is amended to reflect the change in title of the International Affairs Staff to the Office of International Affairs, Office of External Affairs (OEA), in the Food and Drug Administration (FDA).

The Office of International Affairs will continue to serve as the Agency focal point for developing and maintaining international communications and programs. FDA believes that the increase in international activity with regard to FDA regulated products and activities necessitates the elevation of the International Affairs Staff to office level status within OEA and that this action further enhances the management and coordination of Agency international activities.

Under section HF-B, Organization:

1. Delete the subparagraph, *International Affairs Staff (HFAQA)*, under the *Office of External Affairs (HFAQ)*, in its entirety and insert a new subparagraph, Office of International Affairs (HFAQA), under the Office of External Affairs (HFAQ), reading as follows:

Office of International Affairs (HFAQA). Serves as the Agency focal point for developing and maintaining international communications and programs.

Establishes and provides an Agency liaison on international activities with the Department, Public Health Service (PHS), and other Federal agencies, foreign governments, including foreign embassies, and international organizations.

Represents the Agency at meetings, conferences, and symposia relating to international obligations; briefs Agency participants in such international activities.

Establishes, identifies, interprets, and clarifies, in cooperation with appropriate Agency components, the Agency's international obligations and needs, including those associated with bilateral programs which involve extra budgetary support.

Establishes and maintains an international information exchange program concerning Agency policies and programs to provide interchange between FDA and counterpart agencies in foreign countries and international organizations.

Assists in the development, negotiation, and monitoring of agreements with foreign governments and international organizations in cooperation with appropriate Agency components; and acts as the Agency focal point for intergovernmental conferences.

Negotiates the preparation and implementation of technical assistance programs (including formal training programs and surveys) with foreign governments and international organizations in areas relating to the Agency mission. Coordinates ongoing technical assistance operations with appropriate components within the Department, PHS, and the Agency.

Directs the Agency's International Visitors Program, providing participants with policy briefings, technical training, and/or assistance in response to specific needs

2. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 5, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–30744 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1996.

Name: Council on Graduate Medical Education

Date and Time: January 9, 1996, 1:00 p.m.–5:00 p.m., January 10, 1996, 8:30 a.m.–4:00 p.m.

Place: Governor's House Hotel, 17th Street at Rhode Island Avenue, N.W., Washington, D.C. 20036

The meeting is open to the public.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to international medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Agenda will include a panel to discuss International Medical Graduates, entry and participation in the U.S. physician workforce. A panel to discuss Legislation and GME Reform, House Ways and Means Committee. Report on transition funding issues; Report and updates on the work groups, Minorities in Medicine; Geographic Distribution/Medical Education Consortia; Physician Competencies in a Managed Care World; and IMG Entry and Participation in the Physician Workforce.

Anyone requiring information regarding the meeting should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Telephone 301–443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Agenda items are subject to change as priorities dictate.

Dated: December 12, 1996.

Jackie E. Baum,

Advisory Committee Management Officer.

[FR Doc. 95–30816 Filed 12–18–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

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of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 20, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30929 Filed 12–18–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 19, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 19, 1995.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30929 Filed 12–18–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Proposed Planning Criteria for Amending Idaho Land Use Plans for Rangeland Health Standards and Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed planning criteria for amending Idaho land use plans to adopt standards for rangeland health and guidelines for grazing management in Idaho and to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS.

SUMMARY: Pursuant to 43CFR 1610.4–2, the Bureau of Land Management, Idaho State Office, announces the availability of proposed planning criteria for amending Land Use Plans in Idaho to include standards and guidelines for Rangeland Health as directed in 43 CFR 4180.2. And to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS. The public is invited to review and comment on the proposed criteria.

DATES: Comments on the proposed criteria will be accepted through January 31, 1996.

ADDRESS: Comments should be sent to the Idaho State Director, Attn: Dave Brunner, 3380 Americana Terrace, Boise, Idaho 83706–2500. Copies of the proposed criteria may be obtained from and Idaho, BLM office.

SUPPLEMENTARY INFORMATION: Planning criteria, a requirement of the BLMB Planning Regulations, will guide the development of appropriate land use plan modifications and associated NEPA compliance documentation to incorporate standards and guidelines being developed to ensure rangeland health (as required by BLM Grazing Regulations, 43 CFR Part 4, 1780 and 4100, effective August 21, 1995) and other appropriate recommendations which may be included in the Upper Columbia River Basin Environmental Impact Statement (UCRB EIS), currently being prepared. The following general planning criteria will be used for this process:

* All planning actions and decisions will consider the goals of BLM's Grazing Regulations; improve rangeland health, help build stable economies, and enhance stakeholder participation.

* All planning actions will ensure that the following established fundamentals for rangeland health are incorporated:

1. Watersheds are in, or are making significant progress toward properly functioning physical condition. 2. Ecological processes are maintained or there is significant progress toward their attainment. 3. Water quality complies with state water quality standards. 4. Habitats are, or are making significant progress, toward being restored or maintained for threatened or endangered species.

* Planning actions will be driven by the statements of purpose and need from the UCRB EIS and the NEPA compliance process used to analyze the proposed rangeland standards and guidelines.

* Standards proposed for incorporation into land use plans will be measurable and used to assess progress toward achieving the goals and fundamentals related to rangeland management.

* Planning actions will be responsive to the issues identified by the public during the UCRB EIS formal scoping process and other comments received concerning the development of rangeland standards and guidelines.

* Planning actions resulting from the UCRB EIS will be based upon the data provided in the Scientific Assessment for Ecosystem Management in the Interior Columbia River Basin and on other published, peer-reviewed scientific literature.

* The detail and specificity of the alternative management strategies will be limited to that necessary to address the identified needs for the action.

Dated: December 12, 1995.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 95–30731 12–18–95; 8:45 am]

BILLING CODE 1610–DQ–M

[UT–010–06–1020–00]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare standards and guidelines, to modify land use plans, and prepare analyses pursuant to the National Environmental Policy Act.

SUMMARY: The Bureau of Land Management (BLM) in Utah intends to prepare Standards for Rangeland Health, Guidelines for Grazing Management, modifications to existing Land Use Plans, and to prepare appropriate National Environmental Policy Act (NEPA) documents for these actions according to BLM's new grazing regulations (43 CFR Part 4100). Public comment is sought on suggested standards and guidelines, and on the issues and alternatives to be considered.

DATES: Comments will be accepted throughout this process or until further notice. Public comment periods specifically for the plan modification and NEPA process will be provided later.

FOR FURTHER INFORMATION CONTACT: Deane Zeller, Team Leader, Bureau of Land Management, Utah State Office, 324 So. State Street, Salt Lake City, UT 84111–2303; phone (801) 539–4052.

SUPPLEMENTARY INFORMATION: Pursuant to BLM's new grazing regulations (43 CFR Part 4100), which became effective August 21, 1995, BLM Utah intends to develop Standards and Guidelines (43 CFR Part 4180) through the BLM planning and NEPA process. It is uncertain at this point what level of plan modification or NEPA analysis will be conducted. Planning actions may be plan maintenance, plan amendment, or new plan preparation. NEPA actions may be an Administrative Determination (that an EA/EIS is not needed), Categorical Exclusion (CX), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS). All Land Use Plans for public lands in the State of Utah may be affected.

Public comments and opinions are solicited and encouraged. Public meetings will be held—information to be announced later. Guidance will be sought from the Utah BLM Resource Advisory Council, user groups, local leaders, and the public at large.

Issues preliminarily identified are: the effect of the proposed standards and guidelines on public land grazing operations, public land values, and other uses of the public lands.

Alternatives identified at this time include adoption of the Fallback Standards and Guidelines specified in the new grazing regulations, adoption of new Standards and Guidelines specific to Utah, or continuation of current management under existing land use plans (where such plans are in conformance with the Fallback Standards and Guidelines) accompanied by incremental implementation of new Standards and Guidelines on priority areas.

Roger Zortman,

Acting State Director, Utah.

[FR Doc. 95–30705 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–DQ–P

[UT–020–06–1430–00]

Notice

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to amend management framework plan.

SUMMARY: The Bureau of Land Management (BLM) is preparing an Environmental Assessment (EA) to consider a proposed amendment to the Park City Management Framework Plan (MFP). The proposed amendment would consider alternatives for additional opportunities for land tenure adjustments in Summit County.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977–4300. Existing planning documents and information are available at the above address or telephone (801) 977–4300. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Bear River Resource Area of the Salt Lake District, BLM, is proposing to amend the Park City MFP to allow for land tenure adjustments on T. 2 S., R. 3 E., Section 10, NE¼ not previously identified in the MFP. The main purpose is to identify and analyze the land for exchange to the State of Utah for acquisition of lands that results in a net gain of important and manageable resource values on public land. Lands transferred out of Federal ownership to State interests, as a result of the exchange, would be available to meet the various needs of the respective parties. Where there are specific uses proposed on lands identified for exchange, those uses will be analyzed. An environmental assessment (EA) will be prepared to analyze the impacts of this proposed plan amendment and alternatives.

Public participation is being sought at this initial stage in the planning process to ensure the MFP amendment addresses all issues, problems and concerns from those interested in the management of lands within the Bear River Resource Area. Necessary amendments to the approved plan will keep the document current and viable.

David E. Little,

Acting State Director.

[FR Doc. 95–30704 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–DQ–P

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management.

ACTION: Resource advisory council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a discussion of laws and regulations that pertain to grazing, and a statewide update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone (702) 647–5000.

DATES, TIMES: Dates are January 18 and 19, 1996. The council will meet at the BLM Las Vegas District Office located at 4765 Vegas Drive, Las Vegas, Nevada, at 8:30 a.m. until approximately 4 p.m.

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The public comment period will be on January 18 at 3 p.m.

SUPPLEMENTAL INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–30706 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–HC–M

[ES–020–4210–01; FL–ES–047708]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Pinellas County, Florida have been examined and found suitable for classification for conveyance to the Board of Trustees of the Internal Improvement Trust Funds of the State of Florida under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.* The Board of Trustees proposes to use the lands as part of the Anclote Key State Preserve.

Tallahassee Meridian, Florida

T. 27 S., R. 15 E.,
Sec. 1, Part of Lot 1.

Containing 0.17 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period on or before February 2, 1996, interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Jackson District Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of lands for a recreational area.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreational purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, Realty Specialist, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Detailed information concerning this action is also available for review.

Dated: December 13, 1995.

Sammy St. Clair,

Acting District Manager.

[FR Doc. 95–30739 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

PRT–809224

Applicant: U.S. Department of Energy, Portsmouth Site Office, Piketon, Ohio.

The applicant requests a permit to take (capture and release) Indiana Bats (*Myotis sodalis*) within the DOE PORTS reservation boundary to determine presence or absence of the species. Data will be used to assess impacts when designing projects on the reservation.

PRT–809227

Applicant: Dr. Virgil Brack, 3D/Environmental, Cincinnati, Ohio.

The applicant requests a permit to take (capture and release, handle, radio-tag) Indiana Bats (*Myotis sodalis*) and Gray Bats (*Myotis grisescens*) in Ohio, Indiana, Illinois, Iowa, Michigan, and Missouri. Permit is sought for activities proposed to document presence/absence, habitat use, monitor populations, and evaluate effects of industrial, commercial, and military activities on the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone (612/725–3536, x250); FAX: (612/725–3526).

Dated: December 11, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–3070 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Record of Decision on the Final Environmental Impact Statement on the Silvio O. Conte National Fish and Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1505) for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) issues this Record of Decision upon the Final Environmental Impact Statement (FEIS) for the Silvio O. Conte National Fish and Wildlife Refuge. The Service evaluated and considered a range of alternatives on how to implement the Silvio O. Conte National Refuge Act, as presented in the FEIS. The Service also reviewed and considered public and agency comments. Based on that evaluation and review the Service has selected for implementation the Revised Proposed Action described in the FEIS. This determination was based on a thorough analysis of the environmental, social, economic, and other essential considerations.

ADDRESSES: Copies of this Record of Decision and supporting documentation are available for public inspection upon request at the Silvio O. Conte National Fish and Wildlife Refuge, 38 Avenue A, Turners Falls, Massachusetts, 01376.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader of the Silvio O. Conte National Fish and Wildlife Refuge at the address given above, telephone 413/863–0209.

SUPPLEMENTARY INFORMATION:

Background

The proposed action is designed to provide guidance for the establishment and operation of the Silvio O. Conte National Fish and Wildlife Refuge for a period of fifteen years. Shortly before his death, Silvio O. Conte, a 30 plus year member of Congress and conservationist, introduced legislation authorizing a national fish and wildlife refuge within the four state Connecticut River watershed. The watershed is contained within the states of New Hampshire, Vermont, Massachusetts, and Connecticut. After his death the Congress renamed the Act in his honor, the Silvio O. Conte National Fish and Wildlife Refuge Act.

The purposes of the Conte Refuge as stated in the Conte Refuge Act are:

(1) To conserve, protect and enhance the Connecticut River populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish and wildlife;

(2) To conserve, protect and enhance the natural diversity and abundance of plant, fish and wildlife species and the ecosystem upon which these species depend within the refuge;

(3) To protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.);

(4) To restore and maintain the chemical, physical and biological integrity of wetland and other waters within the refuge;

(5) To fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and

(6) To provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section.

The Service identified 434 species rare enough to be considered in need for protection on a watershed basis. In addition 125 plant communities were considered rare or exemplary. The Service identified about 180,000 acres of lands and waters that contributed in a substantial way to protecting these species and fulfilling the other purposes listed in the Conte Refuge Act. These areas have been named Special Focus Areas. An additional 500 small and scattered sites that contain some of the 434 rare species have been identified. The Special Focus Areas and small scattered sites will be the focus of the majority of Conte Refuge efforts.

A notice of intent to prepare an EIS was published in the Federal Register in August, 1993. Sixty-one informal information meetings with organizations and agencies were held prior to that time, and another 82 such meetings were held through the end of July, 1994. A series of 27 more formal evening public scoping meetings were held at locations throughout the watershed during the last 4 months of 1993 and January of 1994. In April, 1994, a 3-day workshop was held in each of the four affected states. Each workshop involved 35 citizens of varied background and opinions in developing consensus recommendations for the Service. Over this entire time period, three informational mailings were made to the large mailing list. In addition, 3,500 copies of an issues workbook, soliciting input, were distributed and 500 completed workbooks were returned and analyzed.

The notice of availability of the Draft EIS appeared in the Federal Register on May 19, 1995. One-thousand nine hundred documents and 2,000 summaries were distributed. Sixteen afternoon walk-in sessions and subsequent evening public meetings were held throughout the watershed area during June, 1995 (four of which were formal public hearings). Over 990 people attended. Written comments were accepted through the end of July, 1995.

The notice of availability of the FEIS appeared in the Federal Register on November 10, 1995. A Revised Proposed Action, modified in response to public comment, was presented and the FEIS also responded to all comments received. Copies of the document or a summary were distributed to all interested parties.

The Selected Alternative

The selected alternative is Alternative D, the Revised Proposed Action as described in the FEIS. The activities to be undertaken include working with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. The Service would also initiate its own land protection program. The Service would use a combination of easements, cooperative management agreements and fee title acquisition—with emphasis on lands hosting endangered, threatened, rare and uncommon species and communities. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers. This alternative would result in the establishment of watershed-wide cooperative management and education programs.

This alternative would provide a high level of protection to federally listed species, rare species, migratory birds, area-sensitive species, and wetland habitats. Over 60% of the watershed's unprotected Special Focus Areas would receive some degree of protection under this alternative, a greater percentage than Alternatives A (7%), B (7%), or C(15%). Although Alternative E would offer some protection to 100% of the Special Focus Areas, Alternative D provides essentially the same protection to the listed and rare species and

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communities evaluated in the FEIS. Since Alternative D also has provisions to offer widespread environmental education, technical assistance and habitat management assistance, up to 25% of the land throughout the watershed, owned by conservation organizations and private owners, would provide improved habitat. The flexibility of programs and broad land base to be affected will benefit many aquatic, and/or wide-ranging species as well as species which require active habitat management; Alternative E cannot provide the same benefits to these species. For this reason, Alternative D is the environmentally preferable alternative.

In addition to being environmentally preferable, Alternative D provides its high level of protection to targeted resources more cost effectively and in a socially preferred format. The cost of Alternative D is estimated to be $4 million a year less than that of Alternative E. Public input throughout the NEPA process consistently recommended partnerships with local organizations as the way to implement this refuge. Such partnerships offer the Service a practical alternative to the traditional way to administer a refuge with many scattered parcels, as well as a way to implement broad landscape-scale solutions to emerging habitat issues. A majority of written and verbal comments received on the Draft EIS supported the project and almost half specifically endorsed Alternative D. In addition, Alternative D was slightly modified in response to comments received to form the Revised Proposed Action described in the FEIS.

Other Alternatives Considered

Besides the proposed action, the major alternatives under consideration that were analyzed and evaluated during the planning process include the following:

A. The No Action Alternative

In this alternative, the Service would take no actions to implement the Conte Refuge Act. The existing programs for protection of threatened and endangered species would continue, as would the restoration programs to restore anadromous fish such as Atlantic salmon and American shad. The activities of the Service, such as commenting on Federally licensed, permitted or funded programs would also continue. State and local agencies and private organizations would continue their ongoing programs without additional Service assistance. This alternative describes the status quo.

Based on current trends, minimal protection of aquatic habitats and plants and animal populations within the identified Special Focus Areas would result. Many species would continue to decline and some would be extirpated from the watershed. This alternative would not provide any additional Service efforts and is therefore not responsive to the Conte Refuge Act.

B. The Private Lands Work and Education Alternative

In this alternative, the Service would work exclusively with private landowners through the existing Partners for Wildlife Program. The Service's major thrust through the year 2010 would focus on the voluntary restoration and enhancement of habitats on private lands to benefit plants and animals. A limited educational effort would be undertaken, targeting the watershed's private landowners.

If this alternative were chosen, many species in the watershed would continue to decline. Minimal protection of aquatic habitats and plant and animal populations within the identified Special Focus Areas would result. Habitat improvement would occur randomly depending on landowner participation and would benefit certain species, primarily those who inhabit small wetlands and perhaps some early-successional species, but not substantially benefit many of the rare, area-sensitive or migratory species. This Alternative would not accomplish the purposes of the Act.

C. The Private Lands Work, Education and Partnerships Alternative

In this alternative, the Service would work with private landowners, state or local agencies, and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers.

If this alternative were chosen, small amounts of additional protection would be provided to federally-listed species, rare species, fish, migratory birds, area-sensitive species and wetland habitats. The protection and management provided by others with the support of the Service would be beneficial, but limited in scope. Species and sites not of interest to existing organizations would receive no protection. This Alternative would not fully accomplish the purposes of the Act.

E. The Private Lands Work, Education and Land Protection Alternative

In this alternative, the Service would work with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife Program. The Service would also initiate an extensive land protection effort through the year 2010, using a combination of conservation easements, cooperative management agreements and fee title acquisition, to ensure natural diversity. Educational efforts would focus on developing new programs and facilities on Service lands. This alternative would result in the establishment of a more traditional national fish and wildlife refute in the watershed.

If this alternative were chosen, all the acreage within the Special Focus Areas would receive some degree of protection by the Service. This Alternative provides essentially the same level of protection to the listed and rare species and communities as does Alternative D, with slight additional protection for grassland and boreal species. Since habitat improvement efforts would largely be limited to Service lands, a smaller amount of the entire watershed would become improved habitat. Many aquatic, and/or wide-ranging species as well as species which require active habitat management would not be broadly benefitted.

Minimization of Impacts

Possible project impacts, public concerns and methods used to mitigate those impacts and concerns are addressed in the FEIS. A major public concern was that the programs undertaken would be forced on the people. The Partners for Wildlife and the Challenge Cost Share programs require the participant to apply to the Service, and therefore are totally voluntary. The Service's land acquisition policy is to work with willing sellers. The loss of tax revenue due to Service purchase of land is a negative impact. The loss of tax revenue to the towns will be partially mitigated by payment-in-lieu taxes.

Findings and Decision

Having reviewed and considered the FEIS for the Silvio O. Conte National Fish and Wildlife Refuge and the public comments thereon, the Service finds as follows:

(1) The requirements of NEPA and their implementing regulations have been satisfied;

(2) Statutory authority for the Service to implement this project exists subject to the Silvio O. Conte National Fish and Wildlife Refuge Act, Public Law 102–212;

(3) The Proposed Action Alternative represents the best balance between the Service's goals and objectives and the public's concerns identified throughout the public participation process; and

(4) Consistent with social, economic and other essential considerations from among the reasonable alternatives, the Proposed Action Alternative is one which minimizes or avoids adverse environmental effects to the maximum extend practicable.

Having made the above findings, the Service has decided to proceed with implementation of the Revised Proposed Action Alternative.

This Record of Decision will serve as the written facts and conclusions relied on it reaching this decision.

Dated: December 13, 1995.

Cathleen I. Short,

Acting Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 95–30768 Filed 12–18–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1155X)]

Consolidated Rail Corporation—Abandonment Exemption—In Middlesex County, NJ

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 1.4 miles of rail line extending between approximately milepost 25.00 and milepost 267.40 in Middlesex County, NJ.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal compliant filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 29, 1995. Petitions to reopen or requests for public use conditions under CFR 1152.28 must be filed by January 8, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[4] Washington, DC 20423–2191.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 12, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30769 Filed 12–18–95; 8:45 am]

BILLING CODE 7035–01–M

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[4] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–114]

National Environmental Policy Act; Mars Global Surveyor Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed Mars Global Surveyor (MGS) mission, which would involve a flight to and orbit about Mars. The baseline mission calls for the MGS spacecraft to be launched aboard a Delta II 7925 from Cape Canaveral Air Station (CCAS), Florida, in November 1996.

DATES: Comments on the FONSI must be provided in writing to NASA on or before January 18, 1996.

ADDRESSES: Written comments should be addressed to Ms. Mary Kaye Olsen, NASA Headquarters, Code SLP, 300 E Street SW, Washington, DC 20546. The Environmental Assessment (EA) prepared for the MGS mission which supports this FONSI may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida, 32899. Please call Lisa Fowler beforehand at 407–867–2468 so that arrangements can be made.

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(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The EA may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4190).

(e) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3448).

(f) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2313).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (205–544–5252).

(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the EA are available by contacting Ms. Mary Kaye Olsen at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Mary Kaye Olsen, 202–358–0304.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the MGS mission and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA is incorporated by reference in this FONSI.

NASA is proposing to launch the MGS mission, which would deliver a single polar-orbiting spacecraft to Mars in 1997. MGS would be inserted into an elliptical capture orbit in September 1997 and, over the next 4 months, would use thruster firings and aerobraking techniques to reach a nearly circular, low-altitude, polar-mapping orbit. The orbit would allow the spacecraft to be illuminated by the sun in the same way throughout the Martian year. Aerobraking, a technique which uses the forces of atmospheric drag to slow the spacecraft for orbital maneuvers, would provide a means of minimizing the amount of fuel required to reach the final low Mars mapping orbit. The spacecraft carries no radioactive material. The proposed action calls for using a Delta II 7925 launch vehicle with a Payload Assist Module-Delta (PAM–D) upper stage to inject the MGS spacecraft into an Earth-Mars trajectory in November 1996.

The science objectives for the MGS mission are to fulfill most of the critical science objectives of the failed Mars Observer mission. To satisfy the mission's purpose, the MGS spacecraft would carry nearly a full duplicate of the Mars Observer instrument payload, and would use those instruments to acquire Mars surface data for a full Martian year (approximately 2 Earth years). These objectives include detailed global maps of surface topography, the distribution of minerals, the planet's mass, size, and shape, the characterization of Mars' gravitational and magnetic fields, and the monitoring of global weather. These data and investigations could help scientists better understand the current state of water on Mars, the evolution of the planet's formation and atmosphere, and the factors that led to major changes in the Martian climate. Other data acquired from this mission could provide insight into the evolution of both Earth and the solar system. MGS could then support possible future Mars missions, by providing relay capability for surface science stations and landers.

Alternatives that were evaluated include (1) No-Action (*i.e.*, no Mars Global Surveyor mission); and (2) launch vehicles options, including the Space Shuttle, Titan, and Atlas configurations, foreign launch vehicles, as well as other Delta configurations. Failure to undertake the MGS mission would disrupt the execution of NASA's Solar System Exploration Program, as defined by the Agency's Solar System Exploration Committee. Cancellation of the MGS mission would leave a gap in the orderly exploration of Mars, and would retard NASA's attainment of scientific data on the surface and atmosphere of Mars, which is critical to future explorations of Mars. Of the launch vehicles evaluated, the Delta II 7925/PAM–D most closely matches the MGS mission requirements, has superior reliability, minimizes adverse environmental impacts, and is also the lowest in cost.

Expected impacts to the human environment associated with the mission arise almost entirely from the normal launch of the Delta II 7925. Air emissions from the exhaust produced by the solid propellant graphite epoxy motors and liquid first stage primarily include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. Air impacts will be short-term and not substantial. Short-term water quality and noise impacts, as well as short-term effects on wetlands, plants, and animals, would occur in the vicinity of the launch complex. These short-term impacts are of a nature to be self-correcting, and none of these effects would be substantial. There would be no impact on threatened or endangered species or critical habitat, cultural resources, or floodplains. Accident scenarios have also been addressed.

The second stage would be ignited at an altitude of 129 kilometers (80 miles), which is in the ionosphere. Although the second stage would achieve orbit, its orbital decay time would fall below the limit NASA has set for orbital debris consideration. After burning its propellant to depletion, the second stage would remain in low Earth orbit until its orbit eventually decayed. The MGS Project has followed the NASA guidelines regarding orbital debris and minimizing the risk of human casualty for uncontrolled reentry into the Earth's atmosphere. No other impacts of environmental concern have been identified.

The level and scope of environmental impacts associated with the launch of the Delta II 7925 vehicle are well within the envelope of impacts that have been addressed in previous FONSI's concerning other launch vehicles and spacecraft. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicle have been identified which would affect the earlier findings.

On the basis of the MGS EA, NASA has determined that the environmental impacts associated with the mission would not individually or cumulatively have a significant impact on the quality of the human environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Dated: December 13, 1995.

Wesley T. Huntress, Jr.,

Associate Administrator for Space Science.

[FR Doc. 95–30759 Filed 12–18–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Temporary Closing of Reference Service on Certain Textual Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of revised schedule of closure and reopening of reference services for certain textual records holdings in the National Archives related to the move to the National Archives at College Park (Archives II) and the relocation of some records to the National Archives Building.

SUMMARY: This notice provides information about the period of time that reference service on certain textual records holdings of the National Archives will be unavailable due to the move of those holdings from their current locations in the National Archives Building in Washington, DC, and the Washington National Records Center in Suitland, Maryland, to new locations in either the new Archives II facility in College Park, Maryland, or the National Archives Building in Washington, DC. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

During the periods shown for the record groups listed on the schedule at the end of this notice, the National Archives will be unable to provide records for research, or process requests for reproductions (fee orders) or requests for information from these records. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for reopening the records for reference service.

BACKGROUND: Changes in the overall move schedule to accommodate necessary space for records to move from the Washington National Records Center in Suitland to the National Archives Building in Washington, DC required changes in the closure and reopening dates for the record groups listed below.

FOR SCHEDULE UPDATES AND INFORMATION ON THE NEW LOCATION OF THE RECORDS, CALL: User Services Division at (202) 501–5400.

Dated: December 7, 1995.

Michael J. Kurtz,

Assistant Archivist for the National Archives.

Cluster title	RG No.	Record group short title	Close date	Reopen date
Genealogical Related Records	015	Veterans Administration	04/09/96	07/01/96
Genealogical Related Records	029	Bureau of the Census	04/15/96	07/10/96
Genealogical Related Records	049	Bureau of Land Management	05/01/96	09/22/96
Genealogical Related Records	059	Department of State	07/15/96	09/26/96
Genealogical Related Records	085	Immigration and Naturalization Service	07/22/96	09/27/96
Genealogical Related Records	117	American Battle Monuments Commission	07/29/96	10/11/96
Genealogical Related Records	147	Selective Service System (World War II)	08/05/96	10/17/96
Genealogical Related Records	163	Selective Service System (World War I)	08/19/96	10/23/96
Genealogical Related Records	210	War Relocation Authority	08/26/96	10/29/96
Genealogical Related Records	241	Patent and Trademark Office	08/30/96	12/06/96
Modern Army	338	Army Commands, 1942–	04/15/96	10/01/96
Modern Navy	024	Bureau of Naval Personnel	10/20/96	01/29/96
Modern Navy	038	Office of the Chief of Naval Operations	11/17/96	02/13/96
Modern Navy	052	Bureau of Medicine and Surgery	01/02/96	02/23/96
Modern Navy	071	Bureau of Yards and Docks	01/08/96	02/29/96
Modern Navy	072	Bureau of Aeronautics	01/12/96	03/25/96
Modern Navy	074	Bureau of Ordnance	01/25/96	04/09/96
Modern Navy	080	Department of the Navy, 1798–1947	02/12/96	04/23/96
Modern Navy	125	Judge Advocate General (Navy)	02/16/96	04/25/96
Modern Navy	127	U.S. Marine Corps	02/20/96	04/30/96
Modern Navy	143	Bureau of Supplies and Accounts	02/26/96	05/09/96
Modern Navy	181	Naval Districts and Shore Establishments	02/26/96	05/13/96
Modern Navy	298	Office of Naval Research	03/04/96	05/15/96
Modern Navy	313	Naval Operating Forces	03/04/96	06/06/96
Modern Navy	343	Naval Air Systems Command	04/01/96	06/07/96
Modern Navy	345	Naval Electronics Systems Command	04/03/96	06/10/96
Modern Navy	346	Naval Ordnance Systems Command	04/08/96	06/12/96
Modern Navy	347	Naval Supply Systems Command	04/08/96	06/13/96
Modern Navy	384	Chief of Naval Material	04/10/96	06/17/96
Modern Navy	428	Department of the Navy, 1947–	04/15/96	06/25/96

[FR Doc. 95–30472 Filed 12–18–95; 8:45 am]

BILLING CODE 7515–01–P–M

NUCLEAR REGULATORY COMMISSION

Union Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

[Docket No. 50–483]

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to withdraw its February 24, 1995, application for proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit No. 1, located in Fulton, Missouri.

The proposed change would have revised Technical Specification 4.6.1.7.4 and its associated Bases to delete the quarterly verification of the measured leakage rate for containment mini-purge supply and exhaust isolation valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 10, 1995 (60 FR 24921). However, by letter dated November 29, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 24, 1995, and the licensee's letter dated November 29, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 11th day of December 1995.

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For the Nuclear Regulatory Commission,
Kristine M. Thomas,
Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.
[FR Doc. 95–30754 Filed 12–18–95; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy FAR Part 15 Rewrite

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Request for Comments via the Internet.

SUMMARY: In response to the report of the National Performance Review (NPR), the Federal Acquisition Regulatory Council has embarked on a rewrite of FAR Part 15 to simplify, update and streamline rules related to negotiated procurements. The intent of this notice is twofold: first, to announce a future rulemaking action; second, to inform the public that electronic means will be used to engage the public in electronic discussions about issues important to the rewrite of the rules governing negotiated procurements. For those who do not want to participate electronically or cannot access the World Wide Web but would like to provide initial input for the rewrite, a notice of proposed rulemaking was published requesting paper comments and announcing a public meeting. This notice, which was issued by the Department of Defense, in concert with the Federal Aquisition Regulations Council, appeared in the **Federal Register** on December 8, 1995 (60 FR 63023).

DATES: The initial round for electronic discussions will be conducted during the period December 1, 1995 through January 22, 1996. We anticipate further rounds as the rulemaking progresses.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi at 202–395–3301.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, the Vice President released the report of the NPR which advocated simplification of the procurement process by, in part, rewriting the Federal Acquisition Regulation (FAR). As a first step in this project, a set of core guiding principles was formulated to guide the federal acquisition system. These principles are now included in FAR Part 1. The project has now resumed with the rewrite of FAR Part 15 dealing with the rules on negotiated rulemaking under the direction of the Federal Acquisition Regulatory Council (FAR Council).

The FAR Council has established a team of 11 individuals from civilian agencies, DOD components and the Office of Federal Procurement Policy, with co-chairs from DOD and NASA to participate in rewriting Part 15. The actual drafting of the regulatory language is scheduled to start no later than February 1, 1996, with a target finish date of October 1996. This delayed starting date was proposed and agreed upon to allow time to solicit input and to identify those areas that need the most attention. The initial public input will be accomplished in a number of ways. In addition to such traditional methods as requesting the submission of written comments and holding a public meeting, additional methods of obtaining public comment are being used, one of which is through on-line discussions via the Acquisition Reform Network (ARnet).

The ARnet was established in June 1, 1995, as an initiative of the NPR to help government workers communicate electronically. The purpose of the Internet based World Wide Web Network is to inform the members of the acquisition community about reform initiatives, give them electronic access to references, training materials and other electronic sources of information, and engage them in on-line discussions about issues important to improving our acquisition system.

Use of the ARnet On-Line Forum to assist the FAR Part 15 Rewrite Team provides an additional avenue for two-way communication with the acquisition community. This support will initially be used as a call for inputs organized around a series of key Part 15 issues. Some of these issues are government-industry communications via draft solicitations, discussions and oral proposals; Part 15 and commercial items; source selection and best value determinations; selection of proposals for competitive range; and the use of "shalls" in governmentwide regulations governing negotiated procurements. We anticipate that the ARnet will subsequently be used to publicize proposed rule(s) and provide another round of discussions on these rule(s) during the public comment period.

Electronic Access to the FAR Part 15 Rewrite Forum on the Internet

General: This Forum can be accessed through the World Wide Web by using any HTML viewer at the following URL address: http://www-far.npr.gov. Anyone with access to the World Wide Web can participate through using comment options residing on the Web Site.

Participation Options: The method for participating in this forum which is currently operational is through the World Wide Web. However, we are also working to provide access to these discussions through E-mail; if E-mail access can be arranged, a supplemental notice will be issued announcing how interested persons can participate in the forum via E-mail. In addition, individuals who cannot participate through these electronic methods, or would prefer to provide their comments through alternative means, will be able to participate through non-electronic means as described above (i.e., by submitting written comments or participating in a public meeting).

Steven Kelman,
Administrator.
[FR Doc. 95–30699 Filed 12–18–95; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36575; File No. SR–CBOE–95–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Membership Fees

December 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby gives notice that it is proposing to amend certain membership fees imposed by the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend the membership fees imposed by the Exchange in two respects. These amendments will take effect on January 1, 1996.

First, the Exchange proposes to reduce from $1,500 and $500 the fee that it assesses member organizations that apply for Exchange approval to conduct a non-member customer business.

Second, the Exchange proposes to amend its Inactive Nominee Status Change Fee. Currently, the Exchange assesses member organizations a $55 whenever an inactive nominee of a member organization becomes an active nominee of the member organization, regardless of when the Exchange's Membership Department is notified of that status change. As is more fully described below, in order to encourage member organizations to provide the Membership Department which advance notice of such status changes, the Exchange is proposing to make the amount of this fee depend on when the Membership Department receives notice of these status changes.

In order to consummate a nominee status change, a member organization is required to submit a Notification of Change in Nominee Status Form ("Notification Form") to the Membership Department setting forth, among other things, the designated effective date of the status change. If the Notification Form is submitted prior to the opening of trading on the designated effective date of the status change, the status change becomes effective upon the opening of trading on such designated effective date. If the Notification Form is submitted subsequent to the opening of trading on the designated effective date of the status change, the status changer becomes effective upon the submission of the Notification Form. Upon the effectiveness of the status change, the person moving from inactive to active nominee status is granted trading privileges on the Exchange.

Although a nominee status change can become immediately effective (or can become effective within minutes) if notice of the status change is submitted to the Membership Department on its designated effective date, it taken time for the Membership Department to update the Exchange's membership records to reflect the status change. Specifically, the Membership Department must enter the status change information into the Exchange's membership database and must validate the acronym for the person moving from inactive to active nominee status in the Exchange's Trade Match System so that trades can be matched to the nominee by that System. Ordinarily, the Membership Department is able to quickly process nominee status changes and to validate the acronyms of nominees moving from inactive to active status before these nominees begin consummating trades on the Exchange. However, if the Membership Department receives notification of a number of nominee status changes either late in the day on the date prior to the designated effective date of such status changes and/or on the designated effective date of such status changes, it is more difficult for the Membership Department to process all of the changes before the newly activated nominees begin their trading activities. This can result in outtrades being created because the Trade Match System is unable to match trades with the acronyms of those nominees whose status changes have not yet been processed, and these outtrades then need to be corrected later in the day.

In order to encourage member organizations to provide the Membership Department with sufficient notice of nominee status changes so that the Membership Department has time to process such changes prior to the time that the newly activated nominees begin to trade, the Exchange is proposing the following three-tiered fee structure for nominee status changes: If a Notification Form is submitted before 4 p.m. on the date prior to the designated effective date of the status change, the fee is proposed to be $40. If a Notification Form is submitted after 4 p.m. on the date prior to the designated effective date of the status change or before 8 a.m. on the designated effective date of the status change, the fee is proposed to be $75. If a Notification Form is submitted after 8 a.m. on the designated effective date of the status change, the fee is proposed to be $150.

The CBOE represents that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such

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filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–69 and should be submitted by January 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30762 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36670; File No. SR–CHX–95–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of a Minor Rule Violation Procedure and Reporting Plan

December 12, 1995.

Pursuant to Sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and (d)(1), and Rules 19b–4 and 19d–1(c)(2) thereunder,[1] notice is hereby given that on October 11, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] On December 8, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add a minor rule violation procedure as Article XII, Rule 9 of the Exchange's rules, adopt a minor rule violation reporting plan,[4] and renumber existing Article XII, Rule 9.

[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 17 C.F.R. 240.19b–4 and 19d–(c)(2).

[2] The Exchange is submitting to the SEC concurrently with the proposed rule change a minor rule violation reporting plan in accordance with Rule 19d–1(c)(2) under the Act. *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated October 6, 1995.

[3] *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated December 8, 1995. Amendment No. 1 renumbers existing Article XII, Rule 9 to Article XII, Rule 10.

[4] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), the SEC adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations to submit for SEC approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by a self-regulatory organization against any person for violation of a rule of the self-regulatory organization that has been designated as a minor rule violation pursuant to a plan filed with the SEC shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies with respect to the matter.

The SEC has approved minor disciplinary rule plans by virtually every stock exchange and the National Association of Securities Dealers, Inc. *See, e.g.*, Securities Exchange Act Release No. 21919 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4–260) (Amex); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (File No. 4–284) (NYSE); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985) (File No. 4–285) (PSE).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed minor rule violation procedure ("Procedure") authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. The Committee on Floor Procedure will have the same authority for violations relating to decorum on the Exchange trading floor.

If the fine is to be imposed by the Exchange (as opposed to the Committee on Floor Procedure) the fine shall be imposed in accordance with the method set forth in paragraph (b) of the Procedure. Specifically, prior to imposing the fine, the staff of the Exchange shall present the facts supporting such violative conduct to a Minor Rule Violation Panel ("Panel"), which shall consist of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees) appointed by the President of the Exchange. The Panel is then authorized to impose the fine. In the event the Panel does not impose the fine, the staff shall, under circumstances set forth in the Procedure, issue a report to the President. The President, in turn, may either impose the fine, direct the staff to prefer formal charges or reject the staff's recommendation entirely.

If a fine is to be imposed under the Procedure, the Exchange will serve a written statement on the person against whom a fine is imposed setting forth the rule violated, the act or omission constituting the violation, the fine imposed and the date of imposition, the date the fine must be paid and the date by which such determination must be contested.

If the person against whom a fine is imposed pursuant to the Procedure chooses not to contest the matter and pays the fine, he or she waives his or her right to a disciplinary proceeding under Article XII of the Exchange's rules and any right to review or appeal (to the extent such right would otherwise exist under current Exchange rules). Alternatively, any person may choose to contest a fine by submitting a written answer, at which point the matter becomes a "disciplinary proceeding" subject to the applicable provisions of Article XII, including all disciplinary sanctions available thereunder (except for contests of a fine by the Committee on Floor Procedure, which will be subject to the provisions of Article XII, Rule 3).

Under the Procedure, the Exchange will periodically prepare and announce to its members and member organizations a list of Exchange rules and policies as to which the Exchange may impose fines pursuant to the Procedure as well as the fines that may be imposed for their violation. The Procedure, however, expressly states that the Exchange is not required to impose a fine under the Procedure with respect to any violation of any rule included on such list. In addition, whenever the Exchange determines that a rule violation is not minor in nature, it has the discretion to commence disciplinary proceedings under Article XII of the CHX rules.

The Exchange also proposes to adopt a minor rule violation reporting plan ("Plan"). Under its Plan, the Exchange designates certain specified rule violations as minor rule violations and requests that it be relieved of the current reporting requirement of Rule 19d–1(c)(1) under the Act regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.[5] The Plan, however, would not cover any fine imposed pursuant to the Procedure that is contested. Such violations and fines would continue to be reported as they occur.

Initially, the Exchange is proposing to include the following rule and policy violations in both its Procedure and Plan: (1) Acquisition of membership by general or limited partner (Article II, Rule 1); (2) general partners bound by rules of Exchange (Article II, Rule 4); (3) notice of death or retirement of partner (Article II, Rule 9); (4) filing and approval of Articles of Incorporation (Article III, Rule 4); (5) authorization of officers to act (Article III, Rule 5); (6) officers, directors and principal stockholders (Article III, Rule 6); (7) death or retirement of registrant member (Article III, Rule 11); (8) transactions off the floor (Article VIII, Rule 9); (9) records of orders transmitted (Article IX, Rule 7); (10) dealing in stocks on put, call, straddle or option (Article IX, Rule 15); (11) record of margin calls and receipt of margin (Article X, Rule 2); (12) record of orders (Article XX, Rule 24); (13) specialist's book (Article XXX, Rule 4); (14) written reports of transactions (Article XXX, Rule 5); (15) record of orders (Article XXX, Rule 11); (16) financial operational reports (Article XI, Rule 4); (17) notification of change in bond coverage (Article XI, Rule 6); (18) filing requirements on change of examining authority (Article XI, Rule 7); (19) submission of books to board (Article VIII, Rule 11); (20) submission of evaluation of co-specialists survey (Article VIII, Rule 11); (21) failure to issue ITS pre-opening notification (Article XX, Rule 39); (22) failure to comply with ITS trade-through, locked markets and block trade rules (Article XX, Rule 40); (23) failure to comply with stop order rule (Article XXX, Rule 22); (24) failure to comply with 50 percent requirement (Article XXXIV, Rule 3); (25) failure to comply with trading from off the floor rule (Article XXXIV, Rule 4); (26) failure to comply with public outcry rule (Article XXXIV, Rule 10); (27) violation of Class A decorum rules (Article II, Rule 3, Interpretation and Policy .01); (28) violation of Class B decorum rules (Article XII, Rule 3, Interpretation and Policy .01); (29) failure to comply with recognized quotations (Article XX, Rule 7); (30) failure to clear the post (Article XX, Rule 10); (31) failure to comply with cabinet securities provision (Article XX, Rule 11); (32) failure to comply with minimum fractional changes Article XX, Rule 22); (33) failure to comply with agency cross rule (Article XX, Rule 23); (34) failure to comply with "stopped"order rule (Article XX, Rule 28); (35) improper use of "SOLD" designator (Article VIII, Rule 7); (36) trading ahead of customer orders (Article XXX, Rule 2); (37) violation of preference solely on competitive basis rule (Article XXX, Rule 3).

The purpose of the Procedure is to provide a more appropriate response to certain rule violations. At the present time, when the staff of the CHX discovers a technical, inadvertent, or otherwise minor rule violation, often, the Exchange's only practical response is to issue a written letter of caution to the person(s) involved focusing attention on the necessity of fully complying with all Exchange rules and policies and warning against future violations. Such written admonitions, however, may not always successfully deter future violations. The other alternative, the initiation of a formal disciplinary proceeding may, in many cases, be too time consuming, too costly, and carry too severe a penalty for such minor violations. The ability to impose a fine on a discretionary basis may constitute a more effective deterrent than a cautionary letter while avoiding the severe penalty or attendant publicity of a disciplinary hearing. The Procedure provides for an appropriate response to minor rule violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

The purpose of the Plan is to provide the CHX with the flexibility to fashion reporting requirements that would result in the Commission receiving the necessary information regarding minor rule violations in the least burdensome way possible.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] and will advance the objectives of Section 6(b)(6) of the Act[7] in that it will provide a procedure whereby members can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In accordance with Sections 6(b)(7) and 6(d)(1) of the Act,[8] the proposed rule change provides a fair procedure for imposing such sanctions. Finally, the proposed plan is consistent with Section 6(d)(1) of the Act and Rule 19d–1(c)(2) thereunder, which authorizes self-regulatory organizations to adopt minor rule violation reporting plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[5] The Exchange's quarterly report to the SEC will include: the CHX's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7) and (d)(1).

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Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–25 and should be submitted by January 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30761 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36532; File No. SR–PHLX–95–78]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market Pilot Program

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to extend the Exchange's Automated Options Market ("AUTOM") system for a one year period ending December 31, 1996.

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

AUTOM, which as operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[1] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X, which was approved as part of the AUTOM pilot program in 1990.[2] AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the Options Price Reporting Authority ("OPRA") as well as the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist and, upon execution of the order, are inputted into exchange systems for reporting to OPRA and the delivering firm.

Originally, the AUTOM pilot program was approved by the Commission for market orders of up to five contracts for 12 PHLX near-month equity options.[3] Since that time, AUTOM has been extended and amended several times.[4]

The purpose of the proposed rule change is to extend the AUTOM pilot program for a one-year period ending December 31, 1996. The PHLX believes that this extension of the pilot program should provide the Exchange with additional time to study the effectiveness of AUTOM prior to permanent approval. During this time, the Exchange intends to monitor the implementation of certain enhancements to AUTOM and to draft an Exchange rule codifying the entire pilot program.

Generally, the Exchange believes that, since the date of the last Commission order extending the AUTOM pilot program, AUTOM has functioned properly and efficiently, without any material problems reported by PHLX members or AUTOM users, and without significant malfunctions or operational failures.

AUTOM provides small customer option orders with the benefits of electronic delivery and reporting, while AUTO–X provides automatic executions as well. Accordingly, the Exchange believes that AUTOM increases the speed and efficiency of order delivery, execution and reporting. This, in turn, promotes both liquidity and fair and orderly markets. For these reasons, the PHLX believes that extending the AUTOM pilot program for a one-year period is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that the proposal is designed to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act in

[1] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX–94–41).

[2] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX–89–03).

[3] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[4] *See* Securities Exchange Act Release No. 35183, *supra* note 1. *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25866 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX–90–16, extending pilot through December 31, 1990; 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX–90–34, extending pilot through December 31, 1991); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX–90–03, extending pilot through December 31, 1993); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 29662 (September 9, 1991), 56 FR 46516 (order approving File No. SR-PHLX–91–31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX–91–33, permitting AUTO-X for all strike prices and expiration months); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX–92–38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR-PHLX–94–40, codifying use of AUTOM for Index options); 35601 (April 13, 1995), 60 FR 19616 (File No. SR-PHLX–95–18, codifying the use of AUTOM for certain order types); 35681 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR-PHLX–95–29, increasing AUTO-X for USTOP 100 Index ("TPX") options to 50 contracts); 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (File No. SR-PHLX–95–30, increasing the maximum AUTOM order size from 100 to 500 contracts); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR-PHLX–95–35, allowing broker-dealer TPX option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57015 (November 16, 1995) (order approving File No. SR-PHLX–95–33, limiting AUTO-X for National Over-the-Counter Index options to series where the bid is $10 or less).

that AUTOM is intended to improve, through the use of new data processing and communications techniques, the efficiency with which transactions in PHLX equity and index options are executed. Further, the Exchange believes that AUTOM fosters competition among options exchanges, which have similar systems in place.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[5] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in PHLX options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission does not object to an extension of the pilot program until December 31, 1996, in response to the PHLX's assertion that continuation of the pilot will provide the Exchange with a better opportunity to study its operation and effectiveness prior to permanent approval of the program.[6] The Commission notes further that the Exchange has represented that from January 1995 until the present, AUTOM has functioned properly and efficiently, that no material problems have been reported by PHLX members or AUTOM users, and that AUTOM has not had significant malfunctions or operational failures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the PHLX to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the PHLX's proposal to extend the AUTOM pilot program does not raise any new issues since it merely extends the pilot program as it is currently operating. Further, the Commission believes that the pilot is beneficial in maintaining the quality and efficiency of the PHLX's market. In addition, the Commission notes that there have been no adverse comments concerning the pilot program since its implemention. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–95–78) is approved through December 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30763 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f and 78k–1 (1988).

[6] The PHLX will submit a request for permanent approval of the program no later than November 1, 1996. This request will be accompanied by a report covering the period between January 1, 1996, and June 30, 1996, that will include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Investment Company Act Release No. 21593; International Series Release No. 901; 812–9816]

First National Bank of Southern Africa Limited; Notice of Application

December 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: First National Bank of Southern Africa Limited ("First National bank").

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f).

SUMMARY OF APPLICATION: First National Bank requests an order that would permit United States registered investment companies (a "U.S. Investment Company"), other than investment companies registered under section 7(d), for which First National Bank serves as custodian or subcustodian, to maintain foreign securities and other assets in the custody of foreign affiliates located in Botswana, Namibia, and Zimbabwe.

FILING DATE: The application was filed on September 5, 1995 and amended on December 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

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Applicant: 3 First Place, BankCity, Johannesburg, Republic of South Africa; cc: Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0565, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. First National Bank requests an order to permit First National Bank, any U.S. Investment Company, and any custodian for a U.S. Investment Company, to maintain foreign securities, cash, and cash equivalents (collectively, "Assets") in the custody of First National Bank of Botswana Limited ("First Botswana"), First National Bank of Namibia Limited ("First Namibia"), and First Merchant Bank of Zimbabwe Limited ("First Zimbabwe," together the "Foreign Affiliates") located in the countries of Botswana, Namibia, and Zimbabwe, respectively. For the purposes of this application, "Foreign securities" includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. First National Bank, a bank organized under the laws of the Republic of South Africa, is regulated in South Africa by the Registrar of Banks of South Africa under the banks Act of 1990. First National Bank is a wholly-owned subsidiary of First National Bank Holdings Limited ("First National Bank Group"), a South African public limited company. First National Bank Group is one of the largest financial service groups in South Africa and is engaged in a broad range of banking and financing services for both individual an corporate customers. As of September 30, 1994, First National Bank had shareholders' equity of approximately $427,500,000.

3. First Botswana is an 80 percent owned subsidiary of First National Bank Group and is supervised by the Bank of Botswana. First Namibia is a wholly-owned subsidiary of First National Bank Group and is supervised by the Central Bank of Namibia. First Zimbabwe operates under the banking Act of Zimbabwe (Chapter 188, Regulatory Controls). First Zimbabwe is appointed as subcustodian by First National Bank but is neither a branch nor a subsidiary of First National Bank.

Applicant's Legal Analysis

1. First National Bank requests an order under section 6(c) of the Act exempting First National Bank, any U.S. Investment Company, and any custodian for such U.S. Investment Company from section 17(f) of the Act to permit the deposit and custody of Assets with the Foreign Affiliates in their respective countries.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A "bank," as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

3. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified United States banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term "Eligible Foreign Custodian" to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 or its equivalent.

4. First National Bank meets the requirements for an Eligible Foreign Custodian under rule 17f–5 because it has shareholders' equity in excess of $200,000,000, is organized and existing under the laws of a country other than the United States, and is regulated as a bank under the laws of South Africa.

5. The Foreign Affiliates also satisfy the requirements of rule 17f–5 insofar as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States and is regulated as such by such country's government or an agency thereof. The Foreign Affiliates, however, do not meet the minimum shareholders' equity requirement of the rule. Accordingly, the Foreign Affiliates are not Eligible Foreign Custodians under the rule and, absent exemptive relief, could not serve as custodians for the Assets of U.S. Investment Companies.

6. Section 6(c) provides, in relevant part, that the SEC may exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. First National Bank submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding the Foreign Affiliates satisfy the requirements of rule 17f–5 in all respects other than the Foreign Affiliate's level of shareholders' equity.

2. First National Bank will deposit the Assets in Botswana, Namibia, or Zimbabwe, as the case may be, with First Botswana, First Namibia, or First Zimbabwe, respectively only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which the Foreign Affiliates fail to satisfy the requirements of rule 17f–5. Each Agreement will be a three-party agreement among First National Bank, the Foreign Affiliate, and the U.S. Investment Group (or its custodian) pursuant to which First National Bank will undertake to provide specified custody or subcustody services for a U.S. Investment Company or its custodian, and will delegate to the Foreign Affiliate such of the duties and obligations of First National Bank as will be necessary to permit First Botswana, First Namibia, or First Zimbabwe, as the case may be, to hold in custody the U.S. Investment Company's Assets in Botswana, Namibia, and Zimbabwe, respectively. The Agreement will further provide that First National Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by a Foreign Affiliate of its responsibilities under the Agreement to the same extent as if First National Bank had been required to provide custody services under such agreement.

3. First National Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30709 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9065]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Keithley Instruments, Inc., Common Shares, Without Par Value)

December 13, 1995.

Keithley Instruments, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on November 28, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 5, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30711 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10814]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (ReadiCare, Inc., Common Stock, $.01 Par Value)

December 13, 1995.

ReadiCare, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on October 24, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the Nasdaq National Market.

The decision of the Board followed a lengthy review of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons:

(a) The Company believes that the Nasdaq/NM system of competing market makers will result in increased visibility and sponsorship for the Security than is presently available on the Amex;

(b) The Company believes that the Nasdaq/NM system will offer an opportunity for the Company to secure its own group of market makers and to expand the capital base available for trading in the Security; and

(c) The Company believes that the firms making a market in the Security on the Nasdaq/NM system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports to the investment community.

Any interested person may, on or before January 5, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30710 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21594; 812–9712]

Sirrom Capital Corporation; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under the Investment Company Act of 1940 (the "Act").

APPLICANT: Sirrom Capital Corporation.

RELEVANT ACT SECTION: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant requests an order approving applicant's 1995 Stock Option Plan for Non-Employee Directors (the "Plan") and the grant of certain stock options thereunder.

FILING DATES: The application was filed on August 7, 1995 and amended on October 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

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issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the requests, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 511 Union Street, Nashville City Center, Suite 2310, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[1] Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan and pursuant to the Plan, the automatic grant of options to purchase shares of applicant's common stock to each director who is neither an officer nor an employee of applicant ("non-employee director") and to each new non-employee director of applicant who may be elected or appointed in the future to applicant's board of directors. Applicant will submit the Plan to applicant's shareholders for their approval at the next meeting for shareholders to be held in the Spring of 1996. Applicant will implement the Plan subsequent to receiving approval by applicant's shareholders and an order of the SEC ("Approval Date").

2. Applicant states that its primary investment objectives are to achieve a high level of current income and long-term growth in the value of its assets. Applicant is primarily engaged in the business of making loans to small, privately owned companies whose securities have no established public market. Applicant's investment decisions are made by a loan approval committee comprised of senior management of applicant in accordance with policies approved by applicant's board of directors. Applicant makes available to its investee companies significant managerial assistance, and helps its investee companies establish boards of directors. In addition, applicant assists its investee companies in obtaining necessary financing and increasing the value of the investee companies. Applicant does not have an external "investment adviser" within the meaning of the Act.

3. Each non-employee director of applicant receives $1,000 for each board and committee meeting attended and reimbursement for expenses incurred in attending meetings. Non-employee directors receive no other compensation for their services to applicant.

4. Grants of options under the Plan would be limited to (a) 18,000 shares of applicant's common stock for non-employee directors elected prior to December 1, 1994, (b) 12,000 shares of applicant's common stock for non-employee directors elected between December 1, 1994 and the Approval Date, and (c) 6,000 shares of applicant's common stock for non-employee directors elected or appointed after the Approval Date. On the Approval Date, the aggregate amount of applicant's voting securities that would result from the exercise of all options issued or issuable under the Plan and applicant's existing employee stock option plan would be 614,000 shares, or approximately 6.7% of the 9,195,116 shares of applicant's common stock outstanding as of September 30, 1995. Applicant has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted or to be granted as of the Approval Date to its directors, officers, and employees pursuant to the executive compensation plans described in the application.

5. Pursuant to the terms of the Plan, the options would vest and become exercisable on the first anniversary of the date of grant. Options would be exercisable at any time after they become exercisable until the tenth anniversary of the date of the grant. The exercise price of the options would be 100% of the current market value of applicant's common stock on the date of issuance.

6. In the event of a non-employee director's death or disability during the director's service, all of the director's unexercised options would immediately become exercisable for a period of three years following the date of death or one year following the date of disability, but in no event after the expiration dates of the options. In the event of the termination of a non-employee director for cause, any options held by the director not exercised shall terminate immediately upon termination of service and may not be exercised thereafter. If a non-employee director's service is terminated for any reason other than by death, disability, or by applicant for cause, his or her options may be exercised within one year following the date of termination, but in no event after the expiration date of the options.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no such market exists, the then current net asset value of the underlying securities; (c) the proposal to issue such options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan, the stock options to be granted automatically to applicant's non-employee directors, and the stock options to be granted automatically to applicant's future non-employee directors pursuant to the Plan would meet the requirements of section 61(a): (a) the options would expire within ten years from the date of grant; (b) the exercise price of the options would be the current market value of applicant's common stock on the date of issuance; (c) the proposal to issue the options would be authorized by applicant's shareholders; (d) the options would not be transferable except for disposition by gift, will, or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan as described in section 57(n) of the Act. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of applicant.

5. Applicant represents that its directors are actively involved in the oversight of applicant's affairs, and that applicant relies on the judgment and experience of its directors. Applicant's directors have experience in many of the industries in which applicant's investee companies operate. The directors' backgrounds enhance applicant's ability to review and evaluate its investee companies and their performance. Applicant states that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program, as contemplated by section 61(a) of the Act.

6. Applicant submits that the terms of the Plan and the stock options to be granted automatically to applicant's non-employee directors are fair and reasonable and do not involve any overreaching of applicant or its shareholders. Options granted to purchase 6,000, 12,000, or 18,000 shares of applicant's common stock would currently represent only .07%, .13%, and .20%, respectively, of applicant's outstanding common stock. Given these relatively small amounts of stock, applicant submits that the exercise of the options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

7. Applicant asserts that because the stock options granted to a non-employee director would not vest until after the first anniversary of the date of grant, the Plan would provide non-employee directors with incentives to remain directors of applicant. In addition, applicant contends that because the options granted pursuant to the Plan have no value unless the price of applicant's common stock exceeds the exercise price of the option, the options provide significant incentives for its non-employee directors to devote their best efforts to the success of applicant's business. Applicant also represents that the options provide a means for the directors to increase their ownership interests in applicant, thereby helping to ensure close identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of stock options enable it to maintain continuity in the membership of its board of directors and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to applicant's success as a BDC and to the success of its investee companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30764 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

[Rel. No. IC. 21592; File No. 812–9236]

Variable Insurance Funds, et al.

December 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Variable Insurance Funds (the "Trust"), The Winsbury Company ("Winsbury") and Qualivest Capital Management, Inc. ("Qualivest").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of each existing and future series of the Trust and shares of any other investment company that is designed to fund insurance products and for which Winsbury, or any of its affiliates, may serve as principal underwriter and administrator (collectively with the Trust, "Funds") to be sold to and held by variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on September 21, 1994 and amended on May 9, 1995.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Trust and Winsbury, 1900 East Dublin-Granville Road, Columbus, Ohio 34229; Qualivest, 111 S.W. Fifth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust, an open-end management investment company organized as a Massachusetts business trust, currently consists of four series, each with its own investment objective and policies. Additional series may be established in the future.

2. Winsbury, a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the administrator and the principal underwriter of the Trust. Winsbury is a division of BISYS Group, Inc.

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3. Qualivest serves as the investment adviser of each existing series of the Trust. Qualivest is an affiliate of United States National Bank of Oregon, which is a wholly owned subsidiary of U.S. Bancorp.

4. Shares of each series of the Trust will be offered initially only to one separate account to serve as the investment vehicle for variable annuity contracts issued by one life insurance company (the "Company"). The Trust intends, however, to offer shares of its existing and future series to separate accounts of other insurance companies, including insurance companies that are not affiliated with the Company (together with the Company, the "participating insurance companies"), to serve as the investment vehicle for variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, "variable contracts").

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company ("mixed funding"). In addition, the relief granted by Rule 6e–2(b) (15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies ("shared funding"). Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). However, Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation discussion above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company. Applicants state that the exemptions contained in Rules 6e–2(b)(15) and 6e–(T)(b)(15) recognized that it is unnecessary to apply Section 9(a) to the many individuals in an insurance complex, most of whom will have no connection with the investment company funding the separate account. Applicants believe that it is unnecessary to limit the applicability of the rules merely because shares of the Funds may be sold in connection with mixed and shared funding. Therefore, Applicants assert that applying the restrictions of Section 9(a) serve no regulatory purpose.

4. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances when required to do so by an insurance regulatory authority. Paragraph (b)(15) of both Rules 6e–2 and 6e–3(T) provides that the insurance company may disregard voting instructions if its contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to certain other provisions in the rules. However, a particular insurer's disregard of voting instructions could conflict with the majority of contractowner voting instructions. Applicants state that if a particular insurance company's disregard of voting instructions conflicted with a majority of the contractowners' voting instructions, or precluded a majority vote, the insurer may be required, at a Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

5. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

6. Applicants argue that mixed funding and shared funding should benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for a greater amount of assets available for investment by a fund, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new series more feasible; and (3) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular participating insurer or type of insurance product. Applicants see no significant legal impediment to permitting mixed and shared funding. According to Applicants, separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Finally, Applicants represent that they believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Fund or series are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (vi) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating insurance companies, Winsbury and any other investment adviser of a Fund or series will report any potential or existing conflicts to the Board. Participating insurance companies, Winsbury, and the investment adviser(s) will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in a Fund under their agreements governing participation in a Fund and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the distinguished trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium (including another series, if any, of the Fund) or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all participating insurance companies.

6. Participating insurance companies will provide pass-through voting privileges to all variable contractowners for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, participating insurance companies will vote shares of each Fund or series thereof held in their separate accounts in a manner consistent with timely voting instructions received from contractowners. Each participating insurance company also will vote shares of each Fund or series held in its separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in a Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. A Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in every prospectus that (1) shares of the Fund are offered to insurance company separate accounts which fund both annuity and life

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insurance contracts, (2) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Fund might at some time be in conflict, and (3) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then each Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The participating insurance companies, Winsbury, and/or any other investment adviser to a Fund or series, shall at least annually submit to the Fund's Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in each Fund.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30708 Filed 12–18–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Northern District of Texas, Dallas Division, dated November 3, 1995, the United States Small Business Administration hereby revokes the license of Diversified Capital Funding Corporation, a Texas corporation, to function as a small business investment company under the Small Business Investment Company License No.06/10–0125 issued to Diversified Capital Funding Corporation on September 27, 1962 and said license is hereby declared null and void as of December 13, 1995.

Small Business Administration.

Dated: December 11, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30758 Filed 12–18–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2301]

Advisory Committee on International Communications and Information Policy; Public Meeting

The Department of State is holding the third meeting of its advisory Committee on International Communications and Information Policy. The Committee was reestablished on August 11, 1994, in order to provide a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The 24-person committee was appointed by Ambassador Vonya B. McCann, United States Coordinator for International Communications and Information Policy, U.S. Department of State, and serves under the Chairmanship of Ed Black, President, Computer & Communications Industry Association.

The purpose of this meeting will be to follow up on the recent creation of working groups on various issues that will help chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public.

This meeting will be held on Thursday, January 18, 1996, from 9:30 a.m.–12:00 noon in Room 1912 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, and date of birth to Sylvia Conley at (202) 647–5233 or by fax at (202) 647–5957. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact the Executive Secretary of the committee, at (202) 647–5385.

Dated: December 7, 1995.

Timothy C. Finton,

Executive Secretary, Advisory Committee for International Communications and Information Policy.

[FR Doc. 95–30702 Filed 12–18–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Ft. Lauderdale-Hollywood International Airport, Ft. Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Broward County Aviation Department under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 1, 1995, the FAA determined that the noise exposure maps submitted by the Broward County Aviation Department under Part 150 were in compliance with applicable requirements. On November 28, 1995, the Administrator approved the Ft. Lauderdale-Hollywood International Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ft. Lauderdale-Hollywood International Airport noise compatibility program is November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., The Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Ft. Lauderdale-Hollywood International Airport, effective November 28, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses.

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Broward County Aviation Department submitted to the FAA on May 22, 1995, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 25, 1992 through May 18, 1995. The Ft. Lauderdale-Hollywood International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 1, 1995. Notice of this determination was published in the **Federal Register**.

The Ft. Lauderdale-Hollywood International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on June 1, 1995, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve (12) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 28, 1995.

Outright approval was granted for ten (10) of the twelve (12) specific program measures. Two (2) measures were partially approved. The approval action was for the following program controls:

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OPERATIONAL MEASURES

Noise Abatement Measure Number	Description	NCP Pages
1	Preferential Flight Tracks: This measure recommends continued use of preferential flight tracks at the Airport as diagrammed on the exhibits in Appendix A of the NCP report. These procedures are implemented through the Informal Runway Use Program, Appendix B. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–10, 6–11 and 7–1; Table 7–1; and Appendices A and B.
2	Noise Abatement Departure Procedures: This measure recommends continued use of existing noise abatement departure procedures at the Airport as indicated in the Informal Runway Use Program (Appendix B). Departures 9L, 9R, 27R, 27L: Remain on runway heading until 3,000 feet or three (3) miles. Departure 13: Turn left heading 090 degrees as soon as practical, maintain 090 degrees until reaching 3,000 feet or three (3) miles. Departure 31: Turn left heading 270 degrees as soon as practical, maintain 270 degrees until reaching 3,000 feet or three (3) miles. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–10, 6–11 and 7–1; Table 7–1; and Appendix B.
3	Preferential Runway Use: This measure recommends continued preferential runway use provided in the Airport's Informal Runway Use Program (Appendix B). The program applies to all turbojet aircraft regardless of weight and includes the following runway use procedures. Runway 9L is the preferred runway and is the calm wind runway. All turbojet arrivals and departures will use Runway 9L–27R. Runway 9R–27L is closed from 2200–0700 local time for noise abatement. This nighttime closure of Runway 9R–27L has not affected the operational capability and capacity of Runway 9L–27R. FAA Action: Approved as a voluntary measure.	Pgs. 6–1, 6–2, 6–10, 6–11, 6–31, 6–32, 7–1; Table 7–1; and Appendix B.
4	Airport Noise Monitoring Program: This measure will continue the Airport Noise Monitoring Program to include, among other things, provision of staff services by the Broward County Aviation Department (BCAD) on behalf of the Airport Noise Abatement Committee (ANAC), monitoring the operation of the Airport's permanent noise monitoring system, administration of an Airport users education program, and administration of a public information program as described in the Fort Lauderdale-Hollywood International Airport FAR Part 150 Program Update. FAA Action: Approved.	Pgs. 6–2, 6–3, 6–10, 6–11, 7–1, 7–2; and Table 7–1.
5	Test of Noise Abatement Departure Profiles: This measure recommends a test of the noise abatement departure profiles (NADPs) described in FAA Advisory Circular 91–53A be conducted at FLL to determine the noise-related benefits of requesting the airlines serving the Airport to use either "close-in" or "distant" community NADP when specific aircraft types are being operated on specific runways. The test will measure differences in SEL values and be used to calculate the anticipated changes in cumulative noise exposure. Test results will be used to prepare recommendations for selection of the NADP with the greatest noise benefit for individual aircraft types being operated from the different runways at the Airport. Such recommendations would be implemented by seeking voluntary compliance from the airlines serving the Airport. FAA Action: Approved in concept. FAA approves further study to determine whether a close-in or distant procedure is the most beneficial for particular runways. However, an actual test of procedures is not necessary as the benefits of the procedures described in FAA Advisory Circular 91–53A may be modeled using the INM.	Pgs. 6–11, 6–12, 7–2; and Table 7–1.
6	Stage 2 Preferential Runway Use: This measure recommends BCAD and the ATCT manager take all actions necessary to restrict all stage 2 aircraft to Runway 9L–27R except when wind, weather, maintenance, operational, or emergency conditions require the use of Runway 13–31 or 9R–27L. In addition to air carriers, this would include any Stage 2 business jets as well as air taxi/commuter aircraft. The NCP recommends implementing this measure in the Tower Order through an amendment to the Informal Runway Use Program. Stage 2 business jet operations on Runway 9R–27L are considered to be largely responsible for sideline noise impacts immediately south of the airport (in the Melaleuca Gardens neighborhood). FAA Action: Approved as voluntary.	Pgs. 6–13, 7–2, 7–3; Table 7–1; and Appendix B.
7	Relocate Engine Maintenance Runup Facility: This measure will relocate the aircraft engine maintenance runup facility from its present site on Runway 13–31 to the east end of Runway 9L–27R following removal of the BCAD "Chassis Master" maintenance area from the latter location. Engine noise at the new location can be directed toward the east away from any existing or planned residential development. FAA Action: Approved.	Pgs. 6–14 to 6–17, 7–3; and Table 7–1.
8	Permanent Noise and Operations Monitoring System: It is recommended the 1987 FAR Part 150 Noise Compatibility Program be amended to include the installation and use of a permanent noise and operations monitoring system at the Airport. This includes reimbursement for the existing permanent monitoring system and the installation of a radar direct connect to upgrade the system.. (pgs. 6–2, 6–3, 7–3; and Table 7–1). FAA Action: Approved.	Pgs. 6–2, 6–3, 7–3; and Table 7–1.

OPERATIONAL MEASURES—Continued

Noise Abatement Measure Number	Description	NCP Pages
	Land Use Measures	
1	Acquistion of Real Property by Condemnation: It is recommended that the 1987 FAR Part 150 Noise Compatibility Program be amended so as to include the Trail's End Mobile Home Park in Dania and the unincorporated Ravenswood neighborhood south of SW 39th Street, west of Ravenswood Road, north of the Dania Cut-off Canal, and east of the Alandco/TCW property line within the land use management category "Acquisition (Condemnation)" instead of "Acquisition (at Homeowner's Request)". The respective land use categories are shown on Exhibits IX–2 and IX–3 of the 1987 Part 150 Program Technical Report (as revised in December 1988 and certified in January 1989). Broward County has already acquired these properties as part of the (1987 approved) land acquisition program by means of condemnation rather than by voluntary acquisition. The condemnation process was used at the request of virtually all of the homeowners. FAA Action: Approved.	Pgs. 6–4 to 6–8, 7–3; Exhibits 5–2 and 6–1; Table 7–2; and Exhibits IX–2 and IX–3 of the 1987 Part 150 Program Technical Report (as revised in December 1988 and certified in January 1989).
2	Easement Acquisition: It is recommended that Broward County acquire avigation easements from the owners of certain noise-sensitive properties located within the Ldn 65–70 contour area, as shown on Exhibit 5–2, Future (1997) Conditions Noise Exposure Map. This acquisition program would involve three residential areas and three mobile home parks. FAA Action: Approved in part, with respect to easement acquisition for noise compatibility purposes from owners of single-family residences, from owners of multi-family residential property, and from the mobile home park owners. Easement valuation and acquisition requirements and criteria are not included within the scope of FAR Part 150, but are addressed by other FAA program requirements concerning the acquisition of real property on FAA grant assisted projects. It is noted that the proposed valuation and acquisition process for this measure do not conform to these requirements, and significant modification of the described easement valuation and acquisition process would be required to secure reimbursement of costs under a FAA grant. The measure is Disapproved in part for purposes of Part 150, with respect to the described payments proposed to be made personally to mobile home owner occupants in addition to the proposed easement acquisition from the mobile home park owner. These proposed additional payments do not contribute to the goals of reducing existing noncompatible land use and preventing the introduction of additional noncompatible land uses.	Pgs. 6–9, 6–20, 6–21, 7–3, 7–4; Exhibit 5–2; and Table 7–2.
3	Voluntary Sales Assistance: It is recommended that the BCAD assist eligible single-family homeowners to sell their property and relocate from the 1997 Ldn 65–70 area. Such assistance would be in the form of specified relocation payments if an eligible property were to be sold within 3 years after an offer had been made by Broward County to purchase an avigation easement from the owner(s) and an appropriate avigation easement had been acquired from an eligible owner. FAA Action: Approved. The measure is approved with respect to the provision of specified relocation payments as a sales assistance measure. It is noted for the application of this measure that owners accepting assistance on the sale of their homes are not displaced persons, as defined under the Uniform Act (49 CFR 24.2(g)(2)(viii)), and are not entitled to relocation assistance payments described under the Uniform Act for Federally assisted projects. Also, it is noted that reliance on valuation and acquisition procedures described for the above easement acquisition measure may not be acceptable for FAA grant funding.	Pgs. 6–9, 6–21, 6–22 and 7–4, Exhibit 5–2; and Table 7–2.
4	Soundproofing: It is recommended that BCAD complete the Wesley Chapel United Methodist Church insulation project and offer once again to sound insulate Edgewood Elementary School in Fort Lauderdale and the Church of the Resurrection in Dania as required to provide an interior sound level of Ldn 45 or less. An easement would be conveyed in return for the sound insulation of Edgewood School and the Church of the Resurrection. FAA Action: Approved.	Pgs. 6–8, 6–23 and 7–4; Exhibit 5–2; and Table 7–2.

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These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 28, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Broward County Aviation Department.

Issued in Orlando, Florida on December 12, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–30779 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum annual random drug testing rate for the period January 1, 1996, through December 31, 1996, will remain at 25 percent of covered aviation employees since the industry-wide random drug testing positive rate continues to be below 1.0 percent.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1996 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), the FAA announced that is will set future minimum random drug testing rates according to the aviation industry's positive rate, which is determined using annual aviation antidrug program data taken from the FAA's Management Information System. (The term "positive rate" for tests required under 14 CFR part 121, appendix I, means the number of positive results for random drug tests plus total number of random drug tests plus the number of refusals to take random drug tests.) Using this performance-based system, the FAA can lower the minimum random drug testing rate to 25 percent whenever the positive rate is less than 1.0 percent of two calendar years while testing at 50 percent. The FAA must return the rate to 50 percent if the positive rate is 1.0 percent or higher in any subsequent calendar year. Each year, the Administrator will publish a notice in the **Federal Register** announcing the minimum annual random drug testing rate for the following year. (There is a similar provision in the alcohol testing rule. Since alcohol testing only commenced in January 1995, there is insufficient data to modify the current alcohol testing rate of 25 percent; industry-wide data on which to make the required determination will not be available until 1997.)

In 1994, the FAA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 aviation industry drug testing data indicated a positive rate below 1.0 percent. In this notice, the FAA announces that the minimum random drug testing rate will continue to be 25 percent of covered aviation employees for the period January 1, 1996, through December 31, 1996, since the aviation industry positive rate for 1994 was approximately 0.5 percent.

Dated: December 13, 1995.

Jon. L. Jordan,

Federal Air Surgeon.

[FR Doc. 95–30773 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 22 through January 25, 1996, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Le Baron Hotel, 1350 N First Street, San Jose, CA.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 22 through January 25, 1996, at the Le Baron Hotel, 1350 N First Street, San Jose, California

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 19, 1996. The next quarterly meeting of the FAA ATPAC is planned to be held from April 15–18, 1996, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 13, 1995.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 95–30778 Filed 12–18–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–104]

Extension of Caesar J. Thibodeaux, Inc.'s Customs Gauger Approval & Laboratory Accreditation to the New Site Located in Corpus Christi, Texas

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Caesar J. Thibodeaux, Inc.'s Customs gauger approval and laboratory accreditation to include its Corpus Christi, Texas new facility.

SUMMARY: Caesar J. Thibodeaux, Inc., of Pasadena, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Corpus Christi, Texas new site. Specifically, this office has been given Customs approval under Part 151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs districts; and accreditation to perform the following tests as listed under Part 151.13(a)(2): API gravity, distillation characteristics, Reid vapor pressure, water by distillation, sediment and water by centrifuge, sediment by extraction and viscosity.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Caesar J. Thibodeaux, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and laboratory accreditation to its Corpus Christi, Texas new facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted.

Location

Caesar J. Thibodeaux, Inc.'s site is located at 4422 Baldwin Street, Corpus Christi, Texas, 78408.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30787 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–103]

Customs Approval of Freeboard International, as a Commercial Gauger

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Freeboard International as a Commercial Gauger.

SUMMARY: Freeboard International of Winsted, Connecticut has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) at its Winsted, Connecticut facility. Customs has determined that the Winsted, Connecticut office meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Freeboard International, Winsted, Connecticut facility is approved to gauge the products named above in all Customs districts.

LOCATION: Freeboard International's approved site is located at: 202 Coe Street, Winsted, Connecticut.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: May 18, 1995.

A.W. Tennant,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 95–30788 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–105]

Extension of Inspectorate America Corporation's Customs Gauger Approval and Laboratory Accreditation to the New Site Located in Houston, Texas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Inspectorate America Corporation's Customs gauger approval and laboratory accreditation to include its Houston, Texas new facility.

SUMMARY: Inspectorate America Corporation of Houston, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Houston, Texas new site. Specifically, this office has been given Customs approval under Part 151.13(a)(1) of the Customs Regulations to gauge petroleum and petroleum products, organic chemicals in bulk and liquid form and animal and vegetable oils in all Customs districts; and accreditation to perform the following tests as listed under Part 151.13(a)(2): API gravity, water by distillation, sediment by extraction, viscosity and percent by weight sulphur.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corporation, a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and laboratory accreditation to its Houston, Texas new facility. Review of the qualifications of the site shows that the extension is warranted and, accordingly, has been granted

Location

Inspectorate America Corporation's site is located at 16640–B Jacintoport Boulevard, Houston, Texas, 77015.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Service.

[FR Doc. 95–30786 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–102]

Customs Commercial Gauger Approval of Inter-Globe Marine Consultants

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Approval of Inter-Globe Marine Consultants, as a Commercial Gauger.

SUMMARY: Inter-Globe Marine Consultants of Houston, Texas has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13) at their Houston, Texas facility. Customs has determined that this facility meets all of the requirements for approval as a commercial gauger. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Inter-Globe Marine Consultants' Houston, Texas site is approved to gauge the products named above in all Customs districts.

LOCATION: Inter-Globe Marine Consultants' approved site is located at: 12605 East Freeway, Suite 507, Houston, Texas 77015.

EFFECTIVE DATE: November 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services,

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U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 at (202) 927–1060.

Dated: December 12, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30780 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–106]

Customs Commercial Laboratory Accreditation of Gulf Coast Systems and Associates, Inc.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of the accreditation of Gulf Coast Systems and Associates, Inc., as a Customs accredited laboratory to perform certain petroleum analyses.

SUMMARY: Gulf Coast Systems and Associates, Inc., of Groves, Texas, has been given Customs laboratory accreditations under Part 151.13 of the Customs Regulations (19 CFR 151.13). Specifically, the Groves, Texas, site is accredited to perform the following tests: API Gravity, distillation characteristics, water by distillation, sediment and water by centrifuge, sediment by extraction, identity and percent composition of organic compounds in bulk and in liquid form.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Gulf Coast Systems and Associates, Inc., of Groves, Texas, has applied to Customs for certain laboratory accreditations. Customs has determined that Gulf Coast Systems and Associates, Inc., meets all the requirements for accreditation as a commercial laboratory.

Therefore, in accordance with part 151.13(f) of the Customs Regulations, Gulf Coast Systems and Associates, Inc.'s Groves, Texas, site is accredited to perform the laboratory analyses listed above.

Location

Gulf Coast Systems and Associates, Inc.'s site is located at 4300 Main Street, Groves, Texas, 77619.

EFFECTIVE DATE: October 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 8, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30785 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–107]

Revocation of Gauger Approval and Revocation of Laboratory Accreditations of Johnnie Wilson Inspections, Inc.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Approval and Accreditations of a Customs Commercial Gauger and Laboratory.

SUMMARY: Johnnie Wilson Inspections, Inc., of Angleton, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revoke its gauger approval and laboratory accreditations. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditations of Johnnie Wilson Inspections, Inc., has been revoked without prejudice.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 9, 1995.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–30783 Filed 12–18–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 243

Tuesday, December 19, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

DATE: January 5, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: January 5, 1996, 9:00 a.m.

1. Review and Accept Minutes of December 12–13, 1995 Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–30876 Filed 12–15–95; 10:30 am]

BILLING CODE 6118–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 14, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will consider and act upon the following:

2. Peabody Coal Co., Docket No. KENT 93–318–R, etc. (Issues include whether the judge erred in determining that the violations of 30 C.F.R. § 70.100(a) were caused by Peabody's unwarrantable failure.)

No earlier announcement of the addition to the agenda was possible.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/for toll free TDD Relay 1–800–877–8339.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–30956 Filed 12–15–95; 2:52 pm]

BILLING CODE 6735–01–M

Nuclear Regulatory Commission

DATE: Weeks of December 18, 25, 1995 and January 1 and 8, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 18

Tuesday, December 19

10:00 a.m.

Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting) (Contact: Denny Crutchfield, 301–415–1199)

2:00 p.m.

Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting) (Contact: John Glenn, 301–415–6187)

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Friday, January 5

10:00 a.m.

Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting) (Contact: Scott Newberry, 301–415–1183)

1:30 p.m.

Discussion on Full Power Operating License for Watts Bar (Public Meeting) (Contact: Fred Hebdon, 301–415–2024)+

Week of January 8—Tentative

There are no meetings scheduled for the Week of January 8.

ADDITIONAL INFORMATION: Affirmation of "Sequoyah Fuel Corporation and General Atomics; LBP–95–05 Ruling on Motions for Protective Order" and "Curators of the University of Missouri; Intervenors' Petition for Reconsideration" (Public Meeting) was held on December 14.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: December 15, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–30993 Filed 12–15–95; 3:45 pm]

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Tuesday
December 19, 1995

Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for Municipal Waste Combustors and Emission Guidelines; Final Rules, Proposed Rule and Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5327–3]

Standards of Performance for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the "Standards of Performance for Municipal Waste Combustors" (subpart Ea). These amendments are being made to improve the clarity of subpart Ea and to make subpart Ea consistent with subparts Eb and Cb.

DATES: The direct final rule §§ 60.17, 60.50a, 60.51a, 60.56a, 60.58a, and 60.59a will be effective January 29, 1996 unless significant adverse comments are received by January 18, 1996. If significant adverse comments are received on any amendment in this rule, that amendment will be withdrawn by timely publication in the **Federal Register**. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: If significant adverse comments are received on any amendment of this direct final rule, the comments will be addressed in a subsequent rulemaking in the **Federal Register** based on those provisions of the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. The amendments in question will be withdrawn from this direct final rule. Amendments of the direct final rule that do not receive any significant adverse comments will become final 40 days from today's **Federal Register** notice. If no significant adverse comments are filed on any provision of this direct final rule, then the entire direct final rule will become effective 40 days from today's **Federal Register** notice and no further action is contemplated on the parallel proposal published today.

On February 11, 1991 (56 FR 5488), the EPA promulgated in the **Federal Register** new source performance standards (NSPS) for municipal waste combustors (MWC's) for which construction, modification, or reconstruction is commenced after December 20, 1989. The regulations were promulgated as subpart Ea in 40 CFR part 60.

Today's action modifies the applicability and definitions sections of the final regulation to improve clarity and make them consistent with those of subparts Eb (standards of performance for new MWC's for which construction commenced after September 20, 1994 or modification or reconstruction commenced after June 19, 1996, and Cb (emission guidelines for existing MWC's for which construction commenced on or before September 20, 1994) that are being promulgated in a separate section of today's **Federal Register**. Today's changes do not significantly modify the requirements of the regulation. The revisions are discussed in the order in which they appear in the subpart Ea regulation.

Preamble Outline: The following outline is provided to aid in locating information in this preamble.

I. Description of Changes
- A. Dates of Applicability
- B. Applicability of Cofired Combustors and Tire-Burning Facilities
- C. Applicability of Subpart Ea to Certain Other Facilities
- D. Definitions
- 1. Definitions of Modification and Reconstruction
- 2. Definition of MSW and Calculation of MWC Unit Capacity
- 3. Definition of an MWC
- E. Clarification of the Carbon Monoxide Standard
- F. Update of Operator Training Specifications
- G. Clarification of MWC Unit Load Measurement

II. Judicial Review

III. Administrative
- A. Paperwork Reduction Act
- B. Executive Order 12291 Review
- C. Regulatory Flexibility Act

I. Description of Changes

A. Dates of Applicability

Subpart Ea is applicable to MWC units with capacities greater than 225 megagrams per day (Mg/day) of municipal solid waste (MSW) for which construction, modification, or reconstruction was commenced after December 20, 1989. To avoid overlap with the subpart Eb NSPS, the dates for applicability for subpart Ea specified in § 60.50a(a) are being changed to apply to MWC's (1) commencing construction after December 20, 1989 and on or before September 20, 1994 or (2) commencing modification or reconstruction after December 20, 1989 and on or before June 19, 1996. The MWC plants that commence construction after September 20, 1994 or that commence modification or reconstruction after June 19, 1996 are subject to subpart Eb, which is more stringent than subpart Ea. The change is also being made to subpart Ea to avoid the same MWC plant being subject to duplicative requirements under two NSPS (subparts Ea and Eb). This change is reflected in the definitions for "MWC plant" and "MWC plant capacity" in § 60.51a. It should be noted that plants that are subject to subpart Ea will also be subject to the emission guidelines contained in subpart Cb, which apply to plants constructed on or before September 20, 1994.

B. Applicability to Cofired Combustors and Tire-Burning Facilities

The wording in § 60.50a (c), (d), and (e) is being changed so that cofired facilities and facilities that only burn tires are clearly defined as not being subject to any sections of subpart Ea. Currently, they are exempt from all requirements of subpart Ea except recordkeeping requirements. This change will make subpart Ea consistent with subparts Eb and Cb. It will also clarify that, for purposes of the title V operating permits program, such facilities are not considered subject to subpart Ea. In addition, because the applicability to cofired combustors has been clarified, the definition of "cofired combustor" has been revised in § 60.51a. Relative to these changes, § 60.58(j)(3) is being removed and items in § 60.59a (a)(1), (b)(14), and (m) are being moved to § 60.50a(d).

C. Applicability of Subpart Ea to Certain Other Facilities

Section 129 of the Clean Air Act (Act) specifies that qualifying cogeneration facilities, qualifying small independent power producers, Solid Waste Disposal Act section 3005 permitted facilities, and materials recovery facilities recovering metals are not MWC's and are not regulated under section 129. Subparts Eb and Cb specify that these units are not subject to subparts Eb and Cb. Additionally, subparts Eb and Cb specify that pyrolysis/combustion units that are an integrated part of a plastics/rubber processing unit are not subject to the MWC regulations. These exemptions are being incorporated into subpart Ea (§ 60.50a (g), (h), (i), (j), and (k)) to be consistent with subparts Eb and Cb.

D. Definitions

Revisions are being made to 13 definitions, 13 new definitions are being added, and 2 are being deleted to clarify subpart Ea and make it consistent with the terms defined in subpart Eb. Several of these definitions are discussed below.

1. Definitions of Modification and Reconstruction

Two new terms, "modification" (or "modified municipal waste combustor") and "reconstruction", are being added to § 60.51a to incorporate the section 129 definition of "modified solid waste incineration unit." These definitions are very similar to the definitions of these two terms in §§ 60.14 and 60.15 of 40 CFR 60 subpart A (the NSPS general provisions). The addition of these definitions will clarify subpart Ea and make the terms used in subparts Ea, Eb, Cb, and section 129 relating to modification and reconstruction consistent with each other.

2. Definition of MSW and Calculation of MWC Unit Capacity

To avoid confusion and possible conflict with the pending medical waste incinerator (MWI) regulations which were proposed in February 1995 and are scheduled to be promulgated in the near future, the definition of MSW in § 60.51a of subpart Ea is being revised to be consistent with subparts Eb and Cb. Additionally, the determination of "MWC unit capacity" in § 60.58a(j)(4) and its definition in § 60.51a are being revised so that only a single heat input value is used for MSW. This change is being made so that subpart Ea will be consistent with subparts Eb and Cb. Section 60.59a(b)(15) is also being deleted.

In addition to the clarification concerning medical waste, the definition of MSW in § 60.51a is being revised to specify that "clean wood" is excluded, while refuse-derived fuel (RDF) and yard waste are included. To ensure clarity, definitions for "clean wood", "untreated lumber", and "yard waste" are being added to § 60.51a. Because the definition of MSW is being revised to clarify that RDF is a type of preprocessed MSW and not a different type of waste, the phrase "MSW or RDF" in several paragraphs is being replaced with "MSW" to avoid redundancy. These clarifications are consistent with the intent of subpart Ea, and will make the definition of MSW consistent with subparts Eb and Cb.

3. Definition of an MWC

The definition of an MWC in § 60.51a is being revised to be consistent with that in subpart Eb. The most significant difference is the addition of a description of the physical boundaries of an MWC. The clarification of the boundaries of the affected facility will assist in considering cost for making reconstruction determinations.

E. Clarification of the Carbon Monoxide Standard

The specifications for the carbon monoxide (CO) standards in §§ 60.56a(a) and 60.58(a) (h)(1) and (h)(2) are being revised to clarify the EPA's intent as to which standard applies to which combustor type. It was intended that the mass burn refractory unit CO standard apply to both mass burn refractory units and rotary mass burn refractory units. This was not clear in the promulgated regulation because the definition in § 60.51a of mass burn refractory units excluded rotary mass burn refractory units. In order to clarify this, the definition of mass burn refractory unit is being clarified to include rotary mass burn rotary refractory units.

It was also intended that the CO standard for coal/RDF mixed fuel-fired units be applicable to pulverized coal-type units, as opposed to spreader stoker-type units that would fall under the RDF stoker standard. Accordingly, the coal/RDF mixed fuel-fired combustor CO standard is being renamed the pulverized coal/RDF mixed fuel-fired combustor CO standard, and a CO standard for spreader stoker coal/RDF mixed fuel-fired combustors equivalent to the RDF stoker standard is being listed separately. Corresponding definitions are being added and revised in § 60.51a.

F. Update of Operator Training Specifications

The operator training requirements in § 60.56a(d) specify that provisional or operator certification shall be obtained in accordance with the American Society of Mechanical Engineers (ASME) QRO–1–1989 requirements or an equivalent State-approved certification program. The ASME standard was updated in 1994 and so, to be consistent with subparts Eb and Cb, the reference is being updated to QRO–1–1994.

G. Clarification of MWC Unit Load Measurement

The MWC unit load measurement specified in § 60.58a(h)(6) is being modified to include feedwater flow monitoring as an alternative to steam flow measurement. The wording of this section is being revised to match the wording in subparts Eb and Cb and a definition of "MWC unit load" is being added to § 60.51a.

II. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the Act, the requirements that are subject to today's rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

III. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (the ICR number is 1506.4, with an OMB approval number 2060–0210) may be obtained from Sandy Farmer, Regulatory Information Division (Code 2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NSPS will have no significant impact on the information collection burden estimates made previously. The burden will be reduced slightly. Consequently, the ICR has not been revised.

B. Executive Order 12291 Review

The MWC NSPS promulgated on February 11, 1991 was considered a "major rule" under Executive Order 12291 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA concludes these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the flexibility of the analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

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Dated: October 31, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 60, subpart Ea of the Code of Federal Regulations is corrected as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart Ea Heading—[Revised]

2. The heading for subpart Ea is revised to read as follows:

Subpart Ea—Standards of Performance for Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994

3. Section 60.17 of subpart A of part 60 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for § 60.56a.

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b and 60.58a(h)(6)(ii).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for § 60.58a(h)(6)(ii).

* * * * *

4. Section 60.50a is amended by revising paragraphs (a), (c), (d), (e), and (f), removing paragraph (g), redesignating paragraph (h) as paragraph (l), redesignating paragraph (i) as paragraph (m), and adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 60.50a Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a municipal waste combustor unit capacity greater than 225 megagrams per day (250 tons per day) of municipal solid waste for which construction, modification, or reconstruction is commenced as specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Construction is commenced after December 20, 1989 and on or before September 20, 1994.

(2) Modification or reconstruction is commenced after December 20, 1989 and on or before June 19, 1996.

* * * * *

(c) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(d) Any cofired combustor, as defined under § 60.51a, located at a plant that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(e) Any cofired combustor that is subject to a federally enforceable permit limiting the operation of the combustor to no more than 225 megagrams per day (250 tons per day) of municipal solid waste is not subject to this subpart.

(f) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under subpart Cb are not considered a modification or reconstruction and do not result in an existing municipal waste combustor unit becoming subject to this subpart.

(g) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of an exemption claim and provides data documenting that the facility qualifies for this exemption.

(h) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of an exemption claim and provides data documenting that the facility qualifies for this exemption.

(i) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(j) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(k) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51a) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of: the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

* * * * *

5. Section 60.51a is amended:

a. by removing the definitions of "coal/RDF mixed fuel fired combustor", "large MWC plant", "mass burn refractory MWC", "mass burn rotary waterwall MWC", "mass burn waterwall MWC", "maximum demonstrated MWC unit load", "medical waste", "municipal-type solid waste or MSW", "municipal waste combustor or MWC unit", "MWC plant", "MWC plant capacity", and "MWC unit capacity", and;

b. by revising the definitions for "cofired combustor", "maximum demonstrated particulate matter control device temperature", and "standard conditions", and;

c. by adding new entries to the section. The revised entries and the new entries are set out to read as follows:

§ 60.51a Definitions.

* * * * *

Calendar quarter means a consecutive 3-month period (nonoverlapping) beginning on January 1, April 1, July 1, and October 1.

* * * * *

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles), which are exempt from the definition of municipal solid waste in this section.

Cofired combustor means a unit combusting municipal solid waste with nonmunicipal solid waste fuel (e.g., coal, industrial process waste) and subject to a federally enforceable permit limiting the unit to combusting a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste as measured on a calendar quarter basis.

* * * * *

Large municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor aggregate plant capacity for affected facilities that is greater than 225 megagrams per day (250 tons per day) of municipal solid waste.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated municipal waste combustor unit load means the highest 4-hour arithmetic average municipal waste combustor unit load achieved during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.53a.

Maximum demonstrated particulate matter control device temperature means the highest 4-hour arithmetic average flue gas temperature measured at the particulate matter control device inlet during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.53a.

* * * * *

Modification or *modified municipal waste combustor unit* means a municipal waste combustor unit to which changes have been made if the cumulative cost of the changes, over the life of the unit, exceed 50 percent of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or any physical change in the municipal waste combustor unit or change in the method of operation of the municipal waste combustor unit increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111. Increases in the amount of any air pollutant emitted by the municipal waste combustor unit are determined at 100-percent physical load capability and downstream of all air pollution control devices, with no consideration given for load restrictions based on permits or other nonphysical operational restrictions.

* * * * *

Municipal solid waste or *municipal-type solid waste* or *MSW* means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff). Household, commercial/retail, and institutional wastes include:

(1) Yard waste;

(2) Refuse-derived fuel; and

(3) Motor vehicle maintenance materials limited to vehicle batteries and tires except as specified in § 60.50a(c).

Municipal waste combustor, MWC, or *municipal waste combustor unit:* (1) Means any setting or equipment that combusts solid, liquid, or gasified MSW including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam-generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units (as specified in § 60.50a(k) of this section). Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of an MWC are defined as follows. The MWC unit includes, but is not limited to, the MSW fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The MWC boundary starts at the MSW pit or hopper and extends through:

(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(3) The MWC unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine generator set.

* * * * *

Municipal waste combustor plant means one or more MWC units at the same location for which construction, modification, or reconstruction is commenced after December 20, 1989 and on or before September 20, 1994.

Municipal waste combustor plant capacity means the aggregate MWC unit capacity of all MWC units at an MWC plant for which construction, modification, or reconstruction of the units commenced after December 20,

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1989 and on or before September 20, 1994. Any MWC units for which construction, modification, or reconstruction is commenced on or before December 20, 1989 or after September 20, 1994 are not included for determining applicability under this subpart.

Municipal waste combustor unit capacity means the maximum design charging rate of an MWC unit expressed in megagrams per day (tons per day) of MSW combusted, calculated according to the procedures under § 60.58a(j). Municipal waste combustor unit capacity is calculated using a design heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) for MSW. The calculational procedures under § 60.58a(j) include procedures for determining MWC unit capacity for continuous and batch feed MWC's.

Municipal waste combustor unit load means the steam load of the MWC unit measured as specified in § 60.58a(h)(6).

* * * * *

Plastics/rubber recycling unit means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock, where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste, and may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (e.g., paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

* * * * *

Pulverized coal/refuse-derived fuel mixed fuel-fired combustor or *pulverized coal/RDF mixed fuel-fired combustor* means a combustor that fires coal and RDF simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is fired in suspension. This includes both conventional pulverized coal and micropulverized coal.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids through the heating of MSW, and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

Reconstruction means rebuilding an MWC unit for which the cumulative costs of the construction over the life of the unit exceed 50 percent of the original cost of construction and installation of the unit (not including any cost of land purchased in connection with such construction or installation) updated to current costs (current dollars).

Refractory unit or *refractory wall furnace* means a combustion unit having no energy recovery (e.g., via a waterwall) in the furnace (i.e., radiant heat transfer section) of the combustor.

* * * * *

Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor or *spreader stoker coal/RDF mixed fuel-fired combustor* means a combustor that fires coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions means a temperature of 20 °C (68 °F) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

* * * * *

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or "pressure-treated." Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a combustion unit having energy (heat) recovery in the furnace (i.e., radiant heat transfer section) of the combustor.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of MSW in this section. Yard waste does not include clean wood, which is exempt from the definition of MSW in this section.

6. Section 60.56a, paragraph (a), Table 1, is amended by removing the entry for "Coal/RDF mixed fuel-fired combustors" and adding entries for "Pulverized coal/RDF mixed fuel-fired combustor" and "Spreader stoker coal/RDF mixed fuel-fired combustor" to the end of the table; by revising paragraph (d); and by removing and reserving paragraph (f)(9) to read as follows:

§ 60.56a Standards for municipal waste combustor operating practices.

(a) * * *

TABLE 1.—MWC OPERATING STANDARDS

MWC technology	Carbon monoxide emission limit (parts per million by volume)[1]
. . . . .	
Pulverized coal/RDF mixed fuel-fired combustor	150
Spreader stoker coal/RDF mixed fuel-fired combustor	150

[1] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen (dry basis). The averaging times are specified in § 60.58a(h).

* * * * *

(d) Within 24 months from the date of start-up of an affected facility or before February 11, 1993, whichever is later, each chief facility operator and shift supervisor of an affected faciltiy located within a large MWC plant shall obtain and keep current either a provisional or operator certification in accordance with ASME QRO–1–1994 (incorporated by reference, see § 60.17) or an equivalent State-approved certification program.

* * * * *

(f) * * *

(9) [Reserved]

* * * * *

7. Section 60.58a is amended by revising paragraphs (h)(1), (h)(2), (h)(6)(i), (h)(6)(ii), and (h)(10), redesignating paragraph (h)(6)(iii) as paragraph (h)(6)(v), adding new paragraphs (h)(6)(iii) and (h)(6)(iv), removing and reserving paragraph (j)(3), and revising paragraph (j)(4), to read as follows:

§ 60.58a Compliance and performance testing.

* * * * *

(h) * * *

(1) Compliance with the carbon monoxide emission limits in § 60.56a(a) shall be determined using a 4-hour block arithmetic average for all types of affected facilities except mass burn rotary waterwall MWC's, RDF stokers, and spreader stoker/RDF mixed fuel-fired combustors.

(2) For affected mass burn rotary waterwall MWC's, RDF stokers, and spreader stoker/RDF mixed fuel-fired combustors, compliance with the carbon monoxide emission limits in § 60.56a(a) shall be determined using a 24-hour daily arithmetic average.

* * * * *

(6) * * *

(i) The owner or operator of an affected facility with steam generation capability shall install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam or feedwater flow in kilograms per hour (pounds per hour) on a continuous basis; and record the output of the monitor. Steam or feedwater flow shall be calculated in 4-hour block arithmetic averages.

(ii) The method included in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964", Section 4 (incorporated by reference, see § 60.17) shall be used for calculating the steam (or feedwater flow) required under paragraph (h)(6)(i) of this section. The recommendations of "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)," chapter 4 (incorporated by reference, see § 60.17) shall be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in (h)(6)(iii) of this section.

(iii) Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

(iv) All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan compliance and performance test, and at least once per year.

* * * * *

(10) At a minimum, valid CEMS data for carbon monoxide, steam or feedwater flow, and particulate matter control device inlet temperature shall be obtained 75 percent of the hours per day for 75 percent of the days per month the affected facility is operated and combusting MSW.

* * * * *

(j) * * *

(3) [Reserved]

(4) The MWC unit capacity shall be calculated using a design heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) for all MSW.

* * * * *

§ 60.59a [Amended]

8. Section 60.59a is amended by removing paragraphs (a)(1), (b)(14), (b)(15), and (m), and removing the third sentence of paragraph (e).

[FR Doc. 95–30254 Filed 12–18–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 60

[AD-FRL–5327–5]

RIN 2060–AD00

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources

Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action adds standards of performance for new municipal waste combustor (MWC) units and emission guidelines for existing MWC's. The standards and guidelines implement sections 111 and 129 of the Clean Air Act and are based on the Administrator's determination that MWC's cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The standards and guidelines apply to MWC units at plants with aggregate capacities to combust greater than 35 megagrams per day (Mg/day) (approximately 40 tons per day) of municipal solid waste (MSW) and require sources to achieve emission levels reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determined is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements. The promulgated standards and guidelines establish emission levels for MWC organics (dioxins/furans), MWC metals (cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), and opacity), MWC acid gases (hydrogen chloride (HCl) and sulfur dioxide (SO_2)), nitrogen oxides (NO_X), and MWC fugitive ash emissions. Some of the pollutants being regulated are considered to be carcinogens and at sufficient concentrations can cause toxic effects following exposure. The standards and guidelines also establish requirements for MWC operating practices (carbon monoxide (CO), load, flue gas temperature at the PM control device inlet, and operator training/certification). Additionally, the standards for new MWC plants also require a siting analysis and materials separation plan.

DATES: *Effective Dates.* June 19, 1996 for the standards for new sources (§§ 60.50b through 60.59b) and December 19, 1995 for the emission guidelines for existing sources (§§ 60.30b through 60.39b). The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1996 for the standards for new sources. See table 3 of this preamble for a summary of the retrofit schedules for existing MWC sources. See **SUPPLEMENTARY INFORMATION** for a discussion of the schedule for judicial review.

Comments. Comments on the Information Collection Request (ICR) document associated with the final standards for new sources are requested, as discussed in section VI.B of this preamble. Comments on the ICR document must be received on or before February 20, 1996. Refer to Section VI.B for further information on this request for comment.

ADDRESSES: *Comments.* As noted above, comments on the ICR document

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associated with the final standards for new source are requested. See section VI.B and the **SUPPLEMENTARY INFORMATION** section of this preamble for further information on obtaining a copy of the ICR document and addresses for submitting comments on the ICR document.

Background Information. The principal background information for the final standards and guidelines includes: (1) A background information document (BID) entitled, "Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses" (EPA–453/R–95–0136), which contains a summary of all the significant public comments submitted regarding the proposed standards and guidelines, the EPA's response to these comments, and a summary of the changes made to the standards and guidelines as a result of the comments; and (2) several technical documents listed under **SUPPLEMENTARY INFORMATION**, including all of the background information documents that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines. A document entitled "FACT SHEET: New Municipal Waste Combustors—Subpart Eb Standards," which succinctly summarizes the final standards, and a document entitled "FACT SHEET: Existing Municipal Waste Combustors—Subpart Cb Emission Guidelines," which succinctly summarizes the guidelines, are also available. See **SUPPLEMENTARY INFORMATION** for instructions and addresses for obtaining these documents.

Docket. Docket Nos. A–90–45 and A–89–08, containing supporting information used in developing the standards and guidelines, are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street SW, Washington DC 20460 [phone: (202) 260–7548]. The docket is located at the above address in room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information.

On December 20, 1989, the EPA proposed standards and guidelines for MWC's in subparts Ea and Ca of 40 CFR 60, respectively. The subparts Ea and Ca were promulgated on February 11, 1991 and were developed under authority of paragraph (b) of section 111 of the Clean Air Act of 1977. The 1990 Amendments to the Clean Air Act required the EPA to review these emission standards and guidelines and determine if they were fully consistent with the requirements of section 129. The EPA reviewed the subpart Ea standards and subpart Ca guidelines and concluded that they were not fully consistent with the requirements of section 129. Therefore, the EPA proposed to revise the standards and guidelines in a September 20, 1994 proposal to make the standards and guidelines fully consistent with the requirements of section 129. Municipal waste combustors that begin construction after September 20, 1994 or that begin modification or reconstruction after June 19, 1996 and that meet all other applicability criteria are subject to the revised standards (subpart Eb). Municipal waste combustors that were constructed on or before September 20, 1994 and that meet all other applicability criteria are subject to the revised guidelines (subpart Cb). Municipal waste combustors that were constructed after December 20, 1989 and on or before September 20, 1994 and that meet all other applicability criteria are subject to both the subpart Ea standards (1991 standards for new sources) and the subpart Cb guidelines (1995 retrofit guidelines for existing sources). In this final rule, the EPA is withdrawing the subpart Ca guidelines (1991 guidelines for existing sources). In a separate action in today's **Federal Register** the EPA is publishing a direct final rule amending the text of subpart Ea.

This **Federal Register** final rule discusses: (1) The standards for new MWC's, (2) the guidelines for existing MWC's, (3) the withdrawal of the 1991 subpart Ca guidelines for existing MWC's, and (4) a request for public comment on the ICR document. This preamble and regulatory text are available on the EPA's Technology Transfer Network (TTN) electronic bulletin board. Also available on the EPA's TTN are FACT SHEETS, which summarize the final standards and guidelines. They are suggested reading for persons requiring an overview of the standards and guidelines. The FACT SHEETS can also be obtained by calling Donna Collins at (919) 541–5578. The TTN contains 18 electronic bulletin boards, and the following 5 items are included in the Clean Air Act Amendments (CAAA) bulletin board under menu item "Recently Signed Rules" in file "MWC2.ZIP":

(1) "FACT SHEET: New Municipal Waste Combustors—Subpart Eb Standards (1995)."

(2) "FACT SHEET: Existing Municipal Waste Combustors—Subpart Cb Emission Guidelines (1995)."

(3) **Federal Register** notice for this promulgation: "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Municipal Waste Combustors" (this document).

(4) "Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses," EPA–453/R–95–0136.

(5) Information Collection Request document for these standards for new sources: "Standard Form 83 Supporting Statement for ICR No. 1506.5—1995 Standards for New Municipal Waste Combustors (Subpart Eb)," September 29, 1995.

The TTN is accessible 24 hours per day, 7 days per week except Monday morning from 8:00 a.m. to 12:00 p.m. when the system is updated. The service is free except for the cost of the phone call. Dial (919) 541–5742 to access the TTN. The TTN is compatible with up to a 14,400 bits-per-second (bps) modem. An alternative way to access the TTN is by "telenet," using access code "ttnbbs.rtpnc.epa.gov". Further instructions for accessing the TTN can be obtained by calling the help desk at (919) 541–5384.

Documents in the Docket. The background information for today's promulgation includes all of the documents that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines (docket No. A–90–45 and docket No. A–89–08). Key background information documents used in developing the subpart Ea standards, the subpart Ca guidelines, and today's promulgated standards and guidelines are as follows:

(1) "Municipal Waste Combustors—Background Information for Proposed Standards: 111(b) Model Plant Description and Cost Report," EPA–450/3–89–27b, August 1989;

(2) "Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance," EPA–450/3–89–27c, August 1989;

(3) "Municipal Waste Combustion Assessment: Combustion Control at

Existing Facilities," EPA–600/8–89–057, August 1989;

(4) "Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practices," EPA–600/8–89–063, August 1989;

(5) "Municipal Waste Combustors—Background Information for Proposed Standards: Control of NO_X Emissions," EPA–450/3–89–27d, August 1989;

(6) "Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures," EPA–450/3–89–27a, August 1989;

(7) "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994;

(8) "Municipal Waste Combustors—Background Information for Proposed Guidelines for Existing Facilities," EPA–450/3–89–27e, August 1989;

(9) "Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses," EPA–453/R–95–0136, 1995.

These documents and additional technical information are contained in dockets A–90–45 and A–89–08. Docket materials are available for inspection and copying as described in the ADDRESSES section of this preamble.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are in today's notice may not be challenged later in the civil or criminal proceedings brought by the EPA to enforce these requirements (42 U.S.C. 7607(b)).

Preamble Outline. The following outline is provided to aid in locating information in the introductory text (preamble) to the final standards and guidelines.

I. Acronyms, Abbreviations, and Measurement Units
A. Acronyms
B. Abbreviations and Measurement Units
II. Background and Withdrawal of the 1991 Subpart Ca Emission Guidelines
III. Summary of Considerations in Developing the 1995 Standards for New Sources and Guidelines for Existing Sources
A. Purpose of the Standards and Guidelines
B. Technical Basis of the Standards and Guidelines
C. Stakeholders and Public Involvement
IV. Standards of Performance for New Sources (1995)—Summary of the Standards, Impacts of the Standards, and Significant Issues and Changes to the Proposed Standards
A. Summary of the Standards
B. Significant Issues and Changes to the Proposed Standards
1. Applicability
2. Emission Limits for MWC Metals, Acid Gases, Organics, Nitrogen Oxides, and Ash Fugitive Emissions
3. Good Combustion Practices
4. Operator Training and Certification
5. Air Curtain Incinerators
6. Siting Analysis/Materials Separation Plan
7. Compliance and Performance Testing
8. Reporting and Recordkeeping Requirements
C. Impacts of the Standards
V. Guidelines for Existing Sources (1995)—Summary of the Guidelines, Impacts of the Guidelines, and Significant Issues and Changes to the Proposed Guidelines
A. Summary of the Guidelines
B. Significant Issues and Changes to the Proposed Guidelines
1. Designated Facilities
2. Emission Limits for MWC Metals, Acid Gases, Organics, Nitrogen Oxides, and Fugitive Ash Emissions
3. Good Combustion Practices
4. Operator Training and Certification
5. Air Curtain Incinerators
6. Compliance and Performance Testing
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C. Impacts of the Guidelines
VI. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Unfunded Mandates Act
E. Executive Order 12875
F. Regulatory Flexibility Act
G. Clean Air Act Procedural Requirements

I. Acronyms, Abbreviations, and Measurement Units

The following definitions, acronyms, and measurement units are provided to clarify the preamble to the final standards and guidelines.

A. Acronyms

ASME American Society of Mechanical Engineers
BID Background Information Document
CEMS continuous emissions monitoring system(s)
COMS continuous opacity monitoring system(s) dioxins/furans polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans
DSI dry sorbent injection
EPA U.S. Environmental Protection Agency
ESP electrostatic precipitator
FF fabric filter
GCP good combustion practices
ICR information collection request
MACT maximum achievable control technology
MSW municipal solid waste
MWC municipal waste combustor
MWI medical waste incinerator
NSR New Source Review
NO_X nitrogen oxides
OAQPS Office of Air Quality Planning Standards
OMB Office of Management and Budget
PM particulate matter
RDF refuse-derived fuel
RFA Regulatory Flexibility Act
SD spray dryer
SNCR selective noncatalytic reduction
TEQ basis 2,3,7,8-tetrachlorinated dibenzo-p-dioxin toxic equivalent based on the 1989 international toxic equivalency factors

B. Abbreviations and Measurement Units

°C=degrees Celsius (degrees Fahrenheit=°C*9/5+32)
Cd=cadmium
CO=carbon monoxide
CO_2=carbon dioxide
dscf=dry standard cubic feet (at 14.7 pounds per square inch, 68 °F)
dscm=dry standard cubic meters (at 14 pounds per square inch, 68 °F)
g=gram (454 grams per pound)
g/yr=grams per year
gr=grains (7,000 grains per pound)
HCl=hydrogen chloride
Hg=mercury
kg=kilogram (0.454 kilograms per pound)
kg/yr=kilograms per year
m3=cubic meter (35.3 cubic feet per cubic meter)
mg=milligrams (10^{-3} grams)
Mg=megagram (1.1 tons)
Mg/d=megagrams per day
Mg/yr=megagrams per year
ng=nanogram (10^{-9} grams)
Pb=lead
ppmv=parts per million by volume
SO_2=sulfur dioxide
tons/d=tons per day
tons/yr=tons per year
total mass basis (dioxins/furans=total mass of tetra- through octa-chlorinated dibenzo-p-dioxins and dibzofurans

II. Background and Withdrawal of the 1991 Subpart Ca Emission Guidelines

By the mid-1980's, several studies had been performed to determine whether MWC emissions should be regulated and, if so, under what section of the Clean Air Act. As set forth in the Advanced Notice of Proposed Rulemaking (52 FR 25399, July 7, 1987), the EPA decided to regulate air emissions from MWC's under section 111 of the Clean Air Act, and to base the

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regulation on best demonstrated technology, as required by section 111. On December 20, 1989, the EPA proposed standards for new MWC's and guidelines for existing MWC's (54 FR 52251 and 54 FR 52209, respectively). On November 15, 1990, 1990 Amendments to the Clean Air Act were enacted and added section 129 to the Clean Air Act. Section 129 of the Clean Air Act specifies that revised standards and guidelines must be developed for MWC's in accordance with the requirements of both section 111 and new section 129. Section 129 further specifies that revised standards and guidelines be developed for both large and small MWC plants and that the revised standards and guidelines must reflect more restrictive performance levels. Section 129 includes a schedule for revising the 1991 standards and guidelines.

When the EPA did not comply with the section 129 schedule, the Sierra Club, the Natural Resources Defense Council, and the Integrated Waste Services Association filed complaints with the U.S. District Court for the Eastern District of New York. The resulting consent decree required the EPA Administrator to sign a notice of proposed rulemaking not later than September 1, 1994 and a notice of promulgation not later than October 31, 1995 (Nos. CV–92–2093, CV–93–0284, and CV–93–5144). The proposal notice for the standards and guidelines was signed as scheduled and published on September 20, 1994 (59 FR 48198 and 59 FR 48228, respectively). This notice responds to the requirement for the Administrator to sign the final standards and guidelines by October 31, 1995.

The standards and guidelines promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514, respectively) apply to only large MWC's (capacities above 225 Mg/day) and reflect best demonstrated technology. Today's notice promulgates revised standards and guidelines that are fully consistent with sections 111 and 129 of the Clean Air Act and extend coverage of the revised standards and guidelines to MWC units located at MWC plants with aggregate plant capacity above 35 Mg/day.

Today's promulgated standards for new sources are more stringent than the standards promulgated on February 11, 1991. Today's promulgated standards will apply to plants for which construction commenced after September 20, 1994 or for which reconstruction or modification commenced after June 19, 1996. The guidelines will apply to all MWC's constructed prior to September 20, 1994. The February 11, 1991 subpart Ea standards will remain in effect for plants constructed, modified, or reconstructed between December 20, 1989 and September 20, 1994. Sources subject to the February 11, 1991 subpart Ea standards are also subject to the guidelines being promulgated today under subpart Cb. In some cases, the promulgated subpart Cb guidelines are more stringent than the existing subpart Ea standards. The control technologies being used to meet the emission limits included in the 1991 subpart Ea standards will be able to comply with the promulgated subpart Cb guidelines, except supplemental controls would be required to reduce Hg emissions and fugitive ash emissions. The direct final rule also being published in today's **Federal Register** will provide consistency between the subpart Ea and Cb rules.

Today's promulgated guidelines under subpart Cb for existing sources are more stringent than the guidelines promulgated under subpart Ca on February 11, 1991. Today's promulgated guidelines will apply to MWC's for which construction commenced on or before September 20, 1994. Today's promulgated guidelines are based on maximum achievable control technology, or MACT, and will require MWC plants to purchase and install different types of air pollution control equipment than the best demonstrated technology-based guidelines promulgated in 1991 under subpart Ca. In consideration of public comments, which supported the withdrawal of subpart Ca, and to satisfy the MACT requirements of section 129 of the Clean Air Act, the EPA is withdrawing the 1991 subpart Ca guidelines as a part of today's action.

III. Summary of Considerations in Developing the 1995 Standards for New Sources and Guidelines for Existing Sources

A. Purpose of the Standards and Guidelines

Under sections 111 and 129 of the Clean Air Act, the EPA is required to develop and adopt performance standards and guidelines for MWC's. Congress specifically added section 129 to the Clean Air Act to address public concerns about MWC's and other solid waste combustion units. Under section 111, performance standards and guidelines must be developed for new and existing stationary sources that may contribute to air pollution and that may reasonably be anticipated to endanger public health or welfare. Under section 129 of the Clean Air Act, the standards and guidelines adopted for MWC's must be based on MACT.

Independent of Clean Air Act requirements, the general public is concerned about emissions from all sources including MWC's. This is understandable considering (1) about two-thirds of the MWC population is located in air quality nonattainment areas with high population densities, and (2) the EPA's 1994 MWC Dioxin Survey identified a limited number of older poorly controlled MWC's with atypically high dioxin/furan emissions (interim corrective actions have been taken at these MWC's).

The MWC industry has aggressively controlled new MWC plants built since 1990, and almost half of the existing population currently is equipped with high efficiency air pollution control equipment. The other older half of the population has control equipment with lower efficiency. As mentioned earlier, health effects are associated with many of the pollutants emitted from MWC's, and the standards and guidelines being promulgated today will bring all MWC units up to the same high performance level.

The EPA estimates that in the United States, there are about 307 operating MWC units at 128 plants, providing a total U.S. MSW combustion capacity of about 94,000 Mg/day. Approximately 16 percent of MSW generated in the United States is combusted.

Emissions from MWC's contain organics (dioxins/furans), metals (Cd, Pb, Hg, PM, and opacity), acid gases (Hcl and SO_2), and NO_X. These pollutants can have adverse effects on both public health and welfare. The EPA recently released a draft report reassessing the health effects of human exposure to dioxins/furans. In the draft report, which is currently undergoing review, MWC's are identified as one source of dioxin/furan emissions. Other MWC emissions of principal concern include Pb, Cd, and Hg. Acid gas and NO_X emissions contribute to acid rain when emissions of SO_2 and NO_X are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as wet deposition such as rain, fog, or snow, or as dry deposition such as fine particles or gases. Acid deposition damages lakes and harms forests and buildings. Nitrogen oxides also contribute to low-level ozone and urban area smog formation.

Today's standards and guidelines are set forth as emission limits and will significantly reduce MWC emissions.

B. Technical Basis of Standards and Guidelines

Section 129(a)(2) of the Clean Air Act requires the revised standards for new MWC's and revised guidelines for existing MWC's to reflect the maximum degree of reduction in emissions of designated air pollutants, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements that the Administrator determines are achievable for a particular category of sources. (This control level is commonly referred to as the "maximum achievable control technology, or "MACT".) Section 129 also provides that standards for new sources may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. This is commonly referred to as the "MACT floor" for new MWC units. Additionally, section 129 provides that the emission limitations in the guidelines for existing MWC's may not be less stringent than the average emission limitations achieved by the best performing 12 percent of units in the category. This is commonly referred to as the "MACT floor" for existing MWC units. Emission control options less stringent than the MACT floor can not be considered in developing section 129 standards and guidelines.

Technical data on the number and size of MWC's, control technologies in use, permit emission limits, and emission test data were used to determine the MACT floor for new and existing MWC's and to define control alternatives. The types of data EPA considered in selecting final standards and guidelines included the following: (1) Over 100 MWC plant-specific questionnaires; (2) emissions information from literature, and State and local agencies; and (3) EPA and industry test reports. Overall, the EPA used performance test data from over 60 MWC plants to develop the standards and guidelines. After proposal, the EPA reviewed additional data submitted with public comments on the proposal and data that EPA gathered from States and industry. Based on the new information, the EPA reviewed both the proposed MACT determinations for new and existing MWC's and the regulatory alternatives. The reassessment of the standards and guidelines in light of the new data resulted in the EPA revising the MACT emission rates for some pollutants.

The most significant changes to the standards and guidelines since proposal are summarized in sections IV.B and V.B., respectively, of this preamble. The rationales for these changes as well as other changes are summarized in the preamble and discussed in more detail in the BID. In keeping with the Administrator's "reinventing government" initiative, several of the changes to the guidelines and standards were made to streamline the regulations and provide increased flexibility while optimizing environmental control by using common sense initiatives. Examples of these changes include the following: (1) Reduced dioxin/furan testing for MWC plants with low dioxin/furan emission levels; (2) NO_X guidelines for large MWC plants that allow plants to use an emissions averaging plan to demonstrate compliance for two or more existing MWC units located at the same facility; (3) clarification of siting requirements for new MWC's; (4) providing additional time for MWC operators to obtain operator training and certification; (5) replacing quarterly reporting with annual reporting (semiannual reporting if noncompliance); (6) revised text to clarify that the regulations do not apply to MWC plants with combustion capacity less than 35 Mg/day; (7) exemption for plants firing small amounts of MSW (10 Mg/day or less); (8) exemption for combustion of clean wood; and (9) allowing certain records to be maintained in either electronic or paper format without duplication. All of these changes are discussed further in sections IV and V of this preamble, and represent changes that improve the effectiveness and efficiency of the standards and guidelines without any reduction in environmental protection.

C. Stakeholders and Public Involvement

Prior to proposal, in accordance with section 117 of the Clean Air Act, the EPA consulated with advisory committees, independent experts, Federal departments and agencies, and owners, operators, and manufacturers of MWC's. Numerous discussions were held with governmental entities, industry representatives, and environmental groups including, but not limited to, the following groups: the U.S. Conference of Majors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, the Solid Waste Association of North America, the Integrated Waste Services Association, the Sierra Club, and the Natural Resources Defense Council.

The standards and guidelines being adopted today were proposed in the **Federal Register** on September 20, 1994 (59 FR 48198 and 59 FR 48228, respectively). The preambles for the proposed standards and guidelines describe the rationale for the proposed standards and guidelines. After proposal, the EPA provided interested persons the opportunity to comment through a written comment period. The public comment period was from September 20, 1994 to November 21, 1994. Comments were received from private citizens, industry representatives, environmental groups, and governmental entities. The comments have been carefully considered, and changes have been made in the standards and guidelines where appropriate. Sections IV and V of this preamble discuss the major revisions to the standards and guidelines to address the commenters' concerns.

IV. Standards of Performance for New Sources (1995)—Summary of the Standards, Impacts of the Standards, and Significant Issues and Changes to the Proposed Standards

This section presents a summary of the final standards, including identification of the source category and pollutants being regulated, and presentation of the final emission limits and their associated performance testing, monitoring, recordkeeping and reporting requirements. This section also discusses the most significant changes to the proposed standards. Also discussed are the impacts of the final standards.

A. Summary of the Standards

The final standards (subpart Eb) apply to each new MWC unit located at an MWC facility that has an aggregate plant capacity to combust over 35 Mg/day of MSW, for which construction commenced after September 20, 1994 or modification or reconstruction commenced after June 19, 1996. Municipal waste combustors that commenced construction on or before September 20, 1994 are not covered under the subpart Eb standards. Municipal waste combustors constructed on or before September 20, 1994 are considered existing sources and are subject to the guidelines that are addressed in section V of this notice.

An MWC is defined as any setting or equipment that combusts MSW including air curtain incinerators. Municipal solid waste combustion includes the direct combustion of MSW or the combustion of MSW gases from pyrolysis or gasification. The MWC unit includes any type of setting or equipment including combustion equipment with or without heat recovery.

Municipal solid waste is defined as a mixture or a single-item waste stream of household, commercial, and/or institutional discards. This would include materials such as paper, yard waste, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The final MSW definition is revised slightly from proposal to make it clear that MSW does not include used motor oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (including but not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles. Although these wastes are not MSW, they can be intermixed with MSW and can be combusted in MWC plants. The regulations do not prohibit their combustion. The definition of MSW includes RDF, which is municipal solid waste that is shredded (or pelletized) before combustion. Any medical, industrial, or other type of waste combustor plant with capability to combust greater than 35 Mg/day of MSW and is in compliance with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered by this standard. Furthermore, cofired MWC plants that combust less than 30 percent MSW (on a calendar quarter basis) are exempt. A summary of the final standards is presented in table 1. In table 1, significant revisions made since proposal are marked with an asterisk (*) and are discussed in section IV.B.

TABLE 1.—SUMMARY OF STANDARDS FOR NEW MWC'S (SUBPART EB)[a]

[* indicates a significant change since proposal and the change is discussed in this preamble]

Applicability	
The final standards apply to new MWC units located at plants with capacities to combust greater than 35 Mg/day of residential, commercial, and/or institutional discards. Industrial manufacturing discards are not covered by the standards. Any medical, industrial manufacturing, municipal, or other type of waste combustor plant with capacity to combust greater than 35 Mg/day of MSW and with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered.*	
Plant Size (MSW combustion capacity)	Requirement.
≤35 Mg/day*	Not covered by standards.
>Mg/day but ≤225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
>225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.
Good Combustion Practices	
• Applies to large and small MWC plants.	
• A site-specific operator training manual is required to be developed and made available for MWC personnel.	
• The EPA or State MWC operator training course must be completed by the MWC chief facility operator, shift supervisors, and control room operators.	
• The ASME (or State-equivalent) operator certification must be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).*	
• The MWC load level is required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.	
• The PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17 °C above the maximum temperature measured during the most recent dioxin/furan performance test.	
• The CO level is required to be measured using CEMS, and the concentration in the flue gas is required not to exceed the following:	

MWC type	CO level	Averaging time (hours)
Modular starved-air and excess-air	50 ppmv	4
Mass burn waterwall and refractory	100 ppmv	4
Mass burn rotary refractory	100 ppmv	4
Fluidized-bed combustion	100 ppmv	4
Pulverized coal/RDF mixed fuel-fired	150 ppmv*	4
Spreader stoker coal/RDF mixed fuel-fired	150 ppmv*	24
RDF stoker	150 ppmv	24
Mass burn rotary waterwall	100 ppmv	24
MWC Organic Emissions (measured as total mass dioxins/furans):		
• Dioxins/furans (performance test by EPA Reference Method 23)		
Large and small MWC plants	13 ng/dscm total mass (mandatory) or 7 ng/dscm total mass (optional to qualify for less frequent testing).*[b]	

MWC type	CO level	Averaging time (hours)
• Basis for dioxin/furan limit	GCP and SD/FF/carbon injection.	
MWC Metal Emissions:		
• PM (performance test by EPA Reference Method 5)		
Large and small MWC plants	24 mg/dscm (0.010 gr/dscf).*	
• Opacity (performance test by EPA Reference Method 9)		
Large and small MWC plants	10 percent (6-minute average)	
• Cd (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.020 mg/dscm (8.7 gr/million dscf).*	
• Pb (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.20 mg/dscm (87 gr/million dscf).*	
• Hg (performance test by EPA Reference Method 29)		
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions	
• Basis for PM, opacity, Cd, Pb, and Hg limits		
Large and small MWC plants	See basis for dioxin/furan limit	
MWC Acid Gas Emissions:		
• SO_2 (performance test by CEMS)		
Large and small MWC plants	30 ppmv or 80-percent reduction in SO_2 emissions	
• HCl (performance test by EPA Reference Method 26)		
Large and small MWC plants	25 ppmv or 95-percent reduction in HCl emissions	
• Basis for SO_2 and HCl limits	See basis for dioxin/furan limit..	
Nitrogen Oxides Emissions:		
• NOx (performance test by CEMS)		
Large MWC plants	150 ppmv, except 180 ppmv is allowed for the first year of operation.*	
Small MWC plants	No NO_X control requirement	
• Basis for NO_X limit		
Large MWC plants	SNCR	
Small MWC plants	No NO_X control requirement.	

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MWC type	CO level	Averaging time (hours)
Fugitive Ash Emissions:		
• Fugitive emissions (performance test by EPA Reference Method 22)		
Large and small MWC plants	Visible emissions less than 5 percent of the time from the ash transfer system except during maintenance and repair activities.*.	
• Basis for fugitive emissions limit	Wet ash handling or enclosed ash handling.	
Siting Requirements:		
• Large and small MWC plants	(1) Siting analysis*, (2) materials separation plan, and (3) public meetings (including response to comments)	
Performance Testing and Monitoring Requirements:		
• Reporting frequency	Annual (semi-annual if violation).*	
• Load, flue gas temperature	Continuous monitoring, 4-hour block arithmetic average.	
• CO	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.	
• Dioxins/furans, PM, Cd, Pb, HC1, and Hg		
Large MWC plants	Annual stack test (see reduced testing option for low emitters of dioxins/furans).*	
Small MWC plants	Annual or third year stack test.*	
• Opacity	COMS (6-minute average) and annual stack test.	
• SO_2	CEMS, 24-hour daily geometric mean.	
• NO_X (large MWC plants only)	CEMS, 24-hour daily arithmetic average, Annual test.	
• Fugitive ash emissions		

*=a significant change since proposal, and the change is discussed in this preamble.
• All concentration levels in the table are corrected to 7 percent O_2, dry basis.
[b] Although not part of the dioxin/furan limit, the limit of 13 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ. The optional reduced testing limit of 7 ng/dscm total mass is equal to about 0.1 to 0.2 ng/dscm TEQ.

B. *Significant Issues and Changes to the Proposed Standards* (Issues were marked with the "*" symbol in table 1)

The most significant changes to the standards since proposal are discussed below. Additional rationales for these changes, as well as other changes being made are provided in the promulgation BID (EPA–453/R–95–0136). Some of the changes made that are not discussed below include GCP requirements, monitoring requirements, and reporting and recordkeeping requirements.

1. Applicability

At proposal, an MWC plant of 35 Mg/day capacity that cofired 30 percent (10 Mg/day) or less MSW would have been exempt from the standards. This 30 percent cofiring provision was retained in the final rule. Additionally, a 10 Mg/day exemption has been added to the final rule to exempt all combustion units independent of size that fire only a small amount of MSW. In the final standards, any medical, industrial manufacturing, or other type of waste combustor capable of combusting more than 35 Mg/day MSW but actually combusting less than 10 Mg/day of MSW is not subject to this rule, provided it submits an initial report containing a copy of the plant's federally enforceable permit limiting the amount of MSW that may be combusted by the plant to less than 10 Mg/day and keeps records on the daily weight of MSW fired.

At proposal, a cofired combustor was defined as a unit combusting a fuel feed stream where 30 percent or less was comprised of MSW, as measured on a 24-hour daily basis. Several commenters expressed concern about a cofired status determination being made on a daily basis. For example, some facilities that burn biomass material including yard waste would have difficulty making a determination of cofired status on a daily basis. Biomass material including yard waste (which is MSW) and clean wood (which is not MSW) are often collected together and stored on- or off-site for a period of time and intermixed before being combusted. In such cases, it is difficult or impossible to determine what percentage of the waste combusted daily was yard waste. After considering the public comments, the EPA determined that the definition of cofired combustor should be revised to allow for measuring the percent MSW burned on a calendar quarterly basis. This change is consistent with current waste refuse storage and recordkeeping procedures.

Also under the proposal, MWC plants of 25 to 35 Mg/day capacity were required to submit an initial notification of construction, but they were not subject to the proposed standards or guidelines. Only MWC plants greater than 35 Mg/day capacity were covered by the proposal. As part of the Administrator's "reinventing government" initiative, the initial notification requirement for MWC plants between 25 and 35 Mg/day capacity was removed from the final rule to minimize the reporting requirement for smaller plants. This change reduced reporting and recordkeeping requirements for both the MWC and the EPA, but did not reduce the level of environmental protection provided by the standards and guidelines being adopted today.

Under the proposed standards, clean wood was included in the definition of MSW. Several commenters disagreed with this decision to cover clean wood under the MWC standards. Under the final rule, clean wood is not considered to be MSW. Clean wood includes untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood is exempt from the definition of MSW because available data indicate that combustion of clean wood results in low emission of dioxins/furans, Hg, and other pollutants. Clean wood is predominantly an agricultural, industrial, or other nonmunicipal solid waste; regulation of the combustion of these types of wastes is currently being addressed under a separate rulemaking. Clean wood does not include yard waste, which is covered by the final MWC standards; yard waste includes grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, or nonmanufacturing industrial sources as part of maintenance activities associated with yards or other private or public lands.

2. Emission Limits for MWC Metals, Acid Gases, Organics, Nitrogen Oxides, and Ash Fugitive Emissions

Many commenters expressed concern as to whether the proposed emission limits for all regulated pollutants are actually achievable by an MWC. These commenters noted that no single MWC existed with all the controls proposed as MACT (SD/FF/SNCR and carbon injection) and the standards may not be achievable. Since proposal, the EPA has obtained data from 12 new MWC units at 5 MWC plants that have recently begun operation and all are equipped with the full set of controls proposed as MACT (SD/FF/SNCR and carbon injection). Data from these plants show that all proposed emission limits for all pollutants are simultaneously being achieved. Therefore, the EPA remains convinced that properly designed, constructed, maintained, and operated MWC plants can comply with all pollutant emission limits included in the final standards.

For new sources, the MACT floor for each regulated pollutant was established as the emission level achievable by the best controlled source. To determine new source MACT for proposal, the EPA evaluated the performance of SD/FF/SNCR/carbon injection. Since proposal, the EPA obtained additional information regarding the performance of the control technologies determined to be MACT (SD/FF/SNCR/carbon injection). Based on the new information and a reevaluation of the data used for proposal, the EPA revised the achievable performance levels for PM, Cd, Pb, Hg, dioxins/furans, and NO_X. Changes to the MACT floor levels and the selected MACT standards resulting from these reevaluations are discussed below.

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a. *MWC Acid Gases.* The MACT floor levels and selected MACT emission limits for MWC acid gases are the same as proposed.

b. *MWC Metals.* Based on comments and data received since proposal, the EPA reassessed the achievable performance levels for PM, Cd, and Pb by SD/FF systems. Based on this reassessment of available data, the selected PM, Cd, and Pb MACT emission limits were revised. For both large and small plants, the PM MACT floor and selected MACT limit were revised to 24 mg/dscm (proposal was 15 mg/dscm). The Cd MACT floor and selected MACT limit were revised to 0.020 mg/dscm (proposal was 0.010 mg/dscm). The Pb MACT floor and selected MACT limit were revised to 0.20 mg/dscm (proposal was 0.10 mg/dscm). The selected MACT limits for all three pollutants were revised because, based on available data, emission levels more stringent than these levels are not considered to be continuously achievable.

The final MACT limits for Hg emissions for large and small plants remain at the same levels as proposed (0.080 mg/dscm or an 85 percent reduction in Hg emissions); however, the MACT floor level was revised. At proposal, the MACT floor for Hg was based on use of an SD/FF system combined with GCP. Carbon injection was not commercially operational at any MWC. At proposal, MACT for Hg was based on use of an SD/FF system in combination with carbon injection. This MACT selection was based on evaluation of emission reductions, costs, and other factors, as described in the proposal preamble (59 FR 48198, September 20, 1994). Several commenters questioned the selection of an Hg MACT limit based on carbon injection when carbon injection was not commercially operated. Since proposal, data have become available for 12 new MWC units initiating operation using carbon injection commercially, and all were meeting the proposed Hg limits. Since carbon injection is now in commercial operation, the EPA revised the final MACT floor for Hg to be based on SD/FF in combination with carbon injection and GCP.

c. *MWC Organics.* The final emission limits for dioxins/furans for new MWC's remain at the same level as proposed; however, the technology basis for the floor level of control has been changed. As discussed in section IV.B.2.b regarding MWC metals (Hg), the EPA reviewed new data received since proposal and concluded that SD/FF combined with GCP and carbon injection is the best emission control technology being used by MWC's for Hg and dioxin/furan control, and is, therefore, the basis of the final MACT floor. The data gathered prior to proposal as well as data for new units operating with these controls show that a dioxin/furan level of 13 ng/dscm is achievable. The final MACT emission limit for dioxins/furans for new units at both large and small plants is equal to the MACT floor and remains at 13 ng/dscm (total mass basis).

The format of the final dioxin/furan emission limit changed from the proposed format. The EPA proposed a dual format for the dioxin/furan emission limit (total or TEQ) and requested comments on the use of this dual format. No commenters agreed with the dual format as proposed. The EPA has selected total mass dioxin/furan emissions in the final standards. The TEQ format is not used. There is no indication that TEQ's would be a better measure of emissions control performance than total dioxins/furans. Furthermore, most test data on which the standards are based were expressed as total dioxins/furans. Additionally, because there have been different methods for calculating TEQ over time and the ratio of total dioxins/furans to TEQ dioxins/furans varies among MWC's, there would be additional uncertainty in using a TEQ data base. Refer to the promulgation preamble (56 FR 5504) for the 1991 subpart Ea standards for additional discussion.

Although not part of the dioxin/furan limit, the limit of 13 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

In addition to the final dioxin/furan limit of 13 ng/dscm, a provision has been added to the final standards allowing less frequent dioxin/furan testing for new plants achieving dioxin/furan emission levels lower than 7 ng/dscm. Data for new MWC's using SD/FF/SNCR/carbon injection technology suggest this is a realistic goal for many new MWC's and will encourage MWC's to optimize performance of pollution control systems. Refer to section IV.B.7 for a description of the alternative dioxin/furan testing schedule.

d. *Nitrogen Oxides.* As explained at proposal (59 FR 48198, September 20, 1994), the combination of SD/FF, GCP, and SNCR was the basis of the new source MACT floor for NO_X. These technologies remain the basis for the final NO_X MACT floor. Since proposal, the EPA has obtained additional NO_X data showing that large MWC plants equipped with SNCR can continuously achieve an emission level of 150 ppmv over a 24-hour averaging period. The new data were obtained from the same plant that was the basis of the proposed NO_X emission level of 180 ppmv. The new data are representative of what NO_X emission level can be achieved after a plant has had a period of time to adjust to operation with the SNCR system. Applications of SNCR typically require some site-specific fine-tuning to achieve optimum performance levels. Based on the revised data, a two-phase standard is being adopted. The final NO_X standard for MWC's at large plants allows time to "fine-tune" the SNCR system. The final standard for MWC's at large plants is 180 ppmv (24-hour averaging period) for the first year of operation, and 150 ppmv (24-hour averaging period) thereafter.

The final standards do not require NO_X control for MWC's at small plants.

e. *MWC Fugitive Ash Emissions.* The proposed fugitive ash emission limit allowed no visible emissions from ash handling and transfer points. Several commenters objected to the proposed level of no visible emissions. The commenters were concerned that even where the best ash management practices such as wetting the ash or enclosing transfer systems, there may be short periods of time when visible emissions are observed, such as during maintenance. The proposal was based on about 16 hours of method 22 visible emissions data for ash handling practices at two MWC plants and observations (not using method 22) at two additional MWC plants. Since proposal, the EPA has reviewed visible emission data from other industries that use similar transfer systems. Based on comments received and the review of additional data, the final fugitive ash emission limit was revised to limit visible emissions to no more than 5 percent of the time.

As part of the final fugitive ash emission requirements, an exemption has been provided during maintenance and repair activities, because these necessary activities may require opening of an enclosure that could generate short-term visible emissions.

3. Good Combustion Practices

The proposed standards included CO limits for nine categories of combustor technologies, including, among others, RDF stoker combustors and coal/RDF mixed fuel-fired combustors. Commenters requested clarification on which CO limit applies to a stoker unit that is designed to combust coal and RDF but only combusts RDF. Under the final standards, a spreader stoker unit burning RDF only or cofiring RDF with coal would be subject to the proposed RDF stoker CO limit. To clarify this requirement, the final CO requirements include an additional category of combustor technology referred to as "spreader stoker coal/RDF mixed fuel-fired combustors," which are assigned the same CO limit and averaging time as RDF stoker combustors (150 ppmv, 24-hour averaging time). The final standards further clarify that the category of combustors referred to in the proposed standards as coal/RDF mixed fuel-fired combustors only includes pulverized coal/RDF mixed fuel streams, and the CO limit and averaging time remains the same as proposed (150 ppmv, 4-hour averaging time).

4. Operator Training and Certification

The proposed standards required full ASME certification of chief facility operators and shift supervisors within 6 months of startup of an affected MWC. Various commenters including ASME pointed out that the proposed standards did not include sufficient time for ASME to conduct full certification exams for all MWC operators. After considering these comments, the EPA revised the operator training requirements to allow additional time for ASME (or State) certification exams. In the final standards, chief facility operators and shift supervisors at new MWC plants must obtain ASME or State-approved provisional certification within 1 year after promulgation or 6 months after startup, whichever is later. In addition, by this same date (1 year after promulgation or 6 months after startup, whichever is later), the same personnel must be either fully certified or scheduled with ASME or the State to take a full certification exam (instead of actually obtaining full certification within 1 year, as proposed).

5. Air Curtain Incinerators

No changes were made to the proposed standards for air curtain incinerators. As discussed above in section IV.B.1, the final standards do not cover combustion of clean wood; therefore, air curtain incinerators combusting only clean wood are not covered by the standards.

6. Siting Analysis/Materials Separation Plan

Various commenters said the proposed siting analysis was not consistent with section 129 of the Clean Air Act. Commenters also argued that the proposed siting requirements were either too stringent or not stringent enough. The siting analysis in the final rule has been reworded to allow for a consideration of alternatives, on a site-specific basis, to minimize to the maximum extent practicable potential risks to the public health or the environment. These changes ensure consistency with section 129(a)(3) of the Clean Air Act.

7. Compliance and Performance Testing

Both the proposed and final standards require all plants to perform annual performance tests for dioxin/furan emissions. However, a provision for less frequent dioxin/furan testing has been added to the final rule to encourage MWC plants to achieve emission levels significantly lower than 13 ng/dscm. By achieving low dioxin/furan emissions, they would qualify for less frequent testing and thereby reduce their testing costs. If all MWC units at an MWC plant achieve 7 ng/dscm dioxins/furans or less during performance testing for 2 consecutive years of operation, the plant can elect to conduct dioxin/furan testing on one unit per year. The plant must test units in sequence (e.g., a 3-unit plant would test unit 1 (year 1), unit 2 (year 2), unit 3 (year 3), unit 1 (year 4), etc.). If an annual performance test conducted on any unit indicates total dioxin/furan emissions are greater than 7 ng/dscm, the plant must revert to testing all units annually beginning the following year until the 2-year compliance record is reestablished.

For small plants, two options are provided. The one-unit incentive schedule discussed above is provided for dioxin/furan testing. An alternative 3-year testing option is also provided for small plants. The alternative 3-year testing option allows small plants to conduct performance tests for dioxins/furans, as well as PM, HCl, Cd, Pb, and Hg only once every 3 years if the plant demonstrates compliance with all pollutant emission limits for 3 consecutive years and continues to demonstrate compliance every third year. The owner or operator of a small plant may choose either option for performance testing.

8. Reporting and Recordkeeping Requirements

Reporting requirements have been changed from quarterly as proposed to annual (semiannual if any emission limits or operating parameters are violated) to reduce the burden on affected plants. In recognition of the cost associated with reporting requirements, the EPA reconsidered the effectiveness of quarterly versus annual reporting for the purpose of determining compliance. After careful reconsideration, the EPA has concluded that annual reporting will provide adequate information for most plants. [The EPA notes, however, that once an MWC is required to obtain a Title V Operating Permit, the Title V reporting requirements given in Section 504(a) of the Act will supersede the annual reporting requirements presented above. Section 504(a) requires permittees to submit monitoring reports to the permitting authority no less often than every six months. See 42 U.S.C. 7661c(a).]

C. Impacts of the Standards

The final standards can be achieved by utilizing any technology. The basis for the MACT-based limits at both proposal and promulgation remain the combination of GCP/SD/FF and carbon injection for new large and small plants, and the additional use of SNCR at large plants. Because the technology basis for the final standards is the same as at proposal, the impacts analysis presented at proposal has not been revised. Table 2 provides a brief summary of the air and cost impacts of the standards. The summary in table 2 provides impacts estimates relative to two baseline scenarios: a pre-1989 baseline (typical control prior to the 1991 subpart Ea standards) and a 1991 baseline (typical control under the 1991 subpart Ea standards). Refer to the preamble to the proposed standards (59 FR 48198) for a detailed summary of these air and control cost impacts, as well as a discussion of the water, solid waste, energy, and economic impacts of the rule. The national impacts estimates provided in table 2 and discussed in the proposal preamble represent the EPA's estimate of the worst case of impacts that would result from implementation of the standards. Recent data suggest a reduction in the construction of new MWC's. This would reduce the cost of the standards.

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TABLE 2.—IMPACTS OF THE CURRENT SUBPART EA AND PROMULGATED SUBPART EB STANDARDS

Parameter	Increment of promulgated standards over the 1991 standards	1991 Standards[a]	Total[b]
New MWC's subject to Standards in the Fifth Year After Promulgation:			
Combustion capacity (10^6 Mg/yr)	0.8	16.8	17.6
Number of MWC plants	24	48	72
Cost (1990 Dollars):			
Capital cost (10^6)	156	613	769
Annualized cost (10^6/yr)	43	157	200
Average cost increase ($/Mg MSW combusted)	1.95	11.55	13.50
Annual Emissions Reduction (Mg/yr):			
SO_2	3,000	35,000	38,000
Hcl	4,000	46,000	50,000
PM	800	5,700	6,500
Cd	1	9	10
Pb	17	140	157
Hg	18	9	27
NO_x	200	10,300	10,500
Total dioxins/furans (kg/yr)	1	28	29

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ea standards.
[b] The total impacts are calculated by adding the incremental impacts of the promulgated standards (subpart Eb) to the impacts of the 1991 standards (subpart Ea). These impacts would be equivalent to the total impacts of the promulgated standards over a pre-1989 baseline.

A number of comments were received on the possible effects on EPA's costing analysis following the recent Supreme Court decision that "flow control" is unconstitutional. The EPA considered the effect of flow control on the financing of new MWC's. In summary, the EPA finds that if tipping fees are raised to cover the increased costs of these regulations, then the lack of "flow control" requirements will likely result in fewer MWC's being constructed and a shift of wastes to other disposal options. The impacts of the flow control decision is likely to be very place-specific depending on the relative tipping fees of MWC's and other disposal options, transportation costs, and institutional factors.

V. Guidelines for Existing Sources (1995)—Summary of the Guidelines, Impacts of the Guidelines, and Significant Issues and Changes to the Proposed Guidelines

This section presents a summary of the final guidelines, including identification of the source category and pollutants being regulated, and presentation of the final emission limits and their associated performance testing, monitoring, recordkeeping, and reporting requirements and compliance schedules. This section also provides a discussion of the most significant issues and changes to the proposed guidelines. Also mentioned are the impacts of the final guidelines.

The EPA strongly believes (based on emissions data from MWC's which incorporate the necessary control technology) that the air pollution control technology to be retrofitted to existing MWC's to meet the emission guidelines will reduce actual emissions to levels significantly below the limits established by the emission guidelines. There remains, however, some uncertainty as to the actual performance level that will be achieved on a continuous basis by the control technology when installed at large MWC plants where ESP-based scrubber systems are used. Therefore, the dioxin/furan emission limits included in the emission guidelines for some types of MWC's, while still significantly below the MACT floor, are slightly less stringent than those included in the proposal.

The EPA will track the implementation of the guidelines and annual performance test results in order to monitor the level of emissions including dioxin/furan control actually achieved by the guidelines. Additionally, the EPA may conduct supplemental dioxin/furan tests. The EPA will also meet with MWC owners and operators as needed to review the performance of the air pollution control technology and the effectiveness of maintenance and operational practices in order to provide information that will lead to optimal performance of emission control technology, and will work with MWC owners and operators to assure a continued high level of public safety.

A. Summary of the Guidelines

The final guidelines require States to develop emission regulations limiting air emissions from each existing MWC unit located at a MWC plant that has an aggregate plant capacity to combust more than 35 Mg/day of MSW, for which construction commenced on or before September 20, 1994.

The aggregate design capacity of all existing MWC's at an MWC plant shall be considered in determining: (1) Whether a plant is subject to the guidelines; and (2) what control levels are applicable. The capacity of new MWC's (i.e., those that commenced construction after September 20, 1994 or that commenced modification or reconstruction after June 19, 1996 that are located at the MWC plant are not considered in determining applicability of the guidelines but would be considered in determining the applicability of subpart Eb (standards for new sources). Only MWC units constructed before September 20, 1994 are considered for determining the applicability of the guidelines. Modification of an existing MWC (or funds spent) to comply with the emission guidelines would not be considered in determining if an existing MWC unit was subject to the standards for new MWC's (subpart Ea or Eb).

Municipal waste combustion plants with a federally enforceable permit to combust less than 10 Mg/day of MSW are exempt from the requirements of the guidelines as long as they submit a notification of exemption and keep records of the weight of MSW combusted.

Cofired combustors (i.e., that combust less than 30 percent MSW) located at a plant with an aggregate plant capacity greater than 35 Mg/day are exempt from the requirements of the guidelines as long as they submit a notification of exemption and keep records of the weight of MSW combusted on a calendar quarter basis.

The definitions of MWC and MSW have been revised but are the same for the guidelines as for the standards, and are discussed in the summary of the standards in section IV.A of this notice.

A summary of the final guidelines is presented in table 3.

TABLE 3. SUMMARY OF GUIDELINES FOR EXISTING MWC'S (SUBPART CB)[a]

[* indicates a significant change since proposal and the change is discussed in this preamble]

Applicability	
The final guidelines apply to existing MWC's located at plants with capacities to combust greater than 35 Mg/day of residential, commercial, and/or institutional discards. Industrial manufacturing discards are not covered by the guidelines. Any medical, industrial manufacturing, municipal, or other type of waste combustor plant with capacity to combust greater than 35 Mg/day of MSW and with a federally enforceable permit to combust less than 10 Mg/day of MSW is not covered.*	
Plant Size (MSW combustion capacity)	Requirement
<35 Mg/day*	Not covered by guidelines.
> 35 Mg/day but ≥225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
> 225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.
Good Combustion Practices	
• Applies to large and small MWC plants.	
• A site-specific operator training manual is required to be developed and made available for MWC personnel.	
• The EPA or a State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.	
• The ASME (or State-equivalent) provisional and full operator certification must be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).*	
• The MWC load level is required to be measured and not to exceed 110 percent of the maximum load level measured during the most recent dioxin/furan performance test.	
• The maximum PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.	
• The CO level is required to be measured using a CEMS, and the concentration in the flue gas is required not to exceed the following:	

MWC type	CO level	Averaging time (hours)
Modular starved-air and excess-air	50 ppmv	4
Mass burn waterwall and refractory	100 ppmv	4
Mass burn rotary refractory	100 ppmv	24
Fluidized-bed combustion	100 ppmv	4
Pulverized coal/RDF mixed fuel-fired	150 ppmv*	4
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv*	24
RDF stoker	200 ppmv	24
Mass burn rotary waterwall	250 ppmv	24

MWC Organic Emissions (measured as total mass dioxins/furans):	
• Dioxins/furans (performance test by EPA Reference Method 23)	
Large MWC plants	
MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
Small MWC plants	125 ng/dscm total mass (mandatory) or 30 ng/dscm total mass (optional to qualify for less frequent testing).* [c]
• Basis for dioxin/furan limits	
Large MWC plants	GCP and SD/ESP or GCP and SD/FF, as specified above.
Small MWC plants	GCP and DSI/ESP.
MWC Metal Emissions:	
• PM (performance test by EPA Reference Method 5)	
Large MWC plants	27 mg/dscm (0.012 gr/dscf).
Small MWC plants	70 mg/dscm (0.030 gr/dscf).*
• Opacity (performance test by EPA Reference Method 9)	
Large and small MWC plants	10 percent (6-minute average)
• Cd (performance test by EPA Reference Method 29)	
Large MWC plants	0.040 mg/dscm (18 gr/million dscf).
Small MWC plants	0.10 mg/dscm (44 gr/million dscf).
• Pb (performance test by EPA Reference Method 29)	
Large MWC plants	0.49 mg/dscm (200 gr/million dscf).*
Small MWC plants	1.6 mg/dscm (700 gr/million dscf).
• Hg (performance test by EPA Reference Method 29)	
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
• Basis for PM, opacity, Cd, Pb, and Hg limits	
Large MWC plants	GCP and SD/ESP/CI or GCP and SD/FF/CI

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Small MWC plants	GCP and DSI/ESP/CI.
MWC Acid Gas Emissions:	
• SO_2 (performance test by CEMS)	
Large MWC plants	31 ppmv or 75-percent reduction in SO_2 emissions.*
Small MWC plants	80 ppmv or 50-percent reduction in SO_2 emissions.
• HCl (performance test by EPA Reference Method 26)	
Large MWC plants	31 ppmv or 95-percent reduction in HCl emissions.*
Small MWC plants	250 ppmv or 50-percent reduction in HCl emissions.
• Basis for SO_2 and HCl limits	
Large and small MWC plants	See basis for MWC metals.
Nitrogen Oxides Emissions	
• NO_X (performance test by CEMS)	
Large MWC plants:	
Mass burn waterwall	200 ppmv[b].
Mass burn rotary waterwall	250 ppmv[b].
Refuse-derived fuel combustor	250 ppmv[b].
Fluidized bed combustor	240 ppmv[b].
Mass burn refractory	No NO_X control[b] requirement
Other	200 ppmv[b].
Small MWC plants	No NO_x control requirement.
• Basis for NO_x limits	
Large MWC plants	SNCR.
Refractory MWC plants	No NO_X control requirement
Small MWC plants	No NO_X control requirement.
Fugitive Ash Emissions:	
• Fugitive Emissions (performance test by EPA Reference Method 22)	
Large and small plants	Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.*
• Basis for fugitive emission limit	Wet ash handling or enclosed ash handling.
Performance Testing and Monitoring Requirements:	
• Reporting frequency	Annual (semiannual if violation)*.
• Load, flue gas temperature	Continuous monitoring, 4-hour block arithmetic average
• CO	CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable
• Dioxins/furans, PM, Cd, Pb, HCl, and Hg	
Large MWC plants	Annual stack test.*
Small MWC plants	Annual or third year stack test.
• Opacity	COMS (6-minute average) and annual stack test.
• SO_2	CEMS, 24-hour daily geometric mean.
• NO_X (large MWC plants only)	CEMS, 24-hour daily arithmetic average.
• Fugitive ash emissions	Annual test.*

Compliance Schedule:

- Large MWC plants
  State plans are required to include one of the following three retrofit schedules for compliance with regulatory requirements: (1) Full compliance or closure within 1 year following EPA approval of the State plan; (2) full compliance in 1 to 3 years following issuance of a revised construction or operation permit if a permit modification is required or 1 to 3 years following EPA approval of the State plan if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance; or (3) closure in 1 to 3 years following approval of the State plan, provided the State plan includes a closure agreement. If a State plan allows the second or third scheduling options (i.e., more than 1 year), the State plan submitted to EPA must contain post-1990 test data for dioxins/furans for all MWC units at large plants under the extended schedule. (See § 60.21(h) of subpart B of 40 CFR 60 for additional information relating to measurable and enforceable incremental steps of progress toward compliance).
- Small MWC plants
  State plans must require full compliance or closure with regulatory requirements in 3 years or less following issuance of a revised construction or operation permit if a permit modification is required, or within 3 years following EPA approval of the State plan if a permit modification is not required.
- State plans are required to specify that all MWC's at large MWC plants for which construction was commenced after June 26, 1987 comply with the guidelines for Hg and dioxins/furans within 1 year following issuance of a revised construction or operation permit if a permit modification is required, or within 1 year following EPA approval of the State plan, whichever is later.
- State plans are required to specify that owners or operators of MWC's comply with the operator training and certification requirements by 6 months after startup or 1 year after State plan approval by the EPA, whichever is later, for large plants and by 6 months after startup or 18 months after State plan approval by the EPA, whichever is later, for small plants.

*=significant change since proposal, and the change is discussed in this preamble.

[a] All concentration levels in the table are converted to 7 percent O_2, dry basis.

[b] State plans may allow NO_X emissions averaging between existing MWC units at a large MWC plant. The daily weighted average NO_X emissions concentration from the MWC units included in the emissions averaging plan must comply with the following 24-hour limits: 180 ppmv for mass burn waterwall combustors; 220 ppmv for mass burn rotary waterwall combustors; 230 ppmv for refuse-derived fuel combustors; 220 ppmv for fluidized bed combustors; and 180 ppmv for other combustor types (excluding mass burn refractory combustors). Refer to the regulatory text of the emission guidelines for additional requirements. State plans may also establish a program to allow emissions trading between non-contiguous MWC plants. Such a program shall meet the requirements of the Open Market Trading Rule of Ozone Smog Precursors, proposed August 3, 1995 (60 FR 39668) as finally promulgated.

[c] Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm, 60 ng/dscm, and 125 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ, 0.7 to 1.4 ng/dscm TEQ, and 1.7 to 2.9 ng/dscm TEQ, respectively. The optional reduced testing limits of 15 ng/dscm and 30 ng/dscm total mass are equal to about 0.1 to 0.3 ng/dscm TEQ and 0.3 to 0.8 ng/dscm TEQ, respectively.

B. Significant Issues and Changes to the Proposed Guidelines

The most significant changes to the proposed guidelines are discussed below. Rationales for these changes as well as other changes not discussed below are provided in the promulgation BID (EPA–453/R–95–0136). Issues not discussed below include additional changes to GCP requirements, monitoring requirements, recordkeeping and reporting requirements, and compliance schedules.

1. Designated Facilities

Under the final guidelines, any medical, municipal, industrial manufacturing, or other type of waste combustion plant capable of combusting greater than 35 Mg/day MSW but actually combusting less than 10 Mg/day of MSW is not a designated facility, as long as the plant submits an initial report and keeps certain records. This exemption was not included in the proposed guidelines. This exemption is identical to the exemption in the standards for new sources. Section IV.B.1 provides further discussion of the exemption.

Under the final guidelines, a cofired combustor is defined as a unit combusting a fuel feed stream 30 percent or less MSW, as measured on a calendar quarterly basis. At proposal, determination of status as a cofired combustor was measured on a daily basis. This change is identical to the change made in the standards. Refer to section IV.B.1 for further discussion on the change.

The initial reporting requirement in the proposed guidelines for MWC plants with combustion capacity greater than 25 Mg/day but less than or equal to 35 Mg/day is not included in the final guidelines. Both the proposed and final guidelines exempt plants with capacity less than 35 Mg/day. Also, an exemption for combustion of clean wood or clean wood products is included in the final guidelines. This exemption is identical to the exemption in the standards. Refer to section IV.B.1 for discussion of EPA's rationale for this exemption.

2. Emission Limits for MWC Metals, Acid Gases, Organics, and Nitrogen Oxides, and Ash Fugitive Emissions

For existing MWC's, the MACT floor levels and the emission limits for several pollutants have been revised since proposal. See the proposal preamble (59 FR 48228, September 20, 1994), the promulgation BID (EPA–453/R–95–0136), and docket A–90–45 for additional details on the MACT floor analysis methodology and the selection of MACT.

Since proposal, the EPA revised the MACT floors for existing plants based on new permit information received and an updated inventory of operating MWC plants. This revision resulted in revised MACT floor levels for various pollutants for small and large MWC plants. The revised MACT floor pollutant levels for large plants have resulted in more stringent MACT emission limits for SO_2, HCl, and Pb. In addition, the revised MACT floors and emission limits for NO_X for large plants include emission levels based on combustor type. Revisions to the MACT floor that resulted in revisions to the selected MACT level of control for specific pollutants are discussed below.

While the final emission limits are somewhat different from proposal, the limits can be achieved using the same control technologies that were the basis of the proposed emission limits. The technology bases for large and small plants are summarized in table 3.

a. *MWC Acid Gases.* Based on the new information and test data received after proposal and the revised MACT floor analysis, the EPA revised the MACT limits for SO_2 and HCl for the final guidelines for large plants.

The revised SO_2 MACT floor for large plants is 31 ppmv. The final SO_2 emission limit for large plants, which was set at the MACT floor level of 35 ppmv at proposal, is 31 ppmv because of the change in the MACT floor at promulgation.

The MACT-based SO_2 limit of 80 ppmv for small plants has not changed from proposal; however, the SO_2 MACT floor for small plants is revised to 98 ppmv. Because the revised floor is more stringent than the proposal floor (the floor at proposal was 118 ppmv), the EPA's conclusion that acid gas controls will be needed to achieve the floor remains the same. In addition, the EPA's conclusion that a lower emission rate of 80 ppmv is achievable at minimal cost also remains the same. Therefore, the final SO_2 emission limit for small plants remains at 80 ppmv.

The revised HCl MACT floor for large plants is 31 ppmv. The final HCl emission limit for large plants, which was set at the MACT floor level of 35 ppmv at proposal, is 31 ppmv because of the change in the MACT floor at promulgation.

b. *MWC Metals.* Based on the new information and test data received after proposal and the revised MACT floor analysis, the Pb limit for large plants was revised for the final guidelines. The proposed Pb MACT emission level for large plants was 0.50 mg/dscm; however, the revised Pb MACT floor emission level for large plants is 0.49 mg/dscm. Therefore, the final Pb emission limit for large plants has been revised to 0.49 mg/dscm.

c. *MWC Organics.* The dioxin/furan emission limits for large and small plants were revised since proposal. The MACT floor for dioxins/furans for MWC's at large plants is 126 ng/dscm total mass. As documented in the preambles to these proposed guidelines (59 FR 48228, September 20, 1994) and the promulgated subpart Ca guidelines (56 FR 5514, February 11, 1991), in combination with GCP, SD/ESP systems can achieve dioxin/furan total mass emissions of 60 ng/dscm and SD/FF systems can achieve dioxin/furan total mass emissions of 30 ng/dscm. Therefore, the MACT floor of 126 ng/dscm can be achieved with either SD/ESP or SD/FF systems.

When determining the final MACT standard (which may be more stringent than the MACT floor), section 129(a)(2) requires the Administrator to consider certain factors, including the cost of achieving the emission reduction. In the Administrator's judgment, it would be prohibitively expensive and unreasonable to require existing MWC's with ESP's that can meet a dioxin/furan emission limit of 60 ng/dscm to retrofit an SD/FF in order to achieve an additional 30 ng/dscm reduction in emissions. For example, at a typical 1,400 Mg/day MWC plant already equipped with an SD/ESP, the capital cost to remove the ESP and retrofit a new FF would be about $14 million. This cost would be in addition to paying the remaining debt for a relatively new ESP (about $5 million including interest payments) and would result in a relatively small increase in control device efficiency.

For the final rule, the Administrator considered several regulatory options more stringent than the MACT floor; however, because of this high pollution control device retrofit cost, the Administrator decided to set separate MACT limits for MWC's with ESP-based control systems and MWC's with nonESP-based control systems. For MWC's with ESP-based control systems, the EPA selected a MACT level of 60 ng/dscm total mass, based on the performance of SD/ESP systems. For MWC's using or retrofitting nonESP-based control systems, the EPA selected a MACT level of 30 ng/dscm total mass, based on the performance of SD/FF systems. The number of MWC plants that will comply by using an SD/ESP will be limited (only about 10 percent of the MWC plants). The vast majority of MWC's are expected to use SD/FF systems to comply.

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The MACT floor for dioxins/furans at small MWC plants is 1,500 ng/dscm total mass. As with large MWC plants, the final emission guidelines limit for dioxins/furans is more stringent than the MACT floor. The final guideline limit for dioxins/furans at small MWC plants is 125 ng/dscm total mass and is based on DSI/ESP technology.

The final MACT limit for Hg is based on use of activated carbon injection. Activated carbon injection technology used in combination with DSI/ESP, SD/ESP, or SD/FF technology is expected to result in supplemental dioxin/furan control, reducing dioxin/furan emissions from these control systems by more than 50 percent. The final MACT guideline levels for dioxins/furans for existing units at small and large plants do not consider supplemental dioxin/furan control from activated carbon injection because an insufficient amount of emissions data exist to adequately determine the performance level of activated carbon injection retrofitted to existing MWC air pollution control systems. Nonetheless, it is expected that the use of activated carbon injection will result in additional reduction of dioxins/furans to levels below the emission limits in the final guidelines.

As with the standards for new MWC's, the final guidelines include a provision that allows less frequent dioxin/furan testing if a plant is achieving a significantly lower level of dioxin/furan emissions (15 ng/dscm for MWC's at large plants and 30 ng/dscm for MWC's at small plants). This option will encourage optimal performance and minimal emissions. Refer to section IV.B.7 for a description of the alternative testing schedule.

Relative to the proposal, the optional TEQ format of the proposed dioxin/furan emission limits was removed in the final standards, as explained in section IV.B.2.c. Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm, 60 ng/dscm, and 125 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ, 0.7 to 1.4 ng/dscm TEQ, and 1.7 to 2.9 ng/dscm TEQ, respectively.

d. *Nitrogen Oxides.* After considering data submitted by commenters regarding requiring SNCR for MWC units at large plants where some could already achieve the MACT floor level without SNCR, the EPA changed the proposed NO_x emission limit of 180 ppmv for all large plants. The NO_x MACT floor was revised by calculating the MACT floor separately for each subcategory of combustor type, and the MACT limits are being promulgated at levels equivalent to the MACT floors for each combustor type. The final guideline MACT limits are: 200 ppmv for mass burn waterwall combustors; 250 ppmv for refuse-derived fuel combustors; 250 ppmv for mass burn rotary waterwall combustors; 240 ppmv for fluidized bed combustors; no limit for mass burn refractory combustors; and 200 ppmv for other combustors not listed above.

In addition, the EPA has revised the emission guidelines to allow States to include in their State plans options for averaging of emissions from units within a large MWC plant, and for trading emissions between MWC plants. The plant average emission limits for units being included in an emissions averaging plan within a plant are approximately 10 percent less than the MACT limits for each combustor type, as follows: 180 ppmv for mass burn waterwall combustors; 220 ppmv for mass burn rotary waterwall combustors; 230 ppmv for refuse-derived fuel combustors; 220 ppmv for fluidized bed combustors; and 180 ppmv for other combustor types (excluding mass burn rotary refractory combustors). Emissions trading between units at noncontiguous plants must be consistent with the requirements of the Open Market Trading Rule for Ozone Smog Precursors, proposed August 3, 1995 (60 FR 39668), as finally promulgated. Until the Open Market trading rule is finalized, it is not possible to reference the rule in the guidelines text. In the interim, the guideline text indicates NO_x emissions trading must be approved by the Administrator prior to implementation. After the Open Market Trading Rule is finalized, it is preapproved for use under the guidelines.

e. *Fugitive Ash Emissions.* The emission limit for fugitive ash emissions under the final guidelines is visible emissions no more than 5 percent of the time from ash conveying and transfer systems at MWC's. An exemption for maintenance and repair activities has been added. These same changes were made to the standards for new sources. See the discussion of the standards in section IV.B.2.e for an explanation of the reasons for these changes.

3. Good Combustion Practices

The final CO guidelines include an additional category of combustor technology referred to as "spreader stoker coal/RDF mixed fuel-fired combustors," which is assigned the same CO limit and averaging time as the RDF stoker combustor category (200 ppmv, 24-hour averaging time). In the final guidelines, the category of combustors referred to in the proposal as "coal/RDF mixed fuel-fired combustors" was revised to "pulverized coal/RDF mixed fuel-fired combustors," and the CO limit and averaging time remains the same as proposed (150 ppmv, 4-hour averaging time). These same changes were made to the standards for new sources. See the discussion of the standards in section IV.B.3 for an explanation of the reasons for these changes.

4. Operator Training and Certification

As discussed in section IV.B.4 for the standards for new sources, the EPA has clarified the provisional certification requirements and revised the schedule for full certification of chief facility operators and shift supervisors to allow sufficient time to schedule exams. As stated in the proposal preamble, a State-approved ASME-equivalent certification program may be substituted for ASME certification.

For large plants, the final guidelines specify that a State plan must require chief facility operators and shift supervisors to obtain ASME provisional certification by 1 year after State plan approval or 6 months after startup, whichever is later. In addition, a State plan must require that, by the same date, these personnel obtain full certification or be scheduled with ASME to take the ASME full certification exam (instead of actually obtaining full certification within 1 year as proposed).

For small plants, the final guidelines specify that a State plan must require chief facility operators and shift supervisors to obtain ASME provisional certification by 18 months after State plan approval or 6 months after startup, whichever is later. In addition, a State plan must require that, by the same date, these personnel obtain full certification or be scheduled with ASME to take the ASME full certification exam (instead of actually obtaining full certification within 1 year as proposed).

5. Air Curtain Incinerators

No changes were made to the proposed guidelines for air curtain incinerators. As discussed in section V.B.1, the final guidelines do not cover combustion of clean wood; therefore, air curtain incinerators combusting only clean wood are not covered by the guidelines.

6. Compliance and Performance Testing

Under the final guidelines, State plans must specify that all plants are required to perform annual performance testing for dioxin/furan emissions. However, a provision for less frequent testing has been added to encourage plants to optimize performance and achieve emission levels significantly lower than the dioxin/furan emission limits in the final guidelines. State plans may require that, to take advantage of this provision, existing MWC's must meet a dioxin/furan level of 15 ng/dscm (large plants) or 30 ng/dscm (small plants), for 2 consecutive years. Refer to the discussion on the standards for new MWC's under section IV.B.7 for a description of this reduced testing schedule.

7. Reporting and Recordkeeping Requirements and Compliance Schedules

Reporting requirements have been changed from quarterly to annual (semiannual if exceeding the emission limit for any pollutant) to reduce the economic burden on MWC's. Refer to section IV.B.8 for an explanation of the reasons for this change.

The EPA revised the proposed compliance schedule for large and small plants to allow more time for small plants to comply with the guidelines and to clarify the schedule for plants that select to close down operation rather than retrofit to comply with the guidelines. The final compliance schedule is as follows. For large MWC plants, State plans may allow three alternative compliance schedules: (1) Full compliance or closure within 1 year following approval of the State plan; (2) full compliance in 1 to 3 years following issuance of a revised construction or operation permit if a permit modification is required or 1 to 3 years following approval of the State plan if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance; or (3) closure in 1 to 3 years following approval of the State plan, provided the State plan includes a closure agreement. If a State plan allows the second or third scheduling options (i.e., more than 1 year), the State plan submitted to EPA must include post-1990 test data for dioxins/furans for all MWC units at large plants under the schedule. For small MWC plants, State plans must require full compliance or closure in up to 3 years following issuance of a revised construction or operation permit if a permit modification is required, or 3 years following approval of the State plan if a permit modification is not required.

C. Impacts of the Guidelines

The final guidelines can be achieved by designated facilities that utilize the same control technologies that were the basis for the proposed guidelines. The basis for the MACT guidelines selected at both proposal and promulgation is GCP/SD/ESP(or FF)/SNCR and carbon injection for large plants and GCP/DSI/ESP and carbon injection for small plants. Because the technology basis for the final guidelines is the same as at proposal, the impacts analysis presented at proposal has not been revised for the promulgated rule. Table 4 provides a brief summary of the air and cost impacts of the guidelines. The summary in table 4 provides impacts estimates based on two baseline scenarios: A pre-1989 baseline (control level prior to the 1991 subpart Ca guidelines) and a 1991 baseline (control level after the 1991 subpart Ca guidelines.) Refer to the preamble to the proposed guidelines (59 FR 48228) for a detailed summary of these air and control cost impacts, as well as a discussion of the water, solid waste, energy, and economic impacts of the guidelines.

TABLE 4.—IMPACTS OF THE 1991 SUBPART CA AND PROMULGATED SUBPART CB GUIDELINES

Parameter	1991 subpart Ca guidelines[a]	Promulgated 1995 subpart Cb guidelines[a]	Increment of promulgated 1995 subpart Cb guidelines over the 1991 subpart Ca guidelines[b]
Characteristics of Existing MWC's:			
Combustion capacity (10^6 Mg/yr)	35.9	39.0	3.1
Number of MWC plants	158	179	21
Cost (1990 Dollars):			
Capital cost ($10^6)	888	2,100	1,212
Annualized cost ($10^6/yr)	168	445	277
Average cost increase ($/Mg MSW combusted)	5.40	13.60	7.20
Annual Emissions Reduction (Mg/yr):			
SO_2	25,000	43,000	18,000
HCl	36,000	56,000	20,000
PM	1,100	3,100	2,000
Cd	2	5	3
Pb	30	83	53
Hg	11	47	36
NO_x	0	19,000	19,000
Total dioxins/furans (kg/yr)	117	157	40

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ca guidelines).
[b] The impacts are calculated by subtracting the impacts of the 1991 subpart Ca guidelines from the impacts of the promulgated 1995 subpart Cb guidelines (based on a pre-1989 baseline).

The national impacts estimates provided in table 4 and discussed in the proposal preamble represent EPA's estimate of the upper limit of impacts that would result from implementation of the guidelines. To the extent that any existing MWC's close rather than comply with the guidelines or switch to other disposal options that may cost less, the national costs will be lower and air emissions will be less.

A number of comments were received on the possible effects on EPA's costing analysis following the recent Supreme Court decision that "flow control" is unconstitutional. The EPA considered the effect of flow control on the financing of existing MWC's. In summary, the EPA finds that if MWC's raise tipping fees to cover the increased costs of these regulations, then the lack of "flow control" will likely result in a shift of some wastes to other disposal options. The combined impacts of no flow control and increased tipping fees on individual MWC's and municipalities are likely to be very

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place-specific depending on the relative tipping fees of MWC's and other disposal options, transportation costs, and institutional factors. If tipping fees are not raised to offset emission control costs, then operators of MWC's will have to finance the costs of the regulations out of current revenues.

The EPA has identified several ways that State and local governments can guarantee a continued source of MSW for the MWC's and provide funds from the general revenue to support the operation of MWC facilities, accomplishing some of the outcomes that flow control can produce, including: (1) Government provision of collection services; (2) contractor provision of collection services under government contract; (3) franchising collection and hauling to designated facilities; (4) subsidizing facilities from the general revenues; and (5) supporting integrated solid waste management programs from the general revenue.

VI. Administrative Requirements

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Orders 12866 and 12875, Unfunded Mandates Act, Regulatory Flexibility Act, and Clean Air Act Procedural Requirements.

A. Docket

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material. 42 U.S.C. § 7607(d)(7)(A). The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking that supported the proposal and promulgation of the subpart Ea standards and subpart Ca guidelines.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1506.5) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740. This ICR document is also available on the EPA's TTN Clean Air Act Amendments electronic bulletin board. See the **SUPPLEMENTARY INFORMATION** section of this preamble for information on accessing EPA's TTN electronic bulletin board.

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the Act. All information submitted as part of a report to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976, amended by 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The annual reporting and recordkeeping burden presented in this ICR document reflects only part of the burden imposed by this rule. The rest of the burden was presented to and approved by the OMB in an ICR document in 1991 for the subpart Ea NSPS promulgated in February 1991. The ICR document that accompanied the subpart Ea rulemaking summarized the reporting and recordkeeping requirements that MWC owners and operators of large MWC units are required to follow to demonstrate compliance with the 1991 NSPS. As explained elsewhere in this document, the Clean Air Act Amendments were passed by Congress in 1990, and they included section 129 that directs the Administrator to extend the NSPS to small MWC plants, as well as to include emission limits for additional pollutants and siting requirements. This ICR document for subpart Eb presents this additional burden imposed by section 129 of the Act, by summarizing the total annual burden on small plants (i.e., for the reporting and recordkeeping requirements associated with all pollutant emission limits and siting) and the additional annual burden on large MWC plants (i.e., only for requirements associated with Cd, Pb, Hg, and fugitive ash emission limits and siting).

The total annual reporting and recordkeeping burden summarized in this ICR document for this collection averaged over the first 3 years of NSPS application to new MWC's is estimated to be about 69,700 person hours per year. This would be the estimated annual burden for 64 respondents (i.e., MWC units). This is a worst-case burden estimate, as discussed under section IV.C. If fewer MWC units are constructed than have been projected, then the burden will be less than reported here. The average burden per respondent is about 1,100 person hours per year. The rule requires an initial one-time notification from each new MWC regarding all pollutant emission levels and siting and subsequent annual compliance reports regarding all pollutant emission levels. Additionally, if any of the pollutant emission limits are exceeded, respondents would be required to submit semi-annual reports. The rule includes continuous monitoring requirements for SO_2, opacity, CO, CO_2, O_2 and annual stack testing requirements for PM, dioxins/furans, opacity, HCl, Cd, Pb, Hg, and fugitive ash. Efforts were made to reduce the burden on small plants by allowing them to test emissions once every 3 years instead of annually if they demonstrate that they consistently meet the emissions requirements. This burden estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments on the ICR document are requested, including the Agency's need for the information presented in this ICR document, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St. S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. N.W.; Washington, DC 20503; marked "Attention: Desk Officer for EPA". Include the ICR number in any correspondence. Since the OMB is required to make a decision concerning the ICR between 30 and 60 days after December 19, 1995, a comment to OMB is best assured of having its full effect if OMB receives it by January 18, 1996. The EPA will publish a response to OMB and public comments on the information collection requirements contained in this proposal in a subsequent **Federal Register** notice.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant," and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the promulgated standards for new sources will not be a "significant" rule because the annual effect on the economy is expected not to exceed $43 million over the cost of the existing subpart Ea standards. However, the EPA considers these promulgated standards to be "significant" because of their relationship to the guidelines for MWC's that are also being promulgated today. The final guidelines will cost $450 million per year or less based on a baseline prior to the effective date of the subpart Ea standards. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public docket for this rulemaking.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any 1 year. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205(a), the EPA generally must select the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule" and is consistent with statutory requirements. The EPA has complied with section 205 of the Unfunded Mandates Act, by promulgating a rule that is the most cost-effective alternative for regulation of these sources that meets the statutory requirements under the Clean Air Act. For Hg and dioxins/furans, the EPA adopted standards that are more stringent than the MACT floor level of control. In the case of dioxins/furans, the EPA concluded that a standard more stringent than the MACT floor can be achieved at little or no cost, and thus represents the most cost-effective control. In the case of Hg, the MACT floor emissions level is equal to current uncontrolled levels. However, the EPA concluded, after considering the requisite factors in section 129(a)(2), that an uncontrolled floor level could not be justified under the Clean Air Act and that a more stringent emissions standard based on the use of carbon injection as an add-on control would be cost-effective. The EPA was unable in this rulemaking to identify any alternatives other than carbon injection for control of Hg emissions. To the extent that section 205(a) of the Unfunded Mandates Reform Act (UMRA) may be read to have the EPA consider a less stringent level of Hg control, the EPA concluded that such an alternative would be "inconsistent with law" within the meaning of section 205(b)(2) of the UMRA. Accordingly, the alternative selected for Hg is the most cost-effective one available under these circumstances.

The unfunded mandates statement under section 202 must include: (1) A citation of the statutory authority under which the rule is proposed, (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment, and the Federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of the EPA's consultation with State, local, and tribal officials.

Since this rule is estimated to impose costs to the private sector and government entities in excess of $100 million, the EPA has prepared the following statement with respect to these impacts.

1. Statutory Authority

The statutory authority for this rulemaking, sections 111 and 129 of the Clean Air Act, is fully discussed in section II of this preamble. The rule establishes emission guidelines for existing MWC's and standards of performance for new MWC's.

Section 129(a)(2) requires the Administrator to promulgate standards for new solid waste incinerator units and emission guidelines for existing units that "reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards * * *" 42 U.S.C § 7429(a)(2) (emphasis added). This is commonly referred to as maximum achievable control technology, or MACT. Section 129(a)(2) further defines a minimum level of stringency that can be considered for MACT standards—commonly referred to as the MACT floor—which for new units, is the level of control achieved by the best controlled similar unit, and for existing units, is the level of control achieved by the average of the best performing 12 percent of units in the category. *Id.*

In the final rule, the Administrator determined for new MWC's that MACT for all pollutants was equivalent to the pollutants' MACT floor levels—i.e., the MACT floor levels reflect the maximum achievable, cost-effective reduction in emissions of the air pollutants specified in section 129(a)(4) of the Clean Air Act. The promulgated MACT levels reflect the performance of emission control technology that is in commercial use at the best controlled similar source (i.e., an MWC equipped with an SD/FF system, carbon injection, and SNCR, in combination with GCP's). The September 20, 1994 proposed standards were more stringent than the MACT floor levels because the proposed levels were based on carbon injection technology, which was not in commercial use at the time of proposal. Since proposal, a dozen MWC units equipped with carbon injection technology have initiated operation; thus, the best controlled similar unit in the final rule includes carbon injection (i.e., basis for the MACT floor).

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For existing MWC's, some of the emission limits included in the emission guidelines promulgated today are the same as the final MACT floor levels. For several pollutants, however, the Administrator decided, consistent with section 129(a)(2) after considering costs and non-air-quality health and environmental impacts and energy requirements, to set MACT standards more stringent than the MACT floor, since more stringent levels could be achieved at either no additional cost, or minimal costs. The MACT floor levels for acid gases and PM are stringent enough for existing units at both small and large plants that they require an acid gas/PM control system. Since an acid gas/PM control system also controls emissions of all regulated pollutants except Hg and NO_x, establishing emission limits for acid gases and PM effectively establishes emission limits for the other pollutants (except Hg and NO_x). The cost to comply with the selected emission limits relative to the cost of the acid gas/PM control system are minimal.

For example, the same acid gas/PM control system that owners and operators of MWC's need to meet the MACT emissions guideline levels for SO_2 and PM also controls dioxins/furans to levels more stringent than the dioxin/furan MACT floor level. Thus, the Administrator determined that the final dioxin/furan emission guidelines may be achieved at no additional control costs. In the final rule, for MWC's at large plants, the Administrator distinguished between the dioxin/furan emission guidelines for MWC's equipped with ESP-based control systems and MWC's equipped with nonESP-based control systems. In the Administrator's judgment, it would be prohibitively expensive and unreasonable to require existing ESP's that can meet a limit of 60 ng/dscm to retrofit an SD/FF in order to achieve additional reduction in emissions beyond the MACT floor (see the proposal preamble, 50 FR 48228, September 20, 1994, for a more detailed discussion). For the final rule, the Administrator considered several regulatory options more stringent than the MACT floor; however, because of the high cost of pollution control device retrofit, the Administrator determined that MACT for dioxins/furans emitted from MWC's with ESP-based control systems is 60 ng/dscm, and MACT for dioxins/furans emitted from MWC's with SD/FF systems is 30 ng/dscm.

The MACT floor for Hg is 0.36 mg/dscm, and MACT for Hg is more stringent than the MACT floor at a level of 0.080 mg/dscm. To achieve the Hg emission limit in the emission guidelines, carbon injection will be required (this exceeds MACT floor requirements). Because of the toxicity and bioaccumulation potential of Hg, the Administrator considered the small cost of adding Hg control to be cost-effective. The cost of Hg control is about $0.25 to $0.35 per gram Hg removed ($250,000 to $350,000 per Mg), which translates to approximately $0.05 to $0.07 per month for a household served by an MWC.

2. Social Costs and Benefits

This assessment of the cost and benefits to State, local, and tribal governments of the guidelines is based on EPA's "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Solid Waste Combustors." Measuring the social costs of the guidelines requires identification of the affected entities by ownership (public or private), consideration of regulatory alternatives, calculation of the regulatory compliance costs for each affected entity, and assessment of the market implications of the additional pollution control costs. Calculating the social benefits of the guidelines requires estimating the anticipated reductions in emissions at MWC's due to regulation, identification of the harmful effects of exposure to MWC emissions, and valuing the expected reductions in these damages to society.

a. *Affected Entities.* For 1996, the base year of the analysis, there are 179 MWC's in the population of operational facilities affected by the guidelines. Of this total, 100 are publicly owned and operated (i.e., facilities owned by State or local governments). There are no MWC's currently owned, or expected to be owned in the near future, by tribal governments, so there is no impact on tribal governments. The remaining 79 MWC's are privately owned and operated. The EPA developed 16 model plants to characterize the existing facilities based on the technologies used for combustion and air pollution control at baseline. Table 5 shows the distribution of publicly and privately owned MWC's and the estimated MSW volumes managed by the existing MWC model plants. Of the 100 publicly owned and operated MWC plants, 38 plants are located in communities with a population less than 50,000, 11 plants are located in communities with a population between 50,000 and 100,000, 21 plants are located in communities with a population between 100,000 and 250,000, and 30 plants are located in communities with a population greater than 250,000. A detailed description of the model plants used to characterize operational MWC's is presented in table 3–4 of the "Economic Impact Analysis of Proposed Emissions Standards and Guidelines for Municipal Waste Combustors" (EPA–450/3–91–029, 1994).

TABLE 5.—SUMMARY OF TOTAL MSW THROUGHPUT AT PUBLIC AND PRIVATE MWC'S BY MODEL PLANT

Model plant[a]	Ownership				
	Public throughput (Mg/yr)	Public share (%)	Private throughput (Mg/yr)	Private share (%)	Total throughput (Mg/yr)
1	813,244	100.0	0	0.0	813,244
2	1,158,112	81.9	256,034	18.1	1,414,146
3	1,397,867	100.0	0	0.0	1,397,867
4	1,914,896	19.3	7,995,967	80.7	9,910,863
5	3,956,410	61.1	2,523,329	38.9	6,479,739
6	374,566	56.7	286,119	43.3	660,685
7	1,008,603	57.5	746,477	42.5	1,755,080
8	1,547,612	66.5	777,981	33.5	2,325,593
9	400,346	73.3	145,661	26.7	546,007
10	425,552	82.5	90,472	17.5	516,024
11	166,082	42.0	228,966	58.0	395,048
12	284,596	72.6	107,219	27.4	391,815
14	343,596	48.4	366,785	51.6	710,381
15	937,280	29.2	2,277,088	70.8	3,214,368

TABLE 5.—SUMMARY OF TOTAL MSW THROUGHPUT AT PUBLIC AND PRIVATE MWC'S BY MODEL PLANT—Continued

Model plant[a]	Ownership				
	Public throughput (Mg/yr)	Public share (%)	Private throughput (Mg/yr)	Private share (%)	Total throughput (Mg/yr)
16	58,462	6.7	819,320	93.3	877,782
17	745,501	52.9	662,673	47.1	1,408,174
Total:	15,078,823	45.9	17,737,993	54.1	32,816,816

[a] There is no model plant that matches model plant #13 in the Economic Impact Analysis (EPA–450/3–91–029, March 1994).

b. *Regulatory Alternatives Considered.* The two broad categories of regulatory standards available include design standards and emission standards. Design standards specify the type of control equipment polluters must install, whereas emission standards specify the maximum quantity of a given pollutant that any one polluter may release.

Design standards offer the least flexible approach considered in this analysis. Municipal waste combustors would have to install the specified control equipment regardless of the additional emission reductions achieved or the relative cost of alternative means of emission reductions.

Emission standards allow greater flexibility in the methods used to reduce emissions. Municipal waste combustors are free to meet the emission limit in the manner that is least costly to them. Consequently, for a given level of emission reductions, emission standards are generally less costly than design standards. Furthermore, emission standards give MWC's an incentive to develop more effective means of controlling emissions. In addition, the Act requires the Administrator to promulgate emission standards unless such standards are not feasible. See 42 U.S.C. §§ 7411(h) and 7429(a)(1). Since emission standards for MWC's are feasible, the EPA is barred from promulgating design standards for MWC's.

Even though emission standards generally result in a more efficient allocation of costs than design standards, uniform emission standards can be more costly than necessary. Uniform emission standards require the same level of emission control of every discharger. Because marginal control costs differ for plants of different sizes, different technologies, different levels of product recovery (i.e., in the chemical industry), and different levels of baseline control, an effective solution can be reached if standards are carefully tailored to the special characteristics of each discharger. This type of standard is referred to as a differentiated standard.

In formulating its MWC regulatory alternatives, EPA selected candidate regulatory alternatives that contain control limits for MWC's differentiated by MWC size classification. Large facilities are defined as MWC plants with aggregate plant capacities over 225 Mg/day. Small facilities are defined as MWC plants with aggregate plant capacities between 35 and 225 Mg/day. Plants with aggregate plant capacities less than 35 Mg/day are not covered by today's rulemaking. The lower size threshold of 35 Mg/day aggregate plant capacity for controlling MWC emissions under today's rulemaking was selected after reviewing the population distributions of MWI's and MWC's. Most incinerators at medical waste facilities are smaller incinerators that fire segregated medical waste with general hospital discards (MSW), and these incinerators would have the potential to be covered by today's rulemaking. To avoid overlap with the upcoming MWI rulemaking, this rulemaking includes the lower size cutoff of 35 Mg/day plant capacity and MWC plants with aggregate capacities less than or equal to 35 Mg/day will be addressed under a separate rulemaking. With a lower size cutoff of 35 Mg/day, today's promulgated MWC rulemaking will cover over 99 percent of the total U.S. MWC combustion capacity but will exclude 97 percent of the total MWI combustion capacity.

The regulatory alternatives for the two selected size classifications did not specify a particular control technology; rather, they specified emission limits that facilities would be required to meet. Current practice indicates that the emission guideline limits for acid gases, PM, and metals will likely be met with one of six different types of control technologies, depending on the applicable emission limits. Table 6 presents acid gas, PM, and metals control technologies listed in order of increasing efficiency.

TABLE 6.—CONTROL TECHNOLOGIES ASSOCIATED WITH ACID GAS, PARTICULATE MATTER, AND METALS CONTROL

GCP + ESP
GCP + DSI/ESP
GCP + DSI/FF
GCP + SD/ESP
GCP + SD/FF

In designing MWC regulatory alternatives, the EPA considered emission limits consistent with the combinations of the acid gas control technologies listed in table 6. Small plants may be required to meet one control limit and large plants another under a given regulatory alternative. Under the final guidelines, more stringent control requirements are in fact applicable to large plants than to small plants. This was done in an attempt to equalize the cost impact on small and large plants. Under the final guidelines the unit cost for air pollution control retrofit for large plants would be about $16 per Mg of waste combusted. For similar small plants the retrofit costs would be about $17 per Mg of waste combusted. Table 7 shows the control technologies evaluated for the guidelines regulatory alternatives under two compliance scenarios for acid gas, PM, and metals control. The control technology bases identified in this table are not intended to imply a design standard. Rather, the technology bases are identified only for the purpose of estimating costs and emission reductions.

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TABLE 7.—EMISSION GUIDELINES FOR EXISTING MWC'S: CONTROL TECHNOLOGY BASES USED TO ESTIMATE THE IMPACTS OF THE REGULATORY ALTERNATIVES [a b]

Regulatory alternative, and baseline APCD	Size Classification (Mg MSW/day)	
	Small (35 to 225)	Large (over 225)
Reg. Alt. I:		
No control	GCP+ESP	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+ESP	GCP+SD/ESP(m)+CI+SNCR
SD/ESP	GCP+SD/ESP	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF	GCP+SD/FF+CI+SNCR
Reg. Alt. II–A:		
No control	GCP+DSI/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+DSI/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/ESP	GCP+SD/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
Reg. Alt. II–B:		
No control	GCP+DSI/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+DSI/ESP+CI	GCP+SD/FF+CI+SNCR
SD/ESP	GCP+SD/ESP+CI	GCP+SD/ESP(m)+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
Reg. Alt. III;		
No control	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
ESP (low)	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
SD/ESP	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
SD/FF	GCP+SD/FF+CI	GCP+SD/FF+CI+SNCR
MACT Floor:		
No control	GCP+DSI/FF	GCP+SD/FF+SNCR
ESP (low)	GCP+DSI/ESP	GCP+SD/ESP(M)+SNCR
SD/ESP	GCP+SD/ESP	GCP+SD/ESP(m)+SNCR
SD/FF	GCP+SD/FF	GCP+SD/FF+SNCR

Source: This table is an extract of table 4–2 of the document entitled "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994. See **SUPPLEMENTARY INFORMATION** for information on obtaining this document.

[a] The MWC regulation does not mandate a specific type of control equipment. The MWC owner/operator may use any control equipment that meets the emission standards. The control technologies are the projected compliance strategies used as the basis for computing costs. If the MWC has equipment that is meeting or exceeding the control requirements, no additional costs are incurred.

[b] CI=carbon injection.

TABLE 7A.—EMISSION GUIDELINES FOR EXISTING MWC'S: EMISSION REDUCTIONS AND ANNUALIZED COSTS OF THE REGULATORY ALTERNATIVES [a]

Pollutant category (Mg/yr)/annualized cost ($1990 10^6/yr)	Regulatory alternative				
	Reg. alt. I	Reg. alt. II–A	Reg. alt. II–B	Reg. alt. III	Mact floor
SO_2	41,200	43,300	43,300	45,000	43,300
HCl	51,600	56,300	56,300	57,300	56,300
PM	3,070	3,070	3,070	3,240	3,070
Pb	74.8	74.8	91.1	102	74.8
Cd	5.24	5.24	5.56	6.02	5.24
Hg	44.7	47.5	47.5	47.5	0
NO_X	8,680	8,680	8,690	8,690	8,680
CO	19,300	19,300	19,300	19,300	19,300
Dioxins/furans (total mass)	0.154	0.156	0.157	0.158	[b]0.153

TABLE 7A.—EMISSION GUIDELINES FOR EXISTING MWC'S: EMISSION REDUCTIONS AND ANNUALIZED COSTS OF THE REGULATORY ALTERNATIVES [a]—Continued

Pollutant category (Mg/yr)/annualized cost ($1990 10^6/yr)	Regulatory alternative				
	Reg. alt. I	Reg. alt. II–A	Reg. alt. II–B	Reg. alt. III	Mact floor
Annualized cost ($1990 10^6/yr)	412	443	448	487	425

Source: This table is an extract of tables 5–14 and 5–21 of the document entitled "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994. See **SUPPLEMENTARY INFORMATION** for information on obtaining this document.

[a] The MWC regulation does not mandate a specific type of control equipment. The MWC owner/operator may use any control equipment that meets the emission standards. The control technologies are the projected compliance strategies used as the basis for computing costs. If the MWC has equipment that is meeting or exceeding the control requirements, no additional costs are incurred.

[b] The MACT floor is regulatory alternative II–A without carbon injection for mercury and dioxin/furan control. The majority of the dioxin/furan emission control is achieved by acid gas controls included in alternative II–A and the floor. It is assumed that adding mercury control (carbon injection) to acid gas control reduces dioxin/furan emissions by at least an additional 50 percent. The dioxin/furan emission reduction estimate for the MACT floor is not provided in the "Economic Impacts Analysis."

The regulatory alternatives represent alternative levels of control considered by the EPA, whereas the compliance scenarios represent potential alternative responses by the MWC owners and operators to the emission requirements. Generally speaking, the EPA assumed that MWC owners and operators will choose the minimum-cost control technology that will meet the emission requirements. However, where there is uncertainty regarding the actual emission limits that a particular control technology will achieve in practice, owners may choose a more conservative (and potentially more costly) compliance strategy to reduce the risk of noncompliance. A conservative investment decision is particularly likely when the investment decision affects the facility's ability to remain in operation (e.g., noncompliance results in plant shutdown), is a long-term decision, or involves a significant capital outlay. Consequently, we evaluate two compliance scenarios for meeting the acid gas, PM, and metals control requirements for existing plants subject to guidelines.

A more detailed discussion of the regulatory alternatives EPA considered may be found in the "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994 (see **SUPPLEMENTARY INFORMATION** for information on obtaining this document). Control alternatives were also developed for NO_X control and Hg control. Discussion of these alternatives can be found in the following memos that may be obtained from the EPA's Air Docket, as specified in the **SUPPLEMENTARY INFORMATION** section of this preamble: (1) "Update Report on Mercury Control Technologies for Municipal Waste Combustors" prepared by K. Nebel and D. White, Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, July 1993; (2) "NO_X Control on Existing MWC's," prepared by E. Soderberg et al., Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, August 23, 1991; (3) "Wet Scrubbing Systems Performance and Cost," prepared by K. Nebel, et al., Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, June 22, 1994; and (4) "A Summary of Mercury Emissions and Applicable Control Technologies for Municipal Waste Combustors," prepared by K. Nebel and D. White, Radian Corporation, for W. Stevenson, U.S. Environmental Protection Agency, September 1991.

c. *Social Costs.* The regulatory compliance costs of reducing air emissions from MWC's include the total and annualized capital costs; operating and maintenance costs; monitoring, inspection, recordkeeping, and reporting costs; and total annual costs. The annualized capital cost is calculated using a 4-percent discount rate for publicly-owned MWC's and an 8-percent discount rate for privately-owned MWC's. The total annual cost is calculated as the sum of the annualized capital cost; operating and maintenance costs; and the monitoring, inspection, recordkeeping, and reporting costs. There are no Federal funds available to assist State and local governments in meeting these costs.

Table 8 provides the estimated compliance costs for the final regulations and their distribution across public and private MWC's. As shown, the national annual compliance costs for existing MWC's total $405.5 million, with publicly-owned facilities incurring $229.9 million. This total both represents 56.7 percent of the estimated national compliance costs and forms the basis for allocating benefits to publicly-owned MWC's. (The analysis has assumed that benefits are linear with emission reductions). The level of compliance costs depends not only on the absolute number of facilities, but also on the baseline level of pollution control. It is assumed that higher compliance costs are associated with higher emission reductions and are, thus, appropriate for allocating the benefits associated with the reduced emissions.

TABLE 8.—SUMMARY OF REGULATORY COMPLIANCE COSTS FOR EXISTING MWC'S BY OWNERSHIP ($1990, 10^3)

Ownership category	Annual capital costs	Annual operating and maintenance costs	Annual MIRR costs [a]	Total annual costs
Public	67,625	154,163	8,092	229,881
Private	83,936	87,161	4,575	175,672
Total	151,561	241,325	12,667	405,553

[a] MIRR=Monitoring, inspection, reporting, and recordkeeping.

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The analysis assumes that the entire increase in costs of combustion services for both public and private entities will be passed through to MWC customers in the form of increases in the tipping fee charged by MWC's. As shown in table 9, the estimated increases in the average tipping fee for publicly-owned MWC's are significant and range from 36 to 59 percent. The range for privately-owned MWC's is 41 to 65 percent.

TABLE 9.—AVERAGE TIPPING FEE INCREASES FOR EXISTING MWC'S BY OWNERSHIP

Ownership	Small MWC plants (35 to 225 Mg/day MSW) (percent change)	Large MWC plants[a] (over 225 Mg/day MSW) (percent change)
Public	59	36
Private	65	41

[a] Fee increases are computed using the average cost per megagram of MSW reported in tables 5–10 and 5–11 of the EPA's "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Solid Waste Combustors," (EPA–450/3–91–029) and an average tipping fee of $57/Mg of MSW. The average tipping fee is based on the 1993 average tipping fee for MWC's reported in *Waste Age* (Berenyi & Gould, 1993) converted to 1990 dollars.

Section 7.3.1 of the EPA's economic impact analysis (EPA–450/3–91–029) provides a distributional analysis of the impacts on governmental entities with respect to their ability to finance the regulatory compliance capital through revenue bonds. A community's ability to finance the regulatory compliance capital through revenue bonds is estimated by comparing the estimated average annual cost per household to the average annual household income for the community. If the cost per household exceeds one percent of average annual household income, then the community is assumed to have potential difficulty issuing revenue bonds. Of the estimated 100 governmental entities subject to the guidelines, no governmental entities with a population above 50,000 are projected to have difficulty issuing revenue bonds as a result of the regulation on existing sources. Overall, 3 of the 100 governmental entities (all 3 of which have population below 50,000) are projected to have difficulty issuing such bonds.

Without market adjustments, the social costs of the guidelines should be equivalent to the national compliance costs shown in table 8. However, in this analysis, the social costs differ, both because the total capital costs for both public and private MWC's were discounted at the social rate equal to 7 percent, and because of tax differences. Table 10 shows the estimated social cost of the regulations and the distribution across public and private MWC's. The estimated annual social cost of the guidelines is $443 million of which 56.7 percent, or $251.1 million, is attributed to publicly-owned MWC's. This estimate of social cost is greater than the national compliance costs because the total capital costs for publicly-owned MWC's is discounted at the social rate of 7 percent, as opposed to the 4 percent rate used to compute the national compliance costs.

TABLE 10.—SUMMARY OF ESTIMATED ANNUAL SOCIAL COST BY OWNERSHIP ($1990)

Ownership category	Total social costs ($10³ per year)	Share (percent)
Public	251,107	56.7
Private	191,893	43.3
Total	443,000	100.0

Table 10A provides typical costs of air pollution control retrofits for existing MWC's. The costs shown in table 10A are for 17 model existing plants.

TABLE 10A.—Typical Cost of Air Pollution Control Retrofit for Existing MWC'S

Plant size (Mg/day)	MWC type	Costs ($1990x10⁶)		Model plant number
		Capital	Annual	
45	MOD/SA	2	0.5	10
136	MOD/SA	3	10.5	9
181	MOD/EA	3	0.4	11
181	MB/WW	5	0.9	6
454	MB/RWW	13	1.6	12
980	MB/WW	25	3.2	5
2,041	MB/WW	46	5.0	4
181	MB/WW	[a]5	0.8	14
454	MB/RWW	[a]13	1.6	17
544	RDF	28	2.3	8
1,814	RDF	64	4.8	7
1,814	RDF	[a]33	4.4	15
544	RDF	[a]17	2.0	16
218	MB/REF	8	0.9	2
680	MB/REF	39	2.3	1
816	MB/REF	35	4.1	3

Note: See table 5–1 of the "Economic Impacts Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors" (EPA–450/3–91–029) for more information.

[a] These model plants are assumed to be relatively new units that originally incorporated good combustion in their design and, therefore, do not need to retrofit good combustion to comply with the guidelines.

d. *Social Benefits.* Society will benefit from the proposed guidelines through the reduction of emissions of dioxins/furans, Cd, Pb, Hg, PM, HCl, SO_2, and NO_X. These pollutant categories are emitted by various types of sources, including MWC's. The level of pollutant emissions and health effects vary among types of sources, and total national emissions of these pollutants has been shown to have the health effects listed in table 11.

TABLE 11.—HEALTH AND OTHER EFFECTS

Pollutant category	Health and other effects
Organics	• Mortality, morbidity. • Carcinogenicity.
Metals	• Retardation and brain damage. • Hypertension. • Central nervous system injury. • Renal dysfunction.
Acid gases	• Materials damage. • Dental erosion. • Acid rain. • Mortality, morbidity. • Respiratory tract problems, permanent harm to lung. • Soiling and materials damage. • Reduced agricultural yield. • Ozone formation.
Particulate matter.	• Mortality, morbidity. • Eye and throat irritation, bronchitis, lung damage. • Impaired visibility. • Soiling and materials damage.

Because of limitations on data on the concentration-response function and valuation of these functions, benefits have not been quantified for all pollutants. Benefits have been quantified only for emissions of SO_2 and PM. Benefits have not been quantified for dioxins/furans, Cd, Pb, Hg, HCl or NO_X emission control. Benefits to the public and environment will result from the control of these hazardous air pollutants (HAP's) and criteria pollutants. For the HAP's, dioxin/furan compounds have been associated with chloracne, reproductive/developmental effects, immune system toxicity, and cancer (probable human carcinogen). Particulate-associated metals including Pb and Cd are toxic and can cause effects such as mucous membrane irritation, gastrointestinal effects, nervous system disorders, skin irritation, and reproductive and developmental disorders. In regard to volatile metals, Hg in all forms may be characterized as quite toxic with each form exhibiting different health effects, including gastrointestinal and respiratory tract disturbances, central nervous system effects, and developmental effects. Additionally, HCl is corrosive and effects the eyes, skin, and mucus membranes, and dermatitis has been reported from long-term exposure.

Table 12 provides the estimated social benefits associated with reductions in PM and SO_2 emissions from MWC's and their distribution across public and private MWC's. The estimated social benefit of reduced PM and SO_2 emissions is $106 million with $60.3 million being attributed to reductions at publicly-owned MWC facilities. These benefits would be experienced annually by the residents of these municipalities. Proper allocation of these benefits would be based on the expected emission reductions at public and private MWC's. However, due to lack of data at the model plant level, these benefits are allocated across public and private MWC's in the same proportion as the estimated national compliance costs (i.e., 56.7 percent for public and 43.3 percent for private).

TABLE 12.—SOCIAL BENEFIT ESTIMATES FOR SO_2 and PM Emission Reductions by Ownership ($1990)

Ownership category	Social benefits ($10³ per year)[a b]		
	PM	SO_2	Total
Public	30,779	29,475	60,254
Private	23,521	22,525	46,046
Total	54,300	52,000	106,300

[a] Benefit estimates are $1,200 per Mg of SO_2 reduced and $17,700 per Mg of PM reduced. (This estimate is derived valuing all mortalities at $4.4 million per life saved. This approach does not consider the length of the changes in longevity resulting from PM exposure). Social benefits attributable to public and private MWC's are proportionate to their share of the total annual costs.

[b] Does not include benefit credits for dioxins/furans, Cd, and Hg control.

Table 13 presents a comparison of the estimated social costs and benefits of the guidelines. Unfortunately, because benefit estimates are not computed for all pollutants, the social benefit provided in table 13 is a partial estimate. Because of this fact, the net benefits (i.e., benefits minus costs) shown in table 13 cannot be used to reach conclusions regarding the total net benefits of the rule for existing sources.

TABLE 13.—SOCIAL COSTS AND PARTIAL SOCIAL BENEFITS FROM REDUCING EMISSIONS AT MWC'S BY OWNERSHIP ($1990, 10^3 PER YEAR)

Ownership category	Total social costs	Partial social benefits
Public	251,107	60,254
Private	191,893	46,046
Total	443,000	106,300

3. Effects on the National Economy

The Unfunded Mandates Act requires that the EPA estimate "the effect" of this rule

"on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if and to the extent that the EPA in its sole discretion determines that

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accurate estimates are reasonably feasible and that such effect is relevant and material."

As stated in the Unfunded Mandates Act, such macroeconomic effects tend to be measurable, in nationwide econometric models, only if the economic impact of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of $1.5 billion to $3 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. For this reason, no estimate of this rule's effect on the national economy has been conducted.

4. Consultation with Government Officials

The Unfunded Mandates Act requires that the EPA describe the extent of the EPA's consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize the EPA's response to those comments or concerns. In addition, section 203 of the Clean Air Act requires that the EPA develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Throughout the development of these rules (pre-proposal through pre-promulgation phases), the EPA consulted with representatives of affected State and local governments, including the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Solid Waste Association of North America, and the Municipal Waste Management Association, to inform them of the proposed rule and determine their concerns. (The EPA also consulted with representatives from other entities affected by the proposed rule, such as the Integrated Waste Services Association, the Sierra Club, and the Natural Resources Defense Council.)

As part of EPA's consultation efforts in this rulemaking, the EPA mailed a copy of the regulatory summary (FACT SHEET) for the September 20, 1994 proposed MWC standards and guidelines to every elected official in an area with either an operating MWC, an MWC under construction, or a planned MWC. (The EPA also mailed copies of the summary to all owners and operators of these MWC's.) This mailout exceeded 400 informational packages. Since approximately half of the MWC's are owned and/or operated by municipalities, with this effort, the EPA was able to ensure that every affected State and local government was made aware of the proposed rule and had the necessary information to provide comment.

In addition, over a 3-month period, EPA staff consulted with State and local government representatives to discuss their comments regarding the final draft package. Letters were received during this time period from the U.S. Conference Mayors and the Integrated Waste Services Association (see docket A–90–45, items IV–D–44 and IV-D–85, respectively), which raised various concerns; however, in subsequent meetings, the EPA learned that State and local officials, as well as industry representatives, were mainly concerned with the following sections of the final draft emission guidelines: (1) The achievability for some MWC's of the final draft NO_X emission limit included in the emission guidelines; (2) the fact that because the EPA had not subcategorized by combustor type for purposes of determining the NO_X emission limit as it had when it determined the CO emission limit, some MWC's would be forced to install retrofit technology in order to meet the more stringent NO_X limit, (3) the achievability for MWC's with large new ESP's of the final draft dioxin/furan emission limit included in the emission guidelines; and (4) the inconsistency between some of the definitions in the draft rules with the definitions given in 40 CFR part 60, subpart Ea, which establishes emission limits for MWC's that commence construction after December 20, 1989, but on or before September 20, 1994.

As a result of these consultations, the EPA decided to modify the final regulatory package to address these concerns. The final emission guidelines promulgated today:

(1) Subcategorize MWC's by combustor type for the purpose of establishing different NO_x emission guidelines; and

(2) Establish separate dioxin/furan emission guidelines for MWC's with ESP-based systems and MWC's with nonESP-based systems. In addition, in order to address the fourth concern identified by State and local governments, the EPA is publishing today under a separate **Federal Register** notice, a direct final rule that modifies the applicability and definitions sections of 40 CFR part 60, subpart Ea to improve clarity and make them consistent with those provided in the standards and emission guidelines promulgated in this notice.

Documentation of the EPA's consideration of comments on the proposed standards and guidelines is provided in the BID's for the proposed and final standards and guidelines. Refer to the **SUPPLEMENTARY INFORMATION** and **ADDRESSES** sections of this preamble for information on how to acquire copies of these documents.

As discussed in section IV.F, the number of affected small entities is not expected to be substantial. The full analysis of potential regulatory impacts on households, small governments, and small businesses is included in the economic impact analysis in the docket and listed under **SUPPLEMENTARY INFORMATION**. Because the number of affected small entities is expected to be insubstantial (i.e., the EPA considers that the regulation is likely to affect less than 20 percent of small entities with MWC's—see section IV.F for a more detailed explanation), no plan to inform and advise small governments is required under section 203 of the Unfunded Mandates Act. However, as described above, the EPA has communicated and consulted with small governments and businesses that will be affected by the standards and guidelines, keeping them informed about the content of this promulgation. Refer to section III.C. for a description of these communications.

E. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled "Enhancing the Intergovernmental Partnership." Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the promulgated standards and emission guidelines. Section III.A of this notice provides a brief summary of the need for the final standards and guidelines. Sections IV.C and V.C provide brief summaries of the cost of the final guidelines and standards. Section III.C provides a brief account of the actions that the EPA has taken to communicate and consult with the affected parties. The discussion provided below provides a brief summary of the content of the final standards and guidelines. For more information on the content of the final standards and guidelines, refer to sections IV.A and V.A of this notice.

The promulgated standards and guidelines establish emission limitations for new and existing MWC units located at MWC plants with plant capacities to combust greater than 35 Mg/day of MSW. The standards and guidelines do not specify which type of air pollution control equipment must be used at MWC's to meet the promulgated emission limitations. The EPA expects, however, that, as a result of the promulgated standards and guidelines, most new and existing MWC's at large MWC plants (plants with greater than 225 Mg/day capacity) will use SD/FF systems with activated carbon injection (new plants) or retrofit SD/FF or SD/ESP systems with activated carbon injection (existing plants) for dioxins/furans, metals, and acid gas control, and will use SNCR for NO_X control. New MWC's at small MWC plants (plants with 35 to 225 Mg/day capacity) are expected to install SD/FF systems with activated carbon injection, and existing MWC's at small plants are expected to install DSI/ESP systems with activated carbon injection. Selective noncatalytic reduction technology would not be necessary for either new or existing MWC's at small MWC plants.

F. Regulatory Flexibility Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of, in this case, the Clean Air Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case at hand, the EPA considers that a regulation that is likely to affect 20 percent or more of small entities with MWC's is a regulation that will affect a substantial number of small entities.

Definitions of small entities are flexible. For analysis of the regulations being proposed today, the EPA considers a small business in this industry to be one with gross annual revenue less than $6 million, and a small government to be one that serves a population less than 50,000. (A typical city of 50,000 generates about 90 Mg/day of MSW.) Most small governments dispose of their MSW by landfilling and, therefore, will not be affected by regulation of MWC emissions. In regard to small organizations such as independent not-for-profit enterprises, the EPA finds that they have no more than a very minor involvement with MWC's, and for that reason the EPA has not found it necessary to study potential direct impacts on small organizations.

The final regulations do not apply to MWC plants with capacity less than 35 Mg/day. The EPA estimates that few if any small-entity MWC's would be affected by today's promulgated standards and guidelines.

Thus, the number of affected small entities is not expected to be substantial, and a regulatory flexibility analysis is not required. Nevertheless, the EPA has conducted an extensive analysis of potential regulatory impacts on households, small governments, and small businesses. The analysis is summarized in the preambles to the proposed standards (59 FR 48198) and guidelines (59 FR 48228.) The full analysis is included in the economic impact assessment in the docket and is listed at the beginning of today's notice under **SUPPLEMENTARY INFORMATION**.

On December 20, 1989, the EPA proposed standards and guidelines for MWC's that applied to all sizes of MWC's. The 1989 proposal had no lower size cutoff. Small businesses, small governments, and groups representing small-entity interests commented extensively on the need to lighten the potential regulatory burden on small entities. Most commenters suggested a small size cutoff considerably smaller than the one now being proposed. The most frequently suggested levels were 5 to 11 Mg/day, 18 Mg/day, 23 Mg/day, and 45 Mg/day. The EPA has used these suggestions and the information submitted by these commenters, as well as information from other sources, to fulfill the intent of the RFA. The EPA has incorporated into the standards and guidelines being promulgated today several features that will mitigate and, in most cases eliminate, any potential, adverse economic impacts on small entities. These features are as follows:

(1) The standards and guidelines will apply only to MWC's with a plant capacity of greater than 35 Mg/day. This cutoff eliminates from the purview of the regulation and guidelines the overwhelming majority of projected new and existing very small MWC's;

(2) The standards and guidelines are "tiered" so that the stringency (and therefore potential economic burden) of the emission standards and guidelines increases as the size of the MWC plant increases. Plants with capacities less than or equal to 35 Mg/day are not covered under the final standards and guidelines. Plants with capacities of 35 to 225 Mg/day are not required to control NO_x. Only plants with capacities larger than 225 Mg/day—plants not often associated with small entities—are subject to a full complement of rigorous standards;

(3) As opposed to design, equipment, work practice, or operational standards, the standards for new sources and the guidelines for existing sources consist predominantly of emission limits. Emission limits give MWC owners and operators of new and existing MWC's the freedom to select the most economical means of compliance.

(4) The guidelines are not the usual type of regulation governed by the RFA. The guidelines will not apply directly to any MWC's, but will be used as a guide by individual State air pollution control agencies in developing site-specific regulations for MWC's. States are allowed some flexibility in implementing the guidelines.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that the standards and guidelines will not have a significant economic impact on a substantial number of small entities because the number of small entities affected is not substantial.

G. Clean Air Act Procedural Requirements

The following procedural requirements of the Clean Air Act are addressed: Administrative listing, periodic review, external participation, and economic impact assessment.

1. Administrator Listing—Sections 111 and 129 of the Clean Air Act

As prescribed by section 111 of the Clean Air Act, establishment of standards of performance and emission guidelines for MWC's is based on the Administrator's determination (52 FR 25399, July 7, 1987) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Additionally, section 129 of the 1990 Amendments to the Clean Air Act directs the Administrator to promulgate revised standards for new MWC's and guidelines for existing MWC's.

2. Periodic Review—Sections 111 and 129 of the Clean Air Act

Sections 111 and 129 of the Clean Air Act require that the standards and guidelines be reviewed not later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator shall review the standards and guidelines and revise them if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

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3. External Participation

In accordance with section 117 of the Clean Air Act, publication of this promulgation was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

4. Economic Impact Assessment

Section 317A of the Clean Air Act requires the EPA to prepare an economic impact assessment for any standards or guidelines promulgated under section 111(b) of the Clean Air Act. An economic impact assessment was prepared for the promulgated standards and guidelines. In the manner described in the sections of this preamble regarding the impacts of and rationale for the promulgated standards and guidelines, the EPA considered all aspects of the economic impact assessment in promulgating the standards and guidelines. The economic impact assessment is included in the list of key technical documents at the beginning of today's notice under SUPPLEMENTARY INFORMATION.

List of Subjects in 40 CFR Part 60

Environmental Protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

Part 60, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Section 60.17 of subpart A of part 60 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a) and 60.54b(b).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), and 60.58b(i)(6)(ii).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii) and 60.58b(i)(6)(ii).

* * * * *

3. Section 60.23 of subpart B of part 60 is amended by revising paragraph (a)(1) to read as follows:

§ 60.23 Adoption and submittal of State plans; public hearings.

(a) * * *

(1) Unless otherwise specified in the applicable subpart, within 9 months after notice of the availability of a final guideline document is published under § 60.22(a), each State shall adopt and submit to the Administrator, in accordance with § 60.4 of subpart A of this part, a plan for the control of the designated pollutant to which the guideline document applies.

* * * * *

4. Section 60.24 of subpart B of part 60 is amended by revising paragraph (f) introductory text to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(f) Unless otherwise specified in the applicable subpart on a case-by-case basis for particular designated facilities or classes of facilities, States may provide for the application of less stringent emissions standards or longer compliance schedules than those otherwise required by paragraph (c) of this section, provided that the State demonstrates with respect to each such facility (or class of facilities):

* * * * *

5. Subpart C of part 60 is amended by revising § 60.30 to read as follows:

§ 60.30 Scope.

The following subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of this part.

(a) Subpart Ca—[Removed and Reserved]

(b) Subpart Cb—Municipal Waste Combustors

(c) Subpart Cc—[Reserved]

(d) Subpart Cd—Sulfuric Acid Production Plants

Subpart Ca—[Removed and Reserved]

5a. Part 60 is amended by removing and reserving subpart Ca.

Subpart Cb—[Redesignated as Subpart Cd]

Subpart Cc—[Reserved]

6. Part 60 is amended by redesignating subpart Cb as Cd, reserving subpart Cc, and revising the new subpart Cd to read as follows:

Subpart Cd—Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units

Sec.

60.30d Designated facilities.
60.31d Emission guidelines.
60.32d Compliance times.

Subpart Cd—Emission Guidelines and Compliance Times for Sulfuric Acid Production Units

§ 60.30d Designated facilities.

Sulfuric acid production units. The designated facility to which §§ 60.31d and 60.32d apply is each existing "sulfuric acid production unit" as defined in § 60.81(a) of subpart H of this part.

§ 60.31d Emissions guidelines.

Sulfuric acid production units. The emission guideline for designated facilities is 0.25 grams sulfuric acid mist (as measured by EPA Reference Method 8 of appendix A of this part) per kilogram (0.5 pounds per ton) of sulfuric acid produced, the production being expressed as 100 percent sulfuric acid.

§ 60.32d Compliance times.

Sulfuric acid production units. Planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission guideline established under § 60.31d can be accomplished within 17 months after the effective date of a State emission standard for sulfuric acid mist.

7. Part 60 is further amended by adding a new subpart Cb to read as follows:

Subpart Cb—Emissions Guidelines and Compliance Times for Municipal Waste Combustors That Are Constructed on or Before December 19, 1995

Sec.

60.30b Scope.
60.31b Definitions.
60.32b Designated facilities.
60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
60.34b Emission guidelines for municipal waste combustor operating practices.
60.35b Emission guidelines for municipal waste combustor operator training and certification.
60.36b Emission guidelines for municipal waste combustor fugitive ash emissions.
60.37b Emission guidelines for air curtain incinerators.
60.38b Compliance and performance testing.
60.39b Reporting and recordkeeping guidelines, and compliance schedules.

Subpart Cb—Emissions Guidelines and Compliance Schedules for Municipal Waste Combustors

§ 60.30b Scope.

This subpart contains emission guidelines and compliance schedules for the control of certain designated pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of this part. The provisions in these emission guidelines supersede the provisions of § 60.24(f) of subpart B of this part.

§ 60.31b Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and subparts A, B, and Eb of this part.

Municipal waste combustor plant means one or more municipal waste combustor units at the same location for which construction was commenced on or before September 20, 1994.

Municipal waste combustor plant capacity means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

§ 60.32b Designated facilities.

(a) The designated facility to which these guidelines apply is each municipal waste combustor unit located within a municipal waste combustor plant with an aggregate municipal waste combustor plant capacity greater than 35 megagrams per day of municipal solid waste for which construction was commenced on or before September 20, 1994.

(b) Any waste combustion unit at a medical, industrial, or other type of waste combustor plant that is capable of combusting more than 35 megagrams per day of municipal solid waste and is subject to a federally enforceable permit limiting the plantwide maximum amount of municipal solid waste that may be combusted to less than or equal to 10 megagrams per day is not subject to this subpart if the owner or operator:

(1) Notifies the Administrator of an exemption claim,

(2) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 10 megagrams per day, and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(c) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under this subpart are not considered in determining whether the unit is a modified or reconstructed facility under subpart Ea or subpart Eb of this part.

(d) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(e) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim, and

(2) Provides data documenting that the unit qualifies for this exemption.

(g) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(h) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(i) Any cofired combustor, as defined under § 60.51b of subpart Eb of this part, that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim,

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section), and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(j) Air curtain incinerators, as defined under § 60.51b of subpart Eb of this part, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 60.37b, the testing procedures under § 60.38b, and the reporting and recordkeeping provisions under § 60.39b.

(k) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(l) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

§ 60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For approval, a State plan shall include emission limits for particulate matter and opacity at least as protective as the emission limits for particulate matter and opacity specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(i) The emission limit for particulate matter contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission limit for particulate matter contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 70

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milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission limit for opacity exhibited by the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 10 percent (6-minute average).

(2) For approval, a State plan shall include emission limits for cadmium and lead at least as protective as the emission limits for cadmium and lead specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) The emission limit for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission limit for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 0.10 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission limit for lead contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.49 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iv) The emission limit for lead contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 1.6 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) For approval, a State plan shall include emission limits for mercury at least as protective as the emission limits specified in this paragraph. The emission limit for mercury contained in the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (an 85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For approval, a State plan shall include emission limits for sulfur dioxide at least as protective as the emission limits for sulfur dioxide specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) The emission limit for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 31 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(ii) The emission limit for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 80 parts per million by volume or 50 percent of the potential sulfur dioxide emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour geometric mean.

(2) For approval, a State plan shall include emission limits for hydrogen chloride at least as protective as the emission limits for hydrogen chloride specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) The emission limit for hydrogen chloride contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 31 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(ii) The emission limit for hydrogen chloride contained in the gases discharged to the atmosphere from an affected facility located within a small municipal waste combustor plant is 250 parts per million by volume or 50 percent of the potential hydrogen chloride emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The emission limits for municipal waste combustor organics, expressed as total mass dioxins/furans, are specified in paragraphs (c)(1) and (c)(2) of this section.

(1) For approval, a State plan shall include an emission limit for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant at least as protective as the emission limit for dioxins/furans specified in either paragraph (c)(1)(i) or (c)(1)(ii) of this section, as applicable.

(i) The emission limit for designated facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(ii) The emission limit for designated facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) For approval, a State plan shall include an emission limit for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant at least as protective as the emission limit for dioxins/furans specified in this paragraph. The emission limit for dioxins/furans for designated facilities located within a small municipal waste combustor plant is 125 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) For approval, a State plan shall include emission limits for nitrogen oxides at least as protective as the emission limits listed in table 1 of this subpart for designated facilities located within large municipal waste combustor plants. Table 1 provides emission limits for the nitrogen oxides concentration level for each type of designated facility.

TABLE 1.—NITROGEN OXIDES GUIDELINES FOR DESIGNATED FACILITIES AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) [a]
Mass burn waterwall	200
Mass burn rotary waterwall	250
Refuse-derived fuel combustor	250
Fluidized bed combustor	240
Mass burn refractory combustors	no limit
Other[b]	200

[a] Corrected to 7 percent oxygen, dry basis.
[b] Excludes mass burn refractory municipal waste combustors.

(1) A State plan may allow nitrogen oxides emissions averaging as specified in paragraphs (d)(1)(i) through (d)(1)(v) of this section.

(i) An owner or operator of a large municipal waste combustor plant may elect to implement a nitrogen oxides emissions averaging plan for the designated facilities that are located at that plant and that are subject to subpart Cb, except as specified in paragraphs (d)(1)(i)(A) and (d)(1)(i)(B) of this section.

(A) Municipal waste combustor units subject to subpart Ea or Eb cannot be included in the emissions averaging plan.

(B) Mass burn refractory municipal waste combustor units cannot be included in the emissions averaging plan.

(ii) The designated facilities included in the nitrogen oxides emissions averaging plan must be identified in the initial compliance report specified in § 60.59b(f) or in the annual report specified in § 60.59b(g), as applicable, prior to implementing the averaging plan. The designated facilities being included in the averaging plan may be redesignated each calendar year. Partial year redesignation is allowable with State approval.

(iii) To implement the emissions averaging plan, the average daily (24-hour) nitrogen oxides emission concentration level for gases discharged from the designated facilities being included in the emissions averaging plan must be no greater than the levels specified in table 2 of this subpart. Table 2 provides emission limits for the nitrogen oxides concentration level for each type of designated facility.

TABLE 2.—NITROGEN OXIDES LIMITS FOR EXISTING DESIGNATED FACILITIES INCLUDED IN AN EMISSIONS AVERAGING PLAN AT LARGE MUNICIPAL WASTE COMBUSTOR PLANTS

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume)[a]
Mass burn waterwall	180
Mass burn rotary waterwall	220
Refuse-derived fuel combustor	230
Fluidized bed combustor	220
Other[b]	180

[a] Corrected to 7 percent oxygen, dry basis.
[b] Excludes mass burn refractory municipal waste combustors. Mass burn refractory municipal waste combustors may not be included in an emissions averaging plan.

(iv) Under the emissions averaging plan, the average daily nitrogen oxides emissions specified in paragraph (d)(1)(iii) of this section shall be calculated using equation (1). Designated facilities that are offline shall not be included in calculating the average daily nitrogen oxides emission level.

$$NO_{X_{24\text{-}hr}} = \frac{\sum_{i=1}^{h}(NO_{X_i})(S_i)}{\sum_{i=1}^{h}(S_i)} \quad (1)$$

where:

$NO_{X\ 24\text{-}hr}$=24-hr daily average nitrogen oxides emission concentration level for the emissions averaging plan (parts per million by volume corrected to 7 percent oxygen).

$NO_{X\ i\text{-}hr}$=24-hr daily average nitrogen oxides emission concentration level for designated facility i (parts per million by volume, corrected to 7 percent oxygen), calculated according to the procedures in § 60.58b(h) of this subpart.

S_i=maximum demonstrated municipal waste combustor unit load for designated facility i (pounds per hour steam or feedwater flow as determined in the most recent dioxin/furan performance test).

h=total number of designated facilities being included in the daily emissions average.

(v) For any day in which any designated facility included in the emissions averaging plan is offline, the owner or operator of the municipal waste combustor plant must demonstrate compliance according to either paragraph (d)(1)(v)(A) of this section or both paragraphs (d)(1)(v)(B) and (d)(1)(v)(C) of this section.

(A) Compliance with the applicable limits specified in table 2 of this subpart shall be demonstrated using the averaging procedure specified in paragraph (d)(1)(iv) of this section for the designated facilities that are online.

(B) For each of the designated facilities included in the emissions averaging plan, the nitrogen oxides emissions on a daily average basis shall be calculated and shall be equal to or less than the maximum daily nitrogen oxides emission level achieved by that designated facility on any of the days during which the emissions averaging plan was achieved with all designated facilities online during the most recent calendar quarter. The requirements of this paragraph do not apply during the first quarter of operation under the emissions averaging plan.

(C) The average nitrogen oxides emissions (kilograms per day) calculated according to paragraph (d)(1)(v)(C)(*2*) of this section shall not exceed the average nitrogen oxides emissions (kilograms per day) calculated according to paragraph (d)(1)(v)(C)(*1*) of this section.

(*1*) For all days during which the emissions averaging plan was implemented and achieved and during which all designated facilities were online, the average nitrogen oxides emissions shall be calculated. The average nitrogen oxides emissions (kilograms per day) shall be calculated on a calendar year basis according to paragraphs (d)(1)(v)(C)(*1*)(*i*) through (d)(1)(v)(C)(*1*)(*iii*) of this section.

(*i*) For each designated facility included in the emissions averaging plan, the daily amount of nitrogen oxides emitted (kilograms per day) shall be calculated based on the hourly nitrogen oxides data required under § 60.38b(a) and specified under § 60.58b(h)(5) of subpart Eb of this part, the flue gas flow rate determined using table 19–1 of EPA Reference Method 19 or a State-approved method, and the hourly average steam or feedwater flow rate.

(*ii*) The daily total nitrogen oxides emissions shall be calculated as the sum of the daily nitrogen oxides emissions from each designated facility calculated under paragraph (d)(1)(v)(C)(*1*)(*i*) of this section.

(*iii*) The average nitrogen oxides emissions (kilograms per day) on a calendar year basis shall be calculated as the sum of all daily total nitrogen oxides emissions calculated under paragraph (d)(1)(v)(C)(*1*)(*ii*) of this section divided by the number of calendar days for which a daily total was calculated.

(*2*) For all days during which one or more of the designated facilities under the emissions averaging plan was offline, the average nitrogen oxides emissions shall be calculated. The average nitrogen oxides emissions (kilograms per day) shall be calculated on a calendar year basis according to paragraphs (d)(1)(v)(C)(*2*)(*i*) through (d)(1)(v)(C)(*2*)(*iii*) of this section.

(*i*) For each designated facility included in the emissions averaging plan, the daily amount of nitrogen oxides emitted (kilograms per day) shall be calculated based on the hourly nitrogen oxides data required under § 60.38b(a) and specified under § 60.58b(h)(5) of subpart Eb of this part, the flue gas flow rate determined using table 19–1 of EPA Reference Method 19 or a State-approved method, and the hourly average steam or feedwater flow rate.

(*ii*) The daily total nitrogen oxides emissions shall be calculated as the sum of the daily nitrogen oxides emissions from each designated facility calculated under paragraph (d)(1)(v)(C)(*2*)(*i*) of this section.

(*iii*) The average nitrogen oxides emissions (kilograms per day) on a calendar year basis shall be calculated

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as the sum of all daily total nitrogen oxides emissions calculated under paragraph (d)(1)(v)(C)(2)(*ii*) of this section divided by the number of calendar days for which a daily total was calculated.

(2) A State plan may establish a program to allow owners or operators of municipal waste combustor plants to engage in trading of nitrogen oxides emission credits. A trading program must be approved by the Administrator before implementation.

§ 60.34b Emission guidelines for municipal waste combustor operating practices.

(a) For approval, a State plan shall include emission limits for carbon monoxide at least as protective as the emission limits for carbon monoxide listed in table 3 of this subpart. Table 3 provides emission limits for the carbon monoxide concentration level for each type of designated facility located within a small or large municipal waste combustor plant.

TABLE 3.—MUNICIPAL WASTE COMBUSTOR OPERATING GUIDELINES

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume)[a]	Averaging time (hrs)
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

(b) For approval, a State plan shall include requirements for municipal waste combustor operating practices at least as protective as those requirements listed in § 60.53b(b) and (c) of subpart Eb of this part.

§ 60.35b Emission guidelines for municipal waste combustor operator training and certification.

For approval, a State plan shall include requirements for designated facilities located within small or large municipal waste combustor plants for municipal waste combustor operator training and certification at least as protective as those requirements listed in § 60.54b of subpart Eb of this part. The State plan shall require compliance with these requirements according to the schedule specified in § 60.39b(c)(4).

§ 60.36b Emission guidelines for municipal waste combustor fugitive ash emissions.

For approval, a State plan shall include requirements for municipal waste combustor fugitive ash emissions at least as protective as those requirements listed in § 60.55b of subpart Eb of this part.

§ 60.37b Emission guidelines for air curtain incinerators.

For approval, a State plan shall include emission limits for opacity for air curtain incinerators at least as protective as those listed in § 60.56b of subpart Eb of this part.

§ 60.38b Compliance and performance testing.

(a) For approval, a State plan shall include the performance testing methods listed in § 60.58b of subpart Eb of this part, as applicable, except as provided for under § 60.24(b)(2) of subpart B of this part and paragraphs (b) and (c) of this section.

(b) For approval, a State plan shall include for designated facilities at large municipal waste combustor plants the alternative performance testing schedule for dioxins/furans specified in § 60.58b(g)(5)(iii) of subpart Eb of this part, as applicable, for those designated facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

(c) For approval, a State plan shall include for designated facilities at small municipal waste combustor plants the alternative performance testing schedule for dioxins/furans specified in § 60.58b(g)(5)(iii) of subpart Eb of this part, as applicable, for those designated facilities that achieve a dioxin/furan emission level less than or equal to 30 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

§ 60.39b Reporting and recordkeeping guidelines and compliance schedules.

(a) For approval, a State plan shall include the reporting and recordkeeping provisions listed in § 60.59b of subpart Eb of this part, as applicable, except for the siting requirements under § 60.59b(a), (b)(5), and (d)(11) of subpart Eb of this part.

(b) Not later than December 19, 1996, each State in which a designated facility is operating shall submit to the Administrator a plan to implement and enforce the emission guidelines. The compliance schedule specified in this paragraph is in accordance with section 129(b)(2) of the Act and supersedes the compliance schedule provided in § 60.23(a)(1) of subpart B of this part.

(c) For approval, a State plan shall include the compliance schedules specified in paragraphs (c)(1) through (c)(5) of this section.

(1) A State plan shall allow designated facilities located within large municipal waste combustor plants to comply with all requirements of a State plan (or close) within 1 year after approval of the State plan, except as provided by paragraph (c)(1)(i) and (c)(1)(ii) of this section.

(i) A State plan that allows designated facilities more than 1 year but less than 3 years following the date of issuance of a revised construction or operation permit, if a permit modification is

required, or more than 1 year but less than 3 years following approval of the State plan, if a permit modification is not required, shall include measurable and enforceable incremental steps of progress toward compliance. Suggested measurable and enforceable activities are specified in paragraphs (c)(1)(i)(A) through (c)(1)(i)(J) of this section.

(A) Date for obtaining services of an architectural and engineering firm regarding the air pollution control device(s);

(B) Date for obtaining design drawings of the air pollution control device(s);

(C) Date for submittal of permit modifications, if necessary;

(D) Date for submittal of the final control plan to the Administrator. [§ 60.21 (h)(1) of subpart B of this part.];

(E) Date for ordering the air pollution control device(s);

(F) Date for obtaining the major components of the air pollution control device(s);

(G) Date for initiation of site preparation for installation of the air pollution control device(s);

(H) Date for initiation of installation of the air pollution control device(s);

(I) Date for initial startup of the air pollution control device(s); and

(J) Date for initial performance test(s) of the air pollution control device(s).

(ii) A State plan that allows designated facilities more than 1 year but up to 3 years after State plan approval to close shall require a closure agreement. The closure agreement must include the date of plant closure.

(2) If the State plan requirements for a designated facility located within a large municipal waste combustor plant include a compliance schedule longer than 1 year after approval of the State plan in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the State plan submittal (for approval) shall include performance test results for dioxin/furan emissions for each designated facility that has a compliance schedule longer than 1 year following the approval of the State plan, and the performance test results shall have been conducted during or after 1990. The performance test shall be conducted according to the procedures in § 60.38b.

(3) A State plan shall allow designated facilities located within small municipal waste combustor plants to comply with all requirements of the State plan (or close) within 3 years following the date of issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required.

(4) A State plan shall require compliance with the municipal waste combustor operator training and certification requirements under § 60.35b according to the schedule specified in paragraphs (c)(4)(i) through (c)(4)(iii) of this section.

(i) For designated facilities located within small municipal waste combustor plants, the State plan shall require compliance with the municipal waste combustor operator training and certification requirements specified under § 60.54b (a) through (c) of subpart Eb of this part by the date 6 months after startup of a designated facility or 18 months after State plan approval, whichever is later.

(ii) For designated facilities located within large municipal waste combustor plants, the State plan shall require compliance with the municipal waste combustor operator training and certification requirements specified under § 60.54b (a) through (c) of subpart Eb of this part by the date 6 months after the date of startup or 12 months after State plan approval, whichever is later.

(iii) For designated facilities located within small or large municipal waste combustor plants, the State plan shall require compliance with the requirements specified in § 60.54b (d), (f), and (g) of subpart Eb of this part no later than 6 months after startup or 12 months after State plan approval, whichever is later.

(A) The requirement specified in § 60.54b(d) of subpart Eb of this part does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the date of State plan approval.

(B) The owner or operator may request that the Administrator waive the requirement specified in § 60.54b(d) of subpart Eb of this part for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the date of State plan approval.

(C) The initial training requirements specified in § 60.54b(f)(1) of subpart Eb of this part shall be completed no later than the date specified in paragraph (c)(4)(iii)(C)(*1*), (c)(4)(iii)(C)(*2*), or (c)(4)(iii)(C)(*3*), of this section whichever is later.

(*1*) The date 6 months after the date of startup of the affected facility;

(*2*) Twelve months after State plan approval; or

(*3*) The date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

(5) A State plan shall require all designated facilities for which construction, modification, or reconstruction is commenced after June 26, 1987 that are located within a large municipal waste combustor plant to comply with the emission limit for mercury specified in § 60.33b(a)(3) and the emission limit for dioxins/furans specified in § 60.33b(c)(1) within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, whichever is later.

(d) In the event no plan for implementing the emission guidelines is adopted, all designated facilities meeting the applicability requirements under § 60.32b shall be in compliance with the guidelines no later than December 19, 2000.

8. Part 60 is amended by adding subpart Eb as follows:

Subpart Eb—Standards of Performance for Municipal Waste Combustors for Which Construction Is Commenced After September 20, 1994

Sec.

60.50b Applicability and delegation of authority.
60.51b Definitions.
60.52b Standards for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
60.53b Standards for municipal waste combustor operating practices.
60.54b Standards for municipal waste combustor operator training and certification.
60.55b Standards for municipal waste combustor fugitive ash emissions.
60.56b Standards for air curtain incinerators.
60.57b Siting requirements.
60.58b Compliance and performance testing.
60.59b Reporting and recordkeeping requirements.

Subpart Eb—Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994

§ 60.50b Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit located within a municipal waste combustor plant with an aggregate municipal waste combustor plant capacity greater than 35 megagrams per day of municipal solid waste for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996.

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(b) Any waste combustion unit at a medical, industrial, or other type of waste combustor plant that is capable of combusting more than 35 megagrams per day of municipal solid waste and is subject to a federally enforceable permit limiting the plantwide maximum amount of municipal solid waste that may be combusted to less than or equal to 10 megagrams per day is not subject to this subpart if the owner or operator:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 10 megagrams per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(c) An affected facility to which this subpart applies is not subject to subpart E or Ea of this part.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission guidelines under subpart Cb are not considered a modification or reconstruction and do not result in an existing municipal waste combustor unit becoming subject to this subpart.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the Administrator of an exemption claim; and

(3) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under § 60.51b, located at a plant that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the Administrator of an exemption claim;

(2) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under § 60.51b, located at a plant that meet the capacity specifications in paragraph (a) of this section and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity limit under § 60.56b, the testing procedures under § 60.58b(l), and the reporting and recordkeeping provisions under § 60.59b (e) and (i).

(l) Air curtain incinerators located at plants that meet the capacity specifications in paragraph (a) of this section combusting municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in § 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) The following authorities shall be retained by the Administrator and not transferred to a State: None.

(o) This subpart shall become effective June 19, 1996.

§ 60.51b Definitions.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustor means a municipal waste combustor unit designed so that it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed while combustion is occurring.

Bubbling fluidized bed combustor means a fluidized bed combustor in which the majority of the bed material remains in a fluidized state in the primary combustion zone.

Calendar quarter means a consecutive 3-month period (nonoverlapping) beginning on January 1, April 1, July 1, and October 1.

Calendar year means the period including 365 days starting January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustor and who is responsible for daily onsite supervision, technical direction, management, and overall performance of the facility.

Circulating fluidized bed combustor means a fluidized bed combustor in which the majority of the fluidized bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition wastes (including but not limited to railroad ties and telephone poles), which are exempt from the definition of municipal solid waste in this section.

Cofired combustor means a unit combusting municipal solid waste with nonmunicipal solid waste fuel (e.g., coal, industrial process waste) and subject to a federally enforceable permit limiting the unit to combusting a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste as measured on a calendar quarter basis.

Continuous emission monitoring system means a monitoring system for continuously measuring the emissions of a pollutant from an affected facility.

Dioxin/furan means tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including the requirements of 40 CFR parts 60, 61, and 63, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period starting on January 1 and ending on June 30 in any year.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations when the affected facility is operating and combusting municipal solid waste measured over 4-hour periods of time from 12:00 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12:00 noon, 12:00 noon to 4 p.m., 4 p.m. to 8 p.m., and 8 p.m. to 12:00 midnight.

Large municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor aggregate plant capacity for affected facilities that is greater than 225 megagrams per day of municipal solid waste.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Materials separation plan means a plan that identifies both a goal and an approach to separate certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems. A materials separation plan may include different goals or approaches for different subareas in the service area, and may include no materials separation activities for certain subareas or, if warranted, an entire service area.

Maximum demonstrated municipal waste combustor unit load means the highest 4-hour arithmetic average municipal waste combustor unit load achieved during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.52b(c).

Maximum demonstrated particulate matter control device temperature means the highest 4-hour arithmetic average flue gas temperature measured at the particulate matter control device inlet during four consecutive hours during the most recent dioxin/furan performance test demonstrating compliance with the applicable limit for municipal waste combustor organics specified under § 60.52b(c).

Modification or *modified municipal waste combustor unit* means a municipal waste combustor unit to which changes have been made after June 19, 1996 if the cumulative cost of the changes, over the life of the unit, exceed 50 percent of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or any physical change in the municipal waste combustor unit or change in the method of operation of the municipal waste combustor unit increases the amount of any air pollutant emitted by the unit for which standards have been established under section 129 or section 111. Increases in the amount of any air pollutant emitted by the municipal waste combustor unit are determined at 100-percent physical load capability and downstream of all air pollution control devices, with no consideration given for load restrictions based on permits or other nonphysical operational restrictions.

Modular excess-air municipal waste combustor means a combustor that combusts municipal solid waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustor means a combustor that combusts municipal solid waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* or *MSW* means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes but is not limited to railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff). Household, commercial/retail, and institutional wastes include:

(1) Yard waste;

(2) Refuse-derived fuel; and

(3) Motor vehicle maintenance materials limited to vehicle batteries and tires except as specified in § 60.50b(g).

Municipal waste combustor, MWC, or *municipal waste combustor unit*: (1) Means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at a plastics/rubber recycling unit (as specified in § 60.50b(m) of this section). Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal solid waste combustor are defined as follows. The municipal waste combustor unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The municipal waste combustor boundary starts at the

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municipal solid waste pit or hopper and extends through:

(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber,

(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(3) The municipal waste combustor unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set.

Municipal waste combustor acid gases means all acid gases emitted in the exhaust gases from municipal waste combustor units including, but not limited to, sulfur dioxide and hydrogen chloride gases.

Municipal waste combustor metals means metals and metal compounds emitted in the exhaust gases from municipal waste combustor units.

Municipal waste combustor organics means organic compounds emitted in the exhaust gases from municipal waste combustor units and includes tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

Municipal waste combustor plant means one or more municipal waste combustor units at the same location for which construction, modification, or reconstruction is commenced after September 20, 1994.

Municipal waste combustor plant capacity means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction, modification, or reconstruction of the units commenced after September 20, 1994. Any municipal waste combustor units for which construction, modification, or reconstruction is commenced on or before September 20, 1994 are not included for determining applicability under this subpart.

Municipal waste combustor unit capacity means the maximum charging rate of a municipal waste combustor unit expressed in megagrams per day of municipal solid waste combusted, calculated according to the procedures under § 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.

Municipal waste combustor unit load means the steam load of the municipal waste combustor unit measured as specified in § 60.58b(i)(6).

Particulate matter means total particulate matter emitted from municipal waste combustor units as measured by EPA Reference Method 5 (see § 60.58b(c)).

Plastics/rubber recycling unit means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock, where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste, and may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (e.g., paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

Potential hydrogen chloride emission concentration means the hydrogen chloride emission concentration that would occur from combustion of municipal solid waste in the absence of any emission controls for municipal waste combustor acid gases.

Potential mercury emission concentration means the mercury emission concentration that would occur from combustion of municipal solid waste in the absence of any mercury emissions control.

Potential sulfur dioxide emissions means the sulfur dioxide emission concentration that would occur from combustion of municipal solid waste in the absence of any emission controls for municipal waste combustor acid gases.

Pulverized coal/refuse-derived fuel mixed fuel-fired combustor means a combustor that fires coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is fired in suspension. This includes both conventional pulverized coal and micropulverized coal.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids through the heating of municipal solid waste, and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustor unit for which the reconstruction commenced after June 19, 1996, and the cumulative costs of the construction over the life of the unit exceed 50 percent of the original cost of construction and installation of the unit (not including any cost of land purchased in connection with such construction or installation) updated to current costs (current dollars).

Refractory unit or *refractory wall furnace* means a combustion unit having no energy recovery (e.g., via a waterwall) in the furnace (i.e., radiant heat transfer section) of the combustor.

Refuse-derived/fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

Refuse-derived fuel stoker means a steam generating unit that combusts refuse-derived fuel in a semisuspension firing mode using air-fed distributors.

Same location means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).

Second calendar half means the period starting July 1 and ending on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of the operation of a municipal waste combustor and who is responsible for onsite supervision, technical direction, management, and overall performance of the facility during an assigned shift.

Small municipal waste combustor plant means a municipal waste combustor plant with a municipal waste combustor plant capacity for affected facilities that is greater than 35 megagrams per day but equal to or less than 225 megagrams per day of municipal solid waste.

Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor means a combustor that fires coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions means a temperature of 20° C and a pressure of 101.3 kilopascals.

Total mass dioxin/furan or *total mass* means the total mass of tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans, as determined using EPA Reference Method 23 and the procedures specified under § 60.58b(g).

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the affected facility is operating and combusting municipal solid waste measured over a 24-hour period between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or "pressure-treated." Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a combustion unit having energy (heat) recovery in the furnace (i.e., radiant heat transfer section) of the combustor.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of municipal solid waste in this section. Yard waste does not include clean wood, which is exempt from the definition of municipal solid waste in this section.

§ 60.52b Standards for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(5) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 24 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 10 percent opacity (6-minute average).

(3) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain cadmium in excess of 0.020 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(4) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from the affected facility any gases that contain lead in excess of 0.20 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(5) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from the affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The limits for municipal waste combustor acid gases are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 30 parts per million by volume or 20 percent of the potential sulfur dioxide emission concentration (80-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. The averaging time is specified under § 60.58b(e).

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 25 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The limits for municipal waste combustor organics are specified in paragraphs (c)(1) and (c)(2) of this section.

(1) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant for which construction, modification, or reconstruction commences after September 20, 1994, but on or before November 20, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen, for the first 3 years following the date of initial startup. After the first 3 years following the date of initial startup, no owner or operator shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan total mass emissions that exceed 13 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant for which construction,

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modification, or reconstruction commences after November 20, 1997 shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan total mass emissions that exceed 13 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The limits for nitrogen oxides are specified in paragraphs (d)(1) and (d)(2) of this section.

(1) During the first year of operation after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of 180 parts per million by volume, corrected to 7 percent oxygen (dry basis). The averaging time is specified under § 60.58b(h).

(2) After the first year of operation following the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of 150 parts per million by volume, corrected to 7 percent oxygen (dry basis). The averaging time is specified under § 60.58b(h).

§ 60.53b Standards for municipal waste combustor operating practices.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits specified in table 1 of this subpart.

TABLE 1.—MUNICIPAL WASTE COMBUSTOR OPERATING STANDARDS

Municipal waste combustor technology	Carbon monoxide emission limit (parts per million by volume) [a]	Averaging time (hours)
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary waterwall	100	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	150	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	150	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen (dry basis). The averaging times are specified in greater detail in § 60.58b(i).

(b) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause such facility to operate at a load level greater than 110 percent of the maximum demonstrated municipal waste combustor unit load as defined in § 60.51b, except as specified in paragraphs (b)(1) and (b)(2) of this section. The averaging time is specified under § 60.58b(i).

(1) During the annual dioxin/furan performance test and the 2 weeks preceding the annual dioxin/furan performance test, no municipal waste combustor unit load limit is applicable.

(2) The municipal waste combustor unit load limit may be waived in accordance with permission granted by the Administrator or delegated State regulatory authority for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions.

(c) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause such facility to operate at a temperature, measured at the particulate matter control device inlet, exceeding 17 °C above the maximum demonstrated particulate matter control device temperature as defined in § 60.51b, except as specified in paragraphs (c)(1) and (c)(2) of this section. The averaging time is specified under § 60.58b(i). The requirements specified in this paragraph apply to each particulate matter control device utilized at the affected facility.

(1) During the annual dioxin/furan performance test and the 2 weeks preceding the annual dioxin/furan performance test, no particulate matter control device temperature limitations are applicable.

(2) The particulate matter control device temperature limits may be waived in accordance with permission granted by the Administrator or delegated State regulatory authority for the purpose of evaluating system performance, testing new technology or control technologies, diagnostic testing, or related activities for the purpose of improving facility performance or advancing the state-of-the-art for controlling facility emissions.

§ 60.54b Standards for municipal waste combustor operator training and certification.

(a) No later than the date 6 months after the date of startup of an affected facility located within a small or large municipal waste combustor plant or on December 19, 1996, whichever is later, each chief facility operator and shift supervisor shall obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see § 60.17 of subpart A of this part)] or a State certification program.

(b) Not later than the date 6 months after the date of startup of an affected facility located within a small or large municipal waste combustor plant or on December 19, 1996, whichever is later, each chief facility operator and shift supervisor shall have completed full certification or shall have scheduled a full certification exam with either the American Society of Mechanical Engineers [QRO–1–1994 (incorporated by reference—see § 60.17 of subpart A of this part)] or a State certification program.

(c) No owner or operator of an affected facility located within a small or large municipal waste combustor plant shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility: A fully certified chief facility operator, a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in paragraph (b) of this section, a fully certified shift supervisor, or a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in paragraph (b) of this section.

(i) The requirement specified in paragraph (c) of this section shall take effect 6 months after the date of startup of the affected facility or on December 19, 1996, whichever is later.

(ii) If one of the persons listed in paragraph (c) of this section must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in paragraph (c) of this section.

(d) All chief facility operators, shift supervisors, and control room operators at affected facilities located within a small or large municipal waste combustor plant must complete the EPA or State municipal waste combustor operator training course no later than the date 6 months after the date of startup of the affected facility or by December 19, 1996, whichever is later.

(e) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall develop and update on a yearly basis a site-specific operating manual that shall, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Municipal waste combustor unit startup, shutdown, and malfunction procedures;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section shall undergo initial training no later than the date specified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this section whichever is later.

(i) The date 6 months after the date of startup of the affected facility;

(ii) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(iii) December 19, 1996.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section shall be kept in a readily accessible location for all persons required to undergo training under paragraph (f) of this section. The operating manual and records of training shall be available for inspection by the EPA or its delegated enforcement agency upon request.

§ 60.55b Standards for municipal waste combustor fugitive ash emissions.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, no owner or operator of an affected facility located within a small or large municipal waste combustor plant shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in § 60.58b(k), except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

§ 60.56b Standards for air curtain incinerators.

On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an air curtain incinerator located at a plant with a plant capacity to combust greater than 35 megagrams per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials shall at no time cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

§ 60.57b Siting requirements.

(a) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which the initial application for a construction permit under 40 CFR part 51, subpart I, or part 52, as applicable, is submitted after December 19, 1995, shall prepare a materials separation plan, as defined in § 60.51b, for the affected facility and its service area, and shall comply with the requirements specified in paragraphs (a)(1) through (a)(10) of this section. The initial application is defined as representing a good faith submittal for complying with the requirements under 40 CFR part 51, subpart I, or part 52, as applicable, as determined by the Administrator.

(1) The owner or operator shall prepare a preliminary draft materials separation plan and shall make the plan available to the public as specified in

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paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) The owner or operator shall distribute the preliminary draft materials separation plan to the principal public libraries in the area where the affected facility is to be constructed.

(ii) The owner or operator shall publish a notification of a public meeting in the principal newspaper(s) serving the area where the affected facility is to be constructed and where the waste treated by the affected facility will primarily be collected. As a minimum, the notification shall include the information specified in paragraphs (a)(1)(ii)(A) through (a)(1)(ii)(D) of this section.

(A) The date, time, and location of the public meeting.

(B) The location of the public libraries where the preliminary draft materials separation plan may be found, including normal business hours of the libraries.

(C) An agenda of the issues to be discussed at the public meeting.

(D) The dates that the public comment period on the preliminary draft materials separation plan begins and ends.

(2) The owner or operator shall conduct a public meeting, accept comments on the preliminary draft materials separation plan, and comply with the requirements specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) The public meeting shall be conducted in the county where the affected facility is to be located.

(ii) The public meeting shall be scheduled to occur 30 days or more after making the preliminary draft materials separation plan available to the public as specified under paragraph (a)(1) of this section.

(iii) Suggested issues to be addressed at the public meeting are listed in paragraphs (a)(2)(iii)(A) through (a)(2)(iii)(H) of this section.

(A) The expected size of the service area for the affected facility.

(B) The amount of waste generation anticipated for the service area.

(C) The types and estimated amounts of materials proposed for separation.

(D) The methods proposed for materials separation.

(E) The amount of residual waste to be disposed.

(F) Alternate disposal methods for handling the residual waste.

(G) Identification of the location(s) where responses to public comment on the preliminary draft materials separation plan will be available for inspection, as specified in paragraphs (a)(3) and (a)(4) of this section.

(H) Identification of the locations where the final draft materials separation plan will be available for inspection, as specified in paragraph (a)(7).

(iv) Nothing in this section shall preclude an owner or operator from combining this public meeting with any other public meeting required as part of any other Federal, State, or local permit review process except the public meeting required under paragraph (b)(4) of this section.

(3) Following the public meeting required by paragraph (a)(2) of this section, the owner or operator shall prepare responses to the comments received at the public meeting.

(4) The owner or operator shall make the document summarizing responses to public comments available to the public (including distribution to the principal public libraries used to announce the meeting) in the service area where the affected facility is to be located.

(5) The owner or operator shall prepare a final draft materials separation plan for the affected facility considering the public comments received at the public meeting.

(6) As required under § 60.59b(a), the owner or operator shall submit to the Administrator a copy of the notification of the public meeting, a transcript of the public meeting, the document summarizing responses to public comments, and copies of both the preliminary and final draft materials separation plans on or before the time the facility's application for a construction permit is submitted under 40 CFR part 51, subpart I, or part 52, as applicable.

(7) As part of the distribution of the siting analysis required under paragraph (b)(3) of this section, the owner or operator shall make the final draft materials separation plan required under paragraph (a)(5) of this section available to the public, as specified in paragraph (b)(3) of this section.

(8) As part of the public meeting for review of the siting analysis required under paragraph (b)(4) of this section, the owner or operator shall address questions concerning the final draft materials separation plan required by paragraph (a)(5) of this section including discussion of how the final draft materials separation plan has changed from the preliminary draft materials separation plan that was discussed at the first public meeting required by paragraph (a)(2) of this section.

(9) If the owner or operator receives any comments on the final draft materials separation plan during the public meeting required in paragraph (b)(4) of this section, the owner or operator shall respond to those comments in the document prepared in accordance with paragraph (b)(5) of this section.

(10) The owner or operator shall prepare a final materials separation plan and shall submit, as required under § 60.59b(b)(5)(ii), the final materials separation plan as part of the initial notification of construction.

(b) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which the initial application for a construction permit under 40 CFR part 51, subpart I, or part 52, as applicable, is submitted after December 19, 1995 shall prepare a siting analysis in accordance with paragraphs (b)(1) and (b)(2) of this section and shall comply with the requirements specified in paragraphs (b)(3) through (b)(7) of this section.

(1) The siting analysis shall be an analysis of the impact of the affected facility on ambient air quality, visibility, soils, and vegetation.

(2) The analysis shall consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to the public health or the environment.

(3) The owner or operator shall make the siting analysis and final draft materials separation plan required by paragraph (a)(5) of this section available to the public as specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator shall distribute the siting analysis and final draft materials separation plan to the principal public libraries in the area where the affected facility is to be constructed.

(ii) The owner or operator shall publish a notification of a public meeting in the principal newspaper(s) serving the area where the affected facility is to be constructed and where the waste treated by the affected facility will primarily be collected. As a minimum, the notification shall include the information specified in paragraphs (b)(3)(ii)(A) through (b)(3)(ii)(D) of this section.

(A) The date, time, and location of the public meeting.

(B) The location of the public libraries where the siting analyses and final draft materials separation plan may be found, including normal business hours.

(C) An agenda of the issues to be discussed at the public meeting.

(D) The dates that the public comment period on the siting analyses and final draft materials separation plan begins and ends.

(4) The owner or operator shall conduct a public meeting and accept comments on the siting analysis and the final draft materials separation plan required under paragraph (a)(5) of this section. The public meeting shall be conducted in the county where the affected facility is to be located and shall be scheduled to occur 30 days or more after making the siting analysis available to the public as specified under paragraph (b)(3) of this section.

(5) The owner or operator shall prepare responses to the comments on the siting analysis and the final draft materials separation plan that are received at the public meeting.

(6) The owner or operator shall make the document summarizing responses to public comments available to the public (including distribution to all public libraries) in the service area where the affected facility is to be located.

(7) As required under § 60.59b(b)(5), the owner or operator shall submit a copy of the notification of the public meeting, a transcript of the public meeting, the document summarizing responses to public comments, and the siting analysis as part of the initial notification of construction.

(c) The owner or operator of an affected facility located within a small or large municipal waste combustor plant, for which construction is commenced after September 20, 1994 shall prepare a siting analysis in accordance with 40 CFR part 51, Subpart I, or part 52, as applicable, and shall submit the siting analysis as part of the initial notification of construction. Affected facilities subject to paragraphs (a) and (b) of this section are not subject to this paragraph.

§ 60.58b Compliance and performance testing.

(a) The provisions for startup, shutdown, and malfunction are provided in paragraphs (a)(1) and (a)(2) of this section.

(1) Except as provided by § 60.56b, the standards under this subpart apply at all times except during periods of startup, shutdown, or malfunction. Duration of startup, shutdown, or malfunction periods are limited to 3 hours per occurrence.

(i) The startup period commences when the affected facility begins the continuous burning of municipal solid waste and does not include any warmup period when the affected facility is combusting fossil fuel or other nonmunicipal solid waste fuel, and no municipal solid waste is being fed to the combustor.

(ii) Continuous burning is the continuous, semicontinuous, or batch feeding of municipal solid waste for purposes of waste disposal, energy production, or providing heat to the combustion system in preparation for waste disposal or energy production. The use of municipal solid waste solely to provide thermal protection of the grate or hearth during the startup period when municipal solid waste is not being fed to the grate is not considered to be continuous burning.

(2) The opacity limits for air curtain incinerators specified in § 60.56b apply at all times as specified under § 60.56b except during periods of malfunction. Duration of malfunction periods are limited to 3 hours per occurrence.

(b) The owner or operator of a small or large municipal waste combustor plant shall install, calibrate, maintain, and operate a continuous emission monitoring system and record the output of the system for measuring the oxygen or carbon dioxide content of the flue gas at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides emissions are monitored and shall comply with the test procedures and test methods specified in paragraphs (b)(1) through (b)(7) of this section.

(1) The span value of the oxygen (or carbon dioxide) monitor shall be 25 percent oxygen (or carbon dioxide).

(2) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor, as specified under § 60.8 of subpart A of this part.

(4) The monitor shall conform to Performance Specification 3 in appendix B of this part except for section 2.3 (relative accuracy requirement).

(5) The quality assurance procedures of appendix F of this part except for section 5.1.1 (relative accuracy test audit) shall apply to the monitor.

(6) If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels shall be established during the initial performance test according to the procedures and methods specified in paragraphs (b)(6)(i) through (b)(6)(iv) of this section. This relationship may be reestablished during performance compliance tests.

(i) The emission rate correction factor and the integrated bag sampling and analysis procedure of EPA Reference Method 3B shall be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples shall be taken for at least 30 minutes in each hour.

(iii) Each sample shall represent a 1-hour average.

(iv) A minimum of three runs shall be performed.

(7) As required by § 60.59b(f)(5), the relationship between carbon dioxide and oxygen concentrations that is established in accordance with paragraph (b)(6) of this section shall be submitted to the EPA as part of the initial performance test report.

(c) The procedures and test methods specified in paragraphs (c)(1) through (c)(11) of this section shall be used to determine compliance with the emission limits for particulate matter and opacity under § 60.52b(a)(1) and (a)(2).

(1) The EPA Reference Method 1 shall be used to select sampling site and number of traverse points.

(2) The EPA Reference Method 3 shall be used for gas analysis.

(3) The EPA Reference Method 5 shall be used for determining compliance with the particulate matter emission limit. The minimum sample volume shall be 1.7 cubic meters. The probe and filter holder heating systems in the sample train shall be set to provide a gas temperature no greater than 160±14 °C. An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.

(4) An owner or operator may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(5) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the particulate matter emission concentrations from the three test runs is used to determine compliance.

(6) In accordance with paragraphs (c)(7) and (c)(11) of this section, EPA Reference Method 9 shall be used for determining compliance with the opacity limit except as provided under § 60.11(e) of subpart A of this part.

(7) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall conduct an initial performance test for particulate matter emissions and opacity as required under § 60.8 of subpart A of this part.

(8) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous

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opacity monitoring system for measuring opacity and shall follow the methods and procedures specified in paragraphs (c)(8)(i) through (c)(8)(iv) of this section.

(i) The output of the continuous opacity monitoring system shall be recorded on a 6-minute average basis.

(ii) The continuous opacity monitoring system shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(iii) The continuous opacity monitoring system shall conform to Performance Specification 1 in appendix B of this part.

(iv) The initial performance evaluation shall be completed no later than 180 days after the date of the initial startup of the municipal waste combustor unit, as specified under § 60.8 of subpart A of this part.

(9) Following the date that the initial performance test for particulate matter is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a large municipal waste combustor plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous performance test).

(10) Following the date that the initial performance test for particulate matter is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the particulate matter emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for particulate matter shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the particulate matter emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the particulate matter emission limit, performance tests shall be required annually until all annual performance tests over a 3-year period indicate compliance with the particulate matter emission limit.

(11) Following the date that the initial performance test for opacity is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small or large municipal waste combustor plant, the owner or operator shall conduct a performance test for opacity on an annual basis (no more than 12 calendar months following the previous performance test) using the test method specified in paragraph (c)(6) of this section.

(d) The procedures and test methods specified in paragraphs (d)(1) and (d)(2) of this section shall be used to determine compliance with the emission limits for cadmium, lead, and mercury under § 60.52b(a).

(1) The procedures and test methods specified in paragraphs (d)(1)(i) through (d)(1)(ix) of this section shall be used to determine compliance with the emission limits for cadmium and lead under § 60.52b(a) (3) and (4).

(i) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(ii) The EPA Reference Method 3 shall be used for flue gas analysis.

(iii) The EPA Reference Method 29 shall be used for determining compliance with the cadmium and lead emission limits.

(iv) An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 29 test run for cadmium and lead required under paragraph (d)(1)(iii) of this section.

(v) An owner or operator may request that compliance with the cadmium or lead emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(vi) All performance tests shall consist of a minimum of three test runs conducted under representative full load operating conditions. The average of the cadmium or lead emission concentrations from three test runs or more shall be used to determine compliance.

(vii) Following the date of the initial performance test or the date on which the initial performance test is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for compliance with the emission limits for cadmium and lead on an annual basis (no more than 12 calendar months following the previous performance test).

(viii) Following the date that the initial performance test for cadmium is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for cadmium emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the cadmium emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for cadmium shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the cadmium emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the cadmium emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the cadmium emission limit.

(ix) Following the date that the initial performance test for lead is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for lead emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all three performance tests over a 3-year period indicate compliance with the lead emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for lead shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the lead emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the lead emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the lead emission limit.

(2) The procedures and test methods specified in paragraphs (d)(2)(i) through (d)(2)(xi) of this section shall be used to determine compliance with the mercury emission limit under § 60.52b(a)(5).

(i) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(ii) The EPA Reference Method 3 shall be used for flue gas analysis.

(iii) The EPA Reference Method 29 shall be used to determine the mercury emission concentration. The minimum sample volume when using Method 29 for mercury shall be 1.7 cubic meters.

(iv) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 29 test run for mercury required under paragraph (d)(2)(iii) of this section.

(v) The percent reduction in the potential mercury emissions (%PHg) is computed using equation 1:

$$\left(\%P_{Hg}\right)=\left(\frac{E_i-E_o}{E_i}\right)\times 100 \qquad (1)$$

where:

$\%P_{Hg}$ = percent reduction of the potential mercury emissions achieved.

E_i = potential mercury emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis).

E_o = controlled mercury emission concentration measured at the mercury control device outlet, corrected to 7 percent oxygen (dry basis).

(vi) All performance tests shall consist of a minimum of three test runs conducted under representative full load operating conditions. The average of the mercury emission concentrations or percent reductions from three test runs or more is used to determine compliance.

(vii) An owner or operator may request that compliance with the mercury emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(viii) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall conduct an initial performance test for mercury emissions as required under § 60.8 of subpart A of this part.

(ix) Following the date that the initial performance test for mercury is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for mercury emissions on a annual basis (no more than 12 calendar months from the previous performance test).

(x) Following the date that the initial performance test for mercury is completed or is required to be completed under § 60.8 of subpart A of this part for an affected facility located within a small municipal waste combustor plant, the owner or operator shall conduct a performance test for mercury emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all three performance tests over a 3-year period indicate compliance with the mercury emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for mercury shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the mercury emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the mercury emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the mercury emission limit.

(xi) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit shall follow the procedures specified in paragraph (m) of this section for measuring and calculating carbon usage.

(e) The procedures and test methods specified in paragraphs (e)(1) through (e)(14) of this section shall be used for determining compliance with the sulfur dioxide emission limit under § 60.52b(b)(1).

(1) The EPA Reference Method 19, section 4.3, shall be used to calculate the daily geometric average sulfur dioxide emission concentration.

(2) The EPA Reference Method 19, section 5.4, shall be used to determine the daily geometric average percent reduction in the potential sulfur dioxide emission concentration.

(3) An owner or operator may request that compliance with the sulfur dioxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(4) The owner or operator of an affected facility shall conduct an initial performance test for sulfur dioxide emissions as required under § 60.8 of subpart A of this part. Compliance with the sulfur dioxide emission limit (concentration or percent reduction) shall be determined by using the continuous emission monitoring system specified in paragraph (e)(5) of this section to measure sulfur dioxide and calculating a 24-hour daily geometric average emission concentration or a 24-hour daily geometric average percent reduction using EPA Reference Method 19, sections 4.3 and 5.4, as applicable.

(5) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system.

(6) Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under § 60.8 of subpart A of this part, compliance with the sulfur dioxide emission limit shall be determined based on the 24-hour daily geometric average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data if compliance is based on an emission concentration, or continuous emission monitoring system inlet and outlet data if compliance is based on a percent reduction.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraphs (e)(7)(i) and (e)(7)(ii) for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) Each sulfur dioxide 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(8) The 1-hour arithmetic averages required under paragraph (e)(6) of this section shall be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 24-hour daily geometric average emission concentrations and daily geometric average emission percent reductions. The 1-hour arithmetic averages shall be calculated using the data points

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required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations and percent reductions even if the minimum continuous emission monitoring system data requirements of paragraph (e)(7) of this section are not met.

(10) The procedures under § 60.13 of subpart A of this part shall be followed for installation, evaluation, and operation of the continuous emission monitoring system.

(11) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor as specified under § 60.8 of subpart A of this part.

(12) The continuous emission monitoring system shall be operated according to Performance Specification 2 in appendix B of this part.

(i) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 in appendix B of this part, sulfur dioxide and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (e)(12)(i)(A) and (e)(12)(i)(B) of this section.

(A) For sulfur dioxide, EPA Reference Method 6, 6A, or 6C shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(ii) The span value of the continuous emissions monitoring system at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit. The span value of the continuous emission monitoring system at the outlet of the sulfur dioxide control device shall be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the municipal waste combustor unit.

(13) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in appendix F of this part.

(14) When sulfur dioxide emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of the hours per day that the affected facility is operated and combusting municipal solid waste for 90 percent of the days per calendar quarter that the affected facility is operated and combusting municipal solid waste.

(f) The procedures and test methods specified in paragraphs (f)(1) through (f)(8) of this section shall be used for determining compliance with the hydrogen chloride emission limit under § 60.52b(b)(2).

(1) The EPA Reference Method 26 or 26A, as applicable, shall be used to determine the hydrogen chloride emission concentration. The minimum sampling time for Method 26 shall be 1 hour.

(2) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 26 test run for hydrogen chloride required by paragraph (f)(1) of this section.

(3) The percent reduction in potential hydrogen chloride emissions (% P_{HCl}) is computed using equation 2:

$$(\%P_{HCl}) = \left(\frac{E_i - E_o}{E_i}\right) \times 100 \qquad (2)$$

where:

$\%P_{HCl}$=percent reduction of the potential hydrogen chloride emissions achieved.

E_i=potential hydrogen chloride emission concentration measured at the control device inlet, corrected to 7 percent oxygen (dry basis).

E_o=controlled hydrogen chloride emission concentration measured at the control device outlet, corrected to 7 percent oxygen (dry basis).

(4) An owner or operator may request that compliance with the hydrogen chloride emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(5) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the hydrogen chloride emission concentrations or percent reductions from the three test runs is used to determine compliance.

(6) The owner or operator of an affected facility shall conduct an initial performance test for hydrogen chloride as required under § 60.8 of subpart A of this part.

(7) Following the date that the initial performance test for hydrogen chloride is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within a large municipal waste combustor plant shall conduct a performance test for hydrogen chloride emissions on an annual basis (no more than 12 calendar months following the previous performance test).

(8) Following the date that the initial performance test for hydrogen chloride is completed or is required to be completed under § 60.8 of this part, the owner or operator of an affected facility located within a small municipal waste combustor plant shall conduct a performance test for hydrogen chloride emissions on an annual basis (no more than 12 calendar months following the previous performance test). If all performance tests over a 3-year period indicate compliance with the hydrogen chloride emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years. At a minimum, a performance test for hydrogen chloride shall be conducted every third year (no more than 36 months following the previous performance test) at a small municipal waste combustor plant. If a performance test conducted every third year indicates compliance with the hydrogen chloride emission limit, the owner or operator may elect not to conduct a performance test for an additional 2 years. If any performance test indicates noncompliance with the hydrogen chloride emission limit, performance tests shall be conducted annually until all annual performance tests over a 3-year period indicate compliance with the hydrogen chloride emission limit.

(g) The procedures and test methods specified in paragraphs (g)(1) through (g)(9) of this section shall be used to determine compliance with the limits for dioxin/furan emissions under § 60.52b(c).

(1) The EPA Reference Method 1 shall be used for determining the location and number of sampling points.

(2) The EPA Reference Method 3 shall be used for flue gas analysis.

(3) The EPA Reference Method 23 shall be used for determining the dioxin/furan emission concentration.

(i) The minimum sample time shall be 4 hours per test run.

(ii) An oxygen (or carbon dioxide) measurement shall be obtained simultaneously with each Method 23 test run for dioxins/furans.

(4) The owner or operator of an affected facility shall conduct an initial performance test for dioxin/furan emissions in accordance with paragraph (g)(3) of this section, as required under § 60.8 of subpart A of this part.

(5) Following the date that the initial performance test for dioxins/furans is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of an affected facility located within small and large municipal waste combustor plants shall conduct performance tests for dioxin/furan emissions in accordance with paragraph (g)(3) of this section, according to one of the schedules specified in paragraphs (g)(5)(i) through (g)(5)(iii) of this section.

(i) For affected facilities located within small and large municipal waste combustor plants, performance tests shall be conducted on an annual basis (no more than 12 calendar months following the previous performance test.)

(ii) For affected facilities located within small municipal waste combustor plants where all performance tests for an affected facility over a 3-year period indicate compliance with the dioxin/furan emission limit, the owner or operator may elect not to conduct a performance test for the subsequent 2 years for that affected facility. At a minimum, a performance test for dioxin/furan emissions shall be conducted every third year (no more than 36 months following the previous performance test) for each affected facility. If a performance test conducted every third year indicates compliance with the dioxin/furan emission limit, the owner or operator may elect not to conduct a performance test on the affected facility for an additional 2 years. If any performance test indicates noncompliance with the dioxin/furan emission limit, performance tests shall be conducted annually until all annual performance tests for the affected facility over a 3-year period indicate compliance with the dioxin/furan emission limit.

(iii) For affected facilities located within small or large municipal waste combustor plants where all performance tests for all affected facilities over a 2-year period indicate that dioxin/furan emissions are less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions shall be conducted annually (no more than 12 months following the previous performance test) for one affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant shall be tested, and the affected facilities at the plant shall be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates a dioxin/furan emission level greater than 7 nanograms per dry standard cubic meter (total mass), performance tests thereafter shall be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 7 nanograms per dry standard cubic meter (total mass).

(6) The owner or operator of an affected facility that selects to follow the performance testing schedule specified in paragraph (g)(5)(iii) of this section shall follow the procedures specified in § 60.59b(g)(4) for reporting the selection of this schedule.

(7) The owner or operator of an affected facility where activated carbon is used to comply with the dioxin/furan emission limits specified in § 60.52b(c) or the dioxin/furan emission level specified in paragraph (g)(5)(iii) of this section shall follow the procedures specified in paragraph (m) of this section for measuring and calculating the carbon usage rate.

(8) An owner or operator may request that compliance with the dioxin/furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(9) As specified under § 60.8 of subpart A of this part, all performance tests shall consist of three test runs. The average of the dioxin/furan emission concentrations from the three test runs is used to determine compliance.

(h) The procedures and test methods specified in paragraphs (h)(1) through (h)(12) of this section shall be used to determine compliance with the nitrogen oxides emission limit for municipal waste combustors located at large municipal waste combustor plants under § 60.52b(d) (no nitrogen oxides performance tests are required for affected facilities located within small municipal waste combustor plants).

(1) The EPA Reference Method 19, section 4.1, shall be used for determining the daily arithmetic average nitrogen oxides emission concentration.

(2) An owner or operator may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(3) The owner or operator of an affected facility located within a large municipal waste combustor plant subject to the nitrogen oxides limit under § 60.52b(d) shall conduct an initial performance test for nitrogen oxides as required under § 60.8 of subpart A of this part. Compliance with the nitrogen oxides emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (h)(4) of this section for measuring nitrogen oxides and calculating a 24-hour daily arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(4) The owner or operator of an affected facility located within a large municipal waste combustor plant subject to the nitrogen oxides emission limit under § 60.52b(d) shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring nitrogen oxides discharged to the atmosphere, and record the output of the system.

(5) Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under § 60.8 of subpart A of this part, compliance with the emission limit for nitrogen oxides required under § 60.52b(d) shall be determined based on the 24-hour daily arithmetic average of the hourly emission concentrations using continuous emission monitoring system outlet data.

(6) At a minimum, valid continuous emission monitoring system hourly averages shall be obtained as specified in paragraphs (h)(6)(i) and (h)(6)(ii) of this section for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least 2 data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) Each nitrogen oxides 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide)

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continuous emission monitoring system data.

(7) The 1-hour arithmetic averages required by paragraph (h)(5) of this section shall be expressed in parts per million by volume (dry basis) and used to calculate the 24-hour daily arithmetic average concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(8) All valid continuous emission monitoring system data must be used in calculating emission averages even if the minimum continuous emission monitoring system data requirements of paragraph (h)(6) of this section are not met.

(9) The procedures under § 60.13 of subpart A of this part shall be followed for installation, evaluation, and operation of the continuous emission monitoring system. The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor unit, as specified under § 60.8 of subpart A of this part.

(10) The owner or operator shall operate the continuous emission monitoring system according to Performance Specification 2 in appendix B of this part and shall follow the procedures and methods specified in paragraphs (h)(10)(i) and (h)(10)(ii) of this section.

(i) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 2 of appendix B of this part, nitrogen oxides and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (h)(10)(i)(A) and (h)(10)(i)(B) of this section.

(A) For nitrogen oxides, EPA Reference Method 7, 7A, 7C, 7D, or 7E shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(ii) The span value of the continuous emission monitoring system shall be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of the municipal waste combustor unit.

(11) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in appendix F of this part.

(12) When nitrogen oxides continuous emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of the hours per day for 90 percent of the days per calendar quarter the unit is operated and combusting municipal solid waste.

(i) The procedures specified in paragraphs (i)(1) through (i)(12) of this section shall be used for determining compliance with the operating requirements under § 60.53b.

(1) Compliance with the carbon monoxide emission limits in § 60.53b(a) shall be determined using a 4-hour block arithmetic average for all types of affected facilities except mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers.

(2) For affected mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers, compliance with the carbon monoxide emission limits in § 60.53b(a) shall be determined using a 24-hour daily arithmetic average.

(3) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in paragraphs (i)(3)(i) through (i)(3)(iii) of this section.

(i) The continuous emission monitoring system shall be operated according to Performance Specification 4A in appendix B of this part.

(ii) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 4A in appendix B of this part, carbon monoxide and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (i)(3)(ii)(A) and (i)(3)(ii)(B) of this section.

(A) For carbon monoxide, EPA Reference Method 10, 10A, or 10B shall be used.

(B) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B shall be used.

(iii) The span value of the continuous emission monitoring system shall be 125 percent of the maximum estimated hourly potential carbon monoxide emissions of the municipal waste combustor unit.

(4) The 4-hour block and 24-hour daily arithmetic averages specified in paragraphs (i)(1) and (i)(2) of this section shall be calculated from 1-hour arithmetic averages expressed in parts per million by volume corrected to 7 percent oxygen (dry basis). The 1-hour arithmetic averages shall be calculated using the data points generated by the continuous emission monitoring system. At least two data points shall be used to calculate each 1-hour arithmetic average.

(5) An owner or operator may request that compliance with the carbon monoxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in paragraph (b)(6) of this section.

(6) The procedures specified in paragraphs (i)(6)(i) through (i)(6)(v) of this section shall be used to determine compliance with load level requirements under § 60.53b(b).

(i) The owner or operator of an affected facility with steam generation capability shall install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam (or feedwater) flow in kilograms per hour (or pounds per hour) on a continuous basis; and record the output of the monitor. Steam (or feedwater) flow shall be calculated in 4-hour block arithmetic averages.

(ii) The method included in the "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" section 4 (incorporated by reference, see § 60.17 of subpart A of this part) shall be used for calculating the steam (or feedwater) flow required under paragraph (i)(6)(i) of this section. The recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)," chapter 4 (incorporated by reference—see § 60.17 of subpart A of this part) shall be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in (i)(6)(iii) of this section.

(iii) Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

(iv) All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan

performance test, and at least once per year.

(a) [Reserved].

(7) To determine compliance with the maximum particulate matter control device temperature requirements under § 60.53b(c), the owner or operator of an affected facility shall install, calibrate, maintain, and operate a device for measuring on a continuous basis the temperature of the flue gas stream at the inlet to each particulate matter control device utilized by the affected facility. Temperature shall be calculated in 4-hour block arithmetic averages.

(8) The maximum demonstrated municipal waste combustor unit load shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in § 60.52b(c) is achieved. The maximum demonstrated municipal waste combustor unit load shall be the highest 4-hour arithmetic average load achieved during four consecutive hours during the most recent test during which compliance with the dioxin/furan emission limit was achieved.

(9) For each particulate matter control device employed at the affected facility, the maximum demonstrated particulate matter control device temperature shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in § 60.52b(c) is achieved. The maximum demonstrated particulate matter control device temperature shall be the highest 4-hour arithmetic average temperature achieved at the particulate matter control device inlet during four consecutive hours during the most recent test during which compliance with the dioxin/furan limit was achieved.

(10) At a minimum, valid continuous emission monitoring system hourly averages shall be obtained as specified in paragraphs (i)(10)(i) and (i)(10)(ii) of this section for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) At a minimum, each carbon monoxide 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

(11) All valid continuous emission monitoring system data must be used in calculating the parameters specified under paragraph (i) of this section even if the minimum data requirements of paragraph (i)(10) of this section are not met. When carbon monoxide continuous emission data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the Administrator or EPA Reference Method 10 to provide, as necessary, the minimum valid emission data.

(12) Quarterly accuracy determinations and daily calibration drift tests for the carbon monoxide continuous emission monitoring system shall be performed in accordance with procedure 1 in appendix F of this part.

(j) The procedures specified in paragraphs (j)(1) and (j)(2) of this section shall be used for calculating municipal waste combustor unit capacity as defined under § 60.51b.

(1) For municipal waste combustor units capable of combusting municipal solid waste continuously for a 24-hour period, municipal waste combustor unit capacity, in megagrams per day of municipal solid waste combusted, shall be calculated based on 24 hours of operation at the maximum charging rate. The maximum charging rate shall be determined as specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this section as applicable.

(i) For combustors that are designed based on heat capacity, the maximum charging rate shall be calculated based on the maximum design heat input capacity of the unit and a heating value of 10,500 kilojoules per kilogram.

(ii) For combustors that are not designed based on heat capacity, the maximum charging rate shall be the maximum design charging rate.

(2) For batch feed municipal waste combustor units, municipal waste combustor unit capacity, in megagrams per day of municipal solid waste combusted, shall be calculated as the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that could be processed in a 24-hour period. The maximum number of batches that could be processed in a 24-hour period is calculated as 24 hours divided by the design number of hours required to process one batch of municipal solid waste, and may include fractional batches (e.g., if one batch requires 16 hours, then 24/16, or 1.5 batches, could be combusted in a 24-hour period). For batch combustors that are designed based on heat capacity, the design heating value of 10,500 kilojoules per kilogram for all municipal solid waste shall be used in calculating the municipal waste combustor unit capacity in megagrams per day of municipal solid waste.

(k) The procedures specified in paragraphs (k)(1) through (k)(3) of this section shall be used for determining compliance with the fugitive ash emission limit under § 60.55b.

(1) The EPA Reference Method 22 shall be used for determining compliance with the fugitive ash emission limit under § 60.55b. The minimum observation time shall be a series of three 1-hour observations. The observation period shall include times when the facility is transferring ash from the municipal waste combustor unit to the area where ash is stored or loaded into containers or trucks.

(2) The average duration of visible emissions per hour shall be calculated from the three 1-hour observations. The average shall be used to determine compliance with § 60.55b.

(3) The owner or operator of an affected facility shall conduct an initial performance test for fugitive ash emissions as required under § 60.8 of subpart A of this part.

(l) The procedures specified in paragraphs (l)(1) through (l)(3) of this section shall be used to determine compliance with the opacity limit for air curtain incinerators under § 60.56b.

(1) The EPA Reference Method 9 shall be used for determining compliance with the opacity limit.

(2) The owner or operator of the air curtain incinerator shall conduct an initial performance test for opacity as required under § 60.8 of subpart A of this part.

(3) Following the date that the initial performance test is completed or is required to be completed under § 60.8 of subpart A of this part, the owner or operator of the air curtain incinerator shall conduct a performance test for opacity on an annual basis (no more than 12 calendar months following the previous performance test).

(m) The owner or operator of an affected facility where activated carbon injection is used to comply with the mercury emission limit under § 60.52b(a)(5), or the dioxin/furan emission limits under § 60.52(b)(c), or the dioxin/furan emission level specified in § 60.58b(g)(5)(iii) shall follow the procedures specified in paragraphs (m)(1) through (m)(3) of this section.

(1) During the performance tests for dioxins/furans and mercury, as

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applicable, the owner or operator shall estimate an average carbon mass feed rate based on carbon injection system operating parameters such as the screw feeder speed, hopper volume, hopper refill frequency, or other parameters appropriate to the feed system being employed, as specified in paragraphs (m)(1)(i) and (m)(1)(ii) of this section.

(i) An average carbon mass feed rate in kilograms per hour or pounds per hour shall be estimated during the initial performance test for mercury emissions and each subsequent performance test for mercury emissions.

(ii) An average carbon mass feed rate in kilograms per hour or pounds per hour shall be estimated during the initial performance test for dioxin/furan emissions and each subsequent performance test for dioxin/furan emissions.

(2) During operation of the affected facility, the carbon injection system operating parameter(s) that are the primary indicator(s) of the carbon mass feed rate (e.g., screw feeder setting) must equal or exceed the level(s) documented during the performance tests specified under paragraphs (m)(1)(i) and (m)(1)(ii) of this section.

(3) The owner or operator shall estimate the total carbon usage of the plant (kilograms or pounds) for each calendar quarter by two independent methods, according to the procedures in paragraphs (m)(3)(i) and (m)(3)(ii) of this section.

(i) The weight of carbon delivered to the plant.

(ii) Estimate the average carbon mass feed rate in kilograms per hour or pounds per hour for each hour of operation for each affected facility based on the parameters specified under paragraph (m)(1) of this section, and sum the results for all affected facilities at the plant for the total number of hours of operation during the calendar quarter.

§ 60.59b Reporting and recordkeeping requirements.

(a) The owner or operator of an affected facility located at a municipal waste combustor plant with a capacity to combust greater than 35 megagrams per day shall submit, on or before the date the application for a construction permit is submitted under 40 CFR part 51, subpart I, or part 52, as applicable, the items specified in paragraphs (a)(1) through (a)(4) of this section.

(1) The preliminary and final draft materials separation plans required by § 60.57b(a)(1) and (a)(5).

(2) A copy of the notification of the public meeting required by § 60.57b(a)(1)(ii).

(3) A transcript of the public meeting required by § 60.57b(a)(2).

(4) A copy of the document summarizing responses to public comments required by § 60.57b(a)(3).

(b) The owner or operator of an affected facility located at a municipal waste combustor plant with a capacity to combust greater than 35 megagrams per day shall submit a notification of construction, which includes the information specified in paragraphs (b)(1) through (b)(5) of this section.

(1) Intent to construct.

(2) Planned initial startup date.

(3) The types of fuels that the owner or operator plans to combust in the affected facility.

(4) The municipal waste combustor unit capacity, municipal waste combustor plant capacity, and supporting capacity calculations prepared in accordance with § 60.58b(j).

(5) Documents associated with the siting requirements under § 60.57b (a) and (b), as specified in paragraphs (b)(5)(i) through (b)(5)(v) of this section.

(i) The siting analysis required by § 60.57b (b)(1) and (b)(2).

(ii) The final materials separation plan for the affected facility required by § 60.57b(a)(10).

(iii) A copy of the notification of the public meeting required by § 60.57b(b)(3)(ii).

(iv) A transcript of the public meeting required by § 60.57b(b)(4).

(v) A copy of the document summarizing responses to public comments required by § 60.57b (a)(9) and (b)(5).

(c) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall provide a notification of construction that includes the information specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility located within a small or large municipal waste combustor plant and subject to the standards under §§ 60.52b, 60.53b, 60.54b, 60.55b, and 60.57b shall maintain records of the information specified in paragraphs (d)(1) through (d)(15) of this section, as applicable, for each affected facility for a period of at least 5 years.

(1) The calendar date of each record.

(2) The emission concentrations and parameters measured using continuous monitoring systems as specified under paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) The measurements specified in paragraphs (d)(2)(i)(A) through (d)(2)(i)(D) of this section shall be recorded and be available for submittal to the Administrator or review onsite by an inspector.

(A) All 6-minute average opacity levels as specified under § 60.58b(c).

(B) All 1-hour average sulfur dioxide emission concentrations as specified under § 60.58b(e).

(C) All 1-hour average nitrogen oxides emission concentrations as specified under § 60.58b(h) (large municipal waste combustor plants only).

(D) All 1-hour average carbon monoxide emission concentrations, municipal waste combustor unit load measurements, and particulate matter control device inlet temperatures as specified under § 60.58b(i).

(ii) The average concentrations and percent reductions, as applicable, specified in paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section shall be computed and recorded, and shall be available for submittal to the Administrator or review on-site by an inspector.

(A) All 24-hour daily geometric average sulfur dioxide emission concentrations and all 24-hour daily geometric average percent reductions in sulfur dioxide emissions as specified under § 60.58b(e).

(B) All 24-hour daily arithmetic average nitrogen oxides emission concentrations as specified under § 60.58b(h) (large municipal waste combustor plants only).

(C) All 4-hour block or 24-hour daily arithmetic average carbon monoxide emission concentrations, as applicable, as specified under § 60.58b(i).

(D) All 4-hour block arithmetic average municipal waste combustor unit load levels and particulate matter control device inlet temperatures as specified under § 60.58b(i).

(3) Identification of the calendar dates when any of the average emission concentrations, percent reductions, or operating parameters recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(E) of this section, or the opacity levels recorded under paragraph (d)(2)(i)(A) of this section are above the applicable limits, with reasons for such exceedances and a description of corrective actions taken.

(4) For affected facilities that apply activated carbon for mercury or dioxin/furan control, the records specified in paragraphs (d)(4)(i) through (d)(4)(v) of this section.

(i) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as required under § 60.58b(m)(1)(i) of this section during the initial mercury performance test and all subsequent annual performance tests, with supporting calculations.

(ii) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated as required under § 60.58b(m)(1)(ii) of this section during the initial dioxin/furan performance test and all subsequent annual performance tests, with supporting calculations.

(iii) The average carbon mass feed rate (in kilograms per hour or pounds per hour) estimated for each hour of operation as required under § 60.58b(m)(3)(ii) of this section, with supporting calculations.

(iv) The total carbon usage for each calendar quarter estimated as specified by paragraph 60.58b(m)(3) of this section, with supporting calculations.

(v) Carbon injection system operating parameter data for the parameter(s) that are the primary indicator(s) of carbon feed rate (e.g., screw feeder speed).

(5) [Reserved]

(6) Identification of the calendar dates for which the minimum number of hours of any of the data specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section have not been obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(i) Sulfur dioxide emissions data;

(ii) Nitrogen oxides emissions data (large municipal waste combustor plants only);

(iii) Carbon monoxide emissions data;

(iv) Municipal waste combustor unit load data; and

(v) Particulate matter control device temperature data.

(7) Identification of each occurrence that sulfur dioxide emissions data, nitrogen oxides emissions data (large municipal waste combustors only), or operational data (i.e., carbon monoxide emissions, unit load, and particulate matter control device temperature) have been excluded from the calculation of average emission concentrations or parameters, and the reasons for excluding the data.

(8) The results of daily drift tests and quarterly accuracy determinations for sulfur dioxide, nitrogen oxides (large municipal waste combustors only), and carbon monoxide continuous emission monitoring systems, as required under appendix F of this part, procedure 1.

(9) The test reports documenting the results of the initial performance test and all annual performance tests listed in paragraphs (d)(9)(i) and (d)(9)(ii) of this section shall be recorded along with supporting calculations.

(i) The results of the initial performance test and all annual performance tests conducted to determine compliance with the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission limits.

(ii) For the initial dioxin/furan performance test and all subsequent dioxin/furan performance tests recorded under paragraph (d)(9)(i) of this section, the maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device temperature (for each particulate matter control device).

(10) [Reserved]

(11) For each municipal waste combustor subject to the siting provisions under § 60.57b, the siting analysis, the final materials separation plan, a record of the location and date of the public meetings, and the documentation of the responses to public comments received at the public meetings.

(12) The records specified in paragraphs (d)(12)(i) through (d)(12)(iii) of this section.

(i) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by § 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification.

(ii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by § 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification.

(iii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustor operator training course or a State-approved equivalent course as required by § 60.54b(d) including documentation of training completion.

(13) Records showing the names of persons who have completed a review of the operating manual as required by § 60.54b(f) including the date of the initial review and subsequent annual reviews.

(14) For affected facilities that apply activated carbon for mercury or dioxin/furan control, identification of the calendar dates when the average carbon mass feed rates recorded under (d)(4)(iii) of this section were less than either of the hourly carbon feed rates estimated during performance tests for mercury or dioxin/furan emissions and recorded under paragraphs (d)(4)(i) and (d)(4)(ii) of this section, respectively, with reasons for such feed rates and a description of corrective actions taken.

(15) For affected facilities that apply activated carbon for mercury or dioxin/furan control, identification of the calendar dates when the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate (e.g., screw feeder speed) recorded under paragraph (d)(4)(v) of this section are below the level(s) estimated during the performance tests as specified in § 60.58b(m)(1)(i) and § 60.58b(m)(1)(ii) of this section, with reasons for such occurrences and a description of corrective actions taken.

(e) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall maintain records of results of the initial opacity performance test and subsequent performance tests required by § 60.58b(l) for a period of at least 5 years.

(f) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit the information specified in paragraphs (f)(1) through (f)(6) of this section in the initial performance test report.

(1) The initial performance test data as recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section for the initial performance test for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, and particulate matter control device inlet temperature.

(2) The test report documenting the initial performance test recorded under paragraph (d)(9) of this section for particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emissions.

(3) The performance evaluation of the continuous emission monitoring system using the applicable performance specifications in appendix B of this part.

(4) The maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device inlet temperature(s) established during the initial dioxin/furan performance test as recorded under paragraph (d)(9) of this section.

(5) For affected facilities that apply activated carbon injection for mercury control, the owner or operator shall submit the average carbon mass feed rate recorded under paragraph (d)(4)(i) of this section.

(6) For those affected facilities that apply activated carbon injection for dioxin/furan control, the owner or

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operator shall submit the average carbon mass feed rate recorded under paragraph (d)(4)(ii) of this section.

(g) Following the first year of municipal combustor operation, the owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit an annual report including the information specified in paragraphs (g)(1) through (g)(4) of this section, as applicable, no later than February 1 of each year following the calendar year in which the data were collected (once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannually).

(1) A summary of data collected for all pollutants and parameters regulated under this subpart, which includes the information specified in paragraphs (g)(1)(i) through (g)(1)(v) of this section.

(i) A list of the particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels achieved during the performance tests recorded under paragraph (d)(9) of this section.

(ii) A list of the highest emission level recorded for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, and particulate matter control device inlet temperature based on the data recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) of this section.

(iii) List the highest opacity level measured, based on the data recorded under paragraph (d)(2)(i)(A) of this section.

(iv) The total number of days that the minimum number of hours of data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, and particulate matter control device temperature data were not obtained based on the data recorded under paragraph (d)(6) of this section.

(v) The total number of hours that data for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load, and particulate matter control device temperature were excluded from the calculation of average emission concentrations or parameters based on the data recorded under paragraph (d)(7) of this section.

(2) The summary of data reported under paragraph (g)(1) of this section shall also provide the types of data specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section for the calendar year preceding the year being reported, in order to provide the Administrator with a summary of the performance of the affected facility over a 2-year period.

(3) The summary of data including the information specified in paragraphs (g)(1) and (g)(2) of this section shall highlight any emission or parameter levels that did not achieve the emission or parameter limits specified under this subpart.

(4) A notification of intent to begin the reduced dioxin/furan performance testing schedule specified in § 60.58b(g)(5)(iii) of this section during the following calendar year.

(h) The owner or operator of an affected facility located within a small or large municipal waste combustor plant shall submit a semiannual report that includes the information specified in paragraphs (h)(1) through (h)(5) of this section for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified under this subpart, according to the schedule specified under paragraph (h)(6) of this section.

(1) The semiannual report shall include information recorded under paragraph (d)(3) of this section for sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, particulate matter control device inlet temperature, and opacity.

(2) For each date recorded as required by paragraph (d)(3) of this section and reported as required by paragraph (h)(1) of this section, the semiannual report shall include the sulfur dioxide, nitrogen oxides, carbon monoxide, municipal waste combustor unit load level, particulate matter control device inlet temperature, or opacity data, as applicable, recorded under paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(D) and (d)(2)(i)(A) of this section, as applicable.

(3) If the test reports recorded under paragraph (d)(9) of this section document any particulate matter, opacity, cadmium, lead, mercury, dioxins/furans, hydrogen chloride, and fugitive ash emission levels that were above the applicable pollutant limits, the semiannual report shall include a copy of the test report documenting the emission levels and the corrective actions taken.

(4) The semiannual report shall include the information recorded under paragraph (d)(15) of this section for the carbon injection system operating parameter(s) that are the primary indicator(s) of carbon mass feed rate.

(5) For each operating date reported as required by paragraph (h)(4) of this section, the semiannual report shall include the carbon feed rate data recorded under paragraph (d)(4)(iii) of this section.

(6) Semiannual reports required by paragraph (h) of this section shall be submitted according to the schedule specified in paragraphs (h)(6)(i) and (h)(6)(ii) of this section.

(i) If the data reported in accordance with paragraphs (h)(1) through (h)(5) of this section were collected during the first calendar half, then the report shall be submitted by August 1 following the first calendar half.

(ii) If the data reported in accordance with paragraphs (h)(1) through (h)(5) of this section were collected during the second calendar half, then the report shall be submitted by February 1 following the second calendar half.

(i) The owner or operator of an air curtain incinerator subject to the opacity limit under § 60.56b shall submit the results of the initial opacity performance test and all subsequent annual performance tests recorded under paragraph (e) of this section. Annual performance tests shall be submitted by February 1 of the year following the year of the performance test.

(j) All reports specified under paragraphs (a), (b), (c), (f), (g), (h), and (i) of this section shall be submitted as a paper copy, postmarked on or before the submittal dates specified under these paragraphs, and maintained onsite as a paper copy for a period of 5 years.

(k) All records specified under paragraphs (d) and (e) of this section shall be maintained onsite in either paper copy or computer-readable format, unless an alternative format is approved by the Administrator.

(l) If an owner or operator would prefer to select a different annual or semiannual date for submitting the periodic reports required by paragraphs (g), (h) and (i) of this section, then the dates may be changed by mutual agreement between the owner or operator and the Administrator according to the procedures specified in § 60.19(c) of subpart A of this part.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 60

[AD–FRL–5327–1]

Standards of Performance for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action revises the "Standards of Performance for Municipal Waste Combustors" (subpart Ea). These amendments are being made to improve the clarity of subpart Ea and to make subpart Ea consistent with subparts Eb and Cb. Because the amendments clarify regulatory text and make subpart Ea consistent with subparts Eb and Cb, the Agency does not anticipate receiving adverse comments. Consequently the amendments are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before January 18, 1996, unless a public hearing is requested by December 29, 1995. If a hearing is requested, written comments must be received by February 2, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 29, 1995. If a hearing is held, it will take place on January 3, 1996, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–89–08 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C., 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Donna Collins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5578.

Docket. Docket Nos. A–89–08 and A–90–45, containing supporting information, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW, Washington, D.C. 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** notice will automatically go into effect on the date specified in this rule. If significant adverse comments are timely received on any amendment, that amendment of the direct final rule will be withdrawn and all public comments received on that amendment will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplementary information, the detailed rationale, and the rule amendments, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (the ICR number is 1506.4, with an OMB approval number 2060–0210) may be obtained from Sandy Farmer, Regulatory Information Division (Code 2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NSPS will have no significant impact on the information collection burden estimates made previously. The burden will be reduced slightly. Consequently, the ICR has not been revised.

Executive Order 12291 Review

The MWC NSPS promulgated on February 11, 1991 was considered a "major rule" under Executive Order 12291 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. The EPA concludes these amendments would have a negligible impact on the results of the RIA and the change is considered to be within the flexibility of the analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–30256 Filed 12–18–95; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5327–4]

New Source Performance Standards and Emission Guidelines for Municipal Waste Combustors; Combustion of Lead-Acid Vehicle Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice/Review of decision.

SUMMARY: On December 20, 1989, the U.S. Environmental Protection Agency proposed standards of performance for new MWC's and emission guidelines for existing MWC's under section 111 of the Clean Air Act (Act). The proposed standards and guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. On February 11, 1991, the EPA promulgated standards and guidelines for new and existing MWC's. The promulgated standards and guidelines did not prohibit the combustion of lead-acid vehicle batteries. The decision not to include a prohibition on the combustion of lead-acid vehicle batteries was challenged in the U.S. Court of Appeals. The U.S. Court of Appeals issued its decision on July 14, 1992 and remanded the issue of lead-acid vehicle battery combustion to the EPA for further explanation of its decision to remove the lead-acid battery combustion prohibition from the 1991 MWC regulations. This supplemental notice responds to the remand.

In response to the remand, the EPA presents the following discussion on the issue of lead-acid battery combustion in MWC's. Based on the information and test data discussed below, the EPA concludes it is unnecessary to include lead-acid battery combustion restrictions in the standards or guidelines and no lead-acid battery combustion prohibitions are being established. This notice describes the basis of the EPA's decision

ADDRESSES: *Docket:* Docket No. A–89–08, containing the information considered by the EPA in reaching a decision with respect to lead-acid battery combustion, is available for public inspection and copying between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday excluding Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M1500, 1st floor, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5264.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this **Federal Register** notice.

I. Background
II. Basis of the EPA's 1991 Decision
III. Supplemental Information on Lead-Acid Batteries in Municipal Solid Waste
IV. Supplemental Information on the Effects of Lead-Acid Battery Combustion on MWC Emissions
V. Conclusions Regarding the EPA's 1991 Decision

I. Background

On December 20, 1989, the EPA proposed standards (subpart Ea) and guidelines (subpart Ca) for new and existing MWC's under section 111 of the Act, 42 U.S.C. section 7411. The proposed standards and guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. The EPA's intent in proposing the prohibition was to reduce the amount of lead (Pb) in the municipal solid waste (MSW) stream and, therefore, reduce the potential for Pb emissions from MSW combustion. Specifically, under the proposed standards and guidelines, all MWC's would be prohibited from combusting lead-acid batteries weighing more than 5 kilograms (kg) (11 pounds (lb)) (i.e., automobile-type batteries). Lead-acid batteries would have been separated from MSW by onsite mechanical or manual separation, a community-based material separation (recycling) program, or a combination thereof prior to combustion of the MSW. Monthly records and annual reports of the weight of batteries separated from the MSW stream would have been required.

Many public comments were received on the 1989 proposed standards and guidelines; some supported the combustion prohibition, others did not. Some commenters cited studies indicating that lead-acid batteries contribute to over 50 percent of the Pb found in the MSW stream. Other commenters questioned whether lead-acid batteries are actually a major source of Pb in MWC emissions.

Several comments on the 1989 proposal indicated that it would be too difficult or too costly to separate lead-acid batteries from MSW, even though technologies were commercially available for identifying large Pb objects in MSW. Other comments encouraged the use of deposit or mandatory take-back programs to encourage recycling and reduce the number of batteries being disposed of as MSW. Finally, several commenters felt that an absolute prohibition on combustion of batteries was unworkable and that 100-percent compliance would be impossible to achieve because neither deposit/take-back systems nor screening devices could ensure removal of all batteries from MSW. These commenters argued that requiring a "best effort" or "reasonable effort" to remove batteries was more reasonable and enforceable.

The final standards and guidelines promulgated on February 11, 1991 (subparts Ca and Ea) did not prohibit the combustion of lead-acid batteries. The EPA stated in the preamble to the 1991 standards and guidelines that although lead-acid batteries are a significant source of Pb in MSW, there are already regulatory mechanisms in place to discourage lead-acid battery combustion. In addition, the EPA stated that many commenters questioned whether it would be possible to achieve 100-percent compliance with a prohibition. For these reasons, the Agency did not believe that a prohibition was necessary, and one was not included in the standards and guidelines promulgated on February 11, 1991.

The decision by the EPA to delete the lead-acid battery combustion prohibition from the promulgated standards and guidelines was challenged in the U.S. Court of Appeals by the Natural Resources Defense Council (NRDC), the State of New York, and the State of Florida. The petitioners argued that if 100-percent compliance with the prohibition was not possible, then the EPA could have adopted a lesser restriction (such as a 99- or 95-percent ban) or could have required a best or reasonable effort to prevent battery combustion. The petitioners also argued that the mere existence of other regulations and programs to discourage lead-acid battery combustion and to promote recycling is not sufficient to explain why some type of combustion prohibition would not constitute the best demonstrated technology for reducing emissions if lead-acid battery combustion is a significant source of Pb emissions. The case was argued in court on February 6, 1992.

The U.S. Court of Appeals issued its decision on July 14, 1992. The Court remanded the issue of lead-acid vehicle battery combustion to the EPA and asked the EPA to explain its decision to remove the lead-acid battery combustion prohibition from the 1991 MWC standards and guidelines. A subsequent consent decree among the Sierra Club, NRDC, and the EPA established a schedule for the EPA to respond to the remand. The consent decree requires a final response to be published in the **Federal Register**. This notice constitutes the EPA's response to the remand.

II. Basis of the EPA's 1991 Decision

At the time the MWC standards and guidelines were promulgated in 1991, there was a lack of sufficient data to support a decision to adopt a lead-acid battery combustion prohibition. Only two studies were available that quantified the contribution of lead-acid batteries to the concentration of Pb in MSW. One study was based on a "life-cycle" analysis of products containing Pb that may become part of MSW and was not based on an analysis of actual MSW composition or MWC emissions data. Only one study, conducted in 1987 at a materials recovery facility in Gallatin, Tennessee, recorded the frequency of lead-acid batteries in MSW by sampling actual MSW. At the same time, there were no data available on the effect of lead-acid batteries on MWC emissions or on the effect of lead-acid batteries relative to other sources of Pb in MSW. Finally, the information available on the feasibility and effectiveness of lead-acid battery detection and removal procedures at MWC's was incomplete and inconclusive at the time the 1991 MWC standards and guidelines were promulgated.

As a result, the EPA had no reliable data on which to estimate the emission reductions or other environmental benefits that would be gained from a lead-acid battery combustion prohibition. The EPA also had no basis for estimating the cost impacts of such a prohibition. Furthermore, between proposal and promulgation of the standards and guidelines, the 1990 Amendments to the Clean Air Act became law. Section 129 of the 1990 Amendments required the EPA to reexamine the 1991 MWC regulations and also to establish numerical emission limits for Pb and other metals. Because of these requirements and the lack of sufficient data on the issue of lead-acid battery combustion in 1991, the EPA determined it would be more effective not to promulgate regulations in 1991. Instead, the EPA indicated ti would address lead-acid battery combustion at the same time it investigated and established numerical Pb emission limits under section 129.

The EPA has reviewed the lead-acid battery combustion issue. Additional data that have become available since the 1991 standards and guidelines were promulgated have been reviewed. These data confirm the EPA's original decision not to promulgate standards and guidelines to prohibit lead-acid battery combustion. These new data are discussed in sections III and IV, below, of this notice.

III. Supplemental Information on Lead-Acid Batteries in Municipal Solid Waste

The EPA supports a hierarchical integrated solid waste management (ISWM) approach. At the top of the hierarchy is solid waste reduction, followed by reuse and recycling. At the bottom of the ISWM hierarchy are disposal options including solid waste combustion or landfilling of the solid waste fraction that cannot be reduced, reused, or recycled.

In 1992, approximately 87.8 million used lead-acid batteries were generated in the United States. Most of these (about 66.7 million) were passenger car and light truck batteries; the remainder included batteries for heavy equipment, tractors, marine applications, motorcycles, aircraft, golf carts, and other miscellaneous uses. In 1992, the recycling rate for used lead-acid batteries was 94.4 percent. Recycling rates for 1987 through 1991 were 88.6, 91.0, 95.3, 97.8, and 96.8 percent, respectively. Lead-acid batteries are recycled at specialized recycling facilities known as secondary lead smelters. These facilities recover the Pb metal and compounds, plastic case material, and sulfuric acid electrolyte and, therefore, represent the best treatment option for used lead-acid batteries.

The recycling rate for used lead-acid batteries is relatively high because of the economic value of the lead they contain and because of the recycling infrastructure that is available. Lead is an internationally traded commodity and is subject to price fluctuations over which the battery manufacturers and secondary lead smelters have no control. In order to keep the price of lead-acid batteries constant, battery manufacturers and their distributors collect used batteries. The manufacturers exchange these batteries for an equivalent amount of recycled Pb bullion from secondary lead smelters, instead of having to purchase Pb at the current market price. The manufacturer pays the smelter only a fixed "tolling fee" for the cost of processing the used batteries into Pb bullion.

The battery manufacturers and distributors collect the used batteries from their retailers who, in turn, collect them from consumers purchasing new batteries. To encourage consumers to return used batteries, retailers accept used batteries for recycling, even without the purchase of a new battery. Most distributors and retailers will charge the consumer a "core charge," usually between $5 and $10, if a used battery is not returned when a new battery is purchased. The core charge is refunded to the consumer if a used battery is later brought in after it has been replaced with the new battery.

Several nationwide battery distributors participate in a battery collection network similar to the one described above. According to one distributor contacted by the EPA, battery collection and recycling networks extend to every county in every State in the United States. Therefore, no used lead-acid batteries should be discarded in MSW for lack of a collection point for recycling.

Although there are strong economic incentives to encourage recycling, many States have also adopted regulations to encourage lead-acid battery recycling. A total of 37 States have adopted battery recycling laws based on a model rule developed by the Battery Council International (BCI). The BCI model rule encourages lead-acid battery recycling at the retailer level through mandatory take-back and deposit requirements. Only five States in which MWC's are located have not adopted a battery recycling rule based on the BCI model rule. However, in the service area of the MWC's located in these five States, there are retailers that have voluntarily adopted a take-back and deposit program or there are battery collection sites as part of household hazardous waste collection programs.

Based on a lead-acid battery recycling rate of 94.4 percent and a total of 87.8 million used batteries generated per year, approximately 5 million automotive-type lead-acid batteries were not recycled in 1992. Some of these batteries enter the MSW stream and are disposed of in landfills or MWC's. Some used batteries are stored in household garages or basements and then indirectly enter the MSW stream or the recycling network. A survey of 1,000 households found that 19 percent of households had at least one old battery (7 percent had one battery, 8 percent had two or three, 2 percent had four or five, and 2 percent had six or more). As many as 45 million batteries may be in storage in individual households. Battery storage by households, therefore, may represent a significant reservoir of automotive-type lead-acid batteries that do not immediately enter the MSW stream or the recycling system.

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Only limited data are available on the actual concentration of lead-acid batteries in MSW. A 1987 study at a materials recovery facility in Gallatin, Tennessee, removed about 70 batteries from 6,332 megagrams (Mg) (6,965 tons) of MSW over a 3-month period. This is equivalent to about one battery per 90 Mg (100 tons) of MSW. However, contacts with other material recovery facility operators indicate that the concentration of lead-acid batteries in MSW may range from one battery per 300 Mg of MSW up to one battery per 700 Mg MSW. Where lead-acid battery collection/separation programs have been implemented, battery contamination levels of less than one battery per 500 Mg of MSW are probably typical. One of the facilities contacted by the EPA reported finding no batteries in the MSW inspected at the facility over a 6-month period during which the facility processed 4,000 tons of MSW per month.

One lead-acid automotive battery (containing about 20 pounds of Pb) per 500 Mg (550 tons) of MSW is equivalent to a Pb concentration in MSW of about 20 parts per million (ppm). However, lead-acid batteries are not the sole source of Pb in MSW. Other sources are lead foils, light bulbs, circuit boards in electrical devices, automobile wheel weights, polyvinyl chloride plastics, yard waste, wood, food, textiles, paper, and inks for some newspapers, magazines, and packaging. One 1988 report estimated that the combustible fraction of MSW had a Pb concentration of 330 ppm based on a life-cycle analysis of lead-containing products.

The concentration of Pb in MSW can be estimated from the concentrations of Pb in MWC ash. There is a relatively constant relationship between the weight of MSW combusted and the weight of ash produced (bottom ash plus fly ash collected from the air pollution control devices (APCD's)). Furthermore, nearly all of the Pb (greater than 99 percent) entering the MWC in the MSW stream is retained in the bottom ash from the MWC and residue (ash) discharged from the APCD. The typical Pb concentration in combined MWC ash and APCD residue ash in about 2000 ppm, by weight, and combined ash represents about 30 percent, by weight, of the original MSW combusted. Based on these relationships, the estimated lead concentration in MSW is about 600 ppm. This estimate is considered to be a good estimate of the Pb concentration in MSW.

Based on a Pb concentration in MSW of 600 ppm, one battery per 100 tons of MSW would contribute about 100 ppm of Pb, or 16 percent of the total Pb in MSW. One battery per 500 tons of MSW would contribute about 20 ppm of Pb, or about 3 percent of total Pb input. At these contribution levels, additional efforts to remove lead-acid batteries from the MSW entering an MWC would have little impact on the amount of lead entering the MWC and little effect on controlled lead emissions.

IV. Supplemental Information on the Effects of Lead-Acid Battery Combustion on MWC Emissions

The remand requires the EPA to explain why it did not include a lead-acid battery prohibition in the February 11, 1991 standards and guidelines. The remand raises the question of whether lead-acid battery removal from MSW would reduce Pb emissions from MWC's. It is clear that Pb is contained in both the MSW stream being combusted and in MWC emissions discharged to the atmosphere. However, it is not clear whether uncontrolled and controlled Pb emissions are proportional only to the total amount of Pb input, or whether they may also be related to the form in which Pb or Pb compounds occur in the MSW. That is, is Pb more efficiently volatilized when it is in the metallic form, such as in lead-acid batteries, than when it is a trace component of paper, plastics, or other MSW material?

In order to determine the effect of lead-acid battery combustion on MWC emissions, a test program was sponsored by Environment Canada, the EPA, the International Lead Zinc Research Organization, and the Greater Vancouver Regional District in British Columbia, Canada. The test program studied the effect of lead-acid batteries on MWC stack emissions and on Pb levels in the fly ash and bottom ash by intentionally spiking MSW being combusted with lead-acid batteries.

Testing was performed on a 240 Mg/day (265 ton/day) mass burn/waterwall combustion unit at the Burnaby, British Columbia, MWC in June 1991. This MWC has a spray dryer/fabric filter-type acid gas/particulate matter APCD. The testing consisted of spiking MSW fed to the MWC unit with lead-acid batteries at the rate of four batteries per hour. This spiking increased the Pb input to the unit by about eight times (800 percent increase), from about 7 kg (15 lb) per hour (baseline) to about 56 kg (125 lb) per hour. The spiking was equivalent to 40 batteries per 90 Mg (100 tons) of MSW, or a Pb concentration in the MSW of about 4,000 ppm.

At the Burnaby MWC, about 1 hour is needed for MSW to travel from one end of the combustion grate to the other. At a spiking rate of four batteries per hour, there were four batteries, on average, on the grate at any given time during the spiking tests.

Testing at the Burnaby MWC consisted of 10 4-hour test runs over a 5-day period. Spiking with lead-acid batteries was performed during two of the runs. Other runs served as baseline control runs. During each run, the MSW fed to the unit was sampled, sorted into 78 categories, and analyzed for metals content. This test is the first to perform controlled spiking of lead-acid batteries to an MWC to study their effect on stack Pb emissions. It is also one of the most through analyses of the metals content of MSW.

The spiking of batteries to the Burnaby MWC did not measurably alter the Pb concentration in the stack gases either before or after the APCD. There were significant Pb increases in the ash residues from the boiler and from below the combustor grate. In the boiler, Pb increased in the section where the temperature is low enough to promote lead chloride (PbCl) condensation. The Pb increase in the grate siftings ash is caused by the Pb metal and Pb sulfate in the battery melting and dripping through the grate and forming beads of Pb metal in the grate siftings and bottom ash. The Pb in lead-acid batteries is not exposed to the appropriate conditions to be volatilized and carried into the flue gas to the APCD's or to the stack. The results of the Burnaby MWC testing program are summarized in table 1.

TABLE 1.—LEAD CONCENTRATION AT AIR POLLUTION CONTROL DEVICE INLET AND OUTLET DURING CONTROL AND BATTERY SPIKING RUNS

Test condition	APCD inlet (µg/dscm)[a]	APCD outlet (µg/dscm)[a b]	APCD efficiency (percent)
Baseline condition	8,764	51.8	99.4
(Range)		(42.0–61.6)	

TABLE 1.—LEAD CONCENTRATION AT AIR POLLUTION CONTROL DEVICE INLET AND OUTLET DURING CONTROL AND BATTERY SPIKING RUNS—Continued

Test condition	APCD inlet (µg/dscm)[a]	APCD outlet (µg/dscm)[a b]	APCD efficiency (percent)
Spiking test	6,412	56.0	99.1
(Range)	(3766–9058)	(47.6–63.0)	

[a] Micrograms per dry standard cubic meter, corrected to 7 percent oxygen; original data were reported at 11 percent oxygen.
[b] The APCD consisted of a spray dryer followed by a fabric filter.

In summary, lead-acid batteries do not appear to be a measurable source of stack gas Pb emissions. Lead emissions from MWC's result from other sources of Pb in MSW and prohibiting lead-acid battery combustion is unnecessary.

V. Conclusions Regarding the EPA's 1991 Decision

Based on the information discussed in sections III and IV of this notice, the EPA has determined that lead-acid batteries do not measurably contribute to Pb stack emissions from MWC's. Prohibiting the combustion of lead-acid batteries would not reduce stack gas Pb emissions. Furthermore, lead-acid batteries only represent a small fraction of the Pb found in MSW entering MWC's because most batteries (greater than 90 percent) are being recycled. There are battery retailers in every community in the United States that will accept used lead-acid batteries for recycling. Relative to the lead-acid battery remand discussed in section I of this notice, the EPA is not proposing any change to the standards or guidelines promulgated February 11, 1991 for existing and new MWC's (40 CFR 60.30a and 40 CFR 60.50a) and is not including a prohibition on the combustion of lead-acid batteries in the subpart Eb standards or subpart Cb guidelines promulgated elsewhere in today's **Federal Register**.

List of Subjects

Environmental Protection, Air pollution control.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–30255 Filed 12–18–95; 8:45 am]

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Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405
Higher Education Challenge Grants Program, Administrative Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3405

Higher Education Challenge Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new Part 3405 to title 7, subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering Higher Education Challenge Grants Program conducted under the authority of section 1417(b)(1) of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152). This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, comments must be received on or before January 18, 1996.

ADDRESSES: Comments should be sent to Dr. Jeffrey L. Gilmore, Higher Education Grant Programs Manager, Science and Education Resources Development, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2251, Washington, DC 20250–2251. Comments may also be sent via electronic mail to jgilmore@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been reviewed and approved by the Office of Management and Budget (OMB) and given the OMB Document Nos. 0524–0022, 0524–0024, and 0524–0030. The public reporting burden for the information collections contained in these regulations (Forms CSRS–663, CSRS–708, CSRS–711, CSRS–712, and CSRS–713 as well as the Proposal Summary and Proposal Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Analyst, OIRM, Ag Box 7630, Washington, DC 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Executive Order No. 12866

This proposed rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Executive Order No. 12612

This rule involves no policies that have federalism implications under Executive Order No. 12612, Federalism, dated October 26, 1987.

Executive Order No. 12778

This rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform, and the required certification has been made to OMB. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document proposes to add a new part 3405 to title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Higher Education Challenge Grants Program. Under the authority of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(1)), the Secretary of Agriculture is authorized to conduct competitive grant programs to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention, to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences. The issuance of this rule will establish and codify the administrative procedures to be followed annually in the solicitation of competitive grant proposals, the evaluation of such proposals, and the award of grants under this program.

The Challenge Grants Program is intended to assist colleges and universities in the United States, having a demonstrable capacity to carry out the teaching of the food and agricultural sciences, in providing high quality educational programs in the food and agricultural sciences. These programs will, in turn, attract outstanding students and produce graduates capable of strengthening the Nation's food and agricultural scientific and professional work force.

List of Subjects in 7 CFR Part 3405

Grant programs—agriculture, Agriculture higher education.

For the reasons set forth in the preamble, it is proposed to amend title 7, subtitle B, chapter XXXIV, of the Code of Federal Regulations by adding part 3405 to read as follows:

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

Subpart A—General Information

Sec.
3405.1 Applicability of regulations.
3405.2 Definitions.
3405.3 Institutional eligibility.

Subpart B—Program Description

3405.4 Purpose of the program.
3405.5 Matching funds.
3405.6 Scope of program.
3405.7 Joint project proposals.
3405.8 Complementary project proposals.
3405.9 Use of funds for facilities.

Subpart C—Preparation of a Proposal

3405.10 Program application materials.
3405.11 Content of a proposal.

Subpart D—Submission of a Proposal

3405.12 Intent to submit a proposal.
3405.13 When and where to submit a proposal.

Subpart E—Proposal Review and Evaluation

3405.14 Proposal review.
3405.15 Evaluation criteria.

Subpart F—Supplementary Information

3405.16 Access to peer review information.
3405.17 Grant awards.
3405.18 Use of funds; changes.
3405.19 Monitoring progress of funded projects.
3405.20 Other Federal statutes and regulations that apply.
3405.21 Confidential aspects of proposals and awards.
3405.22 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3405.1 Applicability of regulations.

(a) The regulations of this part only apply to competitive Higher Education Challenge Grants awarded under the provisions of section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)), to strengthen institutional capacities, including curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention. Section 1405 of NARETPA (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. It authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other U.S. colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, for a period not to exceed 5 years, to administer and conduct programs to respond to identified State, regional, national, or international educational needs in the food and agricultural sciences.

(b) To the extent that funds are available, each year CSREES will publish a **Federal Register** notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The targeted need area(s) to be supported or, if the entire scope of a particular targeted need area is not to be supported, the specific special interest(s) within that targeted need area to be supported;

(ii) The degree level(s) to be supported;

(iii) The maximum project period a proposal may request;

(iv) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(v) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint project proposals will be counted toward the institutional maximum.

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSRS–711, "Intent to Submit a Proposal," is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The minimum project period a proposal may request;

(v) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vi) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(vii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(viii) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(ix) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year; and

(x) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3405.2 Definitions.

As used in this part:

(a) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(b) *Authorized organizational representative* means the president of the institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

(c) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(d) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(e) *Citizen or national of the United States* means:

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(f) *College* or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of

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graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such States to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(g) *Complementary project proposal* means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

(h) *Department* or *USDA* means the United States Department of Agriculture.

(i) *Eligible institution* means land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences.

(j) *Eligible participant* means, for purposes of § 3405.6(b), Faculty Preparation and Enhancement for Teaching, and § 3405.6(f), Student Recruitment and Retention, an individual who: Is a citizen or national of the United States, as defined in § 3405.2(e); or Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under § 3405.2(e)(2), documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

(k) *Food and agricultural sciences* means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

(l) *Grantee* means the institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

(m) *Joint project proposal* means a proposal for a project, which will involve the applicant institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant must meet the definition of "eligible institution" as specified in § 3405.2(i); the other institutions participating in a joint project proposal are not required to meet the definition of "eligible institution" as specified in § 3405.2(i), nor required to meet the definition of "college" or "university" as specified in § 3405.2(f).

(n) *Land-grant colleges and universities* means those institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307 and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including Tuskegee University.

(o) *Matching* or *Cost-sharing* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(p) *Peer review panel* means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(q) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(r) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in § 3405.2(a) of this part.

(s) *Project* means the particular activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

(t) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(u) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(v) *State* means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

(w) *Teaching* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

(x) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

(y) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

§ 3405.3 Institutional eligibility.

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. Awards may be made only to eligible institutions as defined in § 3405.2(i).

Subpart B—Program Description

§ 3405.4 Purpose of the program.

The Department of Agriculture is designated as the lead Federal agency for higher education in the food and agricultural sciences. In this context, CSREES has specific responsibility to initiate and support projects to strengthen college and university teaching programs in the food and agricultural sciences. One national initiative for carrying out this responsibility is the competitive Higher Education Challenge Grants Program. A primary goal of the program is to attract and ensure a continual flow of outstanding programs and to provide

them with an education of the highest quality available anywhere in the world and which reflects the unique needs of the Nation. It is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will:

(a) Address a State, regional, national, or international educational need;

(b) Involve a creative or nontraditional approach toward addressing that need which can serve as a model to others;

(c) Encourage and facilitate better working relationships in the universities and the private sector, to enhance program quality and supplement available resources; and

(d) Result in benefits which will likely transcend the project duration and USDA support.

§ 3405.5 Matching funds.

Each application must provide for matching support from a non-Federal source. CSREES will cite in the program announcement the required percentage of institutional cost sharing.

§ 3405.6 Scope of program.

This program supports projects related to strengthening undergraduate or graduate teaching programs as specified in the annual program announcement. Only proposals addressing one or more of the specific targeted need areas(s) identified in the program announcement will be funded. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curiculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Targeted need areas will consist of one or more of the following:

(a) *Curricula design and materials development.* (1) The purpose of this initiative is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) *Faculty preparation and enhancement for teaching.* (1) The purpose of this initiative is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3405.6(b) must be an "eligible participant" as defined in § 3405.2(j) of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(vi) Increase understanding of the special needs of non-traditional students or students from groups that are underrepresented in the food and agricultural sciences workforce.

(c) *Instruction delivery systems.* (1) The purpose of this initiative is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(vii) Symposia, forums, regional or national workshops, etc.

(d) *Scientific instrumentation for teaching.* (1) The purpose of this initiative is to provide students in science-oriented courses the necessary

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experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) *Student experimental learning.* (1) The purpose of this initiative is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) *Student recruitment and retention.* (1) The purpose of this initiative is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3405.6(f) must be enrolled at an eligible institution and meet the requirement of an "eligible participant" as defined in § 3405.2(j) of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

(viii) Special recruitment programs to increase the participation of students from non-traditional or underrepresented groups in courses of study in the food and agricultural sciences.

§ 3405.7 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3405.2(m), which address regional or national problems and which will result overall in strengthening higher education in the food and agricultural sciences. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3405.8 Complementary project proposals.

Institutions may submit proposals that are complementary in nature as defined in § 3405.2(g). Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3405.9 Use of funds for facilities.

Under the Higher Education Challenge Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Proposal

§ 3405.10 Program application materials.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit grant applications under the program.

§ 3405.11 Content of a proposal.

(a) *Proposal cover page.* (1) Form CSRS–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSRS–712 must contain the pen-and-ink signatures of the Project Director(s) and authorized organizational representative for the applicant institution.

(3) The title of the project shown on the "Higher Education Proposal Cover Page" must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSRS–712, enter "Higher Education Challenge Grants Program."

(5) In block 8.a. of Form CSRS–712, enter "Teaching." In block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project and place an asterisk (*) immediately following the code for the primary targeted need area. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3405.2(g) and § 3405.2(m) of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the Higher Education Challenge Grants Program in a previous competition.

(b) *Table of contents.* For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project summary.* (1) A Project Summary should immediately follow the Table of Contents. The information provided in the Project Summary may be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panels meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3405.2(g) of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3405.2(m) of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(d) *Resubmission of a proposal.*—(1) *Resubmission of previously unfunded proposals.* If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSRS–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal: The fiscal year(s) in which the proposal was submitted previously; a summary of the peer reviewers' comments; and how these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed. This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see § 3405.11(i)). In either case, the location of this information should be indicated in the Table of Contents. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) *Resubmission of previously funded proposals.* The Higher Education Challenge Grants Program is not designed to support activities that essentially are repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding. Proposals that are sequential continuations or new stages of previously funded Challenge Grants Program projects must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project.

(e) *Narrative of a proposal.* The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the Table of Contents must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) *Potential for advancing the quality of education.*—(i) *Impact.* (A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the applicant institution or the grant period. Also discuss the probabilities of the project being adapted by other institutions. For example, can the project serve as a model for others?

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(ii) *Continuation plans.* Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans for eventual self-support built into the project, are plans being made to institutionalize the project, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) *Innovation.* Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) *Products and results.* Explain the expected products and results and their potential impact on strengthening food and agricultural sciences higher education in the United States.

(2) *Overall approach and cooperative linkages.*—(i) *Proposed approach.*—(A) *Objectives.* Cite and discuss the specific objectives to be accomplished under the project.

(B) *Plan of operation. (1)* Describe procedures for accomplishing the objectives of the project.

(2) Describe plans for management of the project to ensure its proper and efficient administration.

(3) Describe the way in which resources and personnel will be used to conduct the project.

(C) *Timetable.* Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close-out.

(ii) *Evaluation plans.* (A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3405.11(e)(2)(ii)(A).

(iii) *Dissemination plans.* Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) *Partnerships and collaborative efforts.* (A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail.

(3) *Institutional commitment and resources.*—(i) *Institutional commitment.* Discuss the institution's commitment to the project. For example, substantiate that the institution attributes a high priority to the project, discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals, explain how the project will help satisfy the institution's high-priority objectives, or show how this project is linked to and supported by the institution's strategic plan.

(ii) *Institutional resources.* Document the commitment of institutional resources to the project, and show that the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(f) *Key personnel.* A Form CSRS–708, "Summary Vita—Teaching Proposal," should be included for each key person associated with the project.

(g) *Budget and cost-effectiveness.*—(1) *Budget form.* (i) Prepare Form CSRS–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these administrative provisions, and can be justified as necessary for the successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) *Matching funds.* When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form CSRS–713 entitled "Applicant Contributions To Matching Funds," only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To be counted toward the matching requirements stated in § 3405.5 of this part, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant institution, which must include:

(1) The name, address, and telephone number of the donor;

(2) The name of the applicant institution;

(3) The title of the project for which the donation is made;

(4) The dollar amount of the cash donation; and

(5) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant institution, which must include:

(1) The name, address, and telephone number of the donor;

(2) The name of the applicant institution;

(3) The title of the project for which the donation is made;

(4) A good faith estimate of the current fair market value of the non-cash contribution; and

(5) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements referenced in § 3405.11(g)(2)(iii) (A) and (B) must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) *Chart on shared budget for joint project proposal.* For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating: the names of the participating institutions; the amount of funds to be disbursed to those institutions; and the way in which such funds will be used in accordance with items A through L of Form CSRS–713, "Higher Education Budget." If a proposal is not for a joint project, such a chart is not required.

(4) *Budget narrative.* (i) Discuss how the budget specifically supports the proposed project activities. Explain how such budget items as professional or technical staff, travel, equipment, etc., are essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area, or to promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(h) *Current and pending support.* Each applicant must complete Form CSRS–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(i) *Appendix.* Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to § 3405.11(d)). When possible, information in the Appendix should be presented in tabular format. A complete set for the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Submission of a Proposal

§ 3405.12 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSRS–711, "Intent to Submit a Proposal," provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does failure to send this form prohibit an institution from submitting a proposal.

§ 3405.13 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart E—Proposal Review and Evaluation

§ 3405.14 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials. Peer review panels will be selected and structured to provide optimum expertise and

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objective judgment in the evaluation of proposals.

§ 3405.15 Evaluation criteria.

The maximum score a proposal can receive is 200 points. Unless otherwise stated in the annual solicitation published in the **Federal Register**, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation criterion	Weight (points)
(a) Potential for advancing the quality of education:	
This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs	
(1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	20
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10
(3) Innovation—Are significant aspects of the project based on an innovation or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	20
(4) Products and results—Are the expected products and results of the project clearly explained? Do they have the potential to strengthen food and agricultural sciences higher education? Are the products likely to be of high quality? Will the project contribute to a better understanding of or improvement in the quality, distribution, effectiveness, or racial, ethnic, or gender diversity of the Nation's food and agricultural scientific and professional expertise base?	20
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	20
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous and/or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	10
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops?	10
(4) Partnerships and collaborative efforts—Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	20
(c) Institutional commitment and resources:	
This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project	
(1) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans?	10
(2) Institutional resources—Will the project have adequate support to carry out the proposed activities? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	10
(d) Key personnel:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	20
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	10
(f) Overall quality of proposal:	
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	10

Subpart F—Supplementary Information

§ 3405.16 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

§ 3405.17 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) *Organizational management information.* Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of the forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) *Notice of grant award.* The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3405.18 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved that are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3405.19 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, D.C. or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: A review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to

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disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3405.20 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR part 1 Subpart A—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017, as amended—Governmentwide Debarment Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3405.21 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3405.22 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, DC, this 11th day of December, 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

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Part IV

Nuclear Regulatory Commission

10 CFR Part 50

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels; Final Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for light-water-cooled nuclear power plants to clarify several items related to the fracture toughness requirements for reactor pressure vessels (RPV). The amendments will clarify the pressurized thermal shock (PTS) requirements, make changes to the Fracture Toughness Requirements and the Reactor Vessel Material Surveillance Program Requirements, and provide new requirements for thermal annealing of a reactor pressure vessel.

EFFECTIVE DATE: January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Alfred Taboada, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001, telephone: (301) 415–6014.

SUPPLEMENTARY INFORMATION: On October 4, 1994 (59 FR 50513), the NRC published in the **Federal Register** a proposed amendment to clarify several items related to fracture toughness requirements for reactor pressure vessels (RPV) and to add a new section on thermal annealing of a reactor vessel to 10 CFR Part 50.

Background

Maintaining the structural integrity of the reactor pressure vessel of light-water-cooled reactors is a critical concern related to the safe operation of nuclear power plants. To assure the structural integrity of RPVs, NRC regulations and regulatory guides have been developed to provide analysis and measurements methods and procedures to establish that each RPV has adequate safety margin for continued operation. Structural integrity of a RPV is generally assured through a fracture mechanics evaluation, including measurement or estimation of the fracture toughness of the materials which compose the RPV. However, the fracture toughness of the RPV materials varies with time. As the plant operates, neutrons escaping from the reactor core impact the vessel beltline materials (e.g. the materials that surround the reactor core), causing embrittlement of those materials. The NRC's regulations and regulatory guides related to RPV integrity provide the criteria and methods needed to estimate the extent of the embrittlement, to evaluate the consequences of the embrittlement in terms of the structural integrity of the RPV, and to provide methods to mitigate the deleterious effects of the embrittlement.

The NRC has several regulations and regulatory guides that establish criteria and procedures for assuring the structural integrity of RPVs. With the addition of the thermal annealing requirements in this rule and several regulatory guides, the regulatory documents contribute to a comprehensive set of regulations and regulatory guidance pertaining to RPV integrity.

This final rule adds requirements for thermal annealing of the RPV as a method for mitigating the effects of neutron irradiation (10 CFR 50.66) and amends the following:

1. The Pressurized Thermal Shock (PTS) rule (10 CFR 50.61).
2. Appendix G of 10 CFR Part 50, "Fracture Toughness Requirements."
3. Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements."

Overview of the Final Rule

PTS Rule (10 CFR 50.61)

This amendment to the PTS rule makes three changes:

1. The rule incorporates in total, and therefore makes binding by rule, the method for determining the reference temperature, RT_{NDT}, including treatment of the unirradiated RT_{NDT} value, the margin term, and the explicit definition of "credible" surveillance data, which is currently described in Regulatory Guide 1.99, Revision 2.
2. The section is restructured to improve clarity, with the requirements section giving only the requirements for the value for the reference temperature for end of life fluence, RT_{PTS}. The method for calculating RT_{PTS} is moved to a new paragraph of the rule.
3. Thermal annealing is identified as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}.

Thermal Annealing Rule (10 CFR 50.66)

The thermal annealing rule, 10 CFR 50.66, provides a consistent set of requirements for the use of thermal annealing to mitigate the effects of neutron irradiation and replaces the requirements for annealing in the current Appendix G of 10 CFR Part 50. The final rule requires, prior to initiation of thermal annealing, submittal of a Thermal Annealing Report containing: (1) A Thermal Annealing Operating Plan, (2) a Requalification Inspection and Test Program, (3) a Fracture Toughness Recovery and Reembrittlement Trend Assurance Program, and (4) Identification of Unreviewed Safety Questions and Technical Specifications Changes. The report must be submitted at least 3 years before the date at which the limiting fracture toughness criteria in 50.61 and Appendix G to Part 50 would be exceeded. This 3-year period is specified to provide the NRC staff with sufficient time to review the thermal annealing program. Under § 50.66(a), the NRC will, within three years of submission of a licensee's Thermal Annealing Report, document its views on the plan, including whether thermal annealing constitutes an unreviewed safety question.

In order to provide for public participation in the regulatory process, Section 50.66(f)(1) requires that the NRC hold a public meeting a minimum of 30 days before the licensee starts to thermal anneal the reactor vessel. The Commission will notify and solicit comments from cognizant local and state governments, and will publish a notice in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, in order to solicit comments from the public.

The thermal annealing operating plan must include an evaluation of the effects of temperature, and of mechanical and thermal stresses on the reactor and associated equipment such as containment, the biological shield, and attached piping, to demonstrate that the operability of the reactor will not be detrimentally affected. The bounding conditions of the temperatures and times used in this analysis define the proposed annealing conditions. If these conditions are exceeded during the vessel annealing, then the evaluation would no longer be valid, and the acceptability of the actual vessel annealing would have to be demonstrated as discussed below in the next paragraph.

Upon completion of the thermal annealing, the licensee must confirm in writing to the Director, Office of Nuclear Reactor Regulation (NRR), that the thermal annealing was performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program. Within 15 days of the licensee's written confirmation that the thermal annealing was completed in accordance with the

Thermal Annealing Plan, and prior to restart, the NRC shall: (1) Briefly document whether the thermal annealing was performed in compliance with the licensee's Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, with the documentation to be placed in the NRC public document room, and (2) hold a public meeting to: (1) permit the licensee to explain the results of the reactor vessel annealing to the NRC and the public, (2) allow the NRC to discuss its inspection of the reactor vessel annealing, and (3) provide an opportunity for the public to comment to the NRC on the thermal annealing. The licensee may restart its reactor after the meeting has been completed, unless the NRC orders otherwise. Within 45 days of the licensee's written confirmation that the thermal annealing was completed in accordance with the Thermal Annealing Operating plan and the Requalification Inspection and Test Program, the NRC staff shall complete full documentation of the NRC's inspection of the licensee's annealing process and place the documentation in the Public Document Room.

If the thermal annealing was completed but not performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, including the bounding conditions of the temperature and times as discussed above, the licensee must submit a summary of lack of compliance and a justification for subsequent operations. The licensee must also identify any changes to the facility which are attributable to the noncompliances which constitute unreviewed safety questions and any changes to the technical specifications which are required for operation as a result of the noncompliances. This identification does not relieve the licensee from complying with applicable requirements of the Commission regulations and the operating license, and if, as a result of the annealing operation, these requirements cannot be met, the licensee must obtain the appropriate exemption per 10 CFR 50.12. If unreviewed safety questions or changes to technical specifications are not identified as necessary for resumed operation, the licensee may restart after the NRC staff places a summary of its inspection of the thermal annealing in the Public Document Room, and the NRC holds a public meeting on the thermal annealing. On the other hand, if unreviewed safety questions or changes to technical specifications are identified as necessary for resumed operation, the licensee may restart only after the Director of NRR authorizes restart, the summary of the NRC staff inspection is placed in the public document room, and a public meeting on the thermal annealing is held.

The final Thermal Annealing Rule also sets forth the requirements that a licensee must follow if the thermal annealing was terminated prior to completion. In general, the process and requirements for partial annealing are analogous to the situations where the thermal annealing was completed; *viz.*, where the partial annealing was otherwise performed in compliance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee submits written confirmation of such compliance and may restart following, *inter alia*, holding of a public meeting on the annealing. By contrast, where the partial annealing was not performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee is required to submit a summary of lack of compliance and a justification for subsequent operations, and identify any changes to the facility which are attributable to the noncompliances which constitute unreviewed safety questions and changes to the technical specifications which are required for operation as a result of the noncompliances with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. If Unreviewed Safety Questions and/or changes to technical specifications are identified as necessary for resumed operation, the licensee may restart only after the Director of NRR authorizes restart and the public meeting on the thermal annealing is held.

Every licensee that either completes a thermal annealing or terminates an annealing but elects to take full or partial credit for the annealing shall provide a Thermal Annealing Results Report detailing: (1) The time and temperature profile of the actual thermal anneal, (2) the post-anneal RT_{NDT} and Charpy upper shelf energy values of the reactor material to be used in subsequent operations, (3) the projected post-anneal reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy, and (4) the projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the application. The report must be submitted within three months of completing the thermal anneal, unless an extension is authorized by the Director, NRR.

Two items of particular importance to the overall annealing are the recovery of fracture toughness and the degree of reembrittlement of the RPV beltline materials. This final rule provides alternative methods for determining these values, ranging from assessments using plant-specific materials to an assessment using a generic computation.

Two methods provided for evaluating annealing recovery are experimental methods to determine plant-specific annealing recovery, and a third method is a generic computational method. Experimental methods and the computational method are also provided for estimating recovery of RT_{NDT} and Charpy upper-shelf energy of the beltline materials. The experimental methods for estimating recovery of RT_{NDT} and the Charpy upper-shelf energy utilize either surveillance program specimens or material removed from the vessel beltline. The experimental methods provide a plant-specific estimate of recovery, rather than the generic value evaluated from the computational method. This final rule requires that surveillance specimens from "credible" surveillance programs must be used to develop plant-specific recovery data, if such specimens are available. This final rule does not require the removal of material from the RPV beltline to permit plant-specific evaluation of recovery.

As described previously, the computational method requires appropriate justification.

Post anneal reembrittlement trends of both the RT_{NDT} and the Charpy upper shelf energy must be estimated and monitored using a surveillance program described in the Thermal Annealing Report.

The reactor pressure vessel is perhaps the most important single component in the reactor coolant system. As such, ensuring its integrity is a fundamental element of plant safety. Thermal annealing is a positive action that could be taken to reduce the level of embrittlement in the pressure vessel beltline and, thereby, improve the ability of a pressure vessel to withstand accident loadings. While thermal annealing is a positive action, there are numerous complex technical questions regarding its application in the U.S. that are unanswered.

Thermal annealing of a commercial reactor pressure vessel has never been accomplished in the United States. Thermal annealing has been successfully employed in Eastern Europe and Russia on Russian-designed pressure vessels. However, there are significant differences between the U.S. and Russian designs in terms of the

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geometry of the pressure vessels, the attached piping, and the surrounding structures. The staff has observed one of these annealing operations. While informative, the East European and Russian experience does not provide answers to all of the potential questions related to annealing of U.S. designed pressure vessels.

Research analyses performed previously indicated the potential for plastic deformation of the main coolant piping for a typical U.S. plant design and anticipated annealing conditions. There are also questions regarding how thermal growth of the pressure vessel is treated, and the adequacy of the thermal and stress analyses used to predict response of the overall system under thermal annealing conditions. Additionally, there may be questions in other areas such as temperature limits for the concrete structures, and potential radiological hazards associated with removing and storing the reactor internals during the annealing process, and fire hazards associated with heating the vessel.

Recognition of the numerous complex technical questions related to thermal annealing, and of the potential benefits for operating nuclear power plants, has resulted in a cooperative effort, funded by the U.S. Department of Energy and the industry, to perform Annealing Demonstration Projects. Projects are planned to demonstrate two different annealing processes, evaluating heater designs and vessel designs. It is anticipated that the annealing demonstration projects will answer many of the generic questions regarding thermal annealing of U.S. pressure vessel and piping designs.

The thermal annealing report, required by the thermal annealing rule, is designed to facilitate a detailed review by the licensee of plant-specific questions and considerations in performing a thermal annealing. The proposed rule specifically discusses the potential for unreviewed safety questions and technical specification changes that may result from or be related to thermal annealing of the reactor pressure vessel. With completion of the demonstration projects and as the staff and industry gain experience with thermal annealing, many of the issues related to annealing will be better understood and related questions will be answered. However, until this experience is realized, the staff will critically review licensee determinations regarding unreviewed safety questions and the need for technical specification changes associated with each proposed thermal annealing.

The thermal annealing rule has been structured to provide time for the staff to thoroughly review the licensee's annealing plan and determination regarding unreviewed safety questions and the need for technical specification changes. If the staff identifies an unreviewed safety question or the need for a technical specification change, the licensee would be so notified and the existing NRC regulatory practices would be invoked to address the issues.

Appendix G of 10 CFR Part 50

Appendix G of 10 CFR Part 50 specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water-cooled nuclear power reactors. These requirements provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. The amendments to Appendix G are principally of a clarifying or a restructuring nature. Requirements for "volumetric inspection" and "additional evidence of fracture toughness" have been removed because they were unnecessary, given the inspection and performance demonstration programs currently required under 10 CFR 50.55a. The "additional evidence of fracture toughness" requirement in Section V.C.2 is incorporated in the "equivalent margins" analysis in Section IV.A.1 as a provisional method for developing fracture toughness data needed for that analysis.

The pressure-temperature and minimum permissible temperature requirements in Section IV have been restructured. The principal feature is the addition of a table which summarizes the pressure-temperature limit requirements and minimum temperature requirements as a function of the plant operating condition, the vessel pressure, whether fuel is in the vessel, and whether the core is critical. In addition, Section IV has been reworded to clarify the minimum permissible temperature requirement by indicating the criteria for use in determining the location in the component or material which must satisfy the minimum temperature requirement. This minimum temperature is defined in Section IV as the metal temperature of the controlling material in the region which has the least favorable combination of stress and temperature for the appropriate plant condition. An explicit statement has been added to require that pressure and leak tests of the reactor pressure vessel required by Section XI of the American Society of Mechanical Engineers Boiler & Pressure Vessel (B&PV) Code (ASME Code) must be completed before the core is critical.

The requirement that all pressure and leak tests of the RPV required by Section XI of the ASME Code must be completed before the core is critical is intended to prohibit the use of nuclear heat, i.e., core criticality, in the conduct of ASME, Section XI pressure and leak tests. The use of nuclear heat before the completion of such tests is not consistent with basic defense-in-depth nuclear safety principle for several reasons, including the hindrance of finding leaks with the vessel at such a high temperature and the potential for exacerbating the consequences of a vessel rupture (in the extremely unlikely event that it should occur) by having the core critical. The explicit prohibition of nuclear heat in these cases was discussed in a letter to Messrs. Reynolds and Stenger of the Nuclear Utility Backfitting and Reform Group from James M. Taylor, Executive Director of Operations, dated February 2, 1990.

The current requirements in 10 CFR Part 50, Appendix G, Section V. D. with respect to reactor vessel thermal annealing are being replaced by a sentence which references the new Thermal Annealing rule, 10 CFR 50.66.

Appendix H of 10 CFR Part 50

Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements" provides the rules for monitoring the changes in the fracture toughness properties of the RPV beltline materials due to irradiation embrittlement using a surveillance program. Appendix H references American Society for Testing and Materials (ASTM) standard E 185 ("Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels") for many of the detailed requirements of surveillance programs, and permits the use of integrated surveillance programs, wherein surveillance program capsules for one reactor are irradiated in another reactor.

Integrated surveillance programs are permitted under Section II.C of Appendix H of 10 CFR Part 50. One provision of this section is that "the amount of testing may be reduced if the initial results agree with predictions." This provision was deleted, although previous authorizations granted by the Director, Office of Nuclear Reactor Regulation, continue in effect.

A second change to Appendix H restructures Section II.C to clarify the requirements for integrated surveillance programs.

The other principal change to Appendix H clarifies the version of ASTM Standard E 185 that applies to the various portions of the surveillance programs. Appendix H recognizes the need to separate surveillance programs into two essential parts, specifically the design of the program and the subsequent testing and reporting of results from the surveillance capsules. Because the design of the surveillance program cannot be changed once the program is in place, the requirements for design of the surveillance program are static for each plant. However, the testing and reporting requirements are updated along with technical improvements made to ASTM standard E 185.

Request for Public Comments

At the request of the Commission, the proposed rule contained a request for public comments on the following specific issues related to the proposed regulation on thermal annealing:

1. The technical adequacy of the staff's guidance;
2. The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation;
3. Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart;
4. The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process; and
5. Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

The supplementary information section of the proposed rule also discussed the issue of opportunity for public participation in regulating thermal annealing of pressure vessels.

The response to the request for public comments on these issues, along with other items, are summarized below.

Summary of Comments

The following includes a summary of the comments received on the proposed rule, on the five issues identified by the Commission, and on the options for public participation in thermal annealing.

Comments were received from nine separate sources. These sources consist of five utilities, the Nuclear Energy Institute (NEI), the Nuclear Utility Backfitting and Reform Group (NUBARG) represented by the firm Winston & Strawn, one public citizens group (Ohio Citizens for Responsible Energy (OCRE)), and one nuclear steam system supplier (NSSS).

NEI provided detailed comments on 10 CFR 50.61, 10 CFR 50.66, Appendix G to 10 CFR Part 50, and Appendix H to 10 CFR Part 50, responded to the request for comments on the five issues related to thermal annealing and included detailed comments on the opportunities for public participation. The five utilities and the NSSS endorsed the NEI comments. Three of the five utilities provided additional comments on 10 CFR 50.61; one of the five utilities provided additional comments on 10 CFR Part 50, Appendix G; two of the utilities provided additional comments on 10 CFR Part 50, Appendix H; and one of the five utilities disagreed with the NEI position on the opportunity for public participation and submitted a separate comment. OCRE provided comments on the opportunity for public participation. NUBARG provided comments on the backfitting aspects of the proposed rule and the staff's backfit justification.

NEI and one of the utilities included comments on the Draft Regulatory Guide DG–1027, "Format and Content of Application for Approval for Thermal Annealing of Reactor Pressure Vessels," that was discussed in the proposed rule. These comments on Draft Regulatory Guide DG–1027 are being reviewed by the NRC staff and will be addressed separately in the resolution of comments on the regulatory guide.

The NRC reviewed the comments received on the proposed rule, the comments on the five questions related to thermal annealing and the issue of opportunities for public participation. The resolution of these comments is presented below.

PTS Rule (10 CFR 50.61)

Sixteen specific comments in the submittals from NEI and three utilities addressed 10 CFR 50.61. A general comment argued that both the existing 10 CFR 50.61 and the proposed modifications contained an excessive amount of prescriptive technical detail that limits licensee compliance flexibility. The commenters proposed that these prescriptive technical details be removed from the rule and placed in a regulatory guide. These commenters suggested that the rule not be issued until it has been written to contain only those requirements essential to regulate reactor pressure vessel embrittlement. A number of comments suggested changes that were clarifications to the proposed rule, including proposals to clarify the procedure for calculating the reference temperatures in the preservice condition, RT_{NDT}, and, at end of reactor life, RT_{PTS}. One comment noted that the proposed rule omitted part of the procedure in Regulatory Guide 1.99, presently being applied by the NRC, that permits adjustments for differences in chemistry between surveillance material and the vessel material when using credible surveillance data to calculate a best fit chemistry factor for transition temperature shifts due to irradiation. Several comments proposed changes in the criteria for establishing whether surveillance material data is credible that would result in a less restrictive basis for using surveillance data in determining the transition temperature shift. The comments argued that the proposed rule is ambiguous with respect to the use of information from other sources that contain limiting material for a specific plant and that the NRC must have the flexibility to approve use of such information on a case-by-case basis. Several comments proposed limiting the basis for making changes of RT_{PTS} subject to the approval of the Director, NRR.

The NRC recognizes that 10 CFR 50.61 contains an unusual amount of prescriptive material and that the comments proposing simplification have merit. Some changes to the rule have been made to provide flexibility, where appropriate. The NRC staff is evaluating subsequent changes that would be more performance based. However, the NRC staff believes that this rule, as written, is needed to ensure that plants apply the appropriate method for determining RT_{PTS} and that the appropriate reference to the thermal annealing rule be applied for the pressurized thermal shock situation.

A number of clarifications were made to the rule. The paragraphs dealing with the determination of RT_{PTS} were modified to make clear that RT_{PTS} is a unique, end of life, case of RT_{NDT} and to clarify the procedure for determining these values. As suggested, the adjustment procedure was added to the rule to permit accounting for differences in chemistry between surveillance materials and reactor vessel materials when calculating chemistry factors. With respect to the plant specific material surveillance data that is permitted to be used in a surveillance program, the rule was modified to make clear that such data includes results from other plant's surveillance programs and test reactors. Several clarifications were made to the criteria for determining credible material. The NRC determined that the requirements for approval by the Director, NRR, for

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changes in RT_{PTS} are appropriate and should not be modified.

Thermal Annealing Rule (10 CFR 50.66)

Twelve individual comments were received on the proposed Thermal Annealing Rule, 10 CFR 50.66. These comments included a number of suggestions for clarification of details of the proposed rule. Three of the comments addressed the requirements that, after the annealing operation, the reembrittlement rate of the reactor vessel due to neutron irradiation must be estimated and must be monitored using a surveillance program which conforms to Appendix H of 10 CFR 50, "Reactor Vessel Materials Surveillance Program." The comments are summarized as follows:

(1) The supplementary information section for the proposed rule is silent on what is acceptable if limiting material is not available. The rule should provide appropriate requirements on the method for monitoring reembrittlement after annealing for those plants that do not have limiting material for their surveillance program and the monitoring plans should be consistent with the preannealing surveillance program approved by the NRC staff;

(2) Appendix H does not define an acceptable post-anneal surveillance program, the reference to Appendix H should be deleted, and the post-anneal surveillance program should be defined in the annealing plan that is approved by the staff; and

(3) The term reembrittlement rate is unclear as to the period of time to be used for its determination, and a wording change is proposed for the requirement that would relate change in toughness to fluence accumulated after the anneal.

Three of the comments addressed the requirements in the proposed rule that the Thermal Annealing Operation Plan include time-temperature profiles which represent the annealing conditions that may not be exceeded during the annealing operation and are to be used for determining the amount of recovery of the fracture toughness of the material due to annealing. The comments suggested that, instead of a single time-temperature profile, bounding time and temperature conditions be established for the maximum values that would be used for thermal and stress analysis and to verify the re-qualification inspection and test program, and the minimum values that would be used to establish the amount of recovery of fracture toughness and for reembrittlement rate estimates. The bounding values would be based upon the estimated uncertainties in the times and temperatures and the actual annealing conditions should fall within these bounds.

Two comments addressed the section on Certification of Annealing Effectiveness. One comment suggested deleting the requirement in the proposed rule for certification of the annealing effectiveness and instead adding a provision in the Thermal Annealing Operating Plan that approval prior to subsequent power operation be required only if the anneal was not performed in accordance with the approved plan. The comment also suggested that, if the licensee terminates the annealing before achieving the specified time but otherwise maintains the annealing envelop such that no concern exists for stress or thermal damage, no additional constraints be imposed on subsequent operations and no credit be given for annealing. The second comment suggested that (1) the staff's review of the annealing report (certification report) need not be completed prior to reinitiating power operation if the anneal was performed in accordance with the approved Thermal Annealing Operating Plan, (2) reporting and quantification of the actual recovery results need not be reported unless the vessel was at or above the PTS screening criteria when annealing was started, and (3) the Thermal Annealing Operating Plan should specify the minimum content and a schedule for reporting the annealing results. The commenter provided a proposed list of criteria, content, and schedule for reporting the annealing results.

One comment stated that no guidance was provided in the proposed rule on what constitutes components "affected" by the annealing operation that are required to be reported in the Thermal Annealing Operating Plan. The comment suggested alternative wording that components to be reported should be structures and components that are expected to experience significant temperature gradient or stress variations during the thermal annealing operation. One comment suggested qualifying the provision in the proposed rule that the effects of localized high temperatures must be evaluated for changes in thermal and mechanical properties of the reactor vessel insulation for those cases where such changes may be negligible at annealing conditions. One comment suggested that the use of applicable material data, such as data from integrated surveillance programs, be an optional part of the computational methods for determining fracture toughness recovery.

The NRC reviewed the comments received on the proposed rule in detail. After consideration, the NRC reached the conclusion that most of the comments are not inconsistent with the intent of the proposed rule and in some cases reflect a need for clarification of the rule. In these cases, alternative wording that clarified the intent of the rule was substituted in the text. With respect to the comments on the requirement that reembrittlement rate after annealing must be monitored using a surveillance program, the NRC is aware that some plants do not have limiting materials for their existing preannealing surveillance programs. For these situations the staff has approved alternative surveillance plans on a case-by-case basis. Clearly, these plants will not have limiting material for surveillance programs for use in determining reembrittlement rates after annealing.

The NRC recognizes that Appendix H of 10 CFR Part 50, which is referenced in this rule, does not specifically address the surveillance of an annealed reactor vessel. However, the requirements of Appendix H to 10 CFR Part 50 apply to all reactors including the specific case of an annealed reactor vessel. To clarify the surveillance requirements of an annealed plant, the final rule has been modified to include, as suggested, that the post-anneal reembrittlement is to be monitored using a surveillance program defined in the Thermal Annealing Report and that the surveillance program must conform to the intent of Appendix H to 10 CFR Part 50.

The term reembrittlement "rate" in the proposed rule was intended to mean the projected amount of reembrittlement over a specific fluence period. It is recognized that reembrittlement is not a straight line function of fluence. Determination of reembrittlement rate is discussed in more detail in Draft Regulatory Guide 1.162, "Format and Content of Report for Thermal Annealing of Reactor Pressure Vessels." In Regulatory Guide 1.162, the approved method for estimating the reembrittlement rate, the lateral shift method, results in the same embrittlement trend as that used for the pre-anneal operating period. To avoid confusion the term "rate" has been changed to "trend" in the final rule and the regulatory guide.

The NRC agrees with the comments that the time and temperature profile required in the annealing operating plan should be bounding values. In this regard, Regulatory Guide DG–1027 calls for the thermal annealing operating plan to include identification of the limitations and permitted variations in temperature, time, heatup and cooldown rate. For clarification, the final rule has been modified to use the terms "bounding conditions for times and temperatures and heatup and cooldown schedules" to describe conditions that may not be exceeded during the annealing operation, and the lower limit time and temperature of the actual anneal is used for determining the projected recovery of fracture toughness by annealing.

The NRC considers that the intent of paragraphs (c), Completion or Termination of Thermal Annealing, and (d), Thermal Annealing Results Report, of the final rule to be consistent with the two comments on that subject. The final rule does not require that the NRC approve restart following the annealing operation if the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program was complied with. The NRC accepts the suggestion that the rule should be more specific on the items the licensee should include in the report and has included the list in the final rule.

Finally, the NRC agrees with the suggestion to make clear that a report is not required if:

(1) The licensee terminates the anneal prior to completion;

(2) The partial anneal was otherwise in accordance with the Thermal Annealing Plan;

(3) The licensee does not elect to take credit for any recovery. A statement was added to the Final Rule to cover the early termination situation.

The NRC has accepted the suggested clarifications of what constitutes an "affected" component and the qualification on the requirement to evaluate changes in properties on reactor vessel insulation if these are negligible. The NRC considers it unnecessary to include a reference in the rule to data from integrated surveillance programs as an optional part of the computational methods to determine fracture toughness recovery. Generic computational methods for this purpose are provided in the Regulatory Guide 1.162. However, the final rule does not prohibit use of alternative methods if adequate justification is provided.

Appendix G to 10 CFR Part 50

Two comments were received on the Appendix G to 10 CFR Part 50 of the proposed rule. The NEI comment, which was endorsed by five utilities and one NSSS organization, included a table with six items on Appendix G. The other comment on Appendix G was received from one of the five utilities.

Two of the comments identified typographical errors and suggested a change in organization to improve clarity. One of the comments suggested revising the rule to change the definition of reference temperature, RT_{NDT}, for cases where plants do not have data to comply with code procedures for determining RT_{NDT}. One comment suggested a change in the title of Table 1, "Pressure and Temperature Requirements," by adding to the title "For the Reactor Pressure Vessel" to make clear that this table does not apply to other components in the reactor coolant pressure system and proposed adding a footnote to the table for the same purpose. One comment identified an error in the minimum temperature requirements for the hydrostatic and leak testing of the pressure vessel without fuel when the vessel pressure is equal or below 20 percent of the vessel design pressure. One of the comments suggested that two of the entries in the table were new requirements when the table was intended to provide clarification. The utility's comment disagreed with the proposed rule change to prohibit the use of nuclear heat for the performance of vessel leak and hydrostatic testing. The utility contended that using nuclear heat, by providing a significant temperature margin above the pressure and temperature limit curves, greatly reduces the probability of brittle fracture and should be allowed.

The NRC corrected the typographical errors and corrected the minimum temperature requirement for the hydrostatic and leak testing of the pressure vessel at low vessel pressures and without fuel. The title to Table 1 was changed, as suggested, for clarification.

The NRC does not agree with the proposal to change the definition of RT_{NDT}. The situation described in the comment, when data is not available to comply with code procedures, is presently handled on a case-by-case basis in accordance with MEB Branch position, MEB 5–2. The NRC staff does not agree with the comment that the two requirements cited are new requirements. Item 2.2.c. and Item 2.2.d of Table 1 are in the existing ASME code requirement and in Paragraph IV.A.3. in the rule. The NRC also does not agree with the utility's comment that using nuclear heat greatly reduces the probability of brittle fracture. The reasons for this are set forth in the February 2, 1990, letter to Messrs. Reynolds and Stenger of NUBARG from James M. Taylor, Executive Director for Operations.

Appendix H to 10 CFR Part 50

Three comments were received on Appendix H to 10 CFR 50. The comment from NEI was endorsed by the five utilities and the NSSS. Two of the five utilities submitted additional comments. NEI and one utility commented that the proposed change to Paragraph III.B.1, which establishes the applicable edition of ASTM standard E 185 for a reactor surveillance program, constituted a backfit that would require a substantial design change in the surveillance program for those plants fabricated to a code edition prior to 1973. The other two commenters suggested new changes to Appendix H to 10 CFR Part 50. One of the commenters noted that an existing provision in Appendix H to 10 CFR Part 50, not part of the proposed rule change, dealing with requirements for attaching capsule holders to the vessel wall is a reiteration of a requirement in the ASME Code and should be removed. The other commenter suggested a new change to Appendix H to 10 CFR Part 50 to add a statement to the criteria for approval of an integrated surveillance program that would permit the use of surveillance specimens for extension of license purposes. The commenter also suggested that there is an apparent conflict between Paragraph III.C.2. and Paragraph III.C.3. that address requirements for an integrated surveillance.

The provision in the proposed rule was changed and reference to ASTM E 185 73 was deleted to make clear that the surveillance programs must be designed to the edition of ASTM 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased or to a later edition through 1982. The Commission agrees with the industry comments that imposing the ASTM E 185 1973 edition is impractical because vessels purchased prior to 1973 could not necessarily comply with all of the surveillance requirements in the 1973 edition of the ASTM standard. The NRC staff believes that the provision in the present rule on requirements for attaching capsule holders to the reactor vessel wall is required for clarity and should not be deleted. The comments related to the requirements for an integrated surveillance program were not persuasive to the NRC staff. The existing provisions of the rule do not preclude the application of the integrated surveillance program for extension of license purposes. The two paragraphs purported to be in conflict address separate items; one addresses the number of materials to be irradiated,

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specimen types, and number of specimens per reactor; the other addresses amount of testing.

Request for Comments on Issues Related to Thermal Annealing

Comments were received from NEI on the five issues on thermal annealing that were included in the proposed rule at the Commission's direction. In addition, OCRE and one utility, Pacific Gas and Electric, submitted comments on Issue 4, concerning the preferred regulatory process (including opportunity for public participation). Public Comments on the five issues are summarized below:

Issue 1: The technical adequacy of the NRC staff's guidance.

Comment: The detailed comments submitted on 10 CFR 50.66 are summarized in the Summary of Comments section on the Thermal Annealing Rule. In addition, NEI suggested that draft Regulatory Guide, DG–1027, be revised to include acceptance criteria where an action is required, but the acceptance criteria was not defined. NEI further commented that the re-embrittlement rate equation (DG–1027, Equation 1) appeared to be very conservative and would result in a post-anneal operating life that is less than industry believes justified.

Response: The NRC is concurrently revising the noted draft regulatory guide and will address this comment in the resolution of comments for the guide.

Issue 2: The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation.

Comment: NEI noted that "The reactor pressure vessel thermal annealing rule and guide address appropriate issues to assure public health and safety and that the annealed reactor pressure vessel may be safely operated. The prior NRC staff approval of the reactor vessel annealing plan assures a clear process and criteria to restart following the vessel anneal. The licensee needs only to attest to compliance with the approved plan prior to resuming operations. The resumption of operations should not be needlessly delayed while a report documenting performance of the vessel anneal and recovery of the embrittled material properties is confirmed, because the vessel anneal will only improve the material properties. The final report should be submitted on a schedule that considers when the vessel would have exceeded the RT_{PTS} or uppershelf energy (USE) screening criteria without an anneal. The material property recovery will document prior to the time when the vessel would have exceeded the screening criteria, thereby assuring that the vessel is safe to operate at restart and for the duration justified by the material embrittlement recovery."

Response: NRC agrees with the NEI comment, except NRC believes it is necessary for the licensee to submit the final report within three months of completing or terminating the anneal, unless an extension is authorized by the Director, Office of Nuclear Reactor Regulation.

Issue 3: Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart.

Comment: NEI noted that "The performance of a reactor pressure vessel anneal in accordance with an approved annealing plan improves the public health and safety by reducing the probability of core melt frequency. This improvement occurs because of the increase in reactor vessel material ductility. The amount of recovery achieved by a thermal anneal will be documented prior to the original date when the reactor vessel would have exceeded the PTS or USE screening limit. Therefore, a demonstration for "restart readiness" is an extra burden that will not provide any further improvement of the public health and safety."

Response: The NRC's determination as to the procedures for NRC review of the Thermal Annealing Operation Plan, Requalification Inspection and Test Program and justification for restart discussed below in further detail in the Opportunities for Public Participation section.

Issue 4: The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process.

Comment: NEI noted that "The industry recommends that a hearing opportunity be provided, but that it be a non-adjudicatory, 10 CFR Part 2, Subpart L type hearing on the docketed record. The essential features of the hearing process proposed are as follows. The NRC would at time of receiving the licensee proposed annealing plan issue a **Federal Register** announcement that staff is performing the review per 10 CFR 50.66. A Subpart L hearing could be held, if requested by an intervener, after the NRC staff has issued a safety evaluation report on the licensee annealing plan, but prior to commencement of the reactor vessel thermal annealing unless the NRC staff makes a "no significant hazards determination." Enclosure 4 provides additional details that support this industry position." Additional detailed comments by NEI and the comments on this subject by OCRE are discussed under the Opportunities for Public Participation heading.

Response: The rule provides for public participation in the regulatory process by incorporating a public meeting on the Licensee's Thermal Annealing Report a minimum of 30 days before the start of thermal annealing, and a public meeting after the licensee completes the anneal but before the reactor is restarted. The opportunity for public hearings in thermal annealing should be limited to those cases where there is an unreviewed safety question or a change to the Technical Specifications or where the licensee did not comply with the Thermal Annealing Operating Plan and Requalification Inspection and Test Program. Expanded discussion on this issue is provided below under the Opportunities for Public Participation heading.

Issue 5: Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

Comment: NEI noted that "Thermal annealing to reduce material irradiation embrittlement is a well understood metallurgical phenomenon. The supporting thermal and stress analysis used to demonstrate that the vessel is not damaged during the anneal are standard technologies used at nuclear plants. Because thermal annealing uses well understood technology, public health and safety is reasonably assured."

Response: The NRC agrees with this comment.

Opportunities for Public Participation

The Supplementary Information section of the proposed rule discussed the four options the Commission considered for structuring the regulatory process related to public participation in the NRC's review and approval of a licensee's proposal for thermal annealing of a reactor vessel. The proposed rule, at the Commission's direction, requested comments on the preferred regulatory process (including opportunities for public participation). The four options included:

(1) No hearings under the rule as proposed;

(2) Discretionary opportunity for hearing under rule as proposed in which situation the Commission would decide on a case-by-case basis to determine whether a hearing should be held;

(3) Required opportunity for hearing under rule as proposed, but work could commence if the NRC were to make a "no significant hazard determination" on the proposed thermal annealing; and

(4) Modify the proposed rule to require suspension of license prior and during the thermal annealing at which time no hearing would be afforded and the license would only be reinstated if the licensee demonstrates that it has addressed the reactor embrittlement such that it is acceptable to operate the plant.

Three comments were submitted on the subject. OCRE and NEI addressed all of the alternatives in detail and they, as well as one utility, identified and discussed individual preferred alternatives.

NEI commented that each of the four alternatives has a sufficiently serious flaw to prevent adoption. With respect to the no hearing alternative, NEI agrees that annealing is presently subject to approval by the Director of NRR in accordance with Part 50 Appendix G rather than being the subject of a license amendment as an unreviewed safety question under § 50.59. However, NEI believes that annealing is an important process from a regulatory standpoint and that public participation, in the form of informal hearings, is appropriate. NEI objected to a discretionary opportunity for a hearing because it provides significant uncertainty in the process for licensees and members of the public. NEI's objection to requiring a hearing, as discussed in staff Option 3, is that it would allow those who object to the resumption of operation, on other than technical grounds, to use hearings to delay restart. Option 4 is objectionable to NEI because it does not provide the licensee with any stability or predictability since the licensee would be required to demonstrate compliance after the annealing was performed, and does not provide the public with any opportunity to express its views.

NEI further commented that a license amendment is not necessary to approve a thermal annealing plan because annealing will not change the reactor vessel or other components in a manner inconsistent with the facility technical specifications nor will it require changes in the FSAR, and further, that a licensee is not required to modify its procedures to address or accommodate the annealing process. NEI noted that, while there is an incentive for the licensee to obtain credit for its improved P/T curves, and could seek a licensee amendment to do so, the licensee's existing P/T curves could remain in force.

Despite the conclusion that a license amendment is not necessary for thermal annealing, NEI recommended that a hearing opportunity be provided, but that it be a non-adjudicatory, Subpart L type hearing on the record. NEI gave the following advantages for this approach: (1) The NRC would be provided with a clear understanding of the licensee's annealing process, and the NRC's hearing process; (2) a Subpart L hearing is held on the written record and typically does not include the discovery or live testimony associated with adjudicatory hearings, but allows the public to participate in a meaningful way without consuming the vast NRC, licensee, and public resources required for an adjudicatory hearing; and (3) it would provide predictability and stability by ensuring that all issues which could be subject to a hearing are addressed prior to restart. Any inspection or test performed in order to restart would be for the purpose of confirming compliance with the rule.

OCRE supported the proposed rule provided that the public hearing rights were preserved with regard to reactor pressure vessel annealing. It is OCRE's position on the request for public comment that, based on the Sholly decision, the NRC must offer the opportunity for a formal adjudicatory hearing on the application for annealing and on the licensee's justification for subsequent operation where the licensee cannot certify that the thermal annealing was performed in accordance with the approved application. OCRE commented that approval by the Director of NRR of the application for annealing and restart of the reactor, if the licensee cannot certify that annealing was performed in accordance with the approved application, will give the licensee the authority to operate in ways in which they otherwise could not, and is thus, a de facto license amendment. OCRE fully supported Option 3 which requires opportunity for hearing under the rule as proposed. OCRE suggested that the adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after annealing, could be raised in the hearing on the thermal annealing plan and that the licensee's implementation of the thermal annealing plan could not commence until any hearing is concluded or unless the NRC makes a "no significant hazards determination" with respect to thermal annealing.

With respect to Option 1, OCRE concluded that the informal hearings or public meetings proposed by the Commission for the initial thermal annealing are not a substitute for adjudicatory hearings required by the Atomic Energy Act (AEA) and do not give the interveners the same rights as they would have in a Section 189a hearing. OCRE found Option 2 preferable to having no hearing. However, OCRE contended that this option is flawed by the assumption that "Section 189a of the AEA does not afford an interested member of the public a right to request a hearing." They contend that approval by the Director, NRR to anneal the reactor pressure vessel or to restart after annealing does constitute a de facto operating licensing amendment for which the opportunity for a hearing is required. OCRE found Options 1 and 4 unacceptable in that they do not provide the opportunity for a formal adjudicatory hearing.

The comment from the utility suggested that Option 1 is the appropriate approach as long as the annealing process to be implemented is approved in advance by the NRC staff and the utility certifies that they have complied with the approved annealing process during the annealing operation, as provided for in the proposed rule. The utility further commented that if Technical Specifications changes or amendments to the operating license are required in order to perform the annealing then the opportunity for hearings would be required due to the normal license amendment process and if the final safety analysis report (FSAR) were required to be updated to reflect the thermal annealing process, the provisions of 10 CFR 50.59 would apply. The utility suggested that if those changes did not constitute an "unreviewed safety question," no amendment would be needed and the license amendment process should not be invoked and that if a member of the public is concerned about a licensee's compliance with the NRC approved thermal annealing plan, those concerns could be addressed pursuant to the 10 CFR 2.206 petition process. The utility commented that, under its proposal, existing regulatory provisions for public participation would apply as appropriate and no new prescriptive requirements would be necessary.

The Commission has considered the public comments and has modified the proposed rule as follows. A licensee that seeks to utilize thermal annealing to mitigate the effects of neutron irradiation of the nuclear reactor vessel must, at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or Appendix G to Part 50 would be exceeded, submit a Thermal Annealing Report to the NRC staff for review. The

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report shall contain four sections: (i) Thermal Annealing Operating Plan, (ii) Requalification Inspection and Test Program, (iii) Program for determining Fracture Toughness Recovery and Reembrittlement Trend, and (iv) a section identifying any changes to the description of the facility as described in the updated final safety analysis report (FSAR) which constitute unreviewed safety questions (USQs) under § 50.59, and changes to the facility's technical specifications, which are necessary either to perform the thermal annealing, or to operate following completion of the annealing. Section 50.66(a) provides that the NRC will, within three years of submission of a licensee's annealing report, document its views on whether the plan for conducting thermal annealing constitutes an unreviewed safety question or otherwise requires a change to the plant's technical specifications. Such a determination is the threshold determination for whether NRC approval is required before undertaking the activity. In the event the NRC were to conclude, contrary to the licensee, that an unreviewed safety question is present or a change to the technical specifications is necessary, the NRC would, as a discretionary enforcement matter, issue an appropriate order to the licensee prohibiting annealing prior to issuance of a license amendment. An opportunity for formal adjudicatory hearing would be provided in connection with the license amendment; however, if the NRC makes a finding that the proposed change to the FSAR description or technical specification constitutes a "no significant hazards consideration" pursuant to Section 189.(a)(2)(A), the licensee may conduct the thermal annealing prior to completion of any hearing. In any event, at least 30 days before the licensee starts to thermal anneal and before the NRC completes its review, the NRC will hold a public meeting on the licensee's proposed Thermal Annealing Plan and Requalification Inspection and Test Program.

Following the completion of the annealing operation, the licensee must confirm in writing to the Director, Office of Nuclear Reactor Regulation, that the thermal annealing was performed in accordance with the Thermal Annealing Operating Plan and the Requalification and Inspection Test Program. In support of this confirmation, the licensee must submit a report, within three months of completion or termination of the anneal, that presents the results of the annealing operation. Within two weeks of the licensee's written confirmation that the thermal annealing was completed in accordance with the Thermal Annealing Plan, and prior to restart, the NRC shall: (1) Place in its public document room a summary of the NRC staff's inspection of the licensee's thermal annealing process to confirm that the thermal annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, and (2) hold a public meeting with the licensee to permit the licensee to explain the results of the reactor vessel annealing to the NRC and the public, for the NRC to discuss its inspection of the reactor vessel annealing process, and to provide an opportunity for the public to comment to the NRC on the annealing operation and the results of the Staff's inspection.

Within 45 days of the licensee's written confirmation that the thermal annealing was completed, the NRC shall complete full documentation of the NRC's inspection of the licensee's annealing process to confirm that the annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program.

The licensee may resume operation if: (1) The licensee concludes that the thermal annealing operation was performed in compliance with the Thermal Annealing Operating Plan, the Requalification Inspection and Test Program, and the provisions of Section 50.66(b), (2) a summary of the NRC's inspection of the thermal annealing is placed in the NRC public document room as required by Section 50.66(c) (2) and (3) the NRC holds the public meeting required by Section 50.66(f)(2), unless the staff takes action against the licensee. Since NRC approval to resume operation is not necessary, an opportunity for hearing would not be provided in this situation. If, however, the licensee cannot conclude that the thermal annealing was performed in compliance with the Thermal Annealing Operating Plan or the Requalification Inspection and Test Program, the licensee must submit a justification for continued operation to the Director. If the noncompliance presents an unreviewed safety question, as determined by the licensee or directed by the NRC following its review of the report, then the plant may not restart until the Director has approved restart. Those failures to comply with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, which either (1) Are considered to be "unreviewed safety questions" or (2) require changes to the technical specifications as a result of the noncompliances, would also be subject to an opportunity for a formal adjudicatory hearing in accordance with the Commission's regulations governing license amendments. However, the licensee may restart prior to completion of the hearing if the Director makes a finding that such restart constitutes a "no significant hazards consideration," as provided under Section 189.(a)(2)(A) of the Atomic Energy Act of 1954, as amended.

The regulatory process for thermal annealing and the associated hearing opportunities are consistent with long-standing NRC regulatory practices defining those matters which present sufficient potential effect on public health and safety (e.g., are unreviewed safety questions) to justify both prior NRC review of the change, and an opportunity for hearings (with the associated time and resource impacts on both the licensee and the NRC). With respect to the thermal annealing review process, the Commission reassessed the regulatory requirements and processes for assuring safety. The Commission determined that the most important safety matters are normally addressed in license conditions, technical specifications, and the FSAR. The regulatory process for NRC consideration of licensee-initiated changes concerning these matters, and the associated opportunities for hearings is in 10 CFR 50.59. In view of this well-established regulatory process for important safety information, the Commission determined that a regulatory process requiring NRC approval of a thermal annealing plan is not necessary, because the licensee is already required to comply with its license conditions, technical specifications, and FSAR. Important changes to license conditions, technical specifications, and FSAR from a safety standpoint are subject to both prior NRC review and approval and an opportunity for hearing. With respect to restart following completion of the annealing, the 15-day delay period should be sufficient time for review of the licensee's input given the NRC staff's understanding of the annealing operation plan prior to implementation, ongoing resident inspections and headquarters inspections of the implementation of thermal annealing operating plan. The Commission did not adopt NEI's suggestion for informal hearings where the Director must approve restart if the Thermal Annealing Operating Plan and Requalification Inspection and Test Program were not complied with, because the Commission does not see

any distinction (in terms of safety implications) between the subject matter of hearings under this rule, as compared with other actions under Part 50 which would require formal hearings.

As discussed earlier in the supplementary information, previously performed research analyses indicated the potential for plastic deformation of the main coolant piping for a typical U.S. plant design and anticipated annealing conditions. There are also questions regarding how thermal growth of the pressure vessel is treated, and the adequacy of the thermal and stress analyses used to predict response of the overall system under thermal annealing conditions. Additionally, there may be questions in other areas such as temperature limits for the concrete structures, and potential radiological hazards associated with removing and storing the reactor internals during the annealing process, and fire hazards associated with heating the vessel.

Recognition of the numerous complex technical questions related to 4 thermal annealing and of the potential benefits for operating nuclear power plants has resulted in a cooperative effort, funded by the U.S. Department of Energy and the industry, to perform Annealing Demonstration Projects. Projects are planned to demonstrate two different annealing processes, evaluating heater designs and vessel designs. It is anticipated that the annealing demonstration projects will answer many of the generic questions regarding thermal annealing of U.S. pressure vessel and piping designs.

The Thermal Annealing Report, required by the thermal annealing rule, is designed to facilitate a detailed review by the licensee of plant-specific questions and considerations in performing a thermal annealing. The proposed rule specifically discusses the potential for unreviewed safety questions and technical specification changes that may result from or be related to thermal annealing of the reactor pressure vessel. With completion of the demonstration projects and as the staff and industry gain experience with thermal annealing, many of the issues related to annealing will be better understood and related questions will be answered. However, until this experience is realized, the staff will critically review licensee determinations regarding unreviewed safety questions and the need for technical specification changes associated with each proposed thermal annealing. The level of staff effort is expected to be significantly greater during its review of the initial proposed vessel annealings than that which will be required after experience is gained.

The thermal annealing rule has been structured to provide time for the staff to thoroughly review the licensee's annealing plan and determination regarding unreviewed safety questions and the need for technical specification changes. If the staff identifies an unreviewed safety question or the need for a technical specification change, the licensee would be so notified and the existing NRC regulatory practices would be invoked to address the issues.

Backfitting Issues

Comments were received on backfitting issues from the Nuclear Utility Backfitting and Reform Group (NUBARG). NUBARG commented that they do not object to the new NRC position in Appendix G to 10 CFR Part 50 which prohibits core criticality before completion of hydrostatic pressure and leak tests as a conservative measure to enhance safety. However, they are concerned that amending Appendix G on the basis of a compliance exception may set a bad precedent for avoiding backfitting analyses. NUBARG stated that "The logic of the proposed rule would seem to allow the NRC to avoid a backfitting analysis by (1) invoking the intent of one requirement to override the explicit provisions of another, (2) using the compliance exception when the practice being eliminated seems specifically contemplated by and specified in the pertinent regulation, and (3) overlooking the fact that the NRC has apparently accepted this position in practice by some licensees * * *" In NUBARG's view, this proposed amendment should be supported by a backfit analysis. The Commission has reviewed this comment and has concluded that use of the compliance exception under § 50.109 for the changes in Appendix G to 10 CFR Part 50 is appropriate. The Backfit Analysis section contains further discussion on this subject. The issue of explicitly prohibiting core criticality before completing pressure and leak tests has been addressed previously (letter from J. M. Taylor, EDO, to N. S. Reynolds and D. F. Stenger, NUBARG, dated February 2, 1990) and the NUBARG comment did not provide new information. The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i).

NUBARG also commented on the amendment to Appendix H to 10 CFR Part 50 regarding surveillance that would preclude reducing the amount of testing if the initial test results agreed with predicted results. Although NUBARG recognizes the change would be prospective, it believes that NRC should provide flexibility to allow continued relief for any licensee who lacks such an authorization but has relied on the provision. The Commission believes that sufficient flexibility already exists in that licensees who do not have an authorization may seek an exemption under 10 CFR Part 50.12.

Another aspect of the backfitting concern raised by NUBARG addresses the proposed amendment to § 50.61 which, based on the adequate protection exception, would impose a uniform methodology for calculating the reference temperature. NUBARG contends that to rely on the adequate protection exception is arguably erroneous because the change in methodology is not likely an adequate protection issue (i.e., for most plants, the screening criteria will not be approached for many years). As discussed further under Backfit Analysis, the Commission believes that a new backfit analysis is not required for this conforming change, which corrects an inadvertent omission from the previous rulemaking. Therefore, the Commission concludes that the adequate protection basis for the backfit continues to apply from the previous rulemaking (56 FR 22300; May 15, 1991) to § 50.61.

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of Sections 161b, 161i or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of human environment and, therefore, an environmental impact statement is not required.

The individual actions covered in this final rule would either serve to enhance safety of the reactor pressure vessel, thereby decreasing the environmental impact of plant operation, or have no

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impact on the environment. Therefore, in all cases these individual actions will not have an adverse impact on the environment.

PTS Rule (10 CFR 50.61)

The inclusion of thermal annealing as an option for mitigating the effects of neutron irradiation serves to decrease the environmental impact of plant operation by enhancing the safety of the reactor pressure vessel.

The incorporation of the Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT} into the PTS rule has no impact on the environment because this change will result in values of RT_{PTS} which are consistent with those currently used in plant operation.

The restructuring of the PTS rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

Thermal Annealing Rule (10 CFR 50.66)

The thermal annealing rule (10 CFR 50.66) permits and provides requirements for the thermal annealing of a reactor vessel to restore fracture properties of the reactor vessel material which have been degraded by neutron irradiation. This final rule only applies when a licensee elects to use it. The final rule provides an alternative for assuring compliance with the requirements in 10 CFR 50.61 and Appendix G of 10 CFR Part 50.

The application of thermal annealing to a reactor vessel improves the condition of the reactor vessel material. In addition, this rule establishes requirements to avoid damaging the reactor system and to protect against accidents during the annealing operation.

This rule is one of several regulatory requirements that will function to ensure reactor vessel integrity. In that sense, this rule has a positive impact on the environment by reducing the potential for vessel failure. For these reasons, the Commission has determined that there is no significant impact and, therefore, an environmental statement is not required.

Appendix G to 10 CFR Part 50

The prohibition of core criticality before completion of the required pressure and leak tests will serve to reduce the potential for vessel failure, and thereby decrease the potential environmental impact of plant operation.

The restructuring of Sections IV and V of Appendix G is clarifying or corrective in nature, and is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The changing of the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code has no impact on the environment because the requirements in the Appendices are identical. Therefore, there is no adverse impact on the environment from this change.

The referencing of the thermal annealing rule results in no adverse impact on the environment because Appendix G currently permits the use of thermal annealing to reduce fracture toughness loss of the RPV materials due to irradiation embrittlement.

Appendix H to 10 CFR Part 50

Concerning the amendments to Appendix H to 10 CFR Part 50 in the final rule, the requirement that all irradiation surveillance tests be made (i.e., no reduction in testing is permitted) will have a positive impact on the environment in helping to assure the integrity of the reactor pressure vessel.

The restructuring of Section II.C is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The clarification of the applicable version of ASTM Standard E 185 will result in no adverse impact to the environment since there will be no change to current surveillance programs. Changes to future surveillance programs will make the programs more effective in assessing irradiation embrittlement effects to the RPV materials, thereby helping to assure the integrity of the reactor pressure vessel

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The public reporting burden for this collection of information is estimated to average 6,000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC staff has prepared a regulatory analysis for the amendments to 10 CFR 50.61, Appendix G of 10 CFR Part 50, and Appendix H of 10 CFR Part 50 that describes the factors and alternatives considered by the Commission in deciding to issue these amendments. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Single copies of the analysis may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6014.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rules which are affected by the amendments will: (1) Preclude brittle fracture of embrittled vessels during PTS events, (2) provide the general fracture toughness requirements for RPVs, including ductile fracture toughness requirements and pressure-temperature limits, (3) provide the requirements for surveillance programs to monitor irradiation embrittlement of RPV beltline materials, and (4) provide for a method for restoring the fracture toughness of RPV beltline materials used in nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act, the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 121, or the size standards established by the NRC at 10 CFR 2.810 (60 FR 18344; April 11, 1995).

Backfit Analysis

PTS Rule (10 CFR 50.61)

The revision to § 50.61 requires licensees to calculate RT_{PTS} using the same methodology specified in Regulatory Guide 1.99, Revision 2, for determining RT_{NDT}. This change was logically a requisite part of the previous rulemaking (56 FR 22300; May 15, 1991) to § 50.61 that set forth a unified method for calculating radiation embrittlement of the reactor beltline materials in Part 50. However, the Commission, at that time, inadvertently failed to make the conforming change to § 50.61. The Commission believes that the backfit statement for the previous amendment, which determined that the backfit was necessary to ensure that the facility continues to provide adequate protection to the public health and safety, is applicable to this conforming change to § 50.61.

The restructuring of the PTS rule does not impose any backfits as defined in 10 CFR 50.109(a)(1) because there is no change in requirements due to this restructuring.

The inclusion of thermal annealing in § 50.61 does not constitute a backfit as defined in 10 CFR 50.109(a)(1) because the decision to perform annealing is voluntary, no annealing has been conducted in this country, and there are no staff positions or Commission requirements relied upon by licensees that are being changed.

Thermal Annealing Rule (10 CFR 50.66)

The final thermal annealing rule establishes requirements with respect to applications for thermal annealing. However, the Commission has determined that the rule does not impose a "backfit" as defined in 10 CFR 50.109(a)(1). The thermal annealing rule does not require any licensee to perform thermal annealing. Under existing requirements, all licensees are required to evaluate whether they exceed the PTS screening limits in 10 CFR 50.61 and the Charpy upper shelf screening limits in Appendix G of CFR Part 50. However, these rules provide an alternative means for meeting these screening limits (e.g., performing thermal annealing). No licensee currently has pending before the NRC an application for thermal annealing, nor has any current licensee been granted permission to conduct thermal annealing. The rule does not reflect any new or different NRC staff position which conflicts with a prior NRC staff position or Commission rule. Thus, the final rule will have a purely prospective effect on future applications for thermal annealing. The Commission has stated in other rulemakings establishing prospective requirements (10 CFR Part 52 and the License Renewal Rule, 10 CFR Part 54) that the Backfit Rule was not intended to protect the future applicant from current changes in Commission requirements. Accordingly, the Commission concludes that the rule does not impose backfits and a backfit analysis need not be prepared for the final thermal annealing rule.

Appendix G to 10 CFR Part 50

The restructuring of Sections IV and V of this appendix, referencing of the thermal annealing rule, changing the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code, and deleting the "design to permit annealing" requirement do not impose any backfits as defined in 10 CFR 50.109(a)(1), because they are either prospective in nature or are of a clarifying nature.

10 CFR Part 50, Appendix G, Paragraph IV.2.d. of the final rule explicitly prohibits core criticality before completion of ASME Code hydrostatic pressure and leak tests. This is intended to make clear that licensees may not use nuclear heat in order to perform ASME Code hydrostatic tests. This amendment can be construed as a backfit, inasmuch as the prior version of 10 CFR Part 50, Appendix G, Paragraph IV.A.5 could be read to permit core criticality during ASME hydrostatic tests and Section XI of the ASME Code does not explicitly prohibit core criticality prior to completion of these tests. However, the Commission never intended the disputed language in Paragraph IV.A.5 of Appendix G to permit core criticality before successful completion of the required ASME hydrostatic tests. The scope of Appendix G is "fracture toughness requirements" only; that scope is stated clearly in the title of Appendix G, and Appendix G was not intended to specify system operational requirements. It is not correct, therefore, to interpret paragraph IV.A.5. as permitting nuclear hydrotesting. The final phrase in IV.A.5, "depending on whether the core is critical during the test," was included in the rule for the sake of completeness, to specify appropriate fracture toughness requirements in the event that a licensee for some reason wanted to have the core critical during hydrotest, and was given approval to do so (e.g., as in the case of the Hatch units, where nuclear hydrotesting was allowed one last time as an approved exception.) The ASME Code's hydrostatic testing provisions for the reactor coolant pressure boundary (RCPB) provides the necessary assurance that GDC–14 is met. GDC–14 *inter alia* requires RCPB testing in order to provide an extremely low probability of RCPB failure, in terms of abnormal leakage, rapidly propagating failure, and gross rupture. Using heat produced by a critical reactor core to perform such testing essentially undercuts the basic safety principle embodied in GDC–14 that testing should be completed prior to nuclear reactor operation. It makes little sense to allow core criticality—thereby allowing the reactor to be in an operational condition where a loss of coolant could have significant consequences—prior to successful completion of tests that are intended to ensure that the probability of such coolant losses during such an operational condition are extremely low.[1] The ASME Code, Section XI, requires that the System Leakage Test be performed prior to plant startup following each refueling outage (Table-2500–1, Examination Category B–P, Note 2). The only way to interpret the ASME Code as permitting core criticality prior to completion of the hydrostatic tests is to read the term, "plant startup" as referring to something other than reactor criticality. This is neither the normal industry practice, nor has it been the NRC staff's longstanding interpretation of this provision of the ASME code. Indeed, it does not appear that the NRC staff has construed either Appendix G, Paragraph IV.A.5 nor Section XI of the ASME Code as permitting core criticality prior to successful completion of ASME Code hydrostatic tests. Moreover, the vast majority of nuclear utility licensees do not use nuclear heat to perform ASME code hydrostatic tests. This suggests that most licensees hold the same interpretation of Appendix G and Section XI of the ASME Code as the Commission. In sum, the Commission believes Section XI of the ASME Code, which is endorsed by 10 CFR 50.55a, implicitly prohibits core criticality prior to successful completion of hydrostatic testing. Therefore, the Commission concludes that the change in the language of Appendix G, Paragraph IV.2.d. is necessary to assure compliance with 10 CFR 50.55a and the ASME Code.

[1] The Commission is aware that NUBARG has presented an argument to the NRC that performance of ASME Code hydrostatic tests are more effective at the higher temperatures achieved when using nuclear heat, as compared with the heat sources normally employed by utilities in performing the hydrostatic tests. However, for the reasons set forth in the 1990 letter from James M. Taylor, EDO to N. S. Reynolds and D.F. Stenger, NUBARG, the Commission rejects this argument.

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The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i).

Appendix H to 10 CFR Part 50

The amendments to Appendix H to 10 CFR Part 50 are either prospective in nature or of a clarifying nature, and hence do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The general authority citation for Part 50 is corrected to read as set forth below, and the section-specific authority citations continue to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat 955 (42 U.S.C. 2237).

2. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.66, 70.71, 50.72, 50.73, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R, to this part.

* * * * *

3. Section 50.61 is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

(a) Definitions. For the purposes of this section:

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, "Rules for the Construction of Nuclear Power Plant Components," edition and addenda and any limitations and modifications thereof as specified in § 50.55a.

(2) *Pressurized Thermal Shock Event* means an event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel.

(3) *Reactor Vessel Beltline* means the region of the reactor vessel (shell material including welds, heat affected zones and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

(4) RT_{NDT} means the reference temperature for a reactor vessel material, under any conditions. For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

(5) $RT_{NDT(U)}$ means the reference temperature for a reactor vessel material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331 or other methods approved by the Director, Office of Nuclear Reactor Regulation.

(6) *EOL Fluence* means the best-estimate neutron fluence projected for a specific vessel beltline material at the clad-base-metal interface on the inside surface of the vessel at the location where the material receives the highest fluence on the expiration date of the operating license.

(7) RT_{PTS} means the reference temperature, RT_{NDT}, evaluated for the EOL Fluence for each of the vessel beltline materials, using the procedures of paragraph (c) of this section.

(8) *PTS Screening Criterion* means the value of RT_{PTS} for the vessel beltline material above which the plant cannot continue to operate without justification.

(b) Requirements.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant[2] change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270 °F for plates, forgings, and axial weld materials, and 300 °F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be evaluated according to the procedures of paragraph (c) of this section, for each weld and plate, or forging, in the reactor vessel beltline. RT_{PTS} must be determined for each vessel beltline material using the EOL fluence for that material.

(3) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion using the EOL fluence, the licensee shall implement those flux

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion prior to the expiration of the operating license, including any renewed term, if applicable, for the plant.

reduction programs that are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated approval by the Director, Office of Nuclear Reactor Regulation, of detailed plant-specific analyses, submitted to demonstrate acceptable risk with RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

(4) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(3) of this section indicates that no reasonably practicable flux reduction program will prevent RT_{PTS} from exceeding the PTS screening criterion using the EOL fluence, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least three years before RT_{PTS} is projected to exceed the PTS screening criterion.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the Director, Office of Nuclear Reactor Regulation, may, on a case-by-case basis, approve operation of the facility with RT_{PTS} in excess of the PTS screening criterion. The Director, Office of Nuclear Reactor Regulation, will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director, Office of Nuclear Reactor Regulation, concludes, pursuant to paragraph (b)(5) of this section, that operation of the facility with RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the licensee shall request and receive approval by the Director, Office of Nuclear Reactor Regulation, prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

(7) If the limiting RT_{PTS} value of the plant is projected to exceed the screening criteria in paragraph (b)(2), or the criteria in paragraphs (b)(3) through (b)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the vessel beltline materials satisfy the requirements of paragraphs (b)(2) through (b)(6) of this section, with RT_{PTS} accounting for the effects of annealing and subsequent irradiation.

(c) Calculation of RT_{PTS}. RT_{PTS} must be calculated for each vessel beltline material using a fluence value, f, which is the EOL fluence for the material. RT_{PTS} must be evaluated using the same procedures used to calculate RT_{NDT}, as indicated in paragraph (c)(1) of this section, and as provided in paragraphs (c)(2) and (c)(3) of this section.

(1) Equation 1 must be used to calculate values of RT_{NDT} for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1:

$$RT_{NDT}=RT_{NDT(U)}+M+\Delta RT_{NDT}$$

(i) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value for the class[3] of material may be used if there are sufficient test results to establish a mean and a standard deviation for the class.

(ii) For generic values of weld metal, the following generic mean values must be used unless justification for different values is provided: 0°F for welds made with Linde 80 flux, and −56°F for welds made with Linde 0091, 1092 and 124 and ARCOS B–5 weld fluxes.

(iii) *M* means the margin to be added to account for uncertainties in the values of $RT_{NDT(U)}$, copper and nickel contents, fluence and the calculational procedures. M is evaluated from Equation 2.

Equation 2:

$$M=2\sqrt{\sigma_U{}^2+\sigma_\Delta{}^2}$$

(A) In Equation 2, σ_U is the standard deviation for $RT_{NDT(U)}$. If a measured value of $RT_{NDT(U)}$ is used, then σ_U is determined from the precision of the test method. If a measured value of $RT_{NDT(U)}$ is not available and a generic mean value for that class of materials is used, then σ_U is the standard deviation obtained from the set of data used to establish the mean. If a generic mean value given in paragraph (c)(1)(i)(B) of this section for welds is used, then σ_U is 17°F.

(B) In Equation 2, σ_Δ is the standard deviation for ΔRT_{NDT}. The value of σ_Δ to be used is 28°F for welds and 17°F for base metal; the value of σ_Δ need not exceed one-half of ΔRT_{NDT}.

(iv) ΔRT_{NDT} is the mean value of the transition temperature shift, or change in RT_{NDT}, due to irradiation, and must be calculated using Equation 3.

Equation 3: $\Delta RT_{NDT}=(CF)f^{(0.28-0.10\ \log\ f)}$

(A) *CF* (°F) is the chemistry factor, which is a function of copper and nickel content. CF is given in Table 1 for welds and in Table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2, "Wt-% copper" and "Wt-% nickel" are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging. For a weld, the best estimate values will normally be the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel material was fabricated may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data[4] may be used if justification is provided. If none of these alternatives are available, 0.35% copper and 1.0% nickel must be assumed.

(B) *f* is the best estimate neutron fluence, in units of 10^{19} n/cm^2 (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question. As specified in this paragraph, the EOL fluence for the vessel beltline material is used in calculating KRT_{PTS}.

(v) Equation 4 must be used for determining RT_{PTS} using equation 3 with EOL fluence values for determining ΔRT_{PTS}.

Equation 4: $RT_{PTS}=RT_{NDT(U)}+M+\Delta RT_{PTS}$

(2) To verify that RT_{NDT} for each vessel beltline material is a bounding value for the specific reactor vessel, licensees shall consider plant-specific information that could affect the level of

[3] The class of material for estimating $RT_{NDT(U)}$ is generally determined for welds by the type of welding flux (Linde 80, or other), and for base metal by the material specification.

[4] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of "generic data."

embrittlement. This information includes but is not limited to the reactor vessel operating temperature and any related surveillance program [5] results.

(i) Results from the plant-specific surveillance program must be integrated into the RT_{NDT} estimate if the plant-specific surveillance data has been deemed credible as judged by the following criteria:

(A) The materials in the surveillance capsules must be those which are the controlling materials with regard to radiation embrittlement.

(B) Scatter in the plots of Charpy energy versus temperature for the irradiated and unirradiated conditions must be small enough to permit the determination of the 30-foot-pound temperature unambiguously.

(C) Where there are two or more sets of surveillance data from one reactor, the scatter of ΔRT_{NDT} values must be less than 28°F for welds and 17°F for base metal. Even if the range in the capsule fluences is large (two or more orders of magnitude), the scatter may not exceed twice those values.

(D) The irradiation temperature of the Charpy specimens in the capsule must equal the vessel wall temperature at the cladding/base metal interface within ±25°F.

(E) The surveillance data for the correlation monitor material in the capsule, if present, must fall within the scatter band of the data base for the material.

(ii)(A) Surveillance data deemed credible according to the criteria of paragraph (c)(2)(i) of this section must be used to determine a material-specific value of CF for use in Equation 3. A material-specific value of CF is determined from Equation 5.

$$\text{Equation 5:}\quad CF = \frac{\sum_{i=1}^{n}\left[A_i \times f_i^{(0.28-0.10\log f_i)}\right]}{\sum_{i=1}^{n}\left[f_i^{(0.56-0.20\log f_i)}\right]}$$

(B) In Equation 5, "n" is the number of surveillance data points, "A_i" is the measured value of ΔRT_{NDT} and "f_i" is the fluence for each surveillance data point. If there is clear evidence that the copper and nickel content of the surveillance weld differs from the vessel weld, i.e. differs from the average for the weld wire heat number associated with the vessel weld and the surveillance weld, the measured values of ΔRT_{NDT} must be adjusted for differences in copper and nickel content by multiplying them by the ratio of the chemistry factor for the vessel material to that for the surveillance weld.

(iii) For cases in which the results from a credible plant-specific surveillance program are used, the value of σ_Δ to be used is 14°F for welds and 8.5°F for base metal; the value of σ_Δ need not exceed one-half of DRT_{NDT}.

(iv) The use of results from the plant-specific surveillance program may result in an RT_{NDT} that is higher or lower than those determined in paragraph (c)(1).

(3) Any information that is believed to improve the accuracy of the RT_{PTS} value significantly must be reported to the Director, Office of Nuclear Reactor Regulation. Any value of RT_{PTS} that has been modified using the procedures of paragraph (c)(2) of this section is subject to the approval of the Director, Office of Nuclear Reactor Regulation, when used as provided in this section.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	21	26	27	27	27	27	27
0.03	22	35	41	41	41	41	41
0.04	24	43	54	54	54	54	54
0.05	26	49	67	68	68	68	68
0.06	29	52	77	82	82	82	82
0.07	32	55	85	95	95	95	95
0.08	36	58	90	106	108	108	108
0.09	40	61	94	115	122	122	122
0.10	44	65	97	122	133	135	135
0.11	49	68	101	130	144	148	148
0.12	52	72	103	135	153	161	161
0.13	56	76	106	139	162	172	176
0.14	61	79	109	142	168	182	188
0.15	66	84	112	146	175	191	200
0.16	70	88	115	149	178	199	211
0.17	75	92	119	151	184	207	221
0.18	79	95	122	154	187	214	230
0.19	83	100	126	157	191	220	238
0.20	88	104	129	160	194	223	245
0.21	92	108	133	164	197	229	252

[5] Surveillance program results means any data that demonstrates the embrittlement trends for the limiting beltline material, including but not limited to data from test reactors or from surveillance programs at other plants with or without surveillance program integrated per 10 CFR Part 50, Appendix H.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F—Continued

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0.22	97	112	137	167	200	232	257
0.23	101	117	140	169	203	236	263
0.24	105	121	144	173	206	239	268
0.25	110	126	148	176	209	243	272
0.26	113	130	151	180	212	246	276
0.27	119	134	155	184	216	249	280
0.28	122	138	160	187	218	251	284
0.29	128	142	164	191	222	254	287
0.30	131	146	167	194	225	257	290
0.31	136	151	172	198	228	260	293
0.32	140	155	175	202	231	263	296
0.33	144	160	180	205	234	266	299
0.34	149	164	184	209	238	269	302
0.35	153	168	187	212	241	272	305
0.36	158	172	191	216	245	275	308
0.37	162	177	196	220	248	278	311
0.38	166	182	200	223	250	281	314
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F

Copper, wt-%	Nickel, wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	20	20	20	20	20	20	20
0.03	20	20	20	20	20	20	20
0.04	22	26	26	26	26	26	26
0.05	25	31	31	31	31	31	31
0.06	28	37	37	37	37	37	37
0.07	31	43	44	44	44	44	44
0.08	34	48	51	51	51	51	51
0.09	37	53	58	58	58	58	58
0.10	41	58	65	65	67	67	67
0.11	45	62	72	74	77	77	77
0.12	49	67	79	83	86	86	86
0.13	53	71	85	91	96	96	96
0.14	57	75	91	100	105	106	106
0.15	61	80	99	110	115	117	117
0.16	65	84	104	118	123	125	125
0.17	69	88	110	127	132	135	135
0.18	73	92	115	134	141	144	144
0.19	78	97	120	142	150	154	154
0.20	82	102	125	149	159	164	165
0.21	86	107	129	155	167	172	174
0.22	91	112	134	161	176	181	184
0.23	95	117	138	167	184	190	194
0.24	100	121	143	172	191	199	204
0.25	104	126	148	176	199	208	214
0.26	109	130	151	180	205	216	221
0.27	114	134	155	184	211	225	230
0.28	119	138	160	187	216	233	239
0.29	124	142	164	191	221	241	248
0.30	129	146	167	194	225	249	257
0.31	134	151	172	198	228	255	266
0.32	139	155	175	202	231	260	274
0.33	144	160	180	205	234	264	282
0.34	149	164	184	209	238	268	290
0.35	153	168	187	212	241	272	298
0.36	158	173	191	216	245	275	303
0.37	162	177	196	220	248	278	308
0.38	166	182	200	223	250	281	313
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

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4. A new § 50.66 is added under the center heading "Issuance, Limitations, and Conditions of Licenses and Construction Permits" to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing may be applied to the reactor vessel to recover the fracture toughness of the material. The use of a thermal annealing treatment is subject to the requirements in this section. A report describing the licensee's plan for conducting the thermal annealing must be submitted in accordance with § 50.4 at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or Appendix G to Part 50 would be exceeded. Within three years of the submittal of the Thermal Annealing Report and at least thirty days prior to the start of the thermal annealing, the NRC will review the Thermal Annealing Report and place the results of its evaluation in its Public Document Room. The licensee may begin the thermal anneal after:

(1) Submitting the Thermal Annealing Report required by paragraph (b) of this section;

(2) the NRC places the results of its evaluation of the Thermal Annealing Report in the Public Document Room; and

(3) the requirements of paragraph (f)(1) of this section have been satisfied.

(b) Thermal Annealing Report. The Thermal Annealing Report must include: a Thermal Annealing Operating Plan; a Requalification Inspection and Test Program; a Fracture Toughness Recovery and Reembrittlement Trend Assurance Program; and Identification of Unreviewed Safety Questions and Technical Specification Changes.

(1) Thermal Annealing Operating Plan.

The thermal annealing operating plan must include:

(i) A detailed description of the pressure vessel and all structures and components that are expected to experience significant thermal or stress effects during the thermal annealing operation;

(ii) An evaluation of the effects of mechanical and thermal stresses and temperatures on the vessel, containment, biological shield, attached piping and appurtenances, and adjacent equipment and components to demonstrate that operability of the reactor will not be detrimentally affected. This evaluation must include:

(A) Detailed thermal and structural analyses to establish the time and temperature profile of the annealing operation. These analyses must include heatup and cooldown rates, and must demonstrate that localized temperatures, thermal stress gradients, and subsequent residual stresses will not result in unacceptable dimensional changes or distortions in the vessel, attached piping and appurtenances, and that the thermal annealing cycle will not result in unacceptable degradation of the fatigue life of these components.

(B) The effects of localized high temperatures on degradation of the concrete adjacent to the vessel and changes in thermal and mechanical properties, if any, of the reactor vessel insulation, and on detrimental effects, if any, on containment and the biological shield. If the design temperature limitations for the adjacent concrete structure are to be exceeded during the thermal annealing operation, an acceptable maximum temperature for the concrete must be established for the annealing operation using appropriate test data.

(iii) The methods, including heat source, instrumentation and procedures proposed for performing the thermal annealing. This shall include any special precautions necessary to minimize occupational exposure, in accordance with the As Low As Reasonably Achievable (ALARA) principle and the provisions of § 20.1206.

(iv) The proposed thermal annealing operating parameters, including bounding conditions for temperatures and times, and heatup and cooldown schedules.

(A) The thermal annealing time and temperature parameters selected must be based on projecting sufficient recovery of fracture toughness, using the procedures of paragraph (e) of this section, to satisfy the requirements of § 50.60 and § 50.61 for the proposed period of operation addressed in the application.

(B) The time and temperature parameters evaluated as part of the thermal annealing operating plan, and supported by the evaluation results of paragraph (b)(1)(ii) of this section, represent the bounding times and temperatures for the thermal annealing operation. If these bounding conditions for times and temperatures are violated during the thermal annealing operation, then the annealing operation is considered not in accordance with the Thermal Annealing Operating Plan, as required by paragraph (c)(1) of this section, and the licensee must comply with paragraph (c)(2) of this section.

(2) Requalification Inspection and Test Program. The inspection and test program to requalify the annealed reactor vessel must include the detailed monitoring, inspections, and tests proposed to demonstrate that the limitations on temperatures, times and temperature profiles, and stresses evaluated for the proposed thermal annealing conditions of paragraph (b)(1)(iv) of this section have not been exceeded, and to determine the thermal annealing time and temperature to be used in quantifying the fracture toughness recovery. The requalification inspection and test program must demonstrate that the thermal annealing operation has not degraded the reactor vessel, attached piping or appurtenances, or the adjacent concrete structures to a degree that could affect the safe operation of the reactor.

(3) Fracture Toughness Recovery and Reembrittlement Trend Assurance Program. The percent recovery of RT_{NDT} and Charpy upper-shelf energy due to the thermal annealing treatment must be determined based on the time and temperature of the actual vessel thermal anneal. The recovery of RT_{NDT} and Charpy upper-shelf energy provide the basis for establishing the post-anneal RT_{NDT} and Charpy upper-shelf energy for each vessel material. Changes in the RT_{NDT} and Charpy upper-shelf energy with subsequent plant operation must be determined using the post-anneal values of these parameters in conjunction with the projected reembrittlement trend determined in accordance with paragraph (b)(3)(ii) of this section. Recovery and reembrittlement evaluations shall include:

(i) Recovery Evaluations.

(A) The percent recovery of both RT_{NDT} and Charpy upper-shelf energy must be determined by one of the procedures described in paragraph (e) of this section, using the proposed lower bound thermal annealing time and temperature conditions described in the operating plan.

(B) If the percent recovery is determined from testing surveillance specimens or from testing materials removed from the reactor vessel, then it shall be demonstrated that the proposed thermal annealing parameters used in the test program are equal to or bounded by those used in the vessel annealing operation.

(C) If generic computational methods are used, appropriate justification must be submitted as a part of the application.

(ii) Reembrittlement Evaluations.

(A) The projected post-anneal reembrittlement of RT_{NDT} must be calculated using the procedures in § 50.61(c), or must be determined using the same basis as that used for the pre-anneal operating period. The projected change due to post-anneal reembrittlement for Charpy upper-shelf energy must be determined using the same basis as that used for the pre-anneal operating period.

(B) The post-anneal reembrittlement trend of both RT_{NDT} and Charpy upper-shelf energy must be estimated, and must be monitored using a surveillance program defined in the Thermal Annealing Report and which conforms to the intent of Appendix H of this part, "Reactor Vessel Material Surveillance Program Requirements."

(4) Identification of Unreviewed Safety Questions and Technical Specification Changes. Any changes to the facility as described in the updated final safety analysis report constituting unreviewed safety questions, and any changes to the technical specifications, which are necessary to either conduct the thermal annealing or operate the nuclear power reactor following the annealing, must be identified. The section shall demonstrate that the Commission's requirements continue to be complied with, and that there is reasonable assurance of adequate protection to the public health and safety following the changes.

(c) Completion or Termination of Thermal Annealing.

(1) If the thermal annealing was completed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, the licensee shall so confirm in writing to the Director, Office of Nuclear Reactor Regulation. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(2) If the thermal annealing was completed but the annealing was not performed in accordance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program, the licensee shall submit a summary of lack of compliance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program and a justification for subsequent operation to the Director, Office of Nuclear Reactor Regulation. Any changes to the facility as described in the updated final safety analysis report which are attributable to the noncompliances and constitute unreviewed safety questions, and any changes to the technical specifications which are required as a result of the noncompliances, shall also be identified.

(i) If no unreviewed safety questions or changes to technical specifications are identified, the licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(ii) If any unreviewed safety questions or changes to technical specifications are identified, the licensee may not restart its reactor until approval is obtained from the Director, Office of Nuclear Reactor Regulation and the requirements of paragraph (f)(2) of this section have been met.

(3) If the thermal annealing was terminated prior to completion, the licensee shall immediately notify the NRC of the premature termination of the thermal anneal.

(i) If the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, and the licensee does not elect to take credit for any recovery, the licensee need not submit the Thermal Annealing Results Report required by paragraph (d) of this section but instead shall confirm in writing to the Director, Office of Nuclear Reactor Regulation that the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(ii) If the partial annealing was otherwise performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, and the licensee elects to take full or partial credit for the partial annealing, the licensee shall confirm in writing to the Director, Office of Nuclear Reactor Regulation that the partial annealing was otherwise performed in compliance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program. The licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(iii) If the partial annealing was not performed in accordance with the Thermal Annealing Operating Plan and relevant portions of the Requalification Inspection and Test Program, the licensee shall submit a summary of lack of compliance with the Thermal Annealing Operating Plan and the Requalification Inspection and Test Program and a justification for subsequent operation to the Director, Office of Nuclear Reactor Regulation. Any changes to the facility as described in the updated final safety analysis report which are attributable to the noncompliances and constitute unreviewed safety questions, and any changes to the technical specifications which are required as a result of the noncompliances, shall also be identified.

(A) If no unreviewed safety questions or changes to technical specifications are identified, the licensee may restart its reactor after the requirements of paragraph (f)(2) of this section have been met.

(B) If any unreviewed safety questions or changes to technical specifications are identified, the licensee may not restart its reactor until approval is obtained from the Director, Office of Nuclear Reactor Regulation and the requirements of paragraph (f)(2) of this section have been met.

(d) Thermal Annealing Results Report. Every licensee that either completes a thermal annealing, or that terminates an annealing but elects to take full or partial credit for the annealing, shall provide the following information within three months of completing the thermal anneal, unless an extension is authorized by the Director, Office of Nuclear Reactor Regulation:

(1) The time and temperature profiles of the actual thermal annealing;

(2) The post-anneal RT_{NDT} and Charpy upper-shelf energy values of the reactor vessel materials for use in subsequent reactor operation;

(3) The projected post-anneal reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy; and

(4) The projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the Thermal Annealing Report.

(e) Procedures for Determining the Recovery of Fracture Toughness. The procedures of this paragraph must be used to determine the percent recovery of ΔRT_{NDT}, R_t, and percent recovery of Charpy upper-shelf energy, R_u. In all cases, R_t and R_u may not exceed 100.

(1) For those reactors with surveillance programs which have developed credible surveillance data as defined in § 50.61, percent recovery due to thermal annealing (R_t and R_u) must be evaluated by testing surveillance specimens that have been withdrawn from the surveillance program and that have been annealed under the same time and temperature conditions as those given the beltline material.

(2) Alternatively, the percent recovery due to thermal annealing (R_t and R_u) may be determined from the results of

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a verification test program employing materials removed from the beltline region of the reactor vessel[6] and that have been annealed under the same time and temperature conditions as those given the beltline material.

(3) Generic computational methods may be used to determine recovery if adequate justification is provided.

(f) Public information and participation.

(1) Upon receipt of a Thermal Annealing Report, and a minimum of 30 days before the licensee starts thermal annealing, the Commission shall:

(i) Notify and solicit comments from local and State governments in the vicinity of the site where the thermal annealing will take place and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the thermal annealing,

(ii) Publish a notice of a public meeting in the Federal Register and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, to solicit comments from the public, and

(iii) Hold a public meeting on the licensee's Thermal Annealing Report.

(2) Within 15 days after the NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i)–(iii) of this section, the NRC staff shall place in the NRC Public Document Room a summary of its inspection of the licensee's thermal annealing, and the Commission shall hold a public meeting:

(i) For the licensee to explain to NRC and the public the results of the reactor pressure vessel annealing,

(ii) for the NRC to discuss its inspection of the reactor vessel annealing, and

(iii) for the NRC to receive public comments on the annealing.

(3) Within 45 days of NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i)–(iii) of this section, the NRC staff shall complete full documentation of its inspection of the licensee's annealing process and place this documentation in the NRC Public Document Room.

5. In 10 CFR Part 50, Appendix G is revised to read as follows:

Appendix G to Part 50—Fracture Toughness Requirements

I. Introduction and scope.
II. Definitions.
III. Fracture toughness tests.
IV. Fracture toughness requirements.

I. Introduction and Scope

This appendix specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The ASME Code forms the basis for the requirements of this appendix. "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. If no section is specified, the reference is to Section III, Division 1, "Rules for Construction of Nuclear Power Plant Components." "Section XI" means Section XI, Division 1, "Rules for Inservice Inspection of Nuclear Power Plant Components." If no edition or addenda are specified, the ASME Code edition and addenda and any limitations and modifications thereof, which are specified in § 50.55a, are applicable.

The sections, editions and addenda of the ASME Boiler and Pressure Vessel Code specified in § 50.55a have been approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017, and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, MD 20852–2738.

The requirements of this appendix apply to the following materials:

A. Carbon and low-alloy ferritic steel plate, forgings, castings, and pipe with specified minimum yield strengths not over 50,000 psi (345 MPa), and to those with specified minimum yield strengths greater than 50,000 psi (345 MPa) but not over 90,000 psi (621 MPa) if qualified by using methods equivalent to those described in paragraph G–2110 of Appendix G of Section XI of the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2).

B. Welds and weld heat-affected zones in the materials specified in paragraph I.A. of this appendix.

C. Materials for bolting and other types of fasteners with specified minimum yield strengths not over 130,000 psi (896 MPa).

Note: The adequacy of the fracture toughness of other ferritic materials not covered in this section must be demonstrated to the Director, Office of Nuclear Reactor Regulation, on an individual case basis.

II. Definitions

A. *Ferritic material* means carbon and low-alloy steels, higher alloy steels including all stainless alloys of the 4xx series, and maraging and precipitation hardening steels with a predominantly body-centered cubic crystal structure.

B. *System hydrostatic tests* means all preoperational system leakage and hydrostatic pressure tests and all system leakage and hydrostatic pressure tests performed during the service life of the pressure boundary in compliance with the ASME Code, Section XI.

C. *Specified minimum yield strength* means the minimum yield strength (in the unirradiated condition) of a material specified in the construction code under which the component is built under § 50.55a.

D. RT_{NDT} means the reference temperature of the material, for all conditions.

(i) For the pre-service or unirradiated condition, RT_{NDT} is evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(ii) For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

E. RT_{NDT} means the transition temperature shift, or change in RT_{NDT}, due to neutron radiation effects, which is evaluated as the difference in the 30 ft-lb (41 J) index temperatures from the average Charpy curves measured before and after irradiation.

F. *Beltline or Beltline region of reactor vessel* means the region of the reactor vessel (shell material including welds, heat affected zones, and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

III. Fracture Toughness Tests

A. To demonstrate compliance with the fracture toughness requirements of Section IV of this appendix, ferritic materials must be tested in accordance with the ASME Code and, for the beltline materials, the test requirements of Appendix H of this part. For a reactor vessel that was constructed to an ASME Code earlier than the Summer 1972 Addenda of the 1971 Edition (under § 50.55a), the fracture toughness data and data analyses must be supplemented in a manner approved by the Director, Office of Nuclear Reactor Regulation, to demonstrate equivalence with the fracture toughness requirements of this appendix.

B. Test methods for supplemental fracture toughness tests described in paragraph IV.A.1.b of this appendix must be submitted to and approved by the Director, Office of Nuclear Reactor Regulation, prior to testing.

C. All fracture toughness test programs conducted in accordance with paragraphs III.A and III.B must comply with ASME Code requirements for calibration of test equipment, qualification of test personnel, and retention of records of these functions and of the test data.

IV. Fracture Toughness Requirements

A. The pressure-retaining components of the reactor coolant pressure boundary that are made of ferritic materials must meet the requirements of the ASME Code, supplemented by the additional requirements set forth below, for fracture toughness during system hydrostatic tests and any condition of normal operation, including anticipated operational occurrences. Reactor vessels may continue to be operated only for that service period within which the requirements of this section are satisfied. For the reactor vessel beltline materials, including welds, plates and forgings, the values of RT_{NDT} and Charpy upper-shelf energy must account for the effects of neutron radiation, including the results of the surveillance program of Appendix H of this part. The effects of neutron radiation must consider the radiation conditions (i.e., the fluence) at the deepest point on the crack front of the flaw assumed in the analysis.

1. Reactor Vessel Charpy Upper-Shelf Energy Requirements

a. Reactor vessel beltline materials must have Charpy upper-shelf energy,[1] in the transverse direction for base material and along the weld for weld material according to the ASME Code, of no less than 75 ft-lb (102 J) initially and must maintain Charpy upper-shelf energy throughout the life of the vessel of no less than 50 ft-lb (68 J), unless it is demonstrated in a manner approved by the Director, Office of Nuclear Reactor Regulation, that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Code. This analysis must use the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2) at the time the analysis is submitted.

b. Additional evidence of the fracture toughness of the beltline materials after exposure to neutron irradiation may be obtained from results of supplemental fracture toughness tests for use in the analysis specified in section IV.A.1.a.

c. The analysis for satisfying the requirements of section IV.A.1 of this appendix must be submitted, as specified in § 50.4, for review and approval on an individual case basis at least three years prior to the date when the predicted Charpy upper-shelf energy will no longer satisfy the requirements of section IV.A.1 of this appendix, or on a schedule approved by the Director, Office of Nuclear Reactor Regulation.

2. Pressure-Temperature Limits and Minimum Temperature Requirements

a. Pressure-temperature limits and minimum temperature requirements for the reactor vessel are given in Table 3, and are defined by the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether or not fuel is in the vessel, and whether the core is critical. In Table 3, the vessel pressure is defined as a percentage of the preservice system hydrostatic test pressure. The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.

b. The pressure-temperature limits identified as "ASME Appendix G limits" in Table 3 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code.

c. The minimum temperature requirements given in Table 3 pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. As specified in Table 3, the minimum temperature requirements and the controlling material depend on the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1.

d. Pressure tests and leak tests of the reactor vessel that are required by Section XI of the ASME Code must be completed before the core is critical.

B. If the procedures of Section IV.A. of this appendix do not indicate the existence of an equivalent safety margin, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the beltline region materials satisfies the requirements of Section IV.A. of this appendix using the values of RT_{NDT} and Charpy upper-shelf energy that include the effects of annealing and subsequent irradiation.

TABLE 1.—PRESSURE AND TEMPERATURE REQUIREMENTS FOR THE REACTOR PRESSURE VESSEL

Operating condition	Vessel pressure[1]	Requirements for pressure-temperature limits	Minimum temperature requirements
1. Hydrostatic pressure and leak tests (core is not critical):			
1.a Fuel in the vessel	≤20%	ASME Appendix G Limits	([2])
1.b Fuel in the vessel	>20%	ASME Appendix G Limits	([2]) +90°F ([6])
1.c No fuel in the vessel (Preservice Hydrotest Only)	ALL	(Not Applicable)	([3]) +60°F
2. Normal operation (incl. heat-up and cool-down), including anticipated operational occurrences:			
2.a Core not critical	≤20%	ASME Appendix G Limits	([2])
2.b Core not critical	>20%	ASME Appendix G Limits	([2]) +120°F ([6])
2.c Core critical	≤20%	ASME Appendix G Limits + 40°F	Larger of [([4]) or [([2]) + 40°F]
2.d Core critical	>20%	ASME Appendix G Limits + 40°F	Larger of [([4]) or [([2]) + 160°F]
2.e Core critical for BWR ([5])	≤20%	ASME Appendix G Limits + 40°F	([2]) + 60°F

[1] Percent of the preservice system hydrostatic test pressure.
[2] The highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload.
[3] The highest reference temperature of the vessel.
[4] The minimum permissible temperature for the inservice system hydrostatic pressure test.
[5] For boiling water reactors (BWR) with water level within the normal range for power operation.
[6] Lower temperatures are permissible if they can be justified by showing that the margins of safety of the controlling region are equivalent to those required for the beltline when it is controlling.

[1] Defined in ASTM E 185–79 and –82 which are incorporated by reference in Appendix H to Part 50.

[6] For those cases where materials are removed from the beltline of the pressure vessel, the stress limits of the applicable portions of the ASME Code Section III must be satisfied, including consideration of fatigue and corrosion, regardless of the Code of record for the vessel design.

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6. In 10 CFR Part 50, Appendix H is revised to read as follows:

Appendix H to Part 50—Reactor Vessel Material Surveillance Program Requirements

I. Introduction
II. Definitions
III. Surveillance Program Criteria
IV. Report of Test Results

I. Introduction

The purpose of the material surveillance program required by this appendix is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment. Under the program, fracture toughness test data are obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. These data will be used as described in Section IV of Appendix G to Part 50.

ASTM E 185–73, –79, and –82, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels," which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the **Federal Register**. Copies of ASTM E 185–73, –79, and –82, may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, MD 20852–2736.

II. Definitions

All terms used in this Appendix have the same meaning as in Appendix G.

III. Surveillance Program Criteria

A. No material surveillance program is required for reactor vessels for which it can be conservatively demonstrated by analytical methods applied to experimental data and tests performed on comparable vessels, making appropriate allowances for all uncertainties in the measurements, that the peak neutron fluence at the end of the design life of the vessel will not exceed 10^{17} n/cm^2 (E > 1 MeV).

B. Reactor vessels that do not meet the conditions of paragraph III.A of this appendix must have their beltline materials monitored by a surveillance program complying with ASTM E 185, as modified by this appendix.

1. The design of the surveillance program and the withdrawal schedule must meet the requirements of the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased. Later editions of ASTM E 185 may be used, but including only those editions through 1982. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 to the extent practicable for the configuration of the specimens in the capsule.

2. Surveillance specimen capsules must be located near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates, to the extent practicable within the physical constraints of the system, the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface. If the capsule holders are attached to the vessel wall or to the vessel cladding, construction and inservice inspection of the attachments and attachment welds must be done according to the requirements for permanent structural attachments to reactor vessels given in Sections III and XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The design and location of the capsule holders must permit insertion of replacement capsules. Accelerated irradiation capsules may be used in addition to the required number of surveillance capsules.

3. A proposed withdrawal schedule must be submitted with a technical justification as specified in § 50.4. The proposed schedule must be approved prior to implementation.

C. Requirements for an Integrated Surveillance Program.

1. In an integrated surveillance program, the representative materials chosen for surveillance for a reactor are irradiated in one or more other reactors that have similar design and operating features. Integrated surveillance programs must be approved by the Director, Office of Nuclear Reactor Regulation, on a case-by-case basis. Criteria for approval include the following:

a. The reactor in which the materials will be irradiated and the reactor for which the materials are being irradiated must have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage.

b. Each reactor must have an adequate dosimetry program.

c. There must be adequate arrangement for data sharing between plants.

d. There must be a contingency plan to assure that the surveillance program for each reactor will not be jeopardized by operation at reduced power level or by an extended outage of another reactor from which data are expected.

e. There must be substantial advantages to be gained, such as reduced power outages or reduced personnel exposure to radiation, as a direct result of not requiring surveillance capsules in all reactors in the set.

2. No reduction in the requirements for number of materials to be irradiated, specimen types, or number of specimens per reactor is permitted.

3. After (the effective date of this section), no reduction in the amount of testing is permitted unless previously authorized by the Director, Office of Nuclear Reactor Regulation.

IV. Report of Test Results

A. Each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted, as specified in § 50.4, within one year of the date of capsule withdrawal, unless an extension is granted by the Director, Office of Nuclear Reactor Regulation.

B. The report must include the data required by ASTM E 185, as specified in paragraph III.B.1 of this appendix, and the results of all fracture toughness tests conducted on the beltline materials in the irradiated and unirradiated conditions.

C. If a change in the Technical Specifications is required, either in the pressure-temperature limits or in the operating procedures required to meet the limits, the expected date for submittal of the revised Technical Specifications must be provided with the report.

Dated at Rockville MD, this 12th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30665 Filed 12–18–95; 8:45 am]
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December 19, 1995

Part V

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

National Driver Registration and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–212]

RIN 2115–AD93

National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In furtherance of the President's Regulatory Reinvention Initiative, this rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit the Coast Guard to review information from the National Driver Register on an applicant prior to issuing or renewing a license, certificate of registry (COR), or merchant mariner's document (MMD). This rulemaking also addresses OPA 90 provisions that permit the Coast Guard to review the criminal records of applicants prior to issuing a license, COR or MMD. In addition, it establishes regulations that permit criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date. This rulemaking provides the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

EFFECTIVE DATE: January 18, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–212), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Walker, Marine Personnel Qualifications (G–MCO–1), (202) 267–0475. This telephone records messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Drafting Information. The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, Project Development Branch (G–MES–2) and Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G–LRA).

Regulatory History

On March 13, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents" in the Federal Register (60 FR 13570). The Coast Guard received 29 letters commenting on the proposal. Several comments requested a public hearing. The Coast Guard determined that a public hearing is unnecessary and that all of the issues contained in the comments are addressed in this rulemaking.

Background and Purpose

1. General

Under the authority of 46 U.S.C. 7101, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers. It also issues certificates of registry (CORs) to qualified staff officers such as pursers, medical doctors, and professional nurses.

The Coast Guard issues merchant mariner's documents (MMDs), with certain exceptions described in 46 U.S.C. 8701, to vessel personnel for service aboard U.S. flag merchant vessels of more than 100 gross tons which operate on waters other than rivers and lakes. The MMD serves as a certificate of identification and qualification, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen. Many merchant mariners who hold licenses and CORs also hold MMDs.

All licensing and documentation transactions are processed at Coast Guard Regional Examination Centers (RECs) exercising the authority of the Officer in Charge, Marine Inspection (OCMIs).

Sections 4101(a) and (b) and section 4102(e) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amend 46 U.S.C. 7101, 7302, and 7109, respectively, to authorize the Coast Guard to conduct criminal record checks of any individual applying for a license, COR, or MMD; for a raise in grade of a license or COR; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. Some individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they present a risk to passengers, fellow crew members, or the safe operation of a vessel.

As amended, 46 U.S.C. 7101 and 7302 prohibit the Coast Guard from issuing a license, COR, or MMD to an applicant unless the applicant makes available to the Coast Guard any information contained in the National Driver Register (NDR) related to an offense committed by the applicant that is described in sections 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (49 U.S.C. Chapter 303). These offenses are: operation of a motor vehicle under the influence of, or while impaired by, alcohol or a controlled substance; and any traffic violation(s) arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Although an individual's motor vehicle record may not be directly related to his or her maritime career, a record of alcohol or drug-related motor vehicle offenses, or other motor vehicle offenses as specified in sections 205(a)(3)(A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Section 4105(b) of OPA 90 amended 46 U.S.C. Chapter 75, to require the Coast Guard to make the information received from the NDR available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying, suspending, revoking, or taking other action on that individual's license, COR, or MMD.

Before Congress enacted OPA 90, an individual who applied for a license, COR, or MMD was not required to provide the Coast Guard with NDR information. However, an applicant for a license or COR was asked on the application form if he or she had been convicted of any offense(s) other than minor traffic violation(s). Information provided by the applicant regarding conviction(s) for other than minor traffic violation(s), including Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), was used to evaluate the applicant's qualifications to hold a license or COR.

2. Criminal Record Review Under Current Regulations

a. Licenses and CORs. The current regulations at 46 CFR 10.205, "Requirements for original licenses and certificates of registry," require the applicant to have his or her fingerprints taken during the application process. The Coast Guard uses the fingerprints to determine if a criminal record exists for the individual. Section 10.205(f)(2) authorizes the OCMI to reject an application if the criminal record check, or other information, indicates that an applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities associated with a license or COR. The OCMI notifies the applicant of the reason(s) for disapproval.

Section 10.205(f)(4) indicates that, in the event a license or COR has been issued before adverse information on the applicant's character or habits of life, or information indicating that the application is false or incomplete, is obtained the OCMI may notify the individual that the license or COR is null and void and direct the holder to return the license or certificate to the OCMI.

Under 46 CFR 10.209, "Requirements for renewal of a license," each renewal applicant must use a standard form furnished by the Coast Guard. The form asks the applicant to identify any criminal convictions or history of drug use. Under § 10.209(b), an applicant may not have his or her license renewed if facts which would render a renewal improper have come to the Coast Guard's attention.

The Coast Guard currently performs a license renewal criminal record check when an individual has identified a conviction or drug use on the application. In addition, the Coast Guard performs a criminal record check on applicants for renewal whom it suspects have criminal records or a history of drug use. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) recognizes these existing Coast Guard procedures.

Related regulations in 46 CFR part 10, "Requirements for raise of grade of a license" (§ 10.207) and "Issuance of duplicate of license or certificate of registry" (§ 10.219), currently do not address criminal record checks.

b. Merchant Mariner's Documents. The regulations contained at 46 CFR part 12, "Certification of Seamen," do not address fingerprinting an applicant for an MMD specifically for a criminal record check; however, under existing practice, the Coast Guard fingerprints an individual applying for his or her original MMD and performs a criminal record check on the applicant. The Coast Guard does not fingerprint and check the criminal record of a person obtaining a duplicate MMD or an additional MMD endorsement.

Under law existing prior to OPA 90, the Coast Guard was not required to consider the character and habits of life of an applicant for an MMD as it was for licenses and CORs. The only specific statutory provision concerning dangerous drug use or criminal convictions authorized the Coast Guard to deny an MMD to an applicant convicted for a dangerous drug offense within 10 years prior to the date of application (46 U.S.C. 7503). The Coast Guard has also been authorized to deny an MMD to a person who has ever used or has ever been addicted to a dangerous drug unless the applicant provides satisfactory proof that he or she is suitable for employment in the merchant marine.

3. National Driver Register Access

The National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation (DOT) maintains the NDR, which is a nationwide repository of information on drivers. The NDR is part of a voluntary cooperative program that assists State motor vehicle driver licensing agencies and certain Federal agencies in gaining access to data on an individual's motor vehicle driving record. The NDR Act of 1982 prohibits the use of information in the NDR that is more than 3 years old, unless that information relates to a current suspension or revocation of the individual's license to operate a motor vehicle.

At present, access to the NDR must be made through participating States. DOT has proposed legislation to amend section 307 of the NDR Act of 1982 to allow direct NDR access by Federal agencies. If the proposed legislation is enacted, the Coast Guard intends to adopt the direct access methodology.

Discussion of Comments and Changes

Twenty-nine letters were received in response to the NPRM. The Coast Guard has considered all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue and are discussed as follows.

1. Coast Guard Authority

Seven comments suggested the regulations are intrusive into the lives of mariners and questioned the Coast Guard's authority to review information from the National Driver Register and review criminal record information in issuing licenses, CORs, or MMDs. OPA 90 authorized the Coast Guard to conduct criminal record checks and review information from the National Driver Register on any individual applying for a license, COR, or MMD; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. The Coast Guard is implementing these provisions to exclude from holding merchant mariner credentials those individuals whose history indicates a lack of concern regarding the safety of themselves, others, the marine environment, and the safe operation of a vessel.

Two comments suggested that since the term "renewal" is not mentioned in 46 U.S.C. 7302(c) and (d), the review of criminal records and the National Driver Register only applies to original document applications. The Coast Guard disagrees. The review of criminal records and the NDR is relevant to all documents applied for under 46 U.S.C. 7302, including renewal of MMDs or endorsement of MMDs with a new expiration date. Similarly, in 46 U.S.C. 7101(h), individuals applying for a license or COR include all individuals applying for a raise in grade or renewal.

One comment stated that the Coast Guard, rather than the employer, is in the best position to monitor and provide assurance of rehabilitation for individuals with an alcohol or drug problem. The Coast Guard lacks the legal authority and resources to continuously monitor individuals with drug or alcohol problems. Checks can be made at a point convenient to the mariner and the Coast Guard, for example, renewal or raise in grade. Monitoring individuals is within the scope of employer responsibilities because the employer is more likely to evaluate an employee's work and conduct on a regular basis.

Two comments stated that the regulations are unnecessary because the merchant marine is self-regulating. The comments submitted that mariners who pose a threat to the safe operation of a ship, personnel, or passengers will be excluded by other mariners or employers. The Coast Guard determined that the mariners' or employer's ability to self-regulate cannot attain the scope of the Coast Guard's ability to regulate merchant marine personnel. Also, the Coast Guard has been delegated the authority of general superintendence over the merchant marine and merchant marine personnel in the interest of marine safety and seamen's welfare. The Coast Guard, as the agency authorized to issue merchant mariner's credentials, must ensure, to the best of its ability, that individuals who receive these credentials do not present a possible threat to personnel, passengers, or the safe operation of a vessel.

2. Relationship Between Convictions and Job Performance

Eight comments suggested that there is little or no relationship between a person's criminal or driving offenses on

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land and their maritime related job performance. The Coast Guard disagrees. An individual's record of alcohol or drug-related, or other motor vehicle offenses as specified in sections 205(a)(3) (A) and (B) of the NDR Act of 1992, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) explains that alcohol impairment may have played a role in the Exxon Valdez incident. Motor vehicle offenses involving the abuse of alcohol and drugs may evince possible unsafe vessel operations. Congressional intent, as presented in the Conference Report on OPA 90, was to provide an additional tool in an effort to promote a drug- and alcohol-free workplace in maritime industry. Also, the Coast Guard concluded that applicants who have been convicted of violent criminal offenses or serious property offenses may pose a threat to ship personnel, passengers, the marine environment, and the safe operation of the ship. The Coast Guard may increase ship safety by denying seafarer's documents to individuals who demonstrate a lack of concern for safety through a record of criminal or motor vehicle offenses.

3. The National Driver Register

Two comments indicated that the Coast Guard is only able to review information from the National Driver Register three years prior to the check. The comments noted that the information from an NDR file check would not cover the full 5 years between document renewal. The NDR Act prohibits the Coast Guard from gaining access to information more than three years old, unless the information is about a revocation or suspension of driving privileges still in effect (49 U.S.C. 30305(b)(5)).

One comment suggested that NDR checks may be a federalism issue, since most driving offenses are state offenses. The Coast Guard is among the authorized agencies granted access to the NDR. The NDR Act establishes guidelines for obtaining information from the NDR for the purposes of evaluating individuals who hold, or are applying for a license or certificate of registry under 46 U.S.C. 7101, or a merchant mariner's document under 46 U.S.C. 7302 (49 U.S.C. 30305(b)(5)).

One comment requested clarification of "racing on the highways." According to the National Highway Traffic Safety Administration, ra ing on the highways means formal or informal contest racing on a public highway.

Another comment stated that if the NDR is a voluntary system, the Coast Guard may not be able to check information from non-participating states. Since all of the states and the District of Columbia are participants in the NDR program, the Coast Guard can conduct checks on any individual in the United States with motor vehicle driving record information.

One comment noted a decision rendered on April 5, 1995, by the United States Circuit Court for the Fourth Circuit in a case entitled, *American Trucking Associations Inc.* v. *Federal Highway Administration*. In that case, the court's decision was based on the fact that off-duty alcohol use is generally not relevant criteria in determining eligibility for employment. In its decision, the court was interpreting the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143), which applied to the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the Federal Transit Administration, but not to the Coast Guard. This case involved preemployment testing requirements for alcohol use. This final rule is under separate authority and does not involve the preemployment testing of individuals for alcohol.

The Coast Guard is providing information to applicants who wish to conduct an NDR file check for their personal use. The NDR allows individuals to request a file check in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579). New sections 10.201(i)(4) and 12.02–4(d)(4) describe the procedures to follow to receive the results of a NDR file check. The information in a personal NDR file check is intended for use by the applicant only, and may not be used in the licensing and certification process.

The Coast Guard concluded the term "NDR listed convictions" needed further clarification. The final rule adds a definition for "NDR listed convictions" to its list of definitions in § 10.103 and § 12.01–6. The new definition will reflect the convictions in 49 U.S.C. 30304(a)(3)(A) and (B) which are authorized by the National Highway Safety Transportation Administration to be used by the Coast Guard to evaluate applicants for merchant mariner's documents.

In the NPRM, § 10.201(b) and § 12.02–4(a) did not discuss individuals with NDR convictions due to the addiction or abuse of alcohol. The Coast Guard added a statement to § 10.201(b) and § 12.02–4(a) to ensure individuals with such NDR convictions furnish satisfactory evidence of suitability for service in the merchant mariner to be eligible for a license, COR, or a merchant mariner's document.

4. Past Offenses

Several comments recommended implementing these regulations in a prospective manner, where the Coast Guard would only consider offenses occurring after the effective date of the regulations. These comments stated that, in the past, many mariners have not challenged false charges due to their work schedule and the threat of loss of employment. The regulations allow mariners ample opportunity to provide the OCMI with evidence of suitability for service in the merchant marine, and to explain the circumstances of an offense. If the application is denied, an appeal process and reconsideration are available.

A few comments suggested that mariners would have altered their behavior if they had prior knowledge of the effect of off-duty conduct on employment. In the past, the Coast Guard has been conducting criminal record review for original applications for licenses and CORs, and under existing practice conducts a criminal record review of original applicants for MMDs. Applicants are already accountable for past behavior when they apply for their original documents. The Coast Guard is expanding its requirements to include spot-checks of individuals applying for a raise in grade of a license, COR, or MMD; an endorsement on a MMD with a new expiration date; and a renewal of a license, COR, or MMD. The NDR checks were created to identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs or the unsafe operation of a motor vehicle. The Coast Guard determined that the certification and licensing of persons involved with the abuse of these substances or the unsafe operation of a motor vehicle may lead to unsafe vessel operations.

Some comments discussed the Coast Guard's consideration of charges against mariners that have been stricken from the record through remediation or compensation and how this defeats public policy and discourages individuals from participating in remediation or compensation. As stated in the definition of "conviction" provided in this final rule, a later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error. The Coast Guard concluded that consideration of all convictions is important to determining the character and habits of life of applicants for merchant mariner's credentials.

Four comments stated that denial of credentials on the grounds of a past offense is punishing an individual twice for the same offense, and for this reason the final rule is unconstitutional. The Coast Guard disagrees. Merchant mariner's credentials are certificates of qualification that authorize individuals to perform certain duties on a vessel. In the interest of marine safety, the Coast Guard examines applicants to determine their suitability to hold merchant marine credentials. Past offenses are a good indicator of whether a person is a possible threat to the safety of ship operation, personnel, the marine environment, or passengers. Basing the decision of whether to grant a merchant mariner's credentials on the factors articulated in this rule is not punishment of those whose applications are denied. It is instead a reasonable way to protect life and property at sea.

The Coast Guard added the statement, "Applicants must provide written disclosure for all prior convictions at the time of application," to § 10.201(h) and § 12.02–4(c). The sentence will provide consistency between this final rule and the current application procedures.

5. Assessment Periods

Five comments addressed the minimum and maximum assessment periods for which the OCMI will consider a conviction in the evaluation of an applicant for merchant mariner's credentials.

One comment expressed that the assessment periods appeared to be arbitrary. The Coast Guard has reviewed three reports from the U.S. Department of Justice, Bureau of Justice Statistics (BJS). These reports are entitled, "Recidivism of Prisoners Released in 1983", Recidivism of Felons on Probation, 1986–1989," and "Recidivism of Young Parolees". The reports revealed high rates of rearrest for released prisoners, felons on probation, and young parolees. Based on a sample of State prisoners released in 1983, 62.5 percent were rearrested for a felony or serious misdemeanor within 3 years. Using a sample of felons sentenced to probation in 1986, a report found that 62 percent of the probationers either had a disciplinary hearing for violating a condition of their probation or were arrested for another felony within three years. Another BJS study, based on a sample of young parolees between the ages of 17 and 22, found that 69 percent of young parolees were rearrested for a serious crime within 6 years of their release from prison. One of the reports found that of the prisoners in the study, those with a prior arrest for a violent offense had a greater likelihood of rearrest than other released prisoners. Therefore, the categories of violent crimes in Tables 10.201(h) and 12.02–4(c) have longer assessment periods. The Coast Guard determined that the assessment periods, as published in the NPRM, are a sufficient guideline for the OCMI to consider the convictions of applicants. The assessment periods take into account both recidivism of the categories of crimes and the consequences of their occurrence.

Several comments suggested reducing the length of the assessment periods and including supervised parole or probation as part of the assessment periods. The Coast Guard established the assessment periods as guidelines for the OCMI when evaluating an applicant with criminal convictions. The assessment periods do not prevent an individual from applying before the minimum assessment period has elapsed or between minimum and maximum assessment periods.

A person who applies before the minimum time period has elapsed must provide the OCMI with evidence of suitability for maritime employment. This final rule provides a list of factors in § 10.201(j) and § 12.02–4(e) for the OCMI to use as a guide in considering an applicant before the minimum assessment period has elapsed.

The applicant may also apply for merchant mariner's credentials between the minimum and maximum assessment periods. During this period, the Coast Guard will issue a license, COR, or MMD to the applicant unless there are offsetting factors. Type of offsetting factors are listed in § 10.201(h)(5) and § 12.02–4(c)(5).

After further review, the Coast Guard determined that the OCMI would benefit from examining periods of supervised probation and parole as part of the assessment periods. Periods of supervised probation and parole, like periods of unsupervised probation and parole, allow individuals to adjust to civilian life. Therefore, the OCMI may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. The Coast Guard also revised § 10.201(h)(2) and § 12.02–4(c)(2) to clarify when the assessment period commences.

One comment objected to the evaluating factor in §§ 10.201(j) and 12.02–4(e) concerning membership in a rehabilitation group. The comment noted that many of these groups are anonymous and information on membership and attendance is usually confidential or nonexistent. The Coast Guard will accept as proof of active membership a broad range of items, such as a letter from a counselor, or the signature or stamp of a secretary from the group an individual is attending.

6. Direct and Indirect Benefits

Three comments recommended supporting the benefit analysis in the NPRM with statistical data. The Coast Guard stated in the NPRM that the direct and societal benefits from this final rule are not quantifiable. Historical data are insufficient to perform an analysis of benefits. The Coast Guard concluded that even if maritime accidents are reduced by a small percentage, savings will accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

7. Additional Comments and Changes

Another comment suggested that the OCMI consider dangerous drug offenses more than ten years prior to the application for a license, COR, or MMD if there are subsequent dangerous drug offenses. The Coast Guard determined that consideration of dangerous drug convictions occurring ten years before application combined with subsequent violations are helpful in establishing a behavior pattern. The Coast Guard is amending § 10.201(h)(2) and § 12.02–4(c)(2) to include dangerous drug convictions occurring more than 10 years prior to the date of application if an individual has subsequent violations. Tables 10.201(h) and 12.02–4(c) were also amended to reflect the consideration of dangerous drug offenses more than 10 years old if there are subsequent dangerous drug offenses.

The Coast Guard determined that some NDR convictions could also be criminal convictions. When deciding on an appropriate assessment period, the OCMI should be able to use the guidelines found in the criminal conviction table and the NDR conviction table. Therefore, § 10.201(h)(3) and § 12.02–4(c)(3) were revised to add Table 10.201(i) and Table 12.02–4(d), respectively. Also, § 10.201(i) and § 12.02–4(d) were revised to allow the OCMI to use criminal conviction assessment period guidelines where appropriate.

The Coast Guard revised Tables 10.201(i) and 12.02–4(d) to clarify the assessment period for 2 or more motor vehicle convictions. The phrase "which ever is longer" was deleted from the assessment period of applicants for merchant mariner's documents, licenses, and certificates of registry with

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2 or more motor vehicle convictions involving dangerous drugs or alcohol.

The Coast Guard revised § 10.201(j) and § 12.02–4(e) to include applicants who are users of, or addicted to dangerous drugs. This revision was made to ensure consistency with § 10.201(b) and § 12.02–4(e).

The other comments received were general in nature and supported this Coast Guard rulemaking.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows.

1. Criminal Record Review

Coast Guard costs attributable to implementing the provisions authorizing the criminal record review of applicants for licenses, CORs, and MMDs in sections 4101(a) and 4102(e) of OPA 90 will be incurred by the RECs and Coast Guard Headquarters. These costs are associated with reviewing and processing the criminal record review data through the Federal Bureau of Investigation (FBI). The REC will assume the primary responsibility for the final review of the criminal record report received from the FBI.

Because current Coast Guard regulations and practices require all applicants for the original issuance of licenses, CORs, or MMDs to submit to criminal record reviews by the taking of fingerprints, these costs are not newly incurred as a result of this rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on an MMD with a new expiration date; or renewal of a license, COR, or MMD. The Coast Guard plans to spot-check the criminal records of individuals applying for these merchant mariner credentials. For the purpose of estimating costs, the Coast Guard has assumed that 1 of every 30 of these applicants will be spot-checked.

Approximately 10,881 licenses are expected to be renewed each year. An estimated 363 (10,881/30) spot criminal record checks will be performed on these applicants.

Approximately 18,000 MMDs are expected to be renewed each year. An estimated 600 (18,000/30) spot criminal record checks will be done on these applicants.

Approximately 300 CORs are expected to be renewed each year. An estimated 10 (300/30) spot criminal record checks will be performed on these applicants.

Approximately 3,740 raises of grade for license and COR endorsements are expected to be issued each year. An estimated 125 (3,740/30) spot criminal record checks will be performed on these applicants.

Approximatley 4,025 supplemental MMD endorsements are issued each year. An estimated 134 (4,025/30) spot criminal record checks will be done on these applicants.

The total number of spot criminal record checks will amount to approximately 1,232 (See Table I.).

TABLE I

Type of action	No. applicants	No. checked
License Renewal	10,881	363
MMD Renewals	18,000	600
COR Renewals	300	10
Raise of grade (licenses) and higher grade of COR	3,740	125
Supplemental endorsements (MMDs)	4,025	134
Total Number of Spot Criminal Record Checks		1,232

It will cost the Coast Guard approximately $17 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of $20,944.

Based on a sample survey of the REC's experience with criminal records conducted by the Coast Guard in 1992, 8 percent of the applicants are estimated to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the application evaluation. Thus, only 0.72 percent of the applicants had actionable convictions on their records. Therefore, of the reissue and renewal applicants sampled, it is estimated that 99 will have records with the FBI, and a total of 9 of the 1,232 applicants will have records significant to the license evaluation. The Coast Guard estimates that the costs for the 99 applicants with convictions to furnish the necessary documents to exonerate themselves will be minimal. Costs are expected to total approximately $19 per court record for aggregate annual applicant costs of approximately $1,900.

The Coast Guard estimates that 75 percent, or 924, of the spot-checked applicants for a raise in grade of a license or COR, a renewal of a license or COR, or any MMD with a new expiration date will apply by mail. For those 924 applicants, the estimated costs include the time for the applicant to go to his or her local police department, submit to fingerprinting, and return to his or her residence. The Coast Guard estimates that this would take approximately 1.5 hrs. of the applicant's time. Total respondent costs are estimated to be $22,700.

Twenty-five percent, or 308, of the spot-checked applicants are expected to choose to go to an REC to conduct their renewal transactions. For those 308 applicants, additional costs attributed to the criminal record check will be insignificant.

2. National Driver Register Access

The Coast Guard estimates that it will conduct 57,435 NDR checks annually for all individuals applying for the original issuance, renewal, or endorsement with a new expiration date of merchant mariner's credentials. The Coast Guard's costs for NDR checks involve providing an interface with the NDR computer and clerical resources to process record checks and notifications to applicants with NDR records. These costs are estimated to be $120,000 annually, with the potential for substantial reduction in cost if direct access to the NDR data by the RECs is authorized. The RECs will write letters to those applicants who have a probable identification (hit), and review any associated court records as forwarded by applicants.

The Coast Guard estimates that initial computer hardware and software and necessary connection to the NDR will be under $20,000. The Coast Guard estimates the annual cost of a dedicated telephone line from Coast Guard Headquarters to the Commonwealth of Virginia will be $12,000 ($6/hr.×8 hrs./day×250 days/yr.). The initial annual Coast Guard REC costs are estimated to be $58,354 (57,435 checks×0.05 hr./check×/$20/hr. for a clerical employee, plus $0.32/stamp×2,872 hits). Initially, the Coast Guard will dedicate one full-time clerical employee at Coast Guard Headquarters to forward data to the Commonwealth of Virginia for processing. This cost is estimated to be $40,000 ($20/hr. for a clerical employee×8 hrs./day×250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the rule is estimated to total approximately $111,400.

Annual respondent costs associated with NDR checks include the time to fill out the NDR consent form which is considered to be insignificant. In 50 percent of the 2,872 hits, or 1,436 cases, applicants will have clean driving records and the OCMI will issue their merchant mariner's credentials without further expense. For the other 50 percent of applicants, or 1,436, costs are expected to be less than $20.00 per court record submitted to the Coast Guard for estimated annual respondent costs of $26,700.

The dollar value of direct and societal benefits flowing from spot-checking applicants' criminal records and from reviewing applicants' NDR records are not quantifiable but may be substantial.

The Coast Guard anticipates that, as a result of this rule, a number of applicants will be identified, based upon their criminal record or adverse driving record, whose conduct indicates that they should not be trusted to safely perform shipboard duties. Those applicants will not be granted merchant mariner credentials.

Direct benefits would include the potential for—

- Fewer margin groundings and other accidents;
- Reduced property loss;
- Fewer releases of oil and hazardous materials into the marine environment; and
- Fewer injuries and reduced loss of life among merchant mariners and other seagoing personnel.

The Coast Guard also anticipates several indirect benefits. Within the community of applicants for merchant mariner's credentials, knowledge of the Coast Guard's enhanced periodic record-checking program may dissuade recidivism among merchant mariners with past criminal, or serious traffic records. The program may also discourage some convicted criminals, users of dangerous drugs, and serious traffic offenders from seeking new credentials or renewals, and may also encourage some applicants who are convicted criminals or users of dangerous drugs to truthfully complete questions that address these issues on the applications forms. Users of dangerous drugs in the U.S. merchant marine may be encouraged to seek counseling and treatment before incurring a criminal record or dangerous drug history with the FBI. In addition, merchant mariners and prospective merchant mariners may be encouraged to maintain a satisfactory standard of personal conduct.

Historical data are insufficient to quantify benefits; however, should this program manage to save even one line per year at $2.7 million per statistical life saved (which reflects a reasonable estimate of people's presumed willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

The costs to small entities will not be significant because the costs of spot-checking applicants' criminal records and reviewing NDR records will be borne by the Coast Guard. The Coast Guard expects the impact of this regulation on small entities to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02–4, and 12.02–9. The corresponding OMB number is OMB Control Number 2115–0514.

Federalism

The Coast Guard has analyzed these regulations under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. Paragraph 2.B.2 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7101, 7106, 7107, 7109, 7302, 7505, 7701; 49 CFR 1.46. Section 10.107 also issued under 44 U.S.C. 3507.

2. In § 10.103, the definitions of "conviction," "National Driver Register," and "NDR listed convictions" are added to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304). Conviction of more than

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one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

* * * * *

3. In § 10.201, paragraph (b) is revised and paragraphs (h), (i), and (j) are added to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

* * * * *

(b) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

* * * * *

(h) *Criminal Record Review.* The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The OCMI may use Table 10.201(h) to evaluate applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMI will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the OCMI. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 10.201(h) and Table 10.201(i) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) and Table 10.201(i) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in Table 10.201(h), or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMI will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMI is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMI.

(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section, the OCMI will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI will disapprove the application.

(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the OCMI will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMI has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMI disapproves an application based upon a conviction older than the maximum assessment period, the OCMI will notify the applicant in writing of the reason(s) for the disapproval. The OCMI will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons[2].		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property[2].		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes[2].		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety[2].		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Dangerous Drug Offenses[3, 4, 5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions[6].		

[1] Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

[4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (j) of this section, including applicants with dangerous drug use convictions more than ten years old.

[6] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense.

(i) *National Driver Register.* A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The OCMI may determine minimum and maximum

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assessment periods for NDR listed criminal convictions using Table 10.201(h). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the application that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the OCMI will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(3) The guidelines in Table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) as applicable.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

(i) Applicants should request Form NDR–PRV or provide the following information on a notarized letter:

(A) Full legal name;
(B) Other names used;
(C) Complete mailing address;
(D) Driver license number;
(E) Eye color;
(F) Social security number;
(G) Height;
(H) Weight; and
(I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

TABLE 10.201(i).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL[1]

No. of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years.	Application will be processed, unless suspension or revocation[2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old.	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old.	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

[2] Suspension or revocation, when referred to in Table 10.201(i), means a State suspension or revocation of a motor vehicle operator's license.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

4. In § 10.205, paragraph (f)(2) is revised and paragraph (k) is added to read as follows:

§ 10.205 Requirements for original licensees and certificates of registry.

* * * * *

(f) * * *

(1) * * *

(2) The OCMI may review the criminal record check of each applicant for an original license or certificate of registry according to the procedures set forth in § 10.201(h).

* * * * *

(k) *National Driver Register.* Each applicant for an original license or certificate of registry shall consent to an NDR check under § 10.201(i).

5. In § 10.207, paragraphs (h) and (i) are added to read as follows:

§ 10.207 Requirements for raise in grade of license.

* * * * *

(h) *Criminal Record Review.* Each applicant for a raise of grade may be required to submit to a criminal record check under § 10.201(h).

(i) *National Driver Register.* Each applicant for a raise of grade of a license shall consent to an NDR check under § 10.201(i) if the license is reissued with a new expiration date.

6. In § 10.209, paragraphs (i) and (j) are added to read as follows:

§ 10.209 Requirements for the renewal of licenses or certificates of registry.

* * * * *

(i) Each applicant for a renewal may be required to consent to a criminal record check under § 10.201(h).

(j) Each applicant for renewal of a license or certificate of registry shall consent to an NDR check under § 10.201(i).

PART 12—CERTIFICATION OF SEAMEN

7. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

8. In § 12.01–6, the definitions of "conviction," "National Driver Register," and "NDR listed convictions" are added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the Untied States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 49 U.S.C. Chapter 303.

NDR listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(b) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, existing paragraph (c) is redesignated as paragraph (b), and new paragraphs (c), (d) and (e) are added to read as follows:

§ 12.02–4 Basis for denial of documents.

(a) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for an original merchant mariner's document, except as provided by the provisions of paragraph (c) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982 (49 U.S.C. 30304) due to the addiction or abuse of alcohol is eligible for a merchant mariner's document unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

* * * * *

(c) *Criminal Record Review.* The Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for a merchant mariner's document issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check. Applicants must provide written disclosure of all prior convictions at the time of application.

(1) If a criminal record check is required by the Officer in Charge, Marine Inspection, applicants shall provide fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if the individual's criminal record leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The Officer in Charge, Marine Inspection will use Table 12.02–4(c) to evaluate applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Officer in Charge, Marine Inspection. The assessment period may include supervised or unsupervised probation or parole. A conviction for a drug offense more than 10 years prior to the date of application will not alone be grounds for denial.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 12.02–4(c) and Table 12.02–4(d) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) and Table 12.02–4(d) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant mariner's document before the minimum assessment period shown in Table 12.02–4(c), or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she

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has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (e.g., child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in Table 12.02–4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in Table 12.02–4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 12.02–4(c).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE CRIMINAL CONVICTIONS

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Other crimes against persons[2].		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes[2].		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety[2].		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses[3,4,5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions[6].		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The OCMI may consider dangerous drug convictions more than 10 years old only if there has been a dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (e) of this section, including applicants with dangerous drug use convictions more than ten years old.

[6] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) *National Driver Register.* A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR listed civil convictions that are more than 3 years old from the date of request unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. The Officer in Charge Marine Inspection may determine minimum and maximum assessment periods for NDR listed criminal convictions using Table 12.02–4(c). An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the information available to the applicant for review and written comment. The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will hold an application with NDR listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(3) The guidelines in Table 12.02–4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under Table 12.02–4(c) as applicable.

(4) An applicant may request an NDR file check for *personal* use in accordance with the Federal Privacy Act of 1974 (Pub. L. 93–579) by contacting the NDR at the following address: National Driver Register, Nassif Building, 400 7th Street SW., Washington, DC 20590.

(i) Applicants should request Form NDR–PRV or provide the following information on a notarized letter:

(A) Full legal name;
(B) Other names used;
(C) Complete mailing address;
(D) Driver license number;
(E) Eye color;
(F) Social security number;
(G) Height;
(H) Weight; and
(I) Sex.

(ii) The NDR will respond to every valid inquiry including requests which produce no record(s) on the NDR file. Records can be made available, within a reasonable amount of time after the request, for personal inspection and copying during regular working hours at 7:45 a.m. to 4:15 p.m., each day except Federal holidays.

TABLE 12.02–4(d).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL[1]

No. of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years.	Application will be processed, unless suspension, or revocation[2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old.	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old.	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[2] Suspension or revocation, when referred to in Table 12.02–4(d), means a State suspension or revocation of a motor vehicle operator's license.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions; if the applicant has ever been the user of, or addicted to the use of, a dangerous drug; or if the applicant applies before the minimum assessment period for his or her conviction has elapsed; the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document. This list is intended as a guideline. The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate, such as:

(1) Proof of completion of an accredited alcohol- or drug-abuse rehabilitation program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

10. In § 12.02–9, paragraphs (g) and (h) are added to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(g) Each applicant for an original merchant mariner's document may be required to submit to a criminal record check as required by § 12.02–4(c).

(h) Each applicant for an original merchant mariner's document or a merchant mariner's document reissued with a new expiration date shall comply

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with the NDR requirements in § 12.02–4(d).

Dated: December 12, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–30677 Filed 12–18–95; 8:45 am]

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Tuesday
December 19, 1995

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Transportation of Hazardous Materials By Rail; Miscellaneous Amendments; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 179

[Docket No. HM–216; Notice No. 95–16]

RIN 2137–AC86

Transportation of Hazardous Materials By Rail; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: RSPA is proposing to incorporate into the Department's Hazardous Materials Regulations (HMR) a number of changes to rail requirements based on rulemaking petitions from industry and RSPA initiatives. This action is necessary to update the regulations and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to improve safety and reduce costs to offerors and transporters of hazardous materials.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Address comments to Dockets Unit (DHM–30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590–0001. Office hours are 8:30 am to 5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590–0001, or James H. Rader, telephone (202) 366–0510, Office of Safety Assurance and Compliance, Federal Railroad Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION: This document proposes miscellaneous changes to rail requirements contained in the HMR. These proposed changes are based either on petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative and are intended to reduce regulatory burdens by simplifying or updating existing regulations.

This rule, as proposed, is consistent with the goals of President Clinton's Regulatory Reinvention Initiative. The President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. A notice issued April 4, 1995 by RSPA requested comments on regulatory reform (Docket HM–222; 60 FR 17049) and announced a comprehensive review of the HMR to identify provisions that are candidates for elimination, revision, clarification, or relaxation. Certain proposed changes in this document reflect the results of this review.

I. Summary of Proposed Regulatory Changes by Section

Listed below is a section-by-section summary of the proposed changes and, where applicable, the assigned petition number.

Part 171

Section 171.7. Various American Society for Testing and Materials (ASTM) standards would be updated to reflect the most current version. Other ASTM standards that no longer would be referenced in the proposed revision of § 179.12 would be removed.

Part 172

Section 172.101: The Hazardous Materials Table. In the Hazardous Materials Table, several entries would be revised based on petitions for rulemaking and agency initiative. Proposed revisions include:

—Twenty-nine entries would be revised by removing Special Provision B12 assigned to those entries in Column (7). This special provision requires the marking of tank cars with the proper shipping name or common name of the material. RSPA is proposing to limit the applicability of this marking requirement to certain materials that pose a higher risk in transportation.

—For the entry "Dimethylhydrazine, unsymmetrical", in Column (7) Special Provision B79 would be removed. "Dimethylhydrazine, unsymmetrical" currently is assigned Special Provisions B74 and B79. Special Provision B74 requires the use of a tank car conforming to a Class 105S, 106, 110, 112J, or 114J. Special Provision B79 requires each tank car to have a tank head puncture system if the tank was constructed prior to April 1, 1989. Because Special Provision B74 requires all tank cars to meet the requirements of B79, referencing Special Provision B79 is unnecessary.

—For the entry for Calcium carbide, Special Provision B59 would be added for both Packing Group I and II entries. This special provision will authorize the continued use of Class AAR 207 tank cars for the transportation of calcium carbide after October 1, 1996.

Section 172.102. Special Provisions B4 and B10 would be revised to remove a prohibition on the use of Association of American Railroads (AAR) 206 tank cars. In the § 172.101 Hazardous Materials Table (HMT), each commodity assigned this special provision must be in a packaging authorized in § 173.243, which does not allow an AAR 206 tank car.

Special Provision B5 would be revised to authorize use of tank cars, constructed from other than aluminum plate, for ammonium nitrate fertilizer.

Consistent with proposed changes to tank car marking requirements discussed previously in conjunction with proposed changes to the Hazardous Materials Table, Special Provision B12 would be removed. The requirement to mark the proper shipping name or common name of a material on a tank car would be limited to certain materials that present a higher risk in transportation, as proposed in § 172.330.

Special Provisions B42, B65, B71, B72, B74, and B76 would be revised for clarity. RSPA and FRA have received numerous inquiries concerning the use of tank cars having higher test pressures than those authorized under these special provisions. RSPA is proposing to revise these provisions to clarify that any class tank car with a higher test pressure than authorized also may be used. Special Provisions B42, B65, and B76 also would be revised to authorize the optional marking of the tank to a lower pressure specification. The current regulations require the lower pressure specification marking for certain commodities. RSPA and FRA believe that tank cars qualified to meet a specific specification should be marked to indicate that specification. RSPA is proposing the optional marking requirement to authorize the remarking of qualified tank cars to the higher pressure specification. For example, currently tank cars transporting acetone cyanohydrin are required to conform to a DOT 105S, 112J, or 114J specification provided the tank test pressure is 300 psig or greater. In addition, the tank car specification must be remarked to indicate a tank test pressure of 200 psig, and each tank car must be equipped with a safety relief device having a start-to-discharge pressure setting of 150 psig. RSPA is proposing that these tank cars remain marked at the higher pressure specification while maintaining the currently applied safety relief device (e.g., DOT 105S300W, Safety Valve 150 LB).

RSPA is proposing to remove a requirement in Special Provision B57 that the shipping name CHLOROPRENE must be marked on a tank car. This marking requirement is included in the proposed revision of § 172.330(a)(1). RSPA also is revising the first sentence of Special Provision B78 to specify test pressure and clarify which rail cars are authorized.

Section 172.203. Currently, rail carrier shipping paper requirements are contained in both Parts 172 and 174. In this notice, RSPA proposes to move the shipping paper requirements in Part 174 to Part 172. RSPA and FRA believe that by consolidating the shipping paper requirements, including additional shipping paper entries for tank cars containing the residue of a hazardous material, compliance will be improved. Paragraph (e)(2) currently references paragraph (e)(3) and § 174.25 for shipping paper description requirements for residues of hazardous materials in tank cars. These references would be replaced with a specific requirement to precede the basic shipping description with the wording "RESIDUE, LAST CONTAINED." Paragraph (g)(1) also would be revised to reflect the incorporation of shipping paper requirements currently contained in Part 174 by a requirement to identify a rail car, freight container, transport vehicle, or portable tank that contains a hazardous material by "reporting mark and number."

Section 172.205. Based on a petition [P–1053] from AAR, RSPA would revise paragraph (f) for consistency with Environmental Protection Agency (EPA) hazardous waste manifest requirements for transportation by rail contained in 40 CFR 263.20(f).

Section 172.330. Paragraph (a)(1) would be revised to clarify marking requirements for tank cars. Marking requirements currently contained in § 172.102 special provisions and in Parts 173 and 179 would be incorporated into § 172.330 or removed as part of this revision. The requirement to mark the proper shipping name or common name of a hazardous material on a tank car would be limited to Division 2.1 and 2.3 materials, Division 2.2 materials in a Class DOT 107 tank car, anhydrous ammonia, ammonia solutions with more than 50% ammonia, bromine and bromine solutions, hydrogen cyanide, chloroprene, and refrigerant or dispersant gases, as defined in § 173.115.

Section 172.510. Paragraph (a) would be revised to require the placement of each placard on a white square background for each class DOT 113 tank car used to transport a Division 2.1 (flammable gas) material. The white square background notifies railroad switching crews that the car may not be cut off while in motion. The current regulations only require rail cars containing Divisions 1.1 and 1.2 explosives, Division 2.3 Hazard Zone A materials and Division 6.1 PG I Hazard Zone A materials to have the white square background, but not the class DOT 113 tank car. This change will simplify the switching requirements for rail cars by communicating, through a white square background, that a class DOT 113 tank car transporting a Division 2.1 material may not be cut off while in motion. RSPA and FRA believe that this requirement will make it easier to train yard switching employees and reduce the potential for overspeed impacts. The inner support system for class 113 tank cars is designed to withstand loads producing accelerations of 7"g" longitudinal, 3"g" transverse, and 3"g" vertical. Consequently, it is imperative that railroads shove this class of car to rest to prevent yielding of the support system.

Sections 172.510 and 172.526. Provisions applying to the specifications and use of RESIDUE placards would be removed in these sections. The RESIDUE placard is not required by any other mode and, because the information provided through a RESIDUE placard can be adequately conveyed through primary and subsidiary placards and shipping paper information, RSPA and FRA believe that this placard is unnecessary. Further, FRA reports that during the last six years its inspectors cited missing, faded, or incorrect placards on nearly 22,000 occasions. By removing the RESIDUE placard requirement, RSPA and FRA believe that offerors will use permanent adhesive placards, such as those used on highway vehicles, thereby increasing compliance with HMR placarding requirements. Also, RSPA and FRA understand that Transport Canada is considering removing the RESIDUE placard from its Transportation of Dangerous Goods Regulations to the extent that, in December 1993, it issued a newsletter asking for public comment. Such an action by Transport Canada would have a direct effect on transborder shipments; consequently, RSPA and FRA believe a proposal to remove this requirement from the HMR is appropriate.

Part 173

Section 173.24b. RSPA is proposing to amend paragraph (a) to recognize the insulation properties of thermal protection applied to tank cars. The proposed rule would allow for a "mid-range" temperature for the calculation of outage and filling limits, provided the insulation qualities provide an overall thermal conductance at 15.5°C (60°F) of no more than 10.22 kilojoules per hour per square meter per degrees Celsius (0.5 Btu per hour per square foot per degree F) temperature differential. This proposal is based on a petition for rulemaking submitted by the Propane Gas Association of Canada [P–1251], developed in cooperation with Transport Canada.

Section 173.29. Paragraph (f) would be removed, consistent with the proposed removal of § 172.510(c).

Section 173.314. Paragraph (b)(5), which contains provisions for marking the proper shipping name of certain Class 2 materials on tank cars, would be removed because these provisions also appear in § 172.330. Paragraph (b)(6) would be redesignated (b)(5) and amended to revise requirements for heat-resistant gaskets. In 1988, the National Transportation Safety Board (NTSB) recommended that FRA: (1) establish performance standards for determining the acceptability of heat-resistant gaskets on tank cars; and (2) evaluate the effect on gasket compatibility and heat-resistant performance of sealants used for installing gaskets on tank cars. NTSB recommended that FRA establish performance criteria to decide what sealant is acceptable and conditions for its use. (Butadiene Release and Fire from GATX 55996 at the CSX Terminal Junction Interchange, New Orleans, Louisiana, September 8, 1987 (NTSB/HZM–88/01)). As a result of the NTSB recommendation, RSPA published an Advanced Notice of Proposed Rulemaking (ANPRM) on May 18, 1990, under Docket HM–175A ¡Notice 90–8; 55 FR 20242] requesting comments on gasket specifications and the use of sealant materials. Commenters to the ANPRM expressed concerns regarding the technical complications for defining gasket specifications in the regulations, since there are many variables in torquing values for the fitting closure/gasket combination and the chemical compatibility of the gasket material. In a Notice of Proposed Rulemaking (NPRM) published October 8, 1993 [58 FR 52574] under Docket HM–175A, RSPA and FRA announced that several

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topics, including gasket specifications, raised in earlier notices either were too technically complex or insufficiently developed to address in that NPRM and would be handled in a separate rulemaking action.

Although the commenters to the ANPRM pointed out many technical complications associated with defining gasket specifications for all products authorized in tank cars, RSPA and FRA believe that a performance standard for heat-resistant gaskets is necessary for Division 2.1 materials and anhydrous ammonia to ensure that installed gaskets will not degrade at elevated temperatures (see § 173.314(b)(6) for current requirements). In this NPRM, RSPA is proposing a performance standard for heat-resistant gaskets based on information obtained from the Fluid Sealing Association's *Non Metallic Gasket Handbook*. The handbook shows that asbestos, a common heat-resistant gasket material, has a maximum temperature range of 230–340°C (450–650°F). Consequently, RSPA is proposing to specify that a heat-resistant gasket can survive temperatures at or above 230°C. This is comparable to the temperature indicated in the Fluid Sealing Association's handbook. This proposal also would expand the use of heat-resistant gaskets to all Division 2.3 materials.

Commenters stated that to seal a joint, the installed gasket is compressed (by applying a bolt load to the flange body surfaces) into the imperfection of the joint and a tight, leakproof barrier occurs. The use of sealants for installing gaskets is therefore unnecessary and may lead to gasket displacement. Based on these comments, RSPA is proposing to prohibit the use of sealants for installing gaskets on tank cars used to transport Division 2.1 and 2.3 materials and anhydrous ammonia.

RSPA also is proposing to authorize Class DOT 112J and 112T specification tank cars for the transportation of dimethyl ether. Currently, RSPA only authorizes the use of a DOT 105A300W tank car. This proposal is based on an exemption issued to Aeropres Corporation (DOT–E 11000) and a petition for rulemaking [P–1253]. RSPA also is proposing to remove Note 2 in paragraph (c) of the table. For the entry "Ammonia, anhydrous or ammonia solutions >50 percent ammonia" in the second column "Note 2" would be revised to read "Note 3". This would allow shippers to calculate the outage and filling limits for tank cars based on changes proposed in § 173.24b.

In addition, paragraph (i), which provides alternate settings for safety relief valves on tank car tanks used for certain commodities, would be removed. Removal of this paragraph is consistent with the proposed consolidation of pressure relief device requirements in § 179.15.

Part 174

In 1985, AAR petitioned RSPA (P–983) to rewrite Part 174, stating that the regulations in this part are "awkwardly arranged, often redundant, and in many places obsolete." AAR supplied a complete rewrite of Part 174 as part of its petition. Subsequently, various rulemaking actions such as HM–175A (final rule adopted improved crashworthiness for tank cars), HM–201 (final rule adopted new methods of tank car testing), HM–181 (mandated performance packaging standards), HM–166 (implemented many detailed changes to the HMR), HM–197 (adopted new requirements for TOFC/COFC shipments), and HM–212 (considering new standards for tank car unloading and attendance) have addressed numerous suggestions contained in petition P–983. This notice proposes additional changes based on P–983, including simplification of standards for inspection of tank cars by railroads and revisions in documentation requirements of Part 174.

Section 174.3. This section prohibits a shipment of a hazardous material not prepared in accordance with Parts 171, 172, and 173 from being offered for transportation or transported by rail. The section would be revised to reflect language contained in Parts 175 and 177 for unacceptable hazardous materials shipments.

Section 174.8 through 174.10. Inspection requirements currently contained in §§ 174.8, 174.9 and 174.10 would be consolidated into § 174.9 to clarify a railroad's inspection duties at points of origination, interchange points and other locations where rail cars must be inspected. Sections 174.8 and 174.10 would be removed. Section 174.9 would require a railroad to inspect each rail car for compliance with the HMR and other conditions that may make the car unsafe for transportation.

Under FRA's Railroad Freight Car Safety Standards (FCSS [49 CFR Part 215]), each railroad must inspect a freight car at each location where it is placed in a train. The inspection must be made by: (1) a "designated inspector" under § 215.11; or (2) a train crew member where a designated employee is not on duty (*see* Appendix D to Part 215). As a rule, train crew members inspect for "imminent hazardous conditions" that are likely to cause an accident or casualty before the train arrives at its destination. Examples provided in Appendix D include: car body leaning or listing to one side, objects dragging below, broken or missing safety appliance, lading leaking from a placarded hazardous materials car, and broken or extensively cracked wheel.

In addition to the requirements above, the HMR require an inspection of each placarded railcar when received in "interchange." This notice proposes to remove the requirement to inspect placarded railcars at interchange, simply because railroad operations now permit the interchange of railroad equipment in outlying locations, usually on mainline track, that may not be acceptable for the performance of a proper inspection. For example, in "run-through" train operations, the train crew of the receiving railroad simply assumes responsibility of the train from the delivering train crew. No locomotives or railcars are added or removed. Since the train may exceed one mile in length, portions of the train, including portions that may have a placarded railcar containing a hazardous material, may not be accessible to the receiving train crew because of bridges, tunnels, or terrain.

As proposed, RSPA would make the locations of inspection consistent with those in the FCSS, issued by the FRA. RSPA does not intend to change the railroad's current inspection practices nor require the railroad to inspect railcars containing a hazardous material on a more frequent basis than the required presently in the HMR and FCSS. The proposed rule simply makes clear that a railroad must inspect a hazardous material laden car at locations that now require an inspection under the FCSS (by the train crew or a designated employee, where such employees are on duty).

The proposed rule further clarifies that a railroad employee need not climb each railcar to determine if, in fact, the railcar conforms to the HMR. These inspections may be performed at "ground level." Where the rule proposes to require a ground level inspection for "securement of closures," RSPA and FRA believe railroad employees can determine, from the ground, whether or not protective housings are open, whether or not manway openings (on non- or low-pressure tank cars) are in the "up" position, and whether or not the manway bonnet cover (on pressure tank cars) is open. At the bottom of the car, FRA and RSPA believe that railroad employees can determine whether or not the bottom outlet cap is in the proper, applied position.

Section 174.11. Section 174.11 would be removed because it merely references

§ 171.12a for transportation of Canadian shipments or packagings by rail car within the U.S.

Section 174.18. Section 174.18 concerning the handling of astray packages of hazardous materials is obsolete; therefore this section would be removed.

Section 174.24. Shipping paper requirements for rail carriers in Part 174 would be moved to Part 172. Revised § 174.24 would cross-reference shipping paper requirements in Part 172.

Section 174.25. When an accident occurs on the railroad, it is customary to identify the transport vehicle or freight container involved by the use of reporting marks. These marks are used for routing, cost accounting, and for tracing (or locating) individual shipments in the transportation system. If an emergency responder were to ask about the contents of an individual shipment by reporting mark, a rail carrier could provide immediate emergency response information, a copy of the shipping paper, routing information, and the name, telephone number, and location of the shipper. This information is much more detailed than simply conveying to the emergency responder the type of placard applied to the packaging. Consequently, RSPA proposes to remove the "placard notation" requirement since it is outdated for emergency response communication. Removing the placard notation requirement would not, however, prohibit individual rail carriers from adopting comparable requirements, if they so choose.

RSPA also is proposing to remove the requirement for a "placard endorsement" placed on a waybill near the reporting mark of each rail car, freight container, transport vehicle, or portable tank that contains a hazardous material when transported by rail. The current rule requires a unique endorsement based on the hazard class of the material shipped. Exceptions to the placard endorsement are provided for materials that do not require placarding (e.g., less than 1,001 pounds of a material listed in § 172.504 Table 2, in most types of transport vehicles or freight containers), Class 9 materials, and combustible liquids). RSPA is proposing to remove this requirement because technological advances in the railroad industry have made the use of the placard endorsement no longer necessary to communicate the presence of hazardous materials to railroad workers. As a general rule, railroads now use electronic data interchange and computer generated train consists (or manifests) to communicate the presence of these materials. Responders and railroad workers rely on the hazardous materials description and emergency response information on train consists and printed waybills rather than the placard endorsement. As stated earlier, removing the endorsement would not prohibit individual rail carriers from adopting comparable requirements at their discretion.

Other shipping paper requirements in this section, including those for tank cars containing the residue of a hazardous material, would either be removed or moved to Part 172.

Section 174.26. Paragraph (a) would be removed because if a carrier complies with paragraph (b), the carrier also is complying with paragraph (a), except for the "consecutively numbered notice." Based on current railroad technology and computer-based information systems, this notice is obsolete. Paragraphs (b) and (c) would be renumbered paragraphs (a) and (b), respectively. Newly designated paragraph (b) would be revised to reference shipping paper requirements of Part 172 and specify use of other forms of car movement documents.

Section 174.45. This section would be removed because it merely references §§ 171.15 and 171.16 and is redundant.

Sections 174.47 and 174.48. These sections contain requirements for forwarding shipments in violation of the HMR and damaged or leaking packages. The provisions in these sections would be consolidated into revised § 174.50.

Section 174.49. This section concerns the use of open-flame lanterns for the inspection of transport vehicles known to contain flammable liquids and gases. The use of open-flame lanterns is obsolete; therefore, this section would be removed.

Section 174.50. This section would be revised by consolidating requirements of §§ 174.47, 174.48, and 174.50 and by removing all obsolete provisions. These sections stipulate that railroads may not forward damaged packages, leaking tank cars (except for necessary short moves), or any tank car found in non-compliance with the HMR, except under the terms of a DOT exemption. RSPA is proposing to simplify the overall principle in these sections by prohibiting the movement of packages that do not conform to the HMR. Packages other than tank cars would have to be repaired, reconditioned, or overpacked prior to subsequent movement. Tank cars would have to be repaired or be moved under conditions approved by FRA's Associate Administrator for Safety. This proposed regulation would allow, for example, the movement of a tank car with an emergency valve repair or capping kit under approved conditions.

Section 174.55. This section would be revised for clarity. Based on a petition [P–1042] submitted by AAR, suggesting that certain provisions of the existing section are meaningless or confusing, RSPA is proposing to streamline this section.

Section 174.67. The first sentence in paragraph (k) would be revised to remove the requirement for heater coil inlet and outlet pipes to be left open. This proposed revision is based on a petition [P–942] indicating that these pipes need to be left open only 5% of the time, when steam is applied.

Section 174.69. This section would be removed, based on a petition from AAR [P–1139], because it conflicts with applicable requirements in § 172.514.

Section 174.85. Based on corresponding changes in §§ 172.510 and 172.526 to remove provisions for a RESIDUE placard, paragraph (c) would be revised to reference a rail car containing a residue of a hazardous material rather than a rail car placarded "RESIDUE".

Part 179

The following sections would be revised by updating certain ASTM specifications and deleting others that are no longer used, based on a petition [P–1023] from AAR: §§ 179.100–7, 179.100–10, 179.100–20, 179.102–1, 179.102–2, 179.200–7, 179.200–24, 179.201–5, and 179.300–7.

Sections 179.12 through 179.12–7. Sections 179.12–1 through 179.12–7 would be removed and § 179.12 would be revised by incorporating provisions from §§ 179.12–1 and 179.12–5. The design and materials of construction for interior heater coils require AAR approval. This NPRM proposes to remove the DOT specification requirements and allow AAR greater flexibility in approving heater system designs.

Section 179.15. This section would be added to consolidate pressure relief device requirements and adopt provisions to: (1) increase the start-to-discharge pressure of safety relief devices for tanks that have a burst pressure of 240 psig, while allowing the continued use of existing cars; (2) allow for a reduced orifice in the upstream nozzle of a pressure relief device to accommodate pressure surges; (3) increase the rupture disc burst pressure for cars so equipped; (4) standardize the start-to-discharge pressure setting for all commodities and tank car specifications; and (5) align the start-to-discharge pressure setting for tank cars with that prescribed by the ASME code.

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In this notice, a pressure relief valve means a pressure relief device that is designed to open rapidly, or by opening in proportion to the increase in pressure over the opening pressure, and designed to reclose and prevent further flow of vapor after normal conditions have been restored. A nonreclosing pressure relief device is a pressure relief device actuated by inlet static pressure and designed to function by rupturing (bursting) a pressure containing disc (rupture disc) and remains open after operation.

Two ANPRMs published under Docket HM–175A (May 15, 1990; 55 FR 20242, and August 29, 1990; 55 FR 35327) solicited comments on potential costs and safety benefits derived from improvements to the crashworthiness of tank cars and restrictions on continued use of tank cars in hazardous materials service that no longer meet current safety requirements. RSPA issued the ANPRM, in part, to address an AAR petition requesting an increase in the start-to-discharge pressure of a nonreclosing pressure relief device and a reduction in the size of the upstream nozzle (P–1083). Commenters responding to the ANPRM suggested that tanks with a 60 psig test pressure and built with 7/16 inch wall thicknesses could be converted to a 100 psig tank test pressure (subject to an inspection and AAR approval), but opposed any conversion of DOT 115A or AAR 206W tank cars because of wall thickness. Most commenters supported increasing the start-to-discharge pressure of a nonreclosing pressure relief device to prevent rupture of the disc from in-transit pressure surges.

The Railway Progress Institute (RPI) suggested in its comment that the optimum flow capacity for a pressure relief device is the minimum required to prevent tank car rupture in fire conditions. The RPI and other commenters opposed increasing the flow capacity of certain pressure relief valves and stated that both large and small capacity pressure relief valves discharge the same amount of product. Large capacity pressure relief valves, as opposed to small capacity valves, release large amounts of product for brief durations.

A petition for rulemaking submitted by the Chemical Manufacturers Association (CMA) supported the ANPRM and AAR's petition (P–1270). CMA suggested that reclosing pressure relief valves should have a start-to-discharge pressure setting consistent with several DOT exemptions for nonreclosing pressure relief devices (i.e., 165 percent of the tank test pressure or 33 percent of the tank burst pressure).

RSPA published an NPRM under Docket HM–175A on October 8, 1993 (58 FR 52574) but did not propose changes to the HMR concerning pressure relief devices. Based on the merit of comments to Docket HM–175A and a petition for rulemaking [P–1083], RSPA is proposing to consolidate the pressure relief device requirements now contained in §§ 173.314(i), 179.100–15, 179.200–18, 179.201–7, and 179.220–19 into a new § 179.15. This proposal incorporates a performance-based flow capacity requirement to prevent excess pressure build-up within the tank, under fire conditions for both reclosing and nonreclosing pressure relief devices. Further, RSPA is not proposing an increase in the flow capacity of a pressure relief device (including those devices used on tank cars transporting materials toxic by inhalation), based on comments received to Docket HM–175A.

For most tank car specifications, the current start-to-discharge pressure setting for pressure relief devices is 30 percent of the tank burst pressure (33 percent of the tank burst pressure for certain commodities listed in § 173.314(i) and in two DOT exemptions: DOT-E 10288 and DOT-E 10328). Flow capacity of the pressure relief device is set at 33 percent of the tank burst pressure. For nonpressure tank car specifications, however, the start-to-discharge pressure setting of a pressure relief device is about 15 percent of the tank burst pressure. To allow for an equivalent start-to-discharge pressure setting for both pressure and nonpressure tank car specifications, RSPA is proposing a start-to-discharge pressure setting of up to 33 percent of the tank burst pressure for all commodities and specifications. Based on the physical-chemical properties of the material (vapor pressure, static head, and gas padding pressure of the product within the tank), this notice also proposes to authorize a reduction in the start-to-discharge pressure setting. This proposal is consistent with Section VIII, UG–125, of the American Society of Mechanical Engineers Pressure Vessels Code (ASME) and an exemption (DOT-E 11184) that authorizes the transportation of certain flammable liquid products in DOT 105J300W tank cars having a start-to-discharge pressure setting of 75 psig as opposed to 225 psig. Further, because of costs associated with modifying existing tank cars to conform to this proposed requirement and because there is no apparent safety reason to require any modification to existing tank cars, this NPRM proposes to allow the continued use of tank cars having a start-to-discharge pressure set at 15 percent of burst.

In addition, this notice proposes that a tank car equipped with a nonreclosing pressure relief device must have installed a rupture disc designed to burst at 33 percent of the tank burst pressure within one year after any final rule issued in this docket. For example, a DOT 111A100W2 tank car would have a rupture disc designed to burst at 165 psig within one year after any final rule issued in this docket. This proposal is based on provisions in several exemptions (e.g., DOT-E 10118 and DOT-E 10354), several petitions for rulemaking, and the number of rupture disc failures reported to RSPA's Hazardous Materials Information System.

The location for pressure relief devices would be revised in proposed paragraph (g) to allow for the mounting of pressure relief valves on a hinged manway cover plate. The current regulations require mounting a pressure relief valve on the tank dome, manway cover plate, or on a nozzle on top of the tank shell. This notice proposes to require a pressure relief device to communicate with the vapor space above the lading.

Sections 179.100–15, 179.200–18, 179.201–7, and 179.220–19. These sections contain provisions for safety relief devices. For consistency with the proposed consolidation of safety relief device provisions in § 179.15, RSPA is proposing to remove these sections from the HMR.

Sections 179.101–1 and 179.201–1. RSPA proposes to revise individual specification requirements for pressure tank cars and non-pressure tank cars, respectively. The proposed revisions will correct many typographical errors and remove several special references that are no longer applicable. RSPA also proposes to add a new class "DOT 120A" specification tank car and a new "DOT 111A60W6" specification tank car in the table based on two petitions for rulemaking [P–1044 and P–1119] from AAR. Furthermore, RSPA proposes to remove certain entries from the table since these provisions are currently found in the text proceeding the table (see for example §§ 179.200–11, 179.200–14, and 179.200–16).

Section 179.102–4. Paragraph (d), which specifies at least one safety relief valve on a tank car tank used to transport vinyl fluoride, inhibited, would be removed, consistent with the proposed consolidation of safety relief device provisions in § 179.15. In addition, paragraphs (b) and (c) would be redesignated paragraphs (a) and (b), paragraphs (e) through (k) would be redesignated paragraphs (c) through (i), and reserved paragraph (l) would be removed.

Section 179.103–5. Based on the merits of a petition [P–1048] submitted by AAR, paragraph (b)(2) would be revised to adopt requirements for the attachment of unloading connections for bottom outlets on pressure tank cars. This proposed revision would reflect existing requirements for bottom outlets on non-pressure tank cars.

Section 179.200–7. In addition to the proposed revision of the paragraph (b) table discussed previously, certain ASTM specifications would be revised to remove references to outdated publications. The entry for ASTM B 209–70, Alloy 6061 would be removed, as would footnotes 4 and 5 associated with that entry. Footnote 2 following the paragraph (d) table would be revised to reference Practice A of ASTM A 262–85, which is a definitive, rapid method of identifying, by simple etching, those specimens free of susceptibility to intergranular attack. This revision is based on a petition [P–1049] from AAR, and also requests referencing this Footnote 2 in § 179.201–4.

Section 179.200–14. The first sentence of paragraph (a) and the first sentence of paragraph (b) would be revised to recognize the new outage and filling limits for tank cars adopted in Docket HM–181.

Section 179.200–16. RSPA is proposing to revise the first sentence in paragraph (d) to require an outage scale visible through the manway opening when using a gaging device. This revision is based on the proposed changes to § 179.201–1.

Section 179.200–24. The reference to "ASTM A 285C" would be revised to read "ASTM A 516".

Section 179.201–4. This section specifies material requirements for fittings, tubes, castings, projections, and closures. Based on a petition [P–1049] submitted by AAR, this section would be revised to refer to Footnote 2 of § 179.200–7(d) rather than the AAR Specifications.

Section 179.221–1. RSPA is proposing to revise the class DOT 115A specification table as noted in the discussion of §§ 179.101–1 and 179.201–1.

Sections 179.222, 179.222–1, and 179.500–17. These sections would be removed because identical provisions are contained elsewhere in the HMR.

II. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The economic impact of this proposed rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted. This certification may be revised as a result of public comment.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

If adopted as final, this rule would preempt State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA requests comments on what the effective date of Federal Preemption should be for the requirements in this proposed rule that concern covered subjects.

C. Regulatory Flexibility Act

This proposed rule would respond to petitions for rulemaking. It is intended to provide clarification of the regulations and relax certain requirements. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety,

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49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. The following entries would be removed: ASTM A 53–69a, ASTM A 178–70, ASTM A 192–69, ASTM A 269–69, ASTM A 312–70a, ASTM B 161–70, ASTM B 210–70, ASTM B 221–76, ASTM B 241–76.

b. For the entry "ASTM A 20–81", the reference "20–81" would be revised to read "A 20–94".

c. For the entry "ASTM A 240–82", the reference "240–82" would be revised to read "240–94", and the wording "Fusion-Welded Unfired". would be removed.

d. For the entry "ASTM A 262–68", the reference "262–68" would be revised to read "262–93", the word "Recommended" would be removed and the word "Standard", added in its place and the word "Austenitic" would be added immediately before "Stainless Steels".

e. For the entry "ASTM A 302–78", the reference "302–78" would be revised to read "302–93".

f. For the entry "ASTM A 370–77", the reference "370–77" would be revised to read "370–94", the word "Test" would be added immediately following the word "Standard" and the word "Definition" would be revised to read "Definitions".

g. For the entry "ASTM A 515–69", the reference "515–69" would be revised to read "515–92", and the wording "Carbon Steel Plates for Pressure Vessels" would be removed and the wording "Standard Specification for Pressure Vessel Plates, Carbon Steel" would be added in its place.

h. For the entry "ASTM A 516–79b", the reference "516–79b" would be revised to read "516–90".

i. For the entry "ASTM A 537–80", the reference "537–80" would be revised to read "537–91".

j. For the entry "ASTM B 162–69", the reference "162–69" would be revised to read "162–93".

k. For the entry "ASTM B 209–69", the reference "209–69" would be revised to read "209–93" and the wording "Aluminum Alloy" would be revised to read "Aluminum and Aluminum-Alloy".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In § 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the following entries, in Column (7), Special Provision "B12," would be removed:

Acrolein, inhibited;
Bromine *or* Bromine solutions;
Bromine chloride;
Dinitrogen tetroxide, liquefied;
Formic acid;
Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrogen cyanide;*
Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrogen cyanide;*
Hydrofluoric acid, solution, *with more than 60 percent strength;*
Hydrofluoric acid, solution, *with not more than 60 percent strength;*
Hydrogen cyanide, stabilized *with less than 3 percent water;*
Hydrogen fluoride, anhydrous;
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid;*
Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary);*
Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide;*
Motor fuel anti-knock mixtures;
Nitric acid *other than red fuming, with more than 70 percent nitric acid;*
Nitric acid *other than red fuming, with not more than 70 percent nitric acid;*
Nitric oxide;
Nitric oxide and dinitrogen tetroxide mixtures *or* Nitric oxide and nitrogen dioxide mixtures;
Perchloryl fluoride;
Phosphorus, amorphous;
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus, white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution;
Phosphorous white, molten;
Potassium nitrate and sodium nitrite mixtures;
Sulfur trioxide, inhibited; and
Sulfur trioxide, uninhibited.

b. For the entries "Carbon dioxide, solid *or* Dry ice" and "Potassium permanganate", in Column (7), Special Provision "B12" would be removed.

c. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "B79," would be removed.

5. In § 172.102, in paragraph (c)(3), Special Provisions B12 and B79 would be removed and Special Provisions B42, B65, B71, B72, B74, B76 and the first sentence of B78 would be revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code/Special Provisions

* * * * *

B42 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B65 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a safety relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). The tank car specification may be marked to indicate a test pressure of 20.68 Bar (300 psig).

* * * * *

B71 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105, 112, or 114.

B72 Tank cars must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J, 106, or 110.

B74 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 106, 110, 112J, or 114J.

B76 Tank cars must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 112J, or 114J. Each tank car must have a safety relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B78 Tank cars must have a test pressure of 4.14 Bar (60 psig) or greater and conform to Class 103, 104, 105, 109, 111, 112, or 114.

* * *

* * * * *

§ 172.102 [Amended]

6. In addition, in § 172.102, in paragraph (c)(3), the following changes would be made:

a. For Special Provision B4, the wording "AAR 206 tank car tanks and" would be removed.

b. For Special Provision B5, the wording "DOT 103 ALW, 111A60 ALW tank car tanks and" would be removed.

c. For Special Provision B10, the wording "AAR 206 tank car tanks," would be removed.

d. For Special Provision B57, the wording "complying with § 179.221–1 of this subchapter and the outer shell must be stenciled "CHLOROPRENE" on both sides in letters not less than 102 mm (4 inches) high" would be removed.

7. In § 172.203, paragraphs (e)(2) and (g) would be revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(e) * * *

(2) The description on the shipping paper for a tank car containing the residue of a hazardous material must include the phrase, "RESIDUE: LAST CONTAINED. . ." before the basic description.

* * * * *

(g) *Transportation by rail.* (1) The shipping paper for a rail car, freight container, transport vehicle, or portable tank that contains a hazardous material must include the reporting mark and number of the rail car, freight container, transport vehicle, or portable tank.

(2) The shipping paper for each DOT–113 tank car containing a Division 2.1 material or its residue must contain an appropriate notation, such as "DOT 113", and the statement "Do not hump or cut off car while in motion."

(3) When shipments of elevated temperature materials are transported under the exception permitted in § 173.247(h)(3) of this subchapter, the shipping paper must contain an appropriate notation, such as "Maximum operating speed 15 mph.".

* * * * *

8. In § 172.205, paragraph (f) would be revised to read as follows:

§ 172.205 Hazardous waste manifest.

* * * * *

(f) *Transportation by rail.* Notwithstanding the requirements of paragraphs (d) and (e) of this section, the following requirements apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States; and

(iv) Retain one copy of the manifest and rail shipping paper in accordance with 40 CFR 263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with 40 CFR 263.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with 40 CFR 263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

* * * * *

9. In § 172.330, paragraph (a)(1) would be revised to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

(a) * * *

(1) In a tank car unless the following conditions are met:

(i) The tank car must be marked on each side and each end as required by § 172.302 with the identification number specified for the material in the § 172.101 Table; and

(ii) A tank car containing any of the following materials must be marked on each side with the key words of the proper shipping name specified for the material in the § 172.101 Table, or with a common name authorized for the material in this subchapter (e.g., "Refrigerant Gas"):

(A) Division 2.1 or Division 2.3 materials;

(B) Anhydrous ammonia or an ammonia solution with more than 50% ammonia;

(C) A refrigerant or dispersant gas, as defined in § 173.115 of this subchapter;

(D) Bromine or bromine solutions;

(E) Chloroprene, inhibited;

(F) Hydrogen cyanide; or

(G) A Division 2.2 material in a Class DOT 107 tank car.

* * * * *

10. In § 172.510, paragraph (a) would be revised, paragraphs (b) and (c) would be removed, and paragraphs (d) and (e) would be redesignated as paragraphs (b) and (c), respectively, to read as follows:

§ 172.510 Special placarding provisions: Rail.

(a) *White square background.* The following must have the specified placards placed on a white square background, as described in § 172.527:

(1) Division 1.1 and 1.2 (explosive) materials which require EXPLOSIVES 1.1 or EXPLOSIVES 1.2 placards affixed to the rail car;

(2) Materials poisonous by inhalation in Hazard Zone A, including tank cars containing only a residue of the material; and

(3) Class DOT 113 tank cars used to transport a Division 2.1 (flammable gas) material, including tank cars containing only a residue of the material.

* * * * *

§ 172.526 [Removed and reserved]

11. Section 172.526 would be removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

13. In § 173.24b, paragraph (a)(3) would be removed and paragraph (a)(1) would be revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

(a) *Outage and filling limits.* (1) Liquids and liquefied gases must be so loaded that the outage is at least one percent (two percent for anhydrous ammonia and five percent for materials poisonous by inhalation) of the total capacity of a cargo tank, portable tank, tank car (including dome capacity),

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multi-unit tank car tank, or any compartment thereof, at the following reference temperatures—

(i) 46°C (115°F) for noninsulated tanks;

(ii) 43°C (110°F) for tank cars having a thermal protection system, incorporating a metal jacket, that provides an overall thermal conductance at 15.5°C (60°F) of no more than 10.22 kilojoules per hour per square meter per degrees Celsius (0.5 Btu per hour/ per square foot/ per degree F) temperature differential; or

(iii) 41°C (105°F) for insulated tanks.

* * * * *

§ 173.29 [Amended]

14. In § 173.29, paragraph (f) would be removed and reserved.

15. In § 173.314, as currently in effect, paragraph (b)(5) would be removed, paragraph (b)(6) would be redesignated as paragraph (b)(5) and revised, and paragraph (i) would be removed and reserved, to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(b) * * *

(5) Each tank car used for the transportation of a Division 2.1 or 2.3 material or anhydrous ammonia must have gaskets capable of surviving temperatures at or above 230°C (450°F). The use of sealants to install gaskets is prohibited.

* * * * *

§ 173.314 [Amended]

16. In addition, in § 173.314, as amended at 60 FR 49074, effective July 1, 1996, the following changes would be made:

a. In the paragraph (c) table, in Column 2, for the entry "Ammonia, anhydrous, or ammonia solutions >50 percent ammonia", "Note 2" would be removed and "Note 3" added in its place.

b. In paragraph (c), in Column 3, for the entry "Dimethyl ether", the class designations "112" and "114" would be added in appropriate numerical order.

c. In the notes following the paragraph (c) table, Note 2, would be removed and reserved.

PART 174—CARRIAGE BY RAIL

17. The authority citation for Part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

18. Section 174.3 would be revised to read as follows:

§ 174.3 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by rail any shipment of hazardous material that is not in accordance with the requirements of this subchapter.

§ 174.8 [Removed]

20. Section 174.8 would be removed.

21. Section 174.9 would be revised to read as follows:

§ 174.9 Inspection and acceptance.

At each location where a hazardous material is accepted for transportation or placed in a train, the carrier shall externally inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, leakage, and for the requirements of part 215 of this title.

§ 174.10 [Removed]

22. Section 174.10 would be removed.

§ 174.11 [Removed]

23. Section 174.11 would be removed.

§ 174.18 [Removed]

24. Section 174.18 would be removed.

25. Section 174.24 would be revised to read as follows:

§ 174.24 Shipping papers.

A carrier may not accept or transport a hazardous material by rail unless the material is properly described on a shipping paper in the manner prescribed in part 172 of this subchapter. An originating carrier must have a copy of the shipping paper that bears the shipper's certification as required by § 172.204 of this subchapter.

§ 174.25 [Removed]

26. Section 174.25 would be removed.

27. In § 174.26, paragraph (a) would be removed, paragraphs (b) and (c) would be redesignated as paragraphs (a) and (b), respectively, and newly redesignated paragraph (b) would be revised to read as follows:

§ 174.26 Notice to train crews of placarded cars.

* * * * *

(b) A member of the train crew of a train transporting a hazardous material must have a copy of the shipping papers, train consist, or other car movement document for the hazardous material being transported showing the information required by part 172 of this subchapter.

§ 174.45 [Removed]

28. Section 174.45 would be removed.

§§ 174.47 through 174.49 [Removed]

29. Sections 174.47, 174.48 and 174.49 would be removed.

30. Section 174.50 would be revised to read as follows:

§ 174.50 Leaking packages.

Leaking packages other than tank cars may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided, a tank car that no longer conforms to this subchapter may not be forwarded unless repaired or approved, in writing, for movement by the Associate Administrator for Safety, Federal Railroad Administration. For the applicable address and telephone number, see part 107, appendix A, of this chapter. A leaking tank car containing any hazardous material may be switched to a location distant from habitation and highways if the move can be safely made and, in the case of a liquid leak, if precautions are taken against the spread of the liquid.

31. Section 174.55 would be revised to read as follows:

§ 174.55 General requirements.

(a) Except as otherwise provided, each packaging containing hazardous materials being transported by rail must be secured within the transport vehicle so that the packaging will not become damaged to an extent that would affect its integrity under conditions normally incident to rail transportation.

(b) Each package of hazardous materials bearing package orientation markings prescribed in § 172.312 of this subchapter must be secured within the transport vehicle in accordance with the orientation indicated by the markings.

(c) The doors of the transport vehicle may not be used as support for the securement system or the package beyond their design strength as required by the AAR's Manual of Standards and Recommended Practices, Specification M–930 (for containers) and M–931 (for trailers).

§ 174.67 [Amended]

32. In § 174.67, in paragraph (k), the wording ", except that heater coil inlet and outlet pipes must be left open for drainage" would be removed.

§ 174.69 [Removed]

33. Section 174.69 would be removed.

34. Section 174.85 would be amended by revising paragraph (c) to read as follows:

§ 174.85 Position in train of placarded cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(c) A rail car containing the residue of a hazardous material must be separated from a locomotive or occupied caboose by at least one non-placarded rail car.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

35. The authority citation for part 179 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

36. Section 179.12 would be revised to read as follows:

§ 179.12 Interior heater systems.

(a) Interior heater systems shall be of approved design and materials. If a tank is divided into compartments, a separate system shall be provided for each compartment.

(b) Each interior heater system shall be hydrostatically tested at not less than 13.79 bar (200 psi) and shall hold the pressure for 10 minutes without leakage or evidence of distress.

§§ 179.12–1 through 179.12–7 [Removed]

37. Sections 179.12–1 through 179.12–7 would be removed.

38. Section 179.15 would be added to read as follows:

§ 179.15 Pressure relief devices.

Except for DOT Class 106, 107, 110, and 113 tank cars, tanks must have a pressure relief system that conforms to the following requirements:

(a) *Performance standard.* Each tank must have a pressure relief system having sufficient flow capacity to prevent pressure build-up in the tank to no more than the flow rating pressure of the pressure relief device in fire conditions as defined in Appendix A of the Association of American Railroads Specifications for Tank Cars.

(b) *Settings for pressure relief valves.* (1) Except as provided in paragraph (b)(2) of this section, a reclosing pressure relief valve must have a minimum start-to-discharge pressure equal to the sum of the lading vapor pressure at the reference temperature (46 °C (115 °F) for noninsulated tanks, 41 °C (105 °F) for insulated tanks) plus the static head plus gas padding pressure. The start-to-discharge pressure may not be lower than 5.17 Bar (75 psig) or exceed 33 percent of the minimum tank burst pressure.

(2) Tanks built prior to [one year after publication of final rule] having a minimum tank burst pressure of 34.47 Bar (500 psig) or less may be equipped with a reclosing pressure relief valve having a start-to-discharge pressure of not less than 14.5 percent of the minimum tank burst pressure but no more than 33 percent of the minimum tank burst pressure.

(3) The vapor tight pressure of a reclosing pressure relief valve must be at least 80 percent of the start-to-discharge pressure.

(4) The valve flow rating pressure must be 110 percent of the start-to-discharge pressure for tanks having a minimum tank burst pressure greater than 34.47 Bar (500 psig) and from 110 percent to 130 percent for tanks having a minimum tank burst pressure less than or equal to 34.47 Bar (500 psig).

(5) The tolerance for a reclosing pressure relief valve is ± 3 psi for valves with a start-to-discharge pressure of 6.89 Bar (100 psig) or less and ± 3 percent for valves with a start-to-discharge pressure greater than 6.89 Bar (100 psig).

(c) *Flow capacity of pressure relief systems.* The total flow capacity of each reclosing and nonreclosing pressure relief device must conform to Appendix A of the Association of American Railroads Specifications for Tank Cars.

(d) *Flow capacity tests.* The manufacturer of any reclosing or nonreclosing pressure relief device must design and test the device in accordance with Appendix A of the Association of American Railroads Specifications for Tank Cars.

(e) *Combination pressure relief systems.* (1) When a reclosing pressure relief valve is used in combination with a breaking pin device, the breaking pin must be designed to fail at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge at 95 percent of the start-to-discharge pressure.

(2) When a reclosing pressure relief valve is used in combination with a rupture disc, the rupture disc must be designed to fail at the start-to-discharge pressure specified in paragraph (b) of this section, and the reclosing pressure relief valve must be designed to discharge 95 percent of the start-to-discharge pressure. A device must be installed to detect any accumulation of pressure between the rupture disc and the reclosing pressure relief valve. The detection device must be a needle valve, trycock, or tell-tale indicator. The detection device must be closed during transportation.

(f) *Non-reclosing pressure relief device.* In addition to paragraphs (a), (c), and (d) of this section, a nonreclosing pressure relief device must conform to the following requirements:

(1) After [one year after publication of final rule], a non-reclosing pressure relief device must incorporate a rupture disc designed to burst at 33 percent of the tank burst pressure.

(2) The approach channel and the discharge channel may not reduce the required minimum flow capacity of the pressure relief device.

(3) The nonreclosing pressure relief device must be designed to prevent interchange with other fittings installed on the tank car, must have a structure that encloses and clamps the rupture disc in position (preventing any distortion or damage to the rupture disc when properly applied), and must have a cover, with suitable means of preventing misplacement, designed to direct any discharge of the lading downward.

(4) The nonreclosing pressure relief device must be closed with a rupture disc that is compatible with the lading and manufactured in accordance with Appendix A of the AAR Specifications for Tank Cars.

(g) *Location of relief devices.* Each pressure relief device must communicate with the vapor space above the lading on the longitudinal center line as near as practicable to the center of the tank.

(h) *Marking of pressure relief devices.* Each pressure relief device and rupture disc must be permanently marked in accordance with the Appendix A of the Association of American Railroads Specifications for Tank Cars.

39. In § 179.100–7, the table following paragraph (a) would be revised to read as follows:

§ 179.100–7 Materials.

(a) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) welded condition (longitudinal)
ASTM A 516	70,000	20
AAR TC128, Gr. B	81,000	19
ASTM A 537, Class 1	70,000	23
ASTM A 302, Gr. B ..	80,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.100–7 [Amended]

40. In addition, in § 179.100–7, the following changes would be made:

a. In the table following paragraph (b), the last entry "ASTM B 209–70, Alloy 6061 [4]" would be removed, and the wording "209–70" would be revised to read "209" each place it appears.

b. In the footnotes to the paragraph (b) table, Footnotes 4 and 5 would be

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removed and Footnote 6 would be redesignated as Footnote 4.

c. In the table following paragraph (c)(1), the wording "A240–70" would be revised to read "A 240" each place it appears.

d. In paragraph (c)(2) (i), the wording "A262–68" would be revised to read "A 262", the word "Recommended" would be revised to read "Standard", and the word "Austenitic" would be added immediately before "Stainless Steel".

DOT specification	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Manway cover thickness	Bottom outlet	Bottom washout	Reference (179.***)
105A100ALW	Yes	500	5/8	100	[2]2½	No	No	
105A200ALW	Yes	500	5/8	200	[2]2½	No	No	
105A300ALW	Yes	750	5/8	300	[2]2⅝	No	No	
105A100W	Yes	500	[3]9/16	100	2¼	No	No	
105A200W	Yes	500	[3]9/16	200	2¼	No	No	
105A300W	Yes	750	[1]11/16	300	[7]2¼	No	No	
105A400W	Yes	1,000	[1]11/16	400	[7]2¼	No	No	
105A500W	Yes	1,250	[1]11/16	500	2¼	No	No	102–1, 102–2
105A600W	Yes	1,500	[1]11/16	600	2¼	No	No	102–4, 102–17
109A100ALW	Optional	500	5/8	100	[2]2½	No	Optional	
109A200ALW	Optional	500	5/8	200	[2]2½	No	Optional	
109A300ALW	Optional	750	5/8	300	[2]2⅝	No	Optional	
109A300W	Optional	500	[1]11/16	300	2¼	No	Optional	
112A200W	Optional[4]	500	[3.5]9/16	200	2¼	No	No	
112A340W	Optional[4]	850	[1]11/16	340	2¼	No	No	
112A400W	Optional[4]	1,000	[1]11/16	400	2¼	No	No	
112A500W	Optional[4]	1,250	[1]11/16	500	2¼	No	No	
114A340W	Optional[4]	850	[1]11/16	340	([6])	Optional	Optional	103
114A400W	Optional[4]	1,000	[1]11/16	400	([6])	Optional	Optional	103
120A200ALW	Yes	500	5/8	200	[2]2½	Optional	Optional	103
120A100W	Yes	500	[3]9/16	100	2¼	Optional	Optional	103
120A200W	Yes	500	[3]9/16	200	2¼	Optional	Optional	103
120A300W	Yes	750	[1]11/16	300	2¼	Optional	Optional	103
120A400W	Yes	1,000	[1]11/16	400	2¼	Optional	Optional	103
120A500W	Yes	1,250	[1]11/16	500	2¼	Optional	Optional	103

[1] When steel of 65,000 to 81,000 p.s.i. minimum tensile strength is used, the thickness of plates shall be not less than 5/8 inch, and when steel of 81,000 p.s.i. minimum tensile strength is used, the minimum thickness of plates shall be not less than 9/16 inch.
[2] When approved material other than aluminum alloys are used, the thickness shall be not less than 2¼ inches.
[3] When steel of 65,000 p.s.i. minimum tensile strength is used, minimum thickness of plates shall be not less than ½ inch.
[4] Tank cars not equipped with a thermal protection or an insulation system used for the transportation of a Class 2 (compressed gas) material must have at least the upper two-thirds of the exterior of the tank, including manway nozzle and all appurtenances in contact with this area, finished with a reflective coat of white paint.
[5] For inside diameter of 87 inches or less, the thickness of plates shall be not less than ½ inch.
[6] See AAR specifications for tank cars, Appendix E, E4.01 and § 179.103–2.
[7] When the use of nickel is required by the lading, the thickness shall not be less than two inches.

§ 179.102–1 [Amended]

45. In § 179.102–1, in paragraph (a)(1), the following changes would be made:

a. In the first sentence, the wording "A516–79b" would be revised to read "A 516".

b. At the end of the third sentence, the wording "A370–77" would be revised to read "A 370".

c. In the last sentence, the wording "A240–79" would be revised to read "A 240".

§ 179.102–2 [Amended]

46. In § 179.102–2, in paragraph (a)(1), the wording "A516–70a" would be revised to read "A 516" and the wording "TC–128–70" would be revised to read "TC–128".

§ 179.102–4 [Amended]

47. In § 179.102–4, the following changes would be made:

a. Paragraph (d) would be removed.

b. Paragraphs (b) and (c) would be redesignated as paragraphs (a) and (b), respectively.

c. Paragraphs (e) through (k) would be redesignated as paragraphs (c) through (i), respectively.

d. Paragraph (l) would be removed.

48. In § 179.103–5, in paragraph (a)(3), the word "valve" would be removed, and paragraph (b)(2) would be revised to read as follows:

§ 179.103–5 Bottom outlets.

* * * * * *

(b) * * *

(2) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, shall be provided with one of the following arrangements or an approved modification thereof. (See appendix E. Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.)

§ 179.103–10 [Amended]

41. In § 179.103–10, in paragraph (c), the wording "ASTM A240–70" would be revised to read "ASTM A 240".

§ 179.103–15 [Removed and reserved]

42. Section 179.103–15 would be removed and reserved.

§ 179.103–20 [Amended]

43. In § 179.103–20, in the paragraph (a) table, for the entry "Material", in the second column, the wording "ASTM A515–70" would be revised to read "ASTM A 516".

44. Section 179.104–1 would be revised to read as follows:

§ 179.104–1 Individual specification requirements.

In addition to § 179.104, the individual specification requirements are as follows:

(i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure.

(ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure.

(iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig E17.6). If the threaded cap closure does not have a pipe plug or integral auxiliary test valve, a minimum 1-inch NPT pipe plug shall be installed in the outlet nozzle above the closure (see Fig. E17.7).

(iv) A two-piece quick-coupling device using a clamped dust cap must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle shall be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9).

* * * * *

49. Section 179.200–7 would be amended by revising the table following paragraph (b) to read as follows:

§ 179.200–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
ASTM A 515, Gr. 70	70,000	20
ASTM A 516, Gr. 70	70,000	20
AAR TC 128, Gr. B	81,000	19

[1] Maximum stresses to be used in calculations.

* * * * *

§ 179.200–7 [Amended]

50. In addition, in § 179.200–7, the following changes would be made:

a. In the table following paragraph (c), the last entry "ASTM B 209–70, Alloy 60614" would be removed, and in the first column, for each entry, the wording "209–70" would be revised to read "209".

b. In the paragraph (c) table, Footnotes 4 and 5 would be removed and Footnote 6 would be redesignated as Footnote 4.

c. In the table following paragraph (d), in the first column, for each entry, the wording "240–70" would be revised to read "240".

d. In Footnote 2 in the paragraph (d) table, the wording "the following procedures in ASTM Specification A 262–68 titled, 'Recommended Practices for Detecting Susceptibility to Intergranular Attack in Stainless Steels,' and must exhibit corrosion rates not exceeding the following:" would be revised to read "Practice A of ASTM Specification A 262 titled, 'Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels.' If the specimen does not pass Practice A, Practice B or C must be used and the corrosion rates may not exceed the following:".

e. In the table following paragraph (e), in the first column, the wording "162–69[2]" would be revised to read "162[2]".

f. In the table following paragraph (f), in the first column, the wording "302–69a" would be revised to read "302".

51. In § 179.200–14, the first sentence of paragraph (a) and the first sentence of paragraph (b) would be revised to read as follows:

§ 179.200–14 Expansion capacity.

(a) Tanks shall have expansion capacity as prescribed in this subchapter. * * *

(b) For tank cars having an expansion dome, the expansion capacity is the total capacity of the tank and dome combined. * * *

* * * * * *

52. In § 179.200–16, the first sentence in paragraph (d) would be revised to read as follows:

§ 179.200–16 Gauging devices, top loading and unloading devices, venting and air inlet devices.

* * * * * *

(d) When using a gauging device, an outage scale visible through the manway opening shall be provided. * * *

* * * * * *

§ 179.200–18 [Removed]

53. Section 179.200–18 would be removed.

§ 179.200–24 [Amended]

54. In § 179.200–24, in the paragraph (a) table, for the entry "Material", in the second column, the wording "ASTM A285 C" would be revised to read "ASTM A 516".

55. Section 179.201–1 would be revised to read as follows:

§ 179.201–1 Individual specification requirements.

In addition to § 179.200, the individual specification requirements are as follows:

DOT Specification[1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201–**)
103A–ALW	Optional	240	½	60	No	Optional	
103AW	Optional	240	179.201–2	60	No	Optional	
103ALW	Optional	240	½	60	Optional	Optional	6(a).
103ANW	Optional	240	179.201–2	60	No	Optional	6(d).
103BW	Optional	240	179.201–2	60	No	No	6(b), 3.
103CW	Optional	240	179.201–2	60	No	No	6(c), 4, 5.
103DW	Optional	240	179.201–2	60	Optional	Optional	6(a), 6(c), 4, 5.
103EW	Optional	240	179.201–2	60	No	Optional	6(c), 4, 5.
103W	Optional	240	179.201–2	60	Optional	Optional	6(a).
104W	Yes	240	179.201–2	60	Optional	Optional	6(a).
111A60ALW1	Optional	240	½	60	Optional	Optional	6(a).
111A60ALW2	Optional	240	½	60	No	Optional	
111A60W1	Optional	240	7/16	60	Optional	Optional	6(a).
111A60W2	Optional	240	7/16	60	No	Optional	
111A60W5	Optional	240	7/16	60	No	No	3, 6(b).

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DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	References (179.201-***)
111A60W6	Optional	240	7/16	60	Optional	Optional	4, 5, 6(a), 6(c).
111A60W7	Optional	240	7/16	60	No	No	4, 5, 6(a).
111A100ALW1	Optional	500	5/8	100	Optional	Optional	6(a).
111A100ALW2	Optional	500	5/8	100	No	Optional	
111A100W1	Optional	500	7/16	100	Optional	Optional	6(a).
111A100W2	Optional	500	7/16	100	No	Optional	
111A100W3	Yes	500	7/16	100	Optional	Optional	6(a).
111A100W4	Yes (see 179.211-11).	500	7/16	100	No	No	6(a), 8, 10.
111A100W5	Optional	500	7/16	100	No	No	3.
111A100W6	Optional	500	7/16	100	Optional	Optional	4, 5, 6(a) and 6(b).
111A100W7	Optional	500	7/16	100	No	No	4, 5, 6(c).

[1] Tanks marked "ALW" are constructed from aluminum alloy plate; "AN" nickel plate; "CW," "DW," "EW," "W6," and "W7" high alloy steel or manganese-molybdenum steel plate; and those marked "BW" or "W5" must have an interior lining that conforms to § 179.201-3.

§ 179.201-4 [Amended]

56. In § 179.201-4, at the end of the paragraph, the wording "AAR Specifications for Tank Cars, appendix M, M3.03(b) and M4.05(d)" would be revised to read "ASTM Specification A 262".

§ 179.201-5 [Amended]

57. In § 179.201-5, in paragraphs (a) and (b), the wording "ASTM A240-70" would be revised to read "ASTM Specification A 240" each place it appears.

§ 179.201-7 [Removed]

58. Section 179.201-7 would be removed.

§ 179.220-19 [Removed]

59. Section 179.220-19 would be removed.

DOT Specification [1]	Insulation	Bursting pressure (psi)	Minimum plate thickness (inches)	Test pressure (psi)	Bottom outlet	Bottom washout	Reference (179.221-***)
115A60W1	Yes	240	1/8	60	Optional	Optional	1.
115A60ALW	Yes	240	3/16	60	Optional	Optional..	
115A60W6	Yes	240	1/8	60	Optional	Optional	1.

[1] Tanks converted to DOT-1A series from existing forge-welded specification, DOT-105A 300, 490, or 500 tanks, by modification using conversion details complying with DOT-1-11A specification requirements, shall be stenciled by substituting the letter "F" for the letter "W" in the specification designation.

§ 179.222 [Removed]

61. Section 179.222 would be removed.

§ 179.222-1 [Removed]

62. Section 179.222-1 would be removed.

§ 179.300-7 [Amended]

63. In § 179.300-7, the following changes would be made:

a. In the table at the end of paragraph (a), the wording "A 285-69" would be revised to read "A 285" each place it appears, and the wording "A 515-69" would be revised to read "A 515" each place it appears.

b. In the table at the end of paragraph (b), the wording "285-69" would be revised to read "285".

§ 179.500-17 [Amended]

64. In § 179.500-17, paragraph (a)(7) would be removed.

Issued in Washington, DC on December 7, 1995 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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60. Section 179.221-1 would be revised as follows:

§ 179.221-1 Individual specification requirements.

In addition to § 179.220, the individual specification requirements are as follows:

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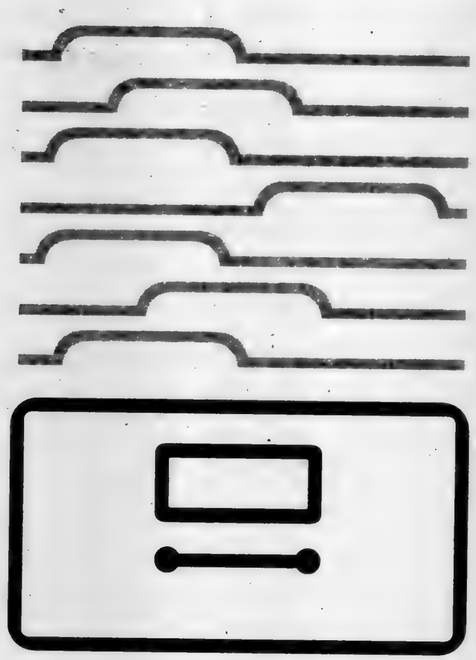
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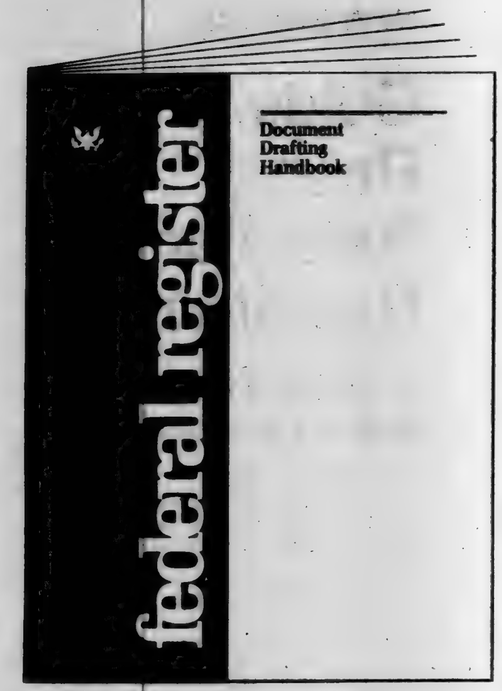
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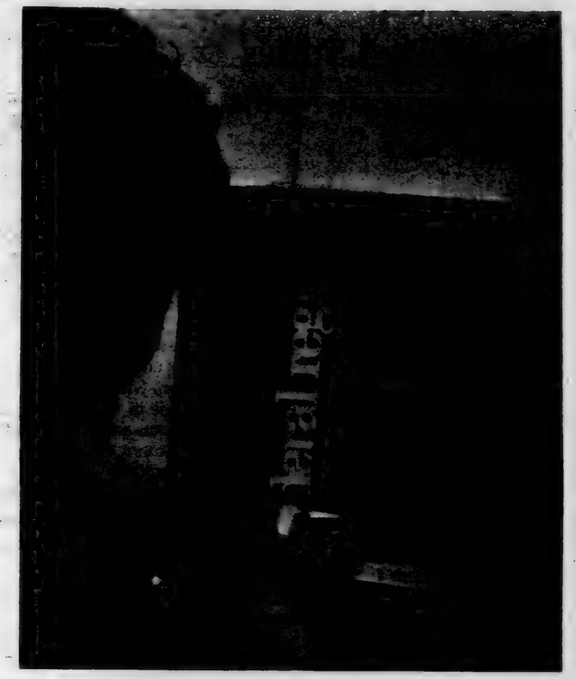
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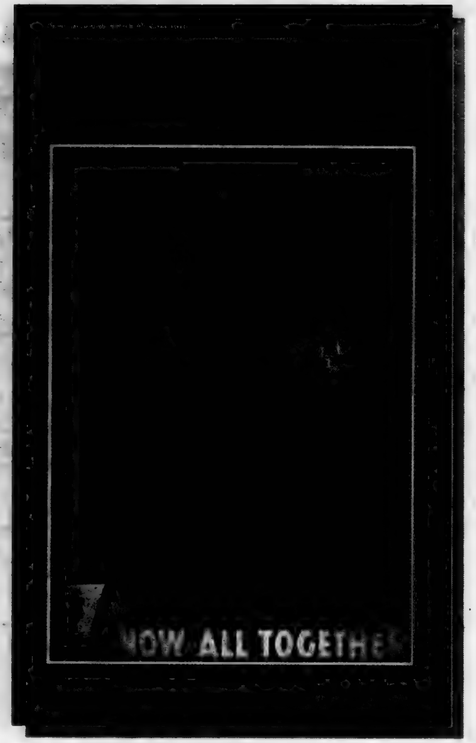
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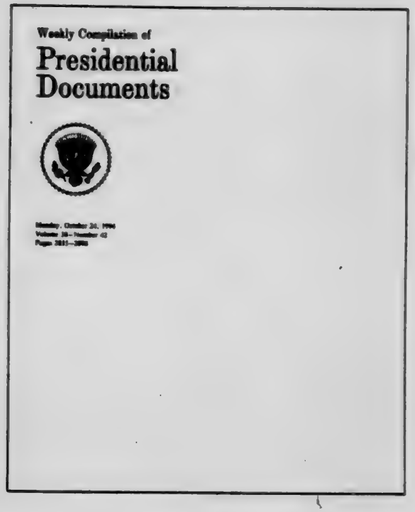
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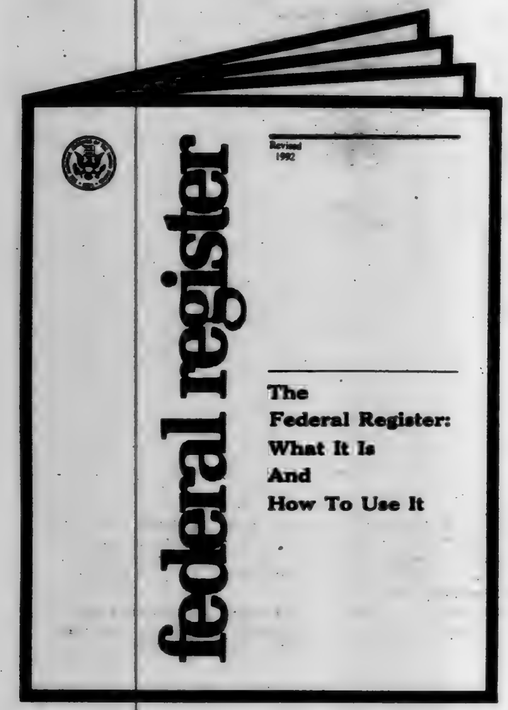
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–6 of December 6, 1995

Assistance Program for New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to Section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I–V of Public Law 103–87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 6, 1995.

MEMORANDUM OF JUSTIFICATION REGARDING CERTIFICATION UNDER SECTION 577 OF THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1994 (TITLES I–V OF PUBLIC LAW 103–87)

There continues to be active and substantial progress on the issue of Russian and CIS troop withdrawal from the Baltics since the President's previous determination under Section 577 "of substantial progress" on June 6, 1995.

Since the last determination, the troop withdrawal agreement between the Russian Federation and Estonia was ratified by the Russian State Duma on July 21, 1995, and endorsed by the Federation Council on October 4. Russian President Boris Yeltsin signed the federal law on ratification of the treaty on October 13. The agreement awaits ratification by the Estonian legislature. As noted previously, the troop withdrawal agreement between the Russian Federation and Latvia has been ratified by both countries, the documents of ratification having been exchanged on February 27, 1995.

By its terms, Section 577 remains in force until the President certifies to the Congress under Section 577(b) that all Russian and CIS armed forces have been withdrawn from Latvia and Estonia, or that the status of those armed forces has been otherwise resolved by mutual agreement of the parties. The Section 577(b) certification is not being made at this time, pending ratification by Estonia of the agreement between the Russian Federation and Estonia.

The residual issues remaining between Russia and Latvia and Russia and Estonia relating to troop withdrawals continue to be primarily political and social rather than military. In particular, there continues to be the question of Russian/CIS military personnel demobilized in place before August 31, 1994, when all active duty military personnel and equipment were

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withdrawn from Estonia and Latvia according to agreement. As noted previously, the lack of precise data for determining the number of troops demobilized in place, combined with certain ambiguities in the agreements, contribute to the difficulty of resolving these residual issues. Humanitarian concerns continue to constitute another factor. Since the June 6, 1995 determination, the parties have actively worked on both bilateral and multilateral levels to resolve these residual issues. In particular, they have used the OSCE Permanent Council and OSCE missions as fora for raising, and working through, their differences.

Latvia and Russia continue to review lists of demobilized officers in an orderly manner to clarify the status of these individuals. In September 1995, Russia submitted updated lists totaling 1238 former Russian military personnel whose status is still unresolved. The Latvians have told the OSCE Mission to Latvia that they believe another 163, outside these lists, reside in Latvia illegally. Of the 1238 on the Russian lists, Russia has committed to repatriating 401 by the end of 1995. In addition, since the last determination, the Russians have recognized the need for individual case-by-case review of a second major category of the 1238, comprised of 771 cases. The Russians have redesignated the category "those claiming to have the right to stay," rather than those "having the right to stay." In noting the progress the two sides have made in resolving the issue of demobilized officers, the OSCE Mission has also commended the political will shown by the Latvian Government in agreeing to investigate each claim to stay with appropriate care. Latvian President Ulmanis stated in September that, despite their serious foreign policy disagreements, Latvia and Russia are continuing to develop good-neighborly bilateral relations.

The bilateral dialogue between Russia and Estonia has broadened and deepened since the last determination. On October 11, Russian Foreign Minister Kozyrev and Estonian Foreign Minister Riivo Sinijarv met in Helsinki to discuss, among other issues, the Estonian ratification process for the July 1994 agreements on troop withdrawal and Russian military pensioners. Sinijarv termed the meeting "very constructive and relaxed," and noted that despite difficulties, the two countries had achieved certain progress in the normalization of Estonian-Russian relations. In November, a group of Russian State Duma members visited the Estonian capital of Tallinn and discussed with their counterparts the schedule for ratification by Estonia of the bilateral agreements signed in July 1994. In mid-November during UNESCO's 50th anniversary celebrations in Paris, Estonian President Lennart Meri noted that "relations between Russia and Estonia have already passed their most difficult stage." He highlighted the progress made on the border talks as an example of this new phase in relations and stated that he viewed future relations with Russia with "optimism."

The decommissioning of the Paldiski facility in Estonia has also been cited by both sides as a major bilateral success. In his 50th UNGA address, Foreign Minister Sinijarv noted that on September 26 "the final remnant of occupation, in the form of the former Soviet nuclear submarine training facility at Paldiski, will be turned over to Estonian authorities by civilian Russian dismantling specialists. I take this opportunity to acknowledge Estonia's satisfaction with the Russian Federation's having fulfilled its commitments in this regard, as mandated by the agreement signed by Russia and Estonia on 30 July 1994."

Russia and Estonia continue to use the OSCE Permanent Council mechanism to raise issues of dispute. The Russians, for example, chose to use the October 12 meeting of the Permanent Council to express concern over a decision by the Estonian Parliament to remove from the week's agenda ratification of the bilateral Russian-Estonian agreement on military pensioners. Estonia replied that the Estonian government had resigned on October 11 and that this issue took precedence over ratification of the bilateral agreement. Since the October 12 OSCE meeting, the Estonian Parliament has been reviewing the package of troop withdrawal agreements for ratification as a high priority agenda item. On November 29, the package of agreements passed the first of three required readings in the Estonian Parliament. The OSCE has also appointed a representative to the Commission dealing with the granting of residence permits for Russian military pensioners desiring to stay in Estonia. Applications are being submitted and processed on a case-by-case basis under this program.

In U.S. discussions with Russian, Latvian, and Estonian officials, the residual troop withdrawal issue no longer receives the priority it once did as an outstanding problem between Russia and Latvia and Russia and Estonia. Further, local press commentators in the leadup to the September 30–October 1 elections in Latvia pointed out that normality had come at last to Latvia. Troop withdrawal concerns had ceased to be a key issue for the populace; integration into European institutions as well as bread and butter issues had taken on greater importance.

Russia and Latvia and Russia and Estonia continue to recognize the importance of dialogue and diplomacy in resolving the residual issues relating to troop withdrawals. They continue to look for practical ways, including through international mechanisms, to solve their differences and have moved significantly towards normal bilateral relations. In a November 7 speech to the opening session of the sixth Saeima in Riga, Latvian President Ulmanis eloquently defined the challenge and the goal facing the parties: "To find a fruitful balance for this mutual tension of political factors is both a task and a challenge to the creative and diplomatic abilities of our politicians."

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 600

[Docket No. PO–RM–95–101]

Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending its Financial Assistance Rules by adding a final statement of policy, including procedures and interpretations, to guide DOE officials in making determinations required by section 2306 of the Energy Policy Act of 1992 (EPACT) concerning eligibility to receive financial assistance under DOE programs authorized by Titles XX through XXIII of EPACT.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Marlay, Office of Science Policy (Mail Stop PO–81), Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–3900. Paul Sherry, Esq., Office of General Counsel (Mail Stop GC–61), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2440.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Procedural Requirements

I. Background

This notice sets forth a final general statement of policy, including procedures and interpretations, concerning implementation of the requirements of section 2306 of EPACT (42 U.S.C. 13525). This general statement of policy will guide implementing DOE officials in making a special eligibility determination prerequisite to a financial assistance award to a company under Titles XX through XXIII of EPACT. Those titles relate to research, development, demonstration and commercialization programs in diverse areas of energy efficiency, energy supply, and related basic research.

Section 2306 provides for a two-part determination. An applicant must be found to satisfy the conditions of both parts in order to be eligible. The first part, set out in section 2306(1), involves a finding with regard to whether an award of financial assistance to the applicant would be in the economic interest of the United States. 42 U.S.C. 13525(1). The statute provides some illustrative examples of the kinds of evidence that would support such a finding: investments in the United States in research, development, and manufacturing; significant contributions to employment in the United States; and agreements, with respect to any technology arising from financial assistance provided, to promote the manufacture within the United States of products resulting from that technology and to procure parts and materials for such manufacture from competitive suppliers.

The second part of the determination, section 2306(2), involves two subparts, one of which must be satisfied. 42 U.S.C. 13525(2). The first subpart is satisfied if the applicant is a "United States-owned company." The second subpart is satisfied if the applicant is found to be incorporated in the United States and the applicant's parent company is incorporated in a foreign country that: (a) affords opportunities to United States-owned companies comparable to those afforded to any other company to participate in government-supported joint ventures in energy research and development; (b) affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to general investment opportunities; and (c) affords adequate and effective protection of intellectual property rights owned by United States-owned companies.

The current list of covered programs is set forth below. This list will be updated as appropriate and published in the **Federal Register** to account for changes in activities undertaken in relation to Titles XX through XXIII of EPACT.

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Building Envelope	§2101
Building Equipment	§2101
Codes and Standards	§2101
Energy Supply R & D: Energy Research:	
Fusion Energy	§2114
All Programs, including:	
Confinement Systems	§2114
Development & Technology	§2114
Applied Plasma Physics	§2114
Planning & Projects	§2114
Inertial Fusion Energy	§2114
Program Direction-Op Exp	§2114
Capital Equipment & Construction	§2114
Basic Energy Sciences	§2203
All Activities, including:	
Materials Sciences	§2203
Chemical Sciences	§2203
Energy Biosciences	§2203
Engineering & Geosciences	§2203
Applied Math Sciences	§2203, 2204
Advanced Energy Projects	§2203
Program Direction	§2203
Capital Equipment	§2203
Advisory & Oversight/Program Direction	§2203
Advanced Neutron Source	§2203
Energy Research Analysis	§2203
University & Science Education Programs	§2203
Experimental Program to Stimulate Competitive Research	§2203
Laboratory Technology Transfer	§2203
Multi-Program Laboratory Support	§2203
Nuclear Energy:	
Light Water Reactor	§2123, 2126
Advanced Reactor R & D	§2121, 2122, 2124, 2126
Facilities	§2126
Solar & Renewables:	
Solar & Other Energy	§2021, 2026, 2111, 2117
All Programs, including:	
Photovoltaics	§2111
Biofuels	§2021, 2013, 2024, 2111
Solar Technology Transfer	§2111

Covered programs	EPACT sections
Program Direction—Other Solar Energy	§2111
Solar Building Technology Research	§2111, 2104
Solar Thermal Energy Systems	§2111
Wind Energy Systems	§2111
Ocean Energy Systems	§2111
International Solar Energy Program	§2111
Resource Assessment	§2111
Program Support	§2111
Geothermal	§2111
Hydrogen Research	§2026
Electric Energy Systems including: Superconductivity	§2117, 2111
Energy Storage Systems	§2111
Environmental Rest & Waste Management:	
Facility Transition—Fast Flux Test Facility	§2116
Civilian Waste R & D	§2113
Electric & Magnetic Fields Research and Public Dissemination Program	§2118
Spark M. Matsunaga Renewable Energy & Ocean Technology Center	§2111, 2119

On February 23, 1995, DOE published a proposed statement of policy for public comment in the **Federal Register** (60 FR 10296). The public comment period ended April 24, 1995. The Department received seven comments. In addition, a public hearing was held on April 19, 1995, in Washington, DC. Comments were received from the Delegation of the European Commission, individual corporations, and associations representing corporations and commercial interests. The official rulemaking record is available in the Department's Freedom of Information reading room.

II. Discussion of Public Comments

A. Applicability of Eligibility Requirements

One commenter questioned the Department's overall approach of implementing section 2306 through a "general statement of policy" which allows DOE officials considerable flexibility. The commenter noted that § 2306 is mandatory, not advisory, and that the Department's interpretation of what constitutes compliance with this provision should also be mandatory in the form of a final binding rule. In addition, the commenter expressed the view that allowing discretion in applying section 2306 will lead to arbitrary and inconsistent results.

The policy statement recognizes the limitations of DOE's discretion by announcing that "Department officials must, in all cases, comply with the requirements of the statute." The Department has decided to adopt a general statement of policy which provides uniform guidance for DOE officials and potential DOE program applicants, but allows implementing officials discretion in applying this policy to a large number of programs in diverse energy areas.

Most importantly, the Department's general statement of policy sets forth a reasonable decisionmaking framework for the purpose of allowing full compliance with—not avoidance of—section 2306. This decisionmaking framework has been designed to avoid arbitrary decisionmaking by ensuring that all implementation actions under section 2306 comply with the requirements of that provision.

Several comments were received concerning the "retroactive" application of section 2306 by the Department. One commenter asserted that the Department should not retroactively impose conditions on program participants granted awards prior to the enactment of EPACT.

Section 2306, which governs the award of financial assistance covered by Titles XX to XXIII of EPACT, became effective on October 24, 1992. The eligibility requirements will not be applied to financial assistance awards made prior to the effective date of the Act. This policy statement will apply to any new financial assistance awards or renewals of such awards under covered programs made after the effective date stated in this notice.

Several commenters also raised retroactivity issues with respect to which programs are covered. One commenter asserted that section 2306 applies to programs authorized by EPACT but commenced prior to the passage of that Act. Another commenter disagreed and asserted that DOE improperly proposed to apply section 2306 to programs that pre-date the enactment of EPACT. Departmental programs that pre-date EPACT but are referenced in Titles XX through XXIII of the Act will be considered covered programs as of the effective date of the Act.

Two commenters expressed opposing views with respect to the scope of programs "under Titles XX through XXIII" of EPACT. One commenter asserted that the requirements of section 2306 should be applied broadly. Another commenter asserted that it would be inappropriate to apply section 2306 to programs not specifically authorized under titles XX through XXIII of EPACT. The Department has developed the list of covered programs set forth above to include both activities specifically authorized by Titles XX through XXIII of EPACT and other activities that are reasonably judged to be undertaken pursuant to program directions set out in those titles.

B. Definitions

Two comments were received concerning the proposed definition of "financial assistance." One commenter agreed with the Department's proposal to define "financial assistance" to include grants and cooperative agreements and not contracts, subcontracts, and cooperative research and development agreements (CRADAs). Another commenter argued that the exclusion of contracts and subcontracts from the definition thwarts the intent of Congress and reduces the applicability of the statute to "near zero."

The term "financial assistance" is not defined in EPACT, and the legislative history to that Act is silent as to its intended meaning. The Department has chosen to apply its pre-existing definition of the term "financial assistance", found at 10 CFR 600.3, which includes grants and cooperative agreements but does not include contracts, subcontracts or CRADAs. This definition is consistent with the usual connotations of the term.

The Department invited comment on the definition of "company" in order to assess whether it was appropriate to exclude all non-profit organizations

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from that definition, or whether it would be more appropriate to exclude a narrower class of non-profit educational and charitable organizations. One commenter expressed the view that excluding all non-profit organizations from the definition of that term would invite efforts to circumvent the purpose of section 2306.

The Department has concluded that the definition of "company" should not exclude all not-for-profit organizations, but should instead exclude educational or charitable organizations.

Accordingly, § 600.501 defines "company" as "any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(3))." This definition is intended to include corporations, general or limited partnerships, sole proprietorships, joint ventures, and other forms of business entities. It is not intended to include governmental entities. Not-for-profit corporations and associations are included unless they are educational or other institutions qualified under section 501(c)(3) of the Internal Revenue Code.

One commenter noted that the term "affiliates" is not defined in the proposed rule and suggested that a definition be added. Section 600.503, in which the term is used, simply provides that investment and employment in the U.S. by affiliates may be considered in assessing whether the applicant's participation is in the economic interests of the U.S. Accordingly, the Department does not believe that a technical definition of "affiliates" is necessary.

Another commenter suggested a change to the definition of "parent company" to clarify that, in the case of indirect control, each company in a series must have a majority control of its subsidiary. Such a rigid approach could permit use of organizational structures designed to circumvent effective review under section 2306. Therefore, the definition has not been modified.

C. Economic Interest Determination

Several comments were received concerning the scope of Departmental discretion in determining whether a company's participation is in the economic interest of the United States. One commenter, asserting that DOE has substantial discretion in this area, suggested that this determination should include a comparison of the records of applicant companies in particular areas, for example, in the area of providing U.S. jobs. A second commenter asserted that economic interest assessments must not be based simply on static comparisons among applicants. This same commenter emphasized that the Department should be flexible in the factors it considers in every case and should consider all available evidence in making its economic interest determination. A third commenter agreed, taking the position that the Department's economic interest determination should not be too narrowly focused. As an example, the third commenter noted that in certain cases there could be a clear economic benefit to the United States even though some prospective awardees have no presence in the United States and could not be expected to have any in the future.

Determinations concerning the economic interest of the United States will be based on consideration of all available evidence. The statement of policy provides that any evidence that shows that an award would be in the economic interest of the United States can be considered. The Department also agrees with the position that economic interest assessments should not be based on comparisons among applicants.

Several commenters cautioned that, in applying the economic interest criteria, DOE should not impose performance requirements or other similar conditions on applicants, directly or indirectly. Some of these comments refer to U.S. Government obligations under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Trade-Related Investment Measures, which prohibit import substitution requirements and local purchasing requirements, respectively. The policy statement does not impose performance requirements or other similar conditions on applicants.

D. Section 2306(2)(B) Determination

One commenter recommended that the sole basis for DOE's finding should be the outcome of proceedings conducted by the Office of the United States Trade Representative under section 301 of the Trade Act of 1974, as amended. This commenter notes that the Congress and the Executive Branch have established a comprehensive system of identifying, evaluating and eliminating foreign trade barriers under section 301. This commenter argues that such an approach would ensure that all concerned parties have an opportunity to express views; would ensure predictable results; and would ensure that DOE's finding supports U.S. market-opening efforts. Another commenter argued that DOE should consider evidence of compliance or non-compliance with laws and international agreements affecting trade, and should not limit its analysis to the outcome of section 301 proceedings. DOE agrees that section 301 proceedings are an important factor in making the necessary finding, but consideration of relevant evidence that is not produced as a result of a section 301 proceeding also is appropriate.

One commenter urged DOE to consider whether U.S.-owned firms have non-discriminatory market access in making its determinations. The criteria contained in section 2306(2)(B) of EPACT address comparable access to research opportunities, comparable investment opportunities and adequate and effective intellectual property protections. Section 2306(2)(B) does not provide for DOE to consider whether U.S.-owned firms have access to comparable trade opportunities in the relevant foreign country.

E. Comparable Access to Research Opportunities

One commenter stated that it would defy common sense to find that a parent company incorporated in a country with no similar research program satisfies the requirements of section 2306. At the public hearing, the same commenter stated that section 2306 of EPACT requires DOE to disqualify any applicant if the applicant is headquartered in a country that has no comparable research program.

Section 2306(2)(B) directs DOE to consider whether a foreign country affords U.S. companies "opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act." 42 U.S.C. 13525(2)(B). This finding relates to whether there is discrimination against U.S.-owned firms relative to other firms with regard to access to any foreign-government-sponsored programs comparable to those covered under EPACT. The law does not provide for a finding that a foreign country has comparable energy research and development programs.

F. Comparable Access to Investment Opportunities

One commenter stated that DOE should not limit its review to whether U.S.-owned firms have a legal right to foreign investment opportunities under international agreements. The commenter stated that DOE should not find an affected applicant eligible to participate in a DOE covered program unless U.S. firms have actual investment opportunities in the country of the applicant's parent company that are comparable to the opportunities available to foreign investors in the United States. Another commenter stated that DOE's main source of information on investment barriers should be the National Trade Estimates Report on Foreign Trade Barriers published annually by the Office of the United States Trade Representative.

Section 2306(2)(B) provides that DOE must determine whether the country "affords to United States-owned companies local investment opportunities comparable to those afforded to any other company." 42 U.S.C. 13525(2)(B). DOE will consider available information on the legal regimes and de facto practices governing foreign investment in relevant countries. The statement of policy states that DOE may consider obligations of the country involved and local investment opportunities afforded to U.S.-owned companies in that country. DOE will consult with other Federal government agencies, as appropriate.

G. Protection of Intellectual Property Rights

One commenter stated that DOE should use the annual National Trade Estimate Reports on Foreign Trade Barriers published by the Office of the U.S. Trade Representative as a main source of information concerning foreign government practices related to the protection of the intellectual property rights of U.S.-owned companies. The commenter recommended that DOE use the reports to allow foreign-owned companies to know whether or not they are likely to be eligible to participate in such programs prior to submitting an application. Two commenters recommended that DOE work with other federal agencies to ensure that DOE's policy is implemented in a manner that is predictable and consistent with U.S. Government trade policies, including intellectual property rights protection. Section 600.505 allows DOE to consider any information related to the protection of intellectual property rights of U.S.-owned companies and to seek and consider advice from other federal agencies concerning such information, as appropriate. To promote consistency, DOE has considered information on intellectual property rights protection developed by other federal agencies and has consulted with appropriate federal agencies in applying the section 2306(2)(B) standards. DOE intends to continue this practice.

H. Administrative Issues

DOE received several comments concerning the "burden" of requirements established in the proposed rulemaking imposed on applicants. One commenter expressed the view that DOE should avoid the imposition of requirements which divert scarce research and development resources to purposes of administration. This commenter also took issue with the proposed certification procedures including those set forth at § 600.504(d) calling for a certification of status as a "United States-owned company." The commenter viewed these requirements as overly legalistic and creating an unnecessary administrative burden and expense. The Department agrees that the administrative burden on applicants in complying with the requirements of section 2306 should be minimized wherever possible. The Department has modified § 600.504 (b) and (c) to provide for representations as opposed to certifications concerning ownership status and other factors. This approach will allow the applicant to demonstrate eligibility while minimizing any administrative burden or added expense.

Another commenter, also urging that the administrative burden of complying with section 2306 should be minimized, argued that there is no reason to impose section 2306 requirements on firms meeting the definition of "small business" under the regulations of the Small Business Administration (SBA) because such firms, to be approved as a small business by SBA, must already meet most of the requirements of section 2306. The Department does not agree that qualifying for small business status is equivalent to satisfying the eligibility criteria of section 2306. *Compare* 13 CFR § 121.403 with 42 U.S.C. 13525. However, DOE sought comment on how it should make the required section 2306 determination in the context of relatively small financial assistance awards. DOE suggested that one possible alternative would be to ask applicants for awards below $100,000 to certify that they satisfy all the eligibility requirements of section 2306 (1) and (2)(A). The Department, in implementing this policy statement, expects to establish such self-certification procedures to minimize the compli-ance burden for awards of less than $100,000. Guidance on the procedures for establishing eligibility is available from the DOE Office of Procurement and Assistance Management (202–586–8613).

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs. Today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review as provided in the Supplementary Information section of this rule.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Pursuant to appendix A of subpart D of 10 CFR part 1021, the Department has determined that today's regulatory action is categorically exempt as a procedural rule for implementation of statutory requirements.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's action interprets the section 2306 eligibility requirements to be inapplicable to State applications for financial assistance. Therefore, the Department has determined that they will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal

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standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certifies that today's regulatory action meets the requirements of section 2 (a) and (b)(2) of Executive Order 12778.

Issued in Washington, DC, on this 13th day of December 1995.

Dan W. Reicher,

Acting Assistant Secretary for Policy.

For the reasons stated in the preamble, part 600 of title 10, Subchapter H of the Code of Federal Regulations is amended as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 is revised to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

2. New subpart F, consisting of §§ 600.500 through 600.505, is added to read as follows:

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

Sec.

600.500 Purpose and scope.
600.501 Definitions.
600.502 What must DOE determine.
600.503 Determining the economic interest of the United States.
600.504 Information an applicant must submit.
600.505 Other information DOE may consider.

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

§ 600.500 Purpose and scope.

This subpart implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

§ 600.501 Definitions.

The definitions in § 600.3 of this part, including the definition of the term "financial assistance," are applicable to this subpart. In addition, as used in this subpart:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501 (c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

§ 600.502 What must DOE determine.

A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(a) Consistent with § 600.503, the company's participation in a covered program would be in the economic interest of the United States; and

(b) The company is either—

(1) A United States-owned company; or

(2) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(i) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(ii) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(iii) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

§ 600.503 Determining the economic interest of the United States.

In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under § 600.502(a), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(a) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(b) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(c) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(1) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(2) To procure parts and materials from competitive suppliers.

§ 600.504 Information an applicant must submit.

(a) Any applicant for financial assistance under a covered program shall submit with the application for financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 600.502(a) and findings concerning ownership status under § 600.502(b).

(b) If an applicant for financial assistance is submitting evidence relating to future undertakings, such as an agreement under § 600.503(c) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(c) If an applicant for financial assistance is claiming to be a United States-owned company, the applicant must submit a representation affirming that it falls within the definition of that term provided in § 600.501.

(d) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 600.502.

§ 600.505 Other information DOE may consider.

In making the determination under § 600.502(b)(2), DOE may—

(a) consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(b) consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(1) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(2) Local investment opportunities afforded to United States-owned companies; and

(3) Protection of intellectual property rights of United States-owned companies;

(c) seek and consider advice from other federal agencies, as appropriate; and

(d) consider any publicly available information in addition to the information provided by the applicant.

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BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

[Notice 1995–24]

11 CFR Part 110

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On Oct. 5, 1995 (60 FR 52069), the Commission published the text of revised regulations governing disclaimers on campaign communications. On Nov. 29, 1995, the Commission published a correction to the preamble of the revised regulations. (60 FR 61199) 11 CFR Part 110. These regulations implement a provision of the Federal Election Campaign Act of 1971, as amended. The Commission announces that these rules are effective as of December 20, 1995.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Part 110 were transmitted to Congress on Oct. 2, 1995. Thirty legislative days expired in the Senate on Nov. 28, 1995, and in the House of Representatives on Dec. 5, 1995.

The Commission subsequently published a corrections notice to the preamble of these rules. The Speaker of the House of Representatives and the President of the Senate were notified of the correction notice on Nov. 27, 1995. The correction did not affect the text of the rules.

The rules address the circumstances under which a disclaimer must be included on campaign communications, as well as what information must be included in the disclaimer. The correction notice deleted a potentially misleading reference to phone bank activity that had inadvertently been included in the Explanation and Justification to the revised rules.

Announcement of Effective Date: 11 CFR 110.11, as published at 60 FR 52069, is effective as of December 20, 1995.

Dated: December 15, 1995.

Lee Ann Elliot,

Vice Chairman, Federal Election Commission.

[FR Doc. 95–30940 Filed 12–19–95; 8:45 am]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 95–74]

Repeal of the Charitable Contribution Limitation Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) has determined that the making of charitable donations is within the corporate power of the Federal Home Loan Banks (FHLBanks) and that issues of safety and soundness to which excessive donations might give rise can be adequately addressed through the Finance Board's FHLBank examination process. Therefore, the Finance Board is repealing the regulation that requires that FHLBanks obtain the approval of the Board of Directors of the Finance Board before making charitable donations in excess of $5,000 to one organization, or $25,000 total, during one calendar year. The repeal of this regulation is intended to allow the FHLBanks to use their own discretion in making such donations, subject only to the Finance Board's power to enforce standards of safety and soundness in FHLBank operations. This result is in keeping with the Finance Board's continuing effort to devolve corporate governance authority to the FHLBanks.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen E. Hancock, Assistant Director, Office of Policy and Financial Reporting, (202) 408–2906, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 934.11 of the Finance Board's regulations requires prior approval of the Board of Directors of the Finance Board, or its designee, for charitable contributions by a FHLBank that exceed $5,000 to one organization, or $25,000 in total during a calendar year. 12 CFR 934.11. As a result of an ongoing internal review of its regulations, the Finance Board, for the reasons set forth below, has determined that this regulation is unnecessary. Accordingly, the Finance Board is repealing section 934.11.

The substance of section 934.11 originally appeared at section 524.11 of the regulations of the Finance Board's predecessor, the Federal Home Loan Bank Board (FHLBB). In 1959, the FHLBB promulgated a regulation prohibiting the FHLBanks from making charitable donations. See 12 CFR 524.11 (1959) (amended). The FHLBB had determined that a FHLBank did not have the legal authority to make charitable donations and, further, wanted to prevent FHLBanks from favoring some communities in their districts over others.

In 1975, the FHLBB reconsidered its position and concluded that charitable donations, within reasonable limits, would further the corporate interests of the FHLBanks. See 40 FR 46302 (Oct. 7, 1975). Therefore, the FHLBB amended

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section 524.11 to permit a FHLBank, with the approval of its board of directors, to make charitable donations not exceeding $1,000 to one organization, or $5,000 in total in a calendar year. See 12 CFR 524.11 (1976) (amended). Exceptions to these annual limits required prior approval of the FHLBB's Office of District Banks. Id.

Recognizing the effects of inflation on the dollar limits it had set in 1975, the FHLBB in 1987 raised the annual limit on individual donations to $5,000 and on aggregate donations to $25,000. See 52 FR 49381 (Dec. 31, 1987).

With the dissolution of the FHLBB and the establishment of the Finance Board in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, § 401, 103 Stat. 183 (Aug. 9, 1989) (codified at 12 U.S.C. 1437 note), section 524.11 was redesignated as section 934.11 of the Finance Board's regulations. See 54 FR 36759 (Sept. 5, 1989). In 1990, the Finance Board amended section 934.11 to require prior approval of the Board of Directors of the Finance Board, or its designee, for exceptions to the annual dollar limitations on FHLBank charitable donations. See 55 FR 2229 (Jan. 23, 1990). Since that time, the Finance Board has routinely approved requests from the FHLBanks for exceptions to the annual charitable donations limitation.

II.Analysis of the Proposed Rule

The Finance Board has determined that the general corporate powers granted to the FHLBanks pursuant to section 12(a) of the Federal Home Loan Bank Act (Bank Act), see 12 U.S.C. 1432(a), include the power to make charitable donations. Section 12(a) provides that each FHLBank "shall have all such incidental powers, not inconsistent with the provisions of this chapter, as are customary and usual in corporations generally." Id. Under the statutes and common law of most states, corporations generally enjoy the power to make donations for charitable, scientific, or educational purposes. See 18B Am. Jur. 2d *Corporations* Section 2902 (1985). Corporations may support charities important to the welfare of the communities in which they do business. Id. Thus, the FHLBanks have statutory authority to make donations to charities in the communities they serve as a "customary and usual" corporate power. See id.; 12 U.S.C. 1432(a). There is no statutory provision that otherwise would require Finance Board approval of such donations.

Because the FHLBanks have authority under the Bank Act to make charitable donations and because the Bank Act and the regulations do not otherwise address the issue, repeal of section 934.11 of the Finance Board's regulations would not prevent the FHLBanks from making such donations. In addition, the repeal of section 934.11 would not affect Finance Board oversight of FHLBank charitable donations. The FHLBank's statutory authority to make charitable donations still would be subject to standards of reasonableness and financial safety and soundness enforced by the Finance Board, as well as any other limitations the Finance Board may decide to impose. See 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1432(a).

The Finance Board and the FHLBanks have been considering ways to transfer a variety of governance responsibilities from the Finance Board to the FHLBanks since the completion of studies required by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 106 Stat. 3672 (Oct. 28, 1992), which concluded that the FHLBanks should be allowed broad discretion to manage their corporate affairs as long as they comply with the Bank Act and Finance Board regulations. Finance Board and FHLBank staff have identified approval of all charitable donations as one of the governance responsibilities that should be devolved from the Finance Board to the FHLBanks. Repeal of section 934.11 would effect the devolution of this authority.

Repeal of section 934.11 of the Finance Board's regulations also will be consistent with the goal of the Vice President's National Performance Review to reduce the total number of regulations of executive agencies. See Report of the National Performance Review 32–33 (Sept. 17, 1993); E.O. 12,861, 58 FR 48255 (Sept. 14, 1993).

For the foregoing reasons, the Finance Board has determined that section 934.11 of its regulations is no longer necessary. Accordingly, the Finance Board has decided to repeal section 934.11 of its regulations, pursuant to its general rulemaking authority under section 2B(a)(1) of the Bank Act. See 12 U.S.C. 1422b(a)(1).

III. Administrative Procedure Act

Because this final rule merely repeals a provision of the Finance Board's regulations that is burdensome to the FHLBanks and will have no adverse affect on the public, the Finance Board, for good cause, finds that the notice and public comment procedure is unnecessary in this instance. Therefore, for good cause shown under 5 U.S.C. 553(b)(B), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act, as well as from the 30-day delay in the effective date under 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

Because this final rule repeals a restrictive provision of the Board's regulations, it will not impose any regulatory requirements on small entities. Therefore, in accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Id. section 605(b).

List of Subjects in 12 CFR Part 934

Federal home loan banks, securities, surety bonds.

Accordingly, the Federal Housing Finance Board hereby amends Chapter IX, Title 12, Code of Federal Regulations, as set forth below.

PART 934–OPERATIONS OF THE BANKS

1.The authority citation for Part 934 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1442.

§ 934.11 [Removed]

2.Section 934.11 is removed.

§§ 934.12 through 934.15 [Redesignated as §§ 934.11 through 934.14]

3.Sections 934.12 through 934.15 are redesignated as §§ 934.11 through 934.14, respectively.

Dated: December 8, 1995.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–30517 Filed 12–19–95; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–28–AD; Amendment 39–9467; AD 95–26–09]

Airworthiness Directives; Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters with shaft assembly, part number (P/N) S1635–20059–2, installed. This AD is prompted by an accident in which the failure of a shaft resulted in the crash of a helicopter. Since that accident, inspections have revealed cracks in four additional shafts. The shaft transmits power to the main rotor system to provide lift for the helicopter. Failure of this shaft results in loss of power to the main rotor system and subsequent loss of control of the helicopter. Due to the criticality of the shaft, this AD must be issued immediately to correct an unsafe condition in the affected helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters of the same type design, this AD is being issued to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter. This AD requires determining the operational cycles-per-hour on the helicopter, removing the shaft assembly from the main gear box, and inspecting the shaft for cracks using a magnetic particle inspection method within the next 50 hours time-in-service (TIS). Following this initial inspection, repetitive magnetic particle inspections are required. Additionally, this AD prescribes operating limitations for certain helicopter operations.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–28–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95–26–09 Federico Helicopters; Invest in Opportunities, Inc.; Orlando Helicopter Airways; Consolidated Air Crane, Inc.; and Pacific Aviation, Inc.: Amendment 39–9467. Docket No. 95–SW–28–AD

Applicability: Sikorsky Aircraft-manufactured Model CH–34A, CH–34C, H–34A, HH–34J, HSS–1, HSS–1N, HUS–1, SH–34J, UH–34D, UH–34E, and UH–34J helicopters with main rotor shaft assembly (shaft assembly), part number (P/N) S1635–20059–2, installed, certificated in any category.

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Note 1: The shaft assembly consists of a main rotor shaft, P/N S1635–20059; an upper end plug, P/N S1635–20153; and a lower end plug, P/N S1635–20154. The shaft assembly P/N (S1635–20059–2) is marked on the edge of the main rotor shaft lower flange.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main rotor shaft (shaft), loss of power to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, determine the maximum number of actual operational cycles-per-hour of the current shaft assembly since installation. An operational cycle is defined as one turnaround (external lift cycle) for external load operations, and as one takeoff and one landing for internal load operations. A turnaround is defined as picking up an external load, transporting that load to a drop-off point, releasing the load, and flying to the next load pickup point. If the maximum number of actual operational cycles-per-hour cannot be determined, use 25-operational cycles-per-hour as the maximum operational cycles-per-hour for purposes of this AD. Record the determined number of operational usage cycles-per-hour of the shaft assembly in the appropriate aircraft maintenance records.

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, inspect in accordance with paragraph (b) of this AD within the next 50 hours time-in-service (TIS), unless previously accomplished within the last 200 hours TIS.

(2) If the maximum operational cycles-per-hour has never exceeded 19 cycles-per-hour, inspect the shaft in accordance with paragraph (b) of this AD within the next 50 hours TIS, unless previously accomplished.

(b) Remove the shaft assembly, P/N S1635–20059–2, from the main gear box. Remove the upper end plug, P/N S1635–20153, and lower end plug, P/N S1635–20154, from the shaft assembly, and conduct a magnetic particle inspection (MPI) of the shaft for cracks in accordance with MIL–STD–1949 or ASTM E–1444. Pay particular attention to the inside diameter of the 0.7515 - 0.7510-inch diameter dowel pin holes in the flange and adjacent flange surfaces.

Note 3: Section 2D of Sikorsky Aircraft Alert Service Bulletin 58B35–34, dated June 9, 1995, contains a procedure for conducting a MPI of the shaft (in agreement with MIL–STD–1949 or ASTM E–1444).

(c) Conduct repetitive MPI's of the shaft for cracks as follows:

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, repeat the MPI at intervals not to exceed 250 hours TIS from the date of the last inspection.

(2) If the maximum operational cycles-per-hour exceeds 6 cycles-per-hour, but has always been less than 20 cycles-per-hour, repeat the MPI at 1,250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS from the date of the last inspection. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, begin the repetitive inspections within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(3) If the maximum operational cycles-per-hour has never exceeded 6 cycles-per-hour, repeat the MPI at 1,250 hours TIS. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, repeat the MPI within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(d) Report all inspection results to the Manager, Boston Aircraft Certification Office, using the Attachment provided later in this AD. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) If no crack is discovered, replace the upper and lower end plugs into the shaft and reinstall the shaft assembly into the main gearbox.

(f) If any crack is discovered or on or before the shaft assembly reaches 2,500 hours TIS, replace the shaft assembly with an airworthy shaft assembly, P/N S1635–20059–2. If the replacement shaft has previously been in service, determine the maximum operational cycles-per-hour in accordance with paragraph (a) and inspect in accordance with this AD.

Note 4: In accordance with the applicable maintenance manual, 2,500 hours TIS is the mandatory retirement life for the shaft assembly, P/N S1635–20059–2.

(g) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, insert the following restrictions into the Limitations section of the Rotorcraft Flight Manual:

(1) For turbine engine installations: "The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 93%N_r. Takeoff power operations are prohibited."

(2) For reciprocating engine installations: "The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 2,500 RPM. Takeoff power operations are prohibited."

(h) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, install on the instrument panel, adjacent to the pilot's engine (N_r or RPM) tachometer, torquemeter, or manifold pressure gauges, a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering of 0.2 inch minimum height and stated in one or two lines:

(1) For turbine engine installations: "MAX PWR: 101% Q AT 93% N_r"

(2) For reciprocating engine installations: "MAX PWR: 47.5 IN. HG AT 2,500 RPM"

(i) Continue to record operational cycles-per-hour of the shaft assembly in the appropriate maintenance records. If operational cycles-per-hour increases on an affected shaft assembly to the extent that it places the shaft assembly into a higher cycles-per-hour usage group, the applicable requirements and limitations contained in this AD for the higher usage group apply to that shaft assembly. A replacement shaft assembly must comply with all requirements and limitations of this AD as applicable. If the number of operational cycles-per-hour determined for a replacement shaft assembly does not equal or exceed 20 cycles-per-hour, the Rotorcraft Flight Manual limitation specified in paragraph (g) and the placard required by paragraph (h) may be removed.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(l) This amendment becomes effective on January 4, 1996.

Attachment

Inspection Results Report

The following information must be reported as soon as possible, but no later than 7 days after inspection, to: Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, FAX: (617) 238–7199.

Operator/Repair Station _____
Aircraft Model No. _____
Aircraft Serial No. _____
Date of Inspection _____
Main Rotor Part No. _____
Main Rotor Serial No. _____
Type of Aircraft Utilization:
Passenger Carry _____
Firefighting _____
Utility/Construction _____
Logging _____
Other _____

Identify Operational Usage Cycles-Per-Hour:
1–6 Operational Cycles-Per-Hour _____
7–19 Operational Cycles-Per-Hour _____
20–Above Operational Cycles-Per-Hour _____
Next Inspection Date (Estimated): _____
and Flight Hours (Estimated): _____
Magnetic Particle Inspection (MPI) Results (this inspection): Passed _____ Failed _____
If a crack is found, indicate the approximate location on the part and the length of the crack in inches: _____
Total Time-In-Service (TIS) (Hours):
Estimated _____
Actual _____
Unknown _____
At Retirement _____
Inspection results at retirement (if known):
MPI Passed _____ Failed _____
Visual Passed _____ Failed _____
Log Book Entry for Part No. _____, Serial No. _____, is (date) _____, at Retirement Hours _____. This part's Serial No. has been marked unairworthy and unfit for further service on (date) _____, 199 ___.

Issued in Fort Worth, Texas, on December 13, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–30771 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–SW–21–AD; Amendment 39–9466; AD 95–26–06]

Airworthiness Directives; Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters. This action requires initial and repetitive magnetic particle inspections of the main rotor shaft (shaft) for cracks, and defines power limitations for certain helicopter operations. This amendment is prompted by a recent accident in which a shaft failed, resulting in loss of power. Subsequent inspections on other aircraft of the same type revealed cracks in four additional shafts. The actions specified in this AD are intended to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Walsh, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters with shaft assembly, part number (P/N) S1635–20059–2, installed. This AD is prompted by an accident in which the failure of a shaft resulted in the crash of a helicopter. Since that accident, inspections have revealed cracks in four additional shafts. The shaft transmits power to the main rotor system to provide lift for the helicopter. Failure of this shaft results in loss of power to the main rotor system and subsequent loss of control of the helicopter. Due to the criticality of the shaft, this AD must be issued immediately to correct an unsafe condition in the affected helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters of the same type design, this AD is being issued to prevent failure of the shaft, loss of power to the rotor system, and subsequent loss of control of the helicopter. This AD requires determining the operational cycles-per-hour on the helicopters, removing the shaft assembly from the main gear box, and inspecting the shaft for cracks using a magnetic particle inspection method within the next 50 hours time-in-service (TIS). Following this initial inspection, repetitive magnetic particle inspections are required. Additionally, this AD prescribes operating limitations for certain helicopter operations.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant

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regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95–26–08 Sikorsky Aircraft: Amendment 39–9465. Docket No. 95–SW–21–AD.

Applicability: Model S–58A, S–58B, S–58C, S–58D, S–58E, S–58F, S–58G, S–58H, S–58J, S–58BT, S–58DT, S–58ET, S–58FT, S–58HT, and S–58JT helicopters with main rotor shaft assembly (shaft assembly), part number (P/N) S1635–20059–2, installed, certificated in any category.

Note 1: The shaft assembly consists of a main rotor shaft, P/N S1635–20059; an upper end plug, P/N S1635–20153; and a lower end plug, P/N S1635–20154. The shaft assembly P/N (S1635–20059–2) is marked on the edge of the main rotor shaft lower flange.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main rotor shaft (shaft) loss of power to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, determine the maximum number of actual operational cycles-per-hour of the current shaft assembly since installation. An operational cycle is defined as one turnaround (external lift cycle) for external load operations, and as one takeoff and one landing for internal load operations. A turnaround is defined as picking up an external load, transporting that load to a drop-off point, releasing the load, and flying to the next load pickup point. If the maximum number of actual operational cycles-per-hour cannot be determined, use 25-operational cycles-per-hour as the maximum operational cycles-per-hour for purposes of this AD. Record the determined number of operational usage cycles-per-hour of the shaft assembly in the appropriate aircraft maintenance records.

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, inspect in accordance with paragraph (b) of this AD within the next 50 hours time-in-service (TIS), unless previously accomplished within the last 200 hours TIS.

(2) If the maximum operational cycles-per-hour has never exceeded 19 cycles-per-hour, inspect the shaft in accordance with paragraph (b) of this AD within the next 50 hours TIS, unless previously accomplished.

(b) Remove the shaft assembly, P/N S1635–20059–2, from the main gear box. Remove the upper end plug, P/N S1635–20153 and lower end plug, P/N S1635–20154, from the shaft assembly, and conduct a magnetic particle inspection (MPI) of the shaft for cracks in accordance with MIL–STD–1949 or ASTM E–1444. Pay particular attention to the inside diameter of the 0.7515–0.7510-inch diameter dowel pin holes in the flange and adjacent flange surfaces.

Note 3: Section 2D of Sikorsky Aircraft Alert Service Bulletin 58B35–34, dated June 9, 1995, contains a procedure for conducting a MPI of the shaft (in agreement with MIL–STD–1949 or ASTM E–1444).

(c) Conduct repetitive MPI's of the shaft for cracks as follows:

(1) If the maximum operational cycles-per-hour has ever equaled or exceeded 20 cycles-per-hour, repeat the MPI at intervals not to exceed 250 hours TIS from the date of the last inspection.

(2) If the maximum operational cycles-per-hour exceeds 6 cycles-per-hour, but has always been less than 20 cycles-per-hour, repeat the MPI at 1,250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS from the date of the last inspection. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, begin the repetitive inspections within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(3) If the maximum operational cycles-per-hour has never exceeded 6 cycles-per-hour, repeat the MPI at 1,250 hours TIS. If the last inspection was accomplished between 1,000 hours TIS and 1,250 hours TIS, repeat the MPI within 250 hours TIS from the date of the last inspection instead of at 1,250 hours TIS.

(d) Report all inspection results to the Manager, Boston Aircraft Certification Office, using the Attachment provided later in this AD. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) If no crack is discovered, replace the upper and lower end plugs and reinstall the shaft assembly into the main gearbox.

(f) If any crack is discovered or on or before the shaft assembly reaches 2,500 hours TIS, replace the shaft assembly with an airworthy shaft assembly, P/N S1635–20059–2. If the replacement shaft has previously been in service, determine the maximum operational cycles-per-hour in accordance with paragraph (a) and inspect in accordance with this AD.

Note 4: In accordance with the applicable maintenance manual, 2,500 hours TIS is the mandatory retirement life for the shaft assembly, P/N S1635–20059–2.

(g) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, insert the following restrictions into the Limitations section of the Rotorcraft Flight Manual:

(1) For turbine engine installations: "The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 93%N_r. Takeoff power operations are prohibited."

(2) For reciprocating engine installations: "The main rotor shaft assembly installed on this helicopter has been operated at 20 or more cycles-per-hour. Engine power is restricted to maximum continuous power at 2,500 RPM. Takeoff power operations are prohibited."

(h) If the main rotor shaft assembly installed on the helicopter has ever equaled or exceeded 20 or more operational cycles-per-hour, install on the instrument panel, adjacent to the pilot's engine (N_r or RPM) tachometer, torquemeter, or manifold pressure gauges, a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering of 0.2 inch minimum height and stated in one or two lines:

(1) For turbine engine installations: "MAX PWR: 101% Q AT 93% N_r"

(2) For reciprocating engine installations: "MAX PWR: 47.5 IN. HG at 2,500 RPM"

(i) Continue to record operational cycles-per-hour of the shaft assembly in the appropriate maintenance records. If operational cycles-per-hour increases on an affected shaft assembly to the extent that it places the shaft assembly into a higher cycles-per-hour usage group, the applicable requirements and limitations contained in this AD for the higher usage group apply to that shaft assembly. A replacement shaft assembly must comply with all requirements and limitations of this AD as applicable. If the number of operational cycles-per-hour determined for a replacement shaft assembly does not equal or exceed 20 cycles-per-hour, the Rotorcraft Flight Manual limitation specified in paragraph (g) and the placard specified in paragraph (h) may be removed.

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(l) This amendment becomes effective on January 4, 1996.

Attachment—Inspection Results Report

The following information must be reported as soon as possible, but no later than 7 days after inspection, to: Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, FAX: (617) 238–7199.

Operator/Repair Station _____
Aircraft Model No. _____
Aircraft Serial No. _____
Date of Inspection _____
Main Rotor Part No. _____
Main Rotor Serial No. _____
Type of Aircraft Utilization:
  Passenger Carry _____
  Utility/Construction _____
  Firefighting _____
  Logging _____
  Other _____
Identify Operational Usage Cycles-Per-Hour:
  1–6 Operational Cycles-Per-Hour _____
  7–19 Operational Cycles-Per-Hour _____
  20–Above Operational Cycles-Per-Hour _____
Next Inspection Date (Estimated): _____
and Flight Hours (Estimated): _____
Magnetic Particle Inspection (MPI) Results (this inspection):
  Passed _____ Failed _____
If a crack is found, indicate the approximate location on the part and the length of the crack in inches: _____
Total Time-In-Service (TIS) (Hours):
  Estimated _____
  Actual _____
  Unknown _____
  At Retirement _____
Inspection results at retirement (if known):
  MPI Passed _____
  Failed _____
  Visual Passed _____
  Failed _____
Log Book Entry for Part No. _____, Serial No. _____, is (date) _____, at Retirement Hours _____. This part's Serial No. has been marked unairworthy and unfit for further service on (date) _____, 199 ____.

Issued in Fort Worth, Texas, on December 13, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–30772 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–238–AD; Amendment 39–9465; AD 95–26–07]

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This action requires revising the Limitations Section of the Airplane Flight Manual to provide the flight crew with procedures to check the travel range of the aileron. This action also requires inspection for damage of the shear pins of the aileron flutter damper and aileron hinge fittings, and various follow-on actions. This amendment is prompted by reports of failure of shear pins in the aileron flutter damper. The actions specified in this AD are intended to prevent damage to the aileron hinge fittings due to failed shear pins, which subsequently could cause reduced controllability of the airplane.

DATES: Effective January 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation advises that it has received reports indicating that the shear pins of the aileron flutter damper had failed. Investigation revealed that the shear pins had sheared off and migrated out, which subsequently damaged the aileron hinge fittings. This condition, if not corrected, could result in reduced controllability of the airplane.

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision "A," dated September 8, 1995, which describes procedures for:

1. A visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting;
2. Repair of the aileron attachment fitting, if necessary;
3. For airplanes on which any damaged shear pin is found, removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware;
4. For certain airplanes on which no damaged shear pin is found, repetitive visual inspections to detect damage of the shear link, the shear pin, and the aileron attachment fitting until the aileron flutter dampers are removed.

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Transport Canada Aviation classified the alert service bulletin as mandatory, and issued Canadian airworthiness directive CF–95–14, dated September 11, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent damage to the aileron hinge fittings due to the failure of the shear pins, which could cause subsequent reduced controllability of the airplane. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual to provide the flight crew with procedures to check the travel range of the aileron prior to the first flight of the day. Such checks are necessary to verify proper operation of the aileron control system. The FAA has determined that these checks may be properly performed by pilots because the checks do not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of reference to technical data that are not contained in the body of the AD.

This AD also requires a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting; and repair of the aileron attachment fitting, if necessary. This AD also requires removal of the aileron flutter dampers, the shear links, the pivots, and the attaching hardware for airplanes on which any damage to the shear pin is detected. For certain airplanes on which no damaged shear pin is found, this AD provides for accomplishment of the visual inspections on a repetitive basis until the aileron flutter dampers are removed. These actions are required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that, although the relevant Transport Canada Aviation airworthiness directive requires the visual inspection of all aileron flutter damper shear pins and aileron hinge fittings within 7 calendar days or at the next scheduled shear pin replacement, this AD requires that inspection to be performed within 30 days. The FAA has determined that an interval of 30 days will address the identified unsafe condition in a timely manner. In recent communications with Transport Canada Aviation and the manufacturer, the FAA finds that the unsafe condition was not as urgent as it initially appeared to be. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the average utilization of the affected fleet and the time necessary to perform the required actions (10 work hours). In light of all these factors, the FAA finds 30 days to be an appropriate compliance time for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

This is considered to be interim action. Once a terminating modification is developed, approved, and available, the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–238–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–26–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–9465. Docket 95–NM–238–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7079 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aileron hinge fittings due to failure of the shear pins, which could cause subsequent reduced controllability of the airplane; accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Before engine start, prior to the first flight of each day, the flight crew or certificated maintenance personnel shall perform a check of the travel range of the aileron as follows:

Aileron—Check travel range (to approx ½ travel) using each hydraulic system in turn, with the other hydraulic systems depressurized."

Note 2: This AFM revision may also be accomplished by inserting a copy of Temporary Revision RJ/45, dated September 7, 1995, in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision RJ/45.

Note 3: Operators should note that operation of the aircraft remains restricted to the altitude and airspeed limits currently specified in the FAA-approved AFM, Revision 34, Chapter 5, Abnormal Procedures, Section 13, Hydraulic Power, Paragraphs "A" through "C" and "M" through "O."

(b) Perform a visual inspection to detect damage of the shear link, the shear pin, and the aileron attachment fitting, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995, and at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 7003 through 7054 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 30 days after the effective date of the AD.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Inspect at the next scheduled shear pin replacement, but no later than 400 flight hours after the effective date of the AD.

(c) If no shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as applicable, at the times specified:

(1) For airplanes having serial numbers 7003 through 7054 inclusive: At the next scheduled shear pin replacement, but no later than 400 flight hours after accomplishing the inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(2) For airplanes having serial numbers 7055 through 7079 inclusive: Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 400 flight hours. At the next scheduled shear pin replacement, but no later than 1,500 landings after accomplishing the initial inspection specified in paragraph (b) of this AD, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, the shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(d) If any shear pin is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, remove the aileron flutter dampers, shear link, and pivot, in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. Following removal of the flutter dampers, shear pin replacement in accordance with the FAA-approved maintenance program is not required.

(e) If any aileron hinge fitting is found to be damaged during the inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, removal, and repair shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–058, Revision 'A,' dated September 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 4, 1996.

Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30961 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–245–AD; Amendment 39–9464; AD 95–26–06]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This AD requires either that the control circuit breaker of the left fuel pump valve be opened and collared, or that the Airplane Flight Manual (AFM) be revised to prohibit autoland operation

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below 100 feet above ground level (AGL). Additionally, this action requires an inspection of the fuel system control panel (FSCP) to detect any mis-wiring, and modification or replacement of the FSCP. This AD also provides for an optional terminating modification for the requirements of the AD. This amendment is prompted by a report of improper wiring of the FSCP during production of these airplanes. The actions specified in this AD are intended to prevent degradation of the automatic landing system during flight due to improper wiring of the FSCP.

DATES: Effective January 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received a report from McDonnell Douglas indicating that improper wiring of the fuel system control panel (FSCP) on Model MD–11 airplanes was detected during functional checks performed during production. Investigation revealed that the direct current (DC) electrical busses, numbers 1 and 3, had been tied together; this could lead to a single short of one bus, which could adversely affect the operation of the remaining bus. This condition, if not corrected, could result in degradation of the automatic landing system during flight.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995, which describes procedures to open and collar the control circuit breaker, B1–458, of the left fuel dump valve. This will reduce the redundancy of the fuel dump system and the fuel dump rate so that autoland (dual land) operations can be maintained. This alert service bulletin also provides procedures for a conducting a one-time visual inspection of the FSCP to detect any mis-wiring, and various necessary follow-on actions, depending upon the result of the inspection. Necessary follow-on actions include re-identification, modification, or replacement of the FSCP, if necessary. (The McDonnell Douglas alert service bulletin references Honeywell Service Bulletin 4059024–28–2, dated November 22, 1995, as an additional source of service information for inspection, re-identification, and modification of the FSCP.)

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent degradation of the automatic landing system during flight due to improper wiring of the FSCP. This AD first requires either (1) That the control circuit breaker of the left fuel pump valve be opened and collared, in accordance with the McDonnell Douglas alert service bulletin described previously; or (2) that the FAA-approved Airplane Flight Manual (AFM) be revised to prohibit autoland operation below 100 feet above ground level (AGL).

Second, this AD also requires a one-time visual inspection of the FSCP to detect any mis-wiring, and re-identification, modification, or replacement of the FSCP, if necessary. These actions are required to be accomplished in accordance with the McDonnell Douglas alert service bulletin described previously. Additionally, operators must submit a report of the results of the inspection to the FAA.

This AD also provides for an optional terminating action for the requirements of the AD, which consists of replacing the FSCP with a modified unit.

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–245–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–26–06 McDonnell Douglas: Amendment 39–9464. Docket 95–NM–245–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0593 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the automatic landing system during flight due to improper wiring of the fuel system control panel (FSCP), accomplish the following:

(a) Within 15 days after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), page 5–4, Flight Guidance, Automatic Landing Section, to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Autoland operation below 100 feet above ground level (AGL) is prohibited. The autopilot must be disconnected prior to descent below 100 feet AGL."

(2) Open and collar the control circuit breaker, B1–458, of the left fuel dump valve, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995.

Note 2: McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995, references Honeywell Service Bulletin 4059024–28–2, dated November 22, 1995, for specific service instructions.

(b) Within 60 days after the effective date of this AD, perform a visual inspection to determine if the wiring is mis-wired in the fuel system control panel (FSCP), part number 4059024–901, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995.

(1) If the FSCP wiring is not mis-wired (the measured resistance between connector pins J1–T and J3–K is more than 100 ohms), accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Continue to operate the airplane provided that the actions specified in either paragraph (a)(1) or (a)(2) have been accomplished; or

(ii) Prior to further flight, re-identify the FSCP, part number 4059024–901, to incorporate modification letter "A" in the FSCP identification plate, in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995. This re-identification constitutes terminating action for the requirements of this AD. [The AFM revision as specified in paragraph (a)(1) of this AD, if previously accomplished, may be removed following this re-identification action.]

(2) If the FSCP wiring is mis-wired (the measured resistance between connectors J1–T and J3–K is less than 100 ohms), accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Continue to operate the airplane provided that the actions specified in either paragraph (a)(1) or (a)(2) have been accomplished; or

(ii) Prior to further flight, either modify the FSCP, part number 4059024–901; or replace the FSCP, part number 4059024–901, with an FSCP having part number 4059024–901 and modification letter "A" in the FSCP identification plate; in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995. This modification or replacement constitutes terminating action for the requirements of this AD. [The AFM revision as specified in paragraph (a)(1) of this AD, if accomplished previously, may be removed following this modification/replacement.]

(c) Within 10 days after accomplishing the visual inspection required by paragraph (b) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3690 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210, Attention: Ray Vakili, ANM–140L. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) Installation of an FSCP having part number 4059024–901 and modification letter "A" in the FSCP identification plate, in accordance with McDonnell Douglas Service Bulletin MD11–28A081, dated November 30, 1995, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A081, dated November 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnel Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 4, 1996.

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Issued in Renton, Washington, on December 13, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-30962 Filed 12-19-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 95-ASO-23]

Removal of Class E Airspace; Marietta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class E airspace at Marietta, GA. The required weather observations are not available to Atlanta Tower, the ATC facility having jurisdiction over the Class E2 surface area airspace at the Cobb County-McCollum Field Airport, when the Cobb County-McCollum Field Airport Traffic Control Tower is closed. Therefore, the Class E2 surface area airspace for the airport must be revoked.

EFFECTIVE DATE: 9091 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

It is a requirement that weather observations shall be taken at the surface area's primary airport during the times and dates a surface area is designated, and further that the required weather observation shall be transmitted expeditiously to the ATC facility having jurisdiction over the surface area. When the Cobb County-McCollum Field Airport Traffic Control Tower is closed this requirement is not being met. This action will eliminate the impact Class E2 surface area airspace has placed on users of the airspace in the vicinity of the Cobb County-McCollum Field Airport. This rule will become effective on the date specified in the **DATES** section. Since this action removes the Class E2 surface area airspace, which eliminates the impact of Class E2 surface area airspace on users of the airspace in the vicinity of the Cobb County-McCollum Field Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E airspace at Marietta, GA. The required weather observations are not available to Atlanta Tower, the ATC facility having jurisdiction over the Class E2 surface area airspace at the Cobb County-McCollum Field Airport, when the Cobb County-McCollum Field Airport Traffic Control Tower is closed. Therefore, the Class E2 surface area airspace for the airport must be revoked.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Marietta, GA [Removed]

* * * * *

Issued in College Park, Georgia, on October 20, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95-30919 Filed 12-19-95; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 779 and 799

[Docket No. 951211296-5296-01]

RIN 0694-AB30

Expansion of General License GLX and GTDR

AGENCY: Bureau of Export Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the Export Administration Regulations (EAR) by expanding General License GLX eligibility to include: microprocessors with a composite theoretical performance not exceeding 500 million theoretical operations per second; memory integrated circuits; certain digital integrated circuits; field programmable gate arrays and logic arrays; portable (personal) or mobile radiotelephones not capable of end-to-end encryption; and software to protect against computer viruses.

In addition, revisions have been made to expand eligibility for General License GTDR with written assurance to include virus protection software controlled under ECCN 5D13A.c.

This rule also revises the list of "Additional Items Eligible for General License GLX" included in a supplement to the General License section of the EAR to reflect the expansion of General License GLX, and makes editorial corrections to the permissive reexport provisions for technical data.

The expansion of General License GLX and GTDR to include additional items will reduce paperwork and licensing delays for exporters, and will focus controls on exports that are of direct strategic concern.

EFFECTIVE DATE: This rule is effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call Nancy Crowe, Bureau of Export Administration, Telephone: (202) 482-2440.

For questions of a technical nature on digital mobile telephones call Joseph Young, Bureau of Export Administration, Telephone: (202) 482-4197.

For questions of a technical nature on semiconductors call Robert Lerner, Bureau of Export Administration, Telephone: (202) 482-3710.

SUPPLEMENTARY INFORMATION:

Background

In response to the realities of a post-Cold War era, the Bureau of Export Administration published a final rule in the **Federal Register** on April 4, 1994, (59 FR 15621) that established General License GLX in section 771.20 of the Export Administration Regulations (EAR). General License GLX allows exports of many items, without the requirement of an individual validated license, to civil end-users and end-uses in formerly COCOM-proscribed destinations. This general license is available for items previously covered by Administrative Exception Notes in the Commerce Control List (CCL), with certain specified exceptions and additions noted in the EAR. General License GLX is not available for exports to military end-users or for known military end-uses. In addition to conventional military activities, military end-uses include any proliferation activities described in Part 778 of the EAR. Retransfers to military end-users or end-uses in countries eligible for General License GLX are strictly prohibited without prior authorization from the Department of Commerce.

Currently, most computer and telecommunications equipment listed on the CCL are eligible for General License GLX, except for most portable radiotelephones, virus protection software, and electronic devices and components. Since the formerly COCOM-proscribed destinations as well as the People's Republic of China are emerging markets for these items, and because this step is consistent with the national security and foreign policy objectives of the United States, this rule expands General License GLX for such items to ensure U.S. manufacturers remain competitive in these areas.

This rule expands General License GLX to include: microprocessors with a composite theoretical performance not exceeding 500 million theoretical operation per second identified under ECCN 3A01A.a.3.; memory integrated circuits identified under ECCN 3A01A.a.4.; digital-to-analog converters identified under ECCN 3A01.a.5.b.; field programmable gate arrays and logic arrays identified under ECCN 3A01A.a.7., and a.8.; digital integrated circuits identified under ECCN 3A01A.a.11.; portable (personal) or mobile radiotelephones not capable of end-to-end encryption identified under Export Control Classification Number (ECCN) 5A11A.a.; and software to protect against computer viruses identified under ECCN 5D13A.c.

This rule also removes ECCNs 4B01A, 4B02A, 4B03A and 4C01A from Supplement No. 1 to Part 771 of the EAR, Additional Items Eligible for General License GLX. This editorial revision conforms the GLX supplement with the removal of these ECCNs from the CCL on May 16, 1994 (59 FR 25314).

In addition, eligibility for General License GTDR with letter of assurance has been expanded to include virus protection software controlled under ECCN 5D13A.c. Note that such software is also eligible for General License GLX, and exporters may use either general license, whichever appropriate, provided that the export meets all the provisions of the general license.

This rule also makes editorial changes to the permissive reexport provisions for technical data based upon authorization by COCOM participating countries. Finally, this rule makes editorial changes to the permissive reexport provisions for the direct product of U.S.-origin technical to clarify the original intent. These clarifications do not provide substantive changes to the EAR.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, and notice of August 15, 1995 (60 FR 42767).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, 0694-0010, and 0694-0023.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

List of Subjects

15 CFR Parts 771, 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 771, 779, and 799 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for 15 CFR Parts 771 and 799 continue to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102-484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

2. The authority citation for 15 CFR Part 779 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

PART 771—[AMENDED]

3. Supplement No. 1 to Part 771, is revised to read as follows:

Supplement No. 1 to Part 771—Additional Items Eligible for General License GLX

Note: Portions of some items listed in this Supplement are controlled for missile technology (MT), nuclear proliferation (NP), or foreign policy (FP) reasons. Exporters are reminded that such portions are not eligible for General License GLX. Refer to the specific ECCNs to identify those portions of entries subject to MT, NP, or FP controls.

CATEGORY 1
- 1D01A
- 1D02A

CATEGORY 2
- 2A01A
- 2A02A
- 2A03A
- 2A04A
- 2A06A
- 2B03A.a

CATEGORY 3
- 3A01A.a.3. (up to 500 Mtops *only*)
- 3A01A.a.4.
- 3A01A.a.5 (except a.5.a.)
- 3A01A.a.7.
- 3A01A.a.8.
- 3A01A.a.11
- 3A02A.h.

CATEGORY 4
- 4A03A.d (having a 3–D vector rate less than 10M vectors/sec.)
- 4A03A.f

CATEGORY 5
- 5A02A (except .h and .i)
- 5A03A
- 5A04A
- 5A05A
- 5A06A
- 5A11A.a (portable or mobile radiotelephones for use with commercial civil cellular radiocommunications systems, not capable of end-to-end encryption)
- 5B01A
- 5B02A
- 5C01A
- 5D01A
- 5D02A
- 5D03A
- 5D13A.c

CATEGORY 6
- 6A01A.b
- 6A02A.a.4
- 6A03A.a.1
- 6A04A.f
- 6A05A.c.2.a
- 6A05A.d
- 6A05A.e
- 6B05A
- 6A08A.b
- 6A08A.c
- 6A08A.l.1.
- 6C02A.c
- 6C04A.h
- 6D03A.d

CATEGORY 8
- 8A02A.e.2

CATEGORY 9
- 9B01A.a
- 9B02A.b
- 9B01A.f
- 9B01A.h
- 9B05A
- 9B06A

PART 779—[AMENDED]

§ 779.8 [Amended]

5. Section 779.8 is amended:

a. By revising the word "exported" in paragraph (b)(2)(i) to read "reexported";

b. by revising the phrase "export or reexport" in paragraph (b)(2)(ii), (b)(2)(iii) and (b)(2)(iv) to read "reexport"; and

c. by revising the phrase "export or reexport" in paragraph (b)(3) to read "export from abroad".

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

6. In Supplement No. 1 to Section 799.1, section II of Category 5 (Telecommunications and "Information Security"), ECCN 5D13A is amended by revising the Requirements section to read as follows:

5D13A Specific "Software" as Follows

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, for 5D13.c and software described in Advisory Note 5 *only*. (See Note)
GTDU: No

Note: Exporter must have determined that the software is not controlled by the Office of Defense Trade Controls, Department of State, before using this general license.

* * * * *

Dated: December 14, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–30776 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DT–P

FEDERAL TRADE COMMISSION

16 CFR Part 400

Trade Regulation Rule Concerning Advertising and Labeling as to Size of Sleeping Bags

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Advertising and Labeling as to Size of Sleeping Bags. The Commission has reviewed the rulemaking record and determined that due to changes in industry practice, and the existence of laws in most states that mandate point-of-sale disclosures similar to those required by the Rule, the Rule no longer serves the public interest and should be repealed. This notice contains a State of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the State of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

State of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Advertising and Labeling as to Size of Sleeping Bags (Sleeping Bag Rule), 16 CFR Part 400, was promulgated in 1963 (28 FR 10900). The Sleeping Bag Rule regulates the advertising, labeling and marking of the dimensions of sleeping bags. The Commission had found that the practice of labeling sleeping bags by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of the sleeping bag. To correct this misconception, the Commission promulgated the Sleeping Bag Rule, which provides that it is an unfair method of competition and an unfair or deceptive act or practice to use the "cut size" of the materials from which a sleeping bag is made to describe the size of a sleeping bag in advertising, labeling or marking unless:

(1) "The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags"; and

(2) "Such 'cut size' dimensions are accompanied by the words 'cut size'"; and

(3) The reference to "cut size" is "accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that such dimensions constitute the finished size".[1]

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Sleeping Bag Rule (60 FR 27240). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Sleeping Bag Rule should be repealed or remain in effect (60 FR 48063).[2] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[3] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Sleeping Bag Rule (58 FR 21095). The Commission asked commenters to address the costs and benefits of the Rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws, and whether changes in technology affected the Rule.

Only one specific comment relating to the Sleeping Bag Rule was received, which generally supported a continuation of this regulation. In addition to this specific comment, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Sleeping Bag Rule because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the sleeping bag industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also conducted an informal inquiry and inspected sleeping bags at several national chain stores. This inquiry found no violations of the Rule on either the sleeping bag packaging materials or the labels affixed to the products themselves. In fact, it appeared from that limited inquiry that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violation of the Rule's requirements. Finally, the National Conference on Weights and Measures' Uniform Packaging and Labeling Regulation, which has been adopted by 47 States, regulates the labeling of sleeping bags, and provides that these items must be labeled with their finished size. Accordingly, due to changes in industry practice, and the existence of laws in most States that mandate point-of-sale disclosures similar to those required by the Rule, the Commission has determined to repeal the Sleeping Bag Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing Federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Sleeping Bag Rule imposes third-party disclosure requirements that constitute "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 400

Advertising, Sleeping bags, Trade practices.

PART 400—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the *Code of Federal Regulations* by removing part 400.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31010 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 402

Trade Regulation Rule Concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being

[1] The Rule then gives an example of proper size marking: "Finished size 33" × 68"; cut size 36" × 72"."

[2] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[3] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties, receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

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Prismatic Binoculars. The Commission has reviewed the rulemaking record and determined that due to changes in technology, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purposes for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, Washington, DC 20580, telephone number (202) 326–2484.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars (Binocular Rule), 16 CFR Part 402, was promulgated in 1964 (29 FR 7316). The Rule requires a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic. Fully prismatic binoculars rely on a prism within the instrument to reverse the visual image entering the lens so that it appears right-side up to the user. Other binoculars rely partially or entirely on mirrors to reverse the visual image. When the rule was promulgated, the Commission was concerned that consumers could be misled into believing that non-prismatic binoculars were in fact prismatic, absent such a disclosure.

To prevent consumer deception, the rule prescribed the use of the term "binocular" to describe anything other than a fully prismatic instrument, unless the term was modified to indicate the true nature of the item. Under the Rule, non-prismatic instruments could be identified as binoculars only if they incorporated a descriptive term such as "binocular-nonprismatic," "binocular-mirror prismatic," or "binocular-nonprismatic mirror."

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Binocular Rule (60 FR 27241). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received one comment suggesting that there may be a continuing need for the Rule because field glasses and opera glasses, both of which are non-prismatic, are still advertised and sold today. The comment acknowledged, however, that present-day binoculars are fully prismatic, while the non-prismatic instruments are identified as either field glasses or opera glasses rather than binoculars.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Binocular Rule should be repealed or remain in effect (60 FR 48065).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

Since the Rule was promulgated, technological advances have reduced the cost of prisms to the point that almost all binoculars sold today are fully prismatic. Those that are not fully prismatic are marketed and sold as field glasses or opera glasses rather than binoculars. Thus, there does not appear to be any continuing need for the Rule. Repeal of the Rule will also further the objective of reducing obsolete government regulation.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Binocular Rule does not impose "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 402

Binoculars, Trade practices.

PART 402—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 402.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31014 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

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16 CFR Part 404

Trade Regulation Rule Concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products. The Commission has reviewed the rulemaking record and determined that due to changes in industry practices and state laws, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Esq., (202) 326–3022, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products (Tablecloth Rule), 16 CFR Part 404, was promulgated in 1964 (29 FR 11261). The Tablecloth Rule declares that in connection with the sale or offering for sale of tablecloths and related products, such as doilies, table mats, dresser scarves, place mats, table runners, napkins and tea sets, any representation of the cut size (that is, the dimensions of unfinished materials used in the construction of such products) constitutes an unfair method of competition and an unfair and deceptive act or practice unless:

(a) "Such 'cut size' dimensions are accompanied by the words 'cut-size'"; and

(b) "The 'cut size' is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size."

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Tablecloth Rule (60 FR 27242). In accordance with section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Tablecloth Rule should be repealed or remain in effect (60 FR 48067).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to sue expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. On April 19, 1993, the Commission published in the **Federal Register** a request for public comments on the Tablecloth Rule, 58 FR 21124. The Commission asked commenters to address the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained or amended.

The Commission received only one comment specifically addressing this Rule along with a general comment referring to several rules under review. The comment specific to this Rule was submitted by a trade group representing the textile rental, linen supply, uniform rental, dust control and commercial laundry services industries. In its one-page comment letter, the association stated there is a continuing need for this Rule. The commenter asserted that the Rule does not impose any additional costs or burdens on entities subject to the Rule and that the rule raises the level of professionalism in the industry.

In addition, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Tablecloth Rule because the general prohibitions covering false and deceptive advertising apply to the industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members or consumers.

Prior to the 1993 request for comments, Commission staff conducted an informal review of industry practices by examining the marking of dimensions on tablecloths and other items subject to the Rule available for retail sale at several national chain stores. This informal review revealed no instances of Rule violations. In fact, it appeared from the limited review that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violations of the Rule's requirements. Finally, the National Conference on Weight and Measures' Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of tablecloths, and provides that these items must be labeled with their finished size.

Because the practices that brought about the Tablecloth Rule are no longer common industry practices and are otherwise addressed by state law, the Rule is no longer necessary and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Tablecloth Rule imposes third-party disclosure requirements that

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included; publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

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constitute "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 404

Advertising, Tablecloths and related products, Trade practices.

PART 404—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 404.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31012 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 413

Trade Regulation Rule Concerning the Failure to Disclose That Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning the Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics. The Commission has received the rulemaking record and determined that due to changes in technology, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez or Janice Podoll Frankle, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, (202) 326–3147 or (202) 326–3022.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning the Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics (Fiberglass Curtain Rule), 16 CFR Part 413, was promulgated in 1967 (32 FR 11023). The Fiberglass Curtain Rule requires marketers of fiberglass curtains or draperies and fiberglass curtain or drapery cloth to disclose that skin irritation may result from handling fiberglass curtains or curtain cloth and from contact with clothing or other articles that have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from the container by cleaning.

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Fiberglass Curtain Rule (60 FR 27243). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, Untied States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Fiberglass Curtain Rule should be repealed or remain in effect (60 FR 48071).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Statement of Basis and Purpose for the Fiberglass Curtain Rule stated that consumers had experienced skin irritation after washing or handling glass fiber curtains and draperies and glass fiber curtain and drapery fabrics. Consequently, the Commission concluded that it was in the public interest to caution consumers that skin irritation could result from the direct handling of fiberglass curtains, draperies, and yard goods, and from body contact with clothing or other articles that had been washed with fiberglass products or in a container previously used to wash fiberglass products and not cleaned of all glass practicles.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule. Based on this review, the Commission has determined that fiberglass curtains and draperies and fiberglass curtain or drapery fabric no longer present a substantial threat of skin irritation to the consumer. Fiberglass was used in curtains primarily because of its fire retardant characteristic. Technological developments in fire retardant fabrics have caused fiberglass fabric to be displaced by polyester and modacrylics in the curtain and drapery industry.[3] Fiberglass fabrics are now used almost exclusively for very specialized industrial uses.[4] Because the products are no longer sold for consumer use, the Fiberglass Curtain Rule has become obsolete and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11 requires an analysis of the anticipated impact of the repeal of the Rule on businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the

[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

[3] See Rulemaking Record, Category B, Staff Submissions.

[4] Id.

Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Fiberglass Curtain Rule does not impose "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered by the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 413

Fiberglass curtains and curtain fabric, Trade practices.

PART 413—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 413.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31013 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 418

Trade Regulation Rule Concerning Deceptive Advertising and Labeling as to Length of Extension Ladders

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Deceptive Advertising and Labeling as to Length of Extension Ladders. The Commission has reviewed the rulemaking record and determined that due to changes in industry practice, and the existence of standards mandating the point-of-sale disclosures required by the Rule, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 20, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Deceptive Advertising and labeling as to Length of Extension Ladders (Extension Ladder Rule), 16 CFR Part 418, was promulgated in 1969 (34 FR 929). The Extension Ladder Rule declares that it is an unfair or deceptive act or practice and an unfair method of competition to represent the size or length of an extension ladder in terms of the total length of the component sections thereof unless:

(a) Such size or length representation is accompanied by the words "total length of sections" or words with similar meaning that clearly indicate the basis of the representation; and,

(b) Such size or length representation is accompanied by a statement in close proximity that clearly and conspicuously shows the maximum length of the product when fully extended for use (i.e., excluding the footage lost in overlapping) along with an explanation of the basis for such representation.[1]

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on proposed repeal of the Extension Ladder Rule (60 FR 27245). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Extension Ladder Rule should be repealed or remain in effect (60 FR 48075).[2] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, the use expedited procedures in this proceeding.[3]

The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission periodically reviews its rules and guides, seeking information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Extension Ladder Rule (58 FR 21125). The Commission asked commenters to address questions relating to the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

Six specific comments were received. One commenter, a consumer, opined that the only label that should be on ladders is the "maximum working length" because consumers should not have to do any figuring to determine the length of the ladder that would meet their needs.

Of the other five commenters, four were manufacturers or suppliers of ladders and one was a trade association. A number of these comments referred to the American National Standards Institute (ANSI) standard A14, which governs the labeling of ladders. ANSI standard A14 details the requirements for labeling portable wood ladders, portable metals ladders, fixed ladders, job made ladders, and portable

[1] The Rule then gives an example of proper length representation when the product consists of two ten foot sections: "maximum working length 17', total length of sections 20'" or "17' extension ladder".

[2] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[3] These procedures included: publishing a Notice of Proposed Rulemaking, soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

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reinforced plastic ladders. The ANSI standard requires specification of the maximum working length of an extension ladder, as well as several other pieces of information not required by the Extension Ladder Rule, including the total length of the ladder's sections and the highest standing level of the ladder. Compliance with the ANSI standard, therefore, ensures compliance with the labeling requirements of the Extension Ladder Rule. Several commenters noted this overlap in coverage of the Extension Ladder Rule and ANSI standard A14, and recommended that the Rule be retained unchanged.

Another commenter stated that the Rule has imposed minor, incremental costs, but opined that the benefits have been significant in that consumers have a better understanding of extension ladder length. The commenter questioned whether there was a continuing need for this Rule given the existence of ANSI standard A14 and UL standard 184, which the commenter stated also requires extension ladders to be marked to indicate both the total length of sections and the maximum extended length or maximum working length.

In addition to these specific comments, one general comment, applicable to several Commission Rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Extension Ladder Rule because the general prohibitions of Section 5 of the Federal Trade Commission Act covering false and deceptive advertising apply to the ladder industry. Thus, the commenter concluded that the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of length on extension ladders available for retail sale at several chain stores. That review indicated general compliance with the requirements of the Rule. Additionally, a check of Commission records failed to find any complaints regarding non-compliance with the Rule, or any initiation of law enforcement actions alleging violations of the Rule's requirements.

Accordingly, the Commission has reviewed the rulemaking record and determined to repeal the Extension Ladder Rule due to changes in industry practice, and the existence of industry standards mandating the point-of-sale disclosures required by the Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Extension Ladder Rule imposes third-party disclosure requirements that constitute "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 418

Advertising, Extension ladders, Trade practices.

PART 418—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 418.

By direction of the Commission.

Donald S. Clark,

Secretary.

FR Doc. 95–31011 Filed 12–19–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8650]

RIN 1545–AS23

Disallowance of Deductions for Employee Remuneration in Excess of $1,000,000

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disallowance of deductions for employee remuneration in excess of $1,000,000. The regulations provide guidance to taxpayers that are subject to section 162(m), which was added to the Code by the Omnibus Budget Reconciliation Act of 1993.

DATES: These regulations are effective January 1, 1994.

For dates of applicability, see § 1.162–27(j).

FOR FURTHER INFORMATION CONTACT: Robert Misner or Charles T. Delise at (202)622–6060 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1466. Responses to these collections of information are required to obtain a tax deduction for performance-based compensation in excess of $1 million.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent is 50 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 162(m) of the Internal Revenue Code, a publicly held corporation is denied a deduction for compensation paid to its "covered employees" to the extent the compensation exceeds $1,000,000 if the compensation would otherwise be deductible in a taxable year beginning on or after January 1, 1994.

On December 20, 1993, proposed regulations under section 162(m) (the 1993 proposed regulations) were published in the **Federal Register** (58

FR 66310). Amendments to the proposed regulations (the 1994 amendments) were published in the **Federal Register** on December 2, 1994 (59 FR 61844). Public hearings were held on May 9, 1994, and August 11, 1995. After consideration of the comments that were received in response to the notices of proposed rulemaking and at the hearings, the IRS and Treasury adopt the proposed regulations as amended and revised by this Treasury decision.

Explanation of Provisions

A. Overview of Provisions

As noted above, section 162(m) provides that a publicly held corporation is denied a deduction for compensation paid to a "covered employee" to the extent the compensation exceeds $1,000,000. A "covered employee" includes the chief executive officer (CEO), as well as any other individual whose compensation is required to be reported to the Securities and Exchange Commission by reason of that individual being among the four highest compensated officers for the taxable year (other than the CEO), as of the end of the corporation's taxable year.

"Performance-based compensation" and certain other compensation is not subject to the deduction limitation of section 162(m). Performance-based compensation is remuneration payable solely on account of the attainment of one or more performance goals, but only if: (1) the goals are determined by a compensation committee of the board of directors consisting solely of two or more outside directors; (2) the material terms under which the compensation is to be paid are disclosed to the shareholders and approved by a majority in a separate vote before payment is made; and (3) before any payment is made, the compensation committee certifies that the performance goals and any other material terms have been satisfied.

Compensation is also excluded from the deduction limitation of section 162(m) if it is paid under a binding written contract that was in existence on February 17, 1993. In addition, in accordance with the legislative history, the proposed regulations exempt from the limitation compensation that is paid under an arrangement that existed before the corporation became publicly held, to the extent that the arrangement is disclosed in the initial public offering.

B. Discussion of Comments

Comments that relate to the application of the proposed regulations and the responses to the comments, including an explanation of the revisions reflected in the final regulations, are summarized below.

Dividend Equivalents Paid on Stock Options

Under the proposed regulations, the performance-based exception to the deduction limitation generally is applied on a grant-by-grant basis. If the facts and circumstances indicate, however, that the employee would receive all or part of the compensation regardless of whether the performance goal is attained, the compensation is not performance based. For example, where payment under a nonperformance based bonus is contingent upon the failure to attain the performance goals under an otherwise performance-based bonus, neither bonus arrangement will be considered performance based. The proposed regulations provide that whether dividends (which generally are not performance based) on restricted stock are payable before attainment of the performance goal, will not affect the determination of whether the restricted stock is performance based. The proposed regulations also provide, however, that if the amount of any compensation the employee will receive under a stock option is not based solely on an increase in the value of the stock after the date of grant (for example, an option granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant will be performance based.

Commentators raised the question of whether nonperformance-based dividend equivalents that are paid with respect to a granted but unexercised stock option irrespective of whether the option is exercised will cause the compensation paid upon the exercise of the option to be nonperformance based. Section 1.162–27(e)(2)(vi) of the final regulations provides that such dividend equivalents will not cause the compensation paid upon the exercise of the option to be nonperformance based, provided that the payment of the dividend equivalents is not conditioned upon the employee exercising the option. If the payment of the dividend equivalent is conditioned upon the employee exercising the option, the dividend effectively reduces the exercise price of the option, thereby causing the option to be nonperformance based upon its exercise.

Bonus Pools

Section 1.162–27(e)(2)(ii) of the proposed regulations provides that a preestablished performance goal must state, in terms of an objective formula or standard, the method for computing the amount of compensation payable to the employee if the goal is attained. A formula or standard is objective if a third party having knowledge of the relevant performance results could calculate the amount to be paid to the employee.

Section 1.162–27(e)(2)(iii) prohibits discretion to increase the amount of compensation to be paid under the preestablished performance goal, but permits the compensation committee to reduce or eliminate the compensation that is due upon attainment of the goal.

Examples 7 and 8 under § 1.162–27(e)(2)(vii) of the proposed regulations illustrated the application of these rules to bonus pools. In Example 7, the amount of the bonus pool was determined under an objective formula. However, because the compensation committee retained the discretion to determine the fraction of the bonus pool that each covered employee would receive, the compensation that any individual could receive was not determined under an objective formula and, therefore, the bonus plan did not satisfy the requirements of paragraph (e)(2). In Example 8, the compensation for any individual was determined under an objective formula because each employee's share of the bonus pool was specified and because, notwithstanding the compensation committee's ability to reduce the compensation payable to each individual employee, a reduction in one employee's bonus would not result in an increase in the amount of any other employee's bonus.

Several commentators have indicated that, in some cases where compensation committees have stated the amount payable to each individual under a bonus pool plan as a percentage of the bonus pool, the total of these percentages has exceeded 100 percent of the pool. The use of such overlapping percentages is inconsistent with § 1.162–27(e)(2), as illustrated by both Example 7 and Example 8. As noted, Example 8 states that negative discretion will not cause the bonus plan to fail to satisfy the requirements of paragraph (e)(2), "provided that a reduction in the amount of one employee's bonus does not result in an increase in the amount of any other employee's bonus." Where the total of the percentages payable under a bonus pool plan exceeds 100 percent, it is impossible to award each individual the

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stated percentage, and this necessary exercise of negative discretion with respect to one or more employees means that it is impossible for a third party, with knowledge of the relevant performance results, to calculate the amount to be paid to each employee. Further, a reduction in at least some employees' bonuses will result in an increase in the amount available to pay other employees' bonuses.

Accordingly, § 1.162–27(e)(2)(iii) is amended to state more clearly that, when the compensation to be paid to each employee is stated in terms of a percentage of a bonus pool, the sum of the individual percentages for all participants in the pool cannot exceed 100 percent. In addition, the principle stated in Example 8, that the exercise of negative discretion with respect to one employee cannot increase the amount payable to another employee, is incorporated in paragraph (e)(2)(iii). Example 8 is also revised to more clearly illustrate this rule.

Although the IRS and Treasury believe that the changes made merely clarify the proposed regulations, it is recognized that others have interpreted the language of the proposed regulations differently. Therefore, under § 1.162–27(j)(2)(iv), this clarified rule will not be applied to any compensation paid before January 1, 2001, under a bonus pool based on performance in any period that began before December 20, 1995.

Outside Directors

Section 1.162–27(e)(3)(vi) provides that a director is not precluded from being an outside director solely because he or she is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. The regulation is revised to clarify that a former officer of either a spun off or liquidated corporation, that formerly was a member of the affiliated group, is not precluded from serving on the compensation committee of the publicly held member of the affiliated group.

Companies that Become Publicly Held Without an Initial Public Offering

Under § 1.162–27(f), the $1 million deduction limit does not apply to any compensation plan or agreement that existed before the corporation became publicly held to the extent that the plan or agreement was disclosed in the prospectus accompanying the initial public offering (IPO). This exception may be relied on until the earliest of: (1) the expiration of the plan or agreement, (2) the material modification of the plan or agreement, (3) the issuance of all stock and other compensation that has been allocated under the plan, or (4) the first shareholder meeting at which directors will be elected that occurs after the close of the third calendar year following the calendar year in which the IPO occurs.

Commentators have asked whether this rule applies to corporations that become publicly held without an IPO.

As indicated in the legislative history accompanying Code section 162(m), the prospectus that accompanies the IPO provides an opportunity to disclose the terms of the plan or agreement to the potential shareholders, and the subsequent purchase of the stock with that knowledge may be viewed as tantamount to a favorable vote on the compensation arrangement. When a corporation becomes publicly held without an IPO, there is no comparable alternative means of satisfying the requirements of section 162(m)(4)(C)(ii). On the other hand, because there is no requirement for privately held corporations to comply with section 162(m), the IRS and Treasury recognize the need for a transition rule for plans and agreements that are in existence when a privately held corporation becomes publicly held without an IPO.

Accordingly, § 1.162–27(f)(1) is revised to provide relief for privately held corporations that become publicly held without an IPO. Under the transition rule for these corporations, the reliance period in § 1.162–27(f)(2) lapses upon the first meeting of shareholders at which directors are to be elected that occurs after the close of the first calendar year following the calendar year in which the corporation becomes publicly held.

Written Binding Contracts

Section 1.162–27(h)(1) provides the transition rules for compensation payable under a written binding contract that was in effect on February 17, 1993. Under those rules, a written binding contract that is terminable or cancelable by the corporation after February 17, 1993, without the employee's consent is treated as a new contract as of the date that any such termination or cancelation, if made, would be effective. The proposed regulations further provide that, if the terms of a contract provide that the contract will be terminated or canceled as of a certain date unless either the corporation or the employee elects to renew within 30 days of that date, the contract is treated as renewed by the corporation as of that date.

Commentators have suggested that these regulations clarify the outcome where a corporation will remain bound by the terms of a contract beyond a certain date at the sole discretion of the employee. For example, if a contract that is in effect on February 17, 1993, provides that the employee has the sole discretion to extend or renew the terms beyond its stated expiration, without the consent of the corporation, a question arises whether the contract will be considered a pre-February 17, 1993 written binding contract after the employee chooses to extend.

Generally, the question of whether the terms of a contract are binding is determined under state law. The IRS and Treasury believe that the rules for determining whether a contract is binding should be applied based on whether the corporation is bound by the terms of the contract. Thus, if a contract provides the employee with the right to extend or renew its terms without the consent of the corporation, and the corporation is legally obligated to pay the agreed-upon compensation to the employee if the employee chooses to extend or renew the contract, the contract will be considered binding on the corporation. Accordingly, a new sentence has been added to § 1.162–27(h)(1)(i) to clarify that, if the corporation will remain legally obligated by the terms of a contract beyond a certain date at the sole discretion of the employee, the contract will not be treated as a new contract as of that date if the employee exercises the discretion.

Awards Based on a Percentage of Salary

The 1994 amendments modified § 1.162–27(e)(2)(iii) to provide that, if the terms of an objective formula or standard fail to preclude discretion merely because the amount of compensation to be paid upon attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay, the objective formula or standard will not be considered discretionary (and thus § 1.162–27(e)(2)(iii) will not be violated) if the maximum dollar amount to be paid is fixed at the time the performance goal is established. The final regulations clarify that a maximum dollar amount need not be specified under this provision if, at the time the performance goal is established, the dollar amount of salary or base pay is fixed. In such a case, the use of salary or base pay does not cause the formula to fail to preclude discretion to increase compensation.

The 1994 amendments made a corresponding amendment with respect to salary-based formulas to the shareholder disclosure rules in § 1.162–27(e)(4)(i). However, the shareholder disclosure amendment was not

explicitly limited to formulas that would otherwise be discretionary. The final regulations clarify that the shareholder disclosure rule relating to salary-based formulas applies only to those formulas that would otherwise be discretionary.

In addition, the final regulations provide transition relief with respect to the 1994 amendment of the shareholder disclosure requirement relating to salary-based formulas. New § 1.162–27(j)(2)(v) provides that this disclosure requirement applies only to plans approved by shareholders after April 30, 1995.

In the case of a preestablished performance goal that was established prior to the publication of the 1994 amendments, a corporation could, of course, rely upon a reasonable good faith interpretation of the statutory provisions to determine that the performance goal was stated in terms of an objective formula, to the extent the issue to which the interpretation relates was not covered by the 1993 regulations. An award made pursuant to such a performance goal would not fail to be performance based merely because the award was made after the publication of the 1994 amendments.

Stock-Based Compensation

The 1993 proposed regulations provided transition relief for previously approved plans and agreements that did not satisfy the written binding contract requirement as of February 17, 1993, but that were approved by shareholders before December 20, 1993. See § 1.162–27(h)(3)(iii). The transition relief applied to compensation paid prior to the expiration of a reliance period. In response to comments on the 1993 proposed regulations, the 1994 amendments expanded this relief to encompass compensation paid after the reliance period with respect to the exercise of stock options and stock appreciation rights, and the substantial vesting of restricted property, provided that the stock option, stock appreciation right, or restricted property was granted during the reliance period. Similar relief provisions were also included in new transition rules added by the 1994 amendments. (See §§ 1.162–27(f)(3), (f)(4), (j)(2)(ii), and (j)(2)(iii) of the final regulations.)

Commentators have asked that the relief provided in the 1994 amendments for stock options, stock appreciation rights, and restricted property be extended even further to cover other stock-based compensation and deferred compensation in general. After careful consideration of the comments received, the IRS and Treasury have concluded that there is not adequate justification for a further expansion of the 1994 expansion of the prior regulatory transition relief for previously approved plans and agreements, or the other similar relief provisions added in 1994.

Subsidiaries That Become Separate Publicly Held Corporations

Section 1.162–27(f)(4) of the proposed regulations contains special rules for subsidiaries that become separate publicly held corporations. A transition rule set forth in § 1.162–27(i)(2)(iii) of the proposed regulations specified delayed effective dates for these special rules. However, commentators indicated that the regulations were not explicit as to which rules applied prior to the delayed effective dates.

The final regulations clarify that compensation paid prior to the delayed effective dates by a subsidiary that becomes a separate publicly held corporation will not be subject to the $1 million deduction limit if the conditions of the transition rule are satisfied. (This transition rule and all other effective date provisions have been moved from paragraph (i) to paragraph (j) of the final regulations. Paragraph (i) is reserved.)

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Charles T. Delise and Robert Misner, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–27 is added to read as follows:

§ 1.162–27 Certain employee remuneration in excess of $1,000,000.

(a) *Scope.* This section provides rules for the application of the $1 million deduction limit under section 162(m) of the Internal Revenue Code. Paragraph (b) of this section provides the general rule limiting deductions under section 162(m). Paragraph (c) of this section provides definitions of generally applicable terms. Paragraph (d) of this section provides an exception from the deduction limit for compensation payable on a commission basis. Paragraph (e) of this section provides an exception for qualified performance-based compensation. Paragraphs (f) and (g) of this section provide special rules for corporations that become publicly held corporations and payments that are subject to section 280G, respectively. Paragraph (h) of this section provides transition rules, including the rules for contracts that are grandfathered and not subject to section 162(m). Paragraph (j) of this section contains the effective date provisions. For rules concerning the deductibility of compensation for services that are not covered by section 162(m) and this section, see section 162(a)(1) and § 1.162–7. This section is not determinative as to whether compensation meets the requirements of section 162(a)(1).

(b) *Limitation on deduction.* Section 162(m) precludes a deduction under chapter 1 of the Internal Revenue Code by any publicly held corporation for compensation paid to any covered employee to the extent that the compensation for the taxable year exceeds $1,000,000.

(c) *Definitions*—(1) *Publicly held corporation*—(i) *General rule.* A *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act. A corporation is not considered publicly held if the registration of its equity securities is voluntary. For purposes of this section, whether a corporation is

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publicly held is determined based solely on whether, as of the last day of its taxable year, the corporation is subject to the reporting obligations of section 12 of the Exchange Act.

(ii) *Affiliated groups.* A publicly held corporation includes an affiliated group of corporations, as defined in section 1504 (determined without regard to section 1504(b)). For purposes of this section, however, an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation. Such a publicly held subsidiary, and its subsidiaries (if any), are separately subject to this section. If a covered employee is paid compensation in a taxable year by more than one member of an affiliated group, compensation paid by each member of the affiliated group is aggregated with compensation paid to the covered employee by all other members of the group. Any amount disallowed as a deduction by this section must be prorated among the payor corporations in proportion to the amount of compensation paid to the covered employee by each such corporation in the taxable year.

(2) *Covered employee*—(i) *General rule.* A *covered employee* means any individual who, on the last day of the taxable year, is—

(A) The chief executive officer of the corporation or is acting in such capacity; or

(B) Among the four highest compensated officers (other than the chief executive officer).

(ii) *Application of rules of the Securities and Exchange Commission.* Whether an individual is the chief executive officer described in paragraph (c)(2)(i)(A) of this section or an officer described in paragraph (c)(2)(i)(B) of this section is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(3) *Compensation*—(i) *In general.* For purposes of the deduction limitation described in paragraph (b) of this section, *compensation* means the aggregate amount allowable as a deduction under chapter 1 of the Internal Revenue Code for the taxable year (determined without regard to section 162(m)) for remuneration for services performed by a covered employee, whether or not the services were performed during the taxable year.

(ii) *Exceptions. Compensation* does not include—

(A) Remuneration covered in section 3121(a)(1) through section 3121(a)(5)(D) (concerning remuneration that is not treated as *wages* for purposes of the Federal Insurance Contributions Act); and

(B) Remuneration consisting of any benefit provided to or on behalf of an employee if, at the time the benefit is provided, it is reasonable to believe that the employee will be able to exclude it from gross income. In addition, compensation does not include salary reduction contributions described in section 3121(v)(1).

(4) *Compensation Committee.* The *compensation committee* means the committee of directors (including any subcommittee of directors) of the publicly held corporation that has the authority to establish and administer performance goals described in paragraph (e)(2) of this section, and to certify that performance goals are attained, as described in paragraph (e)(5) of this section. A committee of directors is not treated as failing to have the authority to establish performance goals merely because the goals are ratified by the board of directors of the publicly held corporation or, if applicable, any other committee of the board of directors. See paragraph (e)(3) of this section for rules concerning the composition of the compensation committee.

(5) *Exchange Act.* The *Exchange Act* means the Securities Exchange Act of 1934.

(6) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. Corporation X is a publicly held corporation with a July 1 to June 30 fiscal year. For Corporation X's taxable year ending on June 30, 1995, Corporation X pays compensation of $2,000,000 to A, an employee. However, A's compensation is not required to be reported to shareholders under the executive compensation disclosure rules of the Exchange Act because A is neither the chief executive officer nor one of the four highest compensated officers employed on the last day of the taxable year. A's compensation is not subject to the deduction limitation of paragraph (b) of this section.

Example 2. C, a covered employee, performs services and receives compensation from Corporations X, Y, and Z, members of an affiliated group of corporations. Corporation X, the parent corporation, is a publicly held corporation. The total compensation paid to C from all affiliated group members is $3,000,000 for the taxable year, of which Corporation X pays $1,500,000; Corporation Y pays $900,000; and Corporation Z pays $600,000. Because the compensation paid by all affiliated group members is aggregated for purposes of section 162(m), $2,000,000 of the aggregate compensation paid is nondeductible. Corporations X, Y, and Z each are treated as paying a ratable portion of the nondeductible compensation. Thus, two thirds of each corporation's payment will be nondeductible. Corporation X has a nondeductible compensation expense of $1,000,000 ($1,500,000×$2,000,000/$3,000,000). Corporation Y has a nondeductible compensation expense of $600,000 ($900,000×$2,000,000/$3,000,000). Corporation Z has a nondeductible compensation expense of $400,000 ($600,000×$2,000,000/$3,000,000).

Example 3. Corporation W, a calendar year taxpayer, has total assets equal to or exceeding $5 million and a class of equity security held of record by 500 or more persons on December 31, 1994. However, under the Exchange Act, Corporation W is not required to file a registration statement with respect to that security until April 30, 1995. Thus, Corporation W is not a publicly held corporation on December 31, 1994, but is a publicly held corporation on December 31, 1995.

Example 4. The facts are the same as in *Example 3*, except that on December 15, 1995, Corporation W files with the Securities and Exchange Commission to disclose that Corporation W is no longer required to be registered under section 12 of the Exchange Act and to terminate its registration of securities under that provision. Because Corporation W is no longer subject to Exchange Act reporting obligations as of December 31, 1995, Corporation W is not a publicly held corporation for taxable year 1995, even though the registration of Corporation W's securities does not terminate until 90 days after Corporation W files with the Securities and Exchange Commission.

(d) *Exception for compensation paid on a commission basis.* The deduction limit in paragraph (b) of this section shall not apply to any compensation paid on a commission basis. For this purpose, compensation is paid on a commission basis if the facts and circumstances show that it is paid solely on account of income generated directly by the individual performance of the individual to whom the compensation is paid. Compensation does not fail to be attributable directly to the individual merely because support services, such as secretarial or research services, are utilized in generating the income. However, if compensation is paid on account of broader performance standards, such as income produced by a business unit of the corporation, the compensation does not qualify for the exception provided under this paragraph (d).

(e) *Exception for qualified performance-based compensation*—

(1) *In general.* The deduction limit in paragraph (b) of this section does not apply to qualified performance-based compensation. Qualified performance-based compensation is compensation that meets all of the requirements of paragraphs (e)(2) through (e)(5) of this section.

(2) *Performance goal requirement*—(i) *Preestablished goal.* Qualified performance-based compensation must be paid solely on account of the attainment of one or more preestablished, objective performance goals. A performance goal is considered preestablished if it is established in writing by the compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates, provided that the outcome is substantially uncertain at the time the compensation committee actually establishes the goal. However, in no event will a performance goal be considered to be preestablished if it is established after 25 percent of the period of service (as scheduled in good faith at the time the goal is established) has elapsed. A performance goal is objective if a third party having knowledge of the relevant facts could determine whether the goal is met. Performance goals can be based on one or more business criteria that apply to the individual, a business unit, or the corporation as a whole. Such business criteria could include, for example, stock price, market share, sales, earnings per share, return on equity, or costs. A performance goal need not, however, be based upon an increase or positive result under a business criterion and could include, for example, maintaining the status quo or limiting economic losses (measured, in each case, by reference to a specific business criterion). A performance goal does not include the mere continued employment of the covered employee. Thus, a vesting provision based solely on continued employment would not constitute a performance goal. See paragraph (e)(2)(vi) of this section for rules on compensation that is based on an increase in the price of stock.

(ii) *Objective compensation formula.* A preestablished performance goal must state, in terms of an objective formula or standard, the method for computing the amount of compensation payable to the employee if the goal is attained. A formula or standard is objective if a third party having knowledge of the relevant performance results could calculate the amount to be paid to the employee. In addition, a formula or standard must specify the individual employees or class of employees to which it applies.

(iii) *Discretion.*

(A) The terms of an objective formula or standard must preclude discretion to increase the amount of compensation payable that would otherwise be due upon attainment of the goal. A performance goal is not discretionary for purposes of this paragraph (e)(2)(iii) merely because the compensation committee reduces or eliminates the compensation or other economic benefit that was due upon attainment of the goal. However, the exercise of negative discretion with respect to one employee is not permitted to result in an increase in the amount payable to another employee. Thus, for example, in the case of a bonus pool, if the amount payable to each employee is stated in terms of a percentage of the pool, the sum of these individual percentages of the pool is not permitted to exceed 100 percent. If the terms of an objective formula or standard fail to preclude discretion to increase the amount of compensation merely because the amount of compensation to be paid upon attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay and the dollar amount of the salary or base pay is not fixed at the time the performance goal is established, then the objective formula or standard will not be considered discretionary for purposes of this paragraph (e)(2)(iii) if the maximum dollar amount to be paid is fixed at that time.

(B) If compensation is payable upon or after the attainment of a performance goal, and a change is made to accelerate the payment of compensation to an earlier date after the attainment of the goal, the change will be treated as an increase in the amount of compensation, unless the amount of compensation paid is discounted to reasonably reflect the time value of money. If compensation is payable upon or after the attainment of a performance goal, and a change is made to defer the payment of compensation to a later date, any amount paid in excess of the amount that was originally owed to the employee will not be treated as an increase in the amount of compensation if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments (whether or not assets associated with the amount originally owed are actually invested therein) such that the amount payable by the employer at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment). If compensation is payable in the form of property, a change in the timing of the transfer of that property after the attainment of the goal will not be treated as an increase in the amount of compensation for purposes of this paragraph (e)(2)(iii). Thus, for example, if the terms of a stock grant provide for stock to be transferred after the attainment of a performance goal and the transfer of the stock also is subject to a vesting schedule, a change in the vesting schedule that either accelerates or defers the transfer of stock will not be treated as an increase in the amount of compensation payable under the performance goal.

(C) Compensation attributable to a stock option, stock appreciation right, or other stock-based compensation does not fail to satisfy the requirements of this paragraph (e)(2) to the extent that a change in the grant or award is made to reflect a change in corporate capitalization, such as a stock split or dividend, or a corporate transaction, such as any merger of a corporation into another corporation, any consolidation of two or more corporations into another corporation, any separation of a corporation (including a spinoff or other distribution of stock or property by a corporation), any reorganization of a corporation (whether or not such reorganization comes within the definition of such term in section 368), or any partial or complete liquidation by a corporation.

(iv) *Grant-by-grant determination.* The determination of whether compensation satisfies the requirements of this paragraph (e)(2) generally shall be made on a grant-by-grant basis. Thus, for example, whether compensation attributable to a stock option grant satisfies the requirements of this paragraph (e)(2) generally is determined on the basis of the particular grant made and without regard to the terms of any other option grant, or other grant of compensation, to the same or another employee. As a further example, except as provided in paragraph (e)(2)(vi), whether a grant of restricted stock or other stock-based compensation satisfies the requirements of this paragraph (e)(2) is determined without regard to whether dividends, dividend equivalents, or other similar distributions with respect to stock, on such stock-based compensation are payable prior to the attainment of the performance goal. Dividends, dividend equivalents, or other similar distributions with respect to stock that are treated as separate grants under this paragraph (e)(2)(iv) are not performance-based compensation unless they separately satisfy the requirements of this paragraph (e)(2).

(v) *Compensation contingent upon attainment of performance goal.* Compensation does not satisfy the requirements of this paragraph (e)(2) if the facts and circumstances indicate that the employee would receive all or part of the compensation regardless of whether the performance goal is attained. Thus, if the payment of compensation under a grant or award is only nominally or partially contingent on attaining a performance goal, none of the compensation payable under the

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grant or award will be considered performance-based. For example, if an employee is entitled to a bonus under either of two arrangements, where payment under a nonperformance-based arrangement is contingent upon the failure to attain the performance goals under an otherwise performance-based arrangement, then neither arrangement provides for compensation that satisfies the requirements of this paragraph (e)(2). Compensation does not fail to be qualified performance-based compensation merely because the plan allows the compensation to be payable upon death, disability, or change of ownership or control, although compensation actually paid on account of those events prior to the attainment of the performance goal would not satisfy the requirements of this paragraph (e)(2). As an exception to the general rule set forth in the first sentence of paragraph (e)(2)(iv) of this section, the facts-and-circumstances determination referred to in the first sentence of this paragraph (e)(2)(v) is made taking into account all plans, arrangements, and agreements that provide for compensation to the employee.

(vi) *Application of requirements to stock options and stock appreciation rights*—(A) *In general.* Compensation attributable to a stock option or a stock appreciation right is deemed to satisfy the requirements of this paragraph (e)(2) if the grant or award is made by the compensation committee; the plan under which the option or right is granted states the maximum number of shares with respect to which options or rights may be granted during a specified period to any employee; and, under the terms of the option or right, the amount of compensation the employee could receive is based solely on an increase in the value of the stock after the date of the grant or award. Conversely, if the amount of compensation the employee will receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (e.g., in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation because it does not satisfy the requirement of this paragraph (e)(2)(vi)(A). Whether a stock option grant is based solely on an increase in the value of the stock after the date of grant is determined without regard to any dividend equivalent that may be payable, provided that payment of the dividend equivalent is not made contingent on the exercise of the option. The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

(B) *Cancellation and repricing.* Compensation attributable to a stock option or stock appreciation right does not satisfy the requirements of this paragraph (e)(2) to the extent that the number of options granted exceeds the maximum number of shares for which options may be granted to the employee as specified in the plan. If an option is canceled, the canceled option continues to be counted against the maximum number of shares for which options may be granted to the employee under the plan. If, after grant, the exercise price of an option is reduced, the transaction is treated as a cancellation of the option and a grant of a new option. In such case, both the option that is deemed to be canceled and the option that is deemed to be granted reduce the maximum number of shares for which options may be granted to the employee under the plan. This paragraph (e)(2)(vi)(B) also applies in the case of a stock appreciation right where, after the award is made, the base amount on which stock appreciation is calculated is reduced to reflect a reduction in the fair market value of stock.

(vii) *Examples.* This paragraph (e)(2) may be illustrated by the following examples:

Example 1. No later than 90 days after the start of a fiscal year, but while the outcome is substantially uncertain, Corporation S establishes a bonus plan under which A, the chief executive officer, will receive a cash bonus of $500,000, if year-end corporate sales are increased by at least 5 percent. The compensation committee retains the right, if the performance goal is met, to reduce the bonus payment to A if, in its judgment, other subjective factors warrant a reduction. The bonus will meet the requirements of this paragraph (e)(2).

Example 2. The facts are the same as in *Example 1*, except that the bonus is based on a percentage of Corporation S's total sales for the fiscal year. Because Corporation S is virtually certain to have some sales for the fiscal year, the outcome of the performance goal is not substantially uncertain, and therefore the bonus does not meet the requirements of this paragraph (e)(2).

Example 3. The facts are the same as in *Example 1*, except that the bonus is based on a percentage of Corporation S's total profits for the fiscal year. Although some sales are virtually certain for virtually all public companies, it is substantially uncertain whether a company will have profits for a specified future period even if the company has a history of profitability. Therefore, the bonus will meet the requirements of this paragraph (e)(2).

Example 4. B is the general counsel of Corporation R, which is engaged in patent litigation with Corporation S. Representatives of Corporation S have informally indicated to Corporation R a willingness to settle the litigation for $50,000,000. Subsequently, the compensation committee of Corporation R agrees to pay B a bonus if B obtains a formal settlement for at least $50,000,000. The bonus to B does not meet the requirement of this paragraph (e)(2) because the performance goal was not established at a time when the outcome was substantially uncertain.

Example 5. Corporation S, a public utility, adopts a bonus plan for selected salaried employees that will pay a bonus at the end of a 3-year period of $750,000 each if, at the end of the 3 years, the price of S stock has increased by 10 percent. The plan also provides that the 10-percent goal will automatically adjust upward or downward by the percentage change in a published utilities index. Thus, for example, if the published utilities index shows a net increase of 5 percent over a 3-year period, then the salaried employees would receive a bonus only if Corporation S stock has increased by 15 percent. Conversely, if the published utilities index shows a net decrease of 5 percent over a 3-year period, then the salaried employees would receive a bonus if Corporation S stock has increased by 5 percent. Because these automatic adjustments in the performance goal are preestablished, the bonus meets the requirement of this paragraph (e)(2), notwithstanding the potential changes in the performance goal.

Example 6. The facts are the same as in *Example 5*, except that the bonus plan provides that, at the end of the 3-year period, a bonus of $750,000 will be paid to each salaried employee if either the price of Corporation S stock has increased by 10 percent or the earnings per share on Corporation S stock have increased by 5 percent. If both the earnings-per-share goal and the stock-price goal are preestablished, the compensation committee's discretion to choose to pay a bonus under either of the two goals does not cause any bonus paid under the plan to fail to meet the requirement of this paragraph (e)(2) because each goal independently meets the requirements of this paragraph (e)(2). The choice to pay under either of the two goals is tantamount to the discretion to choose not to pay under one of the goals, as provided in paragraph (e)(2)(iii) of this section.

Example 7. Corporation U establishes a bonus plan under which a specified class of employees will participate in a bonus pool if certain preestablished performance goals are attained. The amount of the bonus pool is determined under an objective formula. Under the terms of the bonus plan, the compensation committee retains the discretion to determine the fraction of the bonus pool that each employee may receive. The bonus plan does not satisfy the requirements of this paragraph (e)(2). Although the aggregate amount of the bonus plan is determined under an objective formula, a third party could not determine the amount that any individual could receive under the plan.

Example 8. The facts are the same as in *Example 7*, except that the bonus plan provides that a specified share of the bonus pool is payable to each employee, and the total of these shares does not exceed 100% of the pool. The bonus plan satisfies the requirements of this paragraph (e)(2). In addition, the bonus plan will satisfy the requirements of this paragraph (e)(2) even if the compensation committee retains the discretion to reduce the compensation payable to any individual employee, provided that a reduction in the amount of one employee's bonus does not result in an increase in the amount of any other employee's bonus.

Example 9. Corporation V establishes a stock option plan for salaried employees. The terms of the stock option plan specify that no salaried employee shall receive options for more than 100,000 shares over any 3-year period. The compensation committee grants options for 50,000 shares to each of several salaried employees. The exercise price of each option is equal to or greater than the fair market value at the time of each grant. Compensation attributable to the exercise of the options satisfies the requirements of this paragraph (e)(2). If, however, the terms of the options provide that the exercise price is less than fair market value at the date of grant, no compensation attributable to the exercise of those options satisfies the requirements of this paragraph (e)(2) unless issuance or exercise of the options was contingent upon the attainment of a preestablished performance goal that satisfies this paragraph (e)(2).

Example 10. The facts are the same as in *Example 9*, except that, within the same 3-year grant period, the fair market value of Corporation V stock is significantly less than the exercise price of the options. The compensation committee reprices those options to that lower current fair market value of Corporation V stock. The repricing of the options for 50,000 shares held by each salaried employee is treated as the grant of new options for an additional 50,000 shares to each employee. Thus, each of the salaried employees is treated as having received grants for 100,000 shares. Consequently, if any additional options are granted to those employees during the 3-year period, compensation attributable to the exercise of those additional options would not satisfy the requirements of this paragraph (e)(2). The results would be the same if the compensation committee canceled the outstanding options and issued new options to the same employees that were exercisable at the fair market value of Corporation V stock on the date of reissue.

Example 11. Corporation W maintains a plan under which each participating employee may receive incentive stock options, nonqualified stock options, stock appreciation rights, or grants of restricted Corporation W stock. The plan specifies that each participating employee may receive options, stock appreciation rights, restricted stock, or any combination of each, for no more than 20,000 shares over the life of the plan. The plan provides that stock options may be granted with an exercise price of less than, equal to, or greater than fair market value on the date of grant. Options granted with an exercise price equal to, or greater than, fair market value on the date of grant do not fail to meet the requirements of this paragraph (e)(2) merely because the compensation committee has the discretion to determine the types of awards (i.e., options, rights, or restricted stock) to be granted to each employee or the discretion to issue options or make other compensation awards under the plan that would not meet the requirements of this paragraph (e)(2). Whether an option granted under the plan satisfies the requirements of this paragraph (e)(2) is determined on the basis of the specific terms of the option and without regard to other options or awards under the plan.

Example 12. Corporation X maintains a plan under which stock appreciation rights may be awarded to key employees. The plan permits the compensation committee to make awards under which the amount of compensation payable to the employee is equal to the increase in the stock price plus a percentage "gross up" intended to offset the tax liability of the employee. In addition, the plan permits the compensation committee to make awards under which the amount of compensation payable to the employee is equal to the increase in the stock price, based on the highest price, which is defined as the highest price paid for Corporation X stock (or offered in a tender offer or other arms-length offer) during the 90 days preceding exercise. Compensation attributable to awards under the plan satisfies the requirements of paragraph (e)(2)(vi) of this section, provided that the terms of the plan specify the maximum number of shares for which awards may be made.

Example 13. Corporation W adopts a plan under which a bonus will be paid to the CEO only if there is a 10% increase in earnings per share during the performance period. The plan provides that earnings per share will be calculated without regard to any change in accounting standards that may be required by the Financial Accounting Standards Board after the goal is established. After the goal is established, such a change in accounting standards occurs. Corporation W's reported earnings, for purposes of determining earnings per share under the plan, are adjusted pursuant to this plan provision to factor out this change in standards. This adjustment will not be considered an exercise of impermissible discretion because it is made pursuant to the plan provision.

Example 14. Corporation X adopts a performance-based incentive pay plan with a four-year performance period. Bonuses under the plan are scheduled to be paid in the first year after the end of the performance period (year 5). However, in the second year of the performance period, the compensation committee determines that any bonuses payable in year 5 will instead, for bona fide business reasons, be paid in year 10. The compensation committee also determines that any compensation that would have been payable in year 5 will be adjusted to reflect the delay in payment. The adjustment will be based on the greater of the future rate of return of a specified mutual fund that invests in blue chip stocks or of a specified venture capital investment over the five-year deferral period. Each of these investments, considered by itself, is a predetermined actual investment because it is based on the future rate of return of an actual investment. However, the adjustment in this case is not based on predetermined actual investments within the meaning of paragraph (e)(2)(iii)(B) of this section because the amount payable by Corporation X in year 10 will be based on the greater of the two investment returns and, thus, will not be based on the actual rate of return on either specific investment.

Example 15. The facts are the same as in *Example 14*, except that the increase will be based on Moody's Average Corporate Bond Yield over the five-year deferral period. Because this index reflects a reasonable rate of interest, the increase in the compensation payable that is based on the index's rate of return is not considered an impermissible increase in the amount of compensation payable under the formula.

Example 16. The facts are the same as in *Example 14*, except that the increase will be based on the rate of return for the Standard & Poor's 500 Index. This index does not measure interest rates and thus does not represent a reasonable rate of interest. In addition, this index does not represent an actual investment. Therefore, any additional compensation payable based on the rate of return of this index will result in an impermissible increase in the amount payable under the formula. If, in contrast, the increase were based on the rate of return of an existing mutual fund that is invested in a manner that seeks to approximate the Standard & Poor's 500 Index, the increase would be based on a predetermined actual investment within the meaning of paragraph (e)(2)(iii)(B) of this section and thus would not result in an impermissible increase in the amount payable under the formula.

(3) *Outside directors*—(i) *General rule.* The performance goal under which compensation is paid must be established by a compensation committee comprised solely of two or more outside directors. A director is an outside director if the director—

(A) Is not a current employee of the publicly held corporation;

(B) Is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year;

(C) Has not been an officer of the publicly held corporation; and

(D) Does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services.

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(ii) *Remuneration received.* For purposes of this paragraph (e)(3), remuneration is received, directly or indirectly, by a director in each of the following circumstances:

(A) If remuneration is paid, directly or indirectly, to the director personally or to an entity in which the director has a beneficial ownership interest of greater than 50 percent. For this purpose, remuneration is considered paid when actually paid (and throughout the remainder of that taxable year of the corporation) and, if earlier, throughout the period when a contract or agreement to pay remuneration is outstanding.

(B) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity in which the director has a beneficial ownership interest of at least 5 percent but not more than 50 percent. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

(C) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity by which the director is employed or self-employed other than as a director. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

(iii) *De minimis remuneration*—(A) *In general.* For purposes of paragraphs (e)(3)(ii)(B) and (C) of this section, remuneration that was paid by the publicly held corporation in its preceding taxable year to an entity is de minimis if payments to the entity did not exceed 5 percent of the gross revenue of the entity for its taxable year ending with or within that preceding taxable year of the publicly held corporation.

(B) *Remuneration for personal services and substantial owners.* Notwithstanding paragraph (e)(3)(iii)(A) of this section, remuneration in excess of $60,000 is not de minimis if the remuneration is paid to an entity described in paragraph (e)(3)(ii)(B) of this section, or is paid for personal services to an entity described in paragraph (e)(3)(ii)(C) of this section.

(iv) *Remuneration for personal services.* For purposes of paragraph (e)(3)(iii)(B) of this section, remuneration from a publicly held corporation is for personal services if—

(A) The remuneration is paid to an entity for personal or professional services, consisting of legal, accounting, investment banking, and management consulting services (and other similar services that may be specified by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin), performed for the publicly held corporation, and the remuneration is not for services that are incidental to the purchase of goods or to the purchase of services that are not personal services; and

(B) The director performs significant services (whether or not as an employee) for the corporation, division, or similar organization (within the entity) that actually provides the services described in paragraph (e)(3)(iv)(A) of this section to the publicly held corporation, or more than 50 percent of the entity's gross revenues (for the entity's preceding taxable year) are derived from that corporation, subsidiary, or similar organization.

(v) *Entity defined.* For purposes of this paragraph (e)(3), entity means an organization that is a sole proprietorship, trust, estate, partnership, or corporation. The term also includes an affiliated group of corporations as defined in section 1504 (determined without regard to section 1504(b)) and a group of organizations that would be an affiliated group but for the fact that one or more of the organizations are not incorporated. However, the aggregation rules referred to in the preceding sentence do not apply for purposes of determining whether a director has a beneficial ownership interest of at least 5 percent or greater than 50 percent.

(vi) *Employees and former officers.* Whether a director is an employee or a former officer is determined on the basis of the facts at the time that the individual is serving as a director on the compensation committee. Thus, a director is not precluded from being an outside director solely because the director is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. For example, a director of a parent corporation of an affiliated group is not precluded from being an outside director solely because that director is a former officer of an affiliated subsidiary that was spun off or liquidated. However, an outside director would no longer be an outside director if a corporation in which the director was previously an officer became an affiliated corporation of the publicly held corporation.

(vii) *Officer.* Solely for purposes of this paragraph (e)(3), *officer* means an administrative executive who is or was in regular and continued service. The term implies continuity of service and excludes those employed for a special and single transaction. An individual who merely has (or had) the title of officer but not the authority of an officer is not considered an officer. The determination of whether an individual is or was an officer is based on all of the facts and circumstances in the particular case, including without limitation the source of the individual's authority, the term for which the individual is elected or appointed, and the nature and extent of the individual's duties.

(viii) *Members of affiliated groups.* For purposes of this paragraph (e)(3), the outside directors of the publicly held member of an affiliated group are treated as the outside directors of all members of the affiliated group.

(ix) *Examples.* This paragraph (e)(3) may be illustrated by the following examples:

Example 1. Corporations X and Y are members of an affiliated group of corporations as defined in section 1504, until July 1, 1994, when Y is sold to another group. Prior to the sale, A served as an officer of Corporation Y. After July 1, 1994, A is not treated as a former officer of Corporation X by reason of having been an officer of Y.

Example 2. Corporation Z, a calendar-year taxpayer, uses the services of a law firm by which B is employed, but in which B has a less-than-5-percent ownership interest. The law firm reports income on a July 1 to June 30 basis. Corporation Z appoints B to serve on its compensation committee for calendar year 1998 after determining that, in calendar year 1997, it did not become liable to the law firm for remuneration exceeding the lesser of $60,000 or five percent of the law firm's gross revenue (calculated for the year ending June 30, 1997). On October 1, 1998, Corporation Z becomes liable to pay remuneration of $50,000 to the law firm on June 30, 1999. For the year ending June 30, 1998, the law firm's gross revenue was less than $1 million. Thus, in calendar year 1999, B is not an outside director. However, B may satisfy the requirements for an outside director in calendar year 2000, if, in calendar year 1999, Corporation Z does not become liable to the law firm for additional remuneration. This is because the remuneration actually paid on June 30, 1999 was considered paid on October 1, 1998 under paragraph (e)(3)(ii)(C) of this section.

Example 3. Corporation Z, a publicly held corporation, purchases goods from Corporation A. D, an executive and less-than-5-percent owner of Corporation A, sits on the board of directors of Corporation Z and on its compensation committee. For 1997, Corporation Z obtains representations to the effect that D is not eligible for any commission for D's sales to Corporation Z and that, for purposes of determining D's compensation for 1997, Corporation A's sales to Corporation Z are not otherwise treated differently than sales to other customers of Corporation A (including its affiliates, if any) or are irrelevant. In addition, Corporation Z has no reason to believe that these representations are inaccurate or that it is otherwise paying remuneration indirectly to D personally. Thus, in 1997, no remuneration

is considered paid by Corporation Z indirectly to D personally under paragraph (e)(3)(ii)(A) of this section.

Example 4. (i) Corporation W, a publicly held corporation, purchases goods from Corporation T. C, an executive and less- than-5-percent owner of Corporation T, sits on the board of directors of Corporation W and on its compensation committee. Corporation T develops a new product and agrees on January 1, 1998 to pay C a bonus of $500,000 if Corporation W contracts to purchase the product. Even if Corporation W purchases the new product, sales to Corporation W will represent less than 5 percent of Corporation T's gross revenues. In 1999, Corporation W contracts to purchase the new product and, in 2000, C receives the $500,000 bonus from Corporation T. In 1998, 1999, and 2000, Corporation W does not obtain any representations relating to indirect remuneration to C personally (such as the representations described in *Example 3*).

(ii) Thus, in 1998, 1999, and 2000, remuneration is considered paid by Corporation W indirectly to C personally under paragraph (e)(3)(ii)(A) of this section. Accordingly, in 1998, 1999, and 2000, C is not an outside director of Corporation W. The result would have been the same if Corporation W had obtained appropriate representations but nevertheless had reason to believe that it was paying remuneration indirectly to C personally.

Example 5. Corporation R, a publicly held corporation, purchases utility service from Corporation Q, a public utility. The chief executive officer, and less-than-5-percent owner, of Corporation Q is a director of Corporation R. Corporation R pays Corporation Q more than $60,000 per year for the utility service, but less than 5 percent of Corporation Q's gross revenues. Because utility services are not personal services, the fees paid are not subject to the $60,000 de minimis rule for remuneration for personal services within the meaning of paragraph (e)(3)(iii)(B) of this section. Thus, the chief executive officer qualifies as an outside director of Corporation R, unless disqualified on some other basis.

Example 6. Corporation A, a publicly held corporation, purchases management consulting services from Division S of Conglomerate P. The chief financial officer of Division S is a director of Corporation A. Corporation A pays more than $60,000 per year for the management consulting services, but less than 5 percent of Conglomerate P's gross revenues. Because management consulting services are personal services within the meaning of paragraph (e)(3)(iv)(A) of this section, and the chief financial officer performs significant services for Division S, the fees paid are subject to the $60,000 de minimis rule as remuneration for personal services. Thus, the chief financial officer does not qualify as an outside director of Corporation A.

Example 7. The facts are the same as in *Example 6*, except that the chief executive officer, and less-than-5-percent owner, of the parent company of Conglomerate P is a director of Corporation A and does not perform significant services for Division S. If the gross revenues of Division S do not constitute more than 50 percent of the gross revenues of Conglomerate P for P's preceding taxable year, the chief executive officer will qualify as an outside director of Corporation A, unless disqualified on some other basis.

(4) *Shareholder approval requirement*—(i) *General rule.* The material terms of the performance goal under which the compensation is to be paid must be disclosed to and subsequently approved by the shareholders of the publicly held corporation before the compensation is paid. The requirements of this paragraph (e)(4) are not satisfied if the compensation would be paid regardless of whether the material terms are approved by shareholders. The material terms include the employees eligible to receive compensation; a description of the business criteria on which the performance goal is based; and either the maximum amount of compensation that could be paid to any employee or the formula used to calculate the amount of compensation to be paid to the employee if the performance goal is attained (except that, in the case of a formula that fails to preclude discretion to increase the amount of compensation (as described in paragraph (e)(2)(iii)(A) of this section) merely because the amount of compensation to be paid is based, in whole or in part, on a percentage of salary or base pay and the dollar amount of the salary or base pay is not fixed at the time the performance goal is established, the maximum dollar amount of compensation that could be paid to the employee must be disclosed).

(ii) *Eligible employees.* Disclosure of the employees eligible to receive compensation need not be so specific as to identify the particular individuals by name. A general description of the class of eligible employees by title or class is sufficient, such as the chief executive officer and vice presidents, or all salaried employees, all executive officers, or all key employees.

(iii) *Description of business criteria*—(A) *In general.* Disclosure of the business criteria on which the performance goal is based need not include the specific targets that must be satisfied under the performance goal. For example, if a bonus plan provides that a bonus will be paid if earnings per share increase by 10 percent, the 10-percent figure is a target that need not be disclosed to shareholders. However, in that case, disclosure must be made that the bonus plan is based on an earnings-per-share business criterion. In the case of a plan under which employees may be granted stock options or stock appreciation rights, no specific description of the business criteria is required if the grants or awards are based on a stock price that is no less than current fair market value.

(B) *Disclosure of confidential information.* The requirements of this paragraph (e)(4) may be satisfied even though information that otherwise would be a material term of a performance goal is not disclosed to shareholders, provided that the compensation committee determines that the information is confidential commercial or business information, the disclosure of which would have an adverse effect on the publicly held corporation. Whether disclosure would adversely affect the corporation is determined on the basis of the facts and circumstances. If the compensation committee makes such a determination, the disclosure to shareholders must state the compensation committee's belief that the information is confidential commercial or business information, the disclosure of which would adversely affect the company. In addition, the ability not to disclose confidential information does not eliminate the requirement that disclosure be made of the maximum amount of compensation that is payable to an individual under a performance goal. Confidential information does not include the identity of an executive or the class of executives to which a performance goal applies or the amount of compensation that is payable if the goal is satisfied.

(iv) *Description of compensation.* Disclosure as to the compensation payable under a performance goal must be specific enough so that shareholders can determine the maximum amount of compensation that could be paid to any employee during a specified period. If the terms of the performance goal do not provide for a maximum dollar amount, the disclosure must include the formula under which the compensation would be calculated. Thus, for example, if compensation attributable to the exercise of stock options is equal to the difference in the exercise price and the current value of the stock, disclosure would be required of the maximum number of shares for which grants may be made to any employee and the exercise price of those options (e.g., fair market value on date of grant). In that case, shareholders could calculate the maximum amount of compensation that would be attributable to the exercise of options on the basis of their assumptions as to the future stock price.

(v) *Disclosure requirements of the Securities and Exchange Commission.* To the extent not otherwise specifically provided in this paragraph (e)(4), whether the material terms of a

performance goal are adequately disclosed to shareholders is determined under the same standards as apply under the Exchange Act.

(vi) *Frequency of disclosure.* Once the material terms of a performance goal are disclosed to and approved by shareholders, no additional disclosure or approval is required unless the compensation committee changes the material terms of the performance goal. If, however, the compensation committee has authority to change the targets under a performance goal after shareholder approval of the goal, material terms of the performance goal must be disclosed to and reapproved by shareholders no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved the performance goal.

(vii) *Shareholder vote.* For purposes of this paragraph (e)(4), the material terms of a performance goal are approved by shareholders if, in a separate vote, a majority of the votes cast on the issue (including abstentions to the extent abstentions are counted as voting under applicable state law) are cast in favor of approval.

(viii) *Members of affiliated group.* For purposes of this paragraph (e)(4), the shareholders of the publicly held member of the affiliated group are treated as the shareholders of all members of the affiliated group.

(ix) *Examples.* This paragraph (e)(4) may be illustrated by the following examples:

Example 1. Corporation X adopts a plan that will pay a specified class of its executives an annual cash bonus based on the overall increase in corporate sales during the year. Under the terms of the plan, the cash bonus of each executive equals $100,000 multiplied by the number of percentage points by which sales increase in the current year when compared to the prior year. Corporation X discloses to its shareholders prior to the vote both the class of executives eligible to receive awards and the annual formula of $100,000 multiplied by the percentage increase in sales. This disclosure meets the requirements of this paragraph (e)(4). Because the compensation committee does not have the authority to establish a different target under the plan, Corporation X need not redisclose to its shareholders and obtain their reapproval of the material terms of the plan until those material terms are changed.

Example 2. The facts are the same as in *Example 1* except that Corporation X discloses only that bonuses will be paid on the basis of the annual increase in sales. This disclosure does not meet the requirements of this paragraph (e)(4) because it does not include the formula for calculating the compensation or a maximum amount of compensation to be paid if the performance goal is satisfied.

Example 3. Corporation Y adopts an incentive compensation plan in 1995 that will pay a specified class of its executives a bonus every 3 years based on the following 3 factors: increases in earnings per share, reduction in costs for specified divisions, and increases in sales by specified divisions. The bonus is payable in cash or in Corporation Y stock, at the option of the executive. Under the terms of the plan, prior to the beginning of each 3-year period, the compensation committee determines the specific targets under each of the three factors (i.e., the amount of the increase in earnings per share, the reduction in costs, and the amount of sales) that must be met in order for the executives to receive a bonus. Under the terms of the plan, the compensation committee retains the discretion to determine whether a bonus will be paid under any one of the goals. The terms of the plan also specify that no executive may receive a bonus in excess of $1,500,000 for any 3-year period. To satisfy the requirements of this paragraph (e)(4), Corporation Y obtains shareholder approval of the plan at its 1995 annual shareholder meeting. In the proxy statement issued to shareholders, Corporation Y need not disclose to shareholders the specific targets that are set by the compensation committee. However, Corporation Y must disclose that bonuses are paid on the basis of earnings per share, reductions in costs, and increases in sales of specified divisions. Corporation Y also must disclose the maximum amount of compensation that any executive may receive under the plan is $1,500,000 per 3-year period. Unless changes in the material terms of the plan are made earlier, Corporation Y need not disclose the material terms of the plan to the shareholders and obtain their reapproval until the first shareholders' meeting held in 2000.

Example 4. The same facts as in *Example 3*, except that prior to the beginning of the second 3-year period, the compensation committee determines that different targets will be set under the plan for that period with regard to all three of the performance criteria (i.e., earnings per share, reductions in costs, and increases in sales). In addition, the compensation committee raises the maximum dollar amount that can be paid under the plan for a 3-year period to $2,000,000. The increase in the maximum dollar amount of compensation under the plan is a changed material term. Thus, to satisfy the requirements of this paragraph (e)(4), Corporation Y must disclose to and obtain approval by the shareholders of the plan as amended.

Example 5. In 1998, Corporation Z establishes a plan under which a specified group of executives will receive a cash bonus not to exceed $750,000 each if a new product that has been in development is completed and ready for sale to customers by January 1, 2000. Although the completion of the new product is a material term of the performance goal under this paragraph (e)(4), the compensation committee determines that the disclosure to shareholders of the performance goal would adversely affect Corporation Z because its competitors would be made aware of the existence and timing of its new product. In this case, the requirements of this paragraph (e)(4) are satisfied if all other material terms, including the maximum amount of compensation, are disclosed and the disclosure affirmatively states that the terms of the performance goal are not being disclosed because the compensation committee has determined that those terms include confidential information, the disclosure of which would adversely affect Corporation Z.

(5) *Compensation committee certification.* The compensation committee must certify in writing prior to payment of the compensation that the performance goals and any other material terms were in fact satisfied. For this purpose, approved minutes of the compensation committee meeting in which the certification is made are treated as a written certification. Certification by the compensation committee is not required for compensation that is attributable solely to the increase in the stock of the publicly held corporation.

(f) *Companies that become publicly held, spinoffs, and similar transactions*—(1) *In general.* In the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit of paragraph (b) of this section does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such a corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect. In accordance with paragraph (c)(1)(ii) of this section, a corporation that is a member of an affiliated group that includes a publicly held corporation is considered publicly held and, therefore, cannot rely on this paragraph (f)(1).

(2) *Reliance period.* Paragraph (f)(1) of this section may be relied upon until the earliest of—

(i) The expiration of the plan or agreement;

(ii) The material modification of the plan or agreement, within the meaning of paragraph (h)(1)(iii) of this section;

(iii) The issuance of all employer stock and other compensation that has been allocated under the plan; or

(iv) The first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the initial public offering occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held.

(3) *Stock-based compensation.* Paragraph (f)(1) of this section will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(1) of this section if the grant occurs on or before the earliest of the events specified in paragraph (f)(2) of this section.

(4) *Subsidiaries that become separate publicly held corporations*—(i) *In general.* If a subsidiary that is a member of the affiliated group described in paragraph (c)(1)(ii) of this section becomes a separate publicly held corporation (whether by spinoff or otherwise), any remuneration paid to covered employees of the new publicly held corporation will satisfy the exception for performance-based compensation described in paragraph (e) of this section if the conditions in either paragraph (f)(4)(ii) or (f)(4)(iii) of this section are satisfied.

(ii) *Prior establishment and approval.* Remuneration satisfies the requirements of this paragraph (f)(4)(ii) if the remuneration satisfies the requirements for performance-based compensation set forth in paragraphs (e)(2), (e)(3), and (e)(4) of this section (by application of paragraphs (e)(3)(viii) and (e)(4)(viii) of this section) before the corporation becomes a separate publicly held corporation, and the certification required by paragraph (e)(5) of this section is made by the compensation committee of the new publicly held corporation (but if the performance goals are attained before the corporation becomes a separate publicly held corporation, the certification may be made by the compensation committee referred to in paragraph (e)(3)(viii) of this section before it becomes a separate publicly held corporation). Thus, this paragraph (f)(4)(ii) requires that the outside directors and shareholders (within the meaning of paragraphs (e)(3)(viii) and (e)(4)(viii) of this section) of the corporation before it becomes a separate publicly held corporation establish and approve, respectively, the performance-based compensation for the covered employees of the new publicly held corporation in accordance with paragraphs (e)(3) and (e)(4) of this section.

(iii) *Transition period.* Remuneration satisfies the requirements of this paragraph (f)(4)(iii) if the remuneration satisfies all of the requirements of paragraphs (e)(2), (e)(3), and (e)(5) of this section. The outside directors (within the meaning of paragraph (e)(3)(viii) of this section) of the corporation before it becomes a separate publicly held corporation, or the outside directors of the new publicly held corporation, may establish and administer the performance goals for the covered employees of the new publicly held corporation for purposes of satisfying the requirements of paragraphs (e)(2) and (e)(3) of this section. The certification required by paragraph (e)(5) of this section must be made by the compensation committee of the new publicly held corporation. However, a taxpayer may rely on this paragraph (f)(4)(iii) to satisfy the requirements of paragraph (e) of this section only for compensation paid, or stock options, stock appreciation rights, or restricted property granted, prior to the first regularly scheduled meeting of the shareholders of the new publicly held corporation that occurs more than 12 months after the date the corporation becomes a separate publicly held corporation. Compensation paid, or stock options, stock appreciation rights, or restricted property granted, on or after the date of that meeting of shareholders must satisfy all requirements of paragraph (e) of this section, including the shareholder approval requirement of paragraph (e)(4) of this section, in order to satisfy the requirements for performance-based compensation.

(5) *Example.* The following example illustrates the application of paragraph (f)(4)(ii) of this section:

Example. Corporation P, which is publicly held, decides to spin off Corporation S, a wholly owned subsidiary of Corporation P. After the spinoff, Corporation S will be a separate publicly held corporation. Before the spinoff, the compensation committee of Corporation P, pursuant to paragraph (e)(3)(viii) of this section, establishes a bonus plan for the executives of Corporation S that provides for bonuses payable after the spinoff and that satisfies the requirements of paragraph (e)(2) of this section. If, pursuant to paragraph (e)(4)(viii) of this section, the shareholders of Corporation P approve the plan prior to the spinoff, that approval will satisfy the requirements of paragraph (e)(4) of this section with respect to compensation paid pursuant to the bonus plan after the spinoff. However, the compensation committee of Corporation S will be required to certify that the goals are satisfied prior to the payment of the bonuses in order for the bonuses to be considered performance-based compensation.

(g) *Coordination with disallowed excess parachute payments.* The $1,000,000 limitation in paragraph (b) of this section is reduced (but not below zero) by the amount (if any) that would have been included in the compensation of the covered employee for the taxable year but for being disallowed by reason of section 280G. For example, assume that during a taxable year a corporation pays $1,500,000 to a covered employee and no portion satisfies the exception in paragraph (d) of this section for commissions or paragraph (e) of this section for qualified performance-based compensation. Of the $1,500,000, $600,000 is an excess parachute payment, as defined in section 280G(b)(1) and is disallowed by reason of that section. Because the excess parachute payment reduces the limitation of paragraph (b) of this section, the corporation can deduct $400,000, and $500,000 of the otherwise deductible amount is nondeductible by reason of section 162(m).

(h) *Transition rules*—(1) *Compensation payable under a written binding contract which was in effect on February 17, 1993*—(i) *General rule.* The deduction limit of paragraph (b) of this section does not apply to any compensation payable under a written binding contract that was in effect on February 17, 1993. The preceding sentence does not apply unless, under applicable state law, the corporation is obligated to pay the compensation if the employee performs services. However, the deduction limit of paragraph (b) of this section does apply to a contract that is renewed after February 17, 1993. A written binding contract that is terminable or cancelable by the corporation after February 17, 1993, without the employee's consent is treated as a new contract as of the date that any such termination or cancellation, if made, would be effective. Thus, for example, if the terms of a contract provide that it will be automatically renewed as of a certain date unless either the corporation or the employee gives notice of termination of the contract at least 30 days before that date, the contract is treated as a new contract as of the date that termination would be effective if that notice were given. Similarly, for example, if the terms of a contract provide that the contract will be terminated or canceled as of a certain date unless either the corporation or the employee elects to renew within 30 days of that date, the contract is treated as renewed by the corporation as of that date. Alternatively, if the corporation will remain legally obligated by the terms of a contract beyond a certain date at the sole discretion of the employee, the

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contract will not be treated as a new contract as of that date if the employee exercises the discretion to keep the corporation bound to the contract. A contract is not treated as terminable or cancelable if it can be terminated or canceled only by terminating the employment relationship of the employee.

(ii) *Compensation payable under a plan or arrangement.* If a compensation plan or arrangement meets the requirements of paragraph (h)(1)(i) of this section, the compensation paid to an employee pursuant to the plan or arrangement will not be subject to the deduction limit of paragraph (b) of this section even though the employee was not eligible to participate in the plan as of February 17, 1993. However, the preceding sentence does not apply unless the employee was employed on February 17, 1993, by the corporation that maintained the plan or arrangement, or the employee had the right to participate in the plan or arrangement under a written binding contract as of that date.

(iii) *Material modifications.*

(A) Paragraph (h)(1)(i) of this section will not apply to any written binding contract that is materially modified. A material modification occurs when the contract is amended to increase the amount of compensation payable to the employee. If a binding written contract is materially modified, it is treated as a new contract entered into as of the date of the material modification. Thus, amounts received by an employee under the contract prior to a material modification are not affected, but amounts received subsequent to the material modification are not treated as paid under a binding, written contract described in paragraph (h)(1)(i) of this section.

(B) A modification of the contract that accelerates the payment of compensation will be treated as a material modification unless the amount of compensation paid is discounted to reasonably reflect the time value of money. If the contract is modified to defer the payment of compensation, any compensation paid in excess of the amount that was originally payable to the employee under the contract will not be treated as a material modification if the additional amount is based on either a reasonable rate of interest or one or more predetermined actual investments (whether or not assets associated with the amount originally owed are actually invested therein) such that the amount payable by the employer at the later date will be based on the actual rate of return of the specific investment (including any decrease as well as any increase in the value of the investment).

(C) The adoption of a supplemental contract or agreement that provides for increased compensation, or the payment of additional compensation, is a material modification of a binding, written contract where the facts and circumstances show that the additional compensation is paid on the basis of substantially the same elements or conditions as the compensation that is otherwise paid under the written binding contract. However, a material modification of a written binding contract does not include a supplemental payment that is equal to or less than a reasonable cost-of-living increase over the payment made in the preceding year under that written binding contract. In addition, a supplemental payment of compensation that satisfies the requirements of qualified performance-based compensation in paragraph (e) of this section will not be treated as a material modification.

(iv) Examples. The following examples illustrate the exception of this paragraph (h)(1):

Example 1. Corporation X executed a 3-year compensation arrangement with C on February 15, 1993, that constitutes a written binding contract under applicable state law. The terms of the arrangement provide for automatic extension after the 3-year term for additional 1-year periods, unless the corporation exercises its option to terminate the arrangement within 30 days of the end of the 3-year term or, thereafter, within 30 days before each anniversary date. Termination of the compensation arrangement does not require the termination of C's employment relationship with Corporation X. Unless terminated, the arrangement is treated as renewed on February 15, 1996, and the deduction limit of paragraph (b) of this section applies to payments under the arrangement after that date.

Example 2. Corporation Y executed a 5-year employment agreement with B on January 1, 1992, providing for a salary of $900,000 per year. Assume that this agreement constitutes a written binding contract under applicable state law. In 1992 and 1993, B receives the salary of $900,000 per year. In 1994, Corporation Y increases B's salary with a payment of $20,000. The $20,000 supplemental payment does not constitute a material modification of the written binding contract because the $20,000 payment is less than or equal to a reasonable cost-of-living increase from 1993. However, the $20,000 supplemental payment is subject to the limitation in paragraph (b) of this section. On January 1, 1995, Corporation Y increases B's salary to $1,200,000. The $280,000 supplemental payment is a material modification of the written binding contract because the additional compensation is paid on the basis of substantially the same elements or conditions as the compensation that is otherwise paid under the written binding contract and it is greater than a reasonable, annual cost-of-living increase. Because the written binding contract is materially modified as of January 1, 1995, all compensation paid to B in 1995 and thereafter is subject to the deduction limitation of section 162(m).

Example 3. Assume the same facts as in *Example 2*, except that instead of an increase in salary, B receives a restricted stock grant subject to B's continued employment for the balance of the contract. The restricted stock grant is not a material modification of the binding written contract because any additional compensation paid to B under the grant is not paid on the basis of substantially the same elements and conditions as B's salary because it is based both on the stock price and B's continued service. However, compensation attributable to the restricted stock grant is subject to the deduction limitation of section 162(m).

(2) *Special transition rule for outside directors.* A director who is a disinterested director is treated as satisfying the requirements of an outside director under paragraph (e)(3) of this section until the first meeting of shareholders at which directors are to be elected that occurs on or after January 1, 1996. For purposes of this paragraph (h)(2) and paragraph (h)(3) of this section, a director is a disinterested director if the director is disinterested within the meaning of Rule 16b–3(c)(2)(i), 17 CFR 240.16b–3(c)(2)(i), under the Exchange Act (including the provisions of Rule 16b–3(d)(3), as in effect on April 30, 1991).

(3) *Special transition rule for previously-approved plans—(i) In general.* Any compensation paid under a plan or agreement approved by shareholders before December 20, 1993, is treated as satisfying the requirements of paragraphs (e)(3) and (e)(4) of this section, provided that the directors administering the plan or agreement are disinterested directors and the plan was approved by shareholders in a manner consistent with Rule 16b–3(b), 17 CFR 240.16b–3(b), under the Exchange Act or Rule 16b–3(a), 17 CFR 240.16b–3(a) (as contained in 17 CFR part 240 revised April 1, 1990). In addition, for purposes of satisfying the requirements of paragraph (e)(2)(vi) of this section, a plan or agreement is treated as stating a maximum number of shares with respect to which an option or right may be granted to any employee if the plan or agreement that was approved by the shareholders provided for an aggregate limit, consistent with Rule 16b–3(b), 17 CFR 250.16b–3(b), on the shares of employer stock with respect to which awards may be made under the plan or agreement.

(ii) *Reliance period.* The transition rule provided in this paragraph (h)(3) shall continue and may be relied upon until the earliest of—

(A) The expiration or material modification of the plan or agreement;

(B) The issuance of all employer stock and other compensation that has been allocated under the plan; or

(C) The first meeting of shareholders at which directors are to be elected that occurs after December 31, 1996.

(iii) *Stock-based compensation.* This paragraph (h)(3) will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (h)(3)(i) of this section if the grant occurs on or before the earliest of the events specified in paragraph (h)(3)(ii) of this section.

(iv) *Example.* The following example illustrates the application of this paragraph (h)(3):

Example. Corporation Z adopted a stock option plan in 1991. Pursuant to Rule 16b-3 under the Exchange Act, the stock option plan has been administered by disinterested directors and was approved by Corporation Z shareholders. Under the terms of the plan, shareholder approval is not required again until 2001. In addition, the terms of the stock option plan include an aggregate limit on the number of shares available under the plan. Option grants under the Corporation Z plan are made with an exercise price equal to or greater than the fair market value of Corporation Z stock. Compensation attributable to the exercise of options that are granted under the plan before the earliest of the dates specified in paragraph (h)(3)(ii) of this section will be treated as satisfying the requirements of paragraph (e) of this section for qualified performance-based compensation, regardless of when the options are exercised.

(i) (*Reserved*)

(j) *Effective date*—(1) *In general.* Section 162(m) and this section apply to compensation that is otherwise deductible by the corporation in a taxable year beginning on or after January 1, 1994.

(2) *Delayed effective date for certain provisions—(i) Date on which remuneration is considered paid.* Notwithstanding paragraph (j)(1) of this section, the rules in the second sentence of each of paragraphs (e)(3)(ii)(A), (e)(3)(ii)(B), and (e)(3)(ii)(C) of this section for determining the date or dates on which remuneration is considered paid to a director are effective for taxable years beginning on or after January 1, 1995. Prior to those taxable years, taxpayers must follow the rules in paragraphs (e)(3)(ii)(A), (e)(3)(ii)(B), and (e)(3)(ii)(C) of this section or another reasonable, good faith interpretation of section 162(m) with respect to the date or dates on which remuneration is considered paid to a director.

(ii) *Separate treatment of publicly held subsidiaries.* Notwithstanding paragraph (j)(1) of this section, the rule in paragraph (c)(1)(ii) of this section that treats publicly held subsidiaries as separately subject to section 162(m) is effective as of the first regularly scheduled meeting of the shareholders of the publicly held subsidiary that occurs more than 12 months after December 2, 1994. The rule for stock-based compensation set forth in paragraph (f)(3) of this section will apply for this purpose, except that the grant must occur before the shareholder meeting specified in this paragraph (j)(2)(ii). Taxpayers may choose to rely on the rule referred to in the first sentence of this paragraph (j)(2)(ii) for the period prior to the effective date of the rule.

(iii) *Subsidiaries that become separate publicly held corporations.* Notwithstanding paragraph (j)(1) of this section, if a subsidiary of a publicly held corporation becomes a separate publicly held corporation as described in paragraph (f)(4)(i) of this section, then, for the duration of the reliance period described in paragraph (f)(2) of this section, the rules of paragraph (f)(1) of this section are treated as applying (and the rules of paragraph (f)(4) of this section do not apply) to remuneration paid to covered employees of that new publicly held corporation pursuant to a plan or agreement that existed prior to December 2, 1994, provided that the treatment of that remuneration as performance-based is in accordance with a reasonable, good faith interpretation of section 162(m). However, if remuneration is paid to covered employees of that new publicly held corporation pursuant to a plan or agreement that existed prior to December 2, 1994, but that remuneration is not performance-based under a reasonable, good faith interpretation of section 162(m), the rules of paragraph (f)(1) of this section will be treated as applying only until the first regularly scheduled meeting of shareholders that occurs more than 12 months after December 2, 1994. The rules of paragraph (f)(4) of this section will apply as of that first regularly scheduled meeting. The rule for stock-based compensation set forth in paragraph (f)(3) of this section will apply for purposes of this paragraph (j)(2)(iii), except that the grant must occur before the shareholder meeting specified in the preceding sentence if the remuneration is not performance-based under a reasonable, good faith interpretation of section 162(m). Taxpayers may choose to rely on the rules of paragraph (f)(4) of this section for the period prior to the applicable effective date referred to in the first or second sentence of this paragraph (j)(2)(iii).

(iv) *Bonus pools.* Notwithstanding paragraph (j)(1) of this section, the rules in paragraph (e)(2)(iii)(A) that limit the sum of individual percentages of a bonus pool to 100 percent will not apply to remuneration paid before January 1, 2001, based on performance in any performance period that began prior to December 20, 1995.

(v) *Compensation based on a percentage of salary or base pay.* Notwithstanding paragraph (j)(1) of this section, the requirement in paragraph (e)(4)(i) of this section that, in the case of certain formulas based on a percentage of salary or base pay, a corporation disclose to shareholders the maximum dollar amount of compensation that could be paid to the employee, will apply only to plans approved by shareholders after April 30, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry "1.162–27. . . . 1545–1466" in numerical order to the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–30869 Filed 12–19–95; 8:45 am]

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26 CFR Part 1

[TD 8635]

RIN 1545–AS92

Nonbank Trustee Net Worth Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or

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remain an approved nonbank trustee. These regulations affect nonbank trustees and custodians of individual retirement accounts, and nonbank custodians of qualified plans and tax-sheltered annuities.

EFFECTIVE DATE: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, temporary regulations (TD 8570) under section 401 were published in the **Federal Register** (59 FR 62570). A notice of proposed rulemaking (EE–38–94), cross-referencing the temporary regulations, was published in the **Federal Register** (59 FR 62644) on the same day. The temporary regulations provide guidance on the adequacy of net worth requirements for nonbank trustees and custodians of individual retirement plans, and for nonbank custodians of custodial accounts of qualified plans and tax-sheltered annuities.

After consideration of all of the comments, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision. Because section 401(d)(1), under which § 1.401–12 was originally issued, was repealed by section 237(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (1982), these final regulations also move all the rules for nonbank trustees and custodians that were previously in § 1.401–12(n) to § 1.408–2.

Explanation of Provisions

The fiduciary conduct rules for nonbank trustees and custodians under longstanding Treasury regulations require nonbank trustees and custodians to maintain a minimum amount of net worth in order to qualify as an approved nonbank trustee or custodian. Under this requirement, the nonbank trustee or custodian's net worth must exceed the greater of a specified dollar amount or a percentage of the value of all assets held in fiduciary accounts of retirement plans. A primary objective of this adequacy-of-net-worth requirement has been to ensure that nonbank trustees and custodians maintain a level of solvency commensurate with their financial and fiduciary responsibilities.

Under the general net worth requirement, nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of $100,000 or four percent of the value of all assets held in fiduciary accounts. Additionally, nonbank trustees and custodians must take whatever steps are necessary (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or two percent of the value of all assets held by them in fiduciary accounts.

For passive nonbank trustees and custodians (qualified nonbank entities that have no discretion to direct the investment of assets), the percentage requirements are lower. Specifically, passive nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of $100,000 or two percent of the value of all assets held in fiduciary accounts. Additionally, they must take appropriate action (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or one percent of the value of assets held in their fiduciary accounts.

The proposed and temporary regulations provide a special rule for passive nonbank trustees and custodians that are broker-dealers and members of the Securities Investor Protection Corporation (SIPC). The proposed and temporary regulations provide that, to the extent that assets held in any fiduciary accounts are insured by SIPC in the event of the member's liquidation ($500,000 per account, $100,000 of which may be cash), the assets will be disregarded in determining the value of assets held in fiduciary accounts by the trustee or custodian for purposes of the percentage part of the net worth requirement.

The final regulations adopt the provisions of the proposed and temporary regulations. In addition, in response to comments, the final regulations extend the SIPC-related relief to all nonbank trustees and custodians that are broker-dealers and members of SIPC rather than limiting the relief to passive nonbank trustees and custodians. The final regulations provide that the amount of the minimum net worth requirement for nonbank trustees and custodians that are SIPC members is reduced by either two percent of assets insured by SIPC (in the case of the minimum net worth requirement that applies to a trustee or custodian accepting additional accounts) or one percent of assets insured by SIPC (in the case of the minimum net worth requirement that must be satisfied to avoid a mandatory relinquishment of accounts). An example in the regulations illustrates this rule.

The final regulations also retain the rule in the proposed and temporary regulations that increased the initial net worth requirement for all nonbank trustees and custodians. The purpose of the rule is to better assure that the enterprises are sound and well-funded during their start-up period. This initial net worth requirement requires all new entities applying for nonbank trustee or custodian status to have a net worth of not less than $250,000 for the most recent taxable year preceding the applicant's initial application.

This new initial net worth requirement applies only to applications received after January 5, 1995. Previously approved nonbank trustees and custodians need only satisfy the ongoing net worth requirement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations) IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

§ 1.401–12 also issued under 26 U.S.C. 401(d)(1). * * *

§§ 1.401–12 and 1.408–2 [Amended]

Par. 2. Paragraph (n) of § 1.401–12 is redesignated as paragraph (e) of § 1.408–2 and the authority citation immediately following § 1.401–12 is removed.

§ 1.401–12T [Removed]

Par. 3. Section 1.401–12T is removed.

§ 1.401(f)–1 [Amended]

Par. 4. Section 1.401(f)–1 is amended by:

1. Removing the language "section 401(d)(1) and the regulations thereunder" and adding "§ 1.408–2(e)" in its place in the last sentence of paragraph (b)(1)(ii).
2. Removing the language "401(d)(1) and adding "408(n)" in its place in paragraph (d)(1).

Par. 5. Section 1.408–2 is amended by:

1. Removing the language "401(d)(1)" and adding "408(n)" in its place in paragraph (b)(2)(i).
2. Removing the language "(b)(2)(ii)" and adding "(e)" in its place in paragraph (b)(2)(i).
3. Removing paragraph (b)(2)(ii).
4. Redesignating (b)(2)(iii) as (b)(2)(ii).
5. Removing newly designated paragraphs (e)(1) and (e)(9).
6. Further redesignating paragraphs (e)(2) through (e)(8) as paragraphs (e)(1) through (e)(7), respectively.
7. Removing the language "For the plan years to which this paragraph applies, the" and adding "The" in its place, and removing the language "(c)(1)(i)" and adding "(b)" in its place, in the first sentence of newly designated paragraph (e)(1).
8. Removing the language "401" and adding "408" in its place, and removing the language "(n)(3) to (n)(7)" and adding "(e)(2) to (e)(6)" in its place, in the second sentence of newly designated paragraph (e)(1).
9. Removing the language "Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224" and adding "the address prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter)" in its place in the third sentence of newly designated paragraph (e)(1), in the last sentence of newly designated (e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)(v)(B).
10. Removing the language "(n)(8)" and adding "(e)(7)" in its place in the last sentence of newly designated paragraph (e)(1).
11. Removing the language "(n)(6)" and adding "(e)(5)" in its place in newly designated paragraph (e)(2)(iv).
12. Redesignating newly designated paragraph (e)(5)(ii)(A) as paragraph (e)(5)(ii)(E).
13. Removing the language "(n)(7)(i)(A)" and adding "(e)(6)(i)(A)" in its place in newly designated paragraph (e)(5)(ii)(B)(*2*) and in newly designated paragraph (e)(5)(ii)(C)(*2*).
14. Removing the language "(n)(6)(iii)(A)" and adding "(e)(5)(iii)(A)" in its place in newly designated paragraph (e)(5)(iii)(B).
15. Removing the language "(n)(6)(vi)" and adding "(e)(5)(vi)" in its place in newly designated paragraph (e)(5)(v)(A).
16. Removing the language "(n)(6)(viii)(C)" and adding "(e)(5)(viii)(C)" in its place in newly designated paragraph (e)(5)(vi).
17. Removing the language "(n)(3)(v)" and adding "(e)(2)(v)" in its place, and removing the language "(n)(8)" and adding "(e)(7)" in its place, in newly designated paragraph (e)(5)(viii).
18. Removing the language "(n)(6)(i)(A)(3)" and adding "(e)(5)(i)(A)(3)" in its place, and removing the language "(n)(5)(ii)(E)" and adding "(e)(4)(ii)(E)" in its place, in the third sentence of newly designated paragraph (e)(6)(i)(A).
19. Removing the language "(n)(7)(iii)(A)(*3*)" and adding "(e)(6)(iii)(A)(*3*)" in its place in newly designated paragraph (e)(6)(iii)(C).
20. Revising newly designated paragraph (e)(5)(ii)(A) and adding paragraph (e)(5)(ii)(D).
21. The revision and addition read as follows:

§ 1.408–2 Individual retirement accounts.

* * * * * *

(e) * * *

* * * * * *

(5) * * *

(ii) *Adequacy of net worth*—(A) *Initial net worth requirement.* In the case of applications received after January 5, 1995, no initial application will be accepted by the Commissioner unless the applicant has a net worth of not less than $250,000 (determined as of the end of the most recent taxable year). Thereafter, the applicant must satisfy the adequacy of net worth requirements of paragraph (e)(6)(ii) (B) and (C) of this section.

* * * * * *

(D) *Assets held by members of SIPC*—(*1*) For purposes of satisfying the adequacy-of-net-worth requirement of this paragraph, a special rule is provided for nonbank trustees that are members of the Securities Investor Protection Corporation (SIPC) created under the Securities Investor Protection Act of 1970 (SIPA)(15 U.S.C. 78aaa et seq., as amended). The amount that the net worth of a nonbank trustee that is a member of SIPC must exceed is reduced by two percent for purposes of paragraph (e)(5)(ii)(B)(*2*), and one percent for purposes of paragraph (e)(5)(ii)(C)(*2*), of the value of assets (determined on an account-by-account basis) held for the benefit of customers (as defined in 15 U.S.C. 78fff–2(e)(4)) in fiduciary accounts by the nonbank trustee to the extent of the portion of each account that does not exceed the dollar limit on advances described in 15 U.S.C. 78fff–3(a), as amended, that would apply to the assets in that account in the event of a liquidation proceeding under the SIPA.

(*2*) The provisions of this special rule for assets held in fiduciary accounts by members of SIPC are illustrated in the following example.

Example—(a) Trustee X is a broker-dealer and is a member of the Securities Investment Protection Corporation. Trustee X also has been approved as a nonbank trustee for individual retirement accounts (IRAs) by the Commissioner but not as a passive nonbank trustee. Trustee X is the trustee for four IRAs. The total assets of each IRA (for which Trustee X is the trustee) as of the most recent valuation date before the last day of Trustee X's taxable year ending in 1995 are as follows: the total assets for IRA–1 is $3,000,000 (all of which is invested in securities); the value of the total assets for IRA–2 is $500,000 ($200,000 of which is cash and $300,000 of which is invested in securities), the value of the total assets for IRA–3 is $400,000 (all of which is invested in securities); and the value of the total assets of IRA–4 is $200,000 (all of which is cash). The value of all assets held in fiduciary accounts, as defined in § 1.408–2(e)(6)(viii)(A), is $4,100,000.

(b) The dollar limit on advances described in 15 U.S.C. § 78fff–3(a) that would apply to the assets in each account in the event of a liquidation proceeding under the Securities Investor Protection Act of 1970 in effect as of the last day of Trustee X's taxable year ending in 1995 is $500,000 per account (no more than $100,000 of which is permitted to be cash). Thus, the dollar limit that would apply to IRA–1 is $500,000; the dollar limit for IRA–2 is $400,000 ($100,000 of the cash and the $300,000 of the value of the securities); the dollar limit for IRA–3 is $400,000 (the full value of the account because the value of the account is less than $500,000 and no portion of the account is cash); and the dollar limit for IRA–4 is $100,000 (the entire account is cash and the dollar limit per account for cash is $100,000). The aggregate dollar limits of the four IRAs is $1,400,000.

(c) For 1996, the amount determined under § 1.408–2(e)(6)(ii)(B) is determined as follows for Trustee X: (1) four percent of $4,100,000 equals $164,000; (2) two percent of $1,400,000 equals $28,000; and (3) $164,000 minus $28,000 equals $136,000. Thus,

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because $136,000 exceeds $106,000, the minimum net worth necessary for Trustee X to accept new accounts for 1996 is $136,000.

(d) For 1996, the amount determined under § 1.408–3(e)(6)(ii)(C) for Trustee X is determined as follows: (1) two percent of $4,100,000 equals $82,000; (2) one percent of $1,400,000 equals $14,000; and (3) $82,000 minus $14,000 equals $68,000. Thus, because $68,000 exceeds $50,000, the minimum net worth necessary for Trustee X to avoid a mandatory relinquishment of accounts for 1996 is $68,000.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–30884 Filed 12–19–95; 8:45 am]
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26 CFR Part 1

[TD 8646]

RIN 1545–AI82

Exempt Organizations Not Required To File Annual Returns: Integrated Auxiliaries of Churches

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that exempt certain integrated auxiliaries of churches from filing information returns. These regulations incorporate the rules of Rev. Proc. 86–23 (1986–1 C.B. 564), into the regulations defining integrated auxiliary for purposes of determining what entities must file information returns. The new definition focuses on the sources of an organization's financial support in addition to the nature of the organization's activities.

DATES: These regulations are effective December 20, 1995.

For dates of applicability of these regulations, see § 1.6033–2(h)(6).

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura, of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1994 proposed regulations §§ 1.6033–2 and 1.508–1 [EE–41–86 (1995–2 I.R.B. 20)] under sections 6033(a)(2) and 508 of the Internal Revenue Code of 1986, respectively, were published in the **Federal Register** (59 FR 64633). The proposed regulations adopted the rules of Rev. Proc. 86–23 (1986–1, C.B. 564) as the definition of integrated auxiliary of a church replacing the current definition set forth in § 1.6033–2(g)(5). Additionally, section 508(c) excepts integrated auxiliaries of a church from the requirement that new organizations notify the Secretary of the Treasury that they are applying for recognition of section 501(c)(3) status (Form 1023). For consistency, § 1.508–1(a)(3)(i)(*a*), which gives several examples of integrated auxiliaries, was proposed to be amended by deleting the examples and by adding a cross-reference to § 1.6033–2(h) for the definition of integrated auxiliary of a church. After IRS and Treasury consideration of the public comments received regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 6033(a)(1) requires organizations that are exempt from income tax under section 501(a) to file annual returns. Section 6033(a)(2)(A) provides exceptions to this requirement for certain specified types of organizations, including, among others, churches, their integrated auxiliaries, and conventions or associations of churches. Section 6033(a)(2)(B) provides that the Secretary may relieve any organization from the filing requirement where the Secretary determines that filing is not necessary to the efficient administration of the internal revenue laws.

Prior to this Treasury decision, § 1.6033–2(g)(5)(i) defined the term integrated auxiliary of a church as an organization that is: (1) exempt from taxation as an organization described in section 501(c)(3); (2) affiliated with a church (within the meaning of § 1.6033–2(g)(5)(iii)); and (3) engaged in a principal activity that is "exclusively religious." Section 1.6033–2(g)(5)(ii) provides that an organization's principal activity is not "exclusively religious" if that activity is educational, literary, charitable, or of another nature (other than religious) that would serve as a basis for exemption under section 501(c)(3).

The "exclusively religious" element of the definition was litigated in *Lutheran Social Service of Minnesota* v. *United States*, 563 F. Supp. 1298 (D. Minn. 1984), *rev'd* 758 F.2d 1283 (8th Cir. 1985), and *Tennessee Baptist Children's Homes, Inc.* v. *United States*, 604 F. Supp. 210 (M.D. Tenn. 1984) *aff'd*, 790 F.2d 534 (6th Cir. 1986). While the litigation over the "exclusively religious" standard was proceeding, Congress enacted section 3121(w) of the Internal Revenue Code, Tax Reform Act of 1984, Pub. L. 98–369, section 2603(b), 98 Stat. 494, 1128 (1984), which permits certain church-related organizations to elect out of social security coverage if they meet a standard based on the degree of financial support they receive from a church. In light of this litigation and the enactment of section 3121(w), IRS personnel met with representatives of various church organizations to encourage voluntary compliance with the filing requirements and to develop a less controversial and more objective standard for identifying an integrated auxiliary of a church.

Subsequent to these meetings the IRS published Rev. Proc. 86–23, which provides that, for tax years beginning after December 31, 1975, an organization is not required to file Form 990 if it is: (1) described in sections 501(c)(3) and 509(a) (1), (2), or (3); (2) affiliated with a church or a convention or association of churches; and (3) internally supported. With respect to this last criterion, Rev. Proc. 86–23 sets forth an internal support standard that is similar to the financial support standard in section 3121(w).

The proposed regulations adopted the rules of Rev. Proc. 86–23 as the definition of the term integrated auxiliary of a church replacing the current definition set forth in § 1.6033–2(g)(5). The final regulations retain the definition of an integrated auxiliary of a church that is contained in the proposed regulations.

Under this Treasury decision, to be an integrated auxiliary of a church an organization must first be described in section 501(c)(3) and section 509(a) (1), (2), or (3), and be affiliated with a church in accordance with standards set forth in the regulations. An organization meeting those tests is an integrated auxiliary if it either: (1) does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public; or (2) offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public and not more than 50 percent of its support comes from a combination of government sources, public solicitation of contributions, and receipts other than those from an unrelated trade or business.

Some commentators have noted that certain church-related organizations that finance, fund and manage pension programs were originally excused from filing by Notice 84–2 (1984–1 C.B. 331), which was issued pursuant to the Commissioner's discretionary authority

under section 6033(a)(2)(B). Rev. Proc. 86–23 states that Notice 84–2 is superseded by Rev. Proc. 86–23 because the organizations excused from filing under the notice are excused from filing by the revenue procedure. The commentators have expressed concern that the proposed regulations did not relieve church pension plans described in Notice 84–2 from the filing requirement. The organizations excused from filing under Notice 84–2 do not necessarily meet the definition of an integrated auxiliary of a church under these final regulations. Nevertheless, the proposed regulations were not intended to alter the exemption from filing provided in Notice 84–2 and reaffirmed in Rev. Proc. 86–23. To make this intent clear, the IRS is issuing Revenue Procedure 96–10 at the same time that it issues these final regulations. Rev. Proc. 96–10 carries over the exemption from filing for church pension plan organizations that was set forth in Notice 84–2. Having reaffirmed those parts of Rev. Proc. 86–23 that were not incorporated into these final regulations, Rev. Proc. 96–10 also obsoletes Rev. Proc. 86–23.

The IRS developed the internal support test contained in the proposed regulations based on its conclusion that Congress intended that organizations receiving a majority of their support from public and government sources, as opposed to those receiving a majority of their support from church sources, should file annual information returns in order that the public have a means of inspecting the returns of these organizations. The annual information return also was intended to serve as a means by which the IRS could examine, if necessary, those organizations receiving substantial non-church support.

One commentator has suggested that the definition of an integrated auxiliary of a church should consist of a church-related structural test rather than an internal support test. The IRS and the Treasury Department believe that the use of a structural test could lead to problems similar to those caused by the "exclusively religious" test. Additionally, the suggested definition would frustrate Congress' intended objective of allowing ongoing public scrutiny of organizations receiving the majority of their support from public and government sources.

A commentator has also suggested that by using the internal support test as part of the new definition of an integrated auxiliary of a church, the IRS is attempting to "overrule" the holdings in the previously mentioned court cases (i.e. *Tennessee Baptist Children's Home* and *Lutheran Social Service of Minnesota*).

The IRS and the Treasury Department believe that the courts' rulings questioned the validity of the "exclusively religious" activity requirement contained in the former regulation on the basis that it is not within the Service's discretion to assess the religious nature of a church's activities. Having eliminated the "exclusively religious" activity test from the definition of integrated auxiliary of a church, the IRS and the Treasury Department believe that the definition in the final regulation is consistent with the courts' holdings as well as the statute and the legislative history.

Some commentators have suggested that the first sentence of § 1.6033–2(g)(5)(iv) of the regulations in effect prior to this Treasury decision should be included in the final regulations. That sentence identified specific types of organizations as integrated auxiliaries of churches in accordance with legislative history. Although § 1.6033–2(h) of the proposed regulations was intended to provide a general definition that could apply in all instances, the IRS and the Treasury Department agree that, in order to be consistent with the legislative history, parts of § 1.6033–2(g)(5)(iv) of the regulations should be included in these final regulations. Therefore, these final regulations include § 1.6033–2(h)(5) that states that "a men's or women's organization, a seminary, a mission society, or a youth group" is an integrated auxiliary of a church regardless of whether it meets the internal support test in to § 1.6033–2(h)(1)(iii). (The tests under § 1.6033–2(h)(1) (i) and (ii) must still be met.)

Comments were received objecting that *Example 4* relating to seminaries did not describe a realistic set of facts and, therefore, could lead to confusion. Accordingly, *Example 4* has been eliminated. Also, the treatment of seminaries has been clarified by § 1.6033–2(h)(5). We also note that, in addition to the exception for seminaries, § 1.6033–2(g)(1)(vii) of the regulations excepts certain schools below college level that are affiliated with a church or operated by a religious order from the filing requirements of section 6033. Except for a paragraph numbering change contained in a cross-reference, § 1.6033–2(g)(1)(vii) is unchanged by these final regulations.

Several commentators have suggested that expanded definitions of certain terms used in the internal support test be included in this Treasury decision. The final regulations do not incorporate this suggestion. The IRS and the Treasury Department intend for these final regulations to reissue the test published in Rev. Proc. 86–23 as the new definition for an integrated auxiliary of a church. If guidance is necessary on the application of the definition to specific cases, that guidance is more appropriately provided in non-regulatory form, such as through private letter rulings or revenue rulings.

The amendment to § 1.6033–2(g)(5) is effective with respect to returns filed for taxable years beginning after December 31, 1969. However, for returns filed for taxable years beginning after December 31, 1969, but before December 20, 1995, the exclusively religious test contained in § 1.6033–2(g)(5) prior to its amendment by these final regulations may, at the entity's option, be used as an alternative to the financial support test in determining whether an entity is an integrated auxiliary of a church. The remainder of the amendments are effective with respect to returns for taxable years beginning after December 31, 1969. Therefore, for returns filed for taxable years beginning after December 20, 1995, the definition of integrated auxiliary of a church contained in § 1.6033–2(h) will be used in determining whether an entity is an integrated auxiliary of a church.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.508–1 is amended by revising paragraphs(a)(3)(i) introductory text and (a)(3)(i)(a) to read as follows:

§ 1.508–1 Notices.

(a) * * *

(3) * * * (i) Paragraphs (a) (1) and (2) of this section are inapplicable to the following organizations:

(*a*) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church. See § 1.6033–2(h) regarding the definition of integrated auxiliary of a church;

* * * * *

Par. 3. Section 1.6033–2 is amended as follows:

1. Paragraphs (g)(1)(i) and (g)(vii) are revised.

2. Paragraph (g)(5) is removed and reserved.

3. Paragraphs (h) through (j) are redesignated as paragraphs (i) through (k).

4. New paragraph (h) is added.

The added and revised provisions read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

* * * * *

(g) * * *

(1) * * *

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in paragraph (h) of this section);

* * * * *

(vii) An educational organization (below college level) that is described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of paragraph (h)(2) of this section) with a church or operated by a religious order.

* * * * *

(h) *Integrated auxiliary*—(1) *In general.* For purposes of this title, the *term integrated auxiliary of a church* means an organization that is—

(i) Described both in sections 501(c)(3) and 509(a) (1), (2), or (3);

(ii) Affiliated with a church or a convention or association of churches; and

(iii) Internally supported.

(2) *Affiliation.* An organization is affiliated with a church or a convention or association of churches, for purposes of paragraph (h)(1)(ii) of this section, if—

(i) The organization is covered by a group exemption letter issued under applicable administrative procedures, (such as Rev. Proc. 80–27 (1980–1 C.B. 677); See § 601.601(a)(2)(ii)(*b*)), to a church or a convention or association of churches;

(ii) The organization is operated, supervised, or controlled by or in connection with (as defined in § 1.509(a)–4) a church or a convention or association of churches; or

(iii) Relevant facts and circumstances show that it is so affiliated.

(3) *Facts and circumstances.* For purposes of paragraph (h)(2)(iii) of this section, relevant facts and circumstances that indicate an organization is affiliated with a church or a convention or association of churches include the following factors. However, the absence of one or more of the following factors does not necessarily preclude classification of an organization as being affiliated with a church or a convention or association of churches—

(i) The organization's enabling instrument (corporate charter, trust instrument, articles of association, constitution or similar document) or by-laws affirm that the organization shares common religious doctrines, principles, disciplines, or practices with a church or a convention or association of churches;

(ii) A church or a convention or association of churches has the authority to appoint or remove, or to control the appointment or removal of, at least one of the organization's officers or directors;

(iii) The corporate name of the organization indicates an institutional relationship with a church or a convention or association of churches;

(iv) The organization reports at least annually on its financial and general operations to a church or a convention or association of churches;

(v) An institutional relationship between the organization and a church or a convention or association of churches is affirmed by the church, or convention or association of churches, or a designee thereof; and

(vi) In the event of dissolution, the organization's assets are required to be distributed to a church or a convention or association of churches, or to an affiliate thereof within the meaning of this paragraph (h).

(4) *Internal support.* An organization is internally supported, for purposes of paragraph (h)(1)(iii) of this section, unless it both—

(i) Offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and

(ii) Normally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

(5) *Special rule.* Men's and women's organizations, seminaries, mission societies, and youth groups that satisfy paragraphs (h)(1) (i) and (ii) of this section are integrated auxiliaries of a church regardless of whether such an organization meets the internal support requirement under paragraph (h)(1)(iii) of this section.

(6) *Effective date.* This paragraph (h) applies for returns filed for taxable years beginning after December 31, 1969. For returns filed for taxable years beginning after December 31, 1969 but beginning before December 20, 1995, the definition for the term *integrated auxiliary of a church* set forth in § 1.6033–2(g)(5) (as contained in the 26 CFR edition revised as of April 1, 1995) may be used as an alternative definition to such term set forth in this paragraph (h).

(7) *Examples of internal support.* The internal support test of this paragraph (h) is illustrated by the following examples, in each of which it is assumed that the organization's provision of goods and services does not constitute an unrelated trade or business:

Example 1. Organization A is described in sections 501(c)(3) and 509(a)(2) and is affiliated (within the meaning of this paragraph (h)) with a church. Organization A publishes a weekly newspaper as its only activity. On an incidental basis, some copies of Organization A's publication are sold to nonmembers of the church with which it is affiliated. Organization A advertises for subscriptions at places of worship of the church. Organization A is internally supported, regardless of its sources of financial support, because it does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public. Organization A is an integrated auxiliary.

Example 2. Organization B is a retirement home described in sections 501(c)(3) and 509(a)(2). Organization B is affiliated (within the meaning of this paragraph (h)) with a church. Admission to Organization B is open to all members of the community for a fee. Organization B advertises in publications of general distribution appealing to the elderly and maintains its name on non-denominational listings of available retirement homes. Therefore, Organization B offers its services for sale to the general public on more than an incidental basis. Organization B receives a cash contribution of $50,000 annually from the church. Fees received by Organization B from its residents total $100,000 annually. Organization B does not receive any government support or contributions from the general public. Total support is $150,000 ($100,000 + $50,000), and $100,000 of that total is from receipts from the performance of services (66⅔% of total support). Therefore, Organization B receives more than 50 percent of its support from receipts from the performance of services. Organization B is not internally supported and is not an integrated auxiliary.

Example 3. Organization C is a hospital that is described in sections 501(c)(3) and 509(a)(1). Organization C is affiliated (within the meaning of this paragraph (h)) with a church. Organization C is open to all persons in need of hospital care in the community, although most of Organization C's patients are members of the same denomination as the church with which Organization C is affiliated. Organization C maintains its name on hospital listings used by the general public, and participating doctors are allowed to admit all patients. Therefore, Organization C offers its services for sale to the general public on more than an incidental basis. Organization C annually receives $250,000 in support from the church, $1,000,000 in payments from patients and third party payors (including Medicare, Medicaid and other insurers) for patient care, $100,000 in contributions from the public, $100,000 in grants from the federal government (other than Medicare and Medicaid payments) and $50,000 in investment income. Total support is $1,500,000 ($250,000 + $1,000,000 + $100,000 + $100,000 + $50,000), and $1,200,000 ($1,000,000 + $100,000 + $100,000) of that total is support from receipts from the performance of services, government sources, and public contributions (80% of total support). Therefore, Organization C receives more than 50 percent of its support from receipts from the performance of services, government sources, and public contributions. Organization C is not internally supported and is not an integrated auxiliary.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 27, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30839 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1, 301 and 602

[TD 8632]

RIN 1544–AM00

Section 482 Cost Sharing Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to qualified cost sharing arrangements under section 482 of the Internal Revenue Code. These regulations reflect changes to section 482 made by the Tax Reform Act of 1986, and provide guidance to revenue agents and taxpayers implementing the changes.

DATES: These regulations are effective January 1, 1996.

These regulations are applicable for taxable years beginning on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Sams of the Office of Associate Chief Counsel (International), IRS (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1364. Responses to these collections of information are required to determine whether an intangible development arrangement is a qualified cost sharing arrangement and who are the participants in such arrangement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per recordkeeper is 8 hours. The estimated average annual burden per respondent is 0.5 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 482 was amended by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561, et. seq. (1986–3 C.B. (Vol. 1) 1, 478). On January 30, 1992, a notice of proposed rulemaking concerning the section 482 amendment in the context of cost sharing was published in the **Federal Register** (INTL–0372–88, 57 FR 3571).

Written comments were received with respect to the notice of proposed rulemaking, and a public hearing was held on August 31, 1992. After consideration of all the comments, the proposed regulations under section 482 are adopted as revised by this Treasury decision, and the corresponding temporary regulations (which contain the cost sharing regulations as in effect since 1968) are removed.

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The Conference Committee report to the Act indicated that in revising section 482, Congress did not intend to preclude the use of bona fide research and development cost sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties. The Conference Committee report stated, however, that in order for cost sharing arrangements to produce results consistent with the commensurate-with-income standard, (a) a cost sharer should be expected to bear its portion of all research and development costs, on unsuccessful as well as successful products, within an appropriate product area, and the costs of research and development at all relevant development stages should be shared, (b) the allocation of costs generally should be proportionate to profit as determined before deduction for research and development, and (c) to the extent that one party contributes funds toward research and development at a significantly earlier point in time than another (or is otherwise putting its funds at risk to a greater extent than the other) that party should receive an appropriate return on its investment. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–638.

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The Conference Committee report to the Act recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482 (issued in 1968) should be modified in any respect.

The White Paper

In response to the Conference Committee's directive, the IRS and the Treasury Department issued a study of intercompany pricing [Notice 88–123 (1988–2 C.B. 458)] on October 18, 1988 (the White Paper). The White Paper suggested that most bona fide cost sharing arrangements should have certain provisions. For example, the White Paper stated that most product areas covered by cost sharing arrangements should be within three-digit Standard Industrial Classification codes, that most participants should be assigned exclusive geographic rights in developed intangibles (and should predict benefits and divide costs accordingly) and that marketing intangibles should be excluded from bona fide cost sharing arrangements.

Comments on the White Paper indicated that, in practice, there was a great deal of variety in the terms of bona fide cost sharing arrangements, and that if the White Paper's suggestions were incorporated in regulations, the regulations would unduly restrict the availability of cost sharing.

The 1992 Proposed Regulations

The IRS issued proposed cost sharing regulations on January 30, 1992 (INTL–0372–88, 57 FR 3571). In general, the proposed regulations allowed more flexibility than anticipated by the White Paper, relying on anti-abuse tests rather than requiring standard cost sharing provisions.

The proposed regulations stated that in order to be qualified, a cost sharing arrangement had to meet the following five requirements: (1) the arrangement had to have two or more eligible participants, (2) the arrangement had to be recorded in writing contemporaneously with the formation of the cost sharing arrangement, (3) the eligible participants had to share the costs and risks of intangible development in return for a specified interest in any intangible produced, (4) the arrangement had to reflect a reasonable effort by each eligible participant to share costs and risks in proportion to anticipated benefits from using developed intangibles, and (5) the arrangement had to meet certain administrative requirements. The key requirements were that participants had to be eligible and that costs and risks had to be proportionate to benefits.

Under the proposed regulations, only a controlled taxpayer that would use developed intangibles in the active conduct of its trade or business was eligible to participate in a cost sharing arrangement. This requirement was considered necessary to ensure that controlled foreign entities were not established simply to participate in cost sharing arrangements without performing any other meaningful function, and to ensure that each participant's share of anticipated benefits was measurable.

The proposed regulations allowed costs to be divided based on any measurement that would reasonably predict cost sharing benefits (e.g., anticipated units of production or anticipated sales). However, the basis for measuring anticipated benefits and dividing costs was checked by a cost-to-operating-income ratio. The method for dividing costs was presumed to be unreasonable if a U.S. participant's ratio of shared costs to operating income attributable to developed intangibles was grossly disproportionate to the cost-to-operating-income ratio of the other participants.

If a U.S. participant's cost-to-operating-income ratio was not grossly disproportionate, a section 482 allocation could still be made under three circumstances: (a) if the cost-to-operating-income ratio was disproportionate (allocation of costs), (b) if the pool of costs shared was too broad or too narrow, so that the U.S. participant was paying for research that it would not use (allocation of costs), or (c) if the cost-to-operating-income ratio was substantially disproportionate, such that a transfer of an intangible could be deemed to have occurred (allocation of income).

Under the proposed regulations, the IRS could also make an allocation of income to reflect a buy-in or buy-out event, that is, a transfer of an intangible that could occur, for example, when a participant joined or left a cost sharing arrangement.

Comments on the 1992 Proposed Regulations

The 1992 proposed cost sharing regulations were generally well received. However, there were five areas of particular concern to commenters. The first was the mechanical use of cost-to-operating-income ratios as a standard for measuring the reasonableness of an effort to share costs in proportion to anticipated benefits. Commenters noted that operating income attributable to developed intangibles was difficult to measure, and that other bases for measuring benefits might produce more reliable results. Commenters also believed that the ratios might be overused, leading to adjustments to costs in every year, and to many deemed transfers of intangibles. In addition, commenters stated that the ratios did not provide any certainty that a cost sharing arrangement would not be disregarded, since a "grossly disproportionate" ratio was not numerically defined.

The second area of concern was the eligible participant requirement. Commenters argued that separate research entities (with no separate active trade or business) should be allowed to participate in cost sharing arrangements, as should marketing affiliates. Commenters also argued that transfers of intangibles to unrelated entities should not disqualify a participant, and that foreign-to-foreign transfers should not necessarily be monitored. Some comments also stated that controlled entities should be able to participate even if their cost sharing payments would be characterized differently for purposes of foreign law.

The third area of concern was the regulations' requirement that every participant be able to benefit from every intangible developed under a cost sharing arrangement. Commenters stated that the regulations should allow both single-product cost sharing arrangements and umbrella cost sharing arrangements (i.e., cost sharing arrangements under which a broad category of a controlled group's research and development would be covered).

The fourth area of concern was the buy-in and buy-out rules. There were some suggestions for clarifying and simplifying the rules. For example, comments urged that the regulations provide that one participant's abandonment of its rights would not necessarily confer benefits on the other participants, and that a new participant need not always make a buy-in payment when joining a cost sharing arrangement. Suggestions for simplifying the rules generally consisted of proposed safe harbors for valuing intangibles.

The final general area of concern was the administrative requirements. Several commenters suggested that annual adjustments to the method used to share costs should not be required. Commenters also suggested that taxpayers not be required to attach their cost sharing arrangements to their returns, and that the time period for producing records be increased.

In addition to these general areas of concern, commenters noted that there should be more guidance about when the IRS would deem a cost sharing arrangement to exist. Commenters also argued that existing cost sharing arrangements should be grandfathered, or that there should be a longer transition period. Commenters suggested that financial accounting rules be used to calculate costs to be shared, and that the IRS address the impact of currency fluctuations on the cost-to-operating-income ratios. Finally, commenters asked that the regulations clarify that a cost sharing arrangement would not be deemed to create a partnership or a U.S. trade or business.

The Final Regulations

Without fundamentally altering the policies of the 1992 proposed regulations, the final regulations reflect numerous modifications in response to the comments described above. They also reflect the approach of the final section 482 regulations relating to transfers of tangible and intangible property.

Section 1.482–7(a)(1) defines a cost sharing arrangement as an agreement for sharing costs in proportion to reasonably anticipated benefits from the individual exploitation of interests in the intangibles that are developed. In order to claim the benefits of the safe harbor, a taxpayer must also satisfy certain formal requirements (enumerated in § 1.482–7(b)). The district director may apply the cost sharing rules to any arrangement that in substance constitutes a cost sharing arrangement, notwithstanding any failure to satisfy particular requirements of the safe harbor. It is further provided that a qualified cost sharing arrangement, or an arrangement treated in substance as such, will not be treated as a partnership. (A corresponding provision is added to § 301.7701–3 pertaining to the definition of a partnership.) Neither will a foreign participant be treated as engaged in a trade or business within the United States solely by virtue of its participation in such an arrangement.

Section 1.482–7(a)(2) restates the general rule of cost sharing in a manner intended to emphasize its limitation on allocations: no section 482 allocation will be made with respect to a qualified cost sharing arrangement, except to make each controlled participant's share of the intangible development costs equal to its share of reasonably anticipated benefits.

Section 1.482–7(b) contains the requirements for a qualified cost sharing arrangement. This provision substantially tracks the proposed regulations. A modification was made in the second requirement which now directs that the arrangement provide a method to calculate each controlled participant's share of intangible development costs, based on factors that can reasonably be expected to reflect anticipated benefits. The new standard is intended to ensure that cost sharing arrangements will not be disregarded by the IRS as long as the factors upon which an estimate of benefits was based were reasonable, even if the estimate proved to be inaccurate.

Section 1.482–7(b)(4) requires that a cost sharing arrangement be set forth in writing and contain a number of specified provisions, including the interest that each controlled participant will receive in any intangibles developed pursuant to the arrangement. The intangibles developed under a cost sharing arrangement are referred to as the "covered intangibles." It is possible that the research activity undertaken may result in development of intangible property that was not foreseen at the inception of the cost sharing arrangement; any such property is also included within the definition of the term covered intangibles. The prescriptive rules in relation to the scope of the intangible development area under the proposed regulations are eliminated in favor of a flexible definition that encompasses any research and development actually undertaken under the cost sharing arrangement.

Section 1.482–7(c) provides rules for being a participant in a qualified cost sharing arrangement. Unlike the proposed regulations, the final regulations permit participation by unrelated persons, which are referred to as "uncontrolled participants." Controlled taxpayers may be participants, referred to as "controlled participants," if they satisfy the conditions set forth in these rules. These qualification rules replace the proposed regulations' concept of "eligible participant." The tax treatment of controlled taxpayers that do not qualify as controlled participants provided in § 1.482–7(c)(4) essentially tracks the treatment provided for ineligible participants under the proposed regulations.

The requirements for being a controlled participant are basically the same as in the proposed regulations. In particular, a controlled participant must use or reasonably expect to use covered intangibles in the active conduct of a trade or business. Thus, an entity that chiefly provides services (e.g., as a contract researcher) may not be a controlled participant. These provisions are necessary for the reason that they are necessary to the proposed regulations: to prevent foreign controlled entities from being established simply to participate in cost sharing arrangements. In accordance with § 1.482–7(c)(4) mentioned above, service entities (such as contract researchers) may furnish research and development services to the members of a qualified cost sharing arrangement, with the appropriate consideration for such assistance in the research and development undertaken in the intangible development area being governed by the rules in § 1.482-4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). In the case of a controlled research entity, the appropriate arm's length compensation would generally be determined under the principles of § 1.482–2(b) (Performance of services for another). Each controlled participant would be deemed to incur as part of its intangible development costs a share of such compensation equal to its share of reasonably anticipated benefits.

As under the proposed regulations, the activity of another person may be attributed to a controlled taxpayer for purposes of meeting the active conduct requirement. However, modified language is adopted to be more precise concerning the intended requirements for attribution. These requirements were phrased in the proposed regulations as bearing the risk and receiving the benefits of the attributed activity. Under the final regulations, the attribution will be made only in cases in which the controlled taxpayer exercises substantial managerial and operational control over the attributed activities.

As under the proposed regulations, a principal purpose to use cost sharing to accomplish a transfer or license of covered intangibles to uncontrolled or controlled taxpayers will defeat satisfaction of the active conduct requirement. However, a principal purpose will not be implied where there are legitimate business reasons for subsequently licensing covered intangibles.

The subgroup rules of the proposed regulations are eliminated. Their major purpose is accomplished by a simpler provision (see the discussion of § 1.482–7(h)). In addition, the final regulations treat all members of a consolidated group as a single participant.

Section 1.482–7(d) defines intangible development costs as operating expenses other than depreciation and amortization expense, plus an arm's length charge for tangible property made available to the cost sharing arrangement. Costs to be shared include all costs relating to the intangible development area, which, as noted, comprises any research actually undertaken under the cost sharing

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arrangement. As under the proposed regulations, the district director may adjust the pool of costs shared in order to properly reflect costs that relate to the intangible development area.

Section 1.482–7(e) defines anticipated benefits as additional income generated or costs saved by the use of covered intangibles. The pool of benefits may also be adjusted in order to properly reflect benefits that relate to the intangible development area.

Section 1.482–7(f) governs cost allocations by the district director in order to make a controlled participant's share of costs equal to its share of reasonably anticipated benefits. Anticipated benefits of uncontrolled participants will be excluded from anticipated benefits in calculating the benefits shares of controlled participants. A share of reasonably anticipated benefits will be determined using the most reliable estimate of benefits. This rule echoes the best method rule for determining the most reliable measure of an arm's length result under § 1.482–1(c).

The reliability of an estimate of benefits principally depends on two factors: the reliability of the basis for measuring benefits used and the reliability of the projections used. The cost-to-operating-income ratio used in the proposed regulations to check the reasonableness of an effort to share costs in proportion to anticipated benefits has not been included in the final regulations. Rather, the final regulations provide that an allocation of costs or income may be made if the taxpayer did not use the most reliable estimate of benefits, which depends on the facts and circumstances of each case.

Section 1.482–7(f)(3)(ii) provides that in estimating a controlled participant's share of benefits, the most reliable basis for measuring anticipated benefits must be used, taking into account the factors set forth in § 1.482–1(c)(2)(ii). The measurement basis used must be consistent for all controlled participants. The regulations provide that benefits may be measured directly or indirectly. In addition, regardless of whether a direct or indirect basis of measurement is employed, it may be necessary to make adjustments to account for material differences in the activities that controlled participants perform in connection with exploitation of covered intangibles, such as between wholesale and retail distribution.

Section 1.482–7(f)(3)(iii) describes the scope of various indirect bases for measuring benefits, such as units, sales, and operating profit. Indirect bases other than those enumerated may be employed as long as they bear a relationship to benefits.

Section 1.482–7(f)(3)(iv) discusses projections used to estimate benefits. Projections required for this purpose generally include a determination of the time period between the inception of the research and development and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the intangible will generate benefits. However, the regulations note that in certain circumstances, current annual benefit shares may be used in lieu of projections.

Section 1.482–7(f)(3)(iv)(B) states that a significant divergence between projected and actual benefit shares may indicate that the projections were not reliable. A significant divergence is defined as divergence in excess of 20% between projected and actual benefit shares. If there is a significant divergence, which is not due to an unforeseeable event, then the district director may use actual benefits as the most reliable basis for measuring benefits. Conversely, no allocation will be made based on a divergence that is not considered significant as long as the estimate is made using the most reliable basis for measuring benefits.

For purposes of the 20% test, all non-U.S. controlled participants are treated as a single controlled participant in order that a divergence by a foreign controlled participant with a very small share of the total costs will not necessarily trigger an allocation (section 1.482–7(f)(3)(iv)(D), *Example 8*, illustrates this rule). Section 1.482–7(f)(3)(iv)(B) and (C) notes that adjustments among foreign controlled participants will only be made if the adjustment will have a substantial U.S. tax impact, for example, under subpart F.

Section 1.482–7(f)(4) states that cost allocations must be reflected for tax purposes in the year in which costs were incurred. This reflects a change from the rule in the 1992 proposed regulations, which stated that cost allocations would be included in income in the taxable year under review, even if the costs to be allocated were incurred in a prior taxable year. The purpose of the change was to match up cost adjustments with the year to which they relate in accordance with the clear reflection of income principle of section 482.

Section 1.482–7(g) provides buy-in and buy-out rules that are similar to the rules in the proposed regulations. However, some of the clarifications suggested by commenters have been incorporated in these rules. A "substantially disproportionate" cost-to-operating-income ratio will no longer trigger an adjustment to income under these rules. However, if, after any cost allocations authorized by § 1.482–7(a)(2), the economic substance of the arrangement is inconsistent with the terms of the arrangement over a period of years (for example, through a consistent pattern of one controlled participant bearing an inappropriately high or low share of the cost of intangible development), then the district director may impute an agreement consistent with the course of conduct. In that case, one or more of the participants would be deemed to own a greater interest in covered intangibles than provided under the arrangement, and must receive buy-in payments from the other participants.

The rules do not provide safe harbor methods for valuing intangibles, but rely on the intangible valuation rules of §§ 1.482–1 and 1.482–4 through 1.482–6. To the extent some participants furnish a disproportionately greater amount of existing intangibles to the arrangement, they must be compensated by royalties by the participants who furnish a disproportionately lesser amount of existing intangibles to the arrangement. Buy-in payments owed are netted against payments owing, and only the net payment is treated as a royalty. No implication is intended that netting of cross royalties is permissible outside of the qualified cost sharing safe harbor rules.

Section 1.482–7(h) provides rules regarding the character of payments made pursuant to a qualified cost sharing arrangement. Cost sharing payments received are generally treated as reductions of research and development expense. A net approach is applied to foster simplicity and generally preserve the character of items actually incurred by a participant to the extent not reimbursed. In addition, for purposes of the research credit determined under section 41, cost sharing payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–8(e). Finally, any payment that in substance constitutes a cost sharing payment will be treated as such, regardless of its characterization under foreign law. This rule is intended to enable foreign entities to participate in cost sharing arrangements with U.S. controlled participants even if foreign law does not recognize cost sharing. This rule obviated the main reason for the subgroup rules which, as noted, have accordingly been eliminated.

Section 1.482–7(i) requires that controlled participants must use a consistent accounting method for measuring costs and benefits, and must translate foreign currencies on a consistent basis. To the extent that the accounting method materially differs from U.S. generally accepted accounting principles, any such material differences must be documented, as provided in § 1.482–7(j)(2)(iv).

Section 1.482–7(j) provides simplified recordkeeping and reporting requirements. It is anticipated that many of the background documents necessary for purposes of this section will be kept pursuant to section 6662(e) and the regulations thereunder.

Section 1.482–7(k) provides that this regulation is effective for taxable years beginning on or after January 1, 1996.

Section 1.482–7(l) allows a one-year transition period for taxpayers to conform their cost sharing arrangements with the requirements of the final regulations. A longer period was not considered necessary, given the increased flexibility and the reduced number of administrative requirements of the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Lisa Sams, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding an entry for section 1.482–7 to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.482–7 is also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482–0 is amended by:

1. Removing the entry for § 1.482–7T.
2. Adding the entry for § 1.482–7 to read as follows:

§ 1.482–0 Outline of regulations under 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.
(1) Scope and application of the rules in this section.
(2) Limitation on allocations.
(3) Cross references.
(b) Qualified cost sharing arrangement.
(c) Participant.
(1) In general.
(2) Active conduct of a trade or business.
(i) Trade or business.
(ii) Active conduct.
(iii) Examples.
(3) Use of covered intangibles in the active conduct of a trade or business.
(i) In general.
(ii) Example.
(4) Treatment of a controlled taxpayer that is not a controlled participant.
(i) In general.
(ii) Example.
(5) Treatment of consolidated group.
(d(d) Costs.
(1) Intangible development costs.
(2) Examples.
(e) Anticipated benefits.
(1) Benefits.
(2) Reasonably anticipated benefits.
(f) Cost allocations.
(1) In general.
(2) Share of intangible development costs.
(i) In general.
(ii) Example.
(3) Share of reasonably anticipated benefits.
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(ii) Measure of benefits.
(iii) Indirect bases for measuring anticipated benefits.
(A) Units used, produced or sold.
(B) Sales.
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(E) Examples.
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(A) In general.
(B) Unreliable projections.
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(D) Examples.
(4) Timing of allocations.
(g) Allocations of income, deductions or other tax items to reflect transfers of intangibles (buy-in).
(1) In general.
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(3) New controlled participant.
(4) Controlled participant relinquishes interests.
(5) Conduct inconsistent with the terms of a cost sharing arrangement.
(6)Failure to assign interests under a qualified cost sharing arrangement.
(7) Form of consideration.
(i) Lump sum payments.
(ii) Installment payments.
(iii) Royalties.
(8) Examples.e
(h) Character of payments made pursuant to a qualified cost sharing arrangement.
(1) In general.
(2) Examples.
(i) Accounting requirements.
(j) Administrative requirements.
(1) In general.
(2) Documentation.
(3) Reporting requirements.
(k) Effective date.
(l) Transition rule.

* * * * *

Par. 3. Section 1.482–7 is added to read as follows:

§ 1.482–7 Sharing of costs.

(a) *In general*—(1) *Scope and application of the rules in this section.* A cost sharing arrangement is an agreement under which the parties agree to share the costs of development of one or more intangibles in proportion to their shares of reasonably anticipated benefits from their individual exploitation of the interests in the intangibles assigned to them under the arrangement. A taxpayer may claim that a cost sharing arrangement is a qualified cost sharing arrangement only if the agreement meets the requirements of paragraph (b) of this section. Consistent with the rules of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms), the district director may apply the rules of this section to any arrangement that in substance constitutes a cost sharing arrangement, notwithstanding a failure to comply with any requirement of this section. A qualified cost sharing arrangement, or an arrangement to which the district director applies the rules of this section, will not be treated as a partnership to which the rules of subchapter K apply. See § 301.7701–3(e) of this chapter. Furthermore, a participant that is a foreign corporation or nonresident alien individual will not be treated as engaged in trade or business within the United States solely

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by reason of its participation in such an arrangement. See generally § 1.864–2(a).

(2) *Limitation on allocations.* The district director shall not make allocations with respect to a qualified cost sharing arrangement except to the extent necessary to make each controlled participant's share of the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equal to its share of reasonably anticipated benefits attributable to such development, under the rules of this section. If a controlled taxpayer acquires an interest in intangible property from another controlled taxpayer (other than in consideration for bearing a share of the costs of the intangible's development), then the district director may make appropriate allocations to reflect an arm's length consideration for the acquisition of the interest in such intangible under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6. See paragraph (g) of this section. An interest in an intangible includes any commercially transferable interest, the benefits of which are susceptible of valuation. See § 1.482–4(b) for the definition of an intangible.

(3) *Cross references.* Paragraph (c) of this section defines participant. Paragraph (d) of this section defines the costs of intangible development. Paragraph (e) of this section defines the anticipated benefits of intangible development. Paragraph (f) of this section provides rules governing cost allocations. Paragraph (g) of this section provides rules governing transfers of intangibles other than in consideration for bearing a share of the costs of the intangible's development. Rules governing the character of payments made pursuant to a qualified cost sharing arrangement are provided in paragraph (h) of this section. Paragraph (i) of this section provides accounting requirements. Paragraph (j) of this section provides administrative requirements. Paragraph (k) of this section provides an effective date. Paragraph (l) provides a transition rule.

(b) *Qualified cost sharing arrangement.* A qualified cost sharing arrangement must—

(1) Include two or more participants;

(2) Provide a method to calculate each controlled participant's share of intangible development costs, based on factors that can reasonably be expected to reflect that participant's share of anticipated benefits;

(3) Provide for adjustment to the controlled participants' shares of intangible development costs to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the arrangement; and

(4) Be recorded in a document that is contemporaneous with the formation (and any revision) of the cost sharing arrangement and that includes—

(i) A list of the arrangement's participants, and any other member of the controlled group that will benefit from the use of intangibles developed under the cost sharing arrangement;

(ii) The information described in paragraphs (b)(2) and (b)(3) of this section;

(iii) A description of the scope of the research and development to be undertaken, including the intangible or class of intangibles intended to be developed;

(iv) A description of each participant's interest in any covered intangibles. A covered intangible is any intangible property that is developed as a result of the research and development undertaken under the cost sharing arrangement (intangible development area);

(v) The duration of the arrangement; and

(vi) The conditions under which the arrangement may be modified or terminated and the consequences of such modification or termination, such as the interest that each participant will receive in any covered intangibles.

(c) *Participant*—(1) *In general.* For purposes of this section, a participant is a controlled taxpayer that meets the requirements of this paragraph (c)(1) (controlled participant) or an uncontrolled taxpayer that is a party to the cost sharing arrangement (uncontrolled participant). See § 1.482–1(i)(5) for the definitions of controlled and uncontrolled taxpayers. A controlled taxpayer may be a controlled participant only if it—

(i) Uses or reasonably expects to use covered intangibles in the active conduct of a trade or business, under the rules of paragraphs (c)(2) and (c)(3) of this section;

(ii) Substantially complies with the accounting requirements described in paragraph (i) of this section; and

(iii) Substantially complies with the administrative requirements described in paragraph (j) of this section.

(2) *Active conduct of a trade or business*—(i) *Trade or business.* The rules of § 1.367(a)–2T(b)(2) apply in determining whether the activities of a controlled taxpayer constitute a trade or business. For this purpose, the term *controlled taxpayer* must be substituted for the term *foreign corporation.*

(ii) *Active conduct.* In general, a controlled taxpayer actively conducts a trade or business only if it carries out substantial managerial and operational activities. For purposes only of this paragraph (c)(2), activities carried out on behalf of a controlled taxpayer by another person may be attributed to the controlled taxpayer, but only if the controlled taxpayer exercises substantial managerial and operational control over those activities.

(iii) *Examples.* The following examples illustrate this paragraph (c)(2):

Example 1. Foreign Parent (FP) enters into a cost sharing arrangement with its U.S. Subsidiary (USS) to develop a cheaper process for manufacturing widgets. USS is to receive the right to exploit the intangible to make widgets in North America, and FP is to receive the right to exploit the intangible to make widgets in the rest of the world. However, USS does not manufacture widgets; rather, USS acts as a distributor for FP's widgets in North America. Because USS is simply a distributor of FP's widgets, USS does not use or reasonably expect to use the manufacturing intangible in the active conduct of its trade or business, and thus USS is not a controlled participant.

Example 2. The facts are the same as in *Example 1*, except that USS contracts to have widgets it sells in North America made by a related manufacturer (that is not a controlled participant) using USS' cheaper manufacturing process. USS purchases all the manufacturing inputs, retains ownership of the work in process as well as the finished product, and bears the risk of loss at all times in connection with the operation. USS compensates the manufacturer for the manufacturing functions it performs and receives substantially all of the intangible value attributable to the cheaper manufacturing process. USS exercises substantial managerial and operational control over the manufacturer to ensure USS's requirements are satisfied concerning the timing, quantity, and quality of the widgets produced. USS uses the manufacturing intangible in the active conduct of its trade or business, and thus USS is a controlled participant.

(3) *Use of covered intangibles in the active conduct of a trade or business*—(i) *In general.* A covered intangible will not be considered to be used, nor will the controlled taxpayer be considered to reasonably expect to use it, in the active conduct of the controlled taxpayer's trade or business if a principal purpose for participating in the arrangement is to obtain the intangible for transfer or license to a controlled or uncontrolled taxpayer.

(ii) *Example.* The following example illustrates the absence of such a principal purpose:

Example. Controlled corporations A, B, and C enter into a qualified cost sharing arrangement for the purpose of developing a new technology. Costs are shared equally among the three controlled taxpayers. A, B, and C have the exclusive rights to manufacture and sell products based on the new technology in North America, South America, and Europe, respectively. When the new technology is developed, C expects to use it to manufacture and sell products in most of Europe. However, for sound business reasons, C expects to license to an unrelated manufacturer the right to use the new technology to manufacture and sell products within a particular European country owing to its relative remoteness and small size. In these circumstances, C has not entered into the arrangement with a principal purpose of obtaining covered intangibles for transfer or license to controlled or uncontrolled taxpayers, because the purpose of licensing the technology to the unrelated manufacturer is relatively insignificant in comparison to the overall purpose of exploiting the European market.

(4) *Treatment of a controlled taxpayer that is not a controlled participant*—(i) *In general.* If a controlled taxpayer that is not a controlled participant (within the meaning of this paragraph (c)) provides assistance in relation to the research and development undertaken in the intangible development area, it must receive consideration from the controlled participants under the rules of § 1.482–4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). For purposes of paragraph (d) of this section, such consideration is treated as an operating expense and each controlled participant must be treated as incurring a share of such consideration equal to its share of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section).

(ii) Example. The following example illustrates this paragraph (c)(4):

Example. (i) U.S. Parent (USP), one foreign subsidiary (FS), and a second foreign subsidiary constituting the group's research arm (R+D) enter into a cost sharing agreement to develop manufacturing intangibles for a new product line A. USP and FS are assigned the exclusive rights to exploit the intangibles respectively in the United States and Europe, where each presently manufactures and sells various existing product lines. R+D, whose activity consists solely in cartying out research for the group, is assigned the rights to exploit the new technology in Asia, where no group member presently operates, but which is reliably projected to be a major market for product A. R+D will license the Asian rights to an unrelated third party. It is reliably projected that the shares of reasonably anticipated benefits of USP and FS (i.e., not taking R+D into account) will be 66 ⅔% and 33 ⅓%, respectively. The parties' agreement provides that USP and FS will reimburse 40% and 20%, respectively, of the intangible development costs incurred by R+D with respect to the new intangible.

(ii) R+D does not qualify as a controlled participant within the meaning of paragraph (c) of this section. Therefore, R+D is treated as a service provider for purposes of this section and must receive arm's length consideration for the assistance it is deemed to provide to USP and FS, under the rules of § 1.482–4(f)(3)(iii). Such consideration must be treated as intangible development costs incurred by USP and FS in proportion to their shares of reasonably anticipated benefits (i.e., 66 ⅔% and 33 ⅓%, respectively). R+D will not be considered to bear any share of the intangible development costs under the arrangement.

(iii) The Asian rights nominally assigned to R+D under the agreement must be treated as being held by USP and FS in accordance with their shares of the intangible development costs (i.e., 66 ⅔% and 33 ⅓%, respectively). See paragraph (g)(6) of this section. Thus, since under the cost sharing agreement the Asian rights are owned by R+D, the district director may make allocations to reflect an arm's length consideration owed by R+D to USP and FS for these rights under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6.

(5) *Treatment of consolidated group.* For purposes of this section, all members of the same affiliated group (within the meaning of section 1504(a)) that join in the filing of a consolidated return for the taxable year under section 1501 shall be treated as one taxpayer.

(d) *Costs*—(1) *Intangible development costs.* For purposes of this section, a controlled participant's costs of developing intangibles for a taxable year mean all of the costs incurred by that participant related to the intangible development area, plus all of the cost sharing payments it makes to other controlled and uncontrolled participants, minus all of the cost sharing payments it receives from other controlled and uncontrolled participants. Costs incurred related to the intangible development area consist of the following items: operating expenses as defined in § 1.482–5(d)(3), other than depreciation or amortization expense, plus (to the extent not included in such operating expenses, as defined in § 1.482–5(d)(3)) the charge for the use of any tangible property made available to the qualified cost sharing arrangement. If tangible property is made available to the qualified cost sharing arrangement by a controlled participant, the determination of the appropriate charge will be governed by the rules of § 1.482–2(c) (Use of tangible property). Intangible development costs do not include the consideration for the use of any intangible property made available to the qualified cost sharing arrangement. See paragraph (g)(2) of this section. If a particular cost contributes to the intangible development area and other areas or other business activities, the cost must be allocated between the intangible development area and the other areas or business activities on a reasonable basis. In such a case, it is necessary to estimate the total benefits attributable to the cost incurred. The share of such cost allocated to the intangible development area must correspond to covered intangibles' share of the total benefits. Costs that do not contribute to the intangible development area are not taken into account.

(2) *Examples.* The following examples illustrate this paragraph (d):

Example 1. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a qualified cost sharing arrangement to develop a better mousetrap. USS and FP share the costs of FP's research and development facility that will be exclusively dedicated to this research, the salaries of the researchers, and reasonable overhead costs attributable to the project. They also share the cost of a conference facility that is at the disposal of the senior executive management of each company but does not contribute to the research and development activities in any measurable way. In this case, the cost of the conference facility must be excluded from the amount of intangible development costs.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a qualified cost sharing arrangement to develop a new device. USP and FS share the costs of a research and development facility, the salaries of researchers, and reasonable overhead costs attributable to the project. USP also incurs costs related to field testing of the device, but does not include them in the amount of intangible development costs of the cost sharing arrangement. The district director may determine that the field testing costs are intangible development costs that must be shared.

(e) *Anticipated benefits*—(1) *Benefits.* Benefits are additional income generated or costs saved by the use of covered intangibles.

(2) *Reasonably anticipated benefits.* For purposes of this section, a controlled participant's reasonably anticipated benefits are the aggregate benefits that it reasonably anticipates that it will derive from covered intangibles.

(f) *Cost allocations*—(1) *In general.* For purposes of determining whether a cost allocation authorized by paragraph (a)(2) of this section is appropriate for a taxable year, a controlled participant's share of intangible development costs for the taxable year under a qualified cost sharing arrangement must be compared to its share of reasonably anticipated benefits under the arrangement. A controlled participant's share of intangible development costs is determined under paragraph (f)(2) of this section. A controlled participant's share of reasonably anticipated benefits under the arrangement is determined under paragraph (f)(3) of this section. In

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determining whether benefits were reasonably anticipated, it may be appropriate to compare actual benefits to anticipated benefits, as described in paragraph (f)(3)(iv) of this section.

(2) *Share of intangible development costs*—(i) *In general.* A controlled participant's share of intangible development costs for a taxable year is equal to its intangible development costs for the taxable year (as defined in paragraph (d) of this section), divided by the sum of the intangible development costs for the taxable year (as defined in paragraph (d) of this section) of all the controlled participants.

(ii) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) U.S. Parent (USP), Foreign Subsidiary (FS), and Unrelated Third Party (UTP) enter into a cost sharing arrangement to develop new radio technology. In the first year of the arrangement, the controlled participants incur $2,250,000 in the intangible development area, all of which is incurred directly by USP. In the first year, UTP makes a $250,000 cost sharing payment to USP, and FS makes a $900,000 cost sharing payment to USP, under the terms of the arrangement. For that year, the intangible development costs borne by USP are $1,200,000 (its $2,250,000 intangible development costs directly incurred, minus the cost sharing payments it receives of $250,000 from UTP and $800,000 from FS); the intangible development costs borne by FS are $800,000 (its cost sharing payment); and the intangible development costs borne by all of the controlled participants are $2,000,000 (the sum of the intangible development costs borne by USP and FS of $1,200,000 and $800,000, respectively). Thus, for the first year, USP's share of intangible development costs is 60% ($1,200,000 divided by $2,000,000), and FS's share of intangible development costs is 40% ($800,000 divided by $2,000,000).

(ii) For purposes of determining whether a cost allocation authorized by paragraph § 1.482–7(a)(2) is appropriate for the first year, the district director must compare USP's and FS's shares of intangible development costs for that year to their shares of reasonably anticipated benefits. See paragraph (f)(3) of this section.

(3) *Share of reasonably anticipated benefits*—(i) *In general.* A controlled participant's share of reasonably anticipated benefits under a qualified cost sharing arrangement is equal to its reasonably anticipated benefits (as defined in paragraph (e)(2) of this section), divided by the sum of the reasonably anticipated benefits (as defined in paragraph (e)(2) of this section) of all the controlled participants. The anticipated benefits of an uncontrolled participant will not be included for purposes of determining each controlled participant's share of anticipated benefits. A controlled participant's share of reasonably anticipated benefits will be determined using the most reliable estimate of reasonably anticipated benefits. In determining which of two or more available estimates is most reliable, the quality of the data and assumptions used in the analysis must be taken into account, consistent with § 1.482–1(c)(2)(ii) (Data and assumptions). Thus, the reliability of an estimate will depend largely on the completeness and accuracy of the data, the soundness of the assumptions, and the relative effects of particular deficiencies in data or assumptions on different estimates. If two estimates are equally reliable, no adjustment should be made based on differences in the results. The following factors will be particularly relevant in determining the reliability of an estimate of anticipated benefits—

(A) The reliability of the basis used for measuring benefits, as described in paragraph (f)(3)(ii) of this section; and

(B) The reliability of the projections used to estimate benefits, as described in paragraph (f)(3)(iv) of this section.

(ii) *Measure of benefits.* In order to estimate a controlled participant's share of anticipated benefits from covered intangibles, the amount of benefits that each of the controlled participants is reasonably anticipated to derive from covered intangibles must be measured on a basis that is consistent for all such participants. See paragraph (f)(3)(iii)(E), *Example 8*, of this section. Anticipated benefits are measured either on a direct basis, by reference to estimated additional income to be generated or costs to be saved by the use of covered intangibles, or on an indirect basis, by reference to certain measurements that reasonably can be assumed to be related to income generated or costs saved. Such indirect bases of measurement of anticipated benefits are described in paragraph (f)(3)(iii) of this section. A controlled participant's anticipated benefits must be measured on the most reliable basis, whether direct or indirect. In determining which of two bases of measurement of reasonably anticipated benefits is most reliable, the factors set forth in § 1.482–1(c)(2)(ii) (Data and assumptions) must be taken into account. It normally will be expected that the basis that provided the most reliable estimate for a particular year will continue to provide the most reliable estimate in subsequent years, absent a material change in the factors that affect the reliability of the estimate. Regardless of whether a direct or indirect basis of measurement is used, adjustments may be required to account for material differences in the activities that controlled participants undertake to exploit their interests in covered intangibles. See *Example 8* of paragraph (f)(3)(iii)(E) of this section.

(iii) *Indirect bases for measuring anticipated benefits.* Indirect bases for measuring anticipated benefits from participation in a qualified cost sharing arrangement include the following:

(A) *Units used, produced or sold.* Units of items used, produced or sold by each controlled participant in the business activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to the covered intangibles per unit of the item or items used, produced or sold. This circumstance is most likely to arise when the covered intangibles are exploited by the controlled participants in the use, production or sale of substantially uniform items under similar economic conditions.

(B) *Sales.* Sales by each controlled participant in the business activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to covered intangibles per dollar of sales. This circumstance is most likely to arise if the costs of exploiting covered intangibles are not substantial relative to the revenues generated, or if the principal effect of using covered intangibles is to increase the controlled participants' revenues (e.g., through a price premium on the products they sell) without affecting their costs substantially. Sales by each controlled participant are unlikely to provide a reliable basis for measuring benefits unless each controlled participant operates at the same market level (e.g., manufacturing, distribution, etc.).

(C) *Operating profit.* Operating profit of each controlled participant from the activities in which covered intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will be more reliable to the extent that such profit is largely attributable to the use of covered intangibles, or if the share of profits attributable to the use of covered intangibles is expected to be similar for each controlled participant. This circumstance is most likely to arise when covered intangibles are integral to the activity that generates the profit and

the activity could not be carried on or would generate little profit without use of those intangibles.

(D) *Other bases for measuring anticipated benefits.* Other bases for measuring anticipated benefits may, in some circumstances, be appropriate, but only to the extent that there is expected to be a reasonably identifiable relationship between the basis of measurement used and additional income generated or costs saved by the use of covered intangibles. For example, a division of costs based on employee compensation would be considered unreliable unless there were a relationship between the amount of compensation and the expected income of the controlled participants from the use of covered intangibles.

(E) *Examples.* The following examples illustrate this paragraph (f)(3)(iii):

Example 1. Foreign Parent (FP) and U.S. Subsidiary (USS) both produce a feedstock for the manufacture of various high-performance plastic products. Producing the feedstock requires large amounts of electricity, which accounts for a significant portion of its production cost. FP and USS enter into a cost sharing arrangement to develop a new process that will reduce the amount of electricity required to produce a unit of the feedstock. FP and USS currently both incur an electricity cost of X% of its other production costs and rates for each are expected to remain similar in the future. How much the new process, if it is successful, will reduce the amount of electricity required to produce a unit of the feedstock is uncertain, but it will be about the same amount for both companies. Therefore, the cost savings each company is expected to achieve after implementing the new process are similar relative to the total amount of the feedstock produced. Under the cost sharing arrangement FP and USS divide the costs of developing the new process based on the units of the feedstock each is anticipated to produce in the future. In this case, units produced is the most reliable basis for measuring benefits and dividing the intangible development costs because each participant is expected to have a similar decrease in costs per unit of the feedstock produced.

Example 2. The facts are the same as in *Example 1*, except that USS pays X% of its other production costs for electricity while FP pays 2X% of its other production costs. In this case, units produced is not the most reliable basis for measuring benefits and dividing the intangible development costs because the participants do not expect to have a similar decrease in costs per unit of the feedstock produced. The district director determines that the most reliable measure of benefit shares may be based on units of the feedstock produced if FP's units are weighted relative to USS' units by a factor of 2. This reflects the fact that FP pays twice as much as USS as a percentage of its other production costs for electricity and, therefore, FP's savings per unit of the feedstock would be twice USS's savings from any new process eventually developed.

Example 3. The facts are the same as in *Example 2*, except that to supply the particular needs of the U.S. market USS manufactures the feedstock with somewhat different properties than FP's feedstock. This requires USS to employ a somewhat different production process than does FP. Because of this difference, it will be more costly for USS to adopt any new process that may be developed under the cost sharing agreement. In this case, units produced is not the most reliable basis for measuring benefit shares. In order to reliably determine benefit shares, the district director offsets the reasonably anticipated costs of adopting the new process against the reasonably anticipated total savings in electricity costs.

Example 4. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new anesthetic drugs. USP obtains the right to use any resulting patent in the U.S. market, and FS obtains the right to use the patent in the European market. USP and FS divide costs on the basis of anticipated operating profit from each patent under development. USP anticipates that it will receive a much higher profit than FS per unit sold because drug prices are uncontrolled in the U.S., whereas drug prices are regulated in many European countries. In this case, the controlled taxpayers' basis for measuring benefits is the most reliable.

Example 5. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) both manufacture and sell fertilizers. They enter into a cost sharing arrangement to develop a new pellet form of a common agricultural fertilizer that is currently available only in powder form. Under the cost sharing arrangement, USS obtains the rights to produce and sell the new form of fertilizer for the U.S. market while FP obtains the rights to produce and sell the fertilizer for the rest of the world. The costs of developing the new form of fertilizer are divided on the basis of the anticipated sales of fertilizer in the participants' respective markets.

(ii) If the research and development is successful the pellet form will deliver the fertilizer more efficiently to crops and less fertilizer will be required to achieve the same effect on crop growth. The pellet form of fertilizer can be expected to sell at a price premium over the powder form of fertilizer based on the savings in the amount of fertilizer that needs to be used. If the research and development is successful, the costs of producing pellet fertilizer are expected to be approximately the same as the costs of producing powder fertilizer and the same for both FP and USS. Both FP and USS operate at approximately the same market levels, selling their fertilizers largely to independent distributors.

(iii) In this case, the controlled taxpayers' basis for measuring benefits is the most reliable.

Example 6. The facts are the same as in *Example 5*, except that FP distributes its fertilizers directly while USS sells to independent distributors. In this case, sales of USS and FP are not the most reliable basis for measuring benefits unless adjustments are made to account for the difference in market levels at which the sales occur.

Example 7. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop materials that will be used to train all new entry-level employees. FP and USS determine that the new materials will save approximately ten hours of training time per employee. Because their entry-level employees are paid on differing wage scales, FP and USS decide that they should not divide costs based on the number of entry-level employees hired by each. Rather, they divide costs based on compensation paid to the entry-level employees hired by each. In this case, the basis used for measuring benefits is the most reliable because there is a direct relationship between compensation paid to new entry-level employees and costs saved by FP and USS from the use of the new training materials.

Example 8. U.S. Parent (USP), Foreign Subsidiary 1 (FS1) and Foreign Subsidiary 2 (FS2) enter into a cost sharing arrangement to develop computer software that each will market and install on customers' computer systems. The participants divide costs on the basis of projected sales by USP, FS1, and FS2 of the software in their respective geographic areas. However, FS1 plans for sound business reasons not only to sell but also to license the software, and FS1's licensing income (which is a percentage of the licensees' sales) is not counted in the projected benefits. In this case, the basis used for measuring the benefits of each participant is not the most reliable because all of the benefits received by participants are not taken into account. In order to reliably determine benefit shares, FS1's projected benefits from licensing must be included in the measurement on a basis that is the same as that used to measure its own and the other participants' projected benefits from sales (e.g., all participants might measure their benefits on the basis of operating profit).

(iv) *Projections used to estimate anticipated benefits*—(A) *In general.* The reliability of an estimate of anticipated benefits also depends upon the reliability of projections used in making the estimate. Projections required for this purpose generally include a determination of the time period between the inception of the research and development and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the intangible will generate benefits. A projection of the relevant basis for measuring anticipated benefits may require a projection of the factors that underlie it. For example, a projection of operating profits may require a projection of sales, cost of sales, operating expenses, and other factors that affect operating profits. If it is anticipated that there will be significant variation among controlled participants in the timing of their receipt of benefits, and consequently

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benefit shares are expected to vary significantly over the years in which benefits will be received, it may be necessary to use the present discounted value of the projected benefits to reliably determine each controlled participant's share of those benefits. If it is not anticipated that benefit shares will significantly change over time, current annual benefit shares may provide a reliable projection of anticipated benefit shares. This circumstance is most likely to occur when the cost sharing arrangement is a long-term arrangement, the arrangement covers a wide variety of intangibles, the composition of the covered intangibles is unlikely to change, the covered intangibles are unlikely to generate unusual profits, and each controlled participant's share of the market is stable.

(B) *Unreliable projections.* A significant divergence between projected benefit shares and actual benefit shares may indicate that the projections were not reliable. In such a case, the district director may use actual benefits as the most reliable measure of anticipated benefits. If benefits are projected over a period of years, and the projections for initial years of the period prove to be unreliable, this may indicate that the projections for the remaining years of the period are also unreliable and thus should be adjusted. Projections will not be considered unreliable based on a divergence between a controlled participant's projected benefit share and actual benefit share if the amount of such divergence for every controlled participant is less than or equal to 20% of the participant's projected benefit share. Further, the district director will not make an allocation based on such divergence if the difference is due to an extraordinary event, beyond the control of the participants, that could not reasonably have been anticipated at the time that costs were shared. For purposes of this paragraph, all controlled participants that are not U.S. persons will be treated as a single controlled participant. Therefore, an adjustment based on an unreliable projection will be made to the cost shares of foreign controlled participants only if there is a matching adjustment to the cost shares of controlled participants that are U.S. persons. Nothing in this paragraph (f)(3)(iv)(B) will prevent the district director from making an allocation if the taxpayer did not use the most reliable basis for measuring anticipated benefits. For example, if the taxpayer measures anticipated benefits based on units sold, and the district director determines that another basis is more reliable for measuring anticipated benefits, then the fact that actual units sold were within 20% of the projected unit sales will not preclude an allocation under this section.

(C) *Foreign-to-foreign adjustments.* Notwithstanding the limitations on adjustments provided in paragraph (f)(3)(iv)(B) of this section, adjustments to cost shares based on an unreliable projection also may be made solely among foreign controlled participants if the variation between actual and projected benefits has the effect of substantially reducing U.S. tax.

(D) *Examples.* The following examples illustrate this paragraph (f)(3)(iv):

Example 1. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop a new car model. The participants plan to spend four years developing the new model and four years producing and selling the new model. USS and FP project total sales of $4 billion and $2 billion, respectively, over the planned four years of exploitation of the new model. Cost shares are divided for each year based on projected total sales. Therefore, USS bears 66⅔% of each year's intangible development costs and FP bears 33⅓% of such costs.

(ii) USS typically begins producing and selling new car models a year after FP begins producing and selling new car models. The district director determines that in order to reflect USS' one-year lag in introducing new car models, a more reliable projection of each participant's share of benefits would be based on a projection of all four years of sales for each participant, discounted to present value.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new and improved household cleaning products. Both participants have sold household cleaning products for many years and have stable market shares. The products under development are unlikely to produce unusual profits for either participant. The participants divide costs on the basis of each participant's current sales of household cleaning products. In this case, the participants' future benefit shares are reliably projected by current sales of cleaning products.

Example 3. The facts are the same as in *Example 2*, except that FS's market share is rapidly expanding because of the business failure of a competitor in its geographic area. The district director determines that the participants' future benefit shares are not reliably projected by current sales of cleaning products and that FS's benefit projections should take into account its growth in sales.

Example 4. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement to develop synthetic fertilizers and insecticides. FP and USS share costs on the basis of each participant's current sales of fertilizers and insecticides. The market shares of the participants have been stable for fertilizers, but FP's market share for insecticides has been expanding. The district director determines that the participants' projections of benefit shares are reliable with regard to fertilizers, but not reliable with regard to insecticides; a more reliable projection of benefit shares would take into account the expanding market share for insecticides.

Example 5. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a cost sharing arrangement to develop new food products, dividing costs on the basis of projected sales two years in the future. In year 1, USP and FS project that their sales in year 3 will be equal, and they divide costs accordingly. In year 3, the district director examines the participants' method for dividing costs. USP and FS actually accounted for 42% and 58% of total sales, respectively. The district director agrees that sales two years in the future provide a reliable basis for estimating benefit shares. Because the differences between USP's and FS's actual and projected benefit shares are less than 20% of their projected benefit shares, the projection of future benefits for year 3 is reliable.

Example 6. The facts are the same as in *Example 5*, except that the in year 3 USP and FS actually accounted for 35% and 65% of total sales, respectively. The divergence between USP's projected and actual benefit shares is greater than 20% of USP's projected benefit share and is not due to an extraordinary event beyond the control of the participants. The district director concludes that the projection of anticipated benefit shares was unreliable, and uses actual benefits as the basis for an adjustment to the cost shares borne by USP and FS.

Example 7. U.S. Parent (USP), a U.S. corporation, and its foreign subsidiary (FS) enter a cost sharing arrangement in year 1. They project that they will begin to receive benefits from covered intangibles in years 4 through 6, and that USP will receive 60% of total benefits and FS 40% of total benefits. In years 4 through 6, USP and FS actually receive 50% each of the total benefits. In evaluating the reliability of the participants' projections, the district director compares these actual benefit shares to the projected benefit shares. Although USP's actual benefit share (50%) is within 20% of its projected benefit share (60%), FS's actual benefit share (50%) is not within 20% of its projected benefit share (40%). Based on this discrepancy, the district director may conclude that the participants' projections were not reliable and may use actual benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 8. Three controlled taxpayers, USP, FS1 and FS2 enter into a cost sharing arrangement. FS1 and FS2 are foreign. USP is a United States corporation that controls all the stock of FS1 and FS2. The participants project that they will share the total benefits of the covered intangibles in the following percentages: USP 50%; FS1 30%; and FS2 20%. Actual benefit shares are as follows: USP 45%; FS1 25%; and FS2 30%. In evaluating the reliability of the participants' projections, the district director compares these actual benefit shares to the projected benefit shares. For this purpose, FS1 and FS2 are treated as a single participant. The actual benefit share received by USP (45%) is within 20% of its projected benefit share (50%). In addition, the non-US participants' actual benefit share (55%) is also within 20% of their projected benefit share (50%). Therefore, the district director concludes that the participants' projections of future benefits were reliable, despite the fact that FS2's actual benefit share (30%) is not within 20% of its projected benefit share (20%).

Example 9. The facts are the same as in *Example 8*. In addition, the district director determines that FS2 has significant operating losses and has no earnings and profits, and that FS1 is profitable and has earnings and profits. Based on all the evidence, the district director concludes that the participants arranged that FS1 would bear a larger cost share than appropriate in order to reduce FS1's earnings and profits and thereby reduce inclusions USP otherwise would be deemed to have on account of FS1 under subpart F. Pursuant to § 1.482–7 (f)(3)(iv)(C), the district director may make an adjustment solely to the cost shares borne by FS1 and FS2 because FS2's projection of future benefits was unreliable and the variation between actual and projected benefits had the effect of substantially reducing USP's U.S. income tax liability (on account of FS1 subpart F income).

Example 10. (i)(A) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a cost sharing arrangement in 1996 to develop a new treatment for baldness. USS's interest in any treatment developed is the right to produce and sell the treatment in the U.S. market while FP retains rights to produce and sell the treatment in the rest of the world. USS and FP measure their anticipated benefits from the cost sharing arrangement based on their respective projected future sales of the baldness treatment. The following sales projections are used:

SALES
[In millions of dollars]

Year	USS	FP
1997	5	10
1998	20	20
1999	30	30
2000	40	40
2001	40	40
2002	40	40
2003	40	40
2004	20	20
2005	10	10
2006	5	5

(B) In 1997, the first year of sales, USS is projected to have lower sales than FP due to lags in U.S. regulatory approval for the baldness treatment. In each subsequent year USS and FP are projected to have equal sales. Sales are projected to build over the first three years of the period, level off for several years, and then decline over the final years of the period as new and improved baldness treatments reach the market.

(ii) To account for USS's lag in sales in the first year, the present discounted value of sales over the period is used as the basis for measuring benefits. Based on the risk associated with this venture, a discount rate of 10 percent is selected. The present discounted value of projected sales is determined to be approximately $154.4 million for USS and $158.9 million for FP. On this basis USS and FP are projected to obtain approximately 49.3% and 50.7% of the benefit, respectively, and the costs of developing the baldness treatment are shared accordingly.

(iii) (A) In the year 2002 the district director examines the cost sharing arrangement. USS and FP have obtained the following sales results through the year 2001:

SALES
[In millions of dollars]

Year	USS	FP
1997	0	17
1998	17	35
1999	25	41
2000	38	41
2001	39	41

(B) USS's sales initially grew more slowly than projected while FP's sales grew more quickly. In each of the first three years of the period the share of total sales of at least one of the parties diverged by over 20% from its projected share of sales. However, by the year 2001 both parties' sales had leveled off at approximately their projected values. Taking into account this leveling off of sales and all the facts and circumstances, the district director determines that it is appropriate to use the original projections for the remaining years of sales. Combining the actual results through the year 2001 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $141.6 million for USS and $187.3 million for FP. This result implies that USS and FP obtain approximately 43.1% and 56.9%, respectively, of the anticipated benefits from the baldness treatment. Because these benefit shares are within 20% of the benefit shares calculated based on the original sales projections, the district director determines that, based on the difference between actual and projected benefit shares, the original projections were not unreliable. No adjustment is made based on the difference between actual and projected benefit shares.

Example 11. (i) The facts are the same as in *Example 10*, except that the actual sales results through the year 2001 are as follows:

SALES
[In millions of dollars]

Year	USS	FP
1997	0	17
1998	17	35
1999	25	44
2000	34	54
2001	38	55

(ii) Based on the discrepancy between the projections and the actual results and on consideration of all the facts, the district director determines that for the remaining years the following sales projections are more reliable than the original projections:

SALES
[In millions of dollars]

Year	USS	FP
2002	38	55
2003	36	55
2004	18	28
2005	9	14
2006	4.5	7

(iii) Combining the actual results through the year 2001 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $131.2 million for USS and $229.4 million for FP. This result implies that USS and FP obtain approximately 35.4% and 63.6%, respectively, of the anticipated benefits from the baldness treatment. These benefit shares diverge by greater than 20% from the benefit shares calculated based on the original sales projections, and the district director determines that, based on the difference between actual and projected benefit shares, the original projections were unreliable. The district director adjusts costs shares for each of the taxable years under examination to conform them to the recalculated shares of anticipated benefits.

(4) *Timing of allocations.* If the district director reallocates costs under the provisions of this paragraph (f), the allocation must be reflected for tax purposes in the year in which the costs were incurred. When a cost sharing payment is owed by one member of a qualified cost sharing arrangement to another member, the district director may make appropriate allocations to reflect an arm's length rate of interest for the time value of money, consistent with the provisions of § 1.482–2(a) (Loans or advances).

(g) *Allocations of income, deductions or other tax items to reflect transfers of intangibles (buy-in)*—(1) *In general.* A controlled participant that makes intangible property available to a qualified cost sharing arrangement will be treated as having transferred interests in such property to the other controlled participants, and such other controlled participants must make buy-in payments to it, as provided in paragraph (g)(2) of this section. If the other controlled participants fail to make such payments, the district director may make appropriate allocations, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to reflect an arm's length consideration for the transferred intangible property. Further, if a group of controlled taxpayers participates in a qualified cost sharing arrangement, any change in the controlled participants' interests in covered intangibles, whether by reason of entry of a new participant or otherwise by reason of transfers (including deemed transfers) of interests among existing participants, is a transfer

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of intangible property, and the district director may make appropriate allocations, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to reflect an arm's length consideration for the transfer. See paragraphs (g) (3), (4), and (5) of this section. Paragraph (g)(6) of this section provides rules for assigning unassigned interests under a qualified cost sharing arrangement.

(2) *Pre-existing intangibles.* If a controlled participant makes pre-existing intangible property in which it owns an interest available to other controlled participants for purposes of research in the intangible development area under a qualified cost sharing arrangement, then each such other controlled participant must make a buy-in payment to the owner. The buy-in payment by each such other controlled participant is the arm's length charge for the use of the intangible under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, multiplied by the controlled participant's share of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section). A controlled participant's payment required under this paragraph (g)(2) is deemed to be reduced to the extent of any payments owed to it under this paragraph (g)(2) from other controlled participants. Each payment received by a payee will be treated as coming pro rata out of payments made by all payors. See paragraph (g)(8), *Example 4*, of this section. Such payments will be treated as consideration for a transfer of an interest in the intangible property made available to the qualified cost sharing arrangement by the payee. Any payment to or from an uncontrolled participant in consideration for intangible property made available to the qualified cost sharing arrangement will be shared by the controlled participants in accordance with their shares of reasonably anticipated benefits (as defined in paragraph (f)(3) of this section). A controlled participant's payment required under this paragraph (g)(2) is deemed to be reduced by such a share of payments owed from an uncontrolled participant to the same extent as by any payments owed from other controlled participants under this paragraph (g)(2). See paragraph (g)(8), *Example 5*, of this section.

(3) *New controlled participant.* If a new controlled participant enters a qualified cost sharing arrangement and acquires any interest in the covered intangibles, then the new participant must pay an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, for such interest to each controlled participant from whom such interest was acquired.

(4) *Controlled participant relinquishes interests.* A controlled participant in a qualified cost sharing arrangement may be deemed to have acquired an interest in one or more covered intangibles if another controlled participant transfers, abandons, or otherwise relinquishes an interest under the arrangement, to the benefit of the first participant. If such a relinquishment occurs, the participant relinquishing the interest must receive an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, for its interest. If the controlled participant that has relinquished its interest subsequently uses that interest, then that participant must pay an arm's length consideration, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6, to the controlled participant that acquired the interest.

(5) *Conduct inconsistent with the terms of a cost sharing arrangement.* If, after any cost allocations authorized by paragraph (a)(2) of this section, a controlled participant bears costs of intangible development that over a period of years are consistently and materially greater or lesser than its share of reasonably anticipated benefits, then the district director may conclude that the economic substance of the arrangement between the controlled participants is inconsistent with the terms of the cost sharing arrangement. In such a case, the district director may disregard such terms and impute an agreement consistent with the controlled participants' course of conduct, under which a controlled participant that bore a disproportionately greater share of costs received additional interests in covered intangibles. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms) and § 1.482- 4(f)(3)(ii) (Identification of owner). Accordingly, that participant must receive an arm's length payment from any controlled participant whose share of the intangible development costs is less than its share of reasonably anticipated benefits over time, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6.

(6) *Failure to assign interests under a qualified cost sharing arrangement.* If a qualified cost sharing arrangement fails to assign an interest in a covered intangible, then each controlled participant will be deemed to hold a share in such interest equal to its share of the costs of developing such intangible. For this purpose, if cost shares have varied materially over the period during which such intangible was developed, then the costs of developing the intangible must be measured by their present discounted value as of the date when the first such costs were incurred.

(7) *Form of consideration.* The consideration for an acquisition described in this paragraph (g) may take any of the following forms:

(i) *Lump sum payments.* For the treatment of lump sum payments, see § 1.482–4(f)(5) (Lump sum payments);

(ii) *Installment payments.* Installment payments spread over the period of use of the intangible by the transferee, with interest calculated in accordance with § 1.482–2(a) (Loans or advances); and

(iii) *Royalties.* Royalties or other payments contingent on the use of the intangible by the transferee.

(8) *Examples.* The following examples illustrate allocations described in this paragraph (g):

Example 1. In year one, four members of a controlled group enter into a cost sharing arrangement to develop a commercially feasible process for capturing energy from nuclear fusion. Based on a reliable projection of their future benefits, each cost sharing participant bears an equal share of the costs. The cost of developing intangibles for each participant with respect to the project is approximately $1 million per year. In year ten, a fifth member of the controlled group joins the cost sharing group and agrees to bear one-fifth of the future costs in exchange for part of the fourth member's territory reasonably anticipated to yield benefits amounting to one-fifth of the total benefits. The fair market value of intangible property within the arrangement at the time the fifth company joins the arrangement is $45 million. The new member must pay one-fifth of that amount (that is, $9 million total) to the fourth member from whom it acquired its interest in covered intangibles.

Example 2. U.S. Subsidiary (USS), Foreign Subsidiary (FS) and Foreign Parent (FP) enter into a cost sharing arrangement to develop new products within the Group X product line. USS manufactures and sells Group X products in North America, FS manufactures and sells Group X products in South America, and FP manufactures and sells Group X products in the rest of the world. USS, FS and FP project that each will manufacture and sell a third of the Group X products under development, and they share costs on the basis of projected sales of manufactured products. When the new Group X products are developed, however, USS ceases to manufacture Group X products, and FP sells its Group X products to USS for resale in the North American market. USS earns a return on its resale activity that is appropriate given its function as a distributor, but does not earn a return attributable to exploiting covered intangibles. The district director determines that USS' share of the costs (one-third) was greater than its share of reasonably anticipated benefits (zero) and that it has transferred an interest in the intangibles for which it should receive a payment from FP, whose share of the intangible development costs (one-third) was less than its share of reasonably anticipated benefits over time (two-thirds). An allocation is made under §§ 1.482–1 and 1.482–4 through 1.482–6 from FP to USS to recognize USS' one-third interest in the intangibles. No allocation is made from FS to USS because FS did not exploit USS' interest in covered intangibles.

Example 3. U.S. Parent (USP), Foreign Subsidiary 1 (FS1), and Foreign Subsidiary 2 (FS2) enter into a cost sharing arrangement to develop a cure for the common cold. Costs are shared USP–50%, FS1–40% and FS2–10% on the basis of projected units of cold medicine to be produced by each. After ten years of research and development, FS1 withdraws from the arrangement, transferring its interests in the intangibles under development to USP in exchange for a lump sum payment of $10 million. The district director may review this lump sum payment, under the provisions of § 1.482–4(f)(5), to ensure that the amount is commensurate with the income attributable to the intangibles.

Example 4. (i) Four members A, B, C, and D of a controlled group form a cost sharing arrangement to develop the next generation technology for their business. Based on a reliable projection of their future benefits, the participants agree to bear shares of the costs incurred during the term of the agreement in the following percentages: A 40%; B 15%; C 25%; and D 20%. The arm's length charges, under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, for the use of the existing intangible property they respectively make available to the cost sharing arrangement are in the following amounts for the taxable year: A 80X; B 40X; C 30X; and D 30X. The provisional (before offsets) and final buy-in payments/receipts among A, B, C, and D are shown in the table as follows:

[All amounts stated in X's]

	A	B	C	D
Payments	<40>	<21>	<37.5>	<30>
Receipts	48	34	22.5	24
Final	8	13	<15>	<6>

(ii) The first row/first column shows A's provisional buy-in payment equal to the product of 100X (sum of 40X, 30X, and 30X) and A's share of anticipated benefits of 40%. The second row/first column shows A's provisional buy-in receipts equal to the sum of the products of 80X and B's, C's, and D's anticipated benefits shares (15%, 25%, and 20%, respectively). The other entries in the first two rows of the table are similarly computed. The last row shows the final buy-in receipts/payments after offsets. Thus, for the taxable year, A and B are treated as receiving the 8X and 13X, respectively, pro rata out of payments by C and D of 15X and 6X, respectively.

Example 5. A and B, two members of a controlled group form a cost sharing arrangement with an unrelated third party C to develop a new technology useable in their respective businesses. Based on a reliable projection of their future benefits, A and B agree to bear shares of 60% and 40%, respectively, of the costs incurred during the term of the agreement. A also makes available its existing technology for purposes of the research to be undertaken. The arm's length charge, under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, for the use of the existing technology is 100X for the taxable year. Under its agreement with A and B, C must make a specified cost sharing payment as well as a payment of 50X for the taxable year on account of the pre- existing intangible property made available to the cost sharing arrangement. B's provisional buy-in payment (before offsets) to A for the taxable year is 40X (the product of 100X and B's anticipated benefits share of 40%). C's payment of 50X is shared provisionally between A and B in accordance with their shares of reasonably anticipated benefits, 30X (50X times 60%) to A and 20X (50X times 40%) to B. B's final buy-in payment (after offsets) is 20X (40X less 20X). A is treated as receiving the 70X total provisional payments (40X plus 30X) pro rata out of the final payments by B and C of 20X and 50X, respectively.

(h) *Character of payments made pursuant to a qualified cost sharing arrangement*—(1) *In general.* Payments made pursuant to a qualified cost sharing arrangement (other than payments described in paragraph (g) of this section) generally will be considered costs of developing intangibles of the payor and reimbursements of the same kind of costs of developing intangibles of the payee. For purposes of this paragraph (h), a controlled participant's payment required under a qualified cost sharing arrangement is deemed to be reduced to the extent of any payments owed to it under the arrangement from other controlled or uncontrolled participants. Each payment received by a payee will be treated as coming pro rata out of payments made by all payors. Such payments will be applied pro rata against deductions for the taxable year that the payee is allowed in connection with the qualified cost sharing arrangement. Payments received in excess of such deductions will be treated as in consideration for use of the tangible property made available to the qualified cost sharing arrangement by the payee. For purposes of the research credit determined under section 41, cost sharing payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–8(e). Any payment made or received by a taxpayer pursuant to an arrangement that the district director determines not to be a qualified cost sharing arrangement, or a payment made or received pursuant to paragraph (g) of this section, will be subject to the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6. Any payment that in substance constitutes a cost sharing payment will be treated as such for purposes of this section, regardless of its characterization under foreign law.

(2) *Examples.* The following examples illustrate this paragraph (h):

Example 1. U.S. Parent (USP) and its wholly owned Foreign Subsidiary (FS) form a cost sharing arrangement to develop a miniature widget, the Small R. Based on a reliable projection of their future benefits, USP agrees to bear 40% and FS to bear 60% of the costs incurred during the term of the agreement. The principal costs in the intangible development area are operating expenses incurred by FS in Country Z of 100X annually, and operating expenses incurred by USP in the United States also of 100X annually. Of the total costs of 200X, USP's share is 80X and FS's share is 120X, so that FS must make a payment to USP of 20X. This payment will be treated as a reimbursement of 20X of USP's operating expenses in the United States. Accordingly, USP's Form 1120 will reflect an 80X deduction on account of activities performed in the United States for purposes of allocation and apportionment of the deduction to source. The Form 5471 for FS will reflect a 100X deduction on account of activities performed in Country Z, and a 20X deduction on account of activities performed in the United States.

Example 2. The facts are the same as in *Example 1*, except that the 100X of costs borne by USP consist of 5X of operating expenses incurred by USP in the United States and 95X of fair market value rental cost for a facility in the United States. The depreciation deduction attributable to the U.S. facility is 7X. The 20X net payment by FS to USP will first be applied in reduction pro rata of the 5X deduction for operating expenses and the 7X depreciation deduction attributable to the U.S. facility. The 8X remainder will be treated as rent for the U.S. facility.

(i) *Accounting requirements.* The accounting requirements of this paragraph are that the controlled

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participants in a qualified cost sharing arrangement must use a consistent method of accounting to measure costs and benefits, and must translate foreign currencies on a consistent basis.

(j) *Administrative requirements*—(1) *In general.* The administrative requirements of this paragraph consist of the documentation requirements of paragraph (j)(2) of this section and the reporting requirements of paragraph (j)(3) of this section.

(2) *Documentation.* A controlled participant must maintain sufficient documentation to establish that the requirements of paragraphs (b)(4) and (c)(1) of this section have been met, as well as the additional documentation specified in this paragraph (j)(2), and must provide any such documentation to the Internal Revenue Service within 30 days of a request (unless an extension is granted by the district director). Documents necessary to establish the following must also be maintained—

(i) The total amount of costs incurred pursuant to the arrangement;

(ii) The costs borne by each controlled participant;

(iii) A description of the method used to determine each controlled participant's share of the intangible development costs, including the projections used to estimate benefits, and an explanation of why that method was selected;

(iv) The accounting method used to determine the costs and benefits of the intangible development (including the method used to translate foreign currencies), and, to the extent that the method materially differs from U.S. generally accepted accounting principles, an explanation of such material differences; and

(v) Prior research, if any, undertaken in the intangible development area, any tangible or intangible property made available for use in the arrangement, by each controlled participant, and any information used to establish the value of pre-existing and covered intangibles.

(3) *Reporting requirements.* A controlled participant must attach to its U.S. income tax return a statement indicating that it is a participant in a qualified cost sharing arrangement, and listing the other controlled participants in the arrangement. A controlled participant that is not required to file a U.S. income tax return must ensure that such a statement is attached to Schedule M of any Form 5471 or to any Form 5472 filed with respect to that participant.

(k) *Effective date.* This section is effective for taxable years beginning on or after January 1, 1996.

(l) *Transition rule.* A cost sharing arrangement will be considered a qualified cost sharing arrangement, within the meaning of this section, if, prior to January 1, 1996, the arrangement was a bona fide cost sharing arrangement under the provisions of § 1.482–7T (as contained in the 26 CFR part 1 edition revised as of April 1, 1995), but only if the arrangement is amended, if necessary, to conform with the provisions of this section by December 31, 1996.

§ 1.482–7T [Removed]

Par. 4. Section 1.482–7T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 6. Section 301.7701–3 is amended by adding paragraph (e) to read as follows:

§ 301.7701–3 Partnerships.

* * * * *

(e) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482–7 of this chapter and any arrangement that is treated by the Service as a qualified cost sharing arrangement under § 1.482–7 of this chapter is not classified as a partnership for purposes of the Internal Revenue Code. See § 1.482–7 of this chapter for the proper treatment of qualified cost sharing arrangements.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

"1.482–7 ..... 1545–1364".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 30, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30617 Filed 12–19–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 53

[TD 8630]

RIN 1545–AT03

Excise Tax On Self-Dealing By Private Foundations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of self-dealing for private foundations. These regulations modify the application of the self-dealing rules to the provision by a private foundation of directors' and officers' liability insurance to disqualified persons. In general, these regulations provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in his/her capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation for insurance or indemnification generally are not included in the compensation of the disqualified person for purposes of determining whether the disqualified person's compensation is reasonable.

DATES: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995 proposed regulations amending § 53.4941(d)–2(f) [EE–56–94, 1995–6 I.R.B. 39] under section 4941 of the Internal Revenue Code of 1986 were published in the Federal Register (60 FR 82). The proposed regulations provided that generally it would not be self-dealing, nor treated as the payment of compensation, if a private foundation were to indemnify or provide insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation. After IRS and Treasury consideration of the public comments received regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Prior to this Treasury decision, § 53.4941(d)–2(f)(1) provided that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager was self- dealing unless the premium amounts were included in the compensation of the foundation manager. The payment of chapter 42 taxes by the private foundation on behalf of the foundation manager was self-dealing whether or not the amounts were included in the manager's compensation.

Section 53.4941(d)–2(f)(3) provided that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes was not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must have been successful in such defense, or such proceeding must have been terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

This Treasury decision expands the scope of the regulations to cover indemnification and insurance payments made by a private foundation to or on behalf of a foundation manager in connection with any civil proceeding arising from the manager's performance of services for the private foundation. The regulations also clarify the distinction between the treatment of indemnification and insurance payments under chapter 42 and the treatment of these same items for income tax purposes.

The proposed regulations resulted in some confusion as to whether certain indemnification and insurance payments would be considered compensatory or non-compensatory. The final regulations have been revised to provide greater clarity. They divide indemnification payments and insurance coverage into non-compensatory and compensatory categories, described comprehensively in § 53.4941(d)–2(f) (3) and (4). The second and third sentences of § 53.4941(d)–2(f)(1) of the proposed regulations have been removed because their substance was incorporated into § 53.4941(d)–2(f)(4). Generally, the non-compensatory category includes indemnification and insurance payments that cover expenses reasonably incurred in proceedings that do not result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as expenses for the foundation's administration and operation rather than compensation for the manager's services. The compensatory category includes indemnification or insurance payments that cover taxes (including taxes imposed by chapter 42), penalties or expenses of correction, expenses that were not reasonably incurred, or expenses for proceedings that result from a willful act or omission of the manager undertaken without reasonable cause. These payments are viewed as being exclusively for the benefit of the manager, not the foundation.

The regulations provide that non-compensatory indemnification and insurance payments are not affected by the prohibition against self-dealing. Conversely, compensatory indemnification and insurance payments are considered acts of self-dealing unless they are added to the benefiting manager's total compensation for purposes of determining whether that compensation is reasonable. If the total compensation is not reasonable, the foundation will have engaged in an act of self-dealing.

In some instances, a foundation may purchase an insurance policy that provides both non-compensatory and compensatory coverage. Some commentators have recommended that no allocation of insurance premiums be required when a single policy of this sort is purchased. These commentators argue that the allocation requirement places an undue burden on private foundations. After careful consideration, the IRS and the Treasury Department have decided to retain the allocation provision in the final regulations. The self-dealing rules were meant to discourage foundations from relieving managers of penalties, taxes and expenses of correction, as well as expenses ultimately resulting from the manager's willful violation of the law. A rule that did not require an allocation to determine whether the disqualified person's compensation is reasonable for purposes of chapter 42 could have the opposite effect. The insurance allocation rules are now set forth in § 53.4941(d)–2(f)(5).

Some commentators requested a clearer statement of what is meant by the statement that indemnification or insurance premiums are to be treated as compensation to the benefiting foundation manager. The IRS and the Treasury Department agree that further clarification is desirable. Accordingly, § 53.4941(d)–2(f)(7) has been added. It provides that treatment as compensation for the limited purpose of determining whether compensation is reasonable under chapter 42 is separate and distinct from treatment as income to the benefiting manager under the income tax provisions. Whether any amount of indemnification or insurance is included in the manager's gross income for individual income tax purposes is determined in accordance with section 132, without regard to the treatment of such amounts under chapter 42.

Finally, a provision has been added to the regulations specifying that a foundation may disregard de minimis benefits when calculating the total amount of compensation paid to an officer, director or foundation manager for purposes of determining whether that compensation is reasonable. In this context, a de minimis benefit is one excluded from gross income under section 132(a)(4). This provision makes explicit a Service position that has previously been reflected in the instructions to the Form 990–PF.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.4941(d)–2 is amended as follows:

1. Paragraph (f)(1) is amended by removing the second and third sentences and revising the fourth sentence.
2. Paragraph (f)(3) is revised.
3. Paragraph (f)(4) is redesignated as paragraph (f)(9).
4. New paragraphs (f)(4) through (f)(8) are added.

The additions and revisions read as follows:

§ 53.4941(d)–2 Specific acts of self-dealing.

* * * * *

(f) *Transfer or use of the income or assets of a private foundation*—(1) *In general.* * * * For purposes of the preceding sentence, the purchase or sale of stock or other securities by a private foundation shall be an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person.

* * *

* * * * *

(3) *Non-compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) Except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services (or failure to perform services) on behalf of the foundation, against all expenses (other than taxes, including taxes imposed by chapter 42, penalties, or expenses of correction) including attorneys' fees, judgments and settlement expenditures if—

(A) Such expenses are reasonably incurred by the manager in connection with such proceeding; and

(B) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.

(ii) Similarly, except as provided in § 53.4941(d)–3(c), section 4941(d)(1) shall not apply to premiums for insurance to make or to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3). Neither shall an indemnification or payment of insurance allowed pursuant to this paragraph (f)(3) be treated as part of the compensation paid to such manager for purposes of determining whether the compensation is reasonable under chapter 42.

(4) *Compensatory indemnification of foundation managers against liability for defense in civil proceedings.* (i) The indemnification by a private foundation of a foundation manager for compensatory expenses shall be an act of self-dealing under this paragraph unless when such payment is added to other compensation paid to such manager the total compensation is reasonable under chapter 42. A compensatory expense for purposes of this paragraph (f) is—

(A) Any penalty, tax (including a tax imposed by chapter 42), or expense of correction that is owed by the foundation manager;

(B) Any expense not reasonably incurred by the manager in connection with a civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation; or

(C) Any expense resulting from an act or failure to act with respect to which the manager has acted willfully and without reasonable cause.

(ii) Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for expenses described in this paragraph (f)(4) shall be an act of self-dealing under this paragraph (f) unless when such premiums are added to other compensation paid to such manager the total compensation is reasonable under chapter 42.

(5) *Insurance Allocation.* A private foundation shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated and that each manager's portion of the premium attributable to the compensatory coverage is included in that manager's compensation for purposes of determining reasonable compensation under chapter 42.

(6) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for expenses that the foundation manager has already incurred or anticipates incurring but also direct payment by the foundation of such expenses as the expenses arise.

(7) *Taxable Income.* The determination of whether any amount of indemnification or insurance premium discussed in this paragraph (f) is included in the manager's gross income for individual income tax purposes is made on the basis of the provisions of chapter 1 and without regard to the treatment of such amount for purposes of determining whether the manager's compensation is reasonable under chapter 42.

(8) *De minimis items.* Any property or service that is excluded from income under section 132(a)(4) may be disregarded for purposes of determining whether the recipient's compensation is reasonable under chapter 42.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: December 12, 1995.
Leslie Samuels,
Assistant Secretary of Treasury.
[FR Doc. 95–30838 Filed 12–19–95; 8:45 am]
BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 390

Collection By Administrative Offset

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Title 31 by removing Part 390. The action is being taken because the Treasury Department's promulgation of administrative offset regulations at 31 CFR Part 5, Subpart D, made Part 390 unnecessary.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Ed Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, Parkersburg, WV (304) 480–5187.

SUPPLEMENTARY INFORMATION:

Background

Part 390 applied to the collection of claims by administrative offset by the Bureau of the Public Debt. The rule was needed to implement the administrative offset provisions of section 10 of the Debt Collection Act of 1982, (31 U.S.C. 3716). Subsequent to the adoption of this rule, the Department of the Treasury promulgated Department-wide administrative offset regulations at 31 CFR Part 5, Subpart D.

Procedural Requirements

This final rule is not a "significant regulatory action" pursuant to Executive Order 12866. This final rule merely removes a redundancy from existing Department of the Treasury regulations. Accordingly, notice and public procedure thereon is unnecessary. Pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective upon publication. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 390

Administrative practice and procedure, Claims.

Accordingly, under the authority of 5 U.S.C. 301, 31 CFR chapter II is hereby amended by removing part 390.

PART 390—[REMOVED]

1. Part 390 is removed.

Dated: December 7, 1995.
Van Zeck,
Acting Commissioner of the Public Debt.
[FR Doc. 95–30780 Filed 12–19–95; 8:45 am]
BILLING CODE 4810–36–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BLACK HAWK (MHC 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BLACK HAWK (MHC 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mine clearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding the following ship to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
Black hawk	MHC 58	65.0° to 75.6°	284.1° to 294.6°.

Dated: November 30, 1995.
R.R. Pixa,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).
[FR Doc. 95–30720 Filed 12–19–95; 8:45 am]
BILLING CODE 3810–FF–P

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS OAK HILL (LSD 51) is a vessel of the Navy which, due to its special construction and purpose,

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cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OAK HILL (LSD 51) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of 706.2 is amended by adding the following vessel:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
USS Oak Hill	LSD 51			X	63.9

Dated: November 30, 1995.

R. R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–30721 Filed 12–19–95; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville Regulation 93–115]

RIN 2115–AA97

Security Zone Regulations; Naval Air Station Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing an existing security zone on the St. Johns river, Jacksonville, Florida, and establishing a security zone for the waters surrounding Naval Air Station Jacksonville, Florida. The change will delete an existing security zone for the north bank of the St. Johns river at the junction of Brills Cut Range and Broward Point Turn, known as Dunn Creek Terminal. The change also establishes a security zone around Naval Air Station Jacksonville to safeguard sensitive military assets on the facility. No person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida.

EFFECTIVE DATES: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: LT E.W. Heinold, Coast Guard Marine Safety Office Jacksonville, Florida at (904) 232–2957.

SUPPLEMENTARY INFORMATION: On May 19, 1994, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (59 FR 26155). Interested persons were requested to submit comments and no comments were received. One minor correction has been made since the notice of proposed rulemaking; the proposed section, § 165.709 will now read § 165.722. This correction will allow this regulation to be located in Title 33 Code of Federal Regulations (CFR) with other regulations for the MSO Jacksonville area of responsibility. As a matter of general interest the Coast Guard notes that this final regulation provides, that no person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida. Title 33 CFR 6.04–11 authorizes the Captain of the Port to enlist the aid and cooperation of Federal, State, county, municipal, and private agencies to assist in the enforcement of regulations issued pursuant to that part. The Captain of the Port of Jacksonville advises that the aid and cooperation of the Commanding Officer, Naval Air Station Jacksonville, FL has been enlisted to assist in the enforcement of this security zone.

Drafting Information

The drafters of these regulations are LT E.W. Heinold, project officer for the Captain of the Port Jacksonville, Florida and LTJG J. Diaz, project attorney, Seventh Coast Guard District Legal Office.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations consistent with section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B and the establishment of a security zone has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Recreational use of the area will be affected. The security zone will extend 400 feet from the shoreline and the depth of water in this area is such that commercial traffic will not be affected.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.710 [Removed]

2. Section 165.710 is removed.

3. Section 165.722 is added to read as follows:

§ 165.722 Security Zone: St. Johns River, Jacksonville, Florida.

(a) Location. The water located within the following area is established as a security zone: beginning at the shoreline of the St. Johns River at the northernmost property line of Naval Air Station Jacksonville next to Timuquana Country Club, at 30°14'39.5" N, 81°40'45" W; thence northeasterly to 30°14'42" N, 81°40'42" W; thence south remaining 400 feet from the shoreline at mean high water; thence past Piney Point and Black Point to the northern edge of Mulberry Cover Manatee refuge, 400 feet from Naval Air Station Jacksonville boat ramp, at 30°13'00" N, 81°40'23.5" W; thence southwesterly in a straight line to position 30°12'14" N, 81°40'42" W; thence southerly, remaining 400' seaward of the mean high water shoreline to 30°11'40" N, 81°41'15.5" W; thence northwest to the point at the end of the property line of Naval Air Station Jacksonville just north of the Buckman Bridge at position 30°11'42.30" N, 81°41'23.66" W; thence northeasterly along the mean high water shoreline of the St. Johns River and Mulberry Cove to the point of beginning. Datum: NAD 83

(b) In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the zone without the permission of the Captain of the Port Jacksonville, Florida. All other portions of § 165.33 remain applicable.

(c) This regulation does not apply to Coast Guard vessels and authorized law enforcement vessels operating within the Security Zone.

Dated: December 8, 1995.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 95–30968 Filed 12–19–95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5399–0]

Regulation of Fuels and Fuel Additives: Modification of Reformulated and Conventional Gasoline Regulations—Treatment of Business Information Submitted Concerning Individual Baselines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, as amended in 1990 (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) promulgated anti-dumping regulations for conventional gasoline (gasoline not certified as reformulated gasoline (RFG)). These regulations require that conventional gasoline not be more polluting than it was in 1990 and include provisions for the development of individual refinery baselines and other compliance provisions. Today's action modifies the regulations concerning the publication and confidentiality of individual baselines and information submitted to obtain an individual baseline.

DATES: This final rule is effective December 12, 1995.

ADDRESSES: Materials relevant to this final rule can be found in Public Docket A–95–03; materials relevant to the reformulated gasoline final rule are contained in Public Dockets A–91–02 and A–92–12. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 5 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To Request Copies of This Document Contact: Delores Frank, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this final rule is available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8 AM to 12 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

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At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: CBI-FRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <R>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

II. Confidentiality of Information Submitted for Individual Baselines

A. Introduction

Compliance with certain aspects of the reformulated and conventional gasoline regulations depends on the individual baseline of the refiner or importer.[1] The final regulations issued by EPA in December 1993 establish requirements for developing an individual baseline which is the set of fuel parameter values, emissions and volumes which represent the quality and quantity of the refiner's 1990 gasoline. See 40 CFR 80.91. The final rule also states that certain information contained in a refiner's baseline submittal would not be considered confidential, and that EPA would publish the individual standards for each refinery, blender or importer upon approval of an individual baseline. See 40 CFR 80.93(b)(6).

Persons affected by this provision sought judicial review, objecting to the release or publication of this information on grounds of business confidentiality. *American Petroleum Institute* v. *U.S. Environmental Protection Agency*, No. 94–1138 (D.C. Cir.), and consolidated case *Texaco, Inc. and Star Enterprises* v. *U.S. Environmental Protection Agency*, No. 94–1143 (D.C. Cir.). Based on discussions with these parties, EPA reconsidered this provision and proposed to revise it.[2] 60 FR 40009, August 4, 1995. Under the proposal, EPA would publish only a portion of the baseline information, representing a refinery's baseline emissions values. Instead of determining by regulation that the remaining baseline information submitted by a refiner is non-confidential, EPA would address claims of business confidentiality for this other baseline information under EPA's regulations on "Confidentiality of Business Information (CBI)," 40 CFR part 2 subpart B.

This preamble provides background information on individual baselines and their use, discusses the proposal, and summarizes and responds to the comments received on the proposal. The revisions contained in the August 4, 1995 proposal are finalized as proposed. Refiners may submit to EPA claims of confidentiality on baseline information originally deemed not confidential by the December 1993 rule but for which claims of confidentiality would now be considered under EPA's CBI regulations pursuant to this rulemaking. These claims may be sent to Deborah Adler, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4223.

B. Background

A refiner's individual baseline reflects the volume and average quality of its gasoline for the year 1990. Unlike the standards for reformulated gasoline (which for the most part are the same for all refiners), the standards for conventional gasoline (the anti-dumping standards) are generally expressed in terms of this individual baseline, so that compliance with the standards is measured by comparing current production of conventional gasoline against the individual baseline, on an annual basis. For example, for conventional gasoline under the simple model, a refiner's annual average value for exhaust benzene emissions may not exceed its compliance baseline value for exhaust benzene emissions, and its annual average values for sulfur, olefins and T90 may not exceed 125 percent of its compliance baseline values for these parameters. 40 CFR 80.101(b)(1). In most cases, the compliance baseline is the same as the individual baseline. 40 CFR 80.101(f). For reformulated gasoline, certain standards applicable during 1995 through 1997 are also expressed in terms of a refiner's or importer's individual baseline. 40 CFR 80.41(h)(2).

EPA assigns an individual baseline after reviewing a refiner's baseline submittal. The submittal includes the refiner's estimate of its baseline values for the various required fuel parameters; exhaust emissions values calculated from such parameters; 1990 gasoline volumes; and the blendstock-to-gasoline ratios for 1990 through 1993. Per the December 1993 final rule, this information would not be considered confidential, and EPA would publish, for each refinery or importer, certain baseline exhaust emissions and the sulfur, olefins and T90 standards noted above. 40 CFR 80.93(b)(6).

C. Proposal

In the preamble to the December 1993 regulations, EPA stated that it believed that each refiner's anti-dumping standard should be publicly known. The standards for reformulated gasoline are publicly known, but are generally the same for all refiners. EPA cited several benefits of publishing a refiner's anti-dumping standards (i.e., specific individual baseline information). These included citizen suit enforcement, more information to the public about EPA's standards, and better deterrence to noncompliance.

However, as stated above, objections raised by certain parties regarding publication of baseline information caused EPA to reconsider which information should be published and which information might more appropriately be handled under EPA's CBI regulations. Because EPA was particularly concerned that the emissions standards for refiners continue to be public,[3] it did not propose to change the regulations regarding publication of the individual baseline exhaust emissions values that comprise a refiner's anti-dumping standards. However, EPA did propose that the standards for sulfur, olefins and T90 applicable during 1995 through 1997 not be published and instead that the reporting requirements be revised such that a refiner would have to note whether and how much its annual average for these values exceeded their individual baseline value. This latter reporting information would be considered non-confidential. EPA stated that this would effectively provide the same benefits as publishing the baseline values for these three parameters as it would clearly show whether and how much a refiner violated the standards applicable for these fuel parameters while preserving valid claims of business confidentiality.

EPA's proposal to change the regulations regarding business confidentiality was based in large part on evidence, presented by interested parties in the oil refining industry, arguing that detailed information regarding the quality of a business' 1990 gasoline production would allow a competitor to calculate the business' current cost of producing reformulated gasoline much more accurately with this baseline information. This increased ability to predict current cost of production would lead to significant adverse competitive harm. According to the interested parties, information on individual baseline fuel parameters (i.e., sulfur, olefins and T90) would have much more adverse competitive impact than information on individual baseline exhaust emission values.

In the proposal, EPA also stated that requests for release of other baseline information would be governed by the regulations on the confidentiality of business information at 40 CFR part 2 subpart B. By deferring to 40 CFR part 2 subpart B, the factual and legal issues concerning disclosure of this information may be resolved on a case-by-case basis under EPA's CBI rules.

D. Summary and Analysis of Comments

EPA received less than ten comments on this issue; most generally supported the proposal. Commenters agreed with EPA that the proposal would properly inform the public of each refiner's standards yet would minimize competitive harm and would protect each refiner's competitive business interests. Commenters also mentioned that foregoing publication of some baseline information does not hinder EPA's ability to enforce the RFG (or anti-dumping) programs. One commenter stated that no negative environmental effects would occur due to the proposed change. EPA agrees with all of these comments.

Commenters also mentioned that indiscriminate publication of baseline data would be contrary to the Agency's stated rationale for establishing the procedures set forth in the CBI regulations. While EPA believes the December 1993 final rule provisions were consistent with the rationale of the Agency's CBI regulations, EPA believes that the changes adopted today are a more appropriate mechanism to implement this rationale. The December 1993 rule was based on the view that all information submitted by a refiner regarding its individual baseline should be considered non-confidential emissions data, and therefore would not be protected from release notwithstanding its claimed confidential nature. See CAA section 114, 208. In the rule adopted today, EPA basically limits this determination to the information that will be published—individual baseline exhaust emission levels. The reporting information that is considered non-confidential does not meet the definition of confidential business information, without addressing whether it is emissions data. The confidentiality of the remaining baseline information will be addressed under EPA's CBI regulations. Instead of pre-determining whether this remaining information is confidential business information or whether it is emissions data, these issues will be resolved as needed on a case-by-case basis under EPA's CBI regulations. This will allow for a case specific inquiry, focusing on any unique aspects that might be specific to a refiner and thereby reducing the risk of improper disclosure. Having reconsidered these issues, especially the competitive harm that could occur if a refiner's entire baseline information were available for release, EPA believes that the alternative contained in the August 1995 proposal and finalized today will retain the benefits of publishing all of a refiner's individual baseline exhaust emission levels while minimizing competitive harm. One commenter stated that with the proposal the regulations now conformed to the CBI rules.

Another commenter stated that the Act exempts only emission data from CBI rules and that the baseline information is not emission data. EPA disagrees with this comment with respect to the individual baseline exhaust emissions levels. With respect to the remaining individual baseline information, the issue of whether it is or is not emissions data is not resolved by this rulemaking, but will be resolved as needed under EPA's CBI regulations.

Several commenters expressed concern about the ability to claim confidentiality now on baseline information not originally marked confidential. For example, under the December 1993 rule baseline values for sulfur, olefins and T90 were not considered confidential, and many baseline submitters may therefore not have claimed that information as confidential. If not allowed to claim confidentiality now, someone could arguably request and receive that information from EPA. However, baseline submitters can, and in fact are encouraged to now submit claims of confidentiality on baseline information that the submitter considers confidential, even though not originally marked confidential. EPA's CBI regulations do not prohibit a company from notifying EPA that it now claims certain previously submitted information as business confidential. See 40 CFR 2.203, 2.204(c). This also addresses the suggestion by one commenter that EPA take precautions in releasing other baseline information. Once a company makes such a claim, EPA's regulations generally call for notifying the company and giving it an opportunity to justify the claim of confidentiality prior to any release of the information to the public.

One commenter was concerned about the public perception of any published information, citing potential pressure (presumably to be cleaner than one's standard) from competitors and non-informed public and the resulting impact on investor support. The commenter implied that this kind of pressure can be especially burdensome if performance margins are tight. This same commenter was particularly concerned about small refiners and stated that big refiners are protected by (the ability to) aggregate baselines. While multi-refinery refiners do have the option to aggregate baselines for compliance purposes, publication of baseline information is on a refinery basis, and multi-refinery refiners have no advantage over single-refinery refiners in that regard. This commenter also implicitly suggested that EPA consider relaxing the publication requirements for small refiners since EPA has determined that the contribution to emissions of small refiners is minimal to the point of relaxing some requirements. However, the issue of when and under what conditions to allow for baseline adjustments is a separate issue. Whether or not a refiner meets such criteria, EPA believes there is a continuing value in publishing the applicable standards, including standards based on baseline adjustments. This value, described above, occurs whether the business is small or large. There is also no indication that the business pressures noted by this commenter are greater for small businesses.

E. Final Rule

EPA today finalizes the provisions regarding the confidentiality of information submitted for individual

[1] In general, the provisions regarding individual baselines apply to refiners or importers of conventional gasoline. For brevity in this discussion, the term "refiner" shall include both refiners and importers.

[2] For a discussion of industry concerns regarding this issue and EPA's rationale behind its proposal, see the support document "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–93–03.

[3] The Act specifies that conventional gasoline emissions cannot be greater than they were in 1990. The simple model requirements for sulfur, olefins and T90 were a result of the Regulatory Negotiation process.

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baselines and the publication of certain baseline information as proposed in the August 4, 1995 Federal Register (60 FR 40009). The applicable regulations have been modified slightly from the proposal. Specifically, in § 80.75, the proposed additional paragraphs (H), (I) and (J) have been re-ordered to paragraphs (D), (G) and (J) in today's rulemaking. By re-ordering these paragraphs, all paragraphs in § 80.75(b)(2)(ii) referring to a specific fuel parameter, e.g., sulfur, are grouped together, for benefit of the reader. Section 80.105 has also been modified from the proposal, and now requires that a refiner's or importer's simple model standards for conventional gasoline be reported (in addition to the requirements contained in the December 1993 final rule and those contained in the proposal being finalized today). This minor revision results in similar reporting requirements for both reformulated and conventional gasoline under the simple model.

III. Environmental and Economic Impacts

No environmental impacts are expected as a result of today's action. Economic impacts should be generally beneficial to refiners as one purpose of this action is to reduce any adverse competitive harm that could occur without this change. The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

IV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's action is designed to minimize any adverse competitive impacts since only individual baseline exhaust emissions, and not individual baseline fuel parameters values, will be published. Additionally, by this action, less baseline information will automatically be deemed non-confidential.

V. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The Order defines "significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action".

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VIII. Statutory Authority

The statutory authority for this action is granted to EPA by Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 12, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.75 is amended by revising the heading for paragraph (b)(2), and by revising paragraphs (b)(2)(ii)(D) through (G), and adding paragraphs (b)(2)(ii) (H) through (J) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(b) * * *

(2) *Sulfur, olefins and T90 averaging reports.*

(i) * * *

(ii) * * *

(D) The difference between the applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million and the average sulfur content under paragraph (b)(2)(ii)(C) of this section in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(E) The applicable olefin content standard under § 80.41(h)(2)(i) in volume percent;

(F) The average olefin content in volume percent;

(G) The difference between the applicable olefin content standard under § 80.41(h)(2)(i) in volume percent and the average olefin content under paragraph (b)(2)(ii)(F) of this section in volume percent, indicating whether the average is greater or lesser than the applicable standard;

(H) The applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit;

(I) The average T90 distillation point in degrees Fahrenheit; and

(J) The difference between the applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit and the average T90 distillation point under paragraph (b)(2)(ii)(I) of this section in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

* * * * *

3. Section 80.93 is amended by revising paragraph (b)(6) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(b) * * *

(6) Confidential business information.

(i) Upon approval of an individual baseline, EPA will publish the individual annualized baseline exhaust emissions, on an annual average basis, specified in paragraph (b)(5)(ii) of this section. Such individual baseline exhaust emissions shall not be considered confidential. In addition, the reporting information required under § 80.75(b)(2)(ii) (D), (G) and (J), and § 80.105(a)(4)(i) (E), (H) and (K) shall not be considered confidential.

(ii) Information in the baseline submission which the submitter desires to be considered confidential business information (per 40 CFR part 2, subpart B) must be clearly identified. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the submitter pursuant to the provisions of 40 CFR part 2, subpart B.

* * * * *

4. Section 80.105 is amended by revising paragraph (a)(4) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(4)(i) If using the simple model:

(A) The applicable exhaust benzene emissions standard under § 80.101(b)(1)(i);

(B) The average exhaust benzene emissions under § 80.101(g);

(C) The applicable sulfur content standard under § 80.101(b)(1)(ii) in parts per million;

(D) The average sulfur content under § 80.101(g) in parts per million;

(E) The difference between the applicable sulfur content standard under § 80.101(b)(1)(ii) in parts per million and the average sulfur content under paragraph (a)(4)(i)(D) of this section in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(F) The applicable olefin content standard under § 80.101(b)(1)(iii) in volume percent;

(G) The average olefin content under § 80.101(g) in volume percent;

(H) The difference between the applicable olefin content standard under § 80.101(b)(1)(iii) in volume percent and the average olefin content under paragraph (a)(4)(i)(G) of this section in volume percent, indicating whether the average is greater or lesser than the applicable standard;

(I) The applicable T90 distillation point standard under § 80.101(b)(1)(iv) in degrees Fahrenheit;

(J) The average T90 distillation point under § 80.101(g) in degrees Fahrenheit; and

(K) The difference between the applicable T90 distillation point standard under § 80.101(b)(1)(iv) in degrees Fahrenheit and the average T90 distillation point under paragraph (a)(4)(i)(J) of this section in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

(ii) If using the optional complex model, the applicable exhaust benzene emissions standard and the average exhaust benzene emissions, under § 80.101(b)(2) and (g).

(iii) If using the complex model:

(A) The applicable exhaust toxics emissions standard and the average exhaust toxics emissions, under § 80.101(b)(3) and (g); and

(B) The applicable NO_X emissions standard and the average NO_X emissions, under § 80.101(b)(3) and (g).

* * * * *

[FR Doc. 95–30986 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 6F3417 and 7F3516/R2192; FRL–4990–7]

RIN 2070–AB78

Thiodicarb; Extension of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends until August 15, 1997, the temporary tolerances for the insecticide thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage, and cauliflower. Rhone Poulenc Ag. Co. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3417 and 7F3516/R2192], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.; Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 6F3417 and 7F3516/R2192]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Jr., Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703) 305-6386; e-mail: edwards.dennis@epamail.epa.gov.

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SUPPLEMENTARY INFORMATION: Pursuant to petitions from the Rhone Poulenc Ag. Co., P.O. Box 12014, Research Triangle Park, NC 27709, EPA issued final rules establishing temporary tolerances for residues of the combined residues of the insecticide thiodicarb in or on leafy vegetables at 35 parts per million (ppm) and broccoli, cabbage, and cauliflower at 7 ppm (see the **Federal Register** of August 11, 1993 (58 FR 42673)). To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower, which were due to expire December 31, 1995, the Agency established the tolerances with an expiration date of August 15, 1996, to cover residues expected to be present from use during the period of conditional registration while the Agency continued to review studies of acetamide, a metabolite, and the chronic carcinogenicity studies for thiodicarb. The Agency concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower does not raise significant concerns and that extending the tolerances would still be protective of human health. The Agency is continuing to review submitted toxicology studies.

In a notice in the **Federal Register** of October 25, 1995 (60 FR 54690), the Agency announced the receipt of a request from Rhone Poulenc Ag. Co. to extend the temporary tolerances for thiodicarb and its metabolite for leafy vegetables, broccoli, cabbage, and cauliflower for 1 year with an expiration date of August 15, 1997. No comments were received as a result of the notice. Therefore, as set forth below, the temporary tolerances are extended for an additional year with an expiration date of August 15, 1997, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the **Federal Register**. Residues remaining in or on the above raw agricultural commodities after expiration of the tolerances will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 6F3417 and 7F3516/R2192] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 6F3417 and 7F3516/R2192], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 5, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.407 [Amended]

2. Section 180.407 *Thiodicarb; tolerances for residues* is amended in paragraph (b) introductory text by changing "August 15, 1996" to read "August 15, 1997", and in paragraph (c) introductory text by changing "August 15, 1996" to read "August 15, 1997".

[FR Doc. 95–30974 Filed 12–19–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 9F3787/R2194; FRL–4991–1]

RIN 2070–AB78

Avermectin B_1 and its Delta-8,9-Isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity pears. Merck Research Laboratories requested this regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective December 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 9F3787/R2194], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 9F3787/R2194]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 1, 1989 (54 FR 46118), which announced that Merck Research Laboratories, Inc., Hillsborough Rd., Three Bridges, NJ 98887, had submitted a pesticide petition (PP 9F3787) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity (RAC) pears at 0.035 part per million (ppm). In a letter dated September 22, 1993, Merck requested that the pesticide petition be amended by proposing a lower tolerance on pears at 0.02 ppm. No comments were received in response to the notice of filing (See 58 FR 64583; Dec. 8, 1993).

The data submitted in support of this tolerance and other relevant material have been reviewed. The toxicological and metabolism data considered in support of this tolerance are discussed in detail in related documents published in the **Federal Register** of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus). The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight(bwt)/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance level residues. The ARC for established tolerances and the current action is estimated at 0.000013 mg/kg/bwt/day and utilizes 3.4 percent of the RfD for the U.S. population. For nonnursing infants less than 1-year old (the sub-group population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000030 mg/kg bwt/day and utilizes 7.5% of the RfD. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing ages. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 and above. The MOE is 1,000. Generally speaking, MOEs greater than 100 for

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developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. Secondary residues occurring in livestock and their by-products are not expected since there are no known animal feed stock uses for pears. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on pears. There are currently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor or the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 9F3787/R2194] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper version of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystall Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

oop-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 continues to read as follows:

PART 180—[AMENDED]

1. The authority citation of part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.449(b) in the table therein by adding and alphabetically inserting an entry for pears, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Pears	0.02
* * * * *	

[FR Doc. 95-30975 Filed 12-19-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 2F4105/R2191; FRL-4990-2]

RIN 2070-AB78

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl, in or on clover, forage at 1.0 part per million (ppm) and clover, hay at 2.5 ppm. Ciba-Geigy Corp. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This rule is effective on December 4, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4105/R2191], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 2F4105/R2191]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of June 15, 1995 (60 FR 31465), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition, PP 2F4105, to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl, in or on the raw agricultural commmodities cover, forage at 1.0 ppm and clover, hay at 2.5 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice).

Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This

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conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of themicroscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD), anticipated residue contribution (ARC), and food additive regulations are covered by existing tolerances.

The nature of the residue is adequately understood. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 2F4105/R2191] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.408(a) by revising the introductory text and by amending the table therein by adding and alphabetically inserting new entries for clover, forage and clover, hay, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
. . . . .	
Clover, forage	1.0
Clover, hay	2.5
. . . . .	

* * * * *

[FR Doc. 95–30976 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50582L; FRL–4982–9]

RIN 2070–AB27

1,3-Propanediamine, N, N'-1,2-ethanediylbis-, Polymer with 2,4,6-Trichloro-1,3,5-triazine, Reaction Products with N-Butyl-2,2,6,6-tetramethyl-4-piperidinamine; Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine based on a modification to the TSCA 5(e) consent order regulating the substance. EPA is modifying this rule based on receipt of toxicity data.

EFFECTIVE DATE: The effective date of this rule is January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Assistance Office (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1990 (55 FR 33296), EPA issued a SNUR (FRL–3741–8) establishing significant new uses for 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine based on the section 5(e) consent order for the substance. Because of additional data EPA has received for this substance, EPA is modifying the SNUR.

I. Background

The Agency proposed the modification of the SNUR (FRL–4919–6) for this substance in the **Federal Register** of May 30, 1995 (60 FR 28075). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

II. Objectives and Rationale of Modification of the Rule

During review of the premanufacture notice (PMN) submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substances. EPA identified the tests considered necessary to evaluate the risks of the substances and identified the protective equipment necessary to protect any workers who may be exposed to the substances. The basis for such findings is in the rulemaking record referenced in Unit III of this preamble. Based on these findings, a section 5(e) consent order modification was negotiated with the PMN submitter.

In light of the petition to modify the consent order and SNUR, the 90-day subchronic test, the data on structurally similar polycationic polymers, and the recalculation of the risk assessment of the PMN substances based on information provided by the petitioner, the Agency determined that it could no longer support a finding that the PMN substance may present an unreasonable risk to human health or the environment for the hazard communication and respiratory protection requirements in this modification. The modification of SNUR provisions for the substances designated herein is consistent with the provisions of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS–50582. This record includes information considered by the Agency in developing this rule and includes the modification to consent orders to which the Agency has responded with this modification.

A public version of the record, without any Confidential Business Information, is available in the OPPT Non-Confidential Information Center (NCIC) from 12 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in the Northeast Mall Basement Rm. B–607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

EPA is modifying the requirements of this rule by eliminating several requirements. Any costs or burdens associated with this rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 11, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended to read as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

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Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.7280 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 721.7280 1,3-Propanediamine, N, N'-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-propanediamine, *N, N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine (PMN P–89–632) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Protection in the workplace. Requirements as specified in § 721.63 (a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) Hazard communication program. Requirements as specified in § 721.72 (a) through (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

* * * * *

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a) through (i).

* * * * *

[FR Doc. 95–30973 Filed 12–19–95; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7176

[CO–935–1430–01; COC–28255]

Partial Revocation of Secretarial Order Dated May 23, 1946; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 160 acres of public land withdrawn for the Bureau of Reclamation's Gunnison-Arkansas Project. The land is no longer needed for reclamation purposes, and the partial revocation will allow for disposal by exchange. This action will open 160 acres to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Alexa Watson, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3790.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated May 23, 1946, which withdrew public land for the Bureau of Reclamation's Gunnison-Arkansas Project, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 49 N., R. 5 W.,
Sec. 34, NE¼.

The area described contains 160 acres in Gunnison County.

2. At 9 a.m. on January 19, 1996, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 19, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 19, 1996, the land described in paragraph 1 will be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 6, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30640 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–JB–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7630]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the third column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
North Carolina: Hertford County, unincorporated areas	370130	Oct. 6, 1995	June 2, 1978.
Texas: Oakwood, city of, Leon County	480437	Oct. 13, 1995	Feb. 6, 1976.
Georgia: Putman County, unincorporated areas	130540	Oct. 23, 1995	
Michigan: Gourley, township of, Menominee County	260455	...do	
South Carolina: Pamplico, town of, Florence County	450081	...do	Apr. 23, 1978.
Kansas: Miami County, unincorporated areas	200220	Nov. 6, 1995	June 7, 1977.
Texas:			
Roma, city of, Starr County	480577	Nov. 20, 1995	June 4, 1976.
Leon County, unincorporated areas	480903	Nov. 24, 1995	
New Eligibles—Regular Program			
South Carolina: Gilbert, town of, Lexington County	450132	Oct. 13, 1995	July 17, 1995.
California: Buellton, city of, Santa Barbara County[1]	060757	Oct. 16, 1995	
North Carolina: Cleveland County, unincorporated areas.	370302	Oct. 23, 1995	July 2, 1991.
Iowa:			
DeWitt, city of, Clinton County[2]	190568	Oct. 27, 1995.	
Reinstatements			
New York: Lima, village of, Livingston County	361457	Jan. 11, 1980, Emerg; July 23, 1982, Reg; Nov. 4, 1992, Susp; Oct. 4, 1995, Rein.	July 23, 1982.
Pennsylania:			
Bellevue, borough of, Allegheny County	420009	Feb. 17, 1977, Emerg; Dec. 15, 1978, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Emsworth, borough of, Allegheny County	420034	June 20, 1975, Emerg; Sept. 30, 1980, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Briar Creek, borough of, Columbia County	420340	Aug. 31, 1973, Emerg; Aug. 15, 1979, Reg; Feb. 16, 1995, Susp; Oct. 13, 1995, Rein.	Feb. 16, 1995.
Upper St. Clair, township of Allegheny County	421119	June 11, 1974, Emerg; Mar. 15, 1984, Reg; Oct. 4, 1995, Susp; Oct. 13, 1995, Rein.	Oct. 4, 1995.
Illinois:			
New Lenox, village of, Will County	170706	Sept. 19, 1974, Emerg; May 1, 1980, Reg; Sept. 6, 1995, Susp; Oct. 16, 1995, Rein.	Sept. 6, 1995.
Kincaid, village of, Christian County	170858	Apr. 7, 1976, Emerg; April 1, 1993, Reg; Apr. 1, 1993, Susp; Oct. 19, 1995, Rein.	Apr. 1, 1993.
Pennsylvania: McCandless, township of, Allegheny County.	421081	Oct. 4, 1974, Emerg; June 18, 1980, Reg; Oct 4, 1995, Susp; Oct. 19, 1995, Rein.	Oct. 4, 1995.
New York: Sandy Creek, town of, Oswego County	360681	Aug. 18, 1975, Emerg; Oct. 15, 1981, Reg; July 17, 1995, Susp; Oct 20, 1995, Rein.	July 17, 1995.
Pennsylvania:			
Forward, township of, Allegheny County	421064	Sept. 27, 1994, Emerg; Feb. 1, 1980, Reg; Oct. 4, 1995, Susp; Oct. 23, 1995, Rein.	Oct. 4, 1995.
Cumberland, township of, Greene County	421188	Jan. 27, 1976, Emerg; July 1, 1986, Reg; Sept. 20, 1995, Susp; Oct. 23, 1995, Rein.	Sept. 20, 1995.

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State/location	Community No.	Effective date of eligibility	Current effective map date
Stowe, township of, Allegheny County	421110	Dec. 5, 1974, Emerg; Feb. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 23, 1995, Rein.	Oct. 4, 1995.
New York:			
Waverly, town of, Franklin County	361126	Jan. 22, 1977, Emerg; Dec. 4, 1985, Reg; Nov. 4, 1992, Susp; Oct. 26, 1995, Rein.	Dec. 4, 1985.
Ballston Spa, village of, Saratoga, County	360710	July 7, 1975, Emerg; June 1, 1984, Reg; Aug. 16, 1995, Susp; Oct. 26, 1995, Rein.	Aug. 16, 1995.
Pennsylvania:			
Carnegie, borough of, Allegheny County	420019	July 3, 1973, Emerg; May 1, 1978, Reg; Oct. 4, 1995, Susp; Oct. 26, 1995, Rein.	Oct. 4, 1995.
South Versailles, township of, Allegheny County	421281	Aug. 7, 1974, Emerg; Aug. 1, 1979, Reg; Oct. 4, 1995, Susp; Oct. 26, 1995, Rein.	Oct. 4, 1995.
Kennedy, township of, Allegheny County	421072	Apr. 26, 1974, Emerg; Feb. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 27, 1995, Rein.	Oct. 4, 1995.
Baldwin, borough of, Allegheny County	420007	Nov. 19, 1973, Emerg; Aug. 15, 1978, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Brackenridge, borough of, Allegheny County	420014	Nov. 26, 1974, Emerg; Aug. 15, 1980, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Crafton, borough of, Allegheny County	420026	Apr. 15, 1974, Emerg; Dec. 19, 1980, Reg; Oct. 4, 1995, Susp; Oct. 31, 1995, Rein.	Oct. 4, 1995.
Wisconsin: Stanley, city of, Chippewa County	550047	Apr. 1, 1975, Emerg; Sept. 18, 1985, Reg; Sept. 18, 1985, Susp; Oct. 31, Rein.	Sept. 18, 1985.
Indiana: Laurel, town of, Franklin County	180306	May 27, 1975, Emerg; Sept. 1, 1988, Reg; Sept. 1, 1988, Susp; Nov. 6, 1995, Rein.	Nov. 2, 1995.
Illinois: Peotone, village of, Will County	170709	Aug. 14, 1974, Emerg; Jan. 14, 1983, Reg; Sept. 6, 1995, Susp; Nov. 6, 1995, Rein.	Sept. 6, 1995.
Pennsylvania:			
Harrison, township of, Potter County	421978	Dec. 31, 1975, Emerg; June 1, 1987, Reg; Aug. 2, 1993, Susp; Nov. 7, 1995, Rein.	June 1, 1995.
Neville, township of, Allegheny County	425385	Mar. 19, 1971, Emerg; July 7, 1978, Reg; Oct. 4, 1995, Susp; Nov. 7, 1995, Rein.	Oct. 4, 1995.
Rankin, borough of, Allegheny County	420067	Feb. 10, 1975, Emerg; July 2, 1980, Reg; Oct. 4, 1995, Susp; Nov. 20, 1995, Rein.	Oct. 4, 1995.
Indiana: Perry County, unincorporated	180195	Apr. 11, 1975, Emerg; Nov. 1, 1995, Reg; Nov. 1, 1995, Susp; Nov. 24, 1995, Rein.	Nov. 1, 1995.
Mississippi: Philadelphia, city of, Neshoba County	280120	Nov. 2, 1974, Emerg; Sept. 29, 1988, Reg; Oct. 18, 1995, Susp; Nov. 24, 1995, Rein.	Oct. 18, 1995.
Virginia: Salem, city of, independent city	510141	Mar. 8, 1974, Emerg; Sept. 2, 1981, Reg; Oct. 18, 1995, Susp; Nov. 22, 1995, Rein.	Oct. 18, 1995.
Pennsylvania:			
Oakmont, borough of, Allegheny County	420060	July 25, 1974, Emerg; Jan. 16, 1981, Reg; Oct. 4, 1995, Susp; Nov. 27, 1995, Rein.	Oct. 4, 1995.
Green Tree, borough of, Allegheny County	420040	June 27, 1974, Emerg; July 16, 1981, Reg; Oct. 4, 1995, Susp; Nov. 30, 1995, Rein.	Oct. 4, 1995.
South Carolina: Edgefield County, unincorporated areas.	450229	July 12, 1991, Emerg; Apr. 1, 1993, Reg; Sept. 20, 1995, Susp; Nov. 30, 1995, Rein.	Sept. 20, 1995.
Regular Program Conversions			
Region III			
Pennsylvania:			
Aleppo, township of, Allegheny County	421266	October 4, 1995 Suspension Withdrawn	10–4–95.
Aspinwall, borough of, Allegheny County	420005	....do	Do.
Bell Acres, borough of, Allegheny County	420006	....do	Do.
Bethel Park, Municipality of, Allegheny County	420012	....do	Do.
Blawnox, borough of, Allegheny County	420013	....do	Do.
Braddock, borough of, Allegheny County	420015	....do	Do.
Bridgeville, borough of, Allegheny County	420016	....do	Do.
Clairton, City of, Allegheny County	420034	....do	Do.
Collier, township of, Allegheny County	421058	....do	Do.
Corapolis, borough of, Allegheny County	420025	....do	Do.
Dravosburg, borough of, Allegheny County	420027	....do	Do.
Elizabeth, borough of, Allegheny County	421263	....do	Do.
Elizabeth, township of, Allegheny County	420033	....do	Do.
Etna, borough of, Allegheny County	421062	....do	Do.
Fawn, township of, Allegheny County	421285	....do	Do.
Findlay, township of, Allegheny County	421286	....do	Do.
Glassport, borough of, Allegheny County	420038	....do	Do.
Hampton, township of, Allegheny County	420978	....do	Do.
Harmar, township of, Allegheny County	421068	....do	Do.
Harrison, borough of, Allegheny County	420041	....do	Do.
Haysville, borough of, Allegheny County	420042	....do	Do.
Heidelberg, borough of, Allegheny County	420043	....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Homestead, borough of, Allegheny County	420044	....do	Do.
Indiana, township of, Allegheny County	421070	....do	Do.
Leet, township of, Allegheny County	421075	....do	Do.
Leetsdale, borough of, Allegheny County	420047	....do	Do.
Liberty, borough of, Allegheny County	420048	....do	Do.
McDonald, borough of, Allegheny County	420855	....do	Do.
McKeesport, city of, Allegheny County	420051	....do	Do.
McKees Rocks, borough of, Allegheny County	420052	....do	Do.
Mnuhall, borough of, Allegheny County	420056	....do	Do.
North Fayette, township of, Allegheny County	421085	....do	Do.
North Versailles, township of, Allegheny County	421231	....do	Do.
O'Hara, township of, Allegheny County	421088	....do	Do.
Penn Hills, Municipality of, Allegheny County	421092	....do	Do.
Pine, township of, Allegheny County	421094	....do	Do.
Pitcairn, borough of, Allegheny County	420062	....do	Do.
Plum, borough of, Allegheny County	420065	....do	Do.
Reserve, township of, Allegheny County	420068	....do	Do.
Richland, township of, Allegheny County	421199	....do	Do.
Robinson, township of, Allegheny County	421079	....do	Do.
Sharpsburg, borough of, Allegheny County	420073	....do	Do.
Springdale, township of, Allegheny County	420074	....do	Do.
Swissvale, borough of, Allegheny County	420075	....do	Do.
Tarentum, borough of, Allegheny County	420076	..... do	Do.
Turtle Creek, borough of, Allegheny County	420079	..... do	Do.
Verona, borough of, Allegheny County	422611	..... do	Do.
Versailles, borough of, Allegheny County	420081	..... do	Do.
Wall, borough of, Allegheny County	420082	..... do	Do.
West Deer, township of, Allegheny County	421299	..... do	Do.
West Elizabeth, borough of, Allegheny County	420083	..... do	Do.
Wilmerding, borough of, Allegheny County	420091	..... do	Do.
Virginia: Hampton, independent city	515527	..... do	7–3–95.
Region V			
Illinois: Old Mill Creek, village of, Lake County	170385	..... do	8–1–80.
Regular Program Conversions			
Region I			
Maine: Auburn, city of, Androscoggin County	230001	October 18, 1995 Suspension Withdrawn	10–18–95.
Region III			
Maryland: Oakland, town of, Garrett County	240039	..... do	Do.
Pennsylvania:			
East Bethlehem, township of, Washington County	422140	..... do	Do.
Elco, borough of, Washington County	420852	..... do	Do.
Henderson, township of, Huntingdon County	420960	..... do	Do.
Monongahela, township of, Greene County	421673	..... do	Do.
Virginia: Roanoke County, unincorporated areas	510190	..... do	Do.
West Virginia:			
Fairmont, city of, Marion County	540099	..... do	Do.
Marion County, unincorporated areas	540097	..... do	Do.
Morgantown, city of, Marion County	540141	..... do	Do.
Star City, town of, Monongalia County	540273	..... do	Do.
Region V			
Ohio: Hamilton County, unincorporated areas	390204	..... do	Do.
Indiana:			
Flora, town of, Carroll County	180021	November 1, 1995 Suspension Withdrawn	11–1–95.
Scott County, unincorporated areas	180474	.....do	Do.
Vermillion County, unincorporated areas	180449	.....do	Do.
Ohio: Trimble, village of, Athens County	390021	.....do	Do.
Region I			
Connecticut: Bozrah, town of, New London County	090094	November 2, 1995 Suspension Withdrawn	11–2–95.
Region II			
New Jersey: South Belmar, borough of, Monmouth County.	340328	.....do	Do.
Region III			
Pennsylvania: Jefferson, township of, Greene County	421672	.....do	Do.
Region V			
Illinois: Hampshire, village of, Kane County	170327	.....do	Do.
Indiana:			

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State/location	Community No.	Effective date of eligibility	Current effective map date
Brookville, town of, Franklin County	180069	....do	Do.
Cedar Grove, town of, Franklin County	180304	....do	Do.
Franklin County, unincorporated areas	180068	....do	Do.
Michigan: Montrose, township of, Genesee County	260399	....do	Do.
Ohio: Napoleon, city of, Henry County	390266	....do	Do.
Wisconsin: Washburn, city of, Bayfield County	550019	....do	Do.
Region VIII			
Utah: Davis County, unincorporated areas	490038	....do	Do.
Regular Program Conversions			
Region II			
New York:			
Schroon, town of, Essex County	361158	November 16, 1995 Suspension Withdrawn	11–16–95.
Wilmington, town of, Essex County	361161	....do	Do.
Region III			
Pennsylvania:			
Allenport, borough of, Washington County	420845	....do	Do.
Belle Vernon, borough of, Fayette County	420457	....do	Do.
Brownsville, borough of, Fayette County	420458	....do	Do.
Brownsville, township of, Fayette County	421621	....do	Do.
Marion Center, borough of, Indiana County	420503	....do	Do.
Stroud, township of, Monroe County	420693	....do	Do.
Region V			
Illinois: Mill Creek, village of, Union County	170659	....do	Do.
Indiana: Carmel, city of, Hamilton County	180081	....do	Do.
Ohio:			
Laurelville, village of, Hocking County	390273	....do	Do.
Meigs county, unincorporated areas	390387	....do	Do.
Wisconsin: Clintonville, city of, Waupaca County	550494	....do	Do.
Region VI			
Louisiana:			
Grant County, unincorporated areas	220075	....do	Do.
New Roads, town of, Pointe Coupee Parish	220144	....do	Do.
Pointe Coupee Parish, unincorporated areas	220140	....do	Do.
Oklahoma: Comanche, city of, Comanche County	400008	....do	Do.
Withdrawn			
Oklahoma: Delaware Tribe of Western Oklahoma, Caddo County	40052	Oct. 18, 1985, Emerg; Jan. 18, 1988, Reg; Dec. 16, 1992, Susp; Feb. 18, 1993, Rein; Nov. 20, 1995, With.	9–27–91.

[1] The City of Buellton has adopted by reference Santa Barbara County's Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for floodplain management and insurance purposes dated 6–3–92. (Santa Barbara County's CID number is 060331; panels number 554, 555, 556 and 558).

[2] The City of DeWitt has adopted by reference Clinton County's FIRM dated 9–1–90, for floodplain management and insurance purposes. (Panels 21 and 13). Clinton County's CID number is 190859.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 15, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–30965 Filed 12–19–95; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–113; RM–8664, RM 8697]

Radio Broadcasting Services; Salem and New Martinsville, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Salem-Teikyo University, allots Channel 277A at Salem, West Virginia, as the community's second local FM transmission service (RM–8664). *See* 60 FR 39141, August 1, 1995. We also, at the request of Seven Ranges Radio Company, Inc., allot the counterproposal for Channel 258A at New Martinsville, West Virginia, as its second local FM transmission service (RM–8697). Channel 277A can be allotted to Salem in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 277A at Salem are North Latitude 39–17–00 and West Longitude 80–34–00. Additionally, Channel 258A can be allotted to New Martinsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 258A at New Martinsville are North Latitude 39–38–36 and West Longitude 80–51–36. *See* Supplementary Information, *infra.*

DATES: Effective January 29, 1996. The window period for filing applications will open on January 29, 1996 and close on February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–113, adopted November 27, 1995, and released December 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Since Salem and New Martinsville are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 277A at Salem, and by adding Channel 258A at New Martinsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30897 Filed 12–19–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 100

[IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–507]

Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 14, 1995, the Federal Communications Commission adopted a Report and Order in which it adopted a number of new rules and policies for the Direct Broadcast Satellite ("DBS") service, including the use of competitive bidding to resolve mutually exclusive applications for DBS resources. As part of its decision in *Advanced Communications Corporation*, FCC 95–428 (released October 18, 1995), the Commission reclaimed for the public 51 channels of DBS spectrum at two orbital locations (27 channels at 110° W.L. and 24 channels at 148° W.L.) that had previously been assigned to Advanced Communications Corporation ("ACC"). The Commission adopts rules and policies in the DBS service in order to update the current "interim" rules and to reassign, through a competitive bidding process, channels at orbital locations previously assigned to ACC.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings or Bill Wiltshire, International Bureau, (202) 418–0420; or Diane Conley, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Report and Order in IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–507, adopted on December 14, 1995, and released on December 15, 1995. The complete text of this Report and Order ("Order") is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037. This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. 104–13, which were proposed in the NPRM and submitted to the Office of Management and Budget ("OMB") for approval. The Commission received no comments on the proposed information collections, and therefore adopts them as originally proposed. The effective date of the new and modified rules being adopted falls after the deadline for OMB action under the PRA.

Synopsis of the Report and Order

I. Introduction

1. Over six years ago, in *Continental Satellite Corporation*, 4 FCC Rcd 6292 (1989), the Commission stated that existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. The Notice of Proposed Rulemaking ("NPRM") in this proceeding, 60 FR 55822 (Nov. 3, 1995), tentatively concluded that this reassignment policy no longer serves the public interest, and accordingly proposed to use competitive bidding when the Commission has received mutually exclusive applications for reassignment of such DBS resources. Specifically, the NPRM proposed to auction two large blocks of channels that are currently available at two orbital locations. In addition, the NPRM proposed new service rules that would: (1) impose performance criteria intended to ensure that DBS resources are utilized in a timely manner; (2) guard against potential anticompetitive conduct by DBS providers; and (3) ensure timely DBS service to Alaska and Hawaii. The NPRM also requested comment on our existing policy governing the extent to which DBS resources may be put to alternative uses.

2. The Commission concludes that the public interest is no longer served by the *pro rata* methodology established in *Continental* for reassigning reclaimed DBS channels. Accordingly, the Commission adopts new rules for reassigning DBS resources. In the Order, the Commission finds that it has the statutory authority to auction DBS construction permits if the Commission receives mutually exclusive applications, and that the objectives of Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be served by doing so. Specifically, under the Order the Commission will auction two DBS construction permits: one for all 28 channels now available at the 110° W.L. orbital location (27 channels from ACC plus 1 channel that was never assigned), and another for all 24 channels now available at the 148° W.L. orbital location. The NPRM proposed to employ an oral outcry auction to award construction permits for these channel blocks. The Commission has instead determined that these two permits should be awarded through a sequential multiple round electronic auction. Other auction designs may be used for future DBS auctions.

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3. The Commission also adopts three new service rules and revises an existing policy. First, a person receiving a new or additional DBS construction permit will be required to complete construction of its first satellite within four years of receiving its permit, and to complete all satellites in its DBS system within six years. Second, new permittees will be required to provide DBS service to Alaska and Hawaii from any orbital location where such service is technically feasible, and existing permittees will be required to provide such service from either or both of their assigned orbital locations in order to retain their channel assignments at western orbital locations. Third, the term for non-broadcast DBS licenses will be lengthened from five years to ten years, to encourage investment and innovation in the service and to better match the useful life of DBS satellites. In addition, the existing policy restricting non-DBS use of DBS resources will be restated in terms of capacity rather than time in order to allow DBS licensees to configure their systems more efficiently. The Commission believes that these rules are well designed to spur swift development of DBS spectrum resources to the benefit of the American public.

II. Proposed Service Rules

A. Performance Objectives

4. The Commission finds that combining existing due diligence requirements with additional milestones for construction and operation of DBS systems by new permittees will prevent unnecessary delays in the commencement of service. Accordingly, the Commission adopts, as proposed in the NPRM, two additional performance criteria for those receiving DBS construction permits after the effective date of the proposed rule: (1) completion of construction of the first satellite in a DBS system within four years of authorization; and (2) launch and operation of all satellites in a DBS system within six years of authorization.

B. Use of DBS Capacity

5. At present, Commission policy requires each DBS licensee to begin DBS operations before the end of its first five-year license term, but allows otherwise unrestricted use during that term. After expiration of the first term, a DBS operator may continue to provide non-DBS service only on those transponders on which it also provides DBS service, and only up to half of the use of each transponder each day. The Commission finds that capacity-based restrictions would allow DBS permittees and licensees more flexibility in how they configure their satellites as a matter of technical efficiency in complying with the limitations we have imposed. Accordingly, the Order restates existing restrictions on the use of DBS resources as a function of capacity rather than time, but otherwise retains the existing use policy. Thus, the new policy will be that a DBS licensee must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum during that time. After that five-year period, such a licensee may continue to provide non-DBS service so long as at least half of its total capacity at a given orbital location is used for DBS service.

6. The NPRM noted the possibility that, as a result of a separate proceeding, operators using DBS channels and orbital locations may be permitted to provide both domestic and international service. *See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, Notice of Proposed Rulemaking, FCC 95–146, para. 38 (released April 25, 1995)("*Transborder/Separate Systems*"), 60 FR 24817 (May 10, 1995). The Commission notes that the construction permits available at auction currently authorize only DBS service to the United States, and finds that the potential for international DBS service is no basis for delaying the auction pending resolution of international satellite service issues in the *Transborder/Separate Systems* proceeding.

C. Rules and Policies Designed to Promote Competition

1. Spectrum Aggregation Limitations.

7. The NPRM proposed certain rules intended to prevent strategic use of DBS resources for anticompetitive purposes and also requested comment on whether additional steps were necessary to achieve the desired goal of fostering competition among multichannel video programming distributors ("MVPDs"), such as DBS and cable systems. Two of the rules proposed were structural, in that they placed limits on the number of full-CONUS DBS channels a person could hold or use. The NPRM also proposed rules aimed at preventing specific types of potentially anticompetitive conduct, and requested comment on the degree to which existing rules might address those same concerns.

8. The Commission rejects both of the spectrum caps proposed in the NPRM, and instead adopts a one-time spectrum limitation applicable to the upcoming auction. Under this one-time auction rule, a party currently holding an attributable interest in full-CONUS channels at one location may bid at auction for channels currently available at the 110° location, but if successful must divest its existing full-CONUS channels at any other location within twelve months. The Commission finds that the rule is necessary given the scarcity of full-CONUS DBS spectrum and the impact that concentration of this spectrum into the hands of any single provider might have on the overall MVPD market. The resulting intra-DBS competition will best serve the public interest by ensuring a level of rivalry between and among DBS firms and other MVPDs that should constrain any potential there might be for strategic anticompetitive conduct. The Commission also finds that twelve months should be sufficient to allow an orderly divestiture, if necessary, and strikes a proper balance between the time necessary for negotiation and the desire to ensure that spectrum not remain idle.

9. For purposes of implementing the spectrum aggregation limitation adopted in the Order, the Commission will only consider three orbital locations—101°, 110°, and 119°—to be capable of full-CONUS service. A fourth orbital location, at 61.5o W.L, should not be deemed to be capable of delivering full-CONUS service at this time since an operator serving customers in the western United States from that location would face interference from tall objects that an operator from the other three locations would not face due to their better look angles, and therefore would be at a qualitative disadvantage in attracting customers.

10. In applying the auction spectrum rule adopted in the Order, interests will be attributed to their holders and deemed cognizable under criteria similar to those used in the context of the broadcast, newspaper and cable television cross ownership rules. The rules adopted in the Order attribute the following interests: (1) any voting interest of five percent or more; (2) any general partnership interest and direct ownership interest; (3) any limited partnership interest, unless the limited partnership agreement provides for insulation of the limited partner's interest and the limited partner in fact is insulated from and has no material involvement, either directly or indirectly, in the management or operation of the DBS activities of the partnership; and (4) officers and directors. As with the broadcast rules, the attribution threshold for institutional investors is ten percent, and a multiplier will be used to calculate interests held through successive and multiple layers of ownership.

2. Conduct Rules. 11. In addition to the structural solutions designed to promote competition by preventing the potential for undue concentration of DBS and MVPD resources, the NPRM also proposed conduct limitations on the use of DBS resources in order to address a number of specific forms of potential anticompetitive behavior. In the Order, the Commission finds that the one-time auction rule described above will significantly promote rivalry among DBS systems and encourage the development of competition in markets for the delivery of video programming. The Order states that there is little direct evidence of anticompetitive behavior specific to the DBS context. Accordingly, the Commission has decided to rely upon the competitive effect of its one-time spectrum rule to prevent the range of anticompetitive conduct discussed in the NPRM, and thus refrains from adopting conduct rules at this stage in the development of the DBS industry.

12. In view of the market structure set in motion by the Order's one-time spectrum rule, the Commission does not find it necessary to adopt rules prohibiting DBS services from being offered as "ancillary" to cable services. Thus, there is no reason to extend to all non-DBS MVPDs the restrictions imposed in the DBS construction permit issued to Tempo Satellite, Inc., or to maintain those restrictions with respect to Tempo. Similarly, the Commission finds no compelling need at this time for adopting rules designed to ensure that a cable-affiliated DBS operator will compete against other DBS providers for subscribers in cabled areas, or for determining that all joint marketing arrangements between DBS operators and other MVPDs will a fortiori reduce competition. Further, the Commission declines to amend the existing program access and carriage rules to address specific conduct by DBS operators. The Order states that there is no evidence in this record that exclusive agreements currently pose any anticompetitive concern or will do so in the future.

13. The NPRM identified as another area of concern program access issues related to the development of systems such as TCI's proposed "Headend in the Sky" ("HITS") service for satellite delivery of programming to terrestrial MVPD systems. It appears that a HITS-like service that provides most of the available programming, and provides it in a digital format that could be passed through to subecribers, could offer substantial efficiencies for many MVPDs. The benefits of this service cannot materialize if competing DBS operators are unable to provide such service because, for example, programmers refuse to authorize MVPDs to receive programming services from the competing operator's DBS satellite. However, the Commission has no evidence before it of firms presently supplying HITS-like service, and the actual characteristics of such a service remain unclear. Moreover, resolution of the issues surrounding such a service is not necessary to the proceeding at hand. Accordingly, the Commission has decided that it would be imprudent to consider rules governing HITS service absent a better understanding of the nature of the service.

Other Concerns

14. The NPRM observed that in the Advanced Communications Corporation proceeding, commenters raised a number of other concerns about potential strategic conduct that could arise from cable-affiliated ownership of full-CONUS DBS spectrum. Those commenters argued that cable-affiliated ownership of full-CONUS DBS spectrum should be prohibited, or in the alternative, that several remedial conditions should be imposed. The NPRM sought comment on the extent to which those and related concerns are implicated by the proposed auction of DBS construction permits, and if so, whether additional DBS service rules might be appropriate to address those concerns. For the time being, the Commission has decided to rely upon the one-time auction spectrum limitation, the rivalry that rule should promote throughout the MVPD market, and the Commission's ongoing ability to monitor developments in the DBS and MVPD markets through its Title III authority, as adequate restraints on anticompetitive conduct. The Commission remains committed to fostering a vibrant DBS service and recognizes that periodic reviews will be necessary to ensure that the benefits of rivalry are available to the public. It intends to keep a watchful eye on developments in the service to ensure that DBS systems have an opportunity to develop into truly competitive MVPDs.

East/West Paired Assignments

15. The NPRM tentatively concluded that progress in the DBS service has rendered unnecessary the *Continental* policy of assigning DBS channels only in east/west pairs. The commenters supported this conclusion, and accordingly the Commission will no longer require DBS permittees and licensees to retain their assigned channels in east/west pairs.

D. Service to Alaska and Hawaii

16. The Commission adopts the rules proposed in the NPRM to: (1) require that all new permittees must provide service to Alaska and Hawaii if such service is technically feasible from their orbital locations; and (2) condition the retention of channels assigned to current permittees at western orbital locations on provision of such service, from either or both of their assigned orbital locations. These rules should help achieve the important goal of bringing service to underserved regions of the United States. The Commission declined the proposal of some commenters that the first rule be applied to existing as well as new permittees. The Commission notes that service to Alaska and Hawaii has already been shown to be feasible from all but the 101°W.L. and 61.5°W.L. orbital locations, and that any party acquiring channels at those two locations that desires not to provide service to Alaska or Hawaii will bear the burden of showing that such service is not feasible as a technical matter, or that while technically feasible such service would require so many compromises in satellite design and operation as to make it economically unreasonable.

E. License Term

17. The Commission adopts the NPRM's proposal to increase the term of a non-broadcast DBS license from 5 years to 10 years, the maximum allowed under the Communications Act, which better reflects the useful life of a DBS satellite, is consistent with the current proposal for extending the term of satellite licenses in other services, and should encourage investment and innovation in the DBS service.

III. Adoption of a New Methodology for Reassigning DBS Resources

18. Over six years ago, in the *Continental* decision, the Commission stated that existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. The NPRM tentatively concluded that this reassignment policy, adopted in an era before Congress explicitly authorized the Commission's use of auctions and well before any DBS system actually went into operation, no longer serves the public interest, and therefore should be abandoned.

19. After reviewing the comments received in response to the NPRM, the Commission remains convinced that the *pro rata* distribution of reclaimed

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channels to existing permittees no longer serves the public interest. The historic policy of assigning a relatively small number of channels to each permittee was based upon a conception of DBS service that has not been put into practice. Instead, the service has experienced a move toward channel consolidation, an understandable trend given that DBS systems must compete in the MVPD market with cable systems that are promising a 500-channel service in the future. Under *Continental*, the channels available for reassignment would be divided *pro rata* to assign five pairs of channels at two orbital locations to each of six permittees. The result would be a piecemeal assignment of valuable spectrum, requiring the permittees to negotiate either joint operations or channel swaps. The process necessary in either case is often a time consuming one that is not always successful, which is further complicated by the time required for Commission consideration and approval of the resulting transactions. There is also no guarantee that the permittees eligible for this distribution value the channels most highly and can put them to use most efficiently.

20. By contrast, competitive bidding procedures are specifically designed and intended to assign scarce resources to those who value them most highly and can make the most efficient use of them. By offering the available channels in two large blocks, the Commission obviates the need for reaggregation and allows the auction winners to proceed directly to acquisition or construction of satellites and system operation of their systems. Since the Commission intends to hold an auction in January 1996, it concludes that an auction method is better suited to achieving expedited service from the channels available than is the existing policy under *Continental*. In addition, the Commission concludes that since it has determined that the public interest supports a change in its regulatory approach, it has full authority to modify existing DBS permits through notice and comment rulemaking, even if doing so frustrates the expectations of existing permittees.

21. All potential auction participants should be aware that the decision cancelling ACC's construction permit is currently on appeal, and that others may seek judicial review of this Order as well. In the unlikely event that a court either overturns the Advanced order and ACC's permit with its associated orbital/channel authorizations is ultimately reinstated, or overturns this rulemaking and the *Continental* reassignment methodology is ultimately maintained, the Commission would rescind any permit awarded through the auction process and move with all deliberate speed to refund money paid up to that point. Participants in the auction are hereby put on notice of this possibility, and should be willing to facilitate that process if it becomes necessary.

IV. Adoption of Rules for Auctioning DBS Permits

A. Authority to Conduct Auctions

The Commission has authority under Section 309(j) of the Communications Act, 47 U.S.C. 309(j), to employ auctions to choose among mutually exclusive applications for initial licenses or construction permits where the principal use of the spectrum is likely to involve the licensee receiving compensation from subscribers. Having reviewed the comments received in response to the NPRM in this proceeding, the Commission concludes that it has the authority under Section 309(j) to award DBS construction permits for the spectrum reclaimed from ACC, as well as other available spectrum, by means of competitive bidding.

Given that both DBS licensees now providing service to the public operate on a subscription basis, and all other permittees planning to initiate service in the near future also plan to offer subscription-based service, the Commission believes that it is a reasonable assumption that a majority of the use of DBS spectrum is likely to involve the licensee receiving compensation from subscribers, and the "principal use" requirement of the statute is therefore satisfied. In light of current licensees' subscription-based operations, and all other permittees' plans for such operations, the Commission disagrees with the claim made by one commenter that competitive bidding will force DBS operators to offer all-subscription service.

The Commission also disagrees with the argument made by another commenter that construction permits awarded for the channels reclaimed from ACC are not initial. When channels are reclaimed from existing permittees, the construction permits for them are cancelled and cannot be modified. Thus, any construction permits awarded for reclaimed channels will be "initial" under Section 309(j) because they will be new permits for the channels in question.

With respect to the requirement of mutual exclusivity, the Commission does not accept the claim that it could have avoided mutual exclusivity by applying the spectrum reassignment policy in *Continental*. The Commission has determined that this policy would delay the development of DBS service and would squander valuable spectrum, and thus would not be in the public interest. The Commission also notes that where it has scheduled an auction and it turns out that only one application is filed for a particular construction permit, the auction will be cancelled and the application will be processed. In addition, the Commission will consider mutual exclusivity to exist only when the number of DBS channels sought at a given orbital location exceeds the number available there.

The Commission further concludes that the use of competitive bidding to assign DBS spectrum will promote the statutory objectives of the rapid deployment of service and the efficient use of spectrum more effectively than any other spectrum assignment method. An auction is likely to promote the rapid deployment of service because those parties that are in the best position to deploy technologies and services are also likely to be the highest bidders. In addition, abandonment of the Commission's *Continental* policy opens the DBS industry to a wide range of potential new entrants and thus is consistent with the statutory objective of disseminating licenses among a wide variety of licensees. The possibility that auction costs will be passed on to consumers does not mean, as certain commenters assert, that auctions will not serve the statutory objective of recovering a portion of the value of DBS spectrum for the public. DBS operators may also pass on other costs to consumers. Moreover, auction winners will be constrained from charging rates higher than those of competitors who have not paid for spectrum. Finally, the auctioning of DBS channels will ensure that the ultimate holder of the channels has paid market value to the U.S. Treasury and thus will serve the statutory goal of avoiding unjust enrichment. The Commission will therefore award construction permits for the channels available at 110° and 148°, as well as DBS construction permits that become available in the future, by means of competitive bidding.

B. Competitive Bidding Design

The Commission will auction one construction permit for the block of 28 channels at 110° and one construction permit for the block of 24 channels at 148°. The Commission believes that designating two permits for these channels will best serve the public interest and the objectives of Section 309(j)(4)(B), 47 U.S.C. 309(j)(4)(B), especially the promotion of investment in and rapid deployment of the DBS service. The construction permits available for auction include authority to transmit pursuant to allocations in accordance with the ITU feeder link plan allocating frequencies for establishing uplinks and downlinks. The Commission recognizes that there may be legitimate reasons for auctioning spectrum in smaller blocks; therefore, in the future, the Commission may auction DBS spectrum either channel by channel or in small blocks.

The Commission proposed in the NPRM to award the construction permits for the channels available at 110° and 148° by means of an oral outcry auction. However, the Commission is persuaded by the comments submitted that the auction for these channels should have more structure. The Commission concludes that a sequential multiple round electronic auction would be the best way of providing such structure. The primary benefit of additional structure is the reduced risk of bidders making errors in submitting bids, and bid submission errors are far less likely with electronic bidding than in a traditional oral auction. Multiple round electronic bidding also provides bidders more time to analyze previous bids, confer with decision makers, and refine their bidding strategy than a continuous oral auction. Multiple round electronic bidding with the activity rule adopted by the Commission also provides bidders with more information about other bidders' valuations. Finally, given the Commission's experience with electronic auctions, such an auction is likely to be easier for the Commission to implement.

In anticipation of a rapid auction pace, the Commission will provide for electronic bidding at an FCC auction site. The Commission does not anticipate allowing telephone bids and remote electronic bidding, but the Wireless Telecommunications Bureau will announce by Public Notice whether such bidding will be permitted. In the event that telephone bids and remote electronic bidding are not allowed, all bidders will be required to have an authorized bidding representative at the auction site. The channels at 110° and 148° will be auctioned separately since no commenter has made the case that there is significant interdependence between the channels available at these two orbital locations. The Commission may auction one channel block immediately after the other, but also reserves the discretion to hold two separate auctions for the two blocks.

Although the Commission will not use simultaneous multiple round bidding, oral outcry bidding, sealed bidding, or a combined sealed bid-oral outcry auction to award construction permits for the spectrum available at 110° and 148°, such auction designs could be suitable for DBS under certain circumstances. The Commission therefore adopts rules providing for these auction designs, and reserves the discretion to employ such auction designs for DBS in the future. The Commission also delegates to the Wireless Telecommunications Bureau the authority to implement and modify auction procedures—including the general design and timing of an auction, the number of authorizations to be offered in any one auction, the manner of submitting bids, and procedures such as minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements—and to announce such procedures by Public Notice.

C. Bidding Procedures

Sequencing. The 28 channels available at 110° will be auctioned first. The sequence of future DBS auctions will be determined in keeping with the Commission's general finding that the highest value licenses should be auctioned first because the greater the value of the licenses, the greater the cost to the public of delaying licensing. *See Second Report and Order*, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994). In the event that the Commission needs to assign separate blocks of channels that it believes to be interdependent, it may choose to utilize a simultaneous multiple round auction.

Bid Increments and Tie Bids. The Commission reserves the discretion to establish, raise and lower minimum bid increments in the course of DBS auctions. The Commission anticipates using larger percentage minimum bid increments early in the auction and reducing the minimum increment percentage as bidding activity falls. The Commission also reserves the discretion to establish and change maximum bid increments in the course of DBS auctions. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

Minimum Opening Bid. The Commission believes that it would be useful to have a minimum opening bid for the channels at 110° to help move the auction along and to increase the likelihood that the public receives fair market value for the spectrum. A minimum opening bid therefore will be established for the channels available at 110°, the amount of which will be announced by Public Notice. The amount of this minimum opening bid will be determined using all available information and taking into consideration the uncertainty as to the value of the spectrum. No commenter has suggested a minimum opening bid for the channels available at 148°, and it appears that the value of these channels is substantially lower than the value of the channels at 110°. The Commission therefore will not set a minimum opening bid for the channels at 148°. The Commission also reserves discretion to decide whether to set minimum opening bids for individual auctions in the future as circumstances warrant.

Activity Rules. A bidder must be active in each round of the auction or use an activity rule waiver. To be active in the current round, a bidder must submit an acceptable bid in the current round or have the high bid from the previous round. Bidders will be provided with five activity rule waivers that may be used in any round during the course of the auction. A bidder who is not active in a round and has no remaining activity rule waivers will no longer be eligible to bid on the construction permit being auctioned.

If a bidder is not active in a round, a waiver will be applied automatically. An automatic waiver applied in a round in which there are no new valid bids will not keep the auction open. A proactive activity rule waiver is a waiver invoked by a bidder during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control or in the event of a bid withdrawal, as discussed below. The Commission also retains the flexibility to adjust by Public Notice prior to an auction the number of waivers permitted.

Stopping Rules. A stopping rule specifies when an auction is over. The auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission retains the discretion, however, to keep the auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver.

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D. Procedural and Payment Issues

Application Procedures, Permittee Qualifications, and Payment for Construction Permits Awarded by Competitive Bidding. The Commission's general procedural and payment rules for auctions will be applied to the DBS service, along with certain modifications. Applicants for DBS auctions will be required to file a short-form application, FCC Form 175, prior to the auction in which they wish to participate. Filing deadlines will be announced by Public Notice. If administratively feasible, electronic filing of FCC Form 175 for the auction of spectrum available at 110° and 148° will be allowed; filing procedures will be announced by Public Notice. For subsequent DBS auctions, the Commission will also announce by Public Notice how such forms should be filed.

As discussed below, every DBS auction participant will be required to submit to the Commission an upfront payment prior to commencement of the auction. In addition, every auction winner will be required to submit an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. Winning bidders will be required to file information in conformance with Part 100 of the Commission's Rules within 30 days of the announcement of winning bidders. Winning bidders must submit, as part of this post-auction application process, a signed statement describing their efforts to date and future plans to come into compliance with any applicable spectrum limitations, if they are not already in compliance.

After reviewing a winning bidder's information supplied in conformance with Part 100 and determining that the bidder is qualified to be a permittee, and after verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. If the Commission dismisses or denies any and all petitions to deny, the Commission will issue an announcement to this effect, and the winning bidder will then have five (5) business days to submit the balance of its winning bid. If the bidder does so, the permit will be granted subject to a condition, if necessary, that the permittee come into compliance with any applicable spectrum limitations within twelve (12) months of the final grant. The permittee may come into compliance with applicable spectrum caps by either surrendering to the Commission its excess channels or filing an application that would result in divestiture of the excess channels. If the bidder fails to submit the balance of the winning bid or the permit is otherwise denied, the Commission will assess a default payment as set forth below and re-auction the permit.

Upfront Payment. The Commission's approach to upfront payments varies from auction to auction depending on a balancing of the goal of encouraging bidders to submit serious bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. In the *Second Report and Order* in the Competitive Bidding proceeding, the Commission outlined a rationale for setting upfront payments at roughly five percent of the estimated value of a winning bid. *Second Report and Order*, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994). A year ago, Tempo would have paid ACC $45 million for its channels at 110° and 148°. In view of the fact that MCI has stated it would bid $175 million for the channels at 110°, and in the absence of any specific expression of interest in bidding on the channels at 148°, it seems clear that the channels at 110° are more valuable than those at 148°. Moreover, the Commission strongly believes that the value of the channels has increased over the past year. These considerations lead the Commission to set an upfront payment of $10 million for the channels at 110° and $2 million for the channels at 148°. The figure of $10 million is well above five percent of $45 million (it is actually 22.2 percent). This reflects a balancing of the assumed increase in value of the spectrum with the fact that the channels at 110° and 148° were included in the Tempo-ACC arrangement.

The magnitude of the upfront payment also reflects the Commission's concern that, if the upfront payment is too low, there is a risk of encouraging insincere bidding. Moreover, a $10 million payment should not be an excessive burden for bidders because it will not be held for a significant amount of time. In addition, $10 million is the lowest of the specific upfront payment suggestions in the comments. With respect to procedures for collecting upfront payments, the Commission will accept only wire transfers for the auction of the channels available at 110° and 148°.

Bid Withdrawal, Default and Disqualification. Any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the construction permit is offered by the Commission. If this subsequent winning bid is lower than the withdrawn bid. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. To prevent multiple withdrawals by the same party, the Commission will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit.

In the event of a bid withdrawal, the Commission will reoffer the construction permit in the next round. The offer price will be the highest price at or above which bids were made in previous rounds by three or more bidders. The Commission may at its discretion reduce this price in subsequent rounds if it receives no bids at this price. Prior to restarting the auction, the Commission will also restore the eligibility of all bidders who have not withdrawn. After a withdrawal the Commission will also issue each eligible bidder one activity rule waiver in addition to any remaining waivers to provide additional time for bid preparation and to avoid accidental disqualification.

A default payment will be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The amount of this default payment will be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner will be required to submit a payment of three (3) percent of the subsequent winning bid or three (3) percent of its own "winning" bid, whichever is less. If withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other action the Commission deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Regulatory Safeguards

Transfer Disclosure Provisions. In order to accumulate data to evaluate whether DBS authorizations are being issued for bids that fall short of market value, the Commission will require any entity that acquires a DBS license through competitive bidding and seeks to transfer that license within six years of the initial license grant, to file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. Thus, the information submitted should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration. Any competitive concerns raised by the possible disclosure of sensitive information can be addressed by the provisions in Sections 0.457 and 0.459 of the Commission's rules, 47 CFR §§ 0.457, 0.459, providing for the nondisclosure of information.

Performance Requirements. In implementing auction procedures, the Commission is required under Section 309(j) to include performance requirements "to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services." 47 U.S.C. § 309(j)(4)(B). The Commission concludes that the performance requirements adopted as part of the DBS service rules are sufficient to achieve these goals, and it is unnecessary to adopt any further performance rules in connection with auction procedures.

Rules Prohibiting Collusion. The Commission adopts the anti-collusion rules proposed in the NPRM with one modification, as explained below. Under these rules, bidders must identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders are also required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In the NPRM, the Commission proposed that after short-form applications are filed, and prior to the time the winning bidder has submitted the balance of its bid, all applicants should be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other applicants for construction permits serving the same or overlapping geographic areas, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. The Commission adopts this prohibition, but extends it only until the winning bidder has submitted its 20 percent down payment, and not until the winning bidder has submitted the balance of its bid. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the same or overlapping geographic areas from which the first applicant withdrew. In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for construction permits in any of the same or overlapping geographic areas.

DBS applicants may (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits for channels that may be used to cover the same or overlapping geographic areas; and (2) make agreements to bid jointly for construction permits after the filing of short-form applications, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas. In addition, the holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits that may be used to serve the same or overlapping geographic areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas, and (2) the arrangements do not result in any change in control of an applicant.

Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications as provided in the Order.

In adopting these rules, the Commission reminds potential bidders for DBS construction permits that allegations of collusion in a petition to deny may be investigated by the Commission or referred to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules while participating in an auction may be subject to forfeiture of their down payment or their full bid amount, as well as revocation of their license, and may be prohibited from participating in future auctions.

F. Designated Entities

Because of the extremely high implementation costs associated with satellite-based services, the Commission tentatively concluded in the NPRM that no special provisions should be made for designated entities—*i.e.*, small businesses, rural telephone companies, and businesses owned by members of minority groups and women—for the channels currently available at 110° and 148°. The Commission noted, however, that the expeditious implementation of DBS service at the two orbital locations in question might indirectly benefit designated entities by providing new opportunities for them to supply programming and equipment. Having reviewed the comments submitted in this proceeding, the Commission concludes that competition in the delivery of DBS service requires auction rules that will allow expedient assignment of the channels at 110° and 148°. Given the fact that these channels offer enough capacity to provide full DBS service in competition with current video providers, auction rules that put these two construction permits in the hands of entities that can quickly provide competition are in the public interest. No commenters assert that small businesses could attract the capital necessary to provide service on all the channels available at either 110° or 148°.

Accordingly, the Commission will not adopt special provisions for designated entities in the DBS auction for the channels at 110° and 148°, and will not set aside spectrum in this auction for

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"independents," as suggested by one commenter. Another commenter's statement that small and minority businesses are developing services for the DBS industry confirms the Commission's belief that a wide variety of businesses will be involved in the DBS industry; however, the Commission does not have a record before it sufficient to support adoption of this commenter's suggestion that the Commission provide incentives to encourage companies to team up with small and minority-owned businesses. However, designated entity provisions for future DBS auctions may be appropriate, particularly if spectrum is auctioned in small blocks.

Paperwork Reduction Act

22. The Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104–13, which were proposed in the NPRM and were submitted to the Office of Management and Budget ("OMB") for approval. The Commission, as part of its continuing effort to reduce paperwork burdens, also invited the general public to comment on the information collections proposed. The Commission received no comments on the proposed collections, and adopts them as originally proposed. The effective date of the new and modified rules that have been adopted falls after the deadline for OMB action under the PRA.

47 CFR Part 100

OMB Approval Number: None.
Title: Direct Broadcast Satellite Service.
Form No.: None.
Type of Review: Approval of existing collection.
Respondents: Businesses or other for profit.
Number of Respondents: 8.
Estimated Time Per Response: 400 hours.
Total Annual Burden: 3200 hours.
Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical and legal qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. See e.g., *Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, 90 FCC 2d 676 (1982), *recon. denied*, 53 RR 2d 1637 (1983); *CBS, Inc.*, 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986); and *United States Satellite Broadcasting Co.*, 3 FCC Rcd 6858, 6861–62 (1988). Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in IB Docket No. 95–168/PP Docket No. 93–253. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need and Purpose of Rules

This rulemaking proceeding modifies the licensing and service rules for the DBS service. It also adopts rules for competitive bidding in the DBS service based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive applications for authorizations under certain circumstances. Our objectives have been to promote efficiency and innovation in the licensing and use of the electromagnetic spectrum, to develop competitive and innovative communications systems, and to promote effective and adaptive regulations.

B. Issues Raised by the Public in Response to the Initial Analysis

No comments were received specifically in response to the Initial Regulatory Flexibility Analysis. We have, however, taken into account all issues raised by the public in response to the proposed rules. In certain instances, we have eliminated or modified rules in response to those comments.

C. Significant Alternatives Considered

We have attempted to balance all the commenters' concerns with our public interest mandate under the Communications Act in order to update the existing "interim" rules in the DBS service. We will continue to examine these rules in an effort to eliminate unnecessary regulations and to minimize significant economic impact on small businesses.

Ordering Clauses

Accordingly, IT IS ORDERED that Part 100 of the Commission's Rules is amended as specified below.

24. It is Further Ordered that the one-time auction spectrum limitation discussed above Will be Implemented in connection with the auction of the construction permits for the use of 28 DBS channels at the 110° orbital location and 24 channels at the 148° orbital location.

25. It is Further Ordered that the amendments to Part 100 adopted herein and the one-time auction spectrum limitation discussed above Will Become Effective January 19, 1996. This action is taken pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, and 309(j).

26. It is Further Ordered that, pursuant to 47 U.S.C. § 155(c), the Chief, Wireless Telecommunications Bureau, is granted Delegated Authority to implement and modify auction procedures in the DBS service, including the general design and timing of an auction, the number of authorizations to be offered in an auction, the manner of submitting bids, minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, and to announce such procedures by Public Notice.

27. It is Further Ordered that condition (a) placed on the construction permit of Tempo Satellite, Inc. in *Tempo Satellite, Inc.*, 7 FCC Rcd 2728, 2732 (1992), which imposed certain marketing restrictions, is Rescinded.

28. It is Further Ordered that the proceeding in IB Docket No. 95–168 is hereby terminated.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 100 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 100—DIRECT BROADCAST SATELLITE SERVICE

1. The authority citation for Part 100 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 309, and 554, unless otherwise noted.

2. Section 100.17 is revised to read as follows:

§ 100.17 License term.

(a) Licenses for non-broadcast facilities governed by this part will be issued for a period of ten (10) years. Licenses for broadcast facilities governed by this part will be issued for a period of five (5) years.

3. Section 100.19 is revised to read as follows:

§ 100.19 Due diligence requirements.

(a) All persons granted DBS authorizations shall proceed with diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the construction permit. The satellite stations shall also be required to be in operation within six years of the construction permit grant.

(b) In addition to the requirements stated in paragraph (a) of this section, all persons who receive new or additional DBS construction permits after January 19, 1996 shall complete construction of the first satellite in their respective DBS systems within four years of the grant of the construction permit. All satellite stations in such a DBS system shall be in operation within six years of the grant of the construction permit.

(c) DBS permittees and licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the construction permit shall not be considered to justify extension of these deadlines.

4. A new Section 100.53 is added to Subpart D to read as follows:

§ 100.53 Geographic service requirements.

(a) Those holding DBS permits or licenses as of January 19, 1996 must either:

(1) Provide DBS service to Alaska and Hawaii from one or more orbital locations before the expiration of their current authorizations; or

(2) Relinquish their western DBS orbital/channel assignments at the following orbital locations: 148° W.L., 157°W.L., 166° W.L., and 175° W.L.

(b) Those acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location.

A new subpart E consisting of §§ 100.71 through 100.80 is added to Part 100 to read as follows:

Subpart E—Competitive Bidding Procedures for DBS

Sec.
100.71 DBS subject to competitive bidding.
100.72 Competitive bidding design for DBS construction permits.
100.73 Competitive bidding mechanisms.
100.74 Withdrawal, default and disqualification payments.
100.75 Bidding application (FCC Form 175 and 175–S Short-form).
100.76 Submission of upfront payments and down payments.
100.77 Long-form applications.
100.78 Permit grant, denial, default, and disqualification.
100.79 Prohibition of collusion.
100.80 Transfer disclosure.

§ 100.71 DBS subject to competitive bidding.

Mutually exclusive initial applications to provide DBS service are subject to competitive bidding procedures. The general competitive bidding procedures found in Part 1, Subpart Q of this chapter, will apply unless otherwise provided in this part.

§ 100.72 Competitive bidding design for DBS construction permits.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide DBS service:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions;

(3) Combined sealed bid-oral auctions;

(4) Sequential multiple round electronic auctions; or

(5) Simultaneous multiple round auctions.

(b) The Wireless Telecommunications Bureau may design and test alternative procedures. The Wireless Telecommunications Bureau will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Wireless Telecommunications Bureau may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of construction permits, in addition to bids on individual construction permits. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction design.

(d) The Wireless Telecommunications Bureau may use single combined auctions, which combine bidding for two or more substitutable construction permits and award construction permits to the highest bidders until the available construction permits are exhausted. This technique may be used in conjunction with any type of auction.

§ 100.73 Competitive bidding mechanisms.

(a) *Sequencing.* In sequential auctions, the Wireless Telecommunications Bureau will generally auction DBS construction permits in order of their estimated value, with the highest value construction permit being auctioned first. The Wireless Telecommunications Bureau may vary the sequence in which DBS construction permits will be auctioned.

(b) *Grouping.* All DBS channels available for a particular orbital location will be auctioned as a block, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme. In the event the Wireless Telecommunications Bureau uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Wireless Telecommunications Bureau will determine which construction permits will be auctioned simultaneously or in combination.

(c) *Bid Increments and Tie Bids.* The Wireless Telecommunications Bureau may, by announcement before or during an auction, establish, raise or lower minimum bid increments in dollar or percentage terms. The Wireless Telecommunications Bureau may establish and change maximum bid increments during an auction. The Wireless Telecommunications Bureau may also establish by Public Notice a suggested opening bid or a minimum opening bid on each construction permit. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

(d) *Stopping Rules.* The Wireless Telecommunications Bureau may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

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(e) *Activity Rules.* The Wireless Telecommunications Bureau may establish activity rules which require a minimum amount of bidding activity. In the event that the Wireless Telecommunications Bureau establishes an activity rule in connection with a simultaneous multiple round auction or sequential multiple round electronic auction, each bidder will be automatically granted a certain number of waivers of such rule during the auction.

§ 100.74 Withdrawal, default and disqualification payments.

(a) When the Commission conducts a sequential multiple round electronic auction or simultaneous multiple round auction pursuant to § 100.72, the Wireless Telecommunications Bureau will impose payments on a bidder who withdraws a high bid during the course of the auction, who defaults on payments due, or who is disqualified.

(b) A bidder who withdraws a high bid during the course of such an auction will be assessed a payment equal to the difference between the amount bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(d) When the Commission conducts a sequential multiple round electronic auction, the Wireless Telecommunications Bureau will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit. When the Commission conducts any other type of auction, the Wireless Telecommunications Bureau may bar a bidder who withdraws a bid from continued participation in the bidding for the same construction permit or other construction permits offered in the same auction.

(e) When the Commission conducts any type of auction other than those provided for in paragraphs (a), (b), (c), and (d) of this section, the Wireless Telecommunications Bureau may modify the payments to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified above.

§ 100.75 Bidding application (FCC Form 175 and 175-S Short-form).

All applicants to participate in competitive bidding for DBS construction permits must submit applications on FCC Form 175 pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of DBS construction permits and the date of the auction for those construction permits. This Public Notice also will specify the date on or before which applicants intending to participate in a DBS auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as any upfront payment that must be submitted, and the location where the application must be filed.

§ 100.76 Submission of upfront payments and down payments.

(a) Bidders in DBS auctions will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, the amount of which will be announced by Public Notice prior to each auction.

(b) Winning bidders in a DBS auction must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten (10) business days of the announcement of winning bidders.

§ 100.77 Long-form applications.

Each winning bidder will be required to submit the information described in §§ 100.13, 100.21, and 100.51 within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 100.13 and any associated Public Notices. Only auction winners will be eligible to file applications for DBS construction permits in the event of mutual exclusivity between applicants filing a short-form application.

§ 100.78 Permit grant, denial, default, and disqualification.

(a) Each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the construction permit is ready for grant.

(b) A bidder who withdraws its bid during the course of an auction, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 100.74.

§ 100.79 Prohibition of collusion.

(a) Bidders are required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders are also required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

(b)(1) Except as provided in paragraphs (b)(2), (b)(3) and (b)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder submits its downpayment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits that may be used to serve the same or overlapping geographic areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for construction permits, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for construction permits that may be used to serve the same or overlapping geographic areas, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas; and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(c) Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications pursuant to paragraphs (a) and (b) of this section.

§ 100.80 Transfer disclosure.

Any entity that acquires a DBS license through competitive bidding, and seeks to transfer that license within six years of the initial license grant, must file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. The information submitted must include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration.

[FR Doc. 95–30938 Filed 12–19–95; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 660

RIN 2132–AA54

Buy America Requirements; Removal

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule removes the Buy America requirements which are now obsolete and have been superseded by 49 CFR part 661.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, Office of Chief Counsel, room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–1936.

SUPPLEMENTARY INFORMATION: Section 401 of the Surface Transportation Assistance Act of 1978 (the 1978 STAA) (Public Law No. 95–599) included a Buy America provision applicable for the first time to the Federal Transit Administration (FTA) program. This provision established a preference for products produced, mined or manufactured in the United States. The implementing regulation, 49 CFR part 660, applied these requirements to contracts exceeding $500,000 financed by funds obligated under the 1978 STAA.

Both the statutory and funding authority of the 1978 STAA have now lapsed. FTA's current Buy America requirements are set out at 49 U.S.C. 5323(j) and the implementing regulation, 49 CFR part 661. Because 49 CFR part 660 is now obsolete, FTA finds that it is unnecessary to seek public comment on its removal from the Code of Federal Regulations. Part 660 is being removed as part of the President's "Reinventing Government" initiative.

Accordingly, and effective December 20, 1995, FTA is removing 49 CFR Part 660.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties. It merely removes an obsolete regulation. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 660

Grant programs—transportation, Mass transportation.

PART 660—[REMOVED]

Accordingly, for the reasons set forth above, part 660 is hereby removed.

Gordon J. Linton,
Administrator.

[FR Doc. 95–30736 Filed 12–20–95; 8:45 am]
BILLING CODE 4910–57–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 121495A]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the General category fishery.

SUMMARY: NMFS has determined that the 10 metric tons (mt) of Atlantic bluefin tuna (ABT) set aside for the late-season General category fishery in the New York Bight beginning October 1, 1995, will have been taken by December 15, 1995. Therefore, the General category fishery will be closed effective at 2330 hours (11:30 pm) on Friday, December 15, 1995. This action is being taken to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: 2330 hours on December 15, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Kevin Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas recommended U.S. quota among the various domestic fishing categories.

Implementing regulations for the Atlantic Tuna Fisheries at 50 CFR 285.22(a) provide for an adjusted annual quota of 550 mt of large medium and giant ABT to be harvested from the Regulatory Area by vessels permitted in the General category. Based on landings

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statistics, the fishery was closed on September 12, 1995 (60 FR 48052, September 18, 1995). A transfer of 10 mt from the longline-south incidental subcategory to the General category adjusted the General category quota to 560 mt (60 FR 51932, October 4, 1995). Furthermore, the 10 mt transfer established a geographic set-aside for the New York Bight fishery to be fished from October 1 until the 10 mt are taken.

Based on landings statistics, NMFS has determined that the late-season quota of ABT allocated for General category vessels fishing in the New York Bight must be closed. Fishing for, retention of, possession of, or landing large medium or giant ABT by vessels in the General category must cease by 2330 hours December 15, 1995. This action is being taken to prevent overharvest of the quota.

This closure of the late-season General category fishery will not affect other categories fishing for ABT. The Incidental catch categories remain open.

Classification

This action is taken under 50 CFR 285.20(b) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 14, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30822 Filed 12–14–95; 4:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 244
Wednesday, December 20, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0906]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing amendments to Subpart A of Regulation S, which implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA. These proposed amendments update the fees to be charged and streamlines the subpart generally.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Comments should refer to Docket No. R–0906, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 1115 of the RFPA (12 U.S.C. 3415) requires the Board to establish, by regulation, the rates and conditions under which payment is made by a Government authority to a financial institution for searching for, reproducing, or transporting data required or requested under the RFPA. Shortly after the RFPA was adopted, the Board issued Regulation S (12 CFR 219) to implement this provision (44 FR 55812, September 28, 1979). No changes to the rates have been made since that time. In January 1995, the Board adopted a new Subpart B of Regulation S (to become effective on January 1, 1996 [1]) and designated this part of Regulation S as Subpart A. 60 FR 231 (January 3, 1995) No substantive changes were made to the newly designated Subpart A. Pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 4803), the Board has reviewed Subpart A of Regulation S and proposes to update it through these amendments. These amendments streamline the regulation by eliminating unnecessary provisions, and they update the rates to be paid and the exceptions to the provisions of this Subpart.

I. Definitions

The definitions in Subpart A reiterate the statutory definitions from the RFPA for the applicable terms of this Subpart. The definition for "directly incurred costs" has been removed and incorporated into the section concerning cost reimbursement.

II. Cost Reimbursement

This section has been streamlined and reorganized to place the rates in a separate Appendix A for clarity and ease of amendment when updating the rates. The proposed amendments also recognize that courts issuing orders or subpoenas in connection with grand jury proceedings must pay the rates set by Subpart A.

III. Rates

The Board is particularly interested in receiving comments on the rates proposed in Appendix A. It is difficult to establish rates to be applied across all geographic regions and to all depository institutions, regardless of size. While recognizing this difficulty, the Board nevertheless proposes a uniform rate in the belief that administration of a complex fee schedule would be difficult.

A. Reproduction

The rates proposed for reproduction are the same rates used by the Board to charge requesters seeking documents under the Freedom of Information Act (FOIA). The Board establishes its FOIA fees based upon the actual costs of making such reproductions and believes that these costs are similar to those incurred by other entities. The Board welcomes comments on the appropriateness of the proposed fees and any suggested alternative methods of determining the fees.

B. Search and Processing

The proposed fees for search and processing are separated into two categories—clerical/technical and manager/supervisory. Any search for sensitive customer records is likely to involve both clerical staff and managerial staff, who are paid at different levels. The rates set for this reimbursement were calculated using the 1994 Bank Cash Compensation Survey done by the Bank Administration Institute. Based upon the job descriptions in the Cash Compensation Survey, the position of Supervisor, Bookkeeping was used to calculate the managerial rate. The calculation was made based upon the total compensation (with bonus) for all banks on a national average ($27,600) divided by 2080 hours, adjusted up by 25% to cover benefits, and further adjusted by 3% for inflation since 1994. The clerical rate was calculated in the same way, but using an average of the two job positions of Clerk II (Bookkeeping and Operations @ $18,100) and Clerk I (Bookkeeping and Operations @ $15,100). The Board is very interested in receiving comments on the rates and the method of calculation.

[1] In a rulemaking issued on August 24, 1995 (60 FR 44144), the effective date of Subpart B has been delayed until April 1, 1996.

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IV. Exceptions

This section has been updated to reflect changes in the exceptions listed by the RFPA.

V. Conditions for Payment and Payment Procedures

No substantive changes have been made to these two sections.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605, the Board certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule confers a benefit on financial institutions, including small financial institutions, by providing for reimbursement of certain costs incurred in complying with a requirement to assemble and produce financial records.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0203), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The Right to Financial Privacy Act mandates that each financial institution maintain a record of instances in which it releases a consumer's financial information to a government agency. Generally, the institution may not release records until the government agency has notified the consumer of its intent to request the record, together with the reason for the request. Normally, the agency may not obtain records unless it has a subpoena, a search warrant, or an authorization from the consumer.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act is 7100–0203.

Because the records would be maintained at banks, no issue of confidentiality under the Freedom of Information Act arises.

This proposed regulation, 12 CFR 219, has no effect upon the paperwork burden associated with the Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act. That hour burden is estimated to be 22 minutes per response. It is estimated that the frequency of response at state member banks is 30 responses per year. Thus the annual hour burden across the 975 state member banks is estimated to be 10,725 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $214,500.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Federal Reserve System, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR Part 219, as amended at 60 FR 231 and 44144 effective April 1, 1996, is proposed to be amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION)

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

1. The authority citation for Subpart A continues to read as follows:

Authority: 12 U.S.C. 3415

2. Subpart A is amended by revising §§ 219.2 through 219.6 to read as follows:

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

Customer means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts or has acted as a fiduciary in relation to an account maintained in the person's name. Customer does not include corporations or partnerships comprised of more than five persons.

Financial institution means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

Financial record means an original or copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

Government authority means any agency or department of the United States, or any officer, employee or agent thereof.

Person means an individual or a partnership of five or fewer individuals.

§ 219.3 Cost reimbursement.

(a) *Fees payable.* Except as provided in § 219.4, a government authority, or a court issuing an order or subpoena in connection with grand jury proceedings, seeking access to financial records pertaining to a customer shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in Appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) *Search and processing costs.* (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rates specified in Appendix A to this section.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for requested documents are set forth in Appendix A to this section. Copies of photographs, films, computer tapes, and other materials not listed in Appendix A to this section are reimbursed at actual cost.

(d) *Transportation costs.* Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination.

Appendix A to § 219.3—Reimbursement Schedule

Reproduction:	
Photocopy, per page	.15
Paper copies of microfiche, per frame	.15
Duplicate microfiche, per microfiche	.30
Computer diskette	5.00
Search and Processing:	
Clerical/Technical, hourly rate	11.00
Manager/Supervisory, hourly rate	17.00

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty or loan insurance program.

(c) *Nonidentifiable information.* Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder.

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to 5 U.S.C. 554, and to which the government authority and the customer are parties.

(i) *Investigation of financial institution or its noncustomer.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at an entity that is not a customer as defined in § 219.2.

(j) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination, or audit directed at a government authority.

(k) *Federal Housing Finance Board requests.* Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal home loan banks in the exercise of the FHFB's authority to extend credit to financial institutions or others.

(l) *Department of Veterans Affairs.* The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that Department.

§ 219.5 Conditions for payment.

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary.

(b) *Compliance with legal process, request, or authorization.* No payment may be made to a financial institution until it satisfactorily complies with the legal process, the formal written request, or the customer authorization. When the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges disclosure to a grand jury or government authority, the financial institution shall be reimbursed for the reasonably necessary costs incurred in assembling the requested financial records prior to the time the financial institution is notified of such event.

(c) *Itemized bill or invoice.* No reimbursement is required unless a financial institution submits an itemized bill or invoice specifically detailing its search and processing, reproduction, and transportation costs.

§ 219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a service of legal process or request, the court or government authority shall notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment and shall furnish an address for this purpose.

(b) *Special notice.* If a grand jury or government authority withdraws the legal process or formal written request, or if the customer revokes the authorization, or if the legal process or request has been successfully challenged by the customer, the grand jury or government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment of costs incurred prior to the time of the notice to the financial institution receives this notice.

3. Section 219.7 is removed.

By order of the Board of Governors of the Federal Reserve System, December 13, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30725 Filed 12–19–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ACE–17]

Proposed Amendment to Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Muscatine Municipal Airport, Muscatine, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the relocated Port City Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Muscatine Municipal Airport.

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air

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Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–17, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ACE–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the relocated Port City VOR/DME at the Muscatine, IA, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Muscatine, IA [Revised]

Muscatine Municipal Airport, IA
(Lat. 41°22'00" N., long. 91°08'44" W)
Port City VOR/DME
(Lat. 41°21'59" N., long. 91°08'57" W)
Muscatine NDB
(Lat. 41°21'44" N., long. 91°08'46" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Muscatine Municipal Airport and within 1.4 miles each side of the 067° radial of the Port City VOR/DME extending from the 6-mile radius to 7 miles northeast of the airport and within 2.6 miles each side of the 256° bearing from the Muscatine NDB extending from the 6-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30923 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–16]

Proposed Amendment to Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Hastings Municipal Airport, Hastings, Nebraska. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Hastings Municipal Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–16, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ACE–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the GPS at the Hastings, Nebraska, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hastings, NE [Revised]

Hastings Municipal Airport, NE
(Lat. 40°36'16"N., long. 98°25'39"W)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of Hastings Municipal Airport and within 2 miles each side of the 338° bearing from the Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles north of the airport and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southeast of the airport, and within 3 miles each side of the 219° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30922 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–15]

Proposed Amendment to Class E Airspace; Carroll, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Arthur N. Neu Airport, Carroll, Iowa. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System

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(GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Arthur N. Neu Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–15, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ACE–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new SIAP based on the GPS at the Arthur N. Neu Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Carroll, IA [Revised]

Arthur N. Neu Airport, IA
(Lat. 42°02'46"N. long. 94°47'20"W)
Carroll NDB
(Lat. 42°02'42"N., long. 94°47'07"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arthur N. Neu Airport and within 2.6 miles each side of the 142° bearing from the Carroll NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,
Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30921 Filed 12–19–95; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–14]

Proposed Amendment to Class E Airspace; Atlantic, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Atlantic, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Atlantic Municipal Airport.

DATES: Comments must be received on or before January 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–14, 601 East 12th Street, Kansas City, MO. 64106

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ACE 14" The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace of a new SIAP based on the GPS at the Atlantic, IA, Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation of part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Atlantic, IA [Revised]

Atlantic Municipal Airport, IA
(Lat. 41°24'26" N., long. 95°02'49" W)
Atlantic NDB
(Lat. 41°24'26" N., long. 95°02'47" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Atlantic Municipal Airport and within 4 miles each side of the 315° bearing from the Atlantic NDB extending from the 6.4-mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 30, 1995.

Herman J. Lyons, Jr.,
Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30920 Filed 12–19–95; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANE–61]

Proposed Amendment to Class E airspace; Worcester, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Worcester, MA (ORH). With the commissioning of the Automated Surface Observation System (ASOS) at the Worcester Municipal Airport, weather reporting is now continuously available at that

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airport. This action is necessary to establish controlled airspace extending upward from the surface for aircraft operating under instrument flight rules (IFR) to and from the Worcester Municipal Airport during the times when the air traffic control tower is closed.

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, Docket No. 95–ANE–60, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7040; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 406, by contacting the Manager, System Management Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, System Management Branch, ANE–533, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed first under **ADDRESSES** above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–ANE–61." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230,800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E surface area at the Worcester Municipal Airport, Worcester, MA (ORH). Since the air traffic control tower (ATCT) at Worcester does not operate continuously, aircraft operating under instrument flight rules (IFR) to and from Worcester would not have had the benefit of weather reports from the airport during the times when the tower is closed. The lack of continuous weather reporting also required that the controlled airspace for Worcester could not extend to the surface. Recently, however, an Automated Surface Observation System (ASOS) has been commissioned at Worcester, making weather reporting now available continuously. As result, this action is necessary to establish controlled airspace extending from the surface for those aircraft operating to and from Worcester under IFR during the times when the ATCT is closed. Class E airspace designations for airspace areas extending upward from the surface of the earth in the vicinity of airports are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore these proposed regulations—(1) are not "significant regulatory actions" under Executive Order 12866; (2) are not "significant rules" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) do not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation, it is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1994, and effective September 16, 1995, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6002 Class E surface areas extending upward from the surface of the earth.

* * * * *

ANE MA E2 Worcester, MA [New]

Worcester Municipal Airport, MA
(Lat. 42°16'02" N, long. 71°52'32" W)

That airspace extending upward from the surface within a 4.2-mile radius of Worcester Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter by continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on December 13, 1995.

John J. Boyce, Jr.,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–30917 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36580, International Series Release No. 900, File No. S7–34–95]

RIN 3235–AG68

Exemption of the Securities of the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 ("Rule") that would designate debt obligations issued by the Federative Republic of Brazil ("Brazil"), the Republic of Argentina ("Argentina"), and the Republic of Venezuela ("Venezuela") (collectively the "Proposed Countries") as "exempted securities" for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of the Proposed Countries. This change is not intended to have any substantive effect on the operation of the Rule.

DATES: Comments should be submitted by January 19, 1996.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7–34–95, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942–0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has adopted Rule 3a12–8 under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, The Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, and Mexico (the "Designated Foreign Governments"). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 (17 CFR 240.3a12–8) to add the debt obligations of Brazil, Argentina, and Venezuela to the list of Designated Foreign Government securities that are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on debt obligations of the Proposed Countries would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984 [1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, and, most recently, Mexico.[4]

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[1] See Securities Exchange Act Release Nos. 20708 ("Original Adopting Release") (March 3, 1984), 49 FR 8595 (March 8, 1984) and 19611 ("Original Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. See Original Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. See Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8675 (March 20, 1987).

[4] As originally adopted, the Rule applied only to British and Canadian government securities. See Original Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. See Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43660 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of "West Germany" to the

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III. Discussion

The Chicago Mercantile Exchange ("CME") has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of the Proposed Countries.[5] The CME intends to develop a futures contract market in Brady bonds issued by the Proposed Countries.[6] Brady bonds are issued pursuant to the Brady plan which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.[7] The Commission understands that Brady bonds issued by the Proposed Countries are currently traded primarily in the over-the-counter market in the United States.

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,[8] the futures contracts require delivery outside the United States,[9] and the contracts be traded on a board of trade) would continue to apply.

In determining whether to amend the Rule to add new countries, the Commission has considered whether there is an active and liquid secondary trading market in the particular sovereign debt. There appears to be an active and liquid market in the debt instruments of the Proposed Countries. According to the CME, as of December 31, 1993, the total public and publicly guaranteed debt [10] of Brazil, Argentina, and Venezuela was approximately US$86 billion, US$55 billion, and US$74 billion, respectively.[11] Moreover, the cash market for Brady bonds issued by the Proposed Countries evidences relatively active trading. Based on data provided by the CME, the total 1994 trading volume in the Brady bonds of Brazil, Argentina, and Venezuela was approximately US$371 billion, US$360 billion, and US$320 billion, respectively.[12]

In light of the above data, the Commission believes preliminarily that the debt obligations of the Proposed Countries should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments. Moreover, the trading of futures on the sovereign debt of Brazil, Argentina, and Venezuela should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of the Proposed Countries.

In addition, the Commission preliminarily believes that the proposed amendment offers potential benefits for U.S. investors. If adopted, the proposed amendment would allow U.S. boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others. The proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

Section 23(a)(2) of the Exchange Act requires the Commission in amending rules to consider potential impact on competition. Because the proposal is intended to expand the range of financial products available in the United States, the Commission preliminarily believes that the proposed amendment to the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of the Proposed Countries as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of the Proposed Countries' debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between the Proposed Countries and the Designated Foreign Governments for purposes of the Rule. The Commission also solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others. Finally, the Commission seeks comment on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A.

"Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30168 (January 6, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34808 (October 27, 1994), 59 FR 54812 (November 2, 1994). Finally, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) ("Mexico Adopting Release").

[5] *See* Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated November 10, 1995 ("CME petition").

[6] The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991).

[7] There are several types of Brady bonds, but "Par Bradys" and "Discount Bradys" represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

[8] The Commission notes that while no Brady bonds of Proposed Countries have been registered in the United States, certain sovereign debt issues of Argentina and Venezuela have been so registered. The trading of futures on U.S-registered debt securities of Argentina and Venezuela would not be exempted under Rule 3a12–8 from the CEA's general prohibition on futures overlying individual securities.

[9] The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[10] Public debt is an external obligation of a public debtor, including the national government, a political subdivision (or any agency of either) and autonomous public bodies. Publicly guaranteed debt is an external obligation of a private debtor that is guaranteed for repayment by a public entity.

[11] *See* Letter from Carl A. Royal, Senior Vice President and Special Counsel, CME, to James T. McHale, Attorney, OMS, Division, Commission, dated November 30, 1995 (citing the World Bank's 1995 World Debt Tables as the source for this information) ("November 30 letter").

[12] *See* November 30 letter, *supra* note 11. As mentioned earlier, the Commission recently amended the Rule to include the debt securities of Mexico. The total 1994 trading volume in Mexican Brady bonds was approximately US$262.3 billion. *See* Mexico Adopting Release, *supra* note 4.

VI. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. §§ 78a et seq., particularly Sections 3(a)(12) and 23(a), 15 U.S.C. §§ 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xv), removing the "period" at the end of paragraph (a)(1)(xvi) and adding "; or" in its place, and adding paragraph (a)(1)(xvii), paragraph (a)(1)(xviii), and paragraph (a)(1)(xix) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xvii) the Federative Republic of Brazil;

(xviii) the Republic of Argentina; or

(xix) the Republic of Venezuela.

* * * * *

By the Commission.

Dated: December 13, 1995.

Jonathan G. Katz,

Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") set forth in Securities Exchange Act Release No. 36580, which would define government debt securities of Brazil, Argentina and Venezuela (collectively the "Proposed Countries") as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of the Proposed Countries. Second, because futures contracts on the sixteen countries whose debt obligations are designated as "exempted securities" under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 27 CFR 240.0–10 and to the extent that it is defined for futures market participants in the Commodity Futures Trading Commission's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act."[1]

Dated: December 13, 1995.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 95–30862 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

22 CFR Part 89

Bureau of Economic and Business Affairs; Foreign Prohibitions on Longshore Work by U.S. Nationals

[Public Notice No. 2314]

AGENCY: Department of State.

ACTION: Proposed rule; extension of Comment Period.

SUMMARY: On November 24, 1995, the Department of State issued a proposed rulemaking regarding longshore work by foreign nationals in U.S. ports and waters. In response to requests from several interested parties, the Department is extending the deadline for comments by 30 days, from December 26, 1995 to January 26, 1996.

DATES: Interested parties are invited to submit comments in triplicate no later than January 26, 1996.

ADDRESSES: Comments may be mailed to the Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, D.C. 20520–5816.

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647–6961.

SUPPLEMENTARY INFORMATION: On November 24, 1995, the Department of State issued a proposed rulemaking (60 FR 58026) updating the list of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The crews of ships registered in or owned by nationals of the countries on the list may not perform the activities enumerated on the list. Citing the need for more time to assess the full effects of the proposed rule, a number of parties have requested an extension of the comment period. Consequently, the Department will extend the deadline by 30 days, from December 26, 1995 to January 26, 1996.

(8 U.S.C. 1288, Pub. L. 010–649, 104 Stat. 4878)

Dated: December 14, 1995.

Daniel K. Tarullo,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 95–30879 Filed 12–19–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA65

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule addressing the requirements for approval of flame-resistant conveyor belts to be used in underground mines.

DATES: Written comments must be received on or before February 5, 1996.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

[1] 45 FR 18618 (April 30, 1982).

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Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On October 31, 1995, MSHA published a document in the **Federal Register** (60 FR 55353) announcing the reopening of the rulemaking record on its proposed standard for flame-resistant conveyor belts used in underground mines. Comment period was scheduled to close on December 15, 1995. By this document, the Agency is extending the comment period to February 5, 1996. All interested parties are encouraged to submit comments prior to that date.

Dated: December 15, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–30090 Filed 12–15–95; 4:06 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Valuation of Oil From Federal and Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to changes in the oil and gas industry and the marketplace, the Minerals Management Service (MMS) is considering amending its regulations regarding the valuation of crude oil produced from or allocated to Federal and Indian leases.

Most Federal and Indian leases provide that the value of production for royalty purposes be determined by the Secretary. This notice is intended to solicit comments on new methodologies to establish the royalty value of oil produced from Federal and Indian leases. MMS specifically seeks comments on the use of crude oil posted prices as a means to value oil not sold under arm's-length conditions, and the meaning and application of the term "significant quantities".

DATES: Comments must be received on or before March 19, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding valuation issues should be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165, Attention: David S. Guzy, telephone (303) 231–3432, fax (303) 231–3194.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, MMS Royalty Management Program, at telephone (303) 231–3432, fax (303) 231–3491, e-mail David_Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

All Federal and Indian oil and gas leases contain provisions for the determination of royalty obligations.

Most of these Federal and Indian leases reserve to the Secretary considerable discretion in determining value for royalty purposes. This Advance Notice of Proposed Rulemaking is intended to solicit comments on new methodologies to establish value for crude oil production from Federal and Indian leases. Comments received in response to this Advance Notice will be considered in the development of a proposed rulemaking that MMS will publish in the **Federal Register**.

In conjunction with the lease terms, the valuation of oil production from Federal and Indian leases is subject to the regulations at 30 CFR Part 206, Subpart C—Federal and Indian Oil. The present regulations govern the valuation of production from both Federal and Indian (Tribal and allotted) leases (except leases on the Osage Indian Reservation, Oklahoma). MMS believes it could provide an improved regulatory framework in which lease terms could be strictly enforced while requiring little or no extra information from lessees.

MMS may issue separate regulations to value oil from Indian leases because of the Secretary's trust obligation in the administration of Indian oil and gas leases. In view of this obligation, the Secretary must ensure that Indians receive the maximum benefits from mineral resources on their lands. Thus, the value of production for royalty purposes from an Indian lease should be determined considering the higher reasonable values provided by the terms of the standard lease. MMS believes this goal is consistent with: the terms of these Indian oil and gas leases, the statutes governing Indian oil and gas leases, and court decisions providing judicial guidance in the interpretation and administration of Indian oil and gas leases. Specific comments are requested on issuing separate regulations for valuing oil from Indian leases.

II. Discussion of Alternatives

The Secretary's responsibility to determine the royalty value of oil produced from Federal and Indian lands has not changed, although the industry and marketplace have changed dramatically over the years. Specifically, oil posted prices may no longer represent the price a purchaser is willing to pay for a particular crude oil. MMS plans to develop a set of regulations to permit the Secretary to discharge the Department's royalty valuation responsibility in an environment of continuing and accelerating change in the industry and the marketplace. Given the ever-changing marketplace, the Secretary's responsibilities regarding oil production from Federal and Indian leases require development of flexible valuation methodologies that lessees can comply with accurately and timely. MMS specifically seeks to improve oil valuation regarding the use of oil posted prices, including methods of determining "significant quantities." A discussion of these areas follows:

(a) Oil Posted Prices, Including Effects on Existing Valuation Benchmarks for Oil Not Sold Under Arm's-Length Contract

MMS is considering modifying or replacing the current benchmark system at 30 CFR 206.102(c) used to value oil not sold under arm's-length contracts. MMS believes that the current regulations may place too much emphasis on posted prices—the lessee's and others'. The first two of the five benchmarks rely on postings if a significant quantity of like-quality crude is purchased or sold at such postings in a field or area. Likewise, the third benchmark relies at least partly on postings because it applies the average of arm's-length contract prices, which often are tied to postings, for purchases or sales of significant quantities of oil in the area. (The fourth benchmark relies on spot sales and other relevant matters, and the fifth relies on a net-back or any other reasonable method to determine value.)

MMS recently has received information indicating that oil posted prices don't always reflect market value and in fact may often be no more than a beginning point for negotiation.

MMS has found numerous examples where crude oil purchasers pay premiums over the posted price. Further, consultation with private consultants, various State government personnel, and other non-Federal royalty-owners indicates a consistent belief that oil posted prices may not represent market value. And, while posted prices historically were presumed to represent actual prices offered for a particular crude oil, postings no longer necessarily represent an offer to buy at that price.

Revising the benchmark system in the regulations could remove some of the current heavy reliance on posted oil prices and provide MMS more flexibility in determining proper royalty value.

MMS is soliciting comments on the continued applicability of oil posted prices as a fair and reasonable indicator of royalty value. Specifically, MMS seeks input on how oil marketing takes place today and whether and how oil posted prices typically factor into oil sales/purchases/exchanges.

MMS invites specific comments on various aspects of posted prices as applied to crude oil sales and royalty value for Federal and Indian leases, including the option of separate oil valuation regulations for Indian leases. MMS would like examples demonstrating whether crude oil price postings form the true basis for oil values in given fields or areas—and, to the extent possible, nationwide. And, if the commenter feels postings don't reflect market value for the field or area, MMS would like specific suggested alternative royalty valuation methodologies for oil not sold under arm's-length conditions. That is, if postings don't reflect market value and because the existing benchmarks for oil not sold under arm's-length conditions rely heavily on posted prices, what are some suggested alternative valuation benchmarks? For example:

- Are there indices or other published prices that better reflect actual market value than oil postings?
- Where prices posted by individual companies differ considerably within the same field or area, how are these differences best reconciled?
- Are there fixed "reference" prices against which quality, transportation, and other adjustments can be made to develop reasonable royalty values (e.g., West Texas Intermediate)?
- Are spot prices of sufficient reliability and do they cover wide enough geographic areas to use as value bases?
- Do oil "futures" prices provide meaningful bases for royalty valuation?
- What alternative valuation method(s) best balance the needs to (a) reflect the market value of the oil as sold, exchanged, or otherwise disposed of; and (b) maximize administrative efficiency for all concerned? (Please consider the amount of information needed by the lessee and MMS, and the overall administrative costs of all parties.)

For royalty valuation involving arm's-length transactions, MMS generally accepts the contractual terms, which may include postings. MMS further requests comments on whether the use of alternative methods for valuing oil not sold under arm's-length conditions would impact the acceptability of posted prices for valuing oil sold at arm's-length.

(b) Quantifying "Significant Quantities" of Oil

The current MMS royalty valuation benchmarks for oil not sold under arm's-length contract rely on "significant quantity" determinations. Under the benchmarks, the lessee's or others' posted or contract prices used in arm's-length purchases or sales of "significant quantities" of like-quality oil from the same field or area establish royalty value. The first applicable of the five benchmarks is to be used, and the first four rely on "significant quantity" determinations. For example, if the lessee sells "significant quantities" of its field production at arm's-length, the arm's-length contract sales price may apply to the lessee's other, internally-transferred crude oil from the same field. But the existing regulations contain no fixed definition of "significant quantities," either on an absolute or relative basis. Thus, MMS would like comments on the best ways to determine what constitutes "significant quantities." For example:

- Is there an absolute volume measure (barrels per day/month/year, etc.) that would allow MMS to determine whether specific arm's-length sales involve "significant quantities"? If so, should this volume vary by field or area?
- Is there a fixed percentage of field or area production that MMS can use as a comparison basis to determine whether specific arm's-length sales represent "significant quantities"?
- What should be the comparative basis for "significant quantity" determinations? Should individual arm's-length transactions be related to *all* field production, or should some volumes such as internal company transfers of production or exchanges or buy/sell exchanges with other oil companies first be excluded from field production?
- Are there measures other than "significant quantities" that may better apply given alternative valuation scenarios?

In providing comments on (a) and (b) above, please consider not only current oil marketing practices, but also any changes that may be foreseen. MMS intends for any oil valuation rule changes to be flexible enough to accommodate future oil marketing changes as much as possible to avoid ongoing rule modification.

In addition to comments on (a) and (b) above, MMS would like comments on the process to use and make potential changes to the oil valuation rules. Specifically, MMS would like comments on whether any oil valuation regulatory changes should be subject to negotiated rulemaking procedures or other consensual mechanisms for developing regulations.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 95–30767 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–110, Amendment Number 93–7, Part II]

Indiana Permanent Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing receipt of additional changes to an amendment previously submitted by Indiana as a modification to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The changes add new language concerning minor field revisions to the second of three subparts of the original amendment. The changes are intended to incorporate language desired by the State.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on

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January 4, 1996; if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. on January 3, 1996; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 2, 1996.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

Since July 29, 1982, (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), on August 24, 1988 (Regulatory Reform II), and on September 20, 1989 (Regulatory Reform III), that a number of Indiana regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated December 30, 1993 (Administrative Record No. IND–1322), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package (number 93–7) consisting of revisions to 38 sections of the Indiana rules. These revisions address changes to the Indiana program that were identified in the three letters referred to above, and certain required program amendments. The State has also proposed additional changes which Indiana believes will further improve the approved State program. The primary focus of the submittal is on soil capability and restoration standards, individual civil penalties, significant/non-significant revisions, coal exploration, and performance bonds.

OSM announced receipt of the proposed amendment in the January 24, 1994, Federal Register (59 FR 3528), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 24, 1994.

By letter dated December 6, 1995 (Administrative Record Number IND–1415), Indiana submitted additional minor changes to amendment 93–7.

By letter dated January 12, 1995 (Administrative Record Number IND–1423), OSM provided Indiana with comments concerning the proposed amendment. Indiana responded by letter dated January 25, 1995 (Administrative Record Number IND–1419). In that letter, Indiana said that it wishes to separate amendment 93–7 into three subparts. OSM approved the amendments contained in subpart I on November 9, 1995 (60 FR 56516).

By letter dated May 5, 1995 (Administrative Record Number IND–1462), Indiana submitted additional minor changes to subpart II of amendment 93–7, and added a new subparagraph at 301 IAC 12–3–121(d) concerning minor field revisions.

Indiana proposes to add the following language.

310 IAC 12–3–121(d).

If the director determines on a case-by-case basis or by policy guidelines that the conditions of paragraph (c) of this section are met and that the proposed change does not require technical review or design analysis, the proposed change may be approved as a minor field revision by the field inspector in the inspection report or on a form signed in the field. Minor field revisions must be properly documented and separately filed and may include, but are not necessarily limited to, the following:

(1) Soil stockpile locations and configurations.

(2) As-built pond certifications.

(3) Minor transportation facilities changes.

(4) Pond depth/shape/orientation.

(5) Temporary drainage control/water storage areas.

(6) Equipment changes.

(7) Explosive storage areas.

(8) Minor mine management/support facility locations (not refuse).

(9) Adding United States Soil Conservation Service conservation practices.

(10) Methods of erosion protection on diversions.

(11) Temporary cessation orders.

(12) Minor diversion location changes.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on January 2, 1996. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard.

Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES.** A summary of the meeting will be included in the Administrative Record.

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 12, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–30946 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–95–065]

Drawbridge Operation Regulations; Nacote Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the New Jersey Department of Transportation (NJDOT), the Coast Guard is proposing to change the regulations governing operation of the Route 9 Bridge across Nacote Creek, mile 1.5, in Smithville, Atlantic County, New Jersey. This proposal would require the Route 9 Bridge to open on signal except during the period from 11 p.m. to 7 a.m., when a two-hour advance notice for openings would be required. This change should help relieve the bridge owner of the burden of having a bridgetender constantly available at times when there are few or no quests for openings, while still proving for the needs of navigation.

DATE: Comments must be received on or before February 20, 1996.

ADDRESSES: Comments may be mailed to Commander, Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5073, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7170. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator-NY, Fifth Coast Guard District, (212) 668–6969.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–95–065), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District at the address listed under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. J. Arca, Fifth Coast Guard District, Bridge

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Branch-NY, Project Officer, and CAPT R.A. Knee, Fifth Coast Guard District Legal Office, Project Counsel.

Background and Purpose

The Route 9 Bridge across Nacote Creek, mile 1.5, at Smithville, Atlantic County, NJ, has a vertical clearance of 5' above mean high water (MHW) and 8' above mean low water (MLW) in the closed position. The current regulations require the bridge to open on signal at all times.

Review of the bridge logs provided by NJDOT reveals that from 11 p.m. to 7 a.m., there were no requests for bridge openings in 1992 and 1993, and only 13 requests for openings in 1994 during these hours. NJDOT is seeking relief from the requirement that a bridgetender be present during the hours of 11 p.m. to 7 a.m. when there are minimal requests for openings.

The New Jersey Department of Transportation requested that the Coast Guard make a permanent change to the regulations governing operation of the Route 9 Bridge to require the draw to open on signal except from 11 p.m. to 7 a.m., which would require a two-hour advance notice. At all other times, the bridge would open on signal. The bridgetenders would be on call to open the draw when the advance notice is given. A 24-hour special telephone number would be posted on the bridge and maintained by the NJDOT.

Accordingly, a new provision allowing the draw of the Route 9 bridge, at mile 1.5, to remain closed during late night and early morning hours unless two hours advance notice is given will be designated as paragraph (a). The current provision allowing the draw of the Atlantic County (Rte. 575) bridge, at mile 3.5, to remain closed unless eight hours advance notice is given will be designated as paragraph (b). A general provision requiring the passage of Federal, State, and local government vessels used for public safety through all drawbridges in published at 33 CFR 117.31, and is no longer required to be published for each waterway. Therefore, this proposal would remove a provision requiring passage of public vessels from section 117.732.

Regulatory Evaluation

The proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the rule will not prevent mariners from transiting the bridge. It will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and it has been determined that this proposal will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, July 29, 1994), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.732 is revised to read as follows:

§ 117.732 Nacote Creek.

(a) The Route 9 bridge, mile 1.5, shall open on signal except that from 11 p.m. to 7 a.m., the draw shall open if at least two hours advance notice is given.

(b) The draw of the Atlantic County (Rte. 575) bridge, mile 3.5, at Port Republic, shall open on signal if at least eight hours advance notice is given.

Dated: November 22, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–30967 Filed 12–19–95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5399–8]

Proposed Removal of Federal Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In December 1994, under the authority of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) promulgated a rule establishing four sets of water quality criteria to protect the designated uses for the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta). Subsequent to this promulgation, the State of California adopted water quality standards for the Bay/Delta and submitted them to EPA for approval. On September 26, 1995, the Regional Administrator for EPA Region IX approved the state water quality standards as protective of the designated uses for the relevant waterbodies. Currently, the State of California is in the process of implementing these state-adopted and EPA-approved water quality standards through a state water rights hearing process. Accordingly, EPA's promulgated water quality standards are no longer needed to meet the requirements of the Clean Water Act. Therefore, EPA proposes to remove the rule.

DATES: Comments on this proposal will be accepted until March 19, 1996.

ADDRESSES: Comments should be addressed to Palma Risler, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Palma Risler, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, 415–744–2017. The public record for this rulemaking is available through this contact at this same address.

SUPPLEMENTARY INFORMATION:

Background

In December 1994, under the authority of section 303 of the CWA, EPA promulgated a rule establishing four sets of water quality criteria to protect the designated uses for the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta)(60 FR 4664, January 24, 1995). These criteria consisted of estuarine habitat criteria (consisting of a salinity requirement measured at three different locations in Suisun Bay for a specified number of days during the critical spring months), fish migration criteria (consisting of an indexed value representing successful fish migration on the Sacramento River and the San Joaquin River), fish spawning criteria on the lower San Joaquin River (consisting of a salinity requirement measured at various points in April and May), and narrative criteria protecting the brackish tidal marshes in Suisun Marsh. A description of these criteria are provided in the preamble to the final rule and in the rulemaking record.

Prior to federal promulgation of the water quality standards for the Bay/Delta, EPA, the Bureau of Reclamation and Fish and Wildlife Service of the U.S. Department of Interior, and the National Marine Fisheries Service of the U.S. Department of Commerce worked with the State of California to attempt to resolve the water quality issues in the Bay/Delta underlying EPA's rulemaking. This effort led to an agreement, informally called the "Bay Delta Accords" signed by the federal agencies, California state agencies, and interested stakeholders. These Bay Delta Accords, signed by all the parties in December 1994, articulate both substantive measures and processes to protect the Bay/Delta estuary, and laid out the framework for the adoption, review, and approval of the new State standards.

On May 22, 1995, the California State Water Resources Control Board adopted water quality standards for the Bay/Delta in its water quality control plan (1995 WQCP). After these revised standards were approved by the California Office of Administrative Law in accordance with California law, the revised standards were submitted to EPA for its review under section 303(c) of the CWA on July 27, 1995. On September 26, 1995, the EPA Regional Administrator for Region IX approved these standards as protective of the designated uses for the Bay/Delta. The reasons for this approval are set forth in the approval letter and are supplemented by additional information in the rulemaking record. Both the approval letter and this supporting information are included in the public record for this rulemaking.

The CWA gives the states primary responsibility for adopting water quality standards. Throughout the rulemaking process to promulgate federal water quality standards for the Bay/Delta, EPA has maintained that it would withdraw the federal standards if the State adopts and submits standards to the Agency that meet the requirements of the Act. EPA also indicated this intent in the Bay Delta Accords.

EPA recognizes that with the exception of the Suisun Bay narrative criteria,[1] the State's 1995 WQCP provisions are not precisely identical to the federal promulgation. Nevertheless, for the reasons set forth in EPA's approval, the Technical Support Memorandum dated September 21, 1995, underlying the approval, and this rulemaking record, EPA found that the provisions in the 1995 WQCP protect the designated uses of the estuary and otherwise meet the requirements of the CWA. The state is currently implementing these standards. Accordingly, the EPA rule is no longer needed to meet the requirements of the CWA, and EPA proposes to remove the rule at 40 CFR 131.37.

EPA understands that the 1995 WQCP is the subject of state court litigation raising both procedural and substantive challenges to the plan. Although EPA believes that the State Board should ultimately prevail in this litigation, there is always a possibility in such litigation for adverse court actions affecting the 1995 WQCP. Should EPA proceed to final withdrawal of the federal water quality standards as proposed in this notice, and the 1995 WQCP is subsequently rejected or remanded, there would be no water quality standards in effect in California carrying out the Bay Delta Accords. EPA intends to work with the State so that if this situation were to arise, the requirements of the Clean Water Act and the purposes of the Bay Delta Accords are achieved.

[1] The State's 1995 WQCP includes a description of "beneficial uses" of the Bay/Delta waters and a set of "objectives" that protect those beneficial uses. In its review of the 1995 WQCP, and in keeping with past practice, EPA is treating the State's beneficial uses and objectives as the "designated uses" and "criteria" required under the federal Clean Water Act. To avoid confusion, this document will generally use the federal terms "designated uses" and "criteria."

Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (56 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the order (i.e, Regulatory Impact Analysis and review by the Office of Management and Budget). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this order. Pursuant to the terms of this order, EPA has determined that the withdrawal of this rule would not be "significant."

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is certifying that a withdrawal of this rule would not have significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

There are no information collection requirements associated with the withdrawal of this rule that are covered under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

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D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Today's proposal contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments or the private sector. In fact, removing the federal water quality standards for the Bay/Delta will facilitate the State of California's implementation of the state adopted and EPA-approved water quality standards for the Bay/Delta.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards, Water quality criteria.

Dated: December 14, 1995.

Carol M. Browner,

Administrator.

Part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—[AMENDED]

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.37 [Removed and reserved]

2. Section 131.37 is removed and reserved.

[FR Doc. 95–30985 Filed 12–19–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR PART 300

[FRL–5348–9]

Lewisburg Dump Superfund Site, Lewisburg, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete.

SUMMARY: The Environmental Protection Agency (EPA), Region IV, announces its intent to delete the Lewisburg Dump site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated by EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Tennessee Department of the Environment & Conservation have determined that the site no longer poses a significant threat to public health or the environment and, therefore, further CERCLA remedial measures are not appropriate.

DATES: A 30-Day Public Comment Period (December 11, 1995 to January 11, 1996) has been established for the Lewisburg Dump site deletion proposal. Comments concerning the proposal may be submitted by January 11, 1996.

ADDRESSES: Comments may be mailed to: Femi Akindele, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365.

Comprehensive information on this site is available for review at the following site information repositories.

Marshall County Memorial Library, 310 Farmington Pike, Lewisburg, TN 37091.

U.S. EPA Record Center, 345 Courtland St., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Femi Akindele, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia, 30365, 404–347–3555 EXT. 2042 or 1–800–435–9233 EXT 2042.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is to announce EPA's intent to delete the Lewisburg Dump site from the NPL. It also serves to request public comments on the deletion proposal.

EPA identifies sites that appear to present a significant risk to public health, welfare, or environment and maintains the NPL as the list of these sites. Sites on the NPL qualify for remedial responses financed by the Hazardous Substances Response Trust Fund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions. EPA accepts comments on the proposal to delete a site from the NPL for thirty days after publication of this notice in the **Federal Register**.

NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether the site has met any of the following criteria for site deletion:

(i) Responsible or other parties have implemented all appropriate response actions required.

(ii) All appropriate response actions under CERCLA have been implemented and no further response actions are deemed necessary.

(iii) Remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, no remedial action is appropriate.

Deletion Procedures

The following procedures were used for the intended deletion of this site:

(1) EPA Region IV issued a Final Close Out Report in September 1993, which addressed the site conditions, quality assurance and control during construction, and technical criteria for satisfying the completion requirements.

(2) Concurrent with this announcement, a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on the Notice of Intent to Delete.

(3) EPA has made all relevant documents available for public review at the information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned earlier, Section 300.425(e)(30) of the NCP states that deletion of a site from the NPL does not preclude eligibility of the site for future Fund-financed response actions.

For the deletion of this site, EPA will accept and evaluate public comments on this Notice of Intent to Delete before finalizing the decision. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received during the comment period. The deletion is finalized after the Regional Administrator places a Notice of Deletion in the **Federal Register**.

Basis for Intended Lewisburg Dump Site Deletion

The following is a summary of activities on the Lewisburg Dump Site. It provides EPA's rationale for the proposed deletion.

The site is a 20-acre tract of farmland located less than one mile north of Lewisburg, Tennessee. It contains an abandoned six acre limestone quarry and a pond. The City of Lewisburg owned and operated the dump which used about four acres at the western portion of the quarry for landfill operations from the late 1950s to 1979. The landfill was open to all residential and industrial dumpers. City records have indicated that several surrounding communities hauled wastes to the dump.

In 1973, a study was conducted by the Tennessee Department of Public Health (TDPH) which indicated that the old quarry was unfit for a sanitary landfill. Also, in the early 1970s, the City submitted plans to TDPH for an on-site incinerator, interim maintenance, and final closure of the dump. In 1977, preliminary closure of the landfill began as soil was applied to cover the wastes. In 1979, final closure of the landfill was conducted.

EPA initially inspected and assessed the conditions of the site in 1982. Among the wastes observed during the inspection were adhesives, paint stripper, empty pails coated with yellow lacquer, metal cuttings, sawdust, pencil cores, cosmetic powders and shoe linings. Results of the assessment indicated the presence of organic and inorganic compounds including lead, toluene, PCB, chlordane, and phenol. After evaluating the conditions of the landfill, EPA added Lewisburg Dump to the NPL in December 1982.

In 1985, EPA contacted a group of companies, agencies, and individuals who were identified as potentially responsible for the wastes at the dump to address the problem. The City of Lewisburg and other potentially responsible parties (PRPs) formed the Lewisburg Environmental Response Committee (LERC) to conduct a Remedial Investigation/Feasibility Study (RI/FS) on the site. The study was conducted under the terms of an Administrative Order on Consent which the PRPs entered into with EPA.

The RI/FS, which was completed in 1990, confirmed the presence of contaminants at the site. Organic and inorganic compounds were detected in the landfill soil, shallow aquifers beneath the site, and in the abandoned quarry pond.

The most prevalent organic contaminants at the site were bis(2-ethylhexyl)phthalate, (DEHP), methylene chloride, xylene, ethylbenzene, 4-methyl-2-pentanone, 2-butanone, carbon disulfide, and toluene. The most common inorganic contaminants were copper, chromium, aluminum, arsenic, iron, lead, manganese, mercury, barium, and zinc. Of these contaminants, only DEHP and copper were detected at levels of significant concern. No contaminants were detected at appreciable concentrations outside the site.

The RI/FS results indicated that, although contaminant concentrations were generally insignificant, the wide variety of the compounds was of concern. Other concerns noted were that the compounds had the potential to become exposed by landfill cap deterioration, the open access to the site and possible disturbance of landfill constituents. In addition, there was potential for increased groundwater contamination and leachate generation if site conditions were not improved.

Special studies, including well surveys and dye trace analyses were conducted in the area of the site to evaluate groundwater conditions since most residences had water wells. The well survey identified 123 households within a 2 mile radius of the site with a minimum of one well on each property. Approximately 70 of these households were utilizing groundwater from wells for domestic or livestock purposes. However, most residences near the site were connected to the municipal water supply. No industrial or municipal wells were found in the survey area. The dye trace studies did not indicate an immediate effect of the site on the domestic wells.

In order to alleviate potential adverse effects of the site on human health and the environment, the RI/FS evaluated several possible remedial measures. Based on the results, EPA issued a Record of Decision (ROD) in September 1990, which described the remedy selected for the site. The major components of the selected remedy were: (1) removal and disposal of all site surface debris, (2) removal and disposal of all debris in the quarry pond, (3) replacement of plastic test-pit caps with landfill cap material, (4) regrading of the landfill cap, (5) implementation of institutional controls, and (6) long-term monitoring and analysis.

Soon after the ROD was issued, EPA requested the PRPS to implement and fund the selected remedy. The PRPs agreed and signed a Consent Decree in 1991 to perform the work. All remedial activities were completed between September 4, 1992, and September 20, 1993. The Remedial Action Report submitted by the PRPs indicated that 382 cubic yards of debris/soil, 172 tires, 50 empty drums and 2 drums containing lead paint and sludge were removed from the site. These were disposed of at properly permitted facilities. EPA and TDEC performed a final site work inspection in September 1993, and determined that the Remedial Action (RA) had been successfully executed.

Following the RA completion, the PRPs initiated site maintenance and monitoring activities, including regular site inspection and groundwater sampling. Laboratory results and other reports on these activities have confirmed that the cleanup work at Lewisburg Dump was successful and that the site no longer poses a threat to human health or the environment.

The PRPs will continue to monitor the groundwater periodically and report results to EPA as stipulated in the 1991 Consent Decree. TDEC will provide necessary oversight.

The Consent Decree required the PRPs to place deed restrictions on the property. The deed restrictions were recorded with the Office of the Hamilton County Register on August 19, 1993.

Throughout this project, EPA conducted active community relations activities to ensure that the local residents were well informed about the different activities occurring at the site. These included the development of Community Relations Plans, public meetings, and routine publications of progress report fact sheets. A public meeting presenting the Proposed Plan was held on July 25, 1990 in Lewisburg, Tennessee. Public comments on the selected remedy were addressed in the 1990 ROD, and site information was placed at the repository in a local library. A Pre-Construction meeting was held on August 17, 1992 in Lewisburg to discuss the start of cleanup activities with the community. In December 1993, EPA announced the end of site cleanup activities in the local newspaper after the final RA inspection.

EPA provided oversight and involved the State in the evaluation and approval of work conducted by the PRPs at the site. The Remedial Design (RD), RA contract, and RA Work Plan were carefully reviewed by EPA and TDEC for compliance with all quality assurance/quality control (QA/QC) procedures. EPA reviewed or developed site evaluations, project plans, technical and material specifications, construction, installation, testing, and sampling requirements and procedures

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for all laboratory analyses. Work Plans were developed as necessary by contractors which specified appropriate QA/QC measures for all cleanup activities. EPA reviewed and approved the QA/QC plans which, in general, were based on the protocols in the U.S. EPA, Region IV.

Consistent with EPA guidance, a five year review of this project is necessary to ensure continued protection of human health and the environment. The statutory review will be conducted according to the Office of Solid Waste and Emergency Response Directive 9355.7–02, "Structure and Components of the Five year Reviews".

The five-year period begins with the date of RA contract award which, for this project, is September 8, 1992. Therefore, the review should be completed prior to September 8, 1997.

In conclusion, EPA, with the concurrence of the State, has determined that all appropriate remedial actions at the Lewisburg Dump site under CERCLA have been completed. The site no longer poses a threat to human health or the environment. Therefore, EPA proposes to delete the site from the NPL and requests public comments on the proposal.

Dated: November 27, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA, Region IV.

[FR Doc. 95–30798 Filed 12–19–95; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–179; RM–8728]

Radio Broadcasting Services; Cassville and Kimberling City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kevin M. and Patricia W. Wodlinger, proposing the substitution of Channel 261C2 for Channel 261A at Cassville, Missouri, reallotment of Channel 261C2 to Kimberling City, Missouri, and modification of the license for Station KRLK accordingly. The coordinates for Channel 261C2 at Kimberling City are 36–30–00 and 93–23–00. We shall propose to modify the license for Station KRLK in accordance with Sections 1.420(g) and (i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 5, 1996, and reply comments on or before February 20, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 1447, Mount Pleasant, South Carolina 29465.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–179, adopted December 6, 1995, and released December 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30896 Filed 12–19–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 951206293–5293–01; I.D. 110995B]

RIN 0648–AF01

Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the measures contained in Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 5 is intended to further the Americanization of the fisheries and to implement measures to prevent overfishing and avoid overcapitalization of the domestic fleet.

DATES: Comments on the proposed rule must be received on or before January 29, 1996.

ADDRESSES: Comments on the proposed rule should be sent to: Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope, "Comments on Amendment 5 Atlantic Mackerel, Squid, and Butterfish."

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director at the address above and the Office of Management and Budget (OMB) (Attention: NOAA Desk Officer), Washington, D.C. 20503.

Copies of the Amendment, final environmental impact statement, regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 was developed in response to concerns regarding overcapitalization expressed by industry representatives at several meetings of the Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel, and Butterfish (SMB) Committee in the early 1990's. Increases in domestic squid landings and a stagnation in the growth of butterfish landings at well below the maximum sustainable yield (MSY) for that species moved the Council to develop this comprehensive amendment.

At its July, 1992, meeting, the Council voted to publish a notice of control date for the Atlantic mackerel, squid, and butterfish fisheries. The control date established was August 13, 1992 (57 FR 36384, August 13, 1992). This notice informed the public that the Council was considering a moratorium on vessel permits issued for these fisheries. At its July, 1994, meeting, the Council reconsidered the need for a control date for the Atlantic mackerel fishery. The data the Council reviewed indicated the catch and fishing effort had decreased in 1993 and 1994, while stock biomass remained high. In response, the Council rescinded the control date for the Atlantic mackerel fishery (59 FR 49235, September 27, 1994). Initial public scoping meetings to discuss possible management measures for SMB took place in January, 1993, at which time the vessel moratorium, mesh restrictions, and area and seasonal closures were identified as measures for consideration. A public hearing draft of Amendment 5 was adopted by the Council at its June, 1994, meeting and presented at public hearings in December, 1994. As a result of issues raised at the hearings, the Council voted in February, 1995, to issue a supplement to Amendment 5 that contained revisions to the *Loligo* minimum mesh net requirement and the qualifying criteria for the vessel moratoria. Public hearings were conducted in April, 1995, to present the revised Amendment. The Council adopted Amendment 5 on May 25, 1995, for submission to NMFS for Secretarial review.

Status of the Stocks

In 1993, the 17th Northeast Regional Stock Assessment Workshop (17th SAW) was convened to examine the status of several species, including *Illex* and *Loligo* squid and butterfish.

Results of SAW 17, as indicated in the March, 1994, plenary report, estimated MSY for *Loligo* squid to be 36,000 metric tons (mt) based on the finding that the *Loligo* has a life span of one year rather than three, as previously believed. The present MSY for *Loligo* squid is specified in the FMP as 44,000 mt, based on the assumption that *Loligo* squid has a 3-year life span. The 17th SAW advised that *Loligo* is considered to be fully utilized when based on the revised MSY of 36,000 mt.

The present MSY for *Illex* is specified in the FMP as 30,000 mt and is based on the disproven assumption that the life span of these animals is 2 years. Though the 17th SAW determined that *Illex* also has a life span of 1 year, it did not recommend revising the MSY. Instead, the 17th SAW recommended that, since *Illex* is a transboundary stock between the United States and Canada, a joint assessment should be conducted before a revised MSY could be recommended. However, the 17th SAW advised that the current MSY for *Illex* may be inappropriate and cautioned that, while the stock is under-exploited based on current MSY, the potential for recruitment overfishing may be substantial.

The exploitation rate for butterfish is unknown. However, the stock is at a low-to-medium biomass level and current catch levels are well below the MSY of 16,000 mt. The adult component of the stock has declined since 1990 and is currently well below average. It is estimated that 50 percent of the harvest of butterfish over the past several years has been discarded due to both the relatively small size of the fish and the lack of markets. The largest butterfish landings in recent years have been made as bycatch in the *Loligo* squid fishery.

At the time the Council was developing and adopting Amendment 5, the most recent stock assessment for Atlantic mackerel was that done in 1991, when the 12th SAW assessed the stock as underexploited with a high biomass. That assessment indicated that, following a period of poor year classes from 1976 through 1980, there were several years with relatively good recruitment, yielding especially strong year classes in 1982, 1987, and 1988. These cohorts contributed to a marked increase in stock biomass. Estimated spawning stock biomass was 3,010,000 mt in 1991 with an exploitation rate of 2 percent.

The recently concluded 20th SAW determined that, based on the 1994 stock assessment, the Atlantic mackerel stock continues to be under-exploited and at a high biomass level. The exploitation rate of two percent has not changed. The 20th SAW further concluded that the long-term potential catch (LTPC) projected for the Canadian and U.S. Atlantic mackerel combined was approximately 150,000 mt. This represents an increase of 16,000 mt from the previous LTPC value of 134,000 mt. The LTPC is the estimate of allowable annual catch levels that would sustain the fishery for several years.

Management Measures

NMFS is requesting comment on all measures contained in Amendment 5. However, NMFS has serious concerns about the proposed criteria for entry into the fisheries for the squids and butterfish, the exemption proposed for the sea herring fishery, the Council's proposal to constrain ABC by the LTPC value, and the use of the 50-fathom curve as a boundary for the exemption from the minimum mesh size for *Loligo* during prosecution of the summer *Illex* fishery. Because of NMFS' concerns regarding the enforceability of the 50-fathom curve as a boundary, NMFS proposes a set of latitude-longitude coordinates to achieve the Council's intent in an enforceable manner. While comment is sought on all measures contained in the proposed rule, NMFS asks the public to focus on these measures in particular, to assist in conducting a thorough and deliberative review of the amendment before final approval or disapproval by the Secretary of Commerce (Secretary).

In addition, NMFS notes that the provision contained in Amendment 5 that would require the Secretary to publish a control date for the Atlantic mackerel fishery when commercial landings reach 50 percent of allowable biological catch (ABC) is not included in this proposed rule. NMFS does not consider this provision to be a management measure to be implemented by a fishery management plan. Rather, it is viewed as a statement of Council intent; NMFS expects that the Council will recommend the publication of a notice of control date when it deems this action necessary.

The permit and reporting requirements and revision to the annual specification process, if approved, will be implemented for the 1997 fishing year. Other provisions may be effective prior to that time.

Elimination of the Potential for Joint Ventures and Directed Foreign Fishing for the Squids and Butterfish

The Council proposes to eliminate foreign participation in these fisheries. Joint ventures and total allowable levels of foreign fishing (TALFF) have not been allocated for squid or butterfish since the mid-1980's. The Council concluded that the domestic fleet has the capacity to harvest the OY from

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these fisheries. However, joint venture and TALFF allocations for Atlantic mackerel may continue. If there is TALFF specified for Atlantic mackerel, there will be butterfish bycatch TALFF allocated that is equal to 0.08 percent of the mackerel TALFF, in order to reduce waste of bycatch in that fishery. The definitions of "other allocated species" and "prohibited species" at 50 CFR 611.50(b) are modified accordingly, to make squids "prohibited species."

MSY for Loligo Squid

The Council would revise the MSY for *Loligo* squid to 36,000 mt from 44,000 mt. The revision is based on the finding that the squid has a one-year life span. The stock is considered to be fully-exploited.

Spawning Stock Biomass (SSB) and LTPC for Atlantic Mackerel

The FMP currently specifies ABC for Atlantic mackerel as that U.S. catch that would yield an SSB of 600,000 mt. The Council would revise this threshold upward to 900,000 mt to promote recruitment. A time series based on the 1991 assessment found that the median year class size for years 1962–93, inclusive, was 1.277 billion fish. When the SSB was less than 900,000 mt, only 35 percent of the ensuing year classes were observed to be above the median. Conversely, 82 percent of the year classes were above the median recruitment level when SSB exceeded 900,000 mt.

The Council would also constrain ABC with a derived LTPC. The current LTPC specified annually by the Council would be 150,000 mt minus the projected annual Canadian catch. Therefore, at present, if this measure were approved, ABC could be no larger than 150,000 mt and is likely to be less. The Council believes that management of Atlantic mackerel should be based on long-term yield projections. However, NMFS is concerned about the fact that Atlantic mackerel stock abundance is very high currently, and that limiting ABC by LTPC may be overly constraining in the short term. The 20th SAW states that at current stock abundance amounts, Atlantic mackerel landings of 200,000 mt could be sustained for several years because of foregone yield in the fishery recently.

Seasonal Quota for Loligo Squid

This management measure would give the Regional Director authority to establish annual seasonal quotas for *Loligo* based on the recommendations of the Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) and the Council. Such quotas are intended to ensure sufficient escapement of *Loligo* squid from the offshore winter fishery to allow for catches in traditional inshore fisheries.

Moratorium on Vessel Permits for Butterfish and Squids

The Council would establish a moratorium on new vessel permits for the directed fisheries for butterfish and the squids. The Council would also establish a vessel permit category open to all vessels, which would allow a vessel to retain up to 2,500 lb (1.13 mt) of each species per trip. This incidental catch level could be adjusted annually.

Moratorium permits would be issued for *Loligo* squid and butterfish jointly and *Illex* squid separately. In the November, 1994, public hearing draft, the time horizon that served as a basis for qualifying for the moratoria permits was August 13, 1988, to August 13, 1993. Landings requirements proposed at that time were 5,000 lb (2.27 mt) in one week for *Loligo* squid or butterfish and five separate trips of at least 5,000 lb (2.27 mt) each for *Illex*. Furthermore, it was proposed that vessels would qualify for the *Illex* permit if owners had purchased refrigerated sea water equipment or an on-board freezer by May 31, 1994, and had landed five trips of at least 5,000 lb (2.27 mt) prior to the promulgation of the final regulations implementing Amendment 5. Under both moratoria, vessel replacement would be allowed if a qualifying vessel leaves the fishery involuntarily; for example, if it sinks.

Comments during the public hearings held in December, 1994, indicated that the industry believed the qualification period for the *Illex* squid permit should be extended back to August 13, 1981. This revision would allow the catch history of vessels that participated in the foreign joint venture fishery prior to 1988 to qualify them for a moratorium permit. At the February 23, 1995, SMB Committee meeting, industry representatives argued that it would not be fair to limit the extension of the qualification period to the *Illex* fishery only, convincing the Committee to recommend that the Council extend the qualification period back to 1981, for both the *Illex* and *Loligo*/butterfish moratoria permits. Furthermore, the SMB Committee believed that the *Loligo*/butterfish landing criterion was not in line with active participation in these fisheries. It recommended requiring 20,000 lb (9.07 mt) to have been landed in any 30-consecutive-day period during the qualification period. The Council accepted the SMB Committee's recommendations at its March, 1995, meeting. However, since these changes to the Public Hearing Draft regarding qualifying conditions were viewed as substantive, a Supplemental Public Hearing Draft was developed and presented at public hearings in April, 1995. After taking into account public comment, the Council adopted the revised qualifying criteria in May, 1995.

Party or Charter Boat Permit

The owner of a party or charter boat (vessel for hire) would be required to obtain an SMB party or charterboat permit. A party or charter vessel obtaining this permit could also have a commercial permit for Atlantic mackerel or a commercial moratorium permit for *Illex* squid and/or *Loligo*/butterfish if the vessel meets the qualifying criteria. However, such a vessel would be prohibited from fishing commercially when carrying passengers for a fee.

Atlantic Mackerel Permit

Although a moratorium would not exist on entry into the Atlantic mackerel fishery, an Atlantic mackerel permit would be required to harvest and sell Atlantic mackerel. Vessels receiving permits for the Atlantic mackerel fishery would be required to comply with the requirements implemented under the FMP, including recordkeeping and reporting.

Operator Permit

An operator of a vessel with a permit issued under this FMP would be required to have an operator permit issued by the Northeast Region, NMFS. The operator permits issued to operators in the fisheries for Northeast multispecies, American lobster, and Atlantic sea scallops would satisfy this requirement. The operator would be held accountable for violations of the fishing regulations and would be subject to a permit sanction. During the permit sanction period, the operator could not work in any capacity aboard a federally permitted fishing vessel.

Transfers at Sea

Only vessels issued a moratorium permit would be allowed to transfer *Loligo* squid, *Illex* squid, or butterfish at sea. This provision is intended to enhance enforcement of the incidental catch allowance for vessels without moratorium permits, which is currently specified as 2,500 lb (1.13 mt) of *Illex*, *Loligo*, or butterfish per trip.

Reporting and Recordkeeping

The Council intends to institute recordkeeping and reporting

requirements in the FMP that are identical to those required by the Summer Flounder, Northeast Multispecies, and Atlantic Sea Scallop Fishery Management Plans.

Commercial logbooks would be submitted on a monthly basis by vessel owners in order to monitor the fishery. Real-time assessment and management of the *Loligo* and *Illex* resources may be necessary due to the risk of overfishing stocks comprised of only a single cohort. The Council proposes that the Regional Director specify, during the first year of implementation, the data elements and reporting mechanism required to establish a real-time assessment and management program for the annual squid species. The Council would investigate the feasibility of such a management system in year 2 of the management program. Operators of party and charter boats with Federal permits would also be required to provide catch information on logbooks submitted monthly.

Dealers with permits issued pursuant to the FMP would submit weekly reports showing species purchased in pounds, and the name and permit number of the vessels from which the aforementioned species were purchased. Buyers that do not purchase directly from vessels would not be required to submit reports under this provision.

Minimum Mesh Size Requirement for Loligo Squid

The minimum mesh size requirement for the *Loligo* squid fishery and exemptions from that requirement would be established on a framework basis. These provisions could be changed by the Regional Director based upon the recommendation of the Council. This amendment proposes that initially, otter trawl vessels possessing one pound (0.45 kg) or more of *Loligo* squid be required to fish with nets having a minimum mesh size of 1–7/8 inch (48-mm) diamond mesh, inside stretch measure, applied throughout the net including the body and codend. A liner would be allowed to close the opening created by the rings in the rearmost portion of the codend, provided that it does not extend more than ten meshes forward from the rearmost portion of the codend. Net strengtheners, ropes, lines, or chafing gear on the outer portion of the trawl net would be required to have a mesh opening of at least 4.5 inches (115 mm), inside stretch measure. This provision would be implemented as a fishery measure that could be adjusted annually by the Regional Director, based upon a recommendation by the Council.

There are two proposed exemptions from the minimum mesh size requirement for *Loligo*. The first would exempt vessels fishing for *Illex* during the months of June, July, August, and September seaward of the 50-fathom curve. The second would exempt vessels participating in the directed fishery for sea herring, provided that 75 percent or more of their catch, by weight, is comprised of sea herring.

NMFS Office of Enforcement and the Coast Guard have expressed concern about the enforceability of an exemption area defined by a fathom curve, so NMFS proposes a set of latitude-longitude coordinates intended to follow closely the 50-fathom curve and achieve the Council's intent in an enforceable manner. These law enforcement agencies are also concerned with the feasibility of the proposed sea herring exemption because of the difficulties in ascertaining relative percentages of the catch. After receiving public comment on these exemptions, NMFS will determine how best to administer these provisions, should they be approved.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The provisions that would be implemented by Amendment 5 would prevent overcapitalization of these fisheries relative to abundance and availability of the stocks of *Loligo*, *Illex*, and butterfish. Amendment 5, as indicated in the initial regulatory flexibility analysis prepared by the Council, would essentially maintain the status quo, in terms of revenues for participants in the fishery, since the proposed limited entry measures would include historical participants in the fisheries. Proposed measures would not substantially affect more than 20 percent of the present participants in these fisheries and would not directly increase or decrease utilization or production of the affected species resulting in a change in expected revenues of greater than 5 percent.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Mandatory dealer reporting and annual employment data reporting have been approved by OMB under control numbers 0648–0229 and 0648–0018, respectively. Dealer reporting responses are estimated to take 2 minutes and employment data responses 6 minutes. The proposed rule also contains new requirements that have been submitted to OMB for approval. These requirements and their estimated response times are: vessel permits and vessel permit appeals at 30 minutes per response, operator permits at one hour per response, dealer permits at 5 minutes per response, and an observer notification requirement at 2 minutes per response.

The response estimates shown include the time for reviewing instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS or OMB at the ADDRESSES above. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 655 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

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Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq., and 16 U.S.C. 1361 et seq.

2. In § 611.50, paragraphs (b)(3) and (b)(4)(i) and (b)(4)(ii) are revised to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(b) * * *

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the **Federal Register**. Current TALFFs are also available from the Regional Director. The procedures for determining and adjusting the Atlantic mackerel TALFF is set forth in 50 CFR part 655.

(4) * * *

(i) The other allocated species, namely: Atlantic herring, Atlantic mackerel, butterfish (as a bycatch of Atlantic mackerel), and river herring (including alewife, blueback herring, and hickory shad); and

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail flounder, weakfish, white hake, short-finned squid, long-finned squid, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except non-allocated squids).

* * * * *

3. Part 655 is revised to read as follows:

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Subpart A—General Provisions

Sec.

655.1 Purpose and scope.
655.2 Definitions.
655.3 Relation to other laws.
655.4 Vessel permits.
655.5 Operator permit.
655.6 Dealer permit.
655.7 Recordkeeping and reporting requirements.
655.8 Vessel identification.
655.9 Prohibitions.
655.10 Facilitation of enforcement.
655.11 Penalties.

Subpart B—Management Measures

655.20 Fishing year.
655.21 Maximum optimum yields.
655.22 Procedures for determining initial amounts.
655.23 Closure of the fishery.
655.24 Time and area restrictions for directed foreign fishing.
655.25 Gear restrictions.
655.26 Minimum fish sizes. [Reserved]
655.27 Possession limits. [Reserved]
655.28 At-sea observer coverage.
655.29 Transfer-at-sea.
655.30 Experimental fishery.
Figure 1 to Part 655—Exemption line to minimum net mesh-size requirement for *Loligo* squid.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish.

(b) The regulations governing fishing for Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

§ 655.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus.*

Atlantic mackerel or *mackerel* means the species *Scomber scombrus.*

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee or *Monitoring Committee* means a committee made up of staff representatives of the Mid-Atlantic and New England Fishery Management Councils, and the Northeast Regional Office and Northeast Fisheries Science Center of NMFS. The Council Executive Director or a designee chairs the Committee.

Being rerigged means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for squid or butterfish.

Blast freezer means a freezing system in which fish are frozen by being exposed to cold air being blown over them. The freezer must be designed for use on a fishing vessel rather than designed for residential or similar use.

Charter or *party boat* means any vessel that carries passengers for hire to engage in fishing.

Council means the Mid-Atlantic Fishery Management Council.

Dealer means any person who receives squid, mackerel, or butterfish for a commercial purpose, other than solely for transport on land, from the owner or operator of a vessel issued a permit under § 655.4.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, as revised by subsequent amendments.

Fishing for commercial purposes means any fishing or fishing activity that results in the harvest of Atlantic mackerel, squid, or butterfish, one or more of which (or parts thereof) is sold, traded, or bartered.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Gross registered tonnage (GRT) means the gross tonnage specified on the U.S. Coast Guard documentation.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Joint venture harvest means U.S.-harvested Atlantic mackerel transferred to foreign vessels in the EEZ.

Land means to begin offloading fish or to offload fish at sea or on land, or to enter port with fish.

Liner means a piece of mesh rigged inside the main or outer net.

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Metric ton (mt) means 1,000 kg or 2,204.6 lb.

Operator means the master, captain, or other individual on board a fishing vessel and in charge of that vessel's operations.

Personal use means not for sale, barter, or trade.

Plate freezer means a freezing system in which fish are frozen by contact with refrigerated plates. The freezer must be designed for use on a fishing vessel rather than designed for residential or similar use.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Recirculating sea water equipment means a refrigerated sea-water system in which the seawater cooled by mechanical refrigeration is circulated through tanks that contain fish.

Recreational fishing means fishing that is not intended to, nor does result in, the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 hours local time on Sunday and ending at 2400 hours local time the following Saturday.

Squid means *Loligo pealei* and *Illex illecebrosus.*

Substantially similar harvesting capacity means the same or less GRT and vessel registered length for commercial vessels.

Total length (TL) means the distance from the tip of the snout to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

Under construction means that the keel has been laid.

Vessel registered length means the registered length specified on U.S. Coast Guard Documentation, or state registration if the state registered length is verified by a NMFS authorized official.

§ 655.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (d) of this section.

(b) Additional regulations governing domestic fishing for Northeast Multispecies, which affect this part, are found at 50 CFR part 651.

(c) Additional regulations governing domestic fishing for summer flounder, which affect this part, are found at 50 CFR part 625.

(d) Nothing in these regulations supersedes more restrictive state management measures.

§ 655.4 Vessel permits.

(a) *General*—(1) *Requirement.* Vessels, including party or charter vessels, must obtain a permit issued under this part to fish for or retain Atlantic mackerel, *Loligo*, *Illex*, or butterfish in or from the EEZ. This requirement does not pertain to recreational fishing vessels.

(2) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in or from the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing, catch and gear will remain subject to all applicable state requirements. If a requirement of this part and a management measure required by state law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Moratorium permits*—(1) *Loligo squid and butterfish.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (c)(1) of this section, if it meets any of the following criteria:

(i) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* or butterfish in any 30-consecutive-day period between August 13, 1981, and August 13, 1993; or

(ii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Loligo* or butterfish fishery during the effective period of the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iii) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity during the effective period of the moratorium.

(2) *Illex squid.* A vessel is eligible for a moratorium permit to fish for and retain *Illex* squid in excess of the incidental catch allowance specified in paragraph (c)(1) of this section, if it meets any of the following criteria:

(i) The vessel landed and sold at least 5,000 lb (2.27 mt) of *Illex* on each of five trips between August 13, 1981, and August 13, 1993; or

(ii) Recirculating sea water equipment or an on-board commercial plate or blast freezer was purchased by May 31, 1994, and installed on the vessel, and the vessel landed five trips of at least 5,000 lb (2.27 mt) each of *Illex* prior to the effective date of these regulations; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Illex* fishery during the effective period of the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iv) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same or less GRT and vessel registered length for commercial vessels during the effective period of the moratorium.

(3) *Restriction.* No one may apply for the permits specified in paragraphs (b)(1) and (2) of this section more than 12 months after the effective date of these regulations, or the event specified under paragraph (i)(1) of this section. This section does not affect annual permit renewals.

(4) *Appeal of denial of permit.* (i) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(ii) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(iii) The hearing officer shall make a recommendation to Regional Director.

(iv) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(c) *Incidental catch permit.* (1) Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid, *Illex* squid, or butterfish as an incidental catch in another directed fishery.

(2) *Adjustments to the incidental catch.* The incidental catch allowance may be revised by the Regional Director after recommendation by the Council following the procedure set forth in § 655.22. NMFS will publish a notification of any proposed adjustment in the **Federal Register**. The public may comment on the adjustment for 30 days after the date of publication. After consideration of public comments, NMFS may publish a notification of adjustment to the incidental catch allowance in the **Federal Register**.

(d) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ.

(e) *Party and charter boat permit.* Any party or charter boat may obtain a permit to fish for or retain Atlantic mackerel, squid or butterfish while carrying passengers for hire.

(f) *Vessel permit application.* (1) An application for a permit under this section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant

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desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets any eligibility requirements. Dealer weighout forms, joint venture receipts, and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) *Information requirements.* In addition to applicable information required to be provided by paragraph (f)(1) of this section, an application for a permit under this section must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a valid copy of the vessel's U.S. Coast Guard documentation or, if undocumented, the state registration number and a copy of the current state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation showing the principals in the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners that have acquired more than a 25-percent interest; the name and signature of the owner or the owner's authorized representative; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel; and a copy of the charter/party boat license and number of passengers the vessel is licensed to carry (charter and party boats); and any other information required by the Regional Director to manage the fishery.

(g) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (h) of this section. Any fee paid by an insufficient bank draft shall render any permit issued on the basis thereof null and void.

(h) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit under this section within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application as described in paragraph (f) of this section. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(3) of this section; or

(iii) The applicant has failed to comply with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 655.7 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(i) *Expiration.* Except as provided in paragraphs (b)(1)(ii) and (b)(2)(iii) of this section, a permit expires:

(1) When the owner retires the vessel from the fishery;

(2) Upon the renewal date specified on the permit; or

(3) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a moratorium permit for the squid and butterfish fisheries if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits for an otherwise valid permit may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the federal fisheries permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(m) *Change in application information.* Any change in the information specified in paragraph (f)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* The permit must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 655.5 Operator permit.

(a) *General.* Any operator of a vessel holding a valid Federal Atlantic mackerel, *Loligo, Illex,* or butterfish permit under this part, or any operator of a vessel fishing for Atlantic mackerel, *Loligo, Illex,* or butterfish in the EEZ or in possession of Atlantic mackerel, *Loligo, Illex,* or butterfish in or harvested from the EEZ, must have and carry on board a valid operator's permit issued under this part. An operator permit issued pursuant to Parts 649, 650, or 651 shall satisfy the permitting requirement of this paragraph.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 655.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be deemed abandoned.

(g) *Expiration.* A Federal operator permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two recent color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 655.6 Dealer permit.

(a) *General.* All dealers must have a valid permit issued under this part in their possession.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s), owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 655.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified

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under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 655.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Dealers must send by mail, to the Regional Director or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received, or postmarked if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(6) *At-sea activities.* All persons purchasing, receiving, or processing any mackerel, squid, or butterfish at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director or designee on the same frequency basis.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel issued a Federal Atlantic mackerel, *Loligo* squid, butterfish or Illex squid permit under § 655.4 must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Fishing log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. All information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Upon the request of an authorized officer, or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 655.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel owner subject to this part and over 25 ft (7.6 m) in length must affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel owner subject to this section and over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number, or the vessel's state registration number for vessels not required to be documented under title 46 of U.S.C.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be permanently affixed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner.* Any vessel owner subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) *Nonpermanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for Atlantic mackerel, squid, or butterfish.

§ 655.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal Atlantic mackerel, squid, or butterfish permit under § 655.4, or issued an operator permit under § 655.5, to do any of the following:

(1) Possess more than the incidental catch allowance of squid, or butterfish unless issued a moratorium permit pursuant to § 655.4(b).

(2) Use any vessel for taking, catching, harvesting, or landing of any Atlantic mackerel, squid, or butterfish, except as provided in § 655.4(a), unless the vessel has on board a valid permit issued under § 655.4.

(3) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(m).

(4) Falsify or fail to affix and maintain vessel markings as required by § 655.8.

(5) Take, retain, or land Atlantic mackerel, squid, or butterfish in excess of the trip allowance specified under § 655.23.

(6) Take, retain, or land Atlantic mackerel, squid, or butterfish after a total closure specified under § 655.23.

(7) Make any false statement, written or oral, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel, squid, or butterfish.

(8) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 655.25(a) or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 655.25(b) or the vessel is fishing under an exemption specified in § 655.25(a).

(9) Sell or transfer Atlantic mackerel, squid, or butterfish to another person for a commercial purpose, other than transport, unless that person has a dealer permit issued under § 655.6.

(10) Falsify information in order to qualify a vessel for a moratorium permit pursuant to § 655.4(b).

(11) Transfer squid, or butterfish at sea to another vessel unless that other vessel is issued a valid moratorium permit issued pursuant to § 655.4(b) or a letter of authorization issued by the Regional Director.

(12) Fail to comply with any measures implemented pursuant to § 655.22.

(13) Refuse to embark a sea sampler if requested by the Regional Director.

(14) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance an observer or sea sampler conducting his or her duties aboard a vessel.

(15) Fail to affix and maintain markings as required by § 655.8.

(16) Carry passengers for hire while fishing commercially under a permit issued pursuant to § 655.4 (b), (c), or (d).

(17) Fail to carry on board a letter of authorization if fishing in an experimental fishery pursuant to § 655.30.

(18) Employ an operator on board a vessel who has not been issued an operator permit that meets the requirements of § 655.5.

(b) It is unlawful for the owner and operator of a party or charter boat issued a permit (including a moratorium permit) pursuant to § 655.4, when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 655.22(d)

(2) Sell or transfer Atlantic mackerel, squid, or butterfish to another person for a commercial purpose.

(3) Refuse to embark a sea sampler if requested by the Regional Director.

(c) It is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ Atlantic mackerel, squid, or butterfish, except as provided in § 655.4(a), unless the person is operating a vessel issued a permit pursuant to § 655.4, and the permit is on board the vessel, and has not been surrendered, revoked, or suspended.

(2) Possess nets or netting with mesh not meeting the minimum size requirement of § 655.25 that does not meet the net stowage provisions of § 655.25, if the person possesses *Loligo* squid harvested in or from the EEZ.

(3) If subject to the permitting requirements in § 655.4, § 655.5, or § 655.6, to offload, to cause to be offloaded, sell or buy, whether on land or at sea, as an owner, operator, dealer, buyer, or receiver, without accurately and completely preparing and submitting in a timely fashion the documents required by § 655.7.

(4) Transfer squid or butterfish within the EEZ, unless the vessels participating in the transfer are issued valid moratorium permits pursuant to § 655.4(b) or valid letters of authorization pursuant to § 655.29.

(5) Purchase or otherwise receive, except for transport, Atlantic mackerel, squid, or butterfish from the owner or operator of a vessel issued a permit pursuant to § 655.4, unless in possession of a valid permit issued under § 655.6.

(6) Purchase or otherwise receive for a commercial purpose, Atlantic mackerel, squid, or butterfish caught by other than a vessel issued a permit pursuant to § 655.4, unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

(7) Make any false statements, oral or written, to an authorized officer concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic mackerel, squid, or butterfish.

(8) Fail to report to the Regional Director within 15 days any change in information contained in the permit application.

(9) Assault, resist, impede, oppose, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance to an observer or sea sampler conducting his or her duties aboard a vessel.

(10) Operate a vessel fishing for Atlantic mackerel, squid, or butterfish within the EEZ, unless issued an operator permit that meets the requirements of § 655.5.

(11) Violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All Atlantic mackerel and butterfish possessed on board a party or charter boat issued a permit under § 655.4 are deemed to have been harvested from the EEZ.

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to

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§ 655.30 or to fail to keep such letter on board the vessel during the period of the experiment.

§ 655.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 655.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year is the 12-month period beginning on January 1 and ending on December 31.

§ 655.21 Maximum optimum yields.

The optimum yields (OYs) specified pursuant to § 655.22 during a fishing year may not exceed the following amounts:

(a) Atlantic mackerel: That quantity of mackerel that is less than or equal to ABC specified pursuant to § 655.22;

(b) *Loligo* squid: 36,000 mt (79,362,000 lb);

(c) *Illex* squid: 30,000 mt (66,135,000 lb); and

(d) Butterfish: 16,000 mt (35,272,000 lb).

§ 655.22 Procedures for determining initial annual amounts.

(a) *Initial annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) will meet annually to develop specifications regarding:

(1) The initial optimum yield (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids;

(2) The IOY, DAH, DAP and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and

(3) The IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for Atlantic mackerel.

(4) The Monitoring Committee will recommend these specifications to the Mackerel, Squid, and Butterfish Committee (Committee) of the Council. As a basis for establishing these specifications and restrictions, the Monitoring Committee will review available data pertaining to the following:

(i) Commercial and recreational landings;

(ii) Current estimates of fishing mortality;

(iii) Stock status;

(iv) The most recent estimates of recruitment;

(v) Virtual population analysis results;

(vi) Levels of noncompliance by harvesters or individual states;

(vii) Impact of size/mesh regulations;

(viii) The results of a survey of domestic processors and joint venture operators of estimated Atlantic mackerel processing capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648–0114);

(ix) The results of a survey of fishermen's trade associations of estimated Atlantic mackerel harvesting capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648–0114);

(x) Any other relevant information.

(b) *Guidelines.* The specifications determined pursuant to paragraph (a) by the Monitoring Committee will be consistent with the following guidelines:

(1) *Squid.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. ABC for any fishing year is either the maximum OY specified in § 655.21, or a lower amount if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Atlantic mackerel.* (i) Atlantic mackerel ABC is derived using the following terms: C = Estimated mackerel catch in Canadian waters for the upcoming fishing year; S = Mackerel spawning-stock size at the beginning of the upcoming fishing year for which catch estimates and quotas are being specified; and LTPC = Long term potential catch as estimated by the Northeast Fisheries Science Center (NEFSC).

(ii) ABC for the upcoming fishing year must be set at a level to maintain a minimum value for S of 900,000 mt (1,984,050,000 lb) and cannot exceed LTPC minus C.

(iii) IOY is less than or equal to ABC and represents a modification of ABC, based on social and economic factors.

(iv) IOY is composed of DAH and TALFF. DAH, DAP and JVP are projected by reviewing data from sources specified in this paragraph (a) and other relevant data including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on such criteria as contained in the Magnuson Act, specifically section 201(e), and the application of the following economic factors:

(A) Total world export potential by mackerel producing countries;

(B) Total world import demand by mackerel consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased/decreased revenues to the U.S. from foreign fees;

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(F) Increased/decreased revenues to U.S. processors and exporters;

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest;

(H) Increases/decreases in U.S. processing productivity; and

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(v) The Council may also recommend that certain ratios of TALFF to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(3) *Butterfish.* (i) The most recent biological data, including data on discards, will be reviewed annually under the procedures specified in paragraph (a) of this section. If this review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Council will recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC is to be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF which is equal to 0.08 percent of the allocated portion of the Atlantic mackerel TALFF.

(c) *Adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the Council, during the fishing year by publishing a notification in the **Federal Register** stating the reasons for such an action with a 30-day comment period.

(d) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Committee the following measures it determines are necessary to assure that the specifications are not exceeded:

(1) Commercial quotas;

(2) The amount of *Loligo* squid, *Illex* squid, and butterfish which may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 655.4(c);

(3) Commercial minimum fish sizes;

(4) Commercial trip limits;

(5) Commercial seasonal quotas;

(6) Minimum mesh sizes;

(7) Commercial gear restrictions;

(8) Recreational harvest limit;

(9) Recreational minimum fish size;

(10) Recreational possession limits;

(11) Recreational season.

(e) *Annual fishing measures.* (1) The Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the Committee shall make its recommendations to the Council with respect to the specifications and any other measures necessary to assure that the specifications are not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental, economic, and social impacts of the proposed action. The Regional Director will review these recommendations, and on or about November 1 of each year, will publish a notification in the **Federal Register** of proposed specifications and any other measures necessary to assure that the specifications are not exceeded. If the specifications differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The **Federal Register** notification of proposed specifications will provide for a 30-day public comment period.

(2) The Council's recommendations will be available in aggregate form for inspection at the office of the Regional Director during the public comment period.

(3) On or about December 15 of each year, the Secretary will make a final determination concerning the specifications for each species and the other measures contained in the notification of proposed specifications. After the Secretary considers all relevant data and any public comments, a notification of final specifications and response to public comments will be published in the **Federal Register**. If the final amounts differ from those recommended by the Council, the reason(s) for the difference(s) must clearly be stated and the revised specifications must be consistent with the guidelines set forth in paragraph (b) of this section.

§ 655.23 Closure of the fishery.

(a) *General.* The Secretary shall close the directed Atlantic mackerel, *Illex* squid, *Loligo* squid, or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, if such closure is necessary to prevent the DAH from being exceeded. The closure will be in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Secretary shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* The Secretary will take the following actions if it is determined that a closure is necessary:

(1) Notify, in advance, the Executive Directors of the Mid- Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under §§ 655.4, 655.5 and 655.6 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notification of the closure to recreational participants in the fishery; and

(4) Publish a notification of closure in the **Federal Register**.

(c) *Incidental catches.* During a period of closure of the directed fishery, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board for vessels with *Loligo*/butterfish moratorium permits, *Illex* moratorium permits or mackerel commercial permits. During a period of closure of the directed fishery, the trip limit for the species for which the fishery is closed is either 10 percent by weight of the total amount of fish on board, or the allowed level of incidental catch specified in § 655.4(c)(1), whichever is less.

§ 655.24 Time and area restrictions for directed foreign fishing.

Foreign fishing is regulated under the provisions specified in § 611.50(b)(2).

§ 655.25 Gear restrictions.

(a) *Mesh restriction and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net. There are two exemptions to this requirement:

(1) During the months of June, July, August, and September, otter trawl vessels fishing for *Illex* seaward of the following coordinates (see Figure 1 to part 655):

Point	Latitude	Longitude
Point M1	43°58.0′ N.	67°22.0′ W.
Point M2	43°50.0′ N.	68°35.0′ W.
Point M3	43°30.0′ N.	69°40.0′ W.
Point M4	43°20.0′ N.	70°00.0′ W.
Point M5	42°45.0′ N.	70°10.0′ W.
Point M6	42°13.0′ N.	69°55.0′ W.
Point M7	41°00.0′ N.	69°00.0′ W.
Point M8	41°45.0′ N.	68°15.0′ W.
Point M9	42°10.0′ N.	67°10.0′ W.
Point M10	41°18.6′ N.	66°24.8′ W.
Point M11	40°55.5′ N.	66°38.0′ W.
Point M12	40°45.5′ N.	68°00.0′ W.
Point M13	40°37.0′ N.	68°00.0′ W.
Point M14	40°30.0′ N.	69°00.0′ W.
Point M15	40°22.7′ N.	69°00.0′ W.
Point M16	40°18.7′ N.	69°40.0′ W.
Point M17	40°21.0′ N.	71°03.0′ W.
Point M18	39°41.0′ N.	72°32.0′ W.
Point M19	38°47.0′ N.	73°11.0′ W.
Point M20	38°04.0′ N.	74°06.0′ W.
Point M21	37°08.0′ N.	74°46.0′ W.
Point M22	36°00.0′ N.	74°52.0′ W.
Point M23	35°45.0′ N.	74°53.0′ W.
Point M24	35°26.0′ N.	74°52.0′ W.

Vessels fishing under this exemption may not have available for immediate use, as described in paragraph (b) of this section, any net with mesh size less than 1⅞ inches (48 mm) diamond mesh when the vessel is landward of the specified coordinates.

(2) Vessels participating in the directed fishery for sea herring, provided that their catch comprises 75 percent or more by weight of sea herring.

(b) Net stowage requirements. Otter trawl vessels possessing *Loligo* squid that are subject to the minimum mesh size may not have "available for immediate use" any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use, is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

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(i) it is located below the main working deck from which the net is deployed and retrieved;

(ii) the towing wires, including the leg wires, are detached from the net; and

(iii) it is fan-folded (flaked) and bound around its circumference; or

(2) A net stowed and lashed down on deck, provided:

(i) it is fan-folded (flaked) and bound around its circumference;

(ii) it is securely fastened to the deck or rail of the vessel; and

(iii) the towing wires, including the leg wires, are detached from the net; or

(3) A net that is on a reel and is covered and secured, provided:

(i) the entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) the towing wires, including the leg wires, are detached from the net; and

(iii) the codend is removed from the net and stored below deck; or

(4) Nets that are secured in a manner authorized in writing by the Regional Director and published in the **Federal Register**.

(c) *Mesh obstruction or constriction.* Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) mesh (inside stretch measure); net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than effective 1⅞ inches (48 mm) mesh (inside stretch measure). "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. Net strengtheners (covers) may not have a mesh less than effective 4.5-inch (11.43-cm) mesh (inside stretch measure).

§ 655.26 Minimum fish sizes. [Reserved]

§ 655.27 Possession limits. [Reserved]

§ 655.28 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a permit issued under § 655.4.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of Atlantic mackerel, *Loligo* squid, *Illex* squid, or butterfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 655.29 Transfer-at-sea.

Only vessels issued a moratorium permit under § 655.4(b) may transfer *Loligo*, *Illex*, or butterfish at sea. Unless authorized in writing by the Regional Director, vessels issued an incidental catch permit under 655.4(c) are prohibited from transferring or attempting to transfer *Illex*, *Loligo*, or butterfish from one vessel to another vessel.

§ 655.30 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the Atlantic mackerel, squid, or butterfish resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic mackerel, squid, or butterfish resource and fishery; or

(2) Cause any quota to be exceeded; or

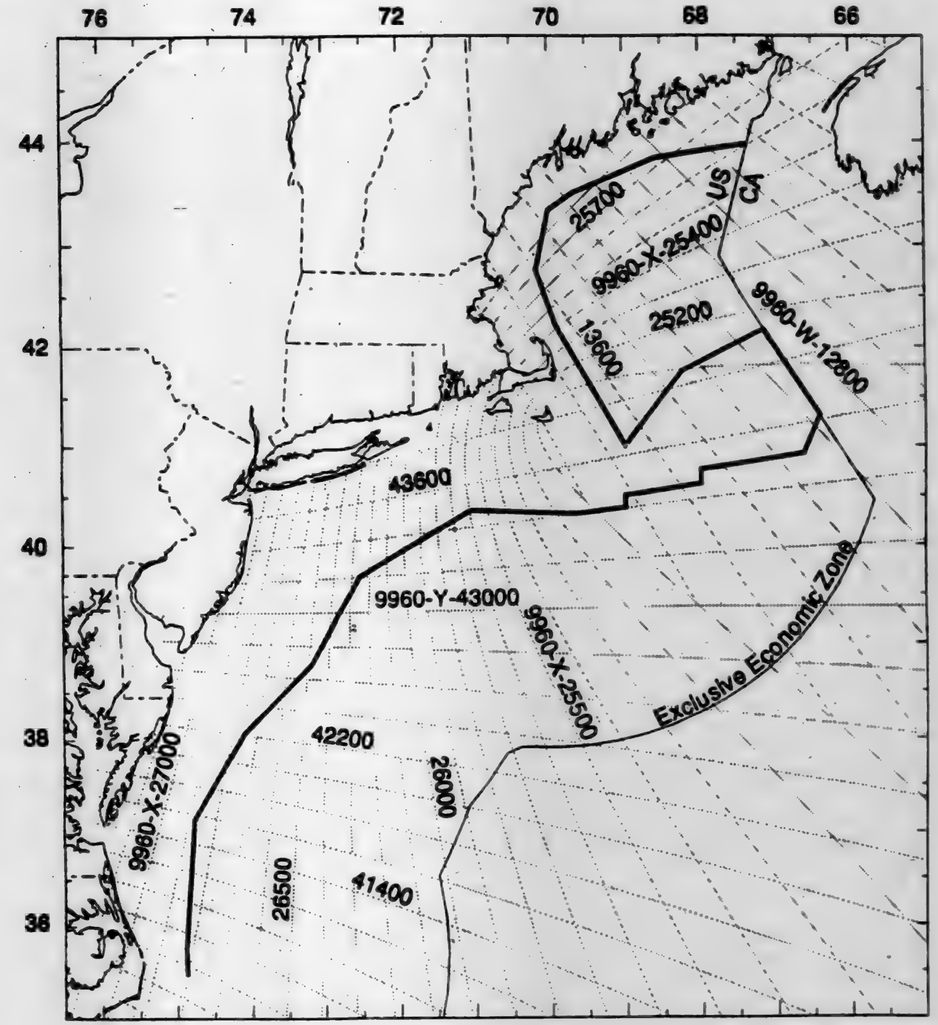
(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

4. Figure 1 to part 655 is added to read as follows:

BILLING CODE 3510-22-P

Figure 1 to Part 655—Exemption line to minimum net mesh-size requirement for Loligo squid



[FR Doc. 95-30821 Filed 12-15-95; 11:27 am]

BILLING CODE 3510-22-C

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Notices

Federal Register
Vol. 60, No. 244
Wednesday, December 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments of this notice must be received by February 23, 1996, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, Beltsville Agricultural Research Center—West, ARS, USDA, 10300 Baltimore Avenue, Beltsville, MD 20705–2330, (301) 504–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Beneficial Organisms: Foreign/Overseas Source (AD–941); Quarantine Facility (AD–942); and Non-Quarantine (AD–943).

OMB Number: 0518–0013.

Expiration Date of Approval: May 31, 1996.

Type of Request: Extension of currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–941), release from quarantine (AD–942), and shipment and/or field release/recolonization (AD–942 and AD–943) of foreign/introduced beneficial organisms (biological control agents and pollinators). The information collected is entered into the USDA "Releases of Beneficial Organisms in the United States and Territories" (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. Efforts are underway to replace the paper forms with computerized information collection, and when completed, the forms would be used by those units for which computerized input is not possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Non-profit institutions, universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 100.

Estimated Number of Responses per Respondent: An average of 3 (range 1–60).

Estimated Total Annual Burden on Respondents: 25 hours.

Copies of the 3 forms used in this information collection can be obtained from Jack R. Coulson, ARS Biological Control Documentation Center, at (301) 504–6350.

COMMENTS: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to:

Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, ARS, USDA, Beltsville Agricultural Research Center—West, 10300 Baltimore Avenue, Beltsville, MD 20705–2350.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Beltsville, MD, December 1, 1995.

Richard S. Soper,

Assistant Administrator, Office of International Research Programs, Agricultural Research Service, Department of Agriculture.

[FR Doc. 95–30836 Filed 12–19–95; 8:45 am]

BILLING CODE 3410–03–M

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.

Date: February 14–15, 1996.

Time: 8:30 a.m.–5:00 p.m., February 14, 1996; 8:30 a.m.–5:00 p.m., February 15, 1996.

Place: USDA, South Building, Room 3109, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advance the development of the National Genetic Resources Program.

Contact Person: Henry L. Shands, Director, National Genetic Resources Program, Building 005, Room 115, BARC-West, Beltsville, Maryland 20705. Telephone: 301–504–5059.

Done at Beltsville, Maryland, this 11 day of December 1995.

Henry L. Shands,

Director, National Genetic Resources Program.

[FR Doc. 95–30835 Filed 12–19–95; 8:45 am]

BILLING CODE 3410–03–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's Scientific and Policy Advisory Committee; Notice of Closed Meetings

December 7, 1995.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meetings:

Name: Scientific and Policy Advisory Committee (SPAC).

Dates: January 3 & 4, 1996; February 14, 15, & 16, 1996.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, NW., Room 4930, Washington, DC.

Type of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Scientific and Policy Advisory Committee, Room 5844, Washington, DC 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meetings: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. Both of the meetings will be held in Executive Session.

Reason for Closing: The SPAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority To Close Meetings: The closing of the meetings is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated December 7, 1995, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination To Close Meetings of the Scientific and Policy Advisory Committee

December 7, 1995.

The Scientific and Policy Advisory Committee (SPAC) will hold meetings in Washington, DC on January 3 and 4 as well as February 14, 15 and 16. The Arms Control and Disarmament Act, as amended (22 U.S.C. sec. 2566) provides for the SPAC to advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meetings will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. sec. 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, the meetings should be closed to the public.

John D. Holum.

[FR Doc. 95–30700 Filed 12–19–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 791]

Grant of Authority for Subzone Status; Mobil Corporation (Oil Refinery), St. Bernard/Jefferson/St. Charles Parishes, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the Port of New Orleans, grantee of Foreign-Trade Zone 2, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Corporation at sites in St. Bernard/Jefferson/St. Charles Parishes, Louisiana (New Orleans area), was filed by the Board on June 6, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 30–95, 60 FR 31703, 6–16–95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 2H) at the Mobil Corporation oil refinery complex, in St. Bernard/Jefferson/St. Charles Parishes, Louisiana, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050 and #2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30952 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

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[Order No. 792]

Grant of Authority for Subzone Status; Bayway Refining Company (Oil Refinery), Linden, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, for authority to establish special-purpose subzone status at the oil refinery complex of Bayway Refining Company in Linden, New Jersey, was filed by the Board on June 19, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32-95, 60 FR 33187, 6-27-95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 49E) at the Bayway Refining Company oil refinery complex, in Linden, New Jersey, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000-#2710.00.1050 and #2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95-30953 Filed 12-19-95; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 790]

Grant of Authority for Subzone Status; Mobil Corporation (Oil Refinery), Gloucester County, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Jersey Port Corporation, grantee of Foreign-Trade Zone 142, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Corporation at sites in Gloucester County, New Jersey, was filed by the Board on May 24, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 27-95, 60 FR 29551, 6-5-95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 142A) at the Mobil Corporation oil refinery complex, in Gloucester County, New Jersey, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000-# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 95-30951 Filed 12-19-95; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 793]

Grant of Authority for Subzone Status; Crown Central Petroleum Corporation (Oil Refinery) Harris County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the oil refinery complex of Crown Central Petroleum Corporation at sites in Harris County, Texas, was filed by the Board on June 23, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 34-95, 60 FR 34511, 7-3-95); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84N) at the Crown Central Petroleum Corporation oil refinery complex, in Harris County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000 - # 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 12th day of December 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95-30954 Filed 12-19-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-428-037]

Dry Cleaning Machinery From Germany, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of Antidumping Finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on dry cleaning machinery from Germany because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Art DuBois or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-6312.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On November 1, 1995, the Department published in the **Federal Register** (55541) its notice of intent to revoke the antidumping finding on dry cleaning machinery from Germany (November 8, 1972). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under 353.2(k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on dry cleaning machinery from Germany is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of dry cleaning machinery from Germany. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8456.10.00.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of dry cleaning machinery from Germany entered, or withdrawn from warehouse, for consumption on or after November 1. Entries made during the period November 1, 1994, through October 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 1, 1995 without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: December 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95-30958 Filed 12-19-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-821-805]

Notice of Amended Antidumping Duty Order: Pure Magnesium From the Russian Federation; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 22, 1995, the Department of Commerce ("the

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Department") made its final determination that pure magnesium from the Russian Federation was being sold at less than fair value (see Pure Magnesium and Alloy Magnesium from the Russian Federation (60 FR 16432, March 30, 1995)). On May 12, 1995, the Department published the antidumping duty order on pure magnesium from the Russian Federation (60 FR 25691). A ministerial error identified by a respondent, Interlink, was not corrected by the Department prior to the time the parties filed suit with the Court of International Trade (CIT). On December 6, 1995, the CIT granted the Department's request for leave to correct the ministerial error. This notice provides the results of that correction.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1769.

Scope of Orders

The product covered by this order is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order is alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these orders are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Case History

On March 22, 1995, the Department of Commerce ("the Department") made its final determination that pure magnesium from the Russian Federation was being sold at less than fair value (see Pure Magnesium and Alloy Magnesium from the Russian Federation (60 FR 16432, March 30, 1995)). On May 12, 1995, the Department published the antidumping duty order on pure magnesium from the Russian Federation (60 FR 25691).

On May 11, 1995, respondent exporter, Interlink, alleged that a ministerial error had been made in that the Department incorrectly assigned a margin for its sales of subject merchandise supplied by Russian producer, Solikamsk Magnesium Works (SMW). Interlink requested that the Department clarify the antidumping duty order to show that Interlink is excluded with regard to subject merchandise supplied by SMW. The Department found the allegation constituted a ministerial error (see memo from The Magnesium Team to Barbara Stafford dated October 19, 1995). However, because the petitioner filed suit with the CIT before we could correct this error, we were unable to correct this error and publish the amended final determination and amended antidumping duty order. Subsequently, the CIT granted the Department leave to correct this ministerial error.

Amendment of Final Determination and Antidumping Duty Order

The Department has corrected the ministerial error in Interlink's margin calculation as follows: where the foreign market value (FMV) had been incorrectly based on an average of the factors of production for both SMW and the other Russian producer Avisma Titanium-Magnesium Works, the FMV now is based solely on SMW's factors of production. As a result the Department is amending its final determination and antidumping duty order of pure magnesium from the Russian Federation. The ad valorem weighted-average dumping margin for Interlink is as follows:

Interlink/Avisma—0.00
Interlink/SMW—0.00
Interlink/Other—100.25

This notice constitutes the amended antidumping duty order with respect to pure magnesium from the Russian Federation. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order are published in accordance with section 736(a) of the Act and 19 CFR 353.28(c).

Dated: December 14, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–30957 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–6A016."

Geothermal Energy Association's original Certificate was issued on 02/05/90. It was subsequently amended on 11/07/90, 04/17/91, 09/11/91, 10/25/93, and 09/26/94. A summary of the original Certificate was published in the **Federal Register** on 02/09/90 [55 FR 4647]. A summary of the application for amendment follows.

Summary of the Application:

Applicant: Geothermal Energy Association, 2001 Second St., Suite 5, Davis, CA 95616.

Application No.: 89–6A016.

Contact: Arthur John Armstrong, Attorney, (703) 356–3100.

Date Deemed Submitted: Dec. 7, 1995.

Proposed Amendment: The Geothermal Energy Association seeks to amend its Certificate to add the following additional entities as "Members" within the meaning of § 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Ormat International, Inc., Sparks, Nevada (Controlling entity: Ormat Technologies, Inc.); Resource Group, Palm Desert, CA; and Ingram Cactus Co., Houston, TX (Controlling entity: Ingram Industries, Inc.). The amendment would delete Foster Valve Corporation and Ormat, Inc.

Dated: December 11, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–30950 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–DR–P

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final dumping determination made by the Secretaria de Comercio y Fomento Industrial, respecting Seamless Commercial Steel Tubes from the United States of America. The Binantional Panel Review is terminated. (Secretariat File No. MEX–95–1904–01).

SUMMARY: On November 10, 1995, Gulf States Tube Division field a Request for Panel review in the above referenced matter with the Mexican Section of the NAFTA Secretariat. On December 6, 1995, Gulf States filed a Notice of Motion requesting termination of this panel review. No other interested persons filed a request for Panel Review of this final determination. As of December 6, 1995, no Complaint nor Notice of Appearance had been filed by any interested person. Therefore, pursuant to subrules 71(2) and 78(a) of the NAFTA Article 1904 Panel Rules 159 FR 8686, February 23, 1994) this Notice of Completion of Panel Review was effective on March 17, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

Dated: December 13, 1995

James R. Holbein,

United States Secretary, NAFTA Binational Secretariat.

[FR Doc. 95–30949 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License; Advanced Ceramics Research

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,772,524, titled, "Fibrous Monolithic Ceramic and Method For Production" to Advanced Ceramics Research, having a place of business in Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 4,772,524 is a process of making fibrous monolithic ceramic product of high density.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise

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from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 53, No. 209 (October 28, 1988). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: December 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–30945 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–13–M

Prospective Grant of Exclusive Patent License; Pasadena Scientific Industries

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,389,523, titled, "Liposome Immunoanalysis By Flow Injection Assay" to Pasadena Scientific Industries, having a place of business in Hanover, Maryland.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 5,389,523 is a method of immunoanalysis which combines immobilized immunochemistry with the technique of flow injection analysis, and employs microscopic spherical structures called liposomes, or lipid vesicles, as carriers of detectable reagents.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 57, No. 226 (November 23, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: December 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–30944 Filed 12–19–95; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Proposed Information Collection Available for Public Comment

ACTION: Notice; correction.

SUMMARY: In FR Doc. 95–29448 concerning a notice of proposed information collection available for public comment on Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173, appearing on pages 62080 and 62081 in the issue of Monday, December 4, 1995, change "Annual Burden Hours:" "423,300 hours" to read "255,000 hours" and the "Average Burden Per Response:" ".83 hours" to read ".5 hours." All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Office of the Under Secretary of Defense for Personnel and Readiness, ATTN: Reports Clearance Officer, Room 3C980, 4000 Defense Pentagon, Washington, DC 20301–4000, telephone number (703) 614–8989.

Dated: December 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30914 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations about environmental restoration at military installations that are being closed or realigned. At the meeting, the DERTF will address issues related to generic remedies, future land use, and the environmental aspects of the base realignment and closure (BRAC) program. The DERTF also will be briefed on the cleanup program at the Orlando Naval Training Center. The business meeting and hearing will be open to the public. Public witnesses who wish to speak before the DERTF should contract Shah A. Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public comment as stated below. Written statements must be received by the close of business, January 5, 1995, at the Office of the Deputy Under Secretary of Defense (Environmental Security).

DATES: January 23, 1996, 9:15 a.m.–7 p.m.; January 24, 1996, 9 a.m.–2:45 p.m.; January 25, 1996, 8:15 a.m.–11 a.m.

PUBLIC COMMENT PERIODS ARE: January 23, 1996, 6 p.m.–7 p.m.; January 25, 1996, 8:30 p.m.–9:30 p.m.

ADDRESSES: The Westgate Lakes Hotel, 10,000 Turkey Lake Road, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Mr. Shah A. Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Room 3C767, Washington, DC 20301–3400; telephone (703) 697–7475.

Dated: December 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30852 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Office of Secretary

Meeting of the Military Health Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the third meeting of the Committee. The purpose of the meeting is to advise the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense (Personnel and Readiness), the Assistant Secretary of Defense (Health Affairs), and the Military Departments with respect to problems and opportunities and potential solutions and strategies for the military health care system. Meeting sessions will be held daily and will be open to the public.

DATES: Janaury 11–12, 1996.

ADDRESSES: ACC (Air Combat Command) Conference Center, Langely Air Force Base, 190 Dodd Boulevard, 2nd Floor, (corner of Thompson Street and Dodd Boulevard), Hampton, VA, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sir Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 9:00 a.m. and 12:15pm, Thursday, January 11, and between 8:30 a.m. and 12 Noon on Friday, January 12, 1996. Contact Lt Col Jody Williams at (804) 764–7811 or 7812 at least 24 hours prior to the meeting to gain access to the base.

Dated: December 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–30853 Filed 12–19–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Availability

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the Revised Draft Environmental Impact Statement (DEIS) on the construction and operation of the proposed chemical agent demilitarization facility at the Umatilla Depot Activity, Oregon. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at the Umatilla Depot Activity. The revised DEIS examines the potential impacts of on-site incineration, alternative sites within Umatilla Depot Activity and the "no action" alternative. The "no action" alternative is considered to be a deferral of demilitarization with continued storage of agents and munitions at the Umatilla Depot Activity.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. on February 6, 1989, the Department of the Army published a Notice of Intent (54 FR 5646) which announced that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Umatilla chemical munitions disposal facility. The Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Umatilla Depot Activity. A Notice of Availability was published on October 23, 1991 (56 FR 54841) which provided notice that the Draft EIS was available for public comment. In late 1991, preparation of draft and final EIS's was halted pending the outcome of a National Research Council (NRC) study of alternative technologies for the destruction of chemical agents and munitions and the Army's review of that study. The alternative technology studies by both the NRC and the Army have been completed and preparation of EIS's has been restarted. Comments from the initial DEIS were included in this revised draft document.

Comments on this revised DEIS will be considered in the Final EIS and should be provided in writing by February 16, 1996, to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–ME, Aberdeen Proving Ground, Maryland 21010–5401. Copies may be obtained by writing to the above address.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for the revised DEIS in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Above address, or Ms. Suzanne Fournier at (410) 671–1093.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 95–30820 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee (Policy Committee)

AGENCY: Headquarters, I Corps and Fort Lewis, Fort Lewis, WA.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.

DATE OF MEETING: January 23, 1996.

PLACE: Officers' Club, Fort Lewis, Washington.

TIME: 12:30 p.m.

PROPOSED AGENDA: After action review of Cascade Sage 95 and Cultural and Natural Resources Management Plan update. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (206) 967–0793.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30841 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee (Technical Committee)

AGENCY: Headquarters, I Corps and Fort Lewis, Fort Lewis, WA.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

DATE OF MEETING: January 11, 1996.

PLACE: Yakima Training Center, Building 266, Yakima, WA.

TIME: 1:30 p.m.

PROPOSED AGENDA: After action review of Cascade Sage 95 and Cultural and Natural Resources Management Plan review. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (206) 967–0793.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30845 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

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Extension of Comment Period on the Proposal To Change Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) Governing Carrier's Entitlement to Detention Charges)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice to extend comment period.

SUMMARY: This notice extends the deadline to January 31, 1996 for comments on the Military Traffic Management Command (MTMC) Proposal to Change Items 85 and 90 in the MTMC Freight Traffic Rules Publication 1A (MFTRP 1A) Governing Motor Carrier Entitlement to Detention Charges. Formerly the deadline for comments was December 26, 1995 as published on November 24, 1995 (FR, Vol. 60, No. 226, page 58052).

FOR FURTHER INFORMATION CONTACT: Mr. Leon N. Patton Jr., or Mr. John Alexander, (703) 681–6871, Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30844 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Extension of Comment Period on the Transloading of Arms, Ammunition, and Explosives

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice to extend comment period.

SUMMARY: This notice extends the deadline to January 31, 1996 to comments on the Military Traffic Management Command (MTMC) Proposal to Change Item 48 in the MTMC Freight Traffic Rules Publication 1A Governing Transloading of Shipments of Divisions 1.1, 1.2, and 1.3 Ammunition and Explosives. Formerly the deadline for comments was December 26, 1995, as published in the notice section on November 24, 1995 **Federal Register**, Vol. 60, No. 226, page number 58054).

FOR FURTHER INFORMATION CONTACT: Mr. David Foreman, (703) 681–6293, Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–30842 Filed 12–19–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for the Development of Facilities in San Diego/Coronado, CA To Support the Homeporting of One Nimitz-Class Aircraft Carrier

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement the preferred alternative presented in the Final Environmental Impact Statement (FEIS) to comply with the 1993 Base Realignment and Closure (BRAC) directive from Congress to close Naval Air Station Alameda and relocate ships currently homeported there to fleet concentrations in San Diego and in the Pacific Northwest. Affected ships include two Nimitz-class aircraft carriers (CVNs), one of which will be realigned to the San Diego area and is the subject of this decision.

A Notice of Intent was published in the **Federal Register** in July 1993, indicating that the Navy would prepare a Draft Environmental Impact Statement (DEIS) for the Development of Facilities in San Diego/Coronado to Support the Homeporting of One Nimitz-Class Aircraft Carrier. A scoping meeting was held in August 1993, in Coronado, California. In May 1995, the DEIS was distributed to federal, state and local agencies, elected officers, special interest groups, and interested individuals. A public hearing was held on June 7, 1995 in Coronado. Oral and written comments and Navy responses were incorporated into the FEIS which was distributed to the public for a review period that ended on December 8, 1995.

The proposed action includes six separate construction projects for facilities and infrastructure necessary to support one CVN and preserve the existing capacity to accommodate one transient CVN at Naval Air Station North Island (NASNI). Homeporting a CVN will require: (1) Dredging of the carrier berths and turning basin, and the San Diego Bay channel (consisting of the inner channel and the outer channel); and (2) constructing a bay fill area, a carrier wharf, propulsion plant maintenance facilities, and support utilities during the next five years.

The carrier berths and turning basin will be dredged to a depth of −50 feet below Mean Lower Low Water (MLLW), the inner channel will be dredged to −47 feet MLLW, and the outer channel will be dredged to −55 feet MLLW. The outer channel extends south from Point Loma for 2.2 miles until the natural water depth reaches −55 feet MLLW. A total of approximately 9 million cubic yards (CY) of sediments will be dredged and disposed of at several locations. Of that amount, 70,000 CY adjacent to the existing quaywall has been found unsuitable for ocean disposal and will be used as backfill in the bay fill area. In addition, approximately 40,000 CY of sediment dredged from the rock dike foundation and 150,000 CY of sediment dredged from an eelgrass mitigation site will also be used as backfill in the bay fill area. Bioaccumulation studies indicated that approximately 932,000 CY of dredged material located in the berthing area are suitable for ocean disposal and will be disposed of at the U.S. Environmental protection Agency approved Ocean Disposal Site (LA–5), located approximately 5 miles southwest of Point Loma. The remaining dredged material of approximately 7.86 million CY are suitable for beach nourishment. This material will be deposited nearshore in water depth ranging between −20 and −30 feet MLLW at four severely eroded beaches in San Diego County. These beaches include: (a) Imperial Beach which will receive approximately 1.7 million CY, (b) Del Mar and (c) Oceanside, which will receive approximately 2.46 million CY each, and (d) Mission Beach, which will receive approximately 1.24 million CY of the dredged material. The exact disposal quantities and locations are subject to approval and permitting by the U.S. Army Corps of Engineers (COE).

The San Diego Association of Governments (SANDAG) is attempting to obtain funding to supplement available Navy military construction funding in order to place dredged material directly onto eroded beaches. In the event that federal, state, or local funding becomes available in time to meet dredging schedules, dredge material determined suitable for beach nourishment by the COE would be placed directly onshore at five beach sites located in San Diego County. These five beaches were analyzed during the EIS process and have been determined to be suitable for onshore beach nourishment. These beaches are not suitable for nearshore placement of dredged material because of sensitive marine resources. Under this contingency, the total of beach quality materials would be deposited at nine sites, both nearshore and on the beach. The exact disposal quantities and locations are subject to approval and permitting by the COE.

A 13.4 acre bay fill area will be constructed to provide adequate land space for carrier maintenance and support functions that need access, laydown, or staging room. This area will also accommodate a boatyard, a cleared security area, requisite fire lanes, and sufficient space for pier crane operations including the movement of towed aircraft to and from the carrier. A carrier wharf adjacent to the bay fill area will be constructed to provide the necessary berthing spaces and onshore support facilities, including electrical power, steam, water, sewage, and oily waste offloading. A 14 acre near-shore site for eelgrass mitigation will be dredged between the low tide line and −5 feet MLLW along the western shore at NASNI.

Three propulsion plant maintenance facilities will be constructed to provide depot-level maintenance of CVN propulsion plant systems and components in the San Diego area. These facilities are: (1) The Controlled Industrial Facility which will be used for the inspection, modification and repair of radiologically controlled equipment and components associated with naval nuclear propulsion plants; (2) The Ship Maintenance Facility which will house the machine tools, industrial processes, and work functions necessary to perform nonradiological depot-level maintenance on CVN propulsion plants; and (3) The Maintenance Support Facility which will house the central area for receiving, inspecting, shipping, and storing materials, and for personnel support spaces. Construction of these three facilities will involve demolition of two historic seaplane hangars.

Impacts to water quality, air quality, benthic organisms, marine and natural resources will briefly occur during dredging and disposal activities and construction of the shore facilities. These impacts, however, are not considered significant within the context of the project location and with implementation of specific mitigation measures described herein.

While the environmental analysis conducted during the EIS process concluded that there would be no significant impacts associated with this project, several topics of concern were identified, including traffic congestion, dredging, and dredge material disposal.

In accordance with the Clean Air Act and General Conformity Rule requirements, an air quality review has been conducted for the proposed projects. it has been determined that the proposed action is in compliance with 40 CFR Part 63 (Determining conformity of General Federal Actions to State or Federal Implementation Plans) and satisfies the requirement of Section 176(c) of the Clean Air Act (42 USC 7506). Accordingly, the proposed action conforms to the state implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of those standards.

Section 404 of the Federal Water Pollution Control Act (FWPCA) requires authorization from the COE for the discharge of dredged material into the waters of the United States. Section 404 regulations prohibit the use of any disposal site in open water when its use would result in adverse effects on water quality, shellfish beds, fisheries and wildlife, or recreational areas. The Navy has determined that the proposed dredging would not have significant impacts and has applied for a Section 404 permit for this project.

Section 401 of the FWPCA requires that any party proposing to engage in an activity which may affect water quality must obtain state water quality certification. Certification will not be granted unless it has been determined that the proposed activity will not violate state water quality standards. The Navy has applied for a Section 401 permit from the California Regional Water Quality Control Board.

In accordance with the Coastal Zone Management Act, the Navy has requested and received concurrence with its determination of coastal zone consistency for the CVN homeporting project from the California Coastal Commission.

Pursuant to Executive Order 12898 on Environmental Justice, potential environmental and economic impacts on minority and low-income persons and communities were assessed. Any impacts caused by the CVN homeporting project will be experienced equally by all groups within the overall regional population. Because no long-term negative environmental impacts are expected from the proposed action, no particular minority or low income segment of the population would be disproportionately affected. There is not anticipated to be any likelihood for minority or low income individuals to be subjected to adverse environmental or health risks.

In accordance with the National Historic Preservation Act, the Navy has signed a Memorandum of Agreement which stipulates the mitigation required for the demolition of two seaplane hangars.

The Navy has also concluded that there are no historic properties at the dredge or disposal sites.

Comments Received on the FEIS

Ten comment letters were received following publication of the FEIS. Several of these letters contained substantive comments which are addressed below. Others reiterated comments which were previously submitted and which have been addressed in the FEIS, or which were beyond the scope of this EIS.

The U.S. Environmental Protection Agency responded supporting the project, concluding that the Navy had been responsive to the Agency's concerns.

The U.S. Fish and Wildlife Service (FWS) responded concurring with the analysis contained in the EIS and with the mitigation plan established for the burrowing owl.

The City of Coronado expressed support for homeporting the CVN addressed in this project, however the City is concerned about the impact on Coronado of all Navy projects in the area. The City requests the Navy agree to take action on several measures the City believes would ease the impacts of Navy-related projects in the area. The Navy has met with City representatives and has found significant areas of cooperation and agreement, including the following specific actions:

- Use of an existing parking lot on NAS North Island property for use by Navy members and government employees whose automobiles do not meet criteria for general access to the base. This lot is intended to reduce parking congestion on city streets near the base. The lot's only restriction is to limit vehicles to 30 days of continuous use. The Navy will investigate the legal impacts of eliminating even the 30 day restriction.
- The Navy is willing to seek funding for a new entrance to NAS North Island, at the end of Third Street in Coronado, in conjunction with construction of a new commissary planned for 1997.
- Barging equipment and material rather than trucking it through Coronado is a major consideration for the construction contracts to be awarded for this project. In its requests for proposals from prospective contractors, the Navy specified alternate transportation as a consideration for contract award. The Navy has elected to

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award those contracts on the basis of "best value" rather than "lowest price" partly in order to encourage this more expensive, but less intrusive method of transportation. Specific transportation plans will be presented to the City of Coronado subsequent to contractor selection.

• Free passenger ferry service exists now between downtown San Diego and NAS North Island. Additional service to the north side of San Diego Bay is on track to begin in July 1996. A new pier will be constructed and a parking lot designated at the Antisubmarine Training Center in San Diego Harbor's West Basin. Initial service will include a 100-space parking lot, to be expanded to 300 spaces as passenger volume increases. Shuttle service from the North Island ferry terminal to work sites on base is already in place.

• Park and Ride sites at Imperial Beach and NAS Miramar are also being negotiated. Key here is identification of sites which are convenient to users. Other actions have been implemented to complement this measure, including prime parking spaces reserved for car pools, institution of van pools, guaranteed rides home for car and van pool riders as well as discounted mass transit fares.

Comments were also received expressing concern that the FEIS did not adequately address cumulative impacts associated with future replacement of North Island's two remaining conventionally powered aircraft carriers and other BRAC related actions. Chapter Six of the FEIS addressed cumulative impacts in quantitative detail, when practiable, for past, present and future projects at North Island and in the San Diego area.

Future Navy projects will be the subject of independent NEPA analysis. The cumulative impacts of past and present projects coupled with the CVN homeporting projects have not been determined to be significant.

Mitigation

The following mitigation measures will be employed to ensure minimization of environmental impacts associated with dredging and disposal operations: (1) Compliance with the permit conditions established by the COE, the California Regional Water Quality Control Board, and the California Coastal Commission which regulate dredging operations and define dredge sediment disposal locations; (2) adherence to the "no barge overflow" requirement; (3) adherence to a dredge and disposal monitoring plan for testing and evaluation of water quality parameters, selected chemical contaminants and measures of turbidity in the water column; (4) use of precision navigational equipment at both the dredging and disposal sites; and (5) placement of all dredged material suitable for beach nourishment nearshore for the protection of severely eroded beaches or a combination of nearshore and onshore disposal as previously described.

Traffic and socioeconomic impacts associated with the proposed CVN homeporting at NASNI are not significant in context because there have historically been three conventionally powered aircraft carriers (CVs) homeported at NASNI. A CVN has a personnel complement of approximately 102 personnel more than that of a CV. The depot-level maintenance facilities would increase personnel complement to an average of 750 personnel for a six-month maintenance availability period every 24 months. However, comparing the full-buildout year of 1999 with the baseline year of 1992 indicates there will be an overall decrease of 330 personnel.

Construction of the 13.4 acre bay fill area will result in the elimination of 13.4 acres of intertidal and shallow water subtidal habitat, including 3.9 acres of eelgrass located in the nearshore area. Mitigation will include the creation of 14 acres of new bay bottom, establishment of 8 acres of eelgrass and the creation of fish enhancement structures in the tidal area. Additionally compensation will include the relocation of burrowing owls from the mitigation area to other areas and the placement of clean sand from the mitigation site at two areas on NASNI to enhance habitat for the California least tern and Western snowy plover. Placement of the clean sand will not occur during the California least tern or the Western snowy plover nesting season. Further compensation for the plant species Nuttall's lotus and coast wooly-head at the mitigation site includes the removal and relocation of the top 6 inches of soil containing seeds from these plants, to another location, free from disturbance at NASNI. Impacts to nesting great blue herons, snowy egrets, and black-crowned night herons at the new maintenance facility site will be compensated by establishing replacement habitat at a site where there would be fewer long-term impacts by NASNI activities.

Questions regarding the Final Environmental Impact Statement prepared for this action may be directed to Mr. Robert Hexom, Environmental Planning, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132, telephone (619) 532–3761; fax (619) 532–3824.

Dated: December 13, 1995.

Duncan Holaday,

Deputy Assistant Secretary of the Navy, (Installations and Facilities).

[FR Doc. 30837 Filed 12–19–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Information Collection Activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval. The ICR is: NAEP Consumer Survey Research Study of the Achievement Levels for the U.S. History NAEP and the Geography NAEP.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Written comments should be submitted by February 20, 1996. Mail to: Susan Cooper Loomis, NAEP ALS Project Director, American College Testing, 2201 N. Dodge Street, Iowa City, Iowa 52243. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Director at the address above. Comments may also be submitted electronically by sending electronic mail (e-mail) to LOOMIS@ACT.ORG. Electronic comments must be submitted as an ASCII file and exclude any special characters and forms of encryption. Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as confidential business information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Susan Loomis, NAEP ALS Project Director, American College Testing, 2201 N. Dodge Street, Iowa City, Iowa 52243, Telephone: (310) 337–1048 or (800) 525–6929, e-mail: loomis@act.org.

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: NAEP Consumer Survey Research Study of the Achievement Levels for the U.S. History NAEP and the Georgraphy NAEP.

Affected Entities: Parties affected by this information collection are persons included in a broadly representative sample including persons identified as nominators of achievement levels-setting (ALS) panelists for pilot studies and ALS, as well as samples of subscribers to the Smithsonian magazine (for U.S. History) and The National Geographic for georgraphy.

Abstract: The purpose of this information collection activity is to gather information for NAGB regarding the achievement levels set for the 1994 NAEP in U.S. History and in Georgraphy. In particular, Congress has deemed that the achievement levels must be shown to be reasonable, valid, and informative to the public. This survey is designed to collect responses from individuals who are likely to have some interest in the ALS process (having been invited in 1994 to nominate individuals to serve as panelists for the ALS process) and individuals who are likely to have some interest in the subjects for which achievement levels have been developed.

A report has been developed in the form of a newspaper (The NAEP Reporter) to provide respondents information about the NAEP, and about the achievement levels. The "newspaper" report was developed as a means of providing information in a format that would be interesting to the respondent. Unlike actual newspaper articles that have reported on the recently-released results of the NAEP, this account does not judge the outcomes regarding student performances. That is, this report is objective and neither applauds nor decries the performance of students on the NAEP. A brief questionnaire elicits responses to questions regarding the usefulness and informativeness of the achievement levels for reporting NAEP results. The survey is printed on a postage-paid, self-mailer card.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated total respondent burden is 924 hours, and the average burden per respondent is .44 hours. This is a one-time survey. Individuals included in the survey will not be contacted for follow-up comments.

No small businesses nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is an appropriate method to determine the usefulness and informativeness of the achievement levels to the public.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

(iii) Evaluate whether the design of this survey maximizes the response rate, i.e. the number of persons who will respond, given the desire to have the sample be broadly representative of persons with some interest in the educational progress of K–12 students and in the general content of the disciplines of geography and U.S. history.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, from 8:30 AM to 5:00 PM.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–30899 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.004D]

Desegregation of Public Education-Desegregation Assistance Center (DAC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: Provides grants to operate regional DACs to enable them to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation.

Eligible Applicants: A public agency (other than a State educational agency or a school board) or private, nonprofit organization.

Deadline for Transmittal of Applications: February 2, 1996.

Deadline for Intergovernmental Review: April 2, 1996.

Applications Available: December 20, 1995.

Available Funds: The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates below of the amount of funds that will be available for grants under this program are based in part on the President's 1996 budget request, in part on the level of funding available in fiscal year 1995, and in part on Congressional action to date.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or reduce funding in 1996 for many of the discretionary grant programs administered by the Department. Final action on the 1996 appropriation may require the Department to cancel some of the competitions or to revise upward or downward the amount of funds estimated to be available for particular competitions.

Estimated Range of Awards: $400,000–$900,000.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85 and 86; except that 34 CFR 75.232 does not apply to grants under 34 CFR Part 272; and (b) the regulations for this program in 34 CFR Parts 270 and 272.

For Applications or Information Contact: Adell S. Washington, U.S. Department of Education, 600 Independence Avenue, S.W., Portals, Suite 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2495. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 42 U.S.C. 2000c–2000c–2,2000c–5

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Dated: December 13, 1995.

Janice E. Jackson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–30891 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.004C]

Desegregation of Public Education-State Educational Agency (SEA) Desegregation Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To enable SEAs to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation of public schools.

Eligible Applicants: State Educational Agency.

Deadline for Transmittal of Applications: January 31, 1996.

Deadline for Intergovernmental Review: April 1, 1996.

Applications Available: December 20, 1995.

Available Funds: The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates below of the amount of funds that will be available for grants under this program are based in part on the President's 1996 budget request, in part on the level of funding available in fiscal year 1995, and in part on Congressional action to date.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or reduce funding in 1996 for many of the discretionary grant programs administered by the Department. Final action on the 1996 appropriation may require the Department to cancel some of the competitions or to revise upward or downward the amount of funds estimated to be available for particular competitions.

Estimated Range of Awards: $50,000–$200,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 53.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 78, 79, 80, 81, 82, 85 and 86; except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271; and (b) the regulations for this program in 34 CFR Parts 270 and 271.

For Applications or Information Contact: Adell S. Washington, U.S. Department of Education, 600 Independence Avenue, S.W., Portals, Suite 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2495. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: December 13, 1995.

Janice E. Jackson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–30890 Filed 12–19–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

CTM Tech, Inc.

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of Intent to Grant Exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to CTM Tech Inc., of Florence, South Carolina, an exclusive license to practice the invention described in U.S. Patent No. 5,137,314, entitled "Catwalk Grate Lifting Tool." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive for a specified duration, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 20, 1996.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

FOR FURTHER INFORMATION: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 C.F.R. 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

CTM Tech Inc., of Florence, South Carolina, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,137,314, and has a plan for commercialization of the invention. A copy of the patent can be obtained from the U.S. Patent and Trademark Office, Washington, D.C. 20231. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209 (c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a royalty and other terms and conditions to be negotiated. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on December 13, 1995.

Agnes P. Dover,

Deputy General Counsel.

[FR Doc. 95–30963 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

Invention Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that U.S. Patent No. 4,942,339, entitled "Intense Steady State Electron Beam Generator" is available for license, in accordance with 35 U.S.C. 207–209.

A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, D.C. 20231.

FOR FURTHER INFORMATION: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register.**

Issued in Washington, DC, on December 13, 1995.

Agnes P. Dover,

Deputy General Counsel for Technology Transfer and Procurement.

[FR Doc. 95–30964 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–22–000, et al.]

Electric Rate and Corporate Regulation Filings; Pepperell Operations, Inc., et al.

December 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Pepperell Operations, Inc.

[Docket No. EG96–22–000]

Take notice that on December 5, 1995, Pepperell Operations, Inc., a corporation organized and existing under the laws of the State of Illinois, with its address at 1130 Lake Cook Road, Suite 300, Buffalo Grove, Illinois 60089 (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged directly and exclusively in the business of (A) operating an eligible facility located in Pepperell, Massachusetts and (B) based on agency relationships with facility owners, selling electric energy at wholesale. The Pepperell Plant consists of a nominal 38 MW combined-cycle cogeneration facility utilizing natural gas as its primary fuel and No. 2 fuel oil as a backup fuel.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Westar Electric Marketing, Inc.

[Docket No. ER96–458–000]

Take notice that on November 30, 1995, Westar Electric Marketing, Inc., tendered for filing amendments to its filing in the above referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER96–459–000]

Take notice that on December 5, 1996, Western Resources, Inc. tendered for filing amendments to its filing in the above referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER96–488–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report required under Article 2.3 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Part Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Power Company

[Docket No. ER96–489–000]

Take notice that on November 30, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing two transmission service agreements, dated November 20, 1995 (TSAs). The TSAs provide for transmission service to be made available to CPP pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. An effective date of January 1, 1996, was requested for both agreements.

A copy of the filing was served upon CPP and the Public Utility Commission of Ohio.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER96–490–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report in accordance with Article IV, Section A(2) of the North Hartland Transmission Service Contract (Contract) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T) under which CVPS transmits the output of the VG&T's 4.0 MW hydroelectric generating facility located in North Hartland, Vermont via a 12.5 kV circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER84–674–000 and was designated as Rate Schedule FERC No. 121.

Article IV, Section A(2) of the Contract requires CVPS to submit the forecast cost report applicable to a service year by December 1 of the preceding year.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

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7. New England Power Company

[Docket No. ER96-491-000]

Take notice that on November 30, 1996, New England Power Company (NEP), submitted for filing an amendment to the March 15, 1982 service agreement for transmission service to Taunton Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER96-492-000]

Take notice that on November 30, 1995, Central Illinois Public Service Company (CIPS), submitted two Service Agreements, dated November 14, 1995, establishing Missouri Public Service (Missouri) and WestPlains Energy-Kansas (WestPlains) as customers under the terms of CIPS' Coordination Sales Tariff CST-1 (CST-1 Tariff) and a Service Agreement, dated November 15, 1995, establishing Aquila Power Corporation (Aquila) as a CST-1 customer.

CIPS requests effective dates of November 14, 1995 for the service agreements with Missouri and WestPlains and the revised Index of Customers and of November 15, 1995, for the service agreement with Aquila. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Aquila, Missouri, WestPlains and the Illinois Commerce Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER96-494-000]

Take notice that on November 30, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements between SCS, as agent of the Southern Companies, and i) Industrial Energy Applications, Inc. and ii) Citizens Lehman Power Sales for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Energy Marketing, Inc.

Docket No. ER96-497-000]

Take notice that on December 1, 1995, Southern Energy Marketing, Inc. (Southern Energy) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Southern Energy has satisfied the requirements for WSPP membership. Accordingly, Southern Energy requests that the Commission amend the WSPP Agreement to include it as a member.

Southern Energy requests waiver of the 60-day prior notice requirement to permit in membership in the WSPP to become effective as of November 27, 1995.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER96-498-000]

Take notice that on December 1, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing Modification No. 26 dated November 30, 1995 to the Interconnection Agreement dated February 1, 1948 between Virginia Power and Appalachian Power Company (Appalachian). The Commission has previously designated the 1948 Agreement as Virginia Power's Rate Schedule FERC No. 7 and Appalachian's Rate Schedule FERC No. 16. Virginia Power also has tendered for filing certain agreements addressing data acquisition facilities and taxes that are related to Modification No. 26.

Modification No. 26 provides for a new point of interconnection between Virginia Power and Appalachian.

Copies of the filing were service upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Public Service Commission of West Virginia and Appalachian Power Company.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER96-499-000]

Take notice that on December 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Industrial Energy Application (IEA).

Con Edison states that a copy of this filing has been served by mail upon IEA.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER96-500-000]

Take notice that on December 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Louis Dreyfus Electric Power, Inc. (LDEP).

Con Edison states that a copy of this filing has been served by mail upon LDEP.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. ER96-502-000]

Take notice that on December 1, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *PECO Energy Company* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER96-503-000]

Take notice that on December 1, 1995, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *PECO Energy Company* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER96-504-000]

Take notice that on December 1, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *PECO Energy Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *PECO Energy Company*, pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER96-505-000]

Take notice that on December 1, 1995, Long Island Lighting Company (LILCO), tendered for filing a Letter Agreement dated November 15, 1995, between LILCO and the New York Power Authority (NYPA) concerning power deliveries to Grumman-Northrop Corporation under Lilco-FERC Rate Schedule No. 34. LILCO requests an effective date of July 1, 1995.

LILCO states that copies of this filing have been served by LILCO on the New York State Public Service Commission and NYPA.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER96-506-000]

Take notice that on December 1, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Enron Power Marketing, Inc. FPL requests an effective date of December 4, 1995.

Comment date: December 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-30883 Filed 12-19-95; 8:45 am]

BILLING CODE 6717-01-P

Hydroelectric Application Filed with the Commission

November 30, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No: 8794-040.

c. Date Filed: November 13, 1995.

d. Applicant: Southern New Hampshire Hydroelectric Development Corporation.

e. Name of Project: Rimmon Pond Project.

f. Location: Naugatuck River, New Haven County, in the Town of Seymour, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: John N. Webster, P.O. Box 78, South Berwick, ME 03908, (207) 384-5334.

i. FERC Contact: David W. Cagnon, (202) 219-2693.

j. Comment Date: January 12, 1996.

k. Description of Application: The licensee states that the power purchase contract has been canceled and the project is now uneconomical.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95-30880 Filed 12-19-95; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application Filed With the Commission

December 5, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment to License.

b. Project No: 1121-034.

c. Date Filed: August 4, 1995.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Battle Creek.

f. Location: North Fork Battle Creek, Shasta County, near Shingletown.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact: Cynthia Kayer, Pacific Gas and Electric Company, P.O. Box 770000, P10A San Francisco, CA 94177, (415) 973-3642.

i. FERC Contact: Robert Grieve, (202) 219-2655.

j. Comment Date: January 22, 1996.

k. Description of Application: Article 33(f) requires maintenance of North Battle Creek Reservoir at full capacity during the annual recreation season from April 1 through September 10 of each year and 75 acre-feet from September 11 through March 31. Applicant proposes to revise article 33(f) to require maintenance of North Battle Creek Reservoir at or above 1,039 acre feet capacity during the annual recreation season from June 1 through September 10 of each year and 75 acre-

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feet from September 11 through March 31.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protects or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30882 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–95–011]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 14, 1995.

Take notice that on December 11, 1995, Colorado Interstate Gas Company (CIG), tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions and affected parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30884 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–102–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

December 14, 1995.

Take notice that on December 8, 1995, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue S.E., Charleston, West Virginia 25314–1599, file in Docket No. CP96–102–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection in Acadia Parish, Louisiana under Columbia Gulf's blanket certificate issued in Docket No. CP83–496–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate a bi-directional interconnection with Egan Hub Partners (Egan) in Acadia Parish, Louisiana. The interconnection has been requested by Egan and the service will be provided on an interruptible basis and therefore, no impact is expected on Columbia Gulf's existing design day and annual obligation to its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30887 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–19–000]

Columbia Gulf Transmission Company; Notice of Refund Report

December 14, 1995.

Take notice that on October 25, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing a Report of Gas Research Institute (GRI) Refund. Columbia Gulf states that the refund report is being made in accordance with Ordering Paragraph C of the Commission's February 22, 1955 "Order Approving Refund Methodology For 1994 Overcollections" in Docket No. RP95–124–000.

Columbia Gulf states that it has credited the GRI refund to its eligible firm customers as a credit to invoices issued on or around September 10, 1995. The refund totalling $209,205.00 represented overcollections of GRI surcharges for the period January 1, 1994 through December 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30868 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA94–15–000]

Florida Gas Transmission Company; Order Establishing Hearing Procedures

Issued: December 14, 1995.

On September 8, 1995, the Deputy Chief Accountant issued a contested audit report under delegated authority noting Florida Gas Transmission Company's (Florida Gas) disagreement with respect to certain recommendations of the Division of Audits.[1] Florida Gas was requested to advise whether it would agree to the disposition of the contested matters under the shortened procedures provided for by Part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

By letter dated November 7, 1995, Florida Gas responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing. The arguments made by Florida Gas in its November 7, 1995 response may be raised at the hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of Florida Gas's accounting practices as discussed in the audit report.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 95–30881 Filed 12–19–95; 8:45 am]

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[1] 72 FERC ¶62,243. The contested matters are discussed in Part I of the letter order. The letter order was amended by reissuance of Part I on October 11, 1995, correcting amounts reported in Part I related to the capitalization of the allowance for funds used during construction on Phase III facilities. The letter as published in the FERC Reports at the cite noted above incorporates the October 11 revision.

[Docket No. RP95–448–002]

Northern Border Pipeline Company; Notice of Tariff Filing

December 14, 1995.

Take notice that on December 11, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute First Revised Sheet Number 110.

Northern Border states that the filing is in compliance with the Commission's order, issued November 30, 1995, in the above-referenced docket. Northern Border further states that the November 30 Order required Northern Border to resubmit Sheet No. 110 to correctly reflect the proper supersession.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. Pursuant to Section 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30863 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2114–040]

Public Utility District No. 2 of Grant Country, Washington; Notice of Application for Approval of Contracts for the Sale of Power for a Period Extending Beyond the Term of the License

December 14, 1995.

On October 16, 1995, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. 815, and the Commission's order in Kootenai Electric No. 2 of Grant Country, Washington (Grant County), filed an application requesting Commission approval of contracts for the sale of power from the Wanapum Development of its licensed Priest Rapids Project No. 2114, for the approximately four-year period that the power sales contracts extends beyond the 2005 expiration date of the project's license. The project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington.

Section 22 provides that contracts for the sale and delivery of power for period extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service Commission or other similar authority in the state in which the sale of delivery or power is made. Grant County states in its application that Commission approval of the Wanapum Development power sales contracts is required because the revenues from those contracts have been pledged to secure repayment of bonds (which expire when the power sales contracts expire) that the licensee issued to finance construction of the Wanapum Development.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by the 30th day following publication of this notice in the **Federal**

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Register; must bear in all capital letters the title "COMMENTS," "PROTESTS," or "MOTION TO INTERVENE," as applicable, and "Project No. 2114–040." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the license specified in its application.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30866 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11072, NY]

Trenton Falls Hydroelectric Company; Notice Not Ready for Environmental Analysis, Notice Requesting Interventions and Protests, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

December 14, 1995.

On December 5, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Trenton Falls Hydroelectric Company's application for the Boyd Dam Hydroelectric Project, located on the East Branch of Fish Creek in Lewis County, New York.

The Boyd Dam's principal features would consist of a 210-acre impoundment, an existing concrete gravity and earthfill dam with a 150-foot-long spillway section, a modified concrete intake structure, which would contain a single 795-kilowatt (Kw) generator, an upgraded 3.5-mile-long transmission line, and appurtenant facilities. With a total authorized installed capacity of 795 Kw, the project would have an average annual generation of about 6.9 megawatthours.

The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to: (1) invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," OR "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 C.F.R. 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and public comments to scoping, whether licensing the Boyd Dam Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commentors *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format then write the files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should show the following captions on the first page: Boyd Dam Hydroelectric Project, FERC No. 11072.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or intercedors (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Mike Dees, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, N.E., Washington, D.C. 20426, or at (202) 219–2807.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30865 Filed 12–19–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of $275,000,000 (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc., Case No. VEF–0030. The OHA has tentatively determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed in duplicate by January 19, 1996, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107. All comments should conspicuously display a reference to Case No. VEF–0030.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 586–2390 [Wieker]; (202) 586–2400 [Freimuth].

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $275,000,000 plus interest, remitted or to be remitted to the DOE by Occidental Petroleum Corporation. The DOE is currently holding $100,000,000, plus accrued interest, of these funds in an interest bearing escrow account pending distribution. The DOE will receive additional annual payments of $35,000,000 plus interest during the years 1996 through 2000.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. Any party whose crude oil application is approved will share in all crude oil overcharge funds.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585–0107.

Dated: December 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation Order

Name of Case: OXY USA, Inc.
Date of Filing: September 18, 1995
Case Number: VEF–0030

The Office of General Counsel, Regulatory Litigation (OGC), formerly the Economic Regulatory Administration (ERA), filed a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The Petition concerns funds remitted to the DOE pursuant to a Consent Order executed by the DOE and Occidental Petroleum Corporation (Occidental), including its wholly-owned subsidiary, OXY USA, Inc. (OXY). OXY was formerly Cities Service Oil and Gas Corporation, which in turn was a successor in interest to Cities Service Corporation (Cities). Unless otherwise indicated, the firms collectively are referred to as Occidental.

Pursuant to the Consent Order, Occidental agreed to remit $100 million within 30 days of the Consent Order and then to make five annual payments of $35 million plus interest. On September 17, 1995, OXY remitted $100 million to the DOE.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations which were resolved by the Consent Order. This Decision and Order sets forth the OHA's proposed procedures for distributing the consent order funds.

I. Background

The Consent Order at issue was executed on June 27, 1995 in proposed form. The DOE published notice of the Proposed Consent Order and the opportunity to file comments. See 60 FR 35186 (July 6, 1995). Following the comment period, the DOE issued the Proposed Consent Order as a final order, pursuant to 10 C.F.R. 205.199J. See 60 FR 43130 (August 18, 1995).

The Consent Order covers the period October 1, 1979 through January 27, 1981 and reflects the resolution of enforcement proceedings related to 91 reciprocal crude oil transactions engaged in by Cities during that period. In those transactions, Cities sold price-controlled crude oil in its refinery inventory in exchange for deeply discounted exempt crude oil.

In 1988, the DOE issued a Remedial Order (RO) holding that the transactions violated the price regulations and that the violation amount of $264 million, plus interest, should be remitted to the DOE. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). The 1988 RO also remanded the issue of whether the transactions violated other regulations.

In 1992, the OGC issued a Revised Proposed Remedial Order (RPRO), specifying an alternate liability of $254 million, plus interest, on the ground that 83 of the transactions violated the entitlements reporting requirements. OXY filed objections to the RPRO with the OHA. *OXY USA, Inc.*, Case No. LRO–0003 (dismissed August 30, 1995). The case was ready for oral argument at the time of the June 27, 1995 execution of the Proposed Consent Order.

During the pendency of the OHA proceeding on the RPRO, the Federal Energy Regulatory Commission (FERC) reversed the 1988 RO. *Cities Service Oil and Gas Corp.*, 65 FERC ¶ 61,403 (1993), *reconsideration denied*, 66 FERC ¶ 61,222 (1994). After FERC's denial of reconsideration motions filed by the DOE and intervenor parties, intervenor parties appealed to federal district court, which dismissed their appeals for lack of standing. *Alabama v. FERC*, 3 Fed. Energy Guidelines ¶ 26,693 (D.D.C. June 8, 1995). One of the intervenors had noticed an appeal at the time of the June 27, 1995 execution of the Proposed Consent Order. See 60 FR 35187 note 2.

Although the Consent Order resulted from the enforcement proceeding involving the 91 reciprocal crude oil transactions, the Consent Order is global. The Consent Order provides that it settles all pending and potential civil and administrative claims against Occidental

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under the federal petroleum price and allocation regulations during the consent order period. Thus, the Consent Order settles not only issues related to the 91 reciprocal transactions but also any other potential liability of Occidental with respect to its compliance with the federal price and allocation regulations during the consent order period.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 *et seq.*; see also *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Proposed Refund Procedures

A. The DOE's Modified Statement of Restitutionary Policy

The distribution of crude oil overcharge funds is governed by the DOE's July 1986 Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 Fed. Reg. 27899 (August 4, 1986). The MSRP was issued in conjunction with the Stripper Well Settlement Agreement. See In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986).

Under the MSRP, up to 20 percent of crude oil overcharge funds may be reserved for direct restitution to injured purchasers, with the remainder divided equally between the states and the federal government. The MSRP also specifies that any funds remaining after all valid claims by injured purchasers are paid be disbursed to the states and the federal government in equal amounts.

In August 1986, shortly after the issuance of the MSRP, the OHA issued an Order that announced that the MSRP would be applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order). In response, parties filed comments.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. See 52 FR 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil funds under the Subpart V regulations. A crude oil refund applicant was only required to submit one application for its share of crude oil overcharge funds.

Consistent with the foregoing, the OHA accepted refund applications from 1987 until the June 30, 1995 deadline. See 60 FR 19914 (April 20, 1995). Applicants who filed before the deadline and whose applications are approved will share in the crude oil overcharge funds. Approved applicants are currently receiving $.0016 per gallon of purchased refined product.

B. Proposal To Distribute the OXY Consent Order Funds in Accordance With the MSRP

We have tentatively determined that all of the consent order funds are crude oil funds and, therefore, should be distributed in accordance with the MSRP. Although the Consent Order was global, i.e., it settled any potential claims against Occidental, the Consent Order was the result of a pending enforcement proceeding related to OXY's reciprocal purchases and sales of crude oil and the reporting of the purchased crude oil to the DOE Entitlements Program. The Consent Order does not identify any potential refined product claims, let alone indicate that any such potential violations were taken into account in arriving at the settlement amount. In fact, a provision in the Consent Order refers to an apportionment of the principal portion of consent order funds as payments of the principal and interest sought by the agency based on the ratio of principal and interest sought in the RPRO.[1] In addition to the Consent Order itself, the Notice of Proposed Consent Order and the Petition for Implementation of Special Refund Procedures both support the conclusion that the consent order funds are crude oil funds. The Notice of Proposed Consent Order indicates that the settlement amount was determined by reference to the litigation concerning the reciprocal crude oil transactions. See 60 FR at 35187 (Part II. Determination of Reasonable Settlement Amount). The Petition for Implementation of Special Refund Procedures states that the alleged violations underlying the Consent Order concern the improper reporting of crude oil certifications to the Entitlements Program, i.e., the claim in the RPRO. Petition at 2. Under the foregoing circumstances, we have tentatively determined that 100 percent of the consent order funds are crude oil funds.[2]

Because we have tentatively determined that 100 percent of the consent order funds are crude oil funds, we propose to distribute the funds according to the MSRP. We propose to reserve initially the full 20 percent ($55 million), plus accrued interest, for direct restitution to injured purchasers of crude oil and refined petroleum products. We propose to distribute the remaining 80 percent ($220 million) in equal shares to the states and the federal government.

As indicated above, the funds reserved for direct restitution to injured purchasers will be available for distribution through OHA's Subpart V crude oil overcharge refund proceeding. We have previously discussed the application requirements and standards that apply in that proceeding. Because the deadline for the filing of applications has now passed, we do not believe that it is necessary to reiterate those matters. In accordance with the MSRP, we propose that any funds remaining after the conclusion of the Subpart V crude oil overcharge refund proceeding be disbursed to the states and the federal government in equal shares.

With respect to the funds made available to the states for indirect restitution, we note that the share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement. Based on the foregoing, we propose that the $100 million initial payment made by Occidental be disbursed as follows: $20 million, plus accrued interest, to the DOE interest-bearing escrow account for crude oil claimants, $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the states, and $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the federal government. We propose that, upon remittance to the DOE, Occidental's subsequent five annual payments of $35 million, plus accrued interest, be distributed to the same accounts in the same proportions.

It is therefore ordered That:

The consent order funds remitted by Occidental Petroleum Corporation will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–30960 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Section 406 provides in full:

Inasmuch as this Consent Order settles both the principal and interest portions of all claims made by the DOE against Occidental, the principal portion of the payments made pursuant to paragraphs 402 through 404 shall be deemed to be a payment of principal and interest in the same ratio that the principal portion of the DOE's claim in the proceeding styled In the Matter of OXY USA Inc., Case No. LRO–0003, bears to the interest portion of the DOE's claim in that case as of the Effective Date.

60 FR at 35189.

[2] See *generally Mt. Airy Refining Co.*, 24 DOE ¶ 85,094 at 88,305 n.1 (1994) (consent order funds considered crude oil funds where most of consent order funds related to crude oil violations); *DeMenno-Kerdoon*, 23 DOE ¶ 85,046 at 88,112 n.1 (1993) (global consent order funds considered crude oil funds where the funds were less than the crude oil violations alleged in PRO that was settled by the consent order).

Western Area Power Administration

Loveland Area Projects, Post-1999 Resource Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Completion.

SUMMARY: In accordance with the Post-1989 General Power Marketing and Allocation Criteria (Criteria), Pick-Sloan Missouri Basin Program-Western Division, published in the **Federal Register** on January 31, 1986 (51 FR 4012), the Western Area Power Administration's (Western) Loveland Area Office (LAO) has completed a hydrological study to determine the available electric power resources for the period starting with the first day of the October 1999 billing period through the last day of the September 2004 billing period. The results of the study show that there is an energy deficit and some surplus capacity available in the post-1999 period. The annual energy deficit is 3.3 percent of the total annual energy resource. The deficit occurs in the winter season when LAO has historically purchased energy. Western has reviewed the study results and concluded that the energy resource, even though deficit, will be sufficient to meet the current contractual commitments with minor energy purchases. The available capacity will be used to maintain operation flexibility. Therefore, there is no need to change the allocated amounts of energy with capacity under the Criteria between 1999 and 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, Telephone: (970) 490–7201.

Regulatory Procedural Requirements

The authority upon which Western allocates and contracts for electric service is based upon the provisions of the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); the Department of Energy Organization Act of 1977 (42 U.S.C. 7152, 7191); the Flood Control Act of 1944 (58 Stat. 891); the Fryingpan-Arkansas Project Acts of 1962 and 1974 (Pub. L. 87–590, 76 Stat. 389 and Pub. L. 93–493, 88 Stat. 1497); and acts amending or supplementing the foregoing legislation.

Background

Power produced by the Loveland Area projects is marketed pursuant to the Criteria. LAO's firm electric service contracts executed under the Criteria expire on the last day of the September billing period in 2004. The Criteria states "* * * at the end of the 1999 summer season billing period, the provisions of the contracts concerning the amounts of energy and capacity committed will be subject to revision based on the marketable resource. Any necessary revisions to these contract provisions will be determined by Western and presented to the contractors by the end of the 1996 summer season billing period." The available resources in the Criteria were determined by duplicating the river systems with a hydrological computer modeling program and calculating what the available energy and capacity would be using this data. The marketable capacity was calculated using a 90-percent probability of exceedance factor.

The energy portion of the Post-1999 Resource Study uses the average of the actual monthly generation rather than a calculated amount of energy using a hydrological computer simulation model. The capacity portion of the study uses essentially the same methodology as used in the Criteria. The results of the Post-1999 Resource Study show that there is an energy deficit and some surplus capacity available.

	Resources	
	Post 1999 marketable	Difference from contract
Winter Energy (GWh)	821.1	(89.2)
Summer Energy (GWh)	1,153.1	23.1
Total Energy (GWh)	1,974.2	(66.1)
Winter Capacity (MW)	538.5	42.0
Summer Capacity (MW)	606.7	16.7

Environmental Compliance

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*) and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) require that the environmental effects of agency actions be studied and considered by decision makers. DOE issued Implementing Procedures and Guidelines for the National Environmental Policy Act at 10 CFR Part 1021. Performance of this resource study meets the definition of a categorical exclusion, which is a category of actions defined at 40 CFR 1508.4 and listed in Appendix A to Subpart D of the DOE Implementing Procedures for which neither an environmental assessment nor an environmental impact statement is usually required. The applicable categorical exclusion is found at A9 in Appendix A to Subpart D.

Issued at Washington, DC, December 11, 1995.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 95–30959 Filed 12–19–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6399–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1426.04.

SUPPLEMENTARY INFORMATION:

Title: EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response, OMB Control # 2050–0105, EPA ICR # 1426.04, expiration 1–31–96. This is a request for extension, without change, of a currently approved collection.

Abstract: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) require EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: those in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities; and employees involved in emergency response operations without regard to location. This ICR renews the existing mandatory recordkeeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste sites maintaining records of employee training, refresher training, medical exams, and reviewing emergency response plans. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this

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collection of information was published on 11/08/95 (60 FR 176).

Burden Statement: The annual public reporting and recordkeeping burden for this collection is estimated to average 10.64 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; and complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local employees engaged in hazardous waste operations and emergency response in states without an OSHA approved State plan.

Estimated Number of Respondents: 24,000.

Frequency of Response: On-going records maintenance.

Estimated Total Annual Hour Burden: 255,427 hours.

Estimated Total Annualized Cost Burden: None.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1426.04 and OMB Control No. 2050–0105 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW 20503

Dated: December 13, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30983 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5398–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 619.07.

SUPPLEMENTARY INFORMATION:

Title: Mobile Source Emission Factor Survey—2060–0078. This is a rerenewal of an existing collection.

Abstract: The EPA Emission Inventory Group, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. The owner is also asked to complete a multiple choice form of nine questions that summarize vehicle usage. There are two methods of soliciting the general public for participation in Emission Factor Program (EFP):

Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists. Motor vehicle owners, who arrive at State inspection lanes for yearly certification, are randomly solicited. Information from the EFP provides a basis for developing

State Implementation Plans (SIPs), Reasonable Further Progress (RFP) reports, attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

The legislative basis for the Emission Factor Program is Section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to "conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution" and "conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *"

EPA uses the data from the EFP to verify predictions of the computer model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the auto industry, and other parties interested in estimating mobile source emissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on Thursday, September 21, 1995 FR Vol. 60, No. 183 Page 48980.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes to 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: are the general public that own on road motor vehicles.

Estimated Number of Respondents: 1,600.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 2,237 Hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 619.07 and OMB control No. 2060–0078 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management And Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: December 5, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–30795 Filed 12–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL—5398–4]

Agency Information Collection Activities Under OMB Review; NESHAP for Benzene Emissions From Bulk Transfer Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 350 *et seq.*), this notice announces that the Information Collection Request (ICR) for NESHAP for Benzene Emissions from Bulk Transfer Operations described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer, United States Environmental Protection Agency, 202–260–2740, and refer to EPA ICR No. 1154.04 and OMB No. 2060–0182.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Benzene Emissions from Bulk Transfer Operations—40 CFR Part 61, Subpart BB, OMB No. 2060–0182. This is request for a revision of a currently approved collection.

Abstract: The National Emission Standards for Benzene Emissions from Benzene Transfer Operations were proposed on September 14, 1989 and promulgated on March 7, 1990. The standards are codified at 40 CFR Part 61, Subpart BB.

These standards apply to the following facilities in benzene transfer operations: the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. Specifically exempted from the regulation are loading racks at which only the following are loaded: benzene-laden waste (covered under Subpart FF of Part 61), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. Any affected facility which loads only liquid containing less than 70 weight-percent benzene or whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the control requirements and need only maintain records and submit an initial report. The control requirements for bulk transfer facilities require that benzene emissions be routed to a control device that achieves a 98 weight-percent emissions reduction, and (2) that loading of benzene be limited to vapor-tight tank trucks or vapor-tight railcars.

Owners or operators of the affected facilities described must take the following one-time-only notices or reports: notification of anticipated startup; notification of actual startup; initial compliance report (or control exemption by sources below cut-off); notification of emission test, report following an emission test; notification of a monitoring system performance test; and report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Monitoring and recording requirements specific to benzene transfer operating include vapor-tightness documentation, and monitoring and operation parameters specific to the control method chosen (incinerator, vent valves status, steam generator, process heater, flare, carbon adsorption). Sources must maintain records of periods exceeding most recent performance test parameters, including the date and time of any exceedance or deviation, the nature and cause of the malfunction and corrective measures taken.

Owners or operators are also required to maintain records of the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. Reporting requirements specific to benzene transfer operations include an initial engineering report and a quarterly report by affected facilities subject to the standards at § 61.302. The quarterly reports include excess emissions and deviations in operating parameters. Sources not subject to the control standards must continue to record information and must file a report only the first year.

Monitoring and record keeping requirements specific to benzene transfer operations provide information on the operation of the emissions control device and compliance with the standards. Any owner or operator subject to the provisions of this part shall maintain an up-to-date file of these measurements and recordings, and retain them for at least two years following. Vapor tightness documentation, and control device parameters must be kept permanently.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 C.F.R. Charter 15. The Federal Register Notice required under 5 C.F.R. 1320.8(d), soliciting comments on this collection of information was published on September 28, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25.34 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 81.

Estimated Number of Respondents: 81.

Frequency of Response: 324 per year.

Estimated Total Annual Hour Burden: 14,685 Hours.

Estimated Total Annualized Cost Burden: $447,158.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1154.04 and OMB Control No. 2060–0182 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460

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and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: November 30, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95-30782 Filed 12-19-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5360-4]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: United States Department of Defense; Meddybemps, ME

AGENCY: U.S. Environmental Protection Agency

ACTION: Notice of proposed administrative settlement and request for public comment

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the United States Department of Defense for costs incurred by EPA in conducting response actions at the Eastern Surplus Superfund Site in Meddybemps, Maine.

DATES: Comments must be provided on or before January 19, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: In re: United States Department of Defense, Meddybemps, Maine, U.S. EPA Docket No. CERCLA-I-93-1044.

FOR FURTHER INFORMATION CONTACT: LeAnn W. Jensen, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCU, Boston, Massachusetts 02203, (617) 565-4906.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Eastern Surplus Superfund Site in Meddybemps, ME. The settlement was approved by EPA Region I on August 14, 1995, subject to review by the public pursuant to this Notice. The United States Department of Defense, the Settling Party, has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Settling Party is required to pay $1,400,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of Section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under Section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on October 27, 1995.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from LeAnn W. Jensen, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCU, Boston, Massachusetts 02203, (617) 565-4906.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA-I-93-1044).

Dated: November 13, 1995.

John DeVillars,

Regional Administrator.

[FR Doc. 95-30982 Filed 12-19-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc., P & O Cruises (UK) Limited and Abbey National March Leasing (1) Limited, 77 New Oxford Street, London WC1A 1PP, England, Vessel: CANBERRA

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc. and P & O Cruises (UK) Limited, 77 New Oxford Street, London WC1A 1PP, England, Vessel: ORIANA

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc., P & O Cruises (UK) Limited and 3I Plc, 77 New Oxford Street, London WC1A 1PP, England, Vessel: VICTORIA

Dated: December 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-30925 Filed 12-19-95; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Person knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Gaoli, Inc., 8181 NW 36th Street, Suite 9A, Miami, FL 33166, Officers: Dany Weil, President, Ira Weil, Vice President

Red Hot Transport, 618 Noe Street, San Francisco, CA 94114, Gina Fregosi, Sole Proprietor

Dart Express (SPO) Inc., 1162 Cherry Avenue, San Bruno, CA 94066, Officers: Teddy Tam, President, Dean Huang, Chief Financial Officer

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 15, 1995.

[FR Doc. 95-30927 Filed 12-19-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board requests comment on the proposed one-time Check Fraud Survey. This survey will help the Federal Reserve to fulfill the Congressional mandate that the Board report to Congress on the advisability of modifying the Expedited Funds Availability Act (EFAA) to extend the maximum permissible hold period for local checks as a means of decreasing losses related to check fraud. The Congress further directed the Board to consider whether there is a pattern of significant increases in losses related to check fraud at depository institutions attributable to the provisions of the EFAA; to consider whether an extension by one day of the period between the deposit of a local check and the availability of funds for withdrawal would be effective in reducing the volume of losses related to check fraud; and to make recommendations for legislative actions. Data collected from the survey will cover the period January 1, 1995, through December 31, 1995.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Comments, which should refer to OMB control number 7100-0279, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Comments may also be delivered to Room B-2222 between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 12 CFR 261.8 of the Board's rules regarding availability of information.

Comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed survey and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents, may be requested from Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For further information regarding the purpose and content of the proposed survey contact Jack Walton, Manager (202/452-2660), or Michelle Braun, Senior Financial Services Analyst (202/452-2819), Check Payments section, Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson (202-452-3544).

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1995, as per 5 CFR 1320.16, to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in the Paperwork Reduction Act (5 CFR 1320 Appendix A.1). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the Paperwork Reduction Act Submission (OMB 83-I) and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The survey, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed survey, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

II. Proposal to Approve Under OMB Delegated Authority the Following Report

Report title: Federal Reserve Check Fraud Survey.
Agency form number: FR 3080.
OMB control number: 7100-0279.
Frequency: one time.
Reporters: depository institutions.
Annual reporting hours: 14,976.
Estimated average hours per response: 9.
Number of respondents: 1,664.
Small businesses are affected: This information collection is voluntary [Public Law 103-325, Title III, section 333] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

III. Justification

The 1994 Community Development Banking Act states that the Board shall "conduct a study on the advisability of extending the 1-business-day period specified in section 603(b)(1) of the Expedited Funds Availability Act (EFAA), regarding availability of funds deposited by local checks, to 2 business days." The report is to be submitted to the Congress by September 1996. The Congress further directed the Board to consider:

- Whether there is a pattern of significant increases in losses related to check fraud at depository institutions attributable to the provisions of the EFAA;
- Consider whether an extension by one day of the period between the deposit of a local check and the availability of funds for withdrawal would be effective in reducing the volume of losses related to check fraud; and
- Make recommendations for legislative action.

To respond to the request of the Congress, the Board proposes that a survey of check fraud be conducted. The survey will gather information about the relationship of all funds availability schedules mandated in the EFAA to check-fraud losses as well as specific information about the types of check fraud and the causes of check-fraud losses at depository institutions.

The proposed survey not only addresses the effect of the mandatory availability schedule for local checks on check-fraud losses, but it also addresses next-day and nonlocal funds availability schedules. In addition, it includes questions about the amount of losses by type of check fraud, the amount of losses by type of check, and the volume of checks cleared. Finally, preliminary research, which has consisted of discussions with representatives of trade associations of depository institutions and of other industries affected by check fraud and reviews of the associations' studies, indicated that several other areas should be addressed in the Board's study. Therefore, the proposed survey includes questions about losses by age of account, losses that could be attributed to organized or professional efforts, and the resources that the respondent's institution expends annually to prevent, detect, and prosecute check fraud. The data will enable the Board to characterize the dynamics of check fraud for the Congress, determine the significance of check-fraud losses and check-fraud prevention, and to develop recommendations that may assist in reducing check-fraud losses.

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IV. Request for Comments

The Board requests comments on all aspects of the survey. The Board specifically requests comments on the following aspects:

A. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

B. Ways to enhance the quality, utility, and clarity of the information to be collected;

C. The accuracy of the Federal Reserve s estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; and

D. Ways to minimize the burden of the information collection on respondents, such as using automated collection techniques or other forms of information technology.

Board of Governors of the Federal Reserve System, December 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-30892 Filed 12-19-95; 8:45am]

BILLING CODE 6210-01-F

Kenneth B. and Moira F. Mumma, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Kenneth B. and Moira F. Mumma, to acquire a total of 27.5 percent of the voting shares of New Century Bank, Phoenixville, Pennsylvania (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Joseph H. Frampton, Paducah, Kentucky; to acquire an additional 2.91 percent, for a total of 27.02 percent, of the voting shares of Paducah Bank Shares, Inc., Paducah, Kentucky, and thereby indirectly acquire Paducah Bank and Trust Company, Paducah, Kentucky.

Board of Governors of the Federal Reserve System, December 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-30854 Filed 12-19-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F-0402]

Peroxid-Chemie GmbH; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Peroxid-Chemie GmbH has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by January 19, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4489) has been filed by Registration and Consulting Co., Ltd., on behalf of Peroxid-Chemie GmbH, c/o Bruce A. Schwemmer, 55 River Dr. South No. 1808, Jersey City, NJ 07310. The petition proposes to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers complying with 21 CFR 177.2600 for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 19, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 4, 1995.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95-30887 Filed 12-19-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95N-0405]

Drug Export; SELECTOGEN® 0.8%, Reagent Red Blood Cells

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the human biological product SELECTOGEN® 0.8%, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM-610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., 1001 U.S. Hwy. 202, Raritan, NJ 08869-0606, has filed an application requesting approval for the export of the human biological product SELECTOGEN® 0.8%, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The SELECTOGEN® 0.8%, Reagent Red Blood Cells, is an in vitro diagnostic test kit for the detection of unexpected blood group antibodies in test methods requiring a 0.8 percent red cell suspension in a low ionic strength diluent. The application was received and filed in the Center for Biologics Evaluation and Research on November 24, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 2, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 4, 1995.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95-30886 Filed 12-19-95; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915-0126)—Extension, No Change—The Data Bank forms and regulations received a short-term approval in June 1995. As part of the terms of clearance, HRSA was required to submit an updated analysis of small medical malpractice payments (concerning the issue of monetary threshold reporting of claims) and provide OMB with an updated chart of the distribution of malpractice awards. The requirements have been satisfied and the Data Bank regulations and forms are now being resubmitted for a 3-year approval. This request is for an extension with no changes. The burden estimates are as follows:

Title	Number of respondents	Frequency of response	Number of responses	Hours per response	Total burden hours
60.6(a) Reporting Corrections of Errors and Omissions	2,800	1.04	2,925	.25	731
60.6(b) Revisions to Original Report Actions	350	1.06	370	.75	278
60.7(b) Reporting Medical Malpractice Payments	150	105.33	15,800	.75	11,850
60.8(b) Reporting Licensure Action by State Boards	125	21.02	2,630	.75	1,973
60.9(a) Reporting Privileging and Professional Society Actions	1,000	1.08	1,075	.75	806
60.9(c) Request for Hearings by Entities Found in Noncompliance	1	1	1	8.00	8
60.10(a)(1) Hospital Queries on Applicants; 60.11(a)(1) Other Hospital Queries; 60.11(a)(6) Queries for Professional Review	7,200	38.33	276,000	.08	23,000
60.10(a)(2) Biennial Queries by Hospitals	6,000	186.83	1,121,000	.08	93,417
60.11(a)(2) Practitioner Queries	29,000	1	29,000	.25	7,250
60.11(a)(3) State Licensure Board Queries	70	171	12,000	.08	1,000
60.11(a)(4) Queries by Non-hospital Health Care Entities	1,860	139.78	260,000	.08	21,667
60.11(a)(5) Queries by Attorneys	10	1	10	.25	3
60.11(a)(7) Queries for Research Purposes	100	1	100	1.00	100
60.14(b) Practitioner's Disputing Data Bank Reports	1,080	1	1,080	.17	180
60.14(b) Practitioner Requests for Secretarial Review	100	1	100	8.00	800
60.14(b) Practitioner Statements	2,700	1	2,700	1.00	2,700

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Title	Number of respondents	Frequency of response	Number of responses	Hours per response	Total burden hours
Biennial Entity Verification Document	5,750	1	5,750	.25	1,438
Entity File Update	1,150	1	1,150	.25	288

Estimated Total Annual Burden: 167,489 hours

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 14, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination

[FR Doc. 95–30885 Filed 12–19–95; 8:45 am]

BILLING CODE 4160–15–U

National Institutes of Health

Opportunity For Licensing: Sequence Modification of Oligonucleotide Primers to Manipulate Non-Templated Nucleotide Addition

AGENCY: National Institutes of Health, Pubic Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks licensees to commercialize a method to manipulate non-templated nucleotide addition to ensure that all amplified DNA products of polymerase chain reaction (PCR) are either specifically modified or unmodified.

This technology was developed by Dr. Jeffrey R. Smith and Dr. John Carpten of the National Center for Human Genome Research and Dr. Michael Brownstein of the National Institute of Mental Health.

The invention embodied in U.S. Provisional Patent Application 60/005,761 filed October 20, 1995, entitled "Sequence Modification of Oligonucleotide Primers to Manipulate Non-Templated Nucleotide Addition," is owned by an agency of the U.S.Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 or pursuant to 42 U.S.C. 241 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Requests for a summary of the technology or other questions and comments concerning the biomedical aspects of this technology should be directed to: Dr. Ronald King, National Center for Human Genome Research, 9000 Rockville Pike, Building 31, Room 3B13, Bethesda, MD 20892; Telephone: 301/402–2537; Fax 301/402–9722.

Requests for a copy of the patent application, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Carol Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301/496–7735 ext 287; Fax 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

SUPPLEMENTARY INFORMATION: Thermostable DNA polymerases are employed in PCR to amplify DNA for sizing in medical diagnostics, forensics, and genotyping, as well as for molecular cloning. Several of these enzymes, including the widely used Taq DNA polymerase, can catalyze non-templated addition of a nucleotide (predominantly adenosine) to the 3' end of amplification products. As a result, an amplified DNA fragment may be incorrectly sized by one base pair in length and introduce error into a genotyping study. Artifactual variations in marker size may adversely impact interpretations of family relationships, medical diagnosis, and forensics. Moreover, full automation of genotyping has been hampered by the necessity of manually editing collected data to correct for allele misidentification due to the unpredictability of non-templated nucleotide addition. In addition, TA cloning methods that rely upon the modification will often fail when the amplified DNA is not modified.

In response to this problem, Drs. Smith, Carpten, and Brownstein have characterized short DNA sequences ("tails") that may be added to the unlabeled primer of a PCR primer pair to confer modification by a thermostable DNA polymerase, or to protect from the modification. This allows uniformity in allele sizing that is essential for automated genotyping. Furthermore, this prevents introduction of error and enables high TA cloning efficiency.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have the most meritorious plan for the development of this method to meet the needs of the public and with the best terms for the NIH. The criteria that NIH will use to evaluate exclusive or non-exclusive license applications will include those set forth by 37 CFR 404.7(a)(1)(ii)–(iv).

Dated: December 8, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30935 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting Robert Benson at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 267; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Immunogenic Chimeras Comprising Nucleic Acid Sequences Encoding Endoplasmic Reticulum Signal Sequence Peptides and at Least One Other Peptide, and Their Uses in Vaccines and Disease Treatments

Nicholas P. Restifo, Steven A. Rosenberg, Jack R. Bennink, Igor Bacik, and Jonathan W. Yewdell (NCI)

Serial Number 08/032,902 filed March 17, 1993

This invention concerns the use of chimeric peptides as vaccines for the cellular immune system. One portion of the chimeric peptide, the ER signal peptide, serves to transport the chimeric peptide from the cytoplasm to the ER. Once in the ER, the other portion of the chimeric peptide associates with class I MHC molecules and together they form a complex which is presented on the surface of the cell. The complex activates cytotoxic lymphocytes which react with the complex, leading to expansion of CTLs which kill cells presenting the particular complex. The MHC complexing portion of the chimeric peptide is taken from cancer antigens or viral antigens. Thus the invention is a broad general method of vaccination that activates the cellular immune system. DNA constructs and expression vectors encoding the chimeric peptides are also claimed. The method has been shown to work as a treatment for cancer in mice. It has been PCT filed, PCT/US94/02897.

Dated: December 8, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30936 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Health

National Institute of Allergy and Infectious Diseases; Meeting, AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 30, 1996, in the Executive Board Conference Room D of the Natcher Conference Center, Building 45, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Disease Research, National Institutes of Health).

Dated December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30933 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 8–9, 1996, convening at 9 a.m. on February 8 and at 8:30 a.m. on February 9 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 8 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. Public Law 92–463, the meeting will be closed on February 8, from 10:30 a.m. to approximately 5 p.m. and on February 9 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30932 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of the Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given to the meeting of the National Advisory Eye Council (NAEC) on January 25, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda , Maryland.

The NAEC meeting will be open to the public on January 25 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there were be presentations by staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on January 25 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

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(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health.)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30930 Filed 12–19–1995; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on January 25–26, 1996, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. Both meetings will take place as telephone conference calls originating in Conference Room 7, Building 31.

In accordance with the provisions set forth in Secs 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on January 25 will be closed to the public from 2 pm to adjournment. The meeting of the full Council will be closed to the public on January 26 from 1 pm until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Earleen F. Elkins, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from her office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30934 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: January 8–January 9, 1996.

Time: 6 p.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: William H. Radcliffe, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1000.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30931 Filed 12–19–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of General Counsel

[Docket No. FR–3950–N–03]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 20, 1996. Comments must be received within sixty (60) days from the date of this Notice.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10245, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, particularly through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Discrimination of Information Collection

Each party seeking designation as a foreclosure commissioner must submit the current information in writing (facsimiles are not acceptable), as listed below, to HUD's Field Assistant General Counsel serving the geographic area (there are ten such areas) in which the party proposes to serve as commissioner.

1. Name.
2. Business Address.
3. Geographic area in which the applicant wishes to conduct foreclosures. (List only States or areas in States in which the applicant is a resident or is duly authorized to transact business.)
4. If the applicant is not a natural person, the names and business addresses of the people who would actually perform the commissioner's duties.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities which would qualify the applicant to serve as a foreclosure commissioner.
6. Evidence of the applicant's financial responsibility.

Note: Any party that has been designated as a foreclosure commissioner for HUD-held multifamily mortgages may submit a letter to the appropriate Field Assistant General Counsel and request designation as a single family foreclosure commissioner. This letter of interest would be acceptable in lieu of the preceding information, unless any information requires updating.

Additional Information

Title of Proposal: Notice of Application for Designation as Single Family Foreclosure Commissioner.

OMB Control Number, if applicable: Not applicable.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclosure Act of 1994 (12 USC 3751 *et seq.*), the "Act," HUD will be able to foreclose on HUD-held single family mortgage loans in about two months instead of the much longer periods—ranging up to two years—currently required under some State laws. The current long periods lead to increased holding costs and vandalism on the mortgaged properties. HUD holds thousands of loans that are eligible for foreclosure. The requested information is needed for HUD's selection of foreclosure commissioners who will satisfy the statutory requirements (Section 3754(c) of the Act) to be "responsible, financially sound, and competent to conduct a foreclosure."

Agency form numbers, if applicable: None.

Members of affected public: Persons and other entities that want to apply to serve as foreclosure commissioners for the Department of Housing and Urban Development.

Estimation of the total numbers of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Respondents: Approximately 250 in the first year and 50 each year thereafter.

Frequency of Submission: Once for each of HUD's ten geographic areas of the country. Probably very few respondents will apply to more than one HUD geographic area.

Reporting burden	First year	Each following year
Number of respondents	250	50
Total burden hours (@ 0.5 hour per response)	125	25

Total estimated burden hours: 175 (first three years)

Status of the proposed information collection: This is a new collection.

Contact persons and telephone numbers (these are not toll-free numbers) for copies of available documents: Bruce S. Albright, Assistant General Counsel, Single Family Mortgage Division, (202) 708–0303; Evelyn M. Wrin, Attorney-Advisor, Single Family Mortgage Division, (202) 708–3082.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 8, 1995.

Nelson A. Diaz,

General Counsel.

[FR Doc. 95–30826 Filed 12–19–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3329–N–05]

Announcement of Funding Awards for Fiscal Year 1994 for Rental Vouchers Set-Aside for Homeless Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 94 to housing agencies under the Section 8 rental voucher set-aside for homeless families with disabilities. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families with disabilities who are homeless or living in transitional housing.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Rental Vouchers Set-Aside for Homeless with Disabilities funding is authorized by the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991). The recent amendment of 791.403 of 24 the Code of Federal Regulations allows for a set-aside such as this initiative for homeless persons with disabilities.

The purpose of the set-aside is to assist eligible homeless families with disabilities to pay the rent for decent, safe, and sanitary housing. The FY 94 awards announced in this notice were selected for funding in a competition announced in a **Federal Register** notice published on February 1, 1994 (59 FR 4758). Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $42,245,630 of budget authority for rental vouchers (1,107 units) was awarded to 10 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: December 14, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8.—RENTAL VOUCHER PROGRAM FY 1994 AWARDS FOR THE HOMELESS WITH DISABILITIES PROGRAM

Recipients	Units	Amount
New England Area:		
EOCD 100 Cambridge St., Boston, MA 02202	175	$8,905,820
HA of the City of Bridgeport, 150 Highland Avenue, Bridgeport CT 06604	40	1,978,360

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APPENDIX A.—SECTION 8.—RENTAL VOUCHER PROGRAM FY 1994 AWARDS FOR THE HOMELESS WITH DISABILITIES PROGRAM—Continued

Recipients	Units	Amount
New York/New Jersey Area:		
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202	200	4,512,440
New York City HA, 250 Broadway, New York, NY 10007	114	5,864,945
New York City DHPD, 100 Gold St., New York, NY 10038	95	3,158,045
New York State HFA % DHCR, One Fordham Plaza, Bronx NY 10458	200	10,114,875
New Jersey Dept of Comm Affairs, CN 051, Trenton, NJ 08625	170	7,112,420
Rock Mountain Area:		
CO Division of Housing, 1313 Sherman St. #323, Denver, CO 80203	63	1,488,365
HA of the County of Salt Lake, 1962 S. 200 E., Salt Lake City UT 84115	25	456,175
Total Units	1,107	$42,245,630

[FR Doc. 95-30824 Filed 12-19-95; 8:45 am]
BILLING CODE 4210-33-P

[Docket No. FR-3714-N-02]

Announcement of Funding Awards for Fiscal Year 1994 for Veterans Affairs Supportive Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 to housing agencies under the HUD-Veterans Affairs Supportive Housing (VASH) program. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to fund rental assistance for veterans under the VASH program.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-8000, telephone (202) 708-0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The purpose of the VASH program is to provide rental assistance to veterans with severe psychiatric or substance abuse disorders. The FY 94 awards announced in this notice were made under a competition announced in a **Federal Register** notice published on July 14, 1994 (59 FR 36008).

A total of $18,260,990 of budget authority for rental vouchers was awarded to 19 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as shown on Appendix A.

Dated: December 14, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A.—Section 8 Rental Voucher Program FY 1994 Veterans Affairs Supportive Housing Funding Decisions

Recipients	Units	Amount
NEW YORK/NEW JERSEY AREA		
NEW YORK CITY HA, (BROOKLYN VAMC), 250 BROADWAY, NEW YORK, NY 10007	50	$2,032,250
NEW YORK CITY HA, (NY VAMC), 250 BROADWAY, NEW YORK, NY 10007	50	2,032,250
ALBANY HOUSING AUTHORITY, 4 LINCOLN SQUARE, ALBANY, NY 12202	25	609,625
MID-ATLANTIC AREA		
HOC OF MONTGOMERY COUNTY, 10400 DETRICK AVE, KENSINGTON, MD 20895	25	1,065,555
SOUTHEAST AREA		
HA OF THE COUNTY OF DEKALB, P. O. BOX 1627, DECATUR GA 30031	25	885,000
MIDWEST AREA		
INDIANAPOLIS HA, 410 NORTH MERIDIAN ST., INDIANAPOLIS, IN 46204	25	779,780
SOUTHWEST AREA		
HA OF FORT WORTH, P.O. BOX 430 212 BURNET ST, FT WORTH, TX 76101	25	605,225
HA OF THE CITY OF HOUSTON, P.O. BOX 2971, 2640 FOUNTAINVIEW, HOUSTON TX 77252	50	1,331,000
HA OF CITY OF NORTH LITTLE ROCK, BOX 516, 2201 DIVISION, NORTH LITTLE ROCK, AR 72115	25	529,500
HA OF JEFFERSON PARISH, 1718 BETTY ST., MARRERO, LA 70072	25	726,825
ROCKY MOUNTAINS AREA		
CO DEPT OF HUMAN SERVICES, 4131 S. JULIAN WAY, DENVER, CO 80236	50	1,221,530
HA OF THE COUNTY OF SALT LAKE, 1962 S. 200 E., SALT LAKE CITY, UT 84115	25	562,275
PACIFIC HAWAII AREA		
HA OF CITY OF LOS ANGELES (LOPAC), P.O. BOX 17157, 2600 WILSHIRE BLVD, FOY STA, LOS ANGELES, CA 90057	25	962,625
HA OF CITY OF LOS ANGELES (LAMC), P.O. BOX 17157, 2600 WILSHIRE BLVD, FOY STA, LOS ANGELES, CA 90057	30	1,155,150
HA OF COUNTY OF SAN BERNARDINO, 1053 N "D" ST., SAN BERNARDINO, CA 92410	25	670,780
NORTHWEST/ALASKA AREA		
ALASKA HOUSING FINANCE CORP, P.O. BOX 230329, 624 W. INTERNATIONAL RD., ANCHORAGE, AK 99523	25	689,775

Appendix A.—Section 8 Rental Voucher Program FY 1994 Veterans Affairs Supportive Housing Funding Decisions—Continued

Recipients	Units	Amount
PIERCE COUNTY HA, P.O. BOX 45410, 603 SOUTH POLK STREET, TACOMA, WA 98445	50	1,182,500
HA OF THE CITY OF PORTLAND, 135 SW ASH STREET, PORTLAND, OR 97204	25	582,625
HA AND COMMUNITY SERVICES, AGENCY OF LANE COUNTY, 177 DAY ISLAND ROAD, EUGENE, OR 97401	25	536,720
Total Units:	605	$18,260,990

[FR Doc. 95-30825 Filed 12-19-95; 8:45 am]
BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-7122-00-5514; AZA 28789]

Availability of Draft Environmental Impact Statement (DEIS) for the Morenci Land Exchange, Greenlee County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The BLM has prepared a Draft Environmental Impact Statement (DEIS), analyzing the impacts to the human environment, of a proposed land exchange with the Phelps Dodge Mining Company, a Division of the Phelps Dodge Corporation, near Morenci, Arizona. The proposed exchange involves trading 3,979 acres of public land managed by the Bureau of Land Management for 1,200 acres of private land owned by the Phelps Dodge Mining Company. This DEIS (1) assesses the environmental impacts of the proposed land exchange as described in the Proposed Action, and the No Action Alternative; (2) determines if there are direct, indirect and cumulative impacts; and (3) identifies necessary mitigative measures. This DEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR parts 1500-1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. at 1701, The Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. at 1716 and 1740, and BLM regulations governing land exchanges (43 CFR parts 2090 and 2200).

DATES: Written comments relating to the DEIS will be accepted until February 20, 1996. Written or oral comments may also be presented at the four public open houses to be held:

January 23, 1996—4:00 p.m. to 8:00 p.m., Greenlee County Offices, 4th Street and Leonard Avenue, Clifton, Arizona

January 24, 1996—4:00 p.m. to 8:00 p.m., Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona

January 30, 1996—4:00 p.m. to 8:00 p.m., Main Public Library, 101 North Stone Avenue, Tucson, Arizona

February 1, 1996—4:00 p.m. to 8:00 p.m., Bureau of Land Management, Arizona State Office (2nd floor conference room) 3707 North 7th Street, Phoenix, Arizona

ADDRESSES: Send written comments to the Bureau of Land Management, Safford District Office, Attention: Scott Evans, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The Public Lands proposed for exchange include 17 small parcels, under 1 acre, surrounded by private property and 12 larger parcels, 5 to 2,560 acres, adjacent to the existing Phelps Dodge Morenci mining operation. Phelps Dodge wishes to acquire these lands to continue and expand their existing mining operation. More than 90 percent of the public lands proposed for exchange are encumbered by mining claims held by Phelps Dodge Corporation and others. The private lands offered for exchange include high resource value inholdings within the Gila Box Riparian National Conservation Area and the Cienega Creek Long-Term Management Area as well as two parcels adjacent to the Dos Cabezas Mountains Wilderness Area.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, Mike McQueen, NEPA Compliance Officer, at BLM, Safford District Office, telephone (520) 428-4040 or Tina Lee, Project Manager, at SWCA, Inc., telephone (520) 325-9194.

Dated: December 13, 1995.

Frank Rowley,

Acting District Manager.

[FR Doc. 95-30738 Filed 12-19-95; 8:45 am]
BILLING CODE 4310-32-M

[OR-130-1020-00; GP6-045]

Notice of Meeting of Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council; Spokane, Washington; January 16, 1996.

SUMMARY: A meeting of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council will be held on January 16, 1996, at the Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212. The meeting will convene at 9:00 a.m. and adjourn upon completion of business. At an appropriate time, the Council meeting will recess for approximately one hour for lunch. Public comments will be received from 10:00 a.m. to 10:15 a.m. The topic of the meeting is to review background information related to the Interior Columbia Basin Ecosystem Management Project.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509-536-1200.

Dated December 14, 1995.

Joseph K. Buesing,

District Manager.

[FR Doc. 95-30877 Filed 12-19-95; 8:45pm]
BILLING CODE 4310-33-P

[WY-989-1050-00-P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

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to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 19 N., R. 105 W., accepted December 12, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 12, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–30898 Filed 12–19–95; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 9, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 4, 1996.

Carol D. Shull,

Keeper of the National Register.

California

Kern County

Weedpatch Camp, 8305 Sunset Blvd., Bakersfield vicinity, 95001554

San Francisco County

Saint John's Presbyterian Church, 25 Lake St. and 201 Arguello Blvd., San Francisco, 95001555

Georgia

Jenkins County

Carswell Grove Baptist Church and Cemetery, Big Buckhead Rd. off US 25/GA 21, Perkins vicinity, 95001564

Kansas

Marion County

Morgan, W. H., House, 21 North Walnut, Peabody, 95001562 Wyandotte County

Lake of the Forest Historic District, Address Restricted, Bonner Springs vicinity, 95001553

Kentucky

Jefferson County

Hope Worsted Mills (Textile Mills of Louisville TR) 942 E. Kentucky St., Louisville, 95001543

Louisiana

Iberia Parish

Taylor, John R., Drugstore, 145 W. Main St., New Iberia, 95001563

North Fork Road (Glacier National Park MPS), North Fork drainage, Fish Creek to Kintla Lake, Glacier NP, West Glacier, 95001572

Polebridge to Numa Ridge Phoneline (Glacier National Park MPS) North Fork drainage, Polebridge to Numa Ridge, Glacier NP, West Glacier, 95001573 West Entrance Station (Glacier National Park MPS), Going-to-the-Sun Rd., near West Glacier, Glacier NP, West Glacier, 95001581

Glacier County

Cut Bank Ranger Station Historic District (Glacier National Park MPS) N side Cut Bank Creek, Glacier NP, East Glacier, 95001566 Glacier National Park Tourist Trail—Inside Trail, South Circle, North Circle (Glacier National Park MPS), Inside Trail, South Circle and North Circle Trails, St. Mary, 95001579

Goathaunt Bunkhouse (Glacier National Park MPS), S end of Waterton Lake, Glacier NP, St. Mary, 95001568

Many Glacier Barn and Bunkhouse (Glacier National Park MPS), Glacier Rt. 3 at Apikuni Flat, Glacier NP, St. Mary, 95001570

Many Glacier Campground Camptender's Cabin (Glacier National Park MPS), Many Glacier, Glacier NP, St. Mary, 95001571

Rising Sun Auto Camp (Glacier National Park MPS), 500 ft. N of Going-to-the-Sun Rd. at St. Mary Lake, Glacier NP, St. Mary, 95001574

Roes Creek Campground Camptender's Cabin (Glacier National Park MPS), N of Going-to-the-Sun Rd. at St. Mary Lake, Glacier NP, St. Mary, 95001575

St. Mary Utility Area Historic District (Glacier National Park MPS), E of St. Mary at Divide Creek, Glacier NP, St. Mary, 95001576

Swanson Boathouse (Glacier National Park MPS), E shore of Two Medicine Lake, Glacier NP, East Glacier, 95001577

Swiftcurrent Auto Camp Historic District (Glacier National Park MPS), W end of Glacier Rt. 3, Glacier NP, Many Glacier, 95001578

Two Medicine Campground Camptender's Cabin (Glacier National Park MPS), Two Medicine Lake, Glacier NP, East Glacier, 95001580

New York

New York County

Metropolitan Life Home Office Complex, Roughly bounded by Madison Ave., E. 23rd St., Park Ave. S. and E. 25th St., New York, 95001544

Yates County

Crooked Lake Outlet Historic District (Yates County MPS), Along the Keuka Lake Outlet Trail, from Penn Yan to Dresden, Penn Yan, 95001545

North Dakota

Morton County

State Training School Historic District, Heart R., W bank, 0.5 mi. S of W. Main St., on W edge of Mandan, Mandan vicinity, 95001549

Sunnyside Farm Barn, Approximately 1.7 mi. W of Mandan, 0.5 mi. S of W. Main St. on S side of Dead Heart Slough, Mandan vicinity, 95001550

Texas

Orange County

Woodmen of the World Lodge—Phoenix Camp No. 32, 110 Border St., Orange, 95001551

Vermont

Washington County

McLaughlin Farm (Agricultural Resources of Vermont MPS), Town Hwy. 17 (Bragg Hill Rd.), Fayston, 95001556

Virginia

Augusta County

Long Glade Farm, VA 607, S of jct. with VA 741, Mount Solon vicinity, 95001560

Halifax County

Brooklyn Store and Post Office, VA 659 N side, 0.1 mi. W of jct. with VA 820, Brooklyn, 95001557

Brooklyn Tobacco Factory, VA 650 N side, 0.25 mi. E of jct. with VA 820, Brooklyn, 95001559

Lunenburg County

Victoria High School, Jct. of Eighth St. and Lee Ave., Victoria, 95001561

Salem Independent City

Southwest Virginia Holiness Association Camp Meeting, 202 and 208 E. Third St., Salem (Independent City), 95001558

Wisconsin

Winnebago County

Doty Island Village Site, Address Restricted, Neenah, 95001552

[FR Doc. 95–30893 Filed 12–19–95; 8:45pm]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–731 (Final)]

Bicycles From China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–731 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of bicycles,[1] provided for in subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of bicycles from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 5, 1995, by Huffy Bicycle Co., Dayton, OH; Murray Ohio Manufacturing Co., Brentwood, TN; and Roadmaster Corp., Olney, IL.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 20, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 2, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 25, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 28, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is March 27, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 8, 1996:

[1] For purposes of this investigation, bicycles are defined as bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. The term "unassembled" means fully or partially unassembled or disassembled; the term "incomplete" means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and the term "unfinished" means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components, whether or not assembled together with the frame and/or fork: (a) the rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin. Incomplete bicycles may be classified for tariff purposes under any of the above-mentioned HTSUS subheadings covering complete bicycles or under HTS subheadings 8714.91.20 through 8714.99.80, inclusive (covering various bicycle parts). The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

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witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 8, 1996. On April 26, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 1, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: December 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30941 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

Notice of Closure of Commission Offices Due to Furlough

AGENCY: International Trade Commission.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Friday, December 22, 1995, because agency personnel will be on furlough. All filings due on that date will be due on Tuesday, December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 15, 1995.

By order of the Chairman:

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30942 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

Notice of Closure of Commission Offices Due to Furlough

AGENCY: International Trade Commission.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Friday, December 29, 1995, because agency personnel will be on furlough. All filings due on that date will be due on Tuesday, January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 15, 1995.

By order of the Chairman:

Donna R. Koehnke,

Secretary.

[FR Doc. 95–30943 Filed 12–19–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (96–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a first quarter 1996 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.066. The first quarter RCAF (Adjusted) is 0.782, a decrease of 2.6% from the fourth quarter 1995 RCAF (Adjusted). Maximum first quarter 1996 RCAF rate levels may not exceed 97.4% of maximum fourth quarter 1995 rate levels.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30770 Filed 12–19–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32816]

Hennepin County Regional Railroad Authority—Exemption—From 49 U.S.C. Subtitle IV [1]

SUMMARY: On our own motion the Interstate Commerce Commission exempts the Hennepin County Regional Railroad Authority from the requirements of 49 U.S.C. Subtitle IV in connection with its acquisition of 2.5 miles of railroad from the Chicago and North Western Railway Company.

DATES: This exemption will be effective January 19, 1996. Petitions to stay must be filed by January 4, 1996. Petitions for reconsideration must be filed by January 16, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32816 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[2] 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2)

[1] This proceeding is embraced in Chicago and North Western Transportation Company Abandonment and Discontinuance of Service Exemption In Hennepin County, MN, Docket No. AB–1 (Sub-No. 252X).

[2] Legislation to sunset the Commmission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

Petitioner's representative: Byron D. Olsen, 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402–4302.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: December 6, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30939 Filed 12–19–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

In accordance with Department of Justice Policy, 28 C.F.R. § 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on November 30, 1995, a proposed amendment to a Consent Decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Simpson Tacoma Kraft Co.*, Civil Action No. C91–5260TC. The proposed amendment to the Consent Decree, Amendment No. 1, settles claims asserted by federal, state, and tribal natural resources trustees against the Settling Defendants for damages to natural resources in the Commencement Bay Environment. The trustees for natural resources in Commencement Bay are the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) (the federal trustees); the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe. The Settling Defendants involved in Amendment No. 1 to the decree are Simpson Tacoma Kraft Company (Simpson) and Champion International Corporation (Champion). The Washington State Department of Natural Resources (DNR), which was a party to the original consent decree, is not involved in the settlement set forth in Amendment No. 1 to the decree.

Under the original consent decree, entered by the Court on December 13, 1991, the natural resource trustees for the Commencement Bay Nearshore/Tideflats Superfund Site (CB N/T Site) settled claims for natural resource damages in the St. Paul Waterway Problem Area, one subpart of the CB N/T Site against Simpson, Champion, and DNR. Amendment No. 1 extends the natural resource damages settlement with Simpson and Champion to encompass the Commencement Bay Environment, which consists of the CB N/T Site plus areas of Commencement Bay between the Site and a line drawn from Point Defiance to Dash Point, points at either side of the mouth of the Bay.

Under the Amendment to the Consent Decree, the Settling Defendants will pay for most of the costs associated with a habitat restoration project (the Restoration Project) in the Middle Waterway in the CB N/T Site. Simpson has provided a 3.3 acre piece of property along the Middle Waterway for the Restoration Project, and will construct the Restoration Project. Simpson will also pay all but $275,000 of the costs of constructing, monitoring, and maintaining the Restoration Project. In addition, Simpson and Champion will reimburse $75,000 of the Trustee assessment costs for the Site. The total value of the settlement under Amendment No. 1 is approximately $1 million.

In return for the commitments made by Simpson and Champion in the Consent Decree Amendment, the United States, the State of Washington, and the Indian Tribe co-trustees are providing a covenant not to sue the companies for damages to natural resources with respect to the Commencement Bay Environment. Specifically, the Trustees are providing a covenant not to sue for claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607; Section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321; Chapters 70.105d and 90.48 of the Revised Code of Washington (the State of Washington's Model Toxics Control Act and the state water pollution control statute); and claims under any other federal, state, tribal, or common law for damages for injury to, destruction of, or loss of natural resources, and claims for recovery of Past Response Costs, Oversight Response Costs, and Future Response Costs incurred by the Natural Resource Trustees with respect to the Commencement Bay Environment.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Simpson Tacoma Kraft Co.*, D.J. Ref. No. 90–11–3–363.

The proposed Amendment No. 1 to the Consent Decree and exhibits to the amendment may be examined at the following locations: the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Ruston/North Tacoma Study Area may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of Amendment No. 1 and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $6.75 (without exhibits) or $48.50 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–30846 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Crash Avoidance Metrics Partnership

Notice is hereby given that, on July 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Crash Avoidance Metrics Partnership has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under

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specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: General Motors Corporation, Detroit, MI; and Ford Motor Company, Dearborn, MI. The purpose of this partnership is to identify opportunities for joining aspects of their independent research and development efforts in procedures for measurement of collision warning/avoidance system performance, functions and operating characteristics. The objectives are to avoid inefficient duplication effort and expense in research in this area, improve general scientific knowledge, and accelerate the development of technologies in this area in order to maximize the benefits and effectiveness of future crash avoidance systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30847 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on August 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Storage Industry Consortium ("NSIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the identities of the new members of NSIC are: Commonwealth Scientific Corporation, Alexandria, VA; Headway Technologies, Milpitas, CA; KLA Instruments, San Jose, CA; Optitek, Mountain View, CA; Rochester Photonics, Rochester, NY; Saint-Gobain/Norton Industrial Ceramics Corporation, Northboro, MA; Stormedia, Inc., Santa Clara, CA; Veeco Instruments, Inc., Plainview, NY; and Western Digital, Irvine, CA.

The following member companies have changed their names: SDL, Inc. was formerly known as Spectra Diode Corporation, and Terabank Systems was formerly known as Virtual Storage Systems.

NSIC's area of activity remains the sponsorship of research in the area of information storage technology.

On June 12, 1991, NSIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on July 26, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 13, 1995 [60 FR 18858).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30849 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 94–06

Notice hereby given that, on November 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the members of the Petroleum Environmental Research Forum participating in Project No. 94–06 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members: Unocal Corporation, Brea, CA; and Gas Research Institute, Chicago, IL.

No other changes have been made in either the membership or planned activities of PERF Project No. 94–06.

On March 20, 1995, PERF Project No. 94–06 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 1995, (60 FR 20750).

Information regarding participation in Project No. 94–06 may be obtained from Mr. P. W. Becker, Exxon Research & Engineering Company, Florham Park, NJ.

Constance K. Robinson,

Director Operations, Antitrust Division.

[FR Doc. 95–30850 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

[Project No. 93–09]

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on August 4, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), participants in Petroleum Environmental Research Forum (PERF) Project No. 93–09, BTEX Removal From Contaminated Water Using Tailored Zeolites, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Oil Company, Naperville, IL; Mobil R & D Corporation, Paulsboro, NJ; Union Oil Company of California, Brea, CA; Elf Aquitaine, Paris, La Pefeure, FRANCE; and Texaco, Inc., EPTD, Bellaire, TX. The nature and objectives of this venture are to establish a joint effort to identify and describe appropriate methods for benzene, toluene, ethylbenzene and xylene ("BTEX") removal from contaminated water using tailored zeolites.

Participation in this project will remain open until termination of the Agreement for Project No. 93–09, and the participants intend to file additional written notifications disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Union Oil Company of California, 376 S. Valencia Avenue, Brea, California 92621, Attention Dr. M.H. Ghandehari.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30851 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on November 2, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Energy and Minerals, Victoria Fitzroy, Victoria, AUSTRALIA; Beijing Research Institute of Petroleum, Beijing, PEOPLES REPUBLIC OF CHINA; and Matra Datavision, Les Ulis Cedex, FRANCE.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on July 17, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 28, 1995 (60 FR 58643).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–30848 Filed 12–19–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Correction

AGENCY: Employment Standards Administration, Labor.

SUMMARY: In notice document 95–29334 beginning on page 61712 in the issue of Friday, December 1, 1995, make the following correction.

On page 61713, right hand column, the OMB clearance number for forms WH–2, WH–205, WH–226–MIS, and WH–226A–MIS is listed as 1215–0158. This should be changed to 1215–0005.

Dated: December 14, 1995.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 95–30946 Filed 12–19–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions throughout calendar year 1996, subject to availability of funds. Application procedures for qualified low-income credit unions are set forth in Part 705, NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 1996.

FOR FURTHER INFORMATION CONTACT: The Office of Community Development Credit Unions at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated "low-income" credit unions in providing basic financial services to residents in their communities which result in increased income, ownership and employment. The Program makes available low interest loans and deposits in amounts up to $300,000 to qualified participating "low-income" credit unions. Program participation is limited to existing credit unions with an official "low-income" designation.

This notice is published pursuant to Part 705.9 of the NCUA Rules and Regulations which states that NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 14, 1995.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 95–30937 Filed 12–19–95; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. Part 110]

In the Matter of Holders of Specific Licenses Authorizing Exports of Utilization Facilities and Source or Special Nuclear Materials to Euratom; Order Suspending Licenses

Effective January 1, 1996.

I

The licensees that are subject to this order hold specific licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Sections 53, 54a, 57, 64, 82, 103, 104 of the Atomic Energy Act of 1954, as amended (AEA) and 10 CFR part 110. These specific licenses authorize exports to EURATOM of utilization facilities, special nuclear materials, and source materials for nuclear and uses under the terms of an Agreement for Cooperation between the U.S. and EURATOM.

II

The current U.S.-EURATOM Agreement for Cooperation will expire on December 31, 1995. A new Agreement has been approved by authorities on both sides, but must sit before Congress for review for up to 90 days of continuous legislative session. Under Section 123 of the AEA, the NRC is prohibited from authorizing any exports to a foreign nation pursuant to Section 53, 54a, 57, 64, 82, 103 or 104 of the AEA in the absence of an Agreement for Cooperation between the U.S. and the foreign nation.

III

Accordingly, pursuant to Sections 123, 161b, 161i, 183, and 186 of the AEA, and 10 CFR 110.50(a)(1) and (2) and 110.52, from January 1, 1996 until such time that a new U.S.-EURATOM agreement comes into force,[1] NRC specific license authorization for nuclear exports to EURATOM under Sections 53, 54a, 57, 64, 82, 103, 104 of the AEA is suspended.[2] This suspension order expires by operation of law when a new Agreement for Cooperation between the U.S. and EURATOM comes into force and necessary assurances form EURATOM are received.

Dated: at Rockville, Maryland this 14th day of December, 1995.

For the Nuclear Regulatory Commission.

Carlton R. Stoiber,

Director, Office of International Programs.

[FR Doc. 95–30889 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–M

[1] The EURATOM Member States are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Licensees holding free-standing licenses to Finland, Spain, or Sweden may continue direct exports to these countries because they had concluded bilateral Agreements with the U.S. before joining EURATOM. Such Agreements will remain valid until a new U.S.-EURATOM Agreement comes into force.

[2] In accordance with 10 CFR 110.52(c), the Commission finds that licensees need not be afforded an opportunity to reply and be heard since this action is required by operation of law and the common defense and security.

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Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 27, 1995, through December 8, 1995. The last biweekly notice was published on December 6, 1995 (60 FR 62485).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 19, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 7, 1995

Description of amendments request: The proposed amendment would adopt the improved Standard Technical Specifications (NUREG-1432) format and content of Section 5.0, "Design Features," as modified by approved changes to the improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Proposed amendment does not change the Design Features, only relocates the information to other documents. This is consistent with the NRC Policy Statement and NUREG-1432. Therefore, relocating existing information, eliminating information which duplicates information found in other licensee documents, and making administrative improvements provide Technical Specifications which are easier to use. Because information is relocated to established programs where changes to those programs are controlled by regulatory requirements, there is no reduction in commitment and adequate control is still maintained. Likewise, the elimination of information which duplicates information in other licensee documents, enhances the useability of the Technical Specifications without reducing commitments. The administrative improvements being proposed neither add nor delete requirements, but merely clarify and improve the understanding and readability of the Technical Specifications. Since the requirements remain the same, these changes only affect the method of presentation and are considered administrative, and as such, would not affect possible initiating events for accidents previously evaluated or any system functional requirement.

Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of existing requirements, the elimination of requirements which duplicate existing information, and making administrative improvements are all changes that are administrative in nature. The proposed changes will not affect any plant system or structure, nor will they affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. The proposed changes are consistent with the improved Standard Technical Specifications, for the most part, as plant specific information is included in this section. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that no change(s) to the design features of the facility are being made. The Design Features Section is being reformatted to be consistent, for the most part, with NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants," Revision 1. The proposed changes do not affect the UFSAR design bases, accident assumptions, or Technical Specification Bases. In addition, the proposed changes do not affect release limits, monitoring equipment, or practices. Consequently, the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 20, 1995

Description of amendment request: The proposed amendment would revise the Electrical Power Systems Surveillance Intervals from 18 months to once per refueling (i.e., nominal 24 months).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented

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below. The no significant hazards consideration analysis has been divided into three parts: AC Sources Operating, DC Sources Operating, and On-Site Power distribution:

In accordance with 10CFR50.92, CYAPCO has reviewed the proposed changes and concluded that they do not involve an SHC. The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

AC Sources Operating

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the interval between a surveillance that is performed during plant shutdown from once per 18 months to a maximum of once per 30 months (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2). The proposed change to Surveillance Requirement 4.8.1.1.2.f does not alter the intent or the method by which the surveillance is conducted. In addition, the acceptance criterion for the surveillance is unchanged. As such, the proposed change will not degrade the ability of the EDG [emergency diesel generator] to perform its intended function.

A review of the past surveillances, and preventive maintenance of the diesel generators indicates that the appropriate acceptance criterion was met in each case. Additional assurance of the diesel generator's operability is provided by Surveillance Requirement 4.8.1.1.2.a.4 and the performance of other on-line testing as described above. As such, the proposed changes do not adversely affect the probability of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

The proposed change regarding the testing frequency of the diesel generators [i.e., from once per 18 months to a maximum of once per 30 months (i.e., 24 months + 25 percent as allowed by Specification 4.0.2)] does not affect the operation or response of any plant equipment, including the diesel generators, or introduce any new failure mechanism. The proposed change does not affect the test acceptance criteria of the EDGs. The plant equipment will respond per design and analyses, and there will not be a malfunction of a new or different type introduced by the testing frequency revision to the EDG surveillance requirements. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The Bases Section of Technical Specification Section 3/4.8, "Electrical Power Systems," states that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety-related equipment required for safe shutdown and mitigation and control of accident conditions. Bases Section 3/4.8 also states that the surveillance requirements for determining the operability of the EDGs are in accordance with the recommendations of Regulatory Guide 1.108, Revision 1. The revision of surveillance requirements will continue to verify that the EDGs are operable. Operable EDGs ensure that the assumptions in the Bases of the Technical Specifications are not affected and ensure that the margin of safety is not reduced. Therefore, the assumptions in the Bases of the Technical Specifications are not affected and the change does not result in a significant reduction in the margin of safety.

DC Sources Operating

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. These surveillance requirements verify the operability of components of the Class 1E DC power system. CYAPCO is also proposing to delete the term "during shutdown" contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f.

Additional assurance of the operability of the Class 1E DC power system is provided by Surveillance Requirements 4.8.2.1.a, b, and e.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes in the frequency of Surveillance Requirements 4.8.2.1.c, d, and f will not degrade the ability of the Class 1E DC power system to perform its intended safety function. Also, the Class 1E DC power system is designed to perform its intended safety function even in the event of a single failure.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirements 4.8.2.1.c, d and f. cThis evaluation included a review of surveillance results, preventive maintenance associated with normal surveillance activities, and corrective maintenance records. It concluded that the Class 1E DC power system is highly reliable, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject Class 1E DC power system components.

The deletion of the phrase "during shutdown" in Surveillance Requirement 4.8.2.1.d, e, and f is acceptable. The terms "Cold Shutdown" and "Hot Shutdown" are defined in the Haddam Neck Plant Technical Specifications as operating modes or conditions. The proposed deletion of the term "during shutdown" is intended to prevent possible misinterpretations and is consistent with the recommendations of GL 91-04.

Based on the above, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. CYAPCO is also proposing to delete the term "during shutdown" contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f. These surveillance requirements verify the operability of components of the Class 1E DC power system.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f will not introduce a new failure mode.

Based on the above, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

CYAPCO is proposing to modify the frequency of Surveillance Requirements 4.8.2.1.c, d, and f of the Haddam Neck Plant Technical Specifications from at least once per 18 months to at least once each refueling interval. CYAPCO is also proposing to delete the term "during shutdown" contained in Surveillance Requirements 4.8.2.1.d, 4.8.2.1.e, and 4.8.2.1.f. These surveillance requirements verify the operability of components of the Class 1E DC power system.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirements 4.8.2.1.c, d and f. This evaluation included a review of surveillance results, preventive maintenance associated with normal surveillance activities, and corrective maintenance records. It concluded that the Class 1E DC power system is highly reliable, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject Class 1E DC power system components.

Additional assurance of the operability of the Class 1E DC power system is provided by Surveillance Requirements 4.8.2.1.a, b, and e.

Since decreasing the surveillance frequency does not involve a significant increase in the consequences of a design basis accident previously analyzed, the proposed changes to Surveillance Requirements 4.8.2.1.c, d, e, and f of the Haddam Neck Plant Technical Specifications do not involve a significant reduction in the margin of safety.

On-Site Power Distribution

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.8.3.1.2 will increase the surveillance interval from once each refueling outage (once per 18 months) to a maximum of once per 30 months (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2.). The proposed change to Surveillance Requirement 4.8.3.1.2 does not alter the intent or the method by which the surveillance is conducted. In addition, the acceptance criterion for the surveillance is unchanged. As such, the proposed changes will not degrade the ability of the MCC-5 ABT scheme to perform its intended function.

The successful past surveillance results, and the simpler re-design of the MCC-5 ABT provide assurance of system operability up to a maximum of 30 months. As such, the proposed changes do not adversely affect the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident than any accident previously evaluated.

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to Surveillance Requirement 4.8.3.1.2 will not introduce a new failure mode.

Based on the above, the proposed change to Surveillance Requirement 4.8.3.1.3 of the Haddam Neck Plant Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to Surveillance Requirement 4.8.3.1.2 extends the frequency for verifying the operability of the MCC-5 ABT scheme from at least once per 18 months to at least once per refueling interval (i.e., 24 months nominal + 25% as allowed by Specification 4.0.2).

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.8.3.1.2 will not degrade the ability of the MCC-5 ABT to perform its safety function and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment will revise Technical Specification (TS) Section 3.6.3, "Containment Isolation Valves." These changes will clarify the action statement for when a penetration has only one containment isolation valve (CIV) and that valve is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

...The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment isolation system is an engineered safety feature that functions to allow normal or emergency passage of fluids through the containment boundary, while preserving the ability of the boundary to prevent or limit the escape of fission products that may result from postulated accidents.

All fluid system pipelines that penetrate the containment are provided with one or more valves that can be closed remotely, either electrically or pneumatically, or are locked manual valves. Most of the piping penetrations connect to equipment inside the reactor containment. Thus, they are not open to the reactor containment atmosphere and will not pass radioactive contamination to the CIV unless the pipe is ruptured inside containment during an accident.

Lines that penetrate the reactor containment and are not in service during operation are isolated with one or more locked closed CIVs. Lines that are in service and that pass fluids during operation are provided with one or more motor-operated valves, positive closure trip valves, or check-valves.

The lack of guidance contained in Technical Specification Section 3.6.3 for a penetration that has only one CIV in it, does not increase the probability or consequences of an accident previously evaluated. This design, and the consequences that could result from this configuration have been evaluated previously and found acceptable. The proposed modification simply provides guidance to the operators should a penetration with only one CIV becomes inoperable. This proposed technical specification will, as do other technical specification action statements, provide a reasonable time to correct the situation before a required shutdown must commence. In addition, this proposed Action Statement was developed to be consistent with Technical Specification Section 3.0.3.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification provides guidance to the operators should a penetration which has only one CIV be inoperable. This design has been previously evaluated and found to be acceptable from both a deterministic and probabilistic standpoint. The proposed modification will provide the operators specific guidance to restore the penetration to an operable state or to isolate it. With this guidance, they can avert the risk associated with a plant shutdown, which would be mandated without this guidance. Should a CIV be inoperable and not capable of being restored, the proposed technical specification provides additional options. However, a probabilistic risk assessment review has determined that these additional options are not risk significant. Finally, the containment isolation system cannot be an accident initiator, rather it is designed to respond to accidents. The inability of the CIVs to operate cannot create a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed modification provides the requirement to the operators should a penetration which has only one CIV be inoperable. The effects of this design have been previously evaluated and found to be acceptable from both a deterministic and probabilistic standpoint.

The current Haddam Neck Plant containment isolation system has been previously reviewed by the NRC. CYAPCO is not making any changes to the containment isolation system. CYAPCO is however, providing guidance in the technical specifications should a penetration which has only one CIV be inoperable. This guidance will allow CYAPCO to correct the event associated with the penetration with an NRC approved alternative, in a set time. This provision is safe especially when compared to the alternative which is a plant shutdown under Technical Specification Section 3.0.3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

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NRC Project Director: Phillip F. McKee

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 17, 1995

Description of amendment request: The Commission issued Amendment Nos. 128 and 122 to the Facility Operating Licenses for Catawba Units 1 and 2 on February 17, 1995, which revised Technical Specification (TS) Table 2.2-1 and TS Surveillance Requirement (SR) 4.2.5 to allow a change in the method for measuring reactor coolant system (RCS) flowrate from the calorimetric heat balance method to a method based on a one-time calibration of the RCS cold leg elbow differential pressure taps. In its application submitted on January 10, 1994, for the above listed amendments, Duke Power (the licensee) neglected to modify SR 4.2.5.2 to delete that portion of the SR that specifies that the measurement instrumentation shall be calibrated within 7 days prior to the performance of the flowrate measurement. The licensee states that the requirement to calibrate the measurement instrumentation within 7 days prior to the performance of the flowrate measurement is impractical based on utilization of the cold leg elbow pressure tap method of RCS flowrate measurement. Accordingly, the licensee proposes to modify SR 4.2.5.2 to reflect the deletion of the subject requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is considered administrative in nature and should have been requested in Duke Power Company's January 10, 1994 application, as amended. The instrumentation which was subject to the requirement is no longer utilized in the fulfillment of the TS required RCS flowrate determination. The proposed changes will not result in any impact upon accident probabilities, since the RCS flowrate measurement instrumentation is not accident initiating equipment. Likewise, they will not result in any impact upon accident consequences, since no change to any method or frequency of calibration of the RCS flowrate transmitters will result. The plant response to accidents will not be affected.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No change is being made to any plant design feature, or to the manner in which the plant will be operated. Therefore, no new accident causal mechanisms can be generated. As noted above, the proposed changes are considered administrative in nature, and should have been requested in the January 10, 1994 application, as amended.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any fission product barriers will occur as a result of the approval of the proposed changes. No change to plant design, operating, maintenance, or test characteristics will result from the proposed amendments. No impact upon any plant safety margins will result.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 15, 1995

Description of amendment request: The proposed amendments modify Technical Specification (TS) 3/4.7.1 and the associated Bases to increase the setpoint tolerance of the main steam safety valves (MSSVs) from plus or minus one percent to plus or minus three percent, to incorporate a requirement to reset as-left MSSV lift settings to within plus or minus one percent following surveillance testing, and to delete two obsolete footnotes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. As demonstrated previously, all applicable licensing basis safety analyses were evaluated with a MSSV setpoint drift of plus or minus 3%. The results of the evaluations were within all appropriate accident analysis acceptance criteria. No significant impact on DNBR results, peak primary or secondary pressures, peak fuel cladding temperature, dose, or any other accident analysis acceptance criterion was involved. No impact on the probability of any accident occurring exists as a result of the increased MSSV setpoint tolerance.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No change is being made to any plant design feature, or to the manner in which the plant will be operated. Therefore, no new accident causal mechanisms can be generated. The MSSV setpoint tolerance only affects the time at which the valve opens following or during a transient, and is not a contributor to the probability of an accident.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. As stated above, all relevant accident analyses were examined to determine the effect of the wider MSSV setpoint tolerances. All analysis results are within applicable acceptance criteria. Finally, the NRC has previously approved TS changes for other plants seeking to use the [plus or minus] 3 [percent] setpoint tolerance, including McGuire Nuclear Station (reference Amendment Nos. 146 and 128 for Units 1 and 2, respectively).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 15, 1995

Description of amendment request: The proposed amendments modify Technical Specification (TS) Limiting Condition for Operation 3.7.5 to raise the minimum nuclear service water system's (RN) water level in the standby nuclear service water pond (SNSWP) from 570 to 571 feet mean sea level.

This change will increase the volume of water that will be available for use of the SNSWP as the ultimate heat sink for postulated accidents under all meteorological conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendments will have no impact upon any accident probabilities, since the RN system is not a accident initiating system. It is an accident mitigating system. Accident consequences will not be affected, since the proposed amendments will require a greater surface area for heat transfer from the SNSWP water to the environment. It has been determined that with the required TS minimum water level of 571 feet and with the required TS temperature limit of 91.5F [degrees Farenheit], the SNSWP will be capable of fulfilling all design basis requirements pertaining to accident mitigation.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated previously, the RN system is not an accident initiator. No change is being made to the plant which would cause the RN system to become an accident initiator. All relevant procedures will be changed as required, commensurate with the NRC issuance of the requested amendments. No accident causal mechanisms will be affected. The effect of the increased SNSWP level on the SNSWP dam was evaluated and found to be negligible.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. As noted above, the SNSWP was evaluatd with the new TS level requirement and was determined to be operable and capable of meeting all design basis requirements. No impact on any fission product barriers is created by the proposed changes. The proposed changes will ensure that the RN system remains capable of fulfilling its required accident mitigating functions. SNSWP temperature will continue to be monitored at an elevation of 568 feet, which is considered to be the highest elevation at which the average SNSWP surface temperature is accurately represented and minimally influenced by daily temperature swings due to variations in solar heat input, air temperature, and rainfall temperature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 20, 1992, as supplemented December 5, 1995.

Description of amendment request: The proposed amendments, would revise the Technical Specifications (TS) related to the 60-month 120-volt battery surveillance requirement. The proposed change is to delete the words "during shutdown" from SR 4.8.2.1.2.e (performance discharge test). The licensee contends that the "during shutdown" provision in the TS is an impractical requirement because both units would have to be shutdown to perform the performance discharge test (PDT).

In the licensee's supplement dated December 5, 1995, proposed changes were made to TS 3/4 8.2 Bases to support the frequency of the PDT on the other batteries in the system after a battery that had its PDT performed is returned to service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment seeks to change the surveillance requirements to allow the performance with the units on line. The surveillance can be safely completed as proposed without affecting unit operation. The equipment would not be removed from service for a time that would exceed the current allowed outage time. The probability or consequences of any accident previously evaluated will not be increased because the removal of a battery from service can be performed while on line, and the loads of each battery can be assumed by another same-train battery which is the case for the battery being inoperable for any other reason. During the allowed outage time, even a single failure of any component (including Emergency Diesel Generator) will still leave a full capacity train available to provide instrumentation and control power for both units. Train redundancy is maintained at all times. Compensatory action is taken to prohibit discharge testing of the other remaining batteries within 10 days following a battery performance discharge test to ensure that the tested battery is fully recharged. Probabilistic Risk Analysis shows that the increase in Core Damage Frequency due to this operation is negligible.

2. The proposed amendment will not change any actual surveillance requirements, the change would simply allow the requirements to be met at different unit conditions. The performance of the surveillance with the units on line does not require any new component configurations that would reduce the ability of any equipment to mitigate an accident. The station would not be in any degraded status beyond that which has previously been evaluated. Therefore the proposed change will not create the possibility of a new accident.

3. The change would allow a battery to be removed from service for testing. However, the testing must be completed within the current allowed outage time. As the allowed outage time defines the required margin of safety for equipment operability, removing equipment from service for testing and returning it to service within the allowed time does not affect a margin of safety. Compensatory action is taken to prohibit discharge testing of the other remaining batteries within 10 days following a battery performance discharge test to ensure that the tested battery is fully recharged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: November 6, 1995

Description of amendment request: The proposed amendment would revise the alarm setpoints for the noble gas and in-containment high range area radiation monitors listed in Table 3.3-6 of Beaver Valley Power Station, Unit 1 Technical Specification (TS) 3.3.3.1. The proposed revisions would make these alarm setpoints consistent with the criteria in the Emergency Action Levels (EALs) which were revised and

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approved by the NRC in August 1994. The revised EALs use the noble gas radiation monitors as indications of effluent releases and are based on dose to the public. The revised EALs use the in-containment high range area radiation monitors as indication of fission product barrier challenges or failures rather than as indications of effluent release.

The proposed amendment would also revise Action Statement 36 of Table 3.3-6 of TS 3.3.3.1 for both BVPS-1 and BVPS-2 to reflect a previously approved change in reporting frequency for effluent releases. BVPS-1 License Amendment No. 188 and BVPS-2 License Amendment No. 70 (both issued on June 12, 1995) approved a change in the reporting frequency for effluent releases from semi-annual to annual. The proposed change would make Action Statement 36 consistent with this previously approved change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed monitor alarm setpoint changes and editorial changes are administrative in nature. Should the radiation alarm fail to annunciate or give a false alarm, there would be no affect on any other plant equipment or systems. The noble gas monitors are not safety related and do not interface with any safety related system. The containment area monitors are safety related; however, they do not initiate any safety function, nor do they interface with any other safety related system.

The monitors' alarm as a visual (lighted icon) and audible alarm in the control room. The operator is then responsible for taking any corrective actions necessary, based on the alarm and Emergency Action Level (EAL) guidelines. The monitors do not provide for any automatic actions of other equipment or systems when an alarm condition occurs.

The operating and design parameters of the radiation monitors will not change. The proposed change affects only the radiation level at which an alarm condition is created and does not affect any accident assumptions or radiological consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed radiation monitor alarm revisions cannot initiate a new type of accident. A failure of the monitor itself cannot serve as the initiating event of an accident and has no effect on the operation of a safety system. Operator action is not made solely on a radiation monitor alarm; other plant condition indicators are also evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The referenced radiation monitoring channels have no capability to mitigate the consequences of an accident. Also, they do not interface with any safety related system. The containment area monitors are safety related channels which provide indication to the operator of the integrity of the fission product barriers in containment. This indication, combined with other indications of plant conditions may direct an operator to take action to mitigate the consequences of an accident. The alarm setpoint itself does not perform any specific safety related function and the trip value is not referenced in the Updated Final Safety Analysis Report (UFSAR), nor does any site design basis document take credit for this setpoint. Safety limits and limiting safety system settings are not affected by this proposed change. Also, the site will continue to meet the requirements of 10 CFR Part 100 which limits offsite dose following a postulated fission product release.

Therefore, use of the proposed technical specification would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippe, Pennsylvania 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: November 22, 1995

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) Index to delete reference to the BASES. The proposed revisions to Turkey Point Units 3 and 4 TS are administrative in nature. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. The Technical Specification BASES, per 10 CFR 50.36(a), are not a part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59. Therefore, the proposed change does not affect the probability or consequences of accidents previously analyzed.

(2) The proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments are administrative in nature. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative change, since the proposed change does not involve the addition or modification of equipment nor does it alter the design or operation of affected plant systems, structures, or components.

(3) The proposed license amendments do not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The BASES information, per 10 CFR 50.36(a), is not a part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59. Therefore, the proposed change does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: November 3, 1995

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to delay for one cycle the volumetric and surface examinations of the Reactor Coolant Pump (RCP) motor flywheels required by Regulatory Guide (RG) 1.14, Regulatory position C.4.b, incorporated by reference in Technical Specification 5.6.2.8.c, to coincide with Crystal River Unit 3 (CR-3) Refueling Outage 11, scheduled for Spring 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The safety function of the RCP flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large LOCA [loss-of-coolant accident]. The estimated maximum obtainable speed in the event of a Reactor Coolant System piping break was established conservatively. The proposed one time change does not affect that analysis. Reduced coastdown times due to a single failed flywheel would not place the plant in an unanalyzed condition since a locked rotor (instantaneous coastdown) is analyzed in the FSAR [Final Safety Analysis Report]. The proposed change does not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction to any margin of safety.

FPC [Florida Power Corporation] has performed two full volumetric examinations in excess of those recommended in RG 1.14, Revision 1 during the Second ISI [inservice inspection] Interval. The margins of safety defined in RG 1.14, Revision 1 used in the analysis are not significantly changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 10, 1995

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for containment systems to reflect the adoption of the requirements of 10 CFR Part 50, Appendix J, Option B, and the implementation of a performance-based containment leak-rate testing program at the Edwin I. Hatch Nuclear Plant, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated. The proposed changes do not involve any physical or operational changes to structures, systems or components. The proposed changes provide a mechanism within the TS for implementing a performance-based leakage rate test program which was promulgated by the revision to 10 CFR 50 to incorporate Option B to Appendix J. The TS Limiting Conditions for Operation (LCO) remain unaffected by these changes. Thus, the safety design basis for the accident mitigation functions of the primary containment, the airlocks, and the primary containment isolation valves is maintained. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed. Revising Surveillance Requirement acceptance criteria and frequencies does not physically modify the plant and does not modify the operation of any existing equipment.

3. The proposed changes do not involve a significant reduction in the margin of safety, nor do they affect a safety limit, an LCO, or the manner in which plant equipment is operated. The NRC letter dated November 2, 1995, recognizes that changes similar to the proposed changes are required to implement Option B of 10 CFR 50, Appendix J. In NUREG-1493, "Performance-Based Containment Leak-Test Program," which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based test intervals for Appendix J testing will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: January 16, 1995

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Section 6.5.1.7 of the administrative controls portion of the technical specifications. The revision would change Section 6.5.1.7 to delete the requirement for personnel in the internal GPU Nuclear (GPUN) Review and Approval matrix to render an unreviewed safety question (USQ) determination regarding (1) proposed changes to unit technical specifications and (2) investigations of violations of technical specifications. Both of these activities involve docketed correspondence with the NRC in which the USQ determination is made and justified. This obviates the need for a requirement for the licensee to perform and document an internal USQ

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determination. This change would make the TMI-2 Technical Specifications consistent with the Standard Technical Specifications for B&W Plants (NUREG 1430).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to perform a no significant hazards consideration. 10 CFR 50.92 states that an amendment to a facility license involves no significant hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

The proposed change to the technical specifications is administrative and does not involve any physical changes to the facility. No changes are made to operating limits or parameters, nor to any surveillance activities. Based on this, GPU Nuclear has concluded that the proposed change does not:

1. Involve a significant increase in the probability of occurrence of the consequences of an accident previously evaluated. The proposed amendment is purely administrative and affects only the review of activities that involve considerable review by the NRC. This change will not degrade the performance of review for either of the two activities that are affected. This proposed technical specification change does not involve changes to hardware configuration, operation, or testing. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident since the change is administrative and no new failure modes are created.

3. Involve a change in the margin of safety. This change is administrative in nature; compatible with standard technical specifications; and does not affect any safety settings, equipment, or operational parameters.

Based on the above analysis it is concluded that the proposed changes involve no significant safety hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Seymour H. Weiss

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.1.3, "Control Rod OPERABILITY," to include the 25% surveillance overrun allowed by Limiting Condition for Operation (LCO) 3.0.2 into the allowances of the surveillance Notes for control rod "notch" testing per Surveillance Requirement (SR) 3.1.3.2 and SR 3.1.3.3. The proposal also includes a clarification to the description of TS Table 3.3.3.1-1, "Post Accident Monitoring Instrumentation," Function 7, to indicate that the Function's requirements apply to the position indication for only automatic primary containment isolation valves, rather than all primary containment isolation valves. Finally, the proposal includes changes to correct a number of editorial and typographical errors inadvertently contained in TS 3.3.4.1, "End of Cycle Recirculation Pump Trip (EOC-RPT) Instrumentation," TS 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," TS 3.3.8.2, "Reactor Protection System (RPS) Electric Power Monitoring," and TS 3.6.5.2, "Drywell Air Lock."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes associated with Limiting Condition for Operation (LCO) 3.1.3 are being made to make the surveillance requirement (SR) Notes agree with their original intent. The Notes were originally intended to allow the testing of control rods to be tracked as a group, i.e., partially withdrawn and fully withdrawn. In the event that a control rod(s) has changed from one test group to another, the Notes were intended to allow performance of the next surveillance on that control rod(s) to be delayed to coincide with the next regularly scheduled performance of the test of the new group. However, these Notes failed to include the 25% surveillance extension allowances of SR 3.0.2. This proposed change merely adds the 25% extension to the time allowed by the Notes to make them agree with the Frequency plus the extension allowance of SR 3.0.2. The addition of the word "fully" to the Note for SR 3.1.3.2 is to provide for clarification only. These changes are consistent with changes approved for the Grand Gulf Nuclear Station (GGNS) and River Bend Station and are being proposed for the Clinton Power Station (CPS) for consistency. The proposed changes do not involve a change to the control rods or control rod drive system design or operation. Further, the proposed change does not affect the way in which the associated control rod test is performed, only the "triggers" for performance of the test are affected. These triggers are being revised to make them consistent with their original intent. As a result, the proposed change cannot increase the probability or the consequences of any accident previously evaluated.

The proposed change to the description of LCO 3.3.3.1 Function 7 to include "automatic" is provided for clarification only. As described in the Bases for this Function, the requirements for operability are currently only associated with automatic primary containment isolation valves (PCIVs). As a result, this change does not involve a change to the scope of this LCO. In addition, these changes are consistent with changes approved for GGNS and are being proposed for CPS for consistency. Since this request does not affect the design or operation of this equipment, nor does it alter the scope of this Technical Specification (TS) requirement, this proposed change cannot increase the probability or the consequences or any accident previously evaluated.

The remaining proposed changes are purely editorial and do not affect the design or operation of any equipment or alter the technical requirements of any TS. As a result, these proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not affect the design or operation of any equipment. In addition, the proposed changes do not affect the manner in which any test is performed or involve a change to any plant operating mode or configuration. As a result, Illinois Power has concluded that the proposed changes cannot create the possibility of an accident not previously evaluated.

(3) The proposed changes to the SRs for LCO 3.1.3 are being made to make the SR Notes agree with their original intent and thus permit control rods to be tested as originally intended. The proposed changes do not involve a change to the control rods or control rod drive system design or operation. Further, the proposed change does not affect the way in which this test is performed or the routine Frequency of performing the test, only the "triggers" are affected. Since these triggers are being revised to make them consistent with their original intent, Illinois Power has determined that this change does not result in a reduction in the margin of safety.

The proposed change to the description of LCO 3.3.3.1 Function 7 to include "automatic" is provided for clarification only. As described in the Bases for this Function, the requirements for operability are currently only associated with automatic PCIVs. As a result, this change does not involve a change to the current scope of this LCO. Since this request does not affect the design or operation of this equipment, nor does it alter the scope of this TS requirement, this proposed change does not result in a reduction in the margin of safety.

The remaining changes are purely editorial and do not affect the design or operation of any equipment or alter the technical requirements of any TS. As a result, these proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 27, 1995

Description of amendment request: The proposed amendment would revise Technical Specification 5.2.2.e, "Unit Staff," to revise the requirements for controls on the working hours of unit staff who perform safety related functions. The proposal would clarify the approval requirements for deviations from the overtime guidelines and eliminate the requirement for a monthly review of individual overtime, consistent with GL 82-12, "Nuclear Power Plant Staff Working Hours," dated June 15, 1982.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a change to the plant design or operation. The proposed changes do not affect the level of approval required for deviations from the overtime guidelines. As the Technical Specifications will continue to require deviations from the guidelines for overtime control to be approved and documented, the proposed changes do not adversely affect the level of alertness for the unit staff who perform safety-related functions. The current requirement for the plant manager (or his designee) to perform a monthly review of individual overtime is an after the fact review that has not been proven to provide any significant benefit with respect to the control of individual overtime. In addition, the proposed changes do not directly affect the automatic operation of equipment or systems assumed to mitigate the consequences of previously evaluated accidents. As a result, the proposed changes do not affect any of the parameters or conditions that contribute to initiation of an accident previously evaluated, and thus, the proposed changes cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not involve a change to the plant design or operation. The proposed changes do not affect the level of approval required for deviations from the overtime guidelines and do not adversely affect the level of alertness for the unit staff who perform safety-related functions. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to initiation of an accident, and thus cannot create the possibility of an accident not previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety. As noted previously, the proposed changes do not change the level of approval required for deviations from the overtime guidelines. Only the requirement for an after-the-fact monthly review is proposed to be deleted. To the extent that personnel alertness may be regarded as a margin of safety, deleting this requirement will not result in a significant reduction in a margin of safety since overtime controls consistent with the guidelines and requirements of GL 82-12 will continue to remain in place.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Gail H. Marcus

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: May 19, 1995, as supplemented October 20, 1995 (AEP:NRC:1213A)

Description of amendment requests: The proposed amendments would modify the Technical Specification (TS) action statement associated with the main steam safety valves (MSSVs). The action statement would reflect different requirements based on operating mode and the power range neutron flux high setpoint with inoperable MSSVs would be revised in response to an issue raised in Westinghouse Nuclear Safety Advisory Letter 94-001. The supplement also requested the addition of an exemption to TS 4.0.4 in the surveillance requirements for the MSSVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Correction of the setpoint methodology does not represent a credible accident initiator. The new methodology reduces the allowable power level setpoints and is conservative compared to the presently evaluated setpoints. The consequences of any previously evaluated accident are not adversely affected by this action because the decrease in the setpoints resulting from the new calculational methodology will ensure that the MSSVs are capable of relieving the pressure at the allowable power levels. Based on these considerations, it is concluded that the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Correcting the overly restrictive action statements of T/S 3.7.1 does not involve a significant increase in the probability of an accident. The proposed changes modify existing text to more accurately reflect the intention of the restrictions imposed by the action statements. The changes do not create any situation that would initiate a credible accident sequence.

The proposed 4.0.4 exemption is necessary to make the T/Ss accurately reflect limitations associated with conduct of the surveillance in Mode 3. Additionally, the change is needed to address the fact that unscheduled outages can and do occur and, when they do, surveillances can expire with no way to correct the situation until the unit returns to power. Since the purpose of the 4.0.4 exemption is to allow surveillances to be conducted after an extended period of reactor shutdown, the decay heat to be removed by the MSSVs will be less than (and therefore conservative compared to) the conditions experienced when the surveillances are already allowed by the T/Ss. These allowed conditions include conduct of the surveillance during power operation or immediately after shutdown. Therefore, we believe that any increase in the probability of occurrence or consequences of an accident previously analyzed would be insignificant.

Criterion 2

The change in Table 3.7-1 reduces the allowable power levels that can be achieved in the event that one or more main steam safety valve(s) is inoperable. This change is a result of vendor guidance to correct an error in the existing methodology used to determine the setpoints for the power level.

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Changing the methodology used to determine the setpoints, and lowering the setpoints themselves, do not create a new condition that could lead to a credible accident. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The action statements remain in effect to perform the intended function of protecting the plant's secondary side when the main steam safety valves are inoperable. They have only been modified to correct the overly restrictive language that specifies when, in each mode, specific actions must be taken. Therefore, the proposed change does not create a new or different type of accident.

Because the proposed 4.0.4 exemption requires neither physical changes to the plant nor changes to the safety analyses, we believe that they will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

The margin of safety presently provided is not reduced by the proposed change in the setpoints. The change will correct the limiting power levels that are to be implemented when MSSVs are inoperable. This action does not adversely affect the margin that was previously allocated for the ability of the MSSVs to relieve secondary side pressure. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The margin of safety is also not significantly reduced by the proposed change to the action statements of the T/S. The proposed revision clarifies when specific actions are to be taken in response to inoperable main steam safety valves. The changes do not decrease the effectiveness of the actions to be taken; therefore, they do not significantly reduce any margin of safety.

The margin of safety is not adversely affected by the proposed exemption to T/S 4.0.4, since the surveillance conditions allowed by the exemption are bounded by the normal surveillance conditions seen immediately after shutdown or during power operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. The initial application was noticed in the **Federal Register** on June 21, 1995 (60 FR 32368).

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Brian E. Holian, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 10, 1995 (AEP:NRC:0896X) (Supersedes application dated June 15, 1995.)

Description of amendment requests: The proposed amendments would change the 18-month emergency diesel generator (EDG) surveillance test from a 24-hour run to an 8-hour run and would add voltage and frequency measurement and power factor monitoring.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The safety function of the EDGs is to supply AC electrical power to plant safety systems whenever the preferred AC power supply is unavailable. Through surveillance requirements, the ability of the EDGs to meet their load and timing requirements is tested and the quality of the fuel and the availability of the fuel supply are monitored. Reduction of the 24 hour run to 8 hours will not reduce the surveillance effectiveness and will sufficiently exercise the EDG and its support systems to identify potential conditions that could lead to performance degradation (See Attachment 4 (of amendment request)). Further, monthly full-load testing will provide confidence in diesel reliability and performance capability. Based on these considerations, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed changes do not involve physical changes to the plant or changes in plant operating configuration. The changes only involve EDG surveillance test requirements. These changes will not affect EDG operability and are designed to improve surveillance effectiveness. Also, paralleling the diesel to the system grid during normal operations has been performed to fulfill monthly surveillance requirements when the resistive load banks were not available.

It is recognized that, during the 1 hour monthly surveillance test period, the diesel could be exposed to electrical system transients (e.g., transients induced by inclement weather conditions) which could cause the paralleled diesel output breaker to trip open. Such a scenario, although unlikely, is mitigated by the availability of the alternate EDG which is placed in the auto start mode prior to the surveillance. In addition, during testing, an operator is continuously monitoring the diesel control panel and can, if necessary, reset the affected EDG lockout relays to restore EDG availability. Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Although the duration of the EDG 18 month 24 hour surveillance test would be reduced, the EDG components will continue to be sufficiently exercised such that the ability to detect incipient and degraded conditions will be maintained (See Attachment 4, Figure 2 [of amendment request]). Also, the added review of diesel reactive loading ensures that test conditions closely match potential emergency conditions. In addition, the monthly full-load testing will provide confidence in diesel reliability and performance capability without impacting diesel operability. During the monthly test, the impact on plant safety due to potential exposure to transient grid conditions is considered to be insignificant based on the likelihood of such transients coincident with the testing and the mitigating factors discussed in Criterion 2 above.

Based on the above considerations, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. This notice supersedes the staff's notice published in the **Federal Register** on July 19, 1995 (60 FR 37096).

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Brian E. Holian, Acting

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 25, 1995

Description of amendment request: The amendment request would revise the Technical Specifications (TS) to relocate the flow-biased average power range monitor (APRM) scram and rod block setpoint requirements for reactor operation with excessive core peaking, which will also include surveillance requirements to verify the setpoints. The amendment would also delete TS Figure 2.1.2, and any references to the figure. APRM meter setting adjustments would be changed to allow setpoint adjustment to be made at power levels less than or equal to 90% of the rated, and the requirement that the scram setting adjustment be <10% would be further defined as <10% of the rated thermal power. The amendment would incorporate several editorial changes and renumbered pages, the removal of blank pages, a revised Table of Contents, and a modified Bases section for the APRM setpoint requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes do not cause the APRM scram and rod block setpoints or APRM meter readings to be manipulated differently. The change limiting the scram and rod block setting adjustments to less than 10% of rated thermal power is more conservative than the current specification in that it allows the APRM meter indication to be set closer to the flow-biased scram or rod block setpoint. There are no other changes to the basic function of any plant equipment. The proposed changes to technical specifications will not decrease the margin to the fuel thermal-mechanical design limits, so the potential for any fuel failure from the LHGR [linear heat generation rate] transient overpower condition is not increased. Therefore, the consequences of a transient overpower are also not increased. Based on the above, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

Moving the APRM setpoint adjustment from Section 2 to Section 3/4.11 does not reduce or eliminate any requirements. The requirements for the APRM setpoint adjustment are more clearly defined in the LCO [limiting conditions for operation] and Surveillance Requirements with specific applicability and corrective action requirements. The proposed changes do not affect the basic function of any plant equipment. The basic process for performing the APRM setpoint adjustment is not significantly changed, so the proposed changes do not create a new process and do not involve any new failure that would cause a new or different kind of accident to occur.

The elimination of redundant information in the technical specifications and the relocation of information pertinent to the operators for performing the APRM setdown determination does not create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Allowing APRM setpoint adjustment during power operation at off-rated conditions improves the flexibility to make control rod pattern or core flow adjustments, but will still preserve the required setdown factor that must be maintained in that flux shape and power level. The change to set up the APRM meter reading up to 10% above the nominal power indication (instead of setting up only to the current MFLPD [maximum fraction of limiting power density] percentage) allows a higher APRM meter setting to be made. This allows the conservative setting, but eliminates frequent setting changes each time a new value of FRP/MFLPD [fraction of rated power] is calculated provided the APRM setting remains conservatively greater than or equal to MFLPD/FRP multiplied by percent core thermal power. Thus, the margins to the fuel thermal and mechanical design limits are not reduced. The fuel remains adequately protected from failure due to a transient LHGR overpower condition. There is no reduction in any margin of safety.

The time requirements imposed are consistent with the current fuel thermal limit LCO actions and are more conservative than STS, therefore, the proposed action time requirement provides the same margin of safety as currently exists in the MP1 [Millstone Unit 1] Technical Specifications. The margins to the fuel thermal and mechanical design limits are not reduced. There is no reduction in any margin of safety and the fuel remains adequately protected from failure due to a transient LHGR overpower condition.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: November 20, 1995

Description of amendment request: The first of the proposed changes provides clarification to the applicability statement for the steam generator blowdown monitor in Table 3.3-12. The applicability is changed to be for Modes 1-4 only. The second proposed change involves the action statement for the steam generator blowdown monitor in Table 3.3-12, Action 2. The action required when the monitor is not operable is clarified to state that if discharges are suspended, no sampling is required. The last proposed change involves the applicability statement for the condensate polishing facility waste neutralizing sump radiation monitor. It is clarified to state that the monitor is only required when the pathway is in use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO [Northeast Nuclear Energy Company] concludes that these changes do not involve a significant hazards consideration since the proposed changes satisfy the criteria in 10CFR50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes clarify the modes and conditions for which the radiation monitors are utilized, as well as the required actions when the monitors are not operable. These changes are administrative in nature, therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no (e)ffect on the ability of the monitors to perform their design function. The clarifications do not involve any physical modifications to any equipment, structures, or components. The proposed changes have no impact on design basis accidents, and the changes will not modify plant response or create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

These changes do not have any impact on the protective boundaries and, therefore, have no impact on the safety limits for these boundaries. The instrumentation associated with these changes do not provide a safety function and only serve to provide radiological information to plant operators. The instrumentation has no (e)ffect on the operation of any safety-related equipment. No hardware, software, or setpoint changes are involved in this proposed change. These changes provide clarification of modes and conditions for which the radiation monitors are utilized. As such, these changes have no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center,

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Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: November 21, 1995

Description of amendment request: The proposed amendment would clarify the reactor containment building temperature as "an equilibrium liner temperature," and the affected Bases will be updated to reflect the results of the most recent main steam line break (MSLB) analysis. The changes to the Bases also identify that the limiting event affecting containment temperature and pressure now includes the MSLB in addition to a Loss of Coolant Accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO [Northeast Nuclear Energy Company] concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10CFR50.92(c). That is, the proposed changes do not:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are clarifications that are administrative in nature. The changes only incorporate the revised containment analysis as approved by the NRC. There are no hardware changes and no change to the functioning of any equipment which could affect any operational modes or accident precursors. Therefore, there is no way that the probability of previously evaluated accidents could be affected.

There are no hardware modifications associated with these changes and no change to the functioning of any equipment which could affect radiological releases. The safety analysis of the plant is unaffected by the changes. Therefore, there is no effect on the consequences of previously evaluated accidents.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are clarifications that are administrative only. There are no hardware changes and no change to the functioning of any equipment which could introduce new or unique operational modes or accident precursors. Therefore, there is no possibility of an accident of a new or different type than previously evaluated.

Involve a significant reduction in a margin of safety.

These changes are clarifications that are administrative in nature. They do not increase or decrease any plant operating requirements or limits. Therefore, they have no effect on any safety analysis and no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would remove the Technical Specification (TS) for motor operated valves with thermal overload protection and bypass devices (TS 3/4.8.4.2) to follow the guidance of the improved Westinghouse Standardized TS (NUREG-1431, Rev. 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report] is not significantly increased.

The removal of TS 3/4.8.4.2 from TS in no way impacts the accident analysis of the FSAR. Compliance of 10 CFR 50, as applies to Regulatory Guide 1.106, will be maintained and controlled through plant procedures with changes evaluated through 10 CFR 50.59 rather than through TS amendments. Therefore, the probability or consequences of a previously evaluated accident has not been increased.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed TSCR [TS change request] does not necessitate physical alteration of the plant nor changes in parameters governing normal plant operation. Therefore, the change does not create the possibility of a new or different kind of accident or malfunction.

3. The margin of safety has not been significantly reduced.

The removal of TS 3/4.8.4.2 and Table 3.8-2 will not diminish the existing thermal overload protection and/or bypass devices operability and testing requirements. They will be maintained and controlled in plant procedures, and changes will be subject to 10 CFR 50.59 review. Therefore, the margin of safety has not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Frederick J. Hebdon

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 21, 1995

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.5.2 by allowing a one time extension of the allowable outage time from 72 hours to 7 days for each residual heat removal (RHR) train. The one time extension is needed to allow maintenance and modification to the RHR system while the plant is in Mode 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

The probability of an accident previously evaluated in the FSAR [Final Safety Analysis Report] does not change. A one time extension to increase the allowed outage time for each train of RHR from 72 hours to 7 days affects only RHR train availability which does not contribute to the probability of a LOCA [loss-of-coolant accident]. The proposed change to TS 3/4.5.2 has been shown to have only a small increase in Core Damage Frequency. The consequences of a LOCA does not change from those currently resulting from a LOCA initiated while in TS 3.5.2 ACTION statement (a.), thus, there is no change in consequences of an accident previously evaluated in the FSAR.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed TSCR [TS change request] only results in a one time increase in the allowable outage time for each train of RHR. It does not result in an operational condition different from that which has already been considered by TS. Therefore, the change does not create the possibility of a new or different kind of accident or malfunction.

3. The margin of safety has not been significantly reduced.

The effects of increasing the allowed outage time on the calculated core damage frequency has been evaluated and determined to be small.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 22, 1995

Description of amendment request: The proposed amendment would change the operating license to reflect the license transfer for part of Ohio Edison Company's ownership interest in the Perry Nuclear Power Plant (PNPP), Unit No. 1 to its wholly owned subsidiary, OES Nuclear Inc.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change. 48 Fed. Reg. 14,864 (1983).

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. PNPP's design and design bases will remain unchanged as will All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change. 48 Fed. Reg. 14,864 (1983).

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the PNPP Operating License are administrative and have no effect on the PNPP facility, programs, personnel or any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely an administrative change. 48 Fed. Reg. 14,864 (1983).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 20, 1995

Description of amendment request: The proposed changes would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). Specifically, the change would permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing.

The Nuclear Regulatory Commission (NRC) has amended its regulations to provide a performance-based option for leakage-rate testing of containments. This testing option is available in lieu of compliance with the prescriptive requirements contained in Appendix J regulations. In order to implement the performance-based leakage-rate testing option the TS must be changed to eliminate reference to the prescriptive Appendix J requirements. Therefore, the licensee is proposing a change to the NA-1&2 TS to eliminate the current prescriptive requirements for leakage rate testing of the containment and reference Option B to 10 CFR 50 Appendix J and NRC Regulatory Guide 1.163, "Performance-Based Containment Leakage-Test Program." This change will permit use of the performance-based surveillance testing, Option B, of 10 CFR 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station with the proposed change will not:

1. Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario which is important to safety and which has been previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. The proposed change permits a performance-based approach to determining the leakage-rate test frequency for the containment and containment penetrations (Type A, B, and C tests). Since the proposed change only affects the test frequency for containment and containment penetrations, the probability of occurrence of an accident is not affected by the proposed changes in the leak-rate test interval.

The proposed change increases the probability of a malfunction due to the longer intervals between leakage tests. It has been estimated that the longer test intervals will increase the overall accident risk to the public by approximately 0.7% and 2.2% (for changes in the frequency of Type A tests and Type B and C tests, respectively). However, this increase in accident risk has been judged to be insignificant. This increase has been reviewed and judged to be acceptable by the NRC as documented in NUREG-1493 and the recent rulemaking to 10 CFR 50 Appendix J.

The Limiting Conditions for Operation are not being changed for the containment or any other safety system. The containment and other safety system remain operable as

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assumed in the accident analysis. Since the proposed change does not affect the Limiting Conditions for Operation for the containment, the containment penetrations, or the other safety systems, the consequences of an accident are not affected by the changes in test frequency.

2. Create the possibility of a new or different type of accident than those previously evaluated in the UFSAR.

Implementing the proposed Technical Specifications change to remove the prescriptive testing requirements and permit use of Appendix J, Option B, performance-based testing of containment and its penetrations do not create the possibility of an accident of a different type than was previously evaluated in the UFSAR. Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. Thus, the proposed Technical Specifications change in leakage-rate test frequency does not introduce any new accident precursors or modes of operation. The containment and containment penetrations will not be operated any differently as a result of the proposed change.

Therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report is not created by the proposed Technical Specifications change.

3. Involve a significant reduction in a margin of safety.

The proposed change, which replace[s] the present prescriptive testing requirements with Appendix J, Option B, performance-based testing of containment and its penetrations, will continue to ensure that the existing accident analysis assumptions are maintained. The containment and containment penetrations will not be operated or tested any differently. Only the leakage rate test frequency is being changed as a result of the proposed change. The operational leakage-rate test acceptance criteria and the operability requirements are not being changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 20, 1995

Description of amendment request: The proposed changes to the Surry Technical Specifications would eliminate the existing prescriptive testing requirements for leakage rate testing of the containment and instead reference the Nuclear Regulatory Commission (NRC) Regulatory Guide 1.163," Performance-Based Containment Leak-Test Program," which would permit use of the performance-based leakage rate testing, Option B of 10 CFR Part 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station with the proposed change will not:

1. Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario which is important to safety and which has been previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications change. The proposed change permits a performance-based approach to determining the leakage-rate test frequency for the containment and containment penetrations (Type A, B, and C tests). There are no plant modifications, or changes in methods of operation. Therefore, the changes in testing intervals for the containment and containment penetrations have no [e]ffect on the probability of occurrence of a LOCA [loss-of-coolant accident]. Since the proposed change only affects the test frequency for containment and the containment penetrations, and the as-found test acceptance criteria at Surry the probability of occurrence and the consequences of an accident are not affected by the proposed changes in the leak-rate test interval.

The proposed change increases the probability of a malfunction of equipment important to safety due to the longer intervals between leakage tests. It has been estimated that the longer test intervals will increase the overall accident risk to the public by approximately 0.7% and 2.2% (for changes in the frequency of Type A tests and Type B and C tests, respectively). However, this increase in accident risk has been judged to be insignificant. This increase has been reviewed and judged to be acceptable by the NRC as documented in NUREG-1493 and the recent rulemaking to 10 CFR 50 Appendix J.

The containment and other safety system remain operable as assumed in the accident analysis. Changing the as-found acceptance criterion to 1.0 La at Surry does not increase the probability or consequences of an accident, since the accident analysis assume[s] a leakage rate of La for Design Basis Accidents. The as-left Type A test acceptance criterion remains at less than [or equal to] 0.75 La. Since the proposed changes do not affect the Limiting Conditions for Operation for the containment, the containment penetrations, or the other safety systems, the consequences of an accident are not affected by the changes in test frequency.

Therefore, the probability of an accident or consequences of an accident are not adversely affected as a result of this change.

2. Create the possibility of a new or different type of accident than those previously evaluated in the UFSAR.

Implementing the proposed Technical Specifications change to remove the prescriptive testing requirements and permit use of Appendix J, Option B, performance-based testing of containment and its penetrations does not create the possibility of an accident of a different type than was previously evaluated in the UFSAR. Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specifications changes. Thus, the proposed Technical Specifications changes in leakage-rate test frequency do not introduce any new accident precursors or modes of operations. The containment and containment penetrations will not be operated any differently as a result of the proposed changes. Therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report is not created by the proposed Technical Specifications change.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specifications change, which replace[s] the present prescriptive testing requirements with Appendix J, Option B, performance-based testing of containment and its penetrations, will continue to ensure that the existing accident analysis assumptions are maintained. The containment and containment penetrations will not be operated or tested any differently. The leakage rate test frequency is being changed as a result of the proposed change. Changing the as-found acceptance criterion to 1.0 La at Surry does not increase the consequences of an accident, since the accident analysis assume[s] a leakage rate of La for Design Basis Accidents. The as-left Type A test acceptance criterion remains at less than [or equal to] 0.75 La, which maintains the operating margin. The operational leakage-rate test acceptance criteria and the operability requirements are not being changed. Therefore, the margin of safety as defined in the Technical Specifications bases is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 23, 1995

Description of amendment request: The proposed amendment would change the name of the licensee from Wisconsin Electric Power Company to Wisconsin Energy Company.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the proposed license amendment, there will be no physical change to the facilities and all Limiting Conditions for Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the facilities' Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will have no effect on the physical configuration of the facilities or the manner in which they will operate. The design and design basis of the plants will remain the same. The current plant safety analysis will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences for the facilities. The Limiting Conditions for Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications for the facilities are not affected by the proposed license amendment. The plant conditions for which the design basis accident analysis have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not involve a significant reduction in the margin of safety.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 17, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 15.6.3, "Facility Staff Qualifications." The position of Health Physics Manager would be renamed Health Physicist. This change would provide additional staffing flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes separate the qualifications requirements of the Technical Specifications from the Health Physics Manager, while requiring that the same qualifications be fulfilled by a designated Health Physicist position within the organization. This change maintains the present knowledge requirements of the PBNP staff. The personnel holding the health physics qualifications are not considered in the probability of any accident. By ensuring the appropriate expertise remains on the staff to advise management on issues related to radiological safety, appropriate action is assured during analyzed events to assess and mitigate the radiological consequences. Therefore, this change does not affect the probability or consequences of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a new or different kind of accident from any accident previously evaluated.

The proposed change separates the Health Physics Manager qualifications from the position while maintaining the requirements for that expertise to be maintained within the organization. This is an administrative change only and does not affect any plant structures, systems and components. Therefore, a new or different kind of accident from any accident previously evaluated cannot result.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant reduction in a margin of safety.

The proposed changes are administrative only. The required levels of expertise and experience will be maintained within the Health Physics organization. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. MarcusWolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 22, 1995

Description of amendment request: The amendment would revise Technical Specification 3.9.4, "Containment Building Penetrations," and its associated Bases section to allow the containment personnel airlock doors to be open during core alterations and movement of irradiated fuel in containment provided that a minimum of one door in the emergency airlock is closed and one door in the personnel airlock is capable of being closed. Also, Surveillance Requirement 4.9.4 would be revised to specify that each containment penetration should be in its "required condition," instead of "closed/isolated condition."

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Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.9.4 would allow the containment personnel airlock to be open during fuel movement and core alterations. The containment personnel airlock is currently closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a fuel handling accident. The containment personnel airlock is not an initiator of any accident. Whether the containment personnel airlock doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

The proposed change does alter assumptions previously made in evaluating the radiological consequences of the fuel handling accident inside the containment building. The proposed change allows for the containment personnel airlock to be open during refueling. The radiological consequences described in this change are bounded by those given in the Wolf Creek Generating Station Safety Evaluation Report and General Design Criteria 19. All doses for the proposed change are less than the acceptance criteria, therefore, there is no significant increase in the consequences of an accident previously analyzed.

The proposed change would significantly reduce the dose to workers in the containment in the event of a fuel handling accident by accelerating the containment evacuation process. The proposed change would also significantly decrease the wear on the containment personnel airlock doors and, consequently, increase the reliability of the containment personnel airlock doors in the event of an accident.

Since the probability of a fuel handling accident is unaffected by the airlock door positions, and the increased doses do not exceed acceptance limits, operation of the facility in accordance with the proposed amendment would not affect the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change affects a previously evaluated accident, e.g., a fuel handling accident inside containment. The existing accident has been modified to account for the containment personnel airlock doors being opened at the time of the accident. It does not represent a significant change in the configuration or operation of the plant. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is reduced when the offsite and control room doses exceed the acceptance criteria in the Wolf Creek Generating Station Safety Evaluation Report. As previously discussed in the response to Standard I, the offsite and control room doses are below the acceptance criteria. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois;Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would close out additional open items identified in the NRC staff's review of the upgrade of the Dresden and Quad Cities Technical Specifications (TS) to the standard Technical Specifications (STS) contained in NUREG-0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letter (GL), and (4) relocating specific items to more appropriate TS locations. The November 14, 1995, application proposed to close out all open items identified during the NRC's review as noted in previous NRC staff Safety Evaluations for previously provided submittals regarding the TSUP project.

Date of publication of individual notice in **Federal Register:** November 29,1995 (60 FR 61272).

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: for Dresden, the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois; and for Quad Cities Station, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois;Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 14, 1995

Description of amendment request: The proposed amendment would change the technical specifications of these plants to incorporate 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors", Option B.

Date of publication of individual notice in **Federal Register:** December 7, 1995 (60 FR 62896)

Expiration date of individual notice: January 8, 1996

Local Public Document Room location: for Dresden Station, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois; for LaSalle County Station, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois; and for Quad Cities Station, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: November 14, 1995

Description of amendment request: The notice relates to your November 14, 1995, application to amend the Technical Specifications to provide a one-time exception to the Technical Specification 3.9.12, "Fuel Building Storage Air Cleanup System," to allow the fuel storage building air cleanup system to be inoperable during intervals in which new fuel rack modules will be moved into and old fuel modules will be moved out of the fuel storage building.

Date of pulbication of individual notice in **Federal Register:** November 28, 1995 (60 FR 58688)

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 12, 1995, as supplemented by letter dated June 29, 1995

Description of amendment request: The proposed amendments would modify portions of Technical Specification Section 6.0, "Administrative Controls."

Date of publication of individual notice in Federal Register: November 24, 1995, (60 FR 58109)

Expiration date of individual notice: December 26, 1995

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 5, 1995

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report.

Date of publication of individual notice in Federal Register: November 28, 1995 (60 FR 58690)

Expiration date of individual notice: December 28, 1995

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of amendments request: October 25, 1995

Description of amendments request: The proposed amendments would change position titles and reassign responsibilites at the upper management level to reflect a restructuring of Niagara Mohawk's upper management organization.

Date of publication of individual notice in **Federal Register:** November 16, 1995 (60 FR 57605)

Expiration date of individual notice: December 18, 1995

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 3, 1995

Description of amendment request: The notice relates to your October 3, 1995, application to amend the Technical Specifications to remove the Limiting Condition for Operation (LCO) and Surveillance Requirements for the loss-of-normal power (LNP) trip function from Tables 3.2.2 and 4.2.1 and insert new LCO 3.2.F and Surveillance Requirement 4.2.F. In addition, the proposed amendment will add a new table to specify the required LNP instrumentation for each bus, will update the Table of Contents, will make some editorial changes, and will revise the associated Bases section.

Date of publication of individual notice in **Federal Register:** December 4, 1995 (60 FR 62111).

Expiration date of individual notice: January 3, 1996

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: July 3, 1995

Brief description of amendments: The amendment temporarily adds new Action Statements 3.8.1.1.f and 3.8.1.1.g to Technical Specification 3.8.1.1, "A.C. Sources - Operating," to provide a method of responding to sustained degraded voltage. Also, Bases 3/4.8.1, 3/4.8.2, and 3/4.8.3 (≥A.C. Sources," "D.C. Sources," and "Onsite Distribution

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Systems," respectively) are being revised to provide guidance on how and why degraded offsite power voltage and the number of startup transformers in service affect compliance to GDC 17 and to give the basis for the additional action statements.

Date of issuance: November 28, 1995

Effective date: November 28, 1995

Amendment Nos.: Unit 1 - Amendment No. 102; Unit 2 - Amendment No. 90; Unit 3 - Amendment No. 73

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39431) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 30, 1994, as supplemented August 4, 1995.

Brief description of amendments: This application upgrades the current custom Technical Specifications (TS) for Dresden and Quad Cities to the Standard Technical Specifications contained in NUREG-0123, "Standard Technical Specification General Electric Plants BWR/4." This application upgrades only Section 3/4.2, "Instrumentation."Date of issuance: November 20, 1995

Effective date: Immediately, to be implemented no later than June 30, 1996.

Amendment Nos.: 142, 136, 164, and 160

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45177) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IllinoisDocket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: September 17, 1993, as supplemented July 20, 1995.

Brief description of amendments: This application upgrades the current custom Technical Specifications (TS) for Dresden and Quad Cities to the Standard Technical Specifications (STS) contained in NUREG-0123, "Standard Technical Specification General Electric Plants BWR/4." This application upgrades only Section 3/4.7, "Containment Systems."

Date of issuance: November 27, 1995

Effective date: Immediately, to be implemented no later than June 30, 1996, for Dresden Station and June 30, 1996, for Quad Cities Station.

Amendment Nos.: 143, 137, 165, 161

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39433) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 12, 1995, as supplemented by letter

dated June 29, 1995

Brief description of amendments: The amendments would revise and clarify portions of Technical Specification Section 6.0, "Administrative Controls."

Date of Issuance: December 1, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 211, 211, and 208

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14020) The June 29, 1995, letter provided clarifying information that did not change the scope of the January 12, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 1, 1995No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: September 1, 1995, as supplemented by letter dated November 15, 1995

Brief description of amendments: The amendments revise Technical Specification (TS) 6.9.2 to include references to updated or recently approved mathodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. The subject references have previously been reviewed and approved by the NRC staff.

Date of Issuance: December 4, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 212, 212, 209

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 1995 (60 FR 52928) The November 15, 1995, letter provided clarifying information that did not change the scope of the September 1, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995, as supplemented by letter dated October 4, 1995

Brief description of amendments: These amendments concern revising certain surveillance intervals and allowable outage times for the RPS and ESFAS equipment.

Date of issuance: November 29, 1995

Effective date: November 29, 1995Amendment Nos. 179 and 173Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 25, 1995 (60 FR 54720) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 1995 No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 24, 1995, as supplemented July 24, 1995

Brief description of amendment: The amendment revises the Technical Specifications to extend the test interval for the source range neutron flux instrumentation from 7 days prior to startup to 6 months prior to startup.

Date of Issuance: November 24, 1995

Effective date: As of its date of issuance, to be implemented within 30 days.

Amendment No.: 199

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32365) The July 24, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 24, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 14, 1993, supplemented April 12, 1994

Brief description of amendment: The amendment revised the technical specifications (TSs) to include wording consistent with 10 CFR Part 20, and to deleted TSs governing miscellaneous radioactive material sealed sources.

Date of issuance: November 28, 1995

Effective date: November 28, 1995

Amendment No.: 174

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46237) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: July 24, 1995, as supplemented by letter dated October 30, 1995.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to reactor coolant system leakage. Specifically, the amendment deletes Table 3.4-1, "Reactor Coolant System Pressure Isolation Valves" from the Seabrook Station, Unit No. 1 TS section 3.4.6.2. Also, reference to Table 3.4-1 is deleted from Limiting Condition for Operation 3.4.6.2 f and from Surveillance Requirement 4.4.6.2.2. The information contained in Table 3.4-1 is to be relocated to the Technical Requirements Manual. Additionally, a footnote providing certain exceptions from the requirements of SR 4.4.6.2.2d for the RHR Pump A and RHR Pump B Suction Isolation Valves previously located on Table 3.4-1 is relocated as a footnote to SR 4.4.6.2.2d.

Date of issuance: November 28, 1995

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 44

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45180). The licensee's letter dated October 30, 1995, provided a minor revision to the application that was within the scope of the original notice and did not change the initial proposed no significant hazards consideration determination. The October 30, 1995, letter also contained a request for an additional change that will be addressed separately.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 20, 1995

Description of amendment request: The amendment modifies the Appendix A Technical Specifications for the Engineered Safety Features Actuation System Instrumentation. Specifically, the amendment revises the Seabrook Station Technical Specifications to relocate Functional Unit 6.b, "Feedwater Isolation - Low RCS T_{avg} Coincident with a Reactor Trip" from Technical Specification 3.3.2. "Engineered Safety Features Actuation System Instrumentation" to the Technical Requirements Manual which is a licensee controlled document.

Date of issuance: November 29, 1995

Effective date: As of its date of issuance, to be implemented within 60 days.

Amendment No.: 45

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 24, 1995 (60 FR 54524). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 7, 1995.

Description of amendment request: The amendment increases the temperature limit, as specified by the

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footnotes to Technical Specification Surveillance Requirement 4.4.7 and to Table 3.4-2, above which reactor coolant sampling and analysis for dissolved oxygen is required and dissolved oxygen limits apply.

Date of issuance: November 29, 1995

Effective date: November 29, 1995

Amendment No.: 46

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37098). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 8, 1995

Brief description of amendment: The amendment modifies Surveillance Requirement (SR) 4.5.1.c and deletes Technical Specification (TS) 3/4.8.4.3, "AC Circuits Inside Containment." The changes to SR 4.5.1.c clarify the requirements for securing the safety injection accumulator isolation valve breakers (3SIL*MV8808A, B, C, and D) in the tripped position for the applicable modes. The amendment also deletes TS 3/4.8.4.3 since reasonable assurance is provided to protect the electrical penetrations and penetration conductors against an overcurrent condition and single failure of a circuit breaker.

Date of issuance: November 29, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 121

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39444) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: June 23, 1995

Brief description of amendment: This amendment involves a one-time change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) system, Residual Heat Removal Service Water (RHRSW) System, the Suppression Pool Cooling, the Suppression Pool Spray, and Low Pressure Coolant Injection modes of the Residual Heat Removal System, and Core Spray System to be extended from 3 and 7 days to 14 days during the Unit 2 refueling outage scheduled to begin in January 1996. This proposed extended AOT allows adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

Date of issuance: November 30, 1995

Effective date: November 30, 1995

Amendment No. 70

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39448) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1995No significant hazards consideration comments received: No

*Local Public Document Room location:*Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 3, 1995, as supplemented April 12, 1995, and November 20, 1995.

Brief description of amendment: The amendment revises the TS to extend the calibration frequency for the following:

(1) Containment water level monitor instrumentation (specified in TS Table 4.1-1)

(2) Containment building ambient temperature sensors (specified in TS Table 4.1-1)

(3) Seismic monitoring instrumentation (specified in TS Table 4.10-2)

In addition, the amendment added a new surveillance requirement to TS Table 4.1-1 for testing the core exit thermocouples.

These changes allow operation on a 24-month fuel cycle and follow the guidance provided in Generic letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Date of issuance: December 1, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 164

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24917) The April 12 and November 20, 1995, letters provided clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 27, 1995

Brief description of amendment: The amendment changes the Technical Specifications to incorporate updated pressure vs. temperature operating limit curves. .

Date of issuance: November 28, 1995

Effective date: As of the date of issuance to be implemented within 60 days

Amendment No.: 88

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47624) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:*Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 31, 1994, supplemented by letters dated August 29, and October 16, 1995.

Brief description of amendment: This amendment changes Technical Specification (TS) 3.5.1, "ECCS -

Operating," and associated Bases, to establish a new allowed out-of-service time. Action c.2 for TS 3.5.1 allows any one Low Pressure Coolant Injection subsystem, or one Core Spray subsystem, to be inoperable in addition to an inoperable High Pressure Coolant Injection system, for 72 hours.

Date of issuance: November 30, 1995

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 89

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29631).The supplemental letters did not change the NRC staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: March 24, June 9, and June 30, 1995

Brief description of amendment: The amendment revised the Technical Specifications to allow a one-time extension for the performance of certain Surveillance Requirements (SRs). Affected SRs include penetration leak rate testing, valve operability testing, instrument calibration, response time testing, and logic system functional tests. The proposed changes are to support refueling outage 5 scheduled to begin no later than February 15, 1996.

Date of issuance: November 29, 1995

Effective date: November 29, 1995

Amendment No. 75

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24919) and August 16, 1995 (60 FR 42612)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:*Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 21, 1994

Brief description of amendment: The amendment revised Technical Specification 3/4.6.1.2, "Primary Containment Leakage," and its associated Bases to reflect the partial exemptions to the requirements of 10 CFR Part 50, Appendix J, Sections III.A.5(b)(2), III.B.3, III.C.3, III.A.1(d), III.D.1(a), and III.D.3 that were granted by the NRC on December 4, 1995.

Date of issuance: December 8, 1995

Effective date:]December 8, 1995

Amendment No.: 76

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42611) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 28, 1995

Brief description of amendment: The amendment clarifies the limiting condition for operation for TS 3.8.1.1 and 3.8.1.2 from "independent" circuit to "qualified" circuit; explains in the Bases the requirements for operability of an offsite circuit; deletes the STAGGERED TEST BASIS scheduling requirement to perform emergency diesel generatorsurveillances; explains in the Bases an acceptable method for verification of Emergency Diesel Generator speed for surveillance requirements (SR) 4.8.1.1.2.a.4 and 4.8.1.1.2.c.4; removes a surveillance test extension that has expired for SR 4.8.1.1.1.b; adds an exception for SR 4.8.1.1.2.c.5 and 4.8.1.1.2.c.7 to SR 4.8.1.2; and revises Bases 3.0.5 to reflect the clarification from "independent" circuit to "qualified" circuit.

Date of issuance: December 8, 1995

Effective date: December 8, 1995

Amendment No.: 203

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1995 (60 FR 56370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 2, 1995

Brief description of amendment: The amendment revises Technical Specification (TS) Section 5.0, "Design Features," by adding a site location description, removing site area maps, removing containment and reactor coolant system design parameters, removing the description of the meteorological tower location, removing component cyclic or transient limits, and revising the fuel assembly description to include the use of ZIRLO clad fuel rods.

Date of issuance: December 8, 1995

Effective date: December 8, 1995

Amendment No.: 204

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1995 (60 FR 56371) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 23, 1995

Brief description of amendment: The amendment revises Technical

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Specification (TS) 4.1.3.1.2, 4.4.6.2.2.b, 4.4.3.2, 4.6.2.1.d, 4.6.4.2, and Table 4.3-3 in accordance with guidance provided in NRC Generic Letter (GL) 93-05, "Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operations." Additionally, the amendment revises TS 4.1.1.1.1, 4.1.1.2, 3/4.1.3.1 and the associated Bases to implement portions of NUREG-1431, "Standard Technical Specifications - Westinghouse Plants."

Date of issuance: December 7, 1995
Effective date: December 7, 1995
Amendment No.: 105
Facility Operating License No. NPF-30. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45187). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 13th day of December 1995. For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 95–30755 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–F

Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR–0058, Revision 2; Issuance, Availability

The Nuclear Regulatory Commission has recently published "Regulatory Analysis Guidelines of the Nuclear Regulatory Commission," NUREG/BR–0058, Revision 2. For over 20 years the NRC has conducted regulatory value-impact analyses to determine whether there is an adequate basis for imposing new requirements on licensees. In January 1983, the NRC first published its Regulatory Analysis Guidelines (NUREG/BR–0058) in order to clarify and formalize its existing value-impact guidance for the analysis of regulatory actions. Revision 1 to NUREG/BR–0058 was issued in May 1984 to include appropriate references to NUREG/CR–3568; a handbook that provided implementation guidance to the NRC staff for the policy set forth in the Guidelines.

In August 1993, the NRC published a draft version of the Guidelines, Revision 2, and invited public comment on the draft report. This revision reflects (1) the NRC's accumulated experience with implementing the previous Guidelines; (2) changes in NRC regulations and procedures since 1984, especially the backfit rule (10 CFR 50.109) and the Policy Statement on Safety Goals for the Operation of Nuclear Power Plants (51 FR 30028, August 21, 1986); (3) advances and refinements in regulatory analysis techniques; (4) regulatory guidance for Federal agencies issued by the Office of Management and Budget (OMB); and (5) procedural changes designed to enhance NRC's regulatory effectiveness.

In the draft report, the NRC indicated that a review and analysis of the dollar per person-rem conversion factor policy was ongoing and until its completion, the existing conversion factor policy would remain operative. The conversion factor is a central consideration because it is the basis for translating radiological exposure to a monetary value and, as such, allows direct comparison between the potential health and safety benefits and the costs of a proposed regulatory initiative. The staff's reevaluation has now been completed, and the Commission has decided to implement a $2000 per person-rem conversion factor, subject it to present worth considerations, and limit its scope solely to health effects. This is in contrast to the previous policy and staff practice of using an undiscounted $1000 per person-rem conversion factor which served as a surrogate for all offsite consequences (health and offsite property).

The new conversion factor policy is based on a relatively simple and straightforward logic in which the dollar per person-rem conversion factor is defined as the product of the dollar value of the health detriment and a risk coefficient that establishes the probability of health effects as a result of low doses of radiation. In the NRC's formulation, the value of the latter term is on the order of 7×10^{-4} per rem which includes allowances for fatal cancers, nonfatal cancers, and severe genetic effects. The national and international bodies (NCRP, ICRP) directly responsible for evaluating and recommending a risk coefficient for the total health detriment are all in close agreement, and NRC has adopted their recommendations. For the dollar valuation of the health detriment, the NRC has adopted $3 million as a representative value. This estimate is consistent with OMB's best estimate and an extensive literature review performed by the NRC. The resulting $2000 conversion factor was derived by multiplying these two factors (7×10^{-4} and $3 million) and expressing the result with one significant digit.

In addition, to provide meaningful summations of the costs and benefits that accrue over time, the dollar valuation of person-rem are to be expressed on a present-worth basis. Based on OMB guidance, present-worth calculations are to use the recommended discount rate specified in the latest version of OMB Circular A–94. This circular was most recently updated in late 1992 and specifies the use of a 7-percent real discount rate.

The final change in conversion factor policy concerns the treatment of offsite property consequences. The $2000 conversion factor is now clearly defined as the value of the health effects associated with a person-rem of dose. As such, it can no longer be used as a surrogate value for other consequences that could be attributable to offsite radiological releases or exposures. Thus, in those regulatory applications where offsite property consequences could result, these consequences would have to be calculated separately, and incorporated into the overall value-impact assessment.

The net effect of this revised conversion factor policy on the bottom-line value-impact results is mixed. In most regulatory applications the only consequence of radiological exposure is health effects. As a result, the dollar valuation of a person-rem would shift from an undiscounted $1000 to a $2000 conversion factor which would be subject to present worth calculations. In these circumstances, the doubling of the conversion factor and discounting tend to cancel each other. The differential in total dollar valuation is not of major significance and no improvement or change in regulatory decisions is expected. However, there are select circumstances where improvements in regulatory decisionmaking are possible. In regulatory applications involving certain severe power reactor accidents, offsite property consequences are an expected outcome. Under the new policy, an additional dollar allowance would need to be included, and in these instances the change in total dollar value could be important to the regulatory decision.

The new conversion factor policy has been incorporated in this final version of the Guidelines without the opportunity for public comment. This position was adopted because the NRC was interested in avoiding further delay in publication of the Guidelines so that analysts will have the benefit of other areas of improved guidance. Furthermore, in most regulatory applications this policy shift will have no meaningful effect on bottom-line cost-benefit results. In addition, given that this policy will be included in regulatory analyses for specific rulemakings, the opportunity to comment on it also exists within the context of individual regulatory initiatives. Finally, these Guidelines are not regulations and are not legally binding on anyone and are merely intended to inform the analyst as to expected staff practice.

A more complete discussion of the basis and implications of the new person-rem conversion factor are provided in NUREG 1530, "Reassessment of NRC's Dollar Per Person-Rem Conversion Factor Policy" (to be published in late 1995). Members of the public who may wish to comment on this issue are encouraged to do so, and, on the basis of these comments, the NRC holds open the possibility of revising this policy in the future.

Copies of NUREG/BR–0058, Revision 2, as well as NUREG–1530 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Dated at Rockville, Maryland, this 11th day of December, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–30888 Filed 12–19–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1996, 34.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 14, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–30895 Filed 12–19–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179;
Rule 7d–1, SEC File No. 270–176, OMB Control No. 3235–0311;
Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is publishing the following summaries of collections for public comment.

Rule 31a–2 concerns preservation of records by registered investment companies and certain majority-owned subsidiaries thereof. The Commission periodically inspects the operations of all registered investment companies to ensure their compliance with the provisions of the Investment Company Act of 1940 ("the Act") and the rules thereunder. A significant portion of the time used in these inspections is spent reviewing the information contained in the books and records required to be preserved by Rule 31a–2. Each of the 4,902 respondents incur an average estimated 15.4 burden hours annually to comply with this requirement.

Rule 7d–1 specifies conditions under which a Canadian (or other foreign) management investment company may request an order from the Commission permitting it to register under the Act. The rule's information collection requirements seek to ensure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the company's shareholders or the Commission.

The Commission believes that three Canadian investment companies and one other foreign investment company have registered under Rule 7d–1 and are currently active. Apart from information collection requirements imposed on all registered investment companies (which are reflected in the information collection burdens applicable to those requirements), Rule 7d-1 imposes ongoing burdens to maintain in the United States records of the company and related records of its investment adviser and to update, as necessary, a list of affiliated persons of the company, investment adviser, and principal underwriter. The four companies and their associated persons spend approximately 101 hours annually complying with the requirements of the rule. This estimate is a revision of the 75 burden hours currently allocated to Rule 7d–1. The revision reflects the inclusion of an additional respondent and the Commission staff's administrative experience with the rule.

Canadian and other foreign investment companies have not sought to register under the Act pursuant to Rule 7d–1 in the past three years. If a company were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens of approximately 90 hours on the company and its associated persons. Since no fund has sought to register under the Act pursuant to Rule 7d–1 in the last three years, the Commission is not including those burdens in its calculation of the annual hours burdens.

After registration, a foreign company may file a supplemental application seeking special exemptive relief from provisions of the Act based on the company's particular circumstances. Because such filings are not mandated by Rule 7d–1 and are made at a company's discretion, no burden hours are allocated for such applications.

Form N–14 is the form for registration of securities to be issued by investment companies registered under the Act in business combination transactions

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specified in Rule 145(a) and exchange offers. There are approximately 95 registrants filing annually on Form N–14. Approximately 58,900 hours are used to meet the requirements of Form N–14. This represents 620 hours per registrant per year.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive study or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondent, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: December 13, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30657 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36589; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 6 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

December 13, 1995.

On November 13, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants") [1] submitted to the Commission proposed Amendment No. 6 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] Amendment No. 6 would extend the effectiveness of the Plan through December 29, 1995. On November 13, 1995, the Commission partially approved Amendment No. 6 to the Plan by extending its effectiveness through December 12, 1995.[3] The present order approves the remainder of the proposal by extending the effectiveness of the Plan through December 29, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[4] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission has extended the effectiveness of the Plan six times since then to allow the Participants to trade pursuant to the Plan while they finalize their negotiations for revenue sharing under the Plan.[5]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995. Since January 1995, the Commission has expected the Participants to conclude their financial negotiations promptly and to submit a filing to the Commission that reflected the results of the negotiations. Moreover, the Commission's August 1995 Extension Order required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995.

The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly, and specifically requests that the Participants submit to the Commission, on or before December 20, 1995, a proposed revenue sharing amendment, along with a proposed amendment to extend the effectiveness of the Plan through the pending comment period for the financial proposal. The Commission currently believes it is appropriate to extend the effectiveness of the Plan through December 29, 1995, so that operation of the Plan may continue while the Commission awaits these amendments and prepares them for publication in the **Federal Register**.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on December 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. This order extends these exemptions through December 29, 1995. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.[6] The Commission continues to believe that this exemptive relief is appropriate through December 29, 1995.

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.) Philadelphia Stock Exchange, Inc. ("Phlx") and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are trade over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. for a more complete discussion of this Section 12(f) requirement, *see* November 1995 Extension Order, *infra*, at n. 2.

[3] Securities Exchange Act No. 36481 (November 13, 1995), 60 FR 58110 ("November 1995 Extension Order").

[4] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 5.

[5] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order"). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 ("January 1995 Extension Order"), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 ("August 1995 Extension Order"), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 ("September 1995 Extension Order"), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 ("October 1995 Extension Order"), and the November 1995 Extension Order, *supra* note 3.

[6] In the November 1995 Extension Order, the Commission extended these exemptions through December 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions through December 29, 1995. *See* letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated November 9, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, the October 1995 Extension Order, and the November 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by January 10, 1996.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period through December 29, 1995, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extension of the exemptive relief through December 29, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to submit the necessary filings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30913 Filed 12–19–95; 8:45 am]

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[Release No. 34–36587; File No. 600–28]

Self-Regulatory Organizations; ProTrade; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

December 13, 1995.

On September 22, 1994, ProTrade [1] filed with the Securities and Exchange Commission ("Commission") a Form CA–1 requesting exemption from registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 ("Exchange Act") [2] and Rule 17Ab2–1 thereunder.[3] Since the original filing, ProTrade has supplemented the information provided in its Form CA–1 filing with letters dated October 27, 1994, April 18, 1995, September 26, 1995, and October 2, 1995. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Introduction

ProTrade proposes to introduce an automated proprietary trading system ("System") for over-the-counter option securities. ProTrade's customers, the users of the System, will be authorized to enter bids and offers for these options into the System. The System will electronically match the bids and offers and provide execution. Instantaneously with each execution, the proceeds of the transaction will be calculated, and the accounts of the trading parties will be debited and credited in settlement.

Accordingly, the System will combine into a single electronic format several functions that usually involve the collective efforts of: (1) An option broker-dealer, (2) an options exchange, and (3) an options clearing agency. ProTrade asserts that this unity of functions will bring new efficiencies to the options marketplace.

ProTrade has represented that its System will not commence operations before ProTrade: (1) has registered as a broker-dealer pursuant to the Exchange Act and has become a member of the National Association of Securities Dealers, Inc. ("NASD"),[4] (2) has registered the option securities that are to be traded in the System pursuant to the Securities Act of 1933 ("Securities Act"),[5] and (3) has received a no-action letter from the Division stating that the Division will not recommend enforcement action if ProTrade does not register as a securities exchange pursuant to the Exchange Act.[6]

ProTrade believes that its proposed operations would involve few, if any, clearing agency activities within the meaning of the Exchange Act. ProTrade also believes that its proposed registration as a broker-dealer, coupled with the proposed registration of its options under the Securities Act, will satisfy the regulatory scheme of the Exchange Act. ProTrade has stated that such registrations under both the Exchange Act and the Securities Act would provide the necessary and appropriate safeguards to protect investors and the public interest.[7] Accordingly, it is ProTrade's belief that an exemption from registration as a

[1] ProTrade, located in Mercer Island, Washington, was incorporated under the laws of the State of Washington in January, 1986. Joseph A. Zajac, the company's President, owns 100% of ProTrade's stock.

[2] 15 U.S.C. 78q–1 (1988).

[3] 17 CFR 240.17Ab2–1 (1995).

[4] For the definitions of "broker" and "dealer" under the Exchange Act, *see* Sections 3(a) (4) and (5), 15 U.S.C. 78c(a) (4) and (5) (1988). *See also*, Section 15 of the Exchange Act, 15 U.S.C. 78o (1988), for broker-dealer registration requirements.

[5] 15 U.S.C. 77b(1) (1988). ProTrade's options are "securities" as that term is defined in Section 2(1) of the Securities Act, 15 U.S.C. 77b(1) (1988). As securities, they must be registered pursuant to Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 77f (1988), before they may be traded in interstate commerce.

The issuer of the options for purposes of the Securities Act will be ProTrade itself. For the definition of "issuer," *see* Section 2(4) of the Securities Act, 15 U.S.C. 77b(4) (1988).

[6] For definition of "exchange," *see* Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1) (1988). *See also*, Section 6 of the Exchange Act, 15 U.S.C. 78f (1988), for exchange registration requirements.

[7] ProTrade expects to have a net capital of $250,000, the amount that ProTrade states it will need to comply with Commission's uniform net capital rule, Rule 15c3–1, 17 CFR 240.15c3–1 (1995), as a broker-dealer that holds customers' funds (*i.e.*, a clearing broker-dealer). The Commission has taken no position on ProTrade's interpretation of its requirements under the uniform net capital rule.

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clearing agency under the Exchange Act is warranted.

II. Description of Proposal

A. The System

1. Background

ProTrade reports that it has designed and developed the System as a "stand-along" electronic operation that integrates order-entry, trade-matching, and execution functions with the back office functions of accounting and settlement. ProTrade states that it will interpose itself between the trading parties of each trade and that it will guarantee performance to each contraparty. The System will be made available to a list of qualified customers. As the operator of the System, ProTrade will derive revenues from customer fees on all transactions effected in the System.[8]

2. Options Securities

The System is designed to process over-the-counter options on equities, equity indexes, foreign currencies, and interest rates. ProTrade plans to have two classes, Class A and Class B, of such options. Class A options will be uncertificated, European-style put and call options that will be cash settled and that will expire on the last trading day of the chosen month of expiration.[9] Class B options will be uncertificated put and call options that will have no standard terms and that will be individually negotiated by the trading parties.

3. Customers

As discussed below under Participation Standards, ProTrade will screen its prospective customers to determine whether they meet certain financial and operational standards.[10] Applicants who fail to meet ProTrade's standards will be denied customer status and therefore will be denied access to the System.[11] In general, ProTrade expects to have a sophisticated customer base including professional investors and financial institutions. Each customer will be provided with the System's proprietary software, which the customer may use on a personal computer for the purpose of entering orders and for performing other tasks within the System. ProTrade expects that customers will be able to connect with the System either by: (1) a dial-up telephone line using a modem or (2) a leased line. ProTrade will provide each customer with a unique identification number and a password that will allow access to the System.

4. Operations

The System will keep a file of its customers' outstanding bids and offers sorted by price and time of receipt. The bids and offers will be displayed in a montage or array, and customers will be able to cancel or modify their orders at any time prior to execution. Bids and offers at the same price will be anonymously matched by the System and will be executed on a first-in, first-out basis. The System will accept market orders, limit orders, stop orders, and market if touched orders.

The System will be designed to calculate balances and to settle accounts immediately (or within a few seconds) after every execution. ProTrade states that each order will be individually processed by the System without netting.[12] Settlement will consist of book-entry debits or credits to the customer's account with the customer's account being part of ProTrade's segregated broker-dealer bank account. As a means of protection, the System is designed to reject any order unless the account of the customer that is entering the order has sufficient equity to satisfy the order's premium payment or has the required collateral.

B. System Safeguards

1. Participation Standards

Customers authorized by ProTrade to use the System will be required to meet initial and continuing financial and operational standards, as may be determined by the ProTrade Board of Directors and administered by ProTrade's management.[13] Under these standards, customers will be screened for margin purposes to determine their creditworthiness. Determining factors will be the customers' financial positions and their knowledge and experience in trading options and other derivative products.

ProTrade will require each applicant to disclose, at a minimum, the following information: (1) Trading experience with options and other derivatives, (2) annual income and net worth, (3) history of any account defaults or failures, (4) experience with computers, and (5) existing accounts with other brokers. ProTrade, when it deems it necessary, will obtain credit reports on an applicant. Based on its subjective review of the above criteria, ProTrade may grant or deny customer privileges. Customers also must agree in writing to comply with applicable law and with all of ProTrade's rules. ProTrade will reserve the right to deny access to the System to any person that, among other things, is the subject of a civil injunction or criminal conviction for breach of the laws governing securities or commodities futures.

2. The System's Data Backup

ProTrade reports that it will backup its data daily and that the System itself will have the ability to regenerate electronically all transactions since the previous backup. The System also will be supported by backup hardware that can be put on-line in a matter of seconds.

While customers will be provided with ProTrade's software, the customers will be responsible for their own electronic equipment or hardware. However, if a customer's equipment should break down, the customer could submit orders by telephone to ProTrade where a ProTrade employee will enter the orders.

3. Margin Payment/Collection

Once ProTrade has completed its broker-dealer registration, ProTrade will be subject to Section 7(c) of the Exchange Act, which governs broker-dealer margin requirements.[14] As a consequence of Section 7(c), ProTrade also will be subject to Regulation T of the Board of Governors of the Federal Reserve System ("Federal Reserve System"), which governs credit extended by broker-dealers,[15] and it will be subject to the NASD's rules governing minimum maintenance margin for option securities held in customers' accounts.[16]

ProTrade states that it will treat all of its customers as margin customers and will require margin collateral for all short positions. ProTrade indicates that its in-house initial margin requirements will be higher than the NASD's maintenance margin requirements to insure that customers have sufficient funds to cover immediate price moves after they open positions. ProTrade further states that it may reject customer applicants and that it may suspend active customers if they are found not to meet margin standards. ProTrade reports that it has programmed its System to reject any order that would open an option position if the subject account does not have the necessary funds or margin and if an existing account were to become undermargined. ProTrade also states that it may choose to vary customer trading limits, margin requirements, and position limits according to the qualifications of each customer.

ProTrade represents that its System is designed to calculate intraday the margin requirements for each account based upon changes in any bid or asked prices that affect an account. The System reportedly will provide ProTrade with real-time reports of under-margined accounts that will allow prompt margin calls and an enhanced ability to prevent account defaults.

4. Default

In the event that a customer's default becomes imminent, ProTrade states that at its discretion it may choose to prevent the default by assuming the customer's positions itself and by creating a hedged position in the cash market. However, ProTrade does not guarantee that it would undertake such bail-out procedures in the face of an imminent default and states that any such efforts would depend upon the circumstances.

In the event of the actual occurrence of a customer default, ProTrade states that it will guarantee full performance to the contraparties. ProTrade does not plan to create a clearing fund in support of this guarantee.[17] ProTrade reports that it is contemplating the formation of the other risk management facilities such as: (1) A blanket surety bond to be purchased by ProTrade from an insurance company or (2) a transactional insurance fee in the form of a refundable deposit that would be included in the cost of each trade.[18]

III. Public Interest Statement

ProTrade believes that exemption from clearing agency registration is critical to its entering the option securities business. ProTrade maintains that its business plan will provide investors with increased access to over-the-counter options through an integrated electronic transaction and margin system, which ProTrade claims will lower trading costs, create processing efficiencies, ensure more fairness and price transparency, and provide a complete audit trail.

ProTrade asserts that these efficiencies will eliminate the need for paperwork, will reduce the time required for order entry and for post-trade processing, and will shorten settlement cycles. Thus, ProTrade believes that its System will improve the option marketplace.

IV. Specific Request for Comments

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to develop a national clearance and settlement system through, among other things, the registration and regulation of clearing agencies.[19] This statutory scheme contemplates that (1) Clearing agencies will provide clearance and settlement functions consistent with statutory goals and (2) as self-regulatory organizations, clearing agencies will exercise certain regulatory functions in furtherance of other statutory goals.

In fostering the development of a national clearance and settlement system generally and in overseeing clearing agencies in particular, Section 17A authorizes and directs the Commission to promote and facilitate certain goals with due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.[20] Furthermore, Section 17A, as amended by the Market Reform Act of 1990, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.[21]

Section 17A(b)(1) of the Exchange Act[22] authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Historically, the Commission has granted newly registered clearing agencies temporary exemptions from specific statutory requirements imposed by Section 17A in a manner that achieves statutory goals.[23]

The Commission recognizes that clearing agencies pose some safety and soundness concerns to the marketplace. Accordingly, the Division has published standards for clearing agency

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[8] ProTrade has stated that it "will derive most of its revenues from typical 'discount' broker activities, *i.e.*, accepting orders for listed securities on behalf of customers." Letter from Joseph M. Zajac, President, ProTrade, to Eugene Lopez, Assistant Director, Division, Commission, at page 2 (October 15, 1993).

[9] As European-style options, no positions may be exercised before the expiration date.

[10] ProTrade has chosen the term "customers" for the users of its System, as distinct from participants, subscribers, members, or other similar terms.

[11] At this time, ProTrade has no written standards or criteria for acceptance of customers.

[12] Technically, this described form of post-trade processing is known as "trade-for-trade" clearing, the simplest form of clearing, which involves accounting for each trade on a contract by contract basis without netting or at least without the usual types of netting. This form of clearing contrasts with the more sophisticated forms of clearing such as "daily balance order" or "continuous net settlement" where clearing agencies net each of their participant's trades and each participant's money credits and debits in each security on a daily basis.

[13] At this time, ProTrade has no financial and operational standards for customers authorized to use its System.

[14] 15 U.S.C. 78g (1988).

[15] 12 CFR 220 *et seq.* (1995). *See, esp.*, § 19(f)(2) of Regulation T, 12 CFR 220.19(f)(2), which in general refers a broker-dealer's option margin requirements to the maintenance rules of the broker-dealer's self-regulatory organization ("SRO"). In ProTrade's case, the SRO would be the NASD.

[16] ProTrade will be subject to NASD margin requirements on its customers' accounts and specifically the margin requirements for options that are not issued by a registered clearing agency. These requirements are set forth in the NASD *Manual*, Rules of Fair Practice, Art. III, § 30(f)(2)(D)(iii).

[17] As a general rule, the Commission has recommended that a clearing agency have a clearing fund which: (1) Is composed of user contributions based on a formula applicable to all users; (2) is held in cash or highly liquid securities; and (3) is limited in purpose to protecting participants and the clearing agency from participant defaults and from unusual, significant clearing agency losses. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

However, on one occasion the Commission permitted a clearing agency, Delta Government Options Corp. ("Delta") to register and to operate as a clearing agency without a clearing fund. In Delta's case, the clearing agency's risk management system was deemed adequate, despite the lack of a clearing fund, because Delta had the financial backing of an affiliated corporation and had a substantial credit facility. Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 (order approving Delta's registration as a clearing agency).

[18] A transactional insurance fee differs from margin in several ways. In brief, margin is collateral deposited by a customer with a broker in connection with the specific purchase of specific securities, and margin requirements are governed by the Exchange Act and the rules and regulations thereunder as well as certain rules of the Federal Reserve Board and the appropriate self-regulatory organization. Under ProTrade's contemplated transactional insurance fee program, ProTrade would debit a customer's account a certain amount in connection with each transaction and later credit that amount back to the customer's account upon normal settlement of the transaction. Currently, ProTrade is considering a debit in the vicinity of 5% of the value of each transaction. As stated above, ProTrade has not yet decided if it will implement such a program.

[19] 15 U.S.C. 78q–1 (1988).

[20] For the legislative history of Section 17A of the Exchange Act, refer to Report of Senate Committee on Banking, Housing and Urban Affairs. Securities Acts Amendments of 1975, Report to Accompany S. 249, S. Rep. NO. 75, 94th Cong., 1st Sess. 4–6 (1975).

[21] Market Reform Act of 1990, § 5, amending § 17A(a)(2) of the Exchange Act, 15 U.S.C. 78q–1(a)(2) (1995 Supp.).

[22] 15 U.S.C. 78q–1(b)(1) (1988).

[23] *See, e.g.*, order approving the temporary registration of Government Securities Clearing Corporation ("GSCC") as a clearing agency where the Commission temporarily exempted GSCC from compliance with the Section 17A(b)(3)(C) requirement of the Exchange Act. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

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registration,[24] and it has exercised significant continuing oversight over all aspects of clearing agency operations and functions.[25] The market break of October 1989 and the market break of October 1991 demonstrated the central role of clearing agencies in the U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.[26] In light of the foregoing, the Commission believes that any applicant that requests an exemption from clearing agency registration should meet standards that are substantially similar to those standards required of registered clearing agencies in order to assure that the fundamental goals of Section 17A of the Exchange Act (*i.e.*, safe and sound clearance and settlement) will be achieved. Therefore, commentators are invited to address whether granting the proposed exemption to ProTrade (1) would further the development of a national clearance and settlement system, (2) would promote linked and coordinated clearing facilities (among options, futures, and other financial instruments), and (3) would promote the maintenance of fair competition.

Specifically, ProTrade's application raises the question of whether the establishment of multiple unlinked securities clearing agencies is consistent with Section 17A of the Act. One of the benefits of a single clearing agency is centralized default administration. Conversely, the introduction of multiple options clearing agencies, including options clearing operations that may seem *de minimis* relative to the overall market may have a fragmentation effect that could increase the risks entailed in liquidating defaulting customers. Commentators should discuss applicable law as well as the costs and benefits of single versus multiple clearing facilities for option securities, including whether the risk exposure to individual clearing organizations would be increased by the fragmentation of the clearing function. Commentators also should discuss the effects that stress to the marketplace (*e.g.*, high volume and high volatility) possibly could have on such a multiple clearing agency system.

B. Fair Competition

Section 17A of the Exchange Act requires the Commission, in exercising its authority under that section, to have due regard for the maintenance of fair competition among clearing agencies.[27] In addition, no clearing agency may be registered or granted an exemption from registration, if its rules "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the federal securities laws.[28] Therefore, the Commission must consider an applicant's likely effect on competition in its review of any application for registration as a clearing agency or for an exemption from such registration and must balance any benefits or hindrances to competition against any effects on the other statutory goals.[29]

The Commission invites commentators to address whether an exemption from registration as a clearing agency for ProTrade would result in increased competition among option broker-dealers and among options clearing agencies and whether such competition would, for example, result in the development of improved systems capabilities, the offering of new services, and the lowering of prices to customers. The Commission also invites commentators to address whether the proposal would impose any burden on competition that is inappropriate under the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by February 16, 1995. Such written data, view, and arguments will be considered by the Commission in deciding whether to grant ProTrade's request for an exemption from registration as a clearing agency. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–28. Copies of the application and all written comments will be made available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30907 Filed 12–19–95; 8:45 am]

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[24] Securities Exchange Act Release No. 16900 (June 17, 1980) 45 FR 41920 (order approving standards for clearing agency registration).

[25] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, National Securities Clearance Corporation, The Options Clearing Corporation, Pacific Securities Depository, Philadelphia Depository Trust Company, and Stock Clearing Corporation of Philadelphia).

[26] Division of Market Regulation, *The October 1987* Market Break (February 1988), Chap. 10 ("Clearance and Settlement"), *esp.* pp. 10–48 to 10–56; Division of Market Regulation, *Market Analysis of October 13 and October 16, 1989*, pp. 116–173 (December 1990).

[27] 15 U.S.C. 78q–1(a)(2) (1988).

[28] 15 U.S.C. 78q–1(b)(3)(I) (1988).

[29] *In Bradford National Clearing Corporation v. Securities and Exchange Commission*, 950 F.2d 1085, 1105 (D.C. Cir. 1978), the court said:

[T]o the extent the legislative history provides any guidance to the Commission in taking competitive concerns into consideration in its deliberations on the national clearing system, it merely requires the [Commission] to "balance" those concerns against all others that are relevant under the statute.

[30] 17 CFR 200.30–3(a)(16) (1994).

[Release No. 34–36578; File No. SR–Amex–95–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Notes

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 5, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 107B of the Amex Company Guide to provide greater flexibility for the listing of Equity-Linked Notes ("ELNs").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 1993 and December 13, 1993, the SEC approved amendments to Section 107 of the Amex Company Guide ("Section 107") to provide for the listing and trading of ELNs.[1] ELNs are intermediate term, nonconvertible, hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. common stock ("linked security"). In order to list an ELNs product, Section 107B currently requires the linked security to meet one of the following criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	20 million shares.
$500 million	and	80 million shares.

Amex now proposes to amend Section 107(B) to provide for greater flexibility in the listing criteria for ELNs. The proposed rule change will lower the trading volume requirements criteria such that ELNs may be listed where the linked security meets one of these revised criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	10 million shares.
$500 million	and	15 million shares.

The Exchange believes this revision strikes an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the markets for the underlying linked security in view of the requirements that the linked security have a large minimum market capitalization and a fairly large trading volume over the preceding twelve months. The Exchange will continue to require that the issuer have a minimum tangible net worth of $150 million and that the total issue price of the ELNs combined with all of the issuers's other listed ELNs shall not be greater than 25% of the issuer's tangible net worth at the time of issuance. The rule change will also delete the current provision of the rule that allows the Exchange to list ELNs that do not meet these criteria if the Division of Market Regulation of the SEC concurs.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–48 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30911 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release Nos. 32345 (May 20, 1993) and 33328 (Dec. 13, 1993).

[Release No. 34–36585; File No. SR–Amex–95–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Gratuity Fund

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Admission of Members and Member Organizations section of its rules to require that all persons who are entitled to make an election to either "opt-in" or "opt-out" of participation in the

[2] 17 CFR 200.30–3(a)(12)(1994).

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Gratuity Fund must make such an election by March 29, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 16, 1995, the Commission approved a number of changes to the Amex Constitution and rules regarding membership structure and requirements, including significant changes to the Gratuity Fund.[1] The changes with respect to the Gratuity Fund increased the benefit to $125,000, subject to a "phase-in" schedule for new Participants, included an "active" requirement for participation, and expanded the categories of individuals who are included in the Gratuity Fund to include both regular and options principal member lessees, as well as options principal members and some lessors.

The changes also included a grandfathering provision with respect to the Gratuity Fund revisions.[2] All regular members and existing regular member lessors were "grandfathered" with respect to the "active" requirement (*i.e.*, they would be deemed to have met it, even if they were never active for a two-year period). Individuals who owned options principal memberships on May 16, 1995 were given a one-time opportunity to elect to "opt-in" or "opt-out" of the Gratuity Fund, and those who choose to "opt-in" are grandfathered with respect to the "active" requirement as well. An election to "opt-out" is irrevocable for the rest of the person's life, unless he or she subsequently buys a regular membership. In addition, those individuals who were either regular or options principal member lessees on May 16, 1995 have the right to "opt-out" of the Gratuity Fund for the duration of their lease (including any renewals).[3]

All individuals who have a right to "opt-in" or "opt-out" of the Gratuity Fund have received extensive written communications from the Exchange's Membership Services Department requesting that such individuals indicate their election thereof on the appropriate form(s). In addition, for a total of three weeks, staff members from the Membership Services Department were stationed in the Exchange lobby to answer questions and distribute forms and information, and signs have been posted on the trading floor alerting the affected membership of the need to notify the staff of their election. Notwithstanding this effort, as of November 7, 1995, almost 40% of eligible individuals[4] had not completed the necessary paperwork or indicated their election to the staff.

In order to efficiently administer the Gratuity Fund it is imperative that each eligible individual's status in this regard be definitively resolved. The lack of complete information has resulted in significant record keeping problems in terms of determining who is subject to an assessment upon a Participant's death, as well as the amount that should be assessed to other Participants.[5] Moreover, interpretative difficulties are presented by the death of an individual who has not yet made an election.

Accordingly, the Exchange is proposing to amend the Admission of Members and Member Organizations section of its Rules to require that all individuals who have a right to elect to "opt-in" or "opt-out" of the Gratuity Fund must make such election by March 29, 1996. An individual who does not make an election by that date will be conclusively deemed to have elected to "opt-out" of participation in the Gratuity Fund. This date has been selected to give the Exchange a period of time during which persons can receive ample warning of the new deadline.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from December 7, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(e)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

[1] See Securities Exchange Act Release No. 35723 (May 16, 1995); 60 FR 27353 (May 23, 1995) (File No. SR–AMEX–95–06).

[2] See Amex Constitution, Article IX, Section 23.

[3] New leases require lessee participation in the Gratuity Fund.

[4] As of November 7, 1995, 452 individuals had not completed the necessary paperwork or indicated their election to the staff. Subsequently, as a result of a concerted drive, an additional 216 individuals have indicated their election, leaving 236 individuals who have not done so as of December 7, 1995.

[5] Because the pool of Participants is now variable, the amount of each assessment is determined by dividing $125,000 by the number of Participants.

[6] The Exchange will take the following steps to notify affected persons of the deadline: A certified letter will be sent to the latest address for each such individual in the files of the Exchange's Membership Services Department, and if necessary a second follow-up certified letter will be sent to such address. In addition, unless an individual has previously responded to such written notification, if such person does business on the Floor of the Exchange and can be found on the Floor of the Exchange, an Exchange staff member will personally speak to the individual to inform him or her of the deadline. For all other individuals who have not responded to a written notification, to the extent the files of the Membership Services Department contain a telephone number for such individual, an Exchange staff member will place one telephone call to such number to attempt to orally notify the individual of the deadline.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(6).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–49 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30856 Filed 12–19–95; 8:45 am]

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[Release No. 34–36588; File No. SR–CBOE–95–83]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Adoption of Rule 9.24 and an Interpretation With Respect to Proposed Rule 9.24

December 13, 1995.

I. Introduction

On October 19, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 9.24 and to add Interpretation and Policy .01 thereunder with respect to the meaning and administration of proposed Rule 9.24.

The proposed rule change appeared in the **Federal Register** on November 9, 1995.[3] No comments were received on the proposed rule change. This order approves the CBOE's proposal.

II. Description

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list. The CBOE's proposal would also add an interpretation concerning the meaning and administration of proposed Rule 9.24 as well as serve as a reminder[4] that members and member organizations are subject to compliance with the relevant Federal Communications Commission ("FCC") and Commission rules relating to telemarketing practices.[5]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. Proposed Rule 9.24 and the interpretation thereunder require a specific practice, the maintenance of a do-not-call list. The purpose of maintaining such a list is to prevent members and member organizations from engaging in such manipulative acts as persistently calling investors who have expressed a desire not to receive telephone solicitations.

The Commission also believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to protect investors and the public interest. Proposed Rule 9.24 and the interpretation thereunder protect investors and the public interest by enforcing members' and member organizations' compliance with investors' desire not to receive such calls. In addition, the proposed interpretation reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to adopt a new rule concerning telephone solicitation and record-keeping is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–95–63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30909 Filed 12–19–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36455 (November 3, 1995), 60 FR 56624 (November 9, 1995).

[4] The Commission notes that the CBOE intends to include this Interpretation in a Circular that will be distributed to members and member organizations.

[5] Pursuant to the Telephone Consumer Protection Act (1991), the FCC developed rules to protect the rights of telephone consumers while allowing legitimate telemarketing practices. The FCC rules include a requirement that a person or entity making telephone solicitations must maintain a do-not-call list. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act (1994) ("Prevention Act"), requires the Federal Trade Commission ("FTC") to adopt rules on abusive cold calling. The Prevention Act also requires the Commission to engage in its own rulemaking or, alternatively, to require the self-regulatory organizations to promulgate telemarketing rules consistent with the legislation.

[6] 15 U.S.C. 78f(b) (1988).

[Release No. 34–36590; File No. SR–CHX–95–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Agency Crosses Between the Disseminated Exchange Market

December 13, 1995.

On October 11, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the execution of agency cross transactions at a price between the disseminated Exchange market.[3] On October 17, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

Continued

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In a cross transaction, a member or member organization that holds an order to buy and an order to sell an equivalent amount of the same security executes the orders against each other.

[4] See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Team Leader, SEC, dated October 13, 1995. Amendment No. 1 corrected the

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The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36432 (Oct. 27, 1995), 60 FR 55873 (Nov. 3, 1995). No comments were received on the proposal.

Currently, Interpretation .01 to CHX Rule 23, Article XX, requires a CHX specialist to refrain from interfering with a floor-brokered agency cross [5] of 10,000 shares or greater that is to be effected at a price between the disseminated Exchange market.[6] The exchange proposes to amend this rule to require a CHX specialist to refrain from interfering with all floor-brokered agency crosses, *regardless of size*, at a cross price between the disseminated Exchange market. Under the Exchange's proposal, the specialist will continue to be obligated to satisfy all orders on the book with priority at the cross price.[7] Moreover, the proposed rule change will continue to permit the specialist to participate at the cross price if the specialist is willing to provide one side of the cross with a better price or if the member presenting the cross previously solicited the specialist's assistance in consummating any part of the transaction.

The Exchange believes that the proposed rule change will increase the possibility of immediate execution for agency crosses on the Exchange, which in turn will improve the Exchange's ability to compete for order flow and enhance the depth and liquidity of the Exchange market. Moreover, the Exchange believes that the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the Exchange and the proprietary trading operations of Exchange members and member organizations, including specialists.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)[8] and Section 11(a).[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is not inconsistent with the traditional auction market principle of customer priority as embodied in Section 11(a) of the Act.

The Commission believes that the proposed rule change should further competition among the exchanges,[10] as well as between the exchanges and other markets, and should increase the opportunities for the efficient execution of cross transactions without operating in a manner inconsistent with traditional auction market principles. The proposal only restricts specialists from interfering with crosses between the disseminated Exchange market under certain circumstances and continues to allow another member, including an order for the principal account of a member, to break up the cross.

The Commission believes that the proposal is not inconsistent with the auction market principles of time and price priority. As before, a member effecting a cross transaction at the prevailing bid or offer will continue to be required to obtain priority over all existing limit orders at that price and specialists will continue to be required to fill limit orders at the cross price, which have not been displayed in the quote. Moreover, the Commission believes that the proposal does not alter the safeguards provided in the current rule, which ensure that public customers are not disadvantaged. For example, the Commission notes that the proposed rule change does not change the opportunity for customer orders to receive price improvement: the specialist will continue to be allowed to participate at a better price.

Finally, the Commission does not believe that the proposed rule change will significantly reduce order interaction on the floor of the Exchange. Only a CHX specialist who does not have a displayed bid or offer at the cross price must refrain from participating in a cross transaction at that price. The proposed rule change does not affect the ability of specialists to participate at a better price or the ability of other interest in the trading crowd to participate. The Commission does not expect the proposed rule change to substantially impair price discovery or market liquidity.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–95–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30910 Filed 12–19–95; 8:45 am]

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text of Exhibit A to the filing, which sets forth the text of the proposed rule change, by adding a sentence that had been inadvertently omitted from Exhibit A as initially filed.

[5] For purposes of this rule, an "agency cross" is defined as a cross where neither the order to buy or sell is for the account of any member or member organization.

[6] *See* Securities Exchange Act Release No. 33708 (Mar. 3, 1994), 59 FR 11339 (File No. SR–MSE–93–05) (approving a proposed rule change to require that the CHX specialist refrain from interfering with a floor-brokered agency cross of 10,000 share or more at a cross price between the disseminated Exchange market).

[7] This requirement is to ensure that in situations where a limit order on the book has not been displayed in the quote, the specialist would be obligated to satisfy such limit orders with priority at the cross price.

[8] 15 U.S.C. § 78f(b).

[9] 15 U.S.C. § 78k(a).

[10] Several exchanges have similar rules prohibiting specialists from interfering with agency crosses when the cross is at a price inside the disseminated exchange market without regard to size. *See, e.g.*, Pacific Stock Exchange Rule 5.14(b) and Philadelphia Stock Exchange Rule 126.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–36581; File No. SR–NYSE–95–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Debt Securities

December 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 29, 1995, the New York Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its listing standards for Equity-Linked Debt Securities ("ELDS"). These listing standards are contained in Para. 703.21 of its Listed Company Manual. The amendments would allow the Exchange to list ELDS on securities, as described below, that have a market capitalization of $1.5 billion or $500 million, if such securities have annual trading volume of 10 million and 15 million shares, respectively.

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.[1] The purpose of the proposed rule change is to amend the trading volume criteria for the linked security, that is, the security on which the value of the ELDS is based. Currently, under Section 703.21 of the Listed Company Manual, in order to list an ELDS product, the linked security must meet one of the following criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	20 million shares.
$500 million	and	80 million shares.

The proposed rule change will lower the trading volume requirements criteria such that an ELDS may be listed provided the linked security meets one of these revised criteria:

Market capitalization		Annual trading volume
$3 billion	and	2.5 million shares.
$1.5 billion	and	10 million shares.
$500 million	and	15 million shares.

The Exchange believes the new criteria will provide it with greater flexibility to list these types of securities. The rule change will also delete the current provision of the rule that allows the Exchange to list ELDS that do not meet these criteria if the Division of Market Regulation of the SEC concurs. With the increased flexibility that the new numerical listing criteria will supply, it will no longer be necessary to conduct such a case-by-case review of ELDS listings.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–39 and should be submitted by January 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30912 Filed 12–19–95; 8:45 am]

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[1] *See* Securities Exchange Act Release No. 33468 (Jan. 13, 1994). These listing standards were subsequently revised in Securities Exchange Act Release Nos. 33841 (March 31, 1994) and 34985 (Nov. 18, 1995).

[2] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36577; File No. SR-Phlx–95–61]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Reduction of the Value of the Phlx National Over-the-Counter Index

December 12, 1995.

I. Introduction

On September 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the value of the Phlx's National Over-the-Counter Index ("Index") option ("XOC") to one-half of its present value.[3] The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks trading over-the-counter. The other contract

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The Exchange will accomplish this reduction in value by doubling the divisor used in calculating the Index.

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specifications for the XOC remain unchanged.

The proposed rule change appeared in the **Federal Register** on November 14, 1995.[4] No letters were received in response to the Commission's solicitation for comment on the proposed rule filing.[5] This order approves the Phlx's proposal.

II. Background and Description

The Phlx began trading the XOC in 1985.[6] The Index was created with a value of 150 on its base date of September 28, 1984, which rose to 548 in June 1994, and to 700 in June 1995. On September 14, 1995, the Index value was 868. Thus, the Index value has increased significantly, especially during the last year. Consequently, the premium for XOC options has also risen.

As a result, the Phlx proposes to conduct a "two-for-one split" of the Index, such that the value will be reduced by one-half. In order to account for the split, the number of outstanding XOC contracts will be doubled, such that for each XOC contract currently held, the holder will receive two contracts at the reduced value, with a strike price of one-half the original strike price. For instance, the holder of an XOC 800 call will receive two XOC 400 calls. In addition, the Phlx will double to the position and exercise limits applicable to the XOC, from 17,000 contracts to 34,000 contracts until the last expiration then trading, which is the June 1996 expiration.[7] According to the Phlx, this procedure is similar to that employed with equity options when the underlying security is subject to a two-for-one stock split, as well as that used for the recent split of the Phlx's Semiconductor Index.[8]

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower Index value, pursuant to Phlx Rule 1101A. The Phlx will announce the effective date by way of an Exchange memorandum to its membership, which will also serve as notice of the strike price and position limit changes.[9]

According to the Phlx, the purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, according to the Phlx, a near-term, at-the-money call option series currently trades at approximately $1,200 per contract. After the Index split, the same option series (once adjusted), with all else remaining equal, could trade at approximately $600 per contract. Thus, while certain investors and traders may currently be impeded from trading at such levels, a reduced Index value should encourage additional investor interest.

The Phlx believes the XOC options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying over-the-counter stocks. By reducing the value of the Index such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. According to the Phlx, this should attract additional investors, and, in turn, create a more active and liquid trading environment.

III. Summary of Comments

The Phlx received one comment letter opposing the proposed rule change from a financial planner at Smith Barney Shearson.[10] The issues raised therein and the Phlx's response thereto[11] are discussed below.

According to the commenter, one of the primary inducements to trading the Index is its volatility. If the Index is split in half, however, the commenter believes that investors will be unnecessarily forced to trade twice as many contracts in order to maintain their current degree of leverage. In response, the Phlx stated that a lower priced, less volatile Index will better serve the needs of investors as the Exchange will be able to more timely update quotes, particularly during periods of active market conditions.

The commenter also opposes the proposed rule change because he believes that splitting the Index will reduce its value to an inappropriately low level. In this regard, the commenter suggests alternative split levels (*e.g.*, a 4 for 3 split, or a 3 for 2 split) as a less problematic approach. In this manner, according to the commenter, the Index will retain a greater percentage of its current value. The Phlx responded that splitting the Index in a manner other than two-for-one would result in unnecessary calculations and adjustments to the divisor, position limits, and strike prices and would thereby create investor confusion and excessive system demands.

Finally, the commenter suggests that the Exchange postpone the splitting of the Index to provide investors with a reasonable amount of time to adjust their positions as a result of the proposed rule change. In this regard, the Commission notes that to avoid investor confusion the Phlx has stated that it intends to provide market participants with adequate notice of the change to the Index value.[12]

IV. Discussion

After careful consideration of the comment letter and the Phlx's response thereto, the Commission has decided to approve the proposed rule change. For the reasons discussed below, the Commmission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[13] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement to protect investors and the public interest and to remove impediments to a free and open securities market. By reducing the value of the Index, the Commission believes that a broader range of investors will be provided with a means of hedging their exposure to the market risk associated with the underlying over-the-counter stocks. Similarly, the Commission believes that reducing the value of the Index could help attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are identical to the approach used to adjust outstanding options on stocks that have undergone a two-for-one stock split.

The Commission believes that doubling the Index's divisor will not have an adverse market impact or make trading in XOC options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner (except for the change in the divisor). The Phlx's surveillance procedures will also remain the same.

Lastly, for the reasons discussed below, the Commission also believes that the commenter's criticisms of the rule proposal have been adequately addressed by the Phlx's response. First, issues regarding the appropriate value of an index are business decisions typically left to the discretion of an exchange, particularly in the absence of Commission concerns regarding potential manipulation, investor confusion, or other regulatory concerns. Second, the Commission believes that the Exchange's proposal to adjust the Index in a manner similar to a two-for-one stock split provides a simple, orderly, and efficient means to effect the adjustment. Third, the Commission believes that the Phlx will be able to provide adequate notice to market participants regarding to change to the Index value prior to its implementation. As noted above,[14] the Phlx has already indicated its intent, subject to Commission approval, to adjust the Index value after the December expiration.

V. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to reduce the value of the Index to one-half of its present value is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–95–61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30855 Filed 12–19–95; 8:45 am]

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[4] See Securities Exchange Act release No. 36460 (November 6, 1995), 60 FR 57256 (November 14, 1995).

[5] The Commission notes, however, that the Phlx forwarded to the Commission one comment letter it received prior to filing this rule proposal. This letter and the Phlx's response is discussed below. See *infra* note 10 and accompanying discussion.

[6] See Securities Exchange Act Release Nos. 21576 (January 18, 1985), 50 FR 3445 (January 24, 1985); and 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (File No. SR–Phlx–84–28).

[7] Separately, the Exchange is proposing to increase the XOC position and exercise limits to 25,000 contracts. See SR–Phlx–95–38.

[8] See Securities Exchange Act Release No. 35909 (July 20, 1995), 60 FR 38387 (July 26, 1995) (File No. SR–Phlx–95–41).

[9] In this regard, the Commission notes that in a memorandum dated November 20, 1995, the Phlx provided notice to its members and member organizations of its intention to reduce the value of the XOC by one-half.

[10] See letter from Barry J. Weisberg, Vice President, Smith Barney Shearson, Inc., to Andy Kolinsky, Vice President, Phlx, dated August 1, 1995. The Commission notes that the commenter also raised other concerns regarding the trading of the XOC unrelated to the rule proposal which are not discussed herein.

[11] See letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Barry J. Weisberg, Vice President, Smith Barney Shearson, Inc., dated November 20, 1995.

[12] See supra note 9.

[13] 15 U.S.C. 78f(b) (1988).

[14] See supra note 9.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21600; File No. 812–9525]

Connecticut General Life Insurance Company, et al.

December 13, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Connecticut General Life Insurance Company ("CG Life"), CG Variable Life Insurance Separate Account II (the "Account"), and CIGNA Financial Advisors, Inc. ("CIGNA").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applciants seek an order to permit them to deduct a charge that is reasonable in relation to CG Life's increased federal income tax burden resulting from the receipt by CG Life of premiums in connection with certain flexible premium variable life insurance contracts issued by CG Life, the Account and any other separate account established in the future by CG Life (the "Other Accounts," collectively, with the Account, the "Accounts").

FILING DATE: The application was filed on March 13, 1995 and amended and restated on August 1, 1995 and December 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Robert A. Picarello, Esq., Connecticut General Life Insurance Company, 900 Cottage Grove Road, Hartford, Connecticut 06152.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. CG Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of CIGNA Holdings, Inc., which is, in turn, wholly owned by CIGNA Corporation. The Account, established by CG Life on July 6, 1994 pursuant to Connecticut law, is registered with the Commission as a unit investment trust. The assets of the Account are divided among subaccounts, each of which will invest in shares of one of five registered investment companies (the "Funds"). The funds currently offer sixteen portfolios for investment. Each of the Funds is an open-end diversified management investment company under the 1940 Act. The Other Accounts will be organized as unit investment trusts and will file registration statements under the 1940 Act and the Securities Act of 1933.

2. CIGNA will serve as the distributor and the principal underwriter of the Existing Contracts, described below. Applicants state that they expect CIGNA also to serve as the distributor and the principal underwriter of the Future Contracts, described below. CIGNA is a wholly owned subsidiary of Connecticut General Corporation, CIGNA, which is, in turn, a wholly owned subsidary of CIGNA Corporation. CIGNA a member of the National Association of Securities Dealers, Inc., is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and as an investment adviser under the Investment Advisers Act of 1940.

3. The Existing Contracts are flexible premium variable life insurance policies, and will be issued on a group or individual basis. The Future Contracts will be substantially similar in all material respects to the Existing Contracts (the Future Contracts, collectively, with the Existing Contracts, the "Contracts"). The Contracts will be issued in reliance on Rule 6e–3(T)(b)(13)(i)(A) under the 1940 Act. Applicants state that CG Life will deduct 1.15% of each premium payment made under the Contracts to cover CG Life's estimated cost for the federal income tax treatment of deferred acquisition costs.

4. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof.

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Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

5. The amount of expenses that must be capitalized and amortized over ten years rather than deducted in the year incurred is based solely upon "net premiums" received in connection with certain types of insurance contracts. Section 848 of the Code defines "net premium" for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

6. The amount of general expenses that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants state that the Contracts are "specified insurance contracts" that fall into the category of life insurance contracts, and under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

7. Applicants state that CG Life's increased tax burden resulting from section 848 may be quantified as follows. For each $10,000 of net premiums received by CG Life under the Contracts in a given year, section 848 requires CG Life to capitalize $770 (7.7% of $10,000), and $38.50 (one-half year's portion of the ten year amortization) of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35%, and results in an increase in tax for the current year of $256.03 (.35×$731.50). This increase will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth year).

8. In the business judgment of CG Life, a discount rate of 10% is appropriate for use in calculating the present value of CG Life's future tax deductions resulting from the amortization described above. Applicants state that CG Life seeks an after tax rate of return on the investment of its capital in excess of 10%. To the extent that capital must be used by CG Life to meet its increased federal tax burden under section 848 resulting from the receipt of premiums, such capital is not available to CG Life for investment. Thus, Applicants contend, the cost of capital used to satisfy CG Life's increased federal income tax burden under section 848 is, in essence, CG Life's after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation.

9. Applicants submit that, to the extent that the 10% discount rate is lower than CG Life's actual targeted rate of return, a measure of comfort is provided that the calculation of CG Life's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax or the targeted after tax rate of return applicable to CG Life is reduced. CG Life undertakes to monitor the tax burden imposed on it and to reduce the charge to the extent of any significant decrease in the tax burden.

10. In determining the after tax rate of return used in arriving at the 10% discount rate, Applicants state that CG Life considered several factors, including: historical capital costs; market interest rates; CG Life's anticipated long term growth rate; the risk level for this type of business; and inflation. CG Life represents that such factors are appropriate factors to consider in determining CG Life's cost of capital. Applicants state that CG Life projects its future growth rate based on its sales projections, the current interest rates, the inflation rate, and the amount of capital that CG Life can provide to support such growth. CG Life then uses the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Applicants state the CG Life seeks to maintain a ratio of capital to assets that is established based on CG Life's judgment of the risk represented by various components of CG Life's assets and liabilities. Applicants state that maintaining the ratio of capital to assets is critical to offering competitively prices products and, as to CG Life, to maintaining a competitive rating from various rating agencies. Consequently, Applicants state that CG Life's capital should grow at least at the same rate as do CG Life's assets.

11. Applying the 10% discount rate, and assuming a 35% corporate income tax rate, the present value of the tax effect of the increased deductions allowable in the following ten years amounts to a federal income tax savings of $160.40. Thus, the present value of the increased tax burden resulting from the effect of section 848 on each $10,000 of net premiums received under the Contracts is $95.63, *i.e.*, $256.03 minus $160.40 or 1.47%.

12. State premium taxes are deductible in computing federal income taxes. Thus, CG Life does not incur incremental federal income tax when it passes on state premium taxes to owners of the Contracts. Conversely, federal income taxes are not deductible in computing CG Life's federal income taxes. To compensate CG Life fully for the impact of section 848, therefore, it would be necessary to allow CG Life to impose in additional charge that would make CG Life whole not only for the $95.63 additional federal income tax burden attributable to section 848 but also for the federal income tax on the additional $95.63 itself. This federal income tax can be determined by dividing $95.63 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.46%.

13. Based on prior experience, CG Life expects that all of its current and future deductions will be fully taken. It is the judgment of CG Life that a charge of 1.15% would reimburse CG Life for the impact of section 848 on CG Life's federal income tax liabilities. Applicants represent that the charge to be deducted by CG Life pursuant to the relief requested is reasonably related to the increased federal income tax burden under section 848, taking into account that benefit to CG Life of the amortization permitted by section 848, and the use by CG Life of a discount rate of 10% in computing the future deductions resulting from such amortization, such rate being the equivalent of CG Life's cost of capital.

14. CG Life asserts that although a charge of 1.15% of premium payments would reimburse CG Life's for the impact of section 848 (as currently written) on CG Life's federal income tax liabilities, it will have to increase this charge if any future change in, or interpretation of section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicant's Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt by such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) under the 1940 Act to permit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity."

4. Rule 6e–3(T)(c)(4) defines "sales load" charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including "a deduction for and approximately equal to state premium taxes."

5. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's tax burden attributable to premiums received. Thus, Applicants submit that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants contend that the requested exemptions from Rule 6e–3(T)(c)(4) are necessary in connection with Applicant's reliance on certain provisions of Rule 6e–3(T)(b)(13), and particularly on subparagraph (b)(13)(i) of the Rule, which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) only if they meet the Rule's alternative limitations on sales load as defined in Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rule 6e–3(T)(c)(4), Applicants state that they have found no public policy reason for including these deductions in "sales load."

7. The public policy that underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rule 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of "sales load" found in the Rule supports this analysis. Applicants state that the Commission's intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of "sales load" in Section 2(a)(35) for their efficacy, the percentage limits in Rule 6e–3(T)(b)(13)(i) depend on Rule 6e–3(T)(c)(4), which does not depart, in principle, from Section 2(a)(35).

9. Section 2(a)(35) excludes deductions from premiums for "issue taxes" from the definition of "sales load" under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rule 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are "not properly chargeable to sales or promotional activities." Applicants contend that this suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate CG Life for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Contract to be issued through one of the Accounts. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

11. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for CG Life and Other Accounts to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of CG Life and the Accounts to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If CG Life and the Other Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for CG Life and the Accounts.

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Conditions for Relief

1. Applicants represent that CG Life will monitor the reasonableness of the charge to be deducted by CG Life pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums;[1] (ii) the reasonableness of the after tax rate of return that is used in calculating such charge and the relationship that such charge has to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder, to permit CG Life to deduct 1.15% of premium payments under the Contracts, meet the standards set forth in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 95–30858 Filed 12–19–95; 8:45 am]

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[1] Applicants represent that they will amend the application during the Notice period to include this condition as set forth herein.

[Investment Company Act Release No. 21597; 812–9476]

The Diversified Investors Funds Group, et al.; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Diversified Investors Funds Group ("Diversified Fund"); Diversified Investors Portfolios ("Diversified Portfolios"); Diversified Investment Advisors, Inc. ("Diversified"), on behalf of itself and each open-end management investment company or series thereof organized in the future (the "Future Funds") which is a member of the same "group of investment companies" as defined in rule 11a–3 under the Act; and Diversified Investors Securities Corp. (the "Distributor").

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create a "fund of funds" that initially will have three portfolios. Each portfolio would allocate substantially all of its assets among the series of Diversified Fund or of the Future Funds (each such series and Future Fund is referred to individually as an "Underlying Spoke," and all such series and Future Funds, collectively, as the "Underlying Spokes") without regard to the percentage limitations of section 12(d)(1). The Underlying Spokes, in turn, will invest in a corresponding series of Diversified Portfolios or of a Future Fund (each such series and Future Fund is referred to individually as an "Underlying Hub," and all such series and Future Funds, collectively, as the "Underlying Hubs"). The requested order also would permit certain affiliated joint transactions in accordance with section 17(d) of the Act and rule 17d–1.

FILING DATES: The application was filed on February 6, 1995, and amended and restated on June 2, 1995, July 12, 1995, and December 12, 1995.

HEARING OR NOTIFICATION OF HEARINGS: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Diversified Fund is organized as a Massachusetts business trust. Diversified Portfolios is organized as a trust under the laws of the State of New York. Each of Diversified Fund and Diversified Portfolios is registered as an open–end management investment company under the Act. Diversified Fund currently consists of eight separate series and Diversified Portfolios currently consists of nine separate series.

2. Diversified is a registered investment adviser under the Investment Advisers Act of 1940. Diversified is an indirect, wholly-owned subsidiary of AEGON USA, Inc., a financial services holding company whose primary emphasis is life and health insurance and annuity and investment products. AEGON USA, Inc. is an indirect, wholly-owned subsidiary of AEGON nv, a Netherlands corporation which is a publicly traded international insurance group. Diversified currently is the investment manager for Diversified Portfolios and acts as administrator and transfer agent for Diversified Fund. Each Underlying Spoke organized in the future will be administered by Diversified, and each Underlying Hub organizer in the future will be advised by Diversified. Diversified Investors Securities Corp. (the "Distributor"), a Delaware corporation, acts as distributor for Diversified Fund.

3. Applicants propose to organize The Diversified Investors Strategic Allocation Funds ("Strategic Fund"), which will operate as a "fund of funds." Strategic Fund will be organized as a Massachusetts business trust, and, subject to the receipt of the requested order, will be registered under the Act as a non-diversified, open-end, management investment company. Strategic Fund initially will have three series or portfolios, identified as the Aggressive Portfolio, the Moderate Portfolio, and the Conservative Portfolio (collectively referred to as the "Portfolios," or individually as a "Portfolio"). Each Portfolio will invest all of its investable assets in shares of the Underlying Spokes and will allocate and reallocate its assets among the Underlying Spokes. Investments also may be made in money market investments for cash management and temporary defensive purposes.

4. The Underlying Spokes are, or will be, "feeder" (or "spoke") funds in a "master-feeder" (or "Hub and Spoke®")[1] structure in which there are other feeders investing in the master funds. Each of the existing Underlying Spokes invests, and each future Underlying Spoke will invest, all of its investable assets in an Underlying Hub having the same investment objective and policies as the Underlying Spoke. Each current Underlying Hub has one or more sub-advisers who are responsible for its day-to-day investment selections. In addition to the Underlying Spokes, each of the existing Underlying Hubs has a number of additional "spokes," including a bank sponsored collective trust, insurance company separate accounts established in respect of variable annuity contracts which are registered as unit investment trusts, and non-registered insurance company separate accounts. In the future, each Underlying Hub may sell interests to other eligible entities to the extent permitted by applicable law.

5. Allocations of a Portfolio's assets among shares of the Underlying Spokes will be made consistent with its investment objective. For example, it is anticipated that the Aggressive Portfolio would, under normal circumstances, invest substantially all of its assets in Underlying Spokes/Hubs that invest in equity securities. The Underlying Spokes/Hubs in which each Portfolio may invest will be described in the Portfolio's prospectus. In addition, the prospectus will disclose the general ranges for investment by the Portfolio in each type of Underlying Spoke (i.e., equity, fixed-income, and money market), and in each specific Underlying Spoke. Shareholders will receive disclosure of any changes in the identity of the Underlying Spokes in which the Portfolio may invest (e.g., if a new Underlying Spoke is included) or any changes in the investment ranges. Allocations of a Portfolio's assets among Underlying Spokes initially will be made, and subsequently adjusted, consistent with quantitative and other market and economic analyses administered by Diversified in its role as investment manager to Strategic Fund.

6. It currently is contemplated that Strategic Fund will be sold without a front-end or deferred sales charge, and will not have a rule 12b–1 distribution plan. The only direct expense payable by Strategic Fund will be an asset allocation and administrative fee, which initially will be at a rate of .20% per annum of average daily net assets for each Portfolio.[2] In return for the fee, Diversified will furnish Strategic Fund with all operating and administrative services and will pay all of the operating expenses (e.g., the fees and expenses of Strategic Fund's independent trustees and the minimal fees and expenses associated with the preparation and audit of its financial statements, but not portfolio brokerage expenses) for Strategic Fund.

7. Each existing Underlying Spoke and Underlying Hub is, and, subject to the right to institute such fees and charges to the extent permitted in condition 5 below, each future Underlying Spoke and Underlying Hub will be, sold without a front-end or deferred sales charge. The shareholders of Strategic Fund, however will pay indirectly their proportional share of the expenses of each Underlying Spoke in which Strategic Fund invests. These expenses include (a) an administration fee payable to Diversified, which covers, among other things, the expenses of transfer agency services, (b) rule 12b–1 fees, which are payable by the existing Underlying Spokes at a maximum rate of .25% per annum of net assets, and (c) other customary expenses of registered investment companies, primarily consisting of compensation to independent trustees, insurance premiums, fees and expenses of independent auditors and legal counsel, and accounting expenses. The expenses also include the Underlying Spokes proportional share of the expenses of the Underlying Hubs in which they invest, which include advisory fees and other customary expenses of registered investment companies.

8. Applicants may, although they do not contemplate doing so in the near future, enter into a special servicing agreement (the "Servicing Agreement"), pursuant to which the Distributor will provide all distribution and distribution-related services relating to Strategic Fund. The Servicing Agreement would provide that a portion of each Underlying Spoke's rule 12b–1 fees attributable to shares held by Strategic Fund may be used to reimburse the Distributor for expenses incurred in rendering distribution and distribution-related services to the Portfolios. Each Underlying Spoke thus would be permitted to pay rule 12b–1 fees in respect of distribution of shares of a Portfolio, but only to the extent that the Portfolio has invested in the Underlying Spoke.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit Strategic Fund to invest in the Underlying Spokes in excess of the percentage limitations of section 12(d)(1).

[1] Hub and Spoke® is a registered service mark of Signature Financial Group, Inc.

[2] Because Strategic Fund under normal circumstances will invest exclusively in shares of the Underlying Spokes, it is not anticipated that it will bear any portfolio brokerage expenses except those associated with the short-term investment of cash, if any.

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3. Applicants propose to organize Strategic Fund to provide investors with a simple means of investing in a diversified mutual fund investment program tailored by investment professionals to different investment goals and risk tolerances. Applicants believe that Strategic Fund will provide an alternative to other programs that investors turn to for diversification and asset allocation advice, such as wrap fee programs using mutual funds and inter-complex funds of funds.

4. Section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure which may be confusing to investors.

5. Applicants believe that Strategic Fund is structured in a manner consistent with the intent of section 12(d)(1) and which avoids the abuses intended to be prevented by that section. Applicants state that the proposed structure of Strategic Fund is very different from the structure of the investment companies whose practices led to the adoption of section 12(d)(1) and its amendment in 1970. Strategic Fund and the Underlying Spokes and the Underlying Hubs are part of the same group of investment companies, and each of these funds is or will be a registered investment company subject to the protections of the Act. In addition, because Diversified will be the investment adviser to Strategic Fund and each of the Underlying Hubs, applicants assert that it will be obligated to treat each fund fairly and impartially in the exercise of its fiduciary obligations. Diversified also will be subject to its fiduciary obligation to avoid self-dealing, therefore, it may not enter into transactions solely for the purpose of benefitting Diversified at the expense of Strategic Fund or any of the Underlying Hubs. Finally, applicants argue that Diversified's self-interest will prompt it to maximize benefits to all shareholders, and not disrupt the operations of Strategic Fund or any of the Underlying Spokes or Underlying Hubs.

6. Applicants believe that, although the proposed structure of Strategic Fund could be deemed to involve three levels of fees rather than two levels, this does not change the analysis with respect to the requested relief. Applicants assert that the structure of the Underlying Spokes and the Underlying Hubs does not create a layering of fees of the type that section 12(d)(1) was meant to address. They argue that this structure, which is specifically permitted by section 12(d)(1)(E), merely separates typical mutual fund expenses into two distinct levels. The expenses of the Underlying Spokes generally are limited to fund administrative and operating expenses (primarily the administration fee and the rule 12b–1 fee). The expenses of the Underlying Hubs generally are limited to investment advisory fees, custodian fees, portfolio accounting fees, and fees for transfer/accounting services. Thus, applicants assert that there is no significant overlap in the various expenses incurred at the hub level and at the spoke level, and that it is appropriate to collapse these two levels for purposes of the analysis of the operation of Strategic Fund.

7. Applicants believe that, while Strategic Fund could invest directly in the Underlying Hubs (and accordingly impose the same expenses that are charged at the level of the Underlying Spokes directly on Strategic Fund), the proposed structure has advantages for shareholders. Applicants assert that the proposed structure will offer shareholders a clearly defined choice either to allocate and reallocate their assets among the Underlying Spokes of their choosing, or to pay the incremental asset allocation fee so that Strategic Fund will make the asset allocation decisions. In addition, they argue that investing in the Underlying Spokes rather than directly in the Underlying Hubs serves to facilitate the Hub and Spoke® accounting function and avoid the extra costs that would be incurred if a Portfolio invested directly in several Underlying Hubs.

8. Applicants assert that there will be no layering of fees as a consequence of the Strategic Fund structure which will result in fees in excess of those permitted to be imposed by a single fund. Subject to the right to institute such fees and charges to the extent permitted in condition 5 below, it currently is contemplated that Strategic Fund will not impose, and no Underlying Spoke will impose, any front-end or deferred sales charge. The existing Underlying Spokes currently are permitted to pay the Distributor rule 12b–1 fees at a maximum rate of .25% per annum of net assets. Applicants have agreed that any sales charges or service fees charged with respect to Strategic Fund (including those paid at the Underlying Spoke level) will not exceed the limits set forth in the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

9. Applicants believe that Strategic Fund's asset allocation and administrative fee will be justified by the incremental benefits, not otherwise available, of the professional asset allocation service that Diversified will provide for investors choosing to invest in Strategic Fund rather than in specific Underlying Spokes, as well as compensate Diversified for the operating and administrative obligations it will undertake with respect to Strategic Fund. Applicants assert that many investors who have little interest or experience in selecting investments feel a need to seek professional advice in order to achieve successful asset allocation and diversification for initial investments and changes in their mutual fund mix. Applicants believe that Strategic Fund will provide investors with a competitive and viable alternative to other mutual fund based asset allocation programs. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

2. Applicants request exemptive relief from the prohibitions of section 17(a) to allow the transactions described in the application. Applicants believe that the relief is consistent with the standards of section 17(b). Applicants assert that the terms of the proposed transaction are reasonable and fair because the shareholders in Strategic Fund will benefit from the valuable incremental services provided as a result of the proposed structure and from savings that accrue based upon their individual situations, such as by not having to pay fees to a financial adviser or sales commissions to a broker-dealer. Strategic Fund shareholders also will receive practical benefits from the consolidation of records and reports, and the general ease of investing in one fund instead of several. In addition, in return for the indirect expenses of investing in the Underlying Spokes and the Underlying Hubs, the Portfolios and their shareholders will benefit to the same extent as other shareholders in the Underlying Spokes from the administrative services provided to the Underlying Spokes and the portfolio management services provided to the Underlying Hubs.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. Applicants believe that all shareholders of the Underlying Spokes, including Strategic Fund, will benefit equally from the distribution and distribution-related services received from the Distributor, which services will be financed, in part, from rule 12b–1 fees. Under the Servicing Agreement, the distribution-related expenses relating to Strategic Fund would be paid from the rule 12b–1 fees of the Underlying Spokes only up to the amount of such fees attributable to the shares of the Portfolios, and no Underlying Spoke would be required to pay any additional distribution-related expenses attributable to the Portfolios. In addition to the benefit to each Portfolio from the sale of its shares, applicants assert that each Underlying Spoke would receive a benefit from the sale of shares of the Portfolios to the extent that a Portfolio invests in such Underlying Spoke. Applicants submit that, based on these considerations: (a) Strategic Fund may create benefits for the Underlying Spokes; (b) the benefits would be shared by the Underlying Spokes in proportion to their assets; (c) the Underlying Spokes and Strategic Fund would participate in the arrangement on the same or substantially the same basis; (d) none of the Underlying Spokes, the Underlying Hubs, Strategic Fund, Diversified, or the Distributor would be advantaged or disadvantaged over one another; and (e) the entire arrangement would be consistent with the provisions, policies, and purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Strategic Fund and each Underlying Spoke and Underlying Hub will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act.

2. No Underlying Hub shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of Strategic Fund will not be "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Trustees").

4. Before approving any advisory contract under section 15 of the Act, the trustees of Strategic Fund, including a majority of the Independent Trustees, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Hub's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of Strategic Fund.

5. Any sales charges or service fees charged with respect to securities of Strategic Fund, when aggregated with any sales charges or service fees paid by Strategic Fund with respect to securities of the Underlying Spokes, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the Division: monthly average total assets for each Portfolio and each of its Underlying Spokes and Underlying Hubs; monthly purchases and redemptions (other than by exchange) for each Portfolio and each of its Underlying Spokes and underlying Hubs; monthly exchanges into and out of each Portfolio and each of its Underlying Spokes; month-end allocations of each Portfolio's assets among its Underlying Spokes; annual expense ratios for each Portfolio and each of its Underlying Spokes and Underlying Hubs; and a description of any vote taken by the shareholders of any Underlying Spoke, including a statement of the percentage of votes cast for and against the proposal by Strategic Fund and by the other shareholders of the Underlying Spoke. Such information will be provided as soon as reasonably practicable following each fiscal year-end of Strategic Fund (unless the Chief Financial Analyst shall notify Strategic Fund or Diversified in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30861 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

The Peninsular and Oriental Steam Navigation Company, Princess Cruises, Inc. and P & O Cruises (UK) Limited, 77 New Oxford Street, London WCIA 1PP, England, Vessels: CANBERRA, ORIANA and VICTORIA

Dated: December 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30926 Filed 12–19–95; 8:45 am]

BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21596; 811–4607]

Eaton Vance High Income Trust; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Easton Vance Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

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FILING DATE: The application was filed on November 16, 1995 and amended on November 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On February 28, 1986, applicant registered under the Act as an investment company. On March 5, 1986, applicant filed a registration statement under the Securities Act of 1933 registering an indefinite number of shares. The registration statement became effective on August 1, 1986, and applicant's initial public offering commenced soon thereafter. Applicant consists of two series, EV Classic High Income Fund ("Classic High Income") and EV Marathon High Income Fund ("Marathon High Income") (collectively the "Funds"). Applicant is a feeder fund in a master/feeder structure and therefore has no investment adviser.

2. On June 19, 1995, applicant's Board of Trustees, including a majority of Trustees who were not interested persons of applicant, approved an Agreement and Plan of Reorganization for each Fund whereby applicant would transfer all of the assets and liabilities of Classic High Income and Marathon High Income to a corresponding new series of Eaton Vance Mutual Funds Trust (the "Trust"). These new series are EV Classic High Income Fund and EV Marathon High Income Fund (together, the "Successor Funds"). In exchange, each Fund would receive shares of beneficial interest of each Successor Fund with an aggregate net asset value equal to the net asset value of each Fund's assets and liabilities transferred. Pursuant to rule 17a–8, applicant's Board of Trustees determined that such reorganization would be in the best interests of applicant and that the interests of existing shareholders of the Funds would not be diluted as a result of the reorganization.[1] No shareholder approval was required by the Declarations of Trust of applicant or the Trust, or by applicable law.

3. On July 31, 1995, applicant transferred all of the assets and liabilities of the Funds to their corresponding Successor Funds. Shareholders in the Funds received shares of beneficial interest of each Successor Fund equal in value to their shares in a Fund in complete liquidation and dissolution of applicant. No brokerage commissions were paid as a result of the exchange.

4. Each Fund and each Successor Fund assumed its own expenses in connection with the reorganization. Such expenses included, but were not limited to, legal fees, registration fees and printing expenses.

5. At the time of the filing of the application, applicant had no assets or liabilities, was not a party to any litigation or administration proceeding, and had no shareholders. Applicant is neither engaged, nor does it propose to engaged, in any business activities other than those necessary for the winding-up of its affairs.

6. On July 31, 1995, applicant dissolved as a Massachusetts business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30860 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers. Applicant and the Trust may be deemed to be affiliated persons of each other solely by reason of having common trustees and officers, and therefore may rely on the rule.

[Rel. No. IC–21601; 812–9823]

Mutual Fund Group, et al.; Notice of Application

December 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Mutual Fund Group, Mutual Fund Trust, Mutual Fund Variable Annuity Trust, Vista Global Fixed Income Portfolio, Vista Growth and Income Portfolio, Vista International Equity Portfolio, Vista Capital Growth Portfolio (collectively, the "Investment Companies"), and the Chase Manhattan Bank, N.A, or its successor entity subsequent to its merger into Chemical Bank[1] (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its trustees who are not employees of its affiliated persons.

FILING DATES: The application was filed on October 23, 1995, and amended on December 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

[1] Chase Manhattan Corporation has announced that it plans to enter into a reorganization with Chemical Banking Corporation pursuant to which Chemical Banking Corporation will be the surviving corporation. This merger is expected to be completed on or about April 1, 1996. Subsequent to this merger it is expected that the Chase Manhattan Bank will be merged into Chemical Bank, with Chemical Bank as the surviving bank, assuming the investment management of the Investment Companies.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, the Investment Companies, Vista Service Center, P.O. Box 419392, Kansas City, Missouri 64141–6392, and the Adviser, One Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Mutual Fund Group, Mutual Fund Trust, Mutual Fund Variable Annuity Trust, Vista Global Fixed Income Portfolio, Vista Growth and Income Portfolio, Vista International Equity Portfolio and Vista Capital Growth Portfolio are diversified open-end management investment companies that currently consist of 32 separate portfolios. The Adviser serves as the investment adviser for the Investment Companies and Vista Broker-Dealer Services, Inc. services as their distributor.

2. Applicants request that relief be extended to any other registered open-end investment company established or acquired in the future, or series thereof, (including any successors in interest[2]) advised by the Adviser (together with the Investment Companies, the "Funds").

3. Each Investment Company has a board of trustees, a majority of the members of which are not "interested persons" of such Investment Company within the meaning of section 2(a)(19) of the Act. Each of the trustees who is not an employee of the Adviser, the Investment Companies' administrator or distributor, or any of their affiliates ("Eligible Trustees") receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Investment Companies. Applicants request an order to permit the Eligible Trustees to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the "Plan") and related election agreement entered into between each Eligible Trustee and the appropriate Fund. Under the Plan, the Eligible Trustees could defer payment of trustees' fees (the "Deferred Fees") in order to defer payment of income taxes or for other reasons.

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Trustee will be credited to a book reserve account established by the Fund (a "Deferral Account"), as of the first business day following the date such fees would have been paid to the Eligible Trustee. The trustee may select one or more investment portfolios from a list of available Investment Companies that will be used to measure the hypothetical investment performance of the trustee's Deferral Account. The value of a Deferral Account will be equal to the value such account would have had if the amount credited to it had been invested and reinvested in shares of the investment portfolios designated by the trustee (the "Designated Shares").

5. Each Investment Company intends generally to purchase and maintain Designated Shares in an amount equal to the deemed investments of the Deferred Accounts of its trustees. Any participating money market series of a Fund that values its assets by the amortized cost method will buy and hold the Designated Shares that determine the performance of the Deferral Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. The accrued liability of each Investment Company for the compensation deferrals will fluctuate with changes in the value of the Designated Shares. The Investment Company will not, however, experience any economic effect from the fluctuating liability because it will own Designated Shares purchased with money that otherwise would have been paid to the Eligible Trustee. Changes in the amount of the liability will be exactly matched by changes in the value of the Designated Shares.

6. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

7. Payment to Eligible Trustees will be made in a lump sum or in generally equal annual installments over a period of no more than 10 years as selected by the Eligible Trustee at the time of deferral. In the event of death, amounts payable to the Eligible Trustee under the Plan will become payable to a beneficiary designated by the Eligible Trustee. In all other events, the Eligible Trustee's right to receive payments is non-transferable.

8. The Plan was adopted prior to receipt of the requested relief. Pending receipt of SEC approval, the Plan provides that the compensation deferred by an Eligible Trustee will be credited to a Deferral Account in the form of cash and credited with an amount equal to the yield on 90 day U.S. Treasury Bills.[3]

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18(f)(1). The Plan would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities

[2] "Successors in interest" is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] *See, e.g.*, American Balanced Fund, Inc. (pub. avail. Feb. 13, 1984) (no-action assurances given for deferred compensation plan in which the value of the deferred amounts did not depend upon the investment company's performance).

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issued by open-end investment companies. Applicants state that such restrictions are set forth in the Plan, which would be included primarily to benefit the Eligible Trustees and would not adversely affect the interests of the trustees or of any shareholder.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to existing Investment Companies. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Investment Companies to invest in Designated Shares without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Investment Company of the Deferred Fees under the Plan. The value of the Designated Shares will be *de minimis* in relation to the total net assets of the respective Investment Company, and will at all times equal the value of the Investment Company's obligations to pay deferred fees.

6. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Designated Shares with the deemed investments of the Deferral Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling any security to such registered investment company. The Adviser is an affiliated person of each of the Fund's portfolios pursuant to section 2(a)(3)(E) of the Act. Each portfolio may be treated as an affiliated person of each other portfolio by reason of being under the common control of the Adviser.[4] The sale by a portfolio of any security to any other portfolio of any Fund would therefore be subject to the prohibitions of section 17(a)(1). Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees with the Designated Shares that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 217(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Fees under the Plan on an ongoing basis.[5]

[4] Section 2(a)(3)(C) of the Act defines the term "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person.

[5] Section 17(b) may permit only a single transaction, rather than a series of on-going transactions, to be exempted from section 17(a). *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan "on a basis different from or less advantageous than that of" the affiliated person. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Funds, than if he or she had received trustee fees on a current basis and invested them in Designated Shares.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund that values its assets by the amortized cost method will buy and hold Designated Shares that determine the value of Deferral Accounts to achieve an exact match between the liability of any such Fund to pay compensation deferrals and the assets that offset that liability.

2. If a Fund purchases Designated Shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30908 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21568; 812–9762]

The One Hundred Fund, Inc., et al.; Notice of Application

December 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The One Hundred Fund, Inc., dba Berger 100 Fund (the "100 Fund"), Berger One Hundred and One Fund, Inc. (the "101 Fund"), and Berger Investment Portfolio Trust (the "Trust") (collectively, the "Funds"), and Berger Associates, Inc. ("BAI").

RELEVANT ACTION SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act; and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the applicant investment companies to enter into deferred compensation arrangements with their independent directors.

FILING DATES: The application was filed on September 13, 1995 and amended on November 30, 1995. Applicant's counsel has stated in a letter dated December 12, 1995 that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 210 University Boulevard, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Law Clerk, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company. BAI serves as the investment adviser to each of the Funds. Applicants request that the exemption also apply to any registered open-end investment company for which BAI, or any entity under common control with or controlled by BAI, subsequently serves as investment adviser.

2. Each Fund has a board of trustees or board of directors. Each board has ten members, eight of whom are not "interested persons" within the meaning of section 2(a)(19) of the Act ("independent directors"). Each independent director receives an annual fee plus a meeting attendance fee. No director who is an interested person of a Fund receives any remuneration from such Fund.

3. Applicants request relief so that the Funds may offer their independent directors deferred compensation plans (each, a "Plan"). Each Fund's Plan will be administered by its board or by such person or persons as the board may designate to carry out administrative functions under the Plan (the "Administrator"). Each Plan would permit independent directors of a Fund annually to elect to defer receipt of all or a portion of their fees. This election would enable the independent directors to defer payment of income taxes on such fees.

4. Under the Plans, the Administrator shall maintain a book entry account (an "Account") with respect to each deferral election by an independent director and shall credit to that Account an amount equal to all compensation deferred by the independent director under such election, as of the date such fees would have been paid to such independent director absent such deferral. The value of an Account will be equal to the value such account would have had if the amount credited to it had been invested and reinvested in certain designated securities (the "Designated Shares"). The Designated Shares for an Account will be shares of one or more of the Funds or a money market fund approved by the board of the Fund on which such independent director serves (the "Investment Funds"), as designated by the participating independent director. The money market fund currently proposed to be included as an Investment Fund is the Cash Account Trust, for which Kemper Financial Services, Inc. acts as investment adviser, and for which BAI provides sub-administration services. The Cash Account Trust is not an "affiliated person" of the Funds, as such term is defined in section 2(a)(3) of the Act. Each Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings and all gains and losses that would have been realized had such account been invested in the Underlying Shares.

5. The amounts paid to the independent directors under the Plans are expected to be insignificant in comparison to the total net assets of the Funds. Each Plan provides that a Fund's obligation to make payments from an Account will be a general obligation of the Fund and payments made pursuant to each Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plans, the relationship of an independent director to a Fund will be that of a general unsecured creditor.

6. The Plans do not create an obligation of a Fund to any independent director of a Fund to purchase, hold, or dispose of any investments. If a Fund should choose to purchase investments in order to cover its obligations under a proposed Plan, any and all such investments will continue to be part of the general assets and property of such Fund. In this regard, a Fund may purchase its own shares or the shares of any other Investment Fund to cover its obligations.

7. Under the Plans, an independent director may specify that his or her deferred fees be distributed in whole or in part commencing on (a) a date at least five years following the deferral election, or (b) the date on which the independent director ceases to be a member of the board, but not later than such cessation date. Deferred payments will be made in a lump sum or in monthly or quarterly installments over a period not to exceed ten years, as elected by the independent director. In the event of the independent director's death, amounts payable under a Plan will be payable to his or her designated beneficiary, or, in the absence of such a beneficiary, to his or her estate. In all other events, the independent director's right to receive payments cannot be transferred, assigned, pledged, subjected to garnishment or otherwise alienated.

8. The Plans will not obligate any Fund to retain the services of an independent director, nor will they obligate any Fund to pay any (or any particular level of) director's fees to any director.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act to permit the Funds to enter into deferred fee arrangements with their independent directors; under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) to permit the Investment Funds to sell securities issued by them to

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participating Funds; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. The Plans would result in the issuance of a senior security only if it was an obligation or instrument "similar" to a bond, debenture or note, and it evidenced indebtedness. In any event, applicants state that the Plans possess none of the characteristics of senior securities that led Congress to enact these sections. The Plans would not confused investors, make it difficult for them to value their shares or convey a false impression of safety. Further, the Plans would not be inconsistent with the theory of mutuality of risk.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plans would set forth any restrictions on transferability or negotiability, and such restrictions are primarily to benefit the participating directors and would not adversely affect the interests of the independent directors or of any Fund shareholder.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plans would provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each of the existing Funds has limitations on its ability to purchase securities issued by other investment companies. Any relief granted from section 13(a)(3) would extend only to the existing Funds. Applicants believe that an exemption is appropriate to enable the existing Funds to invest in Designated Shares without a shareholder vote. Applicants will provide notice to shareholders of the deferred fee arrangements with the independent directors in their registration statements. The value of the Designated Shares will be *de minimis* in relation to the total net assets of the respective Fund. Changes in the value of the Designated Shares will not affect the value of shareholders' investments. Applicants believe that permitting the Funds to invest in Designated Shares without shareholder approval, therefore, would result in no harm to shareholders.

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be "affiliated persons" of one another by reason of being under the common control of their adviser. Applicants believe that an exemption from this provision would not implicate Congress' concerns in enacting the section, but would facilitate the matching of each Fund's liability for deferred directors' fees with the Designated Shares that would determine the amount of such Fund's liability.

8. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction, applicants also request an order under section 6(c) so that relief will apply to a class of transactions. Applicants believe that the proposed transactions satisfy the criteria of sections 6(c) and 17(b).

9. Section 17(d) of the Act prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction after considering whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Under the Plans, participating independent directors would not receive a benefit that otherwise would inure to a Fund or its shareholders. The effect of the Plans is to defer the payment of compensation that a Fund otherwise would be obligated to pay on a current basis as services are performed by its independent directors. Applicants also believe that the Funds' ability to recruit and retain highly qualified independent directors would be enhanced if they were able to offer their independent directors the option of deferred payment of their directors' fees.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

1. If a Fund purchases Designated Shares issued by itself, an affiliated Fund, or any other fund which has been approved as an Investment Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such Fund, affiliated Fund, or other Investment Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–30859 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26432]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 15, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the

Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 8, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation (70–8087)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75266–0164, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43, 53 and 54 thereunder.

CSW currently has in place a Dividend Reinvestment and Stock Purchase Plan ("Current Plan") pursuant to which shares of CSW's common stock, $3.50 par value per share ("Common Stock"), are either newly issued or purchased in the open market with reinvested dividends and optional cash payments made by registered shareholders of CSW, employees and eligible retirees of CSW or its subsidiaries and non-shareholders of legal age who are residents of the States of Arkansas, Louisiana, Oklahoma and Texas.

CSW now proposes to make certain amendments to the Current Plan ("Plan") (a) to increase the number of originally issued shares of Common Stock that may be offered pursuant to the Plan from 5 to 10 million, (b) to permit non-shareholders of legal age who are residents of all fifty States of the United States and the District of Columbia to participate in the Plan, (c) to increase the initial cash investment required for enrollment in the Plan by non-employees and non-retirees from $100 to $250, and (d) to change the frequency of investment in shares of Common Stock by the Plan from bi-monthly to weekly.

The Plan will be open to registered shareholders of CSW, employees and eligible retirees of CSW or its subsidiary companies, and non-shareholders of legal age who are residents of the fifty States of the United States and the District of Columbia. Such residents include but are not limited to retail electric customers of CSW's public utility subsidiaries.

Consistent with the Current Plan, the Plan will include full, partial or no reinvestment of dividends and the ability to make optional cash purchases of at least $25 per investment and not more than $100,00 annually. There is an initial purchase requirement of $250 in order to enroll in the Plan. Employees and retirees will be able to participate in the Plan through payroll/pension deductions with a $10 minimum per pay period.

The shares of Common Stock purchased under the Plan with the initial cash investments, optional cash purchase payments and reinvested dividends, if any, may be, in the discretion of CSW, authorized but previously unissued Common Stock or shares of Common Stock purchased on the open market by the independent agent of the Plan ("Independent Agent"). CSW proposes to use the proceeds from the sale of the newly issued shares of Common Stock for repayment of long- or short-term indebtedness, by working capital or for other general corporate purposes. Purchases will be made weekly on each Monday of each week (or, if not a business day, the next succeeding business day). The timing and manner of purchases and sales on the open market will be determined solely by the Independent Agent. The price of shares of newly issued Common Stock will be the average of the daily high and low sale prices of the Common Stock on the New York Stock Exchange on the applicable investment date. The price of shares of Common Stock purchased on the open market by the Independent Agent with respect to any investment period will be the average price of all such shares of Common Stock purchased during such investment period plus brokerage commissions and other fees. The investment period will commence on each Monday of each week (or, if not a business day, the next succeeding business day) and will continue until all applicable funds are invested, but in no instance past the day prior to the commencement of the next investment period.

A Participant may sell or withdraw all or a portion of his/her shares at any time. Sales will be made weekly by the Independent Agent and the price will be the weighted average cost of shares sold during the applicable investment period, less fees and commissions/

CSW's Shareholder Services Department will continue to share the administration of the Plan with the Independent Agent. The Independent Agent will make open market purchases and sales under the Plan and CSW will handle the other elements of Plan administration. Participants will receive quarterly statements of activity in their account.

EUA Cogenex Corporation (70–8755)

EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, a nonutility subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, have filed an application-declaration under sections 9(a), 10, 12(b), 12(f) and 13 of the Act and rules 45, 53, 54, 90 and 91 thereunder.

Cogenex proposes to form a Delaware limited liability company ("JV ESCO") with Westar Business Services, a nonaffiliated Kansas corporation and a wholly owned subsidiary of Western Resources, Inc., a Kansas corporation, for the purpose of providing energy conservation services in the states of Kansas, Missouri, Nebraska, Oklahoma and Arkansas and to other Westar or Cogenex customers outside such states as opportunities arise ("Territory"). Cogenex and Westar will each own 50% of JV ESCO and share equally in the capital contributions, allocations of profits and losses and distributions of JV ESCO. JV ESCO will be governed overall by a board of directors comprised of six directors, three of whom will be appointed by Cogenex and three by Westar. Daily management decisions will be made by a management committee comprised of one representative from each of Cogenex and Westar. Cogenex and Westar will make capital contributions in an amount initially expected to be approximately $1,000 each, which will be used by JV ESCO for working capital purposes. Cogenex states that capital contributions to JV ESCO will be exempt from the requirement of Commission authorization pursuant to rule 45(b)(4). Cogenex and Westar will subcontract personnel to JV ESCO at cost as needed until such time, if any, as JV ESCO employs its own personnel.

Cogenex and Westar entered into a letter agreement dated November 15, 1995 in which they agreed to perform initial marketing, sales, auditing, bidding, job procurement and performance activities in preparation of forming JV ESCO and to develop a long-term business plan for JV ESCO. The term of the letter agreement is one year ("Interim Period"), unless terminated

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sooner by the formation of JV ESCO or by the decision of one or both of Cogenex and Westar. Cogenex and Westar will assign all contracts and business opportunities obtained during the Interim Period within the Territory at cost by JV ESCO. Cogenex and Westar will also be reimbursed by JV ESCO for their expenses incurred during the Interim Period but not previously reimbursed.

Cogenex and Westar also propose to guarantee third party loans to JV ESCO for up to an aggregate of $15 million. Cogenex states that such guarantees shall be made within five years of the formation of JV ESCO. Cogenex also states that any amount borrowed by JV ESCO from third party lenders will be through loans exempt from the requirement of Commission authorization pursuant to rule 52(b).

Cogenex requests that any goods or services furnished by Cogenex or any of its associate companies (other than an associate company which is a public utility company) to JV ESCO be furnished at prices not to exceed market prices pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. JV ESCO will not be providing goods or services to Cogenex or its associate companies.

Hope Gas, Inc., et al. (70–8757)

Hope Gas, Inc. ("Hope Gas"), Bank One Center, Clarksburg, West Virginia, 26302–2868, a gas public utility subsidiary company of Consolidated Natural Gas Company ("CNG"), a registered holding company, and CNG Producing Company ("CNGP"), 1450 Poydras Street, New Orleans, Louisiana, 70112–6000, a gas and oil exploration and production subsidiary company of CNG, have filed an application under sections 9(a) and 10 of the Act and rules 43 and 54 thereunder.

Hope Gas has signed a binding letter of intent, contingent upon Commission approval, to sell all of its production wells to CNGP. The sale price of approximately $4.6 million is the net book value of all the production properties as shown on Hope Gas' books of account as maintained in the ordinary course of business and in accordance with generally accepted accounting standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Secretary.

FR Doc. 95–30905 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21602; 812–9648]

State Street Bank and Trust Company, et al.; Notice of Application

December 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("Act").

APPLICANTS: State Street Bank and Trust Company ("State Street") and Global Lending Trust ("Trust"), on behalf of themselves and any registered management investment company or series thereof that may participate from time to time as lenders ("Lending Funds") in the securities lending program administered by State Street ("Program").

RELEVANT ACT SECTIONS: Order requested under section 6(c) to grant an exemption from section 12(d)(1), under sections 6(c) and 17(b) to grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit State Street, as agent for the Lending Funds, to invest cash collateral derived from securities lending transactions in shares of one or more series of the Trust ("Investment Funds").

FILING DATES: The application was filed on June 23, 1995, and amended on October 24 and December 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: State Street, Two International Place, Boston, Massachusetts 02110; Global Lending Trust, c/o Raymond P. Boulanger, Exchange Place, 25th Floor, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

State Street, a wholly-owned subsidiary of State Street Boston Corporation, is a Massachusetts chartered trust company and a member of the Federal Reserve System. State Street provides institutional custody services and asset management services for pension plans, foundations, governmental plans, individuals, and registered management investment companies. State Street also administers the Program, which involved securities loan transactions in excess of $50 billion on average during the first three quarters of 1995.

2. The Trust is a Massachusetts business trust organized pursuant to a master trust agreement dated June 15, 1995. The Trust proposes initially to establish three separate Investment Funds: The U.S. Government Securities Money Market Fund ("Government Securities Fund"), the General Money Market Fund ("Money Market Fund"), and the Short-Term Fund.[1] Shares of each Investment Fund will be sold on a private placement basis in accordance with Regulation D under the Securities Act of 1933 only to Lending Funds and other institutional investors participating in the Program. Shares of the Investment Funds will be sold directly by the Trust without a distributor and will not be subject to a sales load or a redemption fee. Assets of the Trust will not be subject to a rule 12b–1 fee. The Trust will register as an investment company under the Act

[1] The Government Securities Fund will invest exclusively in securities issued or backed by the U.S. Government or its agencies or instrumentalities and in repurchase agreements collateralized with such securities ("U.S. Government Securities"). The Money Market Fund will invest in a variety of U.S. dollar-denominated instruments, including U.S. Government Securities, corporate debt obligations, commercial paper, time deposits, certificates of deposit and bankers acceptances, obligations of foreign governments and supranational organizations and shares of money market mutual funds. All investments of the Government Securities Fund and the Money Market Fund will qualify as "eligible securities" within the meaning of rule 2a–7 under the Act. The Short-Term Fund will invest in a variety of securities, the maximum effective duration of which will not exceed five years.

prior to the commencement of operations.

3. State Street will serve as the investment adviser, custodian, transfer agent, and administrator of the Trust with respect to each Investment Fund, and will be entitled to receive a fee for its services.

4. State Street proposes to enter into a securities lending agreement ("Lending Agreement") with each Lending Fund.[2] The Lending Agreement will authorize State Street to enter into a master borrowing agreement ("Borrowing Agreement") with each person designated by the Lending Fund as eligible to borrow securities ("Borrower"). State Street will maintain a list of Borrowers that it believes to be creditworthy and that are eligible to participate in the Program. Each Lending Fund will be responsible for independently evaluating and monitoring the creditworthiness of each Borrower it selects from the pre-approved list and will have the right to add Borrowers to the list, subject to State Street's approval.

5. State Street will invest cash collateral received in the Program on behalf of a Lending Fund in shares of one or more Investment Funds to the extent permitted by the terms of the Lending Agreement. The Lending Agreement will authorize and instruct State Street to invest the cash collateral in accordance with specific guidelines provided by the Lending Fund. Such guidelines will identify the particular Investment Funds and other investment vehicles, instruments, and accounts, if any, in which cash collateral may be invested, and the maximum and minimum amounts of cash or percentages of collateral that may be invested in each Investment Fund and other authorized investments.[3] Each Lending Fund will reserve at all times the right to rescind authorization to invest in an Investment Fund. State Street will not purchase shares of any Investment Fund unless the Lending Fund has represented to State Street that (a) Its policies generally permit the Lending Fund to engage in securities lending transactions; (b) such transactions will be conducted in accordance with the securities lending guidelines established in a series of no-action letters issued by the SEC's Division of Investment Management; (c) its policies permit the Lending Fund to purchase shares of the Investment Funds with cash collateral; and (d) its securities lending activities will be conducted in accordance with all applicable representation and conditions of the application.

6. The Lending Agreement and the Borrowing Agreement will establish, with respect to each transaction, the initial and ongoing collateralization requirements, the types of collateral that may be accepted, and the manner in which the portion of the income earned on the investment of cash collateral during the term of the loan to be repaid to the Borrower ("Borrower's Rebate") will be established. The Lending Agreement will fix the percentage of the difference between the Borrower's Rebate and the actual return on the investment of cash collateral ("Net Income") to be retained by the Lending Fund and the percentage to be paid by the Lending Fund to State Street. The Lending Agreement also will authorize State Street to negotiate the Borrower's Rebate for each transaction.

7. During the term of each loan, the Lending Fund will retain the economic rights of an owner of the securities that are the subject of a loan, and will have the power to terminate a loan at any time and recall loaned portfolio securities in time to exercise voting rights. The Borrowing Agreement will provide that, within three trading days (or such other time period as is the customary settlement period for the loaned securities) of the Lending Fund giving notice of the termination of any loan, the Borrower is required to transfer the loaned securities (or certificates for identical securities) to State Street or the Lending Fund's custodian, and pay to State Street or the Lending Fund's custodian the amount of all dividends and distributions that would have been payable to the Lending Fund on or with respect to such securities if they had not been loaned, to the extent not previously paid.

8. Applicants represent that participation in the Program will provide the Lending Funds with economies of scale that will maximize investment opportunities, minimize investment risk, facilitate management of liquidity, and minimize administrative costs, thereby increasing their net income. In addition, applicants state that participation in the Program will permit the Lending Funds to minimize credit risk and interest-rate risk through diversification, while receiving the procedural and substantive protections of the Act.

[2] The Lending Funds will include, but will not be limited to, investment companies for which State Street or an affiliated person thereof also serves as custodian, transfer agent, and/or administrator.

[3] Applicants anticipate that one or more of the Lending Funds participating in the Program may be investment companies that hold themselves out as money market funds and comply with the requirements of rule 2a–7 ("Money Market Lending Funds"). Cash collateral in which the lender is a Money Market Lending Fund will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a–7.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) prohibits an investment company from acquiring shares of another investment company if, immediately after such acquisition, the acquiring company would own more than three percent of the total outstanding voting stock of the acquired company, securities of the acquired company with an aggregate value in excess of five percent of the value of the total assets of the acquiring company, or securities of any investment companies (including the acquired company) with an aggregate value in excess of ten percent of the value of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits an investment company from selling its shares to another investment company if after such sale more than three percent of the outstanding voting stock of the acquired company would be owned by the acquiring company, or more than ten percent of the voting stock of the acquired company would be owned by investment companies.

2. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the investment of cash collateral in shares of the Investment Funds will permit the Lending Funds to maximize returns with less investment risk than would be present with other means of investment. Applicants also believe that the administrative burdens associated with compliance with section 12(d)(1), such as daily monitoring of total assets and other investments of the Lending Funds, could impair State Street's ability to provide securities lending services to Lending Funds in an economical and administratively efficient manner, and therefore could create competitive disadvantages for the Lending Funds relative to other institutional investors that seek to engage in securities lending activities. In addition, applicants submit that the investment of cash collateral in shares of the Investment Funds do not give rise to the policy concerns of section 12(d)(1), which include unnecessary duplication of costs (such as sales loads, advisory fees, and administrative costs) and undue influence by the fund holding company over its underlying funds arising from the threat of large scale redemptions of the securities of

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the underlying investment companies. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is in the public interest and consistent with the protection of investors and the purposes intended by the Act.

3. Section 17(a) prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such investment company. From time to time, it is possible that a Lending Fund may directly or indirectly own, control, or hold with power to vote five percent or more of the shares of an Investment Fund, which will result in the Lending Fund being an affiliated person of the Investment Fund. In these circumstances, the purchase or redemption of shares of an Investment Fund for the same Lending Fund or an affiliated person of such Lending Fund could violate section 17(a).

4. Section 17(b) authorizes the SEC to issue an order of exemption from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Applicants believe that the proposed transaction will be reasonable and fair and consistent with the general purposes of the Act as well as with the policies of each Lending Fund. The Lending Funds will not be able to purchase or redeem shares of the Investment Funds at a price lower or higher than the per share net asset value of the Investment Funds, and there will be no sales loads or redemption fees charged with respect to such shares. In addition, State Street will be able to invest cash collateral only in accordance with specific guidelines provided by the Lending Funds, which will identify both the particular Investment Fund and other investment vehicles, instruments, and accounts (if any) in which cash collateral may be invested, and the maximum and minimum amounts of cash or percentages of collateral that may be invested in each Investment Fund and other authorized investments.

5. Section 17(b) could be interpreted to exempt only a single transaction.[4] Under section 6(c), however, the Commission may exempt a series of transactions that otherwise would be prohibited by section 17(a). Applicants believe that the requested relief is appropriate under section 6(c) for the same reasons that it is appropriate under section 17(b).

6. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The ownership by a Lending Fund of five percent or more of the shares of an Investment Fund would cause the Lending Fund to be an affiliated person of the Trust. State Street, as investment adviser for each of the Investment Funds, will be an affiliated person of the Trust. As such, State Street may, from time to time, be an affiliated person of an affiliated person of one or more Lending Funds by virtue of such Funds' interests in the Trust. Consequently, the proposed purchase of shares of the Investment Funds with cash collateral, the proposed purchase of shares of the Investment Funds with cash collateral, the redemption of such shares, and the sharing of Net Income between State Street and the Lending Funds may constitute a joint transaction for which an exemptive order is required.

7. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve such a transaction, the SEC must consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participant of the investment company is on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposed transactions satisfy these standards. Each Lending Fund will invest in shares of the Investment Funds on the same basis as every other shareholder of the Trust, and all shares will be priced in the same manner and redeemable under the same terms. The arrangements regarding the sharing of Net Income between State Street and each Lending Fund are the product of arm's length negotiations between the Lending Fund and State Street as service provider. Finally, the proposed investment of cash collateral in the Investment Funds is consistent with the provisions and purposes of the Act because participation in the proposed arrangement will allow the Lending Funds to increase their investment opportunities and returns while lowering their transaction costs in connection with securities lending transactions.

[4] *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Lending Fund will purchase shares of any Investment Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund that are not "interested persons" of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that any investment of cash collateral in the Investment Funds is in the best interests of the shareholders of the Lending Fund.

2. State Street will lend portfolio securities of each of the Lending Funds only in accordance with the guidelines specified by such Lending Fund.

3. Cash collateral from loans by Lending Funds will be invested in shares of each Investment Fund subject to such limitations and guidelines as are specified by the Lending Funds.

4. Cash collateral from loans by Money Market Lending Funds will not be used to acquire shares of any Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. Shares of the Investment Funds will not be subject to a sales load or redemption fee, and assets of the Investment Funds will not be subject to a rule 12b–1 fee.

6. State Street will not acquire shares of any Investment Fund on behalf of any Lending Fund if, at the time of such acquisition, (a) State Street is an affiliated person of the Lending Fund or an affiliated person of an affiliated person of the Lending Fund, or (b) the Lending Fund is an affiliated person of the Investment Fund or an affiliated person of an affiliated person of the Investment Fund, in either case by means other than by directly or indirectly owning, controlling, or holding with the power to vote five percent or more of the shares of an Investment Fund by the Lending Fund or an affiliated person of the Lending Fund.

7. In connection with all matters requiring a vote of shareholders of an Investment Fund, State Street will pass through voting rights to those Lending Funds that have a beneficial interest in such Investment Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30906 Filed 12–19–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0341]

Mezzanine Capital Corporation; Notice of Surrender of License

Notice is hereby given that Mezzanine Capital Corporation, 75 State Street, Suite 2500, Boston, Massachusetts 02109, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Mezzanine Capital Corporation was licensed by the Small Business Administration on May 28, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 1, 1995 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 14, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30878 Filed 12–19–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–95–088]

Navigation Safety Advisory Council, Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Navigation Safety Advisory Council (NAVSAC).

DATES: Completed applications and resumes must be received by February 29, 1996. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NVT–3), U.S. Coast Guard, 2100 Second St., SW., Room 1409, Washington, DC 20593–001. Completed applications and resumes should be mailed or delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council (NAVSAC), Commandant (G–NVT–3), U.S. Coast Guard, 2100 Second St., SW., Room 1409, Washington, DC 20593–001, (202) 267–0415.

SUPPLEMENTARY INFORMATION: NAVSAC is a twenty-one member Federal advisory council that advises the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The applications will be considered for seven (07) expiring terms. The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

The three-year membership term begins July 1, 1996, and, assuming that Congress passes pending legislation to renew the Council, will expire June 30, 1999. Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

The Council meets twice each year at various sites in the continental United States. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

Dated: December 15, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 95–30966 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–95–44]

Petitions for Exemptions; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 9, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence

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Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemptions

Docket No.: 28367.

Petitioner: Mr. Stephen R. Raklovits.

Sections of the FAR Affected: 14 CFR 103.11.

Description of Relief Sought: To permit Mr. Raklovits to operate a powered parachute-type ultralight at night, for the purpose of conducting demonstrations and training, and for special uses including search, rescue, and surveillance, for local, State, and Federal law enforcement agencies.

Docket No.: 28381.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.613.

Description of Relief Sought: To permit ATA's member airlines and other similarly situated part 121 operators to dispatch or release aircraft for operations to any destination airport under instrument flight rule or over-the-top when weather reports or forecasts, or any combination thereof, indicate that the weather conditions at the estimated time of arrival at the destination airport may be below meteorological visibility minimums, subject to certain conditions and limitations.

Docket No.: 28385.

Petitioner: Mr. John B. Milan.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To permit Mr. Milan to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28386.

Petitioner: Heart of Georgia Technical Institute.

Sections of the FAR Affected: 14 CFR 141.35(d) (2) and (3).

Description of Relief Sought: To allow the Heart of Georgia Technical Institute to designate Mr. William James Breazeale to serve as chief flight instructor without meeting certain experience requirements for such a designation.

Docket No.: 28395.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought: To permit an appropriately trained qualified and authorized check airman, in lieu of an FAA inspector, to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424.

Dispositions of Petitions

Docket No.: 24256.

Petitioner: Dalfort Training, L.P.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d)(2) and (3); 61.65 (c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/Disposition: To extend Exemption No. 4955, as amended, which permits Dalfort Training, L.P., to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 22, 1995, Exemption No. 4955E.*

Docket No.: 26903.

Petitioner: The Embassy of the Federal Republic of Yugoslavia.

Sections of the FAR Affected: 14 CFR SFAR 66–2.

Description of Relief Sought/Disposition: To permit the operation of an aircraft carrying delegates from both the Federal Republic of Yugoslavia and the Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovnia to operate to, within, and from the United States to and from a point within Bosnia and Montenegro. *Grant, October 27, 1995, Exemption No. 6196.*

Docket No.: 27457.

Petitioner: Daniel Webster College.

Sections of the FAR Affected: 14 CFR 141.35(d)(2).

Description of Relief Sought/Disposition: To extend Exemption No. 5829, which permits Ms. Robin L. Bray to serve as chief flight instructor at Daniel Webster College administering courses of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, without the required minimum of 2,000 hours as pilot in command. *Grant, November 7, 1995, Exemption No. 5829A.*

Docket No.: 27960.

Petitioner: Rogers Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by Rogers Helicopters, Inc., (RHI) to remove and/or replace the passenger seats and approved stretchers on aircraft used in operations conducted by RHI under part 135. *Grant, October 24, 1995, Exemption No. 6194.*

Docket No.: 28110.

Petitioner: McKeeman Productions, Inc., d.b.a. SkySports International.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in SkySports-sponsored jumping events without complying with the parachute equipment and packing requirements of the FAR. *Grant, November 22, 1995, Exemption No. 6228.*

Docket No.: 28232.

Petitioner: Summit Jet Corp.

Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b) (6) and (7).

Description of Relief Sought/Disposition: To permit Summit Jet Corp to operate its Lear 55 turbojet airplane (Registration No. N123LC, Serial No. 045) in extended overwater operations equipped with only one high-frequency (HF) communication system. *Grant, November 3, 1995, Exemption No. 6226.*

Docket No.: 28237.

Petitioner: PreMair, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65(c)(e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/Disposition: To permit PremAir to use FAA-approved simulators to meet certain flight experience requirements of part 61. *Grant, November 7, 1995, Exemption No. 6190.*

[FR Doc. 95–30924 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 19, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under § 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 5, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1996.

The following is a brief overview of the use application.

PFC Project #: 96–02–U–00–MHT

Level of the proposed PFC: $3.00

Charge effective date: January 1, 1993

Estimated charge expiration date: March 1, 1997

Estimated total net PFC revenue: $1,100,000

Brief description of project: Part 150 Noise Mitigation/Residential Soundproofing/Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103:

Issued in Burlington, Massachusetts on December 12, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–30918 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Brunswick and New Hanover Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Brunswick and New Hanover Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposal to relocate US 17 in Brunswick and New Hanover Counties, North Carolina. The proposed improvement would involve the relocation of the existing US 17 from US 421 to existing US 17 south of Wilmington. The proposed action is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) The "no-build," (2) two build alternatives for constructing a four-lane full control of access freeway on new location, and (3) improvements to existing US 421 and US 17/74/76.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A complete public involvement program has been developed for this project to include: the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in this project study area. A toll-free project telephone "hotline" is also being made available. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 8, 1995.

Roy C. Shelton,

Operations Engineer, Raleigh, NC.

[FR Doc. 95–30843 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Docket No. PS–142; Notice 2]

Considerations for a Program Framework for Risk Management Demonstrations

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is considering how to implement a program administrative framework to receive, analyze, accept, monitor and revise risk management plans that interstate natural gas transmission and hazardous liquid pipeline companies would submit as risk management demonstration projects. RSPA is not yet prepared to consider a conceptual administrative framework for intrastate companies.

A demonstration project framework is needed to validate benefits in applying risk management in the pipeline industry and to determine how it would work most effectively. A framework is also needed to evaluate the use of

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company-specific risk management plans as an alternative to the existing regulatory requirements and to plan for a transition should the demonstration justify it. For demonstration projects to help further the transition, the framework must identify how pipeline companies would submit, implement and improve risk management demonstration plans and how OPS, in consultation with State pipeline safety agencies, would evaluate and monitor them.

The demonstration projects are intended to test whether company-specific plans can provide equal or greater safety than the current regulatory requirements provide. The results will be evaluated, and if determined to be successful, OPS would consider expanding the application. Participation in risk management initiatives will be voluntary and subject to OPS discretion.

The proposed framework outlined below was distributed and discussed at a public meeting on this subject held on November 7, 1995, in McLean Virginia. Provisions for written comments to the framework were announced in a **Federal Register** notice published September 21, 1995. Through this notice, OPS is again requesting comments on the proposed framework.

DATES: Responses to this request for comments should be submitted on or before February 20, 1996.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Patrick J. Ramirez, (202) 366–6864, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Pipeline Safety (OPS) furthers pipeline safety through a compliance-based system of primarily performance-based regulations embodied in 49 CFR Parts 192–195 and Part 199. The program is conducted in partnership with the states, where certified states take responsibility for intrastate pipeline systems and OPS retains responsibility for interstate pipeline systems.

Certain pipeline incidents in the last two years have heightened public awareness of, and concerns about, pipeline safety and environmental protection. Although the pipeline safety record compares favorably with other forms of energy transportation, recent incidents have raised the question of whether safety and environmental protection can be improved by means other than the current system of compliance with minimum federal requirements. There are also expectations of increasing cost and complexity of managing pipeline systems from future potential regulations. Many government and industry officials are interested in new approaches that might more effectively evaluate risks and focus resources in areas with the greatest potential for reducing risk. There is also interest in improving accountability of the industry and the government to the public.

The Department of Transportation transmitted a legislative proposal for reauthorization of the pipeline safety program on March 13, 1995 that would establish a structure to evaluate pipeline risks and their consequences, develop solutions to address the risks, and establish priorities for implementing the solutions. This process is generally referred to as Risk Assessment Prioritization.

The pipeline industry supported an approach that focused on operator risk management by explicitly authorizing demonstration projects. This approach was included in H.R. 1323 which was ordered reported by the House Committee on Transportation and Infrastructure on April 5, 1995. A similar bill was reported by the House Committee on Commerce. Section 6 of H.R. 1323 would require the Secretary to establish a demonstration project on risk management that would seek voluntary participation by operators to demonstrate applications of risk management. In carrying out the demonstrations, the Secretary would ensure that approved plans under the project achieve an equivalent or greater overall level of safety than would be achieved by complying with the existing regulatory requirements. The Department formally expressed its view to the Committee on Transportation and Infrastructure that this provision is consistent with the Department's proposal for a risk management program.

The pipeline risk management demonstration projects for interstate natural gas and hazardous liquid transmission companies would be a vital step in the transition between compliance-based regulations and risk management. The demonstration projects would allow both the government and industry to gain some experience before extending the program. The transition period between compliance-based regulation and risk management programs used by a large segment of the pipeline industry will likely take several years.

To study the applicability and benefits of formal pipeline risk management programs, OPS, representatives of the oil and gas industry, states and local interest groups formed two "risk assessment quality action teams" (RAQTs). The first, in 1994, focused on oil and petroleum product transmission application of risk management and the second, in 1995, focused on natural gas transmission. Both RAQTs have been defining how risk management might be beneficially applied in the pipeline industry. This work has been based on how other industries and government agencies are using risk assessment and management to more efficiently allocate resources for safety.

II. Risk Assessment Quality Team (RAQT) Findings

A. Definition of Risk Management

Risk management is the process of deciding what to do about risk associated with a system. Risk can be expressed as the likelihood of an event occurring multiplied by the severity or the consequence of its effect. The goal of risk management is to set priorities for using finite resources to reduce risk.

A formal definition of risk management from a Gas Research Institute report, adopted by the Gas RAQT is: "Risk Management is the systematic application of management policies, procedures, finite resources and practices to the tasks of analyzing, assessing and controlling risks to protect the public, the environment and company employees and assets."

The Oil RAQT report stated that "Risk management is the overall logical process by which a company understands the risk associated with operation of its facilities and determines whether and how to take action to reduce or accept risks. "

B. Successful Efforts in Other Industries

The RAQTs focused on how risk management practices have been applied worldwide to reduce risk from chemical, nuclear and industrial process hazards as well as from pipeline system leaks and ruptures. The teams' technical conclusions were influenced by the experience of industries and current effective practices of risk management.

In the industries referenced above, the risk management process is applied to the entire physical system that is the source of the risk and follows a life cycle analysis. Various analytical approaches can be performed qualitatively or quantitatively and at many levels of effort. Both teams placed considerable importance on the historical role and value that has accrued from industry codes and standards and recognized the major influence of the insurance industry on corporate loss reduction programs.

C. Expected Benefits in the Pipeline Industry

Companies in the industries using risk management have reported improved safety records and reduction in the number of incidents. The execution of risk management generally leads to a discipline of detailed review of the system, its operation and maintenance. This expanded review can lead to identifying new sources of risk that may not be recognized in a compliance-based management process. Another aspect of the risk management discipline is that it entails a rigorous and comprehensive analysis of the likelihood of incidents and the magnitude of the consequences.

Many pipeline companies have elements of risk management systems in place, although they lack a comprehensive program with formal documentation and public reporting. Practices identified include use of risk assessment techniques that exceed current regulatory requirements. Clearly an area of improvement in the future would be integration of practices into a formal program with clear tracking of goals, activities and performance measurement.

Many pipeline operators routinely exceed the safety levels mandated in current regulation. The Gas RAQT found that the gas transmission industry expends significant resources complying with minimum requirements, and then further allocates resources for practices which exceed the minimum regulatory requirements.

OPS would like to consider an alternative plan that would allow operators flexibility to determine how best to meet safety goals under Federal and state oversight. For example, rather than OPS requiring operators to use a particular inspection tool on their pipelines, an alternative approach would be OPS allowing operators to employ their understanding of their systems to prioritize resources to best ensure pipeline integrity. Operators could take an integrated systems approach from start to finish rather than the current practice of maintaining some systems because they meet federal requirements and then overlaying additional safety measures.

OPS believes that there are many methods and initiatives outside the current regulatory structure that hold promise for pipeline industry use in maintaining or improving safety while recognizing competitive pressures in the marketplace. OPS is considering risk management demonstration projects to test the effectiveness of risk management and to provide a basis for refining the process to improve pipeline safety in the years ahead.

D. Conceptualization of a Risk Management Process

To set parameters for integrating risk management programs into the oversight of pipeline transportation as an option to the current compliance-based scheme, certain assumptions are fundamental: (1) Each pipeline system is different, (2) each risk does not pose the same probability of occurrence and consequence, and (3) given the right analytical tools, technical discretion and financial capability, pipeline operators can make better decisions about how to allocate resources with the data available.

For risk management to work, operators will need to give OPS detailed information about, and the reasons for, taking alternative safety actions in addition to providing baseline safety level information and performance measures to evaluate program progress. At the same time, OPS will give operators greater latitude to choose how to assess and manage risk and what methodologies are most effective.

OPS is considering the approach to risk management that the Gas RAQT outlined. The team report was developed with support from the Gas Research Institute and input from the risk management project team of the Interstate Natural Gas Association of America. It identifies (1) *Process* elements that define technical details of risk management execution and (2) *program* elements that define administrative, managerial and logistical aspects of execution with the structure of an organization.

The process steps have conceptually been expressed in a three, four, or five step approach in other industries, but each approach basically utilizes a Risk Assessment, Risk Control and Decision making, and Performance Measurement process. These steps result in assessing threats from specific problems or sources, ranking their relative importance, determining which have greatest risk reduction potential, allocating resources, and monitoring the effectiveness of prevention and mitigation actions over time.

The program elements constitute a management framework that implements and supports the process by taking the results of the assessment and decisions and putting them into practice in day-to-day operations. Program elements could include Management Responsibilities, Standards, Guidelines, Operation and Maintenance, Training, Security, Incident Reporting, Emergency Preparedness and Response, Communications, and Auditing and Corrective Action, to name some examples.

The process and program elements of risk management can be performed at various levels of detail. The RAQTs referred to this as a "graded approach"—the methods applied should be commensurate with the risk. Further, the RAQTs expect that companies wishing to demonstrate risk management programs may wish to try the concepts out within a part of a pipeline system, rather than within the entire pipeline.

In summary, risk management is based on sound engineering principles and good business practices to help make decisions that reduce risk. A pipeline risk management program depends on good data to help predict accident likelihood and consequence in the risk assessment stage. All elements of the pipeline business, including location, product, process, equipment, components, procedures, supervision, management, records, and human resources are considered and integrated. Eventually, risk management should address the life of the pipeline system from design and construction through start up, operation, maintenance, and shut down.

III. Integrating Risk Management Programs into the National Pipeline Safety Program

While government and industry objectives to assure safety and environmental protection would remain the same under risk management, and the respective roles and responsibilities remain the same fundamentally, risk management offers the opportunity to approach the objectives in a manner that is more flexible to individual circumstance. The new approach will be more open, interactive and dynamic. OPS believes that the program framework must have the following characteristics:

(1) Because consideration needs to be given to providing information and assurances about pipeline safety to other levels of government, the

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communication process needs to be more interactive and efficient.

(2) Because the primary function of these communications will be the exchange of proposals and their justification, data must be provided on the current safety level or baseline and the expected levels resulting from the program. The data development process and cost must be practical.

(3) Because assessing the program is a critical but new function, the performance measurement activity will likely advance incrementally.

IV. Risk Management Demonstration Project Objectives

OPS offers the following risk management demonstration project objectives for public comment and discussion:

- To give a limited number of qualified interstate transmission operators the opportunity to conduct risk management demonstration projects.
- To determine whether risk management provides equal or greater safety than a compliance-based approach.
- To help each operator comprehensively assess threats to integrity, whatever the scope of the project, or whatever aspect of its system is involved in the project.
- To demonstrate how appropriately the draft risk management standards address risks and can be applied effectively.
- To determine how operators consider low probability—high consequence incidents in addition to past accident or component failure history.
- To determine how operators evaluate smaller precursor events that could lead to larger failures.
- To have operators demonstrate how an integrated review of safety operations across the company can expedite prompt response to situations that could lead to failures.
- To have operators systematically correlate data, rank planned actions according to their potential to reduce risk, and follow through on these actions.
- To promote technological innovation.

OPS seeks comment on whether these objectives are appropriate for a four year demonstration project.

V. Program Framework Elements

This program administrative framework to receive, analyze, approve, monitor and revise risk management plans is being considered for interstate natural gas transmission and hazardous liquid pipeline companies that would submit proposals for risk management demonstration projects.

The framework being considered would have four primary elements, appropriate to the features and characteristics of risk management. The first two elements would be developed through industry standards processes. The contents would be similar to the description in II D of this document. The second two OPS would construct:

(1) Industry Technical Process Standard (R1), covering Risk Assessment, Risk Control and Decision-making, and Performance Measurement.
(2) Industry Quality Program Standard (Q1), covering the operator's management framework that implements and supports this process, and puts risk management into daily operations.
(3) Federally developed risk management program participation requirements for communications and reporting, planned oversight and evaluation.
(4) Third party review to simultaneously validate the quality and adequacy of the technical review and administrative process used by OPS.

Elements (1) and (2) of the program framework would be the basis for operators to apply for and OPS to accept a risk management program demonstration project.

To develop knowledge and skill in the application and use of the industry standards, OPS envisions a cooperative effort to develop risk management training curriculum concurrently with the standards. Further, OPS expects that trade groups, OPS, and state agencies would participate in design and development.

OPS would encourage a broad range of stakeholders, including Federal and State pipeline safety officials, to participate in review of the draft industry standards. This process is expected to begin under the auspices of the several trade organizations. While developing and approving Risk Management standards (R1 and Q1) would be a multi-year process, a basic draft would be considered as a point of reference for the demonstration program preliminary review.

The third element, Federally developed requirements likely to be subject to public notice and comment, should identify the project administrative framework components, particularly requirements for applying for the program, obtaining interim project approval, participating in long-term evaluation and monitoring, conflict resolution, penalties, incentives, and program maintenance.

VI. Third Element: Possible Elements of the Administrative Risk Management Demonstration Project Process

(1) *An Informal Consultation with OPS and States.* The interstate transmission operator would consult OPS Headquarters staff, Regional Directors and State pipeline safety program officials affected by the pipeline system to declare program technical objectives. These regulatory officials would express safety concerns and give advice before formal proposals are submitted.

Identifying risk management proposal objectives would begin with the operator submitting a letter of intent. The letter would describe the initial proposal including a request for a consultation with OPS and other pipeline safety regulators on the proposal and justification. In the consultation, the operator would discuss such issues as how hazards are assessed and how risks are currently managed, baseline performance data to indicate the safety level under current regulatory activities and future indicators, program goals, and the scope of the demonstration program.

During the consultation with OPS and state pipeline safety regulators, an operator would explain the risks it intends to address and the nature and extent of its proposal. The operator would demonstrate why it believes the proposal could make its pipeline operate at least as safely as it does by adhering to the current federal safety requirements. Federal and State pipeline regulators would actively participate in the consultation, responding to the operator and raising any concerns.

(2) *Formal Written Proposal.* An operator would submit a formal written proposal to OPS, resulting from the consultation. The proposal would state how the operator would apply the two industry risk management standards and how the plan is expected to meet or exceed the safety level achieved through the current regulatory program.

The proposal would describe the risk assessment process, the means for and the technical rationales for ranking actions, improvement targets, and a preliminary risk reduction plan with decision points for action. Also included would be baseline performance measures against which process targets can be set. Organizational structure, financial capability, and engineering control accountability and integrated evaluation would be briefly described. An operator would need to address in the formal proposal the concerns raised in the consultation session and to provide assurances that management commits to allocating enough resources and to implementing the program in accordance with the proposal.

(3) *Program Sufficiency Review.* OPS and state officials affected by the pipeline system would examine the proposal for completeness against the technical process and quality program standards. This is estimated to occur within sixty to ninety days of the date OPS received the proposal. The review would determine safety expectations from the program initiatives and that current safety would be equalled or exceeded. OPS would also consider experience with the operator, compliance history and performance.

The sufficiency review could result in a proposal being accepted or returned. OPS acceptance at this stage would mean officially accepting the demonstration project as an alternative to complying with the current regulatory process. A returned proposal would lead to second consultation where recommendations would be made or the project could be postponed to a later date.

(4) *Technical Process Review.* OPS and its consultants would perform this review after several months of the project's operation under the risk management scheme and periodically thereafter to assure that the program is meeting the safety goals established by the program performance indicators or metrics. It will take several years to assess trends on long range issues. This review would involve substantive engineering reviews to validate former assumptions and expected outcomes. A follow-on joint government/industry team process would be charged with the task of developing guidelines on use of performance measurements. The review would verify that operators were keeping to their planned program milestones.

(5) *Required Public Prospectus.* As part of the process review, an operator in the demonstration programs would prepare public documents that explain its risk management plans and objectives. An operator would explain how it plans to meet or exceed existing safety levels, what its performance metrics are and how well it has performed. The public would be able to read the operator prospectus before OPS conducts the process reviews and forward any questions to OPS to present during the regularly scheduled audit. OPS could provide feedback through public notice or other means. This mechanism is designed to improve accountability to the public.

(6) *Conflict Resolution.* Procedures may be developed to resolve conflicts between an operator and the government or other stakeholders on program adequacy.

(7) *Civil Penalties.* Penalties would be administered for an operator not following the technical process and quality program standards and not keeping its program commitments within its risk management plan and would be addressed within the provisions of the existing regulations.

VII. Fourth Element: Third Party Review Being Considered

The final planned framework element being considered would be a third party review that would be conducted during the four year demonstration project. OPS would contract with an independent scientific organization to give OPS findings on the planned framework. Findings would include whether the draft standard is adequate and complete, and whether the administrative project framework is sufficient to assure that the program is delivering the expected goals.

VIII. Evaluation and Follow-Up

A limited number of demonstration projects would provide the opportunity to evaluate whether operators' risk management decisions on how best to use their companies' resources to protect people and the environment are an appropriate alternative to industry-wide regulation. The Demonstration program in its entirety would be evaluated in the final year. A successful evaluation would (1) determine that risk management can be a cost-effective way to manage risks pipelines pose and (2) give operators flexibility to manage risk based on their companies' needs, conditions and expertise rather than complying with compliance-based safety regulations.

Successfully completing the demonstration projects is an important part of the Government's evolving regulatory process. OPS and industry having sufficient pipeline operator safety data is critical to managing the risks pipelines pose. OPS does not have enough safety data to be statistically meaningful as a risk management baseline. OPS believes the demonstration program would identify the type and amount of pipeline performance data, pipeline characteristics including failure data, needed to manage risk. The demonstration projects might also lead to more research and development activity in designing models to predict pipeline failure. The demonstration projects would also be the basis for improving the industry technical standards for other operators to develop more effective risk management programs and helping OPS be more creative, effective, and flexible in overseeing and approving ways to make pipelines safer.

OPS would report lessons learned from the demonstration projects through public meetings and to Congress. The report would address project results, including whether or not the demonstrations maintained or strengthened safety and how OPS and industry can improve safety.

Issued in Washington, DC on December 11, 1995.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–30775 Filed 12–19–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Fiscal Service

1996 Fee Schedules for the Issuance of Definitive Securities and TREASURY DIRECT Securities Accounts

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing two schedules of fees to be charged in 1996 for marketable Treasury securities. The schedules are for the fees charged for the issuance of definitive securities and the fees for the annual maintenance of certain TREASURY DIRECT securities accounts.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–7761.

SUPPLEMENTARY INFORMATION: On January 23, 1995, the Department of the Treasury established fee schedules for the issuance of definitive securities and the maintenance of certain TREASURY DIRECT securities accounts.

The Treasury has decided that the fees for the issuance of definitive securities and the maintenance of certain TREASURY DIRECT Securities Accounts in 1996 should remain unchanged from the amounts currently in effect.

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Schedule of Fees for Definitive Securities

The fee schedule for the issuance of a definitive security is as follows: a fee of $50 will be charged for each definitive security issued on a transfer, reissue, exchange or withdrawal from book-entry form, or as a result of the granting of relief on account of loss, theft, destruction, mutilation or defacement. Payment of the fee must accompany the request for the issue of securities in physical form. If a request results in the issuance of more than one security, the amount of the fee is arrived at by multiplying the number of pieces requested by $50. The fee announced above applies beginning January 2, 1996.

Schedule of Fees for TREASURY DIRECT Securities Accounts

The fee schedule for TREASURY DIRECT securities accounts is as follows: each TREASURY DIRECT securities account holding Treasury bonds, notes and bills, pursuant to 31 CFR Part 357, that exceeds $100,000 in par amount will be charged an annual maintenance fee in the amount of $25. For 1996, this will be imposed on accounts exceeding $100,000 in par amount as of May 17, 1996. The determination as to what accounts are subject to the fee shall be made annually. Each account holder will be individually billed.

Dated: December 7, 1995.

Van Zeck,

Acting Commissioner of the Public Debt.

[FR Doc. 95–30781 Filed 12–19–95; 8:45 am]

BILLING CODE 4810–39–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 244
Wednesday, December 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 07, 1995, 60 FR 63571.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., December 13, 1995.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for December 13, 1995:

Item No., Docket No., and Company

CAE–6
ER95–1295–000, Market Responsive Energy, Inc.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31044 Filed 12–18–95; 2:09 pm]

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federal register

Wednesday
December 20, 1995

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.
Commuter Operations and General Certification and Operations Requirements; Air Carrier and Commercial Operator Training Programs; Final Rules
Flight Crewmember Duty Period and Flight Time Limitations and Rest Requirements; The Age 60 Rule; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, 127, and 135

[Docket No. 28154; Amendment Nos. 91-245, 119, 121-251, 125-23, 127-45, 135-58, SFAR 50-2, SFAR 71 and SFAR 38-12]

RIN 2120-AF62

Commuter Operations and General Certification and Operations Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators affected are those conducting scheduled passenger-carrying operations in airplanes that have passenger-seating configurations of 10 to 30 seats (excluding any crewmember seat) and those conducting scheduled passenger-carrying operations in turbojet airplanes regardless of seating configuration. The rule revises the requirements concerning operating certificates and operations specifications for all part 121, 125, and 135 certificate holders. The rule also requires certain management officials for all certificate holders under parts 121 and 135. The rule is intended to increase safety in scheduled passenger-carrying operations and to clarify, update, and consolidate the certification and operations requirements for persons who transport passengers or property by air for compensation or hire.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, (202) 267-8321; Katherine Hakala, (202) 267-8166; or Dave Catey, (202) 267-8166; Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Outline of Final Rule

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VII. Discussion of Comments Related to Costs and Benefits
VIII. Regulatory Evaluation Summary
IX. The Amendments

Background

I. Introduction

On March 29, 1995, the Federal Aviation Administration (FAA) published a Notice of Proposed Rulemaking (NPRM) on "Commuter Operations and General Certification and Operations Requirements" (Notice No. 95-5; 60 FR 16230.) In Notice 95-5, the FAA proposed that commuter operations conducted in airplanes with 10-30 passenger seats be conducted under the domestic or flag rules of part 121 of title 14 of the Code of Federal Regulations. Currently, scheduled passenger-carrying operations in airplanes with passenger-seating configurations of over 30 seats or more than 7,500 pounds payload capacity are conducted under part 121. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of 30 seats or less and 7,500 pounds or less payload capacity are conducted under part 135. Part 121, which provides the safety requirements for all major air carriers (as well as for any certificate holder conducting scheduled or nonscheduled operations with airplanes configured with more than 30 passenger seats), is generally considered to have more restrictive requirements than part 135. The regulatory changes were introduced in order to address the continually changing needs of the industry and to fulfill the agency's statutory requirement. This is the final rule, based on Notice 95-5.

II. History

Historically, the maximum certificated takeoff weight (MCTW) of an airplane determined both an airplane's categorization and operating requirements. Beginning in 1953, airplanes with an MCTW of 12,500 pounds or less were defined as "small airplanes" and were permitted to carry fewer than 10 passengers in on-demand air taxi service. The rules under which those operations were conducted were eventually codified as part 135. Airplanes with an MCTW of more than 12,500 pounds were defined as "large airplanes," and most large airplanes carried 20 or more passengers in scheduled air transportation. The Civil Aeronautics Board (CAB) used the large/small dividing line to separate major airline companies, who were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the CAB in order to operate in interstate commerce as a common carrier, from on-demand air taxi operators, who were exempted from obtaining a CPCN.

During this time, the CAB issued only a small number of CPCN's to major, publicly-recognized companies, such as Eastern, American, Delta, Pan Am, TWA, etc. In contrast, on-demand air taxi operators numbered in the thousands. These operators were typically fixed-base, usually at small airports, and owned fewer than five airplanes. They provided on-demand air transportation as well as other services, such as training new pilots and selling and renting small airplanes. Typically, the air taxi portion of such an operator's business was a small part of that business and rarely involved any scheduled operations.

Beginning in the late 1960's, airplane manufacturers began to design and build small airplanes, that is, less than 12,500 pounds maximum certified takeoff weight, that were capable of carrying more than 10 passengers, often close to 20. Some air taxi operators began to offer services that resembled

the services of the major airlines, given the economic opportunity to operate under the less restrictive requirements of part 135. Though these scheduled commuter operators began to overtake some air taxi operations, they still remained a small percent of the thousands of air taxi operators.

In 1978, as a result of the Airline Deregulation Act, the airline industry was deregulated economically and air carriers were given more freedom to enter and exit markets without prior government economic approval. One of the most significant effects of this deregulation was that it allowed major carriers to eliminate service to smaller communities, where such service proved to be uneconomical for the large aircraft the carriers operated. Major carriers were replaced in those communities by the commuter carriers. Under this "hub and spoke" system, the major part 121 air carriers provided service to the large metropolitan airports, while the growing class of scheduled part 135 air carriers provided service between smaller communities as well as feeder service from the smaller communities to the larger cities to connect with the major carriers' operations. With these changes, the traditional two categories of operations became three categories of operations—scheduled commuter operations, traditional air taxis, and traditional major air carriers.

Also in 1978, in response to the Airline Deregulation Act, the FAA reissued part 135 standards to upgrade commuter and air taxi safety requirements and make them more like part 121. At that time part 135 certificate holders were required to meet more stringent requirements in several areas, including weather reporting, flightcrew training, maintenance, and qualifications for management personnel.

Since 1978, the FAA has issued a number of separate rule changes to further align part 135 safety requirements with those in part 121. Despite this realignment, differences between the regulations still exist. The economic incentive to operate under part 135 still exists because the requirements in part 135 are still less restrictive than the part 121 requirements in many instances.

For the remainder of this document the following terms are used in the following ways. "Commuter," "commuter airline," and "commuter operator" mean those operators conducting scheduled passenger-carrying operations under part 135 in airplanes with a passenger-seating capacity of 30 or fewer seats. This current use of the word "commuter" does not include scheduled passenger-carrying operations conducted under part 121 in airplanes with a seating capacity of 31 to 60 seats. The term "commuter category airplane" used in this document refers to airplanes type certificated in that category under part 23 in contrast to airplanes type certificated under part 25 which are transport category airplanes. The term "nontransport category airplanes" is used for commuter category airplanes and SFAR 41 and predecessor normal category airplanes to be operated under part 121, as well as for some older airplanes certificated before the predecessors of part 25 (parts 04 and 4b of the Civil Air Regulations) came into existence. The Department of Transportation (DOT) uses the term "commuter" more broadly to include all scheduled passenger-carrying operations conducted in airplanes with a passenger-seating capacity of 20 to 60 seats. (Note: The High Density Rule, 14 CFR part 93 uses "scheduled commuters" differently. Its meaning under that part is not relevant to its use in this document.) The term "regional," which is used by industry to refer to short-haul, passenger-carrying, scheduled operations conducted under part 121 or part 135, is not generally used by the FAA.

III. The Problem and Related FAA Action

Recent part 135 commuter accidents have focused public, government, and industry attention on the safety of commuter operations. While the safety level of part 135 commuter operations has continued to improve, accident data, public perception, and recent government inquiries show a need for additional measures.

III.A. Accident Rate for Commuter Operations

The airline industry that uses airplanes with a passenger-seating capacity of 60 or fewer seats to conduct scheduled operations under parts 121 and 135 is an essential part of the air transportation network in the U.S. These airlines now fly more than all airlines did in 1958. In 1993, over 50 million passengers, 12 percent of the total passenger flights in the country, were flown by these airlines. Half of these passengers were flown in part 135 operations, i.e., in aircraft with 30 or fewer seats.

Over the past two decades the safety record of part 135 commuters has greatly improved. The accident rate per 100,000 departures in 1993 was one-fourth the accident rate in 1980. However, the accident rate for commuter airlines operating under part 135 continues to be higher than the rate for domestic part 121 airlines. In the past 2 years, several commuter airline accidents occurred that attracted media and public attention and caused government and industry officials to scrutinize the safety system for commuter operations under part 135.

These accidents included the December 1, 1993, crash of a Jetstream 3100, operated by Express II (as Northwest Airlink), at Hibbing, MN; the January 7, 1994, crash of a Jetstream 4100, operated by Atlantic Coast Airlines (as United Express), at Columbus, OH; and the December 13, 1994, crash of a Jetstream 3200, operated by Flagship Airlines (as American Eagle), at Raleigh-Durham, NC. All of these accidents involved fatalities.

III.B. Public Perception

With the increase in the number of flights to many communities conducted in airplanes with a seating capacity of 30 seats or less, some members of the public are questioning whether they are receiving an appropriate level of safety in small propeller-driven airplanes compared to the level of safety they receive in larger aircraft. This public concern is partly a result of the integration of commuter carriers with major airlines under an arrangement known as code-sharing. The term "code-sharing" refers to the computerized airline reservation system that lists a commuter flight in the reservation system under the same code used by a major carrier. A passenger who books with a major carrier may have a leg of the flight automatically booked with a smaller commuter affiliate of the major carrier.

With the media attention to recent commuter accidents, the passenger may also believe that the flight involves more risk because the smaller airplane and its operation may not have to meet the same safety standards. Most passengers probably do not realize that some differences in standards are necessary because of differences in the airplane and operation and that some of the accidents that are categorized by the media as "commuter" accidents occurred in flights that were being conducted under part 121; that is, in airplanes with over 30 passenger seats.

The differences in regulations were initially based on differences in the types of operations and differences in the size of airplanes; these differences in many instances still apply. But other differences, such as certain performance and equipment requirements,

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operational control requirements, and passenger information requirements are not size- or operationally-based. Some differences between the two sets of regulations must be maintained while others can be eliminated to improve the safety of commuter operations.

III.C. Congressional Hearings

On February 9, 1994, Congress held hearings on the adequacy of commuter airline safety regulations. The purpose of the hearings was to determine if FAA safety regulations should be modified to establish a single standard for all scheduled operations regardless of airplane size. Representatives of government, industry, and the public presented testimony. Most testimony supported the upgrading of safety requirements.

III.D. NTSB Study

In November 1994, the National Transportation Safety Board (NTSB) published a study on commuter airline safety. (National Transportation Safety Board Safety Study: Commuter Airline Safety, NTSB/SS–94/02.) The study was based on the NTSB's analysis of accident investigations and previous studies, on a recent site survey of airline operations and policies conducted at a representative sample of commuter airlines, and on information obtained from a public forum on commuter airline safety convened by the NTSB.

In the study, the NTSB found that the commuter air carrier industry has experienced major growth in passenger traffic and changes in its operating characteristics since the NTSB's 1980 study of the commuter airline industry. The NTSB found that there has been a trend in the industry toward operating larger, more sophisticated aircraft, and many carriers have established code-sharing arrangements with major airlines. The NTSB concluded that the regulations contained in 14 CFR part 135 have not kept pace with changes in the industry.

As a result of the findings, the NTSB issued the following safety recommendations to the FAA:

- Revise the Federal Aviation Regulations such that all scheduled passenger service conducted in aircraft with 20 or more passenger seats would be conducted in accordance with the provisions of 14 CFR part 121. (A–94–191)
- Revise the Federal Aviation Regulations such that all scheduled passenger service conducted in aircraft with 10 to 19 passenger seats would be conducted in accordance with 14 CFR part 121, or its functional equivalent, wherever possible. (A–94–192)

In the 1994 study, the NTSB examined the differences in flight dispatch requirements between parts 121 and 135. The NTSB found that, in the absence of support from licensed dispatch personnel, it is difficult for a part 135 pilot to accomplish several tasks between flights in the short periods of time available. The lack of support might increase the risk of critical mistakes that could jeopardize the safety of flight. As a result the NTSB issued the following recommendation to the FAA:

Require principal operations inspectors (POI) to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. (A–94–193)

The FAA published all of the NTSB recommendations in the **Federal Register** (59 FR 63185, December 7, 1994) and received public comments generally supporting the expansion of the operational rules of part 121, except for flight time limitations, to commuter operations under part 135. Some commenters had considerable reservations about applying certain part 121 equipment requirements to smaller airplanes. The FAA considered these comments in developing this rule.

III.E. Related FAA Action

In December 1994, the FAA proposed revisions to the training and qualification requirements of certificate holders conducting commuter operations under part 135. The proposed rule also addressed crew resource management training for pilots, dispatchers, and flight attendants in part 121. (59 FR 64272, December 13, 1994) [Add Final Action]

IV. The Proposed Rule and General Description of Comments

In Notice 95–5, the FAA proposed to require that all scheduled passenger-carrying operations in airplanes with a passenger-seating configuration of 10 or more seats (excluding any crewmember seat) and all scheduled operations in turbojets (regardless of the number of seats) must be conducted under part 121. The proposal would require certificate holders now conducting scheduled passenger-carrying operations under part 135 in airplanes with a passenger-seating configuration (excluding any crewmember seat) of 10 to 30 seats or in turbojets to be recertificated and to conduct the applicable operations in compliance with part 121 requirements. In some instances the proposed rule revised the requirements of part 121 to make compliance with the requirements feasible for operations in smaller, nontransport category airplanes.

In response to Notice 95–5, the FAA has received over 3,000 comments from the public. Of these, most are solely on the issue of the Age 60 Rule. Many of the Age 60 commenters are pilots and other individuals who address the current rule in part 121; very few address the specific Age 60 issue contained in this rulemaking, i.e. the applicability of the Age 60 Rule to pilots of affected commuter airplanes. These comments are summarized in Section V.E., The Age 60 Rule.

Approximately 200 comments were received on the substantive issues raised by Notice 95–5. These commenters represent air carriers; manufacturers; associations representing air carriers, manufacturers, pilots, dispatchers, and passengers; State and local governments; the U.S. Small Business Administration; the National Transportation Safety Board; and individuals. While some commenters voice general support for the goals of Notice 95–5, most raise concerns about specific proposals. Industry commenters are particularly concerned about the costs of complying with the proposed rule.

The FAA also conducted three public meetings on the proposed rule: on May 18, 1995, in Anchorage, Alaska; on June 14, 1995, in Chicago, Illinois; and on June 21, 1995, in Las Vegas, Nevada. Testimony from the public meetings and written statements submitted at the meetings have been included in the FAA public docket, have been considered by the FAA in developing the final rule, and are discussed in the following discussion of comments along with all written comments that were submitted to the FAA docket.

In Notice 95–5, the FAA identified major issues that the agency addressed in developing the proposal. These included applicability of the proposal, aircraft certification issues, flight time limits, the Age 60 Rule, use of a dispatch system, certain equipment items, and the compliance schedule. Comments received on these major issues and the FAA's response to these comments are discussed in Section V. Comments received on specific proposals and the FAA's response to these comments are discussed in Section VI. Comments specifically addressing cost issues are discussed in Section VII. Below is a list of some of the major commenters and their associated abbreviations. The full name of each commenter is used when the commenter is first mentioned. In subsequent discussions, the commenter's abbreviation, as shown below, is used.

Abbreviations for Commenters

AAAE American Association of Airport Executives
AACA Alaska Air Carriers Association
ADF Airline Dispatchers Federation
AIA Aerospace Industries Association
ALPA Air Line Pilots Association
APA Allied Pilots Association
ASA Atlantic Southeast Airlines
GAMA General Aviation Manufacturers Association
HAI Helicopter Association International
IAPA International Airline Passengers Association
NACA National Air Carrier Association
NATA National Air Transportation Association
NTSB National Transportation Safety Board
Penair Peninsula Airways
RAA Regional Airlines Association

V. Major Issues

V.A. General Justification

In Notice 95–5, the FAA justified the proposed rule on the basis of the higher accident rate for commuter airlines. Parts of the proposed rule were also supported by the testimony from Congressional hearings on commuter airline safety regulations and by the NTSB study, based on accident investigations and previous studies, which found that part 135 regulations had not kept pace with changes in the industry.

Comments: The NTSB and the Air Line Pilots Association (ALPA) generally support the proposal and its justification. A comment from the International Airline Passengers Association (IAPA) supports the rulemaking justification by stating the findings of a recently completed IAPA study of commuter/regional airplane safety records in the United States covering the period 1970 through March 31, 1994. According to IAPA, during that period carriers using airplanes with 30 or fewer seats had 29 fatal accidents with 249 passenger fatalities; over 30 seat regional carriers had 1 fatal accident with 2 passenger fatalities; major airlines had 11 fatal domestic jet accidents with 527 passenger fatalities.

In contrast to these comments, many other commenters state that the proposed rulemaking lacked sufficient justification. Recent accident data, say these commenters, have shown significant reductions in accident rates for commuters so that the difference in accident rates for part 121 operations and part 135 commuter operations is minimal. According to at least one of these commenters, if the accidents that occurred in extreme environments such as Alaska are removed, the accident rate under the two parts would be either the same or lower for part 135 commuter operations.

According to some commenters, the recent accidents cited in Notice 95–5 were all caused by pilot error and thus would not have been prevented by this rulemaking but could have been prevented by improvements in training.

Some commenters state that the proposed rule is the result of public, media, and agency overreaction to recent commuter accidents and that both the public and the media drew inaccurate conclusions about commuter airline safety from these accidents. According to these commenters, instead of hastily proposing rules based on incomplete information, the agency should have informed the public that many so-called commuter operations are already being conducted under part 121.

Several commenters state that the proposed rule will decrease safety because in order to avoid the proposed restrictions, certificate holders now operating airplanes with a seating capacity of 10 to 19 passenger seats will switch to reciprocating-powered airplanes with a passenger seating capacity of 9 or less in order to continue to operate under part 135. Furthermore, some commenters state that if fares are significantly increased to pay for the more restrictive requirements, passengers may choose ground transportation, which has a much higher accident rate.

Several commenters state that the proposed rule would have a significant economic impact on small airline operators, in some cases forcing them to close their businesses, thus eliminating air transportation to some locations. In addition, according to some commenters, the proposed rule would have a negative impact on competition, particularly in the foreign market because the cost of U.S. manufactured airplanes would increase.

FAA Response: The FAA does not agree with the assessment that the proposed rule lacked sufficient justification. The FAA recognizes the validity of some of these comments especially in regard to unintended safety decrements if the aircraft performance portions of the proposed rule were adopted on the schedule proposed. While the FAA recognizes the improvements in the accident data for commuter airlines in recent years, it intends through this rulemaking, and other related rulemaking actions underway, to reduce the accident rate even further.

Several commenters have questioned the need for a rule that would move affected commuters into part 121 domestic or flag operations. For instance two commenters argue that a dispatch system would not have prevented the three accidents cited by the FAA in the NPRM. It would be a mistake to assume that the FAA is basing this final rule on just those three accidents. Similarly, it would be a mistake to conclude that the FAA is justifying this rule on merely "perceptions" of a problem. Those accidents were catalysts for the Government to focus on the differences in the part 121 accident rate and the accident rate for 10- to 30-seat part 135 commuters. Over the next 15 years affected commuters are expected to have had 67 more accidents than they would have had if the accident rate for part 135 affected commuters were the same as that for part 121 scheduled operators. The FAA believes that adoption of this rule will significantly close the accident rate gap over time.

The FAA believes that the part 121 regulatory scheme for scheduled operations is more appropriate for the 10- to 30-seat scheduled operations. The added safety features and requirements in part 121 domestic/flag rules, including the dispatcher system, will increase safety for the affected commuters. Because most accidents are caused by human errors, rules such as the part 121 training rules and the dispatcher system rules are some of the most valuable tools in reducing the number of these kinds of accidents. Rules that most directly relate to preventing accidents caused by human errors are being imposed on the affected commuters on a faster schedule than many of the other rules (e.g., aircraft performance and certain equipment retrofits). It can be reasonably anticipated that applying part 121 operating rules, including these two groups of rules, can begin to immediately and significantly reduce the accident rate for affected commuters. For instance, the FAA anticipates that requiring operators to have someone (i.e., a certificated dispatcher) double check the work of the pilot and provide the flight crew with updates on weather and alternate airports can reduce some human factor errors. The FAA believes that if the flight crew is subjected to more stringent flight and duty safeguards (either the current part 121 domestic flight and duty rules or the rules in a soon to be issued NPRM in which the FAA will propose to overhaul all the flight and duty regulations), the dangers of fatigue causing a human factors error will be reduced. Enhanced part 121 training (which is being required of

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affected commuters in an associated final rule) will also reduce some human factor errors.

It is critically important to impose the bulk of the part 121 regulatory scheme on affected commuters because the absence of any significant portion of that regulatory scheme may lessen the effectiveness of the rest of the safety features in the part 121 regulatory scheme. Even the best trained and well rested pilot is a human being and, therefore, subject to making errors. With a dispatcher system, the chances of pilot miscalculations or oversights could be reduced. Moreover, a dispatcher can assist the flight crew in making enroute plans for an alternate airport (which might be necessary due to weather problems, air traffic control problems, airplane equipment problems, fuel problems, etc.) while the crew focuses on flying the airplane. It is reasonable to conclude that the accident rate for affected commuters can be reduced to a level closer to that of current part 121 domestic operations by eliminating most of the regulatory differences that the two different regulatory schemes allowed.

While major air carriers may require commuter affiliates to follow certain part 121 standards, and in some cases even exceed some part 121 standards, no part 135 commuter operator currently operates under part 121 operations specifications or totally complies with all part 121 standards (e.g., many part 121 requirements are based on the assumption that transport category airplanes are operated). Most importantly, no part 135 commuter is required by current FAA regulation to comply with part 121 requirements.

Recent accidents brought to public attention the differences between part 135 and part 121 and the lack of continuing justification for these differences. As Notice 95–5 pointed out, the distinction between these two types of operations was, in the beginning, an obvious necessity. Major air carriers engaged in public transportation were entirely different from the small on-demand, air taxi operator. But with the development and growth of what has come to be known as commuter service, the line between the two has blurred. Certain segments of the commuter industry have continued to develop commuter category airplanes, holding the line at 19 passenger seats in order to stay within the limits of the less restrictive airworthiness regulations for nontransport category aircraft. This has created the potential for the further development of commuter airplanes specifically designed to stay within the limits of the less restrictive regulations while at the same time becoming as sophisticated or more sophisticated in technology than some transport category airplanes operated by the major carriers. With hindsight, the FAA may not have drawn the line as it currently is but would have attempted from the start to maintain one set of requirements.

Until now the line between the requirements has not created a safety concern, but as the commuter market grows, the disparity between the two sets of requirements is of more concern. There is no longer any justification for maintaining two sets of standards for scheduled operations in airplanes with a passenger-seating configuration of 10 or more seats. When a passenger pays for a ticket on an FAA certificated commuter operation, that passenger must be assured of the highest possible level of safety.

With respect to commenters—concerns that the proposed rules will actually decrease safety because certificate holders will switch to reciprocating-powered airplanes, the FAA has modified the proposal, especially in regard to the schedule for some airplanes to meet part 121 airplane performance criteria, to allow operators sufficient time to build up capital or credit to make changes to the existing fleet or to purchase new airplanes that meet the higher performance standards. The FAA does not want to move so fast as to force operators to use airplanes that have even higher accident rates (i.e., airplanes with 9 or fewer seats).

The FAA finds that safety and the public interest require extending the proposed compliance dates for imposing part 121 performance criteria requirements and some equipment requirements until it is economically feasible for operators of 10- to 19-seat airplanes to acquire or lease replacement aircraft. The FAA has analyzed the situation and has concluded that many operators of 10–15 seat aircraft would replace those aircraft with 9 or fewer seat aircraft to avoid the sudden imposition of large costs on their current fleets. Without the FAA modifying its proposal with regard to airplane performance requirements, many airplanes would be eliminated from scheduled service at the first compliance date (i.e., 15 months after publication of the final rule) and operators of other airplanes would have to offload passenger seats, thereby causing the economic and safety impacts discussed previously. This modification would be consistent with the National Transportation Safety Board's (NTSB) recommendation for airplanes with 10- to 19-seats in scheduled service. For those aircraft, the NTSB recommended that scheduled passenger service be conducted in accordance with part 121 "* * * or its functional equivalent, wherever possible".

Clearly the NTSB used the phrase "wherever possible" because it knew that it was not possible for a substantial portion of the 10- to 19-seat airplane fleet to meet all of the requirements of part 121. The NTSB carefully chose its words when it made its recommendations for 10–19 seat airplanes used in scheduled service. The NTSB recognized that the FAA necessarily had to exercise judgment about which part 121 regulations to impose, which regulations could be modified to achieve functional equivalency, and which regulations simply might not be possible.

In regard to comments that higher fares resulting from this rulemaking will cause passengers to switch to less safe modes of transportation, it has been the FAA's observation that passengers are usually willing to pay for safety. While some may choose to drive rather than fly, that has not stopped the airlines in the past from raising fares. It should also be noted here that the public tolerates a higher accident rate for automobile travel than for airplane travel. If air transportation accident rates approached that of ground travel, most Americans would stop flying. The air transportation industry is very aware of this; it is the main reason that air transportation is safe. As one commenter points out, the recent commuter accidents caused a 12 percent drop in passengers on commuter airlines. That is a significant cost to industry.

The FAA has carefully considered the economic impact of the proposed regulations and has reviewed and revised its analysis in light of the comments received. (See Section VIII.) The agency has determined that the impact of the final rule should not disrupt air transportation service and that few, if any, certificate holders will discontinue their commuter operations. During the transition period, the FAA will work with certificate holders who are switching to part 121 requirements to make the switch as smooth as possible. It should also be noted that the compliance schedule provides for a gradual updating of equipment and operations and will allow certificate holders the choice of upgrading or phasing out airplanes that cannot be upgraded without significant cost.

Some may argue that there may still be limited circumstances, even with these changes, where the effects of this rule (and related rulemakings on

upgraded training requirements and pilot flight time and duty limitations) will be so burdensome as to lead to adverse safety consequences and/or a loss of critical air service. This is neither FAA's intention nor its expectation. Indeed, the entire premise of this rulemaking is that safety standards can and must be improved for the benefit of passengers in 10–30 passenger seat aircraft in scheduled service.

Nevertheless, there is in place in 14 CFR 11.25 a process for requesting and granting exemptions from regulatory requirements, including those adopted here. As with any request for exemption, of course, an applicant would have to demonstrate that the public interest justifies such an exemption. In this case, an applicant could show, for example, that it is unable to comply with a particular provision or a particular schedule date due to circumstances beyond its reasonable control (rather than its own failure to act in a timely or prudent manner), that there is convincing evidence that alternative service is unavailable to the public, and that the carrier would be able to maintain an adequate level of safety during the period of the requested exemption.

We would expect that any exemption from this rule would be for a limited period only, such as the time required for delivery of a piece of equipment that has been ordered. Our goal would be to permit the air carrier to come into compliance with the rule in an orderly manner, and not simply to delay or avoid the cost of compliance.

The FAA considers this rulemaking a positive step towards promoting air transportation by renewing confidence in commuter operations. Most importantly, this rulemaking should reduce the accident rate of the affected commuters to a rate that is closer to that of current part 121 domestic operators.

This rulemaking is consistent with the FAA's obligation in accordance with section 44701(d) of Title 49 of the U.S. Code that when prescribing a regulation or standard to promote safety or to establish minimum safety standards, the Administrator shall consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. The intent of this rulemaking is to provide the highest possible degree of safety to affected commuter operations.

V.B. Applicability

The FAA proposed that part 121 requirements would apply to all scheduled passenger-carrying operations for compensation or hire in airplanes with a passenger-seating configuration of 10 or more seats and to all scheduled passenger-carrying operations for compensation or hire in turbojet-powered airplanes regardless of seating capacity. (Throughout the rest of this document these certificate holders are referred to as the "affected certificate holders" or the "affected commuters.") Under the proposal, scheduled passenger-carrying operations in non-turbojet airplanes with 9 or fewer passenger seats, on-demand operations with airplanes with 30 or fewer passenger seats, operations in single-engine airplanes, and operations in rotorcraft would continue to be under part 135.

The proposed rule would also have eliminated the frequency of operations test of five round trips per week which allowed some part 135 scheduled operations to be conducted under the on-demand rules of part 135.

Comments: While no commenters specifically object to applying part 121 requirements to commuter operations in airplanes of 20 to 30 passenger seats, several commenters, many of them small part 135 certificate holders, object to applying part 121 requirements to commuter operations in airplanes of 10 to 19 passenger seats. According to these commenters, the FAA did not sufficiently justify imposing the more restrictive part 121 requirements on operations in these size airplanes and the small certificate holders of these airplanes would not be able to meet the economic burden of the proposal. A few certificate holders state that if the regulations are implemented as proposed they would either have to downgrade their airplanes, reduce the number of passenger seats, or terminate certain services. This is especially the case for small fixed-based certificate holders, who conduct mostly on-demand service with some scheduled service, and for certificate holders who service remote areas such as parts of Alaska, Hawaii, or the islands of Samoa.

Commenters also state that the burden is greater for certificate holders not affiliated with a major airline and that drawing the line at 10 or more includes many small, independent certificate holders. According to commenters, these certificate holders provide a different kind of service from what the larger commuter operators provide.

One commenter, IAPA, states that part 121 requirements should apply to all scheduled passenger-carrying operations, no matter how many seats are on the airplane. According to this commenter, by leaving out the under 10-seat aircraft from the rulemaking, passengers would be exposed to travel on the least safe aircraft operating in scheduled passenger transportation. According to the commenter, most under 10-seat aircraft are piston-engined, with a lower level of engine reliability and performance. The aircraft are frequently operated in harsh environments thereby exposing passengers to higher risks.

Many of the commenters who object to the applicability of part 121 to aircraft with 10 to 19 passenger seats, also object to the definition of "scheduled" in proposed § 119.3. According to these commenters, the effect of the current description in SFAR 38–2 of commuter air carriers that includes 5 round trips per week should not be changed. Apparently some small certificate holders that conduct mostly on-demand service also provide one or two scheduled service flights per week. According to these commenters, if they have to upgrade the airplanes and operations to part 121 to conduct these scheduled flights, they will downgrade the airplanes or terminate the service. The commenters state that they cannot afford to comply with part 121, that the service they provide offers one-of-a-kind service to remote places or resorts, and that in some instances there is no ground transportation to these locations.

Several on-demand operators and the National Air Transportation Association (NATA) comment that the FAA should not revise part 135 on-demand requirements either at this time or at any time. These commenters are responding to a statement in Notice 95–5 that additional standards for on-demand air taxi operations may be considered in the future.

The General Aviation Manufacturers Association (GAMA) objects to including all scheduled passenger-carrying operations in turbojets under part 121 regardless of the number of passengers. While GAMA agrees with the FAA's assumption that no turbojets are being used in regularly scheduled part 135 operations, it objects to the applicability because the FAA presented no technical justification for the proposal. GAMA recommends allowing turbojets with a passenger-seating capacity of 9 or less to operate under part 135. Aerospace Industries Association (AIA) also objects that no rationale was presented for including turbojets. AIA states that the proposed rule offers an unfair competitive advantage for normal category turboprops against jets with a passenger-seating capacity of 9 or less. United West Airlines states that it is a small operation with two jets, that it costs $70,000 a year to train its four pilots, and that the proposed rule will put the airline out of business.

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Two individual commenters recommend that "any scheduled operation with airplanes seating more than 9 passengers but less than 19 passengers" be operated under supplemental rules when that scheduled operation is a code-sharing arrangement with another part 121 scheduled carrier.

FAA Response: The so-called "frequency of operation" provision in the SFAR 38–2 definition of commuter air carrier does not exist for current part 121 operations. Affected commuters being upgraded to part 121 by this rule will be required to conduct all of their scheduled operations under part 121 regardless of the number of scheduled operations. However, the FAA has decided to retain the frequency of operations distinction for those operations conducted in airplanes with a passenger-seating configuration of 9 seats or less by revising the definitions of "commuter operation" and "on demand operation" in § 119.3. Therefore, scheduled operations in airplanes with a passenger-seating configuration of 9 or less (except turbojets) and conducted on a particular route with a frequency of fewer than five round trips per week (regardless of whether one or more airplanes are used on the route) would be conducted under the requirements applicable to on-demand operations.

The FAA believes that, because of the nature of the operation in which small turbojets, which are type certificated under part 25, are used (e.g., transoceanic, long range, international, etc.), they approximate the operations of larger air carriers. For example, part 135 contains no requirements for long-range navigational equipment or long-range fuel considerations. In an effort to increase the safety for passengers carried in those kinds of operations, the FAA has determined that any scheduled operations of turbojet airplanes should be conducted under part 121.

The FAA disagrees with commenters who suggest that commuter operations in code-sharing arrangements should be conducted under the rules for supplemental operations. Code-sharing, although it may affect passengers' perceptions, is a business/marketing arrangement and is not the basis for an FAA regulatory scheme. Scheduled operations in airplanes with 10 or more passenger seats should come under part 121 domestic or flag, as appropriate, not under supplemental rules.

The only operators who currently operate under part 135 on-demand rules that would be required to conduct their operations under part 121 scheduled rules are those who are included because, as discussed above, part 121 does not contain a frequency of operation provision. If circumstances in the future necessitate a change to these rules, commenters will have an opportunity to comment on any proposed changes.

Air Tour Industry Comments: Several comments were received from air tour operators in the State of Nevada and the vicinity of the Grand Canyon. Some of these certificate holders would be affected by the rulemaking because they operate nontransport category airplanes of 10 to 19 seats and because they provide point-to-point service; for example, from Las Vegas to Grand Canyon Airport even though the flights are exclusively marketed as sightseeing and not point-to-point travel. Despite the fact that they technically fall into the category of a commuter operator, these commenters claim that they are more like an on-demand operator and that the proposed rule would penalize them for using larger, safer airplanes than their competitors. One of these commenters states that it does not fly city to city, but flies regularly scheduled flights that take off and land at the same airport. This operator states that, because of the nature of the operation and because of the proposed definition changes, it would be required to comply as a scheduled operator.

According to the commenters, since they have upgraded from 6- to 9-seat airplanes to 19-seat airplanes, they have been required to install ground proximity warning systems (GPWS), traffic alert and collision avoidance systems (TCAS), cockpit voice recorders (CVR), and flight data recorders (FDR), while their competitors have not been burdened by these costs. According to some of these commenters, this equipment is not beneficial in their operating environment because they typically fly in VFR conditions on short-range flights of an hour or less.

The commenters complain that if the proposed rule is implemented, they will be forced to replace the turboprop airplanes with smaller reciprocating-powered planes and will thereby lose some significant safety benefits such as the following:

- The two-pilot crew requirement with captains required to hold an Air Transport Pilot rating.
- Aircraft certificated to higher levels of aircraft performance.
- Aircraft maintenance procedures under the more comprehensive Continuous Airworthiness Maintenance Program.
- Safety equipment such as GPWS, TCAS, CVR, and weather radar.

One commenter lists some of the more "onerous" proposed requirements:

- "Ditchable" exits in case of water landings.
- Emergency floor path exits.
- Third attitude indicator (in aircraft flown in daylight under visual flight rules).
- Portable protective breathing equipment (PBE).

A commenter points out that the new aircraft performance requirements would limit maximum operating weight at Grand Canyon due to the high altitude.

According to these commenters, switching to smaller airplanes will increase air traffic congestion in the Grand Canyon area, decrease safety for passengers, and double or triple noise levels.

According to one commenter, these certificate holders do not have code-sharing partners and while these certificate holders sometimes provide point-to-point service, the flights are typically part of an all-inclusive tour package which includes ground transfers to Las Vegas hotels, sightseeing flights to the Grand Canyon, and motor coach tours of the Grand Canyon. This is totally unlike typical commuter operations.

Another commenter, however, says that at least one of the air tour operators does use code-sharing with a major carrier and that the offering of its scheduled flights is available by referencing airline computers all over the world.

Some of the commenters cite an NTSB report ("Safety of the Air Tour Industry in the United States," June 1, 1995) which states that the implementation of SFAR 50–2 has created a safe operating environment for air tour operators over the Grand Canyon. One commenter quotes NTSB as saying, "The level of safety of air tour operations could be improved by creating a national standard for air tour operations that contains definitions specific to the air tour industry and specific requirements, including unique operations specifications, to accommodate localized unique conditions, similar to the special conditions contained in SFAR 50–2."

One commenter states that his company recruits retired airline pilots to provide a high level of experience and stability to the flightcrews.

The Clark County Board of Aviation is concerned that the proposed rule could be devastating to individual certificate holders and adversely affect the vitality of the air tour industry in Southern Nevada.

The Grand Canyon Air Tour Council states that the proposed expanded definition of "scheduled operations" is the problem and that the definition was changed with no satisfactory explanation or justification.

The Office of the Lieutenant Governor of Nevada testified at the public meeting held in Las Vegas that compliance would affect a "$250 million industry that we have worked hard to develop."

FAA Response: The FAA does not agree that air tour operations are totally unlike commuter operations. Much of an air tour flight is like much of a commuter flight. If an air tour operator is conducting scheduled operations, as defined in § 119.3, in airplanes with a passenger-seating configuration of 10 or more, it must comply with part 121 domestic or flag requirements, as applicable. This includes operators who fly from and return to the same point on a scheduled basis.

The FAA agrees that certain aspects of air tour operations make them appear to be unlike commuter operations. For example, portions of air tour flights are at lower altitudes, typically over rugged and remote terrain, and often in airspace that is congested with other sightseeing aircraft. The FAA has begun an air tour industry project to study the implications of these differences to safety and to develop regulations, as necessary, to address specific features of air tour operations. If regulations are implemented as a result of the project, they would be in addition to current regulations, as is SFAR 50–2 which prescribes requirements for special conditions relating to flights over the Grand Canyon. The FAA project will consider the recent NTSB study cited by commenters. Because certain part 121 and 135 provisions are being recodified into part 119, SFAR 50–2 and SFAR 71 are being updated to conform to this rulemaking.

Alaskan Comments: Several comments were received from certificate holders in Alaska, Alaska government agencies, and others interested in how the proposal will affect Alaskan operations. Currently Alaskan certificate holders conducting scheduled operations in airplanes of 10 to 30 seats comply with part 135. The regulations allow them not to comply with flight time limitations for scheduled operations (§ 135.261(b) and (c)) and instead allow them to follow the regulations for on-demand operations. Alaskan certificate holders using airplanes of more than 30 seats must comply with part 121 supplemental requirements for nonscheduled flights and flag requirements for international and intra-Alaska scheduled operations. Notice No. 95–5 proposed no exceptions for Alaska. Certificate holders whose operations fit the applicability for scheduled operations for airplanes of 10 or more seats would be required to comply with part 121 domestic requirements. International operations would follow flag requirements of part 121 and charter operations would follow supplemental requirements of part 121. Alaskan operators currently operating under part 121 flag rules would have to operate under part 121 domestic rules except for those operations that meet the definition of flag operations in proposed § 119.3.

The basic thrust of the comments is that the Alaska environment is unique and that requiring Alaskan commuter operators to comply with part 121 requirements would be devastating to certain certificate holders in Alaska and therefore to certain segments of air transportation. Furthermore commenters point out that most air transportation in Alaska is conducted in small reciprocating-powered airplanes with passenger-seating capacities of under 10 seats. Therefore, the proposed rule would not have a significant effect on air transportation safety in Alaska and would impose an economic burden on a few certificate holders who provide upgraded, i.e., safer, service. According to commenters, the accident rate for airplanes with under 10 seats is much higher than for turbine-powered airplanes with 19 seats. (Accident data analyzed by the FAA verifies that, unlike the rest of the nation, the part of the commuter fleet in Alaska involved in accidents contains a large proportion of under-10-seat aircraft.)

Peninsula Airways (Penair), as well as other commenters, states that characteristics of Alaska make commuter operations in the State unlike those in other parts of the country. In particular flights are conducted in the same time zone, pilots do not have long commutes to their jobs, flights are not usually conducted between 9 p.m. and 7 a.m., and operations subject to Air Traffic Control (ATC) are not in congested airspace. This rationale is primarily in defense of using the flight time limit requirements of part 135 nonscheduled operations.

Several commenters emphasize the absolute necessity of air travel in Alaska where many of the towns and villages are not accessible by road. They say that Alaskans are dependent on air transportation and the cost of that transportation must remain affordable. High cost items in the proposal, such as the possible need to upgrade airports, the use of a dispatch system, the various equipment requirements, and certain performance requirements, would boost the fares to levels that many residents of Alaska could not afford. The State of Alaska Department of Transportation and Public Facilities states that "the proposed air carrier and airport regulations could devastate Alaska's heavily aviation dependent economy."

The Alaska Air Carriers Association (AACA) states that the proposed rule would end the growth of the 10- to 19-seat airplane and would increase fares by 67 to 100 percent. The proposed airport legislation is expected to cost the state $100 million. AACA states that the proposed rule would directly affect only 15 certificate holders in Alaska. Two-thirds of the scheduled air carriers use aircraft with a seating capacity of 10 seats or less.

ERA Aviation, which currently operates under part 121 flag rules, objects to the proposal to operate as domestic/supplemental. It operates over 100 aircraft, fixed and rotary wing, nationally and internationally. The commenter states that for years Alaska part 121 operators have been operating under flag rules, both for scheduled and nonscheduled operations. This has allowed increased flexibility in crew scheduling, which is necessary because of the length of Alaska routes, the lack of facilities in remote locations, and the lack of road networks or other alternate forms of transportation to outlying communities. Section 119.21 would require these carriers to operate under domestic rules, which would decrease crew scheduling flexibility, add substantially to costs, derogate safety, and probably result in the elimination of vital air transportation services to some outlying communities. The commenter says there is no safety justification for such a change because Alaska part 121 operators have established an excellent safety record under existing rules. They say that, at the very least, Alaska carriers currently operating under flag rules should be allowed to continue to operate under flag rules for both scheduled and nonscheduled operations.

A part of the proposal that would have affected several Alaskan certificate holders is the proposal that single-engine airplanes with 10 passenger seats now operating scheduled flights under part 135 would in effect have to remove a seat in order to continue operating in scheduled service under part 135. Single-engine airplanes are ineligible for operation under part 121. The only 10-seat single-engine airplane model involved is the single-engine de Haviland DHC–3 Otter (not to be confused with the twin-engine de Haviland DHC–6 Twin Otter mentioned

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elsewhere in this notice). According to AACA and other commenters, there is no possible safety benefit in taking a seat out of an airplane, but the cost to certificate holders who want to continue to use these airplanes in scheduled operations will be significant.

NATA comments that no accident involving the Otter would have been prevented by limiting the seating to 9 passengers. Furthermore, according to the commenter, the FAA cost on this issue is another example of gross underestimation; actual costs will be 15 times higher (almost $22,000 per aircraft). The City and Bureau of Juneau opposes the proposal to remove a seat from the 10-seat airplanes so that they can operate under part 135. This commenter notes that there will be additional flights, additional noise, and additional congestion on the water and in the air. It notes that it is incomprehensible how the reduction of one seat from the Otter will provide an additional level of safety. Wings of Alaska comments that the most cost-efficient floatplane used in southeast Alaska is the single-engine DHC–3 Otter. Because there is no cost-effective replacement aircraft available for float operations that offers the same capacity as the Otter, replacing them is not an option. Wings states that it operates the Otter about 6 months a year. Four communities that do not have runways receive daily service. Wings purchased five 10-seat Otters in '92–93 to improve service to a wilderness sports facility, substantially reducing noise by reducing the number of flights by 50%. Wings notes that considering initial operating experience (IOE) and route check requirements, it is being operated at a higher level of safety than the 10 seat, on-demand aircraft allowed under the rule to be operated in part 135. Wings estimates that the removal of one seat would have cost them $85,000 in 1994. Wings asks that the Cessna Caravan and the Cessna Grand Caravan also be allowed to operate with 10 seats. AACA comments that Ketchikan Air Service, Taquan Air Service, and Wings of Alaska together operate 12 Otters in southeastern Alaska.

The NTSB comments that it intentionally excluded airlines that operate exclusively in Alaska from its study of commuter airline safety because of the unique characteristics of the environment in Alaska. The NTSB currently is conducting a study of commercial Alaska aviation including commuter airlines. The NTSB held two public meetings in Alaska during June 1995 and visited a number of scheduled and nonscheduled part 135 certificate holders to collect information for the study. The NTSB intends to compare flying operations in Alaska with the rest of the U.S. The study is scheduled for completion in 1995. Several other commenters mention the study and suggest that the FAA should wait until the study is completed before making any changes to Alaskan regulations.

ALPA, GAMA, and other commenters state that safety issues are the same in or out of Alaska and that, therefore, Alaska should not be given a blanket exemption from the rulemaking. ALPA and GAMA state that Alaskan certificate holders, as well as certificate holders in other parts of the country, may need to be exempted from certain requirements that are not applicable to the type of operations being conducted and should go through the standard exemption request procedures in such cases.

One comment from an individual pilot in Alaska states that the schedule he flies of 14 days on and 14 days off is exhausting, and that even though he gets 10 hours of rest in each 24 hours, it is not enough over a 14-day period. He is in favor of the proposed flight time limit changes.

Some Alaskan certificate holders comment that they rely on experienced pilots who are familiar with the particular demands of Alaskan operations. Penair states that 10 percent of its pilots are age 60 or over and that 20 percent are over age 52.

Commenters who oppose the rule suggest either exempting Alaska altogether, not including the 10-to-19 seat airplanes in the rule, or allowing under-19-seat airplanes to be covered under the supplemental rules of part 121 rather than the domestic rules.

FAA Response: The FAA agrees with the commenters who state that safety issues are the same in or out of Alaska. The FAA has specifically considered the implications of the proposal on Alaska given its unique characteristics and has determined that the rules should apply to Alaska as proposed. While the NTSB comment on Notice 95–5 states that the NTSB excluded Alaska from its safety study on commuter airline safety, the NTSB states in the report that its findings from the information obtained in the course of the study "apply to operations in Alaska as well as the other 49 states and U.S. Territories." ("Commuter Airline Safety," NTSB/SS–94/02). Therefore, this final rule does not provide a blanket exemption for Alaska.

In response to the single-engine airplane issue, the FAA has decided to allow an exception to continue. Currently, several part 135 certificate holders conduct scheduled passenger-carrying operations in single-engine airplanes type certificated with two pilot seats in the "cockpit" and 9 passenger seats in the "cabin." Some certificate holders are authorized to conduct scheduled operations in that airplane, the DHC–3 Otter, under daytime VFR, and carry a tenth passenger in the right-hand pilot seat. In Notice 95–5, the FAA proposed to limit all scheduled operations of single-engine airplanes to the carriage of nine passengers, under all conditions. (60 FR 16235, 16273) The FAA has decided to allow the current practice to continue for operators who currently conduct single-engine operations under daytime VFR with a tenth passenger.

Comments on Exemptions/Deviations/Waivers: Currently some certificate holders operating under part 135 that will be affected by this rulemaking have obtained exemptions, deviations, and waivers from certain part 135 requirements.

AACA states that AACA has held an exemption on behalf of its members allowing removal and installation of aircraft seats by certain pilots and trained ground personnel under an FAA-approved program. The commenter states that it is unclear whether or not aircraft operated previously under part 135 in Alaska would be allowed to continue this seat removal and installation under part 121 with an appropriate exemption. AACA states that taking away this option would significantly increase air carriers' costs and diminish their flexibility to utilize aircraft in "combi" (combination cargo/passenger) configurations. AACA recommends that all exemptions, deviations, or waivers held by a part 135 operator automatically be carried over into its part 121 operation. As presently written, Notice 95–5 would require compliance with part 121 first, and only then would the FAA evaluate requests for exemptions to part 121 rules. This places additional and unwarranted operational costs on air carriers transitioning to part 121.

FAA Response: The specific exemption referred to by the AACA applies only to operations with airplanes with a passenger-seating configuration of 9 or less, and therefore is not affected by this rulemaking.

However, exemptions issued for operations under part 135 do not automatically continue in effect for operations under part 121. Therefore, affected commuters who will in the future be operating under part 121 must reapply for any exemptions they believe should apply to their part 121 operations after the compliance date of this rule. Also, general exemptions issued to present part 121 operators will not apply automatically to new part 121 operators so any new part 121 operator will have to apply to be included in these existing exemptions.

V.C. Aircraft Certification

The proposed rule would amend part 121 to require each 10- to 19-passenger seat airplane that is to be operated in scheduled operations and for which an application for type certification is made after March 24, 1995, to be type certificated in the transport category. Affected commuter airplanes are type certificated under the requirements of part 23.

In Notice 95–5 the FAA stated its intent to review the standards of parts 23 and 25 to see if the level of safety intended by part 25 could be achieved for those airplanes with a passenger-seating configuration of 19 or less through compliance with a particular standard of part 23 or another standard, in lieu of the corresponding standard of part 25. On completion of that review the FAA stated its intent in future rulemaking to consider amending part 25 as necessary to accommodate type certification in the transport category of certain types of airplanes previously type certificated in the commuter category.

The FAA also proposed that airplanes configured with 10 to 19 passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply by specified compliance dates with certain performance and equipment requirements in part 121. These performance and equipment requirements are discussed later in this preamble.

In Notice 95–5 the FAA included a table that set out a list of potential modifications that were being considered for application to airplanes having a passenger-seating configuration of 10–19 seats that were type certificated in the commuter category (or a predecessor) if the airplanes are to be used in scheduled operations under part 121. The table included a column that indicated that for 12 of the 38 issues addressed, the FAA had determined that any required upgrade should apply only to airplanes manufactured under a type certificate for which application is made after March 24, 1995. Since these 12 issues will be the subject of a future NPRM, the FAA is not addressing specific comments on the substance or cost of these issues in this document.

Comments: ALPA fully supports the proposal to require newly-designed airplanes to comply with the standards of part 25 and also supports continued use of commuter category airplanes. The commenter does not, however, concur that airplanes type certificated under part 23 normal category (i.e., pre-commuter category) should be permitted to remain in operation with more than 10 passenger seats, even in non-air carrier service. ALPA appears to base its position on differences in performance requirements between commuter category and the predecessor normal category standards.

American Eagle supports the proposed rulemaking and states that, "while there may be limited circumstances when aircraft design and/or manufacture may preclude or delay compliance with FAR part 121 or FAR part 25, cost and weight considerations should not be an acceptable barrier to the increase in safety which is derived from applying the higher standards of aircraft airworthiness, airline operations and passenger safety which those regulations provide."

In contrast, six other commenters do not believe that any propeller-driven airplanes with 10 to 19 passenger seats should be required to meet the transport category standards of part 25. Although the commenters' reasons vary, the comments focus on three basic issues: (1) Commuter category standards are appropriate for airplanes of this class; (2) there is no evidence that safety would be enhanced by requiring future airplanes to comply with part 25; and (3) the cost of complying with part 25 would be prohibitive.

Similar comments concerning recertification of existing part 23 airplanes under part 25 were also offered, apparently under the misunderstanding that airplanes already type certificated, or derivatives of those airplanes, would have to be recertificated under part 25.

Some commenters believe that the airplane certification issue is of such magnitude that it should be held in abeyance for a separate future rulemaking program. In this regard, the commenters assert that extensive changes to part 25 would be needed to accommodate the airplanes otherwise certifiable under part 23 commuter category and that those changes would entail a considerable expenditure of FAA resources. They further believe that any such changes should be subject to harmonization with corresponding standards of the European Joint Aviation Requirements (JAR).

Several commenters cite the FAA's 1977 proposal to require all airplanes used in air carrier service to meet part 25 transport category standards. That proposal was later withdrawn. According to commenters, the part 23 standards of that era were considerably different from those of today's part 23 commuter category. The level of safety expected by the public today is much greater than that tolerated in 1977.

A number of other commenters address the proposed retrofitting of existing part 23 normal and commuter category airplanes to meet certain part 25 standards. Those comments are addressed in the section-by-section portion of this preamble (Section VI).

One commenter has developed and produces a unique propulsion system in which two turbine engines drive a single propeller through a common gearbox. In addition to the installations already being made in existing airplanes, the commenter anticipates a future installation of this system in an airplane of entirely new design. Since any new model would have to be type certificated under the provisions of part 25 in order to be eligible for operation under part 121, the commenter requests that part 25 be amended to accommodate airplanes with this or similar propulsion systems.

FAA Response: Rather than forcing the retirement of part 23 normal category airplanes, as recommended by ALPA, the FAA proposed in Notice No. 95–5 to permit their continued use in air carrier service provided certain changes were made on a retrofit basis to enhance their level of safety. Banning those airplanes would be extremely costly, but most importantly could result in an unintended safety decrement. Indeed, the FAA's analysis indicates that moving too quickly on the imposition of part 121 standards could have the unintended effect of lowering the level of safety because operators would not be in a financial position to quickly obtain new airplanes and currently there are not enough replacement airplanes available that meet the higher standards. The result could be a shift from 10- to 19-seat turbopropeller airplanes to 9-seat or less reciprocating engine airplanes, which have an even higher accident rate.

The six commenters' assertions that commuter category standards of part 23 are appropriate for airplanes of this class and that there is no evidence that safety would be enhanced by type certification under part 25 are, to a certain extent, correct. Through a number of recent amendments and pending amendments, the level of safety established by the commuter category has been and is being enhanced considerably. In many instances, commuter category airplanes must meet standards that are the same as, or very similar to, those of part 25 transport

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category. Requiring future 10- to 19-passenger seat airplanes to be type certificated under part 25 would complete this effort to ensure that these airplanes used in air carrier service meet the same aircraft certification standards as the larger airplanes.

In response to comments that part 23 airplanes could not be type certificated using part 25 standards, the FAA notes that it did not propose in Notice No. 95–5 that part 23 normal or commuter category airplanes presently in operation would have to comply with part 25 standards for type certification. Instead, it proposed that part 23 airplanes that will be required to be operated under part 121 will have to comply with certain part 121 equipment and performance requirements.

In response to the individual comment on a unique propulsion system, although the commenter's request is beyond the scope of this rulemaking, it will be considered during the review of part 25 discussed above.

V.D. Flight Time Limits and Rest Requirements

The FAA proposed that the part 121 domestic flight time limits and rest requirements would apply to affected commuter operators when conducting operations within the United States. Under the proposal affected commuter operators, when conducting operations to or from the United States, would comply with the flag flight time limitations and rest requirements of subpart R. Additionally, if these certificate holders use these same airplanes for nonscheduled operations, those certificate holders would be required to comply with supplemental flight time limitations and rest requirements of subpart S of part 121.

As stated in Notice 95–5, since the flight time limitations and rest requirements for flag and supplemental operations were not updated in 1985 when domestic limits were, the FAA has developed an NPRM that is being issued concurrently with this final rule. (See elsewhere in this issue of the **Federal Register**.)

Comments: Atlantic Southeast Airlines (ASA), Regional Airlines Association (RAA), and Big Sky Airlines comment that the FAA should provide specific and scientifically-based data to support this significant change. Fairchild Aircraft adds that the additional time off duty provided by the proposal will not necessarily be used for rest. NATA comments that there are differences in part 135 operations that justify a different set of flight time limitations and rest requirements: part 135 operations are generally confined to a particular area, pilots of smaller certificate holders rarely commute a long distance to and from work, and pilots have fewer overnight stays as part of their schedules. Air Vegas comments that unless an exception is provided, seasonal operators would have to hire additional crews in order not to exceed the 7-day limit of 30 hours or the monthly limit of 120 hours. This commenter notes that short-term employment of such pilots is next to impossible. Morton Beyer and Associates comments that the cost of hiring additional pilots is expected to add another $250 million to airline costs. Twin Otter International comments that the 1,200 yearly limit in part 135 is based on the part 121 100-hour-per-month concept, and that the regulations really are similar.

Several individuals strongly urge the FAA to adopt the part 121 standards for the upgrading commuter pilots. American Eagle comments that it applies part 121 domestic rules to its part 135 operations and believes that all air carriers providing commercial passenger service should use either the domestic or flag rules of part 121.

One individual notes that the reduced rest provision in part 135 allows for only 8 hours of rest between scheduled flights. Another individual comments that commuter pilots have a high frequency of takeoffs and landings, fly in the busier low-altitude airspace, deal with more controllers per flight mile, and deal with more weather than their part 121 counterparts. One person comments that certificate holders routinely schedule 3–4 hour breaks to preclude violations of the 8 hours of flight in 24 hours rule; however, the effect of this is to stretch out the duty day. The result is a higher duty time to flight time ratio which is not accounted for in the current rules. IAPA supports the proposal but also expresses concern that the current regulations fail to count, as part of duty time, the time period when flightcrews are on reserve duty, standby duty, or carrying a pager or other telephonic device. IAPA urges the FAA to treat reserve or standby duty as duty time.

ALPA comments that while the upgrade to part 121 will result in an improvement in flight time limits and rest requirements, part 121 will continue to be deficient in this area until additional rulemaking action is taken, as promised by the FAA.

Alaska commenters argue for maintaining the current regulations. ERA Aviation estimates that if the proposed rule is adopted, it would necessitate at least a 15% increase in the number of pilots it would need, resulting in a $500,000+ increase in costs. Penair finds four reasons for excepting Alaska: Operations are conducted in the same time zone, few Alaska pilots commute to their jobs, less than 5% of Alaska operations occur between 9:00 p.m. and 7:00 a.m., and Alaska does not have the congested ATC operations which are found in the lower 48 states. AACA also presents this argument, adding that going from 1,400 hours of duty per year down to 1,000 represents a 29% decrease in productivity. Other Alaska certificate holders, e.g., Wings, Northern Air Cargo, Taquan Air Service, Tanana, endorse the AACA comment.

One individual commenter from Alaska opposes any attempt to create exceptions to the requirements for Alaska. This person supports the assertion that Alaskan operations are basically the same as state-side operations and should be afforded no special exemptions.

This individual, a pilot who flew over 1,300 hours last year, states that there were many consecutively scheduled 14-hour duty days and many canceled days off. Ten hours of rest may sound adequate, but not for days on end. The individual questions the logic that one is more rested in one geographic area than in another. According to the commenter, duty cycles that are unsafe in the lower 48, are also unsafe in Alaska.

Another individual from Alaska states that the FAA has shown no data to indicate any problem with the provisions of § 135.261(b), which allows Alaskan scheduled operators to use § 135.267. The individual states that in 1994, he flew 1320 hours, had 173 days off, slept in his own bed every night, and never had less than 10 continuous hours of rest in any 24-hour period. He believes he probably had more rest and time off than the average long-haul part 121 pilot. The commenter states that the proposed flight/duty time limits would cause scheduling nightmares for operations in rural/remote parts of Alaska.

FAA Response: The FAA is holding in abeyance a final decision on the proposed imposition of current part 121 flight time limitations and rest requirements on affected commuters pending a review and disposition of comments on the separate flight and duty rulemaking in which the FAA proposes to overhaul all the flight and duty rules. The separate rulemaking, if adopted, would harmonize flight and rest requirements for all part 121 and part 135 carriers. The FAA anticipates that the separate rulemaking will result in a net cost savings to the industry as a whole. In the meantime, affected commuters will continue to operate under the current part 135 flight and duty rules. This will prevent needless expenditure of resources by affected commuters who would have to implement flight and rest provisions under the commuter rule proposal and then later might have to change their system to comply with the separate rulemaking. For the same reasons the FAA will allow part 121 certificate holders operating in Alaska and Hawaii to continue to follow the flight and duty rules of part 121 applicable to flag operations, even though under this rulemaking these certificate holders are now classified as conducting domestic operations.

Accordingly, §§ 121.470, 121.480, and 121.500 include an exception for affected commuters allowing that they continue to comply with flight time limits and rest requirements of part 135. Additionally, § 121.470 will allow existing Alaska and Hawaii intrastate scheduled domestic operations to continue to be conducted under flag rules.

V.E. Age 60 Rule

Section 121.383(c) prohibits a certificate holder from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. Part 135 has not had any such limitation. The FAA proposed to impose one age limitation on all pilots employed in part 121 operations, including those pilots currently employed in affected part 135 scheduled operations. The FAA stated in Notice 95–5 that if it determines that it is appropriate to propose a different age limit in another rulemaking action, it will propose to apply the revised limitation to all part 121 operations, including the pilots in commuter operations.

Comments: The age limitation question was the subject of over 2,000 written comments (including about 1,000 postcards from members of an airline pilot organization) and oral presentations at public meetings. The overwhelming majority of these comments concern the general question of whether there is a need for an age limit in part 121, and do not address any particular aspects of applying an age rule to commuter pilots.

Several commenters, however, state that if commuter pilots are subjected to an age limit, the FAA should adopt a phased-in implementation schedule to avoid abruptly ending the careers of pilots who had not planned on retiring at age 60. Another commenter states that it hires over-age-60 retired part 121 pilots.

FAA Response: As discussed above, the FAA has identified a strong need to enhance the safety of commuter operations. Commuter airlines are carrying an increasing number of passengers over an increasing number of miles. While safety has improved over the past two decades, commuter airlines operating under part 135 continue to have a higher accident rate than domestic part 121 airlines. The FAA can no longer justify most distinctions between parts 121 and 135 commuter operations.

The part 121 regulatory scheme provides a network of safety features. Because most accidents are caused by human error, rules designed to enhance the performance of pilots are among the most valuable in reducing the number of accidents. Elsewhere in this preamble the FAA discusses other provisions that serve this purpose, such as the critical role of the aircraft dispatch system in double checking the work of the pilot and providing updates on weather and alternate airports. The training requirements for commuter pilots are being upgraded, and eventually part 121 flight and duty time rules or the newly proposed rules will apply to them. The Age 60 Rule provides an additional measure of safety by reducing the risk that age-related degradation will affect pilot performance. A pilot may have the best training in the world, and be well-supported by an aircraft dispatch system, but if the pilot suffers from a subtle age-related degradation in performance, safety will be reduced. Also, the potential safety benefits of training and dispatching may be reduced by human safety lapses that could occur or do occur more frequently with age.

The "Age 60 Rule" was adopted by the FAA in 1959 (24 FR 9767, December 5, 1959). At the time Notice 95–5 was issued, the FAA was also considering whether, in the interest of safety, the Age 60 Rule should be retained as is or revised to allow pilots to continue to fly in part 121 operations past their 60th birthday. The FAA completed its review of the Age 60 Rule. In a Disposition of Comments (Disposition) published in the **Federal Register**, [cite], the FAA announced that it will not propose to change the Age 60 Rule at this time. The Disposition thoroughly discusses the various issues regarding the need for an age limitation and what that age should be, including the issues raised in the comments to Notice 95–5 that concern the Age 60 Rule in general, and those comments will not be further discussed here. This rulemaking deals only with the application of part 121 rules to affected commuter operations.

In Notice 95–5 the FAA proposed a general compliance date (that is, a date on which most provisions must be complied with) of 1 year after publication. The Notice also proposed delayed compliance dates for several of the requirements (other than the age limitation), to provide time for the work necessary to comply with the proposed requirements. In this final rule, the FAA has adopted a general compliance date of 15 months after the date of publication of this final rule in § 121.2(c), and also has adopted delayed compliance dates for a number of requirements, giving the air carriers 2, 4, or more years to comply with certain of the new requirements.

In response to the comments requesting delayed compliance dates, and after further evaluation, the FAA has considered that there are factors warranting delay in the compliance date for the Age 60 Rule, as it applies to those affected commuters that now will be brought under part 121. The lack of an age limitation in part 135 has created reasonable expectations on the part of both the affected commuter operators and pilots regarding the length of time that the pilots would continue in service: Some of those operators have spent money to hire and train pilots with the expectation that they would serve past the age of 60; and the pilots have not had to plan on leaving their positions at age 60. In fact, certain affected commuters appear to have a practice of hiring retired part 121 pilots, and will no longer be able to do so.

Further, this rule requires the affected commuters to make extensive changes in equipment, personnel, and procedures before the general compliance date. Also, final rules have been adopted that impose new requirements for training, including standardized pilot training and crew resource management training. The affected commuters operators should not be required to stop using the services of their over-age-60 pilots in scheduled operations (10 or more seats) and train replacements until these new programs are in place, and the training can be under the new programs.

Accordingly, the FAA has determined that the Age 60 Rule, as it applies to certain pilots, should have an extended compliance date. As it applies to pilots newly hired by commuter operators, the Age 60 Rule will apply on the general compliance date indicated in § 121.2(c). Until that date, there will be no age restrictions on the pilots of commuter

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operations that are upgrading to part 121. After that date, the affected commuters will no longer be able to hire pilots who have reached their 60th birthday (except for pilots who as of that date were employed as pilots for another affected commuter). However, pilots who are employed by affected commuters on that date will be able to continue to serve until December 20, 1999, after which the Age 60 Rule will apply to every pilot under part 121.

The delay in applying the rule will provide some relief from the difficulties discussed above. The 4-year compliance period for these pilots will permit the affected commuters to recover services for several more years from those pilots in which they recently have invested in training. Delaying the application of the rule to new hires until the general compliance date will give affected commuters time to adopt new hiring practices, at a time when the operators will have many other new requirements under this rule to comply with. The 4-year compliance period for pilots will give them time to plan for retirement or for changing jobs. It will also give affected commuters additional time to make careful selections of well-qualified pilots and train them under the new training requirements. And, the operators will not have to replace all of their over-age-60 pilots at once, at a time when so many other new requirements must be complied with.

V.F. Dispatch System

Parts 121 and 135 require certificate holders to exercise operational control over all flights conducted by the certificate holder. "Operational control" is defined in 14 CFR part 1 as "The exercise of authority over initiating, conducting and terminating a flight." Operational control consists of making decisions and performing activities on an ongoing basis that are necessary to operate specific flights safely. These activities include among other things crew and airplane scheduling, reviewing weather and NOTAM's (Notices to Airmen), and flight planning.

Parts 121 and 135 provide for three general types of operational control systems based on the kinds of operations and the complexity of operations: aircraft dispatch, flight following, and flight locating systems. Part 121 domestic and flag operations require a dispatch system, part 121 supplemental requires a flight following system, and part 135 requires a flight locating system for any flight for which a flight plan is not filed. In Notice 95–5, the FAA proposed that the affected commuters would be required to have a dispatch system. Affected commuters would have to meet all part 121 dispatch requirements, including dispatcher qualification requirements, recordkeeping, and flight release requirements. As proposed, affected commuters that would conduct some nonscheduled flights under part 121 supplemental rules could use a flight following method for the nonscheduled flights.

The FAA also stated in Notice 95–5 that Alaskan operations pose certain unique problems and requested comments on alternatives that could be considered for Alaska.

Comments: Two individuals suggest that the use of a dispatcher and dispatch system be an option for 10- to 19-seat certificate holders, recommending compliance with existing subpart F of part 121. Both commenters believe that the FAA should seriously consider permitting, at least on an interim 36-month basis, compliance with subpart F flight following requirements in lieu of subpart E dispatch requirements for transition carriers. This will, in their opinions, gain the early momentum of the industry by making it possible for many certificate holders to transition early. A long lead time is necessary to qualify existing personnel as dispatchers under existing part 65. The commenters remind the agency that during the early 1980's, by the FAA's own rules, 20- to 30-seat aircraft were subject to part 121 supplemental rules, including the flight following requirements of subpart F. One of these individuals also states that interim compliance with subpart F flight following requirements would ease the transition to subpart E dispatch requirements for affected certificate holders.

NATA comments that the FAA lacks understanding on the types of operations 10- to 19-seat certificate holders typically fly and recommends a flight following system instead of a dispatch system. NATA states that many small, independent carriers operating aircraft with 10 to 19 seats may have only 2 to 4 of these types of airplanes and may operate them over only a few selected routes. According to NATA, many of these carriers conduct on-demand operations in addition to their scheduled activity. NATA believes, along with several other commenters, that for operations such as these, to implement a full dispatch system will result in significant cost with little or no benefit.

RAA and other commenters suggest that the FAA identify specific safety objectives in requiring a dispatch system for short-haul certificate holders.

One commenter believes that a formal dispatch system for all scheduled air carriers should be required, but points out both the pros and cons of requiring such a system. This commenter, as well as others, states that pilots may be shouldering many additional responsibilities other than flying the aircraft in an effort to minimize the cost of flight operations. Due to the task saturation of pilots and other crewmembers, functions involving flight planning, weather analysis, and weight and balance calculations may not be thoroughly performed. According to the commenter, the majority of commuter pilots are, as a rule, very young and inexperienced. These crews must continually perform at peak levels of performance both on the ground and in the air.

According to this commenter, as well as others, the use of the flight dispatcher would increase safety, operational efficiency, and productivity. The duties of filing the flight plans, checking NOTAMs, planning fuel requirements dictated by weather, and obtaining ATC routing would be completed by the dispatcher prior to the crew arriving for the flight. Optimum routes based on known ATC or weather delays would be filed, resulting in substantial fuel savings and improved arrival and departure reliability. The pilots would now be able to concentrate on flying and be able to relax and rest between flights. Flight could be more effectively managed, thus saving fuel, maximizing aircraft utilization, and passenger satisfaction.

On the other hand, according to the commenter, mandating the dispatch system for part 135 air carriers may create some heavy financial burdens. It will require a facility, communications hardware for the facility and the aircraft, trained personnel, and training for dispatchers. The initial capital outlay would not be recovered for several years. According to the commenter, this mandate will place severe constraints on many less established carriers and may actually result in bankruptcy for some.

Many commenters are in favor of the role of the aircraft dispatcher in operational control issues. One commenter states that the requirement for a formal dispatch system is long overdue.

One commenter believes that dispatch centers might create a sense of complacency on the part of the flightcrew and, along with other commenters, thinks that automated flight planning and flight following information should be used in lieu of dispatchers and dispatch centers. Two

of the commenters advocating automated flight following systems state that the three accidents cited by the FAA in Notice 95–5 would not have been prevented by the use of a dispatcher. One commenter states that in his experience PIC's typically check dispatcher computations but do not duplicate the computations as the FAA stated in Notice 95–5.

The NTSB states that in its 1994 study report, it examined the differences in flight dispatch requirements between parts 121 and 135. The NTSB found that, in the absence of support from licensed dispatch personnel, pressures on commuter airline pilots to accomplish several tasks between flights in shorter periods of time might increase the risk of critical mistakes that could jeopardize the safety of flight. As a result, the NTSB recommended that the FAA require each principal operations inspector (POI) to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights. This review was to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. According to NTSB, the proposed rulemaking, if implemented, would meet the intent of the safety recommendation (A–94–193).

ASA, RAA, and Gulfstream International Airlines support many of the elements of the dispatcher rule. They state that flight dispatch systems that are required under part 121 are extensive since they address the dispatch and en route communications needs for a span of air carriers from international airlines with worldwide flight operations to the largest U.S. regional carriers. ASA supports the requirement for licensed dispatchers, believing that the most qualified candidates for licensing as dispatchers are the individuals currently employed as flight followers. These commenters request that the criteria in § 65.57 be examined to provide guidance for granting a dispatcher certificate based on practical experience as a flight follower under part 135 operations. According to the commenters, many flight followers have passed the written portion of the dispatch license but have not attended formal dispatch school and do not hold licenses. However, they may have extensive practical experience in scheduled air carrier operations performing what is essentially a dispatcher function. According to these commenters, the criteria contained in § 65.57 includes experience in scheduled military operations. The commenters believe that if military experience is applicable, the experience of a flight follower with a scheduled airline should qualify. These commenters also point out that the practical portion of the dispatcher license is administered using a Boeing 727 aircraft. The commenters believe that while many of the functions and decision making circumstances would be the same, the experience of part 135 flight followers, managing flights of high performance turbopropeller-powered aircraft is a considerably more significant and practical measure of their capabilities than military experience or demonstrating their skills in managing a turbojet operation. The commenters believe that the cost and time to send current flight followers to a formal dispatcher school is not justified.

Samoa Air comments that since its longest flight is only 70 miles (35 minutes), a dispatch system would not enhance or change any of its current requirements. Samoa has established VFR and IFR fuel requirements to all of its destinations and the requirements do not change. The only alternate airport is the destination airport. Samoa also states that § 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for operations. Section 135.213 allows the pilot in command to use various other sources, including his own weather assessment, for VFR operations. Of the four airports Samoa serves, only one (departure airport) is in controlled airspace with weather reporting facilities and instrument approach procedures. Enroute and terminal weather conditions are received through the ATC tower from their weather station. VHF communications with the tower cover almost the entire route, so the aircraft has ready access to any weather information available and direct information on the status of communications, navigation, and airport facilities. A dispatcher would not enhance safety but would add significant cost. If Samoa is required to provide weather conditions at each airport to the pilot from an approved source and the pilot can not assess the weather himself, the rule change could eliminate all of Samoa's present operations.

Similarly, Inter Island and Air Vegas comment that the requirement for enroute weather reporting is unfeasible because of minimal weather reporting facilities in the certificate holders' regions. Air Vegas also comments that radio communication in mountainous terrain would be difficult if not impossible with VHF radio systems because mountains block radio transmission.

Air Vegas comments that all "dispatcher duties" are currently being accomplished by personnel in the operations department, station managers, and company pilots. All flight following is being done by telephone. The commenter states that current flight following procedures meet part 135 requirements and are operationally safe and efficient.

Mesa Airlines comments that due to its short flight segments and the lack of significant weather changes in the areas in which it operates, a dispatch system is not needed. Mesa believes that all enroute communications can be accomplished by ATC.

AACA states that the requirements of subpart E come at a time when the availability of weather information in Alaska has been identified as a significant issue adversely affecting aviation activities (proceedings of an NTSB "Aviation Safety in Alaska" forum, May 1995).

The Airline Dispatchers Federation supports the dispatch proposal and agrees with the upgrading of current commuter facilities to dispatch centers. It believes this upgrading is necessary because of the extensive use of code-sharing by the aviation industry. The commenter is not in favor of amending part 121 dispatch rules for certificate holders of the 10- to 19-seat category. The commenter provides its estimate of costs to certificate holders that could be affected by the implementation of this rule. The commenter notes that the costs provided by some certificate holders may not be accurate. For example, cost estimates concerning flight planning and performance issues are inaccurate since several airlines use bulk stored flight plans and performance information taken directly from aircraft flight manuals for fuel planning. The commenter also provides its assessment of various aircraft accidents for which it believes dispatchers could have made a difference in changing events that led to the accident (crew fatigue, lack of management oversight, operational control issues, late arriving weather information).

ALPA comments that dispatchers should be required to complete their 5-hour inflight operating experience in 10- to 30-seat aircraft, not in larger 60-seat aircraft, as currently allowed. ALPA proposes that § 121.400(b) be amended by adding a group specific to propeller-driven aircraft with a seating capacity between 10–30 seats.

AACA comments that due to the operating environment of Alaska, the pilot and not the dispatcher is in a

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better position to access and evaluate operational control information. The commenter believes that scheduled operations in Alaska more closely resemble the operations conducted under supplemental rules and not domestic or flag operations. The commenter notes that pilots frequently are not in radio communication with company offices directly, but could communicate via Flight Service Station, ATC, or other aircraft. According to the commenter, enroute and destination weather conditions are either not accessible or not available at any time from "official" sources. The commenter notes that three affected certificate holders in Alaska presently have a part 121 type dispatch system in place. AACA further states that the assumption that estimated fuel savings by dispatchers would offset the cost of establishing a dispatch system is not true. AACA recommends that the FAA adopt the flight following supplemental rules of part 121 for Alaskan 10–19 seat certificate holders. AACA also recommends that current part 135 personnel be "grandfathered" for dispatcher certificates if they have been employed as flight followers. The commenter notes that the practical experience dealing with turboprop aircraft and flight planning may be lost to the industry if flight followers are required to take extensive dispatcher training courses, pass a written and practical test, and lose time and money on the job while they obtain an FAA dispatcher certificate.

FAA Response: The FAA anticipates that requiring operators to have a certificated dispatcher double check the work of the pilot and provide the flightcrew with updates on weather and alternate airports can reduce human factor errors. With a dispatcher system, the chances of pilot miscalculations or oversights could be reduced. Moreover, a dispatcher can assist the flightcrew in making plans for an alternate airport (which might be necessary due to weather problems, air traffic control problems, airplane equipment problems, fuel problems, etc * * *) during the flight while the crew focuses on flying the airplane.

The FAA disagrees with the recommendation to make the use of a dispatcher and dispatch system optional since that would not address the safety issues involved. The FAA also disagrees that a flight following system is an acceptable alternative to a dispatch system or that dispatch systems are not needed for limited flight distances if there is adequate weather reporting facilities. The use of a dispatch system is based on the type of operation (scheduled), and not the distance of a flight, the number of aircraft, or the type of aircraft being flown. Flight following systems are used for nonscheduled operations, and could be used for nonscheduled operations by affected commuters under the supplemental rules of part 121. Note: The dispatch system requirements apply only to scheduled passenger-carrying operations.

The FAA disagrees with the basic idea that the decision making process of operational control of aircraft can be made by automated means. While automation has improved the accuracy and timeliness of flight planning, weather information, and NOTAMs, nothing so far has replaced the decision making capabilities of a certificated dispatcher. Dispatchers receive training in subject matter beyond just flight planning, e.g. crew resource management, hazardous materials regulations. These subjects are just a small representation of the subject matter an aircraft dispatcher must know in order to make operational control decisions.

The FAA agrees with the comment that dispatchers are usually in a better position to review weather reports and forecasts than pilots hurrying to accomplish other postflight/preflight aircraft duties. Operational control issues are enhanced when both the pilot in command and the aircraft dispatcher are jointly responsible for the safe conduct of a flight. As several commenters point out the overall level of safety is enhanced when a dispatcher is available to assist and back up the pilots who already may have numerous responsibilities in addition to flying the airplane. Thus, while it may not be possible to pinpoint accidents that have actually been prevented by a dispatch system, there can be little doubt that the existence of a dispatch system contributes to the overall high level of safety of scheduled operations under part 121.

The FAA does not agree that use of dispatchers would lead to complacency on the part of the flight crewmembers. Section 121.663 states that for each domestic and flag operation, a dispatch release must be prepared based on information furnished by an authorized dispatcher. The pilot in command and an authorized dispatcher shall sign the release only if they both believe that the flight can be made safely. Dispatchers provide the necessary resources and expertise needed to review operational control issues.

In response to comments that in some companies "dispatch" functions are being adequately performed by individuals from three separate departments (operations, station managers, and company pilots), the FAA finds that operational control decisions can not be effectively made by three separate groups of individuals. The perception is that "whoever is available" makes the decision. For effective operational control, the dispatch process should be standardized and consistent.

In response to NATA's and others' comments on the nature of 10- to 19-seat certificate holders, the FAA finds that these certificate holders are not unique. The same situation currently exists for some part 121 certificate holders who are required to maintain dispatch systems.

In response to comments on the issue of limited areas of operation and short flight duration, the requirement for a dispatch facility is not based on distances, the type of aircraft, or weather patterns alone. It is the type of operation (scheduled) an air carrier is currently operating under that determines if dispatch systems are required. The role of the aircraft dispatcher in the operational control of aircraft provides an enhancement to safety that has clearly been established through years of operations by many air carriers in both domestic and flag operations. Continuous communications could be accomplished with HF radios or through satellite communications, both of which can be provided through vendors.

The FAA agrees with commenters that for some part 135 certificate holders, personnel will first have to acquire the necessary certificate and then complete required air carrier training requirements for dispatchers. The average dispatcher school curriculum lasts 5 weeks and usually includes instruction on both the written and practical tests. The FAA believes that some part 135 personnel already possess aircraft dispatcher certificates and that these personnel would be required to attend only the air carrier's dispatcher training program. Regardless, once an air carrier employs a certificated dispatcher, company training would have to be completed. That training would entail 40 hours of basic indoctrination, differences training, initial ground/transition of 30–40 hours (based on the type of aircraft), and a competency check (see § 121.422).

While the FAA does not agree with AACA's recommendation to "grandfather" dispatcher certificates to current flight followers or flight locating personnel, § 65.57 outlines a means of providing credit for previous experience in order to take the practical test. All dispatcher applicants must complete the appropriate written and practical tests before a certificate can be issued. The FAA agrees that training costs will be incurred to prepare current flight following or flight locating personnel to qualify for a dispatcher certificate, regardless of who pays for the training. Replacement personnel will be needed if the decision by the certificate holder is to send current employees to dispatcher training.

There is no requirement for dispatchers to attend a formal school. Section 65.57, entitled experience requirements, allows several options in lieu of a formal school.

In response to specific requests to expand the criteria in § 65.57 (aircraft dispatcher experience requirements) to include personnel assigned to flight locating and flight following under part 135, the FAA believes that some part 135 experience is acceptable as equivalent experience in § 65.57. Through current policy and guidance provided to FAA inspectors, a review on a case-by-case could be accomplished to ascertain if an applicant has equivalent experience.

In response to comments on the current format of the dispatcher practical exam, § 65.59 requires an applicant for an aircraft dispatcher certificate to pass a practical test with respect to any one type of large aircraft used in air carrier operations. Further, current practical test standards require dispatcher applicants to exhibit adequate knowledge of applicable aircraft flight instruments and operating systems. The scope of the practical test allows for turboprop aircraft and representative commuter operations. Practical tests are developed by the inspector conducting the test and can be designed for any type of large aircraft, including turboprop airplanes.

There is only one dispatcher written examination, the Airline Transport Pilot question book. The selection sheet has questions applicable only to dispatchers and not based on any particular make and model of aircraft. The FAA is considering developing written tests geared to commuter-type operations. However, the current written exam is valid in that it tests for areas common to all make and models of aircraft. The test requires knowledge of various subject areas, i.e. the ability to interpret weather information, interpret regulations, handle emergencies, compute weight and balance, etc.

The FAA disagrees with the ALPA recommendation to require dispatchers to receive 5 hours of operating experience in aircraft they will actually dispatch. Section 121.463(c) requires the dispatcher to satisfactorily complete at least 5 hours of operating familiarization in one of the types of airplanes in each group he is to dispatch. Section 121.400(b) includes all sizes of propeller-driven aircraft under group 1. Therefore, the FAA allows dispatchers to complete the operating familiarization in airplanes that are not exactly the same size or configuration as the ones they will dispatch.

V.G. Airports

Section 121.590 requires that no air carrier or pilot conducting operations under part 121 may operate an airplane into a land airport in the U.S. (or territory, etc.) unless the airport is certificated under 14 CFR part 139. Section 135.229 states that no certificate holder may use any airport unless it is adequate for the proposed operations.

Part 139 prescribes regulations governing the certification and operation of all land airports that are served by any scheduled or nonscheduled passenger air carrier operating airplanes with a seating capacity of more than 30 passengers. The FAA's authority is limited by statute (49 U.S.C. 44706(a)) to the 30-passenger-seat dividing line. The FAA, in conjunction with the Department of Transportation, has sought legislation that would grant the agency the authority to certificate any airport that receives scheduled service by a certificate holder utilizing airplanes designed for 10 or more passenger seats.

Accordingly, pending Congressional resolution of this issue, affected commuters are permitted to operate into other than part 139 certificated airports. If the FAA receives expanded authority over airport certification, it would propose rulemaking standards that are sufficiently flexible to cover the range of airports presently served under part 135.

Comments: Nine comments were received on this issue, with the major concern being that airport legislation currently being considered may include requirements that some communities may not be able to afford which would negatively affect air service to these communities.

The Las Vegas Department of Aviation comments that it has purchased and upgraded satellite airports in the Las Vegas area to help relieve the congestion at the McCarran International Airport. The commenter is concerned that the Clark County Department of Aviation, the Grand Canyon Tour Operators, and the Las Vegas Department of Aviation may not be able to afford additional airport upgrades. This would cause certificate holders that currently operate out of the non-certificated outlying airports to move their operations back to McCarran, thereby increasing traffic congestion and in-flight delays.

NATA and Commuter Air Technology concur with the FAA proposal to allow part 135 certificate holders to continue to operate with existing airport requirements, but are concerned about the airport expansion program. NATA prefers that no new airport legislation be adopted and that the proposed regulatory allowance for noncertificated airports be made permanent.

A comment from Fairchild Aircraft mentions the Essential Air Service Program enacted by Congress that guarantees air service to small and medium size communities. Fairchild says that the commuter industry responded to that program and provided essential air service to small and medium communities, and that those communities may not be able to afford the proposed airport expansion program.

Other commenters state that it would not be feasible to upgrade smaller airports to part 139 standards. One certificate holder states that of the five airports it serves only one meets part 139 standards; at the other airports where the certificate holder provides essential air service "there is no aircraft rescue or fire fighting equipment, airport guidance signs, airfield inspection procedures, airport staff, snow and ice control plan, or airfield pavement maintenance. . . ."

The American Association of Airport Executives (AAAE), RAA, Airports Council International-North America, and the National Association of State Aviation Officials would like the airport expansion issue referred to an ARAC committee before seeking federal legislation, to allow ARAC to develop a cost-effective response to NTSB recommendations that takes into account the difference between small airports that serve rural communities and large airports near major cities.

ALPA believes that the FAA should require commuters to operate out of part 139 certificated airports in the interest of one level of safety. ALPA recognizes that some airports in remote sites will not be capable of complying with all part 139 requirements. However, ALPA does not believe that an exemption should be provided for aircraft with passenger-seating capacities of 30 or less. Rather certificate holders that serve small airports should apply individually for an exemption or waiver.

Commuter Technology expresses concern that a revised part 139 may result in the application of airplane

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operator security regulations of part 108 and the airport security regulations of part 107 to air carriers using aircraft with a seating capacity of 30 or fewer seats. The commenter believes that the ARAC committee that is tasked with recommending revisions to part 139 should also be tasked with restricting or eliminating the applicability of part 107 to small airports. According to the commenter the application of parts 107 and 108 to commuter air carriers and the airports that serve them could have a radical effect on the economic viability of the air carriers and airports.

FAA Response: The FAA has assigned a task to the Aviation Rulemaking Advisory Committee (ARAC) to recommend the requirements in part 139 that should be applicable to airports covered under any expanded legislation that would give the FAA authority to certificate airports serving airplanes with less than 30 passengers. In the meantime, § 121.590 is adopted as proposed to allow affected commuters to use noncertificated airports. In making its recommendations ARAC is to consider accepted industry practices regarding airport safety, personnel available at these airports, costs associated with meeting these requirements (e.g. capital, operating, and maintenance costs), and the types of accidents/incidents that have occurred at these airports.

In response to the comment on security programs for airports and operators, no changes to parts 107 and 108 are necessary as a result of this rule because the requirements of those parts are already tailored to the size of the airplane.

V.H. Effective Date and Compliance Schedule

The FAA proposed an effective date of 30 days and a general compliance date of 1 year after publication of the final rule. The FAA stated in Notice 95–5 that a final rule, if adopted, would be published by December 31, 1995, and that within 1 year of that date, that is, by December 31, 1996, all affected certificate holders that have air carrier certification or operating certificates issued under part 135 at the time of publication would have completed the approval process and obtained new operations specifications giving them authority to conduct domestic or flag operations under part 121.

Under the proposal, persons who do not already have air carrier certificates or operating certificates who submit applications for or obtain air carrier certificates or operating certificates after 30 days after the publication date of the final rule would be required to obtain part 121 operations specifications; however, these new entrants would meet the same requirements as the affected commuters, i.e., delayed dates for retrofit of airplanes with certain types of equipment.

Proposed § 121.2(c) and § 135.2(c) allow for regular or accelerated compliance with part 121 requirements. Proposed §§ 121.2(g) and 135.2(g) also require an affected certificate holder to submit to the FAA a transition plan for moving from part 135 to part 121.

Comments: Eleven comments were received on this issue. Several commenters express a desire for an "incremental" or "phased" compliance schedule. Two commenters are concerned that the proposed "turnkey" recertification event is high risk with no early rewards or benefits.

RAA suggests revising proposed §§ 121.2(c) and 135.2(c) to require compliance "not later than" 1 year after final rule publication rather than the proposed "as of," and adding the word "complete" before "14 CFR part 121 operations specifications." RAA also suggests adding a new paragraph to the section that would state that a certificate holder may be authorized under its transition plan to comply with portions of part 121 instead of the equivalent portions of part 135 in advance of being issued complete 14 CFR part 121 operations specifications. Accordingly RAA recommends adding to the transition plan requirements of paragraph (g) a new subparagraph to include in the transition plans provisions for interim compliance with portions of part 121 in advance of obtaining complete 14 CFR 121 operations specifications. Other commenters also request provisions for complying with portions of part 121 in advance of obtaining part 121 operations specifications.

Other commenters also state concerns about FAA's capacity to facilitate the transition process on schedule. Two commenters perceive a shortage of trained inspectors and suggest that the compliance date be extended if an adequate number of inspectors are not provided by mid year 1996. GAMA suggests a reevaluation of the implementation schedule of § 121.2(d)(1), citing a questionable number of aircraft certification service personnel to support the extensive design approval activity certain to occur. Another commenter expresses concern over the necessary type certification activity surrounding modifications and suggests that 1 year is an unrealistic compliance deadline given the current FAA Aircraft Certification Office backlog.

RAA is concerned that the population of FAA inspectors qualified to perform their duties under part 121 will not be able to respond to the new part 121 air carriers. According to RAA, FAA inspectors must be trained and qualified to help affected commuters achieve the transition. RAA recommends a "fill in the blanks manual" to achieve standardization among FAA regions and districts. If there is an insufficient number of qualified FAA inspectors, the 1996 compliance date should be delayed.

ASA proposes a standardized transition program including three elements: (1) a fill-in-the-blanks manual for transitioning carriers; (2) an automatic exemption and incremental approval process; and (3) time schedules from transitioning carriers submitted to FAA.

Mesa Airlines recommends pre-formal certification meetings with principal operations inspectors (POI's) at an early date to familiarize both parties with the certification process outlined in FAA Order 8400.10. According to Mesa, compliance statement development, individual operator transition plans, GOM (general operating manual) development, and formal certificate application should be scheduled for the spring of 1996 to allow adequate review by respective POI's. According to Mesa this would allow certificate holders to be running their commuter operations under part 121 rules by the summer of 1996. This in turn would allow for a start-up phase for part 121 dispatch operations and modifications to the requirements for proving runs as proposed in § 121.163 and would eliminate the necessity for formal initial operating experience (IOE).

There were several comments on specific compliance dates. ALPA is generally pleased with the compliance schedule, but states that the 4-year compliance date for the installation of pitot heat indication systems could be shortened to 2 years, given the relative ease of the modification. Fairchild Aircraft finds fault with the fact that a 2-year delay is provided for compliance with emergency exit handle illumination, but no delay is allowed for compliance with § 121.310(b)(2)(ii), which would require the replacement of exit signs on new commuter category airplanes. Mesa Airlines suggests that compliance with part 121 crew flight and duty limitations be changed to January 1, 1997.

FAA Response: The final rule has a 30-day effective date and a general compliance date of 15 months after publication of the final rule. The FAA is extending the general compliance

date to be consistent with the compliance date in the training rulemaking referenced in Section III. E, Related FAA Action. Also, the proposed delayed compliance dates for certain retrofit requirements have been modified in response to comments. The final rule also establishes delayed compliance dates for meeting the performance operating limitations of part 121 for certain airplanes. Compliance dates are provided in § 121.2. This section has been reorganized to separate compliance dates for 10–19 seat airplanes and those for 20–30 seat airplanes. Retrofit and performance requirements compliance dates are listed on Table 1 and discussed in the appropriate place in the preamble.

Because of the scope and significance of this rulemaking, the FAA has already begun planning for the implementation of the final rule. Training has been provided for inspectors who will be responsible for overseeing the transition of the affected commuters from part 135 to part 121 operations. Additional training planned for January 1996 will focus on the recertification and transition process. Extensive guidance material is being prepared to assist the inspectors during the transition process. Portions of this material will also be made available to the affected commuters.

The FAA agrees with Mesa Airlines that meetings between POI's and affected commuters would help facilitate the preparation of the transition plan, which is due 90 days from today, and the planning necessary to ensure that normal operations can continue during the transition phase. The FAA believes that the training given to its inspectors, the guidance material being prepared, and a cooperative working relationship between the affected commuters and the FAA will ensure a smooth transition to part 121 operations.

The transition plan must include the certificate holder's proposed calendar of events that shows how and when it plans to make changes in its operations to meet the requirements of part 121. The transition plan should also show detailed plans for accomplishing activities and necessary retrofits for requirements with delayed compliance dates. The POI and the certificate holder will schedule the inspections necessary to show compliance with part 121 requirements. When the inspections are complete and the FAA has determined that the certificate holder can comply with part 121, the FAA will issue new operations specifications. Until the new operations specifications are issued, the existing operations specifications remain in effect. In any case the existing operations specifications expire on: (1) The date the new operations specifications are issued; or (2) 15 months from this date of publication, whichever is earlier. Affected certificate holders who want to comply with certain part 121 requirements in advance of being issued complete 14 CFR part 121 operations specifications could include in their transition plan a phased schedule including advance compliance for certain part 121 requirements, subject to their POI's approval.

Table 1—Summary of Modifications shows the compliance dates for certain retrofit and performance requirements for affected commuters. Many of these are required by the end of the basic 15-month compliance period. Affected commuters should be aware that by the specified date they must comply with all part 121 requirements, not just the ones listed on Table 1. Although the table includes additional items that were not listed in the table in Notice 95–5, no new requirements are involved. Not all requirements are in the table. The purpose of the table is to show the compliance dates for certain equipment and performance requirements that necessitate advance planning for purchasing and installation. Many of the delayed requirements apply to airplanes in the current fleet, while others apply only to newly manufactured airplanes.

It should also be noted that § 121.2(h) requires a certificate holder to comply with corresponding part 135 requirements, as applicable, in the interval between the effective date of this rule and when the certificate holder is in compliance with the part 121 requirements. In addition, the intent of § 121.2(h) is also included in specific sections that have delayed compliance dates.

This table does not apply to certificate holders currently operating under part 121. The passenger seating configuration numbers provided in the chart do not mean that the requirement applies only to that size airplane but rather that the requirement is new for that size airplane.

TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS

Effective date of required upgrade is as stated, measured from the rule publication date	Upgrade will apply to all airplanes including newly manufactured airplanes		Upgrade will apply to all newly manufactured airplanes
Issue/requirement	Within 15 months	Within years (#)	After years (#)
1. Passenger Seat Cushion Flammability, 10–19 Pax §§ 121.2, 121.312(c)		15	
2. Lavatory Fire Protection, 10–30 Pax §§ 121.2, 121.308		2	
3. Exterior Emergency Exit Markings, 10–19 Pax § 121.310(g)	Yes.		
4. Pitot Heat Indication System, 10–19 Pax §§ 121.2, 121.342		4	
5. Landing Gear Aural Warning, 10–19 Pax §§ 121.2, 121.289		2	
6. Takeoff Warning System, 10–19 Pax §§ 121.2, 121.293			4.
7. Emergency Exit Handle Illumination, 10–19 Pax §§ 121.2, 121.310(e)(2)		2	
8. First Aid Kits, 10–19 Pax § 121.309(d)(1)(i)	Yes.		
9. Emergency Medical Kits, 20–30 Pax § 121.309(d)(1)(ii)	Yes.		
10. Wing Ice Light, 10–19 Pax § 121.341(b)	Yes.		
11. Fasten Seat Belt Light and Placards, 10–19 Pax §§ 121.2, 121.317	Yes [1]		21.
12. Third Attitude Indicator, 10–30 Pax:.			
Turbojet	Yes [2].		
Turboprop §§ 121.2, 121.305(j)		152	15 months. [2]
13. Airborne Weather Radar, 10–19 Pax § 121.357	Yes.		
14. Protective Breathing Equipment, 10–30 Pax.			
§ 121.2		2	

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TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS—Continued

Issue/requirement	Effective date of required upgrade is as stated, measured from the rule publication date: Upgrade will apply to all airplanes including newly manufactured airplanes: Within 15 months	Upgrade will apply to all airplanes including newly manufactured airplanes: Within years (#)	Upgrade will apply to all newly manufactured airplanes: After years (#)
§121.337(b)(8)—Smoke and fume protection			
§121.337(b)(9)—Fire fighting (20–30 only)			
15. Safety Belts and Shoulder Harnesses, Single point inertial harness, 10–19 Pax §§121.2, 121.311(f).	.....	.....	15 months.
16. Cabin Ozone Concentration, 10–30 Pax §121.578	Yes.		
17. Retention of Galley Equipment, 10–30 Pax §§121.576, 121.577	Yes.		
18. Ditching approval, 10–30 Pax §§121.2, 121.161(b)	Yes[3]	153	
19. Flotation means, 10–30 Pax §§121.2, 121.340	.....	2	
20. Door Key and Locking Door, 20–30 Pax §121.313(f) & (g)	Yes.		
21. Portable O2, 20–30 Pax §121.327–121.335	Yes.		
22. Additional life rafts, 10–30 Pax §121.339	Yes.		
23. First Aid Oxygen, 20–30 Pax §121.333(e)(3)	Yes.		
24. Enroute radio communications, 10–30 Pax §121.99	Yes.		
25. Latex gloves, 10–30 Pax §121.309(d)(2)	Yes.		
26. Passenger information cards, 20–30 Pax §121.571(b)	Yes.		
27. Flashlights-additional for flight attendant and pilot, 10–30 Pax §121.549(b)	Yes.		
28. Flashlight holder for flight attendant, 20–30 Pax §121.310(l)	Yes.		
29. DME, 10–30 Pax §121.349(c)	Yes.		
30. Single engine cruise performance data, 10–30 Pax (required for determining alternates) §121.617.	Yes.		
31. Performance, Obstruction Clearance, and Accelerate-stop Requirements, 10–19 Pax §§121.2, 121.157, 121.173(b), 121.189(c).	Yes.[4]	154	

[1] In-service airplanes must comply within 15 months. They may use lights or placards. Newly manufactured airplanes must comply with seat belt sign requirements of §121.317(a) within 2 years.
[2] Turbojet airplanes must comply within 15 months. Newly manufactured turboprop airplanes must comply within 15 months. In-service 10–30 pax turboprop airplanes must comply within 15 years.
[3] Transport category must comply within 15 months. Nontransport category can operate for 15 years without ditching approval.
[4] Commuter category airplanes must comply within 15 months. SFAR 41 and predecessor category airplanes must comply within 15 years.

VI. Discussion of Specific Proposals

In this section specific proposals for part 121 and part 119 are summarized, comments received are discussed, and the FAA's response to those comments is given. In Section VII comments received on the costs and benefits of the proposed rule are addressed. The part 121 discussion, which applies to the affected commuters, appears first (Section VI.A). Table 2 provides a listing of comparable sections in part 135 for each specific requirement discussed in this portion of the preamble. This is followed by a discussion of part 119 issues, which apply to all certificate holders under part 121 and part 135 (Section VI.B).

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
Subparts E and F—Approval of Routes: Domestic, Flag, and Supplemental Operations.	135.213	121.97, 121.99, 121.101, 121.107.
Subpart G—Manual Requirements	135.21, .23	121.133, .135, 121.137.
—Contents and personnel	.....	121.141.
—Airplane flight manual		
Subpart I—Airplane Performance Operating Limitations	135.365–.387	121.175–.197.
Subpart J—Special Airworthiness Requirements	.....	121.217.
—Internal doors	135.87	121.285.
—Cargo carried in the passenger compartment	135 App. A	121.289.
—Landing gear aural warning device	.....	121.291.
—Emergency evacuation and ditching demonstration.		
—New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes.	.....	121.293(a) (new).
—Ditching emergency exits	.....	121.293(b) (new).
—Takeoff warning system		
Subpart K—Instrument and Equipment Requirements:		
—Third attitude indicator	135.149	121.305(j).
—Lavatory fire protection	135.163 (a), (h)	
—Emergency equipment inspection	.....	121.308.
—Hand-held fire extinguishers	135.177(b)	121.309(b).
—First aid kits and medical kits	135.155	121.309(c).

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
—Crash ax	135.177(a)(1)	121.309(d).
—Emergency evacuation lighting and marking requirements	135.177(a)(2), 135.178(c)–(h).	121.309(e), 121.310(c)–(h).
—Seatbacks		
—Seatbelt and shoulder harnesses on the flight deck	135.117	121.311(e), 121.311(f).
—Interior materials and passenger seat cushion flammability	135.169(a)	121.312(b).
—Miscellaneous equipment	.....	121.313 (c), (f), (g).
—Cockpit and door keys	.....	121.313(f).
—Cargo and baggage compartments	.....	121.587.
—Fuel tank access covers	.....	121.314, .221.
—Passenger information	.....	121.316.
—Instruments and equipment for operations at night	135.127	121.317, 121.323.
—Oxygen requirements		
—Portable oxygen for flight attendants	135.157	121.237–.335, 121.333(d).
—Protective breathing equipment (PBE)	.....	121.337.
—Additional life rafts for extended underwater operations	135.167	121.339.
—Flotation devices		
—Pitot heat indication system	.....	121.340.
—Radio equipment	135.158	121.342.
—Emergency equipment for operations over uninhabited terrain	135.177, .178	121.353.
—TCAS		
—Flight data recorders	135.180	121.356.
—Airborne weather radar	135.152 (a), (b)	121.343.
—Cockpit voice recorders	135.173, .175	121.357.
—Low-altitude windshear systems	135.151	121.359.
—Ground proximity warning system (GPWS)	135.153	
Subpart L—Maintenance, Preventive Maintenance, and Alterations:		
—Applicability	135.411(a)(2)	121.361.
—Responsibility for Airworthiness	135.413	121.363.
—Maintenance, preventive maintenance, and alteration organization	135.423, .425	121.365, .367.
—Manual requirements	135.427	121.369.
—Required inspection personnel	135.429	121.371.
—Continuing analysis and surveillance	135.431	121.373.
—Maintenance and preventive maintenance training programs	135.433	121.375.
—Maintenance and preventive maintenance personnel duty time limitations		121.377.
—Certificate requirements	135.435	121.378.
—Authority to perform and approve maintenance, preventive maintenance, and alterations.	135.437	121.379.
—Maintenance recording requirements	135.439(a)(2)	121.380(a)(2).
—Transfer of maintenance records	135.441	121.380a.
Subpart M—Airman and Crewmember Requirements:		
—Flight attendant complement	135.107	121.391.
—Flight attendants being seated during movement on the surface	135.128(a)	121.391(d).
—Flight attendants or other qualified personnel at the gate	.....	121.391(e), 121.417, 121.393 (new).
Subparts N and O—Training Program and Crewmember Requirements	.....	121.400–121.459.
Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag.	.....	121.461–121.467.
Air Carriers		
Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations.	135.261–135.273	121.470–121.525.
Subpart T—Flight Operations:		
—Operational control	135.77, .79, 135.75, 135.69, .19.	121.533, .535, 121.537, 121.547, 121.551, .553.
—Admission to the flight deck	.....	121.557, .559, 121.565 (new).
—Emergency procedures	135.117, .127	121.571(a), 121.533, .573, 121.585.
—Passenger information	135.91(d)	121.574.
—Oxygen for medical use by passengers	135.121, 135.87, .122	121.575, 121.577.
—Alcoholic beverages	.....	121.578(b).
—Retention of items of mass	135.93	121.579.
—Cabin ozone concentration	.....	
—Minimum altitudes for use of autopilot	135.75, 135.23(q)	121.581, 121.586.
—Forward observer's seat		
—Authority to refuse transportation	135.87, 135.229, .217	121.589, 121.590.
—Carry-on baggage	.....	121.617(a).
—Airports		
Subpart U—Dispatching and Flight Release Rules:		
—Flight release authority	.....	121.597.

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TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 for each issue discussed in this preamble. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble]

Subject	135 Section	121 Section
—Dispatch or flight release under VFR	135.211	121.611.
—Operations in icing conditions	135.227, .341, 135.345	121.629.
—Fuel reserves	135.209, .223	121.639, .641, 121.643, .645.
Subpart V—Records and Reports	135.65(c), 135.415(a)	121.701(a), 121.703 (a), (e).
—Maintenance log: Airplane	135.417	121.705(b).
—Mechanical interruption summary report	135.439(a)(2), 135.443	121.707, 121.709.
—Alteration and repair reports		
—Airworthiness release or airplane log entry		121.711, .713, 121.715.
—Other recordkeeping requirements.		

VI.A. Part 121 Discussion

VI.A.1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers

Section 121.97 requires each domestic and flag operator to show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. The operator must also have an approved system to disseminate this information to appropriate personnel. Although part 135 has similar requirements, part 121 requires more information.

Section 121.99 requires each domestic and flag operator to have a two-way air/ground communication system between each airplane and the appropriate air traffic control facility, along the entire route. In the 48 contiguous States and the District of Columbia, the communications system between each airplane and the dispatch center must be independent of any system operated by the United States. This would be a new requirement for the affected certificate holders.

Section 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for the operation. For operations within the 48 contiguous States and the District of Columbia, these reports must be prepared by the National Weather Service. For other areas, a system must be approved by the Administrator. Section 135.213 has similar requirements, except that the pilot in command is allowed to use various other sources, including his own weather assessment, for VFR operations. This section also requires reports of adverse weather phenomena. The FAA proposed that affected certificate holders comply with part 121.

Section 121.107 requires each domestic and flag operator to have enough dispatch centers, adequate for the intended operation. This would be a new requirement for affected certificate holders, as discussed in Section V.F., Dispatch System.

Comments: ALPA comments that the upgrade to part 121 represents a major improvement over part 135. ALPA also comments that Subparts E and F should be upgraded to require that each pilot have a set of approach and navigation charts rather than having to share a set. ALPA provides supportive information, such as an NTSB recommendation (A–95–35) for a similar requirement.

Several comments were received on the enroute radio communication requirements of § 121.99. ASA and RAA question the need for airline provided enroute radio communication capability for short-haul flights and request that the requirement be reconsidered. According to these commenters, the average enroute times for affected certificate holders is less than an hour. For such short flights there is little time during the enroute portion of a flight for company communication. The cost of installing company communications would be high and safety would not be diminished without company communication since the crew can be contacted through Air Traffic Control.

AACA points out that this would be a new requirement for affected commuters. Intrastate Alaskan operations now conducted under flag operations rules will be conducted under domestic rules and would be required to comply with the independent communications systems requirements. Because of low altitudes, VFR flight operations, and the lack of Remote Communications Outlet at many locations, maintaining communications will require construction of a large communications infrastructure. When operators in Alaska use flag rules, AACA interprets § 121.99 to not require the communications system be independent of any system operated by the United States.

FAA Response: The ALPA suggestion on requiring that each pilot have a separate set of navigation and approach charts is beyond the scope of this rulemaking; however, the FAA is planning to initiate a separate rulemaking on the issue.

Section 121.99 requires each domestic and flag air carrier to have a two-way radio communication system that is independent of any system operated by the United States. FAA flight service stations and air traffic control facilities that are currently providing radio communication service for certificate holders are used for the control of aircraft and were never intended to be used by individual certificate holders to relay information that is the certificate holder's responsibility, such as scheduling changes or weather information. Hence, an additional expense would be incurred by certificate holders required to contract for communication services through commercial services. However, it is believed that most part 135 certificate holders already have facilities and communications equipment that satisfy the dispatch requirements under part 121.

The FAA believes that there is a need for a two-way air-ground radio communication system that will ensure reliable and rapid communications over the entire route between each airplane and the appropriate dispatch office and between each airplane and the appropriate air traffic control unit. The need to show that each operator has a two-way radio system is not new. However, the requirement to have an independent system is new for operations of affected commuters and intrastate Alaska and Hawaii operations previously conducted under flag operations rules. While no commenters focus on § 121.97 or § 121.117, the FAA points out under §§ 121.97(b)(4)(i) and 121.117(b)(4)(i) affected operators will be required to comply with airport data requirements which include applicable performance requirements of Subpart I. For affected airplanes these performance requirements will be found in new appendix K to part 121 as referenced in subpart I.

VI.A.2. Subpart F—Approval of Routes: Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

This subpart is similar to subpart E except that it applies to supplemental operations and prescribes flight following requirements. Under the proposal, this subpart would apply in cases where an affected operator uses an airplane that is also used in domestic operations to conduct a nonscheduled operation. On this issue, no comments were received and the final rule is adopted as proposed.

VI.A.3. Subpart G—Manual Requirements

Manual requirements: Contents and personnel: Under subpart G of part 121 certificate holders are required to prepare and keep current a manual containing policies, procedures, applicable regulations, and other information necessary to allow crewmembers and ground personnel to conduct the operations properly (see § 121.133 and § 121.135). While the requirements of parts 121 and 135 are similar, part 121 manual requirements contain a more extensive list of manual contents (§ 121.135). Under part 121 the manual or appropriate parts must also be furnished to more personnel, such as aircraft dispatchers and flight attendants, and made available to others, such as station agents. Notice 95–5 stated that the effect of these differences between compliance with part 121 versus compliance with part 135 would be significant for commuter operators. The proposal would require developing, producing, and distributing new manuals appropriate to part 121. In addition, § 121.137 requires the air carrier to issue a manual or appropriate parts to each crewmember and requires each crewmember to keep the manual up to date and have it with him or her when performing assigned duties. Part 135 does not require that flight attendants be issued a manual; however, it does require that any person to whom a manual is issued must keep it up-to-date (see § 135.21).

Comments: Fairchild Aircraft states that § 121.137 would require at least one copy of the manual specified by § 121.133 to be carried in the airplane and that this is a reasonable proposal that they fully support. Fairchild Aircraft also states that § 121.141(b)(2) contains a reference to "rotorcraft" which should be deleted.

ALPA states that the key to an efficient, safe airline operation can normally be found in the manuals developed by the airline. ALPA supports the FAA in adopting all facets of Subpart G. ALPA also states that § 121.135(b)(2) should be amended by removing, "in the case of supplemental air carriers and commercial operators," so that the paragraph reads: "Duties . . . of the ground organization, and management personnel." According to ALPA, the requirement to include in the manual duties and responsibilities of management personnel would no longer be applicable only to supplemental and commercial operators since proposed part 119 requires management personnel for all certificate holders.

One commenter states that § 121.133 should require compliance with the certificate holder's manuals.

Metro International Airways states that the cost of new manuals would be excessive for small businesses and that an outline of procedures would be a more useful reference than a highly detailed manual.

FAA Response: All but one of the comments received regarding the manual requirements support the implementation of Subpart G of part 121. Only one comment regarding the costs associated with the manuals required by § 121.131 was received.

Additionally, the FAA has received requests from certificate holders that would like to begin the process of transition prior to implementation of the rule. This would allow those certificate holders to spread the cost of manual production and distribution over a longer period of time. The question of phased-in-implementation is not unique to this issue and is addressed elsewhere in this document.

The FAA agrees with ALPA's suggestion to revise the wording of § 121.135(b)(2). This is not a substantive change from Notice 95–5 because § 119.65(e) also requires that manuals contain the duties and responsibilities of required management personnel. The FAA also agrees with Fairchild's suggestion to delete the word "rotorcraft" from § 121.141(b)(2). These recommendations are appropriate. In the final rule §§ 121.135(b)(2) and 121.141(b)(2) are revised accordingly.

In response to the comment that § 121.133 should require compliance with the certificate holder's manual, the holder of an air carrier certificate with operations specifications to operate under part 121 must comply with the regulations in part 121 (and other applicable regulations). Requirements for preparing and maintaining a manual serve the purpose of supplying information to personnel. Information in the manual must be accurate and consistent with the regulations. Since the manual may also include company policy and guidance to personnel, all portions of the manual are not enforceable as regulations. The language of the manual requirements does, however, imply that the certificate holder must adhere to all of the contents of the manual and that the certificate holder's personnel must use the manual in conducting operations.

In response to the comment that the manual requirements will be a burden for small businesses and that an outline of procedures would be more helpful to personnel, small certificate holders are already meeting the manual requirements of part 135; this rulemaking requires an update of manuals and broader distribution of the manuals. An outline of procedures could be used as guidance in addition to the manuals or as part of a manual, but under current part 135 it would not suffice as meeting the manual requirements.

In the final rule § 121.133 has been revised to update the terminology.

VI.A.4. Subpart H—Airplane Requirements

For comments and FAA responses to the requirements in § 121.157, Aircraft certification and equipment requirements, see the discussion in Section V. C., Aircraft Certification.

Single-engine airplanes. Section 121.159 prohibits operation of single-engine airplanes under part 121. No change to this prohibition was proposed since the FAA does not consider single-engine airplanes acceptable to part 121 standards. Under the proposal, this section was amended to delete an obsolete reference to § 121.9. No comments were received on this issue and the final rule is adopted as proposed. For a related discussion on the operation of single-engine Otters, see "Applicability: Alaska," in Section V.B.

Airplane limitations: Type of route. Section 121.161(a) requires that a two-engine or three-engine airplane except a three-engine turbine powered airplane must be within 1-hour flying time from an adequate airport at normal cruising speed with one engine inoperative, unless otherwise approved by the Administrator. Part 135 does not contain a comparable requirement; however, the FAA proposed that

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affected commuters would comply with the requirements of § 121.161(a).

Section 121.161(b) contains a separate requirement that (with some exceptions for certain older airplanes) no person may operate a land plane in extended overwater operations unless it is certificated or approved as adequate for ditching. The FAA proposed that affected commuters would also comply with the requirements of § 121.161(b). In Notice 95–5, the FAA invited specific comments on the potential impact of these proposals on operations in Alaska.

Comments: Several comments were received on the § 121.161(a) requirement to be within 1 hour of an airport with one engine inoperative. One commenter suggests that § 121.161 be rewritten to reflect today's environment, since no airport in the U.S. is more than 1 hour away for these commuter airplanes. The commenter also states that the rule should specify the requirements for two-engine operations over the water.

Fairchild and AIA both state that § 121.161(a) would require single-engine cruising speed data and this data is unlikely to be included in some Airplane Flight Manuals (AFM). The commenters also state that there appears to be no safety benefit and it will be difficult to show compliance. According to these commenters, the final rule should except 10–30 passenger seat airplanes.

Phoenix Air anticipates that its operations with a Grumman G–159 Gulfstream airplane would be disrupted due to the requirements of § 121.161, since they intend to start service between Honolulu and Midway Island. There are no airports that would be within 1 hour of the intended flight path.

Jetstream concurs with the requirement that airplane routes should be within 1 hour of an adequate airport.

Three comments were received on the certification ditching requirements of § 121.161(b). Fairchild and AIA note an apparent oversight in that the FAA did not propose to exclude part 23 Normal or Commuter Category airplanes from the ditching requirements of § 121.161(b).

AACA notes that several certificate holders fly affected aircraft on extended overwater routes in Alaska. Compliance with the part 25 ditching requirements would add certification costs, impose equipment weight penalties, and reduce payloads. According to the commenter, the FAA did not calculate these costs. The commenter supplies information indicating that costs to comply with the ditching requirements of part 25 are substantial.

FAA Response: Despite the comments to the contrary, the FAA has decided to adopt its proposal to apply the route limitation requirements of § 121.161(a) to the 10- to 30-seat airplanes operated by the affected commuters. Under that section any route flown by a twin engine commuter type airplane must be flown so that it is within 1 hour of an adequate airport for landing. Part 121 and its predecessor regulations have applied route limitation requirements to airplanes operating under those requirements since 1936. While the specific details of the route limitation requirement have changed over the years, the underlying safety issue has not; the certificate holder must show, before operating affected airplanes over a route, that it can safely continue flight in an emergency situation to an airport adequate for landing. The FAA understands that some of these airplanes will require an AFM revision that will provide engine-out cruise speed data. There are routes in areas outside of the contiguous U.S. that are more than 1 hour flying time (with one engine inoperative) from an adequate airport. In accordance with § 121.161(a), the Administrator may authorize a deviation from the requirement, if the operator can show that the 1-hour flight time limit is not necessary based on the character of the terrain, the kind of operation, or the performance of the airplane. Obtaining authorization to conduct extended range operations with two-engine airplanes is dependent upon many factors. Some of these factors are a type design review of the airframe system, a review of the in-service history of the airplane propulsion system, and an assessment of the certificate holder's maintenance and inspection program capability for extended range operations. Advisory Circular 120–42 provides the guidelines for this authority. Other rules provide the requirements for extended overwater routes.

The Douglas DC–3 and Curtiss C–46 airplanes excluded from § 121.161(b) were type certificated and manufactured before the present standards of part 25 were adopted. These aircraft were excluded because of their previous operating experience which showed, in some cases through actual ditchings, that these old airplanes could ditch satisfactorily. The Convair 240, 340, and 440 and Martin 404 airplanes were also type certificated before the present standards were adopted. They were excluded because tests conducted by the National Advisory Committee for Aviation showed they would have excellent ditching characteristics. Unlike current part 25, part 23 contains no standards for ditching approval. Unlike those older airplanes excluded in § 121.161, none of the part 23 airplanes have been shown to comply with any ditching standards. Contrary to the commenter's assumption, requiring part 23 airplanes used in extended overwater operations to meet the ditching certification requirements was not an oversight. In Notice 95–5 preamble, the FAA concluded that these requirements should be applied to the operations that would be moved from part 135 to part 121.

After considering the comments, the FAA has determined that until 15 years after the date of publication of the final rule a certificate holder may operate in an extended overwater operation a nontransport category land airplane type certificated after December 31, 1964, that was not certificated for ditching under the ditching provisions of part 25 of this chapter. Section 121.161(c) has been added accordingly.

Proving tests. Section 121.163 provides proving test requirements for part 121. In addition to aircraft certification tests, an aircraft to be operated under part 121 must have at least 100 hours of proving tests for an airplane not previously proven for use in part 121 operations, and 50 hours of proving tests for an airplane previously proven for use in part 121 operations. The number of hours may be reduced by the Administrator. Section 135.145 requires 25 hours of proving tests in addition to certification tests for certificate holders that operate turbojet airplanes or airplanes for which two pilots are required for operations under VFR if that airplane or an airplane of the same make and similar design has not been previously proved in any operations under part 135. Both §§ 135.145 and 121.163 require proving tests for materially altered airplanes. However, under § 121.163, proving tests apply to each airplane to be operated under part 121. Under part 135 proving tests apply to each aircraft or to aircraft of similar make and design. Part 121 also describes three types of proving tests. Under part 121, the initial operator of a type of airplane must conduct at least 100 hours of proving tests, acceptable to the FAA, which can be reduced in appropriate circumstances. Moreover, for each kind of operation (e.g., domestic, flag, supplemental) that a certificate holder conducts, 50 hours of proving tests are required, which are reducible in appropriate circumstances.

Comments: Six substantive comments were received. Comair and RAA concur with the requirement for an air carrier to demonstrate its ability to perform in accordance with part 121 and company procedures. However, Comair proposes that carriers currently conducting operations under part 121 and part 135 (split certificates) should not be required to conduct this demonstration. Carriers conducting part 121 and part 135 operations have previously proven their ability to conduct part 121 operations. If the requirement for dispatching is adopted, flight crewmembers will demonstrate their proficiency with the new system during their required line check.

RAA comments that proving flight hours should be reduced based on "experience and performance" factors. To facilitate a reduction in flight hours, the FAA should identify those specific procedures for which non-revenue proving flights would be required and specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures.

ASA believes that the requirement for proving flights will result in an increase in both initial and recurring costs. United Express joins ASA in proposing that FAA recognize the experience level of air carriers operating under part 135 and permit proving tests to be conducted during revenue service. United Express further proposes that the required number of hours be reduced for those carriers currently using a dispatch system.

Big Sky Airlines recommends a waiver of the requirement for a proving test for airlines that have a good safety record and proven experience. The commenter justifies its recommendation on the basis of excessive and unnecessary burden and cost.

Commuter Air Technology requests clarification concerning which modifications to specific aircraft would require 100-hour initial proving tests.

FAA Response: Section 121.163 has two main parts. Paragraph (a) prohibits a carrier from operating an aircraft type in scheduled service that has never been used in scheduled service until it has flown 100 hours of proving flights. These hours are in addition to any aircraft certification tests. For the purposes of this rulemaking, the FAA recognizes that the current commuter fleet has established a sufficient history of operations and does not intend to require the 100 hours of proving flights for aircraft currently being operated by those carriers affected by this rulemaking. Paragraph (b) of § 121.163 requires 50 hours of tests for the carrier to show that not only can it operate and maintain the aircraft, but also that it has the ability to conduct a particular kind of operation (i.e., domestic or flag) in compliance with the applicable regulatory standards.

The FAA agrees that carriers currently conducting operations under both part 121 and part 135 (split certificates) will be eligible to apply for a reduction of the number of hours required to conduct the demonstration required by paragraph (b). In regard to the comment that flight crewmembers that are new to part 121 operations will demonstrate their proficiency during accomplishment of a line check, the FAA does not agree that this could take the place of proving flights. The primary focus of proving flights is not simply to test the proficiency of flight crewmembers but to test the company's operational control procedures for the airplanes that will be operated in accordance with the requirements for a new kind of operation, i.e., flag or domestic. The FAA supports the idea that proving flight hours should be reduced based on "experience and performance" factors. The FAA has begun to identify those specific procedures for which proving flights would be required and to specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures. This guidance to FAA inspectors will be provided in a revision to Order 8400.10.

The FAA agrees that proving tests will require an expenditure of the carrier's financial resources. Safety requires these proving tests to determine that an operator can conduct operations under part 121 safely, using new procedures, dispatches, etc. The FAA recognizes the experience level of air carriers operating under part 135 and, based on the carrier's experience with part 121, will provide FSDO inspectors with written guidance on approving deviations from the requirements of § 121.163. The FAA believes that proving tests are an essential part of the certification process and also provide the carrier with an opportunity to do some "dry-runs" before beginning revenue service under a completely new set of regulatory standards. The FAA's intent is to provide inspectors with the authority to provide deviations from the proving test requirements. FAA Headquarters will review each proposed reduction of proving test hours and will concur or not concur with the proposed number of hours for each affected commuter.

In response to Commuter Air Technology's request for clarification concerning which modifications to specific aircraft would require 100 hour initial proving tests, § 121.163(d) contains criteria for when a type of aircraft is considered to be materially altered in design.

VI.A.5. Subpart I—Airplane Performance Operating Limitations.

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes and §§ 121.189 through 121.197 apply to turbine engine-powered transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

In part 121 the term "nontransport category airplane" is currently used to refer to older airplanes like the Curtis C–46, that were type certificated before the transport category was established, i.e., the early 1940's. However, many airplanes type certificated over the last 20 years used by affected commuters (e.g., commuter category and SFAR 41 airplanes and predecessor categories), are also nontransport category. Therefore, the FAA proposed to delete the term "transport category" throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

Comments: ALPA states that all requirements of part 121 subpart I should be complied with by all turbo-propeller airplanes with a passenger capacity of 10 or more.

AACA concurs that airplanes with 10 to 19 seats should be required to comply with all of the proposed modifications (in Table 1 of Notice 95–5) except for part 121 performance and obstruction clearance and floor proximity lighting. (See later discussion of floor proximity lighting.)

Jetstream, RAA and ALPA support the overall proposals concerning the higher level of performance requirements. However, they join with Commuter Air Technology, Raytheon and an individual to point out that additional performance data/charts would need to be developed (for example: accelerate-stop and obstacle clearance data). RAA also recommends a 2-year time frame instead of the proposed 1-year performance compliance date.

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Jetstream states that Notice 95–5, in conjunction with other proposed rules and changes, will introduce more weight to the aircraft. In addition to this, AC 120–27D, Aircraft Weight and Balance Control, will increase standard average passenger weights used for calculations. The combined effect is that these aircraft will no longer be allowed to carry 19 passengers due to reduced payload capacity. According to the commenter, the combined effect of the weight changes is about two passengers.

Jetstream and Raytheon comment that current FAA policy should be revised to allow manufacturers to increase the maximum takeoff weights for aircraft certificated under SFAR 41. They justify their comments by stating that the increase in maximum takeoff weight will provide a mitigation of the additional equipment weights incurred under this rulemaking.

One commenter states that better weight and balance control by the FAA is necessary because many operators are flying over maximum weight.

Fairchild, Jetstream, and AIA propose that the FAA incorporate the language of § 135.181(a)(2) into § 121.191, which would provide, in their view, a more conservative approach to one engine inoperative enroute operations. Jetstream also notes that there is no requirement for commuter airplanes to show Net En Route Flight Path data in their AFM's.

One commenter suggests that part 121 be written to specify the exact performance requirements for nontransport category airplanes to be included in their performance manuals so there would be no confusion with other FAA performance requirements.

Fairchild and AIA suggest deleting all references to "transport category" in §§ 121.189 through 121.197.

FAA Response: Section 121.135(b) requires that the manual contain methods and procedures for maintaining the aircraft weight and center of gravity within approved limits. Approved weight and balance control procedures are the only means for an operator/applicant to authorize the use of other than known weights for crew, passengers, baggage, or cargo. The weight and balance control program, including loading schedules and charts, are approved on operations specifications by the FAA. This program must be included in the operator/applicant's policies and procedures manual.

Section 121.189(c)(1) states, for turbine engine powered takeoff limitations, that "(c) No person operating a turbine engine powered category airplane certificated after August 29, 1959, may take off that airplane at a weight greater than that listed in the Airplane Flight Manual (AFM) at which compliance with the following may be shown: (1) The accelerate-stop distance must not exceed the length of the runway plus the length of any stopway."

The FAA agrees that new or additional performance data would need to be developed for certain airplanes, and that this data would need to be acceptable to the FAA Aircraft Certification Office and incorporated into the Airplane Flight Manual (AFM). At the present time, some AFM's (for Beech 99, certain Metroliners, and the Twin Otter) do not have accelerate-stop distance data, only accelerate-slow data. In order for the airplane operator to comply with § 121.189(c)(1), the operators would have to request an AFM supplement from the airplane manufacturers showing this required data. The FAA has not required the manufacturers to develop this data. If they have developed the data, it would still have to be certificated by the FAA as a revision to the AFM. If the manufacturer does not have accelerate-stop data, it will have to flight test, simulate, or analytically prove accelerate-stop distance data to the FAA. This process could be expensive to the operators who would pay for the manufacturer's support.

This rulemaking does not require the affected airplanes that are currently in service or airplanes that will be manufactured under an existing type certificate to meet the engine-out climb gradient performance required by part 25. These airplanes will, however, be required to meet the obstacle clearance limitations of § 121.189(d)(2).

Section 121.189(d)(2) states for turbine engine powered takeoff limitations, that "(d) No person operating a turbine engine powered category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual—(2) In the case of an airplane certificated after September 30, 1958, that allows a net takeoff flight path that clears all obstacles either by a height of at least 35 feet vertically, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries." AFM's for some older airplanes with seating capacity of 10-to-19 passengers do not have data to show the required climb gradient or the certification basis to clear obstacles after takeoff with an engine-out at a specified weight. As one commenter suggests, additional certification requirements would have to be identified in part 121 or in a new Appendix to 121 for nontransport category airplanes, except for the commuter category or SFAR 41, ICAO Annex 8 airplanes, before these airplanes could comply with § 121.189(d)(2) requirements.

As with accelerate-stop data, the FAA agrees that new or additional performance obstacle clearance data for certain airplanes would need to be developed, and that this data would need to be approved by an FAA Aircraft Certification Office and incorporated into the Aircraft Flight Manual. Raytheon estimates that to provide obstacle clearance data, testing would have to be done on all Beech 99 models and the price per each airplane for the new performance data would be $63,000 ($53,000 for the Beech 1300). This cost must be incurred by the manufacturer and then passed on to all the operators.

The FAA recognizes the significant problems in developing the necessary performance data for airplanes type certificated under a wide range of standards over the past 30 years, including part 23 (or its predecessor, part 3 of the Civil Air Regulations) normal category, plus additional standards in the form of special conditions, SFAR 23, SFAR 41C, or part 135, appendix A, or part 23 commuter category. Development of the additional performance data for airplanes certificated under older standards may be developed by conducting actual flight tests, data analysis, or any other methods acceptable to the Aircraft Certification Office. The FAA believes that the performance requirements of § 121.189(d)(2), obstacle clearance with an engine-out after takeoff, contribute to an increased level of passenger and crew safety.

The FAA also understands that the requirements for accelerate-stop and obstruction clearance may, in fact, remove certain airplanes from service in part 121. It may also affect the operational capability of some operators, depending on the location and height of obstacles, and may terminate air carrier service to some communities if airplanes are removed from service.

Because of the difficulty that affected commuters would face in meeting the part 121 performance operating limitations with their existing fleet, the FAA has decided to provide delayed compliance for these requirements. Subpart I has been amended to state different requirements for aircraft used by affected commuters that were certificated under different certification standards, as follows:

1. Airplanes certificated under commuter category can meet all of the airplane performance requirements of part 121 within 15 months of the publication of the final rule.

2. Airplanes certificated under SFAR 41 or earlier certification standards will be allowed to continue to comply with the part 135 Subpart I and other airplane performance operating limitations requirements for 15 years. The FAA anticipates that some of the SFAR 41 airplanes will be able to meet the part 121 requirements within the 15-year period so they have the choice of either continuing to operate under the performance requirements of part 135 for the 15-year compliance period or complying with the performance requirements of part 121 during the 15-year compliance period. Some of the airplanes certificated under earlier certification standards, such as under part 135, Appendix A, part 23, with special conditions, and SFAR's 23 and 41C, will probably never be able to meet the part 121 standards. For affected commuters operating these airplanes, the 15-year period allows the operators sufficient time to plan for and obtain replacement airplanes or to modify them.

Although the FAA encourages affected commuters to comply with the performance operating requirements earlier than 15 years after publication of the final rule, it is allowing that length of time to ensure that there will be an adequate supply of replacement airplanes available for purchase. The current rate of production of new commuter category airplanes is approximately 30 per year. But most importantly, if the FAA were to impose a shorter compliance period and affected commuters were not able to obtain new airplanes from manufacturers, they might replace their equipment with airplanes configured for fewer than 10 passengers. This airplane group is not covered by this rulemaking and has a higher accident rate than the 10–19 passenger airplanes. Therefore, an unintended effect of this rule could be an increase in the accident rate.

In response to Jet Stream's comment, current FAA policy prohibits revisions to airplanes certificated under SFAR 41 that would increase the maximum weight or the number of passengers. This SFAR was terminated on September 13, 1983.

While the FAA understands that some of the older airplanes (i.e., normal category predecessors of commuter category airplanes) may not be able to meet certain performance requirements, the FAA has determined that some performance requirements, such as the maintaining of an altitude with an engine-out, are important safety enhancements that provide for a higher level of safety. This level of safety required in part 121 should be available to all passengers flown on carriers operating under part 121.

Section 121.191 requires that the AFM show a one-engine inoperative net en route flight path which would provide a positive slope at an altitude of at least 1,000 feet above the terrain (2,000 feet in mountainous terrain) within 5 statute miles of the intended track. Section 121.191 also provides for a net flight path that would allow continued flight from the cruising altitude to an airport clearing all terrain and obstructions. Section 135.181(a)(2) requires airplanes to maintain a 50 feet per minute rate of climb when operating at the MEAs or 5,000 feet MSL whichever is higher. It does not provide for the continuation of the flight below the MEA.

Section 121.191 has continuously provided for safe engine out en route operations while allowing some flexibility. The flexibility allows the certificate holder to calculate maximum weights for maintaining a constant engine out altitude, a continuous flight path drift down to an airport when an altitude cannot be maintained, and provides off airways direct routing engine out performance requirements. The FAA understands that net en route flight path data must be provided by the manufacturer; however, the FAA believes that part 121 air carriers deserve the additional flexibility of § 121.191 and that commuters adopting the § 121.191 requirements may gain a flexible benefit with a continued higher level of safety.

In response to comments, the FAA points out that Notice 95–5 proposed to remove the words "transport category" wherever they appear in subpart I.

In reviewing part 121 to resolve comments, the FAA noted that several formulas are printed incorrectly. In the rate of climb formula for reciprocating engine powered transport category airplanes certificated under parts other than part 4a of the Civil Air Regulations (CAR), the parentheses are misplaced. This formula has been printed correctly in the corresponding part 135 section of § 135.371 (a) and (c)(1). Also, in the rate-of-climb formula for transport category airplanes certificated under CAR 4a [§ 121.181 (a) and (c)(1) and § 121.183 (a)(2) and (c)(1)] it is not clear as printed that the subscript $_{so}$ is to be squared. Appropriate corrections are made to both formulas.

VI.A.6 Subpart J—Special Airworthiness Requirements

Internal doors. Section 121.217 prescribes that in any case where internal doors are equipped with louvers or other ventilating means, there must be a means convenient to the crew for closing the flow of air through the door when necessary.

Comments: Raytheon Aircraft states that a new toilet installation for the 1900D has internal partitions with permanently open louvers. Compliance with § 121.217 would require Raytheon to redesign the partition louvers so a crewmember could leave his or her station to close the louvers when necessary or design the louvers for remote control closure.

FAA Response: Contrary to the commenter's assumption, the lavatory partition louvers in the commenter's airplanes would not have to be redesigned. As stated in § 121.213 (a) and (b), § 121.217 applies only to airplanes type certificated under Aero Bulletin 7A or part 04 of the Civil Air Regulations.

Cargo carried in the passenger compartment. Section 121.285 requires that cargo carried in passenger compartments must be stowed in a fully enclosed bin or carried aft of a bulkhead or divider and properly restrained. Section 135.87 allows certificate holders to carry cargo in an approved cargo compartment instead of a fully enclosed bin and to carry restrained cargo anywhere in the passenger compartment if it is restrained by a net that meets the requirements of § 23.787(e). The FAA proposed to amend § 121.285 to add an exception for commuter category (and predecessor) airplanes that would have the effect of allowing cargo to be carried in the passenger compartment as it is today under part 135.

Comments: AACA, an association of Alaskan air carriers, fully supports the proposal.

FAA Response: The final rule includes provisions from § 135.87 that have been moved into § 121.285 for nontransport category airplanes type certificated after December 31, 1964.

Landing gear aural warning device. Section 121.289 contains a requirement for a landing gear aural warning device for large airplanes. At present this section applies to any airplane with a maximum certificated takeoff weight of more than 12,500 pounds. Appendix A of part 135 requires a landing gear warning device for airplanes having retractable landing gear and wing flaps, but the device need not be aural. The FAA considers that the cost of replacing a warning light with a warning sound

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would be minimal. Therefore, this section would apply to any airplane that presently operates under part 135 and that would be required by this final rule to operate under part 121. To allow adequate time for airplanes without aural warning devices to be retrofitted, the FAA proposed a compliance date of 2 years after the publication date of the final rule.

Comments: Raytheon comments that their models all provide aural landing gear warning.

AACA notes that the FAA did not prepare a cost analysis for this proposal, other than to show that the cost would be "minimal." AACA shows that various manufacturers' comments on similar proposals have identified substantial administrative, engineering, installation, and ongoing maintenance cost. However, AACA also notes that, in this case, Fairchild Aircraft believes that the landing gear aural warning can be installed without undue cost or difficulty.

AACA also states that once an item is installed, there are many other things that must be done that involve cost. Cost items identified are: revisions of the certificate holder's training program, normal and emergency procedures, maintenance MEL's and other items need to be amended to reflect the change from a visible lighted warning device to an aural device. According to AACA, compliance costs add up incrementally to substantial cumulative cost and that the FAA fails to account for.

FAA Response: Even though part 23 requires an "aural or equally effective device," the FAA is not aware of airplanes where the "equally effective device" was accepted as the only warning for the landing gear warning. The reason for not accepting such devices includes the consideration of pilot's work load during the landing phase of flight and the need for the warning to attract pilot attention under such conditions. No proposed lighted device, by itself, has been found acceptable to provide the needed warning for this flight condition. Therefore, the FAA is amending § 121.289 as proposed to require installation of a landing gear aural warning device within 2 years of the publication of this final rule. However, the FAA believes that all affected airplanes already have an aural warning system.

Emergency evacuation and ditching demonstrations. Section 121.291 contains requirements for conducting demonstrations of airplane evacuation and ditching procedures. The FAA requires these demonstrations upon introduction of a new type and model of airplane into passenger-carrying operations. For airplanes with a seating capacity of more than 44 passengers, an actual evacuation demonstration must show that the full capacity of the airplane and the crewmembers can be evacuated within 90 seconds. Also, for airplanes with more than 44 passenger seats a partial demonstration is required under one of the circumstances described in § 121.291(b). Demonstrations have not been required for airplanes with fewer than 44 passenger seats.

Under § 121.291(d) any certificate holder operating or proposing to operate one or more landplanes of any size in extended overwater operations must conduct a simulated ditching in accordance with Appendix D to part 121. The purpose of the ditching demonstration is to show that the certificate holder's ditching training and procedures for a new type and model of airplane are satisfactory. The simulated ditching does not specifically require the use of flight attendants; the FAA proposed to apply this rule to any affected commuter operator who conducts extended overwater operations, whether or not flight attendants are used in the operation. The FAA proposed to apply this provision to the affected commuter operators only when a new type and model of airplane is introduced into the certificate holder's operations after the effective date of the final rule. This requirement does not apply to the current fleet.

The FAA proposed to amend § 121.291(b) to clarify that the partial demonstration procedures apply only to airplanes with more than 44 passenger seats.

Comments: With respect to partial evacuation, one commenter states that the proposed rule would reduce the safety requirements for commuters because the evacuation procedures under part 121 do not apply to airplanes with less than 44 seats and that § 23.803 requires a demonstration for commuter category airplanes. One commenter states that § 121.291(b) does not indicate if the requirement applies to aircraft with more than 44 seats or all aircraft.

Two commenters recommend clarifying the rule language for the ditching demonstration in § 121.291(d) to make the FAA's intent clear. The commenters say that the current language does not properly communicate the fact that a ditching demonstration would be required only if an airplane is a new make/model for a particular certificate holder's fleet.

FAA Response: Parts 25 and 121 currently require emergency evacuation demonstrations for transport category airplanes with more than 44 passenger seats. These demonstrations are required in addition to specific detail design requirements, e.g. aisle width, exit size, exit slides, etc., and are conducted to confirm the overall evacuation capability of the airplane. They are also conducted to show the adequacy of the operator's evacuation procedures. Considering the specific detail design requirements with which transport category airplanes must also comply, the FAA has not found it necessary to require such evacuation demonstrations for airplanes having 44 or fewer passenger seats. Since part 135 does not pertain to operations with airplanes having more than 44 passenger seats, there has been no need to require an emergency evacuation demonstration in that part. Part 23, on the other hand, does not contain the same specific detail design requirements for commuter or predecessor normal category airplanes. Therefore, an evacuation demonstration is required for type certification of those airplanes in lieu of the specific detail design requirements that transport category airplanes must meet. There will be no reduction in safety because transport category airplanes will still be required to comply with the same specific detail design requirements and the part 23 requirement for an evacuation demonstration will remain unchanged. As proposed, § 121.291(b) is amended to make clear that it, as well as § 121.291(a), only applies to airplanes with more than 44 passenger seats.

The FAA agrees that the language in § 121.291(d) for the ditching requirement does not clearly state that it applies to the affected commuters only if an airplane is a new type and model introduced after they began operations under part 121. Therefore, clarifying language is added to § 121.291(d).

New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes:

• *Ditching emergency exits.* Section 25.807(e) contains requirements for ditching emergency exits in transport category airplanes. The ditching exits for transport category airplanes with 10 or more passenger seats must meet at least the dimensions of a Type III passenger emergency exit (20 inches wide by 36 inches high). It should be noted that transport category airplanes are required to have ditching exits meeting those criteria regardless of whether the airplane is approved for ditching and used in extended overwater operations. If ditching approval is requested by the applicant, it also must be shown that the required life rafts can be launched successfully through the ditching emergency exits.

Part 23, as recently amended by Amendment 23–46 (59 FR 25772; May 17, 1994), now contains requirements for ditching exits; however, all of the normal or commuter category airplanes currently in service were type certificated before that amendment became effective. The FAA proposed to amend part 121 (proposed new § 121.293(a)) to require ditching exits for nontransport category airplanes type certificated after December 31, 1964. Unlike those required for transport category airplanes, the ditching exits would only have to be as large as those currently required by § 23.807(b) (19 inch by 26 inch ellipses). The FAA proposed that compliance would be required 2 years after the publication date of the final rule. The proposed requirement would not entail adding new exits. The overwing exits of most airplanes type certificated under part 23 would probably qualify as ditching exits. Part 25 airplanes intended for non-part 121 transportation sometimes comply by providing a sheet metal dam that can be installed in the passenger entry doorway. If it is necessary to consider a floor-level exit as a ditching exit in a nontransport category airplane, a similar sheet metal dam could be provided.

Comments: Commuter Air Technology, a modifier of business airplanes for commuter airline service, states that its product has overwing exits that would be usable anytime the airplane was floating. The commenter questions whether it would be necessary to conduct a $5,000 type certification effort to qualify those exits as ditching emergency exits. NATA, an association representing certificate holders of 10- to 19-passenger-seat airplanes, recommends rescinding the proposal and asserts that the cost of compliance would be extremely high. The commenter offers no specific details concerning costs, but does note that de Havilland DHC–6 Twin Otters have experienced only three ditchings in 17 million flight hours.

FAA Response: The comments received have some validity. The majority of the current commuter fleet, at least those for which ditching exits were not substantiated for certification, includes such airplanes as the Beechcraft 99 and 1900 and Fairchild airplanes with low wings and overwing exits. It is likely that these exits would qualify as ditching emergency exits. However, they would have to be tested. That would also be true of all other low-wing part 23 normal or commuter category airplanes that would be operated under part 121.

In addition to the low-wing models, there are also three high-wing normal or commuter category airplane models. These are de Havilland DHC–6, Twin Otters, which are by far the most numerous of the high-wing models, and the Dornier 228 and Britten Norman BN–2A Mk III Trislanders. (This, of course, refers to landplanes. Many Twin Otters operate as seaplanes on floats.) Typically, high-wing landplanes come to rest in the water on the fuselage with one wing tip in the water.

The DHC–6 Series 100 and 200 airplanes have emergency exits in the top of the fuselage forward of the wing. These exits also meet the ditching emergency exit requirements. The DHC–6 Series 300 airplanes do not have such overhead exits; instead they depend entirely on the emergency exits in the sides of the fuselage. In almost three decades of service with Twin Otters, there have been two ditchings. One involving a Series 100 airplane occurred in the Pacific Ocean during a ferry flight from Long Beach, California, to Honolulu, Hawaii. Another, involving a Series 300, occurred in the Arctic. In both instances, all occupants were evacuated safely. In the latter case, the occupants escaped through the exits on the highest side. The FAA is not aware of any ditchings of Trislanders or Dornier 228 airplanes; however, because the Dornier 228 and the Trislander are so similar in design to the DHC–6, it is likely that they would float the same way that the Series 300 airplane did, and that their exits would also meet the ditching emergency exit requirements.

Most of the part 23 commuter and predecessor normal category airplanes are low-wing airplanes with overwing exits that would comply with no further substantiation required. The vast majority of the airplanes would, therefore, not be affected by the requirement in regard to either cost or safety benefit because they already comply. In view of the successful ditchings that have occurred with high wing airplanes to date, the FAA has decided not to adopt § 121.293(a) as proposed.

• *Takeoff warning system.* Section 25.703 requires an aural warning to the flightcrew at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. Part 23 does not require a takeoff warning system (although a requirement for such a system is proposed in Notice No. 94–21, 59 FR 37620, July 22, 1994); in addition, part 23 airplanes typically do not have multiple types of devices. Accidents have occurred on transport category airplanes when the flightcrews initiated takeoffs when the airplanes were not in the proper configurations for takeoff. The FAA proposed that airplanes manufactured after a date 4 years after the publication date of the final rule would be required to have a takeoff warning system as required by § 25.703. However, a warning system is not required for any device for which it can be demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition (§ 121.293(b)).

Comments: One commenter notes that a takeoff warning would not be required under § 25.703 if it is demonstrated that a takeoff with that device in the most adverse position would not create a hazardous condition. This commenter questions how one can measure the effect of these improper settings when compounded by other unfavorable conditions, such as weight and balance mistakes, but does not express support or opposition to the proposal.

Commuter Air Technology discusses the longitudinal trim and flap systems on its airplanes. The commenter notes that the pilot can visually verify that the flaps are in correct 40° takeoff setting from the cockpit. The commenter also states that the longitudinal trim is manual and has center marking visible from both the pilot and co-pilot positions. The commenter's position is that the additional cost of such a system is not warranted.

FAA Response: The first commenter correctly notes that a takeoff warning system is not required for any devices if it is demonstrated that takeoffs with that device in the most adverse position would not cause an unsafe condition. While the FAA agrees that with some airplanes it is possible to verify visually flap positions and manual trims and that there is a cost to install warnings, the FAA has determined that for safety reasons, an aural warning is needed under the conditions described.

In considering these comments, the FAA notes that all of the in-service airplanes have demonstrated, by their service histories, that there is no device position that would cause an unsafe condition and therefore that there would be no need for installation of additional takeoff warning devices. While proposed § 121.293(b) (now § 121.293) does not apply to any in-service airplanes affected by this rule, the requirement for airplanes

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manufactured 4 years after the publication date of this rule is retained in the final rule to ensure that future airplanes are covered.

VI.A.7. Subpart K—Instrument and Equipment Requirements.

Instrument and equipment requirements are contained in part 121, subpart K, and part 135, subpart C. The requirements are in addition to the airplane and equipment requirements of part 91. The discussion below emphasizes all new or revised equipment requirements except for major equipment such as FDR's and airborne weather radar, which are previously discussed in the "Major Issues" section of this document.

Notice 95–5 proposed to require that commuter operators comply with part 121 airplane and equipment requirements except in areas that were specifically discussed.

Sections 121.303, 121.305, and 121.307 require certain airplane instruments and equipment. Some of the part 121 equipment is required under part 135 only for IFR, VFR over-the-top, and VFR night operations. Most of the airplanes used by affected commuters already have these instruments as well as equipment required under part 135 (§§ 135.143 and 135.149). Under the proposal this equipment in these part 121 sections would be required for all part 121 operations.

Third Attitude Indicators. Section 121.305(j) currently requires a third attitude indicator on large turbojet-powered and large turboprop powered airplanes. Notice 95–5 proposed to apply this requirement to airplanes that would be operating under part 121 as a result of this rulemaking.

Comments: Most of the commenters on this issue oppose the requirement, primarily because of the cost.

According to RAA, part 121 does not include an equivalent to § 135.163(h), which requires dual attitude indicators which are powered by two different and independent power sources for nontransport category airplanes. RAA recommends requiring the third attitude indicator only for new production large airplanes, deleting the proposed retrofit requirement, and incorporating § 135.163(h) into part 121 for nontransport category airplanes. RAA also recommends considering an equivalent means of compliance for large nontransport category airplanes, such as "Situation Awareness for Safety" devices.

Raytheon Aircraft and Mesa state that the requirement is excessive for airplanes that already have two attitude indicators, each supplied by a separate source of power. Raytheon and Big Sky are concerned that the requirement might necessitate a redesign of the instrument panel.

Twin Otter International believes the requirement would be extremely costly with little safety benefit. According to Twin Otter, even if the attitude indicator were lost, the airplane would have adequate performance and information to be operated without a third attitude indicator.

Commuter Air Technology concurs with the proposal for all aircraft operated under part 121 and points out that § 135.149 currently requires a third indicator only for turbojet aircraft.

United Express states that the FAA supporting data for a third (independently powered) attitude gyro is based on turbojet accident/incident research and not on turbopropeller accident/incident data. According to the commenter, until the FAA can substantiate that this will prevent accident recurrence in turbopropeller aircraft, it should not be required. The commenter states that some aircraft, such as the commenter's fleet of Jetstream turboprops, have a third attitude gyro powered by the aircraft battery system. No information has been provided, that the commenter is aware of, suggesting that an independent power source will improve safety or accident statistics in turbopropeller aircraft.

FAA Response: Section 121.305(j) currently requires a third attitude indicator on large turbojet-powered and large turboprop-powered airplanes. Part 135 requires a third attitude indicator only for turbojet powered airplanes.

The FAA's intent as stated in Notice 95–5 was to require all affected airplanes to comply with the equipment requirements of § 121.305 including the requirement for a third attitude indicator. The notice did not contain amendatory language to § 121.305(j); however, to be consistent with the FAA's stated intent, the rule language has been developed to include the intended airplanes and to provide a compliance date.

In response to RAA's comment that part 121 does not have an equivalent to § 135.163(h), which requires two independent sources of energy, each of which is able to drive all gyroscopic instruments, such an equivalent appears in § 121.313(e).

The FAA does not agree with the commenter that a third attitude indicator is excessive for airplanes that have two attitude indicators or that there could be little safety benefit. The final rule requires a third attitude indicator in all turbojet powered airplanes and all turbopropeller powered airplanes. However, the FAA recognizes that retrofit installation of a third attitude indicator imposes a burden which may require a redesign of the instrument panel. Therefore, as with certain other requirements, the final rule provides for a 15-year compliance date for turbopropeller powered airplanes having a passenger seating configuration of 10 to 30 seats that were manufactured before 15 months after the date of publication of this final rule. In effect, this allows operators to decide whether to retrofit these airplanes or phase them out. Turbojet airplanes and newly manufactured turboprop airplanes must comply within 15 months.

Lavatory fire protection. Section 121.308 currently requires lavatory smoke detection systems, or equivalent, and automatically discharging fire extinguishers in lavatory receptacles for towels, paper, or waste for passenger-carrying transport category airplanes. The FAA proposed to apply the requirements of § 121.308 to airplanes formerly operated under part 135 that are equipped with lavatories. Section 121.308 would be amended to delete the references to transport category. The proposed compliance section, § 121.2, required that lavatory protection equipment be installed within 2 years after the publication date of the final rule.

Comments: ALPA believes that the FAA should require installation of the smoke detection system within 6 months of the effective date rather than 1 year as proposed. This commenter also believes that installation of the lavatory fire suppression system should be required in all airplanes newly manufactured within 1 year of the effective date rather than 2 years as proposed.

ASA and RAA do not object to compliance insofar as new airplanes are concerned, but do suggest that the requirement be deleted as a retrofit requirement. These two commenters state that the industry estimated cost of compliance is $2,500 per airplane while Jetstream estimates $4,000 per airplane.

Comair believes compliance would amount to $2,500 and 20 pounds per airplane. The commenter asserts that compliance is not justified for airplanes with 20 to 30 passenger seats due to the small size of the cabin, proximity of a trained flight attendant with a portable fire extinguisher, and the present smoking ban on domestic flights.

Commuter Air Technology asks whether the proposed requirement would apply to some of their products

that have a side facing toilet separated from the cabin only by a curtain.

Jetstream states that there is no evidence to support the introduction of fire suppression of toilet receptacles on commuter aircraft. According to the commenter, the lavatory receptacles are already designed to contain a fire within the compartment; and, due to the small cabin size of those airplanes, the lavatory is readily accessible to the crew if the need to suppress a fire does occur. The commenter estimates a cost of $4,000 per airplane. Nevertheless, the commenter does support requiring new aircraft to comply.

FAA Response: The FAA does not agree with the commenter's suggestion that installation of smoke detectors should be done within 6 months and fire extinguishers within 1 year of the publication of the final rule. This would not allow sufficient time for compliance.

The comments received do not contradict the FAA's understanding that few, if any, of the airplanes with 10 to 19 passenger seats are equipped with lavatories. The primary impact of the proposed requirement for lavatory smoke detection and fire extinguishment, therefore, would be on airplanes with 20 to 30 passenger seats presently operated under part 135. (Any such airplanes currently operated under part 121 are already required to comply.)

Contrary to one commenter's belief, the present smoking ban on domestic flights does not eliminate the need for lavatory smoke detection and fire extinguishment. On the contrary, the smoking ban could increase the temptation for some passengers to smoke illicitly in the lavatory and thereby increase the possibility of a fire originating in that compartment. The presence of a smoke detector serves as a deterrent to illicit smoking as well as a means of warning when it does occur.

Contrary to the commenter's belief, the presence of a flight attendant in the cabin would not compensate for the lack of a lavatory smoke detector and fire extinguisher. A lavatory is designed with an effective ventilation system to preclude normal odors from entering the cabin. In the absence of a smoke detector, the ventilation systems also precludes early detection of illicit smoking or a fire by persons in the cabin. In addition, the materials typically contained in the waste receptacles are highly flammable and could burn out of control quickly if there were no automatically discharging extinguishers. It is possible that a flight attendant would not know the fire exists until it has grown to catastrophic proportions.

The cost estimates provided by two commenters appear to be based on a misunderstanding concerning the qualifications of a required lavatory smoke detector. Such detectors serve primarily to enhance the capability of crewmembers to detect lavatory fires visually. They are, therefore, not required to meet all of the performance and environmental requirements applicable to primary detectors used in isolated compartments, such as cargo compartments. Anything that meets the ordinary dictionary definition of a lavatory would be covered by this requirement.

Therefore, because the adverse service experience that prompted the adoption of § 121.308 applies equally to any airplane, large or small, with a lavatory and because the commenters' cost estimates are obviously based on a misunderstanding of the required smoke detector qualification, the FAA is adopting this requirement in substance as proposed. The final rule has been revised to provide operators 2 years from the date of publication to comply with the lavatory smoke detector system and fire extinguisher requirements. In addition, the rule states that operators of 10- to 19-seat airplanes that have a lavatory must have a smoke detector system or equivalent that provides either a warning light in the cockpit or an audio warning that can be readily heard by the flightcrew. This will accommodate airplanes that do not have flight attendants.

Emergency equipment inspection. Section 121.309(b) requires that each item of emergency and flotation equipment must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purpose. Section 135.177(b) contains a similar requirement for part 135 operators of airplanes with more than 19 seats. In this section, the FAA proposed requiring affected commuter operations, including those with airplanes of 10 to 19 seats, to comply with the existing part 121 requirement. Other provisions in the proposal would require affected commuters to install additional emergency equipment. No comments were received on this issue and the final rule is adopted as proposed.

Hand-held fire extinguishers. Sections 121.309(c) and 135.155 contain similar requirements for hand-held fire extinguishers aboard airplanes. Part 121 requires at least two of the fire extinguishers to contain Halon, or an equivalent, and mandates placement of the fire extinguishers, while part 135 does not. In Notice 95–5, the FAA proposed that affected commuters comply with the part 121 requirements for fire extinguishers and that § 121.309(c)(7) be amended to require that at least one of the fire extinguishers in the passenger compartment contain Halon or the equivalent. No comments were received on this issue and the final rule is adopted as proposed.

First aid kits and medical kits. Section 121.309(d) requires that both approved first aid kits and approved emergency medical kits be carried on board passenger-carrying airplanes. The medical kits are intended to be used only by medically qualified persons, such as doctors, who may be on board the airplane. Section 135.177(a)(1) requires first aid kits to be carried on board airplanes with more than 19 passengers.

The FAA proposed that first aid kits be required for all airplanes with more than 9 passenger seats operating under part 121 and medical kits be required for airplanes that are required to have a flight attendant. The FAA stated in Notice 95–5 that, after review of the comments, the FAA might decide to require a medical kit for all 10–19 seat airplanes.

In Notice 95–5 the FAA pointed out that affected commuters would have to comply with a recent rule requiring disposable latex gloves for first aid kits and medical kits.

Comments: Six commenters disagree with the proposed requirement to have first aid kits on 10- to 19-seat airplanes. Most of the commenters cite lack of space and the lack of necessity for the equipment. Commenters believe that the first aid kit would not provide enough of a medical benefit to justify its cost. Two of these commenters oppose the addition of latex gloves as part of the first aid kit. One commenter believes that the equipment would place additional liability on employees. One commenter concurs with both proposed requirements.

Two commenters provide additional cost information for first aid kits. One of the commenters estimates $1,500 per airplane and the other estimates $1,500 without specifying the number of entities involved (i.e., airplane(s) or fleet).

AACA agrees with the requirement for first aid kits on all commuter airplanes whether a flight attendant is available or not. According to the commenter, regardless of the size of the airplane, inflight emergencies could occur and a first aid kit may be needed. In the

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absence of a flight attendant, a crewmember or passenger could use the first aid kit. The commenter also estimates costs of $4,359 for Alaskan commuter air carriers in the first year and $436 each year thereafter to meet the requirement, but there is no explanation of the detail.

Four commenters disagree with the required medical kits on 20 to 30 seat airplanes. These commenters cite lack of space and the lack of necessity for the equipment. Three commenters argue that medical kits should not be required on airplanes with less than 30 seats due to the lack of trained personnel and the low likelihood that a medical professional would be on board. One commenter believes that the equipment would place additional liability on employees. One commenter concurs with the proposed requirements.

One commenter provides a cost estimate of about $2,000 per airplane for the medical kit requirement. However, the cost estimate is not supported by any documentation.

FAA Response: The FAA maintains that certain of these requirements are necessary to enhance safety. The ability to respond in the early stages of a medical emergency is critical and could save lives in the event of an in-flight injury or an accident. Additionally, the FAA maintains that latex gloves as were required by a 1994 rule change (59 FR 55208, November 4, 1994) should be included in these first aid kits because they guard against transmission of disease through spilled blood. In sum, no commenter provides any compelling reason to eliminate the first aid kit requirement, especially considering that these airplanes often operate in remote areas where medical assistance may not be available. The FAA has determined that emergency medical kits will be required for airplanes requiring a flight attendant. For airplanes not having a flight attendant, requiring a medical kit poses problems, such as a lack of security, no one to monitor the use of the kit, and no one to check the credentials of a person who professes to be a doctor and able to administer the medical treatment.

The regulations allow flexibility in the location and mounting methods of kits. Depending on the weight of the kit and Velcro surface area, Velcro may be sufficient. Even if Velcro is not practical in a particular instance, other low-cost alternatives, such as leather straps with buckles, are acceptable.

Crash ax. Section 121.309(e) requires that each airplane be equipped with a crash ax, while § 135.177 requires a crash ax for airplanes with a passenger seating configuration of more than 19 passengers. Under part 135 the crash ax is to be accessible to the crew but inaccessible to the passengers during normal operations. The FAA proposed in § 121.309(e) to require a crash ax for each airplane that has a flight deck separate from the passenger cabin and a lockable door.

Comments: One commenter disagrees with the FAA assertion in Notice 95–5 that the crash ax is useful only for egress from the flight deck to the cabin in the event of an emergency. The commenter says that the Airplane Flight Manual of one popular 19-seat commuter airplane suggests that preparation for certain gear-up landings include opening an overwing exit inflight, because even relatively minor distortion of the fuselage in a small airplane can render exits unusable. Thus, the crash ax could be used for prying open an exit.

Raytheon states that if a key lock is required as proposed on lockable doors in 10- to 19-seat airplanes, then a crash ax would be required. The commenter states that removal of the door would eliminate the requirements for a lock and a crash ax.

A third commenter supports the proposal as written in Notice 95–5 to require a crash ax only in airplanes that have a separate flight deck with a lockable door.

FAA Response: The primary purpose in requiring that a crash ax be carried is to allow emergency egress after an accident if airplane exits are unuseable. However, the FAA agrees with commenters that there could be other uses for the ax including egress of the cockpit crew.

After considering the comments and reviewing the proposed requirement, the FAA has determined not to require crash axes on nontransport category airplanes type certificated after December 31, 1964, primarily because these airplanes are not required to have a lockable door. The FAA has determined that the lockable doors that exist in nontransport category airplanes type certificated after December 31, 1964, are frangible and obviate the need for a crash ax on the flight deck. Also carrying a crash ax in these airplanes creates a security risk since the ax would not be inaccessible to passengers.

Emergency evacuation lighting and marking requirements. Section 121.310(c), by referencing § 25.812(e), requires emergency evacuation lighting for passengers when all sources of illumination more than 4 feet above the floor are totally obscured. This requirement applies to all transport category airplanes regardless of how many passenger seats they have. There is no corresponding requirement in part 23 or in part 135 for airplanes having a passenger-seating configuration of less than 20 seats.

Section 121.310(d) for emergency light operation requires that each light required by paragraphs (c) and (h) must be operable manually and must operate automatically from the independent lighting system. As proposed, these requirements would apply to affected commuters. In § 121.310(d)(2)(i) each light must be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat.

Section 121.310(e) requires that an exit operating handle may not be used if its brightness decreases below a specified level. Section 135.178(e) contains an identical requirement for airplanes having a passenger seating configuration of more than 19 seats. Under the proposal the requirement would also apply to airplanes with a passenger configuration of 10–19 seats.

Section 121.310(f) contains standards for access to various exit types that presently apply only to transport category airplanes. Section 135.178(f) is identical to § 121.310(f) for airplanes having a passenger configuration of more than 19 seats. The FAA proposed to amend § 121.310(f) to exclude nontransport category airplanes.

Section 121.310(g) (and its parallel requirement in § 135.178(g) for more than 19 passenger seat airplanes) requires emergency exits to be marked on the outside by a 2-inch band contrasting in color with the surrounding fuselage. Most airplanes with a passenger-seating configuration of less than 20 seats operating under part 135 are already required to meet this requirement and, for those that do not, compliance with this requirement as proposed would merely require painting the bands around each exit.

Section 121.310(h) requires airplanes for which the application for type certification was made before May 1, 1972, to meet the exterior emergency lighting standards of § 25.812, in effect on April 30, 1972, or any later standards in effect if the application for type certification was made later. The FAA proposed to require nontransport category airplanes type certificated after December 31, 1964, (i.e., part 23 normal and utility category) to comply with § 25.812 in effect April 30, 1972, within 2 years after the publication date of a final rule.

The FAA proposed that airplanes with a passenger-seating configuration of less than 20 seats previously operated under part 135 be required to comply with the above-described emergency lighting systems (that is, emergency exit signs, interior lighting, exit handles, and exterior lighting) and, except for the marking requirement discussed above, proposed a compliance date 2 years after the publication date of a final rule.

Comments: Sixteen comments were received on proposed § 121.310. All commenters oppose the proposal to retroactively require any additional emergency exit signs or emergency lighting on 10-to-19 passenger seat commuter airplanes.

Several commenters state that the cost of retrofitting in-service airplanes with an emergency lighting system would be much more expensive than the FAA expected when the notice was prepared.

Six commenters note the size of the cabin area of these airplanes and that no person is seated more than 8 feet (or two or three rows) from an exit. One of these six also notes that no person is more than 12 feet from two exits.

Four commenters note that an emergency evacuation demonstration is required for the certification of commuter category airplanes and that these demonstrations have shown that the airplanes can be evacuated, under conditions of total darkness, in less than 90 seconds. Two other commenters note that there is no known service history or adverse accident data related to commuter operations to support the need for this proposal. Therefore, all six of these commenters believe there is no justification for the proposal and each of them recommends that it be withdrawn.

One commenter believes that the current briefing on exit locations and their use is sufficient and that no further action is needed. Two commenters believe that the requirement in § 121.310(c)(3) to show compliance with § 25.812(e) does not add any safety to these airplanes. They point out that the height of the ceiling in their airplane is only 4¾ feet high and question the need to comply with the provision of § 121.310, which requires compliance with § 25.812(e). Section 25.812(e) requires escape path markings for passenger guidance, "when all sources of illumination more than four feet above the cabin aisle floor are totally obscured." According to commenters, with a ceiling height of only 4¾ feet, it is likely that the required exit markings are located less than 4 feet above the floor and that compliance with § 121.310(c)(3) is not necessary. Another commenter believes that the requirement in § 25.812 for emergency lighting to operate for 10 minutes is not needed for these airplanes. The commenter points out that the required emergency evacuation time for these airplanes is much less than 10 minutes and that this requirement should be adjusted accordingly. One other commenter suggests that flashlights be made available. Finally, two commenters acknowledge that emergency lighting may enhance safety; however, they also believe that this enhancement in safety can be provided by a lighting system that is less expensive, less complex, and much lighter than the one envisioned by § 121.310. Accordingly, they provide some suggestions for such a system.

Embraer, a foreign manufacturer of transport category airplanes, believes that § 121.310(f) should also be amended to exclude smaller (e.g., 20 to 30 passenger) transport category airplanes as well as nontransport category airplanes. The commenter believes that a passenger seat would have to be removed from its product for operation under part 121 if smaller transport category airplanes were not also excluded from this section.

AACA supports the proposed amendment to § 121.310(g).

The only other comment received concerning this issue was from an individual who requests resolution of the issue of whether the 2-inch wide contrasting band has to be on the fuselage surrounding the emergency exit or on the exit itself.

FAA Response: Section 23.803 does require an emergency evacuation demonstration, as noted by the commenters; however, the demonstration is required primarily to compensate for the differences in evacuation design features (e.g. aisle width, exit size, etc.) required by part 23 and those of part 25. Like the demonstrations required by part 25 for airplanes with more than 44 passengers, the demonstrations are intended to evaluate the evacuation capability of the airplane under standard conditions and are not intended to show the evacuation capability of the airplane under the most adverse condition that could be encountered. They are not intended, for example, to demonstrate the evacuation capability of the airplane when there is dense smoke in the cabin or when there is hazardous, damaged structure in the vicinity. The applicability of the required evacuation demonstrations to the need for emergency lighting is therefore limited.

Passengers must egress rapidly in the event of fire. Contrary to the commenters' assertions concerning a lack of adverse service experience, the FAA is aware of at least six instances since 1980 in which passengers had to be evacuated because of fire from such nontransport category airplanes or transport category airplanes with cabins of similar size. There is no doubt that safety can be enhanced considerably by requiring compliance with the emergency lighting requirements proposed in Notice 95–5. Nevertheless, the installation of such lighting is very costly.

In response to excluding smaller airplanes from the requirements pertaining to access to exits, § 121.310(f)(2) states, in part, that there must be enough space next to each Type I or Type II emergency exit to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that required (20 inches wide). Part 135 contains the same requirement for airplanes having a passenger seating capacity of more than 19 seats.

Since the commenter's product has more than 19 passenger seats and numerous examples are already in service in this country, the airplanes have presumably been shown to comply with either § 135.178(f)(2) or the identical text of § 121.310(f)(2). Thus, this rulemaking would not impose any new burden on airplanes with more than 19 passenger seats.

Section 121.310(g) states that exterior exit markings "must be a 2-inch wide colored band outlining each passenger exit on the side of the fuselage." Since the band is outlining the exit it would be on the fuselage, not on the exit.

After reviewing the costs and benefits associated with the proposed emergency lighting requirements, the FAA has decided to revise the final rule as follows:

1. The floor proximity lighting requirements in § 121.310(c) will apply to all airplanes except non-transport category airplanes type certificated after December 31, 1964. In effect, this is not a change from current requirements. Affected airplanes with 10 to 19 passenger seats will not have to comply because of the small cabin size, the probability that passengers would be able to find the emergency exits without floor lighting, and the high cost of retrofitting for these requirements.

2. The interior light operation requirements of § 121.310(d) do not apply in the final rule to nontransport category airplanes certificated after December 31, 1964, since the requirements of § 121.310 (c) and (h) apply only to transport category airplanes.

3. The requirement for an illuminated exit operating handle (§ 121.310(e)) remains as proposed. The compliance date for retrofit requirements for 10- to 19-seat airplanes is 2 years after publication of the final rule.

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4. Section 121.310(f) was proposed to apply to airplanes with a passenger-seating configuration of more than 19 seats. This remains in the final rule.

5. The requirement for marking emergency exits on the outside in § 121.310(g) remains as proposed since compliance is relatively simple and inexpensive for all affected operators.

6. The exterior lighting standards in § 121.310(h) are revised to except nontransport airplanes type certificated after December 31, 1964.

Seatbacks. Section 121.311(e) prohibits a certificate holder from taking off or landing unless passenger seats are in the upright position. Section 135.117 requires only that passengers be briefed that seats should be in the upright position. The FAA proposed that affected commuters be required to comply with § 121.311.

Comments: One commenter objects to the requirement because the pilots cannot assure compliance in a 19-seat airplane, especially during landing.

FAA Response: The FAA intended for those flights with flight attendants to be operated in accordance with the current § 121.311. For these flights on nontransport airplanes type certificated after December 31, 1964, the FAA has included wording to clarify that the pilot must only instruct the passengers to place their seatbacks in the upright position. The final rule has also been revised to add a new subparagraph to § 121.311(e) that provides that on an airplane with no flight attendant, the certificate holder may take off or land as long as the flightcrew instructs each passenger to place his or her seatback in the upright position. This change is needed to clarify what is required for airplanes that do not have a flight attendant.

Seat belt and shoulder harnesses on the flight deck. Section 121.311(f) requires a combined seat belt and shoulder harness with a single-point release that meets the requirements of § 25.785. Part 135 does not contain a requirement for a single-point release system although the FAA believes that virtually all commuter category airplanes being manufactured today have such a system. To ensure that this is the case for newly manufactured airplanes, the FAA proposed in § 121.2(e)(1) to require that airplanes manufactured after 1 year after publication of the final rule meet the requirements of § 121.311(f).

Comments: One commenter concurs with the proposal.

FAA Response: The final rule remains substantively as proposed, except that compliance is within 15 months after publication of the final rule. However, to clarify that § 121.311(f) applies to newly manufactured nontransport category airplanes, appropriate language is added to that paragraph.

The final rule also revises § 121.311(h) to allow crewmembers for affected commuters to release the shoulder harness if they cannot perform their duties otherwise.

Interior materials and passenger seat cushion flammability. Section 25.853(b) was amended in 1984 to require seat cushions to meet greatly enhanced flammability standards. At the same time, §§ 121.312(b) and 135.169(a) (but not for commuter category airplanes) were amended to require airplanes already in service to meet the improved seat cushion flammability standards after November 1987. In the years that have passed since that date, the improved cushions are credited with saving a number of passengers' lives.

The FAA proposed to require nontransport category airplanes type certificated after December 31, 1964, to comply with the same seat cushion flammability standards that apply to other airplanes operated under part 121. The proposed compliance date was 2 years after the publication date of the final rule or on the first replacement of the cushions, whichever occurs first. The proposed rule also allowed for granting deviations for up to 2 additional years when justified by unique integral-seat cushion configurations.

The FAA also proposed that the interior components of nontransport category airplanes manufactured after 4 years or more after the publication date of the final rule must meet the same standards that those components must meet when installed in transport category airplanes with 19 or fewer passenger seats. Those standards, which involve testing with Bunsen burners, are not to be confused with the Ohio State University (OSU) radiant rate of heat release testing required for large-surface-area components installed in airplanes with 20 or more passenger seats. (See proposed § 121.2(e)(2)(ii).)

Comments: ALPA supports the proposed retroactive requirements, including this proposal.

Fairchild and AIA present identically worded statements opposing the proposed requirement that seat cushions would have to comply with the flammability standards of §§ 25.853(b) and 121.312(b). In that regard, they state that they know of no evidence that compliance would provide a significant safety benefit in 10 to 19 passenger airplanes. They do not believe that compliance would delay the spread of a fire enough to be an important factor in survival. In that regard, they note that the seats in smaller airplanes tend to be lightweight and offer relatively little mass of material to fuel a fire. Also, they believe that cabin fires are less likely to occur because the small size of the cabin restricts the amount of carry-on baggage and makes inappropriate passenger activity less likely. Finally, they believe that the FAA would have proposed such rulemaking already if warranted. NATA also believes the higher flammability standards would not be effective in smaller airplanes. That commenter asserts the cost of compliance would be $20,000 per airplane.

Commuter Air Technology observes that the Beech King Air executive airplanes they modify for commuter air service would not have to comply in their original executive configuration because they have fewer than ten seats, yet would have to comply as modified because they have more than ten seats.

Big Sky Airlines and RAA suggest that the compliance period should be extended to enable replacement during the routine seat replacement cycle. One of these commenters quotes a compliance cost of $30,000 for each 19 passenger airplane.

Mesa does not express support or opposition to the proposal, but states that compliance would entail $12,000, 36 pounds, and 10 hours for a Beech 1900C, or $3,400, 38 pounds, and 10 hours for either a Beech 1900D or Jetstream 3100.

No comments were received concerning the proposal to require commuter category airplanes produced four years or more after the effective date to comply with the Bunsen burner test of part 25 (§ 25.853(a)). One commenter states that the installation of interior materials complying with § 25.853(c) would not improve the level of safety of airplanes with 10 to 19 passenger seats.

FAA Response: The commenters focus on the cost of compliance and the lack of a need for added fire protection in smaller airplanes.

In regard to costs, the commenters appear to have a misconception concerning the scope of the rulemaking. The costs fall into one of two categories—the cost of developing and testing suitable cushion materials and the actual cost of replacing individual seat cushions. In regard to the former, § 25.853(c) does not require each seat cushion to be tested, nor does it require each seat cushion design to be tested. Instead it simply states that each cushion must meet the flammability standards. An applicant has the option of utilizing a seat cushion material that meets the flammability standards; however, most choose to comply by using a covering material that protects the cushion from the fire. (The latter are usually referred to as "fire-blocked seats.") Individual seat cushions or individual seat cushion designs do not have to be tested if they can be shown to meet those standards by similarity to other cushions that have been tested previously and found to meet the standards. Advisory Circular (AC) 25.853–1, Flammability Requirements for Aircraft Cushions, issued September 17, 1986, provides guidance in that regard. In the years that have passed since transport category airplanes used in part 121 or 135 service were first required to comply, many different possible seat cushion designs have already been tested and found satisfactory. It is, therefore, quite possible to utilize a seat cushion material or fire-blocking material that has already been shown to comply with the flammability standards. In that regard, many of the affected airlines are affiliated with major airlines and have ready access to the same means of compliance adopted several years earlier by those major airlines.

Contrary to some commenters' beliefs, the use of seat cushions meeting these flammability standards is quite effective in the cabins of smaller airplanes. Some commenters note that the amount of cushion material is relatively small in 10- to 19-passenger airplanes. While the amount of cushion material in those airplanes is obviously much less than that in larger airplanes, it represents approximately the same portion of the total flammable material in those airplanes as in the larger airplanes. In addition to representing a large portion of the materials in the cabin that are flammable, the foam materials typically used for seat cushions are, by far, the most flammable of all the materials used in the cabin. A secondary, but no less significant, benefit is that cushions meeting these flammability standards are much less likely to ignite and sustain a flame than those that do not meet the standard. Precluding a fire from occurring is obviously the best possible form of fire protection.

The FAA conducted a series of 12 full-scale fire tests at its Technical Center at Atlantic City, New Jersey, using the fuselage of a Metroliner. The cabin of the Metroliner is typical of those of the part 23 Normal or Commuter Category airplanes with 10 to 19 passenger seats. Under the test conditions, it was shown that using seat cushions meeting these flammability standards, in lieu of the flammability standards that would otherwise be applicable, would afford passengers approximately 45 additional seconds in which to escape.

The primary benefit of having seat cushions that meet these flammability standards is to afford occupants more time in which to egress in a post-crash fire situation; however, such cushions also provide additional protection should an inflight cabin fire occur. Contrary to the beliefs of commenters in that regard, the FAA is aware of at least six instances in which cabin fires have been experienced since 1980 in nontransport category airplanes or transport category airplanes with cabins of similar size.

In their recommendation A–88–96, the National Transportation Board (NTSB) recommended the use of fire-blocking materials on seats in part 23 normal and commuter category airplanes. Fairchild, AIA, and others state that the fact that the FAA has not previously adopted seat cushion flammability standards for those airplanes is evidence that they would not result in a significant improvement in safety. The FAA has, in fact, initiated separate rulemaking in that regard (Notice No. 93–71, 58 FR 38028, July 14, 1993).

The intent of Notice 95–5 was to mitigate the cost by allowing compliance to coincide with the normal wear replacement cycles. Since compliance can be achieved whenever the seat cushions or seat coverings are being replaced due to normal wear, the cost of compliance for each seat is just the additional cost of including the fire-blocking layer along with the covering.

Based on the above, the FAA has decided to adopt the seat cushion flammability standards of § 121.312(c), but to allow a compliance period of 15 years after the publication date of this rule. The FAA felt that the immediate cost of this retrofit would have negatively affected the industry. By allowing up to 15 years, it should be possible for all replacements to be scheduled within normal replacement cycles. An additional benefit of a 15-year compliance period is that certificate holders can coordinate their compliance with this section with their plans for meeting other extended compliance times, i.e., meeting the performance and accelerate-stop requirements and installation of a third attitude indicator.

As noted above, the FAA also proposed that the interior components of nontransport category airplanes newly manufactured 4 years or more after the publication date of the final rule must meet the same standards that those components must meet when installed in transport category airplanes with 19 or fewer passenger seats (i.e. Bunsen burner testing). After reviewing the present requirements, the FAA determined that the interior components of those airplanes are already required to meet the same flammability standards for type certification. Since the standards are identical, it is not necessary to specify the flammability standards as an additional requirement for newly manufactured airplanes. Section 121.312(a) has been amended in the final rule to clarify the applicability of the flammability standards to nontransport category airplanes used by affected commuters.

Section 121.312 provides the interior material flammability standards for airplanes operated under that part. As described above, the substantive provisions of that section are being retained, and the provisions applicable to airplanes being brought over from part 135 are being incorporated. In this final rule, § 121.312 is reorganized to highlight the applicable provisions and to provide greater clarity; the appropriate substantive text has been retained. Furthermore, appendix L is being added to part 121 to explain the regulatory citations for the part 25 provisions that have been superseded. Although those standards are not current insofar as new type certification under part 25 is concerned, they are referenced in part 121 and remain applicable for compliance. The addition of appendix L only clarifies existing requirements; therefore, it is adopted without prior notice and comment.

Miscellaneous Equipment. Notice 95–5 specifically discussed the proposal that would require affected commuters to comply with the miscellaneous equipment requirements of § 121.313(f) and (g). However, although not specifically discussed in Notice 95–5, § 121.313(c) pertaining to a power supply and distributive system would also be required.

Comments: Fairchild Aircraft notes that § 121.313(c) requires a power supply and distribution system that meets the requirements of six sections of part 25. Because § 121.313(c) does not assign an effective date to this list of part 25 sections, Fairchild assumes that it is the current version of each section that would be applicable. Fairchild also questions whether all airplanes currently operated under part 121 meet the current standards of part 25. Based on their assumption that their airplanes would have to meet current sections of part 25 and the fact that SFAR 23 and SFAR 41 airplanes do not meet those requirements, Fairchild proposes amending § 121.313(c) to except nontransport category airplanes type certificated after December 31, 1964, from this requirement.

FAA Response: The commenter has correctly identified the sections of part

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25 that are listed in § 121.313(c); however, the commenter has apparently overlooked the alternative provisions contained in that section. In part, § 121.313(c) also reads: "or that is able to produce and distribute the load for the required instruments and equipment * * *." This additional text of § 121.313(c) allows the use of a power supply and distribution system that performs this function regardless of whether it complies with the listed sections of part 25. The commenter's proposed amendment is not needed because § 121.313(c) already includes provisions for alternate means of compliance. The commenter's products have already been shown to comply with this alternative.

The commenter is correct in believing that some airplanes currently operated in part 121 service might not meet the current sections of part 25 listed in § 121.313(c). The issue is moot, however, since § 121.313(c) provides for alternative means of compliance.

Cockpit doors and door keys. Section 121.313 (f) and (g) require that there be a lockable door between the cockpit and the cabin and that there be a key for each cockpit door that is readily available to each crewmember. Part 135 does not have such requirements. The FAA proposed that the affected commuters be required to comply with the part 121 rules if there is a door with a lock or a door that can be retrofitted with a lock. (Curtains or accordion doors are not considered lockable doors.) If a lockable door already exists or can be retrofitted, the certificate holder would be required to provide a cockpit key that is readily available to each crewmember. Accordingly, the language of § 121.313(f) was changed to except nontransport category airplanes certificated after December 31, 1964, without a door. Transport category airplanes already are required to have a door and a lock with a key.

Comments: Most of the comments received on this issue oppose the requirement for a locking cockpit door and key. Several commenters say that the cockpit door on EMB–120 airplanes cannot be locked when the observer jumpseat is in use. These commenters are concerned that strict adherence to the wording of the rule would require them to retrofit the door, redesign the cabin, and probably remove a revenue seat, all at a high cost. These commenters recommend that the EMB–120 be exempted from the requirement when the observer jump seat is in use. One commenter states that some nontransport category aircraft that will transition to part 121 do not have a cockpit door lock and key and may not be able to install one. One commenter states that operators will be required to obtain a supplemental type certificate to retrofit airplane doors with key locks. Another commenter states that this requirement would force operators to choose between removing the high-quality cockpit door installed at great expense on BE 1900D aircraft which provides protection from cabin illumination glare during night operations, or installing and using a lock on this door, both of which are contrary to safety. One commenter states that the 1900C and 1900D airplanes have frangible doors between the cockpit and cabin to reduce distractions. According to the commenter, as proposed, the rule would require installation of locks on those doors. Finally, one commenter says that the wording of the cockpit door requirement should be clarified to exclude 10 to 19 seat aircraft not yet produced. According to the commenter, the proposal resolves the problem for existing 10–19 seat airplanes. However, proposed § 121.2(f) would require all new airplanes to be certificated in transport category. The commenter states that new 10–19 passenger airplanes will have the same problem as existing nontransport category types; that is, cockpit doors will neither be practical nor appropriate. The commenter recommends amending § 121.313(f) to read "* * * except that airplanes type-certificated for a maximum of 19 or fewer passengers are not required to comply with this paragraph."

AACA notes that the language of § 121.313(f), which lists required equipment for operating an aircraft, should be changed to exclude airplanes that do not have cockpit doors.

FAA Response: The FAA maintains that the cockpit key and door lock requirement should be retained to enhance aviation safety. However, the final rule language is clarified to require compliance only for airplanes with a passenger-seating configuration of 20 or more seats. Therefore, the requirement for a door lock and cockpit key does not apply to nontransport category airplanes type certificated after December 31, 1964 even if the airplane has a cockpit door.

In response to the comments regarding the EMB–120, § 121.587 allows for the door to remain open, if necessary, to provide access for a person authorized admission to the flightcrew compartment. This allows for the door to be open if the jump seat is in use by an authorized person. Section 121.587 applies to large airplanes which includes the EMB–120.

The FAA acknowledges that the commenters correctly state that keyless locks in airplanes with a passenger seating configuration of 20 or more would have to be retrofitted to work with keys. Certificate holders that would have to retrofit their door locks would incur a higher cost to comply with the requirement. Yet, the FAA strongly believes that keyless locks which only lock from the cockpit side pose a severe safety hazard if the pilots become incapacitated. The FAA maintains that an extended time period to retrofit locks is not justified in light of the many other new requirements which are even broader in scope.

Cargo and baggage compartments. Part 25 (as referenced in § 121.314) contains requirements for cargo or baggage compartment liners, smoke detection, and fire extinguishment for various classes of compartments. The compartment classification system, also duplicated in § 121.221 (which as previously discussed applies only to certain airplanes type certificated before November 1, 1946), is based on the compartment's accessibility for fire detection and extinguishment. Part 25 was amended in 1989 to require the liners of Class C and D compartments to meet more stringent flammability standards. Section 121.314 was also adopted at that time to require the improved liners in existing transport category airplanes on a retroactive basis.

Part 23 contains no classification system or requirements for compartment fire protection; however, a proposed rule to add comparable requirements was issued on July 22, 1994 (59 FR 37620). The FAA proposed in § 121.2(e)(2)(ii) by referencing § 121.314 to require this modification for commuter category (or its predecessor) airplanes manufactured 4 years or more after the publication date of the final rule. However, in Notice No. 95–5, the FAA did not propose to amend § 121.314, which currently applies only to transport category airplanes.

Comments: Two commenters submitted identical comments concerning this proposal. Both commenters believe that the cargo or baggage compartment classification system of § 25.857, referenced in § 121.314, is not suitable for smaller airplanes with fewer than 20 seats and that the smoke detector and fire extinguisher requirements are unreasonable and unnecessary in those airplanes. In that regard, they note that many commuter category airplanes are convertible from a full passenger configuration with a relatively small baggage compartment to combination passenger/cargo (combi) configurations to cargo only. They do not believe that it is practical to modify any of the combi configurations to comply with any of the cargo compartment classes defined by § 25.857. They assert there has been no history of service problems indicating a need for such features.

No comments were received concerning compartments other than those of combi airplanes. Also, no commenters responded to the request in the preamble to Notice No. 95–5 for information concerning less-costly alternatives such as requiring only liners and smoke detection.

FAA Response: The FAA agrees that the present requirements of § 25.857 are not entirely suitable for airplanes with a passenger seating capacity of less than 20 and the FAA has initiated a rulemaking project to develop and propose similar standards that would be suitable for these airplanes. In view of this project the FAA has decided to defer this proposal for future rulemaking.

Fuel tank access covers. As a result of the 1985 Manchester British Air Tours accident (in which a piece of metal from the aircraft engine punctured the fuel tank access panel and created a fire), § 25.963(e) was amended in 1989 to require that all covers located in an area where a strike by foreign objects is likely must have as much resistance to fire or debris penetration as the surrounding structure. Concurrent with the part 25 amendment, § 121.316 was amended to require airplanes already in service to comply with § 25.963(e) on a retrofit basis. These requirements pertain to all transport category, turbine-powered airplanes. Due to their smaller size and turbo-propeller configuration, part 23 airplanes generally do not present the same hazard. The FAA did not propose to require part 23 airplanes to comply with §§ 25.963(e) and 121.316. Since § 121.316 applies only to "turbine-powered transport category" airplanes, no rule change is needed. The FAA points out that turbine-powered transport category airplanes previously operated under part 135 would have to comply with § 121.316.

Comments: Raytheon Corporation submitted comments on the costs of complying with § 25.963(e) for airplanes that in the future would be required to be type certificated in the transport category under part 25.

FAA Response: As previously discussed, the applicability of all present part 25 requirements to airplanes with a passenger seating capacity in the 10–19 range for which a type certificate is applied for after March 29, 1995, will be dealt with in a future rulemaking action. Since Notice No. 95–5 did not propose any change for airplanes in existence or for airplanes newly manufactured under existing type certificates, this issue need not be discussed further in this rulemaking.

Passenger information. Notice 95–5 proposed that affected commuters would comply with the passenger information requirements in § 121.317. There was no preamble discussion of this section because the FAA determined that current requirements for affected commuters in §§ 135.127 and 91.517 were substantively the same as those in § 121.317.

Comments: Three comments were received on this section. Commuter Air Technology suggests that seatbelts should be worn the entire time for flights of less than an hour and a half. According to the commenter, requiring seatbelts at all times while engines are running would provide better passenger safety, remove an unnecessary checklist item from the flight station, and eliminate the probability of missing a flight due to an inoperative sign. According to the commenter, each seat could be placarded and the co-pilot could make a visual check of passenger compliance after closing the door hatch prior to departure.

Two commenters state that § 121.317(a) should be revised to allow permanently lighted no-smoking signs or conspicuous placards, since smoking is prohibited on all flights.

FAA Response: Section 121.317 sets minimum requirements. Both §§ 121.317 and 135.127 allow the use of no smoking placards that meet the requirements of § 25.1541 if the placards are posted during the entire flight segment. Section 121.317(a) requires passenger information signs (fasten seatbelt signs and no smoking signs) that the pilots can turn on and off and § 121.317(b) specifies when fasten seatbelt signs must be turned on. To ensure that the present requirements of § 121.317 are not interpreted so as to prohibit the use of placards in certain airplanes, a clarifying amendment is included in the final rule. New § 121.317(l) provides that a person may operate a nontransport category airplane type certificated after December 31, 1964, having a passenger-seating configuration of 10–19 seats manufactured before 15 months after the publication date of this final rule if it is equipped with one placard that is legible to each person seated in the cabin that states "Fasten Seat Belt" if the flightcrew orally instructs the passengers to fasten their seatbelts at the necessary times. Newly manufactured airplanes must comply with lighted seat belt sign requirements of § 121.317(a) within 2 years after the date of publication of this final rule. In addition, § 121.317(d) requires one legible sign or placard that reads "fasten seat belt while seated" that is visible from each passenger seat. Affected commuters must comply with § 121.317(d) at the time of recertification under part 121, or within 15 months, whichever occurs first.

Instruments and equipment for operations at night. Section 121.323 requires two landing lights for night operations. Under the proposal, the requirement would apply to all affected commuters. While no comments were received on the proposal, the FAA had intended to revise § 121.323 to except nontransport category airplanes certificated after December 31, 1964, from having more than one landing light. The exception was intended because small airplanes with shorter wing spans can be operated safely with only one landing light. The exception was inadvertently omitted from Notice 95–5 but is included in the final rule.

Oxygen requirements. Sections 121.327 through 121.335 cover supplemental oxygen requirements and oxygen equipment requirements. The requirements are similar to the oxygen requirements in § 135.157 except that for certain airplanes, part 121 requires less oxygen. Each affected commuter who would have to comply with part 121 oxygen requirements as a result of this rulemaking should be able to operate its airplanes in accordance with the oxygen requirements specified in part 121.

Comments: Fairchild Aircraft comments that the first aid oxygen requirements of § 121.333(e)(3) are inappropriate for smaller commuter service and that this section should be revised to exclude airplanes with fewer than 20 seats. This commenter also asks that § 121.335 be revised to allow oxygen flow rates based on the airplane's certification basis rather than Civil Air Regulation 4b.651. Fairchild finds that this would avoid unnecessary complication and expense.

FAA Response: In the case of first aid oxygen, since Notice 95–5 proposed no flight attendant for the 10- to 19-seat airplane, requiring the first aid oxygen that would be dispensed by a flight attendant would not be logical. Since the airplanes operated by the affected commuters were not type certificated for flight above 25,000 feet and since § 121.333(e)(3) only applies to pressurized airplanes that operate above 25,000 feet, it would not as a practical matter apply to commuter (or predecessor) airplane operations. The requirement does apply to airplanes

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with 20 to 30 passenger seats, as proposed.

In the case of § 121.335, the FAA finds that parts 23 and 25 provide standards for oxygen that either meet or exceed the standards in section 4b.651 of the CAR. Section 4b.651 has a built in deviation authority.

Portable oxygen for flight attendants. Section 121.333(d) requires that each flight attendant shall, during flights above 25,000 feet, carry portable oxygen equipment with at least a 15-minute supply of oxygen, unless enough portable oxygen units with masks or spare outlets and masks are distributed through the cabin to ensure immediate availability of oxygen to each flight attendant regardless of his or her location at the time of cabin depressurization. Part 135 does not have a similar requirement for portable oxygen for flight attendants. In Notice 95–5, the FAA proposed that affected commuters who use flight attendants in their operations and that operate above 25,000 feet be required to comply with the part 121 requirement. No comments were received on this issue and the final rule is adopted as proposed. For a related discussion on the use of oxygen, see the discussion under "Oxygen Requirements."

Protective breathing equipment (PBE). Section 121.337 contains requirements for equipping the flight deck and passenger compartments of transport category airplanes with PBE. Part 135 does not currently require any type of PBE.

Section 121.337(b)(8) (smoke and fume protection) requires PBE, either fixed or portable, to be conveniently located on the flight deck and easily accessible for immediate use by each flight crewmember for smoke or fume protection at his or her duty station. In addition, § 121.337(b)(9) (fire combatting) requires that for combatting fires a portable PBE must be located on the flight deck with easy access by each flight crewmember for fighting fires. Also portable PBE in the passenger compartment must be located within 3 feet of each hand fire extinguisher. Both of these requirements provide that the Administrator may authorize another location if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

The proposal required affected commuters to comply with the PBE requirements of § 121.337. To be in compliance, an airplane with a passenger-seating configuration of 10 to 19 seats would have to have at least three PBE: one PBE, fixed or portable, for each flight crewmember at his or her station, and an additional portable PBE on the flight deck for use in fighting fires. An airplane with a passenger-seating configuration of 20 to 30 seats would have to have at least four PBE: one PBE, fixed or portable, for each flight crewmember at his or her station; an additional portable PBE on the flight deck for fighting fires; and a portable PBE in the passenger compartment located within 3 feet of the required hand fire extinguisher.

The proposal revised the applicability of the current rule to include other than transport category airplanes. Proposed § 121.337(b)(9)(iv) was also revised to except airplanes having a passenger-seating configuration of fewer than 20 seats and a payload capacity of 7,500 pounds or less from the requirement to have a PBE in the passenger compartment. The exception is needed because these airplanes are not required to have a flight attendant; for these airplanes, the portable PBE on the flight deck could be used by a flight crewmember for fighting a fire.

The FAA proposed to require compliance with § 121.337 by a date 2 years after the publication date of the final rule. (See § 121.2)

Comments: Several commenters oppose the PBE requirement. These commenters are concerned about the lack of space in the plane, the high compliance cost, and the lack of benefits in having the equipment. These commenters state that PBE equipment on non-pressurized aircraft is not justified. Two commenters claim that their current equipment (built in oxygen supply systems and masks) ought to exempt them from the PBE requirement. One commenter incorrectly believes that a PBE would be required for the cabin on METRO aircraft (a 19 seat airplane). One commenter suggests that in the interest of safety the FAA should reduce the compliance time for PBE equipment to 6 months. Though commenters provide cost estimates to install PBE on their airplanes, costs are provided only for 10 to 19 seat airplanes, which would not be required to have PBE in the cabin.

FAA Response: The FAA maintains that the proposed PBE requirement for affected commuters is appropriate. There are several safety benefits for requiring smoke and fume PBE. The use of smoke and fume PBE required by § 121.337(b)(8) would help prevent the injury or death of flight crewmembers from smoke or harmful gases.

The FAA contends that there is adequate space in the cabin of 20- to 30-seat commuter airplanes to accommodate portable PBE for fire combatting, and no major cabin retrofits would be required. With regard to firefighting PBE, the FAA has determined that such equipment is not appropriate for operations with 10–19 passengers. There are no flight attendants on these flights and the pilots generally remain on the flight deck to operate the aircraft during an emergency. In an emergency, passengers will have access to a fire extinguisher and will be able to assist in extinguishing any flames within the cabin. However, passengers are not trained in the use of fire combatting PBE and would not know how to operate such equipment. Accordingly, nontransport category airplanes type certificated after December 31, 1964, having a passenger-seating configuration of 10- to 19-seats are excepted in the final rule from the requirements in § 121.337(b)(9) for having PBE's for combatting fires.

In response to other comments, the lack of a pressurized cockpit does not diminish the need for PBE to enhance safety in case of fire, nor can existing oxygen systems provide adequate protection for fighting a fire. Approved PBE in the cabin must have a protective hood and be fully mobile.

Due to the broad scope of this rulemaking action, certificate holders will have to deal with many new requirements. Therefore, as proposed, a consistent compliance period of 2 years is applied to all affected airplanes for acquiring PBE.

Emergency equipment for extended overwater operations. Sections 121.339 and 135.167 require that airplanes engaged in extended overwater operations (more than 50 nautical miles from the nearest shoreline) provide the following: enough life rafts of a rated capacity and buoyancy to accommodate the occupants of the airplane; a life preserver equipped with an approved survivor locator light for each occupant of the airplane; a pyrotechnic signaling device for each life raft; a survival kit and a survival type emergency locator transmitter. In addition, § 121.339 requires that unless excess rafts of enough capacity are provided, the buoyancy and seating capacity of the rafts must accommodate all occupants of the airplane in the event of loss of one raft of the largest rated capacity. In practice, this requirement is typically met by carrying a spare raft of the largest rated capacity.

The FAA proposed that the affected commuters that engage in extended overwater operations should be required to meet the part 121 requirements. As with current part 121 certificate holders, affected commuters can apply for deviations, and the FAA can decide, on a case by case basis, if a deviation is appropriate. These deviations are issued pursuant to § 121.339(a) which permits the Administrator to allow deviation from the requirement to carry certain equipment for extended overwater operations. Since there are few extended overwater operations conducted by commuters, the FAA does not expect this proposed requirement to have a significant impact.

Comments: Four commenters argue against the requirement for a spare life raft on commuter airplanes. One commenter says that the spare life raft is not necessary because seats can be equipped with additional life vest storage pouches. Another commenter says that the spare life raft is appropriate for larger airplanes but not for 10 to 30 seat aircraft. This commenter also suggests that the rule should remain as presently written under § 135.167, and, on a case-by-case basis, the FAA can require certificate holders to obtain a spare life raft. Another commenter states that spare life rafts should not be required on aircraft with less than 20 passenger seats because the requirement will increase operating costs and reduce passenger revenues. A fourth commenter states that the cumulative weight, space, and compliance costs will be significant for affected Alaskan operators and that these costs cannot be spread across a large number of passenger seats as can be done with a larger aircraft.

Three commenters state that the requirement in § 91.205 (b)(11) for a pyrotechnic signaling device is understandable for general aviation aircraft, but is impractical and superfluous for airplanes operating under part 121 in scheduled air carrier service. The commenters recommend that § 91.205 be revised to exclude airplanes operating under part 121.

FAA Response: The FAA maintains that airplanes conducting extended overwater flights need to carry enough life rafts to accommodate all passengers in the event of the loss of the life raft with the largest rated capacity. Such a requirement will enhance safety in the event of an accident. Individual flotation devices are not adequate for safety in the event of a water ditching because passengers tend to separate in open water. A life raft enables passengers to stay together. An even greater threat is hypothermia, a sequence of physical reactions resulting from the loss of body heat. In cold water, a person will experience increased difficulty with mobility and intense shivering occurs. In arctic waterways, survival time can be as little as 2 or 3 minutes. Thus, a spare life raft is appropriate for affected commuters to enhance passenger safety. The requirement in part 121 for equipping each life raft with a pyrotechnic signaling device is identical to part 135 for extended overwater operations. The recommendation to except scheduled air carriers from the provisions of § 91.205(b)(11) is beyond the scope of this rulemaking. Moreover, under § 119.1(c) persons subject to part 119 must comply with other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by parts 119, 121, 125, or 135 of this chapter. Therefore, the final rule requires commuter airplanes to adhere to part 121 standards and provides deviation authority on a case by case basis.

Flotation devices. Section 121.340 requires that a large airplane in any overwater operation must be equipped with life preservers or with an approved flotation means for each occupant. Because it is practically impossible to operate any place without flying over a body of water of sufficient depth to require some sort of flotation means, § 121.340 has been applied so that virtually every airplane is equipped with either flotation cushions or life preservers. In parts 121 and 135, life preservers are required only for extended overwater operations, (§§ 121.339 and 135.167). Therefore, airplanes used in extended overwater operations are already equipped with life preservers and do not need to have flotation cushions.

The FAA proposed that airplanes equipped with 10 or more seats operating in scheduled passenger operations would comply with § 121.340 and accordingly proposed revising the section to delete the word "large." To allow any replacement of seat cushions to be coordinated with the seat cushion flammability requirements of § 121.312(c), the FAA proposed a compliance date of 2 years after the publication date of the final rule.

Comments: The FAA received three comments that oppose the requirement for flotation devices. One commenter opposes the requirement because of the equipment cost and weight penalty. This commenter determines that the seat cushions in the METRO aircraft would not serve as effective flotation devices. The commenter provides a cost estimate for acquiring and retrofitting individual flotation devices for METRO airplanes. The commenter also states that each flotation device for 10 to 30 seat airplanes would have to be equipped with an approved survivor location light. A second commenter states that the rule should allow exemptions for operations that do not fly over or near large bodies of water. This commenter does not believe that flotation devices would enhance safety. Finally, a third commenter states that flotation devices are already required for extended overwater flights for all airplanes by § 91.205.

FAA Response: The FAA concurs that if the seat cushions in a particular airplane model do not serve as flotation devices, then individual flotation devices would have to be acquired. If life preservers are provided as individual flotation devices they would have to have an approved survivor locator light as required by § 121.339(a)(1).

The FAA found during previous rulemaking that all flights traverse a body of water of at least 6 feet deep during the course of a year. Therefore, individual flotation devices or life preservers for 10 to 30 seat airplanes are required on all flights. Section 121.340(b) contains provisions for requesting an approval to operate without the flotation means if the operator shows that the water over which the airplane is to be operated is not of such size and depth that life preservers or flotation devices would be needed for survival.

The FAA concurs with one of the commenters that § 91.205 requires flotation devices for all airplanes involved in extended overwater flights. Section 121.340 is clearly more restrictive.

Although the compliance date for meeting passenger seat cushion flammability requirements has been extended to 15 years, the compliance time of 2 years for providing flotation devices is the same as proposed.

Equipment for operations in icing conditions. Section 121.341 requires certain equipment for operations in icing conditions. The proposal would require affected operators to comply with this section. In accordance with § 121.341(b), to operate an airplane in icing conditions at night, a wing ice light must be provided or another means of determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. This would be a new requirement for 10- to 19-passenger seat airplanes.

No comments were received on this proposal; however, the FAA has determined that the requirements of § 135.227 (c), (e), and (f) need to be incorporated into § 121.341 to accommodate certain affected airplanes. These requirements pertain to operating limitations for flying into known icing

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conditions if the airplane is not equipped for icing conditions. Thus the final rule § 121.341 incorporates the part 135 language.

Pitot heat indication system. Section 25.1326 requires a pitot heat indication system to indicate to the flightcrew when a pitot heating system is not operating. Part 23 currently requires pitot heat systems for airplanes approved for IFR flight or flight in icing conditions, but does not require pitot heat indicators. Section 121.342 currently requires a pitot heat indication system on all airplanes that have pitot heat systems installed.

In recommendation A–92–86, the National Transportation Safety Board (NTSB) recommended that small airplanes certificated to operate in icing conditions and at altitudes of 18,000 feet mean sea level and above should be modified to provide a pitot heat operating light similar to the light required by § 25.1326. As recommended by the NTSB, the FAA proposed to amend part 23 to require such indication for commuter category airplanes (Notice No. 94–21, 59 FR 37620, July 22, 1994). This new requirement, when adopted, will apply to new type certification and will not affect existing in-service commuter airplanes or future production of currently approved commuter airplanes.

In Notice 95–5, the FAA proposed to amend § 121.342 to require nontransport category airplanes type certificated after December 31, 1964, to incorporate pitot heat indication systems. Affected commuters would have to comply within 4 years after the publication date of this rulemaking.

Comments: Three comments were received on this proposal. Fairchild Aircraft Co., a manufacturer of commuter airplanes fully supports the proposal.

RAA notes that FAA's cost estimate of $500 was significantly lower than the commenter's estimate of between $1,500 and $25,000 per airplane. The commenter further states that there was no known history of accidents or incidents to justify the cost of retrofits and recommends that the requirement apply only to newly manufactured airplanes.

Commuter Air Technology, an aircraft modifier, notes that pitot tubes are accessible to ground personnel who could ascertain their proper function prior to flight. The commenter argues that because of the short duration of commuter flights (usually 1 hour) failure in flight would probably allow for continued flight to the next airport.

FAA Response: As a result of comments received in response to Notice 95–5, the FAA re-examined the cost estimates of this rulemaking. Those revised cost estimates, which are higher than those in the proposal, are included in the Regulation Evaluation Summary of this rulemaking.

The FAA disagrees with the commenter's contention that ground checks and short flights preclude the need for pitot tube heat indicators. Airspeed indicating errors caused by unheated pitot tubes have contributed to icing-related accidents. Airspeed indicating errors are not always obvious to the pilot who may make decisions based on the resulting erroneous information. A system which indicates when the pitot tube is, or is not, heated will provide the crew with the status of the system.

Therefore, the FAA is amending § 121.342, as proposed, to require nontransport category airplanes type certificated after December 31, 1964, that are equipped with a flight instrument pitot heating system to incorporate pitot heat indication systems within 4 years after the effective date of this rulemaking.

Flight data recorders (FDR's). Notice 95–5 did not propose any substantive revisions to current part 121 or part 135 flight data recorder (FDR) requirements. According to the proposal, affected commuters would continue to meet part 135 requirements while the FAA is developing updated FDR requirements for both parts 121 and 135.

Comments: One commenter states that some of the current equipment being used is providing inadequate records and that part 121 and 135 certificate holders should be required by December 31, 1999, to install new FDR on all airplanes. He further states that industry data indicates the changeover will cost $29 million divided by 454 million passengers a year, and that equates to 6 cents increase in ticket prices.

AIA and Raytheon state that following NTSB safety recommendations on FDR's could result in as large an impact on the economic viability for current and future aircraft in this category as the effects of Notice 95–5. They further state that although additional information from FDR's is needed, the safety recommendations as written would require 56 to 84 channels of data on a 1900D and would be excessive for most data requirements. This would result in a large redesign effort and related increases in costs.

American Eagle comments that it believes that this equipment, as well as cockpit voice recorders, is important in the post-incident investigation process and, as a result, has installed FDR's on all its aircraft even though not all aircraft operated under part 135 are required to have them. It strongly supports extending the current part 121 requirement to all aircraft with 10 or more seats operating in scheduled passenger service. In addition, the commenter supports regulations which would require such equipment to meet a new, higher minimum standard.

FAA Response: A recommendation for a rule change on FDR's is being addressed by the Aviation Rulemaking Advisory Committee (ARAC), and the concerns of the commenting parties will be reflected in that separate rulemaking if a rule change is proposed. This rulemaking did not propose any increase in channels for existing FDR's.

For clarification the proposed rule language has been revised in § 121.344 of the final rule to state that § 135.152 FDR requirements will apply to airplanes with a payload capacity of 7,500 pounds or less and a passenger seating configuration, excluding any pilot seat, of 10–30 seats. The proposed rule had not specified passenger seating capacity.

Radio equipment. Sections 121.345 through 121.351 cover radio equipment requirements. Part 121 specifies radio equipment requirements for operations under VFR over routes navigated by pilotage, for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top, and for extended overwater operations. The requirements are more specific and restrictive than those in § 135.161. The radio equipment requirements in part 121 are cumulative; that is, the regulations prescribe basic radio equipment requirements for VFR over routes navigated by pilotage and additional equipment for VFR over-the-top or IFR. Almost all part 121 operations are conducted under IFR. The proposed rule would require affected commuters to comply with part 121 radio equipment requirements.

The final rule revised § 121.349 (radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over the top) by adding a new paragraph (e) which incorporates requirements in § 135.165(a). This change is necessary because part 121 does not have comparable requirements.

Emergency equipment for operations over uninhabited terrain. Section 121.353 prescribes the emergency equipment needed for operations over uninhabited terrain for flag and supplemental operations. The requirements include pyrotechnic signaling devices, emergency locator transmitters (ELT's), and survival kits equipped for the route to be flown. The proposed rule would require compliance with § 121.353.

Comments: Two commenters state that application of § 121.353 to affected commuters would provide relief from compliance with § 91.205, which would reduce the standards. One of these commenters claims that S-type ELT's as required by § 121.353 are useful for sea ditching but are of no use over uninhabited terrain. According to the commenter, they are intended for extended overwater operations, are immersion activated, are not intended for fixed installation on aircraft, lack any impact G-force activation feature, are very bulky, are extremely expensive, and, by design, are not suitable for surviving situations other than sea ditching. The commenter states that incapacitated survivors on uninhabited terrain cannot expect any help from an S-type ELT. The commenter recommends revising § 121.353 to state that the provisions are in lieu of part 91. provisions and that an airplane subject to part 121 must be equipped with an ELT or pyrotechnic signal device in accordance with § 121.353 or § 121.339 (extended overwater).

RAA also states that the requirement for pyrotechnic signaling devices is impractical for airplanes operating under part 121 and recommends that § 91.205(b)(11) be amended to exclude these certificate holders.

RAA and ASA point out that the requirement for ELT's in § 91.207 exempts turbojet-powered aircraft and aircraft engaged in scheduled flights by scheduled air carriers. RAA and ASA believe that all jet-powered airplanes that normally operate under part 121 whether or not they utilize propellers should be exempt from the requirements of § 91.207 during flight operations under part 91, such as ferry, training, testing, proving runs, which are incidental to or in support of scheduled operations. RAA and ASA recommend revising § 91.207(f)(1) to read: "Large turbine powered airplanes."

AACA indicates that the economic analysis did not include the weight penalties or costs for installing, maintaining, repairing, and training for the use of survival kits. AACA also states that the rule is unclear as to when the kits are required since "uninhabited areas" is not defined. AACA recommends clarifying the applicability of these requirements to Alaska. AACA, as well as other commenters, also states that there is an Alaskan state law requiring extensive survival equipment on board any aircraft operated in the State.

FAA Response: In response to the applicability to Alaska, although scheduled intrastate operations within the States of Alaska and Hawaii are currently conducted under flag rules, as a result of this final rule, these will now be domestic operations and the survival equipment requirements do not apply to domestic operations. The FAA did not intend to reduce requirements for operations over uninhabited terrain in Alaska or Hawaii as currently applicable. Therefore, the title of § 121.353 has been revised and an applicability statement added to include Alaska and Hawaii. Since these operators have been meeting flag requirements, this revision will not be a change for them.

The revisions requested to part 91 to exempt ferry flights and other types of flight incidental to scheduled flights is a separate issue from the requirements of § 121.353 which pertain only to emergency equipment for operations over uninhabited terrain. Any amendment to part 91 would need to be part of a separate rulemaking.

The FAA does not agree that the language of § 121.353 should be revised to clarify that it replaces the requirements for pyrotechnic signaling devices in § 91.205(b)(11) pertaining to aircraft for hire operated over water beyond power off gliding distance to shore. The proposed applicability of § 121.353 to affected commuters if they fly a supplemental or flag operation does not affect the applicability of part 91 requirements. The requirements of § 91.205(b)(11) would continue to apply under applicable circumstances. Part 121 requirements are in addition to part 91, not in lieu of part 91.

The FAA does not agree with the commenter's claim that survival-type ELT's do not work except in water ditchings. It is true that S-type ELT's must meet certain buoyancy, waterproofness, and immersion in salt water requirements. While many S-type ELT's employ water-activated batteries, they are not required. Regardless of the type of battery used, each ELT must have a means by which it can be activated manually.

In addition, this rulemaking does not define "uninhabited terrain." When the predecessor regulation to § 121.353 was proposed in CAB draft release 58–24 in 1960, "uninhabited terrain" was defined as "flights for long distances over frigid or tropical land areas for which the Director finds such equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over." When the rule was adopted, the wording was changed to provide the Administrator more flexibility in identifying uninhabited areas. Since implementation is on a case-by-case basis through operations specifications, it was determined that the proposed wording was not necessary. This provision has been in effect for over 30 years without any problem about the meaning of "uninhabited areas."

Airborne weather radar. The proposed rule would require all affected commuters to have airborne weather radar in accordance with § 121.357. Currently, part 135 requires weather radar for 20–30 passenger seat airplanes and weather radar equipment or approved thunderstorm detection equipment for 10–19 passenger airplanes.

Comments: Three comments were received on the proposal. RAA and AMR Eagle support the proposed requirement. AMR Eagle states that commuter operations are typically characterized by high frequency operations at lower altitudes with short stage lengths which necessarily limits preplanning, planning, or executing a desired deviation in flight profile because of changing weather. Hence a flightcrew needs all available tools to conduct safe operations.

One commenter states that airborne weather radar is not needed in Alaska because severe thunderstorms and tornadoes do not occur there.

AACA claims that Notice 95–5 is silent about the exceptions for operations within the states of Alaska and Hawaii and within parts of Canada, AACA requests that the FAA specifically address the issue that airborne weather radar and airborne thunderstorm detection equipment will not be required for operations previously excepted under part 121 and part 135 (§§ 121.357(d) and 135.173(e)). According to the commenter, there have been no meteorological changes in Alaska since the regulation was originally written; therefore, this equipment is no more necessary now than it ever was.

FAA Response: The FAA agrees with AACA that, in accordance with § 121.357(d), airborne weather radar is not required for airplanes used solely within the State of Hawaii or the State of Alaska or that part of Canada west of longitude 130 degrees W, between latitude 70 degrees N and latitude 53 degrees N, or during any training, test, or ferry flight. This exception is retained in the final rule. In Notice 95–5 the FAA did not propose to delete the § 121.357(d) exception.

All other affected operators would have to have airborne weather radar within the 15-month compliance period.

Traffic Alert and Collision Avoidance System (TCAS). Under the proposal,

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affected carriers would be required to comply with part 121 TCAS requirements in § 121.356. There are no substantive differences between part 121 and part 135 TCAS requirements for aircraft with passenger seating configurations of 10–30 seats.

Comments: Fairchild Aircraft recommends that the words, "combination cargo" be deleted from § 121.356(b).

ALPA says that the FAA should require TCAS II for aircraft with fewer than 30 passenger seats, including cargo aircraft (which have increased in recent years).

RAA recommends revising § 121.356(a) to require that "* * * each certificate holder shall equip its airplanes with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder. * * *"

Two certificate holders, Samoa Air and Inter Island Air, say that TCAS is expensive and useless for their operating environment, i.e., airspace with little air traffic.

Fairchild Aircraft states that § 121.345(c)(2), which requires Mode S transponders, is similar to a requirement in part 135 (§ 135.143(c)(2)). According to the commenter, the Mode S equipment has not been installed and the commenter believes that the FAA is granting exemptions to the requirement for part 135 certificate holders. If exemptions would not be granted under part 121, significant cost would be involved.

FAA Response: The intent of the proposed rule § 121.356 was that airplanes with a passenger seating configuration of 10 to 30 seats must be equipped with at least a TCAS I system which is the same as the present part 135 requirement for the affected airplanes. TCAS I systems are not required to be equipped with Mode S transponders.

As a commenter states, unrelated to TCAS I requirements, exemptions to the Mode S requirements of part 135 are currently in effect. Any affected commuters who hold an exemption from the part 135 requirement or from § 135.143, Mode S requirements, after this final rule must reapply to be exempted from the Mode S requirements of part 121.345.

The commenter's recommendation to require TCAS for all-cargo operations is beyond the scope of this rulemaking, as are the recommendations to require TCAS II for all airplanes and to exempt certain affected certificate holders from the requirement for certificate holders to have TCAS I by December 1995.

Low-altitude windshear systems. Section 121.358 requires an approved airborne windshear warning system for most turbine powered airplanes. It specifically excludes turbopropeller-powered airplanes. No comments were received concerning this section and the final rule is adopted as proposed. Comments received on windshear training requirements are discussed under subpart N.

Cockpit voice recorders. No comments were received on this issue; however, the FAA is making a change in the final rule language to correctly incorporate the current CVR requirements that apply to airplanes with 10–30 passenger seats.

Ground proximity warning system (GPWS). Under the proposed rule, affected commuters would have to comply with the GPWS requirements of § 121.360. By the compliance date of this rulemaking, all part 135 operators of turbine powered airplanes having a passenger seating configuration of 10 or more seats would have to have GPWS. All affected commuters are included in this requirement. The GPWS required under part 135 would meet the standards of part 121.

No comments were received on this issue; however, the FAA has discovered that the word "large" was not deleted from § 121.360. This deletion is necessary if the requirements are to apply to all affected commuters. Accordingly the word "large" is deleted in the final rule.

VI.A.8. Subpart L—Maintenance, Preventive Maintenance, and Alterations

Applicability. Part 121 certificate holders are required to adopt a continuous airworthiness maintenance program (CAMP), which has a proven track record for large transport category airplanes. Under § 135.411(a)(2), airplanes that are type certificated for a passenger-seating configuration of 10 seats or more are already required to comply with a CAMP similar to part 121 requirements. The proposed rule would require all airplanes type certificated for 10 or more passengers to comply with part 121 CAMP requirements. These requirements are consistent with present-day maintenance standards and techniques to manage airplane airworthiness. The proposal to include affected commuters under part 121 maintenance requirements would not necessitate a revision to § 121.361.

Section 121.361(b) contains a deviation provision allowing certain foreign noncertificated persons to perform maintenance. Affected commuters would now have this option available. Since many of the airplanes that are the subject of this rulemaking are manufactured outside the United States, this deviation provision would allow certificate holders to have the original equipment manufacturers perform some overhauls and repairs.

Comments: Jetstream Aircraft Limited supports the proposals to apply this subpart to affected commuters.

American Eagle encourages proposed rulemaking which would mirror current parts 121 and 25 maintenance and inspection requirements for aircraft certificated under part 23 or SFAR 41 and used in commercial aviation of any type.

FAA Response: Since the comments in effect support the proposed rule changes, they are adopted as proposed.

Responsibility for airworthiness. Section 121.363 places the responsibility for airworthiness of an airplane on the certificate holder; § 135.413 contains a similar requirement. Under the proposal, affected commuters must comply with § 121.363. Section 135.413(a) requires a part 135 operator to have defects repaired between required maintenance under part 43. This provision does not appear in part 121. Part 121 operators are required to have defects repaired in accordance with their maintenance manual. Since an FAA-approved maintenance manual requires no less than the part 43 requirements, affected commuters would experience no change in requirements under the proposal. On this issue, no comments were received and the final rule is adopted as proposed.

Maintenance and preventive maintenance, and alteration organization. Section 121.365 requires the certificate holder to have an adequate maintenance organization for the accomplishment of maintenance, preventive maintenance, and alterations on its airplanes. The provision allows the certificate holder to arrange with another person to accomplish the work, provided that the certificate holder determines that the person has an organization adequate to perform the work. This provision requires separate inspection functions to ensure that those items directly affecting the safety of flight are verified to be correct by someone other than the person who performed the work.

The FAA recognizes that other provisions of the proposed rule in Notice 95–5, which would require affected certificate holders to install new equipment and might lead to replacement of part 23 type certificated airplanes with part 25 type certificated airplanes, could necessitate that maintenance personnel (as required by this section and by §§ 121.367 and 121.371) have additional skills and training.

Comments: American Eagle supports the proposal.

FAA Response: Since the only comment on this issue is supportive, the rule is adopted as proposed.

Manual requirements. Sections 121.369 and 135.427 have almost identical requirements specifying that the certificate holder include in its manual a description of the organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any required inspections, other maintenance, preventive maintenance, or alterations. The manual must contain the programs required by § 121.367, including the methods of performing required inspections, other maintenance, preventive maintenance, or alterations. This manual is necessary to ensure that the certificate holder has provided an adequate maintenance program for the airworthiness of its airplanes and to inform its personnel, or other persons who perform maintenance, of their responsibilities regarding the performance of maintenance on the airplane. In the proposal, the FAA required affected commuters to comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Required inspection personnel. Sections 121.371 and 135.429 contain similar requirements for inspection personnel, including provisions for specific qualifications for and supervision of an inspection unit. Included is a requirement for listing names and appropriate information of persons who have been trained, qualified, and authorized to conduct required inspections. This requirement ensures that competent and properly trained inspection personnel are authorized to perform the required inspections. In Notice 95–5, the FAA required affected commuters to comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Continuing analysis and surveillance. Section 121.373 on continuing analysis and surveillance is almost identical to the provisions of § 135.431. The FAA proposed that affected commuters comply with § 121.373. Section 121.373 provides for: the establishment by the certificate holder of a system to continually analyze the performance and effectiveness of the programs covering maintenance, preventive maintenance, and alterations; the correction of any deficiencies in those programs; and the requirement by the Administrator that the certificate holder make changes in either or both of its programs if those programs do not contain adequate procedures and standards to meet the requirements of this part. No comments were received on this issue and the final rule is adopted as proposed.

Maintenance and preventative maintenance training programs. Sections 121.375 and 135.433 contain identical requirements prescribing training programs that ensure that persons performing maintenance or preventive maintenance functions (including inspection personnel) are fully informed about procedures, techniques, and new equipment in use and that those personnel are competent to perform their required duties. The FAA proposed that operators comply with part 121. On this issue, no comments were received and the final rule is adopted as proposed.

Maintenance and preventive maintenance personnel duty time limitations. Section 121.377 establishes the requirements for maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any calendar month. This requirement is for maintenance personnel within the United States. This provision would be a new requirement for affected commuters.

Comments: AACA states that most Alaskan certificate holders utilize mixed fleets ranging from under 9 passenger seats, 10–19 seats, and more than 20 seats. These carriers frequently employ maintenance personnel who are qualified to work on all the aircraft in a particular certificate holder's fleet, regardless of the aircraft's seating capacity. If the rule is adopted as proposed, these certificate holders will have to schedule maintenance personnel according to part 121 standards to avoid inadvertently violating the maintenance personnel duty time limitations. At locations with limited maintenance personnel and mixed fleets of 1-to-9, and 10-to-29 seat aircraft, this new requirement would place an additional administrative scheduling burden and financial compliance cost on the air carrier. Alternatively, an air carrier might have to develop and apply two separate work schedules for mechanics, one for part 121 mechanics and aircraft and another for part 135 mechanics and aircraft. AACA states that the FAA's economic analysis failed to address any cost impacts of this requirement. AACA also asks for guidance for those operators who employ maintenance personnel that might work under both part 121 and part 135.

FAA Response: The existing rule requires only 24 consecutive hours off during any 7 consecutive days. While it may have been possible to work mechanics under part 135 7 days a week, without rest, the FAA believes that the combination of union work rules, Department of Labor regulations, and general practice of a day of rest each week would, in effect, accomplish the same result as the rule.

Mechanics must receive adequate rest in order to properly perform their duties. Prescribing a minimum standard will ensure that some rest is provided. It would be inconsistent to require rest for the pilots and flight attendants but not for the people responsible for maintaining the airplane. The FAA believes that the burden of scheduling and providing a day of rest would be minimal. Standard time cards, a common practice, could be used to show compliance.

No FAA regulation prevents a mechanic from working for both a part 121 and a part 135 employer when the mechanic is qualified and, when working on airplanes operated under part 121, the certificate holder meets the regulatory requirements of part 121 for time free from duty.

It should also be noted that the rule allows flexibility by requiring that a certificate holder shall relieve each person performing maintenance or preventive maintenance from duty for at least 24 consecutive hours during any 7 consecutive days, "or the equivalent thereof within any calendar month."

The final rule is adopted as proposed.

Certificate Requirements. Sections 121.378 and 135.435 contain identical requirements specifying that each person, other than a repair station certificated under the provisions of subpart C of part 145, who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections, hold an appropriate airman certificate. The FAA proposed that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Authority to perform and approve maintenance, preventative maintenance, and alterations. Sections 121.379 and 135.437 contain similar requirements allowing certificate holders to perform or make arrangements with other persons to perform maintenance, preventive maintenance, and alterations as provided in its continuous airworthiness maintenance program and

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its manual. In addition, a certificate holder may perform these functions for another certificate holder. The rules require that all major repairs and alterations must have been accomplished with data approved by the Administrator. The FAA proposed that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

Maintenance recording requirements. Section 121.380 provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. The rule also specifies the length of time that the records must be retained and requires that the records be transferred with the airplane at the time it is sold. A small change was proposed to § 121.380(a)(2) to accommodate propeller-driven airplanes used by some affected commuters and to § 121.380(a)(2)(v) to adopt the language found in § 135.439(a)(2)(v) to provide more complete records on airworthiness directive compliance.

Comments: Zantop International Airlines, Inc. (a current part 121 certificate holder) objects to the proposed change to § 121.380(a)(2)(i) that would add engine and propeller total time in service to the list of items that must be recorded. Zantop says that the engine and propeller requirement is new for them and that the aircraft (airframe) total hours in service is the only time transferred on many of its older aircraft. The new requirement would result in searching maintenance records to determine the historical time on the engine and propeller. In some cases this information may not be available. Zantop recommends that an exemption be provided for older aircraft or that these records only be required for future certifications.

FAA Response: Although current § 121.380(a)(2)(i) does not specifically call for total time in-service records of engines or propellers, it does require a record of life-limited parts for these components. The only way to accomplish this is by keeping records for total time in service. Total time in service records may consist of aircraft maintenance record pages, separate component cards or pages, a computer list, or other methods as described in the applicant's manual.

Tracing a life-limited part back to its origin would be required only in those situations where the certificate holder's records are so incomplete that an accurate determination of the time elapsed on the life-limited part could not be made.

The part 135 certificate holders moving to part 121 will have no impact from this rule, since they are already tracking airframe, engine, and propeller time under § 135.439(a)(2)(i).

The airframe, engine, and propeller information is helpful in tracking airworthiness directive compliance and life limits for life-limited parts. It also standardizes language between part 135 and part 121. The FAA believes that at least some of the current part 121 certificate holders have the information in existing required records in order to show compliance with life-limited components. However, the FAA has decided to allow current part 121 operators some time to come into compliance with the requirements for recording total time for engines and propellers. The final rule for § 121.380 has been revised accordingly.

Transfer of maintenance records. Section 121.380a requires the certificate holder to transfer certain maintenance records to the purchaser at the time of the sale, either in plain language form or in coded form. This section is worded the same as § 135.441 except that the part 121 provision allows the purchaser to select the format of the transferred records. Notice 95–5 specified that affected commuters comply with part 121. No comments were received on this issue and the final rule is adopted as proposed.

VI.A.9. Subpart M—Airman and Crewmember Requirements

Flight attendant complement. Section 121.391 requires one flight attendant for airplanes having a seating capacity of more than 9 but less than 51 passengers. Section 135.107 requires one flight attendant for airplanes having a passenger seating configuration, excluding any pilot seat, of more than 19 passengers. The FAA retained the requirement for a flight attendant for more than 9 passengers for current part 121 airplanes and proposed to amend the section to require a flight attendant for affected commuters only in airplanes with more than 19 passenger seats. No comments were received on this issue and the final rule is adopted as proposed.

Flight attendants being seated during movement on the surface. Section 121.391(d) states that during movement on the surface, flight attendants must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants. Part 135 has a similar provision in § 135.128(a), except that it does not specify that flight attendants may be performing safety duties during movement on the surface. The FAA proposed that affected commuters comply with part 121. On this issue, no comments were received and the final rule is adopted as proposed.

Flight attendants or other qualified personnel at the gate. The FAA proposed that all airplanes being operated by affected commuters be required to comply with current § 121.391(e); that is, they must have a flight attendant or substitute (such as a flight crewmember or trained gate agent) on board when the airplane is parked at the gate and passengers are on board. The substitutes must be given training in the emergency evacuation procedures for that airplane as required by § 121.417 and they must be identified to the passengers. If there is only one flight attendant or other qualified person on board the airplane, that person must be located in accordance with the certificate holder's FAA-approved operating procedures.

As a result of the proposed rule, § 121.391(e) applies in the future to some operations that do not require flight attendants. Therefore, the FAA proposed to move § 121.391(e) to a new separate section, proposed § 121.393, to highlight the crewmember requirements that apply when an airplane is on the ground and passengers remain on board before continuing to another destination.

Comments: AACA opposes the requirement for flight attendants at the gate. The commenter states that it would be impossible for one of the two crewmembers on the 10-to-19 seat airplanes to stay on board with passengers while parked at the gate. Both crewmembers would be needed to assist in the loading and unloading process. Furthermore, the commenter states that deplaning passengers would not be a viable option because airports do not have the proper facilities. Most airplanes are not met by a gate agent in rural Alaska airports, and airplanes do not pull up to a terminal. Therefore, the commenter states that a trained substitute would have to stay on board the airplane with the passengers while parked at the gate 100% of the time. The commenter states that the FAA has underestimated the training costs and wage costs for the option of using a substitute. The commenter estimates that this requirement would cost about $2.9 million (costs not broken down) each year for all of the Alaskan commuter air carriers to comply.

FAA Response: While many of the affected airplanes are operated seasonally and do not fly in the winter, some operate during extreme weather conditions into airports that do not have terminals to use for deplaning. To the extent possible the FAA would like a flight attendant or pilot on board whenever passengers are on board. Since the affected 10- to 19-passenger-seat airplanes do not require a flight attendant, it would be inconsistent to require one only during ground operations. However, each of the affected commuter airplanes require two pilots for their operations. One can stay on board while the other does any necessary work off the airplane. Other options are to deplane the passengers or use a trained substitute.

The FAA recognizes that part 121 was written with the expectation that flight attendants would be available and that pilots would not be loading baggage or performing other duties outside the airplane. Therefore, the FAA is revising § 121.393 for airplanes for which a flight attendant is not required to allow a crewmember or qualified person to be on board or near the airplane. If the crewmember or qualified person is not on board the crewmember or qualified person must be near the airplane and in a position to adequately monitor passenger safety. Airplane engines must be shut down and at least one floor level exit must remain open to provide for the deplaning of passengers. This amendment is consistent with current FAA policy for refueling with passengers on board. The FAA has determined that this option is functionally equivalent to having a qualified person on board since these airplanes are small enough to monitor passenger compartments from outside the airplane.

VI.A.10. Subparts N and O—Training Program and Crewmember Qualifications

Subpart N, Training. As the discussion earlier in this preamble points out, the issue of training has been the subject of separate rulemaking. However, several comments were received on training requirements.

Comments: AIA states that Notice 95–5 is virtually silent on training; however, this is an important part of the total picture. AIA states that the separate initiative on training should be reviewed in conjunction with this NPRM.

Raytheon echoes AIA's comments on training, and adds that successful implementation of the training actions would be expected to have a dramatic impact on future accident statistics. Training should be the principal focus for safety improvement together with future programs for safety system monitoring. Raytheon also states that while NPRM 95–5 was not intended to cover training, Notice 95–5 probably would not have been proposed if training were more effective.

Air Vegas comments that all additional flight training would have to be done in the aircraft because there is no Beech 99 simulator in existence. This would increase the hours for initial and transition training and nearly double training costs.

Fairchild Aircraft says that, under §§ 121.424 and 121.427 as well as part 121 Appendix E, windshear training must be performed in a simulator and that such simulators are not likely to be available to many commuter airline operators. This commenter adds that there is no evidence that the part 135 windshear program is inadequate.

Fairchild Aircraft recommends that §§ 121.424 and 121.427, as well as Appendix E, be amended to provide relief from windshear simulator training for certificate holders of turbopropeller airplanes with 30 or fewer passenger seats. An individual commenter recommends that low-altitude windshear training be made a part of both ground and flight (simulator) training under part 135. This commenter says that, currently, commuter aircraft are not equipped to receive advance warning of low-level windshear and that training would help pilots to better deal with such occurrences. ALPA proposes that § 121.400(b) be amended by adding a group specific to propeller-driven aircraft with a seating capacity between 10 and 30 seats. This will ensure that personnel, particularly dispatchers and meteorologists, understand and appreciate the working environment of these aircraft, including the facilities and capabilities associated with weather, airports, maintenance, and logistics, etc.

An individual commenter supports increased commuter training for several reasons: Most accidents are related to human (not equipment) error, there is a need for more simulator training among commuters, and part 135 aircrews must deal with a high number of regional landings and takeoffs as well as varied weather conditions.

Jetstream Aircraft Limited and American Eagle support the proposed rulemaking to strengthen part 135 crewmember training.

FAA Response: The comments on appropriate training requirements, while generally supportive of the FAA's goals in this rulemaking, are actually more relevant to the separate rulemaking addressed in Section III.E, Related FAA Action. The windshear simulator training requirements only affect turbine powered airplanes (turbojets) on which windshear equipment is required by § 121.358.

Subpart O, Crewmember Qualifications. Because of the separate rulemaking previously discussed, the FAA did not propose any changes to subpart O except for the removal of an obsolete section (§ 121.435). Nonetheless, a number of comments were received.

Comments: RAA, ASA, Gulfstream, United Express, Big Sky Airlines, and an individual oppose the requirement that currently qualified first officers performing the duties of second in command obtain initial operating experience (IOE) under § 121.434. However, these commenters do support an IOE requirement for newly designated first officers and new hires. United Express recommends that air carrier proving runs be used for operations evaluation and that if, during the proving runs, an airline does not meet performance criteria, operations should terminate until a satisfactory fix is established.

American Eagle supports IOE requirements for all first officers and believes that the additional costs associated with such a requirement are worth it to ensure that these pilots are fully qualified.

RAA, ASA, and Gulfstream believe that a basis and criteria for "grandfathering" these current and qualified seconds in command can be the training records of each of these airmen as well as the flight records documenting their experience as first officers.

An individual commenter says that a precedent for grandfathering these pilots is the "N & O" exemptions held by certain 135 certificate holders which allows training under part 121 but does not require repetition of unique part 121 IOE for crews which have been conducting scheduled operations under part 135.

Fairchild Aviation recommends that § 121.437(a) be amended to recognize the fact that not all 10–19 passenger airplanes are large airplanes. This commenter says that this section should be changed to read, "* * * and, *if required*, an appropriate type rating for that aircraft."

FAA Response: The comments on appropriate crewmember qualification requirements are actually more relevant to the separate rulemakings addressed in Section III.E, Recent FAA Actions. The concerns raised by these commenters have been considered in those rulemaking actions.

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VI.A.11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Operations

Requirements for dispatch systems and aircraft dispatcher qualifications are discussed in Section V.F., Dispatch system.

VI.A.12. Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations

Requirements for flight time limits and rest requirements are discussed in Section V.D., Flight time limits and rest requirements.

VI.A.13. Subpart T—Flight Operations

Operational control. Sections 121.533 and 121.535 require each domestic and flag operation to be responsible for operational control and specify the responsibilities for aircraft dispatchers and pilots for each flight release. No comments were received on these sections and the final rule is adopted as proposed; however, related comments on dispatch system requirements are discussed in Section V.F., Dispatch system.

Admission to flight deck. Section 121.547 specifies who may be admitted to the flight deck of a passenger-carrying airplane. The part 121 section is similar to § 135.75 but provides for additional types of persons who may be admitted. FAA proposed that affected commuters comply with part 121. No comments were received concerning this section and the final rule is adopted as proposed.

Flying equipment. Section 121.549(b) requires that each crewmember shall, on each flight, have readily available for his or her use, a flashlight that is in good working order. This is a new requirement for 10- to 30-passenger seat airplanes for co-pilots that was not specifically discussed in Notice No. 95–5. No comments were received and the final rule remains as proposed.

Emergency procedures. Parts 121 and 135 require that, when the certificate holder or PIC knows of conditions that are a hazard to safe operations, the operation must be restricted or suspended until the hazardous conditions are corrected. For a discussion of this issue, see "Emergency Operations (Proposed §§ 119.57 and 119.58)" later in this preamble.

Briefing passengers before takeoff. The FAA proposed to amend § 121.571(a) to bring over from § 135.117 requirements for additional passenger information for airplanes with no flight attendant. This additional information includes instructions on location of survival equipment, normal and emergency use of oxygen equipment for flights above 12,000 MSL, location and operation of fire extinguishers, and placement of seat backs in an upright position for takeoffs and landings. The FAA proposed that the affected commuters otherwise comply with the part 121 rules on passenger information. The printed cards would need to be revised or supplemented to provide information on flotation cushions or other required flotation devices once these devices are installed.

A small change was proposed for § 121.571(a)(3) to allow a flight crewmember (instead of a flight attendant) to provide an individual briefing of a person who may need assistance in the event of an emergency, in cases where an airplane does not have a flight attendant.

Comments: AACA disagrees with the FAA's cost estimate for the required passenger information cards and briefings. The commenter states that the FAA's cost estimate appears to be low. Alaskan air carriers would need to devise a more comprehensive information system due to the many nationalities and native languages in Alaska. Many local passengers are not native speakers of English or are not fluent in its comprehension. Briefing cards must be painstakingly translated into many Alaskan Native languages at great expense. Some air carriers have also had to translate into Japanese, Korean, and Russian for tourists from the Pacific Rim nations. Based on experience, the commenter states that the FAA's assumption of a 3-year life expectancy for information cards is high and that information cards normally last less than a year due to wear and theft. The commenter also estimates costs of $26,000 for Alaskan commuter air carriers in the first year and $4,224 each year thereafter to meet the requirement.

FAA Response: While the FAA recognizes the benefits of transleting passenger information on briefing information, this has never been a requirement but an option undertaken by the operator to improve service and safety.

The 3-year life expectancy of briefing cards is based on past experience. There is nothing unique to Alaska that would warrant a deteriorated state sooner than within 3 years.

Part 135 10- to 19-seat airplane briefing card requirements are being incorporated into part 121. New cards need not be revised immediately and normal wear cycles prevail so that this rule would not impose additional costs.

Oxygen for medical use by passengers. Section 121.574 provides that a certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen if, among other requirements, the equipment is furnished by the certificate holder. The proposal would require affected certificate holders to comply with § 121.574.

Under current § 135.91, the certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen provided certain requirements are met. Section 135.91(d) contains a provision for permitting a noncomplying oxygen bottle provided by medical emergency service personnel to be carried on board the airplane under certain circumstances; this provision was not proposed to be carried forward into part 121.

Comments: AACA states that many medevac operations take place on board scheduled and on-demand flights. Without aviation oxygen available at village health clinics, the flexibility of § 135.91(d) would be lost if it is not carried forward into part 121. AACA recommends allowing a noncomplying oxygen bottle on aircraft operating solely within the State of Alaska. To prohibit this will mean medevac costs will increase and patient transports will have to be done on board charter flights that can originate from a hub point where medical oxygen and stretcher units can be installed on the airplane.

FAA Response: The FAA does not find it necessary to move the language of § 135.91 to § 121.574. The FAA has issued exemptions on this requirement to part 121 certificate holders operating in Alaska.

Alcoholic beverages. Sections 121.575 and 135.121 contain requirements controlling the serving and consumption of alcoholic beverages on the airplane. The requirements are similar except for three minor additional requirements in § 121.575. The FAA proposed that affected commuters comply with the requirements of § 121.575 and since no comments were received on this issue, the final rule is adopted as proposed.

Retention of items of mass. Section 121.576 requires that certificate holders must provide and use a means to prevent each item of galley equipment and each serving cart, when not in use, and each item of crew baggage, which is carried in the crew or passenger compartment, from becoming a hazard. Section 121.577 prohibits a certificate holder from moving an airplane on the surface or taking off unless such items are secure. Sections 135.87 and 135.122 require certificate holders to ensure that

such items are secure before takeoff. The FAA proposed that the affected commuters comply with § 121.577, which is substantively the same as § 135.122. No comments were received on this issue and the final rule is adopted as proposed.

Cabin ozone concentration. Section 121.578 sets maximum levels of ozone concentration inside the cabins of transport category airplanes operating above 27,000 feet. The affected commuters do not generally operate at these altitudes. The FAA believes that these rules should apply whenever the altitudes are exceeded. The FAA proposed to amend § 121.578(b) to delete the reference to transport category airplanes.

Comments: Commuter Air Technology states that it does not operate above 25,000 feet. The commenter asks if operation in part 135 now requires ozone monitors and if part 91 flights of 10 or more passengers operated above 27,000 require ozone monitors.

FAA Response: For operations at or below 27,000 feet the ozone requirements do not apply. The answer to both questions of the commenter is no. Part 91 and part 135 do not have ozone provisions. The final rule is the same as proposed.

Minimum altitudes for use of autopilot. Sections 121.579 and 135.93 establish minimum altitudes for use of autopilots. The two sections are similar; however, part 135 does not specify weather requirements for an approach. In a recent NPRM proposing to revise the minimum altitude for use of an autopilot (59 FR 63868, December 9, 1994), which is under consideration, the minimum altitude for autopilot use corresponds to that designated in the type design of the autopilot and stated in the Airplane Flight Manual (AFM). If the rule is adopted as proposed, the AFM would establish guidance that would be edited and approved in the air carrier's operations specifications.

Comments: Commuter Air Technology comments that it has aircraft without autopilots and questions how the rule would affect those aircraft.

AACA states that an NPRM published on December 9, 1994, will require the AFM to establish guidance that would be edited and approved in the affected air carrier's operations specifications.

FAA Response: If the airplane does not have an autopilot, § 121.579 does not apply.

Section 135.93 is similar to § 121.579; however, there are differences that would necessitate manual and training changes regarding the use of the autopilot.

The above mentioned proposal includes the recommendations of the Aviation Rulemaking Advisory Committee (ARAC). The FAA has proposed in that rulemaking that instead of the 500 ft. minimum stated in the regulations, the autopilot could be engaged at whatever the airplane flight manual says it is capable of (200 ft., 100 ft., etc.). Comments were favorable. If adopted, the results of that separate rule will apply to the affected commuters.

Observer's seat. Section 121.581 requires a certificate holder to make available a seat on the flight deck of each airplane for use by the Administrator while conducting routine inspections. Comparable § 135.75 requires, for inspections, a forward observer's seat on the flight deck or a forward passenger seat with headset or speaker. Because airplanes in the 10- to 30-seat range may not have an observer's seat on the flight deck, the FAA proposed to move the option of providing a forward passenger seat into part 121 and require compliance with part 121 for affected commuter operators. No comments were received regarding this issue and the final rule is adopted as proposed.

Authority to refuse transportation. Section 121.586 prohibits a certificate holder from refusing transportation to a passenger on the basis that the passenger will need the assistance of another person to move quickly to an exit in the event of an emergency unless the certificate holder has established procedures for the carriage of such passengers and the passenger either fails to comply or cannot be carried in accordance with the procedures.

Comments: Commuter Air Technology states that their aircraft has no place for a wheelchair and that the seat opposite the main cabin door has increased pitch which normally accommodates individuals with movement restrictions.

FAA Response: In response to the specific comment, if a certificate holder has no room on board an airplane to handle a wheelchair as carry-on baggage, the wheelchair may be checked as cargo baggage.

The Air Carrier Access Act is implemented in 14 CFR part 382. Aircraft accessibility requirements found in § 382.21 generally exempt aircraft operated under part 121 with fewer than 30 passengers and aircraft operated under part 135. The rule requires that these aircraft comply "to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations."

The FAA anticipates that affected commuters will establish procedures in accordance with § 121.586. These procedures must be developed in accordance with § 382.21. Since operators under parts 121 and 135 are already in compliance with § 382.21, this rulemaking poses no new requirements other than establishing procedures for the carriage of passengers who may need special assistance in an emergency.

Carry-on baggage: The FAA proposed that the affected commuters comply with the § 121.589 carry-on baggage rule. This would require the preparation and approval of a carry-on baggage program.

Comments: Commuter Air Technology states that its aircraft have no carry-on baggage storage other than for a standard briefcase under the seat. According to the commenter, carry-on baggage is removed from passengers and placed in the pod upon entry. The interior is also placarded to require adequate securing of any interior cargo. AACA is concerned about the cost of a baggage scanning program.

FAA Response: Even if the aircraft allows only limited carry-on baggage, the certificate holder must still have a carry-on baggage program that complies with § 121.589. Interior cargo must be secured in accordance with § 121.285. (See discussion of § 121.285, Carriage of cargo in passenger compartments in this notice.) The final rule revises references in accordance with other changes in this rulemaking. Although affected operators must develop a program for their approved manuals, compliance will not result in any significant substantive operational burden.

Use of certificated airports. For a discussion of the issue of airports certificated under part 139, see Section V.H., Airports.

VI.A.14. Subpart U—Dispatching and Flight Release Rules

Flight release authority. Section 121.597, which applies to supplemental operations, requires a flight release signed by the pilot in command when the pilot and the person authorized by the certificate holder to exercise operational control believe that the flight can be made safely. Under part 135 releases are not required for either scheduled or on-demand flights. The FAA proposed requiring compliance with part 121. This requirement would apply to affected commuter airplanes when those airplanes are used in nonscheduled service with a passenger-seating configuration of 10 or more. No

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comments were received on this issue and the final rule is adopted as proposed.

Dispatch or flight release under VFR. Section 121.611 states that no person may dispatch or release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport.

Comments: One commenter states that VFR is certainly an acceptable standard for sightseeing operations or for smaller carriers. Scenic Air states that airplanes typically used in the tour business can only operate day VFR. Grand Canyon Airways said 99 percent of its flights are VFR.

An individual states that the proposal on § 121.611 concerning VFR dispatch is unclear as to whether part 135 certificate holders will be required to comply. The commenter believes they should be covered by § 121.611 because it is the safe way and costs nothing.

FAA Response: In the final rule, affected commuters are required to comply with § 121.611. The FAA will develop additional operations specifications paragraphs and guidance for VFR tour operations, remote area operations (e.g. Samoa, Alaska) or other operations that are not capable of being conducted under IFR because they have no airways, IFR approaches, navaids, etc.

Alternate airport for departure. Section 121.617(4) requires an alternate departure airport during certain weather conditions and specifies that for aircraft having two engines the alternate airport must be not more than one hour from the departure airport at normal cruising speed in still air with one engine inoperative. Under the proposed rule, affected commuters would have to comply with the requirement. This requirement was not specifically discussed in the proposed rule.

Comments: Fairchild Aircraft comments that this requirement requires single-engine cruising speed data that are unlikely to be included in the FAA-approved airplane flight manual of 10–19 passenger airplanes. Comparable § 135.217 requires an alternate airport "within 1 hour's flying time (at normal cruising speed) in still air." The commenter requests that the part 135 wording be inserted in the part 121 section.

FAA Response: Fairchild is correct, but the FAA is retaining the requirement and it will be necessary for affected commuters to work with airplane manufacturers to develop appropriate data for normal one-engine inoperative cruising speed for the airplane flight manual within 15 months. (See also Section VI.A.4 Airplane limitations: Type of route for discussion of one engine inoperative data).

Operations in icing conditions. No comments were received on this proposal and the final rule is adopted as proposed. (See also VI.A.7. Equipment for operations in icing conditions).

Fuel reserves. Sections 121.639, 121.641, 121.643, and 121.645 contain fuel reserve requirements based on the type of operation to be conducted. These fuel reserve requirements do not distinguish between VFR and IFR operations. Section 121.639 requires 45 minutes of fuel reserve for domestic air carriers and for certain other air carrier operations.

Section 135.209 requires 30 minutes of fuel reserve for day VFR conditions and 45 minutes for night VFR conditions. Section 135.223 requires 45 minutes for IFR conditions.

The FAA proposed to require affected commuters to comply with the fuel reserve requirements of part 121.

Comments: Fairchild Aircraft comments that the FAA failed to take into consideration that § 121.639 requires fuel to fly to an alternate airport regardless of conditions, and finds that the proposed rule would have a detrimental impact economically, with no related gain in safety. Fairchild suggests that the FAA adopt § 135.209, which requires a 30-minute reserve for airplanes with fewer than 31 seats. Samoa Air comments that the proposal would require a 45-minute reserve for flights that average 30 minutes and is therefore unnecessary. Raytheon adds that its aircraft would have to give up one of 19 passengers to carry the additional fuel. Raytheon argues that smaller airplanes make shorter flights than big airliners, can operate to and from shorter runways, and are closer to an alternate airport. Therefore, the 10–19 seat airplane should be exempt from this requirement. Commuter Air Transport comments that all of its current route analysis is done on a 45-minute reserve.

AACA states that fuel reserve requirements for part 121 are 50 percent higher than for operating identical aircraft under part 135. According to AACA, the large fuel reserves required for dispatching smaller turboprop aircraft under part 121 make those aircraft marginally economical to operate when faced with competition from piston-powered twins operated under part 135.

At the Las Vegas public hearing, Twin Otter International stated that taking the VFR fuel reserve from 30 to 45 minutes is 150 pounds of fuel. That is reducing the capacity of the airplane by one passenger. The commenter is not sure there would be any safety benefit for sightseeing operations.

A pilot in Alaska comments that the part 135 fuel reserve requirements are adequate and that adding more reserves would degrade the already limited payload of many affected aircraft. Two commenters point out that operations that begin as VFR may end up IFR and that a 45-minute reserve provides more options, than a 30-minute fuel reserve.

Another individual recommends adopting the 45-minute fuel reserve. While it may be argued that there are a greater number of potential alternate airports within 30 minutes flying time of a destination airport that are capable of handling smaller, commuter-type airplanes, some of these potential alternates may not be acceptable from the standpoint of having weather reporting or aircraft rescue and firefighting capability. Additionally, once airborne, fuel time and the 30-minute reserve (some of which is unusable) might pressure some crews into poor operational situations. A standard 45-minute reserve provides more options.

One individual states that commuters can quantify the costs of the additional 15 minutes of fuel reserve, which cannot be significant. The standardization and extra fuel safety margin should be worth the cost.

FAA Response: The FAA recognizes that there are some operations that appear not to require a 45-minute fuel reserve. One of these is the flight that only takes 30 minutes. The logical solution would be to carry 30 minutes of reserve fuel so that, at worst, the airplane could return to its airport of origin. However, in some circumstances, such as the sudden occurrence of bad weather, returning may not be possible. Therefore, the FAA agrees with commenters who point out that a 45-minute fuel reserve provides more options.

The FAA also acknowledges that for some airplanes the additional fuel may require the loss of a passenger seat and the FAA recognizes the burden of the 45-minute reserve. Accordingly, the FAA is allowing relief in the final rule for those who operate day VFR par operations specifications. However, the FAA retains the requirement for a 45-minute reserve whenever on an IFR flight plan, including under VFR conditions. The special rule allows relief to those who are truly VFR such as air tour operators and certain Alaskan operations. The relief applies only to

10–19 passenger seat operators with airplanes certificated after 1964. These smaller airplanes have more flexibility in VFR to find a suitable landing airport. This flexibility provides functional equivalency to part 121.

VI.A.15 Subpart V—Records and Reports

Subpart V prescribes requirements for the preparation and maintenance of records and reports for all certificate holders operating under part 121. Although many of the requirements are identical to or similar to the recordkeeping requirements in §§ 135.63 and 135.65, part 121 requires additional information, including new records and reports. Notice 95–5 proposed that affected commuters comply with the recordkeeping requirements of part 121.

Comments: Jetstream supports the application of subpart V to affected commuter operations.

RAA and ASA point out that § 121.715 on in-flight medical emergency reports is an obsolete requirement that should be eliminated. These commenters also contend that § 121.711 on retention of communication records would require affected commuters to record each enroute radio contact and keep the record for 30 days. According to these commenters, recent interpretations of this requirement have caused some certificate holders to establish elaborate recording systems. The commenters question the need for these records and suggest that the requirement be eliminated if it no longer serves a useful purpose.

FAA Response: The FAA agrees with commenters that § 121.715, relating to inflight medical emergencies, is obsolete and it has been deleted in the final rule. The commenters are correct that § 121.711 requires certificate holders to record each en route radio contact and keep the record for 30 days. This requirement is necessary for all certificate holders and has been retained in the final rule.

VI.B. Part 119—Certification: Air Carriers and Commercial Operators: Summary

Part 119 is a new part that consolidates into one part the certification and operations specifications requirements for persons who operate under parts 121 and 135. For the most part, these regulations are currently in SFAR 38–2, which replaced the certification and operations specification requirements in parts 121 and 135 in response to the Airline Deregulation Act of 1978.

Part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988; Docket No. 25713). Based on comments received on the definition of "scheduled operation" in that notice, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in 1993 (58 FR 32248; June 8, 1993; Docket No. 25713). In Notice 95–5, the FAA republished the entire text of part 119 for comment because of the length of time since the first NPRM, the number of changes that were made to the proposed text, and the significance of the changes to part 119 that resulted from the review of commuter operations. Each section of part 119 that had been changed since the previous notices was explained in the preamble to Notice 95–5.

The first objective of part 119 is to establish a permanent guide in a new part that will enable persons who provide transportation of people or cargo to determine what certification, operations, maintenance, and other regulatory requirements they must comply with. A second objective is to set out procedural requirements for the certification process that apply to all certificate holders conducting operations under part 121 or part 135.

Part 119 accomplishes the following:

(1) Incorporates much of SFAR 38–2 as Subparts A and B;

(2) Revises certification procedures now in parts 121 and 135 and consolidates them as Subpart C;

(3) Revises wet leasing requirements;

(4) Provides definitions for terms such as "direct air carrier" and "kind of operation," and clarifies the requirements for operations specifications by adding definitions for terms such as "domestic operation" and "supplemental operation;"

(5) Provides a roadmap for certificate holders to lead them to the operating rules in part 121, 125, or 135 that they must comply with for the kind of operations that they conduct;

(6) Adds a new requirement for a Director of Safety; adds management requirements for domestic and flag operations conducted under part 121 consistent with those that now exist for supplemental operations conducted under part 121; and consolidates part 121 and part 135 management requirements;

(7) Rescinds part 127 and any requirements that pertain solely to helicopters in part 121, Subparts A through D; and

(8) Throughout part 121, Subparts A through D, and part 135, Subpart A, changes various references from CAB requirements to DOT requirements, changes terminology where needed, and makes incidental editorial changes.

Comments on Part 119

This section contains a summary and a response to the comments received on specific sections of part 119.

General Comments on part 119. USAir Express expresses concern over the 7-year time lag between when part 119 was originally introduced and the issuance of Notice 95–5. This commenter suggests that since many changes have occurred in the air industry and in the FAA, it may be best to issue subparts A and B of part 119, but to leave the requirements in subpart C in their current form in parts 121 and 135. NATA similarly contends that "the unknown effects of the requirements contained in part 119 are not adequately considered in Notice 95–5's cost-benefit analysis." Both of these commenters believe that the new requirements in part 119 impose unnecessary administrative burdens for certificate holders.

FAA Response: The FAA disagrees with the arguments presented by the commenters. For the most part, subchapter C is a recodification of the existing part 121 and 135 certification requirements for applicants for air carrier or operating certificates. In some instances, such as wet leases under § 119.53, recency of operation under § 119.63, and management personnel under §§ 119.65 and 119.67, where substantive changes are made, further discussion is contained elsewhere in this preamble.

Section 119.2—Compliance. The final rule contains a new § 119.2 that states that certificate holders shall continue to comply with SFAR 38–2 until 15 months after the publication date of the final rule or the date on which the certificate holder is issued part 121 operations specifications, whichever occurs first.

Section 119.3—Definitions. Section 119.3 contains definitions for the five kinds of operations conducted under parts 121 and 135 (Domestic, Flag, and Supplemental in part 121 and Commuter and On-demand in part 135). The FAA proposed to move the affected commuters to part 121 by changing the definitions for "Commuter operations," "Domestic operations," and "Flag operations." Comments on these definitions as they relate to affected commuters are discussed earlier in the preamble under "V.B. Applicability." Other comments on proposed definitions are discussed in this section.

General comments on definitions. There were several comments on the lack of definitions for certain terms in the proposed rule, and, in some cases, the lack of distinctions drawn among certain terms. Helicopter Association International (HAI) cites the lack of a definition for "common carrier," saying that it is hard to understand the difference between this and the "noncommon carrier." One commenter recommends that "nonscheduled operations" should substitute for "on-demand operations" and "supplemental operations" and that "scheduled operations" should replace the words "domestic," "flag," and "commuter" in order to simplify and standardize the regulations. Additionally, whenever the phrase "flag operations" needs to be

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distinguished, "scheduled foreign operations" could be used instead. Further, this commenter suggests that "since the term 'scheduled' now means any scheduled flight, there would be no need to define it, as the five round trips per week definition has been dropped."

FAA Response: The FAA disagrees with the comment that "scheduled" and "nonscheduled" should be substituted for the terms "domestic," "flag," "commuter," "supplemental," and "on-demand." These are five distinct kinds of operations that the FAA needs to identify and regulate separately according to the characteristics of each kind of operation and the terms are presently used throughout the regulations. Also, the "five round trips per week" concept has been reinstated for commuter operations with 9 or fewer passengers, as discussed in Section V.B., Applicability.

"Common carrier" is a term that has been discussed in numerous court cases. "Non common carriage" is being defined in § 119.3.

"All-cargo operations". Proposed § 119.3 defines "all-cargo operation" to mean any operation for compensation or hire that is other than a passenger-carrying operation. These operations follow the rules for on-demand or supplemental operations, regardless of whether the all-cargo operation is conducted on a regular, "scheduled" basis.

Comments: ALPA proposes that the FAA should discontinue the distinction between scheduled passenger and scheduled all-cargo operations and reserve that distinction for the nonscheduled all-cargo operation because there is little difference between the scheduled passenger and scheduled all-cargo operations.

FAA Response: The FAA has considered ALPA's suggestion; however, it is outside the scope of this rulemaking. However, the definition has been slightly modified so that passengers described in §§ 121.583(a) and 135.85 can be carried without the operation losing its all-cargo status.

"Commuter operations". The proposed definition for "commuter operations" limits the use of this term to scheduled operations in airplanes having 9 or less passenger seats or in any size rotorcraft.

Comments: Fairchild Aircraft states that applying the term "commuter operations" to operations with 9 or fewer passenger seats or to rotorcraft is inappropriate because this use of the term differs from the generally accepted meaning, i.e. frequent service over short stage lengths and service to small communities. According to the commenter, under this proposed definition, commuter category airplanes will no longer be used in commuter operations. The commenter also states that the proposed definition is inconsistent with the use of the term "commuter operator" in part 93. The commenter suggests that a new term be invented for scheduled operations with 9 or fewer passenger seats or rotorcraft.

FAA Response: As was discussed in Notice 95–5 and earlier in this preamble, the term "commuter" is presently used in several different ways. The FAA agrees with the commenter that the proposed definition does not accommodate all of the different uses of the term "commuter." However, operators of aircraft with 9 or fewer passengers do provide frequent service over short stage lengths and service to small communities. Therefore, the term is appropriate for these operations. The FAA acknowledges that this definition differs from the definition of "commuter operator" in part 93 and from the DOT definition. That inconsistency will continue.

"Domestic operation". Proposed § 119.3 defines "domestic operation" to mean any scheduled operation in specified airplanes "between any points within the 48 contiguous States of the United States or the District of Columbia" (2)(i); "between any points entirely within any State, territory, or possession of the United States" (2)(ii); or "between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia" (2)(iii).

The only comment received on this proposed definition is the comment on its inclusion of a tour operation that departs from and returns to same point which is discussed earlier. One change in the proposed definition is replacing the words "any required crewmember" with the words "each crewmember" to be consistent with the treatment of the single-engine Otter airplane as previously discussed. Additionally, the final rule has been slightly modified to include some of the language currently used in SFAR 38–2.

"Flag operation". Proposed § 119.3 defined "flag operation" to mean a scheduled operation conducted in specified airplanes "between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively" (2)(i); or "between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States or the District of Columbia (2)(ii).

Comments: AACA comments that currently Alaskan operations conducted under part 121 are conducted under the flag rules of part 121. According to the commenter, a number of Alaska operators currently hold operating authority and operations specifications to fly scheduled or charter service to Canada, and to the Commonwealth of Independent States (the Russian Federation). The commenter states that the rulemaking should clarify what operating rules are to be used for operations that previously operated solely under flag rules. According to the commenter, since most of the flights to the Russian Federation are on-demand, the impact of part 119 on these flights needs to be thoroughly analyzed.

FAA Response: Other than minor changes, the proposed definition of "flag operations" remains in the final rule as proposed. Accordingly, scheduled operations conducted under part 121 between a point in Alaska to a point outside of Alaska will be considered flag operations. Scheduled operations between a point in Alaska and another point in Alaska will be considered domestic operations. In fact, scheduled operations from one point in Alaska (or any other state) to the same point are considered domestic operations. Nonscheduled operations, whether between points within Alaska or between a point in Alaska and a point outside of Alaska, will be considered supplemental operations or on-demand.

One minor change in the definition adds operations between two foreign points to the list of locations included as flag operations.

"Maximum payload capacity". The proposed definition for "maximum payload capacity" is the same as the one currently used in SFAR 38–2, except for the allowances for determining the standard average weights for crewmembers.

Comments: GAMA comments that the standard oil allowance of 350 pounds found in the definition of "maximum payload capacity" should be changed to coincide with the type certificated oil value. The commenter points out that the 350 pound value greatly exceeds any value found among present and future 10–19 passenger commuter airplane designs. Fairchild suggests that the definition refer to "full oil" and that the specific 350 pound allowance should be deleted. RAA states that the definition uses obsolete values for minimum oil and fuel and recommends that the FAA eliminate the distinction in the definition between aircraft with and without a maximum zero fuel weight and eliminate specific minimum weights for crewmembers, oil, and fuel.

FAA Response: In response to comments on the standard oil allowance, the FAA has revised the standard oil allowance in the definition of "maximum payload capacity" to add: "or the oil capacity as specified on the Type Certificate Data Sheet." The FAA did not eliminate specific weights for crewmembers, oil, and fuel from the definition, as requested by commenters, because these weights are necessary guidelines for determining maximum payload capacity. They are not operational weight values but are used merely to establish the air operator certification and operation requirements for all-cargo and combination of cargo and passenger aircraft. This definition is not used in the computation of weight and balance.

"On-demand operation" and "Supplemental operation". The definitions of "on-demand operation" and "supplemental operation" were rewritten for Notice 95–5 to make it clearer which operations fall into these categories. The proposed definitions did not change significantly from current rules or from the original 1988 NPRM, except for one important difference. Notice 95–5 does not change the basic dividing line between on-demand and supplemental operations. A configuration of more than 30 passenger seats or a payload capacity of more than 7,500 pounds is a supplemental operation, while a configuration of 30 or less passenger seats and a payload of capacity of 7,500 pounds or less is an on-demand operation. However, if a specific airplane with a passenger-seating configuration of 10 to 30 seats is used in domestic or flag operations as a result of this rule, any nonscheduled operation conducted with that airplane must be conducted under the part 121 supplemental rules, instead of under the on-demand rules of part 135.

Comments: Fairchild Aircraft suggests that airplanes' switching between regulatory parts should not be difficult and asks that the FAA eliminate all unnecessarily burdensome conformity, equipment, and record checks.

FAA Response: This requirement is necessary because an airplane must be listed in a certificate holder's operations specifications as either a part 121 or a part 135 airplane; it cannot be switched back and forth between parts without a major investment of time and resources by both the certificate holder and the FAA. Switching between parts entails many things, including airplane conformity checks, equipment checks, and record checks. These are all necessary checks that the FAA must perform to fulfill its safety oversight function.

Section 119.5—Certifications, Authorizations, and Prohibitions. This section identifies the type of certificate (air carrier or operating) the Administrator issues to certificate holders, depending on the nature of their operations, and specifies certain authorizations and prohibitions associated with those certificates for specific types of certificate holders.

Comments: A commenter claims that the distinction between the air carrier certificate and the operating certificate is ambiguous. He poses two questions: "Why would we prohibit a 737, 121 certificated, intrastate, common carriage operator (who presumably would have an operating certificate) from engaging in other common carrier operations?" The second question is "why would we prohibit a part 121 common carriage operator with an air carrier certificate from providing non-common carriage?"

FAA Response: An intrastate common carrier who wishes to conduct interstate operations must first obtain economic authority to conduct those operations from the Department of Transportation. Once that authority is granted, the FAA would issue an air carrier certificate to that operator if the FAA concluded that the operator could safely conduct those operations. In regard to the distinction between common carriage and noncommon carriage, the essential difference is the presence or absence of a holding out. The FAA believes that an operator engaged in common carriage (holding out) cannot unequivocally claim that it can engage in a noncommon carriage operation that would not have benefited from the holding out activities of the common carriage operation.

Section 119.7—Operations Specifications. In § 119.7 the FAA proposed identifying items that must be contained in each certificate holder's operations specifications. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.9—Use of Business Names. In this section, the FAA proposed to prohibit certificate holders that operate airplanes under part 121 or 135 from using a business name other than the name appearing in a certificate holder's operations specifications. The FAA proposed that the name of the certificate holder conducting the operation must be displayed on the airplane and clearly visible and readable to a person standing on the ground at any time except during flight time, and that the means of displaying the name must be acceptable to the Administrator.

Comments: Gulfstream Air, NATA, RAA, SP Aircraft, and two individuals address the requirement to have the certificate holder's name on the aircraft. Four recommend that the requirement not apply to on-demand operations. One opposes the requirement because, as an on-demand operator, his customers often do not want the name of an airline appearing on the aircraft, but rather prefer to arrive in what is believed to be their corporate aircraft. One commenter supports the proposal but recommends that the name of the certificate holder should be near to and visible from the main cabin entry door, not just anywhere on the aircraft. Commenters request clarification of "clearly readable and visible" since this could imply that very large letters must be used. Also, three commenters indicate that the phrase "acceptable to the Administrator" needs to be defined.

FAA Response: The purpose of this requirement is for the FAA to be able to identify, primarily for purposes of ramp inspections, those who appear to have operational control of the airplane. Some carriers use names for their businesses other than their corporate name. These are often called "doing-business-as" or "DBA" names. All of a certificate holder's DBA names must be listed in its operations specifications. A certificate holder may also paint a DBA name on the outside of the aircraft. However, in order to be in compliance with this section, the certificate holder's name must also appear on the outside of the aircraft.

Because this regulation applies to airplanes ranging in size from a small reciprocating-engine-powered airplane to a Boeing 747, it is not practical for the FAA to define the size letters that would be required. Any means of identification which satisfies this requirement is acceptable, including signs temporarily affixed in windows or on the door or fuselage of the airplane.

The term "acceptable to the Administrator" is interpreted to mean acceptable to an authorized representative of the Administrator. In this case, a certificate holder's principal inspector would determine if the means of displaying the name is acceptable, based on written guidance from FAA Headquarters. The final rule is the same as proposed.

Section 119.21—Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes. Section 119.21 contains the regulatory roadmap that requires domestic, flag, and supplemental operations to be conducted under part

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121 and commuter and on-demand operations to be conducted under part 135. Section 119.21(a)(3) states that the Administrator may authorize or require that (1) Certain certificate holders conducting supplemental operations between airports that are also served by the air carrier's domestic or flag operations, conduct those operations under the domestic or flag rules; and (2) certain all-cargo operations that regularly and frequently serve the same two airports may be required to be conducted under the domestic or flag rules.

Comments: The National Air Carrier Association (NACA) recommends deleting "or require" in the second sentence of proposed § 119.21(a)(3). The language goes far beyond the current language of SFAR 38–2.4(a)(3) or part 121 in its application to supplemental passenger operations conducted "between points that are also served by the certificate holder's domestic or flag operations." The preamble does not provide sufficient explanation or justification to require the application of domestic or flag operating requirements to supplemental passenger operations that are operated over routes where an operator also has domestic or flag operations. There are sufficient economic and operational safeguards already in place to preclude abuse. NACA believes that what "may be required" will quickly become "what is required," with the FAA unilaterally imposing the requirement to operate certain nonscheduled passenger operations under domestic or flag rules. There is no safety or accident history to justify more restrictive regulations. NACA concurs that frequency of service between a pair of points should not be the criterion for determining which rules apply.

FAA Response: The FAA concurs with the comments from NACA on the wording of the rule and the words "or require" have been removed in the final rule.

Section 119.25—Rotorcraft operations. Section 119.25 directs that all rotorcraft operations be conducted under part 135 regardless of the size or seating capacity of the rotorcraft. However, external-load operators and agricultural aircraft operators must comply with part 133 or part 137 of the FAR, respectively.

Notice 95–5 proposed to rescind part 127 because rotorcraft operators that previously operated under part 127 are directed in § 119.25 to conduct those operations under part 135. Part 135 has been more recently updated and, therefore, provides a more appropriate level of safety for rotorcraft operators than part 127.

Comments: HAI opposes removing part 127 at this time. HAI supports a review and update of this part in the future, but states that to simply remove this part now would be to allow the certificate-issuing district office unlimited discretionary powers in the design of appropriate operations specifications.

FAA Response: Part 127 is not a current part because SFAR 38–2 directed all rotorcraft operators to conduct their operations under part 135. Appropriate operations specifications for each certificate holder operating either airplanes or any size rotorcraft are developed by FAA Headquarters. The standard paragraphs are completely designed by Headquarters, while nonstandard paragraphs are reviewed and concurred on by Headquarters. Therefore, the certificate-holding district office does not have unlimited discretionary powers.

Section 119.33—General requirements. In § 119.33 the FAA proposed that applicants for certificates be required to conduct the proving tests required for certification under the appropriate requirements of part 121 or part 135. The purpose of the tests is to demonstrate (as one of the last steps in the certification process) that the applicant is qualified and eligible to receive a certificate. The change permits applicants to complete the certification process without having to obtain either a deviation or certification to conduct operations under part 125. The FAA also proposed to amend §§ 121.163, 125.1, and 135.145 to make the proving test requirements consistent in those parts. No comments were received on these § 119.33 issues and the final rule is adopted as proposed.

Section 119.35—Certificate application. This section requires a certificate applicant to submit the application 90 days prior to the intended date of operation instead of the current standard of 60 days. This length of time accounts for the actual amount of time required by the FAA to properly process applications and to allow for agency documentation in the formal review period.

Paragraphs (c) through (h) of this section are a recodification of §§ 121.47, 121.48, and 121.49, which deal generally with the disclosure of financial information and of people/entities that would control the new certificate holder, applicable only to two categories of carriers: those who are not air carriers and those applying for authority to engage in intrastate common carriage but have not undergone fitness review by the Department of Transportation. The FAA believes that these requirements are crucial to ensuring safety by providing a check of financial, management, and other information about of the certificate holder and his or her ability to conduct safe operations.

Comments: NATA expresses concern about the utility of requiring detailed financial reporting, because safety problems are "more appropriately discovered through operational inspections" than through financial data. SP Aircraft comments that requiring detailed financial reporting seems excessive for small craft operators of on demand service since this requirement has not been proposed before now, and no explanation was provided for it in Notice 95–5. This commenter shares the concern that the reporting of financial records would in no way enhance the safety of operations that the FAA claims this proposal serves. Additionally, the commenter criticizes the requirement for insurance in that requiring the applicant to have insurance prior to submitting the application is an unnecessary burden due to the uncertain time span before application and review is complete. Thus, it recommends requiring that insurance should be in place before operations begin.

Fairchild Aircraft comments that § 119.35 fails to define the requirements for submitting detailed financial data, and recommends that the FAA establish the minimum qualifications that must be met under part 119, subpart C.

FAA Response: The financial reporting requirements in § 119.35(c) through (h) apply only to persons who are not air carriers, commonly called "commercial operators," and who are applying for authority to engage in intrastate common carriage but have not undergone a fitness review by the Department of Transportation. The rule language has been updated to make it consistent with new definitions and certification requirements applicable to these operators. For persons applying for authority to conduct intrastate common carriage operations under part 135 these would be new requirements, as commenters point out. The FAA believes these requirements are necessary because financial information, management information, and information concerning who controls the certificate holder can reveal potential shortcomings on the applicant's ability to conduct a safe operation. The requirement for insurance information in § 119.35(h)(7) provides that the applicant report the period of coverage, not that it be in

effect before the application is submitted. Therefore the date that insurance coverage begins can be coordinated with the estimated date that operations begin. In order to make it clear that § 119.35 (c) through (h) apply only to applicants who are commercial operators, the final rule includes cross references within paragraphs (c) through (h), and paragraphs (g) and (h) have been switched.

Section 119.41—Amending a certificate. FAA proposed new procedures for making changes to the operating certificate. These procedures, modeled after 49 U.S.C. Section 44709 and similar to the procedures used to amend operations specifications, would standardize the amendment process. Applications for amendments to certificates would have to be submitted 15 days in advance of the time the operator wants the amendments to be effective, unless the Administrator approves a shorter period when circumstances warrant. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.47—Maintaining a principal base of operations, main operations base, and main maintenance base; change of address. Section 119.47 requires that a certificate holder maintain a principal base of operations and allows the certificate holder to establish a main operation and main maintenance base. Written notification must be provided to the certificate-holding district office before establishing or relocating a principal base of operation, a main operations base, or a main maintenance base. The proposed terminology clarified that the FAA needs to know the location of the primary point of contact between the FAA and the certificate holder. Certificate holders would no longer be required to report changes of address for business offices. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49—Contents of operations specifications. Section 119.49 requires that each certificate holder obtain operations specifications that list other business names under which the certificate holder may operate. Under part 121, there are no restrictions on the use of alternate business names on their operating certificates. Part 135 currently requires certificate holders to list their alternate business names on their operating certificates. The FAA proposed to require that alternate business names be shown on the operations specifications rather than on the operating certificate. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49 adds the requirement that operations specifications contain a reference to the economic authority issued by the OST. The economic authority issued by the OST is not a new requirement; the FAA proposed this reference to clarify that the requirement still exists. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.49 also requires a certificate holder conducting domestic, flag, or commuter operations to obtain operations specifications that list each type of aircraft authorized for use and each aircraft's registration markings and serial number. Under part 121, the requirement to list registration markings is not required for domestic, flag, or commuter operations. The FAA proposed this requirement in the interest of consistency and to facilitate FAA enforcement and surveillance functions. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.51—Amending Operations Specifications. Under § 119.51 applications for amendments to operations specifications would have to be submitted 15 days in advance for minor or routine amendments; however the FAA proposed to require that certificate holders file applications to amend operations specifications at least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisition or airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations. It has been the FAA's experience that these types of major changes do take at least 90 days for the agency to determine that, as a result of the change, the applicant is properly and adequately equipped and is able to conduct a safe operation.

Under § 119.51(b), if the Administrator initiates an amendment to operations specifications, the certificate holder would have 7 days to submit written information or arguments on the amendment.

Under § 119.51(d), a certificate holder may petition for reconsideration of a decision on an amendment to operations specifications. If the amendment is not related to an emergency situation, the petition suspends the effectiveness of the amendment.

Comments: USAIR Express, RAA, Mesa, ASA address the required lead times proposed for making either desired or directed changes to operations specifications. Commenters state that the proposed requirements to file an air carrier-desired operations specifications change 90 days before the effective date is excessive. Additionally, the requirement to respond to changes in operations specifications within 7 days when directed by the Administrator and complete implementation within 30 days is unreasonable.

An individual, ASA, and RAA indicate that the proposed language in § 119.51(d) would not permit the continuation of the practice of staying the effectiveness of an amendment when an air carrier submits a petition for reconsideration. The commenters recommend that the petition for reconsideration stay the effective date of an amendment pending the final review of the petition.

FAA Response: In response to comments that a request to change operations specifications must be filed 90 days in advance of the desired effective date, the FAA will add "unless a shorter time is approved" to § 119.51(c)(1)(i) so as not to imply that a carrier must allow the full 90 days. The rest of paragraph (c) reflects current part 121 and part 135 language and is adopted as proposed.

Since § 119.51(d)(3) clearly states that, if a petition for reconsideration is filed within 30 days and if no emergency situation exists, the effectiveness of an amendment to operations specifications issued by the certificate-holding district office is stayed pending final review of the petition. The procedures for emergency situations, spelled out in paragraph (e), are not substantially different than currently found in §§ 121.79 and 135.17. Therefore there will be no changes to current procedures as a result of new § 119.51 (d) and (e).

Section 119.53—Wet leasing of aircraft and other transportation by air arrangements. Proposed § 119.53 on wet leasing would be revised from current § 121.6 to do the following: (1) clarify that the leasing requirements pertain only to wet leasing (which is defined in § 119.3 as a lease of an aircraft that includes the provision of any crewmember); (2) extend the wet leasing requirements to part 135 operations; (3) prohibit a wet lease from a foreign air carrier or any other foreign person; (4) prohibit a wet lease from any person not authorized to engage in common

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carriage; (5) specify that the Administrator, upon approval of the wet lease, would determine which party to the agreement has operational control and would amend the appropriate operations specifications of both parties, if necessary; and (6) allow a wet lease charter flight to transport passengers who are stranded because of the cancellation of their scheduled flight, provided that the wet lease flight is authorized by OST or the Administrator, as applicable, and that the charter flight is conducted under the rules applicable to a supplemental or on-demand operation. These clarifications reflect for the most part current administrative procedures.

Comments: NACA proposes reorganization of § 119.53, including a new paragraph regarding operations specifications for short term wet leases (short term substitute service) that could occur without prior FAA approval in a situation where there is insufficient time to permit compliance with the usual requirements for a wet lease.

USAir Express sees this issue as an example of part 119 addressing changes which are not relevant to the goal of bringing commuter operations up to the standards of part 121, and imposing new restrictions on wet lease activities at the same time. This company finds fault with the fact that § 119.53 requires certificate holders conducting operations to be held to the same operations authorities as certificate holders arranging for the substitute operations.

British Airways objects to § 119.53 because it prohibits any wet leasing to U.S. carriers from foreign air carriers without any safety justification. British Airways sees this prohibition as interfering with healthy competitive relationships between carriers in an international market. Japan Airlines agrees with British Airways' point and adds that this "discriminatory" prohibition contradicts the Department of Transportation's economic regulations providing for wet leasing of aircraft by foreign air carriers to U.S. air carriers. Japan Airlines argues that foreign air carriers are permitted to operate aircraft in the U.S. only if they meet rigorous requirements of part 129 of the FAA regulations, which would imply that these aircraft are safe. Japan Airlines also claims that this regulation might be contrary to a friendship treaty between the United States and Japan. The company suggests that the FAA address any specific foreign carrier safety concerns with something other than a blanket prohibition of the type proposed.

FAA Response: The changes to current requirements for wet leasing in § 119.53 codify existing FAA policy on wet leasing. The FAA requires operators conducting wet leasing operations to hold operations specifications for the same kind of operation as that being conducted in order to be sure that the operator is qualified to conduct that kind of operation. Since foreign air carriers may conduct operations only under part 129, they do not hold operations specifications for current part 121 or part 135 certificate holders and, therefore, may not conduct wet leasing operations for part 121 or part 135 certificate holders. The FAA is considering NACA's suggestion regarding short term wet leasing and intends to request that ARAC develop recommendations on this issue. Regulatory language is amended to allow short notice wet lease operations to be conducted prior to providing information required by § 119.53(c).

Section 119.55—Obtaining deviation authority to perform operations under a U.S. military contract. Proposed § 119.55 establishes a new procedure to obtain deviation authority to perform under a U.S. military contract. This would require the certificate holder to submit this deviation authority request to DOD's Air Mobility Command (AMC), who would review the request and, in turn, forward it and the AMC recommendation on to the FAA for final review. The logic behind having the AMC review this is to provide an additional, and more efficient, evaluation by a more qualified authority on the needs of the military operation.

Comments: One commenter expresses concern about the FAA's need to have the AMC serve as an extra check on FAA knowledge of deviation authority. The commenter states that adding another agency to the process does not serve the interest of readiness, for during military operations, the demands from the military come "fast and furious with many changes."

FAA Response: As the FAA explained in Notice 95–5, during the Desert Shield/Desert Storm operations, the agency was inundated with requests for deviations. The AMC has the resources to consolidate these requests, identify the specific regulations from which relief is sought, and evaluate the requests to determine whether the relief sought would be needed to accomplish the military mission. This procedure will enable the agency to process these requests more efficiently, should the need arise in the future.

Emergency Operations (§§ 119.57 & 119.58). These two proposed new sections generally recodify §§ 121.57(c), 121.557, 121.559, and 135.19. Section 119.57 addresses emergency situations where it is impossible for the certificate holder who intends to conduct emergency operations to act without thorough and complex planning, such as during natural disasters like floods or earthquakes. Section 119.58 is tailored to emergency operations where thorough and complex planning are inherently impossible due to the critical issue of time and the nature of the emergency.

Comments: Three commenters express concern about this proposed section. One of the commenters believes that this consolidation of two related yet distinct categories would cause confusion: "Section 119.57 relates to certificate authority to conduct certain operations on an emergency approval basis, while § 119.58 relates to emergency operational situations that may require emergency deviation from prescribed procedures and methods, weather minimums, and FARs to the extent required for *flight safety.*" The commenter recommends renaming § 119.57 to read "Obtaining Emergency Deviation Authority to Perform Unapproved Operations" and § 119.58 to be "Operational Emergencies Requiring Immediate Decision and Action." Additionally, the commenter expresses concern that § 119.58(b) needs to be modified to more clearly reflect dispatcher capability/responsibility, joint responsibility, and a cross-check mechanism to ensure critical operational decisions are not made at the exclusion of safety.

Another commenter states that while he supports the NPRM, he believes that this recodification would cause greater confusion and contradict the purpose of existing safety rules because it goes beyond the scope of the NPRM. He claims that "[t]he two types of 'Emergency Authority' are of totally different contexts, are truly irrelevant to each other and there is no apparent advantage to this proposed modification"; hence, this proposed action is "clearly unwarranted."

The Airline Dispatchers Federation objects to the recodification of §§ 121.557, 121.559, and 135.19 as new § 119.58 on the grounds that emergency procedures are an operational issue, not a certification issue and thus should be located in the operational rules of part 121 and 135.

FAA Response: The FAA accepts the commenters' suggestions. Therefore § 119.58 does not appear in final part 119. Instead §§ 121.557, 121.559 and 135.19 will be retained in parts 121 and 135. However, the substance of proposed § 119.57 on obtaining

deviation authority for certain emergency operations does not appear in current part 121 or part 135. Therefore, this section is retained in the final rule. This new section will provide procedures for such situations as the recent hurricane in the U.S. Virgin Islands. Deviation authority was needed in order to allow rescue and supply flights into and out of damaged airports.

Section 119.59—Conducting tests and inspections. In § 119.59, the FAA proposed language to emphasize both the authority of FAA inspectors to gain access to a certificate holder's books and records and the fact that a certificate holder risks suspension of part or all of its operations specifications if it fails to provide that access. Without access to those records, the FAA cannot fulfill its safety mission. No comments were received on this issue and the final rule is adopted as proposed.

Section 119.61—Duration of certificate and operations specifications. Section 119.61 sets out the conditions under which certificates or operations specifications become ineffective.

Comments: Two commenters recommend that when operations specifications are changed or superseded, the carrier should be required to surrender the obsolete copies to the FAA. This would preclude the chance of outdated operations specifications being in the hands of the "field operators."

FAA Response: It is the responsibility of the certificate holder to have procedures in place to ensure that the most current copies of the operations specifications are adequately and accurately distributed. The FAA is not requiring that outdated operations specifications be surrendered to the FAA because of the administrative burden that such a requirement would entail. However, the FAA has decided to incorporate into § 119.61 a new paragraph (c), which contains the § 135.35 language for surrender of operations specifications and certificate if a certificate holder terminates business.

Section 119.63—Recency of operation. Proposed § 119.63 would prohibit a certificate holder from conducting a kind of operation if that kind of operation has not been conducted for a period of 30 consecutive days. The certificate holder must advise the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and make itself available for any FAA reexamination that the FAA considers necessary.

Comments: Eight commenters address this proposed requirement. One says that 30 days is too short a period and recommends a 6–12 month period. NACA recommends a 6-month period. Comair comments that the requirement is burdensome to active air carriers wanting to conduct supplemental operations; this commenter says that the requirement should be changed to apply to certificate holders or air carriers who have not conducted *any* operations, not just a particular kind of operation, in the previous 30 calendar days. A similar comment is made by another individual. NACA comments that this requirement is burdensome to air carriers conducting any type of operation (domestic, flag, or supplemental), especially to carriers who provide these services under short-term, short notice wet leases. USAir Express states that the proposed rule would seriously impact the ability of part 121 domestic and flag operators to conduct occasional supplemental operations since these operations are often required on less than 5 days notice. Also, since many part 121 certificate holders conduct their supplemental operations using the same procedures as their scheduled operations, there is no benefit from this requirement. SP Aircraft says that the requirement would be burdensome to on-demand small aircraft operators and to the FAA and that the rule should provide relief for these certificate holders.

Mesa and RAA point out that the proposed rule is unclear in its use of the term "kind of operation" and recommend that the FAA define this term.

FAA Response: In response to comments, the FAA has made the following changes to § 119.63 in the final rule:

If part 121 and part 135 scheduled operators do not conduct scheduled operations for more than 30 days, the 5-day notification provision would apply. For part 121 and 135 scheduled operators, no notification is required to conduct supplemental or on-demand operations provided they continue to conduct scheduled operations without being dormant for more than 30 days.

Part 121 supplemental operators or part 135 on-demand operators who have not conducted supplemental or on-demand operations for more than 90 days must notify the FAA at least 5 days before resuming operations.

In response to the comment to define "kind of operations," § 119.3 defines five kinds of operation as one of the various operations a certificate holder is authorized to conduct as specified in the operations specifications; that is, domestic, flag, supplemental, commuter, or on-demand.

Management Requirements (Proposed Sections 119.65 through 119.71). Notice 95–5 proposed to consolidate management personnel requirements for operations conducted under part 135 or part 121 into new part 119 and to apply management personnel requirements to domestic and flag operations. The management personnel requirements for operations conducted under part 135 (§§ 119.69 and 119.71) would be substantially the same as those currently in §§ 135.37 and 135.39. The management personnel requirements for operations conducted under part 121 (§§ 119.65 and 119.67) would be similar to those currently in §§ 121.59 and 121.61, which now apply only to supplemental operations.

The only significant changes under the proposed management requirements for part 121 and part 135 are as follows:

Director of safety. The FAA proposed that each certificate holder that conducts operations under part 121 must have a director of safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. The FAA believes that an independent, full time position is important if at all available or possible. However, it recognizes that in smaller operations, the director of safety function may be an additional function of a current manager. Section 119.65(b) provides flexibility in the requirements for positions and number of positions for management personnel, including the director of safety.

Director of operations. The FAA proposed for § 119.67(a) to require a director of operations to have both 3 years experience as a PIC of an aircraft under part 121 or part 135 and 3 years supervisory experience in a position that exercised control over any operations conducted with aircraft under part 121 or part 135.

In the case of a person becoming a director of operations for the first time, the FAA proposed that the PIC experience in large aircraft be recent, i.e., 3 years of experience within the past 6 years. (See proposed § 119.67(a)(3)(i).) Additionally, for all directors of operation under part 121, the minimum of 3 years of supervisory or managerial experience must have been obtained within the last 6 years. (See proposed § 119.67(a)(2).)

Additionally, for operations conducted under part 135, the FAA proposed that the director of operations have the following experience:

(1) At least 3 years of supervisory or managerial experience within the last 6 years, in a position that exercised

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operational control over any operations conducted under part 121 or part 135; or

(2) For a person with previous experience as a director of operations, at least 3 years experience as a PIC of aircraft operated under part 121 or part 135; or for a person becoming a director of operations for the first time, the 3 years of PIC experience must have been obtained within the past 6 years.

Director of maintenance. To standardize the certificates required for the director of maintenance, proposed § 119.67(c) and 119.71(e) would require that a director of maintenance hold a current mechanic certificate with both airframe and powerplant ratings.

Also, the requirement in present § 135.39(c) that the required experience in maintaining aircraft must include the recency requirements of § 65.83 has been added to proposed § 119.67(c) and carried over to proposed § 119.71(e).

Chief pilot. Proposed § 119.71(c)(1) and (d)(1) omitted the word "current" from existing § 135.39(b)(1) and (b)(2) because these pilot certificates no longer have an expiration date and are revoked only for cause. The words "and be qualified to serve as PIC in at least one type of aircraft used in the certificate holder's operation" are added to clarify that the chief pilot must meet recency of experience requirements and medical requirements.

In addition to holding the appropriate certificate, in order to be eligible to be a chief pilot in part 121 or 135 operations, a person must have at least 3 years experience as a PIC of aircraft operated under parts 121 or 135. However, if that person is becoming a chief pilot for the first time, the 3 years experience must have been obtained within the previous 6 years.

Chief inspector. Proposed § 119.67(d) requires a chief inspector for each operator conducting part 121 operations. In addition to the existing eligibility requirements, the chief inspector would be required to have at least 1 year of experience in a supervisory position maintaining large aircraft.

Deviation authority. Proposed §§ 119.67(e) and 119.71(f) authorize the Manager of the Flight Standards Division in the region of the certificate-holding district office to authorize a certificate holder to employ a person who does not meet the qualifications in proposed §§ 119.67 or 119.71. For a certificate holder or applicant that wants to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, airframe and powerplant certificate), the deviation authority sections would not cover such a lack of airman certification situation. The deviation authority provides a means for competent and qualified personnel who do not meet the management personnel qualifications to be employed in required positions.

Comments: A number of commenters responded to the proposed management requirements for part 119. These are discussed below.

Director of Safety. United Express comments that the creation of the director of safety position is in the best interest of the flying public but that the position's responsibilities will depend on airline size, equipment, and type of operations. This commenter says that for small certificate holders, the chief pilot or current director of operations could assume the duties. United Express also says that this position should qualify under current § 121.61.

NTSB and several other commenters say that the director of safety should be independent from operational functions and have direct access to the highest levels of management.

ALPA recommends that in code-sharing operations, the director of safety should report directly to the mainline Safety Vice President; if a code sharer does not have a director of safety, then code-sharing pilots should have access to the mainline safety organization. ALPA also recommends that the director of safety maintain a toll free telephone hotline. In addition, ALPA recommends that the director of safety's qualifications include at least 3 years of supervisory experience and possession of one of the following: an Airline Transport Pilot (ATP) license, Airframe and Powerplant (A & P) license or Dispatcher license, or demonstration of other approved equivalent aeronautical training.

Fairchild states that a separate director of safety position is unnecessarily burdensome and that safety is a concern of all managers. This commenter recommends changing § 119.[illegible](a) so that the director of safety is not required to be a full-time position.

Comair, ASA, Gulfstream, and RAA say that § 119.67 does not provide any qualification requirements for the director of safety. These commenters request that the FAA permit certificate holders to designate directors of safety based upon their needs and without an FAA approval process.

Big Sky Airlines and NATA recommend that smaller certificate holders be allowed to combine the director of safety position with an already existing position. Metro International Airways also points out the burden of this requirement on small certificate holders (e.g., those with 10–15 employees or one or two aircraft). This commenter recommends that these certificate holders be allowed to determine which management personnel, especially the director of safety and chief inspector, are needed and to combine these and other positions as well.

One commenter recommends that smaller operations be permitted to employ contracted or part-time safety officers who could act for more than one carrier. This could reduce these certificate holders' financial burden associated with hiring additional personnel.

One commenter recommends that the director of safety have direct communication paths with dispatch, maintenance, flight attendant, and ground operations.

Samoa Air also points out that the requirement for additional management personnel for certificate holders with three or fewer aircraft is burdensome and that a proper internal evaluation program should keep management informed of the certificate holder's safety status.

One commenter says that § 119.69 does not require a part 135 certificate holder to have a director of safety and that this position should be required for these certificate holders.

One commenter recommends that the director of safety be excluded from enforcement action similar to the Aviation Safety Reporting System under § 91.25.

Inter Island recommends that the safety officer be any line pilot with 6 months experience with the company and that this position be kept from the working ranks of line pilots. According to the commenter, this function should not be given to the chief pilot or director of operations.

Other comments on management requirements: USAir Express says that the requirements of this proposed section are burdensome to large certificate holders because it imposes requirements which are designed for small certificate holders onto these large certificate holders. This commenter states that large certificate holders might have many positions at the Vice President or Director's level to fulfill these management functions that a small certificate holder would fulfill through the positions of director of operations, director of maintenance, chief pilot or chief inspector. This commenter also notes that the management of large carriers is more complex, involving knowledge of such areas as labor relations, legal issues, finance, and quality assurance. To

assume that these subjects can be mastered while also obtaining the required number of years of experience for each management position is unrealistic. Finally, this commenter objects to the explanation of deviation authority regarding the allowance of unlicensed persons to hold management positions and says that it is inconsistent with the language of the proposed rule itself.

Fairchild Aircraft finds § 119.67 to be more stringent than its corresponding section in part 121 (§ 121.61). This commenter suggests that § 119.67(a)(1) be changed to allow the director of operations to hold or *have held* an ATP certificate and also to delete the words "large aircraft" in order to recognize that not all former part 135 certificate holders have been operating large airplanes.

RAA and many other commenters support "grandfathering" existing key management personnel in the wake of the proposed rule's more stringent experience and qualification requirements. These commenters point out that existing personnel, such as the directors of operations and maintenance, chief pilot, and chief inspector, may already possess excellent management skills, and that to hire new personnel would be unnecessary and burdensome. Action Airlines suggests that instead of having to replace existing personnel when air carriers upgrade their equipment, they should have the option to get deviation or wavier authority and continue to use existing directors of operations, chief pilots, and directors of maintenance.

Metro International Airways states that the addition of management personnel would have a significant impact on operators that only operate two or three affected aircraft. The positions of chief inspector can be handled effectively by the director of maintenance. With such a small fleet of aircraft, the chief inspector would spend many hours idle. Also, a small commuter is more likely to contract out most, if not all, maintenance functions. In this situation, the director of maintenance could easily oversee that all work is completed to FAA standards and signed off by an appropriate person with an IA rating.

The commenter also opposes the proposed increase in management experience, indicating it will have a significant impact on small and proposed commuter airlines. Not only will higher wages be needed to attract those applicants that have the necessary experience, but the operators will need to lure those who qualify from secure positions within the industry. The commenter requests that the FAA define "large," stating there is a difference between a B747 and a Beech 1900C. The commenter recommends that the FAA retain the part 135 provision that allows the combinations of one or more of the required management personnel. As the airline grows it is understandable that the management functions would separate and the manager's experience level would rise. The addition of a chief inspector and a director of safety would create a top heavy airline that could not operate at a reasonable cost. Combining these positions must be allowed so new entrants with small fleets will have the chance to build an organization proudly serving the public and the public's interest.

American supports modifying the minimum requirements for director of operations, chief pilot, director of maintenance, and chief inspector under § 135.37 operations to reflect part 121 standards.

One commenter objects to the proposed requirement that a director of maintenance have 5 years experience in the past 5 years because it could disqualify those in management positions who may have been the victims of downsizing and companies going out of business.

One commenter disagrees with the 6-year currency requirement for the 3 years as PIC (under proposed § 119.67(a)) for a person becoming a director of operations for the first time. This commenter believes that PIC time is much more relevant to a director of operations' administrative responsibilities and that the currency requirement should apply to the chief pilot, whose function is much more technical. This commenter also disagrees with proposed § 119.71(c)(1) and (d)(1) which exempts the chief pilot from being qualified to serve as PIC in operations conducted under part 121. He believes that since the chief pilot is directly responsible for the proficiency of the pilots, he should be able to serve in this capacity.

Commuter Air Technologies says that 4 years in an aircraft type is more important than 4 years in maintaining a large aircraft as qualification for chief inspector. This commenter adds that small certificate holders rely on senior maintenance personnel, such as, director and chief inspector, for technical and administrative leadership and that experience in aircraft type would better provide this type of experience and skill as opposed to experience in maintaining large aircraft. Similarly, one commenter objects to the use of the phrase "large aircraft" when many commuter predecessors are not "large" aircraft (by the definition of SFAR 41); this could exclude qualifying excellent candidates from such management positions as director of operations, chief pilot, and director of maintenance.

FAA Response: The FAA contends that most currently employed directors meet the new standards. For those directors who do not, § 119.67(e) allows operators to request authorization from their district office for the continued employment of those directors. However, note that §§ 119.67(e) and 119.71(f) provide for exceptions from experience requirements, but not from requirements to hold necessary certificates. The FAA anticipates that most operators whose directors do not meet the new requirements will request authorization and that those requests will be granted. The FAA agrees that in some cases the proposed recency requirements would place an unnecessary burden on those directors who may have extended periods of unemployment prior to being hired. Thus, for the final rule, the FAA is changing some of the recency requirements. The final rule also standardizes the language as much as possible between operations and airworthiness management positions. The final rule gives relief for those operators who do not operate large aircraft.

The FAA will develop handbook guidance on management personnel to provide FAA inspectors with criteria to respond to requests concerning issues raised by commenters, such as the combining of certain positions in the case of small operators. In analyzing such requests, the FAA will consider the number of airplanes being operated, the number of employees, the complexity of the operation, the ability of the operator to perform required tasks, and the equivalent level of safety.

The final rule contains the following requirements:

Director of Safety

The major carriers have told FAA that they already have established this position and are already fulfilling this function. For other operations, § 119.65(b) provides flexibility for establishing this position.

Director of Operations

Section 119.67 requires 3 years of experience as PIC of a large airplane operated under part 121 or part 135 of this chapter when the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small

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airplanes. For first time applicants, both §§ 119.67 and 119.71 require that the 3 years PIC experience must have been obtained within the past 6 years.

Chief Pilot

Section 119.67 requires 3 years of experience as PIC of a large airplane operated under part 121 or part 135 of this chapter when the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes. For first time applicants, both §§ 119.67 and 119.71 require that the 3 years PIC experience must have been obtained within the past 6 years.

Director of Maintenance

Section 119.67 requires 3 years of experience within the last 6 years in maintaining or repairing aircraft.

Section 119.71 requires 3 years of experience within any amount of time in maintaining or repairing aircraft. The requirement in § 119.67(c)(4)(i) that the director of maintenance have experience in maintaining "large aircraft" has been changed to "aircraft with 10 or more passenger seats" to provide for maintenance experience acquired by work for an affected commuter.

Chief Inspector

The requirement in § 119.67(d)(2) and (d)(3) that the chief inspector have experience in maintaining "large aircraft" has been changed to "aircraft with 10 or more passenger seats" to provide for maintenance experience acquired by work for an affected commuter.

Derivation and distribution tables. The purpose of the revisions to part 121, Subparts A, B, C, and D, and part 135, Subpart A, is to delete all sections which have been moved to part 119, such as requirements using outdated terminology. Subparts B, C, and D, and certain sections of Subpart A of part 121 are entirely deleted as well as certain sections of subpart A of part 135 because these requirements are either obsolete or have been moved to proposed part 119. SFAR 38–2 terminates 15 months after the date of publication of this final rule and many of its provisions have been moved to part 119. Also part 127 is deleted as discussed above under "§ 119.25-Rotorcraft operations." Table 3 is a derivation table, showing the origin and current source in SFAR 38–2, part 121, or part 135 of many of the new sections in part 119. Table 4 is a distribution table, showing the location in part 119 for each section removed from part 121, part 135, and SFAR 38–2.

TABLE 3.—DERIVATION TABLE FOR PART 119

New section	Based on
Subpart A:	
119.1(a)	New language.
119.1(b)	SFAR 38–2, Section 1(a).
119.1(c)	New language.
119.1(d)	New language.
119.1(e)	New language.
119.2	New language.
119.3	SFAR 38–2, Section 6 and new language.
119.5(a)	SFAR 38–2, Section 2(a).
119.5(b)	SFAR 38–2, Section 2(b).
119.5(c)	New language.
119.5(d)	SFAR 38–2, Section 1(a)(3).
119.5(e)	SFAR 38–2, Section 1(a)(3).
119.5(f)	SFAR 38–2, Section 1(b).
119.5(g)	SFAR 38–2, Section 1(c), 121.4, 135.7.
119.5(h)	SFAR 38–2, Flush paragraph following Section 1(a)(3) and new language.
119.5(i)	121.27(a)(1), 121.51(a)(1), 135.13(a)(3).
119.5(j)	135.33.
119.7(a)	SFAR 38–2, Section 3.
119.7(b)	121.23, 121.43.
119.9(a)	135.29.
119.9(b)	New language.
Subpart B:	
119.21(a)	SFAR 38–2, Section 4(a), 121.3.
119.21(b)	SFAR 38–2, Section 4(b).
119.21(c)	New language.
119.23(a)	SFAR 38–2, Section 5(a).
119.23(b)	SFAR 38–2, Section 5(b).
119.25(a)	SFAR 38–2, Section 4(c), 5(c), and (d) and new language.
119.25(b)	SFAR 38–2, Section 4(c), 5(c), and (d) and new language.
Subpart C:	
119.31	SFAR 38–2, Section 1(c), 2(a) and (b), 121.3, and 135.5.
119.33(a)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(b)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(c)	SFAR 38–2, Section 1(c), 2(a) and (b), 3, 121.3, 135.5, 135.13(a).
119.35(a)	121.26, 121.47(a), 135.11(a).
119.35(b)	121.26, 121.47(a), 135.11(a).
119.35(c)	121.47(a).
119.35(d)	121.47(b).
119.35(e)	121.47(c).
119.35(f)	121.47(d).
119.35(g)	121.48.
119.35(h)	121.49.
119.37(a)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(b)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(c)	121.25(a), 121.45(a), 135.11(b)(1) and new language.

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New section	Based on
119.37(d)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(e)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.39(a)	121.27(a)(2), 121.51(a)(3), 135.11(b)(1).
119.39(b)	121.27(a)(2), 121.51, 135.13(a)(2) and (b).
119.41(a)	121.77(a), 135.15(a).
119.41(b)	New language.
119.41(c)	121.77(b), 135.15(b).
119.41(d)	121.77(c), 135.15(d).
119.43(a)	121.75(b), 135.63(a)(2).
119.43(b)	121.75(b), 135.63(a)(2).
119.47(a)	135.27(a).
119.47(b)	121.83, 135.27(b).
119.49(a)	121.5, 121.25(b), 121.45(b), 135.11(b), and new language.
119.49(b)	121.45(b), 135.11(b)(1) and new language.
119.49(c)	135.11(b)(1) and new language.
119.49(d)	121.75, 135.81.
119.51(a)	121.79(a), 135.17(a).
119.51(b)	121.79(b), 135.17(d).
119.51(c)	121.79(c), 135.17(b), and new language.
119.51(d)	121.79(d), 135.17(c) and (d).
119.51(e)	121.79(b), 135.17(c) and (d).
119.53(a)	121.6(a).
119.53(b)	New language.
119.53(c)	121.6(b).
119.53(d)	121.5(c).
119.53(e)	New language.
119.53(f)	New language.
119.55(a)	121.57(a) and (b).
119.55(b)	121.57(a) and (b).
119.55(c)	121.57(a) and (b).
119.55(d)	121.57(a) and (b).
119.55(e)	121.57(a) and (b).
119.57(a)	121.57(c).
119.57(b)	New language.
119.58(a)	135.19(b).
119.58(b)	135.19(a).
119.58(c)	135.19(c).
119.59(a)	121.81(a), 135.73, and new language.
119.59(b)	121.73, 121.81(a), 135.63(a), 135.73, and new language.
119.59(c)	121.81(a).
119.59(d)	New language.
119.59(e)	New language.
119.59(f)	New language.
119.61(a)	121.29(a), 121.53(a), (c), and (d), 135.9(a).
119.61(b)	121.29(a), 121.53(c), and new language.
119.61(c)	135.35.
119.63(a)	New language.
119.63(b)	New language.
119.65(a)	121.59(a).
119.65(b)	121.59(b).
119.65(c)	121.59(b).
119.65(d)	121.61 and new language.
119.65(e)	121.59(c).
119.67(a)	121.61(a) and new language.
119.67(b)	121.61(b) and new language.
119.67(c)	121.61(c), 135.39(c) and new language.
119.67(d)	121.61(d) and new language.
119.67(e)	121.61(b), 135.39(d).
119.69(a)	135.37(a).
119.69(b)	121.59(b), 135.37(b).
119.69(c)	121.59(b).
119.69(d)	135.39 and new language.
119.69(e)	121.59, 135.37(c).
119.71(a)	135.39(a)(1) and new language.
119.71(b)	135.39(a)(2) and new language.
119.71(c)	135.39(b)(1) and new language.
119.71(d)	135.39(b)(2) and new language.
119.71(e)	135.39(c) and new language.
119.71(f)	135.39(d) and new language.

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TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119

	Replaced by
Part 121:	
121.3	119.21(a); 119.31; 119.33.
121.4	119.5(g).
121.5	119.49(a).
121.8(a)	119.53(a).
121.8(b)	119.53(c).
121.7	119.21.
121.9	deleted.
121.13	119.25.
121.21	119.1.
121.23	119.7(b).
121.25(a)	119.37(a), (b), (c), (d), (e), (f), and (g).
121.25(b)	119.49(a).
121.26	119.35 (a) and (b).
121.27(a)(1)	119.5(i).
121.27(a)(2)	119.39 (a) and (b).
121.29(a)	119.61 (a) and (b).
121.41	119.1.
121.43	119.7(b).
121.45(a)	119.37(a), (b), (c), (d), (e), (f), and (g).
121.45(b)	119.49 (a) and (b).
121.47(a)	119.35(a), (b), and (c).
121.47(b)	119.35(d).
121.47(c)	119.35(e).
121.47(d)	119.35(f).
121.48	119.35(g).
121.49	119.35(h).
121.51	119.39(b).
121.51(a)(1)	119.5(i).
121.51(a)(3)	119.39(a).
121.53(a)	119.61(a).
121.53(c)	119.61 (a) and (b).
121.53(d)	119.61(a).
121.55	deleted.
121.57(a)	119.55(a), (b), (c), (d), and (e).
121.57(b)	119.55(a), (b), (c), (d), and (e).
121.57(c)	119.57(a).
121.59	119.89(e).
121.59(a)	119.65(a).
121.59(b)	119.65 (b) and (c); 119.69 (b) and (c).
121.59(c)	119.65(e).
121.61	119.65(d).
121.61(a)	119.67(a).
121.61(b)	119.67 (b) and (e).
121.61(c)	119.67(c).
121.61(d)	119.67(d).
121.71	119.1.
121.73	119.59(b).
121.75	119.49(d).
121.75(b)	119.43 (a) and (b).
121.77(a)	119.41(a).
121.77(b)	119.41(c).
121.77(c)	119.41(d).
121.79(a)	119.51(a).
121.79(b)	119.51 (b) and (e).
121.79(c)	119.51(c).
121.79(d)	119.51(d).
121.81(a)	119.59(a), (b), and (c).
121.83	119.47(b).
Part 135:	
135.5	119.31; 119.33(a), (b), and (c).
135.7	119.5(g).
135.9(a)	119.61(a).
135.11(a)	119.35 (a) and (b).
135.11(b)	119.49(a).
135.11(b)(1)	119.37(a), (b), (c), (d), (e), (f), and (g); 119.39(a); 119.49 (b) and (c).
135.13(a)	119.33(a), (b), and (c).
135.13(a)(2)	119.39(b).
135.13(a)(3)	119.5(i).
135.13(b)	119.39(b).
135.15(a)	119.41(a).
135.15(b)	119.41(b).

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119—Continued

	Replaced by
135.15(d)	119.41(d).
135.17(a)	119.51(a).
135.17(b)	119.51(c).
135.17(c)	119.51 (d) and (e).
135.17(d)	119.51(b), (d), and (e).
135.19	119.58.
135.27(a)	119.47(a).
135.27(b)	119.47(b).
135.29	119.9(a).
135.31	119.5.
135.33	119.5(j).
135.35	119.61(c).
135.37(a)	119.69(a).
135.37(b)	119.69(b).
135.37(c)	119.69(e).
135.39	119.69(d).
135.39(a)(1)	119.71(a).
135.39(a)(2)	119.71(b).
135.39(b)(1)	119.71(c).
135.39(b)(2)	119.71(d).
135.39(c)	119.67(c); 199.71(e).
135.39(d)	119.67(e); 119.71(f).
135.63(a)	119.59(b).
135.63(a)(2)	119.43 (a) and (b).
135.73	119.59 (a) and (b).
135.81	119.49(d).
SFAR 38–2:	
Section 1(a)	119.1(b).
Section 1(a)(3)	119.5 (d) and (e); 119.5(h).
Section 1(b)	119.5(f).
Section 1(c)	119.5(g); 119.31; 119.33 (a), (b), and (c).
Section 2(a)	119.5(a); 119.31; 119.33 (a), (b), and (c).
Section 2(b)	119.5(b); 119.31; 119.33 (a), (b), and (c).
Section 2(c)	129.1.
Section 3	119.7(a); 119.33 (a), (b), and (c).
Section 4(a)	119.21(a).
Section 4(b)	119.21(b).
Section 4(c)	119.25 (a) and (b).
Section 4(d)	119.25 (a) and (b).
Section 5(a)	119.23(a).
Section 5(b)	119.23(b).
Section 5(c)	119.25 (a) and (b).
Section 5(d)	119.25 (a) and (b).
Section 6	119.3.

VII. Discussion of Comments Related to Costs and Benefits

This section of the preamble discusses those costs and benefits related comments submitted to the docket for the NPRM. The comments are presented by topic within their respective areas of concern.

1. Operations

Flight Time Limitations. A commuter operator from Alaska voiced its concerns about the potential high cost ($502,000) of compliance associated with the proposed requirement for flight time limitations. According to this operator, compliance with the proposed rule would require hiring an estimated 15 to 75 percent more pilots, depending on the location of its operations in Alaska. Also, there would also be additional costs incurred for training.

FAA Response: The FAA is holding in abeyance a decision concerning flight time limitations because of a new proposal that, if adopted, would overhaul all of the flight and duty rules.

Dispatchers. There were a number of comments submitted on the establishment of a dispatcher system. However, none of the comments were directly related to costs. Among those comments related to costs, the primary concern pertained to the idea that there would be significant costs incurred by operators in remote areas (i.e., most of Alaska) or those operators with a small number of airplanes (fewer than five).

FAA Response: There are four points to make in reference to the comments. First, the commenters failed to provide any specific cost information to substantiate their claims of incurring significantly high compliance costs for establishing a dispatch system. Second, it is the FAA's position that nearly all part 135 commuters already have the basic communication equipment needed for a dispatch system because they already have flight locators and flight followers conducting some degree of operational control. Third, even in remote areas carriers have access to contracted communications systems. Fourth, in regard to the personnel costs associated with the dispatch system, these operators are expected to upgrade most of their existing flight locators and flight followers to be dispatchers, at an hourly wage increase of $1.60 (or $4,193 annually). Some dispatchers will be hired outside of the company at an

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annual wage of $24,000. This position is based on information obtained from the Aircraft Dispatchers Federation (ADF) and a survey of several part 135 operators with dual operations specifications (parts 121 and 135). The FAA estimates a cost of $13,000 as the average minimum annual operating cost of establishing a dispatch system (assuming nothing is in place by a particular operator). This includes costs for telephone service, office space, office furniture, access to a current weather service, and access to air-ground communications.

Pilot Qualifications. Several commenters are opposed to the proposed requirements for pilot qualifications on the basis of an anticipated high cost of compliance.

FAA Response: The final rule does not contain requirements for crewmember training and pilot qualifications. These requirements are contained in a separate rulemaking action that pertains to operators under parts 121 and 135.

Cockpit Protective Breathing Equipment (PBE). One airplane manufacturer questions the need for fire-fighting PBE on the flight deck of commuter airplanes with 10 to 19 passenger seats. The commenter asserts that it would cost an additional $23,800 dollars (rather than the FAA's cost estimate of $400 per PBE unit) to equip each one of its 10-to-19-seat airplanes with such PBE on the flight deck. This cost estimate does not include a one-time $52,000 for development costs. According to the commenter, its airplanes are already equipped with fixed smoke-and-flame protection PBE at each of the two pilot stations. Thus, the only potential cost would be for a fire-fighting PBE on the flight deck.

FAA Response: The FAA has decided to drop the proposed requirement for fire-fighting PBE on the flight deck of affected airplanes with 10 to 19 seats.

Costs of Compliance—All Items. According to one commenter, the FAA's analysis grossly underestimated costs. The cost of the proposed rule should be $1.6 billion instead of the FAA's estimate of $275 million.

FAA Response: The FAA disagrees with the commenter. The FAA contacted the commenter to acquire information on the methodology and basic assumptions or rationale used to derive the cost estimate. With regards to the methodology, the commenter indicated that he used his own judgment and information provided by other commenters. None of his analysis was supported empirically by outside sources or seemed to be more credible than that used by the FAA. As to the basic assumptions, the commenter said there was no documentation that detailed the methodology used to derive his cost estimate of $1.6 billion. Therefore, since the commenter was unable to substantiate the cost estimate, the FAA will retain its cost estimate and all associated methodology.

2. Cabin Safety

First Aid and Medical Kits. Several commenters provided cost estimates ranging from $1,500 to $2,000 per airplane for the first aid and medical kit requirement, but these cost estimates were submitted without any detailed documentation. An additional commenter, who was contacted, agrees with the cost per first aid kit, but argues that the turnover rate should be 100% a year due to pilfering.

FAA Response: The cost estimates provided by the commenters are higher than the FAA's original estimates. The FAA based the equipment costs on off-the-shelf prices that would be available to all operators. The FAA contacted one commenter that estimates the cost of $1,500 per airplane for a first aid kit. The commenter's cost estimate includes up front costs such as the engineering designs, administrative paperwork, cost of tooling, as well as the cost of equipment and materials. The FAA assumes that the first aid kits, as well as medical kits, can be secured with Velcro tape and would be secure enough to meet the 18–G requirement. As to design and administrative costs involved with securing first aid and medical kits, the FAA is using the up-front costs of $1,500 submitted by the commenters. With regards to pilferage, none of the large airlines complain about first aid kits being stolen, and the FAA believes that if any kits are stolen, air carriers would take positive steps to stop such activity.

Locking Cockpit Door and Key. Several commenters are concerned that some locking cockpit doors would have to be retrofitted to work with a key, but cost estimates are not provided.

FAA Response: The FAA acknowledges that the commenters correctly state that keyless locks on affected lockable cockpit doors would have to be retrofitted to work with keys. Based on information from FAA technical personnel, the FAA is assuming that all of the 20-to-30-seat airplanes would have their locks or doors retrofitted, at a total cost of $182 per retrofit ($100 equipment + $82 labor).

Flotation Cushions and Life Vests. One commenter opposes the requirement because of the equipment cost and weight penalty. This commenter states that the seat cushions in the METRO airplane would not serve as effective flotation devices. In addition, this commenter provides a cost estimate for acquiring and retrofitting individual flotation devices for METRO airplanes.

FAA Response: The FAA concurs that if the seat cushions in a particular airplane model do not serve as flotation devices, then individual flotation devices would have to be acquired. Also, the FAA verified the commenter's cost estimate and has incorporated it into the regulatory evaluation for the final rule.

Halon Fire Extinguishers. One commenter from Alaska provides an aggregate cost estimate for the required halon fire extinguishers which was substantially higher than the estimate in the NPRM. The commenter does not provide additional commentary on the requirement beyond the costs.

FAA Response: The FAA partially disagrees with this commenter. A one-time cost estimate to account for up-front administrative and engineering costs to comply with Type Data Certificates was submitted by the commenter. The FAA verified this cost-estimate and has incorporated it into the cost of the final rule. However, the FAA contends that there would be no major retrofit costs because the halon fire extinguishers would replace existing fire extinguishers with the same size canister. The FAA's equipment costs were based on off-the-shelf prices for halon which would be available to all operators.

Carry-on Baggage. A commenter from Alaska believes that the FAA's cost estimate for the carry-on baggage screening program implementation is too low. This commenter reasons that the wage rates and paperwork burden would be higher for the Alaska air carriers. In addition, the commenter strongly objects to applying the scanning program at locations that do not have terminal facilities. This commenter believes that each operator will need to develop a measurement device to check each item of carry-on baggage which will result in delays. All of this will cost $156,000 per year for each Alaskan commuter air carrier; there is no detailed explanation of what this entails. Another commenter, who was contacted, believes that for crewmembers to enforce the carry-on baggage program will delay each flight one minute; this flight delay will need to be costed out.

FAA Response: The FAA disagrees with these commenters. The FAA is unable to evaluate the Alaska commenter's cost estimate without a detailed explanation of the cost breakdown. However, it is important to note that the wage rate and the paperwork hours assumed in the NPRM were national averages, so these numbers could be higher in some parts of the country, like Alaska, and lower in others. In addition, no carrier would be required to have a measuring device to carry out this program; the baggage screening program is visual in nature, and the requirements and costs involved only refer to preparing baggage screening procedures for the carrier's operations manual and an addendum to the Operations Specifications. Finally, the FAA does not believe that there would be delays on any flights due to such a program as crewmembers would be "eye balling" carry-on baggage as passengers are boarding at the same speed they have always boarded.

Flight Attendants at the Gate. A commenter believes that all operators would only use trained, authorized, substitute personnel when coverage is needed. This commenter believes that these trained persons would all be new hires and paid annual salaries of $12,000. One commenter from Alaska opposes the requirement for flight attendants at the gate. The commenter states that both crewmembers on the 10-to-19 seat airplanes would need to assist in the loading and unloading process, and hence neither could stay on board with passengers. Furthermore, the commenter states that deplaning passengers would not be a viable option because airports in Alaska do not have the proper facilities. Therefore, the commenter states that a trained substitute would have to stay on board the airplane with the passengers 100% of the time. The commenter states that the FAA has also underestimated the training costs and wage costs so that this requirement would cost about $2.9 million each year for all of the Alaska commuter air carriers to comply.

FAA Response: The FAA disagrees with these commenters. The authorized personnel would need to be trained, reliable, and have a low turnover rate; an annual salary of $12,000 would not be high enough to attract such people. These airplanes typically fly only during the summer months so passengers can be deplaned. The FAA contends that one of the crewmembers can stay on board the airplane some of the time; loading and unloading responsibilities can often times be accomplished with one crewmember. The final rule has been changed to allow a crewmember to stay on or in close proximity to the airplane to comply with this requirement. The FAA does not believe it is likely that air carriers in Alaska would have trained substitute personnel waiting at each intermediate stop. Accordingly, the FAA believes that Alaskan air carriers would either deplane passengers or use a crewmember.

Passenger Information. One commenter from Alaska disagrees with the FAA's cost estimate for passenger information cards and believes that it is too low. Alaskan air carriers would need to devise a more comprehensive information system due to the many nationalities and native languages in Alaska and this would entail great expense. Some air carriers would also have to translate into Japanese, Korean, and Russian for tourists from the Pacific Rim nations. The commenter also thought that the FAA's assumption of a three year life expectancy for information cards was too high. Based on experience, the commenter states that information cards last less than a year due to wear and theft. The commenter also estimates costs of $26,000 for Alaskan commuter air carriers in the first year and $4,224 each year thereafter.

FAA Response: The FAA disagrees with this commenter and believes that the commenter misunderstood the requirements of this proposed section. There is no current or proposed requirement to translate any passenger information cards into any other language. In addition, the industry average for passenger information cards is three years, so the FAA will use the NPRM costs.

3. Certification

Performance Criteria. Of seven comments received, only one manufacturer provided cost information. This manufacturer reports that, for their part 23 commuter category certificated airplanes, there would be no compliance costs. However, for their SFAR 41C certificated airplanes, developing the data needed to comply with the part 121 requirements for obstacle clearance and for accelerate-stop would be $3,000 per airplane for obstacle clearance and $2,500 per airplane for accelerate stop. For their pre-SFAR 41C airplanes, it would be $63,000 per airplane to develop performance data for obstacle clearance and $145,000 per airplane to develop anti-skid data, to purchase and install anti-skid systems, and to incur the 35 lb. weight penalty for accelerate-stop.

FAA Response: In the Notice, the FAA stated that all part 135 scheduled airplanes would be able to meet these performance criteria and that the only cost would be a $5,000 per type certificate to provide the data and obtain FAA approval for inclusion into the airplane flight manual. After additional review, however, the FAA realizes that SFAR 41 and predecessor category airplanes will be unable to meet all of the part 121 performance criteria without having to offload so many passengers or cargo as to become unprofitable to operate in scheduled passenger service. If operators substitute airplanes configured with 9 or fewer passenger seats for these airplanes, there could be a substantial economic loss and potential safety reduction. Thus, the FAA will allow the operators of these airplanes to have 15 years to meet the part 121 performance requirements. This will allow operators sufficient time to plan for the replacement of these airplanes without incurring an enormous economic loss. It also will allow manufacturers time to develop better substitutes for these airplanes.

Engine-Out-En-Route-Net-Flight Data. There were three commenters on this issue. One manufacturer commenter reports a one-time cost of $24,774 to create the required one-engine-inoperative-en-route-net-flight-path data which do not exist for any 10-to-19-seat airplanes. Another commenter reports that these flight data are not included in the FAA approved airplane flight manual.

FAA Response: The FAA concurs with these commenters and has adopted the commenter's cost estimate.

Cargo Compartment Smoke Detector and Fire Extinguishing Systems and Cargo Compartment Liners. Two commenters report a per-airplane cost of $15,230 to $15,580 to install smoke detectors and fire extinguishers in the cargo compartments of newly-manufactured 10-to-19-seat airplanes. The commenter also reports a per-airplane-retrofitting cost of $17,420; a one-time cost of $85,400 for engineering, designing, testing, and paperwork for FAA approval; and 32 lbs. of added weight to each airplane. The commenter also reports a per-airplane cost for cargo and baggage compartment liners of $13,000 for a retrofit; $10,420 for a newly-manufactured airplane; a $463,950 cost for a one-time engineering, designing, testing, and paperwork to obtain FAA approval cost; and 9 lbs. of additional weight. Another commenter reports a per airplane cost of $26,400 and a weight of 15 lbs. This commenter also notes that the NPRM did not propose any retrofitting.

FAA Response: The FAA disagrees with the commenter. The FAA proposal would only apply to newly-manufactured airplanes beginning four years after the effective date. Thus, there

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would be no retrofit costs. (After additional analysis, the FAA has decided that this topic needs to be specifically addressed in a separate rulemaking. Thus, there would be no compliance costs for this in the commuter rule.)

Landing Gear Aural Warning. Two manufacturers and one operator report that all of their 10-to-19-seat airplanes have aural landing gear warnings. Two of these commenters report no compliance cost. The other commenter reports a one-time manufacturer's cost of $2,620 to obtain FAA approval of the flight-manual changes.

FAA Response: The FAA disagrees with the commenter who reported a one-time cost because the presence of the aural warning device in existing airplanes means that this equipment was already included and approved in the airplane flight manual. As the FAA believes that all affected airplanes already employ an aural warning system, there are no compliance costs.

Ditching Approval. There were five commenters who addressed this issue. One commenter reports a $7,430 cost for its DeHavilland Twin Otters to comply with this provision. Another commenter reports that it would be impossible for the Twin Otter to comply with the ditching requirement due to its fixed landing gear; also the commenter says that other airplane operators would incur a $180 per airplane paperwork cost to demonstrate compliance. Another commenter reports that the costs would be extremely high. Two commenters report that there would be a $1,500 one-time paperwork cost to demonstrate compliance to the FAA for revision of the approved flight manual.

FAA Response: The FAA agrees with the commenters. For the final rule, the compliance period will be extended to 15 years. Thus, the potential cost of compliance will be minimal.

Take-Off Warning System. One manufacturer reports that the per airplane cost to install take-off warning devices would be $24,920 on a newly-manufactured airplane; $26,500 for a retrofit; and $150,260 for a one-time engineering, development, testing, and FAA-approval cost. Also, these devices would weigh 5 lbs. Another commenter reports that it would cost $12,600 per airplane to install a 2 lb. take-off warning device on a newly manufactured airplane. One commenter reports that it would cost $11,350 per airplane to install a take-off warning device on a newly manufactured airplane.

FAA Response: The FAA estimates that the per airplane cost for a newly manufactured airplane would be $16,000 for engineering, developing, testing, and installing, plus an annual $1,600 inspection, maintenance, and repair cost. The FAA also did not estimate any additional weight for this device. However, after further technical review, the FAA concludes that none of these airplane models (except the Beech 99) would need a takeoff warning system because a takeoff with a device in the most adverse position does not create a hazardous condition. For the Beech 99, that problem was resolved when the FAA issued an Airworthiness Directive (AD) requiring these airplanes to install a takeoff warning system. Thus, there are no compliance costs associated with this requirement.

Third-Attitude Indicator. Two commenters report that there would be no compliance cost for newly-manufactured airplanes because third attitude indicators are standard equipment. One of these commenters reports that there would be a $1,500 one-time manufacturer's paperwork cost to obtain FAA approval to changes in the flight manual. The same commenter reports that it would cost $10,865 to retrofit an airplane. The other commenter reports that the per-airplane-retrofit cost would be between $40,600 for a Beech 1900C and $48,800 for a Beech 99, and that a third-attitude indicator would weigh 15 lbs. An airplane operator reports that it would cost $40,000 per airplane to retrofit its Beech 1900Cs. Another airplane operator reports that it would cost $17,000 per airplane to retrofit its DeHavilland Twin Otters. Finally, a commenter reports that it would cost $53,170 per airplane to retrofit airplanes. In addition to the reported costs, the commenter states that there was insufficient time for operators to retrofit these airplanes within the one-year period proposed by the NPRM.

FAA Response: The FAA estimates that the per airplane cost would be $16,000 for a retrofit and $8,000 for a newly-manufactured airplane. The annual maintenance, inspection, and repair costs would be 10 percent of the retrofitting costs. The third-attitude indicator and wiring would weigh 5 lbs. Based on the manufacturer information, this device has been installed on all turbo-jet and commuter category airplanes.

The FAA contends that its cost estimates in the NPRM are valid. However, the FAA accepts the comment that the additional weight would be 15 lbs. After additional analysis, and in light of the potential high-costs of this proposal, the FAA believes that this requirement should be handled consistently with the principle espoused in the performance requirements. On that basis, the final rule will have a 15-year retrofit compliance period for affected 10–19 seat airplanes and predecessor category.

Lavatory Fire Protection. Concerning 10-to-19 seat airplanes, two manufacturer commenters state that very few of their airplanes had lavatories. For those few that do, one manufacturer reports that installing a lavatory smoke detector and a built-in automatic fire extinguisher in each lavatory-waste receptacle would cost $59,200 per retrofit, $8,800 for a newly manufactured airplane, and would weigh 10 lbs. The other commenter reports it would cost $8,350 for a retrofit, $7,800 for a newly-manufactured airplane, involve a one-time engineering cost of $49,000, and would increase each airplane's weight by 16 lbs. Another commenter reports that a retrofit would cost $725.

Concerning 20-to-30-seat airplanes, two manufacturer commenters report that it would cost $4,000 to retrofit their airplane lavatories. One of these commenters also states that only one half of the newly manufactured airplanes with lavatories have these devices. Two airlines and one association report that it would cost $2,500 to retrofit their airplane lavatories. One of the airlines reports that these devices would weigh 20 lbs.

FAA Response: Section 121.308(a) requires each lavatory to have a smoke detector system connected to either: (1) A warning light in the flight deck; or (2) a warning light or an aural warning in the passenger cabin that can be readily detected by a flight attendant. Section 121.308(b) requires each lavatory to have a built-in automatic fire extinguisher in each waste-disposal receptacle in the lavatory. These requirements are also found in section 25.854 but only for airplanes type certificated after 1991. There are no similar provisions in part 135 or part 23.

In reviewing these comments for the 20-to-30-seat airplanes, the FAA believes, although these commenters did not document the sources for their estimates, that these estimates appear to be based on the cost of a flight deck warning light system, which would involve some airplane rewiring. However, the FAA's estimate is based on the operator electing the second option allowed in the proposed rule—an aural warning device that could be heard by the flight attendant. That option is clearly the cost-effective option for 20-to-30-seat airplanes that are required to have a flight attendant.

These provisions are largely unimportant for the 10-to-19-seat airplanes because very few have a lavatory. In fact, one manufacturer reported that none of their airplanes operating in the U.S. has one. The FAA believes that the reported costs for these individual airplanes are so large because any costs to engineer, design, and test would be distributed over so few airplanes. However, for those few 10-to-19-seat airplanes that do have a lavatory, the FAA changed this rule to allow an aural warning system that can be heard by the flight crew. On that basis, the FAA determined that it would cost about $175 to retrofit or to install in a newly manufactured airplane a 5 lb. aural smoke detector that requires $50 a year in maintenance and inspection and $15 a year for replacement batteries. The FAA also determined that it would cost $300 to retrofit a 5 lb. receptacle automatic fire extinguisher that requires $75 a year in maintenance and inspection and $50 a year for recharging. These costs are $50 a year more than the costs estimated in the NPRM.

The FAA also estimates that half of the 272 existing 20-to-30 seat airplanes certificated before 1991 did not have these devices whereas 90 percent of the newly-manufactured airplanes have them. The FAA accepts the commenter's statement that only half of these newly-manufactured airplanes have these devices.

Emergency Exit Marking. One manufacturer reports that installing an emergency exit marking light would cost $11,050 for a retrofit, $9,100 for a newly manufactured airplane, and would involve a one-time manufacturing cost of $87,280 to engineer, design, test, and obtain FAA approval for this device.

FAA Response: The cost of this provision was a part of the FAA's estimated emergency lighting cost. After additional analysis, the FAA believes that given the passenger's close proximity to emergency exits and the high cost of complying with the lighting requirements, affected airplanes will not be required to comply with certain lighting provisions in 121.310.

Floor Proximity Lighting. One manufacturer commenter reports that installing emergency floor proximity lighting would cost between $27,600 and $36,000 for a retrofit, $20,800 for a newly manufactured airplane, and the installed lighting would weigh 12 lbs. A second manufacturer commenter reports that it would cost $19,000 for a retrofit; $15,000 for a newly manufactured airplane; there would be a one-time engineering, developing, testing, and obtaining FAA approval cost of $52,650, and the installed lighting would weigh 10 lbs. This commenter also proposes an alternative interior lighting of the exit and exterior emergency exit lighting as a substitute for the full-scale floor proximity and exterior emergency exit lighting in the NPRM. This alternative lighting system is required for their airplanes in Great Britain. But this commenter did not report the cost of their proposed alternative. A third manufacturer commenter reports that it would cost $8,000 for a retrofit. One air carrier commenter reports that it would cost about $17,700 to retrofit its DeHavilland Twin Otters. Another air carrier commenter reports that it would cost $26,800 to retrofit its Beech 1900Cs and $22,800 to retrofit its Jetstream 31s and Beech 1900Ds. One association reports that it would cost between $20,000 and $50,000 for a retrofit. A second association reports it would cost $11,000 for a retrofit. A third association reports it would cost $19,000 for a retrofit. Finally, an aviation consultant group reports it would cost $8,000 for a retrofit.

FAA Response: The FAA estimates that the cost to comply with the emergency lighting requirements in 121.310 would be $2,500 to retrofit existing airplanes and $2,000 to install in newly-manufactured airplanes. After additional analysis, the FAA agrees with these commenters that the earlier FAA costs severely underestimated the retrofitting and new installation costs. As a result, the FAA determines that 10-to-19-seat airplanes would not be required to meet these lighting requirements in 121.310.

Emergency Exit Exterior Lighting. One manufacturer commenter reports that the per airplane cost would be $13,400 to install a 15 lb. emergency exit exterior lighting system on a newly manufactured airplane and $17,950 for a retrofit. In addition, they report a one-time engineering, design, testing, and paperwork for FAA approval cost of $64,525. However, as noted in the previous section, their suggested alternative to floor proximity lighting would also contain an exterior emergency lighting capability. Another manufacturer commenter reports that the per airplane cost would be $11,800 to install a 12 lb. emergency exit exterior lighting system on a newly manufactured airplane and $17,250 to $23,550 for a retrofit. One air carrier reports that it would cost $9,400 per airplane to retrofit its DeHavilland Twin Otters. Another air carrier reports that it would cost $16,640 to retrofit its Beech 1990Cs, 1900Ds, and its Jetstream 31s.

FAA Response: The FAA provided one aggregated cost estimate for the emergency lighting system. However, as that total cost estimate for all lighting required by Section 121.310 was $2,500, the FAA reevaluated its exterior-lighting-cost estimate. After additional analysis, the FAA agrees with these commenters that the earlier FAA costs severely underestimated the retrofitting and new installation costs. As a result, the FAA determines that 10-to-19-seat airplanes would not be required to meet these lighting requirements in 121.310.

Exterior Emergency Exit Marking. One manufacturer commenter reports that it would cost between $350 and $650 for an airplane operator to install these markings on the exterior of the emergency exits. One association commenter reports that it would cost $74 to install these markings. Neither commenter discusses the number of airplanes that would need to have these markings installed.

FAA Response: The FAA estimated that about 10 percent of the 10-to-19-seat airplanes would need to comply with this requirement at a cost of $100 per airplane. However, the FAA notes that this section is identical to Section 135.178(g). As a result, there are no compliance costs.

Pilot Shoulder Harnesses. One manufacturer commenter reports that even though all of their airplanes are now manufactured with the single point pilot shoulder harness, they would still incur a $22,500 one-time cost—presumably to obtain FAA approval for inclusion in the flight manual. One association commenter reports that it would cost $440 to retrofit a single point shoulder harness.

FAA Response: The FAA did not estimate any cost for this provision because the proposal did not require retrofitting and the FAA was informed by industry that the single point inertial harness for pilots is standard equipment on all currently-manufactured airplanes. Thus, the FAA determines that there is no compliance cost.

The FAA disagrees with the commenter who reported a one-time manufacturer's cost because this equipment is already in airplanes and, hence, approved in the airplane flight manual.

Interior Panel Heat and Smoke Release Standards. There were two commenters on this issue. One manufacturer commenter reports that the per airplane cost for requiring the more stringent fireproofing material for cabin interiors would be $77,550 for a retrofit, $67,500 for a new installation, and there would be a one-time engineering, designing, testing, retooling, and obtaining FAA approval cost of $627,910. Another manufacturer commenter reports that it would cost

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$90,000 per airplane to install in a newly manufactured airplane and also notes that the Notice did not propose a retrofit. It should be noted that the commenter's methodology averages any one-time engineering and development costs into the expected number of future sales of the Beech 1900D.

FAA Response: The FAA disagrees with the commenters. Manufacturers would only have to comply with the existing type certification standard. Therefore, there would be no compliance cost.

Passenger Seat Cushion Flammability. There were eight commenters on this issue. One manufacturer commenter reports that the per airplane cost would be $11,250 to retrofit one of its airplanes with fire-blocked-seat cushions; $10,250 per airplane to install in a newly manufactured airplane; there would be a one-time engineering, design, testing, and FAA-approval costs of $85,415; and it would add 20 lbs. A second manufacturer commenter reports that the per airplane cost would be between $20,000 and $22,600 for a retrofit; $3,400 in newly manufactured airplanes; and would weigh 38 lbs. One air carrier reports that the per airplane cost would be $12,600 to retrofit its Beech 1900Cs and $4,000 to retrofit its Beech 1900Ds and Jetstream 31s. Another air carrier reports that the per airplane cost would be $35,000 to retrofit its DeHavilland Twin Otters. Another air carrier reports that the per airplane cost would be $20,000 to retrofit its fleet. Three associations report that the per airplane retrofitting costs would range from $20,000, $42,950, and $50,000.

FAA Response: The FAA estimated that the per-airplane-incremental cost would be $20,000 to retrofit fire-blocked-seat cushions, $5,000 to install these seat cushions on newly-manufactured airplanes, and $10,000 to replace these seat cushions on airplanes that have fire-blocked-seat cushions. An additional cost would be the 38 lbs. of weight these seats add to the airplane. The FAA acknowledges the fact that different airplanes would have different retrofitting and new installation costs.

After additional analysis, the FAA accepts the manufacturer commenters' cost estimates for their airplanes as well as accepts the air carrier estimates provided for the DeHavilland Twin Otter and the Jetstream 31. For the other types of airplanes that would need to be retrofitted, the FAA uses an average of these reported retrofitting costs weighted by the number of each type of this airplane still in service. The FAA also accepts the commenters weight estimates for each of their own airplanes. After additional analysis, the FAA finds that, for the final rule, a 15-year compliance period is appropriate for 10-to-19-seat airplanes.

"Fasten Seat Belt" Lighted Sign. There were two commenters on this issue. One manufacturer reports that installing a fasten seat belt light would cost between $3,025 and $4,000 for a retrofit and $1,600 for a newly manufactured airplane. One association reports that it would cost $11,000 per airplane.

FAA Response: The FAA had not estimated any compliance costs for section 121.317(b) because it was believed that commuter airplanes had these signs. However, after additional analysis, the FAA determines that a placard and a pre-flight briefing provide an equivalent level of safety to a lighted sign. As these are industry practices, there is no compliance cost.

Wing Ice Light. There were two comments on this issue. One manufacturer reports that there would be no compliance costs for any of their airplanes. One association reports that it would cost $11,000 to install wing ice lights on its members' airplanes.

FAA Response: In the Notice, the FAA did not estimate any costs for this provision because the provision states "No person may operate an airplane in icing conditions at night unless means are provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation." The FAA holds that all of the airplanes have either the wing ice lights or an acceptable alternative method for determining the icing accumulation on the wings. As a result, there is no compliance cost.

Pitot Heat Indication. There were five commenters on this issue. One manufacturer reports that the per-airplane cost would be $9,250 to retrofit pitot heat indication tubes, $10,600 to install on a newly-manufactured airplane, there would be a one-time cost to apply, engineer, design, and test of $31,670; and it would weigh 4 lbs. Another manufacturer commenter reports that it would cost between $3,000 and $5,700 per airplane to retrofit its models no longer in production and it would weigh 1 lb. This commenter also reports that all of its currently manufactured airplanes have pitot heat indication systems. One air carrier reports it would cost $1,650 to retrofit its DeHavilland Twin Otters with pitot heat indication tubes. One association reports that it would cost its members between $1,500 and $25,000 per airplane for a retrofit.

FAA Response: Based on information contained in the Draft Regulatory Evaluation to the FAR/JAR Harmonization, the FAA had estimated that the per airplane costs would be $500 for a retrofit and $250 for a newly-manufactured airplane. After review of these comments, the FAA has revised these cost estimates to $4,000 for a retrofit, $2,000 for installation on a newly manufactured airplane, and an additional 5 lbs. of weight to the airplane.

Power Distribution System. One commenter reports that Section 121.313(c) requires a power supply and distribution system that meets the requirements of six sections of Part 25. They state that this would require a major redesign of their airplanes' electrical power distribution system. They report a per airplane cost of $15,605 for a retrofit, $12,660 for a newly manufactured airplane, and a one-time engineering, design, testing, and paperwork for FAA approval of $156,256.

FAA Response: The FAA disagrees with this commenter. They did not notice that the further text in part 121.313(c) reads "* * * or that is able to produce and distribute the load for the required instruments and equipment, * * *" The requirement allows the use of a power supply and distribution system that has been shown to perform its functions. Thus, compliance can be established by means other than part 25. As a result, there are no compliance costs.

Out-of-Service Time to Install Airplane Equipment. Four commenters note that the FAA failed to include the cost for the additional out-of-service time that will be needed to install all the equipment required to comply with the proposal. Although no exact costs were provided, these commenters assert that this time out of service would result in a substantial revenue loss.

FAA Response: Even though the FAA attempted to design the proposed rule to minimize out-of-service time, the agency agrees with these commenters that there would be some out-of-service time for some of the affected airplanes. However, as a result of the changes from the NPRM to the final rule, the FAA contends that all of the required equipment by the final rule can be installed during regularly scheduled maintenance and there will be no additional out-of-service time.

4. Maintenance

The Alaska Air Carriers Association (AACA), citing the uniqueness of the Alaskan operating environment and the absolute necessity of air travel in Alaska, notes that most Alaskan operators utilize mixed fleets and employ maintenance personnel who work on all airplanes in such mixed fleets. The AACA maintains that requiring the scheduling of maintenance personnel according to part 121 standards would place an additional administrative burden and financial compliance cost on air carriers at locations with limited personnel and mixed fleets. The AACA contends that the part 121 specification of maintenance personnel duty time limitations would require the air carrier either to develop and apply separate work schedules for part 121 and part 135 mechanics or to hire additional mechanics.

FAA Response: With few exceptions, the FAA agrees with the commenters. Part 121 requires 24 hours off during any 7 consecutive days; part 135 makes no such provision. In its original assessment of maintenance and preventive maintenance personnel duty time limitations, the FAA assumed the issue to be non-controversial; the existence of union work rules, Department of Labor regulations and the generally accepted notion of a "day of rest" were believed to be sufficient to accomplish the same result. As a consequence, the FAA did not assess any costs associated with the burden of scheduling and providing a day of rest for part 135 mechanics as is required under part 121 where operators must ensure adequate rest for their mechanics.

The FAA maintains that mechanics, similar to pilots and flight attendants, must receive adequate rest in order to perform their duties properly and that the minimum standard required under part 121 would ensure that the opportunity for rest is provided. The FAA, however, concurs with the AACA that the extending of duty time limitations to the Alaskan operators of mixed fleets utilizing maintenance personnel under both parts 121 and 135 would be an additional cost burden. Therefore, based on cost information provided by the AACA, the FAA has adjusted its original maintenance cost estimates accordingly. The adjustment is two-fold: 1) the full cost burden inclusive of potential added labor costs were estimated for Alaskan 10–19 seat category air carriers; and 2) the administrative maintenance personnel scheduling costs without the labor cost factor were estimated for the remainder of the 10-to-19-seat non-Alaskan commuter fleet as well as the 20-to-30-seat commuter fleet.

Maintenance Recordkeeping Requirements (Recording). The AACA also criticizes the FAA's estimate of a one-time cost for compliance with the commuter rule's maintenance provisions. The AACA maintains that the one-time cost is underestimated and that there would be on-going maintenance recordkeeping costs.

FAA Response: The FAA concurs and has adjusted its original maintenance cost estimates accordingly. In this instance, however, the FAA has apportioned the added required maintenance recordkeeping costs between 10-to-19-seat and 20-to-30-seat airplanes for the total domestic commuter industry.

Maintenance Recordkeeping Requirements (Records Transfer). One commenter objects to the proposed change requiring engine and propeller total time in service to be added to the list of required recorded items. Typically, under part 121, only the total hours in service of an airplane's airframe is transferred information on older airplanes because operators have not been required to retain engine and propeller time in service data. According to the commenter, this change would necessitate operators of older 121 airplanes to undergo an extensive search of maintenance records to determine the historical times on the engine and propeller if such data is available at all.

FAA Response: The FAA concurs with the commenter. The adoption of part 135 wording imposes the more comprehensive part 135 maintenance recording requirements on part 121 operators and this might require an extensive search of maintenance records with some additional cost to an operator of older part 121 airplanes. The FAA, however, believes that any additional cost as a result of such a search would be minimal and has been taken into account with the cost adjustment provided under the maintenance recordkeeping requirements for recording addressed in an earlier comment. The FAA believes that the additional cost would be minimal because only seven existing part 121 operators of older propeller-driven airplanes would be affected by the new requirement. Typically, most part 135 operators utilizing propeller-driven airplanes already retain engine- and propeller-total-time-in-service data and most part 121 operators utilize jet-driven airplanes.

Continuous Airworthiness Maintenance Program (CAMP). One commenter estimates that the cost associated with the CAMP was considerably greater ($1.6 million) relative to the FAA's estimate to develop or revise and upgrade the CAMP ($105,000) as a result of the commuter rule.

FAA Response: The FAA does not concur with the commenter's estimate. The FAA maintains that nearly all operators of airplanes with 10-to-19- or 20-to-30-seat configurations regardless of whether operating under part 121 or part 135, are either conducting their scheduled maintenance under an approved CAMP or have adopted a CAMP as the basic guideline for their scheduled maintenance. As a consequence, the FAA based its original estimates on the cost associated with the minimum editorial changes to operators' CAMP's necessitated by the commuter rule.

The FAA however, has adjusted its maintenance cost estimates for recordkeeping requirements based on the comments already discussed and detailed above. The FAA believes the costs described by the commenter are costs associated with the new recordkeeping requirements, not administrative costs associated with the modifications to existing CAMP's.

5. Part 119

Single-Engine Airplanes. Several commenters state that the NPRM cost estimates for not allowing a passenger to sit in the co-pilot seat on a single-engine Otter are understated. One commenter states that the data the FAA used was based on national averages while all of the airplanes in question are located in Alaska. The commenters also state that the load factors and operating costs in Alaska are much higher than the rest of the country.

FAA Response: The FAA agrees with the commenters and will not prohibit qualified (as prescribed by § 135.113) single-engine airplanes, namely single-engine Otters, from carrying a revenue passenger in the copilot seat.

Proving Tests. Several commenters suggest that for operators who are switching from part 135 to part 121, the FAA should allow proving tests on revenue flights. Other commenters contend that since the airplanes they are using and the routes they are flying are not changing, the FAA should not require a proving test. Still other commenters state that the FAA's estimate of $437 hourly airplane operating costs was too low. (This rate includes crew, maintenance, and fuel costs.) The commenters' estimates range from $750 to $1,050 per hour versus the FAA's average estimate of $483 per hour for 20-to-30-seat airplanes and $463 per hour for 10-to-19-seat airplanes. Finally, some part 135 operators commented

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that they already meet many of the part 121 requirements and should not have to have a proving test.

FAA Response: For most part 135 operators, the biggest affect the NPRM would have on them would be the establishment of a dispatch system. Thus, for some operators, the FAA could devise tests that would entail only limited in-flight proving tests. This could be done almost entirely from the operator's dispatch center. For the initial upgrade to part 121, the FAA will not require compliance with the initial airplane proving tests requirements of Section 121.163(a) for airplanes already used by the affected commuters in Part 135 operations.

As for the hourly airplane operating cost, some of the commenters provided hourly-charter rates. However, the cost of the rule would not necessitate that operators give up a revenue or charter flight to complete the proving test. Therefore, the cost of the rule would be only the direct operating cost of the airplane based on a direct operating cost rate and not the charter rate. The FAA's estimate was consistent with estimates provided by several airplane manufacturers.

Management Personnel. One commenter says that a number of their management personnel would not meet the new criteria and that they would have to hire all new personnel or a consultant. Other commenters argue that existing personnel should be "grandfathered in" under the final rule. Another commenter says that the requirement for part 121 operators that a director of maintenance have five years of experience within the past five years excludes people who may have not worked for an extended period during a job search.

FAA Response: The FAA contends that most currently employed directors meet the new standards. However, for those directors who do not, section 119.67(a) allows for operators to request deviation for the continued employment of those directors. The FAA anticipates that operators whose directors do not meet the new requirements would request deviation.

In addition, the FAA agrees that the five years experience within five years places an unnecessary burden on those directors who may have extended periods of unemployment within the five year period prior to being hired. Thus, the FAA is changing the requirement to three years of experience in the past six years.

Definition of Commuter Air Carrier. Several commenters disagree with the FAA's proposal to remove the frequency of operation from the definition of a "commuter operations". The existing requirement defines a commuter as one conducting five or more scheduled round-trips per week. This allows on-demand operators to conduct up to four scheduled operations per week. The commenters provide only general comments that the new definition would impose costs.

FAA Response: The FAA agrees with the commenters that the frequency of operations test in part 135 should remain.

6. Benefits

The comments received on the estimated benefits mostly pertained to the FAA's use of a general-accident-rate approach to estimating benefits. The commenters object to the FAA's use of a broad-based accident rate rather than identifying specific historic accidents that the NPRM could have prevented. Other commenters note that the FAA deviated from its usual method of calculating benefits. This method is to identify specific types of accidents (based on the historical record) that would be prevented by a corresponding requirement of the proposed rule. Also, commenters indicate that the commuter accident rate has been declining over the past several years thereby making much of the rule unnecessary. Finally, commenters note that most of the accidents involved pilot error, which is not being addressed by the NPRM.

FAA Response: The FAA agrees that most of the historic accidents involved pilot error. However, many of the pilot error accidents were the result of the pilot's improper response to an emergency situation. An example of this would be an accident where an airplane experiences some mechanical problem or adverse weather and the pilot fails to follow the appropriate corrective procedures to prevent the accident. Even if the accident could not have been prevented, the pilot may have reacted in such a way that the damage or casualties were not mitigated to the extent that they could have been.

The FAA used a general or broad-based accident rate because the scope of the NPRM was broad, encompassing a wide range of safety issues from certification, operations, cabin safety, maintenance, etc. Similarly, the types of accidents the NPRM would prevent are also broad, based on a wide range of probable causes of historic accidents. For most of the accidents, the FAA could not determine if any one requirement of the NPRM alone could have prevented or mitigated the accident. This made it very difficult to divide the various probable causes of the accidents to the various requirements that could have prevented them. Thus, for the NPRM, the FAA contends that a general broad based accident rate is more appropriate.

The FAA agrees that the historic accident rate for part 135 operators has declined. However, that rate is still consistently higher than commuter-type operations under part 121. In the NPRM, the FAA acknowledged that in some respects the part 135 accident rate is higher due to some inherent differences in part 135 and part 121 commuter-type operations. In other respects, the part 135 rate is higher because those operators follow a different and less stringent set of safety rules than part 121. The FAA contends that much of the gap in the accident rate could be closed if all commercial passenger-carrying operators adhered to the higher part 121 standards of safety.

7. Other Areas of Interest

Projected Ticket Prices. Several commenters state that the projected ticket price increases of $1.91 and $.68, respectively for 10-to-19- and 20-to-30-seat airplanes is far off. Commenters from Alaska presented the strongest disapproval of FAA's projected ticket-price estimates.

FAA Response: The FAA's cost estimates of $1.91 and $.68 were not far off because most of the commenters' higher costs claims did not have merit. Except for some commenters from Alaska, the FAA did not receive any direct-cost comments related to these two estimates. Since these two cost estimates were based on the total cost of compliance for the proposed rule, they would only change if there were a change in costs for the commuter rule.

The FAA reviewed all of the cost comments submitted on the proposed rule and rejected the vast majority of them due to the comments' failure to substantiate their claims of higher costs.

In terms of the comments received from Alaskan operators, the FAA agrees that their costs would be higher than $1.91 and $.68, respectively. It is important to note that these projected ticket price increases represent averages over the 10-year period. They are based on the cost of compliance for each of the 10 years, summed over the period, and divided by the number of years. Therefore, if particular operators were to incur disproportionate higher costs, they would be expected to pass those costs on, to the extent possible, in the form of higher ticket prices. Ticket price increases would be highest for all impacted operators during the first two to three years and decrease gradually thereafter.

After accepting some of the cost comments and making adjustments for changes in performance and certain equipment requirements, the commuter rule is estimated to cost $118 million (as opposed to $275 million in the NPRM). Based on this estimate, the average annual per ticket price increase for each of the two airplane-seat categories, over the next 15 years, will be far less than the original estimates.

VIII. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule will generate benefits that justify its costs and is "a significant regulatory action" as defined in the Executive Order. The FAA estimates, however, that the final rule will not have a significant economic impact on a substantial number of small entities. No part of the final rule will constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

A. Sections Without Cost Impacts

Those part 121 sections that the FAA has determined will not impose additional costs on part 135 commuter operators are not described in this summary evaluation. Each of those part 121 sections will not impose costs for one of the following reasons: (1) Current practice is identical or very similar to the new requirement; (2) the new requirement represents minor procedural changes; (3) the section determines general applicability and does not specifically impose any costs; or (4) certain requirements of part 135 would be incorporated into part 121 without change. Those part 121 sections without costs are described in the full evaluation under each of the areas for which they apply. While not shown in this summary evaluation, it is important to note that 10 of the sections in the final rule were identified as having negligible costs. These negligible costs, even when combined, will not be significant.

B. Sections With Cost Impact

The rule will impose costs on part 135 operators with 10-to-30-seat airplanes. The FAA estimates the total cost of the rule will be $117.80 million over the next 15 years in 1994 dollars, with a present value of $75.19 million (7 percent discount rate). The total potential costs for 10-to-19- and 20-to-30-seat airplanes are presented in the following areas:

	10–19 seats	20–30 seats	Total cost	Present value
Operations	$48.32	$24.87	$73.19	$46.18
Maintenance	12.93	5.26	18.19	11.93
Cabin Safety	5.99	5.58	11.57	8.20
Part 119	2.73	0.63	3.36	2.30
Certification	10.39	1.10	11.49	6.58
Total	$80.36	$37.44	$117.80	$75.19

Based on the $80.36 million figure shown above, the FAA estimates that, on average over the next 15 years, the price of a one-way airline ticket will increase by $0.62 for affected operators with 10-to-19-seat airplanes. Similarly, based on the $37.44 million figure, the ticket price will increase by $0.30 for affected operators with 20-to-30-seat airplanes.

It is important to note that the total cost per airplane in each of the first four years of the rule sheds light on the initial compliance costs. These costs per airplane are as follows:

	10-to-19-seat airplanes	20-to-30-seat airplanes
1996	$19,400	$21,900
1997	7,600	6,600
1998	7,000	6,300
1999	7,200	5,900

1. Operations

This section of the regulatory evaluation examines the costs of the changes with regard to operations. Fifteen-year costs for operations requirements will total $73.19 million ($46.18 million, present value). The cost items, by section, are provided below.

Section 121.97: Airports Required Data. Each domestic and flag air carrier must show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. Consideration is given items as size, surface, obstructions, etc. In short, this requirement will ensure that in the event of a single-engine failure each operator's airplane type (regardless of the number of airplanes) can either stop at the end of the runway or, if it continues to fly, can safely clear all of the obstacles in the flight path.

To estimate the potential cost of this requirement, the FAA contacted several commuter operators. According to these operators, the potential cost of compliance is based on performance-obstacle-data analyses for airplane types at particular airports. To ensure that the performance objective will be met, operators are required to make certain that the maximum-allowable-takeoff weight is always achieved under certain temperature conditions. This is done by conducting performance analyses for each airplane type at the airport it intends to operate. To achieve this objective, operators typically hire a contractor to perform obstacle-location and height surveys. The contractor uses the airplane's flight-manual-performance data to assess flap settings and runway-end capability for a particular airport for information related to takeoff-run-acceleration distance, runway length, anti-skid, etc.

The typical contractor fee is $20 per runway. For example, ABC airlines is a commuter operator with 5 types of airplanes that it wishes to operate at airports in 10 cities. Each city has an airport with 10 runways. The operator, however, only intends to use two runways per airport in each of the 10 cities. The cost performing the needed obstacle performance data analyses is $2,000 ($20 per runway ×10 airports ×2 runways per airport ×5 airplane types). While this is a simple example of estimating a fictitious operator's potential cost of compliance, it sheds light on the difficulty of deriving such

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costs reliably. Although reliable information is available on the cost of contractor conducted obstacle-performance-data analyses, the same reliability does not apply to the number of runways or airports commuter operators will use. Potential costs for this requirement cannot be estimated reliably without knowing what airports, runways, and the types of airplanes operators will use. It is for this reason that this section of the evaluation contains no estimate for costs. Despite this situation, the FAA contends that this requirement is an important element in achieving the one-level-of-safety objective.

Section 121.99: Communications Facilities. Currently, this section requires each domestic and flag air carrier to show availability of a two-way air/ground radio communication system at points that will ensure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point-to-point circuits). Each carrier also must show that the system is accessible between each airplane and appropriate dispatch office, and between each airplane and the appropriate ATC unit. In addition, each system must be independent of any other system operated by the United States.

To estimate the potential cost, the FAA contacted several industry sources, including operators and data link service venders. These sources indicated that the least expensive option for most operators would be a voice data link service from an FAA-approved vender. According to Aeronautical Radio, Inc. (ARINC) and several operators with operations specifications for parts 121 and 135 (scheduled), the needed voice-data-link service consists of a monthly access fee of $35 per operator and a fee of $14 per contact. Contact refers to any form of voice communication between the pilot while in flight and the home dispatcher.

If, from a worst case standpoint, none of the current commuters have this access service, the total cost will be the number of affected operators times the monthly access fee of $35 over the next 15 years. This evaluation estimates that the number of commuter operators will range from 63 in 1996 to 73 in 2010. This will result in a total cost of $445 million ($269 million, present value). The contact fee cost can be estimated in a similar manner, though it employs a great deal more of uncertainty because the actual number of contacts each operator will make annually is unknown and usually varies among operators. According to industry sources, there will be a certain percentage of contacts per annual departures for each airplane in an operator's fleet. Based on information contained in the Regional Airlines Association's Annual Report for 1994, each airplane in the U.S. commuter fleet makes an average of 5.68 departures per day or 2,074 annually. The number of airplanes with 10 to 30 seats in the U.S. commuter fleet is projected to range from 950 in 1996 to 1,099 in 2010.

Initially for this evaluation, the FAA assumed at least one contact per departure. Multiplying the 2,074 annual departures times the $14 contact fee gives the total potential contact cost of $445 million ($269 million, present) over the next 15 years. In realistic terms, however, this cost estimate is too high because it does not reflect the actual practice in industry. According to several operators, contacts via ARINC or a similar service would only be made during emergency situations (for example, flight delays, inclement weather, etc.). Within an average radius of 50 nautical miles, contacts can be made directly between the airplane pilot and the home dispatcher, without the aid of an external-communications-voice-data network (e.g., ARINC or a similar service). In flat lands, this communication can be made up to 100 miles, when the dispatcher is located at the hub. In high terrain areas, communication with the home dispatcher would have a radius of less than 50 miles. In emergency situations that arise beyond the average radius of 50 miles, ARINC or similar service would be needed. This would be especially true in remote areas such as the U.S. northern frontier (Montana, Idaho, etc.), Alaska, American Samoa, and Hawaii. This information indicates that frequency of use of ARINC or a similar service may not be as high as originally expected. According to some operators, the likelihood of having at least one contact via ARINC per airplane departure by an operator, on average, could range from 5 to 10 percent. When considering that contacts via ARINC or a similar service beyond the 50-mile radius would only be made in emergency situations, operators, on average, would make contact on 10 percent of their airplane departures. Employing this approach, costs will amount to $44 million ($26 million, present value) over the next 15 years.

In addition to the information above, industry sources contacted indicated that commuter operators with dual or split operations specifications (both parts 121 and 135) already have this capability. These operators (approximately 19) account for over 60 percent of all the airplanes in the U.S. commuter fleet. This scenario will result in estimated costs of $18.9 million ($11.5 million, present value) over the next 15 years. This cost estimate also recognizes that the number of contacts will be lower because pilots typically contact ATC for information related primarily to weather and air traffic delays. Therefore, this evaluation assumes only 10 percent of the commuter airplane departures, by operators without dual operations specifications, will engage in contacts via ARINC or similar service.

Section 121.135—Contents of Manual. This section will require an extensive list of manual contents for operators. Unlike part 135, part 121 requires more detailed instructions to flight and ground personnel, including dispatch procedures, airport information, and approach procedures. The manuals of part 121 operators are, on average, three times as voluminous as those of part 135 operators. Thus, compliance with the final rule will result in major rewrites of manuals. Based on cost information received from industry, affected operators will spend an additional $50,000 on average ($30,000 to $70,000) each for new manuals. This cost estimate multiplied times the number of operators over the next 15 years will total approximately $3.65 million, ($3.28 million, present value). This cost estimate for manuals takes into account additional preparation and distribution requirements.

Section 121.337—Protective Breathing Equipment (PBE) for the Cockpit. This section will require PBE units for persons operating airplanes under part 121. Part 135 has no PBE requirement. While commuter airplanes are typically smaller than airplanes operating under part 121, the accessibility of PBE in the cockpit will provide smoke-and-fumes protection for pilots. The airplane operator is allowed to use fixed equipment such as oxygen masks and smoke goggles at each pilot station. Depending on the present airplane configuration, this may require substantial modifications.

According to FAA's technical personnel, airplanes with 20-to-30 seats already have fixed PBE units for pilot stations in the cockpit for smoke and fume protection but they are not equipped with a portable PBE unit for fire fighting. In terms of operators with 10-to-19-seat airplanes, the FAA is uncertain as to how many part 135 operators are already equipped with PBE (portable or fixed) in the cockpit. As the result of this uncertainty, this evaluation assumes that part 135 operators with 10-to-19-seat airplanes are not currently equipped with PBE in the cockpit. This evaluation also assumes that operators with 20-to-30-seat airplanes do not have portable PBE in the cockpit for firefighting. The installation of fixed PBE in some commuter airplanes could be prohibitively expensive because of complex breathing gas supply requirements. Since portable PBE is much cheaper than fixed PBE, operators with 10-to-19-seat commuter airplanes are assumed to acquire and install portable smoke and fume PBE in the cockpit if not equipped with an oxygen system. Each portable PBE is estimated to cost $400 per unit. In 1996 and subsequent years, operators with 10-to-19-seat airplanes are assumed to install two smoke-and-fumes portable PBE units in the cockpit: one at each of the two pilot stations. Over this same period, operators with 20-to-30-seat airplanes are assumed to install one additional fire-fighting-portable PBE unit in the cockpit. In addition to PBE units, costs are also estimated for the weight penalty of each PBE unit. Each of the cost components multiplied by the number of airplanes in existence, over the next 15 years, will result in an estimated cost of $2.64 million, ($1.81 million, present value).

Section 121.357—Airborne Weather Radar. This section will require part 135 commuters to equip their airplanes with approved weather radar. Currently, section 135.173 requires that operators equip their airplanes with either thunderstorm detection equipment or approved weather radar. However, section 135.175 requires operators of airplanes with 20 to 30 passenger seats to equip their airplanes with weather radar. An estimated 90 percent of all commuter airplanes with 10-to-19 passenger seats already have approved weather radar equipment. Based on this information, the rule will only affect an estimated 10 percent of those operators of airplanes with 10-to-19 seats (excluding commuter operators in Alaska and Hawaii which are not covered by the rule). Because of their unique flying environments, commuter operators in Hawaii and Alaska are not required under current regulations to be equipped with weather radar equipment. Weather radar costs approximately $30,000 per airplane, including installation. Each weather radar unit weighs 25 pounds. This weight translates into an average weight penalty of 87 gallons of fuel per airplane per year. The sum of these cost components multiplied by the number of commuter airplanes over the next 15 years will total $5.08 million ($3.73 million, present value).

Sections 121.593–595: Dispatching authority for domestic and flag air carriers; 121.107: Dispatch centers; 121.533–535: Responsibility for operational control; 121.683: Crewmember and dispatcher record; 121.687: Dispatch release; and other sections that assign specific duties to dispatchers. The rule will require that flights in scheduled commuter operations with 10-to-30 seat airplanes be authorized by a dispatcher. Dispatchers currently are not required under part 135. The FAA assumes that the majority of operators currently certificated only under part 135 do not employ fully qualified dispatchers. These operators primarily employ full-time flight locators. The FAA further assumes that operators conducting both parts 121 and 135 operations currently employ half as many qualified dispatchers as they will need to dispatch all of their flights.

The number of dispatchers was primarily calculated using information provided by Airline Dispatchers Federation (ADF) and industry sources. The ADF estimated that an air carrier with 30 airplanes will need eight or nine dispatchers to staff a 24-hour operation. The FAA used a ratio of eight dispatchers to 30 airplanes of 10 or more passenger seats for each part 135 commuter air carrier. The total number of required dispatchers was computed by multiplying the number of airplanes with 10 or more passenger seats operated by each air carrier by the ratio 8 to 30. However, to take into account that an 8-hour day might not cover all of an air carrier's daily flights, as well as vacation and sick leave, the FAA assumes that each air carrier will need at least two dispatchers. In 1996, 307 dispatchers will be needed to meet the requirements of this rule. In 1997, the number of dispatchers will be 318 and will grow to 353 by 2010.

Unlike in regulatory evaluation for the proposed rule, the cost of compliance for the final rule is based primarily on the median annual salary differential between flight locators and dispatchers. The FAA estimated the median annual salary of a part 135 dispatcher on the hourly wage of $9.10 reported by the ADF. The FAA computed an annual median salary of $23,849 for a dispatcher by multiplying the ADF's hourly wage rate estimate of $9.10 times a fringe benefits factor of 1.26 (or 26 percent) and full-time yearly hours of 2,080 (52 wks. × 40 hrs.). Similarly, the median annual salary of a flight locator was estimated to be $19,656 ($7.50×1.26×2,080). The annual median salary differential was estimated to be $4,193 ($23,849 less $19,656).

Based primarily on information received from FAA technical personnel and industry (operators and ADF's comments on the NPRM), about 67 percent of the required flight dispatchers will come from existing part 135 flight locators and approximately 33 percent of the required dispatchers will be hired from outside by operators. Some of these new hires will be supervisors/trainers. According to several commuter operators contacted recently, they will have to hire dispatchers from outside of their company in order for them to meet the proposed dispatcher requirements. The decision to hire dispatchers from the outside is based primarily on: (1) The need for additional supervisory personnel because of the projected number of inexperienced dispatchers to be hired under part 121 and (2) all of their existing personnel (flight locators and to some flight followers) cannot be trained at once without seriously disrupting daily operations. Thus, of all the new dispatchers projected to be hired over the next 15 years, about 67 percent will be from existing personnel (upgraded from flight locators and some flight followers) with the affected commuter operators and 33 percent from the outside (or non-upgraded employees).

Training costs include 40 hours of initial training, 10 hours of recurrent training, and 5 hours of operating familiarization for dispatchers who authorize turbopropeller flights (as required by sections 121.422(c)(1)(ii), 121.427(c)(4)(ii), and 121.463(a)(2)). Air carriers are assumed to incur the cost of dispatchers' salaries during training. In addition to salary costs, the FAA assumes that the air carrier will incur $1,000 in costs for initial training for each dispatcher and $500 in costs for recurrent training for each dispatcher. The FAA estimates that each carrier will incur $1,000 in administrative costs for each dispatcher hired. The FAA recognizes that during the initial and follow-up training for new dispatchers, operators may incur additional costs in the form of reduced operational efficiency, though to what extent is unknown. However, in view of all available information, the FAA has no indication that such costs would be significant.

Total personnel-related costs were calculated by adding the salary, training, administrative costs, and multiplying by the number of new dispatchers required. The FAA estimates that the dispatcher requirement will cost $42.86 million ($25.9 million, present value) over the next 15 years. Approximately $25.66

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million ($15.40 million, present value) will be borne by operators of 10-to-19-seat airplanes, and the remaining $17.20 million ($10.36 million, present value) will be borne by operators of 20-to-30-seat airplanes.

According to the ADF, most part 135 operators already have facilities and communications equipment that satisfy the dispatch requirements under part 121. Accordingly, the FAA has not included estimates of additional costs attributable to facilities and equipment. The FAA acknowledges that this is a reasonable assessment since all commuter operators exercise some degree of operational control with the use of either flight locating or flight following. The provision of either one of these services requires communication facilities and associated equipment.

Section 121.383: Age-60 Requirement. This section will prohibit operators of airplanes in scheduled service with 10-to-30 passenger seats from using people over the age of 60 as pilots for that service. Currently there is no age restriction for pilots in part 135 operations. Based on data provided by the Air Line Pilots Association (ALPA), the FAA estimates that only about 0.55 percent of part 135 commuter pilots are currently over the age of 60. The FAA estimates that about 45 pilots will be affected if the requirement takes effect in the year 1999. The FAA also estimates, based on ALPA data, that 0.32 percent of current part 135 pilots would reach age 60 in subsequent years and thus about 27 pilots would need to be replaced each year from 1999 on.

The FAA is unable to quantify the costs to operators or to affected pilots. The nature and magnitude of these costs depend upon the alternatives available to each party, which the FAA has been unable to identify in sufficient detail to estimate costs. The FAA believes that the four-year phase-in of this requirement will help to minimize any potential disruptions the rule may cause and that the resulting cost are not likely to be substantial. The FAA also believes that the age 60 requirement is essential to achieve the "one level of safety" goal established by the Secretary of Transportation and that any cost of this requirement is justified by its benefits.

2. Cabin Safety

This section of the regulatory evaluation examines the costs of the changes with regard to cabin safety. Over the next 15 years, costs for cabin safety items will total $11.57 million ($8.20 million, present value). The cost items, by section, are provided below.

Sections 121.183, 121.135, and 121.137—Flight Attendant Manual. These sections will require all flight attendants to have an operations manual. There is no such requirement for flight attendants currently working for part 135 operators. This requirement necessitates preparing such manuals for each flight attendant . Since each flight attendant is required to have a manual, the number of manuals equals the number of flight attendants. The 15-year cost for the preparation, copying, and binding of these manuals is $61,600 ($47,200, present value). The costs involve the preparation of the manual contents and the copying and binding of the finished manual. FAA analysis projects 277 20-to-30-seat airplanes in 20 air carriers in 1996, increasing to 556 such airplanes in 39 air carriers by 2010. Each air carrier will employ a flight attendant supervisor (paid at $24.19 per hour) and a clerical worker (paid at $11.00 per hour) to spend 40 hours each preparing a manual; hence, it will cost each air carrier about $1,400 to prepare a manual. The manual is an average of 100 pages long; at $.10 to copy each page, and $2 to bind each manual, total copying and binding costs is expected to total $12 for each manual. Existing air carriers with new airplanes in the future will have to reproduce a new manual for each airplane. All new air carriers with 20-to-30-seat airplanes, which will total 19 by 2010, will also have to prepare and publish flight attendant manuals.

Section 121.285 and 121.589—Carry-On Baggage. These sections will require affected operators to stow carry-on baggage and develop a program to screen carry-on baggage. Screening, in this context, refers to a visual check to ensure that the carry-on baggage is the proper size and could be stored properly on the airplane; it does not refer to security screening. Currently, part 135 airplanes adhere to substantive baggage stowage procedures, but part 121.589 requires that a crewmember verify that all baggage is properly secured before all doors are closed and the airplane leaves the gate. Some air carriers argue that this requirement will increase time at the gate, reduce airplane utilization time, and thus result in lower revenue to air carriers. The FAA contends that there will be no costs for this procedure due to the minimal time necessary to properly secure carry-on baggage and the fact that airplanes experience routine delays anyway while waiting for clearance on the runway. The cost of the rule will involve the preparation of an addendum to the Operations Specifications in which each carrier will outline its procedures for a baggage program.

The 15-year cost for operators of 10-to-30-seat airplanes to prepare a carry-on baggage addendum to the Operations Specifications will be $20,600 ($16,500, present value). This cost is divided between 10-to-19-seat airplanes ($12,300) and 20-to-30-seat airplanes ($8,300). For each air carrier, this process involves two people—a flight attendant supervisor for 20-to-30-seat airplanes or a crewmember supervisor for 10-to-19-seat airplanes (both paid at $24.19 per hour) and a clerical person ($11.00 per hour) to do the paperwork (average of 8 hours each) and to develop the addendum. Each carrier will bear the cost of developing the addendum for the airplanes in its fleet; it costs each air carrier about $280 for this work. The number of air carriers is projected to rise from 63 in 1996 to 73 in 2010. Finally, the actual baggage screening function will not impose costs because part 135 crewmembers are already required to screen baggage in order to secure it.

Section 121.291(d)—Ditching Demonstration. This section requires new air carriers to conduct a ditching demonstration for each airplane type it proposes to operate in extended overwater operations. There is no similar requirement in part 135.

In the NPRM, the FAA used an estimate that 25 percent of all 10-to-30-seat airplanes conduct extended overwater flights. Upon further examination, this assumption turned out to be too high. Based on a recent survey, the FAA has ascertained that less than 3 percent of all 10-to-19 seat airplanes (14 airplanes) and no 20-to-30-seat airplanes currently conduct overwater flights. The percentages were projected into the future. Based on this paucity of airplanes certificated for extended overwater flights, the FAA tried to estimate the costs for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes using two different methods. In both cases, as will be shown below, the 15-year cost for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes will be zero.

The first method involves taking an aggregate approach and examining the entire fleet using the same methodology used in the NPRM. This involves a demonstration which requires crewmembers to perform ditching evacuation drills and safety procedures including the deployment of one raft. For both 10-to-19- and 20-to-30-seat airplanes the annual incremental change in the number of airplanes times the applicable percentage of airplanes conducting extended overwater flights was zero for every year between 1996 and 2010. Accordingly, using this methodology, the cost will be zero.

The second method involved individually examining those air carriers that this provision affects. The FAA was able to identify those operators that conduct extended overwater operations with 10-to-30-seat airplanes. In every case, the airplanes involved were 10-to-19-seat types. Since the FAA is projecting only a modest increase in such airplanes through 1997 and an overall decline in 10-to-19-seat airplanes after 1997, it is highly unlikely that these operators will seek to increase their fleet size with a new airplane make and model currently not in its fleet that will require a ditching evacuation demonstration. Therefore, there will be no cost.

Both the operator and the FAA incur labor costs to complete a ditching demonstration. The actual demonstration takes about one hour to complete and requires two sets of crews. If an operator should need to conduct a ditching demonstration, the FAA estimates the cost for a 10-to-19 seat airplane at $1,025 per demonstration.

Section 121.309—Medical Kits. This section will require affected commuters to have one medical kit on each 20-to-30-seat airplane for those operators. The FAA has decided to except 10-to-19-seat airplanes from this requirement due to their smaller size and the unlikelihood that a medical professional will be on board or a flight attendant to administer the use of the kit.

The FAA estimates that the 15-year cost for providing medical kits on the 20-to-30-seat airplanes operating under part 135 will be $1.11 million ($674,300, present value). The costs of providing medical kits are composed of acquisition ($200 each) with a 60 percent spares reserve, installation, annual replacement (5 percent), annual maintenance ($20 per kit), a weight penalty (7 pounds per unit), physician consultation expenses ($500 per consultation), engineering and administrative costs, and record keeping (1 hour each time a kit is used at $20.58 per hour).

Acquisition, replacement, and maintenance costs for kits are a function of the number of airplanes. In the first year of the rule, the bulk of the medical kits will be purchased; 443 kits will be needed for 277 airplanes, which takes into account the 60 percent spares reserve. Additional kits are purchased in the future as the airplane fleet increases to 556 airplanes in 2010, and to take into account a 5 percent annual replacement rate. Maintenance costs are calculated based on the number of units that were in use the previous year. The annual maintenance cost equals $8,860 ($20 per kit×443 kits) for all kits (active and spares) in 1997.

Historical data on part 121 airplanes shows one medical emergency for every 124,647 passenger enplanements. The FAA assumes that the medical emergency rate is the same on 20-to-30-seat airplanes since all air carriers serve the same base population. The FAA estimates 70 medical emergencies in 1996 and 77 medical emergencies in 1997. A physician consultation will be required twice a year per air carrier to obtain certain contents, such as prescription drugs, for the medical kits at a cost of $500 per consultation. In 1996, for the 20 projected air carriers, total consultations will total $20,000. Record keeping will be needed per medical emergency; it will take one hour to write up each emergency. At $20.58 per hour, in 1996, record keeping costs will total $1,433.

In the NPRM, the FAA assumed that the medical kits could be secured and installed with industrial strength Velcro tape. The FAA still believes that securing these kits with Velcro (a low cost option, at $20 per kit plus two hours for a Maintenance worker at $20.58 per hour) will meet the 18–G requirement. Also, airplane manufacturers will need to spend $1,500 for each make and model to account for the design and administrative costs involved with securing these kits and to comply with FAA regulations; with 8 makes and models, this totals $12,000. This cost will be spread across the entire population of each make and model.

Section 121.309—First Aid Kit. This section will require 10-to-19-seat airplanes to have at least one first aid kit. Currently, part 135 requires all airplanes with greater than 19 seats to have one kit, but there is no requirement for airplanes with 10 to 19 seats to have a kit.

The 15-year cost of this requirement will be $371,400 ($267,400, present value). The costs of providing first aid kits are composed of acquisition ($70 each based on industry survey) with a 35 percent spares reserve, installation, annual replacement rate (5 percent of total), a weight penalty (4 pounds), engineering and administrative costs, and annual maintenance ($7 per kit). Costs are a function of the 10-to-19-seat airplane count, which ranges from 673 in 1996 to 543 in 2010.

Section 121.309—Halon Fire Extinguisher. This section will require commuter operators of 10-to-30-seat airplanes to replace existing or install fire extinguishers (2 per 10-to-30-seat airplane (one in cabin and one in cockpit) with halon fire extinguishers. For this analysis, the FAA assumes that no part 135 airplanes are currently equipped with halon fire extinguishers. Since part 135 airplanes are already equipped with fire extinguishers prior to complying with part 121 standards, there will be no additional maintenance costs or weight penalties for this equipment.

The 15-year cost of this requirement is $442,900 ($346,500, present value). The cost of this provision will involve purchasing the requisite number of halon fire extinguishers per airplane in 1996, a 13 percent spares reserve ratio, and a 5 percent recharge rate per year after 1996, and up-front administrative costs.

Section 121.549—Flashlight. This section will require commuter operators of 20-to-30-seat airplanes to acquire two additional portable flashlights for use by the flight attendant and the copilot. This section will also require 10-to-19-seat airplanes to acquire one additional portable flashlight for use by the copilot. The analysis assumes that no part 135 airplanes with 10-to-30 seats are equipped with portable flashlights. Based on a recent survey, a portable flashlight costs $5 and 2 D alkaline battery cells cost $2.25.

The 15-year cost of this requirement will be $134,400 ($82,000, present value) broken out between $56,500 for 10-to-19-seat airplanes and $77,900 for 20-to-30-seat airplanes. The cost of this provision will involve purchasing the requisite number of flashlights for airplanes in 1996 and for airplanes added to the fleet through 2010, 10 percent spares, 5 percent replacement rate for every year after 1996, and a weight penalty (1 pound per flashlight). The analysis also assumes that all batteries will be replaced each year.

Section 121.313—Cockpit Key. This section will require all required crewmembers of affected operators to have access to a key for the locking cockpit door. This lock and key requirement will provide additional security for equipment and instruments in the cockpit. This requirement only applies to 20-to-30-seat airplanes. Airplanes with 10 to 19 seats are not required to have locking cockpit doors and will not be affected by this requirement. The rule will require 20-to-30-seat airplanes to retrofit the cockpit door with a lock and copy a key ($1 per key). If an airplane does not have a lock, then the operators will be required to install one.

The 15-year cost is $102,900 ($78,500, present value). The highest yearly cost ($51,245) will occur in 1996 when all of the 277 20-to-30-seat airplanes will have their cockpit doors retrofitted with locks

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and keys. Subsequent yearly costs are based on the annual increase in airplanes. Hence, in 1997, with 30 new airplanes, costs total $5,550 ($90 for new keys + $5,460 for door retrofit costs).

Section 121.333—Portable Oxygen. This section will require airplanes that are certificated to fly above 25,000 feet to have a portable oxygen unit for each flight attendant. This requirement will only apply to commuter airplanes having more than 19 seats. This is because currently no 10-to-19-seat airplanes in commuter operations are certificated to fly above 25,000 feet.; also, 10-to-19-seat airplanes are not required to have flight attendants on board. Of the 249 20-to-30 seat airplanes in 1995, 146 fly over 25,000 feet.

The 15-year cost to equip all affected 20-to-30-seat part 135 airplanes will be $472,900 ($299,200, present value). Costs primarily are composed of $400 per oxygen unit and weight penalty.

Parts 121.333, 121.571, 121.573—Passenger Information. New cards will have to be prepared for 20-to-30-seat airplanes. Industry experience has shown that each card has a lifetime of approximately 3 years. Thus, every year, only one-third of the cards will normally be replaced.

The 15-year cost for the preparation of these cards will be $125,000 ($72,300, present value). Each air carrier having 20-to-30 seat airplanes (20 in 1996 growing to 39 in 2010) will incur preparation costs and will then need to prepare enough passenger information cards for all airplanes in its fleet. Preparation costs involve two people two hours each: a flight attendant supervisor ($24.19 per hour) and a paperwork layout specialist ($20.58 per hour). There will be no training costs, as the flight attendant could read the new passenger information material directly from the manual. Based on an industry survey, the FAA assumes that it costs $1 to print and distribute each information card; a total of 5,353 cards will need to be produced in 1996.

Section 121.337—Protective Breathing Equipment (PBE) for the Cabin. This section requires a fire fighting PBE unit in the cabin on all 20-to-30-seat airplanes. The 15-year costs to supply all 20-to-30-seat airplanes total $936,800 ($595,600, present value). Costs are composed of PBE acquisition ($400 per unit) with a 40 percent spares reserve ratio, installation (two hours of mechanic labor), engineering and administration costs, a 5 percent replacement rate per year, annual maintenance ($40 per unit performed annually), and a weight penalty (5 pounds per unit, one unit per airplane).

Section 121.339—Life Rafts. This section requires all affected commuters conducting extended overwater operations to carry an additional life raft. The 15-year cost to equip the affected airplanes with an additional life raft will be $265,100 ($183,800, present value).

Section 121.340—Flotation Cushions and Life Vests. This section requires operators to provide a flotation cushion or life vest for each passenger seat on each airplane. In 1995, 10-to-19-seat airplanes average 18.66 seats per airplane and 20-to-30-seat airplanes average 28.99 seats per airplane. In this analysis, the FAA assumes that these ratios remain constant into the future.

The 15-year cost for providing flotation cushions or life vests on 10-to-30-seat airplanes will be $7.50 million ($5.53 million, present value) composed of $5.03 million for 10-to-19-seat airplanes and $2.47 million for 20-to-30-seat airplanes. The FAA assumes that 10-to-19-seat airplanes will not be able to install flotation cushions and hence will obtain life vests. In addition, even though some airplanes may have flotation cushions currently installed, the analysis assumes that all operators of 20-to-30-seat airplanes will replace existing seat cushions with flotation cushions. Data from industry sources place the same cost and weight on both items: $50 and 2 pounds each. As the current seat cushions weigh the same amount, there will not be a weight penalty on the 20-to-30-seat airplanes. The total number of life vests and cushions per year is derived by multiplying the number of seats per airplane times the projected airplane count for the 10-to-19-seat and 20-to-30-seat airplane categories.

Section 121.391—Flight Attendants At The Gate. This section requires a flight attendant or other authorized person to stay on the airplane during intermediate stops while passengers are on board. The final rule adopts new section 121.393(a) for 10-to-19 seat airplanes to allow crewmembers (not necessarily a flight attendant) to stay near the airplane.

The only costs imposed on operators, as a result of this rule will be the training and documentation of authorized substitute personnel. Based on information received from FAA technical personnel, there will be no additional crewmember personnel costs for flight attendants or other crewmembers at the gate requirement due to the delay. In the NPRM, the FAA attributed additional compensation costs to operators in the event of a flight delay due to additional time spent by personnel to monitor passengers. FAA technical personnel state that delay costs are a result of the air carrier operations system and not the final rule. The air carrier operations system currently compensates any additional personnel costs due to delays.

Individual operators can comply by having a flight crewmember near the airplane (no cost) or by following one of three scenarios. Under the first scenario, operators could require all passengers to deplane during intermediate stops at the gate. Because deplaning will cause inconvenience to the passengers, air carriers will not use this option all the time. The FAA acknowledges that the deplanement of passengers under this scenario may impose some cost on passengers in the form of inconvenience; however, the FAA is unable to quantify this cost. Under the second scenario, operators can require either a flight attendant or pilot to remain on the airplane at intermediate stops as long as passengers are on board. Generally, the 20-to-30 seat airplanes will use a flight attendant, while 10-to-19 seat airplanes will use a pilot. Under the third scenario, operators can allow a trained, authorized person to stand in for the flight attendant or pilot when coverage is needed due to flight delay. Not all air carriers have authorized personnel at all intermediate stops; this will put a cap on the amount of time that this option will be used. This third scenario will require 24 hours of training for each authorized person ($16.48 per hour) and documentation of personnel records by a clerical worker (paid at $11.00 per hour for one hour of work per record). In the NPRM, the FAA assumed that non-Alaska operators would use the third scenario 20 percent of the time, and the FAA is keeping this percentage. Based on industry sources, the FAA does not believe it is very likely that air carriers in Alaska will have trained substitute personnel waiting at the intermediate stops to be used in the event that the airplane is delayed; thus, the third scenario will not be used. Currently, 88.4 percent of all 20-to-30 seat airplanes and 91.9 percent of all 10-to-19 airplanes fly in areas other than Alaska, and this analysis projects these percentages into the future.

The 15-year cost for training and documentation of authorized personnel in areas other than Alaska on 10-to-30-seat airplanes will be $20,500 (present value, $12,700). This cost is the summation of the 10-to-19-seat airplane cost and the 20-to-30-seat airplane category cost. The cost for the 10-to-19-seat category is derived by multiplying the total 15-year cost for training and documentation ($67,500) by the expected probability of occurrence for the third scenario (20%) and then multiplying by the percentage of the fleet not operating in Alaska (91.9%). The cost for the 20-to-30-seat category is derived by multiplying the total 15-year cost for training and documentation ($45,500) by the expected probability of occurrence for the third scenario (20%) and then multiplying by the percentage of the fleet not operating in Alaska (88.4%).

3. Certification

This section examines the costs of the rule with regards to airplane certification and performance. The total 15-year costs for certification are $11.49 million with a present value of $6.58 million.

Part 121 Subpart I: Performance Criteria. In the NPRM, the FAA had stated its belief that all of the commuter airplanes would be able to meet the part 121 performance standards. Consequently, the only compliance cost would be a manufacturer's one-time recertification cost of $5,000 per airplane. However, after additional FAA analysis and input from several commenters, the FAA realizes that some of these airplanes are not able to meet the part 121 performance standards. Further, there will be an enormous economic impact if the proposed rule were to be adopted for all commuter airplanes.

Airplanes operating under part 121 face stricter performance requirements than those faced by airplanes operating under part 135. Part 135 performance requirements allow greater gross take-off weights for a given runway length and, conversely, allow a shorter runway for a given gross take-off weight than are allowed under part 121 for high altitude and/or high temperature conditions. However, as airplane models' performance capabilities differ, a change in performance requirements has a different effect across airplane models.

For example, the SFAR 41 and predecessor category commuter airplane performance capabilities are such that compliance with the part 121 performance requirements would require them to offload so many passengers or cargo as to become unprofitable to operate in scheduled passenger service. Due to the potential substantial economic loss and the potential safety reduction that would result when many of these airplane operators substitute airplanes with fewer than 10 passenger seats for these airplanes, the FAA decides that they will have 15 years to meet the part 121 performance requirements. By allowing these airplanes to remain in scheduled passenger service, their operators will have a sufficient amount of time to profitably exploit these airplanes, to plan their replacement, and to reduce the potential impact on the resale price in other uses of these airplanes. In addition, this 15-year period will provide an opportunity for manufacturers to develop future airplanes that may be better substitutes than the current available substitute airplane models. Further, this 15-year allowance will reduce the tendency for many of these operators to substitute smaller airplanes with less than 10 seats. These airplanes have an accident rate 14 times that of 10-to-15-seat commuter airplanes. Nevertheless, some of these airplanes will be phased out of scheduled passenger service before they would have been phased out if there were no commuter rule.

Currently, there are 112 pre-SFAR 41 commuter airplanes in part 135 scheduled service. As the FAA was unable to directly obtain the ages of these airplanes, the FAA used a data source to construct an approximate age-profile distribution for each of these airplane models and then assigned the appropriate number of airplanes to individual years based on those distributions. The FAA determines that, due to the increasing maintenance costs as airplanes age, the economic lifespan of these airplanes in scheduled passenger service is 30 years for the Twin Otter and 25 years for all of the other models. On that basis, the FAA projects that, in the absence of the commuter rule, 4 of these airplanes would still be in scheduled passenger service after 15 years.

Finally, these airplanes' market values will fall over time because the airplane ages because it takes an increasing level of expenditure on maintenance and replacement to keep the airplane airworthy for scheduled passenger service. Currently, the average market values for the pre-SFAR 41C airplanes are $500,000 for the Twin Otter and the EMB–110; $350,000 for the Beech 99; and $250,000 for the SA–226 and the Beech 200.

In light of those factors as they relate to the pre-SFAR 41 airplanes, the FAA determines that a one-year compliance date would generate a 60 percent loss in these airplanes' average market values and this percentage loss is reduced by 2.5 percentage points per year for four years (e.g., the second year would have a percentage loss of 57.5 percent, the third year will be 55 percent, etc.) and by 5 percentage points per year thereafter. Thus, the percentage loss of the market value of these airplanes in 15 years will be 5 percent of that airplane's market value. On that basis, the FAA determines that in 15 years these airplanes will incur a reduction in market value of $56,000 ($20,000, present value).

SFAR 41 airplane models would also be affected by the part 121 performance criteria because these criteria are stricter than those in part 135. However, the part 121 performance requirements are very similar to the performance requirements in the ICAO Annex 8 flight operating requirements—the flight operating requirements under which these airplanes must fly in European scheduled service. As all of these airplanes are used in European scheduled service, they can comply with the part 121 performance requirements, but at a potential payload loss. There are some combinations of temperature, airport elevation (pressure altitude) and airport runway length that would require SFAR 41C airplanes either: (1) To unload one, two, or even three passengers from the currently permitted part 135 gross take-off weight; or (2) to operate out of airports with longer runway lengths in order to meet the ICAO Annex 8 performance requirements. For example, the minimum runway length for a Beech 1900–C airplane with a 16,600 lb. maximum takeoff weight (its maximum certificated load) from a pressure altitude of 1,000 ft. (a typical Midwestern airport) at 13 degrees Centigrade (standard day) would be 4,700 ft. under part 135 but would be 5,900 ft. under ICAO Annex 8. From another perspective, in order for a Beech 1900–C to operate under ICAO Annex 8 from an airport with a 4,700 ft. runway, the maximum allowable takeoff weight would be 14,900 lbs. in comparison to the 16,600 lbs. allowable under part 135. One commenter reports that these operating limitations may affect these SFAR 41 airplanes at as many as 65 airports at some point during the year. Nevertheless, for most of the temperatures, airport elevations (pressure altitude), runway lengths, and actual takeoff loads faced by these airplanes, the part 121 performance requirements, ICAO Annex 8 rules, and the part 135 performance requirements would have the same limiting effect on these airplanes' operations.

As a result, the FAA will allow SFAR 41 and predecessor category airplanes 15 years to comply with the part 121 performance requirements. With a 15-year time horizon, operators will be able to organize their schedules (for example, departing high temperature airports earlier in the morning), their airplane/airport pairings, etc. such that the costs in 15 years will be minimal.

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Finally, the commuter category airplanes have the performance capability of meeting part 121 performance requirements. However, the manufacturers will need to document these capabilities for the approved flight manuals. This documentation will require about 20 hours of flight time at a per hour cost of $1,500 (includes instrument calibration, engineering analysis, ground personnel review, etc.) for a total cost of $30,000 per type certificate. In addition, there will be a one-time manufacturer's cost of $5,000 per type certificate to obtain FAA approval for this flight manual revision. Thus, the one-time first-year cost for commuter category airplanes will be $105,000.

Section 121.161(a)—Airplane Limitations: Type of Route. Section 121.161(a) requires that an adequate airport be within one hour flying time at single engine cruising speed along all points of the designated flight route. There is no similar requirement in part 135. This requirement is not expected to affect scheduled operators in the lower 48 states. In the Regulatory Evaluation for the NPRM, the FAA had estimated that 150 round-trip flights in Alaska would be affected annually, with reroutings adding one-half hour to each round-trip, for a total of 75 hours increased flying time. Applying an hourly variable operating cost for Alaskan air carrier commuter category airplanes of $500, the FAA had estimated that annual operating costs would increase $37,500. The 15-year total costs would be $375,000 ($285,000, present value). As no comments were made on the estimated costs of this provision, the FAA affirms its previous calculations. However, carrying them out for 15 years generates a cost of $570,000 ($346,000, present value).

Section 121.191—Engine Out En Route Net Flight Data. Although the FAA had not estimated a compliance cost for this provision in the Regulatory Evaluation for the NPRM, three commenters report that these data do not currently exist for 10-to-19-seat airplane models and there is a cost to developing these data. Based on those comments, the FAA determines that manufacturers' will incur a one-time first-year cost of $1,900 per type certificated model, resulting in a one-time first-year compliance cost of $24,700 for the 13 type-certificated airplanes.

Section 121.305(j)—Third Attitude Indicator. This section requires that a third attitude indicator be retrofitted on all affected airplanes (manufactured before March, 1997) within 15 years of the rule's effective date. Any affected airplane manufactured after March, 1997, must have the device. This device is not required under part 135 or part 23.

In the Regulatory Evaluation for the NPRM, the FAA had estimated that it would cost $16,000 for a retrofit that would add about 5 lbs. of weight while the annual maintenance, inspection, and replacement costs would be about 10 percent of the retrofitting costs. The FAA had also estimated it would cost $8,000 for an installation on a newly-manufactured airplane. The FAA had also determined that a third attitude indicator is standard equipment on the Beech 1900–D. The proposed rule had a 1-year compliance date. On that basis, the FAA had estimated that the 10-year cost would be $19.2 million ($18.4 million, present value).

The FAA estimates that the retrofitting cost will be $16,000 and will add 15 lbs. of weight to the airplane. To eliminate the potential for down time, operators will retrofit this device during one of the airplane's 200-hour scheduled checks. On that basis, the FAA expects that this device will be installed in half of the 58 SFAR 41C airplanes in scheduled passenger service during the 13th year and in the remaining half during the 14th year. On that basis, the FAA determines that the 15-year compliance cost will be $319,000 ($116,000, present value).

Section 121.308—Lavatory Fire Protection. This section requires each lavatory to have a smoke detector system connected to either: (1) a warning light in the flight deck; or (2) a warning light or an aural warning in the passenger cabin that can be readily detected by a flight attendant. Section 121.308(b) requires each lavatory to have a built-in automatic fire extinguisher in each of its disposal receptacles. These requirements are also found in section 25.854 but only for airplanes type certificated after 1991. There are no such provisions in part 135 or part 23.

On that basis, the FAA estimates that for the 20-to-30-seat airplanes, there will be a first-year compliance cost of $78,000 and an annual cost in each succeeding year of $45,000 to $58,000. The 15-year total cost will be $858,000 ($519,000, present value). In the Regulatory Evaluation for the NPRM, the FAA had estimated a 10-year total cost of $263,000 ($206,000, present value).

Section 121.310(l)—Flight Attendant Flashlight Holder. This section requires an emergency flashlight holder be available to the flight attendant. A flashlight holder is needed to keep the flashlight available and within reach of the flight attendant seat. This provision requires retrofitting within one year of the effective date of the rule. The FAA had not estimated any compliance cost for the flashlight holder in the Regulatory Evaluation for the NPRM. However, after additional analysis, the FAA found that there will be a per airplane cost of $50 for a retrofit and $25 for an installation on a newly-manufactured airplane. It will increase the airplane's weight by 2 lbs. In addition, there will be a one-time engineering design, development, and FAA approval cost of $250 for each type certificated model. As there are no flight attendants in 10-to-19-seat airplanes, no flight attendant flashlight will be required and there will be no compliance cost for those airplanes. For 20-to-30-seat airplanes, the first-year cost will be $42,000 and the annual cost thereafter will be between $2,000 and $6,000. The 15-year total cost will be $88,000 ($68,000, present value).

Section 121.312(b)—Passenger Seat Cushion Fire Blocking Materials. This section requires that 10-to-30-seat airplane seat cushions comply with the fire protection standards in Section 25.853(b) within 15 years. The proposed rule had allowed a two-year compliance period with an option for two additional years if there were demonstrated compliance difficulties.

In the Regulatory Evaluation for the NPRM, the FAA had assumed that this provision would affect only the 10-to-19-seat airplanes because the 20-to-30-seat airplanes are type-certificated under part 25, which requires fire-blocked seats for airplanes type-certificated after 1991. As those airplanes are used in both part 121 and part 135 service, the FAA believed that they have already been retrofitted and are being manufactured with fire blocking cushions. As there were no comments to the contrary, the FAA has retained that assumption.

In the Regulatory Evaluation for the NPRM for 10-to-19-seat airplanes, the FAA had estimated that it would cost $20,000 for a retrofit, $5,000 for installation on newly-manufactured airplanes, and fire blocking would add 2 lbs. per seat cushion. In addition, the FAA had believed that the incremental compliance costs from replacing a fire-blocked cushion with another fire-blocked cushion (due to normal wear and tear) would be only due to the difference in the costs of the fire-blocking material, which was estimated to be $5,000. There would be no incremental labor costs because it would take as long to replace a fire-blocked cushion with a fire-blocked cushion as it would take to replace a non-fire-blocked cushion with a non-fire-blocked cushion. The FAA had also estimated that 10 percent of the 10-to-19-seat airplanes have fire blocked seats because they are offered as an option on currently manufactured models. Further, the FAA had estimated that it would cost $50,000 for engineering, developing, testing, and documenting the results for FAA approval for those airplanes no longer in production. Finally, allowing operators four years to comply means that they can schedule this retrofitting to fit into the normal cushion reupholstery schedule. Consequently, the existing cushions would not have been prematurely replaced before they would have been replaced due to normal wear and tear.

Based on information received from industry, the FAA estimates that the average retrofitting cost (weighted by the number of each type of airplane model in the existing fleet) will be $21,500 and the average new-installation cost (weighted by the number of new airplanes projected to be sold by each manufacturer) will be $4,875. The average weight of 38 lbs. (for a 19-seat airplane) results in a yearly per airplane fuel cost of $105. In addition, an industry source reports that airplane operators normally reupholster their seat cushions every four years. Further, the FAA estimates that there will be no engineering costs for current commuter category airplanes because all of the manufacturers offer the fire blocked seat cushions as an option and the engineering and FAA-approval costs have already been incurred. However, the FAA revises its engineering costs for each out-of-production airplane model from $10,000 to $5,000 because there are a sufficient number of fabrics that have been approved so that each manufacturer will not have to completely reengineer its seats.

In response to the increase in time (from 4 years to 15 years) to comply with the rule, the FAA assumes that no airplane that will be withdrawn from scheduled-passenger service during those 15 years will be retrofitted with fire-blocking-seat-cushion materials. Further, an operator of an existing airplane that will be employed in scheduled passenger service beyond the 15-year period will wait until the last moment (13 to 14 years) before performing the retrofit. Based on industry statements, commuter-category airplanes are being built with the expectation of a 25-to-30-year lifespan. Also based on industry statements, the initial cost (plus one or two cushion reupholsteries) is less than or about the same as a retrofit 10 or fewer years in the future. The FAA anticipates that beginning in 5 years, operators will only purchase new airplanes that have factory-installed-fire-blocked seat cushions. Over time, the compliance costs will increase because a greater number of these airplanes will carry the extra 38 lbs. of weight. On that basis, the annual compliance costs will begin at $150,000 in the sixth year after the effective date and increase to $1.25 million by the 13th year. The 15-year total will be $5.88 million ($2.55 million, present value).

Section 121.317(b)—Fasten Seat Belt Lighted Sign. This section requires that there be a lighted "fasten seat belt" sign that can be controlled by the pilot. In the Regulatory Evaluation of the Proposed Rule, the FAA had not estimated any compliance costs because it was believed that affected airplanes had these lighted signs. Based primarily on information received from industry, the FAA estimates that the total 15-year cost for the 2 lb. device will be $522,000 ($269,000, present value).

Section 121.342—Pitot Heat Indication System. This section requires all affected airplanes, within 4 years of the rule's effective date, to have a pitot heat indication system that indicates to the flight crew whether or not the pitot heating system is operating. Section 23.1323 requires a pitot heat system for most commuter category airplanes, but there are no requirements for a heat indication system.

In the Regulatory Evaluation for the NPRM, the FAA estimated a per airplane cost of $500 for a retrofit and $250 for installation on a newly-manufactured airplane. The FAA did not estimate a weight penalty or costs for inspection, maintenance, and repair, but it had estimated a one-time manufacturer cost of $10,000 for initial engineering design, testing, and documentation for FAA approval. On that basis, the FAA had estimated that the compliance cost during each of the first four years would be $280,000 and $10,000 per year thereafter. The 10-year total costs were estimated to be $1.184 million or $993,000, present value.

After additional analysis, the FAA is persuaded that its initial cost estimates need revision. Based on its analysis of the technology required to install these devices, the FAA determines that there is a per airplane cost of $4,000 for a retrofit and $2,000 for installation in a newly-manufactured airplane. However, the number of airplanes expected to be sold by the manufacturer who reported this device is standard equipment is subtracted from the expected number of newly-manufactured airplanes that will need to install this device. In addition, the associated equipment and wiring will add 5 lbs. to the airplane. Finally, there will be a $10,000 one-time cost to engineer, design, test, and obtain FAA approval for the manufacturer of each type certificate.

On that basis, the annual costs in each of the first 4 years will be between $515,000 and $535,000 and the annual costs in each year thereafter will be between $17,000 and $23,000. The 15-year total costs will be $2.29 million ($1.87 million, present value).

Section 121.349(c)—Distance Measuring Equipment. This section requires at least one approved distance measuring equipment (DME) unit within 15 months of the final rule publication date for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top. The FAA had estimated no compliance costs for this provision and there were no comments on this provision. After additional analysis, however, the FAA determines that some airplanes are affected by this requirement.

Based on the 1994 AOPA Pilot General Aviation Aircraft Directory and Avionics Directory and Buyer's Guide, the FAA estimates that the average price of a 25 lb. DME for an airplane is $7,000 and it will cost another $7,000 to retrofit for a total cost of $14,000. The FAA General Aviation and Air Taxi Activity and Avionics Survey for 1993 reports that 3.1 percent of the turboprops in service (twenty-three 10-to-19-seat airplanes and ten 20-to-30-seat airplanes) do not have this device but that all newly-manufactured airplanes will have this device installed. On that basis, the FAA estimates that the first-year-compliance cost is $434,000 ($294,000 for 10-to-19-seat airplanes and $140,000 for 20-to-30-seat airplanes) and the 15-year-compliance cost is $452,000 of which $303,000 is for 10-to-19-seat airplanes and $149,000 is for 20-to-30-seat airplanes ($418,000, present value of which $281,000 is for 10-to-19-seat airplanes and $137,000 is for 20-to-30-seat airplanes).

4. Maintenance

The FAA estimates that over the 15-year period, the total cost of compliance for the relevant maintenance sections affected by the final rule will amount to an estimated $18.18 million ($11.92 million, present value). A discussion of the individual maintenance costs is presented below.

Section 121.361 Applicability. The final rule requires all affected commuter operators to have an airplane maintenance program that is appropriate for part 121 operations. All part 135 commuters currently operating

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under a part 135 continuous airworthiness maintenance program (CAMP) will be required to revise and possibly upgrade their programs in accordance with the new part 121 standards. Currently, commuter operators of airplane type-certificated with a passenger seating configuration of 10 seats or more operate under a CAMP as specified in section 135.411(a)(2). Most differences among the respective part 135 operators' CAMP' arise from the varying complexity of the different airplanes, not solely from the type of operation. Therefore, the only new requirement will be to revise and possibly upgrade part 135 operators' existing CAMP's, not to develop entirely new maintenance programs.

The FAA estimates the one-time total compliance cost of the maintenance applicability section is $104,000. Of this total, $63,000 will be incurred by operators of 10-to-19-seat airplanes and $41,000 will be borne by operators of 20-to-30-seat airplanes. The FAA assumes, based on information received from its technical personnel, that an average of 80 hours will be required of each affected operator's maintenance shop foreman to review an operators' CAMP to ensure compliance with the final rule. Assuming a loaded hourly wage of $20.58 for a maintenance foreman, the one-time cost estimate for each operator will be approximately $1,650 (80×$20.58).

Section 121.377 Maintenance And Preventive Maintenance Personnel Duty Time Limitations. The final rule will require all commuter operators to adhere to the part 121 limitation of time that maintenance and preventive maintenance personnel can be required to remain on duty. Section 121.377 requires maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any one calendar month. Maintenance and preventive maintenance personnel employed by part 135 operators have no such duty time limitation.

The FAA maintained in the NPRM that simple adjustments in work scheduling or duty requirements of maintenance personnel were on-going costs of doing business which would not be affected by the commuter rule. Furthermore, the FAA held that the existence of union work rules, Department of Labor regulations and the generally accepted notion of a "day of rest" would be sufficient to limit the amount of time that part 135 maintenance and preventive maintenance personnel remained on duty. The FAA, therefore, did not estimate any incremental costs associated with this section, and treated it as one not contributing to the total maintenance costs.

For the final rule, in considering the unique operating environment of Alaska, the FAA has determined that imposing the requirements of the maintenance and preventive-maintenance-personnel-duty-time limitations for part 121 operators onto part 135 operators will be a cost factor. The cost for the Alaskan operators is $312,000 per year for all Alaskan 10-to-19-seat airplane operators. This cost estimate was provided by the Alaskan Air Carriers Association (AACA) and adopted by the FAA for this analysis. For the remaining operators, the annual cost is an estimated 80 hours per year at $20.44 per hour for the maintenance foreman to perform the additional scheduling necessary to comply with the rule. The FAA estimates that a maintenance foreman will spend approximately 80 additional hours per year to meet the part 121 standards. Thus, the cost for non-Alaskan 10-to-19-seat operators in 1996 will be 23 operators × $20.58 × 80 hours or $37,870. For 20-to-30-seat seat operators, the cost in 1996 will be 25 operators × $20.58 × 80 hours or $41,000. The calculations would be the same in subsequent years.

Over the 15-year period, the total cost imposed due to the new duty-time-limitation requirement will be approximately $6.02 million ($3.65 million, present value). Most of this cost, $4.68 million, falls on Alaskan part 135 operators of 10-to-19-seat airplanes. This disproportionate amount reflects the probable added labor requirements of Alaskan operators owing to the uniqueness of the Alaskan operating environment.

Section 121.380 Maintenance Recording Requirements. This section provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. It further specifies the length of time records must be retained and the requirements for records to be transferred with the airplane at the time the airplane is sold. Section 121.380a, Transfer Of Maintenance Records, develops the transfer of records in more detail. It requires the certificate holder to transfer certain maintenance records to the purchaser, at the time of sale, in either plain language or coded form which provides for the preservation and retrieval of information. The section ensures that a new owner receives all records that are to be maintained by an operator as required under section 121.380.

In the NPRM, the FAA maintained that because section 135.439 was essentially identical to 121.380, there would be minimal new recordkeeping requirements imposed on part 135 operators and thus, assumed no incremental costs would result from changes to this section. The FAA also maintained that there would be no incremental cost impact resulting from changes to part 121.380a. Upon review of the proposal and subsequent comments received, the FAA has determined that the merging of the recordkeeping requirements of sections 121.380 and 135.439 brought on by the commuter rule will involve incremental administrative costs. The FAA therefore, has revised its NPRM position of no costs, and estimated the administrative costs for the new requirements incorporated in the changes to sections 121.380, 121.380a and 135.439.

The cost was derived from averaging the total recording cost for Alaskan commuter airplanes as provided by the AACA and applied to the total 10-to-19-seat airplane fleet. The AACA estimated the total first-year cost for Alaska operators to be $156,000. This was divided by the number of 10-to-19-seat airplanes in Alaska (44) for an average cost of $3,545 per airplane. This was then multiplied by the total number of airplanes in the 1996 U.S. fleet. In 1996, the number of airplanes will be 629 (673–44), 44, and 277 for 10-to-19-seat non-Alaska airplanes, 10-to-19-seat Alaska airplanes, and 20-to-30-seat airplanes respectively. For subsequent years, the additional reporting cost will be $26,000 for the 10-to-19-seat airplanes in Alaska. The FAA divided that cost by the number of Alaskan airplanes (44) and then multiplied it by the total U.S. fleet. Thus, in 1997 the fleet count is 639 (683–44) 10-to-19-seat non-Alaska airplanes and 307 20-to-30-seat airplanes. The total costs for 1997 are $26,000 for Alaska, $377,590 ($26,000/44×639) for 10-to-19-seat non-Alaska, and $181,409 ($26,000/44×307) for 20-to-30-seat airplanes. The same procedure is used for the remaining years. The total cost imposed on operators of part 135 airplanes due to the additional recordkeeping required to merge parts 121 and 135 maintenance recording requirements is approximately $11.5 million ($7.8 million, present value) for the 15-year period.

As a final point, this rule will impose costs on some part 121 operators by requiring them to maintain information on engine and propeller time in service as specified in section 135.439/121.380.

The FAA concurs with a commenter's objection that for the few operators of older, part 121 propeller-driven airplanes, this will necessitate a substantial search-cost for historical records. In this instance the costs will not be borne by part 135 operators who, for the most part, utilize propeller-driven airplanes, but rather, by a few part 121 operators who do not utilize jet-driven airplanes. However, in the final rule, the FAA will make this requirement prospective only; those part 121 operators of propeller-driven airplanes will be required to maintain information on engine and propeller time in service only from the date of the first overhaul of the engine or propeller as applicable. Thus, this new requirement should only impose negligible costs on these part 121 operators.

5. Part 119

Part 119 is a new part that consolidates the certification and operations specifications requirements for persons who operate under parts 121 and 135. Most of these regulations are currently in SFAR 38–2; therefore, moving them to part 119 would not impose any additional cost. However, some sections currently under parts 121 and 135 would be moved to part 119. The costs imposed on affected operators by those sections are presented below. Over 15 years, the costs of these provisions are estimated to be $3.36 million ($2.30 million, present value).

Sections 119.33(c) and 121.163—Proving Tests. When an operator changes the type of operation it conducts or purchases an airplane that is new to a certain type of operation, that operator must undertake a proving test. A proving test generally consists of a non-passenger flight in which the operator proves that it is capable of safely conducting that type of operation or airplane. Going from a part 135 operation to a part 121 operation would be a change in operation and be subject to a proving test. Under the final rule, there would be two costs associated with proving tests—initial and recurring. The initial cost would be proving tests for upgrading the existing part 135 fleet that would become part 121. The recurring costs would be for any future operational or airplane changes that would normally require a proving test (as required by the existing rule).

The current regulation prescribes 50 hours of flight for a part 121 (section 121.163(b)(1)) proving test. This is the number that part 135 operators switching to part 121 will be subject to. However, the current rule also allows for deviations from the 50-hour requirement. A sample of FAA records on proving tests shows that, since 1991, there has been a wide range of hours actually flown for proving tests. This is because the amount that the operator is allowed to deviate from the prescribed number of hours is based on what that operator requests and on what the FAA will allow. However, based on the above sample, the FAA assumes for the purposes of this analysis that the average deviation will be down to a total of 15 hours.

The FAA recognizes that some operators who currently operate under a split certificate already have experience operating under part 121. Also, some part 135 operators already voluntarily comply with part 121 requirements for much of their operation. To the extent practicable, for these and possibly other operators, the FAA will not require a proving flight. However, some operators who will have to make significant changes to the operation as a result of the final rule will have to have a proving flight. The FAA anticipates that 50 percent of the estimated number of proving tests will not have to include a proving flight. The only cost to these operators will be the preparation and completion of the test for the dispatch system. For this analysis, the FAA assumes three days preparation for the manager, maintenance director, and secretary.

For those operators who must take the proving test, the cost will be the same three days preparation plus the 15 hours of flight time. The FAA estimates that the 15 hours of proving test flights will cost the operator approximately $8,560 for a 20-to-30-seat airplane and $7,000 for a 10-to-19-seat airplane. The difference in cost is due to the flight attendant being on board in the 20-to-30-seat airplanes.

The FAA estimates that there will be 90 proving tests necessary in 1996 to bring the existing fleet up to part 121 standards (assuming a proving test for each type of airplane for each part 135 carrier affected by the final rule.) The cost to the 60 part 135 operators in 1996 to complete the initial 90 proving tests would be approximately $393,660 ($367,900, present value). Of this cost, approximately $128,300 would be incurred by operators with 20-to-30-seat airplanes and $265,360 by operators with 10-to-19-seat airplanes.

The recurring costs would accrue over the next 15 years as affected operators conduct part 121 proving tests instead of part 135 proving tests. If the prescribed number of hours for part 135 and part 121 operators is 25 and 50 respectively, and the average deviation is 50 percent, then the difference in hours would be 13 [(50–25) × .5]. Also, the FAA found from the survey of its records that, on average, operators conduct one proving test every four years, which equates to approximately 3 tests over the 15-year period.

The average number of operators in any given year over the next 15 years is 68. Based on this, the FAA will conduct approximately 14 ((68 operators × 3 tests)/15 years) proving tests annually: 8 for 10-to-19-seat airplanes and 6 for 20-to-30-seat airplanes. The FAA estimates that the increased cost of a proving test per part 135 operator would be $6,050 for a 20-to-30-seat airplane and $5,800 for a 10-to-19-seat airplane. For all affected operators, the final rule will impose approximately $82,700 annually in additional costs for proving tests. Over the next 15 years, the total recurring cost of this provision would be $1.24 million ($0.75 million, present value).

Sections 119.65, 119.67, 119.69, and 119.71—Directors of Maintenance, Operations, and Safety; Chief Inspector; and Chief Pilot. The existing requirements for establishing and the eligibility of management personnel only apply to part 135 operators (excluding those that use only one pilot) and supplemental and commercial part 121 operators. The final rule will expand the applicability of the requirement for management positions to all part 121 operators as well. However, the FAA contends that part 121 operators, by the very nature and size of their operations, already have personnel in these positions (or the equivalent of these positions). Thus, there will be no cost to incorporate part 121 operators under these requirements.

There are three other potential cost areas for the management positions required in the final rule. First, is the new recency of experience for first time Directors of Operations and Maintenance. Second, is the new Director of Safety position for both part 121 and part 135 operators. Third is the Chief Inspector, which will be a new position for those part 135 commuters who upgrade to part 121.

Recency of Experience. The final rule will impose new recency of experience requirements for those Director of Maintenance and Operations candidates who will have that title for the first time. In addition to other requirements, these candidates will have to have three years of experience (within their respective fields) within the past six years to be eligible for a Director position. This will ensure that those candidates who do not have any experience as a Director at least have

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recent on-the-job experience in their respective fields.

The potential cost of the recency of experience requirement is the reduction at any given time in the number of first-time candidates available for these positions. This is because some first-time candidates may have to acquire additional years of experience if they do not have it at the time that they are being considered for a Director position. It is extremely difficult to project how many future first-time Director candidates will be affected by the final rule. However, this will have little if any effect on an operator's ability to find potential applicants to fill a Director position. This is for three reasons. First, the FAA contends that the number of potential candidates who do not meet the recency of experience requirement both now and in the future is small in relation to the total number of potential applicants for a Director position. Second, the FAA contends that the supply of existing personnel who would qualify for a Director position, plus those who are already a Director, is sufficient to keep wages from increasing as a result of the new qualification requirements. Further, the new requirements are not substantive enough to cause wages to increase. Third, operators can always request authorization from the FAA to hire an applicant who has comparable experience. For the initial upgrade to part 121, the FAA will approve these authorizations to the extent practicable. Thus, the FAA contends that the final rule will not impose a hardship on operators in having enough potential qualified applicants to fill the Director positions.

Director of Safety. This is a new position for part 121 but the FAA contends that this position will impose little if any additional cost to operators. The rationale for this assessment is based on two factors: (1) There are no eligibility requirements for the Director of Safety so virtually anyone can be designated as such; and (2) most operators already have a Director of Safety or the equivalent.

Chief Inspector. For existing part 135 commuter operators who will now operate under part 121, the position of Chief Inspector will be new. The FAA contends that this requirement will impose little if any additional cost. Many part 135 operators already have personnel that are the equivalent of a Chief Inspector. The operator may petition the Administrator to combine positions or request authorization to appoint someone who has comparable experience. For the initial upgrade to part 121, the FAA will consider these requests on a case-by-case basis.

On-Demand Operators Conducting Scheduled Operations. Under part 135, on-demand operators will be allowed to conduct up to four scheduled operations a week and still remain an on-demand operator. There is no such allowance in part 121. Thus, if a current on-demand operator conducts even one scheduled passenger flight with a 10-to-30-seat airplane, then that airplane must be upgraded to and the operation flown under part 121. The FAA has identified 5 airplanes in the current fleet with 10 to 19 seats that are used by on-demand operators in scheduled service. To bring these airplanes up to the part 121 standards will cost approximately $1.73 million ($1.18 million, present value). The components behind this estimate are provided below (explanations of these costs components are provided in their respective sections).

C. Benefits

The commuter segment of the U.S. airline industry is a vital and growing component of the nation's air transportation system. Commuter airplanes transport passengers between small communities and large hubs, and they play a vital role in transporting passengers over short distances, regardless of airport or community size. In many cases, they are a community's only convenient link to the rest of the nation's air transportation system.

Over the past 15 years, the size of the commuter industry has grown considerably. In 1993, for example, enplanements for commuter carriers grew by over 10 percent, far outpacing the one percent growth of enplanements on larger carriers. Forecasts of commuter industry activity give every indication that growth in this segment of the airline industry will continue to be robust during the next 15 years.

Many commuter carriers operate in partnership with large air carriers, providing transportation to and from hub locations that would be unprofitable with larger airplanes. These partnerships frequently operate within a seamless ticketing environment, in which the large carrier issues a ticket that often includes a trip segment on a commuter airplane. As these relationships between large carriers and commuter airlines continue to grow, it will become more common for the average long distance flyer to spend at least one flight segment on commuter airplanes.

The combined effect of a continuing growth in the commuter industry and the ever growing relationship between large carriers and their commuter counterparts will progressively blur the distinction between commuter carriers and larger air carriers. In other words, passengers will no longer readily distinguish between one type of carrier and another, but will simply view each component as a part of the nation's air transportation system. It is imperative, therefore, that a uniform level of safety be afforded the traveling public throughout the system. Air carrier accidents, perhaps more than accidents in any other mode, affect public confidence in air transportation.

What is the public value or benefit of air transportation? It would be nearly impossible to calculate something that has been so widely accepted in the American lifestyle. One figure that represents the very least value the public places on traveling by air is the annual amount the public spends on air transportation, or in other words, annual air carrier revenues. In 1994, the FAA estimated that amount to be $88 billion. If public confidence wavers by only one percent, annual total air carrier revenues would be reduced by $880 million, which is a minimum dollar estimate of the cost that would be experienced by the public in terms of being denied a fast, safe means of transportation.

Some studies have been done to measure the effect of change in public confidence. In 1987, the FAA studied the impact of terrorist acts on air travel on North Atlantic routes. The study investigated the relationship between the amount of media attention given to a specific terrorist act and reductions in air traffic. The study concluded that there was a measurable, short-term, carrier-specific correlation between the two. Following a well-publicized incident, ridership on the carrier experiencing the incident dropped by as much as 50 percent for a few months. In another instance, a major air carrier reported that two catastrophic accidents in 1994 resulted in a half-year-revenue loss to that carrier of $150 million. These examples relate to carriers operating large airplanes, but they illustrate how the prevailing level of public confidence can affect the public use of air transportation.

It is clear that the American public demands a high degree of safety in air travel. This is manifested by the large amount of media attention given to the rare accidents that do occur, by the short term reductions in revenues carriers have experienced following accidents or acts of terrorism, and by the pressure placed on the FAA as the regulator of air safety to further reduce accident rates.

The FAA is confident that the final rule will further reduce air carrier accidents. The final rule will require dozens of changes to the way that smaller air carrier airplanes are built, maintained, and operated—all aimed at eliminating or at the very least minimizing the differences between small and large airplanes and the way they operate. Many of these changes result in small, unmeasurable safety improvements when examined in isolation, but taken together result in a measurable difference. That measurable difference ultimately is to bring commuter accident rates down to the very low level of that of the larger carriers. That rate is nearing the point of rare, random events.

What follows is a quantified analysis of the potential benefits of the final rule based on the assumption that it will reduce the number of commuter airplane accidents and (possibly mitigate the severity of those casualties in accidents that will occur). The analysis finds that measurable potential benefits substantially exceed the cost of the final rule, but the FAA believes that the larger but unquantifiable benefit is continued public confidence in air transportation.

Safety Benefits From Preventing Accidents. The intent of the Commuter Rule is to close, to the extent practicable, the accident rate gap between airplanes with 10 to 30 seats currently operating under part 135 and airplanes with 31 to 60 seats operating under part 121. The smaller "commuter-type" part 121 airplanes were used for comparison because their operations best resemble those of commuters than do larger part 121 airplanes. If the accident rate gap were completely closed, the FAA estimates that up to 67 accidents involving airplanes with 10 to 30 seats could be prevented from 1996 to 2010. This would generate a benefit of $588 million, with a present value of $350 million.

Typically, the FAA estimates aviation safety benefits based on rates of specific types of accidents that the rulemaking would prevent in the future. For this rulemaking, however, the FAA used a more broad-based accident rate. This approach was adopted because the scope of the various components of the rule covers such a wide range, and many of those components are interrelated.

To estimate the benefits of the rule, the FAA assembled a database of applicable part 121 and part 135 accidents between 1985 and 1994 using National Transportation Safety Board (NTSB) accident reports. These accidents were categorized by the passenger seating configuration of the airplanes involved—10 to 19, 20 to 30, and 31 to 60. The FAA then divided the annual number of accidents by the annual number of scheduled departures for each group to derive the annual accident rates. After calculating the 10-year historical average accident rates, the FAA took the difference in the accident rates between the part 135 airplanes and the part 121 airplanes. The difference in rates was then multiplied by the projected annual number of scheduled part 135 departures of airplanes with 10 to 19 seats and 20 to 30 seats from 1996 to 2010. Each step of this estimation procedure is described in detail below.

The Accident Database. The NTSB defines an accident as an occurrence associated with the operation of an airplane which takes place between the time any person boards the airplane with the intention of flight and the time such that persons have disembarked, and in which any person suffers death or serious injury or in which the airplane receives substantial damage. The FAA looked at only those accidents for which the final rule could have an effect. Accidents in which the probable cause was undetermined, the result of turbulence, or was related to the ground crew were not included in the database. The FAA also excluded midair collisions, since the current airspace rules (Mode C, TCAS, positively-controlled-airspace areas, etc.) would not be affected by the final rule. Finally, the FAA excluded accidents involving unscheduled and all-cargo operations.

Annual Accident Rate. Based on the annual number of accidents from the database and the annual number of departures, the FAA estimated the accident rates for 10-to-30-seat airplanes operating under part 135 and 31-to-60-seat airplanes operating under part 121. From 1986 to 1994, the FAA found that part 135 airplanes with 10 to 19 seats were involved in accidents at a rate of .32 accidents per 100,000 departures and airplanes with 20 to 30 seats occurred at an average rate of .17 accidents per 100,000. Accidents involving part 121 airplanes with 31 to 60 seats had an average accident rate of .13 accidents per 100,000 departures.

The Average Cost of a Part 135 Accident. From the accident database discussed above, the FAA found that the average part 135 accident involving 10-to-19- and 20-to-30-seat airplanes cost $6.3 million and $24.6 million, respectively.

Estimating Potential Benefits. To estimate the benefit of closing the accident-rate gap between part 135 and part 121 airplanes, the FAA took the difference in average accident rates for 10-to-30-seat part 135 airplanes and 31-to-60-seat part 121 airplanes and multiplied them by the projected annual number of departures for 10-to-30-seat part 135 airplanes. This gives the projected annual number of accidents that the final rule could prevent. The FAA estimates that, from 1996 to 2010, 67 accidents could be prevented. Multiplying the number of potential accidents by the average cost of a part 135 accident ($6.3 million for 10-to-19-seat airplanes or $24.6 million for 20-to-30-seat airplanes) results in total potential benefits of $588.2 million ($350 million, present value).

The extent to which the accident rate gap closes will determine how much of the $350 million in potential benefits is actually achieved. Based on the scope of the final rule, the FAA anticipates a significant closing of this gap.

D. Comparison of Costs and Benefits

Over the next 15 years, the Commuter Rule will impose total costs of $117.80 million, with a present value of $75.19 million. Of the total costs, $80.36 million will be for airplanes with 10 to 19 seats and $37.44 million will be for airplanes with 20 to 30 seats.

The benefit of the Commuter Rule is its contribution to closing the accident rate gap between part 121 and existing part 135 commuter operators. The FAA estimates that closing this gap will prevent 67 accidents over the 15 year period for a total present value benefit of $350 million. It is not certain how much of the accident-rate gap the final rule will close. In view of this uncertainty, the FAA contends that the final rule will be cost-beneficial because it will have to be only 21 percent effective for costs to equal benefits. Given the broad scope of the rule, the FAA anticipates that, at a minimum, the rule will be this effective and more.

One additional observation needs to be made. The FAA considers the Commuter Rule to be complementary to the Air Carrier Training Program final rule and the Flight Crewmember Duty Period Limitations and Rest Requirements NPRM. A common goal of these three rulemaking actions is to prevent the 67 accidents that represent the accident-rate gap between part 135 commuters and part 121 operators.

In terms of the accident-rate gap, the benefits of the Commuter Rule are a part of this total benefit. However, it is not possible to allocate that benefit among the three rulemaking actions because it is difficult to determine which rulemaking action would prevent a given accident. For example, individual accidents may be prevented by any one

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or a combination of several factors such as:

- Preventing the occurrence of a problem with an airplane in the first place (Commuter rule);
- Providing more or better crew training to properly respond to the problem after it occurs (Air Carrier Training Program rule);
- Providing a dispatcher to help identify a problem before it becomes a potential accident (Commuter rule); and
- Ensuring pilots are not over-worked and tired (The Rest and Duty NPRM).

The Commuter Rule only addresses a portion of the necessary requirements to close the accident-rate gap. If the $75 million present value cost of this rule is combined with the $51 million in cost-savings of the Flight and Duty NPRM, and the cost of Pilot Training, $34 million, the total cost, $58 million ($34 −$51+$75), is still less than the estimated $350 million benefit of eliminating the accident-rate gap. These rules combined need only be 17 percent effective to be cost-beneficial.

E. International Trade Impact Assessment

Overview. The final rule will have a minimal effect on international trade. Although there are a number of across-the-border commuter services between the U.S., Canada, and Mexico, they represent a small number of routes and airplanes. The only other concern with regard to international trade is airplane sales. There is the potential that increased equipment requirements and standards may limit the ability of commuter airplanes manufactured for the U.S. market to be resold to buyers in developing nations. Often, these countries do not have extensive safety requirements and may prefer less sophisticated airplanes.

International Routes. Most of the nation's 63 commuter airlines operate almost exclusively on domestic routes, with only limited international operations and no transoceanic routes. The majority of these international operations are across-the-border services between cities in the United States and locations in Canada and Mexico. There are relatively few carriers engaging in this kind of commuter service, with only a limited number of flights. Most of these services are between points in the border states, such as California, Arizona, Texas, Wisconsin, Michigan, Washington, and New York, flying to Mexican and Canadian cities. Although the final rule may require some foreign carriers to comply with its requirements, the primary effect will still be borne by the domestic air carrier market with a minimal affect on international trade.

Airplane Sales. Commuter airplanes are sold on a worldwide basis, and this creates the potential for international trade impacts. The final rule could affect the competitiveness of airplanes made for the U.S. market that are resold internationally. Under the final rule, commuter airplanes made for the American market would include new equipment and upgrades necessary to meet expanded safety requirements. These improvements will increase the cost and maintenance requirements for the airplane and could negatively affect their sales potential in foreign markets, particularly to customers in developing nations.

Many small air carriers in the developing world fly under significantly lower safety requirements than are required in the United States. Operators are generally not motivated to purchase airplanes that exceed their countries' minimum requirements. Further, these operators sometimes lack the facilities, equipment, and expertise that are necessary to keep sophisticated systems operational. Therefore, when purchasing either new or second-hand airplanes, operators tend to focus on airplanes that rely on a minimum of complex systems and equipment and that meet their basic requirements at the lowest cost.

Although sales of smaller airplanes to the developing countries represent an important component of the market, the largest market by far is in North America. In this case, since the airplanes will have to operate under the same standards as before their resale, there would be no impact. According to recent estimates, the worldwide market for commuter airplanes is estimated to be almost $20 billion over the next 15 years, with a projected 59 percent of those sales occurring in North America. Sales to Europe account for approximately 20 percent of the total sales.

F. Regulatory Flexibility Determination Summary

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have "a significant economic impact on a substantial number of small entities." The definitions of small entities and guidance material for making determinations required by the Regulatory Flexibility Act of 1980 are contained in the **Federal Register** [47 FR 32825, July 29, 1982]. Federal Aviation Administration (FAA) Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. With respect to the final rule, a "small entity" is defined as a commuter operator (with 10 to 30 seats) that owns, but does not necessarily operate nine or fewer airplanes. A "significant economic impact on a small entity" is defined as an annualized net compliance cost to a small scheduled commuter operator that is equal to or greater than $67,000 (1994 dollars). The entire fleet of a small scheduled commuter operator has at least one airplane of seating capacity of 60 or fewer seats. The annualized net compliance cost to a small operator whose entire fleet has a seating capacity of over 60 seats is $119,900 (1994 dollars). A substantial number of small entities is defined as a number that is 11 or more and that is more than one-third of small commuter operators subject to the final rule.

The FAA is requiring certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that will be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The rule will revise the requirements concerning operating certificates and operations specifications. The rule will also require certain management officials for all operators under parts 121 and 135. The rule will increase safety in scheduled passenger-carrying operations and clarify, update, and consolidate the certification and operations requirements for persons who transport persons or property by air for compensation or hire.

The total present value cost to small entities with 10-to-19-seat airplanes is $16.7 million. The section on operations represents $10.1 million or 64 percent of the total. The section on maintenance represents $4.0 million or 24 percent of the total. The total present value cost to small entities with 20-to-30-seat airplanes is $4.0 million. The section on operations represents $2.9 million or 73 percent of the total. The section on part 119 represents $416,000 or 10.4 percent of the total.

This determination shows that for an operator with only 10-to-19-seat airplanes, the average annualized cost will be $61,900 and for an operator with 20-to-30-seat airplanes, the average annualized cost will be $35,600. Given the threshold annualized cost of $67,000 for a small commuter operator (with 60 or fewer seats), the FAA estimates that this final rule will not have a significant economic impact on a substantial number of small entities. A complete copy of the Regulatory Flexibility Determination is in the public docket.

Federalism Implications

The regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by the Office of Management and Budget, until December 1998, in accordance with 44 U.S.C. Chapter 35 under OMB No. 2120–0593, TITLE: Commuter Operations and General Certification and Operations Requirements.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this regulation: (1) Is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

IX. The Amendments

In consideration of the foregoing and under the authority of 49 U.S.C. 44702, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR parts 91, 119, 121, 125, 127, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is changed to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180). 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation No. 50–2 is amended by removing the words "part 135" from paragraph (c)(2) of section 3 and by revising section 6 to read as follows:

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 6 *Commercial sightseeing flights.* (a) Non-stop sightseeing flights that begin and end at the same airport, are conducted within a 25-statute-mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of SFAR 38–2 of part 119, part 121, and 135 of this chapter, as applicable.

(b) No person holding or required to hold an air carrier certificate or an operating certificate under SFAR 38–2 or part 119 of this chapter may operate an aircraft having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

* * * * *

3. Special Federal Aviation Regulation No. 71 is amended by revising section 1 and the introductory text of section 7 to read as follows:

SFAR No. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135. This rule does not apply to:

(a) Operations conducted under 14 CFR part 121 in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(b) Flights conducted in gliders or hot air balloons.

* * * * *

Section 7. Passenger briefing. Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in 14 CFR 91.107, 121.571, or 135.117:

* * * * *

4. The heading of subchapter G is revised to read as follows:

SUBCHAPTER G—AIR CARRIERS AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

5. A new part 119 is added to 14 CFR chapter I, subchapter G, to read as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.

119.1 Applicability.
119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of 14 CFR part 121.
119.3 Definitions.
119.5 Certifications, authorizations, and prohibitions.
119.7 Operations specifications.
119.9 Use of business names.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.
119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.
119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

119.31 Applicability.
119.33 General requirements.
119.35 Certificate application.
119.37 Contents of an Air Carrier Certificate or Operating Certificate.
119.39 Issuing or denying a certificate.
119.41 Amending a certificate.

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119.43 Certificate holder's duty to maintain operations specifications.
119.45 [Reserved]
119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.
119.49 Contents of operations specifications.
119.51 Amending operations specifications.
119.53 Wet leasing of aircraft and other arrangements for transportation by air.
119.55 Obtaining deviation authority to perform operations under a U.S. military contract.
119.57 Obtaining deviation authority to perform an emergency operation.
119.58 Emergencies requiring immediate decision and action.
119.59 Conducting tests and inspections.
119.61 Duration and surrender of certificate and operations specifications.
119.63 Recency of operation.
119.65 Management personnel required for operations conducted under part 121 of this chapter.
119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.
119.69 Management personnel required for operations conducted under part 135 of this chapter.
119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

Subpart A—General

§ 119.1 Applicability.

(a) This part applies to each person operating or intending to operate civil aircraft—

(1) As an air carrier or commercial operator, or both, in air commerce; or

(2) When common carriage is not involved, in operations of U.S.-registered civil airplanes with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.

(b) This part prescribes—

(1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;

(2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under part 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;

(3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;

(4) Requirements affecting wet leasing of aircraft and other arrangements for transportation by air;

(5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and

(6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.

(c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by part 119, 121, 125, or 135 of this chapter.

(d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights conducted with aircraft having a passenger seat configuration of 30 or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, for nonstop sightseeing flights for compensation or hire conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2 of this part and SFAR 38–2 of 14 CFR part 121 or 14 CFR part 119, as applicable, apply;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;

(ii) Each flight is made under day VFR conditions;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under part 133 of this chapter or 375 of this title;

(9) Emergency mail service conducted under 49 U.S.C. 41906; or

(10) Operations conducted under the provisions of § 91.321 of this chapter.

§ 119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of 14 CFR part 121.

(a) Each certificate holder that before January 19, 1996 was issued an air carrier certificate or operating certificate and operations specifications under the requirements of part 121, part 135, or SFAR 38–2 of part 121 of this chapter shall continue to comply with SFAR 38–2 of 14 CFR part 121 until March 20, 1997 or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. If a certificate holder is issued operation specifications in accordance with part 119 before March 20, 1997 then, notwithstanding all provisions in SFAR 38–2 of 14 CFR part 121, such certificate holder shall comply with the provisions of part 119.

(b) Each person who on or after January 19, 1996 applies for or obtains an initial air carrier certificate or operating certificate and operations specifications to conduct operations under part 121 or 135 of this chapter shall comply with this part notwithstanding all provisions of SFAR 38–2 of 14 CFR part 121.

§ 119.3 Definitions.

For the purpose of subchapter G of this chapter, the term—

All-cargo operation means any operation for compensation or hire that is other than a passenger-carrying operation or, if passengers are carried, they are only those specified in §§ 121.583(a) or 135.85 of this chapter.

Certificate-holding district office means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week or at least one route between two or more points according to the published flight schedules:

(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(2) Rotorcraft.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

Domestic operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

Empty weight means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Flag operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia.

(iii) Between any point outside the U.S. and another point outside the U.S.

Justifiable aircraft equipment means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

Maximum payload capacity means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flight crewmembers—180 pounds.

(B) For female flight crewmembers—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds or the oil capacity as specified on the Type Certificate Data Sheet.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

Maximum zero fuel weight means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

Noncommon carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, or a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum

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passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat and any turbojet powered airplane, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or

(ii) All-cargo operations.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

When common carriage is not involved or operations not involving common carriage means any of the following:

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

(4) Private carriage.

§ 119.5 Certifications, authorizations, and prohibitions.

(a) A person authorized by the Administrator to conduct operations as a direct air carrier will be issued an Air Carrier Certificate.

(b) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations when common carriage is not involved as an operator of U.S.-registered civil airplanes with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

(d) A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(e) A person authorized to engage in noncommon or private carriage under part 125 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(f) A person conducting operations under more than one paragraph of §§ 119.21, 119.23, or 119.25 shall conduct those operations in compliance with—

(1) The requirements specified in each paragraph of those sections for the kind of operation conducted under that paragraph; and

(2) The appropriate authorizations, limitations, and procedures specified in the operations specifications for each kind of operation.

(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

(h) A person holding an Operating Certificate authorizing noncommon or private carriage operations shall not conduct any operations in common carriage. A person holding an Air Carrier Certificate or Operating Certificate authorizing common carriage operations shall not conduct any operations in noncommon carriage.

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

(j) A certificate holder under this part may not operate aircraft under part 121 or part 135 of this chapter in a geographical area unless its operations specifications specifically authorize the certificate holder to operate in that area.

§ 119.7 Operations specifications.

(a) Each certificate holder's operations specifications must contain—

(1) The authorizations, limitations, and certain procedures under which each kind of operation, if applicable, is to be conducted; and

(2) Certain other procedures under which each class and size of aircraft is to be operated.

(b) Except for operations specifications paragraphs identifying authorized kinds of operations, operations specifications are not a part of a certificate.

§ 119.9 Use of business names.

(a) A certificate holder under this part may not operate an aircraft under part 121 or part 135 of this chapter using a business name other than a business name appearing in the certificate holder's operations specifications.

(b) Unless otherwise authorized by the Assistant Administrator for Civil Aviation Security, no person may operate an aircraft under part 121 or part 135 of this chapter unless the name of the certificate holder who is operating the aircraft is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the aircraft and its readability must be acceptable to the Administrator.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter

§ 119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.

(a) Each person who conducts operations as a direct air carrier or as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

(1) Domestic operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a showing of safety in air commerce, the Administrator may permit persons who conduct domestic operations between any point located within Alaska's Aleutian Islands chain and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter.

(2) Flag operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of safety in air commerce, the Administrator may authorize or require the following operations to be conducted under paragraph (a) (1) or (2) of this section:

(i) Passenger-carrying operations which are conducted between points that are also served by the certificate holder's domestic or flag operations.

(ii) All-cargo operations which are conducted regularly and frequently between the same two points.

(4) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(5) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) Persons who are subject to the requirements of paragraph (a)(4) of this section may conduct those operations in accordance with the requirements of paragraph (a)(1) or (a)(2) of this section, provided they obtain authorization from the Administrator.

(c) Persons who are subject to the requirements of paragraph (a)(5) of this section may conduct those operations in accordance with the requirements of paragraph (a)(3) of this section, provided they obtain authorization from the Administrator.

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with airplanes having a passenger-seat configuration of 20 seats or more, excluding each crewmember seat, or a payload capacity of 6,000 pounds or more, shall, unless deviation authority is issued—

(1) Comply with the certification and operations specifications requirements of part 125 of this chapter;

(2) Conduct its operations with those airplanes in accordance with the requirements of part 125 of this chapter; and

(3) Be issued operations specifications in accordance with those requirements.

(b) Each person who conducts noncommon or private carriage operations for compensation or hire with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds shall—

(1) Comply with the certification and operations specifications requirements in subpart C of this part;

(2) Conduct those operations in accordance with the requirements of part 135 of this chapter, except for those requirements applicable only to commuter operations; and

(3) Be issued operations specifications in accordance with those requirements.

§ 119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations specifications requirements of Subpart C of this part, and shall conduct its:

(a) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of This Chapter

§ 119.31 Applicability.

This subpart sets out certification requirements and prescribes the content of operations specifications and certain other requirements for operations conducted under part 121 or part 135 of this chapter.

§ 119.33 General requirements.

(a) A person may not operate as a direct air carrier unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Air Carrier Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(b) A person other than a direct air carrier may not conduct any commercial passenger or cargo aircraft operation for compensation or hire under part 121 or part 135 of this chapter unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Operating Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(c) Each applicant for a certificate under this part shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or part 135 of this chapter. All proving tests must be conducted in a manner acceptable to the Administrator. All proving tests must be conducted under the appropriate operating and maintenance requirements of part 121 or 135 of this chapter that would apply if the applicant were fully certificated. The Administrator will issue a letter of authorization to each person stating the various authorities under which the proving tests shall be conducted.

§ 119.35 Certificate application.

(a) A person applying to the Administrator for an Air Carrier

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Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator; and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

(c) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal operations base of operations.

(d) Each application submitted under paragraph (c) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns 5 percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.

(ii) The name and address of each director and each officer and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein the non-corporate applicant and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(e) In addition, each applicant for the original issue of an operating certificate under paragraph (c) of this section must submit with the application a signed statement showing—

(1) The financial information listed in paragraph (h) of this section; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(f) Each applicant for, or holder of, a certificate issued under paragraph (c) of this section this part, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (d)(1) or (d)(2) of this section; or

(2) A change in the financial information submitted to the Administrator under paragraph (g) of this section that occurs while the application for the issue is pending before the FAA and that would make the applicant's financial situation substantially less favorable than originally reported.

(g) Each applicant for the original issue of an operating certificate under paragraph (c) of this section must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.

(3) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.

(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and nonoperating expenses by expense objective classification; and

(iii) Estimated net profit or loss for the period.

(5) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—

(i) Acquisition of property and equipment (explain);

(ii) Retirement of debt (explain);

(iii) Additional working capital (explain);

(iv) Operating losses other than depreciation and amortization (explain); and

(v) Other (explain).

(6) An estimate of the cash that will be available during the first 6 months after the month in which the certificate is expected to be issued, from—

(i) Sale of property or flight equipment (explain);

(ii) New debt (explain);

(iii) New equity (explain);

(iv) Working capital reduction (explain);

(v) Operations (profits) (explain);

(vi) Depreciation and amortization (explain); and

(vii) Other (explain).

(7) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and period of coverage; and special conditions, exclusions, and limitations.

(8) Any other financial information that the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct his or her operations with the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes—

(a) The certificate holder's name;

(b) The location of the certificate holder's principal base of operations;

(c) The certificate number;

(d) The certificate's effective date; and

(e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

(1) Meets the applicable requirements of this part;

(2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that—

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if—

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

(2) The certificate holder must petition for reconsideration to the Director, Flight Standards Service.

§ 119.43 Certificate holder's duty to maintain operations specifications.

(a) Each certificate holder shall maintain a complete and separate set of its operations specifications at its principal base of operations.

(b) Each certificate holder shall insert pertinent excerpts of its operations specifications, or references thereto, in its manual and shall—

(1) Clearly identify each such excerpt as a part of its operations specifications; and

(2) State that compliance with each operations specifications requirement is mandatory.

(c) Each certificate holder shall keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.

§ 119.45 [Reserved]

§ 119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.

(a) Each certificate holder must maintain a principal base of operations. Each certificate holder may also establish a main operations base and a main maintenance base which may be located at either the same location as the principal base of operations or at separate locations.

(b) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a certificate holder must provide written notification to its certificate-holding district office.

§ 119.49 Contents of operations specifications.

(a) Each certificate holder conducting domestic, flag, or commuter operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial numbers of each aircraft authorized for use, each regular and alternate airport to be used in scheduled operations, and, except for commuter operations, each provisional and refueling airport.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (a)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft or airport not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Airport limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, rotors, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Interline equipment interchange requirements, if relevant.

(11) Aircraft wet lease information required by § 119.53(c).

(12) Any authorized deviation and exemption granted from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

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(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3) (i) or (ii).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(c) Each certificate holder conducting on-demand operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Kind and area of operations authorized.

(5) Category and class of aircraft that may be used in those operations.

(6) Type of aircraft, registration markings, and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (c)(6) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(7) Registration markings of each aircraft that is to be inspected under an approved aircraft inspection program under § 135.419 of this chapter.

(8) Time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(9) Additional maintenance items required by the Administrator under § 135.421 of this chapter.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorized deviation or exemption from any requirement of this chapter.

(12) Any other item the Administrator determines is necessary.

§ 119.51 Amending operations specifications.

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator determines that safety in air commerce and the public interest require the amendment; or

(2) The certificate holder applies for the amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment to a certificate holder's operations specifications, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment.

(2) The certificate-holding district office sets a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment;

(ii) The partial adoption of the proposed amendment; or

(iii) The withdrawal of the proposed amendment.

(4) If the certificate-holding district office issues an amendment to the operations specifications, it becomes effective not less than 30 days after the certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety in air commerce; or

(ii) The certificate holder petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases of mergers; acquisitions of airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the certificate-holding district office approves the amendment, following coordination with the

certificate holder regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the amendment of operations specifications, the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial of the amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment to its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the certificate-holding district office unless the certificate-holding district office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends the operations specifications and makes the amendment effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office articulates the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 119.53 Wet leasing of aircraft and other arrangements for transportation by air.

(a) Unless otherwise authorized by the Administrator, prior to conducting operations involving a wet lease, each certificate holder under this part authorized to conduct common carriage operations under this subchapter shall provide the Administrator with a copy of the wet lease to be executed which would lease the aircraft to any other person engaged in common carriage operations under this subchapter, including foreign air carriers, or to any other foreign person engaged in common carriage wholly outside the United States.

(b) No certificate holder under this part may wet lease from a foreign air carrier or any other foreign person or any person not authorized to engage in common carriage.

(c) Upon receiving a copy of a wet lease, the Administrator determines which party to the agreement has operational control of the aircraft and issues amendments to the operations specifications of each party to the agreement, as needed. The lessor must provide the following information to be incorporated into the operations specifications of both parties, as needed.

(1) The names of the parties to the agreement and the duration thereof.

(2) The nationality and registration markings of each aircraft involved in the agreement.

(3) The kind of operation (e.g., domestic, flag, supplemental, commuter, or on-demand).

(4) The airports or areas of operation.

(5) A statement specifying the party deemed to have operational control and the times, airports, or areas under which such operational control is exercised.

(d) In making the determination of paragraph (c) of this section, the Administrator will consider the following:

(1) Crewmembers and training.

(2) Airworthiness and performance of maintenance.

(3) Dispatch.

(4) Servicing the aircraft.

(5) Scheduling.

(6) Any other factor the Administrator considers relevant.

(e) Other arrangements for transportation by air: Except as provided in paragraph (f) of this section, a certificate holder under this part operating under part 121 or 135 of this chapter may not conduct any operation for another certificate holder under this part or a foreign air carrier under part 129 of this chapter or a foreign person engaged in common carriage wholly outside the United States unless it holds applicable Department of Transportation economic authority, if required, and is authorized under its operations specifications to conduct the same kinds of operations (as defined in § 119.3). The certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation. These substitute operations must be conducted between airports for which the substitute certificate holder holds authority for scheduled operations or within areas of operations for which the substitute certificate holder has authority for supplemental or on-demand operations.

(f) A certificate holder under this part may, if authorized by the Department of Transportation under § 380.3 of this title and the Administrator in the case of interstate commuter, interstate domestic, and flag operations, or the Administrator in the case of scheduled intrastate common carriage operations, conduct one or more flights for passengers who are stranded because of the cancellation of their scheduled flights. These flights must be conducted under the rules of part 121 or part 135 of this chapter applicable to supplemental or on-demand operations.

§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

(b) A certificate holder that has a contract with the U.S. Department of Defense's Air Mobility Command (AMC) must submit a request for deviation authority to AMC. AMC will review the requests, then forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review and action.

(c) The Administrator may authorize a deviation to perform operations under a U.S. military contract under the following conditions—

(1) The Department of Defense certifies to the Administrator that the operation is essential to the national defense;

(2) The Department of Defense further certifies that the certificate holder cannot perform the operation without deviation authority;

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to

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the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 Emergencies requiring immediate decision and action.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter to the extent required in the interest of safety.

(b) In an emergency situation arising during flight, that requires immediate decision and action by an aircraft dispatcher or appropriate management personnel, and that is known to him, he shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If he cannot communicate with the pilot, he shall declare an emergency and take any reasonable action necessary under the circumstances.

(c) Whenever a pilot in command or a dispatcher or an appropriate management person exercises emergency authority, he shall keep the appropriate ATC facility, ground radio station, and, if applicable, dispatch centers, fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the certificate holder's management to the Administrator within 10 days of the emergency action.

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures of § 119.63 upon resuming that kind of operation; or

(4) The Administrator suspends or revokes the operations specifications for a kind of operation.

(c) Within 30 days after a certificate holder terminates operations under part 135 of this chapter, the operating certificate and operations specifications must be surrendered by the certificate holder to the certificate-holding district office.

§ 119.63 Recency of operation.

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless the certificate holder has conducted that kind of operation within the preceding number of consecutive calendar days specified in this paragraph:

(1) For domestic, flag, or commuter operations—30 days.

(2) For supplemental or on-demand operations—90 days, except that if the certificate holder has authority to conduct domestic, flag, or commuter operations, and has conducted domestic, flag or commuter operations within the previous 30 days, this paragraph does not apply.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the number of preceding 30 consecutive calendar days specified in paragraph (a) of this section, it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days before resumption of that kind of operation; and

(2) It makes itself available and accessible during the 5 consecutive calendar day period in the event that the FAA decides to conduct a full inspection reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the highest degree of safety in its operations. The certificate holder must have qualified personnel serving full-time in the following or equivalent positions:

(1) Director of Safety.
(2) Director of Operations.
(3) Chief Pilot.
(4) Director of Maintenance.
(5) Chief Inspector.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of airplanes used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following materials with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) 14 CFR Chapter I (Federal Aviation Regulations);

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 121 of this chapter); and

(v) The manual required by § 121.133 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must:

(1) State in the general policy provisions of the manual required by § 121.133 of this chapter, the duties, responsibilities, and authority of personnel required under paragraph (a) of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) To serve as Director of Operations under § 119.65(a) a person must—

(1) Hold an airline transport pilot certificate;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large airplanes under part 121 or part 135 of this chapter, or if the certificate holder uses only small airplanes in its operations, the experience may be obtained in large or small airplanes; and

(3) In the case of a person becoming a Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(b) To serve as Chief Pilot under § 119.65(a) a person must hold an airline transport pilot certificate with appropriate ratings for at least one of the airplanes used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience, as pilot in command of a large airplane operated under part 121 or part 135 of this chapter, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes in its operation, the experience may be obtained in either large or small airplanes.

(c) To serve as Director of Maintenance under § 119.65(a) a person must—

(1) Hold a mechanic certificate with airframe and powerplant ratings;

(2) Have 1 year of experience in a position responsible for returning airplanes to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (c)(4)(ii) of this section maintaining the same category and class of airplane as the certificate holder uses; and

(4) Have 3 years experience within the past 6 years in one or a combination of the following—

(i) Maintaining large airplanes with 10 or more passenger seats, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of airplane as the certificate holder uses; or

(ii) Repairing airplanes in a certificated airframe repair station that is rated to maintain airplanes in the same category and class of airplane as the certificate holder uses.

(d) To serve as Chief Inspector under § 119.65(a) a person must—

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years of maintenance experience on different types of large airplanes with 10 or more passenger seats with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year in a supervisory capacity maintaining large aircraft with 10 or more passenger seats.

(e) A certificate holder may request a deviation to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with the Federal Aviation Regulations and the procedures outlined in the certificate holder's manual. Grants of deviation under this paragraph

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may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the safety of its operations. Except for a certificate holder using only one pilot in its operations, the certificate holder must have qualified personnel serving in the following or equivalent positions:

(1) Director of Operations.

(2) Chief Pilot.

(3) Director of Maintenance.

(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—

(1) The kind of operation involved;

(2) The number and type of aircraft used; and

(3) The area of operations.

(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.

(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—

(1) Be qualified through training, experience, and expertise;

(2) To the extent of their responsibilities, have a full understanding of the following material with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) 14 CFR Chapter I (Federal Aviation Regulations);

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 135 of this chapter); and

(v) The manual required by § 135.21 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must—

(1) State in the general policy provisions of the manual required by § 135.21 of this chapter, the duties, responsibilities, and authority of personnel required or approved under paragraph (a) or (b), respectively, of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

(a) To serve as Director of Operations under § 119.69(a) for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter; or

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Chief Pilot under § 119.69(a) for a certificate holder conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate with appropriate ratings and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(e) To serve as Director of Maintenance under § 119.69(a) a person must hold a mechanic certificate with airframe and powerplant ratings and either:

(1) Have 3 years of experience within the past 3 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 3 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(f) A certificate holder may request a deviation to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the

Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with 14 CFR Chapter I and the procedures outlined in the certificate holder's manual. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

7. The heading for part 121 is revised to read as set forth above.

8. Special Federal Aviation Regulation 38–2 is amended by revising the last paragraph to read as follows:

SFAR 38–2—Certification and Operating Requirements

* * * * *

This Special Federal Aviation Regulation No. 38–2 terminates March 20, 1997.

9. A note for SFAR 50–2 is added after the SFAR No. to read as follows:

SFAR No. 50–2

Note: For the text of SFAR No. 50–2, see part 91 of this chapter.

10. Section 121.1 is revised to read as follows:

§ 121.1 Applicability.

This part prescribes rules governing—

(a) The domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 of 14 CFR part 121, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58 of 14 CFR part 121.

(d) Nonstop sightseeing flights conducted with airplanes having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, except for operations subject to SFAR 50–2 of 14 CFR part 121, these operations, when conducted for compensation or hire, must comply only with §§ 121.455 and 121.457, except that an operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to the operator's principal base of operations to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

11. Section 121.2 is added to read as follows:

§ 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that was issued an air carrier or operating certificate and operations specifications under the requirements of part 135 of this chapter or under SFAR No. 38–2 of 14 CFR part 121 before January 19, 1996, and that conducts scheduled passenger-carrying operations with:

(i) Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats;

(ii) Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats; or

(iii) Turbojet engine powered airplanes having a passenger seat configuration of 1–30 seats.

(2) Each person who, after January 19, 1996, applies for or obtains an initial air carrier or operating certificate and operations specifications to conduct scheduled passenger-carrying operations in the kinds of airplanes described in paragraphs (a)(1)(i), (a)(1)(ii), or paragraph (a)(1)(iii) of this section.

(b) *Obtaining operations specifications.* A certificate holder described in paragraph (a)(1) of this section may not, after March 20, 1997, operate an airplane described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section in scheduled passenger-carrying operations, unless it obtains operations specifications to conduct its scheduled operations under this part on or before March 20, 1997.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), (e), and (i) of this section, each certificate holder described in paragraphs (a)(1) of this section shall comply with each applicable requirement of this part on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. Except as provided in paragraphs (d) and (e) of this section, each person described in paragraph (a)(2) of this section shall comply with each applicable requirement of this part on and after the date on which that person is issued a certificate and operations specifications under this part.

(d) *Delayed compliance dates.* Unless paragraph (e) of this section specifies an earlier compliance date, no certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after a date listed in this paragraph (d) unless that airplane meets the applicable requirement of this paragraph (d):

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seating configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in this paragraph (d)(1):

(i) December 22, 1997:

(A) Section 121.289, Landing gear aural warning.

(B) Section 121.308, Lavatory fire protection.

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(C) Section 121.310(e), Emergency exit handle illumination.

(D) Section 121.337(b)(8), Protective breathing equipment.

(E) Section 121.340, Emergency flotation means.

(ii) December 20, 1999: Section 121.342, Pitot heat indication system.

(iii) December 20, 2010:

(A) For airplanes described in § 121.157(f), the Airplane Performance Operating Limitations in §§ 121.189 through 121.197.

(B) Section 121.161(b), Ditching approval.

(C) Section 121.305(j), Third attitude indicator.

(D) Section 121.312(c), Passenger seat cushion flammability.

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraphs (a)(1) (i) and (ii) unless that airplane meets the applicable requirement listed in paragraphs (a)(1) (i) and (ii):

(i) December 22, 1997:

(A) Section 121.308, Lavatory fire protection.

(B) Section 121.337(b) (8) and (9), Protective breathing equipment.

(C) Section 121.340, Emergency flotation means.

(ii) March 20, 1997: Section 121.305(j), Third attitude indicator.

(e) *Newly manufactured airplanes.* No certificate holder that is described in paragraph (a) of this section may operate under this part an airplane manufactured on or after a date listed in this paragraph unless that airplane meets the applicable requirement listed in this paragraph (e).

(1) For nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats:

(i) Manufactured on or after March 20, 1997:

(A) Section 121.305(j), Third attitude indicator.

(B) Section 121.311(f), Safety belts and shoulder harnesses.

(ii) Manufactured on or after December 22, 1997: Section 121.317(a), Fasten seat belt light.

(iii) Manufactured on or after December 20, 1999: Section 121.293, Takeoff warning system.

(2) For transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats manufactured on or after March 20, 1997: Section 121.305(j), Third attitude indicator.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after March 29, 1995, in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before March 19, 1996 each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under this part. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of this part on or before March 20, 1997; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

(h) *Continuing requirements.* Until each certificate holder that is covered by paragraph (a) of this section meets the specific compliance dates listed in paragraphs (d) and (e) of this section, the certificate holder shall comply with the applicable airplane and equipment requirements of part 135 of this chapter.

(i) *Delayed pilot age limitation:*

(1) Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a certificate holder covered by paragraph (a)(1) of this section may use the services of a person as a pilot after that person has reached his or her 60th birthday, until December 20, 1999. Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a person may serve as a pilot for a certificate holder covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999.

(2) This paragraph (i)(1) applies only to persons who were employed as pilots by a certificate holder covered by paragraph (a)(1) of this section on or before March 20, 1997.

§§ 121.3, 121.5, 121.7, 121.9, and 121.13 [Removed]

12. Sections 121.3, 121.5, 121.7, 121.9, and 121.13 are removed.

§ 121.4 [Amended]

13. Section 121.4 is amended by removing "§ 121.3" wherever it appears and adding in its place "part 119 of this chapter".

14. Section 121.15 is revised to read as follows:

§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If a certificate holder operating under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

Subpart B—[Removed and Reserved]

15. Subpart B (§§ 121.21 through 121.29) is removed, and the subpart heading is reserved.

Subpart C—[Removed and Reserved]

16. Subpart C (§§ 121.41 through 121.61) is removed and the subpart heading is reserved.

Subpart D—[Removed and Reserved]

17. Subpart D (§§ 121.71 through 121.83) is removed and the subpart heading is reserved.

18. Section 121.133 is revised to read as follows:

§ 121.133 Preparation.

(a) Each certificate holder shall prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting its operations.

(b) For the purpose of this subpart, the certificate holder may prepare that part of the manual containing maintenance information and instructions, in whole or in part, in printed form or other form acceptable to the Administrator.

19. Section 121.135 is amended by revising paragraphs (a)(4); (b)(2); (b)(6); (b)(7); (b)(8)(i), (ii), and (iii); (b)(23) introductory text and (c) to read as follows:

§ 121.135 Contents.

(a) * * *

(4) Not be contrary to any applicable Federal regulation and, in the case of a flag or supplemental operation, any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate.

* * * * *

(b) * * *

(2) Duties and responsibilities of each crewmember, appropriate members of the ground organization, and management personnel.

* * * * *

(6) For domestic or flag operations, appropriate information from the en route operations specifications, including for each approved route the types of airplanes authorized, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(7) For supplemental operations, appropriate information from the operations specifications, including the area of operations authorized, the types of airplanes authorized, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(8) * * *

(i) Its location (domestic and flag operations only);

(ii) Its designation (regular, alternate, provisional, etc.) (domestic and flag operations only);

(iii) The types of airplanes authorized (domestic and flag operations only);

* * * * *

(23) Procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

* * * * *

(c) Each certificate holder shall maintain at least one complete copy of the manual at its principal base of operations.

20. Section 121.141 is revised amended by revising the section heading, paragraph (a), and the introductory text of paragraph (b) to read as follows:

§ 121.141 Airplane flight manual.

(a) Each certificate holder shall keep a current approved airplane flight manual for each type of airplane that it operates except for nontransport category airplanes certificated before January 1, 1965.

(b) In each airplane required to have an airplane flight manual in paragraph (a) of this section, the certificate holder shall carry either the manual required by § 121.133, if it contains the information required for the applicable flight manual and this information is clearly identified as flight manual requirements, or an approved Airplane Manual. If the certificate holder elects to carry the manual required by § 121.133, the certificate holder may revise the operating procedures sections and modify the presentation of performance data from the applicable flight manual if the revised operating procedures and modified performance date presentation are—

(1) Approved by the Administrator; and

(2) Clearly identified as airplane flight manual requirements.

* * * * *

21. Section 121.157 is amended by revising paragraphs (b) and (e) and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

* * * * *

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c), (d), (e), and (f) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173(a), (b), (d), and (e).

* * * * *

(e) *Commuter category airplanes.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, and before March 30, 1995, unless it meets the applicable requirements of § 121.173(a), (b), (d), (e), and (f) and was type certificated in the commuter category.

(f) *Other nontransport category airplanes.* Except as provided in paragraphs (c), (d), and (e) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless it meets the applicable requirements of § 121.173(a), (b), (d), and (e), was manufactured before March 20, 1997, and meets one of the following:

(1) Until December 20, 2010:

(i) The airplane was type certificated in the normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

(ii) The airplane was type certificated in the normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23, 14 CFR part 23.

(iii) The airplane was type certificated in the normal category and meets the additional airworthiness standards in appendix A of part 135 of this chapter.

(iv) The airplane was type certificated in the normal category and complies with either section 1.(a) or 1.(b) of SFAR No. 41 of 14 CFR part 21.

(2) The airplane was type certificated in the normal category, meets the additional requirements described in paragraphs (f)(1)(i) through (f)(1)(iv) of this section, and meets the performance requirements in appendix K of this part.

(g) *Certain newly manufactured airplanes.* No certificate holder may operate an airplane under this part that was type certificated as described in paragraphs (f)(1)(i) through (f)(1)(iv) of this section and that was manufactured after March 20, 1997, unless it meets the performance requirements in appendix K of this part.

(h) *Newly type certificated airplanes.* No person may operate under this part an airplane for which the application for a type certificate is submitted after March 29, 1995, unless the airplane is type certificated under part 25 of this chapter.

22. Section 121.159 is revised to read as follows:

§ 121.159 Single-engine airplanes prohibited.

No certificate holder may operate a single-engine airplane under this part.

23. Section 121.161 is amended by revising paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 121.161 Airplane limitations: Type of route.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder may operate a land airplane (other than a DC–3, C–46, CV–240, CV–340, CV–440, CV–580, CV–600, CV–640, or Martin 404) in an extended overwater operation unless it is certificated or approved as adequate for ditching under the ditching provisions of part 25 of this chapter.

(c) Until December 20, 2010, a certificate holder may operate, in an extended overwater operation, a nontransport category land airplane type certificated after December 31, 1964, that was not certificated or approved as adequate for ditching under the ditching provisions of part 25 of this chapter.

24. Section 121.163 is amended by revising paragraphs (a), (b), and (c) and the introductory text of paragraph (d) to read as follows:

§ 121.163 Airplane proving tests.

(a) *Initial airplane proving tests.* No person may operate an airplane not before proven for use in a kind of operation under this part or part 135 of this chapter unless an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests acceptable to the Administrator, including a representative number of flights into en route airports. The requirement for at least 100 hours of proving tests may be reduced by the Administrator if the Administrator determines that a satisfactory level of proficiency has been demonstrated to justify the reduction. At least 10 hours of proving flights must

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be flown at night; these tests are irreducible.

(b) *Proving tests for kinds of operations.* Unless otherwise authorized by the Administrator, for each type of airplane, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct, including a representative number of flights into an route airports.

(c) *Proving tests for materially altered airplanes.* Unless otherwise authorized by the Administrator, for each type of airplane that is materially altered in design, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct with that airplane, including a representative number of flights into an route airports.

(d) *Definition of materially altered.* For the purposes of paragraph (c) of this section, a type of airplane is considered to be materially altered in design if the alteration includes—

* * * * *

Subpart I—[Amended]

25. Subpart I is amended by removing the words "transport category" wherever they appear.

26. Paragraphs (a), (b), (c), and (e) of § 121.173 are revised to read as follows:

§ 121.173 General.

(a) Except as provided in paragraph (c) of this section, each certificate holder operating a reciprocating-engine-powered airplane shall comply with §§ 121.175 through 121.187.

(b) Except as provided in paragraph (c) of this section, each certificate holder operating a turbine-engine-powered airplane shall comply with the applicable provisions of §§ 121.189 through 121.197, except that when it operates—

(1) A turbo-propeller-powered airplane type certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, the certificate holder may comply with §§ 121.175 through 121.187; or

(2) Until December 20, 2010, a turbo-propeller-powered airplane described in § 121.157(f), the certificate holder may comply with the applicable performance requirements of appendix K of this part.

(c) Each certificate holder operating a large nontransport category airplane type certificated before January 1, 1965, shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

* * * * *

(e) Except as provided in paragraph (c) of this section, no person may take off a reciprocating-engine-powered airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of 14 CFR part 121, subpart I) after taking into account the temperature operating correction factors in the applicable Airplane Flight Manual.

* * * * *

27. Section 121.175 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

§ 121.175 Airplanes: Reciprocating-engine-powered: Weight limitations.

* * * * *

(f) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

28. Section 121.177 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.177 Airplanes: Reciprocating-engine-powered: Takeoff limitations.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

29. Section 121.179 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.179 Airplanes: Reciprocating-engine-powered: En route limitations: all engines operating.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

30. Section 121.181 is amended by revising the section heading; by revising the formulas in paragraphs (a) and (c)(1) to read "$(0.079–0.106/N)\ V_{so}^2$" and revising "$0.026\ V_{so2}$" in paragraphs (a) and (c)(1) to read "$0.026\ V_{so}^2$"; and adding a new paragraph (d) to read as follows:

§ 121.181 Airplanes: Reciprocating-engine-powered: En route limitations: One engine inoperative.

* * * * *

(d) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

§ 121.183 [Amended]

31. Section 121.183 is amended by revising "$0.0013\ V_{so2}$" in paragraphs (a)(2) and (b)(3) to read "$0.013\ V_{so}^2$".

32. Section 121.185 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.185 Airplanes: Reciprocating-engine-powered: Landing limitations: Destination airport.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

33. Section 121.187 is amended by revising the section heading, designating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 121.187 Airplanes: Reciprocating-engine-powered: Landing limitations: Alternate airport.

* * * * *

(b) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

34. Section 121.211 is revised to read as follows:

§ 121.211 Applicability.

(a) This subpart prescribes special airworthiness requirements applicable to certificate holders as stated in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraph (d) of this section, each airplane type certificated under Aero Bulletin 7A or part 04 of the Civil Air Regulations in effect before November 1, 1946 must meet the special airworthiness requirements in §§ 121.215 through 121.283.

(c) Each certificate holder must comply with the requirements of §§ 121.285 through 121.291.

(d) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (b) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance only with those requirements that are necessary to accomplish the basic objectives of this part.

(e) No person may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless the airplane meets the special airworthiness requirements in § 121.293.

§ 121.213 [Reserved]

35. Section 121.213 is removed and reserved.

36. Section 121.285 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 121.285 Carriage of cargo in passenger cargo compartments.

(a) Except as provided in paragraph (b), (c), or (d) or this section, no certificate holder may carry cargo in the passenger compartment of an airplane.

* * * * *

(d) Cargo, including carry-on baggage, may be carried anywhere in the passenger compartment of a nontransport category airplane type certificated after December 31, 1964, if it is carried in an approved cargo rack, bin, or compartment installed in or on the airplane, if it is secured by an approved means, or if it is carried in accordance with each of the following:

(1) For cargo, it is properly secured by a safety belt or other tie-down having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence.

(2) It is packaged or covered to avoid possible injury to occupants.

(3) It does not impose any load on seats or in the floor structure that exceeds the load limitation for those components.

(4) It is not located in a position that obstructs the access to, or use of, any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment, or is located in a position that obscures any passenger's view of the "seat belt" sign, "no smoking" sign or placard, or any required exit sign, unless an auxiliary sign or other approved means for proper notification of the passengers is provided.

(5) It is not carried directly above seated occupants.

(6) It is stowed in compliance with this section for takeoff and landing.

(7) For cargo-only operations, paragraph (d)(4) of this section does not apply if the cargo is loaded so that at least one emergency or regular exit is available to provide all occupants of the airplane a means of unobstructed exit from the airplane if an emergency occurs.

§ 121.289 [Amended]

37. Section 121.289(a) introductory text is amended by removing the word "large."

38. Section 121.291 is amended by revising the introductory text of paragraph (b) and the introductory text of paragraph (c); revising paragraph (c)(2) and (c)(4); and by adding a new sentence at the end of paragraph (d) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(b) Each certificate holder conducting operations with airplanes with a seating capacity of more than 44 passengers must conduct a partial demonstration of emergency evacuation procedures in accordance with paragraph (c) of this section upon:

* * * * *

(c) In conducting the partial demonstration required by paragraph (b) of this section, each certificate holder must:

* * * * *

(2) Apply for and obtain approval from the certificate-holding district office before conducting the demonstration;

* * * * *

(4) Apply for and obtain approval from the certificate-holding district office before commencing operations with this type and model airplane.

(d) * * * For certificate holders subject to § 121.2(a)(1), this paragraph applies only when a new type or model airplane is introduced into the certificate holder's operations after January 19, 1996.

* * * * *

39. A new § 121.293 is added to read as follows:

§ 121.293 Special airworthiness requirements for nontransport category airplanes type certificated after December 31, 1964.

No certificate holder may operate a nontransport category airplane manufactured after December 20, 1999 unless the airplane contains a takeoff warning system that meets the requirements of 14 CFR 25.703. However, the takeoff warning system does not have to cover any device for which it has been demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition.

40. Section 121.305 is amended by revising paragraph (j) and adding a new paragraph (k) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) On the airplanes described in this paragraph, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument that complies with the provisions of paragraph (k) of this section:

(1) On each turbojet powered airplane.

(2) On each turbopropeller powered airplane that is manufactured after March 20, 1997.

(3) After December 20, 2010, on each turbopropeller powered airplane having a passenger seat configuration of 10–30 seats, that was manufactured before March 20, 1997.

(k) When required by paragraph (j) of this section, a third gyroscopic bank-and-pitch indicator (artificial horizon) that:

(1) Is powered from a source independent of the electrical generating system;

(2) Continues reliable operation for a minimum of 30 minutes after total failure of the electrical generating system;

(3) Operates independently of any other attitude indicating system;

(4) Is operative without selection after total failure of the electrical generating system;

(5) Is located on the instrument panel in a position acceptable to the Administrator that will make it plainly visible to and usable by each pilot at his or her station; and

(6) Is appropriately lighted during all phases of operation.

41. Section 121.308 is revised to read as follows:

§ 121.308 Lavatory fire protection.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may operate a passenger-carrying airplane unless each lavatory in the airplane is equipped with a smoke detector system or equivalent that provides a warning light in the cockpit or provides a warning light or audio warning in the passenger cabin which would be readily detected by a flight attendant, taking into consideration the positioning of flight attendants throughout the passenger compartment during various phases of flight.

(b) Except as provided in paragraph (c) of this section, no person may operate a passenger-carrying airplane unless each lavatory in the airplane is equipped with a built-in fire extinguisher for each disposal receptacle for towels, paper, or waste located within the lavatory. The built-in fire extinguisher must be designed to discharge automatically into each disposal receptacle upon occurrence of a fire in the receptacle.

(c) Until December 22, 1997, a certificate holder described in § 121.2(a)(1) or (2) may operate an airplane with a passenger seat configuration of 30 or fewer seats that does not comply with the smoke detector system requirements described in paragraph (a) of this section and the fire extinguisher requirements described in paragraph (b) of this section.

(d) After December 22, 1997, no person may operate a nontransport category airplane type certificated after December 31, 1964, with a passenger

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seat configuration of 10–19 seats unless that airplane complies with the smoke detector system requirements described in paragraph (a) of this section, except that the smoke detector system or equivalent must provide a warning light in the cockpit or an audio warning that would be readily detected by the flightcrew.

42. Section 121.309 is amended by revising paragraphs (c)(7), (d)(1), and (e) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) * * *

(7) At least two of the required hand fire extinguisher installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent. At least one hand fire extinguisher in the passenger compartment must contain Halon 1211 or equivalent.

* * * * *

(d) *First aid and emergency medical equipment and protective gloves.* (1) For treatment of injuries or medical emergencies that might occur during flight time or in minor accidents each passenger-carrying airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(i) Approved first aid kits; and

(ii) In airplanes for which a flight attendant is required, an emergency medical kit.

* * * * *

(e) *Crash ax.* Except for nontransport category airplanes type certificated after December 31, 1964, each airplane must be equipped with a crash ax.

* * * * *

43. Section 121.310 is amended by revising paragraphs (d)(1), (2), (3), and (4) and (l) and revising the introductory text of paragraphs (c), (f), (h)(1) and (k) to read as follows:

121.310 Additional emergency equipment.

* * * * *

(c) *Lighting for interior emergency exit markings.* Except for nontransport category airplanes type certificated after December 31, 1964, each passenger-carrying airplane must have an emergency lighting system, independent of the main lighting system. However, sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

The emergency lighting system must—

* * * * *

(d) * * *

(1) Each light must—

(i) Be operable manually both from the flightcrew station and, for airplanes on which a flight attendant is required, from a point in the passenger compartment that is readily accessible to a normal flight attendant seat;

(ii) Have a means to prevent inadvertent operation of the manual controls; and

(iii) When armed or turned on at either station, remain lighted or become lighted upon interruption of the airplane's normal electric power.

(2) Each light must be armed or turned on during taxiing, takeoff, and landing. In showing compliance with this paragraph a transverse vertical separation of the fuselage need not be considered.

(3) Each light must provide the required level of illumination for at least 10 minutes at the critical ambient conditions after emergency landing.

(4) Each light must have a cockpit control device that has an "on," "off," and "armed" position.

* * * * *

(f) *Emergency exit access.* Access to emergency exits must be provided as follows for each passenger-carrying transport category airplane:

* * * * *

(h) * * *

(1) Except for nontransport category airplanes certificated after December 31, 1964, each passenger-carrying airplane must be equipped with exterior lighting that meets the following requirements:

* * * * *

(k) On each large passenger-carrying turbojet-powered airplane, each ventral exit and tailcone exit must be—

* * * * *

(l) *Portable lights.* No person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

* * * * *

44. Section 121.311 is amended by revising the first sentence of the introductory text of paragraph (e), by adding a new paragraph (e)(3), by revising the introductory text of paragraph (f), and by revising paragraph (h) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(e) Except as provided in paragraphs (e)(1) through (e)(3) of this section, no certificate holder may take off or land an airplane unless each passenger seat back is in the upright position. * * *

* * * * *

(3) On airplanes with no flight attendant, the certificate holder may take off or land as long as the flightcrew instructs each passenger to place his or her seat back in the upright position for takeoff and landing.

(f) No person may operate a transport category airplane that was type certificated after January 1, 1958, or a nontransport category airplane manufactured after March 20, 1997, unless it is equipped at each flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, effective March 6, 1980, except that—

* * * * *

(h) Each occupant of a seat equipped with a shoulder harness or with a combined safety belt and shoulder harness must have the shoulder harness or combined safety belt and shoulder harness properly secured about that occupant during takeoff and landing, except that a shoulder harness that is not combined with a safety belt may be unfastened if the occupant cannot perform the required duties with the shoulder harness fastened.

* * * * *

45. Section 121.312 is revised to read as follows:

§ 121.312 Materials for compartment interiors.

(a) *All interior materials; transport category airplanes and nontransport category airplanes type certificated before January 1, 1965.* Except for the materials covered by paragraph (b) of this section, all materials in each compartment of a transport category airplane, or a nontransport category airplane type certificated before January 1, 1965, used by the crewmembers and passengers, must meet the requirements of § 25.853 of this chapter in effect as follows, or later amendment thereto:

(1) *Airplane with passenger seating capacity of 20 or more.*

(i) *Manufactured after August 19, 1988, but prior to August 20, 1990.* Except as provided in paragraph (a)(3)(ii) of this section, each airplane with a passenger capacity of 20 or more and manufactured after August 19, 1988, but prior to August 20, 1990, must comply with the heat release rate testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on August 20, 1986) (see App. L of this part), except that the total heat release over the first 2 minutes of sample exposure must not exceed 100 kilowatt minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(ii) *Manufactured after August 19, 1990.* Each airplane with a passenger capacity of 20 or more and manufactured after August 19, 1990, must comply with the heat release rate and smoke testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1)(see app. L of this part) in effect on September 26, 1988).

(2) *Substantially complete replacement of the cabin interior on or after May 1, 1972.*—(i) *Airplane for which the application for type certificate was filed prior to May 1, 1972.* Except as provided in paragraph (a)(3)(i) or (a)(3)(ii) of this section, each airplane for which the application for type certificate was filed prior to May 1, 1972, must comply with the provisions of § 25.853 in effect on April 30, 1972, regardless of passenger capacity, if there is a substantially complete replacement of the cabin interior after April 30, 1972.

(ii) *Airplane for which the application for type certificate was filed on or after May 1, 1972.* Except as provided in paragraph (a)(3)(i) or (a)(3)(ii) of this section, each airplane for which the application for type certificate was filed on or after May 1, 1972, must comply with the material requirements under which the airplane was type certificated, regardless of passenger capacity, if there is a substantially complete replacement of the cabin interior on or after that date.

(3) *Airplane type certificated after January 1, 1958, with passenger capacity of 20 or more.*—(i) *Substantially complete replacement of the cabin interior on or after March 6, 1995.* Except as provided in paragraph (a)(3)(ii) of this section, each airplane that was type certificated after January 1, 1958, and has a passenger capacity of 20 or more, must comply with the heat release rate testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on August 20, 1986)(see app. L of this part), if there is a substantially complete replacement of the cabin interior components identified in § 25.853(d), on or after that date, except that the total heat release over the first 2 minutes of sample exposure shall not exceed 100 kilowatt-minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(ii) *Substantially complete replacement of the cabin interior on or after August 20, 1990.* Each airplane that was type certificated after January 1, 1958, and has a passenger capacity of 20 or more, must comply with the heat release and smoke testing provisions of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1) in effect on September 26, 1988)(see app. L of this part), if there is a substantially complete replacement of the cabin interior components identified in § 25.853(d), on or after August 20, 1990.

(4) Contrary provisions of this section notwithstanding, the Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, may authorize deviation from the requirements of paragraph (a)(1)(i), (a)(1)(ii), (a)(3)(i), or (a)(3)(ii) of this section for specific components of the cabin interior that do not meet applicable flammability and smoke emission requirements, if the determination is made that special circumstances exist that make compliance impractical. Such grants of deviation will be limited to those airplanes manufactured within 1 year after the applicable date specified in this section and those airplanes in which the interior is replaced within 1 year of that date. A request for such grant of deviation must include a thorough and accurate analysis of each component subject to § 25.853(a–1), the steps being taken to achieve compliance, and, for the few components for which timely compliance will not be achieved, credible reasons for such noncompliance.

(5) Contrary provisions of this section notwithstanding, galley carts and galley standard containers that do not meet the flammability and smoke emission requirements of § 25.853(d) in effect March 6, 1995 (formerly § 25.853(a–1)) (see app. L of this part) may be used in airplanes that must meet the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(i), or (a)(3)(ii) of this section, provided the galley carts or standard containers were manufactured prior to March 6, 1995.

(b) *Seat cushions.* Seat cushions, except those on flight crewmember seats, in each compartment occupied by crew or passengers, must comply with the requirements pertaining to seat cushions in § 25.853(c) effective on November 26, 1984, on each airplane as follows:

(1) Each transport category airplane type certificated after January 1, 1958; and

(2) On or after December 20, 2010, each nontransport category airplane type certificated after December 31, 1964.

(c) *All interior materials; airplanes type certificated in accordance with SFAR No. 41 of 14 CFR part 21.* No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 of 14 CFR part 21 for a maximum certificated takeoff weight in excess of 12,500 pounds unless the airplane meets the compartment interior requirements set forth in § 25.853(a) in effect March 6, 1995 (formerly § 25.853(a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978)(see app. L of this part).

(d) *All interior materials; other airplanes.* For each material or seat cushion to which a requirement in paragraphs (a), (b), or (c) of this section does not apply, the material and seat cushion in each compartment used by the crewmembers and passengers must meet the applicable requirement under which the airplane was type certificated.

46. Section 121.313(f) is revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph.

* * * * *

47. Section 121.317 is amended by revising paragraphs (a), (b), and (k) and by adding a new paragraph (l) to read as follows:

§ 121.317 Passenger information.

(a) Except as provided in paragraph (l) of this section, no person may operate an airplane unless it is equipped with passenger information signs that meet the requirements of § 25.791 of this chapter. Except as provided in paragraph (l) of this section, the signs must be constructed so that the crewmembers can turn them on and off.

(b) Except as provided in paragraph (l) of this section, the "Fasten Seat Belt" sign shall be turned on during any movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command.

* * * * *

(k) Each passenger shall comply with instructions given him or her by a crewmember regarding compliance with paragraphs (f), (g), (h), and (l) of this section.

(l) A certificate holder may operate a nontransport category airplane type certificated after December 31, 1964, that is manufactured before December 22, 1997, if it is equipped with at least one placard that is legible to each person seated in the cabin that states "Fasten Seat Belt," and if, during any

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movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command, a crewmember orally instructs the passengers to fasten their seat belts.

48. Section 121.323(b) and (c) are revised to read as follows:

§ 121.323 Instruments and equipment for operations at night.

* * * * *

(b) An anti-collision light.

(c) Two landing lights, except that only one landing light is required for nontransport category airplanes type certificated after December 31, 1964.

* * * * *

49. Section 121.337 is amended by removing the words "a transport category" from the introductory text in paragraph (b) and adding in its place "an", by adding a heading for paragraph (b)(8), by adding a heading and revising the introductory text of paragraph (b)(9), and by removing paragraph (d) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(8) *Smoke and fume protection.* * * *

(9) *Fire combatting.* Except for nontransport category airplanes type certificated after December 31, 1964, protective breathing equipment with a portable breathing gas supply meeting the requirements of this section must be easily accessible and conveniently located for immediate use by crewmembers in combatting fires as follows:

* * * * *

50. Section 121.340 is amended by revising paragraph (a) to read as follows:

§ 121.340 Emergency flotation means.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(1) or with an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

* * * * *

51. Section 121.341 is amended by revising paragraph (a) and by adding new paragraphs (c) and (d) to read as follows:

§ 121.341 Equipment for operations in icing conditions.

(a) Except as permitted in paragraph (c)(2) of this section, unless an airplane is type certificated under the transport category airworthiness requirements relating to ice protection, or unless an airplane is a non-transport category airplane type certificated after December 31, 1964, that has the ice protection provisions that meet section 34 of appendix A of part 135 of this chapter, no person may operate an airplane in icing conditions unless it is equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

* * * * *

(c) *Non-transport category airplanes type certificated after December 31, 1964.* Except for an airplane that has ice protection provisions that meet section 34 of appendix A of part 135 of this chapter, or those for transport category airplane type certification, no person may operate—

(1) Under IFR into known or forecast light or moderate icing conditions;

(2) Under VFR into known light or moderate icing conditions; unless the airplane has functioning deicing anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system; or

(3) Into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing condition that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraph (c) of this section based on forecast conditions do not apply.

52. Section 121.342 is revised to read as follows:

§ 121.342 Pitot heat indication systems.

No person may operate a transport category airplane or, after December 20, 1999, a nontransport category airplane type certificated after December 31, 1964, that is equipped with a flight instrument pitot heating system unless the airplane is also equipped with an operable pitot heat indication system that complies § 25.1326 of this chapter in effect on April 12, 1978.

53. Section 121.344 is added to read as follows:

§ 121.344 Flight recorders: Airplanes with a passenger seat configuration of 10–30 passenger seats and a payload capacity of 7,500 pounds or less.

No person may operate an airplane with a passenger seat configuration of 10–30 passenger seats, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less unless it meets the requirements for flight recorders in § 135.152 of this chapter. A person operating an airplane with a passenger seat configuration of more than 30 passenger seats, or a payload capacity of more than 7,500 pounds shall comply with § 121.343.

54. Section 121.349 is amended by adding a new paragraph (e) to read as follows:

§ 121.349 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.

* * * * *

(e) No person may operate an airplane having a passenger seat configuration of 10 to 30 seats, excluding each crewmember seat, and a payload of 7,500 pounds or less under IFR or in extended overwater operations unless it has, in addition to any other required radio communications and navigational equipment appropriate to the facilities to be used which are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility, two microphones, and two headsets or one headset and one speaker.

55. Section 121.353 is amended by revising the heading and the introductory text to read as follows:

§ 121.353 Emergency equipment for operations over uninhabited terrain areas: Flag, supplemental, and certain domestic operations.

Unless the airplane has the following equipment, no person may conduct a flag or supplemental operation or a domestic operation within the States of Alaska or Hawaii over an uninhabited area or any other area that (in its operations specifications) the Administrator specifies required equipment for search and rescue in case of an emergency:

* * * * *

56. Section 121.356 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

* * * * *

(c) The appropriate manuals required by § 121.131 shall contain the following information on the TCAS II System or TCAS I System, as appropriate, as required by this section:

* * * * *

57. Section 121.357 is amended by revising paragraph (a) and introductory text of paragraph (c) and by removing the words "an air carrier or commercial operator" in paragraph (c)(1) and

adding, in their place, the words "a certificate holder," to read as follows:

§ 121.357 Airborne weather radar equipment requirements.

(a) No person may operate any transport category airplane (except C–46 type airplanes) or a nontransport category airplane certificated after December 31, 1964, unless approved airborne weather radar equipment has been installed in the airplane.

* * * * *

(c) Each person operating an airplane required to have approved airborne weather radar equipment installed shall, when using it under this part, operate it in accordance with the following:

* * * * *

58. Section 121.359 is amended by removing and reserving paragraph (b), by revising the introductory text of paragraph (c), by redesignating paragraphs (d) through (f) as paragraphs (f) through (h), respectively, and adding new paragraphs (d) and (e) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(c) The cockpit voice recorder required by paragraph (a) of this section must meet the following application standards:

* * * * *

(d) No person may operate a multiengine, turbine-powered airplane having a passenger seat configuration of 10–19 seats unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(e) No person may operate a multiengine, turbine-powered airplane having a passenger seat configuration of 20 to 30 seats unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with § 23.1457 or § 25.1457 of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

* * * * *

59. Section 121.360 is revised to read as follows:

§ 121.360 Ground proximity warning-glide slope deviation alerting system.

(a) No person may operate a turbine-powered airplane unless it is equipped with a ground proximity warning system that meets the performance and environmental standards of TSO–C92 (available from the FAA, 800 Independence Avenue SW., Washington, DC 20591) or incorporates TSO-approved ground proximity warning equipment.

(b) For the ground proximity warning system required by this section, the Airplane Flight Manual shall contain—

(1) Appropriate procedures for—

(i) The use of the equipment;

(ii) Proper flightcrew action with respect to the equipment;

(iii) Deactivation for planned abnormal and emergency conditions;

(iv) Inhibition of Mode 4 warnings based on flaps being in other than the landing configuration if the system incorporates a Mode 4 flap warning inhibition control; and

(2) An outline of all input sources that must be operating.

(c) No person may deactivate a ground proximity warning system required by this section except in accordance with the procedures contained in the Airplane Flight Manual.

(d) Whenever a ground proximity warning system required by this section is deactivated, an entry shall be made in the airplane maintenance record that includes the date and time of deactivation.

(e) No person may operate a turbine-powered airplane unless it is equipped with a ground proximity warning/glide slope deviation alerting system that meets the performance and environmental standards contained in TSO–C92a or TSO–C92b or incorporates TSO-approved ground proximity warning-glide slope deviation alerting equipment.

(f) No person may operate a turbojet powered airplane equipped with a system required by paragraph (e) of this section, that incorporates equipment that meets the performance and environmental standards of TSO–C92b or is approved under that TSO, using other than Warning Envelopes 1 or 3 for Warning Modes 1 and 4.

60. Section 121.380 is amended by redesignating paragraphs (a)(2)(iii) through (a)(2)(vi) as paragraphs (a)(2)(iv) through (a)(2)(vii), respectively; by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), newly redesignated paragraphs (a)(2)(vi), (a)(2)(vii), (c)(1), and (c)(2); and by adding new paragraphs (a)(2)(iii) and (b) to read as follows:

§ 121.380 Maintenance recording requirements.

(a) Each certificate holder shall keep (using the system specified in the manual required in § 121.369) the following records for the periods specified in paragraph (c) of this section:

* * * * *

(2) * * *

(i) The total time in service of the airframe.

(ii) Except as provided in paragraph (b) of this section, the total time in service of each engine and propeller.

(iii) The current status of life-limited parts of each airframe, engine, propeller, and appliance.

* * * * *

(vi) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vii) A list of current major alterations to each airframe, engine, propeller, and appliance.

(b) A certificate holder need not record the total time in service of an engine or propeller on a transport category airplane that has a passenger seat configuration of more than 30 seats or a nontransport category airplane type certificated before January 1, 1958, until the following, whichever occurs first:

(1) March 20, 1997; or

(2) The date of the first overhaul of the engine or propeller, as applicable, after January 19, 1996.

(c) * * *

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, and appliance, the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

* * * * *

61. Section 121.391 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; by revising paragraphs (a) introductory text and (a)(1); by adding a new paragraph (a)(2); and by removing paragraph (e) to read as follows:

§ 121.391 Flight attendants.

(a) Each certificate holder shall provide at least the following flight

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attendants on each passenger-carrying airplane used:

(1) For airplanes having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

* * * * *

62. Section 121.393 is added to read as follows:

§ 121.393 Crewmember requirements at stops where passengers remain on board.

At stops where passengers remain on board, the certificate holder must meet the following requirements:

(a) On each airplane for which a flight attendant is not required by § 121.391(a), the certificate holder must ensure that a person who is qualified in the emergency evacuation procedures for the airplane, as required in § 121.417, and who is identified to the passengers, remains:

(1) On board the airplane; or

(2) Nearby the airplane, in a position to adequately monitor passenger safety, and:

(i) The airplane engines are shut down; and

(ii) At least one floor level exit remains open to provide for the deplaning of passengers.

(b) On each airplane for which flight attendants are required by § 121.391(a), but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder shall ensure that:

(i) The airplane engines are shut down;

(ii) At least one floor level exit remains open to provide for the deplaning of passengers; and

(iii) the number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(2) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(3) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

§ 121.435 [Removed]

63. Section 121.435 is removed.

§ 121.455 [Amended]

64. Section 121.455 is amended by adding the words "or operator" after the words "certificate holder," wherever they appear.

§ 121.457 [Amended]

65. Section 121.457 is amended by adding the words "or operator" after the words "certificate holder," wherever they appear.

66. Section 121.463 is amended in paragraphs (a), (b), and (d) by removing the words "domestic or flag air carrier" and adding, in their place, the words "certificate holder conducting domestic or flag operations;" in paragraph (d) by removing the words "air carrier" and adding, in their place, the words "certificate holder;" and by revising paragraphs (a)(2) and (c) to read as follows:

§ 121.463 Aircraft dispatcher qualifications.

(a) * * *

(2) Operating familiarization consisting of at least 5 hours observing operations under this part from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. A person may serve as an aircraft dispatcher without meeting the requirement of this paragraph (a) for 90 days after initial introduction of the airplane into operations under this part.

* * * * *

(c) No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as an aircraft dispatcher unless within the preceding 12 calendar months the aircraft dispatcher has satisfactorily completed operating familiarization consisting of at least 5 hours observing operations under this part, in one of the types of airplanes in each group to be dispatched. This observation shall be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. The requirement of paragraph (a) of this section may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. The requirement of this paragraph may be satisfied by observation of 5 hours of simulator training for each airplane group in one of the simulators approved under § 121.407 for the group. However, if the requirement of paragraph (a) is met by the use of a simulator, no reduction in hours is permitted.

* * * * *

67. Section 121.470 is revised to read as follows:

§ 121.470 Applicability.

This subpart prescribes flight time limitations and rest requirements for domestic operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) Certificate holders conducting scheduled operations entirely within the States of Alaska or Hawaii with airplanes having a passenger seat configuration of more than 30 seats, excluding each crewmember seat, or a payload capacity of more than 7,500 pounds, may comply with the requirements of subpart R of this part for those operations.

68. Section 121.480 is revised to read as follows:

§ 121.480 Applicability.

This subpart prescribes flight time limitations and rest requirements for flag operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

69. Section 121.500 is revised to read as follows:

§ 121.500 Applicability.

This subpart prescribes flight time limitations and rest requirements for supplemental operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

70. Section 121.571 is amended in paragraph (a)(4) by removing the words "flight attendant" and adding in their place, the word "crewmembers;" by adding a new paragraph (a)(1)(v); and by revising the introductory text of paragraph (a)(3) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(v) On operations that do not use a flight attendant, the following additional information:

(A) The placement of seat backs in an upright position before takeoff and landing.

(B) Location of survival equipment.

(C) If the flight involves operations above 12,000 MSL, the normal and emergency use of oxygen.

(D) Location and operation of fire extinguisher.

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, before each takeoff a required crewmember assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the required crewmember shall—

* * * * *

71. Section 121.578(b) introductory text is revised to read as follows:

§ 121.578 Cabin ozone concentration.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may operate an airplane above the following flight levels unless it is successfully demonstrated to the Administrator that the concentration of ozone inside the cabin will not exceed—

* * * * *

72. Section 121.581 is amended by revising the section heading and paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 121.581 Observer's seat: En route inspections.

(a) Except as provided in paragraph (c) of this section, each certificate holder shall make available a seat on the flight deck of each airplane, used by it in air commerce, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

* * * * *

(c) For any airplane type certificated before December 20, 1995 for not more than 30 passengers that does not have an observer seat on the flight deck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections. Notwithstanding the requirements of § 121.587, the cockpit door, if required, may remain open during such inspections.

§ 121.583 [Amended]

73. Section 121.583(a) is amended by removing the reference to ",121.161,."

74. Section 121.587 is amended by revising paragraph (a) and adding a new paragraph (b)(3) to read as follows:

§ 121.587 Closing and locking of flight crew compartment door.

(a) Except as provided in paragraph (b) of this section, a pilot in command of an airplane that has a lockable flight crew compartment door in accordance with § 121.313 and that is carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked during flight.

(b) * * *

(3) When a jumpseat is being used by persons authorized under § 121.547 in airplanes in which closing and locking the flight crew compartment door is impossible while the jumpseat is in use.

§ 121.589 [Amended]

75. Section 121.589 is amended in paragraphs (b) and (c)(2) by removing the reference "§ 121.285(c) of this part" and adding in its place "§ 121.285 (c) and (d)."

76. Section 121.590 is revised to read as follows:

§ 121.590 Use of certificated land airports.

(a) Except as provided in paragraph (b) of this section or unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(b) Certificate holders conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate those airplanes into airports not certificated under part 139 of this chapter if the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

77. Section 121.639 is amended by revising the section heading and revising paragraph (c) to read as follows:

§ 121.639 Fuel supply: All domestic operations.

* * * * *

(c) Thereafter, to fly for 45 minutes at normal cruising fuel consumption or, for certificate holders who are authorized to conduct day VFR operations in their operations specifications and who are operating nontransport category airplanes type certificated after December 31, 1964, to fly for 30 minutes at normal cruising fuel consumption for day VFR operations.

78. Section 121.643 is amended by revising the section heading and paragraph (a)(3) to read as follows:

§ 121.643 Fuel supply: Nonturbine and turbo-propeller-powered airplanes; supplemental operations.

(a) * * *

(3) Thereafter, to fly for 45 minutes at normal cruising fuel consumption or, for certificate holders who are authorized to conduct day VFR operations in their operations specifications and who are operating nontransport category airplanes type certificated after December 31, 1964, to fly for 30 minutes at normal cruising fuel consumption for day VFR operations.

* * * * *

79. Section 121.703 is amended in paragraph (d) by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" and adding, in their place, the words "certificate-holding district office" and by revising paragraphs (a)(12) and (f) to read as follows:

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§ 121.703 Mechanical reliability reports.

(a) * * *

(12) An unwanted landing gear extension or retraction, or an unwanted opening or closing of landing gear doors during flight;

* * * * *

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of 14 CFR part 830.

* * * * *

80. Section 121.713 is revised to read as follows:

§ 121.713 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides service as a commercial operator for a period of at least 1 year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35 (g)(2), (g)(7), and (g)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

§ 121.715 [Removed]

81. Section 121.715 is removed.

82. Appendix K is added to part 121 to read as follows:

Appendix K to Part 121—Performance Requirements for Certain Turbopropeller Powered Airplanes

1. *Applicability.* This appendix specifies requirements for the following turbopropeller powered airplanes that must comply with the Airplane Performance Operating Limitations in §§ 121.189 through 121.197:

a. After December 20, 2010, each airplane manufactured before March 20, 1997 and type certificated in the:

i. Normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

ii. Normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23 of 14 CFR part 23.

iii. Normal category, and complies with the additional airworthiness standards in appendix A of part 135 of this chapter.

iv. Normal category, and complies with section 1.(a) or 1.(b) of SFAR No. 41 of 14 CFR part 21.

b. After March 20, 1997, each airplane:

i. Type certificated prior to March 29, 1995, in the commuter category.

ii. Manufactured on or after March 20, 1997, and that was type certificated in the normal category, and complies with the requirements described in paragraphs 1.a.i through iii of this appendix.

2. *Background.* Sections 121.157 and 121.173(b) require that the airplanes operated under this part and described in paragraph 1 of this appendix, comply with the Airplane Performance Operating Limitations in §§ 121.189 through 121.197. Airplanes described in § 121.157(f) and paragraph 1.a of this appendix must comply on and after December 20, 2010. Airplanes described in § 121.157(e) and paragraph 1.b of this appendix must comply on and after March 20, 1997. (Airplanes type certificated in the normal category, and in accordance with SFAR No. 41 of 14 CFR part 21, as described in paragraph 1.a.iv of this appendix, may not be produced after October 17, 1991.)

3. *References.* Unless otherwise specified, references in this appendix to sections of part 23 of this chapter are to those sections of 14 CFR part 23, as amended by Amendment No. 23–45 (August 6, 1993, 58 FR 42156).

Performance

4. *Interim Airplane Performance Operating Limitations.*

a. Until December 20, 2010, airplanes described in paragraph 1.a of this appendix may continue to comply with the requirements in subpart I of part 135 and § 135.181(a)(2) of this chapter that apply to small, nontransport category airplanes.

b. Until March 20, 1997, airplanes described in paragraph 1.b.i of this appendix may continue to comply with the requirements in subpart I of part 135 of this chapter that apply to commuter category airplanes.

5. *Final Airplane Performance Operating Limitations.*

a. Through an amended type certification program or a supplemental type certification program, each airplane described in paragraph 1.a and 1.b.ii of this appendix must be shown to comply with the commuter category performance requirements specified in this appendix, which are included in part 23 of this chapter. Each new revision to a current airplane performance operating limitation for an airplane that is or has been demonstrated to comply, must also be approved by the Administrator. An airplane approved to the requirements of section 1.(b) of SFAR No. 41 of 14 CFR part 21, as described in paragraph 1.a.iv of this appendix, and that has been demonstrated to comply with the additional requirements of section 4.(c) of SFAR No. 41 of 14 CFR part 21 and International Civil Aviation Organization Annex 8 (available from the FAA, 800 Independence Avenue SW., Washington, DC 20591), will be considered to be in compliance with the commuter category performance requirements.

b. Each turbopropeller powered airplane subject to this appendix must be demonstrated to comply with the airplane performance operating limitation requirements of this chapter specified as follows:

i. Section 23.45 Performance General.
ii. Section 23.51 Takeoff.
iii. Section 23.53 Takeoff speeds.
iv. Section 23.55 Accelerate stop distance.
v. Section 23.57 Takeoff path.
vi. Section 23.59 Takeoff distance and takeoff run.
vii. Section 23.61 Takeoff flight path.
viii. Section 23.65 Climb: All engines operating.
ix. Section 23.67 Climb: one engine inoperative.
x. Section 23.75 Landing.
xi. Section 23.77 Balked landing.
xii. Sections 23.1581 through 23.1589 Airplane flight manual and approved manual material.

6. *Operation.* After compliance with the final airplane performance operating limitations requirements has been demonstrated and added to the Airplane Flight Manual performance data of the affected airplane, that airplane must be operated in accordance with the performance limitations of §§ 121.189 through 121.197.

83. A new appendix L is added to part 121 to read as follows:

Appendix L to Part 121—Type Certification Regulations Made Previously Effective

Appendix L lists regulations in this part that require compliance with standards contained in superseded type certification regulations that continue to apply to certain transport category airplanes. The tables set out citations to current CFR section, applicable aircraft, superseded type certification regulation and applicable time periods, and the CFR edition and **Federal Register** documents where the regulation having prior effect is found. Copies of all superseded regulations may be obtained at the Federal Aviation Administration Law Library, Room 924, 800 Independence Avenue SW., Washington, DC.

Part 121 section	Applicable aircraft	Provisions: CFR/FR references
§ 121.312(a)(1)(i)	Transport category; or nontransport category type certificated before January 1, 1965; passenger capacity of 20 or more; manufactured prior to August 20, 1990.	Heat release rate testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect August 20, 1986: 14 CFR parts 1 to 59, Revised as of January 1, 1986.
§ 121.312(a)(1)(ii)	Transport category; or nontransport category type certificated before January 1, 1965; passenger capacity of 20 or more; manufactured after August 19, 1990.	Heat release rate and smoke testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect September 26, 1988: 14 CFR parts 1 to 59, Revised as of January 1, 1988, and amended by Amdt 25–86, 53 FR 32584, August 25, 1988
§ 121.312(a)(2)(i)	Transport category; or nontransport category type certificate before January 1, 1965; application for type certificate filed prior to May 1, 1972; substantially complete replacement of cabin interior on or after May 1, 1972.	Provisions of 14 CFR 25.853 in effect on April 30, 1972: 14 CFR parts 1 to 59, Revised as of January 1, 1972.
§ 121.312(a)(3)(i)	Transport category type certificated after January 1, 1958; nontransport category type certificated after January 1, 1958, but before January 1, 1965; passenger capacity of 20 or more; substantially complete replacement of the cabin interior on or after March 6, 1995.	Heat release rate testing. 14 CFR 25.853(d) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995; and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a–1) in effect August 20, 1986: 14 CFR parts 1 to 59, Revised as of January 1, 1986.
§ 121.312(a)(3)(ii)	Transport category type certificated after January 1, 1958; nontransport category type certificated after January 1, 1958, but before January 1, 1965; passenger capacity of 20 or more; substantially complete replacement of the cabin interior on or after August 20, 1990.	Heat release rate and smoke testing. 14 CFR 25.853(d) in effect March 6, 1995; 14 CFR parts 1 to 59, Revised as of January 1, 1995; and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR § 25.853(a–1) in effect September 26, 1988: CFR, Title 14, Parts 1 to 59, Revised as of January 1, 1988, and amended by Amdt 25–86, 53 FR 32584, August 25, 1988.
§ 121.312(b) (1) and (2)	Transport category airplane type certificated after January 1, 1958; Nontransport category airplane type certificated after December 31, 1964.	Seat cushions. 14 CFR 25.853(c) effective on November 26, 1984: 14 CFR parts 1 to 59, Revised as of January 1, 1984, and amended by Amdt 25–59, 49 FR 43188, October 26, 1984.
§ 121.312(c)	Airplane type certificated in accordance with SFAR No. 41; maximum certificated takeoff weight in excess of 12,500 pounds.	Compartment interior requirements. 14 CFR 25.853(a) in effect March 6, 1995: 14 CFR parts 1 to 59, Revised as of January 1, 1995, and amended by Amdt 25–83, 60 FR 6623, February 2, 1995. Formerly 14 CFR 25.853(a), (b–1), (b–2), and (b–3) in effect on September 26, 1978: 14 CFR parts 1 to 59, Revised as of January 1, 1978.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

84. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 40103, 44113, 44701–44705, 44707–44714, 44716–44717, and 44722.

85. The heading for 14 CFR part 125 is revised as set forth above.

86. Paragraph (b)(4) of § 125.1 is revised to read as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter; or

* * * * *

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS [REMOVED]

87. Part 127 is removed.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

88. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701, 44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

89. The heading for part 135 is revised to read as set forth above.

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90. Section 135.1 is amended by revising paragraph (a) and by removing and reserving paragraph (b) to read as follows:

§ 135.1 Applicability.

(a) This part prescribes rules governing—

(1) The commuter or on-demand operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 of 14 CFR part 121 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58 of 14 CFR part 121.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, except for operations subject to SFAR 50–2, these operations, when conducted for compensation or hire, must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

* * * * *

91. Section 135.2 is revised to read as follows:

§ 135.2 Compliance schedule for operators that transition to part 121 of this chapter; certain new entrant operators.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that was issued an air carrier or operating certificate and operations specifications under the requirements of part 135 of this chapter or under SFAR No. 38–2 of 14 CFR part 121 before January 19, 1996, and that conducts scheduled passenger-carrying operations with:

(i) Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats;

(ii) Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats; or

(iii) Turbojet engine powered airplanes having a passenger seat configuration of 1–30 seats.

(2) Each person who, after January 19, 1996, applies for or obtains an initial air carrier or operating certificate and operations specifications to conduct scheduled passenger-carrying operations in the kinds of airplanes described in paragraphs (a)(1)(i), (a)(1)(ii), or paragraph (a)(1)(iii) of this section.

(b) *Obtaining operations specifications.* A certificate holder described in paragraph (a)(1) of this section may not, after March 20, 1997, operate an airplane described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section in scheduled passenger-carrying operations, unless it obtains operations specifications to conduct its scheduled operations under part 121 of this chapter on or before March 20, 1997.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), (e), and (i) of this section, each certificate holder described in paragraphs (a)(1) of this section shall comply with each applicable requirement of part 121 of this chapter on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. Except as provided in paragraphs (d) and (e) of this section, each person described in paragraph (a)(2) of this section shall comply with each applicable requirement of part 121 of this chapter on and after the date on which that person is issued a certificate and operations specifications under part 121 of this chapter.

(d) *Delayed compliance dates.* Unless paragraph (e) of this section specifies an earlier compliance date, no certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after a date listed in this paragraph unless that airplane meets the applicable requirement of this paragraph:

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seating configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) (i), (ii), and (iii) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1)(i), (ii), and (iii) of this section:

(i) December 22, 1997:

(A) Section 121.289, Landing gear aural warning.

(B) Section 121.308, Lavatory fire protection.

(C) Section 121.310(e), Emergency exit handle illumination.

(D) Section 121.337(b)(6), Protective breathing equipment.

(E) Section 121.340, Emergency flotation means.

(ii) December 20, 1999: Section 121.342, Pitot heat indication system.

(iii) December 20, 2010:

(A) For airplanes described in § 121.157(f), the Airplane Performance Operating Limitations in §§ 121.189 through 121.197.

(B) Section 121.161(b), Ditching approval.

(C) Section 121.305(j), Third attitude indicator.

(D) Section 121.312(c), Passenger seat cushion flammability.

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in this paragraph (d) unless that airplane meets the applicable requirement listed in this paragraph (d):

(i) December 22, 1997:

(A) Section 121.308, Lavatory fire protection.

(B) Section 121.337(b) (8) and (9), Protective breathing equipment.

(C) Section 121.340, Emergency flotation means.

(ii) December 20, 2010: Section 121.305(j), Third attitude indicator.

(e) *Newly manufactured airplanes.* No certificate holder that is described in paragraph (a) of this section may operate under part 121 of this chapter an airplane manufactured on or after a date listed in this paragraph (e) unless that airplane meets the applicable requirement listed in this paragraph (e).

(1) For nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats:

(i) Manufactured on or after March 20, 1997:

(A) Section 121.305(j), Third attitude indicator.

(B) Section 121.311(f), Safety belts and shoulder harnesses.

(ii) Manufactured on or after December 22, 1997: Section 121.317(a), Fasten seat belt light.

(iii) Manufactured on or after December 20, 1999: Section 121.293, Takeoff warning system.

(2) For transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats manufactured on or after March 20, 1997: Section 121.305(j), Third attitude indicator.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after March 29, 1995, in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before March 19, 1996 each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under part 121 of this chapter. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of part 121 of this chapter on or before March 20, 1997; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

(h) *Continuing requirements.* Until each certificate holder that is covered by paragraph (a) of this section meets the specific compliance dates listed in paragraphs (d) and (e) of this section, the certificate holder shall comply with the applicable airplane and equipment requirements of part 135 of this chapter.

(i) *Delayed pilot age limitation.* (1) Notwithstanding § 121.383(c) of this chapter, and except as provided in paragraph (i)(2) of this section, a certificate holder covered by paragraph (a)(1) of this section may use the services of a person as a pilot after that person has reached his or her 60th birthday, until December 20, 1999. Notwithstanding § 121.383(c) of this chapter, and except as provided in paragraph (i)(2) of this section, a person may serve as a pilot for a certificate holder covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999.

(2) Paragraph (i)(1) applies only to persons who were employed as pilots by a certificate holder covered by paragraph (a)(1) of this section on or before March 20, 1997.

§§ 135.5, 135.9, 135.10, 135.11, 135.13, 135.15, and 135.17 [Removed]

92. Sections 135.5, 135.9, 135.11, 135.13, 135.15, and 135.17 are removed.

§ 135.7 [Amended]

93. Section 135.7 is amended by removing "§ 135.5" wherever it appears and adding in its place "part 119 of this chapter".

§ 135.21 [Amended]

94. Section 135.21 (b) and (f) are amended by removing "principal operations base" and adding in its place ' principal base of operations."

§ 135.23 [Amended]

95. Section 135.23(a) is amended by removing the reference "§ 135.37(a)" and adding in its place "§ 119.69(a) of this chapter".

§ 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 [Removed]

96. Section 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 are removed.

97. Section 135.41 is revised to read as follows:

§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate operating under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 135.43 [Amended]

98. Section 135.43 is amended by:

a. Revising "FAA Flight Standards District Office charged with the overall inspection" in paragraph (b) to read "certificate-holding district office."

b. Revising "Flight Standards District Office" in paragraph (c) to read "certificate-holding district office."

99. Section 135.64 is added to read as follows:

§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35 (h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

§ 135.105 [Amended]

100. Section 135.105(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

§ 135.165 [Amended]

101. Section 135.165(a) is amended by revising the phrase "carrying passengers as a *Commuter Air Carrier*" as defined in part 298 of this title," to read "in a commuter operation, as defined in part 119 of this chapter."

102. Section 135.243(a) is revised to read as follows:

§ 135.243 Pilot in command qualifications.

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—

(1) Of a turbojet airplane, of an airplane having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and

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class ratings and, if required, an appropriate type rating for that airplane.

(2) Of a helicopter in a scheduled interstate air transportation operation by an air carrier within the 48 contiguous states unless that person holds an airline transport pilot certificate, appropriate type ratings, and an instrument rating.

* * * * *

§ 135.244 [Amended]

103. Section 135.244(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

Issued in Washington, D.C. on December 12, 1995.

Federico Peña,
Secretary of Transportation.

David R. Hinson,
Administrator.

[FR Doc. 95-30545 Filed 12-14-95; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 27993; Amdt No. 121-250, 135-57]

RIN 2120-AC79

Air Carrier and Commercial Operator Training Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the training and qualification requirements for certain air carriers and commercial operators by requiring certain certificate holders operating under part 135, and permitting certain others, to comply with part 121 training, checking, and qualification requirements, and mandating Crew Resource Management (CRM) training requirements for part 121 and 135 operators. The FAA is amending these rules in order to make certain part 135 training requirements as comprehensive as part 121 requirements and to incorporate recent knowledge about human performance factors. The rule also allows certain part 135 certificate holders to take advantage of sophisticated aircraft simulator training technologies presently available to part 121 certificate holders. By increasing the training and qualification requirements for certain operators, the rule is intended to reduce the risk of accidents and incidents. By mandating CRM training for certificate holders required to comply with part 121 training requirements, the rule is also intended to reduce the number of accidents and incidents that could be attributed to a lack of crew communication and coordination.

EFFECTIVE DATE: March 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Availability of the Rule

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the amendment number and title of this rule.

Background

Parts 121 and 135 of Title 14 of the code of Federal Regulations contain rules that specify training program requirements for air carriers and certain commercial operators. Those rules specify the qualification requirements of crewmembers, flight and simulator instructors, check airmen, aircraft dispatchers, and other operations personnel. The most detailed and rigorous training and qualification requirements are those contained in subparts N and O of part 121. Although subparts N and O have been amended a number of times in recent years, most of the amendments concern the use of simulators, training devices, or specific training requirements such as security and the transportation of hazardous materials. No comprehensive changes have been made to these subparts since December 1969.

The FAA's most immediate concerns regarding the training and qualification regulations in part 121 and part 135 are twofold. First, compared to part 121 training regulations, part 135 training regulations do not provide a balanced mix of training and checking. Part 121 training and qualification regulations require both recurrent training as well as recurrent flight checks. Although part 135 requires flight training, flight checks can be repeatedly substituted for required training. Second, current parts 121 and 135 training regulations do not incorporate recent knowledge about the significance of human performance factors (e.g., communication, decision-making, leadership, management), generally referred to as crew resource management (CRM), in safe flight operations.

In December, 1986, in response to a safety recommendation from the national Transportation Safety Board (NTSB), the FAA specifically addressed the human factors training issue by initiating an aviation behavioral technology program. This ongoing program consists of projects that, among other things, increase the use of line operational simulations (LOS) i.e. simulator training using a typical operational passenger flight scenario, in a controlled training environment designed to improve cockpit/cabin communication and coordination skills, and pilot decision-making skills.

In June, 1988, the NTSB issued safety recommendation A-88-71 concerning CRM training, as a result of a Northwest Airlines crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed. The NTSB noted that both pilots had received training only as individuals and not as an integral part of the cockpit crew during their last simulator training and proficiency checks. The last CRM training they had each received was 3.5 hours of ground school of general CRM training in 1983. The NTSB implied that the accident might have been prevented had the flight crew received adequate CRM training.

After soliciting ideas from other government agencies and from the aviation community, the FAA published a proposed Special Federal Aviation Regulation (SFAR) and an accompanying draft advisory circular (AC) in the **Federal Register** (54 FR 7670, February 22, 1989). These documents proposed a voluntary, alternative method of complying with the training requirements in current regulations. The voluntary alternative training is called an "advanced qualification program" (AQP). After considering comments received, the FAA issued a final SFAR 58, Advanced Qualification Program, and an accompanying Advisory Circular 120-54 (55 FR 40262, October 2, 1990). This voluntary program applies to certificate holders operating under part 121 or part 135 that elect the alternative requirements of AQP. The alternative requirement includes CRM training and evaluation, increased use of LOS, use of training centers, and the evaluation of flight training devices and flight simulators.

To date, the larger and more sophisticated air carriers have taken advantage of the voluntary program. The FAA expects this to be the case for the foreseeable future. However, the FAA recognizes that some operators, particularly smaller operators, may elect not to participate in the voluntary AQP program and will instead comply with current training requirements in parts 121 and 135; therefore, the FAA is amending the current training requirements of parts 121 and 135 to address the most immediate concerns regarding improved aircrew training and qualification standards. In particular, all certificate holders operating under part 121, and those certificate holders operating under part 135 who are authorized or required under this final rule to follow part 121 training and qualification requirements, are now also required by this rule to include CRM in their training programs.

Another recommendation from the National Transportation Safety Board (NTSB) was that commuter air carriers conducting operations under part 135 with airplanes that require two pilot crewmembers should also be required to comply with the training, checking, and qualification requirements of part 121.

Many regional air carriers operate under both a part 121 and a part 135 certificate because of the type of airplanes they fly. The FAA has encouraged these regional air carriers to train and qualify their pilots under part 121 rather than maintaining two separate training programs. Several of these air carriers have voluntarily required their pilots to be trained, checked, and qualified under part 121 or its equivalent.

The Rule

General Applicability

The amendments to part 121 apply to all certificate holders operating under part 121 and to all certificate holders operating under part 135 that are required to comply with the part 121 training and qualification requirements. The requirements also apply to certain part 135 certificate holders if they request and receive FAA authorization to comply with the part 121 training and qualification requirements.

Commuter Operations Conducted Under Part 135

Part 135 commuter operations serving small and medium sized communities carry millions of passengers every year. The Regional Airline Association (RAA), whose membership consists primarily of commuter air carriers, estimates that more than 61 million passengers will be carried by RAA member airlines in 1997.

Comprehensive training requirements, including CRM training, are important to the safety of these operations. Part 121 training benefits these operations because it provides more emphasis on training, whereas current part 135 rules rely more heavily on the testing and checking requirements set forth in subparts G and H of part 135. Part 121 also allows greater use of simulators which results in two benefits:

(1) Under § 121.407(c), simulator training can be substituted for repetitive proficiency checks (§ 121.441) and certain recency requirements (§ 121.439). This allows for greater flexibility and a more effective mix of training and checking activities.

(2) Simulator training may include hazardous scenarios that would be imprudent to include in inflight training. Thus simulator training increases pilot proficiency in dealing with such situations.

Because subparts N and O emphasize both periodic simulator training and checking programs rather than the continuous checking and testing emphasis of subparts E, G, and H of part 135, this final rule requires the following certificate holders conducting commuter operations under part 135 to comply with the training, checking, and qualification requirements of part 121, subparts N and O, in place of the requirements of subparts E, G, and H of part 135: (1) Those that conduct commuter operations with airplanes for which two pilots are required by aircraft type certification rules, and (2) those that conduct commuter operations with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more.

This final rule also allows the Administrator to authorize any other certificate holders that conduct operations under part 135 to comply with the training, checking, and qualification requirements of subparts N and O part 121. However, because of the size and complexity of the airplanes and the number and length of the flights conducted by these certificate holders, the FAA will permit these certificate holders to comply lower number of hours of operating experience under part 135 rather than those hours specified in § 121.434.

Each part 135 certificate holder that will comply with part 121 training requirements is required to submit and obtain FAA approval of a transition plan for converting from part 135 to the part 121 training and checking requirements. In that plan, the certificate holder should address issues such as: (1) Whether currently employed crewmembers need additional training to meet minimum part 121 training and qualification requirements; and (2) how the certificate holder's training curriculum will be modified, if necessary, to meet part 121 requirements.

Under § 121.405(g), as revised herein, a certificate holder may request a reduction in the programmed hours of ground training from the minimum hours required under present § 121.419. A reduction may be warranted in cases where a certificate holder shows that the airplanes it operates under part 135 are less complex than those generally operated under part 121. For this reason, certain part 135 certificate holders may have to modify their training program.

Crew Resource Management (CRM) Training

A major objective of this rule is to require all certificate holders operating under part 121 and those part 135 certificate holders who must comply with subparts N and O of part 121 as a result of this final rule to provide CRM training.

CRM training teaches crewmembers and aircraft dispatchers to use effectively all resources available to the crew (e.g. hardware, software, and all persons involved in aircraft operation) to achieve safe and efficient flight operations. Sections 121.404, 121.419(a)(1), 121.421(a)(1), 121.422(a)(1), and 121.427(b)(4) provide for the approval of CRM training and require CRM to be incorporated into ground training for flight crewmembers and aircraft dispatchers. Also, as part of this amendment, part 135 certificate holders who conduct training under part 121 must provide CRM training as part of their approved training programs.

The FAA anticipates that for a CRM training program to be approved, it would include three distinct components: (1) An indoctrination/awareness component, often called "initial CRM training," during which CRM issues are defined and discussed; (2) a recurrent practice and feedback component during which trainees gain experience with CRM techniques; and (3) a continuing reinforcement component which ensures that CRM principles are addressed throughout the trainee's employment with the certificate holder. Advisory Circular (AC) 120-51B, as amended, "Crew Resource Management Training," and AC 121-32, "Dispatch Resource Management" provide basic guidance in establishing approved CRM training. (In this amendment, the term "CRM" includes both crew resource

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management and dispatcher resource management.) DOT/FAA/RD–92–26, "Crew Resource Management: An Introductory Handbook," goes into further detail.

Section 121.404 includes initial CRM training for persons already employed by the certificate holder, and for new employees of the certificate holder, unless a new employee has completed the applicable initial CRM training from another certificate holder. The FAA anticipates that this component will be very similar for all certificate holders.

CRM initial indoctrination/awareness training is a curriculum segment with a variety of instructional methods, which can include lectures, discussions, films, practice in an operational setting or a line operational simulation (LOS) session, and feedback with a facilitator. CRM initial indoctrination/awareness training must be provided to all crewmembers and aircraft dispatchers; this training is in addition to existing training. Under § 121.406, the FAA may credit some crew resource management or dispatcher resource management (CRM/DRM) training received before the compliance date in the rule. Some operators have been providing CRM/DRM training under AQP or under voluntary programs. In appropriate circumstances, the FAA may credit part or all of such training toward the initial ground CRM/DRM training which is required by §§ 121.419, 121.421, and 121.422.

The recurrent practice and feedback component of CRM training is best accomplished through the use of simulators and video equipment. However, if the use of simulators is not practical, CRM scenarios can be created without simulators, and practice can be tape recorded to provide feedback. Feedback should be directed by a facilitator who has had appropriate CRM training. Practice and feedback provide participants with critiques by one's self and peers to improve communication, decision-making, and leadership skills.

Numerous comments concerning requiring minimum program hours for CRM training were submitted. Regarding these comments, the FAA has determined that specifying a minimum number of programmed hours for CRM training is not required. Rather, the FAA will consider instructional techniques, number of students in a class, the use of simulation, new training technology, the use of student feedback, the measurement of training outcomes, as well as the number of hours of training time in evaluating and approving CRM training programs.

Many certificate holders already have approved CRM programs that are highly effective. The number of hours in these programs vary, however, the FAA's experience with these highly successful CRM training programs indicates that the most effective programs contain approximately 12 hours for pilot initial CRM training and 8 hours for flight attendant initial CRM training. Recurrent training under these established programs contain approximately 4 hours for pilots and flight engineers and 2 hours for flight attendants and aircraft dispatchers. In this final rule, the increase in minimum programmed hours for initial and recurrent training as proposed in Notice 94–35 (59 FR 64272, December 13, 1994) has been removed. The FAA will consider each certificate holder's CRM training program based on the program's ability to reach the training objectives rather than requiring minimum programmed hours for this training.

Editorial Clarification

The change to § 121.135(b)(15) makes it clear that the certificate holder's manual must include the entire training program curriculum required under § 121.403, not just the program affecting airmen.

Effective Date and Compliance Dates

The FAA has established an effective date of March 19, 1996. By that date, certificate holders operating under part 135 who are required to comply with applicable part 121 training and qualification requirements, must submit the transition plan required under § 135.3. The compliance date for training and qualifying under part 121 rules is 1 year after the effective date of the final rule.

For initial CRM training, the FAA has established a compliance date 2 years after the effective date of the final rule for flight crewmembers, and 3 years after the effective date of the final rule for flight attendants and aircraft dispatchers. After the applicable date, a certificate holder is prohibited from using a crewmember or dispatcher unless that person has completed approved crew or dispatcher resource management initial training. Since a large number of certificate holder employees are required to have this training, the delayed compliance dates will allow sufficient time to train instructors conducting CRM training, and then, in turn, provide this training to all crewmembers and dispatchers.

Consideration of Comments to the NRRM

On December 13, 1994, the FAA proposed these changes in a Notice of Proposed Rulemaking 94–35 (59 FR 64272). Seventeen comments were received. The following is a discussion and the FAA's response to the substantive subject areas.

Improvements in Safety

Comment: The National Transportation Safety Board (NTSB) strongly supports this proposal. The Board believes that the proposal is responsive to a number of their safety recommendations regarding previously noted shortcomings in the human factors aspects of flightcrew performance. It specifically cites and supports the greater use of flight simulators, and actions taken to improve pilot operating experience in scheduled air carriers. The Board believes that the adoption of this proposal will contribute significantly toward improving the level of safety in commuter airline operations as well as major air carriers.

FAA Response: The FAA welcomes the comments of the NTSB, and has given them due consideration in the development of this final rule.

Crew Resource Management Training Program Content

Comments: A number of commenters address the proposed requirement to add a specific number of training hours to be devoted specifically to CRM training.

USAIR Express comments that it supports the addition of CRM, but the hours stated in the regulation should be planned hours rather than programmed hours, indicating that this would provide more flexibility depending on class size. Also, all the training should be proficiency based. Pilot initial training should be 8 hours; 6 hours for flight attendants and dispatchers.

An individual commenter states that he supports the addition of CRM training to the training curriculum and recommends a requirement for at least 5 hours of full motion simulator CRM training for both initial and recurrent training, in addition to 24 classroom hours of initial training. Recurrent CRM training should be conducted annually and include 16 classroom hours.

The Air Line Pilots' Association (ALPA) recommends that the programmed times stated in the NPRM should be considered minimums on which to build a comprehensive CRM training program.

The Coalition of Flight Attendant Unions provides a joint comment for a number of flight attendant associations and concurs with the requirement of 8 hours for initial flight attendant training, but recommends an additional 2 hours be added to recurrent training, raising the requirement from 12 to 14 hours.

The Air Transport Association recommends that the FAA use a "train to proficiency" concept rather than specifying a certain number of hours for CRM training. This training should be integrated into other appropriate training.

Flight Safety International comments that the training should be "objective based" rather than specifying "block hours."

United Airlines (UAL) comments that it is in complete agreement with the proposal, except requiring programed hours. UAL states that "the notion of programmed hours is bankrupt and that no training professional judges the adequacy of a training program by the number of hours spent on a given subject."

The Regional Airline Association recommends removing the "hard time" requirement of a specific number of hours for CRM training and instead recommends that CRM training be integrated into the operator's existing training program in an appropriate manner.

FAA Response: As stated previously, the FAA has removed the requirement for minimum programmed hours for approved CRM training programs. The FAA agrees that CRM training should be objective-based rather than based on a specific number of required hours. Therefore, in complying with this final rule, each individual certificate holder's CRM training program will be evaluated on its design to reach its stated training objectives. In evaluating CRM training programs, the FAA will consider how these training objectives are met and how the certificate holder measures training outcomes. The FAA will consider instructional techniques, class size, the use of simulation, new training technology, overall quality of training, and most importantly, student/instructor feedback and other evaluation methods in determining the adequacy of CRM training programs. The FAA also agrees that the principles of CRM should be integrated into other appropriate training and that these principles be practiced routinely throughout other company flight operations.

Comment: The Department of Psychology of the University of Texas at Austin supports the proposal to add CRM training to the rule. However, they state that CRM training must be designed to the specific needs of the airline and its operating environment and that an evaluation of the human factors training must be included in each certificate holder's approved CRM program.

FAA Response: The FAA agrees with the commenter that CRM training programs should be designed to meet the specific needs of the certificate holder's operating environment and that a continuing assessment of the CRM training program should be accomplished to determine if the program is achieving its goals. Information on designing CRM programs that are specific to the needs of the certificate holder and its operating environment and the evaluation of the CRM training program are included in AC 120–51B. Also, § 121.405(d) allows the training program to be tailored to the individual operator.

Comment: USAIR Express comments that initial new-hire CRM training should be differentiated from initial, transition, and upgrade requirements. CRM training should also be integrated into other training rather than being a separate module in the general subjects section.

FAA Response: USAir Express states that initial new hire CRM training should differ from other CRM training. The FAA agrees that CRM training needs to be tailored to the needs of those being trained and guidance is provided on this subject in AC 120–51B. The FAA also agrees that CRM training principles should be incorporated into all the certificate holder's training. However, the principles of CRM must be learned first before they can be integrated into the certificate holder's entire operation.

Comment: An individual commenter recommends that CRM training be conducted for at least 3 hours in a full motion simulator.

FAA Response: Training in a full motion simulator would provide excellent training; however the FAA believes that mandating CRM training in a "full motion" simulator is not necessary to learn and practice CRM skills.

Comment: The Coalition of Flight Attendant Unions mentions that there is no provision to address giving or denying credit for training already accomplished if the employee changes carriers, for example, moving from a regional carrier to the parent carrier. The group also proposes rewriting § 121.421 (iii) to include wording from AC 120–51B which would ensure a minimum level of quality control.

FAA Response: Section 121.404 as adopted in this final rule provides that a flight attendant who receives initial training from one certificate holder does not have to repeat that training for another certificate holder.

The FAA does not agree with the commenter that the regulation as proposed should be rewritten to include the three CRM training phases as discussed in AC 120–51B, i.e., initial indoctrination and awareness, practice and feedback, and evaluation phases. An approved CRM training program should include the training objectives stated in the AC. However, the FAA believes there is more than one way to achieve these training objectives. Each certificate holder must determine the most practical and efficient way to meet the general training criteria stated in AC 120–51B.

Comment: The Air Transport Association (ATA) recommends reorganizing some of the proposed sections, generally consolidating them into other sections of the proposed rule; and provides a detailed rewrite of the § 121.423.

FAA Response: The FAA does not agree that the rule language should be rewritten under a new § 121.423, since it appears that ATA's rewrite basically provides training credit for CRM training received after the effective date of this final rule; this credit is already provided in § 121.406 which will be adopted as proposed.

Comment: Flight Safety International recommends that the rule include the requirement for assessment, design, and implementation of the CRM training program. The commenter provided a detailed discussion how to improve each of these facets.

FAA Response: The comments of Flight Safety International regarding the requirement for assessment, design and implementation of the CRM training program have merit and are addressed in AC 120–51B.

Comment: The Regional Airline Association generally supports the rule but recommends that the rule include specific reference to part 121, Appendices E, F, and H, and the record keeping requirements of § 121.683.

FAA Response: The FAA does not concur regarding the recommendation that the rule include specific reference to Appendices E, F, and H, which elaborate on flight maneuvers. The certificate holder may include CRM while training on flight maneuvers, but the FAA does not want to limit or mandate CRM during each specific training maneuver. Also, the FAA believes that the detailed record keeping requirements of § 135.63 are more than adequate for affected part 135 operators.

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Comment: One individual commenter believes that CRM could not be defined; to attempt to do so, "goes exactly against the spirit of CRM." Instead, he felt that the flightcrew should pursue "a spontaneous program of people trying to discover ways to relate more harmoniously." Therefore, any effort to formalize CRM training was counterproductive.

FAA Response: The FAA does not agree with this commenter. CRM skills can be learned and improved by both formal training and the informal integration of CRM skills into the certificate holder's organizational culture.

Scope of CRM Training

Comment: One individual commenter and one professional association note that maintenance technicians were not addressed in the notice and recommend that there should be a proposed change to part 65 mandating CRM for maintenance technicians.

FAA Response: The FAA appreciates the comment. However, including maintenance technicians in this rule is outside the scope of the NPRM.

Comments: A number of commenters address the issue of the importance of the training given to those who are responsible to approve, conduct, and evaluate CRM training.

The Department of Psychology of the University of Texas at Austin feels that there should be provisions for specialized training of check pilots, flight instructors, and FAA Flight Standards personnel who must not only be aware of the concepts of CRM, but also must be able to debrief and instruct others in the facets of the program. The commenter also suggests that CRM principles and requirements be included in the airline's flight manuals.

USAIR Express comments that the FAA's Principal Operations Inspectors must be trained in detail to effectively assess and evaluate CRM training programs; otherwise, operators may have difficulty getting curriculum segments approved or getting credit for previously conducted training.

ALPA notes that the facilitators of CRM training must have the highest experience and qualifications to properly evaluate this training.

Flight Safety International emphasizes that instructors and check pilots need specialized training in CRM observation and debriefing skills.

The Regional Airline Association notes that FAA inspectors who are responsible for evaluating, approving, and monitoring the effectiveness of the operator's CRM programs will need additional training for this responsibility.

The Air Transport Association comments that the FAA should ensure that the inspectors who evaluate this program must be highly trained.

FAA Response: The FAA agrees with all these commenters. In addition to establishing a training course for POIs, the FAA has included information in the air carrier inspectors' handbook and AC 120–51B that provides guidance in the approval process. This information is also available to instructors and check pilots.

Compliance Period

Comments: The Department of Psychology of the University of Texas at Austin comments that the compliance period of 2 years for flight crews and 3 years for dispatchers and flight attendants seemed excessive and should be shortened.

The group of flight attendant associations recommends that the proposed compliance period of 2 years for pilots, and 3 years for flight attendants and dispatchers, be shortened to 1 year and 2 years respectively, based on the significance of the rule to the traveling public and its ease of implementation.

ALPA fully supports the proposal and strongly urges the FAA to implement the final rule at the earliest opportunity.

FAA Response: The FAA has adopted a compliance period of 2 years for over 76,000 flight crewmembers and 3 years for over 84,000 flight attendants and dispatchers who require initial CRM training. The FAA encourages certificate holders to develop an approved CRM training program and begin training as soon as possible. However, the FAA believes that to require total compliance in a shorter time than proposed could be a significant economic burden on some certificate holders because training would then have to be accomplished outside the normal, scheduled recurrent training cycle.

Comment Period

Comment: The Alaska Air Carriers' Association suggests extending the comment period to June 23, 1995 to be aligned with another proposal affecting commuter airlines in the area of aircraft certification and general operations.

FAA Response: This action is one in a series of on-going actions to improve the safety of commuter airlines. The effect of this rule is referenced in the recently published NPRM titled Commuter Operations and General Certification and Operations Requirements (60FR16230, March 29, 1995). However, the provisions of this rule are not significantly affected by the other actions proposed in subsequent NPRM's Therefore, this notice will be finalized with due consideration given to all comments received in the current comment period.

Economics

Comment: The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration believes that the FAA overestimated the benefits of CRM training for part 135 operators, mainly citing the belief that CRM training would not be 100% affective. Also, the commenter questions the FAA's position that the rule would not have a significant economic impact on a substantial number of small entities.

Comment: A group of flight attendant associations comments on the estimated cost of initial and recurrent CRM training for flight attendants, providing training costs and per diem information on nine representative carriers.

Comment: The National Air Transport Association expresses concern that, for all part 135 operators who operate aircraft with two pilot crews carrying 10 or more passengers, the proposal may be administratively and economically burdensome. Therefore the Association opposes the FAA proposal to mandate compliance with part 121 training standards. It feels that compliance with part 121 training, including CRM, should be voluntary for part 135 commuter carriers operating aircraft with 10 to 19 seats.

FAA Response: The FAA has reviewed the commenter's points and addressed them in the Regulatory Evaluation of the final rule.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State, and local governments.

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule would generate benefits that justify its costs and is a "significant regulatory action" as defined in the Executive Order. The FAA estimates that the Final Rule will not have a significant economic impact on a substantial number of small entities. No part of the rule is expected to constitute a barrier to international trade. These analyses are provided in the docket and are summarized below.

Response to Comments on the Original Regulatory Evaluation

Two interested parties submitted comments concerning the preliminary regulatory evaluation. Their comments and FAA's disposition are summarized below by subject area.

Wages

Comment: The Coalition of Flight Attendant Unions states that the $27 hourly compensation rate used for part 121 flight attendants seems "excessive."

FAA Response: In response to this comment, the FAA recalculated the hourly compensation rate for part 121 flight attendants based on the Future Aviation Professionals of America's (FAPA) *1994–1995 Flight Attendant Directory of Employers & Salary Survey.* These data support the $27 hourly compensation rate for flight attendants who have been employed for 5 years.

Initial Training

Comment: The Coalition of Flight Attendant Unions states that air carriers do not typically pay or provide benefits to flight attendants during initial training because the trainees are not yet employees. According to the commenter, the provision of lodging and meals during initial training varies among carriers. Many carriers will pay for lodging, some will pay for meals, some provide a small stipend, and some do not defray meal costs at all.

FAA Response: While the FAA agrees that airlines do not necessarily assume the full cost, the agency believes it is appropriate to consider the costs to others including the flight attendants themselves. The FAA believes that if a flight attendant were not attending a training session, the flight attendant would most likely be working at another job earning a wage rate comparable to that of a first year flight attendant. Accordingly, the FAA has calculated costs based on the full hourly compensation rate. The FAA estimates that a first year flight attendant earns hourly compensation of $18.00 for part 135 operators and $20 for part 121 operators. The FAA also estimates that flight attendant training will cost $125 per day for meals and lodging regardless of whether the operator or flight attendant absorbs these costs.

Recurrent Training

Comment: The Coalition of Flight Attendant Unions states that compensation during recurrent training varies among carriers. Some carriers pay no salary during training, while others pay a contractual level substantially below the working flight attendant rate, according to the commenter. Also, some carriers pay per diem while other do not. This commenter provided a brief summary of flight attendant training costs for selected major, national, and regional air carriers.

FAA Response: After reviewing this comment, the FAA has decided to use the compensation rate for a fifth-year flight attendant to compute the compensation rate for recurrent training ($23 for part 135 and $27 for part 121). Based on the discussion above, the evaluation assumes that flight attendants are compensated at their hourly flight rate. Per diem is estimated at $125, regardless of whether the airline or the flight attendant absorbs this cost.

Training Hours

Comment: The Coalition of Flight Attendant Unions states that, based on experience, reductions in training hours are routinely requested and are nearly as routinely granted. The commenter concludes that, following approval of credits and reductions, this rule could result in some carriers absorbing hourly requirements of CRM initial and recurrent training into existing initial and recurrent training programs.

FAA Response: The FAA recognizes this concern, but for purposes of this regulatory evaluation, the cost estimate is based on the average number of planned hours on which established programs are based. For some operators, therefore, such costs may be overstated.

CRM Training Benefits

Comment: The U.S. Small Business Administration (SBA) states that the FAA overestimated the benefits of CRM training for part 135 operators. The SBA states that the FAA assumed that such training would be 100 percent successful in eliminating accidents attributable at least in part to coordination problems. The SBA believes that this is an overly optimistic scenario and encourages the FAA to examine the accident rate of operators who already have CRM programs and use it as the basis for estimating benefits of the training.

The SBA further encourages the FAA to confirm whether the accident rate for part 135 operators resulting from crew coordination problems includes only accidents involving the types of aircraft affected by the rule. According to the commenter, the FAA did not specify whether the accidents involved were the types of part 135 aircraft subject to the rule. In contrast, in estimating the benefits of raising part 135 training to part 121 levels, the FAA specified that the accidents involving part 135 aircraft were of the type affected by the proposal. If the accident rate included part 135 aircraft other than the types covered by the proposed regulation, then the FAA would overestimate the proposal's benefits. For an accurate assessment of CRM's benefits, the FAA must confirm that the accident data used for estimating CRM's benefits is limited to the types of planes covered by the proposal for part 135 operators.

FAA Response: With respect to the comment on effectiveness, the FAA does not expect the rule to be 100 per cent effective. Based on our calculations, the part 135 CRM requirements need to reap only 4 per cent of the estimated benefits to be cost beneficial. The commenter is correct with respect to the accidents included. The final regulatory evaluation has been changed to consider only those accidents involving aircraft affected by this rule.

Regulatory Flexibility Analysis

Comment: The SBA states that the proposal's regulatory flexibility analysis is not in conformance with the Regulatory Flexibility Act (RFA). First, according to the commenter, the FAA did not provide the public with the opportunity to assess the FAA's justification for its criteria for evaluating the significance of a rule's economic impacts. Second, the FAA did not adhere to the procedures for establishing a small business definition different from the definition under § 3 of the Small Business Act. Prior to issuing a final rule, the FAA must make publicly available the development process it used for deriving the threshold criteria for judging the significance of the proposed regulation's economic impact on small entities. The FAA must also consult with the SBA on the use of its alternative small business definition and ask for public comment on the appropriateness of the alternative definition.

FAA Response: The FAA disagrees with this comment. The FAA extensively coordinated the subject criteria and definitions with the appropriate agencies. In 1982, the FAA

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published in the Federal Register (47 FR 32825, July 29, 1982) an invitation for public comment on proposed definitions of small entities. At the time, the FAA also provided to the SBA materials on the proposed alternative definitions.

Costs

Part 121 Equivalent Training for Part 135 Crewmembers

The rule requires 121 training and qualification standards for part 135 crewmembers engaged in operations using airplanes certificated for two pilots or having 10 or more passenger seats. Newly hired part 135 pilots and flight attendants will be required to receive the initial part 121 training. Existing part 135 pilots and flight attendants will not need to repeat initial training but will be subject to recurrent training requirements. During their first recurrent training session, however, existing employees must meet the newly required part 121 training and qualifying standards.

Incremental training costs were determined as the difference between current and projected training costs. For example, the incremental cost of initial training was estimated to be $3,999 for a PIC and was determined by adding pilot compensation, travel and per diem, and other costs and subtracting current costs.

Initial training costs for PICs, SICs, and flight attendants will increase by about $230,000 per year. The cost for first year recurrent training for flight crewmembers will increase by $1.3 million because each currently employed crewmember will be required to meet the part 121 training and qualification standards. The cost for recurrent training after the first year will increase by $1.75 million.

The discounted incremental cost to part 135 operators over the ten year period is estimated to be about $17 million.

Part 121 CRM Training

The number of PICs, SICs, and flight engineers undergoing training during the two-year phase-in period equals 65 percent of the existing number of employees plus new hires (the FAA estimates that 35 percent of pilots are already receiving CRM training through the AQP). The cost for the initial two-year phase-in training will be approximately $7.5 million each year. The cost for initial CRM training after the phase-in period (which applies to new hires only) will be approximately $2 million. Recurrent training costs for existing employees will be about $17 million annually.

The number of flight attendants and dispatchers undergoing training during the three-year phase-in period equals the existing number of employees plus new hires. For flight attendants and dispatchers, initial training over the three-year phase-in period will cost about $4 million annually. Initial training after the third year for new hires will amount to approximately $3.5 million annually. Recurrent training for existing employees will cost about $6 million each year.

Over the ten-year period, the total discounted cost will equal about $230 million.

Part 135 CRM Training

CRM awareness training for pilots for the two-year phase-in period will cost approximately $300,000 per year. After the second year, initial training costs will equal about $67,000 each year. Annual recurrent training costs will be about $600,000.

Initial CRM awareness training for flight attendants will cost about $31,000 per year. The cost for initial training conducted after the phase-in period will equal about $12,000 annually. The annual cost for recurrent training will be about $23,000. Over the ten year period, discounted CRM training costs for the part 135 operators will equal about $6 million.

Total Cost

The total discounted cost of the rule will be approximately $253 million over the next 10 years. The cost of CRM training for part 121 operators accounts for the largest portion.

Benefits

Part 135 Training Upgrade

From 1984 through 1993, the NTSB concluded that pilot error was a probable cause of 30 accidents involving part 135 aircraft affected by this rule. (The accidents included in this analysis involved at least a serious injury or substantial airplane damage). Mid-air collisions and accidents due to bad weather are excluded because the training that will be required under this rule would not reduce those types of accidents.

The 30 accidents were responsible for 89 fatalities and 40 serious injuries. During this period, commuter operators flew 25.5 million flights resulting in a commuter accident due to pilot error of 1.1775 accidents per million commuter flights. The average value of avoiding such an accident is estimated to be $9.607 million.

In estimating the maximum potential value of the benefits, the FAA assumes that: (1) Because part 135 operators will not complete training for two years, no expected benefits will result after the first year and, at most, only one-half of the potential benefits will be achieved in the second year (full benefits will be achieved in the remaining years); and (2) the rule will not eliminate all pilot error accidents but will, at best, only reduce the part 135 pilot-error accident rate down to the rate sustained by part 121 operators. However, the FAA does not expect this rule to completely eliminate the differential in the pilot-error accident rate because the higher part 135 accident rate could be caused by factors other than pilot training; less pilot experience might also result in a higher pilot-error accident rate for part 135 operations.

The FAA estimated the value of potential benefits by multiplying the average value of a part 135 pilot-error related accident ($9.607 million) by the number of potential accidents (accident rate times projected flights). The value of potential benefits was then adjusted to equal the part 121 pilot-error accident rate. The pilot-error accident rate for part 121 airplanes was determined by conducting a search of the part 121 accident database. The FAA determined that this database contained 38 accidents in which pilot error was the probable cause. Given that part 121 airplanes flew 61.55 million flights during this period, the pilot-error accident rate is estimated to be 0.6174 accidents per million flights. By subtracting the part 121 accident rate from the part 135 accident rate [(1.1775 − 0.6174)=.5601], the available reduction in the part 135 accident rate is estimated to equal .56 accidents per one million flights.

Over the ten-year period, the estimated value of the benefits of this provision is about $196 million. When current practice is taken into consideration (30 percent of relevant pilots are already trained under part 121 under an RAA exemption), the ten-year, benefit of this provision is estimated to be $111 million.

Part 135 Crew Resource Management Training

During the period 1984 through 1993, crew coordination was a probable cause in 9 accidents involving part 135 aircraft affected by this rule. The 9 accidents were responsible for 45 fatalities and 7 serious injuries. During this period, commuter operators flew 25.5 million flights resulting in a commuter accident rate due to crew coordination problems of 0.3529 accidents per million

commuter flights. The average value of avoiding such an accident was estimated to be about $15.3 million. This estimated accident cost is considerably higher than the estimated accident cost used in the part 135 training upgrade benefit section. The difference results, in part, from the size of the samples. Thirty accidents were attributable to pilot error and only nine to crew coordination. The three high-cost accidents associated with crew coordination drive up the average cost of those accidents.

Initial training will begin in 1996 and continue through 1997. Therefore, the FAA assumes that full benefits cannot be achieved by this rule until 1998. The FAA estimates the value of benefits by multiplying the average value of a part 135 CRM-related accident ($15.3 million) by the number of potential accidents (accident rate times projected number of flights). Over the ten year period, the benefits of this provision are estimated at $163 million (discounted). However, the FAA expects to realize only some of these benefits by imposing this requirement.

Part 121 Crew Resource Management Training

During the period 1984 through 1993, crew coordination was a probable cause in 17 accidents involving part 121 aircraft. These 17 accidents resulted in 181 fatalities, 45 serious injuries, and 130 minor injuries. During this period, air carriers flew 61.55 million flights resulting in an air carrier accident rate due to crew coordination problems of 0.2762 accidents per million flights.

About two-thirds of the part 121 pilots will receive training during the first year and the remaining one-third of the pilots will complete the initial CRM training by the end of the second year. Thus, the FAA expects reduced benefits for the first two years. The annual, maximum potential benefits cannot be realized until 1998. The FAA estimates the maximum potential value of benefits by multiplying the average value of a part 121 CRM-related accident ($34.4 million) by the number of potential accidents (accident rate times flights).

Over the ten-year period, the estimated value of the benefits of this provision is about $305 million (discounted). Once again, the FAA expects to realize only some of these benefits by this proposed requirement.

Total Benefits

Benefits of this rule are estimated to total $579 million. The largest share of benefits, about $305 million, is attributed to part 121 CRM training. Part 135 CRM training and upgraded pilot training will account for about $163 million and $111 million, respectively.

Cost-Benefit Comparison

The FAA estimates that this rule will cost approximately $253 million over 10 years. The benefits are estimated to be $579 million. With respect to the part 135 flight crew training upgrade, the discounted training costs will be about $17 million, and the discounted value of the expected benefits is $111 million. With respect to part 135 CRM training, the discounted training costs will be about $6 million, and the discounted value of the expected benefits is $163 million. With respect to part 121 CRM training, the discounted training costs will be about $230 million, and the discounted value of the expected benefits is $305 million.

The estimated total cost of the rule has decreased significantly since the NPRM was published. Changes in assumptions—based on additional information about industry practice—were primarily responsible for the adjustments. The final analysis takes into consideration, for example, that 35 percent of part 121 pilots are already receiving and will continue to receive CRM training under AQP. It also takes into account that 30 percent of the part 135 pilots—those employed by dual-certificated operators—already train under part 121. Based on current information, the FAA has also adjusted its assumptions about new-hire rates and the costs of travel and instruction associated with training. In total, these adjustments lead to a lower estimated incremental cost of this rule.

To be cost beneficial, this rule does not have to be 100 percent effective in preventing the types of accidents that it is designed to prevent, nor does the FAA claim that these requirements will prevent all of the accidents for which this rule was designed. If the part 135 training upgrade is only 16 percent effective at preventing these accidents, then the benefits of this requirement will exceed the costs. CRM training for part 135 flight crews needs to be only 4 percent effective for the benefits to exceed the cost of that requirement. However, CRM training for part 121 flight crews needs to be over 75 percent effective for this requirement to be cost-beneficial.

The requirements for upgrading part 135 pilot training should be considered complementary to the proposed Commuter Rule (while the two CRM requirements are independent of the Commuter Rule). The goal of both the Commuter Rule and the part 135 training upgrade requirement is to reduce the accident rate of scheduled carriers operating 10-to-30-seat airplanes under part 135 to the existing part 121 accident rate. The benefits of the part 135 training upgrade requirement are part of the benefits estimated for the Commuter Rule, and they cannot be separated from that rule because it is not possible to determine which rule would have prevented a given accident. For example, individual accidents may be prevented by any one of several factors, such as prevention of the occurrence of a problem with an airplane in the first place, by providing more or better crew training to properly respond to the problem after it occurs, or providing a dispatcher to help identify a problem before it becomes a potential accident. For this reason, the FAA has chosen to combine the estimated costs of upgrading part 135 pilot training with the cost of the Commuter Rule and compare these combined costs with the estimated benefits of the Commuter Rule. When the estimated cost of the part 135 pilot training upgrade requirement ($17 million) is added to the estimated costs for the Commuter NPRM ($275 million), the combined costs ($292 million) are still less than the estimated benefits of the Commuter NPRM ($393 million). The estimated costs and benefits will probably be different in the Commuter Final Rule, but the estimated cost of the Commuter Final Rule plus the $17 million for the part 135 pilot training upgrade requirement is still expected to be less than the estimated benefits for the Commuter Final Rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by the Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The rule will affect those small entities regulated by parts 121 and 135. The FAA's criterion (for documentation, see 47 FR 32825, July 29, 1982) for "a substantial number" is a number that is not less than 11 and which is more than one-third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, 9 or fewer aircraft. The relevant FAA criteria for "a significant impact" are incremental cost of $67,800 per year for a scheduled air carrier with a fleet size of 60 seats or fewer, and $121,300 for a scheduled air carrier with a fleet size of more than 60 seats). (All monetary values are in 1994 dollars).

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Final Regulatory Determination

The FAA identified 39 part 121 operators who operate 9 or fewer aircraft. In addition, the FAA identified another 9 operators who are split certificate holders and operate under both parts 121 and 135. For this analysis the FAA determined that the split certificate holders are currently operating under the higher level of safety required under the part 121 requirements. The FAA determined that, on average, the crew on these aircraft consist of one pilot-in-command, one second-in-command, and three flight attendants. Also, these operators will likely employ two crews per airplane. The FAA determined that in the first year (1996) two PICs, two SICs, and six flight attendants will receive initial training. In the next three years (1997–1999), these crewmembers will receive recurrent training. In the fifth year (2000), there will be a turnover in the crew: 1 PIC, 1 SIC, and 2 flight attendants will be replaced by new employees who will need initial training. Over the following three years (2001–2003), all crewmembers will receive recurrent training. The next year (2004), there will again be a turnover in employees. And, in the final year (2005), the crewmembers will receive recurrent training. The discounted cost over the ten-year period for the part 121 requirements will be about $15,800 per aircraft, or about $2,250 annualized. An operator owning nine airplanes will incur an annualized cost of about $20,252. Thus, a part 121 operator will be able to own at least nine aircraft and remain below the annualized cost threshold of $67,800 for small scheduled operators. The FAA has also determined that part 121 CRM training costs will not impose a significant burden on a substantial number of large scheduled part 121 operators which have a higher threshold of $110,100.

The FAA identified twenty part 135 scheduled operators that own 9 or fewer aircraft (which require two pilots or have 10 or more passenger seats). The discounted cost for part 135 flight crew upgrade and CRM training will be about $53,332, or about $7,593 annualized. Of this amount, CRM training accounts for about $15,362 discounted, or about $2,187 annualized, and flight crew upgrade training accounts for $37,970 discounted, or about $5,406 annualized. This estimate is based on an average of two crews per aircraft with each crew consisting of a PIC, a SIC, and two flight attendants. This estimate includes initial training and recurrent training over the ten year period. Training costs for large scheduled part 135 operators with 9 airplanes (9×$7,593=$68,337) will not exceed the threshold for these operators ($121,300). However, training costs for small scheduled part 135 operators with more than 8 aircraft will exceed the threshold cost (8×$7,593=$60,744). FAA data show that only one of the 20 affected small part 135 operators operate nine aircraft. As this number is less than 11, it does not meet the definition of a "substantial number." Therefore, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small part 135 operators.

International Trade Impact Statement

The FAA has determined that this rule will not constitute barriers to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

These regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule was approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35; there are no changes associated with the paperwork burden of this rule. Therefore, the burden associated with this rule stands cleared under OMB control number 2120–0591.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this regulation: (1) Is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drug testing, Narcotics, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Reporting and recordkeeping requirements, Safety.

The Amendment

The Federal Aviation Administration amends parts 121 and 135 of the Federal Aviation Regulations [14 CFR parts 121 and 135] as follows:

PART 121—CERTIFICATION AND OPERATIONS; DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

2. Section 121.135(b)(15) is revised to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(15) Each training program curriculum required by § 121.403.

* * * * *

3. Section 121.404 is revised to read as follows:

§ 121.404 Compliance dates: Crew and dispatcher resource management training.

After March 19, 1998, no certificate holder may use a person as a flight crewmember, and after March 19, 1999, no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

4. Section 121.405 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 121.405 Training program and revision: Initial and final approval.

* * * * *

(f) Each certificate holder described in § 135.3 (b) and (c) of this chapter must include the material required by § 121.403 in the manual required by § 135.21 of this chapter.

(g) The Administrator may grant a deviation to certificate holders described in § 135.3 (b) and (c) of this chapter to allow reduced programmed hours of ground training required by § 121.419 if it is found that a reduction is warranted based on the certificate holder's operations and the complexity of the make, model, and series of the aircraft used.

5. Section 121.406 is added as follows:

§ 121.406 Reduction of CRM/DRM programmed hours based on credit for previous CRM/DRM training.

(a) For flightcrew members, the Administrator may credit CRM training received before March 19, 1998 toward all or part of the initial ground CRM training required by § 121.419.

(b) For flight attendants, the Administrator may credit CRM training received before March 19, 1999 toward all or part of the initial ground CRM training required by § 121.421.

(c) For aircraft dispatchers, the Administrator may credit CRM training received before March 19, 1999 toward all or part of the initial ground CRM training required by § 121.422.

(d) In granting credit for initial ground CRM or DRM training, the Administrator considers training aids, devices, methods, and procedures used by the certificate holder in a voluntary CRM or DRM program or in an AQP program that effectively meets the quality of an approved CRM or DRM initial ground training program under section 121.419, 121.421, or 121.422 as appropriate.

6. Section 121.419 is amended by revising paragraph (a)(1)(vii), redesignating paragraph (a)(1)(viii) as paragraph (a)(1)(ix), and adding a new paragraph (a)(1)(viii), to read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(1) * * *

(vii) Prevailing weather phenomena and the available sources of weather information;

(viii) Air traffic control and instrument approach procedures; and

(ix) Approved dispatcher resource management (DRM) initial training.

* * * * *

9. Section 121.427 is amended by adding a new paragraph (b)(4):

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(4) Approved recurrent CRM training. For flight crewmembers, this training or portions thereof may be accomplished during an approved simulator line operational flight training (LOFT) session. The recurrent CRM training requirement does not apply until a person has completed the applicable initial CRM training required by §§ 121.419, 121.421, or 121.422.

* * * * *

10. Section 121.431(a) is revised to read as follows:

§ 121.431 Applicability.

(a) This subpart prescribes crewmember qualifications for all certificate holders except where otherwise specified. The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more. The Administrator may authorize any other certificate holder that conducts operations under part 135 to comply with the training and qualification requirements of this subpart instead of subparts E, G, and H of part 135 of this chapter, except that these certificate holders may choose to comply with the operating experience requirements of § 135.244 of this chapter, instead of the requirements of § 121.434.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

12. Section 135.3 is revised to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

(a) Each person operating an aircraft in operations under this part shall—

(1) While operating inside the United States, comply with the applicable rules of this chapter; and

(2) While operating outside the United States, comply with Annex 2, Rules of the Air, to the Convention on International Civil Aviation or the regulations of any foreign country, whichever applies, and with any rules of parts 61 and 91 of this chapter and this part that are more restrictive than that Annex or those regulations and that can be complied with without violating that Annex or those regulations. Annex 2 is incorporated by reference in § 91.703(b) of this chapter.

(b) After March 19, 1997, each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter, or with airplanes having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, shall comply with subparts N and O of part 121 instead of the requirements of subparts E, G, and H of this part. Each affected certificate holder must submit to the Administrator and obtain approval of a transition plan (containing a calendar of events) for moving from its present part 135 training, checking, testing, and qualification requirements to the requirements of part 121 of this chapter. Each transition plan must be submitted by March 19, 1996, and must contain details on how the certificate holder plans to be in compliance with subparts N and O of part 121 on or before March 19, 1997.

(c) If authorized by the Administrator upon application, each certificate holder that conducts operations under this part to which paragraph (b) of this section does not apply, may comply with the applicable sections of subparts N and O of part 121 instead of the requirements of subparts E, G, and H of this part, except that those authorized certificate

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holders may choose to comply with the operating experience requirements of § 135.244, instead of the requirements of § 121.434 of this chapter.

13. Section 135.12 is added:

§ 135.12 Previously trained crewmembers.

A certificate holder may use a crewmember who received the certificate holder's training in accordance with subparts E, G, and H of this part before March 19, 1997 without complying with initial training and qualification requirements of subparts N and O of part 121 of this chapter. The crewmember must comply with the applicable recurrent training requirements of part 121 of this chapter.

§ 135.241 [Amended]

14. Section 135.241 is amended by revising "This" to read "Except as provided in § 135.3, this".

§ 135.291 [Amended]

15. Section 135.291 is amended by revising "This" to read "Except as provided in § 135.3, this".

§ 135.321 [Amended]

16. Section 135.321 is amended by revising "This" to read "Except as provided in § 135.3, this".

Issued in Washington, DC on December 8, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–30449 Filed 12–14–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135

[Docket No. 28081; Notice No. 95–18]

RIN 2120–AF63

Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The proposal results from public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data contained in recent National Aeronautics and Space Administration (NASA) studies relating to flight crewmember duty periods, flight times, and rest. The proposal would update the regulations and replace certain out-dated regulations with a simplified regulatory approach based upon scientific studies of fatigue. The objective of the proposal is to contribute to an improved aviation safety system by ensuring that flight crewmembers are provided with the opportunity to obtain sufficient rest to perform their routine and emergency safety duties.

DATES: Comments must be received on or before March 19, 1996.

ADDRESSES: Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. 28081, 800 Independence Avenue, SW, Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28081. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Room 829, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism- or energy-related impact of the adoption of this proposal. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 28081." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

The aviation industry requires 24-hour activities to meet operational demands. Growth in global long-haul, regional, overnight cargo, and short-haul domestic operations is likely to increase round-the-clock requirements. Flight crews must be available to support 24-hour a day operations to meet these industry demands. Both domestic and international aviation frequently require crossing multiple time zones. Therefore, shift work, night work, irregular work schedules, unpredictable work schedules, and time zone changes will continue to be commonplace components of the aviation industry. These factors affect human physiology by causing performance-impairing fatigue that can affect the level of safety. The FAA believes that it is critical, whenever possible, to incorporate scientific information on fatigue and human sleep physiology into regulations on flight crew scheduling. Such scientific information can help to maintain the safety margin and promote optimum crew performance and alertness during flight operations.

Over the past 40 years, scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, sleepiness/alertness, and performance decrements has grown significantly. Some of this scientific knowledge, gained through field and simulator studies, has confirmed that aviators experience performance-impairing fatigue from sleep loss resulting from current flight and duty practices. Incorporation of scientific knowledge on fatigue into operations (e.g., regulatory scheduling considerations, personal strategies, fatigue countermeasures) would greatly benefit safety. A primary purpose of this rulemaking is to incorporate as much as possible of the scientific knowledge into the applicable regulations.

A second purpose of this proposed rulemaking is to establish consistent and clear duty period limitations, flight time limitations, and rest requirements for all types of operations. The current regulations require revising because of their complexity and age. While domestic flight time limitations and some commuter limitations were updated in 1985, flag and supplemental operations were not. With advancements in new aircraft, these operational distinctions are no longer as meaningful as they once were. This proposal would establish the same duty period limitations, flight time limitations, and rest requirements for all types of operations in part 121 for domestic, flag, and supplemental operations and in part 135 for commuter and on-demand operations. The duty period limitations, flight time limitations, and rest requirements would allow for differences based on the length of flights and number of flight crewmembers on a flight.

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General Discussion

Historical Review

The Civil Aeronautics Act of 1938 (52 Stat. 1007; as amended by 62 Stat. 1216, 49 U.S.C. 551) and subsequently, the Federal Aviation Act of 1958 (now codified at 49 U.S.C. 40101 et seq.) addressed the issue of regulating flight crewmember hours of service. The Federal Aviation Act, as amended, empowers and directs the Secretary of Transportation to promote the safety of civil air flight in air commerce by prescribing and revising from time to time "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees."

Despite many changes in the airline transportation industry over the 30 years before 1983, the rules governing flight time limitations and rest requirements remained virtually unchanged because no safety reasons had been presented which necessitated changes to the regulations. But the presumed level of safety established by these rules did not necessarily mean that the rules were as effective as they should have been when considered in light of changes that had occurred in the industry in the previous 30 years.

In 1983, a significant rulemaking was initiated to clarify and simplify the regulations and to make them more applicable to the air transportation environment at that time. A significant driving force for amending the flight time regulations in 1983 was that the requirements under part 121 were so complicated that they had required thousands of pages of interpretation and had sometimes been incorrectly followed by air carriers.

A second significant factor justifying amendment of the rules in 1983 was their inflexibility. For example, although under the then existing rule, air carriers were not considered in violation of the rules if flight times were exceeded due to adverse weather conditions or other circumstances beyond the control of the air carrier, an air carrier did not have the flexibility to adjust scheduled rest periods in the event of late arrivals or other factors. If a flight was late, the subsequent flights often had to be delayed while substitute flight crewmembers were brought in or while the flight crewmembers received their scheduled rest periods.

A third factor affecting the pre-1983 rules was, under deregulation of the air transportation industry, the number and variety of domestic certificate holders dramatically increased. The complexity and variety of the newer operations required that the FAA provide clear and simple minimum safety criteria for all operators.

A fourth factor affecting the pre-1983 rules, and one related to the changing character of the air transportation industry, was the growth of commuter operations. Some commuter operations fall under part 121 domestic rules while others fall under part 135 rules. A question existed as to whether either set of requirements effectively covered these comparatively new and growing operations. Thus an additional aim of the 1983–1985 rulemaking proceedings was to study the materials submitted by the commuter industry group and incorporate the findings into the applicable rules in order to provide, in this segment of the industry, a level of safety equivalent to other air transportation operations.

The 1983–1985 rulemaking proceeding was not the FAA's first attempt to solve the previously described problems. For a number of years before 1983 the FAA recognized that the flight time limits and rest requirements needed to be clarified and substantively improved in these areas where they were potentially inadequate. On several occasions the FAA had attempted to correct the flight time limitation problems of both parts 121 and 135 through rulemaking actions. But because of the complexity of the flight time rules and the economic interests affected, none of the previous proposals succeeded in resolving the problems to the satisfaction of the affected parties. Given the importance of the flight time rules in air transportation safety, the FAA decided in 1983 to try an innovative approach that would bring the affected parties together to negotiate a resolution.

1983–1985 Regulatory Negotiation

In 1983 regulatory negotiation was a new concept recommended by the Administrative Conference of the United States. Basically, it was a procedure by which representatives of all interests affected by a rulemaking could be brought together to fully discuss the issues under conditions conducive to narrowing or eliminating differences and to negotiating a proposed rule acceptable to each interest. In accordance with the recommended procedure, the FAA created an advisory committee chartered under the Federal Advisory Committee Act. The committee was comprised of persons representing the diverse interests affected by the flight time rules, including persons representing flight crewmembers, air carriers, air taxis, helicopter operators, and the public.

The committee met for 16 days in 1983 under the direction of a convener/mediator and thoroughly discussed the major issues involved in the regulation of flight time limits and rest requirements for domestic operations under part 121 and for operations under part 135. Although the committee did not reach consensus on any particular proposal, its deliberations were successful in narrowing the differences among parties and in reaching substantial agreement on some issues. In addition, the committee identified major areas of concern and all parties obtained significant, new information on a subject which had been discussed, without resolution, for years. The committee deliberations led to a notice of proposed rulemaking [49 FR 12136, March 28, 1984] and then to a final rule [50 FR 29306, July 18, 1985]. The final rule reflected comments received from the organizations represented on the Advisory Committee and from others. The final rule accomplished the following major objectives:

(1) It resolved a series-of-flights problem in part 121, domestic air carrier rules, thereby addressing many interpretation issues;

(2) It established a new rest period requirement in part 121, domestic air carrier rules, for flight crewmembers scheduled to fly 8 hours or less in 24 consecutive hours and allowed greater scheduling flexibility, including the introduction of a reduced rest period;

(3) It upgraded the requirements for all operations in part 135, particularly scheduled operations; and

(4) It incorporated into the rules certain exemptions that had wide applicability: The reduction of a 10-hour rest under part 135 under certain conditions; the extension of flight time with augmented crews; and the special limitations needed for helicopter medical emergency services.

ARAC Flight/Duty Working Group

While the FAA's 1983–1985 flight time limitations rulemaking was a step forward in dealing with rest and flight time issues, the rulemaking was limited in its scope and did not address either flag or supplemental operations under part 121. The FAA recognized at the time that flag and supplemental rules would need to be updated because these rules contained some of the same language and problems contained in the domestic rules that were amended. Furthermore, though the 1985 rulemaking clarified some of the flight time and rest requirements, it did not resolve the problems completely. Also, since the 1985 rulemaking, the complexity of the rules and inconsistencies associated with various types of operations (domestic, flag, and supplemental under part 121 and commuter and on-demand under part 135) have continued to make application and interpretation burdensome. A number of petitions to amend the various sections were received (discussed in more detail later), as well as hundreds of letters concerning the interpretation of rest requirements for flight crewmembers assigned to a reserve status. Therefore, on June 15, 1992, the FAA announced [57 FR 26685] the establishment of the Flight Crewmember Flight/Duty Rest requirements working group (ARAC Flight/Duty Working Group) of the Aviation Rulemaking Advisory Committee (ARAC).

The ARAC had been established by the FAA in January 1991 [46 FR 2190, January 22, 1991] as a vehicle for convening representatives of interested groups to assist the FAA in addressing regulatory problems in a forum that could use, in a less formal setting, many of the regulatory negotiation techniques that had been used by the 1983–1985 flight time limitations advisory committee. The working group's task was to determine whether regulations pertaining to air carrier flight duty and rest requirements are consistently interpreted and understood by the FAA, air carriers, and pilots; to evaluate industry compliance/practice regarding scheduling of reserve duty and rest periods; and to evaluate reports of excessive pilot fatigue as a result of such scheduling. The working group was to develop recommendations for advisory material and a regulatory revision as appropriate.

Between its creation on June 15, 1992, and June 30, 1994, the ARAC Flight/Duty Working Group met on numerous occasions. The chairman of this working group (Dr. Donald E. Hudson of the Aviation Medicine Advisory Service) submitted a preliminary report on February 1, 1994, and a final report on June 30, 1994. The report indicated that while the working group did not reach a consensus on the specific issues, the working group did agree on four major areas that the FAA should address in future rulemaking actions: Absence of a duty time limitation; reserve scheduling; back-side-of-the-clock operations; and scheduled reduced rest. Each of the four areas is briefly described here. Three areas are specifically addressed in this rulemaking and one, back-side-of-the-clock operations, is partially, though indirectly, addressed.

Continuous or indefinite duty could occur under the current rules if flight crewmembers complete their daily schedule when delays encountered are beyond the control of the certificate holder, no matter how long it extends their duty period. The reserve scheduling issue concerns questions such as, do the same rest period requirements apply to flight crewmembers assigned to reserve duty as the rest period requirements that apply to flight crewmembers assigned to scheduled flights? Back-side-of-the clock operations refers to the question whether special duty limitations and rest requirements should be developed for operations that are scheduled during a flight crewmember's normal sleep cycle. The scheduled reduced rest issue concerns whether certificate holders should be allowed to schedule reduced rest in advance or whether reduced rest should only be allowed to deal with unavoidable delays.

Because no consensus could be reached, Dr. Hudson's final report included proposals submitted by several members of the working group. It also stated that there is enough clear scientific guidance available to assist the FAA in establishing a regulatory "safety floor" that will both address the identified issues and not unfairly penalize carriers economically. The report further stated that there is not any physiological justification for having different work rules for part 121 and 135 operators.

NASA Research Program

In 1980, in response to a Congressional request, the National Aeronautic and Space Administration (NASA) Ames Research Center created a Fatigue/Jet Lag Program to examine whether there are safety problems due to transmeridian flying and fatigue in association with various factors found in air transport operations. Since its inception, the program has pursued the following three goals: (1) to determine the extent of fatigue, sleep loss, and circadian disruption in both domestic and international flight operations; (2) to determine the impact of these factors on flight crew performance; and (3) to develop and evaluate countermeasures to reduce the adverse effects of these factors and improve flight crew performance and alertness. In 1991, the NASA Ames Program was renamed the NASA Ames Fatigue Countermeasures Program to highlight the increased focus on the third goal. Since the beginning of the program, NASA has worked in close cooperation with the FAA and with the airline industry to collect data and to provide the findings of its extensive research as quickly as possible. This research is fundamental to this proposal.

NASA Technical Memoranda reveal general principles pertinent to scheduling flight crewmembers. The memoranda include but are not limited to the following:

1. Crew Factors in Flight Operations II: Psychophysiological Responses to Shorthaul Air Transport Operations. (NASA Technical Memorandum 108856, November 1994)

2. Crew Factors in Flight Operations: Factors Influencing Sleep Timing and Subjective Sleep Quality in Commercial Long-Haul Operations. (NASA Technical Memorandum 103852, December 1991)

3. Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation. (NASA Technical Memorandum, 1995)

Copies of these memoranda have been placed in the public docket for this rulemaking.

These memoranda state that sleep, awake time off, and recovery are primary considerations for maintaining alertness and performance levels. Adequate sleep is essential to maintain alertness and performance, a positive mood, and overall health and well-being. Each individual has a basic sleep requirement. The average sleep requirement is for 8 hours in a 24-hour period. Losing as little as 2 hours of sleep in a 24-hour time period can result in acute sleep loss, which will promote fatigue and degrade subsequent performance and alertness. Over days, sleep loss will accrue into a cumulative sleep debt which can only be reversed by sleep. An individual who has obtained required sleep performs better even after long hours awake or during altered work schedules. An individual who is fatigued typically shows a decline in performance by requiring more time to complete a given task. Two nights of an individual's usual sleep requirement will typically stabilize the sleep pattern and restore acceptable levels of waking alertness and performance. More frequent recovery periods reduce cumulative fatigue more effectively than less frequent ones. For example, weekly recovery periods afford a higher likelihood of relieving acute fatigue than monthly recovery periods. Consequently, regulations that ensure minimum days off per week are critical for minimizing the effects of cumulative fatigue over longer periods of time.

The NASA findings and recommendations have been summarized in a 1995 NASA Technical Memorandum titled "Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation."

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This is the first document that NASA intends to publish. This first document is intended to be concise, focused on operational considerations and to provide specific scientific input to this complex issue. The second document will provide the specific scientific references that support the principles and guidelines outlined in the first document. The second document will be longer and will focus on the scientific considerations related to these issues. NASA has assured the FAA that the Technical Reports presently in the docket contain the data on which the results and conclusions in both the first and second document are based. While not every NASA finding or recommendation is specifically reflected in this proposal, the overall thrust of this proposal is consistent with those findings and recommendations. Specific findings of the 1995 NASA memorandum are discussed and where relevant referenced by paragraph number in the discussion of specific proposals in this document.

National Transportation Safety Board Recommendations (NTSB)

Issues of fatigue in transportation have been of special concern to the NTSB in all modes of transportation. In 1989, the NTSB made three recommendations to the Department of Transportation (DOT) to encourage an aggressive Federal program to address the problems of fatigue and sleep issues in transportation safety:

Expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety. (I–89–1)

Develop and disseminate educational material for transportation industry personnel and management regarding shift work; scheduled work and rest; and proper regimens of health, diet, and rest. (I–89–2)

Review and upgrade regulations governing hours of service for all modes to ensure that they are consistent and that they incorporate the results of the latest research on fatigue and sleep issues. (I–89–3)

Further NTSB recommendations were issued as a result of the August 18, 1993, Douglas DC–3–61 freighter crash at the Leeward Point Airfield at the U.S. Naval Air Station, Guantanamo Bay, Cuba after the captain lost control of the airplane on approach. The airplane was destroyed by impact forces and a post accident fire, and the three flight crewmembers sustained serious injuries. NTSB determined that among the probable causes of this accident were impaired judgment, impaired decision-making, and impaired flying abilities of the captain and flightcrew due to the effects of fatigue.

In the letter accompanying the NTSB Safety Recommendations issued as a result of the accident, the NTSB cited the fact that FAA's flight and duty rules applicable to part 121 and 135 certificate holders, as interpreted, allow flight crewmembers to conduct flights under part 91, e.g., ferry flights for their certificate holders following the completion of flights conducted under part 121 or 135, without having to count these flight hours or duty time toward the part 121 or 135 flight time duty time limitations and rest requirements. The NTSB concluded that "the accident trip was under the provisions of a combination of separate regulations that allowed extended flight and duty times to be scheduled, contrary to safe operating practices." The NTSB went on to note that the United States and France are the only countries in the world that base their aviation hours of service regulations on flight time, while most other countries base them on duty time or a combination of duty and flight time.

As a result of the Guantanamo Bay accident, the NTSB issued the following Safety Recommendations that relate to flight and duty time limits:

(1) Revise part 121 to require that flight time accumulated in noncommercial "tail end" ferry flights conducted under part 91, as a result of 14 CFR, part 121, revenue flights, be included in the flight crewmember's total flight and duty time accrued during those revenue operations. (A–94–105)

(2) Expedite the review and upgrade of flight/duty time limitations of the Federal Aviation Regulations to ensure that they incorporate the results of the latest research on fatigue and sleep issues. (A–94–106)

The NTSB also reiterated an earlier recommendation that the FAA require U.S. air carriers operating under 14 CFR part 121, to include, as part of pilot training, a program to educate pilots about the detrimental effects of fatigue, and strategies for avoiding fatigue and countering its effects. (A–94–5)

Aviation Safety Reporting System

The FAA has recently examined incident reports submitted by pilots to NASA's Aviation Safety Reporting System. Since January 1, 1986, NASA has received several reports of situations resulting from fatigue from pilots engaged in part 121 operations and 200 reports from pilots conducting part 135 operations. Although these incidents did not actually result in accidents, they were of a sufficiently serious nature that pilots took the trouble to file a report with NASA with the hope of gaining the attention of the regulatory authorities.

Petitions for Rulemaking

The FAA has received several petitions for rulemaking on flight, duty, and rest requirements:

On June 1, 1989, the Air Transport Association of America (ATA) petitioned the FAA to amend part 121, Subpart R of the FAR (which contains the flight time limitations for flag operations). This petition primarily addressed the need for rulemaking to address the industry wide technological airplane changes that have taken place since these rules were promulgated, such as airplanes that require only two pilots on long distance flights and significant improvements in cockpit automation and noise reduction. Specifically, the petition requested that two-pilot flight crews be allowed to fly 12 hours between required rest periods.

On June 22, 1990, the Air Line Pilots Association (ALPA) petitioned the FAA to amend §§ 121.471 and 135.265 to delete the reduced rest provisions and to increase the required minimum rest for flight crewmembers who are scheduled to fly fewer than 8 hours in a 24-hour period to 10 hours with at least 8 hours in a rest facility; propose longer rest for flight crewmembers who are scheduled to fly more than 8 hours or who make more than eight landings in a 24-hour period; limit duty period time to 14 consecutive hours in a 24-hour period; mandate 1 calendar day free of duty every 7 days, even when flight crewmembers are assigned reserve and/or training duties; and restrict air carriers from interrupting a flight crewmember's rest by communicating with him or her during a required rest period.

On September 12, 1990, the Regional Airline Pilot Association (RAPA) petitioned to amend § 135.265 of the FAR to delete the reduced rest provisions for flight crewmembers who are scheduled to fly in pressurized aircraft during a 24-hour period and increase the minimum rest period to 10 hours with at least 9 hours in a rest facility. For those crewmembers scheduled to fly in unpressurized aircraft, and those who make more than seven landings in a 24-hour period, RAPA petitioned to require a 12-hour rest with at least 10 hours in a rest facility. RAPA petitioned also for an amendment to § 135.265(a) of the FAR which would reduce the total flight time allowed per year to 1,000 hours and per month to 100 hours.

On November 25, 1992, Mr. Thomas T. Gasta, a captain on turbo-jet aircraft, petitioned the FAA to amend the definitions in part 1 of the FAR to include a definition of rest that would ensure that a rest period is free from restraint and free from responsibility for work. Mr. Gasta's particular concern is to ensure that reserve time is not considered rest.

The FAA has considered each of these petitions for rulemaking in preparing this NPRM.

Commuter Rulemaking

The FAA has issued a proposed rulemaking that would affect commuter operations, in general, including applicable flight time limitations and rest requirements (Notice 95–5, 60 FR 16230; March 29, 1995).

The effect of Notice 95–5, if adopted, would be to apply the part 121 domestic flight time limitations and rest requirements to certain commuter operations within the United States and the part 121 flag flight time limitations and rest requirements to certain commuter operations to or from the United States. Thus, that proposal would eliminate the present differences between part 121 and part 135 flight time limitations and rest requirements for affected commuter operations. For all of the reasons discussed in this preamble, the FAA has decided to propose one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation (domestic, flag, supplemental, commuter and on-demand operations). Since, if adopted, this proposal would eliminate all of the present differences between parts 121 and 135 in this subject area, it overrides the related proposal and discussion in Notice 95–5. Nonetheless, in any final rule action based on this proposal, the FAA will consider, where relevant, any comments relating to flight time limitations and rest requirements submitted in response to Notice 95–5.

If the commuter rulemaking is issued as a final rule, the compliance date for the flight time limitations and rest requirements of that rule will be coordinated with the effective date of any final rule that may be issued as a result of this NPRM, so that certificate holders conducting commuter operations will have to change their procedures for scheduling duty periods, flight time, and rest only once.

The Proposal

General

This proposal is a preventive measure designed to address the potential safety problems associated with fatigue-based performance decrements. This proposal is not a response to specific accidents, but rather to extensive data which shows a relationship between fatigue and a decrement in performance. This proposed measure would place limitations on flight crewmember hours of service by requiring certain scheduling limitations and minimum rest periods.

The proposed rule would simplify existing flight crewmember flight time limitations and rest requirements by replacing existing Subparts Q, R, and S of part 121 with a new Subpart Q and revising most of subpart F of part 135. Subpart Q of part 121 would not differentiate between domestic, flag, and supplemental operations as current regulations do, and subpart F of part 135 would not differentiate between commuter and on-demand operations.

As stated previously, the proposed regulatory limitations for parts 121 and 135 are based in part on knowledge of effects of fatigue as reflected in the scientific studies done by NASA. These proposed amendments would be compatible with air carrier operations and would provide reasonable, basic limitations that are conducive to safety.

The FAA considered a number of options prior to proposing those outlined in this notice. The proposal in this notice takes a combined approach based on duty period limitations, flight time scheduling limitations, daily and weekly rest requirements, and requirements for augmented flight crews. Since the studies concerning fatigue in flight operations could not determine any fatigue based rationale for differentiating between types of operations, a single proposed set of scheduling limitations was selected for all types of operations. The proposal is designed to provide science based parameters for duty limitations and rest requirements and, at the same time, be understandable to everyone involved in flight operations. The proposal would establish a basic scheduling limitation for two pilot flight crews of 14 hours of scheduled duty, 10 hours of scheduled flight time, and 10 hours of scheduled rest. Certificate holders would have additional flexibility under the proposal to increase the length of scheduled duty periods, but only under certain conditions. The proposed scheduled maximum 14 hour duty period, 10 hours of scheduled flight time, and 10 hour rest period are consistent with the NASA "Principles and Guidelines" (Specific Principles, Guidelines, and Recommendations 2.2.3 and 2.1.2, hereafter referred to as "Recommendations") for 2-pilot crews.

Although not a proposal in this notice, the FAA also requests that commenters provide scientific data concerning the amount of flight time that two pilot flightcrews should be allowed to fly in a 14-hour duty period, particularly on long range international flights that infringe on the flight crewmember's window of circadian low (2 a.m. to 6 a.m. at the crewmember's home base time).

Applicability

Proposed §§ 121.471 and 135.261 state the applicability of these amendments. Subpart Q in part 121 would provide duty period limitations, flight time limitations, and rest requirements for flight crewmembers in domestic, flag, and supplemental operations. Subpart F in part 135 would provide duty period limitations, flight time limitations, and rest requirements for commuter and on-demand operations.

The proposed duty period limitations, flight time limitations, and rest requirements would also be applicable to duty periods and flight time performed for a certificate holder conducting part 91 operations, as specified in proposed §§ 121.1, 121.487, 135.1, and 135.275.

Terms and Definitions

Proposed §§ 121.471 and 135.261 contain a list of terms and definitions applicable to the proposed amendments.

The proposal defines "approved sleeping quarters" to mean an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator. See Advisory Circular 121–31, "Flightcrew Sleeping Quarters and Rest Facilities" for guidance on methods obtaining FAA approval for aircraft used in part 121 and 135 operations. Sleeping quarters that are already in use that have been determined to be adequate by the Administrator, such as bunks or other horizontal surfaces, will not need to be reapproved because of this proposed rule. The FAA recognizes that there is a difference between the term "adequate" sleeping quarters and "approved" sleeping quarters. Approved sleeping quarters could include additional possibilities that were not part of "adequate sleeping quarters" as previously interpreted. For example, formerly passenger seats were never considered adequate for use as sleeping quarters. Recently, however, a

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new type of passenger seat has been developed that meets the guidelines in AC 121–31 and therefore could be approved for use as sleeping quarters by certificate holders operating under part 121 or part 135.

The proposed rule defines four kinds of time: assigned time, duty involving flight time (referred to as "duty period"), reserve time, and rest (referred to as "rest period"). Definitions of each of these times, as well as other terms, as proposed in §§ 121.471 and135.261, are discussed below.

"Assigned time" is time when the flight crewmember is assigned by the certificate holder to activities other than flight duties. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks and any other assignments, excluding reserve time and required rest periods. Assigned time may be performed as part of a duty period, in which case the proposed duty period limitations and rest requirements in §§ 121.473, 121.475, and 135.263 would apply. Rest requirements associated with assigned time that is not part of a duty period are found in proposed §§ 121.483(f) and 135.271(f).

The proposed rule defines "duty period" as the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base.

The proposed rule defines two types of reserve: "Reserve time" and "standby duty." "Reserve time" is defined as a period of time when a flight crewmember must be available to report upon notice for a duty period. The certificate holder must allow the flight crewmember a minimum of 1 hour or more to report. Reserve time is not considered part of a rest period and is not considered a duty period. Reserve time does not include activities defined as assigned time. Reserve time ends when the crewmember reports for a duty period, when the crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest period.

"Standby duty" in the proposed rule must be treated just like any other duty period associated with flight. Standby reserve duty is any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g., airport, crew lounge) designated by a certificate holder.

The proposed rule defines "rest period" as the time period free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. Rest periods are considered personal time. Rest periods are provided to give the flight crewmember a predetermined opportunity for rest.

For example, if a flight crewmember is scheduled for a duty period which ends on 1200 on Tuesday and requires 14 hours of rest and the flight crewmember is not scheduled for another duty period until 1200 on Thursday, then the 48 hours between duty periods is considered a rest period. The flight crewmember's minimum rest period requirements would be satisfied after 14 hours from the time the duty period ended. The air carrier may reschedule the flight crewmember, but must ensure the minimum rest period requirements are satisfied. It should be noted that the crewmember cannot be required by the air carrier to contact the air carrier, answer the phone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a scheduled rest period. This does not prohibit the flight crewmember from contacting the air carrier at his or her own discretion.

For clarification purposes, the proposal also defines a "calendar day" as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight. The definition is needed because certificate holders have been confused about the application of the term. "Calendar day" is defined in the proposed rule in a manner consistent with past interpretations of the rule.

Also, for clarification purposes, the proposal defines "operational delays" as delays that are beyond the control of the certificate holder such as those that would be caused by weather, aircraft equipment malfunctions, and air traffic control delays. It would not include late arriving passengers, late food service, late fuel trucks, or delays in loading baggage, freight, or mail, or similar events.

Flight Crewmember Duty, Flight, and Rest

Proposed §§ 121.473, 121.475, and 135.263 would establish maximum scheduled duty periods and a maximum scheduled amount of flight time for flight crewmembers within the maximum scheduled duty period. In addition, the proposal would establish minimum rest requirements for flight crewmembers, including requirements that apply when flight crews are augmented and when on board rest facilities are provided.

Current rules are primarily based on flight time. In addition, in some cases the current rules are based on actual rather than scheduled flight time. The major basis for the proposed rule is scheduled duty. The reason for going to a scheduled duty rule is that it is more consistent with current studies relating to fatigue.

For the purposes of assignments involving flight time, the duty period includes the total elapsed time between when the flight crewmember reports for a flight assignment, as required by the air carrier, and when the flight crewmember is relieved from duty by the air carrier. A typical duty period for a flight crewmember would consist of pre-flight duties and post-flight duties assigned by the air carrier. Pre-flight safety duties include aircraft emergency equipment checks, flight planning/dispatch related duties, and complying with the certificate holder's approved operations manual.

At least one industry study and information obtained from crewmembers indicates that air carriers vary in how early they require flight crewmembers to check in to begin their duty periods and pre-flight duties. This check-in or report time varies depending on the type of equipment flown and the flight destination. Carriers typically require flight crewmembers to arrive 30 minutes to 1 hour before scheduled departure. For international flights some carriers require flight crewmembers to report for duty up to 2 hours before departure.

Post-flight safety duties include the post-landing duties, safe deplaning of passengers, duties related to securing the aircraft, and administrative responsibilities such as reporting inoperative equipment to maintenance personnel. Typically, flight crewmembers are required to remain on duty after the aircraft arrives at the gate to accomplish these post-flight duties before they are relieved from duty.

A duty period may also include activities defined as "assigned time," as discussed under "Terms and Definitions," above.

Thus, a flight crewmember's duty period is not solely a function of whether the aircraft is airborne. Flight crewmembers perform important safety duties during boarding and deplaning. This proposal, therefore, is based on duty periods that include flight time rather than solely on flight time. The FAA expects certificate holders to establish realistic report and release times to allow flight crewmembers sufficient time to complete these essential pre-flight and post-flight safety activities.

Proposed §§ 121.473 and 135.263 would provide for different duty period limits based on the number of pilots assigned. Each duty period would have a scheduled flight time limit and would be followed by a required rest period. NASA (Recommendation 2.3.6) recognizes that the use of additional flight crewmembers justifies longer duty periods if the flight crewmembers are provided on-duty sleep opportunities.

To allow flexibility a scheduled duty period could be extended two hours if the extension is needed because of operational delays. Rest periods may be reduced by up to one hour only if the reduction is needed because of operational delays and then only if the pilot has not exceeded the pilot's scheduled maximum duty-period limitations. If a rest period is reduced, the next rest period would have to be extended.

Table 1 provides a summary of the proposed limitations on duty periods and flight time and the proposed rest requirements for pilots.

For one- and two-pilot crews. In proposed § 135.263(b), the basic duty period scheduling limitation for a one-pilot crew would be 14 hours, including no more than 8 scheduled hours of flight time. In proposed §§ 121.473(b) and 135.263(c), the basic duty period limitations for a two-pilot crew would be 14 hours, including no more than 10 scheduled hours of flight time. The minimum rest period for one- and two-pilot crews would be 10 hours. The proposed 10-hour limit on scheduled flight time and the proposed 10-hour minimum rest are consistent with NASA Recommendations 2.3.3 and 2.4.1, respectively.

These proposed duty periods for one- and two-pilot crews could be extended to 16 hours due to operational delays. The rest periods may be reduced to 9 hours if the actual duty period is not more than 14 hours and if the reduction is needed due to operational delays. If the rest period is reduced the next rest period would have to be a minimum of 11 hours. A duty period extended due to operational delays may involve longer than scheduled flight time.

TABLE 1.—PILOT DUTY PERIOD, FLIGHT TIME AND REST REQUIREMENTS

No. of pilots	Duty period hours	Flight time hours	Minimum rest hours	Reduced rest hours [1]	Rest hours following reduced rest (compensatory)	Extended duty period hours [2]
1 (part 135)	No more than 14	No more than 8	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
2	No more than 14	No more than 10	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
3	No more than 16	No more than 12	14	12, May only be reduced if duty period has not exceeded 16.	16	Up to 18 only if due to operational delays
3 Each pilot must have sleep opportunity and approved sleeping quarters must be available.	More than 16, but no more than 18.	No more than 16	18	16, May only be reduced if duty period has not exceeded 18.	20	Up to 20 only if due to operational delays
4 Each pilot must have sleep opportunity ad approved sleeping quarters must be available [3].	More than 18 but no more than 24.	No more than 18	22	20, May only be reduced if duty period has not exceeded 24.	24	Up to 26 only if due to operational delays

[1] Rest periods may be reduced only when the actual duty period does not exceed the maximum scheduled duty period for that crew composition and if the pilot is provided a compensatory rest period. This compensatory rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period.
[2] The flights to which the pilot is assigned must at block out time be expected to reach their destination within the extended duty period.
[3] Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous states and DC.

Longer Duty Period for a 3-Pilot Crew. Under proposed §§ 121.473(c) and 135.263(d), the certificate holder may schedule up to a 16-hour duty period with up to 12 hours of flight time if 3 pilots are assigned to the flight. The required rest would be 14 hours. This duty period could be extended to 18 hours due to operational delays. The required rest could be reduced to 12 hours if the actual duty period is not more than 16 hours. If the rest is reduced the next rest would have to be 16 hours.

Longer duty period for three-pilot flightcrews with approved sleeping quarters. Under proposed §§ 121.473(d) and 135.263(e), if three pilots are assigned and if approved sleeping quarters are provided, the scheduled duty period can be up to 18 hours with a scheduled flight time limit of 16 hours. The required rest would be 18 scheduled hours. Each pilot must be given an opportunity to rest in approved sleeping quarters. The duty period could be extended to 20 hours due to operational delays. The rest could be reduced to 16 hours if the actual duty period is not more than 18 hours. If the rest is reduced, the next rest would have to be 20 hours.

Longer duty period if outside the U.S., four pilots, and approved sleeping quarters. Under proposed §§ 121.473(e) and 135.263(f), if the duty period involves one or more flights outside the 48 contiguous states, if four pilots are assigned, and if approved sleeping quarters are provided, the scheduled duty period can be up to 24 hours with 18 hours of scheduled flight time. Each

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pilot must be given an opportunity to rest in flight in approved sleeping quarters. The required scheduled rest following the duty period would be 22 hours. The duty period could be extended to 28 hours due to operational delays. The rest could be reduced to 20 hours if the duty period is not greater than 24 hours. If the rest is reduced, the next rest would have to be 24 hours.

Reporting for a duty period. The effect of the proposal is that if a flight crewmember reports for duty, including standby duty, as required and finds that the flight assignment was incorrectly scheduled or that the flight is delayed or canceled, a duty period nevertheless would have begun. For example, a flight crewmember may report for duty as scheduled, only to find that the assigned report time is incorrect and that duty actually begins 2 hours later. The carrier could either keep the flight crewmember on duty or release the flight crewmember for a complete rest period under the applicable section of this proposed rule. While the rule language does not spell out in detail this kind of example, or application, this is how the concept of duty period would work.

Extension of duty periods. The intent of this proposed rule is to ensure that flight crewmembers are provided adequate opportunity to rest through properly scheduled duty periods, flight times, and rest. Regular delays on certain routes or deviations from certain schedules would indicate that the schedules need to be adjusted to comply with the proposed limitations. The proposal acknowledges that certain delays, such as adverse weather, cannot be anticipated. A flight crewmember would not be considered to be scheduled for flight time or a duty period in excess of flight time or duty period limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to operational delays (such as adverse weather conditions, equipment malfunctions, and air traffic control) are not at block out time expected to reach their destination within the scheduled time. Operational delays do not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight, or mail, or similar events. (See proposed §§ 121.473, 121.475, 121.479, 135.263, 135.267.)

The FAA is proposing limiting the extension of any scheduled duty period due to operational delays to no more than 2 hours. If at any time during a duty period it is determined that, due to operational delays, a scheduled flight will not terminate within the scheduled termination of that duty period plus 2 hours, then the flight crewmembers must be relieved of duty before initiating that flight segment. They may be scheduled for another flight as long as that flight is scheduled to terminate within the original scheduled duty period limitations plus two hours. The FAA believes that 2 hours provides flexibility in the event of operational delays and also limits the possibility of flight crewmembers being on a continuous duty period even when the duty period is extended due to circumstances beyond the control of the certificate holder. The limit on flight time hours is discussed elsewhere in this preamble.

Certificate holders would be expected to recognize when certain schedules need adjustment due to regularly experienced or seasonal delays.

Augmented Flight Crews

The longer scheduled duty periods that would be allowed under proposed § 121.473 (c), (d), and (e) and § 135.263 (c), (d), and (e) are contingent upon the assignment of additional pilots in order to maintain safety by distributing the workload and permitting more rest. This will ensure that pilots are alert and can contribute to safe operations. It is important to note that if a pilot is scheduled for a duty period longer than 14 hours, the appropriate number of additional pilots would have to be present on every flight segment within that duty period. In practical terms, the FAA expects that this would occur on larger aircraft and, generally, long-haul operations with relatively few flight segments. This result would be consistent with the intent of the proposal and consistent with current industry practice.

It should be noted, however, that if a flight crew with additional, non-required pilots is assigned a duty period of 14 hours or less, the certificate holder may follow § 121.473(b) or § 135.263(b), (i.e., provide a rest period of 10 hours).

Proposed §§ 121.473 (d) and (e) would require opportunities for flightcrew members to rest and availability of approved sleeping quarters for duty periods of more than 16 hours. The provision for additional flight crewmembers and for on board sleeping quarters takes into account the extended time flight crewmembers may be on duty to complete long range flight segments. Existing rules, (§§ 121.483, 121.485, 121.507, 121.509, 121.521, 121.523) require augmented flightcrews for longer duty periods.

Existing rules in some cases, under present § 121.523(c), allow a scheduled duty period of 30 hours; however, the FAA believes that 24 hours should be the limit of any scheduled duty period.

This proposal does not provide for substituting flight engineers for pilots. Rather the augmentation of pilots must take place regardless of the number of flight engineers assigned.

Reduction of the rest period. In order to provide additional flexibility, the FAA is proposing to allow the reduction of rest due to operational delays. The rest period may be reduced only if the maximum scheduled duty period limitation has not been exceeded or extended. Table 1 provides information on reduced rest periods followed by compensatory rest periods.

Flight Engineers

Proposed § 121.475 would provide similar requirements for flight engineers. Table 2 provides a summary of the proposed limitations on duty periods and flight time and the proposed rest requirements for pilots and flight engineers. Present part 121 rules for domestic operations do not contain separate flight time limitation requirements for flight engineers. The flag and supplemental operations rules (§§ 121.493 and 121.511) deal with flight engineers by referencing other sections within the applicable subpart. To avoid any possible confusion as to which flight time limitation rules apply to flight engineers, the FAA proposes in § 121.475 to address flight engineers separately.

TABLE 2.—FLIGHT ENGINEER DUTY PERIOD, FLIGHT TIME AND REST REQUIREMENTS

No. of flight engineers	Duty period hours	Flight time hours	Minimum rest hours	Reduced rest hours (1)	Rest hours following reduced rest (compensatory)	Extended duty period hours (2)
1	No more than 14.	No more than 10.	10	9, May only be reduced if duty period has not exceeded 14.	11	Up to 16 only if due to operational delays
1	No more than 16.	No more than 12.	14	12, May only be reduced if duty period has not exceeded 16.	16	Up to 18 only if due to operational delays
2 Each flight engineer must have sleep opportunity and approved sleeping quarters must be available.	More than 16, but no more than 20.	No more than 16.	18	16, May only be reduced if duty period has not exceeded 18.	20	Up to 20 only if due to operational delays
2 Each flight engineer must have sleep opportunity and approved sleeping quarters must be available.	More than 18 but no more than 24 (3).	No more than 18.	22	20, May only be reduced if duty period has not exceeded 24.	24	Up to 26 only if due to operational delays

(1) Rest periods may be reduced only when the actual duty period does not exceed the maximum scheduled duty period for that crew composition and if the flight engineer is provided a compensatory rest period. This compensatory rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period.

(2) The flights to which the flight engineer is assigned must at block out time be expected to reach their destination within the extended duty period.

(3) Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous States and DC.

Reserve and Standby Assignments

Current regulations do not specifically cover the issue of reserve time and standby duty. Within the air transportation industry two types of generic reserve assignments have developed. One type, usually referred to as "standby reserve," is essentially the same as a duty period, and as discussed below would be treated as duty for duty period limitation and rest requirement purposes. The other type, here called "reserve time" is not considered part of a rest period and is not considered part of a duty period and therefore would be dealt with separately under this proposal. Proposed §§ 121.477 and 135.265 provide reserve assignment requirements.

Under the proposal a standby duty period must be scheduled in accordance with proposed §§ 121.473, 121.475, or 135.263. A standby duty ends when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

Standby duty periods are assigned because the air carrier believes that some time within that period the flight crewmember will be needed for a flight assignment and must report for flight assignment within less than 1 hour of being notified. Standby duty also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g., airport, crew lounge) designated by a certificate holder. Usually flight crewmembers are assigned to standby duty at the airport. In addition, since the industry has indicated that they treat standby as duty, this proposed definition should not impose any additional burdens on certificate holders. It is because of the momentary anticipation of a flight assignment, which prevents a pilot from planning for adequate rest, that standby assignments are treated as duty periods.

The proposed standby duty period would be treated as a duty period that is associated with flight, regardless of whether the flight crewmember is ever assigned to flight time during that standby duty period or not. Standby duty periods would be scheduled in accordance with proposed duty period limitations, flight time limitations, and rest requirements. A standby duty period commences when the flight crewmember is placed on standby duty and ends when the flight crewmember is relieved of duty, whether that duty is standby or flight. Following standby duty, the flight crewmember must be scheduled for and must receive the same amount of rest as he or she would receive if he or she accumulated flight time, even if there is no actual flight time.

Reserve time is a period of time when a flight crewmember is not on duty but nonetheless must be available to report upon notice for a duty period. During reserve time a flight crewmember typically goes about his or her off duty routine, obtaining rest as needed during each 24 hour period. Reserve time is not considered part of a rest period, is not considered part of a duty period, and is not considered assigned time. Reserve time ends when the crewmember is released, the crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the crewmember reports for a duty period. The certificate holder must allow the flight crewmember a minimum of 1 hour to report.

Often flight crewmembers are on reserve for days at a time and are given 10 or more hours notification prior to a duty period assignment. However, there are times when a flight crewmember is given fewer than 10 hours notification and may not be completely rested. Some flight crewmembers arise early in the morning and may have been awake for many hours at the time they receive notification of an evening flight. These flight crewmembers may not have an opportunity for a complete rest period before the flight assignment. The same may be true of a flight crewmember who does not awaken until the middle of the afternoon and receives fewer than 10 hours notification of a duty period which starts after midnight.

Since it is difficult to predict when an individual flight crewmember sleeps and when he or she awakens, no attempt has been made in the proposal to correlate the amount of notice a flight crewmember should receive with the time of day. Rather, the emphasis is placed on the flight crewmember's receiving enough notice to provide an

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opportunity for rest before the duty period assignment. If a flight crewmember receives at least 10 hours notice there would be enough time for the flight crewmember to be fully rested before reporting for a duty period of 14 hours. However, under proposed §§ 121.477(b) and 135.265(b), when flight crewmembers receive fewer than 10 hours notice for a duty period assignment, there is a reduction in the length of that duty period. While it could be possible for a flight crewmember to receive 10 hours rest before being placed on reserve and then given 10 hours of notification in order to serve a 14-hour duty period, the FAA believes that efficient crew scheduling will minimize the possibility of this happening. Table 3 shows for each proposed amount of notification time the proposed corresponding duty period limitation.

Proposed §§ 121.477(b)(2) and 135.265(b)(2) would provide another option under which a flight crewmember could be given a minimum 6-hour period of protected time for each 24 hours of reserve time. During this 6-hour period of protected time the certificate holder would not be able to contact the flight crewmember or assign the flight crewmember to any duty. The 6-hour period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18-hour reserve time, exclusive of the 6 hours of protected time. The length of the duty period and the subsequent rest period must be in accordance with §§ 121.473, 121.475, or 135.263. The FAA believes that this option would allow flexibility for the certificate holder while giving the flight crewmember sufficient certainty to plan for and obtain adequate rest. While the 6 hours of protected time must be the same 6 hours for any reserve assignment, it could be a different 6 hours for subsequent reserve assignments (e.g., a subsequent reserve assignment following duty or assigned time).

Under either reserve time assignment option, the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment.

Although NASA recommends a predictable and protected 8-hour sleep opportunity (2.6.2), the FAA believes that the above described options are practical and in most instances will provide at least an 8-hour rest opportunity. Either the flight crewmember is provided an opportunity for a full 10-hour rest period or, in the case of a short notice, the flight crewmember's duty period is limited, or the flight crewmember is able to plan each day with the certain knowledge there will be a minimum 6-hour period for undisturbed rest. Thus, these options would protect against excess fatigue without eliminating the objective of the reserve system and without placing a significant economic burden on the industry.

There have been a number of complaints stating that in some cases pilots were unable to obtain enough rest because they were given a reserve assignment immediately following a duty period and then were called for duty before they had received an adequate rest. While under these proposed rules such a practice would be a violation because of the requirement for a minimum rest period between duty periods, the FAA has included in proposed §§ 121.477(b) and 135.265(b) a requirement that a flight crewmember must be given a 10-hour rest period before beginning a reserve time assignment. Sections 121.483(c) and 135.271(c) state that required rest periods can occur concurrently so this proposed requirement may not require an additional rest period.

The FAA believes that both of these methods of handling reserve time assignments would provide more flexibility, would be less costly for certificate holders, and would be more likely to ensure adequate rest than the current rules. Under the lookback provision in the current rules, for instance, a flight crewmember on reserve could not take a flight assignment unless he or she had a scheduled rest period in the previous 24 hours. There have been situations in which certificate holders have professed experiencing difficulties in implementing rest requirements for flight crewmembers on reserve. Recognizing this, the FAA has developed this proposal. However, if this proposal on reserve time assignments is not issued as a final rule, the FAA intends to ensure that the current rule, as interpreted, is being correctly implemented.

Other Proposals on Reserve Time Presented During ARAC Discussions

Southwest Airlines proposed a system under which the total of reserve time and "time engaged in scheduled air transportation" could not exceed 18 hours (16 hours if this period included any time during the hours between 0300 and 0459). In addition, Southwest proposed that reserve time between 0001 and 1000 not be included if the air carrier did not contact the crewmember during that period. One option presented by the Air Line Pilots Association is similar to Southwest's proposal. ALPA would not allow reserve time and duty time to exceed 16 hours. A 14-hour maximum would apply when the duty time is not contained with the period between 0500 and 0259.

The FAA has several concerns about this approach. First, we believe it will be difficult to understand and to apply consistently. More importantly, although it appears to provide for some reductions in duty time, depending on the time of day a crewmember is notified of a flight assignment, it does not expressly provide for any dedicated rest opportunity. Moreover, it is not clear exactly what would be encompassed by Southwest's term "time engaged in scheduled air transportation." The FAA requests that commenters supporting this approach provide additional details about this alternative and operational scenarios on how it would be applied. Commenters should provide information on how this alternative does or does not provide the flexibility of the options proposed in this NPRM, and how this alternative provides an equivalent level of safety to the options proposed here.

The International Brotherhood of Teamsters proposed two alternatives for reserve duty. The first alternative proposes that a crewmember could be assigned a reserve period of 24 consecutive hours if the crewmember is given 11 hours or more advance notification for a flight assignment. The second alternative would allow a crewmember to be assigned a reserve period of up to 12 consecutive hours if the crewmember is given less than 11 hours of advance notification. In this case, the total flight time and duty time could not exceed 17 hours. The FAA believes that both of these options unnecessarily limit the scheduling flexibility of the operator and that both would greatly increase operators' costs while providing no increase in safety when compared with the reserve options proposed in this NPRM.

The Air Transport Association would give the operator five alternatives for dealing with reserve time. (1) The carrier could give the employee at least eight consecutive hours of rest during any 24 hour period on reserve; (2) The carrier could give the crewember at least 10 hours of advance notice of any assignment, at which point the crewmember would be released on rest until the time to report; (3) The carrier could not assign the crewmember on reserve to flights between midnight and 5 a.m.; (4) The carrier could assign the crewmember on reserve to no more than two flight segments; or (5) The carrier could establish alternative policies and procedures to ensure that a crewmember will not be assigned to a flight unless that crewmember is "adequately rested for that flight assignment."

The first three ATA proposals are generally similar to this NPRM. The NPRM contains the option of blocking out a protected period of at least six hours during which the crewmember could not be disturbed by the employer. This is less restrictive than ATA's proposal (1), although it involves a slightly longer period than would be provided by proposal (3). Like ATA's proposal (2), the NPRM would provide for advance notice of assgnments. However, the NPRM is not limited to a single cut-off of 10 hours' notice. Carriers would be permitted to assign crewmembers to duty periods that vary with the amount of advance notice, down to as little as 4 hours' notice. Since ATA's proposal number (4) does not address rest at all, it is not included in the NPRM. Proposal number (5) sets no minimum standards for rest, and it, too, is therefore not part of this NPRM.

The Air Line Pilots Association, in addition to the alternative described above, offered a proposal somewhat similar to that of ATA. ALPA's proposal appears intended to provide more stability for pilot rest periods; it would not permit carriers to move the eight hour rest period more than three hours in any 24-hour period. Similarly, ALPA proposed a six-hour protected period, comparable to the five-hour period proposed by ATA. Our comments on ATA's proposal apply to ALPA's as well, i.e., we believe we have accomodated much of their objectives.

Another proposal advanced during the ARAC discussions came from a labor/pilot group consisting mainly of Part 135 pilots. This proposal would limit any combination of reserve time and duty periods to no more than 18 hours or any duty assignment to no more than 14 hours. After being on reserve for 18 hours, a crewmember would have to receive a 10-hour rest period before accepting another reserve assignment. This proposal is not included in the NPRM because it unnecessarily limits the air carrier's reserve scheduling flexibility and provides no increase in safety when compared with the options proposed in the NPRM.

TABLE 3.—ADVANCE NOTIFICATION

No. of hours notification prior to report time	10 hours or more	8 or more hours but less than 10	6 or more hours but less than 8	4 or more hours but less than 6	Less than 4 hours
Maximum scheduled duty period.	Maximum scheduled duty period [1].	No more than 12 hours.	No more than 10 hours.	No more than 8 hours	No more than 6 hours.

[1] Maximum scheduled duty period could be 14, 16, 18, or 24 hours.

Additional Duty Period Limitations and Reduced Rest

Current §§ 121.471(g) and 135.263(d) state that a flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions) are not at block out time expected to reach their destination within the scheduled time. These requirements do not specify a limit to the flight time extensions under these circumstances.

In theory, under the current rule language, duty periods could be extended for unlimited periods of time as long as the extension was due to operational causes beyond the control of the air carrier such as weather, mechanical problems, and Air Traffic Control situations. This could result in flight crewmembers who, after the first flight of a flight schedule in a duty period, would be as much as 6 hours late, but would still continue with the flight schedule. The NASA Scientific Working Group determined that extended duty periods with no limit on the amount of time which the duty period could be extended was one of the major fatigue related problems with current flight crewmember assignments (Recommendations 1.4, 2.1.2, and 2.3.3). Therefore, the FAA has proposed to place a limit on the amount of time that a duty period may be extended regardless of the nature of the delay.

Proposed §§ 121.473, 121.475, and 135.263 would allow certificate holders an extension of a duty period of not more than 2 hours beyond the maximum scheduled duty period if the extension is due to operational delays not under the control of the certificate holder. The proposed requirements would also allow the reduction of the required rest if the flight crewmember has not exceeded the required duty period (without the extension), if the flight crewmember is provided with a longer subsequent rest period as specified, and if the reduction in rest is due to operational delays. Reduced rest periods may not be scheduled in advance.

Proposed §§ 121.479 (a) and (b) and 135.267 (a) and (b) would state that a flight crewmember is not considered to be scheduled for a duty period or flight time in excess of the duty period or flight time limitations if the duty period or flight times to which the flight crewmember is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled duty period or flight time.

In addition, proposed §§ 121.479(a) and 135.267(a) state that a flight crewmember may not serve as a crewmember in an aircraft if, at block out time for the purpose of flight, that flight crewmember's actual elapsed duty time plus duty time scheduled for the next flight will cause the flight crewmember to exceed the applicable duty period limitations by more than two hours. However, there is no limit on actual flight time accrued during a duty period, if the additional flight time is due to operational delays, but in any event the duty time limit may not be extended by more than 2 hours.

The proposal would allow a certificate holder the flexibility to schedule the same crew on a flight even when that flight is going to be late; however, it would not allow flight crewmembers to be scheduled indefinitely even when the circumstances which caused them to be late are beyond the control of the certificate holder. During a scheduled flight assignment, if the combination of scheduled times for the remaining flights would mean that the maximum scheduled duty period would be exceeded by more than two hours, the flight crewmember would have to be

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rescheduled so that the remaining duty period to which he or she is assigned will not exceed the maximum scheduled duty period by more than two hours. This can be done by assigning a flight crewmember to a new flight schedule or by reassigning the original scheduled flights so the flight crewmember is relieved of duty before commencing the flight which would extend beyond the maximum scheduled duty period plus two hours.

Weekly and Monthly Flight Time Limitations

Proposed §§ 121.481 and 135.269 would provide limits on the amount of actual flight time which a flight crewmember can accrue in a calendar month and in any 7 consecutive calendar days. These proposed rules would replace current §§ 121.471(a), 121.481 (d), (e), and (f), 121.503 (d) and (e), 135.265(a) and 135.267(a). Although NASA states that there is insufficient scientific information to provide guidance in this area, these limits are proposed to counter any harmful effects of any possible cumulative fatigue.

In addition to the scheduled flight time limits which are integrated into the scheduled duty periods, weekly and monthly flight time limits are proposed as follows:

- Proposed §§ 121.481(a) and 135.269(a) would limit a flight crewmember to 32 flight hours in any 7 consecutive calendar days.
- Proposed §§ 121.481(b) and 135.269(b) would limit a flight crewmember to 100 flight hours in any calendar month.

In practice, this means that, before beginning to fly on any particular day, a flight crewmember's actual accrued flight time for the previous six days must be added to the flight time scheduled to be flown that day. If the result is fewer than 32 hours, the flight crewmember may begin and complete the day's scheduled flying even if delays (which are beyond the carrier's control) encountered during the day eventually cause the total time to exceed 32 hours. The same principle applies for the calendar month flight time limitation.

Current regulations place varying limits on the amount of time that a flight crewmember can serve. The variance is based on the type of operation. Flight crewmembers given flight assignments under part 121 for domestic operations (§ 121.471(a)) are limited to 30 flight hours in any 7 consecutive days. The 7 consecutive day limit for flag operations is 32 flight hours (§ 121.481(d)) and there is no 7 consecutive day limit for supplemental operations. Under § 135.265(a) in scheduled operations the amount of flight time which may be accrued in any 7 consecutive days is 34 hours and there is no 7 consecutive day limit for unscheduled operations. Sections 121.471(a) and 121.481(e) restrict flight crewmembers serving in domestic or flag operations conducted under part 121 to 100 hours in any calendar month and § 121.503(d) restricts flight crewmembers serving in supplemental operations to 100 flight hours in any 30 consecutive days. Section 121.521(c) allows certain flight crewmembers to accrue 120 hours in any 30 consecutive days. Section 135.265 allows flight crewmembers serving in part 135 scheduled operations to accumulate 120 flight hours in any calendar month.

In addition, § 121.471(a) restricts flight crewmembers engaged in domestic operations conducted under part 121 to 1000 hours in any calendar year. Section 135.265 allows flight crewmembers serving in part 135 scheduled operations to serve as crewmembers during flight for 1200 hours in any calendar year, while § 135.267 allows 1,400 flight hours in a calendar year for unscheduled operations. Sections 121.503, 121.521, 135.267, and 135.269 also provide other calendar quarter and 90 consecutive day limitations.

The proposed rule would establish a common 32 hour limitation in any 7 consecutive days, a 100 hour limitation in any calendar month, and would eliminate quarterly, 90 consecutive day and calendar year limitations.

The proposed rule does not provide a yearly flight time limitation because the monthly limit would effectively restrict flight time to 1200 hours in a calendar year. Although the NASA document recommends the annual flight time limitations be decreased a percentage of the monthly requirement, it also states that there is not enough scientific data to provide specific guidance in this area. The FAA believes that this proposal contains sufficient additional rest provisions (i.e. 36 hours in 7 days, 10 hour rest periods, and 48 hours for crossing multiple time zones). Because of the increase in rest requirements, the FAA believes that safety would not be adversely affected because of a lack of a yearly flight time limit which is less than the sum of all the monthly flight time limits. At the same time the lack of annual flight time limits will provide flexibility and the opportunity for increased productivity. In view of the fact that there is no scientific data to suggest a discrete yearly limit and the fact that the requirement for rest has been increased, the FAA believes the proposed rule will provide the appropriate level of safety.

The FAA believes that there is no longer justification for the different weekly, monthly, and annual flight time limitations for different types of operations and that proposing a single limitation standard provides adequate safeguard against the effects of cumulative fatigue, eliminates rules that do not have an adequate scientific rationale, and also simplifies the overall limitations. The FAA asks for comments from the public about the maximum number of hours a flight crewmember should be allowed to fly under this chapter. Further, the FAA asks for comments regarding the impact of this rule on seasonal flying.

Additional Rest Requirements

The proposed rule would continue some of the rest requirements which are contained in the existing regulations. Proposed §§ 121.483(a) and 135.271(a) would state that no certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest period required. Proposed §§ 121.483(b) and 135.271(b) would state that no duty could be assigned during any required rest period. This proposed requirement would preclude any carrier from assigning any type of duty, including nonflight assignments (such as training, assigned time, reserve time, standby duty, or ground duties), to any flightcrew member during a required rest period. These proposed requirements are the same as those in current § 121.471(c)(4) and (e) and § 135.263(a) and (b).

Proposed §§ 121.483(c) and 135.271(c) would be a new requirement to clarify that rest periods required under the subpart can occur concurrently with any other required rest period. For instance a required 10-hour rest could occur concurrently with the 36-hour rest required under proposed §§ 121.483(e) and 135.271(e). Further, under the proposal, if a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

Proposed §§ 121.483(d) and 135.271(d) would be a new requirement stating that a rest period required in §§ 121.473, 121.475, or 135.263 may be reduced only because of operational delays. The reductions may not be scheduled in advance.

Current §§ 121.471 and 135.265 require each domestic air carrier operating under part 121 and each certificate holder in scheduled operations under part 135 to relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days. Proposed §§ 121.483(e) and 135.271(e) would require that each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time shall be provided a rest period of at least 36 consecutive hours during any 7 consecutive calendar days. The proposed 36-hour rest could be taken during a layover. Thirty-six hours of rest is the amount of time recommended by the NASA Scientific Working Group (2.1.3); further the FAA believes that flight crewmembers should be provided at least 36 consecutive hours rest during any 7 consecutive calendar days any time they are assigned to reserve regardless of the nature of the reserve. This allows flight crewmembers the time to plan for and obtain a thorough rest so that they are not fatigued if they receive a duty period assignment.

The Air Transport Association proposed, during the ARAC discussions, that this provision be applied over a period of 168 consecutive hours rather than 7 consecutive calendar days. We believe that it would be more difficult for crewmembers and carriers to maintain records in this fashion. However, commenters are invited to address this issue more fully in their comments. If adequate justification is shown for using 168 hours rather than 7 calendar days, the final rule may incorporate that proposal. Commenters should note that any change in this provision would likely require corresponding changes in the flight time limitations proposed in §§ 121.481 and 135.269.

Proposed §§ 121.483(f) and 135.271(f) would require certificate holders to provide each flight crewmember assigned to assigned time, as defined in proposed §§ 121.471 and 135.261, a minimum rest period of 10 hours before the commencement of a subsequent duty period. This rest period may occur concurrently with another required rest period. This proposed rest requirement is needed to address situations in which a flight crewmember is assigned to one of a group of activities that are neither rest nor part of an assignment involving flight time, but which could contribute to crewmember fatigue (e.g. training, deadhead transportation, etc.). The intent of this proposed rule is for flight crewmembers to have the opportunity to obtain sufficient rest in order to be able to perform assigned flight duties, regardless of whether the fatigue was caused by flight duties or by other activities for the certificate holder. However, certificate holders have the option of counting assigned time as part of a duty period and scheduling the appropriate rest period for that duty period or of counting assigned time exclusively as assigned time and ensuring that the flight crewmember is given 10 hours of rest before commencing a duty period. The 10 hours is consistent with the other required rest periods.

For example, a flight crewmember could be deadheaded to a new location at the beginning of a duty period and then begin a schedule flight assignment. In this case the deadhead transportation would be counted as part of the duty period. Alternatively, after completing a duty period, a flight crewmember could be deadheaded back to his or her home base before beginning the required rest period. In this case the deadhead transportation could be considered assigned time. Performing assigned time after the completion of a duty period would be permitted as long as the flight crewmember received the minimum rest required for that duty period or 10 hours, whichever is greater, before the next duty period.

Proposed §§ 121.483(g) and 135.271(g) would establish a requirement for a certificate holder to provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The accumulation of the 48 hours may be in one or more time zones but each of these time zones must be 6 or more hours from the flight crewmember's home base. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules. The present rules make no provisions for rest periods based on time zones. The NASA Scientific Working Group data and subjective comments from crewmembers indicate there is a need to recognize the additional fatigue effects of crossing time zones (2.1.4). The literature indicates that some flight crewmembers experience, at times, additional fatigue from crossing as few as two time zones; while others do not report the same fatigue until they have crossed many more time zones. The FAA recognizes the complicated problem of addressing each individual flight crewmembers circadian rhythm; nevertheless by establishing a minimum rest requirement at the home base for flight crewmembers who cross 6 or more time zones the FAA believes these flight crewmembers will be given an opportunity to once again establish what is for that flight crewmember the normal sleep awake cycle. The proposed rest requirement is a minimum requirement and is provided to give the flight crewmember an opportunity for rest. The flight crewmember should use this time to obtain the needed rest so that he or she will be rested when called upon for the next duty period. The FAA will issue advisory material based on scientific studies to assist air carriers and flight crewmembers in dealing with fatigue related issues.

Deadhead Transportation

Current §§ 121.471(f) and 135.263(c) specify that time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport to which he or she is to serve on a flight as a crewmember, or from an airport at which the flight crewmember was relieved from duty to return to his or her home base is not considered part of a rest period. This type of transportation is commonly called "deadhead" transportation. Proposed §§ 121.485 and 135.273 would be the same as the current requirement except that in addition it would specify that for duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

Other Flying for a Certificate Holder

Proposed §§ 121.487 and 135.275 establish duty period and flight time limitations for other flying for a certificate holder, including flying under part 91. Flight crewmembers and certificate holders must ensure that any duty periods and flight assignments assigned by the certificate holder are scheduled, assigned, and performed under the applicable requirements of parts 121 and 135 (14 CFR 121.473, 121.477, 121.479,121.481, 121.483, and 14 CFR 135.263, 135.265, 135.267, 135.269, and 135.271) even if the flight is not conducted under part 121 or 135. In addition, any flight crewmember who is employed by two or more air carriers or commercial operators must ensure that any duty periods and flight assignments are scheduled, assigned and performed under the applicable rules of parts 121 and 135. In other

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words, when certificate holders assign flight crewmembers to conduct ferry flights, or other flights under part 91, this flight assignment is treated just as any other duty period involving flight.

This proposal is based on NTSB recommendation A–94–105, which was issued as a result of the Guantanamo Bay accident, discussed above under "NTSB Recommendations" and the FAA's belief that other flying for a certificate holder such as training flights for a 121 or 135 certificate holder may cause both short term and cumulative fatigue which may adversely effect that flight crewmember's flight duties performed under parts 121 and/or 135. This would include flying for more than one part 121 and/or 135 certificate holder.

Proposed Effective Date for Final Rule

The FAA is proposing an effective date of 60 days after these proposals are published as a final rule. By that date all certificate holders operating under part 121 or part 135 would have to begin scheduling all flight time duty periods and rest periods in accordance with the new requirements. However, as mentioned above under "Commuter Rulemaking," the FAA intends to coordinate the effective date of this rulemaking with the compliance date of the commuter rulemaking, so that certificate holders conducting commuter operations will have to change their procedures for scheduling flight time, duty periods, and rest periods only once.

The FAA requests comments on the length of time needed between the issuance of the final rule and its effective date.

Regulatory Impact Analysis Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned interpretation that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would probably generate benefits and cost savings that are greater than its costs and is "a significant regulatory action" as defined in the Executive Order. The FAA also estimates that the NPRM would have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal would amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. Currently, these limitations and requirements differ across the various sectors of the industry (e.g., part 121, part 135). In addition, the FAA is required to consider alternatives to the proposed rule when the following circumstances are met:

—The regulatory action is designated as a "significant regulatory action" (as defined by Executive Order 12866), and

—The regulatory action is designated as having a significant impact on a substantial number of small businesses, nonprofit groups, or airports operated by small governmental jurisdictions.

The FAA has determined that the potential economic impacts of the proposed rule are sufficiently large that both of these criteria are satisfied. Accordingly, two alternatives will be discussed in the section entitled "Analysis of Alternatives" below.

Cost-Benefit Analysis

Proposal

As mentioned above, the main thrust of the proposal is to amend existing regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The proposal would establish a basic scheduling limitation for 2 pilot crews of 14 hours of scheduled duty and 10 hours of scheduled rest. The maximum length of duty periods permitted would increase as the number of pilots increases. The proposal would also revise limits on the amount of flight time which a flight crewmember can accrue in a duty period, in any 7 consecutive calendar days, and in a calendar month. The maximum duty period limits would be decreased in most cases for part 121 and part 135 operators, and the required length of rest periods would be increased. These changes are expected to impose unquantifiable costs on unscheduled part 135 operators.

Although the maximum length of duty periods would generally decrease under the proposal, the maximum allowable flight times for pilots operating 2-pilot aircraft (no flight engineer) would increase from 8 to 10 hours. This provision should create the potential for substantial cost savings for both part 121 and 135 operators.

The FAA determined that 2 provisions of the proposed rule could impose substantial quantifiable costs. Another provision could impose substantial costs on the commuter operators, but could not be quantified. The potential economic impacts on the air taxi operators of these provisions could not be quantified at this time. The most costly provision applies to the scheduling and duty assignments of reserve pilots. A reserve pilot must be available to report upon notice for a duty period with one hour or longer of notice. The proposal would require that the maximum length of a duty period be reduced in these cases when less than 10 hours of notice for a duty period assignment is received. The proposal would also provide another option under which a flight crewmember could be given a regularly scheduled minimum 6 hour protected time within each 24 hours of reserve time.

The other provision which would impose substantial quantifiable costs would require that "ferry" flight time used to reposition aircraft be counted the same as time accrued in part 121/135 revenue operations for the purpose of determining compliance with FAA limitations on duty periods and flight time limitations. Another provision that would increase the minimum required rest periods between flight duty periods might impose substantial costs on the commuter operators, but they cannot be quantified without additional data. The provisions pertaining to reserve pilot scheduling might also impose substantial costs on air taxi operators, but these costs could not be quantified.

Cost Analysis

As described in more detail in the Regulatory Impact Analysis, the FAA has relied heavily on surveys of a limited number of operators to develop its analysis. The FAA is interested in comments on the representativeness of the data used for extrapolation to the entire affected population. Where commenters believe these survey data do not reflect the circumstances/responses for operators generally, the FAA welcomes any and all relevant data supporting such claims.

The FAA also seeks comments on its methodology, assumptions, and/or data used to estimate the following:

(1) The efficiency gains from the increase in allowable flight time from 8 to 10 hours.

(2) The likely operator response to the reserve pilot requirements (i.e., the likelihood of operators choosing between canceling flights and adding pilots),

(3) The cost to operators and passengers of flight cancellations and of adding pilots, and

(4) The potential safety benefits from reduced fatigue.

Part 121 Air Carriers

The FAA estimated the economic impact of each provision of this proposed rule. Some of the provisions by themselves were estimated to entail substantial compliance costs, whereas others have the potential for affording substantial cost savings to operators.

The proposed rule is estimated to impose discounted costs of $842.03 million on part 121 operators over the next 15 years, but these costs are expected to be offset by the cost savings. The total potential discounted cost savings from increased productivity were estimated at $1.72 billion over this period. The net discounted compliance cost savings of the proposed rule would therefore amount to $877.90 million over this period. The cost savings would result if operators take advantage of opportunities afforded by the proposal to more efficiently schedule their existing workforce, which could enable them to reduce their plans for hiring new pilots by 3,348 pilots over the next 15 years.

Costs

The FAA determined that the primary cost of implementing the reserve pilot scheduling and duty time regulations would consist of the cost of reassigning some scheduled airline pilots or hiring new pilots to assure adequate coverage of flights that would otherwise have to be canceled or delayed. Other provisions of the proposal, however, may allow operators to use on-line pilots more intensively; therefore, the need for additional reserve pilots is likely to be satisfied by reassigning on-line pilots that would become available because of enhanced productivity. In addition, a relatively small number of flights might be canceled.

These cost estimates were based on the least cost combination of reserve pilot scheduling options for each operator based on the nature of its flight operations, such as the amount of advance notification provided reserve pilots and duty period durations. The FAA estimates that the part 121 scheduled operators would have to hire an additional 500 pilots, representing a 1% increase in their current pilot staffing level, thereby increasing their recurring annual salary costs by $41.29 million. In addition, the FAA estimated that the flight cancellations resulting from decreased flexibility in scheduling reserve pilots would impose societal costs (the value of delayed passenger time) amounting to $8.12 million per year. The total potential cost of the reserve pilot regulation was therefore estimated at $49.40 million annually after the first year the proposed rule were in effect for part 121 scheduled carriers. In the first year, this annual cost would be increased by $9.26 million to $58.66 million to capture initial training costs.

The FAA determined that the reserve pilot regulation would also impose substantial costs on part 121 unscheduled or "supplemental" air carriers. The economic impact on these air carriers is expected to be greater than for the scheduled part 121 carriers because of the less predictable nature of their operations, which doesn't allow them to give as much advance notification of flight assignments to their reserve pilots. The FAA estimated that approximately 330 additional pilots, representing about 4% of their present pilot staffing level, would need to be hired by these air carriers at a recurring annual cost of $24.02 million.

The FAA determined that the proposed restriction on "ferry" flights would have very little, if any, impact on scheduled part 121 operators. These proposed restrictions, however, could have a substantial economic impact on part 121 unscheduled operators, which are more likely than the scheduled operators to conduct these operations because of the greater distance between crew bases and destination points of their revenue flights. The FAA estimated that these operators would have to hire an additional 235 pilots (3% increase in current pilot staff) to avoid major disruptions in their flight schedules, entailing recurring annual costs amounting to $17.04 million.

The total recurring annual potential compliance costs (reserve pilot and "ferry flight" restrictions) for unscheduled or supplemental operators were therefore estimated at $41.06 million. The first year initial training costs for these unscheduled air carriers were estimated to add $10.10 million to annual costs in the first year.

In summary, the total first year annual compliance costs for all part 121 air carriers of the reserve pilot regulation and restriction on ferry flights were estimated at $110.28 million. Societal costs resulting from canceled flights were estimated to comprise $8.12 million of this total. These costs were estimated based on the time that passengers on canceled flight would be delayed, which the analysis assumes would be two hours. Total discounted costs were estimated at $842.46 million over the period from 1996–2010.

Cost Savings

The FAA expects that these costs would be more than offset by cost savings afforded the scheduled part 121 operators by the opportunity to more effectively utilize their flight crewmembers. The potential cost savings for the unscheduled part 121 air carriers, however, are not expected to be of a sufficient magnitude to outweigh the proportionally higher potential costs that were estimated for this sector of the industry. Under the proposal, both scheduled and unscheduled air carriers could increase the maximum permitted flight times within individual duty periods from 8 to 10 hours for 2-pilot crews.

The potential productivity gains from this provision should enable scheduled part 121 air carriers to maintain their current schedules with fewer pilots and transfer some pilots from active or nonreserve to reserve status. The decrease in the anticipated need for pilots among the scheduled air carriers is expected to substantially outweigh any potential increased need for pilots among the unscheduled air carriers. In other words, the overall need for pilots in future years should decrease because the positive economic effects resulting from increased productivity are expected to outweigh the negative economic impacts of the need for more reserve pilots.

Data collected by the FAA indicate that domestic air carriers do not fly their crewmembers close to the maximum permitted current limit of 100 hours per month. The average monthly flying time for the scheduled air carriers is 60 hours. The part 121 unscheduled operators tended to fly their crewmembers from 40–60 hours per month. In fact, most unionized air carriers are prevented by labor contracts from flying their crewmembers more than 75–80 hours per month.

If this proposed rule is adopted as an amendment, most air carriers would likely attempt to take advantage of the opportunity to utilize their crewmembers more effectively. The increase from 8 to 10 hours in the maximum permitted flight hours 2-pilot crews could fly within individual duty periods should provide an incentive for air carriers to increase the daily flight hours and hence monthly flight hours of their crews and decrease the amount of duty time which is not flight time. The FAA determined that air carriers would

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most likely be able to increase utilization of their pilots by 4% on average (which would amount to an additional 2 flight hours per month per pilot in most cases).

Air carriers would realize these productivity gains only to the extent that their pilot salary costs would not increase. Such an assumption appears warranted for the following reasons. The FAA estimated that about 10% of the pilot salary cost of the major air carriers is for nonproductive time (i.e., time within a duty period that is not devoted to actually flying the airplane). Air carriers frequently pay pilots for this nonproductive time at a reduced hourly rate, as established by formulas in their contracts. The proposal would allow them to significantly reduce this nonproductive time by permitting an increase in maximum flight hours from 8 to 10 hours within a shorter duty period.

Many unionized part 121 air carriers would probably have to renegotiate their contracts in order to reduce the amount of nonproductive time for which they are currently paying. Renegotiation would not be required, however, in order to add about 2 hours on average to monthly pilot flying hours because actual flying hours are currently considerably lower than the maximum range of 75–80 hours under most contracts. In addition, the nonunionized air carriers would in theory have a greater potential for increasing flight hours flown by their crewmembers because their maximum limits on flight hours tend to be closer to the current regulatory maximums of 1,000 hours per year. Under the proposal, the maximum monthly flight time of 100 hours per month would effectively allow 1,200 hours of flight time per year, thereby affording them the potential of a 20% increase in productivity (nonunionized air carriers account for 16% of the operations flown by all part 121 air carriers). This analysis, however, only assumes a 4% increase in productivity.

The FAA estimated that a 4% overall productivity enhancement would afford part 121 carriers overall total cost savings amounting to $3.07 billion (present value, $1.72 billion) over the next 15 years. These estimates are based on an expected decrease of 3,348 new pilots hired over this period and an average loaded salary of $82,572 for part 121 scheduled and $72,600 for part 121 supplemental. In addition, initial training costs of $18,516 for part 121 scheduled pilot and $17,908 for part 121 supplemental pilot were used in this analysis as in the cost analysis.

This estimate should be regarded as an lower bound for potential cost savings arising from the increase in pilot productivity. Productivity cost savings above 4% are theoretically possible; however, due to any salary increases that unions may negotiate, the air carriers may not be able to achieve all of these savings. In any event, air carriers would have a greater opportunity to limit pay for nonproductive time under the proposal, as noted above, which currently amounts to a significant part of their total salary costs. The FAA does not have sufficient information to assess the interplay of these factors in determining pilot salaries and requests comments from the public on this issue.

Longer proposed flying hours would also allow air carriers to reduce the number of 3-pilot crews in favor of 2-pilot crews. The FAA estimates an additional savings of 200 pilots, with annual net cost savings which could amount to $20.40 million in the first year and $16.54 million in subsequent years. These potential cost savings were estimated at $119.62 million (discounted) over a 15-year period. Consequently, total cost savings of the proposed rule for part 121 air carriers is expected to amount to $3.32 billion (present value, $1.87 billion) over the next 15 years.

Part 135 Scheduled Air Carriers

The proposed rule is estimated to impose discounted quantifiable costs of $56.75 million on part 135 carriers over the next 15 years, but these costs could be offset by cost savings. The total potential cost savings of the proposed rule are expected to amount to $94.04 million over the next 15 years. The net cost savings, which would result from an expected net reduction of 353 new pilots hired over the next 15 years, could therefore amount to $50.68 million over this period. This conclusion is contingent on the assumption that these operators would be able to modify their flight schedules so as to avoid expenses associated with longer minimum rest periods without significantly affecting revenues.

Costs

The FAA estimated that the reserve pilot provisions of the proposal would result in the hiring of 152 additional pilots in order to avoid having to cancel flights because of inadequate reserve pilot resources. The increased annual cost for the industry was estimated at $6.12 million. In addition, these operators are expected to incur incremental initial training costs amounting to $1.06 million in the first year the proposed rule is in effect, increasing annual compliance costs to $7.18 million in that year. These costs would amount to a discounted $56.75 million over a 15-year period.

Cost Savings

Part 135 scheduled airlines would reap potential cost savings amounting to $145.04 million (present value, $84.76 million) over the next 15 years. Although these operators currently tend to utilize their pilots more intensively than the part 121 operators (i.e., 74–89 hours), they still utilize them well under the proposed regulatory maximum of 100 hours a month. The potential for a 4% increase in productivity would still remain. The fact that a considerably smaller portion of the part 135 pilot workforce is unionized would remove that possible constraint to increased productivity.

These potential cost savings are based on a projection that these operators would need 353 fewer pilots at an average annual loaded salary of $40,280 that was used in the analysis of costs. In addition, initial training costs of $6,948 per pilot would be saved.

Benefits

The FAA has promulgated flight time limitation rules that contain rest requirements for certain operations and weekly and monthly limits on the number of hours of flight time in an effort to protect flight crewmembers from work-related fatigue. The issue did not receive much publicity until May 1994, when the NTSB cited pilot fatigue as a probable cause in an accident when the captain lost control of a DC–8 freighter while approaching the U.S. Naval Station Airbase at Guantanomo Bay, Cuba in August 18, 1993. Prior to that time, this factor had never been cited by the NTSB as a probable cause in an accident involving part 135 or 121 operations.

In its investigation, the NTSB noted that the flight crew had been on duty about 18 hours and had flown about 9 hours at the time of the accident. Under the proposed rule, this flight would have been illegal because the maximum length of a duty period for a 3-person flight crew on an airplane lacking appropriate sleeping quarters is 16 hours. In addition, the company had intended to further extend this flight by having the crew ferry the airplane back to Atlanta after the plane had landed at Guantanamo Bay, which would have resulted in a total duty time of 24 hours. The NTSB report specifically noted that the flight crewmembers had experienced a disruption of circadian rhythms and sleep loss, which resulted in fatigue that had adversely affected performance during the critical landing phase.

The National Aeronautic and Space Administration (NASA) Ames Research Center has been studying this issue since 1980 and has published a number of studies on it. These studies have established a relationship between long duty periods and fatigue and between fatigue and a deterioration in performance.

It is very difficult to quantify the potential safety benefits of this proposed rule because of the scarcity of accidents that have been attributable to pilot fatigue. The NTSB has not focused on this issue until quite recently in its accident investigations. The FAA believes that the investigation of the effects of fatigue on pilot performance should not be limited to a review of relevant accidents. A better understanding of this issue can be gained from examining incident reports submitted by pilots to the National Aeronautical and Space Administration's Aviation Safety Reporting System (ASRS). Since January 1, 1986, ASRS has received 21 reports of unsafe incidents resulting from fatigue by pilots engaged in part 121 operations and 200 reports from pilots conducting part 135 operations. Although these incidents did not actually result in accidents, they were of a sufficiently serious nature that pilots filed a report with NASA with the hope of gaining the attention of the regulatory authorities.

NASA has sponsored some research into the issue of the relationship between fatigue and performance decrements based on information contained in these incident reports. The researchers found that about 21% of the reports citing air transport flight crew errors were related to the general issue of fatigue. The researchers selected a control or comparison group of incident reports citing these problem areas but where fatigue was not an apparent factor. Most of the incidents in both data sets involved altitude or clearance operational deviations (e.g., taking off or landing without clearance). The deviations within the fatigue set tended to occur more frequently during the more critical descent, approach, and landing flight phases. This finding was expected because fatigue is most likely to set in towards the end of a flight or work day. Another key finding was that duty period length and workload level were most frequently cited as being responsible for the fatigue.

The FAA has quantified the economic value of all major accidents involving the part 121 air carriers and part 135 air carriers over the 1985–1994 period that were attributable to pilot error. For the part 121 analysis, the FAA examined the seating capacity, average passenger load, and the average replacement cost of a representative sample of both narrow body and wide body aircraft. The FAA examined the same factors in estimatifg the cost of a part 135 accident.

For the part 121 analysis, the FAA assumes that an average airplane costs $14.75 million in 1994 dollars and carries 107 people (101 passengers, 3 flight crewmembers, and 3 flight attendants). In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of $2.7 million to statistically represent a human fatality avoided. The values for serious and minor injuries are $518,000 and $38,000, respectively. For the part 135 analysis, the FAA used the same assumptions regarding the value of a human life and injuries. The amount of airplane damage and severity of injuries was based on a review of NTSB reports of all accidents involving 10–30 seat aircraft over the period from 1985–1994.

Based on these assumptions, the FAA estimated that the economic value of the 71 serious accidents involving pilot error used in part 121 scheduled operations that were involved in serious accidents over the 1985–1994 period at $1.896 billion. Projecting this total from 1996 to 2010 yields a discounted $1.151 billion. The comparable total for the 8 serious accidents involving pilot error used in part 121 supplemental operations that were involved in serious accidents over this time period was $273.9 million. Projecting this total from 1996 to 2010 yields a discounted $166.3 million. The corresponding total for the 71 aircraft involving pilot error used in part 135 operations with 10 to 30 seats that were involved in serious accidents over that period was $602.32 million. Projecting this total from 1996 to 2010 yields a discounted $365.73 million.

The NASA research study summarized above revealed that 21% of pilot error incidents were related to fatigue. Applying this proportion to the total discounted value of the pilot error accidents, using the assumptions noted above, one could conclude that fatigue resulted in accidents valued at $398.24 million (present value, $241.81 million) for part 121 scheduled operations, $57.52 million (present value, $34.92 million) for part 121 supplemental operations, and $126.49 million (present value, $76.80 million) for part 135 operations over a 15-year period. These estimates could be used to provide some idea of the potential safety benefits of this proposed rule, assuming it is 100% effective in preventing these types of accidents.

Cost Savings and Benefits

Initial annual quantifiable compliance costs for part 121 scheduled, part 121 supplemental, and scheduled part 135 air carriers were estimated at $58.66 million, $41.16 million and $7.18 million, respectively. Subsequent annual quantifiable compliance costs were estimated at $49.40 million, $41.06 million and $6.12 million, respectively. Over the period from 1996 to 2010, costs would amount to $750.33 million (present value, $458.63 million), $625.99 million ($383.40 million) and $92.89 million (present value, $56.75 million), respectively.

For part 121 scheduled operators, these compliance costs should be more than offset by cost savings that are projected to result from productivity enhancements for the scheduled part 121 carriers. The same conclusion may apply to the part 135 operators as well in view of the potential magnitude of the unquantifiable costs. But cost savings expected to accrue to the part 121 supplemental carriers are not expected be sufficient to offset potential costs for this sector of the industry.

The estimates for the scheduled part 135 air carriers do not include the potential costs of the proposed general limitations on flight duty and rest periods, which are expected to be fairly significant, although not quantifiable at the present time. On the other hand, these estimates do not take account of potential cost savings as air carriers gain more experience in implementing the various combinations of the available options, which should in theory result in the selection of the most cost effective option. The extent to which these potential impacts would offset each other cannot be determined on the basis of the available data.

These estimates also do not include the potential costs of the proposed rule for air taxi operators, which could not be quantified. The FAA expects that the costs of the reserve pilot restrictions would probably not be substantial for this sector of the industry because the majority of the operators should be able to adopt the second reserve pilot scheduling option without major operational disruptions. The FAA does not have sufficient information to estimate the potential compliance costs for this sector of the industry if the "other commercial flying" restrictions in the proposal are adopted. The potential for cost savings would appear

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to be more limited for these operators because of the point-to-point and geographically restricted nature of their operations, which would tend to limit the length of flight assignments.

The FAA has quantified the economic value of all major accidents involving the part 121 fleet and part 135 fleet over the 1985–1994 period that were attributable to pilot error. Based on this value and the proportion of incidents with similar causal factors where pilots were affected by fatigue, the FAA estimated that if proposed rule were 100% effective at eliminating fatigue as a factor in accidents, it could prevent accidents involving part 121 scheduled operations valued at $242 million and part 121 supplemental operations at $35 million over a 15-year period. The same methodology yielded an estimate of $77 million for the potential effectiveness of the proposal in preventing part 135 accidents. It is important to note that it is unlikely that this proposal would be 100% effective, in part because it addresses duty and rest times, but does not require pilots to rest. The FAA is unable to develop an estimate of effectiveness of this proposal in reducing fatigue-related incidents, but welcomes data and methodologies that may assist such an effort.

The table below compares the costs, potential benefits, and cost savings sections. The FAA therefore concludes that the proposed rule would be cost beneficial for the part 121 scheduled operators, sector of the air transportation industry, would probably be cost beneficial for the entire part 121 sector of the air transportation industry, and could be cost beneficial for the scheduled part 135 operators as well, provided the unquantifiable compliance costs for the commuters do not exceed about $127.5 million (discounted) over a 15-year period.

The FAA does not have sufficient information at this time to evaluate the cost effectiveness of this proposal for air taxi operators. A more definitive overall conclusion would not be appropriate in view of the lack of data pertaining to how the affected air carriers would modify their operations in order to comply with the proposed rule and also to take advantage of the opportunities to increase pilot productivity. The FAA has decided to issue this proposed rule with the expectation that additional data that can clarify these issues will be forthcoming.

FIFTEEN YEAR DISCOUNTED COSTS/COST SAVINGS

	Part 121 scheduled	Part 121 supplemental	Total part 121	Part 135 scheduled	Air taxi
Compliance costs	$458,627,143	$383,403,020	$842,030,163	$56,750,685	Unknown.
Reserve requirements	458,627,143	224,331,554	682,958,697	56,750,685	Unknown.
Other requirements	0	159,071,466	159,071,466	0	Unknown.
Potential safety benefits	241,806,628	34,922,912	276,729,539	76,802,495	Unknown.
Net costs of reserve and other requirements	216,820,515	348,480,108	565,300,623	(20,051,810)	Unknown.
Cost savings	1,658,078,896	215,723,343	1,873,802,239	107,431,330	Unknown.
Increased flight times	1,504,206,226	215,723,343	1,719,929,569	107,431,330	Unknown.
Other cost savings	153,872,670	0	153,872,670	0	Unknown.
Net combined cost savings of proposal	1,441,258,380	(132,756,765)	1,308,501,615	127,483,140	Unknown.

This rulemaking should be considered complimentary to the Commuter Rule and the Air Carrier Training Program final rule. One of the goals of these three rulemaking actions is to prevent the 67 accidents that represent the accident-rate gap between part 135 commuter operators and part 121 operators. The FAA estimates that over the next 15 years, closing this gap would prevent 67 accidents at a present value benefit of $350 million.

In terms of the accident rate gap, the benefits of this NPRM are a part of this total benefit. However, it is not possible to allocate that benefit among the three rulemaking actions because it difficult to determine which rulemaking action would prevent a given accident. For example, individual accidents may be prevented by any one or a combination of several factors such as:

- Preventing the occurrence of a problem with an airplane in the first place (Commuter rule);
- Providing more or better crew training to properly respond to the problem after it occurs (Air Carrier Training Program rule);
- Providing a dispatcher to help identify a problem before it becomes a potential accident (Commuter rule);
- And ensuring pilots are not overworked and tired (Pilot Rest and Duty NPRM).

The Commuter Rule only addresses a portion of the necessary requirements to close the accident-rate gap. If the $51 million present value in net cost savings of this rule ($107 million in cost savings minus $56 million in costs) is combined with the cost of the Commuter Rule, $75 million, and the cost of Pilot Training, $34 million, the total cost, $58 million (−$51+$75+$34), is still less than the estimated $350 million benefit of eliminating the accident-rate gap. These rules combined need only be 17 percent effective to be cost-beneficial. The $77 million in potential safety benefits of this proposed rule is a subset of the aforementioned $350 million.

Analysis of Alternatives

As explained above, the FAA is required to consider alternatives to the proposed rule; the two alternatives will be discussed in this section. As indicated earlier in this preamble, if this proposal on reserve time assignments is not issued as a final rule, the FAA intends to ensure that the current rule, as interpreted, is being correctly implemented. The FAA has estimated that doing so could cost part 121 operators in excess of $2.5 billion and part 135 operators in excess of $450 million discounted over the next 10 years. At the same time, the resulting potential safety benefits would be no more than those estimated for this proposal.

Alternative Number One

This alternative would be to maintain the status quo. This option would not impose any costs on operators because it would not require that they change their pilot scheduling practices. It could impose costs on society, however, by increasing the risk of a preventable fatigue-related accident. The accumulation of a substantial body of scientific evidence documenting the harmful effects of fatigue on pilot performance have increased the need to amend these rules. In addition, given the scientific data available and the NTSB recommendations resulting from an accident at Guantanamo Bay in August 1993, this option is not feasible.

Alternative Number Two

This alternative was the original proposal considered by the FAA. After surveying industry, the FAA determined that such a proposal would impose substantial costs, and that these costs would outweigh any potential benefits. Consequently, the current proposal was established, which uses some of the elements of this original proposal.

This alternative would afford operators three options for scheduling their reserve pilots but does not address the fatigue problem for pilots who are not on reserve status. The three options for scheduling reserve pilots are as follows:

Option 1: The certificate holder provides a minimum of 10 hours of advance notice of reporting time for flight duty.

Option 2: The certificate holder provides 8 hours of rest each 24 hour period of reserve duty. The 8 hours of rest must be assigned prospectively and remain constant for the duration of the reserve assignment.

Option 3: For each 24 hour period of reserve duty the flight crewmember is limited to 18 hours of eligibility for flight duty, with the remaining 6 hours being set aside for rest.

The potential annual compliance costs for the part 121 scheduled carriers were estimated at $225 million on an annual basis based on the assumption they would have to increase their pilot staffing by 4%. The second most heavily affected sector of the industry was the air taxi operators, who indicated they would have to increase their pilot staffing by 74%, resulting in potential annual compliance costs of $175 million. The FAA estimated that commuter operators would increase their pilot staffing by 5% in order to avoid disrupting their flight schedules, resulting in potential annual compliance costs of $24 million. Finally, the annual compliance cost for the part 121 unscheduled operators was estimated at $11.5 million.

The total annual cost was estimated to be $436 million for the air carrier industry. These costs would not be offset by any cost savings because of the limited nature of this alternative (i.e., applies only to reserve pilots). In addition, this alternative would have a considerably lower potential for preventing accidents than the proposal for the same reason. The FAA therefore concluded that this alternative would not be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A, the criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. This rule would primarily affect part 121 and 135 operators. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft. The FAA's criteria for "significant impact" are $4,600 or more per year for an unscheduled operator, $119,900 or more per year for a scheduled operator whose airplane fleet has over 60 seats, and $67,000 or more for other scheduled carriers.

A. Initial Regulatory Flexibility Determination

The present value cost savings of the proposed rule over the 10-year study period would be $1.20 billion for the part 121 scheduled carriers or $148.47 million annualized at 7%. Based on a total fleet of 3,429 airplanes for these air carriers, the projected annualized cost savings of this rule would be $43,298 per airplane. Given the threshold annualized cost of $119,900 for a small part 121 scheduled operator, the FAA estimates that the proposed rule would have a significant economic impact on any operator owning 3 or more aircraft but less than 10 aircraft. However, there are only 7 small operators in this category. Since this is less than 11, a substantial number of these entities would not be affected.

The present value of the net costs of the proposed rule over the 10-year study period would be $139.56 million for the part 121 unscheduled carriers or $19.82 million annualized at 7%. Based on a total fleet of 557 airplanes for these operators, the projected annual cost of this rule would be $42,747 per airplane. This exceeds the cost threshold of $4,600 per unscheduled operator for all small operators in this sector of the industry.

The present value of the cost savings of the proposed rule over the study period has been estimated at $50.68 million for the part 135 scheduled carriers or $7.2 million annualized at 7%. Based on a total fleet of 950 airplanes for these operators, the projected annual cost of this rule would be $7,579 per airplane. Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that an operator would need to own exactly 9 airplanes in order to incur a significant economic impact. As there is only one part 135 scheduled carrier with 9 airplanes, the FAA concludes that a substantial number of small entities in this sector of the industry would not be significantly affected by the proposed rule.

The FAA requests comments from small air taxi operators regarding the potential economic impacts of this proposed rule on their operations. Would additional pilots be required to maintain the current scope of their operations?

B. Initial Regulatory Flexibility Analysis

As the proposed rule would have a significant economic impact on a substantial number of small part 121 unscheduled operators, an initial regulatory flexibility analysis has been prepared. This analysis assures that agencies have examined selected regulatory alternatives that could minimize the economic burdens of the proposed rule on small entities. As delineated in section 603(b) of the RFA, this initial regulatory flexibility analysis is required to identify: (1) the reasons why the agency is considering this action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule would apply, (4) the projected reporting, record keeping, and other compliance requirements of the proposed rule, and (5) all Federal rules which may duplicate, overlap or conflict with the proposed rule. This section of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Why the Agency Action is Taken

The main reason for the NPRM is that the FAA Administrator, when prescribing safety regulations, is required by statute to consider "the duty of an air carrier to provide service with the highest possible safety in the public interest." The FAA has determined that the most appropriate way to meet this statutory mandate is to ensure that flight crewmembers are provided with the opportunity to obtain sufficient rest to perform their routine and emergency safety duties. The need for this rulemaking is supported by studies on pilot fatigue conducted by NASA, anecdotal evidence of the problem contained in pilot reports submitted to the Aviation Safety Reporting System, and the complexity and age of the current flight duty and rest period restrictions.

2. Objective of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to increase safety in passenger- and cargo-carrying operations, both scheduled and unscheduled. The proposed rule would also clarify and

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simplify existing regulations pertaining to duty period limitations, flight time limitations, and rest requirements for crewmembers. This objective is more thoroughly discussed in the preamble to the NPRM.

The legal basis for the proposed rule is 49 U.S.C. 106(g), 1153, 40101, 40102, etc.

3. Description of the Small Entities Affected by the Proposed Rule

The proposal would affect part 121 air carriers conducting both scheduled and unscheduled operations. The FAA estimates that the proposal would affect only one scheduled part 121 operator, which owns 9 aircraft. The remaining operators in this category each own 5 or fewer aircraft, less than the number required for a substantial economic impact potential. The FAA estimates that the proposal would have a substantial economic impact on all 23 small part 121 unscheduled operators, which operate a total of 99 aircraft.

4. Compliance Requirements of the Proposed Rule

The proposed duty period limitations, flight time limitations, and rest requirements would apply to all crewmembers conducting part 121 domestic, flag, and supplemental operations, as well as those engaged in commuter and on-demand operations. These limitations and requirements would also apply to part 121 and 135 certificate holders conducting part 91 operations. The preamble to the NPRM provides a more thorough discussion of the compliance requirements of the proposed rule.

5. Overlap of the Proposed Rule With Other Federal Regulations

No other Federal rules would duplicate, overlap, or conflict with the proposed rule.

6. Alternatives to the Proposed Rule

Alternative Number One did not have any potential compliance costs. Alternative Number Two would have been more costly and would have had a significant impact on a substantial number of entities for the three industry areas where costs could be estimated. Alternative Number Two would have projected annual costs of $65,325 per aircraft for part 121 scheduled operators. Therefore, any operator with 2 or more aircraft would be significantly affected by this alternative rule. Since these operators would comprise more than one-third of the total number of small operators in this category, the FAA concludes that a substantial number of small entities would be affected. In addition, Alternative Number Two was substantially more costly for part 121 unscheduled operators than the proposed rule, which would have affected all operators in this sector of the industry. The impacts of this Alternative on these operators would be considerably greater than the proposed rule.

Alternative Number Two would have projected annual costs of $20,443 per aircraft for part 135 scheduled operators.

Therefore, any operator with 4 or more aircraft would be significantly affected by this alternative rule. Since these operators comprise at least one-third of the total number of small entities in this sector of the industry, the FAA concludes that a substantial number of small operators would be affected. This Alternative, which would be considerably more costly for on-demand air taxis than scheduled part 135 operators, would have a significant economic impact on a substantial number of small operators in this sector of the industry as well.

In addition, the FAA considered an alternative proposal for part 121 supplemental carriers that was proposed at an ARAC (Aviation Regulatory Advisory Committee) meeting. Under this proposal, part 121 supplementals could develop alternative policies and procedures or flight schedules that allow a flight crewmember to anticipate, when a flight time assignment might occur or that otherwise ensures a flight crewmember will not be assigned to a flight unless that flight crewmember is adequately rested for that flight assignment. However, the FAA rejected this option because it does not provide one level of safety for the industry. These different policies or procedures would be ripe for abuse by both certificate holders and pilots and they would be very difficult for the FAA to enforce. In short the FAA believes this alternative would not provide the same level of safety as the proposal. The FAA does, however request comments on other possible alternatives.

Initial Trade Impact Analysis

The FAA believes that in specific foreign countries, including Great Britain, Germany, and some other European countries, pilot, flight, and duty regulations are more restrictive because they make use of more variables as constraints than in the United States. These variables include 1) take-offs and landings, 2) day or night flights, 3) cumulative duty hours per week and month, 4) the number of flights in a duty period, 5) whether the flight crew is "acclimated" to the local time. The net impact of the proposal on the U.S. firms' operating costs is likely to be considerably less than the compliance costs with current rules because of the projected gains in productivity. Foreign air carriers may already be burdened with similar or higher costs to the extent the applicable regulations are as strict or more strict than the proposal. The FAA solicits information from commenters regarding these policies.

Any impacts should be limited to the part 121 air carriers. Most of the nation's 65 commuter airlines operate almost exclusively on domestic routes, with only limited international operations and no transoceanic routes. Similarly, air taxi operators seldom fly outside of domestic airspace.

Federalism Implications

The proposed regulations do not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule remain the same as under the current rules and have previously been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511) and have been assigned OMB Control Numbers 2120–0585. The FAA believes that this proposed rule would not impose any additional recordkeeping or reporting requirements. If, however, a commenter finds that this notice would require additional recordkeeping or reporting, the FAA solicits specific information on the volume, type, and costs of the additional records or reports.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this proposed regulation is a significant rule under Executive Order 12866, and is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the proposed rule would have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation Safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Aviation Safety, Pilots, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105. 46103, 46105.

2. Section 121.1 is amended by adding a new paragraph (g) to read as follows

§ 121.1 Applicability.

* * * * *

(g) As specified in § 121.487, the duty period limitations, flight time limitations and rest requirements of this part are also applicable to duty periods and flight time performed for a certificate holder conducting operations under part 91 or part 135 of this chapter.

Subpart R—[Removed and reserved]

3. Subpart R (§§ 121.480 through 121.493) is removed, and the subpart heading is reserved.

4. Subpart Q is revised to read as follows:

Subpart Q—Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

Sec.

121.471 Applicability and terms.
121.473 Pilot duty period limitations, flight time limitations, and rest requirements.
121.475 Flight engineer duty period limitations, flight time limitations, and rest requirements.
121.477 Reserve and standby assignments.
121.479 Additional flight crewmember duty period and flight time scheduling limitations.
121.481 Weekly and monthly flight crewmember flight time limitations.
121.483 Additional flight crewmember rest requirements.
121.485 Deadhead transportation.
121.487 Duty period and flight time limitations: Other flying for a certificate holder.

Subpart Q—Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements

§ 121.471 Applicability and terms.

(a) This subpart prescribes duty period limitations, flight time limitations and rest requirements for flight crewmembers in domestic, flag, and supplemental operations.

(b) For the purpose of this subpart the following terms and definitions apply:

(1) *Approved sleeping quarters* means an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator.

(2) *Assigned time* means a period of time when the flight crewmember is assigned by the certificate holder to activities other than flight duties or reserve time. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks, or any other assignments at the direction of the certificate holder. Assigned time may be considered part of a duty period or not part of a duty period, at the discretion of the certificate holder.

(3) *Calendar day* means a period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

(4) *Duty period* means a period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base, to reflect the total elapsed time.

(5) *Operational delays* means delays due to operational conditions and requirements that are beyond the control of the certificate holder such as adverse weather, aircraft equipment malfunctions, and air traffic control. It does not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight or mail, or similar events.

(6) *Protected time* means a period of time during which a certificate holder may not contact the flight crewmember and the crewmember has no responsibility for work. Protected time occurs only during a reserve assignment pursuant to § 121.477(b)(2).

(7) *Reserve time* means a period of time when a flight crewmember must be available to report upon notice for duty involving flight time and the certificate holder allows the flight crewmember at least 1 hour to report. Reserve time is not considered part of a rest period and is not considered part of a duty period involving flight time. Reserve time ends when the flight crewmember reports for a duty period, when the flight crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest period. Reserve time does not include activities defined as "assigned time."

(8) *Rest period* means a period of time free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. A flight crewmember is not "free of all restraint" or "free of all responsibility" if that person must, among other things, accept phone calls, carry a beeper, or contact the air carrier. If a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

(9) *Standby duty* means any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g. airport, crew lounge) designated by a certificate holder. Standby duty is considered part of a duty period. Standby duty commences when the flight crewmember is placed on standby duty. Standby duty ends when the flight crewmember is relieved from duty associated with an actual flight or is otherwise relieved from duty.

§ 121.473 Pilot duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a pilot and a pilot may accept that assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) Except as required in paragraphs (c), (d), and (e) of this section, no certificate holder may assign a flight crew consisting of two pilots, and no pilot may accept, a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each pilot must be scheduled for a subsequent rest period of at least 10 consecutive hours. This rest period

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must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot's next rest period is at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept, a scheduled duty period of up to 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each pilot must be scheduled for a subsequent rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 12 consecutive hours if the pilot has not actually exceeded the maximum 16-hour duty period and if the pilot's next rest period is at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (c) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(d) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept, a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a subsequent rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 16 consecutive hours if the pilot has not actually exceeded the maximum 18-hour duty period and if the pilot's next rest period is at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (d) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(e) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, a certificate holder may assign a flight crew consisting of 4 pilots, and a pilot may accept, a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a subsequent rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 20 consecutive hours if the pilot has not actually exceeded the maximum 24 hour duty period and if the pilot's next rest period is at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 121.475 Flight engineer duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a flight engineer, and a flight engineer may accept, a scheduled duty period only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, no certificate holder may assign a flight engineer, and no flight engineer may accept, a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each flight engineer must be scheduled for a subsequent rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the flight engineer has not actually exceeded the maximum 14-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) A certificate holder may assign a flight engineer, and a flight engineer may accept, a scheduled duty period of more than 14 hours, but no more than 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each flight engineer must be scheduled for a subsequent rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 12 consecutive hours if the flight engineer has not actually exceeded the maximum 16-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (c) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(d) A certificate holder may assign a flight engineer, and a flight engineer may accept, a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. The certificate holder must assign to the flight or flights in that duty period at least two flight engineers. Each flight engineer must be given an opportunity to rest in flight in approved sleeping quarters. Each flight engineer must be scheduled for a subsequent rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 16 consecutive hours if the flight engineer has not actually exceeded the maximum 18-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (d) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(e) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, the certificate holder may assign a flight engineer, and a flight engineer may accept, a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. The certificate holder must assign to the flight or flights in that duty period at least two flight engineers. Each flight engineer must be given an opportunity to rest in flight in approved sleeping quarters. Each flight engineer must be scheduled for a subsequent rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 20 consecutive hours if the flight engineer has not actually exceeded the maximum 24-hour duty period and if the flight engineer is provided with a subsequent rest period of at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 121.477 Reserve and standby assignments.

(a) *Standby duty.* Standby duty commences when a flight crewmember is placed on standby duty. Standby duty periods must be scheduled in accordance with §§ 121.473 or 121.475. Standby duty periods end when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

(b) *Reserve time.* A certificate holder may assign a reserve assignment to a flight crewmember and a flight crewmember may accept that assignment only when the applicable provisions of this section are met. Each flight crewmember must be given a 10-hour rest period before being assigned to reserve time. Reserve time may be assigned under either of the following options and the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment:

(1) A certificate holder may schedule a flight crewmember assigned to reserve time and a flight crewmember may accept any duty period if the flight crewmember receives at least 10 hours notice and if the duty period is scheduled in accordance with §§ 121.473 or 121.475. If a flight crewmember does not receive at least 10 hours notice, the following limitations apply:

(i) If at least 8 hours notice is given, the scheduled duty period is limited to no more than 12 hours. The duty period required under this paragraph (b)(1) may be extended to 14 hours when the extension is due to operational delays.

(ii) If at least 6 hours notice is given, the scheduled duty period is limited to no more than 10 hours. The duty period required under this paragraph (b)(1) may be extended to 12 hours when the extension is due to operational delays.

(iii) If at least 4 hours notice is given, the scheduled duty period is limited to no more than 8 hours. The duty period required under this paragraph (b)(1) may be extended to 10 hours when the extension is due to operational delays.

(iv) If fewer than 4 hours notice is given, the scheduled duty period is limited to no more than 6 hours. The duty period required under this paragraph (b)(1) may be extended to 8 hours when the extension is due to operational delays.

(2) A certificate holder may assign a flight crewmember to a reserve assignment, and a flight crewmember may accept a duty period, if, for each 24-hour period, the flight crewmember receives at least a regularly scheduled 6-hour period that is protected from any contact by the certificate holder. The hours of the 6-hour protected time period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18 hour reserve period. The length of the duty period and the subsequent rest period must be in accordance with §§ 121.473 or 121.475.

§ 121.479 Additional flight crewmember duty period and flight time scheduling limitations.

(a) A flight crewmember is not considered to be scheduled for a duty period in excess of the scheduled duty period limitations if the duty periods to which he or she is assigned are scheduled and normally terminate within the limitations, but, due to operational delays, the flights to which he or she is assigned are not at block out time expected to reach their destination within the scheduled duty period. However, no air carrier may assign a flight crewmember, nor may a flight crewmember accept, a flight that at block out time would extend the flight crewmembers scheduled duty period maximum more than two hours, as provided in §§ 121.473 and 121.475.

(b) A flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled time.

§ 121.481 Weekly and monthly flight crewmember flight time limitations.

No certificate holder may schedule any flight crewmember, and no flight crewmember may accept, an assignment for flight time under this part if that flight crewmember's total flight time for a certificate holder under parts 91, 121, and 135 of this chapter will exceed—

(a) 32 hours in any 7 consecutive calendar days.

(b) 100 hours in any calendar month.

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§ 121.483 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember, and no flight crewmember may accept, any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under §§ 121.473 and 121.475 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that contain flights that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

§ 121.485 Deadhead transportation.

Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was relieved from duty to return to his or her home station is not considered part of a rest period. For duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

§ 121.487 Duty period and flight time limitations: Other flying for a certificate holder.

No flight crewmember who is employed by a certificate holder conducting operations under this part may do any other duty or flying for any certificate holder conducting operations under part 121 or 135 of this chapter if that duty or flying for a certificate holder plus his or her duty or flying under this part will exceed any duty period or flight time limitation in this part. This section applies to any other duty or flying under part 91, part 121 or part 135 of this chapter for any certificate holder whether the duty or flying precedes or follows the flight crewmember's flying under this part.

Subpart S—[Removed and reserved]

5. Subpart S (§§ 121.500 through 121.525) is removed, and the subpart heading is reserved.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

7. Section 135.1 is amended by adding a new paragraph (b) to read as follows

§ 135.1 Applicability.

* * * * *

(b) As specified in § 135.275, the duty period limitations, flight time limitations and rest requirements of this part are also applicable to duty periods and flight time performed for a certificate holder conducting operations under part 91 or part 121 of this chapter.

8. The heading for subpart F is revised to read as follows:

Subpart F—Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements

9. Sections 135.261, 135.263, 135.265, 135.267, 135.269, and 135.273 are revised and 135.275 is added.

§ 135.261 Applicability and terms.

(a) This subpart prescribes duty period limitations, flight time limitations and rest requirements for flight crewmembers in commuter and on-demand operations.

(b) For the purpose of this subpart the following terms and definitions apply:

(1) *Approved sleeping quarters* means an area designated for the purpose of flight crewmembers obtaining sleep as approved by the Administrator.

(2) *Assigned time* is time when the flight crewmember is assigned by the certificate holder to activities other than flight duties or reserve time. Assigned time may include activities such as deadhead transportation, training, loading baggage, taking tickets, administrative tasks, or any other assignments at the direction of the certificate holder. Assigned time may be considered part of a duty period or not part of a duty period, at the discretion of the certificate holder.

(3) *Calendar day* means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

(4) *Duty period* means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight crewmember's home base, to reflect the total elapsed time.

(5) *Operational delays* means delays due to operational conditions and requirements that are beyond the control of the certificate holder such as adverse weather, aircraft equipment malfunctions, and air traffic control. It does not include late arriving passengers, late food service, late fuel trucks, delays in handling baggage, freight or mail, or similar events.

(6) *Protected time* means a period of time during which a certificate holder may not contact the flight crewmember and the crewmember has no responsibility for work. Protected time occurs only during a reserve assignment pursuant to § 121.477(b)(2).

(7) *Reserve time* means a period of time when a flight crewmember must be available to report upon notice for duty involving flight time and the certificate holder allows the flight crewmember at least 1 hour to report. Reserve time is not considered part of a rest period and is not considered part of a duty period involving flight time. Reserve time ends when the flight crewmember reports for a duty period, when the flight crewmember is notified of a future flight assignment and released from all further responsibilities until report time for that assignment, or when the flight crewmember has been relieved for a rest

period. Reserve time does not include activities defined as "assigned time."

(8) *Rest period* means the time period free of all restraint or duty for a certificate holder and free of all responsibility for work or duty should the occasion arise. "Free of all restraint" and "free of all responsibility" would include, but not be limited to, accepting phone calls, being required to carry a beeper, or being required to contact the air carrier. If a flight crewmember is not serving in assigned time, reserve time, standby duty or a duty period, that crewmember would be in a rest period.

(9) *Standby duty* means any period of time when a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification. It also includes time when a flight crewmember is required to report to and remain at a specific facility (e.g. airport, crew lounge) designated by a certificate holder. Standby duty is treated like any other duty associated with flight. Standby duty commences when the flight crewmember is placed on standby duty. Standby duty ends when the flight crewmember is relieved from duty associated with an actual flight or is otherwise relieved from duty.

§ 135.263 Pilot duty period limitations, flight time limitations, and rest requirements.

(a) A certificate holder may assign a scheduled duty period or reserve assignment to a pilot and a pilot may accept that assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.

(b) For aircraft for which only one pilot is required, no certificate holder may assign a pilot and no pilot may accept a scheduled duty period of more than 14 hours. The duty period may not include more than 8 scheduled hours of flight time. The pilot must be scheduled for a rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (b) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (b) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(c) Except as required in paragraphs (d), (e), and (f) of this section, no certificate holder may assign a flight crew consisting of two pilots and no pilot may accept a scheduled duty period of more than 14 hours. The duty period may not include more than 10 scheduled hours of flight time. Each pilot must be scheduled for a rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (c) may be reduced to no fewer than 9 consecutive hours if the pilot has not actually exceeded the maximum 14-hour duty period and if the pilot is provided with a subsequent rest period of at least 11 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (c) may be extended to 16 hours when the extension is due to operational delays. In this case the 10 hour rest period may not be reduced.

(d) A certificate holder may assign a flight crew consisting of 3 pilots and a pilot may accept a scheduled duty period of more than 14 hours, but no more than 16 hours. The duty period may not include more than 12 scheduled hours of flight time. Each pilot must be scheduled for a rest period of at least 14 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(1) Due to operational delays, the rest period required under this paragraph (d) may be reduced to no fewer than 12 consecutive hours if the pilot has not actually exceeded the maximum 16-hour duty period and if the pilot is provided with a subsequent rest period of at least 16 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next duty period.

(2) The duty period required under this paragraph (d) may be extended to 18 hours when the extension is due to operational delays. In this case the 14 hour rest period may not be reduced.

(e) A certificate holder may assign a flight crew consisting of 3 pilots, and a pilot may accept a scheduled duty period of more than 16 hours, but no more than 18 hours. The duty period may not include more than 16 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a rest period of at least 18 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (e) may be reduced to no fewer than 16 consecutive hours if the pilot has not actually exceeded the maximum 18-hour duty period and if the pilot is provided with a subsequent rest period of at least 20 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (e) may be extended to 20 hours when the extension is due to operational delays. In this case the 18 hour rest period may not be reduced.

(f) If the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, a certificate holder may assign a flight crew consisting of 4 pilots and a pilot may accept a scheduled duty period of more than 18 hours but not more than 24 hours. The duty period may not include more than 18 scheduled hours of flight time. Each pilot must be given an opportunity to rest in-flight in approved sleeping quarters. Each pilot must be scheduled for a rest period of at least 22 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the next subsequent duty period.

(1) Due to operational delays, the rest period required under this paragraph (f) may be reduced to no fewer than 20 consecutive hours if the pilot has not actually exceeded the maximum 24 hour duty period and if the pilot is provided with a subsequent rest period of at least 24 hours. This subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the

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scheduled duty period and the commencement of the next subsequent duty period.

(2) The duty period required under this paragraph (f) may be extended to 26 hours when the extension is due to operational delays. In this case the 22 hour rest period may not be reduced.

§ 135.265 Reserve and standby assignments.

(a) *Standby duty.* Standby duty commences when a flight crewmember is placed on standby duty assignment. Standby duty periods must be scheduled in accordance with § 135.263. Standby duty periods end when the duty period associated with a subsequent flight assignment ends or the flight crewmember is relieved from standby duty for a scheduled rest period.

(b) *Reserve time.* A certificate holder may assign a reserve assignment to a flight crewmember and a flight crewmember may accept that assignment only when the applicable provisions of this section are met. Each flight crewmember must be given a 10-hour rest period before being assigned to reserve time. Reserve time may be assigned under either of the following options and the flight crewmember must be notified of which option has been selected before the beginning of the reserve time assignment:

(1) A certificate holder may schedule a flight crewmember assigned to reserve time and a flight crewmember may accept any duty period if the flight crewmember receives at least 10 hours notice and if the duty period is scheduled in accordance with § 135.263. If a flight crewmember does not receive at least 10 hours notice, the following limitations apply:

(i) If at least 8 hours notice is given the scheduled duty period is limited to no more than 12 hours. The duty period required under this paragraph (b)(1) may be extended to 14 hours when the extension is due to operational delays.

(ii) If at least 6 hours notice is given the scheduled duty period is limited to no more than 10 hours. The duty period required under this paragraph (b)(1) may be extended to 12 hours when the extension is due to operational delays.

(iii) If at least 4 hours notice is given the scheduled duty period is limited to no more than 8 hours. The duty period required under this paragraph (b)(1) may be extended to 10 hours when the extension is due to operational delays.

(iv) If fewer than 4 hours notice is given the scheduled duty period is limited to no more than 6 hours. The duty period required under this paragraph (b)(1) may be extended to 8 hours when the extension is due to operational delays.

(2) A certificate holder may assign a flight crewmember to a reserve assignment and a flight crewmember may accept a duty period if, for each 24-hour period, the flight crewmember receives at least a regularly scheduled 6-hour period that is protected from any contact by the certificate holder. The hours of the 6-hour protected time period must be assigned before the flight crewmember begins the reserve time assignment and must occur at the same time during each 24-hour period during a reserve time assignment. Any duty period assignment must be scheduled to be completed within the 18 hour reserve period. The length of the duty period and the subsequent rest period must be in accordance with § 135.263.

§ 135.267 Additional flight crewmember duty period and flight time scheduling limitations.

(a) A flight crewmember is not considered to be scheduled for a duty period in excess of the scheduled duty period limitations if the duty periods to which he or she is assigned are scheduled and normally terminate within the limitations, but, due to operational delays, the flights to which he or she is assigned are not at block out time expected to reach their destination within the scheduled duty period. However, no air carrier may schedule a flight crewmember, nor may a flight crewmember accept a flight that at block out time would extend the flight crewmembers scheduled duty period maximum more than two hours, as provided in § 135.263.

(b) A flight crewmember is not considered to be scheduled for flight time in excess of the flight time limitations if the flights to which he or she is assigned are scheduled and normally terminate within the limitations, but due to operational delays are not at block out time expected to reach their destination within the scheduled time.

§ 135.269 Weekly and monthly flight crewmember flight time limitations.

No certificate holder may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time under this part if that flight crewmember's total flight time for a certificate holder under parts 91, 121, and 135 of this chapter will exceed—

(a) 32 hours in any 7 consecutive calendar days.

(b) 100 hours in any calendar month.

§ 135.271 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under § 135.263 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

§ 135.273 Deadhead transportation.

Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was relieved from duty to return to his or her home station is not considered part of a rest period. For duty period limitation purposes the certificate holder and flight crewmember must consider deadhead time as assigned time or as part of a duty period associated with flight.

§ 135.275 Duty period and flight time limitations: Other flying for a certificate holder.

No flight crewmember who is employed by a certificate holder conducting operations under this part may do any other duty or flying for a certificate holder conducting operations under part 121 or part 135 of this chapter if that duty or flying for a certificate holder plus his or her duty or flying under this part will exceed any duty period or flight time limitation in this part. This section applies to any other duty or flying under part 91, part 121, or part 135 of this chapter for a certificate holder whether the duty or flying precedes or follows the flight crewmember's flying under this part.

§ 135.271 [Redesignated as § 135.277]

10. Section 135.271 is redesignated as § 135.277 and revised to read as follows:

§ 135.277 Additional flight crewmember rest requirements.

(a) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty period or flight time with the certificate holder unless the flight crewmember has had at least the minimum rest required under this subpart.

(b) No certificate holder may assign any flight crewmember and no flight crewmember may accept any duty with the certificate holder during any required rest period. For example the flight crewmember may not be required to contact the certificate holder, answer the telephone, carry a beeper, remain at a specific location or in any other way be responsible to the air carrier during a rest period.

(c) Rest periods that are required under this subpart can occur concurrently with any other rest period.

(d) The reduced rest periods allowed under § 135.263 may only be used due to operational delays and may not be scheduled in advance.

(e) Each certificate holder shall provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.

(f) Each certificate holder must provide each flight crewmember assigned to assigned time, when the assigned time is not part of a duty period, a rest period of at least 10 hours before the commencement of a subsequent duty period.

(g) Each certificate holder must provide each flight crewmember at least 48 consecutive hours of rest upon return to the flight crewmember's home base after completion of one or more duty periods that terminate in a time zone or zones that differs from the time zone of the flight crewmember's home base by 6 or more hours and the flight crewmember remains in that time zone or zones for at least 48 consecutive hours. The flight crewmember must receive this rest before beginning a subsequent duty period. The home base is determined by the certificate holder and is where that crewmember is based and receives schedules.

Issued in Washington, D.C., on December 11, 1995.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

[FR Doc. 95–30547 Filed 12–14–95; 8:45 am]

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14 CFR Part 121

[Docket No. 27264]

RIN 2120–AF96

The Age 60 Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments and notice of agency decisions.

SUMMARY: This action announces FAA's decisions on a number of issues regarding the FAA's "Age 60 Rule". The issues include: responding to the comments requested in 1993 regarding various aspects of the Age 60 Rule, including the "Age 60 Project, Consolidated Database Experiments, Final Report", and issues raised by pilots seeking exemptions from the Age 60 Rule, issues raised by a petition for rulemaking by the Professional Pilots Federation (PPF), requesting the FAA to remove the Age 60 Rule.

After review of all comments, studies, and other pertinent information, the FAA has determined not to initiate rulemaking to change the Age 60 Rule at this time. The FAA also has decided not to grant any of the pending petitions for exemption or rulemaking.

ADDRESSES: The complete docket containing recent comments on the Age 60 Rule, including copies of studies related to the Age 60 issue, may be examined at the Federal Aviation Administration, Office of the Chief Counsel (AGC–200), Rules Docket, Room 915–G, 800 Independence Avenue SW., Washington, DC 20591, weekdays (except Federal holidays) between 8:30 a.m. and 5:00 p.m.

Availability of Disposition

Any person may obtain a copy of this Disposition by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should be identified by the docket number of this Disposition.

FOR FURTHER INFORMATION CONTACT: Daniel V. Meier, Jr., AFS–240, Regulations Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3749 or (202) 267–8086.

SUPPLEMENTARY INFORMATION:

I. Background

Section 121.383(c) of the Federal Aviation Regulations (FAR) (14 CFR § 121.383(c)) prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. The FAA adopted the "Age 60 Rule", as it has come to be known, in 1959 (24 FR 9767, December 5, 1959).

In late 1990, the FAA initiated a study aimed at consolidating available accident data and correlating it with the amount of flying by pilots as a function of their age. This resulted in a document entitled "Age 60 Project, Consolidated Database Experiments, Final Report", dated March 1993 (the "Hilton Study"). The FAA held a public meeting and requested comments regarding various issues related to the Age 60 Rule, including the Hilton Study (58 FR 21336, April 20, 1993). The FAA has reviewed the written comments received in the docket (Docket No. 27264) and to the comments presented at the public meeting. The FAA is also responding to a number of pending petitions from pilots seeking an exemption from the Age 60 Rule. Finally, the FAA is responding to a petition for rulemaking submitted by the Professional Pilots Federation (PPF).

This document describes the history and basis for the rule, the major events during the history of the rule, the FAA's response to the issues raised above, and the FAA's rationale for maintaining the Age 60 Rule.

I(a). Basis for the 1959 Rule

The FAA promulgated the Age 60 Rule in 1959 because of concerns that a hazard to safety was presented by utilization of aging pilots in air carrier operations. As noted in that rulemaking,

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the agency found "that there is a progressive deterioration of certain important physiological and psychological functions with age, that significant medical defects attributable to this degenerative process occur at an increasing rate as age increases, and that sudden incapacity due to such medical defects becomes more frequent in any group reaching age 60." 24 FR 9767. It also found that "[s]uch incapacity, due primarily to heart attacks and strokes, cannot be predicted accurately as to any specific individual on the basis of presently available scientific tests and criteria." 24 FR 9767. The FAA noted "[o]ther factors, even less susceptible to precise measurement as to their effect but which must be considered in connection with safety in flight, result simply from aging alone and are, with some variations, applicable to all individuals. These relate to loss of ability to perform highly skilled tasks rapidly, to resist fatigue, to maintain physical stamina, to perform effectively in a complex and stressful environment, to apply experience, judgment and reasoning rapidly in new, changing and emergency situations, and to learn new techniques, skills and procedures." 24 FR 9767. While the FAA recognized that such losses generally start well before age 60, the agency determined that beyond age 59 the risks associated with these losses become unacceptable for pilots in part 121 operations.

The agency noted that, due to seniority, older pilots tend to "fly the largest, highest-performance aircraft, carrying the greatest number of passengers over the longest non-stop distances," in the highest density traffic. 24 FR 9767. The FAA concluded that, because of the high risks involved, persons should be precluded from piloting aircraft in part 121 operations after reaching age 60.

While the Age 60 Rule prohibits pilots from operating aircraft under part 121 after reaching their 60th birthdays, it does not impose mandatory retirement for affected pilots. A pilot may work as a flight engineer or flight instructor in operations conducted under part 121 or may work as a pilot in operations outside of part 121. The pilot also may function as an instructor or evaluator in simulators, an area that has expanded over the years.

I(b). Subsequent Rulemaking Actions

In the early 1980's, the FAA explored possible changes to the Age 60 Rule, stemming from direction from Congress in 1979 that the National Institutes of Health (NIH) study the desirability of mandatory age retirement for certain pilots. (P.L. 96–171). The NIH assigned the National Institute on Aging (NIA) the primary responsibility for implementing the legislation. In the report from this study, "Report of the National Institute on Aging Panel on the Experienced Pilot Study" (August 1981) (NIH report), NIA recommended that the age 60 limit be retained. Among other things, the panel concluded that, while no medical significance could be attached to age 60 as a mandatory retirement age, age-related health changes endanger aviation safety and no medical or performance appraisal system could be identified that would single out pilots who would pose a hazard to safety. The conclusions reached by the NIA panel and the supporting statements contained in the report pointed to an inability to distinguish those persons who, as a consequence of aging, present a threat to air safety from those who do not. The following recommendations were made:

1. The age 60 limit should be retained for pilots in command and first officers.

2. The FAA or some other appropriate Federal agency should be requested to engage in a systematic program to collect the medical and performance data necessary to consider relaxing the age 60 rule.

3. In view of the growing importance of commuter air carriers, the age 60 limit should be extended to cover all pilots engaged in carrying passengers for hire, specifically including operations under part 135 to provide a level of safety equivalent to that provided in part 121 operations.

As part of its study, NIA looked at information on functional decline with age and the increased frequency of a number of medical disorders (including cardiovascular disease, neurological and mental disorders, and changes in perceptual, psychomotor and intellectual functions) associated with aging. In addition, NIA looked at death and disability rates in air carrier pilots and flight engineers, death rates in the general population, and accident rates for pilots.

In response to the NIH recommendations, in 1982 the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) on the Age 60 Rule (47 FR 29782, July 8, 1982). The FAA was considering identifying a select group of pilots who would continue flying in part 121 operations in order to allow the FAA to collect data on selected pilots, age 60 and over, flying in actual operations under part 121. The FAA was also considering establishing age limits for flight engineers serving on airplanes operated under part 121. The FAA withdrew the ANPRM in 1984 (49 FR 14692, April 12, 1984). The FAA found that valid tests did not exist for selecting a group of pilots age 60 and over who could act as the test group for collecting data. The FAA was concerned that without valid selection tests these pilots would create an unacceptable safety risk to part 121 operations. The FAA also stated that it was not appropriate to establish an age limit for flight engineers at that time.

I(c). 1993 Request for Comments on Age 60 Rule and Hilton Study

In late 1990 the FAA contracted for the Hilton Study, a 2-year study to consolidate accident data and correlate it with flying experience and age of pilots. This study analyzed accident data between 1976 and 1988. Although the focus of the study was on part 121 pilots, the study analyzed the accident rates for pilots in part 91, 121, and 135 operations holding Class I, Class II, and Class III medical certificates. The authors of the study found "no hint of an increase in accident rate for pilots of scheduled air carriers as they neared their 60th birthday" but noted that there were no data available on scheduled air carrier pilots beyond age 60. Observing a "hint, and a hint only," of an increase in accident rates for Class III pilots older than 63 years of age, they concluded that "one could cautiously increase the retirement age to age 63."

In addition, on April 20, 1993, the FAA published a notice of public meeting and request for comments regarding various aspects of the Hilton Study. (58 FR 21336; April 20, 1993.) The public meeting was held on September 29 and 30, 1993, and the comment period closed on October 15, 1993. In response to the FAA's notice of public meeting and request for comments, 46 members of the public made presentations at the public meeting, and the FAA received approximately 1,200 written comments on the Hilton Study and the Age 60 Rule in general before the close of the comment period.

I(d). Commuter Rule

The FAA addressed the Age 60 Rule in a Notice of Proposed Rulemaking (Notice 95–5, 60 FR 16230, March 29, 1995) that would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121 (the "Commuter Rule"). In that notice, the FAA proposed to apply all part 121 rules, including the Age 60 Rule, to those pilots currently employed in certain part 135 scheduled operations who would be affected by the Commuter Rule. In response to Notice 95–5 the FAA received many comments dealing with the question, not raised by Notice 95–5, of whether there should be an age limitation for part 121 pilots and what that age should be. To that extent those comments have been considered in this Disposition.

I(e). Public Comment

1993 Meeting and Request for Comments

In addition to the comments at the 1993 public meeting and received during the comment period, the FAA received over 2,000 comments after the comment period closed. The issues raised in the comments by both sets of commenters are similar and will be discussed together. The majority of the commenters at the public meeting and those submitting written comments before the close of the comment period are in favor of raising the age limit, while the majority of commenters submitting written comments after the close of the comment period are against raising the age limit. Commenters in favor of raising the age limit offer several different alternatives, ranging from age 62 to no age limit. Some commenters opposed to a rule change state that the age limit should be decreased to age 55.

Commuter Rule

In addition to the above comments, over 2,000 comments on the age 60 issue (including about 1,000 postcards from members of an airline pilot organization) were received in the docket established for the Commuter Rule. The overwhelming majority of these comments support maintaining the Age 60 Rule and do not express opinions that are different from other comments received in response to the public meeting and request for comments in Docket 27264.

The issues raised at the public meeting, the written comments, and the Commuter Rule are discussed below.

I(f). Professional Pilots Federation Petition for Rulemaking To Repeal the Age 60 Rule

The PPF, an organization whose membership is composed of pilots who oppose the Age 60 Rule, filed a petition for rulemaking in July 1993 (Docket 27375; 58 FR 46585, September 2, 1993) that requests the removal of § 121.383(c). PPF believes that Federal law and policy, operational and regulatory developments since promulgation of the rule, and the results of the Hilton Study warrant the removal.

In its petition, the PPF states that the Age 60 Rule has no basis in fact; refusal to repeal the rule would constitute arbitrary and capricious action by the FAA, contrary to the provisions of the Administrative Procedure Act; refusal to repeal the rule without evidence of a need to retain it in the interest of public safety is inconsistent with Federal policy against age discrimination; and repeal of the rule would have a positive economic impact on the U.S. air carrier industry.

In addition, the PPF states that the FAA should exercise leadership in the international community and repeal the Age 60 Rule; the Age 60 standard in ICAO Annex 1 is ready for change; and the JAA has proposed increasing the maximum age limit for air transport pilots to 65. (The FAA notes that JAA's proposal is to allow pilots to operate in multi-pilot operations up to the age of 65, provided no more than one pilot in the cockpit is over the age of 60.)

The major issues brought up in the PPF's petition for rulemaking (such as age discrimination, the Hilton Study, economic impacts of the Age 60 Rule, etc.) are discussed below in connection with the disposition of comments in Docket No. 27264. Because the FAA has determined that there is insufficient justification to change the Age 60 Rule at this time and that the rule is consistent with Federal law, PPF's petition for rulemaking will be denied in a separate document.

I(g). Petitions for Exemption From the Age 60 Rule

Over the years the FAA has received numerous petitions for exemption from the Age 60 Rule. The FAA consistently has denied these petitions. Some petitioners have sought review in the United States Courts of Appeals, and the Courts have upheld the denials. However, in 1992 when the Hilton Study was underway, the FAA delayed action on the pending petitions for exemption and those newly received. Most of the issues raised by the petitions were so intertwined with the underlying Age 60 Rule issues, the FAA chose to defer action pending deliberation of the broader issues involving the Age 60 Rule itself. There are currently over 100 petitions for exemption pending. Summaries of the petitions were published in the **Federal Register**, and comments were received for some of the petitions. These comments expressed opinions and did not provide the FAA with new information. The issues raised by commenters are discussed in sections II, III, and V below.

Overall, the petitioners provide similar information and arguments that they contend justify exemptions. Part of their assertions involve their personal fitness (see section II(a)) and the ability of the FAA to test them individually with simulators (see section III(a)). They state that they hold or are qualified to hold first-class airman medical certificates (see section III(b)). Some state that they have extensive skill and experience as pilots (see section II(c)). They also note that the FAA gives many exemptions to younger pilots for various medical conditions (see section III(b)).

The petitioners also contend that the Age 60 Rule is discriminatory (see section V(b)). In addition, the petitioners state that the Age 60 Rule is an arbitrary age and that the age of 60 has not scientifically been shown to be an accurate predictor of health or ability (see section II(a)). They state that studies used by the FAA in the past to justify the rule are flawed, including the NIH Study and the reports prepared by Richard Golaszewski (Acumenics Research and Technology, Incorporated, *The Influence of Total Flight Time, Recent Flight Time and Age on Pilot Accident Rates, Final Report* (1983) (First Golaszewski Report); *General Aviation Safety Studies: Preliminary Analysis of Pilot Proficiency* (1991) and his subsequent work, *Additional Analysis of General Aviation Pilot Proficiency* (1993) (Second Golaszewski Report) (section II(b)). They state that pilots at age 60 are in the safest age group and that forcing them to retire results in individuals with less experience serving as pilots, resulting in lower safety (sections II(c) and V(f)). They state that sudden incapacitation is not a cause of accidents in Part 121 operations (section II(a)). They state that the rule was promulgated for economic reasons alone (section V(a)). They state that the rule is contrary to the Age Discrimination in Employment Act (section V(b)). They point out that other countries have higher retirement ages for their pilots (section V(c)). They state that deleting the rule would save the air carriers money (section IV(a)).

Under 49 U.S.C. 44701(e) the FAA, in its discretion, may grant exemptions from the requirements of a regulation if it finds that such an exemption is in the public interest. Section 11.25 (14 CFR § 11.25) provides procedures for petitioning for an exemption. Section 11.25(b)(5) provides that such a petition must—

> Contain any information, views, or arguments available to the petitioner to support the action sought, the reasons why the petition would be in the public interest and, * * * the reason why the exemption would not adversely affect safety or the action to be taken by the petitioner to provide a level of safety equal to that provided by the rule from which the exemption is sought.

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The petitioners have the burden of showing that the exemption is justified.

The FAA does not doubt that the petitioners, in general, are well-qualified, experienced, and safe pilots. However, no petitioner has suggested or shown how he or she is unique compared to others who are subject to the rule.

To the extent that petitioners' comments involve the justification for the Age 60 Rule itself, these issues are discussed in sections II, III, and V below.

As to individual petitioners' fitness to serve as pilots past the age of 60, which petitioners assert can be demonstrated by individualized testing or evaluation, no petitioner has submitted a protocol, nor is the FAA aware of a protocol, that would permit the FAA to adequately assess an aging individual's relative risks of incapacitation, either sudden or subtle. They have not shown how their circumstances are different in a significant way from others subject to the rule. For instance, there is nothing unique in petitioners holding first-class airman medical certificates; all pilots who exercise the privileges of an Air Transport Pilot certificate are required to hold a first-class airman medical certificate. Numerous pilots operating under part 121, who are approaching age 60, have long, distinguished careers. Indeed, the FAA considered these issues in response to the comments in Docket 27284, and they are further responded to below.

The FAA has determined that the petitioners have not shown their circumstances to be unique compared with those who comply with the rule, and that the issues they raise are more appropriately considered in connection with whether the FAA should propose to change the general rule. The FAA will in separate documents deny the pending petitions for exemption from the Age 60 Rule.

In addition, the FAA intends to handle future petitions for exemptions for the Age 60 Rule differently. The normal procedures for handling petitions for exemption are set forth in §§ 11.25 and 11.26. They include publishing a summary of the petition, reviewing any comments received, and issuing an individualized grant or denial of the petition that recites the basis for the petition and the FAA's analysis as to why it is granted or denied. This process can take a substantial amount of time. It appears not to be necessary, however, to carry out all these steps for future petitions for exemption from the Age 60 Rule that are substantially similar to those discussed here. In the future, the FAA will deny any petition for exemption from the Age 60 Rule without first publishing it for comment unless it contains a proposed technique, not discussed in this Disposition, to assess an individual pilot's abilities and risks of subtle and sudden incapacitation. Petitions that do not contain new information or a protocol that may allow the FAA to accurately assess the individual will be summarily denied. A copy of this disposition will be attached to the denial to explain the basis for the FAA's denial. Any petition that does contain such a proposal will be processed and evaluated as provided in §§ 11.25 and 11.26.

II. Concerns Regarding Aging Pilots

After considering all comments and known studies, FAA concludes that concerns regarding aging pilots and underlying the original rule have not been shown to be invalid or misplaced.

II(a). Physical Degradation with Age

As noted above, the Age 60 Rule was promulgated in 1959 to address the progressive deterioration of physiological and psychological functions with age and an increasing occurrence of significant medical defects and sudden incapacitation associated with this degenerative process. While emphasizing heart attacks and strokes, the agency also noted "other" factors, less susceptible to precise measurement, resulting from aging alone. Major emphasis was placed on the difficulties in attempting to predict incapacity.

Several commenters state that the death rate in general and the cardiovascular death rate in particular for men in the relevant age groups declined dramatically between 1960 and 1989. The commenters believe, therefore, that the age limit could be raised. Other commenters, however, state that insurance statistics show a dramatic rise in cardiovascular disease in people over age 50.

In the 35 years since the rule was introduced, there has been remarkable progress in medicine, particularly in the ability to evaluate cardiovascular fitness and in the diagnosis and treatment of cardiac and cerebrovascular illness. For example, cardiovascular disease rises with age, steeply, beginning between ages 55 and 65, and, though mortality has dropped since 1960, cardiovascular disease remains the most frequent cause of death in pilots and the general population. With this increased incidence of cardiovascular disease in the older population, the risk for unexpected threatening events is raised. Cardiac events (e.g., heart attacks, sudden death) during flight have continued to occur in low but fairly consistent numbers over the years and have caused general aviation accidents.

Other conditions are known to increase in incidence or to become more complicated with aging. Many present greater difficulties of detection and risk assessment than does cardiovascular disease. Among these are cerebrovascular disease; malignancies; endocrine dysfunction; neurological disorders; psychiatric diagnoses including depression; and decline in sensory and motor capabilities. There has been an increasing awareness of the more subtle adverse conditions affecting performance, those related to cognitive functioning.

The concepts of "age-related cognitive decline" or "age-associated memory impairment" describe objective impairment of cognitive function (e.g., attention; language; some visuospatial skills; and, particularly, memory), as a result of aging. These concepts are applied to describe a longitudinal decline in performance that is age appropriate, i.e., a normal outcome of aging (Petersen, RC; Normal Aging, Mild Cognitive Impairment, and Early Alzheimer's Disease; *The Neurologist*; 1:000–000, 1995 [in press]). Since there now is general agreement that a functional decline occurs with normal aging, on-going research seeks tools for its identification and quantification and to determine its significance for individuals. A condition of "mild cognitive impairment" also is recognized and appears to be the herald of degenerative disease or dementia. Again, research looks for diagnostic tools and for predictor variables of the ultimate outcome for the individual.

Dementia in the adult population is a major and growing medical and social problem. It occurs at all ages, but its incidence increases with advancing age so that the largest group of demented patients is in the older age groups (Differential Diagnosis of Dementing Diseases; National Institutes of Health Consensus Conference Statement; Volume 6, Number 11; July 6–8, 1987). One in 10 persons over age 65 and nearly half of those over 85 have Alzheimer's disease alone, and increasingly it is found in people in their 40's and 50's.

Many of the dementing diseases can be confirmed or denied with certainty only at autopsy. The history includes a decline from the individual's previously attained intellectual level and usually involves defects in memory, other cognitive capacities, and adaptive behavior. Usually, it is marked by significant deterioration of memory and

of one or more other intellectual functions such as language, spatial or temporal orientation, judgment, and abstract thought. Onset is usually but not always insidious, and the patient may or may not be aware of the dementia. Deterioration may vary from subtle changes that are overlooked by coworkers, family, and friends, to totally incapacitating.

Is there a level of cognitive dysfunction acceptable in a part 121 pilot? On a particular basis, can pilots be screened for mild cognitive deficits or for the "normal" age-related cognitive decline? Can early dementia be identified before the affected pilot becomes a risk? How do we know when the pilot becomes a risk? How specifically are the deficits identified through currently available neuropsychological testing related to performance and to the real requirements of piloting? What is an acceptable level of risk in aviation? When does the incidence of cognitive deficit become unacceptable? Are current proficiency evaluations adequate for determination of a pilot's ability to perform adequately under every reasonably anticipated circumstance regardless of age? At present, adequate answers to these questions have not been provided.

In its 1981 report, the Institute of Medicine (IOM) of the National Academy of Science (on which the NIH report is based) noted that in addition to the increased incidence of cardiovascular disease and degradation in cognitive functions associated with aging, other effects of aging become more prevalent. For example, diabetes, thyroid disease, pulmonary dysfunction, and gastrointestinal malignancy are more common with advancing age.

There is other deterioration with age. For instance, research points to a decline with age in the speed and/or quality of many aspects of perceptual and motor functioning. In the general population, the ability to see fine details declines slightly in adulthood until about 60, and more markedly thereafter. With age, there is typically some loss in ability to hear effectively; the higher the frequency beyond about 1,000 hertz, the greater the loss.

Clearly, there is progressive anatomic, physiological, and cognitive decline associated with aging, albeit variable in severity and onset among individuals. Physicians, psychologists, physiologists, and scientists of other disciplines have identified many age-associated variables, some easily measurable, some not, that may be important to human function. There may be other variables, not yet identified, that play an equally significant role. We know that, at some age, everyone reaches a level of infirmity or unreliability that is unacceptable in a pilot in air transportation. That age will vary from person to person but cannot yet be predicted in a specific individual. Because it is unacceptable for these pilots to work until failure or until there is obvious impairment, the age of 60 has served well as a regulatory limit since 1959. Many commenters state that the Age 60 Rule is arbitrary and there is no scientific basis for it. Others would choose a different arbitrary age. For instance, the Acting Chief, Adult Psychological Development, Behavioral and Social Research Program, NIA, submitted a comment in 1993 on behalf of the NIA. He states the view that the age limit could be increased "to an age closer to the mid-sixties." However, the studies he cites do not point to an age closer to the mid-sixties any more definitively than they point to the age of 60 as an appropriate age limit.

While science does not dictate the age of 60, that age is within the age range during which sharp increases in disease mortality and morbidity occur.

II(b). Hilton Study and Other Accident Rate Studies

Over the years, several reports have examined the rate of accidents as they relate to age in various populations groups, in an effort to better understand how aging may affect safety. As discussed above, the Hilton Study was initiated by the FAA to look at accident rates in pilots. Many commenters state that the report provides justification for a rule change. They point out that the report shows the same accident rate for pilots who are 59 and pilots who are 65. They state that the report finds that accident rates of part 121 pilots decrease with age. Some other commenters, however, state that the report does not provide justification for a rule change. They state that the report is not meaningful since correlating accident rates solely with total flying hours and recent flying hours is not a valid measurement. They also state that it is not meaningful to compare private pilots who fly beyond age 60 with pilots who fly a lot of hours per year in part 121 operations.

David Michaels, Ph.D., MPH, Associate Professor of Epidemiology, The City University of New York Medical School, submitted comments on the Hilton Study. He points out that accident rates are a very crude tool to examine the relationship between pilot age, health, and performance. The IOM, he notes, "recognized the existence of a fundamental problem: since there are no Class I pilots flying Part 121 flights beyond age 60, there are no medical, performance or even accident data on the group of greatest interest. Needed are data on vision, reaction time, judgment, circadian rhythm and many other neurobehavioral and physiological measures." This problem led to the IOM's recommendation that extensive additional data be collected and analyzed to better understand the relationship of aging and pilot performance. Dr. Michaels notes that the Hilton Study did not take the approach recommended by the IOM. Rather than examining the neurobehavioral and physiological measures detailed by the IOM, the authors of the Hilton Study examined only accident rates. (However, the authors of the Hilton Report fully carried out the work statement of their research contract with the agency which asked only that accidents be studied.)

Dr. Michaels further noted that numerous studies have demonstrated that, among various groups of pilots examined, increasing accident risk is associated with increasing age. He includes papers by Golaszewski (1983); Mortimer (1991); and an analysis by the Office of Technology Assessment (1990) which support this finding. He also invites attention to the citation by the NIA Report of studies by Harper (1964); Lategola, et al (1970); Rohde and Ross (1966); and Booze (1977), all demonstrating increasing risk with increasing age. Dr. Michaels warns that it would be contrary to customary epidemiologic practice to accept unconditionally and definitively findings from a single study that are substantially different from those of previous studies.

There is contention regarding the Hilton Study's grouping of pilots for comparison purposes. Richard Golaszewski, the author of two papers on the relationship between pilot age and accident rates, believes that the Hilton Study's conclusions are based on the use of a group of pilots (holders of Class III medical certificates who have more than 500 hours of total flight time and 50 hours of flight time in the last year), inappropriate for inferences about the likely accident rate performance of airline pilots of age 60 and above. He believes this group is least like airline pilots and suggests his own alternative: Professional pilots who did not fly for airlines but who held Class I or II medical certificates. Mr. Golaszewski cites the Second Golaszewski Report for conclusions opposite to the Hilton Study—increases in accident rates with age for professional pilots.

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The Hilton Study provides a discussion of the First Golaszewski Report, noting those researchers' disagreement with Mr. Golaszewski's methodology and questioning his conclusions. The study also notes methodological concerns regarding the cited works by the Office of Technology Assessment; Mortimer; and Guide and Gibson (1991).

Dr. Michaels concludes that (1) the Hilton Study does not present convincing evidence that pilots holding Class I medical certificates past the age of 60 are not at increased risk of accidents, and (2) that the study is a methodologically invalid foundation for rulemaking. He suggests that the analyses performed are not valid because of the small size of the study (very few accidents and a very large number of flight hours), because the study is insensitive to the real concerns (whether aging is associated with increased risk for incapacitation), and because the study does not have well-documented exposure data. The later refers the fact that the Hilton Study calculated accident rates by comparing the total hours flown. However, because most accidents occur during take offs and landings, Dr. Michaels states that hours flown is not a useful measure in calculating the risk of accidents. He believes that the methods used in the Hilton Study would obscure any increased rate of accidents among older pilots in the analyses presented.

The First Golaszewski Report concluded that pilots with Class I medical certificates (required for part 121 air carrier pilots in command) and Class II medical certificates (required for other commercial pilots) had a substantially higher accident rate after age 60 than at younger ages. This report was cited by the FAA in denying a petition for exemption from § 121.383(c) submitted by Courtney Y. Bennett et al., and John H. Baker, et al., in 1986. Golaszewski, in the study report itself, noted and resolved to the FAA's satisfaction various sources of potential error and provided rationale for the choices made. Because the study viewed the accident experience of holders of Class III medical certificates (required for non-commercial operations) and of all classes of medical certificate combined rather than that of identified airline pilots, however, and because of disagreement with Golaszewski's selection of numerators and denominators for calculating accident rates, the study findings and methodology were disputed by the petitioners in their later legal action in a U.S. Circuit Court of Appeals. Although the court identified limitations in the study, it upheld the FAA's denial of the petition. *Baker* v. *FAA*, 917 F.2d 318 (7th Cir. 1990).

The Second Golaszewski Report indicated similar findings. These studies were based on data contained in the National Transportation Safety Board Accident Records Database and the FAA Comprehensive Airman Information System medical database.

It should be noted that increasing accident rates with age is not found just in aviation. The National Research Council (NRC) has found increasing car accident rates with increasing driver age. In a report published in 1988, the NRC concluded that "older drivers show an involvement in crashes that is more extensive than that of middle-age drivers, * * *" *Transportation in an Aging Society*, Transportation Research Board, National Research Council, Washington, D.C. 1988. While safely piloting an airplane is more complex than driving an automobile, both require knowledge, quick reflex actions, good judgment, long-and short-term recall, and many other skills and abilities. Accident rate data represent a quantitative compilation of occurrences where skills and abilities were, for one reason or another, inadequate to cope with a specific situation.

Because statistical analysis of over-age-60 pilots in part 121 operations cannot be done (because there are no such pilots) studies must use surrogate data. As has been the case in both the Hilton Study and the Golaszewski reports, such analyses are subject to the criticism that the data used do not reflect reality and, therefore, are flawed. This is even truer with the consideration of accident rate data in car crashes. Unfortunately, accurate counts of all pilots flying in scheduled air carrier operations during a given time period and their age, current and total flight time, and accident experience are not available. Accidents in air carrier operations are, fortunately, rare, and there are other factors (e.g., seniority bidding for routes) that compound the difficulties encountered in developing meaningful statistics regarding the effects of aging. Further, flying by non-part 121 pilots generally involves aircraft, equipment, airports, operational conditions, and operating procedures that are quite different than part 121 operations. Nevertheless, these studies and the efforts of earlier researchers provide a foundation for this current consideration of the issue.

The Hilton Study, the First Golaszewski Report, and the Second Golaszewski Report sought to define the effects of aging on older pilots in terms of accident rates. While conclusions may differ as to the effect of aging on pilots, the studies are similarly limited by the rule itself since data cannot be gathered on pilots over age 60 operating in part 121 operations. Factors that may have contributed to the contradictory conclusions are that the accident rates for pilots over age 60 can be determined only in operations outside of part 121 and, therefore, may not be fully useful in drawing conclusions about pilot performance in operations conducted under part 121; and grouping the data differently may lead to different conclusions. While we believe the studies all tend to support a regulatory age limit, they provide no consensus as to precisely what that age limit should be.

In the NIH Study, the most comprehensive study yet performed of the issues involved in age-related retirement of airline pilots, the Panel found that "age-related changes in health and performance influence adversely the ability of increasing numbers of individuals to perform as pilots with the highest level of safety and, consequently, endanger the safety of the aviation system as a whole." In response to the question, "What is the effect of aging on the ability of individuals to perform the duties of pilots with the highest level of safety?", the Panel responded, in part, that—

> Undoubtedly, the number of individuals experiencing substantial decline in performance does increase with advancing age * * * Variability in performance appears to increase, and average performance to decrease, with increasing age * * * the risk of an accident increases in the later life of a pilot, and * * * such risk probably accelerates with advancing age * * * The duties of pilots embrace not only maneuvering skill but also decision-making, crew coordination and resource management. Decline in cognitive and psychomotor performance, as well as in physiological performance, occurs with increasing age and will affect how these duties are executed. The health status of the pilot is apt to affect his/her flying performance. In this regard, subtle decrements in performance due to aging processes or subclinical functional impairment are more likely to pose a problem than is complete failure of performance due to sudden incapacitation.

The Hilton Study has not provided answers to these basic concerns.

After careful deliberation, the FAA has determined that the Hilton Study does not provide an acceptable basis warranting proposing to change the Age 60 Rule. Supporters of both the Hilton Study and the First and Second Golaszewski Reports have good points. The subgroups studied by each is to some extent limited, in that they necessarily do not mirror the subgroup of part 121 pilots to which the Age 60 Rule applies. The studies do not look at pilot performance, indeed, they count all accidents regardless of cause (not just those caused by pilot error), and do not count incidents of pilot incapacitation that did not result in accidents.

Debate surrounding the reliance to be placed on these studies illustrates the difficulty of the task. The changes in accident rates identified in the Hilton Study were small, and its conclusions, therefore, were appropriately cautious. In view of the lack of consensus among the best experts who have looked at this matter, the FAA considers caution appropriate in declining to consider the Hilton Study warranting a change to the Age 60 Rule at this time.

II(c). Performance

Many commenters assert that older pilots have more experience and better performance capability than younger pilots, while other commenters state that older pilots lose performance ability. First, age does not necessarily imply quantity or quality of experience. Experience is valuable, but it does not offset all risks or decrements associated with aging. Also, at some point, the law of diminishing returns comes into play. Once a pilot achieves a certain level of expertise, additional flight time will not significantly improve pilot performance.

It must also be pointed out that reference to "younger" pilots may be misleading in this context. It is the FAA's experience in the industry that retiring age 60 pilots (who generally are captains) are not replaced by very young and inexperienced pilots. Rather, they are replaced by pilots who have substantial experience as pilots in the first officer position, and often as flight engineers before that.

In addition, some commenters state that pilots near age 60 have performed heroically, proving that performance does not degrade with age and experience, while other commenters state that courageous performances by pilots who were near age 60 are not reasons for abandoning the rule. While the FAA recognizes that certain older pilots have performed heroically in specific circumstances, the decision to change the Age 60 Rule cannot be based on isolated commendable acts. The FAA must make a decision on whether change to the rule is called for based on the totality of evidence available on the safety implications of aging.

II(d). Health and Technology

Many commenters state that since the rule was issued medical technology has advanced and life expectancy has increased; hence, they conclude, the rule is obsolete. In addition, they reference that medical technology is now more capable of screening out pilots with medical risks and that fatigue is no longer an issue due to more modern aircraft that reduce workload and stress levels. Many commenters also state that the aging process can vary markedly among individuals and that some individuals are in worse physical or mental condition at age 40 than others are at age 60. Hence, these commenters do not believe that age should be a means for determining capability. Many other commenters, however, state that older pilots are not in good physical shape and improvements in medical screening do not detect the subtle impairments with age that can undermine the margin of safety.

As noted earlier, the incidence of cardiovascular disease rises with age, and it remains that most frequent cause of death in pilots and the general population. Though the FAA relies on sophisticated medical assessment and monitoring to permit the certification of carefully selected pilots with known heart disease, the need for the highest level of safety in air carrier operations has required that the increasing, unpredictable danger associated with aging be limited.

In addition, there has been an increasing awareness of the more subtle adverse conditions affecting performance, those related to cognitive functioning. Current medical certification procedures identify those individuals who are at most risk and are adequate for assessing many medical problems in pilots. The significance of the known as well as the potential unknown or unmeasurable adverse factors increases with aging, however, and reduces confidence in the sensitivity of the medical certification process. The Age 60 Rule recognizes this reduction of sensitivity in the context of the statutory recognition that the highest possible degree of safety is required in air carrier operations. As both the incidence of incapacitation risk factors and other adverse effects increase with age, the Age 60 Rule provides additional confidence in air transportation safety.

II(e). Multicrew Concept

Some commenters point out that operations under part 121 use 2-pilot crews, and some also have a flight engineer on board. They state that if one pilot becomes incapacitated, the other crew member(s) can take over. The FAA agrees that the multicrew concept provides an additional measure of safety. Indeed, redundancy in safety features is an important part of the overall safety benefits in part 121 operations, including not only pilots but also other personnel, aircraft structures, and procedures. The safety benefits of redundancy would be reduced, however, if the level of safety of any of the elements were to degrade. The sudden incapacitation of a pilot is not without risk even in a multiple-member crew and is to be avoided. Of equal concern is the prospect of subtle degradation in the judgment, cognitive function, and crew coordination that may accompany advancing age. Unlike the case of sudden incapacitation, such degradation may not be readily apparent to the other crew, and it may be difficult for the crew to deal with the results.

The FAA does not consider the fact that part 121 operations have multiple pilots to be a basis for permitting one (or both) of those pilots to be at unacceptable risk for age-related problems.

III. Alternatives to an Age Limitation

III(a). Performance Checks

Some commenters suggested that the FAA can do performance checks for pilots past age 60 in simulators to ensure that they meet the performance standards. Periodic proficiency and competency checks are intended to detect a pilot's performance deficiency and to correct those deficiencies before the pilot is returned to flight operations. These checks only verify the state of a pilot's performance at the time of the checks. They are not useful for detection of early or subclinical cognitive defects that may subtly degrade performance or which, in time, may progress to risks for errors in judgment or other actions that may jeopardize safety. The checks do not predict whether an individual pilot's performance will degrade at any time in the future as a result of age. In addition, in its 1981 report, NIA noted that proficiency checks and simulator checks usually are designed to train pilots to meet standards of proficiency under optimal testing conditions using known routines and maneuvers. Although the proficiency checks suffice for pilot performance purposes, they are not suitable for testing complex cognitive functions under actual conditions, such as fatigue and stress; nor are they used to determine at what rate the skills learned in the training sessions decline between two consecutive checks. Standard maneuvers used in proficiency tests are inappropriate for measuring any but obvious decrements in pilot performance. Their inadequacy stems

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from the fact that the maneuvers are well-known in advance; they may be well-practiced and over-learned by experienced pilots; and they may give no indication of the pilot's ability to perform them under particular levels of stress, fatigue, or unexpected decision-making requirements. Furthermore, the pass/fail nature of the testing program; the probable wide variability among testers; and the train-to-proficiency nature of these tests make them inadequate as a screening mechanism.

III(b). Class I Medical Certificates and Special Issuance Certificates

Some commenters state that part 121 pilots are required to hold FAA medical certificates, and that the medical certification process tests their medical fitness. Commenters also point out that the FAA issues waivers to pilots and permits them to fly with various medical conditions, including cardiovascular problems. They state that if such pilots can be evaluated, older pilots can too.

The question of operational privileges for aging pilots is not comparable to the question of assessment of younger airmen with specific medical conditions. Although individuals with known medical conditions have been returned to air carrier duties, their circumstances are not comparable with those of an individual who has reached an advanced age. For the person with known disease, the prognosis for the disease can normally be assessed and specific tests or evaluations identified to monitor the condition. Special issuance medical certificates are granted to airmen who have certain known medical conditions or static defects that are disqualifying under the established standards of the Federal Aviation Regulations. This practice does not compromise safety and does not demand similar consideration with respect to the Age 60 Rule. When a special issuance medical certificate is granted, the condition in question has been clearly identified, and the agency has been able to develop a means of assessment and surveillance specially designed to demonstrate the individual's capabilities and to identify any adverse changes. If that is not possible, certification is not granted. Such is not the case in aging, since there are no generally applicable medical tests that can, at this time, adequately determine which individual pilots are subject to incapacitation secondary to either acute cardiovascular or neurological events or to more subtle adverse conditions related to decline of cognitive functioning.

III(c). Suggested Protocol for Gathering Additional Data

One commenter states that data from actual part 121 pilots under 60 and over 60 are needed. The commenter suggested that a pilot group should be established that can fly over age 60. He believes that a cohort of over age 60 pilots can be identified with a quantifiable five year cardiovascular risk that is lower than the risk in the 50 to 59 year age group. Also this group can be tested by serial performance testing to ensure that there has not been subtle incapacitation. The kind of data that is needed to change the rule could then be collected and analyzed.

The commenter recommends that a consensus working group of experts, appointed by the Federal Air Surgeon, deliver a document that describes a battery of state-of-the-art testing to identify a group of age 60 or older pilots who have the attributes for continued safe flying. A second group of non-flying crew age 60 or older would also be considered. The document would include all testing, follow up, methodology, etc. The Federal Air Surgeon would then review the protocol, obtain additional expert help as needed, and produce the final protocol. Finally, the FAA would choose the sites for participants in the long term surveillance program.

FAA Response: While the FAA appreciates the proposed protocol that the commenter submitted, the FAA does not find it an acceptable basis for initiating a rule change at this time. The FAA's ANPRM in 1982 proposed identification of a select group of aged 60 and over pilots who would continue flying in part 121 operations to permit FAA to collect data. The FAA withdrew the ANPRM in 1984 because valid selection tests for the group did not exist. The FAA was concerned that, without valid selection tests, these pilots would create an unacceptable safety risk in part 121 operations. The commenter does not suggest any data that indicates that a group described would be able to identify any such tests. The FAA has the same concerns today.

IV. Financial Impact of the Age 60 Rule

IV(a). Costs

Some commenters stated that raising the age limit will reduce costs, while other commenters stated that raising the age limit will increase costs.

FAA Response: For the reasons discussed in this Disposition, the FAA has determined that an amendment to the Age 60 Rule should not be proposed at this time. Therefore, the FAA has not evaluated the economic impact of a proposed change.

IV(b). Hiring of Pilots

Some commenters state that increasing the age limit would result in the hiring of fewer new pilots, while others state that there would be no change in hiring and no increase in furloughs because economic success rather than retirements determines hiring and furloughs. Commenters estimate that between 10 and 50 percent of pilots would continue to fly if the age limit is extended.

FAA Response: The FAA believes that the primary determinant of new pilot hiring and furlough is general economic conditions rather than retirements. The effects of increasing the age of mandatory retirement would depend on the number of pilots opting to delay their retirement, which may vary considerably among air carriers. Pilots with long tenures at a single carrier would be less inclined to delay their retirement than pilots who began their service at a relatively late age and may not have sufficient years of service at their present employer to qualify for full vesting in pension plans. In addition, the hiring and furlough plans of those air carriers that permit pilots over age 60 to serve as flight engineers would be less affected. Any effects on furlough and new hires would be temporary as retirements would not be delayed by more than the difference between the existing and the amended mandatory retirement age.

V. Other Comments

V(a). Original Promulgation of Age 60 Rule

Several commenters contend that the Age 60 Rule was promulgated for economic reasons in response to an improper personal request from the chairman of American Airlines to the Administrator of the FAA and question the FAA's recent actions in reviewing the rule.

FAA Response: When the Age 60 Rule was first promulgated in 1959, the FAA followed standard rulemaking procedures. Notices were published in the Federal Register (draft releases 59–4, 5, and 6, 24 FR 5249, 5248, and 5247, June 27, 1959), the public was given an opportunity to comment on the proposal, and then the final rule was issued. The rule was not issued to facilitate the operations of any air carrier. The rule was promulgated in order to maintain a high level of safety in part 121 operations, and that remains the FAA objective at the present time.

V(b). Age Discrimination

Many commenters state that the current rule discriminates against pilots 60 years of age or older and that the Age 60 Rule is not in compliance with the Age Discrimination in Employment Act. In addition, many commenters state that the original establishment of the age 60 limit discriminated against people 60 years and older. However, many commenters who are opposed to changing the rule state that since pilots knew about the age 60 limit when they were hired, it is not discriminatory.

FAA Response: The FAA agrees that limitations based on age are to be avoided if possible. However, safety in air transportation is paramount. As discussed above, the FAA has not found a way to acceptably evaluate the inevitable deterioration that occurs with age. Considering that the consequences of a pilot's subtle or sudden incapacitation potentially are so severe, the FAA has determined that at this time safety requires the Age 60 Rule to remain unchanged.

The Equal Opportunity Employment Commission suggests that the FAA use special testing or screening to identify those pilots over age 60 who should be required to stop serving in part 121 operations. They note that some employers of pilots in non-part 121 operations have resolved age discrimination litigation by agreeing to use such additional testing to develop data about pilots' health. However, the FAA has not been apprised of the testing protocols or of the results of any such testing, has not seen them discussed in the medical literature, and has not been party to the agreements. Accordingly, these are not a basis to determine that such testing can be used instead of an age limitation.

V(c). Foreign Pilots Over Age 60

Many commenters reference ICAO standards, the JAA proposal, and the foreign countries that permit pilots to be over age 60, with varying restrictions. In addition, many commenters point out that the FAA allows foreign carriers to operate in U.S. airspace and airports with over age 60 pilots and questioned why U.S. pilots over 60 can't operate in U.S. airspace and airports.

FAA Response: Following the FAA's promulgation of the Age 60 Rule, the International Civil Aviation Organization (ICAO) adopted changes to international safety standards that established an age limit of 60 for the pilot in command of large transport aircraft operating in international air transport service. ICAO standards do not limit the age of the second in command, although an age limit of 60 is recommended. In October 1994, a working group of ICAO's Air Navigation Commission prepared a working paper on the upper age limits for flight crewmembers. The group, acknowledging the lack of medical statistical information, recommended that the age limit not be changed. Some countries such as France and Germany have an Age 60 Rule similar to the United States, while other countries such as the United Kingdom and Switzerland have adopted rules that allow pilots to fly after their 60th birthdays. If foreign airlines operate in the U.S., the FAA requires that the carrier adhere to the ICAO standard. In addition, the Joint Aviation Authorities (JAA) in Europe has proposed to harmonize the European rule to allow pilots who have not reached the age of 65 to operate in multi-pilot operations, provided no more than one pilot in the cockpit is over the age of 60. (JAR–FCL 2–1.11.)

Accordingly, not all countries have dealt with the issue of age limitations in the same manner, and for the reasons discussed elsewhere in this Disposition, the FAA has determined that the Age 60 Rule should be maintained in the United States.

V(d). Inconsistency With Other Regulations

Many commenters point out that pilots who operate under other than part 121 can fly after reaching age 60. They believe, therefore, that there should not be an age limit in part 121 operations.

FAA Response: The Age 60 Rule, like many other safety rules that apply to part 121 operations and not others, provides an increased level of safety appropriate to the operations conducted under part 121. The Commuter Rule proposal, as discussed above, looked at enhancing the level of safety for certain operations now under part 135. The FAA proposed one age limit on all pilots employed in part 121 operations, including those pilots currently employed in the part 135 operations covered by the proposal (60 FR 16230; March 29, 1995). The final Commuter Rule is being issued concurrently with this Disposition.

The FAA's statute requires the Administrator to give consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to make rules appropriate to the differences between air transportation and other air commerce. The Age 60 Rule is responsive to this mandate.

V(e). Pilot Union Membership

Many commenters state that pilot unions and employers may favor retirement at age 60 and write this into their labor contracts, but pilots who do not belong to those unions should not be penalized by actions that benefit union members. In addition, commenters state that some union members disagree with their union's position and they question their union's motivation for changing their position on the question of raising the age limit.

FAA Response: The Age 60 Rule is a safety rule that must apply to all pilots, regardless of union membership or labor contracts. The FAA cannot speculate as to the basis for union or management positions.

V(f). Experienced Pilot Shortages

Many commenters state that new pilots have a shorter time for gaining experience as second and first officer because of the rapid expansion of the major carriers and the increasing numbers of two-person cockpits. The commenters state that carriers that allow rapid promotion to Captain have poor safety records. Commenters also point out that industry forecasts project a shortage of pilots between 1995 and 2010 due to sharply reduced military pilot training, thus the airlines' most experienced pilots should be retained.

FAA Response: The FAA has not been apprised of data that shows that the Age 60 Rule will create a shortage of experienced pilots and thereby compromise safety.

VI. Conclusion

While the FAA considered each comment in its evaluation of the Age 60 Rule, for the most part the comments made assertions and expressed opinions but did not provide the FAA with additional facts or analysis sufficient to support changing the rule. The FAA's overriding regulatory concern is safety. Before issuing a regulation, the FAA must be satisfied that it will maintain or raise the current level of safety.

The Civil Aviation Medical Association's (CAMA) comments are particularly relevant. CAMA noted that medical conditions are degraded by age and that the aging process accelerates with time. It took a neutral position as to the Age 60 Rule, however, stating that the basic question is one of public policy and determining how much risk is acceptable.

The only things that are clear from review of all of the comments and relevant literature is that there is no one obviously "right answer" discovered through scientific or medical studies,

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and, as CAMA states, the basic question is one of public policy and determining how much risk is acceptable. The FAA must evaluate all the varied evidence that indicates what those risks are, and determine where the public interest lies. At this time, the FAA cannot be assured that raising the age 60 limit will maintain or raise the level of safety that the Age 60 Rule offers.

Although the Hilton Study provides useful information on accident rates for pilots as a function of their age, it does not provide a satisfactory basis for changing the Age 60 Rule.

Therefore, after carefully considering the written comments submitted to the docket, the comments presented at the public meeting, and analysis of the Hilton Study, the FAA has determined for the reasons stated above that no change to the Age 60 Rule should be proposed at this time.

Issued in Washington, DC on December 11, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95-30546 Filed 12-14-95; 8:45 am]

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Wednesday
December 20, 1995

Part III

Department of Transportation

Coast Guard

46 CFR Part 26 et al.
Adoption of Industry Standards;
Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 26, 31, 32, 34, 35, 38, 54, 56, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 190, 193, and 196

[CGD 95-027]

RIN 2115-AF09

Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: As part of the President's Regulatory Reinvention, the Coast Guard is proposing to amend its regulations governing both inspected and uninspected commercial vessels by removing or revising obsolete and unnecessary provisions and incorporating industry standards and practices. The provisions proposed for removal or revision are categorized as: Regulations discussing equipment which is no longer manufactured or used; Regulations imposing requirements that are repeated in another, more useful section; Regulations imposing requirements which make a negligible contribution to shipboard safety; Regulations which can be replaced by an appropriate industry consensus standard or practice; and, Regulations which merely repeat statutory language.

The Coast Guard expects these amendments will reduce the regulatory burden to the maritime industry, reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: Comments must be received not later than February 20, 1996. A public meeting will be held on February 9, 1996 to discuss this rulemaking.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A public meeting scheduled for February 9, 1996 will be held in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at Room 1300, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Design and Engineering Standards Division (G-MMS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-2206—LCDR R. K. Butturini, Project Manager; LTJG Jaqueline Twomey, Project Engineer; Ms. Shereen Bell, Project Assistant. Regulations and Administrative Law Division (G-LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1534—LT Rachel Goldberg, Project Counsel,

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95-027) and the specific section of this proposed rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

A public meeting was held on April 20, 1995 (60 FR 16423) to discuss Coast Guard regulations and the regulatory process. The relevant comments received at the hearing or in writing have been considered for the changes included in this document. The Coast Guard will hold another public meeting on February 9, 1996 from 9 a.m. to 3 p.m. to discuss these proposed rules and to solicit other suggestions or comments for regulatory reform. The meeting will be held at the site indicated in the ADDRESSES section. Comments received at the hearing will be considered as part of the review of this proposal and the Coast Guard may change this proposal in view of these comments.

Background and Purpose

This proposal has been sparked by several recent calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and,

(4) Expanding efforts to promote consensual rulemaking.

The President's memorandum coincides with U.S. maritime industry requests for greater alignment of Coast Guard regulations with international marine safety standards to reduce cost disadvantages incurred by the U.S. maritime industry and thereby improve the competitiveness of the U.S. industry. The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides further justification for identifying excessive requirements in Coast Guard regulations and for streamlining government processes. Also, the Coast Guard recognizes the need to explore regulatory reform where it provides an opportunity to reprogram Coast Guard resources to focus more attention on human factors and port state control activities to ensure other nations are conscientiously implementing international safety agreements.

The Coast Guard held a public meeting on April 20, 1995, announced in the March 30, 1995 Federal Register (60 FR 16423), to discuss the Coast Guard's regulatory development process and the President's Regulatory Review Initiative. During the public meeting, the Coast Guard announced its goals of purging obsolete and outdated regulations and eliminating any Coast Guard induced differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of other responsible foreign nations. In the May 31, 1995 Federal Register (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish all of these goals, the Coast Guard is considering alternative compliance methods, examining ways to make existing regulations more efficient and comparing U.S. marine safety regulations with American Bureau of Shipping (ABS) Rules and the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS '74). An initial rulemaking removing or amending obsolete and unnecessary provisions was published in the September 18, 1995 Federal Register (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as removal of the requirements for nuclear vessels, ocean incinerator ships and ocean thermal energy conversion facilities and plantships. This proposal removes or amends obsolete or unnecessary regulations of a more significant nature and seeks to incorporate industry consensus standards and practices. The broader scope of this proposal and the nature of the proposed changes, when compared to the previous rulemaking, make increased public involvement desirable.

In compiling the list of CFR sections included in this proposed rule, the Coast Guard did not consider parts of Title 46 Code of Federal Regulations (46 CFR) that are under review as part of other, ongoing regulatory projects.

In this proposal, sections of the CFR were identified for removal or revision by comparing the section subject matter to the following list of selection criteria:

(a) Equipment discussed in a section is no longer manufactured or used:

(b) Requirements imposed by a section are repeated in another section;

(c) Requirements imposed by a section make a negligible contribution to shipboard safety;

(d) An appropriate industry consensus standard or practice exists which can be referenced instead of publishing detailed requirements in a regulation; or,

(e) The text of a regulation merely repeats statutory language.

Discussion of Proposed Rules

The following discussion summarizes the changes proposed by this rule:

1. The requirement addresses equipment that is no longer manufactured or used. The following sections are being removed or revised because they impose requirements for equipment that is no longer manufactured, that is technologically obsolete, or is no longer used in the marine industry.

Section 31.10-15(a) of Title 46 CFR contains requirements for nuclear vessels. This section was inadvertently omitted from an earlier rulemaking entitled Removal of Obsolete and Unnecessary Regulations (60 FR 48044) which focused on removing regulations for nuclear vessels, ocean incinerator vessels and ocean thermal energy conversion facilities and plantships. Therefore, this section which pertains to nuclear vessels is proposed for removal.

Section 34.05-5 and Subparts 34.13, 76.13 and 95.13 of Title 46 CFR contain requirements for steam smothering systems used for fire fighting purposes. The Coast Guard has prohibited installation of steam smothering systems on vessels since 1962. Existing steam smothering systems may be retained as long as they are kept in good condition to the satisfaction of the Officer in Charge, Marine Inspection. As no new installation of steam smothering systems are allowed and the designs of existing installations have already been approved, the design requirements for steam smothering systems are no longer necessary and are proposed for removal. The Coast Guard is retaining the regulations pertaining to testing and inspection of installed systems.

Subparts 35.70, 78.80, 97.70 and § 108.613 of Title 46 CFR contain requirements for power-operated industrial trucks. Power-operated industrial trucks have historically been used on break-bulk ships for handling cargo in the holds. Only 66 U.S. flag break-bulk ships are currently inspected by the Coast Guard. Well over half of these ships are maintained by the Maritime Administration (MARAD), but are not operating. Of MARAD's ships, only 7 will eventually carry power-operated industrial trucks as ship's equipment. On the remaining, privately owned break-bulk ships, few trucks are still carried as ship's equipment because dockside trucks are readily available. Trucks are also used on mobile offshore drilling units (MODUs) to move palletized stores such as bagged cement. Efficient cargo handling systems are increasingly replacing trucks aboard MODUs for this purpose. The demand for faster loading methods and the evolution of container ships, lighter-aboard ships (LASH) and roll-on/roll-off (RORO) ships has also reduced the use of power-operated industrial trucks. Additionally, there have been no reported accidents involving power-operated industrial trucks in the last fifteen years. Therefore, regulations for power-operated industrial trucks are no longer necessary and are proposed for removal.

Sections 32.15-10, 77.27-1, 96.27-1 and 167.40-20 of Title 46 CFR contain requirements for sounding equipment, including deep-sea hand leads. Reliable, inexpensive electronic sounding equipment and position fixing equipment are available from numerous manufacturers. It is unlikely that a hand lead would be necessary to determine the water depth. Therefore, the requirements for deep sea hand leads are not necessary and are proposed for removal.

Section 32.02-5 and Subparts 78.35, 97.33 and 196.33 require cable travelers between fore and aft deck houses separated by more than 46 m (150 ft) to protect crewmembers needing to cross the weather decks. Cable travelers have been replaced by raised fore and aft bridges and side tunnels as safer means of moving between the deckhouses. Additionally, modern vessel designs have abandoned the two deck house arrangement in favor of a single deckhouse. Therefore, these sections are being revised to remove the requirement for installation of cable travelers between separated deckhouses and merely require a fixed means of facilitating movement between both ends of the vessel.

Sections 34.05-15, 76.05-30, 95.05-20, 167.45-40, 193.05-20 and Subpart 34.55 of 46 CFR require sand, sawdust impregnated with soda or other appropriate dry materials, and a scoop or shaker for distribution, to be located in the machinery spaces for fire fighting purposes. Sand is inferior to other, common fire fighting means, such as portable extinguishers, and this burdensome requirement is no longer appropriate. Therefore, regulations requiring sand in the engine room are proposed for removal.

Subparts 35.12, 78.53, 97.43, 196.43 and Section 167.65-50 of 46 CFR require instructions for the use of breeches buoys. Modern communications and lifesaving equipment have made the use of breeches buoys for lifesaving purposes obsolete. Therefore, the requirement for an instruction placard for the use of breeches buoys is no longer necessary and these sections are proposed for revision to remove this requirement.

Sections 35.30-45, 72.05-60, 167.40-35 and 169.321 and Subparts 78.75, 97.60 and 196.60 of Title 46 CFR contain requirements for motion picture film. Subpart 78.75 also contains a requirement that motion picture projectors comply with the requirements in the electrical engineering regulations. With the exception of large passenger vessels, video cassette recorders and televisions have replaced motion picture projectors on most vessels. Large passenger vessels use motion picture projectors in their movie theaters. Slow-burning film is the only type of film currently available in reel format for use with movie projectors. Section 111.89-1 of Title 46 in the electrical engineering regulations requires all motion picture projectors to meet Article 540 of the National Electrical Code. Therefore, as the risks previously associated with motion picture film no longer exist, the regulations for motion picture film are not necessary and are proposed for removal.

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Sections 180.403 and 167.45–55 of Title 46 CFR allow the installation of water spray systems for fire fighting purposes in boiler spaces of mobile offshore drilling units (MODU) and public nautical school ships. Other fire fighting media, such as carbon dioxide, have shown to be more effective, reliable and practical than water spray systems and no MODU or public nautical school ship currently uses a water spray system in a boiler space for fire fighting purposes. Therefore, these provisions are not necessary and are proposed for removal.

Subpart 160.018 of Title 46 CFR contains specifications for rigid lifecrafts. Rigid lifecrafts are no longer manufactured for use in the marine industry. Therefore, the specifications for rigid lifecrafts in 46 CFR 160.018 are no longer necessary and are proposed for removal.

Subpart 160.034 of Title 46 CFR contains specifications for lifeboat hand propelling gear. Hand propelled lifeboats have largely been replaced by reliable, engine-driven lifeboats and are no longer manufactured for use in the marine industry. Therefore, the specifications for hand propelling gear in 46 CFR 160.034 are no longer necessary and are proposed for removal.

Section 164.018 of Title 46 CFR contains specifications for microcellular nylon used in the construction of lifesaving equipment. Microcellular nylon has been replaced by more effective materials and is no longer manufactured for use in Coast Guard approval lifesaving equipment. Therefore, the specifications for microcellular nylon are no longer needed and are proposed for removal.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 31.10–15	Revision	Nuclear vessels.
§ 32.02–5	Revision	Cable traveler.
§ 32.15–10	Revision	Deep-sea hand leads.
§ 34.05–5	Revision	Steam smothering systems.
§ 34.05–15	Removal	Sand in the engineroom.
Subpart 34.13	Revision	Steam smothering systems.
Subpart 34.55	Removal	Sand in the engineroom.
Subpart 35.12	Revision	Breeches buoy placard.
§ 35.30–45	Revision	Motion picture film.
Subpart 35.70	Removal	Power-operated industrial trucks.
§ 76.05–60	Removal	Motion picture film.
§ 76.05–20	Revision	Fixed firefighting systems.
§ 76.05–30	Removal	Sand in the engineroom.
Subpart 76.13	Revision	Steam smothering systems.
§ 77.27–1	Revision	Deep-sea hand leads.
Subpart 78.35	Revision	Cable traveler.
Subpart 78.53	Revision	Breeches buoy placard.
Subpart 78.75	Removal	Motion picture film.
Subpart 78.80	Removal	Power-operated industrial trucks.
§ 95.05–10	Revision	Fixed firefighting systems.
§ 95.05–20	Removal	Sand in boiler rooms.
Subpart 95.13	Revision	Steam smothering systems.
§ 96.27–1	Revision	Deep-sea hand leads.
Subpart 97.33	Revision	Cable traveler.
Subpart 97.43	Revision	Breeches buoy placard.
Subpart 97.60	Removal	Motion picture film.
Subpart 97.70	Removal	Power-operated industrial trucks.
§ 108.403	Revision	Water spray systems.
§ 108.513	Removal	Power-operated industrial trucks.
Subpart 160.018	Removal	Rigid liferafts.
Subpart 160.034	Removal	Lifeboat hand propelling gear.
Subpart 164.018	Removal	Microcellular nylon.
§ 167.40–20	Revision	Deep-sea hand leads.
§ 167.40–35	Removal	Motion picture film.
§ 167.45–40	Revision	Sand in enginerooms.
§ 167.45–55	Revision	Water spray systems.
§ 167.65–50	Revision	Breeches buoy placard.
§ 169.321	Removal	Motion picture film.
§ 193.05–20	Removal	Sand in boiler rooms.
Subpart 196.33	Revision	Cable traveler.
Subpart 196.43	Revision	Breeches buoy placard.
Subpart 196.60	Removal	Motion picture film.

2. The requirement is repeated in another section. The following provisions are being removed or revised because the requirements are repeated in other, more useful locations in Title 33 CFR or Title 46 CFR.

Subparts 32.05, 78.65, 97.75, 196.18 and 196.73 and Section 169.563 of Title 46 CFR contain identical language regarding the requirement that certain vessels operate in accordance with the requirements of the Federal Water Pollution Control Act (FWPCA), as amended, the Oil Pollution Act (OPA), 1961, as amended and Parts 151, 155 and 156 of Title 33 CFR. However, each of the requirements cited contain language regarding their applicability. Therefore, the sections of Title 46 CFR which merely restate the applicability of the FWPCA, OPA and Title 33 CFR are not necessary and are proposed for removal.

Sections 35.20–25 and 167.65–1 and Subparts 78.25, 97.23 and 196.23 of Title 46 prohibit carrying any light not required by law that will interfere with distinguishing signal lights. However, Rule 20 of both the Inland and International Rules of the Road published in 33 U.S.C. 2020 and 33 CFR 81, Appendix A, respectively, contains the same requirement. It is more logical to retain requirements pertaining to signal lights in the Rules of the Road. Therefore, the sections of Title 46 CFR prohibiting carrying lights that interfere with signal lights are not necessary and are proposed for removal.

Sections 35.20–40, 78.21–1, 97.19–1 and 196.19–1 of Title 46 CFR require ocean and coastwise vessels over 1600 gross tons to display maneuvering information on a fact sheet in the pilothouse. These sections include instructions for validating the information on the fact sheet after the vessel begins operating. Section 164.35 of Title 33 CFR also contains a requirement to display maneuvering information on a fact sheet in the pilothouse for vessels over 1600 gross tons on all navigable waters of the U.S.

The intent of both Title 33 CFR and Title 46 CFR is to provide information about the vessel's maneuvering characteristics for use in piloting waters. However, there are slight differences in the language of the requirements. Also, the requirement to display maneuvering information in Title 33 CFR and Title 46 CFR apply to some of the same vessels, but some vessels are only covered by one title. Under the current regulations, both requirements apply to an oceangoing U.S. vessel entering a U.S. port, resulting in a conflict between Title 33 CFR and Title 46 CFR.

As the information required to be displayed in Title 33 CFR and Title 46 CFR is similar and the purpose is the same, the requirement need not be printed in both locations. It is more useful and consistent to retain the description of the maneuvering information required in the navigation safety regulations of Title 33 CFR. Therefore, this proposal, if adopted, would remove paragraphs repeating the maneuvering information to be displayed from Title 46 CFR and retain the instructions in Title 46 CFR for validating the maneuvering information with an added reference to Title 33 CFR.

Section 56.50–100 of Title 46 CFR merely contains a one sentence reference to Subpart 58.30 of Title 46 CFR for fluid power and control system requirements. Subpart 58.30, Fluid Power and Control Systems, contains the detailed requirements. Therefore, § 56.50–100 is not necessary and is proposed for removal.

Sections 92.01–13 and 190.01–13 of Title 46 CFR contain requirements for the design and operation of sliding watertight door assemblies on cargo and miscellaneous vessels and oceanographic research vessels. Section 170.270 of the subdivision and stability regulations in Title 46 CFR contains identical requirements. The requirements for sliding watertight doors are included in Part 170 because the subdivision and stability regulations apply to all vessels inspected under Title 46, including cargo and miscellaneous vessels and oceanographic research vessels. For example, the passenger vessel and tank vessel regulations do not contain specific provisions for the design and operation of sliding watertight door assemblies because § 170.270 applies. Therefore, repeating the requirements for the design and operation of sliding watertight door assemblies in §§ 92.01–13 and 190.01–13 is not necessary and these provisions are proposed for removal.

In the following list of sections proposed for removal or revision, the citation to the sections where duplicate requirements are being retained is indicated in square brackets below the section being removed or revised.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
Subpart 32.05 [33 CFR Subchapter O]	Removal	Oil pollution.
§ 35.20–25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 35.20–40 [33 CFR 164.35]	Revision	Maneuvering characteristics.
§ 56.50–100 [§ 58.30]	Removal	Fluid power and control systems.
§ 78.21–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 78.25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 78.65 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 92.01–13 [46 CFR Subchapter S, Subpart H] [33 CFR 164.35]	Removal	Watertight doors.
§ 97.19–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 97.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 97.75 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 109.563 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 167.65–10 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 190.01–13 [46 CFR Subchapter S, Subpart H]	Removal	Watertight doors.
Subpart 196.18 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 196.18–1 [33 CFR 164.35]	Removal	Maneuvering characteristics.
Subpart 196.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 196.75 [33 CFR Subchapter O]	Removal	Pollution prevention.

3. The requirement does not improve shipboard safety. The following sections are being removed or revised because they make no significant contribution to shipboard safety. This list includes provisions which are typically exceeded by industry voluntarily, regulations which have outlived their usefulness and requirements which result in inefficient administrative procedures.

Sections 32.05–5, 78.47–67, 97.37–45, 169.742 and 196.37–45 of Title 46 CFR contain requirements for marking fire hose and fire axes with the vessel's name. Emergency equipment is typically marked with instructions or identifying symbols, such as the "E" on emergency lights, to aid in its identification and use. Lifesaving equipment that floats and could be discovered during a search is marked with the vessel's name to help identify the vessel in the event of a sinking. However, fire hose and fire axes have no need for either of these types of markings. These pieces of equipment do not float and are not amenable to marking with instructions. Therefore, the requirement to mark fire hoses and fire axes with the vessel's name is not necessary and is proposed for removal.

Section 35.01–5 and Subparts 32.40, 72.20, 92.20, 167.50, 168.15 and 190.20 of Title 46 CFR contain requirements for on-board crew accommodations. In some cases, the requirements contained in these sections are unnecessarily detailed or exceed the requirements of the International Labor Office Merchant

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Shipping (Minimum Standards) Convention, 1976 (ILO 147) to which the United States is signatory. For example, ILO 147 requires a hospital space be provided for tankships over 500 gross tons carrying a crew of 15 persons or more and on a voyage of over three days duration. Current § 32.40–50 requires a hospital space for all tankships carrying a crew of 12 persons or more and on a voyage of over three days duration.

The changes proposed by this rulemaking would remove or revise those sections of the regulations that are unnecessarily detailed or exceed the requirements of ILO 147 in order to make the regulations more concise and consistent with the international standard for on-board crew accommodations.

Sections 35.10–5 and 35.20–30 of Title 46 CFR discuss the officer in command's responsibility to conduct drills and the prohibitions against unauthorized lights, flashing blinding lights and unauthorized whistling. Section 35.25–1 of Title 46 CFR discusses the chief engineer's responsibility to examine the boilers and report their condition. Additionally, Sections 78.57–1, 97.47–1 and 167.65–15 of Title 46 CFR require mariners to comply strictly with routing instructions issued by competent naval authorities. Each of these sections include phrases to indicate that the master or the other licensed officers of a vessel may be held liable against their licenses in suspension and revocation proceedings for failure to comply with the provisions of these sections. Phrases of this type are inconsistent with the President's memorandum of March 4, 1995 directing the federal agencies to focus on results rather than process and punishment and do not contribute to shipboard safety. The authority to proceed in suspension and revocation proceedings against licensed or certificated mariners that fail to obey a law or regulation is explained in Part 5 of this chapter. Reiterating a mariner's liability in other subchapters is not necessary. Therefore, to meet the Coast Guard's goal of focusing on results instead of process and punishment this proposal, if adopted, would remove or revise sections that restate mariners' liability for failure to obey laws or regulations, while retaining the prohibition against the underlying conduct.

Sections 35.20–15 and 167.65–30 and Subparts 78.20, 97.17 and 196.17 of Title 46 CFR specify the words *Right Rudder* and *Left Rudder* be used when it is intended that the wheel, rudder blade and the head of the ship move to the right or left, respectively. Specifying the direction of the wheel, rudder or ship intended by the commands *Right Rudder* and *Left Rudder* is a detail that is not necessary for professional seamen. Proper steering orders are ingrained in the commercial maritime industry culture and need not be repeated in the regulations. Therefore, these regulations are not necessary and are proposed for removal.

Sections 61.05–5 and 61.30–5 of Title 46 CFR assign responsibilities to the chief engineer to prepare the boilers and thermal fluid heaters for inspection. Preparing machinery for inspection reduces the time needed to conduct the required inspections and determine the condition of the machinery. It is a matter of convenience for the vessel and the attending marine inspectors or classification society surveyors to have the machinery prepared in advance, but is not a safety issue. Not preparing machinery for inspections has no impact on safety because all required inspections must eventually be conducted to the satisfaction of the attending inspectors or surveyors. Therefore, regulations assigning the responsibility to prepare machinery for inspection to the chief engineer are proposed for removal.

Sections 54.01–1, 54.01–3 and 54.01–5 and Table 54.01–5 of Title 46 CFR reference the standards of the Tubular Exchanger Manufacturers Association (TEMA) and the American Society of Mechanical Engineers (ASME) Code for Boilers and Pressure Vessels (ASME Code) for the construction of heat exchangers. Comments received from heat exchanger manufacturers and shipyards indicate that referencing both the TEMA and ASME standards has created confusion. The ASME Code is the primary industry standard for pressure vessels of all types and is extensively referenced in the regulations. The ASME Code is comprehensive and includes updated requirements for design and construction of the heat exchanger components for which a reference to TEMA standards was previously necessary. The ASME Code requirements are equivalent to TEMA requirements. Heat exchangers built solely in accordance with the ASME Code have demonstrated their suitability for shipboard use. Referencing only the ASME Code will result in simplified regulations and less confusion. Therefore, the regulations referencing the TEMA standards are no longer necessary and are proposed for removal.

Part 153 of Title 46 CFR contains the requirements for issuance of a Certificate of Compliance (COC) and Subchapter O Endorsement (SOE). Under the existing regulations, a COC and SOE are issued by the Coast Guard to a foreign chemical tanker registered with a nation signatory to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Issuance of the COC and SOE are based primarily on a review of the vessel's plans and possession of a valid Certificate of Fitness (COF) issued by the flag state or an authorized third party.

The process to obtain a COC and SOE is initiated when a series of documents are submitted to the Coast Guard for review. The required submission of these documents to both the Coast Guard's Marine Safety Center (MSC) and the cognizant Officer in Charge, Marine Inspection (OCMI) often results in unnecessary delays in obtaining a COC and SOE. Also, under current practices, after the COC and SOE have been issued, if a Coast Guard marine inspector discovers that the COF has been reissued by the flag state or its authorized third party, the COC becomes invalid and cargo operations have to be stopped until the MSC reviews the new COF and issues a new SOE.

A new proposed procedure would make the Coast Guard's regulations more consistent with actual practice. Due to the large number of cargoes typically authorized under a COF, currently the MSC does not conduct a detailed review of the majority of a vessel's plans. Instead, the MSC concentrates on identifying cargoes prohibited from bulk carriage in U.S. waters and those cargoes for which the U.S. has special requirements. The MSC accepts a valid COF issued by the flag state or its authorized third party as documentation that the vessel complies with the applicable international codes for carriage of bulk chemicals. These codes are the Bulk Chemical Code (BCH Code) and the International Bulk Chemical Code (IBC Code) developed by the International Maritime Organization. Compliance with these codes is mandatory for any vessel whose flag state is signatory to MARPOL 73/78. Under this proposal, it would be only those chemical tankers whose flag state is not signatory to MARPOL 73/78 that would require a detailed plan review by the MSC to be issued an SOE. Following plan review, the MSC would issue an SOE to these vessels with the notation that the flag state is not signatory to MARPOL 73/78.

Therefore, this proposal, if adopted, would amend the review and issuance process found in 46 CFR Part 153 to allow the OCMI to issue the COC and SOE without the MSC's involvement for those vessels whose flag states are signatory to MARPOL 73/78. This proposal would also enable the SOE to remain valid as long as the COF is valid even if the COF is revised. The burden on the Coast Guard would also be reduced through streamlined administrative procedures.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
Tank Vessels:		
§ 32.05–5	Revision	Equipment marking.
Subpart 32.40	Revision	Accommodations.
§ 35.01–5	Revision	Accommodations.
§ 35.10–5	Revision	Emergency drills.
§ 35.20–15	Revision	Steering orders.
§ 35.20–30	Revision	Blinding lights.
§ 35.20–35	Revision	Unnecessary whistling.
§ 35.25–1	Revision	Examination of boiler and machinery by engineer.
§ 35.40–40	Revision	Equipment marking.
Pressure Vessels:		
§ 54.01–1	Revision	Heat exhangers.
§ 54.01–3	Removal	Heat exhangers.
§ 54.01–5	Revision	Heat exhangers.
Inspectins and Examinations:		
§ 61.05–5	Revision	Preparing boilers for inspection.
§ 61.30–5	Revision	Preparing thermal fluid heater for inspection.
Passenger Vessels:		
Subpart 72.20	Revision	Accommodations.
Subpart 78.20	Removal	Steering orders.
§ 78.47–67	Removal	Equipment marking.
§ 78.57–1	Revision	Routing instructions.
Cargo and Miscellaneous Vessels:		
Subpart 92.20	Revision	Accommodation.
Subpart 97.17	Removal	Steering orders.
§ 97.37–45	Removal	Equipment marking.
§ 97.47–1	Revision	Routing instructions.
Hazardous Cargoes:		
Part 153	Revision	Certificate of Compliance procedures.
Public School Ships:		
Subpart 167.50	Revision	Accommodations.
§ 167.55–5	Revision	Special Markings.
§ 167.65–15	Revision	Routing instructions.
§ 167.65–30	Removal	Steering orders.
Civilian Nautical School Ships:		
Subpart 168.15	Revision	Accommodations.
Sailing School Vessels:		
§ 169.742	Removal	Equipment marking.
Oceanographic Research Vessels:		
Subpart 190.20	Revision	Accommodations.
Subpart 196.17	Removal	Steering Orders.
§ 196.37–45	Removal	Equipment marking.

4. *An appropriate industry standard or practice exists which can be referenced instead of publishing detailed requirements in the regulations.* The Coast Guard has been systematically replacing detailed specifications in the regulations with industry consensus standards for over 20 years. To date, over 250 regulatory provisions have been replaced with adopted industry standards. Incorporation of industry standards saves time and resources for both the Coast Guard and industry by streamlining the shipboard equipment acceptance process.

Sections 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10 and 193.10–90 of Title 46 CFR contain requirements for fire hose nozzles that are approved under 46 CFR 162.027. In 1994, the Coast Guard helped U.S. nozzle manufacturers develop an American Society for Testing and Materials (ASTM) standard for fire fighting nozzles—ASTM F 1546–94, Standard Specification for Marine Fire Fighting Nozzles. The standard was developed for modern variable flow or variable pressure nozzle with the expectation that it would eventually be incorporated into the regulations. Testing conducted by the Coast Guard Research and Development Center in 1988 demonstrated these nozzles are superior to the currently approved all-purpose nozzles. Two of the tested models were issued Coast Guard approvals in 1990. Variable flow or variable pressure nozzles are used by virtually every shoreside fire department in the United States. Incorporation of this standard will make a superior product with a long, successful service history available to the marine industry. Therefore, this proposal, if adopted, would replace current specifications for fire hose nozzles contained in Subpart 162.027

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with a reference to ASTM F 1546–94 and would allow the use of nozzles that meet the new Subpart 162.027 in lieu of nozzles previously approved under Subpart 162.027.

Sections 56.30–35 and 56.30–40 of Title 46 CFR contain regulations for gasketed mechanical couplings and mechanically attached fittings, respectively. In 1993, the Coast Guard and ASTM developed ASTM standards F 1387–93, Standard Specification for Performance of Mechanically Attached Fittings, and F 1476–93, Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications, with the expectation that they would eventually be incorporated into the regulations in lieu of §§ 56.30–35 and 56.30–40. This proposal, if adopted, would incorporate F 1387F–93 and F 1476–93 into the regulations.

Section 61.20–17 of Title 46 CFR contains the requirements for tailshaft examination intervals. The current requirements for tailshaft examination intervals are based on the type of lubricant in the bearing lubrication system. With some exceptions, water-lubricated tailshafts must be drawn and examined at each drydocking. Oil-lubricated bearings need not be drawn and examined if the bearing clearances are taken during drydocking, the inboard seals are examined, the lubricating oil is analyzed and nondestructive testing is conducted on the connection between the propeller to the tailshaft. The differences in the scope and frequency of inspection are due to the non-corrosive properties of oil. Consequently, the use of an oil-lubricated tailshaft can translate into substantial savings during drydock periods. However, a potential drawback is liability for oil released from leaky seals. As a result, industry demand has spurred development of water-miscible, environmentally safe, non-corrosive lubricants.

The Coast Guard supports the development and use of non-polluting lubricants and has evaluated the means for a manufacturer to demonstrate a lubricant's equivalency to oil, based on the lubricant's non-corrosive properties, for purposes of the tailshaft inspection interval. Under this proposal, if adopted, a water-miscible lubricant tested in accordance with ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, may be considered equivalent to oil for the purposes of the tailshaft inspection interval. Therefore, this proposal, if adopted, would incorporate ASTM D 665–92 into the regulations and add appropriate text into § 61.20–17 explaining the procedures for accepting water-miscible lubricants as equivalent to oil. Additionally, this proposal, if adopted, would clarify the purpose of the tailshaft lubricating oil analysis by explaining that the analysis is to determine the presence of bearing material or other contaminants.

Section 38.25–10 of Title 46 CFR contains the inspection requirements for safety relief valves installed on pressure vessel type cargo tanks used in the carriage of liquefied petroleum gas. Under the current regulations, safety relief valves must be tested and adjusted, if necessary, every four years. The ABS Rules require testing and adjustment every five years. The ABS Rules, with the longer testing interval, have shown to be adequate by the satisfactory performance of safety relief valves on non-U.S. vessels classed by ABS. The Coast Guard has amended the inspection intervals for vessel drydockings and for various pieces of shipboard equipment to agree with the inspection intervals in international standards and class society rules. These amendments have been made after consideration for any possible degradation in safety to allow major pieces of equipment to be tested on a cycle that coincides with the normal drydock schedule for the convenience of the vessel owner, class society and the Coast Guard. Therefore, this proposal, if adopted, would change the testing interval for safety valves installed on pressure vessel type cargo tanks from four years to five years to be consistent with international standards and classification society rules.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 34.10–10	Revision	Fire hose nozzles.
§ 34.10–90	Revision	Fire hose nozzles.
§ 38.25–10	Revision	Safety relief valves.
§ 56.01–2	Revision	Incorporation by reference.
§ 56.30–35	Revision	Gasketed mechanical couplings.
§ 56.30–40	Revision	Mechanically attached fittings.
Subpart 61.03	New	Incorporation by reference.
§ 61.20–17	Revision	Tailshaft inspections.
§ 76.10–10	Revision	Fire hose nozzles.
§ 76.10–90	Revision	Fire hose nozzles.
§ 95.10–10	Revision	Fire hose nozzles.
§ 95.10–90	Removal	Fire hose nozzles.
§ 108.425	Revision	Fire hose nozzles.
Subpart 162.027.	Revision	Fire hose nozzles.
§ 167.45–40	Revision	Fire hose nozzles.
§ 193.10–10	Revision	Fire hose nozzles.
§ 193.10–90	Revision	Fire hose nozzles.

5. Statutory language repeated. The regulatory text of the following provisions repeats language or restates requirements from self-executing statutes without any additional regulatory provisions.

Section 26.15–1 of Title 46 CFR repeats the statutory language of 46 U.S.C. 527e authorizing the Coast Guard to board numbered, uninspected commercial vessels. Section 527e of Title 46 U.S.C. was repealed on August 10, 1971 (P.L. 92–75; 85 Stat. 228). The authority for the Coast Guard to conduct boardings on uninspected vessels remains in Title 14 U.S.C. 89. Therefore, § 26.15–1 is no longer needed and is proposed for revision.

Sections 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3 and 196.35–10 of Title 46 CFR either repeat statutory language or paraphrase statutory requirements for making logbook entries. Subparts 78.03, 97.03 and 196.03 of Title 46 CFR repeat the possible consequences of a violation of the provisions of Title 46 CFR and mariners' liability under the suspension and revocation proceedings. Sections 167.65–3 and 196.27–10 of Title 46 CFR repeat the statutory language regarding negligent operations of a vessel.

Regulations which do not add meaning or additional requirements to self-executing statutes are not useful. Therefore, regulations which only repeat language or summarize requirements from self-executing statutes are not necessary and are proposed for removal.

Cite (46 CFR)	Proposed change	Subject addressed by regulation
§ 26.15–1	Revision	Boarding by Coast Guard.
§ 35.07–5	Revision	Logbook entries.
§ 35.07–15	Removal	Logbook entries.
Subpart 78.03	Removal	Statutory penalties.
§ 78.37–3	Revision	Logbook entries.
Subpart 97.03	Removal	Statutory penalties.
§ 97.35–3	Revision	Logbook entries.
§ 97.35–10	Removal	Logbook entries.
§ 167.65–3	Removal	Negligent operations.
Subpart 196.03	Removal	Statutory penalties.
§ 196.27–10	Removal	Negligent operations.
§ 196.35–3	Revision	Logbook entries.
§ 196.35–10	Removal	Logbook entries.

Incorporation by Reference

The following material would be incorporated by reference:

American Society for Testing and Materials (ASTM):

Standard Specification for Performance of Mechanically Attached Fittings, F 1387–93—§§ 56.01–2, 56.30–35

Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications, F 1476–93—§§ 56.01–2, 56.30–40

Standard Specification for Marine Fire Fighting Nozzles, ASTM F 1546–93—§§ 162.027–1, 162.027–2, 162.027–3

Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in §§ 56.01–2 and 162.027–1.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order, nor has it been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Assessment is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This proposed rule will have no economic impact on small entities because it amends portions of regulations that: (1) Are purely administrative; (2) Do not reflect common marine industry practice; (3) Do not have general applicability; or, (4) Are repeated in other sections.

Therefore, the Coast Guard finds that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule imposes on the public no new or added requirements for collecting information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

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46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire Prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR Parts 26, 31, 32, 34, 35, 38, 54, 56, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 189, 190, 193, and 196 as follows:

PART 26—OPERATIONS

1. The authority citation for Part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277.; 49 CFR 1.46.

2. In § 26.15–1, paragraphs (a) and (b) are removed, paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

§ 26.15–1 May board at any time.

(a) To facilitate the boarding of vessels by the commissioned, warrant, and petty officers of the U.S. Coast Guard in the exercise of their authority, every uninspected vessel, as defined in 46 U.S.C. 2101(43), if underway and upon being hailed by a Coast Guard vessel, shall stop immediately and lay to, or shall maneuver in such a way as to permit the Coast Guard boarding officer to come aboard. Failure to permit a Coast Guard boarding officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided in law.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.10–15 [Amended]

4. In § 31.10–15, paragraph (a) is amended by removing the words "and in the case of nuclear vessels, at least once every year".

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. The authority citation for Part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

6. Section 32.02–5 is revised to read as follows:

§ 32.02–5 Communication between deckhouses—TB/OCLB.

On all tank vessels where the distance between deckhouses is more than 46 m (150 ft), a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

§ 32.05–5 [Amended]

7. In § 32.05–5, the words "fire hose, fire axes," are removed.

8. Section 32.15–10 is revised to read as follows:

§ 32.15–10 Sounding machines—T/OCL.

All mechanically propelled vessels in ocean or coastwise service of 500 gross tons and over, and all mechanically propelled vessels in Great Lakes service of 500 gross tons and over certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic deep-sea sounding apparatus.

9. Subpart 32.40 is revised to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

Sec.

32.40–1 Application—TB/ALL.
32.40–5 General—T/ALL.
32.40–10 Restrictions—T/ALL.
32.40–15 Location of crew spaces—T/ALL.
32.40–20 Arrangement of sleeping spaces—T/ALL.
32.40–25 Size of sleeping spaces—T/ALL.
32.40–30 Berths and lockers—T/ALL.
32.40–35 Wash spaces; toilet spaces; and shower spaces—T/ALL.
32.40–40 Messrooms—T/ALL.
32.40–45 Hospital spaces—T/ALL.
32.40–50 Miscellaneous accommodation spaces—T/ALL.
32.40–55 Heating requirements—T/ALL.
32.40–60 Insect screens—T/ALL.
32.40–65 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.
32.40–70 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

§ 32.40–1 Application—TB/ALL.

(a) The provisions of this subpart, with the exception of § 32.40–70 and § 32.40–90, apply to all tankships of 100 gross tons and over constructed on or after June 15, 1987.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of § 32.40–70.

(c) Tankships of 100 gross tons and over constructed prior to June 15, 1987, must meet the requirements of § 32.40–90.

§ 32.40–5 General—T/ALL.

The accommodations provided for the crew, including both officers and unlicensed members, on all tankships must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat and odors.

§ 32.40–10 Restrictions—T/ALL.

(a) There must be no direct communication between the accommodation spaces and any chainlocker, stowage, or machinery space, except through solid, close-fitted doors or hatches.

(b) No access, vent, or sounding tube from a fuel or oil tank may open into any accommodation space, except that accesses and sounding tubes may open into corridors.

§ 32.40–15 Location of crew spaces—T/ALL.

Crew quarters must not be located forward of a vertical plane located at five percent of the tankship's length aft of the stem at the designated summer load line. However, for tankships in other than ocean or coastwise service, this distance does not need to exceed 8.5 m (28 ft). For the purposes of this paragraph, the length defined in § 42.13–15 of Subchapter E (Load Lines) of this chapter is to be used. No section of the deckhead of the crew spaces may be below the deepest load line.

§ 32.40–20 Arrangement of sleeping spaces—T/ALL.

Each department head and watchstanding officer must be provided with a separate stateroom.

§ 32.40–25 Size of sleeping spaces—T/ALL.

(a) No sleeping space may berth more than four persons.

(b) Without deducting any furnishings used by the occupants, each sleeping space must have for each occupant—

(1) 2.78 m^2 (30 ft^2) of deck area; and

(2) 5.8 m^3 (210 ft^2) of volume.

(c) Each sleeping space must have at least 190 cm (75 in) of headroom over clear deck areas.

§ 32.40–30 Berths and lockers—T/ALL.

(a) Each person shall have a separate berth and not more than one berth shall be placed above another.

(b) Each berth must have a framework of hard, smooth, non-corrosive material.

(c) Each berth must be at least 68 cm (27 in) wide by 190 cm (75 in) long.

(d) The bottom of the lower berth must be at least 30 cm (12 in) above the deck. The bottom of an upper berth must be at least 76 cm (30 in) from the bottom of the berth below it and from the deck or any pipe, ventilating duct, or other overhead installation.

(e) Each person accommodated in a room shall be provided a locker.

(f) Each berth must have a berth light.

§ 32.40–35 Wash spaces: toilet spaces; and shower spaces—T/ALL.

(a) Each tankship must have enough public facilities to provide at least one toilet, one shower, and one washbasin for each eight persons who occupy sleeping spaces that do not have private or semi-private facilities.

(b) Each public toilet space and washing space must be convenient to the sleeping space that it serves.

(c) Each washbasin, shower, and bathtub must have hot and cold running water.

(d) Adjacent toilets must be separated by a partition that is open at the top and bottom.

(e) Each washing space and toilet space must be constructed and arranged so that it can be kept in a clean and sanitary condition and the plumbing and mechanical appliances kept in good working order.

§ 32.40–40 Messrooms—T/ALL.

Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40–45 Hospital space—T/ALL.

(a) Except as specifically modified by paragraph (b) of this section, each tankship, which in the ordinary course of its trade makes voyages of more than three days duration between ports, other than on a coastal voyage, and which carries a crew of twelve persons or more, must have a hospital space.

(b) The hospital must be used only for the care of the sick.

(c) Each hospital space must have a toilet, washbasin, and bathtub or shower accessible from the hospital space.

(d) Each hospital space must have a clothes locker, a table, and seats.

(e) On tankships in which the entire crew is berthed in single occupancy rooms, a hospital space is not required if one room is designated and fitted for use as a treatment and isolation room, and meets the following standards:

(1) The room must be available for immediate medical use;

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 32.40–50 Miscellaneous accommodation spaces—T/ALL.

(a) Each tankship must have enough facilities for the crew to wash and dry their own clothes, including at least one tub or sink that has hot and cold running water.

(b) Each tankship must have an accommodation space that can be used for recreation.

§ 32.40–55 Heating requirements—T/ALL.

(a) Radiators and other heating apparatus must be constructed, located or shielded so as to avoid risk of fire or danger and discomfort to the occupants of each accommodation space.

(b) Each exposed pipe in an accommodation space leading to a radiator or other heating apparatus must be insulated.

§ 32.40–60 Insect screens—T/ALL.

Accommodation spaces must be protected against the admission of insects.

§ 32.40–65 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in a manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accommodations must be consistent with the principles underlying the requirements for crew accommodations of tankships of 100 gross tons or more.

§ 32.40–70 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

All tankships of 100 gross tons and over constructed before June 15, 1987 may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 32.95—[Removed]

10. Subpart 32.95 is removed.

PART 34—FIREFIGHTING EQUIPMENT

The authority citation for Part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

12. In § 34.05–5, paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) are revised to read as follows:

§ 34.05–5 Fire-extinguishing systems—T/ALL.

(a) * * *

(1) *Dry cargo compartments.* A carbon dioxide or water spray system shall be installed for the protection of all dry cargo compartments. Where such

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compartments are readily accessible by means of doors such spaces need be protected only by the fire main system.

(2) *Cargo tanks.* A deck foam system shall be installed for the protection of all cargo tank spaces. Where a deck foam system is installed, an approved inert gas, steam or other system may also be installed for the purposes of fire prevention or inerting of cargo tanks. For vessels under 100 feet in length, the semiportable equipment required by footnote 1 of Table 34.05–5(a) will be considered as meeting the requirements of this subparagraph.

(3) *Lamp and paint lockers and similar spaces.* A carbon dioxide or water spray system shall be installed in all lamp and paint lockers, oil rooms, and similar spaces.

(4) *Pumprooms.* A carbon dioxide, inert gas, foam or water spray system shall be installed for the protection of all pumprooms.

* * * * *

§ 34.05–15 [Removed]

13. Section 34.05–15 is removed.

14. In § 34.10–10, paragraphs (e), (e–1) and (n) are removed, paragraphs (f) through (m) are redesignated as paragraphs (g) through (n), respectively, and new paragraphs (e), (f) and (o) are added to read as follows:

§ 34.10–10 Fire station hydrants, hose and nozzles—T/ALL.

* * * * *

(e) Each fire station hydrant must have at least one length of fire hose. Each fire hose on the hydrant must have a combination solid stream and water spray fire hose nozzle that meets the requirements in Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. A suitable hose rack or other device shall be provided. Hose racks on weather decks shall be located so as to afford protection from heavy seas. The hose shall be stored in the open or so as to be readily visible.

TABLE 34.10–10(E).—HYDRANTS WITH COAST GUARD APPROVED LOW-VELOCITY WATER SPRAY APPLICATORS

Location	No. of hydrants with approved applicators	Approved applicator length (meters (feet))
Living spaces.	1	1.2(4)

TABLE 34.10–10(E).—HYDRANTS WITH COAST GUARD APPROVED LOW-VELOCITY WATER SPRAY APPLICATORS—Continued

Location	No. of hydrants with approved applicators	Approved applicator length (meters (feet))
Weather deck.	4	3(10) or 3.7(12)
Machinery space.	2	1.2(4)

(f) Each combination nozzle previously approved under Subpart 162.027 of this chapter in the locations listed in Table 34.10–10(E) must have a low-velocity water spray applicator also previously approved under Subpart 162.027 of this chapter that is of the length listed in that table.

* * * * *

(o) Each low-velocity water spray applicator under paragraph (f) of this section must have fixed brackets, hooks, or other means for stowing next to the hydrant.

15. In § 34.10–90, paragraphs (a)(12) and (a)(13) are removed, paragraph (a)(14) is redesignated as (a)(12) and paragraphs (a)(10), (a)(11) and (b)(2) are revised to read as follows:

§ 34.10–90 Installations contracted for prior to May 28, 1965—T/ALL.

(a) * * *

(10) Each fire station hydrant on a tankship of 500 gross tons or more must have at least one length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of Subpart 162.027. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(11) On each tankship of 1000 gross tons or more, the nozzle required by paragraph (a)(10) on each of the following hydrants must have a low velocity applicator that was previously approved under Subpart 162.027 and that connects to that nozzle when the nozzle itself was previously approved under Subpart 162.027;

(i) At least two hydrants in the machinery and boiler spaces.

(ii) At least 25 percent of other hydrants.

* * * * *

(b) * * *

(2) Each fire station hydrant must have at least one length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray nozzle that meets the requirements of Subpart 162.027. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the fire hose nozzles were previously approved under Subpart 162.027, each of the number of hydrants in the locations listed in Table 34.10–10(E) must have a low velocity water spray applicator that:

(i) Was previously approved under Subpart 162.027 of this chapter:

(ii) Is the length listed in Table 34.10–(E); and

(iii) Meets § 34.10–10(o).

16. Subpart 34.13 is revised to read as follows:

Subpart 34.13—Steam Smothering Systems

§ 34.13–1 Application—T/ALL.

Steam smothering fire extinguishing systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 34.55—[Removed]

17. Subpart 34.55 is removed.

PART 35—OPERATIONS

18. The authority citation for Part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–5 [Amended]

19. In § 35.01–5, paragraphs (b) and (c) are removed and the paragraph designation "(a)" is removed from paragraph (a).

20. Section 35.07–5 is revised to read as follows:

§ 35.07–5 Logbooks and records—TB/ALL.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 35.07–15 [Removed]

21. Section 35.07–15 is removed.

§ 35.10–5 [Amended]

22. In § 35.10–5, paragraph (g) is removed and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

23. Subpart 35.12 is revised to read as follows:

Subpart 35.12—Placard of Lifesaving Signals

Sec.
35.12–1 Application—T/OCLB.
35.12–5 Availability—T/OCLB.

§ 35.12–1 Application—T/OCLB.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 35.12–5 Availability—T/OCLB.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

§ 35.20–15 [Removed]

24. Section 35.20–15 is removed.

§ 35.20–25 [Removed]

25. Section 35.20–25 is removed.

26. Section 35.20–30 is revised to read as follows:

§ 35.20–30 Flashing the rays of a searchlight or other blinding light—T/ALL.

No person shall flash or cause to be flashed the rays of a search light or other blinding light onto the bridge or into the pilothouse of any vessel under way.

27. Section 35.20–35 is revised to read as follows:

§ 35.20–35 Whistling—All.

The unnecessary sounding of a vessel's whistle is prohibited within any harbor limits of the United States.

28. Section 35.20–40 is revised to read as follows:

§ 35.20–40 Maneuvering characteristics—T/OC.

(a) Each ocean and coastwide tankship of 1,600 gross tons or over must have the maneuvering information listed in 33 CFR 164.35(g)(1) through (g)(7) prominently displayed in the pilot house on a fact sheet.

(b) The information on the fact sheet must be:

(1) Verified by the owner or operator six months after the vessel is placed in service; or

(2) Modified six months after the vessel is placed into service and verified within three months thereafter.

(c) The information that appears on the fact sheet may be obtained from:

(1) Trial trip observations;

(2) Model tests;

(3) Analytical calculations;

(4) Simulations;

(5) Information established from another vessel of similar hull form, power, rudder and propeller; or

(6) Any combination of the above. The accuracy of the information in the fact sheet required is that attainable by ordinary shipboard navigation equipment.

(d) The requirement for information for fact sheets for vessels of unusual design will be specified on a case by case basis.

29. Section 35.25–1 is revised to read as follows:

§ 35.25–1. Examination of boilers and machinery by engineer—T/ALL.

It shall be the duty of an engineer when he assumes charge of the boilers to examine the same forthwith and thoroughly. If he finds any part thereof in bad condition, he shall immediately report the facts to the master, owner, or agent, and to the nearest Officer in Charge, Marine Inspection.

§ 35.30–45 [Removed]

30. Section 35.30–45 is removed.

§ 35.40–40 [Amended]

31. In § 35.40–40, paragraph (a) is amended by removing the words "fire hoses, fire axes,".

Subpart 35.70—[Removed]

32. Subpart 35.70 is removed.

PART 38—LIQUEFIED FLAMMABLE GASES

33. The authority citation for Part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. In § 38.25–10, paragraph (b) is revised to read as follows:

§ 38.25–10 Safety relief valves—TB/ALL.

* * * * *

(b) The safety relief valve discs shall be lifted from their seats in the presence of a marine inspector by either liquid, gas, or vapor pressure at least once every 5 years to determine the accuracy of adjustment and, if necessary, shall be reset.

PART 54—PRESSURE VESSELS

35. The authority citation for Part 54 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

36. In § 54.01–1, paragraph (b) is amended by removing the incorporation by reference entry for the Tubular Exchanger Manufacturers Association.

§ 54.01–3 [Removed]

37. Section 54.01–3 is removed.

§ 54.01–5 [Amended]

38. In § 54.01–5, paragraph (d)(5) is amended by adding the word "and" after the semicolon, paragraph (d)(6) is removed, paragraph (d)(7) is redesignated as paragraph (d)(6) and footnote 8 is removed from Table 54.01–5(b).

PART 56—PIPING SYSTEMS AND APPURTENANCES

39. The authority citation for Part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

40. In § 56.01–2, paragraph (b) is amended by adding in numerical order of the standards incorporated by reference from the American Society for Testing and Materials (ASTM) the following additional standards:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

ASTM F 1387–93 Standard—56.30–40
Specification for Performance of Mechanically Attached Fittings
ASTM F 1476–93 Standard—56.30–35
Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications

* * * * *

41. Section 56.30–35 is revised to read as follows:

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§ 56.30–35 Sleeve coupled and other proprietary joints.

Coupling type, mechanical gland type and other proprietary joints may be used in certain locations (see § 56.30–40(d) for limitations) where experience or tests have demonstrated that the joint is safe for the operating conditions, and where adequate provision is made to prevent separation of the joint. Fittings of this type shall be designed, constructed, tested and marked in accordance with ASTM F 1476–93.

42. In § 56.30–40, paragraphs (b), (c), (e), and (h) are removed, paragraph (d) is redesignated as paragraph (c), paragraphs (f) and (g) are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (b) is added to read as follows:

§ 56.30–40 Flexible pipe couplings of the compression or slip-on type.

* * * * *

(b) Couplings shall be designed, constructed, tested and marked in accordance with ASTM F 1387–93.

* * * * *

§ 56.50–100 [Removed]

43. Section 56.50–100 is removed.

PART 61—PERIODIC TESTS AND INSPECTIONS

44. The authority citation for Part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Subpart 61.03 is added to read as follows:

Subpart 61.03—Incorporation of Standards

§ 61.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103

ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, 1992—61.20–17

§ 61.05–5 [Amended]

46. In § 61.05–5, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

47. Section 61.20–17 is revised to read as follows:

§ 61.20–17 Examination intervals.

(a) A lubricant that demonstrates the corrosion inhibiting properties of oil when tested in accordance with ASTM D 665–92 is considered to be equivalent to oil for the purposes of the tailshaft examination interval.

(b) Except as provided in paragraphs (c) through (f) of this section, each tailshaft on a vessel must be examined twice within any five year period. No more than three years may elapse between any two tailshaft examinations.

(c) Tailshafts on vessels fitted with multiple shafts must be examined once every five years.

(d) Tailshafts with inaccessible portions fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every five years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentrations or are fitted with a flanged propeller. Accessible portions of tailshafts must be examined visually during each drydock examination.

(e) Tailshafts with oil lubricated bearings, including bearings lubricated with a substance considered to be equivalent to oil under the provisions of paragraph (a), need not be drawn for examination—

(1) If tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) If the inboard seal assemblies are examined whenever the vessel undergoes a drydock examination or underwater survey;

(3) If an analysis of the tailshaft bearing lubricant is performed semiannually in accordance with the lubrication system manufacturer's recommendations to determine bearing material content or the presence of other contaminants; and

(4) If—

(i) For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed five years; or

(ii) For tailshafts with a propeller fitted to the shaft by means of a coupling flange, the propeller coupling bolts and flange radius are nondestructively tested whenever they are removed or made accessible in connection with overhaul or repairs.

(f) Tailshafts on mobile offshore drilling units are not subject to examination intervals under paragraphs (b) through (d) of this section if they are—

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G–MCO).

§ 61.30–5 [Amended]

48. In § 61.30–5, paragraph (a) is removed and the paragraph designation "(b)" is removed from paragraph (b).

PART 72—CONSTRUCTION AND ARRANGEMENT

49. The authority citation for Part 72 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.05–60 [Removed]

50. Section 72.05–60 is removed.

51. Subpart 72.20 is revised to read as follows:

Subpart 72.20—Accommodations for Officers and Crew

Sec.

72.20–1 Application.
72.20–5 Intent.
72.20–10 Location of crew spaces.
72.20–15 Construction.
72.20–20 Sleeping accommodations.
72.20–25 Washrooms and toilet rooms.
72.20–30 Messrooms.
72.20–35 Hospital space.
72.20–40 Other spaces.
72.20–45 Lighting.
72.20–50 Heating.
72.20–55 Insect screens.
72.20–60 Vessels contracted for prior to November 19, 1952.

§ 72.20–1 Application.

The provisions of this subchapter, except § 72.20–60, apply to all vessels contracted for after November 18, 1952. Vessels contracted for before November 19, 1952 shall meet the requirements of § 72.20–60.

§ 72.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and where practicable, shall be insulated from undue noise, heat and odors.

§ 72.20–10 Location of crew spaces.

(a) Crew quarters shall not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 m (28 ft). For the purposes of this paragraph, the length shall be as defined in § 43.15–1 of Subchapter E (Load Lines) of this chapter. No section of the deck of the crew spaces shall be below the deepest load line, except that in special cases, the Commandant may approve such an arrangement.

(b) There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 72.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and effluvia.

§ 72.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there is at least 2.78 m^2 (30 ft^3) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear head room shall be not less than 190 cm (75 in). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berth shall be composed of materials not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker shall be provided for each person accommodated in a room.

§ 72.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing. Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 72.20–30 Messrooms.

Messrooms shall be located as near to the galley as is practicable except where the messroom is equipped with a steam table. The messroom shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 72.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(d) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(e) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

(c) A space or spaces of adequate size shall be available on an open deck to which the crew has access when off duty.

§ 72.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 72.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 72.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 72.20–60 Vessels contracted for prior to November 19, 1952.

(a) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction provided that in no case will a greater departure from the standards of §§ 72.20–5 through 72.20–55 be permitted than presently exists.

(b) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Where reasonable and practicable, a minimum of 1 toilet, shower, and washbasin shall be provided for each 10 members of the crew or fraction thereof.

(3) Crew spaces shall have a volume of at least 3.4 m^3 (120 ft^2) and a deck

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area of at least 1.5 m^2 (16 ft^2) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable shall be insulated from undue noise and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) There shall be a minimum of one toilet, shower, and washbasin for each eight members of the crew or fraction thereof who are not accommodated in rooms having attached private or semi-private facilities. Washbasins, showers, and bathtubs if substituted for showers, shall be equipped with proper plumbing, including hot and cold running water.

(3) Crew spaces shall have a volume of at least 3.4 m^3 (120 ft^2) and a deck area of at least 1.5 m^2 (16 ft^2) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable shall be insulated from undue noise and odors.

PART 76—FIRE PROTECTION EQUIPMENT

52. The authority citation for Part 76 continues to read as follows:

Authority: 46 U.S.C. 3306, E.O. 12243, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 76.05–20 is revised to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems shall be installed, as required by Table 76.05–1(a) on all self-propelled vessels and on all barges with sleeping accommodations for more than six persons.

§ 76.05–30 [Removed]

54. Section 76.05–30 is removed.

55. In § 76.10–10, paragraphs (j–1) and (j–2) are removed, paragraph (k) and (l) is redesignated as paragraphs (m) and (n), paragraph (j) is revised and new paragraphs (k) and (l) are added to read as follows:

§ 76.10–10 Fire hydrants and hose.

* * * * *

(j) Each fire hose on each hydrant must have a combination solid stream and water spray fire hose nozzle that meets the requirements in Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(k) Fire hose nozzles previously approved under Subpart 162.027 of this chapter in the following locations must have low-velocity water spray applicators also previously approved under Subpart 162.027 of this chapter.

(1) In accommodation and service areas, two fire hoses.

(2) In each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more, each fire hose. The length of each applicator must be not more than 1.8 m (6 feet).

(1) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (k) of this section.

* * * * *

56. In § 76.10–90, paragraph (a)(7) is removed and paragraph (a)(6) is revised to read as follows:

§ 76.10–90 Installations contracted for prior to May 26, 1965.

(a) * * *

(6) Firehose nozzles and low velocity spray applicators must meet the requirements of §§ 76.10–10(j), 76.10–10(k) and 76.10–10(l).

57. Subpart 76.13 is revised to read as follows:

Subpart 76.13—System Smothering Systems

§ 76.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

58. The authority citation for Part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

59. Section 77.27–1 is revised to read as follows:

§ 77.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service, and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic deep-sea sounding apparatus.

PART 78—OPERATIONS

60. The authority citation for Part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 78.03—[Removed]

61. Subpart 78.03 is removed.

Subpart 78.20—[Removed]

62. Subpart 78.20 is removed.

63. In § 78.21–1, paragraphs (a), (b), (c) and (d) are removed, paragraphs, (e) and (f) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added to read as follows:

§ 78.21–1 Data required.

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

(1) Verified six months after the vessel is placed into service; or

(2) Modified six months after the vessel is placed into service and verified within three months thereafter.

* * * * *

Subpart 78.25—[Removed]

64. Subpart 78.25 is removed.

65. Subpart 78.35 is revised to read as follows:

Subpart 78.35—Communication between deckhouses

§ 78.35–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

66. Section 78.37–3 is revised to read as follows:

§ 78.37–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 78.47–67 [Removed]

67. Section 78.47–67 is removed.

68. Subpart 78.53 is revised to read as follows:

Subpart 78.53—Placard of Lifesaving Signals

Sec.
78.53–1 Application.
78.53–5 Availability.

§ 78.53–1 Application.

The provisions of this subpart shall to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 78.53–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

69. Section 78.57–1 is revised to read as follows:

§ 78.57–1 All personnel must comply.

All licensed masters, officers, and certificated seamen on United States vessels shall comply strictly with routing instructions issued by competent naval authority.

Subpart 78.75—[Removed]

70. Subpart 78.75 is removed.

Subpart 78.80—[Removed]

71. Subpart 78.80 is removed.

Subpart 78.85—[Removed]

72. Subpart 78.85 is removed.

PART 92—CONSTRUCTION AND ARRANGEMENT

73. The authority citation for Part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 92.01–13 [Removed]

74. Section 92.01–13 is removed.

75. Subpart 92.20 is revised to read as follows:

Subpart 92.20—Accommodations for Officers and Crew

Sec.
92.20–1 Application.
92.20–5 Intent.
92.20–10 Location of crew spaces.
92.20–15 Construction.
92.20–20 Sleeping accommodations.
92.20–25 Washrooms and toilet rooms.
92.20–30 Messrooms.
92.30–35 Hospital space.
92.20–40 Other spaces.
92.20–45 Lighting.
92.20–50 Heating.
92.20–55 Insect screens.
92.20–90 Vessels contracted for prior to November 19, 1952.

§ 92.20–1 Application.

(a) The provisions of this subpart, with the exception of § 92.20.90, shall apply to all vessels of 100 gross tons and over contracted for on or after November 19, 1952. Vessels of 100 gross tons and over contracted for prior to November 19, 1952 shall meet the requirements of § 92.20–90.

(b) Vessels of less than 100 gross tons shall meet the applicable requirements of this subpart insofar as is reasonable and practicable.

§ 92.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

§ 92.20–10 Location of crew spaces.

(a) Crew spaces shall be located, where practicable, so that the maximum amount of fresh air and light are obtainable.

(b) Crew quarters shall not be located farther forward in a vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load waterline. However, for vessels in other than ocean services, this distance need not exceed 8.5 m (28 ft). For the purpose of this paragraph, the length shall be as defined in § 42.13–15 of Subchapter E (Load Lines) of this chapter.

There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, cargo, or machinery spaces.

(d) There shall be no access, vents, or sounding tubes from fuel or cargo oil tanks opening into crew spaces, except that sounding tubes and access openings may be located in corridors.

§ 92.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

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§ 92.20–20 Sleeping accommodations.

(a) Each department head and watchstanding officer shall have a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there is at least 2.78 m^2 (30 ft^2) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear headroom shall be not less than 190 cm (75 in). In measuring sleeping quarters allocated to crews of vessels, any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berths shall be composed of a material not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker provided for each person accommodated in a room.

§ 92.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semiprivate facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing.

(d) At least one washbasin shall be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) When more than one toilet is located in a space, each toilet shall be separated by partitions.

§ 92.20–30 Messrooms.

Messrooms shall be located as near to the galley as practicable. The messrooms shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 92.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(e) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms a hospital space will not be required, provided, that one room shall be designated and fitted for use as a treatment and isolation room. Such room shall meet the following standards:

(1) The room must be available for immediate medical use; and,

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 92.20–40 Other spaces.

(a) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

§ 92.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 92.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 92.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 92.20–60 Vessels contracted for prior to November 19, 1952.

(a) Vessels of less than 100 gross tons, contracted for prior to November 19, 1952 shall meet the general intent of § 92.20–5 and in addition shall meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(b) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction: Provided, That in no case will a greater departure from the standards of 92.20–5 through 92.20–55 be permitted than presently exists.

(c) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, shall meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(2) Each vessel, which in the ordinary course of its trade makes a voyage of more than three days duration between ports and which carries a crew of 12 or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured.

(3) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and where practicable, shall be insulated from undue noise and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, shall meet the requirements of this paragraph.

Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alternations may be made to the same standard as the original construction.

(2) Washbasins, showers, and bath tubs if substituted for showers, shall be equipped with proper plumbing including hot and cold running water.

(3) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(4) Each vessel, which in the ordinary course of its trade makes a voyage of more than three days duration between ports and which carries a crew of twelve or more persons, shall be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of one berth for each twelve members of the crew or fraction thereof, but the number of berths need not exceed six.

(5) The crew spaces shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located and arranged, and where practicable, shall be insulated from undue noise and odors.

PART 95—FIRE PROTECTION EQUIPMENT

76. The authority citation for Part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

77. In § 95.05–10, paragraph (g) is removed and paragraphs (b) and (c) are revised to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

* * * * *

(b) A fixed carbon dioxide or other approved system shall be installed in all cargo compartments and tanks for combustible cargo, except that vessels engaged exclusively in the carriage of coal or grain in bulk need not be fitted with such system. For cargo compartments and tanks fitted with a fixed carbon dioxide or other approved system a deck foam system is not required. In lieu of the carbon dioxide system or other approved system, the following systems may be used or required in special cases:

(1) A fixed foam system may be used in cargo tanks.

(2) In cases where a cargo is normally accessible and is considered to be a part of the working or living quarters, a water sprinkling system may be required, and the details of such system will be subject to special approval.

(3) Spaces "specially suitable for vehicles" shall be fitted with an approved carbon dioxide system. Alternately, the Commandant may permit the installation of an approved water sprinkler system or other suitable system.

(c) On vessels other than motorboats, a fixed carbon dioxide or other approved system shall be installed in all lamp and paint lockers, oil rooms, and similar spaces.

* * * * *

§ 95.05–20 [Removed]

78. Section 95.05–20 is removed.

79. In § 95.10–10, paragraphs (i), (i–1), (i–2) and (l) are removed, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, and new paragraphs (i), (j), (k), (n), (n)(1), (n)(2) an (n)(3) are added to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * * * * *

(i) Except as allowed in this paragraph, each fire hose on each hydrant must have a combination solid stream and water spray fire hose nozzle approved under Subpart 162.027 of this chapter. Fire hose nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) In each propulsion machinery space containing an oil fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1,000 gross tons or more, each fire hose having a combination nozzle previously approved under Subpart 162.027 of this chapter must have a low-velocity water spray applicator that is also previously approved under Subpart 162.027 of this chapter. The length of the applicator must be less than 1.8 m (6 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

(n) Fire hose and couplings shall be as follows:

(1) Couplings shall be of brass, bronze, or other equivalent metal. National Standard fire hose coupling threads shall be used for the 38 mm (1½ inch) and 64 mm (2½ inch) sizes.

(2) Where 19 mm (¾ inch) hose is permitted by Table 95.10–5(a), the hose and couplings shall be of good commercial grade.

(3) Each section of fire hose must be lined commercial fire hose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification—H–451E. Hose that bears the label of Underwriters' Laboratories, Inc. as lined fire hose is accepted as conforming to this requirement.

* * * * *

80. In § 95.10–90, paragraph (a)(6) is removed and paragraph (a)(5) is revised to read as follows:

§ 95.10–90 Installations contracted for prior to May 26, 1965.

(a) * * *

(5) Firehose nozzles and low velocity spray applicators must meet the requirements of 95.10–10(i), 95.10–10(j) and 95.10–10(k).

81. Subpart 95.13 is revised to read as follows:

Subpart 95.13—Steam Smothering Systems

§ 95.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

82. The authority citation for Part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

83. Section 96.27–1 is revised to read as follows:

§ 96.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, shall be fitted with an efficient electronic sounding apparatus.

PART 97—OPERATIONS

84. The authority citation for Part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

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Subpart 97.03—[Removed]

85. Subpart 97.03 is removed.

Subpart 97.17—[Removed]

86. Subpart 97.17 is removed.

87. In § 97.19–1, paragraphs (a), (b) and (c) are removed, paragraphs (d), (e) and (f) are redesignated as paragraphs (a), (b) and (c), respectively, and the new paragraph (a) is revised to read as follows:

§ 97.19–1 Data required.

* * * * *

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

* * * * *

Subpart 97.23—[Removed]

88. Subpart 97.23 is removed.

89. Subpart 97.33 is revised to read as follows:

Subpart 97.33—Communication Between Deckhouses

§ 97.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

90. Section 97.35–3 is revised to read as follows:

§ 97.35–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on Form CG–706. When a voyage is completed, or after a specified period of time, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 97.35–10 [Removed]

91. Section 97.35–10 is removed.

§ 97.37–45 [Removed]

92. Section 97.37–45 is removed.

93. Subpart 97.43 is revised to read as follows:

Subpart 97.43—Placard of Lifesaving Signals

Sec.
97.43–1 Application.
97.43–5 Availability.

§ 97.43–1 Application.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 97.43–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

94. Section 97.47–1 is revised to read as follows:

§ 97.47–1 All persons must comply.

All licensed masters, officers, and certificated seamen on United States vessels must comply strictly with routing instructions issued by competent naval authority.

Subpart 97.60—[Removed]

95. Subpart 97.60 is removed.

Subpart 97.70—[Removed]

96. Subpart 97.70 is removed.

Subpart 97.75—[Removed]

97. Subpart 97.75 is removed.

PART 108—DESIGN AND EQUIPMENT

98. The authority citation for Part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

§ 108.403 [Amended]

99. In § 108.403, the words ", water spray," are removed from paragraph (b).

100. In § 108.425, paragraph (c) and the introductory text of paragraph (d) are revised to read as follows:

§ 108.425 Fire hoses and associated equipment.

* * * * *

(c) Each nozzle for a fire hose in a fire main system must be a combination solid stream and water spray fire hose nozzle that is approved under Subpart 162.027. Combination solid stream and water spray nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(d) A combination solid stream and water spray fire hose nozzle previously approved under Subpart 162.027 of this chapter installed in the following locations must have a low-velocity spray applicator also previously approved under Subpart 162.027 of this chapter——

* * * * *

§ 108.613 [Removed]

101. Section 108.613 is removed.

PART 109—OPERATIONS

102. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

§ 109.583 [Removed]

103. Section 109.583 is removed.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

104. The authority citation for Part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

105. In § 153.9, paragraph (a) introductory text is revised to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) Application for a vessel whose flag administration is signatory to MARPOL 73/78 and issues IMO Certificates. A person who desires a Certificate of Compliance endorsed to carry a cargo in Table 1 of this part, as described in 153.900, must request the endorsement from the cognizant Officer in Charge, Marine Inspection and have aboard the vessel copies of IMO Certificates issued by the vessel's administration and the following:

* * * * *

§ 153.16 [Amended]

106. In § 153.16, the introductory text is amended by replacing "Certificate of Compliance endorsed with the name of a cargo," with "Certificate of Compliance endorsed to carry a cargo."

§ 153.808 [Amended]

107. Section 153.808 is amended by replacing "Certificate of Compliance endorsed with the name of a cargo," with "Certificate of Compliance endorsed to carry a cargo".

108. Section 153.809 is revised to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

The owner of a foreign flag vessel wishing to have the Coast Guard conduct a Certificate of Compliance examination, as required by § 153.808, must proceed as follows:

(a) Notify the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least seven days before the vessel arrives and arrange the exact time and other details of the examination. This notification is in addition to any other pre-arrival notice to the Coast Guard required by other regulations, but may be concurrent with the endorsement application in 153.9, and must include:

(1) The name of the vessel's first U.S. port of call;

(2) The date the vessel is scheduled to arrive;

(3) The name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in Table 1 of this part that are on board the vessel.

(b) Make certain that the following plans are on board the vessel and available to the Marine Inspector before the examination required by 153.808 is begun:

(1) A general arrangement (including the location of fire fighting, safety and lifesaving gear);

(2) A capacity plan;

(3) A schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(4) A schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

109. In § 153.902, paragraph (b) and (c) are revised to read as follows:

§ 153.902 Expiration and invalidation of the Certificate of Compliance.

* * * * *

(b) The endorsement of a Certificate of Compliance under this part is invalid if the ship does not have a valid IMO Certificate of Fitness.

(c) The endorsement on a Certificate of Compliance invalidated under paragraph (b) of this section, becomes valid once again when the ship has the IMO Certificate of Fitness revalidated or reissued.

PART 160—LIFESAVING EQUIPMENT

110. The authority citation for Part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.018—[Removed]

111. Subpart 160.018 is removed.

Subpart 160.034—[Removed]

112. Subpart 160.034 is removed.

PART 162—ENGINEERING EQUIPMENT

113. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

114. Subpart 162.027 is revised to read as follows:

Subpart 162.027—Combination Solid Stream and Water Spray Fire Hose nozzle

Sec.
162.027–1 Incorporation by reference.
162.027–2 Design, construction, testing and marking requirements.
167.027–3 Approval procedures.

§ 162.027–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103

ASTM F 1546–94, Standard Specification for Fire Hose nozzles, 1994—162.027–2, 162.027–3

§ 162.027–2 Design, construction, testing and marking requirements.

Each combination solid stream and water spray nozzle shall meet the requirements of ASTM F 1546–94.

§ 162.027–3 Approval procedures.

(a) All inspections and tests required by ASTM F 1546–94 shall be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (G–MMS).

(b) Upon completion of the testing required by ASTM F 1546–94, the independent laboratory shall prepare a report on the results of the testing and shall furnish the manufacturer with a copy of the test report.

PART 164—MATERIALS

115. The authority citation for part 164 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 164.016—[Removed]

116. Subpart 164.016 is removed.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

117. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 167.40–20 [Amended]

118. In § 167.40–20, the words "in addition to the ordinary deep-sea hand lead" are removed.

§ 167.40–35 [Removed]

119. Section 167.40–35 is removed.

120. In § 167.45–40, paragraphs (c–1) and (c–2) are removed and paragraphs (a), (b) and (c) are revised to read as follows:

§ 167.45–40 Fire fighting equipment on nautical schoolships using oil as fuel.

* * * * *

(a) In each boiler room and in each of the machinery spaces of a nautical school ship propelled by steam, in which a part of the fuel-oil installation is situated, two or more approved fire extinguishers of the foam type of not less than 9.5 L (2½ gallons) each or two or more approved fire extinguishers of the carbon dioxide type of not less than 33 kg (15 pounds) each shall be placed where accessible and ready for

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immediate use: *Provided,* That on a nautical school ship of 1,000 gross tons and under only one of the fire extinguishers may be required.

(b) In boiler and machinery spaces, at least two fire hydrants must have a fire hose of a length that allows each part of the boiler and machinery spaces to be reached by the combination nozzle.

(c) Each fire hose under paragraph (b) of this section must have a combination solid stream and water spray nozzle that meets subpart 162.027 of this chapter. A combination nozzle and a low-velocity spray applicator previously approved under subpart 162.027 of this chapter may remain so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

§ 167.45–55 [Removed]

121. Section 167.45–55 is removed.

Subpart 167.50—[Removed]

122. Subpart 167.50 is removed.

123. In § 167.55–5, paragraph (i) is removed, paragraph (j) is redesignated as paragraph (i) and the new paragraph (i)(1) is revised to read as follows:

§ 167.55–5 Marking of fire and emergency equipment, etc.

* * * * *

(i) * * *

(1) All lifeboats, rigid type oars and paddles, life preservers, EPIRB and life buoys shall be painted or branded with the name of the nautical school ship.

* * * * *

§ 167.65–3 [Removed]

124. Section 167.65–3 is removed.

§ 167.65–10 [Removed]

125. Section 167.65–10 is removed.

126. Section 167.65–15 is revised to read as follows:

§ 167.65–15 Routing instructions; strict compliance with.

All licensed masters, officers, and certificated seamen on nautical school ships must comply strictly with routing instructions issued by competent naval authority.

§ 167.65–30 [Removed]

137. Section 167.65–30 is removed.

§ 167.65–45 [Amended]

128. In § 167.65–45, paragraphs (a), (b), and (c) are removed and the paragraph designation "(d)" is removed from paragraph (d).

129. Section 167.65–50 is revised to read as follows:

§ 167.65–50 Posting placards of lifesaving signals.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch placard containing instructions for the use of the lifesaving signals set for in Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

130. The authority citation for Part 168 is revised to read as follows:

Authority: 46 U.S.C. 3305, 3306; 46 CFR 1.46.

131. Subpart 168.15 is revised to read as follows:

Subpart 168.15—Accommodations

Sec.
168.15–1 Intent.
168.15–5 Locations.
168.15–10 Construction.
168.15–15 Size.
168.15–20 Equipment.
168.15–25 Washrooms.
168.15–30 Toilet rooms.
168.15–35 Hospital space.
168.15–40 Lighting.
168.15–45 Heating.
168.15–50 Ventilation.
168.15–55 Screening.
168.15–60 Inspection.

§ 168.15–1 Intent.

It is the intent of this subpart to provide minimum standards for the size, ventilation, plumbing, and sanitation of quarters assigned to the members of the crew, passengers, cadets, students, instructors, or any other persons at any time quartered on board any such vessel.

§ 168.15–5 Location.

(a) Quarters shall be located so that sufficient fresh air and light are obtainable compatible with accepted practice or good arrangement and construction.

(b) Quarters shall not be located forward of the collision bulkhead, nor shall such section or sections of any deck occupied by quarters be below the deepest load line except in special case.

§ 168.15–10 Construction.

(a) The accommodations provided must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat and odors.

(b) All accommodations shall be constructed and arranged so that they can be kept in a clean, workable, and sanitary condition.

§ 168.15–15 Size.

(a) Sleeping accommodations shall be divided into rooms, no one of which shall berth more than 6 persons. The purpose for which each space is to be used and the number of persons it may accommodate, shall be marked.

(b) Each room shall be of such size that there is at least 1.8 m^2 (20 ft^3) of deck area and a volume of at least 4.2 m^3 (150 ft^2) for each person accommodated. In measuring sleeping quarters, any furnishings contained therein are not to be deducted from the total volume or from the deck area.

§ 168.15–20 Equipment.

(a) Each person shall have a separate berth and not more than 1 berth shall be placed above another. The berths shall be of metal framework. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck, and the bottom of the upper must not be less than 76 cm (30 in) both from the bottom of the lower and from the deck overhead. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(b) A metal locker shall be provided for each person accommodated in a room.

§ 168.15–25 Washrooms.

(a) There shall be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each 6 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) All wash basins and showers shall be equipped with proper plumbing including hot and cold running fresh water.

§ 168.15–30 Toilet rooms.

(a) There shall be provided 1 toilet for each 10 persons or fraction thereof to be accommodated. The persons to be accommodated shall include all persons who do not occupy rooms to which private facilities are attached.

(b) The toilet rooms shall be located convenient to the sleeping quarters of the persons to which they are allotted but shall not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 168.15–35 Hospital space.

(a) Each vessel shall be provided with a hospital space. This space shall be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of 1 berth to every twelve persons, but the number of berths need not exceed 6.

(d) The hospital shall have a toilet, wash basin, and bath tub or shower conveniently located. Other necessary suitable equipment of a sanitary type such as clothes locker, table, seat, etc., shall be provided.

§ 168.15–40 Lighting.

All quarters, to include washrooms, toilet rooms, and hospital spaces, shall be adequately lighted.

§ 168.15–45 Heating.

All quarters shall be adequately heated in a manner suitable to the purpose of the space.

§ 168.15–50 Ventilation.

(a) All quarters shall be adequately ventilated in a manner suitable to the purpose of the space and route of the vessel.

(b) When mechanical ventilation is provided for sleeping rooms, washrooms, toilet rooms, hospital spaces and messrooms, these spaces shall be supplied with fresh air equal to at least 10 times the volume of the room each hour.

§ 168.15–55 Screening.

Provision shall be made to protect the quarters against the admission of insects.

§ 168.15–60 Inspection.

The Officer in Charge, Marine Inspection, shall inspect the quarters of every such vessel at least once in each month or at such time as the vessel shall enter an American port and shall satisfy himself that such vessel is in compliance with the regulations in this part.

PART 169—SAILING SCHOOL VESSELS

132. The authority citation for Part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.321 [Removed]

133. Section 169.321 is removed.

§ 169.569 [Removed]

134. Section 169.569 is removed.

§ 169.742 [Removed]

135. Section 169.742 is removed.

PART 189—INSPECTION AND CERTIFICATION

PART 190—CONSTRUCTION AND ARRANGEMENT

136–138. The authority citation for Part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–13 [Removed]

139. Section 190.01–13 is removed.

140. Subpart 190.20 is revised to read as follows:

Subpart 190.20—Accommodations for Officers, Crew, and Scientific Personnel

Sec.
190.20–1 Application.
190.20–5 Intent.
190.20–10 Location of crew spaces.
190.20–15 Construction.
190.20–20 Sleeping accommodations.
190.20–25 Washrooms and toilet rooms.
190.20–30 Messrooms.
190.20–35 Hospital space.
190.20–40 Other spaces.
190.20–45 Lighting.
190.20–50 Heating.
190.20–55 Insect screens.
190.20–90 Vessels contracted for prior to March 1, 1968.

§ 190.20–1 Application.

(a) The provisions of this subpart, with the exception of § 190.20–90, shall apply to all vessels contracted for on or after March 1, 1968.

(b) Vessels contracted for prior to March 1, 1968, shall meet the requirements of § 190.20–90.

§ 190.20–5 Intent.

(a) It is the intent of this subpart that the accommodations provided for officers, crew, and scientific personnel on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise and free from odors.

(b) Provided the intent of this subpart is met, consideration may be given by the Officer in Charge, Marine Inspection to relax the requirements relating to the size and separation of accommodations for scientific personnel.

§ 190.20–10 Location of crew spaces.

(a) Crew quarters shall not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designated summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 m (28 ft). For purpose of this paragraph the length shall be as defined in § 43.15–1 of Subchapter E (Load Lines) of this chapter. No section of the deck of the crew spaces shall be below the deepest load line, except that in special cases, the Commandant may approve such an arrangement.

(b) There shall be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 190.20–15 Construction.

All crew spaces are to be constructed in a manner suitable to the purpose for which they are intended. The accommodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat and odors.

§ 190.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew shall be divided into rooms, no one of which shall berth more than four persons.

(c) Each room shall be of such size that there are at least 2.78 m^2 (30 ft^3) of deck area and a volume of at least 5.8 m^3 (210 ft^2) for each person accommodated. The clear head room shall be not less than 190 cm (75 in). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth shall be placed above another. The berth shall be composed of materials not likely to corrode. The overall size of a berth shall not be less than 68 cm (27 in) wide by 190 cm (75 in) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 cm (12 in) above the deck. The berths shall not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker shall be provided for each person accommodated in a room.

§ 190.20–25 Washrooms and toilet rooms.

(a) There shall be provided at least one toilet, one washbasin, and one

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shower or bathtub for each eight members or portion thereof in the crew to be accommodated. The crew to be accommodated shall include all members who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but shall not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with proper plumbing, including hot and cold running water. All toilets shall be installed with proper plumbing for flushing. Where more than one toilet is located in a space or compartment, each toilet shall be separated by partitions.

§ 190.20–30 Messrooms.

Messrooms shall be located as near to the galley as is practicable except where the messroom is equipped with a steam table. The messroom shall be of such size as to seat the number of persons normally scheduled to be eating at one time.

§ 190.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of twelve or more, shall be provided with a hospital space. This space shall be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital shall be suitably separated from other spaces and shall be used for the care of the sick and for no other purpose.

(c) The hospital shall be fitted with berths in the ratio of one berth to every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six. Where all single occupancy rooms are provided, the requirement for a separate hospital may be withdrawn: Provided, That one stateroom is fitted with a bunk accessible from both sides.

(e) The hospital shall have a toilet, washbasin, and bath tub or shower conveniently situated. Other necessary suitable equipment of such character as clothes locker, table, seat, etc., shall be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms a hospital space will not be required, Provided, That one room shall be designated and fitted for use as a treatment and isolation room. Such room shall meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 190.20–40 Other spaces.

(a) Sufficient facilities shall be provided where the crew may wash and dry their own clothes. There shall be at least one sink supplied with hot and cold fresh water.

(b) Recreation accommodations shall be provided.

§ 190.20–45 Lighting.

Berth lights shall be provided for each member of the crew.

§ 190.20–50 Heating.

(a) All crew spaces shall be adequately heated in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus shall be so placed, and where necessary shielded, as to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus shall be lagged where those pipes create a hazard to persons occupying the space.

§ 190.20–55 Insect screens.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 190.20–60 Vessels contracted for prior to March 1, 1968.

Existing structures, arrangements, materials, and facilities previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standards as the original construction: Provided, That in no case will a greater departure from the standards of § 190.20–5 through 190.20–55 be permitted than presently exists.

PART 193—FIRE PROTECTION EQUIPMENT

141. The authority citation for Part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 193.05–20 [Removed]

142. Section 193.05–20 is removed.

143. In § 193.10–10, paragraphs (j) and (k) are redesignated paragraphs (l) and (m), respectively, paragraphs (i-1) and (i-2) are removed, paragraphs (d) and (i) are revised and new paragraphs (j) and (k) are added to read as follows:

§ 193.10–10 Fire hydrants and hose.

* * * * *

(d) Fire hydrants shall be of sufficient number and so located that any part of the vessel, other than main machinery spaces, may be reached with at least 2 streams of water from separate outlets, at least one of which shall be from a single length of hose. In main machinery spaces, all portions of such spaces shall be capable of being reached by at least 2 streams of water, each of which shall be from a single length of hose from separate outlets; however, this requirement need not apply to shaft alleys containing no assigned space for the stowage of combustibles. Fire hydrants shall be numbered as required by § 196.37–15 of this subchapter.

* * * * *

(i) Each fire hydrant shall have at least one length of fire hose. Each fire hose must have a combination solid stream and water spray nozzle that is approved under Subpart 162.027 of this subchapter, except 19 mm (¾ inch) hose may have a garden hose nozzle that is bronze or metal with strength and corrosion resistance equivalent to bronze. Combination solid stream and water spray nozzles previously approved under Subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) Each of the following must have a low-velocity water spray applicator previously approved under Subpart 162.027 of this chapter when the fire hose nozzle was also previously approved under Subpart 162.027 of this chapter.

(1) At least one length of fire hose on each fire hydrant outside and in the immediate vicinity of each laboratory.

(2) Each fire hose in each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel of 1000 gross tons or more. The length of each applicator must be 1.2 m (4 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * * *

144. Section 193.10–90 is revised to read as follows:

§ 193.10–90 Installations contracted for prior to March 1, 1968.

Installations contracted for prior to March 1, 1968, shall meet the following requirements:

(a) Except as specifically modified by this paragraph, the requirements of §§ 193.10–5 through 193.10–15 shall be complied with insofar as the number and general type of equipment is concerned.

(b) Existing equipment, except fire hose nozzles and low-velocity water spray applicators, previously approved but not meeting the applicable requirements of §§ 193.10–5 through 193.10–15, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs, alterations, and replacements may be permitted to the same standards as the original installations. However, all new installations or major replacements shall meet the applicable requirements in this subpart for new installations.

(c) The general requirements of § 193.10–5 (c) through (g), § 193.10–10 (d) through (m), and § 193.10–15 shall be complied with insofar as is reasonable and practicable.

(d) Each fire hose nozzle must meet § 193.10–10(i), and each low-velocity water spray applicator must meet § 193.10–10(j).

PART 196—OPERATIONS

145. The authority citation for Part 196 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 6101; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 196.03—[Removed]

146. Subpart 196.03 is removed.

Subpart 196.17—[Removed]

147. Subpart 196.17 is removed.

Subpart 196.18—[Removed]

148. Subpart 196.18 is removed.

149. In § 196.19–1, paragraphs (a), (b) and (c) are removed, paragraphs (d), (e) and (f) are redesignated as paragraphs (a), (b) and (c), respectively, and the new paragraph (a) is revised to read as follows:

§ 196.19–1 Data required.

* * * * *

(a) The information on the maneuvering characteristics fact sheet required by 33 CFR 164.35(g) must be:

* * * * *

150. Subpart 196.23 is removed.

§ 196.27–10 [Removed]

151. Section 196.27–10 is removed.

152. Subpart 196.33 is revised to read as follows:

Subpart 196.33—Communication Between Deckhouses

§ 196.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more that 46 m (150 ft) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, shall be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

153. Section 196.35–3 is revised to read as follows:

§ 196.35–3 Logbooks and records.

(a) The master or person in charge of an oceanographic research vessel that is required by 46 U.S.C. 11301 to have an official logbook may maintain the logbook on Form CG–706 or in the owner's format for an official logbook. Such logs shall be kept available for a review for a period of one year after the date to which the records refer or for the period of validity of the vessel's current certificate of inspection, whichever is longer. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment shall be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 196.35–10 [Removed]

154. Section 196.35–10 is removed.

§ 196.37–45 [Removed]

155. Section 196.37–45 is removed.

156. Subpart 196.43 is revised to read as follows:

Subpart 196.43—Placard of Lifesaving Signals

Sec.
196.43–1 Application.
196.43–3 Availability.

§ 196.43–1 Application.

The provisions of this subpart shall apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 196.43–5 Availability.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in Regulation 16, Chapter V, of the International Convention for Safety of Life as Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

Subpart 196.60—[Removed]

157. Subpart 196.60 is removed.

Subpart 196.75—[Removed]

158. Subpart 196.75 is removed.

Dated: December 8, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

1890 Institution Capacity Building Grants Program; Administrative Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3406

1890 Institution Capacity Building Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new part 3406 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program conducted under the authority of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318) and pursuant to annual appropriations made available specifically for an 1890 Institution Capacity Building Grants Program. This action establishes and codifies the administrative procedures to be followed annually in the solicitation of competitive proposals, the evaluation of such proposals, and the award of grants under this program.

DATES: Written comments are invited from interested individuals and organizations. Comments must be received on or before January 19, 1996.

ADDRESSES: Comments should be sent to Dr. Jeffrey L. Gilmore, Grant Programs Manager, Office of Higher Education Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2251, Washington, D.C. 20250–2251. Comments may also be sent via electronic mail to jgilmore@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at 202–720–1973 (voice), 202–720–2030 (fax) or via electronic mail at jgilmore@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been reviewed and approved by the Office of Management and Budget (OMB) and given the OMB Document Nos. 0524–0022, 0524–0024, 0524–0030, and 0524–0033. The public reporting burden for the information collections contained in these regulations (Forms CSRS–662, CSRS–663, CSRS–708, CSRS–710, CSRS–711, CSRS–712, CSRS–713, and CSRS–1234 as well as the Proposal Summary and Proposal Narrative) is estimated to be 39½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Analyst, OIRM, Ag Box 7630, Washington, D.C. 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Classification

This proposed rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Regulatory Flexibility Act

The Administrator, CSREES, certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Executive Order No. 12612

This rule involves no policies that have federalism implications under Executive Order No. 12612, Federalism, dated October 26, 1987.

Executive Order No. 12778

This rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform, and the required certification has been made to OMB. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this proposed rulemaking.

Environmental Impact Statement

As outlined in 7 CFR Part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)), environmental data for the proposed project are to be provided to CSREES in order for a determination to be made as to the need of any further action.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 57 FR 15278, April 27, 1992, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

Accordingly, the Secretary recognized, on April 18, 1990, the findings made by Congress in section 301(a) of Public Law 99–498, October 17, 1986 (20 U.S.C. 1060), that the States and the Federal government have discriminated in the allocation of land and financial resources to support these institutions under the Morrill Act of 1862 and its progeny. In the above-referenced findings, Congress acknowledged, and the Secretary recognized, that these institutions were discriminated against in the award of Federal grants and contracts, and in the distribution of Federal resources generally which were intended to benefit institutions of higher education. The Secretary found that the capacity of the 1890 colleges and universities, including Tuskegee University, to develop programs to assist the Nation and the Department in producing food and agricultural science professionals has suffered as a direct result of this discrimination.

The Secretary concluded that a capacity building grants program set aside for the 1890 land-grant colleges and universities, including Tuskegee University, was an appropriate remedial step to redress past inequities found by Congress to have occurred regarding these institutions. Subsequent to the Secretary's establishment of the program, Congress began making annual appropriations specifically for an 1890 Institution Capacity Building Grants Program.

This document proposes to establish Part 3406 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the 1890 Institution Capacity Building Grants Program. Under the authority of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318), and pursuant to annual appropriations made available specifically by Congress for an 1890 Institution Capacity Building Grants Program (see, e.g., Pub. L. No. 103–330), the Secretary conducts this institutional capacity building grants program.

This proposed rule establishes and codifies the administrative procedures to be followed annually in the solicitation of grant proposals, the evaluation of such proposals, and the award of grants under this program. The 1890 Institution Capacity Building Grants Program is competitive in nature and is intended to stimulate the development of high quality teaching and research programs at these institutions to build their capacities as full partners in the mission of the Department to provide more, and better-trained, professionals for careers in the food and agricultural sciences.

List of Subjects in 7 CFR Part 3406

Grant programs—agriculture. Agriculture Higher Education Programs, 1890 Institution Capacity Building Grants Program.

It is therefore proposed to amend Title 7, Subtitle B, Chapter XXXIV, of the Code of Federal Regulations by adding Part 3406 to read as follows:

PART 3406—INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

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Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Information

§ 3406.1 Applicability of regulations.

(a) The regulations of this part apply only to capacity building grants awarded to the 1890 land-grant institutions and Tuskegee University under the provisions of section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(c)) to further the research, extension, and teaching programs in the food and agricultural sciences. This statute authorizes the Secretary of Agriculture, who has delegated the authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES), to enter into grants, or cooperative agreements, for periods not to exceed five years, with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other contractor or recipient, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture. Only 1890 land-grant institutions and Tuskegee University are eligible for this grants program.

(b) To the extent that funds are available, each year CSREES will publish a **Federal Register** notice announcing the program and soliciting grant applications.

(c)(1) Based on the amount of funds appropriated in any fiscal year, CSREES will determine and cite in the program announcement:

(i) The program area(s) to be supported (teaching, research, or both)

(ii) The proportion of the appropriation reserved for, or available to, teaching projects and research projects;

(iii) The targeted need area(s) in teaching and in research to be supported;

(iv) The degree level(s) to be supported;

(v) The maximum project period a proposal may request;

(vi) The maximum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal; and

(vii) The maximum total funds that may be awarded to an institution under the program in a given fiscal year, including how funds awarded for complementary and for joint projects will be counted toward the institutional maximum

(2) The program announcement will also specify the deadline date for proposal submission, the number of copies of each proposal that must be submitted, the address to which a proposal must be submitted, and whether or not Form CSRS–711, "Intent to Submit a Proposal," is requested.

(d)(1) If it is deemed by CSREES that, for a given fiscal year, additional determinations are necessary, each, as relevant, will be stated in the program announcement. Such determinations may include:

(i) Limits on the subject matter/emphasis areas to be supported;

(ii) The maximum number of proposals that may be submitted on behalf of the same school, college, or

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equivalent administrative unit within an institution;

(iii) The maximum total number of proposals that may be submitted by an institution;

(iv) The maximum number of proposals that may be submitted by an individual in any one targeted need area;

(v) The minimum project period a proposal may request;

(vi) The minimum amount of funds that may be requested by an institution under a regular, complementary, or joint project proposal;

(vii) The proportion of the appropriation reserved for, or available to, regular, complementary, and joint project proposals;

(viii) The proportion of the appropriation reserved for, or available to, projects in each announced targeted need area;

(ix) The proportion of the appropriation reserved for, or available to, each subject matter/emphasis area;

(x) The maximum number of grants that may be awarded to an institution under the program in a given fiscal year, including how grants awarded for complementary and joint projects will be counted toward the institutional maximum; and

(xi) Limits on the use of grant funds for travel or to purchase equipment, if any.

(2) The program announcement also will contain any other limitations deemed necessary by CSREES for proper conduct of the program in the applicable year.

(e) The regulations of this part prescribe that this is a competitive program; it is possible that an institution may not receive any grant awards in a particular year.

(f) The regulations of this part do not apply to grants for other purposes awarded by the Department of Agriculture under section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318) or any other authority.

§ 3406.2 Definitions.

As used in this part:

Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative means the president of the 1890 Institution or the official, designated by the president of the institution, who has the authority to commit the resources of the institution.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

Citizen or national of the United States means:

(1) a citizen or native resident of a State; or,

(2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College or *University* means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a baccalaureate degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

Complementary project proposal means a proposal for a project which involves coordination with one or more other projects for which funding was awarded under this program in a previous fiscal year, or for which funding is requested under this program in the current fiscal year.

Cost-sharing or *Matching* means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

Department or *USDA* means the United States Department of Agriculture.

1890 Institution or *1890 land-grant institution* or *1890 colleges and universities* means one of those institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328) that are the intended recipients of funds under programs established in Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 *et seq.*), including Tuskegee University.

Eligible participant means, for purposes of § 3406.11(b), Faculty Preparation and Enhancement for Teaching, and § 3406.11(f), Student Recruitment and Retention, an individual who:

(1) Is a citizen or national of the United States, as defined in this section; or

(2) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. Where eligibility is claimed under paragraph (2) of the definition of "Citizen or national of the United States" in this section, documentary evidence from the Immigration and Naturalization Service as to such eligibility must be made available to CSREES upon request.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, and inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied disciplines.

Grantee means the 1890 Institution designated in the grant award document as the responsible legal entity to which a grant is awarded.

Joint project proposal means a proposal for a project, which will involve the applicant 1890 Institution and two or more other colleges, universities, community colleges, junior colleges, or other institutions, each of which will assume a major role in the conduct of the proposed project, and for which the applicant institution will transfer at least one-half of the awarded funds to the other institutions participating in the project. Only the applicant institution must meet the definition of "1890 Institution" as specified in this section; the other institutions participating in a joint project proposal are not required to meet the definition of "1890 Institution" as specified in this section, nor required to meet the definition of "college" or "university" as specified in this section.

Peer review panel means a group of experts or consultants, qualified by training and experience in particular fields of science, education, or technology to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

Principal investigator/project director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

Prior approval means written approval evidencing prior consent by an authorized departmental officer as defined in this section.

Project means the particular teaching or research activity within the scope of one or more of the targeted areas supported by a grant awarded under this program.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic inquiry directed toward new or fuller knowledge and understanding of the subject studied.

Research capacity means the quality and depth of an institution's research infrastructure as evidenced by its: faculty expertise in the natural or social sciences, scientific and technical resources, research environment, library resources, and organizational structures and reward systems for attracting and retaining first-rate research faculty or students at the graduate and post-doctorate levels.

Research project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening research programs including, but not limited to, such initiatives as: studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Virgin Islands of the United States, and the District of Columbia.

Teaching means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and matters related thereto (such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Teaching capacity means the quality and depth of an institution's academic programs infrastructure as evidenced by its: curriculum, teaching faculty, instructional delivery systems, student experiential learning opportunities, scientific instrumentation for teaching, library resources, academic standing and racial, ethnic, or gender diversity of its faculty and student body as well as faculty and student recruitment and retention programs provided by a college or university in order to achieve maximum results in the development of scientific and professional expertise for the Nation's food and agricultural system.

Teaching project grant means a grant in support of a project that addresses one or more of the targeted need areas or specific subject matter/emphasis areas identified in the annual program announcement related to strengthening teaching programs including, but not limited to, such initiatives as: curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

Third party in-kind contributions means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

USDA agency cooperator means any agency or office of the Department which has reviewed and endorsed an applicant's request for support, and indicates a willingness to make available non-monetary resources or technical assistance throughout the life of a project to ensure the accomplishment of the objectives of a grant awarded under this program.

§ 3406.3 Institutional eligibility.

Proposals may be submitted by any of the 16 historically black 1890 land-grant institutions and Tuskegee University. The 1890 land-grant institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State College; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University; North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University.

Subpart B—Program Description

§ 3406.4 Purpose of the program.

(a) The Department of Agriculture and the Nation depend upon sound programs in the food and agricultural sciences at the Nation's colleges and universities to produce well trained professionals for careers in the food and agricultural sciences. The capacity of institutions to offer suitable programs in the food and agricultural sciences to meet the Nation's need for a well trained work force in the food and agricultural sciences is a proper concern for the Department.

(b) Historically, the Department has had a close relationship with the 1890 colleges and universities, including Tuskegee University. Through its role as administrator of the Second Morrill Act, the Department has borne the responsibility for helping these institutions develop to their fullest potential in order to meet the needs of students and the needs of the Nation.

(c) The institutional capacity building grants program is intended to stimulate development of quality education and research programs at these institutions in order that they may better assist the Department, on behalf of the Nation, in its mission of providing a professional work force in the food and agricultural sciences.

(d) This program is designed specifically to build the institutional teaching and research capacities of the 1890 land-grant institutions through cooperative programs with Federal and non-Federal entities. The program is competitive among the 1890 Institutions and encourages matching funds on the part of the States, private organizations, and other non-Federal entities to encourage expanded linkages with 1890 Institutions as performers of research and education, and as developers of scientific and professional talent for the United States food and agricultural system. In addition, through this program, CSREES will strive to increase the overall pool of qualified job applicants from underrepresented groups in order to make significant progress toward achieving the objectives of work force diversity within the Federal Government, particularly the U.S. Department of Agriculture.

§ 3406.5 Matching support.

The Department strongly encourages and may require non-Federal matching support for this program. In the annual program solicitation, CSREES will announce any incentives that may be

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offered to applicants for committing their own institutional resources or securing third party contributions in support of capacity building projects. CSREES may also announce any required fixed dollar amount or percentage of institutional cost sharing, if applicable.

§ 3406.6 USDA agency cooperator requirement.

(a) Each application must provide documentation that at least one USDA agency or office has agreed to cooperate with the applicant institution on the proposed project. The documentation should describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution, and describe the partnership effort between USDA and the 1890 Institution in regard to the proposed project. Such USDA agency cooperation may include, but is not limited to, assisting the applicant institution with proposal development, identifying possible sources of matching funds, securing resources, implementing funded projects, providing technical assistance and expertise throughout the life of the project, participating in project evaluation, and disseminating project results.

(b) The designated CSREES agency contact can provide suggestions to institutions seeking to secure a USDA agency cooperator on a particular proposal.

(c) USDA 1890 Liaison Officers, and other USDA employees serving on the campuses of the 1890 colleges and universities, may assist with proposal development and project execution to satisfy the cooperator requirement, in whole or in part, but may not serve as project directors or principal investigators.

(d) Any USDA office responsible for administering a competitive or formula grants program specifically targeted to 1890 Institutions may not be a cooperator for this program.

§ 3406.7 General scope of program.

This program supports both teaching project grants and research project grants. Such grants are intended to strengthen the teaching and research capabilities of applicant institutions. Each 1890 Institution may submit one or more grant applications for either category of grants (as allowed by the annual program notice). However, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

§ 3406.8 Joint project proposals.

Applicants are encouraged to submit joint project proposals as defined in § 3406.2, which address regional or national problems and which will result overall in strengthening the 1890 university system. The goals of such joint initiatives should include maximizing the use of limited resources by generating a critical mass of expertise and activity focused on a targeted need area(s), increasing cost-effectiveness through achieving economies of scale, strengthening the scope and quality of a project's impact, and promoting coalition building likely to transcend the project's lifetime and lead to future ventures.

§ 3406.9 Complementary project proposals.

Institutions may submit complementary project proposals as defined in § 3406.2. Such complementary project proposals may be submitted by the same or by different eligible institutions.

§ 3406.10 Use of funds for facilities.

Under the 1890 Institution Capacity Building Grants Program, the use of grant funds to plan, acquire, or construct a building or facility is not allowed. With prior approval, in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching or research spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that the alterations, renovations, or repairs are incidental to the major purpose for which a grant is made.

Subpart C—Preparation of a Teaching Proposal

§ 3406.11 Scope of a teaching proposal.

The teaching component of the program will support the targeted need area(s) related to strengthening teaching programs as specified in the annual program announcement. Proposals may focus on any subject matter area(s) in the food and agricultural sciences unless limited by determinations as specified in the annual program announcement. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology). Applicants are also encouraged to include a library enhancement component related to the teaching project in their proposals. A proposal may be directed toward the undergraduate or graduate level of study as specified in the annual program announcement. Targeted need areas for teaching programs will consist of one or more of the following:

(a) Curricula design and materials development. (1) The purpose of this need area is to promote new and improved curricula and materials to increase the quality of, and continuously renew, the Nation's academic programs in the food and agricultural sciences. The overall objective is to stimulate the development and facilitate the use of exemplary education models and materials that incorporate the most recent advances in subject matter, research on teaching and learning theory, and instructional technology. Proposals may emphasize: the development of courses of study, degree programs, and instructional materials; the use of new approaches to the study of traditional subjects; or the introduction of new subjects, or new applications of knowledge, pertaining to the food and agricultural sciences.

(2) Examples include, but are not limited to, curricula and materials that promote:

(i) Raising the level of scholastic achievement of the Nation's graduates in the food and agricultural sciences.

(ii) Addressing the special needs of particular groups of students, such as minorities, gifted and talented, or those with educational backgrounds that warrant enrichment.

(iii) Using alternative instructional strategies or methodologies, including computer-assisted instruction or simulation modeling, media programs that reach large audiences efficiently and effectively, activities that provide hands-on learning experiences, and educational programs that extend learning beyond the classroom.

(iv) Using sound pedagogy, particularly with regard to recent research on how to motivate students to learn, retain, apply, and transfer knowledge, skills, and competencies.

(v) Building student competencies to integrate and synthesize knowledge from several disciplines.

(b) Faculty preparation and enhancement for teaching. (1) The purpose of this need area is to advance faculty development in the areas of teaching competency, subject matter expertise, or student recruitment and advising skills. Teachers are central to education. They serve as models, motivators, and mentors—the catalysts of the learning process. Moreover, teachers are agents for developing, replicating, and exchanging effective teaching materials and methods. For these reasons, education can be strengthened only when teachers are adequately prepared, highly motivated, and appropriately recognized and rewarded.

(2) Each faculty recipient of support for developmental activities under § 3406.11(b) must be an "eligible participant" as defined in § 3406.2 of this part.

(3) Examples of developmental activities include, but are not limited to, those which enable teaching faculty to:

(i) Gain experience with recent developments or innovative technology relevant to their teaching responsibilities.

(ii) Work under the guidance and direction of experts who have substantial expertise in an area related to the developmental goals of the project.

(iii) Work with scientists or professionals in government, industry, or other colleges or universities to learn new applications in a field.

(iv) Obtain personal experience working with new ideas and techniques.

(v) Expand competence with new methods of information delivery, such as computer-assisted or televised instruction.

(c) Instruction delivery systems. (1) The purpose of this need area is to encourage the use of alternative methods of delivering instruction to enhance the quality, effectiveness, and cost efficiency of teaching programs. The importance of this initiative is evidenced by advances in educational research which have substantiated the theory that differences in the learning styles of students often require alternative instructional methodologies. Also, the rising costs of higher education strongly suggest that colleges and universities undertake more efforts of a collaborative nature in order to deliver instruction which maximizes program quality and reduces unnecessary duplication. At the same time, advancements in knowledge and technology continue to introduce new subject matter areas which warrant consideration and implementation of innovative instruction techniques, methodologies, and delivery systems.

(2) Examples include, but are not limited to:

(i) Use of computers.

(ii) Teleconferencing.

(iii) Networking via satellite communications.

(iv) Regionalization of academic programs.

(v) Mobile classrooms and laboratories.

(vi) Individualized learning centers.

(viii) Symposia, forums, regional or national workshops, etc.

(d) Scientific instrumentation for teaching. (1) The purpose of this need area is to provide students in science-oriented courses the necessary experience with suitable, up-to-date equipment in order to involve them in work central to scientific understanding and progress. This program initiative will support the acquisition of instructional laboratory and classroom equipment to assure the achievement and maintenance of outstanding food and agricultural sciences higher education programs. A proposal may request support for acquiring new, state-of-the-art instructional scientific equipment, upgrading existing equipment, or replacing non-functional or clearly obsolete equipment.

(2) Examples include, but are not limited to:

(i) Rental or purchase of modern instruments to improve student learning experiences in courses, laboratories, and field work.

(ii) Development of new ways of using instrumentation to extend instructional capabilities.

(iii) Establishment of equipment-sharing capability via consortia or centers that develop innovative opportunities, such as mobile laboratories or satellite access to industry or government laboratories.

(e) Student experiential learning. (1) The purpose of this need area is to further the development of student scientific and professional competencies through experiential learning programs which provide students with opportunities to solve complex problems in the context of real-world situations. Effective experiential learning is essential in preparing future graduates to advance knowledge and technology, enhance quality of life, conserve resources, and revitalize the Nation's economic competitiveness. Such experiential learning opportunities are most effective when they serve to advance decision-making and communication skills as well as technological expertise.

(2) Examples include, but are not limited to, projects which:

(i) Provide opportunities for students to participate in research projects, either as a part of an ongoing research project or in a project designed especially for this program.

(ii) Provide opportunities for students to complete apprenticeships, internships, or similar participatory learning experiences.

(iii) Expand and enrich courses which are of a practicum nature.

(iv) Provide career mentoring experiences that link students with outstanding professionals.

(f) Student recruitment and retention. (1) The purpose of this need area is to strengthen student recruitment and retention programs in order to promote the future strength of the Nation's scientific and professional work force. The Nation's economic competitiveness and quality of life rest upon the availability of a cadre of outstanding research scientists, university faculty, and other professionals in the food and agricultural sciences. A substantial need exists to supplement efforts to attract increased numbers of academically outstanding students to prepare for careers as food and agricultural scientists and professionals. It is particularly important to augment the racial, ethnic, and gender diversity of the student body in order to promote a robust exchange of ideas and a more effective use of the full breadth of the Nation's intellectual resources.

(2) Each student recipient of monetary support for education costs or developmental purposes under § 3406.11(f) must be enrolled at an eligible institution and meet the requirement of an "eligible participant" as defined in § 3406.2 of this part.

(3) Examples include, but are not limited to:

(i) Special outreach programs for elementary and secondary students as well as parents, counselors, and the general public to broaden awareness of the extensive nature and diversity of career opportunities for graduates in the food and agricultural sciences.

(ii) Special activities and materials to establish more effective linkages with high school science classes.

(iii) Unique or innovative student recruitment activities, materials, and personnel.

(iv) Special retention programs to assure student progression through and completion of an educational program.

(v) Development and dissemination of stimulating career information materials.

(vi) Use of regional or national media to promote food and agricultural sciences higher education.

(vii) Providing financial incentives to enable and encourage students to pursue and complete an undergraduate or graduate degree in an area of the food and agricultural sciences.

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§ 3406.12 Program application materials—teaching.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit teaching grant applications under the program.

§ 3406.13 Content of a teaching proposal.

(a) Proposal cover page. (1) Form CSRS–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of the Form CSRS–712 must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant institution.

(3) The title of the teaching project shown on the "Higher Education Proposal Cover Page" must be brief (80-character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSRS–712, enter "1890 Institution Capacity Building Grants Program."

(5) In block 8.a. of Form CSRS–712, enter "Teaching." in block 8.b. identify the code for the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, limit the selection to three areas. This information will be used by program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or a joint project proposal as defined in § 3406.2 of this part. If it is not a complementary project proposal or a joint project proposal, identify it as a regular project proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under, the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) Table of contents. For ease in locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should being immediately following the summary documentation of USDA agency cooperation.

(c) USDA agency cooperator. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency of office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used.

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts, in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(B) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) Project summary. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation section. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviewers prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, indicate such and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the project director, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key faculty member or other individual responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text must not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: The objectives of the project; a synopsis of the plan of operation; a statement of how the project will enhance the teaching capacity of the institution; a description of how the project will strengthen higher education in the food and agricultural sciences in the United States; a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution; and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) Resubmission of a proposal. (1) Resubmission of previously unfunded proposals. (i) If a proposal has been submitted previously, but was not funded, such should be indicated in block 13. on Form CSRS–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal:

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed. (ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the Appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) Resubmission of previously funded proposals. Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Project directors who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for further funding.

(f) Narrative of a teaching proposal. The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) Potential for advancing the quality of education.

(i) Impact.

(A) Identify the targeted need area(s).

(B) Clearly state the specific instructional problem or opportunity to be addressed.

(C) Describe how and by whom the focus and scope of the project were determined. Summarize the body of knowledge which substantiates the need for the proposed project.

(D) Describe ongoing or recently completed significant activities related to the proposed project for which previous funding was received under this program.

(E) Discuss how the project will be of value at the State, regional, national, or international level(s).

(F) Discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period. Also discuss the probabilities of its adaptation by other institutions. For example, can the project serve as a model for others?

(ii) Continuation plans. Discuss the likelihood of, or plans for, continuation or expansion of the project beyond USDA support. For example, does the institution's long-range budget or academic plan provide for the realistic continuation or expansion of the initiative undertaken by this project after the end of the grant period, are plans being made to institutionalize the program if it meets with success, and are there indications of other continuing non-Federal support?

(iii) Innovation. Describe the degree to which the proposal reflects an innovative or non-traditional approach to solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences.

(iv) Products and results. Explain the kinds of results and products expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students and increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) Overall approach and cooperative linkages.

(i) Proposed approach.

(A) Objectives. Cite and discuss the specific objectives to be accomplished under the project.

(B) Plan of operation.

(*1*) Describe procedures for accomplishing the objectives of the project.

(*2*) Describe plans for management of the project to enhance its proper and efficient administration.

(*3*) Describe the way in which resources and personnel will be used to conduct the project.

(C) Timetable. Provide a timetable for conducting the project. Identify all important project milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) Evaluation plans.

(A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any data to be collected and analyzed, and explain the methodology that will be used to determine the extent to which the needs underlying the project are met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in paragraph (f)(2)(ii)(A) of this section.

(iii) Dissemination plans. Discuss plans to disseminate project results and products. Identify target audiences and explain methods of communication.

(iv) Partnerships and collaborative efforts.

(A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate

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academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural sciences higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) Institutional capacity building.

(i) Institutional enhancement. Explain how the proposed project will strengthen the teaching capacity as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's academic infrastructure by expanding the current faculty's expertise base, advancing the scholarly quality of the institution's academic programs, enriching the racial, ethnic, or gender diversity of the student body, helping the institution establish itself as a center of excellence in particular field of education, helping the institution maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching, or enabling the institution to provide more meaningful student experiential learning opportunities.

(ii) Institutional commitment.

(A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supported by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) Key personnel. A Form CSRS–708, "Summary Vita-Teaching Proposal," should be included for each key person associated with the project.

(h) Budget and cost-effectiveness. (1) Budget form.

(i) Prepare Form CSRS–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, the administrative provisions in this part, and can be justified as necessary for successful conduct of the proposed project.

(ii) The approved negotiated instruction rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds.

(2) Matching funds. When documenting matching contributions, use the following guidelines:

When preparing the column of Form CSRS–713 entitled "Applicant Contributions To Matching Funds," only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for any incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution,which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) Chart on shared budget for joint project proposal.

(i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) The amount of funds to be disbursed to those institutions; and

(C) The way in which such funds will be used in accordance with items A through L of Form CSRS–713, "Higher Education Budget."

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) Budget narrative.

(i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student stipends/scholarships, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a targeted need area or promote coalition building that could lead to future ventures.

(iv) Includes the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area (e.g., student experiential learning and instruction delivery systems), estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) Current and pending support. Each applicant must complete Form CSRS–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) Appendix. Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in an Appendix should not be used to circumvent the 20-page limitation of a proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in an Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information on previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the project director(s). The Appendix must be referenced in the proposal narrative.

Subpart D—Review and Evaluation of a Teaching Proposal

§ 3406.14 Proposal review—teaching.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.15 Evaluation criteria for teaching proposals.

The maximum score a teaching proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the **Federal Register**, the peer review panel will consider the following criteria and weights to evaluate proposals submitted:

Evaluation Criterion	Weight (points)
(a) Potential for advancing the quality of education: This criterion is used to assess the likelihood that the project will have a substantial impact upon and advance the quality of food and agricultural sciences higher education by strengthening institutional capacities through promoting education reform to meet clearly delineated needs. (1) Impact—Does the project address a targeted need area(s)? Is the problem or opportunity clearly documented? Does the project address a State, regional, national, or international problem or opportunity? Will the benefits to be derived from the project transcend the applicant institution or the grant period? Is it probable that other institutions will adapt this project for their own use? Can the project serve as a model for others?	15

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Evaluation Criterion	Weight (points)
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support with the use of institutional funds? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	10
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach toward solving a higher education problem or strengthening the quality of higher education in the food and agricultural sciences? If successful, is the project likely to lead to education reform?	10
(4) Products and results—Are the expected products and results of the project clearly defined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15
(b) Overall approach and cooperative linkages: This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the targeted need area(s) and the impact anticipated? Are the procedures managerially, educationally, and scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes?	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, or use by faculty development or research/teaching skills workshops?	5
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agency(s)? Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education?	15
(c) Institutional capacity building: This criterion relates to the degree to which the project will strengthen the teaching capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the teaching capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to: expand the current faculty's expertise base; attract, hire, and retain outstanding teaching faculty; advance and strengthen the scholarly quality of the institution's academic programs; enrich the racial, ethnic, or gender diversity of the faculty and student body; recruit students with higher grade point averages, higher standardized test scores, and those who are more committed to graduation; become a center of excellence in a particular field of education and bring it greater academic recognition; attract outside resources for academic programs; maintain or acquire state-of-the-art scientific instrumentation or library collections for teaching; or provide more meaningful student experiential learning opportunities?	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as instructional instrumentation, facilities, computer services, library and other instruction support resources?	15
(d) Personnel Resources: This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes?	
(e) Budget and cost-effectiveness: This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal: This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, and thoroughly explained, etc.)?	5

Subpart E—Preparation of a Research Proposal

§ 3406.16 Scope of a research proposal.

The research component of the program will support projects that address high-priority research initiatives in areas such as those illustrated in this section where there is a present or anticipated need for increased knowledge or capabilities or in which it is feasible for applicants to develop programs recognized for their excellence. Applicants are also encouraged to include in their proposals a library enhancement component related to the initiative(s) for which they have prepared their proposals.

(a) Studies and experimentation in food and agricultural sciences.

(1) The purpose of this initiative is to advance the body of knowledge in those basic and applied natural and social sciences that comprise the food and agricultural sciences.

(2) Examples include, but are not limited to:

(i) Conduct plant or animal breeding programs to develop better crops, forests, or livestock (e.g., more disease resistant, more productive, yielding higher quality products).

(ii) Conceive, design, and evaluate new bioprocessing techniques for eliminating undesirable constituents from or adding desirable ones to food products.

(iii) Propose and evaluate ways to enhance utilization of the capabilities and resources of food and agricultural institutions to promote rural development (e.g., exploitation of new technologies by small rural businesses).

(iv) Identify control factors influencing consumer demand for agricultural products.

(v) Analyze social, economic, and physiological aspects of nutrition, housing, and life-style choices, and of community strategies for meeting the changing needs of different population groups.

(vi) Other high-priority areas such as human nutrition, sustainable agriculture, biotechnology, agribusiness management and marketing, and aquaculture.

(b) Centralized research support systems.

(1) The purpose of this initiative is to establish centralized support systems to meet national needs or serve regions or clientele that cannot otherwise afford or have ready access to the support in question, or to provide such support more economically thereby freeing up resources for other research uses.

(2) Examples include, but are not limited to:

(i) Storage, maintenance, characterization, evaluation and enhancement of germplasm for use by animal and plant breeders, including those using the techniques of biotechnology.

(ii) Computerized data banks of important scientific information (e.g., epidemiological, demographic, nutrition, weather, economic, crop yields, etc.).

(iii) Expert service centers for sophisticated and highly specialized methodologies (e.g., evaluation of organoleptic and nutritional quality of foods, toxicology, taxonomic identifications, consumer preferences, demographics, etc.).

(c) Technology delivery systems.

(1) The purpose of this initiative is to promote innovations and improvements in the delivery of benefits of food and agricultural sciences to producers and consumers, particularly those who are currently disproportionately low in receipt of such benefits.

(2) Examples include, but are not limited to:

(i) Computer-based decision support systems to assist small-scale farmers to take advantage of relevant technologies, programs, policies, etc.

(ii) Efficacious delivery systems for nutrition information or for resource management assistance for low-income families and individuals.

(d) Other creative proposals. The purpose of this initiative is to encourage other creative proposals, outside the areas previously outlined, that are designed to provide needed enhancement of the Nation's food and agricultural research system.

§ 3406.17 Program application materials—research.

Program application materials in an application package will be made available to eligible institutions upon request. These materials include the program announcement, the administrative provisions for the program, and the forms needed to prepare and submit research grant applications under the program.

§ 3406.18 Content of a research proposal.

(a) Proposal cover page. (1) Form CSRS–712, "Higher Education Proposal Cover Page," must be completed in its entirety. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(2) One copy of Form CSRS–712 must contain the pen-and-ink signatures of the principal investigator(s) and Authorized Organizational Representative for the applicant institution.

(3) The title of the research project shown on the "Higher Education Proposal Cover Page" must be brief (80–character maximum) yet represent the major thrust of the project. This information will be used by the Department to provide information to the Congress and other interested parties.

(4) In block 7. of Form CSRS–712, enter "Capacity Building Grants Program."

(5) In block 8.a. of Form CSRS–712, enter "Research." In block 8.b. identify the code of the targeted need area(s) as found on the reverse of the form. If a proposal focuses on multiple targeted need areas, enter each code associated with the project. In block 8.c. identify the major area(s) of emphasis as found on the reverse of the form. If a proposal focuses on multiple areas of emphasis, enter each code associated with the project; however, please limit your selection to three areas. This information will be used by the program staff for the proper assignment of proposals to reviewers.

(6) In block 9. of Form CSRS–712, indicate if the proposal is a complementary project proposal or joint project proposal as defined in § 3406.2. If it is not a complementary project proposal or a joint project proposal, identify it as a regular proposal.

(7) In block 13. of Form CSRS–712, indicate if the proposal is a new, first-time submission or if the proposal is a resubmission of a proposal that has been submitted to, but not funded under the 1890 Institution Capacity Building Grants Program in a previous competition.

(b) Table of contents. For ease of locating information, each proposal must contain a detailed table of contents just after the Proposal Cover Page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the summary documentation of USDA agency cooperation.

(c) USDA agency cooperator. To be considered for funding, each proposal must include documentation of cooperation with at least one USDA agency or office. If multiple agencies are involved as cooperators, documentation must be included from each agency. When documenting cooperative arrangements, the following guidelines should be used:

(1) A summary of the cooperative arrangements must immediately follow the Table of Contents. This summary should:

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(i) Bear the signatures of the Agency Head (or his/her designated authorized representative) and the university project director;

(ii) Indicate the agency's willingness to commit support for the project;

(iii) Identify the person(s) at the USDA agency who will serve as the liaison or technical contact for the project;

(iv) Describe the degree and nature of the USDA agency's involvement in the proposed project, as outlined in § 3406.6(a) of this part, including its role in:

(A) Identifying the need for the project;

(B) Developing a conceptual approach;

(C) Assisting with project design;

(D) Identifying and securing needed agency or other resources (e.g., personnel, grants/contracts; in-kind support, etc.);

(E) Developing the project budget;

(F) Promoting partnerships with other institutions to carry out the project;

(G) Helping the institution launch and manage the project;

(H) Providing technical assistance and expertise;

(I) Providing consultation through site visits, E-mail, conference calls, and faxes;

(J) Participating in project evaluation and dissemination of final project results; and

(K) Seeking other innovative ways to ensure the success of the project and advance the needs of the institution or the agency; and

(v) Describe the expected benefits of the partnership venture for the USDA agency and for the 1890 Institution.

(2) A detailed discussion of these partnership arrangements should be provided in the narrative portion of the proposal, as outlined in paragraph (f)(2)(iv)(B) of this section.

(3) Additional documentation, including letters of support or cooperation, may be provided in the Appendix.

(d) Project summary. (1) A Project Summary should immediately follow the summary documentation of USDA agency cooperation. The information provided in the Project Summary will be used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers and providing information to reviews prior to the peer panel meeting. The name of the institution, the targeted need area(s), and the title of the proposal must be identified exactly as shown on the "Higher Education Proposal Cover Page."

(2) If the proposal is a complementary project proposal, as defined in § 3406.2 of this part, clearly state this fact and identify the other complementary project(s) by citing the name of the submitting institution, the title of the project, the principal investigator, and the grant number (if funded in a previous year) exactly as shown on the cover page of the complementary project so that appropriate consideration can be given to the interrelatedness of the proposals in the evaluation process.

(3) If the proposal is a joint project proposal, as defined in § 3406.2 of this part, indicate such and identify the other participating institutions and the key person responsible for coordinating the project at each institution.

(4) The Project Summary should be a concise description of the proposed activity suitable for publication by the Department to inform the general public about awards under the program. The text should not exceed one page, single-spaced. The Project Summary should be a self-contained description of the activity which would result if the proposal is funded by USDA. It should include: the objective of the project, a synopsis of the plan of operation, a statement of how the project will enhance the research capacity of the institution, a description of how the project will enhance research in the food and agricultural sciences, and a description of the partnership efforts between, and the expected benefits for, the USDA agency cooperator(s) and the 1890 Institution and the plans for disseminating project results. The Project Summary should be written so that a technically literate reader can evaluate the use of Federal funds in support of the project.

(e) Resubmission of a proposal. (1) Resubmission of previously unfunded proposals. (i) If the proposal has been submitted previously, but was not funded, such should be indicated in block 13. On Form CSRS–712, "Higher Education Proposal Cover Page," and the following information should be included in the proposal.

(A) The fiscal year(s) in which the proposal was submitted previously;

(B) A summary of the peer reviewers' comments; and

(C) How these comments have been addressed in the current proposal, including the page numbers in the current proposal where the reviewers' comments have been addressed.

(ii) This information may be provided as a section of the proposal following the Project Summary and preceding the proposal narrative or it may be placed in the appendix (see paragraph (j) of this section). In either case, the location of this information should be indicated in the Table of Contents, and the fact that the proposal is a resubmitted proposal should be stated in the proposal narrative. Further, when possible, the information should be presented in a tabular format. Applicants who choose to resubmit proposals that were previously submitted, but not funded, should note that resubmitted proposals must compete equally with newly submitted proposals. Submitting a proposal that has been revised based on a previous peer review panel's critique of the proposal does not guarantee the success of the resubmitted proposal.

(2) Resubmission of previously funded proposals. Recognizing that capacity building is a long-term ongoing process, the 1890 Institution Capacity Building Grants Program is interested in funding subsequent phases of previously funded projects in order to build institutional capacity, and institutions are encouraged to build on a theme over several grant awards. However, proposals that are sequential continuations or new stages of previously funded Capacity Building Grants must compete with first-time proposals. Therefore, project directors should thoroughly demonstrate how the project proposed in the current application expands substantially upon a previously funded project (i.e., demonstrate how the new project will advance the former project to the next level of attainment or will achieve expanded goals). The proposal must also show the degree to which the new phase promotes innovativeness and creativity beyond the scope of the previously funded project. Please note that the 1890 Institution Capacity Building Grants Program is not designed to support activities that are essentially repetitive in nature over multiple grant awards. Principal investigators who have had their projects funded previously are discouraged from resubmitting relatively identical proposals for future funding.

(f) Narrative of a research proposal. The narrative portion of the proposal is limited to 20 pages in length. The one-page Project Summary is not included in the 20-page limitation. The narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. All pages following the summary documentation of USDA agency cooperation must be paginated. It should be noted that reviewers will not be required to read beyond 20 pages of the narrative to evaluate the proposal. The narrative should contain the following sections:

(1) Significance of the problem.

(i) Impact.

(A) Identification of the problem or opportunity. Clearly identify the specific problem or opportunity to be addressed and present any research questions or hypotheses to be examined.

(B) Rationale. Provide a rationale for the proposed approach to the problem or opportunity and indicate the part that the proposed project will play in advancing food and agricultural research and knowledge. Discuss how the project will be of value and importance at the State, regional, national, or international level(s). Also discuss how the benefits to be derived from the project will transcend the proposing institution or the grant period.

(C) Literature review. Include a comprehensive summary of the pertinent scientific literature. Citations may be footnoted to a bibliography in the Appendix. Citations should be accurate, complete, and adhere to an acceptable journal format. Explain how such knowledge (or previous findings) is related to the proposed project.

(D) Current research and related activities. Describe the relevancy of the proposed project to current research or significant research support activities at the proposing institution and any other institution participating in the project, including research which may be as yet unpublished.

(ii) Continuation plans. Discuss the likelihood or plans for continuation or expansion of the project beyond USDA support. Discuss, as applicable, how the institution's long-range budget, and administrative and academic plans, provide for the realistic continuation or expansion of the line of research or research support activity undertaken by this project after the end of the grant period. For example, are there plans for securing non-Federal support for the project? Is there any potential for income from patents, technology transfer or university-business enterprises resulting from the project? Also discuss the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions.

(iii) Innovation. Describe the degree to which the proposal reflects an innovative or non-traditional approach to a food and agricultural research initiative.

(iv) Products and results. Explain the kinds of products and results expected and their impact on strengthening food and agricultural sciences higher education in the United States, including attracting academically outstanding students or increasing the ethnic, racial, and gender diversity of the Nation's food and agricultural scientific and professional expertise base.

(2) Overall approach and cooperative linkages.

(i) Approach.

(A) Objectives. Cite and discuss the specific objectives to be accomplished under the project.

(B) Plan of operation. The procedures or methodologies to be applied to the proposed project should be explicitly stated. This section should include, but not necessarily be limited to a description of:

(*1*) The proposed investigations, experiments, or research support enhancements in the sequence in which they will be carried out.

(*2*) Procedures and techniques to be employed, including their feasibility.

(*3*) Means by which data will be collected and analyzed.

(*4*) Pitfalls that might be encountered.

(*5*) Limitations to proposed procedures

(C) Timetable. Provide a timetable for execution of the project. Identify all important research milestones and dates as they relate to project start-up, execution, dissemination, evaluation, and close-out.

(ii) Evaluation plans.

(A) Provide a plan for evaluating the accomplishment of stated objectives during the conduct of the project. Indicate the criteria, and corresponding weight of each, to be used in the evaluation process, describe any performance data to be collected and analyzed, and explain the methodologies that will be used to determine the extent to which the needs underlying the project are being met.

(B) Provide a plan for evaluating the effectiveness of the end results upon conclusion of the project. Include the same kinds of information requested in § 3406.13(f)(2)(ii)(A).

(iii) Dissemination plans. Provide plans for disseminating project results and products including the possibilities for publications. Identify target audiences and explain methods of communication.

(iv) Partnerships and collaborative efforts.

(A) Explain how the project will maximize partnership ventures and collaborative efforts to strengthen food and agricultural sciences higher education (e.g., involvement of faculty in related disciplines at the same institution, joint projects with other colleges or universities, or cooperative activities with business or industry). Also explain how it will stimulate academia, the States, or the private sector to join with the Federal partner in enhancing food and agricultural science higher education.

(B) Provide evidence, via letters from the parties involved, that arrangements necessary for collaborative partnerships or joint initiatives have been discussed and realistically can be expected to come to fruition, or actually have been finalized contingent on an award under this program. Letters must be signed by an official who has the authority to commit the resources of the organization. Such letters should be referenced in the plan of operation, but the actual letters should be included in the Appendix section of the proposal. Any potential conflict(s) of interest that might result from the proposed collaborative arrangements must be discussed in detail. Proposals which indicate joint projects with other institutions must state which proposer is to receive any resulting grant award, since only one submitting institution can be the recipient of a project grant under one proposal.

(C) Explain how the project will create a new or enhance an existing partnership between the USDA agency cooperator(s) and the 1890 Institution(s). This section should expand upon the summary information provided in the documentation of USDA agency cooperation section, as outlined in paragraph (c)(1) of this section. This is particularly important because the focal point of attention in the peer review process is the proposal narrative. Therefore, a comprehensive discussion of the partnership effort between USDA and the 1890 Institution should be provided.

(3) Institutional capacity building.

(i) Institutional enhancement. Explain how the proposed project will strengthen the research capacity, as defined in § 3406.2 of this part, of the applicant institution and, if applicable, any other institutions assuming a major role in the conduct of the project. For example, describe how the proposed project is intended to strengthen the institution's research infrastructure by advancing the expertise of the current faculty in the natural or social sciences; providing a better research environment, state-of-the-art equipment, or supplies; enhancing library collections; or enabling the institution to provide efficacious organizational structures and reward systems to attract and retain first-rate research faculty and students—particularly those from underrepresented groups.

(ii) Institutional commitment.

(A) Discuss the institution's commitment to the project and its successful completion. Provide, as relevant, appropriate documentation in the Appendix. Substantiate that the

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institution attributes a high priority to the project.

(B) Discuss how the project will contribute to the achievement of the institution's long-term (five- to ten-year) goals and how the project will help satisfy the institution's high-priority objectives. Show how this project is linked to and supposed by the institution's strategic plan.

(C) Discuss the commitment of institutional resources to the project. Show that the institutional resources to be made available to the project will be adequate, when combined with the support requested from USDA, to carry out the activities of the project and represent a sound commitment by the institution. Discuss institutional facilities, equipment, computer services, and other appropriate resources available to the project.

(g) Key personnel. A From CSRS–710, "Summary Vita—Research Proposal," should be included for each key person associated with the project.

(h) budget and cost-effectiveness.

(1) Budget form.

(i) Prepare Form CSRS–713, "Higher Education Budget," in accordance with instructions provided with the form. Proposals may request support for a period to be identified in each year's program announcement. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. Form CSRS–713 may be reproduced as needed by proposers. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, these administrative provisions, and can be justified as necessary for successful conduct of the proposed project.

(ii) The approved negotiated research rate or the maximum rate allowed by law should be used when computing indirect costs. If a reduced rate of indirect costs is voluntarily requested from USDA, the remaining allowable indirect costs may be used as matching funds. In the event that a proposal reflects an incorrect indirect cost rate and is recommended for funding, the correct rate will be applied to the approved budget in the grant award.

(2) Matching funds. When documenting matching contributions, use the following guidelines:

(i) When preparing the column of Form CSRS–713 entitled "Applicant Contributions To Matching Funds," only those costs to be contributed by the applicant for the purposes of matching should be shown. The total amount of this column should be indicated in item M.

(ii) In item N of Form CSRS–713, show a total dollar amount for Cash Contributions from both the applicant and any third parties; also show a total dollar amount (based on current fair market value) for Non-cash Contributions from both the applicant and any third parties.

(iii) To qualify for an incentive benefits stemming from matching support or to satisfy any cost sharing requirements, proposals must include written verification of any actual commitments of matching support (including both cash and non-cash contributions) from third parties. Written verification means—

(A) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) The dollar amount of the cash donation; and

(*5*) A statement that the donor will pay the cash contribution during the grant period; and

(B) For any third party non-cash contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization (or by the donor if the gift is from an individual) and the applicant institution, which must include:

(*1*) The name, address, and telephone number of the donor;

(*2*) The name of the applicant institution;

(*3*) The title of the project for which the donation is made;

(*4*) A good faith estimate of the current fair market value of the non-cash contribution; and

(*5*) A statement that the donor will make the contribution during the grant period.

(iv) All pledge agreements must be placed in the proposal immediately following Form CSRS–713. The sources and amounts of all matching support from outside the applicant institution should be summarized in the Budget Narrative section of the proposal.

(v) Applicants should refer to OMB Circulars A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," and A–21, "Cost Principles for Educational Institutions," for further guidance and other requirements relating to matching and allowable costs.

(3) Chart on shared budget for joint project proposal.

(i) For a joint project proposal, a plan must be provided indicating how funds will be distributed to the participating institutions. The budget section of a joint project proposal should include a chart indicating:

(A) The names of the participating institutions;

(B) The amount of funds to be disbursed to those institutions; and

(C) The way in which such funds will be used in accordance with items A through L of Form CSRS–713, "Higher Education Budget."

(ii) If a proposal is not for a joint project, such a chart is not required.

(4) Budget narrative.

(i) Discuss how the budget specifically supports the proposed project activities. Explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives.

(ii) Justify that the total budget, including funds requested from USDA and any matching support provided, will be adequate to carry out the activities of the project. Provide a summary of sources and amounts of all third party matching support.

(iii) Justify the project's cost-effectiveness. Show how the project maximizes the use of limited resources, optimizes research value for the dollar, achieves economies of scale, or leverages additional funds. For example, discuss how the project has the potential to generate a critical mass of expertise and activity focused on a high-priority research initiatives(s) or promote coalition building that could lead to future ventures.

(iv) Include the percentage of time key personnel will work on the project, both during the academic year and summer. When salaries of university project personnel will be paid by a combination of USDA and institutional funds, the total compensation must not exceed the faculty member's regular annual compensation. In addition, the total commitment of time devoted to the project, when combined with time for teaching and research duties, other sponsored agreements, and other employment obligations to the institution, must not exceed 100 percent of the normal workload for which the employee is compensated, in accordance with established university policies and applicable Federal cost principles.

(v) If the proposal addresses more than one targeted need area, estimate the proportion of the funds requested from USDA that will support each respective targeted need area.

(i) Current and pending support. Each applicant must complete Form CSRS–663, "Current and Pending Support," identifying any other current public- or private-sponsored projects, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This information should also be provided for any pending proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice the review or evaluation of a project under this program.

(j) Appendix. Each project narrative is expected to be complete in itself and to meet the 20-page limitation. Inclusion of material in the Appendix should not be used to circumvent the 20-page limitation of the proposal narrative. However, in those instances where inclusion of supplemental information is necessary to guarantee the peer review panel's complete understanding of a proposal or to illustrate the integrity of the design or a main thesis of the proposal, such information may be included in the Appendix. Examples of supplemental material are photographs, journal reprints, brochures and other pertinent materials which are deemed to be illustrative of major points in the narrative but unsuitable for inclusion in the proposal narrative itself. Information or previously submitted proposals may also be presented in the Appendix (refer to paragraph (e) of this section). When possible, information in the Appendix should be presented in tabular format. A complete set of the Appendix material must be attached to each copy of the grant application submitted. The Appendix must be identified with the title of the project as it appears on Form CSRS–712 of the proposal and the name(s) of the principal investigator(s). The Appendix must be referenced in the proposal narrative.

(k) Special considerations. A number of situations encountered in the conduct of research require special information or supporting documentation before funding can be approved for the project. If such situations are anticipated, proposals must so indicate via completion of Form CSRS–662, "Assurance Statement(s)." It is expected that some applications submitted in response to these guidelines will involve the following:

(1) Recombinant DNA research. All key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled "Guidelines for Research Involving Recombinant DNA Molecules," as revised. All applicants proposing to use recombinant DNA techniques must so indicate by checking the appropriate box on Form CSRS–712, "Higher Education Proposal Cover Page," and by completing the applicable section of Form CSRS–662. In the event a project involving recombinant DNA or RNA molecules results in a grant award, the Institutional Biosafety Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(2) Protection of human subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this is contained in the Department of Agriculture regulations under 7 CFR part 1c. All applicants who propose to use human subjects for experimental purposes must indicate their intention by checking the appropriate block on Form CSRS–712, "Higher Education Proposal Cover Page," and by completing the appropriate portion of Form CSRS–662. In the event a project involving human subjects results in a grant award, the Institutional Review Board of the proposing institution must approve the research plan before CSREES will release grant funds.

(3) Laboratory animal care. Responsibility for the humane care and treatment of laboratory animals used in any grant project supported with funds provided by CSREES rests with the performing organization. All key project personnel and all endorsing officials of the proposing organization are required to comply with the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of laboratory animals. All applicants proposing a project which involves the use of laboratory animals must indicate their intention by checking the appropriate block on Form CSRS–712, "Higher Education Proposal Cover Page," and by completing the appropriate portion of Form CSRS–662. In the event a project involving the use of living vertebrate animals results in a grant award, the Institutional Animal Care and Use Committee of the proposing institution must approve the research plan before CSREES will release grant funds.

(l) Compliance with the National Environmental Policy Act (NEPA). As outlined in 7 CFR part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969), environmental data for the proposed project is to be provided to CSREES in order for a determination to be made as to the need for any further action such as preparation of an environmental assessment (EA) or environmental impact statement (EIS).

(1) NEPA determination statement. In order for a determination to be made, pertinent information regarding environmental activities is necessary; therefore, Form CSRS–1234, "National Environmental Policy Act Exclusions Form," along with supporting documentation, must be included in the proposal indicating whether or not the project falls under USDA categorical exclusions as defined in 7 CFR 1b.3 (and restated at 7 CFR 3407.6(a)(1)) or CSREES categorical exclusions defined at 7 CFR 3407.6(a)(2) (i) and (ii). The information should be identified in the Table of Contents as "NEPA Determination Statement" and Form CSRS–1234 and the supporting documentation should be placed at the back of the proposal.

(2) Exceptions to categorical exclusions. An EA or EIS shall be prepared for an activity which is normally within the purview of categorical exclusion where it is determined by CSREES that substantial controversy on environmental grounds exists or that other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Subpart F—Review and Evaluation of a Research Proposal

§ 3406.19 Proposal review—research.

The proposal evaluation process includes both internal staff review and merit evaluation by peer review panels comprised of scientists, educators, business representatives, and Government officials who are highly qualified to render expert advice in the areas supported. Peer review panels will be selected and structured to provide

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optimum expertise and objective judgment in the evaluation of proposals.

§ 3406.20 Evaluation criteria for research proposals.

The maximum score a research proposal can receive is 150 points. Unless otherwise stated in the annual solicitation published in the Federal Register, the peer review panel will consider the following criteria and weights to evaluate proposals submitted.

Evaluation Criterion	Weight (points)
(a) Significance of the problem:	
This criterion is used to assess the likelihood that the project will advance or have a substantial impact upon the body of knowledge constituting the natural and social sciences undergirding the agricultural, natural resources, and food systems.	
(1) Impact—Is the problem or opportunity to be addressed by the proposed project clearly identified, outlined, and delineated? Are research questions or hypotheses precisely stated? Is the project likely to further advance food and agricultural research and knowledge? Does the project have potential for augmenting the food and agricultural scientific knowledge base? Does the project address a State, regional, national, or international problem(s)? Will the benefits to be derived from the project transcend the applicant institution or the grant period?	15
(2) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there plans for continuing this line of research or research support activity with the use of institutional funds after the end of the grant? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting? What is the potential for royalty or patent income, technology transfer or university-business enterprises? What are the probabilities of the proposed activity or line of inquiry being pursued by researchers at other institutions?	10
(3) Innovation—Are significant aspects of the project based on an innovative or a non-traditional approach? Does the project reflect creative thinking? To what degree does the venture reflect a unique approach that is new to the applicant institution or new to the entire field of study?	10
(4) Products and results—Are the expected products and results of the project clearly outlined and likely to be of high quality? Will project results be of an unusual or unique nature? Will the project contribute to a better understanding of or an improvement in the quality, distribution, or effectiveness of the Nation's food and agricultural scientific and professional expertise base, such as increasing the participation of women and minorities?	15
(b) Overall approach and cooperative linkages:	
This criterion relates to the soundness of the proposed approach and the quality of the partnerships likely to evolve as a result of the project.	
(1) Proposed approach—Do the objectives and plan of operation appear to be sound and appropriate relative to the proposed initiative(s) and the impact anticipated? Is the proposed sequence of work appropriate? Does the proposed approach reflect sound knowledge of current theory and practice and awareness of previous or ongoing related research? If the proposed project is a continuation of a current line of study or currently funded project, does the proposal include sufficient preliminary data from the previous research or research support activity? Does the proposed project flow logically from the findings of the previous stage of study? Are the procedures scientifically and managerially sound? Are potential pitfalls and limitations clearly identified? Are contingency plans delineated? Does the timetable appear to be readily achievable?	15
(2) Evaluation—Are the evaluation plans adequate and reasonable? Do they allow for continuous or frequent feedback during the life of the project? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can they provide an objective evaluation? Do evaluation plans facilitate the measurement of project progress and outcomes	5
(3) Dissemination—Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications and presentations at professional society meetings?	5
(4) Partnerships and collaborative efforts—Does the project have significant potential for advancing cooperative ventures between the applicant institution and a USDA agency? Does the project workplan include an effective role for the cooperating USDA agencie(s)? Will the project encourage and facilitate better working relationships in the university science community, as well as between universities and the public or private sector? Does the project encourage appropriate multidisciplinary collaboration? Will the project lead to long-term relationships or cooperative partnerships that are likely to enhance research quality or supplement available resources?	15
(c) Institutional capacity building:	
This criterion relates to the degree to which the project will strengthen the research capacity of the applicant institution. In the case of a joint project proposal, it relates to the degree to which the project will strengthen the research capacity of the applicant institution and that of any other institution assuming a major role in the conduct of the project.	
(1) Institutional enhancement—Will the project help the institution to advance the expertise of current faculty in the natural or social sciences; provide a better research environment, state-of-the-art equipment, or supplies; enhance library collections related to the area of research; or enable the institution to provide efficacious organizational structures and reward systems to attract, hire and retain first-rate research faculty and students—particularly those from underrepresented groups	15
(2) Institutional commitment—Is there evidence to substantiate that the institution attributes a high-priority to the project, that the project is linked to the achievement of the institution's long-term goals, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? Will the project have reasonable access to needed resources such as scientific instrumentation, facilities, computer services, library and other research support resources?	15
(d) Personnel Resources:	
This criterion relates to the number and qualifications of the key persons who will carry out the project. Are designated project personnel qualified to carry out a successful project? Are there sufficient numbers of personnel associated with the project to achieve the stated objectives and the anticipated outcomes? Will the project help develop the expertise of young scientists at the doctoral or post-doctorate level?	10
(e) Budget and cost-effectiveness:	
This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective.	
(1) Budget—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget explained clearly and in sufficient detail?	10
(2) Cost-effectiveness—Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize research value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a high-priority research initiative(s), or promote coalition building for current or future ventures?	5
(f) Overall quality of proposal:	
This criterion relates to the degree to which the proposal complies with the application guidelines and is of high quality. Is the proposal enhanced by its adherence to instructions (table of contents, organization, pagination, margin and font size, the 20-page limitation, appendices, etc.); accuracy of forms; clarity of budget narrative; well prepared vitae for all key personnel associated with the project; and presentation (are ideas effectively presented, clearly articulated, thoroughly explained, etc.)?	5

Subpart G—Submission of a Teaching or Research Proposal

§ 3406.21 Intent to submit a proposal.

To assist CSREES in preparing for the review of proposals, institutions planning to submit proposals may be requested to complete Form CSRS–711, "Intent to Submit a Proposal," provided in the application package. CSREES will determine each year if Intent to Submit a Proposal forms will be requested and provide such information in the program announcement. If Intent to Submit a Proposal forms are required, one form should be completed and returned for each proposal an institution anticipates submitting. Submitting this form does not commit an institution to any course of action, nor does failure to send this form prohibit an institution from submitting a proposal.

§ 3406.22 When and where to submit a proposal.

The program announcement will provide the deadline date for submitting a proposal, the number of copies of each proposal that must be submitted, and the address to which proposals must be submitted.

Subpart H—Supplementary Information

§ 3406.23 Access to peer review information.

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

§ 3406.24 Grant awards.

(a) General. Within the limit of funds available for such propose, the authorized departmental officer shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced targeted need areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

(b) Organization management information. Specific management information relating to a proposing institution shall be submitted on a one-time basis prior to the award of a project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms used to fulfill this requirement will be sent to the proposing institution by the sponsoring agency as part of the pre-award process.

(c) Notice of grant award. The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of principal investigator(s)/project director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intend to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(d) Obligation of the Federal Government. Neither the approval of any application nor the award of any project grant shall legally commit or obligate CSREES or the United States to provide further support of a project or any portion thereof.

§ 3406.25 Use of funds; changes.

(a) Delegation of fiscal responsibility. The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) Change in project plans. (1) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such changes.

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(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the authorized departmental officer prior to effecting such transfers.

(c) Changes in project period. The project period may be extended by the authorized departmental officer without additional financial support for such additional period(s) as the authorized departmental officer determines may be necessary to complete or fulfill the purposes of an approved project. However, due to statutory restriction, no grant may be extended beyond five years from the original start date of the grant. Grant extensions shall be conditioned upon prior request by the grantee and approval in writing by the authorized departmental officer.

(d) Changes in approved budget. Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involved transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

§ 3406.26 Monitoring progress of funded projects.

(a) During the tenure of a grant, project directors must attend at least one national project directors meeting, if offered, in Washington, D.C. or any other announced location. The purpose of the meeting will be to discuss project and grant management, opportunities for collaborative efforts, future directions for education reform, research project management, advancing a field of science, and opportunities to enhance dissemination of exemplary end products/results.

(b) An Annual Performance Report must be submitted to the USDA program contact person within 90 days after the completion of the first year of the project and annually thereafter during the life of the grant. Generally, the Annual Performance Reports should include a summary of the overall progress toward project objectives, current problems or unusual developments, the next year's planned activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award. These reports are in addition to the annual Current Research Information System (CRIS) reports required for all research grants under the award's "Special Terms and Conditions."

(c) A Final Performance Report must be submitted to the USDA program contact person within 90 days after the expiration date of the project. The expiration date is specified in the award documents and modifications thereto, if any. Generally, the Final Performance Report should be a summary of the completed project, including: a review of project objectives and accomplishments; a description of any products and outcomes resulting from the project; activities undertaken to disseminate products and outcomes; partnerships and collaborative ventures that resulted from the project; future initiatives that are planned as a result of the project; the impact of the project on the project director(s), the institution, and the food and agricultural sciences higher education system; and data on project personnel and beneficiaries. The Final Performance Report should be accompanied by samples or copies of any products or publications resulting from or developed by the project. The Final Performance Report must also contain any other information which may be specified in the terms and conditions of the award.

§ 3406.27 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and other Nonprofit Institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that CSREES may, as a part of its own program evaluation activities, carry out

in-depth evaluations of assisted activities. Thus, grantees should be prepared to cooperate with CSREES personnel, or persons retained by CSREES, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

Done at Washington, D.C., this 11th day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–30625 Filed 12–19–95; 8:45 am]

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December 20, 1995

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510
Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions; Proposed Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA53

Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation revising the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). This regulation will provide guidance to employers that sponsor contributory plans, including plans complying with section 401(k) of the Internal Revenue Code, as well as fiduciaries, participants, and beneficiaries of such plans.

DATES: Written comments and requests to testify concerning the proposed regulation must be received by February 5, 1996. The Department has scheduled a public hearing on this proposal on January 24, 1995, and, if necessary, on January 25, 1995. The hearing will begin at 10:00 am on both days.

ADDRESSES: Interested persons are invited to submit written comments and requests to testify concerning this proposed regulation to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Participant Contribution Regulation. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave., NW., Washington, DC 20210. Written comments may also be sent by the Internet to the following address: hinz@access.digex.net. The hearing on this proposal will be held in Room N–3437A, Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–7461; or William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In 1988, the Department of Labor (the Department) published a final regulation defining when certain monies that a participant pays to, or has withheld by, an employer for contribution to a plan are "plan assets" for purposes of Title I of ERISA and the related prohibited transaction provisions of the Code.[1] 53 FR 17628 (May 17, 1988). The final regulation provided that the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event to exceed 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or 90 days from the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).[2] This final rule was based on a record developed with respect to a proposed regulation published in 1979. 44 FR 50363 (August 28, 1979).

Except as provided in ERISA § 403(b), plan assets are required to be held in trust by one or more trustees.[3] ERISA § 403(a), 29 U.S.C. 1103(a). In addition, ERISA's fiduciary responsibility provisions apply to the management of plan assets. Among other things, these provisions make clear that the assets of a plan may not inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan. ERISA §§ 403–404, 29 U.S.C. 1103–1104. They also prohibit a broad array of transactions involving plan assets. ERISA §§ 406–408, 29 U.S.C. 1106–1108. Employers who fail to transmit promptly participant contributions, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions.

As was noted in the preamble to the final regulation published in 1988, the Department of Justice takes the position that, under 18 U.S.C. 664, the embezzlement, conversion, abstraction, or stealing of "any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or any fund connected therewith" is a criminal offense, and that under such language, criminal prosecution may go forward in situations in which the participant contributions is not a plan asset for purposes of Title I of ERISA. The final regulation defined when participant contributions become "plan assets" only for the purposes of Title I of ERISA and the related prohibited transaction excise tax provisions of the Code. The Department reiterates that this regulation may not be relied upon to bar criminal prosecutions pursuant to 18 U.S.C. 664.

Similarly, the Department wishes to reemphasize its view, expressed in the preamble to the final regulation, that in circumstances in which the employer clearly converts participant contributions to its own use, such amounts are considered "segregated," and thus will be "plan assets".

The Need for a Proposed Regulation

Although the Department believes that, in the vast majority of contributory employee benefit plans, participant contributions are handled with integrity, recent investigations conducted by the Department have revealed numerous violations related to employers' delay in transmitting or failing to transmit to employee benefit plans amounts that a participant or beneficiary pays to an employer, or amounts that employers withhold from participants' wages, for contribution to the plans. Evidence uncovered in ongoing investigations indicates that such delays are not uncommon.[4] The above described recent enforcement activities focused on participant contribution indicate a significantly higher frequency of violations for such investigations than the Department encounters in general.[5]

In addition, the Department, responding to requests for technical assistance from employers and participants, has received information that many employers who receive participant contributions are under the misimpression that the current regulation permits a delay of up to 90 days in segregating such contributions, even if the participant contributions can reasonably be segregated much sooner. The Department has also received similar information from a variety of other sources. Such delays deprive participants of earnings on their contributions and increase the risk to participants and their beneficiaries that their contributions will be lost due to the employer's insolvency or misappropriation by the employer.

In order to better protect the security of participant contributions to employee benefit plans, the Department believes that the final regulation published in 1988 must be revised. It is important to clarify that participant contributions become plan assets as soon as they can reasonably be segregated from the employer's general assets. In addition, the Department believes that the 90-day maximum period under 1988 regulation is too long, given the abuses that have been uncovered by the Department's investigations, and improvements in cash management and payroll processing practices since the final regulation was adopted.

The Proposed Regulation

This document contains a proposal to revise the regulation at 29 CFR 2510.3–102 by changing the maximum period during which participant contributions to an employee benefit may be treated as other than "plan assets". Under the current regulation, the maximum period is 90 days from the date on which the participant contributions are received by the employer (for amounts that participants or beneficiaries pay to the employer) or would otherwise have been payable to the participants in cash (for amounts that the employer withholds from the participants' wages).

Under the proposed rule, the maximum period for an employer to transmit participant contributions to the plan would be the same number of days as the period in which the employer is required to deposit withheld income taxes and employment taxes under rules promulgated by the Internal Revenue Service (IRS). The currently applicable rules are codified at 26 CFR 31.6302–1.[6] In general, these rules require employers who have reported more than $50,000 of withheld income taxes and employment taxes for a prior 12-month "lookback" period (defined as "semi-weekly depositors") to make tax deposits to a Federal Reserve Bank or authorized financial institution within a few days of withholding from wages. Employers who have reported $50,000 or less of withheld income taxes and employment taxes in the lookback period are defined as "monthly depositors" and must make such deposits on or before the 15th day of the month following the month in which the employees' wages are paid.

In addition, the IRS regulations reflect the statutory requirement that an employer who has accumulated on any day $100,000 in withheld income taxes and employment taxes must deposit such taxes by the next banking day. 26 U.S.C. 6302(g). If an employer accumulates less than a $500 tax liability during a calendar quarter, no deposits are required; the tax is paid with the filing of the tax return for the quarter.[7] The Department solicits comments on the appropriateness of including these two special rules to the general tax deposit rules in the IRS regulation.

The proposed rule would require employers who cannot reasonably segregate participant contributions at an earlier date to treat such amounts as plan assets within the same time frame that the employer is required to segregate and deposit withheld income taxes and employment taxes. The following table illustrates the basic time periods specified in the IRS regulations:

Type of depositor	Date withheld	Date deposit due
Semi-Weekly Depositor (more than $50,000 of Federal Income, Social Security and Medicare taxes (collectively, employment taxes) reported for 12-month period ending last June 30).	Wednesday, Thursday, and/or Friday	Following Wednesday.
	Saturday, Sunday, Monday and/or Tuesday	Following Friday.
Monthly Depositor ($50,000 or less of employment taxes reported for 12-month period ending on the previous June 30).	In any day during a calendar month	By the 15th of the following calendar month.
Either semi-weekly or monthly depositor, if $100,000 or more in employment taxes are accumulated on any date.	Not relevant	Next banking day after the $100,000 in employment taxes was accumulated.

For example, a semi-weekly depositor that pays its employees on Wednesday, December 13, is required to deposit withheld income taxes and employment taxes by the following Wednesday (December 20). Under the proposed rule, any participant contributions withheld on December 13 would become plan assets as soon as they could reasonably be segregated from the employer's general assets, but no later than December 20. Participant contributions that are paid separately by employees or former employees to the employer would be subject to the same time frames. For example, if a semi-weekly depositor receives a participant's payment on Monday,

[1] The Secretary of Labor has authority to issue regulations relating to section 4975 of the Internal Revenue Code pursuant to section 102 of Reorganization Plan No. 4 of 1978. 5 U.S.C. App. 165. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[2] The Department has taken the position that elective contributions to an employee benefit plan, whether made pursuant to a salary reduction agreement or otherwise, constitute amounts paid to or withheld by an employer (*i.e.*, participant contributions) within the scope of § 2510.3–102, without regard to the treatment of such contributions under the Internal Revenue Code. See 53 FR 29660 (Aug. 8, 1988).

[3] ERISA § 403(b) contains a number of exceptions to the trust requirement for certain types of assets, including assets which consist of insurance contracts, and for certain types of plans. In addition, the Secretary has issued a technical release, T.R. 92–01, which provides that, with respect to certain welfare plans (e.g., cafeteria plans), the Department will not assert a violation of the trust or certain reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations, involving such plans solely because of a failure to hold participant contributions in trust. 57 FR 23272 (June 2, 1992), 58 FR 45359 (Aug. 27, 1993).

[4] In the Spring of 1995 PWBA began a project to investigate misuse of employee contributions to employee benefit plans and in particular in 401(k) plans. As of October 31, 1995 there were 417 employee contribution investigations open and 130 cases were closed during the year. More than $3.7 million has been recovered through voluntary compliance in situations where employee contributions were not placed in trust for participants.

[5] Of the 130 closed employee contribution cases, 44, or 33.8 percent of closed cases, resulted in findings of violations of ERISA's fiduciary provisions. This compares to a finding of fiduciary violations in 12 percent of all other closed cases in FY 95.

[6] See also IRS Publication 15 (Cat. No. 10000W) Circular E, Employer's Tax Guide (Rev. January 1995) and IRS Notice 931 (Rev. October 1995).

[7] The Department recognizes that mistakes may occur in the processing of participant contributions. It is the Department's view that ERISA does not prevent the return of any mistaken contributions nor the ability to make correcting contributions after the mistakes are discovered. See ERISA § 403(c), 29 U.S.C. 11103(c).

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December 18, the payment amount would become plan assets as soon as they could reasonably be segregated from the employer's general assets, but no later than the following Friday, December 22.

Because the IRS tax deposit rules are generally applicable to employers, the Department expects that employers who sponsor contributory employee benefit plans are familiar with and have systems in place to comply with the IRS requirements.[6] Thus, the Department believes that applying these same rules in determining when the maximum period beyond which participant contributions must be treated as plan assets should not result in serious inconvenience or expense for such employers. The Department believes that currently available cash management and payroll processing technology allows the segregation of participant contributions within the maximum period proposed in this document. Furthermore, the final regulation published in 1988 requires that participant contributions be treated as plan assets as soon as they can reasonably be segregated from the employer's general assets. As a result, this proposed change will not be material for many employers who have complied with the final regulation published in 1988. The Department recognizes that some employers perceive difficulties in the transfer of participant contributions to the plan that they do not have in the deposit of federal employment taxes. The Department solicits comments as to any specific burdens and associated costs of this kind. The Department also requests comments on the transition period needed for employers and service providers, especially small businesses, to make changes in practices that may be necessary to comply with the proposal if it is adopted.

Although the proposed rule would not change the requirement that participant contributions be treated as plan assets at the earliest date they can reasonably be segregated from the employer's general assets, changing the regulations to provide for an outer limit that conforms to IRS requirements will allow the Department and plan participants to more quickly and easily determine that a violation has occurred. This will assist the Department in its increased monitoring and enforcement in this area, as it reduces the room for argument as to how rapidly participant contributions must be segregated from the employer's general assets. In addition, changing the ninety-day limit for treating participant contributions as other than "plan assets" reduces the risk of loss that exists when employers improperly hold participant contributions in their general assets for the maximum period rather than segregating them from the employer's general assets at the earliest reasonable date.

The proposed rule does not include an alternative proposal for a maximum period based on a fixed period of days (such as 15 days), but the Department may consider adopting such a rule in place of the rule described above if adopting the IRS tax deposit rules as the maximum period for segregating participant contributions would place an undue burden on plan sponsors. Commenters may wish to address the advantages or disadvantages of using a fixed period of days or some other formulation for a maximum period when they provide comments on the proposed rule.

The Department also welcomes comments on the advisability of other measures that it might consider to address the problem of delays in transmitting participant contributions to plans, such as, for example, requirements for more frequent disclosure to participants of participant contributions and account balances by the plan.

This document also modifies the language in section 2510.3–102 to emphasize that the assets of a plan include participant contributions as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. Although this modification would not change the effect of the existing regulation, the Department expects that the proposed new language will reduce the likelihood that employers will incorrectly believe that the maximum period in the proposed rule is a safe harbor and that they may delay the segregation of participant contributions up to the maximum period.

[6] The Department understands that most employers who sponsor section 401(k) plans are "semi-weekly depositors" under the IRS rules.

Effective Date of Regulation

Pursuant to the requirements of the Administrative Procedure Act at 5 U.S.C. 553(b), the Department is publishing this notice of proposed rulemaking for notice and comment and will promulgate this rule in final form subsequent to such comment period. The Department expects to issue a final rule 45 days following the close of the comment period. The Department has determined to propose that the final rule will be effective 60 days after its publication, which the Department believes will allow sufficient time for an appropriate transition to the new maximum periods. The Department solicits comments regarding the appropriate effective date for the final regulation.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic impact on small plans or other small entities. The regulation would describe when contributions made by a participant of a plan subject to ERISA or to the related prohibited transaction excise tax provisions of the Internal Revenue Code must be transmitted to the plan by an employer withholding the contributions. The Department solicits comments on whether the proposal is likely to have a significant economic impact on small entities. The Department also requests comments from small entities regarding what, if any, special problems they anticipate they may encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize these problems.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities.

Pursuant to the terms of the Executive Order, the Department has determined that this regulatory action is a "significant regulatory action" as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Thus, the Department believes this notice is "significant," and subject to OMB review on that basis. The Department also solicits comments on potential economic effects of this proposed rule in the context of Executive Order 12866, and any evidence with respect to whether or not this proposed rule may be "economically significant".

Paperwork Reduction Act

The regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(11).

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (Apr. 21, 1987).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86 (51 FR 3521, January 28, 1986), 1–87 (52 FR 13139, April 21, 1987), and Labor Management Services Administration Order No. 2–6.

Section 2510.3–40 is also issued under sec. 3(40), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)).

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), 3 CFR 1978 Comp. 332 and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978), 3 CFR 1978 Comp. 332.

2. Section 2510.3–102 is revised to read as follows:

2510.3–102 Definition of "plan assets"—participant contributions.

(a) *General rule.* For purposes of Subtitle A and Parts 1 and 4 of Subtitle B of Title I of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets.

(b) *Maximum time period.* In no event shall the date determined pursuant to paragraph (a) of this section occur later than the end of period of time during which the employer is required to make federal tax deposits for withheld income taxes and taxes under the Federal Insurance Contributions Act under regulations issued at 26 CFR 31.6302–1, measured from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date on which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(c) *Examples.* The requirements of this section are illustrated by the following examples:

(1) Employer W is a small company with a small number of employees at a single payroll location. W maintains a plan under section 401(k) of the Internal Revenue Code in which all of its employees participate. W's practice is to issue a single check to the trust that is maintained under the plan in the amount of the total withheld employee contributions within two days of the date on which the employees are paid. Under applicable Internal Revenue Service federal tax deposit rules, W is a "monthly depositor" as defined at 26 CFR 31.6302–1(c)(1). Under these rules W must deposit withheld federal income taxes and employment taxes no later than the 15th of the month following the month in which the relevant wages are paid. In view of the relatively small number of employees and the fact that they are paid from a single location, W could reasonably be expected to transmit participant contributions to a trust within two days after the employee's wages are paid. Therefore, the assets of W's 401(k) plan include the participant contributions attributable to any pay period as of the date two days from the close of such period, even though IRS federal tax deposit rules allow W substantially more time in which to make tax deposits.

(2) Employer X is a large national corporation which sponsors a section 401(k) plan. X has several payroll centers and uses an outside payroll processing service to pay employee wages and process deductions. Each payroll center has a different pay period. Each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions and provides the outside payroll processor the data necessary to prepare employee paychecks and process deductions. The payroll processing service has adopted a procedure under which it issues the employees' paychecks when due and deducts all payroll taxes and elective employee deductions. It deposits withheld income and employment payroll taxes within the time frame specified by 26 CFR 31.6302–1 and forwards a computer data tape representing the total payroll deductions for each employee, for a month's worth of pay periods, to a centralized location in X, where the data tape is checked for accuracy. A single check representing the aggregate participant contributions for the month is issued to the plan by the employer. X believes that this procedure, which takes 7 days after receipt of the date tape to complete, permits segregation of participant contributions at the earliest practicable time and avoids mistakes in the allocation of contribution amounts for each participant. X, however, is a "semi-weekly depositor" under the Internal Revenue Service's Federal Deposit Rules and makes Federal tax deposits within the time frames, set forth in those IRS rules. Under paragraphs (a) and (b) of this section, the assets of the plan include the participant contributions as soon as X could reasonably be expected to segregate the contributions from its general assets, but in no event later than the date on which the employer would be required to deposit withheld income taxes and employment taxes under 26 CFR 31.6302–1. The participant contributions become plan assets no later than end of the time period within which X is required to deposit withheld income taxes and employment taxes.

(3) Employer Y is medium-sized company which maintains a self-insured contributory group health plan. Several former employees have elected, pursuant to the provisions of ERISA § 602, 29 U.S.C. 1162, to pay Y for continuation of their coverage under the plan. Y is a semi-weekly depositor of withheld Federal income taxes and employment taxes. Under paragraphs (a) and (b) of this section, the assets of the plan include the former employees' payments as soon as Y could reasonably be expected to segregate the payments from its general assets, but in no event later than the date on which Y would be required to deposit the payment amounts if the payments were withheld from Federal income taxes or employment taxes. A former employee's payment received on a Monday would have become plan assets no later than the following Friday.

(d) *Effective date.* This section is effective 60 days after date of publication of final regulation.

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Signed at Washington, DC, this 14th day of December 1995.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95-30782 Filed 12-19-95; 8:45 am]

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federal register

Wednesday
December 20, 1995

Part VI

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System
12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation
12 CFR Part 325

Capital; Capital Adequacy Guidelines; Joint Final Rule

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95-28]

RIN 1557-AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0849]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB54

Capital; Capital Adequacy Guidelines

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and the FDIC (Agencies) are amending their respective risk-based capital guidelines to modify the definition of the OECD-based group of countries. The amendment excludes from the OECD-based group of countries any country that has rescheduled its external sovereign debt within the previous five years. The amendment also clarifies that the OECD-based group of countries includes all countries that are members of the OECD, regardless of their date of entry into the OECD. The effect of the amendment would be to increase the amount of capital that banks are required to hold against claims on the governments and banks of an OECD country, in the event that the country were to reschedule its external sovereign debt. This action is being taken to conform with a change in the Basle Accord on risk-based capital that was adopted by the Basle Committee on Banking Supervision (Basle Committee) on April 15, 1995.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: *OCC:* Geoffrey White, Senior International Economic Advisor, International Banking and Finance Department, (202) 874–5235; Saumya Bhavsar, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Roger Cole, Deputy Associate Director, (202) 452–2618; Norah Barger, Manager, (202) 452–2402; Robert Motyka, Supervisory Financial Analyst, (202) 452–3621; Division of Banking Supervision and Regulation; or Greg Baer, Managing Senior Counsel, Legal Division, (202) 452–3236; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf, Dorothea Thompson, (202) 452–3544.

FDIC: For supervisory purposes, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision, (202) 898–8904; for legal purposes, Dirck A. Hargraves, Attorney, Legal Division, (202) 898–7049; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 1988, the central bank governors of the Group of Ten (G–10) countries endorsed a framework for international risk-based capital guidelines entitled "International Convergence of Capital Measurement and Capital Standards" (commonly referred to as the Basle Accord).[1] Under the framework, risk-weighted assets are calculated by assigning assets and off-balance-sheet items to broad categories based primarily on their credit risk: that is, the risk that a banking organization will incur a loss due to an obligor or counterparty default on a transaction. Risk weights range from zero percent, for assets with minimal credit risk (such as U.S. Treasury securities), to 100 percent, which is the risk weight that applies to most private sector claims, including commercial loans. In 1989, the Agencies adopted risk-based capital guidelines implementing the Basle Accord for the banking organizations they supervise.

While the Basle Accord focuses primarily on credit risk, it also incorporates country transfer risk considerations. Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor.

In addressing transfer risk, the Basle Committee members examined several methods for assigning obligations of foreign countries to the various risk categories. Ultimately, the Basle Committee decided to use a defined group of countries considered to be of high credit standing as the basis for differentiating claims on foreign governments and banks. For this purpose, the Basle Committee determined this group to be the full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.[2] These countries, referred to in the Agencies' risk-based capital guidelines as the OECD-based group of countries, encompass most of the world's major industrial countries, including all members of the G–10 and the European Union.

Under both the Basle Accord and the Agencies' risk-based capital guidelines, claims on the governments and banks of the OECD-based group of countries generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD countries. Specifically, the Agencies' guidelines provide for the following treatment:

- Direct claims on, and the portions of claims that are directly and unconditionally guaranteed by, OECD-based central governments (including central banks) are assigned to the zero percent risk weight category. Corresponding claims on the central government of a country outside the OECD-based group are assigned to the zero percent risk weight category only to the extent that the claims are denominated in the local currency and the bank has local currency liabilities in that country.
- Claims conditionally guaranteed by OECD-based central governments and claims collateralized by securities issued or guaranteed by OECD-based central governments generally are assigned to the 20 percent risk weight category. The same types of claims on non-OECD countries are assigned to the 100 percent risk category.
- Long-term claims on non-OECD banks are assigned to the 100 percent risk category, rather than to the 20 percent risk category accorded to long-term claims on OECD banks. (Short-term claims on all banks are assigned to the 20 percent risk weight category.)
- General obligation bonds that are obligations of states or other political subdivisions of the OECD-based group of countries are assigned to the 20 percent risk category. Revenue bonds of such political subdivisions are assigned to the 50 percent risk category. General obligation and revenue bonds of political subdivisions of non-OECD countries are assigned to the 100 percent risk category.

Recently, the OECD has taken steps to expand its membership. In light of these steps, the Basle Committee was urged to clarify an ambiguity in the Basle Accord as to whether the OECD members qualifying for the lower risk weights include only those members that were members of the OECD when the Basle Accord was endorsed in 1988, or all members, regardless of their date of entry into the OECD. The Basle Committee also reviewed the overall appropriateness of the criteria the Basle Accord uses to determine whether claims on a foreign government or bank qualify for placement in a lower risk category. As part of this review, the Basle Committee reassessed whether membership in the OECD (or the conclusion of special lending arrangements with the IMF) would, by itself, be sufficient to ensure that only countries with relatively low transfer risk would qualify for lower risk weight treatment.

On July 15, 1994, the Basle Committee clarified that the reference in the Basle Accord to OECD members applies to all current members of the organization. The Basle Committee also stated its intention, subject to national consultation, to amend the definition of the OECD-based group of countries in the Basle Accord in order to exclude from lower risk weight treatment any country within the OECD-based group of countries that had rescheduled its external sovereign debt within the previous five years. The Basle Committee adopted this change in the definition of the OECD-based group of countries on April 15, 1995.

On October 14, 1994, the Board and the OCC published a joint notice of proposed rulemaking (59 FR 52100) to make corresponding changes in the definition of the OECD-based group of countries in their risk-based capital guidelines. The FDIC published a similar proposal on February 15, 1995 (60 FR 8582). Under the Agencies' proposals, the OECD-based group of countries would continue to include countries that are full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow, but would exclude any country within this group that had rescheduled its external sovereign debt within the previous five years. The purpose of the proposed modification was to clarify that membership in the OECD-based group of countries must coincide with relatively low transfer risk in order for a country to qualify for the lower risk-weight treatment.

Under the proposals, reschedulings of external sovereign debt generally would include renegotiations of terms arising from a country's inability or unwillingness to meet its external debt service obligations. The proposals further provided that renegotiations of debt in the normal course of business generally would not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment.

The Agencies invited comment on all aspects of the proposal.

II. Comments Received

The OCC and the Board together received two public comments on their proposal. (The FDIC did not receive any comments.) One commenter was a regional banking organization that generally supported the proposal. The other was a clearinghouse that opposed the proposal.

The banking organization agreed that OECD membership alone is not sufficient to ensure that only countries with relatively low transfer risk qualify for lower risk weight treatment, and it supported the additional criterion as providing a good indication of a higher level of transfer risk. The banking organization suggested that the definition should be further revised to exclude newly-formed countries, whose willingness and ability to meet their debt obligations were unproven, for a period of five years. The Agencies did not adopt this suggestion, because the process of admitting countries to the OECD is lengthy enough that the five-year waiting period recommended by the commenter would have little practical effect.

The clearinghouse viewed the current criteria as adequate and commented that adding another criterion would increase the complexity of and confusion about the risk-based capital guidelines. Although the Agencies agree with the commenter on the need to minimize the complexity of the risk-based capital guidelines, the Agencies do not believe that this rule will increase their complexity significantly, particularly since reschedulings by OECD countries tend to be extremely rare. Until a rescheduling occurs, the change in the definition will not have any effect on the assignment of assets to risk-weight categories, and thus will have little or no effect on banks.

III. Final Rule

After carefully considering the comments received and deliberating further on the issues involved, the Agencies are adopting a final rule that amends the definition of the OECD-based group of countries in their risk-based capital guidelines substantially as proposed.

Under the final rule, the OECD-based group of countries continues to include countries that are full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow, but excludes any country within this group that has rescheduled its external sovereign debt within the previous five years.

For purposes of this final rule, an event of rescheduling of external sovereign debt generally would include renegotiations of terms arising from a country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

This distinction between renegotiations arising from a country's inability or unwillingness to meet its external debt service obligations and renegotiations that reflect a change in market conditions was discussed in the preambles of the Agencies' notices of proposed rulemaking but was not included in the regulatory text. In order to clarify the meaning of the final rule, the Agencies are including language to this effect in the text of the final rule.

[1] The Basle Accord was proposed by the Basle Committee, which comprises representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices; liberal trade policies; and the absence of exchange controls. Full members of the OECD at the time the Basle Accord was endorsed included Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In May 1994, Mexico was accepted as a full member of the OECD. In addition, Saudi Arabia has concluded special lending arrangements associated with the IMF's General Arrangements to Borrow.

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IV. Regulatory Flexibility Act Analysis

The Agencies hereby certify that this final rule will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The impact on institutions regulated by the Agencies, regardless of their size, will be minimal. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies. Accordingly, no regulatory flexibility analysis is required.

V. Paperwork Reduction Act and Regulatory Burden

The Agencies have determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the Agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. This final rule is effective on April 1, 1996.

VI. OCC Statement on Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action, as that term is defined by Executive Order 12866.

VII. OCC Statement on Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), signed into law on March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons set out in the joint preamble, Appendix A to part 3 of title 12, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1831n note, 1835, 3907, and 3909.

2. In section 1 of appendix A to part 3, footnote 1 in paragraph (c)(19) is redesignated as footnote 1a.

3. In section 1 of appendix A to part 3, paragraph (c)(16) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * * *

(c) * * *

(16) The *OECD-based group of countries* comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow,[1] but excludes any country that has rescheduled its external sovereign debt within the previous five years. These countries are hereinafter referred to as *OECD countries*. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * * *

Dated: August 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4102a, 4104a, 4104b, 4106, 4128.

2. Appendix A to part 208 is amended by revising footnote 22 in section III.B.1. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * * *

III. * * *

B. * * *

1. * * *[22] * *

* * * * * *

[22]The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * * *

By the order of the Board of Governors of the Federal Reserve System, November 13, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended by revising footnote 12 in section II.B.2. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * * *

II. * * *

B. * * *

2. * * *[12] * * *

* * * * * *

[12]The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * * *

By order of the Board of Directors.

Dated at Washington, D.C. this 26th day of October, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–30664 Filed 12–19–95; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[1] As of November 1995, the OECD included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia had concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

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Part VII

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 25

Federal Reserve System
12 CFR Part 228

Federal Deposit Insurance Corporation
12 CFR Part 345

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 563e

Community Reinvestment Act Regulations; Joint Final Rule

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 95–07]

RIN 1557–AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 95–203]

RIN 1550–AA83

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS, (collectively, the Federal financial supervisory agencies or agencies) are issuing this final rule to make technical corrections and clarifications to their regulations concerning the Community Reinvestment Act (CRA). Since the publication of the agencies' joint CRA regulations, financial institutions and others have alerted the agencies that two errors exist and that the transition rules are confusing. This final rule is intended to correct the errors and clarify the transition rules.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874–5216; Matthew Roberts, Director, or Margaret Hesse, Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452–3711; or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 942–3090; Robert W. Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3092; or Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3796, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OTS: Timothy R. Burniston, Assistant Director for Compliance Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Compliance Policy, (202) 906–7054; or John Flannery, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7293, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies jointly are amending their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This final rule makes technical corrections and clarifications to the agencies' joint CRA regulations, 12 CFR parts 25, 228, 345, and 563e. Those regulations establish the framework and criteria by which the agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations, and provide that the agencies will take those assessments into account in reviewing certain applications.

Background

The agencies published a joint notice of proposed rulemaking to amend their CRA regulations on December 21, 1993 (58 FR 67466). In response to over 6,700 comments received, the agencies published a second joint notice of proposed rulemaking on October 7, 1994 (59 FR 51232). After considering over 7,200 comments received in response to the second joint proposed rule, the agencies adopted a joint final rule on May 4, 1995 (60 FR 22156) (1995 Rule).

Need for Final Rule

The agencies are amending their recently adopted CRA regulations to correct two technical errors and to clarify the transition rules. Since the publication of the 1995 Rule, a number of financial institutions have expressed confusion about the transition rules.

The agencies find that notice and public procedure concerning this joint final rule are impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. § 553(b)(B). The agencies make this finding because: (1) This joint final rule involves only technical corrections and clarifications to the recently adopted 1995 Rule, which was subject to public notice and comment; (2) some institutions will be subject to the performance tests and standards of the 1995 Rule beginning on January 1, 1996, so it is in the public interest that the joint final rule be effective at that time; and (3) this joint final rule makes no substantive change to the 1995 Rule, rather it makes corrections and eliminates ambiguities associated with the transition requirements.

Furthermore, under 5 U.S.C. § 553(d)(3), the agencies have determined to make this joint final rule effective with less than 30 days prior publication. The agencies find that there is good cause for shortened notice due to the minor nature of the changes, the fact that some institutions will be subject to the performance tests and standards of the 1995 Rule beginning January 1, 1996, and for other reasons previously discussed.

Corrections

The agencies' 1995 Rule contains two errors. First, an internal cross reference is incorrect. The cross reference is found in the discussions about how an institution may amend its strategic plan, found at 12 CFR 25.27(h), 228.27(h), 345.27(h), and 563e.27(h). These identical sections incorrectly state that the amendment process must be done in accordance with the public participation requirements of "paragraph (c) of this section." The correct cross reference is "paragraph (d) of this section." The agencies are amending their respective regulations to reflect the correct cross reference.

Second, an external cross reference is incorrect. In their joint preamble to the final rule, the agencies discussed the definition of "community development" contained in the regulations. In the preamble, the agencies stated that "[t]he section of the definition that discusses activities that promote economic development by financing small business and farms refers to 13 CFR 121.802(a)(2), the size limitations for the Small Business Administration's (SBA's) Small Business Investment Company and Development Company programs" (60 FR 22159). The agencies' final regulations do, indeed, reference 13 CFR 121.802(a)(2). However, because of an amendment to the SBA regulation (59 FR 16953) made during the agencies' CRA rulemaking process, this citation refers to only the SBA's Development Company Programs. The correct reference should be 13 CFR 121.802(a)(2) and (3), which include both the Development Company and Small Business Investment Company Programs, as intended. Therefore, the agencies are amending the cross references in 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3), and 563e.12(g)(3). The citations are changed from "13 CFR 121.802(a)(2)" to "13 CFR 121.802(a) (2) and (3)."

Clarification

The agencies are amending their transition rules, found at 12 CFR 25.51, 228.51, 345.51, and 563e.51. The transition rules are correct for purposes of incorporation into and expiration from the Code of Federal Regulations. However, the banks and thrifts that must comply with them have expressed confusion regarding how the rules apply.

The transition rules state the final date of applicability to all institutions with regard to each particular provision of the CRA regulation. However, the transition rules inadequately explain the transition from the former regulation to the new regulation. The agencies are clarifying that when an institution, either mandatorily or voluntarily, becomes subject to the requirements of the performance tests and standards in the 1995 Rule (12 CFR 25.21 through 25.27, 228.21 through 228.27, 345.21 through 345.27, and 563e.21 through 563e.27, as applicable), the institution must comply with all aspects of the 1995 Rule (12 CFR 25.11 through 25.44, 228.11 through 228.44, 345.11 through 345.44, or 563e.11 through 563e.44) applicable to it.

For example, the transition rules state that the agencies will evaluate small institutions under the small institution performance standards described in 12 CFR 25.26, 228.26, 345.26, and 563e.26 on January 1, 1996. However, so that the agencies may evaluate a small institution under the small institution performance standards, the small institution must also comply with other provisions of the regulation that are pertinent. Those provisions would include delineating an assessment area (12 CFR 25.41, 228.41, 345.41, or 563e.41, as applicable), maintaining a public file (12 CFR 25.43, 228.43, 345.43, or 563e.43, as applicable), and providing the proper public notice (12 CFR 25.44, 228.44, 345.44, or 563e.44, as applicable). The transition rules at 12 CFR 25.51(c) (4) and (5), 228.51(c) (4) and (5) 345.51(c) (4) and (5), and 563e.51(c) (4) and (5), however, state that these requirements do not become applicable until January 1 or July 1, 1997. The 1997 dates refer to the last point in time that these requirements become effective for any institution. However, the requirements become effective for small institutions as soon as the small institutions are subject to evaluation under the small institution performance standards.

In some cases, an institution may choose to comply with the performance standards and tests of the May 1995 rule before it must do so. For instance, a large institution may elect to be evaluated under the lending, investment and service tests (12 CFR 25.22 through 25.24, 228.22 through 228.24, 345.22 through 345.24, or 563e.22 through 563e.24, as applicable) before it is required to do so in July of 1997. In this case, the institution must comply with all other provisions of the 1995 Rule.

Similarly, the transition rules state that, for example, the section of the former CRA regulation (12 CFR 25.6, 228.6, 345.6 or 563e.6, as applicable) that addresses public notice requirements does not expire until January 1, 1997. However, the public notice requirements (12 CFR 25.44, 228.44, 345.44 or 563e.44, as applicable) in the 1995 Rule are different from the former requirements. Institutions would find it confusing, if not impossible, to comply completely with both provisions. Therefore, once an institution either voluntarily or mandatorily becomes subject to the performance tests and standards of the 1995 Rule, the provisions of the former CRA regulation (12 CFR 25.3 through 25.7, 228.3 through 25.7, 345.3 through 345.7, or 563e.3 through 563e.7, as applicable) no longer apply to that institution, even though they may continue to apply to other institutions.

Therefore, to clarify these provisions, the agencies are amending 12 CFR 25.51(a), 228.51(a), 345.51(a), and 563e.51(a) by adding at the end of paragraph (a), a sentence explaining that once an institution is either voluntarily or mandatorily subject to the performance tests and standards of the 1995 Rule, the institution must comply with all of the requirements of the 1995 Rule and is no longer subject to the requirements of the former CRA regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board, FDIC, and OTS hereby certify that this joint final rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this joint final rule will not have significant secondary or incidental effects on a substantial number of small entities, or create any additional burden on small entities. The joint final rule merely makes technical corrections to two cross-references and clarifies requirements of the transition rules already adopted by the agencies. These changes will not increase and may, in fact, reduce the burden on institutions because they will make the rules clearer. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995

There are no collection of information requirements in this joint final rule.

Executive Order 12866

OCC and OTS: The OCC and the OTS have determined that this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act), requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this joint final rule amends the agencies' CRA regulations to make two technical corrections and one clarification. Therefore, the OCC and the OTS have determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Federal Reserve System, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 through 2907.

§ 25.12 [Amended]

2. In § 25.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 25.27 [Amended]

3. In the last sentence of § 25.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 25.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 25.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 25.21 through 25.27, the bank must comply with all the pertinent requirements of §§ 25.11 through 25.44, and no longer must comply with the requirements of §§ 25.3 through 25.7.

* * * * *

Dated: December 8, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons discussed in the joint preamble, 12 CFR part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

§ 228.12 [Amended]

2. In § 228.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 228.27 [Amended]

3. In the last sentence of § 228.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 228.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 228.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 228.21 through 228.27, the bank must comply with all the pertinent requirements of §§ 228.11 through 228.44, and no longer must comply with the requirements of §§ 228.3 through 228.7.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 8, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons discussed in the joint preamble, 12 CFR part 345 is amended as follows:

PART 345—[AMENDED]

1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

§ 345.12 [Amended]

2. In § 345.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 345.27 [Amended]

3. In the last sentence of § 345.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 345.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 345.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 345.21 through 345.27, the bank must comply with all the pertinent requirements of §§ 345.11 through 345.44, and no longer must comply with the requirements of §§ 345.3 through 345.7.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated: December 8, 1995.

Jerry L. Langley,

Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

PART 563e—[AMENDED]

1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

§ 563e.12 [Amended]

2. In § 563e.12(g)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 563e.27 [Amended]

3. In the last sentence of § 563e.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 563e.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 563e.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a savings association, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 563e.21 through 563e.27, the savings association must comply with all the pertinent requirements of §§ 563e.11 through 563e.44, and no longer must comply with the requirements of §§ 563e.3 through 563e.7.

* * * * *

Dated: December 13, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–30823 Filed 12–19–95; 8:45 am]

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Part VIII

Pension Benefit Guaranty Corporation

29 CFR Part 2628
Annual Financial and Actuarial Information Reporting; Final Rule

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2628

RIN 1212–AA78

Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement section 4010 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. Section 4010 requires controlled groups maintaining plans with large amounts of underfunding to submit annually to the PBGC financial and actuarial information as prescribed by the PBGC.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Frank H. McCulloch, Senior Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4116 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On July 6, 1995, the PBGC published in the **Federal Register** (60 FR 35308) a proposed regulation implementing section 4010 of ERISA. The PBGC received over 20 comments. Section 4010 requires a small number of large controlled groups—those with covered pension plans that (1) have more than $50 million in unfunded vested benefits in the aggregate, (2) have missed contributions in excess of $1 million, or (3) have received funding waivers in excess of $1 million—to file annual financial and actuarial information.

Who Must File—$50 Million Test

In response to comments, the final regulation gives controlled groups the option of using 100% of the 30-year Treasury interest rate and the fair market value of assets (instead of 80% of the 30-year rate and the actuarial value of assets) solely for purposes of calculating the $50 million threshold test. These are the standards that will apply for calculating the variable rate premium under ERISA section 4006 after the Secretary of the Treasury adopts revised mortality tables for post-1999 plan years. Consistent with the post-1999 rules, the PBGC is conditioning use of the option on the use of prescribed mortality tables. For now, controlled groups may continue to use GAM–83 mortality tables. If the PBGC amends the mortality tables under its valuation regulation before the Secretary of the Treasury's revised tables go into effect, the updated mortality tables must be used.

The PBGC did not adopt the suggestion that the PBGC waive reporting if the controlled group's plans meet some prescribed funding percentage or are fully funded on an ongoing basis. The absolute size of the underfunding represents a large exposure to the PBGC and, in many cases, to plan participants.

Who Must File—Missed Contributions and Waivers in Excess of $1 Million

In response to comments, the final regulation provides that missed contributions will not lead to a reporting obligation if they are paid within a ten-day grace period. The final regulation also clarifies that, during the amortization period of a minimum funding waiver, the waiver will be considered to be outstanding (thereby requiring reporting) unless there is a credit balance in the funding standard account that is sufficient to pay the outstanding balance of the waiver and not available to satisfy future minimum funding requirements.

Exempt Entities

In response to comments, the final regulation exempts the controlled group from submitting information for de minimis entities ("exempt entities") and exempts those entities from all reporting requirements. An entity is de minimis if it does not sponsor a nonexempt plan and its revenue, net assets and annual operating income are five percent or less of the controlled group's revenue, net assets and annual operating income. Alternatively, the net asset test or the annual operating income test is satisfied if an entity's net assets or annual operating income, respectively, is $5 million or less.

Commenters suggested that the PBGC exempt certain foreign members and new members of controlled groups from the regulation's requirements. In most cases, foreign corporations should not present problems for controlled groups. A foreign corporation with U.S. subsidiaries or a domestic corporation with foreign subsidiaries will normally include each foreign entity in its consolidated financial statements. The regulation does not require individual financial information concerning a foreign company covered by consolidated financial statements unless it sponsors a U.S. plan. The PBGC will consider waivers or extensions in the limited cases where foreign companies are not included in consolidated financial statements and are not already exempt under the new de minimis exemption.

Other commenters requested a grace period with respect to entities that become members of a controlled group late in the information year. The de minimis rule will deal with many of these situations. Filers may also request waivers or extensions where information about a filer or a plan is not available by the due date because the filer entered the controlled group late in an information year.

Actuarial Information

The proposed regulation required filers to provide the value of plan benefit liabilities and assets, certain participant data matrices, and an actuarial valuation report containing or supplemented with specified information. The final regulation eliminates the requirement that controlled groups routinely submit the participant data matrices. (The PBGC may request this information.) The regulation permits the enrolled actuary to qualify the actuarial certification in the same manner as is permitted for the Form 5500, Schedule B.

Commenters objected to having to determine the value of benefit liabilities using the PBGC's termination assumptions. The PBGC needs this information to determine the risk of a transaction to participants and to premium payers and to determine whether to terminate a plan. Other liability measures do not reflect plan underfunding on a termination basis; they can seriously understate the PBGC's exposure for plans subject to this regulation. The comments confirmed that the cost of calculating benefit liabilities consists mainly of a one-time cost for adding the PBGC's termination assumptions to existing computer programs. The final regulation simplifies the calculation somewhat by providing for use only of the PBGC's annuity methodology (rather than both its annuity and lump sum methodology).

Exempt Plans

The proposed regulation exempted reporting for plans with fewer than 500 participants and plans with no unfunded benefit liabilities (using the PBGC's termination assumptions), other than plans with funding waivers or missed contributions. The final regulation keeps but simplifies this exemption. Solely for exemption purposes, the controlled group may determine the value of a plan's benefit liabilities using the plan's retirement assumptions (instead of the PBGC's expected retirement age assumptions).

Additional Information

Some commenters questioned the provision under which the PBGC may require filers to submit additional information within ten days. Commenters suggested that the response time be lengthened, that the type of information that may be requested be limited, or that the provision be deleted.

It is the PBGC's ability to get the additional information quickly that allows the PBGC to limit the information that controlled groups must submit on a routine basis. The PBGC will grant extensions of time to respond where a filer demonstrates that it is making a reasonable and good faith effort to respond to the information request.

In response to comments, the final regulation clarifies that this additional information is information that could have been required annually (i.e., information that is necessary to determine a plan's assets and liabilities, or the financial status of a filer, for any period through the end of the information year).

Confidentiality

Some commenters expressed concern about the confidentiality of filer tax information. The regulation does not require the submission of a filer's tax return as part of an annual report; it merely permits the filer to substitute its tax return for the audited or unaudited financial statements required by the statute. Moreover, the statute and regulation provide for confidentiality of information similar to that afforded to Hart-Scott-Rodino antitrust submissions. Filers may request that information they submit not be disclosed to other members of their controlled group.

Information Year

One commenter suggested that the regulation eliminate the concept of an information year and that filers instead be required to use the same reporting year as they use for Form 5500. The information year is a simplifying measuring period that does not require any new reports. For most controlled groups the information year will be the same as the fiscal year on which they prepare their consolidated returns. (The Form 5500 reporting year is based on each plan's plan year, which may not match the plan years of other plans or the fiscal years of controlled group members.)

In response to comments, the final regulation excludes the fiscal years of exempt entities in determining the information year for a controlled group. The final regulation clarifies that the controlled group need not restate consolidated financial statements solely because they include information on entities that are not members of the controlled group or that are exempt entities.

Due Date

Commenters questioned the due date for information—105 days after the close of a filer's information year. This due date is coordinated with the Securities and Exchange Commission's annual reporting date for public companies. In most instances, controlled groups will have prepared audited financial statements prior to that date for public filing and can simply refer to those filings in their submissions to the PBGC. The actuarial information required by that date is similar to pension information required by Financial Accounting Standard 87 that must be included in those financial statements. (The regulation generally allows other actuarial information to be delayed until 15 days after the filing deadline for the Form 5500.)

If the due date presents problems for non-public companies or in other unusual circumstances, filers should request extensions of the deadlines. Filers experiencing problems in preparing or submitting required information should apply for extensions as early as possible, rather than shortly before the due date.

E.O. 12866 and Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The provisions of this regulation implement policy decisions made by Congress in requiring filers to provide audited financial statements and other required information annually to the PBGC. The provisions reflect the PBGC's interpretation of the statutory standards and prescribe the form, time, and manner in which the required information should be submitted.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies (for the reasons stated in the proposed rule at 60 FR 35308, 35310, July 6, 1995) that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Paperwork Reduction Act

The collection of information requirements in this regulation have been approved by the Office of Management and Budget under control number 1212–0049. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Responses to this collection of information are mandatory. (See ERISA sections 4002(b)(3) and 4010.) The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. Confidentiality of information submitted is provided for in § 2628.12 of the regulation. (See ERISA section 4010(c).)

The PBGC estimates that the average annual burden for this collection of information will be 13.2 hours and $24,315 for each of approximately 100 controlled groups. Comments concerning the accuracy of this burden estimate and any suggestions for reducing the burden of this collection of information should be submitted to the PBGC's Office of General Counsel, 1200 K Street, NW, Suite 340, Washington, DC 20005–4026.

List of Subjects in 29 CFR Part 2628

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending subchapter C, chapter XXVI of 29 CFR by adding a new part 2628 to read as follows:

PART 2628—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.

2628.1 Purpose and scope.
2628.2 Definitions.
2628.3 Filing requirement.
2628.4 Filers.
2628.5 Information year.
2628.6 Information to be filed.
2628.7 Identifying information.
2628.8 Plan actuarial information.
2628.9 Financial information.
2628.10 Due date and filing with the PBGC.
2628.11 Waivers and extensions.
2628.12 Confidentiality of information submitted.
2628.13 Penalties.
2628.14 OMB control number.

Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310

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§ 2628.1 Purpose and scope.

(a) *Purpose.* This part prescribes the requirements for annual filings with the PBGC under section 4010 of the Act.

(b) *Scope.* This part applies to filers for any information year ending on or after December 31, 1995.

§ 2628.2 Definitions.

For purposes of this part—

(a) *Act* means the Employee Retirement Income Security Act of 1974, as amended.

(b) *Code* means the Internal Revenue Code of 1986, as amended.

(c) *Contributing sponsor* means a person who is a contributing sponsor as defined in section 4001(a)(13) of the Act.

(d) *Controlled group* means, with respect to any person, a group consisting of that person and all other persons under common control with that person, determined under part 2612 of this chapter.

(e) *Exempt entity* means a person who does not have to file information and about whom information does not have to be filed, as described in § 2628.4(d) of this part.

(f) *Exempt plan* means a plan about which actuarial information does not have to be filed, as described in § 2628.8(c) of this part.

(g) *Fair market value of the plan's assets* means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

(h) *Filer* means a person who is required to file reports, as described in § 2628.4 of this part.

(i) *Fiscal year* means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

(j) *Information year* means the year determined under § 2628.5 of this part.

(k) *Person* means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization representing any group of participants for purposes of collective bargaining.

(l) *Plan* means a single-employer plan, as defined in section 4001(a)(15) of the Act, to which Title IV of the Act applies.

(m) *Plan year* means the calendar, policy, or fiscal year on which the records of a plan are kept.

§ 2628.3 Filing requirement.

(a) *In general.* Except as provided in § 2628.8(c) (relating to exempt plans) and except where waivers have been granted under § 2628.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 2628.10, all information specified in § 2628.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 2628.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

§ 2628.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) the aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed $50 million (disregarding those plans with no unfunded vested benefits);

(2) any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of the Act or section 412(n)(1)(A) and (B) of the Code have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of the Act or section 412(d) of the Code totaling in excess of $1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.*

(1) *General.* Except as provided in paragraph (b)(2) of this section, for purposes of the $50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of the Act and § 2610.23 of this chapter (without reference to the exemptions and special rules under § 2610.24).

(2) *Optional assumptions.* Prior to the first information year in which the mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of the Act apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 2610.23(c) of this chapter) all of the following assumptions:

(i) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) the fair market value of the plan's assets; and

(iii) the mortality tables described in section 302(d)(7)(C)(ii)(I) of the Act or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment to the mortality tables used to value benefits to be paid as annuities in trusteed plans under part 2619 of this chapter, those amended mortality tables.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) a credit balance exists in the funding standard account (described in section 302(b) of the Act and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) a waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) no portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of the Act or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) is not a contributing sponsor of a plan (other than an exempt plan);

(2) has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) $5 million; and

(4) has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) $5 million.

§ 2628.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 2628.4), what information a filer must submit (§§ 2628.6–2628.9), whether a plan is an exempt plan (§ 2628.8(c)), and the due date for submitting the information (§ 2628.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years.*

(1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 1996, and filer B's financial information with respect to its fiscal year ending September 30, 1996, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

§ 2628.6 Information to be filed.

(a) *General.* A filer must submit the information specified in § 2628.7 (identifying information), § 2628.8 (plan actuarial information) and § 2628.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year. The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

§ 2628.7 Identifying information.

(a) *Filers.* Each filer is required to provide the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) the name, address, and telephone number of each member of the controlled group and the legal relationships of each (for example, parent, subsidiary); and

(2) the nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to each member (or if there is no EIN for a member, an explanation).

(b) *Plans.* Each filer is required to provide the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) the name of each plan;

(2) the EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each plan (or if there is no EIN or PN for a plan, an explanation); and

(3) if the EIN or PN of a plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation.

§ 2628.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide the following actuarial information—

(1) the fair market value of the plan's assets;

(2) the value of the plan's benefit liabilities (determined in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(3) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of the Act or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of the Act or section 412(b)(3)(A) of the Code),

(ii) the itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) the minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) the actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of the Act or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change), and

(v) a summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors; and

(4) a written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR § 301.6059–1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(3) of this section is not available by the date specified in § 2628.10(a), a filer may satisfy the requirement to provide such information by—

(1) including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 2628.10(b) of this part, and

(2) filing such information (along with a certification by an enrolled actuary under paragraph (a)(4) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has

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benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of the Act or section 412 of the Code; and

(2) has no minimum funding waivers outstanding (as described in § 2628.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Determination of benefit liabilities.* The value of a plan's benefit liabilities (within the meaning of section 4001(a)(16) of the Act) at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data.*

(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trusteed plans terminating at the end of the plan year (as prescribed in part 2619, subpart C, of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of the Act or section 412(l) of the Code.

§ 2628.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide the following financial information for each controlled group member (other than an exempt entity)—

(1) audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) if audited financial statements are not available by the date specified in § 2628.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) if neither audited nor unaudited financial statements are available by the date specified in § 2628.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) the audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 2628.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) for each controlled group member included in the consolidated financial statements that is a contributing sponsor of a plan (other than an exempt plan), the contributing sponsor's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (*e.g.*, joint ventures) or are exempt entities.

§ 2628.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 2628.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 2628.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) the postmark was made by the United States Postal Service; and

(ii) the document was mailed postage prepaid, properly addressed to the PBGC; or

(2) if the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:0(p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computin any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 2628.11 Waivers and Extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 2628.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 2628.10(c) no later than 15 days before the applicable date specified in § 2628.10 of this part, and must state the facts and circumstances on which the request is based.

§ 2628.12 Confidentiality of information submitted.

In accordance with § 2603.15(b) of this chapter and section 4010(c) of the Act, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 2628.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of the Act against the filer and each member of the filer's controlled group (other than an exempt entity) of up to $1,000 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

§ 2628.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB Control Number 1212–0049.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Issued in Washington, DC, this 18th day of December 1995.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 95–31053 Filed 12–19–95; 8:45 am]

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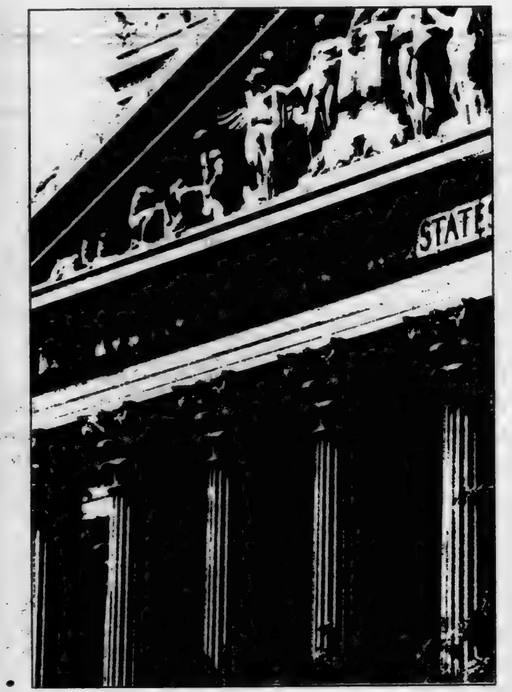
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Legal Process for the Enforcement of a Participant's Legal Obligations To Provide Child Support or Make Alimony Payments

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adopting as a final rule without change an interim regulation which explains the Board's procedures for responding to legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments.

EFFECTIVE DATE: These final rules are effective December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest (202) 942–1662, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Suite 400, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 101 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant. 5 U.S.C. 8437(g).

FERSA provides that payments from the TSP that would otherwise be made to any participant "shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659)." 5 U.S.C. 8437(e)(3).

These regulations address only legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments. The Board also must honor a court decree of divorce, annulment, or legal separation or a court order or court-approved property settlement agreement incident to such decree that expressly awards a portion of a participant's TSP account to a spouse, former spouse, child or other dependent of the participant, or to the attorney for the spouse, former spouse, child or other dependent of the participant for attorney fees. 5 U.S.C. 8467 and 8435(c). The Board refers to these documents as "retirement benefits court orders," and regulations governing them can be found at 60 FR 13604 (1995) (to be codified at 5 CFR part 1653, subpart A).

On August 31, 1995, the Board published an interim rule with request for comment in the **Federal Register** (60 FR 45624) relating to the Board's procedures for responding to legal process for the enforcement of participant's legal obligations to provide child support or make alimony payments. The Board received no comments on the interim rule. Therefore, we are adopting the provisions of the interim rule as a final rule without change.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Accordingly, the interim rule amending 5 CFR part 1653, which was published at 60 FR 45624 on August 31, 1995, is adopted as a final rule without change.

[FR Doc. 95–31016 Filed 12–20–95; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Agricultural Research Service (ARS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to inform the public of the change in location and title of the FOIA Coordinator for ARS and to make technical corrections in the regulations.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA requires agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 510 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of the Department of Agriculture (USDA), the National Agricultural Library (NAL) has been integrated as a subordinate unit within the Agricultural Research Service (ARS), USDA, and the Human Nutrition Information Service (HNIS) has been abolished and the research functions formerly administered by HNIS have been delegated to the Administrator, ARS. Requests for information relating to NAL or HNIS may be directed to the ARS FOIA Coordinator pursuant to the Part.

Former Sections 510.2, Public inspection and copying, and 510.3, Index, have been merged into one new Section 510.2, Public inspection, copying, and indexing. A new Section 510.4, Denials, has been added to clarify the procedures when requested documents are denied by the FOIA Coordinator. This document also amends Part 510 to inform the public of the change in the location and title of the FOIA Coordinator for ARS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to

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internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the **Federal Register** on May 18, 1988 (53 FR 17685).

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.

510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Denials.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§ 510.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ARS at the following office: Information Staff, ARS, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office hours are 8:00 a.m. to 4:30 p.m.

§ 510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207; Facsimile (301) 344–2825; TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 510.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31098 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–03–M

National Agricultural Library

7 CFR Part 4100

Availability of Information

AGENCY: National Agricultural Library, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the National Agricultural Library (NAL) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency. Part 4100 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, NAL has been integrated into the Agricultural Research Service (ARS), USDA. This document removes 7 CFR Part 4100. Requests for information relating to NAL may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 510.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the **Federal Register** on May 19, 1988 (53 FR 17914).

List of Subjects in 7 CFR Part 4100

Freedom of Information Act.

Accordingly, under the authority of 5 U.S.C. 301, Part 4100 is removed and chapter XLI is vacated.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31097 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–12–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 242, 264, 274a, and 299

[INS No. 1414–91]

RIN 1115–AC39

Applicant Processing for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts with amendments the interim rule which was published by the Immigration and Naturalization Service on February 25, 1992, implementing the provisions of the Family Unity Program created by the Immigration Act of 1990 which provides a means by which certain eligible aliens may obtain permanent resident status. This rule also provides voluntary departure and work authorization for certain eligible immigrants.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Hartsoch, Office of Service Center Operations, Immigration and

Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Immigration Act of 1990, Pub. L. 101–649 (IMMACT 90), was enacted. Section 301 of IMMACT 90 provides for relief from deportation, and the granting of employment authorization, to an eligible immigrant who is the spouse or unmarried child of a legalized alien granted temporary or permanent resident status pursuant to section 210 or 245A of the Immigration and Nationality Act (the Act), or permanent resident status under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment). This new program supersedes the administrative Family Fairness policy which began in November 1987. That policy allowed district directors to exercise the Attorney General's authority to defer deportation proceedings of certain family members of legalized aliens where compelling or humanitarian factors existed. On August 31, 1991, the Immigration and Naturalization Service (Service) published in the **Federal Register** at 56 FR 42948 a proposed rule to implement the provisions of section 301 of IMMACT 90, as it relates to the Family Unity Program. Subsequently, on February 25, 1992, the Service published in the **Federal Register** an interim rule at 57 FR 6457–6472 with request for comments. The interim rule as published on February 25, 1992 is adopted as final with amendments to 8 CFR parts 242 and 274a only. This final rule reflects the amendment to section 206 made by the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, § 206, 108 Stat. 4305, 4311–12 (1994). This rule also provides status under § 242.5 for children born to mothers granted status under the Family Unity Program who are authorized to depart and reenter the United States.

Comments

The discussion that follows summarizes the public comments submitted in response to the interim rule and explains the revisions adopted in the final rule.

Residency Since May 5, 1988

The interim rule provided that a qualifying family member would be eligible for Family Unity Program benefits if he or she had been in the United States on May 5, 1988, *and* had resided in the United States since that date. Several commenters asserted that no basis existed for the continuous residency requirement. They did not believe that this requirement had any statutory basis and that it was irrelevant whether an alien actually continued to remain in the United States after May 5, 1988.

Section 301(f) of IMMACT 90 states as follows:

> Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

The statute now requires an applicant to have entered the United States before May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), and also prohibits the admission of an alien for the purposes of obtaining Family Unity Program benefits. The Service interprets these two provisions as requiring an applicant for Family Unity Program benefits to have continuously resided in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). Further, the purpose of the Family Unity Program is to prevent the separation of families, and to provide a means by which qualifying family members already in the United States in illegal status can eventually apply for permanent resident status. The underlying administrative Family Fairness policy supports this premise. The Service created the Family Fairness policy as a means of precluding the separation of family members by deferring their deportation. The purpose of the policy was to allow family members to reside together in the United States until they could acquire legal status. Whether relating to the Family Fairness policy or the Family Unity Program, once a family member no longer resides with the family, the reason for which the status was granted no longer exists.

Therefore, the Service will retain the continuous residency requirement. In order to determine if the applicant has maintained a continuous residence in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), the Service will consider the factors set forth in *Matter of Huang*, 19 I&N 749, 753 (BIA 1988). In *Huang*, the Board of Immigration Appeals enumerated several factors which should be considered in determining whether an alien is returning from a temporary visit abroad, thereby retaining his continuous residency in the United States. These factors include the duration of the alien's absence from the United States; the location of the alien's family ties, the alien's property holdings, and job; and the intention of the alien with respect to both the location of his actual home and the anticipated length of his excursion. *Matter of Quijencio*, 15 I&N 95, 97 (BIA 1974); *Matter of Castro*, 14 I&N Dec. 492 (BIA 1973); *Matter of Montero*, 14 I&N 399, 400 (BIA 1973).

The Service will not interpret "continuous residence" as requiring "continuous physical presence." A qualifying family member who meets the requirements of the Family Unity Program will be granted a 2-year period of voluntary departure. Voluntary departure is a form of relief from deportation and is available only to persons already in the United States.

Legalized Aliens/Applications After May 5, 1988

The interim rule provides that an alien who filed a legalization application on or before May 5, 1988, will be treated as having been a legalized alien as of May 5, 1988, for purposes of the Family Unity Program.

Section 301(a) of IMMACT 90 states as follows:

> The Attorney General shall provide that in the case of an alien who is [a qualified immigrant and the spouse or unmarried child of a legalized alien] as of *May 5, 1988* * * *. [Emphasis added]

Several commenters believe that the statute was never intended to exclude family members of legalized aliens who filed after May 5, 1988, from the Family Unity Program. They note that the filing deadline for the Special Agricultural Worker Program did not occur until November 30, 1988. They believe that an alien who filed a *timely* application after May 5, 1988, but before November 30, 1988, should also be treated as a legalized alien for purposes of the Family Unity Program.

Congress has acted to resolve this issue. Section 206(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, 108 Stat. at 4311, amends section 301 of IMMACT 90 to distinguish the legalization program under section 245A of the Act and the Cuban-Haitian adjustment provision in section 202 of

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IRCA from the SAW program under section 210 of the Act. The Family Unity Program eligibility date for relatives of aliens legalized under the SAW program is now December 1, 1988, to correspond to the filing deadline for that program. This amendment is reflected in this final rule.

Children Born After May 5, 1988

The Service recognizes that the situation may arise where a child may be born abroad to an alien granted voluntary departure status and advance authorization to travel under the Family Unity Program. Although there is no provision in the statute to provide status to the child, it is also true that the intent of the statute was to enable specific family members to reside together in the United States.

Therefore, although the child cannot qualify for benefits under the Family Unity Program, the Service will provide for the granting of voluntary departure under 8 CFR 242.5, to a child of a legalized alien residing in the United States, who was born during an authorized absence of the mother who is currently either a legalized alien or a beneficiary of the Family Unity Program. This provision will also include children born to aliens residing in the United States, who were denied status in the Family Unity Program and granted voluntary departure status under 8 CFR 242.5, where the other parent is a legalized alien residing in the United States.

Waivers

Several commenters sought clarification regarding the availability of existing waivers of deportability for applicants for the Family Unity Program. The interim regulation reflects the statute in making aliens who are deportable under certain grounds ineligible for the Family Unity Program benefits. However, an alien who has been granted any available waiver is not deportable and is not ineligible for the Family Unity Program. The final rule is modified to clarify that existing waivers are applicable to applicants for the Family Unity Program.

Response to Notice of Intent To Deny

One commenter suggested that the Service should allow an applicant for Family Unity Program benefits to submit a good faith request for an extension of time to submit a response to a notice of intent to deny.

An applicant may request more time to respond to a notice to deny. However, the Service's decision whether or not to grant the request is discretionary. To ensure consistency with application procedures in other Service programs, the provisions in this rule are consistent with the general requirements and procedures for applications and petitions in 8 CFR part 103.

Denied Cases

The Service initially proposed an administrative appeal procedure. However, upon further review, this procedure was eliminated in the interim rule. One commenter believed that the Service should not have eliminated the administrative appeal process.

The Service set forth its reasons for eliminating the proposed administrative appeal process in the Supplementary Information to the interim rule published at 57 FR 6459–6460. The Service adheres to that reasoning and will not adopt an administrative appeal procedure.

Issuance of Orders To Show Cause (OSC)

A commenter was concerned that the Service would issue an OSC (Form I–221) while a Family Unity Program application is pending. The Service will not issue an OSC during the pending adjudication of an Application for Voluntary Departure Under the Family Unity Program (Form I–817), unless the OSC is based on a paragraph in section 241(a) of the Act which would render the applicant ineligible for the Family Unity Program.

Several commenters believed that having applicants placed in deportation proceedings as a result of a failure to meet basic eligibility requirements, such as residence by the required date, is a severely disproportionate consequence and a waste of Service resources, as the denied applicants are likely to be eligible for a second preference visa petition and will eventually be allowed to immigrate to the United States. The commenters recommended that the Service continue the policy under the administrative Family Fairness policy of not issuing OSCs in denied cases, except in egregious cases such as a serious criminal conviction.

However, as was discussed in the Supplementary Information to the interim rule, the Service must fulfill its enforcement responsibility under the Act. Therefore, this provision will remain as it is in the interim rule.

Several commenters proposed that the issuance of an OSC be delayed for 90 days after a second denial. They pointed out that the only way an alien may appeal a denial of Family Unity Program benefits would be to file a complaint against the Service in district court alleging abuse of discretion. Further, the commenters allege that the Service is making it difficult for the alien to bring these charges when it will only delay issuance of the OSC for the first denial. The commenters conclude that, in order to balance the removal of the proposed administrative appeals process, the Service should allow applicants more time after a second denial to seek judicial review.

The Service believes that granting a 90-day grace period after every denial before issuing an OSC might simply encourage a person to file repeated applications with the sole intent to protract the adjudication process and delay the issuance of an OSC. The Service believes that ample safeguards exist in the current procedure to enable an applicant to perfect an application and/or appeal a denial of benefits. Denied applicants will have at least 90 days from the first denial to refile a second application before the Service will issue an OSC. If the application is denied again, the applicant may still seek judicial review before the district court. Therefore, the final rule will not be amended to allow for a delayed issuance of an OSC after a second denial.

Release From Detention/Administrative Closure/Automatic Stay of Deportation

Several commenters suggested that the regulations provide that a demonstration of *prima facie* eligibility for Family Unity Program benefits should result in:

(1) The alien's release from detention on his or her own recognizance;

(2) Administrative closure of the deportation proceedings, provided a final administrative order of deportation has not been issued; and

(3) An automatic stay of deportation for a person with a final deportation order.

These commenters asserted that this would promote an efficient use of the budgets of the Service and the Executive Office for Immigration Review (EOIR) to be faithful to Congress' intent and would promote uniformity in national enforcement practice.

The Service may currently consider the requests of release from detention and stays of deportation on a case-by-case basis for Family Unity Program applicants under sections 242 and 243 of the Act. The Service is without authority to consider a request for administrative closure of a deportation proceeding.

Concurrent Jurisdiction of EOIR

Several commenters believe it would be helpful to have a provision stating that EOIR has concurrent jurisdiction with the Service in cases where an applicant has been denied Family Unity Program benefits and is in deportation proceedings. The commenters suggest that the reference to judicial review in the interim rule includes the possibility of seeking review before an immigration judge.

The statute does not provide for administrative review of the Service's denial of Family Unity Program benefits. If an alien's application for Family Unity Program benefits is denied, he or she may still request relief from deportation in the form of voluntary departure in a deportation hearing before an immigration judge. Such a request would be made pursuant to section 244 of the Act and would be a separate determination from that made by the Service pursuant to section 301 of the Immigration Act of 1990. An immigration judge's denial of voluntary departure in deportation proceedings could then be appealed to the Board of Immigration Appeals and the Federal circuit court of appeals.

Employment Authorization

Several commenters proposed that the Service apply the same practice to the Family Unity Program as was applied to the Legalization Program and the administrative Family Fairness policy regarding employment authorization, for example, granting interim employment authorization for the time period between the granting of the application and the issuance of the employment authorization document (EAD) at a local Service office. Several commenters suggested that such interim work authorization should be stamped directly onto the receipt notice, with the period of validity to coincide with the EAD appointment date plus 90 days.

The Service's position regarding the issue of providing interim work authorization to Family Unity Program applicants remains unchanged. The Service has determined that a uniform procedure for issuance of EADs is necessary. Further, interim work authorization is less secure and presents enforcement problems. For the above reasons and those set forth in the interim rule, the Service will not authorize interim employment for the period between the granting of an application for Family Unity Program benefits and the issuance of an EAD. Instead, the applicant may apply on Form I–765 for issuance of an EAD, concurrently with Form I–817. To file Form I–765 at a Service Center, the applicant must include two (2) ADIT-style photographs.

Identify Document for Employment Authorization

The interim rule, at 8 CFR 242.6(e)(5), contained the language, "issued by legitimate agency of the United States or a foreign government," when referring to an identity document the alien must present at the time of filing for an application for an EAD. Some commenters expressed concern that the language could be construed too narrowly to preclude State or local government-issued identification documents (whether domestic or foreign), and recommended that the final language of the rule clarify that identification documents will be accepted if they have been issued by smaller scale government sources, provided they are legitimate.

The intent of this requirement is to ensure that a person appearing at the local district office to obtain an EAD establish that he or she is the person granted Family Unity Program benefits before being given the EAD. The final rule clarifies this point.

Reference on Forms I–688B and I–551

One commenter requested that the Employment Authorization Card, Form I–688B, and the Alien Registration Receipt Card, Form I–551, include a reference to section 301 of IMMACT 90 to assist in identifying participants in this program.

The Form I–688B does have a reference to the Family Unity Program. Section 274a.12(a)(13) is used exclusively for the Family Unity Program. The Form I–551 reflects the section of law under which the alien immigrated but does not directly indicate the alien's previous participation in the Family Unity Program.

Continuing Relationship Requirement

One commenter requested a clarification regarding the continuing relationship requirement, specifically the definitions of "child" and "spouse."

The definition of "child" is the same as is defined in section 101(b)(1) of the Act, with the exception that the alien will not lose eligibility for the Family Unity Program by virtue of having attained the age of 21 after May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The definition of "spouse" includes the term as described in section 101(a)(35) of the Act. The term "spouse" is also described in decisions relating to the petitioning process for sections 201(b) and 203(a)(2) of the Act. There is no special definition of spouse associated with this rule.

In the interim rule, at § 242.6(c)(1)(ii), an eligible immigrant is required to also be eligible for family-sponsored second preference immigrant status under section 203(a)(2) of the Act *based on the same relationship*. One commenter believed that the "based on the same relationship" phrase should not be included in the promulgation of final regulations and that marital status on May 5, 1988, and not any time thereafter, be the relevant determination of eligibility. The commenter concluded that the disqualification is inconsistent with the purposes of the Family Unity Program.

Pursuant to section 301 paragraphs (a) and (b)(1) of the Immigration Act of 1990, the required relationship to a legalized alien must have existed on May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The issue is whether that relationship must continue in order for eligibility to continue, or whether the alien granted benefits under the Family Unity Program should be allowed to retain those benefits even if the required relationship changes.

The purpose of the Family Unity Program is to provide a transition for specific family members of legalized aliens to family-sponsored second preference immigrant status. If benefits under the Family Unity Program were retained even after a required relationship ended by marriage, divorce, or death, and the person became ineligible for family-sponsored second preference classification, the alien could potentially remain in the Family Unity Program without a means to become a permanent resident. This would go far beyond Congress' intent for the program and would be inconsistent with section 205 of the Act.

In essence, this regulation applies the same rules to the Family Unity Program which are applicable to persons with approved family-sponsored immigrant petitions in similar circumstances. If a marriage to a petitioner ends, or the unmarried son or daughter of a lawful permanent resident petitioner marries, approval of an immigrant petition based upon that relationship is automatically revoked, and that petition may no longer be used as a basis for immigration.

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Therefore, if the legalized alien's child marries, or if the legalized alien's marriage to the spouse ends through divorce or death, neither the child nor the spouse can retain benefits under the Family Unity Program because of the termination of the relationship by which he or she qualified.

Petition/Extension Application

In order to obtain an extension of voluntary departure, section 242.6(e)(7) of the interim rule requires that a petition for family-sponsored immigrant status be filed on behalf of the applicant during the initial period of voluntary departure. Several commenters asserted that this requirement is unnecessary.

The Service recognizes that the statute does not specifically require that an immigrant petition be filed in order to obtain an extension of voluntary departure; however, since the intent of the program is to provide a bridge to permanent residence, it is reasonable to require the family member to at least file the second-preference petition. Further, this regulation will assist the Service in moving toward closure of the need for the Family Unity Program, and provide lawful permanent resident status for the participants of the Family Unity Program. The requirement continued from the interim rule is being modified so as to relate only to those applicants whose petitioning family member is a lawful permanent resident and thereby eligible to file the petition.

Extension/Demonstration of Continued Eligibility

Several other commenters suggested that the rule be modified to require a person seeking Family Unity Program benefits to demonstrate continued eligibility only from the date of execution of the prior Family Unity Program application. The commenters conclude that this would streamline the extension process and save time and resources for both the Service and the applicants. Several commenters also suggested that such simplification should result in a reduced fee.

The final rule will be amended to reflect that the applicant for an extension will not be required to submit evidence already submitted. However, the applicant will be required to submit evidence of continuing eligibility since the first application for the Family Unity Program was submitted. The applicant will also be required to notify the Service of any changes relating to the first application.

Two commenters suggested that an applicant for voluntary departure under the Family Unity Program only be required to submit a simple half-page extension form or a Form I–817 by itself, along with a reduced fee. Since activities such as mail distribution, fee receipting, data entry, records verification, adjudication, and notification are associated with the processing of any form, the fee will remain the same.

The Service is committed to charging a fee that accurately reflects costs. The Service will continue to use the form created for this program, Form I–817, Application for Voluntary Departure Under the Family Unity Program. The fee is consistent with 31 U.S.C. 9701 and the guidelines of the Office of Management and Budget in OMB Circular A–25, for an application for an initial grant of family unity benefits and for an application to extend family unity benefits.

Condition/Status

In the interim rule, an alien who is granted advance authorization to travel outside the United States and who returns to the United States in accordance with such authorization, and who is found not to be excludable under section 301(a)(1) of IMMACT 90, shall be *inspected and admitted in the same immigration condition the alien had at the time of departure for the remainder of the 2-year voluntary departure previously authorized under the Family Unity Program.* One commenter was troubled about the use of the term "condition" instead of "status" for persons who depart and return on advance parole.

To avoid an appearance that the Service is not following the statute, the word "status" will be used in the final rule. If the person was in status at the time of departure, the alien will be placed in status upon return to the United States. Conversely, if the person was out of status upon departure, the alien will be out of status upon his or her return. Thus, existing sections of the Act, such as section 245, are unaffected by section 301 of IMMACT 90. If an alien was ineligible to adjust status upon departure, the alien will be ineligible to adjust status upon return.

Visa Processing

One commenter requested clarification regarding the processing of immigrant petitions. Section 301 of IMMACT 90 is not affected by procedures relating to immigrant petitions.

Confidentiality

One commenter suggested that the Service adopt a relation providing for confidentiality for the Family Unity Program application, prohibiting the use of information gathered for the Family Unity program in establishing deportability.

The Immigration Reform and Control Act required confidentiality in clear statutory language. No such provision was made in the enabling statute for the Family Unity Program.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities because the rule relates solely to individual immigration benefits.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by providing for family unity of eligible persons.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens, Crime.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment penalties, Report and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 242, 264, 274a and 299 which was published at 57 FR 6457–6462 on February 25, 1992, is adopted as a final rule with the following changes:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

2. In § 242.5, paragraph (a) is amended by:

a. Removing "or" before paragraph (a)(2)(viii);

b. Removing the "." at the end of the paragraph and replacing it with a "; or";

c. Adding paragraph (a)(2)(ix); and

d. Revising paragraph (a)(3) to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

* * * * *

(a) * * *

(2) * * *

(ix) who is the child of a legalized alien currently residing in the United States, born during an authorized absence from the United States of the mother who is:

(A) A legalized alien; or

(B) An alien currently residing in the United States under voluntary departure pursuant to the Family Unity Program.

(3) *Periods of time/employment.* (i) Except for paragraphs (a)(2) (v) through (ix) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances, as determined on a case-by-case basis. Upon failure to depart, deportation proceedings will be initiated. As an exception to the 30-day voluntary departure period, an eligible alien under:

(A) Paragraph (a)(2)(v) of this section may be granted voluntary departure in increments of 1 year conditioned upon the F–1 or J–1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange program within the limitations imposed by 22 CFR 514.23; or

(B) Paragraphs (a)(2)(vi) (A), (B), and (C) of this section may be granted voluntary departure until the American Consul issues an immigrant visa and, at the discretion of the district director, issuance may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa; or

(C) Paragraphs (a)(2)(vi) (D) and (E) of this section may be granted voluntary departure, conditioned upon the continued validity of the approved third- or sixth-preference petition, as appropriate, and the alien's retention of the status established in the petition for an indefinite period until an immigrant visa is available; or

(D) Paragraphs (a)(2) (vii) and (viii) of this section may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case; or

(E) Paragraph (a)(2)(ix) of this section may be granted voluntary departure in increments of time, not to exceed 2 years.

(ii) An alien eligible for voluntary departure in paragraphs (a)(2) (v) through (viii) of this section may apply for employment authorization under the appropriate citation in § 274a.12 of this chapter.

* * * * *

3. Section 242.6 is revised to read as follows:

§ 242.6 Family Unity Program.

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in Title 8 of the Code of Federal Regulations shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(i) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(ii) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90)), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(ii) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse of unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); *provided that* an alien

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who is deportable under paragraph (1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon an exclusion ground described in section 212(a) (2) or (3) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(3) An alien described in section 243(h)(2) of the Act.

(e) *Filing*—(1) *General.* An application for voluntary departure under the Family Unity Program must be filed at the Service Center having jurisdiction over the alien's place of residence. A Form I–817 (Application for Voluntary Departure under the Family Unity Program) must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(2) *Decision.* The Service Center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(3) *Referral of denied cases for consideration of issuance of Order to Show Cause.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause (OSC). After an initial denial, an applicant's case will not be referred for issuance of an OSC until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under paragraph (d)(2) of this section, the Service reserves the right to issue an Order to Show Cause at any time after the initial denial.

(4) *Voluntary departure under § 242.5 and eligibility for employment under § 274a.12(c)(12).* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program may be granted voluntary departure under § 242.5(a)(2)(ix) for a period of 2 years.

(5) *Duration of voluntary departure under § 242.6.* An alien whose application for benefits under the Family Unity Program is approved will receive a 2-year period of voluntary departure. The 2-year period will begin on the date the Services approves the application.

(6) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765 (Application for Employment Authorization). The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(7) *Travel outside the United States.* An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131 (Application for Travel Document). The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be excludable under section 212(a) (2) or (3) of the Act, shall be inspected and admitted in the same immigration status the alien had at the time of departure, and provided the remainder of the 2-year voluntary departure previously granted under the Family Unity Program.

(8) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(9) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

(f) *Eligibility for Federal financial assistance programs.* An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in paragraph (b) of this section is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under sections 245A(h) or 210(f) of the Act, respectively.

(g) *Termination of Family Unity Program benefits.*

(1) *Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(i) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(ii) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or ineligible for benefits under the Family Unity Program;

(iii) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(iv) The beneficiary is the subject of a final order of exclusion or deportation issued subsequent to the grant of benefits on any ground of deportability or excludability that would have rendered the alien ineligible for benefits under § 242.6(d)(1) of this chapter, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(v) A qualifying relationship to a legalized alien no longer exists.

(2) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of the chapter. Nothing in this section shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(3) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of deportation or exclusion, shall render the alien amendable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

4. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

5. Section 274a.12 is amended by revising paragraph (c)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(12) A deportable alien granted voluntary departure, either prior to or after a hearing, for reasons set forth in § 242.5(a)(2) (v), (vi), (viii), or (ix) of this chapter, may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date, if the alien establishes an economic need to work. Factors which may be considered in adjudicating the application for employment authorization of such an alien granted voluntary departure include, but are not limited to, the following:

(i) The length of voluntary departure granted;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensure in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief.

* * * * *

Dated: December 13, 1995.

Doris Meissner,

Commissioner.

[FR Doc. 95–30701 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–30]

Establishment of Class D Airspace and Amendment of Class E Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and amends Class E airspace areas at Elko Municipal-J.C. Harris Field, Elko, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 and the establishment of a Airport Traffic Control Tower has made this action necessary. An intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Elko Municipal-J.C. Harris Field, Elko, NV.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and amending Class E airspace at Elko, NV (60 FR 55222).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D and Class E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order 7900.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class D and amends the Class E airspace areas at Elko, NV. An intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 5 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP NV D Elko, NV [New]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49'31"N, long 115°47'28"W)

That airspace extending upward from the surface to including 7,700 feet MSL within a 4.3-mile radius of Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 248° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 6 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective

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date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP NV E2 Elko, NV [Revised]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49'31"N, long. 115°47'28"W)

Within a 4.3-mile radius of the Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 248° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 6 miles southwest of the Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 075° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Elko NV [Revised]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49'31"N, long. 115°47'28"W)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of Elko Municipal-J.C. Harris Field and within 1.8 miles either side of 248° bearing from the Elko Municipal-J.C. Field, extending from the 8.3-mile radius to the 11.7 miles southwest of the Elko Municipal-J.C. Harris Field and within 3.9 miles east and 8.3 miles west of the 161° bearing from the Elko Municipal-J.C. Harris Field, extending from the 8.3-mile radius to 21.7 miles south of Elko Municipal-J.C. Harris Field and within 4.3 miles each side of the 075° bearing from the Elko Municipal-J.C. Harris Field, extending from the 8.3-mile radius to 17.8 miles northeast of the airport. That airspace extending upward from 1,200 feet above the surface within an 18.7-mile radius of Elko Municipal-J.C. Harris Field, and that airspace bounded on the north by the south edge of V–6, on the south by the north edge of V–32, on the east by the 18.7-mile radius west of the Elko Municipal-J.C. Harris Field and that airspace bounded by a line beginning at lat. 40°34'00"N, long. 116°00'00"W; to lat. 40°27'00"N, long. 116°36'00"W; to lat. 40°31'00"N, long 116°38'00"W; to lat. 40°32'00"N, long. 116°33'00"W; to lat. 40°33'30"N, long. 116°33'30"W; to lat. 40°38'00"N, long. 116°07'00"W, thence via the 18.7-mile radius of Elko Municipal-J.C. Harris Field to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 6, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–31103 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–15]

Amendment of Class E Airspace; Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the salt Lake City, Utah, Class E airspace to accommodate a new instrument approach procedure at Salt Lake City International Airport. This amendment brings publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 95–ANM–15, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: 206 227–2537.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1995, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) by amending the Salt Lake City, Utah, Class airspace designation (60 FR 52639). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for a typographical error discovered (and corrected herein) in the coordinates for the 1200-foot airspace area. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

The amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Salt Lake City, Utah. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 14 CFR part 71 is amended as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(lat. 40°47'18"N, long. 111°58'40"W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00'00"N, long. 111°45'03"W, thence south along long. 111°45'03"W, to lat. 40°22'30"N, thence southeast to lat. 40°10'20"N, long. 111°35'03"W, thence southwest to lat. 40°03'30"N, long. 111°48'33"W, thence northwest to lat. 40°43'00"N, long. 112°22'03"W, thence north along long. 112°22'03"W, to lat. 41°00'00"N, thence east along lat. 41°00'00"N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00'00"N, on the east by long. 111°25'33"W, thence south to lat. 40°11'00"N, thence east to lat. 40°06'00"N, long. 110°15'00"W, thence southwest to lat. 39°33'00"N, long. 110°55'00"W, thence southwest to lat. 39°04'00"N, long. 112°27'30"W, thence northwest to lat. 39°48'00"N, long. 112°50'00"W, thence west via lat. 39°48'00"N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406B and long. 113°00'03"W; excluding the portion within the Price, UT and the Delta, UT, airspace areas; that airspace east of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the west by long. 111°25'33"W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25'33"W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on December 8, 1995.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–31101 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 417

Trade Regulation Rule Concerning the Failure To Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses. The Commission has reviewed the rulemaking record and determined that, because federal law prohibits the sale or distribution of the products that were the subject of the Quick-Freeze Spray Rule, the Rule no longer serves the public interest and should be repealed. This document contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy or George Brent Mickum IV, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580, (202) 326–2981, (202) 326–3132.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses (Quick-Freeze Spray Rule), 16 CFR Part 417, was promulgated on February 20, 1969 (34 FR 2417). The Quick-Freeze Spray Rule requires a clear and conspicuous warning on aerosol spray products used for frosting beverage glasses. The warning states that the contents should not be inhaled in concentrated form and that doing so may cause injury or death.

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on the proposed repeal of the Quick-Freeze Spray Rule (60 FR 27244). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Quick-Freeze Spray Rule should be repealed or remain in effect (60 FR 48073).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission has determined to repeal the Quick-Freeze Spray Rule for the following reasons:

1. The active ingredient in quick-freeze spray products was Fluorocarbon 12. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and its implementing regulations, ban chlorofluorocarbons in aerosols and foams for non-essential uses because they are ozone depleting agents. The ban, which includes Fluorocarbon 12, became effective on January 17, 1994.[3] A number of aerosol products containing fluorocarbons have been exempted from the ban, but glass-frosting aerosols are not among them.

2. Based on a 1989 review of the Rule, the Commission determined that the last known producer of glass-frosting products was Ronco, Inc. Ronco last produced its glass-frosting machines in 1980. The product was last sold to retailers in 1982. Ronco has none of the product in its warehouse and has sold the tooling machinery that was used to manufacture the product.[4]

3. Commission staff was unable to locate any glass-frosting products for sale anywhere in the country.[5]

4. Poison treatment centers have reported no cases involving the product.[6]

Because the products addressed by this Rule are no longer available and cannot be sold or distributed legally, the Quick-Freeze Spray Rule has become obsolete and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the

[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

[3] 40 CFR 82.64 (1994).

[4] See Rulemaking Record, Staff Submissions: Letter from Donna Wellington, Executive Vice President, Ronco, Inc., dated April 18, 1995, to Mr. Lemuel W. Dowdy.

[5] See Rulemaking Record, Staff Submissions: Memorandum to File, George Brent Mickum IV, dated April 18, 1995.

[6] *Id.*

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Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Quick-Freeze Spray Rule does not impose "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 417

Hazardous substances, Labeling, Trade practices.

PART 417—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing part 417.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–30916 Filed 12–20–95; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 95]

Staff Accounting Bulletin No. 95

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin rescinds the views of the staff contained in Staff Accounting Bulletin No. 57 (Topic 5K—Contingent Stock Purchase Warrants).

DATES: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Morrissey, Office of the Chief Accountant (202) 942–4400, or Douglas Tanner, Division of Corporation Finance (202) 942–2960, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Margaret H. McFarland,

Deputy Secretary.

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 95 to the table found in Subpart B.

PART 211—[AMENDED]

Staff Accounting Bulletin No. 95

The staff hereby deletes Staff Accounting Bulletin No. 57 (Section K to Topic 5 of the Staff Accounting Bulletin Series). Staff Accounting Bulletin No. 57 provided interpretative guidance on the accounting for contingent stock purchase warrants.

Footnote 2 to Staff Accounting Bulletin No. 57 notes that in March 1984, the Financial Accounting Standards Board (FASB) added a project to its agenda to reconsider Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25). Footnote 2 indicates that when this project is completed, the staff will consider whether the accounting articulated in this staff accounting bulletin is still appropriate.

The FASB's reconsideration of APB 25 is now complete with the issuance of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (FAS 123). Consistent with our stated intention, the staff has reconsidered the guidance in Staff Accounting Bulletin No. 57 and concludes that the interpretative guidance providing for an intrinsic value measurement is no longer necessary due to the general guidance in FAS 123 that provides for fair value measurement for transactions with other than employees.

FAS 123 does not provide specific guidance on the methodology for determining fair value for such an arrangement or the measurement date on which the fair value of the equity instrument is determined. The staff intends to request that the Emerging Issues Task Force consider the need to issue additional guidance that would address those issues.

[FR Doc. 95–31086 Filed 12–20–95; 8:45 am]

BILLING CODE 8010–01–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 366 and 367

RIN 3220–AB09

Collection of Debts

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations pertaining to the collection of debts by offset against other Federal payments and against tax refunds to authorize use of these collection methods for collection of debts from businesses.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 366 of the Board's regulations deals with collection of debts by means of offset from Federal tax refunds through referrals to the Internal Revenue Service. This procedure is authorized by 31 U.S.C. 3720A. Part 367 deals with the collection of debts by administrative offset under the authority of the Debt Collection Act of 1982, 31 U.S.C. 3716. As currently in effect, the Board's regulations as to tax refund offset and administrative offset apply to individual debtors only. The Board believes that amendment of these regulations to authorize these collection procedures against business debtors will facilitate collection of debts which may be owed to the Board.

On August 17, 1995, the Board published this rule as a proposed rule (60 FR 42818), inviting comments on or before September 18, 1995. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. Information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Parts 366 and 367

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, parts 366 and 367 of title 20, chapter II of the Code of Federal Regulations are amended as follows:

PART 366—COLLECTION OF DEBTS BY FEDERAL TAX REFUND OFFSET

1. The authority citation for part 366 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3720A.

§ 366.1 [Amended]

2. Section 366.1 is amended by removing the word "individuals" and adding in its place the word "debtors".

3. Section 366.2 is amended by revising the introductory text, and paragraphs (a), (b), (e), and (f) to read as follows:

§ 366.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to the Internal Revenue Service is a debt:

(a) Which arose under any statute administered by the Board or under any contract;

(b) Which is an obligation of a debtor who is a natural person or a business;

* * * * *

(e) With respect to which the rights regarding reconsideration, waiver, and appeal, described in part 260 or 320 of this chapter or in other law, if applicable, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding;

* * * * *

§ 366.2 [Amended]

3. Section 366.2(j) is amended by removing the word "individual" and adding in its place the word "debtor".

4. Section 366.2(k) is amended by removing the word "individual" and adding in its place the word "debtor".

§ 366.6 [Amended]

5. Section 366.6(c) is amended by removing the words "individual owing the debt" and adding in their place the word "debtor".

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

6. The authority citation for part 367 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

7. Section 367.2 is amended by revising the introductory text and paragraphs (a), (b), (e), and (f) to read as follows:

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which arose under any statute administered by the Board or under any contract;

(b) Which is an obligation of a debtor who is a natural person or a business;

* * * * *

(e) With respect to which the rights described in part 260 or 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, if applicable, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding;

* * * * *

§ 367.2 [Amended]

8. Section 367.2(i) is amended by removing the word "individual" and adding in its place the word "debtor", and by removing the words "that person" and adding in their place the words "the debtor";

9. Section 367.2(j) is amended by removing the words "such individual" and adding in their place the words "the debtor";

§ 367.7 [Amended]

10. Section 367.7(c) is amended by removing the words "individual owing the debt" and adding in their place the word "debtor".

Dated: December 13, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–30999 Filed 12–20–05; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs, Overseas Citizens Services

22 CFR Part 94

[Public Notice 2290]

International Child Abduction

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends regulations regarding incoming parental abduction cases pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. Incoming cases will be processed by a non-governmental organization with oversight by the Department of State.

DATES: Effective Date: December 21, 1995. Comments are due on or before January 22, 1995.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Director of the Office of Children's Issues, Bureau of Consular Affairs, Room 4811, U.S. Department of State, Washington, DC 20520; fax: 202–647–2835.

FOR FURTHER INFORMATION CONTACT: Leslie Rowe, Director of the Office of Children's Issues, Room 4811, U.S. Department of State, Washington, D.C. 20520. tele: 202–647–2688.

SUPPLEMENTARY INFORMATION: Since 1988, the Bureau of Consular Affairs has served as the U.S. Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction. As U.S. Central Authority, the Office of Children's Issues is responsible for processing all Hague Convention applications seeking the return of children wrongfully removed or retained in the United States or any other Hague Convention contracting state. In addition, the U.S. Central Authority is responsible for facilitating access rights under the Convention. The Office of Children's Issues processes approximately 700 Hague Convention applications annually; roughly 300 of these cases are incoming cases, i.e., applications for the return of a child wrongfully removed to or retained in the United States.

The processing of incoming Hague applications requires case officers to

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communicate with foreign Central Authorities about incoming cases, to determine the whereabouts of children wrongfully taken to the United States, to attempt to promote voluntary return of abducted children, and to facilitate the initiation of judicial proceedings with a view toward securing the return of abducted children. Many of the case officer functions involve extensive contact with local law enforcement officials, social service agencies, legal aid organizations and local bar associations.

The Office of Children's Issues has recently entered into an agreement with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, and the National Center for Missing and Exploited Children (National Center). Under this agreement, the National Center will assist the U.S. Central Authority in fulfilling its responsibilities under the Hague Convention.

The National Center, a non-governmental organization, is a national resource center and clearinghouse that provides technical assistance to parents seeking to locate and recover children missing in the United States. For more than ten years, the National Center has been performing case management and analysis functions for domestic abductions; it handles more than 1,200 parental child abduction cases annually. By agreement with the Department of Justice, the National Center provides legal technical assistance, maintains a toll-free hotline as well as an online information network, and operates a photo distribution service.

Transferring specified case officer functions to the National Center with respect to incoming Hague Convention cases will result in the provision of better service to parents seeking the return of children under the Convention. Parents will benefit from the National Center's expertise in finding missing children and liaising with contacts in the local law enforcement and social services communities.

This transfer of case officer functions to the National Center will not in any way alter the role of the State Department as U.S. Central Authority under the Hague Convention. The Office of Children Issues will continue as the U.S. Central Authority under the Convention and will retain ultimate responsibility for all incoming cases. Under the agreement, all inherently governmental functions, including matters of Hague Convention interpretation and policy direction are to be carried out by the Department of State. Congressional and White House correspondence as well as media relations will continue to be handled by the Office of Children's Issues.

The Department of State is publishing this as an interim final rule, rather than as a notice of proposed rulemaking as allowed by 5 U.S.C. 553(b)(3)(B) when an agency determines, for good cause, that it is unnecessary to publish a proposed rule. The Department of State has determined that publication of a proposed rule is unnecessary, as the transfer of responsibility over incoming Hague Convention cases to the National Center primarily affects workload distribution and management of U.S. Central Authority functions. The Department of State's Office of Children's Issues will continue to perform all inherently governmental functions of the U.S. Central Authority.

This rule is exempt from E.O. 12866, but nonetheless has been reviewed and found to be consistent with the objectives and policies thereof. This rule is not expected to have a significant impact on a substantial, number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction. Act, 44 U.S.C. Chapter 35. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 94

Infants and children, reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, 22 CFR 94 is amended as follows:

PART 94—INTERNATIONAL CHILD ABDUCTION

1. The authority citation for part 94 continues to read as follows:

Authority: Hague Convention on the Civil Aspects of International Child Abduction; International Child Abduction Remedies Act, Pub. L. 100–300.

2. Section 94.6 is amended by revising the introductory text and paragraph (1), removing paragraph (k), redesignating paragraphs (a) through (j) as paragraphs (b) through (k), and adding a new paragraph (a) to read as follows:

§ 94.6 Procedures for children abducted to the United States.

The National Center for Missing and Exploited Children shall act under the direction of the U.S. Central Authority and shall perform the following operational functions with respect to all Hague Convention applications seeking the return of children wrongfully removed to or retained in the United States or seeking access to children in the United States:

(a) Receive all applications on behalf of the U.S. Central Authority;

* * * * *

(l) Perform such additional functions as set out in the "Cooperative Agreement Adjustment Notice" between the Department of State, Department of Justice, and National Center for Missing and Exploited Children.

Dated: November 3, 1995.

Mary A. Ryan,

Assistant Secretary of State for Consular Affairs.

[FR Doc. 95–31106 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1208

[NHTSA Docket No. 85–12; Notice 4]

RIN 2127–AF95

National Minimum Drinking Age

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This final rule amends Part 1208 of title 23 of the Code of Federal Regulations (CFR). Part 1208 prescribes the requirements necessary to implement 23 U.S.C. 158, which established the National Minimum Drinking Age Act. This final rule is amending Part 1208 by removing outdated and obsolete provisions from that regulation.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. James Wright, Office of Traffic Safety Programs, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–2724; or Ms. Heidi L. Coleman, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–1834. In FHWA: Ms. Mila Plosky, Office of Highway Safety, Federal Highway Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–6902; or Mr. Paul Brennan, Office of the Chief Counsel, Federal Highway Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all Federal Departments and agencies to take a number of steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform.

NHTSA and FHWA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA and FHWA have determined that Part 1208 of title 23 of the Code of Federal Regulations (CFR) should be amended, because portions of the regulation are outdated and obsolete.

Part 1208 prescribes the requirements necessary to implement 23 U.S.C. § 158, which established the National Minimum Drinking Age. The regulation clarifies the provisions which a State must have incorporated into its laws in order to avoid the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age. It also describes, in detail, the consequences of noncompliance.

The regulation was first published in the **Federal Register** on March 26, 1985 (51 F.R. 10376). It was amended, to reflect statutory changes made to the National Minimum Drinking Age Act, on August 18, 1988 (53 F.R. 31318).

Some of the provisions of the regulation are no longer applicable. For example, under the National Minimum Drinking Age (NMDA), funds withheld from a State prior to FY 1989 remained available for apportionment to the State for a period of time, and States were permitted for a limited period of time to include in their laws "grandfather rights" for persons who were between the ages of 18 and 21. The regulation contained provisions implementing these statutory requirements. These requirements no longer apply. Funds now withheld under the NMDA are not available for apportionment to the State, and grandfather rights may no longer be included in State laws. This final rule deletes these outdated and obsolete provisions.

The NMDA provides that the Secretary must withhold from non-complying States, ten percent of the funds required to be apportioned under 23 U.S.C. §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6). At the time the NMDA was enacted, these sections corresponded with the Federal-aid primary, secondary, Interstate and urban systems funding categories.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was enacted on December 18, 1991, revised or eliminated these funding categories, and created new ones, including the National Highway System (NHS) and the Surface Transportation Program (STP). The Interstate System funding category was maintained, although the Interstate system itself is now a component of NHS. The Interstate funding category involves resurfacing, restoring, rehabilitating and reconstruction.

Since the enactment of ISTEA, the agencies have administered the penalty provisions of 23 U.S.C. § 158 by withholding ten percent of a State's apportionments for the NHS, STP and Interstate System programs (23 U.S.C. §§ 104(b)(1), 104(b)(3) and 104(b)(5)), the successors to the funding categories referenced in the NMDA. However, the NMDA has not been amended to reflect the changes made to the funding categories by ISTEA. Accordingly, the implementing regulation for NMDA continues to reflect the language contained in the NMDA. This final rule does not amend this portion of the regulation.

Rulemaking Analyses and Notices

(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This final rule does not impose any additional burden on the public. It is technical in nature and does not change the requirements of the program. It is anticipated that there will be no economic impact as a result of this rulemaking. Accordingly, a full regulatory evaluation is not required and was not prepared.

(b) Regulatory Flexibility Act.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this rule on small entities. Based on the evaluation, the agencies hereby certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, a Regula-tory Flexibility Analysis is not necessary and was not prepared.

(c) Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

(d) Paperwork Reduction Act.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(e) National Environmental Policy Act.

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that implementation of this action will not have any significant impact on the quality of the human environment.

(f) Executive Order 12778 (Civil Justice Reform)

This amendment to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes from the regulation outdated and obsolete provisions that no longer apply. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they merely contain technical changes that remove outdated and obsolete provisions from the regulation and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway Safety.

In accordance with the foregoing, Part 1208 of Title 23 of the Code of Federal Regulations is amended as follows:

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PART 1208—[AMENDED]

1. The authority citation for Part 1208 continues to read as follows:

Authority: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1208.4 is revised to read as follows:

§ 1208.4 Adoption of National Minimum Drinking Age.

The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of each fiscal year in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

3. Section 1208.5 is revised to read as follows:

§ 1208.5 Unavailability of withheld funds.

Funds withheld under § 1208.4 from apportionment to any State will not be available for apportionment to the State.

§§ 1208.6—1208.8 [Removed]

4. Sections 1208.6 through 1208.8 are removed.

§ 1208.9 [Redesignated as § 1208.6]

5. Section 1208.9 is redesignated as 1208.6.

Issued on: December 18, 1995.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration

[FR Doc. 95–31118 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8647]

RIN 1545–AS51

Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding upon certain distributions or dispositions of U.S. real property interests. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and affect withholding agents required to withhold tax due on certain dispositions and distributions of U.S. real property interests.

DATES: These final regulations are effective January 22, 1996. These regulations are applicable to transactions occurring after August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley (202) 622–3860 (not a toll free-call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations reflecting changes made by the Omnibus Budget Reconciliation Act of 1993 to the withholding rates on certain distributions and dispositions of U.S. real property interests. These regulations were not preceded by a Notice of Proposed Rulemaking because the withholding rates were changed by the Act. This document also updates the address of the Assistant Commissioner (International) to whom various forms must be sent.

Explanation of Provisions

The rate of withholding under section 1445(e) (1) and (2) of the Internal Revenue Code was increased from 34% to 35% by the Omnibus Budget Reconciliation Act of 1993. The existing regulations reflect the prior 34% withholding rate. These regulations reflect the increase in withholding to 35% (or the highest rate specified in section 1445(e) (1) or (2)) for dispositions occurring on or after August 10, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Gwendolyn Stanley, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Section 1.1445–5 also issued under 26 U.S.C. 1445(e)(6).

Section 1.1445–8 also issued under 26 U.S.C. 1445(e)(6). * * *

Authority: 26 U.S.C. 7805. * * *

Par. 2. In section 1.1445–1, the section heading and paragraph (g)(10) are revised to read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(10) *Address of the Assistant Commissioner International.* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Director, Philadelphia Service Center; 11601 Roosevelt Blvd.; Philadelphia, PA 19255; ATTN: Drop Point 543X.

Par. 3. Section 1.1445–5 is amended as follows:

1. Paragraph (c)(1)(ii) is revised.
2. The third sentence and the last sentence of paragraph (c)(1)(iii)(A) are revised.
3. Paragraph (c)(1)(iii)(B) is removed.
4. Paragraph (c)(1)(iii)(C) is redesignated as (c)(1)(iii)(B) and revised.
5. Paragraph (c)(1)(iv) is revised.
6. Paragraph (c)(3)(ii) is revised.
7. The first sentence of paragraph (d)(1) is revised.
8. The second sentence of paragraph (d)(1) is removed.

The revisions read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(c)(1) * * *

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. Such distributive share of the gain must be determined pursuant to the principles of section 704 and the regulations thereunder. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see § 1.1445–8.

(iii) *Disposition by trust or estate*—(A) *In general.* * * * The fiduciary must withhold 35 percent (or the highest rate specified in section 1445(e)(1)) of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. * * * For rules applicable to trusts, interests in which are regularly traded on an established securities market and real estate investment trusts, see § 1.1445–8.

(B) *Example.* The following example illustrates the rules of paragraph (c)(1)(iii)(A) of this section.

On January 1, 1994, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a nonresident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1994 tax year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1994.

Date	Parcel sold	Gains or (loss) realized	Distributions to C	Distributions to B (before withholding)	Section 1445 withholding 35% rate	U.S. real property interest account
1/01/94						
3/01/94	Parcel 1	140,000				140,000
3/05/94			5,000	10,000	3,500	125,000
3/15/94			10,000	5,000	1,750	110,000
5/01/94	Parcel 2	300,000				410,000
5/15/94	Parcel 3	(50,000)				360,000
12/01/94			170,000	170,000	59,500	20,000
1/01/95						

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part 1 of subchapter J (sections 671 through 679) must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part 1 of subchapter J.

* * * * *

(3) * * *

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this § 1.1445–5(c)(3) shall withhold from each distribution to a foreign person an amount equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount attributable to section 1445(e)(1) transfers.

* * * * *

(d) *Distributions of U.S. real property interests by foreign corporations*—(1) *In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 35 percent (or the rate specified in section 1445(e)(2)) of the amount of gain recognized by the corporation on the distribution. * * *

* * * * *

Par. 4. Section 1.1445–8(c)(2)(i) is revised to read as follows:

§ 1.1445–8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS).

* * * * *

(c) * * *

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount described in paragraph (c)(2)(ii) of this section.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30871 Filed 12–20–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8648]

RIN 1545–AB21

Controlling corporation's basis adjustment in its controlled corporation's stock following a triangular reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 358, 1032, and 1502 of the Internal Revenue Code of 1986. The final regulations provide rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation. They also generally provide that the use of the controlling corporation's stock provided by the controlling corporation pursuant to the plan of reorganization is treated as a disposition of those shares by the controlling corporation.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the "Effective Dates" section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions of the new or revised regulations.

FOR FURTHER INFORMATION CONTACT: Curt Cutting, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under sections 358, 1032, and 1502. The proposed regulations were published in the **Federal Register** on December 23, 1994 (59 FR 66280 [CO–993–71], 1995–4 I.R.B. 59 (January 23, 1995)). The IRS received many comments on the proposed regulations and held a public hearing on March 31, 1995.

After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision.

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Overview

The final regulations adopt the over-the-top model contained in the proposed regulations. Subject to certain modifications, the model generally adjusts a controlling corporation's (P's) basis in the stock of its controlled corporation (S or T) as a result of certain triangular reorganizations as if P had acquired the T assets (and any liabilities assumed or to which the T assets were subject) directly from T in a transaction in which P's basis in the T assets was determined under section 362(b), and P then had transferred the T assets (and liabilities) to S in a transaction in which P's basis in the S or T stock was adjusted under section 358. The preamble to the proposed regulations contains a discussion of the justification for the model. See 59 FR 66280–81.

The final regulations also provide a special rule that treats S's use of P's stock provided by P pursuant to the plan of reorganization as a disposition of those shares by P.

The final regulations apply only for the purpose of determining P's basis in its S or T stock following a transaction that otherwise qualifies as a reorganization within the meaning of section 368. They do not address issues concerning the qualification of a transaction as a reorganization.

With the publication of these final regulations, the IRS announces the closing of its study project referred to in § 5.14 of Rev. Proc. 95–3, 1995–1 C.B. 385, 395.

The significant comments on the proposed regulations and revisions made are discussed below.

Summary of Comments and Explanation of Revisions P's Basis in T Stock Owned Before a Reverse Triangular Merger

The proposed regulations adjusted basis as a result of a reverse triangular merger to reflect the amount of T stock received in the transaction. Comments on the proposed regulations questioned how an adjustment based on the amount of T stock received in the transaction would apply in the case in which P owns T stock before the transaction.

In response to these comments, the final regulations allow P to treat its T stock as acquired in the transaction or not, without regard to the form of the transaction. Thus, P may retain its basis in the T stock owned before the transaction, or may determine its basis in that stock as an allocable portion of T's net asset basis. The regulations require no explicit election. Instead, it is assumed P will pick the higher basis. This rule applies only for determining basis, and not for qualifying the transaction as a reverse triangular merger. See Rev. Rul. 74–564, 1974–2 C.B. 124.

The Treasury and the IRS continue to study issues relating to restructurings involving related parties and cross-ownership, and welcome comments and suggestions on these issues.

Net Negative Adjustment

Under the proposed regulations, P's basis adjustment was reduced by the fair market value of consideration not provided by P, and by the amount of liabilities assumed by S or to which T assets are subject. These reductions did not result in a net negative basis adjustment to P's basis in its S stock before the transaction. This limitation did not apply, however, where P and S, or P and T, as applicable, were members of a consolidated group following the triangular reorganization. In the consolidated context, the negative adjustments could result in a net negative adjustment to P's basis in its S stock before the transaction, even if the adjustment resulted in an excess loss account under § 1.1502–19.

Some comments on the proposed regulations argued against reducing P's basis in its S stock before the transaction by a net negative adjustment in the consolidated context. Other comments, however, agreed that it is appropriate not to limit the net negative adjustment in this context.

The Treasury and the IRS continue to believe that the proposed regulations reach the correct result. Therefore, the final regulations adopt the rules as proposed.

Overlap of Reverse Triangular Merger and Other Transactions

The proposed regulations provided that if a transaction qualified as both a reverse triangular merger and a stock acquisition under section 368(a)(1)(B), P adjusted its basis in its T stock based either on T's net asset basis or on the aggregate basis of the T stock surrendered in the transaction (as if the transaction were a reorganization under section 368(a)(1)(B)).

One comment noted that a reverse triangular merger might overlap with a section 351 transfer and therefore requested that this rule also apply to such a case. The final regulations adopt this suggestion.

Manner of Making Elections

The proposed and final regulations provide P with elections for its basis adjustments when P owns stock of T and when a reverse triangular merger also qualifies as a section 351 transaction or B reorganization. In these situations, P does not have to declare how it will compute its basis. Rather, P must simply retain appropriate records. See § 1.368–3.

Application of Section 1032

The proposed regulations under section 1032 generally provided that P stock provided by P to S, or directly to T or T's shareholders on behalf of S, pursuant to the plan of reorganization would be treated as a disposition by P of shares of its own stock for T assets or stock, as applicable. Thus, no gain or loss was recognized on the use of such P stock in the transaction. S, however, recognized gain or loss on its use of P stock if S did not receive the stock from P as part of the plan of reorganization. This rule did not apply in the case of a reverse triangular merger; section 361 provides nonrecognition treatment for S's use of P stock in such a case. To clarify this treatment, a cross-reference has been added to the final regulations.

Comments to the proposed regulations requested that they be expanded to cover P debt, warrants and options provided by P to S, or directly to T or T's shareholders on behalf of S, pursuant to the plan of reorganization. Comments also requested that the rule be extended to taxable transactions.

The issues raised in these comments are beyond the scope of this project. However, the Treasury and the IRS are studying issues relating to the scope of section 1032 and welcome comments and suggestions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Effective Dates

Generally, § 1.358–6 applies with respect to all triangular reorganizations occurring on or after December 23, 1994, the day that the proposed regulations were published in the **Federal Register**.

As stated in the preamble to the proposed regulations, any adjustment to P's basis in its S or T stock (as applicable) following a triangular reorganization occurring before December 23, 1994, must be consistent with the adjustment that would be made if P had made the acquisition directly and P then transferred the assets to a controlled subsidiary. However, with respect to reverse triangular mergers occurring before December 23, 1994, P may adjust its basis in its T stock as if P acquired the stock of the former T shareholders in a transaction in which its basis was determined under section 362(b).

Section 1.1032–2 applies with respect to certain triangular reorganizations occurring on or after December 23, 1994. With respect to triangular reorganizations occurring before December 23, 1994, see, e.g., § 1.1032–1 and Rev. Rul. 57–278, 1957–1 C.B. 124.

Section 1.1502–30 applies with respect to triangular reorganizations occurring on or after December 21, 1995, in which P and S, or P and T, as applicable, are members of a consolidated group following the triangular reorganization. For similar triangular reorganizations occurring before December 21, 1995, any adjustments to P's basis in its S or T stock (as applicable) must be consistent with the rules applicable for nonconsolidated taxpayers, except to the extent that § 1.1502–31 applies to a transaction that is a group structure change.

Drafting Information

The principal authors of these regulations are Rose Williams and Curt Cutting, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects for 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–30 also issued under 26 U.S.C. 1502 * * *

§ 1.358–2 [Amended]

Par. 2. Section 1.358–2(d) is removed.

Par. 3. Section 1.358–6 is added to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

(a) *Scope.* This section provides rules for computing the basis of a controlling corporation in the stock of a controlled corporation as the result of certain reorganizations involving the stock of the controlling corporation as described in paragraph (b) of this section. The rules of this section are in addition to rules under other provisions of the Internal Revenue Code and principles of law. See, e.g., section 1001 for the recognition of gain or loss by the controlled corporation on the exchange of property for the assets or stock of a target corporation in a reorganization described in section 368.

(b) *Triangular reorganizations*—(1) *Nomenclature.* For purposes of this section—

(i) *P* is a corporation—

(A) That is a party to a reorganization,

(B) That is in control (within the meaning of section 368(c)) of another party to the reorganization, and

(C) Whose stock is transferred pursuant to the reorganization.

(ii) *S* is a corporation—

(A) That is a party to the reorganization, and

(B) That is controlled by *P*.

(iii) *T* is a corporation that is another party to the reorganization.

(2) *Definitions of triangular reorganizations.* This section applies to the following reorganizations (which are referred to collectively as *triangular reorganizations*):

(i) *Forward triangular merger.* A forward triangular merger is a statutory merger of *T* and *S*, with *S* surviving, that qualifies as a reorganization under section 368(a)(1)(A) or (G) by reason of the application of section 368(a)(2)(D).

(ii) *Triangular C reorganization.* A triangular C reorganization is an acquisition by *S* of substantially all of *T*'s assets in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(C).

(iii) *Reverse triangular merger.* A reverse triangular merger is a statutory merger of *S* and *T*, with *T* surviving, that qualifies as a reorganization under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(E).

(iv) *Triangular B reorganization.* A triangular B reorganization is an acquisition by *S* of *T* stock in exchange for P stock in a transaction that qualifies as a reorganization under section 368(a)(1)(B).

(c) *General rules.* Subject to the special rule provided in paragraph (d) of this section, *P*'s basis in the stock of *S* or *T*, as applicable, as a result of a triangular reorganization, is adjusted under the following rules—

(1) *Forward triangular merger or triangular C reorganization*—(i) *In general.* In a forward triangular merger or a triangular C reorganization, *P*'s basis in its *S* stock is adjusted as if—

(A) *P* acquired the *T* assets acquired by *S* in the reorganization (and *P* assumed any liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b); and

(B) *P* transferred the *T* assets (and liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) to *S* in a transaction in which *P*'s basis in *S* stock was determined under section 358.

(ii) *Limitation.* If, in applying section 358, the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject equals or exceeds *T*'s aggregate adjusted basis in its assets, the amount of the adjustment under paragraph (c)(1)(i) of this section is zero. *P* recognizes no gain under section 357(c) as a result of a triangular reorganization.

(2) *Reverse triangular merger*—(i) *In general*—(A) *Treated as a forward triangular merger.* Except as otherwise provided in this paragraph (c)(2), *P*'s basis in its *T* stock acquired in a reverse triangular merger equals its basis in its *S* stock immediately before the transaction adjusted as if *T* had merged into *S* in a forward triangular merger to which paragraph (c)(1) of this section applies.

(B) *Allocable share.* If *P* acquires less than all of the *T* stock in the transaction, the basis adjustment described in paragraph (c)(2)(i)(A) of this section is reduced in proportion to the percentage of *T* stock not acquired in the transaction. The percentage of *T* stock not acquired in the transaction is determined by taking into account the fair market value of all classes of *T* stock.

(C) *Special rule if P owns T stock before the transaction.* Solely for purposes of paragraphs (c)(2)(i)(A) and (B) of this section, if *P* owns *T* stock before the transaction, *P* may treat that stock as acquired in the transaction or not, without regard to the form of the transaction.

(ii) *Reverse triangular merger that qualifies as a section 351 transfer or section 368(a)(1)(B) reorganization.* Notwithstanding paragraph (c)(2)(i) of this section, if a reorganization qualifies as both a reverse triangular merger and

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as a section 351 transfer or as both a reverse triangular merger and a reorganization under section 368(a)(1)(B), *P* can—

(A) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applies; or

(B) Determine the basis in the *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

(3) *Triangular B reorganization.* In a triangular B reorganization, *P*'s basis in its *S* stock is adjusted as if—

(i) *P* acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b); and

(ii) *P* transferred the *T* stock to *S* in a transaction in which *P*'s basis in its *S* stock was determined under section 358.

(4) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* with $5 cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth $100 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(1), *P*'s $5 basis in its *S* stock is adjusted as if *P* acquired the *T* assets acquired by *S* in the reorganization directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $60 in the *T* assets. *P* is then treated as if it transferred the *T* assets to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s $5 basis in its *S* stock would be increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock as a result of the reorganization.

(c) *Use of pre-existing S.* The facts are the same as paragraph (a) of this *Example 1*, except that *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $110 basis in the *S* stock. Under § 1.358–6(c)(1), *P*'s $110 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *S* stock as a result of the reorganization.

(d) *Mixed consideration.* The facts are the same as paragraph (a) of this *Example 1*, except that the *T* shareholders receive *P* stock worth $80 and $20 cash from *P*. Under section 358, *P*'s $5 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock as a result of the reorganization.

(e) *Liabilities.* The facts are the same as paragraph (a) of this *Example 1*, except that *T*'s assets are subject to $50 of liabilities, and the *T* shareholders receive $50 of *P* stock in exchange for their *T* stock. Under section 358, *P*'s basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred and decreased by the $50 of liabilities to which the *T* assets acquired by *S* are subject. Consequently, *P* has a net basis adjustment of $10, and a $15 basis in its *S* stock as a result of the reorganization.

(f) *Liabilities in excess of basis.* The facts are the same as in paragraph (a) of this *Example 1*, except that *T*'s assets are subject to liabilities of $90, and the *T* shareholders receive $10 of *P* stock in exchange for their *T* stock in the reorganization. Under § 1.358–6(c)(1)(ii), the adjustment under § 1.358–6(c) is zero if the amount of the liabilities which *S* assumed or to which the *T* assets acquired by *S* are subject exceeds the aggregate adjusted basis in *T*'s assets. Consequently, *P* has no adjustment in its *S* stock, and *P* has a $5 basis in its *S* stock as a result of the reorganization.

Example 2. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and a fair market value of $100 and no liabilities. *P* has a $110 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive $10 cash from *P* and *P* stock worth $90 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(2)(i)(A), *P*'s basis in the *T* stock acquired is *P*'s $110 basis in its *S* stock before the transaction, adjusted as if *T* had merged into *S* in a forward triangular merger to which § 1.358–6(c)(1) applies. In such a case, *P*'s $110 basis in its *S* stock before the transaction would have been increased by the $60 basis of the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *T* stock immediately after the transaction.

(c) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* The facts relating to *T* are the same as in paragraph (a) of this *Example 2*. *P*, however, forms *S* pursuant to the plan of reorganization. The *T* shareholders receive $100 worth of *P* stock (and no cash) in exchange for their *T* stock. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. The reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B). Under § 1.358–6(c)(2)(ii), *P* may determine its basis in its *T* stock either as if § 1.358–6(c)(2)(i) applied to the *T* stock acquired, or as if *P* acquired the *T* stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Accordingly, *P* may determine a basis in its *T* stock of $60 (*T*'s net asset basis) or $85 (the *T* shareholders' aggregate basis in the *T* stock immediately before the reorganization).

(d) *Allocable share in a reverse triangular merger.* The facts are the same as in paragraph (a) of this *Example 2*, except that *X*, a 10% shareholder of *T*, does not participate in the transaction. The remaining *T* shareholders receive $10 cash from *P* and *P* stock worth $80 for their *T* stock. *P* owns 90% of the *T* stock after the transaction. Under 1.358–6(c)(2)(i)(A), *P*'s basis in its *T* stock is *P*'s $110 basis in its *S* stock before the reorganization, adjusted as if *T* had merged into *S* in a forward triangular merger. In such a case, *P*'s basis would have been adjusted by the $60 basis in the *T* assets deemed transferred. Under § 1.358–6(c)(2)(i)(B), however, the basis adjustment determined under § 1.358–6(c)(2)(i)(A) is reduced in proportion to the percentage of *T* stock not acquired by *P* in the transaction. The percentage of *T* stock not acquired in the transaction is 10%. Therefore, *P* reduces its $60 basis adjustment by 10%, resulting in a net basis adjustment of $54. Consequently, *P* has a $164 basis in its *T* stock as a result of the transaction.

(e) *P's ownership of T stock.* The facts are the same as in paragraph (a) of this *Example 2*, except that *P* owns 10% of the *T* stock before the transaction. *P*'s basis in that *T* stock is $8. All the *T* shareholders other than *P* surrender their *T* stock for $10 cash from *P* and *P* stock worth $80. *P* does not surrender the stock in the transaction. Under § 1.358–6(c)(2)(i)(C), *P* may treat its *T* stock owned before the transaction as acquired in the transaction or not. If *P* treats that *T* stock as acquired in the transaction, *P*'s basis in that *T* stock and the *T* stock actually acquired in the transaction equals *P*'s $110 basis in its *S* stock before the transaction, adjusted by the $60 basis of the *T* assets deemed transferred, for a total basis of $170. If *P* treats its *T* stock as not acquired, *P* retains its $8 pre-transaction basis in that stock. *P*'s basis in its other *T* shares equals *P*'s $110 basis in its *S* stock before the transaction, adjusted by $54 (the $60 basis in the *T* assets deemed transferred, reduced by 10%), for a total basis of $164 in those shares. See § 1.358–6(c)(2)(i)(A) and (B). Consequently, if *P* treats its *T* shares as not acquired, *P*'s total basis in all of its *T* shares is $172.

Example 3. Triangular B reorganization. (a) *Facts.* *T* has assets with a fair market value of $100 and no liabilities. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. Pursuant to a plan, *P* forms *S* with $5 cash and *S* acquires all of the *T* stock in exchange for $100 of *P* stock. The transaction is a reorganization to which section 368(a)(1)(B) applies.

(b) *Basis adjustment.* Under § 1.358–6(c)(3), *P* adjusts its $5 basis in its *S* stock by treating *P* as if it acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in exchange for the *P* stock in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $85 in the *T* stock

received by *S* in the reorganization. *P* is then treated as if it transferred the *T* stock to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s basis in its *S* stock would be increased by the $85 basis in the *T* stock deemed transferred. Consequently, *P* has a $90 basis in its *S* stock as a result of the reorganization.

(d) *Special rule for consideration not provided by P*—(1) *In general.* The amount of *P*'s adjustment to basis in its *S* or *T* stock, as applicable, described in paragraph (c) of this section is decreased by the fair market value of any consideration (including *P* stock in which gain or loss is recognized, see § 1.1032–2(c)) that is exchanged in the reorganization and that is not provided by *P* pursuant to the plan of reorganization. This paragraph (d) does not apply to the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject under paragraph (c)(1) of this section (or deemed assumed or taken subject to by *S* under paragraph (c)(2)(i) of this section).

(2) *Limitation.* *P* makes no adjustment to basis under this section if the decrease required under paragraph (d)(1) of this section equals or exceeds the amount of the adjustment described in paragraph (c) of this section.

(3) *Example.* The rules of this paragraph (d) are illustrated by the following example. For purposes of this example, *P*, *S*, AND *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $100 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(1), *P*'s $100 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Under § 1.358–6(d)(1), the $60 adjustment is decreased by the $30 of cash provided by *S* in the reorganization. Consequently, *P* has a net adjustment of $30 in its *S* stock, and *P* has a $130 basis in its *S* stock as a result of the reorganization.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 of cash. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $10 of gain under section 1001 on its disposition of the asset in the reorganization.

(d) *Depreciated asset.* The facts are the same as in paragraph (c) of this *Example*, except that *S* has a $60 adjusted basis in the asset. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $30 of loss under section 1001 on its disposition of the asset in the reorganization.

(e) *P stock.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides *P* stock with a fair market value of $30 instead of $30 of cash. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. *S* has a $20 adjusted basis in the *P* stock. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $10 of gain on its disposition of the *P* stock in the reorganization. See § 1.1032–2(c).

(e) *Cross-reference.* For rules relating to stock basis adjustments made as a result of a triangular reorganization in which *P* and *S*, or *P* and *T*, as applicable, are, or become, members of a consolidated group, see § 1.1502–30. For rules relating to stock basis adjustments after a group structure change, see § 1.1502–31.

(f) *Effective dates*—(1) *General rule.* Except as otherwise provided in this paragraph (f), this section applies to triangular reorganizations occurring on or after December 23, 1994.

(2) *Special rule for reverse triangular mergers.* For a reverse triangular merger occurring before December 23, 1994, *P* may—

(i) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applied; or

(ii) Determine the basis in its *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

Par. 4. Section 1.1032–2 is added to read as follows:

§ 1.1032–2 Disposition by a corporation of stock of a controlling corporation in certain triangular reorganizations.

(a) *Scope.* This section provides rules for certain triangular reorganizations described in § 1.358–6(b) when the acquiring corporation (*S*) acquires property or stock of another corporation (*T*) in exchange for stock of the corporation (*P*) in control of *S*.

(b) *General nonrecognition of gain or loss.* For purposes of § 1.1032–1(a), in the case of a forward triangular merger, a triangular C reorganization, or a triangular B reorganization (as described in § 1.358–6(b)), *P* stock provided by *P* to *S*, or directly to *T* or *T*'s shareholders on behalf of *S*, pursuant to the plan of reorganization is treated as a disposition by *P* of shares of its own stock for *T*'s assets or stock, as applicable. For rules governing the use of *P* stock in a reverse triangular merger, see section 361.

(c) *Treatment of S.* *S* must recognize gain or loss on its exchange of *P* stock as consideration in a forward triangular merger, a triangular C reorganization, or a triangular B reorganization (as described in § 1.358–6(b)), if *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* or *T* stock, as applicable. For rules governing *S*'s use of *P* stock in a reverse triangular merger, see section 361.

(d) *Examples.* The rules of this section are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger solely for P stock. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* by transferring $100 of *P* stock to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive, in exchange for their *T* stock, the *P* stock that *P* transferred to *S*. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *No gain or loss recognized on the use of P stock.* Under paragraph (b) of this section, the *P* stock provided by *P* pursuant to the plan of reorganization is treated for purposes of § 1.1032–1(a) as disposed of by *P* for the *T* assets acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange.

Example 2. Forward triangular merger solely for P stock provided in part by S. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *S* also owns *P* stock with a $20 adjusted basis and $30 fair market value. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. Pursuant to a plan, *P* transfers additional *P* stock worth $70 to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive $100 of *P* stock ($70 of *P* stock provided by *P* to *S* as part of the plan and $30 of *P* stock held by *S* previously). The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Gain or loss recognized by S on the use of its P stock.* Under paragraph (b) of this section, the $70 of *P* stock provided by *P* pursuant to the plan of reorganization is treated as disposed of by *P* for the *T* assets

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acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange of those shares. Under paragraph (c) of this section, however, *S* recognizes $10 of gain on the exchange of its *P* stock in the reorganization because *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* stock.

(e) *Effective date.* This section applies to triangular reorganizations occurring on or after December 23, 1994.

Par. 5. Section 1.1502–30 is added to read as follows:

§ 1.1502–30 Stock basis after certain triangular reorganizations.

(a) *Scope.* This section provides rules for determining the basis of the stock of an acquiring corporation as a result of a triangular reorganization. The definitions and nomenclature contained in § 1.358–6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization.* *P* adjusts its basis in the stock of S as a result of a forward triangular merger, triangular C reorganization, or triangular B reorganization under § 1.358–6(c) and (d), except that § 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities assumed by *S* or the amount of liabilities to which the *T* assets acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If *P* adjusts its basis in the *T* stock acquired as a result of a reverse triangular merger under § 1.358–6 (c)(2)(i) and (d), § 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets deemed acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502–19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502–80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, the facts set forth the only corporate activity, and tax liabilities are disregarded.

Example 1. Liabilities. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. Pursuant to a plan, *P* forms *S* with $5 of cash (which S retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth $30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its $5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by –$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, as a result of the reorganization, *P* has an excess loss account of $5 in its *S* stock.

Example 2. Consideration not provided by P. (a) *Facts.* *T* has assets with an aggregate basis of $10 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan of reorganization and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its $5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by –$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). As a result of the reorganization, *P* has an excess loss account of $15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 cash. The basis is adjusted in the same manner as in paragraph (b) of this *Example 2*. In addition, because *S* recognizes a $10 gain from the asset under section 1001, *P*'s basis in its *S* stock is increased under § 1.1502–32(b) by *S*'s $10 gain. Consequently, as a result of the reorganization, *P* has an excess loss account of $5 in its *S* stock. (The results would be the same if the appreciated asset provided by *S* was *P* stock with respect to which *S* recognized gain. See § 1.1032–2(c)).

Example 3. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. *P* owns all of the only class of *S* stock. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders exchange their *T* stock for $2 cash from *P* and $28 worth of *P* stock provided by *P* pursuant to the plan. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P*'s basis in the *T* stock acquired equals its $5 basis in its *S* stock immediately before the transaction adjusted by the $60 basis in the *T* assets deemed transferred, and the $70 of liabilities to which the *T* assets are subject. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Consequently, *P* has an excess loss account of $5 in its *T* stock as a result of the transaction.

(c) *Effective date.* This section applies to reorganizations occurring on or after December 21, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30875 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8631]

RIN 1545–AT79

Notice of Significant Reduction in the Rate of Future Benefit Accrual; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (TD 8631) which were published in the **Federal Register** for Friday, December 15, 1995 (60 FR 64320). The final regulations provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the finding standards of section 302 of ERISA.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 411 of the Internal Revenue Code.

Need for Correction

As published, TD 8631 contains an error which is in need of correction.

Correction of Publication

Accordingly, the publication to the final regulations which is the subject of FR Doc. 95–30416, is corrected as follows:

On page 64321, column 3, in the preamble, following the paragraph heading *Effective Dates*, line 5, the language "or after January 2, 1996." is corrected to read "or after December 30, 1995.".

Michael Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–30977 Filed 12–15–95; 3:31 pm]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8649]

RIN 1545–AS87

Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conversion transactions. These regulations provide that certain gains and losses from positions of the same conversion transaction may be netted for purposes of determining the amount of gain that is recharacterized as ordinary income. These regulations reflect changes to the law made by the Revenue Reconciliation Act of 1993 and affect persons who enter into conversion transactions.

DATES: These regulations are effective December 21, 1995.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** part of the preamble.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1452. Responses to this collection of information are required to obtain netting relief for conversion transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per recordkeeper varies from .05 to 10 hours, depending on individual circumstances, with an estimated average of .10 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking and notice of public hearing at 59 FR 66498 (FI–43–94) under section 1258 of the Internal Revenue Code of 1986.

The IRS received a number of written comments on the proposed regulations. No requests to speak at the public hearing were received, however, and consequently the hearing was cancelled.

Explanation of Provisions

A. General

The proposed regulations allow taxpayers to net gains and losses on the positions of certain conversion transactions for purposes of section 1258(a). For a taxpayer to be eligible, the proposed regulations require the taxpayer to identify, before the close of the day on which the positions become part of the conversion transaction, all the positions that are part of the conversion transaction. In addition, the taxpayer has to dispose of all the positions within a 14-day period that is within a single taxable year. The proposed regulations also define built-in loss and prohibit the netting of built-in loss against gain.

The commenters uniformly supported the netting relief provided by the proposed regulations. Accordingly, the final regulations are substantially unchanged from the proposed regulations.

The proposed regulations provide that the regulations will be effective for conversion transactions entered into on or after the date of filing of final regulations with the **Federal Register**. Several commenters requested that the regulations also apply to conversion transactions entered into prior to the filing date. In response to these comments, the final regulations provide for application of the regulations to any conversion transaction that is outstanding on December 21, 1995, provided that all the positions which are part of the conversion transaction are identified under § 1.1258–1(b)(2) before the close of business on February 20, 1996. The final regulations also provide a transition rule for the same-day identification requirement that allows taxpayers to identify conversion transactions entered into prior to February 20, 1996, at any time on or before February 20, 1996.

Several commenters criticized the examples for failing to adjust the applicable imputed income amount (AIIA) under section 1258(b) for interest and dividends received. The scope of these regulations, however, is limited to netting relief. The IRS is still studying various situations to determine the extent to which it is appropriate to reduce the AIIA by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise. Accordingly, Example 3 has been deleted and Examples 1 and 2 have been clarified to eliminate any implication on this issue.

One commenter requested that the identification requirement be eliminated as impractical, unnecessary, and a trap for the unwary. This same-day identification requirement is similar to identification requirements under sections 475 and 1221. Identification of all the positions of a conversion transaction will aid examiners attempting to determine whether conversion transactions are present and will prevent mismatching of those positions by both taxpayers and agents. The final regulations retain the same-day identification requirement but provide a transition rule.

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Some commenters asked that netting relief be expanded to cover unrealized losses in retained positions by allowing loss positions to be marked to market when a gain position is disposed of or terminated. Allowing retained positions to be marked to market raises valuation and other potentially complex issues. For example, many of the issues addressed by the regulations under section 475 would have to be addressed here. The complexity of these issues outweighs the potential benefit of allowing retained positions to be marked to market. Thus, the final regulations do not include a mark-to-market provision.

To preserve the character of gain that arose before a position became part of a conversion transaction, one commenter requested built-in gain rules similar to the built-in loss rules in the proposed regulations. The appropriateness of a built-in gain rule under section 1258 is beyond the scope of these regulations. Therefore, the final regulations do not address this issue.

The IRS is aware that section 1258 presents a number of issues not addressed by these final regulations. The IRS continues to study the scope of section 1258, the types of transactions that should be included under the regulatory authority of section 1258(c)(2)(D), and what reductions, if any, in the AIIA are appropriate under section 1258(b). The IRS welcomes comments on these and other issues under section 1258.

B. Effective Dates

The regulations are effective for conversion transactions that are outstanding on or after December 21, 1995. In the case of a conversion transaction entered into before February 20, 1996, the same-day identification requirement is treated as satisfied if the identification is made on or before February 20, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Alan B. Munro, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1258–1 is added to read as follows:

§ 1.1258–1 Netting rule for certain conversion transactions.

(a) *Purpose.* The purpose of this section is to provide taxpayers with a method to net certain gains and losses from positions of the same conversion transaction before determining the amount of gain treated as ordinary income under section 1258(a).

(b) *Netting of gain and loss for identified transactions*—(1) *In general.* If a taxpayer disposes of or terminates all the positions of an identified netting transaction (as defined in paragraph (b)(2) of this section) within a 14-day period in a single taxable year, all gains and losses on those positions taken into account for federal tax purposes within that period (other than built-in losses as defined in paragraph (c) of this section) are netted solely for purposes of determining the amount of gain treated as ordinary income under section 1258(a). For purposes of the preceding sentence, a taxpayer is treated as disposing of any position that is treated as sold under any provision of the Code or regulations thereunder (for example, under section 1256(a)(1)).

(2) *Identified netting transaction.* For purposes of this section, an identified netting transaction is a conversion transaction (as defined in section 1258(c)) that the taxpayer identifies as an identified netting transaction on its books and records. Identification of each position of the conversion transaction must be made before the close of the day on which the position becomes part of the conversion transaction. No particular form of identification is necessary, but all the positions of a single conversion transaction must be identified as part of the same transaction and must be distinguished from all other positions.

(c) *Definition of built-in loss.* For purposes of this section, built-in loss means—

(1) Built-in loss as defined in section 1258(d)(3)(B); and

(2) If a taxpayer realizes gain or loss on any one position of a conversion transaction (for example, under section 1256), as of the date that gain or loss is realized, any unrecognized loss in any other position of the conversion transaction that is not disposed of, terminated, or treated as sold under any provision of the Code or regulations thereunder within 14 days of and within the same taxable year as the realization event.

(d) *Examples.* These examples illustrate this section:

Example 1. Identified netting transaction with simultaneous actual dispositions. (i) On December 1, 1995, *A* purchases 1,000 shares of *XYZ* stock for $100,000 and enters into a forward contract to sell 1,000 shares of *XYZ* stock on November 30, 1997, for $110,000. The *XYZ* stock is actively traded as defined in § 1.1092(d)-1(a) and is a capital asset in *A*'s hands. *A* maintains books and records on which, on December 1, 1995, it identifies the two positions as all the positions of a single conversion transaction. *A* owns no other *XYZ* stock. On December 1, 1996, when the applicable imputed income amount for the transaction is $7,000, *A* sells the 1,000 shares of *XYZ* stock for $95,000. On the same day, *A* terminates its forward contract with its counterparty, receiving $10,200. No dividends were received on the stock during the time it was part of the conversion transaction.

(ii) The *XYZ* stock and forward contract are positions of a conversion transaction. Under section 1258(c)(1), substantially all of *A*'s expected return from the overall transaction is attributable to the time value of the net investment in the transaction. Under section 1258(c)(2)(B), the transaction is an applicable straddle as defined in section 1258(d)(1).

(iii) *A* disposed of or terminated all the positions of the conversion transaction within 14 days and within the same taxable year as required by paragraph (b)(1) of this section. The transaction is an identified netting transaction because it meets the identification requirement of paragraph (b)(2) of this section. Solely for purposes of section 1258(a), the $5,000 loss realized ($100,000 basis less $95,000 amount realized) on the disposition of the *XYZ* stock is netted against the $10,200 gain recognized on the disposition of the forward contract. Thus, the net gain from the conversion transaction for purposes of section 1258(a) is $5,200 ($10,200 gain less $5,000 loss). Only the $5,200 net gain is recharacterized as ordinary income under section 1258(a) even though the applicable imputed income amount is $7,000. For federal tax purposes other than section 1258(a), *A* has recognized a $10,200 gain on the disposition of the forward contract ($5,200 of which is treated as ordinary income) and realized a separate $5,000 loss on the sale of the *XYZ* stock.

Example 2. Identified netting transaction with built-in loss. (i) The facts are the same as in *Example 1*, except that *A* had purchased the *XYZ* stock for $104,000 on May 15, 1995. The *XYZ* stock had a fair market value of $100,000 on December 1, 1995, the date it became part of a conversion transaction.

(ii) The results are the same as in *Example 1*, except that *A* has built-in loss (in addition to the $5,000 loss that arose economically during the period of the conversion transaction), as defined in section 1258(d)(3)(B), of $4,000 on the *XYZ* stock. That $4,000 built-in loss is not netted against the $10,200 gain on the forward contract for purposes of section 1258(a). Thus, the net gain from the conversion transaction for purposes of section 1258(a) is $5,200, the same as in *Example 1*. The $4,000 built-in loss is recognized and has a character determined without regard to section 1258.

(e) *Effective date and transition rule*—(1) *In general.* These regulations are effective for conversion transactions that are outstanding on or after December 21, 1995.

(2) *Transition rule for identification requirements.* In the case of a conversion transaction entered into before February 20, 1996, paragraph (b)(2) of this section is treated as satisfied if the identification is made before the close of business on February 20, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry "1.1258–1 * * * .1545–1452" in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30900 Filed 12–20–95; 8:45 am]

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26 CFR Parts 1, 25, 301, and 602

[TD 8633]

RIN 1545–AS37

Grantor Trust Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the method of reporting for trusts that are treated as owned by grantors or other persons under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. These regulations are intended to reduce the current filing burden on trustees, to provide necessary information to grantors or other persons treated as the owners of trusts, to reduce any cases of duplicate filing, and to provide more meaningful information to the IRS. These regulations affect grantors and trustees of trusts that are treated as owned by grantors or other persons, as well as persons who are required to file information returns with respect to payments to these trusts.

DATES: These regulations are effective January 1, 1996. For dates of applicability of these regulations, see § 1.671–4(h).

FOR FURTHER INFORMATION CONTACT: Steven Schneider, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1442. This information is required by the IRS to insure the proper reporting of income and proceeds paid to a trust any portion of which is treated as owned by the grantor or another person.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 22, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking and notice of public hearing (59 FR 37450) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 671 of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under sections 6012 and 6109 of the Code.

Written comments responding to the notice were received. A public hearing was held on September 21, 1994, pursuant to the notice published in the **Federal Register** on July 22, 1994. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions and Significant Changes in the Final Regulations

Subject to certain new limitations under § 1.671–4(b)(6) and (7), discussed below, § 1.671–4(b) of the final regulations retains the optional alternative methods of reporting contained in the proposed regulations published on July 22, 1994.

Several comments were submitted requesting confirmation that the alternative methods of reporting described in the proposed regulations are optional and not mandatory. Section 1.671–4(b) of the final regulations clarifies that the trustee of a trust all of which is treated as owned by one or more grantors or other persons may, but is not required to, report pursuant to one of the alternative methods.

Certain commentators were unsure of which persons are considered payors for purposes of the alternative filing methods. The final regulations define the term payor as including any person who is required by any provision of the Code and the regulations thereunder to make any type of information return with respect to the trust for the taxable year.

With respect to the alternative methods of reporting, several commentators were unsure of the items

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and the amounts of income that must be reported on any Forms 1099 required to be filed by the trustee. Section 1.671–4(b)(5) of the final regulations clarifies that the amounts that must be included on any Forms 1099 required to be filed by the trustee do not include any amounts that are reportable by the payor on an information return other than Form 1099.

For example, in the case of a trustee who furnishes the name, TIN, and address of the trust to all payors pursuant to § 1.671–4(b)(2)(i)(B) of the final regulations, the trustee does not include items of income attributable to an interest in a partnership on any Forms 1099 filed by the trustee because those items are reportable by the partnership on Schedule K–1 of Form 1065 (reporting distributive shares to members of a partnership). While the statement furnished to the grantor or other person treated as the owner of the trust by the trustee will show all items of income, deduction, and credit attributable to the partnership interest, those items will not be reported to the IRS by the trustee on any type of form.

Several commentators were unsure of the dates by which a trustee must file any required Forms 1099 and must furnish any required statements to grantors or other persons treated as owners of the trust. Section 1.671–4(c) of the final regulations provides that the due date for any Forms 1099 required to be filed with the IRS by a trustee is the due date otherwise in effect for filing Forms 1099. Currently, the due date is February 28 of the following year.

Section 1.671–4(d) of the final regulations provides that the due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust is the date specified by section 6034A(a). Currently, the due date is April 15 of the following year.

Comments were received requesting clarification of the trustee's obligation, under the first of the alternative reporting methods, to furnish the name and TIN of the grantor to all payors. The final regulations provide that: (1) A trustee may not report under the first alternative reporting method unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W–9 or other acceptable substitute form; (2) a trustee reporting under the first alternative reporting method acts as the agent of the grantor or other person treated as the owner of the trust for purposes of furnishing backup withholding information to a payor; and (3) the payor may rely on the name and TIN provided to the payor by the trustee. If the Form W–9 indicates that the grantor or other person is subject to backup withholding, then the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold.

Comments were received requesting clarification of the annuity and unitrust payment dates under § 25.2702–3 of the Gift Tax Regulations for trusts electing one of the alternative methods of reporting. The final regulations contain conforming amendments to § 25.2702–3(b)(1)(i) and § 25.2702–3(c)(1)(i).

One commentator noted the need for more guidance concerning the reporting requirements for widely held fixed investment trusts. Because that guidance is outside the scope of this regulation, the final regulations do not provide special rules for these trusts. However IRS and Treasury anticipate providing guidance for these trusts in a separate project and would welcome comments from interested taxpayers and practitioners regarding such guidance.

Several of the comments received with respect to the proposed regulations emphasized the necessity of making the trustee's choice to report under one of the alternative methods revocable. The final regulations provide that a trustee who has reported pursuant to one of the alternative methods may report pursuant to the general rule requiring the trustee to file a Form 1041 for any subsequent taxable years of the trust, provided that certain conditions are met.

The final regulations provide that the trustee of a trust all of which is treated as owned by one grantor or one other person that is an exempt recipient for information reporting purposes may not report under an alternative method. However, if the trust is treated as owned by two or more grantors or other persons, the trustee may report pursuant to the alternative method for multiple grantors if (1) at least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes and (2) the trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

The final regulations also provide that the trustee of a trust all of which is treated as owned by one grantor or other person whose taxable year is a fiscal year may not report under an alternative method. However, the trustee of a trust that is treated as owned by two or more grantors or other persons may report pursuant to the alternative method for multiple grantors even though one or more of the grantors or other persons treated as an owner of the trust has a taxable year that is the fiscal year.

In addition, the final regulations provide that a trustee of a trust that is a qualified subchapter S trust as defined in section 1361(d)(3) may not report under an alternative method.

The final regulations also provide that the trustee of a trust may not report under an alternative method if any person who is treated as an owner of the trust is not a United States person.

Effective Date and Transition Rule

The final regulations are effective for taxable years beginning on or after January 1, 1996, subject to a requirement that certain trustees file a final Form 1041 before adopting one of the alternative methods of reporting. The final regulations retain the transition rule contained in the proposed regulations providing that, for taxable years beginning prior to January 1, 1996, the IRS will not challenge the manner of reporting by trustees of certain trusts.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert Rio, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.671–4 is revised to read as follows:

§ 1.671–4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form.

(b) *A trust all of which is treated as owned by one or more grantors or other persons*—(1) *In general.* In the case of a trust all of which is treated as owned by one or more grantors or other persons, and which is not described in paragraph (b)(6) or (7) of this section, the trustee may, but is not required to, report by one of the methods described in this paragraph (b) rather than by the method described in paragraph (a) of this section. A trustee may not report, however, pursuant to paragraph (b)(2)(i)(A) of this section unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W–9 or acceptable substitute Form W–9 signed under penalties of perjury. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending upon the type of reportable payments made.

(2) *A trust all of which is treated as owned by one grantor or by one other person*—(i) *In general.* In the case of a trust all of which is treated as owned by one grantor or one other person, the trustee reporting under this paragraph (b) must either—

(A) Furnish the name and taxpayer identification number (TIN) of the grantor or other person treated as the owner of the trust, and the address of the trust, to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii) of this section; or

(B) Furnish the name, TIN, and address of the trust to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(iii) of this section.

(ii) *Additional obligations of the trustee when name and TIN of the grantor or other person treated as the owner of the trust and the address of the trust are furnished to payors.* (A) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must furnish the grantor or other person treated as the owner of the trust with a statement that—

(*1*) Shows all items of income, deduction, and credit of the trust for the taxable year;

(*2*) Identifies the payor of each item of income;

(*3*) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*4*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(B) The trustee is not required to file any type of return with the Internal Revenue Service.

(iii) *Additional obligations of the trustee when name, TIN, and address of the trust are furnished to payors*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year, and showing the trust as the payor and the grantor or other person treated as the owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (*1*) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must also furnish to the grantor or other person treated as the owner of the trust a statement that—

(*i*) Shows all items of income, deduction, and credit of the trust for the taxable year;

(*ii*) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(*2*) By furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. G, a United States citizen, creates an irrevocable trust which provides that the ordinary income is to be payable to him for life and that on his death the corpus shall be distributed to B, an unrelated person. Except for the right to receive income, G retains no right or power which would cause him to be treated as an owner under sections 671 through 679. Under the applicable local law, capital gains must be added to corpus. Since G has a right to receive income, he is treated as an owner of a portion of the trust under section 677. The tax consequences of any items of capital gain of the trust are governed by the provisions of subparts A, B, C, and D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. Because not all of the trust is treated as owned by the grantor or another person, the trustee may not report by the methods described in paragraph (b)(2) of this section.

Example 2. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. During the 1996 taxable year the trust has the following items of income and gross proceeds:

Interest	$2,500
Dividends	3,205
Proceeds from sale of B stock	2,000

(B) The trust has no items of deduction or credit.

(ii)(A) The payors of the interest paid to the trust are X ($2,000), Y ($300), and Z ($200). The payors of the dividends paid to the trust are A ($3,200), and D ($5). The payor of the gross proceeds paid to the trust is D, a brokerage firm, which held the B stock as the nominee for the trust. The B stock was purchased by T for $1,500 on January 3, 1996, and sold by T on November 29, 1996. T chooses to report pursuant to paragraph

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(b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to X, Y, Z, A, and D. X, Y, and Z each furnish T with a Form 1099–INT showing the trust as the payee. A furnishes T with a Form 1099–DIV showing the trust as the payee. D does not furnish T with a Form 1099–DIV because D paid a dividend of less than $10 to T. D furnishes T with a Form 1099–B showing the trust as the payee.

(B) On or before February 28, 1997, T files a Form 1099–INT with the Internal Revenue Service on which T reports interest attributable to G, as the owner of the trust, of $2,500; a Form 1099–DIV on which T reports dividends attributable to G, as the owner of the trust, of $3,205; and a Form 1099–B on which T reports gross proceeds from the sale of B stock attributable to G, as the owner of the trust, of $2,000. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest	$2,500
Dividends	3,205
Gain from sale of B stock	500

Information regarding sale of B stock:

Proceeds	$2,000
Basis	1,500
Date acquired	1/03/96
Date sold	11/29/96

(C) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(D) T has complied with T's obligations under this section.

(iii)(A) Same facts as paragraphs (i) and (ii) of this *Example 2*, except that G contributed the B stock to the trust on January 2, 1996. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest $2,500
Dividends 3,205

Information regarding sale of B stock:

Proceeds	$2,000
Date sold	11/29/96

(B) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(C) T has complied with T's obligations under this section.

Example 3. On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The only asset of the trust is an interest in C, a common trust fund under section 584(a). T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to C. C files a Form 1065 and a Schedule K–1 (Partner's Share of Income, Credits, Deductions, etc.) showing the name, TIN, and address of the trust with the Internal Revenue Service and furnishes a copy to T. Because the trust did not receive any amounts described in paragraph (b)(5) of this section, T does not file any type of return with the Internal Revenue Service. On or before April 15, 1997, T furnishes G with a statement that shows all items of income, deduction, and credit of the trust for the 1996 taxable year. In addition, T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person. T has complied with T's obligations under this section.

(3) *A trust all of which is treated as owned by two or more grantors or other persons*—(i) *In general.* In the case of a trust all of which is treated as owned by two or more grantors or other persons, the trustee must furnish the name, TIN, and address of the trust to all payors for the taxable year, and comply with the additional requirements described in paragraph (b)(3)(ii) of this section.

(ii) *Additional obligations of trustee*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the items of income paid to the trust by all payors during the taxable year attributable to the portion of the trust treated as owned by each grantor or other person, and showing the trust as the payor and each grantor or other person treated as an owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (*1*) The trustee must also furnish to each grantor or other person treated as an owner of the trust a statement that—

(*i*) Shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor or other person;

(*ii*) Provides the grantor or other person treated as an owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(*2*) Except for the requirements pursuant to section 3406 and the regulations thereunder, by furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(4) *Persons treated as payors*—(i) *In general.* For purposes of this section, the term payor means any person who is required by any provision of the Internal Revenue Code and the regulations thereunder to make any type of information return (including Form 1099 or Schedule K–1) with respect to the trust for the taxable year, including persons who make payments to the trust or who collect (or otherwise act as middlemen with respect to) payments on behalf of the trust.

(ii) *Application to brokers and customers.* For purposes of this section, a broker, within the meaning of section 6045, is considered a payor. A customer, within the meaning of section 6045, is considered a payee.

(5) *Amounts required to be included on Forms 1099 filed by the trustee*—(i) *In general.* The amounts that must be included on any Forms 1099 required to be filed by the trustee pursuant to this section do not include any amounts that are reportable by the payor on an information return other than Form 1099. For example, in the case of a trust which owns an interest in a partnership, the trust's distributive share of the income and gain of the partnership is not includible on any Forms 1099 filed by the trustee pursuant to this section because the distributive share is reportable by the partnership on Schedule K–1.

(ii) *Example.* The following example illustrates the provisions of this paragraph (b)(5):

Example. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The assets of the trust during the 1996 taxable year are shares of stock in X, an S corporation, a limited partnership interest in P, shares of stock in M, and shares of stock in N. T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to X, P, M, and N. M furnishes T with a Form 1099–DIV showing the trust as the payee. N does not furnish T with a Form 1099–DIV because N paid a dividend of less than $10 to T. X and P furnish T with Schedule K–1 (Shareholder's Share of Income, Credits, Deductions, etc.) and Schedule K–1 (Partner's Share of Income, Credits, Deductions, etc.), respectively, showing the trust's name, TIN, and address.

(B) For the 1996 taxable year the trust has the following items of income and deduction:

Dividends paid by M	$12
Dividends paid by N	6
Administrative expense	$20

Items reported by X on Schedule K–1 attributable to trust's shares of stock in X:

Interest	$20
Dividends	35

Items reported by P on Schedule K–1 attributable to trust's limited partnership interest in P:

Ordinary income	$300

(ii)(A) On or before February 28, 1997, T files with the Internal Revenue Service a Form 1099–DIV on which T reports dividends attributable to G as the owner of the trust in the amount of $18. T does not file any other returns.

(*B*) T has complied with T's obligation under paragraph (b)(2)(iii)(A) of this section to file the appropriate Forms 1099.

(6) *Trusts that cannot report under this paragraph (b).* The following trusts cannot use the methods of reporting described in this paragraph (b)—

(i) A common trust fund as defined in section 584(a);

(ii) A trust that has its situs or any of its assets located outside the United States;

(iii) A trust that is a qualified subchapter S trust as defined in section 1361(d)(3);

(iv) A trust all of which is treated as owned by one grantor or one other person whose taxable year is a fiscal year;

(v) A trust all of which is treated as owned by one grantor or one other person who is not a United States person; or

(vi) A trust all of which is treated as owned by two or more grantors or other persons, one of whom is not a United States person.

(7) *Grantors or other persons who are treated as owners of the trust and are exempt recipients for information reporting purposes*—(i) *Trust treated as owned by one grantor or one other person.* The trustee of a trust all of which is treated as owned by one grantor or one other person may not report pursuant to this paragraph (b) if the grantor or other person is an exempt recipient for information reporting purposes.

(ii) *Trust treated as owned by two or more grantors or other persons.* The trustee of a trust, all of which is treated as owned by two or more grantors or other persons, may not report pursuant to this paragraph (b) if one or more grantors or other persons treated as owners are exempt recipients for information reporting purposes unless—

(A) At least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes; and

(B) The trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

(8) *Husband and wife who make a single return jointly.* A trust all of which is treated as owned by a husband and wife who make a single return jointly of income taxes for the taxable year under section 6013 is considered to be owned by one grantor for purposes of this paragraph (b).

(c) *Due date for Forms 1099 required to be filed by trustee.* The due date for any Forms 1099 required to be filed with the Internal Revenue Service by a trustee pursuant to this section is the due date otherwise in effect for filing Forms 1099.

(d) *Due date and other requirements with respect to statement required to be furnished by trustee.* The due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust pursuant to this section is the date specified by section 6034A(a). The trustee must maintain in its records a copy of the statement furnished to the grantor or other person treated as an owner of the trust for a period of three years from the due date for furnishing such statement specified in this paragraph (d).

(e) *Backup withholding requirements*—(1) *Trustee reporting under paragraph (b)(2)(i)(A) of this section.* In order for the trustee to be able to report pursuant to paragraph (b)(2)(i)(A) of this section and to furnish to all payors the name and TIN of the grantor or other person treated as the owner of the trust, the grantor or other person must provide a complete Form W–9 to the trustee in the manner provided in paragraph (b)(1) of this section, and the trustee must give the name and TIN shown on that Form W–9 to all payors. In addition, if the Form W–9 indicates that the grantor or other person is subject to backup withholding, the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold. If the Form W–9 indicates that the grantor or other person is not subject to backup withholding, the trustee does not have to notify the payors that backup withholding is not required. The trustee should not give the Form W–9, or a copy thereof, to a payor because the Form W–9 contains the address of the grantor or other person and paragraph (b)(2)(i)(A) of this section requires the trustee to furnish the address of the trust to all payors and not the address of the grantor or other person. The trustee acts as the agent of the grantor or other person for purposes of furnishing to the payors the information required by this paragraph (e)(1). Thus, a payor may rely on the name and TIN provided to the payor by the trustee, and, if given, on the trustee's statement that the grantor is subject to backup withholding.

(2) *Other backup withholding requirements.* Whether a trustee is treated as a payor for purposes of backup withholding is determined pursuant to section 3406 and the regulations thereunder.

(f) *Penalties for failure to file a correct Form 1099 or furnish a correct statement.* A trustee who fails to file a correct Form 1099 or to furnish a correct statement to a grantor or other person treated as an owner of the trust as required by paragraph (b) of this section is subject to the penalties provided by sections 6721 and 6722 and the regulations thereunder.

(g) *Changing reporting methods*—(1) *Changing from reporting by filing Form 1041 to a method described in paragraph (b) of this section.* If the trustee has filed a Form 1041 for any taxable year ending before January 1, 1996 (and has not filed a final Form 1041 pursuant to § 1.671–4(b)(3) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995)), or files a Form 1041 for any taxable year thereafter, the trustee must file a final Form 1041 for the taxable year which ends after January 1, 1995, and which immediately precedes the first taxable year for which the trustee reports pursuant to paragraph (b) of this section, on the front of which form the trustee must write: "Pursuant to § 1.671–4(g), this is the final Form 1041 for this grantor trust.".

(2) *Changing from reporting by a method described in paragraph (b) of this section to the filing of a Form 1041.* The trustee of a trust who reported pursuant to paragraph (b) of this section for a taxable year may report pursuant to paragraph (a) of this section for subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(A) of this section, and therefore furnished the name and TIN of the grantor to all payors, the trustee must furnish the name, TIN, and address of the trust to all payors for such subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(B) or (b)(3)(i) of this section, and therefore furnished the name and TIN of the trust to all payors, the trustee

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must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee so reports that it is the final return of the trust.

(3) *Changing between methods described in paragraph (b) of this section*—(i) *Changing from furnishing the TIN of the grantor to furnishing the TIN of the trust.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(A) of this section for a taxable year, and therefore furnished the name and TIN of the grantor to all payors, may report pursuant to paragraph (b)(2)(i)(B) of this section, and furnish the name and TIN of the trust to all payors, for subsequent taxable years.

(ii) *Changing from furnishing the TIN of the trust to furnishing the TIN of the grantor.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(B) of this section for a taxable year, and therefore furnished the name and TIN of the trust to all payors, may report pursuant to paragraph (b)(2)(i)(A) of this section, and furnish the name and TIN of the grantor to all payors, for subsequent taxable years. The trustee, however, must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee reports pursuant to paragraph (b)(2)(i)(B) of this section that it is the final return of the trust.

(4) *Example.* The following example illustrates the provisions of paragraph (g) of this section:

Example. (i) On January 3, 1994, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. On or before April 17, 1995, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1994 taxable year showing the items of income, deduction, and credit of the trust. On or before April 15, 1996, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1995 taxable year showing the items of income, deduction, and credit of the trust. On the Form 1041, T states that "pursuant to § 1.671–4(g), this is the final Form 1041 for this grantor trust." T may report pursuant to paragraph (b) of this section for the 1996 taxable year.

(ii) T reports pursuant to paragraph (b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to all payors, for the 1996 and 1997 taxable years. T chooses to report pursuant to paragraph (a) of this section for the 1998 taxable year. On each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) which T files for the 1997 taxable year (or appropriately on magnetic media), T indicates that it is the trust's final return. On or before April 15, 1998, T files with the Internal Revenue Service a Form 1041 with an attached statement showing the items of income, deduction, and credit of the trust. On the Form 1041, T uses the same TIN which T used on the Forms 1041 and Forms 1099 it filed for previous taxable years. T has complied with T's obligations under paragraph (g)(2) of this section.

(h) *Effective date and transition rule*—(1) *Effective date.* The trustee of a trust any portion of which is treated as owned by one or more grantors or other persons must report pursuant to this section for taxable years beginning on or after January 1, 1996.

(2) *Transition rule.* For taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the manner of reporting of—

(i) A trustee of a trust all of which is treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671–4(a) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) as in effect for taxable years beginning prior to January 1, 1996, but did report in a manner substantially similar to one of the reporting methods described in paragraph (b) of this section; or

(ii) A trustee of two or more trusts all of which are treated as owned by one or more grantors or other persons who filed a single Form 1041 for all of the trusts, rather than a separate Form 1041 for each trust, provided that the items of income, deduction, and credit of each trust were shown on a statement attached to the single Form 1041.

(i) *Cross-reference.* For rules relating to employer identification numbers, and to the obligation of a payor of income or proceeds to the trust to furnish to the payee a statement to recipient, see § 301.6109–1(a)(2) of this chapter.

Par. 3. Section 1.6012–3 is amended by revising paragraph (a)(9) to read as follows:

§ 1.6012–3 Returns by fiduciaries.

(a) * * *

(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to sections 671 through 678.* In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see § 1.671–4.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 4. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 25.2702–3 is amended by adding a sentence to the end of paragraphs (b)(1)(i) and (c)(1)(i), respectively, to read as follows:

§ 25.2702–3 Qualified interests.

* * * * *

(b) * * *

(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the annuity payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

* * * * *

(c) * * *

(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the unitrust payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 7. Section 301.6109–1 is amended by revising paragraph (a)(2) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(2) *A trust all of which is treated as owned by the grantor or another person pursuant to sections 671 through 678*—(i) *Obtaining a taxpayer identification number.* If a trust does not have a taxpayer identification number and the trustee furnishes the name and taxpayer identification number of the grantor or other person treated as the owner of the trust and the address of the trust to all payors pursuant to § 1.671–4(b)(2)(i)(A) of this chapter, the trustee need not obtain a taxpayer identification number for the trust until either the first taxable year of the trust in which all of the trust is no longer owned by the grantor or another person, or until the first taxable year of the trust for which the trustee no longer reports pursuant to § 1.671–4(b)(2)(i)(A) of this chapter. If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this section in order to report pursuant to § 1.671–4(a), (b)(2)(i)(B), or (b)(3)(i) of this chapter.

(ii) *Obligations of persons who make payments to certain trusts.* Any payor that is required to file an information return with respect to payments of income or proceeds to a trust must show the name and taxpayer identification number that the trustee has furnished to the payor on the return. Regardless of whether the trustee furnishes to the payor the name and taxpayer identification number of the grantor or other person treated as an owner of the trust, or the name and taxpayer identification number of the trust, the payor must furnish a statement to recipients to the trustee of the trust, rather than to the grantor or other person treated as the owner of the trust. Under these circumstances, the payor satisfies the obligation to show the name and taxpayer identification number of the payee on the information return and to furnish a statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(iii) *Persons treated as payors.* For purposes of this paragraph (a)(2), the term payor means a person described in § 1.671–4(b)(4) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended in the table by revising the entry for 1.671–4 to read "1.671–4 . . . . 1545–1442".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 5, 1995:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30682 Filed 12–20–95; 8:45 am]

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26 CFR Parts 1, 301 and 602

[TD 8641]

RIN 1545–AN71

Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Federal financial assistance, as defined in section 597(c) of the Internal Revenue Code, that is received by a financially troubled bank or thrift institution, and to acquisitions of financially troubled bank or thrift institutions in which Federal financial assistance is provided. This document also contains final regulations under section 7507. These regulations provide guidance concerning the proper tax treatment of various transactions involving the receipt of Federal financial assistance.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the "§ 1.597–7 Effective date" section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions (§ 1.597–7) of this document.

FOR FURTHER INFORMATION CONTACT: Steven M. Flanagan at 202–622–7790, Vicki J. Hyche at 202–622–7530, William D. Alexander at 202–622–7710, or Steven R. Glickstein at 202–622–4439 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1300. Responses to these collections of information are required to track deferred income and its subsequent recapture, elect to disaffiliate earlier than would otherwise be permitted, elect to apply the provisions of the regulation retroactively, and report uncollected income tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 11 hours, depending on individual circumstances, with an estimated average of 4.4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73) (FIRREA). The regulations provide guidance for banks and domestic building and loan associations (Institutions) and their affiliates in connection with receipt of Federal financial assistance (FFA), as defined in section 597(c).

Section 597(a) delegates to the Secretary of the Treasury authority to prescribe regulations concerning "any transaction in which Federal financial assistance is provided." These regulations are issued under the authority of section 597(a).

This document also amends the regulations under section 7507 to reflect the treatment of FFA under FIRREA.

The IRS published proposed regulations under sections 597 and 7507 on April 22, 1992 (57 FR 14794, FI–46–89, 1992–1 C.B. 1037).

Public Comments and the Final Regulations

The IRS received comments on the proposed regulations, and a public hearing was held on July 17, 1992. After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. The principal comments and revisions are discussed below.

Section 1.597–2 Taxation of FFA

Section 1.597–2 contains rules concerning accounting for FFA as income. The final regulations retain the proposed rule that, generally, FFA is income to the failed Institution when it is received or accrued in accordance with the Institution's method of accounting. Section 1.597–2(c) contains rules permitting certain Institutions to defer the inclusion of FFA.

Deferral formula without Continuing Equity. Under the proposed regulations, unresolved Institutions without Continuing Equity were permitted to defer inclusion of FFA in excess of amounts determined under a formula. The proposed formula required current inclusion equal to the sum of liabilities less aggregate adjusted basis at the

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beginning of the assistance year (representing losses already recognized), plus loss in the current year (disregarding FFA). The proposed formula generally allowed the Institution the benefit of any prior losses of its owners' equity, but offset any losses of creditors' capital by the inclusion of FFA. However, with respect to losses during the year FFA is received, the proposed formula did not distinguish between losses of owners' equity and losses of creditors' capital and, therefore, offset losses of owners' equity by inclusion of FFA. The formula (together with related recapture rules) in the final regulations has been changed to reflect that the owners' equity is the first capital lost and, in a transaction without Continuing Equity, is not offset by inclusion of FFA.

Deferral formula with Continuing Equity. The proposed regulations allowed deferral under different conditions where Continuing Equity is present. In that case, the Institution must include currently, in addition to the normal formula amount, income equal to all net operating loss carryovers available to it. Also, an Institution with Continuing Equity must recapture deferred FFA at least as quickly as pro rata over a maximum of six years, regardless of whether it recognizes all of its built-in losses during that time.

Commentators suggested that the proposed regulations unfairly limited deferral for Institutions with Continuing Equity and recommended the same deferral formula apply in all cases. They criticized the Continuing Equity concept because it focused on the identity of the Institution's shareholders after the assistance transaction.

Under the definition of Continuing Equity in the proposed regulations, an Institution generally would have Continuing Equity if five percent or more of its stock at the end of a taxable year was owned by shareholders who owned stock before the Institution was placed in receivership by a supervisory agency (Agency) or first received FFA. The five percent reference was misleading because, under § 1.597–5, a 50 percent change in ownership generally results in a deemed Taxable Transfer (now defined in § 1.597–5(a)(1)) in which the failed Institution is treated as a New Entity. The deferral rules do not apply after a deemed Taxable Transfer. The final regulations thus clarify that Continuing Equity exists only if the Institution is not (i) a Bridge Bank, (ii) in Agency receivership, or (iii) treated as a New Entity. The modification to the definition of Continuing Equity is not intended as a substantive change. The Continuing Equity deferral provisions apply only to the limited number of "open bank" resolutions not subject to the deemed Taxable Transfer rules. (As discussed below, the Taxable Transfer definitions have also been modified to clarify that most "open bank" assisted transactions are treated as Taxable Transfers.)

The final regulations do not eliminate the special treatment of Institutions with Continuing Equity. The regulations provide deferral rules to ameliorate a timing mismatch between FFA income and related losses. Deferral is not designed to allow built-in losses to offset operating income instead of FFA or to permit the permanent elimination of any subsidy provided by Agency. The requirement that Institutions with Continuing Equity recapture their deferred FFA within six years is a reasonable safeguard against indefinite deferral of FFA income. The results under these rules are comparable in effect to those applicable to acquirors in Taxable Transfers.

The final regulations do, however, modify the Continuing Equity formula, which, in the proposed regulations, counted some losses twice. Recognized losses represented in the first prong of the formula (liabilities minus asset bases) may comprise part of the third prong (net operating losses available to the Institution or its consolidated group). The final regulations correct this double counting of losses.

Transfers of money and property to Agency. The proposed regulations contained rules for taxing FFA if money or property is also transferred to Agency. These rules, together with rules for the treatment of FFA received pursuant to a Loss Guarantee, have been clarified, reorganized, and restated in § 1.597–2(d).

The proposed regulations provided an offset or deduction for payments by an Institution to Agency to the extent of previously received FFA. The rule as proposed provided limited relief for payments made to Agency by a New Entity or Acquiring, because they receive little or no FFA. However, an assisted acquisition can result in income to a New Entity or Acquiring in the form of built-in gain. Under section 597(c) and § 1.597–3(b), an instrument issued to Agency by a New Entity or Acquiring is, in effect, disregarded. If a New Entity or Acquiring issues its instrument to Agency in connection with the acquisition of an Institution, the value of the instrument is not included in the purchase price. Consequently, a New Entity or Acquiring may have a basis shortfall in the assets acquired (or deemed acquired) from the failed Institution. The final regulations provide a New Entity or Acquiring a purchase price adjustment upon any transfer to Agency (e.g., in satisfaction of the disregarded instrument).

In response to comments, the final regulations also specifically provide for repayments to Agency by Institution affiliates. Moreover, the final regulations provide that if Agency sells an Institution's instrument to a third party, the sales price is treated as a repayment to Agency by the issuer. Furthermore, the instrument is treated as having been newly issued by the issuer to the holder at that time. The IRS and Treasury believe that this is an appropriate time for the issuer to offset FFA or increase its basis, because the sales price reasonably fixes the value of the instrument, and any subsequent cost associated with the instrument should be accounted for in accordance with the nature of the instrument.

Section 1.597–4(g) Elective Disaffiliation

The proposed regulations would allow a consolidated group to elect (after the regulations became final) to exclude an Institution in receivership from its group. The election potentially requires the inclusion of a "toll charge" in the income of those members owning the common stock of the Institution (the member shareholders). The amount of the toll charge is the excess of the disaffiliated Institution's liabilities over the adjusted basis of its assets. The toll charge is intended to reflect the amount that would be included in income if Agency were to provide the entire amount of FFA necessary to restore the Institution's solvency at the time of the event permitting disaffiliation. Commentators suggested that the final regulations should include the toll charge in the income of the disaffiliated Institution (rather than its member shareholders), provide the group with a "toll charge deduction," and clarify the ability of the member shareholders to take a worthless stock deduction.

Toll charge. Commentators suggested that the final regulations include the toll charge in the income of the failed Institution rather than its member shareholders. According to the commentators, including the toll charge in the income of the member shareholders may result in disadvantageous state tax consequences in those states where banking corporations are not permitted to file consolidated returns with nonbanking corporations. Under the proposed regulations, a bank holding corporation (the disaffiliated Institution's shareholder) would have to include in income the toll charge without the benefit of the Institution's offsetting losses.

The IRS and Treasury agree that the toll charge is more appropriately included in the income of the Institution (i.e., the entity that is reimbursed by Agency for its loss), because the toll charge represents accelerated FFA income. Thus, the final regulations provide that the Institution, rather than its member shareholders, takes the toll charge into income.

Toll charge deduction. Under the proposed regulations, the Institution does not recognize built-in losses on disaffiliation. One commentator suggested the final regulations provide for a "toll charge deduction" for the excess of the Institution's adjusted basis over its liabilities. According to the commentator, such a deduction is appropriate because the Institution incurred economic loss while it was a member of the consolidated group, before the Institution was placed in receivership by Agency.

The commentator's recommendation is not adopted in the final regulations because a toll charge deduction would accelerate recognition of losses in advance of realization. Such a deduction is particularly inappropriate because federal banking laws now permit placing solvent institutions in receivership. In such cases, it is uncertain whether the loss represented by such a deduction will ever be realized.

Worthless stock deduction. Under the proposed regulations, if an election to disaffiliate is made, the members of the consolidated group are treated as having disposed of their stock in the Institution. One commentator suggested that the final regulations clarify that, upon disaffiliation, the Institution's stock is worthless.

The final regulations address the commentator's concerns by providing that, as a consequence of the election, the members of the consolidated group treat their stock in the Institution as worthless if the Institution is factually insolvent on the date the Institution is placed in receivership (or on the date the consolidated group is deemed to make the election to disaffiliate). This rule preempts otherwise applicable tests for worthlessness under section 165 and § 1.1502–19. Any worthless stock deduction is subject to the limitations of the loss disallowance regulations (§§ 1.337(d)–1 and 1.1502–20).

Consistency rule. Under the proposed regulations, a consolidated group could elect to disaffiliate a subsidiary Institution only if the Institution was its first subsidiary placed in Agency receivership after the enactment of FIRREA. The election made for the first subsidiary bound all future subsidiaries placed in Agency receivership. To address the concern that the scope of the proposed consistency rule was too broad, the final regulations modify the consistency rule to require, generally, that a consolidated group must elect consistently only for subsidiary Institutions placed in Agency receivership within five years of each other.

Section 1.597–5 Taxable Transfers

Section 597 applies to FFA and transactions in connection with which FFA is provided. The proposed regulations generally define a Taxable Transfer as a transfer of deposit liabilities or stock while an Institution is under Agency Control. However, IRS and Treasury now understand that it is possible for Agency to resolve an Institution under its control without providing assistance, or to provide assistance without placing an Institution under its control. In light of this information, the final regulations refine the definition of a Taxable Transfer.

Under the final regulations, Taxable Transfers include the transfer of any deposit liability in connection with which FFA is provided or the transfer of any asset for which Agency has an obligation (e.g., assets covered by Loss Guarantees). Certain transfers of stock cause a Taxable Transfer if FFA is provided in connection with the transfer, if the Institution is a Bridge Bank or if the Institution has a balance in its deferred FFA account. The phrase "in connection with" should be interpreted broadly. If any party to a transaction receives FFA, all parties and all related transactions are within the scope of these regulations. To provide certainty regarding tax treatment for purchasers of stock of subsidiaries of Institutions under Agency Control, the final regulations treat all transactions in which such a subsidiary leaves its group as Taxable Transfers.

Section 1.597–6 Limitation on Collection of Income Tax

Limitation where tax is borne by Agency. The proposed regulations provided that income tax attributable to the receipt of FFA or gain on a Taxable Transfer would not be collected from an Institution without Continuing Equity if Agency would bear the burden of the tax. Commentators suggested that the limitation on noncollection in cases of Continuing Equity is inappropriate because it requires Agency to gross-up any assistance paid to cover the tax thereon.

The final regulations retain the limitation on noncollection in cases of Continuing Equity. The IRS and Treasury believe that the limitation is appropriate for transactions in which Agency assists an Institution while allowing old shareholders to retain their ownership. Noncollection should not inure to the benefit of the Institution's old shareholders, who would have use of the Institution's losses while escaping responsibility for the tax on related FFA income. The congressional purpose in FIRREA to eliminate any tax subsidy for assisted transactions requires that the IRS not waive its rights as a creditor in cases where all other creditors and equity holders retain their rights.

Transferee liability. The proposed regulations limited the collection of a failed Institution's income taxes from a transferee in a Taxable Transfer (i.e., a New Entity or Acquiring). This rule would not apply if (similar to the Continuing Equity rule discussed above under the heading "Deferral formula with Continuing Equity") there is a five percent overlap in the ownership of the transferor Institution and the New Entity or Acquiring.

Commentators suggested that the final regulations should not include the five percent overlap exception because the exception appears to punish former owners of Institutions, Institutions have difficulty tracking ownership, and the exception contains no limits on aggregation.

Because good faith purchasers of assets for value generally do not have transferee liability, the final regulations clarify that Acquiring (the purchaser of Institution's assets in an actual Taxable Transfer) is not subject to such liability in any case. This rule applies even if shareholders of Acquiring were shareholders of the selling Institution.

The final regulations do not, however, except a New Entity (the resulting corporation in a deemed Taxable Transfer) from collection if the Institution's previous equity interests remain outstanding in the New Entity, or are reacquired or exchanged for consideration. As in those cases in which a Taxable Transfer does not occur, the IRS should remain a creditor if all other creditors retain their interests and the Institution's previous equity interests had retained value. However, by focusing on whether previous equity interests retain value, the final regulations eliminate the need to track or aggregate ownership and do not penalize any particular potential acquirors.

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Section 1.597–7 Effective Date

As proposed, these final regulations generally apply to taxable years ending on or after April 22, 1992. However, the provisions of these regulations do not apply to FFA received or accrued for taxable years ending after April 22, 1992, in connection with an Agency assisted acquisition that occurs before April 22, 1992. Taxpayers not subject to these regulations must comply with an interpretation of the statute that is reasonable in light of the legislative history and applicable administrative pronouncements. For this purpose, the rules contained in Notice 89–102 (1989–2 C.B. 436) apply to the extent provided in the Notice.

An irrevocable election is available to apply the regulations to taxable years prior to the general effective date. However, the election cannot be made if the Institution's statute of limitations has expired or a section 338 election was available but not made for the Institution. In addition, consistent treatment is required in "open bank" resolutions that would result under the regulations in deemed Taxable Transfers before April 22, 1992.

The proposed regulations required an electing taxpayer to extend the statute of limitations for all items for three years from the date of filing the election. The final regulations adopt a commentator's suggestion that the taxpayer extend the statute of limitations only for items affected by application of the regulations.

An Institution or consolidated group makes the election on its first annual income tax return filed on or after March 15, 1996. However, to make the affirmative election to disaffiliate under § 1.597–4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, a consolidated group must send the affected Institution the required statement advising it of the elective disaffiliation on or before May 31, 1996. In that case, the consolidated group is deemed to have elected retroactive application of these regulations but must nevertheless attach the required statement to its first annual income tax return filed on or after March 15, 1996.

The final regulations provide that taxpayers may rely on the provisions of the proposed regulations to the extent they acted in reliance on the proposed regulations prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which such taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as well as the overriding policies of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will generally only apply to certain financially troubled financial institutions and the consolidated groups, if any, to which they belong. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Steven M. Flanagan, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *

Sections 1.597–1 through 1.597–7 also issued under 26 U.S.C. 597 and 1502.

Par. 2. Sections 1.597–1 through 1.597–7 are added to read as follows:

§ 1.597–1 Definitions.

For purposes of the regulations under section 597—

(a) Unless the context otherwise requires, the terms *consolidated group, member* and *subsidiary* have the meanings provided in § 1.1502–1; and

(b) The following terms have the meanings provided below—

Acquiring. The term *Acquiring* means a corporation that is a transferee in a Taxable Transfer, other than a deemed transferee in a Taxable Transfer described in § 1.597–5(b).

Agency. The term *Agency* means the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, any similar instrumentality of the United States government, and any predecessor or successor of the foregoing (including the Federal Savings and Loan Insurance Corporation).

Agency Control. An Institution or entity is under *Agency Control* if Agency is conservator or receiver of the Institution or entity, or if Agency has the right to appoint any of the Institution's or entity's directors.

Agency Obligation. The term *Agency Obligation* means a debt instrument that Agency issues to an Institution or to a direct or indirect owner of an Institution.

Bridge Bank. The term *Bridge Bank* means an Institution that is organized by Agency to hold assets and liabilities of another Institution and that continues the operation of the other Institution's business pending its acquisition or liquidation, and that is any of the following—

(1) A national bank chartered by the Comptroller of the Currency under section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) or section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor sections;

(2) A Federal savings association chartered by the Director of the Office of Thrift Supervision under section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor section; or

(3) A similar Institution chartered under any other statutory provisions.

Consolidated Subsidiary. The term *Consolidated Subsidiary* means a member of the consolidated group of which an Institution is a member that bears the same relationship to the Institution that the members of a consolidated group bear to their common parent under section 1504(a)(1).

Continuing Equity. An Institution has *Continuing Equity* for any taxable year if, on the last day of the taxable year, the Institution is not (1) a Bridge Bank, (2) in Agency receivership, or (3) treated as a New Entity.

Controlled Entity. The term *Controlled Entity* means an entity under Agency Control.

Federal Financial Assistance (FFA). The term *Federal Financial Assistance* (FFA), as defined by section 597(c), means any money or property provided by Agency to an Institution or to a direct or indirect owner of stock in an Institution under section 406(f) of the National Housing Act (12 U.S.C. 1729(f)), section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)), section 11(f) or 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f), 1823(c)), or under any similar provision of law. Any such money or property is FFA, regardless of whether the Institution or any of its affiliates issues Agency a note or other obligation, stock, warrants, or other rights to acquire stock in connection with Agency's provision of the money or property. FFA includes Net Worth Assistance, Loss Guarantee payments, yield maintenance payments, cost to carry or cost of funds reimbursement payments, expense reimbursement or indemnity payments, and interest (including original issue discount) on an Agency Obligation.

Institution. The term *Institution* means an entity that is, or immediately before being placed under Agency Control was, a bank or domestic building and loan association within the meaning of section 597 (including a Bridge Bank). Except as otherwise provided in the regulations under section 597, the term *Institution* includes a New Entity or Acquiring that is a bank or domestic building and loan association within the meaning of section 597.

Loss Guarantee. The term *Loss Guarantee* means an agreement pursuant to which Agency or a Controlled Entity guarantees or agrees to pay an Institution a specified amount upon the disposition or charge-off (in whole or in part) of specific assets, an agreement pursuant to which an Institution has a right to put assets to Agency or a Controlled Entity at a specified price, or a similar arrangement.

Net Worth Assistance. The term *Net Worth Assistance* means money or property (including an Agency Obligation to the extent it has a fixed principal amount) that Agency provides as an integral part of a Taxable Transfer, other than FFA that accrues after the date of the Taxable Transfer. For example, Net Worth Assistance does not include Loss Guarantee payments, yield maintenance payments, cost to carry or cost of funds reimbursement payments, or expense reimbursement or indemnity payments. An Agency Obligation is considered to have a fixed principal amount notwithstanding an agreement providing for its adjustment after issuance to reflect a more accurate determination of the condition of the Institution at the time of the acquisition.

New Entity. The term *New Entity* means the new corporation that is treated as purchasing all of the assets of an Old Entity in a Taxable Transfer described in § 1.597–5(b).

Old Entity. The term *Old Entity* means the Institution or Consolidated Subsidiary that is treated as selling all of its assets in a Taxable Transfer described in § 1.597–5(b).

Residual Entity. The term *Residual Entity* means the entity that remains after an Institution transfers deposit liabilities to a Bridge Bank.

Taxable Transfer. The term *Taxable Transfer* has the meaning provided in § 1.597–5(a)(1).

§ 1.597–2 Taxation of Federal Financial Assistance.

(a) *Inclusion in income*—(1) *In general.* Except as otherwise provided in the regulations under section 597, all FFA is includible as ordinary income to the recipient at the time the FFA is received or accrued in accordance with the recipient's method of accounting. The amount of FFA received or accrued is the amount of any money, the fair market value of any property (other than an Agency Obligation), and the issue price of any Agency Obligation (determined under § 1.597–3(c)(2)). An Institution (and not the nominal recipient) is treated as receiving directly any FFA that Agency provides in a taxable year to a direct or indirect shareholder of the Institution, to the extent money or property is transferred to the Institution pursuant to an agreement with Agency.

(2) *Cross references.* See paragraph (c) of this section for rules regarding the timing of inclusion of certain FFA. See paragraph (d) of this section for additional rules regarding the treatment of FFA received in connection with transfers of money or property to Agency or a Controlled Entity, or paid pursuant to a Loss Guarantee. See § 1.597–5(c)(1) for additional rules regarding the inclusion of Net Worth Assistance in the income of an Institution.

(b) *Basis of property that is FFA.* If FFA consists of property, the Institution's basis in the property equals the fair market value of the property (other than an Agency Obligation) or the issue price of the Agency Obligation, as determined under § 1.597–3(c)(2).

(c) *Timing of inclusion of certain FFA*—(1) *Scope.* This paragraph (c) limits the amount of FFA an Institution must include in income currently under certain circumstances and provides rules for the deferred inclusion in income of amounts in excess of those limits. This paragraph (c) does not apply to a New Entity or Acquiring.

(2) *Amount currently included in income by an Institution without Continuing Equity.* The amount of FFA an Institution without Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets; and

(ii) The amount by which the excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA); is greater than the excess at the beginning of the taxable year of the adjusted bases of the Institution's assets over the Institution's liabilities.

(3) *Amount currently included in income by an Institution with Continuing Equity.* The amount of FFA an Institution with Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets;

(ii) The greater of—

(A) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA); or

(B) The excess for the taxable year of the deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) of the consolidated group of which the Institution is a member on the last day of the Institution's taxable year over the group's gross income (determined without regard to FFA); and

(iii) The excess of the amount of any net operating loss carryover of the Institution (or in the case of a carryover from a consolidated return year of the Institution's current consolidated group, the net operating loss carryover of the group) to the taxable year over the

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amount described in paragraph (c)(3)(i) of this section.

(4) *Deferred FFA*—(i) *Maintenance of account.* An Institution must establish a deferred FFA account commencing in the first taxable year in which it receives FFA that is not currently included in income under paragraph (c)(2) or (c)(3) of this section, and must maintain that account in accordance with the requirements of this paragraph (c)(4). The Institution must add the amount of any FFA that is not currently included in income under paragraph (c)(2) or (c)(3) of this section to its deferred FFA account. The Institution must decrease the balance of its deferred FFA account by the amount of deferred FFA included in income under paragraphs (c)(4)(ii), (iv) and (v) of this section. (See also paragraph (d)(5)(i)(B) of this section for other adjustments that decrease the deferred FFA account.) If, under paragraph (c)(3) of this section, FFA is not currently included in income in a taxable year, the Institution thereafter must maintain its deferred FFA account on a FIFO (first in, first out) basis (e.g., for purposes of the first sentence of paragraph (c)(4)(iv) of this section).

(ii) *Deferred FFA recapture.* In any taxable year in which an Institution has a balance in its deferred FFA account, it must include in income an amount equal to the lesser of the amount described in paragraph (c)(4)(iii) of this section or the balance in its deferred FFA account.

(iii) *Annual recapture amount*—(A) *Institutions without Continuing Equity*—(1) *In general.* In the case of an Institution without Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which—

(*i*) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (taking into account FFA included in income under paragraph (c)(2) of this section); is greater than

(*ii*) The Institution's remaining equity as of the beginning of the taxable year.

(*2*) *Remaining equity.* The Institution's remaining equity is—

(*i*) The amount at the beginning of the taxable year in which the deferred FFA account was established equal to the adjusted bases of the Institution's assets minus the Institution's liabilities (which amount may be positive or negative); plus

(*ii*) The Institution's taxable income (computed without regard to any carryover from any other year) in any subsequent taxable year or years; minus

(*iii*) The excess in any subsequent taxable year or years of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income.

(B) *Institutions with Continuing Equity.* In the case of an Institution with Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) exceed its gross income (taking into account FFA included in income under paragraph (c)(3) of this section).

(iv) *Additional deferred FFA recapture by an Institution with Continuing Equity.* To the extent that, as of the end of a taxable year, the cumulative amount of FFA deferred under paragraph (c)(3) of this section that an Institution with Continuing Equity has recaptured under this paragraph (c)(4) is less than the cumulative amount of FFA deferred under paragraph (c)(3) of this section that the Institution would have recaptured if that FFA had been included in income ratably over the six taxable years immediately following the taxable year of deferral, the Institution must include that difference in income for the taxable year. An Institution with Continuing Equity must include in income the balance of its deferred FFA account in the taxable year in which it liquidates, ceases to do business, transfers (other than to a Bridge Bank) substantially all of its assets and liabilities, or is deemed to transfer all of its assets under § 1.597–5(b).

(v) *Optional accelerated recapture of deferred FFA.* An Institution that has a deferred FFA account may include in income the balance of its deferred FFA account on its timely filed (including extensions) original income tax return for any taxable year that it is not under Agency Control. The balance of its deferred FFA account is income on the last day of that year.

(5) *Exceptions to limitations on use of losses.* In computing an Institution's taxable income or alternative minimum taxable income for a taxable year, sections 56(d)(1), 382 and 383 and §§ 1.1502–15, 1.1502–21 and 1.1502–22 do not limit the use of the attributes of the Institution to the extent, if any, that the inclusion of FFA (including recaptured FFA) in income results in taxable income or alternative minimum taxable income (determined without regard to this paragraph (c)(5)) for the taxable year. This paragraph (c)(5) does not apply to any limitation under section 382 or 383 or § 1.1502–15, 1.1502–21 or 1.1502–22 that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(6) *Operating rules*—(i) *Bad debt reserves.* For purposes of paragraphs (c)(2), (c)(3) and (c)(4) of this section, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593.

(ii) *Aggregation of Consolidated Subsidiaries.* For purposes of this paragraph (c), an Institution is treated as a single entity that includes the income, expenses, assets, liabilities, and attributes of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication.

(iii) *Alternative minimum tax.* To compute the alternative minimum taxable income attributable to FFA of an Institution for any taxable year under section 55, the rules of this section, and related rules, are applied by using alternative minimum tax basis, deductions, and all other items required to be taken into account. All other alternative minimum tax provisions continue to apply.

(7) *Earnings and profits.* FFA that is not currently included in income under this paragraph (c) is included in earnings and profits for all purposes of the Internal Revenue Code to the extent and at the time it is included in income under this paragraph (c).

(d) *Transfers of money or property to Agency, and property subject to a Loss Guarantee*—(1) *Transfers of property to Agency.* The transfer of property to Agency or a Controlled Entity is a taxable sale or exchange in which the Institution is treated as realizing an amount equal to—

(i) The property's fair market value; or

(ii) For property subject to a Loss Guarantee, the greater of the property's fair market value or the guaranteed value or price at which the property can be put at the time of transfer.

(2) *FFA with respect to property covered by a Loss Guarantee other than on transfer to Agency.* (i) FFA provided pursuant to a Loss Guarantee with respect to covered property is included in the amount realized with respect to the property to the extent the total amount realized does not exceed the greater of—

(A) The property's fair market value; or

(B) The guaranteed value or price at which the property can be put at the time of transfer.

(ii) For the purposes of this paragraph (d)(2), references to an amount realized include amounts obtained in whole or partial satisfaction of loans, amounts obtained by virtue of charging off or marking to market covered property, and other amounts similarly related to property, whether or not disposed of.

(3) *Treatment of FFA received in exchange for property.* FFA included in the amount realized for property under this paragraph (d) is not includible in income under paragraph (a)(1) of this section. The amount realized is treated in the same manner as if realized from a person other than Agency or a Controlled Entity. For example, gain attributable to FFA received with respect to a capital asset retains its character as capital gain. Similarly, FFA received with respect to property that has been charged off for income tax purposes is treated as a recovery to the extent of the amount previously charged off. Any FFA provided in excess of the amount realized under this paragraph (d) is includible in income under paragraph (a)(1) of this section.

(4) *Adjustment to FFA*—(i) *In general.* If an Institution pays or transfers money or property to Agency or a Controlled Entity, the amount of money and fair market value of the property is an adjustment to its FFA to the extent the amount paid and transferred exceeds the amount of money and fair market value of property Agency or a Controlled Entity provides in exchange.

(ii) *Deposit insurance.* This paragraph (d)(4) does not apply to amounts paid to Agency with respect to deposit insurance.

(iii) *Treatment of an interest held by Agency or a Controlled Entity*—(A) *In general.* For purposes of this paragraph (d), an interest described in § 1.597–3(b) is not treated as property when transferred by the issuer to Agency or a Controlled Entity nor when acquired from Agency or a Controlled Entity by the issuer.

(B) *Dispositions to persons other than issuer.* On the date Agency or a Controlled Entity transfers an interest described in § 1.597–3(b) to a holder other than the issuer, Agency or a Controlled Entity, the issuer is treated for purposes of this paragraph (d)(4) as having transferred to Agency an amount of money equal to the sum of the amount of money and the fair market value of property that was paid by the new holder as consideration for the interest.

(iv) *Consolidated groups.* For purposes of this paragraph (d), an 9Institution will be treated as having made any transfer to Agency or a Controlled Entity that was made by any other member of its consolidated group. The consolidated group must make appropriate investment basis adjustments to the extent the member transferring money or other property is not the member that received FFA.

(5) *Manner of making adjustments to FFA*—(i) *Reduction of FFA and deferred FFA.* An Institution adjusts its FFA under paragraph (d)(4) of this section by reducing in the following order and in an aggregate amount not greater than the adjustment—

(A) The amount of any FFA that is otherwise includible in income for the taxable year (before application of paragraph (c) of this section); and

(B) The balance (but not below zero) in the deferred FFA account, if any, maintained under paragraph (c)(4) of this section.

(ii) *Deduction of excess amounts.* If the amount of the adjustment exceeds the sum of the amounts described in paragraph (d)(5) (i) of this section, the Institution may deduct the excess to the extent the deduction does not exceed the amount of FFA included in income for prior taxable years reduced by the amount of deductions allowable under this paragraph (d)(5)(ii) in prior taxable years.

(iii) *Additional adjustments.* Any adjustment to FFA in excess of the sum of the amounts described in paragraphs (d)(5)(i) and (ii) of this section is treated—

(A) By an Institution other than a New Entity or Acquiring, as a deduction of the amount in excess of FFA received that is required to be transferred to Agency under section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)); or

(B) By a New Entity or Acquiring, as an adjustment to the purchase price paid in the Taxable Transfer (see § 1.338(b)–3T).

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Timing of inclusion of FFA in income. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. On January 1, 1997, M has assets with a total adjusted basis of $100 million and total liabilities of $120 million. M's deductions do not exceed its gross income (determined without regard to FFA) for 1997. Agency provides $30 million of FFA to M in 1997. The amount of this FFA that M must include in income in 1997 is limited by § 1.597–2(c)(2) to $20 million, the amount by which M's liabilities ($120 million) exceed the total adjusted basis of its assets ($100 million) at the beginning of the taxable year. Pursuant to § 1.597–2(c)(4)(i), M must establish a deferred FFA account for the remaining $10 million.

(ii) If Agency instead lends M the $30 million, M's indebtedness to Agency is disregarded and the results are the same as in paragraph (i) of this *Example 1.* Section 597(c); §§ 1.597–1(b) (defining FFA) and 1.597–3(b).

Example 2. Transfer of property to Agency. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. At the beginning of 1998, M's remaining equity is $0 and M has a deferred FFA account of $10 million. Agency does not provide any FFA to M in 1998. During the year, M transfers property not covered by a Loss Guarantee to Agency and does not receive any consideration. The property has an adjusted basis of $5 million and a fair market value of $1 million at the time of the transfer. M has no other taxable income or loss in 1998.

(ii) Under § 1.597–2(d)(1), M is treated as selling the property for $1 million, its fair market value, thus recognizing a $4 million loss ($5 million–$1 million). In addition, because M did not receive any consideration from Agency, under § 1.597–2(d)(4) M has an adjustment to FFA of $1 million, the amount by which the fair market value of the transferred property ($1 million) exceeds the consideration M received from Agency ($0). Because no FFA is provided to M in 1998, this adjustment reduces the balance of M's deferred FFA account to $9 million ($10 million–$1 million). Section 1.597–2(d)(5)(i)(B). Because M's $4 million loss causes M's deductions to exceed its gross income by $4 million in 1998 and M has no remaining equity, under § 1.597–2(c)(4)(iii)(A) M must include $4 million of deferred FFA in income, and must decrease the remaining $9 million balance of its deferred FFA account by the same amount, leaving a balance of $5 million.

Example 3. Loss Guarantee. Institution Q, a calendar year taxpayer, sells an asset covered by a Loss Guarantee to an unrelated third party for $4,000. Q's adjusted basis in the asset at the time of sale and the asset's guaranteed value are both $10,000. Pursuant to the Loss Guarantee, Agency pays Q $6,000 ($10,000–$4,000). Q's amount realized from the sale of the asset is $10,000 ($4,000 from the third party and $6,000 from Agency). Section 1.597–2(d)(2). Q realizes no gain or loss on the sale ($10,000–$10,000 = $0), and therefore includes none of the $6,000 of FFA it receives pursuant to the Loss Guarantee in income. Section 1.597–2(d)(3).

§ 1.597–3 Other rules.

(a) *Ownership of assets.* For all income tax purposes, an Institution is treated as the owner of all assets covered by a Loss Guarantee, yield maintenance agreement, or cost to carry or cost of funds reimbursement agreement, regardless of whether Agency (or a Controlled Entity) otherwise would be treated as the owner under general principles of income taxation.

(b) *Debt and equity interests received by Agency.* Debt instruments, stock, warrants, or other rights to acquire stock of an Institution (or any of its affiliates) that Agency or a Controlled Entity

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receives in connection with a transaction in which FFA is provided are not treated as debt, stock or other equity interests of or in the issuer for any purpose of the Internal Revenue Code while held by Agency or a Controlled Entity. On the date Agency or a Controlled Entity transfers an interest described in this paragraph (b) to a holder other than Agency or a Controlled Entity, the interest is treated as having been newly issued by the issuer to the holder with an issue price equal to the sum of the amount of money and the fair market value of property paid by the new holder in exchange for the interest.

(c) *Agency Obligations*—(1) *In general.* Except as otherwise provided in this paragraph (c), the original issue discount rules of sections 1271 et seq. apply to Agency Obligations.

(2) *Issue price of Agency Obligations provided as Net Worth Assistance.* The issue price of an Agency Obligation that is provided as Net Worth Assistance and that bears interest at either a single fixed rate or a qualified floating rate (and provides for no contingent payments) is the lesser of the sum of the present values of all payments due under the obligation, discounted at a rate equal to the applicable Federal rate (within the meaning of section 1274(d) (1) and (3)) in effect for the date of issuance, or the stated principal amount of the obligation. The issue price of an Agency Obligation that bears a qualified floating rate of interest (within the meaning of § 1.1275–5(b)) is determined by treating the obligation as bearing a fixed rate of interest equal to the rate in effect on the date of issuance under the obligation.

(3) *Adjustments to principal amount.* Except as provided in § 1.597–5(d)(2)(iv), this paragraph (c)(3) applies if Agency modifies or exchanges an Agency Obligation provided as Net Worth Assistance (or a successor obligation). The issue price of the modified or new Agency Obligation is determined under paragraphs (c) (1) and (2) of this section. If the issue price is greater than the adjusted issue price of the existing Agency Obligation, the difference is treated as FFA. If the issue price is less than the adjusted issue price of the existing Agency Obligation, the difference is treated as an adjustment to FFA under § 1.597–2(d)(4).

(d) *Successors.* To the extent necessary to effectuate the purposes of the regulations under section 597, an entity's treatment under the regulations applies to its successor. A successor includes a transferee in a transaction to which section 381(a) applies or a Bridge Bank to which another Bridge Bank transfers deposit liabilities.

(e) *Loss disallowance.* For purposes of § 1.1502–20, FFA and the amount described in § 1.597–4(g)(3) are treated as an extraordinary gain disposition within the meaning of § 1.1502–20(c)(2)(i) and a Taxable Transfer is treated as an applicable asset acquisition under section 1060(c) within the meaning of § 1.1502–20(c)(2)(i)(A)(4).

(f) *Losses and deductions with respect to covered assets.* Prior to the disposition of an asset covered by a Loss Guarantee, the asset cannot be charged off, marked to a market value, depreciated, amortized, or otherwise treated in a manner that supposes an actual or possible diminution of value below the greater of the asset's highest guaranteed value or the highest price at which the asset can be put.

(g) *Anti-abuse rule.* The regulations under section 597 must be applied in a manner consistent with the purposes of section 597. Accordingly, if, in structuring or engaging in any transaction, a principal purpose is to achieve a tax result that is inconsistent with the purposes of section 597 and the regulations thereunder, the Commissioner can make appropriate adjustments to income, deductions and other items that would be consistent with those purposes.

§ 1.597–4 Bridge Banks and Agency Control.

(a) *Scope.* This section provides rules that apply to a Bridge Bank or other *Institution* under Agency Control and to transactions in which an Institution transfers deposit liabilities (whether or not the Institution also transfers assets) to a Bridge Bank.

(b) *Status as taxpayer.* A Bridge Bank or other Institution under Agency Control is a corporation within the meaning of section 7701(a)(3) for all purposes of the Internal Revenue Code and is subject to all Internal Revenue Code provisions that generally apply to corporations, including those relating to methods of accounting and to requirements for filing returns, even if Agency owns stock of the Institution.

(c) *No section 382 ownership change.* The imposition of Agency Control, the cancellation of Institution stock by Agency, a transaction in which an Institution transfers deposit liabilities to a Bridge Bank, and an election under paragraph (g) of this section are disregarded in determining whether an ownership change has occurred within the meaning of section 382(g).

(d) *Transfers to Bridge Banks*—(1) *In general.* Except as otherwise provided in paragraph (g) of this section, the rules of this paragraph (d) apply to transfers to Bridge Banks. In general, a Bridge Bank and its associated Residual Entity are together treated as the successor entity to the transferring Institution. If an Institution transfers deposit liabilities to a Bridge Bank (whether or not it also transfers assets), the Institution recognizes no gain or loss on the transfer and the Bridge Bank succeeds to the transferring Institution's basis in any transferred assets. The associated Residual Entity retains its basis in any assets it continues to hold. Immediately after the transfer, the Bridge Bank succeeds to and takes into account the transferring Institution's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)), taxpayer identification number ("TIN"), deferred FFA account, and account receivable for future FFA as described in paragraph (g)(4)(ii) of this section. The Bridge Bank also succeeds to and continues the transferring Institution's taxable year.

(2) *Transfers to a Bridge Bank from multiple Institutions.* If two or more Institutions transfer deposit liabilities to the same Bridge Bank, the rules in paragraph (d)(1) of this section are modified to the extent provided in this paragraph (d)(2). The Bridge Bank succeeds to the TIN and continues the taxable year of the Institution that transfers the largest amount of deposits. The taxable years of the other transferring Institutions close at the time of the transfer. If all the transferor Institutions are members of the same consolidated group, the Bridge Bank's carryback of losses to the Institution that transfers the largest amount of deposits is not limited by section 381(b)(3). The limitations of section 381(b)(3) do apply to the Bridge Bank's carrybacks of losses to all other transferor Institutions. If the transferor Institutions are not all members of the same consolidated group, the limitations of section 381(b)(3) apply with respect to all transferor Institutions. See paragraph (g)(6)(ii) of this section for additional rules that apply if two or more Institutions that are not members of the same consolidated group transfer deposit liabilities to the same Bridge Bank.

(e) *Treatment of Bridge Bank and Residual Entity as a single entity.* A Bridge Bank and its associated Residual Entity or Entities are treated as a single entity for income tax purposes and must file a single combined income tax return. The Bridge Bank is responsible for filing all income tax returns and statements for this single entity and is

the agent of each associated Residual Entity to the same extent as if the Bridge Bank were the common parent of a consolidated group including the Residual Entity. The term Institution includes a Residual Entity that files a combined return with its associated Bridge Bank.

(f) *Rules applicable to members of consolidated groups*—(1) *Status as members.* Unless an election is made under paragraph (g) of this section, Agency Control of an Institution does not terminate the Institution's membership in a consolidated group. Stock of a subsidiary that is canceled by Agency is treated as held by the members of the consolidated group that held the stock prior to its cancellation. If an Institution is a member of a consolidated group immediately before it transfers deposit liabilities to a Bridge Bank, the Bridge Bank succeeds to the Institution's status as the common parent or, unless an election is made under paragraph (g) of this section, as a subsidiary of the group. If a Bridge Bank succeeds to an Institution's status as a subsidiary, its stock is treated as held by the shareholders of the transferring Institution, and the stock basis or excess loss account of the Institution carries over to the Bridge Bank. A Bridge Bank is treated as owning stock owned by its associated Residual Entities, including for purposes of determining membership in an affiliated group.

(2) *No 30-day election to be excluded from consolidated group.* Neither an Institution nor any of its Consolidated Subsidiaries may be excluded from a consolidated group for a taxable year under § 1.1502–76(b)(5)(ii), as contained in 26 CFR part 1 edition revised April 1, 1994, if the Institution is under Agency Control at any time during the year.

(3) *Coordination with consolidated return regulations.* The provisions of the regulations under section 597 take precedence over conflicting provisions in the regulations under section 1502.

(g) *Elective disaffiliation*—(1) *In general.* A consolidated group of which an Institution is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank). See paragraph (g)(6) of this section for circumstances under which a consolidated group is deemed to make this election.

(2) *Consequences of election.* If the election under this paragraph (g) is made with respect to an Institution, the following consequences occur immediately before the subsidiary Institution to which the election applies is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election) and in the following order—

(i) All adjustments of the Institution and its Consolidated Subsidiaries under section 481 are accelerated;

(ii) Deferred intercompany gains and losses with respect to the Institution and its Consolidated Subsidiaries are taken into account and the Institution and its Consolidated Subsidiaries take into account any other items required under the regulations under section 1502 for members that become nonmembers within the meaning of § 1.1502–32(d)(4);

(iii) The taxable year of the Institution and its Consolidated Subsidiaries closes and the Institution includes the amount described in paragraph (g)(3) of this section in income as ordinary income as its last item for that taxable year;

(iv) The members of the consolidated group owning the common stock of the Institution include in income any excess loss account with respect to the Institution's stock under § 1.1502–19 and any other items required under the regulations under section 1502 for members that own stock of corporations that become nonmembers within the meaning of § 1.1502–32(d)(4); and

(v) If the Institution's liabilities exceed the aggregate fair market value of its assets on the date the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, on the date the consolidated group is deemed to make the election), the members of the consolidated group treat their stock in the Institution as worthless. (See §§ 1.337(d)-1 and 1.1502–20 for potential limitations on the group's worthless stock deduction.) In all other cases, the consolidated group will be treated as owning stock of a nonmember corporation until such stock is disposed of or becomes worthless under rules otherwise applicable.

(3) *Toll charge.* The amount described in this paragraph (g)(3) is the excess of the Institution's liabilities over the adjusted bases of its assets immediately before the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election). In computing this amount, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593. For purposes of this paragraph (g)(3), an Institution is treated as a single entity that includes the assets and liabilities of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication. The amount described in this paragraph (g)(3) for alternative minimum tax purposes is determined using alternative minimum tax basis, deductions, and all other items required to be taken into account. In computing the increase in the group's taxable income or alternative minimum taxable income, sections 56(d)(1), 382 and 383 and §§ 1.1502–15, 1.1502–21 and 1.1502–22 do not limit the use of the attributes of the Institution and its Consolidated Subsidiaries to the extent, if any, that the inclusion of the amount described in this paragraph (g)(3) in income would result in the group having taxable income or alternative minimum taxable income (determined without regard to this sentence) for the taxable year. The preceding sentence does not apply to any limitation under section 382 or 383 or §§ 1.1502–15, 1.1502–21, or 1.1502–22 that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(4) *Treatment of Institutions after disaffiliation*—(i) *In general.* If the election under this paragraph (g) is made with respect to an Institution, immediately after the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately after the consolidated group is deemed to make the election), the Institution and each of its Consolidated Subsidiaries are treated for income tax purposes as new corporations that are not members of the electing group's affiliated group. Each new corporation retains the TIN of the corresponding disaffiliated corporation and is treated as having received the assets and liabilities of the corresponding disaffiliated corporation in a transaction to which section 351 applies (and in which no gain was recognized under section 357(c) or otherwise). Thus, the new corporation has no net operating or capital loss carryforwards. An election under this paragraph (g) does not terminate the single entity treatment of a Bridge Bank and its Residual Entities provided in paragraph (e) of this section.

(ii) *FFA.* A new Institution is treated as having a non- interest bearing, nontransferable account receivable for future FFA with a basis equal to the amount described in paragraph (g)(3) of this section. If a disaffiliated Institution has a deferred FFA account at the time

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of its disaffiliation, the corresponding new Institution succeeds to and takes into account that deferred FFA account.

(iii) *Filing of consolidated returns.* If a disaffiliated Institution has Consolidated Subsidiaries at the time of its disaffiliation, the corresponding new Institution is required to file a consolidated income tax return with the subsidiaries in accordance with the regulations under section 1502.

(iv) *Status as Institution.* If an Institution is disaffiliated under this paragraph (g), the resulting new corporation is treated as an Institution for purposes of the regulations under section 597 regardless of whether it is a bank or domestic building and loan association within the meaning of section 597.

(v) *Loss carrybacks.* To the extent a carryback of losses would result in a refund being paid to a fiduciary under section 6402(i), an Institution or Consolidated Subsidiary with respect to which an election under this paragraph (g) (other than under paragraph (g)(6)(ii) of this section) applies is allowed to carry back losses as if the Institution or Consolidated Subsidiary had continued to be a member of the consolidated group that made the election.

(5) *Affirmative election*—(i) *Original Institution*—(A) *Manner of making election.* Except as otherwise provided in paragraph (g)(6) of this section, a consolidated group makes the election provided by this paragraph (g) by sending a written statement by certified mail to the affected Institution on or before the later of 120 days after its placement in Agency receivership or May 31, 1996. The statement must contain the following legend at the top of the page: "THIS IS AN ELECTION UNDER § 1.597–4(g) TO EXCLUDE THE BELOW-REFERENCED INSTITUTION AND CONSOLIDATED SUBSIDIARIES FROM THE AFFILIATED GROUP," and must include the names and taxpayer identification numbers of the common parent and of the Institution and Consolidated Subsidiaries to which the election applies, and the date on which the Institution was placed in Agency receivership. The consolidated group must send a similar statement to all subsidiary Institutions placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of this section. (Failure to satisfy the requirement in the preceding sentence, however, does not invalidate the election with respect to any subsidiary Institution placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of this section.) The consolidated group must include a copy of any election statement and accompanying certified mail receipt as part of its first income tax return filed after the due date under this paragraph (g)(5) for such statement. A statement must be attached to this return indicating that the individual who signed the election was authorized to do so on behalf of the consolidated group. Agency cannot make this election under the authority of section 6402(i) or otherwise.

(B) *Consistency limitation on affirmative elections.* A consolidated group may make an affirmative election under this paragraph (g)(5) with respect to a subsidiary Institution placed in Agency receivership only if the group made, or is deemed to have made, the election under this paragraph (g) with respect to every subsidiary Institution of the group placed in Agency receivership on or after May 10, 1989 and within five years preceding the date the subject Institution was placed in Agency receivership.

(ii) *Effect on Institutions placed in receivership simultaneously or subsequently.* An election under this paragraph (g), other than under paragraph (g)(6)(ii) of this section, applies to the Institution with respect to which the election is made or deemed made (the original Institution) and each subsidiary Institution of the group placed in Agency receivership or deconsolidated in contemplation of Agency Control or the receipt of FFA simultaneously with the original Institution or within five years thereafter.

(6) *Deemed Election*—(i) *Deconsolidations in contemplation.* If one or more members of a consolidated group deconsolidate (within the meaning of § 1.1502–19(c)(1)(ii)(B)) a subsidiary Institution in contemplation of Agency Control or the receipt of FFA, the consolidated group is deemed to make the election described in this paragraph (g) with respect to the Institution on the date the deconsolidation occurs. A subsidiary Institution is conclusively presumed to have been deconsolidated in contemplation of Agency Control or the receipt of FFA if either event occurs within six months after the deconsolidation.

(ii) *Transfers to a Bridge Bank from multiple groups.* On the day an Institution's transfer of deposit liabilities to a Bridge Bank results in the Bridge Bank holding deposit liabilities from both a subsidiary Institution and an Institution not included in the subsidiary Institution's consolidated group, each consolidated group of which a transferring Institution or the Bridge Bank is a subsidiary is deemed to make the election described in this paragraph (g) with respect to its subsidiary Institution. If deposit liabilities of another Institution that is a subsidiary member of any consolidated group subsequently are transferred to the Bridge Bank, the consolidated group of which the Institution is a subsidiary is deemed to make the election described in this paragraph (g) with respect to that Institution at the time of the subsequent transfer.

(h) *Examples.* The following examples illustrate the provisions of this section:

Facts. Corporation X, the common parent of a consolidated group, owns all the stock (with a basis of $4 million) of Institution M, an insolvent Institution with no Consolidated Subsidiaries. At the close of business on April 30, 1996, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million and a fair market value of $3 million.

Example 1. Effect of receivership on consolidation. On May 1, 1996, Agency places M in receivership and begins liquidating M. X does not make an election under § 1.597–4(g). M remains a member of the X consolidated group after May 1, 1996. Section 1.597–4(f)(1).

Example 2. Effect of Bridge Bank on consolidation—(i) *Additional facts.* On May 1, 1996, Agency places M in receivership and causes M to transfer all of its assets and deposit liabilities to Bridge Bank MB.

(ii) *Consequences without an election to disaffiliate.* M recognizes no gain or loss from the transfer and MB succeeds to M's basis in the transferred assets, M's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)) and TIN. Section 1.597–4(d)(1). (If M had a deferred FFA account, MB would also succeed to that account. Section 1.597–4(d)(1).) MB continues M's taxable year and succeeds to M's status as a member of the X consolidated group after May 1, 1996. Section 1.597–4 (d)(1) and (f). MB and M are treated as a single entity for income tax purposes. Section 1.597–4(e).

(iii) *Consequences with an election to disaffiliate.* If, on July 1, 1996, X makes an election under § 1.597–4(g) with respect to M, the following consequences are treated as occurring immediately before M was placed in Agency receivership. M must include $1 million ($5 million of liabilities—$4 million of adjusted basis) in income as of May 1, 1996. Section 1.597–4(g) (2) and (3). M is then treated as a new corporation that is not a member of the X consolidated group and that has assets (including a $1 million account receivable for future FFA) with a basis of $5 million and $5 million of liabilities received from disaffiliated corporation M in a section 351 transaction. New corporation M retains the TIN of disaffiliated corporation M. Section 1.597–4(g)(4). Immediately after the disaffiliation, new corporation M is treated as transferring its assets and deposit liabilities to Bridge Bank MB. New corporation M recognizes no gain or loss from the transfer and MB succeeds to M's TIN and taxable year. Section 1.597–4(d)(1). Bridge Bank MB is treated as a single entity that includes M and has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million. Section 1.597–4(d)(1).

§ 1.597–5 Taxable Transfers.

(a) *Taxable Transfers*—(1) *Defined.* The term *Taxable Transfer* means—

(i) A transaction in which an entity transfers to a transferee other than a Bridge Bank—

(A) Any deposit liability (whether or not the Institution also transfers assets), if FFA is provided in connection with the transaction; or

(B) Any asset for which Agency or a Controlled Entity has any financial obligation (e.g., pursuant to a Loss Guarantee or Agency Obligation); or

(ii) A deemed transfer of assets described in paragraph (b) of this section.

(2) *Scope.* This section provides rules governing Taxable Transfers. Rules applicable to both actual and deemed asset acquisitions are provided in paragraphs (c) and (d) of this section. Special rules applicable only to deemed asset acquisitions are provided in paragraph (e) of this section.

(b) *Deemed asset acquisitions upon stock purchase*—(1) *In general.* In a deemed transfer of assets under this paragraph (b), an Institution (including a Bridge Bank or a Residual Entity) or a Consolidated Subsidiary of the Institution (the Old Entity) is treated as selling all of its assets in a single transaction and is treated as a new corporation (the New Entity) that purchases all of the Old Entity's assets at the close of the day immediately preceding the occurrence of an event described in paragraph (b)(2) of this section. However, such an event results in a deemed transfer of assets under this paragraph (b) only if it occurs—

(i) In connection with a transaction in which FFA is provided;

(ii) While the Old Entity is a Bridge Bank;

(iii) While the Old Entity has a positive balance in a deferred FFA account (see § 1.597–2(c)(4)(v) regarding the optional accelerated recapture of deferred FFA); or

(iv) With respect to a Consolidated Subsidiary, while the Institution of which it is a Consolidated Subsidiary is under Agency Control.

(2) *Events.* A deemed transfer of assets under this paragraph (b) results if the Old Entity—

(i) Becomes a non-member within the meaning of § 1.1502–32(d)(4) of its consolidated group (other than pursuant to an election under § 1.597–4(g));

(ii) Becomes a member of an affiliated group of which it was not previously a member (other than pursuant to an election under § 1.597–4(g)); or

(iii) Issues stock such that the stock that was outstanding before the imposition of Agency Control or the occurrence of any transaction in connection with the provision of FFA represents 50 percent or less of the vote or value of its outstanding stock (disregarding stock described in section 1504(a)(4) and stock owned by Agency or a Controlled Entity).

(3) *Bridge Banks and Residual Entities.* If a Bridge Bank is treated as selling all of its assets to a New Entity under this paragraph (b), each associated Residual Entity is treated as simultaneously selling its assets to a New Entity in a Taxable Transfer described in this paragraph (b).

(c) *Treatment of transferor*—(1) *FFA in connection with a Taxable Transfer.* A transferor in a Taxable Transfer is treated as having directly received immediately before a Taxable Transfer any Net Worth Assistance that Agency provides to the New Entity or Acquiring in connection with the transfer. (See § 1.597–2 (a) and (c) for rules regarding the inclusion of FFA in income and § 1.597–2(a)(1) for related rules regarding FFA provided to shareholders.) The Net Worth Assistance is treated as an asset of the transferor that is sold to the New Entity or Acquiring in the Taxable Transfer.

(2) *Amount realized in a Taxable Transfer.* In a Taxable Transfer described in paragraph (a)(1)(i) of this section, the amount realized is determined under section 1001(b) by reference to the consideration paid for the assets. In a Taxable Transfer described in paragraph (a)(1)(ii) of this section, the amount realized is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirors' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock.

(3) *Allocation of amount realized*—(i) *In general.* The amount realized under paragraph (c)(2) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338(b)–2T (b), (c)(1) and (2).

(ii) *Modifications to general rule.* This paragraph (c)(3)(ii) modifies certain of the allocation rules of paragraph (c)(3)(i) of this section. Agency Obligations and assets covered by Loss Guarantees in the hands of the New Entity or Acquiring are treated as Class II assets. Stock of a Consolidated Subsidiary is treated as a Class II asset to the extent the fair market value of the Consolidated Subsidiary's Class I and Class II assets exceeds the amount of its liabilities. The fair market value of an Agency Obligation is deemed to equal its adjusted issue price immediately before the Taxable Transfer. The fair market value of an asset covered by a Loss Guarantee immediately after the Taxable Transfer is deemed to be not less than the greater of the asset's highest guaranteed value or the highest price at which the asset can be put.

(d) *Treatment of a New Entity and Acquiring*—(1) *Purchase price.* The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(i) of this section is the cost of the assets acquired. See § 1.1060–1T(c)(1). The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(ii) of this section is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirors' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock. FFA provided in connection with a Taxable Transfer is not included in the New Entity's or Acquiring's purchase price for the acquired assets. Any Net Worth Assistance so provided is treated as an asset of the transferor sold to the New Entity or Acquiring in the Taxable Transfer.

(2) *Allocation of basis*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2), the purchase price determined under paragraph (d)(1) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338(b)–2T(b), (c) (1) and (2).

(ii) *Modifications to general rule.* The allocation rules contained in paragraph (c)(3)(ii) of this section apply to the allocation of basis among assets acquired in a Taxable Transfer. No basis is allocable to Agency's agreement to provide Loss Guarantees, yield maintenance payments, cost to carry or cost of funds reimbursement payments, or expense reimbursement or indemnity payments. A New Entity's basis in assets it receives from its shareholders is

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determined under general principles of income taxation and is not governed by this paragraph (d).

(iii) *Allowance and recapture of additional basis in certain cases.* If the fair market value of the Class I and Class II assets acquired in a Taxable Transfer is greater than the New Entity's or Acquiring's purchase price for the acquired assets, the basis of the Class I and Class II assets equals their fair market value. The amount by which the fair market value of the Class I and Class II assets exceeds the purchase price is included ratably as ordinary income by the New Entity or Acquiring over a period of six taxable years beginning in the year of the Taxable Transfer. The New Entity or Acquiring must include as ordinary income the entire amount remaining to be recaptured under the preceding sentence in the taxable year in which an event occurs that would accelerate inclusion of an adjustment under section 481.

(iv) *Certain post-transfer adjustments*—(A) *Agency Obligations.* If an adjustment to the principal amount of an Agency Obligation or cash payment to reflect a more accurate determination of the condition of the Institution at the time of the Taxable Transfer is made before the earlier of the date the New Entity or Acquiring files its first post-transfer income tax return or the due date of that return (including extensions), the New Entity or Acquiring must adjust its basis in its acquired assets to reflect the adjustment. In making adjustments to the New Entity's or Acquiring's basis in its acquired assets, paragraph (c)(3)(ii) of this section is applied by treating an adjustment to the principal amount of an Agency Obligation pursuant to the first sentence of this paragraph (d)(2)(iv)(A) as occurring immediately before the Taxable Transfer. (See § 1.597–3(c)(3) for rules regarding other adjustments to the principal amount of an Agency Obligation.)

(B) *Assets covered by a Loss Guarantee.* If, immediately after a Taxable Transfer, an asset is not covered by a Loss Guarantee but the New Entity or Acquiring has the right to designate specific assets that will be covered by a Loss Guarantee, the New Entity or Acquiring must treat any asset so designated as having been subject to the Loss Guarantee at the time of the Taxable Transfer. The New Entity or Acquiring must adjust its basis in the covered assets and in its other acquired assets to reflect the designation in the manner provided by paragraph (d)(2) of this section. The New Entity or Acquiring must make appropriate adjustments in subsequent taxable years if the designation is made after the New Entity or Acquiring files its first post-transfer income tax return or the due date of that return (including extensions) has passed.

(e) *Special rules applicable to Taxable Transfers that are deemed asset acquisitions*—(1) *Taxpayer identification numbers.* Except as provided in paragraph (e)(3) of this section, a New Entity succeeds to the TIN of the transferor in a deemed sale under paragraph (b) of this section.

(2) *Consolidated Subsidiaries*—(i) *In general.* A Consolidated Subsidiary that is treated as selling its assets in a Taxable Transfer under paragraph (b) of this section is treated as engaging immediately thereafter in a complete liquidation to which section 332 applies. The consolidated group of which the Consolidated Subsidiary is a member does not take into account gain or loss on the sale, exchange, or cancellation of stock of the Consolidated Subsidiary in connection with the Taxable Transfer.

(ii) *Certain minority shareholders.* Shareholders of the Consolidated Subsidiary that are not members of the consolidated group that includes the Institution do not recognize gain or loss with respect to shares of Consolidated Subsidiary stock retained by the shareholder. The shareholder's basis for that stock is not affected by the Taxable Transfer.

(3) *Bridge Banks and Residual Entities*—(i) *In general.* A Bridge Bank or Residual Entity's sale of assets to a New Entity under paragraph (b) of this section is treated as made by a single entity under § 1.597–4(e). The New Entity deemed to acquire the assets of a Residual Entity under paragraph (b) of this section is not treated as a single entity with the Bridge Bank (or with the New Entity acquiring the Bridge Bank's assets) and must obtain a new TIN.

(ii) *Treatment of consolidated groups.* At the time of a Taxable Transfer described in paragraph (a)(1)(ii) of this section, treatment of a Bridge Bank as a subsidiary member of a consolidated group under § 1.597–4(f)(1) ceases. However, the New Entity deemed to acquire the assets of a Residual Entity is a member of the selling consolidated group after the deemed sale. The group's basis or excess loss account in the stock of the New Entity that is deemed to acquire the assets of the Residual Entity is the group's basis or excess loss account in the stock of the Bridge Bank immediately before the deemed sale, as adjusted for the results of the sale.

(4) *Certain returns.* If an Old Entity without Continuing Equity is not a subsidiary of a consolidated group at the time of the Taxable Transfer, the controlling Agency must file all income tax returns for the Old Entity for periods ending on or prior to the date of the deemed sale described in paragraph (b) of this section that are not filed as of that date.

(5) *Basis limited to fair market value.* If all of the stock of the corporation is not acquired on the date of the Taxable Transfer, the Commissioner may make appropriate adjustments under paragraphs (c) and (d) of this section to the extent using a grossed-up basis of the stock of a corporation results in an aggregate amount realized for, or basis in, the assets other than the aggregate fair market value of the assets.

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Branch sale resulting in Taxable Transfer. (i) Institution M is a calendar year taxpayer in Agency receivership. M is not a member of a consolidated group. On January 1, 1997, M has $200 million of liabilities (including deposit liabilities) and assets with an adjusted basis of $100 million. M has no income or loss for 1997 and, except as described below, receives no FFA. On September 30, 1997, Agency causes M to transfer six branches (with assets having an adjusted basis of $1 million) together with $120 million of deposit liabilities to N. In connection with the transfer, Agency provides $121 million in cash to N.

(ii) The transaction is a Taxable Transfer in which M receives $121 million of Net Worth Assistance. Section 1.597–5(a)(1). (M is treated as directly receiving the $121 million of Net Worth Assistance immediately before the Taxable Transfer. Section 1.597–5(c)(1).) M transfers branches having a basis of $1 million and is treated as transferring $121 million in cash (the Net Worth Assistance) to N in exchange for N's assumption of $120 million of liabilities. Thus, M realizes a loss of $2 million on the transfer. The amount of the FFA M must include in its income in 1997 is limited by § 1.597–2(c) to $102 million, which is the sum of the $100 million excess of M's liabilities ($200 million) over the total adjusted basis of its assets ($100 million) at the beginning of 1997, plus the $2 million excess for the taxable year, which results from the Taxable Transfer, of M's deductions (other than carryovers) over its gross income other than FFA. M must establish a deferred FFA account for the remaining $19 million of FFA. Section 1.597–2(c)(4).

(iii) N, as Acquiring, must allocate its $120 million purchase price for the assets acquired from M among those assets. Cash is a Class I asset. The branch assets are in Classes III and IV. N's adjusted basis in the cash is its amount, i.e., $121 million. Section 1.597–5(d)(2). Because this amount exceeds N's purchase price for all of the acquired assets by $1 million, N allocates no basis to the other acquired assets and, under § 1.597–5(d)(2), must recapture the $1 million excess at an annual rate of $166,667 in the six consecutive taxable years beginning with

1997 (subject to acceleration for certain events).

Example 2. Stock issuance by Bridge Bank causing Taxable Transfer. (i) On April 1, 1996, Institution P is placed in receivership and caused to transfer assets and liabilities to Bridge Bank PB. On August 31, 1996, the assets of PB consist of $20 million in cash, loans outstanding with an adjusted basis of $50 million and a fair market value of $40 million, and other non-financial assets (primarily branch assets and equipment) with an adjusted basis of $5 million. PB has deposit liabilities of $95 million and other liabilities of $5 million. P, the Residual Entity, holds real estate with an adjusted basis of $10 million and claims in litigation having a zero basis. P retains no deposit liabilities and has no other liabilities (except its liability to Agency for having caused its deposit liabilities to be satisfied).

(ii) On September 1, 1996, Agency causes PB to issue 100 percent of its common stock for $2 million cash to X. On the same day, Agency issues a $25 million note to PB. The note bears a fixed rate of interest in excess of the applicable federal rate in effect for September 1, 1996. Agency provides Loss Guarantees guaranteeing PB a value of $50 million for PB's loans outstanding.

(iii) The stock issuance is a Taxable Transfer in which PB is treated as selling all of its assets to a new corporation, New PB. Section 1.597–5(b)(1). PB is treated as directly receiving $25 million of Net Worth Assistance (the issue price of the Agency Obligation) immediately before the Taxable Transfer. Section 1.597–3(c)(2); § 1.597-5(c)(1). The amount of FFA PB must include in income is determined under § 1.597–2(a) and (c). PB in turn is deemed to transfer the note to New PB in the Taxable Transfer, together with $20 million of cash, all its loans outstanding (with a basis of $50 million) and its other non-financial assets (with a basis of $5 million). The amount realized by PB from the sale is $100 million, the amount of PB's liabilities deemed to be assumed by New PB. This amount realized equals PB's basis in its assets and thus, PB realizes no gain or loss on the transfer to New PB.

(iv) Residual Entity P also is treated as selling all its assets (consisting of real estate and claims in litigation) for $0 (the amount of consideration received by P) to a new corporation (New P) in a Taxable Transfer. Section 1.597–5(b)(3). (P's only liability is to Agency and a liability to Agency is not treated as a debt under § 1.597–3(b).) Thus, P realizes a $10 million loss on the transfer to New P. The combined return filed by PB and P for 1996 will reflect a total loss on the Taxable Transfer of $10 million ($0 for PB and $10 million for P). Section 1.597–5(e)(3). That return also will reflect FFA income from the Net Worth Assistance, determined under § 1.597–2 (a) and (c).

(v) New PB is treated as having acquired the assets it acquired from PB for $100 million, the amount of liabilities assumed. In allocating basis among these assets, New PB treats the Agency note and the loans outstanding (which are covered by Loss Guarantees) as Class II assets. For the purpose of allocating basis, the fair market value of the Agency note is deemed to equal its adjusted issue price immediately before the transfer, $25 million. The fair market value of the loans is deemed not to be less than the guaranteed value of $50 million.

(vi) New P is treated as having acquired its assets for no consideration. Thus its basis in its assets immediately after the transfer is zero. New PB and New P are not treated as a single entity. Section 1.597–5(e)(3).

Example 3. Taxable Transfer of previously disaffiliated Institution. (i) Corporation X, the common parent of a consolidated group, owns all the stock of Institution M, an insolvent Institution with no Consolidated Subsidiaries. On April 30, 1996, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million and a fair market value of $3 million. On May 1, 1996, Agency places M in receivership. X elects under § 1.597–4(g) to disaffiliate M. Accordingly, as of May 1, 1996, new corporation M is not a member of the X consolidated group. On May 1, 1996, Agency causes M to transfer all of its assets and liabilities to Bridge Bank MB. Under § 1.597–4(e), MB and M are thereafter treated as a single entity which has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million. Section 1.597–4(g)(4).

(ii) During May 1996, MB earns $25,000 of interest income and accrues $20,000 of interest expense on depositor accounts and there is no net change in deposits other than the additional $20,000 of interest expense accrued on depositor accounts. MB pays $5,000 of wage expenses and has no other items of income or expense.

(iii) On June 1, 1996, Agency causes MB to issue 100 percent of its stock to corporation Y. In connection with the stock issuance, Agency provides an Agency Obligation for $2 million and no other FFA.

(iv) The stock issuance results in a Taxable Transfer. Section 1.597–5(b). MB is treated as receiving the Agency Obligation immediately prior to the Taxable Transfer. Section 1.597–5(c)(1). MB has $1 million of basis in its account receivable for FFA. This receivable is treated as satisfied, offsetting $1 million of the $2 million of FFA provided by Agency in connection with the Taxable Transfer. The status of the remaining $1 million of FFA as includible income is determined as of the end of the taxable year under § 1.597–2(c). However, under § 1.597–2(b), MB obtains a $2 million basis in the Agency Obligation received as FFA.

(v) Under § 1.597–5(c)(2), in the Taxable Transfer, Old Entity MB is treated as selling, to New Entity MB, all of Old Entity MB's assets, having a basis of $6,020,000 (the original $4 million of asset basis as of April 30, 1996, plus $20,000 net cash from May 1996 activities, plus $2 million in the Agency Obligation received as FFA), for $5,020,000, the amount of Old Entity MB's liabilities assumed by New Entity MB pursuant to the Taxable Transfer. Therefore, Old Entity MB recognizes, in the aggregate, a loss of $1 million from the Taxable Transfer.

(vi) Because this $1 million loss causes Old Entity MB's deductions to exceed its gross income (determined without regard to FFA) by $1 million, Old Entity MB must include in its income the $1 million of FFA not offset by the FFA receivable. Section 1.597–2(c). (As of May 1, 1996, Old Entity MB's liabilities ($5,000,000) did not exceed MB's $5 million adjusted basis of its assets. For the taxable year, MB's deductions of $1,025,000 ($1,000,000 loss from the Taxable Transfer, $20,000 interest expense and $5,000 of wage expense) exceeded its gross income (disregarding FFA) of $25,000 (interest income) by $1,000,000. Thus, under § 1.597–2(c), MB includes in income the entire $1,000,000 of FFA not offset by the FFA receivable.)

(vii) Therefore, Old Entity MB's taxable income for the taxable year ending on the date of the Taxable Transfer is $0.

(viii) Residual Entity M is also deemed to engage in a deemed sale of its assets to New Entity M under § 1.597–5(b)(3), but there are no tax consequences as M has no assets or liabilities at the time of the deemed sale.

(ix) Under § 1.597–5(d)(1), New Entity MB is treated as purchasing Old Entity MB's assets for $5,020,000, the amount of New Entity MB's liabilities. Of this, $2,000,000 is allocated to the $2 million Agency Obligation, and $3,020,000 is allocated to the other assets New Entity MB is treated as purchasing in the Taxable Transfer.

Example 4. Loss Sharing. Institution N acquires assets and assumes liabilities of another Institution in a Taxable Transfer. Among the assets transferred are three parcels of real estate. In the hands of the transferring Institution, these assets had book values of $100,000 each. In connection with the Taxable Transfer, Agency agrees to reimburse Institution N for 80 percent of any loss (based on the original book value) realized on the disposition or charge-off of the three properties. This arrangement constitutes a Loss Guarantee. Thus, in allocating basis, Institution N treats the three parcels as Class II assets. By virtue of the arrangement with the Agency, Institution N is assured that the parcels will not be worth less to it than $80,000 each, because even if the properties are worthless, Agency will reimburse 80 percent of the loss. Although Institution could obtain payments under the Loss Guarantee if the properties are worth more, it is not guaranteed that it will realize more than $80,000. Accordingly, $80,000 is the highest guaranteed value of the three parcels. Institution N will allocate basis to the Class II assets up to their fair market value. For this purpose, the fair market value of the three parcels is not less than $80,000 each. Section 1.597–5(d)(2)(ii); § 1.597–5(c)(3)(ii).

§ 1.597–6 Limitation on collection of income tax.

(a) *Limitation on collection where tax is borne by Agency.* If an Institution without Continuing Equity (or any of its Consolidated Subsidiaries) is liable for income tax that is attributable to the inclusion in income of FFA or gain from a Taxable Transfer, the tax will not be collected if it would be borne by Agency. The final determination of whether the tax would be borne by

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Agency is within the sole discretion of the Commissioner. In determining whether tax would be borne by Agency, the Commissioner will disregard indemnity, tax-sharing, or similar obligations of Agency, an Institution, or its Consolidated Subsidiaries. Collection of the several income tax liability under § 1.1502–6 from members of an Institution's consolidated group other than the Institution or its Consolidated Subsidiaries is not affected by this section. Income tax will continue to be subject to collection except as specifically limited in this section. This section does not apply to taxes other than income taxes.

(b) *Amount of tax attributable to FFA or gain on a Taxable Transfer.* For purposes of paragraph (a) of this section, the amount of income tax in a taxable year attributable to the inclusion of FFA or gain from a Taxable Transfer in the income of an Institution (or a Consolidated Subsidiary) is the excess of the actual income tax liability of the Institution (or the consolidated group in which the Institution is a member); over the income tax liability of the Institution (or the consolidated group in which the Institution is a member) determined without regard to FFA or gain or loss on the Taxable Transfer.

(c) *Reporting of uncollected tax.* A taxpayer must specify on the front page of Form 1120 (U.S. Corporate Income Tax Return), to the left of the space provided for "Total Tax," the amount of income tax for the taxable year that is potentially not subject to collection under this section. If an Institution is a subsidiary member of a consolidated group, the amount specified as not subject to collection is zero.

(d) *Assessments of tax to offset refunds.* Income tax that is not collected under this section will be assessed and, thus, used to offset any claim for refund made by or on behalf of the Institution, the Consolidated Subsidiary or any other corporation with several liability for the tax.

(e) *Collection of taxes from Acquiring or a New Entity*—(1) *Acquiring.* No income tax liability (including the several liability for taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from Acquiring.

(2) *New Entity.* Income tax liability (including the several liability for taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from a New Entity only if stock that was outstanding in the Old Entity remains outstanding as stock in the New Entity or is reacquired or exchanged for consideration.

(f) *Effect on section 7507.* This section supersedes the application of section 7507, and the regulations thereunder, for the assessment and collection of income tax attributable to FFA.

§ 1.597–7 Effective date.

(a) *FIRREA effective date.* Section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, is generally effective for any FFA received or accrued by an Institution on or after May 10, 1989, and for any transaction in connection with which such FFA is provided, unless the FFA is provided in connection with an acquisition occurring prior to May 10, 1989. See § 1.597–8 for rules regarding FFA received or accrued on or after May 10, 1989, that relates to an acquisition that occurred before May 10, 1989.

(b) *Effective date of regulations.* Except as otherwise provided in this section, §§ 1.597–1 through 1.597–6 apply to taxable years ending on or after April 22, 1992. However, the provisions of §§ 1.597–1 through 1.597–6 do not apply to FFA received or accrued for taxable years ending on or after April 22, 1992, in connection with an Agency assisted acquisition within the meaning of Notice 89–102 (1989–2 C.B. 436; see § 601.601(d)(2)) (which does not include a transfer to a Bridge Bank), that occurs before April 22, 1992. Taxpayers not subject to §§ 1.597–1 through 1.597–6 must comply with an interpretation of the statute that is reasonable in light of the legislative history and applicable administrative pronouncements. For this purpose, the rules contained in Notice 89–102 apply to the extent provided in the Notice.

(c) *Elective application to prior years and transactions*—(1) *In general.* Except as limited in this paragraph (c), an election is available to apply §§ 1.597–1 through 1.597–6 to taxable years prior to the general effective date of these regulations. A consolidated group may elect to apply §§ 1.597–1 through 1.597–6 for all members of the group in all taxable years to which section 597, as amended by FIRREA, applies. The common parent makes the election for the group. An entity that is not a member of a consolidated group may elect to apply §§ 1.597–1 through 1.597–6 to all taxable years to which section 597, as amended by FIRREA, applies for which it is not a member of a consolidated group. The election is irrevocable.

(2) *Election unavailable in certain cases*—(i) *Statute of limitations closed.* The election cannot be made if the period for assessment and collection of tax has expired under the rules of section 6501 for any taxable year in which §§ 1.597–1 through 1.597–6 would affect the determination of the electing entity's or group's income, deductions, gain, loss, basis, or other items.

(ii) *No section 338 election under Notice 89–102.* The election cannot be made with respect to an Institution if, under Notice 89–102, it was a Target with respect to which a qualified stock purchase was made, a timely election under section 338 was not made, and on April 22, 1992, a timely election under section 338 could not be made.

(iii) *Inconsistent treatment of Institution that would be New Entity.* If, under § 1.597–5(b), an Institution would become a New Entity before April 22, 1992, the election cannot be made with respect to that Institution unless elections are made by all relevant persons such that §§ 1.597–1 through 1.597–6 apply both before and after the deemed sale under § 1.597–5. However, this requirement does not apply if, under §§ 1.597–1 through 1.597–6, the Institution would not have Continuing Equity prior to the deemed sale.

(3) *Expense reimbursements.* Notice 89–102, 1989–2 C.B. 436, provides that reimbursements paid or accrued pursuant to an expense reimbursement or indemnity arrangement are not included in income but the taxpayer may not deduct, or otherwise take into account, the item of cost or expense to which the reimbursement or indemnity payment relates. With respect to an Agency assisted acquisition within the meaning of Notice 89–102 that occurs before April 22, 1992, a taxpayer that elects to apply these regulations retroactively under this paragraph (c) may continue to account for these items under the rules of Notice 89–102.

(4) *Procedural rules*—(i) *Manner of making election.* An Institution or consolidated group makes the election provided by this paragraph (c) by attaching a written statement to, and including it as a part of, the taxpayer's or consolidated group's first annual income tax return filed on or after March 15, 1996. The statement must contain the following legend at the top of the page: "THIS IS AN ELECTION UNDER § 1.597–7(c)," and must contain the name, address and employer identification number of the taxpayer or common parent making the election. The statement must include a declaration that "TAXPAYER AGREES TO EXTEND THE STATUTE OF LIMITATIONS ON ASSESSMENT FOR THREE YEARS FROM THE DATE OF THE FILING OF THIS ELECTION UNDER § 1.597–7(c), IF THE LIMITATIONS PERIOD WOULD EXPIRE EARLIER WITHOUT SUCH EXTENSION, FOR ANY ITEMS AFFECTED IN ANY TAXABLE YEAR BY THE FILING OF THIS ELECTION," and a declaration that either "AMENDED RETURNS WILL BE FILED FOR ALL TAXABLE YEARS AFFECTED BY THE FILING OF THIS ELECTION WITHIN 180 DAYS OF MAKING THIS STATEMENT, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE" or "ALL RETURNS PREVIOUSLY FILED ARE CONSISTENT WITH THE PROVISIONS OF §§ 1.597–1 THROUGH 1.597–6," and be signed by an individual who is authorized to make the election under this paragraph (c) on behalf of the taxpayer. An election with respect to a consolidated group must be made by the common parent of the group, not Agency, and applies to all members of the group.

(ii) *Effect of elective disaffiliation.* To make the affirmative election described in § 1.597–4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, the consolidated group must send the affected Institution the statement described in § 1.597–4(g)(5) on or before May 31, 1996. Notwithstanding the requirements of paragraph (c)(4)(i) of this section, a consolidated group sending such a statement is deemed to make the election described in, and to agree to the conditions contained in, this paragraph (c). The consolidated group must nevertheless attach the statement described in paragraph (c)(4)(i) of this section to its first annual income tax return filed on or after March 15, 1996.

(d) *Reliance on prior guidance*—(1) *Notice 89–102.* Taxpayers may rely on Notice 89–102, 1989–2 C.B. 436, to the extent they acted in reliance on that Notice prior to April 22, 1992. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history.

(2) *Notice FI–46–89*—(i) *In general.* Notice FI–46–89 was published in the **Federal Register** on April 23, 1992 (57 FR 14804). Taxpayers may rely on the provisions of §§ 1.597–1 through 1.597–6 of that notice to the extent they acted in reliance on those provisions prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as well as the overriding policies of notice FI–46–89.

(ii) *Taxable Transfers.* Any taxpayer described in this paragraph (d) that, under notice FI–46–89, would be a New Entity or Acquiring with respect to a Taxable Transfer on or after April 22, 1992, and before December 21, 1995, may apply the rules of that notice with respect to such transaction.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7507–1 also issued under 26 U.S.C. 597.

Section 301.7507–9 also issued under 26 U.S.C. 597. * * *

Par. 4. Section 301.7507–1 is amended by adding paragraph (b)(4) to read as follows:

§ 301.7507–1 Banks and trust companies covered.

* * * * *

(b) * * *

(4) The term *ceased to do business* means the bank no longer accepts deposits or makes loans and discounts, and is winding up its affairs and is in the process of liquidating its assets to pay depositors. A bank will not be considered to have ceased to do business on account of a transaction in which the bank—

(i) Transfers assets and liabilities to a Bridge Bank in a transfer described in § 1.597–4 of this chapter;

(ii) Transfers assets and liabilities to any person in a transaction to which section 381(a) applies or in which the transferee receives property with a transferred basis;

(iii) Transfers assets or liabilities to any person in a transaction in which Federal Financial Assistance (as defined in section 597) is provided to any party to the transaction, unless all the Federal Financial Assistance is deposit insurance under § 301.7507–9(d); or

(iv) Transfers assets or liabilities to any person in a transaction similar to any transaction described in paragraphs (b)(4) (i) through (iii) of this section. This paragraph (b)(4) applies to taxable years ending on or after April 22, 1992.

Par. 5. Section 301.7507–9 is amended by adding a sentence to the end of paragraph (d) to read as follows:

§ 301.7507–9 Termination of immunity.

* * * * *

(d) * * * For taxable years ending on or after April 22, 1992, deposit insurance does not include Federal Financial Assistance (as defined in section 597) and other payments described in section 597(a) prior to its amendment by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and, therefore, such payments must be taken into account to determine whether a bank's assets are sufficient to meet claims of depositors.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.597–2	1545–1300
1.597–4	1545–1300
1.597–6	1545–1300
1.597–7	1545–1300
. . . . .	.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 4, 1995.

Cynthia G. Beerbower,
Assistant Secretary of the Treasury

[FR Doc. 95–30827 Filed 12–20–95; 8:45 am]
BILLING CODE 4830–01–U

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26 CFR Parts 1, 31, 35a, 301, and 602

[TD 8637]

RIN 1545–AT75

Backup Withholding, Statement Mailing Requirements, and Due Diligence

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document provides final rules on backup withholding under sections 3406(a)(1) (A), (C), and (D) of the Internal Revenue Code of 1986 (Code) when a payee fails to provide a taxpayer identification number in the required manner to a person required to make an information return, when a payee is subject to notified payee

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underreporting, or when a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting.

This document also provides final rules on the manner for providing a statement to a payee under sections 6042(c), 6044(e), 6049(c), and 6050N(b) of the Code.

This document also contains temporary regulations on the effective date of §§ 35a.9999–1 through 35a.9999–5, Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 21, 1995. These regulations are applicable to transactions occurring after December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting) with respect to domestic transactions, 202–622–4910 (not a toll-free number); and Teresa Burridge Hughes of the Office of Assistant Chief Counsel (International) with respect to international transactions, 202–622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0112. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper is approximately 1 hour, depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 4, 1983, the **Federal Register** published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a) under sections 3406 and 6676(b) of the Internal Revenue Code of 1954 (26 CFR part 35a.9999–1; TD 7916 (48 FR 45362), as amended on November 25, 1983, by TD 7922 (48 FR 53111), on November 23, 1987, by TD 8163 (52 FR 44861), and on April 11, 1989, by TD 8248 (54 FR 14341). Additional temporary regulations were published in the **Federal Register** on November 25, 1983 (26 CFR part 35a.9999–2; TD 7922 (48 FR 53106), as amended on December 20, 1983, by TD 7929 (48 FR 56342), on March 13, 1984, by TD 7922 (49 FR 9417), on November 23, 1987, by TD 8163, and on April 11, 1989, by TD 8248 (54 FR 14341)), on December 20, 1983 (26 CFR part 35a.9999–3; TD 7929 (48 FR 56332), as amended on January 3, 1984, by TD 7933 (49 FR 63), on August 22, 1984, by TD 7966 (49 FR 33236), on November 23, 1987, by TD 8163 (52 FR 44861), and on April 11, 1989, by TD 8248 (54 FR 14341)), on February 28, 1984 (26 CFR part 35a.9999–3A; TD 7946 (49 FR 7227)), on August 22, 1984 (26 CFR part 35a.9999–4T, TD 7966 (49 FR 33237), as amended on August 29, 1984, by TD 7972 (49 FR 34340); and 26 CFR part 35a.9999–5, TD 7967 (49 FR 33240), as amended on September 19, 1984, by TD 7973 (49 FR 36645), on August 20, 1985, by TD 8046 (50 FR 33526), on April 3, 1986, by TD 8046 (51 FR 11447), on December 19, 1986, by TD 8110 (51 FR 45453), and on May 19, 1988, by TD 8202 (53 FR 17927)), on April 23, 1987 (26 CFR part 35a.3406–2; TD 8137 (52 FR 13430)), and on November 23, 1987 (26 CFR part 35a.3406–1; TD 8163 (52 FR 44861), as amended on April 11, 1989, by TD 8248 (54 FR 14341)). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

Proposed regulations on backup withholding, the statement mailing requirements, and due diligence were published in the **Federal Register** on September 27, 1990, 55 FR 39427. Those regulations were proposed under regulations file number IA–224–82 and RIN 1545–AE20, which numbers were closed in error. These final regulations are issued under regulations file number IA–31–95 and RIN 1545–AT76.

A public hearing on the proposed regulations was held on March 4, 1991. The public submitted written comments on the proposed regulations. After consideration of those comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Overview

The proposed regulations contain rules on the requirement to backup withhold, which section 3406 imposes in four situations. First, backup withholding under section 3406(a)(1)(A) applies if a payee fails to provide a taxpayer identification number (TIN) in the required manner (the A trigger or certification). Second, backup withholding under section 3406(a)(1)(B) applies if the Service or a broker notifies a payor that a payee provided an incorrect TIN (the B trigger). Third, backup withholding under section 3406(a)(1)(C) applies if the Service or a broker notifies a payor that a payee is subject to notified payee underreporting, i.e., the payee has failed to report and pay tax on reportable interest and dividends (the C trigger). Fourth, backup withholding under section 3406(a)(1)(D) applies if a payee fails to certify, when required, that the payee is not subject to backup withholding under section 3406(a)(1)(C) (the D trigger).

Because the IRS published final regulations on the B trigger as a separate project (TD 8409) in 1992, the final regulations in this document address only the other three triggers, sections 3406(a)(1) (A), (C), and (D). The final regulations on these triggers considerably shorten as well as simplify the proposed regulations. In addition, the final regulations contain several modifications to the proposed regulations relating to grantor trusts, S corporations, reportable payments, and certain foreign provisions.

II. Changes Regarding Grantor Trusts, S Corporations, Reportable Payments, and Certain Foreign Provisions

A. *Grantor trusts—proposed § 31.3406(a)–2.* The proposed regulations provide that a grantor trust with ten or fewer grantors is not a payor under section 3406 and, as a result, has no obligation to withhold under section 3406 on reportable payments flowing through the trust and includible in the gross income of its grantors. However, a grantor trust with eleven or more grantors is a payor and must withhold under section 3406 on reportable payments to its grantors who are subject to such withholding.

Recently, the IRS issued proposed regulations under section 671 on the methods of reporting by grantor trusts. These proposed regulations provide two regimes for reporting, one for a grantor trust that is owned (or treated as owned) by one grantor and another for a grantor trust that is owned by two or more grantors. To avoid confusion and thereby promote simplification, the final backup withholding regulations are conformed to these regimes. Accordingly, under these final regulations a grantor trust with two or more grantors is considered a payor and must withhold on payments to its grantors who are subject to backup withholding. For purposes of determining the number of grantors, a husband and wife filing a joint return are considered one grantor. See § 31.3406(a)–2(b)(4).

B. *S corporations—proposed § 31.3406(a)–2(c)(3).* Under an exception in the proposed regulations defining payors, a partnership making a payment of a distributive share to a partner is not considered a payor. The exception does not include S corporations. Because the tax treatment of both entities is similar, the final regulations provide that an S corporation making a similar distribution is not a payor under section 3406. See § 31.3406(a)–2(c)(3).

C. *Transferred short-term obligations—proposed § 31.3406(b)(2)–2.* The proposed regulations provide that a subsequent holder of a short-term obligation with original issue discount may establish the purchase price at which the subsequent holder purchased the obligation. That purchase price is then treated as the original issue price for purposes of computing the amount of original issue discount subject to backup withholding. To reduce the paperwork of issuers and payors of these obligations, the final regulations provide that a payor may disregard the subsequent holder's purchase price if the payor's computer or recordkeeping system is not able to accept that price without substantial manual intervention. See § 31.3406(b)(2)–2(c)(1)(ii).

D. *Foreign provisions.* The proposed regulations contained several provisions on international transactions that are not included in the final regulations. For those international provisions relating to section 3406, the temporary regulations under § 35a.9999 remain in effect.

III. The C Trigger (Payee Underreporting)

A. *Identifying the account subject to the C trigger—proposed § 31.3406(c)–1(b)(3) (i) and (iv).* The proposed regulations provide that a payor must withhold under section 3406(a)(1)(C) on reportable interest or dividend payments to all existing accounts of a payee that the payor can identify exercising reasonable care. Commentators suggested several modifications to or clarifications of the reasonable care standard. For example, some commentators suggested that the procedures for locating and identifying an account of a payee subject to the C trigger should more closely resemble the procedures for identifying an account subject to the B trigger. In response to this comment, the final regulations modify the procedures for identifying accounts subject to the C trigger, and thus require a payor to identify those accounts by identifying accounts with the same TIN as the one provided in the notice from the IRS to the payor that advises the payor to commence withholding on accounts of a payee.

Commentators also informed the IRS that some computer systems use a universal account number that retrieves all accounts of a payee with that payor. In light of this information, the final regulations require payors with such systems to identify all accounts that can be so retrieved.

Some commentators also addressed the requirement under the proposed regulations that a payor search for accounts of a payee on the computer or other recordkeeping system for the region, division, or branch that serves the geographic area in which the payee's mailing address is located. These commentators questioned whether payors must search every such computer or record system. The final regulations clarify that a payor need not search a computer or other recordkeeping system if it is highly unlikely that the system contains an account of the payee that should be identified as one subject to the C trigger. See § 31.3406(c)–1(c)(3)(ii).

B. *Newly opened accounts—proposed § 31.3406(c)–1(b)(3)(ii).* Under the proposed regulations, if a payee subject to the C trigger has one account with a payor and subsequently opens another account, the payor may not rely on the subsequent Form W–9 on which the payee certifies that the payee is not subject to the C trigger, but only if the payor discovers while processing the Form W–9 or administering the account that the Form W–9 is false because the IRS previously notified the payor to withhold on the payee under the C trigger. Commentators argued that this discovery standard was unclear and potentially burdensome. As a result, the final regulations clarify when a payor may not rely on a Form W–9 provided by the payee.

Under the final regulations, a payor has knowledge that a payee opening a new account with the payor is subject to withholding under section 3406(a)(1)(C), and thus must commence backup withholding on reportable interest and dividend payments to the new account, only if (1) the employee or individual agent of the payor receiving the Form W–9 knows at the time the payee opens the account that the payee's statement under section 3406(a)(1)(D) is not true; (2) at the time the payor processes the Form W–9 or in administering the account to which it relates, the payor discovers that the payee is currently subject to withholding under section 3406(a)(1)(C) on a pre-existing account with the payor; (3) the payor uses a single Form W–9 for multiple accounts of the payee; or (4) the payor uses a universal identifier to associate all of the payee's accounts with the payor and other accounts under that universal identifier have been identified as subject to withholding under section 3406(a)(1)(C). See § 31.3406(c)–1(c)(3)(iii).

C. *Including certain dates in the notice that the payor must send to a payee—proposed § 31.3406(c)–1(c)(2)(ii) and (iii).* A commentator objected to the proposed rule requiring a payor to include the following dates in the notice informing a payee that backup withholding for the C trigger has begun or will begin: (1) the last date before the payor must commence backup withholding, and (2) the date the payor received the notice from the IRS. The significant date for the payee is the date backup withholding begins on the payee's account. Therefore, to ease payors' administrative costs, the final regulations require the payor to include only the date the payor started (or plans to start) backup withholding in the notice to the payee. See § 31.3406(c)–1(d)(2)(iii).

D. *Monitoring accounts subject to withholding—proposed § 31.3406(c)–1(e).* Commentators asked the IRS to address how long a payor must monitor an account identified as one subject to the C trigger, if that account later becomes dormant. The final regulations provide that a payor is not required to backup withhold on dormant accounts. In this connection, backup withholding terminates no later than the close of the third calendar year ending after the later

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of (1) the date that the payor pays the last reportable payment to that account, or (2) the date that the payor received a notice from the IRS to impose the C trigger on that account. See § 31.3406(c)–1(e)(3).

IV. Special Rules for Acquiring Accounts (Including a Readily Tradable Instrument) or Selling a Readily Tradable Instrument

A. *By electronic transmission—proposed § 31.3406(d)–3.* A payee can acquire by electronic transmission an account or an instrument that earns reportable interest or dividends. Under the proposed regulations the payor, at its option, may permit a payee to furnish the certifications relating to the A and D triggers within 30 days after the establishment or acquisition of the account or the instrument (30-day period) by electronic transmission, provided that the payee furnishes the payee's TIN at the time of the establishment or the acquisition. However, if the payee makes any withdrawal within the 30-day period and before the payor receives the payee's certifications, the payor must withhold to the extent of any reportable interest or dividends paid to the payee during the 30-day period and at the time of withdrawal.

The proposed regulations provide comparable rules for the sale of a readily tradable instrument by electronic transmission. In this context, the payee is permitted to withdraw (or reinvest) up to 69 percent of the gross proceeds from the sale during the relevant 30-day period.

Commentators requested that backup withholding be applied in the same manner whether the electronic transmission involves the establishment or acquisition of an account or a readily tradable instrument or the sale of a readily tradable instrument. In response to this comment, the final regulations provide that backup withholding applies if the payee withdraws more than 69 percent of the reportable interest or dividends paid to the payee during the relevant 30-day period and at the time of withdrawal, but only if the payor has not received the payee's certifications relating to the A and D triggers at the time of the withdrawal. See § 31.3406(d)–3(a).

B. *By mail—proposed § 31.3406(d)–3(a)(1).* The proposed regulations provide that a payee may provide the certifications relating to the A and D triggers within 30 days after a payee establishes or acquires a readily tradable instrument by mail before January 1, 1985, provided the payee furnishes the payee's TIN upon the establishment or acquisition. The proposed regulations do not provide a similar rule for the sale of a readily tradable instrument by mail.

To simplify the procedures for entering into investments which do not occur in person, the final regulations provide a 30-day rule for the establishment or acquisition of an account or readily tradable instrument by mail and extend the 30-day rule to the sale of a readily tradable instrument by mail. Under the final regulations, if the payee furnishes the payee's TIN before the transaction, backup withholding applies during the 30-day period only if the payee withdraws more than 69 percent of the reportable payment and if the payor has not received the payee's certifications relating to the A or D triggers, whichever applies, at the time of the withdrawal. See § 31.3406(d)–3(a).

V. Section 3406 Confidentiality Issues—Proposed § 31.3406(f)–1(a)

Section 3406(f) provides that a payor may not use information obtained under section 3406 except for meeting a requirement of that section. Commentators requested clarification on what actions a payor or broker may take, consistent with section 3406(f), in response to a payee's failure to provide the payee's TIN under section 3406(a)(1)(A). The final regulations provide that a payor who closes an account at or before the end of a calendar year in which the payee opens the account without providing the payee's TIN or documentation of foreign status, as required, during that year will not, in the absence of evidence to the contrary, be deemed in violation of section 3406(f).

Another commentator inquired whether prohibiting a payee from withdrawing funds from the payee's account is a violation of section 3406(f). The final regulations clarify that refusing to allow a payee to withdraw funds from the payee's account solely because the payee has not furnished a TIN violates section 3406(f). See § 31.3406(f)–1(b)(1).

VI. Exemptions From Backup Withholding.

A. *Interaction of information reporting and backup withholding exemptions—proposed § 31.3406(g)–1(a).* Several commentators questioned the interaction between the rules exempting payees from information reporting and those exempting payees from backup withholding. The class of recipients exempt from information reporting is larger than the class exempt from backup withholding. The final regulations clarify that the list of the payees that are specifically exempt from backup withholding is not exclusive and that other payees that are exempt from information reporting also are exempt from backup withholding. See § 31.3406(g)–1(a)(2).

B. *Interest on certain life-insurance contracts—proposed § 31.3406(g)–1(a)(4).* Commentators requested that the temporary exemption from backup withholding for interest payments made before January 1, 1992, on "advance premiums", "prepaid premiums", or "premium deposit funds", on certain insurance policies be made permanent. The final regulations provide an extension through December 31, 1996.

C. *Payments reportable under section 6047—proposed § 31.3406(g)–2(c)(1) and (2).* Commentators noted that, contrary to the position set forth in the proposed regulations, backup withholding does not apply to designated distributions paid after December 31, 1984. The final regulations clarify that backup withholding does not apply to those payments. See § 31.3406(g)–2(d).

D. *Awaiting-TIN certificate—proposed § 31.3406(g)–3.* Commentators requested simplification of the backup withholding rules applicable to accounts for which a payor has received an awaiting-TIN certification. One suggestion was that backup withholding should not apply during the period (up to 60 days) that the payee is waiting for the payee's TIN if no more than 69 percent of the reportable payment is withdrawn during the 60-day period. The final regulations adopt this suggestion. Therefore, backup withholding is deferred during the 60-day period unless the payee makes a withdrawal (of more than $500 in one transaction) during that time or has failed to provide the certification relating to the D trigger. If the payee makes a withdrawal of more than $500 in one transaction during the 60-day period, backup withholding applies to the extent of any reportable interest or dividends made to the account during the 60-day period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during that period. Payors may elect, however, to impose withholding during the 60-day period. See § 31.3406(g)–3(a)(2) and (3).

Commentators requested clarification of the interaction of the awaiting-TIN rules for post-1983 accounts or instruments and the obligation of the payee to provide the certification relating to the D trigger that the payee is not subject to backup withholding due to the C trigger. The final regulations clarify that in spite of the awaiting-TIN certification, backup withholding applies under section 3406(a)(1)(D) during the 60-day period if the payee has not provided this certification to the payor. See § 31.3406(g)–3(a)(1).

A commentator asked whether the 60-day period refers to calendar or business days. Accordingly, the final regulations clarify that the term "day" means a calendar day. See §§ 31.3406(g)–3 and 31.3406(h)–1(e).

VII. Other Changes

A. *Identifying the person listed on a joint account as the one subject to withholding—proposed § 31.3406(h)–2(a).* Under the proposed regulations, a payor of a reportable payment to a joint account may treat the first person listed on the account (or on the instrument) as the payee subject to information reporting and backup withholding. The final regulations provide that the relevant payee is the one whose name and TIN combination the payor uses for information reporting purposes, whether or not that account or instrument registration lists that payee first. See § 31.3406(h)–2(a)(1).

B. *Backup withholding on payments made in property—proposed § 31.3406(h)–2(b).* Under the proposed regulations, a payor making a reportable payment in property subject to backup withholding must withhold on an amount equal to the fair market value of the property. The obligation to withhold occurs at the time the property is paid to the payee. Consequently, the payor must find an alternative source, such as another account of the payee, from which the payor can satisfy its backup withholding liability. Otherwise, the payor must continue to look for accounts of the payee to satisfy the payor's backup withholding liability. A commentator suggested that the final regulations add an ending date after which a payor no longer has to search for alternative sources from which to satisfy a backup withholding obligation arising from a payment in property. According to this commentator, the obligation should extinguish after a reasonable period of time. In response to this comment, the final regulations provide that a payor's obligation to backup withhold on property terminates on the earlier of the date sufficient cash is deposited to the account to fully satisfy the obligation or the close of the fourth calendar year after the obligation arose. See § 31.3406(h)–2(b)(2)(ii).

C. *Gross-up of payments by middlemen—proposed § 31.3406(h)–2(d).* Under the proposed regulations, a middleman is required to remit the full amount due a payee unless one of the requirements for imposing backup withholding exists at the time of payment. Thus, the middleman is required to remit the full amount even though an upstream payor erroneously withheld on that payment to the middleman. In that event, the middleman may recover the difference between the amount received and the amount paid to the payee, *i.e.*, 31 percent, by seeking a refund from the upstream payor or by taking an equivalent credit against the next required deposit of employment taxes. One commentator noted that the middleman payor incurs a loss in the time value of money measured from the time it pays the full amount due to the payee to the time the payor receives a refund or credit. Because of this, the commentator suggested that the regulations allow the middleman to remit only the net amount due its payee. This suggestion presents several problems. First, it requires a new reconciliation process to correlate the backup withholding reflected on the upstream payor's Form 945 with the backup withholding shown as withheld tax on the payee's income tax return. Second, the suggestion produces an anomalous result, namely, withholding occurs even though none of the statutory conditions requiring withholding exist. For these reasons the final regulations do not adopt this suggestion.

D. *Refund of amount erroneously subject to backup withholding—proposed § 31.6413(a)–3.* Under the proposed regulations, a payor must refund an amount previously withheld under the C trigger if the IRS instructs the payor to do so. This provision is also set forth in § 35a.9999–3 Q/A–38 of the Temporary Employment Tax Regulations issued under the Interest and Dividend Tax Compliance Act of 1983, as amended by TD 8248 (54 FR 18713) on May 2, 1989. One commentator suggested eliminating this refund provision. This rule was needed initially to allow refunds in certain cases where payees had interest or dividend income subject to backup withholding under the C trigger but had no income tax liability on this income. The IRS has subsequently enhanced its C withholding program to eliminate C notices to payors in such cases. Thus, the final regulations adopt the suggestion and delete the proposed rule. See § 31.6413(a)–3.

E. *Effective date.* The final regulations are effective for reportable payments made and transactions occurring after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. See § 31.3406(i)–1.

F. *Coordination with the temporary regulations—§§ 35a.9999–1 through 35a.9999–5.* The temporary regulations issued under 26 CFR Part 35a are not effective for noninternational transactions occurring on and after the effective date of the final regulations. The temporary regulations, however, remain effective for the due diligence safe harbor and for international transactions, including transactions involving a foreign payee, a foreign payor, or a payment from sources without the United States.

G. *Statement mailing requirement—proposed §§ 1.6042–5, 1.6044–6, 1.6049–6, and 1.6050N–1.* These final regulations set forth rules on the manner in which a payor who is required to file an information return for dividends and corporate earnings and profits, patronage dividends, interest, and royalties under sections 6042(c), 6044(e), 6049(c), and 6050N(b), respectively, must provide a copy of that information return to the payee, i.e., payee statement mailing.

The proposed regulations limit the permissible nontax enclosures includible in a statement mailing. Several commentators requested that the inclusion of additional nontax enclosures be permitted. This suggestion was not adopted because the relevant legislative history indicates that Congress wanted to substantially restrict the nontax enclosures in a statement mailing.

H. *Correct identifying number for estates—proposed § 301.6109–1.* The final regulations clarify that the taxpayer identification number to be used to identify estates of decedents is the employer identification number (rather than a social security number).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

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Drafting Information

The principal author of these regulations is Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR parts 1, 31, 35a, 301, and 602 read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6049–6 also issued under 6049(a), (b), and (d). * * *

Par. 2. Section 1.6042–4 is revised as follows:

§ 1.6042–4 Statements to recipients of dividend payments.

(a) *Requirement.* A person required to make an information return under section 6042(a)(1) and § 1.6042–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for dividend payments.

(b) *Form of the statement.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement that contains provisions that are substantially similar to those of the official Form 1099 for the respective calendar year. For further guidance on how to prepare an acceptable substitute statement, see Rev. Proc. 95–30 (1995–27 I.R.B. 9) (or its successor), republished as "Rules and Specifications for Private Printing of Substitute Forms 1096, 1098, 1099 Series, 5498, and W–2G." See § 601.601(d)(2) of this chapter.

(c) *Aggregation of payments.* A payor may aggregate on one Form 1099 all payments made to a recipient with respect to each separate account during a calendar year.

(d) *Manner of providing statements to recipients*—(1) *In general.* The Form 1099, or acceptable substitute statement, must be provided to the recipient either in person or by first-class mail to the recipient's last known address in a statement mailing.

(2) *Statement mailing requirement.* The mailing required under section 6042(c) of a Form 1099 to a payee-recipient must qualify as a statement mailing. A statement mailing must contain the required Form 1099 or acceptable substitute statement (written statement) and must comply with enclosure and envelope restrictions.

(i) *Enclosure restrictions.* To qualify as a statement mailing, the mailing cannot contain any enclosures except those listed in this paragraph (d)(2)(i). Moreover, no promotional or advertising material is permitted in the mailing of the written statement. Even a *de minimis* amount of promotional or advertising material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures described in paragraph (d)(2)(i) (A) through (D) of this section does not violate the written statement requirement. The written statement required under section 6042(c) and paragraph (a) of this section may be perforated to a check or to a statement of the recipient-payee's specific account with the payor described in paragraph (d)(2)(i) (A) or (C) of this section. The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached." The enclosures permitted in a mailing are limited to—

(A) A check with respect to the account reported on the written statement;

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable);

(C) A statement of the taxpayer-recipient's specific account with the payor if payments on such account are reflected on the written statement;

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement;

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2G; and

(F) Any document concerning the solicitation of the Form W–9 or Form W–8.

(ii) *Envelope and delivery restrictions*—(A) *Envelope restrictions.* The outside of the envelope in which the written statement is mailed and each nontax enclosure enclosed in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed." For purposes of this paragraph (d)(2)(ii), a nontax enclosure is any item listed in paragraphs (d)(2)(i)(A) through (C) of this section. However, a payor is not required to include the legend on the outside of an envelope containing only the enclosures in paragraph (d)(2)(i)(D) through (F) of this section.

(B) *Delivery restrictions.* The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in paragraph (d)(2)(i) of this section by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (i.e., the Form 1099 or its acceptable substitute) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph (d), the payor is considered to have failed to mail the statement required under section 6042(c) and will be subject to the penalty under section 6722.

(e) *Time for furnishing statements*—(1) *In general.* Each statement required by section 6042(c) and this section to be furnished to any person for a calendar year must be furnished to such person after November 30 of the year and on or before January 31 (February 10 in the case of a nominee filing under § 1.6042–2(a)(1)(iii)) of the following year, but no statement may be furnished before the final dividend for the calendar year has been paid. However, the statement may be furnished at any time after April 30 if it is furnished with the final dividend for the calendar year.

(2) *Extensions of time.* For good cause upon written application of the person required to furnish statements under this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Director, Martinsburg Computing Center, and must contain a full recital of the reasons for requesting the extension to aid the Director in determining the period of the extension, if any, that will be granted. Such a request in the form of a letter to the Director, Martinsburg Computing Center, signed by the applicant will suffice as an application. The application must be filed on or before the date prescribed in paragraph (e)(1) of this section.

(3) *Last day for furnishing statement.* For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration). (f) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(g) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 3. Section 1.6044–5 is revised as follows:

§ 1.6044–5 Statements to recipients of patronage dividends.

(a) *Requirement.* A person required to make an information return under section 6044(a)(1) and § 1.6044–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for patronage dividends paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under this section. However, each Form 1099 or acceptable substitute statement required by this section must be furnished on or before January 31 of the following year, but no statement may be furnished before the final payment has been made for the calendar year.

(c) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 4. Section 1.6049–6 is amended by:

1. Revising the section heading.
2. Removing the language "section 3451" and adding "section 3406" in each of the following locations:
   a. Paragraph (a), second sentence.
   b. Paragraph (a), third sentence.
   c. Paragraph (a), fourth sentence.
3. Removing the language "section 3451" and adding "section 3406" in each of the following locations:
   a. Paragraph (b)(1)(ii).
   b. Paragraph (b)(2)(ii).
4. Adding paragraph (e).
5. Removing the authority citation at the end of the section.

The revision and additions read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * * *

(e) *Statements to recipients*—(1) *Requirement.* A person required to make an information return under section 6049(a) and § 1.6049–4 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for interest or original issue discount paid or accrued.

(2) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (e)(1) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this paragraph (e). Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute statement to a recipient under paragraph (e)(1) of this section. However, with respect to original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must show the aggregate amount of original issue discount includible in the gross income by the recipient for the calendar year with respect to the obligation (determined by applying the rules of § 1.6049–4(b)(2)), and the amount, serial number, or other identifying number of each obligation with respect to which a return is being made. With respect to interest or original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must be furnished to the recipient on or before January 31 of the year following the calendar year for which the return under section 6049(a)(1) was required to be made.

(3) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(4) *Effective date.* This paragraph (e) is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 5. Section 1.6050N–1 is added to read as follows:

§ 1.6050N–1 Statements to recipients of royalties.

(a) *Requirement.* A person required to make an information return under section 6050N(a) must furnish a statement to each recipient whose name is required to be shown on the related information return for royalties paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of the acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute statement to a recipient under this section.

(c) *Penalty.* For provisions relating to the penalty for failure to furnish a

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statement under this section, see section 6722.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority for Part 31 is amended by removing the entry for § 31.3406(d)–5 and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Sections 31.3406(a)–1 through 31.3406(i)–1 also issued under 26 U.S.C. 3406(i).

Par. 7. Section 31.3406–0 is revised to read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

This section lists paragraphs contained in §§ 31.3406(a)–1 through 31.3406(i)–1.

§ 31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) Overview.
(b) Conditions that invoke the backup withholding requirement.
(1) Conditions applicable to all reportable payments.
(2) Conditions applicable only to reportable interest or dividend payments.
(c) Exceptions.
(d) Cross references.

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) In general.
(b) Middlemen treated as payors.
(c) Persons not treated as payors.

§ 31.3406(a)–3 Scope and extent of accounts subject to backup withholding.

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) Timing.
(1) In general.
(2) Special rules for dividends.
(b) Amounts reportable under section 6045.
(1) In general.
(2) Special rule for interest accrued on bonds.
(c) Middlemen.
(1) In general.
(2) Special rule for common trust funds.
(3) Special rule for certain grantor trusts.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) Interest subject to backup withholding.
(1) In general.
(2) Special rule for tax-exempt interest.
(b) Amount subject to backup withholding.
(1) In general.
(2) Special rule to adjust for premature withdrawal penalty.

§ 31.3406(b)(2)–2 Original issue discount.

(a) Original issue discount subject to backup withholding.
(b) Amount subject to backup withholding and time when backup withholding is imposed with respect to short-term obligations.
(c) Transferred short-term obligations.
(1) Subsequent holder may establish purchase price.
(2) Subsequent holder unable (or not permitted) to establish purchase price.
(3) Transferred obligation.
(d) Amount subject to backup withholding and time when backup withholding is imposed with respect to long-term obligations.
(1) No cash payments prior to maturity.
(2) Registered long-term obligations with cash payments prior to maturity.
(3) Transferred registered long-term obligations with payments prior to maturity.
(e) Bearer long-term obligations.
(1) Payments prior to maturity.
(2) Payments at maturity.

§ 31.3406(b)(2)–3 Window transactions.

(a) Requirement to backup withhold.
(b) Window transaction defined.
(c) Manner of furnishing taxpayer identification number in the case of a window transaction.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) Dividends subject to backup withholding.
(b) Dividends not subject to backup withholding.
(c) Amount subject to backup withholding.
(1) In general.
(2) Reasonable estimate of amount of dividend subject to backup withholding.
(3) Reinvested dividends.

§ 31.3406(b)(2)–5 Reportable patronage dividend payment.

(a) Patronage dividends subject to backup withholding.
(b) Amount subject to backup withholding.
(1) Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.
(2) Notified payee underreporting or payee certification failure.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) Section 6041 and 6041A(a) payments subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Net commissions.
(3) Payments aggregating $600 or more for the calendar year.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) Transactions subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Forward contracts, including foreign currency contracts, and regulated futures contracts.
(3) Security sales made through a margin account.
(4) Security short sales.
(5) Fractional shares.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) Payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) In general.
(b) Manner of making the election.
(c) How to annualize.
(1) In general.
(2) Special aggregation rule for reportable interest and dividends.
(d) Exception for window transactions and original issue discount.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) Overview.
(b) Definitions.
(1) Notified payee underreporting.
(2) Payee underreporting.
(c) Notice to payors regarding backup withholding due to notified payee underreporting.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(3) Payor identification of accounts of the payee subject to backup withholding due to notified payee underreporting.
(d) Notice from payors of backup withholding due to notified payee underreporting.
(1) In general.
(2) Procedures.
(e) Period during which backup withholding is required.
(1) In general.
(2) Stop withholding.
(3) Dormant accounts.
(f) Notice to payees from the Internal Revenue Service.
(1) Notice period.
(2) Payee subject to backup withholding.
(3) Disclosure of names of payors and brokers.
(4) Backup withholding certification.
(g) Determination by the Internal Revenue Service that backup withholding should not start or should be stopped.
(1) In general.
(2) Date notice to stop backup withholding will be provided.

(3) Grounds for determination.
(4) No underreporting.
(5) Correcting any payee underreporting.
(6) Undue hardship.
(7) Bona fide dispute.
(h) Payees filing a joint return.
(1) In general.
(2) Exceptions.
(i) [Reserved.]
(j) Penalties.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) Requirement to backup withhold.
(b) Reportable interest or dividend account.
(1) Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.
(2) Determination of pre-1984 account or instrument.
(3) Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.
(4) Special rule with respect to the acquisition of a readily tradable instrument in a transaction between certain parties acting without the assistance of a broker.
(c) Brokerage account.
(1) Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account.
(2) Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.
(d) Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—Manner required for furnishing a taxpayer identification number.

§ 31.3406(d)–2 Payee certification failure.

(a) Requirement to backup withhold.
(b) Exceptions.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name) by electronic transmission or by mail.
(b) Sale of an instrument for a customer by electronic transmission or by mail.
(c) Application to foreign payees.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) Readily tradable instruments acquired through post-1983 brokerage accounts with a broker who is not a payor.
(1) In general.
(2) Additional requirements.
(3) Transactions entered into through a brokerage account that is not a post-1983 brokerage account.
(4) Payor must notify payee.
(b) Notices.
(1) Form of notice by broker to payor.
(2) Form of notice by payor to payee.
(c) Payor's reliance on information from broker.
(1) In general.
(2) Amount subject to backup withholding.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) Overview.
(b) Definitions and special rules.
(1) Definition of an incorrect name/TIN combination.
(2) Definition of account.
(3) Definition of business day.
(4) Certain exceptions.
(c) Notice regarding an incorrect name/TIN combination.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(3) Payor identification of the account or accounts of the payee that have the incorrect taxpayer identification number.
(4) Special rule for joint accounts.
(5) Date of receipt.
(d) Notice from payors of backup withholding due to an incorrect name/TIN combination.
(1) In general.
(2) Procedures.
(e) Period during which backup withholding is required due to notification of an incorrect name/TIN combination.
(1) In general.
(2) Grace periods.
(3) Dormant accounts.
(f) Manner required for payee to furnish certified taxpayer identification number.
(g) Receipt of two notices within a 3-year period.
(1) In general.
(2) Notice to payee who has provided two incorrect name/TIN combinations within 3 calendar years.
(3) Period during which backup withholding is required due to a second notice of an incorrect name/TIN combination within 3 calendar years.
(4) Receipt of two notices in one calendar year.
(5) Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination.
(h) Payors must use newly provided certified number.
(i) Effective date.
(j) Examples.

§ 31.3406(e)–1 Period during which backup withholding is required.

(a) In general.
(b) Failure to furnish a taxpayer identification number in the manner required.
(1) Start withholding.
(2) Stop withholding.
(c) Notification of an incorrect taxpayer identification number.
(d) Notified payee underreporting.
(e) Payee certification failure.
(1) Start withholding.
(2) Stop withholding.
(f) Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.

§ 31.3406(f)–1 Confidentiality of information.

(a) Confidentiality and liability for violation.
(b) Permissible use of information.
(1) In general.
(2) Window transactions.
(c) Specific restrictions on the use of information.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) Exempt recipients.
(1) In general.
(2) Nonexclusive list.
(b) Determination of whether a person is described in paragraph (a)(1) of this section.
(c) Prepaid or advance premium life-insurance contracts.

§ 31.3406(g)–2 Exception for reportable payments for which backup withholding is otherwise required.

(a) In general.
(b) Payment of wages.
(c) Distribution from a pension, annuity, or other plan of deferred compensation.
(d) Gambling winnings.
(1) In general.
(2) Definition of a reportable gambling winning and determination of amount subject to backup withholding.
(3) Special rules.
(e) Certain real estate transactions.
(f) Certain payments after an acquisition of accounts or instruments.
(g) Certain gross proceeds.

§ 31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) In general.
(1) Backup withholding not required for 60 days.
(2) Reserve method.
(3) Alternative rule; 7-day grace period.
(b) Special rule for readily tradable instruments.
(c) Exceptions.
(1) In general.
(2) Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.
(d) Awaiting-TIN certificate.
(e) Form for awaiting-TIN certificate.

§ 31.3406(h)–1 Definitions.

(a) In general.
(b) Taxpayer identification number.
(1) In general.
(2) Obviously incorrect number.
(c) Broker.
(d) Readily tradable instrument.
(e) Day.
(f) Business day.

§ 31.3406(h)–2 Special rules.

(a) Joint accounts.
(1) Relevant name and taxpayer identification number combination.
(2) Optional rule for accounts subject to backup withholding under section 3406(a)(1)(B) or (C) where the names are switched.
(3) Joint foreign payees.
(b) Backup withholding from an alternative source.
(1) In general.
(2) Exceptions for payments made in property.
(c) Trusts.

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(d) Adjustment of prior withholding by middleman.
(e) Conversion of amounts paid in foreign currency into United States dollars.
(1) Convertible foreign currency.
(2) Nonconvertible foreign currency.
[Reserved]
(f) Coordination with other sections.
(g) Tax liabilities and penalties.
(h) To whom payor is liable for amount withheld.

§ 31.3406(h)–3 Certificates.

(a) Prescribed form to furnish information under penalties of perjury.
(1) In general.
(2) Use of a single or multiple Forms W–9 for accounts of the same payee.
(b) Prescribed form to furnish a noncertified taxpayer identification number.
(c) Forms prepared by payors or brokers.
(1) Substitute forms; in general.
(2) Form for exempt recipient.
(d) Special rule for brokers.
(e) Reasonable reliance on certificate.
(1) In general.
(2) Circumstances establishing reasonable reliance.
(f) Who may sign certificate.
(1) In general.
(2) Notified payee underreporting.
(g) Retention of certificates.
(1) Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.
(2) Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.
(h) Cross references.

§ 31.3406(i)–1 Effective date.

Par. 8. Sections 31.3406(a)–1 through 31.3406(a)–4, 31.3406(b)(2)–1 through 31.3406(b)(2)–5, 31.3406(b)(3)–1 through 31.3406(b)(3)–4, 31.3406(b)(4)–1, 31.3406(c)–1, 31.3406(d)–1 through 31.3406(d)–4, 31.3406(e)–1, 31.3406(f)–1, 31.3406(g)–1 through 31.3406(g)–3, 31.3406(h)–1 through 31.3406(h)–3, and 31.3406(i)–1 are added to read as follows:

§ 31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) *Overview.* Under section 3406, a payor must deduct and withhold 31 percent of a reportable payment if a condition for withholding exists. *Reportable payments* mean interest and dividend payments (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)). The conditions described in paragraph (b)(1) of this section apply to all reportable payments, including reportable interest and dividend payments. The conditions described in paragraph (b)(2) of this section apply only to reportable interest and dividend payments.

(b) *Conditions that invoke the backup withholding requirement*—(1) *Conditions applicable to all reportable payments.* A payor of a reportable payment must deduct and withhold under section 3406 if—

(i) The payee of the reportable payment does not furnish the payee's taxpayer identification number to the payor, as required in section 3406(a)(1)(A) and § 31.3406(d)–1; or

(ii) The Internal Revenue Service or a broker notifies the payor that the taxpayer identification number furnished by its payee for a reportable payment is incorrect, as described in section 3406(a)(1)(B) and § 31.3406(d)–5.

(2) *Conditions applicable only to reportable interest or dividend payments.* A payor of a reportable interest or dividend payment must deduct and withhold under section 3406 if—

(i) The Internal Revenue Service or a broker notifies the payor that its payee has underreported interest or dividend income, as described in section 3406(a)(1)(C) and § 31.3406(c)–1; or

(ii) The payee fails to certify to the payor or broker that the payee is not subject to withholding due to notified payee underreporting, as described in section 3406(a)(1)(D) and § 31.3406(d)–2.

(c) *Exceptions.* The requirement to withhold does not apply to certain minimal payments as described in § 31.3406(b)(4)–1 or to payments exempt from withholding under §§ 31.3406(g)–1 through 31.3406(g)–3.

(d) *Cross references.* For the definition of *payor,* see § 31.3406(a)–2. For the definition of *taxpayer identification number,* see § 31.3406(h)–1(b).

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) *In general. Payor* means any person who is required to make an information return with respect to any reportable payment (as described in section 3406(b)) under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, including any middleman as described in paragraph (b) of this section.

(b) *Middlemen treated as payors.* A person who receives or collects a reportable payment on behalf of or for the account of a payee is a middleman and is treated as the payor of the payment. These persons include, but are not limited to—

(1) A custodian of a payee's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(2) A nominee, including the joint owner of an account or instrument, except if the joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to the payment;

(3) A broker holding a security (including stock) for a customer in street name;

(4) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors, and for this purpose spouses filing a joint return are considered to be one grantor;

(5) A common trust fund; and

(6) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* The following persons are not treated as payors for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor who is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor (for further guidance see Rev. Proc. 84–33 (1984–1 C.B. 502), and § 601.601(d)(2) of this chapter), such as a bank that acts as a paying agent in making a payment of dividends on behalf of a corporation (although payments made by the agent are considered to be payments made by the payor, and thus are subject to withholding, reporting, and the depositing requirements pertaining to section 3406 as if they were made by the payor itself, and failure by the agent so to withhold, report, or deposit is considered to be failure by the payor);

(2) A trust (other than a grantor trust as described in paragraph (b)(4) of this section) that files a Form 1041 and furnishes each beneficiary a Form K–1 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(3) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

§ 31.3406(a)–3 Scope and extent of accounts subject to backup withholding.

A payor who is required to withhold under § 31.3406(a)–1 must withhold—

(a) On the accounts subject to withholding under § 31.3406(a)–1 (b)(1)(i) or (b)(2)(ii); and

(b) On the accounts subject to withholding under § 31.3406(a)–1(b)(1)(ii) or (b)(2)(i), as described under § 31.3406(d)–5 (relating to notification of incorrect TIN) or § 31.3406(c)–1 (relating to notified payee underreporting), respectively.

§ 31.3406(a)–4

Time when payments are considered to be paid and subject to backup withholding.

(a) *Timing*—(1) *In general.* If backup withholding is required under section 3406 on a reportable payment (as defined in section 3406(b)), the payor must withhold at the time it makes the payment to the payee or to the payee's account that is subject to withholding. Amounts are considered paid when they are credited to the account of, or made available to, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) if they are not actually credited to the payee's account or made available to the payee. See paragraph (c) of this section for the timing of withholding by a middleman.

(2) *Special rules for dividends.* For purposes of section 3406 and this section—

(i) *Record date earlier than payment date.* In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date.

(ii) *Dividends paid in corporate reorganizations.* In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends that have been paid with respect to the stock in the new corporation will be provided to the payee, the dividend is considered paid on the date the payee actually exchanges the stock and receives the dividend.

(b) *Amounts reportable under section 6045*—(1) *In general.* Notwithstanding paragraph (a) of this section, in the case of a transaction reportable under section 6045 (except in the case of forward contracts (including foreign currency contracts), regulated futures contracts, and security short sales), the obligation to withhold under section 3406 arises on the date the sale is entered on the books of the broker or the date the exchange occurs as provided in § 1.6045–1(f)(3) of this chapter. A broker (in its capacity as payor) is not required, however, to satisfy its withholding liability until payment is made. See § 31.3406(b)(3)–2(b)(2) for special rules applicable to forward contracts (including foreign currency contracts), regulated futures contracts, and security short sales.

(2) *Special rule for interest accrued on bonds.* For purposes of determining the time that interest is considered paid and subject to withholding under section 3406 when bonds are sold between interest payment dates, the portion of the sales price representing interest accrued to the date of sale is considered a portion of a reportable payment of gross proceeds under section 6045 (provided that the accrued interest is not tax-exempt as described in section 103(a), relating to certain governmental obligations), and is not considered to be a payment of interest for purposes of section 6049.

(c) *Middlemen*—(1) *In general.* Any middleman (as defined in § 31.3406(a)–2(b)) must withhold under section 3406 at the time the reportable payment is received by or credited to the middleman. If the middleman makes or credits the reportable payment to the payee prior to the middleman's receipt of the corresponding payment, the middleman may withhold at the time the reportable payment is made or credited to the payee.

(2) *Special rule for common trust funds.* A common trust fund (as defined in section 584) must withhold either—

(i) At the time the reportable payment is received by or credited to the common trust fund as provided in paragraph (c)(1) of this section;

(ii) On the date on which the assets of the common trust fund are valued; or

(iii) At the time the common trust fund pays or credits the reportable payment to a participant of the common trust fund.

(3) *Special rule for certain grantor trusts.* For grantor trusts described in § 31.3406(a)–2(b)(4), reportable payments made to the trust are treated as paid by the trust to each grantor, in an amount equal to the distribution made by the trust to each grantor, on the date that the reportable payment is paid to the trust (except for gross proceeds reportable under section 6045). Paragraph (b)(2) of this section applies to a grantor trust making a payment of gross proceeds under section 6045 subject to withholding under section 3406. For purposes of this paragraph (c)(3) a husband and wife filing a joint return are considered to be one grantor.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) *Interest subject to backup withholding*—(1) *In general.* A payment of a kind, and to a payee, that is required to be reported under section 6049 (relating to returns regarding interest and original issue discount) is a reportable payment for purposes of section 3406, subject to the special rules of § 31.3406(b)(2)–2 (relating to original issue discount) and § 31.3406(b)(2)–3 (relating to window transactions). See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(2) *Special rule for tax-exempt interest.* When an issuer is required to make an information return under § 1.6049–4(d)(8) of this chapter because a payee provided a signed written statement on the envelope or shell incorrectly claiming that the interest was exempt from taxation under section 103(a) (as described in § 1.6049–5(b)(1)(ii) of this chapter), the issuer is not required to impose withholding under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount of interest subject to withholding under section 3406 is the amount subject to reporting under section 6049.

(2) *Special rule to adjust for premature withdrawal penalty.* Solely for purposes of computing the amount subject to withholding under section 3406, the payor may elect not to withhold from the portion of any interest payment that is not received by the payee because a penalty is in fact imposed for premature withdrawal of funds deposited in a time savings account, certificate of deposit, or similar class of deposit.

§ 31.3406(b)(2)–2 Original issue discount.

(a) *Original issue discount subject to backup withholding.* The amount of original issue discount, treated as interest, subject to withholding under section 3406 is the amount subject to reporting under section 6049, but is limited to the amount of cash paid. In addition, if an original issue discount obligation, subject to reporting under section 6045, is sold prior to maturity and with respect to the seller a condition exists for imposing withholding under section 3406 on the gross proceeds, then withholding under § 31.3406(b)(3)–2 applies to the gross proceeds of the sale reportable under section 6045, and not to the amount of any original issue discount includible in the gross income of the seller for the calendar year of the sale. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding and time when backup withholding is imposed with respect to short-term obligations.* In the case of an obligation with a fixed maturity date not exceeding one year from the date of issue (a short-term obligation), withholding under section 3406 applies to any payment of original issue discount on the obligation includible in the gross income of the holder to the extent of the cash amount of the payment. See § 1.1273–1 of this chapter to determine the amount of original

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issue discount on a short-term obligation. See § 1.446–2(e)(1) of this chapter to determine the amount of a payment treated as original issue discount.

(c) *Transferred short-term obligations*—(1) *Subsequent holder may establish purchase price*—(i) *In general.* At maturity of a short-term obligation, a subsequent holder (i.e., any person who purchased or otherwise obtained the obligation after the obligation was issued to the original holder) may establish the price of the obligation. The price established by the subsequent holder must then be treated as the original issue price for purposes of computing the amount of the original issue discount subject to withholding under section 3406. The price of a short-term obligation may be established by confirmation receipt or other record of a similar type or, if the obligation is redeemed by or through the person from whom the obligation was purchased or otherwise obtained, by the records of the person from whom or through whom the obligation was purchased or otherwise obtained. The subsequent holder is not required to certify under penalties of perjury that the price determined under this paragraph (c)(1)(i) is correct.

(ii) *Exception.* A payor may elect to disregard the price at which the subsequent holder purchased or otherwise obtained the obligation if the payor's computer or recordkeeping system on which the details of the obligation are stored is not able to accept that price without significant manual intervention.

(2) *Subsequent holder unable (or not permitted) to establish purchase price.* If a subsequent holder fails (or is unable, pursuant to paragraph (c)(1)(ii) of this section) to establish the purchase price of the obligation, then the person redeeming the obligation must determine the amount subject to withholding under section 3406 as though the obligation had been purchased by the holder on the date of issue. If the person redeeming the obligation is the issuer of the obligation, then the issuer must determine the amount subject to withholding from its records. If a person other than the issuer of the obligation redeems the obligation and the obligation is listed in Internal Revenue Service Publication 1212, List of Original Issue Discount Obligations, that person must determine the amount subject to withholding by using the issue price indicated in Publication 1212.

(3) *Transferred obligation.* If a short-term obligation is transferred, no part of the purchase price is considered a reportable interest payment under section 6049. Withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists for imposing withholding. For the rules regarding withholding for amounts subject to reporting under section 6045, see § 31.3406(b)(3)-2.

(d) *Amount subject to backup withholding and time when backup withholding is imposed with respect to long-term obligation*—(1) *No cash payments prior to maturity.* In the case of an obligation with a fixed maturity date that is more than one year from the date of issue (a long-term obligation) and with no cash payments prior to maturity, withholding under section 3406 applies at the maturity of the obligation to the amount of original issue discount includible in the gross income of the holder for the calendar year in which the obligation matures. The amount required to be withheld must not exceed the amount of the cash payment.

(2) *Registered long-term obligations with cash payments prior to maturity.* In the case of a long-term obligation in registered form that provides for cash payments prior to maturity, withholding under section 3406 applies at the time cash payments are made to the sum of the amounts of qualified stated interest and original issue discount includible in the gross income of the holder for the calendar year in which the cash payments are made. The amount required to be withheld at the time of any cash payment, however, must not exceed the amount of the cash payment. If more than one cash payment is made during a calendar year, the tax that is required to be withheld with respect to original issue discount must be allocated among all the expected cash payments in the ratio that each cash payment bears to the total of the expected cash payments.

(3) *Transferred registered long-term obligations with payment: prior to maturity.* In the case of a long-term obligation that is transferred after its issuance from the original holder, the amount subject to withholding under section 3406 with respect to a subsequent holder is the amount of original issue discount includible in the gross income of all holders during the calendar year (without regard to any amount paid by a subsequent holder at the time of transfer). If the person redeeming the obligation at maturity is the issuer of the obligation, the issuer must determine the amount subject to withholding through its records by treating the holder as if he were the original holder. If a person redeeming the obligation at maturity is a person other than the issuer of the obligation, and the obligation is listed in Internal Revenue Service Publication 1212, List of Original Issue Discount Obligations, the person must determine the amount subject to withholding by using the issue price indicated in Publication 1212.

(e) *Bearer long-term obligations.* In the case of a bearer long-term obligation with cash payments prior to maturity—

(1) *Payments prior to maturity.* Withholding under section 3406 applies prior to maturity only to the payment of qualified stated interest (and not to any amount of original issue discount) includible in the gross income of the holder for the calendar year.

(2) *Payments at maturity.* At maturity of the obligation, withholding applies to the sum of any qualified stated interest payment made at maturity and the total amount of original issue discount includible in the gross income of the holder during the calendar year of maturity. The amount required to be withheld at the time of the cash payment, however, must not exceed the amount of the cash payment.

§ 31.3406(b)(2)–3 Window transactions.

(a) *Requirement to backup withhold.* Withholding under section 3406 applies to a window transaction (as defined in paragraph (b) of this section) only if the payee does not furnish a taxpayer identification number to the payor in the manner required in paragraph (c) of this section or furnishes an obviously incorrect number as described in § 31.3406(h)–1(b)(2). Withholding does not apply to a window transaction even though the Internal Revenue Service notifies the payor of the payee's incorrect taxpayer identification number under section 3406(a)(1)(B) or of notified payee underreporting under section 3406(a)(1)(C). The payee in a window transaction is not required to certify under penalties of perjury that the payee is not subject to withholding due to notified payee underreporting (as described in § 31.3406(d)–2(b)(2)).

(b) *Window transaction defined—Window transaction* means a payment of interest with respect to any of the following obligations:

(1) An interest coupon in bearer form that is subject to taxation (i.e., other than exempt interest described in § 1.6049–5(b)(1)(ii) of this chapter);

(2) A United States savings bond; or

(3) A discount obligation having a maturity at issue of one year or less, including commercial paper and bankers' acceptances that are in definitive form (i.e., evidenced by a paper document other than a confirmation receipt) but not including short-term government obligations (as defined in section 1271(a)(3)(B)).

(c) *Manner of furnishing taxpayer identification number in the case of a window transaction.* A payee must furnish the payee's taxpayer identification number to the payor with respect to a window transaction either orally or in writing at the time that the window transaction occurs. See § 31.3406(g)–3(c)(1)(i), which provides that a payee may not claim the payee is awaiting receipt of a taxpayer identification number with respect to a window transaction. The payee is not required to certify, under penalties of perjury, that the taxpayer identification number provided is correct.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) *Dividends subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6042 (relating to returns regarding payments of dividends and corporate earnings and profits) is a reportable payment for purposes of section 3406. See paragraph (b) of this section for certain dividends not subject to withholding under section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Dividends not subject to backup withholding.* Except as provided in § 31.3406(b)(3)–2 (relating to transactions reportable under section 6045), withholding under section 3406 does not apply to—

(1) Any amount treated as a taxable dividend by reason of section 302 (relating to redemptions of stock), section 304 (relating to redemptions through the use of related corporations), section 306 (relating to disposition of certain stock), section 356 (relating to receipt of additional consideration in connection with certain reorganizations), or section 1081(e)(2) (relating to certain distributions pursuant to an order of the Securities and Exchange Commission);

(2) Any exempt-interest dividend, as defined in section 852(b)(5)(A), paid by a regulated investment company; or

(3) Any amount paid or treated as paid during a year by a regulated investment company, provided that the payor reasonably estimates, as provided in paragraph (c)(2) of this section, that 95 percent or more of all dividends paid or treated as paid during the year are exempt-interest dividends.

(c) *Amount subject to backup withholding*—(1) *In general.* The amount of a dividend subject to withholding under section 3406 is the amount subject to reporting under section 6042, including any dividend that is reinvested pursuant to a plan under which a shareholder may elect to receive stock as a dividend instead of property. Except as otherwise provided in this paragraph (c), withholding applies to the entire amount of the distribution.

(2) *Reasonable estimate of amount of dividend subject to backup withholding.* Pursuant to section 6042(b)(3) and § 1.6042–3(c) of this chapter, if the payor is unable to determine the portion of a distribution that is a dividend, the entire amount of the distribution must be treated as a dividend for information reporting under section 6042. Hence, withholding applies to the entire amount of the distribution. If a payor is able reasonably to estimate under section 6042 and § 1.6042–3(c) of this chapter the portion of a distribution that is not a dividend, however, the payor must not withhold on that portion (which is not considered a dividend). A payor making a payment, all or a portion of which may not be a dividend, may use previous experience to estimate the portion of a distribution that is not a dividend. The payor's estimate is considered reasonable if—

(i) The estimate does not exceed the proportion of the distributions made by the payor during the most recent calendar year for which a Form 1099 was required to be filed that was not reported by the payor as a dividend; and

(ii) The payor has no reasonable basis to expect that the proportion of the distribution that is not a dividend will be substantially different for the current year.

(3) *Reinvested dividends.* In the case of a dividend paid pursuant to a dividend reinvestment plan, withholding under section 3406 applies, pursuant to § 31.3406(a)–4(a), at the time and to the amount made available to the shareholder or credited to the shareholder's account. At the discretion of the payor, withholding under section 3406 need not be applied to any excess of the fair market value of the shares of stock received by the shareholder or credited to the shareholder's account over the purchase price of the shares (including shares acquired by the shareholder at a discount in connection with the dividend distribution) or to any fee that is paid by the payor in the nature of a broker's fee for purchase of the stock or service charge for maintenance of the shareholder's account. The payor must, however, treat any excess amounts and fees on a consistent basis for each calendar year.

§ 31.3406(b)(2)–5 Reportable patronage dividend payment.

(a) *Patronage dividends subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6044 (relating to returns regarding patronage dividends) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.* For purposes of sections 3406(a)(1) (A) and (B), the amount of a payment described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6044, but only to the extent the payment is made in money. For purposes of this paragraph (b), *money* includes cash or a qualified check (as defined in section 1388(c)(4)).

(2) *Notified payee underreporting or payee certification failure.* For purposes of sections 3406(a)(1) (C) and (D), the amount of a payment described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to withholding under paragraph (b)(1) of this section, but only if 50 percent or more of that reportable amount is paid in money. Thus, a payor is required to withhold according to this paragraph (b)(2) on a payment if—

(i) There has been a notified payee underreporting described in section 3406(a)(1)(C) and § 31.3406(c)–1 or there has been a payee certification failure described in section 3406(a)(1)(D) and § 31.3406(d)–2;

(ii) The payor makes a reportable payment subject to reporting under section 6044 to the payee; and

(iii) Fifty percent or more of the payment is in cash or by qualified check.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) *Section 6041 and 6041A(a) payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6041 (relating to information reporting of rents, commissions, nonemployee compensation, etc.) or a payment that is required to be reported under section 6041A(a) (relating to information reporting of payments to nonemployees for services) is a reportable payment for purposes of section 3406. See paragraph

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(b) of this section for an exception concerning payments aggregating less than $600. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount of a payment described in paragraph (a) of this section subject to withholding under section 3406 is the amount subject to reporting under section 6041 or section 6041A(a).

(2) *Net commissions.* Withholding under section 3406 does not apply to net commissions paid to unincorporated special agents with respect to insurance policies that are subject to reporting under section 6041, provided that no cash is actually paid by the payor to the special agent.

(3) *Payments aggregating $600 or more for the calendar year*—(i) *In general.* A payment is a reportable payment under paragraph (a) of this section only if the aggregate amount of the current payment and all previous payments to the payee during the calendar year aggregate $600 or more. The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal $600 or more and the amount of any subsequent payments made to the payee during the calendar year. This paragraph (b)(3)(i) does not apply to gambling winnings (as provided in § 31.3406(g)–2(e)(1)).

(ii) *Exceptions*—(A) *The $600 aggregation rule.* The $600 aggregation rule of paragraph (b)(3)(i) of this section does not apply if the payor was required to make an information return under section 6041 or 6041A(a) for the preceding calendar year with respect to payments to the payee, or the payor was required to withhold under section 3406 during the preceding calendar year with respect to payments to the payee that were reportable under section 6041 or 6041A(a).

(B) *Determination of whether payments aggregate $600 or more.* In determining whether payments to a payee aggregate $600 or more during a calendar year for purposes of withholding under section 3406, the payor must aggregate only payments of the same kind made to the same payee. For this purpose, payments are of the same kind if they are of the same type, regardless of whether they are reportable under the same section. However, a payor with different paying departments making reportable payments of the same kind is not required to aggregate payments made by all those departments unless it is the payor's customary method to aggregate those payments. A payor may, in its discretion, aggregate—

(*1*) Payments not of the same kind to the same payee, reportable under either section 6041 or 6041A(a); and

(*2*) Payments reportable under section 6041 with payments reportable under section 6041A(a).

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) *Transactions subject to backup withholding.* A payment of a kind, and to a payee, that any broker (as defined in section 6045(c) and § 1.6045–1(a)(1) of this chapter) or any barter exchange (as defined in section 6045(c) and § 1.6045–1(a)(4) of this chapter) is required to report under section 6045 is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount subject to withholding under section 3406 is the amount subject to reporting under section 6045. The amount subject to withholding with respect to broker reporting is the amount of gross proceeds (as determined under § 1.6045–1(d)(5) of this chapter). The amount subject to withholding with respect to barter exchanges is the amount received by any member or client (as determined under § 1.6045–1(f)(4) of this chapter).

(2) *Forward contracts, including foreign currency contracts, and regulated futures contracts*—(i) *In general.* If a customer is subject to withholding under section 3406 with respect to a forward contract (subject to information reporting under § 1.6045–1(c)(5) of this chapter), including a foreign currency contract (as defined in section 1256(g)(2)), or a regulated futures contract (as defined in section 1256(g)(1)), or with respect to an account through which those contracts are disposed of or acquired, the broker must withhold on both of the following amounts:

(A) All cash or property withdrawn from the account by the customer during the relevant year; and

(B) The amount of cash in the account available for withdrawal by the customer at the relevant year-end (including both gross proceeds and variation margin).

(ii) *Rules concerning withdrawals.* A withdrawal includes the use of money (including both gross proceeds and variation margin) or property in the account to purchase any property other than property acquired in connection with the closing of a contract. For this purpose, the acceptance of a warehouse receipt or other taking of delivery to close a contract is in connection with the closing of a contract only if the property acquired is disposed of by the close of the seventh trading day following the trading day that the customer takes delivery under the contract. In addition, making delivery to close a contract is in connection with the closing of a contract only if the broker is able to determine that the property used to close the contract was acquired no earlier than the seventh trading day prior to the trading day on which delivery is made. Withdrawals do not include repayments of debt incurred in connection with making or taking delivery that meets the requirements of this paragraph (b)(2). Withdrawals also do not include payments of commissions, fees, transfers of cash from the account to another futures account that is subject to this paragraph (b)(2) or cash withdrawals traceable to dispositions of property other than futures (not including profit on the contract separately reportable under § 1.6045–1(c)(5)(i)(*b*) of this chapter).

(iii) *Special rule for forward contracts, including foreign currency contracts, and regulated futures contracts.* The determination of whether the customer is subject to withholding under section 3406 with respect to an account containing forward contracts, including foreign currency contracts, or regulated futures contracts must be made at the time of the cash or property withdrawals or the relevant year-end, whichever is applicable.

(3) *Security sales made through a margin account.* The amount described in paragraph (a) of this section that is subject to withholding under section 3406 in the case of a security sale made through a margin account (as defined in 12 CFR part 220 (Regulation T)) is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the sale. The amount required to be withheld with respect to the sale, however, is limited to the amount of cash available for withdrawal by the customer immediately after the settlement of the sale. For this purpose, the amount available for withdrawal by the customer does not include amounts required to satisfy margin maintenance under Regulation T, rules and regulations of the National Association of Securities Dealers and national securities exchanges, and generally applicable self-imposed rules of the margin account carrier.

(4) *Security short sales*—(i) *Amount subject to backup withholding.* The amount subject to withholding under section 3406 with respect to a short sale of securities is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold under section 3406 would be deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to withholding under section 3406 with respect to a short sale only if at the time the short sale is initiated, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property must be assumed for this purpose to have a basis of zero.

(ii) *Time of backup withholding.* The determination of whether a short seller is subject to withholding under section 3406 must be made on the date of the initiation or closing, as the case may be, or on the date that the initiation or closing, as the case may be, is entered on the broker's books and records.

(5) *Fractional shares.* A broker is not required to withhold under section 3406 with respect to a sale of a fractional share of stock resulting in less than $20 of gross proceeds (as described in § 5f.6045–1(c)(3)(ix) of this chapter).

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) *Payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6050A (relating to information reporting by certain fishing boat operators) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding.* The amount described in paragraph (a) of this section subject to withholding under section 3406 is the amount subject to reporting under section 6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) *Royalty payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding.* In general, the amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050N. However, if the reportable payment is for an oil or gas interest, the amount subject to withholding is the net amount the payee receives (i.e., the gross proceeds less production-related taxes such as state severance taxes).

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) *In general.* A payor of reportable interest or dividends (as described in section 3406(b)(2)) or of royalties (as described in section 3406(b)(3)(E)) may elect not to withhold from a payment that does not exceed $10 and that on an annualized basis does not exceed $10 (see paragraph (c) of this section). A broker or barter exchange may elect not to withhold on gross proceeds of $10 or less without regard to the annualization requirement. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Manner of making the election.* The election not to withhold from payments that do not exceed $10 can be made only for payments described in paragraph (a) of this section. The election may be made on a payment-by-payment basis.

(c) *How to annualize*—(1) *In general.* To annualize a reportable interest payment, dividend payment, or royalty payment, a payor must calculate what the amount of the payment would be if it were paid for a 1-year period (instead of the period for which it actually is paid). The annualized amount is determined by dividing the amount of the payment by the number of days in the period for which it is being paid and then multiplying that result by the number of days in the year. If the annualized amount is $10 or less, the payor may elect not to withhold on that payment regardless of whether more than $10 may be or has been paid to the payee in other reportable payments during the calendar year. Conversely, if the annualized amount is more than $10, withholding applies even if $10 or less is actually paid to the payee during the calendar year. For purposes of computing the annualized amount, the payor may assume that February always consists of 28 days and that the year always consists of 360 days. For amounts that are deposited with a payor in a new account or certificate between the dates on which the payor customarily pays or credits interest, the payor may assume that the period for which the interest is paid is the payor's customary period for paying or crediting interest.

(2) *Special aggregation rule for reportable interest and dividends.* If a payor maintains records that reflect multiple holdings of one payee and the payor makes an aggregate payment of reportable interest or dividends (as defined in section 3406(b)(2)) with respect to those multiple holdings (such as a dividend check that reflects payment on all stock owned by the payee), the payor must annualize the aggregate payment.

(d) *Exception for window transactions and original issue discount.* A payor is not required to annualize payments made in window transactions (as defined in § 31.3406(b)(2)–3(b)) or payments of original issue discount. With respect to a window transaction, however, the payor is required to aggregate all payments made in the same transaction (e.g., payments made with respect to coupons or obligations presented for payment at the same time as described in § 1.6049–4(e)(4) of this chapter).

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) *Overview.* Withholding under section 3406(a)(1)(C) applies to any reportable interest or dividend payment (as defined in section 3406(b)(2)) made with respect to an account of a payee if the Internal Revenue Service or a broker notifies a payor under paragraph (c) (1) or (2) of this section that the payee is subject to withholding due to notified payee underreporting (as defined in paragraph (b)(1) of this section), and the payor is required under paragraph (c)(3) of this section to identify that account. After receiving the notice and identifying accounts, the payor must notify the payee, in accordance with paragraph (d) of this section, that withholding due to notified payee underreporting has started. Paragraph (e) of this section describes the period for which withholding due to notified payee underreporting is required. Paragraph (f) of this section provides rules concerning notices that the Internal Revenue Service will send to a payee before notifying a payor that the payee is subject to withholding due to notified payee underreporting. Paragraph (g) of this section provides rules that a payee can use to prevent withholding due to notified payee underreporting from starting or to stop it once it has started. Paragraph (h) of

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this section provides special rules for joint accounts of payees who have filed a joint return. See section 6682 for the penalties that may apply to a payee subject to withholding under section 3406(a)(1)(C).

(b) *Definitions*—(1) *Notified payee underreporting. Notified payee underreporting* means that the Internal Revenue Service has—

(i) Determined that there was a payee underreporting (as defined in paragraph (b)(2) of this section);

(ii) Mailed at least four notices under paragraph (f)(1) of this section to the payee (over a period of at least 120 days) with respect to the underreporting; and

(iii) Assessed any deficiency attributable to the underreporting in the case of any payee who has filed a return.

(2) *Payee underreporting*—(i) *In general. Payee underreporting* means that the Internal Revenue Service has determined, for a taxable year, that—

(A) A payee failed to include in the payee's return of tax under chapter 1 of the Internal Revenue Code for that year any portion of a reportable interest or dividend payment required to be shown on that tax return; or

(B) A payee may be required to file a return for that year and to include a reportable interest or dividend payment in the return, but failed to file the return.

(ii) *Payments included in making payee underreporting determination.* The determination of whether there is payee underreporting is made by treating as reportable interest or dividend payments, all payments of dividends reported under section 6042, all patronage dividends reported under section 6044, and all interest and original issue discount reported under section 6049, regardless of whether withholding due to notified payee underreporting applies to those payments.

(c) *Notice to payors regarding backup withholding due to notified payee underreporting*—(1) *In general.* If the Internal Revenue Service or a broker notifies a payor that a payee is subject to withholding due to notified payee underreporting, the payor must—

(i) Identify any accounts of the payee under the rules of paragraph (c)(3) of this section; and

(ii) Notify the payee and withhold under section 3406 on reportable interest or dividend payments made with respect to any identified account under the rules of paragraphs (d) and (e) of this section.

(2) *Additional requirements for payors that are also brokers*—(i) *In general.* A broker must notify the payor of a readily tradable instrument that the payee of the instrument is subject to withholding due to notified payee underreporting if—

(A) The broker (in its capacity as a payor) receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section that a payee is subject to withholding due to notified payee underreporting and the broker is required to identify an account of the payee under paragraph (c)(3) of this section;

(B) The payee subsequently acquires the instrument from the broker through the same account; and

(C) The acquisition of the instrument occurs after the close of the 30th business day after the date that the broker receives the notice (or on any earlier date that the broker may begin applying this paragraph (c)(2) after receipt of the notice described in paragraph (c)(1) of this section).

(ii) *Transfer out of street name.* For purposes of this paragraph (c)(2), an acquisition includes a transfer of an instrument out of street name into the name of the registered owner (i.e., the payee).

(iii) *Method of providing notice.* A broker must provide the notice required under this paragraph (c)(2) to the payor of the instrument with the transfer instructions for the acquisition. See § 31.3406(d)–4(a)(2).

(iv) *Termination of obligation to provide information.* The obligation of a broker to provide notice to payors under this paragraph (c)(2) terminates simultaneously with the termination of the broker's obligation to withhold (in its capacity as payor) due to notified payee underreporting on reportable interest or dividends made with respect to the account.

(3) *Payor identification of accounts of the payee subject to backup withholding due to notified payee underreporting*—(i) *In general*—(A) *Notice from the Internal Revenue Service.* If a payor receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section, the payor must identify, exercising reasonable care, all accounts using the same taxpayer identification number for information reporting purposes as the one provided in the notice. The notice may provide, however, that the payor need only identify the account or accounts corresponding to any account number or designation and related taxpayer identification number used for information reporting purposes as that listed on the notice.

(B) *Notice from a broker.* If a payor receives a notice from a broker under paragraphs (c) (1) and (2) of this section, the payor is not required to identify any account other than the account identified in the notice.

(ii) *Exercise of reasonable care.* If an account identified pursuant to paragraph (c)(3)(i)(A) of this section contains a customer identifier that can be used to retrieve systemically any other accounts that use the same taxpayer identification number for information reporting purposes, the payor must identify all accounts that can be so retrieved. Otherwise, a payor is considered to exercise reasonable care in identifying accounts subject to withholding under section 3406(a)(1)(C) if the payor searches any computer or other recordkeeping system for the region, division, or branch that serves the geographic area in which the payee's mailing address is located and that was established (or is maintained) to reflect reportable interest or dividend payments.

(iii) *Newly opened accounts.* (A) In general, a new account is not subject to withholding under section 3406(a)(1)(C) if the payee provides to the payor a Form W–9 (or other acceptable substitute) on which the payor may reasonably rely (within the meaning of § 31.3406(h)–3(e)(2) without regard to § 31.3406(h)–3(e)(2)(v)), unless the payor has actual knowledge (within the meaning of paragraph (c)(3)(iii)(B) of this section) that the statements made on the form are not true.

(B) For purposes of paragraph (c)(3)(iii)(A) of this section, a payor is considered to have actual knowledge that a payee's statement that the payee is not subject to withholding under section 3406(a)(1)(C) is not true if—

(*1*) The employee or individual agent of the payor who receives the payee's certification knows that the statement is not true;

(*2*) In conducting the investigation, if any, required by paragraph (c)(3)(iii)(C) of this section, the payor identifies any other accounts of the payee that are already subject to withholding under section 3406(a)(1)(C); or

(*3*) In the course of processing the certification or in administering an account to which a certification relates, the payor discovers that the payor was previously notified by the Internal Revenue Service that the payee is subject to withholding under section 3406(a)(1)(C) and no notice was received to stop withholding pursuant to section 3406(c)(3) prior to the time of the discovery.

(C) Except as provided in this paragraph (c)(3)(iii)(C), a payor is not required to investigate whether the statements made on the Form W–9 described in paragraph (c)(3)(iii)(A) of this section are true. If, however, in

opening a new account, the payor relies on the same Form W–9 (or appropriate substitute) that it relied on previously in opening another account, the payor must investigate whether any such existing account is subject to withholding under section 3406(a)(1)(C). Similarly, if the payor utilizes a universal account system described in the first sentence of paragraph (c)(3)(ii) of this section, and in opening a new account the payor searches its records to determine whether the new account should be identified under an existing identifier (because the payee has existing accounts with the payor), the payor must investigate whether any existing accounts identified with the same identifier are subject to withholding under section 3406(a)(1)(C).

(d) *Notice from payors of backup withholding due to notified payee underreporting*—(1) *In general.* If a payor receives notice from the Internal Revenue Service or a broker under paragraph (c)(1) of this section and is required to identify an account under paragraph (c)(3) of this section as an account of the payee, the payor must notify the payee in accordance with paragraph (d)(2) of this section that withholding due to notified payee underreporting has started.

(2) *Procedures.* The payor must send the notice required by paragraph (d)(1) of this section to the payee no later than 15 days after the date that the payor makes the first payment subject to withholding due to notified payee underreporting. The payor must send the notice by first-class mail to the payee at the payee's last known address. The notice to the payee required by paragraph (d)(1) of this section must state—

(i) That the Internal Revenue Service has given notice that the payee has underreported reportable interest or dividends;

(ii) That, as a result of the underreporting, the payor is required under section 3406(a)(1)(C) of the Internal Revenue Code to withhold 31 percent of reportable interest or dividend payments made to the payee;

(iii) The date that the payor started (or plans to start) withholding due to notified payee underreporting under section 3406(a)(1)(C);

(iv) The account number or numbers that are subject to withholding due to notified payee underreporting;

(v) That the payee must obtain a determination from the Internal Revenue Service in order to stop the withholding due to notified payee underreporting; and

(vi) That while the payee is subject to withholding due to notified payee underreporting, the payee may not certify to a payor making reportable interest or dividend payments (or to a broker acquiring a readily tradable instrument for the payee) that the payee is not subject to withholding due to notified underreporting.

(e) *Period during which backup withholding is required*—(1) *In general.* If a payor receives notice from the Internal Revenue Service or a broker under paragraph (c)(1) of this section, the payor must impose withholding under section 3406(a)(1)(C) on all reportable interest or dividend payments with respect to any account of the payee required to be identified under paragraph (c)(3) of this section made after the close of the 30th business day after the day on which the payor receives that notice and before the stop date (as described in paragraph (e)(2) of this section). A payor may choose to start withholding under this paragraph (e)(1) at any time during the 30-business-day period described in the preceding sentence.

(2) *Stop withholding*—(i) *When no underreporting exists or undue hardship exists*—(A) *Stop date.* In the case of a determination under paragraph (g)(3) (i) or (iii) of this section that no underreporting exists or that an undue hardship exists, the stop date is the day that is 30 days after the earlier of—

(*1*) The date on which the payor receives written notification from the Internal Revenue Service under paragraph (g) of this section that withholding is to stop; or

(*2*) The date on which the payor receives a copy of the written certification provided to the payee by the Internal Revenue Service under paragraph (g) of this section that withholding is to stop.

(B) *Acceleration of stop date.* A payor may choose to stop withholding at any time during the 30-day period described in paragraph (e)(2)(i)(A) of this section.

(ii) *When underreporting is corrected or bona fide dispute exists.* In the case of a determination under paragraph (g)(3) (ii) or (iv) of this section that the underreporting has been corrected or that a bona fide dispute exists, the stop date occurs on the first day of January (immediately following a period of at least twelve months ending on October 15 of any calendar year in which the determination has been made) or if later, the stop date determined under paragraph (e)(2)(i) of this section.

(3) *Dormant accounts.* The requirement that a payor withhold under this paragraph (e) on reportable interest or dividend payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(i) The date that the most recent reportable interest or dividend payment was made with respect to that account; or

(ii) The date that the payor received notice under paragraph (c)(1) of this section.

(f) *Notice to payees from the Internal Revenue Service*—(1) *Notice period.* After the Internal Revenue Service determines under paragraph (b)(2) of this section that payee underreporting exists, the Internal Revenue Service will mail to the payee at least four notices over a period of at least 120 days (the notice period) before payors will be notified under paragraph (c)(1) of this section that the payee is subject to withholding due to notified payee underreporting. The notices may be accompanied by, or incorporated in, other notices provided to the payee by the Internal Revenue Service.

(2) *Payee subject to backup withholding.* After the Internal Revenue Service provides the notices described in paragraph (f)(1) of this section, the Internal Revenue Service will send notices to payors under paragraph (c)(1) of this section unless—

(i) A payee obtains a determination under paragraph (g) of this section; or

(ii) In the case of a payee who has filed a tax return, the Internal Revenue Service has not assessed the deficiency attributable to the underreporting.

(3) *Disclosure of names of payors and brokers.* Pursuant to section 3406(c)(5) the Internal Revenue Service may require a payee subject to withholding due to notified payee underreporting to disclose the names of all the payee's payors of reportable interest or dividend payments and the names of all of the brokers with whom the payee has accounts which may involve reportable interest or dividend payments. To the extent required in the request from the Internal Revenue Service, the payee must also provide the payee's account numbers and other information necessary to identify the payee's accounts.

(4) *Backup withholding certification.* After a payee receives a final notice from the Internal Revenue Service under paragraph (f)(1) of this section, the payee is not permitted to certify to any payor or broker, under penalties of perjury, that the payee is not subject to withholding under section 3406(a)(1)(C), until the payee receives the certification from the Internal Revenue Service under paragraph (g) of this section advising the payee that the payee is no longer subject to

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withholding under section 3406(a)(1)(C). A final notice will contain the information described in this paragraph (f)(4). See sections 6682 and 7205(b) for civil and criminal penalties for making a false certification.

(g) *Determination by the Internal Revenue Service that backup withholding should not start or should be stopped*—(1) *In general.* A payee may prevent withholding due to notified payee underreporting from starting, or stop the withholding once it has started, by requesting and receiving a determination from the Internal Revenue Service under one or more of the provisions of paragraph (g)(3) of this section. Following its review of a request for a determination under paragraph (g)(3) of this section, the Internal Revenue Service will either make the determination or provide the payee with a written report informing the payee that the request for determination is being denied and the reasons for the denial. If a determination is made during the notice period (as defined in paragraph (f)(1) of this section), the payee is not subject to withholding due to notified payee underreporting with respect to any taxable year for which a determination was made. If a determination is made after the notice period, the Internal Revenue Service will, at the time prescribed in paragraph (g)(2) of this section, provide written certification to a payee that withholding is to stop, and will notify payors who were contacted pursuant to paragraph (c)(1) of this section to stop withholding. A broker who (in its capacity as payor) under this paragraph (g)(1) receives a notice from the Internal Revenue Service or a copy of the certification provided to a payee by the Internal Revenue Service is not required to provide a corresponding notice to any payors whom the broker has previously notified under paragraph (c)(2) of this section.

(2) *Date notice to stop backup withholding will be provided*—(i) *Underreporting corrected or bona fide dispute.* If the Internal Revenue Service makes a determination under paragraph (g)(3) (ii) or (iv) of this section during the 12-month period ending on October 15 of any calendar year (as described in paragraph (e)(2)(ii) of this section), the Internal Revenue Service will provide the certification and the notices described in paragraph (g)(1) of this section no later than December 1 of that calendar year.

(ii) *No underreporting or undue hardship.* If the Internal Revenue Service makes a determination under paragraph (g)(3)(i) or (iii) of this section, the Internal Revenue Service will provide the notices described in paragraph (g)(1) of this section no later than the 45th day after the day on which the Internal Revenue Service makes its determination.

(3) *Grounds for determination.* The Internal Revenue Service will make a determination that withholding due to notified payee underreporting should not start or should stop once it has started if the payee—

(i) Shows that there was no payee underreporting (as provided in paragraph (g)(4) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting;

(ii) Corrects any payee underreporting (as provided in paragraph (g)(5) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting;

(iii) Shows that withholding will cause or is causing an undue hardship (as defined in paragraph (g)(6) of this section) and that it is unlikely that the payee will underreport interest or dividend payments again; or

(iv) Shows that a bona fide dispute exists regarding whether any underreporting has occurred (as provided in paragraph (g)(7) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting.

(4) *No underreporting.* A payee may show that no underreporting of reportable interest or dividends payments exists by presenting—

(i) Receipts or other satisfactory documentation to the Internal Revenue Service showing that all taxes relating to the payments were reported; or

(ii) Evidence showing that the payee did not have to file a return for the taxable year in question (e.g., because the payee did not make enough income) or that the underreporting determination was based upon a factual, clerical, or other error.

(5) *Correcting any payee underreporting*—(i) *Before issuance of a statutory notice of deficiency.* Before a statutory notice of deficiency is issued to a payee pursuant to section 6212, the payee may correct underreporting—

(A) By filing a return if one was not previously filed and including the unreported interest and dividends thereon;

(B) By filing an amended return in the event a return was filed and including the unreported interest and dividends thereon; or

(C) By consenting to the additional assessment according to applicable notices and forms sent to the payee by the Internal Revenue Service with respect to the underreporting, and paying taxes, penalties, and interest due with respect to any underreported interest or dividend payments.

(ii) *After issuance of a statutory notice of deficiency.* After a statutory notice of deficiency is issued to a payee—

(A) The payee may correct underreporting at any time, by filing a return if one was not previously filed and paying the entire deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments; or

(B) The payee may correct underreporting after the mailing of the statutory notice of deficiency but before the expiration of the 90-day or 150-day period described in section 6213(a) or, if a petition is filed with the United States Tax Court, before the decision of the Tax Court is final, by making a remittance to the Internal Revenue Service of the amounts described in paragraph (g)(5)(ii)(A) of this section. The payee must specifically designate in writing that the remittance is a deposit in the nature of a cash bond.

(iii) *Special rules.* For purposes of paragraph (g)(5)(ii) of this section, the payee will not be deemed to have corrected the payee underreporting under paragraph (g)(5)(ii)(B) of this section after the remittance is returned to the payee in the manner described in any applicable administrative procedure. For further guidance on a deposit in the nature of a cash bond, see subparagraph 2 of section 4.01 of Rev. Proc. 84–58 (1984–2 C.B. 501). (See § 601.601(d)(2) of this chapter.) Once the remittance is returned to the payee, the rules of this section will apply. If the Internal Revenue Service previously contacted payors of the payee to start withholding with respect to the notified payee underreporting, however, the Internal Revenue Service will reconfact those payors to start withholding under paragraph (c)(1) of this section with respect to the payee underreporting without regard to paragraph (f) of this section.

(6) *Undue hardship*—(i) *In general.* A determination of undue hardship will be based on the overall impact to the payee of having reportable interest or dividend payments withheld at a 31 percent rate under section 3406. In addition, a determination of undue hardship will be made only if the Internal Revenue Service concludes that it is unlikely that any payee underreporting will occur again.

(ii) *Factors.* Factors that will be considered in determining whether withholding causes undue hardship include, but are not limited to, the following—

(A) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to withholding under section 3406, would cause significant overwithholding;

(B) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(C) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(D) Whether other income of the payee is limited or fixed (e.g., social security, pension, and unearned income);

(E) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(F) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(G) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

(7) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph (g)(7) if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(3)(i) of this section and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position.

(h) *Payees filing a joint return*—(1) *In general.* For purposes of this section, if payee underreporting is found to exist with respect to a joint return, then the provisions of this section apply to both payees (i.e., the husband and wife). As a result, both payees are subject to withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraph (g)(3) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that withholding will cause or is causing undue hardship (as provided in paragraph (g)(3)(iii) of this section).

(2) *Exceptions*—(i) *Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse shows that—

(A) He or she did not underreport income because he or she is a spouse described in section 6013(e), i.e. innocent spouse; or

(B) There is a bona fide dispute regarding whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or separated under State law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(3)(iii) of this section with respect to reportable interest or dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(6) of this section.

(i) *Reserved.*

(j) *Penalties.* For the application of penalties related to this section, see sections 6682 and 7205(b).

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(A) applies to a reportable payment (as defined in section 3406(b)) if the payee does not furnish the payee's taxpayer identification number to the payor in the manner required by this section. The period for which withholding is required is described in § 31.3406(e)–1(b). See § 31.3406(d)–3(a) and (b) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail, or an instrument is sold through a broker by electronic transmission or by mail. See § 31.3406(d)–4 for special rules applicable to readily tradable instruments acquired through a broker. See § 31.3406(h)–3(e) for the rules on when a payor may rely on a Form W–9. See also § 31.3406(g)–3 for rules regarding a payee awaiting receipt of a taxpayer identification number. See the applicable information reporting sections and section 6109 and the regulations thereunder to determine whose taxpayer identification number should be provided.

(b) *Reportable interest or dividend account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.* A payee must furnish the payee's taxpayer identification number to the payor with respect to any obligation, deposit, certificate, share, membership, contract, investment, account, or other relationship or instrument established or acquired on or before December 31, 1983 (a pre-1984 account) and with respect to which the payor makes a reportable interest or dividend payment (as defined in section 3406(b)(2)). The manner of determining whether an account or an instrument is a pre-1984 account is described in paragraph (b)(2) of this section. The payee of a pre-1984 account may furnish the payee's taxpayer identification number to the payor orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct.

(2) *Determination of pre-1984 account or instrument*—(i) *In general.* An account that is in existence before January 1, 1984, will be considered a pre-1984 account, regardless of whether additional deposits are made to the account on or after January 1, 1984. An account established as an expansion of a credit union prime account in existence prior to January 1, 1984, constitutes a pre-1984 account. If funds taken from one account in existence prior to January 1, 1984, are used to create a new account on or after that date, however, the new account does not constitute a pre-1984 account except as provided in the preceding sentence. An instrument acquired prior to January 1, 1984, is a pre-1984 account. Regardless of when an instrument was acquired, if it is negotiated in a window transaction as defined in § 31.3406(b)(2)–3(b), it is treated as an instrument acquired after December 31, 1983. An obligation in bearer form and subject to reporting under section 6045, whenever acquired, is not a pre-1984 account. Any instrument, whenever acquired, that is held in a brokerage account is considered a pre-1984 account if the brokerage account is not a post-1983 brokerage account (as described in paragraph (c)(1)(ii) of this section). If shares of a corporation are held before January 1, 1984 (or considered held before that date by operation of this paragraph (b)(2)), and additional shares are acquired by the holder, irrespective of whether the shares are received by reason of a stock dividend, investing new cash, or otherwise, the new shares, in the discretion of the payor, may be considered a pre-1984 account. In the

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case of a qualified employee trust that distributes instruments in kind, any instrument distributed from the trust is considered a pre-1984 account with respect to employees who were participants in the trust before 1984. Similarly, when a payor offers participants in a plan the opportunity to purchase stock of the payor after a specified time, using the money that the payee invested during that period of time, the stock so purchased after December 31, 1983, is considered a pre-1984 account with respect to participants in the plan who either owned shares or invested money in the plan before January 1, 1984.

(ii) *Account or instrument automatically acquired on the maturity or termination of an account.* When an account is opened, or an instrument is acquired, automatically on the maturity or termination of an account that was in existence or an instrument that was held before January 1, 1984 (or considered to have been in existence or held before that date by operation of this paragraph (b)(2)(ii)), without the participation of the payee, the new account or instrument, in the discretion of the payor, may be considered a pre-1984 account. For purposes of the preceding sentence, a payee is not considered to have participated in the acquisition of the new account or instrument solely because the payee failed to exercise a right to withdraw funds at the maturity or termination of the old account or instrument.

(iii) *Insurance policies.* In the case of insurance policies in effect on December 31, 1983, the election of a dividend accumulation option pursuant to which interest is paid (as defined in § 1.6049–5(a)(4) of this chapter), or the creation of an account in which proceeds of a policy are held for the policy beneficiary, may, in the payor's discretion, be treated as a pre-1984 account.

(iv) *Acquisitions of accounts and instruments*—(A) *Pre-1984 or post-1983 status known.* If a payor acquires accounts or instruments of another payor (including through a tax-free reorganization under section 368), the acquiring payor must treat the persons specified in this paragraph (b)(2)(iv)(A) as having the same requirement to furnish a taxpayer identification number in the manner required under this paragraph (b) to the acquiring payor for information reporting, withholding, and related tax provisions as existed with respect to the payor whose accounts or instruments were acquired. Persons specified in this paragraph (b)(2)(iv)(A) are persons who held accounts or instruments in the other payor immediately before the acquisition and who receive an account or instrument in the acquiring payor immediately after the acquisition.

(B) *Pre-1984 or post-1983 status unknown.* If the acquiring payor, as described in paragraph (b)(2)(iv)(A) of this section, is unable to identify from the business records of the other payor whether any or all of the accounts or instruments of the persons specified in paragraph (b)(2)(iv)(A) of this section are pre-1984 (or post-1983) accounts or instruments, then the acquiring payor may treat these unidentified accounts or instruments as pre-1984 accounts or instruments.

(C) *Cross reference.* See § 31.3406(g)–2(g) for the limited exception from withholding under section 3406(a)(1)(A) on accounts or instruments described in paragraphs (b)(2)(iv) (A) and (B) of this section for which the payor does not have a taxpayer identification number.

(3) *Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.* A payee who receives reportable interest or dividend payments (as defined in section 3406(b)(2)) from a payor must certify under penalties of perjury that the taxpayer identification number the payee furnishes to the payor is the payee's correct taxpayer identification number. The payee must make the certification only with respect to an account or instrument that is not a pre-1984 account (as described in paragraph (b)(2) of this section). See § 31.3406(h)–3 for a description of the certificate on which the certification must be made. See § 31.3406(d)–2 for the requirement that the payee must certify under penalties of perjury that the payee is not subject to withholding due to notified payee underreporting. See § 31.3406(d)–3(a) with respect to an account established directly with, or an instrument acquired directly from, the payor by electronic transmission or by mail. See § 31.3406(d)–4 for the rules applicable to readily tradable instruments acquired through a broker.

(4) *Special rule with respect to the acquisition of a readily tradable instrument in a transaction between certain parties acting without the assistance of a broker.* If a payee, at any time, acquires a readily tradable instrument without the assistance of a broker, and no party to the acquisition is a broker or an agent of the payor, the payee must furnish the payee's taxpayer identification number to the payor prior to the time reportable payments are made on the instrument. The payee is not required to certify under penalties of perjury that the number is correct. See § 31.3406(d)–2 for the rule that a payee is not subject to withholding due to notified payee underreporting with respect to a readily tradable instrument acquired in the manner described in this paragraph (b)(4). A broker is considered to provide assistance in the acquisition of an instrument if the person effecting the acquisition would be required to make an information return under section 6045 if such person were to sell the instrument. See § 31.3406(d)–4 for rules relating to an acquisition of a readily tradable instrument when a broker is involved.

(c) *Brokerage account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account*—(i) *In general.* With respect to any instrument, investment, or deposit made through a brokerage account that is not a post-1983 brokerage account, a payee must furnish the payee's taxpayer identification number to the broker either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct. See paragraph (b)(2)(i) of this section for the rule that any instrument, whenever acquired, that is held in a brokerage account that is not a post-1983 brokerage account, is considered held in an account that is not a post-1983 brokerage account. For example, in 1983 a payee established and acquired a readily tradable instrument from a brokerage account; no activity took place through that account until the payee purchased a readily tradable instrument in 1995. That readily tradable instrument is not held in a post-1983 brokerage account; therefore, the payee need not certify under penalties of perjury that the payee's taxpayer identification number is correct.

(ii) *Definition of a brokerage account that is not a post-1983 brokerage account.* A brokerage account that was established by a payee before January 1, 1984, through which during 1983 the broker either bought or sold securities for the payee or held securities on behalf of the payee as a nominee (i.e., in street name), is an account that is not a post-1983 brokerage account.

(2) *Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account*—(i) *In general.* With respect to a post-1983 brokerage account, the payee must furnish the payee's taxpayer identification number to the broker and certify under penalties of perjury that the taxpayer identification number furnished is correct, except as provided in § 31.3406(d)–3(b).

(ii) *Definition of a post-1983 brokerage account.* A brokerage account established after December 31, 1983 (or before January 1, 1984, through which during 1983 the broker neither bought nor sold securities nor held securities on behalf of the payee as a nominee (i.e., in street name)), is a post-1983 brokerage account.

(d) *Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—Manner required for furnishing a taxpayer identification number.* For accounts, contracts, or relationships subject to information reporting under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), or section 6050N (relating to information reporting of payments of royalties), the payee must furnish the payee's taxpayer identification number to the payor either orally or in writing. Except as provided in § 31.3406(d)–5, the payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

§ 31.3406(d)–2 Payee certification failure.

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(D) applies to a reportable interest or dividend payment (as defined in section 3406(b)(2)) if, and only if, the payee fails to certify to the payor, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting under section 3406(a)(1)(C). The period for which withholding applies is described in § 31.3406(e)–1(e). See § 31.3406(d)–3(a) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail. See § 31.3406(c)–1(c)(3)(iv) for rules with respect to a payor's reliance on a payee certification for a new account following notified payee underreporting. See § 31.3406(d)–4 for special rules relating to the acquisition of a readily tradable instrument through a broker. The certificate on which the certification should be made is described in § 31.3406(h)–3.

(b) *Exceptions.* Withholding under section 3406(a)(1)(D) and paragraph (a) of this section does not apply to reportable interest or dividend payments (as defined in section 3406(b)(2)) made—

(1) With respect to a pre-1984 account (as defined in § 31.3406(d)–1(b)(1));

(2) In a window transaction (as defined in § 31.3406(b)(2)–3(b));

(3) With respect to a readily tradable instrument described in § 31.3406(d)–1(b)(2)(iv) or § 31.3406(d)–4(a)(3); or

(4) During the period and with respect to an account or readily tradable instrument described in § 31.3406(d)–3.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) *Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name) by electronic transmission or by mail.* In the case of an account established directly with, or a readily tradable instrument acquired directly from, the payor by means of electronic transmission (i.e., telephone or wire instruction) or by mail, the payor may permit the payee to furnish the certifications required in § 31.3406(d)–1(b)(3) (relating to certification that the payee's taxpayer identification number is correct) and § 31.3406(d)–2 (relating to certification of notified payee underreporting) within 30 days after the establishment or acquisition without subjecting the account to withholding during the 30 days. The preceding sentence applies only if the payee furnishes a taxpayer identification number to the payor at the time of the establishment or acquisition, and the payee does not withdraw more than 69 percent of a reportable interest or dividend payment before the certifications are received within the 30 days. If the payee does not provide the required certifications within 30 days of the establishment or acquisition, the payor must withhold 31 percent of any reportable interest or dividend payments made to the account after its acquisition. For purposes of this section, an account or instrument is considered acquired directly from the payor if the instrument was acquired by the payee without the assistance of a broker or the instrument was acquired directly from a broker who holds the instrument as nominee for the payee (i.e., in street name) and who is considered a payor under § 31.3406(a)–2.

(b) *Sale of an instrument for a customer by electronic transmission or by mail.* The special 30-day rules set forth in paragraph (a) of this section apply comparably with respect to certification of the taxpayer identification number for the sale of an instrument under section 6045 (as described in § 31.3406(b)(3)–2) through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a customer by electronic transmission or by mail. However, these rules apply only if the payee furnishes the payee's taxpayer identification number before the sale occurs. For purposes of applying those 30-day rules under this paragraph (b), a payee's reinvestment of the gross proceeds of the sale into other instruments constitutes a withdrawal.

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 or a substitute of the form or is to obtain other evidence of foreign status (pursuant to the relevant regulations issued under sections 6049 and 6045), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) *Readily tradable instruments acquired through post-1983 brokerage accounts with a broker who is not a payor*—(1) *In general.* If a readily tradable instrument is acquired through a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(2)) and the broker is not the payor of the instrument (as defined in § 31.3406(a)–2(b)(3)), the broker must—

(i) Obtain once with respect to each account the certifications described in § 31.3406(d)–2(a) and § 31.3406(d)–1(b)(3) and (c)(2) from the payee (relating to certification regarding payee underreporting and taxpayer identification number, respectively);

(ii) Furnish the payee's taxpayer identification number to the payor; and

(iii) Notify the payor to impose withholding if the payee fails to make either of the required certifications to the broker or if the broker has been notified by the Internal Revenue Service before the acquisition of the instrument that the payee is subject to withholding due to notified payee underreporting under section 3406(a)(1)(C) or that the payee is subject to withholding because the payee's taxpayer identification number is incorrect under section 3406(a)(1)(B) (as described in § 31.3406(d)–5).

(2) *Additional requirements.* The broker must give the information required by paragraphs (a)(1) (ii) and (iii) of this section to the payor with the transfer instructions for the acquisition (including account registration instructions transmitted by a broker in the case of acquisitions of shares in a mutual fund). A notice including the information described in paragraph

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(b)(1) of this section fulfills the broker's requirement to give notice to the payor. Once the broker transmits the transfer instructions containing the information required by this section, the broker has no further responsibility to obtain a missing taxpayer identification number or missing certification or to provide additional notices to the payee or payor with respect to the acquisition of the instrument. Upon receiving the notice from a broker, the payor must impose withholding on the account pursuant to § 31.3406(a)–1.

(3) *Transactions entered into through a brokerage account that is not a post-1983 brokerage account.* If a broker acquires readily tradable instruments for a payee through an account (with the broker) that is not a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(1)), and the broker is not the payor of the instruments, the broker must furnish the payee's taxpayer identification number to the payor. In addition, if the broker has been notified by the Internal Revenue Service that the payee is subject to withholding under section 3406 either because of an incorrect taxpayer identification number or due to notified payee underreporting as described in sections 3406(a)(1) (B) or (C), respectively, the broker must notify the payor of the instrument to impose withholding with respect to that payee and transmit the information in the manner described in this paragraph (a). After a payor receives a notice from a broker pursuant to section 3406(d)(2)(B) and this paragraph (a), the payor must impose withholding on any accounts of the payee paying reportable interest or dividends as defined in section 3406(b)(2) in accordance with § 31.3406(a)–1.

(4) *Payor must notify payee*—(i) *Failure to provide certifications.* If a payor is notified by a broker, as required in paragraph (a)(1) of this section, that a payee is subject to withholding because the payee failed to provide the certifications, as described in § 31.3406(d)–2(a) and § 31.3406(d)–(b)(3) and (c)(2), and the payor has not received the certifications from the payee, then the payor must notify the payee that withholding has started (or will start) no later than 15 days after the payor makes the first payment to the payee that is subject to withholding under section 3406. A notice that contains the information described in paragraph (b)(2) of this section satisfies the payor's requirement to give notice to the payee. If the broker notifies the payor that the payee failed to make a required certification and the payor has received the certification from the payee, the payor may disregard the notice from the broker.

(ii) *Notified payee underreporting and incorrect taxpayer identification number.* The payor must notify the payee under this section if the Internal Revenue Service or a broker notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) (as described in § 31.3406(d)–5) or due to notified payee underreporting under section 3406(a)(1)(C) (as described in § 31.3406(c)–1). If a payor is notified by the Internal Revenue Service or a broker with respect to a readily tradable instrument, the payor may not ignore the notice even if the payee previously provided the payee's taxpayer identification number under penalties of perjury to the payor and even if the payee certified to the payor that the payee is not subject to backup withholding due to a notified payee underreporting. See § 31.3406(d)–5(c)(1) and (2) and (f)(2) for notice requirements under section 3406(a)(1)(B) due to an incorrect taxpayer identification number. See § 31.3406(c)–1(c)(2) for notice requirements under section 3406(a)(1)(C) due to notified payee underreporting.

(b) *Notices*—(1) *Form of notice by broker to payor.* A broker who is required under paragraphs (a)(1)(iii) and (2) of this section to notify the payor with respect to a readily tradable instrument may notify the payor in connection with the transfer instructions by means of magnetic media, machine readable document, or any other medium, provided that the notice includes the following information—

(i) The payee's name, address, and taxpayer identification number (if provided to the broker); and

(ii) A statement that the payee is subject to withholding under section 3406(a)(1) (A), (B), (C), or (D) of the Internal Revenue Code, whichever section applies; and

(iii) When applicable, a statement that the broker was notified by the Internal Revenue Service that the payee is subject to withholding under sections 3406(a)(1)(B) or (C).

(2) *Form of notice by payor to payee.* A payor who is required to notify a payee that the payee is subject to withholding must provide notice that is substantially similar to the following—

(i) For a notification concerning a failure to provide a taxpayer identification number in the required manner under section 3406(a)(1)(A) or a failure to make the following certification described in section 3406(a)(1)(D):

Recently, you purchased (identify security acquired). Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to withholding of tax at a 31 percent rate: (specify the condition or conditions, described below, that are applicable)

(1) You failed to provide a taxpayer identification number, or failed to provide this number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his or her social security number.)

(2) You failed to certify, under penalties of perjury, that you are not subject to withholding due to notified payee underreporting as required under section 3406(a)(1)(D) of the Internal Revenue Code.

If condition (1) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W–9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have applied (or will soon apply) for one, you may so indicate on the Form W–9. Withholding may apply during the 60-day period you are waiting for your taxpayer identification number. You must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period or to stop withholding if it has already begun. Certain persons, described on the enclosed Form W–9, are exempt from withholding. Follow the instructions on that form if applicable to you.

If condition (2) applies, you may stop withholding by certifying on the enclosed Form W–9 that you are not subject to withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove all applicable conditions to stop withholding.

Please address any questions concerning this notice to: [Insert payor identifying information].

(Do not address questions to the broker who purchased the securities for you.)

(ii) For the form of the notice concerning imposition of withholding due to an incorrect taxpayer identification number, see § 31.3406(d)–5 (d)(2) and (g)(2).

(iii) For the form of the notice concerning the imposition of withholding due to notified payee underreporting, see § 31.3406(c)–1(d)(2).

(c) *Payor's reliance on information from broker*—(1) *In general.* A payor of an instrument acquired by a payee through a broker may rely on the information that the payor receives from the broker pursuant to paragraphs (a) and (b) of this section.

(2) *Amount subject to backup withholding.* The payor is required to withhold under section 3406 depending on the payor's customary method of making payment on an instrument or instruments owned by a payee. If it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if only certain of those instruments are subject to withholding, the payor must withhold on the aggregate payment made with respect to all the instruments in the account. Otherwise, the payor must withhold on the payment made on the instrument or instruments with respect to which the payee is subject to withholding.

§ 31.3406(e)–1 Period during which backup withholding is required.

(a) *In general.* A payor must withhold under section 3406 at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) made to a payee during the period described in this section (irrespective of the number of conditions for imposing withholding under section 3406 that exist with respect to the payee). A payor must continue to withhold under section 3406 until no condition for imposing backup withholding exists with respect to the payee.

(b) *Failure to furnish a taxpayer identification number in the manner required*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(A) at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) at the time the payor pays the reportable payment (as described in § 31.3406(a)–4) to a payee if—

(i) The payor has not received the payee's taxpayer identification number in the manner required in § 31.3406(d)–1; or

(ii) The payor has received notice from a broker (as required in § 31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not furnish a taxpayer identification number to the broker in the manner required in § 31.3406(d)–1 and the payor has not received the taxpayer identification number from the payee in this manner.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(A) within 30 days after the payor receives—

(i) The payee's taxpayer identification number in the manner required under § 31.3406(d)–1; or

(ii) A statement, in such form and containing such information as is required under applicable regulations, that the payee is not a United States person.

(c) *Notification of an incorrect taxpayer identification number.* See § 31.3406(d)–5(e) and (g)(3) for the period for which withholding is required in the case of notification of an incorrect taxpayer identification number.

(d) *Notified payee underreporting.* See § 31.3406(c)–1(e) for the period for which withholding is required in the case of notified payee underreporting.

(e) *Payee certification failure*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(D) at a rate of 31 percent on any reportable interest or dividend payment (as defined in section 3406(b)(2)) at the time the payor pays such reportable interest or dividend payment (as described in § 31.3406(a)–4) to a payee if—

(i) The payor has not received from the payee the certification required in § 31.3406(d)–2; or

(ii) The payor has received notice from a broker (as required in § 31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not make the required certification and the payor has not received the required certification from the payee.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(D) on any reportable interest or dividend payment within 30 days after the payor receives the certification from the payee in the manner required by § 31.3406(d)–2.

(f) *Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payor receives the taxpayer identification number or certification from the payee or in certain cases, from a broker. Thus, the payor may take up to 30 days to treat the taxpayer identification number or a certificate as having been received.

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation.* Pursuant to section 3406(f) no person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of the information (subject to an exception for good faith).

(b) *Permissible use of information*—(1) *In general.* A payor or broker may transmit information on a Form W–9, Form W–8, or other acceptable form relating to withholding to the department, institution, or firm (or to any employee therein) responsible for withholding or processing of taxpayer identification numbers, certifications described in § 31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing withholding (as described in § 31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, issue an instrument to, or redeem an instrument for, a person solely because the person fails to furnish the person's taxpayer identification number or documentation of foreign status in the manner required in § 31.3406(d)–1 and § 31.3406(g)–1, respectively. A payor who closes an account of a payee in the calendar year in which the account was opened and during which no taxpayer identification number or evidence of foreign status was provided for that account will be presumed in the absence of evidence to the contrary to have closed the account without violating section 3406(f) even though the payee is subject to backup withholding under section 3406(a)(1)(A). A payor, except as provided in §§ 31.3406(d)–3 and 31.3406(g)–3, may not prohibit a payee who fails to furnish the payee's taxpayer identification number in the manner required in § 31.3406(d)–1 from withdrawing any funds in the account.

(2) *Window transactions.* In the case of a window transaction (as defined in § 31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

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(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section 3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payee is—

(i) An organization exempt from taxation under section 501(a) or an individual retirement account;

(ii) The United States or any wholly owned agency or instrumentality thereof;

(iii) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(iv) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing (as defined in regulations under section 892); or

(v) An international organization or any wholly owned agency or instrumentality thereof (as defined in section 7701(a)(18)).

(2) *Nonexclusive list.* Paragraph (a)(1) of this section does not prescribe an exclusive list of payees that are exempt from information reporting and also are exempt from withholding under section 3406.

(b) *Determination of whether a person is described in paragraph (a)(1) of this section.* The determination of whether a person is a payee described in paragraph (a)(1) of this section must be made as provided in the applicable provisions of section 6049 and the regulations issued thereunder. A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a certificate and may treat a payee who fails to file the certificate as a person who is not an exempt recipient. See § 31.3406(h)–3 for a description of the Form W–9 or a substitute form prescribed under section 3406 for claiming exempt status.

(c) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in section 3406(b)(1)) may, but is not required to, withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1996, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) *In general.* A payor of a reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payment is subject to withholding under any other provision of the Internal Revenue Code.

(b) *Payment of wages.* A payor who is required to make an information return under section 6041 with respect to a payment of wages (as defined in section 3401) because, e.g., the employee makes a certification under section 3402(n) (relating to employees incurring no income tax liability), must not withhold under section 3406 on those wages.

(c) *Distribution from a pension, annuity, or other plan of deferred compensation.* An amount reportable under section 6047, such as a designated distribution under section 3405, is not a reportable payment subject to withholding under section 3406. See section 3406(b). Designated distributions not subject to withholding under section 3406 include—

(1) Distributions from a pension, annuity, profit-sharing, stock bonus plan, or other plan deferring the receipt of compensation;

(2) Distributions from an individual retirement account or annuity;

(3) Distributions from an owner-employee plan; and

(4) Certain surrenders of life insurance contracts.

(d) *Gambling winnings*—(1) *In general.* A payor of a reportable gambling winning must not withhold under section 3406 if tax is required to be withheld from the gambling winning under section 3402(q) (relating to the extension of withholding to certain gambling winnings). If the reportable gambling winning is not required to be withheld upon under section 3402(q), withholding under section 3406 applies to the gambling winning if, and only if, the payee does not furnish a taxpayer identification number to the payor. Section 31.3406(b)(3)–1(b)(3) does not apply to a reportable gambling winning. The payor of a reportable gambling winning is not required to aggregate all such winnings made to a payee during a calendar year, nor is the payor required to determine whether an information return was required to be made with respect to the payee for the preceding year.

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payor; by

(ii) The amount of the wager.

(3) *Special rules.* Amounts paid with respect to identical wagers are treated as paid with respect to a single wager. The determination of whether wagers are identical is made under § 31.3402(q)–1(c)(1)(ii). In addition, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is $600 or more and if the proceeds are at least 300 times as large as the amount wagered. See § 7.6041–1 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406.

(e) *Certain real estate transactions.* A real estate reporting person (the so-called broker) as defined in section 6045(e)(2) must not withhold under section 3406 on a payment made with respect to a real estate transaction that is subject to reporting under sections 6045 (a) and (e) and § 1.6045–4 of this chapter.

(f) *Certain payments after an acquisition of accounts or instruments.* A payor who acquires pre-1984 accounts or instruments described in § 31.3406(d)–1(b)(2)(iv) for which the payor does not have a taxpayer identification number or has an obviously incorrect taxpayer identification number as defined in § 31.3406(h)–1(b)(2) must start withholding under section 3406(a)(1)(A) and § 31.3406(d)–1 on those accounts or instruments no later than sixty days following the date of the payor's acquisition of those accounts or instruments.

(g) *Certain gross proceeds.* No withholding under section 3406 is required with respect to any portion of the original issue discount on an instrument or security that is subject to withholding under section 3406 as reportable gross proceeds of such instrument or security under section 6045.

§ 31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) *In general*—(1) *Backup withholding not required for 60 days.* If a payor has received an awaiting-TIN certificate from a payee with respect to an account or instrument receiving reportable interest or dividends as described in section 3406(b)(2), the payor must exempt the payee from withholding under section 3406(a)(1)(A) during the 60-day exemption period to the extent and in the manner described in either paragraph (a) (2) or (3) of this section. The 60-day exemption period means the 60-consecutive-day period beginning with the day the payor receives the awaiting-TIN certificate. The payor must withhold under section 3406 beginning after the 60-day exemption period if the payor has not received a taxpayer identification number from the payee in the manner required in § 31.3406(d)–1. Regardless of whether the payee provides an awaiting-TIN certificate to a payor, the payor is required to withhold under section 3406(a)(1)(D) and § 31.3406(d)–2 on reportable interest or dividend payments as described in § 31.3406(d)–2 if the payee fails to certify, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting as required in section 3406(a)(1)(D) and § 31.3406(d)–2.

(2) *Reserve method.* A payor must not withhold under section 3406 during the 60-day exemption period unless the payee (or a joint payee in the case of a joint account) desires to make a withdrawal of more than $500 of either principal or interest from the account in any single transaction during the period. If a payee (or a joint payee) desires to make a withdrawal of more than $500 during the 60-day exemption period, the payor is required under section 3406 to withhold 31 percent of all reportable payments made during the period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during the period.

(3) *Alternative rule; 7-day grace period*—(i) *In general.* A payor who receives an awaiting-TIN certificate may elect, on a payee-by-payee basis or in general, to exempt reportable interest or dividend payments to a payee from withholding under section 3406 applying the rules in paragraph (a)(3)(ii) or (iii) of this section.

(ii) *Withholding on withdrawals.* Under this paragraph (a)(3)(ii), a payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certification. In addition, the payor must withhold under section 3406 on any withdrawals made after the close of 7 business days after the date the awaiting-TIN certification is received and before the earlier of the date that the payor receives a certified taxpayer identification number from the payee, the date the account is closed (in which case the payor must withhold on any reportable payment made at the time the account or relationship is closed), or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. All cash withdrawals in an amount up to the reportable payments made from the day after the date of receipt of the awaiting-TIN certification to the date of withdrawal are treated as reportable payments.

(iii) *Withholding regardless of withdrawals.* Under this paragraph (a)(3)(iii), a payor must start withholding under section 3406 on the account not later than 7 business days after the date the payor receives the awaiting-TIN certification on reportable payments thereafter made to the account (whether or not the payee makes a cash withdrawal). The payor must withhold under section 3406 until the earlier of the date the payor receives a certified taxpayer identification number from the payee, the date the account is closed, or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. The payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certificate or undertake a mailing each year soliciting the certified taxpayer identification number from the payee until the earlier of the calendar year that the certified taxpayer identification number is received, or the calendar year in which the account is closed. However, if the account is closed in December of a calendar year, the mailing must be made after the account is closed and before January 31 of the subsequent calendar year.

(b) *Special rule for readily tradable instruments.* The 60-day awaiting-TIN exemption described in paragraph (a)(1) of this section applies to payments made with respect to readily tradable instruments only if the payee provides an awaiting-TIN certificate directly to the payor. If a broker acquires a readily tradable instrument through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a payee who has no taxpayer identification number, the broker must advise the payor as required in § 31.3406(d)–4(a)(1) that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether the payee provides an awaiting-TIN certificate to the broker. Once a payor is notified by a broker that a payee failed to provide a taxpayer identification number in the required manner, or that the payee is subject to withholding under section 3406(a)(1) (B) or (C), the payor must impose withholding under section 3406 for the appropriate period described in § 31.3406(e)–1.

(c) *Exceptions*—(1) *In general.* The 60-day awaiting-TIN exemption described in paragraph (a) of this section does not apply to—

(i) Window transactions (as defined in § 31.3406(b)(2)–3(b));

(ii) Redemptions of bearer obligations that are subject to reporting under section 6045; or

(iii) Other amounts that are subject to reporting under section 6045 (except as described in paragraph (c)(2) of this section).

(2) *Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.* If a broker's customer does not provide a taxpayer identification number to the broker, and the broker effects a sale that is subject to reporting under section 6045 (other than a redemption of a bearer obligation), § 31.3406(d)–3(b) applies, whether or not the sale is pursuant to an instruction by electronic transmission, provided the customer furnishes an awaiting-TIN certificate to the broker before the sale. For purposes of this paragraph (c)(2), the 30-day period provided in § 31.3406(d)–3(b) is a 60-day period.

(d) *Awaiting-TIN certificate.* A payee qualifies for the 60-day awaiting-TIN exemption provided in paragraph (a) of this section if the payee furnishes a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a taxpayer identification number, that the payee has applied for a taxpayer identification number or intends to apply for a

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number in the near future, and that the payee understands that if the payee does not provide a number to the payor within 60 days, the payor is required under section 3406 to withhold 31 percent of any reportable payment thereafter made to the payee until the payor receives a number, and 31 percent of a withdrawal to the extent of reportable payments made to the payee during the 60-day period, as described in paragraph (a) of this section. Language that is substantially similar to the awaiting-TIN certification on Form W–9 will satisfy the requirements of this paragraph (d).

(e) *Form for awaiting-TIN certificate.* A payor may use Form W–9 for the awaiting-TIN certificate, or a payor may include language that is substantially similar to the awaiting-TIN certification on Form W–9 in any other document of the payor. See § 31.3406(h)–3, which provides that Form W–9 is the prescribed form but permits use of substitute forms, and specifies the length of time the payor is required to retain the form. If Form W–9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number.

§ 31.3406(h)–1 Definitions.

(a) *In general.* For purposes of section 3406 and the regulations thereunder, the definitions of this section apply.

(b) *Taxpayer identification number*—(1) *In general. Taxpayer identification number* means the identifying number assigned to a person under section 6109 (relating to identifying numbers, generally a nine-digit social security number for an individual and a nine-digit employer identification number for a nonindividual, e.g., a corporation, partnership, trust, or estate). An obviously incorrect number is not considered a taxpayer identification number. See § 31.6011(b)–2 and § 301.6109–1 of this chapter for provisions relating to obtaining a taxpayer identification number.

(2) *Obviously incorrect number. Obviously incorrect number* means a number that does not contain nine digits or a number that includes an alpha character as one of the nine digits.

(c) *Broker.—Broker* is defined in section 6045(c)(1) and § 1.6045–1(a)(1) of this chapter. If there could be more than one broker with respect to any acquisition, only the broker having the closest contact (as determined under § 5f.6045–1(c)(3) (ii) and (iii) of this chapter) with the payee is treated as a broker. In the case of any instrument, the term *broker* does not include any person who is the payor with respect to the instrument as described in § 31.3406(a)–2.

(d) *Readily tradable instrument.—Readily tradable instrument* means—

(1) Any instrument that is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)); or

(2) Any instrument that is regularly quoted by brokers or dealers making a market.

(e) *Day.—Day* means a calendar day unless specified otherwise under any section of the regulations under section 3406. For example, see §§ 31.3406(d)–5(a) and 31.3406(g)–3(a)(2).

(f) *Business day.—Business day* means any day other than a Saturday, Sunday, or legal holiday (within the meaning of section 7503).

§ 31.3406(h)–2 Special rules.

(a) *Joint accounts*—(1) *Relevant name and taxpayer identification number combination.* For purposes of identifying the account subject to withholding under sections 3406(a)(1)(B) and (C), the relevant name and taxpayer identification number combination is that which is used for information reporting purposes.

(2) *Optional rule for accounts subject to backup withholding under section 3406(a)(1) (B) or (C) where the names are switched.* See § 31.3406(d)–5(c)(4)(iii) under which a payor may withhold under section 3406(a)(1)(B) as required even though the names or taxpayer identification numbers on the account have been switched. The rules under § 31.3406(d)–5(c)(4)(iii) may be applied comparably by a payor who is required to withhold under section 3406(a)(1)(C).

(3) *Joint foreign payees*—(i) *In general.* If the first payee listed on an account or instrument provides the penalties of perjury statement regarding its foreign status, withholding under section 3406 applies unless—

(A) Every joint payee provides the statement regarding foreign status (pursuant to the relevant regulations issued under sections 6045 and 6049); or

(B) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in § 31.3406(d)–1.

(ii) *Information reporting on an account including foreign payees.* If any one of the joint payees who has not established foreign status provides a taxpayer identification number under paragraph (a)(3)(i)(B) of this section, that number is the taxpayer identification number that is required to be furnished for purposes of information reporting and withholding under section 3406.

(b) *Backup withholding from an alternative source*—(1) *In general.* A payor may not withhold under section 3406 from a source maintained by the payor other than the source with respect to which there exists a liability to withhold under section 3406 with respect to the payee. See section 3403 and § 31.3403–1, which provide that the payor is liable for the amount required to be withheld regardless of whether the payor withholds.

(2) *Exceptions for payments made in property*—(i) *Backup withholding from alternative source.* In the case of a payment that is made in property (other than money), the payor must withhold under section 3406 31 percent of the fair market value of the property determined immediately before or on the date of payment. The payor may withhold under section 3406 from the principal amount being deposited with the payor or from another source maintained by the payee with the payor. The source from which the tax is withheld under section 3406 must be payable to at least one of the persons listed on the account subject to withholding. If the account or source is not payable exclusively to the same person or persons listed on the account subject to withholding under section 3406, then the payor must obtain a written statement from all other persons to whom the account or source is payable authorizing the payor to withhold under section 3406 from the alternative account or source. A payor that elects to withhold under section 3406 from an alternative source may determine the account or source from which the tax is to be withheld, or may allow the payee to designate the alternative source. A payee may not, however, require a payor to withhold under section 3406 from a specific alternative source. See § 31.3402(q)–1(d), *Example 5*, for methods of withholding on prizes, awards, and gambling winnings paid in property other than cash.

(ii) *Deferral of withholding.* If the payor cannot locate, using reasonable care (following procedures substantially similar to those set forth in § 31.3406(d)–5(c)(3)(ii) (A) and (B)), an alternative source of cash from which the payor may satisfy its withholding obligation pursuant to paragraph (b)(2)(i) of this section, the payor may defer its obligation to withhold under section 3406, except for reportable payments of property made in connection with prizes, awards, or gambling winnings, until the earlier of—

(A) The date the payor makes a cash payment to the account subject to withholding under section 3406 or cash is otherwise deposited in the account in a sufficient amount to satisfy the obligation in full; or

(B) The close of the fourth calendar year after the obligation arose.

(iii) *Barter exchanges.* In the case of a barter exchange that issues scrip to, or credits the account of, a member or client of the exchange in payment for property or services, the barter exchange may withhold under section 3406 from—

(A) The scrip or credit, if converted to cash in order to satisfy the deposit requirements of section 6302 and § 31.6302–4; or

(B) Any other source maintained by the exchange for the member or client in the manner described in paragraph (b)(2) of this section.

(c) *Trusts.* Withholding under section 3406 applies to reportable payments made to a trust if any of the conditions for imposing withholding under section 3406 apply to the trust. Generally, a trust is not a payor and will not be required to withhold under section 3406 on reportable payments that it makes to its beneficiary who is subject to withholding under section 3406. The preceding sentence does not apply, however, to a grantor trust with two or more grantors described in § 31.3406(a)–2(b)(4), which is treated as a middleman payor. The trustee of a trust described in this paragraph (c) may certify that the trust's taxpayer identification number is correct and that the trust is not subject to withholding due to notified payee underreporting, without regard to the status of the beneficiaries of the trust.

(d) *Adjustment of prior withholding by middlemen.* A middleman payor (as defined in § 31.3406(a)–2(b)) who receives a payment from which tax has been erroneously withheld under section 3406 may seek a refund of the tax withheld by the payor from whom the middleman payor received the payment (referred to as the "upstream payor"). Alternatively, the middleman payor may obtain a refund of the tax by claiming a credit for the amount of tax withheld by the upstream payor against the deposit of any tax imposed by this chapter which the middleman payor is required to withhold and deposit (as described in section 6413 and § 31.6413(a)–2). In either case, the middleman payor must pay or credit the gross amount of the payment (including the tax withheld) to its payee as though it had received the gross amount of the payment from the upstream payor and must withhold under section 3406 only if one of the conditions for imposing backup withholding exists with respect to its payee. If its payee is not subject to withholding under section 3406, the middleman payor must pay or credit the full amount of the payment to the payee. See § 31.6413(a)–3 regarding repayment by a payor of tax erroneously collected from a payee.

(e) *Conversion of amounts paid in foreign currency into United States dollars*—(1) *Convertible foreign currency.* If a payment is made in a currency other than the United States dollar, the amount subject to withholding under section 3406 is determined by applying the statutory rate of backup withholding to the foreign currency payment and converting the amount withheld into United States dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner.

(2) *Nonconvertible foreign currency.* [Reserved]

(f) *Coordination with other sections.* For purposes of section 31, chapter 24 (other than section 3402(n)) of subtitle C of the Internal Revenue Code (relating to employment taxes and collection of income tax at source) and so much of subtitle F (other than section 7205) of the Internal Revenue Code (relating to procedure and administration) as relates to this chapter, and the regulations thereunder—

(1) An amount required to be withheld under section 3406 must be treated as a tax required to be withheld under section 3402;

(2) An amount withheld under section 3406 must be treated as an amount withheld under section 3402;

(3) An amount withheld under section 3406 must be deposited as required under § 31.6302–4;

(4) *Wages* includes the gross amount of any reportable payment (as defined in section 3406(b)) except for purposes of section 6014 (relating to an election by the taxpayer not to compute the tax on his annual return);

(5) *Employee* includes a payee of any reportable payment; and

(6) *Employer* includes a payor who is required to withhold the tax under section 3406 (as defined in § 31.3406(a)–2(a)) with respect to any reportable payment (as defined in section 3406(b)).

(g) *Tax liabilities and penalties.* A payor is subject to the same civil and criminal penalties for failing to impose withholding under section 3406 as an employer who fails to withhold on a payment of wages. In addition, a broker may be subject to the penalty under section 6705 (failure of a broker to provide notice to a payor).

(h) *To whom payor is liable for amount withheld.* A payor is not liable to any person for any amount withheld under section 3406. A payor is liable only to the United States for an amount that is required to be withheld as provided in § 31.3403–1.

§ 31.3406(h)–3 Certificates.

(a) *Prescribed form to furnish information under penalties of perjury*—(1) *In general.* Except as provided in paragraph (c) of this section, the Form W–9 is the form prescribed under section 3406 on which the payee certifies, under penalties of perjury, that—

(i) The taxpayer identification number furnished to the payor is correct (as required in § 31.3406(d)–1 and § 31.3406(d)–5);

(ii) The payee is not subject to withholding due to notified payee underreporting (as required in § 31.3406(d)–2);

(iii) The payee is an exempt recipient (as described in § 31.3406(g)–1); or

(iv) The payee is awaiting receipt of a taxpayer identification number (as described in § 31.3406(g)–3).

(2) *Use of a single or multiple Forms W–9 for accounts of the same payee.* A valid Form W–9 must include the name and taxpayer identification number of the payee. Except as provided in paragraph (b) of this section, the payee must sign under penalties of perjury and date the Form W–9 in order to satisfy the requirements of this section. A payor or broker may require a payee to furnish a separate Form W–9 for each obligation, deposit, certificate, share, membership, contract, or other instrument, or one Form W–9 for all the payee's obligations or relationships with the payor or broker. In addition, a payee of a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may be permitted, in the discretion of the mutual fund, to provide one Form W–9 with respect to shares acquired or owned in any of the funds.

(b) *Prescribed form to furnish a noncertified taxpayer identification number.* With respect to accounts or other relationships where the payee is not required to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, the payor or broker may obtain the taxpayer identification number orally or may use Form W–9, a

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substitute form, or any other document, but the payee is not required to sign the form.

(c) *Forms prepared by payors or brokers—(1) Substitute forms; in general.* A payor or broker may prepare and use a form that contains provisions that are substantially similar to those of the official Form W–9. A payor or broker may use any document relating to the transaction, such as the signature card for an account, so long as the certifications are clearly set forth. A payor or broker who uses a substitute form may furnish orally or in writing the instructions for the Form W–9 that relate to the account. A payor or broker may refuse to accept certifications (including the official Form W–9) that are not made on the form or forms provided by the payor or broker. A payor or broker may refuse to accept a certification provided by a payee only if the payor or broker furnishes the payee with an acceptable form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form. An acceptable form for this purpose must contain a notice that the payor or broker has refused to accept the form submitted by the payee and that the payee must submit the acceptable form provided by the payor in order for the payee not to be subject to withholding under section 3406. If the payor or broker requires the payee to furnish a form for each account of the payee, the payor or broker is not required to furnish an acceptable form until the payee furnishes the payor or broker with the payee's account numbers. A payor or broker may use separate substitute forms to have a payee certify under penalties of perjury that—

(i) The payee's taxpayer identification number is correct; and

(ii) The payee is not subject to withholding under section 3406 due to notified payee underreporting.

(2) *Form for exempt recipient.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the payee is an exempt recipient (described in § 31.3406(g)–1 or described in the respective reporting section), provided the form contains provisions that are substantially similar to those of the official Form W–9 relating to exempt recipients. A certificate must be prepared in accordance with the instructions applicable to exempt recipients on Form W–9, and must set forth fully and clearly the data called for therein. If a payor will treat the payee as an exempt recipient only if the payee files a certificate as to its exempt status, the certificate is valid only if it contains the payee's taxpayer identification number. Thus, a payee must include the payee's taxpayer identification number on a certificate that a payor requires to be made in order to treat the payee as an exempt recipient.

(d) *Special rule for brokers.* A broker may act as the payee's agent for purposes of furnishing a taxpayer identification number or certification to a payor with respect to any readily tradable instrument (as defined in § 31.3406(h)–1(d)) provided the payee provides a taxpayer identification number on Form W–9 or other acceptable substitute form to the broker. The payor may rely on a taxpayer identification number provided by the broker unless certification is required (as described in § 31.3406(d)–4) and the broker notifies the payor that the number was not certified.

(e) *Reasonable reliance on certificate—(1) In general.* A payor is not liable for the tax imposed under section 3406 if the payor's failure to deduct and withhold the tax is due to reasonable reliance, as defined in paragraph (e)(2) of this section, on a Form W–9 (or other acceptable substitute) required by this section.

(2) *Circumstances establishing reasonable reliance.* For purposes of paragraph (e)(1) of this section, a payor can reasonably rely on a Form W–9 (or other acceptable substitute) unless—

(i) The form does not contain the name and taxpayer identification number of the payee (or does not state, in lieu of a taxpayer identification number, that the payee is awaiting receipt of a taxpayer identification number (i.e., an awaiting-TIN certificate));

(ii) The form is not signed and dated by the payee;

(iii) The form does not contain the statement, when required, that the payee is not subject to withholding due to notified payee underreporting;

(iv) The payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form; or

(v) For purposes of section 3406(a)(1)(C), the payor is required to subject the account to which the form relates to withholding under section 3406(a)(1)(C) under the circumstances described in § 31.3406(c)–1(c)(3)(iii).

(f) *Who may sign certificate—(1) In general.* A Form W–9 or other acceptable substitute form may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the payee as provided in section 6061 and the regulations thereunder (relating to who may sign generally for an individual, which includes certain agents who may sign returns and other documents), section 6062 and the regulations thereunder (relating to who may sign corporate returns), and section 6063 and the regulations thereunder (relating to who may sign partnership returns).

(2) *Notified payee underreporting.* A payee who has not been notified that he is subject to withholding under section 3406(a)(1)(C) as a result of notified payee underreporting may make the certification related to notified payee underreporting. In addition, a payee who was subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting may certify that he is not subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting if the Internal Revenue Service has provided the payee with written certification that withholding under section 3406(a)(1)(C) due to notified payee underreporting has terminated.

(g) *Retention of certificates—(1) Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.* With respect to an account or instrument that is not a pre-1984 account (as described in § 31.3406(d)–1(b)(3)), or with respect to a brokerage relationship that is a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)), a payor or broker who receives a Form W–9 or other acceptable substitute form related to withholding under section 3406 must retain the form in its records for 3 years from the date the account is opened or the instrument is purchased. The form may be retained on microfilm or microfiche.

(2) *Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.* With respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)) or with respect to a brokerage relationship that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), a payor or broker is not required to retain any Form W–9 or other acceptable substitute form. If, however, the payor or broker requires the payee to file only one Form W–9 or substitute form for all accounts or instruments of the payee, the payor or broker must retain the single form in the manner and for the period of time described in paragraph (g)(1) of this section if that form relates to any account or instrument that is not a pre-1984 account or relates to a post-1983 brokerage account. If a payee has certified that the payee is an exempt recipient described in § 31.3406(g)–1,

the payor or broker must retain the form unless the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records.

(h) *Cross references.* For the requirement to file an information return (and furnish the related statement) with respect to a reportable payment, particularly if that payment has been subject to withholding under section 3406, see subtitle F, chapter 61, subparts B and C of the Internal Revenue Code. See § 31.6302–4 for the requirement to deposit amounts withheld under section 3406 on either a monthly or semi-weekly basis. See § 31.6011(a)–4(b) for the requirement to file Form 945, Annual Return of Withheld Federal Income Tax, to reflect amounts withheld under section 3406. See § 31.6071(a)–1 for the time for filing the Form 945.

§ 31.3406(i)–1 Effective date.

Sections 31.3406–0 through 31.3406(i)–1 (except §§ 31.3406(d)–5 and 31.3406(g)–1(c) and except for international transactions) are effective after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. For the effective date of § 31.3406(d)–5, see § 31.3406(d)–5(i). Section 31.3406(g)–1(c) is effective before January 1, 1997. See §§ 35a.9999–0T through 35a.9999–5 of this chapter for rules that apply to international transactions after December 31, 1996.

Par. 9. Section 31.6011(a)–5(a) is amended by:

1. Removing the word "or" immediately after the language "941PR," in the first and third sentences of paragraph (a)(1).

2. Adding the language ", or Form 945" immediately after the language "Form 941VI" in the first and third sentences of paragraph (a)(1).

3. Adding the language "(or other person)" immediately after the word "employer" in the second, third, fourth, and sixth sentences of paragraph (a)(1).

4. Removing the authority citation at the end of the section.

Par. 10. Section 31.6011(a)–6 is amended by revising the heading and the first and third sentences of paragraph (a)(1) to read as follows:

§ 31.6011(a)–6 Final returns.

(a) *In general—(1) Federal Insurance Contributions Act; income tax withheld from wages and nonpayroll payments.* An employer (or other person) who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages or nonpayroll payments in respect of which he is required to make a return on that form, must make the return for the period as a final return. * * * Every such person filing a final return (other than a final return on Form 942 or Form 943) must furnish information showing the date of the last payment of wages (as defined in section 3121(a) or section 3401(a)), and, if appropriate, the date of the last payment of nonpayroll payments defined in § 31.6011(a)–4(b). * * *

* * * * *

Par. 11. Sections 31.6051–4 and 31.6413(a)–3 are added to read as follows:

§ 31.6051–4 Statement required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b)(1)) who is required to deduct and withhold tax under section 3406 must furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section is Form 1099. In the case of any reportable interest or dividend payment as defined in section 3406(b)(2), the prescribed form is the Form 1099 required in § 1.6042–4 of this chapter (relating to payments of dividends), § 1.6044–5 of this chapter (relating to payments of patronage dividends), or § 1.6049–6(e) of this chapter (relating to payments of interest or original issue discount). Statements required to be furnished by this section will be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section must include the amount of tax withheld under section 3406. In no event will a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section.

(c) *Information required.* Each statement on Form 1099 must show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) The amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N whether or not the amount of the reportable payment is less than the amount for which an information return is required. If tax is withheld under section 3406, the statement must show the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement must be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) *In general—(1) Erroneous withholding under section 3406 of the Internal Revenue Code.* If a payor or broker withholds under section 3406 from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker will be considered to have withheld erroneously under section 3406 only if the amount is withheld because of an error by the payor or broker (e.g., an error in flagging or identifying an account that is subject to withholding under section 3406). The payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee if—

(i) The payor or broker requires a payee described in § 31.3406(g)–1(a) or described in a provision of the Internal Revenue Code requiring the reporting of a payment subject to withholding under section 3406 to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds under section 3406 from a payment to the payee;

(ii) The payor or broker does not require the payee to certify concerning its exempt status and the payor or broker withholds under section 3406; or

(iii) The payor or broker withholds under section 3406 from a payee after the payee provides a taxpayer identification number or required certification (including the certification relating to foreign status described in § 1.6049–5(b)(2)(iv) of this chapter or

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§ 1.6045–1(g)(1) of this chapter) to the payor, but before the payor or broker treats the number or required certification as having been received under § 31.3406(e)–1(b).

(2) *Limitation.* For purposes of paragraph (a)(1) of this section, if a payor or broker withholds because the payor or broker has not received a taxpayer identification number or required certification and the payee subsequently provides a taxpayer identification number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) *Refunding amounts erroneously withheld*—(1) *Time and manner.* If a payor or broker withholds under section 3406 from a payee in error (including withholding more than the correct amount, as described in paragraph (a) of this section), the payor or broker may refund the amount erroneously withheld to the payee if the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker must—

(i) Keep as part of its records a receipt showing the date and amount of refund and must provide a copy of the receipt to the payee (a canceled check or an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld);

(ii) Not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee; and

(iii) Not deposit the amount erroneously withheld if the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee.

(2) *Adjustment after the deposit of the tax.* For purposes of paragraph (b)(1) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 12. The authority citation for part 35a is amended by removing the entry for 35a.3406–2 to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

§ 35a.3406–2 [Removed]

Par. 13. Section 35a.3406–2 is removed.

Par. 14. Section 35a.9999–0T is added to read as follows:

§ 35a.9999–0T Effective date (temporary).

In general, the provisions of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5 are effective before January 1, 1997. The provisions of those sections remain effective after December 31, 1996, however, for purposes of § 301.6724–1(g) of this chapter, relating to due diligence safe harbor, and for international transactions, including transactions involving a foreign payee, a foreign payor, a foreign office of a U.S. bank or broker, or a payment from sources without the United States. See §§ 31.3406–0 through 31.3406(i)–1 of this chapter for rules that apply to other transactions after December 31, 1996.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 16. Section 301.6109–1 is amended by:

1. Revising the third sentence in paragraph (a)(1).

2. Revising the first sentence in paragraph (h).

The revised sentences read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* * * * Social security numbers identify individual persons, while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, estates of decedents, and similar nonindividual persons. * * *

* * * * *

(h) *Effective date.* The provisions of this section are effective for information that must be furnished after April 15, 1974, except that the requirement that an estate obtain an Employer Identification Number applies on and after January 1, 1984. * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 17. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 18. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

"§ 31.3406(a)–1—§ 31.3406(i)–1...1545–0112".

Dated: November 28, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Cynthia G. Beerbower,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–30733 Filed 12–20–95; 8:45 am]

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26 CFR Parts 1 and 602

[TD 8643]

RIN 1545–AQ42

Distributions of Stock and Stock Rights

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock. The final regulations concern the treatment of stock redeemable at a premium by the issuer. The regulations generally treat a call premium as giving rise to a constructive distribution only if redemption pursuant to the call provision is more likely than not to occur. The final regulations also reflect 1990 amendments to section 305(c).

DATES: These regulations are effective December 20, 1995.

For dates of applicability of these regulations, see *Effective dates* under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kirsten L. Simpson, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1438. Responses to this collection of information are required to comply with the consistency requirements of the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 22, 1994, a notice of proposed rulemaking (CO–8–91), amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock, was published in the **Federal Register** (59 FR 32160). No public hearing was requested and none was held.

Written comments responding to the notice were received. After consideration of all the comments, the regulations proposed by CO–8–91 are adopted as revised by this Treasury decision. The principal revisions are discussed below.

Explanation of Provisions

The primary focus of the final regulations is on preferred stock callable at a premium at the option of the issuer. The final regulations retain the approach of the proposed regulations and require constructive distribution treatment with respect to an issuer call only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to the call right is more likely than not to occur.

Safe harbor rule. The proposed regulations provided a safe harbor, under which constructive distribution treatment does not result from an issuer call if the issuer and holder are unrelated, there are no arrangements that effectively require the issuer to redeem the stock, and exercise of the option to redeem would not reduce the yield of the stock. In response to comments, the final regulations make certain modifications to the safe harbor to clarify its scope.

Commentators suggested that the exclusion from the safe harbor where there are "arrangements that effectively require the issuer to redeem" is too narrow and will permit taxpayers who issue stock with "understandings" concerning redemption, whether or not legally enforceable, to qualify for the safe harbor. Commentators recommended safeguarding against abuse by changing the effectively requires redemption test to one that requires a lesser degree of probability. The IRS and Treasury intend that the safe harbor not be available where an issuer and a holder have an underlying understanding. Although the IRS and Treasury believe that the word "arrangement" is broad enough to include such understandings, in response to these comments, this prong of the safe harbor has been clarified.

To retain greater certainty for non-abusive transactions, however, the effectively requires redemption test has not been substantially modified. Instead, the final regulations safeguard against abuse by lowering the threshold for determining whether an issuer and a holder are related. The proposed regulations adopted a 50-percent threshold for determining whether an issuer and a holder are related. The final regulations lower this threshold to 20 percent. This threshold relates only to eligibility for the safe harbor, and not to the application of the general "more likely than not" test. When a holder's ownership interest exceeds this threshold, the IRS and Treasury believe it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

Commentators also suggested that the IRS and Treasury except preferred stock within the meaning of section 1504(a)(4) in determining whether the issuer and holder are related. The regulations do not adopt this suggestion. As noted above, the determination of whether the issuer and holder are related only governs eligibility for the safe harbor. The IRS and Treasury believe that when a holder's ownership interest in an issuer exceeds the threshold, even if all that the holder owns is preferred stock within the meaning of section 1504(a)(4), it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

In response to comments, the final regulations clarify that the "arrangements" that effectively require or are intended to compel the issuer to redeem the stock relate to the issuer call right, and not to a later mandatory redemption feature.

In testing whether a call right meets the yield prong of the safe harbor, the final regulations clarify that principles similar to the principles of section 1272(a) and the original issue discount regulations apply to determine whether exercise of the right to redeem would reduce the yield of the stock.

Miscellaneous. The final regulations expand the definition of issuer in certain circumstances. In particular, the regulations provide that if preferred stock may be acquired by a person other than the issuer (a third person), the term issuer includes such third person if the regulations would apply to the stock if the third person were the issuer, and acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise). In addition, if the issuer and the third person are members of the same affiliated group, the term issuer includes the third person if a principal purpose of the arrangement is to avoid the application of section 305 and the final regulations. Furthermore, an agreement or other arrangement for a person other than the issuer of the stock to acquire the stock may create a conversion transaction within the meaning of section 1258.

The final regulations provide rules for the treatment of mandatory redemption obligations and put options that are subject to contingencies. Generally, premiums on such stock are not subject to constructive distribution treatment if the contingency renders remote the likelihood of redemption. For example, where an issuer issues stock that is mandatorily redeemable in the event of an initial public offering, the regulations require evaluation of the likelihood of the occurrence of the initial public offering. The regulations provide, however, that a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law due to insufficient capital.

The preamble to the proposed regulations requested comments on the appropriate treatment of unpaid cumulative dividends. Because of the complexity of this issue, the final regulations do not provide rules for those dividends. The IRS and Treasury will continue to consider the issue, as well as other issues involving the implementation of the amendments to section 305(c) made by the Revenue Reconciliation Act of 1990. The IRS and Treasury continue to invite public comments on these issues.

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EFFECTIVE DATES. The regulations apply to stock issued on or after December 20, 1995. Although the regulations do not apply to stock issued before December 20, 1995, the rules of sections 305(c) (1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of § 1.305–5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kirsten L. Simpson of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.305–3 also issued under 26 U.S.C. 305. Section 1.305–5 also issued under 26 U.S.C. 305. Section 1.305–7 also issued under 26 U.S.C. 305. * * *

Par. 2. Section 1.305–3 is amended as follows: 1. In paragraph (e), remove the parentheses from the numbers in the headings for *Examples (1)* through *(15)*.

2. In paragraph (e), *Example 15* is revised to read as follows:

§ 1.305–3 Disproportionate distributions.

* * * * *

(e) * * *

Example 15. (i) *Facts.* Corporation V is organized with two classes of stock, class A common and class B convertible preferred. The class B stock is issued for $100 per share and is convertible at the holder's option into class A at a fixed ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. The class B stock pays no dividends but it is mandatorily redeemable in 10 years for $200. Under sections 305(c) and 305(b)(4), the entire redemption premium (i.e., the excess of the redemption price over the issue price) is deemed to be a distribution of preferred stock on preferred stock which is taxable as a distribution of property under section 301. This amount is considered to be distributed over the 10-year period under principles similar to the principles of section 1272(a). During the year, the corporation declares a dividend on the class A stock payable in additional shares of class A stock.

(ii) *Analysis.* The distribution on the class A stock is a distribution to which sections 305(b)(2) and 301 apply since it increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and the class B shareholders have received property (i.e., the constructive distribution described above). If, however, the conversion ratio of the class B stock were subject to full adjustment to reflect the distribution of stock to class A shareholders, the distribution of stock dividends on the class A stock would not increase the proportionate interest of the class A shareholders in the assets and earnings and profits of the corporation and such distribution would not be a distribution to which section 301 applies.

(iii) *Effective date.* This *Example 15* applies to stock issued on or after December 20, 1995. For previously issued stock, see § 1.305–3(e) *Example (15)* (as contained in the 26 CFR part 1 edition revised April 1, 1995).

Par. 3. Section 1.305–5 is amended as follows:

1. Paragraph (b) is revised.

2. In paragraph (d), remove the parentheses from the numbers in the headings for *Examples (1)* through *(9)*, redesignate *Examples 8* and *9* as *Examples 9* and *10*, respectively.

3. In paragraph (d), *Examples 4*, *5*, and *7* are revised, and *Example 8* is added.

4. Paragraph (e) is added.

The revisions read as follows:

§ 1.305–5 Distributions on preferred stock.

* * * * *

(b) *Redemption premium*—(1) *In general.* If a corporation issues preferred stock that may be redeemed under the circumstances described in this paragraph (b) at a price higher than the issue price, the difference (the redemption premium) is treated under section 305(c) as a constructive distribution (or series of constructive distributions) of additional stock on preferred stock that is taken into account under principles similar to the principles of section 1272(a). However, constructive distribution treatment does not result under this paragraph (b) if the redemption premium does not exceed a de minimis amount, as determined under the principles of section 1273(a)(3). For purposes of this paragraph (b), preferred stock that may be acquired by a person other than the issuer (the third person) is deemed to be redeemable under the circumstances described in this paragraph (b), and references to the issuer include the third person, if—

(i) This paragraph (b) would apply to the stock if the third person were the issuer; and

(ii) Either—

(A) The acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise); or

(B) The third person and the issuer are members of the same affiliated group (having the meaning for this purpose given the term by section 1504(a), except that section 1504(b) shall not apply) and a principal purpose of the arrangement for the third person to acquire the stock is to avoid the application of section 305 and paragraph (b)(1) of this section.

(2) *Mandatory redemption or holder put.* Paragraph (b)(1) of this section applies to stock if the issuer is required to redeem the stock at a specified time or the holder has the option (whether or not currently exercisable) to require the issuer to redeem the stock. However, paragraph (b)(1) of this section will not apply if the issuer's obligation to redeem or the holder's ability to require the issuer to redeem is subject to a contingency that is beyond the legal or practical control of either the holder or the holders as a group (or through a related party within the meaning of section 267(b) or 707(b)), and that, based on all of the facts and circumstances as of the issue date, renders remote the likelihood of redemption. For purposes of this paragraph, a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law which requires that the issuer have a particular level of capital, surplus, or similar items. A contingency also does not include an issuer's option to require earlier redemption of the stock. For rules applicable if stock may be redeemed at more than one time, see paragraph (b)(4) of this section.

(3) *Issuer call*—(i) *In general.* Paragraph (b)(1) of this section applies to stock by reason of the issuer's right to redeem the stock (even if the right is immediately exercisable), but only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to that right is more likely than not to occur. However, even if redemption is more likely than not to occur, paragraph (b)(1) of this section does not apply if the redemption premium is solely in the nature of a penalty for premature redemption. A redemption premium is not a penalty for premature redemption unless it is a premium paid as a result of changes in economic or market conditions over which neither the issuer nor the holder has legal or practical control.

(ii) *Safe harbor.* For purposes of this paragraph (b)(3), redemption pursuant to an issuer's right to redeem is not treated as more likely than not to occur if—

(A) The issuer and the holder are not related within the meaning of section 267(b) or 707(b) (for purposes of applying sections 267(b) and 707(b) (including section 267(f)(1)), the phrase "20 percent" shall be substituted for the phrase "50 percent");

(B) There are no plans, arrangements, or agreements that effectively require or are intended to compel the issuer to redeem the stock (disregarding, for this purpose, a separate mandatory redemption obligation described in paragraph (b)(2) of this section); and

(C) Exercise of the right to redeem would not reduce the yield of the stock, as determined under principles similar to the principles of section 1272(a) and the regulations under sections 1271 through 1275.

(iii) *Effect of not satisfying safe harbor.* The fact that a redemption right is not described in paragraph (b)(3)(ii) of this section does not affect the determination of whether a redemption pursuant to the right to redeem is more likely than not to occur.

(4) *Coordination of multiple redemption provisions.* If stock may be redeemed at more than one time, the time and price at which redemption is most likely to occur must be determined based on all of the facts and circumstances as of the issue date. Any constructive distribution under paragraph (b)(1) of this section will result only with respect to the time and price identified in the preceding sentence. However, if redemption does not occur at that identified time, the amount of any additional premium payable on any later redemption date, to the extent not previously treated as distributed, is treated as a constructive distribution over the period from the missed call or put date to that later date, to the extent required under the principles of this paragraph (b).

(5) *Consistency.* The issuer's determination as to whether there is a constructive distribution under this paragraph (b) is binding on all holders of the stock, other than a holder that explicitly discloses that its determination as to whether there is a constructive distribution under this paragraph (b) differs from that of the issuer. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the date the holder acquired the stock. The issuer must provide the relevant information to the holder in a reasonable manner. For example, the issuer may provide the name or title and either the address or telephone number of a representative of the issuer who will make available to holders upon request the information required for holders to comply with this provision of this paragraph (b).

* * * * *

(d) * * *

Example 4—(i) *Facts.* Corporation X is a domestic corporation with only common stock outstanding. In connection with its acquisition of Corporation T, X issues 100 shares of its 4% preferred stock to the shareholders of T, who are unrelated to X both before and after the transaction. The issue price of the preferred stock is $40 per share. Each share of preferred stock is convertible at the shareholder's election into three shares of X common stock. At the time the preferred stock is issued, the X common stock has a value of $10 per share. The preferred stock does not provide for its mandatory redemption or for redemption at the option of the holder. It is callable at the option of X at any time beginning three years from the date of issuance for $100 per share. There are no other plans, arrangements, or agreements that effectively require or are intended to compel X to redeem the stock.

(ii) *Analysis.* The preferred stock is described in the safe harbor rule of paragraph (b)(3)(ii) of this section because X and the former shareholders of T are unrelated, there are no plans, arrangements, or agreements that effectively require or are intended to compel X to redeem the stock, and calling the stock for $100 per share would not reduce the yield of the preferred stock. Therefore, the $60 per share call premium is not treated as a constructive distribution to the shareholders of the preferred stock under paragraph (b) of this section.

Example 5—(i) *Facts*—(A) Corporation Y is a domestic corporation with only common stock outstanding. On January 1, 1996, Y issues 100 shares of its 10% preferred stock to a holder. The holder is unrelated to Y both before and after the stock issuance. The issue price of the preferred stock is $100 per share. The preferred stock is—

(1) Callable at the option of Y on or before January 1, 2001, at a price of $105 per share plus any accrued but unpaid dividends; and

(2) Mandatorily redeemable on January 1, 2006, at a price of $100 per share plus any accrued but unpaid dividends.

(B) The preferred stock provides that if Y fails to exercise its option to call the preferred stock on or before January 1, 2001, the holder will be entitled to appoint a majority of Y's directors. Based on all of the facts and circumstances as of the issue date, Y is likely to have the legal and financial capacity to exercise its right to redeem. There are no other facts and circumstances as of the issue date that would affect whether Y will call the preferred stock on or before January 1, 2001.

(ii) *Analysis.* Under paragraph (b)(3)(i) of this section, paragraph (b)(1) of this section applies because, by virtue of the change of control provision and the absence of any contrary facts, it is more likely than not that Y will exercise its option to call the preferred stock on or before January 1, 2001. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply because the provision that failure to call will cause the holder to gain control of the corporation is a plan, arrangement, or agreement that effectively requires or is intended to compel Y to redeem the preferred stock. Under paragraph (b)(4) of this section, the constructive distribution occurs over the period ending on January 1, 2001. Redemption is most likely to occur on that date, because that is the date on which the corporation minimizes the rate of return to the holder while preventing the holder from gaining control. The de minimis exception of paragraph (b)(1) of this section does not apply because the $5 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (5×.0025×$105 = $1.31). Accordingly, $5 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution

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received by the holder on an economic accrual basis over the five-year period ending on January 1, 2001, under principles similar to the principles of section 1272(a). * * *

Example 7—(i) *Facts*—(A) Corporation Z is a domestic corporation with only common stock outstanding. On January 1, 1996, Z issues 100 shares of its 10% preferred stock to C, an individual unrelated to Z both before and after the stock issuance. The issue price of the preferred stock is $100 per share. The preferred stock is—

(1) Not callable for a period of 5 years from the issue date;

(2) Callable at the option of Z on January 1, 2001, at a price of $110 per share plus any accrued but unpaid dividends;

(3) Callable at the option of Z on July 1, 2002, at a price of $120 per share plus any accrued but unpaid dividends; and

(4) Mandatorily redeemable on January 1, 2004, at a price of $150 per share plus any accrued but unpaid dividends.

(B) There are no other plans, arrangements, or agreements between Z and C concerning redemption of the stock. Moreover, there are no other facts and circumstances as of the issue date that would affect whether Z will call the preferred stock on either January 1, 2001, or July 1, 2002.

(ii) *Analysis.* This stock is described in paragraph (b)(2) of this section because it is mandatorily redeemable. It is also potentially described in paragraph (b)(3)(i) of this section because it is callable at the option of the issuer. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on January 1, 2001, because the call would reduce the yield of the stock when compared to the yield produced by the January 1, 2004, mandatory redemption feature. Moreover, absent any other facts indicating a contrary result, the fact that redemption on January 1, 2001, would produce the lowest yield indicates that redemption is most likely to occur on that date. Under paragraph (b)(4) of this section, paragraph (b)(1) of this section applies with respect to the issuer's right to call on January 1, 2001, because redemption is most likely to occur on January 1, 2001, for $110 per share. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price payable in 2001 and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (5×.0025×$110=$1.38). Accordingly, $10 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five-year period ending January 1, 2001, under principles similar to the principles of section 1272(a).

(iii) *Coordination rules*—(A) If Z does not exercise its option to call the preferred stock on January 1, 2001, paragraph (b)(4) of this section provides that the principles of paragraph (b) of this section must be applied to determine if any remaining constructive distribution occurs. Under paragraphs (b)(3)(i) and (b)(4) of this section, paragraph (b)(1) of this section applies because, absent any other facts indicating a contrary result, the fact that redemption on July 1, 2002, would produce a lower yield than the yield produced by the mandatory redemption feature indicates that redemption on that date is most likely to occur. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on July 1, 2002, because, as of January 1, 2001, a call by Z on July 1, 2002, for $120 would reduce the yield of the stock. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price and the issue price (revised as of the missed call date as provided by paragraph (b)(4) of this section) exceeds the amount determined under the principles of section 1273(a)(3) (1×.0025×$120=$.30). Accordingly, the $10 per share of additional redemption premium that is payable on July 1, 2002, is treated as a constructive distribution received by the holder on an economic accrual basis over the period between January 1, 2001, and July 1, 2002, under principles similar to the principles of section 1272(a).

(B) If Z does not exercise its second option to call the preferred stock on July 1, 2002, then the $30 additional redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b)(2) and (b)(1) of this section. The de minimis exception of paragraph (b)(1) of this section does not apply because the $30 per share difference between the redemption price and the issue price (revised as of the second missed call date) exceeds the amount determined under the principles of section 1273(a)(3) (1×.0025×$150=$.38). The holder is treated as receiving the constructive distribution on an economic accrual basis over the period between July 1, 2002, and January 1, 2004, under principles similar to the principles of section 1272(a).

Example 8—(i) *Facts.* The facts are the same as in paragraph (i) of Example 7, except that, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is unlikely that Z will exercise the right to redeem on either January 1, 2001, or July 1, 2002.

(ii) *Analysis.* The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on either January 1, 2001, or July 1, 2002, because each call would reduce the yield of the stock. Under paragraph (b)(3)(i) of this section, neither option to call is more likely than not to occur, because, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is not more likely than not that Z will exercise either option. However, the $50 per share redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b) (1) and (2) of this section, regardless of whether Z is anticipated to have sufficient funds to redeem on that date, because Z is required to redeem the stock on that date. The de minimis exception of paragraph (b)(1) of this section does not apply because the $50 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (5×.0025×$150=$3).

* * * * *

(e) *Effective date.* The rules of paragraph (b) of this section and *Examples 4, 5, 7,* and *8* of paragraph (d) of this section apply to stock issued on or after December 20, 1995. For rules applicable to previously issued stock, see § 1.305–5 (b) and (d) *Examples (4), (5),* and *(7)* (as contained in the 26 CFR part 1 edition revised April 1, 1995). Although the rules of paragraph (b) of this section and the revised examples do not apply to stock issued before December 20, 1995, the rules of sections 305(c) (1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101–508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101–508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of § 1.305–5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Par. 4. Section 1.305–7 is amended by revising the fourth sentence in the concluding text of paragraph (a) to read as follows:

§ 1.305–7 Certain transactions treated as distributions.

(a) * * *

* * * For example, where a redemption premium exists with respect to a class of preferred stock under the circumstances described in § 1.305–5(b) and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. * * *

* * * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. In § 602.101, paragraph (c) is amended in the table by adding the entry "1.305–5.....1545–1438" in numerical order.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 11, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30831 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 31 and 301

[TD 8636]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the time for furnishing wage statements to employees and for filing wage statements with the Social Security Administration upon the termination of an employer's operations. These regulations will affect employers and their employees in the year the employer ceases to pay wages. These regulations are intended to improve the wage reconciliation process between the Social Security Administration and the IRS.

EFFECTIVE DATE: These regulations are effective January 1, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–83–89), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–83–89), Courier's Desk. Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1994, the **Federal Register** (59 FR 65982) published a notice of proposed rulemaking which required an employer to furnish Forms W–2 to employees and to file Forms W–2 and W–3 with the Social Security Administration (SSA) at the same time that the employer is required to file the final Form 941 with the IRS.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 8, 1995, pursuant to a notice published in the **Federal Register** on March 24, 1995 (60 FR 15526). After consideration of the comments that were received in response to the notice of proposed rulemaking and at the hearing, the IRS and Treasury adopt the proposed regulations, as amended and revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

Availability of Forms W–2

The regulations, as proposed, would have required an employer who ceases paying wages to furnish Form W–2 to employees and file Forms W–2 and W–3 with SSA on or before the date on which the final Form 941 is required to be filed with the IRS. Form 941 is generally due quarterly, on or before the last day of the first calendar month following the period for which it is made (i.e., April 30, July 31, October 31, and January 31). Consequently, if an employer ceased paying wages in the first quarter of the calendar year, the Forms 941, W–2 and W–3 would be due by April 30. Some commentators expressed concern that Forms W–2 and W–3 are not available in the first quarter of the calendar year. Commentators questioned whether using prior year Forms W–2 was an acceptable alternative if current year forms were unavailable.

Under the Internal Revenue Code and the existing regulations, an employee may request the Form W–2 at any time during the year if the employee is terminated and there is no reasonable expectation on the part of the employer or the employee of further employment during the calendar year. Therefore, Forms W–2 are available from the IRS, either through the mail or at the district offices, in January of each year. Specifications for the private printing of substitute Forms W–2, however, are not always available during the first quarter of the calendar year. Thus, during this period, employers may be limited to using the Forms W–2 printed by the IRS. Neither prior year Forms W–2 nor the prior year specifications for the private printing of substitute Forms W–2 should be used for filing Forms W–2 on an expedited basis for the current year because such procedures could result in significant processing errors.

Availability of Magnetic Media Specifications

Commentators questioned whether magnetic media specifications would be available in the first quarter of the calendar year for employers who are required to file on an expedited basis under the proposed regulations. Regulation section 301.6011–2 and Notice 90–15, 1990–1 C.B. 326, generally require an employer to file Forms W–2 with SSA on magnetic media if the employer is required to file 250 or more Forms W–2 in a calendar year. Employers who do not meet the 250 return threshold may also file their Forms W–2 with SSA on magnetic media.

It is not certain that magnetic media specifications, which are issued by SSA, will be available in the first quarter of the calendar year for employers who are required to file on an expedited basis. The Commissioner has the authority to provide for reasonable extensions of time, upon written application, for an employer to furnish Forms W–2 to employees and file Forms W–2 and W–3 with SSA. To assure that filers need not shift from magnetic media to paper filings in order to comply with the expedited filing requirements, the final regulations affirm that the Commissioner may adopt automatic extension procedures where appropriate.

It is further anticipated that the Commissioner will establish automatic extension procedures to the extent necessary to permit employers that terminate operations a reasonable period of time, after the issuance of specifications, to make their filings on magnetic media.

It is further anticipated that these procedures will include appropriate automatic extensions of time to file

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expedited Forms W–2 both for employers required to file on magnetic media and for employers who have filed on magnetic media in the past whether or not required to do so. Even though Forms W–2 are furnished to employees on paper, the automatic extension procedures are anticipated to apply to the employee copy of the Form W–2 as well as the SSA copy in order to avoid the complexities and potential errors that could arise from processing these forms at significantly different times.

It is also anticipated that the published procedure will provide for an automatic extension to a specified date which permits employers a reasonable period of time after the issuance of specifications to make their filings on magnetic media. This date will be communicated to filers sufficiently early in the year to permit adequate systems planning. In providing for these procedures, it is necessary to balance the practical issues of compliance with the concern for timely submission of information to SSA. Thus, if prior to a future year, it is anticipated that specifications will be issued sufficiently early in the year to permit a reasonable period of time for filing, while still complying with the due dates otherwise required in this regulation, the Commissioner may suspend the automatic extension procedures for that year. Discretionary extensions would continue to be considered on a case-by-case basis.

Comments are requested on the automatic extension procedures and their implementation.

Regulation section 301.6011–2(c)(4) provides that the Commissioner may, upon application, waive the requirement to file on magnetic media in the case of hardship. The final regulations clarify that the unavailability of the specifications for magnetic media filing of Form W–2 will be treated as creating a hardship. Therefore, an employer has the option of applying for a waiver from the requirement to file Forms W–2 on magnetic media and may instead file the Forms W–2 on paper. The employer must apply for a waiver within 45 days of the due date of the return.

Employers may also contact their local SSA Magnetic Media Coordinator for guidance on how to report on magnetic media. The Coordinators are listed in the annual Technical Instructions Bulletin (TIB–4) published by SSA.

Extension Procedures

Regulation section 31.6051–1(d)(2) provides procedures for an employer to request an extension of time to furnish Forms W–2 to employees. Regulation section 31.6081(a)–1 provides similar procedures for employers to request an extension of time to file Forms W–2 and W–3 with SSA. These procedures apply to employers who are required to furnish Forms W–2 to employees or file Forms W–2 and W–3 with SSA on an expedited basis. Thus, an employer who, under the final regulations, is required to furnish and file the Forms W–2 on an expedited basis may request an extension of time if necessary.

Additional month to provide Forms W–2 and W–3 to SSA

Under existing regulations Forms W–2 and W–3 are due to SSA one month after they are due to the employees. This provides employers an opportunity to correct any errors found by employees before filing the Forms W–2 with SSA. Some commentators noted that providing the Forms W–2 to SSA at the same time the forms are provided to the employees eliminates the opportunity for corrections currently provided by the regulations. To minimize the need for employers to file corrected Forms W–2 (Form W–2c, Statement of Corrected Income and Tax Amounts), the final regulations include a suggested one month additional period for providing the Forms W–2 to SSA. Thus, Forms W–2 would be due to employees at the same time as the final Form 941 (generally one month after the end of the quarter). Forms W–2 and W–3 would be due to SSA two months after the final Form 941 is due.

Modification of Revenue Procedure 84–77

In Revenue Procedure 84–77, 1984–2 C.B. 753, the IRS provided procedures for preparing and filing certain forms, including Form 941, Form W–2 and Form W–3, when a successor employer acquires substantially all of the property (1) used in a trade or business of a predecessor employer, or (2) used in a separate unit of a trade or business of a predecessor, and in connection with, or immediately after the acquisition (but during the same calendar year) the successor employs individuals who were employed in the trade or business of the predecessor immediately prior to the acquisition. Under the standard procedure described in Rev. Proc. 84–77, both the predecessor and successor employer report the wages they paid employees on Form W–2. Under the alternate procedure, the predecessor is relieved from furnishing Form W–2 to any employee who is employed by the successor employer and from filing such Forms W–2 with SSA. Instead, the successor employer assumes the predecessor's reporting obligation for those employees. The preamble to the proposed regulation stated that, other than modifying the time frame for the standard procedure, the proposed regulation would not affect the validity of Rev. Proc. 84–77.

One commentator questioned whether the proposed regulation expedited the filing requirements for the predecessor employer with regard to individuals who are not employed by the successor employer. If the predecessor employer ceases to pay wages, (*i.e.*, is required to file a final Form 941), the predecessor employer is required under these regulations to furnish Forms W–2 on an expedited basis to those individuals who are not employed by the successor employer. The predecessor employer must also file Forms W–2 and W–3 with SSA on an expedited basis for those individuals who are not employed by the successor employer. Revenue Procedure 84–77 is being modified to reflect this change.

Some commentators asked how the proposed regulations apply in the context of mergers. If a final Form 941 is not filed because a merger does not involve the cessation of business operations but only a change in corporate or business form, the expedited filing requirements are inapplicable.

Use of an agent

One commentator suggested the final regulations provide an exception from expedited filing for an employer that appoints an agent to assume the employer's reporting obligation. A similar exception was suggested in the case of a controlled group of corporations in which one member of the group acts as the payroll agent for the group. Because there is no practically effective enforceable manner for shifting liability for reporting from an employer to an agent and for assuring that the agent will satisfy the reporting obligations, these suggestions were not adopted.

Application to Returns filed by Employers for Employees in Guam, U.S. Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands and Puerto Rico.

One commentator questioned whether the proposed regulations applied to wage statements furnished to employees and filed with SSA by employers for employees in Guam, U.S. Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands and Puerto Rico. While these employers file variations of the Forms 941, W–2 and W–3, they are subject to the filing requirements for Forms 941, W–2 and W–3. In addition, employees of these employers receive social security credit on the same basis as employers who file the Forms 941, W–2 and W–3. Thus, these employers are subject to the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jean M. Casey, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 and part 301 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6051–1(d) also issued under 26 U.S.C. 6051.

Section 31.6051–2 also issued under 26 U.S.C. 6051 * * *

Section 31.6071–1 also issued under 26 U.S.C. 6071 * * *

Section 31.6081–1 also issued under 26 U.S.C. 6081 * * *

Par. 2. Section 31.6051–1, paragraph (d) is amended as follows:

1. Paragraph (d)(1) is redesignated as (d)(1)(i).

2. Paragraph (d)(1)(ii) is added.

3. Paragraph (d)(2) is revised.

The addition and revision read as follows:

§ 31.6051–1 Statements for employees.

* * * * *

(d) * * * (1)(i) * * *

(ii) *Expedited furnishing*—(A) *General rule.* If an employer is required to make a final return under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages) on Form 941, or a variation thereof, the employer must furnish the statement required by this section on or before the date required for filing the final return. See § 31.6071(a)–1(a)(1). However, if the final return under § 31.6011(a)–6(a)(1) is a monthly return, as described in § 31.6011(a)–5, the employer must furnish the statement required by this section on or before the last day of the month in which the final return is required to be filed. See § 31.6071(a)–1(a)(2). Except as provided in paragraph (d)(2)(i) of this section, in no event may an employer furnish the statement required by this section later than January 31 of the year succeeding the calendar year to which it relates. The requirements set forth in this paragraph (d)(1)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Requests by employees.* An employer is not permitted to furnish a statement pursuant to the provisions of the third sentence of paragraph (d)(1)(i) of this section (relating to written requests by terminated employees for Form W–2) at a time later than that required by the provisions of paragraph (d)(1)(ii)(A) of this section.

(C) *Effective date.* This paragraph (d)(1)(ii) is effective January 1, 1997.

(2) *Extensions of time*—(i) *In general* (*a*) The Director, Martinsburg Computing Center, may grant an extension of time in which to furnish to employees the statements required by this section. A request may be made by a letter to the Director, Martinsburg Computing Center. The request must contain:

(*1*) The employer's name and address;

(*2*) The employer's taxpayer identification number;

(*3*) The type of return (i.e., Form W–2) and

(*4*) A concise statement of the reasons for requesting the extension.

(*b*) The application must be mailed or delivered on or before the applicable due date prescribed in paragraph (d)(1) of this section for furnishing the statements required by this section.

(*c*) In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the Social Security Administration copies of the statement, see § 31.6081(a)–1(a)(3).

(ii) *Automatic Extension of Time.* The Commissioner may, in appropriate cases, publish procedures for automatic extensions of time to furnish Forms W–2 where the employer is required to furnish the Form W–2 on an expedited basis.

* * * * *

Par. 3. Section 31.6051–2, paragraph (c), first sentence is revised to read as follows:

§ 31.6051–2 Information returns on Form W–3 and Internal Revenue Service copies of Form W–2.

* * * * *

(c) *Cross references.* For provisions relating to the time for filing the information returns required by this section and to extensions of the time for filing, see §§ 31.6071(a)–1(a)(3) and 31.6081(a)–1(a)(3), respectively. * * *

Par. 4. Section 31.6071(a)–1(a)(3) is amended as follows:

1. Paragraph (a)(3)(i) is removed.

2. Paragraph (a)(3)(ii) is redesignated as paragraph (a)(3)(i) and the heading is revised.

3. A new paragraph (a)(3)(ii) is added.

The addition and revision read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) * * * (i) *General rule.* * * *

(ii) *Expedited filing*—(A) *General rule.* If an employer who is required to make a return pursuant to § 31.6011(a)–1 or § 31.6011(a)–4 is required to make a final return on Form 941, or a variation thereof, under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and

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income tax withholding from wages), the return which is required to be made under § 31.6051–2 must be filed on or before the last day of the second calendar month following the period for which the final return is filed. The requirements set forth in this paragraph (a)(3)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Effective date.* This paragraph (a)(3)(ii) is effective January 1, 1997.

* * * * *

Par. 5. Section 31.6081(a)–1(a)(3) is revised to read as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(3) *Information returns of employers on Forms W–2 and W–3—(i) In general.* The Director, Martinsburg Computing Center, may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under paragraph § 31.6051–2(a). The request must contain a concise statement of the reasons for requesting the extension. The request must be mailed or delivered on or before the date on which the employer is required to file the Form W–2 with the Social Security Administration.

(ii) *Automatic Extension of Time.* The Commissioner may, in appropriate cases, publish procedures for automatic extensions of time to file Forms W–2 where the employer is required to file the Form W–2 on an expedited basis.

* * * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U. S. C. 7805 * * *

Par. 7. Section 301.6011–2(c)(4)(i) is revised to read as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(c) * * *

(4) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(4)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the forgoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W–2 is required, the unavailability of specifications for magnetic media filing will be treated as creating a hardship. See § 31.6071(a)–1(a)(3)(ii). A request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–30685 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On July 31, 1995, the Postal Service published a proposed rule for public comment in the **Federal Register** (60 FR 39080–39088) to revise current makeup standards in the Domestic Mail Manual (DMM) for second-, third-, and fourth-class mail prepared on pallets. The final rule adopts proposed changes that pertain only to the physical characteristics of pallet loads (such as minimum/maximum height and weight limits and provisions for triple-stacking). These changes will not be affected by the Postal Service's classification reform proposal currently under consideration before the Postal Rate Commission (Docket No. MC95–1). The Postal Service has decided not to adopt, at this time, those elements of the proposed rule that would be affected by implementation of classification reform to avoid burdening software developers and mailers with the need to make changes that will be supplanted shortly after their implementation. Instead, the standards for levels of pallet sortation and preparation, along with other related issues, will be addressed with the standards that the Postal Service proposes to implement with the pending classification reform filing. The Postal Service expects to publish a proposed rule on classification reform for public comment in December 1995.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: The July 31 proposed rule discussed in detail the efforts by the Postal Service to establish certain basic preparation standards that mailers must meet to ensure that pallets, and the mail placed on them, maintain their integrity throughout transportation and postal processing and allow safe handling by postal employees. At the same time, these standards allow mailers flexibility to prepare pallets by using recognized industry practices based on their specific production and service needs.

The 30-day comment period ended on August 30, 1995, and 16 written comments were received from publishers, mailer associations, printers and mailers, transportation companies, and presort software developers. After thorough consideration of these comments, the Postal Service is publishing its final rule. This final rule removes sections in DMM MO42 through MO48 relating to pallet size and revises and consolidates them into MO41 under one section on general pallet standards. The final rule also revises standards related to stacking and top-capping pallets and to identifying and notifying nonconforming mailers whose preparation methods result in pallets that fail to meet basic pallet integrity and safety standards. The final rule also establishes standards for palletizing trays of letter-size mail. DMM E333 and E416 are also revised to clarify the availability of third-class carrier route rates and special fourth-class level A and B rates for mail on pallets; these revisions also stipulate that the Postal Service will not unload containerized drop shipment loads that have not maintained their integrity in transit or that arrive in an unsafe manner. DMM MO33 is revised to require all trays on BMC, ASF, SDC, and mixed BMC pallets to be both sleeved and strapped to facilitate processing on sack and parcel sorters.

The revised DMM standards are set forth after the discussion of comments to the proposed rule. Many commenters commended the Postal Service for listening to its customers in developing standards that were fair and in accord with industry practices. Such comments are not summarized below.

Discussion of Comments

I. Maximum Height

A. Single and Stacked Pallets

Eight commenters opposed various parts of the proposal related to the maximum heights for a single pallet and for stacked pallets. Six commenters opposed limiting the height of a single pallet of sacks, parcels, or packages to 77 inches (or letter mail in trays to 12 layers) and asked why the Postal Service proposed a different maximum height for stacked pallets of 84 inches. They expressed concern over the possible loss of trailer cube capacity that might result from the 77-inch limit for drop shipments. Two commenters indicated that because different characteristics of products on pallets affect the stability of a load, the rule should be amended to allow for taller loads based on specific product characteristics; one commenter suggested that the weight limit of 2,200 pounds per pallet or stack of pallets be used as the controlling maximum rather than the total height of pallet loads.

The maximum height of 77 inches for a single pallet is derived from the general acceptance throughout the Postal Service of the Postal-PAK and pallet (with a height of 75 inches), plus allowance for packing material. Pallet loads exceeding a 77-inch height are a problem when loaded onto and unloaded from many smaller trucks and vehicles used to transport mail between postal facilities and when handled within many smaller postal facilities. The type of transportation used to move pallet loads and the facilities through which they are processed vary, depending on the level of pallet sortation and the office of entry. Low dock-door heights and limited ceiling heights within some facilities, as well as low door and internal heights of many Postal Service trailers and vehicles, were factors in establishing this maximum height. By establishing a maximum height of 77 inches for all single pallets, the Postal Service is promoting consistency in preparation standards while ensuring that postal employees can handle pallets safely and efficiently on all transportation and at all facilities, regardless of office of entry or level of sortation. The higher maximum of 84 inches for stacked pallets allows mailers to take advantage of trailer cube capacity for lighter weight pallets and allows the Postal Service to unstack the pallets where necessary to ensure compatibility with Postal Service equipment, transportation, or facilities. The maximum heights of 77 inches for a single pallet and 84 inches for stacked pallets are adopted in the final rule.

The Postal Service has also determined to limit the number of layers of trays of letter mail to 12, which is equivalent to the maximum height of 77 inches for a single pallet. Mailers will need to monitor their loads carefully to ensure that fuller trays are placed on the bottom and interspersed nearer the top to avoid crushing. As the height and weight of the pallet load increase, so does the likelihood of the lower trays being crushed and causing the entire load to collapse, particularly if the trays are older cardboard managed mail (MM) trays. If a mailing consists of many less-than-full trays, mailers should consider building loads containing less than the maximum number of layers.

B. Pallet Boxes

A maximum height of 84 inches was proposed for a single pallet box on a pallet, with a possible 60-inch maximum height restriction at some non-BMC facilities. Two commenters suggested that the Postal Service publish a listing of facilities that cannot handle the taller pallet boxes so that software developers can build varying height restrictions into their sortation programs. Ideally, the commenters preferred that all postal facilities be modified to handle pallet boxes that are 84 inches tall (pallet, box, and mail). The Postal Service was in error when it proposed a maximum height of 84 inches for any pallet box because the pallet unloaders being deployed by the Postal Service in bulk mail centers (BMCs) and many processing and distribution centers (P&DCs) can accommodate only pallets with pallet boxes that do not exceed a total height of 77 inches. The Postal Service must cut taller boxes or otherwise alter them to remove the contents manually, resulting in slower service for customers, additional handlings, and inefficient use of newly deployed mechanized equipment. Accordingly, the Postal Service has determined to adopt a 77-inch maximum, which is also consistent with the height of the Postal-PAK and pallet. Because the Postal Service proposed a maximum height of 84 inches and some mailers might have a stock of pallet boxes designed to meet the proposed maximum, the mandatory compliance date will be July 1, 1996, to allow mailers to deplete current stocks of these taller boxes.

II. Pallet Boxes

A. Providing Boxes

One commenter stated that the Postal Service should provide a pallet box "for sack mail shippers that would conform to the specifics outlined in the revisions" to facilitate uniformity and unloading at BMCs. The Postal Service has no plans to purchase additional equipment to provide to sack mailers. The Postal Service is purchasing additional trays and pallets, however, to meet customer demand in preparation for implementation of classification reform.

B. Securing Pallet Boxes

One commenter requested that the proposed requirement that mailers secure boxes to the pallet be optional and indicated that mailers had been entering unsecured boxes on pallets for many years, without any negative comment from the Postal Service. The proposed standard is modified in the final rule to require securing a pallet box to the pallet only if the pallet requires transportation by the Postal Service to move it from the entry office to another postal facility for distribution of the contents and the weight of the mail in the box is insufficient to hold the box in place on the pallet during transportation and processing. This modification is consistent with how the Postal Service prepares and processes mail in its own Postal-PAKs on pallets and ensures that pallets can be loaded and transported safely on Postal Service vehicles and processed as a single unit to the point where the contents are distributed.

C. Construction of Pallet Boxes

No comments were received on the proposal to allow mailers to use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard. Single-wall corrugated fiberboard may be used only for light loads (such as lightweight parcels) that do not require transportation beyond the entry office. The Postal Service will monitor mailings presented in pallet boxes to ensure that the box construction maintains its integrity to the point of distribution of the contents.

III. Pallet Load Integrity

Failure of pallets to meet basic DMM standards negates efforts to ensure safe and efficient handling of palletized loads. Accordingly, all pallets presented to the Postal Service for acceptance, whether the pallets are provided by the Postal Service or the mailer, must meet the basic standards in the DMM pertaining to pallet labels, physical

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pallet dimensions, pallet load integrity, stacking, and minimum/maximum loads and heights. The Postal Service will consider individual shipments that are presented for acceptance under the plant-verified drop shipment (PVDS) program at a destination entry postal facility to be bedloaded if the load integrity of the pallets or the safety of postal employees is compromised. Such loads might require driver unloading or may be refused by the destination facility. If a shipment is refused, the mailer or mailer's agent who is presenting the mail for acceptance at the destination entry facility has the option to rework the mail off-site to match its original preparation as verified, then resubmit it with the appropriate documentation when the entry facility can reschedule the shipment.

The Postal Service will monitor load integrity of customers' pallets at mailers plants when mail is verified by on-site postal personnel and at postal facilities where mailings are entered, whether at business mail entry units under local verification and acceptance or a destination entry facilities where mailings are drop shipped under programs such as PVDS. The Postal Service may initially notify the transportation company presenting mail to the Postal Service for acceptance or the mail preparer, or both, when pallet load integrity problems are identified. The failure of pallet loads to maintain their integrity might be caused by poor preparation methods of the mailer (for example, the load exceeds maximum weight or height limits or the load is not secured to the pallet) or the improper loading and security of pallets onto the transportation used to move pallet loads to postal facilities for acceptance (for example, pallets are not secured with shoring equipment in vehicles to prevent pallets from toppling in transit, or heavier pallets are stacked onto lighter pallets and crush the mail on the bottom).

After a mailer is notified of recurring pallet load integrity problems and allowed to make changes to improve load integrity, If the mailer's methods still do not work, the mailer will be considered nonconforming and required to meet the specifications developed by Postal Service Engineering for securing pallets, pallet box construction and dimensions, stacking of pallets, maximum height/layers of trays, and use of top caps. These specifications are included in the DMM language at the end of this discussion of comments. Mailers whose pallets continue to fail to meet minimum load integrity levels will be suspended from the pallet program.

Three comments were received from two commenters concerning load integrity. One commenter wanted to know how damaged loads will be handled, who will be notified, whether the mailer/agent will be allowed to rework the mail, and how presentation of damaged loads will affect drop shipment appointments. This commenter also noted that "in our business, it is common to refuse loads that have not maintained their integrity. At that point, it is the shipper's or carrier's responsibility to see that the load is taken to an alternative site for reworking." This same commenter wanted clarification about who will determine whether pallets are properly prepared to meet load integrity standards, at what point a mailer will be considered nonconforming, and whether the mailer will have an option to pay a penalty or fine at destination to have nonconforming pallets accepted for time-sensitive mailings. The commenter also expressed concern about possible inconsistencies in the determinations by different facilities about whether a pallet load meets the load integrity standards. The second commenter wanted feedback from the Postal Service about pallet load integrity problems, starting with the mail preparer and proceeding to the owner. The Postal Service will initially contact the mailer or mailer agent (such as a transportation company) when load integrity problems are identified.

Training materials will be distributed to postal facilities that accept pallets from mailers to ensure consistent understanding and application of pallet load integrity guidelines and the procedures that apply when problems are identified. The Drop Shipment Appointment System (DSAS) will be used, where possible, to identify and track the mailers or their agents presenting problem pallet loads. The DSAS will also help to establish contact to ensure that corrective actions are taken to improve future load integrity. The Postal Service will also work with mailers to ensure that corrective actions are taken to prevent recurrence of problems and to provide training and other necessary tools that will communicate the responsibilities of all mailers or their agents who create or handle mail on pallets.

Over the next few months, the Postal Service will formulate clear, objective criteria to identify pallet load integrity problems and to establish consistent feedback mechanisms for notifying mailers or their agents when problems are identified. Until those details are developed, load integrity will be monitored at origin and destination postal facilities as it is today, feedback will be provided to mailers, and mailers will be allowed to improve preparation methods for identified problems. However, during that interim, mailers will not be determined as nonconforming or suspended from the pallet program. Accordingly, the rules relating to nonconforming mailers and suspension will not take effect until July 1, 1996.

IV. Sleeving and Strapping of Trays

No comments were received about the proposal to require mailers to sleeve and strap trays of letter mail placed onto BMC, ASF, SDC, and mixed BMC pallets; the proposed standards are adopted in the final rule. These standards provide an incentive to prepare pallets to finer levels of sortation, allowing for greater cross-dock opportunities at the BMCs and significant relief for BMC operations heavily affected by unstrapped trays. In addition, this rule adopts the proposal to extend the current requirement to sleeve all trays that contain letter-size automation rate mail and that may be processed at a BMC/ASF or AMF/AMC (that is, mail that does not originate and destinate in the delivery area of the same SCF) to include trays containing nonautomation rate letter-size mail.

V. Maximum Pallet Load

One commenter requested clarification of how the proposed 2,200-pound maximum for pallets applies to stacked pallets. The proposal to set 2,200 pounds as the maximum weight for any single pallet and as the maximum total weight for stacked pallets presented to the Postal Service is adopted in the final rule. When the weight of a single pallet or a stack of pallets is calculated, the weight of the mail and any tare placed on the bottom pallet are included in the calculation.

The proposed maximum load for trays on pallets of 12 layers, not to exceed 2,200 pounds, is also adopted in the final rule.

VI. Minimum Pallet Load

For packages, parcels, and sacks on pallets, the final rule requires mailers who prepare mail on pallets to prepare a required level of pallet sortation when there are 500 pounds of mail for that destination (for example, for a 5-digit ZIP Code or an SCF). At their option, mailers may prepare pallets for any required or optional level of sortation when they prepare at least 250 pounds of mail for a destination.

Palletization of trays of letter-size mail is based on the number of layers. Mailers may prepare a pallet when they

have from three to five layers of 1- or 2-foot managed mail (MM) or extended managed mail (EMM) trays. Preparation of pallets to required levels of sortation is mandatory with six layers of trays to that destination (for example, SCF pallets).

For improved service, the processing and distribution manager of the facility where a mailing is entered may issue a written authorization to the mailer, allowing preparation of 5-digit or 3-digit pallets containing less than the minimum volume (250 pounds of packages, parcels, or sacks or three layers of trays) if the mail on those pallets destinates in the service area of that facility.

At the mailer's option, the minimum volume used to determine when a pallet is prepared may vary within a mailing, provided that pallets are prepared to required levels of sortation when there are at least 500 pounds or six layers of mail to the destination.

Mailers are reminded that under the Postal Service's Guidelines for the Plant-Verified Drop Shipment (PVDS) Program, the driver must unload mail entered at delivery units. In some instances, the driver must break down palletized loads because of the physical limitations of a delivery unit (for example, a small or congested office that cannot accommodate large or stacked pallets).

VII. Stacking Pallets

A. Double- and Triple—Stacking

Several commenters responded favorably to the proposal to allow a mailer to double- or triple-stack pallets up to the maximum allowable height and weight (84 inches/2,200 pounds total for the stacked pallets); this proposal is adopted in the final rule. Such pallets must be presented for acceptance at the mailer's plant or a postal facility in a manner that ensures safe and efficient unloading, handling, and transporting. Triple-stacking allows a mailer to make better use of transportation for drop shipments when low-weight pallets are prepared.

When stacking pallets, the mailer must place the heaviest pallet on the bottom and the lightest pallet on the top to prevent crushing or other damage to mail on the bottom. If part of the load is crushed, the entire load is likely to collapse.

B. Securing Stacked Pallets Together

The proposed rule required that all stacked pallets be secured together with at least two straps at least ½ inch wide. Several commenters were opposed to this requirement. Two commenters stated that they stretchwrap stacked pallets together and that the stacked loads maintain their integrity throughout transportation and processing. These commenters indicated that stretchwrapping stacked pallets is consistent with the stretchwrapping operation in their plants for single pallets and that a requirement to strap or band stacked pallets would add an unnecessary cost to their operations.

The Postal Service proposed that mailers be required to secure stacked pallets with banding or strapping because this material is easier to remove than stretchwrap. Only one cut per band is required on no more than two sides of a banded pallet, whereas a stretchwrapped pallet must be cut around all four sides of the stacked pallets to separate the pallets and to insert a forklift or pallet jack. If pallets are triple-stacked, the stretchwrap must be cut on all four sides (two times between the bottom and middle pallets and between the middle and top pallets). Not only is this method time-consuming, it can be difficult to move around a tall pallet load in a full vehicle in order to cut the stretchwrap and remove the top pallet(s). The requirement to strap stacked pallets together is adopted in the final rule. The mandatory compliance date is July 1, 1996, to allow mailers who currently use other means of securing stacked pallets together to change their preparation methods.

C. Use of Top Caps

Three commenters raised issues about top caps. Under the proposed rule, mailers would have been required to top-cap the lower pallets when pallets were stacked. Top caps have been found to be one of the key elements in ensuring the stability of stacked pallets. However, as one commenter noted, the characteristics of certain mail can provide a flat, stable, and protective surface on which to place a pallet (for example, cartons of books placed on a pallet), making top caps unnecessary. The Postal Service agrees. Therefore, the final rule is modified to make top caps optional on stacked pallets when the top surface of the pallet load provides a sturdy, flat surface parallel to the pallet base, that allows for safe and efficient stacking and for preventing damage to mail or crushing of the load from pallets placed on top. The Postal Service will monitor the preparation of all stacked pallets, particularly those that are triple-stacked, to ensure that the pallets can be handled safely and without damage to the mail.

One commenter asked whether the Postal Service will provide top caps. Although the Postal Service does have a limited supply of top caps, it has no plans, at this time, to provide them to mailers on a general basis. By limiting the circumstances under which top caps are required, the Postal Service expects mailers to continue providing their own top caps to ensure the integrity of stacked mail loads.

Two commenters indicated that top-capping pallets can create problems for consolidators who combine pallets and move them closer to destinating postal facilities. Because consolidators are not manufacturing plants, they do not have scrap material to sue for top-capping stacked pallets. Mailers who prepare lightweight pallets that are likely to be stacked by consolidators for drop shipment must work out arrangements with their transportation agents about whose responsibility it is to top-cap those pallets. Regardless of the arrangements, stacked pallets must be top-capped when required to maintain load integrity.

D. Top Cap Construction

Mailers may determine the best material for ensuring pallet integrity and may use manufacturing materials that come into their plants as top-capping material. Mailers must not use flimsy paper obtained from the ends of paper rolls or similar material for top caps because this material, used alone, can cause stack failure.

VIII. Securing Single Pallet Loads

Depending on the characteristics of a mail load, strapping might not be the most effective method of ensuring load integrity of a single pallet throughout transportation and mail handling. Loads can compress during storage in a mailer's plant or while in transit, causing strapping to become loose. In those instances, stretchwrap can be more effective in securing loads on a single pallet. Therefore, in the final rule, the proposal allowing mailers to choose the most appropriate method of securing a single pallet load is adopted. Acceptable methods include strapping or wrapping with stretchable or shrinkable plastic wrap.

IX. Pallet Sortation Levels

This final rule does not adopt any of the proposed changes related to levels of pallet sortation, including the proposed allowance for working pallets or the elimination of the "courtesy pallet," by requiring that all mailings placed onto any pallet be sorted to the finest level of presort. Modified proposed standards will be included in the **Federal Register** notice containing proposed DMM

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language to implement the pending classification reform filing.

The following revisions are made to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations, See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E300 Third-Class Mail

* * * * *

E333 Carrier Route Presort

* * * * *

3.0 PRESORT

3.1 Qualifying Mail

* * * * *

[Add the following at the end of the current section:]

c. Correctly presorted carrier route packages that meet the package preparation standards in M043 and are sorted to the appropriate pallet level.

* * * * *

E350 Destination Entry Discounts

* * * * *

3.0 DEPOSIT

* * * * *

3.8 Unloading Vehicles

The mailer is responsible for the unloading of vehicles, subject to these conditions:

[Add new 3.8a and redesignate current 3.8a through 3.8c as 3.8b through 3.8d, respectively. Amend redesignated 3.8b.]

a. Postal employees unload palletized and containerized loads at MBMCs/FSFs/SCFs, except that the USPS does not unload or permit the mailer (or mailer agent) to unload palletized or containerized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

b. [Remove the second sentence.]

* * * * *

E400 Fourth-Class Mail

* * * * *

E416 Special Fourth-Class Rates

* * * * *

2.0 SPECIAL FOURTH-CLASS PRESORT

* * * * *

2.6 Level A

[Revise the introductory text as follows:]

To qualify for the special fourth-class presort level A rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full 5-digit sacks or under M044 on 5-digit pallets. These conditions also apply:

* * * * *

2.7 Level B

[Revise the introductory text as follows:]

To qualify for the special fourth-class presort level B rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full or substantially full bulk mail center (BMC) sacks or under M044 on destination BMC pallets. These conditions also apply:

* * * * *

E450 Destination BMC/ASF Discount

* * * * *

3.0 DEPOSIT

* * * * *

3.8 Unloading Vehicles

* * * * *

a. [Revise the second sentence as follows:]

* * * The USPS does not unload or permit the mailer (or mailer agent) to unload palletized or containerized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M030 Container Preparation

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

[Add new 1.4 and 1.5 as follows:]

1.4 Sleeving and Strapping of Trays

Except under 1.5, each letter mail tray must be sleeved. All nonpalletized trays of letter mail that are transported from the mailer's plant to a BMC/ASF or AMF/AMC on USPS or mailer transportation and all trays placed on BMC/SDC or mixed BMC/SDC pallets must also be secured with a plastic strap placed tightly around the length of the tray. The strap must not crush the tray or sleeve. Strapping is not required on trays placed on pallets prepared to finer levels of sortation.

1.5 Sleeving Exception

When all pieces in a mailing originate and destinate in the delivery area of the same SCF and the trays containing those pieces are not to be processed at a BMC or an AMF, the processing and distribution manager may (on request) issue a written authorization to the mailer to submit the mailing in trays without sleeves.

* * * * *

3.0 BASIC STANDARDS FOR TRAYS—AUTOMATION RATES

* * * * *

[Remove current 3.6 and 3.7.]

M040 Palletization

M041 General Pallet Standards

[Revise 1.0 through 3.0 as follows:]

1.0 PHYSICAL CHARACTERISTICS

1.1 Standards

All pallets presented to the USPS, whether USPS- or mailer-provided, must meet the standards in 1.2 through 1.4. Mail on such pallets must meet the standards applicable to the class and rate claimed.

1.2 Construction

Pallets must be made of high-quality material that can hold loads equal to a gross weight of 2,200 pounds. Pallets must measure 48 by 40 inches and allow for four-way entry by fork trucks and two-way entry by pallet jacks.

1.3 Securing

Except for pallet boxes under 4.3, loaded pallets of mail must be wrapped with stretchable or shrinkable plastic strong enough to retain the integrity of the pallets during transportation and handling.

1.4 Nonconforming Mailers

The USPS informs mailers or their agents who present palletized mailings, including plant-verified drop shipment (PVDS), when their pallets fail to meet basic pallet integrity and safety standards. After July 1, 1996, once a mailer is notified and allowed to make changes to improve load integrity, if the mailer's methods, or those of the mailer's agent presenting PVDS mailings, do not work, the mailer is considered nonconforming. A nonconforming mailer must meet the specifications for nonconforming mailers for use of top caps, stacking of pallets, pallet box construction, and maximum height/layers of trays in 2.0 through 4.0. After July 1, 1996, mailers will be suspended from the pallet program if their pallets continue to fail to meeting the minimum standards for load integrity levels.

2.0 TOP CAPS

2.1 Use

Top caps are used as follows:

a. Except under 2.1b and 2.1c, all pallets of sacks, letter mail trays, parcels, packages or bundles of mail, or pallet boxes must be top-capped if the pallets are double- or triple-stacked when presented to the USPS for acceptance.

b. The top pallet need not be top-capped if the strapping or banding securing the stacked pallets together neither damages the mail on the top pallet nor allows the stack to shift.

c. Lower pallet(s) containing either parcels or packages or bundles of mail need not be top-capped if the top surface of each pallet load provides a sturdy, flat surface, parallel to the pallet base, that provides safe and efficient stacking of pallets placed on top and prevents sliding of the top pallet(s), damage to the loaded mail, or crushing of the load.

2.2 Construction

Any material may be used as a top cap if it provides a flat, level surface horizontal to the base pallet, protects the integrity of the mail below while supporting a loaded pallet above, and allows easy entry of a forklift to remove the upper pallet(s). Flimsy paper or fiberboard (e.g., the ends of paper rolls) or similar material is inadequate and may not be used as a top cap.

2.3 Securing

A top cap must be secured to the pallet horizontal to the plane of the base pallet, with either stretchwrap or at least two crossed straps or bands, so that the top cap stays in place to protect the mail and maintain the integrity of the pallet load.

2.4 Nonconforming Mailers

Nonconforming mailers (see 1.4) must use top caps on all pallets of sacks, letter mail trays, parcels, or packages or bundles of mail, regardless of weight, or on pallets containing pallet boxes 60 inches high or less. Top caps must be approximately 48 by 40 inches and meet one of these construction standards:

a. Five-wood boards, with uniform edges and nine-leg pallet contact for stacking.

b. Fiberboard box-end style, with a minimum 3-inch side and wall material of at least double-wall corrugated fiberboard C and/or B flute.

c. Fiberboard honeycomb covered on both sides, with heavy linerboard at least ½ inch thick.

d. Corrugated fiberboard C flute sheet covering the entire top of the load, with standard pallet solid fiberboard corner edge protectors.

3.0 STACKING PALLETS

3.1 Double- or Triple-Stacking

Pallets may be double- or triple-stacked if:

a. The combined gross weight of the stacked pallets (pallets, top caps, and mail) does not exceed 2,200 pounds.

b. The heaviest pallet is on the bottom and the lightest is on the top.

c. The pallets are secured together with at least two straps or bands of appropriate material to maintain pallet integrity during transportation and handling. Stretchable or shrinkable plastic wrap be used to secure stacked pallets together until July 1, 1996.

d. Pallets are top-capped under the standards in 2.0.

e. The combined height of the stacked pallets and their loads does not exceed 84 inches.

3.2 Nonconforming Mailers

Nonconforming mailers (see 1.4) who stack pallets are subject to the conditions in 3.1, except that triple-stacking is allowed only for pallets of parcels and the combined height of stacked pallets may not exceed 77 inches.

4.0 PALLET BOXES

[Renumber current 4.0 through 6.0 as 5.0 through 7.0; add new 4.0 as follows:]

4.1 Use

Mailers may use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard placed on pallets to hold sacks or parcels prepared under M042, M043, or M044. Single-wall corrugated fiberboard may be used only for light loads (such as lightweight parcels) that do not require transportation by the Postal Service beyond the entry office. The boxes must protect the mail and maintain the integrity of the pallet loads throughout transportation, handling, and processing. The base of the boxes must measure approximately 40 by 48 inches.

4.2 Maximum Height

The combined height of the pallet, pallet box, and mail may not exceed 77 inches, except that until July 1, 1996, the combined height may be up to 84 inches. The contents of the box must not extend above the top rim of the box.

4.3 Securing

Pallet boxes must be secured to pallets with strapping, banding, stretchable plastic, shrinkwrap, or other material that ensures that the pallets can be safely unloaded from vehicles, transported, and processed as single units to the point where the contents are distributed with the load intact if:

a. The pallet and its contents are transported by the USPS from the office where the mail is accepted to another postal facility where the contents are distributed.

b. The weight of the mail in the box is not sufficient to hold the box in place on the pallet during transportation and processing, a pallet box must be secured to the pallet base.

4.4 Nonconforming Mailers

Nonconforming mailers (see 1.4) may use pallet boxes only if the boxes are constructed of triple-wall corrugated fiberboard (C and/or B flute material) with a maximum height of 77 inches.

5.0 PALLET PREPARATION

[Renumber 5.3 as 5.8; add new 5.3 through 5.7; revise renumbered 5.0 as follows:]

5.1 Presort

[Delete the "s" at the end of "Pallets" in the first sentence.]

5.2 Minimum Load

In a single mailing, the minimum load per pallet is 250 pounds of second-class, third-class, or fourth-class packages and bundles of mail, parcels, or sacks (or three layers of letter trays of second-class or third-class mail), except that the processing and distribution manager of the facility where a mailing is entered may issue a written authorization to the mailer allowing preparation of 5-digit or 3-digit pallets containing less volume if the mail on those pallets is for the service area of that facility.

5.3 Required Preparation

A pallet must be prepared to a required level of sortation when there are 500 pounds of second-, third-, or fourth-class packages, bundles, sacks, or parcels (or six layers of letter trays of second-class or third-class mail).

5.4 Maximum Weight

The maximum weight (mail and pallet) is 2,200 pounds for a single pallet.

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5.5 Maximum Height

The combined height of a single pallet and its load may not exceed these limits:

a. A maximum of 77 inches for packages, bundles, parcels, sacks, or fiberboard pallet boxes and their contents (sacks or parcels) on pallets, except that until July 1, 1996, the maximum for pallet boxes is 84 inches.

b. A maximum of 12 layers of second-class or third-class letter trays.

5.6 Nonconforming Mailers

For nonconforming mailers (see 1.4) of letter-size mail in trays, the combined height of a pallet and its load may not exceed six layers of MM or EMM trays.

5.7 Mail on Pallets

Mailpieces in trays, packages, bundles, and sacks must be prepared under the standards applicable to the class of mail and rate claimed.

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M042 Second-Class Mail

* * * * *

4.0 PREPARING PALLETS OF PACKAGES OR BUNDLES

[Remove current 4.1; renumber 4.2 through 4.5 as 4.1 through 4.4. Amend renumbered 4.4 as follows:]

* * * * *

4.4 Sacking

[In the first sentence, change "4.3" to "4.2."]

5.0 PREPARING PALLETS OF COPALLETIZED FLAT-SIZE PUBLICATIONS

[Remove current 5.3; renumber 5.4 through 5.10 as 5.3 through 5.9. Amend renumbered 5.5 and 5.8 as follows:]

* * * * *

5.5 Sacking

[In the first sentence, change "under 5.4" to "under 5.3."]

* * * * *

5.8 Documentation

* * * * *

d. [Remove "/650."]

* * * * *

[Revise the heading of 6.0 as follows:]

6.0 PREPARING PALLETS OF SACKS OR TRAYS

[Remove current 6.1; renumber 6.2 through 6.4 as 6.1 through 6.3. Amend renumbered 6.2 and 6.3 as follows:]

* * * * *

6.2 Presort and Labeling

Presort sequence and labeling:

a. 5-digit (required for sacks, optional for trays); use destination of packages for Line 1.

b. Multicoded city (optional); use L001 for Line 1.

c. 3-digit (required for sacks, optional for trays); use L002, Column A, for Line 1.

d. SCF (required); use L002, Column B, for Line 1.

e. SDC (optional); use L201 for Line 1.

f. Transfer hub (optional).

[Revise the heading of 6.3 as follows:]

6.3 Sacks and Trays

[Revise the first sentence as follows:]

Mixed states sacks and residual trays may not be included in the palletized portion of a mailing. * * *

M043 Third-Class Mail

* * * * *

4.0 PREPARING PALLETS OF PACKAGES OR BUNDLES

[Remove current 4.1; renumber 4.2 through 4.6 as 4.1 through 4.5. Amend renumbered 4.5 as follows:]

* * * * *

4.5 Sacking

[In the first sentence, change "4.3" to "4.2."]

* * * * *

6.0 PREPARING PALLETS OF COPALLETIZED FLAT-SIZE MAILINGS

[Remove current 6.4; renumber 6.5 through 6.12 as 6.4 through 6.11. Amend 6.1 and 6.10 as follows:]

6.1 Standards

[Change "4.2 through 4.6" to "4.1 through 4.5."]

* * * * *

6.10 Sacking

[In the first sentence, change "4.3" to "4.2."]

* * * * *

7.0 PALLETIZING MACHINABLE THIRD-CLASS PARCELS

[Remove current 7.1; renumber 7.2 through 7.5 as 7.1 through 7.4. In renumbered 7.2 and 7.3, change all references from "7.2" to "7.1."]

* * * * *

8.0 PALLETIZING THIRD- AND FOURTH-CLASS MACHINABLE PARCELS

[Remove current 8.2; renumber 8.3 through 8.8 as 8.2 through 8.7. In renumbered 8.3 and 8.4, change all references from "8.3" to "8.2"; revise 8.1 as follows:]

8.1 Standards

[Change "4.2 through 4.6" to "4.1 through 4.5."]

* * * * *

[Revise the heading of 9.0 as follows:]

9.0 PREPARING PALLETS OF SACKS OR TRAYS

[Remove current 9.1; renumber 9.2 through 9.4 as 9.1 through 9.3. Amend renumbered 9.1 and 9.2 as follows:]

9.1 Presort and Labeling

Presort sequence and labeling:

a. 5-digit (required for sacks, optional for trays); use destination of packages for Line 1.

b. Multicoded city (optional); use L001 for Line 1.

c. 3-digit (required for sacks, optional for trays); use L002, Column A, for Line 1.

d. SCF (required); use L002, Column B, for Line 1.

e. BMC (optional); use L705 (or L708 for BMC/ASF if DBMC rate is claimed) for Line 1.

9.2 Line 2

[Change "9.2" to "9.1" at the end of the section.]

9.3 Remaining Sacks and Trays

All sacks and trays remaining after all pallets are prepared may be presented with the palletized mailing (on the same mailing statement), if the sacks or trays are segregated from the palletized portion of the mailing.

M044 Fourth-Class Mail

* * * * *

3.0 PREPARING PALLETS OF PACKAGES

[Remove current 3.1; renumber 3.2 through 3.5 as 3.1 through 3.4.]

* * * * *

4.0 PREPARING PALLETS OF MACHINABLE PARCELS

[Remove 4.1; renumber 4.2 through 4.6 as 4.1 through 4.5.]

* * * * *

4.2 Line 2

[Change "4.2" to "4.1" at the end of the section.]

* * * * *

5.0 PREPARING PALLETS OF SPECIAL FOURTH-CLASS PRESORT

[Remove 5.1; renumber 5.2 and 5.3 as 5.1 and 5.2.]

* * * * *

5.2 Line 2

[Change "5.2" to "5.1" at the end of the section.]

M048 Automation-Compatible Flats

* * * * *

2.0 PACKAGE PREPARATION

[Renumber 2.1 as 2.0 and remove the 2.1 section heading; remove 2.2.]

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–30989 Filed 12–20–95; 8:45 am]

BILLING CODE 7710–12–M

Environmental Protection Agency

40 CFR Part 52

[GA–27–1–7186a; FRL–5320–3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Georgia Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revision to the Georgia State Implementation Plan (SIP). On May 5, 1994, the Georgia Environmental Protection Division submitted regulations 391–3–21–.01 through .11 establishing a Clean Fuel Fleet program. These rules became effective on May 22, 1994.

DATES: This final rule will be effective February 20, 1996, unless adverse or critical comments are received by January 22, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Benjamin Franco, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Georgia Environmental Protection Division, 4244 International Parkway, Suite 120, Atlanta, GA 30354.

FOR FURTHER INFORMATION CONTACT: Benjamin Franco, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/. 347–3555 x–4211. Reference file GA27–1–7186a.

SUPPLEMENTARY INFORMATION: Section 246(a) of the 1990 Clean Air Act (CAA) requires ozone nonattainment areas classified serious and above to implement a Clean Fuel Fleet (CFF) program. The program is designed to introduce lower-emitting vehicles into centrally fueled fleets in ozone nonattainment areas classified as serious. By choosing to introduce clean fuel vehicles in centrally fueled fleets, Congress focused on vehicle operators that often have more control over their source of fuel than does the general public. Additionally, the central control which operators maintain over their vehicles simplifies the issues related to vehicle maintenance and refueling. Finally, because fleet vehicles typically travel more miles and are replaced more frequently than non-fleet vehicles, they offer a greater opportunity to improve air quality, on a per-vehicle basis and in a more timely manner, than potentially could be achieved by concentrating on a similar number of non-fleet vehicles.

The Georgia Department of Natural Resources adopted on April 29, 1994, Regulations 391–3–21–.01 through .11 establishing a CFF program. The program will be required in the counties of Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Fulton, Forsyth, Gwinnett, Henry, Paulding and Rockdale. Fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled and operated in the above counties are required to include in their new vehicle purchases a certain percentage of clean fueled vehicles (CFV). A CFV is one which meets any one of the three sets of exhaust emission standards. The emission standards and the vehicles which meet them are referred to as low emission vehicles (LEV), ultra low emission vehicles (ULEV), and zero emission vehicles (ZEV).

Vehicles weighing 26,000 lbs. or less will count towards the requirement. The purchase must start with 1998 model year vehicles. The phase-in schedule for vehicles weighing up to 8,500 lbs. Gross Vehicle Weight Rating (GVWR) is: 30 percent Model Year 1998, 50 percent Model Year 1999, 70 percent Model Year 2000 and after. The phase-in schedule for vehicles weighing above 8,500 lbs GVWR is: 50 percent Model Year 1998, 50 percent Model Year 1999, 50 percent Model Year 2000 and after. The following vehicles are exempted from these requirements: motor vehicles for lease or rental to the general public, dealer demonstration vehicles that are used solely for the purpose of promoting motor vehicle sales, emergency vehicles, law enforcement vehicles, nonroad vehicles (farm and construction vehicles), vehicles garaged at a personal residence and not being centrally fueled, and vehicles used for motor vehicle manufacturer product evaluations and tests.

Regulation 391–3–21.08 establishes a credit program in order to help fleets meet the CFF program requirements. Credits can be generated by three ways: (1) By purchasing CFVs prior to 1998, (2) by purchasing extra or exempted CFVs, and (3) by purchasing CFVs with stricter emissions standards such as ULEV and ZEV. These credits can only be used in the designated nonattainment area. Credits can be used towards future purchases or can be sold or traded to other operators. The Georgia Environmental Protection Division (GAEPD) will keep, approve and track all credits.

Final action

The EPA is approving this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 20, 1996, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 20, 1996.

The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

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Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State Implementation Plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 246 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(48) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(48) Clean Fuel Fleet program submitted to EPA by the Georgia Department of Natural Resources on May 5, 1994.

(i) Incorporation by reference.

(A) Addition of Regulations 391–3–21–.01, "Definitions," 391–3–21–.02, "Covered Area," 391–3–21–.03, "Covered Fleet Operators," 391–3–21–.04, "Covered Fleet Vehicles," 391–3–21–.05, "Determination of Capable of Being Centrally Fueled," 391–3–21.06, "Purchase Requirements," 391–3–21.07, "Emission Standards," 391–3–21.08, "Credit Program," 391–3–21.09, "Transportation Control Exemptions," 391–3–21.10, "Requirements for Fuel Providers," 391–3–21–.11, "Enforcement" which became effective on May 22, 1994.

(ii) Other material. None.

[FR Doc. 95–31038 Filed 12–20–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7177

[AK–932–1430–01; A–061697, AA–45553]

Withdrawal of Public Land for the Glacier Loop Administrative Site; Revocation of Secretarial Order dated December 31, 1941; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 22.51 acres of public land from all forms of appropriation under the public land laws, including location and entry under the mining laws, for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Glacier Loop Administrative Site. The land has been and will remain closed to mineral leasing as it is located within an incorporated city (30 U.S.C. 181 (1988)). This order also revokes in its entirety a Secretarial order as it affects 27.06 acres of public land withdrawn for use by the Federal Aviation Administration as Air Navigation Site No. 173. The land is no longer needed for the purpose for which it was withdrawn. The public land that will not be withdrawn for use by the Forest Service will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of the Glacier Loop Administrative Site:

Copper River Meridian

Located within T. 40 S., R. 66 E., described as U. S. Survey No. 3758, Lot 1–3.
The area described contains 22.51 acres.

2. The Secretarial Order dated December 31, 1941, which withdrew public land for Air Navigation Site No. 173, is hereby revoked as it affects the following described land:

Copper River Meridian

Located within T. 40 S., R. 66 E., described as U. S. Survey No. 3758, Lot 1–2 and Lot 1–3.
The area described contains 27.06 acres.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

5. The portion of the area that is not withdrawn for the Forest Service, as described in paragraph 2, will be subject to Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30997 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–JA–P

43 CFR Public Land Order 7178

[CO–935–1430–01; COC–56140]

Withdrawal of National Forest System Land for Aspen Highlands Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,333.34 acres of National Forest System land from mining for 50 years to protect recreational resources and facilities at the Aspen Highlands Ski Area. This land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: December 21, 1996.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for the Forest Service to protect facilities and resources at the Aspen Highlands Ski Area:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 85 W.,
Sec. 15, SE¼SE¼;
Sec. 22, lots 1, 2, 3, 4, and 5, E½SW¼, and SE¼;
Sec. 23, lots 1, 2, 3, 6, 7, 8, and 9;
Sec. 26, lots 3, 4, 5, 10, and 11, SW¼NW¼, and N½SW¼;
Sec. 27;
Sec. 28, E½E½;
Sec. 33, E½ and E½W½;
Sec. 34;
Sec. 35, lot 10, W½NW¼, SE¼NW¼, and SW¼.
T. 11 S., R. 85 W.,
Sec. 2, N½N½NW¼;
Sec. 3, N½N½N½;
Sec. 4, N½N½NE¼ and N½NE¼NW¼.

The area described contains 3,333.34 acres of National Forest System land in Pitkin County.

2. The withdrawal make by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30998 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–JB–P

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Proposed Rules

Federal Register
Vol. 60, No. 245
Thursday, December 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1 and 7

[Docket No. 95–34]

RIN 1557–AB37

Investment Securities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to clarify and update its rules that prescribe the standards under which national banks may purchase, sell, deal in, and underwrite securities. This proposal is part of the OCC's Regulation Review Program, a project designed to review comprehensively, modernize and simplify OCC regulations and reduce unnecessary regulatory burdens. The proposed revisions reorganize the regulation by placing related subjects together, clarify areas where the rules are unclear and confusing, and update various provisions to address market developments and to incorporate significant OCC interpretations, judicial decisions and statutory amendments.

DATES: Comments must be received by February 20, 1996.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–34. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number 202/874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Kay Bondehagen, Special Assistant to the Deputy Chief Counsel (202) 874–5200; Stuart Feldstein, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090; Lee Walzer, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Lisa Lintecum, Director, Fiduciary Activities, (202) 874–5419.

SUPPLEMENTARY INFORMATION:

Background

OCC Regulation Review Program

The OCC is proposing to revise 12 CFR part 1 pursuant to its Regulation Review Program. Pursuant to this Program, the OCC is reviewing all its rules. Rules that are not necessary to protect against unacceptable risks, that do not support equitable access to banking services for all consumers or that are not needed to accomplish other statutory responsibilities of the OCC will be revised or eliminated.

Where risks are meaningful and regulation is appropriate, rules will be examined to determine if they achieve their purpose at the least possible cost. The OCC also recognizes that one source of regulatory cost is the failure of regulations to provide clear guidance because they are difficult to follow and understand. Therefore, an important component of the Regulation Review Program is to revise regulations, where appropriate, to improve clarity and better communicate the standards that the rules are intended to convey.

Investment Securities Limitations

Most of the limitations on the ability of national banks to purchase, sell, deal in, and underwrite securities trace to the Banking Act of 1933, Section 16, Public Law 73–66, 48 Stat. 184 (codified as amended at 12 U.S.C. 24 (Seventh) (1933)). More recently, the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) [1] and the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRI Act) [2] removed quantitative limits on national banks' purchases of certain types of mortgage- and small business-related securities, subject to any regulations prescribed by the OCC.

Although the OCC has revised part 1 a number of times since the early 1960s, the current version still contains many provisions dating from 1963. See 28 FR 9916 (1963). The OCC revised part 1 in 1971, adding the distinctions among "Type I security," "Type II security" and "Type III security." See 36 FR 6737 (1971). Guidelines were added to the part in 1982. See 47 FR 5701 (1982). The OCC revised part 1 again in 1989 principally to reflect amendments to 12 U.S.C. 24 (Seventh) by adding obligations of the African Development Bank and Inter-American Investment Corporation to the description of Type II securities. See 54 FR 1333 (1989). To reduce regulatory burden, the OCC also amended part 1 in 1993 to eliminate a requirement that a national bank maintain certain information for a specified period of time to demonstrate prudence in making determinations and carrying out securities transactions. See 58 FR 27443 (1993). The OCC tended to graft these changes onto the previous regulatory framework, resulting in a sometimes confusing combination of definitions and restrictions.

The OCC did not amend part 1 to reflect the statutory change resulting from the enactment of SMMEA in 1984. Nor have changes been made to the rule to reflect significant judicial decisions and interpretations of the OCC.

Proposal

This proposal modernizes the rules in part 1 and furthers the goals of the OCC's Regulation Review Program. In order to make part 1 more accessible and comprehensive, the proposal restructures many sections of the rule. The proposal also updates the rule to incorporate statutory changes to 12 U.S.C. 24 (Seventh), judicial decisions and long-standing OCC interpretations. The following discussion identifies and explains the significant proposed changes. The OCC requests comments on all aspects of this proposal, and, in addition, requests specific comments on certain changes that are highlighted. The OCC also welcomes any additional comments relevant to this proposal. A table summarizing the areas where changes are proposed is set forth at the end of this preamble.

Authority, purpose, and scope (section 1.1)

The proposal consolidates the current "Scope and application" section (§ 1.2) with the "Authority" section (§ 1.1). The sections are substantially condensed to eliminate redundant and unnecessary language.

The limitations set forth in part 1 apply to national banks, Federal branches of foreign banks, District of

[1] Sec. 105(c), Pub. L. 98–440, Title I, 98 Stat. 1691 (codified as amended at 12 U.S.C. 24 (Seventh) (1984)).

[2] Pub. L. 103–325, 108 Stat. 2160 (1994).

Columbia banks and state banks that are members of the Federal Reserve System.[3] This section further clarifies that foreign branches of national banks may be authorized to conduct additional international activities pursuant to 12 CFR part 211.

Definitions (section 1.2)

The proposal substantially revises the definitions section to add several definitions, updates others, and brings the definitions that currently appear in various places in the regulation into a single section. The following definitions have been added: "investment company," "Type IV security," and "Type V security." The definitions of Type I, II, and III securities also have been substantially revised so that these types of securities are defined by their characteristics, not by the statutory limitations on the extent to which national banks may deal in, underwrite, purchase, or sell them. No substantive change in the authority of a national bank results from these revisions. In addition, as indicated with various individual definitions below, many definitions are revised to clarify their meaning and to incorporate the results of statutory changes, judicial decisions, and established OCC interpretations. Of particular note are the following proposed revisions:

Capital and surplus (section 1.2(a))

The proposal defines "capital and surplus" as Tier 1 and Tier 2 capital includable in risk-based capital under the Minimum Capital Ratios in 12 CFR part 3, plus the balance of a bank's allowance for loan and lease losses that is not included in Tier 2 capital. This is the same standard used in the OCC's recent revisions to its lending limit regulation. See 60 FR 8526 (February 15, 1995). As stated in the Preamble to the new lending limit rule, 60 FR 8528, the OCC's reasons for revising the definition of "capital and surplus" are to reduce the different definitions of capital currently used for various regulatory purposes and to use a well-recognized standard that banks are already required to calculate.

Investment grade (section 1.2(d))

"Investment grade" means that a security is rated in one of the top four rating categories by each nationally recognized statistical rating organization that has rated the security. For example, if two nationally recognized statistical rating organizations rate the security in one of their top four categories, the security would qualify as "investment grade" even if other nationally recognized statistical rating organizations had not rated the security. However, if one of the two organizations rating the security did not rate the security in one of the top four categories, the security would not qualify as "investment grade." Thus, when a security is given different ratings by different nationally recognized rating organizations, the lowest rating governs for purposes of this definition.

Investment security (section 1.2(e))

To be an "investment security" under the proposed definition, a security must be an investment grade marketable debt obligation or, if the security is not rated, it must be the credit equivalent of an investment grade marketable debt obligation. These standards reflect current OCC guidance and practice.

The OCC requests comments on whether the regulation should describe more specifically the characteristics of securities that are the "credit equivalent of investment grade" securities, and, if so, what description would be appropriate.

Commenters also are requested to address whether other securities with characteristics functionally equivalent to a debt obligation might be classified as an "investment security."

Marketable (section 1.2(f))

This proposed definition attempts to rely on more objective standards than the current definition of "marketable." Currently, a marketable security is defined in § 1.5(a) as one that "may be sold with reasonable promptness at a price which corresponds reasonably to its fair value." The proposed definition places more emphasis on indicators of a ready market for a security rather than a prediction of whether the security can be sold quickly at a particular price. As proposed, marketable securities include: (1) Securities registered under the Securities Act of 1933 (the Securities Act), 15 U.S.C. 77a *et seq.*; (2) certain government securities and municipal revenue bonds not required to be registered under the Securities Act; and (3) investment grade securities sold pursuant to SEC Rule 144A, 17 CFR 230.144A.

SEC Rule 144A provides a "safe harbor" exemption from the registration requirements of the Securities Act for resales of privately offered or "restricted" securities to qualified institutional buyers. The rationale for treating securities that qualify under SEC Rule 144A as readily marketable is that they may be sold without the need to prepare and receive SEC clearance of a registration statement used in connection with the sale. There may be a situation, however, based upon the particular security, when the security is not necessarily immediately sellable.

The OCC requests comments regarding whether this definition of "marketable" is sufficiently inclusive, particularly regarding other exemptions under the Securities Act, such as the statutory nonpublic offering exemption, that enable a seller to sell a security promptly at market or fair value, and whether the definition is appropriately inclusive of foreign sovereign debt.

The OCC also welcomes comments regarding alternative definitions of "marketable" that would address the OCC's concerns about liquidity. Commenters may suggest adopting a more general standard, or retaining the current standard whereby a security sold with reasonable promptness for a price that reasonably corresponds to its fair value is marketable. Commenters are asked to address how the OCC might objectively measure such a standard.

Type I security (section 1.2(h))

As in the current rule, the proposal defines a "Type I" security to mean specified government securities. The proposal also incorporates into the definition the key elements of the interpretation now found in § 1.110 regarding securities backed by the full faith and credit of the U.S. Government. The proposed definition is consistent with 12 U.S.C. 24 (Seventh), which does not require that government securities be "marketable" or otherwise qualify as "investment securities."

Type II security (section 1.2(i))

The proposal redefines a "Type II" security to mean an investment security that is issued by certain state, international or multilateral organizations, or that is otherwise listed or described in the statute. The definition differs from the current rule, which describes a Type II security both by the investment limits that apply to it, and by examples of qualifying types of issuers. The proposed definition also includes the statutory requirement that this type of security must qualify as an "investment security," in addition to being issued by a qualifying type of issuer.

Type III security (section 1.2(j))

Part 1 currently defines a "Type III" security to mean a security that "a bank may purchase and sell for its own

[3] State banks that are members of the Federal Reserve System are subject to the same limitations and conditions with respect to the purchasing, selling, underwriting and holding of investment securities and stock applicable to national banks under 12 U.S.C. 24 (Seventh). 12 U.S.C. 335.

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account, subject to a 10 percent limitation, but may neither deal in nor underwrite." § 1.3(e). Instead of defining a Type III security in this manner, the proposal redefines a Type III security as an investment security that does not qualify as a Type I, II, IV, or V security. Examples of Type III securities include corporate bonds and municipal revenue bonds.

Commenters are asked to address whether other examples of Type III securities also should be specifically referenced in the regulation. In particular, commenters are asked to address whether foreign securities that are currently eligible for investment by foreign branches of U.S. banks should be included as Type III securities.

Type IV security (section 1.2(k))

The substance of a "Type IV" security was established, although not named "Type IV," by amendments made to 12 U.S.C. 24 (Seventh) in 1984 by SMMEA and in 1994 by the RCDRI Act. The proposed definition tracks the statutory changes. SMMEA amended 12 U.S.C. 24 (Seventh) to permit national banks to purchase without limitation certain residential and commercial mortgage-related securities offered and sold pursuant to section 4(5) of the Securities Act, 15 U.S.C. 77d(5), or residential mortgage-related securities as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (the Exchange Act), 15 U.S.C. 78c(a)(41). As previously noted, part 1 was never amended to incorporate this 1984 statutory revision. The RCDRI Act defined a new type of small business-related security in section 3(a)(53)(A) of the Exchange Act, 15 U.S.C. 78c(a)(53)(A), and added a class of commercial mortgage-related securities to section 3(a)(41) of the Exchange Act, 15 U.S.C. 78c(a)(41).

The amendments to 12 U.S.C. 24 (Seventh) made by the RCDRI Act removed limitations on purchases by national banks of certain small business-related and commercial mortgage-related securities. The amendments provide the OCC authority to prescribe regulations to ensure that acquisitions of such securities are conducted in a manner consistent with safe and sound banking practices. The OCC has concerns that undue concentration of risk could arise if a bank invested in a security backed by a small number of loans or where one or a small number of loans represented a large percentage of the assets in the pool. This type of concentration of risk is more likely to arise with respect to commercial mortgage- and small business-related securities than with respect to residential mortgage-related securities. For this reason, the proposal requires a Type IV security that is small business- or commercial mortgage-related be fully secured by interests in a pool of homogeneous loans of numerous obligors. The definitions of a Type IV small business-related security and a commercial mortgage-related security also require that the aggregate amount of collateral from loans of any one obligor not exceed 5 percent of the total amount of collateral for the security when the security is issued, in order to assure diversification.

In some instances, such as the prepayment of underlying loans, an issuer or trustee may have the legal right to substitute collateral. If the issuer or trustee has the legal right to substitute collateral, the diversification requirement applies whenever the issuer or trustee substitutes collateral throughout the term of an issue, rather than merely at issuance.

Where the issuer or trustee does not have the legal right to substitute collateral or elects not to exercise the right, the diversification requirement applies only at issuance. If the diversification requirement applied throughout the term of an issue without ongoing substitution of collateral, prepayment of loans in the pool would reduce the number of loans that serve as collateral for the security and, at some point, the aggregate amount of collateral from loans of one obligor could exceed the proposed 5 percent limit and result in a violation of the regulation. Such a result would have the unintended consequence of deterring potential issuers from securitizing existing collateral.

The OCC requests comments on whether the term "homogeneous loans" should be specifically defined. The OCC also welcomes comments on whether the proposed requirement for certain Type IV and all Type V securities, that the aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for that security, or some other standard, would be appropriate to assure adequate diversification of the collateral.

Type V security (Section 1.2(l))

The proposal adds a definition of "Type V security" in order to address separately investment grade securities that represent interests in assets a national bank may invest in directly. The definition reflects the OCC's long-standing interpretations that in addition to the investments specifically described in 12 U.S.C. 24 (Seventh), national banks may hold securitized forms of assets in which they may invest directly.[4] In order to assure the high quality of this type of asset-backed security, however, the definition requires that Type V securities be rated investment grade. The practical effect of the definition is that Type V securities are recognized as high quality indirect interests in assets in which a national bank could invest directly.

A Type V security also must be fully secured by interests in a pool of homogeneous loans to numerous obligors. The definition requires a pool of loans homogeneous as to type of loan, term of loan, or other distinguishing characteristics, in order to facilitate performance projections based on the common features of loans in the pool. As an added safeguard to assure diversification of the collateral supporting the security, the definition requires that the aggregate amount of collateral from loans of any one obligor not exceed 5 percent of the total amount of collateral for the security. Like the similar requirement for Type IV securities, this diversification requirement applies throughout the term of the issue only if the issuer exercises a legal right to substitute collateral.

Commenters are invited to address whether these standards, which also apply to certain Type IV securities, are appropriate.

Limitations on dealing in, underwriting, and purchasing and selling securities (Section 1.3)

The proposal consolidates into one section the provisions regarding limitations on dealing in, underwriting, purchasing, and selling different types of securities. Proposed § 1.3 incorporates portions of current §§ 1.4, "Type I securities; standards for authorized transactions;" 1.5(b), "Judgment based predominantly upon

[4] Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (bonds collateralized by mortgages); Interpretive Letter No. 388 (June 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (mortgage-backed pass-through certificates); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Investment Securities Letter No. 29 (August 3, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,899 (investment limits for asset-backed securities consisting of GMAC receivables); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables); *Security Pacific* v. *Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990) (national bank authority to securitize assets).

reliable estimates;" 1.6, "Type II securities; authority to deal in and underwrite;" and 1.7, "Types II and III securities; limitations on holdings." Current § 1.7(c), "Limitations prescribed in eligibility rulings," has been removed as unnecessary. Current references to "prudent banking judgment" have been changed to "safe and sound banking practices." The latter change is consistent with the OCC's implementation of this requirement and is not intended to change the applicable standard. Most of the limitations on Type I, II, III, and IV securities reflected in this section are derived from 12 U.S.C. 24 (Seventh).

In the proposal, the limitations with respect to Types II, III, and V securities are expressed in terms of "the aggregate par value of the obligations of any one obligor," which is essentially the current approach. The OCC requests comments on whether this is an appropriate measure and, if not, whether alternative measures would be preferable.

Type II and III securities; other investment securities limitations (Section 1.3(d))

As in current § 1.7, the proposal provides that a national bank may not hold Type II and III securities of any one obligor that have a combined aggregate par value exceeding 10 percent of the bank's capital and surplus. However, aggregation is not required with respect to industrial development bonds. Instead, the 10 percent limitation applies separately to each security issue of a single obligor when the proceeds of that issuance are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and the issuance is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases. This provision incorporates the substance of the interpretation that currently appears at 12 CFR 7.7570. The OCC proposes to remove § 7.7570 in conjunction with this change.

Type IV securities (Section 1.3(e))

The new section describing eligible Type IV securities confirms the authority granted to national banks by SMMEA and the RCDRI Act to purchase and sell certain mortgage- and small business-related securities. The section also reflects OCC interpretations concerning the authority of a national bank to deal in obligations that are fully secured by Type I securities, in which national banks may deal.[5] These interpretations reflect the OCC's consistent approach of looking to the substance of an instrument, and not just its form, to determine the activities a bank may conduct in connection with the instrument. In the case of Type IV securities that are fully secured by Type I securities, the ultimate source of repayment is Type I securities. The proposal does not limit the categories of Type IV securities in which banks may deal, provided that the securities are collateralized by Type I securities. Thus, a bank's authority to deal in the securities under this part would be determined with reference to the standards that apply to Type I securities. (The ability of a bank to securitize and sell its loans, including loans that qualify as collateral for Type IV securities, is addressed in § 1.3(g).)

Type V securities (Section 1.3(f))

The proposal establishes a quantitative concentration limitation of 15 percent of a bank's capital and surplus for purchases and sales of Type V securities of any one obligor (or certain related obligors), rather than the 10 percent limit that the OCC currently applies to asset-backed securities that qualify as Type III securities. The OCC believes this approach is appropriate because: (1) The 15 percent standard is the same level used for the basic lending limit threshold; (2) the qualitative standards for a Type V security have been tightened, so that Type V securities are a high quality type of asset-backed security; and (3) under certain circumstances set forth in § 1.4(c), holdings of Type V securities of different issuers will be aggregated for purposes of calculating compliance with the 15 percent limitation. Therefore, the OCC believes an investment limitation of 15 percent of a bank's capital and surplus should not present undue investment or concentration risk.

The OCC solicits comments on whether a higher investment limitation, such as 25 percent of a bank's capital and surplus, would be sufficient to prevent excessive concentration.

Asset securitization (Section 1.3(g))

This new section reflects the OCC's established position that national banks may securitize and sell their loan assets. The ability of banks to sell conventional bank assets through the issuance and sale of certificates evidencing interests in pools of the assets provides flexibility that can enhance banks' safety and soundness.[6] Asset securitization provides an important source of liquidity by allowing banks to convert relatively illiquid assets into instruments with maturities and other features that investors are readily willing to purchase. Another important benefit is the increased credit available, due to the fact that a bank may make more loans with a given level of capital (when the assets are removed from the bank's balance sheet) and may diversify its lending into new markets without incurring undue risk. Also, a bank is less dependent on deposits to fund its loans, improving bank profitability, with positive implications for reducing bank failure rates and minimizing draws on the deposit insurance funds. The treatment described in the proposal reflects the OCC's long-standing treatment of national banks' asset sales activities as affirmed by case law.[7]

[5] See Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218; Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532.

[6] See, e.g., Remarks by Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System before the American Bankers Association (October 8, 1994). See also Statement by Donald G. Coonley, Chief National Bank Examiner, OCC, Asset Securitization and Secondary Markets: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 1st Sess. 2–4 (1991), reprinted in OCC Quarterly Journal (December 1991); and Joint Statement by Richard Spillenkothen, Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, and Donald H. Wilson, Financial Markets Officer, Federal Reserve Bank of Chicago, Secondary Market for Commercial Real Estate Loans: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 2d Sess. 16–19 (1992), reprinted in 78 Fed. Res. Bull. 492 (1992).

[7] See, e.g., Interpretive Letter No. 565 (June 8, 1992), reprinted in [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,460 (securitized motor vehicle retail installment sales contracts purchased from automobile dealers); Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables originated by bank or purchased from others); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Interpretive Letter No. 388 (June 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (sale of mortgage-backed pass-through certificates); No Objection Letter No. 87–9 (December 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038(securitization of commercial loans originated by the bank); Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (sales of bonds collateralized by mortgages). Regarding sales of participations in pools of loans, see Letter from Billy C. Wood, Deputy Comptroller, Multinational Banking (May 29, 1981), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH)

Continued

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Investment company shares (Section 1.3(h))

The proposal permits a national bank to purchase and sell for its own account shares of a registered investment company, subject to two requirements: First, the investment company's portfolio must be comprised entirely of assets in which the bank could invest directly. Second, the amount of the bank's investment in shares of any one investment company is subject to the most stringent investment limitations applicable to the underlying securities and loans that comprise that investment company's portfolio. This provision incorporates OCC interpretations concerning the authority of a national bank to hold instruments representing indirect interests in assets that the bank could invest in directly. See Banking Circular 220 (November 21, 1986); An Examiner's Guide to Investment Products and Practices at 23 (December 1992).[8]

[8] The OCC seeks comments on whether the definition of "investment company" should be revised to include limited partnerships with fewer than 100 investors, i.e., a partnership that would not qualify as an investment company within the meaning of section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1), provided that the partnerships' portfolios consist solely of Type I securities that the bank may purchase and sell for its own account.

Securities held based on estimates of obligor's performance (Section 1.3(i))

Notwithstanding the general definition of an investment security (§ 1.2(e)), the proposal retains the flexibility contained in the current rule, for a bank to treat certain debt securities as investment securities when the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to meet its obligations under that security. The bank may not hold securities classified as investment securities solely in reliance on projections of an obligor's future performance that in the aggregate exceed 5 percent of the bank's capital and surplus. The bank must also believe that the security may be sold with reasonable promptness at a price which corresponds reasonably to its fair value. This approach is modeled upon the OCC's current rule, which allows banks an additional degree of flexibility to determine the quality of debt obligations, for a limited portion of the bank's investment portfolio. The OCC notes that securities representing interests in loans made for community development purposes are one type of security that could, depending upon their characteristics, be eligible for investment by national banks under this standard.

The OCC requests comments as to whether it should provide further clarification of the standards applicable to securities held based on estimates of obligor's performance and, if so, in what respects clarification is needed.

Calculation of limits (Section1.4)

Proposed § 1.4 is new. Paragraphs (a) and (b), relating to the calculation date and authority to require more frequent calculations, are modeled on provisions contained in the OCC's new lending limit regulation. As explained in connection with the lending limit rule, the provision reduces regulatory burden by allowing banks to rely on information they already collect for their Call Reports to calculate compliance with their lending limits. The same reasoning applies to calculating limits of banks' securities holdings, and the proposal achieves a consistent approach in those two areas.

Calculation of Type III and Type V securities holdings (Section 1.4(c))

This proposed paragraph is a new approach to investment securities limitations designed to address situations where a bank's investments in securities of different issuers present similar sources of risk, and, therefore, warrant aggregation. In calculating the amount of its investment in Type III or Type V securities, the proposal requires a bank to combine obligations of issuers that are related directly or indirectly through common control and securities that are credit-enhanced by the same entity. These aggregation rules, which result in a bank being treated as if it has a greater investment in the securities of one obligor than would otherwise be the case, apply separately to Type III and Type V securities held by a bank. Current OCC policies already apply comparable standards for aggregation of Type III securities. As applied to Type V securities, the aggregation rules provide important safeguards in connection with the 15 percent limit provided for investments in Type V securities. Thus, banks are given more investment flexibility with Type V securities, but the increased investment authority is subject to explicit safeguards to address risk concentrations.

Comment is invited regarding other bases upon which a bank should combine its holdings when calculating its investment in Type III or Type V securities of any one obligor. Specifically, the OCC seeks comments as to whether a bank should combine obligations that are predominately collateralized by loans made by the same originator or by originators that are related directly or indirectly through common control. In addition, commenters are asked to address whether and under what circumstances an issuer or affiliate of the issuer would provide a guarantee or other form of credit enhancement for Type V securities that could be a source of credit exposure of the investing bank to the issuer or its affiliate. Comment is also invited on whether the 15 percent investment limitation or a lower limitation is appropriate under these circumstances.

The OCC is not at this time proposing to apply an aggregate limit to a bank's combined holdings of Type III and Type V securities, but requests commenters to address whether some form of an aggregate limitation should apply to a bank's exposure to a single obligor, regardless of the type of the obligation. For example, under the proposal, a bank could invest in Type V securities of any one obligor in an amount not exceeding 15 percent of the bank's capital and surplus, and Type III securities of the same obligor in an amount not exceeding 10 percent of the bank's capital and surplus. In addition, under the lending limit rules, the bank could also make loans to the same obligor in an amount up to 15 percent—or 25 percent depending upon the collateral—of the bank's capital and surplus. Of course, the OCC retains the ability to take action in connection with concentrations inconsistent with safe and sound banking practices.

¶ 85,275; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (February 1, 1980), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,213; Letter from John M. Miller, Deputy Chief Counsel (July 31, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,182; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (April 20, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,167; Letter from H. Joe Selby, Deputy Comptroller for Operations (October 17, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,144; Letter from John G. Heimann, Comptroller of the Currency (May 18, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,116; Letter from Charles B. Hall, Deputy Comptroller for Banking Operations (February 14, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,100; Letter from Robert Bloom, Acting Comptroller of the Currency (March 30, 1977), reprinted in [1973–78 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 97,093. Regarding national bank authority to securitize assets, see Security Pacific v. Clarke, 885 F.2d 1034 (2d Cir. 1989), cert. denied, 493 U.S. 1070 (1990).

[9] The Federal Reserve Board has adopted a similar interpretation relating to state member banks' investments in mutual funds that invest only in eligible securities. See 12 CFR 208.124.

Calculation of investment company holdings (section 1.4(d))

In calculating the amount of its investment in investment company shares under this proposal, a bank must use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolios of each investment company with the bank's direct holdings of securities of that issuer.

Safe and sound banking practices; credit information required (Section 1.5)

The requirement of "prudent banking judgment" in current § 1.8 is moved to § 1.5 and changed to require banks to adhere to "safe and sound banking practices," in addition to any specific requirements of part 1. The OCC will continue its supervision of national bank investment securities activities, including those activities covered by the changes to part 1, to ensure that these investments are effected in a safe and sound manner. In recognition of the different types of risks that may affect the quality of a security, the proposal reflects the OCC position that safe and sound banking practices entail appropriate consideration of the market, interest rate, liquidity, legal, and operations and systems risks, as well as credit risk, posed by certain types of securities investments.[9] These standards are made clearly applicable to all types of permissible securities activities and holdings described in § 1.3. This change also makes the language of part 1 consistent with the authority of a federal banking agency to institute a cease-and-desist proceeding against an insured depository institution that has engaged or is about to engage in an "unsafe and unsound practice." 12 U.S.C. 1818(b). The "unsafe and unsound practice" standard is well recognized by the courts. See, *e.g., Northwest National Bank, Fayetteville, Arkansas* v. *U.S. Department of the Treasury, Office of the Comptroller of the Currency*, 917 F.2d 1111 (8th Cir. 1990); *Gulf Federal Savings and Loan* v. *Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir.. 1981), *cert. denied*, 458 U.S. 1121 (1982); *Groos National Bank* v. *Comptroller of the Currency*, 573 F.2d 889 (5th Cir. 1978). The proposed section also gives banks additional flexibility in maintenance of records for examination purposes.

Convertible securities (section 1.6)

Proposed § 1.6 revises current § 1.9 to clarify the restrictions on investment in certain convertible securities and how banks must account for securities that are convertible into stock or have stock purchase warrants attached.

Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose (section 1.7)

Proposed § 1.7 contains new information in paragraphs (b) "holding period," (c) "accounting treatment," and (d) "non-speculative purpose," which embody standards consistent with OCC's Other Real Estate Owned regulation, see 58 FR 46529 (September 2, 1993), and the OCC's related interpretation, see Interpretive Letter No. 604 (October 8, 1992). A national bank holding securities in satisfaction of debts previously contracted may do so for a period of five years from the date that ownership of the securities was originally transferred to the bank, plus an additional five years, if permitted by the OCC.

Nonconforming investments (section 1.8)

This new section clarifies that a bank does not violate an applicable investment limitation when an investment in securities that was legal when made becomes nonconforming as a result of any of certain enumerated events, provided the bank exercises reasonable efforts to bring the investment into conformity with applicable limitations. The events included in the regulation are: A decline in the bank's capital; a merger of obligors, issuers, or credit-enhancers; issuers becoming related directly or indirectly related through common control; deterioration in the quality of a security so that the security is no longer an investment security; the substitution of collateral by an issuer or trustee that causes a Type IV or Type V security no longer to conform to the diversification requirements of §§ 1.2(k)(1) and (2) and 1.2(l); a change in the investment securities limitations rules; or other events identified by the OCC. This approach to nonconforming holdings is based upon the approach contained in the OCC's new lending limit regulation.

Commenters are specifically asked to address whether: (1) The phrase "reasonable efforts" needs additional clarification, and if so, how it might be defined or should be documented for the purposes of this section; (2) the OCC should require a bank to make "reasonable efforts" to bring into conformity an investment where the quality of a security deteriorates so that the security is no longer an investment security; and (3) any other events should be added to the list of circumstances that may cause an investment in securities to become nonconforming.

Amortization of premiums (current section 1.10)

Current § 1.10 is removed. The OCC believes the section is no longer necessary because generally accepted accounting principles (GAAP) appropriately govern the treatment of premiums. GAAP requires that a bank defer recognition of a premium paid for an investment security and amortize the premium over the period to maturity of the security. In contrast, current § 1.10 permits a bank to charge off the entire premium at the time of purchase or to amortize the premium in any manner the bank considers appropriate as long as the premium is extinguished entirely at or before the maturity of the security.

Interpretations

Indirect general obligations (section 1.100)

Proposed § 1.100 is derived from current § 1.120, but clarifies and shortens the text. Current paragraphs (f) "Tax anticipation notes," and (g) "Bond anticipation notes" of § 1.120 are removed as unnecessary.

Eligibility of securities for purchase, dealing in, and underwriting by national banks; general guidelines (current section 1.100)

The proposal removes current § 1.100, which contains introductory and explanatory comments that the OCC believes are unnecessary in light of other proposed changes to part 1.

Taxing powers of a State or a political subdivision (section 1.110)

Section 1.110 is a shortened version of current § 1.130, with portions removed that are no longer necessary. New text is added to provide standards for determining when obligations that are expressly or implicitly dependent upon voter or legislative authorization of appropriations are considered supported by the full faith and credit of a State or political subdivision.

Prerefunded or escrowed bonds and obligations secured by Type I securities (section 1.120)

Proposed § 1.120 is derived from current § 1.120(e).

Type II securities; guidelines for obligations issued for university and housing purposes (section 1.130)

Proposed § 1.130 is a streamlined version of current § 1.140, and also clarifies the types of issuers whose

[9] See OCC Banking Circular 277, reprinted in 5 Fed. Banking L. Rep. (CCH) ¶ 58,717 (October 27, 1993).

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obligations qualify as Type II securities. Current § 1.140(c)(1) and portions of (c)(2) have been removed. See Proposed § 1.130(c).

The OCC welcomes comments on any aspect of the proposed regulation, particularly, those issues specifically noted in this preamble.

DERIVATION TABLE

[Only Substantive Modifications, Additions and Changes are Indicated]

Revised provision	Original provision	Comments
§ 1.1	§§ 1.1, 1.2	Modified.
§ 1.2(a)		Added.
§ 1.2(b)	§ 1.3(g)	Modified.
§ 1.2(c)		Added.
§ 1.2(d)		Added.
§ 1.2(e)	§ 1.3(b)	Modified.
§ 1.2(f)	§ 1.5(a)	Significant change.
§ 1.2(g)	§ 1.3(f)	
§ 1.2(h)	§§ 1.3(c), 1.110	Modified.
§ 1.2(i)	1.3(d)	Modified.
§ 1.2(j)	§ 1.3(e)	Modified.
§ 1.2(k)		Added.
§ 1.2(l)		Added.
	§ 1.3(a)	Removed.
§ 1.3(a)	§ 1.4	Modified.
§ 1.3(b)	§§ 1.3(d), 1.6, 1.7(a)	Modified.
§ 1.3(c)	§§ 1.3(e), 1.7(a)	Modified.
§ 1.3(d)	§ 1.7(a), 12 CFR 7.7570	Modified.
§ 1.3(e)		Added.
§ 1.3(f)		Added.
§ 1.3(g)		Added.
§ 1.3(h)		Added.
§ 1.3(i)	§§ 1.5(b), 1.7(b)	Modified.
§ 1.4		Added.
§ 1.5	§ 1.8	Significant change.
§ 1.6	§ 1.9	Modified.
§ 1.7(a)	§ 1.11	
§ 1.7(b)		Added.
	§ 1.7(c)	Removed.
	§ 1.7(d)	Added.
§ 1.7(c)		Added.
§ 1.8		Added.
	§ 1.10	Removed.
	§ 1.100	Removed.
§ 1.100(a)	§ 1.120	
§ 1.100(b)(1)	§ 1.120(a)	
§ 1.100(b)(2)	§ 1.120(b)	
§ 1.100(b)(3)	§ 1.120(c)	
§ 1.100(b)(4)	§ 1.120(d)	
§ 1.110	§ 1.130	Modified.
	§ 1.120(f)	Removed.
	§ 1.120(g)	Removed.
§ 1.120	§ 1.120(e)	
§ 1.130(a)	§ 1.140(a)	Modified.
§ 1.130(b)	§ 1.140(b)	
§ 1.130(c)	§ 1.140(c)	Modified.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Paperwork Reduction Act of 1995

The OCC invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of OCC functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 1.6 and 1.7. This information is required to evidence compliance with statutory limitations on the quantity and type of investments by national banks. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 3,000.

Estimated total annual reporting and recordkeeping burden: 6,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for life of the investment.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden and increasing the discretion of national banks regarding their sound investment activities.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 1 is revised to read as follows:

PART 1—INVESTMENT SECURITIES REGULATION

Sec.

1.1 Authority, purpose, and scope.
1.2 Definitions.
1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.
1.4 Calculation of limits.
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1.120 Prerefunded or escrowed bonds and obligations secured by Type I securities.
1.130 Type II securities; guidelines for obligations issued for university and housing purposes.

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

§ 1.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

(b) *Purpose.* This part prescribes standards under which national banks may purchase, sell, deal in, underwrite, and hold securities, consistent with the authority contained in 12 U.S.C. 24 (Seventh) and safe and sound banking practices.

(c) *Scope.* The standards set forth in this part apply to national banks, District of Columbia banks, and federal branches of foreign banks. Further, pursuant to 12 U.S.C. 335, State banks that are members of the Federal Reserve System are subject to the same limitations and conditions that apply to national banks in connection with purchasing, selling, dealing in, and underwriting securities and stock. In addition to activities authorized under this part, foreign branches of national banks also may be authorized to conduct international activities pursuant to part 211 of this title.

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the OCC's Minimum Capital Ratios in Appendix A to part 3 of this chapter based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under 12 CFR part 3, based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) *General obligation of a State or political subdivision means:*

(1) An obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(c) *Investment company* means an investment company, including a mutual fund, registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8.

(d) *Investment grade* means a security rated investment grade (in one of the top four rating categories) by each nationally recognized statistical rating organization that has rated the security.

(e) *Investment security* means a marketable debt obligation that is not predominantly speculative in nature. A security is not predominantly speculative in nature if it is rated investment grade. When a security is not rated, the security must be the credit equivalent of securities rated investment grade.

(f) *Marketable* means that the security is:

(1) Registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*;

(2) Exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c, and authorized under 12 U.S.C. 24 (Seventh) as eligible for investment without limitation by a national bank, such as a security issued or guaranteed by:

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(i) The United States or a territory thereof;
(ii) The District of Columbia;
(iii) A State of the United States;
(iv) A political subdivision of a State or territory;
(v) A public instrumentality of one or more States or territories; or
(vi) A person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States;
(3) A municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2); or
(4) Offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and rated investment grade.

(g) *Political subdivision* means a county, city, town, or other municipal corporation, a public authority, and generally any publicly-owned entity that is an instrumentality of a State or of a municipal corporation.

(h) *Type I security* means:
(1) Obligations of the United States;
(2) Obligations issued, insured, or guaranteed by a department or an agency of the United States Government, if the obligation, insurance or guarantee commits the full faith and credit of the United States for the repayment of the obligation;
(3) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a State of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of non-payment by the third party obligor(s);
(4) General obligations of a State of the United States or any political subdivision;
(5) Obligations authorized under 12 U.S.C. 24 (Seventh) as permissible for a national bank to deal in, underwrite, purchase, and sell for the bank's own account; and
(6) Other securities the OCC deems eligible as Type I securities in accordance with 12 U.S.C. 24 (Seventh).

(i) *Type II security* means an investment security that represents:
(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes;
(2) Obligations of international and multilateral development banks and organizations listed in 12 U.S.C. 24 (Seventh);
(3) Other obligations listed in 12 U.S.C. 24 (Seventh) as permissible for a bank to deal in, underwrite, purchase, and sell for the bank's own account, subject to a limitation of 10 percent of the bank's capital and surplus; and
(4) Other securities the OCC deems eligible as Type II securities in accordance with 12 U.S.C. 24 (Seventh).

(j) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security, such as corporate bonds and municipal revenue bonds.

(k) *Type IV security* means:
(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is fully secured by interests in a pool of homogeneous loans to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security;
(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or a commercial mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of homogeneous loans to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security.
(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or a residential mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)), and that does not otherwise qualify as a Type I security.

(l) *Type V security* means a security that:
(1) Is rated investment grade;
(2) Is not a Type IV security; and
(3) Is fully secured by interests in a pool of homogeneous loans (that a national bank could invest in directly) to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security.

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

(a) *Type I securities.* A national bank may deal in, underwrite, purchase, and sell Type I securities for its own account. The amount of Type I securities that the bank may deal in, underwrite, purchase, and sell is not limited to a specified percentage of the bank's capital and surplus.

(b) *Type II securities.* A national bank may deal in, underwrite, purchase, and sell Type II securities for its own account, provided the aggregate par value of the obligations of any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. This limitation applies to obligations that the bank is legally committed to purchase and sell in addition to existing holdings.

(c) *Type III securities.* A national bank may purchase and sell Type III securities for its own account, provided the aggregate par value of the obligations of any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. This limitation applies to obligations that the bank is legally committed to purchase and sell in addition to existing holdings.

(d) *Type II and III securities; other investment securities limitations.* A national bank may not hold Type II and III securities of any one obligor with an aggregate par value exceeding 10 percent of the bank's capital and surplus. However, if the proceeds of each issue are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and if each issue is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases, the bank may apply the 10 percent investment limitation separately to each security issue of a single issuer of such securities.

(e) *Type IV securities.* A national bank may purchase and sell Type IV securities for its own account. The amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus. A national bank also may deal in Type IV securities that are fully secured by Type I securities.

(f) *Type V securities.* A national bank may purchase and sell Type V securities for its own account provided the aggregate par value of the obligations of any one obligor does not exceed 15 percent of the bank's capital and surplus. This limitation includes obligations the bank is legally committed to purchase and sell in addition to existing holdings.

(g) *Asset securitization.* A national bank may securitize and sell its loan assets as a part of its banking business. The amount of securitized loans that a bank may sell is not limited to a specified percentage of the bank's capital and surplus.

(h) *Investment company shares.* A national bank may purchase and sell for its own account investment company shares, provided that the portfolio of the investment company consists wholly of securities and loans that the national bank may purchase and sell for its own account under this part, subject to the most stringent investment and/or lending limitation that would apply to the underlying securities or loans that comprise such company's portfolio.

(i) *Securities held based on estimates of obligor's performance.* (1) Notwithstanding § 1.2(e) of this part, a national bank may treat a debt security as an investment security for purposes of this part if the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to satisfy its obligations under that security, and the bank believes that the security may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.
(2) The aggregate value of securities treated as investment securities under paragraph (i)(1) of this section may not exceed 5 percent of the bank's capital and surplus.

§ 1.4 Calculation of limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 24 (Seventh) and this part, a bank's limitations shall be determined as of the most recent of the following dates:
(1) The date on which the bank's Consolidated Report of Condition and Income is properly signed and submitted;
(2) The date on which the bank's Consolidated Report of Condition and Income is required to be submitted; or
(3) When there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

(b) *Authority of OCC to require more frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its investment limits more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its investment limitations at a more frequent interval. The bank shall thereafter calculate its investment limits at that interval until further notice.

(c) *Calculation of Type III and Type V securities holdings.* In calculating the amount of its investment in Type III or Type V securities of any one obligor, a bank shall combine:
(1) Obligations of issuers that are related directly or indirectly through common control; and
(2) Securities that are credit-enhanced by the same entity.

(d) *Calculation of investment company holdings.* In calculating the amount of its investment in investment company shares under this part, a bank shall use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolios of each investment company with the bank's direct holdings of securities of that issuer.

§ 1.5 Safe and sound banking practices; credit information required.

(a) A national bank shall adhere to safe and sound banking practices and the specific requirements of this part in conducting the activities described in § 1.3. This includes appropriate consideration of the market, interest rate, credit, liquidity, legal, and operations and systems risks presented by a proposed activity. The bank's particular activities must be appropriate for that bank.

(b) In conducting these activities, the bank shall determine that there is adequate evidence that an obligor possesses resources sufficient to provide for all required payments on its obligations, or, in the case of securities deemed to be investment securities on the basis of reliable estimates of an obligor's performance, that the bank reasonably believes that the obligor will be able to satisfy the obligation.

(c) Each bank shall maintain records available for examination purposes adequate to demonstrate that it meets the requirements of this section. The bank may store the information in any manner that can be readily retrieved and reproduced in a readable form.

§ 1.6 Convertible securities.

(a) When a national bank purchases an investment security convertible into stock, or with a stock purchase warrant attached, the bank shall write down the carrying value of the security to an amount that represents the value of the security considered independently of the conversion feature or attached stock purchase warrant.

(b) A national bank may not purchase securities convertible into stock at the option of the issuer.

§ 1.7 Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose.

(a) *Securities held in satisfaction of debts previously contracted.* The restrictions and limitations of this part, other than those set forth in paragraphs (b),(c), and (d) of this section, do not apply to securities acquired:
(1) Through foreclosure on collateral;
(2) In good faith by way of compromise of a doubtful claim; or
(3) To avoid loss in connection with a debt previously contracted.

(b) *Holding period.* A national bank holding securities pursuant to paragraph (a) of this section may do so for a period not to exceed five years from the date that ownership of the securities was originally transferred to the bank. The OCC may extend the holding period for up to an additional five years.

(c) *Accounting treatment.* A bank shall mark-to-market securities held pursuant to paragraph (a) of this section.

(d) *Non-speculative purpose.* A bank may not hold securities pursuant to paragraph (a) of this section for speculative purposes.

§ 1.8 Nonconforming investments.

(a) An investment in securities, which conforms to this part when made, will not be deemed a violation, but will be treated as nonconforming if the investment no longer conforms to this part because;
(1) The bank's capital declines;
(2) Issuers, obligors, or credit-enhancers merge;
(3) Issuers become related directly or indirectly through common control;
(4) The investment securities rules change;
(5) The security no longer qualifies as an investment security;
(6) The substitution of collateral by an issuer or trustee causes a Type IV or Type V security no longer to conform to the diversification requirements of §§ 1.2(k)(1) and (2) and 1.2(l)(3); or
(7) Other events identified by the OCC occur;

(b) A bank shall exercise reasonable efforts to bring an investment that is nonconforming as a result of events described in paragraph (a) of this section into conformity with this part unless to do so would be inconsistent with safe and sound banking practices.

Interpretations

§ 1.100 Indirect general obligations.

(a) *Obligation issued by an obligor not possessing general powers of taxation.* Pursuant to § 1.2(c) of this part, an obligation issued by an obligor not possessing general powers of taxation qualifies as a general obligation of a State or political subdivision for the purposes of 12 U.S.C. 24 (Seventh), if a party possessing general powers of taxation unconditionally promises to make sufficient funds available for all required payments in connection with the obligation.

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(b) *Indirect commitment of full faith and credit.* The indirect commitment of the full faith and credit of a State or political subdivision (that possesses general powers of taxation) in support of an obligation may be demonstrated by any of the following methods, alone or in combination, when the State or political subdivision pledges its full faith and credit in support of the obligation.

(1) *Lease/rental agreement.* The lease agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise to pay rentals that, together with any other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. These lease/rental agreements may, for instance, provide support for obligations financing the acquisition or operation of public projects in the areas of education, medical care, transportation, recreation, public buildings, and facilities.

(2) *Service/purchase agreement.* The agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise in the agreement to make payments for services or resources provided through or by the issuer of the obligation. These payments, together with any other available funds, must be sufficient for the timely payment of interest on, and principal of, the obligation. An agreement to purchase municipal sewer, water, waste disposal, or electric services may, for instance, provide support for obligations financing the construction or acquisition of facilities supplying those services.

(3) *Refillable debt service reserve fund.* The reserve fund must at least equal the amount necessary to meet the annual payment of interest on, and principal of, the obligation as required by the applicable law. The maintenance of a refillable reserve fund may be provided, for instance, by statutory direction for an appropriation, or by statutory automatic apportionment and payment from the State funds of amounts necessary to restore the fund to the required level.

(4) *Other grants or support.* A statutory provision or agreement must unconditionally commit the State or the political subdivision to provide funds which, together with other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. Those funds may, for instance, be supplied in the form of annual grants or may be advanced whenever the other available revenues are not sufficient for the payment of principal and interest.

§ 1.110 Taxing powers of a State or political subdivision.

(a) An obligation is considered supported by the full faith and credit of a State or political subdivision possessing general powers of taxation when the promise or other commitment of the State or the political subdivision will produce funds, which (together with any other funds available for the purpose) will be sufficient to provide for all required payments on the obligation. In order to evaluate whether a commitment of a State or political subdivision is likely to generate sufficient funds, a bank shall consider the impact of any possible limitations regarding the State's or political subdivision's taxing powers, as well as the availability of funds in view of the projected revenues and expenditures. Quantitative restrictions on the general powers of taxation of the State or political subdivision do not necessarily mean that an obligation is not supported by the full faith and credit of the State or political subdivision. In such case, the bank shall determine the eligibility of obligations by reviewing, on a case-by-case basis, whether tax revenues available under the limited taxing powers are sufficient for the full and timely payment of interest on, and principal of, the obligation. The bank shall use current and reasonable financial projections in calculating the availability of the revenues. An obligation expressly or implicitly dependent upon voter or legislative authorization of appropriations may be considered supported by the full faith and credit of a State or political subdivision if the bank determines, on the basis of past actions by the voters or legislative body in similar situations involving similar types of projects, that it is reasonably probable that the obligor will obtain all necessary appropriations.

(b) An obligation supported exclusively by excise taxes or license fees is not a general obligation for the purposes of 12 U.S.C. 24 (Seventh). Nevertheless, an obligation that is primarily payable from a fund consisting of excise taxes or other pledged revenues qualifies as a "general obligation," if, in the event of a deficiency of those revenues, the obligation is also supported by the general revenues of a State or a political subdivision possessing general powers of taxation.

§ 1.120 Prerefunded or escrowed bonds and obligations secured by Type I securities.

(a) An obligation qualifies as a Type I security if it is secured by an escrow fund consisting of obligations of the United States or general obligations of a State or a political subdivision, and the escrowed obligations produce interest earnings sufficient for the full and timely payment of interest on, and principal of, the obligation.

(b) If the interest earnings from the escrowed Type I securities alone are not sufficient to guarantee the full repayment of an obligation, a promise of a State or a political subdivision possessing general powers of taxation to maintain a reserve fund for the timely payment of interest on, and principal of, the obligation may further support a guarantee of the full repayment of an obligation.

(c) An obligation issued to refund an indirect general obligation may be supported in a number of ways that, in combination, are sufficient at all times to support the obligation with the full faith and credit of the United States or a State or a political subdivision possessing general powers of taxation. During the period following its issuance, the proceeds of the refunding obligation may be invested in U.S. obligations or municipal general obligations that will produce sufficient interest income for payment of principal and interest. Upon the retirement of the outstanding indirect general obligation bonds, the same indirect commitment, such as a lease agreement or a reserve fund, that supported the prior issue, may support the refunding obligation.

§ 1.130 Type II securities; guidelines for obligations issued for university and housing purposes.

(a) *Investment quality.* An obligation issued for housing, university, or dormitory purposes is a Type II security only if it:

(1) Qualifies as an investment security, as defined in § 1.2(e); and

(2) Is issued for the appropriate purpose and by a qualifying issuer.

(b) *Obligation issued for university purposes.* (1) An obligation issued by a State or political subdivision or agency of a State or political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions, qualifies as a Type II security. Facilities financed in this manner may include student buildings, classrooms, university utility buildings, cafeterias, stadiums, and university parking lots.

(2) An obligation that finances the construction or improvement of facilities used by a hospital may be eligible as a Type II security, if the hospital is a department or a division of a university, or otherwise provides a nexus with university purposes, such as an affiliation agreement between the university and the hospital, faculty positions of the hospital staff, and training of medical students, interns, residents, and nurses (*e.g.*, a "teaching hospital").

(c) *Obligation issued for housing purposes.* An obligation issued for housing purposes may qualify as a Type II security if the security otherwise meets the criteria for a Type II security.

PART 7—INTERPRETIVE RULINGS

3. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.7570 [Removed]

4. Section 7.7570 is removed.

Dated: December 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30969 Filed 12–20–95; 8:45 am]

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12 CFR Parts 9 and 19

[Docket No. 95–32]

RIN 1557–AB12

Fiduciary Activities of National Banks; Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules that govern the fiduciary activities of national banks. The OCC also proposes to relocate provisions concerning disciplinary sanctions imposed by clearing agencies to its rules of practice and procedure. This proposal is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

DATES: Comments must be received by February 20, 1996.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–32. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Donald N. Lamson, Assistant Director, Securities and Corporate Practices Division, (202) 874–5210; Lisa Lintecum, Director, Fiduciary Activities, (202) 874–5419; Dean Miller, Special Advisor, Fiduciary Activities, (202) 874–4852; Aida M. Plaza, Director for Compliance, Multinational Banking, (202) 874–4610.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise 12 CFR part 9, which governs the fiduciary activities of national banks, as a component of its Regulation Review Program. One goal of the Regulation Review Program is to review all of the OCC's rules with a view toward eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities, including the oversight of national banks' fiduciary activities. Another goal of the Program is to improve clarity of the OCC's regulations.

This rulemaking is the OCC's first comprehensive revision of the rule since 1963.[1] Much about national banks' fiduciary business has changed since that time, including the nature and scope of the fiduciary services that banks offer and the structures and operational methods that banks use to deliver those services. The OCC's particular goal in revising part 9 is to accommodate those changes by lifting unnecessary regulatory burden and facilitating the continued development of national banks' fiduciary business consistent with safe and sound banking practices and national banks' fiduciary obligations. Three principal themes have emerged from the OCC's review of part 9.

First, bank organizational structures, particularly with respect to the geographic structure of banking organizations, have changed significantly since Congress created the basic framework for national banks' fiduciary operations. These changes strongly suggest that part 9 should be adjusted so that its requirements are more workable for both large, multistate fiduciary banking organizations and small banks that conduct fiduciary activities primarily on a local basis.

Second, national banks' fiduciary activities, in many respects, are subject to state law. In some cases, however, the OCC has the flexibility either to prescribe a uniform Federal standard or to direct national banks to follow state law.

Third, over the years, part 9 has been applied to a wide variety of investment advisory activities and related services, not all of which involve the bank's exercise of investment discretion. In some cases, banks engaged in these activities are subject to different standards than other types of entities that conduct the same type of business, raising the question of whether the OCC should narrow the range of investment advisory activities to which part 9 applies.

These three themes form the basis for requests for comment on specific provisions and issues described in detail in the remainder of this preamble discussion.

More generally, the proposal revises part 9 in its entirety. The proposal updates, clarifies, and streamlines part 9, incorporates significant interpretive positions, and eliminates unnecessary regulatory burden wherever possible to promote more efficient operation and supervision of national banks' fiduciary activities. The proposal adds headings for ease of reference, but, for the most part, retains the numbering system used in the current regulation. Commenters are invited to address all aspects of the proposal, including recommending further improvements to its organization, structure, and content.

Section-by-Section Description of the Proposal

Authority, Purpose, and Scope (Proposed § 9.1)

The proposal adds a new provision that explicitly sets forth the statutory authority for, and the purpose and scope of, part 9. In addition to standards found in part 9, the OCC provides guidance (including policies, procedures, precedents, circulars, and bulletins) regarding the fiduciary activities of national banks in the "Comptroller's Handbook for Fiduciary Activities." The OCC currently is revising the guidance contained in the "Comptroller's Handbook for Fiduciary Activities." The OCC anticipates that the revised fiduciary guidance will consist of a

[1] National banks have been authorized to exercise fiduciary powers since 1913. In 1962, the responsibility for the oversight of their fiduciary activities was transferred from the Board of Governors of the Federal Reserve System to the OCC. See 12 U.S.C. 92a. Following the transfer of oversight responsibilities, the OCC promulgated 12 CFR part 9 in 1962 (27 FR 9764), and revised it soon thereafter in 1963 (28 FR 3309).

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series of booklets in a comprehensive "Comptroller's Handbook," which will replace the "Comptroller's Handbook for Fiduciary Activities" and other OCC guidance currently found in separate publications.

Definitions (Proposed § 9.2)

The proposal moves the definitions currently found at § 9.1 to proposed § 9.2. Some definitions are removed, and others are added. Significant changes are noted below.

Affiliate (Proposed § 9.2(a))

The proposal adds a definition of "affiliate" to part 9. This definition cross-references the definition in the Federal Reserve Act at 12 U.S.C. 221a(b), which is consistent with the way the OCC defines the term "affiliate" in a number of its other regulations.

Applicable Law (Proposed § 9.2(b))

The current regulation uses the term "local law," as defined at § 9.1(g), to refer to the laws of the state or other jurisdiction governing a fiduciary relationship. The proposal replaces "local law" with "applicable law" in order to streamline some of the operative provisions of part 9 and to make clear that the bodies of authority that govern a national bank's fiduciary relationships include Federal law (including regulations), state law governing a national bank's fiduciary relationships (that is, fiduciary duties and responsibilities) the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship. The Federal law relevant to a national bank's fiduciary activities includes, for example, provisions of the Federal banking laws (12 U.S.C. 1 *et seq.*), the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), and the rules issued pursuant to those acts. The OCC does not intend the term "applicable law" to incorporate any state law or other body of authority that would not otherwise apply to a national bank's fiduciary relationships. The OCC invites comment on the adequacy of this definition.

Fiduciary Capacity (Proposed § 9.2(e))

Under the current regulation, the term "fiduciary," defined at § 9.1(b), includes "a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking" and goes on to list the "traditional" fiduciary capacities enumerated by 12 U.S.C. 92a: Trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates of lunatics. The proposed definition of "fiduciary capacity" retains the current regulation's list of traditional fiduciary capacities with minor modification. For example, the phrase "committee of estates of lunatics" is removed because it is outdated and because the definition of the term "guardian" is broad enough to encompass that capacity. The proposed definition also clarifies that acting as registrar of stocks and bonds includes acting as transfer agent.

The current regulation's definition of "fiduciary" also includes fiduciary capacities that are not listed in the fiduciary powers statute. These capacities include "managing agent" and, as a catch-all category, "any other similar capacity."

The proposal attempts to establish a clearer and more objective boundary for the coverage of part 9 while retaining the traditional concept that acting on another's behalf is at the heart of serving in a fiduciary capacity. Under the proposal, the term "fiduciary capacity" includes, in addition to the statutory fiduciary capacities, "any capacity involving investment discretion on behalf of another" and "any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a."[2] The proposal uses investment discretion as the factor that distinguishes fiduciary from non-fiduciary investment advisory activities. Thus, under the proposal, part 9 applies to (and, accordingly, requires a national bank to obtain fiduciary powers for) any investment advisory activity in which the bank manages the assets of another. Conversely, a national bank is not subject to part 9 with respect to an activity in which the bank does not have investment discretion, unless, of course, the bank acts in one of the "traditional" fiduciary capacities. For example, part 9 does not govern a directed custodian account (absent a "traditional" fiduciary capacity) because the customer, and not the bank, has investment discretion, although the bank may provide advice about investments appropriate to the customer's objectives. The proposed investment discretion test affects only those activities in which the bank does not act in one of the enumerated "traditional" fiduciary capacities. Part 9 continues to apply to activities in which the bank acts in a "traditional" fiduciary capacity regardless of whether the bank has investment discretion, *e.g.*, self-directed IRA accounts for which the bank is a named trustee.

As an alternative to using investment discretion as the dividing line between fiduciary and non-fiduciary investment advisory activities, the OCC could adopt an approach that relies on state law. Under a state law approach, for example, part 9 would apply to a national bank's investment advisory activity if that activity, when engaged in by competing state fiduciaries, requires state authorization and is regulated as a fiduciary activity under state law. Thus, the applicability of part 9 to a national bank's investment advisory activities could differ among states. The OCC invites comment on this and other alternative approaches to defining which investment advisory activities to regulate under part 9.

Adopting an approach that excludes some types of investment advisory activities from part 9's coverage raises the question of how to oversee these "non-fiduciary" investment advisory activities. Some of these activities already are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 14, 1994),[3] the anti-fraud provisions of the Securities Exchange Act of 1934, and the recordkeeping and confirmation requirements for brokerage customers under the OCC's rules at 12 CFR part 12. In addition, a national bank must conduct its investment advisory activities (as with all its activities) in a manner consistent with safe and sound banking practices. Furthermore, the national bank must adhere to any conditions imposed by the OCC in writing in connection with approval of an application or request. The OCC invites comment on whether these existing regulatory safeguards are adequate to regulate non-fiduciary investment advisory activities. If the existing safeguards are not adequate, the OCC invites comment on what additional safeguards are appropriate.

For example, even if the OCC adopts the investment discretion approach, the OCC could continue to subject non-discretionary investment advice to pertinent provisions of part 9 (*e.g.*, those governing self-dealing and conflicts of interest). Alternatively, the OCC could use provisions of the Investment Advisers Act of 1940 (Advisers Act)[4] as a point of reference. Under the Advisers Act, as implemented by the Securities and Exchange Commission (SEC),[5] an investment adviser must, among other things: (1) Provide clients and prospective clients with a written disclosure statement about the adviser's business practices and educational and business background; (2) comply with specific contractual requirements in their dealings with clients, including a prohibition against assigning an advisory contract without client consent and restrictions on performance fee arrangements; (3) comply with prohibitions against misstatements or misleading omissions of material facts and fraudulent acts or practices; and (4) comply with anti-fraud provisions dealing with advertising, solicitations, and custody or possession of client funds. In addition, the Supreme Court has held that a registered investment adviser owes its clients an affirmative duty of good faith and full and fair disclosure of all material facts, especially where the adviser's interests may conflict with those of its clients.[6]

[2] The term "fiduciary capacity" under the proposal also includes acting as a custodian under a uniform gifts to minors act, because a custodian under a uniform gifts to minors act is a fiduciary under current part 9.

[3] The four Federal banking agencies have recently issued a clarification of the Interagency Statement. See "Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products (September 12, 1995).

[4] 15 U.S.C. 80b–1–80b–21. Under the Advisers Act, investment advisers generally must register with the Securities and Exchange Commission if, for compensation, they engage in the business of advising others, either directly or through certain types of publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities. Banks and bank holding companies are, for the most part, exempt from the requirements of the Advisers Act.

[5] The SEC's rules governing investment advisers are found at 17 CFR part 275.

[6] See *SEC* v. *Capital Gains Research Bureau*, 375 U.S. 180 (1963); *Transamerica Mortgage Advisors, Inc.*, v. *Lewis*, 444 U.S. 11, 17 (1979).

Fiduciary Officers and Employees (Proposed § 9.2(f))

The proposal replaces the term "trust department," defined at § 9.1(j), with the term "fiduciary officers and employees," to reflect the increasing diffusion of fiduciary functions throughout a national bank.

Investment Discretion (Proposed § 9.2(j))

As mentioned earlier, the proposal defines the term "fiduciary capacity" to include any capacity involving investment discretion on behalf of another. The new term "investment discretion," in turn, includes any account for which a national bank has the authority to determine what securities or other assets to purchase or sell on behalf of the account. The OCC considers this term to apply whether or not the bank itself in fact exercises that discretion or delegates that function to another.

Approval Requirements (Proposed § 9.3)

Consistent with § 9.2 of the current regulation, the proposal directs a national bank seeking approval to exercise fiduciary powers and a person seeking approval to organize a special-purpose national bank limited to fiduciary powers, to appropriate provisions in 12 CFR part 5 (rules, policies, and procedures for corporate activities).

Administration of Fiduciary Powers (Proposed § 9.4)

The proposal relocates most of the substance of current § 9.7 to proposed § 9.4, but relocates provisions in current § 9.7 relating to policies and procedures, review of assets, and recordkeeping, to other sections specifically addressing those topics (proposed §§ 9.5, 9.6, and 9.8, respectively). The proposal also relocates a provision in current § 9.7 relating to the need for fiduciary counsel to proposed § 9.5 (policies and procedures).

The proposal continues to place the primary responsibility for a national bank's fiduciary activities on its directors. Under the proposal, as under the current rule, the board may assign functions related to the exercise of fiduciary powers to bank directors, officers, employees, and committees thereof. The proposal allows a national bank to use personnel and facilities of the bank to perform services related to the exercise of its fiduciary powers, and to allow any department of the bank to use fiduciary officers and employees and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law. The proposal retains the requirement that all fiduciary officers and employees must be adequately bonded.

The proposal adds a new provision, at proposed § 9.4(c), to clarify that a national bank may enter into an agency agreement with another entity to purchase or sell services related to the exercise of fiduciary powers. This provision reflects the OCC position contained in Fiduciary Precedent 9.1300 (found in the "Comptroller's Handbook for Fiduciary Activities").[7]

Policies and Procedures (Proposed § 9.5)

Current § 9.5 requires a national bank to adopt policies and procedures with respect to brokerage placement practices but not with respect to other areas of fiduciary practice. The proposal, on the other hand, requires that a national bank have written policies and procedures to ensure that its fiduciary practices comply with applicable law. The proposal lists particular areas that a bank's policies and procedures should address.

Several of the items on this list of required policies and procedures stem from provisions located in other sections of the current regulation, including methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security (current § 9.7(d)); selection and retention of legal counsel readily available to advise the bank and its fiduciary officers and employees on fiduciary matters (current § 9.7(c)); and investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution (current § 9.10(a)).

Other items on the list are not based on requirements in the current regulation, including methods for preventing self-dealing and conflicts of interest, allocation to fiduciary accounts of any financial incentives the bank may receive for investing fiduciary funds in a particular investment,[8] and disclosure to beneficiaries and other interested parties of fees and expenses charged to fiduciary accounts. The OCC believes that these new items are important to the proper exercise of national bank fiduciary powers, and should be addressed in a bank's policies and procedures.

The OCC invites comment on whether to add any items to, or delete any items from, the proposed list.

Review of Assets of Fiduciary Accounts (Proposed § 9.6)

The proposal clarifies current § 9.7(a)(2) by explicitly requiring national banks to perform two distinct types of written asset reviews with respect to fiduciary accounts: individual account reviews and reviews of assets by issuer.[9] Before accepting a fiduciary account, a national bank must review the account to determine whether it can administer the account properly. After accepting a fiduciary account for which

[7] See also 12 U.S.C. 1867 (regulation and examination of bank service corporations); Fiduciary Precedent 9.1390 (fiduciary support services rendered by agent); and Trust Interpretive Letter #168 (August 3, 1988) (use of an affiliate to perform trust administrative and investment services).

[8] See Fiduciary Precedent 9.3115 (acceptance of financial benefits by bank fiduciaries).

[9] See Fiduciary Precedent 9.4102.

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a national bank has investment discretion, and each year thereafter, the bank promptly must conduct an individual account review of the account's assets to evaluate whether they are appropriate, individually and collectively, for the account. In addition to the individual account review, a bank must conduct an annual review of assets by issuer to determine the investment merit of the assets (or potential assets) in fiduciary accounts for which the bank has investment discretion, to the extent appropriate for that asset. The OCC anticipates that the scope of a bank's assets review will vary, depending on the nature of the particular asset.

To contrast the two types of review, a review of assets by issuer determines what investments, by issuer, (*e.g.*, common stock of Corporation X) are potentially appropriate investments for the bank's fiduciary accounts. In some banks, for example, the review of assets by issuer results in a list of permissible fiduciary investments for the bank's fiduciary accounts. The person or committee in charge of investing for a particular fiduciary account chooses investments from this list. An individual account review, on the other hand, determines whether the investments chosen for that particular account are appropriate, individually and collectively, given the objectives of the account.

The OCC invites comment on whether these specific standards are necessary or appropriate and, if not, what alternative approaches are preferable. For example, commenters may wish to discuss approaches that distinguish between large and small accounts or between large and small institutions.

Recordkeeping (Proposed § 9.8)

The proposal clarifies the recordkeeping requirements currently found at §§ 9.7(a)(2) and 9.8. In particular, a national bank must document the establishment and termination of fiduciary accounts, must maintain adequate records for fiduciary accounts, must retain records for a specified period of time, and must make sure its fiduciary records are distinguishable from other bank records.

Audit of Fiduciary Activities (Proposed § 9.9)

The proposal retains the current § 9.9 requirement that a national bank perform suitable audits of its fiduciary activities annually (specifically, at least once during each calendar year and not later than 15 months after the last audit), and that the bank report the results of the audit (including all actions taken as a result of the audit) in the minutes of the board. The proposal removes as redundant the requirement that the national bank ascertain compliance with "law, this part, and sound fiduciary principles."

The proposal clarifies that if a bank adopts a continuous audit system in lieu of performing annual audits, the bank may perform discrete audits of each fiduciary activity, on an activity-by-activity basis, at intervals appropriate for that activity. For example, a bank may determine that it is appropriate to audit certain low-risk fiduciary activities every 18 months. A bank that adopts a continuous audit system must report the results of any discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year and not later than 15 months after the last audit report.

The proposal also clarifies that a national bank's audit committee may not include directors who are members of a fiduciary committee of the bank.[10] The proposal also modifies the current regulation's position that active officers of the bank may not serve on the audit committee. Under the proposal, only officers who participate significantly in the administration of the bank's fiduciary activities are barred from serving on the audit committee. This proposed position provides some degree of flexibility to smaller banks, which may have a limited number of outside directors.

Finally, the proposal permits an audit committee of an affiliate of the bank to conduct the required audit. This change allows a bank holding company to audit the fiduciary activities of its subsidiary national banks through a central audit committee. This approach facilitates consolidation of functions, and the accompanying efficiencies, within a bank holding company structure.

The OCC invites comment on these proposed changes and, in addition, on the relationship between the audit requirement and the OCC's fiduciary examination process (in particular, the extent to which OCC examiners should rely on a bank's internal or external fiduciary audits).

Fiduciary Funds Awaiting Investment or Distribution (Proposed § 9.10)

As mentioned earlier, the proposal relocates to proposed § 9.5 the current regulation's requirement that a national bank adopt policies and procedures regarding short-term investments. The proposal retains the current regulation's general prohibition against allowing fiduciary funds to remain uninvested and undistributed any longer than reasonable for proper account management. The OCC invites comment on whether reasonableness is a sufficiently clear standard and, if not, on what standard is appropriate.

The proposal continues to allow a national bank to deposit idle fiduciary funds (i.e., fiduciary funds awaiting investment or distribution) in its commercial, savings, or another department, provided that the bank secures the deposit with appropriate collateral. Additionally, the proposal explicitly allows a national bank to use, as collateral for self- deposits of idle fiduciary funds, assets (including surety bonds) that qualify under state law as appropriate security for deposits of fiduciary funds. The proposal also permits a national bank to deposit idle fiduciary funds with affiliates.

Surety bonds as collateral. Under 12 U.S.C. 92a(d), a national bank may deposit idle fiduciary funds with itself (*e.g.*, in its commercial or savings department) only if it pledges United States bonds or "other securities" approved by the OCC. Current § 9.10(b)(3) allows a bank to meet this requirement by pledging qualifying assets of the bank to secure a deposit in compliance with local law.

Under the OCC's interpretation of § 9.10(b)(3), a national bank may pledge, as a qualifying asset, a surety bond as collateral for a deposit of idle fiduciary funds if a surety bond is permissible collateral under state law, unless the instrument governing the fiduciary relationship prohibits the use of a surety bond. This interpretation recognizes that a surety bond provides protection that is functionally at least equivalent to the protection provided by other types of assets that the OCC has approved under section 92a(d). Moreover, this interpretation promotes Congress' policy objective of protecting the interests of beneficiaries and ensures that national banks are not disadvantaged in a state that permits its institutions to use surety bonds to secure deposits of idle fiduciary funds.

The proposal explicitly incorporates this interpretation into part 9 by allowing a national bank to secure deposits of idle fiduciary funds with assets, including surety bonds, that qualify under state law as appropriate security for deposits of fiduciary funds. The theory that a surety bond is comparable to other forms of security permitted by the OCC could have a broader application, however. In particular, the OCC invites comment on whether to adopt a uniform standard allowing national banks in all states to use surety bonds as collateral for these deposits.

Deposits with affiliates. Section 92a(d) authorizes a national bank to pledge assets to secure self-deposits of idle fiduciary funds. Thus, section 92a(d) accommodates a bank with a trust department and a commercial or savings department, the bank organizational structure prevalent when Congress enacted the statutory language in 1918. However, the statutory language does not address other organizational structures that have evolved since 1918. For example, some banks today are special-purpose trust companies. These entities do not have commercial or savings departments in which to deposit idle fiduciary funds, but many are affiliated with banks that do. Other banks operate as part of a large system of affiliated banks and wish, for reasons of efficiency, to consolidate their fiduciary payment and disbursement functions in a single bank. In these situations, a bank may want to deposit idle fiduciary funds with an affiliated bank. However, the OCC has previously applied 12 CFR 9.12(c) to restrict a national bank from depositing idle fiduciary funds with an affiliated bank unless authorized by the instrument governing the account, court order, or state law.

Some states explicitly authorize their banks to deposit idle fiduciary funds with affiliated banks, however. Thus, a national bank in any of these states may deposit idle fiduciary funds in an affiliated bank in accordance with current 12 CFR 9.12(c) (because the deposit is authorized by state law). Additionally, however, many of these states require that these deposits be secured with a pledge of assets. The OCC previously took the position that neither a national bank making a deposit of idle fiduciary funds with an affiliate, nor a national bank accepting the deposit, can pledge assets to secure the deposit, regardless of whether state banks can pledge in that situation. Consequently, a national bank could not legitimately comply with a state's pledging requirement and, thus, could not avail itself of the state's authorization to deposit idle fiduciary funds with an affiliate bank. The OCC believes that a prohibition on pledging assets to secure idle fiduciary funds deposited by or with affiliates is not legally required and may prevent a national bank from achieving efficiencies in its fiduciary operations.

Consequently, the OCC proposes to allow a national bank to secure a deposit of idle fiduciary funds by or with an affiliate if consistent with applicable law. This change is consistent with a recent OCC interpretative letter,[11] and should facilitate more efficient fiduciary operations in multi-bank holding companies.

Investment of Fiduciary Funds (proposed § 9.11)

The proposal condenses current § 9.11 without changing its substance. The proposal simply directs a national bank to invest fiduciary funds in a manner consistent with applicable law. Applicable law, as described earlier, includes Federal law, state law governing a national bank's fiduciary relationships, the terms of the instrument governing the relationships, and any court order pertaining to the relationships.

Self-dealing and Conflicts of Interest (Proposed § 9.12)

The proposal retains the substance of current § 9.12, which addresses fiduciary conflicts of interest. However, the proposal clarifies a point concerning the general rule, found at current § 9.12(b), that a national bank may not lend, sell, or otherwise transfer assets held in a fiduciary capacity to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank. Current § 9.12(b) provides certain exceptions to this general rule, such as where local law authorizes those loans. However, under 12 U.S.C. 92a(h), it is unlawful for a national bank to lend to its directors, officers, or employees any funds it holds in trust. A national bank cannot invoke the exceptions in current § 9.12(b) in contravention of section 92a(h). Thus, the proposal clarifies that despite the exceptions to the general rule, a bank may not lend to any of its directors, officers, or employees any funds it holds in trust, except with respect to bank's own employee benefit plans in accordance with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)), which specifically authorizes loans to participants and beneficiaries of such plans under certain circumstances.

Custody of Fiduciary Assets (Proposed § 9.13)

The proposal retains the substance of current § 9.13, which addresses custody of fiduciary assets. The proposal continues to require joint custody or control of fiduciary assets, separation of fiduciary assets from the assets of the bank, and separation or identification of the assets of each fiduciary account from all other accounts (except when assets are invested in collective investment funds). The proposal also continues to allow a national bank to maintain fiduciary assets off-premises.

Deposit of Securities With State Authorities (Proposed § 9.14)

Under current § 9.14, whenever state law requires institutions acting as fiduciaries to deposit securities with state authorities for the protection of trust accounts, a national bank in that state must make a similar deposit before it can act in a fiduciary capacity.[12] The proposal retains this general requirement.

However, current § 9.14 does not address how a bank should calculate the amount of its required deposit when the bank administers trust assets from offices located in more than one state—*i.e.*, whether the bank must compute the amount of deposit required by a particular state on the basis of all of the bank's trust assets nationwide, or on the basis of the bank's trust assets in that state. This issue will become increasingly significant as interstate branching becomes more common. Many states have laws requiring a state fiduciary to deposit an amount of securities based on its total trust assets. These laws apparently did not contemplate that state fiduciaries would expand geographically and administer significant amounts of trust assets from other states.

It is unnecessary to require a bank with multistate trust operations to deposit in each state in which it administers trust assets an amount based on its total trust assets nationwide. To do so goes far beyond the deposit requirement's purpose of protecting trust assets relating to a particular state, and unnecessarily burdens a bank that conducts fiduciary operations in multiple states. Consequently, the proposal allows a national bank to meet its deposit requirement in each state based on the

[10] See Fiduciary Precedent 9.2505 (a member of a fiduciary committee may not serve on the trust audit committee).

[11] Letter from Julie L. Williams, Chief Counsel (November 6, 1995).

[12] This provision stems from the fiduciary powers statute. See 12 U.S.C. 92a(f).

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amount of trust assets administered from offices located in that state.[13]

Fiduciary Compensation (Proposed § 9.15)

The proposal retains the substance of current § 9.15, which addresses fiduciary compensation. Under the proposal, a national bank may charge a reasonable fee for its fiduciary services if the amount is not set or governed by applicable law. Moreover, the proposal prohibits an officer or an employee of a national bank from retaining any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of its board of directors.

Receivership or Voluntary Liquidation of Bank (Proposed § 9.16)

The proposal retains the substance of current § 9.16, which addresses receivership and voluntary liquidation. The proposal directs a receiver or liquidating agent to close promptly all fiduciary accounts to the extent practicable (in accordance with OCC instructions and the orders of the court having jurisdiction) and to transfer all remaining fiduciary accounts to substitute fiduciaries.

Surrender or Revocation of Fiduciary Powers (Proposed § 9.17)

The proposal retains the substance of current § 9.17, which addresses surrender and revocation of fiduciary powers. The proposal sets forth the standards and procedures that apply when a national bank seeks to surrender its fiduciary powers. The proposal also describes the standards that apply when the OCC seeks to revoke a bank's fiduciary powers.

Collective Investment Funds (Proposed § 9.18)

The proposal revises current § 9.18, which governs the establishment and operation of common trust funds and other collective investment funds by national banks.[14] The central purpose of this proposed revision is to lift certain unnecessary regulatory burdens currently imposed on institutions that administer collective investment funds, while preserving appropriate protections to beneficiaries (and other interested parties) of fiduciary accounts participating in those funds.

The OCC has not rewritten § 9.18 since 1972. In 1982, the OCC published an advance notice of proposed rulemaking requesting public comment on § 9.18 (47 FR 27833, June 25, 1982). The OCC specifically solicited comments on several issues.[15] Moreover, the OCC indicated its intention to undertake a comprehensive review of its collective investment fund regulation.

The OCC received over 70 comments, most of which indicated that technological advances and new customer needs rendered portions of § 9.18 obsolete or even counter-productive. In November 1984, however, the OCC suspended its consideration of amendments to § 9.18, due to pending litigation stemming from the OCC's approval of collective investment funds consisting of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation (collective IRA funds).[16] The OCC determined that it would be premature to pursue significant changes to § 9.18 under the circumstances.

In view of the disposition of the collective IRA fund litigation,[17] the OCC decided in 1990 to resume the rulemaking process by publishing a proposal to amend § 9.18 (55 FR 4184, February 7, 1990) (1990 Proposal) based largely on the public comments received in 1982.[18] The OCC received 150 comment letters on the 1990 Proposal. In 1994, the OCC decided to revise § 9.18 as part of the comprehensive review of part 9 under its Regulation Review Program, rather than proceed with § 9.18 alone. This proposal incorporates many of the elements of the 1990 Proposal. Readers seeking additional background on these elements may refer to the 1990 Proposal.

This current proposal retains the general structure of § 9.18. Paragraph (a) authorizes national banks to invest fiduciary assets in two types of collective investment funds. Paragraph (b) sets forth the requirements applicable to funds authorized under paragraph (a). Paragraph (c) describes other types of collective investments available to national bank fiduciaries. Significant changes to current § 9.18 are noted below.

(a)(1) and (a)(2) Funds (Proposed § 9.18(a)).

The proposal retains the substance of current § 9.18(a), which authorizes national banks to invest fiduciary assets in common trust funds ((a)(1) funds) and funds consisting of employee benefit and other tax-exempt trusts ((a)(2) funds). The proposal, however, relocates to § 9.18(a) the substance of current § 9.18(b)(2), which provides guidance on the circumstances under which a bank may place employee benefit and other tax-exempt trust assets in either an (a)(1) or an (a)(2) fund, and on the circumstances under which a bank may place trusts for which the bank is not the trustee in an (a)(2) fund.[19]

The proposal makes significant changes to current § 9.18(b), which sets forth the requirements for (a)(1) and (a)(2) funds. On balance, these changes, described below, will reduce the Federal regulatory burdens imposed on collective investment funds and enable banks to operate collective investment funds more efficiently. The term "collective investment fund," as used in § 9.18, encompasses both (a)(1) funds and (a)(2) funds.

Written Plan (Proposed § 9.18(b)(1)).

Like the 1990 Proposal, this proposal eliminates as unnecessary two requirements from current § 9.18(b)(1). First, instead of requiring the full board of directors to approve new collective investment fund plans, the proposal allows a committee of the board to perform this function. Second, the proposal removes the requirement that the bank file (a)(1) and (a)(2) fund plans with the OCC.[20] Additionally, the proposal relocates a provision on fund valuation from current § 9.18(b)(1) to proposed § 9.18(b)(4), described below.

Fund Management (Proposed § 9.18(b)(2))

The proposal provides an exception to the "exclusive management" requirement, found in current § 9.18(b)(12), to allow prudent delegation of responsibilities to others.[21] This exception is consistent with the modern prudent investor rule as set forth in the American Law Institute's Restatement (Third) of Trusts (1992).[22]

The proposal also provides an exception to the exclusive management requirement for collective IRA funds registered under the Investment Company Act of 1940. A bank with a collective IRA fund generally registers that fund as an investment company under the Investment Company Act because the SEC takes the position that IRA, Keogh, and certain other similar trusts may not qualify for exemption from registration. However, the exclusive management requirement of current § 9.18(b)(12) arguably conflicts with the Investment Company Act.[23] Currently, the OCC grants waivers of the exclusive management requirement for collective IRA funds that register as investment companies. The proposal obviates the need for these routine waivers.

Proportionate Interests (Proposed § 9.18(b)(3))

The proposal retains the requirement in current § 9.18(b)(3) that all participating accounts in a collective investment fund must have a proportionate interest in all of the fund's assets. However, the proposal eliminates the language concerning the propriety of investing fiduciary assets in a collective investment fund. The permissibility of investing the assets of a fiduciary account in a particular collective investment fund is governed by proposed § 9.11, which allows investments consistent with applicable law.

Valuation (Proposed § 9.18(b)(4))

The proposal consolidates existing provisions relating to valuation of collective investment funds, including current § 9.18(b)(1) (method of valuation), current § 9.18(b)(4) (frequency and date of valuation), and current § 9.18(b)(15) (valuation of short-term investment funds). The OCC invites comment on the need to clarify valuation issues in the regulatory text or an interpretive ruling accompanying part 9.

The OCC also invites comment on the proposed exception to the quarterly valuation requirement for collective investment funds that are invested primarily in real estate or other assets that are not readily marketable. Allowing banks to value these illiquid collective investment funds annually rather than quarterly appears consistent with the one-year prior notice allowance for withdrawals from these funds, found at § 9.18(b)(4).

Admission and Withdrawal of Accounts (Proposed § 9.18(b)(5))

The proposal consolidates existing provisions relating to admissions and withdrawals of accounts, including current § 9.18(b)(4) (prior request or notice), current § 9.18(b)(6) (method of distribution), and current § 9.18(b)(7) (segregation of investments).

The proposal also substantially revises the current regulation's standard for distributions to an account withdrawing from a collective investment fund. Current § 9.18(b)(6) sets a Federal standard requiring the bank to make distributions in cash, ratably in kind (*i.e.*, a proportional share in each of the assets held by the collective investment fund), or a combination of the two. The OCC believes that this Federal standard may not be sufficiently flexible to address distribution problems that arise, particularly with respect to collective investment funds that invest primarily in assets that are not readily marketable (illiquid assets). Even with respect to these collective investment funds that invest primarily in illiquid assets, banks generally make distributions in cash only, either from the fund's cash reserves or after selling some of the fund's assets within the one-year prior notice period. However, if withdrawal requests exceed the fund's cash reserves, and if the bank believes the market for the fund's assets is depressed, a bank under the constraint of the one-year time limit may have to resort to ratable in-kind distributions rather than (1) sell fund assets at depressed prices, or (2) liquidate the fund. With ratable in-kind distributions of certain assets, such as readily marketable securities, a withdrawing participant may easily convert the distribution into cash. However, that may not be the case for ratable in-kind distributions of illiquid assets, where valuation may be complicated and a recipient may have no practical avenue to liquidate its proportionate share of an asset.

In response to these concerns, the proposal allows any distributions consistent with applicable law. The OCC believes that this approach will provide banks with sufficient flexibility to address complex distribution problems that may arise (particularly with respect to collective investment funds that invest primarily in illiquid assets), while maintaining the basic

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[13] See also Op. Chief Counsel, Office of Thrift Supervision (December 24, 1992) (interpreting 12 U.S.C. 1464(n)(5) (the Federal savings association equivalent of 12 U.S.C. 92a(f) with virtually identical language) and concluding that a Federal savings association should compute the amount of a required state deposit based on the amount of trust assets administered from offices located in that particular state, rather than on the basis of the bank's total trust assets nationwide).

[14] Because the regulations of the Office of Thrift Supervision incorporate § 9.18, this revision also affects collective investment funds administered by Federally-chartered savings and loan associations. 12 CFR 550.13(b). Moreover, because common trust funds must comply with § 9.18 in order to qualify for tax-exempt status under section 584 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 584), this revision affects state-chartered banks, trust companies, and other financial institution fiduciaries that administer collective investment funds.

[15] These issues included: (1) operations of guaranteed insurance contract funds; (2) establishment of commingled agency accounts; (3) commingling of Keogh trusts with corporate employee benefit funds; (4) establishment of common trust funds for individual retirement accounts; (5) advertising of common trust funds; and (6) commingling of charitable trusts with employee benefit trusts.

[16] See, *e.g.*, "Decision of the Comptroller of the Currency on the Application by Citibank, N.A., pursuant to 12 CFR 9.18(c)(5) to Establish Common Trust Funds for the Collective Investment of Individual Retirement Account Trusts Exempt from Taxation under Section 408 of the Internal Revenue Code of 1954" (Oct 31, 1982), reprinted in 1 Comptroller of the Currency Q.J. No. 4 (1982), at 45; and "Decision of the Office of the Comptroller of the Currency on the Application by Wells Fargo Bank, N.A. to Establish a Common Trust Fund for the Collective Investment of Individual Retirement Account Trusts Assets Exempt From Taxation Under section 408(a) of the Internal Revenue Code of 1954, as amended" (Jan. 28, 1984) (Wells Fargo Decision).

[17] See *Investment Company Institute* v. *Clarke*, 789 F.2d 175 (2d Cir. 1986), *cert. denied*, 479 U.S. 940 (1986); *Investment Company Institute* v. *Conover*, 790 F.2d 925 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 939 (1986), *Investment Company Institute* v. *Clarke*, No. 86–3725 (W.D.N.C. August 25, 1986, *appeal withdrawn by stipulation*, Jan. 6, 1987).

[18] The 1990 proposal included revisions that would: (1) Eliminate the requirement for specific approval by an institution's board of directors prior to establishing a collective investment fund, and eliminate the requirement for national banks to file fund plans of operation with the OCC; (2) clarify the participation in collective investment funds by certain tax-exempt employee benefit funds; (3) broaden the authority to establish "closed-end" collective investment funds, the assets of which are illiquid; (4) eliminate the specific regulatory prohibition in § 9.18(b)(5)(v) on advertising the availability and performance of common trust funds; (5) eliminate the fixed percentage limitation in §§ 9.18(b)(9)(i) and 9.18(c)(3) on the interest a single participating account may have in a particular common trust fund; (6) eliminate the fixed percentage limitation in § 9.18(b)(9)(ii) on the concentration of investment by a common trust fund in the obligations of any one entity; (7) eliminate the liquidity requirement in § 9.18(b)(9)(iii) applicable to the assets of common trust funds; (8) eliminate the limitations in § 9.18(b)(12) on fees and expenses incurred by an institution in the administration of a collective investment fund, but require appropriate disclosure; (9) eliminate the requirement in § 9.18(c)(2)(ii) that investments in variable-amount notes be made on a short-term basis; (10) provide an expeditious procedure for the review of new types of funds; and (11) codify the authority to establish registered collective investment funds whose assets consist solely of Individual Retirement Accounts, Keogh Accounts, or other eligible employee benefit accounts.

[19] Like the 1990 Proposal, this proposal eliminates from current § 9.18(b)(2) references to specific sections of the Internal Revenue Code and to specific Internal Revenue Service rulings to make clear that the OCC promulgates this regulation solely on the authority of Federal banking law and not under authority of the Internal Revenue Code.

[20] However, national banks must file written plans with the OCC in order to establish special exemption funds (*i.e.*, funds that deviate from the requirements of § 9.18(a) and (b)), in accordance with proposed § 9.18(c)(5).

[21] In the past, the OCC recognized only limited exceptions to the exclusive management requirement. See, e.g., Fiduciary Precedent 9.5320 (an affiliate may manage a bank's collective investment fund).

[22] See Rest. 3rd, Trusts (Prudent Investor Rule), section 171 (Duty with Respect to Delegation): "A trustee has a duty personally to perform the responsibilities of the trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances."

[23] See, e.g., Wells Fargo Decision, *supra* note 16, at 10.

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protections of state fiduciary law.[24] The OCC invites comment on whether to adopt this proposed state law-based approach instead of retaining a Federal standard. In the event that the OCC does not adopt the state law-based approach, the OCC also invites comment on what Federal standard is appropriate.

Moreover, the OCC invites comment on whether, if the OCC adopts a state law-based standard, there is a need to retain the provision that allows a prior notice period of up to one year for withdrawals from funds with assets not readily marketable (proposed § 9.18(b)(5)(iii)).

Audits and Financial Reports (Proposed § 9.18(b)(6))

The proposal retains the requirements in current § 9.18(b)(5)(i)–(iv) regarding collective investment fund annual audits and financial reports. The proposal also adds a requirement that a national bank disclose in the annual financial report fees and expenses charged to the fund, consistent with OCC precedent.[25]

The proposal, however, provides an exception to this requirement for collective IRA funds registered under the Investment Company Act. As mentioned earlier, a bank generally registers a collective IRA fund as an investment company under the Investment Company Act. The requirement that the auditors are responsible only to the bank's board of directors arguably conflicts with the Investment Company Act.[26] Currently, the OCC grants waivers of this requirement for collective IRA funds registered as investment companies. The proposal obviates the need for these routine waivers.

Advertising Prohibition for Common Trust Funds (Proposed § 9.18(b)(7))

The proposal retains and clarifies the current regulation's prohibition on advertising (a)(1) funds. Current § 9.18(b)(5)(v) prohibits a national bank from advertising or publicizing (a)(1) funds except as provided in the regulation. Current § 9.18(b)(5)(iv) allows a national bank to publicize the availability of financial reports for (a)(1) funds in connection with the promotion of the general fiduciary services of the bank. The OCC interprets these provisions to allow a bank to advertise (a)(1) funds only in connection with the advertisement of the general fiduciary services of the bank.[27]

Self-dealing and Conflicts of Interest (Proposed § 9.18(b)(8))

The proposal retains the substance of current § 9.18(b)(8), which addresses self-dealing and conflicts of interest specific to collective investment funds. A national bank administering a collective investment fund must comply with these provisions in addition to the self-dealing and conflicts of interest provisions found in § 9.12, which apply to all fiduciary activities of national banks.

Mortgage Reserve Account (Proposed § 9.18(b)(9))

The proposal retains the substance of current § 9.18(b)(11), which allows a bank administering a collective investment fund to establish a mortgage reserve account for overdue interest payments on mortgages in the fund. The OCC invites comment on the extent to which banks use mortgage reserve accounts, and whether their experience suggests the need for any modifications to this provision.

Fees and Expenses (Proposed § 9.18(b)(10))

The proposal retains the quantitative management fee limitation, found in current § 9.18(b)(12). Under this limitation, a bank administering a collective investment fund may charge a fund management fee only if the total fees charged to a participating account (including the fund management fee) does not exceed the total fees that the bank would have charged if it had not invested assets of the account in the fund. Moreover, the proposal retains the requirement that the bank absorb fund establishment and reorganization expenses, also found in current § 9.18(b)(12).

The proposal, however, eliminates other provisions in § 9.18(b) that specifically permit or prohibit certain expenses, including current § 9.18(b)(5)(i) (expenses for audits performed by independent public accountants), current § 9.18(b)(5)(iv) (expenses for printing and distributing financial reports), and current § 9.18(b)(10) (expenses incurred in servicing mortgages). Rather than mandating the treatment of specific expenses (other than establishment and reorganization expenses), the proposal defers to state law, in effect, by allowing a bank to charge any reasonable expenses incurred in operating the collective investment fund to the extent not prohibited by applicable law. When expenses of a fund are reasonable and permissible under state law, and are fully disclosed in appropriate documentation,[28] the OCC believes that it is not necessary to micromanage the precise types of expenses charged directly to collective investment funds.

Additionally, the OCC invites comment on whether to defer to applicable law instead of retaining the quantitative management fee limitation.

Prohibition Against Certificates (Proposed § 9.18(b)(11))

The proposal retains the substance of current § 9.18(b)(13), which prohibits a national bank administering a collective investment fund from issuing certificates evidencing an interest in the fund.

Good Faith Mistakes (Proposed § 9.18(b)(12))

The proposal retains the substance of current § 9.18(b)(14), which provides that if a bank, in good faith and in the exercise of due care, makes a mistake in administering a collective investment fund, the bank will not be in violation of this part if it takes prompt action to remedy the mistake.

Elimination of Participation, Investment, and Liquidity Requirements

The proposal eliminates the 10 percent participation limitation, the 10 percent investment limitation, and the liquidity requirement applicable to common trust funds under current § 9.18(b)(9), in accordance with the 1990 Proposal. These Federal restrictions have at times interfered with optimal management of common trust funds, and the protections found in state fiduciary law adequately address the concerns underlying these restrictions.

Other Collective Investments (Proposed § 9.18(c))

In addition to (a)(1) and (a)(2) funds, current § 9.18 authorizes other means by which a national bank may invest fiduciary assets collectively. These other collective investments, described in proposed § 9.18(c), are not subject to the requirements of § 9.18(b).

The proposal eliminates the requirement in current § 9.18(c)(2)(ii) that investments in variable-amount notes be made on a short-term basis, in accordance with the 1990 Proposal. The proposal also eliminates the requirement applicable to mini-funds (i.e., funds established for the collective investment of cash balances) that no participating account's interest in the fund exceed $10,000, again in accordance with the 1990 Proposal.[29] Moreover, the proposal expands the total amount of assets permitted in a mini-fund to $1,000,000.

Finally, the proposal provides an expeditious procedure for the review of new types of funds, in accordance with the 1990 Proposal. The purpose of this new procedure is to encourage innovation by improving the approval procedures for banks that wish to establish new types of funds.

Transfer Agents (Proposed § 9.20)

The proposal incorporates by means of cross-reference the SEC's rules prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1). Although section 17A(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(d)(1)) generally subjects all transfer agents to SEC rules, section 17A(c) (15 U.S.C. 78q–1(c)) provides that transfer agents shall register with their appropriate regulatory agencies. Current 12 CFR 9.20 sets forth procedural requirements for national banks that register as transfer agents that are virtually identical to the SEC's registration rules. Thus, the OCC does not need to maintain separate procedures, and the proposal simply incorporates the SEC's rule instead.

The proposal also clarifies that a national bank transfer agent must comply with rules adopted by the SEC pursuant to section 17A of the Securities Exchange Act (15 U.S.C. 78q–1) prescribing operational and reporting requirements that apply to all transfer agents (17 CFR 240.17Ac2–2, and 240.17Ad–1 through 240.17Ad–16).

The OCC's "National Bank Transfer Agents' Guide" provides additional guidance regarding the transfer agent activities of national banks, including the forms that national banks must file. The OCC sends the Guide to all national bank transfer agents, and to any person who requests it from the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Disciplinary Sanctions Imposed by Clearing Agencies (Proposed § 19.135)

The proposal relocates provisions concerning applications by national banks for stay or review of disciplinary sanctions imposed by registered clearing agencies from current §§ 9.21 and 9.22 to 12 CFR part 19, the OCC's rules of practice and procedure. Proposed § 19.135 incorporates by cross-reference the SEC's rules on this subject, which are virtually identical to current §§ 9.21 and 9.22.

Other Issues for Comment

The OCC has identified several other issues that relate to national banks' fiduciary activities. The OCC is not proposing specific regulatory text on these issues at this time, but invites comment on whether and how to address these issues in part 9.

Multistate Fiduciary Operations

As noted at the outset of this preamble discussion, bank organizational structures have changed significantly since 1913, when Congress first enacted the national bank fiduciary powers statute. Many bank holding companies currently conduct multistate fiduciary operations through separate bank or trust company subsidiaries chartered in different states. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) facilitates the consolidation of multistate fiduciary operations by permitting interstate bank mergers. Moreover, the ability to branch interstate may encourage some banks to expand the multistate fiduciary business they already have, and others to enter the fiduciary business on a multistate basis for the first time. However, the Interstate Act does not define the scope of a national bank's multistate fiduciary authority. For example, it does not address activities conducted at places other than interstate branches.

In a recent letter, the OCC analyzed the authority of a national bank to exercise fiduciary powers on an interstate basis under 12 U.S.C. 92a. See Letter from Julie L. Williams, Chief Counsel (December 8, 1995). The letter dealt with a proposal for a national bank to establish non-branch trust offices in many states and to conduct fiduciary business in each state. But the interstate considerations discussed below also apply to fiduciary activities conducted at interstate branches.

In brief, section 92a authorizes a national bank to conduct fiduciary activities but imposes no limitations on the places where, or the customers for whom, the bank may conduct those activities.[30] Since an office that conducts only fiduciary activities and does not engage in any of the so-called "core banking functions" in 12 U.S.C. 36(j) is not a branch for purposes of the McFadden Act (12 U.S.C. 36(c)), a bank may establish non-branch trust offices at any location, without regard to branching limitations. Thus, a national bank may conduct fiduciary activities at non-branch trust offices in states other than the state in which it has its main office. A national bank may also offer fiduciary services at its interstate branches.

The OCC believes that the effect of section 92a is that in any specific state, the extent of fiduciary powers is the same for out-of-state national banks as for in-state national banks and depends upon what the state permits for its own state institutions. A state may limit national banks from exercising any or all fiduciary powers in that state, but only if it also bars its own institutions from exercising the same powers. Therefore, a national bank with its main office in one state may exercise fiduciary powers in that state and other states, depending upon—with respect to each state—the powers each state allows its own institutions to exercise. In essence, with respect to national bank fiduciary powers in a given state, the OCC believes that section 92a applies the same standards to all national banks, regardless of where a national bank has its main office. Whether state administrative requirements connected

[24] Thus, for example, a bank with a collective investment fund facing distribution problems, or beneficiaries (or interested parties) of fiduciary accounts participating in that fund, could seek from a court of competent jurisdiction an order authorizing an equitable solution. Allowing a bank to make distributions in accordance with a court order allows the bank to seek a solution more flexible than what current OCC regulations prescribe. A court-ordered solution also provides all interested parties with the opportunity to present their concerns in a judicial forum, ensuring that the distribution reflects a consideration of all relevant interests.

[25] See, e.g., Fiduciary Precedent 9.5330 (requiring disclosure of management fees).

[26] See, e.g., Wells Fargo Decision, supra note 16, at 11–12.

[27] See, e.g., Fiduciary Precedent 9.5113.

[28] See proposed § 9.18(b)(1)(iii) (disclosure of anticipated fees and expenses in the written plan) and proposed § 9.18(b)(6)(ii) (disclosure of fees and expenses in the annual financial report).

[29] Under current § 9.18(c)(3), a mini-fund may not exceed $100,000. Limiting participation in this fund to $10,000 is equivalent to limiting participation to 10 percent. Thus, eliminating the $10,000 limitation is consistent with eliminating the 10 percent participation limitation found in current § 9.18(b)(9).

[30] The basic authority for national banks to exercise fiduciary powers is found in 12 U.S.C. 92(a) and (b):

(a) Authority of the Comptroller of the Currency

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

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with fiduciary activities apply to national banks (other than the requirements specifically made applicable by sections 92a(f), (g), and (h)), is determined by principles of federal preemption and must be considered on a case-by-case basis.[31]

The OCC invites comment on the legal framework under section 92a for interstate fiduciary powers of national banks as discussed above and in the Letter (December 8, 1995). The OCC also invites comment on whether to add any new provisions to part 9, or modify any existing provisions (in addition to the modification of § 9.18(b)), to address other issues presented by fiduciary activities conducted on an interstate basis.

Investment Adviser to an Investment Company

When a bank or its operating subsidiary acts as an investment adviser to an investment company (such as a mutual fund), that activity raises conflicts of interest and other concerns that part 9 was not designed to address. The OCC currently addresses these concerns by imposing certain conditions on a case-by-case basis in connection with operating subsidiary filings involving mutual fund advisory activities.[32] The OCC has generally imposed the following conditions when a national bank's operating subsidiary acts as investment adviser to an investment company:

(1) The investment company is treated as an affiliate of the bank and its operating subsidiary for purposes of Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and thus is subject to the restrictions on transactions between affiliates;

(2) The bank's aggregate direct and indirect investments in and advances to the subsidiary may not exceed an amount equal to the bank's legal lending limit under 12 CFR part 32;

(3) Neither the bank nor the subsidiary may purchase shares of the investment company for its own account; and

(4) The bank and the subsidiary are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994).

The OCC invites comment on whether these conditions are appropriate in all situations where a national bank or its operating subsidiary acts as investment adviser to an investment company, and, if so, whether to include them in part 9.

Indenture Trustee Conflicts of Interest

A national bank that serves as an indenture trustee to an issue of debt securities and also provides additional banking services to, or has additional relationships with, the securities issue or issuer, is subject to potential conflicts of interest. An indenture trustee to a debt securities issuance represents the security holders as their fiduciary, seeking interest and principal payments from the securities issuer on their behalf. If a bank provides a letter of credit to an issuer while acting as the indenture trustee for the issuer's securities, and the issuer fails to make a scheduled payment to the security holders, the bank, as indenture trustee, must declare the issuer in default and seek payment from itself as issuer of the letter of credit. In this situation, the bank's role as trustee may conflict with its own interest as issuer of the letter of credit. Upon default, when the bank extends credit to the defaulted securities issuance, the bank, as creditor, becomes a competing creditor with itself as trustee for the security holders.

Before 1990, the Trust Indenture Act of 1939 contained conflict of interest prohibitions that disqualified banks from serving as indenture trustees to certain debt securities issuances if they provided credit to the securities issuer. Given the provisions of the statute, the OCC did not need to address conflicts of interest that a national bank might face with respect to securities covered by the Trust Indenture Act.

Some securities issuances, however, are exempt from the Trust Indenture Act. Exempt securities include those exempt from registration under the Securities Exchange Act of 1934, such as municipal industrial revenue bond issuances. With respect to exempt securities issuances, the OCC recommended, consistent with the pre-1990 policies articulated in the Trust Indenture Act, that a national bank avoid acting both as indenture trustee and as issuer of a letter of credit.[33]

In 1990, Congress amended the Trust Indenture Act to permit a bank to serve as both creditor and indenture trustee.[34] The Trust Indenture Act now requires that, upon default of the issuance, the indenture trustee must eliminate the conflict within 90 days or disqualify itself from further service as indenture trustee. As a result of the 1990 amendments, OCC precedent treats exempt securities more stringently than the Trust Indenture Act treats covered securities. These developments raise the issue of whether and how to address conflicts that may arise when a national bank serves as indenture trustee.

The OCC is inclined to allow a national bank to act as creditor and indenture trustee until 90 days after default, consistent with the Trust Indenture Act, with the added condition that the banks maintain adequate controls to manage the potential conflicts of interest. Additionally, the OCC is inclined to apply this policy consistently to all debt securities issuances, including debt securities issuances exempt from the Trust Indenture Act.

Because many national banks already have adopted policies and procedures to manage these potential conflicts of interest,[35] the OCC may not need to address this issue by regulation. It may be sufficient for the OCC to develop guidance on what controls banks should maintain in order to manage potential conflicts.

The OCC invites comment on how banks are managing these conflicts, and on the need to address this issue in part 9.

Waiver of Regulatory Requirements

The OCC also is considering whether to establish standards and procedures for obtaining waivers of any of the requirements in part 9. The OCC notes that a banking circular, BC–205 (dated July 26, 1985), already provides general guidance to national banks, bank counsel, and interested members of the public on requests for staff no-objection positions. The banking circular establishes procedures for obtaining the informal views of the OCC legal staff regarding the applicability of national banking law requirements to contemplated transactions or activities, including fiduciary activities. The OCC invites comment on whether these procedures are sufficient to accommodate most banks that seek clarification of, or relief from, requirements in part 9, or whether the OCC should add a waiver provision specific to part 9.

This table directs readers to the provisions of the current 12 CFR part 9, if any, on which the revised 12 CFR part 9 and the amended 12 CFR part 19 are based

DERIVATION TABLE FOR 12 CFR PART 9

Revised Provision	Current Provision	Comments
§ 9.1		Added.
§ 9.2(a)		Added.
(b)	§ 9.1(g)	Significantly modified.
(c)	§ 9.1(i)	Modified.
(d)	§ 9.1(a)	Modified.
(e)	§ 9.1(b) and (h)	Significantly modified.
(f)	§ 9.1(j)	Modified.
(g)	§ 9.1(d)	Modified.
(h)	§ 9.1(c)	Modified.
(i)	§ 9.1(e)	Modified.
(j)		Added.
§ 9.3	§ 9.2	Modified.
§ 9.4	§ 9.7(a)(1), (b), and (d)	Significantly modified.
§ 9.5	§§ 9.5, 9.7(c), 9.7(d), and 9.10(a)	Significantly modified.
§ 9.6	§ 9.7(a)(2)	Significantly modified.
§ 9.8	§§ 9.7(a)(2) and 9.8	Modified.
§ 9.9	§ 9.9	Significantly modified.
§ 9.10	§ 9.10	Significantly modified.
§ 9.11	§ 9.11	Modified.
§ 9.12	§ 9.12	Modified.
§ 9.13	§ 9.13	Modified.
§ 9.14	§ 9.14	Significantly modified.
§ 9.15	§ 9.15	Modified.
§ 9.16	§ 9.16	Modified.
§ 9.17	§ 9.17	Modified.
§ 9.18(a)	§ 9.18 (a) and (b)(2)	Modified.
(b)(1)	(b)(1)	Significantly modified.
(b)(2)	(b)(12)	Significantly modified.
(b)(3)	(b)(3)	Modified.
(b)(4)	(b) (1), (4), and (15)	Significantly modified.
(b)(5)	(b) (4), (6), and (7)	Significantly modified.
(b)(6)	(b) (5)(i)–(iv)	Significantly modified.
(b)(7)	(b) (5)(iv) and (v)	Significantly modified.
(b)(8)	(b)(8)	Modified.
(b)(9)	(b)(11)	Modified.
(b)(10)	(b)(12)	Significantly modified.
(b)(11)	(b)(13)	Modified.
(b)(12)	(b)(14)	Modified.
(c)(1)	(c)(1)	Modified.
(c)(2)	(c)(2)	Modified.
(c)(3)	(c)(3)	Significantly modified.
(c)(4)	(c)(4)	Modified.
(c)(5)	(c)(5)	Significantly modified.
§ 9.20	§ 9.20	Modified.
§ 19.135	§§ 9.21 and 9.22	Modified.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposal's requirements, for the most part, are not new to the regulation. The proposal liberalizes requirements and reduces burden for all national banks that exercise fiduciary powers, regardless of size.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act of 1995

The OCC invites comment on:

(1) Whether the proposed information collection contained in this proposal is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of

[31] Some earlier OCC letters suggesting that all aspects of state law governing fiduciary institutions apply to national banks have generally dealt with substantive fiduciary law and have not fully distinguished between state substantive fiduciary duties and standards and state administrative requirements. *See, e.g.*, OCC Letter No. 325 (August 8, 1990), reprinted in Fed. Banking L. Rep. (CCH) ¶ 83,236.

[32] See, e.g., Interpretive Letter No. 647 (April 15, 1994), reprinted in, [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,558 (Letter approving notification by First Union National Bank of North Caroline to establish three wholly-owned operating subsidiaries to acquire the partnership interests of Lieber and Company and the assets and liabilities of Evergreen Management Corporation); Interpretive Letter No. 648 (May 4, 1994), reprinted in, [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,557 (Letter approving notification by Mellon Bank, N.A. and Mellon Bank (DE), N.A. to establish certain operating subsidiaries to acquire most of the assets, operations, and activities of The Dreyfus Corporation).

[33] See Interpretive Letter No. 293 (May 11, 1984), reprinted in Fed. Banking L. Rep. (CCH) ¶ 85,463.

[34] See Securities Act Amendments of 1990, Pub. L. 101–550.

[35] Among these policies and procedures are: (1) Favoring debt issuers that have a low risk rating to minimize the possibility of default; (2) ensuring that the credit is fully collateralized by cash or cash equivalents to give the bank a lower credit and asset quality risk and superior credit rights (compared to bondholders); (3) participating out most of the credit to reduce the bank's total credit risk; and (4) employing an independent, third party to become trustee upon default.

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information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–AB12), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–AB12), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 9.8, 9.9, 9.17, and 9.18. The OCC requires this information for the proper supervision of national banks' fiduciary activities. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 15.01 hours.

Estimated number of respondents and/or recordkeepers: 1,000.

Estimated total annual reporting and recordkeeping burden: 15,010 hours.

Start-up costs to respondents: None.

Unfunded Mandates Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 9 is revised to read as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

Sec.

9.1 Authority, purpose, and scope.
9.2 Definitions.
9.3 Approval requirements.
9.4 Administration of fiduciary powers.
9.5 Policies and procedures.
9.6 Review of assets of fiduciary accounts.
9.8 Recordkeeping.
9.9 Audit of fiduciary activities.
9.10 Fiduciary funds awaiting investment or distribution.
9.11 Investment of fiduciary funds.
9.12 Self-dealing and conflicts of interest.
9.13 Custody of fiduciary assets.
9.14 Deposit of securities with state authorities.
9.15 Fiduciary compensation.
9.16 Receivership or voluntary liquidation of bank.
9.17 Surrender or revocation of fiduciary powers.
9.18 Collective investment funds.
9.20 Transfer agents.

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q-1, and 78w.

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The OCC issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q-1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply to the fiduciary activities of national banks.

(c) *Scope.* This part applies to all national banks that act in a fiduciary capacity, as defined in § 9.2(e).

§ 9.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Affiliate* has the same meaning as in 12 U.S.C. 221a(b).

(b) *Applicable law* means Federal law, state law governing a national bank's fiduciary relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

(c) *Custodian under a uniform gifts to minors act* means a fiduciary relationship established pursuant to a state law substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute.

(d) *Fiduciary account* means an account administered by a national bank acting in a fiduciary capacity.

(e) *Fiduciary capacity means:* acting as trustee, executor, administrator, registrar of stocks and bonds (including transfer agent), guardian, assignee, receiver, or custodian under a uniform gifts to minors act; any capacity involving investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

(f) *Fiduciary officers and employees* means all officers and employees of a national bank to whom the board of directors or its designees has assigned functions involving the exercise of the bank's fiduciary powers.

(g) *Fiduciary records* means all written or otherwise recorded information that a national bank creates or receives relating to a fiduciary account or the fiduciary activities of the bank.

(h) *Fiduciary powers* means the authority the OCC grants to a national bank to act in a fiduciary capacity pursuant to 12 U.S.C. 92a.

(i) *Guardian* means the guardian or committee, by whatever name employed by state law, of the estate of an infant, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(j) *Investment discretion* means, with respect to an account, the authority to determine what securities or other assets to purchase or sell on behalf of the account.

§ 9.3 Approval requirements.

(a) A national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

(b) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

§ 9.4 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

(b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank to perform services related to the exercise of its fiduciary powers, and any department of the bank may use fiduciary officers and employees and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* A national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity, pursuant to a written agreement.

(d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.

§ 9.5 Policies and procedures.

A national bank exercising fiduciary powers shall adopt and follow written policies and procedures adequate to ensure that its fiduciary practices comply with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the bank's:

(a) Brokerage placement practices, including:

(1) Selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to those persons;

(2) Acquisition of services or products, including research services, in return for brokerage commissions;

(3) Allocation of research or other services among accounts, including those that did not generate commissions to pay for that research or other services; and

(4) Disclosure of information concerning these brokerage placement policies and procedures to prospective and existing customers;

(b) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;

(c) Methods for preventing self-dealing and conflicts of interest;

(d) Selection and retention of legal counsel who is readily available to advise the bank and its fiduciary officers and employees on fiduciary matters;

(e) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution;

(f) Allocation to fiduciary accounts of any financial incentives the bank may receive for investing fiduciary funds in a particular investment; and

(g) Disclosure to beneficiaries and other interested parties of fees and expenses charged to fiduciary accounts.

§ 9.6 Review of assets of fiduciary accounts.

(a) *Individual account review*—(1) *Pre-acceptance review.* Before accepting a fiduciary account, a national bank shall review the prospective account to determine whether it can properly administer the account.

(2) *Initial post-acceptance review.* Upon the acceptance of a fiduciary account for which a national bank has investment discretion, the bank shall conduct a prompt, written review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

(3) *Annual review.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of all assets of each account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

(b) *Annual review of assets by issuer.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of the investment merit of each asset in fiduciary accounts for which the bank has investment discretion, to the extent appropriate for that asset.

§ 9.8 Recordkeeping.

(a) *Documentation of accounts.* A national bank shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts, including any records required under 12 CFR part 12.

(b) *Retention of records.* A national bank shall retain all fiduciary records relating to an account for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* The bank shall ensure that its fiduciary records are separate and distinct from other records of the bank.

§ 9.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year and not later than 15 months after the last audit, a national bank shall perform, through its audit committee, a suitable audit of all of its fiduciary activities, unless the bank adopts a continuous audit system in accordance with paragraph (b) of this section. The bank shall note the results of the audit (including all actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* In lieu of performing annual audits under paragraph (a) of this section, a national bank may adopt a continuous audit system under which the bank performs, through its audit committee, a discrete audit of each fiduciary activity (*i.e.*, on an activity-by-activity basis) at intervals appropriate for that activity. Thus, a bank may audit certain fiduciary activities at intervals greater or less than one year, as appropriate. A bank that adopts a continuous audit system shall note the results of all discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year and not later than 15 months after the last audit report.

(c) *Audit committee.* A national bank's audit committee may consist of a committee of the bank's directors or an audit committee of an affiliate of the bank. However, the national bank's audit committee must not include:

(i) Any officers of the bank who participate significantly in the administration of the bank's fiduciary activities or;

(ii) Any members of a fiduciary committee of the bank.

§ 9.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* A national bank shall not allow funds of a fiduciary account that are awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* Unless prohibited by applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the bank. To the extent that the funds are not insured by the Federal Deposit Insurance Corporation, the bank shall secure them by setting aside collateral, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A national bank may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities that qualify as investment securities pursuant to 12 CFR part 1;

(iii) Readily marketable securities of the classes in which state banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under state law; and

(iv) Assets, including surety bonds, that qualify under applicable state law as appropriate security for deposits of fiduciary funds.

(c) *Affiliate deposits.* If consistent with applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or

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distribution with an affiliate insured depository institution. If consistent with applicable law, a national bank may secure a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution.

§ 9.11 Investment of fiduciary funds.

A national bank shall invest funds that it holds as fiduciary in a manner consistent with applicable law.

§ 9.12 Self-dealing and conflicts of interest.

(a) *Investments for fiduciary accounts*—(1) *In general.* Unless consistent with applicable law, a national bank shall not invest fiduciary funds in the stock or obligations of, or in assets acquired from: the bank or any of its directors, officers, or employees; affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank.

(2) *Additional securities investments.* If retention of stock or obligations of the bank or its affiliates is consistent with applicable law, the bank may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

(b) *Loans, sales, or other transfers from fiduciary accounts*—(1) *In general.* A national bank shall not lend, sell, or otherwise transfer assets held in a fiduciary capacity to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank, unless:

(i) The transaction is consistent with applicable law;

(ii) Legal counsel advises the bank in writing that the bank has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the bank, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in § 9.18(b)(8)(iii) for defaulted fixed-income investments; or

(iv) Required in writing by the OCC.

(2) *Loans of funds held in trust.* Notwithstanding paragraph (b)(1) of this section, a national bank shall not lend to any of its directors, officers, or employees any funds held in trust, except with respect to the bank's own employee benefit plans in accordance with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)).

(c) *Loans to fiduciary accounts.* A national bank may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A national bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A national bank may make a loan between any of its fiduciary accounts if the transaction is authorized by the instrument creating the account from which the loan is made and is not prohibited by applicable law.

§ 9.13 Custody of fiduciary assets.

(a) *Control of fiduciary assets.* A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if the bank maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A national bank shall keep the assets of fiduciary accounts separate from the assets of the bank. A national bank shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in § 9.18.

§ 9.14 Deposit of securities with state authorities.

(a) *In general.* If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank of the district in which the national bank is located, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

(b) *Assets held in more than one state.* If a national bank administers trust assets in more than one state, the bank may compute the amount of deposit required for each state on the basis of trust assets that the bank administers from offices located in that state.

§ 9.15 Fiduciary compensation.

(a) *Compensation of bank.* If the amount of a national bank's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the bank may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A national bank shall not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of the bank's board of directors.

§ 9.16 Receivership or voluntary liquidation of bank.

If the OCC appoints a receiver for a national bank, or if a national bank places itself in voluntary liquidation, the receiver or liquidating agent shall promptly close all fiduciary accounts to the extent practicable, in accordance with OCC instructions and the orders of the court having jurisdiction. The receiver or liquidating agent shall transfer all remaining fiduciary accounts to substitute fiduciaries.

§ 9.17 Surrender or revocation of fiduciary powers.

(a) *Surrender.* In accordance with 12 U.S.C. 92a(j), a national bank seeking to surrender its fiduciary powers shall file with the OCC a certified copy of the resolution of its board of directors evidencing that intent. If satisfied that the bank has been discharged from all fiduciary duties, the OCC will provide written notice that the bank is no longer authorized to exercise fiduciary powers.

(b) *Revocation.* If the OCC determines that a national bank has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, its fiduciary powers, the Comptroller may, in accordance with the provisions of 12 U.S.C. 92a(k), revoke the bank's fiduciary powers.

§ 9.18 Collective investment funds.

(a) *In general.* Where consistent with applicable law, a national bank may invest assets that it holds as fiduciary in the following collective investment funds:

(1) A fund maintained by the bank, or by one or more affiliate banks,[1]

[1] A fund established pursuant to § 9.18(a)(1) that includes moneys contributed by entities that are affiliates under 12 U.S.C. 221a(b), but are not members of the same affiliated group, as defined at 26 U.S.C. 1504, may fail to qualify for tax-exempt status under the Internal Revenue Code. See 26 U.S.C. 584.

exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliate banks, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act.

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from Federal income taxation under the Internal Revenue Code.

(i) A national bank may invest assets of retirement, pension, profit sharing, stock bonus or other trusts exempt from Federal income taxation and that the bank holds in its capacity as trustee in a collective investment fund established under paragraph (a)(1) or (a)(2) of this section.

(ii) A national bank may invest assets of retirement, pension, profit sharing, stock bonus or other employee benefit trusts exempt from Federal income taxation and that the bank holds in *any* capacity (including agent), in a collective investment fund established under paragraph (a)(2) of this section if the fund itself qualifies for exemption from Federal income taxation.

(b) *Requirements.* A national bank administering a collective investments fund authorized under paragraph (a) of this section shall comply with the following requirements:

(1) *Written plan.* The bank shall establish and maintain each collective investment fund in accordance with a written plan approved by a resolution of the bank's board of directors or by a committee thereof (Plan). The bank shall make a copy of the Plan available for public inspection at its main office during all banking hours, and shall provide a copy of the Plan to any person who requests it. The Plan must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the bank will operate the fund, including provisions relating to:

(i) Investment powers and policies with respect to the fund;

(ii) Allocation of income, profits, and losses;

(iii) Fees and expenses that will be charged to the fund and to participating accounts;

(iv) Terms and conditions governing the admission and withdrawal of participating accounts;

(v) Audits of participating accounts;

(vi) Basis and method of valuing assets in the fund;

(vii) Expected frequency for income distribution to participating accounts;

(viii) Minimum frequency for valuation of fund assets;

(ix) Period following each valuation date during which the valuation must be made;

(x) Bases upon which the bank may terminate the fund; and

(xi) Any other matters necessary to define clearly the rights of participating accounts.

(2) *Fund management.* A bank administering a collective investment fund shall have exclusive management thereof, except as a prudent person might delegate responsibilities to others.[2]

(3) *Proportionate interests.* Each participating account in a collective investment fund must have a proportionate interest in all the fund's assets.

(4) *Valuation*—(i) *Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's assets at least once every three months. However, in the case of a fund that is invested primarily in real estate or other assets that are not readily marketable, the bank shall determine the value of the fund's assets at least once each year.

(ii) *Method of valuation*—(A) *In general.* Except as provided in paragraph (b)(4)(ii)(B) of this section, a bank shall value each fund asset at market value as of the date set for valuation, unless the bank cannot readily ascertain market value, in which case the bank shall use a fair value determined in good faith.

(B) *Short-term investment funds.* A bank may value a fund's assets on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the Plan requires the bank to:

(*1*) Invest at least 80 percent of the fund's assets in bonds, notes, or other evidences of indebtedness that are payable on demand (including variable amount notes), or that have a maturity date not exceeding 91 days from the date of purchase;

(*2*) Accrue on a straight-line basis the difference between the cost and anticipated principal receipt on maturity;

(*3*) Hold the fund's assets until maturity under usual circumstances; and

(*4*) Ensure that, after effecting admissions and withdrawals, at least 20 percent of the value of the remaining fund assets are cash, demand obligations, or assets that will mature on the fund's next business day.

(5) *Admission and withdrawal of accounts*—(i) *In general.* A bank administering a collective investment fund shall admit an account to or withdraw an account from the fund only on the basis of the valuation described in paragraph (b)(4) of this section.

(ii) *Prior request or notice.* A bank administering a collective investment fund may admit an account to or withdraw an account from a collective investment fund only if the bank has approved a request for or notice of intention of taking that action on or before the valuation date on which the admission or withdrawal is based. No requests or notices may be canceled or countermanded after the valuation date.

(iii) *Prior notice period for withdrawals from funds with assets not readily marketable.* A bank administering a collective investment fund described in paragraph (a)(2) of this section that is invested primarily in real estate or other assets that are not readily marketable, may require a prior notice period, not to exceed one year, for withdrawals.

(iv) *Method of distributions.* A bank administering a collective investment fund shall make distributions to accounts withdrawing from the fund in a manner consistent with applicable law.

(v) *Segregation of investments.* If an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal but the investment is not distributed ratably in kind, the bank shall segregate and administer it for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(6) *Audits and financial reports*—(i) *Annual audit.* At least once during each 12-month period, a bank administering a collective investment fund shall arrange for an audit of the collective investment fund by auditors responsible only to the board of directors of the bank.[3]

(ii) *Financial report.* At least once during each 12-month period, a bank administering a collective investment fund shall prepare a financial report of

[2] If a fund, the assets of which consist solely of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation, is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the fund will not be deemed in violation of paragraph (b)(2) of this section as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)).

[3] If a fund, the assets of which consist solely of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation, is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the fund will not be deemed in violation of paragraph (b)(6)(i) of this section as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)), if the bank has access to the audit reports of the fund.

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the fund based on the audit required by paragraph (b)(6)(i) of this section. The report must disclose fees and expenses charged to the fund. This report must contain a list of investments in the fund showing the cost and current market value of each investment, and a statement covering the period after the previous report showing the following (organized by type of investment):

(A) Summaries of all purchases (with costs);

(B) Summaries of all sales (with profit or loss and any other investment changes);

(C) Income and disbursements; and

(D) An appropriate notation as to any investments in default.

(iii) *Limitation on representations.* A bank may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. A bank shall not publish in the financial report any predictions or representations as to future results. In addition, with respect to funds described in paragraph (a)(1) of this section, a bank shall not publish the performance of funds other than those administered by the bank or its affiliates.

(iv) *Availability of the report.* A bank administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The bank may provide a copy of the financial report to prospective customers. In addition, the bank shall provide a copy of the report upon request to any person for a reasonable charge.

(7) *Advertising prohibition for common trust funds.* A bank shall not advertise or publicize any fund authorized under paragraph (a)(1) of this section, except in connection with the advertisement of the general fiduciary services of the bank.

(8) *Self-dealing and conflicts of interest*—(i) *Bank interests.* A bank administering a collective investment fund shall not have an interest in that fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided in this paragraph, the bank shall not lend to, sell assets to, or purchase assets from a fund. The bank shall not invest fund assets in stock or obligations, including time or savings deposits, of the bank or any of its affiliates, except for funds awaiting investment or distribution. If, because of a creditor relationship or otherwise, the bank acquires an interest in a participating account, the participating account must be withdrawn on the next withdrawal date. However, a bank may invest assets that it holds as fiduciary for its own employees in a collective investment fund.

(ii) *Loans to participating accounts.* A bank administering a collective investment fund shall not make any loan on the security of a participant's interest in the fund. An unsecured advance to a fiduciary account participating in the fund until the time of the next valuation date does not constitute the acquisition of an interest in a participating account by the bank.

(iii) *Purchase of defaulted fixed-income investments.* A bank administering a collective investment fund may purchase for its own account any defaulted fixed-income investment held by the fund if, in the judgment of the bank, the cost of segregation of the investment is greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to purchase a defaulted fixed-income investment, it shall do so at the greater of market value or the sum of cost, accrued unpaid interest, and penalty charges.

(9) *Mortgage reserve account*—(i) *In general.* A bank administering a collective investment fund may transfer to a reserve account up to 5 percent of the net income derived by the fund from mortgages held by the fund during any regular accounting period. The amount held in the reserve account must not exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The bank shall deduct the amount of the reserve account from the fund's assets in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) *Charges against reserve account.* At the end of each accounting period, the bank shall charge all interest payments that are due but unpaid with respect to mortgages in the fund against the reserve account to the extent available, and shall credit the payments to income distributed to participating accounts. In the event of subsequent recovery of the payments by the fund, the bank shall credit the reserve account with the amounts recovered.

(10) *Fees and expenses*—(i) *Fund management fees.* A bank administering a collective investment fund may charge a fund management fee if the total fees charged to a participating account (including the fund management fee) does not exceed the total fees that the bank would have charged had it not invested assets of the account in the fund.

(ii) *Reasonable expenses.* A bank administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund, to the extent not prohibited by applicable law. However, a bank shall absorb the expenses of establishing or reorganizing a collective investment fund.

(11) *Prohibition against certificates.* A bank administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in the fund.

(12) *Good faith mistakes.* No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund will be deemed to be a violation of this part if, promptly after the discovery of the mistake, the bank takes whatever action is practicable under the circumstances to remedy the mistake.

(c) *Other collective investments.* In addition to the collective investment funds authorized under paragraph (a) of this section, a national bank may invest assets that it holds as fiduciary, to the extent not prohibited by applicable law, as follows:

(1) *Bank fiduciary funds.* In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of those companies exclusively for the investment of funds held by corporate fiduciaries.

(2) *Single loans or obligations.* In the following loans or obligations, if the bank's only interest in the loans or obligations is its capacity as fiduciary:

(i) A single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or a single fixed amount security, obligation, or other property, either real, personal, or mixed, of a single issuer; or

(ii) A variable amount note of a borrower of prime credit, if the bank uses the note solely for investment of funds held in its fiduciary accounts.

(3) *Mini-funds.* In a fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, or custodian under a uniform gifts to minors act, that the bank considers to be too small to be invested separately to advantage. The total assets in the fund must not exceed $1,000,000, and the number of participating accounts must not exceed 100.

(4) *Trust funds of corporations and closely-related settlors.* In any investment specifically authorized by the instrument creating the fiduciary account or a court order, in the case of trusts created by a corporation, including its affiliates and subsidiaries, or by several individual settlors who are closely related.

(5) *Special exemption funds.* In any other manner described by the bank in a written plan approved by the OCC. The written plan is deemed approved by the OCC 30 days after it receives the plan, unless the OCC notifies the bank that the OCC has disapproved the plan or is extending review beyond the 30-day period because the proposal raises issues that require additional information or additional time for analysis. The written plan must set forth:

(i) The reason that the proposed fund requires a special exemption;

(ii) The provisions of the proposed fund that are inconsistent with paragraphs (a) and (b) of this section;

(iii) The provisions of paragraph (b) of this section for which the bank seeks an exemption; and

(iv) The manner in which the proposed fund addresses the rights and interests of participating accounts.

§ 9.20 Transfer agents.

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1) apply to national bank transfer agents. References to the "Commission" are deemed to refer to the "OCC."

(b) The rules adopted by the SEC pursuant section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2–2, and 240.17Ad–1 through 240.17Ad–16) apply to national bank transfer agents.

PART 19—RULES OF PRACTICE AND PROCEDURE

2. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h), 78(i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

3. A new § 19.135 is added to subpart E to read as follows:

§ 19.135 Applications for stay or review of disciplinary actions imposed by registered clearing agencies.

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by national banks. References to the "Commission" are deemed to refer to the "OCC."

(b) *Reviews.* The regulations adopted by the SEC pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3(a)–(f)) apply to applications by national banks. References to the "Commission" are deemed to refer to the "OCC."

Dated: December 11, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30971 Filed 12–20–95; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R–0908]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is soliciting comment on how the finance charge could more accurately reflect the cost of consumer credit. In particular, the Board is asking for the public's views on the feasibility of treating as finance charges all costs imposed by the creditor or payable by the consumer as an incident to the extension of credit. The Truth in Lending Act Amendments of 1995 direct the Board to submit a report to the Congress regarding these issues. Under present law, costs such as interest are part of the finance charge; other costs, including many associated with real estate-secured lending, are excluded from the finance charge. The Board is also required to address in its report abusive refinancing practices engaged in by creditors for the purpose of avoiding a consumer's rescission rights.

DATES: Comments must be received on or before February 9, 1996.

ADDRESSES: Comments should refer to Docket No. R–0908, and may be mailed to William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW., (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Attorney, or Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of Telecommunications Devices for the Deaf, contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act Amendments of 1995 (1995 Amendments Act), Pub. L. 104–29, 109 Stat. 271, enacted into law on September 30, 1995, direct the Board to submit a report to the Congress concerning the use of finance charges to accurately reflect the cost of consumer credit. The Board must consider the feasibility of including in the finance charge all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the credit transaction—especially costs associated with real estate- or home-secured lending that are currently excluded from the finance charge under section 106 of the Truth in Lending Act. As contemplated by the Congress, perhaps only charges payable in a comparable cash transaction would continue to be excluded from the finance charge. The report must also address abusive refinancing practices engaged in by a creditor for the purpose of avoiding a consumer's rescission rights. The Board will submit its report to the Congress in early spring 1996, based on the comments of interested parties and on its own analysis.

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II. Finance Charges

Definition

The Truth in Lending Act (15 U.S.C. 1601 et seq.) contains rules governing the disclosure of finance charges (Section 106). The act is implemented by the Board's Regulation Z (12 CFR part 226). Rules on finance charges are contained in Regulation Z § 226.4 and accompanying official staff interpretations. The finance charge is defined as the cost of consumer credit expressed as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. The term "imposed" is interpreted broadly, to include any cost charged by the creditor (unless otherwise excluded), including charges for optional services paid by the consumer. Examples of a finance charge include interest, points, and service or transaction fees.

The act excludes certain costs from the finance charge, such as charges payable in a comparable cash transaction and fees paid to third-party closing agents (unless the creditor requires the services provided or retains the fee). Many costs associated with loans secured by real estate or a principal dwelling are specifically excluded; examples are fees for appraisals, document preparation, title insurance, and pest inspections prior to loan closing. The regulation also excludes charges such as application fees (charged to all applicants), late payment fees, and most taxes.

Still other costs that are generally included in the finance charge may nevertheless be excluded. For example, the act provides that credit report fees are finance charges, but provides an exception for credit report fees associated with real estate- or home-secured loans. The act also excludes optional credit life insurance premiums and fees to record a security interest if the cost is disclosed to the consumer and meets other conditions.

Annual percentage rate

In addition to requiring disclosure of finance charges as a dollar amount, the act and regulation require creditors to disclose the cost of consumer credit as an annual percentage rate (APR). Creditors must disclose an APR for all types of consumer credit—installment loans (closed-end credit) and credit card accounts or home equity lines of credit (open-end plans). The APR for closed-end credit and open-end plans reflect finance charges, but the distinct nature of these products calls for differences in how the APR is calculated.

The APR for closed-end credit is based on the amounts borrowed by the consumer in relation to the amount and timing of payments to the creditor. It factors in interest and all other finance charges. Costs such as recording fees or title insurance fees may be disclosed, but are not a part of the finance charge and thus, are excluded from the APR calculation.

Under open-end plans such as a home equity line of credit, the creditor typically sets the maximum amount that can be borrowed at any time. The amount that will actually be borrowed by the consumer, however, is typically unknown when the credit plan is established. The APR stated in advertisements and account-opening disclosures reflects only the rate of interest that will be applied to any outstanding balance the consumer may have in the future. Additional costs—whether finance or other charges—are separately identified.

Consumers with outstanding balances receive an APR on periodic statements. That APR is based on the outstanding balance and certain finance charges imposed during the cycle. Some finance charges, such as points charged in connection with establishing a home equity plan or other fees to open or renew plans, would skew the APR for the billing cycle in which they are imposed. These types of finance charges are disclosed on periodic statements but are not figured in the APR.

Request for Comment

The Board requests comments on how the definition of the finance charge could be modified, if at all, to reflect the cost of consumer credit more accurately. The Congress directs the Board to make recommendations on any necessary statutory and regulatory changes. (1995 Amendments, Section 2(f).) The Board believes the scope of the study is limited to possible modifications to the definition of the finance charge.

The 1995 Amendments contain, for the most part, provisions affecting closed-end credit that is real estate- or home-secured. The Board believes that the scope of the report is intended to cover the treatment of costs as finance charges for *all* types of consumer credit, although a focus of the study will be on those fees associated with real estate lending that are currently excluded from the finance charge. For example, many costs associated with entering into home-secured loans are the same whether the credit is an installment loan or a line of credit. Similarly, certain application fees are excluded from the finance charge for all types of credit transactions, not just those affecting installment loans.

Comment is requested on the feasibility of including in the finance charge all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the credit transaction (other than costs imposed in comparable cash transactions), particularly costs associated with real estate- or home-secured credit that are currently excluded from the finance charge. For example, mortgage brokers fees are sometimes, but not always, a finance charge under present law: A new statutory provision categorizes all brokers fees paid by the consumer to the broker (or to the creditor for delivery to the broker) as finance charges, and will go into effect when the Board issues a final rule in 1996.

In assessing the feasibility of this approach, the Board must consider the implications of including charges imposed by third parties—settlement agents and others—that may not be within the creditor's knowledge or control. Comment is requested on compliance issues that would arise if the definition of the finance charge were expanded to include charges by third parties.

Treating all costs as a finance charge would, of course, simplify creditor compliance with the TILA and Regulation Z; it would reduce the potential for disclosure errors. The Board believes the study is, in part, a reaction to the spate of class action lawsuits that followed the court decision of *Rodash* v. *AIB Mortgage Company*. (16 F.3d 1142 (11th Cir. 1994)). In *Rodash*, the court found, among other TILA violations, that the creditor improperly excluded several fees from the finance charge calculation—totalling about $225. The court awarded civil money damages and allowed the consumer to rescind a $100,000 loan.

Including all costs in the finance charge, however, would also increase the APR disclosed for closed-end credit transactions—dramatically, in some cases. For example, the APR for home-secured loans would reflect closing costs such as appraisal fees, title insurance and the like. Including premiums for optional credit life insurance or for property insurance in the finance charge could also have a significant impact on the APR. The resulting APR for installment loans may seem distorted, particularly in relation to the APR disclosed for a comparable open-end product. For example, disclosures for a home-secured open-end plan would include closing costs and insurance premiums as finance charges, but those fees would not be included in the APR stated in advertisements or account-opening disclosures, unless the current rules on calculating the APR are changed.

III. Abusive Refinancing Practices

The act and regulation allow consumers to cancel (or rescind) certain credit transactions secured by the consumer's principal dwelling. For example, the right of rescission applies if a consumer's principal dwelling is used to secure a loan financing home improvements or a child's education. Other loans secured by a consumer's principal dwelling are not rescindable, such as a loan for a business purpose.

A consumer's right to rescind a refinanced loan depends on both the creditor and amount of money involved. If the creditor refinancing the loan is the same creditor that initially extended the credit, consumers may rescind the refinancing only to the extent new monies are advanced. For example, if a consumer's principal dwelling secures a loan with a creditor and the consumer seeks to refinance an outstanding balance of $100,000 with the same creditor, the transaction is not rescindable. If the consumer obtains $25,000 in an additional advance, the refinancing could be rescinded up to the new advance of $25,000. If the consumer refinances the loan with a new creditor instead, the entire transaction is rescindable, whether or not new monies are advanced.

The Board's report must include recommendations, if any, for statutory or regulatory changes necessary to address abusive refinancing practices engaged in by a creditor for the purpose of avoiding a consumer's rescission rights. Comment is requested on the issue.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0908, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

By order of the Board of Governors of the Federal Reserve System, December 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30994 Filed 12–20–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–4]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 19, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No._____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28376.

Petitioner: National Business Aircraft Association, Inc.

Regulations Affected: 14 CFR 91.501.

Description of Rulechange Sought: To add a new paragraph (e) to § 91.501 defining the word "company" as it is used in § 91.501(b)(5) and (6) to include a governmental agency and governmental corporation, as well as defining the words "parent" and "subsidiary" to include another governmental agency or governmental corporation within the same local, state, or federal jurisdiction. This amendment, if granted, would include government aircraft operations with corporate aircraft operations under part 91 and, therefore, allow government agencies to recover the costs of owning, operating, and maintaining their aircraft in certain circumstances.

Petitioner's Reason for the Request: The petitioner feels that the current regulatory scheme discriminates against government owners and operators of civil aircraft without justification.

[FR Doc. 95–31015 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANE–35]

Proposed Alteration of V–99, V–451 and J–62

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Federal Airways V–99, V–451 and Jet Route J–62 in Massachusetts and Connecticut. Specific portions of each of the airways and jet route are no longer necessary for navigation and would be revoked. Removing the obsolete segments would eliminate clutter on the aeronautical charts.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 95–ANE–35, Federal Aviation

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Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–0255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANE–35." The postcard will be date/time stamped and returned to the commenter. All comments received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airways V–99, V–451 and Jet Route J–62. Specific portions of each of the airways and jet route are no longer necessary for navigation and would be revoked. The airspace designation for V–99 would be revoked between Hartford, CT, and the GRAYM intersection; V–451 would be revoked between Groton, CT, and the SEEDY intersection; and J–62 would be revoked east of the Nantucket, CT, Very High Frequency Omnidirectional Range (VOR). Removing the obsolete segments would eliminate clutter on the aeronautical charts. Jet Routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route and airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004–Jet Routes

* * * * *

J–62 [Revised]

From Robbinsville, NJ; to Nantucket, MA.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–99 [Revised]

From LaGuardia, NY, via INT LaGuardia 043° and Hartford, CT, 245° radials; Hartford.

* * * * *

V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, NY, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton.

* * * * *

Issued in Washington, DC, on December 12, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–31100 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Rregulatory Commission

18 CFR Part 37

[Docket No. RM95–8–000]

Real-Time Information Networks and Standards of Conduct; Notice of Proposed Rulemaking

December 13, 1995

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to add Part 37 containing rules establishing and governing real-time information networks (RINs) and prescribing standards of conduct. Under this proposal, each public utility (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to create and/or participate in a RIN that would provide wholesale transmission customers and potential wholesale transmission customers with electronically provided information on available wholesale transmission capacity, prices, and other information that will enable them to obtain open access non-discriminatory transmission service.

DATES: Written comments (an original and 14 paper copies and one copy on a computer diskette) must be received by the Commission by February 5, 1996.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–1283

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0321

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS indefinitely in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR to add Part 37 containing rules establishing and governing real-time information networks (RINs) and standards of conduct. We are issuing this notice of proposed rulemaking in conjunction with our previously proposed Open Access rule.[1]

Under the proposed Open Access rule, public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce would be required to provide open access, non-discriminatory wholesale transmission services. To ensure non-discriminatory service, the proposed Open Access rule requires the functional unbundling of wholesale services. A public utility's uses of its own transmission system for the purpose of engaging in wholesale sales and purchases of electric energy must be separated from other activities and transmission services (including ancillary services) must be taken under filed transmission tariffs of general applicability.

To ensure this separation of service, the public utility must provide customers with timely access to transmission-related information. As we stated in the Open Access NOPR, "functional unbundling means that the public utility, in order to provide non-discriminatory open access to transmission and ancillary services information, must rely upon the same electronic network that its transmission customers rely upon to obtain transmission information about its

[1] See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice and Supplemental Notice of Proposed Rulemaking, 60 FR 17662 (April 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (March 29, 1995) (hereinafter Open Access NOPR).

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system when buying or selling power."[2] The rule we propose today is designed to begin the process of achieving this objective.

Under the proposed rule, each public utility as defined in section 201(e) of the Federal Power Act, 16 U.S.C. 824(e) (1994), (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to develop and/or participate in a RIN. The proposed regulations, relying heavily on work already done by representatives of all segments of the electric power industry, describe what information must be provided on the RIN and how RINs are to be implemented and used.

The Commission also proposes a code of conduct that would apply to all public utility transmission providers. This code of conduct would require, among other matters, a separation of the utilities' transmission system operations and wholesale marketing functions, and would define permissible and impermissible contacts between employees that conduct wholesale generation marketing functions and employees that handle transmission system operations and reliability in the system control center or at other facilities or locations.

Within 60 days of publication of a final rule in the **Federal Register**, public utilities would be required to file with the Commission procedures that would enable customers and the Commission to determine that public utilities are in compliance with the RINs and code of conduct requirements.

II. Public Reporting Burden

The proposed rule would require transmission providers to establish and/or participate in a RIN, which would provide wholesale transmission users and potential wholesale transmission users with information by electronic means about transmission capacity and prices.

The following collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Persons wishing to comment on the collections of information should direct their comments to the Desk Officer FERC, Office of Management and Budget, Room 3019NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285 or via the Internet at hillier_t@a1.eop.gov. Comments must be filed with the Office of Management and Budget within 60 days of publication of this document in the **Federal Register**.[3] A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41–17, Washington, DC 20426. For further information, contact Michael Miller, 202–208–1415.

ESTIMATED ANNUAL BURDEN

Data Collection	No. of Respondents	No. of Responses	Hours per Response	Total annual hours
Reporting	84	1	8352	701,568
Recordkeeping	84	1	1670	140,280
Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate))=841,848.				

Data collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	$190,000
Annualized Costs (Operations & Maintenance)	$620,000
Total Annualized Costs	$810,000

Internal Review

The Commission has reviewed the proposed collection of information and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this notice of proposed rulemaking, for the collection, efficient management, and use of the required information. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the information burden estimate set forth above.[4]

III. Discussion

A. Background

On March 29, 1995, the Commission issued the Open Access NOPR (referenced above). In the Open Access NOPR, the Commission proposed rules that would require public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce to provide wholesale customers with transmission services comparable to those that they provide to themselves. The goal of the Open Access NOPR is to eliminate unduly discriminatory practices in the provision of wholesale transmission services in interstate commerce, and to facilitate the development of a competitive bulk power market.

The Open Access NOPR includes minimum terms and conditions that a public utility would have to include in its wholesale transmission tariffs, the types of transmission and related ancillary services it must offer to its customers, and a requirement that each public utility purchase wholesale transmission services for its new wholesale sales and purchases under the same transmission tariffs applicable to its wholesale customers. The Open Access NOPR also proposes that public utilities be allowed to recover certain

[2] Open Access NOPR at pp. 95–96.

[3] Although the full text of this document and Attachment 1 will be published in the **Federal Register**, the three appendices attached to this document (Appendix "A"—the report of the "what" working group, Appendix "B"—the report of the "how" working group, and Appendix "C"—templates for upload and download of files and HTML displays) will not. The complete NOPR, including these appendices, is available for inspection and copying in the Commission's Public Reference Room and is accessible through the Commission Issuance Posting System (CIPS), an electronic bulletin board service providing access to Commission documents.

[4] *See* 44 U.S.C. 3506 (c).

legitimate and verifiable stranded costs associated with certain requirements contracts entered into prior to July 11, 1994.

We do not believe that open access non-discriminatory transmission services can be completely realized until we remove real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of these obstacles is unequal access to transmission information. In the Commission's view, transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly non-discriminatory transmission services are to be a reality.

For this reason, when we issued the Open Access NOPR we also issued a notice of technical conference and request for comments (RIN Notice) that initiated this proceeding.[5] In the RIN Notice, the Commission announced that we were considering establishing RIN rules to effectuate the non-discrimination goals of the Open Access NOPR, and that we expected to require a RIN or other options to ensure that potential and actual transmission service customers will receive access to information.[6]

The Commission also announced its goal to establish uniform requirements for a RIN or other communications device at the same time that it adopts a rule requiring open access non-discriminatory transmission services. To accomplish this objective, the Commission invited interested persons to file comments and to participate in a technical conference, where they could make presentations on their positions. As a starting point, the Commission attached to the RIN Notice a Commission Staff paper identifying various RIN-related issues, and directed commenters to respond to the specific issues identified in the Staff paper and to provide their general comments on the RIN concept. The RIN Notice stated that the Commission expected to hold informal conferences, enlisting working groups to discuss any remaining issues, and that input from the technical conference and informal conferences would be the basis for subsequent procedures. The RIN Notice set a timetable to be followed, so that RIN requirements could be in place no later than the effective date of a final rule on open access.

Question 1. We seek comment on whether to continue to call the information network a "RIN" and, if not, what name should be used in its place.

In response to the RIN Notice, Kansas City Power & Light Company and Continental Power Exchange, Inc. sponsored a forum on EBBs held on March 31, 1995 in Kansas City. That forum was attended by more than 50 representatives of the 17 entities with open access filings (at that time) at the Commission, along with state regulators from Kansas and Missouri, and the Edison Electric Institute (EEI). A follow-up workshop on EBBs and RINs, sponsored by EEI, was held in Kansas City on April 19, 1995, and was attended by more than 150 people from all segments of the electric industry.

The North American Electric Reliability Council (NERC) and its nine regional councils offered to act as sponsor and neutral facilitator for the electric industry regarding electronic information systems to:

- Determine the information requirements of transmission users;
- Develop industry wide standards for reporting and using this information;
- Ensure that any information systems developed can build upon and be compatible with existing information systems in the industry; and
- Meet the Commission's goal of ensuring that potential purchasers of transmission services would receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis.

The EEI workshop participants accepted NERC's offer to facilitate industry discussions on RINs. They also decided that, rather than awaiting Commission-drafted standards, they would try to develop an industry wide consensus, for submittal to the Commission, that would ensure fair and equal participation by both transmission customers and transmission providers and that would define the necessary information requirements and standards for a RIN.

Accordingly, on May 3–4, 1995, NERC called together a sub-group of workshop participants, representing all categories of transmission users and providers, to draft a model or "straw man" document that would outline a preliminary list of minimum information requirements for transmission users (*i.e.*, what information should be included on a RIN) and to reach agreement on what would constitute a fair and inclusive process for reaching consensus among transmission user groups on information requirements for a RIN. The resulting consensus document (Strawman 1) set the agenda for subsequent discussions at five regional workshops, held across the country, with participation by over 500 individuals from all segments of the electric power industry. The strawman group issued a revised document (Strawman 2), on June 2, 1995, based on those discussions. Strawman 2 was distributed to the participants in the regional workshops and to Commission Staff and served as the discussion point for a NERC-sponsored workshop held in Washington, DC on June 26–28, 1995. Although participants at this workshop were not able to reach consensus on numerous issues, they were able to identify the important unresolved issues and where efforts would need to be made to reach consensus.

Other groups also got involved early on with RIN-related issues. For example, the Western Group[7] began working in February 1995 (prior to issuance of the RIN Notice) on standards for the electronic information systems needed for implementation of comparable transmission service. WRTA members were joined in their discussions by members of the Southwest Regional Transmission Association (SWRTA), and the Northwest Regional Transmission Association (NWRTA). Together, WRTA, SWRTA, and NWRTA held a series of informal workshops to discuss tariff issues. Representatives of the Western Group also attended the April 19, 1995 meeting sponsored by EEI on national RIN standards and participated in the NERC process.

In all, 108 sets of comments were submitted to the Commission in response to the RIN Notice. Although the comments were nearly uniformly favorable to the RIN concept, the

[5] Real-Time Information Networks, 60 FR 17726 (April 7, 1995), IV FERC Stats. & Regs. ¶ 35,028 (March 29, 1995).

[6] In the RIN Notice, we chose the term "Real-Time Information Network" to describe the electronic information system envisioned by that notice. We chose that term because we wanted to distinguish the RIN from the electronic bulletin board (EBB) rules developed for the natural gas industry and because we wanted to emphasize that information would not be distributed to different users at different times. However, we did not mean to suggest that transmission providers would be precluded from taking adequate time to evaluate requests for service before responding to them. Perhaps a more precise term would have been a same-time information network.

In the two working group reports (discussed below) we are urged to change the name "RIN" to "electronic information network", by the "what" working group, and to "transmission services information network", by the "how" working group. Either of these designations would be equally acceptable. In the meantime, however, we are retaining the title "RIN" to make clear that this NOPR is proposing rules consistent with the ideas expressed in the RIN Notice.

[7] This group is composed of 17 major transmitting utilities, 3 non-utility suppliers, 10 transmission dependent utilities (or groups of utilities), and two state commissions, all located in the western United States and western Canada (the geographic area covered by the interconnected systems of the Western Systems Coordinating Council).

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comments exposed many disagreements about what information should be contained on a RIN, what kind of a RIN system or systems should be required, what transactions should be covered, how terms should be defined, etc. However, most commenters understood that access to transmission information—by all parties at the same time—is essential to ensuring non-discriminatory open access transmission services.

The comments led to a technical conference on RINs (Technical Conference) held in Washington, DC on July 27 and 28, 1995. Panels at the Technical Conference discussed the status of industry efforts to date, industry standards for information systems, what information is needed on a RIN, how a RIN should be structured, what issues need to be resolved, and what steps should be taken next. In addition, demonstrations were presented on different transmission information systems and energy trading systems.

The participants in the July 27, 1995 conference agreed that the NERC-sponsored process, seeking to reach consensus and make recommendations to the Commission on what information should be included on a RIN, should continue, with NERC acting as a facilitator to promote participants reaching consensus and to prepare a "what" report to the Commission describing areas of consensus and non-consensus. The participants also agreed that another industry-sponsored working group should be created, with the Electric Power Research Institute (EPRI) acting as a facilitator to promote consensus on "how" to implement a system that would accomplish these objectives, and to prepare a "how" report to the Commission.

The NERC and EPRI representatives pledged to conduct an open process that would keep all interested persons informed of developments by the working groups and that would provide input from interested persons to working group members. Interested persons also were invited to attend open workshops sponsored by both working groups.

The "what" industry working group consisted of 26 members providing balanced representation from all segments of the electric power industry and included liaisons from the Commission, the "how" working group, NARUC, and Canadian utilities. Major industry trade groups sent observers. On October 9, 1995, the "what" working group made a draft report available for public review. On October 16, 1995, it submitted a final report to the Commission.

Following the Technical Conference, the "how" working group used a similar open and representative process that included participation by all industry and customer segments. On October 16, 1995, the "how" working group submitted to the Commission its report on how a RIN should be implemented.

The two working group reports address both the issues on which the participants were able to reach consensus and the issues on which no consensus was reached. Additionally, nine sets of comments were filed by working group participants who wished to provide a fuller explanation of their views on particular issues. We will address the issues raised by the working group reports below.

B. Overview

In what follows we discuss first, in section C below, what types of information must be posted on the RIN. The Commission proposes to adopt most of the technical parameters agreed to by the "what" working group. Our final rule would include general regulations governing who must develop and maintain RINs and what information must be posted on the RIN. Next, in section D below, we discuss the technical issues surrounding the implementation and use of RINs. We propose to set out the details of these requirements in a publication that would be entitled *Standardized Data Sets and Communication Protocols* and that would be issued as part of our final RIN rule. We propose to implement the RINS in two phases, with the first phase (Phase I) being completed when the Open Access rule goes into effect. In the discussion below, we address the specific, and at times very technical, issues considered respectively by the "what" and "how" working groups.

In section E below, we consider proposed standards of conduct governing the separation of transmission and generation functions. These standards are, we believe, a necessary adjunct to the RINs to ensure non-discriminatory access. The proposed standards are drawn from those that have been developed in our regulation of the natural gas industry. Last, in section F, we discuss issues of applicability for the proposed RINS and standards of conduct.

In setting out proposed requirements for implementing RINs, our primary objective is to establish regulations that ensure the accessibility of all information necessary to the full and fair implementation of the requirements of the Open Access NOPR. The problem, of course, is that we do not now know the specifics of the final Open Access rule. Yet, the information that will be required to be posted depends upon what is required or permitted under the final Open Access rule. For example, what must be posted on the RIN regarding the resale of transmission depends upon whether, in the final Open Access Rule, resales are permitted and, if so, under what conditions. Similarly, what information must be posted regarding transmission pricing discounting will depend upon whether, in the final Open Access Rule, discounting is permitted and, if so, under what conditions. These are just two examples, and are not inclusive, of RINs information that may change depending on what is in the final open access rule.

The final RIN rule will be designed to accommodate whatever final open access rules the Commission adopts and whatever industry structures evolve to meet those rules. In the interim, the RIN proposal follows the Proposed Open Access Rule. For example, it assumes that resales will be permitted[8] Similarly, the proposed RIN standards are designed to accommodate the so called "contract path" approach presently used in today's electricity markets. However, the Commission is open to other approaches that may develop in the future under an Open Access regime. Consequently, commenters should consider how the proposed RINS and standards of conduct regulations can be designed to meet these needs.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry moves to regional pricing, flow-based pricing, or other pricing models that depart from the "contract path" approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

C. What Types of Information Need To Be Posted on a RIN

1. Summary of the "What" Working Group Report

The "what" working group report (What Report), represents a broad consensus of all segments of the electric utility industry. It summarizes the functional requirements for Real-Time Information Networks to facilitate open access to the transmission system.

[8] In designing proposed RINs regulations dealing with what may be required in the Final Open Access rule, our assumptions should in no way be taken as prejudging the various issues involved in the Open Access rulemaking.

a. Introduction

The What Report starts with a number of general assumptions and definitions. They include phasing of RIN implementation (Phases I and II), functional separation, accessibility to the RIN and definitions for "transmission provider", "transmission customer", and "transmission provider's tariff." The What Report for the most part only addresses recommended Phase I requirements.

The What Report states that the RIN will include viewing tools enabling equivalent, basic access to the data base for all RIN users. However, many users will desire to customize their access to the data base and have the information presented in a variety of ways tailored to their individual needs. The RIN itself will not seek to satisfy this need. Instead, private software developers will be permitted and encouraged to develop and market customized viewing tools for the RIN.

The What Report lists five objectives of the RIN which are discussed in section C.2.(a) below. It recommends that, at least initially, the RIN be used as a transmission service reservation system, and not as a transmission scheduling system. Scheduling involves actually implementing a service on control area computers. Thus, the RIN is separate from system operations, and system reliability is handled separately. The decision to include transmission service scheduling on the RIN is left to later development.

Finally, the report discusses the requirement that information posted on the RIN will be date and time stamped and automatically stored in downloadable log files so that audits can be performed as required.

b. Scope and Definitions

The second section of the report deals with scope and definitions. The What Report makes a distinction between "near-term" and "far-term" transmission service requests. "Near-term" requests can be responded to quickly without additional work. "Far-term" requests require off-line studies to determine if the request for service can be accommodated.

The What Report also states that it does not seem possible to post availability for Network Integration Service Transmission on the RIN. Therefore, only the available transmission capability (ATC) for point-to-point transmission service would be posted on the RIN.

The What Report discusses the concept of ATC and gives some consideration to calculating it. Although the What Report recognizes that a consistent methodology is needed, no such methodology is proposed in the report.

The What Report discusses the concept of "transmission paths" for which ATC is to be reported and provides some guidelines for calculating ATC. It appears from the discussion in the What Report that ATC calculations over transmission paths would reflect the impacts of parallel flows. Although a contract path can be the basis for a commercial transmission transaction, such a transaction will use a combination of one or more transmission paths. A transmission path may be a single path or sequence of contiguous paths that form a continuous electrical connection. In alternating current systems, electricity will not flow solely on the contract path, but will flow on the entire transmission system of the interconnection in accordance with the laws of physics. Transmission Providers are urged to develop regionally accepted methods of attributing all contributions of loading to each transmission path including the effects of the real flow contribution of all transactions.

A major concern for the "what" working group (What Group) is over potential differences between the ATC posted on the RIN and the capability actually available when requested. The What Report points out that ATC calculations are only engineering estimates. There is no guarantee that they are correct. It states that "[t]he amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting."[9] Also, conditions may change between the time the ATC is calculated and when service is requested.

Under the What Group's proposal, the posting of ATC is not to be required until a business need arises for a transmission path. "A 'business need' is signified by a request from a Transmission Customer concerning information or a reservation on a Path which has the potential to be constrained."[10] The What Report proposes two new attributes for transmission service to replace the terms "firm" and "non-firm" that are believed to be causing confusion as to the basic nature of transmission services. The new attributes are recallability and curtailability. All transmission service is curtailable. Curtailment is made only in cases "where system reliability is threatened and/or emergency conditions exist."[11] Recallability is "the right of a Transmission Provider to interrupt all or part of a transmission service for any reason that is not unduly discriminatory * * * ."[12] The What Report states that recallability distinguishes between firm and non-firm service. According to the What Report, firm service is not recallable.

The What Report defines a standard set of attributes for describing transmission products on the RIN.

The scope and definitions section concludes with discussions of several areas of non-consensus. The What Group could not agree on the following: whether and how to post information about ancillary services on the RIN; whether transmission customers not using transmission capability that they reserve must make it available to others; whether to post all discounts or only those provided to affiliates; and whether generator cost and status information to verify redispatch/opportunity cost charges must be available on the RIN.

c. Posting Transaction Information

The Posting Transaction Information section discusses four major types of information that are to be posted on the RIN:

1. Available Transmission Capability Information;
2. Transmission Providers' Product Offerings and Prices;
3. Specific Transmission Service Requests; and
4. Informal Transmission Communications.

The What Report itemizes the information that should be posted in each of these areas. A table identifies who is responsible for posting what on the RIN. The What Group was unable to reach consensus on whether to require the posting of additional information beyond ATC. Some believe that additional information is needed as a safeguard against anti-competitive behavior and provides valuable information about transmission constraints. This information includes the run status of generators that have a significant impact on ATC, information about constrained transmission lines, and the identity and status of facilities causing curtailments. Others believe that this additional information is unnecessary and burdensome. This

[9] What Report at 8.
[10] What Report at 10.
[11] What Report at 15.
[12] What Report at 14.

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information also is believed to be commercially sensitive.

A second area of non-consensus was whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request was made and, to the extent necessary, the affected control area operators and/or security centers *or* to all users of the RIN on a same-time basis. Some argue that this information is commercially sensitive and should be limited just to the parties in a transaction. Others believe that full disclosure is important to safeguard against potential anti-competitive behavior. A compromise was proposed, but not agreed to, to delay release of this information for a certain time.

2. Discussion

The What Group assumed the task of developing recommended requirements for the information to be posted on a RIN that would meet the industry's need for customer access to information about wholesale transmission services. In the text that follows, we will discuss these recommendations and will identify those recommendations that at this stage we reject (as previously noted, further background is provided by the complete What Report, attached to this NOPR as Appendix "A"). We also will discuss certain issues not addressed by the What Group.

a. RIN Objectives

The Commission proposes to modify slightly the five objectives listed in the What Report. The changes are intended to expand and better define the objectives. The revised objectives are:

1. Allow Transmission Customers to make requests for transmission services offered by Transmission Providers and the secondary market;
2. Allow Transmission Customers to view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;
3. Provide a mechanism for posting, viewing, uploading and downloading of information between customers and providers regarding available products and desired services;
4. Enable all Transmission Customers to clearly identify the extent to which their transmission service requests and/or schedules were denied or curtailed and how their treatment compares to that of their competitors; and
5. Allow Transmission Customers to access in electronic format information supporting ATC calculations and historical transmission service requests and schedules for various audit purposes.

The What Report states that "[i]n instances where requests are denied or transactions are curtailed, the RIN should provide a mechanism for Transmission Providers to communicate to Transmission Customers (1) the reason those transactions could not be accommodated and (2) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions." [13] The Commission wishes to clarify that since scheduling and the curtailment of schedules will not be done through the RIN initially, this curtailment information would be for information purposes only.

b. ATC for Network Integration Service

The What Report states that it is not possible to post the availability of Network Integration Service Transmission on a RIN. The Commission recognizes that before-the-fact measurement of the availability of network transmission service is difficult. Nonetheless, the Commission believes that it is important to give potential network customers an easy-to-understand indicator of service availability (*e.g.*, in MWs), in addition to power flow data and other studies used by utilities to support the calculation of ATC.

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

As discussed in section C.2.(o) below, information supporting "point-to-point" service ATC calculations is required to be available for download. This information should help potential network customers assess the availability of network service capability.

c. ATC Calculation Methodology

The What Group notes that the proposed Open Access rule requires that the utility "describe the method used to estimate ATC in sufficient detail to allow others to do the same analysis." [14] However, the proposed Open Access rule does not propose a methodology for calculating ATC. The What Report contains some useful guidelines for calculating ATC/Total Transmission Capability (TTC), but does not present specific methodologies.

In calculating ATC, public utilities will need to reserve enough capacity to ensure the reliable operation of the transmission system. Thus, the Transmission Provider (or its designated agent) will need to calculate the additional transfer capability that is available without violating reliability limits. Because of uncertainties in system conditions and utilities' reliance on interconnections to provide generation reserves during emergencies, the Transmission Provider must calculate an appropriate transmission margin. Transmission margin calculations should be based on the published standards, criteria and guides, and operating experience of the individual Transmission Provider (as filed with FERC as part of FERC Form 715 and as filed in transmission tariffs). These calculations must be consistent with industry standards, and these standards must be available for review on the RIN.

The Commission expects that an ATC/TTC calculation methodology can be developed on a consistent, industry-wide basis and encourages efforts to do so. We understand that some of the details may need to differ to reflect regional or utility- specific situations. Transmission Providers are expected to use prudent utility practice to determine ATC. The Commission understands that utilities have historically responded to requests for transmission service using prudent utility practice to determine if sufficient capacity is available to accommodate the request. These practices vary by region and even by utility. Determination of ATC has been made with computer software with a level of complexity that varies from one Transmission Provider to another or with simple formulas or graphical tools (nomograms) created with a mixture of engineering analysis and engineering judgment. The Commission requires the use of the best tools for determining ATC available to the Transmission Provider at the time. Our requirement to provide data and methods on the RIN is to be understood in this context; it may require, for example, posting of the nomograms, the data applied to them, a description of the procedure for applying the data to the nomogram, and an explanation of how the nomogram is derived.

However, the Transmission Provider must strictly adhere to the limits imposed by the resulting ATC determination in its own use of transmission. It must also provide adequate data for the Commission and other industry participants to monitor

[13] What Report at 6.
[14] What Report at 121.

any potential violations of the ATC limit by the Transmission Provider. Further, if the Transmission Provider revises its ATC calculation for any time period, the new availability of transmission capacity must be posted on the RIN in a manner that allows all transmission customers an equal opportunity to apply for its use.

The Commission urges Transmission Providers to improve and coordinate methods of estimating ATC. This will improve the efficiency of capacity utilization by all parties, including the Transmission Provider itself, while maintaining system reliability. We expect that such improved methods and prudent utility practice in the future will require cooperative regional calculation of ATC by all Transmission Providers in a region. We believe that all Transmission Providers should take the same approach to calculating ATC/TTC and use the same basic methodology.

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

d. Provisions for Unscheduled Flows

The What Report states that "[a]ppropriate provision must be made to properly account for "unscheduled flow" through each Path resulting from each known transaction." [15] This should not be interpreted as making the requirements in this proposed rulemaking depend on resolution of this issue.

e. Paths for Which ATC Is Not Posted

The What Report states that ATC should be posted for paths as business needs arise. Some Paths are minor ties between utilities or control areas for which transfer capability calculations have not yet been performed and on which no constraint is anticipated because of the lack of commercial activity. A "business need" is defined, in part, by a transmission customer requesting information about a path.

The business need limitation is intended to limit the number of paths for which ATC must be posted. However, it is not clear that it does. For example, the Open Access rulemaking proposes that Transmission Providers must take wholesale transmission service under their own tariff. This makes them transmission customers. Any wholesale trade they do over these minor ties would appear to trigger the "business need" requirement for ATC posting.

Another approach to limiting the burden of ATC calculations is to allow Transmission Providers to adjust the amount of effort put into calculating ATC and the frequency of recalculating ATC based on the level of commercial interest in a path and how constrained the path is over time. For paths that are never constrained because of the lack of commercial activity, a rough estimate of capability could be posted and could be updated rarely. For constrained paths, a much more accurate calculation of capability is needed and it should be updated frequently.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

f. Differences in ATCs

Because parties on either side of an interface each may use different engineering assumptions, they may calculate different ATC values. The What Report says that the lower ATC must be used. The Commission expects that differences in ATCs will be small and will narrow over time as Transmission Providers work to develop consistent methods of calculating ATC.

g. Format for Transmission Tariffs

The Commission agrees with the recommendation of the What Group that providers must provide downloadable files of their complete tariffs on the RIN. However, the What Report says that the format of these files should be one generally accepted by all utilities in the region. The issue of the format for the transmission tariffs will be addressed in the Open Access rule. This format would also be the format for tariffs available on the RIN.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

h. Posting Requirements for Recallability and Curtailability

The What Report states that "[o]ther elements of Recallable service which will be posted on an EIN include: permissible reasons for recall, recall procedures, reinstatement provisions and placement in the request queue as applicable." [16] Because the permissible reasons for recall, recall procedures, and reinstatement provisions are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

Similarly, the report says "curtailment information which will be posted on the RIN as part of the product definition includes: permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority relative to other classes and other customers in the same class if necessary due to FERC curtailment queuing policy." [17] The Commission proposes that if the permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

i. Communicating Curtailments and Denials of Requests for Service

The Commission proposes that when requests for service are denied, or when transactions are curtailed, Transmission Providers must communicate to transmission customers, through a mechanism that they must install into the RIN: (1) The reason(s) that the transaction(s) could not be accommodated; and (2) the available options, if any, for adjusting the operation of the Transmission Provider's system to increase transfer capability in order to accommodate the transaction(s).

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files? [18]

j. Posting Information About Ancillary Services

The What Group was unable to define requirements for the posting of information about ancillary services. Ancillary services are those services necessary to support the transmission of electric power from seller to purchaser at wholesale given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system. Basic wholesale transmission service without ancillary services may be of little or no value to prospective customers. A variety of ancillary services is needed in conjunction with providing basic wholesale transmission service to a customer. The following six ancillary services are identified in the Open Access NOPR: [19]

1. Loss Compensation Service;
2. Load Following Service;
3. System Protection Service;

[15] What Report at 8.
[16] What Report at 14.
[17] What Report at 15.
[18] HTLM stands for Hyper Text Markup Language.
[19] 60 FR at 17663–65.

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4. Energy Imbalance Service;
5. Reactive Power/Voltage Control Service; and
6. Scheduling and Dispatching Service.

The Commission proposes that the Transmission Provider post offers for ancillary services on the RIN. Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the "Informal Transmission Communications" section of the RIN. Would this place third-party providers at a disadvantage relative to the Transmission Provider?

The Commission proposes that entities that post offers to provide ancillary services on the RIN should pay the costs associated with posting this information.

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

The following information about ancillary services is important to wholesale transmission users and should be posted on the RIN:

- Ancillary services that are available from the Transmission Provider;
- Ancillary services that may be provided by the transmission customer or third parties;
- Price of each ancillary service;
- Which ancillary services, if any, are bundled with transmission service;
- Paths that the ancillary services information pertains to;
- Deviation band, if any;
- Whether the rates for any specific ancillary service would change if taken in combination with any other ancillary service, such as operating reserve and load following;
- Whether any technical limitations exist on who could provide specific ancillary services;
- Whether the rights of ancillary services are reassignable; and
- Identity of third party if ancillary services are being procured from a third party.

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Although the ancillary service information on the RIN should be the most current information available to the Transmission Provider, the information on ancillary services will not change as frequently as the information on the capability availability. However, there is definitely a need to update ancillary services information on RIN on an ongoing basis.

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Ancillary services information should be posted for each transmission path of the Transmission Provider for which ATC is posted. If there are exceptions to the general applicability of the ancillary services posting requirements because of technical limitations on a specific interface, it should be so stated.

k. Must Transmission Customers Resell Unused Capability?

The What Report raised the question of whether Transmission Customers should be required to make available to other wholesale customers unused transmission capability to which they have rights. This issue is not a RINs issue and will be addressed in the Open Access rule.

l. Posting Information About Resales

Although the What Report states that a Transmission Customer should be able to post its transmission capability rights for resale, it does not say where resale offers are to be posted on the RIN. This issue is addressed in section D.2(g)iv below.

m. Mechanism for Discounting Transmission Service Rates

The What Report raises a question about whether all transmission rate discounts should be posted on the RIN on the basis that a competitive market can be achieved only through non-discriminatory discounting. An alternative posed in the What Report is to post only discounts that a Transmission Provider provides to itself or its affiliates. This is to police self-dealing and affiliate favoritism which are not an issue in other transactions. It is important to distinguish between an offer of a discount and a discount already given. The Commission is proposing, in the proposed standards of conduct, to require a Transmission Provider that offers any discount to itself or to its merchant function or an affiliate to offer, at the same time, on the RIN, comparable discounts for similar service to all Transmission Customers. As to discounts that the Transmission Provider has agreed to give to any Transmission Customer (affiliated or unaffiliated), the Commission is proposing that these discounts must be posted on the RIN within 24 hours after the agreement is entered into (measured from when ATC is adjusted in response to the agreement), and that they remain posted for 30 days.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. If discounts are to be posted, when should this be done? Also, commenters should address whether requiring the Transmission Provider to offer "comparable discounts for similar service to all transmission customers" is necessary and/or sufficient to prevent unduly discriminatory pricing practices.

The Commission proposes that the information about discounts to affiliates should be posted on the RIN using HTML displays and as files that are available for download.

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

n. Discussion of Generation Information Related To Redispatch/Opportunity Costs

Opportunity or redispatch costs are meant to compensate a party that gives up its right to wholesale transmission service so that another party can take service. The opportunity/redispatch costs associated with increasing the ATC of a constrained Transmission Path will depend upon the time, duration and nature of the requested transmission use because of the dynamics of system loads, economic dispatch, outages, loop flow, the types of generation resources involved, the availability and cost of energy storage, and other operating conditions expected during the time of use. The What Report raises the issue of whether the ability of the Transmission Provider to impose these costs on the Transmission Customer requires the posting of generator run status and cost information on the RIN.

Transmission Providers may charge only for legitimate and verifiable opportunity/redispatch costs. Information needed to verify these costs is required to be provided to the Transmission Customer charged on request. This information is not required to be posted on the RIN.

o. Discussion of Providing Additional Information Beyond ATC

The proposed rules on Open Access state that "[t]he utility must make all data used in calculating the ATC publicly available."[20] This information must be available for download on the RIN.

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Near-Term Transmission Information

The What Report provides arguments for and against providing additional information beyond ATC on the RIN. Those entities who are against providing additional information argue that this information is of little practical use, sufficiently voluminous to substantially reduce performance of the RIN, and burdensome to provide. They further argue that some of this information is competitive data. Those entities who are in favor of providing additional information beyond ATC on the RIN argue that the additional information will increase the confidence of transmission customers in the validity of the posted ATC and that this information will help the transmission customers anticipate with greater certainty whether to attempt to request and schedule resources that may be subject to curtailment due to projected loading trends on certain system components.

The Commission believes that the issue of customer confidence can be addressed through audits of posted ATC values or by raising the issue at regional forums or filing a complaint with the Commission. However, the Commission also believes that transmission customers should have as much pertinent information available as will enable them to make informed decisions about the relative quality of wholesale transmission services they intend to request and purchase.

The Commission therefore proposes to require that Transmission Providers post information about those system elements that have a direct and significant impact on ATC. Such elements could include generators, transmission lines, phase shifters, series and shunt capacitors, static VAR compensators, special protection systems or remedial action schemes, etc. In addition, the Commission proposes to require the posting of actual path loadings in addition to the path schedules.

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should "significant and direct impact" be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

The ATC of some transmission paths is a function of run status and/or megawatt output of certain generators. For example, the Southern California Import Transmission Nomogram is affected by the run status of units in the Palo Verde Generation Complex. When one or more of the Palo Verde units are not on line, the nomogram is reduced by several hundred megawatts.[21]

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators?

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Far-Term Transmission Information

The What Report proposes that for "far-term" transmission service (over one year), firm service (non-recallable) ATC should be posted "seasonal[ly], by year, for years 1–10 (as available)."[22] The caveat "as available" suggests that the What Group does not want utilities to have to perform additional transmission studies to calculate "far-term" ATCs beyond those done for normal planning and special requests.

The Commission agrees with this. However, we find the "as available" requirement vague. It appears to leave the posting of this information to the discretion of the Transmission Provider. For clarity, the Commission proposes to require that any planning or specifically requested studies of the transmission network performed by the Transmission Provider be provided on the RIN on a same-time basis. This would include only those parts of customer-specific, interconnection studies that relate to network impacts.

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

p. Requested Start and End Times/Dates

In the section in the What Report on "Information Provided by Transmission Customer in Requesting Service", under "duration" the report states that "[t]his must correspond to full clock hour periods."[23] The Commission proposes to enhance flexibility by requiring instead that the duration must be a specific time as stated in the Transmission Provider's tariff.

q. Transaction Anonymity

The What Report raises a question about whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request is made and, to the extent necessary, the affected control area operators and/or security centers, or to all users of the RIN on a same-time basis. The Commission proposes to restrict information about the request and response process, while it is ongoing, to those parties directly involved.

We believe that this procedure will be adequate because we are proposing standards of conduct that would require Transmission Providers to separate the functions of their marketing employees and their system operations employees and that would restrict access by wholesale marketing employees to information available on the RIN. Information about a completed request and response process should be recorded in the audit file.

r. Auditing Transmission Service Information

The Commission proposes that RIN audit log files[24] must be downloadable from the RIN in a standard format and must be retained on a rolling basis for three years from entry on the RIN.

The Commission notes that transmission transaction prices are to be

[20] What Report at 121.

[21] A nomogram defines the interactive relationship of the transfer capability of a transmission path to other system conditions, especially power flows on one or more other transmission paths.

[22] What Report at 24.

[23] What Report at 26.

[24] See What Report at 31.

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included in the information in the audit file proposed in the What Report.[25] We do not consider price information concerning cost-based transmission services to be commercially sensitive. With respect to information concerning negotiations on transmission requests, we propose that such information not be posted unless an agreement to provide the transmission is reached.[26] This information is to be available only in the audit file. In addition, if an agreement is reached, we propose that the identity of parties to transmission transactions be masked until a standard release period elapses. This release period should be a standard period after which it is commonly recognized that most information is no longer commercially sensitive. The Commission proposes that a reasonable standard release period is 30 days after the date when the Transmission Provider's ATC was adjusted in response to the transaction; after that date all transaction data will be made available.

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period. Should affiliated transactions be treated differently?

D. Technical Issues Concerning the Development and Implementation of RINS

1. Summary of the "How" Working Group Report

After a review of the process used by the "how" working group (How Group) in formulating its views, and after consideration of the Group's efforts to invite input from a broad spectrum of industry segments, the Commission is satisfied that the How Group conducted its process in an inclusive and open manner. The How Group report (How Report) represents a broad agreement among all segments of the electric power industry. It presents the agreed minimum requirements for computer systems and associated communications facilities needed by public utilities to provide comparable access to transmission and ancillary services information by all wholesale transmission users.[27]

The How Group proposes a two-phase approach. It believes that the Phase I implementation provides the information needed for the Commission's open access program and works well enough to communicate this information to customers. Under the How Group proposal, RINs would become fully functional in Phase II. The How Report recommends that Phase II requirements be implemented 24 months after the effective date of the final rule establishing Phase I RIN requirements.

a. Phase I Recommendations

The How Group proposes that the required transmission service information be posted on RINs operated by the transmission-owning public utility, jointly with other utilities, or by a third party.[28] Each RIN implementation, whether on behalf of a single entity or a group of utilities, is referred to as a Node. A RIN operated jointly by several utilities would be considered one Node. RIN Nodes must be accessible through the Internet. By connecting each Node through the Internet, transmission service information from each utility becomes part of a network. With a single Internet connection, customers would be able to access information from any utility and would even be able to display information from several Nodes at the same time.[29]

Nodes must support the use of Internet tools. These inexpensive, widely available, and well-tested tools will permit customers to access RIN information easily and to download[30] it to available desk-top database programs, spreadsheets, and other applications.[31] Customers would also be able to upload[32] information to RIN Nodes. The specific tools for doing so are described in Appendix B.

RIN users would access Nodes using World Wide Web (WWW) browsers.[33] Each Node would display information using the HTML protocol required by World Wide Web browsers. Screen displays would consist of a series of pages that may be viewed by customers without requiring them to download the pages.[34] Under the standards that will accompany issuance of a final rule on RINs, the information on each page, but not the actual displays, must be standardized. Information would also be required to be made available for downloading, in a standardized ASCII[35] format, using the Internet's File Transfer Protocol (FTP).

In Phase I, customers would be able to use the RIN to purchase transmission from public utilities. They would be able to request capacity either by completing a standardized form contained in an on-line HTML page or by uploading a filled-out form using FTP.[36] Customers who want to resell transmission capacity would upload (post) the relevant information to the same RIN Node used by the primary provider from whom they purchased the ATC.[37] Customers would also be able to upload Want Ads containing such information as requests to purchase transmission capacity.[38]

In Phase I, transmission-owning public utilities may, but would not be required to, provide private connections at the request of a customer. These connections could include leased-lines or connections to a private network. These connections would have to use the same Internet tools as are required for the Internet connection.[39] Customers would pay for the cost of the connections. If a connection is made for one customer, the same type of private connection must be made available to all customers in a comparable manner. In Phase II, utilities would be *required* to provide these connections.

The How Report proposes that utilities may provide value-added services for a fee on a fair and non-discriminatory basis. Such services would include notifying customers of changes in available capacity, beyond simply posting a notice of the change.[40]

The How Group developed a model of the information requirements that the What Group identified as needed for comparable access. For Phase I, the model specifies the information that must be available at each RIN Node, how the information may be requested and the layout of the information received by customers. Customers would be limited to obtaining

[25] See What Report at 31–32.

[26] An exception would be where the Transmission Provider offers discounts to its merchant function or an affiliate. As noted elsewhere, such information would need to be posted regardless of whether an agreement to provide transmission was reached.

[27] The version of this report attached to this proposal intentionally omits Appendix C (Workshop Participants), Appendix D (Survey Questionnaire and Results), and Appendix F (Correspondence with "What" Working Group). The How Report, in its entirety, is posted on CIPS.

[28] How Report at § 2.4.1 (a).

[29] How Report at § 2.4.1 (f).

[30] Download refers to the transfer of a file from a RIN Node to the user's computer system.

[31] How Report at § 2.4.1 (c).

[32] This is accomplished by transferring a file from the user's computer system to a RIN Node.

[33] The World Wide Web is a system of computer resources that are accessed through the Internet.

A Browser is a computer program for retrieving and reading hypermedia documents from the WWW. A hypermedia document can contain, text, graphics, video, sound or data. These documents are often linked to other documents.

[34] How Report at § 3.2.3

[35] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

[36] How Report at § 3.2.6.

[37] How Report at § 3.2.4

[38] How Report at § 3.2.3 (e).

[39] How Report at § 2.4.1 (g).

[40] How Report at §§ 3.1.2 (c) and 3.2.2.

information from HTML text displays and selecting from menus of downloadable files. Customers would receive the information either as HTML pages or as ASCII files in a predetermined form and layout.

The information model for Phase II, while not fully specified, would provide customers with much more flexibility in requesting and receiving information. Customers would be able to make complex queries of a data base and specify the order in which the information will be received.

For security purposes, and as an aid in auditing performance and transactions, customers would be required to register with the transmission-owning utility or its agent before they are permitted access to the utility's transmission service information on the RIN.[41]

The How Report provides a number of performance standards and a limited set of security precautions. Performance requirements include sizing RIN Nodes to handle the loading of registered subscribers, responding to subscriber requests, backing up the system, and other areas that are necessary for the system to function as desired. Security precautions include firewalls[42] between computer systems and the Internet, the use of passwords, the use of data encryption for uploads of sensitive or confidential information, and the use of ASCII text for uploads of other information.

b. Phase II Requirements

The specifications for Phase II are less detailed than those for Phase I, but the How Group anticipates that Phase II RINs would be an upgrade of Phase I and would not make Phase I investments obsolete. Phase I is envisioned as a prototype for Phase II. Once Phase I becomes operational, the full information and functional requirements needed to support open access transmission service will become clearer. The How Report recommends the formation of a RIN Management Organization to develop Phase II standards for submission to the Commission. The How Group proposes that Phase II be implemented two years after issuance of the final rule on Phase I RIN requirements.

The How Group foresees the need for several key additional requirements in Phase II.[43] In Phase II, they foresee that RIN Nodes must provide connections to private networks if requested by a customer, for a negotiated cost-based fee, whereas in Phase I public utilities would not be required to make these connections. In Phase II, RIN Nodes would have to offer the capability of informing customers immediately when information of interest to them is changed by the provider. RIN Nodes would be required to support search and select tools to access information in RIN Node data bases, and to meet a more complete set of performance requirements.

In Phase II, the information model would change, although the information in the data base would be the same. Customers would be able to receive information by querying a data base. The information would no longer be received in a predetermined fixed layout. Customers would be able to specify the exact information they want to receive and the layout they want to receive it in. For example, customers would be able to request available capacity by quantity of capacity, point of delivery, date of availability, and have it sorted by the name of the transmission-owning public utility. The customer also would be able to define the order in which the information is received in the file.

2. Discussion

The How Group assumed the task of specifying, in a very short period of time, a RIN that would meet the Commission's requirement for customer access to information about transmission services. It developed a proposed solution that places the RIN of each transmission-owning public utility on a network that can be accessed by all customers, using inexpensive tools with a single connection, with what the group believes to be a reasonable cost to both utilities and customers, sufficient security, and sufficient response time. The proposal to use the Internet to tie RIN Nodes together appears to be an inexpensive way for customers to access transmission services information and for transmission-owning public utilities to provide it to them.

The Commission proposes to adopt the proposals contained in the How Report, with the exceptions discussed below.[44] Except where noted, the issues discussed are Phase I issues.

a. Phasing

Because of the complexity of building RINs, and the need to begin the Commission's transmission open access program promptly, the Commission agrees with the How Report that a phased approach to implementation is warranted. The Commission proposes to require Phase I implementation as of the effective date of a final rule on non-discriminatory open access transmission and stranded costs.

At How Group meetings, many transmission-owning public utilities expressed the view that implementing Phase I within 90 days of the date of a final RIN Rule may not allow sufficient time to design, build, and test RINs. The How Report notes that a large risk exists that many RINs will not be fully functioning at that time. These transmission-owning public utilities request that the Commission permit a six-month implementation period.

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Phase I would provide a good first step toward ensuring that sufficient information is available to utility customers to achieve the Commission's goal of comparable access to transmission information. It would not, however, provide all of the performance requirements or information needed for a long-term open access RIN.

Phase II would provide for more expanded services. The How Report addresses Phase II issues, but does not fully specify them. It proposes that Phase II be implemented within two years of a final rule on RINs. The Commission believes that the need for the additional functions and performance requirements proposed for Phase II requires expeditious implementation. Accordingly, the Commission requests that the industry continue the process of developing standards, and provide a consensus report to the Commission on Phase II recommendations by no later than January 1, 1997. We anticipate that this report would be the basis of supplemental RIN proceedings to implement Phase II RIN requirements.

b. Standards Issues

Based on our experience with implementing standards for natural gas pipeline electronic bulletin boards,[45] a

[41] How Report at § 3.2.1.

[42] A firewall increases security by blocking access to certain services on a private network from the Internet.

[43] How Report at § 2.4.2.

[44] The Report refers to Buy/Sell transactions. As used in the Report, the term refers to a request to purchase transmission capacity and the response to the request. The reader of the How Report should substitute Purchase request/Response for buy/sell whenever it is encountered.

[45] See Order No. 563, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Final Rule, III FERC Stats. & Regs. ¶ 30,988 (1993); Order 563–A, Order on Reh'g, III FERC Stats. & Regs. ¶ 30,994 (1994); Order 563–B, Order Denying Reh'g, 68 FERC

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major concern of the Commission is that the proposed standards be sufficiently unambiguous to provide consistent implementation of the standards on every RIN Node. Customers and other users of RINs should be able to use the same software to access all RIN Nodes and should be able to expect that procedures and data definitions will be the same on all Nodes. The Commission must ensure that every RIN Node would be presenting information that would be clearly understood.

i. Phase I Data Definitions for HTML Pages and File Transfers

The information model, data dictionary and various templates appearing in the How Report specify the name, definition and format of the data items to be communicated on the RIN. They are intended to be the basis for the standards specifying file uploads and downloads and HTML displays. Because of the importance of these standards to the usability and uniformity of RINs, the Commission must ensure that downloadable and uploadable files will have the same unambiguous structure, field formats, units and definitions, etc., no matter which RIN Node they come from or go to. The Commission is similarly concerned that all WWW page displays, while not necessarily having the same appearance, contain the same information and use the same definitions, etc.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

With these goals in mind, the Commission has compiled a series of templates (tables) that show in one place the specifications that appear in various sections of the How Report. The templates contained in Appendix "C," are intended to help produce a consistent implementation of RIN requirements and highlight problems that could hinder consistent implementation of RIN standards.

In Appendix "C", the Commission proposes to make changes to certain definitions, data formats, and specifications appearing in the How Report.

Question 27. The Commission invites comment on the issues discussed in Appendix "C".

The Commission proposes to add a price field to the templates that would specify available capacity and those templates associated with the purchase of capacity. The price field would allow primary providers to offer capacity to buyers at a discount. The price field in the available capacity templates would contain the initially offered price, whether this is the tariff price or a discount. Adding the price field to the templates for the purchase of capacity would allow buyers to offer a price for capacity below the posted price. Further discounts from any posted offered price could be negotiated. The price field in the purchase of capacity templates would permit customers to offer a price different than the offering price.

ii. Internet Browsers

There are a large number of Internet browsers available commercially and in the public domain. The How Report proposes that browsers support "at least" HTML version 3 and "optionally" support Secure Sockets Layer. The HTML standards used by browsers change from time to time, and, in addition, various browsers can support different extensions to the standards. The Commission does not want to stifle innovation, but at the same time it does not want chaos on the RIN. The Commission does not want customers to be forced to use different browsers for different RIN Nodes. The Commission wants to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

iii. Bandwidth of Node Connections to the Internet

The How Report proposes a formula to calculate the minimum bandwidth connection between a RIN Node and the Internet using the criteria of customers receiving data at the rate of 8,000 bits per second.[46] This speed may be adequate for customers reading HTML pages, which are about 8,000 bits in size, but it might be too slow for customers downloading many 100,000 byte files.[47] Eight thousand bits per second is much slower than the 28,800 bit per second telephone connections many private individuals use to connect to the Internet. Electric utilities will likely have even faster direct connections to the Internet. The Commission is concerned that the basis for the calculation in the Report will lead to connections that are too slow and proposes to use 28,800 bits per second instead of 8,000 bits per second in the bandwidth formula.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

iv. Common Codes

The How Report does not address a standardized method of uniquely identifying transmission-owning public utilities and customers, nor does it address a standardized method of identifying facilities.

(1) Company Codes

The Commission's experience with implementing standards for file transfers and electronic bulletin boards in the natural gas industry shows that the use of a common system of identifying companies enhances the efficiency of data transfers. The Commission is satisfied with the results of using DUNS numbers[48] as the standard to uniquely identify pipelines and shippers in the natural gas transactions.[49] The Commission proposes to require the use of DUNS numbers to identify transmission-owning utilities and customers on RIN Nodes.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

(2) Common Location Codes

The Commission's experience in the natural gas industry also demonstrates that a common method of uniquely identifying location points will be needed to facilitate movement of power across the grid. The natural gas industry uses a sophisticated system of "smart" codes (PI–GRID Codes), developed by the Petroleum Information Corporation. This coding system uses "smart" codes, which identify each transaction point by such items as state, county, latitude, longitude and type of facility.[50] Thus, the code will tell RIN users where a posted receipt, delivery point or path is located, the function it performs, and whether there are multiple facilities at that location. The Commission proposes to use a smart code system to identify location, including paths, on the electric transmission grid.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

v. Data Compression Standards

The How Report recommends that RINs support data compression of downloadable and uploaded files, using standard, commonly available compression applications.[51] The Commission believes that data compression will speed up the transmission of files. However, it believes communication of the RIN information would be enhanced if every RIN Node used the same compression techniques.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

vi. Templates for Upload and Download Header Information

The How Report does not completely specify how to use the upload and download header templates in Phase I.[52] The templates require a series of header fields specifying such information as: (1) who is sending the data; (2) the kind of data, such as Provider Hourly Capacity Available for Purchase; (3) the column headings of the data; and (4) the number of rows of data. This header information is followed by rows of actual data. The discussion of the template does not specify delimiters between rows of data. The result would be that an entire file of Provider Hourly Capacity Available for Purchase downloaded from a RIN Node would be received as one long record. However, customers downloading data into personal computer spreadsheets may have trouble using the information since spreadsheets cannot handle very long records. To remedy the problem the Commission proposes to require, at least for Phase I, the sending RIN Node to separate each row of data with carriage return and line feed characters. Similarly, customers uploading data to a RIN node would separate each row of data with carriage return and line feed characters.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

c. Costs

Transmission-owning public utilities will be entitled to recover reasonable expenses associated with developing and running RINs. The costs of developing and operating the system will generally be fixed and not attributable to individual users. The Commission, therefore, proposes to roll these costs into wholesale transmission rates. The Commission also proposes to permit costs that can be identified as dependent on usage to be charged as usage fees to individual customers.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

d. Access to RIN Information by the Public

The Commission believes that the registration procedures described in the How Report are useful security tools.[53] The Commission also believes that the Commission, state regulators, and the public should have access to transmission services information consistent with the need to maintain the security of the system.[54] The Commission, therefore, proposes that once Commission Staff and members of the general public have complied with the requisite registration procedures, they be granted "read only" access to RINs.

e. The Number of RIN Nodes

The How Report does not put a limit on the number of RIN Nodes, but raises the issue of how many RIN Nodes there should be.[55] Public utilities would be permitted to combine the function of their RINs into a single Node. Consequently, there could be as many Nodes as there are transmission-owning public utilities or only a very small number of Nodes. The How Group sees merit in a small number of Nodes and goes on to suggest a small number of Nodes be actively encouraged in order to minimize the networking management requirements for the RIN and to help ensure seamlessness of access. On the other hand, it recognizes that the advantages of a small number of separate Nodes must be weighed against the complexity and size that each Node would have to be to handle the correspondingly large number of transmission-owning utilities.

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

f. Connections to Third Party Networks

The How Group proposes, in Phase I, to permit transmission owning utilities to provide connections to private networks, if requested to do so. In Phase II, the How Group proposes that public utilities be required to provide these connections. It proposes that customers be required to pay the cost of the connections and the connections would be required to use the same Internet tools as are required for the Internet connections.

The Commission believes that private networks and third party services can provide valuable contributions to the successful operation of RINs. The Commission, therefore, proposes to require utilities to provide private connections in Phase I. As proposed by the How Group, the cost of the connections would be paid for by the customers making the requests and the networks would be required to use Internet tools.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

g. Unresolved Issues

The How Group was unable to resolve a number of issues. Many of them concern issues covered by the What Group and are discussed elsewhere.[56] The Commission requests comments on the following unresolved issues.

i. Price Discrimination Issues

The How Report would permit public utilities to offer value-added RIN services above the basic level of service. The Commission proposes to allow these services. However, such services would remain cost based until the Commission is satisfied that market-based (value added) rates should be allowed for such services. Requests for market-based rates for such services will be addressed, initially, on a case-by-case basis.

Some customers are concerned that price could be used to discriminate, between customers if public utilities are permitted to charge for different optional services, such as higher speed connections, value-added services, and automatic notification of changed data. If public utilities charge relatively high prices for these additional services, then some customers may not be able to afford them. These customers fear, for example, that they could be effectively

¶61,003 (1994); Order 563–C, Order Accepting Modifications, 68 FERC ¶61,362 (1994); Order 563–D, Order Accepting Modifications, 69 FERC ¶61,416 (1994); Order 563–E, Order Granting Clarification, 70 FERC ¶61,186 (1995).

[46] How Report at § 3.4.3.

[47] A bit is the smallest unit of computer data and can have a value of zero or one. A byte is eight bits and is often used to represent a character of text.

[48] DUNS numbers refer to the Data Universal Numbering System, maintained by Dun and Bradstreet.

[49] See Standardized Data Sets and Communication Protocols for Electronic Bulletin Boards in Docket No. RM93–4, Order 563(a), supra n.45, Reg. Preambles at 31,034.

[50] See Order 563(c), supra n.45, 68 FERC at 62,462–65.

[51] How Report at § 3.3.8 (c).

[52] How Report at § 3.3.8.

[53] How Report at §§ 3.2.1 (b)-(f).

[54] cf. 16 U.S.C. 824l.

[55] How Report at § 3.1.2 (f).

[56] Supra at 40–60.

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locked out of the transmission market if they could rarely get timely access to the queue for purchasing transmission access.

These customers felt that the Commission should monitor and possibly regulate the prices charged for the services to ensure that they were non-discriminatory.

ii. Transmission Services Information Timing Requirements

The How Group proposes several timing requirements for posting transmission service information and suggests that the requirements be reviewed for reasonableness, possibly during Phase I. The Commission believes that some timing requirements should be operative during Phase I.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

iii. The Posting of Capacity Available for Resale

The How Report also raises issues concerning posting of capacity to be resold.[57] The report requires the reseller to post the relevant information on the Node of the facility owner.[58]

The Commission is concerned that unless primary capacity and secondary capacity appear in the same location on the Node and require the same forms to be filled out and the same procedures followed, the capacity for sale by the facility owner will be easier to find and purchase, thereby giving the facility owner a competitive advantage. Therefore, the Commission proposes that secondary capacity be posted on the same page, using the same tables as similar capacity being sold by the facility owner.

Question 38. The Commission requests comments on how to redesign the download templates in Appendix C so that primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

The Commission proposes that resellers pay the costs associated with posting this information on the RIN.

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

E. Standards of Conduct

The What Group and the How Group both focused on the specific issues that the participants at the Technical Conference agreed that they should address. Nevertheless, other important RINS-related issues must also be decided. One such issue is whether the Commission needs to promulgate generic standards of conduct for jurisdictional utilities in the electric industry akin to the ones that we promulgated for the natural gas industry,[59] or whether this issue should be decided on a case-by case basis. For the reasons explained below, we propose to address this issue on a generic basis by issuing Standards of Conduct patterned on those we promulgated for the natural gas industry.

As we stated in the RIN Notice,

> Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions * * *

This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements * * *

In response to this discussion and the accompanying request for comments, the comments (in preparation for the technical conference) debated how the control room could be functionally unbundled. Currently, marketing and transmission functions are performed in the same control room and sometimes these functions are performed by the same people. However, same-time access to transmission information means that, somehow, these functions must be separated. A related matter that we are concerned about is the potential for informal communication among colleagues if utility traders have preferred access to limited access control rooms and buildings.

In discussing this issue, the commenters asked—how much separation is enough? They wondered whether the Commission would set requirements for separating marketing and transmission functions and, if so, what those requirements would be. Commenters came down on both sides of this issue. The East Texas Cooperatives and the Ohio PUC believe that separation is essential. American Electric Power points out that requiring the transmitting utility's marketing personnel to use only that transmission information posted on a RIN would be a powerful incentive for utilities to provide adequate disclosure on the RINs (or else the marketing employees couldn't properly do their jobs). El Paso Electric and Houston L&P are concerned about the reliability consequences of separating control room functions. NYSEG and Sierra Pacific do not believe that separating control room functions is needed.

Additionally, this issue was renewed by the power marketers, in the discussion of non-consensus issues in the What Report and in separate comments, where they argued that a lack of organizational separation and the absence of formal standards of conduct similar to those the Commission imposed on natural gas pipelines undermines their confidence in functional unbundling and the RIN. In the absence of such standards, the marketers request that voluminous supplemental information about transactions be posted on the RINs.

To help ensure non-discriminatory access to information, the Commission believes it is appropriate to impose standards of conduct for Transmission Providers. Therefore, we are proposing standards that would require Transmission Providers to separate their wholesale merchant functions (*i.e.*, purchases or sales for resale of electric energy in interstate commerce) from their wholesale transmission system operations and reliability functions, and that would further require employees performing merchant functions to obtain access to information on wholesale transmission services through the RIN, on the same basis available to all other RIN users.

In deciding this issue, we have been influenced by the differing views expressed by interested persons as to what conduct should be deemed proper or improper, our experience in the gas industry, and the generic nature of these issues. We have concluded that the industry needs explicit guidelines on separating transmission and power trading functions. In formulating proposed standards of conduct, our goal is to prevent employees of the Transmission Provider that perform merchant functions from having *preferential* access to any relevant information about the Transmission Provider's wholesale transmission availability and costs. In other words, those employees should not have access to any relevant information that is not also available to all wholesale transmission customers and potential wholesale transmission customers, regardless of whether this information is obtained through access to the control center, access to other locations or files, or through informal communications.

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

We note that, although formal rules prescribing standards of conduct were deemed necessary in the natural gas industry, the potential for improper communications between transmission and trading personnel is even more of a concern for electric utilities than for gas pipelines. Absent divestiture, transmission and power trading jobs will be performed by individuals working for the same company (or corporate group). These tasks have traditionally been done in the same control room and, in some cases, are now being performed by the same person.

We believe that explicit guidance would be helpful to all concerned. Transmission Providers will have a better idea of what conduct is permissible and what is impermissible. Customer complaints on preferential access should be minimized. Enforcement efforts by the Commission will be easier when specific guidelines are available. Additionally, to the extent this standard of conduct allays concerns about improper conduct, it could reduce what information needs to be posted on the RIN.

In the event that Transmission Providers are concerned that this proposal somehow will impede system reliability, we invite them to articulate their concerns in their comments by addressing the question below.

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by transmission providers in making their own wholesale transmission purchasing decisions?

F. Applicability

1. Non-Public Utility Transmission Providers

As with the requirements in the Open Access NOPR, the RINs requirement applies only to public utilities. Issues relating to potential gaps in the provision of comparable open access to wholesale transmission services or access to transmission information due to the fact that the requirements do not apply to non-public utilities will be addressed in the Open Access rulemaking proceeding. Although the RINs requirements would not apply to non-public utilities, the Commission expects non-public utilities to provide comparable access to wholesale transmission information under the reciprocity provision in the Open Access rule *pro forma* tariffs.

In this regard, we also note our general authority under section 311 of the Federal Power Act, 16 USC § 825j (1994), to secure information (and conduct appropriate investigations) concerning, among other things, the transmission of electric energy throughout the United States, regardless of whether such transmission is otherwise subject to our jurisdiction.

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly-owned utility) have a RIN?

2. Public Utilities Having No Transmission Facilities With Commercial Value

Some public utilities claim that none of their transmission facilities that could be used to provide wholesale service has commercial value that would justify the burden and expense of developing and maintaining a RIN. Although the Commission would still require same-time access to wholesale transmission and ancillary service information, simpler means of satisfying this requirement may be considered for utilities with wholesale transmission of little commercial value.

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[60] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would have to comply with the proposed rule are public utilities and transmitting utilities that do not fall within RFA's definition of

[57] How Report at § 6.6.

[58] How Report at § 3.2.4.

[59] See 18 CFR Part 161. *See also* the primary Commission orders addressing natural gas pipeline marketing affiliate regulation, and the other cases cited therein: Order No. 497, 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52,781 (December 22, 1989), III FERC Stats. & Regs. ¶ 30,868 (1989); Order Nos. 566, 59 FR 32,885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (1994); Order No. 566–A, *order on rehearing*, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (1994); Order No. 566–B, *order on rehearing*, 59 FR 65,707 (December 21, 1994), 69 FERC ¶ 61,334 (1994); *appeal docketed*, Conoco, Inc. v. FERC, D.C. Cir. No. 94–1745 (December 13, 1994).

[60] 5 U.S.C. 601–612.

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small entities.[61] Therefore, under section 605(b) of RFA, the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[62] Although this regulation does not directly affect any physical transmission facilities, but merely proposes the electronic posting by computers of certain information about transmission availability and prices, it nevertheless is being covered by the environmental impact statement being prepared in the Open Access NOPR proceeding in Docket Nos. RM95–8–000 and RM94–7–001. Thus, no separate environmental assessment or environmental impact statement is being prepared for this proposed rule.

VI. Information Collection Statement

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 166 of these utilities own and/or control facilities used for the transmission of electric energy in interstate commerce and thus are subject to this proposal. However, since the operation of a RIN will be closely associated with control areas, we assume that RINs will be developed at the control area level and not by each public utility that owns and/or controls interstate transmission facilities. We estimate, therefore, that 84 respondents will be required to collect information. We believe that this estimate is conservative because some regions are likely to develop a region-wide RIN that will cover more than one control area.

Information Collection Statement

Title: FERC–717, Real-Time Information Network Standards.

Action: Proposed Collection.

OMB Control No: None.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Notice of Proposed rulemaking solicits public comments to respond to the uniform requirements for a Real-time information network (RIN) established by the Commission to ensure simultaneous access to information on transmission service. The proposed requirements were developed after technical conferences with industry to ensure that safeguards are installed to provide procedures and substantive requirements for all parties seeking transmission service. These requirements would support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents would give competitors and other users of the transmission system access to same information available to the public utility personnel who initiate the acquisition or disposition of power in the wholesale market and at the same time. The Commission would use the information to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory basis.

The Office of Management and Budget's (OMB) regulations,[63] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in the proposed rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

VII. Public Comment Procedure

This NOPR gives notice of our intention to add Part 37 to the Commission's Regulations. As described in the discussion above, under this proposal each Transmission Provider would be required to create and participate in a RIN, to ensure that potential purchasers of transmission services have access to information to enable them to obtain open access transmission services on a non-discriminatory basis from the Transmission Provider. Additionally, the proposal would require public utilities to comply with standards of conduct designed to prevent discriminatory practices and affiliate abuse.

Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on 47 specific questions enumerated in the body of this order (and compiled in Attachment "1"), on the proposed templates in Appendix "C" and, more generally, on whether the Commission should proceed to promulgate this proposal as a final rule. Additionally, the Commission invites comments on any suggested changes or modifications to the proposal that would, in the view of the commenter, improve the proposal, and if so, why. Moreover, the Commission is not intending to allow the filing of reply comments in this proceeding and, therefore, we also invite parties to discuss why policy options advocated by other parties (as described in the comments in preparation for the Technical Conference, the working group reports, and in comments in response to the working group reports), should not be adopted by the Commission.

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking and the issues identified above. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM95–9–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before [insert date 45 days from the date of publication in the **Federal Register**]. Additionally, a copy of the comments also should be submitted to the Commission on computer diskette in Wordperfect 5.1 or ASCII format.

All written submissions to this NOPR will be placed in the public file and will be available for public inspection in the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 37

Real-Time Information Networks.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Title 18, *Code of Federal Regulations*, to add a new Part 37, as set forth below.

[61] See 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a).

[62] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Reg. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

[63] 5 CFR 1320.11.

PART 37—REAL-TIME INFORMATION NETWORKS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

Sec.

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Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 37.1 Applicability.

This part applies to any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

§ 37.2 Purpose.

The purpose of this part is to ensure that potential customers of transmission service receive access to information that will enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of wholesale electric energy in interstate commerce. These rules require public utilities (or their agents) to create and operate a real-time information network (RIN) that gives competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time, so that potential customers may obtain open access transmission service that is comparable to that provided by transmission owning public utilities to themselves.

§ 37.3 Definitions.

(a) *Transmission Provider* means any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

(b) *Transmission Customer* means any eligible customer (or its designated agent) that executes a service agreement and/or receives transmission service.

(c) *Responsible Party* means the Transmission Provider or a third party to whom the Transmission Provider has delegated the responsibility of meeting the requirements of this Part.

(d) *Resellers* means Transmission Customers who offer to sell transmission capability they have purchased to other Transmission Customers.

(e) *Wholesale Merchant Function* means the sale for resale or purchase of electric energy in interstate commerce.

(f) *Affiliate* means:

(1) for any non-exempt wholesale generator public utility, another person which controls, is controlled by, or is under common control with such person;

(2) for any public utility that is an exempt wholesale generator, as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935, as amended.

§ 37.4 Standardization of data sets and communication protocols.

(a) A public utility subject to this Part must provide access on a RIN to standardized information relevant to the availability of transmission capability, prices, and other information (as described elsewhere in this Part) pertaining to its transmission system; it must also provide the ability to display, download and upload the standardized information in compliance with standardized procedures and protocols.

(b) The standardized information, procedures and protocols are found in "Standardized Data Sets and Communication Protocols," which can be obtained from the Office of Public Information, Federal Energy Regulatory Commission, 888 North Capitol Street NE, Washington, DC 20426.

§ 37.5 Obligations of Transmission Providers.

Each Transmission Provider is required to provide for the operation of a RIN, either individually or jointly with other Transmission Providers, in accordance with the requirements of this Part.

§ 37.6 Standards of conduct.

A public utility subject to this Part must conduct its business to conform with the following standards:

(a) The employees of the public utility that are engaged in wholesale merchant functions (*i.e.*, wholesale purchases and sales for resale of electric energy in interstate commerce) are prohibited from also conducting transmission system operations and/or reliability functions. The employees of the public utility that are engaged in merchant functions also are prohibited from having preferential access to the system control center and other facilities of the public utility that differs from the access available to other wholesale transmission customers or potential wholesale transmission customers. To the maximum extent practicable, the employees of the public utility engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions and of the employees of any affiliate of the public utility. Employees are not precluded from transferring between departments as long as they do not conduct both transmission system operations functions and wholesale merchant functions or functions on behalf of any affiliate, and as long as these standards of conduct are observed. Notices of any employee transfers to or from transmission system operations must be posted on the RIN.

(b) When buying or selling power, employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility must rely upon the same information relied upon by the public utility's wholesale transmission customers (*i.e.*, the information posted on the RIN), and must not have preferential access to any information about the public utility's transmission system that is not available to all users of the RIN.

(c) Employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility are prohibited from obtaining information about the public utility's transmission system (including information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(d) Employees of the public utility that are engaged in transmission system operations or reliability functions may not disclose to employees engaged in the wholesale merchant function or to employees of any affiliate of the public utility any information concerning the public utility's transmission system (including information received from non-affiliates or information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(e) If a public utility employee that is engaged in transmission system

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operations or reliability functions provides information not contained on the RIN to an employee of the public utility that is engaged in the merchant function or to an employee of an affiliate of the public utility, the public utility must immediately post such information on the RIN.

(f)(1) The employees of the public utility that are engaged in transmission system operations must apply all tariff provisions relating to the sale or purchase of wholesale transmission service in a fair and impartial manner that treats all customers (including the public utility's employees conducting wholesale merchant functions and employees of any affiliate) alike, if these provisions involve discretion.

(2) The public utility must keep a log, available for after-the-fact Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff.

(g) The employees of the public utility that are engaged in transmission system operations must strictly enforce all tariff provisions relating to the sale or purchase of wholesale transmission service, if these provisions do not provide for the use of discretion.

(h) The public utility may not, through its tariffs or otherwise, give preference to wholesale purchases or sales made for itself or any affiliate over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, etc.).

(i) If the public utility offers discounts to purchases made for itself or for any affiliate, then it must, at the same time, offer on the RIN comparable discounts for similar service to all transmission customers.

(j) A public utility must maintain its books of account and records separately from those of its affiliates.

(k) Within 60 days of publication of the final rule in the **Federal Register**, the public utility must file with the Commission procedures that will enable customers and the Commission to determine that the public utility is in compliance with the requirements in this section.

§ 37.7 RIN uses.

The information posted on the RIN must allow transmission customers to:

(a) make requests for transmission services offered by Transmission Providers and the secondary market;

(b) view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;

(c) post, view, upload and download information regarding available products and desired services;

(d) clearly identify the degree to which their transmission service requests and/or schedules were denied or curtailed relative to those of their competitors; and

(e) obtain access in electronic format information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes.

§ 37.8 Information requirements for transmission service.

(a) The RIN must support the posting of available transmission capability and the processing of requests electronically.

(b) The RIN must provide a mechanism to enable Transmission Providers and Customers to promptly communicate requests and responses to buy and sell available transmission capability offered under the Transmission Providers' tariffs.

(c) For requests for transmission service to begin more than one year from the date of the request, transmission studies need not be performed to calculate ATCs, *see* § 37.9(a)(1), until a request for service is made. However, any planning or specifically requested studies of the transmission network performed by the Transmission Provider are to be available for download on the RIN. (This applies only to those parts of customer-specific interconnection studies that relate to network impacts).

§ 37.9 Information to be posted on a RIN.

(a) Five major types of information must be posted on the RIN: (1) Available Transfer Capability (ATC) and Total Transfer Capability (TTC);

(2) Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices;

(3) Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices;

(4) Specific Transmission Service Requests/Responses; and

(5) Informal Transmission Communications.

(b) Information on ATC and TTC shall be posted on the RIN in accordance with the following: (1) The Transmission Provider must inform all participants simultaneously in the wholesale market of the transfer capability that is expected to be available on transmission paths of the Transmission Provider's system and each paths' total transfer capability. The Transmission Provider may delegate this responsibility to a suitable third party who maintains that Transmission Providers' RIN, such as an Independent System Operator, a Regional Transmission Group, or a Regional Reliability Council.

(2) The ATC/TTC shall be calculated by the Responsible Party (the Transmission Provider or its designated agent) according to consistently applied industry practices, standards and criteria, or criteria referenced in the Transmission Provider's transmission tariff.

(3) The amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting. ATCs and TTCs as required in the Posting Schedule must be posted in megawatts.

(4) Curtailment provisions associated with ATC must be incorporated in the posting and must be made available to all Transmission Customers.

(5) Transmission tariffs provide an application procedure for Transmission Customers to request transmission service. At the time of the application, and in accordance with the provisions of those tariffs, the Transmission Provider (or its designated agent) must inform the requester if the Transmission Provider can honor the request. If not, the Transmission Provider must provide an explanation of additional information that is needed to evaluate the request, or identify prior pending requests that prevent acceptance of the full request, regardless of the posted ATC/TTC values.

(6) The public utility must make all data used to calculate ATC/TTC publicly available. This information must be available for download on the RIN. The Transmission Provider must identify in its information supporting its ATC calculations the limiting element and the cause of the limit (*e.g.*, thermal, voltage, stability). Whatever method is used to determine capability must be applied consistently.

(c) Information on Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) Transmission Providers and Resellers must post the prices, terms and conditions associated with the transmission products that they offer to Transmission Customers. Transmission Providers must also provide a downloadable file of their complete tariff in the format required in the Open Access rule.

(2) Customers who desire to resell capability must post the relevant information to the same RIN node used by the primary provider from whom the customer purchased the transmission capability.

(3) If the Transmission Customer resells its rights, in whole or in part, it must promptly notify the Transmission Provider, or the Transmission Provider's agent, of the new owner of the rights, any subdivision of these rights that may have occurred, and any changes in the terms and conditions of these rights, subject to the terms and conditions of the tariff.

(d) Information on Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) To the extent that the final Open Access rule requires that a Transmission Provider offer ancillary services, the Transmission Provider will post such offers on the RIN.

(2) Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

(e) All requests for transmission service must be made on the RIN. Requests for transmission service and the responses to such requests must be consistent with the Transmission Provider's tariff, the Federal Power Act, and FERC regulations.

(f) RINs must permit the posting of informal communications related to transmission services. Postings made in this section carry no obligation to respond on the part of any market participant. These communications include "want ads" and "other communications" (including using the RIN as a conference space or to provide messaging services between RIN users).

§ 37.10 Posting and Updating Information on the RIN.

(a) Information about ATC/TTC posted on the RIN must be updated when transactions are scheduled or end or as other system conditions change that significantly affect TTC/ATC.

(b) Information must be posted in accordance with the following procedures:

(1) All information will be date/time stamped;

(2) Firm (Non-Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) By month, both on and off peak, for next 12 months updating the next 11 months and adding month 12 on the 15th of each month;

(iv) Seasonal, by year, for years 1–10 (when planning and specially requested transmission planning studies have been done).

(3) Non-Firm (Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) Longer term by request.

(4) Daily updates must be posted at the same universal time for each RIN.

§ 37.11 Posting of discounts.

A public utility, within 24 hours of agreeing to a discount (as measured from when ATC must be adjusted in response to the transaction), must post on the RIN and make available for download, information describing the transaction (including price, quantity, and any other relevant terms and conditions) and shall keep such information posted on the RIN for at least 30 days. Thereafter, records of the transaction must be retained and kept available for after-the-fact Commission audit as part of the audit log required in section 37.14(e).

§ 37.12 Procedure for transmission providers to respond to customer requests for transmission service.

The following steps must be followed in processing a transmission service request, with the time for each step specified in the service tariff:

(a) Requester: Submits request, including all information, as required by the tariff.

(b) Provider: Places request in queue and posts applicable information to the RIN. Posts request status and provides time/date stamps throughout the process.

(c) Provider: Approves or denies request and provides reason, if denied. Posts result to the RIN. Tenders service offer.

(d) Requester: Accepts service or withdraws request.

(e) Provider: If service accepted by Customer, adjusts ATC on the RIN.

(f) Requester: Holds for scheduling, arranges scheduling, or arranges for resale.

§ 37.13 Communicating denials of requests for service and curtailments.

When requests for service are denied or transactions are curtailed, the RIN must provide a mechanism for Transmission Providers to communicate to transmission customers:

(a) the reason those transactions could not be accommodated; and

(b) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions.

§ 37.14 Auditing Transmission Service Information.

(a) All RIN database transactions must be automatically copied, recorded in a log file, and date/time stamped. If there is a question concerning a transmission transaction, the log file may be downloaded to identify the sequence of events concerning the transaction.

(b) Information on scheduling transmission service must be recorded in a log file by the entity scheduling the transmission service and must be available for download on the RIN by interested parties.

(c) Transmission Service Schedules must be posted to the RIN within one week of the start of the transmission service schedule agreed upon by the parties, unless otherwise reasonably requested by a party with a legitimate concern.

(d) With the exception of discounted prices to its merchant functions or to its affiliates, information about negotiations for transmission do not have to be posted on the RIN unless an agreement for transmission is reached. If an agreement is reached, the identity of the parties, to a transmission transaction may be masked for 30 days from the date when the transaction was agreed upon by the parties.

(e) Audit logs must be available for download on RINs for 90 days and retained and available upon request for three years from the date when they are first posted on a RIN.

§ 37.15 Implementation schedule for RIN requirements; phases.

The RIN(s) established under this part may be constructed in phases, with the initial phase consisting of core requirements and later phases increasing the number of functions, efficiency, and/or effectiveness of the RIN. The first phase requirements must be implemented as of the effective date of the Open Access rule.

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment 1—(Questions for Comment)

Question 1. We seek comment on whether to continue to call the information network

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a "RIN" and, if not, what name should be used in its place.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry transitions to regional pricing, flow-based pricing, or other pricing models that depart from the "contract path" approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the "Informal Transmission Communications" section of the RIN. Would this place third party providers at a disadvantage relative to the Transmission Provider?

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. Also, if discounts are to be posted, when should this be done?

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should "significant and direct impact" be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators.

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period? Should affiliated transactions be treated differently?

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

Question 27. The Commission invites comment generally, on the issues discussed in Appendix "C".

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

Question 38. The Commission requests comments on how to redesign the download templates in Appeat primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by Transmission Providers in making their own wholesale transmission purchasing decisions?

Question 44. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities' that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly owned utility) have a RIN?

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

[FR Doc. 95–30884 Filed 12–20–95; 8:45 am]

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RAILROAD RETIREMENT BOARD

20 CFR Part 261

RIN 3220–AB15

Finality of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The proposed regulation addresses the finality of benefit decisions. This proposed rule is similar to the regulation of the Social Security Administration (SSA) entitled "Reopening and Revising Determinations and Decisions" (20 CFR 404.987–404.996).

Proposed § 261.1 describes who may open a final decision issued by the agency. Proposed § 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision; within 3 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in proposed § 261.2(c).

Proposed § 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Proposed § 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Proposed § 261.5 provides that a decision may be reopened after the 1 year and 3 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Proposed §§ 261.6–261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR part 260).

Proposed § 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Proposed § 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, proposed § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Labor Member of the Board dissented from the action of the majority of the Board approving this proposed rule. The Labor Member's reasons for dissenting from this action are set out below.

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Views of the Labor Member of the Board

Proposed § 261.2 would allow unlimited retroactivity for reopening where an overpayment resulted from the Board's failure to apply a proper reduction to the tier I component of an annuity. This same section would allow unlimited retroactivity in cases where an incorrect decision results in entitlement to an annuity where if the decision were correct there would be no entitlement.

The Labor Member contends that failure to consider these cases final after a reasonable period of time clearly defeats the purpose of developing an administrative finality policy. He agrees that, where an individual through fraudulent or similar means causes an incorrect benefit to be paid, the Board should promptly take steps to correct the payment and collect the overpayment. However, in cases where an overpayment has been made due to an error on the part of the Board or the beneficiary and there was no intent at deception, he feels that a reasonable "statute of limitations" should be set. He feels a more reasonable approach would be to borrow a policy from the Social Security Administration and allow unlimited retroactivity for reopening decision that were unfavorable to a party, but only to correct clerical error or error that appears on the face of the evidence that was considered when the determination or decision was originally made. In most other cases, reopening should be limited.

The Labor Member points out that in November 1985 the Board published a proposed rule in the **Federal Register** dealing with administrative finality (50 FR 48602, November 26, 1985). Several months later, the Office of Management and Budget submitted a letter to the then Chairman of the Board expressing dissatisfaction with the proposed rule comparing it unfavorably with SSA's.

The Labor Member interprets this as a clear message that the Board should tailor its administrative finality policy to that of SSA's to the extent possible.

The Labor Member wants our beneficiaries to have the security of knowing that benefits that they have come to rely on will not be suddenly taken away and argues that conforming our administrative finality regulations to those of SSA's where appropriate, lends itself to a true administrative finality, while still maintaining the integrity of the railroad retirement system. He thinks the proposed rule approved by the majority of the Board fails to do this, and for this reason he cannot endorse it.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 261

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to amended as follows:

1. Part 261, Administrative Finality, is added to read as follows:

PART 261—ADMINISTRATIVE FINALITY

Sec.

261.1 Reopening and revising decisions.
261.2 Conditions for reopening.
261.3 Change of legal interpretation or administrative ruling.
261.4 Decisions which shall not be reopened.
261.5 Late completion of timely investigation.
261.6 Notice of revised decision.
261.7 Effect of revised decision.
261.8 Time and place to request review of a revised decision.
261.9 Finality of findings when later claim is filed on same earnings record.
261.10 Increase in future benefits where time period for reopening has expired.
261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

Authority: 45 U.S.C. 231f.

§ 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) Reopening a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date or the notice of such decision, for any reason;

(b) Within three years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of a deceased person, and it is later established that:

(i) the claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(8) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(9) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity;

(10) Except as is provided in § 261.4 of this part, the decision is incorrect for any reason and results in entitlement to an annuity in a case where if the decision were correct there would be no entitlement.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 261.4 Decisions which shall not be reopened.

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than $25.00.

§ 261.5 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in § 261.2(a) or § 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 261.6 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 261.7 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 261.8 Time and place to request review of a revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

§ 261.9 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the fist claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

§ 261.10 Increase in future benefits where time period for reopening has expired.

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: December 14, 1995.

By authority of the Board.

For the Board

Beatrice Ezerski,

Secretary to the Board.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94P–0390 and 95P–0241]

Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations on nutrient content claims and health claims to provide additional flexibility in the use of these claims on food products. These changes are intended to benefit public health by encouraging manufacturers to use health claims and nutrient content claims that will assist consumers in maintaining a healthy diet. The agency's current regulations were issued in January of 1993 to implement the Nutrition Labeling and Education Act of 1990. This document proposes refinements to those regulations to allow additional synonyms for nutrient content claims without specific preclearance by the agency, permit health claims on certain foods that do not currently qualify because they do not contain 10 percent of certain required nutrients, permit the use of shortened versions of authorized health claims under certain circumstances, eliminate some of the required elements for health claims, and provide additional guidance for petitioners seeking exemption from the disqualification of some foods from bearing a health claim because they contain high levels of certain nutrients. FDA is proposing these amendments in response to petitions submitted by the National Food Processors Association (NFPA) and the American Bakers Association (ABA).

DATES: Written comments by March 20, 1996. The agency is proposing that any final rules that may issue based upon this proposal become effective on the date of publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–2), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. Among the more notable aspects of the 1990 amendments were that they confirmed FDA's authority to regulate nutrient content and health claims on food labels and in food labeling.

Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), which was added by the 1990 amendments, provides that a product is misbranded if it bears a claim that characterizes the level of a nutrient of the type required to be included in nutrition labeling unless the claim uses terms that are defined and designated in regulations adopted by FDA and is made in accordance with all other regulatory requirements. Similarly, section 403(r)(1)(B) of the act provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition unless the claim is made in accordance with the requirements of the act.

The 1990 amendments instruct the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) to issue regulations defining nutrient content claims that characterize levels of nutrients in food. The 1990 amendments also instruct the Secretary (and, by delegation, FDA) to issue regulations authorizing health claims only if he or she determines,

> "based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence" (section 403(r)(3)(B)(i) of the act).

Section 403(r)(3)(B)(ii) and (r)(3)(B)(iii) of the act describe the information that must be included in any health claim authorized under the act. The act provides that the claim shall be an accurate representation of the significance of the substance in affecting the disease or health-related condition, and that it shall enable the public to comprehend the information and understand its significance in the context of the total daily diet. Section 403(r)(4)(A)(i) of the act also provides that any person may petition FDA to issue a regulation authorizing a nutrient content or health claim.

In addition, the 1990 amendments directed FDA to consider 10 disease-nutrient relationships as possible subjects for health claims.

B. FDA's Implementation of the 1990 Amendments

In the **Federal Register** of January 6, 1993 (58 FR 2066–2941), FDA adopted final rules that implemented the 1990 amendments to the act. Among those final rules, § 101.13 sets out general principles for nutrient content claims and provides for their use on food labels. Other regulations in subpart D of part 101 (21 CFR part 101) establish specific requirements for nutrient content claims. These regulations define specific terms such as "free," "low," "good source," "high," "reduced," "less (or fewer)," "more," and "light" or "lite," and establish values for these terms for various nutrients. They also designate certain synonyms that can be used in place of these defined terms (58 FR 2302). In addition, § 101.69 establishes procedures for petitioning the agency to authorize additional nutrient content claims and provide for additional synonyms which, if authorized, will be listed in the relevant regulations (§ 101.69) (e.g., "extra" as a synonym for "more").

FDA also adopted final rules that implemented the health claims provisions of the act (58 FR 2478). Section 101.14 establishes general principles for health claims. This regulation prescribes the circumstances in which a substance is eligible to be the subject of a health claim (§ 101.14(b)), sets forth the standard in section 403(r)(3)(B)(i) of the act as the standard that the agency will apply in deciding whether to authorize a claim about a substance-disease relationship (101.14(c)), sets forth general rules on how authorized claims are to be made in food labeling (§ 101.14(d)), and establishes limitations on the circumstances in which claims can be made (§ 101.14(e)). The agency also adopted § 101.70, which established a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

At the same time, the agency announced its decisions regarding health claims on the 10 disease-nutrient

relationships specified in the 1990 amendments. Of the 10, FDA authorized health claims for calcium and osteoporosis (58 FR 2665); dietary lipids and cancer (58 FR 2787); sodium and hypertension (58 FR 2820); dietary saturated fat and cholesterol and risk of coronary heart disease (58 FR 2739); fiber-containing grain products, fruits, and vegetables and cancer (58 FR 2537); fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease (58 FR 2552); and fruits and vegetables and cancer (58 FR 2622). The regulations on general requirements for health claims and on the claims specified above became effective May 8, 1993.

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments," (the implementation final rule). The implementation final rule provided 30 days for interested persons to comment on technical issues arising in any of the final rules implementing the 1990 amendments. In the **Federal Register** of August 18, 1993 (58 FR 44020 to 44096), FDA published technical amendments to the final rules in response to the comments it received.

In the **Federal Register** of October 14, 1993 (58 FR 53254), FDA proposed to authorize the use of a health claim about the relationship between folate and the risk of neural tube defects on the labels or in labeling of foods in conventional food form and dietary supplements. This action was in response to provisions of the 1990 amendments and the Dietary Supplement Act of 1992 (Pub. L. 102–571). In the **Federal Register** of January 4, 1994 (59 FR 395), FDA announced that the proposed regulation to authorize use of the health claim about the association between folate and neural tube defects in food labeling was considered a final regulation for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances.

II. The Petition of the National Food Processors Association

The National Food Processors Association (NFPA) submitted a citizen petition dated October 25, 1994, requesting initiation of rulemaking for the adoption of amendments to the regulations governing nutrient content and health claims. This petition was assigned FDA Docket No. 94P–0390.

For nutrient content claims, NFPA requested specific amendments to §§ 101.13 and 101.65 allowing use of synonyms and implied nutrient content claims, without FDA preclearance, that are understood by consumers to have the same meaning as a defined term, where such claims are made in accordance with the requirements for the defined term, and the defined term also appears in the product's labeling.

NFPA also requested several amendments to the health claim regulations. Among other changes, NFPA requested that FDA permit the use of an abbreviated or implied health claim with a referral statement directing consumers to the complete claim elsewhere in labeling. Currently, all required information must appear in one place without other intervening material.

It also requested that health claims be permitted for foods with levels of nutrients that FDA had determined increase the risk of other diseases to the general population. Among the general requirements for health claims, FDA established in § 101.14(a)(5) levels of total fat, saturated fat, cholesterol, and sodium in a food above which the food is disqualified from making a health claim. These are identified as "disqualifying nutrient levels." In its petition, NFPA suggested that FDA amend the regulation so that a food with a nutrient at a disqualifying level would be prohibited from making a health claim only if the nutrient is directly and adversely associated with the disease to which the claim refers. Absent such an association, NFPA requested that the presence of a nutrient above a threshold level not disqualify a product from bearing a health claim but instead require disclosure of that fact in labeling.

Finally, NFPA requested an amendment to § 101.14(e)(6), which prohibits a food in conventional food form from bearing a health claim unless the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed before any nutrient addition (the "10 percent nutrient contribution requirement"). NFPA requested that this prohibition be replaced by a requirement that any food bearing a health claim that refers to an added nutrient disclose the fact of that nutrient addition in labeling.

FDA issued a letter on May 11, 1995, granting most of the requests to initiate rulemaking on the foregoing aspects of the petition (hereinafter referred to as the May 11, 1995, letter). However, the agency denied certain aspects of NFPA's petition, including NFPA's request that FDA change the levels in § 101.14(a)(5) from disqualification levels to disclosure levels. Although the agency recognized that it has the authority under section 403(r)(3)(A)(ii) of the act to exempt any claim from the disqualifying nutrient levels if it finds that the claim would "assist consumers in maintaining healthy dietary practices," the agency concluded that a generic change in its regulations would not be consistent with the underlying goals of the NLEA.

FDA acknowledged, however, that disclosure rather than disqualification may be appropriate under certain circumstances. The agency said it will seek more limited criteria to define the conditions under which disclosure rather than disqualification could be permitted.

III. The Petition of the American Bakers Association

A citizen petition, dated July 27, 1995, was submitted to FDA by the ABA (Docket No. 95P–0241/CP 1), requesting that FDA amend, among other things, the regulatory provision in § 101.14(e)(6) to permit enriched cereal-grain products that conform to the standards of identity in part 136, 137, or 139 (21 CFR part 136, 137, or 139), and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard, to bear health claims. The petition specifically requested that FDA amend § 101.14(e)(6) to read:

> Except for dietary supplements, enriched grain products that conform to a standard of identity in part 136, 137, or 139, and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard, or where provided for in other regulations in part 101, subpart E.

In the alternative, ABA suggested that the agency expand the list of qualifying nutrients to include complex carbohydrates, niacin, or thiamin or allow the 10 percent nutrient contribution requirement to apply to all foods for which the summation of the Daily Value of the applicable nutrients is 10 percent rather than requiring that the 10 percent be based on a single serving.

Because of the similarities in the NFPA and ABA petitions regarding the 10 percent nutrient contribution and health claims, FDA is responding to part of the ABA petition in this document, which implements FDA's May 11, 1995, letter response to the NFPA petition. Other issues raised in the ABA petition will be handled separately.

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IV. The Proposals

As the petitioners have requested, the agency is reconsidering its position on several of the issues raised in the NFPA and ABA petitions. The agency is well within its legal authority to reconsider the issues in the NFPA petition and propose changes to the current food labeling regulations. "An agency may always change its mind and alter its policies." (See *Conference of State Bank Examiners* v. *Office of Thrift Supervision*, 792 F. Supp. 837, 845 (D.D.C. 1992)). While the burden is on the agency to justify the change from the status quo, that justification need not consist of an affirmative demonstration that the status quo is wrong. The agency need only supply "a reasoned analysis for the change." (See *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, 1349 (D.C. Cir 1985) (citing Motor *Vehicle Mfrs. Ass'n* v. *State Farm Mutual*, 463 U.S. 29, 41, 103 S.Ct. 2856, 2865–2866 (1983))). The agency can justify its departure from past policy "with reference to the objectives underlying statutory scheme it purports to construe." (See *Simmons* v. *I.C.C.*, 829 F.2d 150, 156 (D.C. 1987)).

One of the primary purposes of the 1990 amendments was to educate consumers about healthful dietary practices. The legislative history states, "Health claims supported by significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet" (Ref. 1).

If the current regulations hinder food companies who want to use one of the FDA-authorized claims, as NFPA has alleged, this public health objective will be frustrated. As the agency has stated, if valid health claims are not being used, "there is a cost imposed on society in that some valuable information may not be conveyed to consumers" (58 FR 2927 at 2940). Consumers cannot change their dietary practices if they do not have the necessary information.

The agency is pleased that many food companies are using the health claims on the labels of their products. While the agency has not done an extensive survey, FDA notes that dozens of health claims have appeared on products such as cereal, cookies, frozen dessert bars, egg products, and frozen vegetables. Nonetheless, the agency is concerned that health claims are not being used as extensively as they could be, despite the fact that many foods qualify for such claims.

FDA also notes that food companies are submitting petitions seeking approval of new claims. Since the final regulations have been published, the agency has received two such petitions, one regarding sugar alcohols and dental caries and one regarding oat products and coronary heart disease. A proposed regulation to authorize a health claim regarding sugar alcohols and dental caries was published in the **Federal Register** on July 20, 1995 (60 FR 37502) (hereinafter referred to as the sugar alcohols proposal). The agency expects to complete in the very near future its evaluation of the petition regarding oat products and coronary heart disease.

Accordingly, the agency is proposing changes to the regulations regarding the use of synonyms for nutrient content claims, the 10 percent nutrient contribution requirement for health claims, the use of abbreviated health claims, the specific requirements for individual health claims, and disqualifying levels for health claims to facilitate additional use of these claims.

A. Synonyms in Nutrient Content Claims

Section 403(r)(1)(A) and (r)(2) of the act state that claims that either expressly or by implication characterize the level of a nutrient (nutrient content claims) may be made in the label or labeling of a food only if the characterization of the level made in the claim uses terms that are defined in regulations of the agency. Based on these provisions, the agency has defined expressed claims as any direct statement about the level (or range) of a nutrient in the food (§ 101.13(b)(1)). In addition, it has defined implied claims as nutrient content claims that describe the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (e.g., "high in oat bran") (§ 101.13(b)(2)(i)) or that suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an expressed claim or statement about a nutrient (e.g., "healthy, contains 3 grams of fat") (§ 101.13(b)(2)(ii)).

The agency has specifically defined a number of expressed nutrient content claims ("free," "low," "reduced," "light," "good source," "high," and "more") and provided for their synonyms, e.g., "no," "little," "contains," and "rich in." The agency also provided for certain implied nutrient content claims (§ 101.65(c) and (d)). Finally, the agency has defined the implied nutrient content claim "healthy" (§ 101.65(d)(2)).

The agency considered the use of additional synonyms for the defined terms in the 1993 nutrient content claims final rule (58 FR 2302 at 2320). At that time the agency provided for a limited number of specific synonyms and declined to provide for either long lists of synonyms or conditions for use of unevaluated terms. The agency concluded that permitting additional synonyms to be used in conjunction with either a defined claim or a disclosure statement explaining the synonym's intended meaning would not assist consumers in maintaining healthy dietary practices (58 FR 2302 at 2320). The agency stated that there is no provision in the act that allows for the use of undefined synonyms in the absence of action by the agency. Because of time constraints, in developing the final regulations FDA was unable to fully study the suggested schemes for use of terms without preclearance to determine whether a scheme could be devised that would constitute approval by the agency without preclearance of each term.

The agency also considered but rejected (58 FR 2302 at 2373) the suggestion that implied claims that are defined on the label be permitted. The agency did provide for certain implied claims on products that meet the definition for certain expressed claims and gave specific examples of some of these claims in the preamble (58 FR 2302 at 2374) and in the regulations (§ 101.65(c)(3)) (e.g., "high in oat bran" for foods that are a good source of fiber; "no oil" for fat free foods).

In the October 25, 1994, petition, as stated above, NFPA requested that the agency reconsider allowing synonyms and implied nutrient content claims to be used without FDA preclearance under certain circumstances. NFPA maintained that FDA's strict interpretation and application of the 1990 amendments totally frustrated the achievement of the various statutory goals of improving consumer education about diet and health and thereby reducing the incidence of diet-related diseases.

NFPA argued that, because the regulations sharply limit the terminology that can be used to make nutrient content claims for food products and require "premarket clearance" of terminology that FDA has not specifically authorized by regulation, the regulations ban a host of truthful and nonmisleading labeling statements. The petitioner requested that FDA propose amendments that would permit nonmisleading terms or statements that are reasonably understood by consumers to be synonyms of a term defined in subpart D of part 101 to be used in product labeling when the defined term also is used in the labeling. Requesting similar amendments for implied claims, NFPA stated that such amendments would ensure that claims characterizing the level of a nutrient in a food are truthful and nonmisleading but would give manufacturers greater freedom to construct such labeling messages creatively.

In its May 11, 1995, response, FDA recognized that there may be some merit to the argument that more latitude in the use of truthful, nonmisleading nutrient content claims may assist consumers in maintaining healthy dietary practices because greater flexibility would provide the food industry with an increased incentive to develop more healthful products. Permitting synonyms for defined terms to be used on product labels without specific authorization for the particular synonyms has the potential to provide the industry with a greater variety of ways to convey nutrient information to the consumer because the nutrient content claims on the label would not be restricted to a finite list of terms that can only be expanded by filing an appropriate petition. This approach could facilitate the industry's efforts to arrive at terms that not only appropriately describe the nutrient level in a food but also effectively catch the attention of the consumer.

In its May 11, 1995, letter, the agency noted that while a plethora of uncontrolled terms would confuse consumers by diminishing the usefulness of clearly defined and limited terms, NFPA's "anchoring" concept, if properly implemented, could offer the possibility of increasing the available terms without confusing consumers. The agency stated that it was granting NFPA's petition to initiate rulemaking on the use of additional synonyms anchored to specifically authorized terms.

Consequently, the agency is proposing to add new paragraph (r) to § 101.13, which provides that synonyms may be used in labeling in accordance with one of two provisions. First, proposed § 101.13(r)(1) reflects the fact that a term may be used as a synonym when the agency has specifically listed it as a synonym for a defined term in one of the regulations listing authorized nutrient content claims in subpart D of part 101 ("listed synonym"). FDA included a number of synonyms in the regulation that it adopted as part of the 1993 nutrient content claims final rule. It has also adopted synonyms as a result of a petition filed in accordance with § 101.69(n). Additional synonyms may be added to FDA's regulations following this procedure. Second, FDA is proposing in § 101.13(r)(2) to authorize the use of synonyms that are not specifically listed by name in the regulations in subpart D of part 101, part 105, or part 107 (21 CFR part 105 or part 107) ("unlisted synonyms") but are used in labeling in accordance with the labeling requirements set out in this provision.

Specifically, in § 101.13(r)(2), the agency is proposing a number of requirements to ensure that the use of unlisted synonyms will not confuse or mislead consumers. In particular, FDA is proposing in § 101.13(r)(2)(i) to require that an unlisted term be reasonably understood by consumers to be a synonym of a term defined in subpart D of part 101, part 105, or part 107. Such an understanding is necessary because the agency has, for example, defined the terms "high" and "good source" to represent two different levels of a nutrient.

Consumers can reasonably be expected to understand that "without any [nutrient]" is the same as "free of [nutrient]," and that "not much" of a nutrient is, in common usage, synonymous with "low" for that nutrient since "not much" implies that some but not a lot of the nutrient is present. Other "synonyms" however, may not be so clear. It is important, therefore, that the use of unlisted synonyms that FDA is proposing to authorize under § 101.13(r)(2) be clear and unambiguous to consumers regarding the levels to which they apply. Without such clarity, consumers may be confused as to the nutrient content of the food bearing the claim. Thus, regardless of the prominent use of a listed term or other explanatory information discussed below, terms that are not clearly understood by consumers to be synonymous with specific listed terms may still be misleading and misbrand the food under both section 403(a) and section 403(r)(1)(A) of the act.

Further, the agency is concerned that different manufacturers might use the same term but anchor it to different nutrient content claims. For example "plenty of fiber" might be anchored to "good source" on one product label and "high" on another. In this event, the agency reserves the right to call for petitions to define the term by regulation or to define the term on its own initiative.

The agency agrees with NFPA that, in addition to considering the words of the individual claim, it is important to consider the meaning of the unlisted synonym in the context of the entire product label. It is possible, for instance, that other statements such as other nutrient content claims on the label or in labeling could establish a context in which the unlisted synonym would be misleading. Section 403(a) of the act states that a food is misbranded if it bears any labeling statement that is false or misleading in any particular. Therefore, proposed § 101.13(r)(2)(i) requires that the unlisted synonym not be misleading in the context of the entire label.

The agency seeks comments as to whether further requirements should be imposed to ensure that an unlisted term is truly synonymous with a listed term. For example, FDA seeks comments as to whether it should require companies to have data in their files demonstrating that consumers understand the unlisted term to be synonymous with the listed term in question as a condition for the use of the unlisted terms. In addition, the agency seeks comments on why, if it includes such a requirement, it should not also require that such data be available for review by regulatory officials.

As stated above, for any term used as a synonym authorized under proposed § 101.13(r)(2) not to be misleading, the defined term for which it purports to be a synonym would have to be clear to the consumer. Proposed § 101.13(r)(2)(ii)(A) will require that the listed term appear prominently and conspicuously on the label.

Proposed § 101.13(r)(2)(ii)(A)(*1*) requires the listed term appear immediately adjacent to (with no intervening material) the most prominent (as defined in § 101.13(j)(2)(iii)) use of the unlisted synonym. The agency tentatively concludes that having a listed term immediately adjacent to the most prominent use of each such unlisted synonym will help to ensure that consumers understand the claim that is being made and thus to ascertain the level of the nutrient that the food purports to contain.

The agency tentatively concludes that it is not sufficient for the listed term to appear anywhere on the label, as suggested in the NFPA petition. Such a scheme would not guarantee that the unlisted synonym is read in conjunction with a listed term and would hinder the consumer from ascertaining the level of the nutrient that the food purports to have. For example, with such a provision, the unlisted synonym authorized under § 101.13(r)(2) could be very large and prominent, and the listed term could be a part of the fine print (i.e., in small print that is in sentence or paragraph form elsewhere on the label). Although such defining information may be read by consumers at some point, it would be unlikely to be fully read and comprehended at the same

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time as the unlisted term and thus would not make clear to the consumer that the two statements are synonymous.

The agency's proposal is consistent with section 403(f) of the act which deems a food to be misbranded if any word, statement, or other information required by the act to appear on the label or labeling is not prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Section 403(f) of the act necessitates placement of the listed term on the label so that it is likely to be read and understood, and thereby to eliminate any ambiguity as to the meaning of the unlisted synonym. Allowing the listed term to be anywhere on the label that the manufacturer chooses would not ensure that this requirement is met.

There are a number of precedents for requiring clarifying information in labeling to be adjacent to the text that it clarifies. For example, § 101.3(e) requires that the word "imitation" precede the name of the food imitated; the term "artificial" is required by § 101.22(i)(1)(i), (i)(1)(ii), and (i)(3) to be adjacent to the name of the flavor; and § 102.5(b)(2) (21 CFR 102.5(b)(2)) requires that if the percentage of a characterizing ingredient is required to be included in the common or usual name of the food, it must be adjacent to the name of the food. Further, several aspects of the nutrient content claims regulations require that clarifying statements such as the referral statement, "See [side] panel for nutrition information" (§ 101.13(g)); the disclosure statement, "See [side] panel for information about [sodium] and other nutrients" (§ 101.13(h)); the percentage reduction and identity of the reference food for a relative claim (§ 101.14(j)(2)(ii)); and other clarifying information about the food in relation to the claim, e.g., § 101.13(i)(2) and (p)(2), be immediately adjacent to the claim to which the statement pertains.

As with accompanying information for relative claims (i.e., percent reduction in the nutrient and identity of the reference food (§ 101.13(j)(2)(i) through (j)(2)(iii)), the agency considers the presence of a listed term to be necessary to ensure that the claim is understood by, and is not misleading to, consumers. However, as with accompanying information, it recognizes that to require that this information be included each time an unlisted synonym is used may overburden the label. Consequently, as with relative claims, the agency is proposing to require only that the defined term or listed synonym be placed immediately adjacent to the most prominent declaration of each unlisted synonym. Because of the similar purposes of the two requirements, the agency believes that the provisions in § 101.1(j)(2)(iii) for determining the order of prominence of relative claims are also appropriate for determining the order of prominence of presentations of an unlisted synonym. The order of prominence for relative claims is: (1) A claim on the principal display panel adjacent to the statement of identity, (2) a claim elsewhere on the principal display panel, (3) a claim on the information panel, or (4) a claim elsewhere on the label or labeling.

The agency is proposing in § 101.13(r)(2)(ii)(A)(2) that the listed term be at least half as prominent as the unlisted synonym. If it adopts these changes, FDA will evaluate prominence using type size, style, and color. In the past, FDA has required certain clarifying information to be in type at least half the size of that of the statement it is clarifying. For example, when the term "light" is used to describe a physical or organoleptic property of a food (e.g., "light in color"), the clarifying information "in color" is required to be at least half the type size as the word "light" (§ 101.56(e)(2)). Similarly, when the term "light" is used on a meal type product to describe a nutrient reduction, a clarifying statement as to whether the food is "low in calories" or "low in fat" is required and must be at least half the size of the term "light" (§ 101.56(d)(1)(ii)). Further, § 102.5 requires that the percentage declaration of a characterizing ingredient or component be no less than half the height of the largest type appearing in the common or usual name when it has a material bearing on the nature of the product. Further, this information must appear in bold-faced type. As a final example, § 101.13(f) requires that any nutrient content claim not be more than two times larger than, and not unduly prominent in type style compared to, the statement of identity. All of these provisions are examples of requirements where clarifying information must be at least half as large or prominent as the statement that it is clarifying.

FDA is proposing section 101.13(r)(2)(ii)(A)(*1*) and (r)(2)(ii)(A)(*2*) to ensure that the combination of unlisted and listed terms that appear on a food label are understood by consumers to be making a single claim. This understanding is crucial because the act requires that a nutrient content claim be made "only if the characterization of the level made in the claim *uses terms which are defined in regulations* * * *." (Section 403(r)(2)(A)(i) of the act (emphasis added).) In its petition, NFPA argues that there is nothing in the act that defines a claim to mean individual label statements—as opposed to the overall message conveyed by labeling for a product. The petition stated that, in NFPA's view, a "claim" is properly viewed under the statute as referring to the message about the level of a particular nutrient in the food conveyed in the context of the entire product labeling. NFPA maintained that, while the labeling should include terms defined by FDA, other synonyms or implied statements concerning the nutrient should be viewed as components of the single labeling claim. FDA tentatively concludes that the use of unlisted synonyms in the manner proposed will ensure that consumers understand them to be part of a single nutrient content claim that uses terms defined by regulation. As stated in its May 11, 1995, letter to NFPA, however, the agency cannot finalize this rule unless it receives evidence demonstrating that consumers understand the terms used in this way.

FDA also recognizes that there may be some labels on which the listed term is significantly more prominent than an unlisted synonym. This would be the case, for example, if the listed term was made in a "burst" or in the statement of identity and the unlisted synonym was used in a paragraph in smaller sized type. Such usage might occur if a manufacturer wanted to use a variety of ways to express the level of a nutrient in a discussion about the food. The agency tentatively finds that, in this case, the level of the nutrient described by the listed term would be clearly understood, and additional clarification next to the smaller print on the same label would not be necessary. Therefore, FDA is proposing in § 101.13(r)(2)(ii)(B) that if the listed term is more than twice as prominent on a label as the listed synonym, such that the claimed nutrient level is clearly understood, e.g., a bold faced listed term versus an unlisted synonym used only in a paragraph in smaller sized type, the listed need not be placed adjacent to the unlisted synonym. The agency requests comment on whether this approach is consistent with a nonmisleading label.

The agency is also providing in proposed § 101.13(r)(2)(iv) that a listed term may not be used with an unlisted synonym to form a new term, e.g., extra low, extra high, especially good source, or great source. In its review of food labels before the passage of the 1990 amendments, the Institute of Medicine (IOM) stated that consumers were confused by the plethora of terms on food labels and recommended that definitions of nutrient levels for label claims be severely restricted (Ref. 2). The IOM recommended that four levels be defined for explicit claims: Low, very low, high and very high or their equivalents. The agency has essentially done just that in defining, "low," "free," "good source" and "high." With the use of unlisted synonyms, the agency is concerned that there may be instances when the use of unapproved modifiers for these terms (e.g., "extra low," "extra high," "especially good source," "great source") would confuse consumers by unjustifiably suggesting that there is a distinction between the listed term with and without the modifier. To avoid this confusion, the agency tentatively concludes that it is necessary to prohibit the use of claims that consist of a term that modifies an existing listed term.

In the course of developing the definitions and other requirements for the use of nutrient content claims, the agency made a diligent effort to determine the various meanings and requirements of the nutrient content claims it defined. In some cases the agency determined that, in order for the label not to be misleading, it was necessary for certain additional information to be conveyed to consumers along with the claim. This information included referral or disclosure statements (required by the statute), additional label statements such as accompanying information for foods bearing relative claims (§ 101.13(j)(2)), and other statements such as "not a sodium free food" on a food bearing an "unsalted" claim that was not "sodium free" (§ 101.61(c)(2)(iii)). Just as this information is necessary for a listed term not to be misleading and for a label bearing such a claim to provide full and relevant information to the consumer, the agency tentatively concludes that such additional information is equally important and necessary when unlisted synonyms are used. Consequently, the agency is proposing in § 101.13(r)(2)(iii) to require that unlisted synonyms be used in conformance with all of the requirements for the use of the listed terms.

The petitioners also requested that the agency permit the use of unlisted synonyms with implied claims such as terms, statements, or symbols. As with unlisted synonyms, FDA tentatively finds that this concept may have some merit. However, the agency points out that implied claims that are consistent with a listed term may currently be used on a label. Therefore, the agency is not proposing further provisions for the use of implied nutrient content claims.

B. Section 101.14(e)(6): The 10 Percent Nutrient Contribution Requirement

In the **Federal Register** of January 6, 1993, FDA published a final rule entitled "Food Labeling: General Requirements for Health Claims for Food" (58 FR 2478) (hereinafter referred to as the 1993 health claims final rule). Among other things, this rule requires that, to be eligible to bear a health claim, a food other than a dietary supplement contain 10 percent or more of the Daily Value (DV) for vitamin A, vitamin C, iron, calcium, protein, or fiber, before any nutrient addition (§ 101.14(e)(6)). As explained in that document, FDA concluded that such a requirement was necessary to assure that the value of health claims would not be trivialized or compromised by their use on foods of little or no nutritional value. Furthermore, such a requirement responded to Congress's intent that health claim provisions consider the role of the nutrients in food in a way that will enhance the chances of consumers constructing total daily diets that meet dietary guidelines. Thus, foods bearing health claims should be consistent with current dietary guidelines. Furthermore, the agency concluded that fortification of foods of little or no nutritional value for the sole purpose of qualifying that food for a health claim is misleading, especially if foods such as confections, soda, and sweet desserts are fortified to qualify for a health claim, because such foods have been cited in dietary guidance as those that should be used sparingly.

In the **Federal Register** of August 18, 1993 (58 FR 44036), FDA published technical amendments to the health claim regulations in response to comments that the agency received on the implementation final rule (hereinafter referred to as the 1993 health claims technical amendment). One of the comments stated that if a health claim petition were submitted for the claim "useful only in not promoting tooth decay," virtually none of the sugar-free products on the market would be eligible to bear the claim because of the 10 percent nutrient contribution requirement.

In the 1993 health claims technical amendments, FDA acknowledged that certain food products of limited nutritional value that have been specially formulated relative to a specific disease condition, such as dental caries, may be determined to be appropriate foods to bear a health claim. The agency commented that its intention was to deal with such situations within the regulations authorizing specific health claims. Therefore, FDA amended § 101.14(e)(6) to state that:

> Except for dietary supplements not in conventional food form or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

The terminology "not in conventional food form" was subsequently deleted in the final rules pertaining to health claims for dietary supplements published in the **Federal Register** on January 4, 1994 (59 FR 395).

The sugar alcohols proposal proposes such an exemption from the 10 percent nutrient contribution requirement.

Following publication of the health claims final rule, two trade associations—NFPA and the ABA—submitted petitions to FDA requesting that the agency revise the general requirements for health claims and reconsider its decision regarding the 10 percent nutrient contribution requirement. The NFPA petition argued that the 10 percent nutrient contribution requirement precludes truthful, nonmisleading health claims because it sets an arbitrary nutritional contribution a food must make to the diet to qualify for any claim. Consequently, NFPA argued, the 10 percent nutrient contribution requirement prohibits some common fruits, vegetables, and other wholesome and nutritious foods from making health claims. While NFPA agreed that a food bearing a health claim should contain levels of the nutrient consistent with the health claim, it contended that the lack of significant levels of other nutrients should not prevent a food from bearing a health claim. NFPA argued that if other nutrient levels are deemed to be material with respect to consumers' understanding of a health claim, then such levels should be disclosed in the Nutrition Facts panel.

Furthermore, NFPA contended that the 1993 health claims final rule precludes truthfull, nonmisleading claims because it prohibits a food from satisfying the 10 percent nutrient contribution requirement through fortification. NFPA stressed that even though fortification of a food to support a health claim is material information that should be disclosed in labeling, added and indigenous nutrients are equally nutritious, and, therefore,

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prohibiting fortified foods from bearing a health claim is not justified.

NFPA requested that FDA amend § 101.14(e) by revoking the requirement that foods bearing a health claim contain 10 percent of the DV of vitamin A, vitamin C, calcium, protein, iron, or fiber before any nutrient addition, so that fruits, vegetables, and other nutritious foods could bear health claims.

The ABA petition did not request that the agency revoke the 10 percent nutrient contribution requirement. Rather, it requested that FDA modify the 10 percent nutrient contribution requirement to permit health claims on certain enriched grain products. ABA contended that while some enriched breads might meet the 10 percent nutrient contribution requirement for fiber, most enriched grain products cannot meet the 10 percent nutrient contribution requirement for any of the six listed nutrients because they are precluded by the standards of identity from containing 10 percent of the six listed nutrients. ABA also stated that the standards of identity require specific nutrient addition at levels that were established by FDA as optimal for reducing the risk of certain diet-related diseases. These foods, in fact, have been used for many years to improve the nutrition of U.S. consumers and to reduce the risk of diet-related diseases. Therefore, ABA contended that these foods are precisely the kinds of foods that should be permitted to bear health claims.

ABA argued that the 10 percent nutrient contribution requirement was obviously not intended to apply to foods that conform to the standards of identity for enriched grain products because it precludes virtually all enriched grain products from bearing health claims. It contended that this exclusion is inconsistent with the basis of the health claims because these foods are not only beneficial in reducing the risk of diet-related diseases but, more importantly, are also recommended in current dietary guidelines as foods whose consumption should be increased to maintain a balanced and healthful diet. The petition noted that the Food Guide Pyramid recommends that 6 to 11 servings of grain products be consumed per day. ABA contended that this recommendation demonstrates the importance of including these foods in the diet. ABA argued that the 10 percent nutrient contribution requirement has had the unintended effect of precluding foods that FDA concluded could appropriately bear a health claim from bearing the claim. Thus, ABA requested that the agency amend § 101.14(e) to exempt from the 10 percent nutrient contribution requirement enriched grain products that conform to a standard of identity in part 136, 137, or 139, and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard.

In the alternative, ABA suggested that the agency expand the list of nutrients that must be present at 10 percent to include complex carbohydrates, niacin, or thiamin. Such action, the petition explained, would permit enriched grain products to bear health claims because these products are a significant source of such nutrients.

As a second alternative, ABA suggested that FDA amend the 10 percent nutrient contribution requirement to allow it to apply to a daily consumption of grain products rather than to the nutrient profile of a specific food.

FDA has fully evaluated and considered the arguments raised in both petitions. FDA recognizes that the 10 percent nutrient contribution requirement may have had the unintended effect of prohibiting health claims on certain foods that could be beneficial for consumers and help them to maintain a balanced and healthful diet. The agency is concerned, however, that eliminating the 10 percent nutrient contribution requirement will permit misleading health claims on foods with little or no nutritional value such as candies and soft drinks or will encourage overfortification of the food supply (e.g., vitamin or mineral addition to soft drinks). The appearance of health claims on such foods would be inconsistent with Congress's intent when it enacted the health claims provisions. As discussed in the 1993 health claims final rule, Congress enacted the health claims provisions of the 1990 amendments to not only protect consumers from health claims that are not scientifically valid but also to help consumers maintain healthy dietary practices by providing information that would be useful in constructing total daily diets that meet current dietary guidelines. Thus, an important part of the significance and benefit of health claims is that they appear on foods that are compatible with current dietary recommendations. (See H. Rept. 101–538, 101st Cong., 2d sess. pp. 9–10 (1990).)

During the development of the health claims final rule, FDA considered other alternatives that would ensure that health claims are not trivialized or rendered meaningless by appearing on foods of little or no nutritional value. For example, the agency considered prohibiting health claims on specific foods, such as confections, soda, and snack foods, based on the foods' categorization or characteristic use. However, as fully discussed in the 1993 health claims final rule (58 FR 2478 at 2521), the agency was not persuaded that such action was in keeping with the intent of the statute. The agency concluded that Congress did not intend that specific foods that could be in general use be prohibited from bearing a health claim. Thus, the agency concluded that a prohibition on health claims for specific categories of foods was not a viable option.

However, given the requirement in section 403(r)(3)(B)(iii) of the act that a claim should enable the public to comprehend the information in a claim and understand the relative significance of that information in the context of a total daily diet, FDA concluded (as discussed in the 1993 health claims final rule (58 FR 2478 at 2521–2522)) that it is appropriate to provide a basis for health claims that takes into account the nutritional contribution of the food beyond its role as a source of calories. The agency noted that "Congress intended that FDA establish provisions of health claims regulations by considering the role of the nutrients in food in a way that will enhance the chances of consumers constructing total daily diets that meet dietary guidelines" (Id. at 2521). Without such provisions, foods that are not compatible with dietary guidelines could bear health claims. In addition to being inconsistent with Congress's intent when it established the health claim provisions, and section 403(r) of the act, claims intended to promote the consumption of a food that is incompatible with dietary guidelines would be misleading to consumers and, therefore, would be in violation of section 403(a) (id.). Such claims would be misleading because consumers would be purchasing the food, in part, to achieve a more healthful diet, when, in fact, such foods are inconsistent with dietary guidelines. Further, such claims could be damaging if consumers are encouraged to replace wholesome and nutritious foods that are recommended in dietary guidelines with these foods.

Thus, the agency concluded then, and reiterates now, that the 10 percent nutrient contribution requirement is a necessary component of the health claims provisions to ensure that such claims appear on foods that make a nutritional contribution to the diet and are consistent with dietary guidelines. If the agency were to revoke this requirement, it would have to establish an alternative mechanism to ensure that health claims are not made on inappropriate foods. The NFPA petition did not suggest any alternatives to the 10 percent nutrient contribution requirement to preclude misleading health claims on inappropriate foods.

The agency also tentatively concludes that the alternatives suggested in the ABA petition would not ensure that health claims were made only on foods that are consistent with dietary guidelines. Relying on either of the two alternatives suggested in the ABA petition would not adequately assist consumers in placing foods that bear health claims in their proper dietary context.

The ABA's suggestion that the nutrients required to be present at 10 percent be expanded to include thiamin, niacin, or carbohydrates would not encourage consumers to increase their intake of vitamins and minerals that have been identified as those of continuing public health significance. Public health concerns for deficient intakes of thiamin, niacin, or carbohydrates have lessened considerably in the last 20 years, whereas the inadequate intakes of vitamin A, vitamin C, calcium, and iron remain a public health concern especially because of the possible association between several of these nutrients and the risk of chronic disease. Furthermore, expanding the list of nutrients required to be at 10 percent to include thiamin, niacin, or carbohydrates would permit only certain foods to bear health claims, such as enriched cereal grain products. Certain fruit and vegetable products that are promoted in dietary guidelines but that are currently prohibited from bearing health claims would still not be able to bear a health claim. Consequently, the agency tentatively concludes that expanding the list of nutrients would not sufficiently address the concern that the current regulation precludes certain foods that contribute to a healthful diet, and whose consumption is encouraged by the dietary guidelines, from bearing health claims.

Likewise, permitting the 10 percent nutrient contribution requirement to be based on the daily consumption of a food group would not enhance the likelihood of consumers achieving dietary goals. In fact, such a requirement would be contrary to dietary goals because it would reduce the likelihood that a consumer would reach 100 percent of the DV if daily consumption of an entire food group only supplies 10 percent of one of the listed nutrients. One reason for requiring that a serving of the food provide 10 percent of one or more of the listed nutrients is to assist the consumer in achieving daily intakes recommended in current dietary guidelines. Permitting a food that does not meet the 10 percent nutrient requirement to bear a claim on the basis that the total daily consumption of foods from that category would provide 10 percent of the nutrient would be inconsistent with one of the basic principles of the requirement. Accordingly, the agency has not been persuaded by the arguments raised in the petitions to propose to eliminate the 10 percent nutrient contribution requirement, to expand the list of nutrients that will qualify a food to bear a health claim, or to allow the 10 percent nutrient requirement to apply to a daily consumption of grain products rather than to the nutrient profile of a specific food.

Regarding the request that FDA permit fortification to meet the 10 percent nutrient contribution requirement, the agency is concerned that fortification of foods solely to bear a health claim could result in deceptive or misleading labeling and, thereby, be in violation of section 403(a) of the act. As fully addressed in the 1993 health claims final rule (58 FR 2478 at 2522), fortification of a food of little or no nutritional value for the purpose of bearing a health claim has the great potential of misleading and confusing consumers if foods like confections, soda, and sweet desserts are fortified to qualify for a health claim when, at the same time, dietary guidance as contained in the Food Guide Pyramid, for example, states that "[T]hese foods provide calories and little else nutritionally. Most people should use them sparingly" (Ref. 3). Indiscriminate fortification of such foods with one nutrient would not make such foods consistent with dietary guidelines. Consequently, FDA has not been persuaded that foods should be permitted to be fortified to qualify to bear a health claim. Accordingly, FDA is denying NFPA's request to permit fortification to specifically qualify a food to bear a health claim.

The agency notes, as discussed in the 1993 health claims technical amendments (58 FR 44036 at 44037), that some foods either have been traditionally formulated in accordance with the fortification policy or to meet standards of identity that include fortification and, in that form, contain 10 percent or more of one of the six nutrients listed. In such cases, the agency notes that the food would not be precluded by § 101.14(e)(6) from being fortified to qualify for a health claim.

Although the agency has not been persuaded that elimination of the 10 percent nutrient contribution requirement is in order, or that it should permit fortification so that a food could qualify to bear a health claim, the agency has been persuaded by the arguments raised in the petitions that it should act to modify the 10 percent nutrient contribution requirement. As stated above, the agency acknowledges that the 10 percent nutrient contribution requirement has had the unintended effect of precluding some foods that contribute to a healthful diet, and whose consumption is encouraged by the dietary guidelines, from bearing health claims. As discussed above, the agency's primary goals in establishing the 10 percent nutrient contribution requirement were to preclude foods of little or no nutritional value from bearing health claims and, at the same time, to enhance the likelihood of consumers constructing overall daily diets that conform to current dietary guidelines.

FDA recognizes that precluding certain fruits, vegetables, and grain products from bearing health claims because of the 10 percent nutrient contribution requirement is contrary to that goal. The agency agrees with the arguments raised in the petitions that certain fruits, vegetables, and grain products that otherwise meet the requirements of the specific health claim should be able to bear the claim even though they do not contain 10 percent of one of the six listed nutrients because these foods comprise a major part of a balanced and healthful diet, and because current dietary guidance promotes consumption of these foods. Moreover, diets high in fruits, vegetables, and grain products have been associated with various specific health benefits, including lower occurrence of coronary heart disease and of some cancers (Refs. 4 and 5) and therefore, are exactly the types of foods that should be included in the diet to reduce the risk of specific diet-related diseases. Precluding such foods from bearing health claims could confuse consumers and undermine the utility of health claims.

Furthermore, the foods described in the petitions are not the types of foods FDA intended to preclude from bearing health claims when it established the 10 percent nutrient contribution requirement. In fact, these foods can contribute significantly to a balanced and healthful diet and to achieving compliance with dietary guidelines even though they do not meet the 10 percent nutrient contribution requirement. Consequently, the agency

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tentatively concludes that fruit and vegetable products comprised solely of fruits and vegetables, enriched grain products that conform to a standard of identity, and bread that conforms to the standard of identity for enriched bread except that it contains whole wheat or other grain products not permitted under that standard, that do not meet the 10 percent nutrient contribution requirement but that meet all other aspects of the health claim should be permitted to bear a health claim. Accordingly, the agency is proposing to amend § 101.14(e)(6) to exempt these products from the 10 percent nutrient contribution requirement.

The agency is proposing to limit the exemption for fruit and vegetable products to those products comprised solely of fruits and vegetables because it is concerned that permitting health claims on fruit and vegetable products that do not contain 10 percent of one of the six listed nutrients, but that contain ingredients that may raise the level of certain other nutrients, such as fat, cholesterol, and sodium, would be inconsistent with the purpose of the health claim and incompatible with current dietary guidelines. While the agency recognizes that fruit and vegetable products with added syrups, sauces, and other ingredients that have increased levels of fat, cholesterol, or sodium have an appropriate place in the diet, the agency tentatively concludes that to exempt these products from the 10 percent nutrient contribution requirement would be to promote the consumption of foods that do not fall within the recommendations in dietary guidelines. Accordingly, the agency is not prepared to extend the exemption to these products. However, FDA requests comment on whether the exemption proposed in this document should be extended to include fruit and vegetable products with added oils, sodium, sauces, syrups, or other ingredients.

The agency also requests comment on whether other foods, for example, other types of grain products such as breakfast cereals, should be exempt from the 10 percent nutrient contribution requirement. The agency advises that comments submitted in support of extending this exemption to other foods should provide valid data and sound justification for exempting such foods from the 10 percent nutrient contribution requirement. If the comments persuade the agency that such foods are being unfairly precluded from bearing health claims, and that the foods are consistent with the intent of the health claims, the agency will consider including such foods in the exemption provided in any final regulation based on this proposal.

C. Abbreviated Health Claims

Current § 101.14(d)(2)(iv) mandates that all information required to be included in the claim appear in one place without other intervening material. The current rule, however, does permit a reference statement "See———— for information about the relationship between———— and————," with the blanks filled in with the location of the labeling containing the health claim, the name of the substance, and the disease or health-related condition (e.g., "See attached pamphlet for information about calcium and osteoporosis") with the complete health claim appearing elsewhere on the other labeling. The current rule also permits the use of graphic material, such as a symbol that constitutes an expressed or implied health claim, to be used on the label or labeling of the product provided that it is accompanied by the complete claim, an abbreviated claim, or a referral statement (§ 101.14(d)(2)(iv)).

In the preamble to its 1993 health claims final rule, the agency stated that it did not believe that it is appropriate to use abbreviated health claims as referral statements (58 FR 2478 at 2512). The agency was concerned that an abbreviated claim did not include facts that are material in light of the representation that is made and that are necessary to understand the claim in the context of the daily diet. The agency was concerned that such confusion is possible "whenever the full health claim information appears in a location different from that of the reference statement and is especially likely to occur when a multiplicity of labeling is associated with a product" (Id.). The agency then described the situation where the grocer displays an abbreviated claim on a display (labeling) near the product but only puts the full claim on a billboard in a far corner of the store (labeling) (id.).

In its petition, NFPA requested that the agency reconsider this position and permit greater latitude in constructing and presenting health claims. More specifically, the petition requested that FDA permit abbreviated health claims that are accompanied by a referral statement directing the consumer to the label panel where the complete health claim appears.

The agency has no desire for its regulations to unnecessarily stand in the way of the use of health claims and the presentation of the important information contained therein. While health claims are currently being used on the label and in labeling, the agency would like to see them used more extensively. Consequently, the agency agreed to initiate rulemaking in this area. The agency stated, however, that it must have assurance that the claims will be presented in a scientifically valid, truthful, and nonmisleading manner.

FDA notes that in this document the agency is proposing to provide the basis for shorter health claims by making optional some of the elements that it has required to be included in claims. If those changes are finalized, many of the complete claims will be brief enough to permit their use on the principal display panel. For example, a claim for sodium and hypertension could be made in 12 words: "Diets low in sodium may reduce the risk of high blood pressure." Most other claims would be of a similar length. The agency believes that these shortened claims will, for the most part make this issue moot. Nevertheless, the agency recognized that some claims may still remain somewhat complex.

In those cases where the complete health claim remains long and somewhat complex, the agency recognizes that there may be a need to permit a shortened version of the claim on the principal display panel. Although the entire health claim contains important information necessary for consumers to fully understand the subject substance-disease relationship, the agency recognizes that a short message that captures the consumer's attention will facilitate use of the claim. As a result, the communication of formation will assist consumers in achieving healthful dietary practices.

The agency tentatively concludes that the use of an abbreviated health claim on the principal display panel is consistent with the act. The full health claim includes information required under section 403(a) and 403(r)(3)(B)(iii) of the act. Section 403(r)(3)(B)(iii) requires that the complete health claim "enable[] the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet." Section 403(a) of the act requires only that a claim not be false and misleading. FDA has long required that all information that is necessary to make the claim truthful and not misleading appear in one place, without any intervening material. (See, e.g., *United States* v. *An Article of Food* * * * *"Manischewitz* * * * *Diet Thins"*, 377 F. Supp. 746 (E.D. New York 1974)). However, there is nothing in the act that would require that information required under section 403(r)(3)(B)(iii) appear as

part of the claim each time it is presented on the label.

Thus, an abbreviated health claim that is a scientifically valid representation of the relationship between a substance and a diet-related disease may be permissible under section 403(a) of the act if it is truthful and not misleading. If such an abbreviated claim includes a prominent and immediately adjacent reference to the full claim elsewhere on the label, the requirements of section 403(a) and (r)(3)(B)(iii) of the act would be fulfilled. Consequently, the agency is proposing to amend § 101.14(d)(2)(iv). In addition to permitting the current reference statement to the full claim (§ 101.14(d)(2)(iv)(A)), the agency is proposing to permit an abbreviated health claim to be used on the principal display panel of the label provided that it is accompanied by a reference statement to the complete health claim on the same label or in the same labeling (proposed § 101.14(d)(2)(iv)(B)).

It is vital to compliance with the act that the complete claim appear elsewhere on the same label or in the same labeling as the abbreviated claim. For example, as discussed below for the calcium and osteoporosis health claim, the agency is concerned that consumers might be less likely to read the full health claim if an abbreviated claim appears on the principal display panel of a label, and the full health claim appears in a separate brochure that accompanies the product.

The agency is also proposing to require that the reference statement be prominent and in immediate proximity to the abbreviated claim. The agency notes, of course, that if the proposed provision is adopted, an abbreviated claim could not be used unless the food meets the criteria necessary to make the complete health claim.

As stated above, in the section D.IV. of this document, the agency is proposing to amend the regulations in subpart E of part 101, where appropriate, to set forth the elements that are required to ensure that an abbreviated health claim complies with section 403(a) of the act. As stated above, provision for an abbreviated claim will not be needed for most of the nutrient-disease relationships about which FDA has authorized claims if the revisions proposed in this document are adopted. Consumers may benefit, however, from abbreviated claims for a few of the longer, more complicated claims, such as those for calcium/osteoporosis and folic acid/neural tube defects.

The agency strongly emphasizes that the diet-disease relationship may not be overstated. Even with a prominent referral to the full claim, the abbreviated claim must not overemphasize the importance of the substance in the diet-disease relationship or in the total daily diet. The concept of risk reduction must be accurately conveyed.

The agency notes that some of the diet-disease relationships may already be well-known by consumers. Therefore, nutrient content claims such as "low sodium" and "reduced cholesterol" on the principal display panel and elsewhere on the label may serve as a reminder of the diet-disease relationship and provide a way to market a product for its contribution to a healthy diet.

FDA encourages the use of all authorized claims by the food industry in order to educate consumers about the importance of a healthy diet. The agency believes that the proposed changes to § 101.14(d)(2)(iv) will result in increased use of the authorized health claims and, consequently, will fulfill the legislative intent to educate the public about diet-disease relationships.

D. Specific Requirements for Health Claims

To date, FDA has authorized eight health claims that are codified in the Code of Federal Regulations, Title 21, subpart E of part 101 (§§ 101.72 to 101.79). Among the actions requested by NFPA in its petition is one to "* * * modify the regulations in subpart E of part 101 prescribing the content of authorized health claims so that they constitute 'safe harbors' rather than requirements for claims; * * *." To accomplish this request, NFPA requested that the health claims regulations be modified to permit simplified, nondeceptive claims that are likely to be more easily understood. NFPA contended that the specific health claims regulations contained in subpart E of part 101 include several provisions that prescribe the content and form of health claims to an extent that far exceeds that necessary to ensure that claims are truthful and not misleading. Mentioned as an example was that some regulations require claims to include references to specific nondietary factors even though, in NFPA's view, this information is unnecessary to ensure a claim is stated in a truthful, nonmisleading manner. Cited as illustrative of the nature of the problem was the model claim from the calcium/osteoporosis regulation (§ 101.72(e)) containing all required elements:

> Regular exercise and a healthy diet with enough calcium helps teen and young adult white and Asian women maintain good bone health and may reduce their high risk of osteoporosis later in life.

Each of the other regulations authorizing claims in subpart E of part 101 was identified as requiring similar information.

NFPA requested that the regulations in subpart E of part 101 governing the specific information that must appear in a health claim, and the circumstances in which a claim could be used, be amended. Where, for example, § 101.14(d)(2)(i) requires that labeling statements about a health claim be based on, and consistent with, the conclusions set forth in the regulations in subpart E of part 101, NFPA recommended amending § 101.14(d)(2)(i), along with § 101.14(d)(1) and the rest of (d)(2), so that such statements are objective and either consistent with applicable guidelines set forth in subpart E of part 101, or a reasonable basis for the claim is otherwise substantiated. The petitioner contended that such changes would operate to allow truthful, nonmisleading health claims that either omit information currently required under the regulations (e.g., nondietary information) or that include other useful information not expressly authorized by the regulations.

Responding to NFPA in the May 11, 1995, letter, FDA acknowledged that, although use of health claims in food labeling has increased over the period of time that they have been in effect, the number of products bearing such claims is not as great as the agency had anticipated. Because of the importance of the information conveyed to consumers by health claims, the agency stated that it would review the authorizing regulations to determine whether they contain any unnecessary barriers to the use of the claims and, if so, take steps to remove those barriers. FDA stated that, as part of this assessment, it would conduct a review of what are referred to as "required elements" in each of the eight authorized health claims to determine whether any of them are unnecessary or can be made optional and initiate rulemaking to propose any changes identified in its internal review.

The eight authorized health claims in subpart E of part 101 are codified following the same format. Thus the "required elements" for each claim are contained in paragraph (c) of the respective regulation under the heading "Requirements." For example, specific requirements that apply to the calcium/osteoporosis health claim are contained in § 101.72(c)(2)(i)(A) through (c)(2)(i)(E).

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The agency has reviewed all of the required elements in the eight authorized claims codified in subpart E of part 101. This document presents the results of this review for the following seven claims: § 101.72 on calcium and osteoporosis; § 101.73 on dietary lipids and cancer; § 101.74 on sodium and hypertension; § 101.75 on dietary saturated fat and cholesterol and risk of coronary heart disease; § 101.76 on fiber-containing grain products, fruits, and vegetables and cancer; § 101.77 on fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease; and § 101.78 on fruits and vegetables and cancer. The health claim on folate and neural tube defects (§ 101.79) will be dealt with separately but in a manner consistent with the review of the other health claims.

Since the final rules on the seven claims addressed in this document were published on January 6, 1993 (58 FR 2537 to 2849), new data have become available allowing FDA to reconsider the need for some information that, at the time the specific health claim regulations were issued, was considered necessary to preclude a claim from being misleading. Most notable among these data are two documents, one a National Institutes of Health (NIH) consensus statement on optimal calcium intake (hereinafter referred to as the 1994 consensus statement) and the other an FDA report on consumer understanding of health claims (hereinafter referred to as the 1995 consumer report) (Refs. 6 and 7, respectively).

1. The Calcium/Osteoporosis Health Claim

The 1994 consensus statement is the result of the Consensus Development Conference on Optimal Calcium Intake convened by NIH on June 6 through 8, 1994, which brought together experts in public education and different biomedical sciences dealing with osteoporosis and bone and dental health. Directly relevant to the calcium/osteoporosis health claim, this conference addressed questions and provided recommendations on optimal calcium intake for various population segments, on important cofactors for achieving optimal intake, on the risks associated with increased intake, on the best ways to attain optimal intake, and on the public health strategies that are available or are needed to implement optimal calcium intake recommendations.

The 1995 consumer report is part of FDA's ongoing review of its regulations governing health claims. The report evaluated consumer understanding of four health claims (dietary lipids and cancer, fruits and vegetables and cancer, calcium and osteoporosis, and folate and neural tube defects) and consumer reaction to possible variations on the messages. The report describes the content, the manner of presentation, and the results of a consumer survey of knowledge about the four health claims mentioned above among consumer groups at eastern, central, and western locations in the United States.

For the calcium/osteoporosis health claim, the first required element is contained in § 101.72(c)(2)(i)(A) and provides that:

> The claim makes clear that adequate calcium intake throughout life is not the only recognized risk factor in this multifactorial bone disease by listing specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stating that an adequate level of exercise and a healthful diet are also needed.

The effect of presenting the information required by this element is to convey the message that, for any individual, several factors define the disease risk.

The focus of the 1994 consensus statement is, as stated in its title, optimal calcium intake for promotion of public health. The first of several significant conclusions in the report is that a large percentage of Americans fail o meet currently recommended guidelines for optimal calcium intake. Because of the need to correct this public health shortfall and to improve bone health in the United States, thereby reducing the risk of osteoporosis, FDA tentatively concludes that a singular focus on achieving and maintaining adequate calcium intake as a required element in the calcium/osteoporosis health claim is important.

Accordingly, FDA is proposing to simplify § 101.72(c)(2)(i)(A) by limiting the requirement to a balanced statement that reflects the importance of the essential nutrient calcium over a lifetime in a healthful diet to reduce osteoporosis risk, but that does not imply that calcium is the only risk factor for the development of osteoporosis. To this end, proposed § 101.72(c)(2)(i)(A) states that the claim must make clear that adequate calcium intake as part of a healthful diet throughout life is essential to reduce the risk of osteoporosis.

FDA has included the reference to a "healthful diet" in proposed § 101.72(c)(2)(i)(A) for consistency with the general requirement in § 101.14(d)(2)(v) that "the claim enable[ ] the public * * * to understand the relative significance of such information [in this case, the relationship between calcium and osteoporosis] in the context of a total daily diet." The effect of adequate calcium intake can only be realized if the calcium is a part of a healthy diet that provides all essential and other nutrients to optimize nutritional health status.

The proposed revision of § 101.72(c)(2)(i)(A) emphasizes the most important risk factor in the development of osteoporosis on the label of a food product, i.e., adequacy of dietary calcium intake. Nevertheless, the agency is concerned that such a claim could lead consumers to believe that adequacy of dietary calcium intake is the only risk factor for the disease. In the proposal to authorize the calcium/osteoporosis health claim, the following was stated:

> Calcium intake is not the only recognized risk factor in the development of osteoporosis. Other factors include a person's sex, race, hormonal status, family history, body stature, level of exercise, general diet, and specific life style choices, such as smoking and excess alcohol consumption.

(56 FR 60689 at 60698, November 27, 1991). Based on that information in part, § 101.72(c)(2)(i)(A) requires a listing of several specific risk factors, in addition to dietary calcium intake, in the calcium/osteoporosis health claim.

As stated above, however, FDA acknowledges that the number of food products bearing health claims is not as great as the agency had anticipated. FDA is concerned that manufacturers have been disinclined to use lengthy health claims on food labels, and that too many words will detract from the central consumer message of the claim. As a result, FDA is concerned that health claims like the calcium/osteoporosis claim will continue to be infrequently used, and that the benefits of communicating information on diet-disease relationships through such claims will not be realized.

Because of these concerns, the agency has reevaluated the requirement in § 101.72(c)(2)(i)(A) that a calcium/osteoporosis health claim "* * * list[ ] specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stat[e] that an adequate level of exercise * * * [is] also needed." Given the consensus statement's central focus on optimal calcium intake and the agency's desire to make health claims as useful and useable as possible, FDA is proposing to replace the requirement in § 101.72(c)(2)(i)(A) that specific risk factors and the need for an adequate level of exercise be stated in any claim with the more simple requirement that the claim not imply that adequate dietary calcium intake is the only recognized risk factor for a reduced risk of osteoporosis. This revision will ensure that the scientific validity of claims about osteoporosis is preserved by recognizing the multifactorial nature of this disease without adding words to the claim.

In concert with the proposed change in § 101.72(c)(2), the agency is proposing to redesignate § 101.72(d)(2) as paragraph (d)(5) and to add a new paragraph (d)(2) that provides for the provision of the following information from current § 101.72(c)(2)(i)(A) as optional information:

> The claim may list specific risk factors for osteoporosis, identifying them among the multifactorial risks for the disease. Such factors include a person's sex, age, and race. The claim may state that an adequate amount of exercise is also needed to reduce risk for the disease.

The 1995 consumer report identified the calcium/osteoporosis model health claim as the one most actively disliked (Ref. 7). This dislike most likely arises primarily from a misunderstanding one of the concepts required in § 101.72(c)(2)(i)(B), specific identification of the populations at particular risk for the disease. The current regulation states:

> The claim does not state or imply that the risk of osteoporosis is equally applicable to the general United States population. The claim shall identify the populations at particular risk for the development of osteoporosis. These populations include white (or the term "Caucasian") women and Asian women in their bone forming years (approximately 11 to 35 years of age or the phrase "during teen or early adult years" may be used). The claim may also identify menopausal (or the term "middle-aged") women, persons with a family history of the disease, and elderly (or "older") men and women as being at risk.

The 1995 consumer report states that minority women were unanimous in objecting to the inference that black American women do not need calcium. Accordingly, minority participants questioned the accuracy of the information. All of the survey participants recognized that calcium is essential for everyone. Although there was some recognition based on prior knowledge that younger women need to be concerned about osteoporosis, no participant thought the model claim communicated that concept very well. For these and other reasons, older women tended to dismiss the model claim as incorrect.

The agency did not intend that the calcium/osteoporosis health claim imply that calcium is not needed by any individual or specific population. Given that calcium is essential for every person, the agency attempted to craft requirements for presenting this disease claim in a truthful, nonmisleading, and scientifically valid manner. In reviewing the scientific data supporting the claim, including the incidence of low-trauma bone fracture in the elderly, FDA stated in the preambles to the calcium/osteoporosis proposed and final rules (56 FR 60689 and 58 FR 2665, respectively) that those individuals in the general population at greatest risk of developing osteoporosis, and for whom the health claim would have greatest benefit, include Caucasian and possibly Asian women and adolescent girls and young adult women between 11 and 35 years of age. For this and other reasons, a requirement for identifying these high risk groups was included in § 101.72(c)(2)(i)(B). In identifying those at highest risk, there was no intent by the agency to imply that other consumers are risk free.

The 1994 consensus statement is silent in ascribing relative risk for osteoporosis on the basis of race or ethnicity of population groups. For adolescents and young adults of both sexes, 11 through 24 years of age, the optimal calcium requirement is given as a range of 1,200 to 1,500 milligrams (mg) of calcium daily. The report says the following about a subset of this population, 12 to 19 year old females:

> Importantly, population surveys of girls and young women 12–19 years of age show their average calcium intake to be less than 900 mg/day, which is well below the calcium intake threshold. The consequences of low calcium intake during this crucial period of rapid skeletal accrual raise concerns that achievement of optimal peak adult peak bone mass may be seriously compromised. Special education and public measures aimed at improving dietary calcium intake in this age group are essential.

(Ref. 6.)

FDA tentatively concludes that greater use in food labeling of the calcium/osteoporosis health claim, articulated in a manner that will be accepted and followed by consumers, can help support significant strides in improving calcium intake in all segments of the U.S. population. Accordingly, the agency is proposing to revise § 101.72(c)(2)(i)(B) in several ways.

First, it is proposing to revise § 101.72(c)(2)(i)(B) by removing the requirement to identify by race those populations at particular risk for the development of osteoporosis. In neither the statement cited above nor elsewhere in the 1994 consensus statement is any racial or ethnic segment among girls and young women 12 to 19 years of age identified as being more at risk for the consequences of a less than optimal calcium intake. The 1994 NIH consensus statement found that the recommendation for optimal nutrient requirements for any particular age/sex population segment to forestall the impact of a degenerative disease applies to all members of that segment, although not necessarily to the same degree for everyone. Thus, the agency is proposing not to require mention of race or ethnicity as a required element but to permit such information as an option since it is useful and important to those to whom it applies.

Nevertheless, retention of teen and young adult women, irrespective of race or ethnicity, as the focus of the claim is important because, as stated succinctly in the 1994 consensus statement:

> Two important factors that influence the occurrence of osteoporosis are optimal bone mass attained in the first two or three decades of life and the rate at which bone is lost in later years.
>
> Failure to attain optimal bone mass during the bone-forming years of adolescence and early adulthood is a loss that cannot be recovered during middle age or later in life (Ref. 6). Once peak adult bone mass is reached at about age 25, bone turnover is stable in men and women such that bone formation and bone resorption (breakdown) are balanced. In women, resorption rates increase, and bone mass declines, beginning with the fall in estrogen production that is associated with the onset of menopause. Unlike hormone replacement therapy, supplemental calcium during this initial phase will not slow the decline in bone mass attributable to estrogen deficiency. The effects of calcium in reducing the rate of bone loss can be shown more clearly in postmenopausal women after the period when the effects of estrogen deficiency are no longer dominant (i.e., about 10 years after menopause).
>
> Osteoporosis affects more than 25 million people in the United States and is the major underlying cause of bone fractures in postmenopausal women and the elderly (Ref. 6). Given this tremendous cost to public health, it is essential that the health claim on calcium and osteoporosis inform consumers, particularly those at great risk for the disease, of the importance of adequate calcium intake throughout life for attaining peak adult bone mass and for reducing the rate of bone resorption or loss, two processes that occur at different periods over a lifetime.

Thus, FDA is proposing to retain the requirement in § 101.72(c)(2)(i)(B) that the claim not suggest that the risk of osteoporosis applies equally to the general U.S. population. However, it is proposing to remove the required

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reference to any racial or ethnic group in identifying the at-risk population. The agency is proposing to identify this population in the following way:

> * * * The claim shall identify the population at particular risk for the development of osteoporosis as women in their bone forming years from approximately 11 to 35 years of age. An optional statement that further characterizes this and other populations at risk for developing osteoporosis may be made in accordance with paragraph (d)(3) of this section.

FDA is proposing to permit identification of Caucasian women and Asian women as among those at particular risk for the disease as optional information, along with other information from § 101.72(c)(2)(i)(B), in new § 101.72(d)(3). While the 1995 consumer report (Ref. 7) found evidence that some consumers could be misled by references in the calcium/osteoporosis health claim to Caucasian and Asian women, FDA tentatively concludes that, if properly qualified, this information could be helpful in informing such women who may be unaware of their risk of developing this disease. By providing for this information as an optional element in § 101.72(d), the agency is attempting to encourage manufacturers to use this information in formats where the message can be phrased in enough detail to clarify its meaning. For example, "while all women may be at risk of osteoporosis, Caucasian and Asian women are particularly at risk," may be understood and not rejected by consumers. While this statement provides more detail than seems to be necessary in the basic health claim, this information could be useful in a longer discussion of calcium and osteoporosis, for example in a paragraph format on a large label or in a pamphlet. The agency requests comment, and is particularly interested in data, on whether its tentative view that consumer understanding would be helped is correct.

Section 101.72(c)(2)(i)(C) established a requirement for identifying the mechanism whereby adequate dietary calcium over a lifetime should reduce the risk of osteoporosis:

> The claim states that adequate calcium intake throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase "build and maintain good bone health" may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate calcium intake is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.

The agency concluded in developing this requirement that it is important for consumers to have a basic understanding of the biological and physiological mechanisms by which adequate dietary intake of calcium achieves a reduced risk of osteoporosis. However, information developed since the regulation was published indicates that a health claim may not be the best way to provide this information. The 1995 consumer survey (Ref. 7) found that, because participants had learned elsewhere that calcium intake is related to general bone health, they thought the food label was not the right means for conveying this information. In addition, this awareness by consumers that calcium's ability to "build and maintain good bone health" is the mechanism whereby risk of osteoporosis is reduced, raises a question as to whether there is a need to state that fact in a health claim. In the interest of streamlining the claim, therefore, FDA is proposing to make the statement of the mechanism by which calcium intake affects the risk of osteoporosis optional information. The agency is proposing to move § 101.72(c)(2)(i)(C) to § 101.72(d)(4), changing only the word "shall" to "may".

Section 101.72(c)(2)(i)(D) requires that:

> The claim does not attribute any degree of reduction in risk of osteoporosis to maintaining an adequate calcium intake throughout life;

This paragraph is consistent with requirements in regulations for all other authorized claims that no attribution to degree of risk reduction for the respective disease or health-related condition be made in reference to the nutrient or substance that is the subject of the claim (see, for example: §§ 101.73(c)(2)(i)(E), 101.74(c)(2)(i)(D), 101.75(c)(2)(i)(D), 101.76(c)(2)(i)(E), 101.77(c)(2)(i)(G), 101.78(c)(2)(i)(E), and 101.79(c)(2)(i)(F).

Unlike these other regulations, § 101.72 does not contain an express requirement that the claim state that adequate calcium intake throughout life "may" or "might" reduce the risk of osteoporosis (see, for example, paragraphs (c)(2)(i)(A) in §§ 101.73 through 101.79). However, it is clear that FDA also intended that this requirement apply to the calcium/osteoporosis health claim. This intention may be inferred from the two model health claims that use the term "may" in relating calcium intake with a reduction in risk of osteoporosis. Accordingly, the agency is proposing to revise § 101.72(c)(2)(i)(D) and redesignate it as § 101.72(c)(2)(i)(C) to read as follows:

> The claim does not attribute any degree to which maintaining adequate calcium intake throughout life may reduce the risk of osteoporosis;

This proposed revision retains the prohibition against attributing the degree to which adequate calcium intake is associated with a reduced risk for osteoporosis while introducing the concept that, because of the multifactorial nature of the disease, maintenance of an adequate calcium intake throughout life may reduce risk of developing the disease.

Section 101.72(c)(2)(i)(E) contains the conditional requirement that a calcium/osteoporosis health claim include a statement that reflects the limit on the benefit derived from dietary calcium intake as follows:

> The claim states that a total dietary intake greater than 200 percent of the recommended daily intake (2,000 milligrams (mg) of calcium) has no further known benefit to bone health. This requirement does not apply to foods that contain less than 40 percent of the recommended daily intake of 1,000 mg of calcium per day or 400 mg of calcium per reference amount customarily consumed as defined in § 101.12(b) or per total daily recommended supplement intake.

Most conventional foods and many calcium-fortified foods do not exceed the threshold of 40 percent of the DV for calcium for adults and children 4 or more years of age and, therefore, do not trigger the required use of the statement in § 101.72(c)(2)(i)(E). Dietary supplements containing calcium, particularly single nutrient supplements containing 500 or 600 mg of calcium per tablet, exceed the threshold and are therefore required to bear the statement as part of a health claim. The Dietary Supplement Health and Education Act of 1994 (the DSHEA) (Pub. L. 103–417) was enacted on October 25, 1994, and amends the act (Ref. 8). Among the findings of Congress for this new law regarding the benefits of dietary supplements to health promotion and disease prevention is one that identifies a link between ingestion of certain nutrients or dietary supplements and reduced risk for several chronic diseases including osteoporosis. Another finding states that the Federal Government should not take any actions to impose unreasonable regulatory barriers limiting or slowing the flow of safe products and accurate information to consumers.

Among the issues addressed in the 1994 consensus statement is the question of the ways by which optimal calcium intake may be attained. The document draws the following conclusion:

> The preferred source of calcium is through calcium-rich foods such as dairy products. Calcium-fortified foods and calcium supplements are other means by which optimal calcium intake can be reached in those who cannot meet this need by ingesting conventional foods.

The agency has taken into consideration the expressed intent of the DSHEA and this finding from the 1994 consensus statement and tentatively concludes that revision of § 101.72(c)(2)(i)(E) is in order. The agency is proposing to raise the threshold for the required statement from 400 to 1,500 mg of calcium, along with other changes.

With regard to adverse effects and the risks associated with increased levels of calcium intake, the 1994 consensus statement states the following:

> Even at intake levels of less than 4 g/day, certain otherwise healthy persons may be more susceptible to developing hypercalcemia or hypercalciuria. Likewise, subjects with mild or subclinical illnesses marked by dysregulation of 1,25-dihydroxyvitamin D synthesis (e.g., primary hyperparathyroidism, sarcoidosis) may be at increased risk from higher calcium intakes. Nevertheless, in intervention studies (albeit of relatively short duration--less than 4 years), no adverse effects of moderate supplementation up to 1500 mg/day have been reported.

(Ref. 6.)

The same document concludes that daily calcium intake, up to a total of 2,000 mg, appears to be safe in most individuals (Ref. 6). For major segments of the U.S. population the 1994 consensus statement identifies an optimal calcium requirement of either 1,500 mg or a range of 1,200 to 1,500 mg of calcium per day. These population groups include adolescents and young adults 11 to 24 years of age, pregnant and lactating women, women over 50 (postmenopausal) who are not on estrogens, and men over 65 years of age (Ref. 6). Therefore, the agency tentatively finds that a level of 1,500 mg of calcium as the proposed threshold for the statement in § 101.72(c)(2)(i)(E) is not only consistent with current recommendations for dietary calcium intake but is also well within a range that is not known to cause adverse effects.

The agency is consequently proposing to require that the statement of limited benefit appear only on foods that provide more than 1,500 mg of calcium per day. FDA has expressed this proposed threshold level as a percentage of the Daily Values (DV's) for adults and children 4 or more years of age and for pregnant or lactating women. The agency notes that the calcium DV's for adults and children 4 or more years of age and for pregnant or lactating women have not changed and are 1,000 and 1,300 mg, respectively. (See § 101.9(c)(8)(iv) and 58 FR 2206 at 2213.) The agency intends to redesignate this requirement as § 101.72(c)(2)(i)(D).

A common form of a calcium dietary supplement in the marketplace is as a tablet containing either 500 or 600 mg of calcium as the sole nutrient with directions for use in labeling that recommend an intake of one or two tablets per day. A health claim in the labeling of such a product would not require the additional statement in proposed § 101.72(c)(2)(i)(D). FDA tentatively concludes that this proposed change is consistent with the recommendation from the 1994 consensus statement on dietary sources for this nutrient.

For consistency with the proposed revisions in § 101.72(c) and (d), FDA has revised the model health claims in proposed § 101.72(e). FDA has used the phrase "Especially for teen and young adult women" in example 1, which sets out how a claim that conforms with § 101.72(c) might look to reflect the effects on the risk of developing osteoporosis that may be realized by this population segment without implying that adequate calcium intake is without benefit for others.

The agency solicits comment on the proposed revisions to the calcium/osteoporosis health claim and is particularly interested in data on consumer understanding of this claim, and how such understanding can be improved.

2. Other Health Claims

A common requirement in the authorized claims for dietary fat and cancer (§ 101.73); sodium and hypertension (§ 101.74); dietary saturated fat and cholesterol and risk of coronary heart disease (§ 101.75); fiber-containing grain products, fruits, and vegetables and cancer (§ 101.76); fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease (§ 101.77); and fruits and vegetables and cancer (§ 101.78) is a statement that development of the particular disease depends on many factors.

It is well documented over the past 10 years that consumers are generally aware that development of major chronic diseases, such as cancer and coronary heart disease, is dependent on a number of different factors such as smoking, excess body weight, family history of the disease, exposure to environmental chemicals, and dietary and other factors (Refs. 9 and 10). Additionally, the requirement that authorized claims use the term "may" or "might" to relate the ability of the substance that is the subject of the claim to reduce the risk of the corresponding disease or health-related condition is an indication to consumers of the multifactorial nature of the disease or health-related condition. In responding to comments on the scientific standard for health claims as to whether or not a claim based on preliminary scientific data would be consistent with that standard, the agency said:

> * * * Further, absolute claims about diseases affected by diet are generally not possible because such diseases are almost always multifactorial. Diet is only one factor that influences whether a person will get such a disease. For example, in the case of calcium and osteoporosis, genetic predisposition (e.g., where there is a family history of fragile bones with aging) can play a major role in whether an individual will develop the disease. Because of factors other than diet, some individuals may develop the disease regardless of how they change their dietary patterns to avoid the disease. For those individuals, a claim that changes in dietary patterns will reduce the risk of disease would be false. Thus, health claims must be free to use the term "may" with respect to the potential to reduce the risk of disease. However, use of this term would not be appropriate for health claims on food labeling where significant scientific agreement does not exist that there is a high probability that a reduction in disease risk will occur.

(58 FR 2478 at 2505.)

Given these facts, as part of its review of required elements for all health claims the agency has reconsidered the need to remind consumers of the multifactorial nature of hypertension, heart disease, and cancer. Based on its review, FDA tentatively concludes that the statement of that fact in each claim can be made optional. In place of the requirement for stating the multifactorial nature of the disease, the agency proposes to substitute a requirement that the claim not imply that the substance that is the subject of the health claim is the only recognized risk factor for the corresponding disease or health-related condition. Thus, the agency tentatively concludes that the concept of the multifactorial nature of the disease or health-related condition for each health claim will be preserved without adding additional words to the claim. The agency requests comment on whether consumers will be misled to believe reduction of risk will be achieved if the multifactorial nature of

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the disease or health-related condition is not stated in the claim.

Accordingly, the agency is proposing to revise §§ 101.73(c)(2)(i)(F), 101.74(c)(2)(i)(E), 101.75(c)(2)(i)(E), 101.76(c)(2)(i)(D), 101.77(c)(2)(i)(F), and 101.78(c)(2)(i)(I) in similar fashion to ensure that the health claim not imply that there is only one recognized risk factor for the development of the corresponding disease or health-related condition. The agency is also proposing to revise §§ 101.73(d)(1), 101.74(d)(1), 101.75(d)(1), 101.76(d)(2), 101.77(d)(1), and 101.78(d)(2) to state that development of the disease in question depends on many factors and to list the relevant factors for each disease. For consistency, the agency is also proposing to revise the model claims to reflect the proposed revisions to §§ 101.73, 101.74, 101.75, 101.76, 101.77, and 101.78.

In addition, the agency is proposing to correct § 101.77(e) by adding the phrase "and the risk of coronary heart disease" which was inadvertently omitted in the final rule.

The health claim for fruits and vegetables and cancer (§ 101.78) contains one additional element that FDA tentatively concludes could be optional instead of a mandatory part of the claim. In § 101.78(c)(2)(i)(D) the regulation states:

> The claim characterizes the food bearing the claim as containing one or more of the following, for which the food is a good source under § 101.54: dietary fiber, vitamin A, or vitamin C.

This required statement is very similar to the one required by § 101.78(c)(2)(i)(C):

> The claim characterizes fruits and vegetables as foods that are low in fat and may contain vitamin A, vitamin C, and dietary fiber.

The agency believes that the statement required by § 101.78(c)(2)(i)(C) is necessary to describe the relationship between the food and the disease. In the 1993 health claims final rule, FDA stated that by requiring that all characterizing nutrients be identified as characteristic of dietary patterns rich in fruits and vegetables without specifically attributing reduced cancer risk to a single nutrient, the claim is consistent with current scientific knowledge. However, the requirement in § 101.78(c)(2)(i)(D) identifies for the consumer which of the characterizing nutrients is contributed by the labeled food. FDA tentatively concludes that this information need not be a required element of the claim because it is available as part of the nutrition label.

Therefore, the agency has tentatively concluded that the information in § 101.78(c)(2)(i)(D) can be made optional. Accordingly, the agency is proposing to remove § 101.78(c)(2)(i)(D); redesignate § 101.78(d)(3) through (d)(5) as § 101.78(d)(4) through (d)(6), and add new § 101.78(d)(3) which reads:

> The claim may characterize fruits and vegetables that meet the requirements described in paragraph (e)(2)(ii) of this section as foods that are low in fat and that contain (or are a good source of) one or more of vitamin A, vitamin C, or dietary fiber.

FDA is also proposing to revise the model health claims in § 101.78(e) to reflect these changes.

3. Abbreviated Health Claims

In addition to eliminating some of the requirements for a full health claim, as stated above, NFPA requested that FDA permit the use of abbreviated health claims in labeling, such as on the principal display panel. FDA has reviewed the health claims as it is proposing to revise them to determine whether the required elements can be reorganized in accordance with proposed § 101.14(d)(2)(iv) to facilitate their use on the food label.

With the revisions to §§ 101.73, 101.74, 101.75, 101.76, 101.77, and 101.78 proposed in this document, the agency tentatively finds that all of the required elements for each of the claims are required under section 403(a) of the act to ensure that the claims are truthful and not misleading as well as under section 403(r) to ensure that they are scientifically valid. Accordingly, the agency tentatively concludes that there is no basis upon which it can propose to permit the splitting of these required elements between the principal display panel and another part of the food label.

Using the health claim for dietary fat and cancer as an example, the agency is proposing to remove the requirement that the claim state that cancer is a multifactorial disease. The remaining specific requirements in § 101.73(c)(2)(i)(A) through (c)(2)(i)(E) are necessary so that claims on the relationship between dietary fat and cancer are truthful, not misleading, and scientifically valid. A claim consistent with these requirements can be expressed in 11 or fewer words (e.g., "A low fat diet may reduce the risk of some cancers"). These requirements also ensure that consumers will be able to understand the relative significance of the information presented in the claim in the context of a total daily diet. Accordingly, the agency tentatively finds that there is no need to divide the required elements of § 101.73 into those that must be included whenever the claim is presented and those that need only be included as part of the full claim. Based on the same reasoning, FDA has reached the same judgment about the elements of the claims authorized by §§ 101.74 through 101.78.

The agency tentatively concludes, however, that such a split is appropriate among the required elements of health claims on calcium and osteoporosis (§ 101.72). The various proposed revisions for the specific requirements in § 101.72(c)(2)(i) would produce a claim that is shorter than is provided for in the current regulation. Nonetheless, even with the proposed revisions, the length of the claim that would be required under § 101.72 is such that, to facilitate use of the claim, FDA is proposing to distinguish between those elements necessary to ensure that the claim is truthful and not misleading, and those elements that are necessary to understand the significance of the claim in the context of the total daily diet.

Section 101.72(c)(2)(i)(A), which the agency is proposing to revise, sets forth the most important requirement. It establishes the essence of the calcium/osteoporosis claim in that it requires clarity in a statement that associates adequacy of dietary calcium intake over a lifetime with a reduced risk of osteoporosis, a degenerative disease that affects more than 25 million Americans, particularly postmenopausal women and the elderly, and that is manifested by an incidence of 1.5 million bone fractures annually (Ref. 6). This provision sets out information that is fundamental if a claim associating calcium and osteoporosis is to be truthful and not misleading.

Section 101.72(c)(2)(i)(C), which requires that the claim not attribute any particular degree of risk reduction to adequate calcium intake is also necessary to ensure that claims are truthful, not misleading, and scientifically valid. Compliance with this requirement, however, does not add any words to the claim.

For the remaining requirements, § 101.72(c)(2)(i)(B) prohibits the implication that risk for the disease applies equally across the U.S. population. Instead, it requires identification of that segment of the population that is most at risk for developing the disease later in life, women in their bone forming years. The agency requires this information in response to section 403(r)(3)(b)(iii) of the act, which as stated above, requires that the claim accurately represent the relationship between calcium and osteoporosis in a manner that is comprehensible to the public. It is also under section 403(r)(3)(b)(iii) of the act that FDA is requiring in § 101.72(c)(2)(i)(D) that the claim disclose that further benefit does not derive from a daily dietary intake of calcium that exceeds 2,000 mg.

Given these bases for the calcium/osteoporosis claim, an abbreviated claim consistent with the principles proposed earlier in this document may be developed that sets out the information required under § 101.72(c)(2)(i)(A) and (c)(2)(i)(C). To reflect this fact, the agency is proposing to renumber current § 101.72(c)(2)(ii), which deals with the nature of a food bearing a calcium/osteoporosis health claim, as § 101.72(c)(2)(iii), and it is proposing a new § 101.72(c)(2)(ii) that describes how the health claim is to be presented on the label or in labeling. This proposed new paragraph states that all of the elements listed in § 101.72(c)(2)(i) must be included in one presentation of the claim on the label or labeling. However, it also provides that a short, simple statement of the claim that includes the elements in § 101.72(c)(2)(i)(A) and (c)(2)(i)(C), and thus that is truthful, not misleading, and scientifically valid, may be used on the principal display panel as long as the full claim appears on the label or in the labeling, and, there is a referral statement to the full claim in immediate proximity to the abbreviated statement.

The referral statement that FDA is proposing accompany the abbreviated claim is consistent with that provided for in the general requirements for nutrient content claims (§ 101.13) and health claims (§ 101.14(d)(2)(iv)). Because this referral statement is short, it is also consistent with the use of an abbreviated claim.

In the 1993 health claims final rule, the agency stated that it did not believe that it is appropriate to use abbreviated health claims as referral statements (58 FR 2478 at 2512). The agency was concerned that an abbreviated claim did not include facts that are material in light of the representation that is made and that are necessary to understand the claim in the context of the daily diet. The agency was concerned that such confusion is possible whenever the full health claim information is in a location different from that of the reference statement, and that such confusion is especially likely to occur when a multiplicity of labeling is associated with a product. If these concerns can be addressed, however, the use of an abbreviated claim on the principal display panel would facilitate use of the claim and, as a result, the communication of information that will assist consumers in achieving healthful dietary practices.

The agency has tentatively concluded that this proposed rule addresses these concerns. It is providing for an abbreviated statement that reflects the facts that are material under section 201(n) of the act (21 U.S.C. 321(n)) and that are necessary to ensure that the claim is scientifically valid. It is also providing for an accompanying referral statement to additional information that is necessary for a full understanding of the claim. The agency is concerned, however, about the possibility that consumers may not read the complete claim, and thus that they will not have all the facts necessary to fully understand the significance of the claim being made and to comprehend the claim in the context of the daily diet. For this reason, the agency is asking for data to demonstrate that permitting an abbreviated claim in the manner that FDA has proposed will not significantly decrease the likelihood that consumers will read the full claim.

In § 101.72(c)(2)(ii)(A) and (c)(2)(ii)(B), the agency is proposing requirements for the type size and location of the referral statement that are consistent with those for nutrient content claims in § 101.13(g)(1) and (g)(2).

FDA has long held that accompanying information should be in a size reasonably related to that of the information that it modifies. Section 403(f) of the act requires that information required under the act be placed on the label with such conspicuousness as to render it likely to be read. Section 403(r)(2)(B) of the act requires that a referral statement for nutrient content claims appear prominently, although it does not specify requirements such as to type size or style.

For nutrient content claims, FDA established type size requirements for referral and disclosure statements that are related to the area of the surface bearing the principal display panel rather than to the type size used for the nutrient content claim. The proportionality between size of the referral statement and the size of the label panel ensures that the referral statement is presented with appropriate prominence. However, when the claim is less than twice what the minimum size of the referral statement would be, given the size of the label and § 101.105(i), the type size of the referral statement may be less than that required under § 101.105 for net quantity of contents. In such circumstances, the referral statement is of appropriate prominence if it is at least one-half the size of the claim and not less than one-sixteenth of an inch. This approach to the type size requirement for the referral statement provides additional flexibility to firms in utilizing label space but still ensures adequate prominence for this statement.

Because, under this proposal, health claim referral statements are to be used in a manner that is similar to how nutrient content claim referral statements are used, and because they are likely to appear on the principal display panel, the agency tentatively concludes that a health claim referral statement should be subject to the same type size requirements as those for nutrient content claims. Therefore, the agency tentatively concludes that the requirements for the referral statement set forth in § 101.72(c)(2)(ii)(A) and (c)(2)(ii)(B) are appropriate when an abbreviated health claim is used, and it is including them in this proposed rule.

In concert with the proposed requirements for an abbreviated health claim, the agency is including an abbreviated health claim among the examples of other model claims in proposed § 101.72(e).

E. Disclosure Versus Disqualifying Nutrient Levels for Health Claims

Section 403(r)(3)(A)(ii) of the act provides that a health claim may only be made for a food that "does not contain, as determined * * * by regulation, any nutrient in an amount which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet." This section helps to ensure that consumers who rely on health claims will be consuming foods that will assist them in structuring a healthful diet that meets dietary guidelines.

As discussed more fully in the preamble to the 1993 health claims final rule, the agency implemented this provision by considering a food's role in the total daily diet and calculating levels of total fat, saturated fat, cholesterol, and sodium that would increase the risk of disease or health-related conditions in the general population. FDA calculated these levels by considering the number of foods consumed each day, as well as the number of foods that are likely to contain significant levels of these nutrients.

The agency has established different disqualifying levels for different types of foods, depending on the role that they play in the daily diet. Section 101.14(a)(5) defines the disqualifying level for individual foods as 20 percent of the DV's for total fat, saturated fat, cholesterol, and sodium. These levels

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translate to 13.0 grams (g) of total fat, 4.0 g of saturated fat, 60 mg of cholesterol, and 480 mg of sodium per reference amount customarily consumed, per label serving size, and for foods with reference amounts customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. The regulations make additional allowances for main dish products and meal-type products. The disqualifying levels for main dish and meal products are 30 percent and 40 percent of the DV, respectively. These different levels are consistent with the legislative history, which states, "a particular level of fat in a frozen dinner might not trigger the provision, whereas the same amount of fat in a snack food might trigger it."

A food that exceeds the disqualifying level for any of the four disqualifying nutrients may not bear a health claim unless the agency has granted an exemption "based on a finding that such a claim would assist consumers in maintaining healthy dietary practices." (Section 403(r)(3)(A)(ii) of the act.) To date, the agency has received no petitions for an exemption from this provision.

The NFPA petition requested that the defined disqualification levels be converted to disclosure levels under certain circumstances. More specifically, the petition suggested that "the presence of one of these nutrients at the prescribed level would require disqualification *only* if the nutrient was found in another health claim regulation to be directly and adversely related to the disease mentioned in the claim." The petition went on to state that "[i]f the nutrient is not so directly related to the disease to which the claim refers, the regulations would require only disclosure by an appropriate referral statement in conjunction with the health claim on the label, as the regulations now require for nutrient content claims."

As stated in the May 11, 1995, letter to NFPA, FDA concludes that a generic change in its regulations would not be consistent with the underlying goals of the NLEA. The current disqualifying levels assist consumers in constructing total daily diets that meet dietary guidelines. The agency considered the role a food plays in the daily diet when it calculated the disqualifying levels. Health claims on foods with levels of fat, saturated fat, cholesterol, or sodium that exceed the disqualifying levels would encourage increased intake of these foods and would make it difficult for consumers to follow the Surgeon General's recommendations and to construct a healthful diet. Even with the current disqualification levels, consumers could reach the DV's for total fat, saturated fat, cholesterol, or sodium by eating as few as five foods that bear health claims.

The agency considers the current disqualification rules to be consistent with congressional intent. Congress contemplated that health claims would be reserved for those foods that can contribute to a healthful diet. As the House Report states, "Health claims supported by a significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet." (See H. Rept. 101–538, 101st Cong., 2d sess. pp. 9–10 (1990).)

Nevertheless, the agency tentatively finds that there may be some instances where disclosure rather than disqualification is appropriate. While FDA continues to believe that exceptions should be granted on a case-by-case basis, using a petition process, the agency recognizes that further guidance on the criteria that it will use to evaluate petitions for exceptions would be useful. FDA is, therefore, proposing to amend its regulations to give such guidance.

Proposed § 101.70(f) provides guidance for petitioners requesting an exception to the prohibition in § 101.14(e)(3) against health claims for foods exceeding the disqualifying levels identified in § 101.14(a)(5). This proposed amendment to the petition procedures sets out some of the factors that the agency will consider when evaluating a petition.

The first factor that FDA is proposing to list is whether the risk of the disease or health-related condition is of such public health significance, and the role of the diet so critical, that disqualification is not appropriate (proposed § 101.70(f)(1)). The agency recognizes that there may be instances where extraordinary efforts are needed to address a particular public health problem. In such cases, the agency would consider providing for disclosure rather than disqualification levels.

The second factor is whether the availability of foods that qualify for a health claim is adequate to address the public health concern that is the subject of the health claim (proposed § 101.70(f)(2)). The agency intends to consider whether the application of the claim is so limited because of the disqualification levels that it will not be possible to meet the public health goal of the health claim. If only a limited number of food products qualify to bear the claim because of the disqualifying levels, the agency would consider providing for disclosure rather than disqualification levels.

The third factor that FDA intends to consider is whether there is some evidence that the population to which the health claim is targeted is not at risk for the disease or health-related condition associated with the disqualifying nutrient (proposed § 101.70(f)(3)). Although the current disqualifying nutrients are associated with diseases or health-related conditions that pose risks to the general population, there may be some categories of foods that are targeted to specific subpopulations that are not at particular risk for the disease or health-related condition associated with the disqualifying nutrient (toddlers, for example). The agency would be willing to look at data and to consider whether an exception to the disqualifying levels should be made for foods intended for such subgroups.

Related to this criterion, is the question of whether there is evidence that consumers can identify themselves as being at risk for a particular disease or health-related condition associated with the disqualifying levels. For instance, some individuals can already identify themselves as being sensitive to sodium and, therefore, would recognize the risk of a high sodium food if it were disclosed. If the ability to self-identify for these risks becomes widespread, disclosure might be sufficient to reduce the risk from the disqualifying nutrient. FDA would expect to receive data that demonstrate that this ability exists, however, before it would be willing to grant an exemption on this basis.

Finally, the agency intends to consider whether there are any other public health reasons for providing for disclosure rather than disqualification (proposed § 101.70(f)(4)). The agency does not consider the above list of criteria exhaustive. There may be other criteria that would be useful in determining whether the agency should provide for disclosure rather that disqualification levels for health claims, and the agency is open to considering such factors.

The agency requests comments on the appropriateness of these criteria.

The agency notes that there are ways to convey important health information other than through health claims. A food may still be able to bear a nutrient content claim or a structure/function claim in order to highlight a particular attribute even if it exceeds the disqualification level for a health claim. For example, while whole milk may not be able to bear a calcium and osteoporosis health claim, it can still bear a "high calcium" nutrient content claim, so long as the levels of fat and saturated fat are disclosed. Similarly, cooking oils that are lower in saturated fat may not be able to bear a "healthy heart" claim but can still bear a "low" or "less" saturated fat nutrient content claim.

In addition, some products can make other truthful and not misleading claims. For example, the label of whole milk can state "Calcium builds strong bones." While such a claim is not considered a health claim under the 1990 amendments, it still conveys important dietary advice useful to consumers in constructing a healthful diet.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

FDA is proposing to: (1) Specify circumstances under which synonyms may be used, authorizing the use of unlisted synonyms provided that they are properly anchored to a listed term; (2) exempt certain types of products from the 10 percent nutrient contribution requirement; (3) provide the basis for shorter health claims by eliminating some of the required elements; and (4) permit an abbreviated health claim to be used on the principal display panel. FDA is also providing guidance for petitioners requesting an exception to the prohibition against health claims for foods exceeding FDA's defined disqualifying levels. The agency anticipates that the costs of this proposed rule will be minimal. If this rule is finalized as proposed, it will not require any manufacturers currently making claims to change their labels or labeling. Also, this rule may reduce the costs of making future claims by reducing the uncertainty and relaxing the requirements of the petition process for claims.

Although many health claims have appeared on a variety of products, the agency is concerned that health claims are not being used as extensively as they could be. To the extent that valid claims are not being used, a cost is imposed on society in that some valuable information may not be conveyed to consumers. This proposed rule will reduce the cost of lost beneficial information by making it easier for firms to make nutrient content and health claims. The agency is aware that the food label or labeling is a major means of providing information on foods at the point-of-purchase. By adopting a less restrictive approach to claims, the agency is providing industry with a method by which the label can be used to inform consumers of the health benefits of foods in such a way that will catch the attention of consumers. As long as the claims are truthful, not misleading, and scientifically valid, the additional information will benefit consumers by reinforcing the Surgeon General's recommendations and helping consumers maintain healthful dietary practices. In addition, the greater flexibility provided to industry will increase the incentive to develop more healthful products.

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. The current claims regulations may have discouraged small businesses from making valid nutrient content claims and health claims. To the extent that this rule relaxes the restrictions on the ability of firms to use claims on the labels or in the labeling of their products, this rule will benefit small firms. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small businesses.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirements; thus there is not "information collection" necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is seeking comment on whether this proposed rule to permit additional flexibility in the use of health claims and synonyms for nutrient content claims on food labels imposes any paperwork burden.

VIII. Comments

Interested persons may, on or before March 20, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The follow'ng references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. House Committee on Energy and Commerce, "Nutrition Labeling and Education Act of 1990," 101st Congress, 2d sess., Report 101–538, pp. 9–10, June 13, 1990.

2. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, IOM, National Academy of Science, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

3. United States Department of Agriculture, Human Nutrition Information Services, "USDA's Food Guide Pyramid," Home and Garden Bulletin No. 249, April, 1992.

4. "The Surgeon General's Report on Nutrition and Health," DHHS, Public Health Service Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington, DC, 1988.

5. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Science, "Diet and Health: Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

6. National Institutes of Health, Office of the Director, "NIH Consensus Statement, Optimal Calcium Intake," vol. 12, No. 4, June 6–8, 1994. Available from: NIH Consensus Program Information Service, P.O. Box 2577, Kensington, MD 20891, 1–800–644–6627.

7. Levy, A., Food and Drug Administration, Center for Food Safety and Applied Nutrition, Division of Market Studies, "Summary Report on Health Claims Focus Groups," June 15, 1995.

8. Dietary Supplement Health and Education Act of 1994 (Pub. L. 103–417), October 25, 1994.

9. Technical Report—Cancer Prevention Awareness Survey—Wave II, Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Bethesda, MD, November 1986.

10. Brenda Derby, Memorandum to Victor Frattali, "Consumer Understanding of

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Multifactoriality of Disease," October 25, 1995.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.13 is amended by revising the introductory text of paragraph (b) and adding new paragraph (r) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(b) A claim that expressly or implicitly characterizes the level of a nutrient (nutrient content claim) of the type required in nutrition labeling under § 101.9 with the exception of such claims on restaurant menus and except as noted in paragraph (r) of this section for unlisted synonyms, may not be made on the label or in labeling of foods unless the claim is made in accordance with this regulation and with the applicable regulations in subpart D of this part or in part 105 or part 107 of this chapter.

* * * * *

(r) Expressed synonyms for nutrient content claims may be used, provided:

(1) The term is listed as a synonym of a defined term in the regulations in subpart D of this part or in part 105 or part 107 of this chapter; or

(2) The term is used in a manner that complies with the following requirements:

(i) Such term is not misleading and, in the context of the entire label, is reasonably understood by consumers to be a synonym of a term listed in subpart D of this part or in part 105 or part 107 of this chapter;

(ii)(A) The term that is listed in subpart D of this part or in part 105 or part 107 of this chapter, and for which the unlisted term is being used as a synonym, appears prominently and conspicuously on the label, such that it is:

(*1*) Immediately adjacent (with no intervening material) to the most prominent use of the unlisted synonym (as determined in accordance with § 101.13(j)(2)(iii)); and

(*2*) At least half as prominent (including type size, style, and color) as the unlisted synonym authorized under this paragraph.

(B) If the term listed in subpart D of this part or in part 105 or part 107 of this chapter is more than twice as prominent on a label as the synonym authorized under this paragraph such that the claimed nutrient level is clearly understood (e.g., a claim in the statement of identity versus an unlisted synonym used only in a paragraph in small sized type), the term listed in subpart D of this part or in part 105 or part 107 of this chapter need not be placed adjacent to the unlisted synonym authorized under this paragraph.

(iii) The unlisted synonym is used in conformance with all the requirements for the use of the defined term, i.e., the referral statement required in § 101.13(g) and any other required label statements appear in the prescribed manner; and

(iv) This paragraph does not authorize a term listed in subpart D of this part or in part 105 or part 107 of this chapter to be used in conjunction with an unlisted qualifying term (e.g., "extra low," "extra high," "especially good source," or "great source").

3. Section 101.14 is amended by revising paragraphs (d)(2)(iv) and (e)(6) to read as follows:

§ 101.14 Health claims: general requirements.

* * * * *

(d) * * *

(2) * * *

(iv) All information required to be included in the claim appears in one place without other intervening material, except that the principal display panel of the label or labeling may bear:

(A) The reference statement, "See———— for information about the relationship between———— and ————," with the blanks filled in with the location of the labeling containing the health claim, the name of the substance, and the name of the disease or health-related condition (e.g., "See attached pamphlet for information about calcium and osteoporosis"), with the entire claim appearing elsewhere on the other labeling, Provided that, where any graphic material (e.g., a heart symbol) constituting an explicit or implied health claim appears on the label or labeling, the reference statement or the complete claim shall appear in immediate proximity to such graphic material; or

(B) As authorized under subpart E of this part, an abbreviated claim consisting only of a truthful, nonmisleading, and scientifically valid description of the relationship between the substance and the disease or health-related condition, Provided that:

(*1*) Such an abbreviated claim is accompanied by a reference statement to the complete health claim;

(*2*) The reference statement is prominent and in immediate proximity to the abbreviated claim; and

(*3*) The complete health claim appears on the same label, or in the same labeling, in which the abbreviated claim appears.

* * * * *

(e) * * *

(6) Except for dietary supplements, fruit or vegetable products composed solely of fruits and vegetables, enriched grain products that conform to a standard of identity in part 136, 137, or 139 of this chapter, and bread which conforms to the standard of identity for enriched bread in § 136.115 of this chapter except that it contains whole wheat or other grain products not permitted under that standard, or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

4. Section 101.70 is amended in paragraph (f) by adding in the model petition new text immediately preceding the last undesignated paragraph of section B to read as follows:

§ 101.70 Petitions for health claims.

* * * * *

(f) * * *

B. * * *

In deciding the merits of a petition filed for an exception to the prohibition in § 101.14(e)(3) against health claims for foods exceeding the disqualifying levels identified in § 101.14(a)(5), the agency will consider the following factors:

1. The public health significance of the risk of the disease or health-related condition that is the subject of the claim and the role that the diet plays in decreasing that risk;

2. The availability of foods that qualify for a claim to address the underlying public health concerns;

3. Evidence demonstrating the population to which the health claim is targeted is not at risk for the disease or health-related condition associated with the disqualifying nutrient, including, but not limited to, the ability of individuals to identify themselves as being at risk for the disease or health-related condition associated with the disqualifying nutrient; and

4. All other evidence demonstrating the public health need for waiving the disqualification requirements.

* * * * *

5. Section 101.72 is amended by revising paragraph (c)(2)(i); by redesignating paragraphs (c)(2)(ii) and (d)(2) as (c)(2)(iii) and (d)(5), respectively; by adding new paragraphs (c)(2)(ii), (d)(2), (d)(3), and (d)(4); and by revising paragraph (e) to read as follows:

§ 101.72 Health claims: calcium and osteoporosis.

* * * * *

(c)(2) Specific requirements. (i) *Nature of the claim.* A health claim associating calcium with a reduced risk of osteoporosis may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim makes clear that adequate calcium intake as part of a healthful diet throughout life is essential to reduce the risk of osteoporosis. The claim does not imply that adequate dietary calcium intake is the only recognized risk factor for the development of osteoporosis;

(B) The claim does not state or imply that the risk of osteoporosis is equally applicable to the general United States population. The claim shall identify the population at particular risk for the development of osteoporosis as women in their bone forming years from approximately 11 to 35 years of age. An optional statement that further characterizes this and other populations at risk for developing osteoporosis may be made in accordance with paragraph (d)(3) of this section;

(C) The claim does not attribute any degree to which maintaining adequate calcium intake throughout life may reduce the risk of osteoporosis; and

(D) The claim states that total dietary intake of calcium greater than 2,000 milligrams (mg) per day (200 percent of the DV for calcium for adults and children 4 or more years of age or 154 percent of the daily value (DV) for pregnant or lactating women) provides no further benefit to bone health in reducing the risk of osteoporosis. This requirement does not apply to a food that provides 1,500 mg or less of calcium per day (150 percent or less of the DV for calcium for adults and children 4 or more years of age or 115 percent or less of the DV for pregnant or lactating women) when used as directed in labeling.

(ii) *Presentation of the claim.* All of the elements listed in paragraph (c)(2)(i) of this section must be included in one presentation of the claim displayed prominently on the label or labeling on which the claim appears. Other presentations of the claim on that label or labeling, including on the principal display panel, need not include the information in paragraphs (c)(2)(i)(B) and (c)(2)(i)(D) of this section provided that, displayed prominently and in immediate proximity to such claim, the following referral statement is used: "See ———— for more information" with the blank filled in with the identity of the panel on which is presented the statement of the claim that includes all of the elements in paragraph (c)(2)(i) of this section.

(A)The referral statement "See [appropriate panel] for more information" shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, that is no less than that required by § 101.105(i) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch.

(B) The referral statement shall be immediately adjacent to any presentation of the health claim that does not include all of the elements of paragraph (c)(2)(i) of this section, and there may be no intervening material between the claim and the referral statement. If the abbreviated health claim appears on more than one panel of the label, the referral statement shall be adjacent to the claim on each panel except for the panel that bears the full health claim where it may be omitted.

* * * * *

(d) * * *

(2) The claim may list specific risk factors for osteoporosis, identifying them among the multifactorial risks for the disease. Such factors include a person's sex, age, and race. The claim may state that an adequate amount of exercise is also needed to reduce risk for the disease.

(3) The claim may further identify the population at particular risk for the development of osteoporosis as including white (or "Caucasian") women and Asian women in their bone forming years (approximately 11 to 35 years of age). The claim may also identify menopausal (or the term "middle-aged") women, persons with a family history of the disease, and elderly (or "older") men and women as being at risk.

(4) The claim may state that adequate calcium intake throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase "build and maintain good bone health" may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate calcium intake is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.

* * * * *

(e) *Model health claims.* The following are examples of model health claims that may be used in food labeling to describe the relationship between calcium and osteoporosis:

(1) *Examples 1 and 2.* Model health claims for a food that does not require the statement specified in paragraph (c)(2)(i)(D) of this section:

Especially for teen and young adult women, adequate calcium in a healthful diet may reduce the risk of osteoporosis later in life.

A healthful diet with adequate calcium and regular exercise help teen and young adult white and Asian women maintain good bone health and may reduce their high risk of osteoporosis later in life.

(2) *Example 3.* Model health claims for a food labeled for use by adults and children 4 or more years of age that requires the statement specified in paragraph (c)(2)(i)(D) of this section:

Exercise and a healthful diet with enough calcium may help teen and young adult women reduce their high risk of osteoporosis later in life. Adequate calcium is important for everyone (women and men at all ages) but daily intakes above 2,000 mg (200 percent of the DV) may not provide added benefit.

(3) *Example 4.* Abbreviated model health claim for use with a full health claim and that conforms with the requirements of paragraph (c)(2)(ii) of this section:

Adequate calcium in a healthful diet may reduce the risk of osteoporosis. See [appropriate panel] for more information.

6. Section 101.73 is amended by revising paragraphs (c)(2)(i)(F), (d)(1), and (e)(1) to read as follows:

§ 101.73 Health claims: dietary lipids and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(F) The claim does not imply that dietary fat consumption is the only

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recognized risk factor for the development of cancer.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

* * * * *

(e) * * *

(1) A low fat diet may reduce the risk of some cancers.

* * * * *

7. Section 101.74 is amended by revising paragraphs (c)(2)(i)(E), (d)(1), (e)(1), and (e)(2) to read as follows:

§ 101.74 Health claims: sodium and hypertension.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) The claim does not imply that dietary sodium consumption is the only recognized risk factor for the development of high blood pressure.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of high blood pressure depends on many factors and identify one or more of the following as risk factors for the disease in addition to dietary sodium consumption: Family history of high blood pressure, growing older, alcohol consumption, and excess weight.

* * * * *

(e) * * *

(1) A low sodium diet may reduce the risk of high blood pressure.

(2) [This product] can be part of a low sodium, low salt diet that might reduce the risk of hypertension or high blood pressure.

8. Section 101.75 is amended by revising paragraphs (c)(2)(i)(E), (d)(1), (e)(1), and (e)(2) to read as follows:

§ 101.75 Health claims: dietary saturated fat and cholesterol and risk of coronary heart disease.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) The claim does not imply that consumption of dietary saturated fat and cholesterol is the only recognized risk factor for the development of coronary heart disease.

* * * * *

(d) *Optional information.* (1) The claim may indicate that coronary heart disease risk depends on many factors and identify one or more of the following in addition to saturated fat and cholesterol about which there is general scientific agreement that they are major risk factors for this disease: A family history of coronary heart disease, elevated blood total and LDL-cholesterol, excess body weight, high blood pressure, cigarette smoking, diabetes, and physical inactivity.

* * * * *

(e) * * *

(1) Diets low in saturated fat and cholesterol may reduce the risk of heart disease;

(2) Your risk of heart disease might be reduced by a diet low in saturated fat and cholesterol and a healthy lifestyle;

* * * * *

9. Section 101.76 is amended by revising paragraphs (c)(2)(i)(D), (d)(2), (e)(1), and (e)(2) to read as follows:

§ 101.76 Health claims: fiber-containing grain products, fruits, and vegetables and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) The claim does not imply that consumption of diets low in fat and high in fiber-containing grain products, fruits, and vegetables is the only recognized risk factor for a reduced risk of developing cancer.

* * * * *

(d) * * *

(2) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

* * * * *

(e) * * *

(1) Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer.

(2) A diet low in fat and high in grain products, fruits, and vegetables that contain fiber may reduce your risk of some cancers.

* * * * *

10. Section 101.77 is amended by revising paragraphs (c)(2)(i)(F), (d)(1), and (e) to read as follows:

§ 101.77 Health claims: fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease.

(c) * * *

(2) * * *

(i) * * *

(F) The claim does not imply that consumption of diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, is the only recognized risk factor for a reduced risk of developing coronary heart disease.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of coronary heart disease depends on many factors and identify one or more of the following as risk factors for the disease: A family history of coronary heart disease, elevated blood-, total- and LDL-cholesterol, excess body weight, high blood pressure, cigarette smoking, diabetes, and physical inactivity.

* * * * *

(e) *Model health claims.* The following model health claims may be used in food labeling to characterize the relationship between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain soluble fiber and the risk of coronary heart disease:

(1) Diets low in saturated fat and cholesterol and rich in fiber-containing fruits, vegetables, and grain products may reduce the risk of heart disease.

(2) A diet low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber may lower blood cholesterol levels and reduce your risk of heart disease.

11. Section 101.78 is amended by removing paragraph (c)(2)(i)(D); by redesignating paragraphs (c)(2)(i)(E) through (c)(2)(i)(J) and (d)(3) through (d)(5) as (c)(2)(i)(D) through (c)(2)(i)(I) and (d)(4) through (d)(6), respectively; by revising newly redesignated paragraph (c)(2)(i)(I), paragraphs (d)(2), (e)(1), and (e)(2); and by adding new paragraph (d)(3) to read as follows:

§ 101.78 Health claims: fruits and vegetables and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(I) The claim does not imply that consumption of diets low in fat and high in fruits and vegetables is the only recognized risk factor for a reduced risk of developing cancer.

* * * * *

(d) * * *

(2) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

(3) The claim may characterize fruits and vegetables that meet the requirements described in paragraph (c)(2)(ii) of this section as foods that are low in fat and that contain (or are a good source of) one or more of vitamin A, vitamin C, or dietary fiber.

* * * * *

(e) * * *

(1) Low fat diets rich in fruits and vegetables (foods that are low in fat and may contain dietary fiber, vitamin A and vitamin C), may reduce the risk of some types of cancer.

(2) A diet low in fat and high in certain fruits and vegetables, foods that are low in fat and that may contain vitamin A and vitamin C, may reduce your risk of some cancer.

Dated: December 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–31008 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

21 CFR Part 888

[Docket No. 95N–0176]

Orthopedic Devices: Classification, Reclassification, and Codification of Pedicle Screw Spinal Systems; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting certain statements in the preamble to a proposed rule that appeared in the **Federal Register** of October 4, 1995 (60 FR 51946). The document proposed to classify certain unclassified preamendments pedicle screw spinal systems into class II (special controls), and to reclassify certain postamendments pedicle screw spinal systems from class III (premarket approval) to class II. The document states further that FDA is issuing for public comment the recommendations of the Orthopedic and Rehabilitation Devices Panel (the Panel) concerning the classification/reclassification of pedicle screw spinal systems, and the agency's tentative findings on the Panel's recommendations. The document is being corrected to reflect an accurate description of the formation, membership, and activities of the Spinal Implant Manufacturers Group (SIMG), and the Scientific Committee, two separate entities established by the spinal implant manufacturers and medical professional societies to collect and submit to FDA all available valid scientific data on the performance of pedicle screw spinal devices.

FOR FURTHER INFORMATION CONTACT: Mark N. Melkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

In the FR Doc. 95–24686, appearing on page 51946 in the **Federal Register** of Wednesday, October 4, 1995, the following corrections are made:

1. On page 51947, in the second column, in the fourth paragraph, beginning in line 7, the second, third, and fourth sentences are removed and the following text is added in their place to read as follows:

In response, two groups were founded: The Spinal Implant Manufacturers Group (SIMG), and the Scientific Committee. SIMG, founded by 16 medical device manufacturers, agreed to provide the funding that would be required to conduct a nationwide study of pedicle screw devices. The Scientific Committee was formed by five professional medical societies, including the North American Spine Society, the American Academy of Orthopedic Surgeons, the Scoliosis Research Society, the Congress of Neurosurgeons, and the American Association of Neurological Surgeons. The Scientific Committee was formed to develop and implement a uniform research protocol to gather clinical experience from the use of the device. The Scientific Committee consisted of four surgeons and two nonvoting SIMG representatives, a biostatistician, and a clinical/regulatory affairs professional.

2. On page 51947, in the third column, in the first paragraph, beginning in the fifteenth line, the fourth and fifth sentences are removed and the following text is added in their place to read as follows:

At this meeting, the Scientific Committee presented clinical data from its nationwide "Historical Cohort Study of Pedicle Screw Fixation in Thoracic, Lumbar, and Sacral Spinal Fusions" (Cohort Study). FDA presented a comprehensive review of the medical literature, an analysis of the medical literature, an analysis of the Cohort study conducted by the Scientific Committee, and a summary of the clinical data that had been released by IDE sponsors.

3. On page 51950, in the first column, in the fourth paragraph, in the first line, the abbreviation "SIMG" is corrected to read "Scientific Committee".

Dated: December 8, 1995.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–31047 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–52–86]

RIN 1545–AL99

Statements to Recipients of Dividends and Patronage Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of the notice of proposed rulemaking under sections 6042 and 6044 of the Internal Revenue Code that was published in the **Federal Register** on February 29, 1988, as proposed to be amended on September 27, 1990. The proposed regulations prescribed rules for official statements to recipients of dividends and patronage dividends paid after December 31, 1983.

DATES: This withdrawal is effective on December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Renay France, (202)622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 29, 1988, the IRS issued proposed regulations on backup withholding (INTL–52–86, 53 FR 5991). The proposed regulations related, in part, to official statements to recipients of dividends and patronage dividends under sections 6042 and 6044, respectively (proposed §§ 1.6042–5 and 1.6044–6). On September 27, 1990, the IRS issued additional proposed regulations on backup withholding (IA–224–82, 55 FR 39427). Those proposed

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regulations contained amendments to the regulations previously proposed under sections 6042 and 6044.

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final regulations relating to backup withholding that were proposed in INTL–52–86 and IA–224–82. Those final regulations do not include proposed §§ 1.6042–5 and 1.6044–6. Further, when the IRS issues additional final regulations that were proposed under INTL–52–86, those additional final regulations will not include proposed §§ 1.6042–5 and 1.6044–6. Accordingly, this document withdraws those proposed regulations sections. See §§ 1.6042–4 and 1.6044–5 of the final regulations for substantive rules proposed under the withdrawn sections.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Portion of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, proposed §§ 1.6042–5 and 1.6044–6 that were published in the **Federal Register** on February 29, 1988 (53 FR 5991) and amended in the **Federal Register** on September 27, 1990 (55 FR 39427) are withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc. 95–30735 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[EE–53–95]

RIN 1545–AT95

Requirements for Tax Exempt Section 501(c)(5) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations clarifying certain requirements of section 501(c)(5). The requirements are being clarified to provide needed guidance to organizations as to the requirements an organization must meet in order to be exempt from tax as an organization described in section 501(c)(5).

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–53–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–53–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking clarifies the scope of the exemption provided in section 501(c)(5) of the Internal Revenue Code for labor, agricultural and horticultural organizations.

An income tax exemption for labor organizations was first provided in the Corporation Excise Tax Act of 1909, Public Law No. 61–5, 36 Stat. 11, 112–118, and has been in effect continuously since that time. A labor organization is an entity that is organized "to protect and promote the interests of labor." *Portland Cooperative Labor Temple Association* v. *Commissioner*, 39 B.T.A. 450 (1939), acq., 1939–1 C.B. 28. The principal purpose of the organization must be to better the working conditions of people engaged in a common pursuit. See, Treas. Reg. § 1.501(c)(5)–1. Organizations meeting this requirement have traditionally engaged in collective action directed toward the workers' common objective of improving working conditions. They include labor unions that negotiate with employers on behalf of workers for improved wages, fringe benefits, hours and similar working conditions, and certain union-controlled organizations, like strike funds, that provide benefits to workers that enhance the union's ability to bargain effectively. See Rev. Rul. 67–7 (1967–1 C.B. 137). They do not include strike funds that provide income to union members but are not controlled by unions. See Rev. Rul. 76–420 (1976–2 C.B. 153). Such an organization will not pay the strike benefits "with the objective of bettering conditions of employment, but by reason of its contractual agreements with the workers."

Labor organizations may also meet the requirements of section 501(c)(5) by providing benefits that directly improve working conditions or compensate for unpredictable hazards that interrupt work. Examples of such benefits include operating a dispatch hall to match union members with work assignments and providing industry stewards who represent employees with grievances against management. See Rev. Rul. 75–473 (1975–2 C.B. 213); Rev. Rul. 77–5 (1977–1 C.B. 148). On the other hand, managing saving and investment plans for workers, including retirement plans, does not bear directly on working conditions. See Rev. Rul. 77–46 (1977–1 C.B. 147). Accordingly, section 501(c)(5) has not been applied to organizations that manage retirement savings plans as their principal activity.

Nevertheless, in *Morganbesser* v. *United States*, 984 F.2d 560 (2d Cir. 1993), the court held that a trust managing a pension benefit plan pursuant to a collective bargaining agreement qualified as a labor organization described in section 501(c)(5). The IRS and the Treasury Department believe that this decision is contrary to existing law, and the IRS is issuing an action on decision reflecting its view that the *Morganbesser* court erred in its holding. These proposed regulations are a clarification of the existing legal standard.

Like labor organizations, agricultural and horticultural organizations must also better the conditions of those engaged in a common pursuit in order to be described in section 501(c)(5). See § 1.501(c)(5)–1. There is no authority indicating that the law is to be interpreted differently for agricultural and horticultural organizations than for labor organizations. Accordingly, the proposed regulations clarify the law as it applies to all section 501(c)(5) organizations.

Certain organizations have taken the position in refund actions that they are labor organizations described in section 501(c)(5) even though their principal activity was to manage retirement savings plans for workers. In addition, some such foreign organizations have claimed exemption from withholding on dividend, interest and similar income that they have earned. The IRS will continue to oppose these claims for refund and exemption from withholding.

A health plan is not a retirement savings plan. Thus, the IRS will continue to follow Rev. Rul. 62–17 (1962–1 C.B. 87) (regarding a labor organization providing health benefits) even in circumstances where a majority of the organization's members are retired. Furthermore, the IRS will continue to recognize that negotiating the terms of a retirement plan and other postretirement benefits and designating one or more representatives to the board of a multiemployer pension trust are proper activities for a labor organization. The proposed regulations are not intended to apply to or affect any other provision of federal law, including provisions of the Employee Retirement Income Security Act of 1974 (ERISA) administered by the Secretary of Labor.

Explanation of Provisions

The proposed regulations add a new paragraph to § 1.501(c)(5)–1 providing that an organization is not an organization within the meaning of section 501(c)(5) if the organization's principal activity is to manage savings or investment plans or programs, including retirement savings plans.

Proposed Effective Date

These regulations are proposed to be effective December 21, 1995.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robin Ehrenberg, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.501(c)(5)–1 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding a new paragraph (b) to read as follows:

§ 1.501(c)(5)–1 Labor, agricultural, and horticultural organizations.

* * * * *

(b)(1) An organization is not an organization described in section 501(c)(5) if the principal activity of the organization is to receive, hold, invest, disburse, or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs.

(2) *Example.* Trust A is organized in accordance with a collective bargaining agreement between a labor union and multiple employers. Representatives of both the employers and the union serve as trustees. Trust A receives funds from the employers who are subject to the agreement, invests the funds and uses the funds and accumulated earnings to pay pension benefits to union members as specified in the agreement. It also provides information to union members about their retirement benefits and assists them with administrative tasks associated with the benefits. Most of Trust A's activities are devoted to these functions. From time to time, Trust A also participates in the renegotiation of the collective bargaining agreement. Because Trust A's principal activity is to manage funds associated with a pension plan, it is not an organization described in section 501(c)(5).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30830 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[EE–20–95]

RIN 1545–AT47

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to cafeteria plans that reflect changes made by the Family and Medical Leave Act of 1993. The proposed regulations provide the public with guidance needed to comply with the Act and affect employees who participate in cafeteria plans.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–20–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (EE–20–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Catherine Fuller, (202) 622–6080; concerning submissions and the hearing, Mike Slaughter, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to the Income Tax Regulations (26 CFR Part 1) under section 125 of the Internal Revenue Code of 1986 (Code). These additions are proposed to conform the regulations to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3. FMLA imposes certain requirements on employers regarding coverage, including family coverage, under group health plans for employees taking FMLA leave, and regarding the restoration of benefits to employees who return from FMLA leave. This notice of proposed rulemaking addresses a number of the principle questions that have been raised about how these FMLA requirements affect the operation of cafeteria plans (including flexible spending arrangements) maintained under section 125 of the Code. The rules in this notice of proposed rulemaking supplement the proposed Income Tax Regulations under section 125 of the Code. Except as otherwise provided in this notice of proposed rulemaking, all of the existing rules governing cafeteria plans, including the nondiscrimination rules, continue to apply.

The requirements pertaining to FMLA leave, including the employer's obligation to maintain coverage under a group health plan during FMLA leave and to restore benefits upon return from FMLA leave, are established by FMLA,

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not the Code. The U.S. Department of Labor, in 29 CFR part 825, has published rules interpreting the requirements of FMLA, and the Department of Labor has jurisdiction relating to those rights or obligations. This notice of proposed rulemaking does not interpret FMLA; it provides guidance on the cafeteria plan rules that apply to an employee in circumstances to which FMLA and the Labor Regulations thereunder also apply. The Department of Labor has advised the Department of the Treasury, including the Internal Revenue Service (IRS), that the provisions of this notice of proposed rulemaking do not conflict with, and are not inconsistent with, the provisions of FMLA or the Labor Regulations thereunder.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Catherine Fuller, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Department of the Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. Section 1.125–3 is added to read as follows:

§ 1.125–3 Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.

Q–1: *May an employee taking FMLA leave revoke an existing election of group health plan coverage under a cafeteria plan?*

A–1: Yes. An employee taking FMLA leave may revoke an existing election of group health plan coverage (including a health flexible spending arrangement (FSA)) under a cafeteria plan for the remaining portion of the coverage period. See 29 CFR 825.209(e). FMLA also requires that an employee be permitted to choose to be reinstated in the group health plan coverage (including a health FSA) provided under a cafeteria plan upon returning from FMLA leave if the employee's group health plan coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums). Such an employee is entitled, under FMLA, to be reinstated on the same terms as prior to taking FMLA leave (including family or dependent coverage). See 29 CFR 825.209(e) and 825.215(d). However, the employee has no greater right to benefits for the remainder of the plan year than an employee who has been continuously working during the plan year. In addition to the rights granted under FMLA, such an employee has the right to revoke or change elections (e.g., because of changes in family status or significant cost or coverage changes imposed by a third-party provider) under the same terms and conditions as are available to employees participating in the cafeteria plan who are not on FMLA leave.

Q–2: *Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave continues group health plan coverage?*

A–2: An employee is entitled to continue group health plan coverage (including a health FSA) during FMLA leave whether or not provided under a health FSA or other component of a cafeteria plan. See 29 CFR 825.209(b). An employee making premium payments under a cafeteria plan who chooses to continue group health plan coverage (including a health FSA) while on FMLA leave is responsible for the share of group health premiums that the employee was paying while working, such as amounts paid pursuant to a salary reduction agreement. The employer must continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave. See 29 CFR 825.100(b) and 825.210(a).

Q–3: *What payment options are required or permitted to be offered under a cafeteria plan to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave, and what is the tax treatment of these payments?*

A–3: (a) *In general.* A cafeteria plan may, on a nondiscriminatory basis, offer one or more of the following payment options (subject to the limitations described in paragraph (b) of this Q&A–3) to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave. These options are referred to in this section as pre-pay, pay-as-you-go and catch-up.

(1) *Pre-pay.* (i) Under the pre-pay option, a cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period. However, the Labor Regulations under FMLA provide that under no circumstances may the employer mandate that an employee pre-pay the amounts due for the leave period. See 29 CFR 825.210(c)(3) and (4).

(ii) Contributions under the pre-pay option may be made on a pre-tax salary reduction basis from any taxable compensation (including the cashing out of unused sick days or vacation days). These contributions will not be included in the employee's gross income, provided that all cafeteria plan requirements are satisfied. For example, see Q&A–5 of this section regarding restrictions on pre-tax salary reduction contributions when an employee's FMLA leave spans two cafeteria plan years.

(iii) Contributions under the pre-pay option may also be made on an after-tax basis. See Prop. Treas. Reg. § 1.125–1, Q&A–5.[1]

[1] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

(2) *Pay-as-you-go.* (i) Under the pay-as-you-go option, employees may pay their share of the premium payments on the same schedule as payments would be made if the employee were not on leave or under any other payment schedule permitted by the Labor Regulations at 29 CFR 825.210(c) (i.e., on the same schedule as payments are made under the Consolidated Omnibus Reconciliation Act of 1985, Public Law 99–272; under the employer's existing rules for payment by employees on leave without pay; or under any other system voluntarily agreed to between the employer and the employee that is not inconsistent with this section or with 29 CFR 825.210(c)).

(ii) Contributions under the pay-as-you-go option are generally made by the employee on an after-tax basis. However, contributions may be made on a pre-tax basis to the extent that the contributions are made from taxable compensation (e.g., cashing out unused sick or vacation days) that is due the employee during the leave period, and provided that all cafeteria plan requirements are satisfied.

(iii) An employer is not required to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave. See 29 CFR 825.212. However, if the employer chooses to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave, the employer is entitled to recoup those payments as set forth in paragraph (a)(3)(i) of this Q&A–3. See also Q&A–6 of this section regarding coverage under a health FSA when an employee fails to make the required premium payments while on FMLA leave.

(3) *Catch-up.* (i) An employer that continues providing group health coverage to an employee who does not pay premiums on FMLA leave is, to the extent provided under the Labor Regulations, permitted to utilize the catch-up option to recoup the employee's share of premium payments. See, e.g., 29 CFR 825.212(b).

(ii) Where an employee is electing to use the catch-up option, the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer will assume responsibility for advancing payment of the premiums on the employee's behalf during the FMLA leave; and these advance amounts must be paid by the employee when the employee returns from FMLA leave.

(iii) Contributions under the catch-up option may be made on a pre-tax salary reduction basis when the employee returns from FMLA leave from any available taxable compensation (including the cashing out of unused sick days and vacation days). These contributions will not be included in the employee's gross income, provided that all cafeteria plan requirements are satisfied.

(iv) Contributions under the catch-up option may also be made on an after-tax basis. See Prop. Treas. Reg. § 1.125–1, Q&A–5.[2]

(b) *Exceptions.* Cafeteria plans may offer (pursuant to 29 CFR 825.210(c)) one or more of the payment options described in paragraph (a) of this Q&A–3, with the following exceptions:

(1) The pre-pay option cannot be the sole option offered to employees on FMLA leave. However, the cafeteria plan may include pre-payment as an option for employees on FMLA leave, even if such option is not offered to employees on non-FMLA leave-without-pay.

(2) The catch-up option can be the sole option offered to employees on FMLA leave if and only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.

(3) A cafeteria plan cannot offer employees on FMLA leave a choice of either the pre-pay option or the catch-up option without also offering the pay-as-you-go option, if the pay-as-you- go option is offered to employees on non-FMLA leave-without-pay.

(c) *Voluntary waiver of employee payments.* In addition to the foregoing payment options, an employer may voluntarily waive, on a nondiscriminatory basis, the requirement that employees who elect to continue health coverage while on FMLA leave pay the amounts the employees would otherwise be required to pay for the leave period.

Q–4: *Do the special FMLA requirements concerning an employee who continues group health plan coverage under a cafeteria plan apply if the employee is on paid FMLA leave?*

A–4: No. The Labor Regulations provide that, if an employee's FMLA leave is substituted paid leave as described at 29 CFR 825.207 and the employee continues group health plan coverage while on FMLA leave, the employee's share of the premiums must be paid by the method normally used during any paid leave (i.e., salary reduction). See 29 CFR 825.210(b).

Q–5: *What restrictions apply to contributions when an employee's FMLA leave spans two cafeteria plan years?*

A–5: (a) Contributions to a cafeteria plan during FMLA leave will not be included in an employee's gross income, provided that the plan complies with all cafeteria plan requirements. Among other requirements, a plan may not operate in a manner that enables employees on FMLA leave to defer compensation from one cafeteria plan year to a subsequent cafeteria plan year. See Prop. Treas. Reg. § 1.125–2, Q&A–5.[3]

(b) The following example illustrates this Q&A–5:

Example. Employee A elects health coverage under a calendar year cafeteria plan maintained by Employer X. A's premium for health coverage is $100 per month throughout the 12-month period of coverage. A takes FMLA leave for 12 weeks beginning on October 31 after making 10 months worth of premiums totalling $1000 (10 months × $100 = $1000). A maintains health coverage while on FMLA leave. A utilizes the pre-pay option by cashing-out A's unused sick days in order to make the required premium payments due while A is on FMLA leave. Because A cannot defer compensation from one plan year to a subsequent plan year, A may pre-pay the premiums due in November and December (i.e., $100 per month) on a pre-tax basis, but A cannot pre-pay the premium payment due in January on a pre-tax basis. If A participates in the cafeteria plan in the subsequent plan year, A must use another option (e.g., pay-as-you-go or catch-up) to make the premium payment due in January.

Q–6: *Are there special rules concerning employees taking FMLA leave who participate in health FSAs offered under a cafeteria plan?*

A–6: (a) *In general.* (1) A health plan that is a flexible spending arrangement (FSA) offered under a cafeteria plan must conform to the generally applicable rules in this section concerning employees who take FMLA leave. Thus, FMLA requires that an employee taking FMLA leave be permitted to—

(i) Continue coverage under a health FSA while on FMLA leave; or

(ii) Revoke an existing health FSA election under the cafeteria plan for the remainder of the coverage period. See 29 CFR 825.209(e).

(2) FMLA also requires the plan to permit the employee to be reinstated in the health FSA upon return from FMLA leave on the same terms as prior to taking FMLA leave. See 29 CFR 825.215(d) and paragraph (b)(2) of this Q&A–6. However, reinstatement is at the employee's election and under no circumstances may an employer require

[2] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

[3] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

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an employee whose coverage has terminated while on FMLA leave to reinstate coverage under a health FSA upon return from FMLA leave. See 29 CFR 825.214(a).

(b) *Uniform Coverage Rule* (1) Q&A–7(b)(2) of § 1.125–2[4] (the uniform coverage rule) applies during the FMLA leave period as long as the employee continues health coverage. Therefore, regardless of the payment option selected under Q&A–3 of this section, for so long as the employee continues coverage (or for so long as the employer continues the coverage of an employee who fails to make the required contributions as described in Q&A–3(a)(2)(iii) of this section), the full amount of the elected coverage, less any prior reimbursements, must be available to the employee at all times, including the FMLA leave period.

(2)(i) If an employee's coverage under the health FSA terminates while the employee is on FMLA leave, the employee is not entitled to receive reimbursements for claims incurred during the period when the coverage is terminated. If that employee subsequently elects to be reinstated in the health FSA upon return from FMLA leave for the remainder of the plan year, the employee may not retroactively elect health FSA coverage for claims incurred during the period when the coverage was terminated. Further, the employee is not entitled to greater FSA benefits relative to premiums paid than an employee who has been continuously working during the plan year. See 29 CFR 825.216. Therefore, if an employee elects to be reinstated in a health FSA upon return from FMLA leave, the employee's coverage for the remainder of the plan year is equal to the employee's election for the 12-month period of coverage (or such shorter period as provided under § 1.125–2[5]), prorated for the period during the FMLA leave for which no premiums were paid, and reduced by prior reimbursements.

(ii) An employee on FMLA leave has the right to revoke or change elections (e.g., because of changes in family status) under the same terms and conditions that apply to employees participating in the cafeteria plan who are not on FMLA leave. Thus, notwithstanding the rules described in paragraph (b)(2)(i) of this Q&A–6, an employee who returns from FMLA leave may make a new health FSA election for the remainder of the plan year if return from leave without pay constitutes a change of family status under the employer's cafeteria plan.

(3) The following examples illustrate the rules in this Q&A–6:

Example 1: (a) Employee A elects $1200 worth of coverage under a calendar year health FSA provided under a cafeteria plan, with an annual premium of $1200. A is permitted to pay the $1200 through pre-tax salary reduction amounts of $100 per month throughout the 12-month period of coverage. A incurs no medical expenses prior to April 1. On April 1, A takes FMLA leave after making three months worth of contributions totalling $300 (3 months × $100 = $300). The plan does not permit a revocation of election on account of a change in family status. However, pursuant to A's rights under FMLA, A elects to terminate coverage upon going on FMLA leave. Consequently, A makes no premium payments for the months of April, May, and June, and A is not entitled to submit claims or receive reimbursements for expenses incurred during this period. A returns from FMLA leave and elects to be reinstated in the health FSA on July 1.

(b) Under FMLA, A has no greater right to benefits upon reinstatement than if A had been continuously working during the plan year. Therefore, A is reinstated to A's annual election (i.e., $1200) prorated for the period during the FMLA leave for which no premiums were paid (i.e., reduced for 3 months or ¼ of the plan year) less prior reimbursements (i.e., $0). Consequently, A's coverage for the remainder of the plan year equals $900. A must also begin making premium payments of $100 per month for the remainder of the plan year.

Example 2: Assume the same facts as *Example 1* except that A incurs medical expenses totaling $200 in February and obtains reimbursement of these expenses. The results are the same as in *Example 1*, except that A's coverage for the remainder of the plan year equals $700.

Example 3: Assume the same facts as *Example 1* except that prior to taking FMLA leave, A elects to continue health FSA coverage during the FMLA leave. The plan permits A (and A elects) to use the catch-up payment option described in Q&A–3 of this section, and as further permitted under the plan, A chooses to repay the $300 in missed payments on a ratable basis over the remaining six-month period of coverage (i.e., $50 per month). Thus, A's monthly premium payments for the remainder of the plan year will be $150 ($100 + $50).

Q–7: *Are employees entitled to non-health benefits while taking FMLA leave?*

A–7: FMLA does not require an employer to maintain an employee's non-health benefits (e.g., life insurance) during FMLA leave. An employee's entitlement to benefits other than group health benefits under a cafeteria plan during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on non-FMLA leave (paid or unpaid). See 29 CFR 825.209(h). Therefore, an employee who takes FMLA leave is entitled to revoke an election of non-health benefits under a cafeteria plan to the same extent employees taking non-FMLA leave are permitted to revoke elections of non-health benefits under a cafeteria plan. For example, election changes are permitted due to changes of family status or upon enrollment for a new plan year. See § 1.125–2, Q&A–6(c)[6] and § 1.125–1, Q&A–8.[7] However, the FMLA regulations provide that, in certain cases, an employer may continue an employee's non-health benefits under the employer's cafeteria plan while the employee is on FMLA leave to ensure that the employer can meet its responsibility to provide equivalent benefits to the employee upon return from unpaid FMLA. If the employer continues an employee's non-health benefits during FMLA leave, the employer is entitled to recoup the costs incurred for paying the employee's share of the premiums during the FMLA leave period. See 29 CFR 825.213(b). In addition, a cafeteria plan must, as required by FMLA, permit an employee whose coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums) to be reinstated in the cafeteria plan on return from FMLA leave. See 29 CFR 825.214(a) and 825.215(d).

Q–8: *How may taxpayers rely on these proposed regulations?*

A–8: (a) The guidance provided by the questions and answers in this section may be relied upon to comply with provisions of section 125 and will be applied by the Internal Revenue Service in resolving issues arising under cafeteria plans and related Internal Revenue Code sections. If final regulations are more restrictive than the guidance in this section, the regulations will not be applied retroactively. No inference, however, should be drawn regarding issues not expressly raised that may be suggested by a particular question or answer or by the inclusion or exclusion of certain questions.

(b) The Department of Labor has advised the Department of the Treasury, including the Internal Revenue Service, that the provisions of this section are not inconsistent with the provisions of FMLA and the Labor Regulations thereunder.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–30681 Filed 12–20–95; 8:45 am]
BILLING CODE 4830–01–U

[4] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[5] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[6] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[7] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

26 CFR Part 1

[EE–106–82]

RIN 1545–AE45

Loans to plan participants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations under section 72(p) of the Internal Revenue Code relating to loans made from a qualified employer plan to plan participants or beneficiaries. Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982, and amended by the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. These regulations provide guidance to the public with respect to this provision, and affect any plan participant or beneficiary who receives a loan from a qualified employer plan.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–106–82), Attention: Plan Loans Guidance, room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (EE–106–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at (202) 622–6070 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which added section 72(p) to the Code, and to the amendments to section 72(p) made by the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

Explanation of Provisions

Section 72(p) of the Code generally provides that an amount received as a loan from a qualified employer plan by a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution), except to the extent certain conditions are satisfied. For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified plan or a government plan. A loan from a contract purchased under a qualified employer plan is also treated as a loan from the plan. Section 72(p) also provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is to be treated as a loan from the plan.

Under section 72(p), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies certain requirements relating to the terms of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned. The proposed regulations require that the loan be evidenced by an enforceable agreement, set forth in writing or in another form that is approved by the Commissioner of Internal Revenue, that includes terms that satisfy the statutory requirements. Thus, the agreement must specify the amount of the loan, the term of the loan, and the repayment schedule. The agreement may be set forth in more than one document.

If a loan fails to satisfy the repayment requirements or the enforceable agreement requirement, the proposed regulations provide for the balance then due under the loan to be treated as a distribution from the plan. This may occur at the time the loan is made or at a later date if the loan is not repaid in accordance with the repayment schedule. If the loan satisfies the repayment requirements and the enforceable agreement requirement, but at the time the loan is made the amount of the loan exceeds the statutory limitation on the amount that is permitted to be loaned, the proposed regulations provide that only the excess amount is a deemed distribution.

One of the repayment requirements is that the loan be repaid within five years, unless the loan is used to acquire a dwelling unit which within a reasonable time is used as the principal residence of the participant. The proposed regulations provide that a principal residence has the same meaning as under section 1034 (relating to the taxation of a sale of a residence) and that tracing rules established under section 163(h)(3)(B) (relating to interest deductions for indebtedness incurred with respect to the acquisition of a principal residence) will be used to determine whether the section 72(p)(2)(B)(ii) exception to the five-year repayment requirement applies. (Notice 88–74 (1988–2 C.B. 385), sets forth certain standards applicable under section 163(h)(3).)

The Tax Reform Act of 1986 amended section 72(p) to require that, in order for a loan to not be treated as a distribution, the loan must be repaid in substantially level installments (not less frequently than quarterly) over the term of the loan. Section 72(p) authorizes regulations to allow exceptions from this requirement. Pursuant to this authorization, the proposed regulations permit loan repayments to be suspended during a leave of absence of up to one year, if the participant's pay from the employer is insufficient to service the debt, but only if the loan is repaid by the latest date permitted under section 72(p)(2)(B).

If the repayment terms of a loan are not satisfied after the loan has been made due to a failure to make a scheduled loan repayment, the proposed regulations provide for the balance then due under the loan to be deemed to be distributed. The proposed regulations permit a grace period, to the extent the grace period does not extend beyond the end of the calendar quarter next following the calendar quarter in which the repayment was scheduled to be made.

If a loan is treated as a distribution under section 72(p), the proposed regulations state that the amount so distributed is to be treated as a taxable distribution, subject to the normal rules of section 72 if the participant's interest in the plan includes after-tax contributions (or other tax basis). A deemed distribution would also be a distribution for purposes of the 10

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percent tax in section 72(t) and the excise tax on excess distributions under section 4980A. However, a deemed distribution under section 72(p) is not treated as an actual distribution for purposes of the qualification requirements of section 401, the rollover and income averaging provisions of section 402 and the distribution restrictions of section 403(b).

By contrast, if a participant's accrued benefit is reduced (offset) in order to repay a loan, an actual distribution occurs for purposes of the provisions in sections 401, 402 and 403(b) referred to above. Thus, for example, a plan is prohibited from enforcing its security interest in a participant's account balance attributable to amounts contributed pursuant to an election under section 401(k) until a date on which distribution is permitted under section 401(k).

The proposed regulations do not address all issues arising under section 72(p). Comments are requested on whether further guidance should be provided on issues that are not addressed and how the issues should be resolved, including the effect of a deemed distribution on the tax treatment of subsequent distributions from the plan and the application of the $50,000 limitation and the five year repayment requirement to a refinancing and to multiple loan arrangements.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the following address: CC:DOM:CORP:R (EE–106–82), Attention: Plan Loans Guidance, room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Vernon S. Carter, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.72–17A is amended as follows:

1. Paragraphs (d)(1), (d)(2) and (d)(3) are redesignated as paragraphs (d)(2), (d)(3) and (d)(4), respectively.

2. New paragraph (d)(1) is added to read as follows:

§ 1.72–17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

* * * * *

(d) * * * (1) The references in this paragraph (d) to section 72(m)(4) are to that section as in effect on August 13, 1982. Section 236(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 repealed section 72(m)(4), generally effective for assignments, pledges and loans made after August 13, 1982, and added section 72(p). See section 72(p) and § 1.72(p)-1 for rules governing the income tax treatment of certain assignments, pledges and loans from qualified employer plans made after August 13, 1982.

* * * * *

Par. 3. Section 1.72(p)–1 is added to read as follows:

§ 1.72(p)–1 Loans treated as distributions.

The questions and answers in this section provide guidance under section 72(p) pertaining to loans from qualified employer plans (including government plans and tax-sheltered annuities and employer plans that were formerly qualified). The examples included in the questions and answers in this section are based on the assumption that a bona fide loan is made to a participant from a qualified defined contribution plan pursuant to an enforceable agreement (in accordance with Q&A–3(b) of this section), with adequate security and with an interest rate and repayment terms that are commercially reasonable. (The particular interest rate used for illustration in this section is 8.75 percent compounded annually.) In addition, unless the contrary is specified, it is assumed in the examples that the amount of the loan does not exceed 50 percent of the participant's nonforfeitable account balance, the participant has no other outstanding loan (and had no prior loan) from the plan or any other plan maintained by the participant's employer or any other person required to be aggregated with the employer under section 414(b), (c) or (m), and the loan is not excluded from section 72(p) as a loan made in the ordinary course of an investment program as described in Q&A–18 of this section. No inference should be drawn from these regulations or the examples therein that a loan would not result in a prohibited transaction under section 4975 or would be consistent with the fiduciary standards of Title I of the Employee Retirement Income Security Act of 1974, as amended. See, for example, 29 CFR § 2550.408b–1 (interpreting the statutory prohibited transaction exemption for loans to participants and beneficiaries).

Questions and Answers

Q–1: In general, what does section 72(p) provide with respect to loans from a qualified employer plan?

A–1: (a) *Loans.* Under section 72(p), an amount received by a participant or beneficiary as a loan from a qualified employer plan is treated as having been received as a distribution from the plan (a deemed distribution), unless the loan satisfies the requirements of Q&A–3 of this section. For purposes of section 72(p), a loan made from a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) shall be considered a loan made under a qualified employer plan.

(b) *Pledges and assignments.* Under section 72(p), if a participant or beneficiary assigns or pledges (or agrees to assign or pledge) any portion of his or her interest in a qualified employer plan as security for a loan, the portion of the individual's interest assigned or pledged (or subject to an agreement to assign or pledge) is treated as a loan from the plan to the individual, with the result that such portion is subject to the deemed distribution rule described in paragraph (a) of this Q&A–1. For purposes of section 72(p), any assignment or pledge of (or agreement to assign or to pledge) by a participant or beneficiary of any portion of his or her interest in a contract that has been purchased under a qualified employer plan (including a contract that has been distributed) shall be considered an assignment or pledge of (or agreement to assign or pledge) an interest in a qualified employer plan. However, if all or a portion of a participant's or beneficiary's interest in a qualified employer plan is pledged or assigned as security for a loan from the plan to the participant or the beneficiary, only the amount of the loan received by the participant or the beneficiary, not the amount pledged or assigned, is treated as a loan.

Q–2: What is a qualified employer plan for purposes of section 72(p)?

A–2: For purposes of section 72(p), a qualified employer plan means—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b);

(d) Any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of the United States, a State or a political subdivision of a State; or

(e) Any plan which was (or was determined to be) described in paragraph (a), (b), (c), or (d) of this Q&A–2.

Q–3: What requirements must be satisfied in order for a loan to a participant or beneficiary from a qualified employer plan not to be a deemed distribution?

A–3: (a) *In general.* A loan to a participant or beneficiary from a qualified employer plan will not be a deemed distribution to the participant or beneficiary if the loan satisfies the repayment term requirement of section 72(p)(2)(B), the level amortization requirement of section 72(p)(2)(C), and the enforceable agreement requirement of paragraph (b) of this Q&A–3, but only to the extent the loan satisfies the amount limitations of section 72(p)(2)(A).

(b) *Enforceable agreement requirement.* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) set forth in writing or in such other form as may be approved by the Commissioner, and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount of the loan, the term of the loan, and the repayment schedule.

Q–4: If a loan from a qualified employer plan to a participant or beneficiary fails to satisfy the requirements of Q&A–3 of this section, when does a deemed distribution occur?

A–4: (a) *Deemed distribution.* For purposes of section 72, a deemed distribution occurs at the first time that the requirements of Q&A–3 of this section are not satisfied, in form or in operation, with respect to that amount. This may occur at the time the loan is made or at a later date. If the terms of the loan do not require repayments that satisfy the repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C), or the loan is not evidenced by an enforceable agreement satisfying the requirements of Q&A–3(b) of this section, the entire amount of the loan is a deemed distribution under section 72(p) at the time the loan is made. If the loan satisfies the requirements of Q&A–3 of this section except that the amount loaned exceeds the limitations of 72(p)(2)(A), the amount of the loan in excess of the applicable limitation is a deemed distribution under section 72(p) at the time the loan is made. If the loan initially satisfies the requirements of section 72(p)(2)(A), (B) and (C) and the enforceable agreement requirement of Q&A–3(b) of this section, but payments are not made in accordance with the terms applicable to the loan, a deemed distribution occurs as a result of the failure to make such payments. See Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof and Q&A–11 of this section regarding the tax treatment of a deemed distribution.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–4 and are based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example 1. (a) A participant has a nonforfeitable account balance of $200,000 and receives $70,000 as a loan repayable in level quarterly installments over five years.

(b) Under section 72(p), the participant has a deemed distribution of $20,000 (the excess of $70,000 over $50,000) at the time of the loan, because the loan exceeds the $50,000 limit in section 72(p)(2)(A)(i). The remaining $50,000 is not a deemed distribution.

Example 2. (a) A participant with a nonforfeitable account balance of $30,000 borrows $20,000 as a loan repayable in level monthly installments over five years.

(b) Because the amount of the loan is $5,000 more than 50% of the participant's nonforfeitable account balance, the participant has a deemed distribution of $5,000 at the time of the loan. The remaining $15,000 is not a deemed distribution. (Note also that, if the loan is secured solely by the participant's account balance, the loan may be a prohibited transaction under section 4975 because the loan may not satisfy 29 CFR § 2550.408b–1(f)(2)).

Example 3. (a) The nonforfeitable account balance of a participant is $100,000 and a $50,000 loan is made to the participant repayable in level quarterly installments over seven years. The loan is not eligible for the section 72(p)(2)(B)(ii) exception for loans used to acquire certain dwelling units.

(b) Because the repayment period exceeds the maximum five-year period in section 72(p)(2)(B)(i), the participant has a deemed distribution of $50,000 at the time the loan is made.

Example 4. (a) On August 1, 1998, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making monthly payments through July 1999, the participant fails to make any of the payments due thereafter.

(b) As a result of the failure to satisfy the requirement that the loan be repaid in level monthly installments, the participant has a deemed distribution. See Q&A–10(c) *Example* of this section regarding when such a deemed distribution occurs and the amount thereof.

Q–5: What is a principal residence for purposes of the exception in section 72(p)(2)(B)(ii) from the requirement that a loan be repaid in five years?

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A–5: Section 72(p)(2)(B)(ii) provides that the requirement in section 72(p)(2)(B)(i) that a plan loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant (a principal residence plan loan). For this purpose, a principal residence has the same meaning as a principal residence under section 1034.

Q–6: In order to satisfy the requirements for a principal residence plan loan, is a loan required to be secured by the dwelling unit that will within a reasonable time be used as the principal residence of the participant?

A–6: A loan is not required to be secured by the dwelling unit that will within a reasonable time be used as the participant's principal residence in order to satisfy the requirements for a principal residence plan loan.

Q–7: What tracing rules apply in determining whether a loan qualifies as a principal residence plan loan?

A–7: The tracing rules established under section 163(h)(3)(B) apply in determining whether a loan is treated as for the acquisition of a principal residence in order to qualify as a principal residence plan loan.

Q–8: Can a refinancing qualify as a principal residence plan loan?

A–8: (a) *Refinancings.* In general, no. However, a loan from a qualified employer plan used to repay a loan from a third party will qualify as a principal residence plan loan if the plan loan qualifies as a principal residence plan loan without regard to the loan from the third party.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–8 and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (a) On July 1, 1999, a participant requests a $50,000 plan loan to be repaid in level monthly installments over 15 years. On August 1, 1999, the participant acquires a principal residence and pays a portion of the purchase price with a $50,000 bank loan. On September 1, 1999, the plan loans $50,000 to the participant, which the participant uses to pay the bank loan.

(b) Because the plan loan satisfies the requirements to qualify as a principal residence plan loan (taking into account the tracing rules of section 163(h)(3)(B)), such plan loan qualifies for the exception in section 72(p)(2)(B)(ii).

Q–9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year, that a participant is on a leave of absence, either without pay from the employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan must be repaid by the latest date permitted under section 72(p)(2)(B) and the installments due after the leave ends (or, if earlier, after the first year of the leave) must not be less than those required under the terms of the original loan.

(b) *Example.* The following example illustrates the rules of paragraph (a) of this Q&A–9 and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (a) On July 1, 1997, a participant with a nonforfeitable account balance of $80,000, borrows $40,000 to be repaid in level monthly installments of $825 each over five years. The loan is not a principal residence plan loan. The participant makes nine monthly payments and commences an unpaid leave of absence that lasts for 12 months. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2002.

(b) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2002 repaid the full balance remaining due.

Q–10: If a participant fails to make the installment payments required under the terms of a loan that satisfied the requirements of Q&A–3 of this section when made, when does a deemed distribution occur and what is the amount of the deemed distribution?

A–10: (a) *Timing of deemed distribution.* Failure to make any installment payment when due in accordance with the terms of the loan violates section 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a grace period, and section 72(p)(2)(C) will not be considered to have been violated until the last day of the grace period. Any such grace period shall be given effect for purposes of section 72(p)(2)(C) only to the extent it does not continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

(b) *Amount of deemed distribution.* If a loan satisfies Q&A–3 of this section when made, but there is a failure to pay the installment payments required under the terms of the loan (taking into account any grace period allowed under the preceding paragraph (a) of this Q&A–10), then the amount of the deemed distribution equals the entire outstanding balance of the loan at the time of such failure.

(c) *Example.* The following example illustrates the rules in Q&A–10(a) and (b) of this section and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (1) On August 1, 1998, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making all monthly payments due through July 31, 1999, the participant fails to make the payment due on August 31, 1999 or any other monthly payments due thereafter. The plan administrator allows a three-month grace period.

(2) As a result of the failure to satisfy the requirement that the loan be repaid in level installments pursuant to section 72(p)(2)(C), the participant has a deemed distribution on November 30, 1999, which is the last day of the three-month grace period for the August 31, 1999 installment. The amount of the deemed distribution is $17,157, which is the outstanding balance on the loan at November 30, 1999. Alternatively, if the plan administrator had allowed a grace period through the end of the next calendar quarter, there would be a deemed distribution on December 31, 1999 equal to $17,282, which is the outstanding balance of the loan at December 31, 1999.

Q–11: Do sections 72 and 4980A apply to a deemed distribution as if it were an actual distribution?

A–11: (a) *Tax Basis.* If the employee's account includes after-tax contributions or other investment in the contract under section 72(e), section 72 applies to a deemed distribution as if it were an actual distribution, with the result that all or a portion of the deemed distribution may not be taxable.

(b) *Sections 72(t) and (m).* Section 72(t) (which imposes a 10 percent tax on certain early distributions) and section 72(m)(5) (which imposes a separate 10 percent tax on certain amounts received by a 5-percent owner) apply to a deemed distribution under section 72(p) in the same manner as if the deemed distribution were an actual distribution.

(c) *Section 4980A.* For purposes of section 4980A, a deemed distribution under section 72(p) is taken into account in determining an individual's excess distributions, as provided in § 54.4981A–1T, Q&A a–8.

Q–12: Is a deemed distribution under section 72(p) treated as an actual distribution for purposes of the qualification requirements of section 401, the distribution provisions of section 402, or the distribution restrictions of section 401(k)(2)(B) or 403(b)(11)?

A–12: No. Thus, for example, if a participant in a money purchase plan who is an active employee has a deemed distribution under section 72(p), the plan will not be considered to have made an in-service distribution to the participant in violation of the qualification requirements applicable to money purchase plans. Similarly, the deemed distribution is not eligible to be rolled over to an eligible retirement plan and the participant is not eligible to elect income averaging with respect to the deemed distribution. See also §§ 1.402(c)–2, Q&A–4(d) and § 1.401(k)–1(d)(6)(ii).

Q–13: How does a reduction (offset) of an account balance in order to repay a plan loan differ from a deemed distribution?

A–13: (a) *Difference between deemed distribution and plan loan offset amount.* (1) Loans to a participant from a qualified employer plan can give rise to two types of taxable distributions—

(i) A deemed distribution pursuant to section 72(p); and

(ii) A distribution of an offset amount.

(2) As described in Q&A–4 of this section, a deemed distribution occurs when the requirements of Q&A–3 of this section are not satisfied, either when the loan is made or at a later time. A deemed distribution is treated as a distribution to the participant or beneficiary only for certain tax purposes and is not a distribution of the accrued benefit. A distribution of a plan loan offset amount (as defined in § 1.402(c)–2, Q&A–9(b)) occurs when, under the terms governing a plan loan, the accrued benefit of the participant or beneficiary is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). A distribution of a plan loan offset amount could occur in a variety of circumstances, such as where the terms governing the plan loan require that, in the event of the participant's request for a distribution, a loan be repaid immediately or treated as in default.

(b) *Plan loan offset.* In the event of a plan loan offset, the amount of the account balance that is offset against the loan is an actual distribution for purposes of the Internal Revenue Code, not a deemed distribution under section 72(p). Accordingly, a plan may be prohibited from making such an offset under the provisions of section 401(a), 401(k)(2)(B) or 403(b)(11) prohibiting or limiting distributions to an active employee. See § 1.402(c)–2, Q&A–9(c) *Example 6.*

Q–14: How is the amount includible in income as a result of a deemed distribution under section 72(p) required to be reported?

A–14: The amount includible in income as a result of a deemed distribution under section 72(p) is required to be reported on Form 1099–R (or any other form prescribed by the Commissioner).

Q–15: What withholding rules apply to plan loans?

A–15: To the extent that a loan, when made, is a deemed distribution or an account balance is reduced (offset) to repay a loan, the amount includible in income is subject to withholding. If a deemed distribution of a loan or a loan repayment by benefit offset results in income at a date after the date the loan is made, withholding is required only if a transfer of cash or property (excluding employer securities) is made to the participant or beneficiary from the plan at the same time. See §§ 35.3405–1(f)(4) and 31.3405(c)–1, Q&A–9 and Q&A–11 of this chapter for further guidance on withholding rules.

Q–16: If a loan fails to satisfy the requirements of Q&A–3 of this section and is a prohibited transaction under section 4975, is the deemed distribution of the loan under section 72(p) a correction of the prohibited transaction?

A–16: A deemed distribution is not a correction of a prohibited transaction under section 4975. See §§ 141.4975–13 and 53.4941(e)–1(c)(1) of this chapter for guidance concerning correction of a prohibited transaction.

Q–17: What are the income tax consequences if an amount is transferred from a qualified employer plan to a participant or beneficiary as a loan, but there is an express or tacit understanding that the loan will not be repaid?

A–17: If there is an express or tacit understanding that the loan will not be repaid, or, for any reason, the transaction does not create a debtor-creditor relationship, then the amount transferred is treated as an actual distribution from the plan for purposes of the Internal Revenue Code, and is not treated as a loan or as a deemed distribution under section 72(p).

Q–18: If a qualified employer plan maintains a program to invest in residential mortgages, are loans made pursuant to the investment program subject to section 72(p)?

A–18: Residential mortgage loans made by a plan in the ordinary course of an investment program are not subject to section 72(p) if the property acquired with the loans is the primary security for such loans and the amount loaned does not exceed the fair market value of the property. An investment program exists only if the plan has established, in advance of a specific investment under the program, that a certain percentage or amount of plan assets will be invested in residential mortgages available to persons purchasing the property who satisfy commercially customary financial criteria. Loans will not be considered as made under an investment program if the loans are only made available to, or any loan is earmarked for, any person or persons who are participants or beneficiaries in the plan, or if such loans mature upon a participant's termination from employment. In addition, no loan that benefits an officer, director, or owner of the employer maintaining the plan, or his or her beneficiaries, will be treated as made under an investment program. No inference should be drawn that a transaction under such an investment program is not a prohibited transaction under section 503 or 4975 or is not a violation of the applicable fiduciary standards for an employee benefit plan, so that such a loan could be a prohibited transaction if it does not satisfy the requirements of 29 CFR 2550.408b–1.

Q–19: When is the effective date of these regulations?

A–19: This section applies to assignments, pledges, and loans made on or after the date that is three months after the date of publication of the final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30874 Filed 12–20–95; 8:45 am]

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26 CFR Part 1

[PS–7–89]

RIN 1545–AM66

Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1254 of the Internal Revenue Code relating to the tax treatment by S corporations and their shareholders of gain from the disposition by an S corporation (and a former S corporation) of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986), and also rules relating to the disposition of stock in an S corporation that holds certain natural resource recapture property. Changes to the applicable tax law were made by the Tax Reform Act of 1986, and the Subchapter S Revision Act of 1982. The regulations provide the public with guidance in complying with the changed tax laws.

DATES: Written comments and requests for a public hearing must be received by February 20, 1996.

ADDRESSES: Send comments and requests for a public hearing to: CC:DOM:CORP:R (PS–7–89), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered to CC:DOM:CORP:R (PS–7–89), Room 5228, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: James A. Quinn, 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224. Comments on the collection of information should be received by January 22, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is contained in § 1.1254–4(c) of the proposed regulations. This information is required by the Internal Revenue Service to verify that taxpayers have reported the appropriate amount of gain as ordinary income under section 1254 when a shareholder sells stock in an S corporation that holds natural resource recapture property. The likely respondents are individuals and businesses and other for-profit institutions.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 1,000 hours. The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: On occasion.

Background

On June 11, 1980, proposed amendments to the Income Tax Regulations, 26 CFR part 1, under sections 170, 301, 312, 341, 453, 751, 1254, and 1502 of the Internal Revenue Code of 1954 (Code) were published in the **Federal Register** (45 FR 39512). These amendments were proposed to conform the regulations to section 205(a), (b), (c)(1) and (2) of the Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1533, and section 402(c) of the Energy Tax Act of 1978, Public Law 95–618, 92 Stat. 3202, and to make certain other technical amendments to the regulations to conform them to section 1(c) of the Act of September 12, 1966, Public Law 89–570, 80 Stat. 762, section 211(b)(6) of the Tax Reform Act of 1969, Public Law 91–172, 83 Stat. 570, and sections 1042(c)(2), 1101(d)(2), 1901(a)(93), and 2110(a) of the Tax Reform Act of 1976, 90 Stat. 1637, 1658, 1780, 1905. Section 1.1254–3 of the proposed regulations provided rules relating to the sale or exchange of stock in an electing small business corporation (hereinafter referred to as an S corporation). Because of the substantial changes in the tax treatment of S corporations since the proposed regulations were issued, the proposed regulations contained in § 1.1254–3 needed to be completely revised.

This document revises and reproposes § 1.1254–3 of the above- referenced notice of proposed rulemaking as amendments to the Income Tax Regulations, 26 CFR part 1, under section 1254 of the Code, relating to S corporations (redesignated as § 1.1254–4). These amendments are proposed to conform the regulations to section 5(a)(37) of the Subchapter S Revision Act of 1982, Public Law 97–354, 96 Stat. 1669, and sections 411 and 413 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2225, 2227. The amendments are to be issued under the authority contained in sections 1254(b) and 7805 of the Code.

Explanation of Provisions

These proposed regulations contain rules for applying the provisions of section 1254 to the disposition of natural resource recapture property by an S corporation (and a former S corporation) and the disposition of S corporation stock.

The proposed regulations provide that the recognition of ordinary income under section 1254 upon the disposition of natural resource recapture property by an S corporation is generally computed at the shareholder level. Determining the amount of ordinary income to be recognized under section 1254 at the shareholder level is appropriate because the determination of section 1254 costs can be affected by shareholder elections and characteristics. See, for example, sections 59(e) and 1363(c)(2)(A). Similarly, in the case of oil and gas properties, gain on the disposition of the property and depletion with respect to the property are computed at the shareholder level. See section 613A(c)(11).

The proposed regulations also contain rules relating to the recognition of ordinary income under section 1254 upon a sale or exchange of S corporation stock. Under section 1254(b)(2), rules similar to the rules of section 751 are to be applied to that portion of the excess of the amount realized over the adjusted basis of the stock that is attributable to section 1254 costs. Pursuant to section 1254(b)(2), the proposed regulations provide that, as a general rule, a shareholder must treat any gain recognized on a sale or exchange of S corporation stock as ordinary income to the extent of the shareholder's section 1254 costs with respect to the shares sold or exchanged.

The proposed regulations provide two exceptions to the general rule for determining the amount treated as ordinary income under section 1254 upon a sale or exchange of stock. The first exception is that the general rule does not apply to the extent that the shareholder establishes that the gain is not attributable to the section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254. To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

The second exception to the general rule for sales or exchanges of stock is that, in the case of a contribution of property to the S corporation prior to a stock sale or exchange pursuant to a plan a principal purpose of which is to avoid the recognition of ordinary income under section 1254, the selling or exchanging shareholder must recognize as ordinary income under section 1254 the amount of ordinary income the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold all of its natural resource recapture property the disposition of which would result in ordinary income under section 1254. Section 1.1254–4(c)(3) *Example 3* of the proposed regulations illustrates this exception. The proposed regulations also provide rules for determining an S corporation shareholder's section 1254 costs. Generally, an S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property while in the hands of the S corporation. In the case of a person (acquiring shareholder) who acquires stock from another shareholder, the proposed regulations provide that the acquiring shareholder's section 1254 costs are zero if the acquiring shareholder's basis for the stock transferred is determined by reference to its cost (within the meaning of section 1012) or by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date). However, an acquiring shareholder's section 1254 costs include any section 1254 costs paid or incurred before the decedent's death, to the extent that the basis of the stock is reduced under section 1014(b)(9) (relating to adjustments to basis if the property is acquired from a decedent prior to death). For stock that is acquired in a transfer that is a gift, in a transfer that is part sale or exchange and part gift, or a transfer described in section 1041, the acquiring shareholder generally acquires the section 1254 costs of the transferor but reduces the section 1254 costs by the amount of any gain treated as ordinary income under section 1254 by the transferor on the transfer.

The proposed regulations provide rules for applying section 1254 to the shareholders of an S corporation that incurred section 1254 costs while it was a C corporation (former C corporation). In the case of a C corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a *pro rata* share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

The proposed regulations also provide rules for applying section 1254 to a corporation that holds natural resource recapture property after the termination of its S corporation election (former S corporation). In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year for which the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A).

Because certain transactions will change the allocation to the shareholders of gain or amount realized from the natural resource recapture property if the S corporation disposes of it subsequent to these transactions, the proposed regulations require that section 1254 costs be reallocated to reflect the effects of these transactions. Transactions requiring reallocation of the section 1254 costs are transactions involving the issuance of stock by an S corporation in a reorganization or otherwise, and transfers of natural resource recapture property to the S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction or in a reorganization).

The rules for former S corporations and the rules for allocating section 1254 costs upon certain transfers require the S corporation to determine the aggregate of its shareholders' section 1254 costs. The proposed regulations provide rules for the S corporation to apply in determining a shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation. In general, the S corporation may determine a shareholder's section 1254 costs by using written data provided by the shareholder or by applying certain assumptions.

These regulations are proposed to apply to dispositions of natural resource recapture property by an S corporation (and a former S corporation) and dispositions of S corporation stock occurring after publication of these regulations as final regulations in the **Federal Register**.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

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553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *
Section 1.1254–4 also issued under 26 U.S.C. 1254(b). * * *

Par. 2. Section 1.1254–0 is amended by revising the entry for § 1.1254–4 to read as follows:

§ 1.1254–0 Table of contents for section 1254 recapture rules.

* * * * *

§ 1.1254–4 Special rules for S corporations and their shareholders.

(a) In general.
(b) Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation.
(1) General rule.
(2) Examples.
(c) Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock.
(1) General rule.
(2) Exceptions.
(3) Examples.
(d) Section 1254 costs of a shareholder.
(e) Section 1254 costs of an acquiring shareholder after certain acquisitions.
(1) Basis determined under section 1012.
(2) Basis determined by reason of the application of section 1014(a).
(3) Basis determined by reason of the application of section 1014(b)(9).
(4) Gifts and section 1041 transfers.
(f) Special rules for former S corporations and former C corporations.
(1) Section 1254 costs of an S corporation that was formerly a C corporation.
(2) Examples.
(3) Section 1254 costs of a C corporation that was formerly an S corporation.
(g) Determination of a shareholder's section 1254 costs upon certain stock transactions.
(1) Issuance of stock.
(2) Natural resource recapture property acquired in exchange for stock.
(3) Treatment of nonvested stock.
(4) Exception.
(5) Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation
(6) Examples.
(h) Effective date.

* * * * *

Par. 3. Section 1.1254–4 is amended by adding text to read as follows:

§ 1.1254–4 Special rules for S corporations and their shareholders.

(a) *In general.* This section provides rules for applying the provisions of section 1254 to S corporations and their shareholders upon the disposition by an S corporation (or a former S corporation) of natural resource recapture property and upon the disposition by a shareholder of stock of an S corporation that holds natural resource recapture property.

(b) *Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation*—(1) *General rule.* Upon a disposition of natural resource recapture property by an S corporation, the amount of gain treated as ordinary income under section 1254 is determined at the shareholder level. Each shareholder must recognize as ordinary income under section 1254 the lesser of—

(i) The shareholder's section 1254 costs with respect to the property disposed of; or

(ii) The shareholder's share of the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition (including a distribution), exceeds the adjusted basis of the property.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Disposition of natural resource recapture property other than oil and gas property. A and B are equal shareholders in X, an S corporation. On January 1, 1995, X acquires for $90,000 an undeveloped mineral property, its sole property. During 1995, X expends and deducts $100,000 in developing the property. On January 15, 1996, X sells the property for $250,000 when X's basis in the property is $90,000. Thus, X recognizes gain of $160,000 on the sale. A and B's share of the $160,000 gain recognized is $80,000 each. Each shareholder has $50,000 of section 1254 costs with respect to the property. Under these circumstances, A and B each are required to recognize $50,000 of the $80,000 of gain on the sale of the property as ordinary income under section 1254.

Example 2. Disposition of oil and gas property the adjusted basis of which is allocated to the shareholders under section 613A(c)(11). C and D are equal shareholders in Y, an S corporation. On January 1, 1995, Y acquires for $150,000 an undeveloped oil and gas property, its sole property. During 1995, Y expends in developing the property $40,000 in intangible drilling costs which it elects to expense under section 263(c). On January 15, 1996, Y sells the property for $200,000. C and D's share of the $200,000 amount realized on the sale is $100,000 each. C and D each have a basis of $75,000 in the property and $20,000 of section 1254 costs with respect to the property. Under these circumstances, C and D each are required to recognize $20,000 of the $25,000 gain on the sale of the property as ordinary income under section 1254.

(c) *Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if an S corporation shareholder recognizes gain upon a sale or exchange of stock in the S corporation (determined without regard to section 1254), the gain is treated as ordinary income under section 1254 to the extent of the shareholder's section 1254 costs (with respect to the shares sold or exchanged).

(2) *Exceptions*—(i) *Gain not attributable to section 1254 costs*—(A) *General rule.* Paragraph (c)(1) of this section does not apply to any portion of the gain recognized on the sale or exchange of the stock that the taxpayer establishes is not attributable to section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254.

(B) *Substantiation.* To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in paragraph (c)(2)(i)(A) of this section, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

(ii) *Transactions entered into as part of a plan to avoid recognition of ordinary income under section 1254.* In the case of a contribution of property prior to a sale or exchange of stock pursuant to a plan a principal purpose of which is to avoid recognition of ordinary income under section 1254, paragraph (c)(1) of this section does not apply. Instead, the amount recognized as ordinary income under section 1254 is the amount of ordinary income the selling or exchanging shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold its natural resource recapture property the disposition of which would have resulted in the recognition of ordinary income under section 1254. The amount recognized as ordinary income under the preceding sentence reduces the amount realized on the sale or exchange of the stock. This reduced amount realized is used in determining any gain or loss on the sale or exchange.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c):

Example 1. Application of general rule upon a sale of S corporation stock. C and D are equal shareholders in Y, an S corporation. As of January 1, 1995, Y holds two mining properties: Blackacre, with an adjusted basis of $5,000 and a fair market value of $35,000, and Whiteacre, with an adjusted basis of $20,000 and a fair market value of $15,000. Y also holds securities with a basis of $5,000 and a fair market value of $10,000. On January 1, 1995, D sells 50 percent of D's Y stock to E for $15,000. As of the date of the sale, D's adjusted basis in the Y stock sold is $7,500, and D has $18,000 of section 1254 costs with respect to Blackacre and $12,000 of section 1254 costs with respect to Whiteacre. Under this paragraph (c), the gain recognized by D upon the sale of Y stock is treated as ordinary income to the extent of D's section 1254 costs with respect to the stock sold, unless D establishes that a portion of such excess is not attributable to D's section 1254 costs. However, because D would recognize $7,500 in ordinary income under section 1254 with respect to the stock sold if Y sold Blackacre (the only asset the disposition of which would result in ordinary income to D under section 1254), the $7,500 of gain recognized by D upon the sale of D's Y stock is attributable to D's section 1254 costs. Therefore, upon the sale of stock to E, D recognizes $7,500 of ordinary income under this paragraph (c).

Example 2. Sale of S corporation stock where gain is not entirely attributable to section 1254 costs. Assume the same facts as in *Example 1*, except that Blackacre has a fair market value of $25,000, and the securities have a fair market value of $20,000. Immediately prior to the sale of stock to E, if Y had sold Blackacre (its only asset the disposition of which would result in the recognition of ordinary income to D under section 1254), D would recognize $5,000 in ordinary income with respect to the stock sold under section 1254. D attaches a statement to D's tax return for 1995 detailing D's share of the fair market values and bases, and D's section 1254 costs with respect to Blackacre and Whiteacre. Therefore, upon the sale of stock to E, of the $7,500 gain recognized by D, $5,000 is ordinary income under this paragraph (c).

Example 3. Contribution of property prior to sale of S corporation stock as part of a plan to avoid recognition of ordinary income under section 1254. H owns all of the stock of Z, an S corporation. As of January 1, 1995, H has $3,000 of section 1254 costs with respect to property P, which is natural resource recapture property and Z's only asset. Property P has an adjusted basis of $5,000 and a fair market value of $8,000. H has a basis of $5,000 in Z stock, which has a fair market value of $8,000. On January 1, 1995, H contributes securities to Z which have a basis of $7,000 and a fair market value of $4,000. On April 15, 1995, H sells all of the Z stock to J for $12,000. On that date, H's adjusted basis in the Z stock is also $12,000. Based on all the facts and circumstances, the sale of stock is part of a plan (along with the contribution by H of the securities to Z) that has a principal purpose to avoid recognition of ordinary income under section 1254. Consequently, under paragraph (c)(2)(ii) of this section, H must recognize $3,000 as ordinary income under section 1254, the amount of ordinary income that H would recognize as ordinary income under section 1254 if property P were sold at fair market value. In addition, H reduces the amount realized on the sale of the stock ($12,000) by $3,000. As a result, H also recognizes a $3,000 capital loss on the sale of the stock ($9,000 amount realized less $12,000 adjusted basis).

(d) *Section 1254 costs of a shareholder.* An S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property in the hands of the S corporation. See § 1.1254–1(b)(1) for the definition of section 1254 costs.

(e) *Section 1254 costs of an acquiring shareholder after certain acquisitions*—(1) *Basis determined under section 1012.* If stock in an S corporation that holds natural resource recapture property is acquired and the acquiring shareholder's basis for the stock is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(2) *Basis determined by reason of the application of section 1014(a).* If stock in an S corporation that holds natural resource recapture property is acquired from a decedent and the acquiring shareholder's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(3) *Basis determined by reason of the application of section 1014(b)(9).* If stock in an S corporation that holds natural resource recapture property is acquired before the death of the decedent, the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands includes the amount, if any, of the section 1254 costs deducted by the acquiring shareholder before the decedent's death, to the extent that the basis of the stock (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(4) *Gifts and section 1041 transfers.* If stock is acquired in a transfer that is a gift, in a transfer that is a part sale or exchange and part gift, or in a transfer that is described in section 1041(a), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands immediately after the transfer is an amount equal to—

(i) The amount of section 1254 costs with respect to the property held by the corporation in the hands of the transferor immediately before the transfer; minus

(ii) The amount of any gain recognized as ordinary income under section 1254 by the transferor upon the transfer.

(f) *Special rules for former S corporations and former C corporations*—(1) *Section 1254 costs of an S corporation that was formerly a C corporation.* In the case of a C

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corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a *pro rata* share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

(2) *Examples.* The following examples illustrate the application of the provisions of paragraph (f)(1) of this section:

Example 1. Sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Y is a C corporation that elects to be an S corporation effective January 1, 1996. On that date, Y owns Oil Well, which is natural resource recapture property and a capital asset. Y has section 1254 costs of $20,000 as of the close of the last taxable year that it was a C corporation. On January 1, 1996, Oil Well has a value of $200,000 and a basis of $100,000. Thus, under section 1374, Y's net unrealized built-in gain is $100,000. Also on that date, Y's basis in Oil Well is allocated to A, Y's sole shareholder, under section 613A(c)(11) and the section 1254 costs are allocated to A under § 1.1254–4(f)(1). In addition, A has a basis in A's Y stock of $100,000.

(ii) On November 1, 1996, Y sells Oil Well for $250,000. During 1996, Y has taxable income greater than $100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of $100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of $35,000 under section 1374. The tax of $35,000 is treated as a capital loss under section 1366(f)(2). A has a realized gain on the sale of $150,000 ($250,000 minus $100,000) of which $20,000 is recognized as ordinary income under section 1254, and $130,000 is recognized as capital gain. Consequently, A recognizes ordinary income of $20,000 and net capital gain of $95,000 ($130,000 minus $35,000) on the sale.

Example 2. Sale of stock followed by sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Assume the same facts as in *Example 1*(i). On November 1, 1996, A sells all of A's Y stock to P for $250,000. A has a realized gain on the sale of $150,000 ($250,000 minus $100,000) of which $20,000 is recognized as ordinary income under section 1254, and $130,000 is recognized as capital gain.

(ii) On November 2, 1996, Y sells Oil Well for $250,000. During 1996, Y has taxable income greater than $100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of $100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of $35,000 under section 1374. The tax of $35,000 is treated as a capital loss under section 1366(f)(2). P has a realized gain on the sale of $150,000 ($250,000 minus $100,000), which is recognized as capital gain. Consequently, P recognizes net capital gain of $115,000 ($150,000 minus $35,000) on the sale.

(3) *Section 1254 costs of a C corporation that was formerly an S corporation.* In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year that the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A). See paragraph (g)(5) of this section for rules on determining the aggregate amount of the shareholders' section 1254 costs.

(g) *Determination of a shareholder's section 1254 costs upon certain stock transactions*—(1) *Issuance of stock.* Upon an issuance of stock (whether such stock is newly-issued or had been held as treasury stock) by an S corporation in a reorganization or otherwise—

(i) Each recipient of shares must be allocated a *pro rata* share (determined solely with respect to the shares issued in the transaction) of the aggregate of the S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance (as determined pursuant to paragraph (g)(5) of this section); and

(ii) Each pre-existing shareholder must reduce his or her section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance by an amount equal to the pre-existing shareholder's section 1254 costs immediately before the issuance multiplied by the percentage of stock of the corporation issued in the transaction.

(2) *Natural resource recapture property acquired in exchange for stock.* If natural resource recapture property is transferred to an S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction, or in a reorganization described in section 368), the S corporation must allocate to its shareholders a *pro rata* share of the S corporation's section 1254 costs with respect to the property immediately after the transaction (as determined under § 1.1254–3(b)(1)).

(3) *Treatment of nonvested stock.* Stock issued in connection with the performance of services that is substantially nonvested (within the meaning of § 1.83–3(b)) is treated as issued for purposes of this section at the first time it is treated as outstanding stock of the S corporation for purposes of section 1361.

(4) *Exception.* Paragraph (g)(1) of this section does not apply to stock issued in exchange for stock of the same S corporation (as for example, in a recapitalization described in section 368(a)(1)(E)).

(5) *Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation*—(i) *In general.* The aggregate of S corporation shareholders' section 1254 costs is equal to the sum of each shareholder's section 1254 costs. The S corporation must determine each shareholder's section 1254 costs under either paragraph (g)(5)(i)(A) (written data) or paragraph (g)(5)(i)(B) (assumptions) of this section. The S corporation may determine the section 1254 costs of some shareholders under paragraph (g)(5)(i)(A) of this section and of others under paragraph (g)(5)(i)(B) of this section.

(A) *Written data.* An S corporation may determine a shareholder's section 1254 costs by using written data provided by a shareholder showing the shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation unless the S corporation knows or has reason to know that the written data is inaccurate. If an S corporation does not receive written data upon which it may rely, the S corporation must use the assumptions provided in paragraph (g)(5)(i)(B) of this section in determining a shareholder's section 1254 costs.

(B) *Assumptions.* An S corporation that does not use written data pursuant to paragraph (g)(5)(i)(A) of this section to determine a shareholder's section 1254 costs must use the following assumptions to determine the shareholder's section 1254 costs.

(*1*) The shareholder deducted his or her share of the amount of deductions under sections 263(c), 616, and 617 in the first year in which the shareholder could claim a deduction for such amounts, unless in the case of expenditures under sections 263(c) or 616 the S corporation elected to capitalize such amounts;

(*2*) The shareholder was not subject to the following limitations with respect to the shareholder's depletion allowance under section 611, except to the extent a limitation applied at the corporate level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (g):

Example 1. Transfer of natural resource recapture property to an S corporation in a section 351 transaction. As of January 1, 1996, A owns all the stock (20 shares) in X, an S corporation. X holds property that is not natural resource recapture property that has a fair market value of $2,000 and an adjusted basis of $2,000. On January 1, 1996, B transfers natural resource recapture property, Property P, to X in exchange for 80 shares of X stock in a transaction that qualifies under section 351. Property P has a fair market value of $8,000 and an adjusted basis of $5,000. Pursuant to section 351, B does not recognize gain on the transaction. Immediately prior to the transaction, B's section 1254 costs with respect to Property P equaled $6,000. Under § 1.1254–2(c)(1), B does not recognize any gain under section 1254 on the section 351 transaction and, under § 1.1254–3(b)(1), X's section 1254 costs with respect to Property P immediately after the contribution equal $6,000. Under paragraph (g)(2) of this section, each shareholder is allocated a *pro rata* share of X's section 1254 costs. The *pro rata* share of X's section 1254 costs that is allocated to A equals $1,200 (20 percent interest in X multiplied by X's $6,000 of section 1254 costs). The *pro rata* share of X's section 1254 costs that is allocated to B equals $4,800 (80 percent interest in X multiplied by X's $6,000 of section 1254 costs).

Example 2. Contribution of money in exchange for stock of an S corporation holding natural resource recapture property. As of January 1, 1996, A and B each own 50 percent of the stock (50 shares each) in X, an S corporation. X holds natural resource recapture property, Property P, which has a fair market value of $20,000 and an adjusted basis of $14,000. A's and B's section 1254 costs with respect to Property P are $4,000 and $1,500, respectively. On January 1, 1996, C contributes $20,000 to X in exchange for 100 shares of X's stock. Under paragraph (g)(1)(i) of this section, X must allocate to C a *pro rata* share of its shareholders' section 1254 costs. Using the assumptions set forth in paragraph (g)(5)(i)(B) of this section, X determines that A's section 1254 costs with respect to natural resource recapture property held by X equal $4,500. Using written data provided by B, X determines that B's section 1254 costs with respect to Property P equal $1,500. Thus, the aggregate of X's shareholders' section 1254 costs equals $6,000. C's *pro rata* share of the $6,000 of section 1254 costs equals $3,000 (C's 50 percent interest in X multiplied by $6,000). Under paragraph (g)(1)(ii) of this section, A's section 1254 costs are reduced by $2,000 (A's actual section 1254 costs ($4,000) multiplied by 50 percent). B's section 1254 costs are reduced by $750 (B's actual section 1254 costs ($1,500) multiplied by 50 percent).

Example 3. Merger involving an S corporation that holds natural resource recapture property. X, an S corporation with one shareholder, A, holds as its sole asset natural resource recapture property that has a fair market value of $120,000 and an adjusted basis of $40,000. A has section 1254 costs with respect to the property of $60,000. For valid business reasons, X merges into Y, an S corporation with one shareholder, B, in a reorganization described in section 368(a)(1)(A). Y holds property that is not natural resource recapture property that has a fair market value of $120,000 and basis of $120,000. Under paragraph (c) of this section, A does not recognize ordinary income under section 1254 upon the exchange of stock in the merger because A did not otherwise recognize gain on the merger. Under paragraph (g)(2) of this section, Y must allocate to A and B a *pro rata* share of its $60,000 of section 1254 costs. Thus, A and B are each allocated $30,000 of section 1254 costs (50 percent interest in X, each, multiplied by $60,000).

(h) *Effective date.* This section applies to dispositions of natural resource recapture property by an S corporation (and a former S corporation) and dispositions of S corporation stock occurring after publication of these regulations as final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30832 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 31

[IA–33–95]

RIN 1545–AT77

Effective Date of Temporary Backup Withholding Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the effective date of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, relating to backup withholding, statement mailing requirements, and due diligence. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA–33–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA–33–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Renay France, (202) 622–4910; concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a). The temporary regulations contain rules relating to the effective date of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

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place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of the regulations is Renny France, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.9999–0 is added to read as follows:

§ 31.9999–0 Effective date.

[The text of this proposed section is the same as the text of § 35a.9999–0T published elsewhere is this issue of the Federal Register].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30734 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–015–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to abandoned mine land reclamation (AMLR) goals and objectives, project ranking and selection, coordination between reclamation agencies, reclamation on private land, eligible lands and waters, public participation, agency administrative and management structure, reclamation set-aside trust funds, contractor eligibility requirements, and acid mine drainage projects. The amendment is intended to bring the Oklahoma AMLR Program into compliance with Federal AMLR regulations. It will allow the Oklahoma Conservation Commission to participate in AMLR activities authorized by the Omnibus Budget Reconciliation Act of 1990 and the Energy Policy Act of 1992.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 22, 1996. If requested, a public hearing on the proposed amendment will be held on January 16, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on January 5, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, Oklahoma 73105–4210, Telephone: (405) 521–2384.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, Federal Register (47 FR 2989).

II. Description of the Proposed Amendment

By letter dated November 13, 1995 (Administrative Record No. OAML–63), Oklahoma submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a September 26, 1994, letter from OSM (Administrative Record No. OAML–65), in accordance with 30 CFR 884.15(d), concerning revisions to the AML regulations at 30 CFR Chapter VII, Subchapter R (59 FR 28136, May 31, 1994).

Oklahoma proposes to amend its administrative rules at OAC 155:15, Oklahoma Abandoned Mine Land Program. Oklahoma proposes to amend its Reclamation Plan at sections 884.13(c)1, Goals and Objectives; 884.13(c)2, Project Ranking and Selection; 884.13(c)3, Interagency Coordination; 884.13(c)5, Eligible Lands and Waters; 884.13(c)7, Public Participation; and 884.13(d)1, Administrative and Management Structure.

(1) OAC 155:15, Oklahoma Abandoned Mine Land Reclamation Program Rules

Subsection 1–2, is revised to clarify definitions used later in the rules. Subsection 1–3, subpart (4) is added to require that contracts for AML projects only be awarded to successful bidders who are determined eligible to receive funds by using OSM's Applicant Violator System. Subsection 1–3 is revised to ensure that certain coal mine sites damaged and abandoned after August 3, 1977, are eligible for reclamation funding if the mining (1) took place during the interim program or (2) ended on or before November 5, 1990, and the surety for the mining company became insolvent during that period. Changes to Subsection 1–6 revise the objectives of reclamation project funding and the priority of those objectives. Objectives (4), Research and Demonstration, and (7), Construction of Public Facilities, are eliminated. The priority of order of the other objectives remains unchanged. Subsection 1–14 is added to allow for the construction, repair or enhancement of facilities related to water supplies where such supplies have been adversely affected by coal mining practices. Subsection 1–15 adds requirements for the establishment of special trust accounts that will provide for coal reclamation after September 30, 1995. Once established, Oklahoma may then set aside 10% of its annual grant funding for this use. Subsection 1–16 authorizes Oklahoma to receive and retain funds for Acid Mine Drainage Programs without regard to normal time limitations and establishes requirements for expenditure of granted funds.

(2) Section 884.13(c)1 Goals and Objectives

This section is revised to eliminate goal 4 (Research and Demonstration) and goal 7 (Construction of Public Facilities). The remaining goals and their priorities are unchanged.

(3) Section 884.13(c)(2) Project Ranking and Selection

A new sentence is added that (1) requires public notices to be published during the project selection process and (2) outlines requirements for public meetings and public comment during the selection process. The "Project Selection Matrix" is completely revised and Table 3 which outlines the project selection decision process is changed to place the general public into the project screening process.

(4) Section 884.13(c)(3) Coordination of Reclamation Work Between the State, the Soil Conservation Service and Other Reclamation Agencies

This section revises the description of the State Reclamation Committee and its role in the reclamation program.

(5) Section 884.13(c)(5) Policies and Procedures for Reclamation on Private Land

The subsection "Eligible Lands and Water" is revised to add eligibility for Interim Program and certain Insolvent Surety sites.

(6) Section 884.13(c)(7) Public Participation Policies

The public participation policies are revised to increase public input into the beginning of the project selection process.

(7) Section 884.13(d)(1) Administrative and Management Structure

Figure 7, which depicts the organizational structure of the Oklahoma Conservation Commission, is revised to reflect the current organization. The list of state agencies which may be involved in the reclamation program is changed to reflect current program operational practices. Figure 8, Oklahoma Executive Branch Organizational Chart, has been deleted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Oklahoma plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t., on January 5, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (e) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) AND 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously

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promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 1995.

Russell Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–31050 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA27–1–7186b; FRL–5320–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation Plan (SIP) revision submitted by the State of Georgia for the adoption of the Clean Fuel Fleet program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by January 22, 1996.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the State of Georgia submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, GA 30354.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–31039 Filed 12–20–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2810

[WO–420–6310–00]

Tramroads and Logging Roads—Subpart 2812—Over O. and C. and Coos Bay Revested Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: On November 16, 1995, the Bureau of Land Management (BLM) published an advance notice of proposed rulemaking in the **Federal Register** (60 FR 57561). The notice announced BLM's plans to revise regulations governing logging roads over revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands (collectively known as the O&C lands). The changes will bring the existing cost-sharing road program under the regulatory framework of Section 502 of the Federal Land Policy and Management Act of 1976 (FLPMA) and incorporate environmental protection and other requirements for rights-of-way over public lands found in Title V of FLPMA. The notice allowed 30 days for public comment. In response to a request from a representative of interested parties, the comment period is being extended until January 15, 1996.

DATES: Comments on this advance notice of proposed rulemaking must be received by January 15, 1996. Comments postmarked after this date may not be considered in the preparation of the proposed rule.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "ATTN: O&C" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, Oregon State Office, Bureau of Land Management, (503) 952–6454.

Dated: December 13, 1995.

Patrick W. Boyd,

Regulatory Management Team.

[FR Doc. 95–30741 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 236, and 252

[DFARS Case 95–D039]

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule with request for comment; correction.

SUMMARY: This document contains corrections to a proposed rule on Small Disadvantaged Business Concerns, which was published in the **Federal Register** on December 14, 1995 (60 FR 64135).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Accordingly, the Department of Defense is correcting 48 CFR Parts 219, 236, and 252 as follows:

PART 219—SMALL BUSINESS PROGRAMS

1. On page 64137, middle column, section 219.7202, paragraph (c)(1), is corrected to read as follows:

219.7202 Applicability.

* * * * *

(c) * * *

(1) The contracting activity will meet its goal for SDB concerns, established pursuant to 10 U.S.C. 2323 and Departmental procedures, during the current fiscal year, without this preference;

* * * * *

2. On page 64137, middle column, section 219.7203, paragraphs (b) and (d), are corrected to read as follows:

219.7302 Procedures.

* * * * *

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

* * * * *

(d) When using the procedures in 236.303–70, additive or deductive items, the evaluation preference in this subpart shall be applied.

3. On page 64137, last column, section 219.7204, paragraph (2), is corrected to read as follows:

219.7204 Contract clause.

* * * * *

(2) Where work is to be performed inside the U.S., its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. On page 64137, last column, section 236.303–70, paragraph (c)(2), is corrected to read as follows:

236.303–70 Additive or deductive items.

* * * * *

(c) * * *

(2) Evaluate all bids, including those using the procedures in 219.7203, on the basis of the same additive or deductive bid items.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. On page 64138, first column, section 252.219–7010, paragraphs (b)(2) and (b)(3)(i) are corrected to read as follows:

252.219–7010 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—Test program.

* * * * *

(b) * * *

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) * * *

(i) Offers from SDBs which have not waived the evaluation preference; and

* * * * *

[FR Doc. 95–31110 Filed 12–20–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 5]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee Public Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Notice; schedule of advisory committee meetings.

SUMMARY: This notice announces the final dates and locations of the three remaining series of meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Tuesday-Thursday, January 16–18, 1996; Monday-Wednesday, March 4–6, 1996; Tuesday-Thursday, April 23–25, 1996.

ADDRESSES: The January and March 1996 meetings of the Advisory Committee will be held at the Department of Transportation, Room 2230, Nassif Building, 400 Seventh Street SW., Washington, DC. The April 1996 meeting will be held at the Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC. Meetings will begin at 9:00 a.m., except for the meeting of Tuesday, January 16, 1996, which will begin at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: On August 16, 1995, the National Highway Traffic Safety Administration (NHTSA) published a tentative schedule for its early 1996 meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) (60 FR 42496)). The notice announced that this schedule was subject to confirmation or modifications at the Committee's November 1995 meeting. It announced that if there were changes or additions to the schedule, NHTSA would publish a notice informing the public of the changes.

At its meeting on November 30, 1995, in order to complete its tasks by the end of April 1996, the Committee decided to expand its three remaining series of meetings from a schedule of two days each to one of three days each, to be held on the days and in the locations shown above. The dates are approximately those announced in the August notice.

The meetings are open to the public.

Issued: December 15, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31051 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 642 and 659

[I.D. 120695B]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold 13 public hearings on Draft Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). In conjunction with these hearings, the Council will also hold seven public hearings to solicit comments on management measures for Draft Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Both Draft Amendment 8 and

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Draft Amendment 2 include Supplemental Environmental Impact Statements (SEISs).

DATES: Written comments will be accepted until 5 p.m., January 19, 1996. The hearings will be held from January 1 to January 5, 1996, and from January 8 to January 12, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Copies of the draft amendments are available from Susan Buchanan, Public Information Officer, at (803) 571-4366. Written comments may be faxed or sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407. Fax: 813–225–7015. The draft amendments will be available to the public at the hearings.

The hearings for draft Amendment 8 (Coastal Pelagics) will be held in Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, New Jersey, and New York. The hearings for draft Amendment 2 (Shrimp) will be held in South Carolina, Florida, Georgia, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803-571-4366.

SUPPLEMENTARY INFORMATION: The hearings are scheduled to begin at 7 p.m. and will end when all business is completed. The dates and locations are scheduled as follows:

1. Tuesday, January 2, 1996, (Coastal Pelagics) Ft. Pierce—Holiday Inn, 7151 Okeechobee Road, Ft. Pierce, FL; telephone: (407) 464-5000;

2. Tuesday, January 2, 1996, (Coastal Pelagics & Shrimp) Murrell's Inlet—Murrell's Inlet Community Center, 4450 Murrell's Inlet Road, Murrell's Inlet, SC; telephone: (803) 651-7373;

3. Wednesday, January 3, 1996, (Coastal Pelagics & Shrimp) Jacksonville—Sea Turtle Days Inn, 10 Ocean Blvd., Atlantic Beach, FL; telephone: (904) 249-7402;

4. Wednesday, January 3, 1996, (Coastal Pelagics & Shrimp) Wilmington—Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, NC; telephone: (910) 256-2231;

5. Thursday, January 4, 1996, (Coastal Pelagics & Shrimp) Brunswick—Comfort Inn–I95, 5308 New Jesup Highway, Brunswick, GA; telephone: (912) 264-6540;

6. Thursday, January 4, 1996, (Coastal Pelagics & Shrimp) Morehead City—Carteret Community College, 3505 Arendell Street, Morehead City, NC; telephone: (919) 247-3004;

7. Friday, January 5, 1996, (Coastal Pelagics & Shrimp) Savannah—Holiday Inn-Mid-Town, 7100 Abercorn Street, Savannah, GA; telephone: (912) 352-7100;

8. Monday, January 8, 1996, (Coastal Pelagics & Shrimp) Charleston—Town & Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571-1000;

9. Monday, January 8, 1996, (Coastal Pelagics) Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY; telephone: (516) 585-9500;

10. Tuesday, January 9, 1996, (Coastal Pelagics) Tom's River—Holiday Inn, 290 Route 37 East, Tom's River, NJ; telephone: (908) 244-4000;

11. Wednesday, January 10, 1996, (Coastal Pelagics) Salisbury—Holiday Inn, 2625 N. Salisbury Blvd., Salisbury, MD; telephone: (410) 742-7194;

12. Thursday, January 11, 1996, (Coastal Pelagics) Norfolk—Quality Inn Lake Wright, 6280 Northampton Blvd, Norfolk, VA; telephone: (804) 461-6251;

13. Friday, January 12, 1996, (Coastal Pelagics) Manteo—North Carolina Aquarium, Airport Road, Manteo, NC; telephone: (919) 473-3494;

Draft Amendment 8 to the Coastal Migratory Pelagic FMP

The South Atlantic, Gulf of Mexico and Mid-Atlantic Fishery Management Councils will hold public hearings on draft Amendment 8 to the FMP and the draft SEIS. Amendment 8 proposes management measures for the fisheries for king and Spanish mackerel, cobia, and dolphin (fish). Amendment 8 proposes measures that (1) apply only to the South Atlantic and Mid-Atlantic Council's jurisdiction, (2) apply only to the Gulf Council's jurisdiction, or (3) apply to the three Councils' jurisdictions.

Proposed actions that would affect only the stocks and area under the jurisdiction of the South Atlantic and Mid-Atlantic Council are as follows: Harvest Spanish mackerel only with hook and line, run-around nets and stab nets (nets shall not exceed 600 yd (549 m) in length), and along Florida's east coast nets are limited to 1 hour soak time; harvest king mackerel with hook and line only; allow the harvest of other directed coastal pelagics with surface longline, hook and line including manual, electric, or hydraulic rod and reels, and bandit gear only; allow the use of cast nets and other nets with mesh sizes no larger than 2 1/2–inch (6.35 cm) stretch mesh and no longer than 50 yd (46 m) for the purpose of catching bait; allow the introduction of experimental gear; provide that non-conforming gear be limited to the bag limit for species with a bag limit; allow the transfer at sea of Spanish mackerel between permitted vessels; establish a 5-year moratorium beginning on October 16, 1995 on the issuance of commercial vessel permits with a king mackerel endorsement; provide for the transfer of vessel permits to other vessels; require that anyone applying for a commercial vessel permit demonstrate that 25 percent of annual income or $5,000 is from commercial fishing; require that as a condition for a Federal commercial or charter vessel permit, the applicant comply with the more restrictive of state or Federal rules when fishing in state waters; extend the range of cobia management through New York; establish the following commercial trip limits for Atlantic king mackerel of 3,500 lb (1.6 mt) for Volusia/Flagler County, FL to the New York/Connecticut border from April 1 - March 31, a 3,500 lb (1.6 mt) limit for Volusia/Flagler to Brevard/Volusia, FL from April 1 to October 31, and a 50–fish limit for Brevard/Volusia to Dade/Monroe, FL from April 1 to October 31.

Amendment 8 also includes the following measures that apply to the three Councils' jurisdictions: Require commercial dealer permits to buy and sell coastal pelagic fish managed under the FMP and require that dealers keep and make available records of purchase by vessel; recreational bag and commercial trip limit alternatives for cobia and dolphin (fish); retention of king mackerel damaged by barracuda bites by vessels under commercial trip limits; an alternative trip limit for Atlantic group king mackerel for Monroe County, FL of 125 fish from April 1 to October 31; changes to procedures used to set total allowable catch; and changes to definitions of overfishing and optimum yield.

Proposed measures in Amendment 8 applying only to the area and stocks under the jurisdiction of the Gulf of Mexico Council were published in the Federal Register on December 5, 1995.

Draft Amendment 2 to the Shrimp FMP

At its meeting of August 21-25, 1995, the Council approved draft Amendment 2 to the Shrimp FMP for public hearing. At its October 23-27 meeting, at the request of the Director, Southeast Region, NMFS (Regional Director), the Council approved additional options concerning a bycatch reduction device (BRD) certification protocol for inclusion in Amendment 2.

The Council is holding public hearings to solicit views on certain management measures in the draft amendment that are intended to reduce bycatch in South Atlantic penaeid shrimp fisheries included in the amendment.

Draft Amendment 2 would also modify the management unit to include the populations of brown and pink shrimp occurring along the U.S. Atlantic coast from the east coast of Florida, including the Atlantic side of the Florida Keys, to the North Carolina/Virginia border. This amendment includes measures to reduce bycatch only in the penaeid shrimp fishery.

Shrimp trawls have a significant bycatch of non-target finfish and invertebrates, most of which are discarded dead. This may reduce ecosystem diversity, adversely impact other fauna, and significantly reduce yield in other fisheries directed at these discarded species. The Council is proposing regulations to address a mandate established by the Atlantic States Marine Fishery Commission to minimize the impact of bycatch on Spanish mackerel and weakfish resources.

Also, the South Atlantic states, North Carolina, South Carolina, Georgia, and Florida are directed under the interjurisdictional weakfish management plan to implement management measures that will reduce bycatch of weakfish in shrimp trawls by 50 percent for the 1996 shrimp season. The Council, in order to create compatible regulations with the South Atlantic states, is addressing bycatch in Federal waters to ensure effective reduction of weakfish bycatch throughout the range of the species.

Management Measures under Consideration

The following management measures are under consideration by the Council for inclusion in Amendment 2 to the Shrimp FMP:

1. Add brown and pink shrimp to the management unit,

2. Define overfishing for brown and pink shrimp,

3. Define optimum yield for the pink and brown shrimp fisheries,

4. Require the use of certified BRDs in all penaeid shrimp trawls in the South Atlantic Exclusive Economic Zone (EEZ). All shrimp nets (any net with mesh less than 2 1/2 inches (6.35 cm) stretch mesh) and all nets greater than 15 ft (4.6 m) in footrope length (or compatible with Turtle Excluder Device requirements for try nets) that are used as try (test) nets would be required to use a certified BRD.

A. Upon implementation of Amendment 2, BRDs that have passed the operational testing phase of the NMFS cooperative bycatch research program (fish eyes, extended funnels and large mesh) are de facto certified for use in the EEZ.

B. Other BRDs will subsequently be certified according to procedures and criteria specified in item 5.

5. Establish a BRD certification process and specify certification criteria for new or modified BRDs. The Council is specifically requesting input from industry members concerning protocol options for future BRD certification of new or modified BRDs:

A. The following are options for BRD certification protocol being considered by the Council:

Option 1: The Council makes final recommendations for certification to the NMFS Regional Director;

Option 2: The Regional Director makes the decision based on direct application to NMFS; and

Option 3: BRDs developed, tested and approved by state agencies, meeting the criteria specified in the amendment, may be used in the EEZ in lieu of BRDs certified by NMFS.

Three geographical sub-options are identified for Option 3 to specify where state-approved BRDs would be allowed for use in the EEZ:

i: Adjacent to the state in which the BRD was approved,

ii: Throughout the EEZ in the South Atlantic region, or

iii: In the EEZ by vessels registered in the state where BRDs have been approved.

B. The Amendment will also establish certification criteria for new or modified BRDs. New or modified BRDs must be certified or approved by NMFS for use in the South Atlantic penaeid shrimp fishery based on the following criteria:

i. The BRD must reduce the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent, and

ii. The shrimp loss rate (by weight) must be acceptable to fishermen.

The Council intends to finalize both Amendments at its meeting in St. Augustine, FL, from February 12-16, 1996. The public will have an opportunity to comment at the full Council session before the Council takes final action to adopt the amendment's management measures. Once finalized, the amendment will be submitted to NMFS for review, approval and implementation. NMFS will provide a 60-day public comment period on the amendment and a 45-day public comment period on the proposed implementing rule during its 110-day review period.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 27, 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30988 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 655

[Docket No. 951211295–5295–01; I.D. 111595C]

RIN 0648–XX37

Atlantic Mackerel, Squid, and Butterfish Fisheries; 1996 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1996 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1996 fishing year for Atlantic mackerel, squid, and butterfish (SMB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and provide an opportunity for the public to comment. This action is intended to promote the development of the U.S. SMB fisheries.

DATES: Public comments must be received on or before January 17, 1996.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope "Comments—1996 SMB specifications."

FOR FURTHER INFORMATION CONTACT: Myles Raizin, 508–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP)

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prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 655. These regulations stipulate that NMFS publish a document specifying the initial annual amounts of the optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 655.22.

The following table contains the proposed initial specifications for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish for 1996. These specifications are based on the recommendations of the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR SMB FOR THE FISHING YEAR

[January 1 through December 31, 1996 (mt)]

Specifications	Squids		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY[1]	44,000	30,000	[2] N/A	16,000
ABC[3]	30,000	30,000	1,175,500	7,200
IOY	25,000	21,000	[4] 105,500	5,900
DAH	25,000	21,000	105,500	5,900
DAP	25,000	21,000	50,000	5,900
JVP	0	0	35,000	0
TALFF	0	0	0	0

[1] Max optimum yield (OY) as stated in the FMP.
[2] Not applicable, see the FMP.
[3] IOY can increase to this amount.
[4] Contains 20,500 mt projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock biomass (SSB) in the year following the year for which catch estimates and quotas are being prepared, equal to or greater than 600,000 mt.

The Council recommended an ABC of 125,500 mt, derived by subtracting the estimated Canadian catch of 24,500 mt from the long-term potential yield of 150,000 mt, which was estimated at the 20th Northeast Regional Stock Assessment Workshop (20th SAW) concluded in August 1995. This recommendation for ABC was based on the provisions for deriving that value as contained in Amendment 5 to the FMP. However, NMFS has determined that ABC should be calculated in accordance with § 655.21 (b)(2)(i), while still using the most recent stock assessment. It would be premature to use the provisions of Amendment 5 to determine ABC for 1996 since the amendment is still undergoing Secretarial review and has not been approved or implemented. The 20th SAW concluded that productivity appears to decline when SSB falls below 900,000 mt. Therefore, the ABC specification for Atlantic mackerel is proposed at 1,175,500 mt. This level of ABC would leave an SSB of 900,000 mt for the following year (1997) from a mean starting value of SSB of 2,100,000 mt while also taking into account a projected Canadian catch of 24,500 mt.

The proposed IOY for the 1996 Atlantic mackerel fishery is set at 105,500 mt, equal to the proposed DAH. The specification for DAH is computed by adding the estimated recreational catch, the proposed DAP, and the proposed JVP. The recreational component of DAH is estimated to be 20,500 mt, using a formula found at § 655.21(b)(2)(ii). DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 and 1995, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced Alaskan freezer trawlers and New England groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP and JVP for the 1996 fishery. It is generally agreed that joint ventures have had a positive impact on the development of the U.S. Atlantic mackerel fishery and should be encouraged.

The Council has recommended and NMFS proposes a DAH of 105,500 mt, which includes the 20,500 mt recreational component. The Council also recommended and NMFS proposes a DAP of 50,000 mt. The difference between DAH (minus the recreational component) and DAP allows for a JVP of 35,000 mt.

Zero TALFF is recommended for the 1996 Atlantic mackerel fishery by the Council and proposed by NMFS. In 1992, the Council used testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 655.21(b)(2)(ii) to determine that mackerel produced from directed foreign fishing would compete directly with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe, may substantially increase opportunities for U.S. producers to increase sales to new markets abroad. Although the U.S. industry has not been successful in capturing a substantial market share for mackerel in the Caribbean, North Africa, and Europe so far, several factors indicate that market expansion of Atlantic mackerel may occur soon. Atlantic mackerel stock abundance remains high. Also, the continued low abundance amounts of several important groundfish stocks in the Gulf of Maine, southern New England, and on Georges Bank are causing further restrictions in fishing effort for those species and the need for many fishermen to redirect their effort to underutilized species. Atlantic mackerel is now considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that in the long term a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1996 quota paper, the Council provides an additional analysis of the costs and benefits of directed foreign fishing, which indicates that the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended and NMFS proposes that four special conditions imposed in previous years continue to be imposed on the 1996 Atlantic mackerel fishery as follows: (1) Joint ventures are allowed south of 37°30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director, Northeast region, NMFS, should ensure that adverse impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year as described under § 655.21(b)(2)(iv) in consultation with the Council, but the total should not exceed 125,500 mt; and (4) applications from a particular nation for a joint venture for 1996 will not be approved until the Regional Director determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

The maximum OY (Max OY) for *Loligo* is 44,000 mt. The recommended ABC for the 1996 fishery is 30,000 mt, representing a decrease of 6,000 mt from the 1995 ABC of 36,000 mt. This level of ABC is based on the most recent stock assessments and is determined to be at a level that will not harm the continued growth of the resource. The 17th SAW concluded that *Loligo* is an annual species and does not have a 3-year life span, as previously assumed. The 17th SAW recommended that a real-time assessment/management system be used to ensure an adequate level of spawning stock. This will be addressed in Amendment 5 to the FMP, which has been submitted to the Secretary of Commerce for review. Amendment 5 will also address the need to lower the Max OY, which is defined in the regulations governing the fishery to be 44,000 mt. This specification can be changed only with a plan amendment. In the interim, the Council believes that it would be prudent to reduce the ABC for conservation purposes, as suggested by the 17th SAW. The Council recommended and NMFS proposes an IOY of 25,000 mt, which is 5,000 mt less than ABC and equal to DAH and DAP. DAH and DAP have historically been estimated using the Council annual processor survey. However, for 1995, response was low and did not contain projections from the large, known processors. Furthermore, the Council believes that these stocks may be susceptible to recruitment overfishing due to the 1-year life span of the animals, and in the absence of real-time assessment/management, the Council has chosen a conservative strategy. The proposed IOY/DAH/DAP of 25,000 mt for the 1996 fishery represents a decrease of 11,000 mt from the final 1995 IOY/DAH/DAP of 36,000 mt.

The expansion of the U.S. freezer trawler and refrigerated sea water fleets that participate in this fishery and substantially increased U.S. landings indicate that there is no longer a justification for foreign participation. Therefore, zero JVP and TALFF are specified for the 1996 *Loligo* fishery.

The Max OY for *Illex* squid is 30,000 mt. The Council recommended and NMFS proposes an ABC of 30,000 mt, which is equal to the Max OY. However, the Council has recommended and the Regional Director proposes that the IOY for *Illex* be set at 21,000 mt, 9,000 mt below the ABC, due to the conclusion that *Illex* has a life span of only 1 year and is, therefore, susceptible to recruitment overfishing. Though the 17th SAW determined that *Illex* has a life span of 1 year, no recommendations to adjust Max OY ensued. The 17th SAW recommended that, since *Illex* is a transboundary stock between the United States and Canada, a joint assessment be conducted before a revised Max OY is recommended. However, the 17th SAW advised that the current MSY for *Illex* may be inappropriate and cautioned that, while the stock is under-exploited based on current MSY, the potential for recruitment overfishing may be substantial. No directed foreign fishery has been specified for *Illex* since 1986, which reflects the large increases in the capacity of the East Coast freezer trawler fleet and projected increases in the number of vessels using refrigerated seawater systems capable of landing high quality *Illex*. Because U.S. vessels have the capacity to harvest the IOY, no joint venture processing is proposed 1996 fishery.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and the Regional Director proposes an ABC of 7,200 mt for the 1996 fishery, representing a decrease of 8,800 mt from the 1995 final initial specification. Commercial landings of butterfish have been low at 4,000 mt, 2,285 mt, 4,430 mt, and 3,537 mt for the 1991 through 1994 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery is lacking and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY for butterfish of 5,900 mt. The U.S. industry has the potential to fully utilize this IOY. Thus, there is no TALFF available. The Council recommends and the Regional Director proposes a DAH of 5,900 mt. There has been no interest expressed in joint ventures, thus, the IOY is proposed at a level that does not allow for a JVP. The Council recommended and NMFS proposes that both JVP and TALFF be specified at zero for the 1996 fisheries. However, a 1,300 mt difference between ABC and IOY is available to accommodate an increase in IOY if economic conditions dictate.

Classification

This action is authorized by 50 CFR part 655, and these proposed specifications are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–31119 Filed 12–18–95; 2:30 pm]
BILLING CODE 3510–23–P

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Notices

Federal Register
Vol. 60, No. 245
Thursday, December 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

December 13, 1995.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

December 15, 1995.

Federal Crop Insurance Corporation

Title: Castrophic Risk Protection Plan, Crop Insurance Application and Continuous Contract and Related Requirements.

Summary: This proposed action allows Federal Crop Insurance Crop to improve the insurance coverage now available for producers and provide a new option allowing open market producers to obtain insurance for their malting barley. Approximately 5,000 additional producers will have the opportunity to participate due to this option.

Need and Use of the Information: This information is required to be able to purchase crop insurance and to determine program eligibility for crop coverage under the Malting Barley Price and Quality Endorsement.

Description of Respondents: Farms.

Number of Respondents: 1,760,015.

Frequency of Responses: Annually.

Total Burden Hours: 2,676,752.

Emergency processing of this submission has been requested by December 29, 1996.

December 15, 1995.

National Agricultural Statistics Service

Title: Agricultural Surveys Program.

Summary: The Agricultural Surveys Program obtains basic agricultural data from farmers and ranchers throughout the nation. The data provides the basis for estimates of the current season's crop and livestock production and supplies of grain in storage.

Need and Use of the Information: Crop and livestock statistics help develop a stable economic atmosphere and reduces risk for production, marketing, and distribution operations. Users of statistical information include producers, farm organizations, agribusiness, state and national farm policy makers, and foreign buyers of agricultural products.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 146,500.

Frequency of Responses: On occasion.

Total Burden Hours: 138,217.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–31019 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Information Collection for Public Involvement Research Study

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request approval of an information collection related to the research of public involvement programs on National Forest System lands.

EFFECTIVE DATE: Comments must be received in writing on or before February 20, 1996.

ADDRESSES: All comments should be addressed to: Christine Overdevest, Outdoor Recreation and Wilderness Research Staff, Southern Forest Experiment Station, 320 Green Street, Athens, GA 30602.

FOR FURTHER INFORMATION CONTACT: Christine Overdevest, Outdoor Recreation and Wilderness Research Staff, at (706) 546–2451.

SUPPLEMENTARY INFORMATION:

Background

The social science community has evaluated the character, quality, and success of the Forest Service's Public Involvement activities since the passage of the National Forest Management Act (NFMA); however, no studies have been conducted at the ranger district-level of the agency. In order to meet the information needs of the Wayah Ranger District on the Nantahala National Forest, a survey study has been commissioned to obtain information on how non-participants differ from participants in the district's Public Involvement process. This survey is a one-time information collection by the Forest Service and the University of Georgia Department of Sociology.

Description of Forms

The following information describes the forms to be approved:

Titles: Public Involvement Participant Survey. Public Involvement Non-Participant Survey.

OMB Number: Application pending.

Expiration Date of Approval: Not applicable.

Type of Request: New Approval.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be 15 minutes per response.

Type of Respondents: Random sample of community members of Franklin, North Carolina; participants involved in planning process for the district.

Estimated Number of Respondents: 436.

Estimated Number of Responses per respondent: 1.

Estimated Total Annual Burden on respondents: 109 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 15, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–31022 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Extension of Currently Approved Information Collection for Baseline and Trend Information on Wilderness Use and Users

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend a currently approved information collection of questions and sampling alternatives used to develop baseline and trend information about the changing role of wilderness in rural communities and the behavior of urban residents who visit wilderness for recreation, education programs, or scientific study.

DATES: Comments must be received in writing on or before February 20, 1996.

ADDRESSES: All comments should be addressed to: Alan Watson, Aldo Leopold Wilderness Research Institute, Forest Service, USDA, P.O. Box 8089, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute, (406) 542–4197.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The currently approved information collection comprises a pool of questions and sampling alternatives (for example, on-site surveys and mailback questionnaires); the following describes the information collection to be extended:

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Number: 0596–0108.

Expiration Date of Approval: May 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The Wilderness Act (Pub. L. 88–577) directs that wilderness be managed to preserve natural conditions and to provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. To make informed decisions on appropriate management methods that mediate recreational users' impact on natural resources and on other visitor experiences, Forest Service and other Federal land managers need information on visitors' behavior in the area, their preferences for various types of social interaction, and their support for various management strategies. It is difficult for wilderness managers to obtain accurate information on these topics because information currently available is limited to only a few wilderness areas. Established baselines and monitoring trends for visitor characteristics, behavior, and preferences throughout the country are needed by Federal agencies managing wilderness, including the Forest Service and the USDI National Park Service, Bureau of Land Management, and Fish and Wildlife Service. The Forest Service has been using the previously approved collection of questions and sampling alternatives to establish baselines, monitor trends, and provide input to forest planning activities at several wildernesses managed by the agency.

Estimate of Burden: The response time is likely to vary from 3 to 5 minutes to respond to on-site surveys and from 15 to 20 minutes to complete mailback questionnaires.

Type of Respondents: Visitors to units of the National Wilderness Preservation System.

Estimated Number of Respondents: 1,000 per year for 3 years.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 410 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 15, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–31023 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement for Land Use Authorization for Lakewood Raw Water Pipeline; Roosevelt National Forest, Boulder County, CO

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is proposing to issue an easement to the City of Boulder Colorado to cross 5 miles of National Forest System lands with a replacement pipeline. The easement would allow the City to replace, maintain and operate Lakewood Pipeline. The pipeline is a raw water transmission line used to transport municipal water nine miles from Lakewood Reservoir to Betasso Water Treatment Plant. The City proposes to install the replacement pipeline in the vicinity of the 1906 pipeline, with some specific deviations to avoid potentially adverse impacts to environmentally sensitive areas. The proposal is for a 27- to 33-inch inside-diameter steel pipeline to be buried with a minimum of 4 feet of cover.

DATES: Comments concerning the scope of the analysis should be received in writing by January 20, 1996. The Draft Environmental Impact Statement will be published mid-February, 1996 for a 45-day comment period. The final Environmental Impact Statement will be issued at the end of June 1996.

RESPONSIBLE OFFICIAL: The Regional Forester, Region 2 Rocky Mountain Region, will be the responsible official and will decide whether to grant an easement for a pipeline on National Forest System lands and at what location.

FOR FURTHER INFORMATION CONTACT: Submit written comments, suggestions and questions to: Jean Thomas, Project Coordinator; Arapaho and Roosevelt National Forests; 240 West Prospect; Fort Collins Colorado 80526; 970–498–1267.

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SUPPLEMENTARY INFORMATION: The City of Boulder is proposing to maintain the historical water delivery function of the Lakewood Pipeline facility. Continued operation to serve this function will require reconstruction of the facility. The City's proposal consists of installing the replacement pipeline in the vicinity of the 1906 pipeline, with some specific deviations to avoid potentially adverse impacts to environmentally sensitive areas. The City will restore, to the extent reasonably possible, the contours and vegetation on National Forest System lands, estimated to be 18 acres, and the private lands, estimated to be 25 acres, along the Pipeline corridor. The City will require access to the pipeline for repair and maintenance.

The existing Lakewood Pipeline must be replaced because air entrainment, caused by the current pipeline, reduces the Betasso Water Treatment Plant's capability to remove drinking water contaminants. New stricter drinking water standards have been adopted by the EPA. The City will not meet the new standards based on water tests performed under current operating conditions. Also, the pipeline interior lining is deteriorating and collecting in the pipeline low points, restricting the flow in the pipeline. This has reduced the pipeline's capacity from the historical rate of 20 million gallons per day (mgd) to 14 mgd.

The Forest Service is considering analyzing five alternatives in the Lakewood Raw Water Pipeline Environmental Impact Statement. (1) A No Action Alternative, where the Forest Service would not authorize the use of National Forest System lands for the pipeline. The City would not be required to remove the existing pipeline because removal would create undesirable environmental impacts. (2) A Cleaning and Relining Alternative which entails refurbishing the existing pipeline, and reducing air entrainment to Betasso Water Treatment Plant through the use of vacuum deaeration equipment. (3) Sugarloaf Road or a Pump-Driven Replacement Pipeline alternative. The objective of the Sugarloaf Road Alternative is to confine pipeline construction to established road corridors, thereby avoiding the potential environmental effects from construction disturbance along the existing pipeline and North Boulder Creek, but would require pumping. (4) The Existing Pipeline Alignment is the City of Boulder's proposed action. This alternative closely follows the existing and 1906 Lakewood Pipeline alignment along North Boulder Creek. (5) Peewink Alignment—Gravity-Fed Replacment Pipeline. This alternative seeks to address concerns regarding impacts to the North Boulder Creek riparian zone and to reduce pumping and traffic concerns associated with the Sugarloaf Road alternative.

Lakewood Pipeline reconstruction has been considered since 1988. Over the years both the City of Boulder and the Forest Service have asked the public to express their concerns and issues. The primary concerns are about impacts of reconstruction to aquatic and riparian ecosystems in North Boulder Creek if the pipeline follows the historical right-of-way, or concerns for personal safety and convenience if Sugarloaf Road is closed for periods of time for construction along the road. The environmental analysis will also address impacts to air, soils, forested and nonforested terrestrial ecosystems, recreation and visual resources, cultural resources and private properties and residents.

The Arapaho and Roosevelt National Forests and Pawnee National Grassland intend to publish the Draft Environmental Impact Statement for public comment in mid-February, 1996. The Comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. versus NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon versus Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. versus Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participated by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act as 40 CFR 1503.3 in addressing these points.

The Arapaho and Roosevelt National Forests and Pawnee National Grassland intend to issue the final Environmental Impact Statement the end of June 1996.

Dated: December 13, 1995.

M.M. Underwood, Jr.,

Forest Supervisor.

[FR Doc. 95–31070 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Hickory Creek Watershed, Newton County, Missouri; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hickory Creek Watershed, Newton County, Missouri.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center Suite 250, 601 Business Loop 70 West, Columbia, Missouri, 65203, (314) 876–0901.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood prevention, flood damage reduction, fish and wildlife habitat development, and recreational development. The planned works of improvement include construction of 11 single-purpose floodwater retarding dams, acquisition of 40 flood plain properties, demolition or relocation of buildings from the acquisition area, and construction of recreational facilities in the stream corridor and flood plain.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Michael D. Wells, Assistant State Conservationist (WR).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

State Conservationist.

[FR Doc. 95–31112 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–16–M

Aua Watershed, Ma'oputasi County, American Samoa

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Joan B. Perry, responsible Federal Official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the Territory of American Samoa, is hereby providing notification that a record of decision to proceed with the installation of the Aua Watershed project is available. Single copies of this record of decision may be obtained from Joan B. Perry at the address below.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Pacific Basin Area, Natural Resources Conservation Service, Suite 301, FHB Building, 400 Route 8, Maite, Guam 96927, telephone 671–472–7490.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: December 6, 1995.

Joan B. Perry,

Director, Pacific Basin Area.

[FR Doc. 95–31066 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 9–10, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 9, 1996

9:00 am–10:30 am Briefing on Rulemaking (Closed Session)
10:45 am–12:00 Noon Planning and Budget Committee
1:30 pm–3:15 pm Vision Statement Work Group
3:30 pm–5:00 pm Technical Programs Committee

Wednesday, January 10, 1996

9:00 am–12:00 Noon Ad Hoc Committee on Bylaws and Statutory Review
1:30 pm–3:30 pm Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 12 and September 14 Board Meetings.
- Executive Director's Report.
- Vision Statement Work Group Report.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Fiscal Year 1996 Spending Plan.
- Fiscal Year 1997 Budget Request.
- Fiscal Years 1994 and 1995 Research Projects Status.
- Fiscal Year 1996 Research Projects.
- Extension of Detectable Warnings Suspension.
- Election of Officers.

All meeting are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–31107 Filed 12–20–95; 8:45 am]

BILLING CODE 8150–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Thursday, January 11, 1996, at the Pavilion Office Building, 4th Floor Conference Room, 109 State Street, Montpelier, Vermont 05609. The purpose of the meeting is to plan a project for fiscal year 1996.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Samuel B. Hand, 802–656–3180, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31062 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the

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Maryland Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Thursday, January 25, 1996, at the Omni Hotel, 101 W. Fayette Street, Baltimore, Maryland 21201. The purpose of the meeting is to choose a project topic and plan a project for fiscal year 1996.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Chester L. Wickwire, 410–825–8949, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 14, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31071 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:30 p.m. on Friday, January 26, 1996, at the La Mansion Del Rio Hotel, San Magusl Room, 112 College Street, San Antonio, Texas 78205. The purpose of the meeting is to plan for future projects and hear presentations on civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214–653–6779, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31061 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations of:

(1) Residual New York City Weather Service Office (WSO) into the future New York City and Philadelphia Weather Forecast Offices (WFO);

(2) Providence WSO into the future Boston WFO;

(3) Worcester WSO into the future Boston WFO;

(4) residual Kansas City WSO into the future Kansas City/Pleasant Hill WFO;

(5) Detroit WSO into the future Detroit WFO;

(6) Concordia WSO into the future Topeka, Wichita, and Hastings WFOs;

(7) West Palm Beach WSO into the future Miami and Melbourne WFOs;

(8) Daytona Beach WSO into the future Melbournes and Jacksonville WFOs;

(9) Waco WSO into the future Dallas/Fort Worth and Houston/Galveston WFOs;

(10) Beaumont/Port Arthur WSO into the future Lake Charles and Shreveport WFOs;

(11) Knoxville WSO into the future Knoxville and Nashville WFOs;

(12) Havre WSO into the future Great Falls and Missoula WFOs; and

(13) Helena WSO into the future Great Falls WFO.

In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by February 20, 1996.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) the residual New York City Weather Service Office (WSO) with the future New York City and Philadelphia Weather Forecast Offices (WFOs);

(2) the Providence WSO with the future Boston WFO;

(3) the Worcester WSO with the future Boston WFO;

(4) the residual Kansas City WSO with the future Kansas City/Pleasant Hill WFO;

(5) the Detroit WSO with the future Detroit WFO;

(6) the Concordia WSO with the future Topeka, Wichita, and Hastings WFOs;

(7) the West Palm Beach WSO with the future Miami and Melbourne WFOs;

(8) the Daytona Beach WSO with the future Melbourne and Jacksonville WFOs;

(9) the Waco WSO with the future Dallas/Fort Worth and Houston/Galveston WFOs;

(10) the Beaumont/Port Arthur WSO with the future Lake Charles and Shreveport WFOs;

(11) the Knoxville WSO with the future Knoxville and Nashville WFOs;

(12) the Havre WSO with the future Great Falls and Missoula WFOs; and

(13) the Helena WSO with the future Great Falls WFO. In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) a draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) a comparison of the services provided within the service area and the services to be provided after such action;

(4) a description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) an identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) evidence, based upon operational demonstration of modernization NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s) User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) a letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At its December 14, 1995 meeting the Committee concluded that the information presented did not reveal any potential degradation of service and decided not to issue a report.

Documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Attached to this Notice are draft memoranda by the respective meteorologists-in-charge recommending the certifications.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: December 15, 1995.

Louis J. Boezi,

Deputy Assistant Administrator for Modernization.

U.S. Department of Commerce

National Oceanic and Atmospheric Administration

National Weather Service

175 Brookhaven Avenue, Building NWS–1, Upton, NY 11973

Memorandum For: W/ER—John T. Forsing

From:

Michael E. Wyllie, AM/MIC NWSFO New York City

Chet Henricksen, AM/MIC NWSFO Philadelphia, PA

Peter Ahnert, MIC NWSO Binghamton, NY

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Residual New York City Weather Service Office (RWSO) with the future New York City and Philadelphia Weather Forecast Offices (WFO) will not result in any degradation in weather services to the New York City service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the New York City service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future New York City and Philadelphia WFOs will not degrade these services.

2. A detailed list of the services currently provided within the New York City service area from the Residual New York City WSO location and a list of services to be provided from the future New York City and Philadelphia WFO locations after the proposed consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the RWSO New York City Area of Responsibility (i.e. "Affected Service Area") and the future WFO New York City Area of Responsibility. AD discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the RWSO New York City service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for New York and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the New York City service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Reports from New York City, Philadelphia and Binghamton, attachment E validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect. Note: Binghamton, NY is used as a backup but no Residual New York City services were transferred to Binghamton.

B. The User Confirmation of Services from New York City, Philadelphia and Binghamton, attachment F, document that three negative comments were received from New York City, Philadelphia and Binghamton related to the RWSO New York City service area. All negative comments have been answered to the satisfaction of the users as reflected in the reports.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing New York City WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the New York City service area is included at attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

John T. Forsing

Date

Attachments

October 3, 1995.

Memorandum For: W/ER—John T. Forsing

From: Robert M. Thompson, NWSFO Boston AM/MIC

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Providence Weather Service Office (WSO) with the future Boston Weather Forecast Office (WFO) located in Taunton, MA, will not result in any degradation in weather services to the Providence service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and

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application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Providence service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Boston WFO will not degrade these services.

2. A detailed list of the services currently provided within the Providence service area from the Providence WSO location and a list of services to be provided from the Boston WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Providence Area of Responsibility (i.e. "Affected Service Area") and the future WFO Boston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Providence service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Rhode Island is included as attachment D. NWS operational radar coverage for the Providence service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that several responses required explanation. This included two negative comments. Two other responses expressed concern over the new radar. Telephone calls were placed to the four responders and their comments and concerns were addressed. All four responsers are now satisfied with our service, as stated in the Confirmation of Services Report.

C. The Providence Weather Service Office does not have a network or local warning radar.

6. A memorandum assigning the liaison officer for the Providence service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

John T. Forsing

Date

Attachments

October 3, 1995.

Memorandum for: W/ER—John T. Forsing
From: Robert M. Thompson, NWSTFO Boston AM/MIC
Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Worcester Weather Service Office (WSO) with the future Boston Weather Forecast Office (WFO) located in Taunton, MA, will not result in any degradation in weather services to the Worcester service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Worcester service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the NWSFO Boston will not degrade these services.

2. A detailed list of the services currently provided within the Worcester service area from the Worcester WSO location and a list of services to be provided from the NWSFO Boston location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Worcester Area of Responsibility (i.e. "Affected Service Area") and the future WFO Boston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Worcester service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for southern New England including central and west central Massachusetts is included as attachment D. NWS operational radar coverage for the Worcester service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that several responses required explanation. This included two negative comments. Two other responses expressed concern over the new radar. Telephone calls were placed to the four responders and their comments and concerns were addressed. All four responsers are now satisfied without service, as stated in the Confirmation of Services Report.

C. The Decommissioning Readiness Report, attachment G, verified that the existing Worcester local warning WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Worcester service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

John T. Forsing

Date

Attachments

1803 North 7 Highway, Pleasant Hill, MO 64080

October 27, 1995.

Memorandum for: Richard P. Augulis, Director, Central Region
From: Lynn P. Maximuk, MIC NWSO Kansas City/Pleasant Hill
Subject: Recommendation for Consolidation Certification

In December 1993 a change of operations occurred when most personnel and most services provided by the WSO at Kansas City International Airport were transferred to the future WFO site in Pleasant Hill, Missouri. At that time a Residual Weather Service Office (RWSO) was left at the airport site to continue the surface and radar observational programs. Since that time the Kansas City International Airport ASOS has been commissioned, and the WSR–57 radar has been decommissioned.

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Kansas City Residual Weather Service Office (RWSO) with the future Kansas City/Pleasant Hill Weather Forecast Office (FWO) in Pleasant Hill, Missouri will not result in any degradation in weather services to the Kansas City service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Kansas City service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Kansas City/Pleasant Hill WFO will not degrade these services.

2. A detailed list of the services currently provided from the Kansas City RWSO location and a list of comparable services to be provided from the future Kansas City/Pleasant Hill WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the pre-modernized WSO Kansas City area of responsibility (i.e., "affected service area") and the future WFO Kansas City/Pleasant Hill area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Kansas City service area is included as attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Kansas and Missouri is included as attachment D. NWS operational radar coverage for the Kansas City service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national workarounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that all comments have been answered to the satisfaction of the commentors as stated in the service Conformation Report. Three of the commentors had concerns about the automated coded radar observation product (ROB). They were specifically concerned about the lack of movement speed and direction, and the inclusion of AP in the reports. We have discussed these problems with those people and they are satisfied that the NWS is working toward a solution. These three users have stated that those limitations do not diminish the capabilities of the WSR–88D from providing superior radar information through their video feeds. An emergency management agency responded negatively due to the cost of obtaining a NIDS drop. They have since completed negotiations with a NIDS vendor to receive the WSR–88D data. Four other respondents had negative responses but followed with comments not directly related to the WSR–88D. Those comments dealt with inadequate NWR coverage and other NWS products or services.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Kansas City WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Kansas City service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

Richard P. Augulis

Date

U.S. DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL WEATHER SERVICE

9200 White Lake Rd White Lake, MI 48386

October 25, 1995.

Memorandum for: Richard P. Augulis, Director, Central Region
From: Dean P. Gulezian, MIC, WSFO DTX
Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Detroit Weather Service Offices (WSO) with the future Detroit Weather Forecast Office (WFO) in White Lake, Michigan will not result in any degradation in weather services to the Detroit service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Detroit service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from future Detroit WFO will not degrade these services.

2. A detailed list of the services traditionally provided within the Detroit service area from the Detroit WSO location and a list of services to be provided from the future Detroit WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Detroit area of responsibility (i.e. "affected service area") and the future WFO Detroit area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Detroit service area is

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included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Michigan is included as attachment D. NWS operational radar coverage for the Detroit service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that three negative comments were received. All comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Detroit WSR–74S radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Detroit service area is included at attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

Richard P. Augulis

Date

Memorandum for: Richard P. Augulis, Director, Central Region.

From:
Curtis S. Holderbach, MIC (AM) NWSFRO Topeka, KS
Richard H. Elder, MIC, NWSO Wichita, KS
Steven D. Schurr, MIC, NWSO Hastings, NE

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, we have determined in our professional judgment, consolidation of the Concordia Weather Service Office (WSO) with the future Topeka, Wichita, and Hastings Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Concordia service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Concordia service area is included as attachment A. As discussed below, we find that providing the services which address these characteristics and concerns from the future Topeka, Wichita, and Hastings WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Concordia service area from the Concordia WSO location and a list of services to be provided from the future Topeka, Wichita, and Hastings WFO locations after the proposed consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Concordia Area of Responsibility (i.e., "Affected Service Area") and the future Topeka, Wichita and Hastings WFOs' Areas of Responsibility. As discussed below, we find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWF) operations which will enhance services in the WSO Concordia service area is included as attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Kansas and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the Concordia service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Reports from Topeka, Wichita, and Hastings, attachment E validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services from Topeka, Wichita, and Hastings, attachment F, document that no negative comments were received from Topeka, seven negative comments were received from Wichita, and one negative comment from Hastings. All negative comments have been answered to the satisfaction of the commentors as reflected in the reports.

c. The Decommissioning Readiness Report, attachment G, verifies that the existing Concordia WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Concordia service area is included as attachment H.

We have considered recommendations of the Modernization Transition Committee (attachment I) and the _____, public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). We believe all negative comments have been addressed to the satisfaction of our customers and we continue to recommend this certification.

4Endorsement

I, Richard P. Augulis, Director, Central; Region, endorse this consolidation certification.

Richard P. Augulis

Date

Attachments

Weather Service Forecast Office

11691 S.W. 17 Street, Miami, FL 33165–2149

Memorandum for: Harry S. Hassel, Director, Southern Region

From:
Paul J. Hebert, AM/MIC, Miami, FL
Bart Hagemeyer, MIC, Melbourne, FL

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the West Palm Beach Weather Service Office (WSO) with the future Miami and Melbourne Weather Forecast Offices (WFOs) will not result in any degradation in weather services to the West Palm Beach service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the West Palm Beach service area is included as Attachment A. As discussed below, I find that providing the services which address these characteristics and concerns by the Miami and Melbourne WFOs will not degrade these services.

2. A detailed list of the services currently provided within the West Palm Beach service area from the West Palm Beach location and a list of services to be provided from the Miami and Melbourne WFO locations after consolidation is included in Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO West Palm Area of Responsibility (i.e., "Affected Service Area") and the future WFO Miami Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO West Palm Beach service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Florida is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Melbourne, Attachment E–1, and NWSFO Miami, Attachment E–2, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachments F–1 and F–2, document that only one negative comment was received for the Miami WSR–88D. The negative comment has been answered to the satisfaction of the commenter as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing West Palm Beach WSR–74S radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the West Palm Beach service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

Memorandum for: Harry S. Hassel, Director Southern Region

From: Bart Hagemeyer, MIC, NWSO Melbourne, FL; Steve Letro, MIC, NWSO Jacksonville, FL

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Daytona Beach Weather Service Office (WSO) with the future Melbourne and Jacksonville Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Daytona Beach service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Daytona Beach service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Melbourne and Jacksonville WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Daytona Beach service area from the Daytona Beach WSO location and a list of services to be provided from the Melbourne and Jacksonville WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Daytona Beach Area of Responsibility (i.e. Affected Service Area) and the future WFO Melbourne Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations that will enhance services in the WSO Daytona Beach service area are included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Florida is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports, attachment E, validate that the Melbourne and Jacksonville WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but two national work-arounds remain in effect.

B. The User Confirmation of Services reports, attachment F, document that no negative comments were received from the WSO Daytona Beach service area.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Daytona Beach WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Daytona Beach service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____.public comment(s) received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

Memorandum for: Harry S. Hassel, Director Southern Region

From:
Gifford Ely, MIC, NWSFO Dallas/Fort Worth, TX

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Bill Read, MIC, NWSO Houston/Galveston, TX

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Waco Weather Service Office (WSO) with the future Dallas/Fort Worth and Houston/Galveston Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Waco service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Waco service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Dallas/Fort Worth and Houston/Galveston WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Waco service area from the Waco WSO location and a list of services to be provided from the future Dallas/Fort Worth and Houston/Galveston WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Waco Area of Responsibility (i.e. "Affected Service Area") and the future WFO Dallas/Fort Worth Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Waco service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. The combination NWS and DOD operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSFO Dallas/Fort Worth and NWSFO Houston/Galveston, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services for Dallas/Fort Worth and Houston/Galveston, attachment F, document that one negative comment was received from both the Dallas/Fort Worth and Houston/Galveston Radar Service Confirmations related to the WSO Waco Service Area. These negative comments have been answered to the satisfaction of the commentors as stated in the two attached Radar Service Confirmation Reports.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Waco WSR–74 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Waco service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the (_____) public comments received during the comment period (attachment J). On (_____), the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

Memorandum for: Harry S. Hassel, Director, Southern Region

From:

David C. McIntosh, MIC, NWSO Lake Charles, LA

Lee Harrison, MIC, NWSO Shreveport, LA

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Beaumont/Port Arthur Weather Service Office (WSO) with the future Lake Charles and Shreveport Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Beaumont/Port Arthur service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Beaumont/Port Arthur service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from future WFOs Lake Charles and Shreveport will not degrade these services.

2. A detailed list of the services currently provided within the Beaumont/Port Arthur service area from WSO Beaumont/Port Arthur and a list of services to be provided from the future WFO Lake Charles and Shreveport locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Beaumont/Port Arthur Area of Responsibility (i.e. "Affected Service Area") and the future WFO Lake Charles Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Beaumont/Port Arthur service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernization NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Lake Charles and Shreveport, attachment E, validate that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment, along with trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services for NWSO Lake Charles and Shreveport, attachment F, documents that two negative comments were received from NWSO Lake Charles. However, neither of the negative comments came from the Beaumont/Port Arthur service area. The negative comments were addressed and answered to the satisfaction of the users as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, has already been approved and the WSR–57 radar has been decommissioned.

6. A memorandum assigning the liaison officer for the Beaumont/Port Arthur service area is included as attachment H.

I have maintained a close association with the emergency management community in southeast Texas and they have all expressed appreciation for the improved warning services they have received.

I have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I have tried to answer all negative comments and responses to the satisfaction of our customers and, based upon their later actions and comments, I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

Memorandum for:

Harry S. Hassel, Director, Southern Region, NWS

From:

Jerry O. McDuffie, MIC, NWSO Knoxville/Tri-Cities, TN

Derrel R. Martin, MIC, NWSO Nashville, TN

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Knoxville Weather Service Office (WSO) with the future Knoxville/Tri-Cities and Nashville Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Knoxville area. This proposed certification is in accordance with the advanced notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Knoxville service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Knoxville/Tri-Cities and Nashville WFOs will not degrade these services.

2. A detailed list of the service currently provided within the Knoxville service area from the WSO Knoxville location and a list of services to be provided from the future Knoxville/Tri-Cities and Nashville WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. The enclosed map shows the WSO Knoxville service area and the future WFO Knoxville/Tri-Cities service area. As discussed below, I submit that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the modernization of National Weather Service (NWS) operations which will enhance services in the WSO Knoxville service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned WSR–88D radar coverage at an elevation of 10,000 feet for east Tennessee is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Knoxville/Tri-Cities and NWSO Nashville, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment, along with trained operations and maintenance personnel are available on site. Training was completed; but, two national work-arounds remain in effect.

B. The User Confirmation of Services for Knoxville/Tri-Cities and Nashville, attachment F, document that only one (1) negative comment was received. Followup with Monroe County indicates the main concern was NOAA Weather Radio coverage from the Chattanooga transmitter in regard to warnings, not really the WSR–88D. The County Director of EMA stated on October 17, 1995, after several months of evaluation, that the radar coverage and service to Monroe County is very good. Several positive comments were given.

6. A memorandum assigning the liaison officer for the Knoxville service area is included as attachment G.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment H) and the _____ public comments received during the comment period (attachment I). On _____, the Committee voted to endorse the proposed consolidation (attachment J). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certifications.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Harry S. Hassel

Date

Attachments

Memorandum for: Thomas D. Potter, Director, Western Region

From: Kenneth Mielke, AM/MIC, NWSFO Great Falls, MT

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Havre Weather Service Office (WSO) with the future Great Falls Weather Forescast Office (WFO) will not result in any degradation in weather services to the Havre service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Harve service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Great Falls WFO will not degrade these services.

2. A detailed list of the services currently provided within the Havre service area from the Havre WSO location and a list of services to be provided from the future Great Falls WFO after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Havre Area of Responsibility (i.e. "Affected Service Area"), and the future WFO Great Falls Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Havre service area is

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included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Montana is included as attachment D. NWS operational radar coverage for the Havre service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but, two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that three negative comments were received, but none impacted the WSO Havre service area. These negative comments were answered to the satisfaction of the commentors, as stated in the service Confirmation Report.

6. A memorandum assigning the liaison officer for the Havre service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments recieved during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Thomas D. Potter

Date

Attachments

Memorandum for: Thomas D. Potter, Director, Western Region

From:

Kenneth Mielke, AM/MIC, NWSFO Great Falls, MT

Brenda Brock, MIC, NWSO Missoula, MT

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Helena Weather Service Office (WSO) with the future Great Falls Weather Forecast Office (WFO) and the Missoula Weather Forecast Office will not result in any degradation in weather services to the Helena service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application for the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Helena service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Great Falls and Missoula WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Helena service area from the Helena WSO location and a list of services to be provided from the future Great Falls and Missoula WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Helena Area of Responsibility (i.e. "Affected Service Area") and the future WFO Great Falls Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Helena service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Montana is included as attachment D. NWS operational radar coverage for the Helena service area will be increased.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Reports for Great Falls and Missoula, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but, two national work-arounds remain in effect.

B. The User Confirmation of Services for NWSFO Great Falls and NWSO Missoula, attachment F, document that only three negative comments were received from Great Falls. All three of the negative comments have been answered to the satisfaction of the commentors, as stated in the service Confirmation Report. Two negative comments were received from Missoula and both were answered to the satisfaction of the commentors.

6. A memorandum assigning the liaison officer for the Helena service area is included as attachment H.

I have considered recommendations of the Modernation Transition Committee (Committee) (attachment I) and the _____ public comments received during the comments period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Thomas D. Potter

Date

Attachments

[FR Doc. 95–30987 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the State of Qatar agreed to extend their Bilateral Textile Agreement, effected by exchange of notes dated February 11, 1995 and May 30, 1995, for two consecutive one-year periods, beginning on January 1, 1996 and extending through December 31, 1997.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1996 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated February 11, 1995 and May 30, 1995, as amended and extended, between the Governments of the United States and the State of Qatar; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	385,170 dozen.
341/641	168,540 dozen.
347/348	415,732 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the State of Qatar.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31028 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limits for Categories 331/631, 334/634, 335/835, 336/636/836, 338/339, 340/640, 341/641, 341 (sublimit), 347/348/847, 351/651, 352/652, 635 and 840 have been reduced for special carryforward applied to the 1995 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka exported during the period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit
237	275,884 dozen.
314	4,118,559 square meters.
331/631	2,503,111 dozen pairs.
333/633	51,932 dozen.
334/634	523,224 dozen.
335/835	242,735 dozen.

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Category	Twelve-month limit
338/636/836	288,416 dozen.
338/339	1,160,240 dozen.
340/640	1,018,301 dozen.
341/641	1,792,827 dozen of which not more than, 1,175,777 dozen shall be in Category 341 and not more than 1,234,099 dozen shall be in Category 641.
342/642/842	682,910 dozen.
345/845	163,910 dozen.
347/348/847	963,800 dozen.
350/650	113,599 dozen.
351/651	285,227 dozen.
352/652	1,237,589 dozen.
359–C/659–C [1]	1,250,003 kilograms.
360	1,372,853 numbers.
363	11,785,652 numbers.
369–D [2]	883,335 kilograms.
369–S [3]	736,110 kilograms.
434	7,163 dozen.
435	15,350 dozen.
440	10,233 dozen.
611	5,377,008 square meters.
635	323,648 dozen.
638/639/838	857,307 dozen.
644	486,855 numbers.
645/646	194,741 dozen.
647/648	1,044,135 dozen.
670–L [4]	7,950,000 kilograms.
840	277,281 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.40.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to the category limits for the periods June 23, 1995 through December 31, 1995 (Category 670–L) and January 1, 1995 through December 31, 1995 (remaining categories) shall be charged to those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31029 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be available at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
Group I	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	231,732,646 square meters equivalent.
Sublevels in Group I	
219	39,616,503 square meters.
218/225/317/326	71,092,259 square meters of which not more than 3,915,484 square meters shall be in Category 218(1) [1] (yard dyed fabric other than denim and jacquard).
611	6,246,076 square meters.
617	3,940,835 square meters.

Category	Twelve-month restraint limit
Group I Subgroup 200, 226/313, 314, 315, 369(1) and 604, as a group.	105,114,569 square meters equivalent.
Within Group I Subgroup	
200	341,558 kilograms.
226/313	71,063,499 square meters.
314	19,164,973 square meters.
315	9,475,228 square meters.
369(1) [2](shoptowels)	778,672 kilograms.
604	234,457 kilograms.
Group II 237, 239, 330–359, 431–459 and 630–659, as a group.	843,523,844 square meters equivalent.
Sublevels in Group II	
237	1,145,602 dozen.
239	5,251,589 kilograms.
331	4,165,089 dozen pairs.
333/334	294,115 dozen.
335	340,319 dozen.
338/339 [3] (shirts and blouses other than tank tops and tops, knit).	2,892,609 dozen.
338/339(1) [4] (tank tops and knit tops).	2,173,232 dozen.
340	2,769,978 dozen.
345	447,394 dozen.
347/348	6,711,062 dozen of which not more than 6,621,062 dozen shall be in Categories 347–W/348–W [5]; not more than 5,017,693 dozen shall be in Category 348–W.
352	6,738,277 dozen.
359(1) [6] (coveralls, overalls and jumpsuits).	599,433 kilograms.
359(2) [7] (vests)	1,249,341 kilograms.
433	10,241 dozen.
434	10,994 dozen.
435	76,149 dozen.
436	99,181 dozen.
438	814,560 dozen.
442	90,835 dozen.
443	62,577 numbers.
444	41,130 numbers.
445/446	1,346,359 dozen.
447/448	67,709 dozen.
631	635,826 dozen pairs.
633/634/635	1,319,253 dozen of which not more than 493,430 dozen shall be in Categories 633/634 and not more than 1,013,038 dozen shall be in Category 635.
638/639	4,856,092 dozen.
641	839,112 dozen.
644	43,126 numbers.
645/646	1,330,963 dozen.
647	528,923 dozen.
648	1,146,530 dozen of which not more than 1,131,740 dozen shall be in Category 648–W [8].
649	814,328 dozen.
650	168,400 dozen.
652	4,823,852 dozen.
659(1) [9] (coveralls, overalls and jumpsuits).	662,530 kilograms.
659(2) [10] (swimsuits)	268,913 kilograms.
443/444/643/644/843/844/844(1) (made-to-measure suits).	56,914 numbers.
Group II Subgroup 336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	153,947,658 square meters equivalent.
Within Group II Subgroup	
336	221,261 dozen.
341	2,803,856 dozen.
342	546,882 dozen.
350	136,354 dozen.
351	1,184,223 dozen.
636	297,779 dozen.
640	933,490 dozen.
642	236,806 dozen.
651	322,488 dozen.
Group III 831–844 and 847–859, as a group.	46,838,216 square meters equivalent.
Sublevels in Group III	
834	12,118 dozen.
835	111,840 dozen.
836	161,029 dozen.
840	664,341 dozen.
842	257,003 dozen.
847	356,774 dozen.
Limits not in a group	
845(1) [11] (sweaters made in Hong Kong).	1,126,525 dozen.
845(2) [12] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,696,471 dozen.
846(1) [13] (sweaters made in Hong Kong).	182,170 dozen.
846(2) [14] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	438,960 dozen.

[1] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[5] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[7] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[8] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[9] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[11] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[12] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[13] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[14] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

Imports charged to these category limits, except made-to-measure suits in Categories 443/444/643/644/843/844(1), for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative

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arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31030 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 18, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
300/301	3,436,220 kilograms.
313	12,999,037 square meters.
315	20,854,102 square meters.
340/640	1,356,534 dozen.
342/642	331,832 dozen.
359–C/659–C [2]	1,187,058 kilograms.
359–S/659–S [3]	1,026,046 kilograms.
360	853,748 numbers.
369–S [4]	810,029 kilograms.
433	10,698 dozen.
604–A [5]	312,623 kilograms.
618	1,123,311 square meters.
634/635	274,344 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–31031 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limits for Categories 333/334/335/833/834/835, 336/836, 338, 339, 340, 347/348/847, 351/851, 359–C/659–C, 359–V, 633/634/635, 638/639/838, 642/842 and 647/648 have been reduced for carryforward applied to the 1995 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wood, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	2,646,000 square meters.
225	9,261,000 square meters.
313	6,615,000 square meters.
314	1,102,500 square meters.
315	3,307,500 square meters.
317	6,615,000 square meters.
326	2,646,000 square meters.
333/334/335/833/834/835.	231,554 dozen of which not more than 129,162 dozen shall be in Categories 333/335/833/835.
336/836	54,883 dozen.
338	298,088 dozen.
339	1,248,586 dozen.
340	282,141 dozen.
341	192,699 dozen.
342	87,176 dozen.
345	53,306 dozen.
347/348/847	705,568 dozen.
350/850	58,117 dozen.
351/851	65,861 dozen.
359–C/659–C [1]	332,535 kilograms.
359–V [2]	109,767 kilograms.
611	2,646,000 square meters.
625/626/627/628/629	6,615,000 square meters.
633/634/635	490,334 dozen.
638/639/838	1,546,815 dozen.
640	114,963 dozen.
641/840	197,591 dozen.
642/842	108,711 dozen.
645/646	269,484 dozen.
647/648	513,377 dozen.
659–S [3]	116,236 kilograms.
Group II	
400–469, as a group	1,484,449 square meters equivalent.
Sublevel in Group II	
445/446	80,029 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.00.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.904, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31032 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–C

Request for Public Comments on Bilateral Textile Consultations with the Government of Nepal on Certain Man-Made Fiber Textile Products

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 28, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Nepal with respect to man-made fiber skirts in Category 642, produced or manufactured in Nepal.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Nepal, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 642, produced or manufactured in Nepal and exported during the twelve-month period which began on November 28, 1995 and extends through November 27, 1996, at a level of not less than 92,081 dozen.

A statement of serious damage concerning Category 642 follows this notice.

Anyone wishing to comment or provide data or information regarding

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the treatment of Category 642, or to comment on domestic production or availability of products included in Category 642, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Nepal.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 642. Should such a solution be reached in consultations with the Government of Nepal, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Nepal

Man-made Fiber Skirts—Category 642

November 1995

Import Situation and Conclusion

U.S. imports of manmade fiber skirts, Category 642, from Nepal reached 92,081 dozen for the year-ending August 1995, three times the 29,006 dozen imported during the same period a year earlier. Imports from Nepal during the year-ending August 1995 were 1.9 percent of total U.S. imports of Category 642 and were equivalent to 2.1 percent of U.S. domestic production of Category 642 for the year-ending June 1995.

U.S. imports of manmade fiber skirts from Nepal in Category 642 during the first eight months of 1995 entered the U.S. at an average landed duty-paid value of $49.59 per dozen, 67 percent below the average U.S. producers' price for manmade fiber skirts.

The sharp and substantial increase of low-valued Category 642 imports from Nepal is causing serious damage to the U.S. domestic industry producing manmade fiber skirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of manmade fiber skirts, Category 642, increased from 5,119,000 dozen in 1992 to 5,227,000 dozen in 1993, an increase of 2 percent. Domestic production of Category 642 fell to 4,610,000 dozen in 1994, 12 percent below the 1993 level and 10 percent below the 1992 level. Domestic production of Category 642 continued to decline in 1995, falling to 2,347,000 dozen in the first half of 1995, 7 percent below the January-June 1994 level. In contrast, imports of Category 642 increased from 3,819,000 dozen in 1992 to 4,177,000 dozen in 1994, a 9 percent increase. Category 642 imports continue to increase in 1995, reaching 3,657,467 dozen during January-August 1995, 28 percent above the January-August 1994 level.

The ratio of imports to domestic production increased from 75 percent in 1992 to 91 percent in 1994, and reached 113 percent in the first half of 1995. The share of the U.S. market for manmade fiber skirts held by domestic manufacturers fell from 60 percent in 1992 to 55 percent in 1994, and to 48 percent during January-June 1995.

[FR Doc. 95–31033 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of a Final Environmental Impact Statement for Kennecott Utah Copper Corporation's Proposed North Expansion Tailings Modernization Project in Salt Lake County, UT.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Sacramento District, Utah Field Office of the U.S. Army Corps of Engineers (Corps) has prepared a Final Environmental Impact Statement (FEIS) for the Kennecott Utah Copper Corporation (Kennecott) proposed North Expansion Tailings Modernization Project (Project) in Salt Lake County, Utah. The proposed Project provides tailings storage capacity required for the next 25 to 30 years of Kennecott's operation. The FEIS is available for public review at the Salt Lake City Library, Main Branch, 209 East 500 South and the Salt Lake County Library System, Magna Branch, 8339 West 3500 South. Copies for distribution are available from Mr. Michael A. Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Regulatory Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

DATES: A public hearing will be held at 6:00 pm on January 18, 1996 at the Olympus Hotel and Conference Center, Wasatch 2 Conference Room, 161 West 600 South, Salt Lake City, Utah.

The 30 day waiting period prior to the Record of Decision ends January 18, 1996.

ADDRESSES: To obtain a copy of the FEIS, contact Mr. Michael A Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Regulatory Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

FOR FURTHER INFORMATION CONTACT: Direct requests for a copy of the FEIS or questions to Mr. Michael A. Schwinn, Project Manager, (801) 295–8380.

SUPPLEMENTARY INFORMATION: Kennecott is proposing to expand its existing tailings impoundment by approximately 3500 acres. The proposed Project site is directly to the north and northwest of the existing tailings impoundment. Kennecott has identified two primary needs for the proposed Project. First, as the existing tailings impoundment is nearing its operational capacity, Kennecott requires approximately 1.9 billion tons of storage capacity to support mining and concentrating operations for the next 25 to 30 years. Since only approximately 0.3 to 0.4 billion tons of this material will be stored in the existing impoundment, additional capacity is required. The second need is for a seismic upgrade to the existing tailings impoundment. As more information has recently become available regarding the seismic nature of the Salt Lake Valley, Kennecott has identified a need to upgrade the existing facility. Accordingly, the proposed action includes various engineering measures to upgrade the existing facility in the event of a large earthquake.

The proposed Project would provide approximately 3500 acres of additional tailings storage area. Approximately 1.6 billion tons of tailings would be stored in the proposed impoundment with an ultimate height of approximately 250 feet. Site preparation activities would include relocation of the Union Pacific Railroad mainline tracks, relocation of the C–7 Ditch, relocation of utility lines, the construction of a new bridge on Highway 202 over the relocated railroad lines, and modification of the Interstate 80 on and off ramps at the intersection with Highway 202.

Since the proposed action affects jurisdictional waters of the United States, Kennecott submitted a Clean Water Act Section 404 Permit Application to the Corps on June 10, 1994. The Corps determined that an EIS was required prior to making a permit decision.

The Corps published a notice of intent to prepare a DEIS for the proposed action on August 19, 1994 in the **Federal Register**. A public scoping meeting was held on September 19, 1994 and the written comment period remained open until November 7, 1994. A Draft EIS was released on April 28, 1995 and the public comment period closed on June 27, 1995.

Twelve alternatives are identified and analyzed in accordance with the U.S. Environmental Protection Agency Section 404(b)(1) guidelines for their technical, logistic, and economic practicability in the FEIS. The North Expansion West, the North Expansion East, and the No Action alternatives are carried forward for complete analysis in the FEIS.

The FEIS has been prepared in compliance with the National Environmental Policy Act (NEPA), the Corps implementing procedures in 33 CFR 230, the Council for Environmental Quality regulations for implementing NEPA in 40 CFR 1500, and U.S. Environmental Protection Agency (EPA) 404(b)(1) guidelines in 40 CFR 230.

The FEIS was filed with the U.S. Environmental Protection Agency for publication of its availability.

Dated: December 12, 1995.

Jack V. Scherer,

LTC, EN, Deputy Commander.

[FR Doc. 95–31172 Filed 12–20–95; 8:45 am]

BILLING CODE 3710–GH–M

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities, Advisory Council for School-to-Work Opportunities; Notice of Open Meetings

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and act as advocates for implementing the School-to-Work framework on behalf of their stakeholders.

TIME AND PLACE: The Advisory Council for School-to-Work Opportunities will have an open meeting on Tuesday, January 9, 1996 from 1:00 p.m. to approximately 2:15 p.m. and on Thursday, January 11 from 1:00 p.m. to approximately 3:00 p.m. at the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001–1527. During the interim, Council members will work in small groups to develop and present strategic plans for the consideration of the whole Council.

AGENDA: The agenda for the meeting on Tuesday, January 9 from 1:00 p.m. –2:15 p.m. will include opening remarks, an overview of the role of the Advisory Council and introduction of participants. The agenda for the meeting on Thursday, January 11 from 1:00 p.m. – 3:00 p.m. will include reports from the various work groups, a conference summary and a discussion of future actions.

PUBLIC PARTICIPATION: The meetings on January 9 from 1:00–2:15 p.m. and on January 11 from 1:00 – 3:00 p.m. will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: JD Hoye, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW, Room 210, Washington, DC 202/401–6222, (This is not a toll free number.)

Signed at Washington, D.C., this 15th day of December 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Patricia W. McNeil,

Assistant Secretary of Education.

[FR Doc. 95–31095 Filed 12–20–95; 8:45 am]

BILLING CODE 4510–30–M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Participation" (ED Form E40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs for the 1996–97 award year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1996–97 award year to submit to the Secretary an "Application for Institutional Participation" and all documents required for an eligibility and certification determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1996–97 award year is July 1, 1996, through June 30, 1997.

DATE: Closing Date for Filing Application and Required Documents. To participate in the campus-based programs in the 1996–97 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Participation" on or before January 22, 1996. The application along with all documents required for an eligibility and certification determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: Applications and Required Documents Delivered by Mail. An institutional participation application and required documents delivered by mail must be addressed to the U.S. Department of Education, Office of Postsecondary Education, Institutional

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Participation Division, Room 3522, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5323.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use certified or at least first class mail. Institutions that submit institutional participation applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1996–97.

Applications and Required Documents Delivered by Hand. An institutional participation application and required documents delivered by hand must be taken to the U.S. Department of Education, Office of Postsecondary Education, Institutional Participation Division, Room 3522, ROB–3 (GSA Building), 7th and D Streets, S.W., Washington, D.C. 20407. We will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An institutional participation application for the 1996–97 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1996–97 to any currently ineligible institution unless the institution files its "Application for Institutional Participation" and other required documents by the closing date. If the institution submits its institutional participation application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1997–98 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP; or

(2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution but has been included in the institution's 1996–97 FISAP.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Participation," should not be confused with the FISAP form that institutions were required to submit electronically as of September 29, 1995, in order to be considered for funds under the campus-based programs for the 1996–97 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Program, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact: Karen W. Kershenstein, Acting Director, Institutional Participation Division, U.S. Department of Education, Room 3923, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5323. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Judy Norris, Acting Chief, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Room 4714, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5458. Telephone: (202) 708–9757. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program)

Dated: December 15, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–31024 Filed 12–20–95; 8:45 am]

BILLING CODE 4000–01–P

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by February 5, 1996 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes as reliable authorities as to the quality of education offered by institutions or programs within their scope accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than (Insert 45 days after date of publication in the **Federal Register**). Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet May 22–24, 1996 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the May 1996 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Polygraph Association (requested scope of recognition: the accreditation of private, postsecondary, non-degree-granting institutions that prepare students to become Polygraph examiners).

2. National Association of Nurse Practitioners in Reproductive Health (requested scope of recognition: the accreditation of women's health nurse practitioner education programs in reproductive health).

3. Pacific Association of Schools and Colleges (requested scope of recognition: the accreditation of smaller specialized degree-granting institutions of higher education that specialize in limited and identified areas of social sciences and humanities).

4. Respiratory Care Accreditation Board (requested scope of recognition: the accreditation of respiratory care education programs).

Petitions for Renewal of Recognition

1. Commission on Accreditation of Allied Health Education Programs (requested scope of recognition: As a coordinating agency for the accreditation of institutions and programs under the following allied health education committees:

a. Cytotechnology Programs Review Committee.

b. Joint Review Committee on Education in Diagnostic Medical Sonography.

c. Joint Review Committee on Education in Electroneurodiagnostic Technology.

d. Joint Review Committee on Educational Programs for the EMT-Paramedic

e. Accredition Committee for Perfusion Education (perfusionist)

f. Accredition Committee for Education for the Physician Assistant

g. Joint Review Committee for Respiratory Therapy Education

h. Accreditation Review Committee for the Surgical Technologist

The Commission is also requesting an expansion of scope of recognition to include the accredition of institutions and programs under the following allied health education committee:

i. Joint Review Committee on Education in Cardiovascular Technology.

2. Middle States Association of Colleges and Schools, Commission on Secondary Schools (requested scope of recognition: the accreditation and preaccreditation of public vocational and technical schools offering non-degree postsecondary education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands)

3. National Accrediting Agency for Clinical Laboratory Sciences (requested scope of recognition: the accreditation of programs for the histologic technician/technologist)

4. National League for Nursing, Inc. (requested scope of recognition: the accredition of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admission to the Bar
2. Accrediting Council for Continuing Education and Training
3. American Psychological Association, Committee on Education
4. Commission on Opticianry Accreditation
5. Distance Education and Training Council, Accrediting Commission
6. National Environmental Health Science and Protection Accreditation Council

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition—

1. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational Technical Education Institutions and Programs

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Montana Board of Nursing

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, S.W., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Dated: December 18, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–31073 Filed 12–20–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

DATES: Tuesday, January 16, 1996 from 8:00 a.m. until 6:00 p.m. Mountain Standard Time (MST) and Wednesday, January 17, 1996 from 8:00 a.m. until 5:00 p.m. MST. There will be a public comment availability session Tuesday, January 16, 1996 from 5:00 to 6:00 p.m. MST.

The Board will be participating in a public outreach program hosted by Boise State University and the University of Idaho Engineering Programs Tuesday afternoon.

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Main Meeting:
Boise Centre on the Grove, 850 Front Street, Boise, Idaho 83701
Outreach Program:
BSU Student Union Building, 1910 University Drive, Boise, Idaho 83701 (tentative location)

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Meeting Purpose: EM SSAB, INEL will be following up on a study of the Environmental Management Prioritization of FY 1996 funds, studying the environmental restoration scoping process, prioritizing its own activities for the remainder of FY 1996, and participating in an educational activity highlighting research and development capabilities of INEL.

Tentative Agenda

Tuesday, January 16, 1996

7:30 a.m.—*Sign-in and Registration*
8:00 a.m.—*Miscellaneous Business: Old Business*

- Jerry Bowman—Deputy Designated Federal Official Report.
- Joy Myers—Chair Report.

Member Reports

Standing Committee Reports

- Member Selection Committee—Dean Mahoney (chair), Gen Paroni, Chuck Rice.
- Budget Committee—Chuck Rice (chair), Larry Boam, Terry Perez.
- Public Communication Committee—Ben Collins (chair), Clarence Bellem, Chuck Broscious, Wayne Pierre (ex-officio).

9:00 a.m.—Environmental Management Budget Prioritization

Committee Members—Dieter Knecht (chair), Gen Paroni, Linda Milam, Terry Perez, and Jerry Bowman (ex-officio).

10:15 a.m.—Break
10:30 a.m.—*Environmental Management Budget Prioritization*
12:00 p.m.—*Discussion—EM SSAB INEL Prioritization Activity*
12:30 p.m.—Lunch
2:00 p.m.—*Public Outreach Program—INEL Research and Development*
5:00 p.m.—*Public Comment Availability*

Wednesday, January 17, 1996

7:30 a.m.—*Sign-In and Registration*
8:00 a.m.—*Miscellaneous Business*
8:30 a.m.—*EM SSAB INEL Prioritization Process*
10:30 a.m.—*Break*
10:45 a.m.—*Environmental Management Budget Prioritization*
12:00 p.m.—Lunch
1:00 p.m.—Environmental Restoration Scoping Discussion

Committee Members—Chuck Broscious and Brett Hayball (co-chairs), Chuck Rice, Terry Perez, Joel Hamilton, and ex-officios Jerry Bowman, DOE-ID, Wayne Pierre, EPA, and Bob Ferguson, INEL.

3:00 p.m.—Break
3:15 p.m.—*Environmental Restoration Scoping Discussion*
4:15 p.m.—*Meeting Evaluation*
5:00 p.m.—Adjourn

This agenda is subject to change as the Board meeting nears. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Marsha Hardy, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Comment Availability: The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, January 16, 1996 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on December 18, 1995.

Rachel M. Samuel,
Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–31102 Filed 12–20–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1625–000]

USGen Power Services, L.P.; Notice of Issuance of Order

December 15, 1995.

On August 24, 1995, as amended on October 17, 1995, USGen Power Services, L.P. (USGen) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, USGen requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by USGen. On December 13, 1995, the Commission issued an Order Accepting Market-Based Rates For Filing, Granting Waivers And Authorizations And Revising Policy Regarding Sales Of Power By Affiliated Power Marketers (Order), in the above-docketed proceeding.

The Commission's December 13, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by USGen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, USGen is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of USGen's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 12, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE, Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 95–31045 Filed 12–20–95; 8:45 am]
BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3788
Name: Global Maritime, Inc.
Address: 421 S. 9th Street, Suite 117, Lincoln, NE 68508
Date Revoked: November 28, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2142
Name: All Transport, Inc.
Address: 6510 N.W. 84th Ave., Miami, FL 33166
Date Revoked: December 6, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 1814
Name: Vijaya Maldonado dba General Cargo International Forwarders
Address: 12322 SW 10 Lane, Miami, FL 33184
Date Revoked: December 8, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–31041 Filed 12–20–95; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Banamex Accival, S.A. de C.V.; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects the notices (FR Doc. 94-467 and FR Doc. 95-28824) published on pages 1400 and 1401 of the issue for Monday, January 10, 1994, and on page 58361 of the issue for Monday, November 27, 1995.

Under the Federal Reserve Bank of San Francisco heading, the entry for Grupo Financiero Banamex Accival, S.A. de C.V., is revised to read as follows:

1. Grupo Financiero Banamex Accival, S.A., de C.V., Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico City, Mexico, and thereby indirectly acquire 100 percent of the voting shares of California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y. Applicant also proposes to engage in the following activities which the Board previously has determined by order to be closely related to banking: (1) acting as agent in the private placement of all types of securities; and (2) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors. Applicant has stated that it will conduct the proposed activities within the limitations and prudential guidelines established by the Board in its previous orders. *See Bank of Nova Scotia*, 76 Fed. Res. Bull. 545 (1990); *J.P. Morgan & Co., Incorporated*, 76 Fed. Res. Bull. 26 (1990); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989).

Comments on this application must be received by January 19, 1996.

Board of Governors of the Federal Reserve System, December 15, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–30992 Filed 12–20–95; 8:45 am]
BILLING CODE 6210–01–F

ABNA Holding, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-3034) published on page 64064 of the issue for Wednesday, December 13, 1995.

Under the Federal Reserve Bank of Dallas heading, the entry for Community Bankshares, Inc., is revised to read as follows:

1. ABNA Holdings, Inc., Denton, Texas; to become a bank holding company by acquiring 97.6 percent of the voting shares of American Bank, N.A., Dallas, Texas.

Comments on this application must be received by December 27, 1995.

Board of Governors of the Federal Reserve System, December 15, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–30991 Filed 12–20–95; 8:45 am]
BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

The Federal Register Online via GPO Access; Meeting and Demonstration for Federal Agencies

The United States Government Printing Office (GPO) will hold 2 days of demonstrations for Federal agencies interested in an overview and demonstration of the GPO's award-winning online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstrations will be held at the National Archives Building, 5th Floor Theater, 7th and Pennsylvania Avenue NW., Washington, DC, on Wednesday, January 10, 1996, and again on Wednesday, January 17, 1996. There are three sessions each day: from 8:30 a.m. to 10:00 a.m.; 11:00 a.m. to 12:30 p.m.; and 1:30 p.m. to 3:00 p.m. The National Archives Building is located at the Archives-Navy Memorial Metro stop on the Green and Yellow Lines. There is no charge to attend.

The online **Federal Register** service offers access to the **Federal Register** by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics are included in the PDF files and are also available as

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separate files in TIFF format. The **Federal Register** online via *GPO Access* is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Government Manual, Congressional Record, Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code; GAO Reports;* and a growing list of important Government documents on the same day of publication.

Seating is limited. Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov; by telephone on 202–512–1525; or by fax on 202–512–1262. Seating reservations for Federal agencies will be accepted for the January 10th sessions through Friday, January 5, 1996; and for the January 17th session through Friday, January 12th. From January 8–9 and from January 15–16, reservations will be accepted from the general public on a *space available basis* for the January 10th and January 17th sessions, respectively.

Michael F. DiMario
Public Printer
[FR Doc. 95–31042 Filed 12–20–95; 8:45 am]
BILLING CODE 1505–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Ruth Lupu, Ph.D., Georgetown University Medical Center: On December 6, 1995, based on an investigation conducted by Georgetown University Medical Center, ORI found that Ruth Lupu, Ph.D., committed scientific misconduct by submitting a false letter of collaboration in an unfunded application to the Public Health Service (PHS). Letters of collaboration are a significant factor in the evaluation of applications.

Dr. Lupu has entered into a Voluntary Exclusion Agreement with ORI in which she has accepted ORI's finding and has agreed to exclude herself voluntarily, for the period beginning December 6, 1995, and ending January 30, 1997, from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

In addition, Dr. Lupu has voluntarily agreed to accept the administrative sanctions imposed by Georgetown University Medical Center, which include requirements that:

(1) a letter of reprimand be issued and retained in her personnel file for two years; and
(2) her future grant applications, proposals, and other publications be subject to special monitoring and review for two years.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,
Director, Office of Research Integrity.
[FR Doc. 95–31048 Filed 12–20–95; 8:45 am]
BILLING CODE 4160–17–P

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Ms. Victoria Santa Cruz, University of Arizona: Based on an investigation conducted by the institution, ORI found that Ms. Victoria Santa Cruz, former Program Coordinator, College of Nursing, University of Arizona, engaged in scientific misconduct by fabricating interview data on a questionnaire intended for use in two studies funded by two Public Health Service (PHS) grants.

Ms. Santa Cruz did not contest the ORI findings or administrative actions, which require that, for a period of three years, any institution that proposes her participation in PHS-supported research must submit a supervisory plan designed to ensure the scientific integrity of her contribution. Ms. Santa Cruz is also prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years.

Because the studies involved are ongoing, no publications were affected by the fabricated data, and no clinical treatment has been based on the results of the studies.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,
Director, Office of Research Integrity.
[FR Doc. 95–31049 Filed 12–20–95; 8:45 am]
BILLING CODE 4160–17–M

Administration on Children and Families

Local Research Partnerships for Early Head Start Programs: Availability of Funds and Request for Applications

AGENCY: Head Start Bureau, Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Availability of funds and request for applications to conduct research in Early Head Start programs.

SUMMARY: The Head Start Bureau, Administration on Children, Youth and Families has recently awarded grants to provide comprehensive services to families with infants and toddlers. A cross-site evaluation of a subsample of the total 68 Early Head Start programs will be performed by Mathematica Policy Research Institute which was designated as the National Early Head Start Evaluation contractor. Additional site-specific research will be conducted by research partners who reside in or near the same subset of Early Head Start programs and will attempt to determine the interrelationships of child, family, program and community variables and program outcomes (local research). This announcement describes the requirements to be met by applicants seeking to conduct the local research.

DATES: The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone) February 20, 1996. Applications received after 5 p.m. will be classified as late.

ADDRESSES: Mail applications to: Early Head Start Local Research, Department of Health and Human Services, ACF/Division of Discretionary Grants, 6th floor, 370 L'Enfant Promenade, SW, Washington, DC 20447, Mail Stop 6c-462, Attn: Application for Early Head Start Local Research.

Hand Delivered, Courier or Overnight Delivery applications are accepted during the normal working hours of 8 a.m. to 5 p.m., Monday through Friday, on or prior to the established closing date at: Program Announcement: ACYF/HS, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center, Technical Assistance Team (1–800–351–2293), is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions.

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, please send a post card with or call in the following information: the name, address, and telephone and fax number of the contact person and the name of the organization four weeks prior to the submission deadline date to: Administration on Children, Youth and Families Operations Center, Ellsworth Associates, Inc., 3030 Clarendon Blvd., Suite 240, Arlington, VA 22201, (1–800–351–2293).

If you decide to submit after the notification date, you may still submit a proposal.

Part I. General Information

A. Table of Contents

This announcement is divided into four parts, plus appendices:

Part I provides information on the purpose of the local research effort and a discussion of issues particularly relevant to the local research under this announcement.

A. Table of Contents
B. Definitions
C. Purpose
D. Background
E. Local Research Studies

Part II contains key information such as eligible applicants, project periods, special conditions and other information.

A. Statutory Authority
B. Eligible Applicants
C. Special Conditions
D. Cooperative Agreements
E. Project Duration and Federal Share

Part III presents the criteria upon which the proposals will be reviewed and evaluated.

A. Criteria
B. Review Process

• Part IV contains information for preparing the fiscal year 1996 application.

A. Availability of Forms
B. Proposal limits
C. Check List for a Complete Application
D. Due Date
E. Paperwork Reduction Act of 1980
F. Required Notification of State Single Point of Contact

Appendix A contains a list of the Early Head Start grantees.

Appendix B–1 contains the Request for Proposal for contract to conduct the evaluation of Early Head Start as originally published and now funded.

Appendix B–2 contains the tentative measures proposed for the cross-site evaluation.

Appendix C includes the relevant forms necessary for completing the application.

B. Definitions

Research Partner: The initial university or non-profit organization designated in the Early Head Start grantee's proposal or a university or non-profit organization which formed a partnership with an Early Head Start grantee for the purpose of conducting the research under this announcement after the Early Head Start grant was awarded.

Cooperative Agreement: A cooperative agreement is a funding mechanism which allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships, and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and grantee staff are tentatively listed in Part II-D and will be agreed upon prior to the award of each cooperative agreement.

C. Purpose

The purpose of this announcement is to invite universities and non-profit organizations who agree to be the research partners of Early Head Start program grantees to submit proposals for competitive Cooperative Agreements to (1) conduct local research studies on issues related to Early Head Start which will enrich and expand the National Early Head Start Research and Evaluation Study and benefit the field, and (2) establish the foundation for a possible longitudinal study of the mediating and moderating influences on the developmental progress of Early Head Start and Head Start children and families.

D. Background

On March 17, 1995, ACF announced the availability of funds on a competitive basis for Early Head Start Programs. Sixty-eight applicants were successful and became Early Head Start grantees on the effective date of September 30, 1995. (Applicants should be familiar with this document in order to prepare a responsive proposal. Copies of this announcement are available from the Technical Assistance Team at (1–800 351–2293.) Along with the development of the program specifications for Early Head Start, ACYF designed a set of research and evaluation initiatives to establish the efficacy of the Early Head Start program and to contribute new knowledge to the field on factors which influence the developmental progress of low-income infant and toddlers and their families. The plan for the Early Head Start research and evaluation activities is based on the premise that the first set of Early Head Start programs are prototypes of the Early Head Start concept of state-of-the-art services for families with infants and toddlers. They will operate during a period which will almost assuredly see major social reforms and reconfigurations in services including welfare, health and child care. Therefore, the lessons learned and the models that will be developed will shape the direction of services for families with infants and toddlers well into the 21st century. The plan features (1) a dynamic and iterative formative evaluation process, designed to be used in subsequent Early Head Start programs, that will serve as the instrument for continuous program improvement; (2) an impact evaluation to determine whether and under what conditions program prototypes were effective, and (3) an integrated research base consisting of local research studies as well as the cross-site study for generating further hypotheses around a broad array of potential development and service issues and possibilities; and (4) an intended longitudinal study of both Early Head Start and Head Start.

On May 19, 1995, the first phase of the competitive award process for the conduct of the research and evaluation activities was initiated as a Request for Proposal for a national contractor to perform the cross-site evaluation of Early Head Start (Appendix B–1). The contract resulting from the competition for the national contractor was awarded to Mathematica Policy Research, Inc. This announcement is the second phase, in which cooperative agreements will be awarded on a competitive basis to the research partners of Early Head Start grantees to conduct local research studies.

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E. Local Research Studies

1. Local Research Under This Announcement

a. Role of Local Researchers

Under the total Early Head Start Research and Evaluation effort local researchers will have two significant roles:

(1) Under this announcement they will conduct research relevant to the issues addressed in section E.2.b. below; and (2) under a subcontract to the national contractor they will be responsible for the collection of data for the cross-site study. The local researchers will form a consortium with the other local researchers and the national contractor to insure that all the parts of this study form a cohesive whole. A Technical Review Panel will by appointed by ACYF to review all the research and evaluation efforts as a whole and provide additional input. (See Appendix B–1 for a more detailed description.) In order to ensure the minimum of intrusion for the Early Head Start programs and to ensure a cohesive study, no applicants will be considered for an award under this announcement unless they agree to serve as subcontractors to the national contractor.

b. Concepts

Local research studies are intended to supplement, complement and enrich the research that will be conducted in the cross-site study. (See Appendix B–1 The Statement of Work for the Cross-site Evaluation and Appendix B–2 for a list of the tentative measures proposed for the cross-site evaluation.) With full access to the cross-site data collected in their respective sites, local investigators will have an opportunity to explore mediating events or the theoretical pathways that explain the results that are obtained. In addition, local research provides an opportunity to identify outcomes, that because of data constraints, are not explored in the cross-site study or are specific to an individual site. It also expands the possibilities for multiple measures of the same construct. Another advantage of local research is the enhanced opportunity for the use of observational, ethnographic, case study and other qualitative approaches that inform our understanding of how the program functions and explain the particular outcomes that are achieved.

Four outcome domains and specific outcomes under each were preliminarily identified by the Advisory Committee on Services for Families with Infants and Toddlers for Early Head Start. Although no one program is expected to be equally successful across all outcomes, these outcomes were identified by the Committee as particularly important for continued child, family and program development.

Child: Health and physical development; social competency; secure attachments with parents and other caregivers; language and cognitive development; resiliency factors; benefits to siblings.

Family: Attitudes towards parenting; parent-child interaction; reduction in teenage pregnancy and positive birth outcomes; having a medical home; parenting, employability and progress towards self-sufficiency; training and education; housing; physical and mental health; substance abuse; home environment; safety; involvement in the Early Head Start program; knowledge of child development; child guidance beliefs and practices.

Community: Collaboration among agencies serving children and families; seamlessness in referrals and actual service provision; quality of services for children and families; increase in services for infants and toddlers; safety.

Staff: Staff-parent/child relationships; staff continuity; staff professional development; staff compensation; staff physical and mental health; staff qualifications; and staffing patterns.

The major question for the local studies is "What mediates and moderates positive child and family development within the context of the specific Early Head Start program and the local community?" Each of the local research studies may focus on variables within one of the four outcome domains listed above. Positive child and family development are the ultimate objectives of Early Head Start, and thus, must have a prominent focus. However, well-designed local research studies which focus on particular staff or community outcomes will be considered if their relationship to the well-being of children and families can be theoretically linked through the existing literature and investigated within the time frame of the five-year cooperative agreement. Investigators focusing on the same outcome domain may find additional opportunities for cooperative research. Depending on the questions for the local research, investigators may choose or not choose to incorporate the control group, which will be part of the cross-site evaluation, in the local research study.

Within the framework of the Early Head Start program design, each site represents a unique model based upon the needs, values, resources and cultural climate of its community. Therefore, within the array of possible outcomes, it is highly likely that each program will place different emphases among them and work toward additional objectives that are unique to the particular local site. It is therefore important for the local research studies to identify site-specific outcomes which are not explored in the cross-site study and to study intra-site differential impacts and the reasons for them. The local studies will enhance the cross-site analysis by the provision of additional explanatory material for inter-site differences and by the identification of additional effects of Early Head Start programs. The first data collection point for the child's developmental status, attachment, mother/child interaction and other child and family measures for the cross-site analysis will be around the time of the child's first birthday. (See Appendix B–2 for a list of tentative measures.) If applicants see a need for earlier data collection for their local research studies, they may propose such data collection using the same or other measures as part of the local research data collection and analyses.

c. Study Parameters

—Design

The program sites whose local research partners receive awards under this announcement will be sites in which both local research and the national cross-site evaluation are conducted. However, if less than 12 proposals receive an acceptable rating, additional sites may be selected to participate only in the national cross-site evaluation to ensure 12 sites for the cross-site effort. The sites with local researchers will become the potential sites to continue on with the follow-up longitudinal studies. For the cross-site evaluation, all 12 sites, whether they are additionally local research sites or not, will be required to participate in random assignment of those families who have applied to the Early Head Start program and in which there is a pregnant woman or a child under one year of age. Such families will be randomly assigned to either the program or control group under a system designed by the national contractor with participation from the local researchers. The Early Head Start program must agree to fully cooperate with the random assignment as a condition for the research partner to receive an award under this announcement.

As noted above, applicants are not required to utilize the control group in their local research designs unless the proposed research questions require such a design. However, since the cost of the data collection on a number of child and family measures for the program and control group will be covered by the national contractor, the applicant may wish to consider adding an additional sample, such as a random sample of the Early Head Start eligible population, or other types of scientifically sound samples. These samples could contribute valuable information to the Early Head Start research and evaluation effort and would considerably strengthen longitudinal follow-up efforts.

—Sample

In order to be considered for an Early Head Start research cooperative agreement, the applicants must be able to guarantee that their Early Head Start program partners have the ability to recruit a minimum of 150 families meeting the designated criteria for the random assignment pool. Specifically, the families to be recruited must include a child who is born between June 1, 1995 and June 30,1997 and must not have had a child enrolled in Head Start and PCC (Parent and Child Centers) within the last 12 months, or, in the case of CCDP (Comprehensive Child Development Program), the last five years. Neither may the families to be recruited have been enrolled in any other Federal, State or local program with similar comprehensive services for the last 12 months. Exceptions to these requirements will be considered on a site by site, or family basis after the research sites have been selected. (*Note:* Enrollment in other programs is defined as participating for a minimum of three months.) The families in the random assignment pool, as the term implies, will be randomly assigned to either the program or the control group. (A minimum of 75 in each.) Therefore the Early Head Start program must have the ability to enroll a minimum of 75 families who meet the research requirements during the research recruitment period of March 1, 1996 and June 1, 1998 (27 months). The families must be enrolled some time during the mother's pregnancy or before the child is one year of age. The Early Head Start programs will be continuously enrolling families during the course of their operation. Therefore, the research sample will be an additive sample rather than a cohort sample. However, no family will be recruited into the research sample if the child is born before June 1, 1995 or after June 30, 1997. If a research sample family leaves the program during the 27 month research recruitment period, replacement of families can only be made within the parameters stated above.

Although there is a 27 month recruitment and enrollment period for the research sample, sites may wish to use all or part of that period to recruit the requisite sample in accordance with what works best for their program. (For example, some programs may not be ready to recruit or enroll families by March and other programs may wish to enroll the majority of their research sample families as early as possible.) However, to ensure that the site will reach the requisite sample size, the earliest possible enrollment of the full research sample is encouraged. In addition, any site which anticipates that it can secure a sample of over 75 program families and 75 control families over the recruitment period that meet the research criteria, may enroll other families, in excess of the 75 families, which do not meet the research criteria. These additional families will not be included in the research sample. Programs are encouraged, however, to achieve the largest research sample possible, up to 125 families each for the program and comparison group. Larger samples would be a major advantage for any future longitudinal research.

2. Considerations for the Longitudinal Studies

Longitudinal studies beyond the five years of the Early Head Start research and evaluation effort are outside the scope of the present announcement. However, it is ACYF's intent to engage in such longitudinal studies, given availability of future funds and the feasibility of such efforts in five years time. It will be necessary to lay the groundwork for such studies from the beginning of the Early Head Start research and evaluation effort in order to ensure that early data necessary for the longer effort is collected.

Although the longitudinal studies are related to and embedded in the Early Head Start Research and Evaluation Study, they have a number of sufficiently unique considerations to warrant a separate discussion.

a. Eligibility—It is anticipated that universities and non-profit organizations which receive Early Head Start research grants under this announcement will be potential candidates for follow-on longitudinal research grants. The exact number of grants that will be awarded for the follow-on longitudinal studies will depend on the availability of funds and other criteria such as the size of the sample left at the site, the quality of the research conducted to date, and the level of program implementation.

b. Studies—The longitudinal follow-ons can be conceptualized as two studies which serve different purposes.

Longitudinal Studies of Early Head Start

Longitudinal studies of Early Head Start will address the contributions of earlier intervention to the child and family's later development.

Longitudinal Studies of Head Start

Since Early Head Start programs are required to establish formal linkages with local Head Start programs in order to provide for the continuity of services for children and families, the Early Head Start research sites provide a unique opportunity for the conduct of longitudinal studies of Head Start. Presently, there are no existing studies of Head Start where the early service patterns and experiences of children and families either enrolling in Head Start or serving as comparisons or controls are known to the extent that they will be known in Early Head Start. That data will be available, at least for part of the Head Start population, in the Early Head Start research sites by the time Longitudinal Studies of Head Start are underway. In addition, the studies can make progress in addressing the question of whom among the Head Start population Head Start serves.

Design and sampling issues for both studies will need careful consideration.

Part II Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

B. Eligible Applicants

Universities and other non-profit institutions which have been designated by the Early Head Start grantees listed in Appendix A as their research partner for the purposes of the impact evaluation.

A research partner may be the institution identified in the Early Head Start grantee's proposal or a new or additional research partner that the Early Head Start grantee has selected for the purposes of conducting the research under this announcement.

Note: Only one university or non-profit institution per each Early Head Start grantee may apply. An applicant must be certified by the Early Head Start grantee as the designated research partner. In addition, if a university or non-profit institution applies on behalf of one or more investigators as the research partner of an Early Head Start grantee, the university or non-profit institution may only apply as the partner of any other Early Head Start grantee if applying in behalf of different investigators.

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C. Additional Special Requirements

1. In order to be accepted for review, applications must contain a letter from the Program Director of the Early Head Start program certifying that the applicant is the designated research partner of that program.

2. The proposed local research study must not overlay additional interventions for children, families or staff which are designed by the local research partner for research purposes beyond the existing Early Head Start intervention designed by the program for that site. (For example, the local research may not investigate research hypotheses that would require the assignment of families enrolled in the program to treatment and control groups.

3. Applicants must agree to enter a subcontractual or other arrangement with the national contractor for the purposes of collecting the data for the cross-site study and for site-specific analysis of the cross-site data. *The subcontract with the national contractor will be in addition to the funds received under this announcement* and will primarily consist of providing input to the cross-site design; supervision of cross-site data collection at the local site; ensuring quality control; and site specific data analyses of the cross-site data.

4. Applicants must agree to work in a consortium with the other local researchers and the national contractor in order to produce an integrated set of studies.

5. Applicants must present their proposal to and receive approval from the Early Head Start program policy councils (or other appropriate policy group) prior to submission.

6. Successful applicants must form a local advisory committee consisting of staff and parents of the Early Head Start program, other community agencies and researchers with expertise in areas relevant to the local research.

7. Applicants' Early Head Start program partner must be able to recruit and enroll the required number and types of families as described in Part I, section E–1–c above.

8. The principal investigator and at least one other key research team member must attend a minimum of one two-day meeting of the local researchers in Washington, DC in addition to the two-day meetings with the national contractor and the Technical Review Panel. A third day will be provided at the national contractor meetings in order for the local researchers to meet on the issues and coordination of the local research projects. Successful applicants must also plan to attend Head Start's Third National Research Conference in Washington, DC June 20–23, 1996. The applicant will be responsible for all travel expenses related to these meetings. These travel expenses may be included in the applicant's budget.

9. Since the research will be conducted at the Early Head Start program site, applicants must use their off-campus research rates for indirect costs. If the applicant is a non-profit organization, the applicant is limited to an indirect cost rate of no more than 15 percent.

10. In submitting an application, the applicant understands that the data resulting from the local research is the property of the ACYF. Therefore, a copy of the raw data set with accompanying documentation must be submitted to the Government in a manner and frequency that will be specified in consultation with the consortium during the first year of the cooperative agreement. It is not the intention of the Government to inhibit or restrict presentations and publications of the results of the local research by the grantee beyond any publishing restrictions that will be agreed upon by the Consortium and ACYF.

12. The applicant must provide all required assurances and certifications including a Protection of Human Subject Assurance as specified in the policy described on the HHS Form 596 (attached in Appendix A).

D. Cooperative Agreements

ACYF is utilizing a cooperative agreement mechanism to support local research as a means of ensuring close cooperation and coordination between and among local researchers, Early Head Start programs and the National contractor. Together, these three entities form the research team. Although the three entities have equal status on the research team, each has an area of primary responsibility: (1) The Early Head Start program has primary responsibility for the design and implementation of program services and activities; (2) the National contractor has primary responsibility for the cross-site study; and (3) the local researcher has primary responsibility for the local research study. In applying for a cooperative agreement under this announcement, the applicant pledges close cooperation and coordination with the other research partners.

1. Responsibilities of the Grantee

The Grantee

- Conducts a local research study which enhances, enriches or expands the cross-site data and focuses on one of the four Early Head Start outcome domains.
- Designs and conducts the preliminary research for the Longitudinal Study of Early Head Start and the Longitudinal Study of Head Start.
- Participates as a member of the consortium of local researchers and the national contractor.
- Conducts local analyses and interpretations of the cross-site data.
- Agrees to enter a subcontract or other financial arrangement with the national contractor for purposes of collecting data for the cross-site study.
- Agrees to work as a member of the research team consisting of the Early Head Start program, the national contractor and the local researcher.

2. Responsibilities of the Federal Staff

Federal Staff

- Provide guidance in the development of the final study design.
- Participate as members of the national consortium or any policy, steering or other working groups established at the consortium level to facilitate accomplishment of the project goals.
- Facilitate communication among consortium members, Early Head Start grantees and the Federal staff.
- Provide logistical support to facilitate meetings of the local researchers.

E. Project Duration and Federal Share

1. Project Duration

Awards, on a competitive basis, are for a project period of five years. Continuation applications beyond the first 12 month budget period, but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress and a determination that continued funding is in the best interests of the Government.

2. Federal Share of Project Costs

Federal share of project costs shall not exceed $150,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $150,000 for the second and third 12-month budget period. The Federal share of the fourth and fifth budget period shall be negotiated prior to the fourth and/or fifth year of funding.

3. Matching Requirements

There is no matching requirement; however, applicants must apply their indirect cost rate for off-campus research or no more than 15 percent for non-profit research institutions.

4. Anticipated Number of Projects to be Funded

It is anticipated that 12 projects will be funded.

Part III Evaluation Criteria

The criteria presented below will be applied by the reviewers to the applicants submission in order to select the successful applicants. ACYF has prepared a document entitled "Helpful Tips for Preparing a Successful Research Grant Application." This document can be obtained from the Technical Assistance Team at (1–800–351–2293).

A. Criteria

1. Objectives and Significance 25 points

- The extent to which the objectives of the local research are important and relevant to the overall Early Head Start Research and Evaluation effort.
- The extent to which the local research study makes a significant contribution to the overall study and to the broader field.
- The extent to which the related literature review supports the study objectives, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. Approach 40 points

- The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which the planned approach allows for the identification and differentiation of site-specific outcomes.
- The extent to which the planned research includes quantitative and qualitative methods.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The adequacy of the anticipated research sample size for the requirements of the cross-site study and for the local research study.
- The extent to which the site in which the research will be conducted has a recruitment and enrollment strategy that meets the requirements set forth in the design section of the announcement.
- The extent to which planned site activities are sufficient preparation for potential longitudinal studies.
- The extent to which the applicant's proposals for resolution of the data collection issues as a result of the two types of data collection are realistic and feasible.
- The applicant has provided all required assurances.
- The reasonableness of the budget for the work proposed.

3. Staffing 35 points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the local research including infant/toddler and family development; the application of advanced statistical analysis for quantitative and qualitative data; and the use of quantitative and qualitative methods as demonstrated by the technical portions of the applications and the information contained in their vitae.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with program staff and parents.
- The extent to which the proposed staff reflect a multi-disciplinary team.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.
- The extent to which the staffing is sufficient for conducting the local research and the data collection and site analysis of the cross-site evaluation.

B. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions. In selecting successful applicants, consideration may be given to achieving an equitable distribution among geographic regions of the country and other considerations necessary to achieve, to the greatest extent possible, a research and evaluation sample that is representative of all Early Head Start programs.

Part IV Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix C. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs" (approved by the Office of Management and Budget under control number 0348–0340). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub.L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human

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Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0137) in Appendix C. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)-496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Proposal Limits

The proposal should be double-spaced and single-sided on 8½"×11" plain white paper, with 1" margins on all sides. Use only a standard size font such as 10 or 12 pitch throughout the announcement. All pages of the narrative (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification as page number one. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

The length of the narrative section, including appendices, should not exceed 60 pages. Anything over 60 pages will be removed and not considered by the reviewers. Applicants are encouraged to submit curriculum vita using "Biographical Sketch" forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.
—A complete application consists of the following items in this order:

(1) Application for Federal Assistance (SF 424, REV. 4–88);

(2) Budget information—Non-Construction Programs (SF424A&B REV.4–88);

(3) Budget justification, including subcontract agency budgets;

(4) Letter from the Director of the Early Head Start program certifying that the applicant is the designated research partner of the respective program;

(5) Application Narrative and Appendices (not to exceed 60 pages);

(6) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6c-462, Washington, DC 20447, Attention: Early Head Start Local Research. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 5 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accomodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails or when it is anticipated that many of the applications will caome from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved under OMB Control Numbers 0348–0043, 0348–0044, 0348–0046 and 0925–0137.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-one jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as an Appendix to this announcement.

Dated: December 14, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A—List of Early Head Start Grantees

Alaska

Rural CAP Child Development, Karen King, P.O. Box 200908, Anchorage, AK 99520–0908, Telephone: (907) 279–2511, Fax: (907) 279–6343, E-mail: None

Arizona

Southwest Human Development Ginger Ward, 202 E. Earll, Suite 140, Phoenix, AZ 85012, Telephone: (602) 266–5976, Fax: (602) 274–8952, E-mail: SWHD@PRIMENET.COM

Arkansas

Child Development Inc., JoAnn Williams, P.O. Box 2110, Russellville, AR 72811, Telephone: (501) 968–6493, Fax: (501) 968–7825, E-mail: ARHYNE@CSWNET.COM

California

The Children First, Manuel Castellanos Jr., Venice Family Clinic, 604 Rose Avenue, Venice, CA 90291, Telephone: (310) 314–7320 x670, Fax: (310) 314–7641, E-mail: None

Northcoast Children's Services (NCS), Siddiq Kilkenny, P.O. Box 1165, Arcata, CA 95521, Telephone: (707) 822–7206, Fax: (707) 822–7962, E-mail: None

Sacramento Employment Training Agency (SETA), Head Start, Catherine Goins, 3750 Rosin Court, Suite 100, Sacramento, CA 95834, Telephone: (916) 263–5342, Fax: (916) 263–3779, E-mail: None

Colorado

Clayton Mile High Family Futures Project, Mitzi Kennedy/Adele Phelan, 3801 Martin Luther King Jr. Blvd., Denver, CO 80205, Telephone: (303) 355–2008, Fax: (303) 331–0248, E-mail: None

Community Partnership for Child Development, Terry Schwartz, 2132 E. Bijou, Colorado Springs, CO 80909, Telephone: (719) 635–1536 x217, Fax: (719) 634–8086, E-mail: Later date

Family Star, Lereen Castellano/Alicia Sheridan, 1331 E. 33rd Avenue, Denver, CO 80205, Telephone: (303) 295–7711, Fax: (303) 295–0958, E-mail: None

District of Columbia

Edward C. Mazique Parent Child Center, Cynthia Faust, 1719–13th Street, NW, Washington, DC 20009, Telephone: (202) 462–3375, Fax: (202) 939–8696, E-mail: None

United Cerebral Palsy of Washington and Northern VA (UCP), Stanley L. Pryor, 3135 Eighth Street, NE, Washington, DC 20017, Telephone: (202) 269–1500, Fax: (202) 526–0519, E-mail: STAN177640@AOL

Florida

Alachua County School District, Donna Omer, School Board of Alachua County, 620 East University Avenue, Gainesville, FL 32601, Telephone: (904) 955–7605, Fax: (904) 955–6700, E-mail: None

Metro Dade Community Action Agency, Regina M. Grace, 395 NW. 1st Street, Miami, FL 33128, Telephone: (305) 347–4640, Fax: (305) 372–6745, E-mail: None

Georgia

Berry Chattooga Early Development Center, Nancy Daniel, 702 South Congress Street, Summerville, GA 30747, Telephone: (706) 857–1651, Fax: (706) 857–6610, E-mail: None

Clark Atlanta University Head Start, Linda Hassan, 350 Autumn Lane, SW., Atlanta, GA 30314, Telephone: (404) 696–9585 x104, Fax: (404) 696–9524, E-mail: None

Georgia Early Head Start Network, Donna Overcash, Save the Children Child Care Support Ctr., 1447 Peachtree Street, NE, Suite 700, Atlanta, GA 30309, Telephone: (404) 885–1578, Fax: (404) 874–7427, E-mail: ATLANTA@SAVECHILDREN.ORG

Illinois

City of Chicago, Dept. of Human Services, Frank McGehee, 510 North Peshtigo Court, 8th Floor, Chicago, IL 60611, Telephone: (312) 744–0251, Fax: (312) 744–7530, E-mail: None

The Ounce of Prevention Fund, Portia Kennel, 188 W. Randolph Street, #2200, Chicago, IL 60601, Telephone: (312) 853–6080, Fax: (312) 853–3337, E-mail: None

Wabash Area Development, Inc., Donna Emmons, 100 N. Latham, Enfield, IL 62835, Telephone: (618) 963–2387, Fax: (618) 963–2525, E-mail: None

Indiana

Healthy Beginnings, Hamilton Center, Anita Lascelles, 620 6th Avenue, Terre Haute, IN 47804, Telephone: (812) 231–8335, Fax: (812) 232–8228, E-mail: None

Iowa

Mid-Iowa Community Action, Susan Fessler, 1001 South 18th Street, Marshalltown, IA 50158, Telephone: (515) 752–7162, Fax: (515) 752–9724, E-mail: None

Upper Des Moines Opportunity, Inc., Mary Jo Madvig, P.O. 519, 101 Robbins Avenue, Graettinger, IA 51342–0519, Telephone: (712) 859–3885, Fax: (712) 859–3892, E-mail: None

Kansas

Head Start Parent & Child Center, Glenda Wilcox, 931 South St. Francis, Wichita, KS 67211, Telephone: (316) 267–8314, Fax: (316) 267–7185, E-mail: None

Project EAGLE of the University of Kansas Medical Center, Martha Staker, Gateway Centre Tower II, Suite 1001, 4th & State Avenue, Kansas City, KS 66101, Telephone: (913) 281–2648, Fax: (913) 281–2680, E-mail: None

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Salina USD #305, Korey Powell-Hensley, 700 Jupiter, Salina, KS 67401, Telephone: (913) 826–4868, Fax: (913) 826–4807, E-mail: None

Kentucky

Breckinridge-Grayson Programs, Inc., Cleo Lowery, P.O. Box 63, Leitchfield, KY 42755, Telephone: (502) 259–4054, Fax: (502) 259–4055 E-mail: None

Murray Head Start, Judy Whitten, 208 S. 13th Street, Murray, KY 42074, Telephone: (502) 753–6031, Fax: (502) 759–4906, E-mail: None

Maryland

The Family Services Agency, Inc., Mary C. Jackson, 640 E. Diamond Avenue, Suite A, Gaithersburg, MD 20877, Telephone: (301) 840–2000 x205, Fax: (301) 840–9621, E-mail: None

Friends of the Family, Inc., Linda R. Gaither, 1001 Eastern Avenue—2nd Floor, Baltimore, MD 21202–4364, Telephone: (410) 659–7701, Fax: (410) 783–0814, E-mail: None

Michigan

Region II Community Action Agency, Martha York, Center for Family, 817 W. High Street, Jackson, MI 49203, Telephone: (517) 784–2895, Fax: (517) 788–5998; 784–9236, E-mail: None

Mississippi

Friends of Children of Mississippi, Inc., Cathy Geston/Marvin Hogan, 4680 McWillie Drive, Jackson, MS 39206, Telephone: (601) 362–1541, Fax: (601) 362–1613, E-mail: None

Missouri

Human Development Corporation, Lois A. Harris, 929 North Spring Avenue, St. Louis, MO 63108, Telephone: (314) 652–5100 x285, Fax: (314) 652–0813, E-mail: None

KCMC Child Development Corporation, Shirley Stubbs-Gillette, 2104 East 18th, Kansas City, MO 64127, Telephone: (816) 474–3751 x603, Fax: (816) 474–1818, E-mail: None

Nebraska

Central Nebraska Community Services, Suzan Obermiller, P.O. Box 509, Loup City, NE 68853, Telephone: (308) 745–0780, Fax: (308) 745–0824, E-mail: None

New Hampshire

Community Action Program Belknap-Merrimack Counties, Inc., Rebecca Johnson, P.O. Box 1016, Concord, NH 03302–1016, Telephone: (603) 225–3295, Fax: (603) 228–1898, E-mail: None

New Jersey

Babyland Nursery, Inc., Mary Smith/Martin Schneider, 755 South Orange Avenue Newark, NJ 07106, Telephone: (201) 399–3400, Fax: (201) 399–2076, E-mail: None

NORWESCAP Head Start Administration, Linda Kane, 461 Memorial Parkway, Phillipsburg, NJ 08865, Telephone: (908) 454–8830, Fax: (908) 859–0729, E-mail: None

New York

The Astor Home for Children, Elizabeth Colkin, 50 Delafield Street, Poughkeepsie, NY 12601, Telephone: (914) 452–4167, Fax: (914) 452–0718, E-mail: None

Chautauqua Opportunities, Inc. Head Start, Grace Knaak, Municipal Bldg—5th Floor, 200 E. Third Street, Jamestown, NY 14701, Telephone: (716) 661–9430 Fax: (716) 661–9436 E-mail: GKNAAK@EPI

Educational Alliance, Marion Lazar, 197 East Broadway, New York, NY 10002, Telephone: (212) 475–6200 x6200, Fax: (212) 982–0932, E-mail: None

Parent & Child Center, Coleen A. Meehan, 175 Hudson Street, Syracuse, NY 13204, Telephone: (315) 470–3324, Fax: (315) 474–6863, E-mail: None

Project Chance Early Head Start, Bart O'Conner, 136 Lawrence Street, Brooklyn, NY 11201, Telephone: (718) 330–0845, Fax: (718) 330–0846, E-mail: None

North Carolina

Asheville City Schools Preschool and Family Literacy Center, Robbie H. Angell 441 Haywood Road, Asheville; NC 28806, Telephone: (704) 255–5423, Fax: (704) 251–4913, E-mail: None

North Dakota

Little Hoop Community College, Beverly Graywater, P.O. Box 89, Fort Totten, ND 58335, Telephone: (701) 766–4070, Fax: (701) 766–1357, E-mail: None

Ohio

Child Focus—Clermont County Head Start, Terrie Hare, 1088 Hospital Drive, Suite A, Batavia, OH 45103, Telephone: (513) 732–5432, Fax: (513) 732–5440, E-mail: None

Cincinnati-Hamilton County Community, Action Agency, Verline Dotson, 2904 Woodburn Avenue, Cincinnati, OH 45206, Telephone: (513) 569–1840, Fax: (513) 569–1251, E-mail: None

Oregon

Southern Oregon Child and Family Council, Inc., Blair Johnson, 505 Oak Street, P.O. Box 3819, Central Point, OR 97502, Telephone: (503) 664–4730; 857–9255, Fax: (503) 664–6620, E-mail: Pending

Pennsylvania

Family Foundations, Laurie Mulvey/Heather Fisher, 1811 Boulevard of the Allies, Pittsburgh, PA 15219, Telephone: (412) 281–3511 Fax: (412) 281–3254, E-mail: MULVEY@VMS.CIS.PITT.EDU

Philadelphia Parent Child Center, Inc., Jewel Morrissette-Ndulula, 2515 Germantown Avenue, Philadelphia, PA 19133, Telephone: (215) 229–1800, Fax: (215) 229–5860, E-mail: None

Puerto Rico

Aspira Inc. of Puerto Rico, Edme Ruiz Torres, Box 29132, 65th Infantry Station, Rio Piedras, PR 00929, Telephone: (809) 768–1968, Fax: (809) 257–2725, E-mail: None

New York Foundling Hospital, Zaida Fernandez, P.O. Box 191274, San Juan, PR 00919–1274, Telephone: (809) 753–9082; 753–1321; 753–9080, Fax: (809) 763–9209, E-mail: None

South Carolina

District #17 Schools, Anita E. Kieslich, P.O. Box 1180, Sumter, SC 29150, Telephone: (803) 778–6433, Fax: (803) 469–6006, E-mail: None

SHARE Greenville-Pickens Head Start, Rubye H. Jones, 652 Rutherford Road, Greenville, SC 29609, Telephone: (803) 233–4128, Fax: (803) 233–4019, E-mail: None

Tennessee

Chattanooga Human Services, Head Start/PCC, Donna Ginn, 2302 Ocoee Street, Chattanooga, TN 37406, Telephone: (423) 493–9750, Fax: (423) 493–9754, E-mail: None

Tennessee CAREs, Barbara Nye, Tennessee State University, 330 Tenth Avenue N., Box 141, Nashville, TN 37203, Telephone: (615) 963–7231, Fax: (615) 963–7214 E-mail: None

Texas

Avance San Antonio Inc., Rebecca C. Carvantez, 2300 W. Commerce, Suite 304, San Antonio, TX 78207, Telephone: (210) 220–1788, Fax: (210) 220–3795, E-mail: None

Head Start of Greater Dallas, Inc., Rob Massonneau, 1349 Empire Central, Suite 900, Dallas, TX 75247, Telephone: (214) 634–8704 x484, Fax: (214) 631–5417, E-mail: None

Parent/Child Incorporated, Blanche A. Russ-Glover, 1000 West Harriman Place, San Antonio, TX 78207–7900, Telephone: (210) 226–6232, Fax: (210) 228–0071, E-mail: None

Texas Migrant Council, Inc., John E. Gonzales, 5102 N. Bartlett Avenue, P.O. Box 2579, Laredo, TX 78041, Telephone: (210) 722–5174, Fax: (210) 726–1301, E-mail: None

Utah

Bear River Head Start, Glenna Markey, 75 South 400 West, Logan, UT 84321, Telephone: (801) 753–0951, Fax: (801) 753–1101, E-mail: None

Vermont

CVCAC Head Start, Marianne Miller, PO. Box 747, 36 Barre-Montepelier Road, Barre, VT 05641, Telephone: (802) 479–1053, Fax: (802) 479–5353, E-mail: None

Early Education Services, Judith Jerald, 218 Canal Street, Brattleboro, VT 05301, Telephone: (802) 254–3742, Fax: (802) 254–3750, E-mail: None

Washington

Families First, Peg Mazen, P.O. Box 1997, Auburn, WA 98071, Telephone: (206) 850–2582, Fax: (206) 850–0220, E-mail: None

Port Gamble S'Klallam Tribe, Jaclyn Haight, 31912 Little Boston Road, NE, Kingston, WA 98346, Telephone: (360) 297–6258, Fax: (360) 297–7097, E-mail: None

Spokane County Head Start/ECEAP, Washington State Community College #17, Patt Earley, 4410 North Market, Spokane, WA 99202, Telephone: (509) 533–8500, Fax: (509) 533–8599, E-mail: None

Washington State Migrant Council, Carlos Trevino, 312 Division, Grandview, WA 98930, Telephone: (509) 882–5800, Fax: (509) 882–1605,E-mail: None

West Virginia

Monongalia County Head Start, Marie Alsop/Cheryl Wienke,1433 Dorsey Avenue,Morgantown, WV 26505, Telephone: (304) 291–9330, Fax: (304) 291–9324,E-mail: CWIENKE@ACCESS.K12.WV.US

Wisconsin

Renewal Unlimited, Inc. - Head Start of Central Wisconsin, Suzanne Hoppe, N6510 Hwy. 51 South, Portage, WI 53901–9603, Telephone: (608) 742–5329, Fax: (608) 742–5481, E-mail: None

Appendix B–1—Statement of Work for the Early Head Start Evaluation Contract

Request for Contract—The Early Head Start Research and Evaluation Project

I. Background

The Head Start Act, as amended May, 1994 (42 usc 9801 et seq.) established a new program for families with infants and toddlers within the framework of Head Start. Section 645A of the Head Start Act, Programs for Families with Infants and Toddlers states that (a) "The Secretary shall make grants in accordance with the provisions of this section for—(1) programs providing family-centered services for low-income families with very young children designed to promote the development of the children and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency."

The Department of Health and Human Services calls this new program Early Head Start. In developing Early Head Start, the Administration on Children, Youth and Families (ACYF)/Administration for Children and Families (ACF) engaged in an intensive consultation process to learn from parents, practitioners, researchers and academics about the state of the art of quality programming for pregnant women and families with infants and toddlers. As part of the consultation process, the Secretary of Health and Human Services formed the Advisory Committee on Services for Families with Infants and Toddlers. That committee issued a report in September, 1994, that provides the blueprint for the design of the Early Head Start program. The ACF issued a Program Announcement of in March, 1995, and is expected to begin funding programs by September 30, 1995.

The award of this contract will be followed by a competition among Early Head Start program research partners to establish a limited number of local research sites. The first part of this section describes the overall Early Head Start research and evaluation design, including activities to be completed both by the national Contractor and local researchers; the second part details the scope of work for the national evaluation contract.

The Need for Early Head Start Research and Evaluation

It will be important for the proposed evaluation, mandated by the Head Start legislation, to build upon the substantial body of knowledge that exists and to expand upon findings from related studies. The CCDP evaluation will present results of a rigorous evaluation of an intensive, comprehensive, multi-service intervention program for families of infants and toddlers, implemented across a number of communities nationwide. Additional studies currently underway, such as the National Institute of Child Health and Human Development (NICHD) Child Care study and the Healthy Start evaluation will provide findings and methods that will contribute to the Early Head Start research and evaluation. However, Early Head Start, while related programmatically to many predecessors, combines and/or extends elements in previous programs to present a unique program for evaluation. The Early Head Start program is individualized; intense; comprehensive; child-service oriented; two-generational; locally-adapted, utilizing parents in decision making, and designed to have four levels of effect, on infants and toddlers, families, communities and staff.

II. The Early Head Start Research and Evaluation Plan

The research and evaluation plan highlights the first Early Head Start programs as prototypes of the Early Head Start concept. The plan features (1) a dynamic formative evaluation process, designed to be used in subsequent Early Head Start programs, that will serve continuous program improvement; (2) an impact evaluation that will enable determination of whether and under what conditions program prototypes were effective, and (3) an integrated research base for generating further hypotheses around the broad array of potential program issues and possibilities.

This research and evaluation plan features an integrated local and national evaluation design with nested levels of program involvement. Level I, continuous program improvement, is for all sites; Level II, cross-site impact evaluation and site-specific, related research will occur at selected sites. The impact evaluation is designed to determine the attribution of outcomes to the intervention. The research portion of the study will examine the causally modeled and directional relationships among specific child, family, program and community variables and outcomes.

A. Purposes

Elaboration of the purposes and the proposed approach proposed for each follow:

1. *Continuous Program Improvement.* The Advisory Committee on Services for Families with Infants and Toddlers proposed a new role for program

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evaluation that would be useful to programs seeking to develop to a standard of high quality. A systematic feedback procedure utilizing formative evaluation techniques will be developed as a tool for dynamic program improvement, and as a prototype formative evaluation tool in the event of Early Head Start program expansion. Thus, the first purpose of this effort is to support a process for generating and utilizing program qualitative and quantitative data, including management information system data, in continuous program improvement. This feature will be addressed programmatically at all Early Head Start sites, in most cases with the aid of local research partners. The national Contractor will provide support for this evaluation function through development of formative evaluation formats for continuous improvement.

2. *Impact.* The Head Start Act and the Advisory Committee on Services for Families with Infants and Toddlers called for a study of program effectiveness. A cross-site impact study will be conducted by a national Contractor in a sample of selected sites. Site-specific analyses, conducted by local research partners, will identify local program impacts and elucidate the processes, pathways, and conditions under which the program had an effect. Cross-site and local studies will complement each other.

3. *Additional Research.* The Advisory Committee on Services for Families with Infants and Toddlers sought to stimulate the research community to address the many questions we have about how best to enhance the development of low-income infants and toddlers and their families under conditions of changing policies and programmatic variations. The potential for research under the broad umbrella of the Early Head Start purposes and in connection with impact and continuous programmatic improvement is great. The Early Head Start research and evaluation plan thus seeks to bring forth a new generation of solid research to enhance current understandings of optimal developmental circumstances for low-income infants/toddlers, their families and communities. Further, questions related to the program are expected to be fitted to theoretical frameworks to encompass and extend beyond the realm of impact evaluation. This research will be conducted primarily at selected research sites by local research partners.

4. *Longitudinal Study.* Early Head Start presents a unique opportunity to conduct longitudinal research on Early Head Start, Head Start and beyond. Thus, the research and evaluation plan emphasizes the underlying longitudinal nature of the study of Early Head Start, and is the beginning of a longitudinal study of Early Head Start children and families.

B. Studies

The specific studies this project is expected to generate and the approximate sequence are as follows:

Studies to Describe Early Head Start Programs
Studies of Program Quality and Program Implementation
Studies of Program Impact
Studies of Program Variation
Studies Directed Towards Specific Policy Concerns
Studies of Program Impact in a Longitudinal Context
Studies by Local Researchers on Multiple Topics Pertaining to Early Head Start

C. Questions

A series of preliminary research questions have been developed to guide the formation of the research and evaluation design.

What are the *characteristics* of Early Head Start children and families, communities and staff and programs? What are the origins of Early Head Start programs? Who attends Early Head Start? How representative are the children and families who attend Early Head Start of the Early Head Start-eligible population within their communities? What types of communities are Early Head Start programs in? What types of services are delivered? What are the characteristics and emphases of local programs?

What are the pathways to *quality* in Early Head Start Programs? How do programs achieve full implementation? How is quality in Early Head Start program components defined? What is the quality of Early Head Start programs and program components? How long does it take to attain quality in Early Head Start programs? What outcomes are associated with various aspects of program quality?

Is Early Head Start effective in supporting the development of children, family, communities and staff? Which Early Head Start practices maximize benefits for children, families, communities and staff under what kinds of circumstances? What are the collective and differentiated impacts of Early Head Start? How does Early Head Start support development under varying conditions of risk? Are there diffuse effects of the program? Are there effects that can be attributed to targeted programs or services in Early Head Start? Are there mediators between services and outcomes that can be identified? What are the benefits of Early Head Start that translate into dollars saved?

What child, family, program and community variables contribute to the optimal development of low-income *children* in Early Head Start programs? Which Early Head Start practices maximize benefits for which *children* under what conditions? What factors contribute to resiliency of children in Early Head Start? What factors associated with Early Head Start contribute to optimizing health, social or cognitive development? Is targeting specific services for children effective? Are there strategies that are particularly effective with high-risk infants? What are the programs that are achieving positive outcomes for children doing? What are the barriers to attaining positive outcomes for children in Early Head Start programs?

What Early Head Start factors, community, family and personal factors contribute to *parent and family-level outcomes?* What factors, under what conditions, enhance parenting skills including parent/child interactions for which parents? What factors contribute to the parents' ability to make progress toward self-sufficiency? What factors contribute to the health and well-being of Early Head Start parents? What factors contribute to male involvement in the lives of Early Head Start children? What factors contribute to parental involvement for which parents in the Early Head Start program? What family outcomes are associated with positive child outcomes, and what are the pathways from parent to child development in the context of Early Head Start? Are there targeted strategies that specifically benefit some parents?

What changes in *communities* occur as a result of the Early Head Start program? What were the baseline characteristics of Early Head Start communities at the time programs began? What Early Head Start practices maximize benefits for which communities under what types of circumstances? What new collaborations were established? What community factors supplemented or supplanted the Early Head Start success with families and children? How strong was the community effect on Early Head Start programs? Did Early Head Start have a positive effect on child care services, or on any other services, throughout the community?

What is the role of *staffing* in Early Head Start programs? What is the role of staffing and staff development in creating effective program processes and

bringing about positive outcomes for children, families and communities? What enables staff to create the environments and relationships that promote infant/toddler and family development? What factors contribute to staff continuity with children and families? What role does Early Head Start professional development play in staff effectiveness?

What are the effects of *program variations?* What are the identifiable program variations in Early Head Start? What can be said about the types of variations and their effects?

What can we learn through Early Head Start to maximize collective effectiveness of *policies* and programs that promote the development of low-income children and their families? What is the role of Early Head Start for promoting parents' pathways to work? How do comprehensive Early Head Start services add to the effects of child care on children and families? What are the barriers and pathways to the successful integration of children with special needs into Early Head Start? These questions will be addressed in a report directed towards specific policy concerns by the national Contractor and the Contractor may be asked to provide additional special reports around related issues.

How do Early Head Start and Head Start families and comparable groups who do not participate in Early Head Start develop over *time*? What are the developmental trajectories of Early Head Start and comparison group children and families under varying experiences and varying degrees of risk?

D. Design

The Early Head Start program is designed as a prototype of an on-going service program as opposed to an intervention designed by an investigator for theory building or hypothesis testing. Thus, while Early Head Start was planned to accommodate evaluation, the evaluation design primarily has been fitted to the program. This programmatic emphasis has shaped numerous research and evaluation design elements as well as the overall two-tier nature of the research and evaluation plan. All Early Head Start programs will participate in either one or both levels of the research and evaluation.

Level I: All program sites will participate in formative evaluation activities which are designed to assist programs in continuous improvement towards program quality. The Level I evaluation activities also will be instituted for all subsequent Early Head Start programs under conditions of program expansion. The following are features of Level I.

- Sites will use data from a uniform management information system, together with local qualitative and quantitative data in a formative evaluation process.
- In most cases, sites will utilize a local research partner for this aspect of the evaluation.
- The national Contractor will provide standard formats for the use of these data during the first year of the project, and will make the characteristics of this format available to sites added in subsequent years through collaboration with the Training and Technical Assistance Contractor.

Level II: A sample of sites (12) will participate in Level II activities focusing on evaluating the effectiveness of the Early Head Start utilizing approaches to generate both breadth and depth in impact evaluation . The following are characteristics of Level II activities.

- There will be a *cross-site* impact study, conducted by a national Contractor, that will be complemented by *local* studies of program impact.
- The local research partners may apply through a competitive process for grants to carry out research studies at their local sites. The sites whose local research partners receive these grants will become sites for the cross-site impact evaluation. In the event that there are not sufficient numbers of sites whose local research partners have submitted an acceptable proposal or if a better distribution of Early Head Start programs is required than the research site pool represents, as programs were alerted in the Early Head Start program announcement, ACYF may select further sites for evaluation. Data collection at these sites would be conducted directly by the national Contractor.
- The impact evaluation will follow an experimental model. The program will recruit double the number of families needed to fill program openings. Families then will be assigned into program and comparison groups by random assignment, most likely midway through the first fiscal year. The recruitment and random assignment process will continue until October 1, 1996, when programs are expected to attain full enrollment, and, thereafter, as openings occur.
- Only those programs that are fully implemented and operating as the program was designed, with criteria to be determined as an evaluation task, will be included in the final impact evaluation. Additional criteria for impact evaluation may be proposed by ACYF as well. It is anticipated that 12 sites will participate in the final impact evaluation, however, 15 sites will be selected as preliminary impact sites to provide an ample pool of sites for impact evaluation.
- To fit the service emphasis of the program, subjects will be continuously recruited into the program to fill program openings as they occur. That is, this is not a cohort study. Sample sizes will build over time.
- While programs are encouraged to give preference to subjects who are pregnant and have infants under a year of age, they may serve children up to three years of age. However, to focus the sample and to have a potential longitudinal sample of children who began the program early, the *research sample will be comprised only of pregnant women and families with infants up to one year of age.* This requirement will apply to families recruited at the time the program begins as well as to replacement families.
- Programs will range in size from 75 to 150 families. The impact evaluation sample, due to continuous recruitment, may exceed 150 program (and an equal number of comparison group) families but shall be capped at 175 program (and an equal number of comparison group) families for any one site. Site samples need to include at least 50 program families (with an equal number of comparison families).
- In addition to documenting the services received by program families in the Early Head Start program, it will be necessary to document the needs and service use by comparison families to determine if the individualized services provided by the Early Head Start program had an impact beyond what comparison families received in their communities. Therefore, the same needs assessment will need to be conducted on control families and their service usage will need to be tracked in a manner as similar to the experimental group as possible.
- Comparison group families will be given an annotated list of community services. Pregnant women will receive an initial referral to prenatal care. All families, program and comparison, participating in the evaluation study will receive approximately $20/interview period for their participation in the study. Both the national Contractor and local researchers are encouraged to solicit material goods to give to families for completing interviews. These goods may be donated locally or nationally and could include diapers, infant clothing, or educational toys.
- Program families who drop out will be followed, to the extent possible. An

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evaluation task will be to develop a plan for tracking comparison and program group dropout research sample families and for defining the minimum amount of time that constitutes program involvement.

E. Desired Outcomes

The Early Head Start program targets specific outcome variables in the four program areas. It will be important for this evaluation to focus on those outcomes likely to be associated with involvement in Early Head Start, outcomes that realistically could be expected in a program of this nature. It will also be important to target potential interim outcomes, outcomes most likely to be apparent after the first 2–3 years of the study. Preliminary outcomes as proposed by the Advisory Committee on Services for Families with Infants and Toddlers include:

Child: Health and physical development; social competency; secure attachments with parents and other caregivers; language and cognitive development; resiliency factors; benefits to siblings.

Family: Attitudes towards parenting; parent-child interaction; reproductive sequelae; having a medical home; parenting employability and progress towards self-sufficiency; training and education; housing; physical and mental health; substance abuse; home environment; safety; involvement in the Early Head Start program; knowledge of child development; child guidance beliefs and practices.

Community: Collaboration among agencies serving children and families; seamlessness in referrals and actual service provision; quality of services for children and families; increase in services for infants and toddlers; safety.

Staff: Staff-parent/child relationships; staff continuity; staff professional development; staff compensation; staff physical and mental health.

F. Data Sources

For purposes of definition and discussion, data are referred to as either (1) process or (2) outcome data. Process data refer to those data that document program use and other experiences of families; outcome data refer to those qualities the program seeks to bring about. These data may be thought of, respectively, as independent and dependent variables. It is recognized that some data fit both definitions and that under different circumstances the same data element could be either process or product, independent or dependent, or, mediating, variables.

A family-level management information system will be introduced, with technical assistance, at the outset of Early Head Start. This information system, known as the Head Start Family Information System (HSFIS) will include data elements focused on intake; needs assessment; use of direct and referred services; family and child health information and other information related to parent employment, housing, education and services. Primarily, HSFIS data will be referred to as process data, however, some of the HSFIS data also can be viewed as interim outcome and outcome data. Program staff will enter and utilize HSFIS data. Program staff will enter initial family background data for all Early Head Start families prior to the random assignment process. HSFIS data will be available for the evaluation of the Early Head Start program.

Comparison family services use and health data will be recorded frequently in a special HSFIS module that will be identical to or parallel to HSFIS-entered program data. It is proposed that these data will be entered by a Community Family Coordinator/s, who will form a relationship with the comparison group families, paralleling to some extent the context in which HSFIS data for program families will be entered by program staff. The Community Family Coordinator services will be subcontracted by the national Contractor, as feasible, through the local researchers.

Additional process data (qualitative and quantitative) may be collected locally or nationally as determined by researchers at either level. This may include process data that cannot be collected through the HSFIS in comparable ways for the comparison and program families and will therefore have to be collected using the same, vs. parallel data collection procedures.

Outcome variables and the measurement for those variables will be identified and developed for the cross-site evaluation, for both project and comparison families, by the national Contractor with input from the local research team. Collection will be contracted through the national Contractor to the local researchers.

Local research data will be collected by local researchers through grants made directly from ACYF to the local researcher.

G. The Structure

In this research and evaluation design the primary responsibility of the national Contractor will be to coordinate and administer the cross-site evaluation in the 12 impact evaluation sites. This includes financial and administrative responsibility for all data collected for the cross-site-evaluation, including both process and outcome data for both comparison and project families. The national Contractor may use as much program-collected data (HSFIS) as the Contractor and ACYF deem appropriate and, as feasible, is encouraged to subcontract other local data collection to local researchers. The national Contractor has an additional responsibility to provide a standard format for continuous programmatic improvement.

The local program research partners will be responsible for designing and conducting local research in areas relating to the overall research and evaluation questions. Local researchers will be funded through individual grants with ACYF to carry out locally-relevant research. Local researchers will be expected to be reliable subcontractors for the cross-site project. These same local researchers will be expected to serve the continuous improvement needs of their sites and to provide local impact evaluation reports to accompany the cross-site reports required by this research and evaluation design.

A consortium will provide the mechanism for the coordination required by the project. A Technical Work Group, meeting with the consortium, will advise both the cross-site studies and the local research projects.

H. Challenges to the Evaluation

The unique design for the Early Head Start program and the requirements for research and evaluation present specific interesting challenges that both local researchers and the national Contractor will need to address. These include:

—Program variation within and between sites. The evaluation is expected to stimulate unique approaches for process data measurement to meet the challenge of documenting the variety of programs that will be offered across sites and the individualized nature of services within sites.

—Changing conditions over time. The evaluation is expected to take into account a shifting range of ages. The age range will shift from a less-than-two year range at the outset to nearly five years towards program completion, due to continuous enrollment. Further, the evaluation will need to accommodate the transition of children out of the program at age 3 into Head Start or other programs and to plan for extending this study longitudinally.

—Decoupling of parent and child data collection. Because Early Head Start is not a cohort study, the periodicity of child assessments by child age may need to be decoupled from periodicity in assessing parent variables.

—Measuring the true nature of services delivered by Early Head Start at both the child and family levels. This challenge requires assessing a number of features associated with services, such as professional standards of quality, duration, intensity, quality of relationships and goodness of fit between the program services and individual needs.

—Delineating whether the services received are a function of the program or of the families' own initiative from other sources in the community. Since this study is not conducted in the isolation of a laboratory, families may seek and receive services from other community service providers. Therefore, it is important to determine what services families receive outside the program.

—Documenting services received by the comparison group. We cannot assume a no-treatment comparison group. While some comparison group data has been collected through parent interview, in other studies these data are usually collected at fairly long intervals with limited checking of reliability. The current study requires a careful documentation of comparison group services for interpretation of study findings.

—Framing the role of relationships. For very young children the relationships with parents and caregivers are central to development and these relationships are often influenced by the relationships between parents and program staff and the relationships of both to the community at large. The evaluation is challenged to assess the central role of relationships in this program.

—Measuring the effect of Early Head Start on communities and the effect of communities on Early Head Start. Early Head Start is designed to impact not only children and families but also communities. It is designed to have a ripple effect on all the programs for young children in a community. It is an important challenge for the evaluation to determine how to measure the community at baseline and how to measure change. Reciprocally, Early Head Start programs are nested in communities. The evaluation is challenged to reflect the variance of communities and to document the effect these communities have on Early Head Start's ability to carry out its purposes.

—Conducting impact evaluation exclusively at fully-implemented programs. The evaluation is challenged to determine criteria and timing for assessing full implementation in order to focus the evaluation on programs that are fulfilling the intent of the Early Head Start program.

—Determining meaningful effects. It will be important for the national Contractor and local researchers to go beyond the question of whether Early Head Start had a simple effect. Researchers are challenged to conceptualize the Early Head Start data set for use with complex analytical approaches involving meaningful aggregations and pattern analyses to account for varying degrees of risk, program variation and time.

—Fitting national and local evaluations together. The evaluation is challenged to bring two kinds of knowledge about Early Head Start together—that gathered across sites and that gathered from in-depth analyses within sites. A number of premises have been already made about this feature of the evaluation. For example, it is central to this project that local researchers and the national Contractor be equals in evaluating this project. It is presumed that there are questions that each can answer best from their unique perspectives. Local researchers are in a position to truly delve into the causes and effects and pathways to outcomes. They can use in depth and observational as well as qualitative measures to determine a program's effect. The local researchers are expected to address "what's in the box" at their site using multiple measures and methods in site-specific studies. The local researchers will also need to work together to lay the groundwork for continuation of the study beyond the five-year funding period. The national evaluation Contractor, on the other hand, will need to address those questions that cross-site data will enable answering, including those focused on program variation, and those requiring large samples for ample cells sizes required for examination of how the program worked for which children and families under which conditions. The research and evaluation was designed to bring forth both types of studies, and both types of studies are important to the story this evaluation is expected to tell. It will be necessary for every report to reflect this dual and complementary input and for the researchers at both levels to affirm the role of the other. Their task as partners in this evaluation will be to determine at each step of the project how their two efforts fit together.

—Attrition. Given the five year nature of this program and the intention to continue to follow the original Early Head Start families, it will be important for the partners in this project to coordinate to keep families in the sample. The evaluation is challenged to develop an array of sample-retention ideas that may range from local solicitation of gifts, newsletters and birthday cards to relationship-building to maintain subjects' interest. It will also be necessary to develop a clear plan for determination of which families who leave the project will be followed for research purposes under what conditions.

C–2 Scope of Work for the National Contractor

Specifically, the national Contractor will:

1. Provide a description of Early Head Start, from its inception through Year 1 for the Early Head Start programs, in all sites, with special emphasis on the 12 research sites, relying primarily on HSFIS data, but complemented by site profiles from research sites.

2. Conduct a study of program quality and implementation in Early Head Start (preliminary) impact study sites programs (estimate 12). This study will be used in the selection of fully-implemented sites for inclusion in the final impact evaluation, and to present a story of the development of quality for future Early Head Start programs;

3. Design and carry out an effective cross-site impact evaluation (estimate 12 sites) that addresses evaluation challenges and determines whether Early Head Start had an impact on children, families, communities or staff, and that addresses differential effectiveness by age of entry, need, sub-population, and by program features, duration and intensity;

4. Conduct a study of program variation in the impact evaluation sites (estimate 12 sites) and its effects;

5. Establish an infant sample for future longitudinal study in impact evaluation sites (estimate 12 sites), to carefully track all subjects to minimize attrition for the longitudinal study and to include cross-site analyses of data in a longitudinal context in the Final Report of this project;

6. Conduct timely analyses and reports (in all years) with Early Head Start data in the context of critical policy issues, e.g., examining the value added of Early Head Start comprehensive services for children in full-time child care and in the transition from welfare to work, as requested by

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the ACYF and/or the Technical Work Group; and

7. Prepare an Interim Report in September, 1997, and a Final Report for this project which fully integrate the cross-site and local studies, drawing upon the strengths of each.

C-3 Tasks

As part of this Early Head Start evaluation effort, the Contractor shall access, collect, utilize, analyze and synthesize information regarding the implementation, operation and effectiveness of Early Head Start programs.

The work for this contract will be conducted in five sequential 12 month phases and the activities that will be accomplished include the following:

In Phase I, the Contractor shall:

(1) Participate in an orientation meeting;

(2) Develop a coordination strategy for working with other Contractors involved with Early Head Start;

(3) Conduct a literature review;

(4) Select a cadre of consultants;

(5) Select a Technical Work Group;

(6) Prepare a revised study design;

(7) Prepare a process data collection plan;

(8) Conduct a feasibility study;

(9) Prepare a logistical proposal for the consortium;

(10) Prepare a site visit protocol;

(11) Convene the consortium;

(12) Prepare a final study design;

(13) Conduct site visits to all impact evaluation sites;

(14) Prepare a protocol for the data collection instruments;

(15) Prepare a data collection and analysis plan;

(16) Prepare an Office of Management and Budget (OMB) clearance package;

(17) Prepare a revised work plan;

(18) Develop criteria for selection of impact sites.

In Phases II-V, the Contractor shall:

(19) Conduct annual site visits to impact evaluation sites.

In *ALL Phases*, the Contractor shall:

(20) Conduct cross-site data collection;

(21) Conduct a minimum of two consortium meetings a year in Washington, DC;

(22) Establish a protocol of all new or additional data collection instruments and prepare OMB clearance packages for all new or additional data collection instruments;

(23) Provide timely data entry and return of data disks to sites;

(24) Process and analyze the data collected;

(25) Provide a format for continuous program improvement and support its use.

In addition, in all phases the Contractor shall prepare deliverables as necessary for the work completed in each Phase, including monthly progress reports and in-depth annual progress reports, and the following reports within an agreed-upon time: "Report of Characteristics of Early Head Start Programs," "Pathways to Quality Study," "Impact Study," "Study of Program Variations," "Studies Directed Toward Specific Policy Concerns," an Interim Report, and a Final Report which shall include a synthesis of the results of the final data analyses, reports of site researchers and a summary of the five-year project. In all Phase reports, the national impact study will be supplemented and integrated with the studies from the local research sites.

A. PHASE I

Task 1—Orientation Meeting With the Federal Project Officer (FPO)

Within *one week of the effective date of the contract*, the Contractor shall meet with the Federal Project Officer (FPO), and other relevant Federal staff to review the background of the project, and the work to be conducted. The FPO will provide the Contractor with available copies of the relevant grant proposals for ACYF-funded Early Head Start grantees. The Contractor shall propose an agenda for the meeting, indicate who would attend on behalf of the Contractor, list the types of study design modifications or other problems that would require FPO decisions at that meeting, and shall provide a project summary for distribution to ACYF staff. Specific topics to be discussed at the meeting include: Revisions to the proposed work plan in the Contractor's proposal; arrangements for maintaining regular contact with the FPO and relevant Federal staff via the INTERNET network and other means of communication; arrangements for initial contacts and ongoing cooperation with program sites; arrangements for information to be supplied upon selection of research sites and plans for carrying out the Phase I tasks. The meeting shall provide an opportunity to discuss any clarifications of the Contractor's proposed approach, the nature of the project, the schedule of work, and the progress report requirements and other deliverables. There shall be an additional meeting with the consortium in the second half of Phase I.

TASK 2—DEVELOP A COORDINATION STRATEGY FOR WORKING WITH OTHER CONTRACTORS—HSFIS and TRAINING/TECHNICAL ASSISTANCE CONTRACTORS

During all phases of the project, effective coordination with the Federal staff, Federal Contractors working on related projects and evaluations and outside stakeholders will be important to the success of the project. The Contractor shall work with the FPO and other Federal staff to establish and maintain cooperative working arrangements and in *weeks two through six* of Phase I shall establish a list of tasks and a communication plan for approval by ACYF. It is particularly important that procedures be coordinated with the HSFIS Contractor, including procedures for communication and bi-annual meetings in Washington, DC; procedures for ensuring readiness of grantees to utilize the HSFIS at the outset of Early Head Start; feasibility of HSFIS process data collection for project and comparison groups; procedures for transferring HSFIS reports to the national evaluation Contractor and for reports to the HSFIS Contractor. It will also be necessary to coordinate with Training and Technical Assistance personnel at ACYF and with the Contractor for Early Head Start Training and Technical Assistance, planning for two yearly meetings with that Contractor and ACYF staff in Washington, DC. Reports shall be given to ACYF from each of the meetings.

TASK 3—PREPARE A LITERATURE REVIEW

The Contractor shall conduct a thorough review of the existing literature on programs and evaluations of services to families with infants and toddlers, including documents produced by ACYF, foundations and reports of evaluations, published and not published. To place this evaluation in a national context, the Contractor shall review and synthesize relevant research and evaluation findings based on reliable research methodologies about the effects of services to families with infants and toddlers. This report shall synthesize findings from services to families for infants and toddlers and those from services related to any portion of Early Head Start, present methodological issues and creative solutions to those issues, identify gaps in the findings and methodologies and outline how this study will fill those gaps. This report shall also include the Contractor's recommendations for adding to or refining the evaluation research questions. The draft report shall be submitted by the beginning of the *second month* of Phase I and the final report shall be submitted at the beginning of the *third month* of Phase I. The Contractor shall provide ACYF with copies of each document referenced in the literature review and shall deliver a an IBM PC-compatible 3–½ inch diskette. ACYF shall reserve the right to make the literature review, or parts of the document, available to the public.

TASK 4—SELECT A CADRE OF CONSULTANTS

The Contractor shall establish a cadre of consultants from relevant academic, professional, consulting and service-provider communities and recommend names *within two weeks* of the contract effective date. The intent is to have a cadre of professionals available for more intensive involvement on the design and implementation than is feasible with the Technical Work Group (TASK 5). Contractor shall provide the names and vitaes of potential consultants.

The Contractor shall not secure their formal commitment prior to the award of the contract, and without prior approval of ACYF. The Contractor shall provide the names and vitae of potential consultants, including their specific qualifications relevant to this study. Prior to final approval, the Contractor shall provide a sufficiently detailed description of the specific work (including total projected hours per task or subtask to be done by this cadre, and a timeline for its completion). The Contractor will be responsible for all expenses of these consultants, including air fare, per diem and honorarium. The number of persons in the cadre and the quantity of consultation shall be the decision of the Contractor in cooperation with ACYF. The Contractor shall propose an estimate of consultant use.

The Contractor shall report on expenditures for professional consultants as a separate line item in monthly expense vouchers and shall provide a separate monthly report on activities of consultants.

TASK 5: SELECT AND CONVENE A TECHNICAL WORK GROUP

The Technical Work Group will advise the entire Early Head Start research and evaluation project, including national impact and local research activities. Within *two weeks* following the contract effective date, the evaluation Contractor shall recommend eighteen experts in relevant fields, such as: Infant and toddler development; home visitation; child care; Head Start; parent-child relationships; family systems; teen parenting; services research; prevention and intervention research; ethnic diversity and minority issues; health delivery systems; parent education; mental health; adult education; family ecology; community development; staff development; assessment of child development; research methodology; statistics, instrument development, tests and measurement. The Contractor shall be prepared to make modifications in the list, as suggested by ACYF, based on additional and/or alternative candidates who might bring additional strengths to the Technical Work Group and to complete a group of twelve. All Technical Work Group members will require the approval of the ACYF Commissioner. In addition, the Technical Work Group must include rotating representation from research and program sites. Technical Work Group meetings will be held in conjunction with national-local research consortium meetings but there may be additional meetings called by the Contractor as needed. The Technical Work Group will provide guidance for this entire project, advising the cross-site evaluation study and local research, to produce a comprehensive picture of the complex story of the impact of Early Head Start. Therefore, available time of the Technical Work Group will need to be appropriated accordingly. A portion of each Technical Work Group meeting shall be allotted to local researchers issues.

Phase I meeting schedule: During Phase I of the project the Contractor shall convene the meetings of the Technical Work Group. With the exception of the first meeting, these meetings shall be held during the consortium meetings. Within *two months, or earlier if determined advisable in the orientation session*, of Phase I a meeting will be convened to solicit initial comments and suggestions regarding the overall scope of the evaluation and issues related to implementing the set of proposed evaluation activities; to review the draft of the literature and resource review plan; to review the draft design and sampling plan and process data collection plans and for consultation in selection of local research partners. Within *six months* (with final determination to be set by the Early Head Start program timetable) but *as early as within four months* of Phase I the Technical Work Group will convene in the consortium to be introduced to local researchers and their projects; advise local projects; establish representation from the consortium for the Technical Work Group; establish sampling plans; plan site visits; and to establish the preliminary data collection instruments protocol. *Nine months* following the beginning of Phase I, members will participate in and report on site visits, including creating site profiles; consult for process evaluation; recommend a final design; recommend a data collection instruments protocol for the cross-site studies; meet with local researchers to plan specifications for their studies; and review the overall research and evaluation plan for Early Head Start. All expenses of the Technical Work Group including honorarium, per diem, travel and lodging to Technical Work Group or consortium meetings shall be covered by the national Contractor. Any site-specific consulting done by the Technical Work Group at site locations, with the exception of that done during site visits, shall not be the responsibility of the national Contractor.

TASK 6—PREPARE A REVISED STUDY DESIGN

Within *four and one half months* after the beginning of Phase I, the Contractor shall prepare a revised design and sampling plan.

Design and Sampling Plan: The Contractor shall develop a design and sampling plan based on random assignment methodology. The design and sampling plan also shall specifically include:

- A discussion of the issues and approach the Contractor will use to manage and coordinate with program and research staff, the recruitment and random assignment of families into project and comparison groups in 12 (preliminary) evaluation sites, including discussion of issues pertaining to the implementation of experimental design in low-income communities, steps that will be taken to ensure comparability of program and comparison families and how to ensure minimization of differential response rates and bias, over time;
- A discussion of how the Contractor will meet ethical challenges for comparison families presented by an experimental design, to be addressed, to some extent by presenting an annotated list of community services to comparison families, by a referral process for families that have identified crises, and for pregnant women to receive a focused initial referral for prenatal services;
- A discussion of how the Contractor will resolve challenges related to the burden on families, compensation, and attrition, and a discussion of procedures to be put into place to maintain families' interest, including predetermined plans

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for Contractor to provide a payment of approximately $20/interview period for project and comparison families; efforts of the national Contractor or efforts to encourage local sites to leverage additional material resources (such as diapers, infants clothing or toys); efforts of a part-time Community Family Coordinator at each site, who will be subcontracted by the national Contractor, to form relationships with and collect data from the comparison group families (and to some extent, program families). (See TASK 7, for elaboration);

• A discussion of how the Contractor will address the challenge of documenting the nature of services received by the program families, given program variation between and within sites in type of program delivered, quality, duration, intensity, and goodness of fit between program and need; and a discussion of how the Contractor will address the challenge of documenting the types of services comparison group families received.

• A discussion of how the Contractor will meet other challenges to the design as presented in Section C–1–II–H Challenges to the Evaluation, on page 19 of this document, and not directly addressed in any other segment of the Contractor's proposal, including measuring changing conditions over time; framing the role of relationships; measuring and determining full program implementation (See also TASK 18);

• A discussion of the importance of the Contractor's plan for determining the representativeness of the Early Head Start sample in impact evaluation communities, utilizing existing data sources;

• A discussion of the implications of the design and how the Contractor will collect data to place impact evaluation programs in a community context, including a baseline measure of community infrastructure; and

• A discussion of any other challenges the Contractor identifies for this evaluation and the Contractor's proposal for resolving those challenges.

TASK 7—PREPARE A PROCESS EVALUATION PLAN

There are multiple challenges to the process evaluation of the Early Head Start program that shall be addressed in a process evaluation plan to accompany the study design (TASK 6) *four months* after the beginning of Phase I. (1) In Level I sites the Contractor shall develop a process report, "Characteristics of Early Head Start Programs Report," which will be a description of FY '95 and FY '96 programs, using HSFIS data. (2) In Level II sites it will be necessary to begin documenting the characteristics, needs and the nature of services for both program and comparison group families, including the characteristics of programs and communities from the outset of Early Head Start.

The Contractor shall have overall responsibility for collecting the process data required for this study, but shall coordinate with local researchers and program personnel. It is recommended that a part-time Community Family Coordinator be employed or subcontracted at each site who will coordinate local process data collection; maintain a relationship with comparison families; document the service use and provide emergency services for comparison families; and track families who have moved or have left the program. The Contractor shall also be responsible for the collection of:

• A baseline intake interview for comparison and program families in Level II sites. The baseline intake interview may be completed by program staff using the HSFIS, before random assignment of recruited families.

• A needs assessment for comparison and project groups, which may be gathered by the program personnel (program) and a Community Family Coordinator (comparison) families using identical formats, or utilizing an alternative format proposed by the Contractor.

• Establishing comparability of process data between program and comparison groups, utilizing a program-entered HSFIS data and parallel comparison group HSFIS data entry. It is anticipated that collection of service-use and health data will be conducted by the program personnel (for program families) and that a Community Family Coordinator will form a relationship with and enter such data for comparison group families, using a special module of HSFIS. However, the Community Family Coordinator will interview both project and comparison families for data for which comparability of parallel entry cannot be established or the Contractor shall propose an alternative format.

• Additional data collection procedures and a timetable for process data collection from comparison and project families.

• A plan for developing site-specific profiles that will characterize each of the FY '95 impact evaluation sites. This task may cross reference with TASK 10, PREPARE A SITE VISIT PROTOCOL. Year 1 site profiles for impact evaluation sites will be jointly authored by national and local researchers and local program personnel.

• An approach that would be used in drawing up a cross-site descriptive study of the FY '95 and FY '96 Early Head Start programs utilizing HSFIS data, supplemented by site profiles from research sites.

• Within *two months* after the beginning of Phase I, the Contractor shall be prepared to submit an OMB package. See TASK 16, PREPARE AN OMB CLEARANCE PACKAGE) of process data collection instruments in the eventuality all or part of a HSFIS evaluation module is not deemed comprehensive or desirable for process data collection.

• An approach that would be used in drawing up a cross-site descriptive study of FY 95 programs with special emphasis on describing the 12 research sites, using HSFIS data supplement by site profiles from research sites.

TASK 8—CONDUCT A FEASIBILITY STUDY IN 3 SITES

Within *two months* of the beginning of Phase I, the Contractor shall discuss rationale for and submit a protocol for an evaluation feasibility study protocol and within *three months* of Phase I shall conduct a feasibility study in 3 sites in order to determine if assumptions about the evaluation design are valid. This study shall involve site visits which shall have tasks to: determine the status of the HSFIS in the site; determine program-use needs assessment; determine viability of entering comparison and project group data with HSFIS software; determine feasibility of establishing adequate sample size for experimental design; and estimate the feasibility of measuring the level and quality of services available in the community for referral services. A report from this study shall be submitted within *four months* of Phase I.

TASK 9— PREPARE A LOGISTICAL PROPOSAL FOR A NATIONAL-LOCAL RESEARCH CONSORTIUM

Within *three months* of Phase I, the Contractor shall be responsible for proposing a consortium logistics plan which shall be submitted to ACYF for approval the *seventh month* after the beginning of Phase I, following review by the consortium members. This plan shall include the logistical approach to bi-annual consortium meetings in Washington, DC, to be attended by the Contractor, the Technical Work Group and local researchers from impact evaluation sites; a discussion of time-use divided into equal day-long segments in order to meet the three needs of the consortium (impact study planning; local research, and Technical

Work Group consultation); a discussion of areas of the impact study for which the Contractor will seek input from the local researchers, i.e., site visit protocols; data collection instruments; data collection procedures; workplan; a discussion of the areas for which the national Contractor, the Technical Work Group and the local researchers will need to work closely together as partners, i.e., preventing attrition, integrating the national and local research efforts, publication issues, and data use. The Contractor is encouraged in preparing these discussions to review other consortium arrangements such as that utilized by LONGSCAN. The Contractor will be responsible for logistical expenses associated with the consortium, as well as for all of the expenses of the Technical Work Group. Local researchers will cover their own travel, lodging, registration and other expenses. The national Contractor shall also provide for honoraria and expenses of any speakers, if necessary, and subject to prior approval from the FPO.

TASK 10— PREPARE A SITE VISIT PROTOCOL

The *third month of Phase I*, the Contractor shall develop a draft site visit protocol which details procedures for site visits. The purposes of the site visits will be to review continuous program improvement evaluation procedures at all FY '95 (and FY '96 research sites). In impact evaluation sites, additional purposes will be to establish site profiles, to review staffing for Community Family Coordinators; to establish relationships with the local researchers and to understand the local research projects; to establish the procedures for random assignment, and to establish local procedures for data collection. The FPO and other ACYF representatives will review the draft protocol and return it within one week to the Contractor who shall present a final protocol to ACYF by the *fourth month* of Phase I. As part of the protocol development process by the *third month of Phase I* the Contractor shall provide the FPO with a draft letter of introduction for the ACYF Commissioner to send to Early Head Start sites that will participate in site visits. The letter shall identify the Contractor, describe the purpose of the project, and inform the Early Head Start programs about plans for the site visits and specify other contacts, including community and research representatives. A letter shall also be provided to the FPO for the researchers at the sites, identifying their roles in the site visit and describing the purpose of the visit. *Prior to conducting the site visits*, the Contractor shall submit a memorandum to the FPO outlining a schedule for the visits and an outline of a standardized format for site visit reports that shall be submitted to the FPO within two weeks after each visit. Each proposed three-person site visit team shall be comprised of, but not limited to, representatives of the national Contractor; the Technical Work Group, and program or research staff from other sites. ACYF staff may be represented as well.

TASK 11—CONVENE THE CONSORTIUM

Upon selection of research sites, *within four months* of Phase I and/or *within one month* of the selection of research sites, the Contractor shall convene a meeting of the consortium in Washington, DC, including ACYF, the national Contractor, local researchers and the Technical Work Group. The Contractor shall carry out the logistical plan as proposed previously, dividing the consortium time into thirds for addressing needs of the cross-site impact evaluation, local research development and advise for both from the Technical Work Group. At the initial consortium meeting, the Contractor shall provide opportunities for identification of each of the local research sites' research purposes; discuss the logistical plan with the consortium; establish committees as identified by the logistical plan; establish a work plan; establish any subcommittees; discuss issues for immediate and future data collection; review process data to be collected by HSFIS and otherwise; review sample selection procedures; review the preliminary site visit protocol; and name site visit teams. The national Contractor shall communicate about this meeting with ACYF for a potential joint meeting with program staff. The national Contractor is responsible for all costs associated with consortium meetings, including hotel, break out rooms, expenses of Technical Work Group, except for the direct expenses of the local researchers and federal staff.

TASK 12—CONDUCT SITE VISITS TO ALL FY '95 EARLY HEAD START IMPACT EVALUATION SITES

From the *fifth through seventh month* of Phase I and/or within *two months* of the selection of research sites, the Contractor shall begin site visits as specified in the Site Visit Protocol. A draft report and sample site profiles shall be submitted to the FPO by the *sixth month* of Phase I. Site visit reports and profiles on every Early Head Start site evaluation site shall be submitted to ACYF by the *seventh month* of Phase I. For planning purposes, the Contractor shall allow for site visits of 2 days in length for each site (with the actual length of the visits varying somewhat as a function of the size and complexity of the program, as well as the intended tasks to be accomplished.) All expenses from the site visits shall be handled through the national contract.

TASK 13—PREPARE A FINAL DESIGN

It is anticipated that information provided by the Early Head Start site visits, by the interactions with the local researchers and by the meetings with the consortium, Technical Work Group and the FPO will call for changes and clarifications in the evaluation design and implementation plan. Based on this information the Contractor shall prepare a draft revised technical evaluation design and analysis report by the *seventh month* of Phase I and final plan by the *eighth month* of Phase I which consists of the following components:

A. Statement of Evaluation Outcomes

A list of research and policy questions, both general and specific, that the study shall address. Each specific question shall be logically connected with the general question to which it relates, as well as being organized according to the overall conceptual model of the study.

For each specific question the theoretical hypothesis, required data elements and data source(s) shall be identified.

For each specific question, a discussion of any measurement issues for obtaining realistic and valid outcomes and the approach to resolving those measurement issues shall be included.

B. Revised Study Design (See TASK 6)

C. Revised Process Data Collection Plan (See TASK 7)

TASK 14—ESTABLISH A PROTOCOL FOR ALL DATA COLLECTION INSTRUMENTS

By the *ninth month* following the award of this contract, the Contractor shall submit to the FPO a complete draft protocol for data collection instruments for studies for Phase II of the evaluation and a proposed protocol for data collection instruments for Phases III–V of this study. It is expected that the Contractor will seek input from local researchers through the consortium but that final responsibility for this protocol rests with the Contractor. This protocol will have multiple sets of data collection instruments (or interview guides). The first set includes

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instruments to assess quality in site program activities and the second set will include instruments to measure the programs' impact on children, families, communities and staff. A third set will include instruments to determine the variations in programs and may overlap with other sets. It is anticipated that information shall be gathered through interviews with parents and staff as well as through observation of children, parents, home environments, and staff.

The Contractor's approach to measurement, including discussion of measurement issues, for the several studies of this evaluation shall be presented. The Contractor shall identify strategies for searching for measurement instruments, for including measurement instruments utilized in related studies of infant/toddler development or family services; and for pilot testing the data collection instruments. It is anticipated that community-level outcomes may involve the development of new data collection instruments. It is possible that some of the quality, variations or policy-related data may be collected by the national Contractor using cross-site survey methods or qualitative assessments.

The instruments selected or developed shall be clearly linked to the conceptual design of the study, services delivered and expected outcomes. The set of instruments for the quality study shall generate information in critical areas such as:

- Child relationships with caregivers.
- Child and parent continuity in relationship with program providers.
- Parent perceptions of, expectations of, and satisfaction with the program.
- Staff perceptions of the quality of their program.
- Parent relationships with case managers and other key Staff.
- Goodness of fit between parent/child needs and services delivered.
- Availability, access and quality of services in the community.
- Availability, access and quality of parent education activities.
- Quality of home visitation.
- Perceptions of the program by community members.
- Child care environment.

The studies of impact shall generate information in critical areas not contained in the HSFIS or gathered as process data and including:

- Child development.
- Child security of attachment.
- Child risk and resiliency factors.
- Home environment.
- Child care environments.
- Parent-child relationships.
- Other caregiver-child relationships.
- Parenting attitudes.
- Parent knowledge of child development.
- Parent attitudes about guidance.
- Support for parenting.
- Perceptions of conflict and/or violence in the neighborhood.
- Perception of parent involvement activities.
- Community collaboration.
- Community development of services.
- Staff professional development.
- Staff-children/family relationships.
- Sibling health and development.

For each of the proposed data collection instruments, the Contractor shall attach an analysis of the instruments with regard to any prior use in other studies of a similar nature, their psychometric properties and their acceptance by experts in the field as appropriate measures. The Contractor shall attach the results from pilot studies of each of the instruments in the final protocol. The Contractor shall prepare complete protocols of all instruments, and a training plan for all data collectors. The Contractor shall revise the instruments plan based on input from the FPO and the consortium, including the Technical Work Group, and shall submit final data collection instruments to the FPO for approval by the end of the *tenth month* of Phase I.

TASK 15—SUBMIT A DATA COLLECTION AND ANALYSIS PLAN

The Contractor shall prepare a data collection and analysis plan that links each study question to the data collection instruments, proposed respondents/data sources and study methods and the final design and sampling plan (TASK 11). The Contractor shall provide a graphic that displays this information.

The national Contractor shall be responsible for all the costs of data collection for all of the national studies as described in this document, including the cost of compensating families for interviews. Local researchers will also be encouraged to generate additional material resources for families. Impact data collection may be, and it is anticipated in most cases, will be, subcontracted to the local researcher, in response to the Contractor's call for an application containing data collection plan and qualifications of staff. The local researcher shall have first subcontracting opportunity at the first collection period. However, if, after that, due to a lack of quality or timeliness in previous data collection; or the local researcher does not want to subcontract; or there is no local researcher at the site, the national Contractor may subcontract with other qualified researchers for local data collection. Subcontracts shall be renewed on an annual basis.

The Contractor shall develop an overall data collection plan which clearly outlines timelines for all proposed data collection activities, including a theoretically-based justification for each proposed data collection activity. The data collection plan shall include:

- A discussion of issues around the timing of data collection and a proposed timetable for data collection. It is also anticipated that the impact data shall be collected at multiple points in time, to correspond with predetermined targets around children's age and parent and staff length of time in the program. Thus, data collection activities involving parents and children may need to be decoupled, leading to the likelihood that data collection in any one site may be relatively continuous. The Contractor shall discuss a preferred approach to this issue;
- Procedures for contacting and tracking families over time;
- A discussion of recommended procedures for the follow-up of incomplete data;
- Theoretical justification, procedures and timelines for assessment strategies proposed by the Contractor in additional areas not already mentioned in the presentation related to data collection of the program process;
- Theoretical justification, procedures and timelines for assessment strategies proposed by the Contractor related to data collection of child, family, community or staff outcomes;
- Theoretical justification, procedures and timelines for conducting observations and other data collection focused on program quality or variations;
- A discussion of a quality control component which addresses the training of data collection staff at the local Early Head Start program sites, continuity of data collection staff and methods for ascertaining reliability and effectiveness of data collectors;
- Procedures for identifying and assessing the quality of existing data, as well as procedures for negotiating with sites to access and utilize existing sources of data, particularly as they pertain to community data for determining the representativeness of the Early Head Start recruited families; and
- Procedures for establishing, maintaining and overseeing the subcontractors cooperative relationships with the Early Head Start programs that shall maintain the independence and objectivity required for a third party evaluation, but will allow for the effective management of data collection activities.

The Contractor shall discuss the data analysis challenge (Section I–I), including a discussion focused on determining the magnitude of effect across diffuse program services, and propose solutions to these challenges. The Contractor shall identify the specific types of data analyses that will be employed for each phase of data collection and for each data element, within the context of the revised study design, including the unit of analysis, possible aggregations and method of display in the final report.

The draft data collection and analysis plan shall be submitted to the FPO by the end of the *eleventh month* after contract effective date. The FPO will review this plan with other ACYF staff and submit comments to the Contractor within one week. The Contractor shall make the required corrections and resubmit the plan in final form to the FPO by the end of *twelfth month* after contract effective date.

TASK 16—PREPARE AN OMB CLEARANCE PACKAGE

The Contractor shall develop an Office of Management and Budget (OMB) clearance package for the study, including all data collection instruments and transmittal memorandum in accordance with OMB and the ACF guidelines. The package shall include, but not be limited to, the following:

- A justification and introduction to the study. This includes a justification of why the study is needed; how, by whom and for what purpose the information will be used; why existing information cannot be used and a summary of study components;
- Data collection plan. This includes both a description of and a justification for the study design, including the sample plan; design of data collection instruments with a question by question justification; results of pretesting data collection instruments; and a data analysis plan;
- Tabulation and publication plans;
- Consultation with outside agencies;
- Respondent burden estimate;
- Confidentiality statement.

The OMB package shall be submitted to the FPO by the end of the eleventh month of Phase I. The FPO will provide up to four sets of comments to the Contractor over a period of three weeks. The Contractor shall then submit the final OMB package to the FPO by the end of the *twelfth month of Phase II.* The Contractor shall allow at least 120 days for OMB approval.

TASK 17—REVISE THE INITIAL WORK PLAN INCLUDED IN THE PROPOSAL

Based on the progress of work covered by Tasks 1–16, the Contractor shall produce a revised work plan for each of the remaining Phases of the contract (Phases II–V), by the twelfth month after the contract effective date. Key issues to be addressed in both the initial and revised work plan shall include:

- Effective coordination of this project with Federal staff and designated Contractors, including HSFIS Contractor; Training and Technical Assistance Coordinator; Early Head Start sites, the consortium and the Technical Work Group;
- Identification of issues to be resolved for data collection with plans and timelines for how those issues will be addressed;
- Identification of logistical issues in the workings of the consortium and plans for addressing these issues. A schedule of consortium meetings;
- A proposed protocol of measures with timelines and identification of data collectors for each data collection point;
- Data collection, analyses and reporting plans for later phases of this project;
- A schedule for subsequent site visits;
- Any other remaining tasks.

TASK 18—SELECT FINAL CRITERIA FOR INCLUSION IN IMPACT EVALUATION

The Advisory Committee on Services to Families with Infants and Toddlers recommended establishing criteria for Early Head Start program evaluation, including the recommendation that no Early Head Start program shall be evaluated that is not fully implemented. *Twelve months after the beginning of Phase I*, the Contractor, with input from the Technical Work Group, shall submit a draft plan for determining whether sites demonstrate viability for impact evaluation. This plan shall include criteria for defining the minimum threshold for program implementation; standards for demonstrating whether comparability between comparison and project families was maintained; adequate power, and any other criterion deemed important to a valid evaluation of impact, i.e., absence of saturation of Head Start-like services in the community. As criteria for full implementation, the review shall include consideration of measures of implementation associated with the Early Head Performance Standards; Head Start Performance Measures; and program quality in general. This review and the plan shall be submitted to ACYF. On approval of the criteria, site visit teams will rate sites, beginning with research sites, on each criterion; this rating shall involve a site visit which may be combined with a previously scheduled site visit or with other planned data collection. Ratings will be forwarded to ACYF, who will make the final determination of which sites shall be included in the evaluation. *Three months* after the beginning of Phase II or on a modified timetable as proposed by ACYF or the national Contractor and approved by ACYF, final determination shall be made by ACYF regarding which and how many sites to include in the final impact evaluation. As a conservative estimate, the Contractor shall plan to conduct an impact evaluation at 12 sites.

B. PHASES II–V

TASK 19—CONDUCT ANNUAL SITE VISITS

Within *one month* of each new Phase, the Contractor shall develop a revised protocol for annual site visits to, at a minimum, all sites included in the evaluation. Protocols for the site visits shall be developed with input from the consortium, including the Technical Work Group, and be submitted to ACYF for final approval within *three months* of each new Phase. Site visits shall follow the approved protocol and shall include verification of data collection procedures; availability and use of program data, including HSFIS data, for continuous program improvement; follow through on research plans, and continued documentation of the nature of the program. Written reports shall be submitted to ACYF and the site within *three weeks* of each visit. The written report shall include an updated site profile, authored jointly by the Contractor and the local researcher, where applicable. The Contractor may be asked to conduct site visits to new Early Head Start sites for purposes the same as for FY '95 program sites. The proposal shall include a per-site cost to cover the possibility of additional Early Head Start program site visits in subsequent years.

C. ALL PHASES

TASK 20—CONDUCT CROSS-SITE DATA COLLECTION

The Contractor shall conduct cross-site data collection for the national impact studies (for both the project and comparison groups) in an estimated 12 selected Early Head Start sites, either directly providing for data collection or by subcontracting with local evaluators, as determined on an annual basis.

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Upon approval of the OMB Clearance Package, the Contractor shall conduct the appropriate data collection activities (outlined in the OMB clearance package) at the selected Early Head Start programs. The Contractor shall develop a plan to have senior evaluation staff conduct periodic site visits during data collection periods for the purpose of monitoring on-site evaluation staff, ensuring quality control and maintaining good working relationships with local research and program staff. The Contractor shall develop procedures for monitoring local staff to make sure they carry out their evaluation responsibilities.

Where appropriate, the Contractor also shall consider the potential need for the use of security guards to accompany researchers in cases where their safety is at risk.

As the data collection in this project has a longitudinal nature, whenever possible, data collectors with demonstrated effectiveness shall maintain continuity with families; the Contractor shall have developed compensatory procedures for maintaining reliability of measurement.

In each site, the Contractor shall continue to design and implement methods for understanding the services provided to both the treatment and comparison groups and at the community level. The Contractor shall continue to build the profile begun at each site to describe the general character of each program and shall continue to examine methods for documenting the program. Finally, the Contractor shall continue to explore methods for understanding the communities' impacts on and from Early Head Start programs. The Contractor shall work closely with researchers at local sites in these tasks.

TASK 21—CONDUCT A MINIMUM OF TWO MEETINGS A YEAR WITH THE CONSORTIUM

Within the *first three months* following the beginning of each new phase, the Contractor shall convene the consortium, including the local researchers and the Technical Work Group, in Washington, DC., to conduct the business of the consortium according to the consortium workplan. A minimum of two consortium meetings shall be convened each year, and no six month period shall pass without a consortium meeting. The possibility of meeting in connection with Early Head Start program personnel shall be considered for at least one of the two meetings and ACYF shall guide the decision on whether a program-research meeting is advised. There shall be support for at least two meetings of each of the consortium subcommittees per year, as necessary. The Contractor shall deliver ACYF consortium reports with embedded Technical Work Group reports *within one month* following each consortium meeting. The Contractor shall be responsible for all costs associated with consortium meetings (See TASK 11), except for the direct costs of local researchers and the federal staff. If the Contractor coordinates with program personnel, only the research and evaluation portion of the costs of the consortium shall be the responsibility of the national Contractor.

TASK 22—ESTABLISH A PROTOCOL OF ALL MEASURES FOR EACH NEW PHASE OF THE PROJECT AND PREPARE AND SUBMIT NEW CLEARANCE PACKAGES FOR SUBMISSION TO THE OFFICE OF MANAGEMENT AND BUDGET (OMB), AS NECESSARY

Within the *first three months* of each new phase, and as needed, the Contractor shall review the work plan to determine acceptability of the protocol for each new phase of measurement and the need to obtain OMB clearance. Measures added shall be submitted with input from the local researchers and the Technical Work Group, to ACYF, pilot tested and approved by the consortium according to procedures developed in the original protocol before being submitted to OMB. Procedures under TASK 14, TASK 15 and TASK 16 shall be adopted for subsequent measures.

TASK 23—PROVIDE SITES WITH DATA FILES AND SUMMARY REPORTS

The objective of continuous program improvement necessitates the timely turnaround of all data. Therefore, it will be necessary for impact data submitted from local sites to the national Contractor to be cleaned, entered and returned on disk to the local site within *three months* of its submission to the national Contractor. The national Contractor will need to develop procedures for working with sites that do not maintain quality and timeliness standards within the subcontracting structure.

Within *six months* of each Phase, a site-level printout for all impact evaluation sites shall be generated with sites identified only by number to maintain confidentiality, presenting the data, as predetermined in the data analysis plan, in summary form for each site and summed or averaged, as appropriate, across sites. From these printouts, sites shall be able to compare their own results with those of other sites. This report shall include HSFIS data. The national Contractor shall be required to submit, receive and report to ACYF a brief assessment of their own activities in the task of timely data turn around. To this end, initiated by the national Contractor, local programs will briefly evaluate the Contractor's timeliness and formatting of returned data. This brief report shall be due to ACYF by the *eleventh* month of each Phase, and will be submitted to the ACYF together with printouts of data returned to sites.

TASK 24—PROVIDE FORMATS FOR CONTINUOUS PROGRAM IMPROVEMENT

All Level I sites are expected to utilize formative evaluation procedures for continuous program improvement as a component of program management. Many Level I sites will identify a local university or research institution partner to assist them in completing this task; Level II sites will be expected to participate in continuous program improvement activities in addition to conducting research. The national Contractor shall be a partner in formative evaluation tasks for continuous program improvement by: Conducting site visits to all 12 evaluation sites in order to informally assess site preparedness for continuous program improvement and to provide on-site guidance for initiating this function at the local level; developing a standard format for orienting subsequent Early Head Start sites (FY '96 and beyond) to continuous program improvement activities; providing annual formative evaluation training, either directly or through the Training and Technical Assistance Contractor, to all program sites, during annual program consortium meetings in Washington, DC. or utilizing an alternative format; participating in bi-annual coordination meetings with the Training and Technical Assistance Contractor to ascertain that capacity for this new management function develops in all sites, and coordinating with the HSFIS Contractor through bi-annual meetings to assure that HSFIS data are being utilized for continuous program improvement. The Contractor shall provide a continuous program improvement report in the *twelfth month* of each Phase.

TASK 25—ANALYZE THE DATA

The Contractor shall conduct and complete analyses of national evaluation data on a timetable jointly agreed upon by ACYF and the Contractor, and based on the methodology approved under TASK 15. After preliminary analyses during each Phase, the Contractor may revise the analytical plan based on the quality and completeness of the database or on refinements of the conceptual hypotheses. Procedures for data analysis shall be reviewed by the Technical Work Group after each Phase of data collection and analysis. Recommendations for any revisions in the data analysis plan shall be submitted to the FPO for review and approval. In addition, the Contractor shall reserve 5% of the budget for analyses requested by ACYF or the Technical Work Group for analyses focused on policy or not specified in the contract.

C-4 Deliverables

a. *Literature and Research Review, Draft and Final:* The Contractor shall produce a draft and final literature review. The draft report shall be submitted to the FPO by November 1, 1995. The FPO shall provide comments within two weeks. The final version of the revised literature review shall be submitted to the FPO by December 1, 1995.

b. *Revised Draft Study Design and Process Data Plan:* The Contractor shall submit a revised study design and sampling plan and process data plan by January 31, 1996. This shall be an updated version of the design and sampling plan submitted in the Contractor's Best and Final proposal and shall reflect input from the Technical Work Group and ACYF. It shall be in draft form. The process data plan shall reflect the progress of HSFIS implementation as well.

c. *Feasibility Study to Test Assumptions of the Design—Protocol and Report:* By November 31, 1995, the Contractor shall submit a feasibility protocol, updated from the proposal to reflect knowledge of sites available for the feasibility study. This shall be a pilot study of the sampling, design and process evaluation procedures proposed. Working with ACYF, program sites for this study will be selected and the Contractor shall report findings by January 31, 1996.

d. *Consortium Logistics Plan, Draft and Final:* The draft and final Logistics Plan shall be submitted, respectively, by December 31, 1995 and April 30, 1996. This document shall be an update from procedures submitted with this contract and shall propose operations procedures that will guide the coordination of consortium logistics for the cooperative aspects of this project.

e. *Site Visit Draft and Final Protocols, Draft and Reports:* After review by the Technical Work Group, the draft of the site visit protocol shall be submitted to the FPO by the end of December 1995. ACYF will make recommendations, and the final site visit protocol shall be submitted to the FPO for approval by January 31, 1996. By the beginning of the March 1996, (the week after the first site visit), the Contractor shall submit a draft site visit report for approval by the FPO. The draft report shall include a schedule of events, an analysis of data from interviews and assessments, a summary of any additional issues raised, and an updated and expanded profile of the program and its evaluation. The FPO shall provide feedback to clarify expectations about content and format within two weeks. The final version of the first site visit report shall be submitted to the FPO for approval by the end of the March 1996. For each remaining site visit, a draft of the site visit report shall be submitted to the FPO one week after the site visit. The final version of each report shall be submitted to the FPO for approval *three weeks* after the site visit. The report for the last of the site visits shall be submitted no later then the end of April 1996.

f. *Study Design, Draft and Final:* The study design report shall be due April 30, 1996, reflecting input from the Technical Work Group, the consortium, and from site visits. The FPO shall review the design, obtain comments from other ACYF staff, and provide comments to the Contractor within two weeks. The Contractor shall then make corrections to the design and submit a final study design for review and approval by the FPO. The final study design shall be submitted by May 31, 1996.

g. *Data Collection Instruments Protocol, Draft and Final:* With input from the consortium including the Technical Work Group, the Contractor shall develop, or select existing data collection instruments to be submitted to the FPO by the end of the June 1996. The Contractor shall attach an analysis of the instruments with regard to any prior use in other studies of a similar nature, their psychometric properties, their acceptance by experts in the field as appropriate measures, and their performance in pre-tests and field testing. The FPO shall provide comments to the Contractor within two weeks. The Contractor shall revise the instruments based on the comments by the FPO and shall submit final data collection instruments to the FPO for approval by July 31,1996.

i. *Data Collection and Analysis Plan, Draft and Final:* With input from the consortium including the Technical Work Group, the Contractor shall present a draft data collection and analysis plan to the FPO by August 31, 1996 that shall be a complete plan for the data collection for this project and shall present a plan for analysis to answer the original study questions. The FPO shall review this plan, returning it to the Contractor for revisions and request its return by the September 30, 1996.

j. *Revised Work Plan, Draft and Final:* A draft of the Phase I Revised Work Plan shall be submitted to the FPO for approval by July 31, 1996. The FPO shall provide feedback within one week. The final version shall be submitted by September 30, 1996. The work plan may be revised once the data collection is underway to make use of new information or strategies which emerge over time. Proposed changes shall be indicated in the monthly technical progress reports and shall require the prior written approval of the FPO before changes are implemented.

k. *OMB Clearance Package:* The draft OMB package shall be submitted to the FPO by August 31, 1996. The FPO shall provide up to four separate sets of comments to the Contractor over a period of two weeks. The Contractor shall then submit the final OMB package to the FPO for approval by the end of the September 1996. The Contractor shall allow at least 120 days for OMB approval. An early OMB package shall be developed within the first several months on a schedule to be determined by the Contractor and FPO.

l. *Report of Site Qualifications for Evaluation:* The draft criteria, finalized criteria and report of sites' qualification for criteria shall be submitted to ACYF respectively, September 30, 1996, November 30 and December 31, 1996.

m. *Phase II—V Site Visit Protocols, Reports:* Following the schedule established for the Phase I site visit reports, a draft of the site visit protocol shall be submitted to the FPO by the *third month* of each Phase and a draft report shall be submitted *one week* after the first site visit. The final version of each report shall be submitted to the FPO *three weeks* after the site visit.

n. *Monthly and Annual Progress Reports:* The Contractor shall provide brief monthly technical progress reports to the FPO which clearly indicate the contract tasks which were to be performed in the prior month, a description of the progress made in completing these tasks, problems encountered or remaining from the prior month, expected approach to resolve problems from the prior month, tasks for the current month, and any budgeting implications or significant concerns to

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be addressed by the FPO. In addition, the monthly progress reports shall provide a brief review of the status of the contract budget for the respective Phase, with separate presentations (by tasks and subtasks) of the original amount budgeted, funds expended to date, funds expended in the prior month, and the remaining balance of funds in the contract. The *first two monthly* progress reports shall contain a communication plan which details how all relevant parties shall be updated regarding project activities. This communication plan shall be updated as necessary in the monthly progress report.

At the end of each project year, the Contractor shall prepare an in-depth annual progress report, summarizing the status of the evaluation cross sites and in each site as well as activities of the evaluation and the consortium, accomplishments, and problems encountered during the year. This report shall also include a detailed plan for activities in each site during the coming year. *Within one month* of submitting the annual report for approval, the Contractor shall provide an in-depth briefing on the progress of the study and initial findings in Washington, DC, for ACYF staff. Following those briefings, after receiving input from ACYF staff, the Contractor may be required to present a similar briefing for a Congressional audience. In all briefings, the Contractor may be required to collaborate with local researchers involved with Early Head Start evaluation.

o. *New Data Collection Instruments Protocols and OMB Clearance:* Within *three months* of the beginning of each new phase or as is necessary, the Contractor shall submit a protocol and OMB clearance for any new measures to be added to or changed from the originally approved protocols. The form of these deliverables shall be similar to form specified above for Data Collection Instruments Protocol, Draft and Final, and OMB Clearance Package.

p. *Consortium and Technical Work Group Reports:* Within *one month* after each consortium meeting and subcommittee meetings and within one month of each Technical Work Group meeting a written report shall be submitted to ACYF. All meetings of these bodies shall be reported in separate reports, even though Technical Work Group meetings may be embedded in the consortium meetings.

q. *Collaborative Contractor Coordination Reports: One week* following each meeting with the HSFIS or Training and Technical Assistance Contractor, a report shall be submitted to ACYF and to the relevant Contractor.

r. *Reports of Data Returned to Sites: Timeliness and Usefulness of Data Turnaround:* Reports of data disks returned to sites, site printouts, and reports of assessments of the Contractor's activities at local sites shall be submitted to ACYF by August 31st of each Phase.

s. *Reports of Activities to Support Continuous Program Improvement:* By September 30th of each Phase, a report shall be submitted summarizing the Contractor's role in Continuous Program Improvement activities and progress.

t. *Phase Reports:* For each Phase, the Contractor shall produce Draft and Final Report/s that shall incorporate data collected and analyzed around the intended purposes and plan of the project. These reports shall be due in draft form August 31 *and in final form September 30* of each Phase, *or as determined between ACYF and the Contractor.* Each report shall have attached relevant local researchers' reports, and provide an overview that integrates national and local findings. The reports shall be presented in the following approximate sequence:

"Report of Characteristics of Early Head Start Programs" which shall be an analysis of first year HSFIS data together with site profiles from impact evaluation sites, co-authored by local researchers and program staff.

"Pathways to Quality Study" which shall be an analysis of quality data from sites in describing the various procedures and successes of programs in attaining program quality. There shall be attached local studies focused on improving program quality. The national Contractor shall provide an overview that integrates findings from the national and local studies.

"Impact Studies" of this project shall compare program to comparison groups and also address the question: for which children and families were there impacts under which conditions? Local research studies focused on this question shall be attached and the national Contractor shall provide an overview that integrates findings from the national and local studies.

The "Study of Program Variations" shall first describe, then examine in depth the site profiles in relation to impact data collected to examine the questions pertaining to which children and families benefitted under what conditions of Early Head Start program variations. Local research reports that address the question shall be included and integrated.

"Studies Directed Towards Specific Policy Concerns," shall examine potential studies nested in the data set, i.e., analyzing across sites the added effect of Early Head Start to child care and in transition from welfare to work.

"Studies of Impact in a Longitudinal Context" shall be an analysis of findings in a longitudinal context. Local research reports that address the question of change over.

u. *Interim Report:* The Contractor shall produce an Interim Report, due September 1, 1997, which will summarize findings to date for the study. This report may require integration with other studies and evaluations of services for infants and toddlers, such as the CCDP evaluation.

v. *Final National Report:* The Contractor shall produce a Final Report which provides a national assessment of Early Head Start program implementation and program impacts across the programs examined. This report shall be comprehensive of the entire 5-year duration of the project and shall include and integrate findings from local studies, but maintaining the integrity of the separate studies.

The Report shall draw conclusions about the following issues (as well as other relevant issues raised during the course of the evaluation):

(1) Were nationally-defined Early Head Start objectives met?

(2) Were program implementation objectives realized?

(3) To what extent were continuous improvement objectives realized?

(4) To what extent and under what conditions were programs able to implement quality services?

(5) What short- and long-term impacts did Early Head Start programs have on children, families, communities and staff?

(6) For which children, families, communities and staff under which conditions was Early Head Start able to realize its objectives? What else was learned about child, family, community, staff effects through Early Head Start?

(7) To what extent did different prototypes of Early Head Start variation emerge and what kinds of outcomes were associated with various prototypes?

(8) What was learned through analyses of subgroups in Early Head Start with additional implications for public policy;

(9) What were the longitudinal effects of Early Head Start under a variety of conditions, including risk and program variation;

(10) How did the study of Early Head Start programs advance the methods of program evaluation?

In the Report, the Contractor shall discuss how the contents of this Report relate to any findings and recommendations presented in previous work produced under this contract. The Contractor also shall provide a discussion of the findings in relation to the literature in the field. The discussion of the literature shall be based on a revised version of the preliminary literature review. These revisions shall take into account new work in the field as well as information produced by Contractors under related studies.

The Contractor shall submit a draft outline of the final report to the FPO by the end of the *ninth month* before the end of Phase V. The FPO will have four weeks to review and approve the outline. The outline shall include a framework for a stand-alone Executive Summary. The draft final report based on the approved outline shall be submitted by the end of the *tenth month* before the end of Phase V. The FPO shall have four weeks to comment on the report and to obtain comments from other HHS staff and the Technical Work Group and the consortium. The Contractor shall plan to revise the draft at least twice based on comments from the FPO and other ACYF staff prior to submitting the final report to the FPO for approval. The Contractor shall make a presentation to Federal staff *four weeks* after submission of the draft final report. Issues raised in response to the presentation shall be considered in preparing the final version of the report. The final report and a camera ready copy of the final report shall be submitted to the FPO for approval by the end of the 60th month after contract effective date. The final report shall include a stand-alone Executive Summary which must not exceed fifteen pages in length. A copy of the Report of Evaluation Outcomes and of the Executive Summary shall be submitted on IBM PC compatible 3.5 inch 1.4 megabyte DS/HD diskettes in Wordperfect 5.1. In order to accommodate a publishing plan, the Contractor shall submit line item quotes reflecting the exact costs of research, writing, editing and copy preparation associated with the copies of the Final National Report and the Executive Summary (including one unbound camera-ready copy of each report).

w. *Data Files:* The Contractor shall produce a public use data diskette for an IBM PC Compatible 3.5 inch 1.4 MB DS/HD diskette at the conclusion of each Phase and at the end of the project for purposes of data archiving. Documentation shall include file and record layout, data dictionary including coding keys, a dump of the first and last 20 records of the data set and a summary of the processing including edit conditions and software used for analysis. The file shall contain no personal identifiers or confidential information.

It is the intent of ACYF that data should be publicly available for secondary analysis and publication of results as soon as possible following the completion of the contract. Prior to the end of the five year project, however, approval of the FPO and consideration by the consortium shall be required for publications, presentations or other uses of the data that are based on that national evaluation, at either a national or local level. Data tapes may be released for analyses by phases with first priority for a six-month period of time going to the Technical Work Group and researchers involved with the project.

Appendix B–2

TABLE 1.—COMPONENTS OF PROPOSED CHILD AND FAMILY ASSESSMENTS

	Assessment point (child's age)		
	14 months	24 months	36 months
Direct Child Assessments:			
Cognitive and Language Development:			
Bayley Scales of Infant Development	X	X	X
Expressive Language			X
Receptive Language			X
Social Competence:			
Bayley Behavioral Rating Scale	X	X	X
Emotional and Self Regulation:			
Bayley Behavioral Rating Scale	X	X	X
Maternal Interview:			
Parenting and the Home Environment[a]	X	X	X
Social Support Networks for Families[b]	X	X	X
Child's Social and Emotional Outcomes[c]	X	X	X
Child's Language Development (MacArthur Communicative Development)	X	X	
Quality of Parent-Caregiver Relationship	X	X	X
Home and Family Observations:			
Home Observation for Measurement of the	X	X	X
Attachment Q-Sort (Mother-Child)	X	X	X
Videotaping—Mother-Child Tasks		X	

[a] Proposed measures include Concepts of Development Questionnaire, Knowledge of Infant Development Inventory, Aggravation Related to Parenting Scale, Parent Attitude toward Child Expressiveness Scale, Parent Attributions Test, Home Observation for Measurement of the Environment, Family Functioning Style, and Family Environment Rating Scale.
[b] Proposed measures include Social Support Scale and Family Social Network Scale.
[c] Proposed measures include Infant Characteristics Questionnaire, Adaptive Social Behavior Inventory, and a behavioral problem checklist.

TABLE 2.—COMPONENTS OF PROPOSED PARENT SERVICES INTERVIEWS

Parent interviews	Timing (months since enrollment)					
	Baseline	6	12	18	24	36
Service Needs and Use	X	X	X	X	X	X
Family Health Outcomes		X	X	X	X	X
Parent Involvement			X		X	X
Progress Toward Economic Self-Sufficiency			X		X	X

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TABLE 2.—COMPONENTS OF PROPOSED PARENT SERVICES INTERVIEWS—Continued

Parent interviews	Timing (months since enrollment)					
	Baseline	6	12	18	24	36
Perceptions of Community			X		X	X
Child Health and Physical Development Outcomes	X	X	X	X	X	X
Benefits to Siblings—Health	X	X	X	X	X	X

TABLE 3.—COMPONENTS OF PROPOSED CHILD CARE QUALITY ASSESSMENTS

	Assessment point (child's age)		
	14 months	24 months	36 months
Observation of Child Care Setting and Provider-Child Interactions*	X	X	X
Provider Survey	X	X	X
Attachment Q-Sort (Caregiver-Child)	X	X	X

*Proposed measures include Infant-Toddler Environment Rating Scale, Family Day Care Rating Scale, Early Childhood Environment Rating Scale, Adult Involvement Scale, and Arnett Scale of Provider Sensitivity.

Appendix C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ REVISION

☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER

☐ NEW ☐ RENEWAL ☐ CONTINUATION

APPLICATION IDENTIFICATION NUMBER *(if known)*

STATEMENT OF POLICY: Safeguarding the rights and welfare of subjects at risk in activities supported under grants and contracts from DHHS is primarily the responsibility of the institution which receives or is accountable to DHHS for the funds awarded for the support of the activity. In order to provide for the adequate discharge of this institutional responsibility, it is the policy of DHHS that no activity involving human subjects to be supported by DHHS grants or contracts shall be undertaken unless the Institutional Review Board has reviewed and approved such activity, and the institution has submitted to DHHS a certification of such review and approval, in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, (45 CFR 46). Administration of the DHHS policy and regulation is the responsibility of the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20205.

1. TITLE OF PROPOSAL OR ACTIVITY

2. PRINCIPAL INVESTIGATOR/ACTIVITY DIRECTOR/FELLOW

3. DECLARATION THAT HUMAN SUBJECTS EITHER WOULD OR WOULD NOT BE INVOLVED

☐ A. NO INDIVIDUALS WHO MIGHT BE CONSIDERED HUMAN SUBJECTS, INCLUDING THOSE FROM WHOM ORGANS, TISSUES, FLUIDS, OR OTHER MATERIALS WOULD BE DERIVED, OR WHO COULD BE IDENTIFIED BY PERSONAL DATA, WOULD BE INVOLVED IN THE PROPOSED ACTIVITY. (IF NO HUMAN SUBJECTS WOULD BE INVOLVED, CHECK THIS BOX AND PROCEED TO ITEM 7. PROPOSALS DETERMINED BY THE AGENCY TO INVOLVE HUMAN SUBJECTS WILL BE RETURNED.)

☐ B. HUMAN SUBJECTS WOULD BE INVOLVED IN THE PROPOSED ACTIVITY AS EITHER: ☐ NONE OF THE FOLLOWING, OR INCLUDING: ☐ MINORS, ☐ FETUSES, ☐ ABORTUSES, ☐ PREGNANT WOMEN, ☐ PRISONERS, ☐ MENTALLY RETARDED, ☐ MENTALLY DISABLED. UNDER SECTION 6. COOPERATING INSTITUTIONS, ON REVERSE OF THIS FORM, GIVE NAME OF INSTITUTION AND NAME AND ADDRESS OF OFFICIAL(S) AUTHORIZING ACCESS TO ANY SUBJECTS IN FACILITIES NOT UNDER DIRECT CONTROL OF THE APPLICANT OR OFFERING INSTITUTION.

4. DECLARATION OF ASSURANCE STATUS/CERTIFICATION OF REVIEW

☐ A. THIS INSTITUTION HAS NOT PREVIOUSLY FILED AN ASSURANCE AND ASSURANCE IMPLEMENTING PROCEDURES FOR THE PROTECTION OF HUMAN SUBJECTS WITH THE DHHS THAT APPLIES TO THIS APPLICATION OR ACTIVITY. ASSURANCE IS HEREBY GIVEN THAT THIS INSTITUTION WILL COMPLY WITH REQUIREMENTS OF *DHHS Regulation 46 CFR 46*, THAT IT HAS ESTABLISHED AN INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS AND, WHEN REQUESTED, WILL SUBMIT TO DHHS DOCUMENTATION AND CERTIFICATION OF SUCH REVIEWS AND PROCEDURES AS MAY BE REQUIRED FOR IMPLEMENTATION OF THIS ASSURANCE FOR THE PROPOSED PROJECT OR ACTIVITY.

☐ B. THIS INSTITUTION HAS AN APPROVED GENERAL ASSURANCE (DHHS ASSURANCE NUMBER _____) OR AN ACTIVE SPECIAL ASSURANCE FOR THIS ONGOING ACTIVITY, ON FILE WITH DHHS. THE SIGNER CERTIFIES THAT ALL ACTIVITIES IN THIS APPLICATION PROPOSING TO INVOLVE HUMAN SUBJECTS HAVE BEEN REVIEWED AND APPROVED BY THIS INSTITUTION'S INSTITUTIONAL REVIEW BOARD IN A CONVENED MEETING ON THE DATE OF _____ IN ACCORDANCE WITH THE REQUIREMENTS OF THE *Code of Federal Regulations on Protection of Human Subjects (45 CFR 46)*. THIS CERTIFICATION INCLUDES, WHEN APPLICABLE, REQUIREMENTS FOR CERTIFYING FDA STATUS FOR EACH INVESTIGATIONAL NEW DRUG TO BE USED (SEE REVERSE SIDE OF THIS FORM).

THE INSTITUTIONAL REVIEW BOARD HAS DETERMINED, AND THE INSTITUTIONAL OFFICIAL SIGNING BELOW CONCURS THAT:

EITHER ☐ HUMAN SUBJECTS WILL NOT BE AT RISK; OR ☐ HUMAN SUBJECTS WILL BE AT RISK.

5. AND 6. SEE REVERSE SIDE

7. NAME AND ADDRESS OF INSTITUTION

8. TITLE OF INSTITUTIONAL OFFICIAL	TELEPHONE NUMBER
SIGNATURE OF INSTITUTIONAL OFFICIAL	DATE

HHS-596 (Rev. 5-80)

ENCLOSE THIS FORM WITH THE PROPOSAL OR RETURN IT TO REQUESTING AGENCY.

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5. INVESTIGATIONAL NEW DRUGS - ADDITIONAL CERTIFICATION REQUIREMENT

SECTION 46.117 OF TITLE 45 OF THE Code of Federal Regulations states, "Where an organization is required to prepare or to submit a certification . . . and the proposal involves an investigational new drug within the meaning of The Food, Drug, and Cosmetic Act, the drug shall be identified in the certification together with a statement that the 30-day delay required by 21 CFR 130.3(a)(2) has elapsed and the Food and Drug Administration has not, prior to expiration of such 30-day interval, requested that the sponsor continue to withhold or to restrict use of the drug in human subjects; or that the Food and Drug Administration has waived the 30-day delay requirement; provided, however, that in those cases in which the 30-day delay interval has neither expired nor been waived, a statement shall be forwarded to DHHS upon such expiration or upon receipt of a waiver. No certification shall be considered acceptable until such statement has been received."

INVESTIGATIONAL NEW DRUG CERTIFICATION

TO CERTIFY COMPLIANCE WITH FDA REQUIREMENTS FOR PROPOSED USE OF INVESTIGATIONAL NEW DRUGS IN ADDITION TO CERTIFICATION OF INSTITUTIONAL REVIEW BOARD APPROVAL, THE FOLLOWING REPORT FORMAT SHOULD BE USED FOR EACH IND: (ATTACH ADDITIONAL IND CERTIFICATIONS AS NECESSARY).

— IND FORMS FILED: ☐ FDA 1571, ☐ FDA 1572, ☐ FDA 1573

— NAME OF IND AND SPONSOR _____

— DATE OF 30-DAY EXPIRATION OR FDA WAIVER
(FUTURE DATE REQUIRES FOLLOWUP REPORT TO AGENCY) _____

— FDA RESTRICTION _____

— SIGNATURE OF INVESTIGATOR _____ DATE _____

6. COOPERATING INSTITUTIONS - ADDITIONAL REPORTING REQUIREMENT

SECTION 46.116 OF TITLE 45 OF THE *Code of Federal Regulations* IMPOSES SPECIAL REQUIREMENTS ON THE CONDUCT OF STUDIES OR ACTIVITIES IN WHICH THE GRANTEE OR PRIME CONTRACTOR OBTAINS ACCESS TO ALL OR SOME OF THE SUBJECTS THROUGH COOPERATING INSTITUTIONS NOT UNDER ITS CONTROL. IN ORDER THAT THE DHHS BE FULLY INFORMED, THE FOLLOWING REPORT IS REQUESTED WHEN APPLICABLE.

USE FOLLOWING REPORT FORMAT FOR EACH INSTITUTION OTHER THAN GRANTEE OR CONTRACTING INSTITUTION WITH RESPONSIBILITY FOR HUMAN SUBJECTS PARTICIPATING IN THIS ACTIVITY: (ATTACH ADDITIONAL REPORT SHEETS AS NECESSARY).

INSTITUTIONAL AUTHORIZATION FOR ACCESS TO SUBJECTS

— SUBJECTS: STATUS (WARDS, RESIDENTS, EMPLOYEES, PATIENTS, ETC.) _____

NUMBER _____ AGE RANGE _____

NAME OF OFFICIAL (PLEASE PRINT) _____

TITLE _____ TELEPHONE _____

NAME AND ADDRESS OF COOPERATING INSTITUTION _____

— OFFICIAL SIGNATURE _____

NOTES: *(e.g., report of modification in proposal as submitted to agency affecting human subjects involvement)*

HHS-596 (Rev. 9-80) (Back)

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

VOL 60 ISS 245 DE 21 1995 UMI

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget			
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

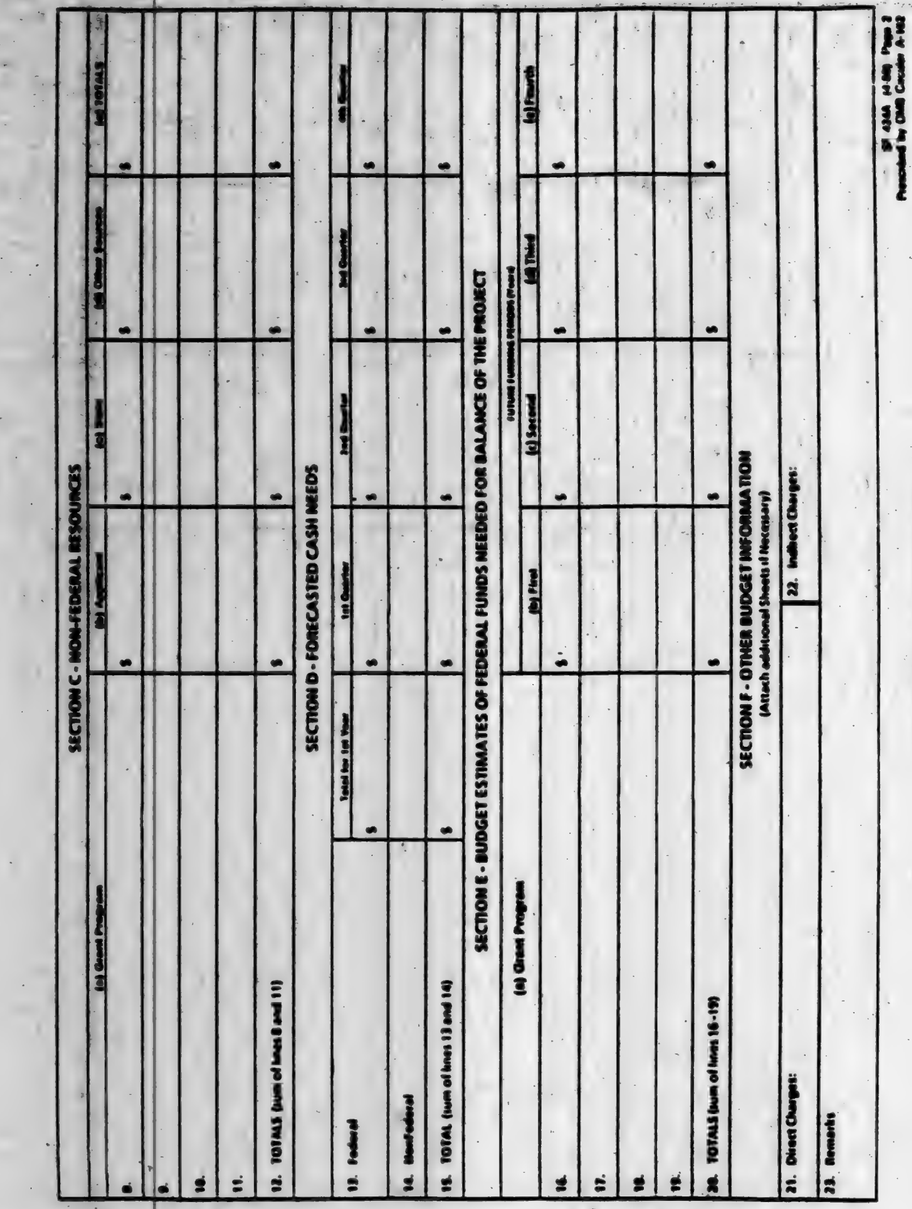
SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

22. Indirect Charges:

21. Direct Charges:	
23. Remarks	

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Standard Form 424A (4-88) Page 2
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Column (e) and (f).

For supplemental grants and changes to existing grants, do not use Column (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Column (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Secton C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Secton D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need to be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provides any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

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establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184-01P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-P

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certificatin Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently deberred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certificatin Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and relief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-P

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A *if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4110-01-P

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

OMB STATE SINGLE POINT OF CONTACT LISTING*

ARIZONA
Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–1305

ARKANSAS
Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

ALABAMA
Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, AL 36103–5690, Telephone: (205) 242–5483, FAX: (205) 242–5515

CALIFORNIA
Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

DELAWARE
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

DISTRICT OF COLUMBIA
Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. and Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

FLORIDA
Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, The Capitol (Room 1603), Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114, FAX: (904) 488–9005

GEORGIA
Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

ILLINOIS
Tim Golemo, State Single Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone: (217) 782–1671, FAX: (217) 782–6620

INDIANA
Frances E. Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–2972, FAX: (317) 233–3323

IOWA
Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

KENTUCKY
Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

MAINE
Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

MARYLAND
William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

MISSISSIPPI
Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

MISSOURI
Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102 Telephone: (314) 751–4834, FAX: (314) 751–7819

NEVADA
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (701) 687–4065, FAX: (702) 687–3983

NEW HAMPSHIRE
Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process
Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

NEW JERSEY
Gregory W. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs
Please direct all correspondence and questions about intergovernmental review to:
Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit, CN 800, Room 813A, Trenton, New Jersey 08625–0800, Telephone: (609) 292–9025, FAX: (609) 633–2132

NEW MEXICO
Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

NEW YORK
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

NORTH CAROLINA
Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

NORTH DAKOTA
North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

OHIO
Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus,

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Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

RHODE ISLAND

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

TEXAS

Tom Adams, Governors, Officer, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

UTAH

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114 Telephone: (801) 538–1535, FAX: (801) 538–1547

VERMONT

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609 Telephone: (802) 828–3326, FAX: (802) 828–3339

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

WISCONSIN

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

WYOMING

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX: (307) 638–8967

TERRITORIES

GUAM

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

PUERTO RICO

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96590

VIRGIN ISLANDS

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

[FR Doc. 95–31009 Filed 12–20–95; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3617–N–36]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also list the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number: 2502–0036.

Description of the need for the information and the proposed use: Section 204(b) of the National Housing Act (P.L. 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) provides that the Secretary of Housing and Urban Development (HUD) may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

Agency form numbers: HUD–92210.

Members of affected public: Individuals or households.

An estimation of the total numbers of hours needed to prepare the information collection is 10,000, number of respondents is 10,000, frequency response is monthly and the response is one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 7, 1995.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–31077 Filed 12–20–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Huron Potawatomi, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Huron Potawatomi, Inc., 221 1½ Mile Road, Fulton, Michigan 49052, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies the criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8.

DATES: This determination is final and will become effective 90 days from publication of the Final Determination, pursuant to 25 CFR 83.10 (l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

A notice of the Proposed Finding to acknowledge the Huron Potawatomi, Inc. (HPI) was published in the **Federal Register** on May 31, 1995, 60 F.R. 104, 28426–28427. The 180-day period provided for in the regulations for comment on the Proposed Finding closed November 27, 1995. No substantive third-party comments were received by the BIA. The only public comments received were two resolutions in support of the proposed finding. The petitioner waived the 60-day period provided for in the regulations (25 CFR Part 83.10(k)) for the petitioner to respond to third-party comments. This determination is made following a review of Huron Potawatomi, Inc.'s response to the Proposed Finding to acknowledge, which consisted of the submission of an updated membership list.

The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the **Federal Register** (§ 83.11(a)(2)).

The final determination incorporates the proposed finding and the technical reports to the proposed finding. Under 25 CFR 83.8, Huron Potawatomi, Inc., also known as the Nottawaseppi Huron Potawatomi Band, was deemed to have had prior unambiguous Federal acknowledgment in 1833, the date of the last treaty signed by the Potawatomi of Huron Band's chiefs. Between 1833 and 1840, the tribe's ancestors continued to reside on the Nottawaseppi Reserve. In 1840, the tribe's ancestors either avoided attempts of the Federal Government to remove the Potawatomi to Kansas or returned to Michigan within a few years after removal. The community was reestablished by 1842, and from that date until the present has consistently been identified as a settlement of Michigan Potawatomi in Federal, state, and local documents. Huron Potawatomi, Inc. meets criterion 83.7(a) as modified by criterion 83.8(d).

A geographical residential focus on the Pine Creek Indian Reservation in Calhoun County, Michigan, use of the Potatomi language as late as 1960, and a level of in-group or culturally appropriate patterned out-group marriages to other Michigan Indians from 1842 through 1960 of more than 50 percent were evidence that the tribe met the requirements of criterion 83.7(b) for community up to 1960 under the provisions of 83.7(b)(2). Since 1960, the migration of the tribe's members off the Pine Creek Reservation to specific locations in Michigan was patterned. The outlying settlements not only maintained close social and kinship ties with the central Pine Creek settlement area, but also among the five external settlement areas. Huron Potawatomi, Inc. meets criterion 83.7(b) as modified by section 83.8(d).

Because Huron Potawatomi, Inc. met the requirements of criterion 83.7(b) between 1833 and 1934 by showing a sufficient level of evidence under 83.7(b)(2), pursuant to 83.7(c)(3) they also met criterion 83.7(c) for that time period. From 1934 through 1970, the leadership was by a committee closely associated with the Methodist Indian mission on the Pine Creek reservation. In 1970, the tribe incorporated and has since been administered by an elected chairman and council. Huron Potawatomi, Inc. meets criterion 83.7(c) as modified by criterion 83.8(d).

The tribe has provided a copy of its governing document, which describes its membership criteria. Huron Potawatomi, Inc. meets criterion 83.7(d).

The 1994 membership list of the Huron Potawatomi, Inc. contained 650 entries. The membership has been documented to descend from persons listed on the 1904 Taggart Roll, compiled by the Bureau of Indian Affairs in connection with the issuance of Potawatomi annuity payments under Federal treaties. The Proposed Finding concluded that the 1994 HPI membership list, after eliminating deceased members and duplicate names, contained 619 actual living persons. The Proposed Finding noted the following items pertaining to the HPI membership: (1) That 171 of the HPI members were also, by ancestry, eligible for membership in the Pokagon Potawatomi Band; (2) that a small number of the HPI members were eligible for enrollment in other federally acknowledged tribes and that two large families appeared to be dually enrolled with the Saginaw Chippewa Indian Tribe; and (3) that 126 individuals on the February 18, 1994, HPI membership list had notified the BIA that they wished to be part of the petition for Federal acknowledgment submitted by the Match-e-be-nash-she-wish Pottawatomi Band, while about 150 others were eligible to be included in the membership of the Match-e-be-nash-she-wish Pottawatomi Band if they so desired. Because of extensive intermarriage among American Indian tribes in Michigan, the above determinations contained overlaps: the same individual might be eligible for more than one of the enrollment options. The Proposed Finding concluded that if the persons who fell into the categories listed above chose to disenroll from HPI, their removal from the HPI membership would not adversely affect the ability of the Huron Potawatomi, Inc. to meet the mandatory criteria of the Federal acknowledgment regulations.

The December 1, 1995, membership list submitted by Huron Potawatomi, Inc. used both the prior membership list dated June 27, 1991 (numbers 1 through 849) and that dated February 15, 1994, as the basis for the changes submitted: it utilized the 1991 membership numbers, whereas the 1994 list did not include membership numbers, and added #850 for one individual (whose name was on the February 19, 1994, list). The December 1, 1995, HPI list represents the following changes from the February 18, 1994, HPI list: 11 former members were noted as deceased; 2 former members enrolled in the Grand Traverse Band; 42 former members enrolled in the Pokagon

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Potawatomi Band; and 132 (the 126 noted by the Proposed Finding plus 6 more) former members enrolled in the Match-e-be-nash-she-wish Pottawatomi Band. These withdrawals fall well within the parameters predicted by the Proposed Finding. Since the Proposed Finding, fifty-eight persons carried on the 1991 and 1994 HPI lists relinquished their membership in Huron Potawatomi, Inc. in order to remain enrolled in the Saginaw Chippewa Indian Tribe. These relinquishments resolved any problem caused by dual enrollment in another federally-recognized tribe. Huron Potawatomi, Inc. did not add any members between the February 18, 1994, and December 1, 1995, membership lists: none of the births to tribal members that occurred in the interim met the constitutional requirements for voting membership at age 18. These deductions should have given, based on the 1994 roll, a net membership for Huron Potawatomi, Inc., of 606 individuals. The list dated December 1, 1995, contained 602 names. The discrepancy of four persons was clarified by an addendum to the membership roll sent by the HPI on December 12, 1995. The addendum identified three names that were on the tribe's deceased list, but had been overlooked. The fourth person was identified as member on the roll who has the same name as a person on the deceased member list. Huron Potawatomi, Inc. meets criterion 83.7(e).

Huron Potawatomi, Inc. is not principally composed of persons who are members of another acknowledged North American Indian tribe. Huron Potawatomi, Inc. meets criterion 83.7(f).

No evidence was found that Huron Potawatomi, Inc. or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship. Huron Potawatomi, Inc. meets criterion 83.7(g).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–31075 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–02–P

Operation and Maintenance Rate Adjustment: Wapato Irrigation Project, Washington; Notice of Proposed Operation and Maintenance Rate Increase

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Wapato Irrigation Project for 1996 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management control,

(b) Materials and supplies,

(c) Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement,

(e) Capitalization expenses,

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702.

DATES: Comments must be submitted on or before [January 22, 1996.]

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Assistant Secretary of Indian Affairs by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1996 and subsequent years.

The purpose of this notice is to announce a proprosed increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The assessment rates for 1996 will amount to an increase of 11% for the Wapato Satus Unit A Lands and 21% for B lands due to increased storage charges and an 11% increase for the Toppenish-Simcoe & Ahtanum Units.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1996 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report $15.00
(2) Requests for Verification of Account Delinquency Status, Per Report.....$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (In addition to minimum billing fee) Per Bill $10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee) Per Bill $10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report $10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee.....$10.00
(7) Review of subdivision plats.....$10.00

Ahtanum Unit

Charges

(A) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land to which water can be delivered from the project works.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(A) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(A) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1996 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts .. $40.00
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands .. $40.00
(3) Rate per assessable acre for all lands with a storage water rights, known as "b" lands, in addition to other charges per acre $8.00
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands $44.00
(5) Basic rate for each assessable acre of Water Rental Agreement Lands $49.00

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied against all tracts of less than one acre.

Payments

The water charge become due on April 1 of each year and are payable on or before that date. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Dated: December 13, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–31043 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AZ–054–06–7122–14–X218; AZ–054–06–03]

Arizona, Temporary Closure of Selected Public Lands in La Paz County, Arizona.

AGENCY: Bureau of Land Management.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the Operation of the 1996 SCORE Parker 400 Desert Race.

SUMMARY: The Area Manager of the Havasu Resource Area announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1996 SCORE Parker 400 Desert Race.

DATES: January 18, 1996, through January 21, 1996.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways south of the Bill Williams River. East and north of AZ Highway 72 and west of Wenden Road is closed to public vehicle use from 6:00 p.m. Thursday, January 18, 1996, to 12:00 noon Sunday, January 21, 1996 (Mountain Standard Time).

2. Vehicles are prohibited from the following four Wilderness Areas and one Wilderness Study Area (WSA):

a. AZ–054–12 (Gibraltar Mountain)
b. AZ–054–15A (Swansea)
c. AZ–054–71 (Buckskin Mountains)
d. AZ–054–17 (East Cactus Plain)
e. AZ–054–14A/B (Cactus Plain WSA)

3. The entire area encompassed by the designated course and all areas within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles.

4. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the designated spectator areas.

5. Spectator viewing is limited to two designated spectator areas located at:

a. South and north of Shea Road, approximately 7 miles east of Parker, Arizona.

b. Bouse Road, also known as Swansea Road, approximately 2 miles north of Bouse, Arizona).

6. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Possess, discharge, or use firearms, other weapons, or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

j. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

k. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Arizona time.

m. Allow any pet or other animal in their care to be unrestrained at any time. Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, or Myron McCoy, Outdoor Recreation Planner, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 855–8017.

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Dated: December 15, 1995.

William J. Liebhauser,

Area Manager.

[FR Doc. 95–31067 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–054–06–1430–00; AZA 29390]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in La Paz County, Arizona, have been examined and found suitable for classification for lease under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The classification is for the following lands for recreational or historical purposes.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 15 W.,
Sec. 28, W½SW¼;
Sec. 29, lots 1 to 6, inclusive, NW¼SW¼;
Sec. 32, lots 1 and 2;
Sec. 33, lots 1 and 2;
MS 2797.

The area described contains 1,010 acres.

The lands are not needed for Federal purposes. Lease is consistent with the current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All valid existing rights documented on the official public land records at the time of lease issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for recreational or historical purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreational purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona, (520) 855–8017.

Dated: December 13, 1995.

Robert M. Henderson,

Acting Area Manager.

[FR Doc. 95–31063 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–932–1430–01; NMNM 69094–25, et al.]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to The Nature Conservancy (TNC) on September 23, 1994, for the following described land in Otero County, New Mexico, pursuant to the Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

NMNM 69094–28

New Mexico Principal Meridian

T. 16 S., R. 10 E.,
Sec. 5, lots 21 and 28.
Containing 39.26 acres.

In exchange the United States acquired the surface estate in the following described land located in Rio Arriba County, New Mexico:

NMNM 69094–25

T. 27 N., R. 2 E.,
Sec. 28, S½NW¼ and SW¼.
Containing 240.00 acres.

NMNM 69094–26

T. 27 N., R. 2 E.,
Sec. 33, W½
Containing 320.00 acres.

The purpose of the exchange was to acquire land for the Rio Chama National Wild and Scenic River as part of an ongoing TNC Exchange Pool.

Dated: December 14, 1995.

Richard A. Whitley,

Acting State Director.

[FR Doc. 95–31111 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–030–5700–77; N–59714]

Notice of Realty Action; Modification of Recreation and Public Purposes Classification and Designation of Public Land for Sale; Lyon County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended, (43 U.S.C. 869, et seq.), is hereby modified to allow for disposal of the land through sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than fair market value:

Mt. Diablo Meridian, Nevada

T. 20 N., R.25 E.,
Sec. 8, NE¼NW¼.
Containing 40 acres.

Fair market value has been determined to be $68,000.00.

DATES: Comments on the proposed land sale will be accepted until February 5, 1996. The land will not be offered for sale until 60 days after publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, (702) 885–6000.

SUPPLEMENTARY INFORMATION: On May 11, 1983, this public land was classified for public purposes pursuant to the Recreation and Public Purposes Act. The land was subsequently leased to Lyon County, Nevada for a public school site. The land was never developed as a school site and surrounding lands have been zoned for industrial use. The Lyon County School District is no longer interested in utilizing this land as a school site and the lease has been relinquished. The 40-acre parcel will be offered for sale directly to Wade/Fernley, L.P., the property owner of all adjoining lands. This sale is consistent with BLM policies and the Lahontan Resource Management Plan and is supported by Lyon County and the Town of Fernley, Nevada. The public interest will be served by offering this land for sale. The purpose of the sale is to dispose of a parcel of land which is difficult and uneconomical to manage as part of the public lands and which has potential for industrial development. No significant resource values will be affected by this transfer. The appraisal report, planning document, and environmental report covering the proposed sale are available for review at the BLM, Carson City District Office.

PATENT TERMS AND CONDITIONS: Patent for the land when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals other than those having no known mineral values. (A more detailed mineral reservation will appear in the patent.) and be subject to:

Those rights for highway purposes granted to the Nevada Department of Transportation, its successors or assigns, by rights-of-way Nev–054710 and CC–018420, pursuant to the Act of November 9, 1921 (42 Stat 216).

The sale will not result in a reduction of Animal Unit Months (AUMs) on BLM grazing permits.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to James M. Phillips, Lahontan Resource Area Manager, Bureau of Land Management, Carson City District Office. Objections will be reviewed by the Carson City District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated this 12th day of December, 1995.

James M. Phillips,

Area Manager Lahontan Resource Area.

[FR Doc. 95–31113 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–055–05–1330–00; CAAZCA 38103]

California; Notice of Realty Action: Extension of Deadline for Submission of Applications for a Long-Term Recreation Concession Lease in Imperial County, California.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is announcing the extension of the deadline for submission of applications for a long-term recreation concession lease in support of BLM's recreation program, pursuant to the regulations at 43 CFR 2920. The original Notice of Realty Action "Availability of Long-Term Recreation Concession Lease in Imperial County, California" was published in the **Federal Register**, Volume 60, No. 187, pages 49850 through 49851, September 27, 1995. The site for the proposed concession is located on public lands on the west bank of the Colorado River about 12 miles south of Blythe, California, in Imperial County.

DATES: Applications for developing the site will be accepted only at the BLM Yuma Resource Area Office, Yuma District, 3150 Winsor Avenue, Yuma, AZ 85365, from October 25, 1995, to February 20, 1996. If a satisfactory application/proposal is received, selection of the successful applicant will be made by March 31, 1996, without further publication. Lease issuance will not be simultaneous with final selection, but will occur by May 1, 1996, after the term of the lease, stipulations, and other items have been agreed upon by BLM and the successful applicant.

FOR FURTHER INFORMATION CONTACT: Area Manager Joy Gilbert or Supervisory Lands and Minerals Specialist Pat Boykin, BLM, Yuma Resource Area, 3150 Winsor Avenue, Yuma, AZ 85365, (520) 726–6300.

Dated: December 12, 1995.

Joy Gilbert,

Area Manager, Yuma Resource Area.

[FR Doc. 95–31058 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–963–06–1420–00]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on January 2, 1995.

New Mexico Principal Meridian, New Mexico

T. 17 N., R. 18 W., Accepted September 6, 1995, for Group 843 NM.
T. 20 N., R. 17 W., Accepted August 31, 1995, for Group 844 NM.
T. 18 N., R. 18 W., Accepted September 14, 1995, for Group 844 NM.
T. 19 N., R. 18 W., Accepted September 14, 1995, for Group 844 NM.
T. 27 N., R. 15 W., Accepted July 25, 1995, for Group 870 NM.
T. 29 N., R. 20 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 16 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 18 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 15 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 19 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 14 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 17 W., Accepted August 31, 1995, for Group 870 NM.
T. 10 N., R. 16 W., Accepted September 20, 1995, Amended Survey.

Indian Meridian, Oklahoma

T. 13 N., R. 9 W., Accepted September 21, for Group 64 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the open files of the New Mexico State Office, Bureau

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Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 7, 1995.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 95–31089 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–932–06–1430–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on December 4, 1995.

New Mexico Principal Meridian, New Mexico

T. 20 N., R.10 E., Accepted December 1, 1995, for Group 914 NM.

A person or party who wishes to protest against this survey must file a written protest with the State Director, Bureau of Land Management, that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

This plat will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 4, 1995.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 95–31088 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–809443

Applicant: Alan Sackman, New York, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by F. Bowker, "Thornkloof", Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809393

Applicant: John Thrower, Saxonburg, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by the Ciskei Government, "Tsolwana Game Reserve", Tarkastad, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809587

Applicant: University of Washington, Regional Primate Research Center, Seattle, WA.

The applicant requests a permit to import blood samples from captive-held and captive-born orangutans (*Pongo pygmaeus*) from Safari Park, Bogor, Indonesia, for the purpose of enhancement of the survival of the species.

PRT–800037

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export two captive-born male Parma wallaby (*Macropus parma*) to the Seoul Grand Park Zoo, Seoul, Korea, to enhance the propagation and survival of the species through captive breeding and conservation education.

PRT–808443

Applicant: Richard A. Pruchey, Riverton, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Contour, Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809334

Applicant: Manimal Magic Act, Las Vegas, NV.

The applicant requests a permit to export and import leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–765658

Applicant: Manimal Magic Act, Las Vegas, NV.

The applicant requests a permit to reexport and reimport captive-born leopards (*Panthera pardus*), tigers (*Panthera tigris*), Siberian tiger (*Panthera tigris altaica*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–673539

Applicant: Gatti Production, Inc., Tustin, CA.

The applicant requests a permit to reexport and reimport four wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–701458

Applicant: Carl R. Beck, Las Vegas, NV.

The applicant requests a permit to reexport and reimport leopards (*Panthera pardus*), tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809349

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809348

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephant (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809347

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephant (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809260

Applicant: Thomas Boyle, Farmington Hills, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. D.B. Pohl at Teafoutain, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809599

Applicant: Wenjun Li, University of Massachusetts, Amherst, MA.

The applicant requests a permit to import study skins, skulls, hair, scale, tissue and blood samples from Temminck's ground pangolin (*Manis temminckí*) from museums in Canada, Australia, France, Germany, Austria, Sweden, United Kingdom, and South Africa, for the purpose of scientific research on the status of genetic relationships within the genus *Manis*.

PRT–809549

Applicant: Frederick E. McDonald, III, Dallas, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Frank Bowker, Thornkoof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809545

Applicant: Exotic Feline Breeding Compound, Rosamond, CA.

The applicant requests a permit to import one captive-born Persian leopard (*Panthera pardus saxicolor*) from Zoo Kaunas, Lithuania for the purpose of enhancement of the survival of the species through propagation.

The following applicants have applied for a permit to conduct certain activities with endangered species. The original notice was published on November 16, 1995, in FR Vol. 60, No. 221, 57592–57593, pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). The comment period has been extended for an additional 5 days because of the government shutdown.

PRT–808566

Applicant: Darrell Judkins, Lakeville, MN.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802429

Applicant: Christian Jackson, Metairie, LA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the survival of the species.

PRT–802428

Applicant: Tamara Scott, Newark, CA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the survival of the species.

PRT–792071

Applicant: Frank O'Brien, Wilkes-Barre, PA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–800757

Applicant: Richard Edwards, Edmond, OK.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–797904

Applicant: Charles Cook, Centerville, OH.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802244

Applicant: David Greenberg, Tucson, AZ.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) and slender-snout crocodile (*Crocodylus cataphractus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–794568

Applicant: Eugene Bergholz, Dousman, WI.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–786168

Applicant: Wilson Stout, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788047

Applicant: Hossein Golabchi, Augusta, GA.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788044

Applicant: Larry Battarbee, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: The Cincinnati Zoo, Cincinnati, OH, PRT–809222.

Type of Permit: Take for public Display.

Name and Number of Animals: Pacific walrus (*Odobenus rosmarus*), 4

Summary of Activity to be Authorized: The applicant has requested a permit to take (permanently remove) from the wild up to 4 walrus calves which are orphaned as a result of the Alaska Native subsistence hunt or are

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found stranded for the purposes of public display.

Source of Marine Mammals for Research/Public Display: Located in Alaskan waters near Savoonga, St. Lawrence Island.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 15, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–31025 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–55–P

Emergency Exemption: Issuance

On 13 December 1995, a permit, US 809571, was issued to the Southwest Foundation for Biomedical Research, San Antonio, Texas to import two serum samples from one captive-born lion-tailed macaque (*Macaca silenus*) from the Metro Toronto Zoo, Ontario, Canada for diagnostic virology. The 30-day public comment period required by the Endangered Species Act was waived in accordance with section 10(c) of the Endangered Species Act. The Fish & Wildlife Service determined that an emergency affecting the health and life of one of the animal's care-takers existed and no reasonable alternative was available to the applicant. The care-taker was bitten on 11 December 1995, by the animal which is a potential carrier of the monkey B-virus (*Herpes simiae*). The B-virus is lethal to humans if not diagnosed within the first few days. Regardless of the test results the lion-tailed macaque will not be destroyed.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 15, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–31026 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Electronic Data Interchange (EDI) in the Royalty Management Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of an EDI presentation.

SUMMARY: The Minerals Management Service (MMS) is giving an Electronic Data Interchange (EDI) presentation in Fort Worth, Texas, on January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Y. Matthews, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593 or (303) 275–7036, FAX number (303) 275–7099.

DATE: The EDI presentation is Thursday, January 25, 1996.

LOCATION: Burnett Building, Union Pacific Resource's Conference Room 2983, 801 Cherry Street, Fort Worth, Texas. Cherry Street is located off of Interstate 30 (take the exit marked Cherry Street).

SUPPLEMENTARY INFORMATION: MMS is offering an EDI presentation at no cost to companies and interested parties that intend to implement or pilot EDI with MMS. The EDI presentation will be held the day following the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX) REGS Work Group meeting in Fort Worth, Texas. The API PIDX REGS Work Group meeting is scheduled for January 22–24, 1996. The EDI Presentation instructors are MMS employees of the Royalty Management Program, Systems Management Division.

Agenda: Morning Session 9:00 a.m.–11:30 a.m.

Instructor: Mr. Ron Hatton

Subject: MMS EDI activities, capabilities, current status and implementation planning and schedules.

Afternoon Session 1:00 p.m.–4:00 p.m.

Instructor: Mr. Tim Allard

Subject: EDI technical issues related to mapping and electronic exchange of regulatory data, and funds transmittal with MMS via EDI.

All EDI Presentation attendees will be provided copies of the current MMS EDI Implementation Guides.

If you are planning to attend this EDI Presentation, please leave a message for Barbara Matthews at the telephone and FAX numbers in the information contact section of this notice no later than January 17, 1996.

Dated: December 15, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–31074 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

General Management Plan Organ Pipe Cactus National Monument, Arizona; Notice of Intent to Prepare Supplemental Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91–190, and the Council on Environmental Quality regulations at 40 CFR 1502.9(c), the National Park Service will prepare a supplemental environmental impact statement (SEIS) to the 1995 draft General Management Plan/Environmental Impact Statement (GMP/DEIS) for Organ Pipe Cactus National Monument, Arizona. This notice serves to inform the public of the continuation of the GMP/EIS planning process.

BACKGROUND: In May 1995, the National Park Service issued a draft GMP/EIS for Organ Pipe Cactus National Monument, Arizona. The draft GMP described and analyzed a proposed action and an alternative strategy for the general management of the monument including resource protection, visitor use, and facility development. An accompanying DEIS assessed the environmental and socioeconomic impacts associated with each alternative.

Substantive public and agency comments were received on the draft document during the 60-day comment period that ended on July 10, 1995. Most comments focused on the following issues: changes proposed for State Route 85; the range of alternatives and suggestions for new alternatives; costs associated with implementing various elements of alternatives; and mitigation strategies for the protection of natural resources, especially threatened and endangered species. Based on an analysis of these comments, the National Park Service has determined that a supplemental draft GMP/EIS will be prepared.

The supplemental draft GMP/EIS will address the comments and suggestions received during the initial public comment period. The supplement will include clarifications of the original alternatives and a discussion of new alternatives to be added since release of the initial draft GMP/EIS. It will also present an analysis of the environmental consequences associated with each alternative.

The official who is responsible for the current GMP/EIA planning process is Stanley T. Albright, Field Director, Pacific West Area, National Park Service. The supplemental draft GMP/EIS is expected to be available for public review in early 1996, and it will be provided to all persons and organizations who received the initial DEIS. Upon approval, officials responsible for implementing the plan will be the Superintendent, Organ Pipe Cactus National Monument, and the Field Director, Intermountain Field Area, National Park Service.

Dated: December 12, 1995.

Patricia L. Neubacher,

Field Director, Pacific West Area.

[FR Doc. 95–31065 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistance Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Introduction of Commission members and guests.
(3) Approval of summary of minutes from April 6–8, 1994 meeting.
(4) Review agenda.
(5) Superintendent's welcome and review of the Commission's function and purpose.
(6) Commission membership status.
(7) Election of Chair and Vice-Chair.
(8) Federal Subsistence Management Program:
  a. Update on the revised C&T determination process.
  b. Update on Federal Subsistence Board actions affecting the park.
(9) Public and other agency comments.
(10) Old business:
  a. Status of letter to Eastern Interior, Southcentral and southeast Subsistence Regional Councils encouraging cooperation between the SRC and the regional councils.
  b. Status of letter to Secretary of the Interior requesting funding to conduct an access study.
  c. Status of letter to Secretary of the Interior requesting assistance in resolving fall hunting of waterfowl with provisions of the Migratory Bird Treaty Act.
  d. Status of SRC's Resident Zone Boundary Proposal.
  e. Status of Hunting Plan Recommendation studies to add Northway and Tetlin as resident zone communities.
(11) New business:
  a. Proposed 1996–97 subsistence hunting proposals/regulations.
  b. Mentasta Caribou Hunt Proposal by NPS.
  c. 804 process work session.
  d. Review of NPS Subsistence Program.
(12) Set time and place of next SRC meeting.
(13) Adjournment

DATES: The meeting will be held Wednesday and Thursday, January 17 and 18, 1996. The meeting will begin at 8:30 a.m. and end at 5 p.m. each day.

LOCATION: The meeting will be held at the Caribou Cafe in Glennallen, Alaska.

FOR FURTHER INFORMATION CONTACT:

Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Cooper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION: The subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Field Director.

[FR Doc. 95–31090 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1996 is 7.625 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1995, through and including September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–1061, extension 287.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.625 percent for fiscal year 1996.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 7.58 percent. Rounding this average yield to the nearest one-eighth percent is 7.625 percent, which is within the permissible one-quarter of 1 percent change.

The rate of 7.625 percent shall be used by all Federal agencies in the formulation and evaluation of water and

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related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 14, 1995.

Wayne O. Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 95–31060 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–04–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32804]

CSX Corporation and American Commercial Lines, Inc.—Control and Related Merger Exemption—Conticarriers and Terminals, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Petition for exemption.

SUMMARY: Acting under 49 U.S.C. 10505(a), the Commission exempts CSX Corporation (CSX), CSX subsidiary, American Commercial Lines, Inc. (ACL), and Conticarriers and Terminals, Inc. (Conticarriers) from 49 U.S.C. 11343 and 11321 so as to enable ACL to acquire control of the barge operating assets of Conticarriers and lease them to ACL's barge operating subsidiary American Commercial Barge Line Company.

DATES: This exemption will be effective on December 21, 1995. Petitions to reopen must be filed by January 10, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32804 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[1] 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) petitioners' representative: Donald H. Smith, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31082 Filed 12–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should use the current name and address.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Macromolecular Crystallography Association

Notice is hereby given that, on January 19, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Industrial Macromolecular Crystallography Association ("IMCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, G.D. Searle and Company, Skokie, IL; and Sanofi Winthrop, Inc., New York, NY have become members of IMCA. Monsanto Company and Sterling Drug, Inc. have withdrawn as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMCA intends to file additional written notifications disclosing all changes in membership.

On October 23, 1990, IMCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 1990 (55 FR 49953).

The last notification was filed with the Department on March 3, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 30, 1993 (58 FR 16707).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–31055 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 1, 1995 a proposed Consent Decree in *United States and State of California* v. *Shell Oil Company, Inc., et al.*, Case No. CV 91–0589 RJK (Ex) was lodged with the United States District Court for the Central District of California. This Consent Decree represents a settlement of claims against McAuley LCX Corporation ("McAuley") for costs incurred in connection with the McColl Superfund Site in Fullerton, California under section 107 of CERCLA, 42 U.S.C. § 9607.

Under this settlement between the United States and the State of California ("Plaintiffs") and McAuley, McAuley will pay the United States Environmental Protection Agency ("EPA") $184,000 for past United States response costs. The Consent Decree also requires McAuley to pay the State of California $66,000 for past State response costs.

This is the second consent decree entered in this case. The first consent decree between the Plaintiffs and the Oil Company Defendants (Shell Oil Company, Union Oil Company of California, Atlantic Richfield Corporation and Texaco, Inc.) resulted in payment of $18,000,000 from the Oil Company Defendants to the Plaintiffs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and State of California* v. *Shell Oil Company, Inc., et al.*, D.J. Ref. 90–11–2–3A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Room 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012 and at Region IX, Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree and exhibits thereto may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–31057 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Caribe General Electric Products, Inc.*, Civil Action No. 90–2287CCC, was lodged on December 8, 1995, with the United States District Court for the District of Puerto Rico.

The Second Amended Complaint in the *Caribe General Electric Products* action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the United States in taking response actions in connection with the Vega Alta Public Supply Wells Superfund Site ("Site") located in the municipality of Vega Alta, Puerto Rico. The proposed Consent Decree embodies an agreement by defendants Caribe General Electric Products, Inc., Motorola Telcarro de Puerto Rico, Inc., Harman Puerto Rico Automotive, Inc., the West Company of Puerto Rico, Inc., and Unisys Corporation to be jointly and severally liable for the payment of $2,650,000 to the United States in order to reimburse the United States for past costs incurred at the Site through about November 1993. In addition, all of these defendants, as well as the Puerto Rico Industrial Development Company, the remaining defendant, have agreed to provide the United States with access to any property that they own or control to which access is required for implementation of response actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Uunited States* v. *Caribe General Electric Products, Inc.*, DOJ Ref. #90–11–3–269. The proposed Consent Decree may be examined at the Region 2 Office of the Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866 (contact Marla Wieder at 212–637–3184), at the United States Attorney's Office located at the Federal Building, Room 101, Carlos Chandon Avenue, Hato Rey, Puerto Rico 00918 (contact Rosa Rodriguez at 809–766–5656), and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 for a copy of the Consent Decree (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–31056 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR 100, Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants."

2. Current OMB approval number: 3150–0093.

3. How often the collection is required: As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power plants constructed and licensed in accordance with 10 CFR Part 50 and the Atomic Energy Act of 1954, as amended.

4. Who is required or asked to report: Applicants and licensees for nuclear power plants.

5. The number of annual respondents: 2.

6. The number of hours needed annually to complete the requirement or request: 10,000.

7. Abstract: Utilities that propose to build and operate nuclear power plants are required to design, construct, and maintain those plants to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. NRC uses the information required by 10 CFR Part 100, Appendix A, to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power plants.

Submit, by February 20, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 14th day of December, 1995.

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For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–31079 Filed 12–20–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company (D.C. Cook Nuclear Plant, Units 1 and 2)

Exemption

I

Indiana Michigan Power Company (IMPCo, the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2. The Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

In 10 CFR 73.55(d), "Access Requirements," paragraph (1), it specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Also, 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, "receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area***."

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Donald C. Cook site.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same "high assurance" objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area of Donald D. Cook, Units 1 and 2, for both employee and contractor personnel is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Donald C. Cook site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Donald C. Cook site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Donald C. Cook site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 64183).

Dated at Rockville, Maryland, this 15th day of December 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV. Office of Nuclear Reactor Regulation.

[FR Doc. 95–31080 Filed 12–20–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Joint Meeting of the Subcommittees on Individual Plant Examinations/Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Individual Plant Examinations (IPEs) and on Probabilistic Risk Assessment (PRA) will hold a joint meeting on January 10, 11 and 12, 1996, in room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 10, 1996—8:30 a.m. until the conclusion of business

Thursday, January 11, 1996—8:30 a.m. until the conclusion of business

Friday, January 12, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will continue to discuss topics related to Risk-Based Regulatory Applications (RBRA), including identification of the models, analysis and regulatory issues that are currently amenable to risk-based regulatory approach, adequacy of IPEs, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, industry groups, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineers, Dr. Medhat El-Zeftawy (telephone 301/415–6889) or Mr. Michael Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individuals one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: December 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–31007 Filed 12–20–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of December 1, 1995, of three deferrals contained in one special message for FY 1996. This message was transmitted to Congress on October 19, 1995.

Rescissions

As of December 1, 1995, no rescission proposals were pending before the Congress.

Deferrals (Attachments A and B)

As of December 1, 1995, $113.2 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1995.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

60 FR 55154, Friday, October 27, 1995.

Alice M. Rivlin,

Director.

Attachments

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ATTACHMENT A

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	122.8
Routine Executive releases through December 1, 1995... (OMB/Agency releases of $9.6 million, partially offset by cumulative positive adjustment of $4 thousand.)	-9.6
Overturned by the Congress.....	---
Currently before the Congress.....	113.2

ATTACHMENT B
Status of FY 1996 Deferrals - As of December 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and international Fund for Ireland	D96-1	75,000		10-19-95	9,616			4	65,388
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					40,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					7,321
TOTAL, DEFERRALS		122,807	0		9,616			4	113,194

[FR Doc. 95-31005 Filed 12-20-95; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36604; File No. SR-Amex-95-49]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Bond Listing Standards

December 14, 1995.

I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise its standards for the listing and delisting of debt securities. On December 12, 1995, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 48734 (September 20, 1995). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

Section 104 of the Amex's *Company Guide* sets forth the current standards for listing bonds and debentures. Presently, the Amex will consider listing a debt security if: (1) The company appears to be in a financial position sufficient to satisfactorily service the debt issue; (2) the issuer meets the size and earnings guidelines applicable to issuers listing common stock;[4] and (3) the issue has an aggregate market value and principal amount of at least $5 million for issuers that have common stock listed on the Amex or the New York Stock Exchange ("NYSE"), or at least $20 million and 100 holders for issuers that do not have securities listed on the Amex or NYSE. The Amex presently gives consideration to delisting a bond issue if the aggregate market value or principal amount falls below $400,000. For convertible debt, continued listing is dependent upon the underlying security remaining in compliance with the Amex's numerical criteria for that security.

The Amex proposes to amend its standards for the listing of debt securities with a view towards making the Exchange more accessible to debt issuers and facilitating the listing of such securities.[5] Specifically, the proposal eliminates the requirements that the issuer demonstrate that it will be able to satisfactorily service the debt issue, and that the issuer meet the size and earnings guidelines applicable to companies listing common stock. The proposal also removes the requirement that issuers that do not have securities listed on the Amex or NYSE have at least 100 holders and an aggregate market value and principal amount of $20 million. Finally, the proposal modifies the current aggregate market value and principal amount requirement by stating that the issuer must have at least $5 million in aggregate market value *or* principal amount.

In place of the current guidelines, the proposal provides that the Amex may list an issuer's debt securities if an issuer of an equity security listed on the Amex or NYSE is in "good standing" with the respective exchange,[6] and has an aggregate market value *or* principal amount of at least $5 million. This standard also will apply to an issuer that is owned by, or under common control with, an issuer of equity securities listed on the Exchange or the NYSE ("listed issuer"); and to an issuer whose debt securities are guaranteed by a listed issuer.

In contrast, debt securities of an "unaffiliated" issuer[7] will not be eligible for initial listing on the Amex unless a nationally recognized securities rating organization ("NRSRO") has assigned a certain minimum rating to the bonds (or to other bonds issued by the same company). Specifically, debt securities of an unaffiliated issuer will not be eligible for initial listing on the Amex unless:

- An NRSRO has assigned a current rating to the debt security that is no lower than a Standard and Poor's ("S&P") Corporation "B" rating or an equivalent rating by another NRSRO; or
- If no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue,[8] or a rating that is no lower than an S&P Corporation "B" rating (or an equivalent rating by another NRSRO) to a *pari passu*[9] or junior issue.

As under its current rules, the Amex will give consideration to delisting a bond issue if the issuer is unable to meet its obligations on the listed debt, or if the debt's aggregate market value or principal amount falls below $400,000. The Amex proposal amends the delisting standards to clarify that any debt issuer that is unable to meet its obligation on the listed debt securities may be delisted. In applying this standard, the Exchange states that it normally will not delist the debt if there is value in the security and continued Exchange trading is in the best interests of investors.[10] However, if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the debt issue.[11] The Exchange states that it also will consider delisting debt that was listed based on the issuer being either majority-owned or guaranteed by an Amex or NYSE issuer when the equity securities of such owner or guarantor are delisted.[12]

Convertible bonds will be reviewed for continued listing when the underlying equity security is delisted, and will be delisted when the related security is no longer subject to real-time last sale reporting in the United States.[13] Further, if the underlying equity security is delisted due to a violation of the Amex "corporate responsibility" criteria (including, but not limited to, the outside director, audit committee and shareholder voting requirements),[14] the Exchange will delist all debt securities convertible into that equity security.

The Amex also proposes to simplify the listing process for debt issuers by reducing the number of documents that an applicant must file in support of its debt listing application. Specifically, the Exchange will eliminate the schedule of distribution and the listing resolution. In addition, the Exchange will no longer require that trustees certify certain issuer-specific information.

Finally, the Amex is adopting a new rule to permit the listing of municipal and sovereign debts (*i.e.*, debt issued by foreign governments, and by American states, localities, or government agencies).[15] The Exchange will evaluate whether to list there issuers on a case-by-case basis and will treat the issuer as an "unaffiliated" corporate issuer for purposes of the initial listing guidelines described above. Municipal debt will be subject to the same delisting standards as corporate debt. The Amex will assign municipal securities accepted for listing on the Exchange to specialists that will trade the securities in accordance with all Amex regulations otherwise applicable to the trading of securities on the trading floor.[16] All Exchange contracts in municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the Municipal Securities Rulemaking Board ("MSRB").

III. Discussion

The Commission finds that the proposed rule change is consistant with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the Amex with greater flexibility in determining which debt securities warrant inclusion in its bond trading and disclosure systems, while continuing the protections that the Exchange's listing standards provide investors.

After careful review, the Commission has concluded that the proposed initial listing standards should help the Amex to ensure that only substantial companies capable of meeting their financial obligations are eligible to have their debt listed on the Exchange. As before, the proposed rule change will require that the Amex evaluate an issuer's ability to cover the interest charges on its debt securities. Although the Exchange currently makes this interest coverage determination itself,[18] the amended standards will rely instead on either the issuer's relationship with the Amex of NYSE, or the debt's NRSRO rating.

The Commission agrees that, to the extent that the Amex and the NYSE have adequate listing standards for common stock, the Amex reasonably may assume that listed companies (and certain affiliates thereof) should not pose a significant risk of defaulting on their obligations so long as the companies remain in "good standing" on the exchanges. Moreover, debt securities enjoy seniority over equity securities. Because the Amex (or NYSE) presumably would not have listed the junior equity issue unless it was satisfied with the quality of the company, the Commission believes it is reasonable for the Amex to assume that the senior debt issue also warrants listed status.

For "unaffiliated" issuers, the Commission finds that it is not unreasonable for the Exchange to defer to the expertise of an NRSRO, rather than conducting its own analysis of the company's financial condition, as is presently the case. Although the Commission would be concerned by any potential misuse of NRSRO ratings, the Commission notes that the NRSROs routinely evaluate interest coverage, among other things, when they rate bonds. In addition, their methodology incorporates extrinsic factors, such as characteristics of the issuer's industry group. The Commission therefore agrees with the Exchange that, under these circumstances, NRSRO ratings can be relied upon for determinations about the creditworthiness of issuers.

Moreover, the Commission is satisfied that the distinctions in NRSRO ratings drawn by the Amex are valid.[19] According to the S&P Corporation's debt rating definitions,[20] bonds rated "B" (or higher) currently have the capacity to meet interest payments and principal repayments, whereas bonds rated "CCC" (or lower) are dependent upon favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. The Commission also believes that it is logical for the Amex to assume that an unrated debt issue which is *pari passu* with (or senior to) an issue with at least a "B" rating would, if rated, receive an equal (or higher) rating. Finally, to permit the Amex to list unrated bonds that are immediately junior to an investment grade issue is appropriate because those bonds generally would be rated no more than one rating category lower (*i.e.*, a S&P Corporation "BB" rating).[21]

As for the other provisions in the proposal, the Commission finds that they strike an appropriate balance between protecting investors and enhancing the flexibility of the debt listing process. For instance, the proposed rule change provides that, to be eligible for listing, a bond issue must have an aggregate market value or

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] *See* letter from Claudia Crowley, Amex, to Glen Barrentine, Senior Counsel, Division of Market regulation, SEC, dated December 12, 1995. Amendment No. 1 supplemented the proposal by specifying that (1) the underlying equities of listed convertible debt must be subject to real-time last sale reporting *in the United States*, (2) specialists assigned to municipal debt must comply with MSRB Rule G-3, (3) municipal securities will not be subject to off-board trading restrictions, and (4) unrated debt securities of unaffiliated issuers may be listed if an NRSRO has currently assigned an investment grade rating to an *immediately* senior issue by the *same* company.

[4] The Amex guidelines provide for the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[5] The Commission notes that the new guidelines for listing debt securities are substantially similar to the NYSE's debt listing standards, which the Commission approved in Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994).

[6] A company is in "good standing" if it is above the relevant continued listing guidelines.

[7] An unaffiliated issuer is one that has no equity securities listed on the Amex or NYSE; is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Amex or NYSE-listed equity securities; and is not issuing a debt security guaranteed by an issuer of equity securities listed on the Amex or NYSE.

[8] To be investment grade, an issue must be assigned a rating no lower than an S&P Corporation rating of "BBB-" (or another NRSRO's equivalent thereof). The Amex amended the proposal to specify that it will apply this standard only to unrated bonds that are *immediately* junior to another rated class of securities issued by the *same* company. *See* Amendment No. 1, *supra* note 3.

[9] A *pari passu* issue has equal standing with the debt issue proposed to be listed.

[10] *See* Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 48734 (September 20, 1995) (notice of this proposed rule change).

[11] *Id.*

[12] *Id.*

[13] *See* Amendment No. 1 *supra* note 3 (specifying that last trade reporting must be available *in the United States*).

[14] *See* Sections 121-123 of the Amex's *Company Guide*.

[15] This does not include debt issued or guaranteed by the United States Government or agencies thereof that presently may be admitted to dealings on the Exchange pursuant to Amex Rule 140.

[16] The Amex intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G-3 regulations regarding municipal securities principals and representatives. *See* Amendment No. 1 *supra* note 3. The National Association of Securities Dealers, Inc. ("NASD") has authority to enforce MSRB rules for listed municipal securities. The Amex enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[17] 15 U.S.C. 78f(b) (1988).

[18] As noted above, the current listing standards require that a company appear to be in a financial position sufficient to satisfactorily service in the debt issue to be listed.

[19] The Commission notes that the NRSRO ratings being adopted by the Amex are the same standards as the Commission approved for the NYSE in Securities Exchange Act Release No. 34019, *supra* note 5.

[20] *See* Standard & Poor's High Yield Directions, January 1994.

[21] *Id.*

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principal amount of at least $5 million. This should enable the Amex to deny listed status to companies whose securities do not have sufficient liquidity for a fair and orderly market, without infringing upon *bona fide* issuers' access to the Exchange's bond trading and disclosure systems.

Conversely, the Commission does not believe that eliminating the distribution requirement for unaffiliated issuers will have a significant adverse effect on investors in the bond market. In the past, the Commission has recognized that such information may be difficult to estimate accurately and may be relatively less pertinent than other factors.[22] Additionally, the Commission believes that the proposed elimination of certain documents that the Exchange currently requires from applicants is reasonable. Specifically, the Exchange is eliminating the schedule of distribution because distribution is no longer a listing guideline, and the listing resolution because it is essentially ceremonial in nature and does not serve any significant purpose.[23] The Amex also will cease to require that trustees certify issuer-specific information. Accordingly, the Exchange only will require that the certificate show the trustee's acceptance of the trust.[24]

In terms of the delisting criteria, the Commission has concluded that the revised standards should enable the Amex to identify listed companies that may have insufficient resources to meet their financial obligations or whose debt securities may lack adequate trading depth and liquidity. This, in turn, will allow the Exchange to take appropriate action to protect bondholders. The Amex delisting standards, however, do not include a minimum market value for debt securities. The Exchange states that if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the debt issue.[25] As the Commission discussed in its approval of similar debt standards for the NYSE,[26] the Commission expects the Amex to consider carefully the propriety of continued exchange trading of the securities of bankrupt or distressed companies,[27] and expects debt securities with minimal value to be delisted.

In addition, the Amex will delist convertible bonds whenever the underlying equity security is no longer subject to real-time last sale reporting in the United States.[28] If the related equity merely moves from the Amex to another market, it is not inconsistent with the Act for the Exchange to have discretion to continue listing the convertible debt. This would not be the case, however, if the underlying security is delisted because the issuer violated one of the Amex's corporate responsibility criteria. As a general matter, the Commission would have serious concerns about any proposal that does not provide for the delisting of convertible bonds where a company acts to disadvantage its shareholders. The Amex proposal addresses this concern by including in its guidelines that the Exchange will delist convertible bonds when the issuer's equity security is delisted due to a violation of the Exchange's corporate governance listing standards.[29]

Finally, the Commission believes that the Amex's initial listing and delisting criteria are appropriate for determining whether municipal debt should be trading on the Exchange. Because municipal securities will trade under the Amex's existing regulatory regime for trading securities (which includes specialist obligations, margin requirements, and surveillance programs), the Commission believes that adequate safeguards are in place to ensure the protection of investors in municipal securities.[30]

The Commission notes that the MSRB's regulatory scheme for the comparison, settlement, and clearing of municipal securities will continue to apply to municipal securities listed on the Amex. Additionally, the Amex will require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G–3 regarding municipal securities principals and representatives.[31] The Commission believes that it is important that any specialist selected by the Amex for a listed municipal security be familiar with the characteristics of such security.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 clarifies and codifies the intent of certain language used in the original filing. Finally, the Commission did not receive any comments on the original proposal,[32] which was noted for the full statutory period, nor did it receive comments on a similar NYSE proposal that was also noticed for the full statutory period.[33]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–29 and should be submitted by January 11, 1996.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Amex–95–29), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

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[22] *See* Securities Exchange Act Release No. 32909 (September 15, 1993), 58 FR 49537 (September 23, 1993) (File No. SR–NYSE–93–21) (approving amendments to Paragraph 703.06 of the NYSE's *Listed Company Manual* to eliminate requirement that distribution information be submitted as supporting document to debt listing application).

[23] The Exchange will continue to require an opinion of counsel that the issuance of the debt has been approved by the company's board of directors. *See* Section 213.6(c) of the Amex's *Company Guide*. Not requiring a listing resolution is consistent with NYSE procedures. *See* Paragraph 703.06 of the NYSE's *Listed Company Manual*.

[24] This is consistent with NYSE requirements. *See* Paragraph 703.06 of the NYSE's *Listed Company Manual*.

[25] *See* Securities Exchange Act release No. 36225, *supra* note 10.

[26] *See* Securities Exchange Act Release No. 34019, *supra* note 5.

[27] For example, the Commission believes that the Amex should delist the debt of companies in bankruptcy that file a plan of reorganization providing no recovery for debt holders.

[28] *See* Amendment No. 1, *supra* note 3 (specifying that last trade reporting must be available *in the United States*).

[29] *See supra* note 14 and accompanying text.

[30] The Amex confirmed in Amendment No. 1, *supra* note 3, that municipal securities will not be subject to off-board trading restrictions.

[31] *See* Amendment No. 1, *supra* note 3.

[32] *See* Securities Exchange Act Release No. 36225, *supra* note 10.

[33] *See* Securities Exchange Act Release No. 34019, *supra* note 5.

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–31087 Filed 12–20–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36582; File No. SR–PSE–95–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Composition and Duties of the Options Allocation Committee of the Exchange

December 14, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 15, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend the rules relating to the composition and duties of its Options Allocation Committee ("OAC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to make five changes to PSE Rule 11.10(c). First, the Rule currently provides in part that the OAC shall consist of Floor Brokers and Market Makers. The Exchange proposes to amend this provision to provide that the OAC shall consist of Market Makers, Lead Market Makers, Floor Brokers, and/or persons associated with floor members, office members or office allied members.[2]

Second, Commentary .01 to Rule 11.10(c) currently provides that the OAC shall be comprised of (i) two Floor Brokers from either the Options Floor Trading Committee or the Options Listing Committee; (ii) two Market Makers or Lead Market Makers from either the Options Floor Trading Committee or the Options Listing Committee; (iii) three at-large Floor Brokers; and (iv) three at-large Market Makers or Lead Market Makers. The Exchange proposes to amend this provisions to provide that attempts shall be made in order for the OAC to have a composition that includes: Floor Brokers from either the Options Floor Trading Committee or the Options Listing Committee; Market Makers or Lead Market Makers from either the Options Floor Trading Committee or the Options Listing Committee; at-large Floor Brokers; and at-large Market Makers or Lead Market Makers.

Third, the Exchange proposes to eliminate the provision in Commentary .01 that the OAC shall be limited to no more than three members of the Options Floor Trading Committee and no more than three members of the Options Listing Committee.

Fourth, Rule 11.10(c) currently provides that it shall be the duty of the OAC to allocate, reallocate and evaluate options issues. The Exchange proposes to change this provision to provide that the OAC shall allocate and reallocate option issues.

Finally, Rule 11.10(c) currently provides that the OAC shall be responsible for monitoring the performances of trading crowds and Lead Market Makers. The Exchange proposes to change this provision to provide that the OAC shall be responsible for evaluating and monitoring the performances of Market Makers, trading crowds and Lead Market Makers.[3]

The Exchange believes that the current rules on the composition of the OAC are unnecessarily restrictive and that the proposed changes to these rules are appropriate in order to allow for greater flexibility in the committee selection process and the process for replacing committee members who resign or change their status in regard to floor membership or service on other committees of the Exchange. With regard to the proposed changes to the rules on the duties of the OAC, the Exchange believes that they clarify the existing rules and do not otherwise change the way business is conducted on the Exchange.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it promotes just and equitable principles of trade, and Section 6(b)(4), in particular, in that it assures a fair representation of members in the administration of the affairs of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] *Cf.* PSE Const., Art. IV, § 5(a) (similar provision for Equity Allocation Committee).

[3] The OAC currently evaluates Market Makers and Lead Market Makers pursuant to Options Floor Procedure Advice B–13.

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proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–95–29 and should be submitted by January 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31068 Filed 12–20–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Notice to Registrants Who Have Attained Age 26 Years

Registrants who have attained age 26 years do not have the duty to notify the Selective Service System of a change in their address.

If a registrant notifies the System of a change in his address the System may record it.

This notice is issued pursuant to my authority in 32 CFR 1621.1.

Dated: December 14, 1995.

Gil Coronado,

Director of Selective Service.

[FR Doc. 95–31000 Filed 12–20–95; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2313]

Policy on Munitions Export Licenses to Nigeria

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer commercial defense articles or defense services to Nigeria are suspended until further notice. This action is being taken pursuant to Section 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: November 10, 1995.

[4] 17 CFR 200.30–3(a)(12) (1994).

FOR FURTHER INFORMATION CONTACT: Richard Sherman, Office of Arms Transfer and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202 647–4231).

SUPPLEMENTARY INFORMATION: On November 10, President Clinton announced a ban on the sale and repair of military goods and services to Nigeria. It is thus the policy of the U.S. Government to deny all new, and suspend all previously issued, licenses and other approvals to export or otherwise transfer commercial defense articles and defense services to Nigeria. This action is being taken to underscore the importance the United States attaches to an orderly and timely transition to unhindered elected civilian government, as well as to respect for human rights.

The licenses and approvals subject to this policy include those which permit commercial defense article and service, including repair service, exports of any kind (e.g. licenses and other approvals for manufacturing license agreements, technical assistance agreements, and technical data exports), involving Nigeria, subject to the Arms Export Control Act. This policy also prohibits the use in connection with Nigeria of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), with the exception of the exemption specified at 22 CFR 125.4(b)(13).

This action has been taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. Sections 2778 and 2791) and Section 126.7 of the ITAR in furtherance of the foreign policy of the United States. In accordance with Sections 126.3 and 126.7 of the ITAR, affected persons desiring review of this policy with regard to a particular export may petition the Director, Office of Defense Trade Controls.

Dated: December 11, 1995.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–31108 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice No. 2308]

United States International Telecommunications Advisory Committee, Radiocommunication Sector, Working Parties of Study Group 9; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector, Study Group 9, (Radio relay systems), Working Parties will meet on January 9 and 10, 1996 at the Federal Communication Commission, 2000 M Street, NW, Washington, DC 20554.

The meetings will be convened as follows:

Working Party 9C (HF Systems)—January 9, 1:30 pm, Room 501.

This meeting will address organizational and working plans for the coming cycle including consideration of Recommendation GT PLEN B (Annex 1) for WRC–97.

Working Parties 9A (Performance and interface of radio relay systems), *9B* (Channel plans), and *9D* (Sharing with other services except the fixed satellite service)—January 10, 9:30 am, Room 847.

This joint meeting will address the development of a work plan for the coming cycle with emphasis on preparations of sharing studies required for WRC–97.

Joint Working Party 4–9/S (Sharing between the fixed service and fixed-satellite service)—January 10, 1:30 pm, Room 847.

This meeting will continue development of the work plan for the coming cycle.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairman. Those planning to attend the meeting should contact Mr. Alex Latker by phone at (202) 418–0767 or by fax at (202) 418–0765.

Dated: December 11, 1995.

Warren G. Richards,

Chairman, U.S. ITAC for ITU–Radiocommunication Sector.

[FR Doc. 95–31001 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2309]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC–T), National Study Group and ITAC–T Study Group A; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) National Study Group and Study Group A will meet on the following dates, times and venue in Washington, DC:

ITAC–T Study Group A, January 30, 1996, 9:30 a.m.—4:00 p.m., at the Department of State, Room 1207, 2201 C Street, NW, Washington, DC.

ITAC–T National Study Group, January 31 and February 1, 1996, 9:30 a.m.—4:00 p.m., at the Department of State, Room 1207, 2201 C Street, NW, Washington, DC.

Detailed agendas will be provided prior to the meetings to the most recent attendees of ITAC–T Study Groups. The Study Group A agenda will deal primarily with preparations for the upcoming Geneva meeting of the ITU–T Study Group 1 scheduled for February 27 to March 8, 1996 and preparations for, and development of U.S. contributions for the upcoming meeting of ITU–T Study Group 3 March 11–20, 1996. The ITAC–T National Group's agenda will cover preparations for the February 19–23 TSAG General meeting and continue preparations for the upcoming World Telecommunications Standardization Conference scheduled for October 1996.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: December 7, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–31002 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2310]

United States International Telecommunications Advisory Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held January 12, 1996, 1:30–4 p.m., in room 1912 of the Department of State, 2201 "C" Street, NW., Washington, DC. The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

The agenda of this meeting is to consider preparations for the ITU's first World Telecommunications Policy Forum, to be held October 21–23, 1996, in Geneva, with the theme "Global mobile personal communications by satellite." both Members (governments) and members (entities and organizations authorized to participate in the Union's activities) are invited to attend and may submit contributions in their own right. In particular the Department is seeking ITAC recommendations on U.S. participation in the Forum. For example, it is foreseen that U.S. contributions, which have been requested by February 26, might consist of a relatively short submission by the U.S. government on appropriate topics, accompanied by one or more submissions from the private sector interested in such systems. Questions regarding the agenda may be directed to Richard Shrum, Department of State (202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–7407 not later than 2 days before the scheduled meeting. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: December 13, 1995.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 95–31072 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2307]

Privacy Act of 1974; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–41, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on December 4, 1995.

This system of records is being implemented by the Department of State to reflect more accurately its enhanced record keeping system for Foreign Service officers and specialists, and WAE re-employed annuitants who are assigned as rovers at posts abroad or domestically. The information included is directly related to the employee's assignment as a rover and generally does not include information kept in his/her official personnel file.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret P. Grafeld; Acting, Director; Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239. This system of records will be effective 40 days from the date of publication, unless we receive comments which will result in a contrary determination. The new system description, "Rover Records, STATE–41" will read as set forth below.

Dated: December 4, 1995.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

State—41

SYSTEM NAME:

Rover Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520; and the Miami Regional Center, 4000 N. Andrews Street, Ft. Lauderdale, FL 33309.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign Service professional full-time officers and specialists, (communicators, secretaries, personnelists, administrative officers, and budget and fiscal officers) who are assigned as rovers for a tour of duty or in temporary duty status; WAE re-employed annuitants assigned as rovers in designated positions; and individuals previously in the above two categories whose reassignments are pending or who have resigned from the rover program or been reassigned outside of the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3921 (Management of service); 22 U.S.C. 2656 and 2658 (Management of foreign affairs; Delegation of authority); 5 U.S.C. 301 (Management of the Department of State).

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CATEGORIES OF RECORDS IN THE SYSTEM:

Communications between the Bureau of Personnel (PER) and the employee regarding assignments, extensions and curtailments; communications between PER and the bureau of assignment; communications between the employee and the office responsible for the employee's rating regarding issues and problems encountered and self-evaluation of performance and accomplishments; memoranda and telegrams regarding performance prepared at posts where employee served; employee trip reports; employee's assignment history; passports and copies of passport applications; photographs of employee for passport and visa purposes; profile sheets for visa applications; blanket travel authorizations and amendments; training records; medical clearance notifications; signed work requirements; copies of SF–50 personnel actions, arrival/departure communications; information regarding allowances, housing, and household effects; and time and attendance information. For WAE re-employed annuitants: Copies of W–4 tax withholding forms, SF–1190 foreign allowance forms, earnings and leave statements, salary checks and transfer of labor charges are also kept when routed through the appropriate Executive Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to provide performance evaluation information for the employee's rating and reviewing officers who are not the on-site supervisors, to provide necessary information for visa requests for foreign travel, for applications for U.S. passports, for recommendation and authorization of training, for assisting the employee and posts in travel arrangements and assignment and administrative processing, for assignment processing in considering reappointments for re-employed annuitants, and by foreign missions when visas are requested. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the Federal Register.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to the Miami Regional Center is controlled by camera and motion detection devices. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired according to published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239; Department of State, 2201 C Street, NW, Washington, DC 20520–1239.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director for African Affairs, Room 3517; Executive Director for East Asian and Pacific Affairs, Room 4313A; Executive Director for European and Canadian Affairs, Room 5428; Executive Director for Near Eastern and South Asian Affairs, Room 4245; or the Managing Director for Systems Operations for Information Management, Room 4422; Department of State, 2201 C Street, NW, Washington, DC 20520; or the Director of Miami Regional Center; 4000 N. Andrews Street, Ft. Lauderdale, FL 33309.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Department of State might have records pertaining to themselves when they were rovers should write to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 1201 C Street NW, Washington, DC 20520–1239. The individual must specify that he/she wishes the Rover Records applicable to his/her assignment to that program to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; bureau to which he/she was assigned and dates of assignment.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, from supervisors and officers who benefited from the individual's performance at posts where the individual served, from the office of the Regional Executive Director, from the Office of Medical Services, and from the Bureau of Personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the Federal Register.

[FR Doc. 95–31109 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–89 established the first interim SFFL, and Order 95–10–9 established the currently effective two-month SFFL applicable through November 30, 1995.

In establishing the SFFL for the two-month period beginning December 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–12–23 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4085.
Latin America	1.4448.
Pacific	1.4717.

FOR FURTHER INFORMATION CONTACT:
Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 14, 1995

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–31052 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Notice That the Department Will No Longer Issue Formal SFRL Update Orders, in Light of the Recently Issued Final Rule Exempting Carriers From Their Statutory Duty To File International Air Cargo Tariffs. We Are Publishing This Notice in Its Entirety as an Appendix to This Document

DATED: Issued in Washington, DC December 13, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Attachment

United States of America, Department of Transportation, Office of the Secretary, Washington, DC

NOTICE: Issuing of Formal SFRL Update Orders Discontinued.

The Department issued a final rule, November 30, 1995, exempting all U.S. and foreign air carriers from their statutory duty to file international air cargo tariffs, subject to the reimposition of the duty in specific cases when consistent with the public interest (60 FR 61472).

In light of this development, the Department will no longer be issuing periodic formal orders updating the Standard Foreign Rate Level (SFRL) for each geographic area (Atlantic, Latin America and Pacific). However, as stated in our October 24, 1994, Notice of Proposed Rulemaking, the Department will continue to recalculate the SFRL cost indices. This will continue to establish benchmark levels that would be considered reasonable, and that could be used to resolve any complaints against rates in any rate categories covered by the SFRL.

These SFRL cost indices will be available from the Department upon request. Persons who desire this information may telephone the Department at 202–366–2435 or write to the Department at the following address:

U.S. Department of Transportation; Office of the Secretary; Office of International Aviation, X–43; 400 7th Street S.W.; Washington DC 20590.

This notice shall be published in the Federal Register and shall be served on all certificated air carriers and all foreign air carriers.

Dated: December 13, 1995.

Patrick V. Murphy for Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–30915 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The waiver petitions are as follows:

Mississippi Central Railroad Company (MSCI)

FRA Waiver Petition Docket No. HS–95–3

The MSCI seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MSCI states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The MSCI railroad operates 55.5 miles of excepted track from Grand Junction, Tennessee to Oxford, Mississippi. Train movements are authorized by Yard Limit rule and Timetable instructions. The maximum authorized operating speed is 10 mph.

The MSCI connects with the Burlington Northern at Holly Springs, Mississippi and the Norfolk Southern at Grand Junction, Tennessee. There are no operating rights arrangements on any carrier. Norfolk Southern has 1.8 miles of track rights at Grand Junction, Tennessee. The MSCI does not operate trains on the segment of track. The Norfolk Southern maintains the 1.8 miles of track.

The petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

The Puget Sound Railway Historical Association (PSHX)

FRA Waiver Petition Docket No. HS–95–5

The Puget Sound Railway Historical Association (PSHX) requests a waiver from the requirements of Title 49 Code of Federal Regulations Part 228.11(a)(4), which requires the number of consecutive hours off duty prior to going on-duty for hours of service purposes. The PSHX operates 3 miles of former Northern Pacific branch line between North Bend, and Snoqualmie, Washington, as the Puget Sound Snoqualmie Valley Railroad.

Port Utilities Commission of South Carolina (PUCC)

FRA Waiver Petition Docket No. HS–95–6

The PUCC seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PUCC states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The PUCC is a Terminal Switching Railroad operating within the County of Charleston, South Carolina over a 1.5 miles of trackage at North Charleston, South Carolina. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

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Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

East Cooper and Berkeley Railroad (ECBR)

FRA Waiver Petition Docket No. HS–95–8

The ECBR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The ECBR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The ECBR provides service over 15.5 miles of track in Berkeley County, between State junction and Charity Church, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Port Terminal Railroad of South Carolina (PTR)

FRA Waiver Petition Docket No. HS–95–9

The PTR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PTR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The PTR is a Terminal Switching Railroad operating within the County of Charleston, South Carolina over a two-thirds of a mile of trackage between North Charleston and Charleston, South Carolina. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Algers, Winslow and Western Railroad Company (AWW)

FRA Waiver Petition Docket No. HS–95–10

The AWW seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AWW states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The AWW provides freight service over 16 miles of trackage within Pike County, Indiana. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Louisiana and Delta Railroad (LDRR)

FRA Waiver Petition Docket No. HS–95–11

The LDRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The LDRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The LDRR railroad operates 91 miles of Class 2 track between New Liberia and Schriever, Louisiana and joint operation with the Southern Pacific Transportation Company (SP), between Cade (MP 131) and Raceland (MP 41.2), Louisiana. Train movements are authorized by the yard limit rule and posted track speeds while on LDRR trackage and Direct Traffic Control on SP trackage. The maximum authorized operating speed is 20 mph on LDRR and 45 mph on the SP by special agreement.

Pioneer Valley Railroad (PVRR)

FRA Waiver Petition Docket No. HS–95–12

The PVRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The PVRR provides service over 26 miles of trackage between Westfield and Holyoke, and Westfield and Easthampton, all within the State of Massachusetts. The petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Tennessee Valley Railroad (TVRM)

FRA Waiver Petition Docket NO. RSAD–95–2

The TVRM seeks a waiver petition from the requirements of subparts D, E, F, and G of the random alcohol and drug testing provisions. The TVRM provides excursion service over approximately 3 miles of TVRM trackage and also operates over 4 miles of Norfolk Southern trackage. TVRM states that maintaining the required programs will create a financial burden to the railroad.

Issued in Washington, D.C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–31115 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for a Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ–95–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The waiver petition is as follows:

Little Kanawha River Rail (LKRR)

FRA Waiver Petition Docket No. RSEQ–95–4

The LKRR seeks a waiver of compliance with Title 49, Code of Federal Regulations (49 CFR), Part 240, "Qualifications for Locomotive Engineers." LKRR is a rural railroad operating over approximately 2.8 miles of track near the Little Kanawha River in Wood County, West Virginia. LKRR operates using a 1200 HP locomotive, No.1205. LKRR employs 3 part time employees, has a maximum speed of 10 MPH and a 5 MPH restriction over crossings and bridges. The LKRR operates approximately 16 hours per week handling coke into Marietta Industrial Enterprises and scrap metal from Ames Corporation.

LKRR handles about 55 cars per month. LKRR has 4 crossings at grade on its property and interchanges with the CSXT near the end of its line. LKRR states that granting this wavier will not have a negative impact on safety.

Issued in Washington, D. C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation

[FR Doc. 95–31116 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application BS–AP–No. 3370

Applicant: Portland and Western Railroad, Incorporated, Mr. A.W. Mogytych, President and General Manager, P.O. Box 942, Albany, Oregon 97321

The Portland and Western Railroad, Incorporated (PNWR) seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track and controlled siding, between Greton, milepost 757.0 and St. Marys, milepost 751.8, Oregon, a distance of approximately 5 miles, and operate trains by track warrant control.

The reason given for the proposed changes is that of the 106 miles of main line track that PNWR operates, only 5 miles of trackage is controlled by CTC. The maintenance of the CTC imposes a unnecessary cost burden upon PNWR, and frequent and costly train delays are experienced because of difficulties in establishing communications with the SP dispatching personnel in Denver. PNWR is the only operating carrier within the CTC limits and the carrier's track warrant system utilized on 83.2 miles of other trackage, is adequate to safely handle PNWR traffic in lieu of CTC. Acquisition and installation of CTC controls to operate from PNWR's Albany, Oregon, dispatching office would be prohibitively expensive.

BS–AP–No. 3371

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed modification of the automatic block signal system, on the single main track, at North End of Travis, milepost 253.9, near San Antonio, Texas, Austin Subdivision; consisting of the discontinuance and removal of automatic block signal 2539–2 and absolute signal 2540–2, conversion of absolute signal 2545–2 to automatic operation, and relocation of automatic signal 2546–2.

The reason given for the proposed changes is that Travis siding is no longer used for the meeting and passing of trains.

BS–AP–No. 3372

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the two main track Baring Cross Bridge, milepost 345.4, near North Little Rock, Arkansas, Little Rock Subdivision.

The reason given for the proposed changes is to modernize the operation of the Baring Cross Bridge.

BS–AP–No. 3373

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Montana Junction, Idaho, milepost 136.7 and Idaho Falls, Idaho, milepost 189.4, Montana Subdivision, approximately 53 miles; consisting of the discontinuance and removal of 81 automatic block signals and conversion of signals 1382 and "BW Hold" to operative distant signals.

The reason given for the proposed changes is that traffic density does not warrant an automatic block signal system.

BS–AP–No. 3374

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the No. 2 main track, between Valley Blvd X-Overs, milepost B–485.5 and Taylor Junction B–482.8, California, Los Angeles Division, Basin Subdivision, West Line; consisting of the discontinuance and removal of automatic block signal 4846 and designation of the No. 2 main track to a yard track.

The reason given for the proposed changes is that due to minimum track usage, the automatic block signal system is no longer required.

BS–AP–No. 3375

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed conversion of the manual interlocking system to a traffic control system, between Polk, milepost 131.8 and Elvas, milepost 92.1, California, Roseville Division, San Joaquin Subdivision.

The reason given for the proposed changes is to enhance safety by having the operator use the same operating rules as the dispatchers on joining territories.

BS–AP–No. 3376

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines (SP) seeks approval of the proposed discontinuance and removal of the barricade detectors and installation of

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Krell, in the SP Western Region, at the following dead end street locations:

Roseville Division

Brooklyn Subdivision, Valley Line, County Road Milepost C–737.8
Valley Subdivision, East Valley Line, Road Milepost C–163.0
Roseville Subdivision, No.1 Track, Forest Street Milepost A–124.7
Martinez Subdivision, Sacramento Line, Road Milepost A–9.4
Coast Subdivision, Coast Line, Road Milepost E–79.7
San Joaquin Subdivision, Fresno Line, Road Milepost B–109.5
San Joaquin Subdivision, Fresno Line, Road Milepost B–204.6
San Joaquin Subdivision, Sacramento Line, Road Milepost A–99.0

Los Angeles Division

Salinas Subdivision, Coast Line, Harris Road Milepost E–121.6
Santa Barbara Subdivision, Coast Line, Road Milepost E–403.2
Santa Barbara Subdivision, Coast Line, Road Milepost E–422.6

West Colton Division

Mojave Subdivision, Bakersfield Line, Road Milepost B–384.6
Mojave Subdivision, Bakersfield Line, Road Milepost B–400.0
Mojave Subdivision, Bakersfield Line, Road Milepost B–402.0
Yuma Subdivision, East Line, Road Milepost B–574.3
Gila Subdivision, Phoenix Line, Road Milepost R–922.6

El Paso Division

Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1298.2
Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1300.2
Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1300.4

The reason given for the proposed changes is that due to the crossings being closed for a number of years, the barricade detectors are no longer required, and will eliminate unnecessary train delays associated with vandalism.

BS–AP–No. 3377

Applicant: National Railroad Passenger Corporation, Ms. Alison Conway-Smith, Vice President/Chief Engineer, 30th and Market Streets, Philadelphia, Pennsylvania 19104

The National Railroad Passenger Corporation (Amtrak) and the Massachusetts Bay Transportation Authority (MBTA) jointly seek approval of the proposed modification of the traffic control system, between Hill Interlocking, milepost 219.1 and South Bay Interlocking, milepost 227.0 near Boston, Massachusetts, Dorchester Branch, New England Division; associated with the installation of a new "Park Interlocking" near milepost 224.0, the discontinuance and removal of the intermediate wayside signals on the No. 1 and No. 2 main tracks between South Bay and Dana Interlocking in favor of operating by cab signals alone, and the installation of NORAC Rule 280(a) signals at South Bay, Park, and Dana interlockings.

The reason given for the proposed changes is that the existing wayside signals are at the end of their useful life span and will require replacement within the next four years. The Dorchester Branch is an extremely high crime and vandalism area, and the elimination of the wayside signals would increase the realiablity of the signal system, increase the safety of maintenance personnel, and maintain the safety of railroad traffic.

BS–AP–No. 3378

Applicant: Burlington Northern Santa Fe Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5304

The Burlington Northern Santa Fe Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between Appleton, Minnesota, milepost 578.93 and Summit, South Dakota, milepost 633.2, Willmar Division, 12th Subdivision, a distance of approximately 54.3 miles; including conversion of Big Stone Control Point, milepost 602.2 to automatic switches, conversion of the remaining power-operated switches to hand operation, removal of all associated signals, and operate train movements by Track Warrant Control. The proposed changes also include the installation of an operative approach signal near milepost 579.5 and installation of a proximity warning system on all locomotives between Appleton, Minnesota and Terry, Montana.

The reasons given for the proposed changes are that reduced traffic patterns do not justify high cost to maintain an aging signal system; a late October snow storm broke miles of pole line, cross arms, and poles which to replace in kind is estimated at $110,000; large amounts of capital dollars will be required to replace pole line with electronic coded track circuits in the near future; and full radio coverage is reported.

BS–AP–No. 3379

Applicant: Burlington Northern Santa Fe Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304

The Burlington Northern Santa Fe Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal systems, on the single main track, between Summit, South Dakota, milepost 633.2 and Terry, Montana, milepost 1078.9, Willmar and Yellowstone Divisions, Appleton, Mobridge, and Hettinger Subdivisions, a distance of approximately 445.7 miles; including conversion of West End of Aberdeen Control Point, near milepost 709.1 to automatic switches, conversion of the remaining power-operated switches to hand operation, removal of all associated signals, and operate train movements by Track Warrant Control. The proposed changes also include the installation of a proximity warning system on all locomotives between Appleton, Minnesota and Terry, Montana.

The reasons given for the proposed changes are that reduced traffic patterns do not justify high cost to maintain an aging signal system; large amounts of capital dollars will be required to replace pole line with electronic coded track circuits in the near future; and full radio coverage will be provided.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–31114 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that First Trust of Illinois, National Association, with offices at 400 North Michigan Avenue, Chicago, Illinois, 60611, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: December 18, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 95–31105 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–81–P

Notice of Change of Name of Approved Trustee

Notice is hereby given that effective April 22, 1994, Bank of Delaware, with offices at 222 Delaware Avenue, Wilmington, Delaware, 19899–0791, has changed its name to PNC Bank, Delaware.

Dated: December 18, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 95–31104 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Volkswagen of America, Inc., (Volkswagen) for an exemption from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard for the Model Year (MY) 1997 Passat car line. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 1997 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On September 1, 1995, Volkswagen of America, Inc., (Volkswagen), submitted a petition for exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Passat car line. The petition is pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

Volkswagen's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Volkswagen requested confidential treatment for some of the information and attachments submitted in support of its petition, including the date of production for the Passat car line. In a letter to Volkswagen dated October 2, 1995, the agency granted the petitioner's request for confidential treatment.

In its petition, Volkswagen provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter-interrupt feature and an alarm function. The antitheft device is activated by removing the ignition key and locking either of the front doors with it. The alarm monitors the doors, hood, trunk and radio.

In order to ensure reliability and durability of the device, Volkswagen stated that it conducted tests based on its own specified standards. Volkswagen provided the test reports for its proposed antitheft device, which is essentially the same as that currently installed on the MY 1994 Volkswagen Corrado, showing that the reliability and durability of the device complied with specified performance requirements for each test. Volkswagen stated that the device complied with its standards for durability, electrical and electronic operating requirements, thermal and mechanical shock resistance and electromagnetic compatibility.

Volkswagen compared the device proposed for the Passat car line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Volkswagen stated that antitheft devices such as that proposed for its line and those already granted exemptions from the parts-marking requirements have been found effective in reducing motor vehicle theft. Specifically, Volkswagen based its belief on reduced theft rates for comparable lines such as the Mitsubishi Diamante, the Toyota Cressida, the Nissan Maxima, the Toyota Supra, the Nissan 300ZX, the Mazda RX–7, and the Audi 5000. Additionally, Volkswagen stated that the Passat car line experienced theft rates below the median theft rate (3.5826) for MYs 1990/1991 and 1992. Volkswagen believes that the low-theft ratings for those years may be attributable to the installation of an antitheft device as standard equipment on the line beginning with the 1991 model year. Volkswagen stated that it believes the theft rating for the MY 1997 Passat car line with the installation of the antitheft device described in its petition will also be below the 3.5826 median theft rate.

Based on evidence submitted by Volkswagen, the agency believes that the antitheft device for the MY 1997 Volkswagen Passat line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Volkswagen has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Volkswagen provided about its device. This confidential information included a description of reliability and functional tests conducted by Volkswagen for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Volkswagen's petition for exemption for the MY 1997 Passat car line from the parts-marking requirements of 49 CFR Part 541.

If Volkswagen decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the . line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit

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a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden with Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on December 18, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31117 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet in Room 600, 301 4th Street, SW., on December 20, 1995 from 9:30 a.m. to 12:00 noon.

The meeting will be closed to the public from 9:30 a.m. to 11:30 a.m. because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with Mr. Roberts Owen, Senior Advisor to the Secretary of State on the former Yugoslavia; Ms. Anne Sigmund, Director, Office of East European and NIS Affairs; USIA; Ms. Mary McIntosh, Chief, European Branch, Office of Research and Media Reaction, USIA. (5 U.S.C. 552b(c)(1))

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Please call Betty Hayes, (202) 619–4468, for further information.

Dated: December 15, 1995.

Joseph Duffey,

Director.

Determination To Close a Portion of the U.S. Advisory Commission on Public Diplomacy's Meeting of December 20, 1995

Based on the information provided to the United States Information Agency by the United States Advisory Commission on Public Diplomacy, I hereby determine that the meeting scheduled by the Commission for December 20, 1995 may be closed to the public from 9:30 a.m. to 11:30 a.m.

The Commission has requested that its December 20 meeting be closed from 9:30 a.m. to 11:30 a.m., because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with Mr. Roberts Owen, Senior Advisor to the Secretary of State on the former Yugoslavia; Ms. Anne Sigmund, Director, Office of East European and NIS Affairs, USIA; and Ms. Mary McIntosh, Chief European Branch, Office of Research and Media Reaction, USIA. (5 U.S.C. 552(2)(1))

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Dated: December 15, 1995.

Joseph Duffy,

Director.

[FR Doc. 95–31094 Filed 12–20–95; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
December 21, 1995

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 266, and 268

Hazardous Waste: Identification and Listing; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 266, and 268

[FRL–5337–6]

RIN 2050–AE07

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Hazardous Waste Identification Rule (HWIR)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, tentative response to Chemical Manufacturers Association petition and the Hazardous Waste Identification Dialogue Committee recommendations, and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by establishing constituent-specific exit levels for low-risk solid wastes that are designated as hazardous because they are listed, or have been mixed with, derived from, or contain listed hazardous wastes. Under this proposal, generators of listed hazardous wastes that meet the self-implementing exit levels would no longer be subject to the hazardous waste management system under Subtitle C of RCRA as listed hazardous wastes. Today's Notice, commonly referred to as the Hazardous Waste Identification Rule (HWIR), establishes a risk-based "floor" to hazardous waste listings that will encourage pollution prevention, waste minimization, and the development of innovative waste treatment technologies.

Many of the exit levels are established using an innovative risk assessment which evaluates potential exposure pathways, both direct and indirect, from a variety of sources, such as waste piles and surface impoundments. This assessment focuses on both human and environmental receptors and is presented for comment in today's Notice. The remaining exit levels are based on an alternative risk analysis.

The Agency is also proposing to modify some of the land disposal restriction (LDR) numerical treatment standards listed in subpart D of 40 CFR part 268. This notice proposes to cap technology-based treatment standards with the risk-based exit levels which minimize threats to human health and the environment. This notice also takes comment on several general approaches and one specific approach for conditional exemptions from subtitle C management. Today's notice also contains the Agency's tentative response to a petition for rulemaking submitted by the Chemical Manufacturers Association and the Agency's tentative response to the recommendations made by the Dialogue Committee on Hazardous Waste Identification. This committee was formally chartered in July 1993 in accordance with the Federal Advisory Committee Act (FACA).

DATES: EPA will accept public comments on this proposed rule until February 20, 1996. Comments postmarked after this date may not be considered. However, the Agency recognizes that, because of the complexity of this proposed rulemaking, some commenters may want to request additional time for comment submittal. In anticipation of these requests, EPA will be communicating with the litigants and the court regarding the implications on our rulemaking schedule of a possible extension of the comment period for this proposal. If the comment period is extended, the Agency will provide notice of such in the **Federal Register**.

Any person may request a public hearing on this amendment by filing a request with Mr. David Bussard, whose address appears below, by January 5, 1996.

ADDRESSES: The public must send an original, two copies, and whenever possible, a 3.5 inch computer disk containing the comments in a common word processing format such as WordPerfect version 5.1 [1]. to: EPA RCRA Docket (5305W), 401 M Street, SW., Washington, DC 20460.

Place "Docket number F–95–WHWP–FFFFF" on your comments. The RCRA docket is located at: EPA's Crystal Gateway Office, 1235 Jefferson Davis Highway, Arlington, Virginia, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy material from any regulatory docket at a cost of $0.15 per page. Copies of the background documents, Integrated Risk Information System (IRIS) chemical files, and other references (which are not readily available) are available for *viewing and copying only* in the RCRA docket.

Requests for a public hearing should be addressed to Mr. David Bussard, Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (703) 412–9810. For technical information contact Mr. William A. Collins, Jr., Mr. Greg Helms, or Ms. Pamela McMains, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–4770.

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[1] This will greatly facilitate EPA's preparation of the comment responses and will significantly reduce the cost associated with responding to the comments.

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I. Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3002, 3004 and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924 and 6926.

II. Background

A. Overview of the Hazardous Waste Identification Program

Section 1004(5) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, defines "hazardous waste" as "a solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to an increase in the mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

Section 3001 of RCRA requires EPA to identify those wastes that should be classified as "hazardous." The Agency's hazardous waste identification rules designate wastes as hazardous in one of two ways. First, the Agency has established four hazardous waste characteristics which identify properties or attributes of wastes which would pose a potential hazard if the waste is improperly managed. See 40 CFR 261.21-261.24. Any generator of a solid waste is responsible for determining whether a solid waste exhibits any of these characteristics. See 40 CFR 262.11. Any solid waste that exhibits any of the characteristics remains hazardous until it no longer exhibits the characteristics. See 40 CFR 261.4(d)(1).

The other mechanism EPA uses to designate wastes as hazardous is "listing." The Agency has reviewed data on specific waste streams generated from a number of industrial processes and has determined that these wastes would pose hazards if mismanaged for one or more reasons, including the presence of significant levels of hazardous constituents listed in appendix VIII to 40 CFR part 261, the manifestation of one or more of the hazardous waste characteristics, or the potential to impose detrimental effects on the environment. (See generally 40 CFR 261.11). As discussed in detail in the preambles and in associated dockets accompanying the listings, EPA has generally determined that these wastes contain toxic constituents at concentrations which pose risks which are unacceptable for human or environmental exposure and that these constituents are mobile and persistent to the degree that they can reach environmental or human receptors.

On May 19, 1980, as part of the final and interim final regulations implementing section 3001 of RCRA, EPA published two lists of hazardous wastes: One composed of wastes generated from non-specific sources (*e.g.*, spent solvents) and one composed of wastes generated from specific sources (e.g., distillation bottoms from the production of benzyl chloride). The Agency also published two lists of discarded commercial chemical products, off-specification species, container residues, and spill residues thereof which are hazardous wastes under specific circumstances. These four lists have been amended several times, and are currently published in 40 CFR 261.31, 261.32, 261.33(e) and (f), respectively.

B. The Mixture and Derived-From Rules and the Contained-In Policy

1. Mixture and Derived-From Rules

a. Scope and Purpose of the Rules

In 1980 EPA promulgated its first comprehensive regulatory program for the management of hazardous waste under RCRA. 45 FR 33066 (May 19, 1980). As part of that rulemaking EPA promulgated several rules to identify hazardous wastes. Two of these rules clarify the scope of the hazardous waste listings. Under the mixture rule, a solid waste is a hazardous waste if it is mixed with one or more listed hazardous wastes. 40 CFR 261.3(a)(2)(iv). Under the derived-from rule a solid waste generated from the treatment, storage or disposal of a listed hazardous waste is also a hazardous waste. 40 CFR 261.3(c)(2)(i).

EPA promulgated the mixture and derived-from rules to close potentially major loopholes in the subtitle C management system. Without a "mixture" rule, generators of hazardous wastes could potentially evade regulatory requirements by mixing listed hazardous wastes with other hazardous wastes or non-hazardous solid wastes to create a "new" waste that arguably no longer met the listing description, but continued to pose a serious hazard. Such a waste also might not exhibit any of the hazardous waste characteristics. Similarly, without a "derived-from" rule, hazardous waste generators and owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) could potentially evade regulation by minimally processing or managing a hazardous waste and claiming that resulting residue was no longer the listed waste, despite the continued hazards that could be posed by the residue even though it does not exhibit a characteristic. (See 57 FR 7628).

It is for these reasons that the Agency continues to believe that the mixture and derived-from rules are extremely important in regulating hazardous wastes and reducing risk to human health and the environment. However, EPA acknowledges that the mixture and derived-from rules apply regardless of the concentrations and mobilities of hazardous constituents in the waste. The purpose of this rulemaking is to reduce any overregulation of low-risk wastes captured by the mixture and derived-from rule.

b. Subsequent History

Numerous industries that generate hazardous wastes challenged the 1980 mixture and derived-from rules in *Shell Oil* v. *EPA*, 950 F. 2d 741 (D.C. Cir. 1991). In December 1991 the D.C. circuit vacated the rules because they had been promulgated without adequate notice and opportunity to comment. The court, however, suggested that EPA might want to consider reinstating the rules pending full notice and comment in order to ensure continued protection of human health and the environment.

In response to this decision, EPA promulgated an emergency rule reinstating the mixture and derived-from rules as interim final rules without providing notice and opportunity to comment. 57 FR 7628 (Mar.3, 1992). EPA also promulgated a "sunset provision" which provided that the mixture and derived-from rules would remain in effect only until April 28, 1993. Shortly after, EPA published the proposal containing several options for revising the mixture and derived-from rules. See 57 FR 21450 (May 20, 1992). This proposal also included options for exempting media contaminated with listed hazardous wastes that are regulated under the "contained in" policy.

The May 1992 proposal and the time pressure created by the "sunset provision" generated significant controversy. In response, Congress included in EPA's 1992 appropriations bill several provisions addressing the mixture and derived-from rules. Pub. L. No. 102–389, 106 Stat. 1571. First, Congress nullified the sunset provision by providing that EPA could not promulgate any revisions to the rules

before October 1, 1993 and by providing that the reinstated regulations could not be "terminated or withdrawn" until revisions took effect. However, to ensure that EPA could not postpone the issue of revisions indefinitely, Congress also established a deadline of October 1, 1994 for the promulgation of revisions to the mixture and derived-from rules. Congress made this deadline enforceable under RCRA's citizen suit provision.

On October 30, 1992 EPA published two notices, one removing the sunset provision, and the other withdrawing the May 1992 proposal. See 57 FR 49278, 49280. EPA had received many comments criticizing the May 1992 proposal. The criticisms were due, in a large part, to the very short schedule imposed on the regulation development process itself. Commenters also feared that the proposal would result in a "patchwork" of differing State programs because some states might not adopt the revisions. This fear was based on the belief that States would react in a negative manner to the proposal and refuse to incorporate it into their programs. Finally, many commenters also argued that the risk assessment used to support the proposed exemption levels failed to provide adequate protection of human health and the environment because it evaluated only the risks of human consumption of contaminated groundwater ignoring other pathways that could pose greater risks. Based on these concerns, and based on the Agency's desire to work through the individual elements of the proposal more carefully, the proposal was withdrawn.

Meanwhile, a group of waste generating industries challenged the March 1992 action that reinstated the mixture and derived-from rules without change. *Mobil Oil Corp.* v. *EPA*, 35 F.3d 579 (D.C. Cir. 1994). EPA argued that the 1992 appropriations act made the challenge moot because it prevented both EPA and the courts from terminating or withdrawing the interim rules before EPA revised them, even if EPA failed to meet the statutory deadline for the revisions. In September, 1994 the D.C. Circuit issued an opinion that dismissed the challenges as moot under the rationale that the Agency had offered.

In early October 1994 several groups of waste generating and waste managing industries filed citizen suits to enforce the October 1 deadline for revising the mixture and derived-from rules. The U.S. District Court for the District of Columbia Circuit entered a consent decree resolving the consolidated cases on May 3, 1993. *Environmental Technology Council* v. *Browner*, C.A. No. 94–2119 (TFH) (D.D.C. 1994) Under this decree the Administrator must sign a proposal to amend the mixture and derived-from rules by November 13, 1995 and a notice of final rulemaking by December 15, 1996. The decree also specifies that the deadlines in the 1992 appropriations act do not apply to any rule revising the separate regulations that establish jurisdiction over media contaminated with hazardous wastes.

c. Federal Advisory Committees Act (FACA) and Outreach

After the withdrawal of the HWIR proposal, the Agency initiated a series of public meetings with invited representatives from industry, environmental groups, hazardous waste treaters, and States. These meetings focused on three major issues: —RCRA regulation of low hazard wastes with a particular interest in addressing issues raised regarding the mixture and derived-from rules; concerns that full RCRA requirements for contaminated media may unnecessarily impede clean-ups; and need to regulate additional high-risk wastes outside the scope of the current listings and characteristics.

A strong and successful effort was made to encourage all the interested parties to participate in the public meetings. EPA forged a solid partnership with the States (both ASTSWMO and Environmental Commissioners under the National Governors Association) and the state representatives worked closely with EPA as co-regulators in our analyses of options.

In July of 1993, EPA chartered this group as an advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463)(58 FR 36200).

The committee rather quickly formed two sub-committees to allow separate discussion of the low risk waste problem associated with the mixture and derived-from rules and the rules for managing contaminated media and other wastes during remediation.

By September of 1994 the low risk waste group had made significant progress in identifying options for creating exemptions for low risk wastes. Despite significant investment of time and effort, however, the group was unable to reach consensus on many key issues.

With the statutory deadline for revisions to the mixture and derived-from rules approaching, EPA requested that group to present a final report in late September of 1994. EPA and representatives from several state environmental agencies then took up the task of selecting options for creating an exit rule, crafting regulatory language, and developing necessary supporting materials. The FACA subcommittee's final report was taken into consideration during the development of today's proposal.

2. Contained-In Policy

The Agency also has interpreted its regulatory definition of hazardous waste to extend to mixtures of hazardous wastes and environmental media (such as contaminated soil and groundwater).[2] See 40 CFR 261.3(c)(1) and (d)(2). Media that are contaminated with listed or characteristically hazardous waste must be managed as hazardous wastes until they no longer contain such wastes. To date, the Agency has not issued any general rules as to when, or at what levels, environmental media contaminated with hazardous wastes are no longer considered to "contain" those hazardous wastes. Media that contain hazardous wastes with constituent concentrations below the levels proposed today will be eligible for exemption under the procedures proposed today. In addition, in a separate rulemaking, the Agency plans to propose additional rules reducing regulation of contaminated media during remediation activities.

C. Overview of Expected Impacts of the Exit Rule

1. Listed Wastes

The purpose of this rule is to exempt from hazardous waste regulation those solid wastes currently designated as hazardous waste even though they contain constituent concentrations at levels that pose very low risk to human health and the environment. While facilities generating such wastes can petition for delisting by rulemaking under the provisions of 40 CFR § 260.20 and 260.22, EPA believes that the detailed waste-stream specific review required under delisting is not necessary for the low risk wastes that are identified by today's proposal. The alternative, generic exit rule proposed today will be faster and less resource-intensive for both the Agency and the regulated community. By providing an opportunity for a more self-implementing exemption, the Agency intends to create incentives for effective and innovative waste minimization and waste treatment and to reduce unnecessary demand for Subtitle C disposal capacity, without

[2] EPA's "contained in" policy was upheld as a reasonable interpretation of 40 CFR 261.3(c)(1) and (d)(2) by the D.C. Circuit in *Chemical Waste Management, Inc* v. *U.S. EPA*, No. 869 F.2d 1526 (D.C. Cir. 1989).

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compromising needed environmental protection.[3]

By proposing a risk-based "floor" to listed wastes, today's proposal should give a very strong incentive to generators of listed hazardous waste to apply pollution prevention to their processes to avoid Subtitle C control. This action should also give incentive for the development of innovative treatment technologies to render wastes less risky.

Today's proposed rule specifies sampling and analysis requirements, public participation, reporting and record keeping requirements. Most of these provisions are alternatives to the safeguard of waste-specific review provided under the delisting program. The exit levels are risk-based concentrations at which a human or wildlife species could be directly or indirectly exposed to the exempted waste, and would be unlikely to suffer adverse health effects. The exposure scenario used to develop these levels assume that the exempted waste will no longer be subject to Subtitle C control, but will be managed as a solid waste in one of a variety of non-hazardous waste management units regulated under Subtitle D.

2. Characteristic Wastes

Listed hazardous wastes exempted under today's proposed rule which exhibit any of the characteristics will continue to be regulated as hazardous wastes until the characteristic is removed. In a number of cases, wastes were listed on the basis of containing both toxic hazardous constituents and exhibiting one or more of the hazardous waste characteristics that do not relate to chemical toxicity (e.g., ignitability, corrosivity, or reactivity). If such a waste still exhibits any characteristic after complying with the exemption criteria proposed in today's proposed rule, it must continue to be managed as a characteristically hazardous waste.

III. Scope of Revisions to the Mixture and Derived-From Rules

The mixture and derived-from rules promulgated in 1980 and reinstated in 1992 require Subtitle C regulation of all mixtures of listed hazardous wastes and solid wastes and all residuals from treatment of hazardous wastes. The rules proposed today, however, allow rapid exemptions for mixtures and derived-from wastes that present no significant threats to human health and the environment. Those wastes that would remain subject to the mixture and derived-from rules typically will pose risks that warrant regulation under Subtitle C. To the extent that this is not true for a particular mixture or treatment residual, the delisting process remains available (at least at the state level) to exempt wastes with constituents at more site- and waste-specific levels. Consequently, EPA has tentatively determined that further revisions of the mixture and derived-from rules, with the exception of the one minor change to the derived-from rule discussed later in this section, are not warranted in this rulemaking. However, EPA requests comment on this conclusion.

A. Rationale for Retention of the Mixture and Derived-From Rules

EPA continues to believe that it had ample statutory and regulatory authority to promulgate the original rules and that it also has ample authority to maintain the rules without further revisions. The mixture and derived-from rules, particularly with the revisions proposed today, ensure that hazardous wastes that are mixed with other wastes or treated in some fashion do not escape regulation so long as they are reasonably likely to continue to pose threats to human health and the environment. They thus retain jurisdiction over listed hazardous wastes and clarify that such wastes are not automatically eligible for exit when they are mixed or treated. Although RCRA sets out criteria for the identification of hazardous wastes to *enter* the subtitle C system, it is silent on the question of how to determine that a waste is eligible to exit the system. EPA's interpretation of the statute is thus entitled to deference so long as it is reasonable and consistent with RCRA's purposes.

EPA believes that its decision to retain jurisdiction over major portions of the universe of waste mixtures and treatment residues is consistent with its authorities under sections 3002–3004 of RCRA to impose requirements on waste handlers until wastes have "cease[d] to pose a hazard to the public". *Shell Oil Corp.* v. *EPA*, 959 F.2d 741, 754 (D.C. Cir. 1991). See also *Chemical Manufacturers Assoc.* v. *EPA*, 919 F.2d 158, 162–65 (EPA may regulate the disposal of nonhazardous wastes in a hazardous waste impoundment under section 3004) and *Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2, 8, 13–14 (D.C. Cir. 1992) (EPA may require further treatment of wastes under section 3004 even though they cease to exhibit a hazardous characteristic).

The mixture and derived-from rules are also valid exercises of EPA's authority to list hazardous wastes under section 3001. That provision gives EPA broad authority to promulgate listing criteria. EPA's 1980 criteria authorize the listing of classes of hazardous wastes when it has reason to believe that wastes in the class are typically or frequently hazardous. See 40 CFR 261.11(b). Such class listings are permissible even if some members of the class do not actually pose hazards. Nothing in the section 1004(5) definition of hazardous waste, in section 3001, or in EPA's listing criteria require EPA to prove that every member of a class poses a hazard. In fact, many waste listings describe "classes" of hazardous wastes because they cover a range of materials that are not identical in composition. The mixture and derived-from rules thus are fully authorized as class "listings" under section 3001.

EPA has also made a reasonable factual determination that these classes of waste warrant regulation under sections 3002–3004 and section 3001. In 1980 EPA determined that the hazardous constituents contained in these wastes are not generally eliminated or rendered nontoxic simply because a waste is mixed with other wastes or managed in some fashion. In 1992, when EPA repromulgated the mixture and derived-from rules, it documented numerous instances of mixed and derived-from wastes that continued to pose hazards. See 57 FR 7629 (March 3, 1992). Today, EPA is proposing that members of this class of wastes that pose low risks will be eligible for an expedited, self-implementing exemption from Subtitle C regulation. Accordingly, EPA has an even better basis for believing that wastes which remain within the scope of the mixture and derived-from rules pose threats warranting regulation.

Additionally, EPA continues to believe, as it did in 1980, that it would be virtually impossible to try to identify all possible waste mixtures and treated wastes and assess their hazards individually. EPA's rule reasonably retains jurisdiction over both broad classes and places the burden of proof on the regulated community to show that a particular waste has ceased to present a hazard. Today's self-implementing exit proposal will reduce that burden significantly, ensuring that the mixture and derived-from rules represent a reasonable approach to regulating these classes of wastes.

[3] As will be discussed further in this notice, the Agency believes that the delisting process will continue to be valuable for certain types of wastes which are not eligible for an exemption under this proposal. Thus the Agency is not proposing to eliminate or modify the delisting program as a result of this proposal.

B. Revision to Derived-from Rule for Wastes Listed Because They Exhibit the Characteristics of Ignitability, Corrosivity, or Reactivity

In 1981 EPA responded to a number of comments on the scope of the original 1980 mixture rule by promulgating a number of exemptions for mixtures of solid wastes and listed hazardous wastes which, according to information submitted by commenters, posed no significant risk to human health and the environment. See 46 FR 56582 (Nov. 17, 1981). The 1981 rule included an exemption for mixtures of solid wastes and hazardous wastes listed solely because they exhibited one or more of the hazardous waste characteristics, if the resultant mixtures no longer exhibited a characteristic. The exemption was based on a finding that such mixtures did not pose threats to human health and the environment warranting Subtitle C regulation. See 46 FR 56568 and the current text of the exemption at § 261.3(a)(2)(iii). EPA notes that it has never promulgated any listings for wastes solely on the basis that they exhibit either the 1980 EP toxicity characteristic or the 1990 toxicity characteristic; consequently, only mixtures containing wastes listed because they exhibit the characteristics of ignitability, corrosivity, or reactivity have been eligible to exit Subtitle C when they no longer exhibit the characteristic.

The 1981 notice focused exclusively on issues concerning the mixture rule. Consequently, EPA did not propose any parallel exemption for such wastes for the separate derived-from rule (codified at § 261.3(c)(2)(i)), even though the derived-from wastes would appear to present similarly low risks if they no longer exhibited a characteristic and were treated to meet LDR standards before land disposal. Recent inquiries from the public have highlighted the discrepancy in the scope of the mixture rule and the derived-from rule for wastes listed solely because they exhibit characteristics. EPA believes it has no reason to treat derivatives of wastes listed solely because they exhibit the characteristic of ignitability, corrosivity, or reactivity any differently from the way it treats mixtures of such wastes because both present similar low risks to human health and the environment.

Consequently, EPA is today proposing a revision to the derived-from rule that will closely resemble the 1981 revision to the mixture rule. Since no listings to date have been based on the toxicity characteristic, EPA is proposing to limit the new revision to the derived-from rule to wastes listed because they exhibit only the characteristics of ignitability, corrosivity, or reactivity. EPA is also not proposing to exempt wastes that might in the future be listed only because of the toxicity characteristic because (as this rule proposal indicates) there can be risk concerns with the TC constituents below TC levels. EPA requests comment on this proposal to create a new exemption to the derived-from rule for this limited category of listed wastes.

The proposed exemption will also remind the regulated community of the separate duty to comply with requirements imposed by the part 268 regulations implementing the LDR program. In *CWM* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), the U.S Court of Appeals for the D.C. Circuit interpreted RCRA section 3004(m) as requiring treatment of de-characterized hazardous wastes to meet LDR treatment standards even after the wastes cease exhibiting a characteristic. EPA believes that de-characterized derived-from residues from wastes listed because they exhibit characteristics also must meet LDR requirements, unless they are either delisted or are exempt at the point of generation pursuant to other provisions proposed in this rule (*e.g.*, meeting HWIR levels at the point of generation).

In 1992 EPA amended the 1981 exemption to mixture rule to provide a similar cross-reference and clarification for mixtures containing de-characterized listed wastes. See 57 FR 37194, 37210–11 (Aug. 18, 1992). That 1992 clarification, however, only covers nonwastewater mixtures. As explained in that mixture rule preamble, EPA then regulated de-characterized wastewaters much less stringently under the LDR program. Consequently, EPA did not believe it was necessary to remind the regulated community to comply with LDR requirements for wastewater mixtures.

Later in 1992 the *CWM* v. *EPA* decision invalidated most of the distinctions between the LDR rules for wastewaters and nonwastewaters. EPA is now revising the LDR program to comply with that decision in the LDR Phase III and Phase IV rulemakings. To reflect the changes in LDR regulation of wastewaters, the derived-from rule exemption proposed today reminds the regulated community of the need to comply with part 268 LDR requirements for all types of derived-from residues. EPA requests comment on this clarifying language. EPA also requests comment on whether it should revise the LDR clarification for the mixture rule as well.

IV. Development of Exit Levels and "Minimize Threat" Levels

A. Need for the Exit

The primary purpose of this rule is to address listed hazardous wastes, mixtures of listed hazardous wastes and solid wastes, and residues derived-from managing listed hazardous waste that, under current rules, continue to be designated as "hazardous waste" although they are either generated with constituent concentrations that pose low risks or treated in a manner that reduces constituent concentrations to low levels of risk.

EPA notes that there are currently exemptions, both codified and contained in policy directives, from the hazardous waste identification system, particularly the mixture and derived-from rules, for certain types of wastes or wastes with certain constituent concentrations. See e.g. 40 CFR 261.3(a)(2)(iv)(A) through (E) and policy memorandums such as the "Skinner Memorandum" dated August 23, 1995. EPA is not proposing to modify or replace any of these exemptions and policy statements.

B. *Overview of the Exit*

For 191 of the 376 constituents of concern, EPA conducted a detailed human health risk analysis to develop risk-based levels for either the wastewater or nonwastewater form of a constituent (or both). To conduct this analysis, EPA identified five types of units actually and rather frequently used to manage nonhazardous wastes that covered the full range of environmental releases needing analysis. The May 1992 proposal of exit levels for listed wastes, like many previous RCRA rules, assessed only risks from releases to groundwater. In response to complaints that such an assessment would not protect human health and the environment from other types of releases, EPA also assessed potential releases to air, surface water and soil in this proposal.

For each category of releases, EPA evaluated both relatively simple pathways (such direct human ingestion of contaminated groundwater) and more complex pathways (such as the deposition of windblown waste particles on agricultural land, followed by crop uptake, consumption of the crop by cattle, and consumption of contaminated beef or milk by humans). EPA assessed approximately 8 to 27 release pathways depending on the type of waste management unit.

Additionally, EPA screened the same group of 191 constituents to identify the highest priorities for assessment of

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ecological receptors. In addition, EPA considered for its assessment the toxicological effects of silver on ecological receptors. EPA conducted a specific assessment of ecological risks for 47 constituents using the same five units and the same pathways (modified to reflect ecological exposures) for each unit. This risk assessment is described in more detail in sections V.B. and C.

Data limitations and resource constraints prevented EPA from conducting a risk analysis for the remaining constituents of concern. For each of these constituents, EPA extrapolated exit levels from levels derived from the risk assessment for similar chemicals. EPA's extrapolation methodology is described in section IV.F.

The current capabilities of analytical chemistry constrain EPA's ability to use some of concentrations as exit levels. For approximately one-fourth of the constituents, EPA found that available methods could not routinely measure the constituent at the modeled or extrapolated risk-based exit level.

C. *Selection of Constituents of Concern*

1. Development of the Master List

EPA developed an initial "Master List" of 506 constituents to be evaluated for purposes of establishing exit criteria. This master list was developed by combining the constituents specifically listed in the following appendices of 40 CFR part 261: Appendix VII, Basis for Listing Hazardous Waste; Appendix VIII, Hazardous Constituents; and appendix IX of part 264, the Ground-Water Monitoring List. The master list includes the full list of constituents referenced in appendix VII, including the F039 constituents.

Appendix VII to part 261, which was originally promulgated on May 19, 1980 (45 FR 33084) sets out the chemical constituents found to pose threats to human health and the environment that served as the actual basis for each of EPA's original hazardous waste listings. Appendix VIII to Part 261, also promulgated in 1980, is a more general listing of chemicals found to pose potential threats to human health and the environment. (45 FR 33084). EPA considers wastes containing appendix VIII constituents to be candidates for listing determinations. EPA amends appendix VII from time to time as EPA identifies additional potentially toxic constituents.

EPA later promulgated appendix IX to part 264 to identify those appendix VIII constituents which it could routinely expect owners and operators of permitted hazardous waste treatment, storage and disposal facilities to monitor in groundwater. EPA also included in this appendix 17 additional constituents found to pose significant risks that the Superfund program routinely monitored in groundwater. (52 FR 25942, July 9, 1987).

EPA established in these rulemakings that each of these constituents had significant potential to threaten human health, and, by implication, potential to threaten the environment. (Most of the data EPA utilized predicted toxic effects on humans.) EPA finds it reasonable to include each of these constituents on the list of chemicals of concern.

Further, EPA believes that, with the exception of the six chemicals identified below, the three appendices identify the chemicals of current concern to EPA that are likely to be found in listed wastes.

The Agency requests comment on whether the master list should also include six constituents that are not listed in any of the above sources. These six constituents, which are listed in Table 1, are found in six "U" listed wastes (commercial chemical products that become hazardous wastes when discarded). See 40 CFR 261.33(f). EPA originally listed these wastes because they routinely exhibited the characteristic of ignitability. Since the original listings, however, sufficient toxicity data have become available for these constituents. (The risk number for dimethylamine was recently withdrawn; however, EPA understands that it will shortly be replaced). Because of the toxicity data associated with these constituents, the Agency is taking comment on whether exit levels should be established for these six constituents in today's rulemaking. The Agency also requests comment on whether these six constituents should be added to Appendix VIII.

TABLE 1.—CONSTITUENTS NOT ON APPENDICES VII, VIII, OR IX

CAS #	Constituent	Wastewater	Nonwastewater	
			Totals	Leach
75-07-0	Acetaldehyde (ethanal)			
98-82-8	Cumene	.67	18,000	2.5
124-40-3	Dimethylamine			
110-00-9	Furan	.16	1300	.06
79-10-7	Acrylic acid	(1)	(1)	(1)
98-01-1	2-Furancarbox- aldehyde (furfural)	(1)	(1)	(1)

[1] No exit levels because no EQC is available for this constituent. The criteria for exit would be to meet LDR treatment standards in §268.

Full documentation concerning the selection of constituents of concern is available in the docket under *The Background Document to Support Development of the Final Constituent List under the Waste Exit Rule.*

2. Development of the Exit Constituent List

The Agency narrowed the list of 506 constituents to consist of 376 constituents that are included in the exemption list. 130 constituents were deleted from the master list. Criteria for constituent deletions from the master list include: Reactivity in air, analysis as a different constituent, reactivity in water, hydrolysis in soil or water, or is part of a chemical class with a specific constituent represented on the list. Because different methods and quantitation limits are necessary for solid and liquid matrices, two separate analyses were conducted. *The Background Document to Support Development of the Final Constituent List under the Waste Exit Rule* in the docket further justifies deletions of constituents from the master list and lists the deleted constituents.

Molybdenum is not on the Appendices VII, VIII, or IX, which provided the scope of today's master list of constituents. In anticipation of the Petroleum listing, due to a Drinking Water Sewage Sludge regulatory level, and due to available toxicity information, the Agency has included molybdenum on the exemption list. Due to modeling time constraints, Molybdenum was not modeled for groundwater risk. The groundwater leach level was estimated by assuming a DAF of 10 and using the RfD. The Agency requests comment on whether molybdenum should be on the list.

Two modeled constituents do not have estimated quantitation criteria (EQCs—see section IV.G.) and therefore do not have associated exit levels. These constituents are ethylene thiourea and phenyl mercuric acetate. The Agency requests comment on how to deal with these two constituents. The following table represents modeled results for these constituents for comment.

TABLE 2.—MODELED CONSTITUENTS WITHOUT EQCS

CASNUM	Constituent	NWW totals	NWW leach	WW totals
96-45-7	Ethylene thiourea	0.51	0.00017	.00053
62-38-4	Phenyl mercuric acetate	0.0093	0.0045	0.012

EPA modeled chromium VI in the risk assessment. However, totals chromium appears on the exit tables based on the exit levels calculated from modeling chromium VI. This approach is consistent with the Toxicity Characteristic approach to chromium. The Agency asks for comment on this approach.

The cyanide exit level was extrapolated. It is meant to be totals cyanide. The Agency requests comment on whether testing for totals cyanide is appropriate.

The values in the exit tables for silver do not represent results of human toxicity data for silver, rather they represent ecological results from the risk assessment. The Agency has determined that the effect of silver on humans is not a human health problem, rather it is an aesthetic problem. The groundwater model did not model ecological exposure, therefore, there is no groundwater risk level for silver.

3. Constituents of Ecological Concern

As explained above, EPA established in previous RCRA rulemakings that the constituents on the exit list (376) present significant threats to human health. Numerous comments submitted on EPA's May 1992 proposal to establish exit levels urged EPA to conduct a more specific and detailed analysis of threats to non-human species. Consequently, in this rulemaking EPA determined the constituents it believed to also be reasonably likely to pose risks to ecological receptors.

EPA has not set benchmarks for ecological impacts for a large number of constituents under any of its programs. Establishing such benchmarks for this proposal would be a resource-intensive and time-consuming task. Accordingly, EPA narrowed the list of exit constituents for which ecological receptors would be evaluated. First, EPA decided to consider only the 191 constituents which it had already targeted for analysis to protect human health. Second, the Agency developed a methodology for screening the 191 constituents to identify those most likely to pose significant risks to ecological receptors.

Based on an extensive review of available literature, EPA developed five criteria to indicate the potential for ecological risks:

(1) Constituents that bioaccumulate (and possibly biomagnify) in the food chain that can present elevated exposures to certain predators;

(2) Persistent constituents that are likely to increase long-term multi-generational exposures in wildlife;

(3) Constituents that cause reproductive and developmental effects that can elicit adverse effects at sensitive life stages;

(4) Constituents that may cause ecological effects that have no human analog (e.g., eggshell thinning); and

(5) Constituents that may cause effects to ecological receptors continuously exposed.

EPA also developed operational definitions for each criterion. The definitions were quantitative where possible. Further details can be found in appendix B of the Technical Support Document for the Risk Assessment for Human and Ecological Receptors.

EPA decided to designate as constituents of ecological concern the 47 constituents that exhibited at least two of the five criteria. The Agency believes these constituents present the highest priorities in terms of environmental risk. An additional 36 constituents exhibited only one criterion. EPA, however, chose not to designate them as constituents of concern because time and resource constraints would prevent the Agency from completing an analysis with these constituents. EPA, nevertheless, believes it has identified and analyzed sufficient constituents of concern to ensure that the exit levels proposed today provide for reasonable protection of the environment. Only 83 of 191 screened constituents showed any significant potential to pose threats to the environment at levels protective of human health. Further, as discussed in more detail below, of the 47 constituents that EPA actually assessed for ecological impacts, only 6 wastewater constituents and 18 nonwastewater constituents required exit levels to protect environmental receptors lower than those necessary to protect human health under the baseline proposal. Consequently, EPA believes it is unlikely that all of the remaining constituents will present significant threats to ecological receptors at levels that would adequately protect human health.

D. Risk-Based Information

The Agency's proposed option for establishing exit values is based on risk modeling to a hazard quotient of 1 and a 1×10^{-6} cancer risk. The Agency chose a hazard quotient of 1 as its toxicity benchmark value for non-carcinogens because evaluation of these compounds presumes there is a threshold exposure above which individuals would be at significant risk of suffering the adverse effects attributable to the compound. The HQ is the Agency's best attempt to estimate that level. Therefore, the Agency believes all exposures should remain below HQ 1. Some Agency programs rely on HQ values less than 1 in standard setting (the drinking water program uses an HQ of 0.20 to provide a safety factor which allows for exposure to the constituent from sources other than drinking water).

The Agency chose a toxicity benchmark of 1×10^{-6} cancer risk for carcinogens for several reasons. A cancer risk level of 1×10^{-5} risk was used as a clearly hazardous level in establishing the toxicity characteristic. Second, in the listings program, a 1×10^{-4} cancer risk is used as the presumptive listing risk, and a 1×10^{-6} as the presumptive no-list level. A cancer risk of 1×10^{-5} represents a level of initial concern about risk. Therefore, in allowing listed hazardous waste to exit the requirements of Subtitle C, the Agency was targeting waste that is clearly not hazardous. Thus, the Agency believes the risk level should be at the

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low end of the risk range used to bring waste into the hazardous waste system.

Similarly, the Agency sought to be protective of public health in developing its fate and exposure modeling. For the groundwater evaluation, the Agency used a DAF 10 (which represents an approximate 90th percentile protection level) for infinite source type constituents. (Constituent-specific DAFs were developed using the same input assumptions, and different DAFs result from modeling of degradation or retardation factors in the environment). This is the generic DAF used in the delisting program for large volume wastes. Since this is a national program which will largely benefit the largest volume generators, the DAF 10 assumption is consistent with delisting practice. Also, the toxicity characteristic used a DAF of 100 (representing an approximate 85th percentile protection level) for identifying clearly hazardous waste (for infinite source type constituents; regulation of hydrolysers was deferred). Again the policy goal of exits was to strive to be well below clearly hazardous levels. The Agency also modeled exposure at the nearest downgradient well. The TC rule restricted well placement to within the plume. Today's proposal attempts to balance the protectiveness level and well placement by requiring a more protective level than the TC rule, but is less restrictive in well location, e.g., wells outside of the plume, at significantly lower risk, are averaged in.

For modeling of the non-groundwater pathways, the Agency used four high-end parameter values for which the modeling outcome is most sensitive as inputs to the analysis to be protective of public health and the environment. These include: Two high-end parameters in the waste management unit characterization and fate portions and two high-end parameters in the exposure portions of the model. The remaining input parameters were evaluated at typical values or central tendency values. The Agency sought to be protective of a high percentile exposed population (at least 90th percentile).

1. Human Health Benchmarks

For each constituent on the master list, the Agency evaluated the existing toxicity information to determine whether there were sufficient toxicity data to establish a benchmark. For those constituents with adequate data, the data were evaluated either by the Agency's CRAVE (Carcinogen Risk Assessment Verification Endeavor) Workgroup, Reference Dose/Reference Concentration (RfD/RfC) Workgroup, or the Office of Research and Development. This approach is consistent with the approach used in the Agency's other risk-based RCRA programs such as the Toxicity Characteristic, delisting petition evaluations, listings, as well as the CERCLA program. See Section 4, "Benchmarks," of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more details.

a. Non-carcinogens

The Agency proposes to use oral reference doses (RfDs) and inhalation reference concentrations (RfCs) as the basis for developing the exit criteria for non-carcinogenic constituents. An RfD or RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to a constituent for the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The approach used to derive an RfD or RfC is to identify the highest test dose of a constituent associated with no effects or effects that are not considered adverse in an appropriate animal bioassay test. These experimental no-observed-adverse-effect-levels (NOAELs) or no-observed-effect-levels (NOELs) are considered to be an estimate of the animal population's physiological threshold for adverse effects. The RfD or RfC is derived by dividing the NOAEL or other toxicity benchmark by suitable uncertainty and modifying factors. In the event that an appropriate NOAEL or NOEL is not available, the lowest-observed-adverse-effect level (LOAEL) may be used with additional uncertainty factors.

It is important to note that the contributions of the constituent from various sources in the environment (*e.g.*, air, food, water) are not considered in the development of an RfD or RfC. Rather, the RfD or RfC reflects the estimated total permissible daily human exposure from all sources of exposure. RfDs and RfCs have been calculated for many, but not all, of the non-carcinogenic constituents for which the Agency is establishing exit criteria.

The Agency prefers to use only RfDs and RfCs that have been evaluated and verified by the RfD/RfC Workgroup as the basis for setting regulatory levels. However, for some constituents, the Agency has not yet completed its verification process; thus, RfDs and RfCs under development are being used for purposes of this proposal for those constituents. If the final verified RfDs and RfCs differ from the RfDs and RfCs under development proposed in today's notice, the Agency will adopt the new (*i.e.*, verified) values for the final rule after noticing the data in the **Federal Register**.

b. Carcinogens

The Agency proposes to use the oral cancer slope factor and inhalation cancer unit risk as the basis for developing exit levels for carcinogenic constituents unless the non-carcinogenic effects occur at lower levels. EPA's CRAVE Workgroup and Office of Research and Development have estimated the carcinogenic slope factor (CSF) (*i.e.*, the slope of the "dose-response" curve) and inhalation unit risks for humans exposed to low-dose levels of carcinogens in the environment. The slope factors indicate the upper-bound confidence limit estimate of excess cancer risk for individuals experiencing a given exposure over a 70-year lifetime. In practice, a given dose multiplied by the slope factor gives an upper estimate of the lifetime risk to an individual of developing cancer. By specifying a level of lifetime risk (no matter how small), one can also estimate the corresponding dose using the slope factor.

EPA proposes to quantify on a weight-of-evidence basis, as described below. EPA promulgated "Guidelines for Carcinogen Risk Assessment" on September 24, 1986 (51 FR 33992), which defined a scheme to characterize substances based on experimental data and the kinds of responses induced by a suspect carcinogen. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)
Group B—Probable human carcinogen
Group B_1—Limited evidence of carcinogenicity in humans
Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)
Group E—Evidence of non-carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies).

The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Under each of the regulatory options presented in today's proposal, the Agency is using the same risk level for Groups A, B, and C carcinogens. This approach is consistent with the way carcinogens were treated in the 1990 Toxicity Characteristic rule, hazardous waste listing determinations, and the delisting program. The rationale for this approach is that while the classifications indicate the type (human or animal) and strength of the studies available which reflects upon the uncertainty about the carcinogenic potential, the severity of the effect, cancer, warrants equal treatment. It is important to note that a few Group C carcinogens do not have slope factors or unit risks. In these cases the Agency used the benchmark developed for the non-cancer endpoint.

c. Consideration of MCLs

The Agency is proposing two approaches for setting human health-based levels for carcinogens and non-carcinogens in routes of exposure involving water ingestion. For the first approach, the Agency is proposing to use Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, as the human health-based levels for the constituents for which they have been established. In general, MCLs for non-carcinogens are derived from the Reference Doses (RfDs), while MCLs for most carcinogens are set as close to zero as technically and economically feasible; this normally corresponds to risk levels that range from 10^{-4} to 10^{-6}. (Note that, although the derivation of MCLs considers feasibility of treatment, analytic chemistry, and cost factors in addition to health effects, it also considers other routes of exposure. The Agency's policy has been to use MCLs, when available, in other similar concentration-based programs.) For those constituents which do not yet have MCLs, the Agency is proposing to use oral reference doses (RfDs) for non-carcinogens and oral slope factors for carcinogens as described above. However, if new MCLs are finalized under the SDWA prior to the promulgation of today's rule, the Agency proposes to substitute the new MCLs for the RfDs and slope factor-derived human health-based levels for water ingestion presented in today's notice.

For the second approach, the Agency intends to propose to use only RfDs and slope factors in deriving human health-based levels for water ingestion. The Agency requests comment on these two approaches.

2. Ecological Benchmarks

Ecological benchmarks were developed for a variety of ecological receptors based on the availability of data. Benchmarks were needed for mammals, birds, plants, soil fauna, fish, aquatic invertebrates, aquatic plants, and benthos (sediment-dwelling organisms). A much smaller number of constituents have been evaluated by the Agency for ecological effects than have been for human health effects, as discussed under V.A. In general, measurement endpoints were selected: (1) For consistency with the Agency's Framework for Ecological Risk Assessment (U.S. EPA 1992x), the Great Lakes Initiative, and other ecological efforts within the Agency, and (2) relevance to the ecological receptor. As discussed in "Section D—Risk Assessment" the ecological assessment focussed on inferring the sustainability of populations and communities within ecosystems. Therefore, benchmarks were derived from measurement endpoints (i.e., reproductive, developmental, growth, survival, and mortality) from which such inferences could be made. Reproductive studies (e.g., number of viable young per female) were preferred over other endpoints. For some constituents, acute or mortality studies were used, however, this occurred only for developing benchmarks for fish, aquatic invertebrates, and benthos where protocol exists (AWQC development) for using such data. The Agency seeks comment on the measurement endpoints selected for each ecological receptor.

The toxicological benchmarks were established using the more conservative no effects level (or concentration) approach for ecological receptors as compared to a 20% effects level. The 20% effects level is the lowest level for ecological effects that can be detected in field population analyses (Suter et al., 1992). Although the 20% effects level may indeed be the lower limit that could be reliably confirmed in field studies, this level reflects our current analytical abilities and not necessarily the ecological significance of the effects level. The no effects approach was taken because the ecological analysis infers the sustainability of various populations under the assumption that if a sufficient number of populations within an ecosystem is protected, then the likelihood of adverse effects that are causally related to the chemical stressor will be reduced at the ecosystem level. The Agency was concerned that if an effects approach was taken, then the assumption underlying the ecological analysis would no longer be valid. The Agency seeks comment on the approach taken for setting toxicological benchmarks.

Given the number and variety of ecological receptors included in the analysis (predatory birds to soil fauna) as well as the variety of effects and endpoints considered, the benchmark development process required an approach that was internally consistent and acknowledged, at least qualitatively, the uncertainty involved in estimating ecological benchmarks. The Agency, therefore, developed a benchmark classification scheme to incorporate both the relationship of the benchmark to the entire toxicity data set and the adequacy of the database used to derive the benchmark. Three classifications were established: Adequate, provisional, and interim. These classifications were developed on a receptor group-specific basis (i.e., fish and aquatic invertebrates, benthos, mammals, birds, soil fauna, and terrestrial plants) and represent a weight-of-evidence designation for the toxicological benchmark. In many respects, this classification scheme is similar in meaning to the human carcinogen weight-of-evidence groups and the difference between "verified" values on IRIS and "unverified" values in HEAST. The classifications relate to the certainty assigned to a given ecological benchmark. The benchmarks were treated the same in the analysis regardless of classification. See Section 4 in the "Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors" for details on each classification and how they were used for each ecological receptor group. The Agency seeks comment on the classification developed for the analysis.

Below is a discussion of how benchmarks were developed for each of the receptor groups. For a detailed discussion of each of their developments, see Section 4, "Benchmarks," and Appendix B, "Toxicological Profiles for Ecological Receptors," of the "Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors." The Agency seeks comment on the overall development of each of the ecological benchmarks generated for this proposed rule.

For populations of birds and mammals, the overall approach used to establish toxicological benchmarks was similar to the methods used to establish RfDs for humans as described in IRIS. Each method uses a hierarchy for the selection of toxicity data (e.g., no effects

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levels are generally preferred to lowest effects levels) and extrapolates from a toxicity benchmark for the test species to a toxicity benchmark for the desired species. However, the procedures used to develop benchmarks (i.e., RfDs) for the protection for human health establish an acceptable daily dose for all individuals (including sensitive sub-populations) while the development of ecological benchmarks for this analysis establish a level that will sustain the reproductive fitness in a local population. Consequently, benchmarks for birds and mammals were established using three key guidelines. First, because the reproducing population was selected as the assessment endpoint, the benchmarks were developed from measures of reproductive success or, if unavailable, other effects that could conceivably impair the maintenance of the population.

Second, the taxon of the test species was matched to the taxon of the wildlife species to the greatest extent possible. The evolutionary processes that result in obvious differences in taxa (e.g., morphology) also result in differences in the physiological processes that govern chemical response. Moreover, taxonomic similarities are generally associated with similarities in feeding habits, physiology, and chemical sensitivity at the family classification and, to a lesser extent, the order classification. For example, herbivores are generally more resistant to toxicants than predators because they are exposed to plant toxins, and the enzymatic system that detoxifies plant toxins also detoxifies pesticides and other organic chemicals.

Third, a default safety factor of 10 was adopted only for extrapolating from an lowest-observed-effects level (LOEL) to a no-effects level (NOEL). A ten-fold safety factor was not applied to sub-chronic studies since reproductive and developmental toxicity studies are frequently short-term. Even among target organ toxicity studies, there are many instances where sub-chronic studies are actually more sensitive than chronic studies carried out on the same substance. Also, for mammals and birds, differences in interspecies uncertainty were indirectly addressed through the use of the species-scaling equation described in Section 4 of the "Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors." The Agency requests comment on the use a safety factor of 10 when extrapolating from a LOEL to a NOEL. The Agency also requests comment on the use of a scaling approach to address interspecies uncertainty as described above. Furthermore, the Agency seeks comment on the inability of the Risk Assessment to evaluate the inhalation and dermal routes of exposure for birds and mammals.

For the terrestrial plants, the approach used to establish toxicological benchmarks was adapted from the Effects Range Low (ER-L) approach developed by the National Oceanographic and Atmospheric Administration (NOAA). The NOAA ER-L approach estimates a percentile of the distribution of various toxic effects thresholds. The measurement endpoints were generally limited to growth and yield parameters because (1) they are the most common class of response reported in phytotoxicity studies and, therefore, will allow for benchmark calculations for a large number of constituents, and (2) they are ecologically significant responses both in terms of plant populations and, by extension, the ability of producers to support higher trophic levels. It should be noted that these benchmarks were limited to soil concentrations and do not explicitly consider the adverse impacts on plants from ambient contaminant concentrations in the air. Further details can be found in section 4.3.3 of the "Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors." The Agency solicits comment on the overall approach taken to develop benchmarks for the terrestrial plant community.

For the soil fauna, the toxicological benchmarks were established based on methods developed by the Dutch National Institute of Public Health and Environmental Protection (RIVM). The RIVM approach estimates a confidence interval containing the concentration at which the no observed effects concentration (NOEC) for p percent (95th percentile was selected) of the species within the community is not exceeded 50% of the time. A minimum data set was established in which key structural and functional components of the soil community (e.g., decomposer and grazing organisms) encompassing different sizes of organisms (i.e., microfauna, mesofauna, macrofauna) were represented. As with the Ambient Water Quality Criteria, measurement endpoints included reproductive effects as well as measures of growth, survival, mortality. The Agency requests comment on the use of the RIVM methodology, and protecting 95 percent of the community 50 percent of the time. The Agency also requests comment on its inability to fully quantify the effect of soil characteristics on toxicity of constituents to soil organisms.

For populations of fish and aquatic invertebrates (represented by daphnids), a hierarchical approach was taken for use of data sources in deriving benchmarks. The first choice was final chronic values (FCVs) from the Sediment Quality Criteria effort by the EPA Office of Water, followed by values from the Great Lakes Initiative (GLI) effort, and finally, the Ambient Water Quality Criteria (AWQC). If these benchmarks were not available, then a benchmark was developed using AWQC procedures or, if data were inadequate, the GLI Tier II procedures for establishing chronic values (termed secondary chronic values—SCVs). The AWQC ranked third since many years have passed since their establishment and the SQC and GLI efforts re-evaluated the toxicity data sets of several of these. The Agency solicits comment on the hierarchical approach described above for deriving toxicity benchmarks.

For aquatic plants, the approach used to establish toxicological benchmarks was adapted from the ER-L approach developed by NOAA. The NOAA ER-L approach estimates a percentile of the distribution of various toxic effects thresholds. However, due to the general lack of toxicity data, the default ER-L approach was used wherein the lowest LOEC for either vascular plants or algae was used. The Agency solicits comment on the overall approach taken to develop benchmarks for aquatic plants.

For the sediment organisms, the approach used to establish toxicological benchmarks for non-ionic, hydrophobic organic chemicals was based on sediment quality criteria methods for non-ionic constituents. Two key assumptions form the basis for the proposed sediment quality criteria. First, benthic species, defined as either epibenthic or infaunal species, have a similar toxicological sensitivity as water column species. As a result, FCVs (or SCVs) developed for the fish and aquatic invertebrates can be used for the benthic community. Second, pore water and sediment carbon are assumed to be in equilibrium and the concentrations are related by a partition coefficient, Koc. This assumption, described as equilibrium partitioning (EqP), provides the rationale for the equality of water-only and sediment-exposure-effects concentrations on a pore water basis: The sediment-pore water equilibrium system results in the same effects as a water-only exposure. The Agency requests comment on the use of this approach in support of today's proposal. In some cases, protecting these

ecological receptors represents the critical pathway that limits the projected exit level for management of a waste stream outside of the Subtitle C hazardous waste program. These ecological receptors serve as the basis for the proposed exit levels for 18 constituents, including 6 metals. To the extent that contaminants from these waste streams reach off site areas, the Agency based its proposal on modeling the ecological receptors on a neighboring land area of 500 acres or an adjacent stream (with a total length of 12 miles). This approach as currently modeled, may only serve as an indicator of a potential nearby threat to ecological receptors (e.g., the soil fauna and plant life), rather than serving as a measure or indicator of a broader threat to the environment. The Agency solicits comment on the appropriateness and relevance of these receptors as the basis for exit levels under the HWIR program.

3. Sources of Data

a. Human

The two primary sources used to identify human health benchmarks were the Integrated Risk Information System (IRIS) and the Health Effects Assessment Summary Tables (HEAST). Both of these sources were developed and are maintained by the USEPA. For a few constituents, other Agency sources such as Carcinogen Assessment Group (CAG) profiles, Health Effect Assessments (HEAs), and Health Assessment Documents (HADs) were used to fill data gaps.

IRIS is the Agency's official repository of Agency-wide consensus chronic human health risk information. IRIS evaluation are conducted by the Agency's Work Group review process that leads to internal Agency scientific consensus regarding risk assessment information on a chemical. This information is recorded on IRIS and is considered to be "Work Group Verified."

The HEAST is prepared by EPA's Office of Research and Development. They contain risk assessment information on chemicals that have undergone a more limited review and have the concurrence of individual Agency program offices; each is supported by an Agency reference. The information has not, however, had enough review to be recognized as Agency-wide consensus information.

b. Ecological

A thorough literature review was conducted to identify toxicological data from laboratory and field studies for each of the constituents of ecological concern. The review included secondary sources such as the Synoptic Review Series published by the U.S. Fish and Wildlife Service, the Ambient Water Quality Criteria documents, and other Federal compendia of toxicity data (e.g. HEAs, the Derivation of Proposed Human Health and Wildlife Bioaccumulation Factors for the Great Lakes Initiative, Agency for Toxic Substances and Disease Registry documents, PHYTOTOX, GRIN, TERRETOX, and AQUIRE). Toxicity data on soil organisms were obtained for several constituents from van de Meent et al. (1990). In addition to AQUIRE, the other primary data source for toxicity data on aquatic plants were the Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Aquatic Biota:1994 Revision (Suter and Mabrey, 1994). On-line literature searches were conducted to identify primary sources of toxicity data on constituents lacking sufficient data in the secondary sources. Additional studies were identified in conventional literature reviews.

E. Risk Assessment

1. The Non-groundwater Risk Assessment

a. Introduction

The risk assessment underlying today's proposed rule is based upon a comprehensive approach to evaluating the movement of many different waste constituents from their waste management units, through different routes of exposure or pathways, to the points where human and ecological receptors are potentially exposed to these constituents. This risk assessment is being used in today's proposed rule to determine which listed hazardous wastes can be defined as "low-risk" wastes, able to exit the Subtitle C system and be managed in non-Subtitle C units. The previous approach taken in the May 20, 1992, proposed HWIR rule also addressed the risks associated with the management of wastes containing hazardous constituents with very diverse physical and chemical properties; however, only groundwater ingestion exposures from landfill units were evaluated. That approach led to a concern by the Agency, as well as commenters on the proposed rule, that leachate from landfills contaminating groundwater and subsequent consumption of the contaminated groundwater by humans may not be the only exposure pathway important to evaluate. Although the ingestion of contaminated groundwater pathway may be appropriate to propose exit levels for some wastes and constituents, it may be under-protective for others, depending on the physical and chemical properties of each waste constituent. (For example, some constituents have a high potential to bioaccumulate or bioconcentrate in living organisms. Pathways in which these constituents come in contact with fish, grazing livestock, wildlife, or edible plants would be important to evaluate.) In addition, over the past 14 years of implementing the RCRA program, the Agency has learned more about potential routes of release to the environment from various management practices.

Therefore, for today's proposal the Agency undertook an extensive risk assessment that examines numerous exposure pathways, rather than just the groundwater ingestion pathway. In selecting the exposure pathways, previous rulemakings were used as a guide, as well as other special studies by the Agency that implement analyses examining numerous pathways. (Tables A–1 and A–2 contain the human and ecological pathways, respectively, evaluated in the assessment, and are presented in appendix A to today's preamble.) With regard to waste management units considered in the assessment, it is important to note that because today's proposal establishes criteria for waste to exit the Subtitle C system, the assessment evaluated exposures associated with managing wastes in non-Subtitle C units. The human and ecological receptors considered in the assessment were selected to represent a range of behaviors, activities, dietary habits, and trophic levels that influence exposure levels.

The risk assessment supporting this proposal is currently undergoing review by the Science Advisory Board and EPA's Office of Research and Development. As a result of these reviews, and of comments received during the public comment period, it is likely that EPA would make changes to the risk assessment or other parts of the rule. Topics on which the Agency has received informal comment include the use of ecological benchmarks for regulation and the overland transport of waste constituents. The Agency, to the extent consistent with the schedule negotiated in the consent decree for this rulemaking, would publish a supplemental notice proposing any significant changes before finalizing the rule.

b. How the Assessment is Structured

The non-groundwater assessment acknowledges that not all human and ecological pathways arise from each

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source; for example, movement of particles from an active surface impoundment is not expected to occur. To account for this, the assessment matched the environmental transport pathways with both the releases from various types of waste management units and the various receptors for the nearly 200 constituents examined. All constituents were assessed in all pathways deemed plausible for a given waste management unit, if the data permitted. Tables A–3, A–4, and A–5 of appendix A show the pathways assessed for each waste management unit, human receptors assessed for each pathway, and ecological receptors assessed for each pathway, respectively. The assessment estimated the constituent-specific concentrations in a waste at the management unit that could be expected to result in an acceptable exposure for a human or ecological receptor (determined through using the toxicity benchmarks discussed in section V.B.), taking into account the various pathways by which the constituent may move through the environment from the waste management unit to the receptor.

The waste management units considered in the assessment are not all-inclusive but were selected to reflect those that might be commonly associated with the management of exited hazardous wastes (from wastewaters to nonwastewaters) in non-Subtitle C waste management units. These units were identified as commonly used in the management of solid wastes in the 1988 Report to Congress entitled *Solid Waste Disposal in the United States Report*. The Agency believes that risks posed by other types of management of these exited wastes will be no greater than those from the units assessed.

There is a high degree of variability in the physical and chemical properties of the approximately 200 constituents evaluated. An understanding of those properties and how they interact with the physical and chemical properties that control persistence and mobility in the environment is an essential element of the assessment. The management units could potentially be located in the range of environments that exist across the United States. These environments have differing characteristics (e.g., meteorological conditions, soil type) that are more conducive for the movement of certain constituents in certain pathways than others. For example, an environment with a high precipitation and high organic soil content may result in significant exposures to fishers by constituents that readily adsorb to soils (i.e., have a high log K_{oc}) through erosion of contaminated soil and uptake in the food chain. For other pathways, however, an environment with these characteristics may result in relatively low exposures. The assessment was designed to determine what conditions would need to exist to cause higher exposures for each pathway rather than developing a scenario and determining all the types of exposures and receptors for that scenario. By determining the appropriate conditions for which higher exposures from a given pathway will occur, the Agency believes that environments where the conditions are not as likely for a constituent to move through a pathway are protected.

The assessment was structured using a deterministic approach. A deterministic approach uses a single, point estimate of the value of each input or parameter and calculates a single result based on those point estimates. The assessment used the best data available to select typical (i.e., approximately 50th percentile) and high-end (i.e., approximately 90th percentile) values for each parameter or parameter group as discussed in Section E.2. below. Sometimes full distributions were available but, more commonly, ranges of values or point values were available with no description of distributions or variability. If there was not a sufficient distribution for the parameter, best professional judgement was used in determining typical and high-end values (which sometimes would be the maximum).

The assessment is constructed as a set of calculations that begin with an acceptable exposure level for a constituent at a receptor, and back-calculates to a concentration in a waste in a management unit that corresponds to the acceptable exposure level. For the human receptors, the assessment was designed to determine constituent concentrations in waste for each waste management unit that would correspond to protecting receptors at the high-end of exposure (i.e., above the 90th percentile of each of the receptor populations and types of exposures being assessed). The Agency estimated waste concentrations corresponding to the high-end exposure by identifying four critical or sensitive parameters in the source/pathway/receptor equations and using high-end input values for those parameters and using central tendency values for the remaining parameters. The Agency also estimated central tendency (approximately the 50th percentile) and bounding estimates (worst-case) of constituent concentrations in waste for each of the receptor populations and types of exposures being assessed. For ecological receptors, the approximate percentile level of protection is difficult to discern. The Agency believes the ecological analysis is conservative with respect to the overall assessment endpoint (e.g., sustainability of the reproducing populations) because of the way the source, fate and transport parameters are set, the dietary habits assumed, and how the toxicity benchmarks are developed. However, the degree to which this conservativeness transfers to ecosystems is not known.

The steps of the assessment which provide estimates of acceptable constituent-specific concentrations in waste include the following:

Step 1—Specify acceptable risk levels for each constituent and each receptor. See Section V.B. in today's preamble for a discussion of how benchmarks are set for both human and ecological receptors.

Step 2—Specify the exposure medium. Using the toxicity benchmarks as a starting point and the exposure equations, the assessment back-calculates the concentration of contaminant in the medium (e.g., beef, milk, plant, air, water, soil) that corresponds to the "acceptable" exposure level. The exposure equations include a quantitative description of how a receptor comes into contact with the contaminant and how much the receptor takes in through specific mechanisms (e.g., ingestion, inhalation, dermal adsorption) over some specified period of time. Thus, for the subsistence farmer eating contaminated beef, the exposure specifies the amount of beef eaten on a daily basis, the period of time over which the contaminated beef is eaten, and descriptions for the individual such as body weight and lifetime. For this example, the concentration in the beef is what is back-calculated.

Step 3—Calculate the point of release concentration from the exposure concentration. Based on the back-calculated concentration in the exposure medium (from Step 2), the concentration in the medium to which the contaminant is released to the environment (i.e., air, soil, groundwater) for each pathway/receptor was modeled. The end result of this calculation is a medium concentration at the point of release from the waste management unit.

Step 4—Calculate the concentration in the waste that corresponds to the medium concentration at the point of release. This step depends on the characteristics (e.g., area, cover practices, waste consistency) of the waste management unit.

The output of the assessment is a range of constituent concentrations, reflecting the range of pathway-receptor combinations considered for each waste management unit. The lowest concentration (per constituent) of this range represents the highest exposure pathway-receptor combination for that waste management unit.

c. How Uncertainty is Addressed

Any analysis of the magnitude used in this rule-making will have uncertainty associated with the outputs generated. The uncertainty can be associated with the models or equations used and the data relied on for the model parameters. In addition, policy assumptions, such as waste management units assessed and receptors assessed, may also affect the degree of representativeness of the assessment. In order to be consistent with Agency policy on the characterization of risk, stochastic and deterministic approaches were considered. A stochastic approach, such as Monte Carlo analysis, which produces a distribution of constituent concentrations, was initially considered due to the tremendous interest in, and use of, these techniques in risk assessment. However, after evaluation of the models and data available for use, the Agency decided to use a deterministic approach for the non-groundwater assessment.

The Agency's deterministic approach used for this assessment, like most such approaches, uses point values in all calculations and produced point estimates of constituent concentrations for waste in each management unit-exposure pathway-receptor combination. However, in selecting and developing point values for parameters, EPA considered all available data. Wherever possible, the Agency developed both a central-tendency and high-end value for each parameter used in the assessment. This was not possible in all cases because some parameters were a property, such as density of water, and because some values were fixed by Agency-wide policy decisions. (For example, EPA used standard Agency-wide human toxicity benchmarks and body weights.) EPA then calculated constituent concentrations based on a mixture of central-tendency and high-end values.

EPA believes that the deterministic approach described above (based on identifying critical parameters and using higher-end values only for those parameters and central-tendency values for the other parameters) allowed it to derive constituent concentrations in waste for each waste management unit that are reasonably protective across a range of conditions and for a range of receptors. EPA also believes that this approach is consistent with EPA's risk assessment policy.

EPA further believes that the approach chosen allows both the Agency and the public to determine more easily which parameters played the most critical roles in determining the constituent concentrations in waste for each waste management unit. This furthers general understanding of the assessment and helps commenters effectively target their resources for reviewing what EPA is proposing. It has also helped EPA target its own data collection and input selection efforts. It is often more difficult to identify critical parameters in a stochastic assessment because of the greater number of iterations and because results are reported as probability distributions. This is particularly true for an analysis with a large number of parameters such as the assessment used for this proposed rule.

EPA notes that stochastic approaches are also consistent with Agency risk assessment policy. In fact, EPA applied a stochastic "Monte Carlo" approach to the separate analysis of dilution and attenuation of groundwater performed for this proposal. That analysis, however, has been under development for many years and EPA is more familiar with the underlying data and the relationships between various parameters. In addition, the public has had a chance to comment on aspects of that analysis in previous rule-makings. EPA was more comfortable applying a stochastic analysis for the groundwater analysis than a stochastic approach to the non-groundwater analysis.

EPA believes that it is not necessary to resolve all issues relating to the relative merits of the two approaches or to determine which approach would be ideal for each of the assessments described above. Rather, the debate should focus on whether the approaches chosen allowed EPA to reach reasonable regulatory decisions.

The Agency solicits comment on the use of a deterministic approach as described above. Specifically, the Agency seeks comment on whether the approach proposed is a reasonable approach for setting protective levels across a set of types of management units and exposure pathways.

d. Linkage of the Non-groundwater Risk Assessment to the Groundwater Risk Assessment

In the non-groundwater risk assessment, the pathways involving potentially contaminated groundwater (e.g., bathing) are back-calculated from the receptor to the wellhead (i.e., the assessment provides constituent concentrations in the groundwater at the well). In order to determine the concentration of a constituent in leachate coming from a waste management unit that would result in the estimated constituent concentration at the water well, the Agency used a separate groundwater fate and transport risk analysis. That analysis is described in detail in Section D.8. elsewhere in today's proposal. The well concentrations estimated from the pathways involving bathing are used as input to the groundwater fate and transport modeling from which a leachate concentration is determined.

e. Risk Targets Used

As previously discussed in Section V.B. of today's proposed rule, the Agency used existing toxicity benchmarks when available. However, many ecological benchmarks were developed for this rule-making, as discussed in Section V.B. of today's proposed rule. As described in that section, the Agency used a cancer risk target of 1×10^{-6}, and a hazard quotient equal to 1 for non-carcinogens. For ecological benchmarks, a hazard quotient equal to 1 was used. The Agency solicits comment on the risk targets being used for today's proposed rule.

2. Detailed Overview of the Non-groundwater Risk Analysis

The assessment can be broken down into six components: Constituents; toxicity benchmarks; receptors; exposure; fate and transport; and waste management units. Each of these components is discussed in turn below, except the constituents and toxicity benchmarks which were discussed earlier in section V.A and V.B. It is important to recognize that the assessment was not able to evaluate all constituents in all receptor-pathway-waste management unit combinations because of data gaps in either toxicity or chemical properties, or inadequate methodologies. Many of these gaps have been identified in different sections of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors" (denoted "Uncertainties and Issues of Concern"). The Agency requests additional data or other information that would assist in filling these gaps.

a. Waste Management Units

The manner in which constituents are released to environmental media and the relative quantity released to each

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medium will affect the pathways of most concern for a particular constituent. The pathway presenting the highest risk to human or ecological receptors is not always easily determined because of the complex interactions of the waste management unit and its types of releases, the physical and chemical properties of the constituent, and the properties that control mobility and persistence in a particular environmental medium. For some constituents, the management practice will determine which exposure pathway is of most concern. For example, benzene tends to migrate to both air and groundwater. Upon examining the risks from exposure to these two media arising from releases from a quiescent surface impoundment, the groundwater ingestion pathway may pose the highest risks. But, when examining the risks from these two media for releases from an aerated tank, the air inhalation pathway may pose the higher risks. Further, the air inhalation risks may even be higher than groundwater ingestion risks from the quiescent surface impoundment.

Therefore, and as stated earlier, the selection of non-Subtitle C waste management units examined in the assessment attempted to reflect both the influence of the type of unit on pathways and those that might be commonly associated with the management of exited hazardous wastes in non-Subtitle C waste management units. Again, the Agency believes that risks posed by other types of management of these exited wastes will be no greater than those from the units assessed. The management units examined include the following:

- Aerated treatment tanks. Relative to all other types of management, aerated tanks containing wastewaters can potentially have the most significant releases of volatile organics to air.
- Quiescent surface impoundments. This type of unit containing wastewaters also can potentially result in significant releases of volatile organic constituents to air. These units also have a potential to affect surface water bodies if the unit is not well maintained or constructed. The sludges generated, which may contain high concentrations of metals and hydrophobic constituents, may impact groundwater. (As discussed above, the groundwater fate and transport analysis was conducted in a separate analysis.)
- Land application. This type of unit, when used for non-wastewaters can potentially have significant releases of certain constituents to nearby land and surface water bodies through erosion and runoff, particularly if run-on and run-off control measures are not practiced. In addition, significant releases of volatile organics constituents to air are possible. Further, after the unit is closed, significant on-site exposures to some persistent and relatively immobile constituents may occur as well as continued long-term releases to the nearby land and surface water bodies. The Agency believes such units will pose higher exposures relative to landfills in all pathways except those arising from groundwater. Therefore, the non-groundwater assessment did not examine landfills, but they were examined in the groundwater fate and transport analysis.
- Ash monofill. This type of unit used for ash disposal can potentially have significant releases of particulates to air which may be inhaled or may deposit on land and plants, and result in exposure through food and soil ingestion.
- Wastepiles. This type of unit used for nonwastewaters can have significant releases of particulates to air as well as significant releases of particulates through erosion and runoff.

Each of the pathways that evaluates a receptor using contaminated groundwater other than as a source of drinking water (i.e., bathing) are back-calculated to a concentration in a drinking water well. The pathways are applicable to all of the waste management units modeled (except tanks). All of the waste management unit and chemical-specific portions of the groundwater fate and transport analysis and subsequent estimated leachate concentrations are contained in the Agency's separate groundwater fate and transport analysis (see Section E.3 below).

One exception to the above discussion of the types of waste management units evaluated involves the combustion of wastes. Although the Agency attempted to include this type of management in the assessment, it became clear that the emissions from combustion are not easily predicted from the waste inputs to the units. The combustion process both destroys and creates constituents. Although destruction of constituents can be predicted based on certain operating characteristics of combustion units, the creation of other constituents, referred to as products of incomplete combustion (PICs), is not easy to predict. It may be possible to make such predictions for a specific waste and a specific combustion unit; however, the extensive data (e.g., on the variety of combustion units, waste types, constituent combinations) needed for the assessment used in this rulemaking relating wastes with emissions are not available. Therefore, acceptable constituent levels in waste going to a combustion unit could not be established. However, the Agency is developing emission standards for various types of combustion units and those emission standards may be a more appropriate vehicle for addressing combustion.

In addition, the assessment does not address accidental or catastrophic releases, such as transportation accidents or tank failures. The Agency determined that, although such releases are possible, they are of low probability and non-routine and, therefore, are not appropriate for developing exit criteria that apply to all wastes.

The Agency has identified several specific areas giving rise to uncertainty in the characterization of the waste management units and for which the Agency seeks comment:

(1) Use of Subtitle D Survey.

- The Agency relied upon data from a 1987 survey of Subtitle D facilities to characterize waste management units. That survey, used in the 1988 Report to Congress on Solid Waste Disposal in the United States, was designed primarily to collect estimates of the following parameters:
- Number of establishments that manage Subtitle D wastes on site;
- Number of establishments that manage Subtitle D wastes on site in land application units, wastepiles, surface impoundments, or landfills;
- Number of land application units, wastepiles, surface impoundments, or landfills used to manage Subtitle D wastes;
- Amount of Subtitle D wastes managed on site in land application units, wastepiles, surface impoundments, or landfills.

In addition to these parameters, data were also collected for some other parameters, such as the area of the waste management units. Although the survey was not designed to collect accurate estimates for these other parameters, it is the most comprehensive date available to characterize these other parameters. One difficulty encountered in using these data is that the survey requested information on total area or waste quantity for all of each type of units at a facility. The total area or waste quantity was divided by the number of each type of unit at the facility (number of each unit being one of the primary parameters the survey was designed to estimate) to estimate average unit area. Further, it is not certain how well the on-site units (which are used routinely for wastes generated on-site) reflect the characteristics of off-site units. Uncertainty related to the representativeness of the data is important because exited wastes could be managed in units off-site as well as on-site. The Agency seeks comment on the use of the Subtitle D survey to characterize the waste management units.

In evaluating the waste management unit components of the risk assessment, the Agency made certain assumptions when data were not available or were incomplete. A description of the waste management unit parameters for which there was little to no data is described below. The rationale behind these assumptions is presented (e.g., results of any sensitivity analyses, references to other work, etc.). The Agency requests comment on the specific issues raised for each management unit.

(2) Fate and Transport

Fate processes, particularly biodegradation and hydrolysis, were accounted for only in the land application unit since that unit had wastes applied intermittently and that unit was being examined for on-site risks after closure (assuming human occupation of the site begins 10 years after closure occurs). Because waste is continuously applied to the other waste management units, biodegradation and hydrolysis were presumed to have minimal influence on the subsequent availability of constituents to the above ground pathways. The Agency requests comment on not considering biodegradation and hydrolysis in waste management units other than the land application unit. The Agency also requests comment on the appropriateness of the data and methods used to account for the fate and transport of constituents in waste management units, with particular emphasis on data and methods of determining biodegradation and hydrolysis of constituents in land application units.

(3) Ash Monofill

(i) Particle Size Distribution for Air Dispersion Modeling

A size distribution of ash particles that become airborne from an ash monofill was not available. Therefore, a sensitivity analysis was performed to assess the importance of the particle size distribution in the calculation of air concentrations and deposition rates. Different distributions were modeled reflecting a variety of assumptions for particle size distributions between PM10 and PM30 classes. The greatest deviation among the modeled conditions in the estimated air concentration of PM10 was 12 percent; for the estimated deposition rate for PM30 the greatest deviation was 59 percent. Given the uncertainties and variabilities inherent in the assessment, these variations were considered minor, therefore, the Agency assumed an equal distribution of particle sizes between the two size classes used in the assessment.

(ii) Monofill Characterization

Because limited data were available to characterize hazardous waste ash monofills, data from municipal waste ash monofills were used. However, because ash generation rates for municipal waste incinerators are more than 100 times greater than ash generation rates for hazardous waste incinerators and reuse-as-fuel combustors resulting in significantly larger municipal monofills, EPA calculated an ash monofill volume for this analysis based on generation rates reported in the 1988 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities, assumed bulk density of the ash, and assumed lifetime of the monofill. The Agency is not certain that hazardous waste monofills should be sized in the same manner as municipal waste monofills. The Agency also assumed that each waste monofill would accept ash from only a single combustor. Accepting wastes from more than one combustor may underestimate monofill size.

(iii) Vehicle Traffic

The estimates of number of ash trucks per day are dependent on the size of truck. Limited data were available on the sizes of trucks hauling ash. These data were used to characterize a range of truck sizes. The truck sizes may either under- or overestimate the size of trucks actually used at hazardous waste ash monofills depending on the representativeness of municipal waste ash truck sizes.

No data were available on other vehicular traffic; therefore, these values were estimated, introducing additional uncertainty into the overall amount of traffic at the ash monofill.

(iv) Emission Equations for Ash Blown From Trucks and During Spreading and Compacting

The emission equation used for ash blown from trucks was developed for windblown emissions from storage piles. This was adapted to trucks by using the truck speed to estimate frequency of wind greater than 5.4 m/s. Because this equation was not derived for windblown emissions from moving trucks, the results of its application to such emissions are uncertain. It may over- or underestimate actual emissions of particulates blown from trucks.

Similarly, the emission equation used for spreading and compacting was developed for agricultural tilling. Agricultural tilling was thought to approximate the process of spreading and compacting; however, the use of this equation may under- or overestimate emissions due to spreading and compacting.

(4) Land Application Unit

(i) Particle Size Distribution for Air Dispersion Modeling

A size distribution of soil particles that become airborne was not available. The same assumption was made for soil particles as was done for ash particles when modelling the monofill (see above). As described above for ash particles, the Agency assumed an equal distribution of particle sizes between the two size classes.

(ii) Area of Land Application Unit Relative to Agricultural Field

The assessment examined the impact of subsistence farming on the land application unit beginning 10 years after closure. Based on the distribution of sizes for land application units and agricultural fields, the Agency selected a combination of fields such that the central tendency land application unit (61,000 m^2) is smaller in area than the central tendency agricultural field (2,000,000 m^2). The significantly larger size of the agricultural field suggests that the model may inappropriately average the constituent concentration over the agricultural field. However, the Agency does not believe this to be a significant impact on the analysis because: (1) The area of the agricultural field is not an explicit input to the model; (2) the size of the land application unit is large enough to support a subsistence farmer; and (3) this pathway is driven by the assumptions for the high-end analysis. The Agency requests comment on the relationship between the land application unit and the agricultural field.

(iii) Application Rate

The waste application rate is an important parameter in determining the constituent's soil concentration after application. In practice, this rate is a function of the characteristics of the waste being applied, the characteristics of the receiving soil, the environmental conditions, and the purposes for which the waste is being applied. Information from the Subtitle D survey was used to calculate the rates, since those rates

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were not expressly requested in the survey. The rates were calculated from the area receiving the wastes and the waste quantity applied. This introduces uncertainty for it combines rates applicable to both treatment of wastes and rates for specific uses (e.g., farming, mine reclamation). To account for the potential of having application rates be much too high for the site they are being applied to, the data on receiving area and waste quantity applied were linked.

(iv) Waste Characteristics

Limited data were available on the characteristics of wastes being land applied. As a result, soil values for most parameters (e.g., hydraulic conductivity, moisture retention index) were used to characterize nonwastewaters. It is not known to what extent these soil values differ from the waste properties.

(v) Depth of Contamination

Depth of contamination affects the amount of constituent available for exposure. For the non-groundwater pathways, only constituents at the soil surface were assumed available for each exposure pathway. The Agency selected tilling depth as the depth of contamination available to the non-groundwater pathways as over time, the depth of the waste layer would increase and a portion of the mass of waste would move out of the zone available for the surface pathways. The model kept the depth of contaminated soil constant that was available for the surface pathways. The Agency recognizes that the use of the tilling depth may underestimate the depth of contamination in some cases and overestimate it in others. Thus, the Agency requests comment on the use of tilling depth as a surrogate for depth of contamination.

(vi) Partitioning

Releases from the land application unit were partitioned among volatilization, evaporative losses, hydrolysis, erosion, runoff, and leaching. Periodic application of waste was factored into the partitioning model during the active life of the unit. Biodegradation was factored in during both the active life and closed period. The finite source Jury model was used to estimate volatilization emissions. The Jury model, which models the convection of constituents caused by the flux of water in soil, was used for evaporative losses. Runoff and leaching losses were calculated using the soil-water partition coefficient (K_d) to determine constituent concentration in the soil water and multiplying that by the land application unit area and runoff rate for run-off losses or recharge rate for leaching losses. (See Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors, Section 7, Land Application for full description.)

(5) Waste Pile

(i) Waste Pile Height

No data were available on this parameter; therefore, the value is an estimate based on heights attainable by a front-end loader. This parameter is important in the air dispersion modeling, which is sensitive to the height of the pile. The Agency requests suggestions for alternatives to determining waste pile height and any data which would support those determinations.

(ii) Particle Size Distribution for Air Dispersion Modeling

The same sensitivity analysis and assumptions discussed above for ash monofills were used for waste piles. Given that the air dispersion analysis is not very sensitive to particle size distribution, the simple assumption described above was believed to be an adequate approximation for the assessment.

(iii) Waste Characteristics

Limited data were available on the characteristics of wastes in waste piles. As a result, soil values for most parameters (e.g., hydraulic conductivity, moisture retention index) were used to characterize the nonwastewaters disposed in piles. It is not known to what extent these soil values differ from the waste properties. The soil values, however, were not used for the ash waste pile. The ash disposed in the piles had the same properties as that disposed of in a monofill.

(iv) Vehicle Traffic

The estimates of number of trucks per day are dependent on the size of truck and waste quantity. Limited data were available on truck sizes. These data were used to characterize a range of truck sizes. These truck sizes may either under- or overestimate the size of trucks actually used around waste piles.

(v) Emission Equation for Ash Blown from Trucks

As described in the section above on ash monofills, the emission equation used for ash blown from trucks was developed for windblown emissions from waste piles. It may over- or underestimate actual emissions of particulates blown from trucks.

(6) Surface Impoundment

(i) Two-Phase Sludge Formation Model

The two-phase sludge formation model simplifies the solids concentration gradient in a surface impoundment into two distinct and homogeneous layers, a liquid layer with the same average solids content as the inflow and a sediment or sludge layer with a much higher solids concentration.

(ii) Dilution of Waste During a Spill

Overflows or breaches associated with surface impoundments are a waste release examined in the assessment. The algorithm used for spills does not account for dilution of the wastewater caused by excess run-on. Such run-on is presumably relatively uncontaminated; thus the spill volume, consisting partly of contaminated wastewater from the impoundment and partly of uncontaminated run-on would have a lower concentration than the wastewater in the impoundment. By using the concentration in the impoundment, the mass of contaminant released to surface water is overestimated. This effect could be considerable for the central tendency impoundment, as the quantity of run-on is significant compared to the capacity of the central tendency impoundment. However, to determine the extent of such dilution, the degree to which such run-on becomes mixed with the wastewater would need to be estimated. No model has been found to assist in this estimation.

(7) Tank

(i) Unit characterization

Limited data were available on Subtitle D tanks. The assessment used the profiles (specifies design and operating parameters) for uncovered aerated treatment tanks developed in the *Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards* (TSDF—BID, U.S. EPA, 1991)

(ii) Volatilization

The Agency used the well-mixed flow model. This model assumes that the contents of the system are well mixed and that the equilibrium concentration in the system is equal to the effluent concentration. The equilibrium concentration is the average concentration throughout the unit and the driving force for volatile emissions.

(8) Combustors

For the reasons stated below, EPA did not modelled a combustion unit in the risk analysis for this regulation. EPA,

however, asks for comments on that decision.

In initial analyses (see Multipathway Analysis Background Document available through the docket), EPA modeled potential risks from several types of combustion units, using engineering judgment to make a best estimate for destruction and removal efficiencies for non-hazardous waste combustors. Early comments suggested that the assumptions might have overstated or understated the estimated risks by not reflecting actual practice in industrial boilers or other likely combustion facilities not regulated by Subtitle C. However, initial comparisons indicated that the combustion risk estimates back-calculated to the combustion unit were not often the most significant risk and, therefore, would not be the basis for the limiting exit criteria.

EPA also recognized that there are many issues related to organics that are produced during the combustion process, but are not necessarily originally in the waste. The amount and type of these "products of incomplete combustion" are generally believed to be dependent on a number of aspects of the design and operation of a facility, and not easily related to the composition of the wastes fed into the combustion unit. For purposes of this proposal, EPA decided that because of the high degree of uncertainty associated with developing waste concentrations from combustion units, it was not appropriate to use risks from combustion as a factor in deciding what wastes remain under the hazardous waste regulations. Rather, EPA believes there are more appropriate ways to regulate emissions from combustion units through various regulatory authorities, including regulation of a range of units under the Clean Air Act.

EPA, however, asks comment on the appropriateness of this approach. In particular, there may be some constituents (e.g., certain metals that are difficult to capture in pollution control equipment) where a better correlation exists between waste input and potential risk from combustor emissions than for organics that are in the waste and also created as PICs during the combustion process.

b. Fate and Transport

(1) Pathways

In selecting environmental fate and transport pathways to include in the assessment, EPA used as a guide previous rulemakings and other special studies by the Agency that examine numerous pathways. For example, the Agency has used similar risk assessment methodologies in several recent rules including: Wastes from Wood Surface Protection, Final Rule (59 FR 458, January 4, 1994); Standards for Use or Disposal of Sewage Sludge, Final Rule (58 FR 32, February 19, 1993); Corrective Action Management Units, Final Rule (58 FR 29, February 16, 1993); and rulemaking efforts on the Pulp and Paper Industry (56 FR 21802, May 10, 1991 and 58 FR 66078, December 17, 1993).

The sewage sludge and pulp and paper rulemakings in particular examined both human and ecological risk. Other rulemakings under development within the Office of Solid Waste also use non-groundwater risk assessment methodologies including various hazardous waste listing determinations and the dioxin emission rules for hazardous waste combustion units. Most of these assessments rely on several Agency guidance documents issued in recent years. In January 1990, the Agency issued an interim report, Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA/600/6–90/003 and referred to as the Indirect Exposure Document). This document served as the basis for further development of non-groundwater pathway assessments by the Agency. In November 1993, the Agency issued an Addendum to the Indirect Exposure Document that updated and revised portions of the methodology presented in the Indirect Exposure document. In April 1994, OSW issued a draft implementation guidance entitled Implementation Guidance for Conducting Indirect Exposure Analysis at RCRA Combustion Units. In June 1994, the Agency released a review draft of Estimating Exposure to Dioxin-Like Compounds: Volumes I–III (EPA/600/6–88/005C), which presents an extensive and expanded version of the Agency's previous multiple pathway exposure assessments. Finally on November 16, 1994, the Agency issued Draft Soil Screening Guidance (59 FR 59225), which presents a multiple pathway assessment using air, groundwater, and soil pathways for soil screening levels at Superfund sites. The risk assessment presented relies on the methodologies presented in these Agency guidance documents to maintain consistency with previous Agency efforts.

Based on these efforts by the Agency in conducting non-groundwater pathway assessments, comments by reviewers on previous draft versions of the risk assessment, and some screening analyses to identify pathways that are either very similar or unimportant compared to other pathways, the Agency selected the human and ecological exposure pathways presented in Table A–1 (human exposure pathways) of appendix A and Table A–2 (ecological exposure pathway) of appendix A. These exposure pathways are described in greater detail in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.

Tables A–1 and A–2 presents four columns: column 1 (exposure media), identifies the medium, such as air or soil, to which the receptor is exposed; column 2 (route of exposure), identifies the route, such as inhalation or ingestion, by which a receptor is exposed to the exposure medium; column 3 (type of fate and transport), classifies the pathway by the primary mode of fate and transport of the contaminant to the exposure medium, including direct air, air deposition, air diffusion, groundwater, overland, and soil; and column 4 (exposure scenario), identifies the compartments in the pathway (e.g., source to air to humans), and describes the exposure scenario (e.g., inhalation of volatiles).

The fate and transport pathways examined can be grouped into six types of initial release and movement away from a waste management unit, as follows:

- Direct air pathways—air emissions of volatiles and respirable (PM_{10}) particulates;
- Air deposition pathways—air emissions of particulates that deposit on soil or plant surfaces;
- Air diffusion pathways—air emissions that, while in the vapor phase, diffuse directly into surface water or plants;
- Groundwater—groundwater releases (These are the pathways that link to the separate groundwater fate and transport analysis that then links to the waste management units.);
- Overland pathways—overland transport (i.e., surface runoff and soil erosion) to surface water or transport by soil erosion to off-site fields;
- Soil pathways—on-site soil exposures.

There are three types of pathways not included in the analysis. Pathways involving the use of contaminated water (groundwater and surface water) for irrigation were removed due to modeling difficulties that could not be resolved, however early results indicated these are not the most significant pathways for any of the waste management units. Pathways involving the deposition of contaminated particles directly onto

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surface water bodies were not included because previous efforts by the Agency have shown these pathways not to be as significant when compared to particle deposition onto the watershed and subsequent erosion to the surface water body. Pathways involving wet deposition were not examined. An air model recently developed evaluates the impact of wet deposition and was not available to use at the time of this proposed rule. This new model also was addressing problems with the area component of earlier models. When the model is available, the Agency will determine whether its use will have an impact on the proposed exit criteria. If the Agency determines that there will be an impact, it will provide an opportunity for public comment on use of the updated model.

As stated earlier, not all exposure pathways were evaluated for all waste management units. Constituents may be released from each waste management unit by a variety of mechanisms. Each release mechanism may be associated with certain exposure pathways. By examining the release mechanisms assumed for each waste management unit and identifying the exposure pathways associated with those release mechanisms, the appropriate pathways to be modeled for each waste management unit were identified. The exposure pathways modeled for each waste management unit are presented in Table A–5 of appendix A.

b. Equations

Since the objective of the assessment was to generate acceptable levels in waste rather than determining risks posed by waste, the equations, which are designed to calculate risks, had to be turned around or run in reverse. The assessment began with a target risk (or acceptable risk to the receptor) that was used to back-calculate what constituent concentration in a waste would not exceed the target risk.

Wherever appropriate, the equations used in the back-calculation were taken from Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (U.S. EPA, 1990x; hereafter, the Indirect Exposure document, or IED) as modified by the November 10, 1993, draft of Addendum: Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions, Working Group Recommendations (U.S. EPA, 1993x; hereafter, the Addendum). The Addendum is currently being revised based on comments from the Science Advisory Board and is being combined with the IED to generate a single methodology guidance document. Therefore, the equations may change after that revision is completed. If this occurs, the assessment used for this rule-making will be revised. If such a revision is needed and occurs, the Agency will provide an opportunity for public comment on those changes. For convenience, the methodology presented in the IED as modified by the Addendum will be referred to as the Indirect Exposure Methodology, or IEM.

The equations presented in the IEM were modified to estimate the soil concentration for constituents eroding to an off-site field. The IEM did not address this pathway because it was developed for stack emissions from combustors rather than releases from land-based units. However, because soil erosion is a critical release pathway for this analysis, the Agency applied the Universal Soil Loss Equation (USLE) and other equations presented in the IEM to calculate soil erosion to the off-site field. However, the application of these equations resulted in concentrations greater at the receptor than in the waste management unit. This phenomenon, first noted in the Dioxin reassessment, occurred because the equations assumed that the amount of uncontaminated soil that was eroded into the field was negligible in comparison to the total mass of soil in the field. Therefore, the Agency modified these equations to reflect erosion of uncontaminated soil together with the constituents.

Certain modifications to the equations used in the assessment were made for dioxin-like compounds to reflect the different behavior of these constituents in the environment. These modifications were based on Estimating Exposure to Dioxin-like Compounds, Volume III: Site-Specific Assessment Procedures (U.S. EPA, 1994x), hereafter referred to as the Dioxin document. The Dioxin document defines dioxin-like compounds as "* * * compounds with nonzero Toxicity Equivalency Factor (TEF) values as defined in the 1989 International scheme * * * [which] assigns nonzero values to all chlorinated dibenzodioxins (CDDs) and chlorinated dibenzofurans (CDFs) with chlorines substituted in the 2,3,7,8 positions. Additionally, the analogous brominated compounds (BDDs and BDFs) and certain polychlorinated biphenyls (PCBs) have recently been identified as having dioxin-like toxicity * * * and thus are also included in the definition of dioxin-like compounds."

Although the modifications presented in the Dioxin document may be applicable to other highly lipophilic compounds, in keeping with this definition, the modifications for dioxin-like compounds were made only for 2,3,7,8–TCDDioxin Toxicity Equivalents (TEQs), and PCBs. Other dioxin congeners are addressed through the 2,3,7,8-TCDDioxin TEQ. The Agency solicits comment on not using these modifications for other highly lipophilic compounds.

(3) Specific Issues on Pathways and Equations

Below are specific issues of the risk assessment related to the modeling of the fate and transport pathways on which the Agency is requesting comment on their use, improvements to them, or alternative ways to model them. A detailed discussion of these aspects is in Section 6, Fate and Transport Modeling, of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors. (Air emission and dispersion modeling is discussed in Section 7, Waste Management Units, in the technical support document. To be consistent, issues related to that modeling were presented earlier in this preamble in Section D.2.a.)

(i) Hydrolysis

The Agency accounted for fate processes (e.g., biodegradation, hydrolysis) and transport processes (e.g., volatilization) for constituents throughout their movement from the point at which the constituent leaves the waste management unit until it reaches the location at which contact with the receptor occurs. During an initial screen, the Agency identified four constituents that were known to hydrolyze completely or rapidly. These constituents were not included in the detailed assessment and include: Benzotrichloride (98–07–7); maleic anhydride (108–31–6); phthalic anhydride (85–44–9); and 1,2-diphenylhydrazine (122–66–7). In addition, 16 inorganic salts known to dissociate completely were also not assessed. These included: Calcium cyanide (592–01–8); copper cyanide (544–92–3); potassium cyanide (151–50–8); potassium silver cyanide (506–61–6); silver cyanide (506–64–9); sodium cyanide (143–33–9); thallium (I) carbonate (6533–73–9); thallium (I) chloride (7791–12–0); thallium (I) nitrate (10102–45–1); thallium (I) sulfate (7446–18–6); zinc cyanide (557–21–1); zinc phosphide (1314–84–7); cyanogen bromide (506–68–3); cyanogen chloride (506–77–4); hydrogen cyanide (74–90–8); and thallium acetate (563–68–8). The Agency solicits comment on not assessing these constituents.

Of the 192 constituents evaluated in the non-groundwater analysis, the Agency directly accounted for chemical hydrolysis for 18 constituents. For the remaining constituents, hydrolysis was not considered for the following reasons: The constituent has no hydrolyzable chemical group; hydrolysis is not expected to be important or significant; the degradation half-life of the chemical, which includes hydrolysis, is greater than one year; or, there was no data available for the constituent.

The extent to which fate and transport processes play a role in the removal of a constituent from a pathway, or its movement from one environmental compartment to another is determined by site-specific environmental conditions as well as chemical-specific parameters. To simplify the analysis, the Agency used fate and transport data based on one set of environmental conditions to represent all possible spatial and temporal environments encountered in any given exposure pathway. The Agency solicits comments on this simplification for modeling fate and transport processes throughout the exposure pathways considered in the MPA.

(ii) Other Fate and Transport Processes

Fate and transport processes other than hydrolysis may be important in determining the concentration of a constituent reaching a receptor. The Agency's approach to incorporate consideration for these other processes involved the use of biodegradation and volatilization rates into the fate and transport pathways, when applicable. The Agency recognizes that the rate for many chemical-specific fate and transport processes (in particular, biodegradation) varies with characteristics of the environment (e.g., temperature, soil type). However, the Agency simplified the non-groundwater analysis by applying chemical-specific fate and transport rates generically across environmental settings found in the various exposure pathways. This simplification may overestimate the exit level in some instances and underestimate the exit level in other instances. The Agency solicits comments on this simplification for modeling fate and transport processes throughout the exposure pathways considered in the non-groundwater analysis.

(iii) Bioavailability

With regard to the metals examined in the risk assessment, there is considerable uncertainty about their bioavailability that affects their fate, transport, and uptake in various media (e.g., plant tissue, animal tissue) and receptors. Speciation and associated solubility of metal species in wastes which contain metals are key factors that influence the bioavailability of metals. The Agency had no information on the speciation, solubility, or availability of the metals in the wastes in which they are disposed or how they may transform in the environment. The Agency assumed that the metals were in a soluble form, mobile, and available. In the absence of this information, the Agency assumed that metals are soluble, mobile, and bioavailable. The Agency seeks comment on this approach, and requests data on the speciation and solubility of metals in wastes, together with the conditions of the waste (e.g., pH) that could be disposed by the methods considered in this rulemaking and methodologies that account for the transformation of the metals through changing environmental conditions.

(iv) Meteorological Data

The approach for setting central-tendency and high-end meteorological conditions in the risk assessment was to evaluate sets of meteorological data from a variety of locations, and then select locations that reflect central tendency or high-end conditions for a given exposure pathway.

The Agency used the set of 29 meteorological stations identified during its efforts to develop soil screening levels for Superfund sites. These are considered representative of the United States. Central-tendency and high-end locations were then selected from these 29 locations for the exposure pathways where meteorological conditions were required as input to the models; these were the air pathways and overland pathways. The meteorological data were evaluated as location sets as opposed to individual parameters. Once locations were selected, the annual average values for those locations were used.

For air pathways, which required data on wind speed, wind direction, temperature, sunshine, cloud cover, and air mixing height, selection of meteorological data was waste management unit-specific and based on extensive sensitivity analysis. EPA considered only the effect of meteorological data on emissions and dispersion in selecting locations for air pathways. However, for consistency, once a pair of high-end and central tendency locations were selected for a pathway, any meteorological data used in that pathway were selected to correspond to the locations chosen, even in any overland transport component of the pathway.

Overland pathways were driven by soil erosion, for which the critical meteorological input is the Universal Soil Loss Equation (USLE) rainfall factor (R). Therefore, to select central tendency and high-end locations for overland pathways, the 29 locations were ranked based on the rainfall factor, and the 50th and 90th percentile locations chosen for all overland pathways.

See Section 6.8, Fate and Transport Inputs and Section 7.1.5. Air Modeling, of the Technical Support Document for the Hazardous waste Identification Rule: Risk Assessment for Human and Ecological Receptors for a detailed discussion of how meteorological data were selected and used. The Agency solicits comment on how meteorological data was selected and used in the risk assessment.

(v) Soil Data

A variety of soil parameters were required for the modeling. These parameters are interdependent and vary with the type of soil (e.g., loam, clay). However, values for these parameters also vary within a soil type. Due to the interdependence of the parameter, the Agency chose to maintain them as a set and determine a central-tendency property set and a high-end property set.

The Agency used loam type soils to characterize all soils simulated in the risk assessment because these types of soils are fairly prevalent in the United States. All soils are composed of varying percentages of sand, silt, and clay. Loam, by definition, is composed of equal proportions of sand, silt, and clay; therefore, it represents a combination of each of the physical properties of the individual soil textures. Central tendency and high-end values were selected from the range of values for loam soil so that each individual soil parameter required by the model is consistent with a loam soil. (See Section 6.8, Fate and Transport Inputs, in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more detail.) The Agency solicits comments its approach for characterizing soil in the assessment.

(vi) Soil Pathways

The Agency seeks comment on the following issues related to the modeling of soil pathways:

• Use of the Universal Soil Loss Equation to predict soil erosion in a generic application - This is a widely-used model intended for site-specific

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applications where specific input data can be used for relatively small fields. Its use in a generic application, and for fairly large waste management units, may overestimate quantities of soil eroded.

• Handling of the Soil Loss Constant - This term is the sum of loss rates for leaching, erosion, runoff, biodegradation, hydrolysis, and volatilization. Possible uncertainties may arise because: the assessment assumes that these terms are first-order decay rates and therefore can be added together; loss processes are calculated independently, even though they may occur simultaneously.

• Use of the Soil Water Content Equation to predict soil water content in a generic application - The equation is from the Superfund Exposure Assessment Manual (U.S. EPA, 1988x), and was developed for site-specific applications.

• Area of garden and agricultural field - No data were available on the size of home gardens, gardens on subsistence farms, or yards of residential lots (for soil ingestion). Therefore, a single set of central tendency and high-end values was estimated for these, based on best professional judgment; this set is referred to as garden area, even though it might also apply to a yard. Because a larger area leads to greater dilution of deposited or eroded contaminant, a high-end garden would be one that was relatively small.

• Areas for agricultural fields were estimated from data in the 1992 Census of Agriculture (U.S. Department of Commerce, 1992). The Census gives average farm acreage by State for 48 States (the data are not yet complete for the two missing States). No percentile data were available. These data do not distinguish between commercial and subsistence farms.

• Mixing Depth—Mixing depth reflects the depth of soil to which deposited or eroded contaminant is mixed. It is important to distinguish between soil that is tilled for agricultural purposes and soil that is untilled in determining appropriate mixing depth values. A smaller mixing depth results in less dilution of a constituent, and therefore higher soil concentrations; therefore, a high-end mixing depth would be smaller than a central tendency mixing depth.

(vii) Surface Water Pathways

Water column as well as benthic sediment concentrations were estimated. Water column concentrations include dissolved, sorbed to suspended sediments, and total (sorbed plus dissolved, or total contaminant divided by total water volume). Benthic sediment concentrations included: Dissolved in pore water, sorbed to benthic sediments, and total. The model accounts for three routes of constituent entry into the water-body were examined: Sorbed to soils eroding into the water-body; dissolved in runoff water; and diffusion of vapor phase contaminants into the water-body. Air deposition of constituents bound to particles into a water-body was not examined because earlier analysis demonstrated that its contribution would be negligible when compared to that of eroding particles. Volatilization of dissolved constituents and removal of constituents through burial in bed sediments were modeled as loss processes.

Important assumptions made for the surface water modeling included: Water-body sufficiently large to support certain ecological receptors; sufficient fish to support a subsistence fisher; uniform mixing within the water-body (this tends to be more realistic for smaller water-bodies as compared to large river systems); and equilibrium is established between constituents within the water column, bed sediments, and air.

The Agency seeks comment on the following issues related to the modeling of surface water pathways:

• Water-body/Watershed Characterization—The water-body characterization parameters are another example of a set of parameters that are interdependent and therefore were used as a group. Watershed characterization relates to the water-body (in the case of the assessment, a stream) characterization. Streams are characterized (flow, water-body area, watershed area, depth, and various other parameters) by their "order." A first-order stream has no tributary channels; a second-order stream forms when two first-order streams converge, and so on through stream order 10. The Agency used a stream order 4 as the high-end estimate because EPA believes this stream order would be among the smallest stream orders that would support sufficient fish or a subsistence fisher and the receptors assessed. A stream order 5 was used as the central-tendency estimate based on the number of streams within each stream order. (See Section 6.8 in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more detail.)

• Total Suspended Solids—Total suspended solids (TSS) can range from 1 to 100 mg/L with a typical value being 10 mg/L for streams and rivers. This value is used as the central tendency value. No data on frequency of values in actual streams was available to estimate a 90th percentile value. Since 80 mg/L is believed to be the maximum tolerable value for aquatic life; this value was used as the high-end value.

• Bed Sediment Concentration—The bed sediment concentration term is analogous to the bulk density for soil in that it describes the concentration of solids in terms of a mass per unit volume. A single value of 1 kg/L was used in the assessment given that this is considered a reasonable value in most situations and the range is quite narrow, 0.5 to 1.5 kg/L.

• Gas-Phase Transfer Coefficient—The gas-phase transfer coefficient is used to estimate volatile losses from the water-body. Volatile losses are calculated using a two-layer resistance model that incorporates a gas-phase transfer coefficient and a liquid-phase transfer coefficient. Both transfer coefficients are controlled by flow induced turbulence in flowing systems. The liquid-phase transfer coefficient is calculated based on chemical-specific properties. A single value of 36,500 m/yr. was used. There is some uncertainty related to setting this parameter to a single value that is not chemical specific. It is reasonable to assume that chemical properties affecting volatility would have some effect on this value, although it is not known how large such an effect would be.

• Fraction Organic Carbon in Bottom Sediment—The fraction organic carbon in bottom sediment is derived from the fraction organic carbon in watershed soils. For a fraction organic carbon of about 0.01 in the watershed, the fraction organic carbon for bottom sediments is typically 0.03 to 0.05. The midpoint of this range, 0.04, divided by the fraction organic carbon of the watershed (0.01) derives a multiplier of 4 for calculating fraction organic carbon in bottom sediments from fraction organic carbon in watershed soils. The fraction organic carbon values used of 0.024 and 0.008 correspond to the central tendency and high-end values for soil fraction organic carbon of 0.006 and 0.002, respectively. The fraction organic carbon in the bottom sediments was varied with the fraction organic carbon in soil.

(viii) Food-Chain Pathways

The Agency seeks comment on the following issues related to the modeling of food-chain pathways: (Please note the fish uptake methodology is described below in Section D.2.c.2), Ecological Receptors and Exposure; the littoral methodology is used for humans):

• Use of regression equations based on Kow to derive biotransfer factors for plants—The biotransfer factors are based upon empirical relationships with Kow defined by studies on relatively few chemicals.

• The lack of accounting for translocation of contaminants within plants—The plant uptake models do not account for translocation of contaminants (should such a translocation occur) from one part of a plant to another. The Agency is considering two models developed by Stephan Trapp, plantx and plantE, and solicits comment on their use.

• Use of regression equations based on Kow to derive biotransfer factors for beef and milk—The biotransfer factors for beef and milk are based upon empirical relationships with Kow defined by studies on relatively few chemicals.

c. Receptors

Both human and ecological receptors are considered in the assessment. The human receptors evaluated were selected to represent a range of behaviors and activities that influence exposure levels. The Agency believes that these represent typical and more exposed types of behaviors and activities that might exist around waste management units or media contaminated by releases from waste management units. Each receptor was evaluated for individual exposure pathways (i.e., exposure to multiple pathways was not included). For ecological receptors, populations or communities were selected for the generic terrestrial and freshwater ecosystems based on behavior patterns such as dietary habits (plant-eater vs. meat-eater) as well as qualities such as significance and representativeness with respect to trophic structure in the ecosystem (bald eagle). The selection of ecological receptors was limited by the level of characterization available such as food intake and body weight. Again, the Agency believes that these represent the types of organisms that might exist around waste management units or media contaminated by releases from waste management units.

(1) Human Receptors and Exposure

Human receptors assessed in the assessment included the following:

• Adult resident living in the vicinity of a management unit—This individual is representative of the general population in the United States and is evaluated independently through the following potential exposure pathways: Inhalation, ingestion of contaminated soil, ingestion of contaminated drinking water, dermal contact with contaminated soil, and dermal contact during bathing. In addition, the analysis evaluates exposures to an adult resident living on-site of a land application unit begining 10 years after closure of the unit.

• Child resident living in the vicinity of a management unit—Children are a special population considered in certain pathways because of their low body weight compared to high intake rates or surface area. A child is evaluated through the following potential exposure pathways: ingestion of contaminated soil, dermal contact with contaminated soil, and dermal contact during bathing.

• Home Gardener—This individual represents a sub-population that supplements their fruit and vegetable consumption with fruits and vegetables they grow on contaminated land.

• Subsistence Fisher—This individual represents a sub-population that subsists on contaminated fish.

• General Fish Consumer—This individual represents a sub-population that consumes contaminated fish and supplements their intake with other non-contaminated foods.

• Subsistence Farmer—This individual represents a sub-population that grows or raises most of their own food on contaminated land. This individual is evaluated independently through the following exposure pathways: beef ingestion, milk ingestion, and fruit and vegetable ingestion.

• On-site Worker—This individual represents the working population that may be found at the waste management units. This individual is evaluated during the active phase of the unit for the following on-site exposures: Inhalation and dermal contact with contaminated soil.

Each of the receptors has been matched with the most relevant exposure routes. Table A–3 in appendix A shows the pathways were modeled for each receptor.

As previously discussed, the assessment begins with a target human toxicity benchmark and exposure assumptions tailored to each receptor, and back-calculates to constituent-specific concentrations in each media. In characterizing the exposure, two exposure parameters are set to high-end values and the rest of the exposure parameters are set to central tendency or default values. The two high-end exposure values were typically exposure duration and a parameter affecting intake of, or exposure to, a contaminant (e.g., fraction contaminated, consumption rate, inhalation rate).

The exposure equations used for back-calculating media concentrations are based on standard risk equations used in most Agency risk assessments. For all inhalation and ingestion pathways, these equations were adapted from Risk Assessment Guidance for Superfund (RAGS): Volume I—Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) (U.S. EPA, 1991x; hereafter, RAGS Part B) and subsequent modifications. For dermal pathways, which are not covered in RAGS Part B, the equations presented in Dermal Exposure Assessment: Principles and Applications, Interim Report (U.S. EPA 1992x; hereafter, the Dermal document) were used; this document reflects the current techniques for assessing dermal exposure. The Agency requests comment on the data sources and assumptions used in the human exposure portion of the risk assessment, described in detail in Section 5.0 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.

The Agency seeks comment on the following types of human exposure that were not examined:

• Ingestion of contaminated water by humans while bathing or swimming—The ingestion rate of water while swimming or bathing is 30 times smaller than the normal consumption rate of water used in the drinking water ingestion pathways; therefore, the drinking water ingestion pathways should be protective of the incidental water ingestion pathways.

• Inhalation of volatiles while bathing—No appropriate, chemical-specific equations could be found to address this pathway.

• Ingestion of airborne particulates—The ingestion rate of soil used in the soil ingestion pathways is many times larger than the ingestion rate from airborne particulates; therefore, the soil ingestion pathways should be protective of the ingestion of airborne particulates. Also, given the way the soil ingestion rates were empirically derived, ingestion of airborne particulates should, in effect, be accounted for in the estimated soil ingestion rates.

• Ingestion of contaminated soil by resident on active site—While the waste management units are active, it is assumed that access is limited to workers.

(2) Ecological Receptors and Exposure

In addition to the human receptors, ecological receptors were evaluated in the assessment. Lacking an Agency precedent for the selection of ecological

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receptors for a generic analysis, a simple framework was developed for ecological receptor identification based on EPA's Framework for Ecological Risk Assessment (U.S. EPA, 1992x). During the problem formulation phase, a suite of ecological receptors was selected to include species that represent each of the trophic levels or feeding habits within an ecosystem. At best, one can only infer that an ecosystem is protected from chemical stressors. In addition, the toxicological data support the evaluation of individuals, populations, and occasionally communities, but are inadequate to address the complexities of an ecosystem in most cases. Thus, the approach taken in the assessment was to estimate protective levels for the populations and communities (inferred from the measurement endpoints used) found in generic ecosystems. The species included in the ecological assessment encompass a wide range of dietary preferences, sizes, and trophic levels.

In selecting ecological receptors for the assessment, a number of ecosystem types (e.g., lakes, streams, estuaries, deserts, forests, grasslands) were considered because the waste could be disposed anywhere once it has exited the Subtitle C system. Two generic ecosystems were designed: A freshwater-based ecosystem and a terrestrial-based ecosystem. Specific details of these ecosystems are described in Section 3, Receptors, in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment of Human and Ecological Receptors. The Agency solicits comment on both the adequacy of the design of the ecosystems used in the assessment and the use of generic ecosystems to assess potential ecological hazards.

Generally, ecological receptors were identified at different trophic levels as well as at different levels of biological organization and included species of relatively low ecological significance but high societal relevance (e.g., American kestrel). The final selection of receptors was based primarily on the availability of data with which to assess the risks to that receptor. As suggested in the Framework for Ecological Risk Assessment (1992x), the process of selecting appropriate assessment endpoints was iterative, including information from the other activities included in the assessment phase—the characterization of ecological effects. The ecological receptors included in the assessment were:

- Mammals—Mammals were evaluated for both generic ecosystems and include upper trophic level predators such as the mink or red fox, lower trophic level consumers such as the whitetail deer, and insectivores such as the meadow mole; species were selected to represent a variety of body sizes, habitats, and dietary habits for which data on body weight, food intake, etc., are available. Mammals may be exposed by eating contaminated prey items (e.g., fish, other vertebrates, insects) or plants, through incidental ingestion of contaminated soil while eating or preening, or through lactation or placental transfer.
- Birds—Birds were also evaluated for both generic ecosystems and include upper trophic level predators such as the red-tailed hawk and lower trophic level consumers such as the American robin; species were selected to represent a variety of body sizes, habitats, and dietary preferences for which input parameters (e.g., body weight, diet, ingestion rates) are available. Birds are exposed through the ingestion of contaminated prey items (e.g., fish, worms), through incidental ingestion that occurs while eating or preening, or through maternal transfer to eggs.
- Terrestrial Plants—Vascular plants that might be common in a generic terrestrial ecosystem were evaluated. The species of plants used to represent plants within the terrestrial ecosystem were determined by the availability of data and included primarily forage grasses and food crops. Plants are exposed through soil-to-root uptake, deposition on the surface of leaves or bark, and during air-to-leaf transport of volatile or semi-volatile constituents.
- Soil Community—Representative species for the soil community were based on six metrics for measuring ecological function: (1) Location, (2) size, (3) abundance, (4) taxon richness, (5) trophic structure, and (6) energy metabolism. Organisms living in or on the soil are exposed through direct contact (e.g., insects), through the ingestion of contaminated soil (e.g., earthworms), and through the ingestion of other soil dwellers (e.g., centipedes). The Agency solicits comment on the representative species selected to comprise the soil community.
- Fish—Given the small percentage of freshwater species for which toxicological data are available, all species of freshwater fish were considered as potential receptors, regardless of size or dietary habits. Fish are subject to continuous exposure to contaminated water via gill exchange and may be exposed to bioaccumulative chemicals through the food chain.
- Aquatic Invertebrates (Daphnids)—Aquatic invertebrates are believed to be among the most sensitive aquatic species (Suter, 1993x), daphnids were selected to represent free living aquatic invertebrates. Continuous exposure to contaminated water is considered the primary route of exposure.
- Aquatic Plants—Vascular aquatic plants and algae typical of aquatic ecosystems were evaluated. Aquatic plants are exposed during sediment-to-root uptake and through water-to-leaf transport.
- Benthic Community—Representative species include organisms that fall within any of the eight taxonomic genera used in the development of the Ambient Water Quality Criteria for the protection of aquatic life. Because these organisms spend most (if not all) of their lives in the sediment, they are exposed through direct contact and ingestion of contaminated sediments as well as through the ingestion of other sediment dwellers.

Each of these receptors has been matched with the exposure pathways and waste management units likely to result in exposure. Table A–4 of appendix A shows which pathways were modeled for each receptor. The Agency solicits comment on the use of a single species to represent major trophic elements.

The development of medium-specific concentrations for the protection of ecological receptors was based on ingestion of contaminated vegetation, water, soil, or prey or through continual contact with a contaminated medium (e.g., aquatic invertebrates with water or soil fauna with soil).

Numerous studies have demonstrated the capacity of hydrophobic organic chemicals to bioaccumulate in the food chain that are orders of magnitude above the concentration in the contaminated medium (e.g., Oliver and Niimi, 1988x). However, it is important to recognize that food-chain pathways may be significant even for constituents that do not bioaccumulate appreciably. Dietary exposure to constituents that concentrate weakly in fish tissue (e.g., bioconcentration factor below 10) may be more significant than exposure to contaminated drinking water simply because a particular animal may ingest relatively more fish than water.

For constituents that bioaccumulate, particularly those that biomagnify, benchmarks should account for exposure through the ingestion of contaminated prey as well as contact with or ingestion of contaminated media. The majority of toxicological studies examined a single route of exposure and seldom considered the potential increase in exposure concentrations through successive

trophic levels. As a result, toxicity benchmarks for bioaccumulative constituents cannot be used as acceptable medium exposure concentrations; exposure estimates must incorporate the bioaccumulation potential in the food chain. For nonbioaccumulating constituents, where toxicity benchmarks that are medium specific (i.e., concentration units—mg/kg or mg/L)) can be used as acceptable medium concentrations for ecological receptors (e.g., Ambient Water Quality Criteria).

In the aquatic ecosystem, for bioaccumulative chemicals (log K_{ow}>4), bioaccumulation factors (BAFs) were estimated using models developed by Thomann (1989x) for the limnetic (or pelagic) food chain and Thomann et al. (1992x) for the littoral food chain (i.e., sediment-based). However, for constituents with log K_{ow} above 6.5, only measured values were used. The Agency is considering using the Gobas model since it can be used for constituents with log K_{ow} above 6.5. Further, switching to the Gobas model would be consistent with the Great Lakes Initiative which recently switched to that model. The results produced by either the Thomann models or the Gobas model are very similar. The tissue concentration (TC) was estimated for prey based on the intake, body weight, and dietary preference (i.e., trophic level of fish consumed) of the representative predator species. Protective surface water concentration was calculated by dividing the tissue concentration (TC) by the bioaccumulation factor for the appropriate trophic level. For nonbioaccumulative chemicals, the protective surface water concentration for fish and aquatic organisms was the Final Chronic Value (FCV) or Secondary Chronic Value (SCV) as described in Section 4 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors. For upper trophic level aquatic wildlife such as mink and osprey, protective surface water concentrations were calculated based on the consumption of contaminated fish and water. The benthic community was included in the littoral ecosystem. Protective sediment concentrations were estimated using the equilibrium partitioning (Eqp) methods developed by Di Toro et al. (1991x). As explained in Section 4 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors, the sediment benchmark was calculated by multiplying the FCV (or SCV) by the octanol/carbon partition coefficient (K_{oc}) and adjusting for the fraction organic carbon (f_{oc}) in the sediment. EPA requests comment on the selection of the bioaccumulation model, the potential switch to the Gobas model, BAFs used, dietary assumptions, and how tissue concentrations were calculated.

For receptors in the generic terrestrial ecosystem, methods used represented a range of dietary habits across trophic levels for wildlife, including plants and organisms that live in the soil (i.e., soil fauna). (See the discussion on the development of soil and plant benchmarks elsewhere in today's rule.) For higher trophic level wildlife, dietary preferences, daily intake, and bioconcentration factors for prey items were identified or estimated to calculate protective soil concentrations. The key equation used to back-calculate soil concentrations as a function of dietary exposure (including soil ingestion), and the exposure inputs (e.g., body weights, daily intake) for ecological receptors are discussed in Section 5.3 of the Risk Assessment. The Agency requests comment on the equations and inputs used in the generic terrestrial ecosystem modeling.

The following types of exposure were not assessed in the assessment:

- Inhalation by ecological receptors—No suitable methodology was available.
- Dermal contact with soil—No suitable methodology or sufficient toxicity data were available.
- Dermal contact with water—No suitable methodology or sufficient toxicity data were available.

3. Groundwater Fate and Transport Modeling

In the risk analysis previously described in the section, the pathways involving groundwater are only modeled (back-calculated) to the wellhead, i.e., to the point of exposure at a water well. For groundwater modeling from the waste management unit (i.e., surface impoundment) to the water well, the Agency used a separate fate and transport analysis. This section describes the groundwater model and the modeling procedures for the various waste management scenarios for the groundwater path. The details of the model and the modeling procedures are presented in the background documents (USEPA, 1995 a-f).

The Agency has developed specialized subsurface fate and transport modeling for four waste management options: (1) Landfills; (2) surface impoundments; (3) waste piles; and (4) land application units. All four waste management scenarios assume that the waste if exempted could be managed in the respective RCRA Subtitle D units. In deriving the exemption levels, the Agency needs to evaluate the fate and transport of constituents from the waste unit to the nearby drinking water wells. The potential migration of constituents from a waste unit to the leachate at the bottom of the waste unit can be simulated by the laboratory test, the Toxicity Leaching Procedure (TCLP), or the Synthetic Precipitation Leaching Procedure (SPLP), Method 1312. Although one procedure may be more applicable for some wastes than the other procedure, as described on page 21483 of the **Federal Register** Notice of May 20, 1992 (57 FR 21450), the Agency is soliciting comments on the applicability and use of one test over the other for this proposal.

The fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone is estimated using a fate and transport model. The Agency proposes to use EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) for this purpose. The EPACMTP considers not only the subsurface fate and transport of chemical constituents, but also the formation and the fate and transport of transformation (daughter) products. The Agency also solicits comments on the technical correctness and applicability of the model and the data for this proposal.

The Agency proposed the use of a subsurface fate and transport model (EPASMOD) on June 13,1986 (51 FR 21648) in the Toxicity Characteristic (TC) Rule. However, after receiving numerous comments, the Agency revised the model and the data used in the model (53 FR 28692) and the enhanced model (EPACML) was used in the TC Final Rule (55 FR 11798). The EPACMTP replaces the EPACML for use in this proposal. The EPACMTP was recently published in a refereed journal (Kool, Sudicky and Saleem, Journal of Contaminant Hydrology 17(1994) 69–90) and has been reviewed by the EPA's Science Advisory Board (SAB). The SAB commended the Agency for making for its significant improvements to the model. They also stated that it represents the state of the art for such analyses. However, they also recommended additional testing of the model.

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML and the approach for the TC rule. The enhancements fall into the

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following categories: (1) Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents); (2) Use of enhanced flow and transport solution algorithms and techniques (e.g., three-dimensional transport); and (3) Revision of the Monte Carlo methodology (e.g., site-based implementation of available input data). A discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents (USEPA, 1995a-g). The Agency is soliciting comments on the modeling enhancements and the modeling methodology as well as on the values derived for individual chemical constituents:

(1) Fate and Transport Processes

Effects of groundwater mounding underneath waste unit.—The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions (USEPA, 1995 a).

Transformation products.—The EPACMTP model has capability to simulate the formation and fate of multiple transformation products (up to seven) in the unsaturated as well as in the saturated zones. For constituents which have toxic transformation products, the EPACMTP can provide an assessment of the groundwater impact of the transformation products, along with that of the parent constituent. This methodology has been implemented for hydrolyzing organic constituents included in this proposal.

Fate and transport of metals.—The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility of metals. The EPA's MINTEQA2 (USEPA, 1995 f) metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions. The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with capability to simulate, in the unsaturated and in the saturated zones, the impact of Ph, leachate organic matter, natural organic matter, iron hydroxide and the presence of other ions in the groundwater on the mobility of metals.

(2) Enhanced Solution Algorithms and Techniques

Linkage between unsaturated zone and saturated zone modules.—The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table underneath the waste unit. The approximate nature of this mixing factor could sometimes lead to unrealistic values of contaminant concentration in the groundwater close to the waste unit, especially in cases of a high infiltration rate from the waste unit. The enhanced model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

Numerical transport solution modules.—To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique. The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional solution, or a highly efficient quasi-3D solution. The latter has been implemented for Monte Carlo applications and provides nearly the same accuracy as the fully three-dimensional option, but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

Solution for nonlinear metals transport.—A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the Monte Carlo framework. Non-linearity in the metals sorption isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

Elimination of biases in determination of receptor well location.—The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced to eliminate bias which was present in the implementation in the EPACML. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, *the closest drinking water well is located anywhere on the downgradient side of the waste unit and the Agency is soliciting any comments on this procedure.*

(3) Revisions of Monte Carlo methodology for nationwide assessment

Data sources.—The data sources from which parameter distributions for nationwide Monte Carlo assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the latest version of the HELP model with the revised data inputs. Source specific input parameters (e.g., waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites.

Finite-source methodology.—The original version of the model was implemented for Monte Carlo assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been implemented for Monte Carlo assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit. The Monte Carlo methodology was enhanced to allow determination of regulatory threshold levels for these two waste characteristics USEPA, 1995.

Site-based regional analysis.—The Monte Carlo methodology has been fundamentally revised and enhanced to account for the interdependency among the various model input parameters based on regional distributions. The original methodology simply assumed that a waste site could be located anywhere in the US, and that the probability distributions of individual model parameters (e.g., infiltration rate, depth to groundwater, etc.) at any waste site were mutually independent and given by their nationwide frequency distributions. The model therefore only had limited capability to account for correlations and dependencies among the model parameters. To address this limitation, a site-based methodology has been implemented, based on the OSW's surveys of existing waste facilities in the US, and their geographical locations. The information of geographical location is used in this enhanced approach to select the other model parameters, such as infiltration rate and hydrogeological characteristics. A number of different sources were reviewed for the development of the site-based approach. Four of these sets were selected to derive the regional characteristics of the more important parameters for each sampled site: The OSW's survey of industrial waste management units (EPA, 1986); the infiltration and recharge analysis performed for U.S. climatic regions; the U.S. Geological Survey inventory of groundwater resources; and the API's (American Petroleum Institute) survey of hydrogeologic parameters for the different groundwater environments in the U.S.

(4) Implementation of EPACMTP

The specific modeling options selected for the modeling analyses are summarized in Table 3 below. All modeling analyses were conducted in the finite source, Monte Carlo mode, for four industrial Subtitle D waste management scenarios. The groundwater fate and transport model was used to predict the maximum concentration at a receptor well placed down gradient from the waste unit. A 10,000 years time limit was imposed on the exposure time period, i.e., the calculated concentration is the highest exposure concentration occurring within 10,000 years following the initial release from the waste unit. The Monte Carlo fate and transport simulation provides a probability distribution of receptor well exposure concentrations as a function of waste and leachate concentrations. For this proposal, the groundwater modeling results were used to derive leachate concentration thresholds. For carcinogenic constituents, the exposure concentration calculated by the model corresponds to the maximum 30-year average receptor well concentration. For non-carcinogenic constituents, the peak receptor well concentration is used. The regulatory threshold leachate concentration limits were determined using a back-calculation procedure, to correspond to an approximate 90th percentile protection level. This means that the closest downgradient drinking-water wells at 90% of the industrial Subtitle D waste management units would have water concentrations below the HBN/MCL. The wells further away at 90% of the sites would be protected at higher protection levels. The wells at the other 10% of the sites would be protected at lower protection levels.

The Agency uses a 95th percentile protection level in the RCRA Delisting program and the 85th percentile for the toxicity characteristic program. These two programs have slightly different goals from the exemption proposed today. The recently developed Superfund soil-screening levels use a 90th percentile protection level to identify sites at which no additional investigation for possible remediation is required. The exit proposed today is similar to the soil-screening levels program. Today's proposed exit is intended to identify wastes no longer needing Subtitle C management. Finally, the 90th percentile was chosen because it is nearly consistent with the protectiveness level in the other pathways of the multipath risk assessment performed for today's proposal as far as could be identified.

Table 3 provides a summary of the methodology and/or data sources used to obtain values for the source-specific parameters, chemical-specific parameters, unsaturated zone parameters, saturated zone parameters, and receptor well location parameters. Because the groundwater pathway analysis was performed in Monte Carlo mode, all parameters are in principle described by their probability distributions. Details on the actual distributions used are provided in the background documents (USEPA, 1995a-g). Probability distributions used for the unsaturated zone parameters, the saturated zone parameters, and receptor well location parameters were the same for all waste management scenarios and individual constituents that were analyzed for today's exit.

(5) Waste Management Scenarios

The waste management unit represents the source term in the fate and transport model for the waste management scenarios evaluated for groundwater contamination. In the modeling framework, the source is defined in terms of four key parameters: (i) Waste unit area, (ii) Leachate flux (infiltration) rate, (iii) Leachate concentration, and (iv) Duration of leachate pulse. The first of these parameters, waste unit area, was determined from the nationwide OSW survey of industrial Subtitle D waste management facilities (USEPA, 1995 a-b). After screening out records with unreliable waste site area and/or volume, the OSW Industrial Subtitle D survey provides data on location, area and volume of 790 landfills, 1655 surface impoundments, 774 waste piles, and 311 land application sites nationwide. The weighted distributions of waste unit characteristics used as input to the model are based on the results of the survey.

The leachate flux, or infiltration rate, and duration of the leachate pulse are determined from the design and operational characteristics of the waste management scenario being modeled. Consideration of a leachate pulse of finite duration is a fundamental aspect of the present analysis and distinguishes it from the continuous source (infinite source) assumption used for the 1990 Toxicity Characteristic (TC) Rule (55 FR 11798). It should be emphasized though that the results of the finite source analysis are not necessarily different from those of the continuous source analysis. If the source leaching duration is long enough to drive the maximum receptor well concentration to its steady state value, the finite source and continuous source analyses are in fact the same. In practice, the distinction between continuous source and finite source analysis is the most important for chemicals which are subjects to sorption, speciation, and/or degradation, including hydrolyzing organics and metals.

The leachate concentration of specific constituents in the waste forms the basis for regulating the wastes. The leachate concentration is not specified a-priori, but rather it is back-calculated at the end of the Monte Carlo analysis to satisfy the regulatory criterion that the

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maximum groundwater exposure concentration should be at, or below, the constituent-specific health-based drinking water standard, in at least 90 % of the cases.

The following sections present background on the determination of the source parameters for each waste management scenario.

Landfills.—The key characteristic of the landfill scenario is that the duration of the leachate pulse is independent of the operational life of the waste management unit, i.e., the period of time required to fill the landfill. The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually on the order of 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration (see below) is typically on the order of several hundred years.

The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapo-transpiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representstive subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the US. These correspond to the reasonable worst case assumptions as explained in the Risk Assessment Background Document (USEPA, 1995b). The model calculates the daily water balance for the total period for which climatic data are available. For each waste site in the OSW survey, an infiltration rate was calculated using the data from the closest climate station (USEPA, 1995b).

In the landfill scenario, the duration of the leaching period is not prescribed. Instead it is calculated as part of the Monte Cario simulation from the total mass of constituent in the landfill, and the rate of leaching. This relationship is derived from a straight-forward mass balance principles. The methodology is documented in the Background Document for the Finite Source Procedure (USEPA, 1995-c); only the most salient aspects are presented here.

The duration of the leachate pulse, T_p, is determined by the total mass of constituent that is initially present in the landfill, and the rate at which the constituent is removed by leaching:

$$A_w \cdot d \cdot F_h \cdot P_{hw} \cdot C_w = A_w \cdot I \cdot C_L \cdot T_p$$

or

$$T_p = \{d \cdot F_h \cdot P_{hw}\} \text{ over } \{I\} \ C_w \text{ over } C_L$$

where

A_w=Area of the waste unit (m^2),
d=Depth of waste unit (m),
F_h=Fraction of waste unit volume occupied by this waste,
P_{hw}=Density of the waste (g/cm^3),
I=Leachate flux (Infiltration) rate (m/y),
C_w=Constituent waste concentration (mg/kg), and
C_L=Constituent leachate concentration (mg/L).

The determination of T_p according to (2) tacitly assumes that the constituent does not degrade inside the waste unit, does not consider removal by mechanisms other than leaching (e.g., volatilization), and assumes that all of the constituent mass will eventually leach out. The formulation given above also assumes that the leachate concentration, C_L, remains constant until all of the constituent mass has leached out. The methodology was adapted to handle a time-varying leachate concentration, e.g., a gradually diminishing leachate concentration to represent the depletion of the contaminant mass in the landfill over time. If it is assumed that the leaching of the constituent from the waste into the water phase is controlled by a linear equilibrium partitioning process, the reduction of the leachate concentration with time can be modeled as a first-order decay process (EPA, 1995c):

$$C_L(t) = C_L^o e^{\{-\lambda t\}}$$

where

C_L^o=Initial leaching concentration (mg/L)
λ=Apparent decay constant (y^{-1})
t=Time (y)

The rate at which the leachate concentration is reduced is determined by the coefficient λ, which is given by:

$$\lambda = \{I\} \text{ over } [\{d \ F_{hw} P_{hw}\} \{C_w \text{ over } C_L^o\}]$$

Using (3), the leachate concentration will gradually and asymptotically be reduced to zero. The total amount of constituent that is released into the subsurface will be the same whether a constant leachate concentration of finite duration, or a gradually diminishing leachate concentration is assumed. In the latter case, the duration of the release period is longer, but the average leachate concentration lower, as compared to the former case.

It can be seen from either (2) or (4) that the duration of the leachate pulse, or the rate of depletion, respectively, can be expressed as a function of the initial leachate concentration, C_L. For the modeling analyses, equation (3) was used for organic constituents. The underlying assumption that the concentration is controlled by linear equilibrium partitioning is reasonable for organic constituents. For metals, the pulse release option (equation 2) with constant leaching concentration was used.

The calculation of T_p (or λ) requires a number of ancillary source and waste parameters. These are the depth of the waste unit (d), the fraction of the waste unit occupied by the waste (F_h), and the waste density (P_{hw}). The waste unit depth is obtained directly from the OSW waste site survey. The survey provides data on both landfill areas and volumes, which allows the depth to be calculated for any landfill selected during the Monte Carlo simulation. The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills (EPA, 1995). The lower bound assures that the waste unit will always contains a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 g/cm^3 (EPA, 1995c).

Surface Impoundment.—The surface impoundment waste management scenario is that of a non-hazardous waste industrial impoundment. The area of the impoundment is obtained from the OSW Subtitle D Industrial Survey (USEPA 1995 b). No direct data is available on the rate of infiltration from surface impoundments. The rate of infiltration from the impoundment is calculated inside the EPACMTP fate and transport model. The rate of infiltration is calculated, using Darcy's Law, as a function of surface impoundment depth, and hydraulic conductivity and thickness of a low-permeability sediment layer at the base of the impoundment.

Impoundment depth is obtained from the OSW survey, for each impoundment site in the survey, in the same way as the landfill depth is obtained (see above). The sediment layer at the base of the impoundment is taken to be 2 feet thick, and have an effective equivalent saturated conductivity of 10^{-7} cm/s . These values were selected in recognition of the fact that most non-hazardous waste surface impoundments do have some kind of liners in place (USEPA, 1995b). During the Monte Carlo fate and transport simulation, the infiltration rate is calculated using the impoundment depth value for the specific unit selected for each Monte Carlo realization.

The leachate concentration again is not determined a priori, but is determined after the analysis, based on

the desired regulatory protection level (90th percentile). The surface impoundment is taken to have a 20-year operational life. After this period, the impoundment may be filled in, or simply abandoned. In the latter case, the waste in the impoundment will drain and/or evaporate relatively quickly. In the modeling analysis, the duration of the leaching period is therefore set equal to 20-years.

Waste Pile.—The waste pile management scenario is conceptually similar to that of the landfill, but differs in a number of key aspects. In contrast to landfills which represent a long-term waste management scenario, waste piles represent a more temporary management scenario. During the operational life of the waste pile, it may be regarded as an uncovered landfill. Typically at the end of the active life of a waste pile, the waste material is either removed for land filling, or the waste pile is covered and left in place. If the waste is removed, there is no longer a source of potential contamination. If a waste pile is covered and left in place, it then becomes equivalent to a landfill, and consequently is to be regulated as a landfill. For the analyses, therefore, only the groundwater impacts associated with the period that the waste pile is active, are considered.

Data on the waste pile area are obtained from the OSW Subtitle D survey. Infiltration rates for the waste pile are obtained by treating the waste pile as an uncovered landfill. HELP model derived landfill infiltration rates assuming a sandy loam soil cover were used to assign infiltration rates for waste piles. A sandy loam cover represents the most permeable cover considered for the landfill scenario, and most closely resembles a situation in which no cover is present. The methodology for assigning an infiltration rate to any specific waste pile in the OSW survey follows that used for landfills (see above).

An active life of 20 years is assumed for the waste pile. This also determines the duration of the leaching period. As with the landfill and surface impoundment scenario, the leachate concentration is determined at the end of the analysis, to satisfy the regulatory protection level.

Land Application Units.—Data on the location, area and waste application rates at industrial land application sites were obtained from the OSW survey of industrial Subtitle D sites. Location-specific infiltration rates were estimated for each land application site by applying the HELP model, using climatic data from the nearest climate station. Because wastes applied at land application sites typically have a high liquid content, this factor was accounted for in the water balance calculations. An annual waste application rate of six inches of waste, containing 85% water was assumed. This is typical of sludges which constitute a large fraction of waste at land application sites. Therefore, an additional 5.1 inches of water were added to the natural precipitation for the water balance evaluation at each land application site.

The leaching duration for the land application unit was set to 40 years, consistent with the release period modeled for the air pathway. No reliable data were available for the active life of land application units. Using a longer value than for surface impoundments and waste piles is warranted because part of the applied waste material may remain in the soil at the end of the active life of a land application unit, and may continue as a source of contaminant leaching.

(6) Determination of Regulatory Waste and Leachate Concentration Limits

The objective of the Monte Carlo fate, and transport analysis is the determination of regulatory limits for the concentration of individual toxic constituents in the leachate, C_L. These limits are determined so as to satisfy the regulatory criterion that disposal of a waste in a subtitle D waste management unit should not lead to an exceedance of the health-based value or the drinking water standard, at a receptor well placed down gradient from the waste unit, in at least 90% of the cases.

The C_L limits are specific to each waste management scenario, and are also constituent specific. C_L limits are constituent specific because of their dependence on constituent specific health-based standards, as well as on constituent specific fate and transport characteristics that affect the concentration received at the receptor well. The latter factors are discussed in the following section; this section discusses the determination of regulatory C_L thresholds.

Using Equation (2) or (3) and (4), the groundwater exposure concentration calculated by the fate and transport model can be expressed as a function C_L. All other parameters used in the modeling analysis are obtained from prescribed probability distributions. Consequently, by comparing the predicted exposure concentration to the appropriate regulatory standard, e.g., health-based value or a drinking-water standard, threshold levels of C_L, can be calculated. Wastes for which the leachate concentration exceeds the C_L threshold would not be exempted. Because the Monte Carlo analysis produces a probability distribution of exposure concentrations, the back-calculation of C_L threshold levels can be performed for any desired level of protection.

For those constituents that degrade (see next subsection) and produce toxic degradation products, the development of regulatory threshold values for C_L considers not only the exposure concentration and toxicity of the parent constituent, but also the exposure concentration and toxicity of toxic transformation products. For instance, consider two waste constituents that have similar toxicity values, i.e., similar health-based levels, as well as similar fate and transport characteristics, so that they show comparable values for the model simulated receptor well exposure concentration. However, if one of the two chemicals produces toxic off-spring, but the other chemical does not, the chemical which has toxic daughter products will have more stringent limits for C_L.

(7) Chemical—Specific Fate and Transport Processes

The Monte Carlo fate and transport analysis considers chemical-specific sorption and hydrolysis (degradation) characteristics. These characteristics directly affect the model-predicted groundwater exposure concentration. Chemicals which are subject to sorption and/or hydrolysis will exhibit lower exposure concentration as compared to non-sorbing, non-degrading chemicals. This translates into higher regulatory waste and concentration limits. Two broad groups of chemicals are considered under today's proposal. They are organic constituents and metals.

Organic Constituents.—Organic constituents account for the largest group of chemicals addressed under today's proposal. The groundwater pathway analyses were performed for a total of 222 organic constituents. The fate and transport analysis accounts for sorption of organics onto soil and aquifer organic matter, as expressed by a chemical-specific organic-carbon partition coefficient (Koc), and degradation due to hydrolysis reactions, as expressed by chemical-specific hydrolysis constants. Sorption is modeled as a reversible, linear equilibrium process. Degradation due to hydrolysis is modeled as a first-order kinetic process. The groundwater pathway analysis utilizes a comprehensive set of Koc values and hydrolysis rate constants compiled by the EPA–ORD (Environmental Fate

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Constants for Organic Chemicals Under Consideration for EPA's Hazardous Waste Identification Projects , EPA/600/R-93/132). Chemicals with identical Koc values and hydrolysis constants will exhibit the same fate and transport behavior, and given the same leachate concentration and leaching period, they will result in the same exposure concentration. Note, however, that they may still have different regulatory leachate concentration limits, if they have different health-based drinking water standards and/or produce toxic transformation products.

For the groundwater pathway analysis, organic constituents with a hydrolysis half-life of 6,900 years or less (first-order degradation rate of 10^{-4} or greater) were classified as degraders, the remainder were classified as non-degraders. The EPACMTP can simulate the formation and subsequent fate and transport of transformation daughter products, enabling the groundwater exposure concentrations of any toxic transformation products to be determined and, therefore, included in the determination of leachate concentration thresholds.

It has been established, by analyzing modeling results for different constituents with a range of sorption and degradation characteristics that, after normalizing the results against the chemical-specific HBN/MCL, the effect of sorption and degradation on the regulatory values can be expressed as a function of the Koc and hydrolysis rate coefficients, using a straight-forward scaling relationship. After these relationships have been established, it is not actually necessary to conduct the Monte Carlo fate and transport computer simulations for each individual constituent. Instead, for each waste management scenario of concern, a set of reference C_L values are generated by running the Monte Carlo model for a selected range of values of Koc and hydrolysis rate coefficients using a normalized HBN/MCL of 1 mg/L. Constituent-specific C_L^{MIN} values are then determined in two steps: First, the reference curves are scaled to the constituent specific Koc value, and (for degraders) hydrolysis rate coefficients. Secondly, an adjustment is made for the constituent-specific value of the drinking water standard. The final values of C_L^{MIN} are obtained by multiplying the concentration limits based on the normalized drinking water standard, by the actual value of the drinking water standard of that particular constituent. For constituents with toxic transformation products, this procedure is repeated for the transformation products, to find the minimum values of C_L (C_L^{MIN}) which ensure that the exposure concentrations of the parent constituent and any daughter products will not be exceeded. The benefit of this approach is that if additional constituents are to be regulated, or a different value of the drinking water standard HBN/MCL, the appropriate C_L^{MIN} can be determined with less effort, because it is not necessary to repeat the time-consuming complete Monte Carlo simulation.

Metals.—Fate and transport of metals in the subsurface may be controlled by complex geochemical interactions. To account for these processes, the OSW has developed and implemented a modeling approach which utilizes the MINTEQA2 metals speciation model in conjunction with the EPACMTP subsurface fate and transport model. The MINTEQ model has been applied to generate effective sorption isotherms reflecting variations in four geochemical master variables affecting metals fate and transport. These factors are: Ph, leachate organic matter natural organic matter in the soil or aquifer, and ironhydroxide content. Each of these parameters has a range of values, reflecting their nationwide probability.

TABLE 3.—EPACMTP MODELING OPTIONS

Management Scenarios	Industrial Subtitle D: (i) Landfill; (ii) Surface Impoundment; (iii) Waste Pile; and (iv) Land Application Unit.
Modeling Scenario	Finite Source Monte Carlo.
Regulatory Protection Level	90% (yields an approximate DAF of 10 for a continuous source landfill).
Source Parameters:	
Waste Unit Area	Site based, form OSW Industrial Subtitle D Survey.
Waste Unit Volume	Site based, from OSW Industrial Subtitle D Survey.
Infiltration Rate:	
Landfill	Site-based, derived from water balance using HELP model.
Surface Impoundment	Site-based, derived from impoundment depth using Darcy's law.
Waste Pile	Site-based derived from water balance using HELP model.
Land Application Unit	Site-based, derived from water balance using HELP model.
Leaching Duration:	
Landfill	Derived, continues until all constituent has leached out.
Surface Impoundment	20 years (operational life of waste unit).
Waste Pile Land	20 years (operational life of waste unit).
Application Unit	40 years.
Chemical Specific Parameters:	
Decay Rate:	
Organics	Hydrolysis rates based on measurements or based on appropriate structure-activity relationships.
Metals	No decay.
Sorption:	
Organics	K_{oc} estimated from K_{ow}, which is based on measurements or based on appropriate structure-activity relationships.
Metals	MINTEQ sorption isotherms (Pb, Hg, Ni, Cr (III), Ba, Cd). pH dependent isotherms (As, Cr (VI), Se (VI), Th)
Unsaturated Zone Parameters:	
Depth to groundwater	Site-based, from API/USGS hydrogeologic database.
Soil Hydraulic Parameters	National distribution for the main soil types.
Fraction Organic Carbon	National distribution for the main soil types.
Bulk Density	National distribution for the main soil types.
Saturated Zone Parameters:	
Recharge Rate	Site-based, derived from precipitation/evaporation and soil type.

TABLE 3.—EPACMTP MODELING OPTIONS—Continued

Saturated Thickness	Site-based, from API/USGS hydrogeologic database.
Hydraulic Conductivity	Site-based, from API/USGS hydrogeologic database.
Porosity	Effective porosity derived from national distribution of aquifer particle diameter.
Bulk Density	Derived from porosity.
Dispersivity	Derived from a national distribution and is based on distance to the receptor well.
Groundwater Temperature	Site-based, from USGS regional temperature map.
Fraction Organic Carbon	National distribution, from EPA STORET database.
pH	National distribution, from EPA STORET database.
Receptor Well Location:	
Radial Distance	Nationwide distribution based the survey.
Angle Off-Center	Uniform within ± 90° from plume centerline.
Depth of Intake Point	(No restriction to be within plume) Uniform throughout saturated thickness of aquifer.

4. Other Risk Assessment Issues

a. Differences Between the Groundwater and Non-groundwater Analyses

As mentioned previously, the Agency conducted separate analyses for the evaluation of risks from groundwater and non-groundwater pathways. The groundwater pathways relied on a full Monte Carlo analysis; whereas the non-groundwater pathway analyses were performed using high-end and central tendency parameters, consistent EPA's risk characterization guidance (EPA 1995).

Although the approaches to the modeling differed, the Agency used the same data for parameter inputs (i.e., OSW's Industrial Subtitle D Survey, U.S. EPA 1986) to describe the waste management units common to both analyses (i.e, surface impoundments, waste piles, and land application units). However, even though the same data were used, some differences exist based on the different modeling approaches. These differences are discussed below.

(1) Infiltration

For the groundwater pathway analysis, the Agency used the HELP model to calculate the net infiltration rate for landfills, land application units and waste piles, as a function of regional climatic conditions and waste unit design characteristics (see EPACMTP background Document). The analysis used the meteorological data from 93 meteorological stations located throughout the United States to develop infiltration rate distributions using the HELP model.

For the non-groundwater analysis, the Agency used rainfall to calculate the recharge rate. The rainfall was selected from 29 meteorological stations distributed among 9 climate regions. However, the method for selecting the rainfall factor differed between the air release pathways and the overland release pathways.

- For the air release pathways, the Agency conducted a sensitivity analysis for each waste management unit type to rank the 29 meteorological stations with respect to several air modeling outputs, including maximum air concentration of pollutants, average air concentrations over the agricultural field and water body, and average deposition over the agricultural field and water body. Based on these sensitivity analyses, the Agency selected a central tendency location and high-end location for the air pathway for each of the waste management units. Thus, locations with meteorologic data, including the rainfall factor, approaching the central tendency and high-end values were selected for each waste management unit.
- For the overland release pathways, the Agency ranked the rainfall factors from the 29 meteorological stations and selected the 50th and 90th percentile based on the distribution of the 29 meteorological stations.

(2) Density of Waste Applied to the Land Application Unit

The approach used in the groundwater analysis assumed the bulk density of the applied waste to be 1 gram per cubic centimeter (g/cc) because the waste was assumed to be comprised predominantly of water. However, changes in the density of applied waste do not significantly affect the results of the groundwater modeling results.

The approach used in the non-groundwater analysis assumed the bulk density of waste to be analogous to the density of sewage sludge (i.e., 1.4 g/cc). The waste in the LAU is a mixture of industrial waste and soil. The central tendency bulk density for soil (i.e., 1.5 g/cc) is similar to the bulk density assumed for industrial waste. Because the waste is incorporated into soil, the properties of the waste/soil mixture are needed. There is little variability in bulk density for the type of soil used in the analysis (i.e., loam), thus, the same value was used for central tendency and high-end estimates of the waste/soil mixture bulk density.

(3) Unsaturated Zone Characteristics

The groundwater pathway analysis used the characteristics (e.g., percent organic matter, saturated hydraulic conductivity) of the entire unsaturated zone as input into the modeling analysis. The non-groundwater pathway analysis used as input the characteristics of only the upper portions of the unsaturated zone because these characteristics were those significant for the surface exposure pathways.

(4) Hydrolysis Rates

The hydrolysis rate for a chemical constituent is used in the Monte Carlo groundwater pathway analysis as a function of temperature and pH of the groundwater at the Monte Carlo realized site. The Agency used hydrolysis rates for constituents that have been measured through appropriate structure activity relationships. They have been reviewed by a panel of experts from the Agency's Office of Research and Development (USEPA, 1993). The non-groundwater pathway analysis used hydrolysis rates from the "Handbook of Environmental Fate and Exposure Data for Organic Chemicals" (Howard et. al, 1993).

b. Other Groundwater Pathway Analysis Issues

(1) Use of 1,000 Year Versus 10,000 Year Exposure Time Horizon

The Agency's proposal is based on a 10,000 year time horizon for the groundwater pathway. This means that the determination of leachate concentration limits is based on the highest (30-year average) concentration that occurs within 10,000 years from the start of the release. Although this longer time horizon has been used in other programs (U.S. Nuclear Regulatory

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Commission and U.S. Department of Energy), the Agency is considering using 1,000 years as an alternative time horizon. The Agency requests comment on this issue which is described in more detail below.

Using this shorter time horizon results in an increase of the leachate concentration limit for a number of constituents. The constituents affected are those which are strongly sorbed in the subsurface, and which therefore tend to migrate slowly. These constituents include organics with retardation factors (R) significantly greater than one. The organic carbon partition coefficient (k_{oc}) values for these constituents are about 3,500 g/cm³ or greater, and certain metals such as lead and chromium(III). For organic constituents with k_{oc} values less than about 3,500 g/cm³, the highest receptor well exposure concentration is generally reached in less than 1,000 years. Reducing the modeling time horizon from 10,000 to 1,000 years therefore does not affect the results of the pathway analysis for these constituents. The effect of using a 1,000 year versus a 10,000 year time horizon is illustrated in Table 4. The constituent-specific differences are shown in Table B–1 of appendix B to the preamble. The table is based on a landfill waste management scenario, and all constituents are assumed to have identical toxicity values and not be subject to hydrolysis. For reference, the leachate concentration limit for constituents with k_{oc}=0 (no sorption, R=1), and a 10,000 year time horizon is equal to 1.0 mg/L. This table shows that the increase in leachate concentration limit for organic constituents is affected for a shorter modeling horizon (1,000 years) only when k_{oc} values (or R values) are very large. (About fifteen percent, out of a total of approximately 200, including eight metals, fall into this category.) The effect of hydrolysis rate is not considered in results shown in the table. While hydrolysis influences the magnitude of the exposure concentration at a receptor well, the time that it takes for a contaminant to reach the receptor well is independent from the chemical-specific hydrolysis rate. It is, however, strongly influenced by chemical-specific sorption characteristics, which for organics are expressed in terms of k_{oc} or R values.

TABLE 4.—EFFECT OF 1,000 YEAR VERSUS 10,000 YEAR MODELING TIME HORIZON ON LEACHATE CONCENTRATION LIMIT

k_{oc} (cm³/)	10,000 years	1,000 years
0.0	1.0	1.0
3,384 (R=10)	1.0	1.0
37,224 (R=100).	1.0	60

(2) Implementation of Parameter Bounds in Monte Carlo Procedure

The Monte Carlo modeling procedure used in the groundwater pathway analysis uses data on waste site location from the EPA's Industrial Subtitle D Survey (USEPA, 1986). These data are combined with other data sets for climatic and hydrogeological parameters. Auxiliary parameters for which no direct data is available are calculated internally in the model. For instance, ground-water velocity is calculated from hydraulic conductivity, gradient and effective porosity, and the dispersivity is calculated from the receptor well distance (See EPACMTP Background Document and User's Manual). Each parameter furthermore can have specified upper and lower bounds to guard against the possibility that physically infeasible parameters and/or parameter combinations are not used. When the latter condition occurs, the particular Monte Carlo realization is rejected, and another realization is generated. The Agency is considering an alternative procedure in which only the offending parameter is regenerated, or, if necessary, set equal to its upper or lower bound to avoid selection of values beyond the minimum to the maximum values range. In first case, the frequency distribution of parameter values generated by the Monte Carlo module, may be different from its input distribution. The Agency has determined that the two alternative procedures have little impact on the overall modeling results in the case of landfills and land application units, but that the default procedure tends to favor the selection of sites with larger waste unit area in the case of waste piles and surface impoundments. Therefore it produces more conservative (lower) values for the final leachate concentration limits. The analysis results show that for the two alternative Monte Carlo procedures for surface impoundments, the default procedure results in a leachate concentration limit of 1.0 mg/L, the alternative procedure results in a concentration limit of about 31 mg/L for a chemical with R=1. The effect of changes in the hydrolysis rate or the R value on the resultant regulatory leachate concentration do not impact the results obtained by using the alternative Monte Carlo procedure described in this subsection. The Agency is also soliciting comments on the Monte Carlo parameter rejection procedure used for the results presented in this subsection.

(3) Hydraulic Conductivity of Surface Impoundment Bottom Layer

The surface impoundment scenario modeled in the groundwater pathway analysis incorporates a 2 feet thick layer at the base of the impoundment. In the base case for this proposal, the layer is assigned a hydraulic conductivity of 10–7 cm/sec. The Agency recognizes that this value may or may not be appropriate value for bottom sediments as a nationwide typical for industrial Subtitle D surface impoundments. To evaluate the impact of varying this parameter, the Agency has compared modeling results obtained using a 10 times higher conductivity of 10–6 cm/sec. A higher conductivity value corresponds to a greater leachate flux from the impoundment, and generally higher receptor well concentrations, which translates into a more conservative (lower) regulatory leachate concentration limit. The regulatory limit calculated for a conductivity value of 10^{-7} cm/sec is 1.0 mg/L, the corresponding value for a conductivity of 10^{-6} cm/sec would be 0.35 mg/L. The effect of changes in hydraulic conductivity on the results is believed to be independent of the sorption or the hydrolysis characteristics of the chemical. The Agency is inviting comments on the appropriate value for the hydraulic conductivity of the bottom sediment layer for industrial D surface impoundments. In addition, the Agency requests the submission of hydraulic conductivity data for industrial Subtitle D surface impoundment bottom sludges.

(4) Waste Pile Infiltration Rates

The Agency used the HELP model to calculate the net infiltration rate for landfills, land application units and waste piles, as a function of regional climatic conditions and waste unit design characteristics (see EPACMTP background Document). For waste piles, the Agency considered two alternatives. The procedure used in the base case considered a waste pile, for the purpose of estimating infiltration rates, to be similar to an uncovered landfill. The Monte Carlo modeling analysis therefore used landfill infiltration rates corresponding to the most permeable (sandy loam) of the three cover types

used for landfill modeling. As an alternative, the Agency has used the HELP model to calculate infiltration rates for waste piles directly. In the initial evaluation, the runoff used in the water balance calculation was computed by the HELP model as a function of soil texture and vegetative cover (bare ground).The Agency has evaluated the impact of representative bare, but unevenly surfaced, waste piles on simulated runoff using the HELP model. A comparison of the impact of using this alternative procedure against the values used in this proposal for the base case, on the regulatory leachate concentration limit, was conducted. The comparison of regulatory leachate concentration limits is based on a non-degrading, non-sorbing constituent, which has a concentration limit of 1.0 mg/L in the proposal. Using the alternative procedure, the corresponding leachate concentration level changes to 0.77. The Agency is inviting comments on the two methods for the waste piles for the estimation of infiltration rates through them. If you have any data and other information to support your comment, send it along with your comments to the Docket.

(5) Land Application Unit Infiltration Rates

In the calculation of infiltration rates for land application units for the base case in the proposal, it was assumed that land application units receive, on average, 1,295.4 m³ha (5.1 inches) of water annually through the application of the waste. This amount of water was included in the HELP model water balance calculation, resulting in an increased net infiltration as compared to ambient conditions. The waste application rate may or may not represent true field situations. As an alternative to the modeling procedure used for the base case of this proposal, the Agency evaluated the effect of using ambient recharge rates, i.e., the application of waste does not significantly alter the water balance, on the calculated leachate concentration limits. The comparison of this alternative with the procedure used for the base case shows that the regulatory leachate concentration limits for a non-degrading, non-sorbing constituent in land application units changes to 1.12 mg/L from 1.0 mg/L for the procedure used in the base case.

(6) Aggregate Effects of Alternative Groundwater Modeling Procedures and Data

The preceding sections have presented the effect of alternative modeling options and data sources that have been considered by the Agency. A consequence of the Monte Carlo exposure modeling approach is that the effects of changes in model parameters are not always linearly additive; rather the aggregate effect of changing multiple parameters or options may be to either magnify or reduce the effect of the individual changes. The Agency, therefore, has conducted modeling analyses of the aggregate effect of the alternatives discussed above for each of the four waste management scenarios. In addition to the alternatives presented in the preceding subsections, a modification was also made in the procedure for modeling waste sites for which the corresponding hydrogeological region was initially assigned as "not classifiable". Rather than ignoring the small fraction of sites involved, they were incorporated into the analysis by assigning them nationwide average values for the groundwater parameters. Table 5 presents the aggregate effect of all changes for each of the four waste management scenarios modeled. The modeling results correspond to a non-degrading, non-sorbing constituent. The leachate concentration limits are normalized with respect to a value of 1.0 mg/L for the landfill scenario, under the modeling procedure for the base case of this proposal. The results are presented for a 1,000 year time horizon; however for a non-sorbing constituent, these same results also hold for the 10,000 year time horizon.

TABLE 5.—AGGREGATE EFFECT OF MODELING - ALTERNATIVES ON LEACHATE CONCENTRATION LIMITS FOR NON-DEGRADING, NON-SORBING CONSTITUENTS FOR FOUR WASTE MANAGEMENT SCENARIOS

Waste management scenario	HWIR proposal	Alternative Options
Landfill	1.0	0.71
Surface Impoundment	0.22	0.27
Waste Pile	0.29	484
Land Application Unit	0.08	0.22

Table 5 shows that, except for landfills, the aggregate effect of the combined alternative options is a less conservative (higher) leachate concentration limit. For landfills, adoption of the alternative modeling options would have resulted in a 30 % less stringent regulatory leachate limit for the groundwater pathway for non-sorbing and non-degrading constituents. For surface impoundments, there is little overall impact because the opposing effects of increasing the impeding layer hydraulic conductivity, and the alternative Monte Carlo procedure for handling parameter bound exceedances, nearly cancel out. For waste piles on the other hand, the procedure used for the base case, results in a significantly more conservative leachate concentration limit as compared to the alternative modeling options. This is due to the handling of parameter exceedances in the Monte Carlo simulation. Because many waste piles have very small sizes (surface areas), the alternative Monte Carlo procedure has a large impact. For land application units, the procedures used in the proposal for the base case also result in a more conservative regulatory limit as compared to the alternative modeling options. The contributing factors are much the same as for waste piles, but the overall impact is much smaller, primarily because there are only few land application units with very small areas.

F. Additional Eco-Receptor Considerations

EPA considered two different policy goals with respect to protection of terrestrial ecological receptors (i.e., soil fauna, birds, mammals, and plants). One goal protected terrestrial ecological receptors outside the boundaries of the waste management site, thus, the constituent had to travel off-site before exposures would be assessed. The alternative goal protected terrestrial ecological receptors on the closed land application site.

The Agency chose to propose exit levels based on off-site impacts for several reasons. One reason is that there are many land use decisions that significantly affect terrestrial ecological receptors on the property of a party making those decisions (e.g., a decision to pave a portion of land as a parking lot). EPA does not generally regulate those sort of decisions. However, many impacts are judged through local zoning regulations. Congress has typically asked EPA or other Federal entities to regulate activities on a property when there are significant off-site impacts, such as a groundwater plume that migrates, an air release that moves beyond the property, a wetland (located on the property) that is a significant resource for migratory birds and has broader ecological significance, or an endangered species with social values beyond the impact on a specific landowners purview.

EPA asks for comment, however, on the alternative of protecting terrestrial ecological receptors on-site. The rationale for this alternative approach would relate to protection from impacts on bird and mammal populations, and

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other ecological receptors, and to the regulation of certain constituents that could potentially result in environmental consequences that go significantly beyond the bounds of a current waste management unit.

G. Background Concentrations in Soils and Other Issues Relating to Results

EPA has compared the exit levels for nonwastewaters to data on the variation in mean background concentrations found in soils. For some metals, the exit levels calculated based on risks at land application units are below [4] mean soil concentrations. One reason exit criteria may be below soil concentrations is that these metals bioaccumulate, causing greater exposure for higher trophic levels. Also, the acceptable levels for some of the metals that would be calculated for practices other than land application are significantly higher and not below mean soil concentrations.

If the final exit levels are below typical soil levels, EPA would consider promulgating levels based on concentrations that are either typical soil concentrations (national mean levels) or some percentile or portion of the naturally-occurring range such as the 10th percentile. If the effect of concern is an ecological impact, the rationale for using the 10th percentile (or similar figure if the data available does not allow that precision) would be that in 90 percent of locations, if the soil already contains those or greater levels, the ecological receptors existing in the area should already reflect the toxicity of the waste material; the rational for using the 10th percentile (or similar value) value is that human behavioral practices (e.g., treatment of groundwater prior to use) may already reflect protection from the potential toxicity of concern. EPA asks for comment on whether these are reasonable arguments.

EPA is concerned, however, that there are also issues of the chemical and physical form in which compound or chemicals exist, in both natural conditions and in the waste and that a simple comparison of total concentrations in soils and in wastes might be misleading about potential ecological or human impacts. EPA requests comment on these issues. EPA's first preference will be to reexamine the risk modeling to identify any inappropriate assumptions or modeling issues that may explain the low proposed exit level, and to look more carefully at those constituents where this issue only arises from the modeling of risks from land application units, to identify potential contingent management solutions to this problem.

Finally, EPA requests comment on whether these arguments could be extended to site-specific determinations where information on local background constituent concentrations and form in soil are available and have been reviewed by a State regulatory authority. EPA assumes that such an approach would only apply if the background concentrations were more than very localized and the concentrations were naturally-occurring rather than due to past contamination. If a site-specific determination were adopted, two approaches are available that have been used in other contexts. One statistical technique for determining whether background data conform to a normal distribution assumption includes combining the Student-t difference of means test, presented in the *Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units*, (EPA, 1986) with the normal tolerance interval approach found in *Statistical Analysis of Ground Water at RCRA Facilities-Interim Final Guidance*, (EPA, April 1989). The Student-t test compares averaged waste/media concentrations to background concentrations, and is used to determine if the waste/media as a whole is within a specified criteria. However, even if the waste/media passes the Student-t test, individual sample concentrations may still exceed the tolerance interval limit. The normal tolerance interval approach is used to compare sample concentrations to an upper tolerance value based on the background mean, standard deviation, and sample size.

If such an approach is incorporated into the final rule, it would include criteria for defining and collecting adequate background samples. More specifically, the facility would be required to identify background locations, sample size, soil depth, etc. for at least four samples in a "difference of means" demonstration, and six to eight samples for a "tolerance of means" demonstration. The facility would also need to demonstrate the normalcy of the sample distribution. The Agency would require that this information be included as part of the facility's sampling and analysis plan and subject to review by the appropriate overseeing authority.

A more simplified approach would be to establish exit levels at 1/10 of the naturally occurring background level. The rationale for using 1/10 is that these levels would not appreciably contribute to the overall risk posed by elevated levels in the environmental media. EPA requests comment of this approach as well as the rationale.

Alternatively, the rule could defer any background level demonstrations to an omnibus authority for the overseeing agency. Under this concept, a claimant could submit information on naturally occurring background level and a request for modified exit levels to the agency overseeing the exemption process, which would have discretion to grant modifications where they are clearly justified. Comment is requested on the need for this authority.

The Agency solicits comments on other appropriate and generic ways (1) to identify background levels in soils, and (2) to incorporate the existing 40 CFR part 264, subpart F standards for establishing background levels for groundwater. Other suggestions that address the Agency's intent to promulgate a simplified exemption with little reliance on site-specific considerations but also allow for consideration of elevated background levels will be considered.

EPA also observed that some of the exit levels for organic chemicals appear relatively high (see, for example, the level for xylene). EPA believes that these results occurred primarily because these chemicals either are toxic only at relatively high concentrations or undergo high dilution during transport. EPA, however, requests comment on whether these chemicals are frequently co-disposed and, if so, whether they might pose cumulative risks not assessed by the risk analysis. EPA is interested in information on issues such as whether a waste containing one or more of these constituents at concentrations near exit levels would be ignitable or threaten the integrity of control measures such as liners.

H. Constituents with Extrapolated Risk-based Levels

EPA was unable to conduct the risk assessment for 187 of the 376 constituents on the exit list. In most of these cases, EPA was unable to find acceptable human health benchmarks to serve as the starting place for the assessment. In a few cases, EPA could not find values for critical physical or chemical properties, such as log K_{ow}s. Based on its past experience, EPA believes it would need at least a year to develop a new human health benchmark value for any constituent. EPA has less experience with the type of research and peer review needed to develop values for physical and chemical properties, but it believes that this process also would be time-consuming.

[4] When compared with mean soil background levels provided by the USGS, the exit levels are not more that 1 order of magnitude more restrictive.

Rather than not consider the 187 constituents for which EPA was unable to conduct the risk assessment as potential candidate constituents for exit criteria, EPA developed an approach for establishing exit criteria for these constituents. The Agency grouped the constituents on the exit list into classes, based on chemical structure. EPA selected the 50th percentile value from the range of modeled risk levels for each chemical class. This 50th percentile value serves as the extrapolated risk-based level for the un-modeled constituents in the corresponding chemical class. The constituents and their 50th percentile extrapolated risk-based levels are presented in a background document *Background Document to Support the Methodology used in Extrapolating Exit Levels to Constituents with no Health-Based Benchmarks*. EPA is proposing the 50th percentile level to avoid adding another conservative assumption to the derivation of exit levels for these constituents. EPA believes that the multipathway approach is already sufficiently conservative to protect human health and the environment even for these chemicals. EPA, however, requests comment on the alternative of using the 10th percentile or a different percentile from the modeled exit levels from each class. Such an approach would reduce the chances that the actual health benchmark for a particular level was lower than the extrapolated estimate. However, it would also increase the odds that the extrapolated level was higher than needed for many constituents. A complete list of extrapolated constituents and associated risk levels may be found in appendix C to today's preamble.

EPA recognizes that this approach to generating exit levels is much less sophisticated and precise than the multipathway analysis. Nonetheless, EPA prefers it to any of the available alternatives. If EPA set no exit levels and made wastes containing any of these constituents ineligible for exit, a significant number of waste streams would probably be ineligible, even though they may pose no significant threat to human health and the environment. EPA's RIA data shows that some of these constituents, such as Cyanide and Anthracene, are fairly prevalent. Although other constituents, such as those found in the commercial chemical products on the P and U lists of hazardous wastes, are not very prevalent, they may be significant for generators that manage multiple waste streams in centralized wastewater treatment plants. In the absence of extrapolated exit criteria, a generator would lose its opportunity to claim an exit for an entire combined stream if any of these constituents is found in the waste stream. Furthermore, it would take a long time to complete the work necessary to conduct exposure pathway assessments for any significant number of these 187 constituents.

Alternatively, EPA could propose to allow wastes to exit without testing for constituents lacking modeled exit levels. EPA, however, finds this approach insufficiently protective, especially when it can at least approximate likely risk levels as described above.

Finally, EPA considered the alternative of basing exit levels for these constituents on quantitation limits. As explained below, EPA is proposing to use EQCs as exit levels where they are higher than a constituent's multipathway or extrapolated exit level. (EPA is also proposing that wastes with such constituents meet the technology-based LDR standards for those constituents prior to exit.) EPA considered using this EQC and LDR approach for constituents lacking multipathway levels. Such an approach would actually produce more conservative exit levels, because EPA would not use extrapolated levels that are higher than EQCs. EQCs (and technology-based LDRs), however, are not based on risk. EPA prefers the extrapolated approach because it takes into account the toxicity and fate and transport of structurally similar chemicals. EPA believes it would be unreasonable to continue to regulate a chemical because chemistry can detect it, where the extrapolation described above suggests that the chemical poses no significant risks at the EQC level.

EPA finds the option of basing exit levels on the extrapolation procedure described above to strike a reasonable balance between the goals of protecting human health and the environment and eliminating regulation of low-risk wastes. EPA, however, requests comment on all of the alternatives described in this section.

I. Analytical Considerations

Some of the proposed exit levels established by the risk assessment and the extrapolation methodology are low. In some cases, existing analytical methods cannot routinely detect the constituents at those levels. EPA is proposing to cap these potential exit levels with reasonable analytical quantitation limits. The Agency is proposing quantitation limits that represent the lowest levels that can be reliably measured within acceptable limits of precision and accuracy during routine laboratory operating conditions using appropriate methods. These concentrations are referred to as "exemption quantitation criteria," or EQCs. It is necessary to specify EQCs because a number of the constituents on the exemption list have either modeled or extrapolated risk-based levels that are not analytically achievable in all matrices. Appendix C to today's preamble lays out the comparison between the modeled or extrapolated risk level and the EQC for every constituent. Approximately one-quarter of the constituents have proposed modeled or extrapolated risk-based levels lower than EQC.

1. Development of Exemption Quantitation Criteria (EQC)

To develop the EQCs proposed in today's notice, EPA compiled a master list of the quantitation limits published for the identified constituents in the Third Edition of Test Methods for Evaluating Solid Waste, (SW–846), including the first and second updates (both of which are widely distributed throughout the regulated community). The Agency believes that the resultant EQCs present achievable quantitation limits for the proposed exemption constituents in most matrices. The Agency requests comment on the proposed quantitation limits as well as any data supporting those comments.

A regulatory action level (e.g., exit levels) must provide a clear distinction between those wastes subject to the regulation and those excluded. Action levels based on analytical determinati ..as within a methods quantitative ..ange can be used to determine regulatory status with a high degree of confidence. On the other hand, when an analyte is present at a concentration equal to the detection limit (DL) it will be detected only half the time. In other words there is a 50% risk of a false negative result when the analyte is present at the DL concentration. There is, however, a less than 1% risk of false positive results at this level. Therefore, regulations set at the detection limit would not identify non-compliance reliably.

The Agency is in the process of re-evaluating EQCs for some constituents. Preliminary updated EQCs could not be incorporated into today's proposed rule, but have been included in the docket for comment.

2. EQCs and LDR Requirements as Exit Levels

A comparison of the modeled or extrapolated risk-based levels with the EQCs reveals a number of cases where

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quantitative measurement of analyte concentration at the modeled or extrapolated risk-based level cannot be reliably achieved, using standardized analytical methods. In today's proposed rule, for wastes containing constituents with a modeled or extrapolated risk-based level lower than the EQC, exit criteria include meeting the EQC along with an additional requirement that the waste meet Land Disposal Restrictions (LDR) treatment standards from part 268, regardless of whether or not the waste is to be land disposed. The exit table for constituents with EQCs as exit levels is proposed appendix X of 40 CFR part 261, Table B.

a. EQCs as exit levels

Only when the comparison between the modeled or extrapolated risk-based level with that constituent's EQC level reveals that the constituent cannot be quantitated at the modeled or extrapolated risk-based level, does the EQC become the exit level. For example, the modeled risk-based level for 2-nitropropane in wastewaters is 0.00019 µg/L. The EQC for 2-nitropropane in wastewaters is 0.0058 µg/L. 2-nitropropane is listed in appendix X, Table B, with an exemption level of 0.0058 µg/L. In other words, the exemption level for 2-nitropropane has been met if the claimant demonstrates that the method used can achieve the EQC of 0.0058 µg/L in the waste matrix, and the level detected by the method does not exceed 0.0058 µg/L.

The Agency believes that, for those constituents that have a modeled or extrapolated risk-based level lower than the achievable quantitation limit, demonstration that the constituent is not present above the EQC is the most reasonable approach to setting a national exemption level. The Agency is proposing that quantitation limits cap the modeled or extrapolated risk-based levels because a reliable, consistent measure of the constituent below the quantitation limit is not achievable. By establishing EQCs as benchmarks (or maximum allowable quantitation limits), the Agency is ensuring that all exemption demonstrations will achieve acceptable analytical sensitivity, and that wastes with high levels of contamination that tend to confound analytical protocols are not exempted.

The Agency requests comments on whether an exemption demonstration should be considered adequate if all proper method selection and QC procedures are followed and the constituents are not detected, even though the EQC level has not been analytically attained. This situation could arise even in relatively clean matrices if the constituents bind strongly to the matrix or if the constituents degrade rapidly during the analysis. However, the Agency would not want the exemption to be allowed if the EQC could not be achieved because of interference from other contaminants in the matrix, or if inappropriate methodology, i.e., sample preparation, cleanup (if necessary), or determinative, was used.

EPA is not proposing that any exit level based on an EQC can serve as a "minimize threat" level capping current 40 CFR part 268 treatment standards. Such levels are not sufficiently related to a constituent's risk.

b. LDR Requirements for Constituents With EQC Exit Levels

EPA considered the option of setting exit levels for all constituents at their modeled or extrapolated levels, regardless of analytical considerations. EPA also considered the alternative of making wastes containing constituents with analytical limitations ineligible for exit. Both of these options, however, are likely to constrain significantly the number of waste streams eligible for exit. Approximately one-quarter of the constituents on the exit list have EQCs above risk-based or extrapolated levels. Some of these constituents, such as Beryllium and Arsenic, are fairly prevalent. For less prevalent constituents, EPA has the same concerns about limiting exit for wastes managed in centralized wastewater treatment systems that it described above in the section on extrapolated risk levels. Further, this approach would overregulate wastes where constituents were in fact below risk levels. EPA prefers options which would not prohibit all wastes with these constituents from exiting.

The most promising alternative EPA found was setting exit levels for these constituents at EQC levels, and also requiring all wastes containing these constituents to comply with LDR treatment standards, even where such waste are not destined for land disposal. This alternative offers the possibility of additional risk reductions and, therefore, reduces the possibility that wastes posing significant threats will escape Subtitle C control.

EPA is unable to characterize the amount of additional risk reduction for a number of reasons. First, as explained in more detail in the Minimize Threat section of the preamble, compliance with LDRs already will be required after exit before land disposal for all wastes (except those that are below exit levels at their point of generation). The LDR requirement for constituents with EQC exit levels may provide additional risk reduction, even for those constituents that are not managed in land disposal units. EPA currently does not know how frequently nonhazardous wastes are burned as fuel, incinerated, or otherwise managed outside of land disposal.

Additionally, the Universal Treatment Standards (UTS) for nonwastewaters, were developed based on similar analytical chemistry considerations of detection limits. The majority of the UTS limits for nonwastewaters were based, however, on analysis of residuals from the treatment of what EPA determined to be the most difficult to treat wastes and, as a result, this often represented the most difficult to analyze treated matrix (i.e., higher detection limits than those represented by the EQCs). The majority of the UTS limits for wastewaters, on the other hand, were not developed based on limits of detection but rather they were based on analysis of treated effluents regulated under EPA's National Pollution Discharge Elimination System (NPDES).

LDR requirements for all wastes subject to the UTS would be equal to or higher than the EQC exit levels themselves. However, for wastes subject to treatment standards based on application of specified treatment methods under § 268.40, extending LDR requirements may provide additional risk reduction.

EPA believes that the combined approach of requiring non-detection at EQC levels and compliance with LDR standards for all waste streams, regardless of whether or not the waste will be land disposal, offers a reasonable balance between the goals of reducing overregulation and ensuring that wastes with significant risks remain subject to Subtitle C. EPA, however, requests comment on all of the alternatives described above. EPA also requests comment on the option of basing exit levels for these constituents on EQCs alone and relying on continued, independent applicability of LDR requirements for wastes that exit and are destined for land disposal.

3. Exemption for Constituents Without EQCs

There are several constituents covered in today's notice for which EQCs could not be developed. The universe of these constituents includes 78 constituents, most of which are not widely prevalent in wastes. Most are also found only in P and U listed wastes. These constituents are listed in table B to appendix X without associated exemption levels. The background document *Background Document to Support the Development of Exemption Quantitation Criteria (EQCs) and Description of Analytical Methods under the Waste Exit Rule* explains why EQCs could not be created.

EPA is proposing that wastes containing these constituents (i.e., where an applicant has not documented that these constituents are not present—see section VIII.A.1.b.,) may remain eligible for an exemption under today's proposed rule by complying fully with LDR treatment standards applicable to the waste, as codified in 40 CFR part 268, regardless of whether the waste is to be land disposed. The Agency believes that any potential risks posed by these constituents are likely to be further reduced by applying LDR standards from part 268 to the waste, before the waste may be exempt, regardless of whether or not the waste is destined for land disposal. The Agency asks for comment on this approach.

An alternative approach would be to allow wastes with these constituents to exit without additional LDR obligations, but relying on continued, independent applicability of LDR treatment requirements to wastes destined for land disposal only. Another approach would be to prohibit wastes containing these constituents from being eligible for exemption under today's proposed rule. An additional approach would be that these constituents could be deleted from the exit table. The Agency requests comment on each of these alternatives.

EPA is not willing to propose to use LDR standards as exit levels for any other group of constituents. The technology-based LDR standards are not based on any risk assessment. A comparison of these standards with the multipathway risk levels that EPA produced shows that the LDR standards are sometimes more stringent and sometimes less stringent than risk-based levels. EPA believes that it is more prudent to base exit levels on risk assessment where possible because this better assures protection of human health and the environment. EPA views use of the LDR standards as the option of least preference, but necessary for exit for this group of constituents. EPA is willing to consider it only where there is no alternative to prohibiting a constituent from being eligible for exit.

V. Presentation of Exit Levels

Today's proposed exemption criteria involves setting exemption levels for toxicants in listed waste, and in some cases requiring additional compliance with the requirements set forth at 40 CFR part 268. To exit Subtitle C regulation as a listed hazardous waste, all the hazardous constituents listed in appendix X of part 261 would be required to be in concentrations less than or equal to the numeric exit levels and when specified, the waste would have to meet the applicable requirements at 40 CFR part 268. Appendix C to the preamble presents constituents, distinguishes between modeled and extrapolated constituents, and includes EQCs for each constituent.

A. Constituents With Modeled or Extrapolated Risk-Based Exit Levels

The Table A of proposed appendix X to part 261 presents exit levels for constituents with modeled or extrapolated risk-based levels which can be reliably quantified. See section IV.H. for a description of how this was determined. Listed hazardous waste would be required to contain concentrations at or below the specified exit levels to be eligible to be exempted from Subtitle C requirements other than LDR. In some cases we are proposing to change the land disposal restriction requirements at 40 CFR part 268 as well. A totals analysis would be required for both wastewaters and nonwastewaters to show that the constituent does not exist in the wastestream at levels above the exemption level.

For nonwastewaters, the Agency is also proposing that generators either use the TCLP test or a calculational screen to measure or calculate constituents' leachate from wastes. If the TCLP test shows leachate concentration in the waste is below the leach exit level, the waste would be considered to not pose a hazard to groundwater.

The Agency has in the past experienced difficulty in using the TCLP test for some types of waste. The Agency solicits comment on how to consider oily wastes and other wastes that are difficult to filter in the TCLP test or whose impact on groundwater is believed to be underestimated by the TCLP (such as materials subject to non-aqueous phase transport). Comment on alternative tests for these wastes, as well as comment on how to define such wastes for regulatory purposes is sought. A more complete discussion of oily waste can be found in VIII.A.1.a.iv.

Table A of appendix X of 40 CFR part 261 presents results of two alternatives for establishing the exit levels. These alternatives differ only in the benchmark used to calculate the modeled risk-based levels. For certain constituents there exists both a risk-based toxicity benchmark and a maximum concentration level (MCL) established under the Safe Drinking Water Act (SDWA). These numbers may differ because the MCLs are established using some non-risk considerations such as the cost of treatment and the availability of technology and consider exposure contributions from other sources for non-carcinogens. See section IV.D. of today's proposal for a complete discussion of toxicity benchmarks and MCLs.

B. Constituents With Quantitation-Based Exit Levels; Table B to Appendix X

Table B of proposed appendix X to part 261 presents quantitation-based exit levels for constituents with methods that cannot reliably quantify the modeled or extrapolated risk-based levels. All exit levels on Table B of appendix X to 40 CFR part 261 are based on EQCs. (See section IV.I.) Wastes containing any of these constituents must *also* comply with the applicable treatment standards set forth at 40 CFR part 268, the Land Disposal Restrictions (LDR) in order to meet today's proposed exemption, regardless of whether or not the waste is to be land disposed.

Some constituents on Table B of appendix X of 40 CFR part 261 do not have associated exit levels. Waste with these constituents may exit only after complying with the LDR treatment standards for the waste. (See section IV.I.2.b.)

C. How To Read the Exit Level Tables

For a waste to be eligible to exit Subtitle C under the exit proposed in today's rulemaking, every constituent in the waste must be below its exit level. Proposed appendix X of 40 CFR part 261, Tables A and B are the exit constituents and the exit levels. The following is a description of how to read the tables.

- The constituent list is derived from constituents listed in appendix VII, Basis for Listing Hazardous Waste; Appendix VIII, Hazardous Constituents; and appendix IX of part 264, the Ground-Water Monitoring List. (See section IV.C.)
- Table A represents constituents and their risk exit values—where the risk values can be measured analytically. (See sections IV.E., and IV.I.)
- Table B represents constituents with quantitation limits (EQCs) as exit levels—where the constituent cannot be measured at the modeled or extrapolated risk value. An additional condition of exit, compliance with treatment standards in 40 CFR part 268, exists for any waste becoming exempt under today's rulemaking by using a constituent exit level on Table B. (See section IV.I.2.b.)
- There will be overlap for some constituents between Tables A & B. For

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example, the wastewater exit level for a constituent may be on Table A, whereas the nonwastewater exit level may be on Table B.

• Where an exit level does not exist on Table A or B for a particular constituent, the waste need not be tested for that constituent. For example, some constituents that are hydrolyzers have exit levels for nonwastewaters, but not for wastewaters. A complete discussion of deletions to the master constituent list can be found in section IV.C.

The tables' columns:

• Columns 1 and 2 are the CAS numbers & constituent names.

• There are two proposed options for the development of today's proposed exit levels. Option 1 is the option whereby Maximum Contaminant Levels (MCLs) from the Drinking Water program are used as an acceptable toxicity exposure for human drinking water exposure and toxicity benchmarks are used for other exposures. Option 2 is the option whereby toxicity benchmarks are used as acceptable exposure levels for all exposures. A more complete discussion of these two options is found in section IV.D. of today's proposed rule. The effect of co-proposing these two options is that there are two independent sets of proposed exit levels.

—Columns 3, 4, and 5 represent the exit levels that were derived by using an MCL benchmark for drinking water ingestion & using toxicity benchmarks for all other routes of exposure.

—Columns 6, 7, and 8 represent the exit levels that were derived by using toxicity benchmarks for all routes of exposure.

• The definitions of wastewater and nonwastewater are discussed in VIII.A.1.a.ii.

• Columns 3 & 6 represent wastewater exit values. If a generator determines he/she has a wastewater, if each constituent in the waste meets these wastewater exit levels, it is eligible for exemption.

—Values in columns 3 & 6 were derived from the most limiting of non-groundwater-ecological receptor, non-groundwater-human receptor, and groundwater pathway values from surface impoundments and tanks (the risk assessment's wastewater units).

• Columns (4 and 5) and (7 and 8) represent nonwastewater exit values. If a generator determines he/she has a non-wastewater, if each constituent in the waste meets both of these nonwastewater values, it is eligible for exemption. The totals level must be met by a totals analysis. The leach level must be met by a TCLP test or the calculational screen.

—Values in columns 4 & 7 were derived from the most limiting of the non-groundwater-ecological receptor and non-groundwater-human receptor pathway values from land application units, ash monofills, and waste piles (the risk assessment's nonwastewater units).

—Values in columns 5 & 8 were derived from the most limiting of the groundwater pathway values from land application units, landfills, and waste piles (the risk assessment's nonwastewater units).

VI. Minimize Threat Levels

A. *Background*

1. Summary of the Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, allow hazardous wastes to be land disposed of only if they satisfy either of two conditions: (1) They can either be treated or otherwise satisfy the requirements of section 3004(m), which requires EPA to set levels or methods of treatment, if any, which substantially diminish the toxicity of the water or substantially reduce the likelihood of migration of hazardous constituents from the water so that short term and long term threats to human health and the environment are minimized; or (2) they can be land disposed in units satisfying the so-called no migration standards in sections 3004(d)(1), (e)(1), and (g)(5). Land disposal includes any placement of hazardous waste in a landfill, surface impoundment, water pile, injection well, land treatment facility, salt dome formation, underground mine or cave. See RCRA section 3004(k).

EPA was required to promulgate land disposal prohibitions and treatments standards by May 8, 1990 for all wastes that were either listed or identified hazardous at the time of the 1984 amendments, a task EPA completed within the statutory time frames. See RCRA section 3004(d), (e), and (g). EPA is also required to promulgate prohibitions and treatment standards for wastes identified or listed after the date of the 1984 amendments within six months after the listing or identification takes effect. See RCRA section 3004(g)(4).

The land disposal restrictions are effective on promulgation. See RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity that protects human health and the environment will be available. (RCRA section 3004(h)(2).) The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year when an applicant(s) successfully makes certain demonstrations. (RCRA section 3004(h)(3).) See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

As explained in the legislative history, the purpose of the land disposal restrictions is to reduce the risks associated with land disposal. Congress also intended the restrictions to reduce reliance on land disposal and promote waste minimization since land disposal was its least favored method of managing hazardous wastes.

2. EPA's Interpretation of Standard for Treatment Requirements

The heart of the LDRs are the standards for treatment prior to land disposal, which must meet the statutory requirement to "substantially diminish the toxicity of the water or substantially reduce the toxicity of the waste so that short term and long term threats to human health and the environment are minimized." RCRA Section 3004(m): EPA's interpretation of this "minimize threat" requirement has evolved through a long series of rulemakings.

When EPA proposed its first set of LDR treatment standards it took the position that the most effective way to minimize threats was to base standards on the capabilities of generally available treatment technologies. (51 FR 16011 (January 14, 1986).) To avoid unnecessary treatment, however, EPA also proposed to "cap" the technology based standards with risk-based screening levels based on human health toxicity thresholds for individual hazardous constituents and modeling of the groundwater route for exposure. (51 FR 16011–13.)

In the final rule EPA promulgated only the technology based standards. EPA explained that although it believed it had authority to promulgate risk-based standards, it was not promulgating the proposed risk-based caps because of extensive comments raising concerns about the scientific uncertainties of risk analysis. (52 FR 40578 (November 7, 1986).) Industry challenged the final standards, claiming that they required treatment to concentrations below "minimize threat" levels. On review, the Court held that section 3004(m) authorized both technology based and risk-based standards, but remanded the rule to EPA for a fuller explanation of its decision to rely on technology-based standards alone. (*Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355 (D.C. Circ. 1989). ("HWTC III").) The court also held that EPA was not obligated to adopt either the RCRA characteristic test levels or the Safe Drinking Water Act Maximum Contaminant levels (MCLs) as "minimize threat" levels because neither "purports to establish a level at which safety is assured or 'threats to human health and the environment are minimized'." (886 F. 2d at 363.)

In its response to the remand, EPA stated that the best way to fulfill the requirements of section 3004(m) would be to ensure that no technology-based treatment standard required treatment of hazardous waste containing levels of hazardous constituents posing insignificant risks. (55 FR 6641 (Feb. 26, 1990).) EPA, however, explained that it was not yet able to promulgate such levels. EPA believed that it lacked a reliable predictive model for groundwater exposure, needed to assess exposure scenarios for air pathways, needed to consider impacts on ecological receptors, needed to develop additional analytic methods for hazardous constituents, and needed to develop an approach for constituents with threshold effect levels lower than detection limits. (Id. at 6642.)

In the same notice, EPA noted that the "minimize threat" language of section 3004(m) could reasonably be interpreted to require more protection than the "normal subtitle C command that standards be those necessary to protect human health and the environment." (Id. at 6641.) EPA found that the many portions of the 1984 amendments stressing the inherent uncertainties of land disposal buttressed this interpretation. See, e.g., RCRA sections 1092(b)(7), 3004(d)(1)(A), 3004(e)(i)(A), 3004(g)(5). EPA also found support in the legislative history. For example, the Senate amendment containing the "minimize threat" standards replaced a committee bill that only would have required treatment to be "protective of human health and the environment." See S. 757, section 3004(b)(7), printed at S. Pep. No. 284, 98th Cong., 2nd Session 86. Further, EPA noted that the "no threat" levels it had been using in site-specific and waste stream specific contexts, such as clean closures, delistings, and no-migration petitions, would not necessarily be appropriate for generally applicable standards required to minimize threats to health and the environment. (55 FR 6641, note 1.)

At the same time, EPA took the position that section 3004(m) does not require the elimination of every conceivable threat posed by land disposal of hazardous waste, citing a statement by Senator Chafee that "[i]t is not intended that every waste receive repetitive levels of treatment, nor must all inorganic constituents be reclaimed." 130 Cong. Rec. S.9179 (daily ed., July 25, 1984). (55 FR 6641, note 1.) Clearly EPA did not interpret the minimize threat language to require the elimination of all threats.

Today, the Agency is proposing to re-evaluate the basis for some of the existing performance standards established for listed wastes. Since EPA's response to the HWTC III remand in 1990, the state-of-the-art in making quantitative determinations of risk has advanced and available methods have improved significantly. In addition, the increased sensitivity of analytical methods has lowered achievable detection limits, better bioassays exist than in the past, and more extensive biological data is available for extrapolation. As a result, the universe of available health-based and ecological data has grown significantly, and the reliability of this information has improved. The Agency now believes that these data can be used to establish levels that minimize threats to human health and the environment.

B. Risk Assessment and Minimize Threat Levels

1. Rationale

a. Overview

Today the Agency is proposing to establish risk-based LDR treatment requirements for some of the hazardous constituents for which exit levels are being proposed. These risk-based LDR requirements will minimize the short-term and long-term threats to human health and the environment posed by the hazardous waste constituents. The risk-based LDR levels (or "minimize threat" levels) would have the effect of capping, or limiting, treatment of those waste constituents where the current technology-based UTS standards require lower concentrations. EPA also hoped to propose most of these constituent-specific levels as "minimize threat" levels under section 3004(m) of RCRA that would cap current technology-based treatment standards under at these levels the LDR program. However, EPA is proposing "minimize threat" levels only for those constituents that were evaluated under the multipathway risk analysis and are not capped by quantitation (EQC) limitations. EPA is proposing to promulgate such levels as replacements for the constituent-specific treatment levels in the LDR Universal Treatment Standards (UTS). (As explained in more detail in Section VI, EPA is not proposing to cap any LDR standards requiring the use of specified technologies.) As shown on Table 1, § 268.60, EPA is proposing "minimize threat" levels to cap UTS treatment requirements for either the wastewater or nonwastewater (or both) for approximately 70 wastewater constituents and 90 nonwastewater constituents.

EPA, however, is not proposing that any extrapolated levels serve as "minimize threat" levels for LDR purposes. EPA does not have as much confidence that this alternative methodology provides enough information on risks to human health and the environment to enable EPA to determine that risks have been minimized. Similarly, EPA is not proposing that any levels based on quantitation limits serve as "minimize threat" levels. Such levels are not based on any analysis of risks to human health and the environment. In fact, as explained above, EPA is proposing to require compliance with technology-based LDR standards for all wastes which contain such constituents.

If a claimant finds that all constituents in a waste are below exit levels at the waste's point of generation and if the claimant meets all of the requirements for filing an exit claim, EPA will not require compliance with the LDR treatment standards for the waste. EPA will take the position that such as waste never became subject to subtitle C regulations, so that LDR standards never applied to the waste. EPA is proposing to take this position for all exit levels, regardless of whether they were generated by the multipathway analysis, the extrapolation method, or EQC limitations. For further explanation, see section VI.D.

EPA, however, is proposing that all listed wastes which as generated contain constituents exceeding exit levels must meet LDR requirements (current or as modified by this proposal), even if the waste subsequently becomes exempt from hazardous waste regulation under this rule. This requirement resembles EPA's current rules for "de-characterized" wastes, which must meet LDR requirements even after they cease to exhibit the hazardous characteristic that made them subject to Subtitle C in the first place.

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b. "Minimize Threat" requirement of Section 3004(m)

EPA continues to believe that the minimize threat language of section 3004(m) does not require the elimination of every conceivable threat posed by land disposal of a hazardous waste. The legislative history of LDR indicates that Congress did not intend to require wastes to undergo repetitive or ultimate levels of treatment. Rather, Congress wanted to require use of effective, but widely available treatment technologies. See 130 Cong. Rec. S 9178 (daily ed. July 25, 1984) (statement of Senator Chafee introducing the amendment that became section 3004(m).)). Requiring elimination of all conceivable threats would almost certainly require use of the most effective treatment methods available, and this appears to conflict with Congresses' treatment goals. Moreover, although the DC Circuit has cited the dictionary definition of "minimize" to uphold technology-based treatment standards below EPA standards such as MCLs and TC levels, EPA does not believe that the court meant that EPA literally must reduce threats to the maximum extent possible. (See *Hazardous Waste Treatment Council III*, 886 F.2d at 361; *Chemical Waste Management II*, 976 F 2d. at 14.) EPA notes that the court indicated that risk-based treatment standards would satisfy section 30004(m). *Hazardous Waste Treatment Council III*, 866 F.2d at 364–65. Further, in his concurring opinion, Judge Silberman stated that Congress would allow EPA to exercise reasonable amounts of discretion in determining the level of risk reduction needed to meet the minimize threat requirement. Id. at 372.

The Agency believes that today's exit concentrations can serve as risk-based land disposal restriction levels for several reasons. First, the risk assessment, described in Section IV of today's proposal, significantly expands beyond the scope of past Agency risk assessment for wastes and waste constituents. Where adequate data are available, the analysis can evaluate the potential for waste constituent migration through almost all significant environmental fate and transport pathways leading to exposure for human and ecological receptors. As explained in more detail below, the Agency is also relying on reasonable conservative risk targets for both humans and ecological receptors in developing this risk assessment. The Agency believes that the proposed exit levels represent levels below which further treatment would not be needed to minimize threats to human health and the environment.

c. Scope of Risk Assessment

The broad scope of the risk analysis is a critical factor in the Agency's conclusion that proposed exit levels minimize both short term and long-term threats to human health and the environment, for those constituents where data are relatively complete.

The risk analysis evaluates all of the most common non-Subtitle C disposal options available to waste generators and treaters. These include disposal in landfills/monofills and by land farming, and management in surface impoundments, tanks and waste piles. The risk analysis assumes no minimum level of regulation of these facilities, and relies on available data to characterize them. As described in detail in Section IV and in the risk analysis report (EPA 1995), EPA modeled each disposal alternative using median values for most inputs, and high-end or conservative values for the two fate and transport and two exposure parameters for which the modeling outcome is most sensitive. The Agency believes that the modeling will also protect against exposures from similar disposal alternatives not specifically modeled.

The risk analysis evaluates the movement of waste constituents from each of these disposal options through numerous environmental fate and transport pathways. These include pathways involving volatiles and respirable (PM10) particulates, particulate deposition on soil and plant surfaces, vapor phase diffusion into surface water and plants, and surface run-off and soil erosion. Many of these pathways can result in waste constituent movement through the food-chains. Therefore, human exposures resulting from these fate and transport pathways include inhalation, soil or groundwater ingestion, and dermal contact, as well as exposure through consumption of contaminated foods such as fish, beef or vegetables.

EPA screened all multipathway constituents for potential to pose threats to ecological receptors. For 45 constituents, EPA quantitatively assessed likely risk to selected ecological receptors. Risks to both fresh water aquatic and terrestrial organisms were evaluated, representing different trophic levels and feeding habits of the ecosystem. Fish, daphnids, and benthic organisms, mammals, birds, plants, and soil organisms (nematodes, insects, etc.) were evaluated. The sustainability of the ecosystem and reproducing populations within the aquatic and terrestrial ecosystems was selected as an assessment endpoint, as described in Section IV of this Notice and in detail in Chapter 3 of the risk analysis support document (EPA 1995).

In addition, as part of this overall risk assessment effort, the Agency has reviewed and reevaluated its modeling of waste and waste constituent movement through groundwater. As described in Section IV above, this responds to comments by interested parties on the original HWIR proposal, as well as incorporates additional data submitted to the Agency (API data base), and updated modeling of leaching from wastes (new HELP model; get Cite).

In evaluating groundwater, the Agency examined both wells located on the landfill edge and closest wells anywhere down-gradient. Also, both finite source type and infinite-source type constituents (which behave as though there is an infinite supply of the constituent in the landfill, and will continue to leach forever) were evaluated. For finite source type constituents, the available constituent was not apportioned over the groundwater and other pathways, i.e., groundwater was modeled separately. Adsorption to soil and degradation of waste constituents (but not biodegradation) is modeled, and the toxicity of constituent daughter products (either more or less toxic than the parent compounds) is included. (There is a biodegradation module to the model; however, data to run that module for national conditions are not adequate at this time, although data were available for some sites. The Agency will continue to evaluate biodegradation data as they become available, and assess in the future whether national biodegradation estimates can be defensibly made). Leaching and groundwater migration from disposal in unregulated industrial landfills, surface impoundments, and waste piles have been modeled.

In evaluating the results of this series of groundwater modeling exercises, the Agency selected the approximate 90th percentile from a distribution of wells closest to modelled sites. This means that there is about a 90% probability that the drinking water well closest to the landfill would be protected at the target concentration (MCL or HBN). All wells more distant would be protected to a greater extent.

As described in section VI.E. above, the Agency then reviewed the risk assessment for groundwater and the pathways for each constituent, and selected as the exit level the concentration, back-calculated to the waste, from the most limiting (or highest risk) pathway. By using the most limiting pathway as the basis for the risk criterion, the Agency believes it has accounted for all significant risks resulting from disposal and management of the waste outside of Subtitle C.

The agency believes it is also important to identify and discuss some of the limitations of the risk assessment, especially as they relate to determining whether short term and long-term threats to human health and the environment have been minimized.

The analysis does not account for additivity of risk for exposure to multiple constituents. Evaluation of risk additivity can be a complex analysis when even a few constituents are included. In the case of multiple waste constituents, potentially occurring in one or more waste streams that might be considered for exit, the complexity of conducting and analysis of additivity of risk quickly becomes overwhelming. However, EPA believes it will often be the case that one constituent typically drives determinations of whether waste streams exit and additivity would often make little difference with respect to the calculated exit levels.

Exposures to the same constituent from several pathways also are not added together, even though the risk analysis does apportion the available quantity of waste constituents over the different pathways evaluated. Again, EPA believes that often one result (in this case, one pathway) would contribute most of the risk and little would be gained from adding across pathways. EPA requests comment on this issue.

Data also were not available for all human exposure routes for all constituents, although data for high-risk pathways were usually available. Nonetheless, the Agency believes the exit levels can be considered to represent levels that minimize threats to human health and the environment because of the comprehensive evaluation of possible exposure routes, consideration of both human and ecologic risk, selection of the most restrictive pathway overall, and the relatively conservative risk target, 10^{-6}, used in setting the exit levels derived from cancer risk estimates.

As mentioned above, EPA conducted a screening analysis to identify 47 high priority constituents for ecological assessment. EPA did not model the ecological impacts for 36 additional constituents that displayed one characteristic indicating potential ecological impacts. EPA is proposing to set minimize threat levels for 19 of these constituents.

EPA believes that it has adequately assured that the caps to BDAT treatment standards proposed today minimize threats to the environment. The specific ecological risk assessment conducted for 45 constituents (19 of which have minimize threat levels under this proposal) is the most extensive EPA has ever conducted under the RCRA program to date. EPA did not find threshold effects data for all seven groups of ecological receptors for any constituent evaluated for ecological risks. Rather, EPA typically had benchmarks for three to five groups. Nevertheless, its consideration of a broad range of species and use of reasonably conservative endpoints ensures that threats to ecological receptors are minimized.

With regard to chemicals that did not undergo this detailed assessment, EPA has conducted an extensive review of risks to human health, including a thorough review of risks posed by indirect pathways and risks posed by constituents that bioaccumulate in plants and animals consumed by humans. (Bioaccumulation is a key concern for protection of many ecological species.) EPA believes that it is reasonable to assume that the exit levels identified by this analysis also minimize threats to ecological receptors unless it has some definite data indicating that additional protection is warranted. Reliance on these levels is particularly appropriate for those chemicals that did not display one of EPA's ecological screening characteristics. EPA finds it also appropriate for the 15 "minimize threat" chemicals which exhibited one ecological screening characteristic. EPA acknowledges that conducting a specific assessment of ecological risks for these 15 constituents would have provided additional assurance that threat to ecological receptors were minimized. EPA solicits comment on the option of declining to set minimize threat levels for these 15 constituents until it can complete an ecological assessment for them.

d. Risk Targets Minimize Threats

The Agency believes that the risk targets used in the risk analysis to back calculate to waste concentrations minimize threats to human health and the environment. For cancer risks to human, a risk target of one in one million, over a lifetime is the risk target. For non-carcinogens, a hazard quotient (HQ) based on a reference dose or other comparable value from the literature could not exceed one (hazard quotient (HQ)=1). Reference doses or comparable values are based on studies of toxicity and no-effect levels in test animals and extrapolated, using safety factors, to humans. For ecological receptors, population effects inferred from individual effects and effects on a substantial number of both aquatic and terrestrial species were evaluated.

Other risk targets may be considered in establishing minimize threat levels. The Agency solicits comment on whether apportionment of the RfD ought to be used in establishing minimize threat levels (i.e., HQ<1). The Agency uses 20% of the Rfd in setting drinking water standards; a similar approach might be appropriate in establishing minimize threat levels and in establishing exit levels. EPA requests comment on this issue.

2. Public Policy Considerations

Finally, the Agency believes that it represents good public policy to reduce or eliminate unneeded or duplicative regulatory requirements. In this case, the Agency believes that for the initial list of constituents listed in Table 1 of 40 CFR 268.60, treatment to the UTS/LDR standard is no longer required beyond waste constituent concentrations where risks to human health and the environment are insignificant. Because there is no purpose in terms of protecting human health and the environment for retaining the more stringent LDR requirements, the Agency is proposing to revise them to the risk-based levels. This would reduce the overall number of different and distinct regulatory requirements on waste generators and treaters, would rationalize the RCRA regulations, and will provide significant pollution prevention opportunities and incentives. Waste generators would have only one target level to direct their pollution prevention effort toward. If generators met the LDR/exit levels, the waste would not be considered hazardous, and no additional treatment would be required before disposal in a subtitle D facility. Where waste continues to exceed one or more exit levels after LDR requirements are met, subtitle C disposal would be required.

C. Risk-based LDR Levels

1. List of Constituents and Minimize Threat Concentrations

As was mentioned earlier in this section, only modeled constituents' risk-level results are eligible to serve as risk-based LDR levels meeting the statutory requirement of minimize threat. In addition, minimize threat levels are only proposed for those constituents where the risk level is higher (less stringent) than the associated

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technology-based treatment standard in § 268.40 or the UTS level in § 268.48.

First, the Agency repeats that it is not proposing to set any alternative risk-based LDR standards expressed as specified technologies (rather than constituent concentrations.) Consequently, the option of complying with minimize threat levels in lieu of levels specified in part 268 will be available only for wastes with treatment standards expressed as constituent concentrations. This includes both wastes subject to waste-specific treatment requirements under the table to § 268.40 and wastes subject to the Universal Treatment Standard levels in the table to § 268.48

The Agency proposes that for purposes of establishing nonwastewater and wastewater minimize threat values for wastes with BDAT treatment standards expressed as constituent concentrations, the levels proposed would utilize the LDR definitions of nonwastewater and wastewater from 40 CFR 268.2(d) and (f). Therefore, any exit levels that are considered nonwastewater for purposes of exit will also be considered nonwastewater for purposes of minimize threat. Likewise, wastewater exit levels will be considered wastewater LDR levels. The Agency believes that consistent definitions of nonwastewater and wastewater is the only practical means to establish minimize threat levels. The Agency realizes, however, that the modeling and subsequent development of exit levels for today's proposed exit did not use the part 268 definition of nonwastewater and wastewater. (A complete discussion of this may be found in section VIII.A.1.a.ii.) The effect of this would be that some wastes that would be defined as wastewaters under today's proposed exit scheme would be considered LDR non-wastewaters. The Agency requests comment on whether the definition in Part 268 should be adopted for purposes of establishing minimize threat levels.

The Agency compared the exit levels to the current LDR treatment levels to determine whether a constituent's risk level should be proposed as a minimize threat level. For wastewater values, the LDR wastewater value was directly compared to the wastewater exit value. Where the UTS nonwastewater level is a total level, the comparison was made to the nonwastewater totals exit level. Where the LDR nonwastewater level is a leach level, the comparison was made to the nonwastewater leach exit level. However, for the reasons explained below, the nonwastewater minimize threat level would contain both a leach level and a totals level. For both wastewater and nonwastewater, where the most comparable exit level is higher (less stringent) than the current LDR level, the constituent's risk level is proposed as an optional minimize threat level. The Agency requests comment on this approach to determining which exit levels are higher than current LDR levels.

The Agency is proposing that testing requirements when using minimize threat levels would be consistent with the current LDR testing requirements found in § 268.7. The Agency proposes that if a claimant wishes to meet LDR requirements by complying with a minimize threat level, the claimant must meet the minimize threat levels with a totals analysis, and where specified, the waste must meet the leach level with a leachate analysis. The Agency believes that a totals analysis is preferable to a leach analysis for establishing minimize threat levels, as it more directly pertains to all pathways, not only the groundwater pathway.

Today's proposed exit levels for nonwastewaters consist of two risk levels for each constituent. The totals (mg/kg) nonwastewater risk level is the result of the most limiting non-groundwater pathway. The leach (mg/L) nonwastewater risk level is the result of the most limiting groundwater pathway. The Agency believes it would be preferable to have one exit level, but the groundwater model results are a leach (mg/l), whereas the results from the multipathway analysis are a totals (mg/kg), and the science to extrapolate from a leach to totals is highly variable. Using only the leach or only the total risk level would reflect only a portion of the risks presented by the waste. A waste must meet both of these limits before it minimizes threats to human health and the environment. Consequently, EPA is proposing to include both levels in the minimize threat standards for nonwastewaters. The Agency proposes to allow generators to either use a calculational screen or perform the TCLP to make a determination that constituent concentrations do not exceed nonwastewater leach minimize threat levels. A full discussion and explanation of the calculational screen can be found in section VIII.A.1.a.iii. of today's proposal.

Because extrapolating from a leach to a total varies with each constituent and is not easily measured, EPA has not directly compared both of the minimize threat levels with the LDR standard. The Agency requests data on specific constituents where the second, less easily-compared nonwastewater minimize threat level may be harder to achieve than the current LDR standard. If such results occur, waste handlers will not be required to use the new minimize threat levels. The levels in the tables to § 268.40 and § 268.48 will continue to satisfy LDR requirements as they always have. The minimize threat levels will be located in Table 1 of § 268.60, are optional, and are intended to be used to provide treatment relief. The Agency believes that minimize threat levels will only be used where they are less stringent than current LDR levels. The Agency requests comment on the proposed revisions to part 268 with respect to minimize threat levels.

Table D–1 of appendix D to the preamble presents for comparison current LDR UTS standards and proposed minimize threat levels. The Agency is proposing that for the constituents listed below, the risk levels may substitute for current UTS treatment levels in 40 CFR 268.48 or for treatment standards for these constituents in 40 CFR 268.40. A table of the proposed minimize threat levels can be found at proposed 40 CFR 268.60 subpart F in the regulatory text following this preamble.

2. Constituents for Which Exit Levels Are Not Minimize Threat Levels

As an alternative to the approach described in C.1 above, the Agency solicits comment on the background data underlying the risk evaluations for these constituents. The Agency believes, in general, that the constituents evaluated in the risk analysis have relatively complete assessments of risk. The Agency recognizes, however, that data quality and completeness can vary among constituents, even for those for which risk can be assessed. The Agency solicits comment on both general criteria for assessing completeness of data, and also specific constituents for which use as minimize threat levels to cap LDR requirements may be inappropriate.

D. Meeting LDR Requirements

1. Wastes Below Exit Levels as Generated

EPA proposes that, if a generator samples a listed waste stream at its point of generation and analysis of the sample shows all constituents to be below exit levels, LDR requirements would not apply to the waste. EPA is proposing this result both for constituents with exit levels based on multipathway analysis (where, since exit levels can serve as LDR "minimize threat" levels that cap current treatment requirements, the LDR program will never require treatment to levels lower than exit levels) and constituents with exit levels based on extrapolation from the multipath analysis or quantitation levels (where, since EPA has not proposed to make exit levels into LDR minimize threat levels,the LDR programs may require treatment to levels lower than exit levels).

To claim this relief generators would have to certify that they sampled their wastes at the point of generation. In the interim between sampling and receipt of analytical results, the generator would be required to manage the waste as hazardous. However, EPA would take the position that this brief period of Subtitle C regulation would not subject the waste to LDR requirements.

EPA believes that position is consistent with its prior interpretations of LDR provisions and the D.C. Circuit's opinion in *Chemical Waste Management II*. At issue in that case was EPA's determination that LDR treatment standards apply to wastes that are characteristically hazardous at the point of generation but that *subsequently* cease to exhibit characteristics and become nonhazardous wastes. EPA took that position to ensure that characteristic wastes receive effective treatment. Without this requirement, for example, it would be possible to dilute characteristic wastes and evade LDR treatment requirements. The Court held that EPA must apply this interpretation consistently to characteristic wastes.

It is not necessary, however, to follow this interpretation for wastes that are generated with all constituent concentrations below exit levels. EPA can reasonably distinguish between wastes that are below exit levels at the point of generation and wastes which achieved such levels at some subsequent time. Only wastes which exceed exit levels at the point of generation need continued LDR applicability to ensure that they reduce constituent concentration or constituent mobility by complying with LDR standards rather than using dilution or some other inferior form of treatment. A generator of wastes that meet exit levels as generated would not use waste treatment to evade LDR requirements. Rather, he or she might use waste minimization techniques to reduce concentration or mobility of constituents in the precursor to his waste.

EPA notes that it is proposing to require listed wastes which exceed exit levels at the point of generation to meet LDR treatment requirements, even if the waste later meets exit levels. EPA believes that this requirement carries out the LDR requirements set out in the Third Third rule and the *Chemical Waste* decision.

Finally, EPA notes that it would be possible to articulate alternative rationales for exempting from LDR requirements wastes which meet today's exit levels as generated. For exit levels based on extrapolations from the multipathway analysis, EPA could argue that extrapolated levels are LDR "minimize threat" levels. EPA, however, thinks protection of the environment is better served by refraining from such a step and requiring wastes which exceed such levels at the point of generation to meet current technology-based LDR standards. (As explained above, EPA is not entirely certain that these extrapolated levels actually minimize risks for all constituents.) For exit levels based on quantitation limits, imposing LDR requirements would not have any practical impact. LDR treatment standards are limited by the same quantitation limits proposed for this rule. Consequently, treatment standards for constituents limited by analytical capabilities are not lower than the exit levels.

2. Wastes Above Exit Levels as Generated

Listed wastes that are above exit levels as generated would be required to be treated to the LDR standards in force at the time if they are placed on the land.

VII. Dilution

The 1984 RCRA Amendments (HSWA) established a vigorous national policy for minimizing the generation of hazardous wastes. Section 1003 of RCRA, as amended in 1984, established a national waste minimization policy stating that "wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible". The policy also cited the need to reduce the volume and toxicity of hazardous wastes which is nevertheless generated. Similarly, section 3005(h) prescribed that effective September 1, 1985, all RCRA permittees who generate waste disposed of, treated, or stored on-site certify, on an annual basis, that the facility has waste minimization programs in place. In addition, section 3002(b) mandates that hazardous waste generators include a certification with their hazardous waste manifests that the generator has a waste minimization program in place and that the proposed method of off-site management minimizes threats to human health and the environment. In concert with these HSWA mandates, it is the Agency's policy to encourage source reduction (*i.e.*, waste minimization) and waste treatment as preferable to disposal and dilution.

EPA has recognized that successful implementation of the land disposal restrictions requires that, in general, dilution be prohibited as a partial or complete substitute for adequate treatment of restricted wastes. The legislative history indicates that such a prohibition "is particularly important where regulations are based on concentrations of hazardous constituents" (H.R. Rep. no. 198, Part I, 98th Congress, 1st Session 38 (1983)).

The Agency also opposes the dilution of hazardous wastes for several technical reasons. Most importantly, dilution is an environmentally inappropriate means to reduce toxicant concentrations because it does not reduce toxicant loadings to the environment. The same mass of toxicant is released to the environment when a diluted waste is disposed as would be if that same waste, prior to dilution, were to be disposed. While mass loading of the environment is itself a serious concern, the potential for environmental damage is magnified when toxicants (for example, pesticides and metals) bioaccumulate in the food chain. In addition, diluted wastes can create an unnecessary demand for scarce solid waste disposal capacity.

For these reasons, dilution is generally prohibited as a means to achieve the exemption levels under today's proposal. Because today's rule proposes to amend the some of the current LDR levels by establishing minimize threat levels, allowing dilution as a means of achieving exemptions would be inconsistent with the ban on dilution included in the land disposal restrictions rule (40 CFR 268.3). In addition, dilution would be inconsistent with the Congressional purpose of encouraging waste minimization. Thus, today's proposed rule specifically prohibits dilution as a means of attaining the exemption levels except as provided under the LDR program under 40 CFR 268.3(b).

VIII. Implementation

Today's proposed rulemaking would establish a generic set of constituent-specific exemption levels for listed hazardous wastes. Wastes with hazardous constituent concentrations below the generic exemption levels would be conditionally exempt from Subtitle C.[5] Today's proposed

[5] Exempted wastes would continue to be solid wastes, and as such would require proper management under subtitle D and other applicable state laws.

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rulemaking would be self-implementing; that is, no prior governmental approval or review of documentation would be required before wastes are eligible to exit. Claimants of an exemption, however, would be required to meet certain prerequisites in addition to the generic constituent concentration levels before the wastes would be considered non-hazardous. These testing and notification requirements are necessary to ensure that only those hazardous wastes which truly meet the exemption criteria exit the subtitle C system. In addition, certain testing and record-keeping conditions would be imposed to maintain the exemption to ensure that the waste continued to be eligible for the exemption. Failure to satisfy the conditions would void the exemption.

A. Implementation Requirements

To make an effective claim, persons would need to comply with the following requirements:

—The waste must be sampled and tested in accordance with a comprehensive sampling and analysis plan prepared prior to conducting sampling and analysis (EPA recommends, as guidance, using the basic elements of sampling and analysis plans described in Chapters One and Nine of SW–846);
—Representative samples collected in support of an exemption proposed in today's notice must consist of a sufficient number of samples to represent the spatial and temporal variability of the waste characteristics;
—The waste must be tested for all hazardous constituents except those that should not be present in the waste as defined by this rule, with documentation supporting determination not to test any constituent available on-site at the time of the notification;
—If the claimant must test for any hazardous constituents on table B of appendix X of 40 CFR part 261, the waste must also meet treatment standards for those constituents listed on UTS table of 40 CFR 268.48;
—A notification must be submitted to the Regional Administrator (or authorized State) (hereafter referred to as the implementation authority), along with
—A certification signed by the claimant's authorized representative attesting to the completeness and accuracy of the notification, and
—Verification that a notice of the exemption claim has been placed in a major local newspaper of general circulation.

Any deficiencies in compliance with these requirements would prevent the exemption from being valid; that is, the waste would not exit the subtitle C system. Claimants would not be able to use their knowledge of the waste alone to make a determination. Furthermore, in order to defend a claim that a waste was exempt under today's proposed rule and thus exempt from hazardous waste regulation, claimants would bear the burden in an enforcement action of establishing that the waste in question met the exit levels and the other requirements for the exemption.

1. Testing Requirements

In today's notice, the Agency is proposing concentration-based exemption criteria below which a listed hazardous waste would be conditionally exempt from subtitle C compliance. To best ensure accurate characterizations of constituent concentrations in these wastes, the Agency is also proposing sampling and analysis requirements for the exemption determination proposed today. Adherence to these requirements, however, does not ensure that the characterization is accurate and representative of a waste on a continual basis. It is the generator's responsibility to ensure that a waste always meets the exemption requirements proposed today for *all* appendix X of 40 CFR part 261 constituents, regardless of which constituents the facility is required to test and how often testing is performed.

To be eligible for an exemption, EPA is proposing that facilities must (1) demonstrate that each constituent of concern is not present above the specified exemption level in the waste, (2) demonstrate that the analysis could have detected the presence of the constituent at or below the specified exemption level, and, (3) where specified, comply with the LDR standards applicable to the waste. Today's proposed rule allows that any reliable analytical method may be used to demonstrate that no constituent of concern is present at concentrations above the exemption levels. It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste.

The Agency will consider that the exemption level was achieved in the waste matrix if an analysis in which the constituent is spiked at the exemption level indicates that the analyte is present at that level within analytical method performance limits (e.g., bias and precision). The Agency prefers this empirical demonstration of method performance through the successful analysis at the exemption level. The Agency requests comment on this and any other approaches to demonstrate method performance.

In general, the Agency is proposing testing requirements that would consist of an initial test to characterize the waste as exempt, followed by subsequent testing to ensure ongoing compliance with constituents of concern. A generator of a listed waste on a one-time basis will only be required to comply with initial testing requirements. Wastes produced on an infrequent (batch) or continuous basis will have to comply with initial testing requirements and subsequent testing requirements as appropriate based on the volume of the waste. The Agency asks for comment on this general approach to testing requirements.

a. Data Evaluation

i. Compliance With the Exit Levels

The Agency is requesting comment on three approaches of data evaluation.

First, the Agency is proposing that, for exemptions under today's proposed rule, generators would be required to evaluate their waste based on the maximum detected concentrations of the exemption constituents. If any constituent concentration is greater than its specified exit level, then the waste would be ineligible for exemption under today's proposed rule. One advantage of this approach is that facilities can use process and waste knowledge to determine the appropriate number of representative samples without relying on a complex, potentially costly statistical approach to determine an appropriate number of samples. However, generators will need to be sufficiently knowledgeable about their waste and process to make an unbiased determination regarding the appropriate number of samples. Actual sample representativeness might be difficult to verify or otherwise assess (on a statistical basis). Finally, the level of uncertainty associated with the results cannot be defined. Because of this, under this approach, a single composite sample that validly exceeds the HWIR exit levels would indicate that the waste is hazardous and must be handled in Subtitle C.

Second, the Agency requests comment on also allowing a second data evaluation method whereby the analytical results are evaluated in terms of an upper confidence limit around an average concentration. An example of one method for determining an upper confidence limit is presented in the statistical approach found in Chapter Nine of SW–846 (Third Edition, as amended by Updates I, II, IIA, and IIB),

where, for the purpose of evaluating solid wastes, the probability level (confidence interval) of 80 percent is used. Sample measurements for which the upper limit of the 80 percent confidence interval about the sample mean is below the regulatory level for the chemical contaminant are not considered to be present at levels of regulatory concern. One main advantage of this approach is that the number of samples is statistically determined and thus it eliminates any bias that might otherwise be introduced when using knowledge to determine the appropriate number of samples. In addition, the level of uncertainty associated with the results can be determined. However, the main disadvantage of this approach is that it could be more costly for some facilities than the proposed approach. For example, it might require multiple rounds of sampling to determine the mean and variance. Highly variable wastes may require the collection of many more additional samples than might otherwise be determined to be necessary using the first approach. However, this statistical approach allows occasional samples to be above exemption level, as long as the upper confidence limit of the data overall is below the exit level.

The Agency also requests comment on a third data evaluation method that would allow facilities to use long-term average data to demonstrate compliance without consideration of the upper confidence limit. A rolling average of samples would be taken over the course of a year on a schedule determined by the initial sampling and analysis plan. As long as the average of the samples was below the HWIR exit level, the waste stream would be considered non-hazardous. This approach would have the advantage of being simpler than the second option, while allowing occasional exceedences of the exit levels by single samples, as long as the average concentration is below exit levels.

EPA has modelled risk with the assumption that the constituents of concern are uniformly distributed within the waste at the exit concentrations. In discussion with the Hazardous Waste Identification Dialogue Group, some representatives noted that actual levels might need to average significantly below the exit levels if the exit criteria are to be consistently met. The second and third data evaluation methods discussed above help address this issue.

However, EPA and the States have noted that the only practical approach for enforcement purposes is to independently collect samples for analysis (which may represent a composite of materials spatially or over a short time span) and to set up the regulation so that an exceedence by any single composite sample during an inspection could constitute a violation. It would then be the responsibility of the generator to refute this, using historic sampling data and possibly additional samples to show that the sample exceedence does not constitute an overall violation of the HWIR levels.

EPA believes it is important to retain the practical approach whereby a single composite sample of a waste at some arbitrary point in time or space during a short visit is considered sufficient for enforcement purposes. However, because the exit numbers were modeled based on long-term average concentrations, the Agency requests comment on allowing occasional exceedences as long as the average concentration meets the exit level.

In addition to the concern about enforceability, however, EPA has identified two additional concerns about using average concentration to determine compliance. First, not all waste streams would be disposed of in the same place. Thus the wastes may on average be in compliance when they are generated, but the wastes arriving at the disposal site (possibly from multiple sources) may not be, on average, below the exit levels. Second, EPA has not modeled the constituents for acute risk. While the average concentration of constituents may be below the exit levels, the occasional "high" concentration may be of concern due to acute health or ecological effects.

One possible way to address some of these concerns is, in addition to requiring that the average meet the exit levels (as in the second and third data evaluation methods), EPA could require that all samples be below some "peak" concentration.

Under this approach, if the average concentrations are below the exit levels, and all individual samples are below the higher peak level, then the generator would be in compliance and need take no further action to support the exemption. EPA or a State would then be able to confirm waste status without total reliance on the generator's data and without the expense of periodic sampling by EPA or the State. EPA requests comment on this issue, including any information on setting peak levels.

For any of the three data evaluation approaches, representative samples must be collected in support of exemption under today's proposed rule, consisting of a sufficient number of samples to represent the spatial and temporal variability of the waste characteristics, regardless of how the sample number is determined.

For the identification and handling of "outliers", the Agency is recommending that testing for outliers should be done if an observation seems particularly high or low compared to the rest of the data set. If an outlier is identified, the result should not be treated as such until a specific reason for the abnormal measurement can be determined (e.g. contaminated sampling equipment, laboratory contamination, data transcription error). If a specific reason is documented, the result should be excluded from further data evaluation. If a plausible reason cannot be found, the observations should be treated as a true, albeit extreme, value and not excluded from the data evaluation, as waste composition can vary. The Agency solicits comments on implementable techniques for the identification of analytical outliers.

The results of the tests of all of the constituents on the exemption list would be required to show the constituent concentration to be at or below the exit level in order for the claimant to be eligible for an exemption. In the case where a constituent's exit level is based on the quantitation criteria (EQC, as described in section IV.E.), in addition to showing a non-detect at the exit level, the waste would be required to meet applicable requirements set forth at 40 CFR part 268. Certain facilities may have difficulty quantifying a constituent at the exit level due to matrix interference effects, but the Agency expects exempted wastes to have relatively clean matrices such that exit levels should be able to be achieved. The Agency believes that the exit level must be met in order for a waste to exit Subtitle C; therefore, waste streams that cannot meet exit levels would not exit under today's rule. The Agency asks for comment on this approach.

ii. Wastewater and Nonwastewater Categories

Throughout today's proposal and background documentation, all of the exit levels have been described as being applicable to two categories of wastes using the terms wastewater and non-wastewater[6]. EPA used these terms as an initial means of distinguishing two waste categories that are inherent to how the exit levels were developed, by taking into account how these wastes

[6] The terms "wastewater" and "non-wastewater" are used generically in today's preamble and rule, and do not represent the land disposal restriction definitions in 40 CFR 268.2(d) and (f), although one option EPA is requesting comment on in this section is the use of those definitions.

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will be managed (i.e., stored, treated, and disposed), and also how the wastes would be expected to behave in the environment. In the development of the exit levels, several waste management units were evaluated in the underlying risk analysis. The units chosen for evaluation were those that are considered most likely to manage the types of wastes that would be expected to exit Subtitle C regulation under today's exemption. Although these units will likely receive to some degree both forms of waste, in general there are technical, physical, and sometimes legal constraints on what types of waste are managed in each. The Agency considered ash monofills, waste piles, and land application units as typically managing waste materials that can be considered "solid" or "non-wastewater," while tanks and surface impoundments typically manage "liquid" or "wastewater." Based on these assumptions, results from the analysis of risk from these specific waste management units were then used to generate the corresponding exit levels for non-wastewater and wastewater.

In considering how to develop final definitions and terms for these two waste categories, the Agency's goal is to establish definitions that are clear, concise, and easily distinguishable from other similar terms such that a generator can readily determine which set of exit levels to apply to the waste being evaluated for the exemption. EPA requests comment on three options for defining these two waste categories to determine which set of exit levels to apply to a listed waste eligible for today's proposed exemption. EPA emphasizes that these definitions will only apply in the context of today's exit rule.

The Agency also requests comment on whether it is reasonable in all three options to allow a generator the alternative options of separating in the laboratory the solid (or nonwastewater) portion of the waste from the liquid (or wastewater) portion of the waste, analyzing the resultant portions, comparing the results to the corresponding exit levels, and treating the waste as exempt if all exit levels are met in both portions.

Option 1: Using Percent Solids—EPA prefers the option of defining the two categories of exit levels as "solid" and "liquid" exit levels, where the distinction between solids and liquids is based upon the percent solids content of the waste, as determined using Section 7.1 of the Toxicity Characteristic Leach Procedure (TCLP) in SW–846. Specifically, the option would define wastes containing 15 percent solids by weight or greater as solids,[7], while wastes with less than 15 percent solids by weight be defined as liquids. EPA believes that the 15 percent cutoff is a reasonable distinction between the two categories of exit levels, for the following reasons. Because there are general prohibitions on liquids or wastes containing free liquids in non-hazardous waste landfills accepting municipal wastes, the Agency does not envision wastes containing less than 15 percent solids being managed in these units. Similarly, it is unlikely that waste containing less than 15 percent solids will be stored in waste piles due to obvious physical limitations. For land application units, EPA believes that 15 percent solids content by weight is a reasonable lower limit for the types of wastes typically managed in these units; indeed, this was the value used in the land application unit scenario in the groundwater modeling portion of the risk assessment underlying today's exit levels.

Because of these limitations, EPA believes that wastes containing less than 15 percent solids will more frequently be managed in the types of units associated with wastewater treatment, such as tanks and surface impoundments. In fact, EPA believes that many wastes falling into the liquid category under this definition, that can realistically exit under today's proposed exit rule, will likely be wastewaters that have undergone treatment and that contain much less than 15 percent solids. EPA presumes that in many cases the separation of water from solids will be occurring as part of routine wastewater treatment, and generators will be either be evaluating the solid residues (which would clearly meet our solid definition), or the treated water, much of which is currently discharged under the Clean Water Act and therefore likely has limits on the amount of solids present.

EPA also requests comment on alternative ways of determining percent solids content, including generator knowledge of the waste or results of previous analyses. The Agency believes that in many cases, particularly for fairly dry or fairly wet wastes, the generator can immediately ascertain from a visual inspection that the percent solids content is well above or well below the 15 percent solids value.

[7] EPA will avoid use of the term "solid waste" when describing the category of exit levels that are defined as solids under this option in today's proposal. This is to avoid confusion with the existing term "solid waste" in the RCRA program, which has specific statutory and regulatory definitions, which have no relationship to whether a waste is a physically a solid or a liquid.

Option 2: Using LDR Definitions—EPA also requests comment on the use of the same terms and definitions currently used under the land disposal restrictions. Wastewater is defined as waste containing less than 1 percent total suspended solids (TSS) and less than 1 percent total organic carbon, or TOC (40 CFR 268.2(f)). Non-wastewater is defined as any waste that is not a wastewater (40 CFR 268.2(d)). The principle advantage of this approach is it allows the use of consistent definitions for wastewater and nonwastewater in both today's exit system for listed wastes, and the LDR program. The advantage of this consistency is particularly apparent for those cases where LDR treatment standards are conditions of exit under today's rule. One disadvantage of this approach is that it defines wastes containing greater than 1 percent TSS as non-wastewater, even though these wastes will likely be managed in wastewater treatment systems using tanks and surface impoundments, which is inconsistent with the way in which the results from the risk analysis were used in developing exit levels. The Agency requests comment on this approach as an alternative to Option 1.

Option 3: Using the Paint Filter Liquids Test—The third option is to use the terms "liquid" and "solid" as in Option 1, but to use EPA Method 9095 from SW–846, the Paint Filter Liquids Test, to determine whether the waste being evaluated for exit is a liquid or a solid. Under this option, any waste determined to contain free liquids using Method 9095 would be considered a liquid, and the exit numbers currently in the wastewater category would apply to that waste. Conversely, a waste would be defined as a solid, and the nonwastewater exit levels would apply, if the waste does not contain free liquids using Method 9095. Under this option, EPA realizes that many wastes appearing like solid materials would actually be defined as liquids.

Method 9095 is presently used in defining the term "liquid waste" in the solid waste disposal facility criteria, for determining compliance with the prohibition on disposing of bulk or containerized liquid in municipal solid waste landfills (see 40 CFR 258.28). Method 9095 is also used in determining compliance with the prohibition on bulk or containerized liquids in hazardous waste landfills (264.314(c)).

iii. Totals and TCLP Analyses

Today's rule proposes that the claimant would be required to test the waste for which today's exemption is being claimed to prove that constituent concentrations in the waste do not exceed the exit level(s) for each constituent that should be present in the waste.

The claimant would determine which category of exit levels would apply (e.g., wastewater or nonwastewater) to his waste. In a previous section of today's rule, the Agency requests comment on several options to define these two categories. For a wastewater waste to be eligible for exit, every constituent in the waste must comply with the wastewater total constituent exit concentration. For a nonwastewater waste to be eligible for exit, every constituent in the waste must comply with the nonwastewater total constituent exit level as well as the nonwastewater leach exit level.

A test for total concentration would be required for each constituent in the waste regardless of whether the waste is a wastewater or a nonwastewater to determine that the total constituent exit concentration has not been exceeded. For non-wastewaters, a claimant must also prove that the measurable leachate concentrations do not exceed the nonwastewater leach exit levels. The Agency proposes to allow claimants to either use a calculational screen or to use the Toxicity Characteristic Leaching Procedure (TCLP, Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846) to make a determination that constituent concentrations do not exceed nonwastewater leach exit levels. Discussion concerning the methodology of a calculational screen is described below.

Section 1.2 of the TCLP allows for a compositional (total) analysis in lieu of the TCLP when the constituent of concern is absent from the waste, or if present, is at such a low concentration that the appropriate regulatory level could not be exceeded.

For wastes that are 100% solid as defined by the TCLP, the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by 20. The dilution factor of 20 reflects the liquid to solid ratio employed in the extraction procedure. This value then can be compared to the appropriate regulatory concentration. If this value is below the regulatory concentration, the TCLP need not be performed. If the value is above the regulatory concentration, the waste may then be subjected to the TCLP to determine its regulatory status.

The same principal applies to wastes that are less than 100% solid. In this case, however, both the liquid and solid portion of the waste are analyzed for total constituency and the results are combined to determine the maximum leachable concentration of the waste. The following may be used to calculate the maximum theoretical concentration in the leachate.

$$\frac{[A\times B]+[C\times D]}{B+\left[20\frac{L}{kg}\times D\right]}=E$$

where:

A = Concentration of the analyte in liquid portion of the sample (mg/L)
B = Volume of the liquid portion of the sample (L)
C = Concentration of the analyte in the solid portion of the sample (mg/kg)
D = Weight of the solid portion of the sample (kg)
E = Maximum theoretical concentration in leachate (mg/L)

If:

$E<exit_{leach}$

Then: A TCLP need not be performed for this constituent because, even if 100% of the constituent leaches, the TCLP results would be less than the regulatory leach standard. This calculation is adequate proof that this waste is at or below its leach exit level.

The above calculational screen may be used by a claimant in order not to perform the TCLP. The screen may be used to determine that a total analysis of the waste demonstrates that individual contaminants are at such low concentrations that the nonwastewater leach exit level could not possibly be exceeded, thus eliminating the need to run the TCLP.

Example: To illustrate the calculational screen, the following example is provided: An analyst wishes to determine if a leach processing sludge could fail the nonwastewater leach exit level for lead. The sludge is reported to have a low concentration of lead, and the analyst decides to perform a compositional analysis (totals test). A representative sample of waste is subjected to a preliminary percent solids determination as described in the TCLP. The percent solids is found to be 90%. Thus, for each 100 grams of this waste filtered, 10 grams of liquid and 90 grams of solid are obtained. It is assumed for the purpose of this calculation that the density of the filterable liquid is equal to one. The liquid and solid portion of the sample are then analyzed for total lead. The following data are generated:

Percent solids = 90%
Concentration of lead in the liquid phase = 0.023 mg/l
Volume of filtered liquid = 0.010 L
Concentration of lead in the solid phase = 85 mg/kg (wet weight)
Weight of the solid phase = 0.090 kg.
The calculated concentration is as follows:

$$\frac{[0.023\frac{mg}{L}\times 0.010L]+[85\frac{mg}{kg}\times 0.090kg]}{0.010L+[20\frac{L}{kg}\times 0.090kg]}=4.23\frac{mg}{L}$$

In this case, the maximum leachable concentration is below the 10 mg/L regulatory concentration for lead, and the TCLP need not be performed.

iv. Oily Wastes

In this proposed rulemaking, the Agency has modelled the transport of solutes in groundwater as well as movement along other environmental pathways. This groundwater modeling involves predicting rates of constituent leaching from wastes in land-based waste disposal units. In using this fate and transport modeling to develop regulatory exit levels, the Agency is proposing to rely on the use of leach tests to ensure that groundwater is not contaminated. Among the test methods that have been developed and employed to identify wastes which might pose an unacceptable hazard are: Methods 1310 (Extraction Procedure), 1311 (Toxicity Characteristic Leaching Procedure, TCLP), 1320 (Multiple Extraction Procedure, MEP), and 1330 (Oily Waste Extraction Procedure, OWEP).

However, these leach test procedures all have deficiencies in predicting the mobility of toxic chemicals from oily

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wastes. Method 1311 underestimates the mobility of constituents from many oily wastes due to filter clogging problems, can be imprecise for oily wastes, and has several operational problems. Conversely, Method 1330 is believed to overestimate mobility of constituents from oily wastes since it emulates a worst case scenario by using solvents to extract contaminants from the oil. None of the available laboratory procedures is fully satisfactory. Rather, they bracket the range of possible leaching for oily wastes.

In addition, EPA does not have a good definition for what constitutes an oily waste. EPA originally defined oily wastes as those materials that clogged the filter during Method 1311 (TCLP) extraction. EPA requests comment on how to better define what an oily waste is.

EPA also requests comment on which of the two tests methods (1311 or 1330) should be used and why should one test be chosen over the other for predicting the concentrations of contaminants in leachate from wastes being managed in landfills. EPA also requests comment on whether there are any alternative test methods or models that could be used for predicting the mobility of oily materials. Such procedures need to be both scientifically credible and environmentally protective. Methods need to identify material that might be released from the waste and enter the soil. Release is defined as movement of either the liquid phase of the waste or leached contaminants through the bottom of the waste unit to the subsurface soil immediately underlying the disposal point. Once contaminants pass this point their ultimate fate in terms of impact on down-gradient water supplies can be estimated by the ground-water fate and transport model (EPACMOW model).

EPA also requests comment on any additional problems with oily waste leachability not covered here, and whether the volatilization or other attributes of constituents should be considered in the development of a test.

Oily wastes also pose modeling challenges in groundwater because they do not disperse in the same pattern as aqueous liquids. This affects the movement of the constituents in the material. In the event of a release of waste at or near the soil surface, the waste will migrate downward until it reaches the water table. Light non-aqueous phase liquids (LNAPLs) will then tend to migrate laterally, forming a pancake on top of the water table. Dense non-aqueous phase liquids (DNAPLs) on the other hand will sink to the base of an aquifer and not show much lateral spreading until an impermeable layer is reached. EPA is requesting comment on what sort of wastes or what constituents exhibit these behaviors and how to define that set of wastes. Constituents that have been associated with DNAPLs include dichlorobenzenes, PCBs, napthalenes, chloroform, carbon tetrachloride pentachlorophenol, cresols, and several PAHs. However, trace amounts of these constituents are unlikely to pose a DNAPL problem. A DNAPL problem is likely to occur when there is sufficient concentration to flow as undissolved liquid that would then form the sort of complex reservoirs that subsequently slowly dissolve into groundwater. The Agency requests comment on concentrations of these or similar chemicals that are likely to pose DNAPL problems and whether the proposed exit levels in totals or, for nonwastewaters in leach levels, are sufficient to limit wastes exiting for which a DNAPL or LNAPL problem would need to be explicitly evaluated.

The Agency is continuing to work on developing tests and models for determining the leaching potential of oily materials and may propose them in future rulemaking. In the meantime, EPA is today proposing to apply the levels as proposed in this rule to oily wastes, but seeks comment on whether instead there is a definable class of wastes for which these levels cannot reasonably be concluded to be protective.

b. Initial Test

The Agency is proposing in today's rule that there would be an initial test before a facility would be eligible for an exemption. The initial test would be the primary tool to characterize the waste as exempt. Results from this initial test would be sent to the implementing agency. The public could request the implementing agency to make the results available.

EPA is proposing to require initial testing of all of the 386 constituents on appendix X of 40 CFR part 261 except those that the claimant determines should not be present in the waste. EPA would require the claimant to document the basis of each determination that a constituent should not be present. The claimant must submit the documentation to the implementing agency and retain a copy on site for three years. No claimant may determine that any of the following categories of constituents should not be present:

—Constituents set out in appendix VII to part 261 as the basis for listing the wastestream for which exemption is sought;
—Constituents listed in the table to 40 CFR 268.40 as regulated hazardous constituents for LDR treatment of the waste stream ;
—Constituents detected in any previous analysis of the same wastestream conducted by or on behalf of the claimant;
— Constituents introduced into the process which generates the wastestream; and
—Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the wastestream.

The Agency requests comment on whether these are the appropriate criteria to be used to determine what should not be present in the waste. The Agency also requests comment on requiring claimants who are not waste generators to consult the generator prior to determining that a constituent is not introduced into the process or that a constituent is not a byproduct or side product of the process. EPA believes that it is unlikely that a non-generator claimant would have sufficient knowledge of the production process to make adequate determinations on these issues. EPA requests comment on the type of documentation that it should require. The generator could co-sign the document that sets out the reasons for determining that the claimant need not test for a constituent, or the generator could prepare a separate supporting document that would be attached to the document for submission to the implementing agency and retention in the claimant's files.

The Agency is soliciting comment on whether the absence of constituents in the following documents could constitute sufficient justification for not analyzing all of the constituents listed in 40 CFR part 261 appendix X.

—40 CFR part 261 appendix VII highlighted to show which constituents are listed for each waste code applicable to that waste;
—40 CFR 268.40 highlighted to show which constituents are regulated under the land disposal restrictions for each waste code applicable to that waste;
—EPCRA Toxic Release Inventory reports highlighted to show which constituents are reported as being "used" in the manufacturing process from which that waste is generated (based on the EPCRA definition of "use");
—NPDES discharge permits highlighted to show which constituents are required to be monitored in wastewaters with which that waste is commingled or will be commingled;

—State or Local emissions monitoring permits or documents (e.g., stack emissions, fugitive emissions, groundwater monitoring, wastewater discharges, etc.,) highlighted to indicate which constituents are required to be monitored as potential emissions from units in which that waste is managed or will be managed;
—Responses to government and/or trade group data collection efforts (e.g., biennial reports, TSD surveys) that require submission of waste-specific constituent information;
—Published literature (e.g., journals, presentations, chemical and engineering reference documents, health and safety handbooks, material safety data sheets, etc.,) highlighted to indicate constituents that are formed or potentially formed from side reactions, degradation, or reactivity of the products, reactants, or solvents used in the manufacturing process generating that waste;
—Plant-specific process flow diagrams or process descriptions highlighted to indicate constituents that are formed or potentially formed from side reactions, degradation, or reactivity of the products, reactants, or solvents used in the manufacturing process generating that waste;
—Product specifications or constituent-specific labeling requirements under federal regulations, state regulations, or non-governmental standards (i.e, per product-grade) that identify constituents that are expected to be present in the products from which the waste was generated, highlighted to indicate those constituents identified as part of these specifications or standards (excluding chemical additives or preservatives that are placed in the products subsequent to the generation of the waste for which exit is claimed);
—Waste profile data sheets, such as those submitted to commercial waste handlers, highlighted to show the constituents that were found or expected to be present in that waste; and/or
—A certified, third party engineering analysis of the process generating that waste that provides qualitative verification of the theories behind the anticipated absence of certain chemical classes or groups of Appendix X of 40 CFR 261 constituents such as pesticides, pharmaceutical, halogenated solvents, carbamate, organo-sulfur compounds, known gases, cyanides, etc.;
—Any other available quantitative or qualitative constituent information specific to that waste

Relevant information includes not only those document sections that indicate which constituents are present, but also cover pages that indicate the source of the document segments and signature pages to verify authenticity of government-approved documents (where appropriate). For the verification purposes, page numbers should also be clearly identified for each document. EPA is also soliciting information on additional readily available documentation that could be added to this list that would not impose an unreasonable records burden on both the generator and enforcement officials (for example, the Agency believes that requiring highlighted copies of copious amounts of monitoring data would be redundant and would significantly impede enforcement review). EPA believes that requiring copies of only relevant portions of these documents, highlighted to indicate the chemicals present, should minimize the burden associated with this documentation requirement significantly.

Regardless of which constituents a facility tests, the facility is responsible for ensuring that each constituent in the waste meets its applicable exit level.

The Agency believes that the tailored initial test described above will ensure accurate waste characterizations of the waste streams while focusing testing requirements to those constituents that are of concern. A facility could determine whether a constituent would be present. A facility would *not* be authorized to determine that the constituents in the waste meet the exemption levels based on knowledge of the waste or material. This approach both reduces unnecessary testing costs and allows for more frequent monitoring of those constituents that are of concern.

The Agency is soliciting comment on whether this proposed approach to an initial test is appropriate.

The Agency asks for comment on taking the opposite approach: requiring each claimant to test only for those constituents that the claimant determines "could be present" for that waste. This would be a systematic way for facilities to focus the list of hazardous constituents to those that are mostly to be present in the waste. EPA requests comment on requiring at a minimum testing of the following categories of constituents:

—Constituents set out in appendix VII to part 261 as the basis for listing the wastestream for which exemption is sought;
—Constituents listed in the table to 40 CFR 268.40 as regulated hazardous constituents for LDR treatment of the waste stream ;
—Constituents detected in any previous analysis of the same wastestream conducted by or on behalf of the claimant;
—Constituents introduced into the process which generates the wastestream; and
—Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the wastestream.

The Agency asks for comment on the completeness of the proposed mandatory testing criteria. In addition, the Agency requests comment on whether testing should be required for those constituents that do not meet any of the criteria of "could be present." The Agency also requests comment on whether documentation should be required to demonstrate that those constituents that were not tested did not meet any of the "could be present" criteria.

EPA requests comment on another approach to determining which constituents need to be analyzed by a claimant. The approach would be that the claimant needs to provide data on all additional constituents listed in appendix X of 40 CFR part 261 of today's rulemaking for which a method used by the generator to detect other constituents which the claimant is required to test can easily determine concentrations. Thus, for example, if a waste was listed for a constituent for which GC/MS is an appropriate method used by the claimant, the claimant would also be required to ask the laboratory to provide information on all other constituents listed in appendix X of 40 CFR part 261 of today's proposed rulemaking for which the GC/MS is also an appropriate method.

EPA did not use this in its primary proposal because the Agency realized that implementation of this concept become more complex than it appears. For example, even when using GC/MS, there may be sample preparation techniques, dilutions, and similar issues that determine which constituents can be measured in the appropriate concentration ranges using the method.

However, there is something intuitively reasonable and attractive in asking claimant to gather and provide information that is easily obtainable and would provide additional confidence and certainty. EPA solicits comments on this idea and ways to implement it.

The Agency requests comment on whether there is some other way to focus the scope of testing requirements or if the only way to ensure accurate waste characterizations would be to require testing for all 386 constituents.

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The FACA suggested EPA should define, for major waste streams, a set of constituents that it believes would fairly characterize those waste streams. The Agency believes such an approach may be desirable. However, the Agency notes that this could require it to expend significant resources. The Agency requests comments on the feasibility or need for this approach in the long term.

EPA recognizes that some generators may wish to assert claims for protection of confidential business information (CBI) for some to the information that supports an exit claim. Material that is classified as CBI may be reviewed by EPA, but may not be released to the public. States may have similar provisions under state law. EPA requests comments on two options for addressing CBI information.

First, EPA requests comment on the option of prohibiting any person from asserting a claim of exit under this rule if that person wishes to claim CBI protection for any data or information used to support the exit claim, including all information submitted to the implementing agency in the notification package and all information required to be maintained by the claimant on site and furnished to the agency on request. A generator who wished to rely on CBI data to support an exemption claim for a listed hazardous waste would need to file a delisting petition with EPA or a state authorized for delisting.

EPA believes such an approach may be necessary because the exits proposed today are self-implementing. The public would not have the assurance of knowing that EPA or a state agency had reviewed the claimant's data and determined that it showed that the claimant's waste posed low risks to human health and the environment. Members of the public may not feel that they are adequately protected by the fact that EPA and authorized states could obtain the CBI data and use it (with appropriate precautions against disclosure) in an enforcement action if warranted. They may feel that the number of claims will strain agency inspection and enforcement resources, making it important for them to be able to bring their own citizen enforcement actions under section 7002 of RCRA.

At the same time EPA is sensitive to potentially legitimate business needs to protect information supporting an exit claim. Some firms may not wish to release detailed information about the chemical composition of their process waste streams. EPA also recognizes that the federal delisting process is considerably slower and imposes more procedural burdens than the self-implementing exit scheme. EPA requests comment on the alternative of creating a limited prior approval process for exit claims involving CBI claims. EPA anticipates that rulemaking would not be required. However, states that wish to obtain authorization for today's exit program might not be required to adopt this feature because they could argue that failure to provide a review process for CBI claims would not make their programs less stringent than the federal program.

EPA also notes that CBI protection is not absolute. EPA has authority under RCRA to release CBI information to the public as necessary to support rulemaking proceedings. (In fact, EPA could try to support the first option above by arguing that it was exercising in this proceeding its authority to waive protection for all of the individual exit claims that "implement" the rule.) Also, a citizen that has sufficient evidence of a violation to file a complaint in court may be able to persuade the court to order a limited release of the data for use in the enforcement proceedings.

2. Notification Requirements

The Agency is proposing that the required notification to the implementing authority would include the following information:

—The name, address, and RCRA ID number of the person claiming the exemption;
—The applicable EPA Hazardous Waste Codes;
—A brief description of the process that generated the waste;
—An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;
—Documentation for any claim that a constituent is not present;
—The results of all analyses and estimates of constituent concentrations and all quantitation limits achieved;
—Documentation that any constituents on Table B to appendix X of 40 CFR part 261 have met the applicable treatment standards in § 268.48, unless the claimant is claiming the exemption under § 261.36(e);
—Evidence that the public notification requirements have been satisfied; and
—A certification signed by the person claiming the exemption or his authorized representative.

The Agency is taking comment on whether the following additional information should also be sent to the implementing authority:

—The name and address of the laboratory which performed the analysis;
—A copy of the sampling and analysis plan used for making the exemption determination;
—A description of any chain-of-custody procedures;
—Whether the identity of the disposal facility should be included in the notification package;
—Dates of sampling and analysis; and
—A description of the (temporal and) spatial locations of the demonstration samples.

Also, the Agency is taking comment on whether, if the disposal facility is different than the claimant's facility, the claimant should also include as part of the notification package documentation that the claimant informed the disposal facility of the exempt status of the waste.

A complete notification package would include all required information in the notification and all required certifications signed by the appropriate individual, as identified in the regulations. Failure to submit a notification package if the exemption is being claimed or submission of an incomplete notification package would be a violation of RCRA requirements and thus subject to penalties and injunctive relief under section 3008(a) of RCRA and possible criminal liability under section 3008(d) of RCRA. As a necessary prerequisite to claiming an exemption, the burden would be on the claimant to establish that a complete notification package was submitted to the implementing authority to assert in an enforcement action that the waste is exempt.

It should be noted that, regardless of whether the sampling and analysis plan must be included with the notification to the implementing agency, a current sampling and analysis plan must be developed and used to establish the waste's eligibility for exemption, and must be available upon request to the implementing authority at the time the notification package is submitted and at least for three years. The sampling and analysis plan must demonstrate that the samples to be taken and analyzed will be representative of any spatial and temporal variations in the subject waste.

Furthermore, it should be noted that submission of sampling and analysis plans with the notification to the implementing authority does not change the self-implementing nature of the exemption. Submission of such plans would not be for review or approval of exemption claims prior to the exemption becoming effective. The implementing agency would be under no obligation to undertake such review or approval prior to the exemption becoming effective, and failure to undertake such prior review would not preclude a subsequent enforcement action should the exemption claim later be determined to be inaccurate or otherwise invalid.

As proposed, the certification required to accompany the notification must attest that the waste in question meets all relevant constituent concentration exit levels and that the information in the notification package is true, accurate, and complete. The Agency is taking comment on whether this certification is sufficient assurance that the claimant has made best efforts to accurately characterize the waste or if additional certification language or additional certifications (*e.g.*, from an analytical laboratory) are necessary.

The notification package would be required to be submitted by certified mail with return receipt requested, or other commercial carrier that provided written confirmation of delivery. No claim would be effective until the claimant received the return notification indicating that the package had been delivered.

Submission of the notification package to the implementing authority, however, is not equivalent to approval or verification of the exemption claim. Submission of a notification package would not preclude or in any way limit the implementing authority's ability to take a subsequent enforcement action should it determine that the initial requirements of exemption were never met or that the conditions for maintaining the exemption are not satisfied.

The Agency is taking comment on whether, instead of the exemption becoming effective upon confirmation of delivery of the notification package, there should be some brief waiting period prior to the exemption becoming effective.

Such a period (*e.g.*, 30 or 60 days) could be used by the implementing authority to review notification packages for completeness or for indicia of concerns that would lead to prioritized enforcement, although the exemption would still become automatic after the period regardless of whether any action was taken by the implementing authority. As an alternative, the period could be designed to provide the implementing authority an opportunity to determine that a claimant should not be able to avail itself of the exemption without some further review and to notify the claimant of its views.

Under either approach, governmental review would be discretionary and the lack of such review would not be an indication of governmental approval of the exemption claim. To ensure that there would be no confusion on this point, the certification could include a statement of recognition that expiration of the delay period without comment by the overseeing agency is not the equivalent of agency approval that the claim is accurate. The Agency has not chosen to propose a delayed implementation approach because it believes a short time frame, particularly combined with an automatic effective date, would not provide an opportunity for thorough prior review and would, at best, provide only marginal benefits as a screening device for potentially problematic claims. The Agency, however, requests comment on whether such a delay would be beneficial to monitoring claims and if there are procedural or other concerns relating to such a delay.

B. Implementation Conditions

After the exit claim has become effective, the claimant would have to continue to meet certain conditions to maintain the exemption. Failure to satisfy any of the conditions would void the exemption and subject the waste to applicable subtitle C requirements.

Under this proposal, wastes must continue to meet the generic exemption levels established for exit to remain non-hazardous. Separate and distinct from any requirement or condition that might be established under this rulemaking, all generators—including claimants of today's proposed exemption—would have a continuing obligation to identify whether they are generating a hazardous waste and to notify the appropriate governmental official if they are generating a hazardous waste. Section 3010; 40 CFR 261.11. If wastes claimed as exempt under today's proposed rule test above exit levels at any time, that waste and subsequently generated waste would have to be managed as hazardous waste—including compliance with all notification requirements—until testing demonstrated that the waste was below exit levels.[8]

[8] Compliance with HWIR exemption levels will be measured from the last available test data or from the latest representative samples taken from the waste in question. Testing which shows constituent concentration levels above exemption levels will not affect wastes previously generated under a valid claim of exemption based upon representative samples. Similarly, testing, which shows that a waste which tested above exit levels once again tested below all relevant exit levels will exempt all waste generated on or after the date the samples were taken. Waste which exceeded the exit levels would not be able to requalify for the exemption.

1. Records Maintained on Site

In addition to the information described in the Notification Section above, the Agency is also proposing that the following information concerning the initial testing and retesting be maintained in the files on site at the facility making the exemption claim for at least three years:

—All information required to be submitted to the implementing authority as part of the notification of the claim;
—The dates and times waste samples were obtained, and the dates the samples were analyzed;
—The names and qualifications of the person(s) who obtained the samples;
—A description of the (temporal and) spatial locations of the samples;
—The name and address of the laboratory facility at which analyses of the samples were performed;
—A description of the analytical methods used, including any clean-up and extraction methods;
—All quantitation limits achieved and all other quality control results for the analyses (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred;
—All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.36(b)(2) and also provides for the availability of the documentation to the claimant upon request;
—If the generator claims a waste is exempt from part 268 requirements pursuant to § 261.36(e), documentation to substantiate such a claim.

The Agency requests comment on the proposed information maintenance requirements and comment on additional information that may be necessary.

In addition, claimants will be required to retain certain information concerning retesting of wastes as described below and set out in the text of proposed 40 CFR 261.36(d)(6)(ii).

2. Testing Conditions

Claimants would continue to periodically test their wastes as a condition of the exemption.[9] Failure to test and maintain documentation of the

[9] Wastes generated on a one-time basis would not be subject to this requirement.

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testing in accordance with the requirements of proposed 40 CFR 261.38(d) would void the exemption. The Agency believes that required subsequent testing is necessary to maintain accurate waste characterizations. Subsequent testing would be an ongoing exemption condition and would be the minimum testing required to maintain an exemption. A tailored constituent list setting out minimum requirements for testing purposes should not be confused with the facility's ongoing requirement to maintain constituent concentrations below exit levels for *all* constituents on appendix X of 40 CFR part 261. Results from subsequent testing would be required to be maintained on-site.

The scope of subsequent testing would focus primarily on those constituents from appendix X of 40 CFR part 261 that are of concern based on the initial test. The list of constituents for which a claimant would be required to test would, at a minimum, include each constituent that was detected in the initial test within an order of magnitude below the exit level for that constituent, and any constituent listed in Table B of appendix X of 40 CFR part 261 that is also identified as a basis for listing the waste or appendix VII to part 261 or listed as a regulated hazardous constituent for the waste in the table to 40 CFR 268.40. The claimant would also be required to test for any other constituent which the claimant had reason to believe was newly present in the waste since the most recent previous test.

The Agency proposes that the frequency with which a facility would be required to perform subsequent testing would be determined based on the volume of waste which the facility is declaring exempt. Those facilities with large-volume waste streams would perform subsequent testing more often than those facilities with low- or medium- volume waste streams. The claimant would be responsible for determining the volume of annual exempt waste. The Agency asks for ideas and comments on whether guidance should be made available for claimants on how to measure annual volumes. Justification of annual volumes would be sent to the Director in the notification package. The Agency believes that accurate waste characterizations are important for waste volumes of all sizes; however, inaccurately characterized large-volume wastes have greater potential to harm the environment than do smaller-volume wastes. In today's rule, the Agency is proposing the following requirements for the first three years of subsequent testing:

—Wastes generated at the time of exemption is initially claimed in volumes greater than 10,000 tons/year would be tested four times a year for the first three years of the exemption.
—Wastes generated at the time of exemption is initially claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year would be tested twice a year for the first three years of the exemption.
—Wastes generated at the time of exemption is initially claimed in volumes less than 1000 tons/year would be tested once a year for the first three years of the exemption.

EPA requests comment on whether it should allow the Agency proposes that if a waste maintains exempt status for three years, the frequency of subsequent testing would then be reduced to once a year, regardless of the volume produced. The Agency believes that three years of subsequent testing should provide a facility with adequate data to assess the potential for variability in the waste. The Agency requests comment on the frequency of subsequent testing.

The Agency requests comment on an approach that the FACA suggested. The approach consisted of a comprehensive test, similar to an initial test, that is required every 3 or 5 years of an exemption because of the strong reliance on the initial test's results in determining the scope of subsequent testing.

The Agency also requests comment on whether follow-up testing should be eliminated entirely after the first three year period. In addition, the Agency asks if a certification of compliance with all relevant exit levels could suffice in lieu of testing at the end of three years.

3. Testing Frequency and Process Change

Under today's proposal, the claimant has a continuing obligation to verify that the waste continues to meet the exemption criteria, including meeting the exemption constituent concentration levels. Process changes that may either increase the number of hazardous constituents in the exempted waste or increase the concentration of hazardous constituents already present, should put a claimant on notice that there may be changes in the waste that may affect its continued eligibility for exemption. The Agency, however, is not proposing to require new sampling and analysis whenever there is a process change that may affect the exempt status of the waste.

The Agency is taking comment on whether it is necessary to require as a condition of maintaining the exemption that wastes be re-tested after a process change and, if so, what the scope of such re-testing should be. The Agency would like to know if the testing frequency proposed or more frequent testing would provide a clearer indicator of waste changes of concern than triggering re-testing through a narrative description of a process change. Another alternative is to require the claimant to notify the implementing authority that a process change has occurred and to certify that the exemption criteria continue to be met if the claimant determines that the waste still maintains its exempt status. The Agency is taking comment on how process change should be defined in the event one of the alternatives is chosen. It should be noted that if waste for which an exemption has been claimed at any time tests above exemption levels, that waste and all subsequently generated waste is hazardous. The claimant could not assert a new exit claim until a new batch of waste tests below the exit levels. The exemption proposed today would not relieve generators of their responsibility under § 262.11, nor would any test data previously obtained prevent a claimant from failing to satisfy the exemption criteria should an inspector conduct waste sampling that establishes hazardous constituents at concentrations above exit levels.

C. Public Participation

As a self-implementing exemption effective upon receipt of the notification by the implementing authority, there is no decision prior to exit being made by the implementing authority regarding the waste. The opportunity for public participation in an exemption claim is the opportunity that exists at all times for the public to bring to the implementing authority's attention any circumstance that might aid that authority in its monitoring and enforcement efforts. The public, furthermore, would have the ability to bring a citizen suit for a claimant's failure to comply with any requirement of the exemption.

The Agency is proposing to require that the public be notified by the claimant that an exemption claim is being asserted. This notification would be accomplished by publication of a notice in a major newspaper, local to the claimant and of general circulation, that contains the information required by the regulations. Evidence that the notice has been submitted for publication must be part of the notification package submitted to the implementing facility.

The Agency is requesting comment on whether such a notice should be placed in a newspaper local to the claimant's facility or to the disposal facility or both, should those facilities be located in different areas not served by the same newspaper.

Requiring notification of facilities receiving exiting wastes has also been raised to the Agency in discussions. The Agency solicits public comment on the need for and possible approaches to requiring that waste generators that are exiting their listed waste, notify receiving facilities that wastes are HWIR exited wastes. Additional discussion of this issue appears in the docket under "Receiving Facility Notification Process."

As discussed above, the Agency is also taking comment on whether providing a "delay" in the effective date when the exemption attaches (*e.g.*, 30 or 60 days) would provide a significant and meaningful opportunity for public comment prior to the waste having exited the subtitle C system. Possible benefits of a waiting period before effectiveness of the exit could include greater opportunity for State review or citizen comment before waste is actually disposed outside of Subtitle C. Under such an approach, the waiting period would begin with receipt by the State of a complete certification package, and would run for the designated time (30 or 60 calendar days).

The Agency is taking comment on whether access to claim documentation through the appropriate implementing agency will be sufficient to provide public access to documentation. One alternative would be to require the claimant to provide access to the information. If that option is selected, the Agency requests comment on how, and for how long, the claimant should be required to provide access to the documentation, and on what kind of protection for CBI would be appropriate.

IX. Request for Comment on Options for Conditional Exemptions

The Agency has at different times considered contingent management approaches to disposal of hazardous wastes. Under such approaches, wastes that would be considered hazardous if managed in an uncontrolled manner, could be considered non-hazardous if managed in a sufficiently controlled manner. The following section discusses and requests public comment on several approaches to setting higher exit levels tied to meeting certain management requirements. These approaches would allow wastes with higher concentrations of hazardous constituents to be managed safely outside of Subtitle C.

Many Subtitle C requirements were written generically to address all hazardous wastes and, consequently, provide protection for those wastes that pose the greatest risks. Others are either explicitly or implicitly technology-based rather than risk-based. Some of these requirements are statutory and cannot easily be adjusted to take risk into account. Nevertheless, EPA generally believes that it would be desirable to tailor waste management requirements to more closely coincide with risks. The exit levels proposed today take an initial significant step in this process by allowing very low-risk hazardous wastes to be exempt from Subtitle C requirements, leaving them subject only to less prescriptive federal and state controls for nonhazardous wastes. They also take an initial step towards setting different exit levels for different situations by recognizing that wastewater and non-wastewaters are typically handled in different ways and pose different risks, hence today's notice proposes different exit levels for wastewaters and non-wastewaters.

Within the time constraints imposed by the court-ordered deadline for this proposal, EPA has begun exploring whether it would be possible to create additional exemptions to allow more flexible management of additional wastes now classified as hazardous without compromising protection of human health and the environment. These options are premised on the theory that a waste's risk is due not only to its chemical composition, but also the manner in which it is managed, which can greatly affect the amount of chemical constituents that ultimately reach a human or environmental receptor. The multipathway analysis prepared to support the exit levels shows that the concentration at which a hazardous constituent threatens human health or the environment varies significantly with the type of management that a waste receives—some forms of management appear to present greater risks than others. The following discussion presents the legal framework for management-based exemptions, and outlines in some detail the options which EPA finds to be most promising for rapid promulgation.

A. Legal Basis for Conditional Exemptions

EPA originally interpreted RCRA's definition of hazardous waste to focus on the inherent chemical composition of the waste and to assume that mismanagement would occur so that people or organisms would come into contact with the waste's constituents. See 45 FR 33113 (May 19, 1980). However, EPA even in the past tried to consider "reasonable" mismanagement scenarios, scenarios that where reasonably likely or plausible even if not proven to necessarily have occurred or be typical for a specific waste. However, after more than a decade of experience with waste management, EPA believes that it may no longer be accurate or necessary to assume that worst-case mismanagement will occur. In recent hazardous waste listing decisions, for example, EPA has identified some likely "mismanagement" scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to then determine if any of these are for some reason very unlikely for the specific wastes being considered, or if other scenarios are likely given available information about current waste management practices. As a further extension of that logic, EPA now believes it may be appropriate to find that, where mismanagement is not likely or has been adequately addressed by other programs, EPA need not classify a waste as hazardous and that there may be ways to recognize situations where the limitations on likely "mismanagement" are specific to a State, a type of waste, or a facility-specific condition on how a waste is managed.

EPA believes that it can interpret the definition of "hazardous waste" in RCRA section 1004(5) to authorize this approach to classifying wastes as hazardous. Section 1004(5)(B) defines as "hazardous" any waste which may present a substantial present or potential hazard "when mismanaged". EPA reads this provision to allow it to determine the circumstances under which a waste may present a hazard and to regulate the waste only when those conditions occur. Support for this reading can be found by contrasting section 1004(5)(B) with section 1004(5)(A), which defines certain inherently dangerous wastes as "hazardous" no matter how they are managed. The legislative history of Subtitle C of RCRA also appears to support this interpretation, stating that "the basic thrust of this hazardous waste title is to identify what wastes are hazardous in what quantities, qualities and concentrations, *and the methods of disposal which may make such wastes hazardous.*" H.Rep. No. 94–1491, 94th Cong., 2d Sess.6 (1976), reprinted in *A Legislative History of the Solid Waste Disposal Act, as Amended,* Congressional Research Service, Vol.1, 567 (1991) (emphasis added).

EPA also believes that section 3001 provides it with flexibility to consider

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the need to regulate wastes as hazardous. Section 3001 requires that EPA, in determining whether to list or otherwise identify a waste as hazardous waste, decide whether a waste "should" be subject to the requirements of Subtitle C. Hence, section 3001 authorizes EPA to determine that Subtitle C regulation is not appropriate where a waste is not likely to be managed in such a way that it will threaten human health or the environment. Moreover, regulation of such waste under Subtitle C would not appear "necessary to protect human health or the environment" under RCRA sections 3002(a), 3003(a) and 3004(a). As noted elsewhere in this proposal, EPA interprets these provisions to give it broad flexibility in fashioning criteria to allow hazardous wastes to exit the Subtitle C regulatory system. EPA's existing regulatory standards for listing hazardous wastes also allow consideration of a waste's potential for mismanagement. See § 261.11(a)(3) (incorporating the language of RCRA section 1004(5)(B)) and § 261.11(c)(3)(vii) (requiring EPA to consider plausible types of mismanagement). Where mismanagement of a waste is implausible, the listing regulations do not require EPA to classify a waste as hazardous.

Two decisions by the U.S. Court of Appeals for the District of Columbia Circuit provide potential support for this approach to defining hazardous waste. In *Edison Electric Institute v. EPA, 2 F.3d 438,* (D.C. Cir. 1993) the Court remanded EPA's RCRA Toxicity Characteristic ("TC") as applied to certain mineral processing wastes because the TC was based on modeling of disposal in a municipal solid waste landfill, yet EPA provided no evidence that such wastes were ever placed in municipal landfills or similar units. This suggests that the Court might approve a decision to exempt a waste from Subtitle C regulation if EPA were to find that mismanagement was unlikely to occur. In the same decision the Court upheld a temporary exemption from Subtitle C for petroleum-contaminated media because such materials are also subject to Underground Storage Tanks regulations under RCRA Subtitle I. The court considered the fact that the Subtitle I standards could prevent threats to human health and the environment to be an important factor supporting the exemption. *Id.* at 466. In *NRDC v. EPA,* 25 F.3d 1063 (D.C. Cir. 1994) the Court upheld EPA's finding that alternative management standards for used oil promulgated under section 3014 of RCRA reduced the risks of mismanagement and eliminated the need to list used oil destined for recycling. (The Court, however, did not consider arguments that taking management standards into account violated the statute because petitioners failed to raise that issue during the comment period.)

B. Improvements in Management of Non-Hazardous Waste and in Risk Assessment Methodology

EPA's early regulations defining hazardous waste reached broadly to ensure that wastes presenting hazards were quickly brought into the system. When EPA promulgated its first listings and characteristic rules in 1980, its knowledge of toxic constituents, constituent transport pathways, and waste management options was more limited than it is today.

In addition, significant changes and improvements in waste management have occurred since the early 1980's. Many states have established or strengthened industrial nonhazardous waste programs since that time. For example, currently 26 states require liners and 28 states require ground-water monitoring for at least some surface impoundments. Up to 45 states require ground-water monitoring and 38 states require liners for at least some landfills. It is important to recognize however, that within a state, applicable requirements may vary according to a number of factors, including unit type, waste source, and location. See "State Requirements for Industrial Non-Hazardous Waste Management Facilities" EPA 1994. At the same time, industries have gained experience in managing wastes and many have improved waste management practices under incentives such as public access pursuant to the Emergency Preparedness and Community Right to Know Act, and avoiding liabilities under Superfund, RCRA corrective action and state cleanup programs.

EPA's ability to predict the risks that a waste may pose has also improved significantly. EPA has collected much more data on a variety of waste management units and other factors that impact the ability of waste constituents to reach a receptor. Models such as the EPACMTP and the models used in the multipathway analysis provide more sophisticated means of assessing the risks of a range of waste management options. As a result of all these changes, EPA is now in a position to begin to implement a more carefully tailored risk-based approach to regulating hazardous wastes.

C. Overview of Options for Conditional Exemptions

The Agency has identified several different approaches to providing conditional exemptions that would allow more wastes to exit the Subtitle C system. These options fall into two broad categories: (1) Establishing national conditional exemptions based on unit type either with or without assuming additional management controls; and (2) granting conditional exemptions to qualified state programs that ensure additional management controls.

1. National Approach: EPA Would Establish National Exit Levels for Contingently Managed Waste

The contingent management program could be adopted by any state that wants to implement it, without consideration of state programs for non-hazardous waste. The contingent exit levels would differ according to the degree of management/disposal restrictions imposed as a condition of exit. The possible options would include progressively more restrictive requirements, and allow progressively higher exit levels as disposal options are further restricted. The options under this approach are:

a. Distinguish Between Disposal in Land Application Units and Other Units

The multipathway risk assessment methodology used for this rulemaking takes into account management scenarios (such as land treatment of a waste), or exposure pathways (such as wind transport from an uncovered pile or volatilization from an open tank), resulting in calculated exit levels based on the riskiest scenario. In some cases this exit level may be significantly lower than the next most risky exposure pathway. The riskiest exposure pathway may not be applicable to some management situations. On review of the risk analysis results, the Agency determined that disposal in a land application unit is frequently the highest risk disposal option in both the multipath and groundwater modeling.

As described in detail in Section X. below, the Agency has developed for proposal an approach to contingent management relying on the multipathway exposure analysis, risk level of 10–6 and HQ of 1, and using the base case uncontrolled management scenarios, but with land application units removed from the analysis. Exit concentrations would still be protective across a wide variety of conditions nationally, for all non-land application unit disposal. The Agency is proposing

one national exit level for each constituent based on the next riskiest pathway, on condition that wastes are not disposed in land application units.

This option was considered by the Agency to be the simplest approach to contingent management. It would be somewhat easier to enforce than other options described below, since there would still be only one conditional exit level for each constituent. Implementation mechanisms to assure that the wastes go only to allowable unit types are described below.

b. Unit-Specific Exit Levels for Each Disposal

Another approach to contingent management considered by the Agency would be to establish a set of exit levels for each waste management unit evaluated based on risks at unregulated units of that type. Units that would be evaluated, at HQ 1 and 1 E–6 risk, would be land application units, waste piles, landfills, surface impoundments and tanks. Base case assumptions would be used to describe the units. The Agency has not included specific exit levels for this approach here, but solicits comment on its potential benefits, and potentially greater complexity of implementation and compliance assurance.

Under option 2 the Agency would set separate exit levels for each type of waste management unit. Generators would be allowed to choose the type of non-subtitle C waste management unit in which to manage their waste, and would be required to meet the unit-specific exit levels for all constituents in order to manage the waste in that unit. Testing and implementation would be similar to the requirements for exit based on the most limiting pathway. However, the Agency believes this option would increase the complexity of tracking wastes that met the varying concentration exit levels tied to specific allowable units.

The Agency believes allowing use of exit levels tailored to waste management can be a practical and appropriate way to allow greater volumes of waste to exit Subtitle C without increasing risks to above the toxicity benchmarks described in Section IV.D, providing that characteristics of various waste unit types can be clearly defined (such as the difference between surface impoundments, tanks, and perhaps covered tanks for the management of wastewaters), and providing the Agency can design a viable implementation scheme that does not rely primarily on statements of proposed future disposal. Tracking and monitoring of actual waste management could be one way to assure disposal in the appropriate facilities. Limiting disposal to on-site facilities could also better assure proper disposal, although this would limit the usefulness of contingent management approaches. The Agency requests comment on additional implementation requirements that might be needed to assure the waste is managed in the designated unit type only.

EPA has not developed this as a general approach in this rulemaking because the risk modelling that was done, while more multifaceted and comprehensive than many past analyses, was not designed for this purpose. For efficiency in modelling, EPA did not always model each pathway for each specific unit. EPA sometimes only modelled an exposure pathway of concern (such as air emissions) from certain types of units that EPA thought might be the limiting scenario, and risk from organic constituents in a landfill were not modeled. Therefore the modelling work to date may not identify the most limiting pathway if each unit is judged individually. To fully develop exit levels for a full range of unit types, EPA believes it would have to do supplemental risk analysis to fill in the gaps in modeling for each of the waste management units, or at least evaluate whether the risk analysis done to date is sufficiently representative. Tables 21–39 in the November 1995 Supplement to the multipath analysis present the modeled risk values for each constituent disposed in each of the five options modeled, and for each pathway. These tables can aid commenters in understanding what a unit-specific exit value for any particular constituent could be.

c. Consideration of Additional Management Unit Design or Management Practices

A third option is that EPA would use a somewhat modified multipathway exposure model to evaluate whether adding additional specific design or operating controls for particular unit types, would allow less conservative exit levels. These conditional exit concentrations would be promulgated on a unit-type specific basis, and could be used only by units employing the specified additional controls that would reduce the risk level to 10–6. Such an approach could be self-implementing for a facility owner/operator, and would not necessarily be tied into a permitting authority.

While such an approach could take into account the effects of a combination of added controls on each unit type (such as size of the unit, ground-water monitoring, liners, caps, etc.) the Agency believes that there are a number of significant implications associated with this approach. It could be interpreted by industries and states as an indirect way to define a broader set of management standards for industrial non-hazardous waste management units. Also, if the approach were self-implementing, it could be extremely difficult to ascertain that a particular unit meets a complex set of controls and therefore to assure compliance with the conditional exit levels. The more complex a judgement required to determine compliance with the conditions (such as whether a liner that is hard to inspect during operation is properly installed and protected from tears), the more appropriate it is likely to be that such determinations be made in the context of a permitting authority or prior approval rather than as a condition on a self-implementing exemption.

As a variation on this approach, The Agency could take into account certain regional, local, or site-specific factors in establishing exit levels. These could include the effect of local rainfall, regional hydrogeology, or size of facility on exit values. These issues are described in greater detail in section 3 below.

Because of the complexity of implementation, the Agency would attempt to define very limited additional control(s) to limit exposures and reduce risks to 10–6 level. EPA particularly asks for comments on unit design attributes that are easily ascertainable in a spot inspection versus those that require more detailed engineering review, or review or monitoring of operations. For this option, as with options one and two, the Agency would have to conduct additional risk modelling work to adequately evaluate additional parameters on a unit specific basis.

One issue common to all of the options discussed above is the legal status of wastes subject to such conditioned exemptions when there is a violation of the conditions. The Agency requests comments on how to make them enforceable in a practical way that is fair to those involved. If the waste concentration/unit requirements are conditions of an exemption, any violation of a condition means that the waste generator, or other individual managing the waste, has violated the full range of RCRA requirements and has been illegally managing a "hazardous waste" as a "nonhazardous" waste. Because the conditional requirements are not clearly tied to other non-hazardous waste authorities,

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there would not be a remedy for the violations outside of the hazardous waste program. An alternative approach is discussed in the following options allowing conditional exit levels in states with qualified industrial non-hazardous waste programs. As long as the state has clear enforcement authority under its non-hazardous waste management program, these conditions could be crafted so that a violation of the condition was not illegal disposal of hazardous waste involving multiple RCRA counts. Rather it would be enforced as a violation of the relevant State authorities. The Agency requests comment on the advantages and disadvantages of these approaches, as well as whether there might be other approaches to ensure adequate legal remedies for violations of the conditional exit requirements, when the contingencies are not based on qualified state industrial non-hazardous waste programs.

2. State Program Approach

As noted earlier in this section, many state industrial non-hazardous waste programs have improved significantly since the early days of Subtitle C. State programs may offer the advantages both of requiring management controls which ensure protection of human health and the environment and ongoing oversight on a facility specific basis through permitting, inspection and enforcement activities. While every state program may not be operating at the same level, the Agency believes that a number of state programs may offer reasonable, protective systems to serve as the basis for less stringent exit levels. Qualified state programs would be allowed to manage listed waste in their non-hazardous waste management program under certain conditions. These qualified state programs would ensure that risks were reduced to protect human health and the environment.

There are three key factors the Agency believes would need to be considered in establishing state-based contingent management programs. These are (1) establishing a risk-based cap on waste constituent concentrations that can be managed contingently; (2) the type of program review of a state program that EPA would perform to identify qualified state programs, and (3) the breadth of state program controls.

For the risk cap, the Agency has considered using either a 1 E–4 cancer risk and HQ 1, or 1 E–3 cancer risk and HQ 10 as options. The caps would be modeled based on management in unregulated disposal facilities, as in the base-case exit level modeling.

Regarding program review, the Agency would either conduct a qualitative review of the State program, examining it to ensure it addresses key considerations, or would require states to conduct quantitative risk assessment of planned management practices to demonstrate their safety down to 1 E–6 cancer risk and HQ 1 or an alternative risk target.

For the qualitative review, EPA would specify environmental and administrative performance goals and the state would have to submit a narrative description demonstrating how the particular combination of technical standards and administrative requirements in their program protects human health and the environment and meets those performance goals, for example:

- Ground-water protection: A state program must address adequately contamination of groundwater from a facility.
- Surface water protection: A state program must address adequately prevention of contamination of surface water which may occur through the run-off of pollutants from the disposal facility to surface waters.
- Address other environmental and performance goals such as controlling air exposures, siting, ensuring long-term integrity of the site, etc.
- Permitting and enforcement authorities and public participation: A state program has appropriate authorities and a system for prior approval of waste management facilities, and public participation either on a site-specific basis or for input to development of class permits.
- Adequate resources: A state program has adequate resources for administration of the program including permitting, inspections and enforcement.

Under a quantitative risk review approach, a state would have to document their permitting and enforcement authorities and public participation requirements, as well as the adequacy of their program resources. The state would also have to demonstrate to EPA how the particular combination of technical management controls or design standards in its industrial non-hazardous waste program would ensure meeting 10–6 risk levels. In order to do this, EPA would have to refine or expand the multipathway exposure model. EPA would then either make its multipath model available to states or work with them to demonstrate that unit-specific state program controls would meet the 10–6 risk level for a particular class of facilities receiving conditionally exited wastes. The Agency solicits public comment on whether states can propose alternative risk targets for use in state contingent management programs.

Regarding program breadth, the Agency believes either broad, state-wide programs, or more narrowly focused contingent management programs could be developed. Under a broad-based state program approach, the Agency would approve as qualified only those state subtitle D programs that adequately regulate all state non-hazardous waste management and wastes. Under this approach, states with programs deficient in certain aspects would be required to upgrade before participating in the contingent management program. However, the Agency recognizes that state subtitle D programs vary widely in the particular units and waste types that are covered, among other factors. Therefore, as an alternative approach, EPA might determine that a program qualifies for conditional exit only for particular units (i.e. for landfills only, or for landfills and surface impoundments, etc.). In other cases, a state program might focus narrowly on developing appropriate contingent management for particular waste streams generated by key industries in the state.

In considering how to use these key factors in developing contingent management regulations, the Agency identified three options in addition to the three options described above under the national programs. These will be identified in this discussion as options four, five and six.

Under option four, the Agency would use the 1 E–4 and HQ 1 risk cap on waste and would conduct a qualitative review of the state program using the criteria described above. This could be done either on a narrow program basis, or based on a program that qualifies broadly.

Under option five, the Agency would also use the 1 E–4 and HQ 1 risk cap for waste being contingently managed, but would require that states conduct risk modeling of proposed disposal to demonstrate that risks from the waste as disposed would be not greater than the 1E–6 and HQ1 risk targets of the base case. This approach could be taken either with the entire state program, or only certain waste management practices. In particular, site-specific factors, as described below, could be considered under this approach. These could include facility size, local rainfall, or local hydrogeology, among others. Location of the nearest drinking water well might also be considered by the state in evaluating risks, if allowed under state regulations and regulatory policies. In this case, the state would be required to demonstrate to EPA, using the multipathway analysis or another risk assessment model, how they would ensure on a site-specific basis that facilities disposing of conditionally exited wastes meet a 10–6 risk level. Development of this approach might also require quite different risk models, since the multipathway model as it currently exists incorporates a number of simplifying assumptions to capture a broad range of possible conditions. The Agency would have to ensure that a model used for this analysis can incorporate complex site-specific variables, or develop a set of simplified models that could be applied by states. However, this approach would provide maximum flexibility to states and generators to tailor exit levels to particular waste and site characteristics.

Under option six, the Agency would allow wastes posing up to 1 E–3 cancer risk and HQ 10 (in an unregulated management setting), and allow either a qualitative or quantitative review of the state program, but allow participation only by state programs that are broadly qualified, i.e., that are qualified in all aspects of the program, for currently managed industrial non-hazardous waste. The Agency would be more comfortable with this approach because it would be more assured of safe management of the waste regardless of where in the state it is disposed.

The Agency also solicits public comment on whether more than one of the options discussed above should be developed at the same time. For example, the Agency might establish both the option 1 proposal described below, and establish a state-based contingent management program based on any of options four, five or six. By doing so, the Agency would establish option 1 as a minimum national standard, but this approach would allow that states to go further they choose to do so.

3. Establish Exit Levels That Consider Regional or Site-Specific Factors That Might Affect Constituent Fate and Transport'

In addition to facility design factors, there are other location-specific factors that may substantially affect the risks and the appropriate exit levels for waste management units. Examples of such factors include: Rainfall and hydrogeology at the site and the distance to off-site receptors. The average amount of precipitation falling on these waste management units may affect both the amount of leachate to groundwater and soil run off to off-site receptors. Thus, the Agency could determine geographic regions based upon climatic zones, could require precipitation data from the most appropriate certified rain gauge, or could require site specific precipitation information. However, in order to do this the Agency would need to verify that the other model inputs are appropriate for each of the regions or else develop new region-specific inputs. Therefore, the Agency solicits data and comment on technically appropriate ways to establish exit levels based on rainfall levels.

Other site-specific factors that may significantly affect the groundwater pathway are the hydraulic conductivity of the soil surrounding the waste management unit and the distance to the nearest drinking water wells. If the hydraulic conductivity of surrounding soil is relatively low—such as in soils dominated by clays—then the flow of any potentially contaminated leachate to ground water could be effectively retarded for long periods of time (though flow to surface waters or other pathways might change, perhaps increasing). Landfills located in soils with low hydraulic conductivities (for example, 10–6 cm/sec or lower) could provide an extra level of environmental protectiveness for ground water that could be considered in developing this approach. For example, the Agency might address this effect by developing exit levels corresponding to different classes of hydraulic conductivity. Alternatively, differences in hydraulic conductivity could be considered through a site-specific process. This approach would not be relying on engineered controls, but on natural attributes of the location. EPA solicits comments on whether such attributes can be readily determined or in what circumstances they can be readily determined and relied upon.

The Agency did some limited sensitivity analysis with respect to ground water risk modelling to look at the concept of developing different exit levels depending on broad hydrogeological regions. The results of that analysis are in the docket. The Agency requests comment as to the value of investing in this approach and practical considerations the Agency should weigh in deciding whether to pursue this approach.

Finally, where the nearest drinking water wells are at an unusually great distance from the waste management unit, corresponding exit level concentrations associated with groundwater exposures that took that distance into account could be significantly lower if the Agency's goal were solely the prevention of current exposure to groundwater contamination. However, many states have policies to not degrade groundwater and EPA believes it is quite difficult to predict future needs for uncontaminated groundwater. EPA believes that the groundwater modelling done for this rule reflects a balanced view by using the distribution of nearest wells. However, EPA expects it will receive comments suggesting that it should consider allowing facilities with no moderately nearby drinking water wells to take that into account. The Agency seeks comment on the implementation issues associated with taking these factors into account and the related policy judgement as to whether the goal of more site-specific assessment should be prevention of risk based on current ground water use, reasonably foreseeable use, or based on distances that would be more protective of the potential future use of ground water.

The Agency also seeks comment on other location-specific factors or combinations of factors that may be particularly important in mitigating the risks associated with waste disposal. The Agency also requests comment on alternative approaches for taking these location-specific factors into consideration in developing exit levels for waste management. One option for doing so would be to develop additional tables of exit levels (in addition to Option 2) for waste management units that reflect the effect of some of the most important location-specific factors (e.g., exit levels for areas with low annual rainfall, or indexed to landfill size). As an alternative option, the Agency could develop "reduced form" equations that specifically relate the exit level concentration to critical location-specific factors (such as annual rainfall). The Agency requests comment on the merits of these approaches and on alternative options that might be used to better accommodate the effect of location-specific factors on exit levels.

D. Land Disposal Restrictions for Contingent Management Options

Any conditional exemption would offer much more significant relief if it eliminated or reduced the need to comply with more stringent LDR treatment requirements. As explained above in Section VI of today's proposed rulemaking, however, under *Chemical Manufacturers Association* v. *EPA* (the "Third Third" decision) LDR treatment standards generally continue to apply even if a waste ceases to be classified as a hazardous waste. If an LDR treatment standard were lower (more stringent) than a contingent management exit level, the waste would still need to meet the LDR standard.

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EPA has proposed two approaches to integrating HWIR exit levels and LDR treatment requirements for the base option. First, EPA is proposing that LDR treatment requirements will never apply to wastes that meet all applicable exit levels at the point of generation. Second, for wastes which meet exit levels subsequent to the point of generation and, consequently, remain subject to the LDR regime, EPA is proposing to allow some exit levels to serve as alternative risk-based treatment standards meeting the "minimize threat" standard under RCRA section 3004(m). EPA expects these proposals to reduce the burden of complying with LDR requirements.

As explained more fully in the detailed presentation of option 1 below, EPA is proposing both of these approaches for contingent management option 1 (relaxed exit values for wastes that are not placed in land application units). EPA's rationales are set out in that discussion.

EPA anticipates that it might also be willing to propose to use exit levels developed under option 2 (separate exit levels for each major type of waste management unit) to serve as risk-based "minimize threat" standards. If EPA filled the gaps in its current multipathway risk assessment, it would feel fairly confident that the multipathway analysis plus the groundwater analysis identified constituent concentrations that minimize threats to human health and the environment for each class of waste management units. The modeling for both analyses would assume each type of unit was located in a "reasonable worst case" physical setting and was subject to minimal management controls. EPA, however, would expect some members of the public to argue that unit-specific exit levels should not be considered "minimize threat" levels because risks to human health and the environment would not be minimized if exempted waste ended up in the wrong type of management unit. EPA might try to address such concerns by imposing conditions such as tracking or reporting systems on persons claiming the exemptions.

EPA would expect similar objections to the option of allowing wastes that meet option 2 levels to exit if their constituent concentrations met unit-specific exit levels at the point of generation. Members of the public might again be concerned about the possibility that wastes could be placed in a unit type requiring lower (more restrictive) exit levels. As suggested above, however, EPA could impose conditions to help ensure that exempted waste goes only to a unit where the exit levels in fact minimize threats.

Providing LDR relief for the remaining options for conditional exemptions would raise additional legal and practical issues. All of the remaining national and state-based options rely on design or operating controls (such as liners) to help prevent dangerous concentrations of hazardous constituents from reaching human or environmental receptors. EPA, for example, would be reluctant to take into account control measures that would be difficult for inspectors to verify during site visits.

It might be somewhat easier to take into account factors—such as annual rainfall, depth to groundwater, and subsurface soil and rock formations—that relate to a unit's physical setting. EPA has already proposed to interpret section 3004(m) to allow consideration of a unit's physical setting in making site-specific minimize threat findings. See the proposed LDR standards for contaminated soil, 58 Fed. Reg. 48123 and 48155 (Sept. 14, 1993). EPA requests comments on all of these issues related to the integration of conditional exemption options to the LDR standards.

E. Contingent Management of Mixed Waste

The Department of Energy (DOE) has also expressed interest in EPA's contingent management approaches to managing waste that is mixed radiologic and RCRA hazardous waste ("mixed waste"). Mixed waste may be managed by DOE-regulated facilities or commercial facilities regulated by the Nuclear Regulatory Commission (NRC). EPA expects that the general approach in today's proposed regulation would be applicable to mixed wastes as well as listed-only hazardous wastes. DOE has suggested that because mixed wastes subject to RCRA are also subject to AEA disposal requirements which control releases of and exposure to radioactive hazards, these AEA requirements may address releases of chemically hazardous constituents as well, and it would be reasonable to allow more mixed wastes to exit Subtitle C because of the AEA requirements. DOE believes these AEA requirements would also provide adequate protection of human health and the environment from chemically-hazardous constituents. DOE has submitted several studies to EPA in support of their views, and the Agency has placed those documents in the public docket for review. The Agency will also undertake a review of these data to better understand the additional increment of protection provided by AEA low-level waste site performance standards. With that review ongoing, the Agency is proposing, and requesting public comment on, adaption of option four above to DOE's special circumstances. The Agency requests comment on allowing mixed waste meeting conditional exit levels for chemical toxicity estimated at 10–4 cancer risk and HQ 1 (modeled at an uncontrolled site), to exit Subtitle C if managed in AEA disposal facilities.

DOE has also urged the Agency to consider establishing a categorical exclusion from RCRA requirements for mixed waste debris that is immobilized. One of several macro- or microencapsulation methods could be used to immobilize the debris, including use of portland or other cement products, or various polymer products. Under such an exclusion, all immobilized mixed debris could be managed outside of Subtitle C, but would still be required to be disposed in AEA disposal facilities. No testing of the debris would be required to identify toxic constituents or the levels at which they might be present. DOE has conducted a study of leaching rates for certain toxic constituents from stabilized debris and submitted it to the Agency for review in support of DOE's conclusion that immobilized debris can be managed safely outside of subtitle C if disposed in an AEA facility. Because the Agency has only recently received this study, it has been unable to adequately review and evaluate the data presented. The Agency solicits public comment on this approach, the DOE study, and solicits any other available data that are relevant to this topic.

Finally, DOE has developed data on vitrified waste, and requested that the Agency consider the environmental protection conferred by this treatment process. Again, the Agency has not had adequate time to review and evaluate the DOE data, but has placed it in the public docket and solicits public comment on the data and DOE's preferred approach to mixed waste management.

In soliciting comment on these exit procedures for mixed waste, the Agency recognizes that a number of states hosting DOE facilities have expressed concern over the proposal's effect on their states ability to adequately regulate mixed waste under states and federal law as intended by RCRA and the Federal Facilities Compliance Act. These states also believe that significant details of the DOE proposal are lacking and additional analysis would need to occur before the procedures can receive adequate comment. Therefore, the Agency intends, to the extent consistent with the schedule negotiated in the consent decree for this rulemaking, to publish a supplemental proposal on HWIR mixed waste exit criteria after initial comments have been received. The supplemental proposal would further describe the regulatory options being considered and will solicit additional comment on more specific options.

X. Implementation of Conditional Exemption Option 1

A. Introduction

Using the concept of contingent management, EPA is proposing to create a second, alternative set of exit levels for nonwastewaters that are managed in landfills or monofills, but not land treatment units. Persons wishing to utilize this alternative exit scheme would not only have to meet the recalculated concentration limits for all constituents in their wastes, but also comply with conditions prohibiting land treatment. Compliance with notification and tracking requirements described in more detail below will also be necessary. The exit levels for this alternative are set out in appendix XI of 40 CFR part 261; the requirements and conditions are set out in proposed § 261.37. Nonwastewaters that do not meet the exit levels in appendix X to 40 CFR part 261 will be eligible for exit only if they meet the more relaxed levels in appendix XI of 40 CFR part 261 and comply with all relevant conditions.

EPA derived the levels for this alternative by deleting all of the modeling results for the land treatment scenario from its risk assessment data base, and selecting the lowest remaining exit value from the remaining modeling results for other types of waste management units. The same approach used to establish exit levels presented in Section V. of today's proposed rulemaking was used to establish exit levels under this option. That is, where complete risk data was not available, surrogates were used to extrapolated exit levels (see Section IV.H) and where analytical limitations existed, EQCs were used as exit levels (see Section IV.I). As a practical matter, this approach affects only the exit levels for nonwastewaters. As explained above in section IV, EPA created the original exit levels for nonwastewaters by grouping the modeling results for the unit types typically used to manage solid materials (ash monofills, piles, and land treatment units) and selecting the lowest value from all pathways modeled for these scenarios. EPA created the separate wastewater exit levels by grouping the results from units typically used to manage liquid wastes (tanks and surface impoundments). Consequently, the wastewater exit levels are not based on the modeling of land treatment units, and these levels are not affected by the decision to exclude results from the land treatment scenario.

The Agency is proposing that the contingent management exemption be self-implementing. Therefore, the claimant would have the burden of demonstrating that all of the provisions for the contingent management exemption described herein have been met. In an enforcement action, a waste for which a contingent management exemption is claimed would be considered a Subtitle C hazardous waste unless the claimant was able to produce evidence that all of the conditions of the exemption have been met.

B. When Contingent Management Exemptions Become Effective

The Agency is proposing two options for the point at which the contingent management exemption would become effective.

1. Option 1A—Placement of the Waste in a Qualifying Unit

Under the first option, the conditional exemption for "contingent management" nonwastewaters would not become effective until the waste had been placed in a qualifying unit. Prior to actual disposal, the nonwastewater would be managed as a hazardous waste according to all applicable RCRA provisions, including 40 CFR parts 262 (for generators) and 263 (for transporters) and part 268 (regarding treatment prior to land disposal). These requirements include compliance with the waste manifest provisions of 40 CFR part 262, subpart B, and the pre-transport provisions of 40 CFR part 262, subpart C, which contains, among other provisions, the provisions governing hazardous waste accumulation. Treatment and storage prior to disposal would remain subject to parts 264, 265, and 270.

The Agency believes this approach makes it easier to ensure consistent implementation and safe management of the waste. It also decreases the potential implementation concerns that may arise if some states adopt this rule as part of their authorized programs and others do not. For example, this approach would reconcile transportation concerns that could arise if waste, conditionally-exempt in one state, were transported through a state that had not adopted the contingent management exemption as part of its authorized program.

Under this option, the Agency is considering and requesting comment on the applicability of amending 40 CFR 264.1 and 265.1 to allow off-site disposal facilities to store candidate contingent management exempt wastes for up to 10 days without becoming a subtitle C treatment, storage, and disposal facility, prior to ultimate disposal in a monofill or landfill. The Agency requests comment on whether 10 days is a sufficient or appropriate length of time, and if not, what time period may be appropriate.

Under the above approach, contingent management exempt nonwastewaters being disposed of on-site also would not become exempt until placed in a disposal unit meeting the requirements established under this rule. However, since the current waste accumulation provisions of 40 CFR 262.34, allow a generator to store hazardous waste on-site in tanks, containers or containment buildings for 90 days without becoming a Subtitle C storage facility, EPA believes that this approach should not place undue burdens on a generator. EPA requests comment on whether § 262.34 will in fact enable generators of exempt nonwastewaters to store wastes on-site in unpermitted units for a reasonable period of time prior to land disposal. EPA acknowledges that nonwastewaters are typically not stored in tanks.

2. Option 1B—Effective Upon Meeting the Exit Levels

The second option that EPA is considering would allow a nonwastewater to become exempt from all hazardous waste requirements except part 268 as soon as it meets appendix XI of 40 CFR part 261 exit levels and the claimant has met all the requirements and conditions of the exemption, including certifying that the waste will be managed in a monofill or land disposal unit. The goal of this approach is to ensure nonwastewaters will not be managed in a land treatment unit, which was found to pose the greatest risk for many routes of exposure. Under this approach, storage, treatment and transportation of the nonwastewater could take place outside of Subtitle C control upon meeting the requirements and conditions for the exemption. If EPA were to adopt such an approach, it would impose conditions to ensure that the exempted nonwastewater reached the types of units for which the exemption was designed. Various options are suggested below in Section D.1.

Finally, EPA notes that the proposed approaches have different implications for LDR relief. These differences, which

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principally concern the availability of LDR relief for nonwastewaters which meet the appendix XI of 40 CFR part 261 exit levels at their point of generation, are discussed in more detail in section H. below.

C. Requirements for Obtaining an Exemption

The following requirements would be applicable to both of the approaches discussed above. Requirements for meeting the contingent management exemption would include the sampling and testing requirements of § 261.37 (b)(1), the public notice requirements of § 261.37 (b)(3) and the notification to the implementing Agency requirements of § 261.37 (b)(4), similar to those respective requirements for the base exemption in §§ 261.36 (b) (1), (3) and (4). The Agency notes that these provisions would be directly enforceable Subtitle C requirements imposed prior to obtaining an exemption rather than conditions for maintaining the exemption.

1. Sampling and Testing Requirements for Contingent Management Exemptions

The Agency is proposing that the sampling and testing requirements for the contingent management exemption be the same as those proposed for the base exemption in Section 261.36 (b)(1). The Agency requests comment on whether the sampling and testing requirements for the base exemption would be appropriate for the contingent management exemption.

2. Requirements for Public Participation in Contingent Management Exemptions

To provide the public with access to information, the Agency is proposing to require compliance with the public notice requirements in proposed § 261.37(b)(3), similar to those in § 261.36(b)(3). The first time a claimant provides the Agency with notification of an exemption claim for contingent management wastes, he will be required to publish a notice of the claim in a major local newspaper general circulation. The notice must include the name and address of the facility, the description of the waste (as contained in the notification), a brief general description of the process producing the waste, an estimate of the quantities of waste claimed to be exempt, and information about the Agency where the claimant has sent the notification and supporting information. In addition, the public notice must include that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be disposed of in a monofill or land disposal unit.

3. Notification Requirements for Contingent Management Exemptions

To qualify for a contingent management exemption, a claimant would need to submit to the authorized State Agency Director a formal notification of its claim that waste meets the contingent management exemption levels in Appendix XI of 40 CFR part 261 and will be managed in accordance with the management conditions. In addition to the requirements under § 261.36 (b)(4), the contingent management exemption notification to the implementing Agency must include an accompanying certification that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be disposed of in a monofill or land disposal unit.

The Agency requests comment on whether these requirements, similar to § 261.36 (b)(1),(3) and (4), will provide adequate information to the implementing agency and the public on what exemption levels, i.e., appendix X to 40 CFR part 261 or appendix XI of 40 CFR part 261, are being claimed and on how the waste is being managed. These provisions would be requirements rather than conditions.

D. Implementation Conditions

As set out in § 261.37 (d) and explained in the base exemption implementation preamble (section VIII. B., Implementation Conditions) certain conditions have to be met to maintain the exemption after the claim has become effective. Under both option 1A and 1B, the following conditions would have to be met to maintain the contingent management option: Submitting changes in notification information to the Director within 10 days of the change, following the schedule for retesting, preparing and complying with a sampling and analysis plan for every retest, maintaining constituent concentrations in the nonwastewater at or below the exemption levels in appendix XI, meeting applicable treatment levels under § 268.40, and maintaining records on-site for three years. These conditions are very similar to those proposed for the base exit in Section VIII of today's proposed rulemaking. In addition to those conditions established for the base exemption, the claimant would also have to ensure that the waste was managed in a qualifying unit.

Claimants, under both options, always have the obligation to identify whether they are generating a hazardous waste and to notify the appropriate government official if they are generating a hazardous waste. (Section 3010; 40 CFR 261.11.) If any nonwastewater claimed as exempt under the contingent management proposal tested above the exit levels in appendix XI to 40 CFR part 261 at any time, that waste and any mixture or derived-from forms of that waste would have to be managed as hazardous waste, including compliance with all notification requirements, until testing demonstrated that the waste was below the exit levels.

1. Tracking Conditions

EPA is proposing to modify the manifest regulations to reflect the fact that wastes exiting under this exemption need not be disposed of in treatment, storage or disposal facilities that are subject to the requirements of § 264.71–264.72 or Section 265.71–264.72 requiring the facility that receives the waste to sign and return the manifest. EPA is not proposing to require the owners and operators of nonhazardous waste facilities that accept wastes exempted under this option to comply with these duties. As EPA concluded when it decided not to extend recordkeeping duties related to the LDR program to nonhazardous waste facilities accepting de-characterized hazardous wastes, it would probably be difficult to provide reasonable notice to all the members of this diverse universe, which has little or no other contact with the hazardous waste management regime, of these Subtitle C responsibilities.

EPA is proposing instead that the claimant of the exemption be responsible for ensuring that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). Billing documents may already supply some of the needed information. Where they do not, EPA believes that claimants should generally be able to contract with the receiving facilities to obtain the necessary information. In some states, nonhazardous waste rules may also require disposers to furnish generators with some of the necessary information. EPA proposes to revise the manifest document as necessary to ensure that nonhazardous waste facilities can be designated as receiving facilities for listed wastes meeting all of the other requirements for obtaining an exemption under this option.

The alternative to this approach would be to require owners and operators of nonhazardous waste facilities to sign and return manifests as a condition of the exemption. Failure to satisfy this condition would void the exemption and return the waste to the hazardous waste management regime, even if it were in fact safely placed in an appropriate waste management unit. EPA requests comment on this alternative.

Under option 1A, where all Subtitle C regulations apply until placement of the nonwastewater in a monofill or landfill, EPA is proposing conditions that make the claimant responsible for obtaining a copy of the manifest to ensure the waste has reached its destination. The claimant would also have the burden of acquiring evidence from the receiving facility that the waste was placed in either a monofill or land disposal unit.

Under Option 1B, where the exemption becomes effective upon the waste meeting the appendix XI of 40 CFR part 261 exit levels, any tracking system established would be a condition that the claimant would have to meet to maintain the contingent management exemption. To ensure that listed wastes exempted under this option actually go to a landfill or monofill, EPA is proposing to require exemption claimants to comply with the requirements of part 262 (with the modification discussed above) relating to the uniform hazardous waste manifest.

Since this option allows wastes to go to facilities that are not subject to the duty to return the manifest under § 264.71–264.72 or § 265.71–264.72, EPA is proposing to require the claimant to ensure that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). The duties would be identical to those proposed above for claimants under the first option. The rationale for imposing the duties on the claimant—and not the receiving facility—is also the same.

An alternative which EPA requests comment on is the concept of imposing conditions that require a uniform, national tracking document similar to the current uniform manifest to accompany the waste until it reaches its final destination. This document could inform transporters and other waste handlers that the waste is an exempt hazardous waste that must be managed in a monofill or land disposal facility and loses its exemption if it is managed in a land treatment unit. EPA could further require that the disposal facility certify that the nonwastewater was disposed in a monofill or land disposal unit and return the tracking document and certification to the original exemption claimant. EPA could also ensure that the implementing agency (EPA or an authorized state) received notice of any problems in waste disposal by imposing requirements similar to the current § 262.42 exception reporting provisions.

Another alternative would be to require, in lieu of a tracking document, a contractual agreement between the exemption claimant and the receiving facility specifying the type of waste the receiving facility will accept, the type of units it will use, and information on the volume and frequency of deliveries. EPA could require either the claimant or the receiving facility (or both) to maintain a copy of the agreement on-site and make it available to state or EPA inspectors. EPA also could require exemption claimants and transporters to create and keep similar contracts. EPA, however, requests comment on whether transporters would require claimants to provide information on the exempted waste's origin and the regulatory limits on its disposal options even without federal regulation.

EPA requests comment on whether any of these alternatives can adequately ensure that mismanagement will not occur so that these wastes managed under this option 1B approach would not need to be classified as hazardous.

2. Qualifying Unit

A "qualifying unit" for today's contingent management proposal is a landfill or monofill. For purposes of today's proposal, a landfill is defined in § 260.10 as being "a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit." The Agency is proposing a definition for monofill in § 260.10 as a landfill where waste of only one kind or type is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit. Also, for today's proposal, a land treatment facility is defined in § 260.10 as being "a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure." The Agency requests comment on whether other units could be considered "qualifying units" for contingent management exempt waste and whether additional modeling is needed to assess risks from management of nonwastewaters from other units.

The Agency modeled risks from waste piles in both its multipathway and groundwater analyses. It modeled only groundwater risks form landfills. As explained elsewhere in this preamble, EPA believes that the nongroundwater risks posed by piles generally are higher than the nongroundwater risks posed by landfills. EPA, however, is not proposing to allow wastes placed in piles to be exempt under the exit levels for contingent management option 1. Piles, as defined in Part 260, are temporary units. To ensure that exempted wastes removed form piles went only to landfills or monofills, EPA would have to impose additional tracking conditions. These could be difficult to craft and enforce effectively. EPA currently thinks that excluding piles from eligibility will provide much better assurance that exempted wastes will not be mismanaged.

EPA acknowledges that the exit levels for this option, which are based in many cases on the evaluation of waste piles, may, for some pathways, be more restrictive than levels for landfills. If EPA later completes a multipathway analysis of landfill units, it will be able to use the levels from that modeling in lieu of the modeling from piles to derive exit levels for this option.

The Agency requests comment on the proposal to exclude wastes placed in piles from being eligible for exemption under this option. The Agency also requests comment on the alternatives of allowing wastes to be exempt either permanently or temporarily (e.g., for one year) after they are placed in piles.

3. Claimant's Duty To Ensure Compliance With All Requirements and Conditions

Today's proposal requires that, in order to claim a contingent management exemption, the person submitting the claim must manage the waste for which the exemption is claimed in accordance with the requirements and conditions established by this rule. To satisfy this rule, the claimant must ensure that the waste is actually disposed of in a qualifying unit. The burden of satisfying all conditions for the exemption falls on the claimant as the person in the best position to determine eligibility of a waste for an exemption and to ensure informed waste management decisions. The claimant may enter into contractual

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arrangements with receiving facilities to allocate responsibility for satisfaction of the conditions among themselves although such arrangements will not relieve the claimant of liability if the receiving facility manages the waste improperly. It should be noted, however, that facilities receiving contingent management exemption wastes could also become liable for violations of permitting, Subtitle C treatment, storage and disposal standards should they dispose of the nonwastewaters that do not qualify.

Under today's proposal, § 261.37(g), the burden of proof to establish conformance with the exemption criteria is on the claimant in the event of an enforcement action. One alternative for simplifying the claimant's burden of proving compliance with all conditions would be to set out in the rule certain documentation that, while not necessarily required of the claimant, presumptively would be sufficient evidence of satisfaction of the management condition. Of course, EPA could rebut this presumption regarding actual disposal through evidence that the claimant's documentation is deficient or inaccurate. For example, claimants might be able to develop rebuttable evidence of proper off-site disposal by keeping correspondence with the receiving facility, indicating that the waste went to a landfill or monofill, and by keeping a returned manifest which indicates that the waste reached that facility. The Agency is taking comment on whether establishing certain evidentiary standards would provide useful guidance to claimants on how to satisfy the management condition and provide helpful incentive for claimants to maintain proper documentation of their exemption claims.

Comment is also requested on whether any additional conditions or requirements, substantive or procedural, should be imposed on claimants to ensure that the contingent management exemption waste is actually managed in a qualifying unit.

E. Retesting and Recordkeeping Conditions for Contingent Management Exemptions

Claimants continuing to generate or otherwise manage waste for which they continue to claim a contingent management exemption would be required, under § 261.37(d)(2), to retest the waste with the same frequency and under the same conditions as is being proposed for the base exemptions, § 261.36(d)(2). If a claimant finds that the exempted waste no longer meets the constituent concentration levels on Appendix XI of 40 CFR part 261 for the contingent management exemption, or that the waste has not been placed in a landfill or monofill, the claimant must comply with all applicable requirements for generators of listed wastes (including disposal of waste at a Subtitle C facility) and the disposal facility would have to comply with all of the requirements for owner/operators of treatment, storage, and disposal facilities under 40 CFR parts 262–270. The generator and disposal facility's obligations would also include renotifying the Agency of hazardous waste management activity using EPA form 8700–12.

Under § 261.37(d)(6), claimants also would be required to maintain on-site, for at least three years after Agency receipt of the notification and certification, all documentation required under this rule including, but not limited to, the sampling and analysis plan and test data and the accompanying notification and certification. These requirements are similar to those proposed for the "base" exemption in § 261.36.

The Agency requests comment on alternative record retention periods for claimants such as 5 years, which corresponds to the applicable statute of limitations period at 28 U.S.C. 2462. An extended record retention period may assist claimants in substantiating their conformance with the contingent management exemption criteria. The documentation must be available for review by the Agency or an authorized State at the time of site inspection. The three-year claimant record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

F. Compliance Monitoring and Enforcement for Contingent Management Exemptions

Since contingent management exemptions are self-implementing, the Agency needs to rely on its enforcement authorities to ensure that the exemptions are being applied in an appropriate manner and that only those wastes that are truly nonhazardous are relieved from Subtitle C disposal requirements. Compliance monitoring and enforcement of the contingent management program would be carried out under existing authorities and conditions with which the regulated community should already be familiar.

Claimants must comply with all of the previously described conditions of the exemptions to qualify for the exemptions. All persons who manage waste for which an exemption has been claimed must manage the waste as required under Subtitle C during periods when any of those conditions are not met. Claimants that fail to comply with the applicable conditions of the contingent management exemption risk enforcement action for violations of Subtitle C requirements, including administrative, civil and criminal penalties.

1. Compliance Monitoring

The Agency is proposing that compliance monitoring of the contingent management exemption occur through EPA and State oversight, primarily through review of notifications and inspections.

The Agency has the authority, under section 3007 of RCRA, to require submission of information and to conduct inspections of facilities which EPA has reason to believe may be generating or managing a hazardous waste. EPA and States may do confirmatory sampling and analysis to determine whether a waste meets the exemption levels. Under this authority, the Agency would be able to inspect a non-Subtitle C facility receiving contingent management exemption waste.

Inspections of off-site laboratories may also be performed.

2. Enforcement

The contingent management exemption criteria proposed today would create an exit from the Subtitle C system only so long as the requirements and conditions established for the exemption are met. Failure to comply with any of the conditions for the exemption would mean that the wastes would not be exempt from Subtitle C, and the claimant could be subject to immediate enforcement action for violation of Subtitle C requirements.

The Agency has the authority under this regulation and RCRA Section 3007 to require submission of information on the management of exempted wastes in a situation where the Agency suspects the claimant has not satisfactorily determined whether a waste meets the appropriate exemption levels. Alternatively, the Agency may require improved analysis using an administrative or civil action under section 3013. Failure to manage the contingent management exemption waste in accordance with the conditions would void the exemption and the conditionally exempt waste would be subject to full Subtitle C regulation. The receiving facility, therefore, would become a Subtitle C treatment, storage, and/or disposal facility requiring a permit.

In an enforcement action, compliance with the terms and conditions of the exemption may be raised as an affirmative defense, but the burden will be on the defendant to establish eligibility for the exemption and compliance with the conditions necessary to maintain the exemption. See 50 FR 642 (Jan. 4, 1985) for a discussion of EPA's authority to place such burdens on defendants.

Claimants may not use the contingent management exemption as a means of avoiding enforcement actions. For example, a generator who is the subject of an Agency enforcement action cannot claim that the waste in question is exempted from Subtitle C under the contingent management exemption unless a valid exemption notification for that waste has been previously submitted to the Agency and the required documentation to support the claim exists at the facility and satisfies the requirements of the regulations. The contingent management exemption cannot be used in a retroactive fashion to avoid enforcement actions. Similarly, these exemptions cannot be used as a legal defense prior to the effective date of promulgation of this rule.

G. Exports of Wastes Eligible for Contingent Management Exemptions

Under option 1A of today's proposal, contingent management exemption wastes would remain hazardous until actually disposed of in a qualifying unit. The waste would thus remain subject to all applicable requirements of 40 CFR parts 262 and 263, including export requirements.

Under option 1B where the waste becomes exempt upon meeting the contingent management exit levels, comment is requested on whether these exempt wastes should still remain subject to the export requirements of 40 CFR part 262. Comment is requested on whether these export requirements are necessary to ensure that the contingent management exemption waste will be properly managed in the receiving country.

H. Land Disposal Restrictions

As discussed above in section VI, EPA is proposing two approaches to integrating LDR requirements with the exit levels for the base option. First, EPA is proposing that LDR treatment requirements will never apply to wastes that meet exit levels for the base option at the point of generation. Second, for wastes which remain subject to LDR requirements, EPA is proposing to allow exit levels based solely on the combined multipathway and groundwater analyses to serve as alternative risk-based LDR standards meeting the "minimize threat" standard in section 3004(m) of RCRA. EPA believes that both approaches are appropriate for contingent management option 1.

To eliminate the duty to comply with the LDR rules for wastes that meet the base option exit level at the point of generation, EPA is taking the position that such wastes are defined as hazardous waste pursuant to their listing descriptions for such a brief period of time that they effectively never become subject to Subtitle C requirements, and LDR requirements never apply. It is relatively easy to apply this theory to option 1B presented above in section B.2. that allows nonwastewaters to exit as soon as they have met the appropriate concentration limits and to remain exempt so long as they are managed in landfills or monofills. Such wastes need only meet the exit levels to obtain their exemption. If they meet them at the point of generation, they would appear just as entitled to LDR relief as wastes meeting the exit levels for the base option.

Under option 1A, however, nonwastewaters will not exit until they both meet the exit levels and are placed in a landfill or monofill. Such wastes would not be eligible for exit at the point of generation even if their constituent concentrations were low enough. Rather, they would be subject to Subtitle C regulation for a significant portion of their "cradle-to-grave" management cycle. It would be difficult to argue that these wastes had never really been regulated as hazardous wastes, and that LDR treatment requirements did not apply. Consequently, EPA is not proposing to allow nonwastewaters to become exempt from LDR requirements at the point of generation under this sub-option. EPA requests comment on alternative legal theories that would provide a better basis for arguing that nonwastewaters subject to this sub-option could be exempt for the LDR rules if they meet exit levels at the point of generation.

Both options 1A and 1B have identical exit levels based on removing the predictions for land treatment units and using the next-highest concentration as the exit level. EPA is proposing to allow the exit levels that are based solely on the multipathway/groundwater risk analyses to serve as minimize threat levels for both options 1A and 1B. These levels represent concentrations posing minimal low threats for nonwastewater placed in landfills, monofills and waste piles. They are based on the same risk assessment used for the assessment for the base option. They make the same "reasonable worst case" assumptions about the units' physical setting and the same minimal assumptions about control measures. Hence, EPA believes that these exit levels sufficiently reduce threats to human health and the environment to meet section 3004(m)'s "minimize threat" standard.

EPA acknowledges that option 1B, allowing wastes to exit Subtitle C before they are placed in the right kind of land disposal unit, presents an additional type of risk. Under option 1B, it may be more difficult for EPA to ensure that exited wastes will not be placed in land treatment units. (Under the alternative option, option 1A, Subtitle C manifest and tracking requirements would apply.) As explained above in section B., however, EPA will create conditions for option 1B to help ensure that exempted wastes are not disposed of in land treatment units. EPA believes that these conditions will sufficiently reduce the risk of inappropriate disposal that the exit levels will continue to minimize threats. EPA requests comment on this aspect of the proposal.

XI. Relationship to Other RCRA Regulatory Programs

Today's rule proposes specific conditions and exit criteria that would exempt listed hazardous wastes, including waste mixtures and derived-from wastes, from Subtitle C regulation. Below is a discussion of how this proposed rule would affect other relevant RCRA regulatory programs.

A. Hazardous Waste Determination

Under current RCRA regulations, any person who generates a solid waste must determine if that waste is a hazardous waste in accordance with the procedures outlined in 40 CFR 262.11. According to 262.11, generators must first determine if their waste is excluded from regulation under 40 CFR 261.4. Generators must then determine if the waste is listed in subpart D of part 261. If the waste was not listed, or for purposes of compliance with 40 CFR part 268, generators must then determine if the waste exhibits a characteristic defined in subpart C of part 261.

Today's proposed rule is an exemption for listed wastes meeting the exit criteria, and does not change the general requirements for generators making hazardous waste determinations under § 262.11 (see discussion of characteristic waste below).

B. Characteristic Hazardous Waste

Today's proposed rule establishes exemption criteria for hazardous

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constituents in eligible listed wastes, waste mixtures, or derived-from wastes. If the waste satisfies the exemption criteria proposed today, the waste would not be considered listed hazardous waste. However, the generator must still determine whether the waste exhibits any characteristics of a hazardous waste as specified in 40 CFR 261.21 through 261.24 and continue to meet hazardous waste requirements if the waste does exhibit a characteristic.

C. Toxicity Characteristic Level for Lead

Toxicity characteristic constituents are among those evaluated for exit values in this proposal. In developing the risk assessment for all constituents, including the TC constituents, the Agency examined risks via groundwater and other pathways to humans, and also environmental receptors. In evaluating risks resulting from the groundwater pathway, the Agency used its newly developed CMTP model, and the MINTEQ metals speciation component. The CMTP model estimates groundwater transport using finite source assumptions, and accounting for hydrolysis and adsorption of chemicals to soils. The MINTEQ component estimates dissolution and speciation of metals in groundwater. Using these models, the Agency has developed and is proposing estimates of transport through groundwater specific to each constituent. These estimates are analogous to constituent-specific dilution and attenuation factors (DAFs). These constituent-specific DAFs were contemplated for several constituents proposed for regulation in the TC rulemaking, but not finalized, because the modeling work was not complete. TC levels were set using generic DAFs of 100.

In developing the constituent-specific DAFs, the Agency estimated that lead moves through groundwater much more slowly than predicted by the generic DAF of 100. While the modeling analyses supporting the TC rule and today's proposed rule are somewhat different from one another, the constituent-specific DAF for lead leaching from a landfill was estimated as 5000 rather than the 100 used in the TC rule. Higher leaching rates (giving lower DAF values) were estimated for some other disposal options evaluated in the updated modeling, such as land application and management in surface impoundments. This analysis raised the question of how the TC and today's proposed rules would relate to one another, and whether these results warranted consideration of a change to the TC level of 5 mg/l for lead (updated groundwater modeling of other TC constituents did not show the large disparity between the TC and exit level proposed in today's notice for lead).

In considering these issues, the Agency reviewed several factors. First, the human health risk evaluation for lead has changed since the TC rule was promulgated, resulting in the MCL (on which the TC is based) for lead being reduced from 50 ppb to 15 ppb. Using the new DAF from the landfill scenario plus the new drinking water standard could raise the TC level to 75 mg/l from the current 5 mg/l. However, when lead movement from a land treatment scenario was modeled, a DAF of approximately 770 resulted, and a TC level based on this and the new drinking water standard could be approximately 10 mg/l. Another relevant reference point for lead in the environment includes the current OSWER soil direct ingestion level for lead of 400 ppm (as a total concentration, not leachate).

The Agency considered several approaches to potentially proposing revisions to the TC level, including basing a new TC level on groundwater modeling only, basing it on the soil ingestion estimate, or basing it on the driving pathway value and exit level, which considers adverse ecologic effects.

After carefully considering the issue, the Agency concluded that the issue of lead toxicity and movement through the environment is very complex and changes to existing rules could have significant impacts on management of lead-bearing waste and public health. The agency believes regulation of lead-bearing wastes warrants careful consideration and full evaluation of and review of the policy issues associated with considering all potential exposure pathways and risk to human health and the environment. Questions include whether the TC level would be a leachate or totals value, and whether it would be based on groundwater only or other exposure routes and whether it would be human health based or based on ecological risk considerations. Such a comprehensive evaluation is not feasible in the context of the rulemaking proposed today, and so the agency has determined to defer any action on the lead TC level. The Agency recognizes that this is an issue of considerable interest to the public, and will consider review of management of lead-bearing waste at the soonest practical time. In the interim, the lead TC regulation and the exemption regulation proposed today (when finalized) would co-exist as independent regulations.

As described in Section IV.E.3, the Agency has developed groundwater modeling based on both 10,000 year and 1000 year time frames. Today's proposal is based on the 10,000 year modeling time horizon, and the Agency is soliciting public comment on the alternative of using 1000 years. One aspect of the 1000 year modeling results is that the groundwater-based exit levels for more constituents would be above current TC levels for those constituents. These constituents include, in addition to lead, chromium, cadmium, selenium, and mercury. The Agency seeks public comment on this aspect of using the 1000 year time horizon modeling for risk assessment in the HWIR rule.

D. Hazardous Waste Listings

The Agency evaluated the likelihood that untreated hazardous wastes would be able to meet the exemption criteria in an "pure" state (e.g., untreated and unmixed) and determined that it is unlikely that the constituent concentrations in many untreated hazardous wastes would be below today's proposed exemption levels or the applicable BDAT standards, particularly for nonwastewaters. Specifically, the Agency's hazardous waste characterization data indicate that the concentrations of toxicants of concern in untreated listed wastes are typically present at levels many times higher than health-based levels or BDAT values. Therefore, it is unlikely that the Agency's current criteria for listing wastes as hazardous will change as a result of the introduction of today's exit criteria into the RCRA regulations. However, EPA has been utilizing a more comprehensive risk analysis in the listing program, looking at multiple pathways for the movement of constituents through the environment, similar to the approach taken in today's proposal. Today's proposed approach may also provide the Agency with a means of assessing whether or not future listings might inadvertently bring into the RCRA system the types of low-concentration wastestreams that would subsequently be eligible for exit under today's proposal.

E. Delisting

The evaluation criteria used for delisting may vary from today's exemption criteria for various reasons. First, delisting is an interactive process that considerable oversight by EPA or authorized State agencies. In delisting, the overseeing agency evaluates the processes generating a specific wastestream in order to determine the constituents likely to be present, as well as the potential variability in the waste.

EPA (or the State) closely reviews sampling procedures, analytical test results, and the accompanying QA/QC data. This oversight increases the confidence in the quality and representativeness of the waste analysis.

Second, delisting is specific to one wastestream, which decreases uncertainties that arise in the more generic approach proposed today. For example, a delisting petition will typically provide the annual generation volume of the waste. Using a specific waste volume as an input to various models has allowed EPA to calculate exit levels that may be somewhat higher than the levels proposed in today's rule. EPA believes that it is reasonable to use higher exit levels for the smaller waste volumes in delisting petitions (see 56 FR 32993 (Reynolds Metals) for further description of volume impact).

The delisting process also allows more certainty in the plausible management scenarios that are modeled to generate exit levels. For example, the characteristics of the waste may dictate the likely disposal method (e.g., disposal in a landfill of de-watered process sludge). In some cases, special management standards may also be a factor (e.g., radioactive wastes are regulated under the Atomic Energy Act, therefore if such a hazardous waste were delisted, disposal options would be severely limited (see 60 FR 6054 (Hanford delisting)).

EPA also considers the applicability of available groundwater monitoring data from land-based waste management units that have received the petitioned waste. Such data are typically required under permitting regulations for hazardous waste facilities (see 40 CFR parts 264 and 265). If any contamination of groundwater appears to be due to constituents from the petitioned waste, EPA will consider this as a basis to deny the petition. The more generic waste identification rule proposed today does not incorporate this additional evaluation criterion.

EPA may also require special testing regimes to ensure waste consistently meets delisting criteria (e.g., see (cite Reynolds Metals, CSI, Hanford)). Because the overseeing agency reviews the petition in some detail, the testing frequency may be closely tied to the potential variability of the waste. A facility that accepts and treats waste from diverse sources would typically have frequent testing requirements (see 40 CFR part 261 appendix IX (Envirite)). In other cases, the testing requirements for some initial period will be extensive, but the subsequent testing may be reduced.

Delisting petitions for wastes that contain toxic constituents which exceed the exemption levels proposed today will continue to be accepted and reviewed by the Agency after promulgation of today's rule. With the exception of a potentially reduced petition review burden, the Agency does not anticipate any changes in the current review of delisting petitions as a result of the implementation of today's proposed exemption. EPA does request comment on which risk models should be used to evaluate future delisting petitions.

F. Requirements for Treatment, Storage, and Disposal Facilities and Interim Status Facilities

In order to implement the changes proposed today, owners or operators of RCRA permitted or interim status facilities may have to amend their waste analysis plans if required under 40 CFR 264.13 and 265.13. Such changes will most likely include the addition of the appropriate analysis methods and changes that may be required in the frequency of testing.

Permitted facilities, in unauthorized States, who elect to employ the exemption procedures and who subsequently prepare changes to their waste analysis plans should, following promulgation of this rule, submit a Class I permit modification to EPA. (EPA is aware that although most States have either become authorized for, or have adopted, the 3-class permit modification regulations, some states may still be operating under the older "major/minor" permit modification procedures. Under those procedures, changes to the waste analysis plan would be considered a major modification).

G. Closure

Under today's proposed rule, a hazardous waste management unit that receives wastes that are exempt under today's exit criteria would continue to be a regulated Subtitle C unit subject to the requirements of 40 CFR parts 264 or 265, including closure requirements, until the owner/operator completed clean closure of the unit or unless all of the waste in the unit were delisted. A unit receiving only waste that is exempt under today's proposal would no longer be receiving hazardous waste upon the effective date of the exemption; such a unit would normally become subject to Subtitle C closure requirements, which are triggered by the final receipt of hazardous waste by the unit. The facility owner or operator is required to complete closure activities within 180 days after receiving the final volume of hazardous waste. 40 CFR 264.113(b) and 265.113(b). However, RCRA closure requirements do allow certain waste management units to delay closure, while continuing to receive non-hazardous waste (such as waste exempt under today's proposed rule), provided certain conditions are met.

The RCRA delay-of-closure regulations, promulgated on August 14, 1989 (54 FR 33376), allow owners or operators to delay the closure of landfills, land treatment units, and surface impoundments in cases where the unit stops receiving hazardous waste but the owner or operator wishes to continue using the unit to manage only non-hazardous waste. These requirements are outlined in 40 CFR 264.113(d) and (e) and 265.113(d) and (e). Owners or operators wishing to delay closure must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application at least 180 days prior to the final receipt of hazardous wastes. The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage non-hazardous wastes, and that the non-hazardous wastes are not incompatible with any wastes in the unit. In addition, certain facility information including the waste analysis plan, groundwater monitoring plans, closure and post-closure plans, cost estimates, and financial assurance demonstrations must be updated as necessary to account for receipt of only non-hazardous waste. Sections 264.113(d) and 265.113(d). In addition, surface impoundments that do not meet the minimum technological requirements (MTRs) for liners and leachate collection of RCRA 3004(o) must comply with additional requirements in order to delay closure, including the removal of hazardous wastes to the extent practicable from the unit. Sections 264.113(e) and 265.113(e).

The delay of closure regulations apply only to landfills, land treatment units, and surface impoundments. In the case of other RCRA units such as tanks and waste piles, the Agency did not feel that the delay-of-closure regulations were necessary for these types of units in order to receive only non-hazardous wastes (54 FR 33383). The closure requirements in subpart G for these units include removal or decontamination of waste residues, containers, liners, bases and contaminated soils, equipment, and other containment system components; these closure requirements are not incompatible with the reuse of these

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units for receipt of only non-hazardous waste. Once the unit has been emptied of all hazardous wastes and decontaminated, it could receive non-hazardous waste. However, the Agency also recognizes that some flexibility may be warranted in converting the use of a unit such as a tank from hazardous to non-hazardous waste management. EPA solicits comment on whether an owner or operator might demonstrate removal of hazardous waste residues from the tank by demonstrating that all waste in the tank is below exemption levels, without removing the waste from the tank. In cases where the owner or operator could not demonstrate that all wastes in the tank were below exemption levels, he or she would have to remove the hazardous waste in order to achieve closure of the unit. In some cases, the facility owner or operator may be able to demonstrate that a tank no longer managed hazardous waste (because the waste met today's proposed exemption criteria), but did not achieve clean closure because of soil and perhaps groundwater contamination. In this case, EPA solicits comment on whether the facility owner or operator should be required to remove the contamination to clean closure levels, or close the area as a landfill while using the tank to manage nonhazardous wastes, as long as this activity did not interfere with cleanup activities or control of the contaminated areas.

The Agency also believes that the availability of a delay-of-closure option provides much of the flexibility needed to allow for the uninterrupted management of exempt waste, while providing assurance that the protections afforded by the closure regulations for Subtitle C units (e.g., evaluation of soil and groundwater at closure) are not lost. This approach makes sense in light of the fact that today's proposed exemption is self-implementing, which the Agency feels is appropriate for waste identification purposes, but not necessarily so for determining whether a Subtitle C unit may become a Subtitle D unit without first undergoing closure.

H. HWIR-Media Rule/Subtitle C Corrective Action

The Agency is currently planning on proposing a rule ("HWIR Media") addressing waste management issues relating to environmental media (e.g., soil, groundwater, and sediments). The goal of this rule is to allow more effective cleanups at contaminated sites. As currently drafted, the media proposal will supplement the regulatory system under RCRA for the management of RCRA hazardous contaminated media, applicable to sites that are undergoing cleanup overseen by EPA or authorized States. Such sites include cleanups at RCRA corrective action sites, State cleanups, and Superfund remedial actions. The media rule will propose a "bright-line" distinction between hazardous contaminated media (i.e., media containing hazardous waste that is therefore regulated as hazardous) subject to modified Subtitle C standards, and less contaminated media subject to more site-specific, flexible standards implemented by State agencies. This new system will supplement the current approach(es) to identifying RCRA applicability to the management of contaminated media. The rule will also propose streamlined permit requirements for cleanups. It will not specify cleanup standards.

Today's proposal applies to listed hazardous wastes (e.g. process wastes, sludges, discarded commercial chemical products, etc.), including mixtures of one or more listed wastes with other solid wastes, and residues derived from the treatment, storage, or disposal of one or more listed hazardous wastes. Media that contain listed hazardous wastes, mixtures, or derived-from wastes with constituent concentrations below today's proposed exemption levels will be eligible for exemption under the procedures proposed today. EPA or an authorized State may continue to assess contaminated media with concentrations higher or lower than the exit levels proposed today on a case-by-case basis by making site-specific determinations as to whether a media "contains" a RCRA hazardous waste.

I. Land Disposal Restriction Program

Today's rule contains several important areas of overlap with the RCRA Land Disposal Restrictions (LDR) program that are discussed elsewhere in today's rule. First, as described in more detail elsewhere in this notice, EPA is proposing that exit levels produced under the multipathway analysis for constituents with adequate analytical methods should "cap" existing technology-based LDR standards, where the exit levels are less stringent than the current LDR values. If a waste contains only constituent with "capped" LDR values, it should be able to satisfy LDR requirements and exit Subtitle C for all other purposes as soon as the waste achieved those levels.

Under today's proposal the uncapped LDR requirements for listed hazardous wastes continue to apply to a waste even after the waste becomes exempt from Subtitle C under the exemption criteria. Furthermore, for listed wastes containing certain constituents with analytical problems, compliance with the LDRs (either numerical levels, specified treatment, or both) is part of the criteria for exempting that waste under today's proposal. Specifically, for constituents where there are no adequate analytical methods for determining whether or not the exit levels have been met, a combination of meeting applicable LDR standards and a showing of non-detect estimated quantitation concentration is required to satisfy the exit criteria for these constituents. This is explained in more detail in Section IV.I of today's rule.

If, however, a listed waste is below the exit concentrations proposed today at the point where the waste is "first" generated, that is, the point where the waste first meets the listing description and is potentially subject to Subtitle C, then a hazardous waste is never really "generated" and the LDR requirements do not attach to the waste. The EPA does not expect many listed wastes to be at or below the exit criteria at the point of first generation, where waste characterization data indicate that this is where wastes contain higher concentrations of hazardous constituents. Nonetheless, where a particular process generates a waste that is perhaps inappropriately captured by a listing, or where pollution prevention efforts by the generator result in a waste of lower constituent concentrations, if the waste meets the exemption criteria at the moment it is first generated, the LDR requirements would not apply. In contrast, once a listed waste is generated and managed the LDR requirements attach, and remain even after the waste exits Subtitle C under today's exemption (unless, as stated, where the exit levels are considered equivalent to a minimize threat standard). This issue is discussed in more detail in Section VI in today's proposal.

It should be noted that the Agency is currently reviewing the definition of "point-of-generation" with respect to the application of the LDRs. Since November 1986 (51 FR 40620), EPA has required LDR determinations to be made at the point which hazardous wastes are generated. In the Phase III LDR rule (March 2, 1995, 60 FR 11702), EPA solicited comment on the issue of where the point of generation should be defined. EPA presented three options to narrowly redefine the point at which the land disposal prohibitions attach: (1) Similar wastestreams generated by similar processes, (2) wastestreams from a single process, and (3) "battery limits." With Option 1 the point of generation would be defined at the point after which like wastestreams are generated from like processes and combined as a matter of routine

practice. Option 2 would consider the point of generation to occur when wastestreams from a single process are combined (e.g., residual wastestreams collected in a common unit such as a sump). In many cases, these wastestreams are similar in composition because they all come from a common unit process. The Option 3 "battery limits," is similar to Option 2; however instead of limiting aggregation to that normally occurring within a single unit process, the facility would view an entire battery of processes (associated with making a single product or related group of products) as a single manufacturing step. In the Phase III LDR proposal, EPA identified listed hazardous wastes as situations where existing point of generation determinations may remain appropriate. This is because EPA has carefully reviewed the various waste streams and has defined the point of generation as part of the listing description. Therefore, it may be inappropriate to modify that description with a more generic "point of prohibition" rule. This is important because today's rule applies only to listed hazardous wastes.

Lastly, under today's proposal, mixtures containing listed hazardous waste and residues from the treatment, storage, or disposal of listed hazardous waste that contain some constituents with concentrations below exit levels and some constituents with concentrations above exit levels would continue to be managed as listed hazardous wastes. Today's notice does not allow for partial exemptions, because the Agency does not believe that a self-implemented exemption process is well suited to partial exemptions. It is not always clear what the origin of a hazardous constituent is, particularly for constituents that are formed as by-products of treatment or waste interactions. Further, the proposed exemption criteria are not waste-specific, and thus are not suited to waste-specific or partial exemptions. Thus, the determination that a waste that carries two listing numbers should no longer bear one of the listing numbers is not always a straight-forward decision. The Agency has designed the exemption process proposed today to remove as much subjective decision making from the process as possible.

However, while the Agency is not today proposing an alternative that would allow these wastes to use only the hazardous waste codes for those listed wastes that are the origin of the constituents above the exit levels, the Agency believes that there could be merit in the concept for a future proposed rulemaking should the implementation concerns stated above be overcome. Therefore, the Agency requests information on actual cases with waste characterization data where a waste bears more than one waste code which results in conflicting treatment standards under the land disposal restrictions rules. If the Agency finds that there is a serious compliance issue for multiple listing wastes, the Agency may reconsider this decision, as well as other potential solutions to any documented problems.

J. RCRA Air Emission Standards

Today's proposed rule, when promulgated, may have an impact on the effectiveness of two other RCRA rules developed by the Agency under HSWA authority. Section 3004(n) of HSWA directed the Agency to promulgate regulations controlling air emissions from hazardous waste TSDFs "as necessary to protect human health and the environment." Subsequent Agency analysis demonstrated that air emissions from TSDFs do pose substantial risk in the absence of controls, and that controls were therefore required under the HSWA mandate. The Agency is fulfilling this mandate in phases; EPA completed the first phase when it promulgated RCRA air standards that control organic emissions vented from certain hazardous waste treatment processes, as well as from leaks in certain ancillary equipment used for hazardous waste management processes (55 FR 25454, June 21, 1990; 40 CFR part 264/265, subparts AA and BB). More recently, EPA completed the second phase when it promulgated RCRA air standards for tanks, surface impoundments, containers, and miscellaneous units operated at TSDFs (59 FR 62896, December 6, 1994; 40 CFR part 264/265, subpart CC). Together, these rules would reduce the risk from air emissions from the vast majority of these facilities to well within the risk range of other RCRA standards. After more thorough analysis, the Agency may issue a third phase of these regulations to address any residual risk. The emission reductions achieved by these rules would also significantly reduce the formation of ozone, which has adverse effects on human health and the environment.

Hazardous waste that satisfies the exemption criteria proposed today (including any constituent-specific exit concentrations for volatile organic chemicals, or VOCs), would be exempt from Subtitle C regulations, including regulations promulgated to date under RCRA 3004(n). In other words, once a waste is no longer regulated as hazardous, any unit in which the waste is managed (assuming no other hazardous wastes are being/have been managed in the unit) is not subject to Subtitle C regulations, including 40 CFR parts 264 and 265, subparts AA, BB, and CC. However, the Agency believes that it is important to ensure that the risks associated with air emissions both from hazardous wastes, and from wastes that would be eligible for exit under today's proposal, are adequately addressed. In the final rule establishing air emission controls for tanks, surface impoundments, containers, and miscellaneous units (the "Subpart CC" rule), the Agency established a threshold level of 100 ppmw (parts per million by weight) for total volatile organics in a waste, a concentration which if equaled or exceeded that would trigger the emission control requirements for these units. Because there are examples of exit levels proposed today for specific volatile organic constituents that exceed this 100 ppmw threshold, the Agency considered whether today's exit levels adequately addressed the air emission concerns of 3004(n) in allowing waste to exit Subtitle C. There are important differences in the underlying risk modeling between the two rules. However, the Agency believes that the constituent-specific risk evaluation done for this rulemaking results in proposed exit levels that for VOCs will not be less protective than the standards established to date under RCRA 3004(n). Despite these differences, the Agency requests comment on whether or not a total VOC concentration of 100 ppmw (parts per million weight), which is the concentration that triggers air emission controls under the Subpart CC rule, would be appropriate for use in the exit rule proposed today, and if so, how this level would be used.

K. Hazardous Debris

Hazardous debris that contains one or more listed hazardous wastes is eligible for exiting Subtitle C under today's proposed rule. The EPA notes, however, that certain exemptions already exist relating to hazardous debris. On August 18, 1992, the EPA published a final rule on the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194). In that rule, EPA required that hazardous debris be treated prior to land disposal, using specified treatment technologies from the treatment categories of extraction, destruction, or immobilization. (See 40 CFR 268.45, Table 1.) EPA also added a conditional exemption at § 261.3(f) for non-characteristic hazardous debris (i.e.,

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debris that is hazardous solely because it contains one or more listed hazardous wastes). Section 261.3(f)(1) exempts debris from Subtitle C regulation provided that the debris is treated using one of the extraction or destruction technologies specified in Table 1 of § 268.45. Alternatively, non-characteristic hazardous debris can be exempt under § 261.3(f)(2) if it is determined to be no longer hazardous by the Regional Administrator, after considering the extent of contamination of the debris, i.e., after a "contained-in" determination is made. However, non-characteristic hazardous debris contaminated with a listed waste, that is treated by a specified immobilization technology is *not* eligible for the conditional exemption in § 261.3(f)(1), and therefore remains subject to Subtitle C regulation after treatment.

In today's rule, EPA is not proposing to change the current exemption under § 261.3(f); therefore, non-characteristic hazardous debris that requires LDR treatment by extraction or destruction technologies will be exempt from Subtitle C regulation, once treated. As was explained more thoroughly in the final rule for hazardous debris, the Agency gave careful consideration to many factors before exempting certain treated debris, including whether each debris/contaminant type would be effectively treated by each BDAT technology to levels that would no longer pose a hazard to human health or the environment (57 FR 37240). However, hazardous debris that contains listed waste, and for which immobilization is the specified LDR treatment, may exit using today's proposed exit criteria. See also the discussion of a contingent management option above for a description of an alternative for encapsulated debris contaminated by radioactive "mixed" hazardous wastes. Finally, EPA is not proposing to change the contained-in exemption under § 261.3(f)(2) for hazardous debris; that is, the Regional Administrator may continue to determine on a case-by-case basis that hazardous debris no longer contains listed hazardous waste, and should therefore be exempt from RCRA Subtitle C.

L. Hazardous Wastes Used in a Manner Constituting Disposal

Section 266.20 (b) of the regulations states that hazardous wastes and hazardous waste-derived products that are legitimately recycled by being applied to or placed on the land are largely exempt from subtitle C regulation provided they satisfy three conditions: the recyclable materials must have undergone a chemical reaction so as not to be separable by physical means, the product must be produced for the general public's use, and land disposal restriction treatment standards for every hazardous waste in the hazardous waste-derived product must be satisfied. (The shorthand for this type of recycling is "use in a manner constituting disposal". See § 261.2(c)(1).) EPA developed § 266.20(b) largely as a stop-gap to provide some modicum of safety while EPA studied further whether various disposal-like uses of hazardous waste-derived products in fact were safe or warranted control. 50 FR 614, 628–29, 647 (Jan,. 4, 1985). Since then, the Agency has studied particular use constituting disposal practices and determined, or proposed, that such uses either be prohibited or allowed based on more individualized determinations of risk. See 53 FR 31138, 31164 (August 17, 1988) (allowing use of fertilizers derived from waste K 061 because of similarity to other zinc-containing fertilizers); 59 FR 43496, 43500 (August 24, 1994) (prohibiting anti-skid uses of K 061-derived sags); 59 FR 67256 (Dec. 29, 1994) (proposing to allow certain uses of K 061 if risk-based criteria are satisfied); 60 FR 11702, 11732 (March 2, 1995) (proposing to prohibit hazardous waste use as fill material).

EPA solicits comment today on the relationship of today's proposed exit levels and the general use constituting disposal provisions in § 266.20(b) stating that such uses can occur if land disposal restriction treatment standards are satisfied. These land disposal restriction standards are not fully protective in all cases: the standards are technology-based rather than risk-based, and, for metal hazardous constituents, only control leachable amounts of the metal. Yet in many situations, *total* metal levels, rather than leachable levels, will be the critical factor because of the possibilities of direct contact through inhalation of abraded or wind-dispersed contaminants, or surface runoff. These exposure pathways are critical for uses constituting disposal because the hazardous waste are not placed in a confined unit. 60 FR at 11733, 59 FR at 43499.

The exit levels proposed today, on the other hand, are risk-based (although some are capped by quantitation limits), are expressed as both total and leachable concentrations, and consider exposure pathways in some cases similar to those relevant in analyzing uses constituting disposal. The Agency solicits comment as to the appropriateness of applying these levels to hazardous wastes used in a manner constituting disposal (or at least to those uses where the hazardous waste-derived products are not comparable to non-hazardous waste based products that would be used in their place). One approach would be to replace the requirement to meet LDR treatment standards with a requirement to meet the exit levels proposed today. This approach should assure that exit levels for unconfined hazardous wastes (i.e. hazardous wastes used in a manner constituting disposal) are never less stringent than exit levels for hazardous wastes placed in confined units. EPA believes that the risk assessment it conducted for the exit levels considered scenarios sufficiently similar to use constituting disposal scenarios to ensure that the exit levels would be reasonably protective for uses (and more protective than LDR levels, in many cases, because of the analysis of impacts from total concentrations of constituents). EPA, however, requests comment on the reasonableness of this approach.

Another option would be to require persons wishing to use hazardous wastes in a manner constituting disposal to meet the lower of the LDR treatment standards and the exit levels. Because EPA is today proposing setting exit levels for both total and leachable concentrations, and because LDR standards are expressed as either total or leachable levels, however, EPA is not certain how to meaningfully compare relative stringency.

With respect to the current requirement in § 266.20(b) that persons wishing to use waste in a manner constituting disposal meet the treatment standards from the LDR program, EPA notes that compliance with LDR tracking and recordkeeping rules is not required. EPA proposes today to require compliance only with the exit levels where they substitute for LDR treatment levels, although it requests comment on the option of requiring persons using wastes in this manner also to file the exit-notification package proposed today. EPA does not intend that such persons be required to comply with conditions that continue to apply after exit, such as periodic retesting.

Finally, EPA proposes to eliminate the requirement that wastes to be used in a manner constituting disposal undergo a chemical reaction so as to be inseparable by physical means. EPA does not believe it is necessary to retain this requirement since wastes will be evaluated for total constituent concentrations. (EPA, however, will retain this requirement for wastes with treatment standards expressed as a specified technology, rather than concentration levels.)

Were EPA to proceed on this course, the Agency would adjust the timing of any regulatory action so that it does not supersede the separate rulemaking the Agency is now conducting on certain uses of residues derived from K 061 recovery facilities. 59 FR 67256. Thus, the Agency does not intend to take final action affecting these uses until the analysis begun in that rulemaking is completed on the schedule established in that rulemaking.

With respect to the other pending proposal, involving a prohibition on placement of hazardous waste as fill material, the Agency requests comment on whether it should substitute permission to use waste that has met the proposed exit levels for the proposed prohibition. The risk assessment underlying today's proposal addressed the major pathways that would arise from use as fill, but may not have used input values that fully reflect the fill scenario for some important parameters. For example, unit depths may be greater for fill sites than for land application units. At the same time, use of hazardous waste as fill is a proven cause of human health and environmental harm, contributing significantly to a number of Superfund sites. See Docket F–95–PH3P–FFFFF (record for the pending proposal). In light of this, the Agency questions whether to substitute today's proposed exit approach for the proposed prohibition.

XII. CERCLA Impacts

All listed hazardous wastes are listed as hazardous substances under section 101(14)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. Under section 103(a) of CERCLA, notification must be made to the Federal government of a release of any CERCLA hazardous substance in an amount equal to or greater than the reportable quantity (RQ) assigned to that substance within a 24 hour period. (See 40 CFR part 302 for a list of CERCLA hazardous substances and their Rqs.) If a specific waste from a particular facility meets the exemption criterion in this rule, the waste is not a listed hazardous waste and therefore not a hazardous substance by virtue of its hazardous waste listing. Thus, notification under CERCLA of a release of the exempted waste may not be necessary. In this situation, CERCLA notification of releases of the waste would only be required if the waste or any of the constituents of the waste are CERCLA hazardous substances by virtue of Section 101(14) (A), (B), (D), (E), or (F) of CERCLA or 40 CFR 302.4(b), and are released in amounts greater than or equal to their Rqs. The Agency requests comment on this approach.

Exit levels also may be applicable to the CERCLA program where it has been documented that RCRA listed hazardous waste has been disposed of at the site. Section 121(d) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, requires that CERCLA actions comply with, or justify a waiver of, applicable or relevant and appropriate requirements (ARARs) under federal and state environmental laws. The options proposed in this rule would determine the legal applicability of federal RCRA managements requirements to remediation wastes generated at Superfund sites. They may also be considered in determining whether RCRA is relevant and appropriate in cases where it is not applicable.

At sites undergoing CERCLA remedial activities where no listed hazardous wastes have been identified, the Agency will generally use a site-specific risk assessment for all chemicals for which there are no ARARs. In some cases, these health-based cleanup levels will be higher than the exemption levels, based on a reasonably conservative exposure scenario which does not include leachate ingestion. In other cases, the CERCLA health-based clean-up levels will be lower than exemption levels when additive effects are considered or when specialized analytical techniques are required in order to lower quantitation limits. The CERCLA health-based clean-up levels may also be different than exemption levels based on the consideration of site-specific factors.

XIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State and EPA could not issue permits for any facility in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement HSWA requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect of State Authorizations

Today's proposal, if finalized, will promulgate regulations that are not effective under HSWA in authorized States. Thus, the exemption will be applicable only in those States that do not have final authorization.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's proposal for exit levels is considered to be less stringent than, or a reduction in the scope of, the existing Federal regulations because it would exempt certain wastes now subject to RCRA Subtitle C. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to today's proposal.

Even though States are not required to adopt most options in today's proposal, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's proposal will reduce over-regulation of dilute wastes and will provide an alternative to delisting. States are therefore urged to consider the adoption of today's proposal (when promulgated); EPA will expedite review of authorized State program revision applications.

C. Streamlining Issues

EPA is considering a new approach to state authorization for rules revising the

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RCRA program. Under this new approach EPA would vary the requirements for state submissions and for EPA's review to reflect differences in the scope and complexity of various program revisions. This differential approach to authorization also would recognize the fact that many states now have more than a decade of experience in implementing large portions of the RCRA program and commensurate experience in obtaining authorization for program revisions. EPA believes that adjusting authorization requirements will strike an appropriate balance between recognizing state experience and ensuring environmental protection.

EPA recently proposed a greatly streamlined set of procedures for the least complex changes to the LDR program in the "LDR Phase IV" rulemaking. EPA, however, proposed to retain the current authorization process for other portions of the rule that presented more complex and novel regulations.

EPA is also developing a different approach to streamlining authorization for the "HWIR media" proposal scheduled for publication later in 1995. Although EPA expects some aspects of these state authorization procedures to be unique to the HWIR- media rulemaking, EPA will determine whether some of the concepts can be used to craft streamlined procedures for additional RCRA rules.

EPA was not able to develop a streamlined authorization process for this rule in time to include it in this proposal. EPA, however, intends to describe such a process in more detail in the preamble to the proposed HWIR-media rule. EPA anticipates that most elements of the basic waste exit scheme proposed in today's notice would be eligible for a greatly streamlined approach to authorization. For example, the new LDR standards based on "minimize threat" findings would be good candidates for streamlined authorization because states that are already authorized for significant portions of the LDR program are familiar with the type of rule changes needed, have adopted all or most of the underlying LDR program, and have experience in implementing and enforcing the rules. The exit levels, along with the self-implementing approach to exit determinations, are also likely to be eligible for a greatly streamlined approach. The scheme is very similar to the existing program for determining whether a waste exhibits any of the hazardous waste characteristics, particularly the 1980 EP Toxicity Characteristic and the expanded 1990 Toxicity Characteristic. Under both the characteristic rules and today's proposal, generators are responsible for determining whether or not a waste meets a numerical definition of "hazard". States must then enforce by reviewing records of determinations and/or conducting their own analysis of wastes determined not to be hazardous. Consequently, States which have been authorized for the base program already have experience in adopting and enforcing rules which resemble the exit scheme proposed today. EPA, however, notes that adopting the exit scheme proposed in today's notice will place additional demands on state inspection and enforcement resources. EPA will give careful consideration to balancing the need to ensure that a state has sufficient resources to implement an exit program with the goal of streamlining the authorization process.

Today's scheme does differ from the original characteristics and the 1990 Toxicity Characteristic by including some requirements which must be enforced as conditions of exit. These requirements, however, are requirements for testing, notification and recordkeeping that are relatively easy to meet and relatively easy to detect if violated. Accordingly, EPA does not at this time anticipate that these conditions would require it to retain the current authorization process.

EPA currently finds it unlikely that it will propose a greatly streamlined authorization process for any of the contingent management options presented for discussion in today's proposal. These options will raise novel legal, implementation and enforcement issues. A more conventional approach to the review of state authorities and capabilities may be warranted. If EPA proposes any of these options in the future, it will consider the possibility of adapting the approach to authorization that it is currently developing for the HWIR-media proposal.

XIV. Regulatory Requirements

A. Analytical Requirements

1. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether this regulatory action is "significant." A determination of significance will subject this action to full OMB review and compliance under Executive Order 12866 requirements. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more, adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the terms of the Executive Order.

The proposed rule is expected to have an annual effect on the economy greater than $100 million. Furthermore, although voluntary, the adoption of this action may burden state or tribal governments with increased regulatory review requirements. Today's action may also raise novel legal or policy issues as they relate to the President's priorities for environmental protection within a regulatory system facing resource limitations. The Agency, therefore, has determined that today's proposed rule is a "significant regulatory action." As a result, this rulemaking action, and supporting analyses, are subject to full OMB review under the requirements of the Executive Order. The Agency has prepared an *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed*, in support of today's action. A summary of this Assessment and findings is presented in section D below.

2. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis. This analysis shall consider the effect of the rule on small entities (i.e.: Small business, small organizations, and small governmental jurisdictions).

Under the Agency's revised Guidelines for Implementing the Regulatory Flexibility Act, dated May 4, 1992, the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. Previous guidance required alternatives to be examined only when significant economic effects were estimated for a substantial number of small entities. The Agency has prepared a Regulatory Flexibility Analysis in support of today's action. A summary of this analysis and findings is presented in section E below.

3. Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs each Federal Agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *"

The Executive Order requires that where environmental justice concerns or the potential for concerns are identified, appropriate analysis of the issue(s) be evaluated. To the extent practicable, the ecological, human health (taking into account subsistence patterns and sensitive populations) and socio-economic impacts of the proposed decision-document in minority and low-income communities should also be evaluated.

The Agency has examined Environmental Justice concerns relevant to today's action. A summary of this analysis and findings is presented in section F below.

4. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1766.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740.

This information collection is required to provide documentation of solid waste exemptions from Subtitle C requirements, and will allow for certification and verification as the program evolves. Exemptions under today's action require no formal preapproval. As such, information collection, maintenance and reporting issues are especially important due to the self-implementing nature of this action. Successful implementation of today's proposal will depend upon the documentation, certification, and verification provided by the information collection.

The general authority for this proposal is sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, and 6926. The specific authority for the collection of information is 40 CFR 261.36, *Exemption for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents.*

The Agency has prepared a full Information Collection request (ICR) in support of today's action. A summary of the methodology and findings from this document is presented in section G below.

B. Background

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to address problems associated with annual nationwide generation of large quantities of municipal and industrial solid waste. This Act was significantly amended in 1984 by the Hazardous and Solid Waste Amendments (HSWA). Under RCRA, the Agency regulates non-hazardous solid waste through the Subtitle D program, and hazardous solid waste under the Subtitle C program. Subtitle C regulations differ from Subtitle D in two important areas. First, Subtitle C regulations are developed and promulgated by EPA, while Subtitle D requirements have been largely delegated to the states. Second, non-hazardous wastes regulated under Subtitle D are generally subject to standards that are considerably less stringent and less costly than those under Subtitle C. All wastes addressed under this action are currently managed under Subtitle C regulations.

RCRA is divided into four programs: Underground storage, medical waste, nonhazardous solid waste, and hazardous solid waste. Under RCRA 3001(a), Congress has required EPA to identify those wastes that should be classified as hazardous. In accordance with this provision, the Agency has designated wastes as hazardous in two ways: "characteristic," or "listed." Hazardous waste is considered characteristic if it has any of the properties or characteristics that would present a potential hazard if managed improperly. The Agency has identified four characteristics which, if exhibited, lead to hazardous classification. These are: Ignitability, corrosivity, reactivity, and toxicity. Under the toxicity characteristic, specific health-based concentration standards have been developed for approximately forty (40) constituents. Wastes exhibiting any of these characteristics are subject to Subtitle C regulation. Hazardous wastes are identified as listed based on an extensive listing procedure. This procedure may identify a waste as hazardous under three broad categories: if it exhibits one of the characteristics identified above but has not been classified as characteristically hazardous, if it is determined to be acutely toxic or hazardous, or if the waste meets the statutory definition of a hazardous waste.

The Agency, however, was concerned that generators and managers of hazardous waste might avoid regulatory requirements in two major ways: (1) By mixing listed hazardous waste with non-hazardous solid waste, and, (2) by minimal processing and treatment of hazardous waste. These activities could result in a waste or residual material that was no longer legally defined as hazardous under Subtitle C. In many cases, the Agency believed these materials could continue to pose unacceptable hazards to human health and the environment. The Agency promulgated mixture and derived-from rules in May of 1980, in response to these potential loopholes.

C. Need for Regulation

The mixture and derived-from rules created what was perceived as being federal over-regulation, where listed hazardous waste continued to remain under Subtitle C jurisdiction regardless of constituent concentration or presence in the waste, either before or after treatment. This problem was exacerbated with the passage of HSWA in 1984. HSWA set Land Disposal Restrictions (LDR) requiring best demonstrated available technology (BDAT) treatment for all listed hazardous wastes prior to disposal. In cases where a specific listed wastestream contained relatively innocuous constituents, or very low concentrations, BDAT treatment requirements were felt to be overly protective, and unnecessarily expensive.

By requiring Subtitle C management for some low risk wastes, the current RCRA regulatory system may inhibit the efficient allocation of limited societal resources. From a social perspective, too many resources devoted to managing low risk wastes may reduce resource availability for managing higher risk wastes. Resource availability for general productivity investments and innovative technologies are also reduced. The Agency's delisting program has not provided an efficient solution to this problem. The delisting process has proven to be overly time

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and resource intensive for both industry and EPA.

The Agency believes that a simpler exemption process is necessary to reduce the over-regulation of low risk hazardous waste while, at the same time, reducing the time and resource burden on industry and government. This revised exemption process would also reduce the burden on the delisting program which will continue under current regulations. To meet these goals, the Agency is proposing the current action that would establish a single set of exit levels for constituents found in listed hazardous waste. This action would cover wastes as-generated, derived-from wastes, including BDAT treatment residuals, mixtures with solid wastes, and environmental media that contain hazardous wastes.

D. Assessment of Potential Costs and Benefits

1. Introduction and Summary

The U.S. Environmental Protection Agency (EPA) has prepared an *Assessment of The Potential Costs and Benefits (Assessment)* to accompany today's proposed rulemaking action. This action will establish concentration-based exemption criteria for certain hazardous wastes, creating a mechanism to exclude from Subtitle C regulation those listed industrial process wastes that the Agency believes are clearly not of Federal regulatory concern. Today's proposed rule addresses low hazard wastes, mixtures, treatment residuals, and media that contain hazardous wastes.

The Agency anticipates that the proposed rule will provide cost savings to selected generators and managers of low hazard wastes. Under the preferred option, annual nationwide treatment and disposal cost savings for exempted wastes may be as high as $75 million. Annual cost savings for a single facility may be as high as $5.03 million. Potential cost reductions beyond treatment and disposal savings may be associated with waste minimization incentives, avoided treatment costs for wastes remaining within Subtitle C, and administrative cost savings.

Exemption of eligible wastes from Subtitle C management requirements is projected to have negligible effects on human health and the environment. The proposed exemption levels are based on detailed analysis of numerous possible routes of exposure. These exemption levels are designed to be protective of both human health and ecological systems when exempted wastes are managed under Subtitle D, including state regulated waste disposal systems.

The Agency has also evaluated other impacts of the proposed rule. These include: Environmental justice, unfunded mandates, regulatory takings, and waste minimization incentives. Environmental justice concerns associated with today's proposed action may be in the form of economic benefits and/or human health effects. Today's proposal implements no enforceable requirements on states. Federal unfunded mandates, therefore, are not relevant to today's proposed rulemaking. Regulatory takings under today's proposed rulemaking will not approach land or productive value impacts discussed in past House and Senate Bills presented on this issue. This rulemaking provides opportunities for generators to implement waste minimization procedures to gain additional savings.

The complete document, *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed (Assessment)*, is available in the docket established for this proposed rule. This document details the data, methodology, findings, regulatory issues, and analytical limitations associated this *Assessment*. The rapid evolution of this action resulted in continuous technical modifications throughout the development of this proposal. An Addendum to the *Assessment* document that details final quantity and cost savings estimates is included in the docket materials. Findings presented in this preamble present final estimates.

A summary of the *Assessment* methodology and findings is presented below. The analysis conducted for this Notice of Proposed Rulemaking is to be considered preliminary. The Agency welcomes review and comment of this document and urges the submission of data in support of any comment or response.

2. Regulatory Options

The Agency's Assessment, conducted in support of today's action, addresses the costs, benefits, and other potential impacts of the preferred option. The Assessment also examines various other regulatory options based on exit levels that are both more and less stringent. Findings presented in this preamble discuss the preferred option and one primary alternative. A full discussion of findings associated with various alternative regulatory options is presented in the Assessment and Addendum.

a. Preferred (Proposed) Option

Under the preferred option, exit criteria are established for approximately 400 constituents, allowing hazardous wastes (including waste mixed with or derived-from listed wastes) to exit Subtitle C if the concentration of all constituents is less than or equal to the exemption criteria. The exit levels apply to all listed wastes, regardless of origin.

Exit levels for most constituents are based on risks posed to human health and the environment. The Agency's goal is to ensure, through Federal or State management requirements, that humans are not exposed to carcinogens in concentrations that will increase the statistical risk of cancer by more that one-in-one-million (1×10^{-6}). For non-carcinogens, the Agency's goal is to ensure that humans are not exposed to concentrations where the hazard quotient exceeds one (1). The Agency feels that, above this level, selected populations may experience carcinogenic effects at a 10^{-6} risk level and non-carcinogenic effects at a hazard quotient greater than one (1).

To determine the concentrations at which exempt wastes would not pose human health risks in excess of these target levels, EPA conducted a "Multipathway" Analysis that included ecological exposure pathways. In addition, EPA considered the effects of direct exposure to contaminants in groundwater. The analyses consider several types of waste management units. For non-wastewaters these unit types include landfills, land application units, waste piles, and ash monofills. For wastewaters management units included tanks and surface impoundments.

The concentrations from all other pathways were compared to the groundwater concentrations in determining the exit level. The more stringent of the multipathway or groundwater numbers was chosen as the exit level. Exit levels for some constituents are based on surrogates, or Exemption Quantitation Criteria (EQCs). MCLs were not used in the development of exit levels analyzed for this option. The Agency believes that levels established under this process will ensure protection of human health and the environment. These exit levels are presented in the regulatory language for this proposed rulemaking.

b. Other Options

In developing the preferred option, the Agency compared the proposed rule to several alternative regulatory options. These are discussed in the full

document, *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed*. Additional options are discussed in the supporting Addendum to the Assessment document. These options consider alternative waste management requirements, target risk levels, dilution and attenuation factors (DAFs), and exposure pathways. This Preamble discusses one primary alternative to the preferred option. This alternative is the same as the preferred option but drops land application units from consideration as a management source. Exempt nonwastewater wastestreams could not be land applied. There would be no change for wastewaters.

3. Implementation Requirements

Implementation requirements include the steps that generators (or waste managers) must take to achieve exemption of their wastes, regardless of the exit levels selected. These requirements include waste sampling and analysis, and related recordkeeping and reporting. Under the proposed rule, the facility must first perform a comprehensive analysis of the waste, testing for all constituents identified in appendix X to 40 CFR part 261. Reduced initial testing may be possible only if a facility is able to document that such constituents are not present in the waste. The generator must then prepare a notification/certification package and submit it to the EPA Regional Administrator or authorized state agency. The generator must repeat a comprehensive analysis periodically according to the schedule established in the proposed rule, along with more frequent tailored scans that focus on the constituents of concern. Related documentation must be maintained on-site and be available for review.

The Agency has estimated annual sampling, analysis, recordkeeping, and reporting costs (collectively referred to as "implementation costs") that may be required under this rule. These estimates range from approximately $21,000 for a less complex, solvent wastestream with testing every 12 months, to $169,000 for a complex high quantity F039 wastestream with testing every three months.

4. Analysis and Findings

Under the proposed rule, listed wastes from industrial processes may be eligible for exemption from Subtitle C hazardous waste requirements if they contain low concentrations of contaminants. This exemption may allow generators and waste managers to avoid some or all costs associated with Subtitle C requirements. The most significant cost savings relate to waste treatment and disposal; this rule will allow generators to avoid the costs of treatment required for compliance with the Land Disposal Restrictions as well as the costs of disposing wastes in highly protective Subtitle C facilities.

In addition to assessing these cost savings, the Assessment addresses a number of other potential effects of the regulations. It analyzes the relative effects of the regulatory options on human health and the environment and considers issues related to ensuring environmental justice, eliminating federal mandates, encouraging waste minimization, and providing flexibility for small businesses.

a. Eligible Waste

The universe of annual listed waste generation, both wastewaters and nonwastewaters, potentially affected by today's proposed rulemaking is estimated to total 303.6 million tons. The universe of potentially affected wastes includes approximately 25,300 wastestreams from 10,700 facilities. Wastewaters account for the vast majority of total waste quantity (99 percent).

To determine whether these wastes are likely to be eligible for exemption, EPA developed the Process Waste Model. This model uses data on the characteristics of individual listed waste-streams first collected in 1986 for EPA's *National Survey of Hazardous Waste Generators*, which has since been updated, refined, and in some cases, corrected. The model first compares the reported concentrations of constituents in each wastestream to the proposed rule exit levels to determine whether the waste is likely to be eligible for exemption without further treatment. If the waste is not eligible as-reported, the model then considers whether it may be eligible after treatment. In this comparison, the concentration standards established under EPA's Land Disposal Restrictions (which are based on the use of the best demonstrated and available technology) are used as a proxy for the lowest concentrations achievable by treatment. If the waste is not eligible for exemption as-reported or after treatment, EPA assesses whether waste minimization or pollution prevention methods could be used to cost-effectively achieve the exit levels. This model does not address contaminated media.

The analysis indicates that:

- Under the preferred option, total nonwastewater quantity exempted, including BDAT treatment residuals and sludge from wastewater, is estimated at 0.40 million tons. Total wastewater (liquid) quantity exempted is approximately 64 million tons.
- Under the primary alternative option (no land application), approximately 65 million tons of wastewaters, and 0.60 million tons of nonwastewaters, including BDAT treatment residuals and sludge from wastewaters, may be eligible for exemption.

b. Cost Savings

The proposed rule will allow waste generators and managers to avoid costs associated with Subtitle C requirements. Specifically, this exemption will allow them to avoid treatment costs and/or costs of disposing wastes in Subtitle C facilities. Wastes which meet exit levels at the point of generation may accrue treatment cost savings because the wastes will not require any treatment that would have been needed to comply with the Subtitle C Land Disposal Restrictions prior to disposal. All exempt wastes are likely to accrue disposal cost savings because the costs of disposing wastes in non-Subtitle C facilities are generally lower than the cost of more protective Subtitle C facilities.

The analysis indicates that:

- Under the preferred option, the high-end estimate of annual treatment and disposal cost savings is approximately $75 million.
  - —A large portion of these savings are attributable to avoided treatment costs.
- Under the primary alternative, the high-end estimate of cost savings is $99 million.

The above estimates for quantities exempted and cost savings assume zero implementation costs. The incorporation of implementation costs into the analytical model will have a significant impact on facilities and wastestreams affected, while having only a marginal impact on total quantities exempted.

c. Affected Wastestreams and Facilities

Under the preferred option (unconditional exemption), as high as 41 percent (10,300) of the potentially affected wastestreams may be eligible for exemption. These eligible wastestreams are generated by 56 percent (6000) of the facilities producing listed waste. Total wastestreams and facilities potentially eligible for exemption under the primary alternative option (no land application) are estimated at 12,200 (48 percent), and 7,000 (65 percent), respectively.

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The majority of the wastestreams eligible for exemption under the preferred option are very small in quantity. The median annual generation size of an eligible wastewater wastestream is 20 tons. The median for eligible nonwastewaters is 2.0 tons. For small wastestreams, the costs accrued due to the exemption are likely to be counterbalanced by the costs associated with gaining the exemption.

While a relatively large number of wastestreams and facilities meet the eligibility criteria for exemption, many may not gain exemption because the costs of exemption may outweigh the estimated cost savings from exemption. For example, if implementation costs average $35,000 annually per wastestream, the estimate of facilities generating an exempted wastestream may be overstated by as much as 90 percent. However, small generators may choose to aggregate their wastes to avoid this problem.

d. Relative Impacts on Human Health and the Environment

Today's proposed rule will allow low concentration hazardous wastes to exit RCRA Subtitle C regulation and be disposed of in Subtitle D nonhazardous waste units. The Agency believes that today's proposed rule will have little effect on human health for the following reasons:

- The acceptable daily exposure levels used to set the exit levels are based on maximum risk levels for carcinogens of 10^{-6} and on acceptable daily doses for non-carcinogens at which no adverse effects are likely to occur.
- The waste management units modeled in the *Multipathway Analysis* provide high potential release rates for the various groups of constituents being considered in the analysis based on their physical and chemical properties.
- The pathways included in the *Multipathway Analysis* are generally considered to be the most critical.
- The *Multipathway Analysis* includes populations that are likely to be exposed more than the average adult due to proximity to a contaminant source, behavior patterns, activities, and body size.
- High-end values were used for selected parameters in the *Multipathway Analysis* to calculate acceptable waste concentrations.
- Exit levels represent acceptable constituent concentration levels for Subtitle D waste management based on all of the potential combinations of management units, and receptors in the Multipathway Analysis.
- Exit levels for several constituents are below the acceptable waste concentrations for human health due to the inclusion of ecological receptors.

Ecological risks were also evaluated for selected key constituents. The inclusion of such risk in solid waste regulation at a national level is an important step, and is preferable to establishing exit criteria based only on human health risks.

5. Other Regulatory Issues

a. Environmental Justice

Economic benefits may occur to selected communities as affected local facilities reinvest cost savings derived from reduced treatment and/or disposal costs. Human health effects are expected to be negligible due to the stringency of the exit levels. Included in these exit levels are pathways of particular concern for selected low income populations such as subsistence fishing and farming.

b. Other Issues

Today's proposal is expected to have no impact in the area of Unfunded Federal Mandates or Regulatory Takings. Waste minimization procedures are likely to be stimulated under this proposal.

6. Implications and Conclusions

The analysis indicates that approximately 11 percent of the quantity of all nonwastewaters containing listed codes, and 21 percent of all such wastewaters may be eligible for exemption under the proposed rule. This exempt quantity is dominated by a small number of very large wastestreams, and includes a large number of very small wastestreams. For some small wastestreams, exemption may not be cost effective unless generators aggregate their wastes or otherwise work cooperatively to minimize the costs of gaining the exemptions.

Today's proposal could also provide incentives for industry to implement process changes and increased recycling in an effort to gain additional savings. Preliminary estimates indicate that savings from these activities, when combined with treatment and disposal savings from the preferred option, are likely to result in total annual cost savings greater than $100 million. However, limitations of our analysis suggest that the cost savings estimates from such activities are highly uncertain. Additional savings related to administrative requirements and reduced treatment for hazardous wastes may also accrue. These potential additional cost savings are discussed in greater detail in the *Assessment* document.

The Agency believes that today's proposal will result in a net benefit to society. Wastes gaining exemption under the preferred option will not pose unacceptable incremental risks to human health and the environment because the exit levels are based on extensive analysis of possible human and ecological risks associated with exempt wastes.

EPA's analysis of the impact of today's proposal on industry groups indicates that a limited number of industries are likely to benefit from exemption. Under the preferred option (unconditional exemption), three industries account for 51 percent of eligible nonwastewater and wastewater sludge quantity and 53 percent of total treatment and disposal cost savings. These industries are: Chemicals and allied products (SIC 28); fabricated metals (SIC 34); and primary metals (SIC 33).

The Agency also compared benefits gained from exemption to key industry data such as national pollution abatement expenditures and considered facility level impacts of the proposal. To evaluate the relative magnitude of cost savings that would accrue under the proposed rule, EPA compared cost savings estimates to total pollution abatement expenditures and the total value of industry shipments. Total treatment and disposal cost savings under the preferred option account for approximately 3.5 percent of annual operating costs for hazardous waste pollution abatement activities, and less than 0.002 percent of the total value of industry shipments. The facility-level impacts of the proposal vary greatly.

E. Regulatory Flexibility Analysis.

The Regulatory Flexibility Act requires analysis of the impact of regulations on small entities. Because today's proposal is deregulatory, it is not expected to have adverse impacts on small businesses. In general, generators of large quantity wastestreams posing low hazards will benefit substantially from the regulations. The impacts on small quantity generators is less certain and depends on the degree to which they aggregate their wastes and work cooperatively to cost-effectively gain exemption.

F. Environmental Justice

It is the Agency's policy that environmental justice be considered as an integral part in the development of all policies, guidance and regulations. Further, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", directs each Federal Agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *"

The Executive Order requires that where environmental justice concerns or the potential for concerns are identified, appropriate analysis of the issue(s) be evaluated. To the extent practicable, the ecological, human health (taking into account subsistence patterns and sensitive populations) and socio-economic impacts of the proposed decision-document in minority and low-income communities should also be evaluated. Examples include how a policy on future land use would impact minority or low-income communities versus non-minority, affluent communities, or how subsistence farming or fishing patterns relate to risk-assessment policies.

For the purposes of today's proposed rulemaking, the Agency has taken an approach for proposal consistent with Executive Order 12898. As currently drafted, the multipathway analysis which was used to develop the exit levels takes into account subsistence farmers and subsistence fishers; however, subsistence fishers were evaluated using a recreational fisher database (one does not exist for subsistence fishers). Sensitive populations are accounted for in the RfDs, RfCs, and slope factors and ecological receptors were also evaluated.

G. Paperwork Reduction Act

As stated earlier, the level of implementation costs (i.e. sampling, analysis, recordkeeping, and reporting) will have a significant impact on the number of wastestreams and facilities affected by this proposal. Assuming annual implementation costs of $35,000 per wastestream, as many as 269 facilities, generating up to 285 different wastestreams may seek exemptions, and therefore be affected by the recordkeeping and reporting requirements. The actual number of facilities and wastestreams affected will depend upon the level of implementation costs. The higher the implementation cost to the facility, the fewer the number of facilities expected to participate in the HWIR program.

The estimated hour burden ranges from 382 hours to 573 hours per wastestream in the first year, and from 31 hours to 146 hours per wastestream in years two and three. The variation in burden estimates results from different assumptions in (1) the complexity of the waste (and therefore of the test methods required), and (2) the frequency of reporting. The estimated total hour burden over the first three years ranges from 206,900 to 293,465 hours, averaging 68,967 to 97,821 hours per year.

The estimated total start-up cost of recordkeeping and reporting in the first year ranges from $55,000 to $235,000 per wastestream. The annual cost in the second and third years is estimated to be $9,000 to $209,000 per wastestream (of which $8,000 to $203,000 is the cost of shipping samples to a laboratory and paying to have them tested). In years four and five the high-end cost drops to $53,000. The estimated annual recordkeeping and reporting cost per wastestream, annualized at seven percent over five years, is $21,000 to $170,000. The total recordkeeping and reporting cost burden over the first three years is $28,000,000 to $32,000,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 21, 1995, a comment to OMB is best assured of having its full effect if OMB receives it by January 22, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR 261 and 268

Identification and listing of hazardous waste. Land disposal restrictions.

Dated: November 13, 1995.

Carol Browner,

Administrator.

XV. References

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Appendix A

TABLE A–1.—HUMAN EXPOSURE PATHWAYS

Exposure medium	Route of exposure	Type of fate and transport	Pathway[a]
Groundwater	Ingestion	Groundwater	**1** WMU → groundwater → humans *Ingestion of contaminated groundwater as a drinking water source.*
Air	Inhalation	Direct air	**2a (on site or off site)** WMU → air → humans *Inhalation of volatiles*
Air	Inhalation	Direct air	**2b (on site or off site)** WMU → air → humans *Inhalation of suspended particulates*
Soil	Ingestion	Direct soil	**3 (on site)** WMU → humans *Ingestion of contaminated soil*
Soil	Ingestion	Overland	**3 (off site)** WMU → overland → humans *Ingestion of contaminated soil*
Soil	Ingestion	Air deposition	**4** WMU → air → deposition to soil → humans *Ingestion of contaminated soil*
Soil	Dermal	Direct soil	**5 (on site)** WMU → humans *Dermal contact with contaminated soil*
Soil	Dermal	Overland	**5 (off site)** WMU → overland → humans *Dermal contact with contaminated soil*
Soil	Dermal	Air deposition	**6** WMU → air → deposition to surface soil → humans *Dermal contact with contaminated soil*
Plant (veg/root)	Ingestion	Air deposition	**8** WMU → air → deposition to soil/gard crops → garen crops → humans *Consumption of contaminated crops grown in home gardens*
Plant (veg)	Ingestion	Air diffusion	**8a** WMU → air → garden crops → humans *Consumption of contaminated crops grown in home gardens*
Plant (veg/root)	Ingestion	Direct soil	**9 (on site)** WMU → garden crops → humans *Consumption of contaminated crops grown in home gardens*
Plant (veg/root)	Ingestion	Overland	**9 (off site)** WMU → overland → garden crops → humans *Consumption of contaminated crops grown in home gardens*
Animal (beef/milk)	Ingestion	Air deposition	**10** WMU → air → deposition to soil/feed crops → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Animal (beef/milk)	Ingestion	Air diffusion	**10a** WMU → air → feed crops → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops*
Animal (beef/milk)	Ingestion	Direct soil	**11 (on site)** WMU → feed crops → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Animal (bedl/milk)	Ingestion	Overland	**11 (off site)** WMU → overland → feed crops/soil → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Groundwater	Dermal (bathing)	Groundwater	**14** WMU → groundwater → humans *Ingestion of contaminated surface water as a drinking water source*
Surface water	Ingestion	Air diffusion	**17** WMU → groundwater → humans *Dermal bathing contact with contaminated groundwater*

TABLE A–1.—HUMAN EXPOSURE PATHWAYS—Continued

Exposure medium	Route of exposure	Type of fate and transport	Pathway[a]
Surface water	Ingestion	Overland	**19** WMU → overland flow → surface water → humans *Ingestion of contaminated surface water as a drinking water source*
Surface water	Ingestion	Air deposition	**20** WMU → air → deposition to soil → overland flow → surface water → humans *Ingestion of contaminated surface water as a drinking water source*
Fish	Ingestion	Air diffusion	21 WMU → air → surface water → fish → humans Consumption f fish contaminated by toxicants in surface water
Fish	Ingestion	Overland	23 WMU → overland → surface water → fish → humans Consumption f fish contaminated by toxicants in surface water
Fish	Ingestion	Air deposition	24 WMU → air → deposition to surface soil → overland flow → surface water → fish → humans Consumption f fish contaminated by toxicants in surface water
Animal (beef/milk)	Ingestion	Air diffusion	**33** WMU → air → suface water → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Animal (beef/milk)	Ingestion	Overland	**35** WMU → overland flwo → surface water → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Animal (beef/milk)	Ingestion	Air deposition	**36** WMU → air → deposition to soil → overland flow → surface water → cattle → humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Surface water	Dermal (bathing)	Air diffusion	**37** WMU → air → surface water → humans *Dermal bathing contact with contaminated surface water*
Surface water	Dermal (bathing)	Air deposition	**38** WMU → air deposition to soil → overland flow → surface water → humans *Dermal bathing contact with contaminated surface water*
Surface water	Dermal (bathing)	Overland	**42** WMU → overland flow → surface water → humans *Dermal bathing contact with contaminated surface water*

Overland = Soil erosion; Overland flow = Both runoff and sold erosion; or, for surface impoundments, a spill directly to surface water. Veg = Aboveground fruits and vegetables. Root = Belowground (or root) vegetables.

[a] Some pathway numbers are missing, reflecting pathways that have been eliminated from the analysis or combined with other pathways.

TABLE A–2.—ECOLOGICAL EXPOSURE PATHWAYS

	Exposure medium	Route of exposure	Type of fate and transport	Pathways[a]
Terr I	Soil	Ingestion	Direct soil	3 (on site) WMU → mammals, birds, soil fauna *Ingestion of contaminated soil*
	Soil	Direct contact	Direct soil	5 (on site) WMU → plants, soil fauna *Direct contact with contaminated soil*
	Plant	Ingestion	Direct soil	9 (on site) WMU → vegetation → mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
	Soil fauna	Ingestion	Direct soil	11a (on site) WMU → soil fauna → mammals, birds *Consumption of soil fauna (e.g., earthworms, insects) with elevated levels of toxicant*
	Animals	Ingestion	Direct soil	11b (on site) WMU → soil fauna/vegetation → animals → predatory mammals, birds *Consumption of animals with elevated levels of toxicant*
Terr II	Soil	Ingestion	Overland	3 (off site) WMU → overland → mammals, birds, soil fauna *Ingestion of contaminated soil*

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TABLE A–2.—ECOLOGICAL EXPOSURE PATHWAYS—Continued

	Exposure medium	Route of exposure	Type of fate and transport	Pathways[a]
	Soil	Direct contact	Overland	5 (off site) WMU → overland → plants, soil fauna *Direct contact with contaminated soil*
	Plant	Ingestion	Overland	9 (off site) WMU → overland → vegetation → mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
	Soil fauna	Ingestion	Overland	11c (off site) WMU → overland → soil fauna → mammals, birds *Consumption of soil fauna (e.g., earthworms, insects) with elevated levels of toxicant*
	Animals	Ingestion	Overland	11d (off site) WMU → soil fauna/vegetation → animals → predatory mammals, birds *Consumption of animals with elevated levels of toxicant*
Terr III	Soil	Ingestion	Air deposition	4 WMU → air → deposition to soil → mammals, birds, soil fauna *Ingestion of contaminated soil*
	Soil	Direct contact	Air deposition	5 WMU → air → deposition to surface soil → plants, soil fauna *Direct contact with contaminated soil*
Terr IV	Plant	Ingestion	Air deposition	8 WMU → air → deposition to soil → vegetation → mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
Terr V	Plant	Ingestion	Air diffusion	8 WMU → air → vegetation → mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
Aq I	Surface water	Ingestion	Air diffusion	17 WMU → air → surface water → mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Air diffusion	21 WMU → air → surface water → fish → mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Air diffusion	37 WMU → air → surface water → fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*
Aq II	Surface water	Ingestion	Air deposition	37 WMU → air → deposition to soil → overland flow → surface water → mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Air deposition	24 WMU → air → deposition to surface soil → overland flow → surface water → fish → mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Air deposition	38 WMU → air → deposition to soil → overland flow → surface water → fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*
Aq III	Surface water	Ingestion	Overland	19 WMU → overland flow → surface water → mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Overland	23 WMU → overland flow → surface water → fish → mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Overland	42 WMU → overland flow → surface water → fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*

Overland=Soil erosion. Overland flow=Both runoff and soil erosion; or, for surface impoundments, a spill directly to surface water.

[a]Some pathway numbers are missing, reflecting pathways that have been eliminated from the analysis.

TABLE A–3.—SUMMARY OF HUMAN RECEPTORS FOR EXPOSURES PATHWAYS

Pathway	Receptor						
	Adult	Child	Subs. farmer	Home gardener	Subs. fisher	Fish consumer	Worker
1: Groundwater-ingestion	√[a]						
2a: Direct air-inhalation of violates (on site)	√[a]						√
2a: Direct air-inhalation of volatiles (off site)	√						
2b: Direct air-inhalation of particles (on site)	√[a]						√
2b: Direct air-inhalation of particles (off site)	√						
3: Direct soil-soil ingestion (on site)	√[a]	√[a]					
3: Overland-soil ingestion (off site)	√	√					
4: Air deposition-soil ingestion	√	√					
5: Direct soil-dermal (soil) (on site)	√[a]	√[a]					√
5: Direct Soil-dermal (off site)	√	√					
6: Air deposition-dermal (soil)	√	√					
8: Air deposition-veg/root ingestion			√	√	√		
8a: Air diffusion-veg/root ingestion			√	√			
9: Direct soil-veg/root ingestion (on site)			√[a]	√[a]			
9: Overland-veg/root ingestion (on site)			√	√			
10: Air deposition-beef/milk ingestion			√				
10a: Air diffusion-beef/milk ingestion			√				
11: Direct soil-bee/milk ingestion (on site)			√[a]				
11: Overland-beef/milk ingestion (off site)			√				
14: Groundwater-dermal (bathing)	√	√					
17: Air diffusion-drinking water ingestion	√						
19: Overland-drinking water ingestion	√						
20: Air deposition-drinking water ingestion	√						
21: Air diffusion-fish ingestion	√				√	√	
23: Overland-fish ingestion	√				√	√	
24: Air deposition-fish ingestion	√				√	√	
33: Air diffusion (SW)-beef/milk ingestion			√				
35: Overland (SW)-beef/milk ingestion			√				
36: Air deposition (OF/SW)-beef/milk ingestion			√				
37: Air diffusion (SW)-dermal (bathing)	√	√					
38: Air deposition (OF/SW)-dermal (bathing	√	√					
42: Overland (SW)-dermal (bathing)	√	√					

[a]On-site pathways for receptors other than workers are modeled only for the land application unit after closure.

TABLE A–4.—SUMMARY OF ECOLOGICAL RECEPTORS BY EXPOSURE PATHWAYS

Pathway	Receptor						
	Mammals	Birds	Plants	Soil fauna	Fish	Daphnids	Benthos
3: Direct soil-soil ingestion (on site)	√[a]	√[a]		√			
3: Direct soil-soil ingestion (off site)	√	√		√			
4: Air deposition-soil ingestion	√	√		√			
5: Direct soil-dermal soil (on site)			√	√			
5: Direct soil-dermal soil (off site)			√	√			
6: Air deposition-dermal soil			√	√			
8: Air deposition-veg/root ingestion	√	√					
8a: Air diffusion-veg ingestion	√	√					
9: Direct soil-veg/root ingestion (on site)	√	√					
9: Overland-veg/root ingestion (off site)	√	√					
11a: Direct soil-soil fauna ingestion (on site)	√	√					
11b: Direct soil-animals ingestion (on site)	√	√					
11c: Overland-soil fauna ingestion (off site)	√	√					
11d: Overland-animals ingestion (off site)	√	√					
17: Air diffusion-drinking water ingestion	√	√					
18: Groundwater (SW)-drinking water ingestion	√	√					
19: Overland-drinking water ingestion	√	√					
20: Air deposition-drinking water ingestion	√	√					
21: Air diffusion-fish ingestion	√	√			√		
22: Groundwater (SW)-fish ingestion	√	√			√		
23: Overland-fish ingestion	√	√			√		
24: Air deposition-fish ingestion	√	√			√		
37: Air diffusion (SW)-direct contact					√	√	√
38: Air deposition (OF/SW)-direct contact					√	√	√
40: Groundwater (SW)-direct contact					√	√	√

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TABLE A–4.—SUMMARY OF ECOLOGICAL RECEPTORS BY EXPOSURE PATHWAYS—Continued

Pathway	Receptor						
	Mammals	Birds	Plants	Soil fauna	Fish	Daphnids	Benthos
42: Overland (SW)-direct contact					√	√	√

*On-site pathways are modeled only for the land application unit after closure.

TABLE A–5.—PATHWAYS MODELED FOR EACH WASTE MANAGEMENT UNIT

Pathway	Waste management unit					
	Ash monofill	Land appl. unit	Wastepile	Surface impound.	Tank	Water use
1: Groundwater-ingestion		√	√	√		
2a: Direct air-inhalation volatiles		√	√	√	√	
2b: Direct air-inhalation particles	√	√	√			
3: Direct soil-soil ingestion		√	√			
4: Air deposition-soil ingestion	√	√	√			
5: Direct soil-dermal (soil)		√	√			
6: Air deposition-dermal (soil)	√	√	√			
8: Air deposition-veg/root ingestion	√	√	√			
8a: Air diffusion-veg/root ingestion		√	√	√	√	
9: Direct soil or overland-veg/root ingestion		√	√			
10: Air deposition-beef/milk ingestion	√	√	√			
10a: Air diffusion-beef/milk ingestion		√	√	√	√	
11: Direct soil or overland-beef/milk ingestion		√	√			
14: Groundwater-dermal (bathing)				√	√	√
17: Air diffusion-drinking water ingestion		√	√	√	√	
19: Overland-drinking water ingestion		√	√			
20: Air deposition-drinking water ingestion	√	√	√			
21: Air diffusion-fish ingestion		√	√	√	√	
23: Overland-fish ingestion		√	√	√		
24: Air deposition-fish ingestion	√	√	√			
33: Air diffusion (SW)-beef/milk ingestion		√	√	√	√	
35: Overland (SW)-beef/milk ingestion		√	√	√		
36: Air deposition (OF/SW)-beef/milk ingestion	√	√	√			
37: Air diffusion (SW)-dermal (bathing)		√	√	√	√	
38: Air deposition (OF/SW)-dermal (bathing)	√	√	√			
42: Overland (SW)-dermal (bathing)		√	√	√		

OF=Overland flow. SW=Surface water.

Appendix B

TABLE B–1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10–6)
[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
1	83329	Acenaphthene	6.30E+00	3.60E+02	4.90E+00	3.10E+01
2	67641	Acetone (2-propanone)	6.00E+00	1.56E+01	6.00E+00	1.56E+01
3	75058	Acetonitrile (methyl cyanide)	3.00E−01	7.80E−01	3.00E−01	7.80E−01
4	98862	Acetophenone	6.40E+00	1.68E+01	6.40E+00	1.68E+01
5	107028	Acrolein	1.00E+06	1.00E+06	1.00E+06	1.00E+06
6	79061	Acrylamide #	3.80E−05	2.80E−04	3.80E−05	2.60E−04
7	107131	Acrylonitrile #	3.40E−04	1.10E−03	3.40E−04	1.10E−03
8	309002	Aldrin #	6.70E−04	6.50E−02	3.70E−06	4.70E−03
9	107051	Allyl Chloride	1.70E−02	5.30E−02	1.70E−02	5.30E−02
10	92533	Aniline #	4.57E+01	1.18E+02	5.30E−02	1.36E−01
178	7440360	Antimony	3.08E−02	7.92E−02	1.48E−04	3.84E−04
177	7440382	Arsenic #	1.67E+01	4.29E+01	1.55E+01	3.32E+01
176	7440393	Barium	5.40E−03	1.80E−02	5.40E−03	1.77E−02
12	71432	Benzene #	6.80E−07	2.24E−06	6.80E−07	2.24E−06
13	92875	Benzidine #	5.50E−02	5.50E−02	7.00E−06	3.60E−03
14	50328	Benzo[a]pyrene #	1.10E−02	4.90E−01	6.60E−05	1.60E−02
15	205992	Benzo[b]fluoranthene #	1.50E+01	4.00E+01	1.50E+01	3.90E+01
16	100516	Benzyl alcohol	1.00E+06	1.00E+06	1.00E+06	1.00E+06
17	100447	Benzyl chloride #	1.10E−04	1.10E−02	4.30E−06	7.20E−04
11	56553	Benz[a]anthracene #	1.06E−03	2.72E−03	3.20E−04	8.27E−04
179	7440417	Beryllium #	3.68E−04	1.92E−02	3.60E−04	6.48E−04
18	111444	Bis(2-chloroethyl)ether #	1.90E−03	7.90E−03	1.90E−03	7.00E−03
19	4E+07	Bis(2-chloroisopropyl)ether #	1.80E+00	1.80E+02	1.10E−03	1.20E+01
20	117817	Bis(2-ethylhexyl)phthalate #	2.52E−03	1.05E−02	2.52E−03	8.54E−03
21	75274	Bromodichloromethane #	2.87E+03	5.63E+04	2.87E+03	4.13E+04
22	74839	Bromomethane	6.00E+00	1.56E+01	6.00E+00	1.56E+01
23	71363	Butanol	1.10E+02	1.10E+04	6.40E+01	4.40E+02
24	85687	Butyl benzyl phthalate	6.40E−02	1.92E−01	6.40E−02	1.92E−01
25	88857	Butyl-4,6-dinitrophenol,2-sec-	1.18E+01	3.05E+01	1.10E−01	2.40E−01
180	7440439	Cadmium	6.40E+00	2.08E+01	8.40E+00	1.84E+01
28	76150	Carbon disulfide	1.61E−03	1.40E−02	1.61E−03	1.40E−02
27	56235	Carbon tetrachloride #	1.50E−02	1.50E+00	1.60E−04	1.00E−01
28	57749	Chlordane #	1.60E−01	4.20E−01	1.60E−01	4.20E−01
29	126998	Chloro-1,3-buadiene 2-(Chloroprene)	1.33E+00	4.83E+00	1.33E+00	4.76E+00
30	106478	Chloroaniline p-	7.50E−03	1.02E+00	5.70E−03	5.40E−02
31	108907	Chlorobenzene	1.80E−03	6.90E−03	1.80E−03	6.60E−03
32	510156	Chlorobenzilate #	1.70E−02	5.80E−02	1.70E−02	5.70E−02
33	124481	Chlorodibromomethane #				
34	67663	Chloroform #	3.20E−01	9.00E−01	3.20E−01	9.00E−01
35	74873	Chloromethane	1.32E+05	3.40E+05	2.37E+04	6.12E+04
36	95578	Chlorophenol 2-	1.88E+01	4.85E+01	4.76E−01	1.24E+00
181	16065831	Chromium (+3)	2.70E−02	2.90E+00	1.20E−03	1.00E−01
182	7440473	Chromium (+6)	1.32E+05	3.40E+05	1.08E+03	2.79E+03
37	218019	Chrysene	3.20E+00	8.80E+00	3.20E+00	8.40E+00
183	7440508	Copper	3.20E+00	8.80E+00	3.20E+00	8.40E+00
38	108394	Cresol m-	3.30E−01	8.80E−01	3.20E−01	8.40E−01
39	95487	Cresol o-	2.50E+01	2.50E+01	2.50E+00	1.50E+01
40	106445	Cresol p-	2.80E+03	1.00E+06	2.80E+03	9.10E+05
41	98828	Cumene				
42	72548	DDD #				

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TABLE B–1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10–6)—Continued

[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
43	72559	DDE #	3.30E–02	3.30E+00	1.70E–04	2.30E–01
44	50293	DDT, p,p'- #	8.40E+03	1.00E+06	5.40E–03	2.04E+01
47	2303164	Diallate #	4.60E–01	2.80E+03	4.60E–01	9.00E+01
48	53703	Dibenz[a,h]- anthracene #	2.50E–04	2.50E–02	6.30E–07	1.80E–03
49	96128	Dibromo-3-chloropropane1,2- #	1.14E–04	7.20E–04	1.14E–04	6.60E–04
50	95501	Dichlorobenzene1,2-	6.10E+00	3.00E+01	6.10E+00	3.00E+01
51	106467	Dichlorobenzene1,4- #	1.16E–02	6.80E–02	1.08E–02	5.60E–02
52	91941	Dichloro- benzidine3,3 #	7.80E–04	5.40E–03	7.20E–04	4.20E–03
53	75718	Dichlorodifluoromethane	1.19E+01	3.57E+01	1.19E+01	3.57E+01
54	75343	Dichloroethane 1,1- #	1.71E–03	9.90E–03	6.00E–05	1.60E–04
55	107062	Dichloroethane1,2- #	1.62E–03	9.00E–03	6.00E–05	1.60E–04
56	156592	Dichloroethylene cis-1,2	6.40E–01	1.72E+00	6.40E–01	1.68E+00
57	156605	Dichloroethylene trans-1,2	1.12E+00	2.94E+00	1.12E+00	2.94E+00
58	75354	Dichloroethylene1,1-(Vinylidene chloride:) #	1.80E–04	5.90E–04	1.80E–04	5.90E–04
59	120832	Dichlorophenol 2,4-	1.80E–01	6.30E–01	1.80E–01	6.20E–01
60	94757	Dichlorophenoxyacetic acid, 2,4-	6.00E–01	1.56E+00	6.00E–01	1.56E+00
61	78875	Dichloropropane 1,2- #	2.30E–03	2.60E–02	2.30E–03	2.30E–02
62	1E+07	Dichloropropene trans-1,3- #	1.15E+03	9.00E+04	1.15E+03	9.00E+04
63	542756	Dichloropropene 1,3-(mixture of isomers) #	8.50E–04	2.80E–03	8.50E–04	2.80E–03
64	1E+07	Dichloropropene cis-1,3- #	1.15E+03	9.00E+04	1.15E+03	9.00E+04
65	60571	Dieldrin #	5.40E–01	2.90E+04	5.40E–01	6.80E+02
66	84662	Diethyl phthalate	6.00E+01	4.50E+02	5.40E+01	1.86E+02
67	56531	Diethylstilbestrol #	1.20E–07	9.20E–06	6.50E–08	4.30E–07
68	60515	Dimethoate	7.70E–01	2.94E+01	7.70E–01	2.94E+01
69	119904	Dimethoxybenzidine 3,3'- #	1.20E–02	3.36E–02	1.02E–02	3.36E–02
70	131113	Dimethyl phthalate	1.04E+03	1.1.12E+04	3.00E+01	7.80E+01
72	119937	Dimethylbenzidine 3,3'- #	1.89E–05	8.10E–05	1.80E–05	7.02E–05
71	57976	Dimethylbenz[a]anthracene 7,12-	1.20E–03	1.40E–01	2.80E–06	1.30E–02
73	105679	Dimethylphenol 2,4-	1.19E+00	3.78E+00	1.19E+00	3.78E+00
45	84742	Di-n-butyl phthalate	5.70E+01	6.30E+03	2.50E+01	2.30E+02
74	99650	Dinitrobenzene 1,3-	6.40E–03	1.68E–02	6.40E–03	1.68E–02
75	51285	Dinitrophenol 2,4-	1.05E–01	2.73E–01	1.05E–01	2.73E–01
76	121142	Dinitrotoluene 2,4-	1.12E–01	3.01E–01	1.12E–01	2.94E–01
77	606202	Dinitrotoluene 2,6-	6.40E–02	1.68E–01	6.40E–02	1.68E–01
46	117840	Di-n-octyl phthalate	3.10E+02	5.20E+04	1.00E–01	1.30E+03
78	123911	Dioxane 1,4- #	1.36E–02	4.24E–02	1.36E–02	4.24E–02
79	122394	Diphenylamine	2.60E+00	1.50E+01	2.60E+00	1.50E+01
80	298044	Disulfoton	1.30E+01	5.80E+02	1.30E+01	4.60E+02
81	115297	Endosulfan(Endosulfan I and II, mixture)	1.00E+00	1.26E+01	9.40E–01	6.00E+00
82	72208	Endrin	3.20E+01	2.70E+05	3.20E+00	6.60E+03
83	106898	Epichlorohydrin #	5.40E+03	4.14E+05	5.40E+03	4.14E+05
84	110805	Ethoxyethanol 2-	1.50E+01	3.90E+01	1.50E+01	3.90E+01
85	141786	Ethyl acetate	1.14E+02	6.00E+02	1.14E+02	3.90E+02
86	60297	Ethyl ether	1.05E+01	2.73E+01	1.05E+01	2.73E+01
87	97632	Ethyl methacrylate	6.60E+00	6.90E+01	6.60E+00	2.40E+01
88	62500	Ethyl methanesulfonate #	1.17E+04	9.30E+05	1.17E+04	9.30E+05
89	100414	Ethylbenzene	8.10E+00	3.90E+01	8.10E+00	3.90E+01
90	106934	Ethylene dibromide (1,2-Dibromoethane) #	1.50E–05	4.20E–04	1.50E–05	3.60E–04
91	96457	Ethylene thiourea #	1.70E–04	5.30E–04	1.70E–04	5.30E–04
92	206440	Fluoranthene	7.50E+00	7.80E+02	1.70E+00	2.70E+01

93	86737	Fluorene	5.00E+00	3.90E+02	3.40E+00	2.20E+01
94	50000	Formaldehyde	1.05E+01	2.73E+01	1.05E+01	2.73E+01
95	61486	Formic acid	1.05E+02	2.73E+02	1.05E+02	2.73E+02
96	110009	Furan	6.00E–02	1.60E–01	6.00E–02	1.56E–01
97	319857	HCH beta- #	2.10E–04	1.30E–03	2.10E–04	1.30E–03
99	319846	HCH alpha- #	1.10E–01	2.10E+01	1.10E–01	2.10E+01
98	58899	HCH (Lindane) gamma- #	6.93E+01	1.19E+02	6.93E–01	1.19E+02
100	76448	Heptachlor #	1.00E+06	1.00E+06	1.00E–06	1.00E+06
101	1024573	Heptachlor epoxide #	4.50E+01	3.15E+04	4.50E–01	7.83E+02
102	87683	Hexachloro-1,3-butadene #	2.30E+02	2.10E+00	6.90E–03	8.10E+02
103	118741	Hexachlorobenzene #	3.50E+03	3.50E+01	1.10E–04	2.23E+02
104	77474	Hexachlorocyclopentadiene	1.00E+06	1.00E+06	1.00E–06	1.00E+06
105	67721	Hexachloroethane #	4.02E–02	110E+00	3.30E–02	2.16E–01
106	70304	Hexachlorophene	1.40E–02	1.50E+00	1.40E–03	5.20E–01
107	193395	Indeno[1,2,3-cd]pyrene	4.60E–03	5.00E–01	2.40E–05	1.70E–02
108	78831	Isobutyl alcohol	1.50E+01	3.90E+01	1.50E+01	3.90E+01
109	78591	Isophorone #	1.62E–01	5.49E–01	1.62E–01	5.31E–01
110	143500	Kepone #	5.80E–05	4.80E–03	3.20E–05	2.20E–04
184	7439921	Lead	1.32E+05	3.40E+05	1.16E+01	3.00E+01
185	7439976	Mercury	1.81E+01	4.67E+01	1.38E–01	2.96E–01
111	126987	Methacrylonitrile	6.00E–03	1.64E–02	6.00E–03	1.56E–02
112	67561	Methanol	3.00E+01	7.80E+01	3.00E+01	7.80E+01
113	72435	Methoxychlor	1.00E+06	1.00E+06	1.00E+06	1.00E+06
114	78933	Methyl ethyl ketone	3.00E+01	7.80E+01	3.00E+01	7.80E+01
115	108101	Methyl isobutyl ketone	3.00E+00	8.00E+00	3.00E+00	7.80E+00
116	80626	Methyl methacrylate	8.10E+00	8.40E+01	8.10E+00	2.82E+01
117	298000	Methyl parathion	2.34E+01	9.90E+02	2.34E+01	7.80E+01
118	56495	Methylcholanthrene 3- #	1.70E–03	1.70E–01	1.40E–06	1.20E–02
119	74953	Methylene bromide	6.80E–01	2.32E+00	1.90E–01	2.32E+00
120	75092	Methylene Chloride #	6.80E–01	2.36E+00	1.50E–02	3.90E–02
186	7439987	Molybdenum				
129	91203	Naphthalene	2.70E+00	1.40E+01	2.70E+00	1.40E+01
187	7440020	Nickel	9.95E+00	2.56E+01	4.89E+00	1.05E+01
130	98953	Nitrobenzene	3.20E–02	8.40E–02	3.20E–02	8.40E–02
131	79469	Nitropropane 2-				
123	55185	N–Nitrosodiethylamine #	1.02E–06	3.18E–06	1.02E–06	3.18E–06
124	62759	N–Nitrosodimethylamine #	3.40E–06	1.06E–05	3.40E–06	1.06E–05
121	924163	N–Nitroso-di-n-butylamine #	3.60E–05	1.32E–04	3.60E–05	1.22E–04
122	621647	N–Nitroso-di-n-propylamine #	1.70E–05	5.40E–05	1.70E–05	5.30E–05
125	86306	N–Nitrosodiphenylamine #	4.80E–02	2.60E–01	4.60E–02	2.00E–01
126	1E+07	N–Nitrosomethylethylamine #	6.80E–06	2.16E–05	6.80E–06	2.12E–05
127	100754	N–Nitrosopiperidine #	3.40E–06	1.06E–05	3.40E–06	1.06E–05
128	930552	N–Nitrosopyrrolidine #	6.80E–05	2.12E–04	6.80E–05	2.12E–04
132	152169	Octamethyl pyrophosphoramide	1.05E–01	2.80E–01	1.05E–01	2.73E–01
133	56382	Parathion (ethyl)	1.16E+04	5.60E+05	1.16E+04	4.40E+05
134	608935	Pentachlorobenzene	1.44E+01	1.56E+03	5.70E–01	5.10E+00
135	82688	Pentachloronitrobenzene (PCNB) #	2.37E–02	2.19E+00	5.40E–03	8.10E–02
136	87865	Pentachlorophenol #	4.20E–04	2.50E–03	4.10E–04	2.00E–03
137	108952	Phenol	3.20E+01	8.40E+01	3.20E+01	8.40E–01
138	62384	Phenyl mercuric acetate	4.50E–03	1.17E–02	4.50E–03	1.17E–02
139	108452	Phenylenediamine, 1,3-	3.00E–01	7.80E–01	3.00E–01	7.80E–01
140	298022	Phorate	1.00E+06	1.00E+06	1.00E+06	1.00E+06
141	1336363	Polychlorinated biphenyls (Aroclors) #	9.10E–04	8.80E–02	4.80E–06	6.10E–03
142	2E+07	Pronamide	5.70E+00	2.19E+01	5.70E+00	2.13E+01
143	129000	Pyrene	1.40E+01	1.50E+03	1.70E+00	5.40E+01
144	110861	Pyridine	6.00E–02	1.56E–01	6.00E–02	1.56E–01
145	94597	Safrole #	9.50E–04	3.80E–03	9.50E–04	3.50E–03
188	7782492	Selenium	1.38E+00	3.57E+00	3.57E–01	9.27E–01
189	7440224	Silver	1.32E+00	3.40E+00	8.90E–02	1.91E–01

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TABLE B-1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10-6)—Continued
[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
146	57249	Strychnine and salts	1.60E-02	4.50E-02	1.60E-02	4.50E-02
147	100425	Styrene	1.54E+01	6.51E+01	1.54E+01	6.37E+01
148	1746016	TCDDioxin 2,3,7,8, #	2.70E-08	2.70E-06	1.80E-10	1.90E-07
149	95943	Tetrachlorobenzene 1,2,4,5- #	6.00E-02	5.70E+00	3.20E-02	2.30E-01150
	630206	Tetrachloroethane 1,1,1,2- #	7.80E-03	7.50E-02	7.80E-03	7.50E-02
151	79345	Tetrachloroethane 1,1,2,2- #	9.60E-03	2.92E-01	8.00E-03	2.40E-02
152	127184	Tetrachloroethylene	6.80E-01	2.08E+00	6.80E-01	2.04E+00
153	58902	Tetrachlorophenol 2,3,4,6-	5.80E-01	1.90E+00	5.80E-01	1.90E+00
154	3689245	Tetraethyl dithiopyrophosphate	1.00E+06	1.00E+06	1.00E+06	1.00+06
190	7440280	Thallium	3.96E+02	1.02E+03	1.92E-02	5.00E-02
155	108883	Toluene	1.26E+01	4.20E+01	1.26E+01	4.13E+01
156	95807	Toluenediamine 2,4- #	5.10E-05	1.59E-04	5.10E-05	1.59E-04
158	95534	Toluidine o- #	6.80E-04	2.24E-03	6.80E-04	2.24E-03
157	106490	Toluidine p- #	6.80E-04	2.24E-03	6.80E-04	2.24E-03
159	8001352	Toxaphene (chlorinated camphenes) #	1.10E-01	6.70E+02	1.10E-01	2.20E+01
160	75252	Tribromomethane #	1.80E-02	6.80E-02	1.80E-02	6.40E-02
161	76131	Trichloro-1,2,2-trifluoro- ethane 1,1,2-	2.40E+03	1.40E04	2.40E+03	1.10E+04
162	120821	Trichlorobenzene 1,2,4-	2.10E+00	1.70E+02	1.30E+00	9.30E+00
163	71556	Trichloroethane 1,1,1-	5.00E+00	1.20E+02	4.80E+00	1.20E+02
164	79005	Trichloroethane 1,1,2- #	1.80E-03	7.40E-03	1.80E-03	7.00E-03
165	79016	Trichloroethylene (1,1,2-Trichloroethylene) #	1.44E-02	5.28E-02	1.28E-02	3.84E-02
166	75694	Trichlorofluoromethane	1.60E+01	4.90+01	1.60E+01	4.80E+01
168	95954	Trichlorophenol 2,4,5-	4.20E+00	2.00E+01	4.20E+00	4.40E+01
167	88062	Trichlorophenol 2,4,6- #	1.52E-02	5.76E-02	1.52E-02	5.38E-02
170	93765	Trichlorophenoxyacetic acid 2,4,5-	6.40E-01	1.68E+00	6.40E-01	1.68E+00
169	93721	Trichlorophenoxypropionic acid	4.80E-00	1.32E+00	4.80E-01	1.26E+00
171	96184	Trichloropropane 1,2,3-	3.40E-01	2.20E+00	3.40E-01	1.10E+00
172	99354	Trinitrobenzene (1,3,5-Trinitrobenzene) sym-	3.00E-03	8.00E-03	3.00E-03	7.80E-03
173	126727	Tris (2,3-dibromopropyl) phosphate B19 #	9.90E-05	2.52E-03	9.90E-05	2.52E-03
191	7440622	Vanadium	8.82E+00	2.27E+01	3.71E+00	9.58E+00
174	75014	Vinyl chloride #	6.80E-05	2.16E-04	6.00E-05	1.56E-04
175	1330207	Xylenes (total)	1.47E+02	9.10E+02	1.47E+02	8.60E+02
192	7440666	Zinc	1.08E+02	2.79E+02	3.84E+01	9.90E+01

For Trichloroethane 1,1,1 the MCL, 0.20 mg/L was used in conic. calculation.
*Represents the lowest results from either landfills, waste piles, or land application units waste management scenarios.
**Represents results from surface impoundments.
Carcinogen.

Appendix C

TABLE C-1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
83-32-9	Acenaphthene	49.5	31.2		0.0018	9480		0.0742	4.9		0.0018
208-96-8	Acenaphthylene			0.00285	0.02		3.9	0.7		0.0000661	0.02
67-64-1	Acetone	232000	15.6		0.2	17400		0.027	6		0.2
75-05-8	Acetonitrile	5.56	0.78		0.015	923		0.014	0.3		0.015
98-86-2	Acetophenone	5960	16.8		0.00158	1210		0.03	6.4		0.00158
75-36-5	Acetyl chloride			0.023			30.85			0.015	
591-08-2	Acetyl-2-thiourea,1-			0.11775	1		1.66	70		6.4	1
53-96-3	Acetylaminofluorene, 2-			0.02762	0.02		3.28	1		0.00884	0.02
107-02-8	Acrolein	0.00248			0.013	2.63		0.075			0.013
79-06-1	Acrylamide	3.67	0.00026		0.01	0.00436		0.1	0.000036		0.01
107-13-1	Acrylonitrile	0.00428	0.0011		0.008	0.961		0.7	0.00034		0.008
1402-68-2	Aflatoxins			14.7			6900			10.5	
116-06-3	Aldicarb			0.0069415	0.05		0.194	1		0.48	0.05
309-00-2	Aldrin	5.640E-07	0.00489		0.000034	0.000444		0.0006	3.670E-06		0.000034
107-18-6	Allyl alcohol			39			35700			15	
107-05-1	Allyl chloride	0.0742			0.002	258		0.002			0.002
92-67-1	Aminobiphenyl, 4-			0.02762	0.02		3.28	1		0.00884	0.02
2763-96-4	Aminomethyl-3-isoxazolol, 5-			0.159			19.955			0.105	
504-24-5	Aminopyridine, 4-			0.02762			3.28			0.00884	
61-82-5	Amitrole			0.0069415			0.194			0.48	
62-53-3	Aniline	0.444	0.053		0.00023	4.21		0.0132	0.017		0.00023
120-12-7	Anthracene			0.00285	0.007		3.9	0.5		0.0000661	0.007
7440-36-0	Antimony	8210	0.136		0.0008	8.72		2	0.053		0.0008
140-57-8	Aramite			14.7	0.02		6900	1		10.5	0.02
7440-38-2	Arsenic	40.5	0.000384		0.0005	0.17		0.3031	0.000148		0.0005
2465-27-2	Auramine			0.159			19.955			0.105	
115-02-6	Azaserine			0.159			19.955			0.105	
7440-39-3	Barium		33.2		0.001	2080		0.2	15.5		0.001
71-43-2	Benzene	0.0209	0.0177		0.00004	109		0.0001	0.0054		0.00004
92-87-5	Benzidine	0.00015	2.240E-06		0.0025	0.0000298		0.042	6.800E-07		0.0025
106-51-4	Benzoquinone, p-			14.7	0.01		6900	0.7		10.5	0.01
98-07-7	Benzotrichloride			0.081			142	0.004		0.0317	
50-32-8	Benzo(a)pyrene	0.00231	0.00364		0.000023	0.227		0.0621	7.040E-06		0.000023
205-99-2	Benzo(b)fluoranthene	0.000805	0.0164		0.000018	3.7		0.0699	0.0000661		0.000018
205-82-3	Benzo(j)fluoranthene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
207-08-9	Benzo(k)fluoranthene			0.00285	0.0002		3.9	0.7		0.0000661	0.0002
191-24-2	Benzo[g,h,i,]perylene			0.00285	0.0008		3.9	0.7		0.0000661	0.0008
100-51-6	Benzyl alcohol	22500	39		0.00074	2740		0.034	15		0.00074
100-44-7	Benzyl chloride	1.13	3.9		5.000E-06	37.5		0.00276	15		5.000E-06
56-55-3	Benz(a)anthracene	0.0138	0.000717		0.000013	0.1		0.0826	4.300E-06		0.000013
225-51-4	Benz[c]acridine			0.00285	0.0005		3.9	0.03		0.0000661	0.0005
7440-41-7	Beryllium	10.1	0.000627		0.00003	0.0591		0.1	0.000332		0.0003
39638-32-9	Bis (2-chloroisopropyl) ether	0.569	0.007		0.00145	0.944		0.0588	0.0019		0.00145
111-44-4	Bis(2-chlorethyl)ether	0.00141	0.000648		0.0003	0.115		0.0651	0.000336		0.0003
117-81-7	Bis(2-ethylhexyl)phthalate	0.00044	12.4		0.00027	225		0.143	0.00112		0.00027
542-88-1	Bis(chloromethyl)ether			0.023			30.85			0.015	
598-31-2	Bromoacetone			0.023	0.005		30.85	0.03		0.015	0.005
75-27-4	Bromodichloromethane	33.3	0.00854		0.00008	19		0.0012	0.00252		0.00008
75-25-2	Bromoform (Tribromomethane).	0.178	0.064		0.0002	173		0.02	0.018		0.0002
101-55-3	Bromophenyl phenyl ether, 4-			0.023	0.01		30.85	0.7		0.015	0.01
357-57-3	Brucine			0.159	20		19.955			0.105	20
71-36-3	Butanol	38600	15.6		0.014	18200		0.23	8		0.014
88-85-7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb).	15.4	0.192		0.00029	772		0.042	0.064		0.00029
85-68-7	Butylbenzylphthalate	235	437		0.000042	87		0.049	54		0.000042
7440-43-9	Cadmium	1600	0.24		0.00005	14.1		0.2	0.11		0.00005
86-74-8	Carbazole			0.159			19.955			0.105	
75-15-0	Carbon disulfide	0.738	18.4		0.00121	330		0.0002	6.4		0.00121
353-50-4	Carbon oxyfluoride			0.023			30.85			0.015	
56-23-5	Carbon tetrachloride	0.0115	0.014		0.00021	8.54		0.02	0.00161		0.00021
75-87-6	Chloral			0.081			142			0.0317	
305-03-3	Chlorambucil			0.081			142			0.0317	
57-74-9	Chlordane	0.000014	0.0998		0.00004	0.00976		0.0015	0.000163		0.00004
494-03-1	Chlornaphazin			0.081			142			0.0317	
126-99-8	Chloro-1, 3-butadiene, 2- (Chloroprene).	0.515			0.002	288		0.00099			0.002
107-20-0	Chloroacetaldehyde			0.023			30.85			0.015	
106-47-8	Chloroaniline, p-	517	0.42		0.00066	142		0.0592	0.16		0.00066
108-90-7	Chlorobenzene	1.5	4.76		0.00004	2470		0.0002	1.33		0.00004
510-15-6	Chlorobenzilate	0.0731	0.054		0.00504	5.82		0.069	0.0057		0.00504
124-48-1	Chlorodibromomethane	16.3	0.0066		0.00007	27.5		0.00085	0.0018		0.00007
75-00-3	Chloroethane (ethyl chloride)			0.023	0.005		30.85	0.005		0.015	0.005
110-75-8	Chloroethyl vinyl ether, 2-			0.081			142	0.005		0.0317	
67-66-3	Chloroform	0.00759	0.057		0.00003	6.74		0.002	0.017		0.00003

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TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
59–50–7	Chloro-m-cresol, p-			0.081	0.02		142	1		0.0317	0.02
107–30–2	Chloromethyl methyl ether			0.023			30.85	0.005		0.015	
91–58–7	Chloronaphthalene, 2-			0.081	0.01		142	0.7		0.0317	0.01
95–57–8	Chlorophenol, 2-	134	0.9		0.00058	104		0.0758	0.32		0.00058
7005–72–3	Clorophenyl phenyl ether, 4-			0.023	0.01		30.85	0.7		0.015	0.01
5344–82–1	Chlorophenyl thiourea, 1-o-			0.023			30.85			0.015	
542–76–7	Chloropropionitrile, 3-			0.081	0.1		142	0.5		0.0317	0.1
7440–47–3	Chromium	1300	1.24		0.002	9.76		0.003	0.476		0.002
218–01–9	Chrysene	1.32	0.1		0.00015	34.6		0.004	0.00119		0.00015
6358–53–8	Citrus red No. 2			14.7			6900			10.5	
7440–48–4	Cobalt			1.24	0.5		8.72	5		0.4165	0.5
7440–50–8	Copper	674	2790		0.0007	5.91		0.5	1080		0.0007
108–39–4	Cresol, m-	615	8.4		0.00046	21500		0.035	3.2		0.00046
95–48–7	Cresol, o-	656	8.4		0.00055	27400		0.027	3.2		0.00055
106–44–5	Cresol, p-	63.5	0.84		0.00046	2550		0.035	0.32		0.00046
4170–30–3	Crotonaldehyde			7.8	0.06		1210	4		6.2	0.06
57–12–5	Cyanide			0.159	0.2		19.955	0.2		0.105	0.2
14901–08–7	Cycasin			14.7			6900			10.5	
108–94–1	Cyclohexanone			7.8	10		1210	10		6.2	10
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-			0.0252	0.1		2.991	7		0.0083	0.1
50–18–0	Cyclophosphamide			0.159			19.955			0.105	
20830–81–3	Daunomycin			14.7			6900			10.5	
72–54–8	DDD	0.000126	913000		0.00005	0.00648		0.0012	2800		0.00005
53–19–0	DDD (p,p')			0.0069415			0.194			0.48	
72–55–9	DDE	9.110E–08	0.228		0.000058	0.000936		0.0006	0.0000623		0.000058
3424–82–6	DDE (p,p')			0.0069415			0.194			0.48	
50–29–3	DDT	0.0000181	20.4		0.000081	0.00315		0.0006	0.0054		0.000081
789–02–6	DDT (p,p')			0.0069415			0.194			0.48	
2303–16–4	Diallate	0.26	90.1		0.00083	1.26		0.023	0.48		0.00083
132–64–9	Dibenzofuran			8.4	0.01		27400	0.7		3.2	0.01
192–65–4	Dibenz(a,e)pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.001
189–64–0	Dibenz(a,h)pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
189–55–9	Dibenz(a,i)pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
194–59–2	Dibenz(c,g)carbazole, 7H-			0.00285	0.01		3.9	0.7		0.0000661	0.01
226–36–8	Dibenz(a,h)acridine			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
53–70–3	Dibenz(a,h)anthracene	9.440E–08	0.00176		0.00003	0.000155		0.084	6.340E–07		0.00003
224–42–0	Dibenz(a,j)acridine			0.00285	0.001		3.9	0.7		0.0000661	0.001
96–12–8	Dibromo-3-chloropropane, 1,2-	0.0723	0.00066		0.00026	0.663		0.0003	0.000114		0.00026
764–41–0	Dichloro-2-butene, 1,4-			0.023	0.005		30.85	0.005		0.015	0.005
110–57–6	Dichloro-2-butene, trans-1,4-			0.023	0.005		30.85	0.005		0.015	0.005
96–23–1	Dichloro-2-propanol, 1,3-			0.081	0.01		142	0.05		0.0317	0.01
95–50–1	Dichlorobenzene, 1,2-	15.4	29.5		0.00003	50000		0.0002	6.1		0.00003
541–73–1	Dichlorobenzene, 1,3-			0.023	0.005		30.85	0.7		0.015	0.005
106–46–7	Dichlorobenzene, 1,4-	3.01	0.056		0.00004	63.9		0.0001	0.0108		0.00004
91–94–1	Dichlorobenzidine, 3,3'-	0.0037	0.0042		0.0024	0.0524		0.116	0.00072		0.0024
75–71–8	Dichlorodifluoromethane	14.7	35.7		0.0001	8070		0.0052	11.9		0.0001
75–34–3	Dichloroethane, 1,1-	37.4	0.00016		0.00004	24.2		0.0002	0.00006		0.00004
107–06–2	Dichloroethane, 1,2-	0.00698	0.00016		0.00006	6.1		0.0001	0.00006		0.00006
75–35–4	Dichloroethylene, 1,1-	0.00345	0.00059		0.00012	2.55		0.0014	0.00018		0.00012
156–59–2	Dichloroethylene, cis-1,2-	30000	1.88		0.00012	5400		0.02	0.64		0.00012
156–60–5	Dichloroethylene, trans-1,2-	44200	2.94		0.00006	13800		0.0006	1.12		0.00006
111–91–1	Dichloromethoxy ethane			0.023	0.01		30.85	0.7		0.015	0.01
98–87–3	Dichloromethylbenzene (benzal chloride).			0.023	0.005		30.85	0.3		0.015	0.005
120–83–2	Dichlorophenol, 2,4-	6.94	0.62		0.00041	769		0.0788	0.18		0.00041
87–65–0	Dichlorophenol, 2,6-			0.023	0.01		30.85	0.7		0.015	0.01
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D).	58.5	1.56		0.00029	3140		0.00011	0.6		0.00029
78–87–5	Dichloropropane, 1,2-	0.303	0.023		0.00004	16.9		0.0001	0.0023		0.00004
542–75–6	Dichloropropene, 1,3-	0.00478	0.0028		0.0009	32.4		0.0003	0.00085		0.0009
10061–01–5	Dichloropropene, cis-1,3-	0.00485	90000		0.00089	2.84		0.0003	1150		0.00089
10061–02–6	Dichloropropene, trans-1,3-	0.0049	90000		0.00094	2.67		0.0003	1150		0.00094
60–57–1	Dieldrin	0.000059	682		0.000044	0.00176		0.0006	0.54		0.000044
1464–53–5	Diepoxybutane, 1,2,3,4- (2,2'-bioxirane).			14.7	0.005		6900	0.005		10.5	0.005
84–66–2	Diethyl phthalate	3560	186		0.00025	4490		0.022	54		0.00025
311–45–5	Diethyl-p-nitrophenyl phosphate.			0.159			19.955			0.105	
56–53–1	Diethylstilbestrol	7.720E–07	4.290E–07		0.0078	2.470E–11		1	6.500E–08		0.0078
94–58–6	Dihydrosafrole			14.7	0.05		6900	3		10.5	0.05
60–51–5	Dimethoate	38.1	29.4		0.00029	1.6		0.0691	0.77		0.00029
131–11–3	Dimethyl phthalate	200000	78		0.00064	3		0.013	30		0.00064
77–78–1	Dimethyl sulfate			0.11775			1.66			6.4	

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
60–11–7	Dimethylaminoazobenzene, p-			0.02762	0.01		3.28	0.7		0.00884	0.01
119–93–7	Dimethylbenzidine, 3,3'-	0.000625	0.0000702		0.0033	0.00062		0.7	0.000018		0.0033
57–97–6	Dimethylbenz(a)anthracene, 7,12-.	3.820E–06	0.00464		0.00037	0.00263		0.039	2.760E–06		0.00037
79–44–7	Dimethylcarbamoyl chloride			0.081			142			0.0317	
122–09–8	Dimethylphenethylamine, alpha, alpha-.			0.159	0.05		19.955	3		0.105	0.05
105–67–9	Dimethylphenol, 2,4-	151	3.78		0.00047	11300		0.052	1.19		0.00047
119–90–4	Dimethyoxybenzidine, 3,3'-	1.78	0.0336		0.0077	0.236		7	0.0102		0.0077
84–74–2	Di-n-butyl phthalate	883	227		0.00033	90000		0.249	25.2		0.00033
99–65–0	Dinitrobenzene, l,3-	1.28	0.0168		0.00011	5.54		0.25	0.0064		0.00011
100–25–4	Dinitrobenzene, l,4-			0.0252	0.04		2.991	3		0.0083	0.04
534–52–1	Dinitro-o-cresol, 4,6-			0.0252	0.05		2.991	3		0.0083	0.05
51–28–5	Dinitrophenol, 2,4-	50.2	0.273		0.00042	56.1		0.03	0.105		0.00042
121–14–2	Dinitrotoluene, 2,4-	10.7	0.294		0.00002	213		0.26	0.112		0.00002
606–20–2	Dinitrotoluene, 2,6-	12.9	0.168		0.00031	86.3		0.25	0.064		0.00031
117–84–0	Di-n-octyl phthalate	0.002	1260		0.000042	4480		0.139	0.1		0.000042
123–91–1	Dioxane, 1,4-	558	0.0424		0.012	13.2		0.0005	0.0136		0.012
122–39–4	Diphenylamine	29	14.7		0.00151	11600		0.041	2.6		0.00151
122–66–7	Diphenylhydrazine, 1,2-			0.159	0.01		19.955	0.7		0.105	0.01
298–04–4	Disulfoton	0.0131	458		0.00007	42.6		0.0035	13		0.00007
541–53–7	Dithiobiuret			0.11775			1.66			6.4	
115–29–7	Endosulfan	6.62	6		0.00004	73.1		0.0005	0.94		0.00004
959–98–8	Endosulfan I			0.0069415	0.0003		0.194	0.009		0.48	0.0003
332–13–65–9.	Endosulfan II			0.0069415	0.0904		0.194	0.003		0.48	0.0004
1031–07–8	Endosulfan sulfate			0.0069415	0.0004		0.194	0.04		0.48	0.0004
145–73–3	Endothall			0.0069415	0.1		0.194			0.48	0.1
72–20–8	Endrin	0.0729	6550		0.00039	026		0.0036	32		0.00039
7421–93–4	Endrin aldehyde			0.0069415	0.0005		0.194	0.02		0.48	0.0005
53494–70–5	Endrin ketone			0.0069415	0.0005		0.194	0.03		0.48	0.0005
106–89–8	Epichlorohydrin	0.335	414000		0.06519	44		0.0714	5400		0.06519
51–43–4	Epinephrine			0.159			19.955			0.105	
110–80–5	Ethoxyethanol, 2-	14.7	39		1.16	5900		2.03	15		1.16
141–78–6	Ethyl acetate		390		0.009	272000		0.18	114		0.0009
51–79–6	Ethyl carbamate			14.7	0.05		5900	3		10.5	0.05
107–12–0	Ethyl cyanide (propionitrile)			0.159	0.1		19.955	0.1		0.105	0.1
60–29–7	Ethyl ether		27.3		0.00153	41200		0.00319	10.5		0.00153
97–63–2	Ethyl methacrylate	25500	24		0.00345	3420		0.0011	6.6		0.00345
62–50–0	Ethyl methanesulfonate	0.0055	930000		0.00106	00133		0.018	11700		0.00106
100–41–4	Ethylbenzene	74.5	39		0.00006	550000		0.0002	8.1		0.00006
106–93–4	Ethylene Dibromide	0.000928	0.00036		0.00005	0.00745		0.0001	0.000015		0.00006
75–21–8	Ethylene oxide			14.7	0.001		6900	0.07		10.5	0.061
96–45–7	Ethylene thiourea	17.7	0.00053				0.51			0.00017	
151–56–4	Ethyleneimine (aziridine)			0.159			19.955			0.105	
52–56–4	Famphur			0.0069415	0.02		0.194	1		0.48	0.02
640–19–7	Fluoracetamide, 2-			0.023			30.85			0.015	
62–74–8	Flouracetic acid, sodium salt			0.0069415			0.194			0.48	
206–44–0	Fluoranthene	1580	27.5		0.00021	5970		0.084	1.74		0.00021
86–73–7	Fluorene	1310	22.4		0.00021	89800		0.08	3.4		0.00021
16984–48–8	Fluoride			0	0.05		0			0	0.05
50–00–0	Formaldehyde	0.0158	27.3		0.0232	48.8		4	10.5		0.0232
64–18–6	Formic Acid		273		0.2	301000		10	105		0.2
765–34–4	Glycidylaldehyde		7.8			1210			6.2		
319–86–8	HCH, delta-			0.0069415	0.0002		0.194	0.0006		0.48	0.0002
76–44–8	Heptachlor	0.0000237			0.00004	7.79		0.0006			0.00004
1024–57–3	Heptachlor epoxide	0.000528	783		0.000032	0.0264		0.0006	0.45		0.000032
87–68–3	Hexachloro-1,3-butadiene	0.00788	0.0806		0.0001	36.4		0.046	0.00631		0.0001
118–74–1	Hexachlorobenzene	0.000424	0.0226		0.00161	0.0116		0.0723	0.000113		0.00161
319–84–6	Hexachlorocyclohexane, alpha-(alpha-BHC).	0.000142	21		0.000035	0.0333		0.0008	0.1		0.000035
319–85–7	Hexachlorocyclohexane, beta-(beta-BHC).	0.000445	0.0013		0.000023	0.12		0.0006	0.00021		0.000023
58–89–9	Hexachlorocyclohexane, gamma-(Lindane).	0.000783	119		0.000025	0.102		0.002	0.693		0.000025
77–47–4	Hexachlorocyclopentadiene	0.00521			0.00018	1450		0.092			0.00018
67–72–1	Hexachloroethane	0.049	0.212		1.600E–06	80.6		0.0206	0.033		1.600E–06
70–30–4	Hexachlorophene	5.150E–06	0.0521		0.207	0.0000241		1.87	0.00136		0.207
1888–71–7	Hexachloropropene			0.081	0.01		142	0.7		0.0317	0.01
757–58–4	Hexaethyl tetraphosphate			14.7			6900			10.5	
591–78–6	Hexanone, 2-			7.8	0.005		1210	0.005		6.2	0.005
302–01–2	Hydrazine			0.159			19.955	0.3		0.105	
193–39–5	Indeno (1,2,3-cd) pyrene	0.00285	0.0165		0.000043	3.9		0.0748	0.0000241		0.000043

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
74–88–4	Iodomethane			0.023	0.005		30.85	0.005		0.015	0.005
78–83–1	Isobutyl alcohol	180000	39		0.011	55200		0.0035	15		0.011
465–73–6	Isodrin			0.0069415	0.02		0.194	1		0.48	0.02
78–59–1	Isophorone	78.6	0.531		0.01	743		0.0719	0.162		0.01
120–58–1	Isosafrole			14.7	0.01		6900	0.7		10.5	0.01
143–50–0	Kepone	0.0000264	0.00022		0.016	0.000277		0.097	0.000032		0.016
303–43–4	Lasiocarpine			0.159			19.955			0.105	
7439–92–1	Lead	907000	30		0.01	568		2	11.6		0.01
108–31–6	Maleic anhydride			14.7			6900	0.07		10.5	
123–33–1	Maleic hydrazide			0.159	0.05		19.955	3		0.105	0.05
109–77–3	Malononitrile			0.159	• 0.1		19.955	0.5		0.105	0.1
148–82–3	Melphalan			14.7			6900			10.5	
7439–97–6	Mercury	125	0.296		0.00009	0.598		0.1	0.138		0.00009
126–98–7	Methacrylonitrile	0.0708	0.0156		0.009	8.91		0.0005	0.006		0.009
74–93–1	Methanethiol			0.11775			1.66			6.4	
67–56–1	Methanol		78		0.021	138000		0.46	30		0.021
91–80–5	Methapyrilene			0.159	0.1		19.955	7		0.105	0.1
16752–77–5	Methomyl			0.0069415	0.05		0.194	3		0.48	0.05
72–43–5	Methoxychlor	6.73			0.000086	19.4		0.0057			0.000086
74–83–9	Methyl bromide (Bromomethane).	0.37	3.12		0.00011	504		0.02	0.92		0.00011
74–87–3	Methyl chloride (Chloromethane).	0.0959			0.00013	90.8		0.02			0.00013
78–93–3	Methyl ethyle ketone	141	78		0.01	112000		0.00834	30		0.01
1338–23–4	Methyl ethyl ketone peroxide			7.8			1210			6.2	
60–34–4	Methyl hydrazine			0.159			19.955			0.105	
108–10–1	Methyl isobutyl ketone	10.3	7.8		0.00083	17000		0.00315	3		0.00083
80–62–6	Methyl methacrylate	69900	28.2		0.005	39500		0.0027	8.1		0.005
66–27–3	Methyl methanesulfonate			0.11775	0.01		1.66	0.7		6.4	0.01
91–57–6	Methyl naphthalene, 2-			0.00285	0.01		3.9	0.7		0.0000661	0.01
298–00–0	Methyl parathion	0.662	78		0.01	1.43		0.0691	23.4		0.01
75–55–8	Methylaziridine, 2-			0.159			19.955			0.105	
56–49–5	Methylcholanthrene, 3-	9.880E–06	0.0117		0.01	0.000128		0.046	1.410E–06		0.01
74–95–3	Methylene bromide	11700	2.32		0.00024	8400		0.0001	0.19		0.00024
75–09–2	Methylene chloride	0.376	0.039		0.00026	306		0.02	0.015		0.00026
101–14–4	Methylenebis, 4,4'-(2-chloroaniline).			0.02762			3.28			0.00884	
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG)			0.159			19.955			0.105	
56–04–2	Methylthiouracil			0.11775			1.66			6.4	
50–07–7	Mitomycin C			14.7			6900			10.5	
7439–98–7	Molybdenum	121000	1.83		0.001	114		0.3	1.83		0.001
91–20–3	Naphthalene	385	14		0.0018	120000		0.0665	2.7		0.0018
130–15–4	Naphthoquinone, 1,4-			14.7	0.01		6900	0.7		10.5	0.01
86–88–4	Naphthyl-2-thiourea, 1-			0.11775			1.66			6.4	
134–32–7	Naphthylamine, 1-			0.159	0.01		19.955	0.7		0.105	0.01
91–59–8	Naphthylamine, 2-			0.159	0.01		19.955	0.7		0.105	0.01
7440–02–0	Nickel	5040	10.5		0.005	108		1	4.89		0.005
54–11–5	Nicotine and salts			0.159	0.02		19.955	1		0.105	0.02
88–74–4	Nitroaniline, 2-			0.02762	0.05		3.28	3		0.00884	0.05
99–09–2	Nitroaniline, 3-			0.02762	0.05		3.28	3		0.00884	0.05
100–01–6	Nitroaniline, 4-			0.02762	0.02		3.28	1		0.00884	0.02
99–95–3	Nitrobenzene	0.345	0.084		0.0064	44.8		0.0544	0.032		0.0064
55–86–7	Nitrogen mustard			0.159			19.955			0.105	
51–75–2	Nitrogen mustard hydrochloride salt.			0.159			19.955			0.105	
126–85–2	Nitrogen mustard N-Oxide			0.159			19.955			0.105	
302–70–5	Nitrogen mustard N-Oxide, HCl salt			0.159			19.955			0.105	
55–63–0	Nitroglycerine			0.159			19.955			0.105	
99–55–8	Nitro-o-toluidine, 5-			0.02762	0.01		3.28	0.7		0.00884	0.01
88–75–5	Nitrophenol, 2-			0.0252	0.01		2.991	0.7		0.0083	0.01
100–02–7	Nitrophenol, 4-			0.0252	0.05		2.991	3		0.0083	0.05
79–46–9	Nitropropane, 2-	0.00019			0.00577	0.128		0.0022			0.00577
56–57–5	Nitroquinoline-1-oxide, 4-			0.159	0.04		19.955	3		0.105	0.04
55–18–5	Nitrosodiethylamine	0.0000406	3.160E–06		0.002	0.00064		1	1.020E–06		0.002
62–75–9	Nitrosodimethylamine	0.000268	0.0000106		0.0006	0.00245		0.074	3.400E–05		0.0006
924–16–3	Nitrosodi-n-butylamine	0.000279	0.000122		0.06	0.094		0.03	0.000036		0.06
10595–95–6	Nitrosomethylethylamine	0.129	0.0000212		0.028	0.00244		0.016	6.800E–06		0.028
1116–54–7	M-Nitrosodiethanolamine			0.0000371	0.01		0.012875	0.7		0.0000119	0.01
621–64–7	N-Nitrosodi-n-propylamine	0.0644	0.000053		0.026	0.0233		0.0144	0.000017		0.026
86–30–6	N-Nitrosodiphenylamine	7.54	0.2		0.05	1270		0.0848	0.046		0.05
4549–40–0	N-Nitrosomethyl vinyl amine			0.0000371			0.012875			0.0000119	
59–89–2	N-Nitrosomorpholine			0.159	0.05		19.955	3		0.105	0.05
759–73–9	N-Nitroso-N-ethylurea			0.159			19.955			0.105	
684–93–5	N-Nitroso-N-methylurea			0.159	0.01		19.955	0.7		0.105	0.01

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
615–53–2	N-Nitroso-N-methylurethane			0.159			19.955			0.105	
18543–55–8	N-Nitrosonomicotine			0.159			19.955			0.105	
100–75–4	N-Nitrosopiperidine	0.0106	0.0000106		0.00135	0.00247					0.00135
930–55–2	N-Nitrosopyrrolidine	0.101	0.000212		0.0047	0.0534					0.0047
13256–22–9	N-Nitrososarcosine			0.159			19.955			0.105	
103–85–5	N-Phenylthiourea			0.11775			1.66			6.4	
1615–80–1	N,N-Diethylhydrazine			0.159			19.955			0.105	
152–16–9	Octamethyl- pyrophosphoramide.	7310	0.273		0.0053	31					0.0053
20816–12–0	Osmium tetroxide			1.24	3		8.72	290		0.4165	3
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate.			0.11775	0.02		1.66	1		6.4	0.02
126–68–1	O,O,O-Triethyl phosphorothioate.			0.11775	0.05		1.66	3		6.4	0.05
123–63–7	Paraldehyde			7.8	1		1210	70		6.2	1
56–38–2	Parathion	2.63	440000		0.0005	0.128		0.025	11600		0.0005
608–93–5	Pentachlorobenzene	7.86	5.15		0.000038	205		0.02	0.0543		0.000038
76–01–7	Pentachloroethane			0.023	0.005		30.85	0.01		0.015	0.005
82–68–8	Pentachloronitrobenzene (PCNB).	13.9	0.081		0.02	11.4		0.052	0.0054		0.02
87–86–5	Pentachlorophenol	0.301	0.00204		0.00008	2.92		0.1222	0.00041		0.00008
62–44–2	Phenacetin			14.7	0.02		6900	1		10.5	0.02
85–01–8	Phenanthrene			0.00285	0.006		3.9	0.7		0.0000661	0.006
108–95–2	Phenol	19300	84		0.00028	163000		0.2185		32	0.00028
62–38–4	Phenyl mercuric acetate	0.506	0.0117			0.00932				0.0045	
25265–76–3	Phenylenediamines (N.O.S.)			0.159	0.01		19.955	0.7		0.105	0.01
108–45–2	Phenylenediamine, m-	5440	0.78		0.0174	784		0.7	0.3		0.0174
106–50–3	Phenylenediamine, p-			0.159	0.01		19.955	0.7		0.105	0.01
298–02–2	Phorate	0.106			0.00004	157		0.002			0.00004
298–06–6	Phosphorodithioic acid, o-o-diethyl ester.			0.11775			1.66			6.4	
3268–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl.			0.11775			1.66			6.4	•
2953–29–9	Phosphorodithioic acid, trimethyl ester.			0.11775			1.66			6.4	-
85–44–9	Phthalic anhydride			132			2352.5	7		27.6	
109–06–8	Picoline, 2-			0.159	0.001		19.955	0.07		0.105	0.001
1336–36–3	Polychlorinated biphenyls	0.000286	0.00614		0.0005	0.00586		0.04	4.810E–06		0.0005
23950–58–5	Pronamide	80.3	21.3		0.00145	438		0.097	5.7		0.00145
1120–71–4	Propane sultone, 1,3-			0.11775			1.66			6.4	
107–10–8	Propylamine, n-			0.159	0.005		19.955	0.005		0.105	0.005
51–52–5	Propylthiouracil			0.11775	0.1		1.66	7		6.4	0.1
107–19–7	Propyn-1-ol, 2-			39	0.01		36700	0.05		15	0.01
129–00–0	Pyrene	3040	54.1		0.00027	15800		0.0726	1.69		0.00027
110–86–1	Pyridine	0.522	0.156		0.011	814		0.2	0.06		0.011
50–55–5	Reserpine			0.159	0.05		19.955	3		0.105	0.05
108–46–3	Resorcinol			0.0069415	0.1		0.194	7		0.48	0.1
81–07–2	Saccharin and salts			0.159			19.955			0.105	
94–59–7	Safrole	0.0829	0.0035		0.0021	10.5		0.015	0.00095		0.0021
7782–49–2	Selenium	822	0.927		0.0006	1.94		5	0.357		0.0006
7440–22–4	Silver	199			0.0005	0.134		0.3			0.0005
18883–66–4	Streptozotocin			14.7			5900			10.5	
57–24–9	Strychnine	3.34	0.045		0.0084	0.0041		3	0.016		0.0084
100–42–5	Styrene	75.7	63.7		0.00004	629000		0.004	15.4		0.00004
18496–25–8	Sulfide			0	2		0	2		0	2
1746–01–6	TCDD, 2,3,7,8-	1.050E–09	1.880E–07		1.000E–06	7.980E–06		1.000E–06	1.780E–10		1.000E–06
95–94–3	Tetrachlorobenzene, 1,2,4,5-	14.8	0.234		0.00141	168		0.034	0.0317		0.00141
630–20–6	Tetrachloroethane, 1,1,1,2-	0.0241	0.075		0.00005	133		0.0001	0.0078		0.00005
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	0.024		0.0002	29.3		0.0002	0.0077		0.0002
127–18–4	Tetrachloroethylene	15600	2.04		0.00014	13300		0.0007	0.68		0.00014
58–90–2	Tetrachlorophenol, 2,3,4,6-	2720	1.89		0.00062	5150		0.04	0.58		0.00062
107–49–3	Tetraethyl pyrophosphate			14.7			5900	3		10.5	
3689–24–5	Tetraethyldithiopyrophosphate.	0.23			0.000056	2.81		0.0039			0.000056
7440–28–0	Thallium (I)	546	0.05		0.0007	5.12		3	0.0192		0.0007
62–55–5	Thioacetamide			0.159	1		19.955			0.105	1
39196–18–4	Thiofanox			0.11775	0.05		1.66	3		6.4	0.05
108–98–5	Thiophenol			0.11775	0.02		1.66	1		6.4	0.02
79–19–6	Thiosemicarbazide			0.11775			1.66			6.4	
62–56–6	Thiourea			0.11775			1.66			6.4	
137–26–8	Thiram			0.0069415	0.05		0.194	3		0.48	0.05
7440–31–5	Tin			1.24	5		8.72	500		0.4165	5
108–88–3	Toluene	29.8	41.3		0.00011	176000		0.0002	12.5		0.00011
584–84–9	Toluene diisocyanate			0.159			19.955	7		0.105	
95–80–7	Toluenediamine, 2,4-	0.211	0.000159		0.0134	0.0101		1	0.000051		0.0134
823–40–5	Toluenediamine, 2,6-			0.159	0.02		19.955	1		0.105	0.02

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CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
496–72–0	Toluenediamine, 3,4-			0.159	0.02		19.955	1		0.105	0.02
636–21–5	Toluidine hydrochloride, o-			0.159	0.01		19.955	0.7		0.105	0.01
95–53–4	Toluidine, o-	0.441	0.00224		0.0121	2.35		0.029	0.00068		0.0121
106–49–0	Toluidine, p-	0.703	0.00224		0.0168	0.128		0.043	0.00068		0.0168
8001–35–2	Toxaphene	0.000364	21.5		0.00127	0.000178		0.0295	0.11		0.00127
76–13–1	Trichloro-1,2,2-trifluoroethane, 1,1,2-.	2210	11000		0.00106			0.00114	2400		0.00106
120–82–1	Trichlorobenzene, 1,2,4-	0.685	9.31		0.0002	3450		0.574	1.3		0.0002
71–55–6	Trichloroethane, 1,1,1-	73.9	120		0.00008	48200		0.0002	0.0539		0.00008
79–00–5	Trichloroethane, 1,1,2-	0.0117	0.007		0.0001	11.3		0.004	0.0018		0.0001
79–01–6	Trichloroethylene	138	0.0384		0.00019	567		0.0001	0.0128		0.00019
75–69–4	Trichlorofluoromethane	51.4	48		0.00008	25800		0.001	16		0.00008
75–70–7	Trichloromethanethiol			0.11775			1.66			6.4	
95–95–4	Trichlorophenol, 2,4,5-	38.8	18.1		0.00049	11500		0.0672	4.2		0.00049
88–06–2	Trichlorophenol, 2,4,6-	0.1	0.0536		0.0004	124		0.0785	0.0152		0.0004
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245-T).	15.5	1.68		0.00008	63.2		0.0063	0.84		0.00008
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex).	9.72	1.26		0.00008	6.38		0.00028	0.48		0.00008
96–18–4	Trichloropropane, 1,2,3-	707	1.1		0.00032	872		0.0009	0.34		0.00032
99–35–4	Trinitrobenzene, sym-	3	0.0078		0.00026	0.442		0.25	0.003		0.00026
126–72–7	Tris (2,3-dibromopropyl) phosphate.	0.000237	0.00252		0.0245	0.357		0.061	0.000099		0.0245
52–24–4	Tris (1-aziridinyl) phosphine sulfide.			0.11775			1.66			6.4	
72–57–1	Trypan blue			14.7			6900			10.5	
66–75–1	Uracil mustard			0.159			19.955			0.105	
7440–62–2	Vanadium	15800	9.58		0.003	250		1	3.71		0.003
108–05–4	Vinyl acetate			14.7	0.005		6900	0.005		10.5	0.005
75–01–4	Vinyl chloride	0.00199	0.000158		0.00017	1.23		0.0017	0.00008		0.00017
81–81–2	Warfarin			0.0089415	0.05		0.194	3		0.48	0.05
1330–20–7	Xylenes (total)	22.4	859		0.002	172000		0.0002	147		0.002
7440–66–6	Zinc	23200	99		0.002	316		0.3	38.4		0.002

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
83–32–9	Acenaphthene	49.5	31.2		0.0018	9480		0.0742	4.9		0.0018
208–96–8	Acenaphthylene			0.00285	0.02		3.9	0.7		0.00119	0.02
67–64–1	Acetone	232000	15.6		0.2	17400		0.027	6		0.2
75–05–8	Acetonitrile	6.58	0.78		0.015	923		0.014	0.3		0.015
98–86–2	Acetophenone	5980	16.8		0.00158	1210		0.03	6.4		0.00158
75–36–5	Acetyl chloride			0.0241			30.85			0.0115	
591–08–2	Acetyl-2-thiourea, 1-			0.11775	1		1.66	70		6.4	1
53–96–3	Acetylaminofluorene, 2-			0.02762	0.02		3.28	1		0.00884	0.02
107–02–8	Acrolein	0.00248			0.013	2.63		0.075			0.013
79–06–1	Acrylamide	3.67	0.00026		0.01	0.00436		0.1	0.000038		0.01
107–13–1	Acrylonitrile	0.00428	0.0011		0.008	0.961		0.7	0.00034		0.008
1402–68–2	Aflatoxins			14.7			6900			10.5	
116–06–3	Aldicarb			0.0089415	0.05		0.194	1		0.54	0.05
309–00–2	Aldrin	5.640E–07	0.00469		0.000034	0.000444		0.0006	3.670E–06		0.000034
107–18–6	Allyl alcohol			39			36700			15	
107–05–1	Allyl chloride	0.0742			0.002	258		0.002			0.002
92–67–1	Aminobiphenyl, 4-			0.02762	0.02		3.28	1		0.00884	0.02
2763–96–4	Aminomethyl-3–isoxazolol, 5-.			0.159			19.955			0.105	
504–24–5	Aminopyridine, 4-			0.02762			3.28			0.00884	
61–82–5	Amitrole			0.0089415			0.194			0.54	
62–53–3	Aniline	0.444	0.053		0.00023	4.21		0.0132	0.017		0.00023
120–12–7	Anthracene			0.00285	0.007		3.9	0.5		0.00119	0.007
7440–36–0	Antimony	8210	0.136		0.0008	8.72		2	0.063		0.0008
140–57–8	Aramite			14.7	0.02		6900	1		10.5	0.02
7440–38–2	Arsenic	40.5	0.384		0.0005	0.17		0.3031	0.15		0.0005
2465–27–2	Auramine			0.159			19.955			0.105	
115–02–6	Azaserine			0.159			19.955			0.105	
7440–39–3	Barium		28		0.001	2080		0.2	10.8		0.001
71–43–2	Benzene	0.0209	0.0295		0.00004	109		0.0001	0.009		0.00004
92–87–5	Benzidine	0.00015	2.2400E–06		0.0025	0.0000298		0.042	6.800E–07		0.0025

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
106–51–4	Benzoquinone, p-			14.7	0.01		6900	0.7		10.5	0.01
98–07–7	Benzotrichloride			0.27			142	0.004		0.033	
50–32–8	Benzo(a)pyrene	0.00231	1.88		0.000023	0.227		0.0821	0.0036		0.000023
205–99–2	Benzo(b)fluoranthene	0.000805	0.0164		0.000018	3.7		0.0699	0.0000661		0.000018
205–82–3	Benzo(j)fluoranthene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
207–08–9	Benzo(k)fluoranthene			0.00285	0.0002		3.9	0.7		0.00119	0.0002
191–24–2	Benzo(g,h,i)perylene			0.00285	0.0008		3.9	0.7		0.00119	0.0008
100–51–6	Benzyl alochol	22500	39		0.0074	2740		0.034	15		0.00074
100–44–7	Benzyl chloride	1.13	3.9		5.000E–06	37.5		0.00278	15		5.000E–06
56–55–3	Benz(a)anthracene	0.0138	0.000717		0.000013	0.1		0.0826	4.300E–06		0.000013
225–51–4	Benz(c)acridine			0.00285	0.0005		3.9	0.03		0.00119	0.0005
7440–41–7	Beryllium	10.1	0.000827		0.0003	0.0591		0.1	0.00032		0.0003
39638–32–9	Bis (2-chloroisopropily) ether	0.569	0.007		0.00145	0.944		0.0586	0.0019		0.00145
111–44–4	Bis(2-chlorethyl)ether	0.00141	0.000648		0.0003	0.115		0.0651	0.00036		0.0003
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	1260		0.00027	225		0.143	0.106		0.00027
542–88–1	Bis(chloromethyl) ether			0.0241			30.85			0.0115	
598–31–2	Bromoacetone			0.0241	0.005		30.85	0.03		0.0115	0.005
75–27–4	Bromodichloromethane	33.3	0.00854		0.00008	19		0.0012	0.00252		0.00008
75–25–2	Bromoform (Tribromomethane).	0.179	0.064		0.0002	173		0.02	0.018		0.0002
101–55–3	Bromophenyl phenyl ether, 4-.			0.0241	0.01		30.85	0.7		0.0115	0.01
357–57–3	Brucine			0.159	20		19.955			0.105	20
71–36–3	Butanol	38600	15.6		0.014	18200		0.23	5		0.014
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb).	15.4	0.0336		0.00029	772		0.042	0.0112		0.00029
85–68–7	Butylbenzylphthalate	235	437		0.000042	87		0.049	64		0.000042
7440–43–9	Cadmium	1600	0.038		0.00005	14.1		0.2	0.015		0.00005
86–74–8	Carbazole			0.159			19.955			0.105	
75–15–0	Carbon disulfide	0.738	18.4		0.00121	330		0.0002	6.4		0.00121
353–50–4	Carbon oxyfluoride			0.0241			30.85			0.0115	
56–23–5	Carbon tetrachloride	0.0115	0.1		0.00021	8.54		0.02	0.0115		0.00021
75–87–6	Chloral			0.27			142			0.033	
305–03–3	Chlorambucil			0.27			142			0.033	
57–74–9	Chlordane	0.000014	24		0.00004	0.00976		0.0015	0.036		0.00004
494–03–1	Chlomaphazin			0.27			142			0.033	
126–99–8	Chloro-1,3-butadiene, 2- (Chloroprene).	0.515			0.002	288		0.00099			0.002
107–20–0	Chloroacetaldehyde			0.0241			30.85			0.0115	
106–47–8	Chloroaniline, p-	517	0.42		0.00065	142		0.0592	0.16		0.00065
108–90–7	Chlorobenzene	1.5	0.68		0.00004	2470		0.0002	0.19		0.00004
510–15–6	Chlorobenzilate	0.0731	0.054		0.00504	6.82		0.069	0.0057		0.00504
124–48–1	Chlorodibromomethane	16.3	0.0066		0.00007	27.5		0.00085	0.0018		0.00007
75–00–3	Chloroethane (ethyl chloride).			0.0241	0.005		30.85	0.005		0.0115	0.005
110–75–8	Chloroethyl vinyl ether, 2-			0.27			142	0.005		0.033	
67–66–3	Chloroform	0.00759	0.057		0.00003	6.74		0.002	0.017		0.00003
59–50–7	Chloro-m-cresol, p-			0.27	0.02		142	1		0.033	0.02
107–30–2	Chloromethyl methyl ether			0.0241			30.85	0.005		0.0115	
91–58–7	Chloronaphthalene, 2-			0.27	0.01		142	0.7		0.033	0.01
95–57–8	Chlorophenol, 2-	134	0.9		0.00058	104		0.0758	0.32		0.00058
7005–72–3	Chlorophenyl phenyl ether, 4-.			0.0241	0.01		30.85	0.7		0.0115	0.01
5344–82–1	Chlorophenyl thiourea, 1-o-			0.0241			30.85			0.0115	
542–76–7	Chloropropionitrile, 3-			0.27	0.1		142	0.5		0.033	0.1
7440–47–3	Chromium	1300	0.618		0.002	9.76		0.003	0.238		0.002
218–01–9	Chrysene	1.32	0.1		0.00015	34.6		0.084	0.00119		0.00015
6358–53–8	Citrus red No. 2			14.7			5900			10.5	
7440–48–4	Cobalt			0.618	0.5		8.72	5		0.194	0.5
7440–50–8	Copper	674	2790		0.0007	5.91		0.5	1080		0.0007
108–39–4	Cresol, m-	615	8.4		0.00046	21500		0.035	3.2		0.00046
95–48–7	Cresol, o-	656	8.4		0.00055	27400		0.027	3.2		0.00055
106–44–5	Cresol, p-	53.5	0.84		0.00046	2550		0.035	0.32		0.00046
4170–30–3	Crotonaldehyde			7.8	0.06		1210	4		6.2	0.06
57–12–5	Cyanide			0.159	0.2		19.955	0.2		0.105	0.2
14901–08–7	Cycasin			14.7			6900			10.5	
108–94–1	Cyclohexanone			7.8	10		1210	10		6.2	10
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-			0.0252	0.1		2.991	7		0.0083	0.1
50–18–0	Cyclophosphamide			0.159			19.955			0.105	
20830–81–3	Daunomycin			14.7			6900			10.5	
72–54–8	DDD	0.000126	913000		0.00005	0.00648		0.0012	2800		0.00005
53–19–0	DDD (o,p')			0.0069415			0.194			0.54	
72–55–9	DDE	9.110E–06	0.228		0.000058	0.000936		0.0008	0.0000623		0.000058
3424–82–6	DDE (o,p')			0.0069415			0.194			0.54	

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
50–29–3	DDT	0.0000181	20.4		0.000081	0.00315		0.0006	0.0054		0.000081
789–02–6	DDT (o,p')			0.0069415			0.194			0.54	
2303–16–4	Diallate	0.26	90.1		0.00063	1.26		0.023	0.46		0.00063
132–64–9	Dibenzofuran			8.4	0.01		27400	0.7		1.8	0.01
192–65–4	Dibenz(a,e)pyrene			0.00285	0.001		3.9	0.7		0.00119	0.001
189–64–0	Dibenz(a,h)pyrene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
189–55–9	Dibenz(a,i)pyrene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
194–59–2	Dibenzo(c,g)carbazole, 7H-			0.00285	0.01		3.9	0.7		0.00119	0.01
226–36–8	Dibenz(a,h)acridine			0.00285	0.0002		3.9	0.01		0.00119	0.0002
53–70–3	Dibenz(a,h)anthracene	8.440E–06	0.00176		0.00003	0.000155		0.004	6.340E–07		0.00003
224–42–0	Dibenzo[a,j]acridine			0.00285	0.001		3.9	0.7		0.00119	0.001
96–12–8	Dibromo-3-chloropropane, 1,2-.	0.0723	0.0022		0.00026	0.663		0.0003	0.00038		0.00026
884–41–0	Dichloro-2-butene, 1,4-			0.0241	0.005		30.85	0.005		0.0115	0.005
110–57–6	Dichloro-2-butene, trans-1,4-.			0.0241	0.005		30.85	0.005		0.0115	0.005
96–23–1	Dichloro-2-propanol, 1,3-			0.27	0.01		142	0.05		0.033	0.01
95–50–1	Dichlorobenzene, 1,2-	15.4	7.8		0.00003	50000		0.0002	1.62		0.00003
541–73–1	Dichlorobenzene, 1,3-			0.0241	0.005		30.85	0.7		0.0115	0.005
106–46–7	Dichlorobenzene, 1,4-	3.01	1.12		0.00004	53.9		0.0001	0.216		0.00004
91–94–1	Dichlorobenzidine, 3,3'-	0.0037	0.0042		0.0024	0.0524		0.116	0.00072		0.0024
75–71–8	Dichlorodifluoromethane	14.7	35.7		0.0001	8070		0.0052	11.9		0.0001
75–34–3	Dichloroethane, 1,1-	37.4	0.00016		0.00004	24.2		0.0002	0.00006		0.00004
107–06–2	Dichloroethane, 1,2-	0.00698	0.0475		0.00006	6.1		0.0001	0.009		0.00005
75–35–4	Dichloroethylene, 1,1-	0.00345	0.0413		0.00012	2.55		0.0014	0.0216		0.00012
156–59–2	Dichloroethylene, cis-1,2-	30000	0.294		000012	5400		0.02	0.112		0.00012
156–60–5	Dichloroethylene, trans-1,2-	44200	0.42		0.00006	13800		0.0006	0.16		0.00006
111–91–1	Dichloromethoxyethane			0.0241	0.01		30.85	0.7		0.0115	0.01
98–87–3	Dichloromethylbenzene (benzal chloride).			0.0241	0.005		30.85	0.3		0.0115	0.005
120–83–2	Dichlorophenol, 2,4-	6.94	0.62		0.00041	768		0.0788	0.18		0.00041
87–65–0	Dichlorophenol, 2,6-			0.0241	0.01		30.85	0.7		0.0115	0.01
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D).	58.5	0.273		0.00029	3140		0.00011	0.105		0.00029
78–87–5	Dichloropropane, 1,2-	0.303	0.115		0.00004	16.9		0.0001	0.0115		0.00004
542–75–6	Dichloropropene, 1,3-	0.00476	0.0026		0.0009	32.4		0.0003	0.00065		0.0009
10061–01–5	Dichloropropene, cis-1,3-	0.00485	90000		0.00069	2.64		0.0003	1150		0.00069
10061–02–6	Dichloropropene, trans-1,3-	0.0049	90000		0.00094	2.67		0.0003	1150		0.00094
60–57–1	Dieldrin	0.000059	682		0.000044	0.00178		0.0006	0.54		0.00044
1464–53–5	Diepoxybutane, 1,2:3,4-(2,2'-bioxirane.			14.7	0.005		6900	0.005		10.5	0.005
84–66–2	Diethyl phthalate	3560	186		0.00025	4490		0.022	54		0.00025
311–45–5	Diethyl-p-nitrophenyl phosphate.			0.159			19.955			0.105	
56–53–1	Diethylstilbestrol	7.710E–07	4.2900E–07		0.0078	2.470E–11		1	6.500E–08		0.0078
94–58–6	Dihydrosafrole			14.7	0.05		6900	3		10.5	0.05
60–51–5	Dimethoate	36.1	29.4		0.00029	1.6		0.0691	0.77		0.00029
131–11–3	Dimethyl phthalate	200000	78		0.00064	3		0.013	30		0.00064
77–78–1	Dimethyl sulfate			0.11775			1.66			6.4	60
60–11–7	Dimethylaminoazobenzene, p-.			0.02762	0.01		3.28	0.7		0.00884	0.01
119–93–7	Dimethylbenzidine, 3,3'-	0.000625	0.0000702		0.0033	0.00062		0.7	0.000018		0.0033
57–97–6	Dimethylbenz(a)anthracene, 7,12-.	3.820E–08	0.00464		0.00037	0.00263		0.038	2.760E–06		0.00037
79–44–7	Dimethylcarbamoyl chloride			0.27			142			0.033	
122–09–8	Dimethylphenethylamine, alpha, alpha-.			0.159	0.05		19.955	3		0.105	0.05
105–67–9	Dimethylphenol,2,4-	151	3.75		0.00047	11300		0.052	1.19		0.00047
119–90–4	Dimethyloxybenzidine,3,3'-	1.78	0.0336		0.0077	0.236		7	0.0102		0.0077
84–74–2	Di-n-butyl phthalate	883	900		0.00033	90000		0.249	100		0.00033
99–65–0	Dinitrobenzene,1,3-	1.28	0.0168		0.00011	5.54		0.25	0.0064		0.00011
100–25–4	Dinitrobenzene,1,4-			0.0252	0.04		2.991	3		0.0063	0.04
534–52–1	Dinitro-o-cresol,4,6-			0.0252	0.05		2.991	3		0.0063	0.05
51–28–5	Dinitrophenol,2,4-	50.2	0.273		0.00042	56.1		0.03	0.105		0.00042
121–14–2	Dinitrotoluene,2,4-	10.7	0.294		0.00002	213		0.26	0.112		0.00002
606–20–2	Dinitrotoluene,2,6-	12.9	0.168		0.00031	86.3		0.25	0.064		0.00031
117–84–0	Di-n-octyl phthalate	0.002	1260		0.000042	4480		0.139	0.1		0.000042
123–91–1	Dioxane,1,4-	556	0.0424		0.012	13.2		0.0005	0.0136		0.012
122–39–4	Diphenylamine	29	14.7		0.00151	11800		0.041	2.6		0.00151
122–66–7	Diphenylhydrazine,1,2-			0.159	0.01		19.955	0.7		0.105	0.01
298–04–4	Disulfoton	0.0131	458		0.00007	42.6		0.0035	13		0.00007
541–53–7	Dithiobiuret			0.11775			1.66			8.4	
115–29–7	Endosulfan	6.62	6		0.00004	73.1		0.0005	0.94		0.00004
959–98–8	Endosulfan I			0.0069415	0.0003		0.194	0.009		0.54	0.0003
33213–65–9	Endosulfan II			0.0069415	0.0004		0.194	0.003		0.54	0.0004

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
1031–07–8	Endosulfan sulfate			0.0069415	0.0004		0.194	0.04		0.54	0.0004
145–73–3	Endothall			0.0069415	0.1		0.194			0.54	0.1
72–20–8	Endrin	0.0729	4800		0.00039	0.26		0.0036	24		0.00039
7421–93–4	Endrin aldehyde			0.0069415	0.0005		0.194	0.02		0.54	0.0005
53494–70–5	Endrin ketone			0.0069415	0.0005		0.194	0.03		0.54	0.0005
106–89–8	Epichlorohydrin	0.335	414000		0.06519	44		0.0714	5400		0.06519
51–43–4	Epinephrine			0.159			19.955			0.105	
110–80–5	Ethoxyethanol,2-	14.7	39		1.16	8900		2.03	15		1.16
141–78–6	Ethyl acetate		390		0.009	272000		0.18	114		0.009
51–79–6	Ethyl carbamate		390	14.7	0.05		6900	3		10.5	0.05
107–12–0	Ethyl cyanide (propionitrile)			0.159	0.1		19.955	0.1		0.105	0.1
60–29–7	Ethyl ether		27.3		0.00153	41200		0.00319	10.5		0.00153
97–63–2	Ethyl methacrylate	25500	24		0.00345	3420		0.0011	6.5		0.00345
62–50–0	Ethyl methanesulfonate	0.0055	930000		0.00106	0.00133		0.018	11700		0.00106
100–41–4	Ethylbenzene	74.5	8.4		0.00006	550000		0.0002	1.75		0.00006
106–93–4	Ethylene Dibromide	0.000928	0.018		0.00006	0.00745		0.0001	0.00075		0.00006
75–21–8	Ethylene oxide			14.7	0.001		6900	0.07		10.5	0.001
96–45–7	Ethylene thiourea	17.7	0.00053				0.51		0.00017		
151–56–4	Ethyleneimine (aziridine)			0.159			19.955			0.105	
52–85–7	Famphur			0.0069415	0.02		0.194	1		0.54	0.02
640–19–7	Fluoroacetamide, 2-			0.0241			30.85			0.0115	
62–74–8	Fluoroacetic acid, sodium salt.			0.0069415			0.194			0.54	
206–44–0	Fluoranthene	1560	27.5		0.00021	5970		0.084	1.74		0.00021
86–73–7	Fluorene	1310	22.4		0.00021	89800		0.08	3.4		0.00021
16984–48–8	Fluoride			0	0.05		0			0	0.05
50–00–0	Formaldehyde	0.0158	27.3		0.0232	48.8		4	10.5		0.0232
64–18–6	Formic Acid		273		0.2	301000		10	105		0.2
765–34–4	Glycidylaldehyde			7.8			1210			6.2	
319–86–8	HCH, delta-			0.0069415	0.0002		0.194	0.0006		0.54	0.0002
76–44–8	Heptachlor	0.0000237			0.00004	7.79		0.0008			0.00004
1024–57–3	Heptachlor epoxide	0.000528	17400		0.000032	0.0264		0.0006	55		0.000032
87–68–3	Hexachloro-1,3-butadiene	0.00788	0.0806		0.0001	36.4		0.045	0.00691		0.0001
118–74–1	Hexachlorobenzene	0.000424	3.6		0.00161	0.0116		0.0723	0.018		0.00161
319–84–6	Hexachlorocyclohexane, alpha- (alpha-BHC).	0.000142	21		0.000035	0.0333		0.0008	0.11		0.000035
319–85–7	Hexachlorocyclohexane, beta- (beta-BHC).	0.000445	0.0013		0.000023	0.12		0.0006	0.00021		0.000023
58–89–9	Hexachlorocyclohexane, gamma- (Lindane).	0.000783	340		0.000025	0.102		0.002	1.96		0.000025
77–47–4	Hexachlorocyclopentadiene	0.00521			0.00018	1450		0.092			0.00018
67–72–1	Hexachloroethane	0.049	0.212		1.600E–06	80.6		0.0206	0.033		1.600E–06
70–30–4	Hexachlorophene	5.150E–06	0.0521		0.207	0.0000241		1.87	0.00136		0.207
1888–71–7	Hexachloropropene			0.27	0.01		142	0.7		0.033	0.01
757–58–4	Hexaethyl tetraphosphate			14.7			6900			10.5	
591–78–6	Hexanone, 2-			7.8	0.005		1210	0.005		6.2	0.005
302–01–2	Hydrazine			0.159			19.955	0.3		0.105	
193–39–5	Indeno(1,2,3-cd) pyrene	0.00285	0.0165		0.000043		3.9	0.0748	0.0000241		0.000043
74–88–4	Iodomethane			0.0241	0.005		30.85	0.005		0.0115	0.005
78–83–1	Isobutyl alcohol	180000	39		0.011	55200		0.0035	15		0.011
465–73–6	Isodrin			0.0069415	0.02		0.194	1		0.54	0.02
78–59–1	Isophorone	78.6	0.531		0.01	743		0.0719	0.162		0.01
120–58–1	Isosafrole			14.7	0.01		6900	0.7		10.5	0.01
143–50–0	Kepone	0.0000264	0.00022		0.016	0.000277		0.097	0.000032		0.016
303–43–4	Lasiocarpine			0.159			19.955			0.105	
7439–92–1	Lead	907000	30		0.01	568		2	12		0.01
108–31–6	Maleic anhydride			14.7			6900	0.07		10.5	
123–33–1	Maleic hydrazide			0.159	0.05		19.955	3		0.105	0.05
109–77–3	Malononitrile			0.159	0.1		19.955	0.5		0.105	0.1
148–82–3	Melphalan			14.7			6900			10.5	
7439–97–6	Mercury	125	0.0596		0.00009	0.598		0.1	0.023		0.00009
126–98–7	Methacrylonitrile	0.0708	0.1056		0.009	5.91		0.0005	0.006		0.009
74–93–1	Methanethiol			0.11775			1.66			6.4	
67–56–1	Methanol		78		0.021	138000		0.48	30		0.021
91–80–5	Methapyrilene			0.159	0.1		19.955	7		0.105	0.1
16752–77–5	Methomyl			0.0069415	0.05		0.194	3		0.54	0.05
72–43–5	Methoxychlor	6.73			0.000086	19.4		0.0057			0.000086
74–83–9	Methyl bromide (Brumomethane).	0.37	3.12		0.00011	504		0.02	0.92		0.00011
74–87–3	Methyl chloride (Chloromethane).	0.0959			0.00013	90.8		0.02			0.00013
78–93–3	Methyl ethyl ketone	141	78		0.01	112000		0.00834	30		0.01
1338–23–4	Methyl ethyl ketone peroxide.			7.8			1210			8.2	
60–34–4	Methyl hydrazine			0.159			19.955			0.105	

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TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
108–10–1	Methyl isobutyl ketone	10.3	7.8		0.00083	17000		0.00315	3		0.00083
80–62–6	Methyl methacrylate	69900	28.2		0.005	39500		0.0027	9.1		0.005
66–27–3	Methyl methanesulfonate			0.11775	0.01		1.66	0.7		6.4	0.01
91–57–6	Methyl naphthalene, 2-			0.00285	0.01		3.9	0.7		0.00119	0.01
298–00–0	Methyl parathion	0.662	78		0.01	1.43		0.691	23.4		0.01
75–55–8	Methylaziridine, 2-			0.159			19.955			0.105	
56–49–5	Methylcholanthrene, 3-	9.880E–06	0.0117		0.01	0.000128		0.046	1.410E–06		0.01
74–95–3	Methylene bromide	11700	0.029		0.00024	8400		0.0001	0.0085		0.00024
75–09–2	Methylene chloride	0.376	0.039		0.00026	306		0.02	0.09		0.00026
101–14–4	Methylenebis, 4,4'-(2-chloroaniline).			0.02762			3.28			0.00884	
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG).			0.159			19.955			0.105	
56–04–2	Methylthiouracil			0.11775			1.66			6.4	
50–07–7	Mitomycin C			14.7			6900			10.5	
7439–98–7	Molybdenum	121000	1.83		0.001	114		0.3	1.83		0.001
91–20–3	Naphthalene	385	14		0.0018	120000		0.0865	2.7		0.0018
130–15–4	Naphthoquinone, 1,4-			14.7	0.01		6900	0.7		10.5	0.01
86–88–4	Naphthyl-2-thiourea, 1-			0.11775			1.66			6.4	
134–32–7	Naphthylamine, 1-			0.159	0.01		19.995	0.7		0.105	0.01
91–59–8	Naphthylamine, 2-			0.159	0.01		19.955	0.7		0.105	0.01
7440–02–0	Nickel	5040	4.38		0.008	106		1	2.04		0.005
54–11–5	Nicotine and salts			0.159	0.02		19.955	1		0.105	0.02
88–74–4	Nitroaniline, 2-			0.02762	0.05		3.28	3		0.00884	0.05
99–09–2	Nitroaniline, 3-			0.02762	0.05		3.28	3		0.00884	0.05
100–01–6	Nitroaniline, 4-			0.02762	0.02		3.28	1		0.00884	0.02
98–95–3	Nitrobenzene	0.345	0.084		0.0064	44.8		0.0544	0.032		0.0064
55–86–7	Nitrogen mustard			0.159			19.955			0.105	
51–75–2	Nitrogen mustard hydrochloride salt.			0.159			19.955			0.105	
126–85–2	Nitrogen mustard N-Oxide			0.159			19.955			0.105	
302–70–5	Nitrogen mustard N-Oxide, HCl salt.			0.159			19.955			0.105	
55–63–0	Nitroglycerine			0.159			19.955			0.105	
99–55–8	Nitro-o-toluidine, 5-			0.02762	0.01		3.28	0.7		0.00884	0.01
88–75–5	Nitrophenol, 2-			0.0252	0.01		2.991	0.7		0.0083	0.01
100–02–7	Nitrophenol, 4-			0.0252	0.05		2.991	3		0.0083	0.05
79–46–9	Nitropropane, 2-	0.00019			0.00577	0.128		0.0022			0.00577
56–57–5	Nitroquinoline-1-oxide, 4-			0.159	0.04		19.955	3		0.105	0.04
55–18–5	Nitrosodiethylamine	0.0000406	3.1600E–06		0.002	0.00064		1	1.020E–06		0.00262
62–75–9	Nitrosodimethylamine	0.000285	0.0000106		0.0006	0.00245		0.074	3.400E–06		0.0006
924–16–3	Nitrosodi-n-butylamine	0.000279	0.000122		0.06	0.094		0.03	0.000036		0.06
10595–95–6	Nitrosomethylethylamine	0.129	0.000212		0.028	0.00244		0.016	5.800E–06		0.028
1116–54–7	N-Nitrosodiethanolamine			0.0000371	0.01		0.012875	0.7		0.0000119	0.01
621–64–7	N-Nitrosodi-n-propylamine	0.0644	0.000053		0.026	0.0233		0.0144	0.000017		0.026
86–30–6	N-Nitrosodiphenylamine	7.54	0.2		0.05	1270		0.0846	0.046		0.05
4549–40–0	N-Nitrosomethyl vinyl amine			0.0000371			0.012875			0.0000119	
59–89–2	N-Nitrosomorpholine			0.159	0.05		19.955	3		0.105	0.05
759–73–9	N-Nitroso-N-ethylurea			0.159			19.955			0.105	
684–93–5	N-Nitroso-N-methylurea			0.159	0.01		19.955	0.7		0.105	0.01
615–53–2	N-Nitroso-N-methylurethane			0.159			19.955			0.105	
16543–55–8	N-Nitrosonornicotine			0.159			19.955			0.105	
100–75–4	N-Nitrosopiperidine	0.0106	0.0000106		0.00135	0.00247		0.033	3.400E–06		0.00135
930–55–2	N-Nitrosopyrrolidine	0.101	0.000212		0.0047	0.0534		0.042	0.000068		0.0047
13256–22–9	N-Nitrososarcosine			0.159			19.955			0.105	
103–85–5	N-Phenylthiourea			0.11775			1.66			6.4	
1615–80–1	N,N-Diethylhydrazine			0.159			19.955			0.105	
152–16–9	Octamethylpyrophosphoramide.	7310	0.273		0.0053	31		0.148	0.105		0.0053
20816–12–0	Osmium tetroxide			0.618	3		8.72	200		0.194	3
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate.			0.1175	0.02		1.66	1		64	002
126–68–1	O,O,O-Triethyl phosphorothioate.			0.11775	0.05		1.66	3		6.4	0.05
123–63–7	Paraldehyde			7.8	1		1210	70		6.2	1
56–38–2	Parathion	2.83	440000		0.0005	0.128		0.025	11500		0.0005
608–93–5	Pentachlorobenzene	7.86	5.15		0.000038	205		0.02	0.0543		0.000038
76–01–7	Pentachloroethane			0.0241	0.005		30.85	0.01		0.0115	0.005
82–68–8	Pentachloronitrobenzene (PCNB).	13.9	0.27		0.02	11.4		0.052	0.018		0.02
87–86–5	Pentachlorophenol	0.301	0.00204		0.00008	2.92		0.1222	0.00041		0.00008
62–44–2	Phenacetin			14.7	0.02		6900	1		10.5	0.02
85–01–8	Phenanthrene			0.00285	0.008		3.9	0.7		0.00119	0.006
108–95–2	Phenol	19300	54		0.00028	163000		0.2185	32		0.00028
62–38–4	Phenyl mercuric acetate	0.506	0.0117			0.00932			0.0045		

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modified exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
25265–76–3	Phenylenediamines (N.O.S.)			0.159	0.01		19.955	0.7		0.105	0.01
108–45–2	Phenylenediamine, m-	5440	0.78		0.0174	784		0.7	0.3		0.0174
106–50–3	Phenylenediamine, p-			0.159	0.01		19.955	0.7		0.105	0.01
298–02–2	Phorate	0.106			0.00004	157		0.002			0.00004
298–06–6	Phosphorodithioic acid, o-o-diethyl ester.			0.11775			1.66			6.4	
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl.			0.11775			1.66			6.4	
2953–29–9	Phosphorodithioic acid, trimethyl ester.			0.11775			1.66			6.4	
85–44–9	Phthalic anhydride			132			2352.5	7		42	
109–06–8	Picoline, 2-			0.159	0.001		19.955	0.07		0.105	0.001
1336–36–3	Polychlorinated biphenyls	0.000286	11.5		0.0005	0.00596		0.04	0.009		0.0005
23950–58–5	Pronamide	80.3	21.3		0.00145	438		0.097	5.7		0.00145
1120–71–4	Propane sultone, 1,3-			0.11775			1.66			6.4	
107–10–8	Propylamine, n-			0.159	0.005		19.955	0.005		0.105	0.005
51–52–5	Propylthiouracil			0.11775	0.1		1.66	7		6.4	0.1
107–19–7	Propyn-1-ol, 2-			39	0.01		3700	0.05		15	0.01
129–00–0	Pyrene	3040	54.1		0.00027	15800		0.0726	1.69		0.00027
110–86–1	Pyridine	0.522	0.156		0.011	814		0.2	0.06		0.011
50–55–5	Reserpine			0.159	0.05		19.955	3		0.105	0.05
108–46–3	Resorcinol			0.0069415	0.1		0.194	7		0.54	0.1
81–07–2	Saccharin and salts			0.159			19.955			0.105	
94–59–7	Safrole	0.0829	0.0035		0.0021	10.5		0.015	0.00095		0.0021
7782–49–2	Selenium	822	0.232		0.0006	1.94		5	0.0892		0.0008
7440–22–4	Silver	199			0.0005	1.134		0.3			0.0005
18883–66–4	Streptozotocin			14.7			6900			10.5	
57–24–9	Strychnine	3.34	0.045		0.0084	0.0041		3	0.016		0.0084
100–42–5	Styrene	75.7	0.91		0.00004	529000		0.004	0.22		0.00004
18496–25–8	Sulfide			0	2		0	2		0	2
1746–01–6	TCDD, 2,3,7,8-	1.050E–09	0.00057		1.000E–08	7.80E–06		1.000E–06	5.400E–07		1.000E–08
95–94–3	Tetrachlorobenzene, 1,2,4,5-	14.8	0.234		0.00141	168		0.034	0.0317		0.00141
630–20–6	Tetrachloroethane, 1,1,1,2-	0.0241	0.075		0.00005	133		0.0001	0.0078		0.00005
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	0.024		0.0002	29.3		0.0002	0.0077		0.0002
127–18–4	Tetrachloroethylene	15600	0.0255		0.00014	13300		0.0007	0.0085		0.00014
58–90–2	Tetrachlorophenol, 2,3,4,6-	2720	1.89		0.00062	6150		0.04	0.58		0.00062
107–49–3	Tetraethyl pyrophosphate			14.7			6900	3		10.5	
3689–24–5	Tetraethyldithiopyrophosphate.	0.23			0.000058	2.81		0.0039			0.000058
7440–28–0	Thallium (I)	546	0.0353		0.0007	5.12		3	0.014		0.0007
62–55–5	Thioacetamide			0.159	1		19.955			0.105	1
39196–18–4	Thiofanox			0.11775	0.05		1.66	3		6.4	0.05
108–98–5	Thiophenol			0.11775	0.02		1.66	1		6.4	0.02
79–19–6	Thiosemicarbazide			0.11775			1.66			6.4	
62–56–6	Thiourea			0.11775			1.66			6.4	
137–26–8	Thiram			0.0089415	*0.05		0.194	3		0.54	0.05
7440–31–5	Tin			0.618	8		8.72	500		0.194	8
108–88–3	Toluene	29.8	5.9		0.00011	176000		0.0002	1.8		0.00011
584–84–9	Toluene diisocyanate			0.159			19.955	7		0.105	
95–80–7	Toluenediamine, 2,4-	0.211	0.000159		0.0134	0.0101		1	0.000051		0.0134
823–40–5	Toluenediamine, 2,6-			0.159	0.02		19.955	1		0.105	0.02
496–72–0	Toluenediamine, 3,4-			0.159	0.02		19.955	1		0.105	0.02
636–21–5	Toluidine hydrochloride, o-			0.159	0.01		19.955	0.7		0.105	0.01
95–53–4	Toluidine, o-	0.441	0.00224		0.0121	2.35		0.029	0.00068		0.0121
106–49–0	Toluidine, p-	0.703	0.00224		0.0168	0.126		0.043	0.00068		0.0168
8001–35–2	Toxaphene	0.000364	1170		0.00127	0.000176		0.0295	5.3		0.00127
76–13–1	Trichloro-1,2,2-trifluoroethane, 1,1,2-.	2210	0.77		0.00108			0.00114	0.158		0.00108
120–82–1	Trichlorobenzene, 1,2,4-	0.685	9.31		0.0002	3450		0.0574	1.3		0.0002
71–55–6	Trichloroethane, 1,1,1-	73.9	120		0.00008	48200		0.0002	0.0539		0.00008
79–00–5	Trichloroethane, 1,1,2-	0.0117	0.035		0.0001	11.3		0.004	0.009		0.0001
79–01–6	Trichloroethylene	138	0.024		0.00019	567		0.0001	0.006		0.00019
75–69–4	Trichlorofluoromethane	51.4	48		0.00008	25800		0.001	16		0.00008
75–70–7	Trichloromethanethiol			0.11775			1.66			6.4	
95–95–4	Trichlorophenol, 2,4,5-	38.8	18.1		0.00049	11500		0.0672	4.2		0.00049
88–06–2	Trichlorophenol, 2,4,6-	0.1	0.0536		0.0004	124		0.0785	0.0152		0.0004
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245–T).	15.5	1.68		0.00008	63.2		0.0063	0.64		0.00008
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex).	9.72	0.21		0.00008	6.36		0.00026	0.08		0.00008
96–18–4	Trichloropropane, 1,2,3-	707	1.1		0.00032	872		0.0009	0.34		0.00032
99–35–4	Trinitrobenzene, sym-	3	0.0078		0.00026	0.442		0.25	0.003		0.00026
126–72–7	Tris (2,3-dibromopropyl) phosphate.	0.000237	0.00252		0.0245	0.357		0.061	0.000099		0.0245

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TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
52–24–4	Tris(1-aziridinyl) phosphine sulfide			0.11775			1.66			6.4	
72–57–1	Trypan blue			14.7			6900			10.5	
66–75–1	Uracil mustard			0.159			19.955			0.105	
7440–62–2	Vanadium	15800	9.56		0.003	250		1	3.71		0.003
108–05–4	Vinyl acetate			14.7	0.005		6900	0.005		10.5	0.005
75–01–4	Vinyl chloride	0.00199	0.0076		0.00017	1.23		0.0017	0.003		0.00017
81–81–2	Warfarin			0.0089415	0.05		0.194	3		0.54	0.05
1330–20–7	Xylenes (total)	22.4	88		0.002	172000		0.0002	21		0.002
7440–66–6	Zinc	23200	99		0.002	316		0.3	38.4		0.002

Appendix D

TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
83–32–9	Acenaphthene	31	0.059	9500	3.4	5	
67–64–1	Acetone	16	0.28	17000	160	6	
75–05–8	Acetonitrile	0.78	5.6	920	*1.8	0.3	
98–86–2	Acetophenone	17	0.01	1200	9.7	6	
107–02–8	Acrolein	eqc	0.29				
107–13–1	Acrylonitrile	eqc	0.24	0.96	84	eqc	
107–05–1	Allyl chloride	0.074	0.36	280	30		
62–53–3	Aniline	0.053	0.81	4	14	0.017	
7440–36–0	Antimony	0.14	1.9	9		0.053	2.1
7440–38–2	Arsenic	eqc	1.4	eqc		eqc	5
7440–39–3	Barium	33	1.2	2100		16	7.6
56–55–3	Benz(a)anthracene	0.00072	0.059	0.1	3.4	eqc	
71–43–2	Benzene	0.015	0.14	110	10	0.0054	
50–32–8	Benzo(a)pyrene	0.0023	0.061	0.23	3.4	eqc	
205–99–2	Benzo(b)fluoranthene	0.00081	0.11	4	6.8	0.000068	
7440–41–7	Beryllium	0.00063	0.82	eqc		0.00032	0.014
39638–32–9	Bis (2-chloroisopropyl) ether	0.007	0.055	0.94	7.2	0.0019	
111–44–4	Bis(2-chloroethyl)ether	0.00065	0.033	0.12	6	0.00036	
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	0.28	230	28	0.0011	
75–27–4	Bromodichloromethane	0.0085	0.35	19	15	0.0025	
75–25–2	Bromoform (Tribromomethane)	0.064	0.63	170	15	0.018	
71–36–3	Butanol	16	5.6	18000	2.6	6	
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	0.066	770	2.5	0.064	
85–68–7	Butylbenzylphthalate	240	0.017	87	28	84	
7440–43–9	Cadmium	0.24	0.69	14		0.11	0.19
75–15–0	Carbon disulfide	0.74	3.8	330		6	4.8
56–23–5	Carbon tetrachloride	0.012	0.057	9	6	0.0016	
57–74–9	Chlordane	eqc	0.0033	0.0098	0.26	0.00016	
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.52	0.057	280	0.26		
106–47–8	Chloroaniline, p-	0.42	0.46	140	16	0.16	
108–90–7	Chlorobenzene	2	0.057	2500	6	1	
510–15–6	Chlorobenzilate	0.054	0.1				
124–48–1	Chlorodibromomethane	0.0068	0.057	26	15	0.0018	
67–66–3	Chloroform	0.0076	0.046	7	6	0.017	
95–57–8	Chlorophenol, 2-	0.9	0.044	100	5.7	0.32	
7440–47–3	Chromium	1	2.77	10		0.48	0.86
218–01–9	Chrysene	0.1	0.059	35	3.4	0.0012	
108–39–4	Cresol, m-	8	0.77	22000	5.6	3	
95–48–7	Cresol, o-	8	0.11	27000	5.6	3	
106–44–5	Cresol, p-	0.84	0.77	2600	5.6	0.32	
72–54–8	DDD	0.00013	0.023	0.0065	0.087	2800	
72–55–9	DDE	eqc	0.031	0.00084	0.087	0.000052	
50–29–3	DDT	eqc	0.0039	0.0032	0.087	0.0054	
84–74–2	Di-n-butyl phthalate	230	0.057	90000	28	25	
117–84–0	Di-n-octyl phthalate	0.002	0.017	4500	28	0.1	
96–12–8	Dibromo-3-choloropropane, 1,2-	0.00065	0.11	0.56	15	eqc	
95–50–1	Dichlorobenzene, 1,2-	15	0.088	50000	6	6	
106–46–7	Dichlorobenzene, 1,4-	0.056	0.09	84	6	0.011	
75–71–8	Dichlorodifluoromethane	15	0.23	8100	7.2	12	
75–34–3	Dichloroethane, 1,1-	0.00016	0.059	24	6	0.00006	
107–06–2	Dichloroethane, 1,2-	0.00016	0.21	6	6	0.00006	
75–35–4	Dichloroethylene, 1,1-	0.00059	0.025	3	6	0.00016	
156–60–5	Dichloroethylene, trans-1,2-	3	0.054	14000	30	1	
120–83–2	Dichlorophenol, 2,4-	0.62	0.044	770	14	0.18	

TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS—Continued

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	2	0.72	3100	10	0.6	
78–87–5	Dichloropropane, 1,2-	0.023	0.85	17	18	0.0023	
10061–01–5	Dichloropropene, cis-1,3-	0.0049	0.036	3	18	1200	
10061–02–6	Dichloropropene, trans-1,3-	0.0049	0.036	3	18	1200	
60–57–1	Dieldrin	0.000059	0.017	0.0018	0.13	0.54	
84–66–2	Diethyl phthalate	190	0.2	4500	28	54	
131–11–3	Dimethyl phthalate	78	0.047	3	28	30	
105–67–9	Dimethylphenol,2,4-	4	0.036	11000	14	1	
51–28–5	Dinitrophenol,2,4-	0.27	0.12	56	160	0.11	
121–14–2	Dinitrotoluene,2,4-	0.29	0.32	210	140	0.11	
606–20–2	Dinitrotoluene,2,6-	0.17	0.55	86	28	0.084	
123–91–1	Dioxane,1,4-	0.042	*NA	13	170	0.014	
122–39–4	Diphenylamine	15	0.92	12000	13	3	
298–04–4	Disulfoton	0.013	0.017	43	6.2	13	
72–20–8	Enndrin	0.073	0.0026	0.26	0.13	32	
141–78–6	Ethyl acetate	390	0.34	270000	33	110	
60–29–7	Ethyl ether	27	0.12	41000	160	11	
97–63–2	Ethyl methacrylate	24	0.14	3400	160	7	
100–41–4	Ethylbenzene	39	0.057	550000	10	5	
206–44–0	Flouranthene	28	0.068	6000	3.4	2	
86–73–7	Flourene	22	0.059	90000	3.4	3	
76–44–8	Heptachlor	eqc	0.0012	8	0.066		
1024–57–3	Heptachlor epoxide	0.00053	0.016	0.026	0.066	0.45	
87–68–3	Hexachloro-1,3-butadiene	0.0079	0.055	36	5.6	0.0068	
118–74–1	Hexachlorobenzene	eqc	0.055	eqc	10	eqc	
319–84–6	Hexachlorocyclohexane, alpha-(alpha-BHC)	0.00014	0.00014	0.033	0.066	0.11	
319–85–7	Hexachlorocyclohexane, beta-(beta-BHC)	0.00044	0.00014	0.12	0.066	0.00021	
58–89–9	Hexachlorocyclohexane, gamma-(Lindane)	0.00078	0.0017	0.1	0.066	0.69	
77–47–4	Hexachlorocyclopentadiene	0.0052	0.057	1500	2.4		
67–72–1	Hexachloroethane	0.049	0.055	81	30	0.033	
193–39–5	Indeno(1,2,3-cd) pyrene	0.0029	0.0055	4	3.4	eqc	
78–83–1	Isobutyl alcohol	39	5.6	55000	170	15	
7439–92–1	Lead	30	0.69	570		12	0.37
7439–97–6	Mercury	0.3	0.15	0.6		0.14	0.025
126–98–7	Methacrylonitrile	0.016	0.24				
67–56–1	Methanol	78	5.6	140000		30	0.75
72–43–5	Methoxychlor	7	0.25	19	0.18		
74–83–9	Methyl bromide (Bromomethane)	0.37	0.11	500	15	0.92	
74–87–3	Methyl chloride (Chloromethane)	0.096	0.19	91	30		
78–93–3	Methyl ethyl ketone	78	0.28	110000	36	30	
108–10–1	Methyl isobutyl ketone	8	0.14	17000	33	3	
80–62–6	Methyl methacrylate	28	0.14	40000	160	8	
298–00–0	Methyl parathion	0.66	0.014	1	4.6	23	
74–95–3	Methylene bromide	2	0.11	8400	15	0.19	
75–09–2	Methylene chloride	0.039	0.089	310	30	0.015	
86–30–6	N-Nitrosodiphenylamine	0.2	0.92	1300	13	eqc	
930–55–2	N-Nitrosopyrrolidine	eqc	0.013	0.053	35	eqc	
91–20–3	Naphthalene	14	0.059	120000	5.6	3	
7440–02–0	Nickel	11	3.98	110		5	5
98–95–3	Nitrobenzene	0.084	0.068	45	14	0.032	
924–16–3	Nitrosodi-n-butylamine			0.094	17	eqc	
56–38–2	Parathion	3	0.014	0.13	4.6	12000	
608–93–5	Pentachlorobenzene	5	0.055	210	10	eqc	
82–68–8	Pentachloronitrobenzene (PCNB)	0.081	0.055	11	4.8	eqc	
87–86–5	Pentachlorophenol	0.002	0.089	3	7.4	0.00041	
108–95–2	Phenol	84	0.039	160000	6.2	32	
298–02–2	Phorate	0.11	0.021	160	4.6		
1336–36–3	Polychlorinated biphenyls	eqc	0.1	eqc	10	eqc	
23950–58–5	Pronamide	21	0.093	440	1.5	6	
129–00–0	Pyrene	54	0.067	16000	8.2	2	
110–86–1	Pyridine	0.16	0.014	610	16	0.06	
94–59–7	Safrole	0.0035	0.081	11	0.16	eqc	
7782–49–2	Selenium	0.93	0.82	eqc		0.36	0.16
7440–22–4	Silver	200	0.43	eqc			0.3
1746–01–6	TCDD,2,3,7,8	eqc	0.000063	8.000E–06	0.001	eqc	
95–94–3	Tetrachlorobenzene, 1,2,4,5-	0.23	0.055	170	14	0.032	
630–20–6	Tetrachloroethane, 1,1,1,2-	0.024	0.057	130	6	0.0078	
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	0.057	29	6	0.0077	
127–18–4	Tetrachloroethylene	2	0.056	13000	6	0.68	
58–90–2	Tetrachlorophenol, 2,3,4,6-	2	0.03	6200	7.4	0.58	
7440–28–0	Thallium (I)	0.05	1.4	5	0.078	0.019	
108–88–3	Toluene	30	0.08	180000	10	13	
8001–35–2	Toxaphene	eqc	0.0095	eqc	2.6	0.11	
76–13–1	Trichloro-1,2,2-trifluoroethane, 1,1,2-	2200	0.057		30	2400	
120–82–1	Trichlorobenzene, 1,2,4-	0.69	0.055	3500	19	1	
71–55–6	Trichloroethane, 1,1,1-	74	0.054	48000	6	0.054	
79–00–5	Trichloroethane, 1,1,2-	0.007	0.054	11	6	0.0016	
79–01–6	Trichloroethylene	0.038	0.054	570	6	0.013	
75–69–4	Trichlorofluoromethane	48	0.02	26000	30	16	

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TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS—Continued

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
95-95-4	Trichlorophenol, 2,4,5-	18	0.18	12000	7.4	4	.....
88-06-2	Trichlorophenol, 2,4,6-	0.054	0.035	120	7.4	0.015	.....
93-76-5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	0.72	63	7.9	0.64	.....
93-72-1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	1	0.72	6	7.9	0.48	.....
96-18-4	Trichloropropane, 1,2,3-	1	0.85	870	30	0.34	.....
126-72-7	Tris (2,3-dibromopropyl) phosphate	eqc	0.11	0.36	0.1	eqc	.....
7440-62-2	Vanadium	10	4.3	250	.....	4	0.23
75-01-4	Vinyl chloride	eqc	0.27	1	6	eqc	.....
1330-20-7	Xylenes (total	22	0.32	170000	30	150	.....
7440-66-6	Zinc	99	2.61	320	.....	36	5.3

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In § 260.10, add the following definitions in alphabetical order:

* * * * *

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, Director means the Regional Administrator. When there is an approved State program, Director normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. In such cases, the term Director means the Regional Administrator and not the State Director.

* * * * *

Monofill means a landfill where waste of only one kind or type is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

4. Section 261.3 is amended by revising the first sentence of paragraph (a)(2)(iv) and the first sentence of paragraph (c)(2)(i) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(a) * * *

(2) * * *

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this section under either §§ 260.20 and 260.22, § 261.36, or § 261.37 of this chapter; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the clean water act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

* * * * *

(c) * * *

(2) * * *

(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, § 261.36, or § 261.37 of this chapter, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. * * *

* * * * *

5. A new § 261.36 is added to subpart D to read as follows:

§ 261.36 Exemption for listed hazardous wastes containing low concentrations of hazardous constituents.

(a) Any hazardous waste listed under this subpart, any mixture of such a listed waste with a solid waste, or any waste derived from the treatment, storage, or disposal of a listed hazardous waste that does not exhibit any of the characteristics of hazardous waste in subpart C of this part 261 and that meets all of the requirements in § 261.36(b)–(d) is exempt from all requirements of parts 262–266 and part 270 of this chapter. Any such waste which also meets the requirements of § 261.36(e) is also exempt from the requirements of part 268 of this chapter.

(b) *Requirements for qualifying for an exemption.*—(1) *Testing.* (i) For each waste for which an exemption is claimed, the claimant must test for all of the constituents on appendix X to this part 261 except those that the claimant determines should not be present in the waste. The claimant is required to document the basis of each determination that a constituent should not be present. No claimant may determine that any of the following categories of constituents should not be present:

(A) Constituents identified in appendix VII to this part 261 as the basis for listing the waste for which exemption is sought;

(B) Constituents listed in the table to § 268.40 of this chapter as regulated hazardous constituents for LDR treatment of the waste;

(C) Constituents detected in any previous analysis of the same waste conducted by or on behalf of the claimant;

(D) Constituents introduced into the process which generates the waste; and

(E) Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the waste.

Note: Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a claimant from liability should that constituent later be found in the waste.

(ii) The claimant must develop a sampling and analysis plan for each waste for which an exemption is sought. The plan must identify:

(A) Sampling procedures and locations sufficient to characterize the entire waste for which the exemption is claimed. Grab sampling is acceptable for this purpose.

(B) Analytical methods that the claimant will use to determine, for wastewaters and nonwastewaters, the total concentration of each constituent on appendix X to this part except for those constituents which the claimant has determined should not be present under § 261.36(b)(1)(i).

(iii) The claimant must conduct sampling and analysis in accordance with the plan.

(iv) The results of the sampling and analysis must show, for both wastewaters and nonwastewaters, that all total constituent concentrations in the waste are at or below the exemption levels in appendix X to this part 261 and, for nonwastewaters, that all leachable constituent concentrations are either:

(A) At or below exemption levels in Appendix X to this part 261, as determined by testing an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, set out in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846)), or

(B) Estimated to be at or below exemption levels using the equation {[(A×B)+(C×D)]/[B+(20×D)]} leach exit level, where A=concentration of the analyte in the liquid portion of the sample; B=Volume of the liquid portion of the sample; C=Concentration of the analyte in the solid portion of the sample; D=Weight of the solid portion of the sample.

(2) *Treatment requirements.* Any waste that exits using an exit level on Table B to appendix X to this part 261 must meet the treatment standard for such a constituent under § 268.40 of this chapter, regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.36(e).

(3) *Public Notice.* The claimant must submit for publication in a major newspaper of general circulation, local to the claimant, a notice entitled "Notification of Exemption Claim for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents Under the Resource Conservation and Recovery Act" containing the following information:

(i) The name, address, and RCRA ID number of the claimant's facility;

(ii) The applicable EPA Hazardous Waste Code of the waste for which the exemption is claimed and the narrative description associated with the listing from this part 261 subpart D;

(iii) A brief, general description of the manufacturing, treatment, or other process or operation producing the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of the waste claimed to be exempt;

(v) The name and mailing address of the agency to which the claimant is submitting the notification required under § 261.36(b)(4).

(4) *Notification to implementing agency.* Prior to managing any waste as exempt under this section, the claimant must send to the Director via certified mail or other mail service that provides written confirmation of delivery a notification of the exemption claim meeting the following requirements:

(i) The name, address, and RCRA ID number of the person claiming the exemption;

(ii) The applicable EPA Hazardous Waste Codes;

(iii) A brief description of the process that generated the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;

(v) Documentation for any claim that a constituent is not present as described under § 261.36 (b)(1)(i);

(vi) The results of all analyses and estimates of constituent concentrations required under § 261.36(b)(1)(iv) and all quantitation limits achieved;

(vii) Documentation that any waste that exits using a constituent exit level from Table B to Appendix X to this part has met the applicable treatment standards in § 268.40 of this chapter, unless the claimant is also claiming the exemption under § 261.36(e);

(viii) Evidence that the public notification requirements of § 261.36(b)(3) have been satisfied; and

(ix) The following statement signed by the person claiming the exemption or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.36(b) have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.36(d)(7) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) *Effectiveness of exemption.* No claim shall take effect until the claimant receives confirmation of delivery for the notification required under § 261.36 (b)(4).

(d) *Conditions for maintaining the exemption.* To maintain any exemption claimed pursuant to this section, the claimant must satisfy the following conditions:

(1) *Changes in information.* The claimant must submit to the Director any change in any information submitted under § 261.36(b)(4) within ten business days of the claimant's first knowledge of the change.

(2) *Schedule for retesting.* The claimant must retest the waste for which the exemption was claimed on the following schedule:

(i) For the first three years of the exemption, the claimant must:

(A) Test wastes generated at the time the exemption is claimed in volumes greater than 10,000 tons/year on a quarterly basis;

(B) Test wastes generated at the time the exemption is claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year must on a semi-annual basis;

(C) Test wastes generated at the time the volume is claimed in volumes less than 1000 tons/year on an annual basis.

(ii) After the first three years of an exemption, the claimant must retest the waste for which the exemption was claimed on an annual basis.

(3) For every retest the claimant must prepare and comply with a sampling and analysis plan meeting the requirements of § 261.36(b)(1)(ii) and determine the concentration of:

(i) Each constituent from Table A to appendix X to this part that was detected in the initial test within an order of magnitude below either its total or leachable exemption level and each constituent from Table B to appendix X of this part that is identified as a basis for listing the waste on appendix VII to this part or is listed as a regulated hazardous constituent for the waste in the table of "Treatment Standards for Hazardous Wastes" in § 268.40 of this chapter; and

(ii) Any other constituent that the claimant has reason to believe may be newly present in the waste since the most recent test.

(4) *Exemption levels.* The concentrations of all constituents tested must meet the criteria set out in § 261.36(b)(1)(iv).

(5) *Treatment requirements.* Any waste exiting by using an exit level for a hazardous constituent from Table B to appendix X to this part must meet the treatment requirements for such a constituent under § 268.40 of this chapter prior to exit regardless of whether or not the waste is intended for land disposal, unless the claimant meets

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the exemption requirements in § 261.36(e).

(6) *Records.* The claimant must maintain records of the following information in files on-site for three years after the date of the relevant test:

(i) For initial testing, all information submitted under § 261.36(b)(4), all revisions to such material submitted under § 261.36(d)(1) and all information required to be maintained under § 261.36(d)(6)(iii);

(ii) For retests:

(A) All volume determinations made for the purpose of determining testing frequency under § 261.36(d)(2);

(B) All sampling and analysis plans required under § 261.36(d)(3);

(C) All analytical results and estimates of leachable concentrations (if any) for constituents required to be assessed under § 261.35(d)(3);

(D) Documentation showing that a waste exiting using any constituent exit level from Table B to appendix X to this part and is required to be reassessed under § 261.36(d)(3) has met applicable treatment standards under § 268.40 of this chapter, unless the claimant also claims the exemption under § 261.36(e); and

(iii) For both initial tests and retests, the claimant must also retain records of:

(A) The dates and times waste samples were obtained, and, for total concentrations and leachable concentrations that were analyzed, the dates of the analyses;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and extraction methods;

(F) All quantitation limits achieved and all other quality control results (including any method blanks, duplicate analyses, and matrix spikes), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred; and

(G) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.36 (b)(2) and also provides for the availability of the documentation to the claimant upon request.

Note: Failure to satisfy any of these conditions voids the exemption and requires management of the waste for which the exemption has been claimed as hazardous waste. Submission of notification to the Director that all waste conditions have been satisfied re-establishes the exemption for all waste generated after that date.

(e) Exemption from part 268 requirements.—If all hazardous constituent levels in a waste qualifying for exemption are at or below the appendix X to this part concentration levels at the waste's point of generation, prior to any mixing with other solid or hazardous wastes and prior to any treatment, the waste is exempt from all requirements of part 268 of this chapter. The claimant also must meet the following documentation requirements:

(1) For initial tests, in place of the certification required at § 261.36 (b)(4)(ix), the claimant must submit the following statement signed by the person claiming the exemption or his authorized representative and, if the claimant is not the generator of the waste, also signed by the generator or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that, for the waste identified in this notification, the concentration of all constituents assessed as required under § 261.36 (b)(1)(iv) met the applicable levels in appendix X to this part 261 at the point of generation and that all other requirements of 40 CFR § 261.36 (b) have been met. Copies of the records and information required at 40 CFR § 261.36 (d)(4) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."; or

(2) For every retest required under § 261.36(d)(2), the claimant must document that the concentrations of all constituents retested as required under § 261.36(d)(3) met the applicable levels in appendix X to this part 261 at the waste's point of generation, must include information supporting this claim from the waste's generator if the generator is not the person asserting the claim, and must retain such documentation in files on-site for three years after the date of the relevant test.

(f) Nothing in this paragraph preempts, overrides, or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(g) In an enforcement action, the burden of proof to establish conformance with the exemption criteria shall be on the claimant.

6. A new § 261.37 is added to read as follows:

§ 261.37 Exemption for listed hazardous wastes containing low concentrations of hazardous constituents and managed in landfills and monofills.

(a) Any hazardous waste listed under this subpart, any mixture of such a listed waste with a solid waste, or any waste derived from the treatment, storage or disposal of such a listed waste is exempt from regulation as a hazardous waste under parts 262–266 and 270 of this chapter if it meets the requirements in § 261.37(b) and (d) (including the requirement that all hazardous constituents present in the waste be at or below the levels listed in appendix XI to this part and that the waste be disposed in a landfill or monofill, but not a land application unit). To maintain the exemption, the waste must satisfy the conditions in § 261.37(e). Any such waste which also meets the requirements of 261.37(f) is also exempt from the requirements of part 268 of this chapter.

(b) *Requirements for qualifying for an exemption*—(1) *Testing.* (i) For each waste for which an exemption is claimed, the claimant must test for all of the constituents on appendix XI to this part 261 except those that the claimant determines should not be present in the waste. The claimant is required to document the basis of each determination that a constituent should not be present. No claimant may determine that any of the following categories of constituents should not be present:

(A) Constituents identified in appendix VII to this part 261 as the basis for listing the waste for which exemption is sought;

(B) Constituents listed in the table to § 268.40 as regulated hazardous constituents for LDR treatment of the waste;

(C) Constituents detected in any previous analysis of the same waste conducted by or on behalf of the claimant;

(D) Constituents introduced into the process which generates the waste; and

(E) Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the waste.

Note: Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a claimant from liability should that constituent later be found in the waste.

(ii) The claimant must develop a sampling and analysis plan for each waste for which an exemption is sought. The plan must identify:

(A) Sampling procedures and locations sufficient to characterize the entire waste for which the exemption is claimed. Grab sampling is acceptable for this purpose.

(B) Analytical methods that the claimant will use to determine, for wastewaters and nonwastewaters, the total concentration of each constituent on appendix XI to this part except for those constituents which the claimant has determined should not be present under § 261.37(b)(1)(i).

(iii) The claimant must conduct sampling and analysis in accordance with the plan.

(iv) The results of the sampling and analysis must show, for both wastewaters and nonwastewaters, that all total constituent concentrations in the waste are at or below the exemption levels in appendix XI to this part 261 and, for nonwastewaters, that all leachable constituent concentrations are either:

(A) At or below exemption levels in appendix XI to this Part 261, as determined by testing an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, set out in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846)), or

(B) Estimated to be at or below exemption levels using the equation $\{(AxB)+(CxD)\}/\{B+(20xD)\} <$ leach exit level, where A=concentration of the analyte in the liquid portion of the sample; B = Volume of the liquid portion of the sample; C=Concentration of the analyte in the solid portion of the sample; D = Weight of the solid portion of the sample.

(2) *Treatment requirements.* Any waste that exits using an exit level on Table B to appendix XI to this Part 261 must meet the treatment standard for such a constituent under § 268.40 of this chapter, regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.37(f).

(3) *Public Notice.* The claimant must submit for publication in a major newspaper of general circulation, local to the claimant, a notice entitled "Notification of Exemption Claim for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents and Managed in Landfills and Monofills Under the Resource Conservation and Recovery Act" containing the following information:

(i) The name, address, and RCRA ID number of the claimant's facility;

(ii) The applicable EPA Hazardous Waste Code of the waste for which the exemption is claimed and the narrative description associated with the listing from this part 261 subpart D;

(iii) A brief, general description of the manufacturing, treatment, or other process or operation producing the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of the waste claimed to be exempt;

(v) The name and mailing address of the agency to which the claimant is submitting the notification required under § 261.37(b)(4);

(vi) The following statement:

The exemption for this waste from the hazardous waste regulatory scheme is conditioned disposing of the waste in a landfill or monofill (and not a land application unit.)

(4) *Notification to implementing agency.* Prior to managing any waste as exempt under this section, the claimant must send to the Director via certified mail or other mail service that provides written confirmation of delivery a notification of the exemption claim meeting the following requirements:

(i) The name, address, and RCRA ID number of the person claiming the exemption;

(ii) The applicable EPA Hazardous Waste Codes;

(iii) A brief description of the process that generated the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;

(v) Documentation for any claim that a constituent is not present as described under § 261.37(b)(1)(i);

(vi) The results of all analyses and estimates of constituent concentrations required under § 261.37(b)(1)(iv) and all quantitation limits achieved;

(vii) Documentation that any waste that exits using a constituent exit level from Table B to appendix XI to this part have met the applicable treatment standards in § 268.40, of this chapter, unless the claimant is also claiming the exemption under § 261.37(f);

(viii) Evidence that the public notification requirements of § 261.37(b)(3) have been satisfied; and

(ix) The following statement signed by the person claiming the exemption or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of § 261.37(b) have been met, including the requirement that all hazardous constituents present in the waste are at or below the levels listed on appendix XI to this part, for all listed wastes identified in this notification. I also certify that arrangements have been made to dispose of the waste in a landfill or monofill (and not a land application unit). Copies of the records and information required at § 261.37 (e)(7) are available) at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(5) The claimant must receive confirmation of delivery for the notification required under § 261.37 (b)(4).

(c) *Tracking, storage, treatment and other management prior to disposal.* Until a listed hazardous waste meeting the requirements of § 261.37(b) is placed in a landfill or monofill, it remains subject to all requirements of parts 262–266 and 270 of this chapter. The waste is also subject to the requirements of part 268 of this chapter unless it qualifies for an exemption under § 261.37(f).

(d) *Disposal in a landfill or monofill.* The claimant must ensure that any listed waste meeting the requirements of § 261.37(b) for which an exemption is sought is disposed of in either a landfill or monofill (and not a land application unit). The landfill or monofill need not be subject to regulation as a hazardous waste management unit. The waste becomes exempt as soon as it is placed in a landfill or monofill unit.

(e) *Conditions for maintaining the exemption.* To maintain any exemption claimed pursuant to this section, the claimant must satisfy the following conditions:

(1) *Compliance with modified hazardous waste manifest system.* If the landfill or monofill in which the waste is disposed is not a hazardous waste disposal unit subject to part § 264.71–264.72 or § 265.71–265.72 of this chapter, the claimant must:

(i) Ensure that the manifest form is returned from the disposal facility, and

(ii) Obtain information showing that the disposal facility designated on the manifest received the waste for which the exemption is sought and placed it in either a landfill or monofill (and not a land treatment unit).

(2) *Changes in information.* The claimant must submit to the Director any change in any information submitted under § 261.37(b)(4) within ten business days of the claimant's first knowledge of the change.

(3) *Schedule for retesting.* The claimant must retest the waste for which the exemption was claimed on the following schedule:

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(i) For the first three years of the exemption, the claimant must:

(A) Test wastes generated at the time the exemption is claimed in volumes greater than 10,000 tons/year on a quarterly basis;

(B) Test wastes generated at the time the exemption is claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year must on a semi-annual basis;

(C) Test wastes generated at the time the volume is claimed in volumes less than 1000 tons/year on an annual basis.

(ii) After the first three years of an exemption, the claimant must retest the waste for which the exemption was claimed on an annual basis.

(4) For every retest the claimant must prepare and comply with a sampling and analysis plan meeting the requirements of § 261.37(b)(1)(ii) and determine the concentration of:

(i) Each constituent from Table A to appendix XI to this part that was detected in the initial test within an order of magnitude below either its total or leachable exemption level and each constituent from Table B to appendix XI to this part that is identified as a basis for listing the waste on appendix VII to this part or is listed as a regulated hazardous constituent for the waste in the table of "Treatment Standards for Hazardous Wastes" in § 268.40 of this chapter; and

(ii) Any other constituent that the claimant has reason to believe may be newly present in the waste since the most recent test.

(5) Exemption levels.—The concentrations of all constituents tested must meet the criteria set out in § 261.37(b)(1)(iv).

(6) Treatment requirements.—Any waste exiting by using an exit level for a hazardous constituent from Table B to Appendix XI to this part must meet the treatment requirements for such a constituent under § 268.40 of this chapter prior to exit regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.37(f).

(7) Records.—The claimant must maintain records of the following information in files on-site for three years after the date of the relevant test:

(i) For initial testing, all information submitted under § 261.37(b)(4) and all revisions to such material submitted under § 261.37(e)(2), all information obtained under § 261.37(e)(1), and all information required to be maintained under § 261.37(e)(7)(iii);

(ii) For retests:

(A) All volume determinations made for the purpose of determining testing frequency under § 261.37(e)(3);

(B) All sampling and analysis plans required under § 261.37(e)(4);

(C) All analytical results and estimates of leachable concentrations (if any) for constituents required to be assessed under § 261.37 (e)(5);

(D) Documentation showing that a waste exiting using any constituent exit level from Table B to Appendix XI to this part has met applicable treatment standards under § 268.40 of this chapter, unless the claimant also claims the exemption under § 261.37(f); and

(iii) For both initial tests and retests, the claimant must also retain records of:

(A) The dates and times waste samples were obtained, and, for total concentrations and leachable concentrations that were analyzed, the dates of the analyses;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and extraction methods;

(F) All quantitation limits achieved and all other quality control results (including any method blanks, duplicate analyses, and matrix spikes), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred; and

(G) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.37 (b)(2) and also provides for the availability of the documentation to the claimant upon request. Failure to satisfy any of these conditions voids the exemption and requires management of the waste for which the exemption has been claimed as hazardous waste. Submission of notification to the Director that all waste conditions have been satisfied re-establishes the exemption for all waste generated after that date.

(f) Exemption from part 268 requirements.—If all hazardous constituent levels in a waste qualifying for exemption are at or below the appendix XI to this part concentration levels at the waste's point of generation, prior to any mixing with other solid or hazardous wastes and prior to any treatment, the waste is exempt from all requirements of part 268 of this chapter. The claimant also must meet the following documentation requirements:

(1) For initial tests, in place of the certification required at § 261.37 (b)(4)(ix), the claimant must submit the following statement signed by the person claiming the exemption or his authorized representative and, if the claimant is not the generator of the waste, also signed by the generator or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that, for the waste identified in this notification, the concentration of all constituents assessed as required under § 261.37 (b)(1)(iv) met the applicable levels in appendix XI to this part 261 at the point of generation and that all other requirements of 40 CFR 261.37 (b) have been met. I also certify that arrangements have been made to dispose of the waste in a landfill or monofill (and not a land application unit). Copies of the records and information required at 40 CFR 261.37 (e)(7) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."; and

(2) For every retest required under § 261.37(e)(3), the claimant must document that the concentrations of all constituents retested as required under § 261.37(e)(4) met the applicable levels in appendix XI to this part 261 at the waste's point of generation, must include information supporting this claim from the waste's generator if the generator is not the person asserting the claim, and must retain such documentation in files on-site for three years after the date of the relevant test.

(g) Nothing in this paragraph preempts, overrides, or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(h) In an enforcement action, the burden of proof to establish conformance with the exemption criteria shall be on the claimant.

7. Appendix X is added to read as follows:

Appendix X

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option				Toxicity benchmark option			
		Wastewater		Nonwastewater		Wastewater		Nonwastewater	
		Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)
83-32-9	Acenaphthene	31		9500	5	31		9500	5
208-96-8	Acenaphthylene	(1)		4	(1)	16		4	6
67-64-1	Acetone	16	0.78	17000	6	16	0.78	17000	0.3
75-05-8	Acetonitrile	17		920	6	17		920	6
98-86-2	Acetophenone	(2)	0.028	1200	(2)	(2)	0.028	1200	(2)
75-36-5	Acetyl chloride	(2)		3	(2)	(2)		3	(2)
591-08-2	Acetyl-2-thiourea, 1-	(2)		3	(2)	(2)		3	(2)
53-96-3	Acetylaminofluorene, 2-	(2)		0.96	(2)	(2)		0.96	(2)
107-02-8	Acrolein	(2)		(2)	(2)	(2)		(2)	(2)
79-06-1	Acrylamide	(2)		(2)	(2)	(2)		(2)	(2)
107-13-1	Acrylonitrile	(2)		(2)	(2)	(2)		(2)	(2)
1402-68-2	Aflatoxins	(2)		(2)	(2)	(2)		(2)	(2)
116-06-3	Aldicarb	(2)		(2)	(2)	(2)		(2)	(2)
309-00-2	Aldrin	(2)		(2)	(2)	(2)		(2)	(2)
107-18-6	Allyl Alcohol	(2)		(2)	(2)	(2)		(2)	(2)
107-05-1	Allyl chloride	(2)		(2)	(2)	(2)		(2)	(2)
92-67-1	Aminobiphenyl, 4-	(2)		(2)	(2)	(2)		(2)	(2)
2763-96-4	Aminomethyl-3-isoxazolol, 5-	(2)		(2)	(2)	(2)		(2)	(2)
504-24-5	Aminopyridine, 4-	(2)		(2)	(2)	(2)		(2)	(2)
61-82-5	Amitrole	(2)		(2)	(2)	(2)		(2)	(2)
62-53-3	Aniline	(2)		(2)	(2)	(2)		(2)	(2)
120-12-7	Anthracene	(2)		(2)	(2)	(2)		(2)	(2)
7440-36-0	Antimony	(2)		(2)	(2)	(2)		(2)	(2)
140-57-8	Aramite	(2)		(2)	(2)	(2)		(2)	(2)
7440-38-2	Arsenic	(2)		(2)	(2)	(2)		(2)	(2)
2465-27-2	Auramine	(2)		(2)	(2)	(2)		(2)	(2)
115-02-6	Azaserine	(2)		(2)	(2)	(2)		(2)	(2)
7440-39-3	Barium	(2)		(2)	(2)	(2)		(2)	(2)
71-43-2	Benzene	(2)		(2)	(2)	(2)		(2)	(2)
92-87-5	Benzidine	(2)		(2)	(2)	(2)		(2)	(2)
106-51-4	Benzoquinone, p-	(2)		(2)	(2)	(2)		(2)	(2)
98-07-7	Benzotrichloride	(2)		(2)	(2)	(2)		(2)	(2)
50-32-8	Benzo(a)pyrene	(2)		(2)	(2)	(2)		(2)	(2)
205-99-2	Benzo(b)- fluoranthene	(2)		(2)	(2)	(2)		(2)	(2)
206-82-3	Benzo(j)- fluoranthene	(2)		(2)	(2)	(2)		(2)	(2)
207-08-9	Benzo(k)- fluoranthene	(2)		(2)	(2)	(2)		(2)	(2)
191-24-2	Benzo(g,h,i)- perylene	(2)		(2)	(2)	(2)		(2)	(2)
100-51-6	Benzyl alcohol	(2)		(2)	(2)	(2)		(2)	(2)
100-44-7	Benzyl chloride	(2)		(2)	(2)	(2)		(2)	(2)
56-55-3	Benz(a) anthracene	(2)		(2)	(2)	(2)		(2)	(2)
225-51-4	Benz(c)acridine	(2)		(2)	(2)	(2)		(2)	(2)
7440-41-7	Beryllium	(2)		(2)	(2)	(2)		(2)	(2)
39638-32-9	Bis (2-chloroisopropyl) ether	(2)		(2)	(2)	(2)		(2)	(2)
111-44-4	Bis(2-chloroethyl)ether	(2)		(2)	(2)	(2)		(2)	(2)
117-81-7	Bis(2-ethylhexyl)phthalate	(2)		(2)	(2)	(2)		(2)	(2)
542-88-1	Bis(chloromethyl) ether	(2)		(2)	(2)	(2)		(2)	(2)
598-31-2	Bromoacetone	(2)		(2)	(2)	(2)		(2)	(2)
75-27-4	Bromodichloromethane	(2)		(2)	(2)	(2)		(2)	(2)
75-25-2	Bromoform (Tribromomethane)	(2)		(2)	(2)	(2)		(2)	(2)
101-55-3	Bromophenyl ether, 4-	(2)		(2)	(2)	(2)		(2)	(2)
357-57-3	Brucine	(2)		(2)	(2)	(2)		(2)	(2)
71-36-3	Butanol	(2)		(2)	(2)	(2)		(2)	(2)
88-85-7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	(2)		(2)	(2)	(2)		(2)	(2)
85-68-7	Butylbenzylphthalate	(2)		(2)	(2)	(2)		(2)	(2)
7440-43-9	Cadmium	(2)		(2)	(2)	(2)		(2)	(2)
86-74-8	Carbazole	(2)		(2)	(2)	(2)		(2)	(2)

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Appendix X—Continued

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option				Toxicity benchmark option			
		Wastewater		Nonwastewater		Wastewater		Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	
75-15-0	Carbon disulfide	0.74	330	0		0.74	330	0	
353-50-4	Carbon oxyfluoride	(*)	0	(*)		(*)	0	(*)	
56-23-5	Carbon tetrachloride	0.012	9	0.012		0.012	9	0.0016	
75-87-6	Chloral								
305-03-3	Chlorambucil								
57-74-9	Chlordane	0.52	290	0.035	0.0098	0.52	290	0.0016	0.00016
494-03-1	Chlormephazin								
126-99-8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.42	140	0.19		0.42	140	0.16	
107-20-0	Chloroacetaldehyde	0.88	2500	0.0057		2.054	2500	1	0.0057
106-47-8	Chloroaniline, p-	0.054	7	0.0018		0.0066	7	0.0057	0.0018
108-90-7	Chlorobenzene	0.024	28	0.012		0.023	28	0.016	0.016
510-15-6	Chlorobenzilate	(*)	31	(*)		(*)	31	(*)	
124-48-1	Chlorodibromomethane	0.0076	140	0.017		0.0076	140	0.017	0.017
75-00-3	Chloroethane (ethyl chloride)	0.27	140	0.033		0.061	140	0.032	0.032
110-75-8	Chloroethyl vinyl ether, 2-	0.9	31	0.32		0.9	140	0.32	0.32
67-66-3	Chloroform	0.024	140	0.012		0.023	100	0.015	0.015
59-50-7	Chloro-m-cresol, p-	(*)	31	(*)		(*)	31	(*)	
107-30-2	Chloromethyl methyl ether	0.27	140	0.033		0.081	140	0.048	0.048
91-58-7	Chloronaphthalene, 2-	0.9	100	0.32		0.9	100	0.54	0.54
95-57-9	Chlorophenol, 2-	0.024	31	0.012		0.023	31	0.015	0.015
7005-72-3	Chlorophenyl phenyl ether, 4-	(*)	140	(*)		(*)	140	(*)	
5344-82-1	Chlorophenyl thiourea, 1-(o-	0.82	140	0.24		0.82	140	0.48	0.48
542-76-7	Chloropropionitrile, 3-	0.1	35	0.0012		0.1	35	0.0012	0.0012
7440-47-3	Chromium	(*)	9	(*)		(*)	9	(*)	
218-01-9	Chrysene	0.82	6	0.12		0.82	6	0.48	0.48
8359-53-8	Citrus red No. 2	670	22000	1100		670	22000	1100	
7440-48-4	Cobalt	8	27000	3		8	27000	3	3
7440-50-8	Copper	8	2800	3		8.84	2800	3.32	3.32
108-39-4	Cresol, m-	8	1200	6		8	1200	6	6
95-48-7	Cresol, o-		20				20		
106-44-5	Cresol, p-								
4170-30-3	Crotonaldehyde								
57-12-5	Cyanide	0.0013	0.0065	0.00062		0.00013	0.0065	0.00062	0.00062
14901-08-7	Cycasin		(*)	(*)			(*)	(*)	
108-94-1	Cyclohexanone		0.0004	0.0054			0.0004	0.0054	0.0054
131-89-5	Cyclohexyl-4,6-dinitrophenol, 2-		(*)	0.46			(*)	0.46	0.46
50-18-0	Cyclophosphamide	0.26	0.0032	0.0012		0.26	0.0032	0.0012	0.0012
20830-81-3	Daunomycin	0.0029	(*)	0.0012		0.0029	(*)	0.0012	0.0012
72-54-8	DDD	0.0029	27000	0.0012		0.0029	27000	0.0012	0.0012
53-19-0	DDD (o,p')	0.0029	4	0.0012		0.0029	4	0.0012	0.0012
72-55-9	DDE	0.0029	4	0.0012		0.0029	4	0.0012	0.0012
3424-82-6	DDE (o,p')	0.0029	4	0.0012		0.0029	4	0.0012	0.0012
50-29-3	DDT	(*)	(*)	(*)		(*)	(*)	(*)	(*)
789-02-6	DDT (o,p')	0.0029	4	0.0012		0.0029	4	0.0012	0.0012
2303-16-4	Diallate	0.0022	0.85	0.00038		0.0022	0.85	0.00038	0.00038
132-64-9	Dibenzofuran	0.024	31	0.012		0.023	31	0.012	0.012
192-64-9	Dibenzo[a,e]pyrene	0.024	31	0.012		0.023	31	0.012	0.012
189-64-0	Dibenzo[a,h]pyrene								
189-55-9	Dibenzo[a,i]pyrene								
194-59-2	Dibenzo[c,g]carbazole, 7H-								
226-36-8	Dibenz(a,h)acridine								
53-70-3	Dibenz(a,h)anthracene								
224-42-0	Dibenz[a,j]acridine								
96-12-8	Dibromo-3-chloropropane, 1,2-								
764-41-0	Dichloro-2-butene, 1,4-								
110-57-6	Dichloro-2-butene, trans-1,4-								
96-23-1	Dichloro-2-propanol, 1,3-								
96-50-1	Dichlorobenzene, 1,2-								
541-73-1	Dichlorobenzene, 1,3-								
106-46-7	Dichlorobenzene, 1,4-								
91-94-1	Dichlorobenzidine, 3,3')								
75-71-8	Dichlorodifluoromethane								
75-34-3	Dichloroethane, 1,1-								
107-06-2	Dichloroethane, 1,2-								
75-35-4	Dichloroethylene, 1,1-								
156-59-2	Dichloroethylene, cis-1,2-								
156-60-5	Dichloroethylene, trans-1,2-								
111-91-1	Dichloromethoxy ethane								
98-87-3	Dichloromethylbenzene (benzal chloride)								
120-83-2	Dichlorophenol, 2,4-								
87-65-0	Dichlorophenol, 2,6-								
94-75-7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)								
78-87-5	Dichloropropane, 1,2-								
542-75-6	Dichloropropene, 1,3-								
10061-01-5	Dichloropropene, cis-1,3-								
10061-02-6	Dichloropropene, trans-1,3-								
60-57-1	Dieldrin	0.0018	6900	0.00059		0.0018	6900	0.00059	0.00059
1464-53-5	Diepoxybutane, 1,2;3,4- (2,2'-bioxirane)		4500	15			4500	15	15
84-66-2	Diethyl phthalate			190				190	190
311-45-5	Diethyl-p-nitrophenyl phosphate								
56-53-1	Diethylstilbestrol		0.26	15			0.26	15	15
94-58-6	Dihydrosafrole		2	29			2	29	29
60-51-5	Dimethoate		3	78			3	78	78
131-11-3	Dimethyl phthalate		(*)	0.026			(*)	0.026	0.026
77-78-1	Dimethyl sulfate		3				3		
60-11-7	Dimethylaminoazobenzene, p-								
119-93-7	Dimethylbenzidine, 3,3'		20	0.16			20	0.16	0.16
57-97-6	Dimethylbenz(a)anthracene, 7,12		0.11	4			0.11	4	4
79-44-7	Dimethylcarbamoyl chloride		11000	0.034			11000	0.034	0.034
122-09-8	Dimethylphenethylamine, alpha, alpha-		(*)	880			(*)	880	880
105-67-9	Dimethylphenol, 2,4-		90000	0.017			90000	0.017	0.017
119-90-4	Dimethoxybenzidine, 3,3-		6	(*)			6	(*)	
84-74-2	Di-n-butyl phthalate		(*)	(*)			(*)	(*)	
99-65-0	Dinitrobenzene, 1,3-		56	0.27			56	0.27	0.27
100-25-4	Dinitrobenzene, 1,4-		210	0.29			210	0.29	0.29
534-52-1	Dinitro-o-cresol, 4,6-		86	0.17			86	0.17	0.17
51-28-5	Dinitrophenol, 2,4-		4500	0.002			4500	0.002	0.002
121-14-2	Dinitrotoluene, 2,4-		13	0.042			13	0.042	0.042
606-20-2	Dinitrotoluene, 2,6-		1200	15			1200	15	15
117-84-0	Di-n-octyl phthalate		20	0.16			20	0.16	0.16
123-91-1	Dioxane, 1,4-		43	0.013			43	0.013	0.013
122-39-4	Diphenylamine		(*)	(*)			(*)	(*)	
122-66-7	Diphenylhydrazine, 1,2-		73	0.0069			73	0.0069	0.0069
298-04-4	Disulfoton		0.19	6			0.19	6	6
541-53-7	Dithiobiuret		0.19	0.0069			0.19	0.0069	0.0069
	D, salts, esters, 2,4-		0.19	0.0069			0.19	0.0069	0.0069
115-29-7	Endosulfan		(*)	(*)			(*)	(*)	
959-98-8	Endosulfan I		0.26	0.073			0.26	0.073	0.073
33213-65-9	Endosulfan II		0.19	0.0069			0.19	0.0069	0.0069
1031-07-8	Endosulfan sulfate		0.19	0.0069			0.19	0.0069	0.0069
145-73-3	Endothall		(*)	(*)			(*)	(*)	
72-20-8	Endrin		0.26	0.0069			0.26	0.0069	0.0069
7421-93-4	Endrin aldehyde		0.19	0.0069			0.19	0.0069	0.0069
53494-70-5	Endrin ketone		0.19	0.0069			0.19	0.0069	0.0069
106-89-8	Epichlorohydrin		44	0.34			44	0.34	0.34
51-43-4	Epinephrine		(*)	(*)			(*)	(*)	
110-80-5	Ethoxyethanol, 2-		6900	15			6900	15	15
141-78-6	Ethyl acetate		270000	390			270000	390	390
51-79-6	Ethyl carbamate		6900	15			6900	15	15
107-12-0	Ethyl cyanide (propionitrile)		20	0.16			20	0.16	0.16
60-29-7	Ethyl ether		41000	27			41000	27	27
97-63-2	Ethl methacrylate		3400	24			3400	24	24

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Appendix X—Continued

Table A.—Modeled or Extrapolated Risk-Based Exit Levels

CAS No.	Name	MCL benchmark option				Toxicity benchmark option			
		Wastewater		Nonwastewater		Wastewater		Nonwastewater	
		Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)
62–50–0	Ethyl methanesulfonate	0.0055		(1)	0.0055	0.0055		(1)	12000
100–41–4	Ethylbenzene	8		550000	2	39		550000	8
106–93–4	Ethylene Dibromide	0.00093		0.0075	0.00075	0.00036		0.0075	0.00046
75–21–8	Ethylene oxide	15		6900	11	15		6900	11
96–45–7	Ethylene thiourea				0.54				0.48
151–56–4	Ethyleneimine (aziridine)				8				2
52–85–7	Famphur			6000	2	28		6000	3
640–19–7	Fluoroacetamide, 2-			90000	3	22		90000	3
62–74–8	Fluoroacetic acid, sodium salt	270	270	49	11	270	270	49	110
206–44–0	Fluoranthene	(1)	(1)	300000	110	0.069	0.19	300000	110
86–73–7	Fluorene	0.069	0.19	(1)	0.54	(1)	8	(1)	0.48
16984–48–8	Fluoride	(1)	8	8		0.00053	0.026	8	
50–00–0	Formaldehyde	0.00053	0.026	0.026	95	0.0079	36	0.026	0.45
64–18–6	Formic Acid	0.0079	36	36	0.0069	(1)	(1)	36	0.0069
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	0.018	0.00014	0.0033	(1)	0.11
319–84–6	HCH, delta-	0.00014	0.0033	0.0033	0.11	0.00044	0.12	0.0033	0.00021
76–44–8	Heptachlor	0.00044	0.12	0.12	0.00021	0.00078	0.1	0.12	0.59
1024–57–3	Heptachlor epoxide	0.00078	0.1	0.1	2	0.0052	1500	0.1	0.033
87–68–3	Hexachlorobutadiene	0.0052	1500	1500	0.033	0.049	61	1500	0.032
118–74–1	Hexachlorobenzene	0.049	61	61	(1)	(1)	140	61	(1)
319–84–6	Hexachloro- cyclohexane, alpha- (alpha-BHC)	(1)	140	140	0.033	0.001	(1)	140	0.032
319–85–7	Hexach- lorocyclo- hexane, beta- (beta-BHC)	0.27	(1)	(1)	(1)	(1)	8	(1)	0
58–89–9	Hexach- lorocyc- lohexane, gamma- (Lindane)	8	1200	1200	8	(1)	1200	1200	8
77–47–4	Hexach- lorocyc- lopentadiene	(1)	20	20	(1)	0.0029	20	20	0.015
67–72–1	Hexachloroethane	0.0029	4	4	0.012	0.023	4	4	15
70–30–4	Hexachlorophene	0.024	31	31	15	39	31	31	0.48
1888–71–7	Hexachloropropene	39	55000	55000	0.54	0.53	55000	55000	0.16
757–58–4	Hexane- thyle- traphosphate	0.53	(1)	(1)	0.16	15	(1)	(1)	0
591–78–6	Hexanone, 2-	15	740	740	0.11	0.16	740	740	0.11
302–01–2	Hydrazine	0.16	6900	6900	0.11	0.16	6900	6900	0.11
193–39–5	Indeno(1,2,3-cd) pyrene	0.16	570	570	0.023	0.3	570	570	0.14
78–83–1	Isobutyl alcohol	0.06	6900	6900	0.11	0.016	6900	6900	0.11
465–73–6	Isodrin	0.016	20	20	0.11	78	20	20	0.11
78–59–1	Isophorone	(1)	(1)	(1)	0.023	0.16	(1)	(1)	0.14
120–58–1	Isosafrole	78	0.6	0.6	30	(1)	0.6	0.6	30
143–50–0	Kepone	0.16	9	9	0.11	7	9	9	0.11
303–43–1	Lasiocarpine	(1)	(1)	(1)	0.54	0.37	(1)	(1)	0.46
7439–92–1	Lead	7	140000	140000	0.92	0.096	140000	140000	0.92
108–31–6	Maleic anhydride	0.37	20	20	30	78	20	20	30
123–33–1	Maleic hydrazide	0.096	19	19	3	8	19	19	3
109–77–3	Malononitrile	78	500	500			500	500	
148–82–3	Melphalan	8	91	91			91	91	
7439–97–6	Mercury		110000	110000			110000	110000	
126–98–7	Methacrylonitrile		(1)	(1)			(1)	(1)	
74–93–1	Methanethiol		17000	17000			17000	17000	
67–56–1	Methanol								
91–80–5	Methapyrilene								
16752–77–5	Methomyl								
72–43–5	Methoxychlor								
74–83–9	Methyl bromide (Bromomethane)								
74–87–3	Methyl chloride (Chloromethane)								
78–93–3	Methyl ethyl ketone								
1338–23–4	Methyl ethyl ketone peroxide								
60–34–4	Methyl hydrazine								
108–10–1	Methyl isobutyl ketone								

80–62–6	Methyl methacrylate	8	8	40000	8	28	28	40000	8
66–27–3	Methyl methanesulfonate	6	6	2	6	0.12	0.12	2	6
91–57–6	Methyl naphthalene, 2-	23	23	4	23	(1)	(1)	4	23
298–00–0	Methyl parathion	0.19	0.0095	0.19	0.0095	0.66	0.66	0.19	0.0095
75–55–8	Methylaziridine, 2-	0.015	0.09	0.015	0.09	2	2	0.015	0.09
56–49–5	Methylcholanthrene, 3-	2	2	2	2	0.039	0.039	2	2
74–95–3	Methylene bromide	3	3	3	3	2	2	3	3
75–09–2	Methylene chloride	11	11	11	11	14	14	11	11
101–14–4	Methylenebis, 4,4'-(2-chloroaniline)	0.11	0.11	0.11	0.11	15	15	0.11	0.11
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG)	5	2	5	2	0.16	0.16	5	2
56–04–2	Methylthiouracil	0.11	0.11	0.11	0.11	4	4	0.11	0.11
50–07–7	Mitomycin C	0.11	0.11	0.11	0.11	0.16	0.16	0.11	0.11
7439–98–7	Molybdenum	0.11	0.11	0.11	0.11	20	20	0.11	0.11
91–20–3	Naphthalene	6	6	6	6	0.028	0.084	6	6
130–15–4	Naphthoquinone, 1,4-	6	6	6	6	0.028	0.025	6	6
86–88–4	Naphthyl-2-thiourea, 1-	12000	12000	12000	12000	0.16	0.16	12000	12000
134–32–7	Naphthylamine, 1-	0.054	0.054	0.054	0.054	0.2	0.2	0.054	0.054
91–59–8	Naphthylamine, 2-	0.012	0.012	0.012	0.012	0.16	0.16	0.012	0.012
7440–02–0	Nickel	(1)	(1)	(1)	(1)	0.16	0.16	(1)	(1)
54–11–5	Nicotine and salts	0.00041	0.00041	0.00041	0.00041	0.27	0.27	0.00041	0.00041
88–74–4	Nitroaniline, 2-	11	11	11	11	0.12	0.12	11	11
99–09–2	Nitroaniline, 3-	32	32	32	32	8	8	32	32
100–01–6	Nitroaniline, 4-	0	0	0	0	3	3	0	0
98–95–3	Nitrobenzene					5	5		
55–86–7	Nitrogen mustard					0.024	0.023		
51–75–2	Nitrogen mustard Hydrochloride salt					0.27	0.081		
126–85–2	Nitrogen mustard N-Oxide					0.002	0.022		
302–70–5	Nitrogen mustard N-Oxide, HCl salt					15	15		
55–63–0	Nitroglycerine					84	84		
99–55–8	Nitro-5-toluidine, 5-								
88–75–5	Nitrophenol, 2-								
100–02–7	Nitrophenol, 4-								
79–46–9	Nitropropane, 2-								
56–57–5	Nitroquinoline-1-oxide, 4-								
55–18–5	Nitrosodiethylamine								
62–75–9	Nitrosodimethylamine								
924–16–3	Nitrosodi-n-butylamine								
10595–95–6	Nitroso- methylethyle thylamine								
1116–54–7	N-Nitro- sodiethа- nolamine								
621–64–7	N-Nitrosodi-n-propylamine								
86–30–6	N-Nitro- sodiphe- nylamine								
4549–40–0	N-Nitrosomethyl vinyl amine								
59–89–2	N-Nitrosomorpholine								
759–73–9	N-Nitroso-N-ethylurea								
684–93–5	N-Nitroso-N-methylurea								
615–53–2	N-Nitroso-N-methylurethane								
16543–55–8	N-Nitrosonornicotine								
100–75–4	N-Nitrosopiperidine								
930–55–2	N-Nitrosopyrrolidine								
13256–22–9	N-Nitrososarcosine								
103–85–5	N-Phenylthiourea								
1615–80–1	N,N-Diethylhydrazine								
152–16–9	Octame- thylpyro- phospho- ramide								
20816–12–0	Osmium Tetroxide								
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate								
126–68–1	O,O,O-Triethyl phosphorothioate								
123–63–7	Paraldehyde								
56–38–2	Parathion								
608–93–5	Pentachlorobenzene								
76–01–7	Pentachloroethane								
82–68–8	Penta- chloro- nitro-benzene (PCNB)								
87–86–5	Pentachlorophenol								
62–44–2	Phenacetin								
85–01–8	Phenanthrene								
108–95–2	Phenol								
62–38–4	Phenyl mercuric acetate								

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Appendix X—Continued

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
25265-76-3	Phenylenediamines (N.O.S.)	0.16	20	0.11	0.16	20	0.11
108-45-2	Phenylenediamine, m-	0.78	780	0.3	0.78	780	0.3
106-50-3	Phenylenediamine, p-	0.16	20	0.11	0.16	20	0.11
298-02-2	Phorate	0.11	160	.....	0.11	160	.....
	Phosphorodithioic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298-06-6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288-58-2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953-29-9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85-44-9	Phthalic anhydride	(1)	2400	(1)	(1)	2400	(1)
109-06-8	Picoline, 2-	0.16	20	0.11	0.16	20	0.11
1336-36-3	Polychlorinated biphenyls	(1)	(1)	0.009	(1)	(1)	(1)
23950-58-5	Pronamide	21	440	6	21	440	6
1120-71-4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
107-10-8	Propylamine, n-	0.16	20	0.11	0.16	20	0.11
51-52-5	Propylthiouracil	0.12	(1)	6	0.12	(1)	6
107-19-7	Propyn-1-ol,2-	39	37000	15	39	37000	15
129-00-0	Pyrene	54	16000	2	54	16000	2
110-86-1	Pyridine	0.16	810	0.08	0.16	810	0.08
50-55-5	Reserpine	0.16	20	0.11	0.16	20	0.11
108-46-3	Resorcinol	(1)	(1)	0.54	(1)	(1)	0.46
81-07-2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)
94-59-7	Safrole	0.0035	11	(1)	0.0035	11	(1)
7782-49-2	Selenium	0.23	(1)	0.089	0.93	(1)	0.36
7440-22-4	Silver	200	(1)	.....	200	(1)	.....
18883-66-4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57-24-9	Strychnine	0.045	(1)	0.018	0.045	(1)	0.016
100-42-5	Styrene	0.91	630000	0.22	64	630000	15
18496-25-8	Sulfide	.....	.....	.....	.....	.....	.....
1746-01-6	TCDD,2,3,7,8-	(1)	8.000E-06	5.400E-07	(1)	8.000E-06	(1)
95-94-3	Tetrachlorobenzene, 1,2,4,5-	0.23	170	0.032	0.23	170	0.032
630-20-6	Tetrachloroethane, 1,1,1,2-	0.024	130	0.0078	0.024	130	0.0078
79-34-5	Tetrachloroethane, 1,1,2,2-	0.0037	29	0.0077	0.0037	29	0.0077
127-18-4	Tetrachloroethylene	0.026	13000	0.0085	2	13000	0.68
58-90-2	Tetrachlorophenol, 2,3,4,6-	2	6200	0.56	2	6200	0.56
107-49-3	Tetraethylpyrophosphate	(1)	6900	(1)	(1)	6900	(1)
3689-24-5	Tetraethyldithiopyrophosphate	0.23	3	.....	0.23	3	.....
7440-28-0	Thallium (I)	0.035	5	0.014	0.05	5	0.019
62-55-5	Thioacetamide	(1)	(1)	(1)	(1)	(1)	(1)
39196-18-4	Thiofanox	0.12	(1)	6	0.12	(1)	6
108-98-5	Thiophenol	0.12	2	6	0.12	2	6
79-19-6	Thiosemicarbazide	(1)	(1)	(1)(1)	(1)	(1)	(1)
62-56-6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137-26-8	Thiram	(1)	(1)	0.54	(1)	(1)	0.48
7440-31-5	Tin	(1)	(1)	(1)	(1)	(1)	(1)
108-88-3	Toluene	6	180000	2	30	180000	13
584-84-9	Toluene diisocyanate	(1)	20	(1)	(1)	20	(1)
95-80-7	Toluenediamine,2,4-	(1)	(1)	(1)	(1)	(1)	(1)
823-40-5	Toluenediamine,2,6-	0.16	20	0.11	0.16	20	0.11
496-72-0	Toluenediamine,3,4-	0.16	20	0.11	0.16	20	0.11
636-21-5	Toluidine hydrochloride, o-	0.16	20	0.11	0.16	20	0.11
95-53-4	Toluidine, o-	(1)	2	(1)	(1)	2	(1)
106-49-0	Toluidine, p-	(1)	0.13	(1)	(1)	0.13	(1)
8001-35-2	Toxaphene	(1)	(1)	6	(1)	(1)	0.11
76-13-1	Trichloro-1,2,2-trifluoroethane,1,1,2-	0.77	.....	0.17	2200	.....	2400

120-82-1	Trichlorobenzene, 1,2,4-	0.69	3500	1	0.69	3500	1
72-55-6	Trichloroethane, 1,1,1-	74	48000	0.054	74	48000	0.054
79-00-5	Trichloroethane, 1,1,2-	0.012	11	0.009	0.007	11	0.0018
79-01-6	Trichloroethylene	0.024	570	0.008	0.038	570	0.013
75-69-4	Trichlorofluoromethane	48	26000	16	48	26000	16
75-70-7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	(1)
95-95-4	Trichlorophenol, 2,4,5-	18	12000	4	18	12000	4
88-06-2	Trichlorophenol, 2,4,6-	0.054	120	0.015	0.054	120	0.015
93-76-5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	63	0.64	2	63	0.64
93-72-1	Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	0.21	6	0.08	1	6	0.48
96-18-4	Trichloropropane, 1,2,3-	1	870	0.34	1	870	0.34
99-35-4	Trinitrobenzene, sym-	0.0078	0.44	0.003	0.0078	0.44	0.003
126-72-7	Tris (2,3-dibromopropyl) phosphate	(1)	0.36	(1)	(1)	0.36	(1)
52-24-4	Tris(1-azridinyl)phosphine sulfide	(1)	(1)	(1)	(1)	(1)	(1)
72-57-1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66-75-1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
7440-62-2	Vanadium	10	250	4	10	250	4
108-05-4	Vinyl acetate	15	6900	11	15	6900	11
75-01-4	Vinyl chloride	0.002	1	0.003	(1)	1	(1)
81-81-2	Warfarin	(1)	(1)	0.54	(1)	(1)	0.48
1330-20-7	Xylenes (total)	22	170000	21	22	170000	150
7440-66-6	Zinc	99	320	38	99	320	38

[1] See Table B.

TABLE B.—QUANTITATION-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
208-96-8	Acenaphthylene	0.02	.....	0.02	0.02	.....	0.02
75-36-5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591-08-2	Acetyl-2-thiourea, 1-	1	70	.....	1	70	.....
53-96-3	Acetylaminofluorene, 2-	.....	.....	0.02	.....	.....	0.02
107-02-8	Acrolein	0.013	.....	.....	0.013	.....	.....
79-06-1	Acrylamide	0.01	0.1	0.01	0.01	0.1	0.01
107-13-1	Acrylonitrile	0.008	.....	0.008	0.008	.....	0.008
1402-68-2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116-06-3	Aldicarb	0.05	1	.....	0.05	1	.....
309-00-2	Aldrin	0.000034	0.0006	0.000034	0.000034	0.0006	0.000034
107-18-6	Allyl alcohol	(1)	(1)	(1)	(1)	(1)	(1)
92-67-1	Aminobiphenyl, 4-	.....	.....	0.02	.....	.....	0.02
2763-96-4	Aminomethyl-3-isoxazolol, 5-	(1)	(1)	(1)	(1)	(1)	(1)
504-24-5	Aminopyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61-82-5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
120-12-7	Anthracene	0.007	.....	0.007	0.007	.....	0.007
7440-38-2	Arsenic	.....	0.3	.....	0.0005	0.3	0.0005
2465-27-2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115-02-6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
92-87-5	Benzidine	0.0025	0.042	0.0025	0.0025	0.042	0.0025
98-07-7	Benzotrichloride	(1)	.....	(1)	(1)	.....	(1)
50-32-8	Benzo(a)pyrene	.....	.....	.....	.....	.....	0.000023
205-82-3	Benzo(j)fluor- anthene	.....	.....	.....	.....	.....	0.0002
207-08-9	Benzo(k)- fluoranthene	.....	.....	.....	.....	.....	0.0002
191-24-2	Benzo[g,h,i]- perylene	.....	.....	.....	.....	.....	0.0008
56-55-3	Benz(a)anth- racene	.....	.....	0.000013	.....	.....	0.000013
225-51-4	Benz[c]acri- dine	.....	.....	.....	.....	.....	0.0005
7440-41-7	Beryllium	.....	0.1	.....	.....	0.1	.....
542-88-1	Bis(chloro- methyl) ether	(1)	(1)	(1)	(1)	(1)	(1)
357-57-3	Brucine	20	(1)	20	20	(1)	20
86-74-8	Carbazole	(1)	(1)	(1)	(1)	(1)	(1)
353-50-4	Carbon oxyfluoride	(1)	(1)	(1)	(1)	(1)	(1)

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TABLE B.—QUANTITATION-BASED EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
75-87-6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305-03-3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57-74-9	Chlordane	0.00004			0.00004		
494-03-1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
107-20-0	Chloroacetaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
110-75-8	Chloroethyl vinyl ether, 2-	(1)		(1)	(1)		(1)
107-30-2	Chloromethyl methyl ether	(1)		(1)	(1)		(1)
5344-82-1	Chlorophenyl thiourea, 1-o-	(1)	(1)	(1)	(1)	(1)	(1)
542-76-7	Chloropropionitrile, 3-			0.1	0.1		0.1
6358-53-8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440-48-4	Cobalt			0.5			0.5
57-12-5	Cyanide	0.2		0.2	0.2		0.2
14901-08-7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108-94-1	Cyclohexanone	10		10	10		10
131-89-5	Cyclohexyl-4,6-dinitrophenol, 2-	0.1	7	0.1	0.1	7	0.1
50-18-0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830-81-3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
53-19-0	DDD (o,p')	(1)			(1)		
72-55-9	DDE	0.000058			0.000058		
3424-82-6	DDE (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
50-29-3	DDT	0.000081			0.000081		
789-02-6	DDT (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
192-65-4	Dibenzo(a,e)- pyrene						0.001
189-64-0	Dibenzo(a,h)- pyrene						0.0002
189-55-9	Dibenzo(a,i)pyrene						0.0002
194-59-2	Dibenzo(c,g)car- bazole, 7H-	0.01		0.01	0.01		0.01
226-36-8	Dibenz(a,h)acri- dine						0.0002
53-70-3	Dibenz(a,h)ant- hracene	0.00003	0.084	0.00003	0.00003	0.084	0.00003
224-42-0	Dibenz(a,j)acridine						0.001
96-12-8	Dibromo-3-chloropropane, 1,2-						0.00026
91-94-1	Dichlorobenzidine, 3,3'-		0.12	0.0024		0.012	0.0024
542-75-6	Dichloropropene, 1,3-			0.0009			0.0009
311-45-5	Diethyl-p-nitrophenyl phosphate	(1)	(1)	(1)	(1)	(1)	(1)
56-53-1	Diethylstilbestrol	0.0078	1	0.00 3	0.0078	1	0.0078
77-78-1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
60-11-7	Dimethylaminoazobenzene, p-			0.01			0.01
119-93-7	Dimethylbenzidine, 3,3'-	0.0033	0.7	0.0033	0.0033	0.7	0.0033
57-97-6	Dimethylbenz- (a)anthracene, 7,12-	0.00037	0.039	0.00037	0.00037	0.039	0.00037
79-44-7	Dimethylcarbamoyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
119-90-4	Dimethyoxybenzidine, 3,3'-		7			7	
100-25-4	Dinitrobenzene, 1,4-	0.04	3	0.04	0.04	3	0.4
534-52-1	Dinitro-o-cresol, 4,6-	0.05	3	0.05	0.05	3	0.05
541-53-7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
	D, salts, esters, 2,4-		0.2			0.2	
145-73-3	Endothall	0.1	(1)		0.1	(1)	
51-43-4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
62-50-0	Ethyl methanesulfonate		0.018			0.018	
106-93-4	Ethylene Dibromide						0.00006
96-45-7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151-56-4	Ethylenelmine (aziridine)	(1)	(1)	(1)	(1)	(1)	(1)
52-55-7	Famphur	0.02	1		0.02	1	
640-19-7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62-74-8	Fluoroacetic acid, sodium salt	(1)	(1)	(1)	(1)	(1)	(1)
16984-48-8	Fluoride						
50-00-0	Formaldehyde	0.023			0.023		
765-34-4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
76-44-8	Heptachlor	0.00004			0.00004		

118-74-1	Hexachlorobenzene	0.0016	0.072		0.0016	0.072	0.0016
70-30-4	Hexachlorophene	0.21	2	0.21	0.21	2	0.21
757-58-4	Hexaethyl tetraphosphate	(1)	(1)	(1)	(1)	(1)	(1)
302-01-2	Hydrazine	(1)		(1)	(1)		(1)
193-39-5	Indeno(1,2,3-cd) pyrene			0.000043			0.000043
465-73-6	Isodrin	0.02	1		0.02	1	
143-50-0	Kepone	0.016	0.097	0.016	0.016	0.097	0.016
303-43-4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
108-31-6	Maleic anhydride	(1)		(1)	(1)		(1)
148-82-3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
126-98-7	Methacrylonitrile			0.009			0.009
74-93-1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
16752-77-5	Methomyl	0.05	3		0.05	3	
1338-23-4	Methyl ethyl ketone peroxide	(1)	(1)	(1)	(1)	(1)	(1)
60-34-4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
91-57-6	Methyl naphthalene, 2-	0.01		0.01	0.01		0.01
75-55-8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56-49-5	Methylcholanthrene, 3-	0.01	0.046	0.01	0.01	0.046	0.01
101-14-4	Methylenebis, 4,4'-(2-chloroaniline)	(1)	(1)	(1)	(1)	(1)	(1)
70-25-7	Methyl-nitro-nitrosoguanidine (MNNG)	(1)	(1)	(1)	(1)	(1)	(1)
56-04-2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50-07-7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
86-88-4	Naphthyl-2-thiourea, 1-	(1)	(1)	(1)	(1)	(1)	(1)
88-74-4	Nitroaniline, 2-	0.05		0.05	0.05		0.05
99-09-2	Nitroaniline, 3-	0.05		0.05	0.05		0.05
100-01-6	Nitroaniline, 4-			0.02			0.02
55-86-7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51-75-2	Nitrogen mustard hydrochloride salt	(1)	(1)	(1)	(1)	(1)	(1)
126-85-2	Nitrogen mustard N-Oxide	(1)	(1)	(1)	(1)	(1)	(1)
302-70-5	Nitrogen mustard N-Oxide, HCl salt	(1)	(1)	(1)	(1)	(1)	(1)
55-63-0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
99-55-8	Nitro-o-toluidine, 5-			0.01			0.01
88-75-5	Nitrophenol, 2-			0.01			0.01
100-02-7	Nitrophenol, 4-	0.05	3	0.05	0.05	3	0.05
79-46-9	Nitropropane, 2-	0.0058			0.0058		
55-18-5	Nitrosodiethylamine	0.002	1	0.002	0.002	1	0.002
62-75-9	Nitrosodimethylamine	0.0006	0.074	0.0006	0.0006	0.074	0.0006
924-16-3	Nitrosodi-n-butylamine	0.06		0.06	0.06		0.06
10595-95-6	Nitrosomethylethylamine	0.028	0.016	0.028	0.028	0.016	0.028
1116-54-7	N-Nitrosodiethanolamine	0.01	0.7	0.01	0.01	0.7	0.01
621-64-7	N-Nitrosodi-n-propylamine	0.026		0.026	0.026		0.026
86-30-6	N-Nitrosodiphenylamine			0.05			0.05
4549-40-0	N-Nitrosomethyl vinyl amine	(1)	(1)	(1)	(1)	(1)	(1)
759-73-9	N-Nitroso-N-ethylurea	(1)	(1)	(1)	(1)	(1)	(1)
615-53-2	N-Nitroso-N-methylurethane	(1)	(1)	(1)	(1)	(1)	(1)
16543-55-8	N-Nitrosonornicotine	(1)	(1)	(1)	(1)	(1)	(1)
100-75-4	N-Nitrosopiperidine	0.0014	0.033	0.0014	0.0014	0.033	0.0014
930-55-2	N-Nitrosopyrrolidine	0.0047		0.0047	0.0047		0.0047
13256-22-9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103-85-5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615-80-1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
20816-12-0	Osmium tetroxide	3	200	3	3	200	3
126-68-1	O,O,O-Triethyl phosphorothioate		3			3	
82-68-8	Pentachloronitrobenzene (PCNB)			0.02			0.02
85-01-8	Phenanthrene	0.006		0.006	0.006		0.006
62-38-4	Phenyl mercuric acetate	(1)	(1)	(1)	(1)	(1)	(1)
	Phosphorodithiolic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298-06-6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288-58-2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953-29-9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85-44-9	Phthalic anhydride	(1)	(1)	(1)	(1)	(1)	(1)
1336-36-3	Polychlorinated biphenyls	0.0005	0.04		0.0005	0.04	0.0005
1120-71-4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
51-52-5	Propylthiouracil		7		7		
108-46-3	Resorcinol	0.1	7		0.1	7	
81-07-2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)

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TABLE B.—QUANTITATION-BASED EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
94-59-7	Safrole			0.0021			0.0021
94-59-7	Safrole			0.0021			0.0021
7782-49-2	Selenium		5			5	
7440-22-4	Silver		0.3			0.3	
18883-66-4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57-24-9	Strychnine		3			3	
1746-01-6	TCDD, 2,3,7,8-	1.000E-08			1.000E-08		1.000E-08
107-49-3	Tetraethyl pyrophosphate	(1)	(1)	(1)	(1)	(1)	(1)
62-55-5	Thioacetamide	1	(1)	1	1	(1)	1
39196-18-4	Thiofanox		3			3	
79-19-6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62-56-6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137-26-8	Thiram	0.05	3		0.05	3	
7440-31-5	Tin	8	500	8	8	500	8
584-84-9	Toluene diisocyanate	(1)		(1)	(1)		
95-80-7	Toluenediamine, 2,4-	0.013	1	0.013	0.013	1	0.013
95-53-4	Toluidine, o-	0.012		0.012	0.012		0.012
106-49-0	Toluidine, p-	0.017		0.017	0.017		0.017
8001-35-2	Toxaphene	0.0013	0.03		0.0013	0.03	
75-70-7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	(1)
126-72-7	Tris (2,3-dibromopropyl) phosphate	0.025		0.025	0.025		0.025
52-24-4	Tris(1-azridinyl) phosphine sulfide	(1)	(1)	(1)	(1)	(1)	(1)
72-57-1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66-75-1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
75-01-4	Vinyl chloride				0.00017		0.00017
81-81-2	Warfarin	0.05	3		0.05	3	

8. Appendix XI is added to read as follows:

Appendix XI

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
83-32-9	Acenaphthene	31	63000	13	31	63000	13
208-96-8	Acenaphthylene	(1)	4	(1)	(1)	4	(1)
67-64-1	Acetone	16	39000	21	16	39000	21
75-05-8	Acetonitrile	0.78	2200	1	0.78	2200	1
98-86-2	Acetophenone	17	75000	22	17	75000	22
75-36-5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591-08-2	Acetyl-2-thiourea, 1-	(1)	590	24	(1)	590	24
53-96-3	Acetylaminofluorne, 2-	0.028	88	0.038	0.028	88	0.038
107-02-8	Acrolein	(1)	11		(1)	11	
79-06-1	Acrylamide	(1)	(1)	(1)	(1)	(1)	(1)
107-13-1	Acrylonitrile	(1)	2	(1)	(1)	2	(1)
1402-68-2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116-06-3	Aldicarb	(1)	6	4	(1)	6	3
309-00-2	Aldrin	(1)	0.0045	(1)	(1)	0.0045	(1)
107-18-6	Allyl alcohol	(1)	(1)	(1)	(1)	(1)	(1)
107-05-1	Allyl chloride	0.074	260		0.074	260	
92-67-1	Aminobiphenyl, 4-	0.028	88	0.038	0.028	88	0.038
2763-96-4	Aminomethyl-3-isoxazolol, 5-	(1)	(1)	(1)	(1)	(1)	(1)
504-24-5	Aminopyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61-82-5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
62-53-3	Aniline	0.053	170	0.072	0.053	170	0.072
120-12-7	Anthracene	(1)	4	(1)	(1)	4	(1)
7440-36-0	Antimony	0.14	85	0.16	0.14	85	0.18
140-57-8	Aramite	15	6900	37	15	6900	37
7440-38-2	Arsenic	0.38	0.53	0.52	(1)	0.53	0.00052
2465-27-2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115-02-6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
7440-39-3	Barium	28	34000	38	33	34000	45
71-43-2	Benzene	0.021	250	0.039	0.018	250	0.023
92-87-5	Benzidine	(1)	(1)	(1)	(1)	(1)	(1)
106-51-4	Benzoquinone, p-	15	6900	37	15	6900	37
98-07-7	Benzotrichloride	(1)	1200	(1)	(1)	1200	(1)
50-32-8	Benzo(a)pyrene	0.0023	0.23	0.0036	0.0023	0.23	(1)
205-99-2	Benzo(b) fluoranthene	0.00081	4	0.000066	0.00081	4	0.000066
205-82-3	Benzo(j) fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
207-08-9	Benzo(k) fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
191-24-2	Benzo[g, h, i]perylene	0.0029	4	0.0012	0.0029	4	(1)
100-51-6	Benzyl alcohol	39	130000	53	39	130000	53
100-44-7	Benzyl chloride	1	81	50	1	81	50
56-55-3	Benz(a) anthracene	0.00072	0.1	(1)	0.00072	0.1	(1)
225-51-4	Benz[c] acridine	0.0029	4	0.0012	0.0029	4	(1)
7440-41-7	Beryllium	0.00083	0.22	0.0011	0.00083	0.22	0.0011
39638-32-9	Bis (2-chloroisopropyl) ether	0.007	97	0.0088	0.007	97	0.0088
111-44-4	Bis(2-chlore- thyl)ether	0.00065	1	0.002	0.00065	1	0.002
117-81-7	Bis(2-ethy- lexyl)phthalate	0.00044	740	0.11	0.00044	740	0.0011
542-88-1	Bis(chlor- omethyl)ether	(1)	(1)	(1)	(1)	(1)	(1)
598-31-2	Bromoacetone	0.024	140	0.054	0.023	140	0.053
75-27-4	Bromodich- loromethane	0.0085	240	0.011	0.0085	240	0.011
75-25-2	Bromoform (Tribromomethane)	0.064	1600	0.081	0.064	1600	0.081
101-55-3	Bromophenyl phenyl ether, 4-	0.024	140	0.054	0.023	140	0.053
357-57-3	Brucine	(1)	(1)	(1)	(1)	(1)	(1)
71-36-3	Butanol	16	41000	21	16	41000	21
88-85-7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.034	6000	0.043	0.19	6000	0.24
85-68-7	Butylbenzyl- phthalate	240	67	67	240	67	67

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option				Toxicity benchmark option			
		Wastewater		Nonwastewater		Wastewater		Nonwastewater	
		Totals (mg/kg)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Leach (mg/l)	Totals (mg/kg)	Leach (mg/l)
7440-43-9	Cadmium	0.035	0.061	110	0.061	0.24	0.32	110	0.32
86-74-8	Carbazole	0.74	24	3800	24	0.74	24	3800	24
75-15-0	Carbon disulfide								
353-50-4	Carbon oxyfluoride	0.012	0.055	130	0.055	0.012	0.0077	130	0.0077
56-23-5	Carbon tetrachloride								
75-87-6	Chloral								
305-03-3	Chlorambucil			0.19	0.036		0.00016	0.19	0.00016
57-74-9	Chlordane	0.02	0	1700	0	0.02	0	1700	0
494-03-1	Chlornaphazin								
126-99-8	Chloro-1,3-butadiene, 2-(Chloroprene)								
107-20-0	Chloroacetaldehyde								
106-47-8	Chloroaniline, p-								
108-90-7	Chlorobenzene								
510-15-6	Chlorobenzilate								
124-48-1	Chlorodibromomethane								
75-00-3	Chloroethane (ethyl chloride)								
110-75-8	Chloroethyl vinyl ether, 2-								
67-66-3	Chloroform	0.52	0.56	1700	0.56	0.52	0.56	1700	0.56
59-50-7	Chloro-m-cresol, p-	0.42	0.61	5600	0.61	0.42	6	5600	6
107-30-2	Chloromethyl methyl ether	0.68	0.029	41000	0.029	2	0.029	41000	0.029
91-58-7	Chloronaphthalene, 2-	0.054	0.0070	14	0.0070	0.054	0.0079	14	0.0079
95-57-8	Chlorophenol, 2-	0.0066	0.054	200	0.054	0.0066	0.053	200	0.053
7005-72-3	Chlorophenyl phenyl ether, 4-	0.024	0	140	0	0.023	0	140	0
5344-82-1	Chlorophenyl thiourea, 1-o-	0.0076	0.075	76	0.075	0.0076	0.075	76	0.075
542-76-7	Chloropropionitrile, 3-	0.27	0.068	1200	0.068	0.081	0.08	1200	0.08
7440-47-3	Chromium	0.27	0	140	0	0	0	140	0
218-01-9	Chrysene	0.9	0.068	1200	0.068	0.081	0.08	1200	0.08
6358-53-8	Citrus red No. 2	0.024	1	8500	1	0.9	1	8500	1
7440-48-4	Cobalt	0.27	0.054	140	0.054	0.023	0.053	140	0.053
7440-50-8	Copper	0.62	0	(1)	0	0	0	(1)	0
108-39-4	Cresol, m-	0.1	0.31	1200	0.31	1	2	1200	2
95-48-7	Cresol, o-	0.62	0.0012	16	0.0012	0.1	0.0012	16	0.0012
106-44-5	Cresol, p-			35				35	
4170-30-3	Crotonaldehyde			(1)				(1)	
57-12-5	Cyanide	0.62	0	110	0	0.1	0	110	0
14901-08-7	Cycasin			950				950	
108-94-1	Cyclohexanone			30000				30000	
131-89-5	Cyclohexyl-4,6-dinitrophenol, 2-			46000				46000	
50-18-0	Cyclophosphamide			2900				2900	
20830-81-3	Daunomycin			38000				38000	
72-54-8	DDD			51				51	
53-19-0	DDD (o,p')			(1)				(1)	
72-55-9	DDE			38000				38000	
3424-82-6	DDE (o,p')			42				42	
50-29-3	DDT			(1)				(1)	
789-02-6	DDT (o,p')			(1)				(1)	
2303-16-4	Diallate	0.26	0.00013	7	0.000062	0.26	0.000062	7	0.000062
132-64-9	Dibenzofuran	0.033	0	38000	0	0.033	0	38000	0
192-65-4	Dibenzo- [a,e]pyrene	0.11	0.0054	4	0.0054	0.11	0.0054	4	0.0054
189-64-0	Dibenzo- [a,h]pyrene	(1)	11	4	11	(1)	11	4	11
189-55-9	Dibenzo- [a,i]pyrene	7	9	4	9	7	9	4	9
194-59-2	Dibenzo- [c,g]carbazole, 7H-	38000	0.0012	4	0.0012	38000	0.0012	4	0.0012
226-36-8	Dibenz- (a,h)acridine	4	0.0012	4	0.0012	4	0.0012	4	0.0012
53-70-3	Dibenz- (a,h)anth- racene	(1)	0.0012	4	0.0012	(1)	0.0012	4	0.0012
244-42-0	Dibenz- [a,j]acridine	4	0.0012	4	0.0012	4	0.0012	4	0.0012
96-12-8	Dibromo-3-chloropro- pane, 1,2-	7	0.0029	7	0.0029	7	0.0029	7	0.0029
764-41-0	Dichloro-2-butene, 1,4-	140	0.0022	140	0.0017	140	0.00066	140	0.00052
			0.024		0.054		0.023		0.053

110-57-6	Dichloro-2-butene, trans-1,4-	0.024	0.054	140	0.054	0.023	0.053	140	0.053
96-23-1	Dichloro-2-propanol, 1,3-	0.27	0.068	1200	0.068	0.061	0.06	1200	0.06
541-73-1	Dichlorobenzene, 1,3-	8	8	530000	8	16	32	530000	32
106-46-7	Dichlorobenzene, 1,4-	0.024	0.054	140	0.054	0.023	0.053	140	0.053
91-94-1	Dichlorobenzidine, 3,3'-	1	0.0036	660	0.0036	0.0056	0.006	660	0.006
75-71-8	Dichlorodifluoromethane	0.0037	45	1	45	0.0037	45	1	45
75-34-3	Dichloroethane, 1,1-	15	0.00021	8400	0.00021	15	0.00021	8400	0.00021
107-06-2	Dichloroethane, 1,2-	0.00016	0.011	110	0.011	0.00016	0.00021	110	0.00021
75-35-4	Dichloroethy lene, 1,1-	0.007	0.054	59	0.054	0.00059	0.00077	59	0.00077
156-59-2	Dichloroethylene, cis-1,2-	0.0035	0.39	20	0.39	2	2	20	2
156-60-5	Dichloroethylene, trans-1,2-	0.29	0.56	46000	0.56	3	4	46000	4
111-91-1	Dichloromethoxy ethane	0.42	0.054	130000	0.054	0.023	0.053	130000	0.053
98-87-3	Dichloromethylbenzene (benzal chloride)	0.024	0.054	140	0.054	0.023	0.053	140	0.053
120-83-2	Dichlorophenol, 2,4-	0.62	0.76	140	0.76	0.62	0.76	140	0.76
87-65-0	Dichlorophenol, 2,6-	0.024	0.054	770	0.054	0.023	0.053	770	0.053
94-75-7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	0.27	0.37	140	0.37	0.62	0.76	140	0.76
78-87-5	Dichloropropane, 1,2-	0.12	0.055	12000	0.055	0.023	0.053	2	0.011
542-75-6	Dichloropropene, 1,3-	0.0026	0.0038	180	0.0038	0.0026	0.0038	180	0.0038
10061-01-5	Dichloropropene, cis-1,3-	0.0049	10000	88	10000	0.0049	0.0038	88	0.0038
10061-02-6	Dichloropropene, trans-1,3-	0.0049	10000	85	10000	0.0049	10000	85	10000
60-57-1	Dieldrin	0.000059	36	82	36	0.000059	36	82	36
1464-53-5	Diepoxybutane, 1,2:3,4- (2,2'-bioxirane)	15	37	0.046	37	15	37	0.046	37
84-66-2	Diethyl phthalate	190	220	6900	220	190	220	6900	220
311-45-5	Diethyl-p-nitrophenyl phosphate	0	0	19000	0	0	0	19000	0
56-53-1	Diethylstilbestrol	15	37	(1)	37	15	37	(1)	37
94-58-6	Dihydrosafrole	29	4	6900	4	29	4	6900	4
60-51-5	Dimethoate	78	110	7	110	78	110	7	110
131-11-3	Dimethyl phthalate	0	0	4	0	0	0	4	0
77-78-1	Dimethyl sulfate	0.028	0.038	88	0.038	0.028	0.038	88	0.038
60-11-7	Dimethyl- aminoazo- benzene, p-	0	0	0	0	0	0	0	0
119-93-7	Dimethylbenzidine, 3,3'-	0	0	0	0	0	0	0	0
57-97-6	Dimethyl- benz(a)- anthracene, 7,12-	0	0	0	0	0	0	0	0
79-44-7	Dimethylcarbamoyl chloride	0.16	0.37	51	0.37	0.16	0.37	51	0.37
122-09-8	Dimethyl- phenethyl- amine, alpha, alpha-	4	5	24000	5	4	5	24000	5
105-67-9	Dimethylphenol, 2,4-	0.034	0.045	(1)	0.045	0.034	0.045	(1)	0.045
119-90-4	Dimethoxy- benzidine, 3,3'-	880	25	90000	25	230	25	90000	25
84-74-2	Di-n-butyl phthalate	0.017	0.022	60	0.022	0.017	0.022	60	0.022
99-65-0	Dinitrobenzene, 1,3-	0	0	42	0	0	0	42	0
100-25-4	Dinitrobenzene, 1,4-	0.27	0.37	450	0.37	0.27	0.37	450	0.37
534-52-1	Dinitro-o-cresol, 4,6-	0.29	0.39	1400	0.39	0.29	0.39	1400	0.39
51-28-5	Dinitrophenol, 2,4-	0.17	0.22	420	0.22	0.17	0.22	420	0.22
121-14-2	Dinitrotoluene, 2,4-	0.002	0.1	21000	0.1	0.002	0.1	21000	0.1
606-20-2	Dinitrotoluene, 2,6-	0.042	0.058	71	0.058	0.042	0.058	71	0.058
117-84-0	Di-n-octyl phthalate	15	15	12000	15	15	15	12000	15
123-91-1	Dioxane, 1,4-	0.16	0.37	51	0.37	0.16	0.37	51	0.37
122-39-4	Diphenylamine	0.013	120	58	120	0.013	120	58	120
122-66-7	Diphenylhydrazine, 1,2-	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
298-04-4	Disulfoton	0.0069	4	6	4	0.0069	3	6	3
541-53-7	Dithiobiuret	6	4	150	4	6	4	150	4
	D, salts, esters, 2,4-	0.0069	4	6	4	0.0069	3	6	3
115-29-7	Endosulfan	6	4	6	4	6	3	6	3
959-98-8	Endosulfan I	0.0069	4	6	4	0.0069	3	6	3
33213-65-9	Endosulfan II	0.0069	4	6	4	0.0069	3	6	3
1031-07-8	Endosulfan sulfate	(1)	4	(1)	4	(1)	3	(1)	3
145-73-3	Endothall	27	880	27	880	27	770	27	770
72-20-8	Endrin	6	4	6	4	6	3	6	3
7421-93-4	Endrin Aldehyde	6	4	6	4	6	3	6	3
53494-70-5	Endrin ketone	6	4	6	4	6	3	6	3
106-89-9	Epichlorohydrin	96	47000	96	47000	96	47000	96	47000
51-43-4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
110-80-5	Ethoxyethanol, 2-	6900	53	6900	53	6900	53	6900	53
141-78-6	Ethyl acetate	600000	510	600000	510	600000	510	600000	510
51-79-6	Ethyl carbamate	6900	37	6900	37	6900	37	6900	37
107-12-0	Ethyl cyanide (propionitrile)	51	0.37	51	0.37	51	0.37	51	0.37
60-29-7	Ethyl ether	260000	37	260000	37	260000	37	260000	37

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TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option				Toxicity benchmark option			
		Wastewater		Nonwastewater		Wastewater		Nonwastewater	
		Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)		Totals (mg/kg)	Leach (mg/l)
97-63-2	Ethyl methacrylate	24	0.0055	100000	27	24	0.0055	100000	27
62-50-0	Ethyl methanesulfonate	6		(1)	99000	39		(1)	99000
100-41-4	Ethylbenzene	0.00093		0.06	0.0049	0.00036		0.06	0.000098
106-93-4	Ethylene Dibromide	15		6900	37	15		6900	37
75-21-8	Ethylene oxide	(2)		(2)	5	(2)		(2)	3
96-45-7	Ethylene thiourea	(2)		(2)	4	(2)		(2)	(2)
151-56-4	Ethyleneimine (aziridine)	(2)		(2)	(2)	(2)		(2)	(2)
52-85-7	Famphur	(2)		21000	2	(2)		21000	2
640-19-7	Fluoroacetamide, 2-	(2)		90000	7	(2)		90000	7
62-74-8	Fluoroacetic acid, sodium salt	28				28			
206-44-0	Fluoranthene	22				22			
86-73-7	Fluorene	(1)		54	37	(1)		54	37
16984-48-8	Fluoride	270		680000	370	270		680000	370
50-00-0	Formaldehyde	(1)		(1)	(3)	(1)		(1)	(3)
64-18-6	Formic Acid	0.0069		6		0.0060		6	
765-34-4	Glycidylaldehyde	(2)		8		(2)		8	
319-86-8	HCH, delta-	0.00053		0.56		0.00053		0.56	
76-44-8	Heptachlor	0.0079		290	0.0069	0.0079		290	0.0069
1024-57-3	Heptachlor epoxide	(2)		0.27	0.018	(2)		0.27	(2)
87-68-3	Hexachloro-1,3-butadiene	0.00014		0.18	2	0.00014		0.18	2
118-74-1	Hexachlorobenzene	0.00044		0.64	0.0009	0.00044		0.64	0.0009
319-84-6	Hexachlorocyclohexane, alpha- (alpha-BHC)	0.00078		0.75	26	0.00078		0.75	9
319-85-7	Hexachlorocyclohexane, beta- (beta-BHC)	0.0052		1500		0.0052		1500	
58-89-9	Hexachlorocyclohexane, gamma- (Lindane)	0.049		890	0.11	0.049		890	0.11
77-47-4	Hexachlorocyclopentadiene	(2)		(2)	(2)	(2)		(2)	(2)
67-72-1	Hexachloroethane	0.27		1200	0.069	0.001		1200	0.06
70-30-4	Hexachlorophene	(2)		(2)	22	(2)		(2)	22
1888-71-7	Hexachloropropene	8		38000	22	8		38000	22
757-58-4	Hexaethyl tetraphosphate	(2)		51	0.054	0.0029		51	0.053
591-78-6	Hexanone, 2-	0.0029		4	53	0.023		4	53
193-39-5	Indeno(1,2,3-cd) pyrene	0.024		140	4	39		140	3
74-88-4	Iodomethane	39		120000	0.69	(1)		120000	0.69
78-83-1	Isobutyl alcohol	(1)		6	37	0.53		6	37
465-73-6	Isodrin	0.53		2000	41	15		2000	41
78-59-1	Isophorone	15		6900	(2)	30		6900	(2)
120-58-1	Isosafrole	(2)		(2)	0.37	(2)		(2)	0.37
143-50-0	Kepone	(2)		1600	0.37	0.16		1600	0.37
303-43-4	Lasiocarpine	(2)		6900	4	0.16		6900	0.37
7439-92-1	Lead	0.16		51	0.081	(2)		51	(2)
108-31-6	Maleic anhydride	0.16		51	0.021	0.06		51	0.4
123-33-1	Maleic hydrazide	(2)		(2)	(2)	0.016		(2)	0.021
109-77-3	Malononitrile	0.06		39	110	(2)		39	(2)
148-82-3	Melphalan	0.016		72	0.37	78		72	110
7439-97-6	Mercury	(2)		(2)	4	0.16		(2)	0.37
126-98-7	Methacrylonitrile	78		310000		(2)		310000	3
74-93-1	Methanethiol	0.16		51		0.37		51	
67-561	Methanol	(2)		6		(2)		6	
91-80-5	Methapyrilene	7		260	4	2.37		260	4
16752-77-5	Methomyl	0.37		850		0.096		850	
72-43-5	Methoxychlor	0.096		91		78		91	
74-83-9	Methy bromide (Bromomethane)	78		250000	110	(2)		250000	110
74-87-3	Methyl chloride (Chloromethane)	(2)		(2)		(2)		(2)	
78-93-3	Methyl ethyl ketone	(2)		38000		8		38000	
1338-23-4	Methyl ethyl ketone peroxide								
60-34-4	Methyl hydrazine								
108-10-1	Methyl isobutyl ketone								

33	100000	28	33	100000	28	33	100000	28	
24	560	0.12	24	560	0.12	24	560	0.12	
110	4	0.66	110	4	0.66	110	4	0.66	
0.19	6	2	0.057	6	2	0.029	6	2	
0.053	21000	0.039	0.09	21000	0.039	0.039	21000	0.039	
2	720	2	2	720	2	2	720	2	
15	1200	14	15	1200	14	14	1200	14	
37	430000	15	37	430000	15	15	430000	15	
(1)	- 6900	(1)	(1)	- 6900	(1)	(1)	- 6900	(1)	
0.37	51	0.16	0.37	51	0.16	0.16	51	0.16	
0.37	51	0.16	0.37	51	0.16	0.16	51	0.16	
14	8600	11	6	8600	11	4	8600	4	
0.37	51	0.16	0.37	51	0.16	0.16	51	0.16	
(2)	88	(2)	(2)	88	(2)	(2)	88	(2)	
0.038	88	0.028	0.038	88	0.028	0.028	88	0.028	
0.11	520	0.084	0.11	520	0.084	0.084	520	0.084	
(2)	88	(2)	(2)	88	(2)	(2)	88	(2)	
0.038	88	0.028	0.038	88	0.028	0.028	88	0.028	
0.034	42	0.025	0.034	42	0.025	0.025	42	0.025	
(1)	3	0.16	(1)	3	0.16	0.16	3	0.16	
	51			51			51		
0.37	1	0.035	0.37	1	0.035	0.035	1	0.035	
	(2)	0.22		(2)	0.22	0.22	(2)	0.2	
0.24	3600	0.2	0.24	3600	0.2	0.2	3600	0.2	
(2)	51	0.16	(2)	51	0.16	0.16	51	0.16	
0.37	51	0.16	0.37	51	0.16	0.16	51	0.16	
(2)	(2)		(2)	(2)			(2)		
	0.36			0.36			0.36		
0.37	31	0.27	0.37	31	0.27	0.27	31	0.27	
	560	(2)		560	(2)	(2)	560	(2)	
24	560	0.12	24	560	0.12	0.12	560	0.12	
24	38000	8	24	38000	8	8	38000	8	
22	19	3	22	19	3	3	19	3	
160000	2300	5	160000	2300	5	5	2300	5	
0.054	140	0.023	0.054	140	0.023	0.024	140	0.024	
0.053	140	0.061	0.053	140	0.061	0.27	140	0.27	
(1)	22	0.002	(1)	22	0.002	0.002	22	0.002	
0.0022	6900	15	0.0022	6900	15	15	6900	15	
37	4	84	37	4	84	84	4	84	
(1)	390000	(1)	(1)	390000	(1)	(1)	390000	(1)	
110	(1)	0.16	110	(1)	0.16	0.16	(1)	0.16	
0.37	51	0.78	0.37	51	0.78	0.78	51	0.78	
1	1700		1	1700			1700		

0.37	100000	33	0.37	100000	33	0.37	100000	33	
	560	24		560	24		560	24	
0.24	4	110	0.24	4	110	0.24	4	110	
(2)	6	0.057	(2)	6	0.057	(2)	6	0.19	
0.37	21000	0.09	0.37	21000	0.09	0.37	21000	0.053	
0.37	720	2	0.37	720	2	0.37	720	2	
14	1200	15	6	1200	15	14	1200	15	
0.37	430000	37	0.37	430000	37	0.37	430000	37	
	- 6900	(1)		- 6900	(1)		- 6900	(1)	
0.038	51	0.37	0.038	51	0.37	0.37	51	0.37	
0.11	51	0.37	0.11	51	0.37	14	51	0.37	
	8600	14		8600	14	0.37	8600	14	
0.038	51	0.37	0.038	51	0.37		51	0.37	
0.11	88	0.038	0.11	88	0.038	0.038	88	0.038	
	88	0.11		88	0.11	0.11	88	0.11	
0.038	88	0.038	0.038	88	0.038		88	0.038	
0.034	520	0.034	0.034	520	0.034	0.038	520	0.034	
(1)	88	(1)	(1)	88	(1)	0.11	88	(1)	
	42			42			42		
0.37	42	0.37	0.37	42	0.37		42	0.37	
	3			3			3		
	51			51			51		
0.24	1	0.035	0.24	1	0.035	0.037	1	0.035	
(2)	(2)	0.22	(2)	(2)	0.22	(2)	(2)	0.22	
0.37	3600	0.2	0.37	3600	0.2	0.24	3600	0.2	
(2)	51	0.16	(2)	51	0.16	(2)	51	0.16	
0.37	51	0.16	0.37	51	0.16	0.37	51	0.16	
(2)	(2)		(2)	(2)		(2)	(2)		
	0.36			0.36			0.36		
0.37	31	0.27	0.37	31	0.27	0.37	31	0.27	
	560	(2)		560	(2)		560	(2)	
24	560	0.12	24	560	0.12	24	560	0.12	
24	38000	8	24	38000	8	24	38000	8	
22	19	3	22	19	3	24	19	3	
160000	2300	5	160000	2300	5	22	2300	5	
0.054	140	0.023	0.064	140	0.023	160000	140	0.024	
0.053	140	0.061	0.064	140	0.061	0.054	140	0.27	
(1)	22	0.002	(1)	22	0.002	0.053	22	0.002	
0.0022	6900	15	0.0022	6900	15	(1)	6900	15	
37	4	84	37	4	84	0.0022	4	84	
(1)	390000	(1)	(1)	390000	(1)	37	390000	(1)	
110	(1)	0.16	110	(1)	0.16	(1)	(1)	0.16	
0.37	51	0.78	0.37	51	0.78	0.37	51	0.78	
1	1700		1	1700		1	1700		

0.37	100000	33	0.37	100000	33	0.37	100000	33	
	560	24		560	24		560	24	
0.24	4	110	0.24	4	110	0.24	4	110	
(2)	6	0.057	(2)	6	0.057	(2)	6	0.19	
0.37	21000	0.09	0.37	21000	0.09	0.37	21000	0.053	
0.37	720	2	0.37	720	2	0.37	720	2	
14	1200	15	6	1200	15	14	1200	15	
0.37	430000	37	0.37	430000	37	0.37	430000	37	
	- 6900	(1)		- 6900	(1)		- 6900	(1)	
0.038	51	0.37	0.038	51	0.37	0.37	51	0.37	
0.11	51	0.37	0.11	51	0.37	14	51	0.37	
	8600	14		8600	14	0.37	8600	14	
0.038	51	0.37	0.038	51	0.37		51	0.37	
0.11	88	0.038	0.11	88	0.038	0.038	88	0.038	
	88	0.11		88	0.11	0.11	88	0.11	
0.038	88	0.038	0.038	88	0.038		88	0.038	
0.034	520	0.034	0.034	520	0.034	0.038	520	0.034	
(1)	88	(1)	(1)	88	(1)	0.11	88	(1)	
	42			42			42		
0.37	42	0.37	0.37	42	0.37		42	0.37	
	3			3			3		
	51			51			51		
0.24	1	0.035	0.24	1	0.035	0.037	1	0.035	
(2)	(2)	0.22	(2)	(2)	0.22	(2)	(2)	0.22	
0.37	3600	0.2	0.37	3600	0.2	0.24	3600	0.2	
(2)	51	0.16	(2)	51	0.16	(2)	51	0.16	
0.37	51	0.16	0.37	51	0.16	0.37	51	0.16	
(2)	(2)		(2)	(2)		(2)	(2)		
	0.36			0.36			0.36		
0.37	31	0.27	0.37	31	0.27	0.37	31	0.27	
	560	(2)		560	(2)		560	(2)	
24	560	0.12	24	560	0.12	24	560	0.12	
24	38000	8	24	38000	8	24	38000	8	
22	19	3	22	19	3	24	19	3	
160000	2300	5	160000	2300	5	22	2300	5	
0.054	140	0.023	0.064	140	0.023	160000	140	0.024	
0.053	140	0.061	0.064	140	0.061	0.054	140	0.27	
(1)	22	0.002	(1)	22	0.002	0.053	22	0.002	
0.0022	6900	15	0.0022	6900	15	(1)	6900	15	
37	4	84	37	4	84	0.0022	4	84	
(1)	390000	(1)	(1)	390000	(1)	37	390000	(1)	
110	(1)	0.16	110	(1)	0.16	(1)	(1)	0.16	
0.37	51	0.78	0.37	51	0.78	0.37	51	0.78	
1	1700		1	1700		1	1700		

60-34-4	Methyl hydrazine
108-10-1	Methyl isobutyl ketone
80-62-6	Methyl methacrylate
66-27-3	Methyl methanesulfonate
91-57-6	Methyl naphthalene, 2-
298-00-0	Methyl parathion
75-55-8	Methylaziridine, 2-
56-49-5	Methylcholanthrene, 3-
74-95-3	Methylene bromide
75-09-2	Methylene chloride
101-14-4	Methylenebis, 4,4'- (2-chloroaniline)
70-25-7	Methyl-nitro-nitrosoguanidine (MNNG)
56-04-2	Methylthiouracil
50-07-7	Mitomycin C
7439-98-7	Molybdenum
91-20-3	Naphthalene
130-15-4	Naphthoquinone, 1,4-
86-88-4	Naphthyl-2-thiourea, 1-
134-32-7	Naphthylamine, 1-
91-59-8	Naphthylamine, 2-
7440-02-0	Nickel and salts
54-11-5	Nicotine and salts
99-08-2	Nitroaniline, 2-
100-01-6	Nitroaniline, 4-
98-95-3	Nitrobenzene
55-86-7	Nitrogen mustard
51-75-2	Nitrogen mustard hydrochloride salt
126-85-2	Nitrogen mustard N-Oxide
302-70-5	Nitrogen mustard N-Oxide, HCl salt
55-63-0	Nitroglycerine
99-55-8	Nitro-o-toluidine, 5-
88-75-5	Nitrophenol, 2-
100-02-7	Nitrophenol, 4-
79-46-9	Nitropropane, 2-
56-57-5	Nitroquinoline-1-oxide, 4-
55-18-5	Nitrosodiethylamine
62-75-9	Nitrosodimethylamine
924-16-3	Nitrosodi-n-butylamine
10595-95-6	Nitrosomethylethylamine
1116-54-7	N-Nitrosodiethanolamine
621-64-7	N-Nitrosodi-n-propylamine
86-30-6	N-Nitrosodiphenylamine
4549O-40-0	N-Nitrosomethyl vinyl amine
59-89-2	N-Nitrosomorpholine
759-73-9	N-Nitroso-N-ethylurea
684-93-5	N-Nitroso-N-methylurea
100-75-4	N-Nitrosopiperidine
930-55-2	N-Nitrosopyrrolidine
13256-22-9	N-Nitrososarcosine
103-85-5	N-Phenylthiourea
1615-80-1	N,N-Diethylhydrazine
152-16-9	Octamethylpyrophosphoramide
20816-12-0	Osmium tetroxide
297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
126-68-1	O,O,O-Triethyl phosphorothioate
123-63-7	Paraldehyde
56-38-2	Parathion
608-93-5	Pentachlorobenzene
76-01-7	Pentachloroethane
82-68-8	Pentachloro- nitrobenzene (PCNB)
87-86-5	Pentachlorophenol
62-44-2	Phenacetin
85-01-8	Phenanthrene
108-95-2	Phenol
62-38-4	Phenyl mercuric acetate
25265-76-3	Phenylenediamines (N.O.S.)
106-45-2	Phenylenediamine, m-

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TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
106-50-3	Phenylenediamine, p-	0.16	51	0.37	0.16	51	0.37
298-06-2	Phorate	0.11	510		0.11	510	
	Phosphorodithioic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298-06-6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288-58-2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953-29-9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85-44-9	Phthalic anhydride	(1)	9800	(1)	(1)	9800	(1)
109-06-8	Picoline, 2-	0.16	51	0.37	0.16	51	0.37
1336-36-3	Polychlorinated biphenyls	See Table B	0.25	0.009	See Table B	0.25	(1)
12305-58-5	Pronamide	21	230000	25	21	230000	25
1120-71-4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
107-10-8	Propylamine, n-	0.16	51	0.37	0.16	51	0.37
51-52-5	Propylthiouracil	0.12	590	24	0.12	590	24
107-19-7	Propyn-1ol, 2-	39	130000	53	39	130000	53
129-00-0	Pyrene	54	16000	2	54	16000	2
110-86-1	Pyridine	0.16	930	0.21	0.16	930	0.21
50-55-5	Reserpine	0.16	51	0.37	0.16	51	0.37
108-46-3	Resorcinol	(1)	(1)	4	(1)	(1)	(1)
81-07-2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	
94-59-7	Safrole	0.0035	28	0.0044	0.0035	28	0.0044
7782-49-2	Selenium	0.23	280	0.12	0.93	280	1
7440-22-4	Silver	200	9		200	9	
18883-66-4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57-24-9	Strychnine	0.045	(1)	0.059	0.045	(1)	0.059
10-42-5	Styrene	0.91		1	64		70
18496-25-8	Sulfide						
1746-01-6	TCDD, 2,3,7,8-	(1)	(1)	(1)	(1)	(1)	(1)
95-94-3	Tetrachlorobenzene, 1,2,4,5-	0.23	1600	0.032	0.23	1600	0.032
630-20-6	Tetrachloroethane 1,1,1,2-	0.024	370	0.042	0.024	370	0.042
79-34-5	Tetrachloroethane, 1,1,2,2-	0.0037	70	0.0077	0.0037	70	0.0077
127-18-4	Tetrachloroethylene	0.026	100000	0.032	2	100000	3
58-90-2	Tetrachlorophenol, 2,3,4,6-	2	35000	2	2	35000	2
107-49-3	Tetraethyl pyrophosphate	(1)	6900	(1)	(1)	6900	(1)
107-49-3	Tetraethyl pyrophosphate	(1)	6900	(1)	(1)	6900	(1)
3689-24-5	Tetraethyldithiopyrophosphate	0.23	1200		0.23	1200	
7440-28-0	Thallium (I)	0.035	33	0.048	0.05	33	0.071
62-55-5	Thioacetamide	(1)	(1)	(1)	(1)	(1)	(1)
39196-18-4	Thiofanox	0.12	590	24	0.12	590	24
108-98-5	Thiophenol	0.12	590	24	0.12	590	24
79-19-6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62-566	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137-26-8	Thiram	(1)	(1)	(1)	(1)	(1)	(1)
7440-31-5	Tin	(1)	(1)	(1)	(1)	(1)	(1)
108-88-3	Toluene	6	560000	7	30	560000	51
584-84-9	Toluene diisocyanate	(1)	(1)	(1)			
95-80-7	Toluenediamine, 2,4—	(1)	(1)	(1)	(1)	(1)	(1)
823-40-5	Toluenediamine, 2,6-	0.16	51	0.37	0.16	51	0.37
496-72-0	Toluenediamine, 3,4-	0.16	51	0.37	0.16	51	0.37
636-21-5	Toulidene,3,4-	0.16	51	0.37	0.16	51	0.37
95-53-4	Toluidine, o-	(1)	(1)	(1)	(1)	(1)	(1)
106-49-0	Toluidine, p-	(1)	(1)	(1)	(1)	(1)	(1)
8001-35-2	Toxaphene	(1)	(1)	160	(1)	(1)	3
76-13-1	Trichloro-1,2,2-trifluoroethane, 1,1,2	0.77		0.84	2200		12000
120-82-1	Trichlorobenzene, 1,2,4-	0.69	62000	3	0.69	62000	3
71-55-6	Trichloroethane, 1,1,1-	74	630000	0.054	74	630000	0.054
79-00-5	Trichloroethane, 1,1,2-	0.012	190	0.039	0.007	190	0.0077

79-01-6	Trichloroethylene	0.024	3200	0.031	0.038	3200	0.049
75-69-4	Trichlorofluoromethane	48	170000	61	48	170000	61
75-70-7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	22
95-95-4	Trichlorophenol, 2,4,5-	18	55000	22	18	55000	22
88-06-2	Trichlorophinol, 2,4,6-	0.054	160	0.068	0.054	160	0.068
93-76-5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	150	2	2	150	2
93-72-1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	0.21	520	0.26	1	520	2
96-18-4	Trichloropropane, 1,2,3-	1	14000	1	1	14000	1
99-35-4	Trintrobenzene, sym-	0.0078	23	0.011	0.0078	23	0.011
126-72-7	Tris (2,3-dibromopropyl) phosphate	(1)	0.76	(1)	(1)	0.76	(1)
52-24-4	Tris (1-azridinyl) phosphine sulfide	(1)	(1)	(1)	(1)	(1)	(1)
72-57-1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66-75-1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
7440-62-2	Vanadium [5]	10	2700	13	10	2700	13
108-05-4	Vinyl acetate	15	6900	37	15	6900	37
75-01-4	Vinyl chloride	0.002	3	0.011	(1)	3	0.00021
81-81-2	Warfarin	(1)	6	4	(1)	6	3
1330-20-7	Xylenes (total)	22	710000	100	22	710000	700
7440-66-6	Zinc	99	51000	130	99	51000	130

[1] See table B.

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TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
208–96–8	Acenaphthylene	0.02		0.02	0.02		
75–36–5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591–08–2	Acetyl-2-thiourea,	1			1		
107–02–8	Acrolein	0.013			0.013		
79–06–1	Acrylamide	0.01	0.1	0.01	0.01	0.1	0.01
107–13–1	Acrylonitrile	0.008		0.008		0.008	
1402–68–2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116–06–3	Aldicarb	0.05			0.05		
309–00–2	Aldrin	0.000034		0.000034	0.000034		0.000034
107–18–6	Allyl alcohol	(1)	(1)	(1)	(1)	(1)	(1)
2763–96–4	Aminomethyl-3-isoxazolol, 5-	(1)	(1)	(1)	(1)	(1)	(1)
504–24–5	Aminopyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61–82–5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
120–12–7	Anthracene	0.007		0.007	0.007		0.007
7440–38–2	Arsenic				0.0005		
2465–27–2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115–02–6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
92–87–5	Benzidine	0.0025	0.042	0.0025	0.0025	0.042	0.0025
98–07–7	Benzotrichloride	(1)	(1)	(1)	(1)	(1)	(1)
50–32–8	Benzo(a)pyrene						0.000023
205–82–3	Benzo(j)fluoranthene						0.0002
207–08–9	Benzo(k)fluoranthene						0.0002
191–24–2	Benzo(g,h,i)perylene						0.0008
56–55–3	Benz(a)anthracene			0.000013			0.000013
225–51–4	Benz(c)acridine						0.0005
542–88–1	Bis(chloromethyl) ether.	(1)	(1)	(1)	(1)	(1)	(1)
357–57–3	Brucine	20	(1)	20	20	(1)	20
86–74–8	Carbazole	(1)	(1)	(1)	(1)	(1)	(1)
353–50–4	Carbon oxyfluoride	(1)	(1)	(1)	(1)	(1)	(1)
75–87–6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305–03–3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57–74–9	Chlordane	0.00004			0.00004		
494–03–1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
107–20–0	Chloroacetaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
110–75–8	Chloroethyl vinyle ether, 2-.	(1)	(1)	(1)	(1)	(1)	(1)
107–30–2	Chloromethyl methyl ether.	(1)	(1)	(1)	(1)	(1)	(1)
5344–82–1	Chlorophenyl thiourea, 1-o.	(1)	(1)	(1)	(1)	(1)	(1)
542–76–7	Chloropropionitrile, 3-.			0.1	0.1		0.1
6358–53–8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440–48–4	Cobalt			0.5			
57–12–5	Cyanide	0.2			0.2		
14901–08–7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108–94–1	Cyclohexanone	10			10	(1)	(1)
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-.	0.1	(1)	0.1	0.1	(1)	0.1
50–18–0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830–81–3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
53–19–0	DDD (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
72–55–9	DDE	0.000058			0.000058		
3424–82–6	DDE (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
50–29–3	DDT	0.000081			0.000081		
789–02–6	DDT (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
192–65–4	Dibenzo-[a,e]pyrene.						0.001
189–64–0	Dibenzo- [a,h]pyrene						0.0002
189–64–9	Dibenzo- [a,i]pyrene						0.0002
194–59–2	Dibenzo-[c,g]carbazole, 7H-.	(0.01		0.01	0.01		0.01
226–36–8	Dibenz- (a,h)acridine						0.0002
53–70–3	Dibenz- (a,h)anthracene.	0.00003	0.064	0.00003	0.00003	0.064	0.00003
224–42–0	Dibenz[a,j] acridine						0.001
311–45–5	Diethyl-p-nitrophenyl phosphate.	(1)	(1)	(1)	(1)	(1)	(1)
56–53–1	Diethylstibestrol	0.0078	1	0.0078	0.0078	1	0.0078
77–78–1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
119–93–7	Dimethylbenzidine, 3,3'-.	0.0033	0.7	0.0033	0.0033	0.7	0.0033
57–97–6	Dimethyl- benz(a)-anthracene, 7,12-.	0.00037	0.039	0.00037	0.00037	0.039	0.00037

TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
79–44–7	Dimethylcarbamoyl chloride.	(1)	(1)	(1)	(1)	(1)	(1)
119–90–4	Dimethy- oxybenzidine, 3,3'-.		7			7	
100–25–4	Dinitrobenzene, 1,4-	0.04		0.04	0.04		0.04
534–52–1	Dinitro-o-cresol, 4,6-	0.05		0.05	0.05		0.05
541–53–7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
145–73–3	Endothall	0.1	(1)		0.1	(1)	
51–43–4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
62–50–0	Ethyl methanesulfonate.		0.018			0.018	
96–45–7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151–56–4	Ethylenelmine (aziridine).	(1)	(1)	(1)	(1)	(1)	(1)
52–85–7	Famphur	0.02			0.02		
640–19–7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62–74–8	Fluoracetic acid, sodium salt.	(1)	(1)	(1)	(1)	(1)	(1)
16984–48–8	Fluoride						
50–00–0	Formaldehyde	0.023			0.023		
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
76–44–8	Heptachlor	0.00004			0.00004		
118–74–1	Hexachlorobenzene	0.0016			0.0016		0.0016
70–30–4	Hexachlorophene	0.21	2	0.21	0.21	2	0.21
757–58–4	Hexaethyl tetraphosphate.	(1)	(1)	(1)	(1)	(1)	(1)
302–01–2	Hydrazine	(1)		(1)	(1)		(1)
193–39–5	indeno(1,2,3-cde)pyrene.			0.000043			0.000043
465–73–6	Isodrin	0.02			0.02		
143–50–0	Kepone	0.016	0.097	0.016	0.016	0.097	0.016
303–43–4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
108–31–6	Maleic anhydride	(1)		(1)	(1)		(1)
148–82–3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
74–93–1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
16752–77–5	Methomyl	0.05			0.05		
1338–23–4	Methyl ethyl ketone peroxide.	(1)	(1)	(1)	(1)	(1)	(1)
60–34–4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
91–57–6	Methyl naphthalene, 2-.	0.01		0.01	0.01		0.01
75–55–8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56–49–5	Methylcholanthrene, 3-.	0.01	0.046	0.01	0.01	0.046	0.01
101–14–4	Methylenebis, 4,4'-(2-chloroaniline).	(1)	(1)	(1)	(1)	(1)	(1)
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG).	(1)	(1)	(1)	(1)	(1)	(1)
56–04–2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50–07–7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
86–88–4	Naphthyl-2-thiourea, 1-.	(1)	(1)	(1)	(1)	(1)	(1)
88–74–4	Nitroaniline, 2-	0.05		0.05	0.05		0.05
99–09–2	Nitroaniline, 3-	0.05		0.05	0.05		0.05
55–86–7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51–75–2	Nitrogen mustard hydrochloride salt.	(1)	(1)	(1)	(1)	(1)	(1)
126–85–2	Nitrogen mustard N–Oxide.	(1)	(1)	(1)	(1)	(1)	(1)
302–70–5	Nitrogen mustard N-Oxide, HCl salt.	(1)	(1)	(1)	(1)	(1)	(1)
55–63–0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
110–02–7	Nitrophenol, 4-	0.05		0.05	0.05		0.05
79–46–9	Nitropropane, 2-	0.0056			0.0056		
55–18–5	Nitrosodiethylamine	0.002	(1)	0.002	0.002	1	0.002
62–75–9	Nitrosodimethylamine	0.0006	0.074	0.0006	0.0006	0.074	0.0006
924–16–3	Nitrosodi-n-butylamine.	0.06		0.06	0.06		0.06
10595–95–6	Nitrosomethylethylamine.	0.028		0.028	0.028		0.028
1116–54–7	N-Nitrosodiethanolamine.	0.01	0.7	0.01	0.01	0.7	0.01
621–64–7	N-Nitrosodi-n-propylamine.	0.026		0.026	0.026		0.026

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TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
4549-40-0	N-Nitrosomethy vinyl amine.	(1)	(1)	(1)	(1)	(1) D(1)	
759-73-9	N-Nitroso-N-ethylurea.	(1)	(1)	(1)	(1)	(1)	(1)
615-53-2	N-Nitroso-N-methylurethane.	(1)	(1)	(1)	(1)	(1)	(1)
16543-55-8	N-Nitrosonornicotine	(1)	(1)	(1)	(1)	(1)	(1)
100-75-4	N-Nitrosopiperidine	0.0014	0.033	0.0014	0.0014	0.033	0.0014
930-55-2	N-Nitrosopyrrolidine	0.0047		0.0047	0.0047		0.0047
13256-22-9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103-85-5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615-80-1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
20816-12-0	Osmium tetroxide	3	200	3	3	200	3
82-68-8	Pentachloronitrobenzene (PCNB).			0.02			0.02
85-01-8	Phenanthrene	0.006		0.006	0. 006		0.006
62-38-4	Phenyl mercuric acetate.	(1)	(1)	(1)	(1)	(1)	(1)
	Phosphorodithioic acid, dimethylethylester.	(1)	(1)	(1)	(1)	(1)	(1)
298-06-6	Phosphorodithioic acid, o-o-diethyl ester.	(1)	(1)	(1)	(1)	(1)	(1)
3288-58-2	Phosphorodithioic acid, o-o-diethyl-s-methyl.	(1)	(1)	(1)	(1)	(1)	(1)
2953-29-9	Pyhosphorodithioic acid, trimethyl ester.	(1)	(1)	(1)	(1)	(1)	(1)
85-44-9	Phthalic anhydride	(1)		(1)	(1)		(1)
1336-36-3	Polychlorinated biphenyls.	0.0005			0.0005		0.0005
1120-71-4	Propene sultone, 1,3-.	(1)	(1)	(1)	(1)	(1)	(1)
108-46-3	Resorcinol	0.1	7		0.1	7	
81-07-2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)
18883-66-4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57-24-9	Strychnine		3			3	
1746-01-6	TCDD, 2, 3, 7,8-	1.000E-08			1.000E-08		1.000E-08
107-49-3	Tetraethyl pyrophosphate.	(1)		(1)	(1)		(1)
62-55-5	Thioacetamide	1	(1)	1	1	(1)	1
79-19-6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62-56-6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137-26-8	Thiram	0.05			0.05		
7440-31-5	Tin	8	500	8	8	500	8
584-84-9	Toluene diisocyanate	(1)		(1)	(1)		(1)
95-80-7	Toluenediamine, 2,4-	0.013	1	0.013	0.013	1	0.013
95-53-4	Toluidine, 0-	0.012		0.012	0.012		0.012
106-49-0	Toluidine, p-	0.017		0.017	0.017		0.017
8001-35-2	Toxaphene	0.0013	0.03		0.0013	0.03	
75-70-7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	(1)
126-72-7	Tris (2, 3-dibromopropyl) phosphate.	0.025		0.025	0.025		0.025
52-24-4	Tris (1-azridinyl) phosphine sulfide.	(1)	(1)	(1)	(1)	(1)	(1)
72-57-1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66-75-1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
75-01-4	Vinyl chloride				0.00017		
81-81-2	Warfarin	0.05			0.05		

[1] No testing required; additional LDR requirements apply.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES

9. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

10. Section 266.20 is amended by revising the first sentence of paragraph (b) to read as follows:

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if, for each hazardous constituent in each recyclable material (i.e., hazardous waste) that they contain, they meet the applicable exit levels in appendix X to Part 261 of this chapter. * * *

PART 268—LAND DISPOSAL RESTRICTIONS

11. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) 6921, and 6924.

12. Section 268.2 is amended by adding paragraph (j) to read as follows:

* * * * *

(j) *Land treatment* means waste is applied onto or incorporated into the soil surface.

13. Section 268.40 is amended by revising the first sentence of paragraph (a), revising paragraph (e), and adding paragraph (g) to read as follows:

§ 268.41 Applicability of treatment standards

(a) Except as provided in paragraph (g) of this section, a waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. * * *

* * * * *

(e) Except as provided in paragraph (g) of this section, for all characteristic wastes (D001, D002, and D012–D043) that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," all underlying constituents (as defined in § 268.20(i)) must meet Universal Treatment Standards, found in § 268.48, Table UTS, prior to land disposal.

* * * * *

(g) Wastes subject to either the treatment standards described in paragraph (a)(1) or (a)(2) of this section or the Universal Treatment Standards described in paragraph (e) of this section may be land disposed if they meet either of the alternative, risk-based standards found in subpart F and G of this part and representing levels at which threats to human health or the environment are minimized.

14. Part 268 is amended by adding Subpart F consisting of § 268.60 to read as follows:

Subpart F—Minimize Threat Levels Without Management Requirements

§ 268.60 Minimize threat levels.

(a) Table "Minimize Threat Levels" identifies risk-based standards representing levels at which threats to human health and the environment are minimized. These levels may be used as alternatives to waste-specific treatment standards in the table to § 268.40 and to the Universal Treatment Standards in the table to § 268.48. Nonwastewaters must meet both the total and waste extract levels contained in the table of "Minimize Threat Levels".

(b) Wastes identified in the Table to § 268.40 may be land disposed if they meet either the requirements in that Table or the standards in the Minimize Threat Table for all constituents. Characteristic wastes that are subject to the requirement for meeting Universal Treatment Standards under § 268.40(e) must also meet the requirements of Table UTS or the Minimize Threat Table for all underlying hazardous constituents as defined in § 268.2(i).

(c) Wastes containing either regulated hazardous constituents under the Table to § 268.40 or UTS constituents which do not have treatment standards listed in the Minimize Threat Table must continue to comply with treatment standards for these constituents in the tables to § 268.40 or § 268.48 prior to land disposal.

268.60 TABLE 1.—MINIMIZE THREAT LEVELS

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
83-32-9	Acenaphthene	31	9500	5
67-64-1	Acetone	16	17000	6
75-05-8	Acetonitrile		920	0.3
98-86-2	Acetophenone	17	1200	6
107-05-1	Allyl chloride		260	
7440-39-3	Barium	33	2100	16
71-43-2	Benzene		110	0.0054
117-81-7	Bis(2-ethylhexyl)phthalate		230	0.0011
75-27-4	Bromodichloromethane		19	0.0025
75-25-2	Bromoform (Tribromomethane)		170	0.018
71-36-3	Butanol	16	18000	5
88-85-7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	770	0.064
85-68-7	Butylbenzylphthalate	240	87	54
75-15-0	Carbon disulfide		330	6
56-23-5	Carbon tetrachloride		9	0.0015
126-99-8	Chloro-1,3-butadiene, 2- (Chloroprene)	0.52	290	
106-47-8	Chloroaniline, p-		140	0.16
108-90-7	Chlorobenzene	2	2500	1
124-48-1	Chlorodibromomethane		28	0.0018
67-66-3	Chloroform		7	0.017
95-57-8	Chlorophenol, 2-	0.9	100	0.32
218-01-9	Chrysene	0.1	35	0.0012
108-39-4	Cresol, m-	8	22000	3
95-48-7	Cresol, o-	8	27000	3
106-44-5	Cresol, p-	0.84	2600	0.32
84-74-2	Di-n-butyl phthalate	230	90000	25
117-84-0	Di-n-octyl phthalate		4500	0.1
95-50-1	Dichlorobenzene, 1,2-	15	50000	6
106-46-7	Dichlorobenzene, 1,4-		54	0.011
75-71-8	Dichlorodifluoromethane	15	6100	12
75-34-3	Dichloroethane, 1,1-		24	0.00006
156-60-5	Dichloroethylene, trans-1,2-	3	14000	1
120-83-2	Dichlorophenol, 2,4-	0.62	770	0.18
94-75-7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	2	3100	0.6
84-66-2	Diethyl phthalate	190	4500	54
131-11-3	Dimethyl phthalate	78		

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268.60 TABLE 1.—MINIMIZE THREAT LEVELS—Continued

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
105–67–9	Dimethylphenol, 2,4-	4	11000	1
51–28–5	Dinitrophenol, 2,4-	0.27	.....	.....
121–14–2	Dinitrotoluene, 2,4-	.....	210	0.11
606–20–2	Dinitrotoluene, 2,6-	.....	86	0.064
122–39–4	Diphenylamine	15	12000	3
298–04–4	Disulfoton	.....	43	13
72–20–8	Endrin	0.073	0.26	32
141–78–6	Ethyl acetate	390	270000	110
60–29–7	Ethyl ether	27	41000	11
97–63–2	Ethyl methacrylate	24	3400	7
100–41–4	Ethylbenzene	39	550000	8
206–44–0	Fluoranthene	28	6000	2
86–73–7	Fluorene	22	90000	3
76–44–8	Heptachlor	.....	8	.....
87–68–3	Hexachloro-1,3-butadiene	.....	36	0.0069
319–85–7	Hexachlorocyclohexane, beta- (beta-BHC)	0.00044	0.12	0.00021
58–89–9	Hexachlorocyclohexane, gamma- (Lindane)	.....	0.1	0.69
77–47–4	Hexachlorocyclopentadiene	.....	1500	.....
67–72–1	Hexachloroethane	.....	81	0.033
78–83–1	Isobutyl alcohol	39	55000	15
7439–92–1	Lead	30	570	12
7439–97–6	Mercury	0.3	0.6	0.14
67–56–1	Methanol	78	140000	30
72–43–5	Methoxychlor	7	19	.....
74–83–9	Methyl bromide (Bromomethane)	0.37	500	0.92
74–87–3	Methyl chloride (Chloromethane)	.....	91	.....
78–93–3	Methyl ethyl ketone	78	110000	30
108–10–1	Methyl isobutyl ketone	8	17000	3
80–62–6	Methyl methacrylate	28	40000	8
298–00–0	Methyl parathion	0.66	.....	.....
74–95–3	Methylene bromide	2	8400	0.19
75–09–2	Methylene chloride	.....	310	0.015
91–20–3	Naphthalene	14	120000	3
7440–02–0	Nickel	11	110	5
98–95–3	Nitrobenzene	0.084	45	0.032
56–38–2	Parathion	3	.....	.....
608–93–5	Pentachlorobenzene	5	.....	.....
82–68–8	Pentachloronitrobenzene (PCNB)	0.081	.....	.....
108–95–2	Phenol	84	160000	32
298–02–2	Phorate	0.11	160	.....
23950–58–5	Pronamide	21	440	6
129–00–0	Pyrene	54	16000	2
110–86–1	Pyridine	0.16	810	0.06
7782–49–2	Selenium	0.93	.....	.....
7440–22–4	Silver	200	.....	.....
95–94–3	Tetrachlorobenzene, 1,2,4,5-	0;23	170	0.032
630–20–6	Tetrachloroethane, 1,1,1,2-	.....	130	0.0078
79–34–5	Tetrachloroethane, 1,1,2,2-	.....	29	0.0077
127–18–4	Tetrachloroethylene	2	13000	0.68
58–90–2	Tetrachlorophenol, 2,3,4,6-	2	6200	0.58
7440–28–0	Thallium (I)	.....	5	0.019
108–88–3	Toluene	30	180000	13
76–13–1	Trichloro-1,2,2,-trifluoroethane, 1,1,2-	2200	.....	.....
120–82–1	Trichlorobenzene, 1,2,4-	0.69	3500	1
71–55–6	Trichloroethane, 1,1,1-	74	48000	0.054
79–00–5	Trichloroethane, 1,1,2-	.....	11	0.0018
79–01–6	Trichloroethylene	.....	570	0.013
75–69–4	Trichlorofluoromethane	48	26000	16
95–95–4	Trichlorophenol, 2,4,5-	18	12000	4
88–06–2	Trichlorophenol, 2,4,6-	0.054	120	0.015
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	63	0.64
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	1	.....	.....
96–18–4	Trichloropropane, 1,2,3-	1	870	0.34
7440–62–2	Vanadium	10	250	4
1330–20–7	Xylenes (total)	22	170000	150
7440–66–6	Zinc	99	320	36

15. Part 268 is amended by adding subpart G consisting of §§ 268.70 and 268.71 to read as follows:

Subpart G—Conditioned Minimize Threat Levels with Management Requirements

§ 268.70 Conditioned Minimize Threat Levels.

(a) Table "Conditioned Minimize Threat Levels" identifies risk-based standards representing levels at which threats to human health and the environment are minimized for wastes which are placed in landfills or monofills (but not land application units). These levels may be used as alternatives to waste-specific treatment standards in the table to § 268.40 and to the Universal Treatment Standards in the table to § 268.48 for wastes which comply with the requirements of § 268.71. Nonwastewaters must meet both the total and waste extract levels contained in the table of "Minimize Threat Levels".

(b) Wastes identified in the Table to § 268.40 may be land disposed if they meet, for all hazardous constituents identified in the table to § 268.40, either the requirements in that table, the standards in the Minimize Threat Table in subpart F, or, if they meet the requirements in § 268.71, the standards in the Conditioned Minimize Threat Table. Characteristic wastes that are subject to the requirement for meeting Universal Treatment Standards under § 268.40(e) must also meet the requirements of Table UTS, the Minimize Threat Table, or, if they meet the requirements of § 268.71, the Conditioned Minimize Threat Table, for all underlying hazardous constituents as defined in § 268.2(i).

(c) Wastes containing either regulated hazardous constituents under the Table to § 268.40 or UTS constituents which do not have treatment standards listed in the Minimize Threat Table must continue to comply with treatment standards for these constituents in the tables to § 268.40, § 268.48, or the Minimize Threat Table to Subpart F prior to land disposal.

268.70 TABLE 1.—CONDITIONAL MINIMIZE THREAT LEVELS

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
83–32–9	Acenaphthene	31	63000	13
67–64–1	Acetone	16	39000	21
75–05–8	Acetonitrile	.....	2200	1
98–86–2	Acetophenone	17	75000	22
107–05–1	Allyl chloride	.....	260	.....
62–53–3	Aniline	.....	170	0.072
7440–39–3	Barium	33	34000	45
71–43–2	Benzene	.....	250	0.023
39638–32–9	Bis (2-chloroisopropyl) ether	.....	97	0.0088
117–81–7	Bis(2-ethylhexyl)phthalate	.....	740	0.0011
75–27–4	Bromodichloromethane	.....	240	0.011
75–25–2	Bromoform (Tribromomethane)	.....	1600	0.081
71–36–3	Butanol	16	41000	21
88–85–7	Buthl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	6000	0.24
85–68–7	Butylbenzylphthalate	240	87	57
7440–43–9	Cadmium	.....	110	0.32
75–15–0	Carbon disulfide	.....	3800	24
56–23–5	Carbon tetrachloride	.....	130	0.0077
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.52	1700	.....
106–47–8	Chloroaniline, p-	.....	5800	0.56
108–90–7	Chlorobenzene	2	41000	6
124–48–1	Chlorodi- bromo- methane	.....	200	0.0079
67–66–3	Chloroform	.....	76	0.075
95–57–8	Chlorophenol, 2-	0.9	8500	1
7440–47–3	Chromium	.....	16	2
218–01–9	Chrysene	0.1	35	0.0012
108–39–4	Cresol, m-	8	30000	11
95–48–7	Cresol, o-	8	46000	11
106–44–5	Cresol, p-	0.84	2900	1
72–54–8	DDD	.....	0.26	6800
50–29–3	DDT	.....	0.11	0.0054
84–74–2	Di-n-butyl phthalate	230	90000	25
117–84–0	Di-n-octyl phthalate	.....	21000	0.1
95–50–1	Dichlorobenzene, 1,2-	15	530000	32
106–46–7	Dichlorobenzene, 1,4-	.....	650	0.06
75–71–8	Dichloro- difluoro- methane	15	8400	45
75–34–3	Dichloroethane, 1,1-	.....	110	0.00021
107–06–2	Dichloroethane, 1,2-	.....	59	0.00021
156–60–5	Dichloro- ethylene, trans-1,2-	3	130000	4
120–83–2	Dichlorophenol, 2,4-	0.62	770	0.76
94–75–7	Dichlorophen- oxyacetic acid, 2,4- (2,4-D)	2	12000	2
78–87–5	Dichloropropane, 1,2-	.....	180	0.011
10061–01–5	Dichloropropene, cis-1,3-	.....	65	10000
10061–02–6	Dichloropro- pene, trans-1,3-	.....	62	10000
84–66–2	Diethyl phthalate	190	19000	220
131–11–3	Dimethyl phthalate	78	.....	.....
105–67–9	Dimethylphenol, 2,4-	4	24000	5
51–28–5	Dinitrophenol, 2,4-	0.27	450	0.37
121–14–2	Dinitrotoluene, 2,4-	.....	1400	0.39

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268.70 TABLE 1.—CONDITIONAL MINIMIZE THREAT LEVELS—Continued

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
606-20-2	Dinitrotoluene, 2,6-	----------	420	0.22
122-39-4	Diphenyla- mine	15	12000	15
298-04-4	Disulfoton	----------	58	120
72-20-8	Endrin	0.073	27	770
141-78-6	Ethyl acetate	390	600000	510
60-29-7	Ethyl ether	27	260000	37
97-63-2	Ethyl methacrylate	24	100000	27
100-41-4	Ethylbenzene	39	----------	42
206-44-0	Fluoranthene	28	21000	2
86-73-7	Fluorene	22	90000	7
76-44-8	Heptachlor	----------	8	----------
1024-57-3	Heptachlor epoxide	----------	0.56	10
87-68-3	Hexachloro-1,3-butadiene	----------	290	0.0069
319-84-6	Hexachloro- cyclohex- ane, alpha- (alpha-BHC)	----------	0.18	2
319-85-7	Hexachloro- cyclohex- ane, beta- (beta-BHC)	0.00044	0.64	0.0009
58-89-9	Hexachloro- cyclohex- ane, gamma- (Lindane)	----------	0.75	9
77-47-4	Hexachloro- cyclopent- adiene	----------	1500	----------
67-72-1	Hexachloroethane	----------	890	0.11
78-83-1	Isobutyl alcohol	39	120000	53
7439-92-1	Lead	30	1600	41
7439-97-6	Mercury	0.3	39	0.4
67-56-1	Methanol	78	310000	110
72-43-5	Methoxychlor	7	280	----------
74-83-9	Methyl bromide (Bromo- methane)	0.37	850	4
74-87-3	Methyl chloride (Chloro- methane)	----------	91	----------
78-93-3	Methyl ethyl ketone	78	250000	110
108-10-1	Methyl isobutyl ketone	8	38000	11
80-62-6	Methyl methacrylate	28	100000	33
298-00-0	Methyl parathion	0.66	6	110
74-95-3	Methylene bromide	2	21000	0.19
75-09-2	Methylene chloride	----------	720	0.053
86-30-6	N-Nitrosodi- phenylamine	----------	3600	0.24
91-20-3	Naphthalene	14	430000	15
7440-02-0	Nickel	11	8600	14
98-95-3	Nitrobenzene	0.084	520	0.11
152-16-9	Octamethyl- pyrophos- phoramide	----------	31	0.37
56-38-2	Parathion	3	19	160000
608-93-5	Pentachlorobenzene	5	----------	----------
82-68-8	Pentachloro- nitrobenzene (PCNB)	0.081	----------	----------
87-86-5	Pentachlorophenol	----------	22	0.0022
108-95-2	Phenol	84	390000	110
298-02-2	Phorate	0.11	510	----------
23959-58-5	Pronamide	21	230000	25
129-00-0	Pyrene	54	16000	2
110-86-1	Pyridine	0.16	930	0.21
94-59-7	Safrole	----------	28	0.0044
7782-49-2	Selenium	0.93	----------	----------
7440-22-4	Silver	200	----------	----------
95-94-3	Tetrachloro- benzene, 1,2,4,5-	0.23	1600	0.032
630-20-6	Tetrachloro- ethane, 1,1,1,2-	----------	370	0.042
79-34-5	Tetrachloro- ethane, 1,1,2,2,-	----------	70	0.0077
127-18-4	Tetrachloro- ethylene	2	100000	3
53-90-2	Tetrachloro- phenol, 2,3,4,6-	2	35000	2
7440-28-0	Thallium (I)	----------	33	0.071
108-88-3	Toluene	30	560000	51
76-13-1	Trichloro-1,2,2,-trifluoroethane, 1,1,2-	2200	----------	12000
120-82-1	Trichlorobenzene, 1,2,4-	0.69	62000	3
71-55-6	Trichloroeth- ane, 1,1,1-	----------	190	0.0077
79-01-6	Trichloroeth- ylene	----------	3200	0.049
75-69-4	Trichlorofluo- romethane	48	170000	61
95-95-4	Trichlorophenol, 2,4,5-	18	55000	22
88-06-2	Trichlorophenol, 2,4,6-	0.054	160	0.068
93-76-5	Trichlorophenoxyacetic acid, 2,4,5-(245-T)	2	150	2
93-72-1	Trichlorophen- oxypropionic acid, 2,4,5- (Silvex)	1	520	2
96-18-4	Trichloropro- pane, 1,2,3-	1	14000	1
7440-62-2	Vanadium	10	2700	13
1330-20-7	Xylenes (total)	22	710000	700
7440-66-6	Zinc	99	51000	130

§ 268.71 Associated Management Requirements.

Waste may meet the standards set out in the Conditional Minimize Threat Table as an alternative to the treatment standards in the tables to Subpart D of this part or the Minimize Threat Table to subpart F of this part only if they are placed in a landfill or a monofill as defined in 40 CFR 260.10. Waste that is placed in land application units must comply with the minimize threat levels set forth in subpart F of this part or the treatment standards set forth in subpart D of this part.

[FR Doc. 95–29458 Filed 12–20–95; 8:45 am]
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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 52 and 44
Allowable Cost and Payment Clause and Contractors' Purchasing Systems Reviews; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 93–024]

RIN 9000–AG74

Federal Acquisition Regulation; Allowable Cost and Payment Clause

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to clarify payment provisions for large business prime contractors which are awarded cost-type contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments on: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 93–024.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 1992, entitled "Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts", recommended several FAR revisions which were viewed to have Government-wide benefit.

One area identified for clarification included the payment provisions in FAR clauses 52.216–7, Allowable Cost and payment, and 52.232–7, Payment Under Time-and-Materials and Labor-Hour Contracts. The SWAT Team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors. The proposed rule amends these payment clauses to clarify that, on cost-type contracts, payments to subcontractors are not billable by large business prime contractors until the subcontractors have been paid by the prime contractor.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to large business entities who wish to be reimbursed under cost-type contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite (FAR case 93–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.216–7 is amended by revising the clause date and paragraph (b)(i)(iii) to read as follows:

52.216–7 Allowable cost and payment.

* * * * *

Allowable Cost and Payment (Date)

* * * * *

(b) * * *

(1) * * *

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards.

* * * * *

3. Section 52.232–7 is amended by revising the clause date and the second sentence of paragraph (b)(2) to read as follows:

52.232–7 Payments under time-and-materials and labor-hour contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

* * * * *

(b) * * *

(2) * * * Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. * * *

* * * * *

[FR Doc. 95–30996 Filed 12–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAR Case 94–605]

[RIN 9000–AG75]

Federal Acquisition Regulation; Contractors' Purchasing Systems Reviews

AGENCY: Department of Defense (DOD), General Services Administration (GSA),and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing a revision to the Federal Acquisition Regulation (FAR) concerning requirements under Contractors' Purchasing Systems Reviews (CPSR's). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 94–605 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–605.

SUPPLEMENTARY INFORMATION:

A. Background

Concern has been expressed that FAR 44.302(a) includes contractors in the CPSR process that will be severely inconvenienced by the review, and allows for the review of systems even when there is no benefit to the Government. Under the current FAR 44.302, a CPSR is to be conducted for each contractor whose sales to the Government are expected to exceed $10 million during the next 12 months. However, the Councils have agreed to raise the $10 million threshold to $25 million and have determined that contractors meeting the $25 million threshold should be reviewed before conducting a CPSR, to decide if a CPSR is necessary. The increased thresholds ($10 million to $25 million) that are reflected in this proposed rule have previously been approved under FAR case 94–40, Contractors' Purchasing Systems Reviews and Subcontractor Consent, and is awaiting publication as a final rule. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. The proposed revision is intended to prevent unwarranted CPSR's from being conducted.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will reduce the number of CPSR's being conducted by requiring a review to determine if a CPSR is needed. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–605), in correspondence.

C. Paperwork Reduction Act

The information collection requirements for CPSR's have been previously approved under Office of Management and Budget Number 9000–0132. This proposed rule does not contain any increased information collection requirements.

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 44 be amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is revised to read as follows:

§ 44.302 Requirements.

(a) Each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $25 million during the next 12 months, shall be reviewed to determine if Contractors' Purchasing Systems Review (CPSR) is needed. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the $25 million review level if such action is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the cognizant contract administration activity will either: conduct a follow-up purchasing review; or determine that a purchasing system review is not required based on volume, complexity, and dollar value of subcontracting activity.

[FR Doc. 95–30995 Filed 12–20–95; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 206

Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 206

[Docket No. FR-2958-F-03]

RIN 2502-AF32

Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final, without substantive changes, the interim rule that was promulgated by the Department on August 16, 1995, to amend HUD's regulations in 24 CFR parts 203 and 206. The interim rule simplified the Home Equity Conversion Mortgage (HECM) Insurance Demonstration and expedited the processing of HECMs by permitting use of the Direct Endorsement program. The interim rule also implemented the statutory disclosure amendments in section 334 of the Cranston-Gonzalez National Affordable Housing Act and made other changes, including technical and clarifying changes, to improve and streamline the program based on the first five years of the demonstration. This final rule does contain a correction to a technical error in the interim rule.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Room number 9272, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2700; TDD (202) 708-9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Home Equity Conversion Mortgage (HECM) Insurance Demonstration was authorized by Section 417 of the Housing and Community Development Act of 1987 (42 U.S.C. 5301), which amended Section 255 of the National Housing Act (12 U.S.C. 1715z-20) to permit elderly homeowners to borrow against the equity in their homes. HUD published final regulations on June 9, 1989, at 54 FR 24823, issued HUD Handbook 4235.1 for the program in August 1989, and immediately began processing applications for commitments to insure. The regulations were codified at 24 CFR part 206. Revision 1 to HUD Handbook 4235.1 was issued in November 1994.

On August 16, 1995, the Department promulgated an interim rule, at 60 FR 42754, which reflected ideas for improving the program regulations based on experience from the first five years of the demonstration. It also reflected HUD's implementation of section 334 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12701), regarding additional disclosures to the mortgagor before loan closing, including projections of future loan balances and information that the mortgagor's liability is limited. The public was given 60 days in which to submit comments on the interim rule, and no public comments were received. Therefore, this rule makes final the interim rule without any substantive changes. This final rule does contain a correction to a technical error in the interim rule. The second and third sentences of 24 CFR 206.45(b) were inadvertently dropped from the Code of Federal Register when an amendment was made to the first sentence of that section. This final rule restates those two sentences.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule makes final, without changes, an interim rule that was limited to revision of the Home Equity Conversion Mortgage Demonstration. Specifically, the requirements of the interim rule were directed to making the program more efficient for participating mortgagees, mortgagors and the Department.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the interim rule published on August 16, 1995, at 60 FR 42754, is adopted as final, with the following amendment:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-200; 42 U.S.C. 3535(d).

2. In § 206.45, paragraph (b) is revised to read as follows:

§ 206.45 Eligible properties.

* * * * *

(b) *Type of property.* The property shall include a dwelling designed principally as a residence for one family

or such additional families as the Secretary shall determine. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit designed for one-family occupancy shall also be an eligible property.

* * * * *

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95-31676 Filed 12-20-95; 8:45 am]

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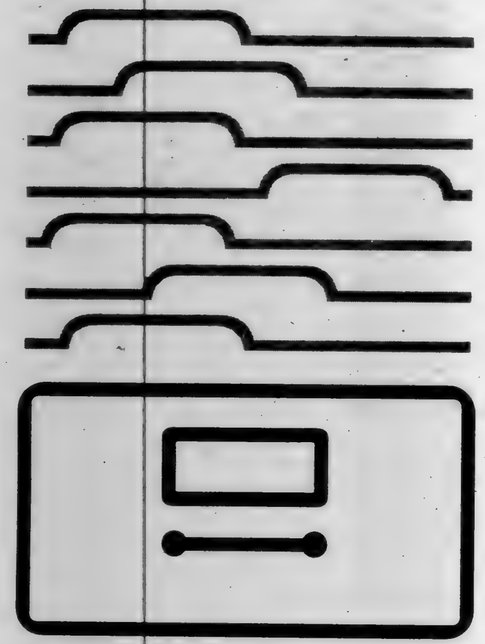
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 1b

Departmental Proceedings, Judicial Proceedings, and NEPA Policy

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Administrative Regulations—Departmental Proceedings, the Administrative Regulations—Judicial Proceedings, and the National Environmental Policy Act regulations as part of the United States Department of Agriculture's (USDA) regulatory reinvention initiative to improve its regulations. This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender specific references; removes unnecessary regulations; and makes minor nonsubstantive changes for clarity.

EFFECTIVE DATE: This final rule is effective January 22, 1996.

FOR FURTHER INFORMATION CONTACT: William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, (202) 720–2453.

SUPPLEMENTARY INFORMATION:

Background

The President directed the heads of all departments and agencies to review all regulations and eliminate or revise those that are outdated or otherwise in need of reform. The Department completed its review and submitted a report on the review to the Office of Management and Budget on June 1, 1995. The review included USDA's Administrative Regulations—Departmental Proceedings (7 CFR, part 1, subpart B); Administrative Regulations—Judicial Proceedings (7 CFR, part 1, subpart C); and National Environmental Policy Act regulations (7 CFR, part 1b). The Department found that these regulations contain outdated and incorrect references to statutes, regulations, USDA agencies, and USDA officials; unnecessary provisions; gender specific references; and provisions that could be clarified by making minor nonsubstantive changes. This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender specific references; removes unnecessary regulations; and makes minor nonsubstantive changes for clarity.

7 CFR, Part 1, Subpart B

This final rule amends 7 CFR, part 1, subpart B, by adding a citation to the statutory authority for the subpart. This final rule also amends §§ 1.26, 1.27, 1.28, and 1.29 in 7 CFR, part 1, subpart B.

Section 1.26(c) provides that "[c]hapter 11 of title 18, United States Code prohibits employees and former employees from representing others under certain circumstances. See § 0.735–41 of this subtitle for illustrations." Section 1.26(c) is unnecessary and has no effect and is therefore removed. In addition, this final rule makes minor nonsubstantive amendments to 7 CFR 1.26 (a), (b)(2), and (b)(3) for clarity and to remove gender specific references.

Section 1.27 sets forth the Department policy with respect to the availability of written submissions in response to certain notices published by the Department. Sections 1.27 (a) through (d) appear by their terms to apply only to written submissions in response to notices of proposed rulemaking published by the Department. However, § 1.27(e) provides that, despite the limiting language in § 1.27 (a) through (d), the policy annunciated in § 1.27 applies to written submissions in response to any published notice which solicits, or affords interested members of the public an opportunity to submit, written views with respect to any proposed action relating to any program administered by the Department regardless of the fact that the issuance of a rule may not be contemplated.

Further, this final rule amends the provisions regarding the confidentiality of written submissions. Sections 1.27 (c) and (d) provide for confidentiality if making the submission public would have an adverse effect on the submitter by reason of: (1) Disclosing trade secrets, processes, operations, style of work or apparatus; (2) disclosing the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures; or (3) exposing the submitter to substantial disadvantage in business or employment. This confidentiality provision was written before the enactment of the Freedom of Information Act. The confidentiality provision in § 1.27 (c) and (d) includes agency records that the Department may not be able to withhold under the Freedom of Information Act. Therefore, § 1.27 is amended to provide that confidentiality may be given to written submissions only if they may be withheld under the Freedom of Information Act.

Further still, this final rule amends § 1.27 by setting forth the scope of the Department policy at the beginning of § 1.27, eliminating the inaccurate limiting language currently found in § 1.27 (a) through (d), and making other minor nonsubstantive changes for clarity.

Section 1.28 contains an inaccurate reference to a provision of the Administrative Procedure Act. This final rule amends § 1.28 to correct that inaccurate reference.

Section 1.29(a) provides that the "Administrator, Agricultural Marketing Service may delegate the authority to issue subpoenas in connection with investigations being conducted under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229), to the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service." Since § 1.29(a) was issued, the Department has been reorganized and the references to Department officials in § 1.29(a) are no longer accurate. This final rule amends this provision within § 1.29(a) to correct the references to Department officials.

In addition, this final rule amends other provisions in § 1.29(a), and §§ 1.29(b)(1)(iii), (b)(2), and (b)(3) for clarity and to remove gender-specific references and surplusage.

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7 CFR, Part 1, Subpart C

This final rule amends 7 CFR, part 1, subpart C, by adding a citation to the statutory authority for the subpart. This final rule also amends § 1.41 in 7 CFR, part 1, subpart C, to remove a gender-specific reference and to remove a provision that requires service of process to be made upon the General Counsel to enforce child support or alimony payments owed by employees of the Department. This provision is removed because the regulations related to service of legal process for the enforcement of child support and alimony owed by Department employees are set forth in 5 CFR, part 581.

7 CFR, Part 1b

This final rule amends the authority citation for 7 CFR, part 1b, to remove inaccurate references to the **Federal Register**.

Section 1b.1 contains inaccurate references to regulations and an inaccurate reference to the Council on Environmental Quality. This final rule corrects those inaccuracies.

Section 1b.2(a) describes the purposes of some of the Department's programs and the methods by which some of these programs are conducted. Section 1b.2(a) is unnecessary and has no effect and is therefore removed. In addition, this final rule makes minor nonsubstantive amendments to 7 CFR 1b.2 paragraphs (c), (d), and (e) for clarity; to remove inaccurate references to regulations, the Under Secretary, Natural Resources and Environment, and the Agricultural Council on Environmental Quality; and to remove surplusage.

Section 1b.3(c) is amended to correct a cross reference.

Section 1b.4 lists agencies that are excluded from the requirement to prepare procedures to implement the National Environmental Policy Act and categorically excluded from the preparation of environmental assessments and environmental impact statements unless the agency head determines that an action may have a significant environmental effect. Since § 1b.4 was published, the Department has been reorganized and some of the listed agencies no longer exist. This final rule corrects the list of Department agencies in § 1b.4 and makes minor nonsubstantive changes for clarity.

Notice and Comment

This rule makes only minor nonsubstantive amendments to the regulations in order to update and correct incorrect references, remove gender-specific references, remove unnecessary provisions, and clarify existing regulations. The rule will not have any effect on the public and no public participation is expected. Therefore, notice and public procedure with respect to this rule are unnecessary, and there is good cause under 5 U.S.C. 553 to make this rule effective without opportunity for public participation.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule updates and corrects references to statutes, regulations, USDA agencies, and USDA officials; removes gender-specific references; removes unnecessary provisions; and makes minor nonsubstantive changes for clarity. This final rule will not have any economic impact.

Under these circumstances, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 1b

Environmental policy statements.

Accordingly, 7 CFR parts 1 and 1b are amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

§ 1.26 [Amended]

2–3. Section 1.26 is amended as follows:

a. In paragraph (a), by removing the words "The provisions of this section apply" and by adding the words "This section applies" in their place; and by removing the words "such provisions, or any part thereof" and by adding the words "this section, or any part of this section" in their place.

b. In paragraph (b)(2), by removing the word "he" and adding the words "the Secretary" in its place each time it appears; and by removing the word "him" and adding the words "the person" in its place.

c. In paragraph (b)(3), by removing the words "his employment he" and adding the words "employment with the Department the employee or former employee" in their place; and by removing the word "him" and adding the words "the employee or former employee" in its place.

d. By removing paragraph (c).

§ 1.27 [Amended]

4. Section 1.27 is revised to read as follows:

§ 1.27 Rulemaking and other notice procedures.

(a) This section shall apply to:
(1) Notices of proposed rulemaking;
(2) Interim final rules;
(3) Advance notices of proposed rulemaking; and
(4) Any other published notice that solicits, or affords interested members of the public an opportunity to submit, written views with respect to any proposed action relating to any program administered in the Department regardless of the fact that the issuance of a rule may not be contemplated.

(b) Each notice identified in paragraph (a) of this section shall indicate the procedure to be followed with respect to the notice, unless the procedure is prescribed by statute or by published rule of the Department. Each notice shall contain a statement that advises the public of the policy regarding the availability of written submissions by indicating whether paragraph (c), (d), or (e) of this section is applicable to written submissions made pursuant to the notice.

(c) All written submissions made pursuant to the notice shall be made available for public inspection at times and places and in a manner convenient to the public business.

(d)(1) Any written submission, pursuant to a notice, may be held confidential if the person making the submission requests that the submission be held confidential, the person making the submission has shown that the written submission may be withheld under the Freedom of Information Act, and the Department official authorized to issue the notice determines that the submission may be withheld under the Freedom of Information Act.

(2) If a request is made in accordance with paragraph (d)(1) of this section for confidential treatment of a written submission, the person making the request shall be informed promptly in the event the request is denied and afforded an opportunity to withdraw the submission.

(3) If a determination is made to grant a request for confidential treatment under paragraph (d)(1) of this section, a statement of the specific basis for the determination that will not be susceptible of identifying the person making the request will be made available for public inspection.

(e) If the subject of the notice is such that meaningful submissions cannot be expected unless they disclose information that may be withheld under the Freedom of Information Act, the notice shall so indicate and contain a statement that written submissions pursuant to the notice will be treated as confidential and withheld under the Freedom of Information Act. *Provided,* That the policy regarding availability of written submissions set forth in this paragraph may only be used with the prior approval of the Secretary, or the Under Secretary or Assistant Secretary that administers the program that is the subject of the notice.

§ 1.28 [Amended]

5. Section 1.28 is amended by removing the phrase "the provisions of section 4(d) of the Administrative Procedure Act (60 Stat. 239; 5 U.S.C. 1003(d))" and adding the reference "5 U.S.C. 553(e)" in its place.

§ 1.29 [Amended]

6. Section 1.29 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. In paragraph (b)(1)(iii), by adding the word ", her," immediately after the word "his".

c. In paragraph (b)(2), by adding the words "or she" immediately after the word "he"; and by removing the word "therein" and adding the words "in the subpoena" in its place.

d. In paragraph (b)(3), by removing the reference "(5 U.S.C. 301).".

§ 1.29 Subpoenas relating to investigations under statutes administered by the Secretary of Agriculture.

(a) *Issuance of subpoena.* (1) When the Secretary is authorized by statute to issue a subpoena in connection with an investigation being conducted by the Department, the attendance of a witness and the production of evidence relating to the investigation may be required by subpoena at any designated place, including the witness' place of business. Upon request of any representative of the Secretary involved in connection with the investigation, the subpoena may be issued by the Secretary, the Inspector General, or any Department official authorized pursuant to part 2 of this title to administer the program to which the subpoena relates, if the official who is to issue the subpoena is satisfied as to the reasonableness of the grounds, necessity, and scope of the subpoena. Except as provided in paragraph (a)(2) of this section, the authority to issue subpoenas may not be delegated or redelegated by the head of an agency.

(2) The Administrator, Grain Inspection, Packers and Stockyards Administration, may delegate the authority to issue subpoenas in connection with investigations being conducted under the Packers and Stockyards Act (7 U.S.C. 181–229), to the Deputy Administrator, Packers and Stockyards Programs.

* * * * *

§ 1.41 [Amended]

7–8. Section 1.41 is amended as follows:

a. In the third sentence, by removing the word "he" and adding the words "the officer" in its place.

b. By removing the last sentence.

PART 1b—NATIONAL ENVIRONMENTAL POLICY ACT

9. The authority citation for part 1b is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 4321 *et seq.*; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

§ 1b.1 [Amended]

10. Section 1b.1 is amended as follows:

a. In paragraph (a), by removing the words "This subpart" and adding the words "This part" in their place; by removing the words "Council of" and adding the words "Council on" in their place; and by removing the words "The subpart" and adding the words "This part" in their place.

b. In paragraph (b), by removing the word "subpart" and adding the word "part" in its place.

§ 1b.2 [Amended]

11. Section 1b.2 is amended as follows:

a. By removing paragraph (a).

b. In paragraph (c), by removing the words "the provisions of this subpart" and adding the words "this part" in their place; and by removing the words "the provisions of NEPA" and adding the word "NEPA" in their place.

c. In paragraph (d), the first sentence, by removing the word "Assistant" and adding the word "Under" in its place; and by removing the reference "(7 CFR 2.19(b))".

d. In paragraph (d), the second sentence, by removing the words "Assistant Secretary, through the USDA Natural Resources and Environment Committee" and adding the words "Under Secretary, NR&E, through the Agricultural Council on Environmental Quality" in their place.

e. In paragraph (e), the first sentence, by removing the word "subpart" and adding the word "part" in its place.

f. In paragraph (e), the third sentence, by removing the word "Assistant" and adding the word "Under" in its place.

g. By redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d), respectively.

§ 1b.3 [Amended]

12. In § 1b.3, paragraph (c) is amended by removing the words "above and in" and adding the words "in paragraphs (a) of this section and" in their place.

13. Section 1b.4 is revised to read as follows:

§ 1b.4 Exclusion of agencies.

(a) The USDA agencies and agency units listed in paragraph (b) of this section conduct programs and activities that have been found to have no individual or cumulative effect on the human environment. The USDA agencies and agency units listed in paragraph (b) of this section are excluded from the requirements of preparing procedures to implement NEPA. Actions of USDA agencies and agency units listed in paragraph (b) of this section are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect.

(b)(1) Agricultural Marketing Service

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(2) Economic Research Service
(3) Extension Service
(4) Federal Corp Insurance Corporation
(5) Food and Consumer Service
(6) Food Safety and Inspection Service
(7) Foreign Agricultural Service
(8) Grain Inspection, Packers and Stockyards Administration
(9) National Agricultural Library
(10) National Agricultural Statistics Service
(11) Office of the General Counsel
(12) Office of the Inspector General

Done in Washington, DC, this 8th day of December, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–30674 Filed 12–21–95; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 95–048DF]

RIN 0583–AC03

Use of the Fast Antimicrobial Screen Test for Bob Veal Calves

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of the Fast Antimicrobial Screen Test (FAST) in its bob veal calf residue testing program. Under FSIS' residue testing program, carcasses of bob veal calves are subject to specific regulatory requirements for residue testing by FSIS inspectors to assure that adulterated meat does not enter human food channels. Until recently, the Calf Antibiotic and Sulfonamide Test (CAST) was the only official test authorized for use in the bob veal calf residue testing program. FSIS has now developed FAST, which is an enhanced and equally effective version of CAST that provides results after 6 hours of incubation, compared to 18–24 hours of incubation for CAST. This action will permit the use of FAST in lieu of CAST under FSIS' bob veal calf residue testing program.

DATES: This rule will be effective on February 20, 1996, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 22, 1996. If FSIS receives adverse comments or notice of intent to submit adverse comments, FSIS will withdraw this rule and publish a proposed rule for public comment.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, Docket #95–048DF, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Background

In June 1984, as a result of findings of increased levels of sulfonamide and antibiotic residues in young calves, FSIS promulgated an interim rule (49 FR 23602; affirmed 50 FR 32162) that amended the Federal meat inspection regulations (9 CFR parts 309, 310 and 318) by establishing an intensified residue testing program for bob veal calves (calves up to 3 weeks in age or 150 pounds in weight). FSIS was concerned with findings of increased levels of sulfonamide and antibiotic residues in young calves, and undertook an emergency rulemaking to decrease the likelihood that adulterated meat would enter into human food channels. FSIS determined that carcasses and parts thereof from bob veal calves are adulterated under the Federal Meat Inspection Act if they bear or contain sulfonamide or antibiotic residues other than in accordance with tolerances established by the Food and Drug Administration.

In the interim rule, FSIS stated that CAST, a swab bioassay test, would be the official test used to screen carcasses of bob veal calves. In trial testing, FSIS had found CAST to be extremely reliable in detecting violative levels of antibiotics and sulfonamides in animal tissues.

FSIS has recently developed a new test that, like CAST, is designed to detect the presence of sulfonamide and antibiotic residues in animal tissues. FAST is similar to and is performed in a similar manner to CAST. The major advantage of FAST is that test results can be obtained in 6 hours, instead of the 18–24 hour period required for CAST. FSIS' in-plant trial testing of FAST has shown that FAST is equivalent to CAST in detecting sulfonamide and antibiotic residues in animal tissues.[1]

Therefore, FSIS is amending § 310.21 to add FAST as an alternative to CAST for use by inspectors in testing carcasses and parts of bob veal calves for sulfonamide and antibiotic residues.

[1] Results of the in-plant trial for FAST are available for review in the Office of the FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Effective Date

This rule is being published without a prior proposal because this action is viewed as noncontroversial, and FSIS does not anticipate any adverse public comments will be received. This rule will be effective 60 days after the date of publication in the **Federal Register** unless FSIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

If FSIS receives adverse comments or notice of intent to submit adverse comments, FSIS will withdraw this rule and publish a proposed rule for public comment.

If no adverse comments are received, FSIS will publish a notice in the **Federal Register** confirming that the rule is effective on the date indicated.

Executive Order 12866

This rule is considered not significant and therefore has not been reviewed by the Office of Management and Budget.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant impact on a substantial number of small entities. The rule permits the use of an alternate test, which can provide results in less than half the time than the original test. Carcasses that test negative could be released on the day of slaughter, which will modestly benefit the meat industry.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR part 310

Meat inspection, Residue testing.

For the reasons discussed in the preamble, FSIS is amending part 310 of the Federal meat inspection regulations (9 CFR Part 310) as follows:

PART 310—[AMENDED]

1, The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. The introductory text and footnote to paragraph (c) of § 310.21 are revised to read as follows:

§ 310.21 Carcasses suspected of containing sulfa and antibiotic residues; sampling frequency; disposition of affected carcasses and parts.

* * * * *

(c) * * * The inspector shall perform a swab bioassay test [1] on:

* * * * *

Done at Washington, DC, on: December 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–31017 Filed 12–21–95; 8:45 am]

BILLING CODE 3410–DM–P

9 CFR Part 318

[Docket No. 95–035F]

RIN 0583–AB96

Potassium Hydroxide as a Hog Scald Agent

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date.

SUMMARY: On October 23, 1995, the Food Safety and Inspection Service (FSIS) published a direct final rule, "Potassium Hydroxide as a Hog Scald Agent." This direct final rule allows the use of potassium hydroxide in hog scald and hair removal processes. No adverse comments were received in response to the direct final rule. Therefore, this rule is effective on December 22, 1995.

EFFECTIVE DATES: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–7164.

SUPPLEMENTARY INFORMATION: This notice affirms the effective date of the direct final rule, "Potassium Hydroxide as a Hog Scald Agent," that was published on October 23, 1995, at 60 FR 54295. This direct final rule allows the use of potassium hydroxide in hog scald and hair removal processes. FSIS did not receive any written adverse comments or written notice of intent to submit adverse comments in response to this rule. Therefore, the effective date of the rule is December 22, 1995.

[1] The procedures for performing the swab bioassay test are set forth in one of two self-instructional guides: "Performing the CAST" or "Fast Antimicrobial Screen Test." These guides are available for review in the office of the FSIS Docket Clerk, Room 4352 South, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, on: December 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–31018 Filed 12–21–95; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RESOLUTION TRUST CORPORATION

12 CFR Chapter XVI

Effectiveness of RTC Regulations After RTC Termination

AGENCIES: Federal Deposit Insurance Corporation and Resolution Trust Corporation.

ACTION: Joint notification of status of regulations.

SUMMARY: The Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) are issuing this joint document to inform the public regarding the effectiveness of the RTC's regulations after RTC termination. In accordance with the Federal Home Loan Bank Act, the RTC will terminate on December 31, 1995, and the FDIC will succeed the RTC as receiver for any remaining RTC receiverships and will be responsible for managing any remaining assets and liabilities of the RTC transferred to the FSLIC Resolution Fund. Congress did not include any provision transferring the RTC's regulations to the FDIC. The two corporations have considered these issues and are publishing this document to inform the public that, when the FDIC assumes responsibility for the RTC's functions at termination, the RTC's regulations generally will not govern the FDIC's performance of these functions for occurrences that arise post-termination, and that the FDIC's regulatory scheme generally will govern former RTC activities on a prospective basis.

EFFECTIVE DATE: December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Jamey Basham, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898–7265, or Karen L. Main, Senior Attorney, Legal Division, Resolution Trust Corporation, 1717 H Street NW., Washington, DC 20006, (202) 736–3096.

SUPPLEMENTARY INFORMATION:

A. General Rule

Section 21A(m)(1) of the Federal Home Loan Bank Act (FHLBA), 12 U.S.C. 1441a(m)(1), provides that the RTC will terminate on December 31, 1995. At that time, the FDIC shall succeed the RTC as receiver of any remaining RTC receiverships. *Id.* In addition, the FDIC will be responsible for managing any remaining RTC assets and liabilities, all of which are transferred to the FSLIC Resolution Fund. Section 21A(m)(2) of the FHLBA, 12 U.S.C. 1441a(m)(2). However, Congress did not include provisions transferring the RTC's regulations, 12 CFR Chapter XVI, to the FDIC. In similar situations when Congress has intended an agency's rules to survive transfer of its functions to a successor, Congress expressly so provided by statute. Therefore, after the RTC terminates on December 31, 1995 and its functions are transferred to the FDIC, the RTC's regulations generally will not govern the FDIC's performance of such functions in dealing with occurrences that arise post-termination. When the FDIC assumes responsibility from the RTC for such functions, the FDIC's regulations generally will govern matters arising on a prospective basis.

However, the termination of the RTC in and of itself does not affect rights or obligations of the RTC or third parties that have arisen under the RTC's regulations as a result of factual occurrences prior to the RTC's termination. The legal consequences of pre-termination conduct governed by the RTC's regulations will continue to be determined under such regulations.

B. The RTC's Affordable Housing Disposition Program

In contrast, the RTC's affordable housing disposition program (AHDP) regulations at 12 CFR part 1609 will continue to govern the sale of the remaining RTC AHDP inventory and other related responsibilities assumed by the FDIC even after the RTC termination date. Since Congress has directed the FDIC to carry out such functions under the provisions of the RTC AHDP statute, section 21A(c) of the FHLBA, 12 U.S.C. 1441a(c),[1] the RTC's AHDP regulations which refine and

[1] Section 21A(c)(17)(C) of the FHLBA provides, *inter alia*, that the FDIC shall carry out any remaining authority and responsibilities of the RTC "under this subsection." 12 U.S.C. 1441a(c)(17)(C). Moreover, section 40(n)(4) of the Federal Deposit Insurance Act provides that the FDIC shall carry out the remaining responsibilities and authority of the RTC as set forth in section 1441a(c) of title 12. 12 U.S.C. 1831q(n)(4).

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implement this authority will continue to govern these functions.

By order of the Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 15th day of December, 1995.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

By order of the Board of Directors.

Dated at Washington, D.C., this 15th day of December, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Editorial note: The Federal Home Loan Bank Act, as codified at 12 U.S.C. 1441a(m)(1), provides that the Resolution Trust Corporation (RTC) will terminate on December 31, 1995. Accordingly, the RTC's regulations in chapter XVI of title 12 of the Code of Federal Regulations will be removed and the chapter vacated as of January 1, 1996 pursuant to the authority of the Office of the Federal Register to establish and maintain an orderly system of codification (44 U.S.C. 1510 and 1 CFR part 8).

[FR Doc. 95–31120 Filed 12–21–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–56–AD; Amendment 39–9456; AD 95–25–10]

Airworthiness Directives; Cessna Model 441, 500, 550, and 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 441, 500, 550, and 560 series airplanes, that requires replacement of outflow/safety valves with serviceable valves. This amendment is prompted by a report of cracking and subsequent failure of outflow safety valves in the pressurization system. The actions specified by this AD are intended to prevent such cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.

DATES: Effective January 22, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Allied Signal, Inc., Controls and Accessories, 1110 North Oracle Road, Tucson, Arizona 85737–9588. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Cessna Model 441, 500, 550, and 560 series airplanes was published in the **Federal Register** on August 18, 1995 (60 FR 43089). That action proposed to require replacement of certain discrepant outflow/safety valves with serviceable valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 150 Model 441, 500, 550, and 560 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $86,400, or $720 per airplane. However, the manufacturer has advised that it will provide replacement parts at no cost to the operator and will reimburse operators for the labor costs of the required removal and replacement.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–25–10 Cessna Aircraft Company: Amendment 39–9456. Docket 95–NM–56–AD.

Applicability: Model 441, 500, 550, and 560 series airplanes; equipped with Allied Signal outflow/safety valves; as identified in Allied Signal Aerospace Service Bulletins 103576–21–4054, 103576–21–4056, and 103648–21–4055, all dated January 30, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the outflow/safety valve in accordance with Allied Signal Aerospace Service Bulletin 103576–21–4054 (for Model 441 series airplanes), 103576–21–4056 (for Model 500 and 550 series airplanes), or 103648–21–4055 (for Model 560 series airplanes), all dated January 30, 1995, as applicable.

(b) As of the effective date of this AD, no person shall install an outflow/safety valve, having a part number and serial number identified in Allied Signal Aerospace Service Bulletin 103576–21–4054 (for Model 441 series airplanes), 103576–21–4056 (for Model 500 and 550 series airplanes), or 103648–21–4055 (for Model 560 series airplanes), all dated January 30, 1995, on any airplane unless that valve is considered to be serviceable in accordance with the applicable service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Allied Signal Aerospace Service Bulletin 103576–21–4054, dated January 30, 1995; Allied Signal Aerospace Service Bulletin 103576–21–4056, dated January 30, 1995; or Allied Signal Aerospace Service Bulletin 103648–21–4055, dated January 30, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied Signal Inc., Controls and Accessories, 1110 North Oracle Road, Tucson, Arizona 85737–9588. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 22, 1996.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–31151 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–27–AD; Amendment 39–9443; AD 95–24–13]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes. This action requires inspecting (one-time) the threaded portion of the aileron mounting spigots for cracks, replacing any cracked spigots, and replacing the securing nut assemblies with newly designed special nut assemblies and new split pins. Reports of cracked aileron mounting spigots caused by stress corrosion prompted this action. The actions specified by this AD are intended to prevent damage to the aileron control systems, which if not detected and corrected, could cause loss of lateral control and eventual loss of control of the airplane.

DATES: Effective January 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on July 25, 1995 (60 FR 37966). The action proposed to require inspecting (one-time) the threaded portion of the aileron mounting spigots for cracks, replacing any cracked spigots, and replacing the securing nut assemblies with newly designed special nut assemblies and new split pins. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin (SB) 57–JA 921140, which incorporates the following pages and revision levels:

Pages	Revision level	Date
4, 5, 8, 9, 10, 12, 13 and 14	Original Issue	Feb. 24, 1993.
1, 2, 3, 6 7, and 11	Revision 1	Feb. 3, 1994.

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Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 160 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 22 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $211,200 or $1,320 per airplane. This figure is based on the assumption that no owner/operator has accomplished the proposed inspection and modification and it does not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by stress corrosion. Stress corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD No. 95–24–13 JETSTREAM AIRCRAFT LIMITED: Amendment 39–9443; Docket No. 95–CE–27–AD.

Applicability: Model HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent damage to the aileron control systems, which, if not detected and corrected, could cause loss of lateral control and eventual loss of control of the airplane, accomplish the following:

(a) Inspect the mounting spigots for cracks using both visual and fluorescent dye penetrant methods in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–JA 921140, which incorporates the following pages and revision levels:

Pages	Revision level	Date
4, 5, 8, 9, 10, 12, 13 and 14	Original Issue	February 24, 1993.
1, 2, 3, 6 7, and 11	Revision 1	February 3, 1994.

(1) Prior to further flight, replace any cracked spigots with applicable parts specified in the Parts Table in paragraph 5 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 921140.

(2) Prior to further flight, replace the securing nut assemblies and split pins with new special nut assemblies (Part No. SL45022 (Qty. 2)), and new split pins (Part No. SP90–C8 and SP90–C6), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 921140. This replacement is required regardless of the results of the inspection required in paragraph (a) of this AD.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium or the Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(d) The inspections and replacements required by this AD shall be done in accordance with Jetstream SB 57–JA 921140 Revision 1, dated February 24, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9443) becomes effective on January 17, 1996.

Issued in Kansas City, Missouri, on November 17, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–31201 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–SW–29–AD; Amendment 39–9462; AD 95–26–04]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R22 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stall and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This action would require similar revisions to the Limitations, Normal Procedures and Emergency Procedures sections required by the existing AD, but the revision to the Limitations section would prohibit only pilots without a certain level of experience and training from operating in the flight conditions specified. This action is prompted by data that indicates pilots who possess a certain level of experience and training are more able to recognize and react to the adverse meteorological conditions specified in the AD. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–04–14, Amendment 39–9166, which superseded Priority Letter AD 95–02–03, issued January 12, 1995, which is applicable to RHC Model R22 helicopters, was published in the **Federal Register** on October 12, 1995 (60 FR 53148). That action proposed to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds and turbulence; provide information about M/R stalls and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This supersedure will reduce limitations for pilots who have the flight experience specified by the AD and who have completed the SFAR No. 73 training.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received. The sole commenter agrees with the FAA's proposal that the FAA's exemption of those pilots with sufficient training and experience from limitations that might in some cases substantially restrict their Model R22 flight operations is justified.

After careful review of the available data, including the comment, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 800 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-half work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9166, and by adding a new airworthiness directive (AD), Amendment 39–9462, to read as follows:

AD 95–26–04 Robinson Helicopter Company: Amendment 39–9462. Docket No. 95–SW–29–AD. Supersedes AD 95–04–14, Amendment 39–9166.

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Applicability: Model R22 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Regardless of the experience level of the pilot manipulating the controls or the amount or quality of the awareness training received by the pilot manipulating the controls, these changes to the flight manual are in no way intended to authorize flight in any condition(s) or under any circumstance(s) that are otherwise contrary to other Federal Aviation Regulations.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R22 Rotorcraft Flight Manual. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

The following limitations (1–3) are to be observed unless the pilot manipulating the controls has logged 200 or more flight hours in helicopters, at least 50 of which must be in the RHC Model R22 helicopter, and has completed the awareness training specified in Special Federal Aviation Regulation (SFAR) No. 73, issued February 27, 1995.

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Continued flight in moderate, severe, or extreme turbulence is prohibited.

Adjust forward airspeed to between 60 knots indicated airspeed (KIAS) and 0.7 V_{ne}, but no lower than 57 KIAS, upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, Model R22 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low "G" (load factor below 1.0) or abrupt control input. A low "G" flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds between 60 KIAS and less than 0.9 V_{ne}, but no lower than 57 KIAS.

(2) Use maximum "power-on" RPM at all times during powered flight.

(3) Avoid sideslip during flight. Maintain in-trim flight at all times.

(4) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW "G" CONDITION

Gradually apply aft cyclic to restore positive "G" forces and main rotor thrust. Do not apply lateral cyclic until positive "G" forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive "G" forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not overcontrol.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on January 26, 1996.

Issued in Fort Worth, Texas, on December 11, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–31140 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–SW–30–AD; Amendment 39–9463; AD 95–26–05]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R44 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stall and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This action would require similar revisions to the Limitations, Normal Procedures and Emergency Procedures sections required by the existing AD, but the revision to the Limitations section would prohibit only pilots without a certain level of experience and training from operating in the flight conditions specified. This action is prompted by data that indicates pilots who possess a certain level of experience and training are more able to recognize and react to the adverse meteorological conditions specified in the AD. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–04–13, Amendment 39–9165, which superseded Priority Letter AD 95–02–04, issued January 12, 1995, which is applicable to RHC Model R44 helicopters, was published in the **Federal Register** on October 12, 1995 (60 FR 53150). That action proposed to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds and turbulence; provide information about M/R stalls and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This supersedure will reduce limitations for pilots who have the flight experience specified by the AD and who have completed the SFAR No. 73 training.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received. The sole commenter agrees with the FAA's proposal that the FAA's exemption of these pilots with sufficient training and experience from limitations that might in some cases substantially restrict their Model R44 flight operations is justified.

After careful review of the available data, including the comment, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that three helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-half work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $90.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39— AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9165, and by adding a new airworthiness directive (AD), Amendment 39–9463, to read as follows:

AD 95–26–05 Robinson Helicopter Company: Amendment 39–9463. Docket No. 95–SW–30–AD. Supersedes AD 95–04–13, Amendment 39–9165.

Applicability: Model R44 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Regardless of the experience level of the pilot manipulating the controls or the amount or quality of the awareness training received by the pilot manipulating the controls, these changes to the flight manual are in no way intended to authorize flight in any condition(s) or under any circumstance(s) that are otherwise contrary to other Federal Aviation Regulations.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R44 Rotorcraft Flight Manual. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

The following limitations (1–3) are to be observed unless the pilot manipulating the controls has logged 200 or more flight hours in helicopters, at least 50 of which must be in the RHC Model R44 helicopter, and has completed the awareness training specified in Special Federal Aviation Regulation (SFAR) No. 73, issued February 27, 1995.

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Continued flight in moderate, severe, or extreme turbulence is prohibited.

Adjust forward airspeed to between 60 knots indicated airspeed (KIAS) and 0.7 V_{ne}, but no lower than 60 KIAS, upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, Model R44 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots

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should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low "G" (load factor below 1.0) or abrupt control input. A low "G" flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds greater than 60 KIAS and less than 0.9 V_{ne}.

(2) Use maximum "power-on" RPM at all times during powered flight.

(3) Avoid sideslip during flight. Maintain in-trim flight at all times.

(4) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW "G" CONDITION Gradually apply aft cyclic to restore positive "G" forces and main rotor thrust. Do not apply lateral cyclic until positive "G" forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive "G" forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not overcontrol.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on January 26, 1996.

Issued in Fort Worth, Texas, on December 11, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–31139 Filed 12–21–95; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 95–ANM–17]

Establishment of Class E Airspace; Wray, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Wray, Colorado, Class E airspace. This action is necessary to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Wray Municipal Airport, Wray, Colorado.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, System Management Branch, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–17, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Wray, Colorado, to accommodate a new GPS SIAP at Wray Municipal Airport (60 FR 54206). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class E airspace at Wray, Colorado. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since there is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Wray, CO [New]

Wray Municipal Airport, CO
(Lat. 40°06′00″N, long. 102°14′27″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wray Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 40°12′00″N, long. 102°30′00″W; to lat. 40°16′00″N, long. 102°03′00″W; to lat. 39°45′00″N, long. 102°03′00″W; to lat. 39°45′00″N, long. 102°14′00″W; to lat. 40°00′00″N, long. 102°30′00″W; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on November 29, 1995.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–31203 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket Number 950613151–5304–02]

RIN 0660–XX02

Public Telecommunications Facilities Program (PTFP), National Endowment for Children's Educational Television (NECET), Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final Policy Statement and Conforming Rule Amendments.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is publishing a Final Policy Statement modifying the interpretation of its policy on the use of NTIA-funded equipment and materials in connection with sectarian activities and making conforming rule amendments.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Jana Gagner, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 20, 1995, the National Telecommunications and Information Administration, U.S. Department of Commerce (NTIA), published a notice in the **Federal Register** proposing to modify NTIA's interpretation of its policy regarding the use of Federal grant funds awarded by NTIA in connection with sectarian activities.[1] Eight parties filed comments in response to the Notice.[2] Based on these comments and current jurisprudence, NTIA is hereby modifying its prior interpretation of its rules, which prohibited the use of NTIA-funded equipment, facilities, and materials in connection with any sectarian activities, no matter how incidental.

Under its new interpretation, NTIA will retain its present requirement that grant funds not be used for purposes the "essential thrust of which are sectarian,"[3] but will modify its interpretation of this requirement as follows. No more than an attenuated or incidental benefit may inure to a sectarian interest if a grantee uses NTIA-funded facilities in connection with a sectarian activity. In addition, the use must fall within the broad scope of a grant program's statutory purposes. A grantee cannot, however, use NTIA grant funds primarily to support sectarian interests.

For the reasons discussed below, NTIA believes that this approach is consistent with current jurisprudence.[4] We also discuss below in greater detail the issues raised in the June Notice regarding NTIA's policy on sectarian activities,[5] NTIA's interpretation of its prior policy, comments received by NTIA in response to the Notice, and the application of NTIA's new policy to each of its grant programs. Our discussion is informed by relevant First Amendment jurisprudence, including the recent Supreme Court holding in *Rosenberger* v. *Rector and Visitors of the University of Virginia,* 115 S.Ct. 2510 (1995).

II. Background

NTIA's Prior Policy. In 1979, the Public Telecommunications Facilities Program (PTFP) of the NTIA adopted a rule prohibiting funding for any equipment, facilities, and other materials that would be used for any purposes the essential thrust of which is sectarian.[6] NTIA's interpretation of this rule has prohibited use of NTIA-funded facilities and materials in connection with any sectarian activity.[7] In implementing this "bright-line" policy interpretation, NTIA relied upon *Lemon* v. *Kurtzman.*[8]

NTIA's policy interpretation did, however, permit the "presentation in an educational or cultural context of music or art with a religious theme [or] of programs about religion. It [also did] not preclude distribution of instructional programming of a secular nature to church-related educational institutions."[9] In addition, sectarian-affiliated organizations could generally apply for grant funds,[10] subject, of course, to the prohibition on the use of NTIA-funded equipment, facilities, and materials for purposes the essential thrust of which is sectarian. NTIA's two newer grant programs, the National Endowment for Children's Educational Television (NECET) and the Telecommunications and Information Infrastructure Assistance Program (TIIAP), also adopted the same policy and interpretation.[11]

In enforcing this policy over the years, NTIA required grant applicants to certify that they would comply with its policy by signing an assurance to that effect.[12] By relying upon this assurance, NTIA avoided evaluating programming schedules for sectarian content as a routine practice. Such evaluation occurred only if information contained in the application itself suggested that the applicant would violate NTIA's policy, a complaint was filed with NTIA, or NTIA otherwise became aware of information that suggested that its policy was being or would be violated. By not routinely evaluating program content and information transmitted using NTIA-funded equipment and materials, NTIA avoided excessive Government entanglement with religion,

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[1] 60 FR 32,142 (1995).

[2] The following eight parties filed comments in response to the Notice: Representative Richard Burr, the Corporation for Public Broadcasting, Fordham University, National Public Radio, North Carolina Public Radio Association, Lisa Owens, Southern Public Radio, and Wake Forest University.

[3] 15 CFR 2301.22(d). "Sectarian" is defined at 15 CFR 2301.1 as "that which has the purpose or function of advancing or propagating a religious belief." The PTFP regulation at 15 CFR § 2301.22(d) provides, "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." NTIA considers these phrases to mean the same thing.

[4] See *Rosenberger* v. *Rector and Visitors of the University of Virginia,* 115 S.Ct. 2510 (1995); *Zobrest* v. *Catalina Foothills Sch. Dist. (Zobrest),* 113 S.Ct. 2462 (1993); *Witters* v. *Washington Dep't of Services for the Blind,* 474 U.S. 481, 487 (1986); *Mueller* v. *Allen,* 463 U.S. 388 (1983).

[5] Notice, *supra* note 1.

[6] See 44 FR 30898 (1979) for explanation of NTIA's previous policy. PTFP's regulation regarding sectarian programming appears at 15 CFR 2301.22(d).

[7] This interpretation stems from policy statement, *infra* fn. 11 and was applied in the Fordham case.

[8] 403 U.S. 602 (1971). The constitutional test set forth in *Lemon*—and the consistency between NTIA's new policy interpretation and that test—are described in section III.A. of this policy statement, *infra.*

[9] Public Telecommunications Facilities Program; Report and Order, 44 FR 30898, 30902 (1979) (Report and Order).

[10] *Id.* at 30,900–30,901. Previously, organizations organized for primarily religious purposes were ineligible to apply for a PTFP planning grant, although their affiliates were eligible to apply. See 15 CFR 2301.4(b)(2). We are revising this rule to be consistent with the new policy adopted herein, such that applicant eligibility will be the same for both construction and planning grants. See the conforming amendments to § 2301.4 (a) and (b).

[11] 60 FR 15636 (1995); 60 FR 8156 (1995).

[12] The applicant "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities . . . ." Public Telecommunications Facilities Program, Grant Application, Assurances, no. 30, at 9.

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as proscribed by the Supreme Court in *Lemon* v. *Kurtzman*.[13]

The Challenge by Fordham University. In 1993, Fordham University sued the Department of Commerce, alleging that NTIA's policy on sectarian broadcasting violated its right to free exercise of religion and its freedom of speech rights under the First Amendment of the Constitution. In *Fordham University* v. *Brown*, the court upheld NTIA's bright-line approach with respect to the PTFP as consistent with the First Amendment.[14] In *dicta*, however, the court noted that it did not consider whether there were other acceptable interpretations of the Establishment Clause.[15]

Since the *Fordham* decision, NTIA has become aware that some public broadcast stations include in their schedules programs that might constitute impermissible sectarian programming, which could make them ineligible for PTFP grants. This was highlighted, in fact, following the *Fordham* decision, when NTIA received several requests to modify its policy.

Issuance of the Notice. As a result, NTIA sought comment on whether it should modify its policy regarding sectarian programming and information. Specifically the Notice sought comment on: (1) Whether the current prohibition on using NTIA grant funds in connection with any sectarian activities should be continued, or whether there are alternative approaches that would also be consistent with the First Amendment; (2) the underlying policy rationale for a given approach; (3) how such policy would, as practical and constitutional matters, be implemented and enforced; (4) whether the same policy could and should be applied to all three NTIA grant programs (PTFP, TIIAP, and NECET) and, if not, what policy should pertain to each grant program; and (5) whether the current definition of "sectarian" would continue to be supportable if NTIA's current policy were modified.

The Rosenberger Decision. Subsequent to the issuance of NTIA's Notice, the Supreme Court decided *Rosenberger* v. *Rector and Visitors of the University of Virginia*,[16] which further supports NTIA's announced policy interpretation change. The Supreme Court held in *Rosenberger* that a state university had erred in relying on the First Amendment's Establishment Clause to deny grant funding to a student group publisher of a Christian magazine, when that student group otherwise satisfied neutral funding criteria applied by the university in making financial grants to other student organizations. As discussed in more detail below, this decision serves as a basis, in part, for the new policy approach adopted by NTIA.

Comments Filed in Response to the Notice. All but one of the eight commenters supported a change in NTIA's policy interpretation. The one commenter favoring retention of NTIA's long-term policy objected to a religious organization receiving any benefit, however incidental, from NTIA's grant programs.[17] A majority of the supporting commenters, however, relied upon the recent Supreme Court case, *Rosenberger*, in arguing that a policy change was warranted. Most agreed that *Rosenberger* requires that the Federal government behave in a neutral manner toward religion. Two commenters recommended that NTIA adopt a specified or maximum percentage for the amount of permissible sectarian programming.[18] Other commenters recommended allowing a "reasonable minimal amount of sectarian programming."[19] Two other commenters expressed some concern that the proposed change in policy could result in excessive government entanglement with religion.[20]

As noted above, we solicited comments on whether the definition of "sectarian" needed to be altered in light of a possible policy change. Most commenters agreed that no change in the definition of "sectarian" was required to allow NTIA to modify its policy interpretation. One commenter contended, however, that the definition of "public telecommunications services" had to be redefined because it provides that public telecommunications services "[do] not include essentially sectarian programming."[21] This commenter also maintained that NTIA's prior policy should be changed because it burdened individuals' free exercise of religion in violation of the Religious Freedom Restoration Act.[22]

III. Application of the Modified Policy To NTIA'S Grant Programs

As indicated, NTIA's new policy will retain the requirement that grant funds not be used for purposes the essential thrust of which is sectarian. The interpretation of that requirement will be modified, however, such that as long as the grant funds are used to fulfill the statutory purposes of the grant programs, attenuated or incidental benefits to sectarian interests will be permissible.

A. Constitutional Basis for Modified Policy

We believe the alternative approach we are now adopting passes constitutional muster under First Amendment case law. Having analyzed our new approach in light of *Lemon v. Kurtzman*,[23] we conclude that our new policy is consistent with *Lemon* and other Supreme Court jurisprudence. *Lemon* established a three-prong test to determine whether government action would have the "primary effect" of establishing religion in violation of the Establishment Clause. Under *Lemon*, the constitutionality of a statute, regulation, or funding policy depends on whether: (1) it has a secular legislative purpose; (2) its principal or primary effect is one that neither advances nor inhibits religion; and (3) it avoids "an excessive government entanglement with religion."[24] If any one of these three questions is answered in the negative, government action is deemed unconstitutional.

Each of NTIA's grant programs has a secular purpose, which remains unchanged under the new policy, and thus NTIA's change in policy interpretation passes the first prong of the *Lemon* test. PTFP promotes public broadcasting, NECET supports development of children's programming, and TIIAP promotes new telecommunications technologies. Each grant award will be reviewed to ensure it meets the appropriate statutory purpose.

NTIA's new policy interpretation also satisfies the second prong of the *Lemon* test as NTIA grant funds still may not be used primarily to advance or inhibit religion. As recently underscored by the *Rosenberger* court, programs that neutrally extend benefits to recipients pass Establishment Clause muster, if religious interests are only incidentally served:

> [T]he [constitutional] guarantee of neutrality [toward religion] is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, *including religious ones*, are broad and diverse. . . . More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to *religious speakers* who participate in broad-reaching government programs neutral in design. 115 S.Ct. at 2521–22 (emphasis added).

NTIA's new policy interpretation will ensure both that the program funds are neutrally provided and that any benefit to religion will be attenuated or incidental. NTIA will behave neutrally toward all grant applicants. All grant applicants (including sectarian organizations) will be eligible for funding (assuming they meet NTIA's other eligibility requirements), provided they comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.[25] If, as we discuss further below, questions arise regarding compliance, however, NTIA will determine whether the recipients' use of grant funds has the primary, and thus impermissible, effect of advancing or inhibiting religion. Where some benefit appears to inure to a sectarian interest, further analysis of the potential benefit will be undertaken to determine whether it is merely incidential or attenuated and thus permissible.

With regard to the third prong of the *Lemon* test—avoiding excessive entanglement of goverment with religion—NTIA's administrative procedures will remain esssentially the same as before. NTIA will avoid analyzing individual programs unless a compliance problem comes to NTIA's attention. Thus, under the new policy, excessive government entanglement with religion will continue to be avoided as under our prior policy.

B. Application of New Interpretation to Particular NTIA Programs

Specific application of this new interpretation to each of the three NTIA grant programs is discussed below.

1. The Public Telecommunications Facilities Program (PTFP).

Under the PTFP rules, a sectarian organization is eligible to apply as long as it meets the general PTFP eligibility requirements.[26] The purpose of PTFP is to make public telecommunications services available to U.S. citizens. PTFP funds the construction and planning of public telecommunications services,[27] subject to the eligibility requirements for applicants.[28]

To determine whether a grant would have the primary effect of establishing religion, NTIA will apply the *Lemon* test. To determine eligibility and the overall purpose of the planning and construction of public telecommunications facilities, NTIA will examine the applicant's proposal and its organizational purposes, as required by the statutory criteria. This approach ensures that grant awards will neither advance nor inhibit religion.

To avoid Government entanglement in religion and programming decisions, NTIA will continue its policy of reviewing the project narrative and supporting documents, while also relying on the applicants' assurances that they comply with NTIA's policy on sectarian activities. General monitoring of grantees' activities will continue under the normal administrative process pertaining to Federal assistance programs.

Accordingly, as under our prior policy, submission of broadcast schedules and program listings will not generally be required. We will not review the content of all programs or activities for sectarian content unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee may be using NTIA-funded equipment or materials in connection with a project the essential thrust of which is sectarian. For example, under the prior approach, a single sectarian program in a broadcast schedule would have rendered the project ineligible for funding. Under our new approach, a single program with sectarian aspects will not necessarily render the project ineligible.[29] In such instances, NTIA will examine the overall purpose of the project to determine if it is consistent with the PTFP's statutory purposes. Further inquiry may be made as necessary to ensure that any benefit to a sectarian interest is merely attenuated or incidental as permitted under current jurisprudence.

To implement this new approach, we do not need to revise the language in the PTFP regulation, assurance or definition of "sectarian" as it pertains to our policy on sectarian activities.[30] We shall, however, revise the definition of "public telecommunications services" to delete the last sentence which provides, "It does not include essentially sectarian programming."[31]

2. National Endowment for Children's Educational Television (NECET)

Pursuant to NECET's enabling legislation,[32] in order to be eligible to apply for a grant, an applicant must be one of the following: an individual, corporation (for-profit or not-for-profit), partnership, association, joint stock company, trust, or state or local governmental entity.[33] A sectarian organization is eligible to apply, as long as it meets these eligibility requirements. NECET funds are available "to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills."[34] Presently, in making a NECET grant, NTIA must, as a part of its evaluation and review process, review program proposals and

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[13] For a discussion of this point, see Section III.A. of this policy statement.

[14] 856 F. Supp. 684 (D.D.C. 1994), appeal docketed, No. 94–5229 (D.C. Cir. Aug. 22, 1994).

[15] *Id.* at 697–698.

[16] 115 S.Ct. 2510 (1995).

[17] Comments of Lisa Owens.

[18] Comments of National Public Radio at 2.5; Comments of Wake Forest at 2–3.

[19] Comments of North Carolina Public Radio Association at 1; Comments of Honorable Richard Burr at 1; Comments of Southern Public Radio at 1.

[20] Comments of Corporation for Public Broadcasting at 3; Comments of National Public Radio at 3.

[21] Comments of Fordham University at 16–17.

[22] Comments of Fordham University at 9.

[23] 403 U.S. 602 (1971).

[24] *Id.* at 612–613.

[25] The PTFP regulation at 15 C.F.R. § 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing. See also n. 3, supra.

[26] To be eligible for a construction or planning grant, an applicant must be one of the following: a public broadcast station; a noncommercial telecommunications entity; a system of public telecommunications entities; a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or a state or local government (or any agency thereof), or a political or special purpose subdivision of a state. See 15 CFR § 2301.4(a), (b).

[27] 47 U.S.C. 390–393; 15 CFR Part 2301 *et seq.*

[28] For definitions of eligible organizations and projects, see 15 CFR 2301.4.

[29] While this example uses one program, we wish to emphasize that we are not setting any percentage or hourly maximum on the amount of sectarian programming that would be considered allowable.

[30] See 15 CFR 2301.1; 15 CFR 2301.5(d)(2)(xvi); 15 CFR 2301.22(d). The PTFP regulation at 15 CFR 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing.

[31] 15 CFR 2301.1.

[32] 47 U.S.C. 394.

[33] 47 U.S.C. 394(i)(2).

[34] 47 U.S.C. 394 (a).

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content to determine whether it would meet these requirements.

Accordingly, review under our new policy interpretation will be essentially the same as before. The policy will be applied to each individual program for which a grant is sought, and the grantee must comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.[35] If the essential purpose of a program is to advance or inhibit religion, its funding would not be permissible. We do not believe the likelihood of entanglement is any greater than it was under our prior policy.

Under our prior policy interpretation, if, for example, part of a program encompassed a Catholic mass, the entire project would have been considered ineligible for funding. In contrast, under the new approach, we will make a determination on eligibility based on the test that any benefit to a sectarian interest resulting from the receipt of NTIA funds must be attenuated or incidental.

3. Telecommunications and Information Infrastructure Assistance Program (TIIAP)

To be eligible for a TIIAP grant, an applicant must be one of the following: a state or local government, an accredited college or university, or a non-profit entity. Individuals and for-profit organizations are not eligible to apply. A sectarian organization is eligible to apply, as long as the organization meets these requirements. TIIAP funds are provided for the "planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety or other social services."[36]

In contrast to PTFP, however, where the broadcaster maintains editorial control, a TIIAP grantee may sometimes, but not always, exercise editorial control over the content of its communications network. For example, a network may involve a bulletin board where the operator does not have control of messages sent among individuals. In some cases, therefore, it could be difficult for a TIIAP applicant to certify that facilities will not be used for essentially sectarian purposes. Accordingly, TIIAP awards will be subject to the policy which requires that the NTIA-funded facilities will not be used for essentially sectarian purposes to the extent that the applicant controls the content of network communications.[37]

To avoid excessive entanglement in religion, we will not review the content of information transmitted over TIIAP-funded networks unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee is using NTIA funded equipment or materials in connection with sectarian activities. In such instances, rather than examining only the questioned activity, NTIA will examine the overall purpose of the project to determine whether NTIA funding provides an attenuated or incidental benefit to the sectarian interest and thus whether it is permissible.

For example, TIIAP might provide funding to a local organization to establish a public computer bulletin board. As part of this bulletin board, a church-affiliated youth group might post information regarding meetings and meeting times, which includes a meeting time for a worship service. Under NTIA's prior policy, this project might have been ineligible for funding because the information regarding the sectarian meetings and meeting times would have appeared on the network. Applying NTIA's new policy interpretation, we would examine the overall purpose of the project to determine whether it fell within the TIIAP's statutorily authorized purposes and whether any benefit to religion was merely incidental or attenuated. If the answer to both questions was yes, such a grant would be permissible under the new policy interpretation.

IV. Conclusion

NTIA's modified policy interpretation appropriately harmonizes the First Amendment's Free Exercise and Establishment Clauses, consistent with current jurisprudence. The new interpretation of our policy concerning use of NTIA grant funds in connection with sectarian activities will provide grant applicants greater flexibility, while continuing to avoid unwarranted government entanglement with religion.

Rulemaking Requirements

1. It has been determined that this rule is not significant for purposes of Executive Order 12866.

2. Because this rule relates to public property, loans, grants, benefits, or contracts, it is exempt from the notice and comment and delayed effective date requirements of the Administrative Procedure Act (APA).

3. Because a notice of proposed rulemaking is not required by the APA or any other law, a Regulatory Flexibility Analysis is not required and was not prepared.

4. This rule contains information collection requirements subject to the provisions of the Paperwork Reduction Act. This collection has clearance from the Office of Management and Budget under OMB Approval No. 0660–0003.

5. This policy does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting and recordkeeping requirements, Telecommunications.

(Catalog of Federal Domestic Assistance No. 11.550)

Dated: December 15, 1995.

Larry Irving,

Assistant Secretary of Communications and Information.

For the reasons set out in the preamble, 15 CFR part 2301 is amended as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

1. The authority for part 2301 continues to read as follows:

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95–567, 92 Stat. 2405, codified at 47 U.S.C. 390–394, 397–399b; the Public Broadcasting Amendments Act of 1981, Pub. L. 97–35, 95 Stat. 725; the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, section 5001, 100 Stat. 117; and the Public Telecommunications Act of 1988, Pub. L. 100–626, 102 Stat. 3207.

2. Section 2301.1 is amended by revising the definition of public telecommunications services to read as follows:

§ 2301.1 Definitions.

* * * * *

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

* * * * *

3. Section 2301.4(a) is revised to read as follows:

§ 2301.4 Eligible organizations and scope of projects.

(a) Eligible applicants (Construction and Planning Grants). In order to apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or

(5) A state or local government (or agency thereof), or a political or special purpose subdivision of a state.

* * * * *

4. Section 2301.4 is further amended by removing paragraph (b), redesignating paragraph (c) as (b), and revising the newly designated paragraph (b) to read as follows:

* * * * *

(b) Scope of projects. An applicant that is eligible under paragraph (a) of this section may file an application with the agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

* * * * *

5. Paragraphs (d) through (f) of § 2301.4 are redesignated paragraphs (c) through (e) respectively.

[FR Doc. 95–31089 Filed 12–21–95; 8:45 am]

BILLING CODE 3510–60–P

[35] Each award will contain a special award condition which requires that: "The grantee will neither use nor allow the NTIA-funded equipment, facilities or programming to be used for purposes the essential thrust of which is sectarian." There are often special award conditions attached to each award which provide conditions on the Federal funds in addition to those required by OMB Circulars. As noted above in n. 30, supra, NTIA considers this language to mean the same thing as not allowing the NTIA-funded equipment, facilities or programming to be used for essentially sectarian purposes.

[36] Pub. L. No. 103–317, 1994 U.S.C.C.A.N. (108 Stat.) 1724, 1747; 47 U.S.C. § 390–393.

[37] The special award condition for the TIIAP awards will read as follows: "During the Federal interest period, to the extent that the grantee maintains control over network transmissions, the grantee will neither use nor allow the NTIA-funded network to be used for purposes the essential thrust of which is sectarian." As noted in fn. 35, supra, NTIA considers this language to mean the same thing as not allowing the NTIA-funded network to be used for essentially sectarian purposes.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 88P–0030]

RIN 0910–AA11

Beverages: Bottled Water; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of November 13, 1995 (60 FR 57076). The document established a standard of identity for bottled water; recodified the standard of quality for bottled water; revised the definition of bottled water to include mineral water and ingredient uses of this product; and defined "artesian water," "ground water," "mineral water," "purified water," "sparkling bottled water," "spring water," "sterile water," and "well water." The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204,202–205–4681.

In FR Doc. 95–27798, appearing on page 57076 in the **Federal Register** of Monday, November 13, 1995, the following corrections are made in § 165.110 *Bottled water*:

§ 165.110 [Corrected]

1. On page 57124, in the third column, in paragraph (a)(2)(v), in the fourth line, the phrase "amount of carbon dioxide that" is corrected to read "amount of carbon dioxide from the source that".

2. On page 57126, in the first column, in paragraph (b)(4)(i)(C)(*4*), beginning in the third line, "Method 501.2" is removed.

Dated: December 15, 1995.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 95–31200 Filed 12–21–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Zoalene

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Pharma, Inc. The supplemental NADA provides for wider assay limits for zoalene Type A medicated articles. FDA is amending the regulation concerning medicated feed applications to reflect the approval.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: A. L. Pharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed supplemental NADA 11–116, which provides for widening the current assay limits for zoalene Type A medicated articles. FDA reviewed the data and information submitted and is amending 21 CFR 558.4 to provide for an assay range of 92 to 104 percent for zoalene Type A medicated articles.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the "Category I" table in the entry for "Zoalene" in the second column by removing "98–104" and adding in its place "92–104".

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Dated: December 14. 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–31199 Filed 12–21–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADA's) from Farmland Industries, Inc., to A. L. Pharma, Inc.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., Kansas City, MS 64116, has informed FDA that it has transferred the ownership of, and all rights and interests in, approved NADA's 46–415 (Tylosin Premixes) and 91–749 (Tylosin-Sulfa Premixes) to A. L. Pharma, Inc., One Executive Dr., Fort Lee, NJ 07024. Accordingly, the agency is amending the regulations in 21 CFR 558.625 and 558.630.

List of Subject in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

2. Section 558.625 *Tylosin* is amended in paragraph (b)(83) by removing "021676" and adding in its place "046573".

§ 558.630 [Amended]

3. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "021676" and by adding "046573" in numerical order.

Dated: December 14, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–31198 Filed 12–21–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8645]

RIN 1545–AS38

Rules for Certain Rental Real Estate Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing rules for rental real estate activities of taxpayers engaged in certain real property trades or businesses. The regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993, and affect taxpayers subject to the limitations on passive activity losses and passive activity credits.

DATES: These regulations are effective on January 1, 1995. See § 1.469–11 for applicability.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (TD 8645), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to: CC:DOM:CORP:T:R (TD 8645), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William M. Kostak at (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–AS38. The estimated annual burden per respondent varies from 0.10 hours to 0.25 hours, depending on individual circumstances, with an estimated average of 0.15 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document amends 26 CFR part 1 to provide rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of section 469. Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. In general, passive activities are activities in which the taxpayer does not materially participate. In addition, until the enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), all rental activities (including those in which a taxpayer materially participated) were passive.

OBRA 1993 added section 469(c)(7), which provides that rental real estate activities of qualifying taxpayers are not subject to the rule that treats all rental activities as passive. Thus, a rental real estate activity of a qualifying taxpayer is not passive if the taxpayer materially participates in the activity. Further, section 469(c)(7) provides that each of a qualifying taxpayer's interests in rental real estate is treated as a separate activity unless the taxpayer elects to treat all interests in rental real estate as a single activity.

On January 10, 1995, the IRS published in the **Federal Register** a notice of proposed rulemaking (60 FR 2557) to provide guidance regarding section 469(c)(7). A number of public comments were received concerning the proposed regulations, and a public hearing was held on May 11, 1995. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. General Background

The proposed regulations provide rules for determining whether a taxpayer qualifies for treatment under section 469(c)(7). The proposed regulations also provide rules for determining the rental real estate activities of qualifying taxpayers for purposes of section 469. Except for modifications in response to comments received on the proposed regulations, the final regulations generally adopt the rules contained in the proposed regulations.

II. Public Comments

Several comments requested that the Service reconsider the rule in the proposed regulations prohibiting qualifying taxpayers from grouping rental real estate activities with other activities in determining whether the taxpayers materially participate in the rental real estate activities. After careful consideration, the final regulations adopt the rule in the proposed regulations because that position is consistent with the statutory language and the legislative history.

Several comments suggested that the rule in the proposed regulations prohibiting the grouping of rental real estate activities with other activities be modified to allow qualifying taxpayers to group the activities of development or construction of rental real estate with rental real estate activities. The final regulations do not adopt this modification because in most cases development and construction activities are separate and distinct from rental activities. In addition, this modification would introduce significant administrative difficulties in determining which development activities or construction activities qualify. However, the IRS and Treasury Department invite comments concerning whether the material participation tests in § 1.469–5T(a) should be amended to include a look-back material participation test for taxpayers significantly involved in the development or construction of their rental real estate interests.

Several comments requested clarification regarding whether a qualifying taxpayer's participation in a management activity may count towards material participation in a rental real estate activity if the management activity includes the management of rental real estate owned by the taxpayer. The final regulations clarify that a qualifying taxpayer may participate in a rental real estate activity through participation in a management activity. In determining whether the taxpayer materially participates in the rental real estate activity, however, work the taxpayer performs in the management activity is taken into account only to the extent it is performed in managing the taxpayer's own rental real estate. The final regulations also clarify that a qualifying taxpayer who owns rental real estate through an entity, including a C corporation that is subject to section 469, may count work performed by the taxpayer in managing the rental real estate of the entity in establishing material participation in the taxpayer's rental real estate activities. Thus, if a qualifying taxpayer owns some interests in rental real estate through a closely held C corporation and makes the election to treat all interests in rental real estate as a single activity, the aggregate rental real estate activity will include those interests held through the closely held C corporation for purposes of material participation.

One comment requested that the regulations modify the definition of trade or business to clarify that a taxpayer's real property trades or businesses are determined without regard to the taxpayer's grouping of activities under § 1.469–4. The final regulations clarify that a taxpayer's grouping of activities under § 1.469–4 does not control the determination of the taxpayer's real property trades or businesses for purposes of this section.

Several comments requested that the regulations provide a detailed definition of real property trades or businesses beyond the cross-reference to section 469(c)(7)(C). However, to avoid complex and mechanical rules, the final regulations do not adopt a detailed definition of real property trades or businesses. Instead, the regulations provide that taxpayers may use any reasonable method for determining their real property trades or businesses.

Several comments requested that the final regulations modify the rule in the proposed regulations providing that only employees who are five-percent owners of their employer at all times during the taxable year may treat personal services performed as an employee as services performed in a real property trade or business. The comments suggested that the regulations should take into account personal services performed by employees that are five-percent owners for a significant portion of a taxable year. In response to these comments, the final regulations are modified to provide that an employee may count services performed in a real property trade or business during the portion of the taxable year that the employee is a five-percent owner in the employer.

Several comments requested clarification concerning whether a qualifying taxpayer that makes an election to treat all interests in rental real estate as a single activity will be treated as having a single rental real estate activity for purposes of the former passive activity rule under section 469(f). In addition, comments requested that the regulations be modified to provide that qualifying taxpayers that make the aggregation election will be treated as having separate activities for purposes of the disposition rules under section 469(g) and § 1.469–4(g). In response to these comments, the final regulations clarify that a qualifying taxpayer that makes the election to treat all interests in rental real estate as a single rental real estate activity will be treated as having a single activity for all purposes of section 469, including sections 469(f) and (g). The statutory language and the legislative history do not support a rule allowing a qualifying taxpayer to treat all interests in rental real estate as a single activity for purposes of material participation and section 469(f), but as separate activities for purposes of section 469(g).

In addition, in response to comments, the final regulations provide an example illustrating the operation of the former passive activity rule for qualifying taxpayers that make the election to treat all interests in rental real estate as a single activity. This example illustrates that qualifying taxpayers that make the aggregation election may use current net income from the aggregate rental real estate activity to offset the prior-year disallowed passive losses of the aggregate rental real estate activity, regardless of which rental real estate interests within that activity produced the income or prior-year losses.

Some comments requested that the regulations permit qualifying taxpayers to make or revoke the aggregation election on an amended income tax return. After careful consideration of this issue, the final regulations adopt the rule in the proposed regulations that aggregation elections must be made or revoked on an original return. The final regulations provide, however, that the election may be revoked in any year in which the facts are materially changed from those in the taxable year for which the election was made.

In addition, one comment requested clarification as to what constitutes a material change in the facts and circumstances that would allow a taxpayer to revoke an aggregation election. However, the final regulations do not provide an example or bright-line rule for determining when a material change in the facts and circumstances has occurred, because this determination is intended to be a broad factual inquiry. Providing an example or bright-line rule may inappropriately restrict the scope of that inquiry.

One comment requested the modification of the rule in the proposed regulations that the aggregation election has no effect in years the taxpayer is not a qualifying taxpayer. Instead, the comment suggested that, for ease of administration and compliance, the

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aggregation election should be binding and irrevocable for all future years, including years in which the taxpayer is not a qualifying taxpayer. However, the final regulations adopt the rule in the proposed regulations because the position advocated by the comment would be unfavorable to many taxpayers and would not significantly improve administration.

Several comments requested that the regulations modify the rule in the proposed regulations treating each rental real estate interest of a passthrough entity as a separate interest of a person owning a fifty-percent or greater interest in the capital, gain, loss, income, deduction, or credit of the entity at any time during a taxable year. A commentator stated that this rule is burdensome on many passthrough entities and should be eliminated or modified. The final regulations modify this rule so that it applies only when a qualifying taxpayer owns a fifty-percent or greater interest in the capital, profits, or losses of a passthrough entity for a taxable year. Accordingly, this rule will not apply if a qualifying taxpayer owns a fifty-percent or greater interest in a single item of income or deduction but does not own a fifty-percent or greater interest in the overall capital, profits, or losses of the passthrough entity.

In response to one comment, the final regulations also clarify the application of the fifty-percent ownership rule to tiered passthrough entities. The final regulations provide that if a passthrough entity owns a fifty-percent or greater interest in the capital, profits, or losses of another passthrough entity for a taxable year, each interest in rental real estate of the lower-tier entity will be a separate interest in rental real estate of the upper-tier entity.

In response to another comment, the final regulations clarify that section 469(i) applies after the rules of section 469(c)(7) are applied. Accordingly, the $25,000 offset will be applied only against passive losses from rental real estate activities, and not against losses that are allowable as a result of section 469(c)(7). In addition, the final regulations clarify that adjusted gross income for purposes of section 469(i) is not reduced by any losses from rental real estate that are allowable as a result of section 469(c)(7).

Several comments requested a modification to the effective date provision, to provide that aggregation elections made for taxable years beginning before January 1, 1995, are not binding for future years. Because taxpayers had sufficient notice of the rules of section 469(c)(7) and these regulations, this modification is unnecessary and would add administrative complexity. Accordingly, the final regulations adopt the effective date provision of the proposed regulations.

Finally, in response to a comment, the activity regrouping rule of § 1.469–4(e)(2) is clarified to provide that a taxpayer may not regroup activities unless the taxpayer's original grouping was clearly inappropriate or there has been a material change in the facts and circumstances that makes the original grouping clearly inappropriate.

III. Effective Dates

In general, section 469(c)(7) applies for taxable years beginning after December 31, 1993. These regulations are effective for taxable years beginning on or after January 1, 1995. These regulations are also effective for elections under section 469(c)(7)(A) and paragraph (g) of these regulations that are made with returns filed on or after January 1, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is William M. Kostak, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.469–9 also issued under 26 U.S.C. 469(c)(6), (h)(2), and (l)(1).

Par. 2. Section 1.469–0 is amended by:

1. Revising the entry for § 1.469–4(h).
2. Revising the heading for § 1.469–9 and adding entries for paragraphs (a) through (j) of § 1.469–9.
3. Revising the entry for § 1.469–11(b)(2) and removing the entries for § 1.469–11(b)(2)(i) and (ii).
4. Revising the entry for § 1.469–11(b)(3).
5. Adding an entry for § 1.469–11(b)(4).
6. The revisions and additions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–4 Definition of Activity.

* * * * *

(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

* * * * *

§ 1.469–9 Rules for certain rental real estate activities.

(a) Scope and purpose.
(b) Definitions.
(1) Trade or business.
(2) Real property trade or business.
(3) Rental real estate.
(4) Personal services.
(5) Material participation.
(6) Qualifying taxpayer.
(c) Requirements for qualifying taxpayers.
(1) In general.
(2) Closely held C corporations.
(3) Requirement of material participation in the real property trades or businesses.
(4) Treatment of spouses.
(5) Employees in real property trades or businesses.
(d) General rule for determining real property trades or businesses.
(1) Facts and circumstances.
(2) Consistency requirement.
(e) Treatment of rental real estate activities of a qualifying taxpayer.
(1) In general.
(2) Treatment as a former passive activity.
(3) Grouping rental real estate activities with other activities.
(i) In general.
(ii) Special rule for certain management activities.
(4) Example.
(f) Limited partnership interests in rental real estate activities.
(1) In general.
(2) De minimis exception.
(g) Election to treat all interests in rental real estate as a single rental real estate activity.
(1) In general.
(2) Certain changes not material.
(3) Filing a statement to make or revoke the election.
(h) Interests in rental real estate held by certain passthrough entities.

(1) General rule.
(2) Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.
(3) Special rule for interests held in tiered passthrough entities.
(i) [Reserved].
(j) $25,000 offset for rental real estate activities of qualifying taxpayers.
(1) In general.
(2) Example.

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§ 1.469–11 Effective date and transition rules.

* * * * *

(b) * * *
(2) Additional transition rule for 1992 amendments.
(3) Fresh starts under consistency rules.
(i) Regrouping when tax liability is first determined under Project PS–1–89.
(ii) Regrouping when tax liability is first determined under § 1.469–4.
(iii) Regrouping when taxpayer is first subject to section 469(c)(7).
(4) Certain investment credit property.

* * * * *

Par. 3. Section 1.469–4 is amended by revising paragraphs (e) (1) and (2) and (h). The revisions read as follows:

§ 1.469–4 Definition of Activity.

* * * * *

(e) * * *

(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section and § 1.469–11, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

(2) *Regroupings.* If it is determined that a taxpayer's original grouping was clearly inappropriate or a material change in the facts and circumstances has occurred that makes the original grouping clearly inappropriate, the taxpayer must regroup the activities and must comply with disclosure requirements that the Commissioner may prescribe.

* * * * *

(h) *Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).* See § 1.469–9 for rules for certain rental real estate activities.

Par. 4. Section 1.469–9 is revised to read as follows:

§ 1.469–9 Rules for certain rental real estate activities.

(a) *Scope and purpose.* This section provides guidance to taxpayers engaged in certain real property trades or businesses on applying section 469(c)(7) to their rental real estate activities.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Trade or business.* A *trade or business* is any trade or business determined by treating the types of activities in § 1.469–4(b)(1) as if they involved the conduct of a trade or business, and any interest in rental real estate, including any interest in rental real estate that gives rise to deductions under section 212.

(2) *Real property trade or business. Real property trade or business* is defined in section 469(c)(7)(C).

(3) *Rental real estate. Rental real estate* is any real property used by customers or held for use by customers in a rental activity within the meaning of § 1.469–1T(e)(3). However, any rental real estate that the taxpayer grouped with a trade or business activity under § 1.469–4(d)(1)(i)(A) or (C) is not an interest in rental real estate for purposes of this section.

(4) *Personal services. Personal services* means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in § 1.469–5T(f)(2)(ii).

(5) *Material participation. Material participation* has the same meaning as under § 1.469–5T. Paragraph (f) of this section contains rules applicable to limited partnership interests in rental real estate that a qualifying taxpayer elects to aggregate with other interests in rental real estate of that taxpayer.

(6) *Qualifying taxpayer.* A *qualifying taxpayer* is a taxpayer that owns at least one interest in rental real estate and meets the requirements of paragraph (c) of this section.

(c) *Requirements for qualifying taxpayers*—(1) *In general.* A qualifying taxpayer must meet the requirements of section 469(c)(7)(B).

(2) *Closely held C corporations.* A closely held C corporation meets the requirements of paragraph (c)(1) of this section by satisfying the requirements of section 469(c)(7)(D)(i). For purposes of section 469(c)(7)(D)(i), gross receipts do not include items of portfolio income within the meaning of § 1.469–2T(c)(3).

(3) *Requirement of material participation in the real property trades or businesses.* A taxpayer must materially participate in a real property trade or business in order for the personal services provided by the taxpayer in that real property trade or business to count towards meeting the requirements of paragraph (c)(1) of this section.

(4) *Treatment of spouses.* Spouses filing a joint return are qualifying taxpayers only if one spouse separately satisfies both requirements of section 469(c)(7)(B). In determining the real property trades or businesses in which a married taxpayer materially participates (but not for any other purpose under this paragraph (c)), work performed by the taxpayer's spouse in a trade or business is treated as work performed by the taxpayer under § 1.469–5T(f)(3), regardless of whether the spouses file a joint return for the year.

(5) *Employees in real property trades or businesses.* For purposes of paragraph (c)(1) of this section, personal services performed during a taxable year as an employee generally will be treated as performed in a trade or business but will not be treated as performed in a real property trade or business, unless the taxpayer is a five-percent owner (within the meaning of section 416(i)(1)(B)) in the employer. If an employee is not a five-percent owner in the employer at all times during the taxable year, only the personal services performed by the employee during the period the employee is a five-percent owner in the employer will be treated as performed in a real property trade or business.

(d) *General rule for determining real property trades or businesses*—(1) *Facts and circumstances.* The determination of a taxpayer's real property trades or businesses for purposes of paragraph (c) of this section is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances in determining the real property trades or businesses in which the taxpayer provides personal services. Depending on the facts and circumstances, a real property trade or business consists either of one or more than one trade or business specifically described in section 469(c)(7)(C). A taxpayer's grouping of activities under § 1.469–4 does not control the determination of the taxpayer's real property trades or businesses under this paragraph (d).

(2) *Consistency requirement.* Once a taxpayer determines the real property trades or businesses in which personal services are provided for purposes of paragraph (c) of this section, the taxpayer may not redetermine those real property trades or businesses in subsequent taxable years unless the original determination was clearly inappropriate or there has been a material change in the facts and

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circumstances that makes the original determination clearly inappropriate.

(e) *Treatment of rental real estate activities of a qualifying taxpayer*—(1) *In general.* Section 469(c)(2) does not apply to any rental real estate activity of a taxpayer for a taxable year in which the taxpayer is a qualifying taxpayer under paragraph (c) of this section. Instead, a rental real estate activity of a qualifying taxpayer is a passive activity under section 469 for the taxable year unless the taxpayer materially participates in the activity. Each interest in rental real estate of a qualifying taxpayer will be treated as a separate rental real estate activity, unless the taxpayer makes an election under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity. Each separate rental real estate activity, or the single combined rental real estate activity if the taxpayer makes an election under paragraph (g), will be an activity of the taxpayer for all purposes of section 469, including the former passive activity rules under section 469(f) and the disposition rules under section 469(g). However, section 469 will continue to be applied separately with respect to each publicly traded partnership, as required under section 469(k), notwithstanding the rules of this section.

(2) *Treatment as a former passive activity.* For any taxable year in which a qualifying taxpayer materially participates in a rental real estate activity, that rental real estate activity will be treated as a former passive activity under section 469(f) if disallowed deductions or credits are allocated to the activity under § 1.469–1(f)(4).

(3) *Grouping rental real estate activities with other activities*—(i) *In general.* For purposes of this section, a qualifying taxpayer may not group a rental real estate activity with any other activity of the taxpayer. For example, if a qualifying taxpayer develops real property, constructs buildings, and owns an interest in rental real estate, the taxpayer's interest in rental real estate may not be grouped with the taxpayer's development activity or construction activity. Thus, only the participation of the taxpayer with respect to the rental real estate may be used to determine if the taxpayer materially participates in the rental real estate activity under § 1.469–5T.

(ii) *Special rule for certain management activities.* A qualifying taxpayer may participate in a rental real estate activity through participation, within the meaning of §§ 1.469–5(f) and 5T(f), in an activity involving the management of rental real estate (even if this management activity is conducted through a separate entity). In determining whether the taxpayer materially participates in the rental real estate activity, however, work the taxpayer performs in the management activity is taken into account only to the extent it is performed in managing the taxpayer's own rental real estate interests.

(4) *Example.* The following example illustrates the application of this paragraph (e).

Example. (i) Taxpayer *B* owns interests in three rental buildings, *U*, *V* and *W*. In 1995, *B* has $30,000 of disallowed passive losses allocable to Building *U* and $10,000 of disallowed passive losses allocable to Building *V* under § 1.469–1(f)(4). In 1996, *B* has $5,000 of net income from Building *U*, $5,000 of net losses from Building *V*, and $10,000 of net income from Building *W*. Also in 1996, *B* is a qualifying taxpayer within the meaning of paragraph (c) of this section. Each building is treated as a separate activity of *B* under paragraph (e)(1) of this section, unless *B* makes the election under paragraph (g) to treat the three buildings as a single rental real estate activity. If the buildings are treated as separate activities, material participation is determined separately with respect to each building. If *B* makes the election under paragraph (g) to treat the buildings as a single activity, all participation relating to the buildings is aggregated in determining whether *B* materially participates in the combined activity.

(ii) Effective beginning in 1996, *B* makes the election under paragraph (g) to treat the three buildings as a single rental real estate activity. *B* works full-time managing the three buildings and thus materially participates in the combined activity in 1996 (even if *B* conducts this management function through a separate entity, including a closely held C corporation). Accordingly, the combined activity is not a passive activity of *B* in 1996. Moreover, as a result of the election under paragraph (g), disallowed passive losses of $40,000 ($30,000+$10,000) are allocated to the combined activity. B's net income from the activity for 1996 is $10,000 ($5,000 − $5,000+$10,000). This net income is nonpassive income for purposes of section 469. However, under section 469(f), the net income from a former passive activity may be offset with the disallowed passive losses from the same activity. Because Buildings *U*, *V* and *W* are treated as one activity for all purposes of section 469 due to the election under paragraph (g), and this activity is a former passive activity under section 469(f), *B* may offset the $10,000 of net income from the buildings with an equal amount of disallowed passive losses allocable to the buildings, regardless of which buildings produced the income or losses. As a result, *B* has $30,000 ($40,000 − $10,000) of disallowed passive losses remaining from the buildings after 1996.

(f) *Limited partnership interests in rental real estate activities*—(1) *In general.* If a taxpayer elects under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and at least one interest in rental real estate is held by the taxpayer as a limited partnership interest (within the meaning of § 1.469–5T(e)(3)), the combined rental real estate activity will be treated as a limited partnership interest of the taxpayer for purposes of determining material participation. Accordingly, the taxpayer will not be treated under this section as materially participating in the combined rental real estate activity unless the taxpayer materially participates in the activity under the tests listed in § 1.469–5T(e)(2) (dealing with the tests for determining the material participation of a limited partner).

(2) *De minimis exception.* If a qualifying taxpayer elects under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and the taxpayer's share of gross rental income from all of the taxpayer's limited partnership interests in rental real estate is less than ten percent of the taxpayer's share of gross rental income from all of the taxpayer's interests in rental real estate for the taxable year, paragraph (f)(1) of this section does not apply. Thus the taxpayer may determine material participation under any of the tests listed in § 1.469–5T(a) that apply to rental real estate activities.

(g) *Election to treat all interests in rental real estate as a single rental real estate activity*—(1) *In general.* A qualifying taxpayer may make an election to treat all of the taxpayer's interests in rental real estate as a single rental real estate activity. This election is binding for the taxable year in which it is made and for all future years in which the taxpayer is a qualifying taxpayer under paragraph (c) of this section, even if there are intervening years in which the taxpayer is not a qualifying taxpayer. The election may be made in any year in which the taxpayer is a qualifying taxpayer, and the failure to make the election in one year does not preclude the taxpayer from making the election in a subsequent year. In years in which the taxpayer is not a qualifying taxpayer, the election will not have effect and the taxpayer's activities will be those determined under § 1.469–4. If there is a material change in the taxpayer's facts and circumstances, the taxpayer may revoke the election using the procedure described in paragraph (g)(3) of this section.

(2) *Certain changes not material.* The fact that an election is less advantageous to the taxpayer in a particular taxable year is not, of itself, a material change in the taxpayer's facts and circumstances. Similarly, a break in the taxpayer's status as a qualifying taxpayer is not, of itself, a material change in the taxpayer's facts and circumstances.

(3) *Filing a statement to make or revoke the election.* A qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. This statement must contain a declaration that the taxpayer is a qualifying taxpayer for the taxable year and is making the election pursuant to section 469(c)(7)(A). The taxpayer may make this election for any taxable year in which section 469(c)(7) is applicable. A taxpayer may revoke the election only in the taxable year in which a material change in the taxpayer's facts and circumstances occurs or in a subsequent year in which the facts and circumstances remain materially changed from those in the taxable year for which the election was made. To revoke the election, the taxpayer must file a statement with the taxpayer's original income tax return for the year of revocation. This statement must contain a declaration that the taxpayer is revoking the election under section 469(c)(7)(A) and an explanation of the nature of the material change.

(h) *Interests in rental real estate held by certain passthrough entities*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, a qualifying taxpayer's interest in rental real estate held by a partnership or an S corporation (passthrough entity) is treated as a single interest in rental real estate if the passthrough entity grouped its rental real estate as one rental activity under § 1.469–4(d)(5). If the passthrough entity grouped its rental real estate into separate rental activities under § 1.469–4(d)(5), each rental real estate activity of the passthrough entity will be treated as a separate interest in rental real estate of the qualifying taxpayer. However, the qualifying taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(2) *Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.* If a qualifying taxpayer owns, directly or indirectly, a fifty-percent or greater interest in the capital, profits, or losses of a passthrough entity for a taxable year, each interest in rental real estate held by the passthrough entity will be treated as a separate interest in rental real estate of the qualifying taxpayer, regardless of the passthrough entity's grouping of activities under § 1.469–4(d)(5). However, the qualifying taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(3) *Special rule for interests held in tiered passthrough entities.* If a passthrough entity owns a fifty-percent or greater interest in the capital, profits, or losses of another passthrough entity for a taxable year, each interest in rental real estate held by the lower-tier entity will be treated as a separate interest in rental real estate of the upper-tier entity, regardless of the lower-tier entity's grouping of activities under § 1.469–4(d)(5).

(i) [Reserved].

(j) *$25,000 offset for rental real estate activities of qualifying taxpayers*—(1) *In general.* A qualifying taxpayer's passive losses and credits from rental real estate activities (including prior-year disallowed passive activity losses and credits from rental real estate activities in which the taxpayer materially participates) are allowed to the extent permitted under section 469(i). The amount of losses or credits allowable under section 469(i) is determined after the rules of this section are applied. However, losses allowable by reason of this section are not taken into account in determining adjusted gross income for purposes of section 469(i)(3).

(2) *Example.* The following example illustrates the application of this paragraph (j).

Example. (i) Taxpayer *A* owns building *X* and building *Y*, both interests in rental real estate. In 1995, *A* is a qualifying taxpayer within the meaning of paragraph (c) of this section. *A* does not elect to treat *X* and *Y* as one activity under section 469(c)(7)(A) and paragraph (g) of this section. As a result, *X* and *Y* are treated as separate activities pursuant to section 469(c)(7)(A)(ii). *A* materially participates in *X* which has $100,000 of passive losses disallowed from prior years and produces $20,000 of losses in 1995. *A* does not materially participate in *Y* which produces $40,000 of income in 1995. *A* also has $50,000 of income from other nonpassive sources in 1995. *A* otherwise meets the requirements of section 469(i).

(ii) Because *X* is not a passive activity in 1995, the $20,000 of losses produced by *X* in 1995 are nonpassive losses that may be used by *A* to offset part of the $50,000 of nonpassive income. Accordingly, *A* is left with $30,000 ($50,000–$20,000) of nonpassive income. In addition, A may use the prior year disallowed passive losses of *X* to offset any income from *X* and passive income from other sources. Therefore, *A* may offset the $40,000 of passive income from *Y* with $40,000 of passive losses from *X*.

(iii) Because *A* has $60,000 ($100,000–$40,000) of passive losses remaining from *X* and meets all of the requirements of section 469(i), *A* may offset up to $25,000 of nonpassive income with passive losses from *X* pursuant to section 469(i). As a result, *A* has $5,000 ($30,000–$25,000) of nonpassive income remaining and disallowed passive losses from *X* of $35,000 ($60,000–$25,000) in 1995.

Par. 5. Section 1.469–11 is amended as follows:

1. Paragraph (a)(2) is amended by removing "; and" and adding ";" in its place.

2. Paragraph (a)(3) is redesignated as paragraph (a)(4) and a new paragraph (a)(3) is added.

3. Paragraph (b)(1) is revised.

4. The heading for paragraph (b)(2) is revised; the headings for paragraphs (b)(2)(i) and (b)(2)(ii) are removed; paragraph (b)(2)(ii) is removed, and paragraph (b)(2)(i) is redesignated as paragraph (b)(2).

5. Paragraph (b)(3) is redesignated as paragraph (b)(4).

6. A new paragraph (b)(3) is added.

The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(3) The rules contained in § 1.469–9 apply for taxable years beginning on or after January 1, 1995, and to elections made under § 1.469–9(g) with returns filed on or after January 1, 1995; and

* * * * * *

(b) * * * (1) *Application of 1992 amendments for taxable years beginning before October 4, 1994.* Except as provided in paragraph (b)(2) of this section, for taxable years that end after May 10, 1992, and begin before October 4, 1994, a taxpayer may determine tax liability in accordance with Project PS–1–89 published at 1992–1 C.B. 1219 (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Additional transition rule for 1992 amendments.* * * *

(3) *Fresh starts under consistency rules*—(i) *Regrouping when tax liability is first determined under Project PS–1–89.* For the first taxable year in which a taxpayer determines its tax liability under Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of Project PS–1–89.

(ii) *Regrouping when tax liability is first determined under § 1.469–4.* For the first taxable year in which a

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taxpayer determines its tax liability under § 1.469–4, rather than under the rules of Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of § 1.469–4.

(iii) *Regrouping when taxpayer is first subject to section 469(c)(7).* For the first taxable year beginning after December 31, 1993, a taxpayer may regroup its activities to the extent necessary or appropriate to avail itself of the provisions of section 469(c)(7) and without regard to the manner in which the activities were grouped in the preceding taxable year.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

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26 CFR Part 1

[TD 8646]

RIN 1545–AT40

Allocation and Apportionment of Research and Experimental Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides guidance concerning the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources within and without the United States. This document affects taxpayers that have income from United States and foreign sources and that have made expenditures for research and experimentation that the taxpayer deducts under section 174 of the Internal Revenue Code of 1986.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Carl Cooper at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On May 24, 1995, the IRS published a notice of proposed rulemaking and notice of public hearing in the **Federal Register** (60 FR 27453) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 861 of the Internal Revenue Code of 1986. Section 1.861–8(e)(3) of the Income Tax Regulations provides rules regarding the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources inside and outside the United States.

The notice of proposed rulemaking proposed three principal changes to the existing regulations. First, allocation of research and experimental expenditures to three-digit SIC code product categories of gross income would be permitted. Second, the percentage of research and experimental expenditures that may be exclusively apportioned to United States source income under the sales method of apportionment under § 1.861–8(e)(3)(ii) would be increased from 30 percent to 50 percent. Third, use of the optional gross income methods of apportionment would constitute a binding election to use such methods in subsequent years. The election would not be revocable without the prior consent of the Commissioner. The three changes were proposed in part on the basis of an economic study performed by the Treasury Department pursuant to Rev. Proc. 92–56 (1992–2 C.B. 409), "The Relationship Between U.S. Research and Development and Foreign Income," which was published by the Treasury Department simultaneously with the proposed regulations.

Written comments responding to the notice were received, and a public hearing was held on September 8, 1995.

Regarding the determination of product categories under § 1.861–8(e)(3)(i)(B) of the proposed regulations, commenters suggested that the rule requiring a taxpayer to determine relevant product categories by reference to the three-digit classification of the Standard Industrial Classification Manual should be modified to allow determinations by reference to the five-digit classifications of the Manual. This suggestion was not adopted, because such a rule would too narrowly restrict the necessarily broad scope of the deduction. The IRS continues to believe that research and experimentation is an inherently speculative activity, that findings may contribute unexpected benefits, and that gross income derived from successful research and experimentation must bear the cost of unsuccessful research and experimentation.

Commenters suggested that the regulations permit taxpayers to determine product categories by reference to two- or three-digit categories at the annual election of the taxpayer. This suggestion was not adopted. The regulations provide that a taxpayer may determine product categories by reference to two- or three-digit categories. A taxpayer may aggregate, disaggregate or change a previously selected SIC code category if the taxpayer establishes to the satisfaction of the Commissioner that, due to changes in the relevant facts, a change in product category is appropriate. This rule provides a simple and workable format for balancing the need for consistency with the desire for flexibility.

Referring to current § 1.861–8(g) *Example 6* (which has been redesignated *§ 1.861–17(h) Example 4*), commenters suggested that the regulations allow the use of the Wholesale Trade SIC code category with respect to sales from any other category. The current § 1.861–8(g) *Example 6* was not correct on this point and does not override the rule stated parenthetically in the list of two digit SIC code categories in present § 1.861–8(e)(3)(i)(A) that wholesale trade may not be combined with other product categories. The final regulations include this rule along with *Example 6* corrected to conform to the rule.

Regarding the exclusive place of performance apportionment rule under § 1.861–8(e)(3)(ii)(A) of the proposed regulations, commenters suggested adding a rule providing that if the ratio of foreign research and experimental expenditures in a three digit SIC code category of all foreign affiliates of a United States consolidated group over foreign affiliate sales in that SIC code category exceed fifty percent of the ratio of United States consolidated group research and experimental expenditures in that SIC code category over United States consolidated group sales in that SIC code category, then the United States consolidated group research and experimental expenditures should be exclusively apportioned to United States source gross income. This suggestion has not been adopted. Although a foreign affiliate may incur substantial research and experimental expenditures in a given product category, the foreign affiliate may still benefit from the research and experimental expenditures of the United States consolidated group. See *Perkin-Elmer Corporation* v. *Commissioner*, 103 T.C. 464 (1994).

Regarding the optional gross income methods of apportionment under § 1.861–8(e)(3)(iii) of the proposed regulations, commenters suggested that the final regulations include a fifty percent exclusive place of performance apportionment under the optional gross income methods to be parallel with § 1.861–8(e)(3)(ii)(A). This suggestion has been adopted in part. Section (b)(1)(ii) of the final regulations includes a twenty-five percent exclusive place of performance apportionment under the optional gross income methods. This twenty-five percent exclusive apportionment ensures that taxpayers electing to use one of the optional gross income methods also obtain results comparable to those obtained by taxpayers electing to use the sales method, *i.e.*, an overall allocation that is twenty-five percent lower on average than the allocation to foreign source income resulting from the current regulations. The Treasury Department study does not support a greater exclusive apportionment.

Commenters suggested that the proposed regulations should be modified to reduce the floor on the amount of research and experimental expenditures that must be apportioned to foreign source income under the optional gross income methods from fifty percent to thirty percent of the amount that would have been apportioned under the sales method. This suggestion has not been adopted. The adoption of this suggested rule in addition to the twenty-five percent exclusive apportionment rule is not supported by the Treasury Department study.

Commenters suggested the elimination of the binding election to use the optional gross income methods under § 1.861–8(e)(3)(iii)(C) of the proposed regulations. Commenters also suggested that the binding election rule should be modified to provide for a change of method without the prior consent of the Commissioner after five years' use of one method. This suggestion, which recognizes the need for consistency while reducing the administrative burden on taxpayers, has been adopted.

Commenters suggested that the effective date election under § 1.861–8(e)(3)(vi) of the proposed regulations permit election by fiscal year taxpayers whose taxable years begin after August 1, 1994, but before January 1, 1995. This suggestion has been adopted.

Finally, these provisions, which were previously published as § 1.861–8(e)(3), have been renumbered and will now be published as § 1.861–17. This change has been made solely for the purpose of achieving greater clarity in formatting and is not intended to result in any additional substantive changes.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Carl Cooper, Office of the Associate Chief Counsel (International). However, other personnel from IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.861–8 is amended by:

1. Revising paragraph (e)(3) to read as set forth below.

2. Removing and reserving paragraph (g), *Examples 3* through *16* and *23*.

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(3) *Research and experimental expenditures.* For rules regarding the allocation and apportionment of research and experimental expenditures, see § 1.861–17.

* * * * *

Par. 3. Section 1.861–17 is added to read as follows:

§ 1.861–17 Allocation and apportionment of research and experimental expenditures.

(a) *Allocation*—(1) *In general.* The methods of allocation and apportionment of research and experimental expenditures set forth in this section recognize that research and experimentation is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and experimentation must bear the cost of unsuccessful research and experimentation. Expenditures for research and experimentation that a taxpayer deducts under section 174 ordinarily shall be considered deductions that are definitely related to all income reasonably connected with the relevant broad product category (or categories) of the taxpayer and therefore allocable to all items of gross income as a class (including income from sales, royalties, and dividends) related to such product category (or categories). For purposes of this allocation, the product category (or categories) that a taxpayer may be considered to have shall be determined in accordance with the provisions of paragraph (a)(2) of this section.

(2) *Product categories*—(i) *Allocation based on product categories.* Ordinarily, a taxpayer's research and experimental expenditures may be divided between the relevant product categories. Where research and experimentation is conducted with respect to more than one product category, the taxpayer may aggregate the categories for purposes of allocation and apportionment; however, the taxpayer may not subdivide the categories. Where research and experimentation is not clearly identified with any product category (or categories), it will be considered conducted with respect to all the taxpayer's product categories.

(ii) *Use of three digit standard industrial classification codes.* A taxpayer shall determine the relevant product categories by reference to the three digit classification of the Standard Industrial Classification Manual (SIC code). A copy may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The individual products included within each category are enumerated in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1987 (or later edition, as available).

(iii) *Consistency.* Once a taxpayer selects a product category for the first taxable year for which this section is effective with respect to the taxpayer, it must continue to use that product category in following years, unless the taxpayer establishes to the satisfaction of the Commissioner that, due to changes in the relevant facts, a change in the product category is appropriate. For this purpose, a change in the

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taxpayer's selection of a product category shall include a change from a three digit SIC code category to a two digit SIC code category, a change from a two digit SIC code category to a three digit SIC code category, or any other aggregation, disaggregation or change of a previously selected SIC code category.

(iv) *Wholesale trade category.* The two digit SIC code category "Wholesale trade" is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories and is not applicable with respect to a domestic international sales corporation (DISC) or foreign sales corporation (FSC) for which the taxpayer is a related supplier of goods and services from any of the taxpayer's product categories.

(v) *Retail trade category.* The two digit SIC code category "Retail trade" is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories, except wholesale trade, and is not applicable with respect to a DISC or FSC for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories, except wholesale trade.

(3) *Affiliated Groups*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, the allocation and apportionment required by this section shall be determined as if all members of the affiliated group (as defined in § 1.861–14T(d)) were a single corporation. See § 1.861–14T.

(ii) *Possessions corporations.* (A) For purposes of the allocation and apportionment required by this section, sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and dividends from an electing corporation, shall not be taken into account, except that this paragraph (a)(3)(ii) shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(B) The research and experimental expenditures taken into account for purposes of this section shall be reduced by the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)).

(4) *Legally mandated research and experimentation.* Where research and experimentation is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source, the deduction for such research and experimentation shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in paragraphs (c) and (d) of this section). For example, where a taxpayer performs tests on a product in response to a requirement imposed by the U.S. Food and Drug Administration, and the test results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside the United States, the costs of testing shall be allocated solely to gross income from sources within the United States.

(b) *Exclusive apportionment*—(1) *In general.* An exclusive apportionment shall be made under this paragraph (b), where an apportionment based upon geographic sources of income of a deduction for research and experimentation is necessary (after applying the exception in paragraph (a)(4) of this section).

(i) *Exclusive apportionment under the sales method.* If the taxpayer apportions on the sales method under paragraph (c) of this section, an amount equal to fifty percent of such deduction for research and experimentation shall be apportioned exclusively to the statutory grouping of gross income or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than fifty percent of the amount of such deduction were performed.

(ii) *Exclusive apportionment under the optional gross income methods.* If the taxpayer apportions on the optional gross income methods under paragraph (d) of this section, an amount equal to twenty-five percent of such deduction for research and experimentation shall be apportioned exclusively to the statutory grouping or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than fifty percent of the amount of such deduction were performed.

(iii) *Exception.* If the applicable fifty percent geographic source test of the preceding paragraph (b)(1)(i) or (ii) is not met, then no part of the deduction shall be apportioned under this paragraph (b)(1).

(2) *Facts and circumstances supporting an increased exclusive apportionment*—(i) *In general.* The exclusive apportionment provided for in paragraph (b)(1) of this section reflects the view that research and experimentation is often most valuable in the country where it is performed, for two reasons. First, research and experimentation often benefits a broad product category, consisting of many individual products, all of which may be sold in the nearest market but only some of which may be sold in foreign markets. Second, research and experimentation often is utilized in the nearest market before it is used in other markets, and in such cases, has a lower value per unit of sales when used in foreign markets. The taxpayer may establish to the satisfaction of the Commissioner that, in its case, one or both of the conditions mentioned in the preceding sentences warrant a significantly greater exclusive allocation percentage than allowed by paragraph (b)(1) of this section because the research and experimentation is reasonably expected to have very limited or long delayed application outside the geographic source where it was performed. Past experience with research and experimentation may be considered in determining reasonable expectations.

(ii) *Not all products sold in foreign markets.* For purposes of establishing that only some products within the product category (or categories) are sold in foreign markets, the taxpayer shall compare the commercial production of individual products in domestic and foreign markets made by itself, by uncontrolled parties (as defined under paragraph (c)(2)(i) of this section) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (c)(3)(ii) of this section) that can reasonably be expected to benefit directly or indirectly from any of the taxpayer's research expense connected with the product category (or categories). The individual products compared for this purpose shall be limited, for nonmanufactured categories, solely to those enumerated in Executive Office of the President, Office of Management and Budget Standard Industrial Classification Manual, 1987 (or later edition, as available), and, for manufactured categories, solely to those enumerated at a 7-digit level in the U.S. Bureau of the Census, Census of Manufacturers: 1992, Numerical List of Manufactured Products, 1993, (or later edition, as available). Copies of both of these documents may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

(iii) *Delayed application of research findings abroad.* For purposes of establishing the delayed application of research findings abroad, the taxpayer shall compare the commercial introduction of its own particular products and processes (not limited by those listed in the Standard Industrial Classification Manual or the Numerical List of Manufactured Products) in the United States and foreign markets, made by itself, by uncontrolled parties (as defined under paragraph (c)(2)(i) of this section) of products involving intangible property that was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (c)(3)(i) of this section) that can reasonably be expected to benefit, directly or indirectly, from the taxpayer's research expense. For purposes of evaluating the delay in the application of research findings in foreign markets, the taxpayer shall use a safe haven discount rate of 10 percent per year of delay unless he is able to establish to the satisfaction of the Commissioner, by reference to the cost of money and the number of years during which economic benefit can be directly attributable to the results of the taxpayer's research, that another discount rate is more appropriate.

(c) *Sales method*—(1) *In general.* The amount equal to the remaining portion of such deduction for research and experimentation, not apportioned under paragraph (a)(4) or (b)(1)(i) of this section, shall be apportioned between the statutory grouping (or among the statutory groupings) within the class of gross income and the residual grouping within such class in the same proportions that the amount of sales from the product category (or categories) that resulted in such gross income within the statutory grouping (or statutory groupings) and in the residual grouping bear, respectively, to the total amount of sales from the product category (or categories).

(i) *Apportionment in excess of gross income.* Amounts apportioned under this section may exceed the amount of gross income related to the product category within the statutory grouping. In such case, the excess shall be applied against other gross income within the statutory grouping. See § 1.861–8(d)(1) for instances where the apportionment leads to an excess of deductions over gross income within the statutory grouping.

(ii) *Leased property.* For purposes of this paragraph (c), amounts received from the lease of equipment during a taxable year shall be regarded as sales receipts for such taxable year.

(2) *Sales of uncontrolled parties.* For purposes of the apportionment under paragraph (c)(1) of this section, the sales from the product category (or categories) by each party uncontrolled by the taxpayer, of particular products involving intangible property that was licensed or sold by the taxpayer to such uncontrolled party shall be taken fully into account both for determining the taxpayer's apportionment and for determining the apportionment of any other member of a controlled group of corporations to which the taxpayer belongs if the uncontrolled party can reasonably be expected to benefit directly or indirectly (through any member of the controlled group of corporations to which the taxpayer belongs) from the research expense connected with the product category (or categories) of such other member. An uncontrolled party can reasonably be expected to benefit from the research expense of a member of a controlled group of corporations to which the taxpayer belongs if such member can reasonably be expected to license, sell, or transfer intangible property to that uncontrolled party or transfer secret processes to that uncontrolled party, directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and experimentation shall be considered in determining reasonable expectations.

(i) *Definition of uncontrolled party.* For purposes of this paragraph (c)(2) the term *uncontrolled party* means a party that is not a person with a relationship to the taxpayer specified in section 267(b), or is not a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3) or 927(d)(4)).

(ii) *Licensed products.* In the case of licensed products, if the amount of sales of such products is unknown (for example, where the licensed product is a component of a large machine), a reasonable estimate based on the principles of section 482 should be made.

(iii) *Sales of intangible property.* In the case of sales of intangible property, regardless of whether the consideration received in exchange for the intangible is a fixed amount or is contingent on the productivity, use, or disposition of the intangible, if the amount of sales of products utilizing the intangible property is unknown, a reasonable estimate of sales shall be made annually. If necessary, appropriate economic analyses shall be used to estimate sales.

(3) *Sales of controlled parties.* For purposes of the apportionment under paragraph (c)(1) of this section, the sales from the product category (or categories) of the taxpayer shall be taken fully into account and the sales from the product category (or categories) of a corporation controlled by the taxpayer shall be taken into account to the extent provided in this paragraph (c)(3) for determining the taxpayer's apportionment, if such corporation can reasonably be expected to benefit directly or indirectly (through another member of the controlled group of corporations to which the taxpayer belongs) from the taxpayer's research expense connected with the product category (or categories). A corporation controlled by the taxpayer can reasonably be expected to benefit from the taxpayer's research expense if the taxpayer can be expected to license, sell, or transfer intangible property to that corporation or transfer secret processes to that corporation, either directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and experimentation shall be considered in determining reasonable expectations.

(i) *Definition of a corporation controlled by the taxpayer.* For purposes of this paragraph (c)(3), the term *a corporation controlled by the taxpayer* means any corporation that has a relationship to the taxpayer specified in section 267(b) or is a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3) or 927(d)(4).

(ii) *Sales to be taken into account.* The sales from the product category (or categories) of a corporation controlled by the taxpayer taken into account shall be equal to the amount of sales that bear the same proportion to the total sales of the controlled corporation as the total value of all classes of the stock of such corporation owned directly or indirectly by the taxpayer, within the meaning of section 1563, bears to the total value of all classes of stock of such corporation.

(iii) *Sales not to be taken into account more than once.* Sales from the product category (or categories) between or among such controlled corporations or the taxpayer shall not be taken into account more than once; in such a situation, the amount sold by the selling corporation to the buying corporation shall be subtracted from the sales of the buying corporation.

(iv) *Effect of cost-sharing arrangements.* If the corporation controlled by the taxpayer has entered

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into a bona fide cost-sharing arrangement, in accordance with the provisions of § 1.482–7, with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense.

(d) *Gross income methods*—(1)(i) *In general.* In lieu of applying the sales method of paragraph (c) of this section, the remaining amount of the deduction for research and experimentation, not apportioned under paragraph (a)(4) or (b)(1)(ii) of this section, shall be apportioned as prescribed in paragraphs (d)(2) and (3) of this section, between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income.

(ii) *Optional methods to be applied to all research and experimental expenditures.* These optional methods must be applied to the taxpayer's entire deduction for research and experimental expense remaining after applying the exception in paragraph (a)(4) of this section, and may not be applied on a product category basis. Thus, after the allocation of the taxpayer's entire deduction for research and experimental expense under paragraph (a)(2) of this section (by attribution to SIC code categories), the taxpayer must then apportion as necessary the entire deduction as allocated by separate amounts to various product categories, using only the sales method under paragraph (c) of this section or only the optional gross income methods under this paragraph (d). The taxpayer may not use the sales method for a portion of the deduction and optional gross income methods for the remainder of the deduction separately allocated.

(2) *Option one.* The taxpayer may apportion its research and experimental expenditures ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income, if the conditions described in paragraph (d)(2)(i) and (ii) of this section are both met.

(i) The amount of research and experimental expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent of the amount that would have been so apportioned if the taxpayer had used the method described in paragraph (c) of this section; and

(ii) The amount of research and experimental expense ratably apportioned to the residual grouping is not less than fifty percent of the amount that would have been so apportioned if the taxpayer had used the method described in paragraph (c) of this section.

(3) *Option two.* If, when the amount of research and experimental expense is apportioned ratably on the basis of gross income, either of the conditions described in paragraph (d)(2)(i) or (ii) of this section is not met, the taxpayer may either—

(i) Where the condition of paragraph (d)(2)(i) of this section is not met, apportion fifty percent of the amount of research and experimental expense that would have been apportioned to the statutory grouping (or groupings in the aggregate) under paragraph (c) of this section to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings on the basis of gross income within each grouping), and apportion the balance of the amount of research and experimental expenses to the residual grouping; or

(ii) Where the condition of paragraph (d)(2)(ii) of this section is not met, apportion fifty percent of the amount of research and experimental expense that would have been apportioned to the residual grouping under paragraph (c) of this section to such residual grouping, and apportion the balance of the amount of research and experimental expenses to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(e) *Binding election*—(1) *In general.* A taxpayer may choose to use either the sales method under paragraph (c) of this section or the optional gross income methods under paragraph (d) of this section for its original return for its first taxable year to which this section applies. The taxpayer's use of either the sales method or the optional gross income methods for its return filed for its first taxable year to which this section applies shall constitute a binding election to use the method chosen for that year and for four taxable years thereafter.

(2) *Change of method.* The taxpayer's election of a method may not be revoked during the period referred to in paragraph (e)(1) of this section without the prior consent of the Commissioner. After the expiration of that period, the taxpayer may change methods without the prior consent of the Commissioner. However, the taxpayer's use of the new method shall constitute a binding election to use the new method for its return filed for the first year for which the taxpayer uses the new method and for four taxable years thereafter. The taxpayer's election of the new method may not be revoked during that period without the prior consent of the Commissioner.

(i) *Short taxable years.* For purposes of this paragraph (e), the term *taxable year* includes a taxable year of less than twelve months.

(ii) *Affiliated groups.* In the case of an affiliated group, the period referred to in paragraph (e)(1) of this section shall commence as of the latest taxable year in which any member of the group has changed methods.

(f) *Special rules for partnerships*—(1) *Research and experimental expenditures.* For purposes of applying this section, if research and experimental expenditures are incurred by a partnership in which the taxpayer is a partner, the taxpayer's research and experimental expenditures shall include the taxpayer's distributive share of the partnership's research and experimental expenditures.

(2) *Purpose and location of expenditures.* In applying the exception for expenditures undertaken to meet legal requirements under paragraph (a)(4) of this section and the exclusive apportionment for the sales method and the optional gross income methods under paragraph (b) of this section, a partner's distributive share of research and experimental expenditures incurred by a partnership shall be treated as incurred by the partner for the same purpose and in the same location as incurred by the partnership.

(3) *Apportionment under the sales method.* In applying the remaining apportionment for the sales method under paragraph (c) of this section, a taxpayer's sales from a product category shall include the taxpayer's share of any sales from the product category of any partnership in which the taxpayer is a partner. For purposes of the preceding sentence, a taxpayer's share of sales shall be proportionate to the taxpayer's distributive share of the partnership's gross income in the product category.

(g) *Effective date.* This section applies to taxable years beginning after December 31, 1995. However, a taxpayer may at his or her option, apply this section in its entirety to all taxable years beginning after August 1, 1994.

(h) *Examples.* The following examples illustrate the application of this section:

Example 1—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of small gasoline engines for lawn mowers. Gasoline engines are a product within the category, Engines and Turbines (SIC Industry Group 351). Y, a wholly owned foreign subsidiary of X, also manufactures and sells these engines abroad. During 1996, X incurred expenditures of $60,000 on research and experimentation, which it deducts as a current expense, to invent and patent a new and improved gasoline engine. All of the research and experimentation was performed in the United States. In 1996, the domestic sales by X of the new engine total $500,000 and foreign sales by Y total $300,000. X provides technology for the manufacture of engines to Y via a license that requires the payment of an arm's length royalty. In 1996, X's gross income is $160,000, of which $140,000 is U.S. source income from domestic sales of gasoline engines and $10,000 is foreign source royalties from Y, and $10,000 is U.S. source interest income.

(ii) *Allocation.* The research and experimental expenditures were incurred in connection with small gasoline engines and they are definitely related to the items of gross income to which the research gives rise, namely gross income from the sale of small gasoline engines in the United States and royalties received from subsidiary Y, a foreign manufacturer of gasoline engines. Accordingly, the expenses are allocable to this class of gross income. The U.S. source interest income is not within this class of gross income and, therefore, is not taken into account.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States and the residual grouping is gross income from sources within the United States. Since the related class of gross income derived from the use of engine technology consists of both gross income from sources without the United States (royalties from Y) and gross income from sources within the United States (gross income from engine sales), X's deduction of $60,000 for its research and experimental expenditure must be apportioned between the statutory and residual grouping before the foreign tax credit limitation may be determined. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping of gross income, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales of small gasoline engines by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income method. The apportionment for 1996 is as follows:

(1) Tentative Apportionment on the Basis of Sales

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income:	$60,000
(*ii*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent):	$30,000
(*iii*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income on the basis of sales:	$30,000
(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($30,000×$500,000/($500,000+$300,000)):	$18,750
(*v*) Apportionment of research and experimental expense to the statutory grouping of gross income ($30,000×$300,000/($500,000+$300,000)):	$11,250
(*vi*) Total apportioned deduction for research and experimentation:	$60,000
(*vii*) Amount apportioned to the residual grouping ($30,000+$18,750):	$48,750
(*viii*) Amount apportioned to the statutory grouping:	$11,250

(2) Tentative Apportionment on the Basis of Gross Income.

(*i*) Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×25 percent):	$15,000
(*ii*) Research and experimental expense apportioned to sources within the United States (residual grouping) ($45,000×$140,000/($140,000+$10,000)):	$42,000
(*iii*) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($45,000×$10,000/($140,000+$10,000)):	$3,000
(*iv*) Amount apportioned to the residual grouping:	$57,000
(*v*) Amount apportioned to the statutory grouping:	$3,000

(B) The total research and experimental expense apportioned to the statutory grouping ($3,000) under the gross income method is approximately 26 percent of the amount apportioned to the statutory grouping under the sales method, Thus, X may use option two of the gross income method (paragraph (d)(3) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income methods will constitute a binding election to use the optional gross income methods for 1996 and four taxable years thereafter.

Example 2—(i) *Facts.* Assume the same facts as in *Example 1* except that X also spends $30,000 in 1996 for research on steam turbines, all of which is performed in the United States, and X has steam turbine sales in the United States of $400,000. X's foreign subsidiary Y neither manufactures nor sells steam turbines. The steam turbine research is in addition to the $60,000 in research which X does on gasoline engines for lawnmowers. X thus has a deduction of $90,000 for its research activity. X's gross income is $200,000, of which $140,000 is U.S. source income from domestic sales of gasoline engines, $50,000 is U.S. source income from domestic sales of steam turbines, and $10,000 is foreign source royalties from Y.

(ii) *Allocation.* X's research expenses generate income from sales of small gasoline engines and steam turbines. Both of these products are in the same three digit SIC code category, Engines and Turbines (SIC Industry Group 351). Therefore, the deduction is definitely related to this product category and allocable to all items of income attributable to it. These items of X's income are gross income from the sale of small gasoline engines and steam turbines in the United States and royalties from foreign subsidiary Y, a foreign manufacturer and seller of small gasoline engines.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deduction of $90,000 must be apportioned between the statutory and residual groupings. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of total sales of small gasoline engines and steam turbines by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income methods. The apportionment for 1996 is as follows:

(1) Tentative Apportionment on the Basis of Sales

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income:	$90,000
(*ii*) Less: Exclusive apportionment of the research and experimental expense to the residual grouping of gross income ($90,000×50 percent):	$45,000
(*iii*) Research and experimental expense to be apportioned between the residual and statutory groupings of gross income on the basis of sales:	$45,000
(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($45,000×($500,000+$400,000)/($500,000+$400,000+$300,000)):	$33,750

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(v) Apportionment of research and experimental expense to the statutory grouping of gross income ($45,000×$300,000/($500,000+$400,000+$300,000)): $11,250
(vi) Total apportioned deduction for research and experimentation: $90,000
(vii) Amount apportioned to the residual grouping ($45,000+$33,750): $78,750
(viii) Amount apportioned to the statutory grouping: $11,250

(2) Tentative Apportionment on the Basis of Gross Income

(i) Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($90,000×25 percent): $22,500
(ii) Research and experimental expense apportioned to sources within the United States (residual grouping) ($67,500×$190,000/($140,000+$50,000+$10,000)): $64,125
(iii) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($67,500×$10,000/($140,000+$50,000+$10,000)): $3,375
(iv) Amount apportioned to the residual grouping: $86,625
(v) Amount apportioned to the statutory grouping: $3,375

(B) The total research and experimental expense apportioned to the statutory grouping ($3,375) under the gross income method is 30 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use option two of the gross income method (paragraph (d)(3) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income methods will constitute a binding election to use the optional gross income methods for 1996 and four taxable years thereafter.

Example 3—(i) *Facts.* Assume the same facts as in *Example 1* except that in 1997 X continues its sales of the new engines, with sales of $600,000 in the United States and $400,000 abroad by subsidiary Y. X also acquires a 60 percent (by value) ownership interest in foreign corporation Z and a 100 percent ownership interest in foreign corporation C. X transfers its engine technology to Z for a royalty equal to 5 percent of sales, and X enters into an arm's length cost-sharing arrangement with C to share the funding of all of X's research activity. In 1997, corporation Z has sales in country Z equal to $1,000,000. X incurs expense of $80,000 on research and experimentation in 1997, and in addition, X performs $15,000 of research on gasoline engines which was funded by the cost-sharing arrangement with C. All of Z's sales are from the product category, Engines and Turbines (SIC Industry Group 351). X performs all of its research in the United States and $20,000 of its expenditure of $80,000 is made solely to meet pollution standards mandated by law. X establishes, to the satisfaction of the Commissioner, that the expenditure in response to pollution standards is not expected to generate gross income (beyond *de minimis* amounts) outside the United States.

(ii) *Allocation.* The $20,000 of research expense which X incurred in connection with pollution standards is definitely related and thus allocable to the residual grouping, gross income from sources within the United States. The remaining $60,000 in research and experimental expenditure incurred by X is definitely related to all gasoline engines and is therefore allocable to the class of gross income to which the engines give rise, gross income from sales of gasoline engines in the United States, royalties from country Y, and royalties from country Z. No part of the $60,000 research expense is allocable to dividends from country C, because corporation C has already paid, through its cost-sharing arrangement, for research activity performed by X which may benefit C.

(iii) *Apportionment.* For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States, and the residual grouping is gross income from sources within the United States. X's deduction of $60,000 for its research and experimental expenditure must be apportioned between these groupings. Because more than 50 percent of the research and experimentation was performed in the United States, 50 percent of the $60,000 deduction can be apportioned exclusively to the residual grouping. The remaining 50 percent of the deduction can then be apportioned between the residual and the statutory grouping on the basis of sales of gasoline engines by X, Y, and Z. (If X utilized the optional gross income methods in 1996, then its use of such methods constituted a binding election to use the optional gross income methods in 1996 and for four taxable years thereafter. If X utilized the sales method in 1996, then its use of such method constituted a binding election to use the sales method in 1996 and for four taxable years thereafter.) The optional gross income methods are not illustrated in this *Example 3* (see instead *Examples 1* and *2*). Since X has only a 60 percent ownership interest in corporation Z, only 60 percent of Z's sales (60% of $1,000,000, or $600,000) are included for purposes of apportionment. The allocation and apportionment for 1997 is as follows:

(A) X's total research expense: $80,000
(B) Less: Legally mandated research directly allocated to the residual grouping of gross income: $20,000
(C) Tentative apportionment on the basis of sales.
(*1*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $60,000
(*2*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent): $30,000
(*3*) Research and experimental expense to be apportioned between the residual and the statutory groupings on the basis of sales: $30,000
(*4*) Apportionment of research and experimental expense to gross income from sources within the United States (residual grouping) ($30,000×$600,000/($600,000+$400,000+$600,000)): $11,250
(*5*) Apportionment of research and experimental expense to general limitation gross income from countries Y and Z (statutory grouping) ($30,000×$400,000+$600,000/($600,000+$400,000+$600,000)): $18,750
(*6*) Total apportioned deduction for research and experimentation ($30,000+$30,000): $60,000
(*7*) Amount apportioned to the residual grouping ($30,000+$11,250): $41,250
(*8*) Amount apportioned to the statutory grouping of gross income from sources within countries Y and Z: $18,750

Example 4—Research and Experimentation—(i) *Facts.* X, a domestic corporation, manufactures and sells forklift trucks and other types of materials handling equipment in the United States. The manufacture and sale of forklift trucks and other materials handling equipment belongs to the product category, Construction, Mining, and Materials Handling Machinery and Equipment (SIC Industry Group 353). X also sells its forklift trucks to a wholesaling subsidiary located in foreign country Y (but title passes in the United States), and X manufactures forklift trucks in foreign country Z. The wholesaling of forklift trucks to country Y also belongs to X's product category Transportation equipment and, therefore, may not belong to the product

category, Wholesale trade (SIC Major Group 50 and 51). In 1997, X sold $7,000,000 of forklift trucks to purchasers in the United States, $3,000,000 of forklift trucks to the wholesaling subsidiary in Y, and transferred forklift truck components with an FOB export value of $2,000,000 to its branch in Z. The branch's sales of finished forklift trucks were $5,000,000. In response to legally mandated emission control requirements, X's United States research department has been engaged in a research project to improve the performance and quality of engine exhaust systems used on its products in the United States. It incurs expenses of $100,000 for this purpose in 1997. In the past, X has customarily adapted the product improvements developed originally for the domestic market to its forklift trucks manufactured abroad. During the taxable year 1997, development of an improved engine exhaust system is completed and X begins installing the new system during the latter part of the taxable year in products manufactured and sold in the United States. X continues to manufacture and sell forklift trucks in foreign countries without the improved engine exhaust systems.

(ii) *Allocation.* X's deduction for its research expense is definitely related to the income to which it gives rise, namely income from the manufacture and sale of forklift trucks within the United States and in country Z. Although the research is undertaken in response to a legal mandate, it can reasonably be expected to generate gross income from the manufacture and sale of trucks by the branch in Z. Therefore, the deduction is not allocable solely to income from X's domestic sales of forklift trucks. It is allocable to income from such sales and income from the sales of X's branch in Z.

(iii) *Apportionment.* For the method of apportionment on the basis of either sales or gross income, see *Example 3*. However, in determining the amount of research apportioned to income from foreign and domestic sources, the net sales of the branch in Z are $3,000,000 ($5,000,000 less $2,000,000) and the sales within the United States are $12,000,000 ($7,000,000 plus $3,000,000 plus $2,000,000). See § 1.861–17(c)(3)(iii).

Example 5—(i) *Facts.* X, a domestic corporation, is a drug company that manufactures a wide variety of pharmaceutical products for sale in the United States. Pharmaceutical products belong to the product category, Drugs (SIC Industry Group 283). X exports its pharmaceutical products through a foreign sales corporation (FSC). X's wholly owned foreign subsidiary Y also manufactures pharmaceutical products. In 1997, X has domestic sales of pharmaceutical products of $10,000,000, the FSC has sales of pharmaceutical products of $3,000,000, and Y has sales of pharmaceutical products of $5,000,000. In that same year, 1997, X incurs expense of $200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that FSC sells goods to countries that do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of $200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond *de minimis* amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, gross income from sales within the United States.

Example 6—(i) *Facts.* X, a domestic corporation, is engaged in continuous research and experimentation to improve the quality of the products that it manufactures and sells, which are floodlights, flashlights, fuse boxes, and solderless connectors. X incurs and deducts $100,000 of expenditure for research and experimentation in 1997 that was performed exclusively in the United States. As a result of this research activity, X acquires patents that it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, uncontrolled foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of $3,000 plus $0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are $135,000 (at $4.50 per unit) or 30,000 units, and the royalty is $9,000 ($3,000 + $0.20 x 30,000). Y has sales of other products of $500,000. Z pays X an arm's length royalty of $3,000 plus $0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is $12,000 ($3,000 + $0.30 x 30,000). The dollar value of Z's floodlight sales is not known and cannot be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theaters. The sales of all Z's products, including the lighting equipment for theaters, are $1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are $500,000 and its sales of its other products, flashlights, fuse boxes, and solderless connectors, are $400,000. X has gross income of $500,000, consisting of gross income from domestic sources from sales of floodlights, flashlights, fuse boxes, and solderless connectors of $479,000, and royalty income of $9,000 and $12,000 from foreign corporations Y and Z respectively. X utilized the optional gross income methods of apportionment for its return filed for its first taxable year to which this section applies.

(ii) *Allocation.* X's research and experimental expenses are definitely related to all of the products that it produces, which are floodlights, flashlights, fuse boxes, and solderless connectors. All of these products are in the same three digit SIC Code category, Electric Lighting and Wiring Equipment (SIC Industry Group 364). Thus, X's research and experimental expenses are allocable to all items of income attributable to this product category, domestic sales income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* (A) The statutory grouping of gross income is general limitation income from sources without the United States. The residual grouping is gross income from sources within the United States. X's deduction of $100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (c) of this section, X is entitled to an exclusive apportionment of 50 percent of its research and experimental expense to the residual grouping, gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or $120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (d) of this section. The apportionment is as follows:

(1) Tentative Apportionment on the Basis of Sales

(i) Research and experimental expense to be apportioned between statutory and residual groupings of gross income: $100,000
(ii) Less: Exclusive apportionment of research and experimental expense to the residual groupings of gross income ($100,000×50 percent): $50,000
(iii) Research and experimental expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales: $50,000
(iv) Apportionment of research and experimental expense to the residual groupings of gross income ($50,000×$900,000/($900,000+$135,000+$120,000)): $38,961
(v) Apportionment of research and experimental expense to the statutory grouping, royalty income from countries Y and Z ($50,000×$135,000+$120,000/($900,000+$135,000+$120,000)): $11,039

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(*vi*) Total apportioned deduction for research and experimentation: $100,000
(*vii*) Amount apportioned to the residual grouping ($50,000+$38,961): $88,961
(*viii*) Amount apportioned to the statutory grouping of sources within countries Y and Z: $11,039

(2) Tentative Apportionment on Gross Income Basis

(*i*) Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($100,000×25 percent): $25,000
(*ii*) Apportionment of research and experimental expense to the residual grouping of gross income ($75,000×$479,000/$500,000): $71,850
(*iii*) Apportionment of research and experimental expense to the statutory grouping of gross income ($75,000×$9,000+$12,000/$500,000): $3,150
(*iv*) Amount apportioned to the residual grouping: $96,850
(*v*) Amount apportioned to the statutory grouping of general limitation income from sources without the United States: $3,150

(B) Since X has elected to use the optional gross income methods of apportionment and its apportionment on the basis of gross income to the statutory grouping, $3,150, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, $11,039, it must use Option two of paragraph (d)(3) of this section and apportion $5,520 (50 percent of $11,039) to the statutory grouping.

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: December 13, 1995.
Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 95-30901 Filed 12-21-95; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991-AA63

Acquisition Regulation; Technology Transfer Activities of Department of Energy (DOE) Management and Operating Contractors

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends the Department of Energy Acquisiton Regulation (DEAR) to codify DOE's implementation of its technology transfer mission for DOE laboratories (including weapon production facilities) operated by management and operating contractors.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, Policy Analyst, Office of Policy (HR-51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, D.C., 20585, (202) 586-8190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Disposition of comments
III. Procedural Requirements
A. Regulatory Review Under Executive Order 12866
B. Review Under Executive Order 12612
C. Review Under Executive Order 12778
D. Review Under the Regulatory Flexibility Act
E. Review Under the Paperwork Reduction Act
F. Review Under the National Environmental Policy Act (NEPA)

I. Background

The proposed rule was published on May 22, 1995, at 60 FR 27069 (1995). It was intended to amend the Department of Energy Acquisition Regulation (DEAR) to codify DOE's implementation of its technology transfer mission for DOE laboratories and weapon production facilities operated by management and operating contractors. This mission was established by The National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of the National Defense Authorization Act for Fiscal Year 1994.

II. Disposition of Comments

DOE received formal comments from only one entity. This commenter is a current Departmental non-profit Management and Operating Laboratory contractor. The commenter noted the need for inclusion in the proposed definition of bailment the term, Laboratory Tangible Research Product. This term would encompass tangible material results of research which (i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility, (ii) are not materials generally commercially available, and (iii) were made under the contract by Laboratory employees or through the use of Laboratory research facilities. The definition of bailment has been modified to incorporate this new term. The commenter also expressed concern that the current definition of allowable costs only encompassed costs "through an ORTA", with the implication that the activities and costs associated with autonomous Laboratory organizations such as finance, procurement, legal and other offices involved in technology transfer would be excluded. DOE agrees that such Laboratory organizations may be "appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications" and that the costs associated with supporting technology transfer at these Laboratory organizations would be allowable subject to other provisions of the M&O contract. One of the organizational examples cited by the commenter, however, falls under the definition of a home or corporate office general and administrative (G&A) expense. DEAR 970.3102-1 indicates that, in its fee allowance, DOE provides appropriate compensation for home office G&A expense. DOE policy also recognizes that the circumstances and the need for such home office involvement vary considerably from site to site. Therefore, home office G&A (including technology transfer related expenses) would normally be considered in the individual negotiation of the fee for the contract. When the fee amount is believed to be insufficient to cover the extent of such offsite involvement, however, DEAR 970.3102-1 also permits separate treatment of such a home office expense. Therefore, no change in the language of the rule is believed necessary.

The commenter further suggested adding language under Conflicts of Interest to reflect that other persons working at the Laboratory participating in Laboratory research or technology

transfer activities should also be considered when implementing procedures to avoid conflicts of interest. Such other persons would most likely be long term visitors, job-shop subcontractors, guest scientists, no-pay appointees, post doctoral fellows, industrial exchange participants, academic sabbaticals and other non-Laboratory personnel. DOE agrees and appropriate language to address this comment has been included under Conflicts of Interest—Technology Transfer. The commenter also recommended deleting the requirement under (d)(10) which requires contractors to notify DOE prior to evaluating a proposal by a third party or DOE when the subject matter of the proposal involves an elected or waived subject invention or one in which the Contractor intends to elect to retain title. The commenter believes that (d)(10) is burdensome for Contractors that manage and operate several private and DOE facilities because it requires Contractors to search for inventions unrelated to the contract. DOE has inserted language under (d)(10) to clarify that the notification requirement applies when the subject matter of the proposal involves an elected or waived subject invention under the contract or one in which the Contractor intends to elect to retain title under the contract.

The commenter recommended adding language to indicate that the U.S. Industrial Competitiveness requirements apply to intellectual property where the Laboratory obtains rights during the period the Contractor is operating the Laboratory and would not apply to intellectual property owned by the parent organization/company. Language was added to reflect that the U.S. Industrial Competitiveness requirements solely apply in licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under the contract. The U.S. Industrial Competitiveness requirements would not apply in licensing and assignment decisions involving the Contractor's other intellectual property.

Three comments were made objecting to three separate provisions of the Indemnity-Product Liability paragraph which might, in the commenter's view, result in the contractor being subjected to undue financial/legal risks and administrative burden. Specifically, the commenter objected to language that limited the indemnification in licensing to only personal injury or property injury and which also excluded from the indemnity protection any liability based upon negligence of the Contractor. The Indemnity—Product Liability provisions as written are minimally acceptable to DOE and therefore, no change is being made to the language. However, the Department emphasizes that the Contractor is permitted to negotiate language that is deemed more beneficial to both the Contractor and the Department. With respect to the commenter's objection to the requirement to identify and obtain the approval of the Contracting Officer for any proposed exceptions to the Participant providing indemnification, the Department believes that overall, this requirement is beneficial to the Contractor. This requirement provides a mechanism by which the Contractor is able to obtain exceptions to the indemnification provision and, therefore, no change is believed necessary.

In the Disposition of Income provisions, the commenter made three suggestions. Under subparagraph (h)(1), the first suggestion was to modify the language to reflect that the amount of royalties or other income earned or retained by the Contractor was to be that amount remaining after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions. This language parallels that which appears in 35 U.S.C. 202(c)(7)(E)(i) and has been adopted.

The second comment submitted regarding the Disposition of Income provision was to add the text of 35 U.S.C. 202 (c)(7)(E)(ii) which would allow the licensing of Subject Inventions to be administered by Contractor employees on location at the facility. This suggestion was not adopted in that 35 U.S.C. 202 (c)(7)(E)(ii) is already contained in the patent clause of the M&O contract. The third comment objected to the proposed coverage on inventor award and royalty sharing being subject to the approval of the Contracting Officer. Changing the requirement to obtain Contracting Officer approval with respect to policies for inventor award and royalty sharing, as proposed in this comment, would result in a major change to a long standing Departmental policy and has not been adopted.

Under the Transfer to Successor Contractor provision, the commentor requested that additional assurance be provided in requiring a successor contractor to accept transfer of title and accounts subject to the rights and obligations which the previous operator had to its inventors, its licensees and to its parent organization/company. No change is believed necessary because the intent of the suggestion is implicit in the current language.

In the Technology Transfer Through Cooperative Research and Development Agreements, Withholding of Data provision, the commenter suggests that the likelihood of obtaining commercially reasonable patent protection be included as a standard in determining whether a patent application has to be filed. As provided in the M&O contract's patent clause, if the Contractor does not file a patent application on an invention disclosed to the Government as a subject invention, the Government may file. Disclosure of subject inventions and the Government's right to file is a statutory requirement.

III. Procedural Requirements

A. Regulatory Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41285, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

C. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and

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certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. Therefore, DOE certifies that this final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

D. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This final rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this final rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that promulgation of this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on December 15, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970–DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 970.5204–40, Technology Transfer Mission, is added to read as follows:

970.5204–40 Technology transfer mission.

As prescribed in 48 CFR 970.73, insert the following clause:

Technology Transfer Mission (Jan. 1996)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101–189 and as amended by Pub. L. 103–160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.*

(1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101–189, Sections 3134 and 3160 of P.L. 103–160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) *Definitions.*

(1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) *Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) *Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) *Assignment* means any agreement by which the Contractor transfers ownership of Laboratory intellectual Property, subject to the Government's retained rights.

(6) *Laboratory Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) *Laboratory Tangible Research Product* means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and

(iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) *Bailment* means any agreement in which the Contractor permits the commercial or non- commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) *Allowable Costs.*

(1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Litigation and Claims" of this Contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) *Fairness of Opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industriol Competitiveness.*

(1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.*

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the

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Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) *Transfer to Successor Contractor.* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.

(j) *Technology Transfer Affecting the National Security.*

(1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.

(m) *Oversight and Appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer Through Cooperative Research and Development Agreements.* Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) *Review and Approval of CRADAs*

(i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in his approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) *Selection of Participants* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of Data*

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson- Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Work For Others and User Facility Programs*

(i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U. S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of Interest*

(i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(*1*) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(*2*) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) *Technology Transfer in Other Cost-Sharing Agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of clause)

Alternate I (Jan 1996). As prescribed in 970.7330(b), add the following definition under paragraph (b) and new paragraph (p):

(b)(8) *Privately funded technology transfer* means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity - Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (Jan 1996). As prescribed in 970.7330(c), the phrase "weapon production facility" may be substituted wherever the word "laboratory" appears in the clause.

3. A new subpart 970.73, Technology Transfer, consisting of sections 970.7310, 970.7320, and 970.7330, is added to read as follows:

Subpart 970.73 Technology Transfer

Secs.

970.7310 General.
970.7320 Policy.
970.7330 Contract Clause.

Subpart 970.73–Technology Transfer

970.7310 General.

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989. The Act required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of laboratory to include weapon production facilities that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

970.7320 Policy.

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended. A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by DOE laboratories and weapon production facilities.

970.7330 Contract clause.

(a) The contracting officer shall insert the clause at 970.5204–40, Technology

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transfer mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 et seq., to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) The contracting officer may substitute the Alternate II phrase "weapon production facility" wherever the word "laboratory" appears in the clause where the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

[FR Doc. 95–31187 Filed 12–21–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[I.D. 121595B]

Groundfish of the Bering Sea and Aleutian Islands Area; Approval of Community Development Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Allocation of Community Development Quota of pollock for 1996–98.

SUMMARY: NMFS announces the approval of recommendations made by the Governor of the State of Alaska (Governor) for Community Development Plans (CDPs) during the calendar years 1996–98 under authority of the Community Development Quota (CDQ) program. This action announces the decision of NMFS to approve the Governor's recommended CDPs, including the pollock CDQs for each subarea or district, and the availability of findings underlying the decision.

EFFECTIVE DATE: Effective January 1, 1996.

ADDRESSES: Copies of the findings made by NMFS in approving the Governor's recommendations may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: David C. Ham, 907–586–7228.

SUPPLEMENTARY INFORMATION: The pollock CDQ program originally was developed by the North Pacific Fishery Management Council (Council) and submitted as part of Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, which was approved in part by the Secretary of Commerce (57 FR 23321, June 3, 1992). Initial Federal regulations implementing the CDQ program became effective on November 18, 1992 (57 FR 54936, November 23, 1992) and expire on December 31, 1995. The Council proposed re-authorizing the CDQ program for an additional 3 years as part of Amendment 38 to the FMP. NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996, 1997, and 1998, were published on December 12, 1995 (60 FR 63654), and will be effective on January 1, 1996.

Eligible western Alaska communities submitted six proposed CDPs requesting CDQs to the Governor under § 675.27. The State of Alaska conducted a public hearing on September 23, 1995, in Seattle, WA, during which all interested persons had an opportunity to be heard. The hearing covered the substance and content of the proposed CDPs in such a manner that the general public, and particularly the affected parties, had a reasonable opportunity to understand the impact of each proposed CDP. The Governor made available for public review all State of Alaska materials pertinent to the hearing at the time the hearing was announced. The public hearing held by the State of Alaska satisfied the requirements of § 675.27(a).

The Governor consulted the Council concerning the proposed CDPs during the Council's September 1995 meeting. The Council reviewed copies of the CDP executive summaries, summary sheets, and the Governor's recommended allocations and unanimously concurred in the Governor's recommendations.

Upon receiving the Governor's recommendations on November 1, 1995, NMFS commenced a review of the record to determine whether the community eligibility criteria and the evaluation criteria set forth in regulations implementing the CDQ program have been met. NMFS has found that the Governor's recommendations for approval of proposed CDPs are consistent with the community eligibility conditions and evaluation criteria and other applicable provisions of the regulations.

As required by § 675.27(c)(1), NMFS publishes this announcement of approval of the Governor's recommendations, including the CDQ allocated to each CDP (see table below) and the availability of the findings regarding this decision (see **ADDRESSES**).

CDQ recipient	CDQ for 1996, 1997, and 1998 (percent)
Aleutian Pribilof Island Community Development Association	16
Bristol Bay Economic Development Corporation	20
Central Bering Sea Fishermen's Association	04
Coastal Villages Fishing Cooperative	25
Norton Sound Economic Development Corporation	22
Yukon Delta Fisheries Development Corporation	13

Authority: This action is taken under 50 CFR 675.27.

Dated: December 14, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–31182 Filed 12–21–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 246
Friday, December 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 12

[Docket No. 95–30]

RIN 1557–AB42

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its rules that prescribe recordkeeping and confirmation requirements for securities transactions. This proposal is another part of the OCC's Regulation Review Program to update and streamline OCC regulations and reduce unnecessary regulatory costs and other burdens. The proposal reorganizes the OCC's regulation by placing related subjects together, clarifying areas where the rules are unclear or confusing, incorporating significant OCC interpretations, and updating various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by national banks.

DATES: Comments must be received by February 20, 1996.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Attention: Docket No. 95–30. In addition, comments may be sent by fax to 202–874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Suzette H. Greco, Senior Attorney, Securities and Corporate Practices Division (202–874–5210); Joseph W. Malott, National Bank Examiner, Capital Markets Division (202–874–5070); William L. Granovsky, National Bank Examiner, Compliance (202–874–4861).

SUPPLEMENTARY INFORMATION:

Background

OCC Regulation Review Program

The OCC is proposing revisions to 12 CFR part 12 as part of its Regulation Review Program. Pursuant to this Program, the OCC is reviewing all its rules. Rules that are not necessary to protect against unacceptable risks, that do not support equitable access to banking services for all consumers, or that are not needed to accomplish other statutory responsibilities of the OCC will be revised or eliminated.

Where risks are meaningful and regulation is appropriate, the OCC will examine its rules to determine if they achieve their purpose most efficiently. In this regard, the OCC recognizes that one source of regulatory cost is the failure of regulations to provide clear guidance because they are difficult to follow and understand. Therefore, an important component of the Regulation Review Program is to revise regulations, where appropriate, to improve clarity and better communicate the standards that the rules are intended to convey.

Revisions to 12 CFR part 12 present particular challenges in several regards because the part implements requirements from different statutory sources, addresses transactions of a specialized and often technical nature, and currently is out of date in certain respects.

Recordkeeping and Confirmation Requirements for Securities Transactions

The OCC adopted part 12 on July 24, 1979 (44 FR 43252), to establish requirements applicable to national banks effecting securities transactions for customers, including recordkeeping and confirmation requirements. The OCC amended part 12 on December 31, 1979 (44 FR 77137) to include additional suggestions recommended by commenters, and the part became effective on January 1, 1980. The OCC has not significantly changed part 12 since then.[1]

Since that time, there have been significant changes in securities regulation and market practices. For example, Congress enacted the Government Securities Act of 1986, 15 U.S.C. 78o-5, requiring the registration of government securities brokers and dealers, including financial institutions, and regulating transactions in government securities. Recently, the Securities and Exchange Commission (SEC) adopted amendments to its confirmation rule requiring additional disclosures and restructuring the rule. *See* Securities Exchange Act of 1934 Rule 10b-10, 17 CFR 240.10b-10 (SEC Rule 10b–10).

Under SEC Rule 10b-10, the SEC requires a broker/dealer to send a customer notification of a securities transaction at or before the completion of the transaction. The SEC defines "completion of the transaction" generally to be the time of payment or partial payment and/or delivery of the security. *See* 17 CFR 240.10b-10(d)(2). The SEC also has shortened the standard settlement period for broker/dealer trades from five to three days (T+3 Settlement) effective on June 7, 1995. *See* Securities Exchange Act Release No. 33023, 58 FR 52891 (Oct. 13, 1993). In addition, for trades in government securities, next day settlement is industry practice. Currently, part 12 generally requires a national bank to send a customer notification of a securities transaction within five business days from the date of the transaction.

Proposal

The proposal modernizes the rules in part 12 and reduces unnecessary regulatory burdens, where possible. In

[1] In 1979, the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) adopted regulations similar to part 12. *See* 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 344, 44 FR 43261 (July 24, 1979) (FDIC regulation). Since that time, neither of these agencies has significantly changed these regulations, although recently the FDIC adopted a regulation concerning authority to waive certain requirements of part 344, similar to the authority in § 12.7(d) of part 12. *See* 60 FR 7111 (Feb. 7, 1995). Consequently, the current regulations for all three Federal banking agencies are very similar. The OCC and the other Federal banking agencies have been meeting and discussing changes to the FRB's and the FDIC's rules substantively similar to those proposed today by the OCC.

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order to make part 12 more accessible and easier to use, the proposal also restructures many sections and updates others by incorporating significant OCC interpretive positions and reflecting regulatory changes by other agencies. The following discussion identifies and explains proposed changes. A Derivation Table identifying the proposed changes and keying them to the current rule appears at the end of this preamble.

The OCC requests comments on all aspects of the proposal, as well as specific comments on changes in the rule.

Authority, Purpose, and Scope (§ 12.1)

The proposal revises the scope section (§ 12.1) to clarify the securities transactions to which part 12 applies and identify the types of transactions that are subject to other regulatory schemes. Paragraph (c)(1) provides the rules of general applicability and paragraph (c)(2) sets forth exemptions. Generally, any national bank effecting a securities transaction for a customer is subject to the requirements of part 12, unless the transaction specifically is exempted.

For example, the part 12 requirements apply to transactions in mutual funds as well as other securities. While investment companies, commonly referred to as mutual funds, must register with the SEC under the Investment Company Act of 1940 (Investment Company Act), 15 U.S.C. 80a–1 *et seq.*, and are subject to numerous legal requirements,[2] the requirements of part 12 govern national banks effecting trades for customers in mutual fund shares. Some requirements of the Investment Company Act and its regulations also may apply to national banks providing services to an investment company or acting as the investment company's investment adviser. *See e.g.*, 15 U.S.C. 80a–17; 15 U.S.C. 80a–30; 17 CFR 270.17j–1; 17 CFR 270.31a–1.

The OCC recognizes that national banks may enter into various arrangements with registered broker/dealers that permit the broker/dealers to operate on the bank's premises. Part 12 generally does not apply to securities transactions effected by these broker/dealers for their customers. As registered broker/dealers, they already are subject to the SEC's recordkeeping and confirmation rules. If, however, the bank is using this broker/dealer to clear securities transactions effected by the bank for the bank's own customers, then the requirements of part 12 would apply to the bank.

Government Securities Transactions

National banks conducting government securities transactions for their customers also are within the scope of part 12. Government securities are defined in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)), and include but are not limited to United States Treasury securities and securities issued or guaranteed by Federal government agencies and government-sponsored enterprises.

The Department of the Treasury, under its authority pursuant to the Government Securities Act of 1986 (GSA), 15 U.S.C. 78o–5, has issued regulations in 17 CFR parts 400 through 405, 449, and 450, applicable to many government securities transactions by national banks (GSA regulations). The GSA regulations define the terms "government securities broker" and "government securities dealer" to include financial institutions. *See* 17 CFR 400.3 (k) and (l). Part 404 of the GSA regulations provides specific recordkeeping requirements for government securities brokers and dealers that are financial institutions. *See* 17 CFR 404.4.

National banks, because they are subject to part 12 recordkeeping requirements, are not required to follow the recordkeeping requirements of the GSA regulations at 17 CFR 404.2 and 404.3. *See* 17 CFR 404.4(a). National banks, however, must follow other recordkeeping requirements under the GSA regulations. *See* 17 CFR 404.4(a)(3), (b), and 450.4(c), (d), and (f). Part 12 *confirmation* requirements apply to all government securities transactions by national banks.

Consistent with the GSA regulations, proposed § 12.1(c)(2)(ii) exempts a national bank that conducts fewer than 500 government securities *brokerage* transactions per year from complying with the recordkeeping requirements under proposed (and current) § 12.3. *See* 17 CFR 401.3(a)(2)(i) and 404.4(a). This exemption does not apply to government securities *dealer* transactions by national banks, however. Staff at the Bureau of the Public Debt, which is the organization within the Department of the Treasury that is responsible for administering 17 CFR 404.4(a), has advised us that they are considering amending this regulation to clarify any ambiguity resulting from the interplay of the regulation and current § 12.7(a) (proposed § 12.1(c)(2)(i)), with respect to recordkeeping requirements for financial institutions that conduct government securities dealer transactions.

Municipal Securities Transactions

The proposed "scope" section (§ 12.1(c)(1)) also clarifies that a national bank's transactions in municipal securities that are *not* subject to the Municipal Securities Rulemaking Board's (MSRB) rules, *are* subject to part 12. The MSRB adopts rules with respect to transactions in "municipal securities" effected by brokers, dealers, and "municipal securities dealers." *See* 15 U.S.C. 78o–4; Rules of the MSRB, MSRB Manual (CCH) ¶ 3501 *et seq.* Municipal securities are defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) (Exchange Act), and include but are not limited to debt obligations of a state of the United States or a political subdivision, such as a county, city, town, village, or municipal authority, and revenue bonds. As defined in the Exchange Act, a "municipal securities dealer" includes a bank, as well as a "separately identifiable department or division of a bank," that is engaged in the business of buying and selling municipal securities for its own account through a broker or otherwise. *See* 15 U.S.C. 78c(a)(30). Under the SEC's regulatory scheme, however, a bank need not register as a "municipal securities broker." *See* 15 U.S.C. 78c(a)(4) and (31).

Thus, under proposed § 12.1(c)(2)(iii), transactions in municipal securities conducted by a national bank registered with the SEC as a "municipal securities dealer" are exempt from part 12. However, municipal securities brokerage transactions by a national bank not registered as a municipal securities dealer are subject to part 12 requirements.

Other Transactions and Exemptions

The "scope" section further provides that both 12 CFR parts 9 and 12 apply to a national bank's securities transactions effected as a fiduciary, including transactions effected for a collective investment fund (§ 12.1(c)(1)). Finally, the proposed "scope" section, in the exemptions paragraph (§ 12.1(c)(2)), includes the current rule's exception from certain requirements of part 12 for banks with an average of fewer than 200 securities transactions per year for customers, over the prior three calendar year period, not including transactions in government securities. The exemptions paragraph also restates the current rule's exemption from part 12 requirements for activities of a foreign branch of a national bank.

Safe and Sound Operations

Under proposed § 12.1(c)(3), the proposal clarifies that notwithstanding the exemptions from part 12, the OCC expects a national bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations. Since national banks already are obligated to conduct their operations in a safe and sound manner, this addition does not impose any new requirements; rather, it emphasizes the importance of effective systems with respect to all securities transactions.

Definitions (§ 12.2)

The proposal clarifies and modernizes § 12.2, the definitions section, by adding several definitions and modifying several others. The proposal defines "crossing of buy and sell orders," a term used in proposed § 12.7(a)(3) (current § 12.6(c)). It also adds a new definition of "completion of the transaction," a term used in proposed § 12.4 (a) and (b). The proposed definition is based on that used in SEC Rule 10b–10, the SEC's rule for confirmation of transactions by broker/dealers. *See* 17 CFR 240.10b–10(d)(2), citing Securities Exchange Act of 1934 Rule 15c1–1, 17 CFR 240.15c1–1(b). The proposal clarifies the definition of "customer" (§ 12.2(e)) by removing the term "dealer bank" and inserting that a "bank acting as a broker or dealer" is not a customer.

For purposes of § 12.4(b) (8) and (9), the proposal adds a definition of "debt security" consistent with the SEC's definition under Rule 10b–10, 17 CFR 240.10b–10. The proposal also adds a definition of "asset-backed security," which is the same as that in the SEC's Rule 10b–10, 17 CFR 240.10b–10.

The proposal also adds definitions of "government security" and "municipal security" which are intended to have the same meaning as those terms have under the Securities Exchange Act of 1934. *See* 15 U.S.C. 78c(a)(42) and (a)(29). In addition, the proposed definition of "security" more closely tracks the definition of security in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10), with an exception for certain instruments, such as foreign currency and various bank instruments. However, the proposal makes clear that the OCC may determine whether an instrument is a security for purposes of part 12.

Recordkeeping (§ 12.3)

The proposed recordkeeping provision in § 12.3 is similar to current § 12.3. A bank effecting securities transactions for customers must maintain, for at least three years, chronological records of original entry containing an itemized daily record of all purchases and sales of securities, account records for customers, and the written notifications to customers required by proposed (and current) § 12.4. The proposal also clarifies that a bank must maintain a copy of any alternative form of written notification that it uses pursuant to proposed § 12.5.

The proposal retains the current provision permitting a bank to maintain the required records in any manner, if the records clearly and accurately reflect the information required and provide an adequate basis for auditing the information (§ 12.3(b)).

The OCC seeks comments as to whether and in what manner banks rely upon this provision (proposed § 12.3(b)) and whether it serves a useful purpose.

Form and Time of Customer Notification (§ 12.4); Alternative Forms and Times of Customer Notification (§ 12.5)

The proposal reorganizes current §§ 12.4 and 12.5. Under the proposed sections, a bank has several alternatives from which it may choose to provide the required written notification to a customer for whom the bank has effected a securities transaction.

As under current part 12, a bank may elect to provide notification through: (1) A copy of a broker/dealer confirmation and statement regarding the source and amount of remuneration that the customer or any other source is to provide the bank (§ 12.4(a)); (2) a written notification that includes information such as the date of execution of the transaction, the price and number of shares or units purchased or sold, the capacity in which the bank is acting (as agent, principal, or otherwise), and the amount of remuneration received by the bank and by any broker/dealer in connection with the transaction (§ 12.4(b)); or (3) an alternative form of notification permitted for a specific type of customer transaction or account, for example, a transaction where the bank exercises investment discretion in an agency capacity or effects a transaction for a periodic plan (§ 12.5(a) through (d)). The proposal moves current § 12.5(a) regarding notification for a transaction where the bank does not exercise investment discretion to § 12.4(c).

The proposal provides that if a bank opts to fulfill its customer notification requirement through compliance with either of these first two means (§ 12.4(a) and (b)), the bank must give or send the notification at or before the completion of the transaction. Proposed § 12.2(c) defines the term "completion of the transaction," which generally means the payment of funds and delivery of securities, i.e. the settlement of the securities transaction. Sending the notification at or before completion of the transaction is consistent with the SEC's confirmation rule, SEC Rule 10b–10. *See* 17 CFR 240.10b–10(a). The SEC similarly defines "completion of the transaction." *See* 17 CFR 240.10b–10(d)(2).

Currently, § 12.5 requires a national bank that effects a securities transaction to send written notification to its customer within five business days from the date of the transaction or within five business days from receipt by the bank of a broker/dealer's confirmation (unless the bank uses a notification permitted for a specific type of customer transaction or account). When the OCC first adopted part 12, this five day period was consistent with the generally recognized industry practice of having the settlement of a securities transaction on the fifth business day after the trade day, (T+5). On October 13, 1993, however, the SEC published a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). *See* Securities and Exchange Act of 1934 Rule 15c6–1, 17 CFR 240.15c6–1, 58 FR 52891. Thus, the current § 12.5 five day period is inconsistent with the new T+3 settlement cycle. Since settlement will occur within three days, the OCC, by adopting the "at or before completion of the transaction" timeframe, reflects current securities industry practice. Consistent with the SEC, the OCC also is adopting a T+3 securities settlement rule as discussed subsequently under § 12.9.

The OCC welcomes comments on whether providing written notification "at or before completion of the transaction" is an appropriate requirement for a national bank in proposed § 12.4(a) and (b).

The OCC also specifically requests comments on the need for additional time by banks opting to provide notification by using a copy of the broker/dealer's confirmation, as is currently permitted in § 12.5 (five business days from receipt).

[2] The Investment Company Act and its implementing regulations contain various provisions relating to the formation and operation of an investment company, including provisions on the distribution and pricing of shares, fiduciary duties of directors, transactions with affiliates, permissible capital structures, disclosure and reporting requirements, and other requirements. *See* 15 U.S.C. 80a–1 *et seq.*; 17 CFR part 270. Investment companies also may need to register their shares under the Securities Act of 1933. *See* 15 U.S.C. 77a *et seq.*

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Proposed § 12.4(c) retains the current § 12.5(a) option for the bank and the customer to agree in writing to a different time and form of notification for a securities transaction where the national bank does not exercise investment discretion. This paragraph, captioned "notification by agreement," also provides that the arrangement must specify the customer's right to receive the written notification as provided in § 12.4(a) or (b) at no additional cost.

The form of the notification required under proposed § 12.4(a) is similar to current § 12.4(a). Both require the bank to provide a copy of the broker/dealer confirmation and a statement regarding remuneration that the customer or any other source is to provide the bank. Alternatively, the bank may choose to provide its customer a written notification as described in proposed § 12.4(b) (current § 12.4(b)). The proposed § 12.4(b) form of notification requires the bank to notify the customer about the amount of any remuneration the customer or any other source is to provide the bank, and any remuneration from the customer to any broker/dealer in connection with the transaction. As with current § 12.4(b), the notification under proposed § 12.4(b) also must include other information regarding the securities involved in the transaction, the capacity in which the bank is acting (as agent, principal, or otherwise), and the use of any broker/dealer. By providing the notification, the bank gives its customers an opportunity to verify the terms of their transactions and evaluate the accuracy of the bank's execution.

Under proposed § 12.4(b)(6), the bank may choose not to disclose the source and amount of any *other* remuneration to the bank, if the written notification contains the following two-statements: first, whether the bank has received or will receive any other remuneration; and, second, that the bank will furnish the source and amount of the other remuneration upon the customer's written request. A bank may not use this option if, in the case of a purchase, the bank is participating in a distribution of the security, or in the case of a sale, the bank is participating in a tender offer. This proposed option is new and reflects the option concerning disclosure of other remuneration contained in SEC Rule 10b-10, 17 CFR 240.10b-10(a)(2)(i)(D).

The OCC seeks specific comments on inclusion of this proposed modification concerning the disclosure of other remuneration.

The SEC, on November 17, 1994, published a final rule adopting amendments to SEC Rule 10b-10 requiring the disclosure of additional information on the broker/dealer confirmation. *See* Securities Exchange Act Release No. 34962, 59 FR 59612. Among other items, SEC Rule 10b-10 now requires disclosure concerning a debt security that has not been rated by a nationally recognized statistical rating organization and the fluctuation of yield with respect to certain asset-backed securities. *See* 17 CFR 240.10b-10(a)(7) and (8). The SEC also expanded the range of debt securities where yield need not be disclosed to include any asset-backed security subject to continuous prepayment. *See* 17 CFR 240.10b-10(a)(5) and (6). The OCC recognizes that this type of information may be important to bank customers evaluating the merits of investing in various debt securities.

Consistent with SEC Rule 10b-10, the proposal adds § 12.4(b)(8), (9), (10), and (11), requiring disclosure of yield information on debt securities. The proposal also adds § 12.4(b)(12) requiring disclosure that a debt security that has not been rated by a nationally recognized statistical rating organization. While the proposal incorporates these additional disclosures, the OCC is interested in commenters' views on the applicability of these disclosures to national banks' securities activities. The OCC may revise its proposal.

The OCC seeks comments on whether banks engage in transactions in unrated securities and the need for requiring disclosure of information in the written notification to customers regarding unrated securities and yield information on debt securities, similar to the SEC requirements under SEC Rule 10b-10.

The OCC also seeks comments on whether it should require the disclosure of any other information describing the security in the written notification to customers.

SEC Rule 10b-10(c) also contains a provision requiring broker/dealers to furnish to customers requested information within five business days of the receipt of the request, or within 15 business days if the broker/dealer effected the transaction more than 30 days before the receipt of the request. *See* 17 CFR 240.10b-10(c). Part 12 currently does not contain a similar provision.

The OCC requests comments on whether it should include a provision similar to SEC Rule 10b-10(c) stating the required period of time for a bank to furnish information pursuant to a customer's request.

In addition to § 12.4, the proposal also authorizes alternative forms and times of notification under § 12.5(a) through (d) for certain specific types of transactions. These are: (1) Transactions in which the bank exercises investment discretion in other than an agency capacity (except for collective investment funds); (2) transactions in which the bank exercises investment discretion in an agency capacity; (3) transactions for a collective investment fund; and (4) transactions for a periodic plan.

Proposed § 12.5 includes captions generally characterizing the transactions covered under each paragraph. For example, § 12.5(a), captioned "trust transactions," concerns transactions for an account in which the bank exercises investment discretion other than in an agency capacity, e.g. a bank providing traditional trust services as directed by a will or a trust. Under § 12.5(b), captioned "agency transactions," the bank exercises investment discretion in an agency capacity and may provide fiduciary services; however, the bank is not named as trustee, e.g. the bank acting as a managing agent. The captions are intended to provide practical assistance and are not precise terms.

In a change from current § 12.5, the availability of the first two alternative forms of notification (§ 12.5(a) and (b)) depends on the capacity in which the bank effects the securities transaction for its customer, and not on the form of the account. Thus, this change clarifies that the transaction triggers the part 12 requirements and dictates the permissible form and time of notification.

The OCC invites comments about any effects of the proposed change regarding alternative forms of notification based upon types of transactions instead of accounts. The OCC also specifically requests comments on the continuing need for the different forms of alternative notification provided in proposed § 12.5.

Consequently, under the proposal, if a bank effects a securities transaction for a fiduciary account where the customer has the right to direct the transaction and does so, the forms of notification available for use by the bank are the same as for transactions where the bank does not exercise investment discretion (except for periodic plans), in other words, § 12.4(a), (b), or (c). Hence, as an alternative to § 12.4(a) or (b), the bank could provide the notification under § 12.4(c). However, the bank could not provide notification in the same manner as for a fiduciary account transaction that the customer did not direct, as in § 12.5(a). Therefore, the bank does not have the option of providing notification as in § 12.5(a) only upon the request of the person having the power to terminate the account, or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account.

The OCC seeks specific comments regarding whether this result clarifies the existing part 12 requirements and is the appropriate form of notification for securities transactions in a fiduciary account where the customer directs the transaction.

With respect to transactions for a periodic plan (§ 12.5(d)), the proposal changes the time for notification. Currently part 12 requires a national bank to furnish a written statement "as promptly as possible" after each transaction for a periodic plan (§ 12.5(e)). Instead, proposed § 12.5(d) requires the bank to furnish the written statement not less than once every three months. This change is consistent with similar provisions under the securities laws. Otherwise, the notification requirements for periodic plan transactions remain the same.

The OCC request comments on the proposed change in notification to not less than once every three months for periodic plan transactions under § 12.5(d) rather than notification as promptly as possible after each transaction.

Fees (§ 12.6)

The proposal places the provisions regarding fees (§§ 12.4 and 12.5) into § 12.6. It does not change the substance of these provisions.

Securities trading policies and procedures (§ 12.7)

The proposal retains the current requirement that a bank establish written policies and procedures for trading practices, but places new emphasis on following these written policies and procedures. The proposal also relocates these provisions from § 12.6 to § 12.7.

With respect to proposed § 12.7(a)(4), the proposal clarifies that bank officers and employees must provide a report to the bank containing specific information on certain trades, and the bank must establish written policies and procedures requiring these reports. While current § 12.6(d) states that the report must "identify" the securities purchased and sold, proposed § 12.7(b) clarifies the information necessary for banks to identify the securities, including the title and number of shares, the principal amount of each security involved, and the price at which the transaction was effected.

The OCC seeks comments as to whether enumeration of the information required in these reports will assist banks, and officers and employees, in complying with this requirement.

The proposal also revises one of the exceptions to the reporting requirements for securities transactions for the benefit of certain bank officers or employees to make clear that the reporting exception applies only if the transactions involve an aggregate amount of purchases and sales per officer or employee of $10,000 or less during a calendar quarter.

The proposal also clarifies that a national bank acting as an investment adviser to an investment company is subject to section 17 of the Investment Company Act, 15 U.S.C. 80a–17, and, in particular, the requirements of Rule 17j–1 of the Investment Company Act, 17 CFR 270.17j–1 (SEC Rule 17j–1). Generally, SEC Rule 17j–1 requires that an investment adviser to a registered investment company adopt a written code of ethics, and that certain defined "access persons" of the investment adviser, including directors, officers, and certain employees, report personal securities transactions to the investment adviser. *See* 17 CFR 270.17j–1(e)(1).

The requirement under proposed § 12.7(a)(4) concerning the reporting by bank officers and employees of securities transactions in which they have a beneficial interest is in addition to the applicable requirements under the Investment Company Act and SEC Rule 17j–1. Banks should recognize that the part 12 requirements, in some respects, are broader than those under the Investment Company Act because they apply to investment advisory activities by national banks whether the bank provides the advice to an investment company or to another type of customer.

The OCC welcomes any comments on this proposed addition to the regulation.

Waivers (§ 12.8)

The proposal makes no substantive changes in the waiver provision currently in § 12.7(d). It relocates the provision to § 12.8. As is the current practice, the proposal makes clear that the procedure for requesting a waiver is to submit a request in writing. The proposal also clarifies that the OCC may grant a waiver from the requirements of part 12 to any national bank, or any class of national banks, with regard to specific transactions or specific classes of transactions.

Settlement of Securities Transactions (§ 12.9)

The proposal adds § 12.9 to establish a securities settlement timeframe for national banks effecting or entering into contracts for the purchase or sale of securities for customers. The OCC intends this rule to parallel the SEC's adoption of the "T+3" securities settlement timeframe. In October 1993, the SEC adopted for the first time a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). *See* Securities Exchange Act of 1934 Rule 15c6–1, 17 CFR 240.15c6–1 (SEC Rule 15c6–1); 58 FR 52891 (Oct. 13, 1993); 60 FR 26604 (May 17, 1995) (amendments to the rule). SEC Rule 15c6–1 is a separate securities settlement requirement and is not part of the SEC's confirmation rule, SEC Rule 10b-10, 17 CFR 240.10b–10. The OCC believes that most national banks effecting customer securities transactions use a clearing broker that would be subject to the SEC's T+3 rule and national banks' securities transactions thereby routinely would settle within three days. However, some national banks may clear and settle their securities trades directly. For this reason, the OCC proposes to revise part 12 to include a separate T+3 settlement requirement that tracks the language of the SEC's securities settlement rule. *See* 17 CFR 240.15c6–1.

As with SEC Rule 15c6–1, the OCC's rule does not apply to an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptance, or commercial bill. Proposed § 12.9 also contains an identical override provision to SEC Rule 15c6–1 permitting national banks to agree that settlement will take place in more than three business days when the agreement is express and reached at the time of the transaction. Nonetheless, the OCC, similar to the intent expressed by the SEC, intends the override provision to apply to unusual transactions and not merely to permit national banks to specify before execution of specific trades that a group of trades will settle in a timeframe other than T+3. *See* Securities Exchange Act Release No. 33023, 58 FR 52891, 52901 (Oct. 13, 1993).

While proposed § 12.9 conforms to the language of the SEC's T+3 settlement rule, the OCC notes there are alternatives to adopting the language of the SEC's rule. For example, one possibility is not having a separate OCC settlement rule and, instead, using three days as the timeframe for sending the confirmation under part 12 rather than following the SEC's "completion of the transaction" timeframe. Another possibility is cross-referencing the language of SEC Rule 15c6–1 instead of

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incorporating the actual language of the rule.

The OCC seeks comments on the need for and the effect of proposed § 12.9 adopting the T+3 securities settlement requirement for national banks.

The OCC also specifically invites comments on the feasibility and appropriateness of alternative approaches to implement the T+3 securities settlement cycle.

Interpretations (§§ 12.101 and 12.102)

The proposal adds two interpretative rulings at the end of part 12. The first interpretation (§ 12.101) relates to the disclosure of remuneration for mutual fund transactions. The interpretation reflects the view taken by the OCC in various letters granting a waiver from compliance with part 12 remuneration disclosure requirements. In particular, the OCC has allowed a bank to fulfill its disclosure requirement of the source and amount of remuneration required by current § 12.4(a)(2) and (b) (proposed § 12.4(a)(2) and (b)) for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction. The OCC's view is predicated on the SEC's position as provided in a no-action letter dated March 19, 1979, and permits national banks to use the same option for disclosure of remuneration as is permitted for nonbank broker/dealers with respect to transactions in mutual funds. *See* Letter to the Investment Company Institute, [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The OCC would reconsider its position upon any change in the SEC's practice.

The second interpretive ruling (§ 12.102) discusses the use of electronic communications to satisfy part 12's customer notification requirements. In appropriate situations, the OCC will allow a national bank to satisfy the "written" notification requirement under §§ 12.4 and 12.5 through electronic communications. Where a customer has a facsimile machine, a national bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, a bank may satisfy the notification delivery requirement by other electronic communications when: (1) The parties agree to use electronic instead of hard-copy notifications; (2) the parties have the ability to print or download the notification; (3) the recipient affirms or rejects the trade through electronic notification; (4) the system cannot automatically delete the electronic notification; and (5) both parties have the capacity to receive electronic messages. The SEC has taken a comparable approach to the use of electronic means to deliver a confirmation under SEC Rule 10b-10, 17 CFR 240.10b–10. *See e.g.*, Letter regarding Thompson Financial Services, Inc. (Oct. 8, 1993). The OCC would consider the permissibility of other situations using electronic notifications on a case-by-case basis.

DERIVATION TABLE

[Only substantive modifications, additions and changes are indicated.]

Revised provision	Original provision	Comments
§ 12.1(a)	§ 12.1(a)	
§ 12.1(b)	§ 12.1(a)	
§ 12.1(c)(1)		Added.
§ 12.1(c)(2)(i)	§ 12.7(a)	
§ 12.1(c)(2)(ii)		Added.
§ 12.1(c)(2)(iii)	§ 12.7(b)	Modified.
§ 12.1(c)(2)(iv)	§ 12.7(c)	
§ 12.1(c)(3)		Added.
§ 12.1(d)	§ 12.1(b)	
§ 12.2(a)		Added.
§ 12.2(b)	§ 12.2(a)	
§ 12.2(c)		Added.
§ 12.2(d)		Added.
§ 12.2(e)	§ 12.2(b)	Modified.
§ 12.2(f)		Added.
§ 12.2(g)		Added.
§ 12.2(h)	§ 12.2(c)	
§ 12.2(i)		Added.
§ 12.2(j)	§ 12.2(d)	
§ 12.2(k)	§ 12.2(e)	Modified.
§ 12.3	§ 12.3	
§ 12.4	§§ 12.4, 12.5	Modified.
§ 12.5	§§ 12.4, 12.5	Modified.
§ 12.6	§§ 12.4, 12.5	
§ 12.7(a)	§ 12.6(a), (b), (c), and (d)	
§ 12.7(b)	§ 12.6(d)	Modified.
§ 12.7(c)	§ 12.6(d)	Modified.
§ 12.7(d)		Added.
§ 12.8	§ 12.7(d)	
§ 12.9		Added.
§ 12.101		Added.
§ 12.102		Added.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal will have minimal economic impact on national banks, regardless of size, since it makes no material changes to existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, March 22, 1995, 109 Stat. 48 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing unnecessary regulatory costs and other burdens, where possible.

Paperwork Reduction Act of 1995

The OCC invites comments on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0142, Washington DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–0142), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in §§ 12.3 through 12.8. This information is required by the OCC to establish an audit trail. That audit trail is used by the OCC in its regulatory examinations as a tool to evaluate a bank's compliance with banking and securities laws and regulations, such as the anti-fraud provisions of the Federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through national banks. Other records provide a basis for the OCC to waive some or all of the recordkeeping and confirmation requirements of 12 CFR part 12. The recordkeepers are national banks.

Estimated total annual recordkeeping burden: 56,019 hours.

The estimated annual burden per recordkeeper varies from 2 hours to more than 700 hours, depending on individual circumstances, with an estimated average of 53.3 hours.

Estimated number of recordkeepers: 1,047.

List of Subjects in 12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 12 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

12.1 Authority, purpose, scope, and OMB control number.
12.2 Definitions.
12.3 Recordkeeping.
12.4 Form and time of customer notification.
12.5 Alternative forms and times of customer notification.
12.6 Fees.
12.7 Securities trading policies and procedures.
12.8 Waivers.
12.9 Settlement of securities transactions.

Interpretations

12.101 National bank disclosure of remuneration for mutual fund transactions.
12.102 National bank use of electronic communications as customer notifications.

Authority: 12 U.S.C. 24, 92a, and 93a.

§ 12.1 Authority, purpose, scope, and OMB control number.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 24, 12 U.S.C. 92a, and 12 U.S.C. 93a.

(b) *Purpose.* This part establishes rules, policies, and procedures applicable to recordkeeping and confirmation requirements for certain securities transactions effected by national banks for customers.

(c) *Scope*—(1) *General.* Any security transaction effected for a customer by a national bank is subject to this part unless exempted by paragraph (c)(2) of this section. A national bank effecting transactions in government securities is subject to the confirmation, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a national bank that is not registered as a "municipal securities dealer" with the Securities and Exchange Commission. *See* 15 U.S.C. 78c(a)(30) and 78o–4. This part, as well as 12 CFR part 9, applies to a national bank's securities transactions effected as a fiduciary.

(2) *Exemptions*—(i) *Small number of transactions.* The requirements of §§ 12.3(a)(2) through (4) and 12.7(a)(1) through (3) do not apply to a national bank having an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(ii) *Government securities.* The recordkeeping requirements of § 12.3 do not apply to national banks effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by national banks.

(iii) *Municipal securities.* This part does not apply to transactions in municipal securities conducted by a national bank registered with the Securities and Exchange Commission as a "municipal securities dealer" as defined in title 15 U.S.C. 78c(a)(30). *See* 15 U.S.C. 78o–4.

(iv) *Foreign branches.* This part does not apply to securities transactions conducted by a foreign branch of a national bank.

(3) *Safe and Sound Operations.* Notwithstanding paragraph (c)(2) of this section, every national bank conducting securities transactions for customers shall maintain effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The systems maintained must clearly and accurately reflect appropriate information and provide an adequate basis for an audit.

(d) *OMB control number.* The collection of information requirements in this part were approved by the Office and Management and Budget under OMB control number 1557–0142.

§ 12.2 Definitions.

(a) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(b) *Collective investment fund* means any funds held by a national bank as fiduciary and invested collectively in a "collective investment" as described in 12 CFR 9.18(a).

(c) *Completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a national bank, except as provided in paragraph (c)(2) of this section, the time when the customer pays the bank any part of the purchase price, or, if payment is made by a bookkeeping entry, the time when the bank makes the bookkeeping entry for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a national bank and who makes payment for the security prior to the time when payment is requested or notification is given that payment is due, the time when the bank delivers the security to or into the account of the customer;

(3) In the case of a customer who sells a security through or to a national bank except as provided in paragraph (c)(4) of this section, if the security is not in the custody of the bank at the time of sale, the time when the security is delivered to the bank, and if the security is in the custody of the bank at the time of sale, the time when the bank transfers the security from the account of the customer;

(4) In the case of a customer who sells a security through or to a national bank and who delivers the security to the bank prior to the time when delivery is requested or notification is given that delivery is due, the time when the bank makes payment to or into the account of the customer.

(d) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(e) *Customer* means any person or account, including any agency, trust,

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estate, guardianship, committee, or other fiduciary account for which a national bank makes or participates in making the purchase or sale of securities, but does not include a broker, dealer, bank acting as a broker or dealer, or issuer of the securities that are the subject of the transaction.

(f) *Debt security* as used in § 12.4(b)(8) and (9) only, means any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, shall not be included in this definition.

(g) *Government security* means:

(1) A security which is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security which is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (g) (1), (2), or (3) of this section, other than a put, call, straddle, option, or privilege:

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

(h) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(i) *Municipal security* means:

(1) A security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision;

(2) A security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(c)(2) (1970)) (Code)) the interest on which is excludable from gross income under section 103(a)(1) of the Code (26 U.S.C. 103(a)(1)) if, by reason of the application of paragraph (4) or (6) of section 103(c) of the Code (26 U.S.C. 103(c)) (determined as if paragraphs (4)(A), (5), and (7) were not included in section 103(c) (26 U.S.C. 103(c)), paragraph (1) of section 103(c) (26 U.S.C. 103(c)) does not apply to the security.

(j) *Periodic plan* (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means a written authorization for a national bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them.

(k) *Security:* (1) Means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing;

(2) Does not mean currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; units of a collective investment fund; interests in a variable amount note as defined in 12 CFR 9.18(c)(2)(ii); U.S. Savings Bonds; or any other instrument the OCC determines does not constitute a security for purposes of this part.

§ 12.3 Recordkeeping.

(a) *General rule.* A national bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* A chronological record of each original entry containing an itemized daily record of each purchase and sale of securities, including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price (if any);

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash with respect to transactions in securities for each account; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *Memorandum order.* A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), including:

(i) Account or customer name for which the transaction was effected;

(ii) Type of order (market order, limit order, or subject to special instructions);

(iii) Time the trader or other bank employee responsible for effecting the transaction received the order;

(iv) Time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or cancelled;

(v) Price at which the order was executed; and

(vi) Name of the broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 12.4 and 12.5.

(b) *Manner of maintenance.* The records required by this section must

clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

§ 12.4 Form and time of customer notification.

A national bank effecting a securities transaction for its customer shall give or send to the customer a notification. This section and § 12.5 describe the form and time of permissible types of notifications. A bank may elect to provide notification through a copy of a broker/dealer confirmation and statement regarding remuneration as provided in § 12.4(a), written notification as provided in § 12.4(b), notification by agreement as provided in § 12.4(c), or an alternative form of notification applicable to a specific type of transaction as provided in § 12.5.

(a) *Confirmation of a broker/dealer.* A national bank effecting a securities transaction for a customer shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and

(2) If the customer or any other source will provide remuneration to the bank in connection with the transaction, and a written agreement between the bank and the customer does not determine the remuneration, a statement of the source and amount of any remuneration that the customer or any other source is to provide the bank.

(b) *Written notification.* A national bank effecting a securities transaction for its customer that does not provide notification pursuant to paragraph (a) of this section, shall give or send to its customer at or before the completion of the transaction a written notification that includes:

(1) Name of the bank;

(2) Name of the customer;

(3) Capacity in which the bank acts (as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity);

(4) Date of execution, a statement that the bank will furnish the time of execution within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) Amount of any remuneration that the customer has provided or is to provide any broker/dealer, directly or indirectly, in connection with the transaction;

(6) Amount of any remuneration that the bank has received or will receive from the customer, and the source and amount of any other remuneration that the bank has received or will receive in connection with the transaction;

(i) A bank need not provide the information in paragraph (b)(6) of this section if:

(A) The bank and its customer have determined remuneration pursuant to a written agreement; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction;

(ii) Unless the bank follows paragraph (b)(6) of this section, the written notification must state whether the bank has received or will receive any other remuneration and that the bank will furnish the source and amount of the other remuneration upon written request of the customer. A bank may not follow this paragraph (b)(6)(ii), if, in the case of a purchase, the bank was participating in a distribution, or, in the case of a sale, the bank was participating in a tender offer;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information upon written request from the customer. The bank shall furnish this information within a reasonable time after receipt of a written request;

(8) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and the fact that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price: Provided, however, that this paragraph (b)(9)(ii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g. current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; Provided, however, that this paragraph (b)(10)(iii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(c) *Notification by agreement.* Unless the bank follows paragraphs (a) or (b) of this section, a national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion (except for periodic plans) shall give or send the notification at the time and in the form agreed to in writing by the bank and customer, provided that the agreement makes clear the customer's right to receive the written notification pursuant to paragraphs (a) or (b) of this section at no additional cost to the customer.

§ 12.5 Alternative forms and times of customer notification.

(a) *Trust transactions.* Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction

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for an account in which the bank exercises investment discretion other than in an agency capacity (except for collective investment funds) shall give or send the notification within a reasonable time if a person having the power to terminate the account, or, if there is no such person, any person holding a vested beneficial interest in the account, requests written notification pursuant to § 12.4(a) or (b). Otherwise, notification is not required.

(b) *Agency transactions.* (1) Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction for an account in which the bank exercises investment discretion in an agency capacity shall give or send, not less than once every three months, an itemized statement to each customer that specifies the funds and securities in the custody or possession of the bank at the end of the period and all debits, credits and transactions in the customer's account during the period; and

(2) If requested by the customer, the bank shall give or send written notification to the customer pursuant to § 12.4(a) or (b) within a reasonable time.

(c) *Collective investment fund transactions.* Unless the bank follows § 12.4(a) or (b), a national bank effecting a securities transaction for a collective investment fund shall follow 12 CFR 9.18(b)(5).

(d) *Periodic plan transactions.* (1) Unless the bank follows § 12.4 (a) or (b), a national bank effecting a securities transaction for a periodic plan shall give or send to its customer not less than once every three months a written statement showing:

(i) The customer's funds and securities in the custody or possession of the bank;

(ii) All service charges and commissions paid by the customer in connection with the transaction; and

(iii) All other debits and credits of the customer's account involved in the transaction.

(2) Upon written request of the customer, the bank shall give or send the information described in § 12.4 (a) or (b), except that the bank need not provide to the customer any information relating to remuneration paid in connection with the transaction when the remuneration is paid by a source other than the customer.

§ 12.6 Fees.

(a) *Permissible fees.* A national bank may charge a reasonable fee for providing notification pursuant to § 12.5 (a), (b), and (d).

(b) *Impermissible fees.* A national bank may not charge a fee for providing notification pursuant to § 12.4 (a), (b), and (c), and § 12.5(c).

§ 12.7 Securities trading policies and procedures.

(a) *Policies and procedures; reports of securities trading.* A national bank effecting securities transactions for customers shall maintain and adhere to policies and procedures that:

(1) Assign responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers;

(2) Provide for the fair and equitable allocation of securities and prices to accounts when the bank receives orders for the same security at approximately the same time and places the orders for execution either individually or in combination;

(3) Provide for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where applicable, and where permissible under local law; and

(4) Require bank officers and employees to report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest, if the officers and employees:

(i) Make investment recommendations or decisions for the accounts of customers;

(ii) Participate in the determination of the recommendations or decisions; or

(iii) In connection with their duties, obtain information concerning which securities are purchased, sold, or recommended for purchase or sale.

(b) *Report required.* A bank officer or employee shall file a report, as referenced in paragraph (a)(4) of this section, that contains the following information:

(1) The date of the transaction, the title and number of shares, and the principal amount of each security involved;

(2) The nature of the transaction (i.e., purchase, sale, or other type of acquisition or disposition);

(3) The price at which the transaction was effected; and

(4) The name of the broker, dealer, or bank with or through whom the transaction was effected.

(c) *Report not required.* Paragraph (b) of this section does not require a bank officer or employee to report transactions for the benefit of the officer or employee if:

(1) The officer or employee has no direct or indirect influence or control over the transaction;

(2) The transaction is in mutual fund shares;

(3) The transaction is in government securities; or

(4) The transactions involve an aggregate amount of purchases and sales per officer or employee of $10,000 or less during the calendar quarter.

(d) *Additional reporting requirement.* A national bank that acts as an investment adviser to an investment company is subject to the requirements of Securities and Exchange Commission (SEC) Rule 17j–1 (17 CFR 270.17j–1) of the Investment Company Act of 1940. SEC Rule 17j–1 requires certain personal securities transactions by "access persons" of the investment adviser, including directors, officers, and certain employees, to be reported to the Securities and Exchange Commission. The reporting requirement under paragraph (a)(4) of this section is in addition to any applicable requirements under SEC Rule 17j–1.

§ 12.8 Waivers.

A national bank may file a written request with the OCC for waiver of one or more of the requirements set forth in §§ 12.2 through 12.7, either in whole or in part. The OCC may grant a waiver from the requirements of this part to any national bank, or any class of national banks, with regard to specific transactions or specific classes of transactions.

§ 12.9 Settlement of securities transactions.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a national bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1, either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, or sold to an initial purchaser by a national bank participating in the offering provided that a national bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

Interpretations

§ 12.101 National bank disclosure of remuneration for mutual fund transactions.

A national bank may fulfill its obligation to disclose information on the source and amount of remuneration, required by § 12.4(a)(2) and (b), for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction. The OCC's view is consistent with the position of the Securities and Exchange Commission (SEC) as provided in a no-action letter dated March 19, 1979, which permits confirmations for mutual funds merely to refer to the sales load disclosed in the prospectus. *See* Letter to the Investment Company Institute, (1979 Transfer Binder) Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The OCC would reconsider its position upon any change in the SEC's practice.

§ 12.102 National bank use of electronic communications as customer notifications.

(a) In appropriate situations, a national bank may satisfy the "written" notification requirement under §§ 12.4 and 12.5 through electronic communications. Where a customer has a facsimile machine, a national bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, a bank may satisfy the notification delivery requirement by other electronic communications when:

(1) The parties agree to use electronic instead of hard-copy notifications;

(2) The parties have the ability to print or download the notification;

(3) The recipient affirms or rejects the trade through electronic notification;

(4) The system cannot automatically delete the electronic notification; and

(5) Both parties have the capacity to receive electronic messages.

(b) The OCC would consider the permissibility of other situations using electronic notifications on a case-by-case basis.

Dated: December 7, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30970 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–142–AD]

Airworthiness Directives; Beech (Raytheon) Model BAe 125–800A and Hawker 800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe 125–800A and Hawker 800 series airplanes. This proposal would require a detailed visual inspection of the fuel feed hose assemblies of the auxiliary power unit (APU) to detect overheating, degradation, proper routing, and adequate clearance; and the correction of any discrepancies found. This proposal is prompted by reports of heat damage to the fuel feed hose assembly of the APU due to contact between the hose assembly and hot surfaces. The actions specified by the proposed AD are intended to prevent such heat damage, which could lead to a possible fire/smoke hazard when failure of the hose assembly occurs and subsequent fuel mist or spray is emitted into the rear equipment bay.

DATES: Comments must be received by January 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manger Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

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Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Beech (Raytheon) Model BAe 125–800A and Hawker 800 series airplanes. The CAA advises that it has received reports of heat damage to the fuel feed hose assembly of the auxiliary power unit (APU). The cause of such heat damage has been attributed to contact between the hose assembly and hot surfaces. This condition, if not corrected, could lead to a possible fire/smoke hazard if failure of the hose assembly occurs and fuel mist or spray is subsequently emitted into the rear equipment bay.

The manufacturer has issued Service Bulletin SB. 49–45, dated May 15, 1995. The service bulletin describes procedures for a detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the APU; and to verify if adequate clearance (0.5 inch) exists between the hose assembly and the left-hand mixer valve/main air valve assemblies and associated hot air ducting. The service bulletin also provides procedures for the correction of any discrepancies found during the inspection. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the APU; and to verify if adequate clearance (0.5 inch) exists between the hose assembly and the left-hand mixer valve/main air valve assemblies and associated hot air ducting. It also would require the correction of any discrepancies prior to further flight. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,400, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Company (Raytheon Aircraft Company): Docket 95–NM–142–AD.

Applicability: Model BAe 125–800A (including military variants C–29A and U–125) and Hawker 800 series airplanes, constructor's numbers 8091 and subsequent; equipped with Turbomach auxiliary power unit (APU) (Modification 250404B); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent heat damage to the fuel feed hose assemblies of the auxiliary power unit (APU), which could lead to a possible fire/smoke hazard if failure of the hose assembly occurs and fuel mist or spray is subsequently emitted into the rear equipment bay, accomplish the following:

(a) Within 75 days after the effective date of this AD, perform a detailed visual inspection to detect overheating or degradation of the hose assemblies; to verify proper routing of fuel feed hose assembly of the auxiliary power unit (APU); and to verify if adequate clearance (0.5 inch) exists between the hose assembly (outlet from the fuel pump box of the APU) and the left-hand mixer valve/main air valve assemblies and associated hot air ducting; in accordance with Hawker Service Bulletin SB. 49–45, dated May 15, 1995.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any overheating or degradation is detected, prior to further flight, replace the hose assembly with a new assembly, ensuring proper clearance and routing exists, in accordance with the service bulletin.

(3) If any hose assembly is improperly routed, prior to further flight, re-route the assembly maintaining proper clearance, in accordance with the service bulletin.

(4) If the clearance of the hose assembly is inadequate and the hose assembly is properly routed, prior to further flight, adjust the hose assembly to achieve the 0.5-inch clearance, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–31189 Filed 12–21–95; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 95–AWP–38]

Proposed Establishment of Class D and E Airspace Areas; Saipan Island, CQ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class D and E airspace areas at Saipan Island, CQ. The Class D airspace area would be established because an airport traffic control tower (ATCT) at Saipan International Airport, Saipan Island, CQ, has been commissioned. The FAA is proposing to establish the Class E airspace area to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 95–AWP–38, Federal Aviation Administration, P. O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–38." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and E airspace areas at Saipan Island, CQ. The Class D airspace area would be established because an ATCT at Saipan International Airport, Saipan Island, CQ, has been commissioned. The FAA is proposing to establish the Class E airspace area to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport. Class D and E airspace designations are published in paragraphs 5000 and 6004, respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes are carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000—Class D Airspace

* * * * *

AWP CQ D Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07'08"N, long. 145°43'46"E)
Saipan RBN (lat. 15°06'41"N, long. 145°42'37"E)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Saipan International Airport. This Class D airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Paragraph 6004—Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AWP CQ E4 Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07'08"N, long. 145°43'46"E)
Saipan RBN (lat. 15°06'41"N, long. 145°42'37"E)

That airspace extending upward from the surface within a 4.3-mile radius of Saipan International Airport and within 2.6 miles each side of the Saipan RBN 264° bearing, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 248° radial, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 068° radial, extending from the 4.3-mile radius to 6.5 miles east of the Saipan International Airport. This Class E airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Issued in Washington, DC, on December 12, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–31202 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 312

[Docket No. 95N–0359]

Protection of Human Subjects; Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its current informed consent regulations to require that the written consent form signed by the subject or the subject's legally authorized representative, be dated by the subject or the subject's legally authorized representative at the time consent is given. FDA is proposing this requirement because the agency has had problems on occasion verifying that informed consent was obtained from a research subject prior to participation in a study because the consent document was not dated. The agency believes that by explicitly requiring that the consent form be dated at the time it is signed, the agency will be able to help ensure that informed consent was, in fact, obtained prior to entry into the study as required by FDA regulations. FDA is also proposing to amend its regulation on case histories to clarify what adequate case histories include.

DATES: Written comments by March 21, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glen D. Drew, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Rule

Except as provided in FDA regulations, no investigator may involve a human being as a subject in research covered by part 50 (21 CFR part 50) unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. Section 50.20 requires the investigator to seek informed consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. In past audits of clinical investigations, FDA has had problems on occasion verifying that consent was obtained prior to participation in the study because a number of the consent documents were not dated. By explicitly requiring that the consent form be dated at the time it is signed, the agency will be able to help ensure that informed consent was obtained prior to entry into the study and will be able to verify that the investigator has fulfilled his or her obligation. Thus, FDA is proposing to amend § 50.27(a) to explicitly require that the consent form be dated by the subject or the subject's legally authorized representative at the time that it is signed.

II. Request for Comments

Interested persons may, on or before March 21, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule simply adds a requirement that consent forms be dated at the time that they are signed in order to permit the agency to verify that informed consent is obtained prior to an individual's entry into a research study. Because the majority of consent forms are currently dated at the time that they are signed, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Clarifying Amendments

Along with this proposal to require that consent forms be dated at the time they are signed, FDA believes that a number of related changes to the regulations for human drugs and biologics are warranted. FDA is proposing to revise § 312.53(c)(1)(vi)(*d*) (21 CFR 312.53(c)(1)(vi)(*d*)) to expressly recognize that the informed consent referred to be in accordance with 21 CFR part 50 and that institutional review board review and approval referred to be in accordance with 21 CFR part 56. Also, FDA is proposing to revise § 312.62(b) (21 CFR 312.62(b)) to clarify that adequate case history records include the case report forms and supporting data, including, for example, signed and dated consent forms and medical records.

List of Subjects

21 CFR Part 50

Human research subjects, Informed consent, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 50 and 312 be amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

2. Section 50.27 is amended by revising paragraph (a) to read as follows:

§ 50.27 Documentation of informed consent.

(a) Except as provided in § 56.109(c), informed consent shall be documented by the use of a written consent form approved by the IRB and signed and dated by the subject or the subject's legally authorized representative at the time of consent. A copy shall be given to the person signing the form.

* * * * *

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

3. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

4. Section 312.53 is amended by revising paragraph (c)(1)(vi)(*d*) to read as follows:

§ 312.53 Selecting investigators and monitors.

* * * * *

(c) * * *

(1) * * *

(vi) * * *

(*d*) Will inform any patients, or any persons used as controls, that the drugs are being used for investigational purposes and will ensure that the requirements relating to obtaining informed consent (21 CFR part 50) and institutional review board review and approval (21 CFR part 56) are met;

* * * * *

5. Section 312.62 is amended by revising paragraph (b) to read as follows:

§ 312.62 Investigator recordkeeping and record retention.

* * * * *

(b) *Case histories.* An investigator is required to prepare and maintain adequate and accurate case histories that record all observations and other data pertinent to the investigation on each individual treated with the investigational drug or employed as a control in the investigation. Case histories include the case report forms and supporting data including, for example, signed and dated consent forms and medical records.

* * * * *

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–31154 Filed 12–21–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–35–95]

RIN 1545–AT82

Allocation of Accrued Benefits Between Employer and Employee Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on calculation of an employee's accrued benefit derived from the employee's contributions to a qualified defined benefit pension plan. These regulations are issued to reflect changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and the Omnibus Budget Reconciliation Act of 1989 (OBRA '89). OBRA '87 and OBRA '89 amended the law to change the accumulation of employee contributions and the conversion of those accumulated contributions to employee-derived accrued benefits.

DATES: Written comments and requests for a public hearing must be received by March 21, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–35–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (EE–35–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer, (202) 622–4606, concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to regulations containing rules for computing an employee's accrued benefit derived from the employee's contributions to a qualified defined benefit pension plan. The proposed amendments reflect changes made to section 411(c)(2) by the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (OBRA '87), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (OBRA '89). OBRA '87 and OBRA '89 changed the interest rates used to accumulate an employee's contributions to normal retirement age. OBRA '89 also changed the manner in which the accumulated contributions are converted to an annual benefit payable at normal retirement age, and removed a limitation on the employee-derived accrued benefit contained in prior law.

Section 411(c)(1) provides that an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for the employee as of that date over the accrued benefit derived from contributions made by the employee as of that date. Section 411(c)(2)(B) provides that in the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's contributions accumulated to normal retirement age using the interest rate(s) specified in section 411(c)(2)(C), expressed as an actuarially equivalent annual benefit commencing at normal retirement age using an interest rate which would be used by the plan under section 417(e)(3), as of the determination date. If the employee-derived accrued benefit is determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, section 411(c)(3) requires that the employee-derived accrued benefit be the actuarial equivalent of the benefit determined under section 411(c)(2).

Under section 411(c)(2)(C)(iii)(I), effective for plan years beginning after December 31, 1987, the interest rate used to accumulate an employee's contributions until the determination date is 120 percent of the Federal mid-term rate under section 1274 of the Internal Revenue Code (Code). For the period between the determination date and normal retirement age, section 411(c)(2)(C)(iii)(II) provides that the interest rate used to accumulate an employee's contributions is the interest rate which would be used under the plan under section 417(e)(3) as of the determination date. As noted above, section 411(c)(2)(B) provides that the interest rate which would be used under the plan under section 417(e)(3) as of the determination date also applies for purposes of converting the accumulated contributions to an annual benefit commencing at normal retirement age. The Retirement Protection Act of 1994, Public Law 103–465 (RPA '94) amended section 417(e) to change the applicable interest rate under section 417(e)(3) and to specify the applicable mortality table under that section. Examples contained in § 1.411(c)-1(c)(6) of these proposed regulations reflect a plan that has been amended to comply with the interest rate and mortality table specifications enacted in RPA '94.

Explanation of Provisions

1. Conversion Calculation

Prior to OBRA '89, section 411(c)(2)(B) specified that the conversion factor to be used for purposes of computing the employee-derived accrued benefit was 10 percent for a straight life annuity commencing at normal retirement age of 65 (i.e., multiply the accumulated contributions by .10), and that for other normal retirement ages the conversion factor was to be determined in accordance with regulations prescribed by the Secretary. Section 1.411(c)-1(c)(2) of the existing regulations provides that for normal retirement ages other than age 65, the conversion factor shall be the factor as determined by the Commissioner.

Rev. Rul. 76–47 (1976–1 C.B. 109) sets forth in tabular form the conversion factors to be used for determining the accrued benefit derived from employee contributions when the normal retirement age under the plan is other than age 65 or when the normal form of benefit is other than a single life annuity (without ancillary benefits). Rev. Rul 76–47 further provides that where no standard factor is available, a conversion factor must be determined using an interest rate of 5 percent and the UP–1984 mortality table (without age setback).

OBRA '89 deleted the ten percent conversion factor in section 411(c)(2)(B) and replaced it with the requirement that the accumulated contributions at normal retirement age be expressed as an annual benefit commencing at normal retirement age using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date). This change was effective retroactively to the effective date of the OBRA '87 provision relating to section 411(c)(2)(C) (the first day of the first plan year beginning after December 31, 1987).

To reflect the OBRA '89 amendments, these proposed regulations define appropriate conversion factor with respect to an accrued benefit expressed in the form of an annual benefit that is nondecreasing for the life of the participant as the present value of an annuity in the form of that annual benefit commencing at normal retirement age at a rate of $1 per year. This amount is to be computed using the interest rate and mortality table

which would be used under the plan under section 417(e)(3) and § 1.417(e)-1T. To reflect the post-OBRA '89 conversion factor definition and to conform to common actuarial practice, these proposed regulations would change the multiplied by language in § 1.411(c)-1(c)(1) to divided by.

2. Accumulated Contributions

As added by the Employee Retirement Income Security Act of 1974 (ERISA), section 411(c)(2)(C) provided that employee contributions were to be accumulated using a standard interest rate of 5 percent for years beginning on or after the effective date of that section. OBRA '87 changed the interest rate under section 411(c)(2)(C) to 120 percent of the applicable Federal mid-term rate under section 1274 for plan years after 1987. OBRA '89 again amended section 411(c)(2)(C) to provide that 120 percent of the applicable Federal mid-term rate under section 1274 is to be used for accumulating contributions only up to the determination date. For the period from the determination date to normal retirement age, the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) must be used for accumulating contributions for the period from the determination date to normal retirement age. Accordingly, these proposed regulations would amend paragraph (3) of § 1.411(c)-1(c) to reflect those rates. As stated above, RPA '94 amended section 417(e)(3) to change the applicable interest rate. See § 1.417(e)-1T.

3. Determination Date

Section 1.411(c)-1(c)(5)(i) defines the term determination date for purposes of section 411(c)(2)(C)(iii), in a case in which a participant will receive his or her entire accrued benefit derived from employee contributions in any one of the following forms (described in paragraph (c)(5)(ii)): an annuity that is substantially nonincreasing, substantially nonincreasing installment payments for a fixed number of years, or a single sum distribution. In such a case, the term determination date means the date on which distribution of such benefit commences. For this purpose, an annuity that is nonincreasing except for automatic increases to reflect increases in the consumer price index is considered to be an annuity that is substantially nonincreasing.

Thus, for example, for purposes of section 411(c)(2)(C)(iii), in the case of a distribution of the employee's entire accrued benefit (or the employee's entire employee-derived accrued benefit) in the form of a nonincreasing single life annuity payable commencing either at normal retirement age or at early retirement age, the determination date is the date the annuity commences. Similarly, in the case of a single sum distribution of accumulated employee contributions (i.e., employee contributions plus interest computed at or above the section 411(c) required rates) upon termination of employment with a deferred annuity benefit derived solely from employer contributions, the determination date is the date of distribution of the single sum of accumulated employee contributions.

Alternatively, the plan may provide that the determination date is the annuity starting date, as defined in § 1.401(a)–20, Q&A–10.

Under § 1.411(c)–1(c)(5)(iii) of these regulations, where a participant will receive a distribution that is not described in paragraph (c)(5)(i), the determination date will be as provided by the Commissioner.

4. Elimination of Limitation on Employee-derived Accrued Benefit

Prior to OBRA '89, section 411(c)(2)(E) of the Code limited the accrued benefit derived from employee contributions to the greater of (1) the employee's accrued benefit under the plan, or (2) the sum of the employee's mandatory contributions, without interest. Section 7881(m)(1)(C) of OBRA '89 deleted that provision. Section 7881(m)(1)(D) of OBRA '89 added section 411(a)(7)(D) to the Code, which provides that the accrued benefit of an employee shall not be less than the amount determined under section 411(c)(2)(B) with respect to the employee's accumulated contributions. Accordingly, these proposed regulations delete the rule included in § 1.411(c)–1(d) of the existing regulations, which reflects the pre-OBRA '89 rule.

5. Delegation of Authority

Section 1.411(c)–1(d) of these proposed regulations provides that the Commissioner may prescribe additional guidance on calculating the accrued benefit derived from employer or employee contributions under a defined benefit plan.

Effective Date

These amendments are proposed to be effective for plan years beginning on or after January 1, 1997. For example, assume that under a plan the employee's date of termination of employment is treated as the determination date, and distribution of the employee's entire employee-derived accrued benefit (as determined under the terms of the plan then in effect) occurs or commences prior to the first day of the plan year beginning in 1997. In that case, with respect to interest credits under section 411(c)(2)(C)(iii) for plan years beginning after 1987, the Service will not treat the plan as having failed to satisfy the requirements of section 411(c), nor will it require that additional amounts be credited in the calculation of the employee-derived accrued benefit in order to satisfy the requirements of section 411(c) after final regulations become effective, merely because the date the employee's employment terminated was treated as the determination date, provided that interest is credited in accordance with section 411(c)(2)(C)(iii)(I) for the period before the date the employee terminated employment and in accordance with section 411(c)(2)(C)(iii)(II) thereafter.

Once amendments to the regulations under § 1.411(c)–1 are adopted in final form, the Service will obsolete or modify Rev. Rul. 76–47, Rev. Rul. 78–202 (1978–2 C.B. 124) and Rev. Rul. 89–60 (1989–1 C.B. 113) as necessary or appropriate.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

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Drafting Information

The principal author of these regulations is Janet A. Laufer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.411(c)–1 is amended by:

1. Revising paragraphs (c)(1), (c)(2), and (c)(3), and by adding paragraphs (c)(5) and (c)(6).
2. Revising paragraph (d).
3. Adding paragraph (g).

The additions and revisions read as follows:

§ 1.411(c)–1 Allocation of accrued benefits between employer and employee contributions.

* * * * *

(c) *Accrued benefit derived from mandatory employee contributions to a defined benefit plan*—(1) *General Rule.* In the case of a defined benefit plan (as defined in section 414(j)), the accrued benefit derived from contributions made by an employee under the plan as of any applicable date in the form of an annual benefit commencing at normal retirement age and nondecreasing for the life of the participant is equal to the amount of the employee's accumulated contributions (determined under paragraph (c)(3) of this section) divided by the appropriate conversion factor with respect to that form of benefit (determined under paragraph (c)(2) of this section). Paragraph (e) of this section provides rules for actuarial adjustments where the benefit is to be determined in a form other than the form described in this paragraph (c)(1).

(2) *Appropriate conversion factor.* For purposes of this paragraph, with respect to a form of annual benefit commencing at normal retirement age described in paragraph (c)(1), the term *appropriate conversion factor* means the present value of an annuity in the form of that annual benefit commencing at normal retirement age at a rate of $1 per year, computed using an interest rate and mortality table which would be used under the plan under section 417(e)(3) and § 1.417(e)–1T (as of the determination date).

(3) *Accumulated contributions.* For purposes of section 411(c) and this section, the term *accumulated contributions* means the total of—

(i) All mandatory contributions made by the employee (determined under paragraph (c)(4) of this section);

(ii) Interest (if any) on such contributions, computed at the rate provided by the plan to the end of the last plan year to which section 411(a)(2) does not apply (by reason of the applicable effective dates);

(iii) Interest on the sum of the amounts determined under paragraphs (c)(3)(i) and (ii) of this section compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 411(a)(2) applies (by reason of the applicable effective date) to the beginning of the first plan year beginning after December 31, 1987;

(iv) Interest on the sum of the amounts determined under paragraphs (c)(3)(i) through (iii) of this section compounded annually at 120 percent of the Federal mid-term rate(s) (as in effect under section 1274(d) of the Internal Revenue Code for the first month of a plan year) for the period beginning with the first plan year beginning after December 31, 1987 and ending on the determination date; and

(v) Interest on the sum of the amounts determined under paragraphs (c)(3)(i) through (iv) of this section compounded annually, using an interest rate which would be used under the plan under section 417(e)(3) and § 1.417(e)–1T (as of the determination date), from the determination date to the date on which the employee would attain normal retirement age.

* * * * *

(5) *Determination date*—(i) For purposes of section 411(c) and this section, in a case in which a participant will receive his or her entire accrued benefit derived from employee contributions in any one of the forms described in paragraph (c)(5)(ii), the term *determination date* means the date on which distribution of such benefit commences. Alternatively, in such a case, the plan may provide that the determination date is the annuity starting date with respect to that benefit, as defined in § 1.401(a)–20, Q&A–10.

(ii) Paragraph (c)(5)(i) applies to the following forms: an annuity that is substantially nonincreasing (e.g., an annuity that is nonincreasing except for automatic increases to reflect increases in the consumer price index), substantially nonincreasing installment payments for a fixed number of years, or a single sum distribution.

(iii) In a case in which a participant will receive a distribution that is not described in paragraph (c)(5)(i), the determination date will be as provided by the Commissioner.

(6) *Examples.*

(i) *Facts.* (A) In the following examples, Employer X maintains a qualified defined benefit plan that required mandatory employee contributions for 1987 and prior years, but not for years after 1987. The plan year is the calendar year. The plan provides for a normal retirement age of 65 and for 100 percent vesting in the employer-derived portion of a participant's accrued benefit after 5 years of service.

(B) The terms of the plan provide that the normal form of benefit is a level monthly amount commencing at normal retirement age and payable for the life of the participant. A plan participant who elects not to receive benefits in the form of the qualified joint and survivor annuity provided by the plan may elect to receive a single-sum distribution of the present value of his or her accrued benefit upon termination of employment.

(C) As of January 1, 1995, the plan was amended to provide that, for purposes of computing actuarially equivalent benefits, the single sum is calculated using the unisex version of the 1983 GAM mortality table (as provided in Revenue Ruling 95–6 (1995–1 C.B. 80)), and interest at the rate equal to the annual rate of interest on 30-year Treasury securities for the first calendar month preceding the first day of the plan year during which the annuity starting date occurs.

(D) Under the plan, employee contributions are accumulated at 3 percent interest for plan years beginning before 1976, 5 percent interest for plan years beginning after 1975 and before 1988, and interest at 120 percent of the Federal mid-term rate (as in effect under section 1274(d) for the first month of the plan year) for plan years beginning after 1987 until the determination date. Under the plan, the determination date is defined as the annuity starting date. For the period from the determination date until the date on which the employee attains normal retirement age, interest is credited at the interest rate which would be used under the plan under section 417(e)(3) as of the determination date.

(E) A, an unmarried participant, terminates employment with X on January 1, 1997 at age 56 with 15 years of service. As of December 31, 1987, A's total accumulated mandatory employee contributions to the plan, including interest compounded annually at 5 percent for plan years beginning after 1975 and before 1988, equaled $3,021. A receives his or her accrued benefit in the form of an annual single life annuity commencing at normal retirement age. A's annuity starting date is January 1, 2006, and therefore the determination date is January 1, 2006.

(ii) *Annuity at Normal Retirement Age—Determination of Employee-Derived and Total Plan Vested Accrued Benefit.*

Example 1.

For purposes of this example, it is assumed that A's total accrued benefit under the plan in the normal form of benefit commencing at normal retirement age is $2,949 per year. A's benefit, as of January 1, 2006, would be determined as follows:

(1) Determine A's total accrued benefit in the form of an annual single life annuity commencing at normal retirement age under the plan's formula ($2,949 per year payable at age 65).

(2) Determine A's accumulated contributions with interest to January 1, 1997. As of December 31, 1987, A's accumulated contributions with interest under the plan provisions were $3,021. A's employee contributions are accumulated from December 31, 1987 to January 1, 1997 using 120 percent of the Federal mid-term rate under section 1274(d). This rate is 10.61 percent for 1988, 11.11 percent for 1989, 9.57 percent for 1990, 9.78 percent for 1991, 8.10 percent for 1992, 7.63 percent for 1993, 6.40 percent for 1994, and 9.54 percent for 1995. It is assumed for purposes of this example that 120 percent of the Federal mid-term rate is 7.00 percent for each year between 1996 and 2006, and that the 30-year Treasury rate for December 2005 is 8.00 percent. Thus, A's contributions accumulated to January 1, 1997, equal $8,480.

(3) Determine A's accumulated contributions with interest to normal retirement age (January 1, 2006) using, for the 1996 plan year and for years until normal retirement age, 120 percent of the Federal mid-term rate under section 1274(d), which is assumed to be 7.00 percent ($11,913).

(4) Determine the accrued annual annuity benefit derived from A's contributions by dividing A's accumulated contributions determined in paragraph (3) of this *Example 1* by the plan's appropriate conversion factor. The plan's appropriate conversion factor at age 65 is 9.196, and the accrued benefit derived from A's contributions would be $11,913 − 9.196 = $1,295.

(5) Determine the accrued benefit derived from employer contributions as the excess, if any, of the employee's accrued benefit under the plan over the accrued benefit derived from employee contributions ($2,949 − $1,295=$1,654 per year).

(6) Determine the vested percentage of the accrued benefit derived from employer contributions under the plan's vesting schedule (100 percent).

(7) Determine the vested accrued benefit derived from employer contributions by multiplying the accrued benefit derived from employer contributions by the vested percentage ($1,654 × 100 percent = $1,654 per year).

(8) Determine A's vested accrued benefit in the form of an annual single life annuity commencing at normal retirement age by adding the accrued benefit derived from employee contributions and the vested accrued benefit derived from employer contributions, the sum of paragraphs (4) and (7) of this *Example 1* ($1,295 + $1,654 = $2,949 per year).

Example 2.

This example assumes the same facts as *Example 1* except that A's total accrued benefit under the plan in the normal formof benefit commencing at normal retirement age is $1,000 per year. A's benefit, as of January 1, 2006, would be determined as follows:

(1) Determine A's total accrued benefit in the form of an annual single life annuity commencing at normal retirement age under the plan's formula ($1,000 per year payable at age 65).

(2) Determine A's accumulated contributions with interest to January 1, 1997 ($6,480 from paragraph 2 of *Example 1*).

(3) Determine A's accumulated contributions with interest to normal retirement age (January 1, 2006) ($11,913 from paragraph 3 of *Example 1*).

(4) Determine the accrued annual annuity benefit derived from A's contributions by dividing A's accumulated contributions determined in paragraph (3) of this *Example 2* by the plan's appropriate conversion factor ($1,295 from paragraph 4 of *Example 1*).

(5) Determine the accrued benefit derived from employer contributions as the excess, if any, of the employee's accrued benefit under the plan over the accrued benefit derived from employee contributions. Because the accrued benefit derived from employee contributions ($1,295) is greater than the employee's accrued benefit under the plan ($1,000), the accrued benefit derived from employer contributions is zero, and A's vested accrued benefit in the form of an annual single life annuity commencing at normal retirement age is $1,295 per year.

(d) *Delegation to Commissioner.* The Commissioner may prescribe additional guidance on calculating the accrued benefit derived from employee contributions under a defined benefit plan through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter).

* * * * *

(g) *Effective date.* Paragraphs (c)(1), (c)(2), (c)(3), (c)(5), (c)(6) and (d) of this section are effective for plan years beginning on or after January 1, 1997.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–31006 Filed 12–21–95; 8:45 am]

BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AA07

[Notice No. 817]

The Malibu-Newton Canyon Viticultural Area (95R–014P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area in the State of California to be known as "Malibu-Newton Canyon." This proposal is the result of a petition submitted by Mr. George Rosenthal, President of Rancho Escondido, Inc.

ATF believes that the establishment of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by February 20, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 817). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-

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growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. George Rosenthal, President of Rancho Escondido, Inc., proposing to establish a new viticultural appellation in the Malibu area of Los Angeles County, California, to be known as "Malibu-Newton Canyon." The viticultural area, comprising approximately 850 acres, is located within Newton Canyon which is a bowl shaped valley located on the south facing side of the Santa Monica Mountains. Vineyards currently within the proposed viticultural area are located on the Rancho Escondido Estate. Rancho Escondido is comprised of approximately 157 acres, all of which lies within the proposed "Malibu-Newton Canyon" viticultural area. Approximately, 14 of these acres are planted with premium wine producing vineyards. Varietals include Cabernet Savignon, Merlot, Cabernet Franc, Chardonnay and Petite Verdot. Currently, there are no wineries located within the proposed "Malibu-Newton Canyon" area. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed previously.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, the origin of the name Malibu comes from the ancient Chumash Indian word MALA I BOO, meaning "Place on the Cliff," and was the name of an Indian village just beyond Malibu Beach. After the Spaniards took control of southern California, the encompassing Chumash ranchera UMALIBO became known as the Malibu Rancho. A Spanish settler, Jose Bartolome Tapia gained control of the rancho and was later granted the land by the Governor of the Californias. The present day spelling appears on the name of the Topanga Malibu Sequit grant dated July 12, 1805. It originally totalled 13,315 acres, one of the largest southern California Ranchos at that time.

The petitioner further states that throughout the 19th century, Rancho Malibu changed hands many times but remained intact. Until the construction of the Pacific Coast Highway in the 1930's, the privacy of Rancho Malibu had not been invaded. With the burgeoning economy of southern California, conditions greatly changed. This historic rancho was finally subdivided during the same decade. Following soon after, the famous Malibu Beach Colony was established where movie stars and industry moguls began constructing their homes. The Malibu area then quickly developed into the highly recognized community of Los Angeles as it is known today.

Throughout this region there exists topography in the form of roads, a creek, a lake, a canyon, a beach, hiking trails, parks, vistas, etc. which denote the name "Malibu." The region lying roughly from the ridge line of the Santa Monica Mountains to the ocean, and from Topanga Canyon to the Ventura County line is commonly known as Malibu, according to the petitioner. While the city of Malibu was incorporated in 1992, the entire surrounding area described above continues to be recognized as Malibu. "Malibu" could be applied to any of the hills/mountains which drain toward the ocean through the city of Malibu, including Newton Canyon, the location of the proposed viticultural area.

The petitioner provided a 1:250,000 scale Topopgraphic-Bathymetric map of Los Angeles to document the use of the name, "Malibu." An article in the October 15, 1994, issue of the "Wine Spectator," entitled "A Vineyard Grows in Malibu Canyon," refers to the area around "The Malibu Estate" (Rancho Escondido, Inc.) as "Malibu Hills." Also, included as an exhibit was a copy of an article from, "The Underground Wine Journal," 1994, entitled, "Distinctive New Wines." This article refers to "The Malibu Estate" as being located "in the hills above Malibu."

According to the petitioner, the name "Newton Canyon" is generally known as describing the specific area in which the proposed viticultural area is located. This is evidenced by the name of the main street running through the proposed viticultural area—"Newton Canyon Road." In addition, maps of the area, including the U.S.G.S. map referenced and shown within the petition, label the area as, "Newton Canyon." The petitioner states that, "'Newton Canyon alone is not descriptive enough to describe the general location of the proposed viticultural area, and further, might possibly cause public confusion in relation to Newton Vineyards, located in the Napa Valley." Therefore, the petitioner proposed the name, "Malibu-Newton Canyon."

Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

The boundaries of the proposed "Malibu-Newton Canyon" viticultural area follow the natural ridge lines which define Newton Canyon and are delineated on the U.S.G.S. Point Dume, California, quadrangle map.

Newton Canyon is a bowl shaped valley located on the south facing side of the Santa Monica Mountains, in the Malibu area of Los Angeles County. The canyon is oriented along an east-west axis. The valley floor lies at an elevation of approximately 1,400 feet. The surrounding ridgeline ranges in elevation from 1,800–2,100 feet on the southern ocean side of the canyon, continuing to 2,100–2,800 feet on the high side of the canyon to the north.

According to the petitioner, the elevation of the southern rim of the canyon is low enough to allow evening fog to sift into the valley, but high enough to keep out the marine layer that shrouds much of the coastline throughout the daytime. The northern rim of the canyon joins the crest of the Santa Monica Mountains that divides oceanside from leeside. Lying at the eastern most side of the canyon, Castro Peak is another distinguishing feature which marks one of the highest points in the Santa Monica Mountains at 2,824 feet.

The petitioner further states that approximately two-thirds of the surrounding Malibu area contains slopes greater than 25 percent, with only one-fifth having relatively level terrain. Throughout the past several decades, most of the usable land in the Malibu area has been developed. Because of increasingly high land prices, very little of the land in the general Malibu area is still used for agriculture. The Santa Monica Mountains also have thousands of acres dedicated to State and national parks, with more acreage being aggressively acquired by public conservation agencies.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas

Climate

Based upon a 1994 climate study completed by Fox Weather, Oxnard, California, the petitioner asserts the following: The general climate of the Malibu area is typical of southern California with mild rainy winters, and warm dry summers. However, there are several climatological factors which distinguish the proposed "Malibu-Newton Canyon" viticultural area from the surrounding region.

While summer temperatures often exceed 80 degrees in the afternoon, cooling ocean breezes flow into the valley in the evening, according to the petitioner. Moreover, during the evening and early morning a light fog often filters into the valley and settles along the slopes, creating a unique microclimate which is significantly cooler than the surrounding inland areas. Typically, the morning sun shines through the fog, which in turn is swept out by warm winds and high daytime temperatures. The valley enjoys southern exposure to the sun throughout the afternoon. According to the petitioner, these conditions are ideal for premium grape growing.

Because of its high elevation and orientation, the proposed viticultural area does not experience the constantly overcast skies and cooler temperatures of the coastal region immediately below.

Newton Canyon, within which the proposed viticultural area is located, is a unique pocket protected from marine influence. The coastline near sea level is a more temperate climate controlled by marine stratus with uniformly cold temperatures, fog and low clouds. This cooler and more humid coastal environment, mainly affecting areas below the 1,300 foot level, can create grape rot and delay maturation.

The petitioner claims that the proposed "Malibu-Newton Canyon" viticultural area is, in the daytime, a sunny warm oasis for a coastal location. The proposed area is located at an elevation which lies just at the bottom of the inversion layer and just at the top of the marine layer. Typically, the marine layer ceiling is approximately 1,400 feet on average. The southern or bottom rim of the canyon acts as a barrier to the marine layer, preventing the bulk of the coastal fog and low clouds from penetrating the valley for extended periods of time. This allows the "Malibu-Newton Canyon" area to enjoy favorable cooling effects of the Pacific ocean and have the warm sunny daytime temperatures found in the adjacent interior valleys.

Nearby inland areas experience uniformly hot summer temperatures similar to those experienced in the upper elevations on the oceanside of the Santa Monica Mountains. However, these inland areas receive little or no fog and much less precipitation than the oceanside regime, according to the petitioner.

An additional distinctive aspect is an increasing amount of precipitation with increasing elevation. The petitioner states that upland weather stations report practically twice the mean precipitation of the nearby lowland stations. Furthermore, the greatest monthly precipitation during the rainy season is from 1.5 to 3.0 times as great as that for the lowland stations. Precipitation is concentrated in the winter months. The average annual rainfall is about 24 inches, with approximately 12 percent occurring from the months of April to October.

The proposed area experiences typical low temperatures in the winter time, just above freezing temperatures. Infrequent winter freezes have been known to occur during the dormant winter growing cycle.

In summary, the petitioner states that the proposed viticultural area is characterized by an isolated microclimate that captures the favorable climatic conditions necessary for premium wine grape growing. In contrast, the petitioner states that the surrounding areas found on the oceanside of the Santa Monica Mountains (i.e, Malibu, Oxnard, Santa Monica) are uniformly cool and overcast. Surrounding inland areas found on the leeside of the Santa Monica Mountains (i.e, Thousand Oaks, Agoura, Woodland Hills) are uniformly hot and dry. The petitioner provided a diagram illustrating the "Malibu-Newton Canyon" microclimate and a November 29, 1994, "CLIMATOLOGICAL SURVEY FOR RANCHO ESCONDIDO VINEYARDS," by Alan D. Fox of Fox Weather.

Physical Features

According to the petitioner, the primary distinction of the proposed viticultural area is its unique combination of shape, elevation, orientation and relative location to the marine influences of the Pacific Ocean. The proposed area lies within a clearly defined valley with a "bowl" shape resting high on the oceanside of the Santa Monica Mountains. These physical features create a pocket which harbors the distinct microclimate described above. The petitioner provided aerial photos to illustrate these physical features.

Drainage

All of the proposed viticultural area drains into Newton Canyon Creek, continuing to Zuma Creek which then drains into the Pacific Ocean at Point Dume's westward beach, according to the petitioner.

Soils

As evidence of soil types, the petitioner provided a 1994 soils study completed by Soil & Plant Laboratory, Inc., Orange, California, in addition to "Soils of the Malibu Area California" published by the Soil Conservation Service, United States Department of Agriculture.

According to this information, major soils within the proposed viticultural area range from loam to clay loam in texture. Subsoil texture ranges from clay loam to clay. Current plantings are mainly on Castaic and Rincon silty clay loams and Malibu loam which are lower elevation terrace soils that are moderately deep, with favorable Capability Class ratings of II to IV. Steeper hillside soils (mostly above the 1,700 foot contour line) are shallower with Capability Class ratings ranging from IV to VIII.

Soils in the proposed viticultural area have moderate to high inherent fertility. Soil reaction in surface soils ranges from moderately acid to slightly alkaline. Subsoil ph varies with type and several areas are calcareous.

According to the petitioner, soil tests performed prior to the planting of vineyards in 1988 revealed that the topsoil found in much of lower Newton Canyon contained crushed rock, as a result of the construction of the nearby Kanan Dume Road tunnel, which is ideal for good drainage.

The surrounding areas are mainly steep hillsides and mountainous uplands with poor soil capability. These soils are usually shallower than those found in the proposed viticultural area, and are subject to erosion.

Proposed Boundary

The boundary of the proposed "Malibu-Newton Canyon" viticultural area may be found on one United States Geological Survey map, entitled Point Dume Quadrangle, California, 7.5 minute series, with a scale of 1:24,000.

Public Participation—Written Comments

ATF requests comments from all interested parties. Comments received

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on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½ x 11" in size, (3) contain a written signature, and (4) are 3 pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

During the comment period, any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to describe more accurately the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.152 to read as follows:

* * * * *

§ 9.152 Malibu-Newton Canyon.

(a) *Name.* The name of the viticultural area described in this petition is "Malibu-Newton Canyon."

(b) *Approved maps.* The appropriate map for determining the boundary of the Malibu-Newton Canyon viticultural area is the U.S.G.S. map, "Point Dume Quadrangle, California" (7.5 Minute Series 1:24,000 Topographic map, photorevised 1981).

(c) *Boundary.* The Malibu-Newton Canyon viticultural area is located in Los Angeles County, California. The boundary is as follows:

(1) Beginning at the intersection of the Newton Canyon creek (lowest elevation) and an unnamed medium duty road referred to by the petitioner as Kanan Dume Road at the boundary of section 13 and 18 on the U.S.G.S. map "Point Dume Quadrangle."

(2) Then south along Kanan Dume Road to the point where an unnamed, unimproved dirt road referred to by the petitioner as Ramerez Mountain Way crosses over Kanan Dume Road at the tunnel in the northwest corner of section 19.

(3) Then east along Ramerez Mountain Way, following the southern ridgeline of Newton Canyon, to Latigo Canyon Road in the southwest corner of section 17.

(4) Then south along Latigo Canyon Road to an unnamed, unimproved dirt road referred to by the petitioner as Newton Mountain Way at the southern boundary of section 17.

(5) Then northeast along Newton Mountain Way, following the southeastern ridgeline of Newton Canyon, to an unnamed, unimproved dirt road referred to by the petitioner as Castro Mountain Way in section 16.

(6) Then west along Castro Mountain Way, past Castro Peak, following the northern ridgeline of Newton Canyon to Latigo Canyon Road in section 18.

(7) Then southwest along the natural ridgeline of Newton Canyon to the intersection of Kanan Dume Road and the 1,600 foot contour line in the southeastern portion of section 13.

(8) Then southeasterly along Kanan Dume Road to the beginning point.

Signed: December 11, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–31169 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to form a regulatory negotiation committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) proposes to establish a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. The regulatory negotiation committee will be composed of organizations who represent the interests affected by the accessibility guidelines for play facilities. The Access Board invites comments on the proposal to establish the regulatory negotiation committee and the proposed committee membership.

DATES: Comments should be received by January 22, 1996.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, D.C. 20004–1111. Fax number (202) 272–5447.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, D.C. 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act and the Architectural Barriers Act to ensure that new construction and alterations of facilities covered by the laws are readily accessible to and usable by individuals with disabilities.[1] In July 1993, the Access Board established the Recreation Access Advisory Committee to examine various types of recreation facilities and make recommendations for accessibility guidelines for the facilities. The committee presented its recommendations in July 1994 covering six types of recreation facilities: sports facilities; places of amusement; play facilities; golf facilities; boating and fishing facilities; and outdoor developed areas. The Access Board issued an advance notice of proposed rulemaking (ANPRM) in September 1994 inviting public comment on the committee's recommendations. 59 FR 48542 (September 21, 1994). Comments received in response to the ANPRM generally supported the committee's recommendations. However, the comments revealed that there is not presently consensus on some major issues regarding play facilities and outdoor developed area among interests that potentially would be affected by accessibility guidelines for those facilities.

The Access Board proposes to establish a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for play facilities. Regulatory negotiation is a supplement to the traditional rulemaking process that allows for face-to-face negotiations among representatives of affected interests, including the agency, with a goal of arriving at a consensus decision on the text of a proposed rule. The proposed rule is then published in the **Federal Register** and the public has an opportunity to comment.

Play facilities are commonly found in schools, parks, day care centers, and other settings designed for children. Play facilities include equipment such as slides, swings and ladders; areas designed for play activities such as sand play areas; and soft contained play structures. Among the issues to be considered in developing the accessibility guidelines are providing an accessible route within play facilities and providing access to elevated play equipment and structures.

The following interests are likely to be significantly affected by accessibility guidelines for play facilities:

- Manufactures and designers;
- State and local governments;
- Schools, parks, and day care centers;
- Individuals with disabilities;
- Voluntary standard groups; and
- Federal government.

The Access Board proposes to appoint the following organizations to represent the interests identified above on the regulatory negotiation committee:

Playground Equipment Manufacturers Association
American Society of Landscape Architects
International City/County Management Association
National Association of Counties
National League of Cities
National Association of Elementary School Principals
National Recreation and Park Association
National Child Care Association
National Council on Independent Living
National Easter Seal Society
TASH[2]
Spina Bifida Association of America
The Council for Exceptional Children
United Cerebral Palsy Association
ASTM[3] Public Playground Committee (F 15.29)
ASTM[3] Soft Contained Play Committee (F 15.36)
Access Board

Comments are invited on the proposal to establish the regulatory negotiation committee and the proposed membership of the committee. Persons who will be significantly affected by the accessibility guidelines for play facilities and who believe that their interests will not be adequately represented by the above organizations may apply for, or nominate another person for, membership on the regulatory negotiation committee. Applications or nominations should include the following information: (i) The name of the applicant or nominee and the interest that the person proposes to represent; (ii) evidence that the applicant or nominee is authorized to represent an organization or other parties having interests similar to the interests the person proposes to represent; (iii) a written commitment that the applicant or nominee would participate in good faith; and (iv) the reasons that the organizations specified in this notice do not adequately represent the interests that applicant or nominee proposes to represent.

For regulatory negotiation to be effective, the size of the committee will be limited. Each person or organization affected by accessibility guidelines for play facilities need not have its own representative on the regulatory negotiation committee. Rather, each interest must be adequately represented and the membership must be fairly balanced. Meetings of the regulatory negotiation committee will be announced in the **Federal Register**. The meeting will be open to the public and anyone may attend the meetings and confer with or provide their views to members of the regulatory negotiation committee.

[1] The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) is a comprehensive civil rights law which prohibits discrimination on the basis of disability and requires, among other things, that newly constructed and altered State and local government facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities.

The Architectural Barriers Act (42 U.S.C. 4151 et seq.) requires that certain federally financed facilities be readily accessible to and usable by individuals with disabilities.

The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Services.

[2] The Association for Persons with Severe Handicaps.

[3] American Society for Testing and Materials.

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The Access Board has arranged for the Federal Mediation and Conciliation Service to provide facilitators for the regulatory negotiation committee. Staff support would be provided by the Access Board. Members of the regulatory negotiation committee will not be compensated for their service. The Access Board may pay travel expenses for a limited number of persons who would otherwise be unable to serve on the regulatory negotiation committee. Members of the regulatory negotiation committee will not be considered special government employees since they will serve as representatives of their organizations and will not be required to file confidential financial disclosure reports.

After reviewing the comments received in response to this notice, the Access Board will issue a notice in the **Federal Register** announcing the establishment of the regulatory negotiation committee and the committee membership, unless it is determined based on the comments that regulatory negotiation would be inappropriate.

The first meeting of the regulatory negotiation committee is tentatively scheduled for March 5, 6 and 7, 1996 in Washington, D.C.

The Access Board expects that the regulatory negotiation committee will develop a proposed rule on accessibility guidelines for play facilities within nine months of the first meeting. However, if unforseen delays occur, the Chairman of the Access Board may agree to an extension of that time if a consensus of the regulatory negotiation committee believes that additional time will result in agreement.

After the regulatory negotiation committee develops a proposed rule on accessibility guidelines for play facilities, the Access Board will issue a notice of proposed rulemaking (NPRM) inviting public comment on the proposed rule. The NPRM will also include proposed rules on accessibility guidelines for sports facilities, places of amusement, golf facilities, and boating and fishing facilities based upon the recommendations of the Recreation Access Advisory Committee and the comments received on those recommendations. The Access Board intends to establish another regulatory negotiation committee to develop a proposed rule on accessibility guidelines for outdoor developed areas after the proposed rule on accessibility guidelines for play facilities is developed. A separate notice will be issued in a future edition of the **Federal Register** inviting comment on the establishment of a regulatory negotiation committee to develop a proposed rule on assessibility guidelines for outdoor developed areas and that committee membership.

Issued on December 18, 1995.

John H. Catlin,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 95–31192 Filed 12–21–95; 8:45 am]

BILLING CODE 8150–01–P

Notices

Federal Register
Vol. 60, No. 246
Friday, December 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121295A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: These meetings will be held January 8–12, 1996, January 15–19, 1996, and January 22–26, 1996, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meetings on January 8–12, 1996, and January 15–19, 1996, will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000. The meeting on January 22–26, 1996, will be held at the Corpus Christi Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX; telephone: 512–887–1600.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Red Snapper Individual Transferable Quota (ITQ) Appeals Board established by the Council will meet at each site (see **ADDRESSES**) to review appeals of commercial red snapper fishermen who dispute landings and other information used to assign to them ITQ shares of the commercial red snapper quota.

Owners and operators of permitted reef fish vessels have been notified by NMFS of the appeals processes and the requirement to submit a written appeal setting forth the nature of the dispute and attaching copies of relevant records. NMFS also provided each owner and/or operator with an estimate of his or her ITQ share and the 1990–91 landings records upon which the share was based, and relevant records for "historical captain" status that would entitle that person to a share. Persons filing written appeals with NMFS by December 27, 1995, will be offered an opportunity to testify before the appeals board and will be notified by the Council of the times and places of reviews of their appeals.

A copy of each written appeal and the appended information will be provided to each member of the appeals board and summarized by Council/NMFS staffs. The board members will then discuss the case, hear testimony from persons making the appeals, and individually fill out forms recommending (1) approval of an appeal, (2) denial of the appeal, or (3) abstention on the issue. The completed forms will be provided by the Council representative daily by mail to the Director, Southeast Region, in St. Petersburg, FL for final decisions on granting the appeals.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 29, 1995.

Dated: December 18, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–31180 Filed 12–21–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the procurement list

SUMMARY: This action adds to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 22, 1996

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 6, 13, 20, 30, November 3 and 13, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 52388, 53338, 55243, 5421, 55835 and 56987) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities,

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military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

Commodities

Carrying Cover, Arch
8340–00–556–0674

Military Resale Commodities

Pillow, Fiber Fill
M.R. 764
M.R. 765
M.R. 766

Services

Data Entry/Data Base Management, General Services Administration, Federal Supply Service Bureau, Washington, DC
Grounds Maintenance
Defense Finance and Accounting Service, Building 951, 1111 East Mill Street, San Bernadino, California
Grounds Maintenance
Marine Corps Support Activity, Richards-Gebaur Memorial Airport, Kansas City, Missouri
Janitorial/Custodial for the following Springfield, Illinois locations:
Paul Findley Federal Building, 600 E. Monroe Street
Sarah Cook House, 508 S. 8th Street
Henson Robinson House, 520 S. 8th Street
Janitorial/Custodial for the following Albuquerque, New Mexico locations:
Petroglyph National Monument Headquarters, 6001 Unser Boulevard NW, Petroglyph National Monument Visitor Center and Ranger Station, 4735 Unser Boulevard
Janitorial/Custodial
Letterkenny Army Depot, Chambersburg, Pennsylvania
Laundry Service
Naval Air Station, North Island, Bachelor Enlisted Quarters and Bachelor Officer Quarters, San Diego, California
Recycling Service
Westover Air Reserve Base, Chicopee, Massachusetts
Recycling Service
McGuire Air Force Base, New Jersey
Storage/Distribution of Clothing & Other Items
Corporation for National Service, Americorps, Washington, DC
Switchboard Operation
Samuel S. Stratton Veterans Affairs Medical Center, Albany, New York
Toner Cartridge Remanufacturing, Naval Training Center, Great Lakes, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–31171 Filed 12–21–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes Availability of Draft Environmental Impact Statement and Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes Draft Environmental Impact Statement (Draft EIS), DOE/EIS–0249D, for public review and comment. DOE also announces the dates, times, and locations for public hearings on the Draft EIS. The alternative facilities for the proposed project that are analyzed in the Draft EIS are located at the Idaho National Engineering Laboratory near Idaho Falls, Idaho; Sandia National Laboratories/New Mexico in Albuquerque, New Mexico; Los Alamos National Laboratory in Los Alamos, New Mexico; and Oak Ridge National Laboratory in Oak Ridge, Tennessee.

DATES: DOE filed the Draft EIS with the U.S. Environmental Protection Agency on December 15, 1995, with an expected **Federal Register** publication date for the notice of availability of December 22, 1995. Written comments on the Draft EIS are invited from the public. Comments must be postmarked by February 9, 1996, to ensure consideration; comments postmarked after that date will be considered to the extent practicable. The DOE will use the comments received to help prepare the final version of the EIS. Public hearings on the Draft EIS will be held as follows:

Idaho National Engineering Laboratory—January 17, 1996, 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 10:00 p.m., Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, ID 83402

Oak Ridge National Laboratory—January 25, 1996, 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 10:00 p.m., Pollard Auditorium, 210 Badger Avenue, Oak Ridge, TN 37830

Sandia National Laboratories/New Mexico—January 30, 1996, 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 10:00 p.m., Indian Pueblo Cultural Center, Main Auditorium, 2401 12th Street, Albuquerque, NM, 87104

Los Alamos National Laboratory—February 1, 1996, 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 10:00 p.m., Fuller Lodge, Pajarito Room, 2132 Central Avenue, Los Alamos, NM 87544.

The meetings will provide opportunities for information exchange and discussion as well as for the submittal of prepared statements.

ADDRESSES: Requests for copies of the Draft EIS, written comments on the Draft EIS, or other matters regarding this environmental review should be addressed to: Mr. Wade Carroll, EIS Project Manager, NE–70, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Mr. Carroll may be contacted by telephone at (301) 903–7731, facsimile (301) 903–5434.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, D.C. 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600. For general information on the DOE isotope production program, please contact: Mr. Owen W. Lowe, Associate Director, Office of Isotope Production and Distribution, NE–70, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Mr. Lowe may be contacted by calling (301) 903–5161.

SUPPLEMENTARY INFORMATION: The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 et seq.], the Council on Environmental Quality's NEPA regulations [40 CFR Parts 1500–1508] and the DOE NEPA regulations [10 CFR Part 1021].

The Department proposes to establish a medical isotope production project that would ensure a reliable domestic supply of molybdenum-99 (Mo-99) and related medical isotopes (iodine-125, iodine-131, and xenon-133). Mo-99 decays to form technetium-99m (Tc-99m), an important medical isotope. Radioactive isotopes are used in more than 38,000 diagnostic medical procedures each day in the United States. Tc-99m is used in over 80 percent of these procedures.

The United States medical community now relies on a single small nuclear reactor in Canada for its entire supply of Mo-99. The near term goal of DOE is to provide a backup capability to supply a baseline production level of 10 to 30 percent of current United States demand for Mo-99. The near term goal also includes establishing the capability to supply 100 percent of the United States demand for Mo-99 should the existing Canadian source be unavailable. The baseline capability would maintain the capabilities of the facilities and staff needed to respond on short notice to supply the entire United States demand if necessary.

It is the Department's position that, in the long-term, the domestic production of Mo-99 should be conducted by the private sector. The Department encourages the development of private sources in the United States for the production of Mo-99, and would phase out production if a private source begins to produce Mo-99 reliably. The long-term domestic production of Mo-99 by private sources is not within the scope of this EIS.

The Draft EIS analyzes the environmental consequences of alternative ways to accomplish the proposed action. The Department's preferred alternative would be to modify and operate the Annular Core Research Reactor and associated hot cell facility at Sandia National Laboratories/New Mexico and the Chemistry and Metallurgy Research facility at Los Alamos National Laboratory to produce Mo-99 and related medical isotopes. The Draft EIS also analyzes the environmental impacts of producing Mo-99 using the Omega West reactor at Los Alamos National Laboratory, the Power Burst Facility at Idaho National Engineering Laboratory, and the Oak Ridge Research Reactor at Oak Ridge National Laboratory, as well as the impacts of not establishing a Mo-99 production source (the No Action alternative).

DOE has distributed copies of the Draft EIS to appropriate Congressional members and committees, the States of Idaho, New Mexico, and Tennessee, American Indian tribal governments, local county governments, other federal agencies, and other interested parties. Additional copies are available as indicated above.

Signed in Washington, D.C., this 18th day of December, 1995, for the United States Department of Energy.

Ray A. Hunter,

Deputy Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 95–31186 Filed 12–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission and the Puerto Rico Planning Board

EcoEléctrica, L.P.; Notice of Comment Period Extension

December 15, 1995.

Due to comments received on the Draft Environmental Impact Statement/Preliminary Environmental Impact Statement for the proposed EcoEléctrica LNG Import Terminal and Cogeneration Project in Guayanilla, Puerto Rico, the comment period is extended from December 26, 1995 to January 23, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–31123 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2413–026 Georgia]

Georgia Power Company; Notice of Availability of Environmental Assessment

December 18, 1995.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the license for the Wallace Project. The application is to exchange approximately 500 acres of project lands for approximately 500 acres of non-project lands located on the shores of Lake Oconee. The EA finds that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment. The Wallace Project is located on the Oconee River in Greene and Putnam Counties, Georgia.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 20 days of the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix the project number to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31190 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2433–004–MI/WI, 2357–003–MI/WI, 2394–006–MI/WI, 2536–009–MI/WI]

Wisconsin Public Service Corporation, et al.; Notice of Intent to Hold Public Meetings in Marinette, Wisconsin to Discuss the Draft Environmental Impact Statement (DEIS) for the Proposed Relicensing of the Grand Rapids, Chalk Hill, White Rapids, and Little Quinnesec Hydroelectric Projects

December 18, 1995.

On November 22, 1995, the Commission staff mailed the DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of the proposed relicensing of the Grand Rapids, White Rapids, Chalk Hill, and Little Quinnesec Hydroelectric Projects. The projects are located on the lower Menominee River in Menominee and Dickinson Counties, Michigan and Marinette County, Wisconsin.

Two public meetings will be recorded by a court reporter and are scheduled to be held at 1 p.m. and 7 p.m. on Thursday, January 4, 1996, at the Best Western Riverfront Inn, 1821 Riverside Avenue, Marinette, Wisconsin. You are invited to attend either or both public meetings.

At the meetings, Commission Staff will summarize major DEIS findings and recommendations. Resource agency personnel and other interested persons will have an opportunity to submit oral and written comments on the DEIS for the Commission's public record. Written comments on the DEIS may also be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments must be received on or before January 16, 1995. All correspondence should include the project name and number on the first page of the correspondence.

The DEIS considers recommendations of government agencies, nongovernmental organizations, affected Indian tribes, the public, the license applicants, and the Commission's staff. It evaluates natural and social resource benefits, the economic costs, and the project-specific and cumulative environmental impacts associated with relicensing the projects.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31132 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

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Notice of Application Tendered for Filing With the Commission

December 18, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Major License.
b. Project No.: 11282–001.
c. Date Filed: November 21, 1995.
d. Applicant: Summit Hydropower.
e. Name of Project: Gainer Dam.
f. Location: On the North Branch Pawtuxet River, Town of Scituate, Providence County, Rhode Island.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Duncan S. Broatch, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620.
i. FERC Contact: Charles T. Raabe (dt) (202) 219–2811.
j. Deadline Date: Within 60 days of the date filed shown in paragraph (c).
k. Description of Project: The existing inoperative project would consist of: (1) a 3,500-foot-long, 109-foot-high earthen dam having a 450-foot-long, overflow-type spillway at its right (southwest) abutment; (2) a reservoir, known as the Scituate Reservoir, having a 3,400-acre surface area and a 112,270 acre-foot gross storage capacity at spillway crest elevation 283 feet MSL; (3) an intake structure; (4) a powerhouse containing a rehabilitated 1,500-kW generating unit operated at an 82-foot-net head and at a flow of 300 cfs and a new 70–kW generating unit operated at an 82-foot-net head and at a flow of 14 cfs; (5) a 400-foot-long tailrace tunnel and a 700-foot-long excavated tailrace; (6) a 500-foot-long underground, 2.3–kV transmission line; (7) a 2.3/23.-kV substation (8) a 1.5-mile-long 23.–kV transmission line; and (5) appurtenant facilities.

The primary purpose for the existing facilities, owned by the Providence Water Supply Board (PWSB), is water supply for the City of Providence. Applicant estimates that the project average annual generation would be 2,968,000 kWh.

1.With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 880.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31133 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–15–000]

Aroostook Valley Electric Company; Notice of Application

December 18, 1995.

Take notice that on December 7, 1995, Aroostook Valley Electric Company, filed an application, under 204 of the Federal Power Act, seeking authorization to issue and renew on or before December 31, 1997 short-term notes, pursuant to bank lines of credit and individual negotiated bank offers of short-term funds, in each case maturing one year or less after the date of issuance, in an aggregate principal amount not to exceed $5 million outstanding at any one time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 5, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31128 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–377–006]

Colstrip Energy Limited Partnership; Notice of Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 18, 1995.

On December 11, 1995, Colstrip Energy Limited Partnership (Applicant), of 1087 W. River Street, Suite 200, Boise, Idaho 83702, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. The instant request for recertification is due to the use of an additional type of waste coal. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the small power production facility, which is located approximately 7 miles North of the city of Colstrip in Rosebud County, Montana, was previously recertified as a qualifying cogeneration facility, *AEM CORP.—Colstrip Energy Limited Partnership*, 44 FERC ¶ 62,275 (1988).

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestantS parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31134 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

December 18, 1995.

Take notice than an informal settlement conference will be convened in this proceeding on Tuesday, January 9, 1996, and Wednesday, January 10, 1996, at 10:00 a.m., respectively, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the

Commission's Regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058, David R. Cain at 208–0917 or Anja M. Clark at 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31135 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–90–000]

Columbia Gas Transmission Corp., CNG Transmission Corp., Texas Eastern Transmission Corp.; Notice of Application

December 15, 1995.

Take notice that on December 1, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston,West Virginia 25314–1599, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, jointly filed an application in Docket No. CP96–90–000 pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon the service rendered pursuant to an agreement to purchase and exchange gas of certain production properties and facilities and local purchases of gas owned by Columbia in the Benezette Field in Cameron, Clearfield, and Elk Counties, Pennsylvania, with certain production properties and facilities and local purchases of gas in the Artemas Field in Bedford County, Pennsylvania, owned by CNGT, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia and CNGT exchanged the properties, facilities, and gas purchase agreements related to the fields to enable Columbia to activate and operate the Artemas Storage Field, and to enable CNGT to acquire property interests in the Benezette Production Field for its storage development. Columbia's Rate Schedule X–34, CNGT's Rate Schedule X–8, and Texas Eastern's Rate Schedule X–60 provided for the exchange of the remaining recoverable gas reserves underlying Columbia's and CNGT's respective gas purchase agreements, with Texas Eastern delivering Columbia's volumes in Texas Eastern's Zone C in Pennsylvania or at other points interconnection between Columbia and Texas Eastern. Texas Eastern deducted equivalent volumes from its scheduled delivery to CNGT at established delivery points in Zone C.

It is also stated that the specific reserve volumes involved in the March 31, 1971, Agreement were 2,082,000 Mcf from Columbia to CNGT and 214,000 Mcf from CNGT to Columbia. CNGT resold and transported the difference in reserves transferred to Columbia for the costs incurred by CNGT in measuring, transporting, and compressing the gas into CNGT's transmission system. An existing exchange between Columbia and CNGT in the Benezette, Nolo, and Rockton Fields, was modified so that gas purchased in the Nolo Field, Indiana county, Pennsylvania, could be delivered to Columbia in exchange for gas purchased by Columbia in the Rockton Field, Clearfield County, Pennsylvania. The rate schedules for which abandonment authority is sought are as follows:

Docket No.	Company
Rate schedule:	
CP72–173 Columbia	X–34
CP72–173 CNGT	X–8
CP72–173 Texas Eastern	X–60

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–31124 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–395–000]

Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co.; Notice of Filing

December 18, 1995.

Take notice that on November 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Enron Power Marketing, Inc. (Enron) dated November 13, 1995. This Service Agreement specifies that Enron has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 13, 1995 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on Enron.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31127 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–203–000]

Multi-Energies U.S.A. Inc.; Notice of Issuance of Order

December 15, 1995.

On October 31, 1995, Multi-Energies U.S.A. Inc. (MEI) submitted for filing a rate schedule under which MEI will engage in wholesale electric power and energy transactions as a marketer. MEI also requested waiver of various Commission regulations. In particular, MEI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MEI.

On December 8, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MEI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MEI is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MEI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 8, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31191 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–168–024]

National Gas & Electric L.P.; Notice of Succession

December 18, 1995.

On October 31, 1995, National Gas & Electric L.P., submitted for filing a notice of succession, changing its name from National Electric Associates L.P. to National Gas & Electric L.P., pursuant to 18 CFR 35.16 and 131.51 of the Commission's Regulations.

Any person desiring to be heard or objecting to this submittal should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by December 22, 1995, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31125 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP78–124–020]

Northern Border Pipeline Company; Notice of Petition To Further Amend Order

December 15, 1995

Take notice that on December 6, 1995, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP78–124–202, a Petition to Further Amend Order (Petition) pursuant to Rule 202 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] requesting authority to add receipt and delivery points on the Northern Border system as secondary receipt and delivery points under the U.S. Shippers Service Agreement dated October 6, 1989 (1989 Service Agreement), as amended, between Northern Border and Pan-Alberta Gas (U.S.) Inc. (PAG–US), all as more fully set forth in the Petition which is on file with the Commission and open to public inspection.

Northern Border states that by Commission order issued on December 21, 1989 in Docket No. CP78–123, *et al.*, it was authorized, among other things, to transport, on a firm basis, an annual average daily volume of 450,000 Mcf of natural gas on behalf of PAG–US in accordance with the 1989 Service Agreement. By Commission order issued on December 22, 1992 in Docket No. CP78–124–019, Northern Border was authorized, among other things, to add certain secondary receipt and delivery points to the 1989 Service Agreement.

Northern Border requests in this proceeding to add additional secondary receipt and delivery points as set forth in the Amended Exhibit A dated November 30, 1995 (November 30th Exhibit A) to the 1989 Service Agreement, a copy of which is attached to the Petition as Exhibit P. Northern Border states that all of the receipt and delivery points downstream of Port of Morgan, Montana and upstream of Ventura, Iowa previously not included under the 1989 Service Agreement are now included on the November 30th Exhibit A. Northern Border further states that the allocation of costs by Northern Border pursuant to its tariff will not be impacted by virtue of the addition of secondary points, as the Port of Morgan and Ventura are the primary receipt and delivery points under the 1989 Service Agreement.

Northern Border states that it has been advised by PAG–US that the primary purpose of requesting to add the proposed secondary receipt and delivery points is to enhance its operational flexibility in order to meet the needs of the local distribution customers served by PAG–US. Northern Border also states that as part of the Northern Natural Gas Company's (Northern) settlement filed in Docket No. RS92–8, *et al.*, and approved on July 16, 1993 by the Commission, a reverse auction procedure was conducted by Northern that resulted in the transfer to PAG–US of Northern's Alaska Natural Gas Transportation System (ANGTS) prebuild-related supplies and its related Northern Border transportation capacity. By a Commission order issued on November 3, 1993 in Docket No. CP94–22, *et al.*, Northern Border was authorized, among other things, to abandon the firm transportation of 200,000 Mcf per day (Mcf/d) of ANGTS prebuild-related gas for Northern and provide the equivalent firm transportation for PAG–US pursuant to a U.S. Shipper Service Agreement dated October 1, 1993 (1993 Service Agreement). Northern Border further states that the supply of 200,000 Mcf/d together with an additional 100,000 Mcf/d of ANGTS prebuild-related gas associated with the 1989 Service Agreement which Northern was entitled to purchase from PAG–US, was made available for purchase by the LDCs from PAG–US through the reverse auction. PAG–US now sells 300,000 Mcf/d of ANGTS prebuild-related gas to 18 LDCs in the midwest and utilizes both the 1989 and 1993 Service Agreements to deliver these volumes to the LDCs at points of interconnection between the facilities of Northern Border and Northern.

Any person desiring to be heard or to make any protest with reference to said Petition should on or before January 6, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–31122 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–79–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1995.

Take notice that on December 8, 1995, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, to become effective January 1, 1996:

Second Revised Sheet No. 1
Fourth Revised Sheet No. 400
Fourth Revised Sheet No. 401
Second Revised Sheet No. 456M
Second Revised Sheet No. 456N
Original Sheet No. 456N.01
Original Sheet No. 456N.02
Original Sheet No. 456N.03

Northwest Alaskan states that the proposed Rate Schedule X–4 tariff revisions reflect a redetermination in accordance with the existing contract and tariff of the Index Price from which transportation and administrative costs are subtracted to arrive at the Tier I Commodity Charge and provide, in summary, as follows:

(1) A change in the Index Price, from 100 per cent of the average spot gas prices for quantities from the San Juan Basin delivered into interstate pipeline facilities of El Paso Natural Gas Company (the "San Juan Basin Price") to a combination of 95 percent of the San Juan Basin Price and 5 percent of the average spot gas prices for quantities from the Permian Basin delivered into interstate pipeline facilities of El Paso Natural Gas Company (the "Permian Basin Price").

(2) The payment of an Adjustment Amount which reflects the difference in price paid using the existing Index Price (*i.e.*, 100% San Juan Basin Price) and the price which would have been paid using the redetermined Index Price (*i.e.*, San Juan Basin Price and 5% Permian Basin Price) for the period from November 1, 1995, to the effective time of the tariff change.

Northwest Alaskan states that it served the filing on Pacific Interstate Transmission Company, Pan-Alberta Gas (U.S.), Inc., Pan-Alberta Gas Ltd. and the California Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31136 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–2–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1995.

Take notice that on December 12, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective January 12, 1996:

Fourth Revised Sheet No. 239
Third Revised Sheet No. 297

Northwest states that the purpose of this filing is to update its tariff in compliance with the directives of the Commission in 18 CFR 250.16(b)(1), which requires an interstate natural gas pipeline to report any changes which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31130 Filed 12–21–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Even though Northern Border filed this petition under Rule 202, the Commission is treating this petition as an amendment under Section 7(c) of the Natural Gas Act (NGA).

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[Docket No. ER96-336-000]

Southern Company Services, Inc.; Notice of Filing

December 18, 1995.

Take notice that on December 6, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Collectively referSouthern Companies), tendered for filing a supplement to its filing under section 205 of the Federal Power Act. The Supplemented Filing involves the Interchange Service Contract between Southern Companies and Koch Power Services, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-31128 Filed 12-21-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR96-2-000]

Texaco Refining and Marketing Inc. v. SFPP, L.P.; Notice of Complaint

December 18, 1995.

Take notice that on December 1, 1995, Texaco Refining and Marketing Inc. (Texaco) filed a complaint pursuant to sections 8, 9, 13(1), and 15(1) of the Interstate Commerce Act (ICA) and Rule 206 of the Commission's Rules of Practice and Procedure against SFPP, L.P. (SFPP) in the above captioned docket.

The complaint alleges that SFPP has violated and continues to violate the ICA, including but not limited to Sections 1(5)(a), 2, 3(1), 6 and 8 by transporting refined petroleum products in interstate commerce without having a tariff on file with the FERC, by charging an unjust and unreasonable rate for the transportation of refined petroleum products, by granting an undue discrimination and preference to other shippers, and by charging more than the maximum filed rate for transportation in interstate commerce from California origins to destinations in California and Arizona. Texaco requests that the Commission order such refunds as are deemed appropriate, and establish lawful rates, terms and conditions for the transportation of refined petroleum products in interstate commerce. Texaco further requests such damages as the Commission finds appropriate, and interest and attorney's fees.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 17, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint are due on or before January 17, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 95-31131 Filed 12-21-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-6-29-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1995.

Take notice that on December 8, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective as indicated on Appendix A.

Transco states that the purpose of the instant filing is to track rate and fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Included in Appendix B attached to the filing is an explanation of the rate change and details regarding the computation of the revised Rate Schedule S-2 rates.

Also included therein for filing is a substitute tariff sheet which incorporates the Rate Schedule S-2 changes proposed therein into Transco's November 15, 1995 filing in Docket No. RP96-44-000 which is currently pending Commission acceptance to become effective December 15, 1995.

Transco states that copies of the filing are being mailed to each of its S-2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95-31138 Filed 12-21-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-39-000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1995.

Take notice that on December 11, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective April 1, June 1, July 1, September 1, October 1, and November 1, 1995.

Trunkline states the revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-31129 Filed 12-21-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-80-000]

Viking Gas Transmission Company; Notice of Filing

December 18, 1995.

Take notice that on December 11, 1995, Viking Gas Transmission Company (Viking) filed a report of interruptible throughput and revenues for the period November 1, 1994 through October 31, 1995. Viking also stated that Viking did not have sufficient net interruptible revenues during that period to trigger an obligation, under Article 5, Section 5 of Viking's Rate Schedule IT, to credit net interruptible revenues to Viking's firm shippers.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Pursuant to § 154.210 of the Commission's regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-31137 Filed 12-21-95; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

BACKGROUND: A proposed renewal of the following currently approved collection of information is hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments are invite on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to the OMB control number 3064-0114. Comments may be hand-delivered to Room F-400, 1776 F Street NW, Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address; comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposed To Revise the Following Currently Approved Collections of Information

Title: Activities of State-Licensed, Insured Branches of Foreign Banks.

Form Number: None.

OMB Number: 3064-0114.

Frequency of Response: On occasion.

Affected Public: State-licensed branches of insured banks.

Estimated Number of Respondents: 32.

Estimated Time per Response: 8 burden hours.

Estimated Total Annual Burden: 256 burden hours.

General Description of Collection: Section 202 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) imposes restrictions on the permissible activities of state-licensed branches of foreign banks. The statute provides that after December 19, 1992, a state-licensed branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless (1) (the Board of Governors of the Federal Reserve has determined that the activity is consistent with safe and sound banking practice, and (2) the FDIC has determined that the activity would pose no risk to the deposit insurance fund. The collection of information consists of procedures to apply for permission to engage in, or continue to engage in, an activity which is not permissible for a federal branch of a foreign bank, and the submission of a plan to discontinue those activities that are deemed to pose significant risk to the deposit insurance fund. This collection is contained in the FDIC's regulations at 12 CFR part 346.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the FDIC's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

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Dated at Washington, DC, this 18th day of December 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–31142 Filed 12–21–95; 8:45 am]

BILLING CODE 6714–01–M

Proposed Agency Information Collection Activities; Comment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. A proposed revision of the following currently approved collection of information is hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 20, 1996.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to the OMB control number 3064–0072. Comments may be hand-delivered to Room F–400, 1776F Street NW, Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to revise the following currently approved collection of information.

Title: Contract and Procurement Information Requirements.

Form Number: FDIC 3320/11, 12, 13, 14, and 19; FDIC 6371/01.

OMB Number: 3064–0072

Frequency of Response: On occasion.

Affected Public: Vendors and contractors wishing to do business with the FDIC.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 0.35 hours

Estimated Total Annual Burden: 350 burden hours.

General Description of Collection: The collection involves the submission of information on various forms by contractors and vendors who wish to do business with the FDIC. The information is used to for offerors to submit quotes and amend proposals, to permit the evaluation of bids from offerors, to award contracts, and to make purchases of goods and services. The revisions consist of the deletion of two forms: the 3320/11 (Solicitation, Offer, and Award), and the 3320/13 (Award, Contract); and the addition of fitness and integrity certifications for contractors.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated at Washington D.C., this 18th day of December 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–31141 Filed 12–21–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Central Bancorporation, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 10, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Bancorporation, Inc., Fort Worth, Texas, and Central Bancorporation of Delaware, Wilmington, Delaware; to acquire First American Savings Bank, S.S.B., Bedford, Texas, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The georgraphic scope for this activity will be Bedford, Texas; Irving, Texas; North Richland Hills, Texas; and Southlake, Texas.

Board of Governors of the Federal Reserve System, December 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31147 Filed 12–21–95; 8:45 am]

BILLING CODE 6210–01–F

Durden Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 19, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Durden Bankshares, Inc., Twin City, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Durden Banking Company, Inc., Twin City, Georgia.

2. First Commerce Corporation, New Orleans, Louisiana; to acquire 13.51 percent of the voting shares of Louisiana Independent Bankshares, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire First National Bankers Bank, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, December 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31148 Filed 12–21–95; 8:45 am]

BILLING CODE 6210–01–F

Regions Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company also has given notice under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal to acquire the non-banking subsidiaries can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Regions Financial Corporation, Birmingham, Alabama, and Regions Merger Subsidiary, Inc., Gainesville, Georgia; to acquire 100 percent of the voting shares of First National Bancorp, Gainesville, Georgia, and thereby indirectly acquire The First National Bank of Gainesville, Gainesville, Georgia; First National Bank of Habersham, Cornelia, Georgia; Granite City Bank, Elberton, Georgia; Bank of Clayton, Clayton, Georgia; First National Bank of White County; Cleveland, Georgia; The Citizens Bank, Toccoa, Georgia; Bank of Banks County, Homer, Georgia; First National Bank of Gilmer County, Ellijay, Georgia; The Peoples Bank of Forsyth County, Cumming, Georgia; Pickens County Bank, Jasper, Georgia; The First National Bank of Paulding County, Dallas, Georgia; Citizens Bank, Ball Ground, Georgia; Bank of Villa Rica, Villa Rica, Georgia; The Community Bank of Carrollton, Carrollton, Georgia; The Commercial Bank, Douglasville, Georgia; Barrow Bank & Trust Company, Winder, Georgia; and The Key Bank of Florida, Tampa, Florida.

In addition to this application, Regions Merger Subsidiary, Inc., Gainesville, Georgia, has applied to become a bank holding company, by merging with First National Bancorp, Gainesville, Georgia.

In connection these applications, Applicants also have applied to acquire FF Bancorp, Inc., New Smyrna Beach, Flordia, and thereby indirectly acquire First Federal Savings Bank of New Smyrna, New Smyrna Beach, Florida, and First Federal Savings Bank of Citrus County, Inverness, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31149 Filed 12–21–95; 8:45 am]

BILLING CODE 6210–01–F

John Smithhisler; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank

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Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John Smithhisler, Las Cruces, New Mexico; to acquire an additional 2.2 percent, for a total of 11.8 percent of the voting shares of Las Cruces B.R.G., Inc., Las Cruces, New Mexico, and thereby indirectly acquire Bank of the Rio Grande, N.A., Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, December 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31150 Filed 12–21–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Agency Information Collection Under OMB Review

Title: National Study of Outcomes for Children Placed in Foster Care with Relatives.

OMB No.: New.

Description: This is a series of interview forms for use with state administrators, case workers, and foster parents in seven states selected for the study. State administrators are the Chief Child Welfare Administrator, the fiscal administrator, and management information system specialist in each state. The National Study of Outcomes for Children Placed in Foster Care with Relatives will be used to describe policies, practices and characteristics regarding placement of children in foster care with relatives; to describe outcomes of children placed in foster care with relatives compared to children placed in non-relative foster care; and to examine the associated costs of relative foster care compared to non-relative foster care.

Under a contract from the Administration on Children, Youth and Families (ACYF), researchers from TransAmerica Systems, Inc., will conduct the National Study of Outcomes for Children Placed in Foster Care with Relatives. The study is in three phases. Phase I was an initial on-site survey of nine States which make extensive use of relative roster care, which have sufficient and accessible data, and which are willing to participate in the survey. During Phase II, a national study was designed based on results from the nine State survey, with the assistance of a Technical Advisory Panel, consisting of nationally recognized foster care experts; a thorough literature review; and input from organizations with interest in foster children, a national study is designed during Phase II. Phase III will be conducting the national study, analyzing the data, and preparing a final report. This will include in-depth site visits to seven States, purposively sampled from the 34 States that are able to identify whether children are placed with relatives or with non-relatives. State child welfare administrators and workers and foster parents will be selected for in-depth interviews. Additionally, the research team will also extract information form case records and gather demographic data and fiscal information from the States visited.

Respondents: 441 (280 foster parents; 161 staff).

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden hours
Administrator Interview	7	1	2	14
Caseworker Interview	140	1	1	140
Foster Parent Interview	280	1	1	280
Demographic Information Report	7	1	1	7
Fiscal Information Report	7	1	1	7
Total	441			448

Estimated Total Annual Burden Hours: 448.

Additional Information: Copies of the proposed collection may be obtained by writing to: Reports Clearance Officer, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 14, 1995.

Arnold Jacobson,

Acting ACT Reports Clearance Officer.

[FR Doc. 95–31184 Filed 12–21–95; 8:45 am]

BILLING CODE 4148–01–M

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites, Savannah River Site Health Effects Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effect Subcommittee (SRS).

Times and Dates: 9 a.m.–5 p.m., January 11, 1996; 9 a.m.–12 noon, January 12, 1996.

Place: Hilton—The De Soto, 15 East Liberty Street, Savannah, Georgia 31401, telephone 912/232–9000, FAX 912/232–6018.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This Subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: This Subcommittee will listen to presentations from the Radiological Assessments Corporation, Medical University of South Carolina Cancer Registry, as well as updates on the Savannah River Site Phase II Dose Reconstruction Project findings and implications. Additional agenda items will include: the National Center for Environmental Health (NCEH) activities, the National Institute for Occupational Safety and Health and ATSDR presentations on the progress of current studies, and issues regarding the Committee selection process.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: December 18, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 95–31152 Filed 12–21–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Grassroots Regulatory Partnership Meeting; Southwest Region; Importing Commodities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Office of the Southwest Region, and Office of External Affairs) is announcing a free public meeting to discuss ways FDA could regulate imported commodities more efficiently, improve levels of communication with industries and individuals associated with the importation of FDA-regulated commodities, and provide improved levels of consumer protection in connection with imported commodities being shipped into the United States across the United States-Mexico border. This meeting is intended to identify and evaluate opportunities for implementing the President's initiative for a partnership approach between the agency and the people affected by the work of this agency.

DATES: The public meeting will be held on Wednesday, January 31, 1996, from 9 a.m. to 12 m.

ADDRESSES: The public meeting will be held at the Concourse Clarion Hotel, Oxford Room A and B, 6789 Boeing, El Paso, TX 79926.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cain, Food and Drug Administration, 300 East Eight St., rm. B123, Austin, TX 78701, 512–482–5736; or Robert G. Rast, Food and Drug Administration, 9777 Via De La Amistad, rm. 128, San Diego, CA 92173, 619–661–3273.

SUPPLEMENTARY INFORMATION: There is no registration fee for this meeting. However, due to space limitations, early registration is recommended. This meeting is intended to assist importers, brokers, and others associated with a wide variety of products being shipped through the southwest and west coast (FDA Southwest and Pacific Regions).

Dated: December 15, 1995.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 95–31195 Filed 12–21–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0403]

Drug Export; SURGISCREEN® 0.8 Percent, Reagent Red Blood Cells

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the human biological product SURGISCREEN® 0.8 percent, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its

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review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., 1001 U.S. Highway 202, Raritan, NJ 08869–0606, has filed an application requesting approval for the export of the human biological product SURGISCREEN® 0.8 percent, Reagent Red Blood Cells to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The SURGISCREEN® 0.8 percent, Reagent Red Blood Cells, is an in vitro diagnostic test kit for the detection of unexpected blood group antibodies in test methods requiring a 0.8 percent red cell suspension in a low ionic strength diluent. The application was received and filed in the Center for Biologics Evaluation and Research on November 24, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (*insert date 10 days after date of publication in the* **Federal Register**), and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 4, 1995.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–31153 Filed 12–21–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–67]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized,underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing-and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 15, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–31078 Filed 12–21–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–95–40]

Cachuma Project Contract Renewal, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the final environmental impact statement/ final environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the Cachuma Project Authority (Authority) and the Santa Barbara County Water Agency (Agency) have prepared a joint final environmental impact statement/final environmental impact report (FEIS/FEIR) for the Cachuma Project contract renewal. The proposed action of the lead agencies is the continuation of the member units' entitlement to water from the Cachuma Project by means of a renewed water service contract. The proposed action exercises the provisions of several Federal laws as applicable to Reclamation.

ADDRESSES: Copies of the FEIS/FEIR are available for public inspection and review at the following locations:

- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW., Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Regional Director, Attention: MP–152, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: (916) 979–5129.
- Bureau of Reclamation, South-Central California Area Office, Attention: SCC–412, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727–1551; telephone: (209) 487–5137.
- Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara CA 93105–2017; telephone: (805) 569–1391.
- Santa Barbara County Water Agency, 123 E. Anapamu Street, Santa Barbara CA 93101–2058; telephone: (805) 568–3542.

Libraries: Copies will also be available for inspection at public libraries located in Carpinteria, Montecito, Santa Barbara, Goleta, Solvang, Buellton, Vandenberg Village, Lompoc, and Santa Maria, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert May, Program Manager, SCC–412, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727–1551; telephone: (209) 487–5137; or Mr. Chris Dahlstrom, Project Coordinator, Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara CA 93105–2017; telephone: (805) 569–1391; or Mr. Robert Almy, Santa Barbara County Water Agency, 123 E. Anapamu Street, Santa Barbara CA 93101–2058; telephone: (805) 568–3542.

SUPPLEMENTARY INFORMATION: The FEIS/FEIR considers the effects of renewing the Cachuma Project Contract under which water service has been provided to the member units. The original Cachuma Project Contract (No. I75r–1802) was executed on September 12, 1949, for irrigation, and municipal and industrial purposes under the provisions of section 9(c)(2) and 9(e) of the 1939 Reclamation Project Act. The authority for contract renewal is pursuant to the Act of July 2, 1956, 70 Stat. 483, and the Act of June 21, 1963, 77 Stat. 68, requiring the Secretary of the Department of the Interior, upon request, to renew long-term contracts.

The Cachuma Project has been the principal water supply for the majority of the member units since initial deliveries began in 1955. These member units include the City of Santa Barbara, Goleta Water District, Montecito Water District, Summerland Water District, Carpinteria County Water District, and the Santa Ynez River Water Conservation District, Improvement District No. 1. The original Cachuma Project Contract had a term of 40 years and expired on May 14, 1995.

A Phase I Renewal Contract was executed on April 25, 1995, for purposes of continuing the rights and obligations under the original Contract until April 15, 1996, to allow the contract renewal negotiation process to be completed. A proposed Cachuma Project Long-Term Renewal Contract was made available to the public for a 60-day review period beginning November 14, 1995.

The proposed Cachuma Project Long-term Renewal Contract is a water service contract with a term of 25 years. It will be retroactively effective to extend from May 15, 1995, through September 30, 2020, even though the contract requires repayment of the remaining Cachuma Project capital costs within 20 years.

The FEIS/FEIR evaluates several alternatives, including the no action alternative, and also describes the existing environment and environmental consequences of contract renewal. The FEIS/FEIR considers the following issues: environmental improvement and restoration with respect to biological resources, including fisheries, wildlife, and riparian vegetation, surface water hydrology, groundwater hydrology, flood control, water supply and demand, water pricing and delivery practices, increased operational efficiency, increased conservation, conjunctive use, water exchanges and transfers, recreational enhancement and land use policies, agriculture, socioeconomic conditions, cultural resources, and Indian Trust Assets.

The terms and conditions of the proposed Cachuma Long Term Renewal Contract represents the lead agencies' preferred alternative. It combines features of the original Contract with higher water rates and a "renewal fund" that may be used for various environmental restoration purposes. Relative to the "no action" alternative, there are no significant environmental, socioeconomic, or agricultural impacts under the proposed contract/preferred alternative, and current operations of the Cachuma Project are unchanged. In addition, there will be opportunities to restore riparian and other habitats along the Santa Ynez River using the renewal fund. Therefore, no mitigation measures are required for renewal of the Cachuma Project Contract.

The Santa Ynez Indian Reservation, the Southern California Area Office of the Bureau of Indian Affairs (BIA), and the Sacramento Area Office of the BIA have been contacted by Reclamation regarding Indian Trust Assets (ITAs) that may be affected by the proposed action. No potentially affected ITAs have been identified by the BIA.

The Draft EIS/EIR (DEIS/DEIR) was issued November 16, 1994. Responses to comments received from interested organizations and individuals on the DEIS/DEIR are addressed in the FEIS/FEIR. No decision will be made on the proposed action until 30 days after the release of the FEIS/FEIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: December 8, 1995.

Franklin E. Dimick,

Acting Regional Director.

[FR Doc. 95–31027 Filed 12–21–95; 8:45 am]

BILLING CODE 4310–94–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–32 (Sub-No. 70X), Boston and Maine Corporation—Abandonment and Discontinuance of Service—Middlesex County, Massachusetts. EA available 12/11/95.

AB–364 (Sub-No. 2X), Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Lamar and Red River Counties, Texas; and

AB–3 (Sub-No. 125X), Missouri Pacific Railroad Company—Abandonment Exemption—in Lamar and Red River Counties, Texas. EA available 12/15/95.

AB–448 (Sub-No. 1X), SF&L Railway, Inc.—Abandonment Exemption—In Ellis and Hill Counties, TX. EA available 12/15/95.

Comments on the following assessment are due 30 days after the date of availability:

None.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31174 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32806]

Clinton Industrial Switching District, Inc., d/b/a Clinton Terminal Railroad Company—Operation Exemption—Lines of Clinton Switching District, Inc.

Clinton Industrial Switching District, Inc., d/b/a Clinton Terminal Railroad Company (Clinton), a noncarrier, has filed a verified notice under 49 CFR part 1150, Subpart D—*Exempt Transactions* to operate a line of railroad owned by the Clinton Industrial Switching District, Inc., between milepost 199.0 at Moltonville, NC to milepost 202.5 at Clinton, NC. Clinton's operation of the line is expected to begin soon after the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32806, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[1] 1201 Constitution

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining

Continued

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Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Peter A. Greene, Thompson, Hine and Flory, 920 N Street NW., Washington, DC 20035.

Decided: December 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31081 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32822]

Lancaster Northern Railway—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation

Lancaster Northern Railway (LANO), a noncarrier, has filed a notice of exemption to acquire and operate approximately 12.90 miles of rail line owned by Consolidated Rail Corporation (Conrail), known as the Akron Secondary Track LC 20–0337, between the connection with Conrail at approximately milepost 0.05 at Sinking Spring, Berks County, PA, and the end of the track at Stevens, approximately milepost 12.94, in Lancaster County, PA. The proposed transaction was expected to be consummated on November 30, 1995.

This proceeding is related to Finance Docket No. 32823, *John C. Nolan—Continuance in Control Exemption—Lancaster Northern Railway*, wherein John C. Nolan has concurrently filed a notice of exemption to continue in control of LANO when LANO becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any pleading filed with the Commission should be sent to applicant's representative: John K. Fiorilla, 390 George St., P.O. Box 1185, New Brunswick, NJ 08903.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31083 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32823]

John C. Nolan—Continuance in Control Exemption—Lancaster Northern Railway

John C. Nolan (Nolan) has filed a notice of exemption to continue in control of Lancaster Northern Railway (LANO), upon LANO becoming a class III rail carrier.

LANO, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32822, *Lancaster Northern Railway—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation*, in which LANO seeks to acquire and operate approximately 12.90 miles of rail line owned by Consolidated Rail Corporation (Conrail), known as the Akron Secondary Track LC 20–0337, between the connection with Conrail at approximately milepost 0.05 at Sinking Spring, Berks County, PA, and the end of the track at Stevens at approximately milepost 12.94, in Lancaster County, PA. The parties intended to consummate the proposed transaction on November 30, 1995.

Nolan also controls, through stock ownership, two other nonconnecting class III rail carriers that operate in Pennsylvania: East Penn Railways, Inc., and Bristol Industrial Terminal Railway. Nolan states that: (1) The railroads do not connect with each other nor do they belong to any family of lines to which they connect; (2) the involved transaction is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad within its corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Interstate Commerce Commission, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423[1] and served on: John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Decided: December 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31084 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32785]

Norfolk Southern Railway Company—Corporate Family Exemption—Georgia Midland Railway Company

Norfolk Southern Railway Company (NSR) or its predecessors have leased a portion of track in Georgia from Georgia Midland Railway Company (GMRC),[1] pursuant to a lease dated June 18, 1896. The term of the lease expired on October 2, 1995. The railroads have agreed to extend the lease for successive one-year terms to commence October 2, 1995, until terminated by agreement of the parties or operation of law. It is expected that GMRC will eventually be liquidated or merged into NSR. Accordingly, the purpose of this exemption is to extend the lease until such time as this occurs.

This notice is filed under 49 CFR 1180.2(d)(3)[2] which exempts transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Any comments must be filed with the Commission[3] and served on: Greg E. Summy, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption, any employees affected by the transaction will be protected pursuant to the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Decided: December 15, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31085 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address: Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423.

[1] NSR is a class I railroad controlled by Norfolk Southern Corporation, and the owner of the common stock of GMRC.

[2] Originally this transaction was also filed under 49 CFR 1180.2(d)(4), which exempts the renewal of leases. However, by a pleading filed December 4, 1995, NSR amended the transaction.

[3] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address: Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423.

[Finance Docket No. 32820]

Norfolk Southern Railway Company and Atlantic and East Carolina Railway Company—Lease and Operation Exemption—North Carolina Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the renewal of a lease to allow Norfolk Southern Railway Company and Atlantic and East Carolina Railway Company to continue to lease and operate approximately 317 miles of North Carolina Railroad Company's rail line, between Charlotte and Morehead City, NC, subject to standard employee protective conditions.

DATES: This exemption is effective on December 22, 1995. Petitions to reopen must be filed by January 11, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32820 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423;[1] (2) Robert J. Cooney, Norfolk Southern Railway, 3 Commercial Place, Norfolk, VA 23510; (3) Scott M. Saylor, North Carolina Railroad Company, 234 Fayetteville Street Mall, Raleigh, NC 27602; and (4) Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary

[FR Doc. 95–31176 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32735]

North Carolina Ports Railway Commission—Acquisition of Control Exemption—Beaufort & Morehead Railway, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition of control by North Carolina Ports Railway Commission (NCPRC) of Beaufort & Morehead Railway, Inc. (BMRI). NCPRC, a noncarrier, currently controls the Beaufort & Morehead Railroad Company. To avoid unlawful control by NCPRC, BMRI is being held in an independent voting trust pending Commission approval or exemption of this control transaction. The exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on January 21, 1996. Petitions for stay must be filed by January 2, 1996. Petitions to reopen must be filed by January 11, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32735 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[1] 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Fritz R. Kahn, 1100 New York Avenue, N.W., Suite 750 West, Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31175 Filed 12–21–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

DEPARTMENT OF JUSTICE

Antitrust Division

United States and State of Texas v. Kimberly-Clark Corporation and Scott Paper Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas, Dallas Division in *United States and State of Texas* v. *Kimberly-Clark Corporation and Scott Paper Company*, Civil No. 3:95 CV 3055–P, as to both defendants.

On December 12, 1995, the United States and the State of Texas filed a Complaint alleging that the proposed merger of Kimberly-Clark Corporation ("Kimberly-Clark") and Scott Paper Company ("Scott") would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18. The Complaint further alleges that the merger of Kimberly-Clark and Scott would lessen competition substantially and tend to create a monopoly in the sale of consumer facial tissue and baby wipes in the United States. The proposed Final Judgment, filed the same time as the Complaint, requires Kimberly-Clark to divest the Scott baby wipes brands, Baby Fresh and Wash A Bye Baby and

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the Scott facial tissue brand, Scotties, along with certain tangible and intangible assets.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: 202/307–6694).

Constance K. Robinson,

Director of Operations.

United States District Court, Northern District of Texas, Dallas Division

United States of America and State of Texas, Plaintiffs, v. *Kimberly-Clark Corporation and Scott Paper Company,* Defendants. Civil Action No.: 3:95 CV 3055–P. Filed: December 12, 1995.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Texas.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that either plaintiff has not withdrawn its consent, which either or both may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event either plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 12, 1995.

For Plaintiff United States:

Anne K. Bingaman

Assistant Attorney General, District of Columbia #369900.

Lawrence R. Fullerton,

Deputy Asst. Attorney General, District of Columbia #251264.

Constance K. Robinson,

Director of Operations, District of Columbia #244800.

Charles E. Biggio, Sr. Counsel,

State of New York (no bar no. assigned)

Anthony V. Nanni, Chief,

Litigation I Section State of New York (no bar number assigned).

Anthony E. Harris, Attorney,

State of Illinois #01133713, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–6583.

For Plaintiff State of Texas:

Dan Morales,

Attorney General of Texas

Jorge Vega,

First Assistant Attorney General

Laquita A. Hamilton,

Deputy Attorney General

Thomas P. Perkins, Jr.,

Assistant Attorney General, Chief, Consumer Protection Div.

Mark Tobey,

Assistant Attorney General, Antitrust Section, State of Texas #22082960, P.O. Box 12548, Austin TX 78711–2548, (512) 463–2185.

For Defendant Kimberly-Clark Corp.:

William O. Fifield, Esquire,

State of Illinois #0080332, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603, (312) 853–7474

For Defendant Scott Paper Company:

Michael L. Weiner, Esquire,

State of New York (no bar number assigned) Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022–3897, (212) 735–2632

Executed on: December 11, 1995.

United States District Court, Northern District of Texas, Dallas Division

United States of American and State of Texas. Plaintiffs, v. *Kimberly-Clark Corporation and Scott Paper Company,* Defendants. Civil No.: 3:95 CF 3055–P. Filed: December 12, 1995.

Final Judgment

Whereas, plaintiffs, the United States of American and the State of Texas, having filed their Complaint herein on December 12, 1995, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain rights and assets to assure that competition is not substantially lessened are the essence of this agreement;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing viable competitors in the sale of baby wipes and facial tissue;

And whereas, defendants have represented to plaintiffs that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Kimberly-Clark" means defendant Kimberly-Clark Corporation, a Delaware corporation with its headquarters in Dallas, Texas, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "Scott" means defendant Scott Paper Company, a Pennsylvania corporation with its headquarters in Boca Raton, Florida, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. "Relevant Wet Wipes Assets" means:

(1) The Dover, Delaware plant of Scott, including all tangible assets used by Scott in connection with its business of researching, developing, making, having made, packaging, distributing, or selling products of the Dover plant, including but not limited to: the manufacturing plant and associated web making, converting, packaging and distributing equipment and facilities, inventory, real property, and any other interests, or tangible assets or

improvements, associated with the Dover plant;

(2) A twenty-five year, exclusive, royalty-free and assignable license, perpetually renewable at the licensee's option, to make, have made, use or sell in the United States any label of any baby wipes product currently produced at the Dover, Delaware plant, including but not limited to the Baby Fresh, Wash-a-Bye Baby, Baby Fresh Gentle Touch, and Kid Fresh labels, and any improvement to or line extension of those labels; and

(3) All intangible assets, wherever located, that relate in any way to the tangible assets and labels described above (including but not limited to: manufacturing, converting, packaging and distribution know-how); exclusive, assignable rights to all patents, proprietary technology, supply contracts, and business information solely dedicated to the tangible assets or the labels described above; rights in real and personal property; and nonexclusive, assignable rights to all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the labels described above.

D. "Relevant Facial Tissue Assets" means:

(1) A twenty-five year, exclusive, royalty-free and assignable license, perpetually renewable at the licensee's option, to make, have made, use or sell in the United States any facial tissue under the Scotties label, and a covenant that defendants shall not make, have made, use or sell in the United States any facial tissue under the Scott or Scotties label;

(2) Any two of the following four tissue mills: the Scott tissue mill in Marinette, Wisconsin; the Scott tissue mill in Ft. Edward, New York; the Kimberly-Clark Lakeview tissue mill in Neenah, Wisconsin; and the Kimberly-Clark Badger-Globe tissue mill in Neenah, Wisconsin; provided, however, that in the event a purchaser elects to purchase the Marinette, WI tissue mill of Scott, defendants shall not be required to divest the DRC tissue machine and associated converting assets, located in an adjacent facility on the Marinette tissue mill site and not currently used for making facial tissue, in which case defendants shall, at the option of the purchaser, enter into an arrangement with respect to the measures necessary to separate the DRC tissue machine from the rest of the Marinette tissue mill, including but not limited to a long-term agreement to provide, on a nondiscriminatory basis, shared utilities, such as water, electric, steam, and treatment of waste or effluent;

(3) At the purchaser's option, (a) a commitment by defendants to enter into up to a three-year agreement to sell to purchaser, at such rates as to which purchaser and defendants may agree, as much as 25,000 metric tons/year of tissue parent rolls; and (b) a commitment by defendants to enter into up to a three-year agreement to buy from the purchaser, at such rates as to which purchaser and defendants may agree, as much as 25,000 metric tons/year of tissue parent rolls;

(4) All tangible assets used solely in connection with the business of making, having made, using, converting, packaging, distributing, or selling any product from any of the tissue mills identified in Section II(D)(2), including but not limited to: the tissue mill and associated papermaking, converting, packaging and distribution equipment and facilities; real property; or tangible assets or improvements, associated with the tissue mill; and

(5) All intangible assets, not otherwise addressed above, wherever located, that relate in any way solely to the tangible assets described above or the Scotties label (including but not limited to: papermaking, converting, packaging and distributing know-how); exclusive, assignable rights to all patents, proprietary technology, supply contracts, and business information and rights in real and personal property solely dedicated to the tangible assets or the Scotties label; and nonexclusive, assignable rights to all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the Scotties label.

E. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress (and any improvements, extensions or modifications); the brand's trade secrets; know-how or other proprietary information for making, having made, using and selling the brand, including, but not limited to, packaging, sales, marketing and distribution know-how and documentation, such as customer lists.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, within 150 days after filing of the Final Judgment, to divest to a purchaser the Relevant Wet Wipes Assets, in accordance with the procedures specified in this Final Judgment.

Defendants are ordered and directed, within 180 days after filing of the Final Judgment, to divest to one or more purchasers the Relevant Facial Tissue Assets, in accordance with the procedures specified in this Final Judgment.

B. Defendants agree to take all reasonable steps to accomplish the divestitures as expeditiously and timely as possible. Plaintiffs may, in their sole discretion, extend the time period for any divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets. Defendants shall provided any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Wet Wipes Assets and the Relevant Facial Tissue Assets, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestitures required by this Final Judgment.

D. Unless plaintiffs otherwise consent in writing, divestitures under Section IV(A), or by the trustee appointed pursuant to Section V, shall include the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets and be

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accomplished in such a way as to satisfy plaintiffs, in their sole discretion, that the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of baby wipes and facial tissue at wholesale to retail stores. Each divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiffs' satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores and other customers; and (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores; and (3) none of the terms of any agreement between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively. Although Sections II(D)(2) and IV(A) require a sale of any two of four tissue mills, plaintiffs can, in their sole discretion, approve a divestiture involving a sale of less than two tissue mills listed in Section II(D), if convinced that such divestiture is sufficient to satisfy their competitive concerns.

E. Defendants shall exercise any residual right in any label licensed pursuant to this Final Judgment solely for the purpose of protecting their lawful intellectual property rights. Defendants shall not, in any circumstance, exercise any such right to impair or inhibit in any way a licensee's ability to compete, and they shall not exercise such right, directly or indirectly, to obtain competitively-sensitive information pertaining to any licensee.

V. Appointment of Trustee

A. If defendants have not accomplished any divestiture required by Section IV within the time specified therein, defendants shall notify plaintiffs of that fact in writing. Within ten (10) calendar days of their receipt of such written notice, plaintiffs shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiffs within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiffs, within ten (10) calendar days after plaintiffs provide the names of their nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiffs, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiffs, plaintiffs shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished either of the divestitures required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect the divestiture(s) specified in Section IV(A).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets. The trustee shall have the power and authority to accomplish the divestiture(s) to a purchaser acceptable to plaintiffs at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement which provides an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses (other than related to the selection process), prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Relevant Wet Wipes Assets or the Relevant Facial Tissue Assets, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and term of the trustee's appointment.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the assets that are the subject of the finding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiffs shall proved written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiffs provided written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiffs do not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by either plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by either plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Section IV and V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII. Financing

With prior written consent of the plaintiffs, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that the Relevant Wet Wipes Assets will be maintained as an independent, ongoing, economically viable and active competitor in the sale of baby wipes in the United States, with proprietary technology, management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of Kimberly-Clark's Huggies baby wipes business.

B. Defendants shall operate the Relevant Facial Tissue Assets to ensure a distinct and economically viable product line, which actively competes in the sale of facial tissue in the United States, with competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of Kimberly-Clark's Kleenex facial tissue business.

C. Defendants shall use all reasonable efforts to maintain and increase sales of baby wipes under any label required to be divested pursuant to Sections II(C) and IV(A) and facial tissue under the Scotties label, and they shall maintain at 1995 or previously approved levels, whichever is higher, promotional, advertising, marketing and merchandising support for baby wipes under labels in the Relevant Wet Wipes Assets and facial tissue under the Scotties label.

D. Defendants shall take all steps necessary to ensure that the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets are fully maintained inoperable condition at their current capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for such assets.

E. Defendants shall not, except as part of a divestiture approved by plaintiffs, sell any Relevant Wet Wipes Assets or Relevant Facial Tissue Assets, other than in the ordinary course of business.

F. Defendants shall take no action that would jeopardize the sale or license of the Relevant Wet Wipes Assets or the Relevant Facial Tissue Assets. Within 21 days after filing of the Final Judgment, defendants shall discontinue making and selling facial tissue under the Scott label and make and sell facial tissue under the Scotties label; provided, however, that defendants may sell inventory of facial tissue produced under the Scott Label until such inventory is depleted.

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege from time to time.

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or of the Attorney General of the State of Texas, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without

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restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or of the Attorney General of the State of Texas, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of either plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Texas, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge

United States District Court, Northern District of Texas, Dallas Division

United States of America and State of Texas, Plaintiffs, v. *Kimberly-Clark Corporation and Scott Paper Company*, Defendants. Civil No. 3:95 CV 3055–P. Filed December 12, 1995.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States and the State of Texas filed a civil antitrust Complaint on December 12, 1995, which alleges that Kimberly-Clark Corporation's proposed acquisition of Scott Paper Company ("Scott") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Kimberly-Clark and Scott are the nation's first and third leading sellers of facial tissue, and its leading sellers of baby wipes.

The Complaint alleges that the combination of these rivals would substantially lessen competition in production and distribution, and raise prices to consumers in retail sale, of facial tissue and baby wipes in the United States. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Kimberly-Clark from acquiring control of Scott's facial tissue and baby wipes businesses or otherwise combining them with its own business in the United States.

At the time the suit was filed, the United States and State of Texas also filed a proposed settlement that would permit Kimberly-Clark to complete its acquisition of Scott's other assets, but require divestitures of baby wipes and facial tissue assets in a way that will preserve competition in the markets. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders defendants to divest to one or more purchasers Scott's Scotties® facial tissue label, any two or four United States tissue mills currently operated by Kimberly-Clark or Scott, all of Scott's baby wipes labels, and Scott's wet wipes plant used to produce baby wipes and other products. Certain tangible and intangible assets that relate to these assets and labels must also be divested. Defendants must complete the divestiture of the Scott facial tissue business within 180 days, and the divestiture of the wet wipes business within 150 days, after December 12, 1995, in accordance with the procedures specified in the proposed Final Judgment.

The Stipulation and Final Judgment require Kimberly-Clark to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, Scott's facial tissue and baby wipes businesses and associated assets will be held separate from, and operated independently of, other, competing Kimberly-Clark facial tissue and baby wipes businesses. Kimberly-Clark must preserve and maintain these assets as saleable and economically viable, ongoing concerns, with competitively-sensitive business information and decision-making divorced from that of competing Kimberly-Clark businesses.

The United States, the State of Texas, Kimberly-Clark, and Scott have also stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Kimberly-Clark, based in Dallas, Texas, is a leading producer of consumer paper products, including disposable diapers, feminine care products, facial tissue and baby wipes. In 1994, Kimberly-Clark reported total sales of $7.3 billion. Kimberly-Clark makes Kleenex® facial tissue and Huggies® brand baby wipes.

Scott, based in Boca Raton, Florida, is also a leading producer of consumer paper products, including bath tissue, facial tissue and baby wipes. In 1994, Scott reported total sales of $3.5 billion. Among its other brands, Scott makes and sells Scotties® facial tissue (recently renamed Scott® and Baby Fresh® and Wash A Bye Baby® baby wipes.

On July 16, 1995, Kimberly-Clark agreed to acquire Scott for cash and stock in a transaction that would create a firm with global sales of about $12 billion. This transaction, which would combine leading competitors in two major markets, precipitated the governments' suit.

B. The Transaction's Effects in the Facial Tissue Industry

Facial tissue is a soft, thin, pliable and absorbent sheet of paper, typically folded and packed in a box. It is primarily used to catch a sneeze, blow a nose, or remove make-up. There are no good substitutes for facial tissue.

For all practical purposes, the retail facial tissue market is dominated by three major firms—Kimberly-Clark, Scott and Procter & Gamble—which together account for nearly 90 percent of sales of facial tissue, a $1.34 billion dollar market. Kimberly-Clark's popular Kleenex® is by far the leading brand of facial tissue sold, commanding 48.5 percent of all sales.

Scott's Scotties® facial tissue, a value brand offering consumers more product for the money, has a 7 percent share of sales, but significantly greater presence and consumer acceptance in the Northeast, where the brand was first introduced. Procter & Gamble, the only other significant firm, makes Puffs®, which has about a 30 percent market share.[1]

Scott's market share, however, understates its competitive significance. As a value brand, Scotties® has, in the past, imposed a significant constraint on Kimberly-Clark's prices for facial tissue. Kimberly-Clark's Kleenex® likewise has been a significant constraint on prices of Scotties® facial tissue.

The Complaint alleges that Kimberly-Clark's acquisition of Scott would remove these constraints, and provide Kimberly-Clark both the power and the incentive to increase unilaterally and profitably the price of either, or both, brands of facial tissue. Kimberly-Clark's acquisition of Scott would also increase the likelihood of cooperative increases in the price of consumer facial tissue, since the merger would leave Kimberly-Clark with a single significant rival, Procter & Gamble's Puffs®, in the facial tissue market.

Because entry into the facial tissue market is difficult, requiring a significant investment in plant equipment and brand building, successful new entry or repositioning after the merger is unlikely to restore the competition lost through Kimberly-Clark's removal of Scott from the marketplace.

C. The Transaction's Effect in the Baby Wipes Industry

Baby wipes are soft, moist and absorbent sheets of paper substrate, about the size of a wash cloth, that are packaged in a plastic tub or canister. Consumer use baby wipes to clean babies, especially during a diaper change. Stronger, softer and more convenient or sanitary than any alternative product, baby wipes are a popular staple of families with babies, and are bought by 95 percent of such households. There are no good substitutes for baby wipes.

Kimberly-Clark and Scott are the nation's two largest and most significant manufacturers of baby wipes. Scott's Baby Fresh® and Wash A Bye Baby® baby wipes account for about 31 percent of all baby wipes sold, while Kimberly-Clark's Huggies® baby wipes command nearly 25 percent of all sales. They are each other's primary competitor and most significant constraint on prices for baby wipes. Kimberly-Clark and Scott aggressively compete in pricing, promotion, and product innovation.

Following its acquisition of Scott, Kimberly-Clark would control nearly 60 percent of all baby wipes sold,[2] and leave it seven times larger than its next largest competitor in a market with $500 million in annual sales. By eliminating Scott, the Complaint alleges, Kimberly-Clark would acquire market power that would enable it unilaterally to increase prices to consumers of either, or both, Huggies®, Baby Fresh® and Wash A Bye Baby® wipes. New market entry is difficult, time-consuming and unlikely, and hence cannot be expected to constrain the unlawful effects of Kimberly-Clark's acquisition of Scott.

D. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the facial tissue and baby wipes markets will be substantially lessened; actual and potential competition between Kimberly-Clark and Scott in the market for facial tissue and baby wipes will be eliminated in the United States; prices for facial tissue and baby wipes in the United States are likely to increase; and product innovation in facial tissue and baby wipes in the United States will suffer.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in production and retail sale of branded baby wipes and facial tissue in the United States. Within 150 days after filing the proposed Final Judgment, defendants must divest Scott's wet wipes plant in Dover, Delaware; grant a 25-five year, royalty-free, exclusive and assignable, perpetually renewable license for the baby wipes labels produced at that plant; and divest other associated assets—sell, in essence, the entire Scott baby wipes business and brands. Within 180 days after filing the proposed Final Judgment, defendants must similarly divest Scott's Scotties® brand facial tissue business, grant a 25-year, royalty-free, exclusive and assignable, perpetually renewable license for the Scotties® facial tissue label, and divest any two of four tissue mills specified in the Final Judgment and associated assets. These businesses must be sold to a purchaser or purchasers who demonstrate to the sole satisfaction of the United States and the State of Texas that they will be an economically viable and effective competitor, capable of maintaining or surpassing Scott's market performance in the sale of branded baby wipes and consumer facial tissue in the United States.

Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If defendants do not accomplish the ordered divestitures within the specified 150 and 180 day time periods, the Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. Defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Kimberly-Clark will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee shall promptly file with the Court a report setting forth the trustee's efforts to accomplish the divestiture, explaining why the divestiture has not been accomplished, and making recommendations. The trustee's report will be furnished to the parties and shall

[1] The approximate post-merger Herfindahl-Hirschman Index ("HHI") for the facial tissue market, based on 1994 dollar sales, would be 4031, with an increase in the HHI as a result of the merger of 705 points.

[2] The approximate post-merger HHI for the relevant market based on 1994 dollar sales would be over 3137, with a change in the HHI concentration index resulting from the merger of 1501 points.

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be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties will each have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants. The proposed Final Judgment provides that nothing therein contained shall be construed to provide any rights to any third party.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants Kimberly-Clark and Scott. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of facial tissue and baby wipes that would otherwise be adversely affected by the acquisition. Thus, the proposed Final Judgment would achieve the relief the governments would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the governments' Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the DC Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 1995–1 Trade Cas. (CCH) ¶71,027, at ____ (Slip op. 26) (DC Cir. June 16, 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 1995–1 Trade Cas. at ____ (Slip. op. 22). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless if believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[4] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also Microsoft*, 1995–1 Trade Cas. at ____ (Slip op. 23) (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 12, 1995.

Respectfully submitted,

Anthony E. Harris,
Attorney, State of Illinois # 01133713, Antitrust Division, U.S. Department of Justice, 1401 H. Street NW., suite 4000, Washington, DC 20530, (202) 307–6583.

[FR Doc. 95–31054 Filed 12–21–95; 8:45 am]
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[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division;

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. MD950050 and MD950053 dated February 10, 1994.

Agencies with construction projects pending, to which this Wage Decision would have been applicable, should utilize Wage Decision MD950047. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume II

Virginia
VA950040 (Dec. 22, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950009 (Feb. 10, 1995)
NY950010 (Feb. 10, 1995)
NY950041 (Feb. 10, 1995)

Volume II

Maryland
MD950047 (Feb. 10, 1995)
Pennsylvania
PA950004 (Feb. 10, 1995)
PA950023 (Feb. 10, 1995)
PA950065 (Feb. 10, 1995)
Virginia
VA950004 (Feb. 10, 1995)
VA950014 (Feb. 10, 1995)
VA950015 (Feb. 10, 1995)
VA950049 (Feb. 10, 1995)
VA950064 (Feb. 10, 1995)

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Volume III

None

Volume IV

Michigan
MI950007 (Feb. 10, 1995)

Volume V

None

Volume VI

California
CA950001 (Feb. 10, 1995)
Nevada
NV950001 (Feb. 10, 1995)
NV950001 (Feb. 10, 1995)
NV950002 (Feb. 10, 1995)
NV950005 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 15th day of December 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–30947 Filed 12–21–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co; Zion Nuclear Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application for and exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), "Access Requirements," it specifies in part that "The licensee shall control all points of personnel and vehicle access into a protected area." In 10 CFR 73.55(d)(5), it specifies in part that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area."

Currently, unescorted access for both employee and contractor personnel into the Zion Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into a the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alterative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractors who have unescorted access to keep their picture badges in their possession when departing the Zion site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Zion site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access process, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on November 15, 1995, the NRC staff consulted with the Illinois State official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this, see the licensee's letter dated October 25, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of December 1995.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31157 Filed 12–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Co. et al.; Catawba Nuclear Station, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

By letter dated September 5, 1995, Duke Power Company submitted a proposal for amendments of the Facility Operating Licenses that would allow the Catawba Units 1 and 2 Containment Airborne Particulate Radiation Monitors (CAPRMs, 1/2 EMF38(L)) to be reclassified in the Updated Final Safety Analysis Report (UFSAR) as non-seismic Category I.

The Catawba operating license Safety Evaluation Report (SER, NUREG–0954), Section 5.2.5, states that the CAPRMs are designed to seismic Category I requirements. The basis for this determination was Section 5.2.5 of the Catawba UFSAR, which currently states that the CAPRMs would remain functional during and following a safe shutdown earthquake (SSE) as recommended in Position C.6 of Regulatory Guide (RG) 1.45 "Reactor Coolant Pressure Boundary Leakage Detection Systems."

By letter dated September 8, 1994, the licensee informed the staff that sufficient documentation did not exist to show that the subject monitors were seismically qualified to withstand the SSE. By letter dated September 5, 1995, the licensee stated that the matter involved an unreviewed safety question and requested amendments to its Facility Operating Licenses including proposed changes to the UFSAR, which would clarify that the CAPRMs are not designed to remain functional following the SSE. The licensee has proposed an alternative to Position C.6 of RG 1.45 by showing that adequate instrumentation and procedures will be available to assess conditions inside containment following a seismic event comparable to an SSE and that, accordingly, the seismic qualification requirement for the CAPRMs may be deleted from the UFSAR.

The proposed action is in accordance with the licensee's application for amendments dated September 5, 1995.

The Need for the Proposed Action

The proposed action is needed so that the appropriate seismic qualification for the CAPRMs can be reflected in the UFSAR.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the UFSAR. The proposed revisions would permit the Containment Airborne Particulate Radiation Monitors (1/2EMF38(L)) at Catawba Units 1 and 2 to be classified as non-seismic Category I. The safety considerations associated with this re-classification have been evaluated by the NRC staff. The staff has concluded that the licensee has demonstrated an acceptable alternative to Position C.6 of RG 1.45 by showing that adequate instrumentation and procedures will be available to assess conditions inside containment following a seismic event comparable to an SSE. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact.

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Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the requested amendments. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Catawba Nuclear Station Units 1 and 2," dated January 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on November 30, 1995, the NRC staff consulted with the South Carolina State official, Mr. V. Autrey of the Bureau of Radiological Health, Department of Health and Environmental Controls, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

For further details with respect to this action, see the licensee's letter dated September 5, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 18th day of December 1995.

For The Nuclear Regulatory Commission.

Leonard A. Wiens, Acting Director,

Project Directorate II–2, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31156 Filed 12–21–95; 8:45 am]

BILLING CODE 7590–01–P

Docket No. 50–344

Portland General Electric Company; Trojan Nuclear Plant; Notice of Issuance of Environmental Assessment and Final Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering approving a Portland General Electric (PGE) proposed decommissioning plan for the Trojan Nuclear Plant (TNP) and issuing an order authorizing decommissioning of the facility.

Description of the Proposed Action

On January 27, 1993, PGE notified the NRC of their decision to permanently cease power operations after approximately 17 years of operation. The fuel was transferred to the spent fuel pool, and on May 5, 1993, the NRC amended the TNP Facility Operating License (NFP–1) to a Possession Only License, which allows the licensee to maintain but not operate the facility. On January 26, 1995, the licensee submitted an application to terminate the TNP Possession Only License. The application for termination of the TNP license included a proposed decommissioning plan and an supplement to the environmental report. The licensee proposes to decommission the TNP using a dismantlement (DECON) approach as defined in the "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" NUREG–0586, dated August 1988 (GEIS).

The licensee plans to precede the DECON radiological decontamination and dismantlement period with a five-year transition period. Transition period activities include the removal and disposal of selected large components, licensing and construction of an Independent Spent Fuel Storage Installation (ISFSI), and transfer of the fuel to the ISFSI. Assessment of the environmental impact associated with the construction and operation of the Trojan ISFSI will be conducted during the licensing of the ISFSI. Radioactive structures, systems, and components that are removed from the facility during decommissioning will be shipped to a licensed burial site for permanent disposal.

Summary of the Environmental Assessment

The purpose of decommissioning a nuclear facility is to remove the facility safely from service, and to reduce residual radioactivity at the site to levels that permit the release of the property for unrestricted use. Once this state is reached the licenses granted by the NRC may be terminated.

The NRC staff has reviewed the PGE decommissioning plan, and supplemental environmental report prepared in accordance with 10 CFR 51.53(b). To document its review, the staff has prepared an environmental assessment (EA) consistent with 10 CFR 51.95(b), which examined decommissioning alternatives, non-radiological and radiological impacts of decommissioning, and effects of postulated radiological accidents during decommissioning. The alternatives available for decommissioning—DECON, ENTOMB, SAFSTOR, and No Action—are evaluated and discussed in the GEIS. Based on its review of the proposed PGE decommissioning plan, the staff has determined that the environmental impacts associated with the decommissioning of TNP in accordance with the plan are either bounded by the impacts evaluated by the GEIS or in the NRC Final Environmental Statement related to Operation of Trojan Nuclear Plant dated August 1973. The staff also finds that the proposed decommissioning of TNP is in compliance with 10 CFR Part 50, Appendix I annual design objectives for offsite releases or 10 CFR Part 20.

Final Finding of No Significant Impact

The staff has reviewed the proposed decommissioning plan and supplement to the environmental report in accordance with the requirements of 10 CFR Part 51. The staff has concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement.

For further details with respect to this action, see the licensee application for termination of license, dated January 26, 1995 and updated November 13, 1995, and the NRC staff Environmental Assessment and Safety Evaluation Report. These documents are available for public inspection at the NRC Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC. 20555, and at the Local Public Document Room for TNP at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207. Single copies of the NRC staff Environmental Assessment and Safety Evaluation may be obtained from Dr. Michael T. Masnik, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this December 18, 1995.

For the Nuclear Regulatory Commission.

Singh S. Bajwa,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31156 Filed 12–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company; Trojan Nuclear Power Station; Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for a Hearing

A. Introduction

Pursuant to 10 CFR 2.105(a)(9), the U.S. Nuclear Regulatory Commission ("the Commission") hereby gives notice that it is considering issuance of an order under 10 CFR 50.82(e) to the Portland General Electric Company ("PGE," the licensee), for the Trojan Nuclear Power Station ("Trojan NPS"), located near Ranier, Oregon. The order would involve approval of the Trojan NPS decommissioning plan as it relates to the decommissioning of the remaining portions of the Trojan NPS.

On October 12, 1995, the Commission issued a Memorandum and Order, CLI–95–13, in which it announced that it would issue a Notice of Opportunity for a Hearing on the licensee's decommissioning plan and the application of that plan to the completion of the decommissioning of the Trojan NPS. The Commission also announced in CLI–95–13 that it would "direct an expedited hearing process in this case."

The licensee is the holder of facility Possession Only License No. NPF–1, which was issued on May 5, 1993. All spent fuel has been removed from the reactor and placed in the plant's spent fuel pool. In addition, the pressurizer and the four steam generators have been removed from the reactor containment and shipped to a low level waste disposal facility.

By issuance of this order, the licensee would be authorized to complete the decommissioning of the Trojan NPS facility in accordance with its proposed decommissioning plan, submitted on January 25, 1995, as supplemented. Under that plan, PGE intends to dismantle the Trojan facility using the DECON decommissioning alternative as defined in NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," (1988).

The licensee has proposed to precede the DECON decommissioning and dismantlement period with a five-year transition period. Proposed activities during the transition period, which began with the permanent shutdown of the facility in January 1993, include the removal and disposal of selected components, the licensing and construction of an Independent Spent Fuel Storage Installation (ISFSI), and the transfer of the spent fuel, currently in the spent fuel pool, to the ISFSI. Licensing of the ISFSI will be the subject of a separate Notice of Opportunity for a Hearing and will not be a part of the proceeding to approve the Decommissioning Plan.

Once the spent fuel has been transferred to the ISFSI the DECON phase will begin. The DECON phase will consist of the major disassembly and dismantlement of structures systems and components that are radioactive. Low level radioactive waste resulting from decommissioning activities will be shipped to a licensed waste disposal site for burial. The DECON phase will end with the site, except for the ISFSI, being released for unrestricted use.

B. Requests for Hearing and Petitions for Leave To Intervene

By January 22, 1996, the licensee may file a request for a hearing with respect to issuance of the order to the subject facility. During that same period, any other person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file both a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2, and the special instructions provided in this notice.

This notice provides a brief overview of the requirements in 10 CFR 2.714. However, the fact that a requirement is not addressed in this notice does not excuse compliance with that requirement. Each person seeking to participate in this proceeding is responsible for complying with all applicable requirements. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555, or the NRC Local Public Document Room, located at the Bandford Price Millar Library, Portland State University, 934 S.W. Harrison Street (P.O. Box 1151), Portland Oregon 97207.

If a request for hearing or a petition for leave to intervene is filed by the above date, either the Commission or an Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and either the Secretary of the Commission or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, both a request for hearing and a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of that proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene.

C. Filing of Contentions

The Commission has determined to take several steps to expedite this proceeding. The first step toward expediting this proceeding is to require that all contentions be filed at the same time as petitions for leave to intervene. Accordingly, any person who files a request for hearing and a petition for leave to intervene shall, at the same time, submit a supplement to the petition for leave to intervene which must include a list of contentions which are sought to be litigated in the proceeding. The Commission will issue additional directions to expedite this proceeding where appropriate in the future.

Potential petitioners should not be prejudiced by this requirement because the documents which would give rise to potential disputes are already in existence and in the public domain. For example, the most important document for consideration in the formation of contentions is the licensee's proposed decommissioning plan, which has been in the public domain since January 25, 1995. The NRC Staff has now prepared

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both an Environmental Assessment ("EA") of the plan and a Safety Evaluation Report ("SER") reviewing the plan and those documents are available for public review as described below.

Pursuant to 10 CFR 2.714(b)(2), each contention must consist of a specific statement of the issue of law or fact to be raised or controverted, including any alleged omission by the licensee or the Staff in any action taken or in any document issued relating to this matter. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must also provide sufficient information to show that a genuine dispute exists with the licensee on a material issue of law or fact. Under the circumstances of this case, the Commission will consider a valid contention to satisfy the aspect requirement noted above.

If a hearing is held, the issue shall be whether an order approving the decommissioning plan should be issued. Thus, contentions shall be limited to matter relevant to the order under consideration. The contention must be one which, if proven, would entitle petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene.

D. Filing Instructions

A request for hearing and/or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC, 20555–0001; Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC by the above date. If a request for hearing or a petition for leave to intervene is filed within the last five (5) calendar days of this period, the filing party should not only file the documents by U.S. Mail, but should also fax them to the Secretary of the Commission. The fax number for the Office of the Secretary is (301) 415–1672.

A copy of all filings should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Assistant General Counsel for Hearings and Enforcement, and to Douglas R. Nichols, Assistant General Counsel, Portland General Electric Company, 121 S.W. Salmon Street, Suite 1300, Portland, Oregon 97204, attorney for the licensee.

Non-timely filings of (1) petitions for leave to intervene, (2) amended petitions, (3) supplemental petitions and/or (4) requests for hearing will not be entertained absent a determination by the Commission or the designated Atomic Safety and Licensing Board that the non-timely filing should be accepted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 10 CFR 2.714(d). Notwithstanding the provisions of 10 CFR 2.714(a)(3), the participants will not be allowed to amend their pleadings without leave of the Commission or of the designated Board. Under that provision, amendment of pleadings without leave is tied to the submission of contentions which has been expedited in this case. Answers to any request for hearing or petition for leave to intervene should be filed in accordance with 10 CFR 2.714(c).

For further details with respect to this action, see (1) the application for decommissioning, including the decommissioning plan, dated January 25, 1995, as supplemented on November 13, 1995; (2) the NRC Staff's Environmental Assessment, dated December 18, 1995, and (3) the NRC Staff's Safety Evaluation Report, dated December 15, 1995. These documents are available for public inspection at both the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC, and at the NRC Local Public Document Room at the Brandford Price Millar Library, Portland State University, 934 S.W. Harrison Street (P.O. Box 1151), Portland, Oregon 97207. In addition, single copies of the Environmental Assessment or the Safety Evaluation Report may be requested in writing from Dr. Michael T. Masnik, Senior Project Manager, OWFN MS:11–B–20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 18th day of December, 1995.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.

[FR Doc. 95–31155 Filed 12–21–95; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36597; File No. SR–GSCC–95–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Authorizing the Release of Clearing Data Relating to Participants

December 15, 1995.

On August 28, 1995, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–95–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On September 13, 1995, GSCC filed an amendment to the proposed rule change.[2] Notice of the proposal as amended was published in the **Federal Register** on November 2, 1995.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The purpose of the proposed rule change is to modify GSCC's rules to authorize the release of clearing data relating to GSCC's participants to the National Securities Clearing Corporation's ("NSCC") Collateral Management Service ("CMS")[4] and to other parties. GSCC Rule 1 ("Definitions") is amended to include the term "CFTC-Recognized Clearing Organization" and to define it as "a clearing organization that is affiliated with, or designed by, a contracts market or markets trading specific futures products, and is under the oversight of the Commodity Futures Trading Commission." The term "Collateral Management Service" also is added to Rule 1 and defined as "the collateral management information-sharing service operated by the National Securities Clearing Corporation."

Section 2 of Rule 29 ("Release of Clearing Data") is amended to permit GSCC to release clearing data to CFTC-Recognized Clearing Organizations and to NSCC solely in connection with NSCC providing CMS.[5] Section 4 of Rule 29 is amended to clarify that the term "Clearing Data" includes, in addition to transaction data, other data that is received by GSCC in the clearance and/or settlement process.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[6] As discussed below, the Commission believes the proposed rule change is consistent with GSCC's obligation under Section 17A(b)(3)(F) because the proposal sets forth GSCC's responsibilities and obligations with regard to releasing participants' clearing data and facilitates GSCC's participation in NSCC's CMS by enabling GSCC to provide information regarding GSCC's participants to NSCC for its CMS. GSCC's and its participants' participation in NSCC's CMS should help GSCC and other clearing agencies to better monitor clearing fund, margin, and other similar required deposits that protect a clearing agency against loss should a member default on its obligations to the clearing agency.[7]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–95–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–31179 Filed 12–21–95; 8:45 am]
BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Peter R. Geraghty, Division of Market Regulation, Commission (September 13, 1995).

[3] Securities Exchange Act Release No. 36430 (October 27, 1995), 60 FR 55748.

[4] Generally, NSCC's CMS will provide participating participants and clearing agencies with access to information regarding participating participants' clearing fund, margin, and other similar requirements and deposits at participating clearing agencies. For a complete description of CMS, refer to Securities Exchange Act Release No. 36091 (August 10, 1995), 60 FR 42931 [File No. SR–NSCC–95–06] (order approving NSCC's CMS).

[5] Section 2(a) of Rule 29 already permits GSCC to release clearing data to other self-regulatory organizations such as NSCC that have regulatory authority over a GSCC member. The purpose of new Section 2(b) is to make explicit GSCC's authority to release clearing data to NSCC for its CMS.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] Although GSCC currently does not have any cross-guarantee agreements or arrangements with other clearing agencies, NSCC's CMS will be especially beneficial to those participating clearing entities that have executed cross-guaranty agreements or have other cross-guarantee arrangements. The Commission supports the use of cross-guaranty agreements and other similar arrangements among clearing agencies as a method of reducing clearing agencies' risk of loss due to a common participant's default and encourages GSCC to explore such agreements or arrangements.

Currently, The Depository Trust Company ("DTC") and NSCC are the only clearing agencies registered with the Commission that have executed a cross-guaranty agreement. The agreement provides that in the event of a default of a common member, any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and deposits to the clearing agencies' clearing funds. For a complete description of DTC's and NSCC's agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR–DTC–93–08 and SR–NSCC–93–07].

The Midwest Securities Trust Company ("MSTC") and Midwest Clearing Corporation ("MCC") and the Philadelphia Depository Trust Company ("Philadep") and the Stock Clearing Corporation of Philadelphia ("SCCP") each have cross-guarantee arrangements with their related affiliate. Pursuant to Section 3, Rule 2, Article VI of MSTC's Rules, a defaulting participant's obligations at MSTC or MCC will be discharged by application of that participant's deposits at either clearing agency if that participant is a common member to both clearing agencies. MCC's Rules contain a similar provision. Similarly, pursuant to Section 4, Rule 4 of SCCP's Rules, SCCP will make available any portion of a defaulting participant's contribution to its participants fund to offset a loss suffered by Philadep by reason of that participant's default. Philadep's Rules contain an identical provision.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36596; File No. SR–MSRB–95–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

December 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on November 28, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR–MSRB–95–18) as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to rule G–15(a) on customer confirmations (hereafter referred to as the "proposed rule change"). On July 11, 1995, the Commission approved an amendment to rule G–15(a) which completely revised the test and incorporated many interpretations that had been issued over the years. The proposed rule change makes several clarifying and technical changes to the text. In order to simplify compliance for dealers, the Board requests that the provision in rule G–15(a)(i)(A)(6)(h) regarding disclosure of the "premium paid over accreted value" be withdrawn, effective upon filing. The Board requests that the proposed rule change be made operative 90 days after filing, pursuant to Section 19(b)(3)(A) of the Act. The text of proposed rule change is as follows. (Additions are italicized; deletions are bracketed.) Rule G–15(a). Customer Confirmations.

(i)(A)(1)–(5) No change.

(6) Final Monies. The following information relating to the calculation and display of final monies shall be shown:

(a)–(g) No change.

(h) for callable zero coupon securities, [any premium paid over the accreted value of the securities] *if applicable, the percentage of the purchase price at risk due to the lowest possible call, which shall be calculated based upon the ratio between (i) the difference between the price paid by the customer and the lowest possible call price, and (ii) the price paid by the customer.*

(7)–(8) No change.

(B) No change.

(C) Securities descriptive information. The confirmation shall include descriptive information about the securities which includes, at a minimum:

(1) Credit backing. The following information, if applicable, regarding the credit backing of the security:

(a) Revenue securities. For revenue securities, a notation of that fact, [regardless of whether such designation appears in the formal title of the security,] and a notation of the primary source of revenue (*e.g.*, project name). *This subparagraph will be satisfied if these designations appear on the confirmation in the formal title of the security or elsewhere in the securities description.*

(b) No change.

(2)–(3) No change.

(4) Tax information. The following information that may be related to the tax treatment of the security:

(a)–(b) No change.

(c) Original issue discount securities. If the securities pay periodic interest and are sold

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by the underwriter as original issue discount securities a designation that they are "original issue discount" securities and a statement of the initial public offering price of the securities, *expressed as a dollar price.*

(D) Disclosure statements:

(1) The confirmation for zero coupon securities shall include a statement to the effect that "No periodic payments," *and, if applicable,* "callable below maturity value without notice by mail to holder unless registered."

(2) No change.

(E) No change.

(ii) Separate confirmation for each transaction. Each broker, dealer or municipal securities dealer for each transaction in municipal securities shall give or send to the customer a separate written confirmation in accordance with the requirements of (i) above. *Multiple confirmations may be printed on one page, provided that each transaction is clearly segregated and the information provided for each transaction complies with the requirements of (i) above; provided, however, that if multiple confirmations are printed in a continuous manner within a single document, it is permissible for the name and address of the broker, dealer, or municipal securities dealer and the customer to appear once at the beginning of the document, rather than being included in the confirmation information for each transaction.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 11, 1995, the Commission approved the Board's recent amendment to rule G–15(a), on customer confirmations, which became effective on November 15, 1995.[1] This amendment constituted a major revision of the rule, which not only revised and reorganized the rule, but incorporated many interpretations that had been issued over the years.

The Board has identified a need for several technical amendments to clarify certain provisions of the rule. First, the proposed rule change would clarify that the requirement in rule G–15(a)(i)(D)(1) to provide a disclosure statement relating to call features of zero coupon bonds is necessary on confirmations only if the bonds are callable. Therefore, the proposed rule change adds the language "if applicable" before the disclosure statement for call provisions. Second, rule G–15(a)(ii) requires dealers to provide a separate written confirmation for each transaction. The proposed rule change would clarify that separate confirmations may be printed as part of one document, as long as the information unique to each trade (*e.g.*, securities description, yield, call information) is segregated and complies with the requirements of the rule.

Third, rule G–15(a)(i)(C)(1)(a) states that revenue bonds must be so identified, regardless of whether such designation appears in the title of the bond. In some cases, this provision leads to the revenue designation being stated twice on the confirmation, one in the title, and again in a separate information block. The proposed rule change makes clear that, if the bond is identified as a revenue bond on the title, there is no need to make an additional disclosure that the bond is a revenue bond. Fourth, dealers are required to disclose the initial public offering price of original issue discount securities in rule G–15(a)(i)(C)(4)(c). The proposed rule change would make clear that the initial public offering price would be expressed as a dollar price, rather than a yield.

Finally, rule G–15(a)(i)(A)(6)(h) states that the confirmation shall disclose any premium paid over the "accreted value" for callable zero coupon bonds. The rationale behind this provision is that customers purchasing callable zero coupon bonds in the secondary market can include a premium over the price at which all or some of the bonds may be called. This portion of the customer's investment is at risk to call.[2] The Board believes that the most important information for the customer in this situation is the amount of the purchase price at risk to a call at the lowest price at which all or some of the customer's bonds can be called. While the current language of rule G–15(a)(i)(A)(6)(h) stated this information in terms of "premium over accreted value," it is not entirely accurate because a cusomter's bonds are not always callable at accreted value. For example, a call may be possible at a price that is a percentage of accreted value.

Accordingly, the text of the proposed rule change states simply that the amount to be disclosed is the percentage of the purchase price at risk due to the lowest possible call price that might be experienced by the customer. It further clarifies that the percentage must be calculated as the ratio between (i) the difference between the price paid by the customer and the lowest possible call price, and (ii) the price paid by the customer. It also makes clear that such an at-risk percentage must be disclosed only if it is applicable to the transaction. The Board believes that the proposed rule change more clearly reflects the rationale behind the provision than the current language.

In order to simplify compliance for dealers, the Board requests that the language in rule G–15(a)(i)(A)(6)(h) regarding disclosure of the premium paid over accreted value be withdrawn, effective upon filing. However, in order to allow dealers an opportunity to revise their confirmation procedures to accommodate the proposed rule change, the Board requests that the proposed rule change be made operative 90 days after filing with the Commission under Section 19(b)(3)(A) of the Act.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any

[1] *See* Securities Exchange Act Release No. 35953 (July 11, 1995), 60 FR 36843.

[2] In contrast, the Board believes that a customer purchasing a normal coupon bond at a price above par in the secondary market usually understands that, if any of the bonds are called at par, the premium paid in the market may be lost.

[3] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general, to protect investors in the public interest."

significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for ninety (90) days from the date of its filing on November 28, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition, and because it makes technical and clarifying changes to an existing MSRB rule. At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–18 and should be submitted by January 12, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31178 Filed 12–21–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, as amended (Pub. L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on December 8, 1995, the information collection listed below will require extension of the current OMB approval.

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to the SSA Reports Clearance Officer at the address listed after the information collections)

Application for U.S. Benefits Under the Canada-U.S. International Agreement—0960–0371. The information collected on form SSA–1294 is used to determine entitlement to benefits. The respondents are individuals who live in Canada and file for U.S. Social Security Benefits.

Number of Respondents: 1000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding this information collection should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: December 15, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–31162 Filed 12–21–95; 8:45 am]

BILLING CODE 4190–29–P

Notice of Meeting of the Representative Payment Advisory Committee

Date and Time: February 15, 1996, 9 a.m.–9 p.m.; February 16, 1996, 9 a.m.–5 p.m.

Place: Environmental Protection Agency Classrooms, 75 Hawthorne Street, First Floor, San Francisco, CA 94105.

Type of Meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the fourth meeting of the Representative Payment Advisory Committee. The Committee will discuss issues related to payee selection, payee recruitment and retention, standards for payee performance and payee oversight. The Committee will focus its discussion on use/misuse of benefits and accountability. The Committee is also interested in the value of automated accounting systems to track expenditures on behalf of beneficiaries as well as funds conserved for future use.

Current guidelines on the use of benefits clearly distinguish acceptable uses of benefits from misuse. However, SSA is interested in learning if additional guidance on choosing the most appropriate among several acceptable uses of benefits is necessary or appropriate. Increasingly, SSA is being asked to resolve disputes concerning use of benefits, especially in balancing current maintenance costs and needs against possible future needs.

Payee accountability also is an area in which SSA would be helped by external views. For some years, SSA has required an annual accounting by all payees except certain State custodial institutions which are subject to an onsite review process. The form used for this accounting elicits information from the payee about how benefits were used during the 12-month report period (including any savings or investments); whether any changes occurred in the beneficiary's living arrangement or custody which could affect entitlement or benefit amount; and other information related to the payee's continued suitability. The process is expensive, currently costing about $60 million yearly and has been criticized as cumbersome for the agency and payees alike.

The representative payment program is so critical to the well being of SSA's most vulnerable beneficiaries that its continuous improvement is of compelling national interest. One in six

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Americans receives benefits from SSA, and about one in eight of those has a representative payee. Among supplemental security income beneficiaries, one in three has payee. The appropriate use and management of benefits is important in helping beneficiaries, especially younger disabled persons, to gain or regain their independence and productivity, and it is essential to ensure that all beneficiaries live with the security and dignity that the benefits are meant to provide.

Agenda: The Committee will meet commencing at 9 a.m. to 9 p.m. on Thursday, February 15, 1996 with a break for dinner, and from 9 a.m. to 5 p.m. on Friday, February 16, 1996. Agenda items for both days will include, but not be limited to, a discussion concerning payees' use of benefits, standards for payee performance and payee oversight. Oral statements on these issues or any issue concerning representative payment policy are sought from the public for presentation on February 16. Presentations will be limited to 5 minutes per public speaker.

Persons interested in presenting oral statements may call the Advisory Committee staff at (410) 966–4688 to schedule a presentation time or they may submit a written request, along with a copy of their statement, to the Representative Payment Advisory Committee, 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763. Requests should contain the name, address, telephone number and any business or professional affiliation of the person desiring to make an oral statement. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Representative Payment Advisory Committee will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not make a written or oral request for presentation in advance, but desire to make an oral statement, may sign up at the meeting site before noon on February 16. These persons will be allowed to present their oral statements as time permits. The Committee also welcomes written comments. They may be sent to the Representative Payment Advisory Committee at 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763.

Records are being kept of all Committee proceedings, and are available for public inspection at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9 a.m. and 4 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX: (410) 966–0980; Internet: adcom@ssa.gov.

Dated: December 14, 1995.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 95–31161 Filed 12–21–95; 8:45 am]

BILLING CODE 4190–29–P

Notice of Meeting of the Representative Payment Advisory Committee

Date and Time: January 22, 1996, 9:00 a.m.–9:00 p.m.; January 23, 1996, 9:00 a.m.–5:00 p.m.

Place: Urban Life Center Auditorium, Georgia State University, Decatur and Piedmont Streets, Atlanta, GA 30303–3083.

Type of Meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the third meeting of the Representative Payment Advisory Committee. The Committee will discuss issues related to payee recruitment and retention, standards for payee performance, use/misuse of benefits, payee accountability and payee oversight. The Committee will focus its discussion on the investigation and selection of payees.

SSA investigates all payee applicants. The application form requires the individual to disclose certain information, including his/her relationship to the beneficiary and his/her own source(s) of income. After the applicant has provided positive identification, SSA uses its own records to verify the applicant's social security number and work history. SSA screens the applicant against a listing of persons who have been convicted of social security or supplemental security income fraud. Such persons may not be appointed as payees under any circumstances. There are other factors which may result in the nonselection of a payee applicant also.

SSA has built a data base of representative payee information which is readily accessible to all social security offices. The data base includes information concerning any prior performance as a representative payee.

SSA selects the best payee from among the applicants who are willing to serve. If none is immediately available, SSA continues developing leads until a satisfactory applicant is located. Unless direct payment is legally prohibited, benefits generally continue to be paid to a beneficiary while SSA seeks a qualified payee.

Advance notification of the payee selection is provided to the beneficiary (or his or her legal representative or guardian) before payment is certified and the beneficiary is given the opportunity to appeal the payee selection.

Agenda: The Committee will meet commencing at 9:00 a.m. to 9:00 p.m. on Monday, January 22, 1996, with a break for dinner, and from 9:00 a.m. to 5:00 p.m. on Tuesday, January 23, 1996. Agenda items for both days will include, but not be limited to, a discussion concerning the investigation and selection of the payee applicant. Oral statements on these issues or any issue concerning representative payment policy are sought from the public for presentation on January 23. Presentations will be limited to 5 minutes per public speaker.

Persons interested in presenting an oral statement may call the Advisory Committee staff at (410) 966–4688 to schedule a presentation time or they may submit a written request, along with a copy of their statement, to the Representative Payment Advisory Committee, 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763. Requests should contain the name, address, telephone number and any business or professional affiliation of the person desiring to make an oral statement. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Representative Payment Advisory Committee will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not make a written or oral request for presentation in advance, but desire to make an oral statement, may sign up at the meeting site before noon on January 23. These persons will be allowed to present their oral statements as time permits. The Committee also encourages written comments. They may be sent to the Representative Payment Advisory Committee at 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763.

Records are being kept of all Committee proceedings, and are available for public inspection at the office of the Social Security Administration, Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9:00 a.m. and 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX: (410) 966–0980; Internet: adcom@ssa.gov.

Dated: December 14, 1995.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 95–31160 Filed 12–21–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard Porsche

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Porsche Cars North America, Inc., on behalf of Dr. Ing. h.c.F. Porsche AG, (Porsche) for an exemption of a high-theft car line, (nameplate and model year are confidential), from the parts-marking requirements of the Federal motor vehicle theft prevention standard. Porsche requested and was granted on July 14, 1995, confidential treatment for this vehicle line's nameplate. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh St, SW., Washington, D.C. 20590. Ms Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTAL INFORMATION: In a petition dated September 26, 1995, Porsche Cars North America, Inc., requested on behalf of Dr. Ing. h.c.F. Porsche AG, an exemption from the parts-marking requirements of the Theft Prevention Standard for a motor vehicle line. The submittal requested an exemption from the parts-marking requirements pursuant to 49 CFR Part 543, Exemption From Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

Porsche's September 26 letter and supplemental letter of October 24, together constitute a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, Porsche provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter-interrupt function, a central locking system, and an optional alarm function. The antitheft device is activated by removing the ignition key and locking the doors with it. The optional alarm is operated by a remote control and monitors the doors, hood, rear decklid, glove compartment or radio contact switches and will sound horn and lights if breached.

In order to ensure the reliability and durability of the device, Porsche stated that it conducted tests, based on its own specified standards. Porsche provided a listing of the tests conducted. Porsche stated that the antitheft system also utilizes a built-in self test which constantly checks for system failures. If a failure is detected, the operator is signaled.

Porsche compared the device proposed for its new line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of 49 CFR Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices.

Porsche has concluded that the antitheft device proposed for its new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. Porsche based its belief on reduced theft rates of the General Motors Corporation (GM) Chevrolet Camaro, Chevrolet Corvette, and Pontiac Firebird. Porsche stated that the GM Chevrolet Camaro has been equipped with the antitheft device since model year (MY) 1990. The theft rate of the Camaro continues to decrease, from (MY) 1988 with a theft rated of 25.7394 (55 FR 18794) to 2.7243 in MY 1993 (60 FR 47429). This represents a decrease of 89 percent. The Chevrolet Corvette and Pontiac Firebird equipped with the same antitheft device, have also shown a decrease in theft rates. Since the vehicle line that is the subject of this petition will be equipped with a system similar to that in the Camaro, Porsche expects that the antitheft device on the vehicle line for which it now seeks an exemption will be as effective as the Camaro's system in reducing and deterring theft.

Based on the evidence submitted by Porsche, the agency believes that the antitheft device for the new Porsche line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): promoting activation, preventing defeat of circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a) (4) and (5), the agency finds that Porsche has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Porsche provided about its device.

For the foregoing reasons, the agency hereby grants in full Porsche's petition for exemption for the (nameplate is confidential) line from the parts-marking requirements of 49 CFR Part 541.

If Porsche decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, mark the line according to the requirements of 49 CFR Parts 541.5 and 541.6.

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the

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administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult with the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31177 Filed 12–21–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Firearms Transaction.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Mosley, Chief, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Report of Firearms Transaction.

OMB Number: 1512–0178.

Form Number: ATF F 4483 (5300.5).

Abstract: This form is used to evaluate firearms transactions by licensee when the Regional Director (Regulatory) determines the need to do so. It is prepared from existing records and submitted to the official.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: December 15, 1995.

John W. Magaw,

Director.

[FR Doc. 95–31167 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Licensed Firearms Manufactures Records of Production, Disposition, and Supporting Data.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Mosley, Chief, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

OMB Number: 1512–0369.

Recordkeeping Requirement ID Number: ATF REC 5300/1.

Abstract: Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,380.

Estimated Time Per Respondent: 3 minutes per line item.

Estimated Total Annual Burden Hours: 72,023.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dates: December 15, 1995.

John W. Magaw,

Director.

[FR Doc. 95–31168 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Claim—Alcohol, Tobacco and Firearm Taxes.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Wanda Williams Burggraff, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Claim—Alcohol, Tobacco and Firearms Taxes.

OMB Number: 1512–0141.

Form Number: ATF F 2635 (5620.8).

Abstract: This form is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. This form is submitted along with supporting documents to indicate the reason a credit of Federal Tax should be made.

Current Actions: There are no new changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 10,000

Estimated Time Per Respondent: one hour

Estimated Total Annual Burden Hours: 10,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Date: December 15, 1995.

John W. Magaw

Director.

[FR Doc. 95–31165 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants Excise Taxes.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tami Light, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants, Excise Taxes.

OMB Number: 1512–0203.

Recordkeeping Requirement ID Number: ATF REC 5110/06.

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Time Per Respondent: 26 hours.

Estimated Total Annual Burden Hours: 3458.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

DATED: December 15, 1995.

John W. Magaw,

Director.

[FR Doc. 95–31164 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders,

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Product Compliance Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1512–0204.

Form Number: ATF F 5110.38.

Abstract: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. This form describes the person filing, type of product to be made and restrictions to labeling and manufacturing. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: one hour.

Estimated Total Annual Burden Hours: 4,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Date: December 15, 1995.

John W. Magaw,

Director.

[FR Doc. 95–31166 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records of Aquisition and Disposition—Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

DATES: Written comments should be received on or before February 20, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Debbie Lee, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Records of Acquisition and Disposition—Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

OMB Number: 1512–0386.

Recordkeeping Requirement ID Number: ATF REC 7570/1.

Abstract: The records of items listed on the U.S. Munitions List are used to account for the items on the Registered Imports and this bureau in investigations to insure compliance with the Federal law.

Current Actions: There are no new changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 250.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: December 15, 1995.

John W. Magaw,

Director.

[FR Doc. 95–31163 Filed 12–21–95; 8:45 am]

BILLING CODE 4810–31–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 246
Friday, December 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, December 19, 1995, the Corporation's Board of Directors determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a personnel matter.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: December 20, 1995.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31259 Filed 12–20–95; 3:28 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that a 10:55 a.m. on Tuesday, December 19, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: December 20, 1995.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

FR Doc. 95–31260 Filed 12–20–95; 3:28 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 63573, December 11, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 A.M., December 13, 1995.

CHANGES IN THE MEETING: The following topics were withdrawn from the open portion of the meeting: Approval of AHP District Priorities; appointment of FHLBank Public Interest Directors; appointment of FHLBank Chairs; and repeal of Finance Board Regulation on Charitable Donations by the FHLBanks.

The following topic was withdrawn from the close portion of the meeting: FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances.

The Board determined that agency business required its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–31235 Filed 12–20–95; 1:02 pm]

BILLING CODE 6725–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 18, 1995.

A closed meeting will be held on Wednesday, December 20, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Wednesday, December 20, 1995, at 10:00 a.m., will be:

Institution of injunctive action
Settlement of injunctive action
Settlement of administrative proceedings of an enforcement nature
Opinions

At time, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: December 18, 1995.

Margaret H. McFarland,

Duputy Secretary.

[FR Doc. 95–31236 Filed 12–20–95; 1:04pm]

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federal register

Friday
December 22, 1995

Part II

Postal Service

39 CFR Part 111
Classification Reform; Implementation Standards; Proposed Rule

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POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This represents the third notice concerning Classification Reform published by the Postal Service for public comment. On June 29 and August 30, 1995, the Postal Service published advance notices of proposed rulemaking (60 FR 34056–34069 and 60 FR 45298–45323, respectively). Each provided information about current Postal Service proposals and decisions regarding prospective rate eligibility and mail preparation standards, and opportunities for public comment on those and other important issues related to the Postal Service's pending MC95–1 Classification Reform proposals. This notice reviews the preceding months' activity in this regard, presents extensive discussion of comments received on the second notice, detailed descriptions of proposals that are new or revised and estimates of their affect on the mailing community, overview charts to assist commenters in understanding the implementing standards set forth in the proposed rule, and the full text of the Domestic Mail Manual standards the Postal Service proposes to adopt to implement its Classification Reform proposals.

DATES: Comments on the implementation process or proposed standards must be received on or before January 22, 1996.

ADDRESSES: Mail or deliver written comments to the Manager, Customer Mail Preparation, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6830, Washington DC 20260–2405. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On March 24, 1995, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a number of mail classification reform proposals. The PRC designated the filing as Docket No. MC95–1 and proceedings are currently under way before the PRC in accordance with 39 U.S.C. 3624 and the PRC's rules of practice under 39 CFR 3001. A notice of the filing, with a description of the Postal Service's proposals, was published on April 3, 1995, in the **Federal Register** by the PRC (60 FR 16888–16893).

On June 29, 1995, the Postal Service published for public comment in the **Federal Register** an advance notice of proposed rulemaking (60 FR 34056–34069). That notice included an overview of the Postal Service's proposals in MC95–1, the process that was used in developing them, and the instant process being used to prepare for implementation of classification reform and to begin development of the implementing standards for future use in the Domestic Mail Manual (DMM). The notice also contained detailed information about issues that had been developed for consideration as part of the implementation process, prepared in a format that paralleled the listing of requirements in the Domestic Mail Classification Schedule (DMCS) portion of the MC95–1 filing. Among the purposes for publishing the advance notice was the elicitation of comments on the proposed criteria under consideration for inclusion in DMM implementing standards, many of which had been developed with the advice of the Classification Reform Implementation Advisory Groups (IAGs) convened by the Postal Service as part of the process described in the notice. Readers who are unfamiliar with the content of the Postal Service's MC95–1 filing, or the process that is under way for implementation of MC95–1, should review the June 29 notice.

On August 30, 1995, the Postal Service published for public comment in the **Federal Register** a second advance notice of proposed rulemaking (60 FR 45298–45323). The second notice reported a summary of the comments received from the earlier notice and invited further comment from interested parties on updated proposed implementing standards and on the implementation process generally. Readers were advised that, following review of comments received for that notice, the Postal Service would revise its proposed implementation criteria as appropriate and use them as the basis for the DMM standards it would propose for adoption if the Classification Reform proposals requested by the Postal Service in PRC Docket No. MC95–1 are adopted. Those proposed DMM standards are set forth after the discussion of comments from the second notice.

Pursuant to 39 U.S.C. 3624, the PRC will issue a recommended decision on the Postal Service's Request to the Governors of the Postal Service. This recommendation is expected in January 1996. Pursuant to 39 U.S.C. 3625, the Governors will act on the PRC's recommendations. If the Governors determine to place the PRC's recommendations into effect, the Board of Governors will set an implementation date for the rate and classification changes to take effect. Publication of a notice announcing the Governors' decision and the issuance of final Domestic Mail Classification Schedule and Rate Schedule changes will be made immediately following the Governors' decision. After reviewing the comments received on this proposed rule in light of the PRC's recommendations and of the Governors' decision, a final rule will be published adopting appropriate DMM implementing standards for the rate and classification changes. Publication of this final rule will be either concurrent with publication of the Governors' decision or as soon thereafter as possible.

Part A of this notice summarizes major changes that have been made to or added to the proposed implementation standards since the second advance notice of proposed rulemaking. Part B provides an analysis of comments received on the second notice and the Postal Service responses. Part C provides a presort summary guide with charts for each proposed rate. Part D contains a table showing ZIP Codes ineligible for Automation Carrier Route rates. Part E summarizes proposed changes to the DMM, followed by the proposed revisions to DMM standards.

A. Major Changes and Additions Since August 30 Notice

This section identifies proposed additions and changes to the DMM mailing standards that were not specifically indicated in the summary of preparation standards presented in the August 30 advance notice of proposed rulemaking. To aid readers in identifying changes which might affect them, this information is provided in the following subject matter groups: (1) Changes to the proposed mailing standards described in the August 30 notice; (2) additional changes for the reformed subclasses of mail not included in the August 30 notice; (3) changes generally affecting all classes of mail; (4) changes reflecting planned adjustments in postal operations; (5) changes affecting address matching for all classes of mail; (6) changes affecting all third-class mail; (7) changes affecting nonprofit third-class mail; (8) changes affecting all second-class mail; (9) changes affecting preferred rate second-class mail; and (10) changes affecting all fourth-class mail. Unless otherwise stated, the Postal Service proposes to make these changes effective at the same time as the Classification Reform changes are implemented.

1. Changes to Mailings Standards Contained in August 30 Notice

a. The proposed requirement to use uniform placement of address elements within Retail Presort First-Class, Regular and Enchanted Carrier Route Standard Mail, and nonautomation-compatible Publications Service Periodicals mailings has been withdrawn.

b. The proposed minimum quantity for a package of automation-compatible Publications Service letters to qualify for carrier route rates has been revised from 10 pieces to 6 pieces. This would establish a standard 6-piece package size for all Publications Service Periodicals.

c. New sortation criteria have been added for nonautomation-compatible letters for Publications Service and Regular Periodicals. The new Publications Service sortation proposal would require preparation of packages since this mail cannot be processed on automation. The new sortation criteria for Regular Periodicals nonbarcoded letters also would require package preparation, and allows Regular Periodicals to qualify for presort rates in the same manner as today.

d. Separate sortation criteria have been added for Regular Periodicals barcoded letters and Regular Periodicals barcoded flats. As discussed in the section concerning comments on the Periodicals proposals, Publications Service does not have a separate barcoded rate and carrier route mail may be counted toward the 85% ZIP+4 or delivery point barcoded requirement. However, the Regular subclass has separate 3/5 and Basic Barcoded rates. For Postal Service processing efficiency, Regular Periodicals mailers wishing to qualify for the separate Barcoded letter and flat rates must prepare separate Barcoded rate mailings meeting a separate 85% barcoding requirement that does not include the carrier route portion of the mailing, and that does not include firm packages. These pieces are excluded because they are not processed on automation. These new Regular barcoded letter preparation proposals reflect the new tray sortation levels that will be implemented with Classification Reform. The current 10-piece 5-digit package, 50-piece 3-digit package, and 10-piece AADC package standards are retained to maintain eligibility for the 3/5 Barcoded rates. Since the proposed Regular Barcoded letter rates do not provide for a separate 5-digit Barcoded rate and a separate 3-digit Barcoded rate, but rather a combined 3/5 Barcoded rate, the preparation of all possible 5-digit packages before preparing 3-digit packages will be required.

e. Automation-compatible Publications Service letter-size mailings also have only one rate for noncarrier route sorted mail. Because there is no separate 5-digit Barcoded rate for this mail, preparation of all possible 5-digit trays will be required.

f. The presort requirements for Regular Standard Mail letters have been revised to incorporate a minimum of 150 pieces of mail for a 3-digit destination to qualify for 3/5 presort rates and to prepare 5-digit and 3-digit tray levels. This reflects a consistent application of a 150-piece criterion to qualify for 5-digit and 3-digit rates for letter mail (with the exception of barcoded Regular Periodicals). This proposal would also keep qualification levels for 3/5 rates at levels somewhat equivalent to current preparation standards.

g. Within First-Class and Standard Automation Mail, and automation-compatible Publications Service letters, a proposed requirement for a minimum of 150 pieces of mail to an AADC destination before mailers may prepare an AADC tray has been added. This proposal also reflects the Postal Service's desire to maintain a consistent 150-piece tray preparation criteria for barcoded letter mail.

h. A requirement has been added to the proposal that all letter mail be prepared in trays under the reformed subclasses, including Enhanced Carrier Route Standard Mail, and Regular and Publications Service Periodicals. This requirement is discussed in more detail below in the section on letters.

i. With certain exceptions for local mailings and some pallet levels, all letter and flat trays containing mail in the reformed subclasses would have to be sleeved and strapped. This is discussed in more detail below in the section on letters.

j. The proposed standards have been revised concerning the preparation of pieces that meet the standards for both letter-size and automation-compatible flat-size mail, and that are prepared as packages placed directly on pallets. The revision would limit the amount of Regular Standard Mail that can be palletized in this manner to 10% of the total pieces in the mailing job. This is discussed in more detail below in the section on flats.

k. Because of the differences in presort and rate eligibility criteria, the proposed option to combine letter-size mailings of Regular and Publications Service Periodicals has been removed.

l. The provision for local approval to prepare First-Class Mail in pouches has been removed from the DMM. This provision was primarily to allow pouching of flat-size pieces and parcels. Because DMM provisions have been proposed for traying flat-size pieces and sacking First-Class parcels, the provision for local approval of pouching is no longer needed.

m. The qualification criteria for Destination Delivery Unit discounts for Standard Mail and Publications Service Periodicals have been revised to require that mailers to take carrier route sorted mail to the postal facility where sequencing of the mail takes place. For Automation Standard Mail and for automation-compatible carrier route letter-size Publications Service Periodicals, this could be the facility where the carrier sequence barcode sorter (CSBCS) that sequences this mail is located, rather than the facility were the carrier is located.

n. The proposal to require that addresses in Retail Presort and Automation First-Class mailings be updated for moves within 6 months of the mailing has been clarified to indicate that it would become effective as a rate eligibility requirement beginning 6 months after Classification Reform implementation, or January 1, 1997, whichever is sooner.

2. Additional Proposed Changes for Reformed Subclasses Not Specified in August 30 Notice

a. New sack sortation standards for First-Class parcels have been added. Because, the preparation of parcels in flats trays is generally inappropriate, sack preparation criteria have been added for this processing category of First-Class Mail.

b. Clarification has been added that Publications Service mailings may include in-county pieces even though such pieces do not count toward the eligibility requirements for the Publications Service rates.

c. For all mailings under the reformed subclasses, provisions have been added requiring the preparation of a less-than-full 3-digit tray for each 3-digit ZIP Code of the SCF that serves the entry post office. This would allow small quantities of local mail to avoid being transported to and processed at an ADC or AADC, resulting in better service and expanding the opportunity for Standard Mail and Periodicals to obtain destination SCF rates.

d. The rules in this notice reflect the Postal Service's intent to allow mailers

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to include only pieces with postage affixed at an Automation First-Class or Standard rate in mailings presented under the value added refund (VAR) procedures in DMM P014.4. That the relationship between mailers participating in the VAR process, such as presort bureaus, and their customers is that letter-size pieces coming into their operations are intended to be incorporated into the automation mailstream. Requiring postage to be affixed at an automation rate will simplify the documentation and verification process for mailers, their customers, and the Postal Service by reducing the number of different rates for which value added computations must be made.

3. Proposed Changes That Generally Affect All Classes

a. Marking requirements that reflect the proposed new class and subclass names have been added throughout the DMM. In order to make it easier to apply the rate/subclass markings that are planned under Classification Reform, an option has also been added to allow placement of these markings on the optional endorsement line, in front of the package label information. Furthermore, the current required walk-sequence markings for Regular and Publications Service Periodicals, and for Automation, Enhanced Carrier Route, and Regular Standard Mail have been changed from "WS" to "WSH" or "WSS" to facilitate obtaining separate cost information for pieces mailed at the High Density and Saturation rates, respectively.

b. Appropriate labeling list information has been added for trays, sacks, and pallets. The ADC labeling list, DMM L101, proposed in this notice to apply more generally and not to First-Class Mail only, has been redesignated accordingly as DMM L004.

c. Provisions have been added to the DMM that require mailings of different subclasses to be prepared as separate mailings, to meet separate minimum quantity requirements, and to bear appropriate rate/subclass markings and appropriate postage.

d. Specific standards have been included in proposed DMM M020 and M033 about how to place mail in trays, when to package, and what packaging material is permitted.

e. Pallet preparation rules are also included in this proposal. These pallet rules reflect the standards contained in a separate, recently published final rule on pallet preparation that adopts changes pertaining to the physical characteristics of pallet loads, such as minimum/maximum height and weight limits, and provisions for triple-stacking. That final rule is expected to appear in the **Federal Register** on December 20, 1995. It adopts changes proposed on July 31, 1995 (60 FR 39080–39088). Although those changes are not affected by the Postal Service's Classification Reform proposal, they are included in this proposed rule for providing the entire set of rules on pallets as they would look like after Classification Reform. The pallet rules in this proposal also contain proposed DMM standards on levels of pallet sortation and requirements to prepare pallets of Standard Mail and Periodicals sorted to the finest levels, which are affected by Classification Reform. These proposals are open to further comment.

4. Proposed Changes That Reflect Adjustments in Postal Operations

The Postal Service plans to make changes in its processing networks to reflect changes that have occurred over time, and to implement improvements to the way it processes and transports mail. One change is the elimination of the current state distribution center (SDC) network for non-First-Class letters, flats, and irregular parcels. The Postal Service plans to eliminate this network and merge the mail currently processed (SDC, state, and mixed states sorted mail) into the area distribution center (ADC) network currently used for First-Class Mail. This change should enhance service for SDC and state mail, provide a finer breakdown of this mail for more precise sortation and transportation (the ADC network has more processing centers than the SDC network), and reduce the redundancies of two overlapping processing networks. With this change, all letters, flats, and irregular parcels will be processed on the same network. As a result, the Postal Service expects to improve service and reduce the handlings for processing this mail.

The Postal Service also plans to eliminate the current option for mailers to prepare mail sorted to specific multi-ZIP Coded post offices (listed in DMM L001). Due to changes in Postal Service operations, this level of sortation no longer provides additional value to the Postal Service because most of this mail is now sorted at a mail processing plant that serves such post offices. The Postal Service has itself stopped preparing most such sortations. Moreover, the implementation of letter and flat automation has reduced the need for these separations because, for this mail, it is more efficient to process larger quantities of mail made up to fewer sortation levels.

The Postal Service plans to implement the transition from the SDC network to the ADC network and to eliminate optional city preparation when it implements the rate and classification changes that result from Classification Reform. Making all these changes at the same time will have less impact on postal operations and on mailers than if they were made in stages. The Postal Service proposes to apply these changes systemwide to all affected subclasses of mail, both reformed and not, in order to obtain the maximum benefit. Preferred Rate Periodicals, however, will retain the option of being prepared in optional city packages and sacks, because eliminating them could affect qualification for the Level H rates.

A less-than-systemwide implementation of the ADC network would compel the Postal Service to maintain SDC, states, and mixed states processing and optional city preparation for only a portion of the letter, flat, and irregular parcel mailstreams. This dual system would complicate processing and would impose unwarranted costs for separate facilities, equipment, and personnel for a greatly reduced volume of SDC network mail.

Therefore, the Postal Service proposes to eliminate the optional city package and sack-sortation level and to eliminate the SDC, state, and mixed states package and sack sortation levels for all current second- and third-class letters and flats and all current third- and fourth-class irregular parcels, except Preferred Rate Periodicals, which will retain the option of being prepared in optional city packages and sacks. The SDC, state, and mixed states package and sack sortation levels will be replaced by ADC and mixed ADC package and sack sortation.

Customers should note that because alignment of the Postal Service's processing and distribution networks is an ongoing process, the facilities listed as ADC/AADC destinations at the time that Classification Reform is implemented might differ from those shown in the DMM labeling lists contained in this proposal. Some ZIP ranges might change, and some facilities currently identified as ADC or AADC destinations might be realigned. The same range of ZIP Codes also might be assigned to different ADC facilities, depending on the class of mail.

5. Proposed Changes Affecting Address Matching for All Mail

The Postal Service has also been developing improvements in the product cycle and the update schedule for its Address Information System (AIS) products. In conjunction with the Classification Reform case, the Postal Service proposed adopting a bimonthly update frequency for its AIS products. It also proposed requiring that carrier route information used in qualifying for all carrier route rates be obtained through a match to a current Carrier Route Information System (CRIS) scheme or other AIS product that contains carrier route coding information no more than 90 days before the date of the mailing. This change is necessary due to the proposed increase in the issuance cycle of AIS products and the need to standardize the time frames applicable to the use of those products. A more detailed discussion of this change is set forth below in the section on the addressing proposals in the August 30 notice. The Postal Service proposes to apply these AIS changes to carrier route mailings of all classes and subclasses. Given the frequency of route adjustments that will occur over the next few years, maintaining the old matching schedule for some carrier route mail while changing it for other mail would be confusing, costly and irrational because of overlapping required updates.

Mailers at ZIP+4 and Barcoded rates will also be required to use a current database as defined under new release date schedules when matching addresses to the ZIP+4 database. Mailings prepared under subclasses not included under the current proposals for Classification Reform would need to have their addresses matched to the ZIP+4 database using CASS- or MASS-certified address matching software once a year, whereas mailings prepared under the reformed subclasses would need to have this match performed at least once every 6 months. The frequency at which address matching software must obtain CASS/MASS certification also will not change.

6. Changes Affecting All Third-Class Mail

a. Due to the proposed adoption of the name Standard Mail as part of Classification Reform for all mail currently in third- and fourth-class mail, the Postal Service proposes to change the class abbreviations from 3C to STD for sack, tray, and pallet labels for current third-class mail (which will be known as Standard Mail (A)).

b. To make it easier to apply the rate/subclass markings that are proposed under Classification Reform, this proposal would allow Standard mailers the option of placing these markings on the optional endorsement line, in front of the package label information.

7. Proposed Changes Affecting Nonprofit Third-Class Mail

As a convenience to Nonprofit Standard mailers, the Postal Service proposes to allow an optional preparation of Nonprofit Standard Mail under the rate eligibility, presort rules, PAVE-certified presort software or standardized documentation requirements, and address quality and accuracy standards for the reformed subclasses. The current third-class nonprofit rates would apply to such mailings. For example, mailers could choose to prepare a letter-size Nonprofit 3/5 and Basic mailing under the preparation rules for the Regular Standard Mail subclass. This would mean that the addresses would have to be matched to the correct 5-digit ZIP Code no more than 1 year before the date of mailing; PAVE-certified software would have to be used to presort the mailing or standardized documentation would have to be submitted with the mailing; the pieces would have to be in groups of 150 pieces to a 3-digit area trayed to 5-digit and 3-digit destinations, with the trays sleeved and strapped. The current nonprofit third-class 3/5 rates would apply to groups of 150 pieces for a 3-digit area properly presorted under the Regular Standard Mail standards. Preparation of Nonprofit Standard Mail under the rules for Regular, Automation, or Enhanced Carrier Route Standard Mail would also enable it to be combined (comailed) with mailings of those subclasses.

8. Proposed Changes Affecting All Current Second-Class Mail

a. Due to the change in the name of second-class mail that is proposed with implementation of Classification Reform, the Postal Service proposes to change the class abbreviations from 2C or NEWS to PERIOD or NEWS, as applicable, for sack, tray, and pallet labels for all Periodicals, including Preferred Rate Periodicals. In addition, the mail processing category of the mail will be required to follow the class abbreviation on the second line of the sack or tray label, making those standards for Periodicals consistent with other classes of mail, and assist Postal Service mail processing personnel in directing containers of Periodicals to the proper operation.

b. The Periodicals imprints required as part of the identification statement would be changed from "Second-Class Postage Paid at * * *" and "Application to Mail at Second-Class Postage Rates is Pending at * * *" to "Periodicals Postage Paid at * * *" and "Application to Mail at Periodicals Postage Rates is Pending at * * *."

9. Proposed Changes Affecting Preferred Rate Second-Class Mail

As a convenience to Preferred Rate Periodicals mailers, the Postal Service proposes to allow the optional preparation of Preferred Rate Periodicals under the presort and eligibility rules for Regular Periodicals (including addressing and PAVE-certified or standardized documentation standards). The current second-class preferred rates would apply to such mailings. For example, if a mailer chose to prepare a letter-size Nonprofit Level G and H mailing under the preparation rules for the Regular Periodicals 3/5 and Basic rates, the pieces would have to be trayed, sleeved, and strapped, and optional city and optional SCF sortations could not be performed. The Level H rates would apply only to 5-digit and unique 3-digit packages properly sorted to 5-digit and 3-digit trays.

10. Proposed Changes Affecting All Current Fourth-Class Mail

Due to the change in the name of fourth-class mail that is proposed with implementation of Classification Reform, the Postal Service proposes to change the class abbreviations from 4C to STD 4C for sack labels for fourth-class mail (which will be known as Standard Mail (B)), and to change the rate markings "Special Fourth-Class" and "Presorted Special Fourth-Class" to "Special Standard Mail" and "Presorted Special Standard Mail" to agree with the revised names for these types of mail.

B. Summary of Comments From Second Notice

The Postal Service received 49 pieces of correspondence offering a total of 207 comments on the August 30 notice. Respondents included major mailer associations, individual publishers, printers, presort bureaus, mailers, and private citizens. As with the first notice, the comments do not lend themselves to easy categorization or direct association with specific provisions in the second notice. Rather, commenters tended to speak to general areas of concern, such as automation, or to common aspects of several proposed criteria, such as tray volumes for several different presort levels. Although the proposals were replicated in the second notice in the same format as in the first, comments tended to aggregate these into a single response.

The largest single area to which comments were directed in general was

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the preparation of automation mail (First-Class Mail and Standard Mail); approximately 70 comments discussed issues in that area. Addressing issues were the focus of 28 comments, although other comments mentioned addressing issues to a degree. Publications Service was the subject of 13 comments. Nonautomation First-Class (Retail subclass) and Standard Mail (Regular and Enhanced Carrier Route subclasses) received a total of 2 and 27 comments, respectively. Another 26 comments discussed general issues, including some (like the wisdom of classification reform) that are beyond the scope of this rulemaking. The specific points raised in the comments are presented below, organized by subject areas represented by the Implementation Advisory Groups (IAGs): letters, flats, addressing, and publications. Miscellaneous issues are reported thereafter. Readers are invited to comment on the proposed DMM provisions and to identify additional proposals or issues that warrant inclusion in Classification Reform implementation plans.

1. General Comments

a. Minimum Quantity Requirements

One commenter asked whether separate 200-piece minimums will be required for each Standard Mail subclass when the mailings are commingled on pallets. Each subclass of Standard Mail (Automation, Enhanced Carrier Route, and Regular) will be required to meet a separate 200-piece minimum quantity requirement, and each subclass of First-Class Mail (Automation and Retail) will have to meet a separate 500-piece minimum quantity requirement.

b. Definitions of Mailing and Mailing Job

One commenter requested clarification of what a mailing and a mailing job will be under Classification Reform. This commenter noted that because the Postal Service indicated that it will allow mailings of different subclasses to be claimed on the same mailing statement, that the current axiom that "a mailing statement equals a mailing" cannot be used. This commenter also requested a definition of a mailing job as used in the description of when pieces meeting the standards for both letter-size and barcoded flat-size pieces may be prepared as packages on pallets. He specifically asked whether there will be time limits such as a day, week, or month for a mailing job.

A mailing may include only one subclass and only one mail processing category (e.g., letter, flat) and is reported on a mailing statement. A mailing job, defined by the mailer and agreed to by the local business mail entry unit, contains the total pieces meant to be mailed to a defined set of addresses. A mailing job may contain more than one mailing (e.g. more than one subclass).

c. Presort Accuracy Validation and Evaluation (PAVE)

The Postal Service has proposed to require use of PAVE-certified software or standardized documentation when preparing mailings under any of the reformed subclasses. Nine comments were received regarding this proposal, five of which included requests for clarification of standards.

Two commenters wanted a definition of "standardized documentation" and examples of any required documentation along with more clearly defined requirements. One asked whether PAVE certification will be available before the implementation of Classification Reform. A commenter that uses software developed in-house asked how the requirement for PAVE certification affects in-house software developers and requested further clarification of PAVE. Another commenter expressed concerns about documenting overflow trays and requested clarification of content documentation for allowed overflow trays.

A utility company said that it would like uniform requirements for mailing documentation and a single computerized mailer file, possibly accessible by permit number, that would document Postal Service certification of software and mailing processes. A second utility company believed that CASS, which focuses on address quality, and PAVE are duplicative in nature and suggested that public utility mailers who use CASS-certified software and update customer moves within the prescribed time frame should be exempt from the requirement to use PAVE software.

PAVE and CASS are not duplicative. CASS tests the ability of address matching software to match addresses correctly to the Postal Service ZIP+4 database and to apply proper barcodes. PAVE tests the ability of presort software to sort addresses correctly according to Postal Service sortation requirements and to produce accurate presort and postage documentation and accurate mailing statement facsimiles.

The Postal Service plans to have PAVE testing available for all reformed subclasses prior to implementation of Classification Reform. PAVE certification does not remove the requirement to submit documentation with each mailing where documentation is required. This is because PAVE tests the ability of the software program to sort properly, but does not test the mailer's proper use of it or application of proper mailing parameters to each mailing. PAVE also tests the ability to prepare properly formatted mailing statement facsimiles. The Postal Service also plans to make production of standard documentation a requirement for PAVE certification. Software that is developed in-house may be PAVE-certified. Requests for PAVE certification information and tests should be directed to: PAVE Program, National Customer Support Center, United States Postal Service, 6060 Primacy Pky Ste 101, Memphis TN 38188–0001

Mailers will have the choice of using either PAVE-certified software or standardized documentation, regardless of whether they use presort software. Therefore, mailers not using software to sort their mail will not need to meet the PAVE requirements. However, such mailers must be able to present standardized documentation for those mailings that require documentation. Standardized documentation requirements are still being developed and will be published for comment in a separate proposed rule. The Postal Service expects to publish this proposal in the **Federal Register** by early February 1996. Questions concerning whether overflow trays will need to be documented also will be addressed in that notice.

The request for a single computerized mailer file, possibly accessible by permit number, that would document Postal Service certification of software and mailing processes is more related to a system certification approach to mail acceptance. Although this is an idea that will be considered for the future, it will not be developed and deployed by the time of Classification Reform implementation.

2. Automation Subclasses

a. 100% Barcoding

The Postal Service has proposed that First-Class and Standard Mail Automation subclasses be composed of 100% delivery point barcoded pieces for letters and 100% ZIP+4 barcoded or delivery point barcoded pieces for flats. Fifteen commenters responded to the proposal for 100% barcoding.

Three commenters supported this proposal because it promotes higher quality addresses. Four commenters

indicated that they cannot obtain 100% barcoding of their mailing lists. Six commenters expressed doubts that the goal could be achieved because current matching software is too restricted from making matches to the ZIP+4 file and because data missing from the file prevents a match.

Mailers with good quality addresses can obtain delivery point barcodes on their mailpieces. If they cannot, those pieces can be mailed at the appropriate subclass rates for nonbarcoded mail. Having identified a need for accurate barcodes to ensure proper automated sortation, the Postal Service tests and certifies address matching software to ensure that the software is producing correct barcodes. Because only correct barcodes are acceptable, software is controlled to help ensure that a barcode will not be applied if an incomplete or otherwise poor quality address inhibits reliable coding. The Postal Service is proposing reduced postage rates for mail with correct barcodes. Those rates were not designed to apply to nonbarcoded mail or to mail with incorrect barcodes. Incorrect barcodes cause misdirected mailpieces, in turn causing increased costs and reducing the Postal Service's ability to provide timely, consistent delivery service. To aid mailers with barcoding, the Postal Service already has a variety of tools for improving address quality. If the mailer cannot use CASS- or MASS-certified software to successfully barcode some of its mail (with a delivery point barcode or, for flats, a correct ZIP+4 barcode), the mailer will be required to mail those pieces at the Retail First-Class or Regular Standard rates.

One commenter wanted Address Element Correction extended to small mailers. The current limit is 10,000 address records. However, smaller lists may be acceptable. Interested mailers should call the National Customer Support Center at (800) 238–3150. The National Customer Support Center can also provide information on a variety of other address quality improvement products and services.

Four commenters indicated that improvements in address correction service are needed, one of whom stated that carriers often do not provide address corrections if they can deliver the mailpiece. Although changes to address correction service are beyond the scope of this rulemaking, the Postal Service is mindful of the need for quality address corrections, especially to addresses beyond those corrections generated by a change of address order.

One commenter wanted confirmation that the 100% delivery point barcoding requirement applies to bulk outgoing mailings and not courtesy reply, business reply, and Business Reply Mail Accounting System (BRMAS) mail. The 100% delivery point barcoding requirement for letters applies only to letter-size mailings entered as Automation First-Class Mail or Standard Mail. Under Classification Reform, BRMAS mail will continue to be required to bear a ZIP+4 barcode assigned by the Postal Service. However, as part of Classification Reform, the Postal Service does plan to implement a requirement that, by January 1, 1997, all reply letters and cards included as enclosures to Automation subclass mailings must bear a proper facing identification mark (FIM) and correct barcode. This would apply to courtesy reply mail and current non-BRMAS business reply mail. A further discussion of this requirement is in a later section of these comments.

One commenter requested that 5-digit and unique ZIP+4 codes be permitted to qualify as a delivery point barcode so as not to limit internal sorting opportunities. Another commenter wanted continued acceptance of unique 5-digit and ZIP+4 barcodes at barcoded rates, stating that software can recognize and count these barcodes as delivery point barcodes.

Currently, barcodes must be 11-digit delivery point barcodes in order to qualify for letter-size barcoded rates. Although unique 5-digit and certain ZIP+4 codes may represent the final delivery point for some mailpieces, it would not be possible to determine at the time of acceptance whether a 5-digit or ZIP+4 barcode was a unique barcode or a coding error if they were permitted in mailings. Furthermore, CASS- or MASS-certified software is capable of returning 11-digit delivery point barcodes for unique ZIP Codes and ZIP+4 codes. Accordingly, the Postal Service plans to retain the requirement that only 11-digit delivery point barcodes may qualify for Automation subclass rates for letter-size pieces. Mailers wishing to utilize internal sortation abilities by assigning their own 4-digit add-on codes to unique 5-digit ZIP Codes may do so if they have the ZIP+4 codes added to the Postal Service ZIP+4 database. To have internal ZIP+4 codes added to the ZIP+4 database, the mailer must develop rational internal addresses to be matched to a particular ZIP+4 add-on in a rational manner, and have the address configuration and +4 codes approved by the district address management office. There will be one exception to the 11-digit delivery point barcode rule: courtesy reply mail bearing a FIM and a preapplied unique 5-digit or unique ZIP+4 barcode will be considered to have a proper delivery point barcode and will not be counted as an error at acceptance. Because of the FIM, this mail can be easily identified at acceptance.

Four commenters indicated that splitting their mail lists into two separate mailstreams, one with delivery point barcodes and one without, will increase their mail preparation expenses. One of these commenters was concerned that the separate mailstreams will slow their processes, resulting in some mail having to be remetered. This commenter requested that an extra day on meter dates be given so that mailers can use encoding systems to barcode mail initially rejected from multiline optical character readers (MLOCRs). DMM P030.4.12 currently contains procedures to allow mailers to correct meter dates. This may be done either by remetering the mail with a ".00" meter impression in authorized locations or by using an ink jet printer to apply the correct meter date, city, state, and 3-digit ZIP Code of the office of mailing, preceded by two asterisks, above the address and below the meter impression. Because meter dates are used to measure Postal Service service performance and because mail recipients rely on them to indicate the date of mailing, an option of submitting mail with a stale meter date will not be provided.

One commenter stated that the 100% delivery point barcoding requirement should be deleted to prevent nonqualifying mail from flooding post offices at the single-piece rates. Two commenters indicated that this requirement will result in more residual mail being processed at origin. One commenter stated that the cost-effectiveness of point-of-origin MLOCR processing of nondelivery point barcoded mail is overstated because the Postal Service is still using multiposition letter sorting machines (MPLSMs). One commenter indicated that this requirement should not be implemented until the Postal Service is in a "full-up" environment for equipment deployment. One commenter stated that this requirement might have the effect of third-class mailers removing uncodable names from their advertising lists, resulting in decreased revenue for the mailer and the Postal Service. Two commenters requested that the 100% barcoding requirement be phased in. One commenter indicated that 90% barcoding would be a more realistic requirement and would be more in keeping with the concept of lowest combined cost.

As indicated in the comment response section of the August 30 notice, when

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mailers mix delivery point barcoded mail and nondelivery point barcoded mail within the 5-digit and residual portions of their barcoded rate mailings, as is currently permitted, the nondelivery point barcoded mail is rejected from barcode sorters and must be rerun on MLOCRs or MPLSMs. (Mail presorted to 5-digit packages and trays must currently be 100% delivery point barcoded.) Requiring mailers to prepare a separate mailing for nondelivery point barcoded mail eliminates these extra handlings and allows this mail to be directed properly from the start, resulting in more efficient Postal Service processing. These efficiencies are recognized in the lower Automation subclass rates proposed under Classification Reform. Furthermore, the Postal Service put mailers on notice several years ago that, in the near future, the Postal Service would require a 100% barcoded mailstream. Accordingly, the Postal Service does not believe that phasing in this requirement is appropriate.

If the 100% barcoding requirement results in more nonbarcoded mail presented for OCR processing at the origin post office, the Postal Service believes that it has the operational capacity to process this mail. Furthermore, because the origin post office will not have to OCR-process the current volume of mailer-prepared pieces without delivery point barcodes (that are rejected from that plant's barcode sorters), there should be an offsetting lessening of mail volume presented to a plant's OCRs for processing. The fact that the Postal Service is still using MPLSMs and has not deployed all its planned barcode sorting equipment does not negate the operational advantages for the majority of plants where MLOCRs and barcode sorters are in place. The processing efficiencies that the Postal Service will gain from a 100% barcoded mailstream are reflected in the lower rates proposed for the Automation subclasses. In return for the lower rates proposed for Automation subclass mail, mailers will have to perform the additional work of separating nondelivery point barcoded mail and presenting it as a separate mailing under different subclass requirements. If mailers remove uncodable names from their address lists, it is not certain that net revenue will be lost by either the mailers or the Postal Service. It is probable that many addresses for which delivery point barcodes cannot be obtained would be undeliverable. If sent as Standard Mail, these pieces would not be delivered. If sent as First-Class Mail, these pieces would add costs to the Postal Service to determine the delivery point and forward the mail to that point or return the pieces as undeliverable-as-addressed mail.

One commenter wanted to know whether 98% barcoding would be the actual requirement when tolerances for mailer errors are taken into consideration, and another commenter wanted to know the error tolerance level. In terms of tolerance for mailer error, at least initially, it is planned that Automation subclass letter mail will be subject to the current business mail entry unit acceptance procedures. If pieces in the sample selected during verification of Automation subclass mailings are found not to bear a delivery point barcode, these pieces will be counted as errors. When the acceptable tolerance for all presort errors is surpassed, the mailer will be given the same two choices currently available: (1) Take the mailing back, correct it, and resubmit it to the Postal Service; or (2) pay additional postage at the appropriate rate for the proportion of the mailing found to be in error during the verification process.

One commenter requested that the Postal Service provide delivery performance data to all mailers so that they can measure process changes. This comment is beyond the scope of this proposed rule and will not be addressed here.

b. Courtesy and BRM Barcoded Envelopes

Seven commenters had questions or cited concerns about the proposed requirement that courtesy and business reply letters or cards included in an Automation First-Class or Standard mailing must be automation-compatible and bear a FIM and a correct barcode for the address to which the piece is returned.

One commenter said that this new requirement was unneeded, reasoning that business reply mail does not pose a major problem because the Postal Service provides automation-compatible, camera-ready addresses for mailpieces and also places restrictions on how reply mail can be used. Four commenters questioned the relationship of enclosed pieces to host pieces. One questioned whether requirements for an enclosed First-Class piece are relevant to an outgoing third-class piece because the processing costs are independent. A second commenter asked why a barcoded return piece could disqualify an outgoing piece and also questioned the Postal Service's ability to administer the rule. This commenter and one other said that they were confused about the requirements concerning barcodes that appear through a window. Another felt that the requirement is content-based in nature.

Other concerns were also raised. For example, one commenter was of the opinion that the proposal penalizes the wrong party when a client has a mailing that contains "partner" reply pieces for which printing and return postage is paid by a third party. An owner of a lettershop said that his customers should have a choice whether to barcode reply pieces. A state agency said that it is not possible for government agencies using courtesy reply mail to stock and insert the number of different preprinted envelopes that would be required by this rule. The commenter went on to say that software would have to be developed and, if the proposal were adopted, the lead time needed before implementation would have to be long. Two commenters whose concerns pertained to the timing of the requirement agreed with the Postal Service's proposal for a phased implementation. One commenter urged the Postal Service to remove the requirement that the barcode "match" the address on the reply piece because the printed address plays no role in the delivery of an automation-compatible reply piece. This commenter indicated that flexibility is needed when business growth requires more than one fulfillment location for the same business entity.

The Postal Service is retaining its proposal that reply letters and cards that are included within either letter-size or flat-size mailpieces entered as Automation First-Class and Standard mailings must be automation-compatible and bear a FIM and a correct barcode for the reply address. In addition to the customer convenience of a reply vehicle, increasing the use of barcoded reply vehicles is expected to keep postage rates down by making this mail more efficient to process. Moreover, because Automation mailers have the demonstrated ability to prepare automation-compatible barcoded mailpieces, they should be able to prepare barcoded reply pieces with ease.

The Postal Service recognizes that mailers will need to work with their customers, and possibly modify their contracts with advertisers and others to ensure that this requirement is met. To allow time for this and for utilization of existing reply mail stock, the Postal Service is proposing an implementation date for this requirement of January 1, 1997. At that time, mailers of Automation First-Class and Standard Mail will be required to certify that enclosed reply pieces are properly prepared when the mailing is presented to the post office. For this purpose, the mailer is defined as the party who presents the mail to the post office.

The barcode on reply mail must match the address. A piece with a nonconforming address could be mistakenly forwarded to the printed address rather than delivered to the address represented by the barcode. Accordingly, the mail could be misdelivered or incur additional processing and transportation costs if the barcode and address do not match.

The Postal Service will provide free of charge camera-ready positives of appropriate FIMs and correct barcodes for the production of reply mail pieces. Mailers should contact their local Postal Service account representatives or postal business centers to obtain the positives and additional information on preparation standards. Obtaining the correct barcode for mailpieces is extremely important. The Postal Service assigns ZIP+4 barcodes to BRMAS reply pieces. Publication 353, Designing Reply Mail, contains information on correctly preparing barcoded courtesy reply mail and business reply mail. DMM S922 contains additional information on business reply mail.

c. Barcoded Tray Labels

The Postal Service proposes that Automation First-Class and Standard Mail and Publications Service Periodicals must be prepared with barcoded tray or sack labels. Nine comments were received concerning this proposal.

One of the commenters expressed outright support and another said that if the Postal Service plans to provide preprinted barcoded tray labels, they have no problem with the proposal but would like to have this expressly confirmed. Five commenters wanted the requirement to use barcoded labels phased in or made optional. Two commenters indicated that they would have to buy new equipment to produce the labels.

The Postal Service plans to require the use of barcoded tray and sack labels on barcoded mailings with implementation of Classification Reform. Use of barcoded tray labels speeds the processing of First-Class Mail at the "scan where you band" step of the presort breakdown operation. Barcoded labels will also be used to sort trays of Standard Mail at BMCs. Finally, barcoded tray labels will be an integral part of the planned tray management system. Barcoded tray labels are currently being scanned on existing tray management systems at several plants.

The Postal Service will supply barcoded tray and sack labels. Customers must complete Form 1578–B and submit it to the business mail entry unit to order barcoded labels from the Postal Service. The labels will be delivered in approximately 6 weeks. Alternatively, mailers having a personal computer and modem can obtain free Passport software from the Postal Service to order labels directly. In addition, the Passport system allows mailers to print barcoded labels on demand if they use a Monarch 9425, Monarch 9445, or Intermac 3000 printer. The Passport system also includes free updates to the DMM labeling lists. Passport software or further information about Passport may be obtained from the National Customer Support Center at (800) 238–3150.

3. Letter Mail

a. Automation (Barcoded) Carrier Route Rates

The Postal Service is proposing to limit Carrier Route Automation rates to ZIP Codes where mail will be sequenced either manually or by a carrier sequence barcode sorter (CSBCS). Four commenters opposed the limits on eligibility for Carrier Route Automation rates. Two of these commenters believed that this requirement should be removed because it seemed to represent the inability of the Postal Service to provide necessary equipment on a national basis. One commenter was concerned that the Postal Service is penalizing mailers based on the geography of the mailings lists, something the mailer cannot change.

The limits on the availability of Carrier Route Automation letter rates are necessary for efficient Postal Service processing. For an increasing number of 5-digit ZIP Code areas, the Postal Service sorts mail to delivery point sequence (DPS), the sequence in which carriers deliver the mail, using two passes on delivery barcode sorters (DBCSs). Where this takes place, the carrier does not have to sort this mail manually into delivery or walk sequence, which saves carrier in-office time. At postal facilities where DPS processing is being performed, it is to the Postal Service's advantage to have as much mail as possible DPS processed on the automated equipment. Currently, at 5-digit ZIP Code areas for which DPS processing on DBCSs has been implemented, all mailer-prepared carrier route and walk-sequence presorted letter mail received with barcodes is processed on DBCSs rather than directed to carriers for manual sequencing. Carrier route and walk-sequence sorted letter mail without barcodes is directed to MLOCRs for application of barcodes and subsequent DPS processing. In many cases, this process results in the Postal Service backflowing mail from a delivery unit to the place where the DBCS or MLOCR is located. Thus, there is no additional value provided to the Postal Service by mailer presortation to carrier route or walk-sequence versus a 5-digit presortation for automation-compatible letter mail at destinating DBCS sites.

Carrier route discounts are based in part on steps avoided by the Postal Service during processing. Carrier route presorted mail needs only the final step of sortation into the sequence of carrier delivery. When the Postal Service sequences mail using DBCSs at general mail facilities (GMFs), presortation by the mailer to carrier route groups is not needed. Therefore, for those 5-digit ZIP Code areas sequenced on DBCSs, presortation to carrier routes by the mailer saves no processing steps for the Postal Service and is no longer going to be either permitted or encouraged by a discount. Accordingly, even though this process means that Automation Barcoded rates will be based in part on geography, the Postal Service will not give reduced rates for mail preparation that provides the Postal Service no value. Therefore, under Classification Reform, Carrier Route Automation rates will not be provided to barcoded carrier route mail at those 5-digit ZIP Code areas where DPS sequencing is performed on DBCSs. This is not a matter of the inability of the Postal Service to provide necessary equipment on a national basis. Rather, it is at those places where the Postal Service has deployed DBCS equipment and has implemented DPS processing that carrier route rates will be restricted.

CSBCSs are smaller barcode sorting machines that also sequence mail to delivery point. However, mail must already be sorted to the carrier route level before it can be processed on a CSBCS. Therefore, it will still be useful for the Postal Service to offer carrier route discounts for barcoded mail that it sorts on CSBCSs and for mail on carrier routes that are sequenced manually.

One of the commenters indicated that matching mail to a list of places where Carrier Route Automation rates can and cannot be obtained is an additional processing step and therefore a financial burden to mailers, particularly when the Postal Service plans to revise the list periodically. Matching mailing lists with a list of ZIP Codes where Carrier Route Automation rates are not

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available should not be a significant burden to mailers. This list will be provided to software vendors and mailers as part of the City/State file provided with the CRIS and ZIP+4 database updates. It will be up to each mailer to make the decision whether the level of discount is worth the expense of preparing the mail in this manner.

Two commenters asked for the expected list. One requested that the list be broken down by 3-digit ZIP Code areas and the relative volume of addresses for each ZIP Code. The preliminary list available at this time, printed as part of this notice, is grouped by 3-digit ZIP Code and then in ascending numeric order by 5-digit ZIP Code. This list of ZIP Codes where the Carrier Route Automation rates are not available has also been placed on the Postal Service Rapid Information Bulletin Board System (RIBBS). Mailers will need to match their address lists against the list of ineligible ZIP Codes to determine their own levels of qualification. When doing so, however, mailers should also keep in mind that this preliminary list does not represent the list of ineligible ZIP Codes that will be in effect at the time of implementation. The list will change as barcode sorting equipment is deployed to the field and DPS processing is implemented. Information about the City/State file that contains the eligible/ineligible ZIP Code information and a printed list of these ZIP Codes will be provided in the final rule.

Two commenters were concerned with the update frequency. One commenter opposed updates as frequent as monthly and suggested that the list of 5-digit areas for which Carrier Route Automation rates are available should be provided on the CRIS files. One commenter simply wanted information on how frequent the updates will be and how the information will be provided. As indicated above, information on the ZIP Codes where these rates will/will not apply will be identified in the Postal Service City/State product. Updates to the ZIP Codes where carrier route rates are available for letters will occur with the same frequency that CRIS and ZIP+4 databases are updated. Mailers will be required to incorporate this information into their mailings no more than 90 days before the date of mailing using a current City/State file.

b. 150–Piece/Full Tray Requirement

Fourteen commenters voiced concern over the proposal to require 150 pieces per 5-digit or 3-digit ZIP Code destination to qualify for 5-digit or 3-digit Automation barcoded rates for letters.

The proposed mailing standards in this notice reflect the Postal Service's desire to maintain a consistent standard of 150 pieces per rate qualification level for 5-digit and 3-digit Automation subclass letter rates. However, the Postal Service recognizes that this might be an issue for some Standard mailers. As noted below, several commenters pointed out that some Standard mailers may experience a rate increase as a result of Classification Reform because of the higher 150-piece qualification standard and the fact that not all 5-digit ZIP Codes may qualify for carrier route rates. Other commenters have argued that pieces in a physically full tray should qualify for the rate. Although the rules in this notice reflect retention of the 150-piece qualification standard, based on the mailer comments discussed below, the Postal Service is seeking additional information on the impact of allowing a physically full tray to qualify for rates as an alternative to the 150-piece standard. The Postal Service is asking that affected mailers provide information on the thickness of various mailings that they produce and might wish to qualify under a physically full tray eligibility standard. Because of the desire not to reduce the number of pieces to a destination more than necessary, mailers would likely have to physically fill a 2-foot tray to qualify for a rate if a physically full tray rule were implemented. Also, in the interest of making it easy to verify such mailings, documentation listing each tray in the mailing along with the number of pieces contained in each tray would likely be required if such a rule were implemented. The Postal Service is asking that mailers who want a rate eligibility standard based on physically full trays provide additional information indicating how they will be affected as part of their comments to this notice. Particularly, information is sought about the usual thickness of pieces, how many can be put in a tray, whether the mailer has the ability to prepare full 2-foot trays, whether the mailer can or cannot provide overflow trays, and what type of documentation can be provided. A discussion of all the comments follows.

Nine commenters requested that the requirement be changed from 150 pieces to 150 pieces or a physically full tray. One commenter indicated that different qualification levels are needed for First-Class Mail and Standard Mail because Standard Mail is inherently thicker than First-Class Mail. One commenter indicated that accommodating MLOCR users by imposing the 150-piece rule unfairly penalized Standard mailings that can meet full tray requirements with fewer than 150 pieces. Another commenter argued that because 150 average-weight Standard Mail pieces cannot fit into a 1-foot tray, the Postal Service should adopt a "full tray" requirement instead of its proposed 150-piece qualification. However, this commenter did not recognize that this thicker mail does not need to be prepared in 1-foot trays because both 1- and 2-foot trays may be used to prepare letter mailings and overflow trays are permitted.

The 150-piece minimum represents the average number of letter-size pieces that can fill ¾ of a 1-foot tray. Under the proposal, the 150-piece average is applied uniformly to determine both the rate qualification and the particular sortation level of tray for presort. The requirement applies rates to tray levels and eliminates the preparation of packages within full trays. The Postal Service also desires to apply rates on an equal basis to all mailers. Accordingly, the application of the 150-piece standard allows card-size or other thin pieces to qualify for rates in the same way that thicker pieces can qualify. The application of a 150-piece standard with the use of overflow trays also makes it easier for mailers whose mailings are made up of pieces having different thicknesses, such as MLOCR users, to determine when a rate qualification level has been met, and assists such mailers to complete a mailing statement.

The 150-piece standard also facilitates acceptance and verification by applying a single standard and method of documentation to all mailings within the subclass. The Postal Service also expects to achieve efficiencies by having only one method of preparing mailings for Automation subclass letter rates for both First-Class and Standard Mail. Currently, there are three separate methods for presorting barcoded letter mail, which lead to 17 different possible tray configurations for barcoded letter mail. Having a single method of preparation that requires only four tray levels for the noncarrier route portion will simplify postal operations as well as mailer preparation requirements.

One third-class mailer association stated that the restrictions on Carrier Route Automation rate availability will cause more mail to default to the 5-digit and 3-digit sortation levels. This association further commented that because of the 150-piece minimum for the 5-digit Barcoded rate, most of this previously carrier route sorted mail will fall to 3-digit Barcoded rates, significantly increasing postage for Automation Standard mailers. This commenter was further concerned that this move from carrier route sortation to 3-digit sortation would affect the service for Standard Mail.

The rate structure for Automation subclass letters would provide significantly reduced rates for barcoded mailings. Those rates are based, in part, on more stringent preparation standards that allow more efficient Postal Service processing of that mail. Under the proposed Automation Standard Mail (A) letter rates, certain mailers could experience a minor increase in postage over what they pay today, assuming that all mail not eligible for a carrier route rate moves to the 3-digit Barcoded rate level and that there are neither Basic rate pieces in the mailing nor pieces currently qualifying for 3-digit Barcoded rates that would continue to qualify for 3-digit rates under the new standards. However, any such potential increase would be offset by savings from pieces in the mailing that could qualify for 5-digit Barcoded rates and pieces that now qualify for 3-digit Barcoded rates and would continue to do so under Classification Reform. This theoretical postage increase would also be offset by pieces that the mailer now qualifies for basic rates, because of a significant decrease in the Basic Automation rates under Classification Reform. A mailer's cost to prepare Automation mail is also expected to decline because of the elimination of package preparation in full trays.

With reference to the concern over degradation of service for pieces moving from carrier route sortation to 3-digit sortation, established postal operating plans are designed to achieve stated service commitments, regardless of the level of sortation of the mail.

Two commenters who mail both First- and third-class mail indicated that 95% of their letter mail that now qualifies for 5-digit Barcoded rates will move to 3-digit Barcoded rates. One commenter indicated that 70% of his mail now qualifying for 5-digit Barcoded rates will move to the 3-digit qualification level. One commenter indicated that the loss of presort and associated discounts could cause his company to stop offering credit cards to their customers due to the anticipated increase in postage for the credit card bills. One commenter stated the belief that if his mail could not be sorted to qualify for the 5-digit or 3-digit Barcoded rates, the 30-cent Retail Presort rate would apply to the remaining pieces.

Under the Postal Service's proposal, delivery point barcoded First-Class and Standard Mail that cannot be sorted into a group of at least 150 pieces to a 5-digit or 3-digit ZIP Code destination must be sorted to AADC and mixed AADC trays. This mail will qualify for a Basic Automation presort rate. For First-Class Mail, the rate proposed by the Postal Service for this Basic rate mail is 3.5 cents below the rate (30.5 cents) currently applied to barcoded residual pieces in a barcoded rate mailing. The proposed carrier route, 5-digit, and 3-digit rates are also significantly lower than the current corresponding rates. Thus, First-Class Mail under the scenarios presented above should receive a reduction in postage. Standard mailers having 95% of their mail move from a 5-digit qualification to a 3-digit qualification could experience a very minor increase in postage for that portion of the mailing, under the rates proposed by the Postal Service. However, that increase would be offset by savings from the lower rate applicable to Basic Automation Standard letters. Standard mailers experiencing a 70% shift in mail from 5-digit Barcoded rates to 3-digit Barcoded rates will experience a reduction in postage for this portion of the mailing, and can expect an additional reduction for the Basic rate portion.

One commenter indicated that 90% of his mail now qualifies for a presort rate but after Classification Reform only 75% will qualify, and another indicated that his presort qualification would drop from 90% to 40%. It is not clear what these mailers mean by presort. As indicated above, all pieces in Automation First-Class and Standard mailings will qualify for a reduced rate. To the extent that these mailers are describing an expected degradation from one presort level to another, the above analysis would apply to them.

Overall, the Postal Service believes that the Automation letter discount levels and preparation standards will lower postage and preparation costs for barcoded mailings for most mailers. Under current Barcoded rate mailing standards, a large percentage of mail qualifying for 5-digit and 3-digit rates is already prepared in full trays without packages. Because the proposed 150-piece requirement is based on a 1-foot tray, these mailers should be able to place even more mail in full 5-digit and 3-digit trays.

One commenter believed that if mail is barcoded and all mixed together on machines, there are no cost differences between 10 sorted pieces and 150 sorted pieces. This view is incorrect. When packages for different levels of sort are mixed together in a tray, these trays must be emptied and the packages sorted and retrayed before they can be directed to the proper barcode sorting machine. This process is not as efficient as being able to direct an entire tray without package handling. In return for the lower rates being proposed, the Postal Service expects to gain efficiencies in its operations by eliminating package sortation and retraying of mail prior to directing it to the proper barcode sorting scheme. Currently, when trays contain presort packages, the packages are often not sorted by postal personnel because it is deemed more efficient to remove the packaging material and run the pieces in the tray through the appropriate barcode sorting scheme. It is for this reason that the Postal Service proposed to eliminate rate discounts that are based on package preparation and to base Automation rates instead on the sortation level of a tray.

One commenter requested clarification as to whether 150 pieces to a tray level may still be trayed to that level even if they do not fill a 1-foot tray. Under the proposed standards published below, 150 pieces to a sortation level must be placed in that level of tray. One less-than-full tray is permitted for tray levels where the 150-piece minimums are applied. Such pieces must be prepared in rubber-banded packages to maintain their orientation in the tray during transit and handling.

One commenter requested that the definition of a full tray currently used in PAVE testing be added to the DMM language of the next proposed rule. PAVE testing currently indicates that 15¾ inches of mail (i.e., ¾ of the bottom inside length of a 2-foot tray) is the minimum amount of mail for a full tray, and that, where possible, 2-foot trays should be further filled to contain 21 inches of mail. Upon implementation of Classification Reform, PAVE testing instructions would indicate that, for 1-foot trays, 7$^{9}/_{10}$ inches of mail would be considered the minimum amount of mail for a full tray and, where possible, trays should be further filled to contain 10½ inches of mail. Definitions of standard tray sizes are provided in the DMM language proposed in this notice and will be included in the PAVE instructions that mailers receive with PAVE testing material. It should be noted, however, that these definitions do not relate to rate qualification standards under the proposed rule.

c. Scheme Sortation

Ten commenters responded to the proposal to allow or require scheme sortation for Automation subclass (barcoded) letters. Five of these commenters had basic misunderstandings of what this scheme sortation list represents. One stated that it was not very different from the

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current SCF sortation and asked what it will do for his mailings. Another stated that this list looks like the DMM L802 labeling list (an SCF list used for certain ZIP+4 rate mailings) which means that 80% of his mail would end up in mixed AADC trays. Accordingly, this commenter wanted to use the current DMM L803 labeling list (an AADC list used for certain ZIP+4 rate mailings) to obtain full trays to qualify for 3-digit Barcoded rates. Two commenters indicated that there must be at least three different 3-digit ZIP Codes per scheme for mailers to be able to qualify as much mail for 3-digit rates under the 150-piece minimums as they can qualify using the current 50-piece per 3-digit package rules. These two commenters indicated that the 150-piece minimum rules should be held in abeyance until the scheme sorts are workable in this manner. One of the commenters believed that the purpose of scheme sort was to reduce the number of MLOCR or barcode sorter pockets used by the Postal Service to sort mail, and suggested that a better way to achieve this would be to scheme-sort to ADCs or AADCs.

The 3-digit scheme list is made up of 3-digit ZIP Codes that are processed on the same barcode sorter incoming primary sort plan (scheme) used to sort 3-digit mail to 5-digit ZIP Codes. The determination of which, if any, combination of 3-digit ZIP Codes can be sorted on the same barcode sort plan is based on the number of 5-digit ZIP Codes served by each 3-digit ZIP Code and the physical limitation of the number of bins on barcode sorters. Therefore, it is not possible for the Postal Service to adjust the scheme list to cause each scheme to contain at least three different 3-digit ZIP Codes. It is also not possible for the Postal Service to substitute the published 3-digit scheme list with any of the labeling lists suggested by commenters. The purpose of this scheme sortation was not to arbitrarily find a way to allow mailers to qualify as much mail for 3-digit rates under Classification Reform as they do based on the current 50-piece package minimums for 3-digit barcoded letter rates. The purpose is to allow mailers to prepare mail for processing in the same manner that the Postal Service processes it on barcode sorters (not MLOCRs) and thereby increase their potential for qualifying mail for a 3-digit automation discount. As published, the scheme sort list will allow mailers to use the total number of pieces for any or all of the 3-digit ZIP Codes that are combined on the list to qualify for 3-digit Barcoded rates. For example, ZIP Codes 068 and 069 are combined on the 3-digit scheme list and labeled to STAMFORD CT 068. This means a mailer having 75 pieces for ZIP Code 068 and 75 pieces for ZIP Code 069 could combine these pieces into a single tray to meet the 150-piece minimum. Without the scheme sort option, those pieces would not be eligible for the 3-digit Barcoded rate.

One commenter believed that the 3-digit scheme sort should be mandatory. Two commenters indicated that scheme sort should be optional. One of these indicated that use of the 3-digit scheme sort could be an insurmountable barrier to participation by Federal government mailers, and the other indicated that it should be a business decision because many mailers have a lot of volume to individual 3-digit areas or may not want to upgrade software to do these mailings. Another commenter indicated that making scheme sort mandatory for Automation subclass mailings means that the same presort software could not be used for the upgradable Retail Presort portion of the mailing since scheme sorts are not permitted for Retail Presort mailings. One commenter indicated that it only made a 1.5% difference in the qualification levels of his mailings. Another commenter indicated that it would help presort qualification. One commenter asked whether Publications Service mailers would use the same schemes as other classes of letter mail. One commenter stated that he needed the final tables for 5-digit and 3-digit sort schemes with the next notice, or at least before the implementation date, to test the software that incorporates these schemes.

Based on these comments, the Postal Service has proposed that 3-digit scheme sort be optional. Mailers may use scheme sort for only those schemes they select prior to preparing individual 3-digit trays for the remainder of the mailing. Mailers expressing concern over needing different software if they add scheme sortation are advised that they will not be able to use existing software to sort letter mail under Classification Reform anyway, because the tray levels are different from current standards, packaging is allowed only in less-than-full trays, a residual portion of the mailing is not allowed, and both 1-foot and 2-foot trays must be used. Furthermore, the sortation standards for Retail Presort First-Class and Regular Standard mailings are significantly different from the Automation subclass standards set forth in this notice. Therefore, mailers will not be able to use the same software to sort to these two subclasses.

As information, the Postal Service is currently investigating the future provision of 5-digit scheme sorts for barcoded letter mailings. However, because of the volatility of 5-digit schemes while the Postal Service is deploying new equipment over the next 3 years, 5-digit scheme sorts will not be available until some time after Classification Reform is implemented. The Postal Service is also investigating the feasibility of providing a 3-digit scheme sort for barcoded flat-size mailings. If there appears to be a benefit to scheme sort for flats, it also would not be made available until after implementation of the current Classification Reform proposals.

d. Use of Trays

Eight commenters had concerns over the standards for the use of trays for Standard letter mail. Two commenters wanted to use trays for letter-size Enhanced Carrier Route Standard Mail. One commenter wanted the option to sack nonupgradable mail to assist noncomputerized customers. This commenter also indicated that for nonautomation-compatible mail, traying makes it impossible to achieve package testing results. Five commenters expressed a desire to allow sacking for all mail except Automation subclass letters. Three of these commenters did not want to tray nonautomation subclass mail because they believe that trayed Standard Mail must be palletized. Five commenters were concerned that traying mail can cause a loss of cube in trailers with a resulting impact on their qualifying for destination entry discounts.

The August 30 notice erroneously implied that mailers could not tray letter-size Enhanced Carrier Route Standard Mail. It had been previously agreed that Enhanced Carrier Route mailers would have the option to tray letter mail. Since that time, the Postal Service has reconsidered this position. Because the Postal Service prepares letter mail in trays, it is important that all mailer-prepared letter mail be trayed. Accordingly, the proposed DMM standards set forth in this notice would require that all letter mail, including Enhanced Carrier Route and Periodicals letters, be prepared in trays. It should also be noted that, although encouraged, it is not required that Standard letters prepared in trays be palletized. Mailers will be permitted to bedload trays of letter mail. However, if a mailer wants to palletize Standard letter mail, the mail must be prepared in trays on pallets, with one exception. If, as described in the section on flat-size mail, the letter-size piece also meets the definition of an automation-compatible flat, and a portion of the mailing job is mailed at the Automation subclass rate for flats, all the pieces in the mailing job may be prepared in packages placed directly on pallets if all pieces pay the applicable rates as flats. However, the amount of Regular Standard Mail meeting the size standards for both letters and flats that can be prepared as packages on pallets is limited to 10% of the mailing job for reasons described in the section on flats. The Postal Service acknowledges that trayed mail can sometimes fill trailers more quickly than the same amount of mail prepared in sacks, and that the number of pieces that can be placed in a trailer might affect a mailer's decision whether to prepare mail for destination entry discounts. However, trays are the most efficient method of containerizing letter mail for the Postal Service. Because the Postal Service now uses trays for letter-size mail in its internal operations, it is proposing to require that mailers submit all letter-size mailings in trays for consistency and efficiency. The requirement to use both 1-foot and 2-foot trays will ensure the most efficient use of trailer space under the traying environment. The Postal Service does not understand the comment that traying would affect the ability to monitor package testing results.

e. Use of Both 1–Foot and 2–Foot Trays

The Postal Service is proposing that for all trayed letter-size mailings, a combination of full 2-foot and 1-foot trays must be used in a manner that results in the fewest possible trays. Eleven comments were received concerning this proposed requirement. Four commenters stated that this requirement will increase their handlings or cause problems in their production lines. One of these commenters indicated that this will create another mailstream, which, added to the 100% barcoding requirement for the Automation subclass, would result in four separate mailstreams. One commenter stated that he hoped this requirement could be canceled if it did not work. Another commenter stated that he did not want to handle two sizes of trays. Two commenters indicated that this requirement is not supported by current software, including software for MLOCRs. Two commenters were concerned about the availability of the appropriate size trays. One of these commenters requested clarification, for software writing purposes, of what to do if tray sizes are not available. The other commenter indicated that shortages of any type of tray will complicate processing when the mailer has software programmed to handle two sizes. One commenter indicated that he did not understand the need for this requirement. Three commenters asked how a stable pallet can be built when there is a mix of two different size trays. One commenter asked whether a 1-foot tray could be placed upside down on a pallet next to a right-side up 1-foot tray to allow the two trays to take up the same amount of space as a 2-foot tray.

The 150-piece minimum quantity to qualify for Automation subclass letter rates is based on the preparation of a 1-foot tray so that mailers may more easily qualify for those rates. That quantity per tray also is intended to yield more full trays to direct destinations, thus lessening any loss of presort to the Postal Service. In order to increase the number of direct trays to sortation destinations for all letter mailings, the proposed DMM language would require use of both 1-foot and 2-foot trays for all mailings of letter-size pieces in all reformed subclasses. However, the Postal Service does not want to increase its potential number of tray handlings by allowing a mailing to be prepared entirely in 1-foot trays, nor to increase transportation costs by shipping in more less-than-full 2-foot trays. Accordingly, the requirement to use both 1-foot and 2-foot trays where appropriate is considered necessary by the Postal Service. Under the proposed rule, mailers would be required first to fill as many 2-foot trays as possible before filling 1-foot trays.

The Postal Service recognizes that this requirement will cause mailers to make major changes to their production lines and to maintain a supply of both 1-foot and 2-foot trays. It is believed that presort software developed to accommodate the Classification Reform presort structure will include mail documentation that provides information about the tray size to be used and where tray breaks occur. If this type of software is used, it may not be necessary to create two separate production lines for the different tray sizes. The Postal Service anticipates an increased need for both sizes of trays and has purchased additional supplies while continuing to review the need to purchase still more. If local shortages develop for a particular size tray, mailers will have to use the trays provided the Postal Service. This may require working out individual mailing solutions locally.

Mailers must use their own judgment when building pallets of trays containing both sizes of trays. The elimination of the proposal to require separate layers of trays on pallets for the different subclasses should facilitate building stable pallets. The requirement to place destination delivery unit trays on the top of the pallet has also been eliminated. Accordingly, mailers may build pallets of trays solely by the weight of the trays (heavier trays must be on the bottom) and the pallet destination. Mailers will not, however, be permitted to place a 1-foot tray upside down on a pallet next to a right-side-up 1-foot tray because this could damage the mail.

f. Banding Material

(1) Automation Compatible Mailings. One commenter asked whether mail in overflow and less-than-full trays must be prepared with rubber bands. The use of rubber bands will be required for automation-compatible pieces, i.e., for Automation First-Class or Automation Standard Mail, upgradable Retail Presort First-Class and upgradable Regular Standard Mail, automation-compatible Publications Service Periodicals, and barcoded Regular Periodicals. Letter mail placed in less-than-full trays must be prepared with rubber bands or elastic strapping. In addition, because of their small size and their likely becoming unfaced even in full trays, card-size pieces in the previously named automation-compatible mailings must be prepared with rubber bands or elastic strapping in all trays. For barcoded carrier route rate mailings, separator tabs must be used to separate the carrier route groups within 5-digit carrier routes trays. If a 5-digit carrier routes tray is less-than-full, rubber bands or elastic strapping must be used. For Regular Periodicals barcoded letter mailings, separator cards must be used to delineate presort groups in all full trays. Pieces in less-than-full mixed AADC trays in any mailing must be prepared with rubber bands or elastic strapping. Plastic strapping and string will not be permitted for these automation-compatible mailings. When prepared, packages should be between 4 and 6 inches thick.

(2) Other Mailings. For Enhanced Carrier Route letter mailings, mailers may use separator cards or rubber bands or other permissible banding material to delineate carrier route groups within full 5-digit carrier routes trays. In less-than-full 5-digit carrier routes trays, separator cards will not be permitted and banding material must be used. For nonupgradable mailings, separator cards are not permitted; banding material must be used for packages in these mailings.

g. Overflow Trays

One commenter asked whether overflow trays will be required to

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contain a minimum number of pieces; they will not.

One commenter noted that overflow trays are allowed for AADC trays in the Automation letters subclass but not in Retail Presort mailings and asked whether this inconsistency was an error. This difference is not an error. Within the Automation subclass, AADC trays are prepared based on the 150-piece minimum standard. The Postal Service wants to apply this standard consistently for all trays of barcoded mail except the last level of tray. Allowing an overflow tray when the 150-piece standard is applied makes presort simpler and facilitates documentation and acceptance of that mail. For Retail Presort First-Class Mail, there is just one rate, and pieces at all tray levels are trayed based on filling 2-foot and 1-foot trays without regard to the 150-piece standard. To make Regular Standard Mail traying more consistent with First-Class Retail Presort preparation, the Postal Service has determined that pieces at the ADC and AADC (upgradable) tray level will also be trayed based on filling 2-foot and 1-foot trays without regard to the 150-piece standard and the need for overflow trays.

h. Request for Elimination of AADC Trays

One commenter requested that, for Automation subclass letters, the less-than-full AADC tray be replaced with mixed AADC trays. Another commenter indicated that sorting to AADC or mixed AADC destinations is difficult to do in a manual operation.

Overflow trays are provided for certain tray levels to permit mailers to qualify all mail to a sortation level, once the 150-piece minimum has been met, when rates are based on the level of tray in which a piece is placed. Overflow trays are also provided to ensure that the mail is presorted to the finest level possible. For this reason, when overflow trays are allowed at required levels of sortation, such as the 3-digit and AADC sortation levels of Automation subclass mailings, preparation of overflow trays will be required. The Postal Service recognizes that preparation of ADC packages and trays and preparation of AADC trays may be more difficult to do in a manual operation than in an automated one. However, ADCs and AADCs are the next stop for transportation and in-plant processing of pieces that are not sorted to the 3-digit destination plant level. The Postal Service believes that preparing mail to this level of sortation is necessary and appropriate to qualify for the basic presorting rates. It should also be noted that, with the exception of current Presorted First-Class and Carrier Route sorted mail, today's bulk mailings require preparation of AADC, ADC, SDC or state trays and, in some instances, corresponding packages.

i. Request for Elimination of Required Tray Sortation Levels

One commenter indicated that tray sortation levels should not be required and that the size of the mailing should determine the breakdown levels.

The proposed presort rates requested in the Classification Reform case are based on presorting mail to the finest extent possible. Accordingly, mailers will be required to prepare 3-digit trays any time there are at least 150 pieces for a 3-digit ZIP Code before preparing AADC and mixed AADC trays. It is not permissible to begin sortation at the AADC level and qualify for the proposed rates.

j. Grouping of Pieces in AADC and Mixed AADC Trays

One commenter stated that for "piece sequencing" requirements the Postal Service needs to have a minimum mailing in mind, such as 10,000 pieces nationwide, before it insists that the mailer breakdown a mailing, and that the cost to prepare this mail is not worth the discount. Another commenter wanted clarification as to why 3-digit groupings within AADC trays need not be in numeric order. This commenter anticipated acceptance problems.

Presort discounts are based on mailers performing presort to the finest level. For automation letter mail, presort to 3-digit level is required before preparing mail to the AADC level. In order to determine whether a 3-digit tray should be made, the mailer must first group pieces by 3-digit levels. Therefore, it should not be a burden for mailers to maintain those groupings when placing that mail in AADC trays. This grouping also helps the Postal Service verify that mail has been sorted correctly (although it is still possible to verify mail that is not grouped in numeric order). Therefore, Postal Service is not requiring that 3-digit groups be placed in ascending numeric order, although it is encouraging mailers to do so. It should also be noted that, within mixed AADC trays, in addition to grouping by 3-digit or 3-digit scheme, as applicable, the 3-digit/scheme groups must be further grouped by AADC area. Few acceptance problems are anticipated because acceptance personnel will receive training on the new sortation and acceptance procedures. The Postal Service believes that the Basic rates proposed for First-Class and Standard Mail should encourage mailers to prepare the mail in this manner. However, it is the mailer's decision to determine whether this preparation would be less expensive than mailing such pieces at single-piece rates.

k. Pallet Preparation

Four commenters requested clarification as to whether letter mail prepared on pallets for different subclasses could be combined on the same pallets with a single mailing statement and corresponding documentation as allowed for flats on pallets. It is proposed that letter mail of different subclasses prepared in trays may be presorted to the same pallets, excluding 5-digit pallets. Trays of automation-compatible letter mail (Automation Standard and upgradable Regular Standard Mail, barcoded Regular Periodicals, and automation-compatible Publications Service Periodicals) must be placed on 5-digit pallets separate from nonautomation mail in the same mailing job because it is more efficient for the Postal Service to move whole pallets directly to where the mail is processed. Pallets of automation-compatible mail may be processed at postal facilities different from facilities that process pallets of nonautomation-compatible letters. In many cases, pallets of automation-compatible mail are broken down at different locations in the same plant, or if barcoded carrier route mail, the pallets are sent directly to the postal facility where a CSBCS or DBCS is located. When trays are palletized in this manner, they may be reported on a single mailing statement with the same corresponding documentation as allowed for palletized packages of flats.

l. Carrier Route Rate Eligibility

One commenter agreed with the Postal Service's promise to consider allowing carrier route rates for routes that have fewer than 10 delivery stops. The Postal Service has decided to propose that such mail may be prepared to qualify for the Saturation Enhanced Carrier Route rates if it meets the applicable density and documentation standards.

m. Enhanced Carrier Route Traying Requirements

One commenter asked, in response to the June 29 notice, whether letter-size Enhanced Carrier Route mail would require packaging in full direct trays. The Postal Service deferred an answer to this question until completion of the DMM standards. Under the presort standards set forth in the proposed rule, Enhanced Carrier Route letter mail is prepared in full 2-foot and/or 1-foot carrier route trays. Mail that cannot be placed in full carrier route trays must be placed in 5-digit carrier routes trays, which may be less than full when necessary.

n. Machinable Addressing/Upgradable

The Postal Service has proposed optional presort requirements for Retail Presort First-Class and Regular Standard Mail that meets the Postal Service criteria of "upgradable" mail. (Upgradable mail is mail that can be processed on Postal Service MLOCRs.) Four commenters voiced concerns about the requirement for a machine-printed address on a mailpiece before it could be considered upgradable.

One commenter opposed the proposal, arguing that presort bureaus will have to separate their automation reject mail on the basis of physical characteristics and then prepare it under two sets of rules. This commenter requested that mailers be given an extra day to attempt to barcode the automation rejects, without redating metered mail, in order to increase the barcoded volume. By adopting this approach, according to the commenter, mailers will be positioned to benefit from soon-to-be-available technology that will make it possible to barcode more rejected mailpieces. In much the same vein, a government agency said that the requirement is too restrictive and that several federal agencies have purchased encoding systems in order to place barcodes on typewritten and handwritten mail.

The proposed DMM standards specify that preparation of mail under the provisions for upgradable mail is optional. Accordingly, First-Class and Standard mailers may prepare all their mail not qualifying for the Automation subclass under the basic preparation standards for the corresponding Retail Presort or Regular rates. Naturally, mailers are encouraged to apply delivery point barcodes to such pieces using CASS-certified encoding systems and thereby enter as many pieces as possible as Automation First-Class or Standard Mail. However, for the reasons set forth in the preceding discussion of 100% barcoding, the Postal Service cannot allow mail to be presented with stale meter dates. The current procedures for allowing mailers to print a new meter date will remain in effect for all mail, including upgradable and automation-reject pieces. The proper subclass marking must also appear on these pieces.

o. Machinability

One commenter asserted that the Postal Service will not achieve its objective of encouraging more automation-compatible mail unless it relaxes machinability standards to allow more mailers to prepare automation-compatible mail.

The Postal Service cannot spontaneously relax machinability standards. Such standards are based on the capabilities of automated mail processing systems and the type of mail that automation equipment is able to process.

p. Tray Sleeving and Strapping

The Postal Service proposed that mailings of Automation letter mail be both sleeved and strapped by the mailer, and that trayed letter mail in other reformed subclasses be sleeved by the mailer. Five commenters responded to this proposal. One commenter expressed wholehearted support on the condition that the mailer, not postal employees, perform the associated tasks. One commenter strongly recommended that where all pieces in a mailing originate and destinate in the delivery area, sleeving and banding of trayed letter mail should not be required. This commenter wants continuation of the existing provision in DMM M033.3.7 (that allows local exception to the sleeving requirement when all pieces in a mailing originate and destinate in the delivery area of the same SCF). Another commenter contended that local post offices should be able to determine when sleeving and strapping are required based on mailing destinations. A third commenter wanted a phased implementation to have time to order and install equipment needed for sleeving and strapping. A federal government agency voiced concern about requirements for stocking, storing, and using many different types of equipment.

The Postal Service plans to require sleeving and strapping of all bedloaded trayed mail under all reformed subclasses, with the exception of mail entered at a postal facility that destinates within the service area of that facility. Mail transported without first being sleeved is susceptible to spillage and damage during transportation and handling. A strap around the tray is also necessary to maintain the integrity of the tray and its contents during transportation and handling. For example, because trays of Periodicals and Standard Mail sorted in a BMC move on belts and down chutes during mechanized distribution, sleeves that are not strapped to trays could slide off and the contents of the tray could spill. Trays transported by air are handled in many different ways and also need to be strapped to maintain their integrity. Because local mail is not subject to the same type or amount of transportation as other mail, an exception may be made for the strapping and sleeving of this mail. Local mail that destinates within the service area of the postal facility where it is entered may be prepared without sleeving and strapping, if prior written approval is obtained from that facility's manager.

For palletized mailings, sleeving will be required but strapping will be optional for mail on 5-digit, 3-digit, and SCF pallets, if those pallets are wrapped with stretchable or shrinkable plastic wrap to maintain their integrity during transportation and handling, because these pallets remain intact until reaching the destination plant or destination 5-digit delivery unit. Trays on other levels of pallet will be required to be both strapped and sleeved.

q. ACT Tagging

The Postal Service proposed that mailers apply ACT tags to trays of Automation First-Class letters. Six commenters responded to this proposal. Of these, one supported the proposal as long as mailers, not postal employees, did the work of preparing the tags. The remaining five commenters either had serious reservations or were strongly opposed to this proposal if it applied to trays of nonlocal letter- and flat-size mail. One of the five strongly opposed tagging nonlocal mail, stating that it was burdensome and difficult to comply with due to time-sensitive airline flight schedules, and that the rates proposed for the Automation subclass do not reflect this added worksharing requirement. Another commenter expressed the view that requiring ACT-tagging of all Automation subclass letter mail trays adds little value and should not be required at this time. The commenters believed that the proposal should be optional until a method can be developed and implemented so that mailers could access a database of accurate postal air contract transportation and flight data for ACT tags.

Based upon the comments, the Postal Service has determined to remove the proposed requirement for ACT-tagging of mailings. The Postal Service is also in the process of revising its internal systems to replace the ACT tags with the "Scan-Where-You-Band" process.

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4. Flat-Size Pieces

a. General

Under Classification Reform, the large majority of flat-size pieces will be mailed as either Standard Mail or Periodicals. The discussion of comments dealing with Periodicals is contained in a separate section of this notice. Preparation of packages on pallets under the rules in DMM M040 is the preferred method of preparing flat-size pieces. The nonpalletized preparation requirements for Standard Mail flats under Classification Reform will continue to require preparation of packages placed in sacks. The package and sack levels will be 5-digit, 3-digit, ADC, and mixed ADC, except for Enhanced Carrier Route flats which will be prepared in carrier route packages of 10 or more pieces placed in carrier route or 5-digit carrier routes sacks. The current 125-piece/15-pound minimum sacking criterion will apply to flats under Classification Reform where minimum sack volumes are prescribed. The sortation for Automation flats differs from current preparation requirements in that SCF packages and sacks are eliminated, and there is no separate preparation of residual mail. For Automation flats, ADC and mixed ADC packages will be combined with 5-digit and 3-digit packages within ADC and mixed ADC sacks. The sortation for First-Class flats will require 5-digit, 3-digit, ADC, and mixed ADC sortation in both packages and flats trays.

b. Mail Meeting Standards for Both Letters and Automation-Compatible Flats

Of the 49 commenters who responded to the August 30 notice, four commented on issues related to flats. With only one exception, those commenters had questions or comments focusing on pieces whose size dimensions meet the size standards for both letters and automation-compatible flats. This type of mail is often referred to by mailers as "fletters." These comments were of essentially the same nature as those submitted in response to the June 29 notice.

Two commenters wanted the Postal Service to develop options to allow mailers to prepare mailpieces that meet both the letter-size standards and the automation-compatible flats standards either in trays or in packages on pallets.

As indicated in the section on letter mail, the Postal Service handles letter mail in trays and, for operational efficiency, wants all mailer-prepared letter mail placed in trays. Therefore, mailers of such pieces always have the option of preparing them as letter-size mailings in trays or, for Standard Mail, in trays on pallets. Mailers of such pieces may choose to prepare one portion of their mailing job as letter mail and another portion of their mailing job as Automation flat mail. The Postal Service also recognizes that many mailers having pieces that meet the dimensions for both letters and automation-compatible flats, and who prepare a portion of their mailing jobs for the Automation rates for flats, would have more efficient mail preparation operations if allowed to prepare an entire mailing job in the same manner, particularly when preparing that mail as packages on pallets. Therefore, when mailers of these so-called "fletters" mail part of a mailing job at the Automation rates for flats and prepare that mail as packages on pallets, the Postal Service will allow the entire mailing job, which may also include Enhanced Carrier Route mail and Regular mail, to be prepared as packages on pallets if no more than 10% of the total number of pieces in the mailing job are claimed at Regular rates and if those pieces are claimed at Regular rates for nonletters, since the mailing is prepared in a manner applicable to flat-size pieces. This 10% limit on the number of Regular pieces in such a mailing is designed to permit a small part of a mailing job to be prepared in this manner while minimizing the amount of these letter-size pieces on pallets; as stated earlier, letter-size pieces are more efficiently handled by the Postal Service as trayed letter mail. If the percentage of such letters-size pieces exceeds 10% of a mailing job, it must be prepared and presented as a separate mailing under the standards for letter mail. Mailers who prepare mail in sacks or trays must prepare that mail in the manner appropriate to its processing category, as defined in DMM C050, i.e., mail meeting both letter-size and automation-compatible flats dimensions may be sacked and otherwise prepared as a flat only if mailed as part of a mailing at an Automation rate for flats.

c. Revisions to Automation-Compatible Flats Criteria

One commenter stated that the Postal Service should allow pieces that can be processed on FMS 1000 flat-sorting equipment to be eligible for barcoded rates when that equipment is retrofitted with barcode readers. This commenter further indicated that the Postal Service should allow letter-size catalogs that can be processed on FSM 1000s to be eligible for Automation rates for flats, thereby allowing mailers to avoid the tabbing requirements associated with the Automation rates for letters.

The FSM 1000 machines were not intended to replace the FSM 881s but to handle pieces that cannot be processed on them. Therefore, the FSM 881 machinability requirements, reflected in the current standards in DMM C820 for barcoded rates for flats, will continue to be the basis for barcoded rates for flats for some time, including when Classification Reform is implemented. Letter-size pieces that do not meet the current criteria for Automation-Compatible flats will be considered letters under Classification Reform and will have to be prepared under the standards for letters in DMM C810 and DMM C840 to obtain Automation letter rates.

d. Dimensions of Trays

One commenter requested that the dimensions of flat trays be provided so mailers can program how much mail can be placed in these trays. The inside bottom dimensions are 14¾ inches long by 10¾ inches wide. Their depth is 8 inches to the handhold and 11¼ inches to the top. This information will be included in both the DMM and in the instructions provided with PAVE testing material.

e. Copalletization and Commingling

No comments were received regarding this issue. The Postal Service is retaining the position set forth in the August 30 notice that, for packages prepared on pallets, packages from different Standard Mail subclasses (Automation, Enhanced Carrier Route, and Regular) may be placed on the same pallets, and no physical separation of the packages on the pallets by rate category will be required. At the pallet breakdown operation, the Postal Service will sort the packages to containers for the proper transportation or in-plant processing operation.

The Postal Service also erroneously indicated in the August 30 notice, that it would allow mailers to combine packages from different mailings in the same sack. Combining packages of different mailings in the same sack does not make operational sense for the Postal Service. Sack labels identify the type of mail contained in the sack so that the Postal Service can direct it to the proper in-plant operation. Enhanced Carrier Route sacks may be sent directly to the 5-digit ZIP Code for carrier casing, whereas barcoded flats will be sent to a barcoded flats sorting machine. Regular mail may be sent to manual distribution operations. Because combining this mail together in sacks would not allow the Postal Service to direct the mail to the proper operation, combining packages from different mailings in the same sack will not be permitted.

f. Flats Mail in Trays

No comments were received regarding this issue. The Postal Service is retaining the position set forth in the August 30 notice that First-Class flats will be prepared in flat trays and Standard Mail flats will be prepared in sacks. A commenter to the June 29 notice questioned the rationale for this policy. The Postal Service plans to initially limit the use of trays to First-Class flats to allow for a more gradual change to a future operating environment in which all nonpalletized flat mail will be prepared in trays. Currently, the Postal Service processes First-Class flats in trays. Generally, flat trays are better handled at GMFs and airmail facilities (AMFs) (where the Postal Service has tray handling systems) than sacks, which are more amenable to processing at bulk mail centers (BMCs). When barcoded flat mail is distributed on flat sorting machines using the barcode, there are instances where the flat mail is dispatched in flat trays to the next handling or destination regardless of class. Therefore, as part of the transition of all classes of flats mail to tray preparation, allowing automation-compatible (barcoded) flat mail in trays would be the likely next step, but this will not take place until after implementation of the current Classification Reform proposals.

g. Last Package Rule

A question concerning how to label a mixed ADC sack containing only a 5-digit package was asked in response to the June 29 notice. The Postal Service deferred an answer to this question until completion of the DMM standards. Under the presort standards set forth in this proposed rule, a 5-digit package left over after filling all possible 5-digit, 3-digit, and ADC sacks will be placed in a sack bearing a mixed ADC sack label.

h. 3–Digit Schemes

No comments were received regarding this issue in response to the August 30 notice. The Postal Service is retaining the position that, while a 3-digit scheme sort for flats may be investigated at a later date, it will not be implemented with Classification Reform.

5. Addressing

a. AIS Product Cycle

Concurrent with Classification Reform, the Postal Service is proposing to increase the frequency at which it updates all of its AIS Products, such as ZIP+4 and CRIS. This change would increase the frequency of required mailer updates to address matching systems. Because this change will affect all AIS products and must be applied universally, it will impact all mailers using AIS products for preparing mailings, not just those mailing in the reformed subclasses.

The proposal to increase the frequency of AIS product updates is designed to improve the currency of the data that is used during the matching process and reflects the significant advancements in list management technology that have been made since the original product cycle was developed. Now that the Postal Service is experiencing more rapid change in address information and carrier route codes, it has become critical that mailers update their data files more frequently.

Under this proposal, the frequency of AIS product releases would increase from quarterly to bimonthly. The Postal Service also proposes to eliminate inconsistencies in the implementation dates of new product releases. These currently range from 45 days with ZIP+4 products to 75 days for some CRIS products. Under this proposal, all products would have to be put into use within 45 days of the release date of the product update. There are no plans to increase the frequency with which ZIP+4 code or delivery point code matches must be reprocessed from the current "within 12 months of the mailing date" standard for any of the unreformed subclasses.

Because these changes are systemic and because it would be costly and confusing to maintain two different sets of product update frequencies, the Postal Service proposes to apply these changes to all affected mailings, regardless of whether that mail will also be affected by Classification Reform. For example, carrier route codes would be updated more quickly with the initiation of bimonthly CRIS releases and with the reduction in the permissible implementation period from 75 to 45 days. This would apply to both reformed and unreformed subclass mailings.

Although these changes in AIS product frequency were previously planned and could have been proposed independently, the Postal Service has chosen to propose to implement them with the implementation of Classification Reform to consolidate changes to mail preparation standards.

b. Carrier Route Updates

Eight comments were received about the Postal Service's proposal that mailings at carrier route rates incorporate carrier route codes updated within 90 days prior to the date of mailing using certified software. One commenter suggested that the Postal Service eliminate the requirement for certified software, indicating that it limited the creativity of mailers in applying the carrier route codes to their mail. The Postal Service requires the use of certified software to verify the accuracy of the matches and to provide documentation of the time and age of the information being used to apply carrier route codes. The certification process verifies the results of address matching, not the means by which it was achieved. Thus, there are no limits to the creativity that may be applied to the matching process if the result represents the correct carrier route code for the address.

Four commenters suggested that the coding date should be increased to 120 days, whereas two other commenters approved the proposal to increase the frequency of ZIP+4 matching to 90 days. The Postal Service has no plans to increase the frequency of ZIP+4 matching at this time. Carrier route assignments are more frequently changed to accommodate the operational needs of the Postal Service to balance carriers' workload. Thus, the Postal Service believes that the 90-day coding standard is reasonable. However, it is not the Postal Service's intent to require mailers to update their carrier route codes if no more current source of information is available. The Postal Service believes that the most current data available should be used in assigning carrier route codes. If new data files are not available, mailers should continue to use the existing route assignments until new AIS products have been released by the Postal Service.

c. Move Updates

Seventeen comments were received concerning the proposal to require First-Class bulk mailers to update the addresses of their customers who have moved within 6 months prior to the mailing date. Several mailers seemed confused about the exact class of mail to which this standard applies; it would apply only to Retail Presort and Automation First-Class mailings.

The Postal Service believes that the methods currently available to provide customers with updated address information offer a wide range of options that can meet the needs of mailers at a reasonable cost. For example:

(1) Use of the endorsement "Address Correction Requested" means that the mailpiece will be returned to sender with the new address information

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affixed. This service is provided at no additional charge to the mailer. The mailer can then update the address information and, if it so desires, use a new envelope to mail the piece to the new address.

(2) Use of the endorsement "Forwarding and Address Correction Requested" means that the mailpiece is forwarded to the new location and the Postal Service sends a hard copy notice to the mailer with the new address information. Each such notice costs $0.50 and can be used to update the mailer's addresses.

(3) Use of Address Change Service (ACS) provides the mailer with an electronic notice of new address information instead of hard copy. ACS can also be used on mailings other than First-Class to qualify those addresses in the mailing list that were used for Retail Presort and Automation First-Class mailings. Electronic notices cost $0.20 each and can be obtained on a variety of electronic media. Mailers may determine the frequency with which they use the ACS endorsement and participant code if the mailer can certify that each address in a First-Class mailing has been updated for customer moves within 6 months prior to the mailing.

(4) Use of National Change of Address (NCOA) processing service can update mailers' address lists with corrected address information prior to a mailing. Mailers determine how frequently they process their address lists.

Two commenters stated that they are unable to use the current methods, and two other commenters said that the services were too costly. None of these commenters provided specifics in support of their statements. The Postal Service incurs both costs to rehandle undeliverable-as-addressed mail and service delays when mail must be redirected to a new location. It is in the best interests of the Postal Service and mailers to improve deliverability and reduce costs. The options cited above, including the "no fee" Address Correction Requested endorsement, provide flexibility to mailers in meeting the proposed standard.

Six commenters asked that implementation of the requirement be postponed to allow time to adjust and obtain move updates. The Postal Service recognizes that many mailers will need to revise their addressing systems to accommodate move updating. Thus, the Postal Service will begin the move update address qualification process at the time of Classification Reform implementation, but will not condition the eligibility of First-Class bulk mailings on complete move update qualification until 6 months after Classification Reform implementation, or January 1, 1997, whichever is earlier. The Postal Service also wants to avoid creating a semiannual "crunch" of demand for NCOA and ACS services that might occur if move update was implemented at the same time as Classification Reform. Some mailers may need to experiment with several options for move updating, such as the impact of the two different endorsements, to determine which option makes the best business sense for their operations. Some will have to learn to use electronic update systems, and others will need to use up stocks of envelopes that do not bear an endorsement. The "ramp-up" period should give all concerned customers sufficient time to decide which update method to use, obtain NCOA matching services, if appropriate, implement internal system changes to accept electronic move update information, and work with their internal customers or presort customers to obtain full compliance.

Several commenters also asked that implementation of the proposed move update standard be postponed indefinitely until other methods have been approved to do move updating, such as the Multiline Forwarding System (MFS). The Postal Service does not believe that such an open-ended delay is warranted, given the wide range of current options. However, the Postal Service is encouraged by the progress currently being made toward implementation of MFS. The Postal Service has been working with vendors of commercial MLOCRs on the MFS project since June 1995. Test mail has been successfully processed by several vendors to determine the accuracy of the matching processes. The next step is testing "live" mail in a production environment. The project plan for MFS is on track, with operational issues now under review. As a result, the Postal Service expects that MFS will be available before the end of 1996, but that outcome is not certain at this time. The Postal Service plans to continue working on the development of MFS with MLOCR users through the Mailers Technical Advisory Committee and the Multiline Users Group. Moreover, as marketplace demands create a need, the Postal Service will also consider expanding the range of options in the existing services, for example, by additional notification options in ACS beyond those currently available.

Five commenters asked whether their in-house address correction centers, to which they have devoted significant resources, might be certified as meeting the move update standard. For those mailers who believe that their lists are up to date, the use of the "Address Correction Requested" endorsement should have little or no impact on their business practices because they are mailing to the most current address of their customers. The simple and straightforward use of the endorsement would meet the proposed standard with no difficulty, would need be applied to all addresses on the list only within 6 months prior to mailing, and expenditures would be limited to the costs associated with preprinting the endorsement on mailing envelopes. The current endorsement options would be an effective approach to meeting the proposed standard for lists that are well maintained by a mailer's move correction processes. In the future, the Postal Service may consider the establishment of "move update certification" processes for specific types of lists or businesses. The Postal Service is interested in evaluating other options that mailers suggest to meet the move update standard if unique situations exist that preclude the use of the current solutions.

Three other commenters asked whether a mailer was required to use the information provided from postal address correction processes and apply it immediately to their address lists. They asked whether the notification could serve as a trigger to the company to initiate an inquiry with the customer about correcting address information. Four commenters indicated that various state and federal government agencies believe that they are prohibited from using corrections provided by the Postal Service. In most cases, mailers are expected to update their mailing addresses promptly. However, the Postal Service recognizes that, in some industries, there are legally-mandated limits on the address that may be used in certain customer communication. For example, one commenter noted that, in a number of states, notices of shareholder meetings must be sent to the address "in the corporation records." Given the concerns expressed by these mailers, the Postal Service has decided that in circumstances where clearly demonstrated legal constraints limit a mailer from using address changes provided by the Postal Service, an individually-approved alternative process will be acceptable to meet the move update standard. Alternative process approval would be granted on a case-by-case basis, and the legal limitation would need to be clearly identified. In this process, mailers would receive address change information from the Postal Service in any of the currently prescribed manners. This would be followed by a prompt mailer-initiated direct mail contact with the customer, requesting a signed verification of the address change. For example, the mailer could provide a preprinted barcoded business reply card that the customer signs and returns. Address information could then be updated in the mailer's records prior to the next mailing cycle.

d. Uniform Placement of Address Elements

During the comment period, the Postal Service decided to remove uniform placement of address elements from consideration as a proposed address quality standard. The Postal Service took this action in response to extensive mailer concerns regarding the details of the proposal and its potential adverse impact on rate eligibility.

e. Line of Travel

One commenter asked whether the line-of-travel (LOT) sequencing requirement applied only to flat-size pieces. Because LOT sequencing can be beneficial for casing of all carrier route mail, the proposed standard will apply to letters, flats, and merchandise samples prepared with detached address labels in Basic Enhanced Carrier Route mailings, and to all Publications Service pieces except for those pieces that are presented in a mailing of automation-compatible Publications Service barcoded letters.

One commenter stated that the requirement would be easy to meet, whereas two other commenters stated that it would be difficult to maintain and would be an unnecessary burden. The Postal Service has had assurance from the mailer and vendor communities that this requirement is not an onerous burden. The update of sequence information could be done through any of the established sequencing methods or through use of the newly-developed Line-of-Travel product, which has been available to the mailing industry since June 1995. Mailers who are interested in obtaining the Line-of-Travel product should contact the National Customer Support Center at (800) 238–3150 for subscription information. Continuing update of sequence information will occur with the same frequency that carrier route codes are updated.

Four commenters stated that there were many operational variables in their production lines and questioned whether exact delivery order or reverse order would be equally effective. The Postal Service will identify mailers whose mailings are frequently in the reverse order and deal with them on an exception basis.

Three other commenters asked whether LOT could apply to High Density mail. Although the Postal Service believes that LOT sequencing would accomplish most of what walk sequencing will do for High Density mail, the Classification Reform proposal specifies walk sequencing for High Density mail. Therefore, LOT is not an acceptable sequencing option to qualify for High Density rates.

f. 5–Digit ZIP Code Verification

The Postal Service proposed to require a certification by the mailer that the 5-digit ZIP Codes on addresses in a Retail Presort First-Class, Regular Standard, or nonautomation-compatible Publications Service Periodicals mailing have been checked for accuracy within 12 months prior to mailing. One commenter stated that because ZIP Code verification was quick and easy, out-of-date ZIP Codes should not be allowed access to presort rates. Another called the proposed verification costly and intrusive on business activity. The Postal Service believes that accurate ZIP Codes are vital to ensuring consistent, timely delivery service. Moreover, the use of a correct ZIP Code is currently a requirement for the affected groups of mail. Those mailers who are unwilling to verify the correctness of the ZIP Codes they apply to mailpieces will not be allowed access to postage rates that require ZIP Code presortation.

Two commenters asked what some of the approved methods of verification might be. The Postal Service has previously stated, "A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the list might include manual verification using the most recent Postal Service ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service (DMM A910), use of a service provider to verify ZIP Code information, and use of approved software."

Other options might include the use of electronic look-up services such as those available on the Postal Service home page on the World Wide Web and other bulletin board look-up services using certified address matching software. Mailers will be expected to identify the method used to verify the ZIP Code information and sign a certification of verification. Mailers will have 3 months from the date of Classification Reform implementation to verify the accuracy of their 5-digit ZIP Code information. In addition, as new techniques for ZIP Code verification are developed, they will be added to the list of acceptable methods for verification.

6. Periodicals

a. Overview

Periodicals, like today's second-class mail, is designed for newspapers and other periodical publications. Under Classification Reform, all current categories of authorization would remain (general, requester, institutions and societies, foreign, and state departments of agriculture). Current subclasses would also be retained and Publications Service, a new low-cost subclass, would be added.

No substantive change to Preferred Rates Periodicals (In-County, Classroom, Nonprofit, Science-of-Agriculture zones 1–2) is proposed in the current Classification Reform case. The provision will also be retained that prescribes payment of Regular rates for advertising that exceeds the 10% limitation.

Publishers may mail at only one subclass of outside-county rates for each publication: Preferred (when applicable), Regular, or Publications Service. The publication must follow the same basic standards as today, i.e., it must be formed of printed sheets and published from a known office of publication at a regular frequency of at least four times per year. Current requirements by authorization category continue to apply. General publications must have a minimum of 50% paid circulation and contain no more than 75% advertising in one-half the issues published during a 12-month period. The publisher must maintain a list of subscribers. Likewise, requester publications must have a list of requesters/subscribers, with a minimum 50% of the circulated copies either requested or paid for by the recipient. Advertising in requester publications may not exceed 75% in any issue.

A notable change proposed for the Regular subclass pertains to the presort levels: Basic, 3/5, and Carrier Route would replace current levels A, B, and C, making the presort structure for Regular Periodicals more consistent with other classes. The new 3/5 rate replaces the current Level B3 and B5 rates. Mail presorted to all 3-digit destinations (not just to unique 3-digit destinations) will qualify for the 3/5 rates. Another minor change renames the current 125 walk-sequence rate as High Density.

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Three primary criteria must be met to qualify for Publications Service: (1) at least 75% of the mailed volume must be paid (for general publications) or paid or requested (for requester circulation); (2) at least 30% of the content in each issue must be nonadvertising matter; and (3) at least 90% of each issue must be presorted in prescribed volumes to carrier route, 5-digit, or 3-digit destinations. An outside circulation audit is also required.

Each issue of a Publications Service periodical must have at least 30% nonadvertising content and at least 75% of the mailed circulation (excluding copies claimed at in-county, foreign, First-Class, Priority Mail, or Express Mail rates) must be sent to paid subscribers (or requesters, depending on the category of authorization). Publications that fail to meet the nonadvertising content requirement are assessed a 40% surcharge of the applicable postage for that issue. If a publication fails to meet the 75% paid/requester standard, its authorization to mail at Publications Service will be revoked.

The Postal Service has determined that the outside circulation audit will be used only to validate compliance with the proposed 75% paid/requested circulation requirement. The outside auditor will not be responsible for confirming the advertising/editorial ratio. To ensure compliance and reduce the amount of material reviewed before mail acceptance, the Postal Service will include on the mailing statement a certification block for the publisher's signature, validating that the publication meets the 30% nonadvertising requirement. If the Postal Service determines that an issue exceeds 70% advertising, the publisher will be given ample opportunity to demonstrate compliance with the requirement before any penalty is assessed.

At least 90% of each issue must be presorted to 3-digit, 5-digit, or carrier route destinations. Copies count toward the 90% criterion if they are part of a minimum of 24 addressed pieces for a 3-digit destination, all properly presorted to carrier route, 3-digit, or 5-digit destinations in packages of six or more addressed pieces each. Any combination of six-piece or larger packages to these destinations is acceptable (e.g., 18 pieces to a carrier route and six copies to a 5-digit, both in the same 3-digit area). Publications that fail to meet the 90% standard are assessed a 40% surcharge of the applicable postage for that issue.

For the purposes of the 90% criterion, an "issue" will be considered to consist of all copies in the mailed volume that are mailed within that "window" of time during which the main file and most supplemental mailings for a particular title are deposited with the Postal Service. The mailing "window" includes all copies, regardless of cover date, mailed during that period. To ensure that the entire mailed volume of a publication is considered, all mailings, including "supplementals," will be counted.

Publications may be better able to meet this density requirement by comailing, including the comailing of Publications Service flats with Regular Periodicals. To administer the 90% criterion in a comailing situation, the Postal Service proposes to look at the sortation of the individual title within the comailing. The copies reported on a single mailing statement will not have to meet the 90% criterion. The qualifying pieces in the comailing are added to the qualifying pieces in the main file and any qualifying pieces in supplemental runs that were not comailed. The final qualifying percentage is derived by dividing the total number of qualifying pieces by the total number of mailed pieces.

In a comailing, the 40% penalty would apply to the publication that fails to meet the density requirements, not to all other comailed publications. While firm packages are considered a single addressed piece for presort and postage purposes, each copy in a firm package counts individually toward the 90% standard.

Carrier route, nonbarcoded, and barcoded mail may be mixed on the same pallet, and 5-digit and ZIP+4 barcoded Publications Service flats may be combined in the same package. This is discussed further in the analysis of comments on Periodicals.

In addition to the requirements for nonadvertising content, circulation to paid/requester addresses, and density, all automation-compatible Publications Service mail (except carrier route rate flats) must bear a barcode. All pieces must bear at least a 5-digit barcode and no less than 85% of the pieces must bear a ZIP+4 or delivery point barcode. If the piece is not machinable, barcoding is not required. Although the carrier route portion of the mailing will count toward the 85% criterion, it will not have to be barcoded. The 85% criterion optimizes the proportion of pieces that can be given automated processing. To the extent firm packages are amenable to such handling, it would not be relevant to the objectives of the 85% criterion if the component copies inside the firm package were barcoded. Therefore, the 85% criterion will be applied to consider the number of addressed pieces in the mailing, not the total number of copies.

Compliance with the 85% criterion will be based on the entire mailed volume of the issue, encompassing all editions from all sources. Publishers will be responsible for providing the supporting information if requested by the Postal Service.

Additional "bundled" requirements pertaining to such issues as addressing, sortation, and containerization are detailed in the proposed DMM standards in this notice.

To mail at Publications Service rates, a periodical must first be authorized Periodicals mailing privileges in one of the existing categories of authorization. To apply for Publications Service, the publisher must submit a separate application (and pay an additional $305 fee) and initiate an outside circulation audit. Once authorized, all outside-county copies of the publication, which are not sent as Express Mail, Priority Mail, or First-Class Mail, must be mailed at Publications Service rates exclusively, unless the publication voluntarily abandons its authorization. If the publication abandons the authorization or the Postal Service revokes it, the publisher must wait 1 year to reapply. Authorization to mail at Publications Service rates does not affect eligibility for in-county rates.

Publications currently authorized to mail at second-class rates will not be required to mail in a pending status if it can be shown to meet the 75% paid or requested criterion and an application to mail at Publications Service rates is filed. Mailings will be accepted at Publications Service rates subsequent to the application being filed. If the Postal Service denies the application or the publisher abandons it, a revenue deficiency will be assessed for the difference between the amount paid at Publications Service rates and the amount due at Regular rates.

Publications not authorized second-class mail privileges may also apply for Publications Service rates. A publisher would be required to file an application for a Periodicals authorization and pay a fee of $305. A separate application for Publication Service rates must also be filed and the publisher must pay an additional $305 fee. These applications may be filed simultaneously or separately as desired by the publisher. Under these circumstances, the publisher will be required to mail under established pending procedures (i.e., the publisher must deposit funds at the applicable third- or fourth-class rates). When the applications are approved, the publisher will be entitled to an appropriate refund.

b. Comment Analysis

A total of nine comments were received concerning the implementation standards for Periodicals described in the August 30 notice. Of that number, five comments expressed general disapproval of Classification Reform as it pertains to Periodicals and three were generally favorable; such comments are beyond the scope of this rulemaking and are not addressed here. Two of the three commenters who expressed general satisfaction with Classification Reform as it pertains to Periodicals, and two other commenters, offered specific comments concerning various issues. These comments are discussed below.

(1) Automated Processing of Flats. One commenter reiterated that the widespread availability of automation equipment capable of handling all types of second-class flats is crucial to second-class mailers. The commenter recommended that the Postal Service immediately undertake to develop a nationwide plan to increase automation capacity for flat-size mail. As explained above in the discussion on flats, although the Postal Service would like to be able to process all types of flats on automated equipment, new machines will not be purchased until the current ones have been properly positioned for optimum utilization.

(2) 75% Paid Subscriber/Requester and 30% Nonadvertising Requirements for Publications Service. Regarding the requirement that 75% of all mailed copies of Periodicals authorized to mail at Publications Service rates must be sent to paid subscribers/requesters (as appropriate), two commenters requested that all mailed newsstand copies (regardless of the number returned or destroyed) be considered paid circulation. This request has been given full consideration. Although the Postal Service believes that it is appropriate to account for newsstand copies sent through the mails, it is both inaccurate and inconsistent with past postal policy to consider all such copies paid. Rather, the Postal Service will continue to require publishers to maintain records to distinguish between sold and unsold newsstand copies. Those copies mailed to newsstands that are eventually sold will count toward the 75% paid subscriber/requester requirement.

One commenter addressed the proposal to require an outside auditor to review the proportion of mailed copies of a Publications Service periodical that are sent to paid subscribers/requesters to verify compliance with the 75% paid subscriber/requester requirement. This commenter supported the Postal Service decision not to require that an outside auditor confirm that the 30% nonadvertising minimum per issue has been met, but instead to accept a written certification by the publisher (included as part of the mailing statement prepared for each issue).

(3) Commingling of 5–Digit and ZIP+4 Barcoded Publications Service Periodicals. One commenter supported the Postal Service's decision to allow the commingling on pallets of all types of packages of both Regular and Publications Service Periodicals. Two commenters believed that the volume of 5-digit barcoded pieces is relatively small in second-class today and, therefore, warrants allowing mailers to combine 5-digit and ZIP+4 barcoded pieces in the same package.

Once a publication is authorized to be mailed at Publications Service rates, all mailed copies (except those mailed at in-county rates or as Express Mail, Priority Mail, or First-Class Mail) must be prepared according to the required sortation for this subclass. Unlike First-Class and Standard Mail where pieces not qualifying for one subclass may be mailed in another, no copies of an authorized Publications Service periodical may be mailed as Regular or outside-county Preferred Periodicals. For this reason, the Postal Service decided that setting a 100% ZIP+4 or delivery point barcoding standard for automation-compatible Publications Service periodicals would be difficult for publishers to achieve; therefore, the current "85–15" barcoding standard is retained.

Under today's second-class standards, which allow 15% of a nominally ZIP+4 barcoded mailing to bear a 5-digit barcode, publishers may combine ZIP+4 and 5-digit barcoded pieces in packages. The Postal Service believes that combining such mail in packages continues to be appropriate and will allow this preparation for Publications Service periodicals. However, the Postal Service will continue to study the issue and may require other packaging standards at a later date if combining ZIP+4 barcoded and 5-digit barcoded pieces in the same package has a negative operational impact as the barcoded flats mailstream expands.

(4) Presort and Comailing. The Postal Service will allow the comailing of Regular and Publications Service flat-size Periodicals. To enable publishers to comail efficiently, the Postal Service has determined (and has so stated in earlier notices) that it will align the sortation standards for Regular and Publications Service flats. This decision is reflected in the proposed DMM standards presented below. For flats, the only difference between Regular and Publications Service sortation requirements is that mail entered at a Regular Barcoded rate must be prepared as a separate mailing meeting a separate 85% barcoding standard as discussed in section A of this proposal.

Although the majority of Periodicals is flat-size mail, many publications are produced in letter-size format. The preparation standards proposed for automation-compatible letter-size Publications Service mail will mirror the proposed standards for Automation First-Class and Standard Mail letter-size pieces, with the exception that a 6-piece package minimum will be applied to Publications Service carrier route sortation rather than the 10-piece minimum applied in First-Class and Standard Mail. In addition, new sortation criteria for nonautomation-compatible letters have been added for Publications Service to require packaging and traying of pieces. Preparation of presorted packages is necessary for nonautomation-compatible mail for efficient Postal Service processing.

These two Publications Service letter-size sortations are significantly different from current letter sortation requirements for second-class mail. Because these sortation requirements affect rate eligibility, the Postal Service will not propose the alignment of standards for Regular and Publications Service letter-size mail. Consequently, comailing will not be allowed for Regular and Publications Service letter-size pieces.

New sortation criteria have been developed for barcoded letters and for nonbarcoded letters at Regular rates. These new sortation criteria reflect the new standards for preparation of all letter-size mail in trays and for tray sortation levels that will be implemented with Classification reform, while allowing such mail to continue to qualify for presort and barcoding rates under the same qualification criteria as today.

C. Presort Summary Guide

The following charts summarize the presort requirements for reformed subclasses. They do not reflect every presort requirement but are a guide to the major presort points contained in the DMM standards presented in the latter part of this notice.

BILLING CODE 7710-12-P

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1. First-Class—Automation Subclass—Letters

Sort Level	Opt./ Req.	Rate Qual. Min.	Tray Level and Sortation[1]	Rate Letters[2]	Rate Cards
Carrier Route[3]	Opt.	10 pcs./rt.	{ Carrier Route[3] (full; no overflow trays) 5-Digit Carrier Routes (no minimum)	23.2¢	13.7¢
5-Digit	Opt.	150 pcs.	5-Digit (150-pc. min.; one less-than-full tray allowed)	23.5¢	14.0¢
3-Digit/Scheme	Req.	150 pcs.	3-Digit/Scheme[4] (150-pc. min.; one less-than-full tray allowed)	25.0¢	15.5¢
AADC	Req.	none	AADC[4] (150-pc. min.; one less-than-full tray allowed, grouped by 3-digit/3-digit scheme)	27.0¢	17.5¢
Mixed AADC	Req.	none	Mixed AADC (no min.; grouped by AADC, within AADC, subgrouped by 3-digit/3-digit scheme)	27.0¢	17.5¢

1/ For each tray destination, fill all possible 2-foot trays before preparing 1-foot tray(s).
2/ First-ounce rate; each additional ounce 23.0¢. Additional presort discount for pieces over 2 ounces is 4.6¢. Carrier route rates based on package level; other rates, on tray level.
3/ Carrier route sortation and rates limited to 5-digit ZIP Codes where delivery point sequencing on delivery barcode sorters is not performed.
4/ All mail for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted; if less than 150 pieces each, Basic rates apply.

2. First Class—Automation Subclass—Flats

Sort Level	Opt./ Req.	Pkg./Rate Qual. Min.	Tray Level and Sortation[1]	Rate[2,3]
5-Digit	Req.	10 pcs.	5-Digit (full; no overflow trays)	27.0¢
3-Digit	Req.	10 pcs.	3-Digit[4] (full; no overflow trays)	27.0¢
ADC	Req.	10 pcs.	ADC (full; no overflow trays)	29.0¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	29.0¢

1/ A full tray is defined as a minimum of one stack of pieces lying flat that reaches bottom of handholds of tray. If there are enough pieces to destination, trays must be further filled to top of tray (in two or more stacks where possible).
2/ Rates are based on package level without regard to tray in which a package is placed.
3/ First-ounce rate; each additional ounce 23.0¢. A nonstandard surcharge of 5¢ applies to each piece weighing 1 ounce or less that falls outside standard letter dimensions. An additional presort discount of 4.6¢ applies to each piece weighing over 2 ounces.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted.

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3. First-Class—Retail Subclass—Presort Letters

a. Basic Preparation

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Rate Letters[2]	Rate Cards
5-Digit	Req.	10 pcs.	5-Digit (full; no overflow trays)	30.0¢	19.0¢
3-Digit	Req.	10 pcs.	3-Digit[3] (full; no overflow trays)	30.0¢	19.0¢
ADC	Req.	10 pcs.	ADC (full; no overflow trays)	30.0¢	19.0¢
Mixed ADC	Req.	No min.	Mixed ADC[4] (no minimum)	30.0¢	19.0¢

b. Optional Preparation for Upgradable Pieces

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Rate Letters[2]	Rate Cards
5-Digit	Opt.	N/A	5-Digit (full; no overflow trays)	30.0¢	19.0¢
3-Digit	Req.	N/A	3-Digit[3] (full; no overflow trays)	30.0¢	19.0¢
AADC	Req.	N/A	AADC (full; grouped by 3-digit ZIP Code, no overflow trays)	30.0¢	19.0¢
Mixed AADC	Req.	N/A	Mixed AADC (no minimum; grouped by AADC, within AADC, subgrouped by 3-digit)	30.0¢	19.0¢

1/ Fill all possible 2-foot trays before preparing 1-foot tray(s).
2/ First-ounce rate; each additional ounce is 23.0¢. Additional presort discount for pieces weighing more than 2 ounces 4.6¢.
3/ All 5-digit and 3-digit packages (all pieces for upgradable) remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted.
4/ Physically fill all possible 2-foot trays. Place remaining pieces in a 2-foot tray, except place them in a 1-foot tray if they do not exceed its capacity.

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4. First Class—Retail Subclass—Presort Flats

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Rate[2]
5-Digit	Req.	10 pcs.	5-Digit (full; no overflow trays)	30.0¢
3-Digit	Req.	10 pcs.	3-Digit[3] (full; no overflow trays)	30.0¢
ADC	Req.	10 pcs.	ADC (full; no overflow trays)	30.0¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	30.0¢

1/ A full tray is defined as a minimum of one stack of pieces lying flat that reaches bottom of handholds of tray. If there are enough pieces to destination, trays must be further filled to top of tray (in two or more stacks where possible).
2/ First-ounce rate 30¢; each additional ounce 23.0¢. Additional 4.6¢ presort discount applies to each piece weighing over 2 ounces. Nonstandard pieces weighing 1 ounce or less are subject to an additional 5¢ surcharge.
3/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted.

5. First Class—Retail Subclass—Presort Parcels

Sort Level	Opt./ Req.	Pkg. Level Min.[1]	Sack Level and Sortation	Rate[2]
5-Digit	Req.	10 pcs.	5-Digit (minimum 10 lbs.; lesser quantities not permitted)	30.0¢
3-Digit	Req.	10 pcs.	3-Digit[3] (minimum 10 lbs.; lesser quantities not permitted)	30.0¢
ADC	Req.	10 pcs.	ADC (minimum 10 lbs.; lesser quantities not permitted)	30.0¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	30.0¢

1/ Packaging is required for pieces 1/2 inch thick or less. Irregular pieces more than 1/2 inch thick need not be made up into packages if packages would be placed in a sack for same destination.
2/ First-ounce rate 30¢; each additional ounce 23.0¢. Additional 4.6¢ presort discount applies to each piece weighing over 2 ounces. Nonstandard pieces weighing 1 ounce or less are subject to an additional 5¢ surcharge.
3/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted.

6. Standard Mail—Automation Subclass—Letters

Sort Level	Opt./ Req.	Rate Qual. Min.	Tray Level and Sortation[1]	Rate[2]
Carrier Route[3]	Opt.	10 pcs./rt.	Carrier Route[3] (full; no overflow) 5-Digit Carrier Routes (no minimum)	14.1¢
5-Digit	Opt.	150 pcs.	5-Digit (150-pc. minimum; 1 less-than-full tray allowed)	15.0¢
3-Digit/Scheme	Req.	150 pcs.	3-Digit/Scheme[4] (150-pc. minimum; 1 less-than-full tray allowed)	16.8¢
AADC	Req.	none	AADC (150-pc. minimum; 1 less-than-full tray allowed, grouped by 3-digit/3-digit scheme)	17.5¢
Mixed AADC	Req.	none	Mixed AADC (no minimum, grouped by AADC, within AADC, subgrouped by 3-digit/3-digit scheme)	17.5¢

1/ For each tray destination, fill all possible 2-foot trays before preparing 1-foot tray(s).
2/ Destination discounts will also be available. Carrier route rates based on package level; other rates on tray level.
3/ Carrier route sortation and rates limited to 5-digit ZIP Codes where delivery point sequencing on delivery barcode sorters is not performed.
4/ All mail for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted; if less than 150 pieces each, Basic rates apply.

7. Standard Mail—Automation Subclass—Flats

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation[1]	Min. Per Pc. Rate[2]
5-Digit	Req.	10 pcs.	5-Digit (minimum 125 pcs. or 15 lbs.)	19.0¢
3-Digit	Req.	10 pcs.	3-Digit[3] (minimum 125 pcs. or 15 lbs.)	19.0¢
ADC	Req.	10 pcs.	ADC (minimum 125 pcs. or 15 lbs.)	23.7¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	23.7¢

1/ Palletization preferred. Pallet destinations are not same as sack levels shown.
2/ Rate is based on type of package regardless of sack in which, or pallet on which, it is placed. For pieces weighing more than 3.2941 oz., 3/5 rate is 8.5¢/pc. plus 51¢/lb.; Basic rate is 13.2¢/pc. plus 51¢/lb. Destination discounts will also be available.
3/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack.

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8. Standard Mail—Regular Subclass—Letters

a. Basic Preparation

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Rate[2]
5-Digit	Req.	10 pcs.	5-Digit[3] (full; no overflow trays)	21.9¢
3-Digit	Req.	10 pcs.	3-Digit[3, 4] (full; one less-than full tray allowed)	21.9¢
ADC	Req.	10 pcs.	ADC (full; no overflow trays)	26.1¢
Mixed ADC	Req.	No min.	Mixed ADC[5] (no minimum)	26.1¢

b. Optional Preparation for Upgradable Pieces

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Rate[2]
5-Digit	Opt.	N/A	5-Digit[3] (full; no overflow trays)	21.9¢
3-Digit	Req.	N/A	3-Digit[3, 4] (full; one less-than-full tray allowed)	21.9¢
AADC	Req.	N/A	AADC (full; grouped by 3-digit ZIP Code)	26.1¢
Mixed AADC	Req.	N/A	Mixed AADC (no minimum; grouped by AADC; within AADC, subgrouped by 3-digit)	26.1¢

1/ Fill all possible 2-foot trays before filling a 1-foot tray.
2/ Rate is based on tray level. There must be at least 150 pieces in 5-digit and 3-digit packages for a 3-digit area (150 pieces to a 3-digit area for upgradable) to claim 3/5 rates. Destination discounts will also be available.
3/ There must be at least 150 pieces of 5-digit and 3-digit packages (150 pieces for upgradable) to a 3-digit destination before 5-digit and 3-digit trays to that destination may be prepared. Begin tray preparation for groups of less than 150 pieces for a 3-digit area at ADC level (AADC level for upgradable) except under footnote 4.
4/ All 5-digit and 3-digit packages (all mail for upgradable) remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted; if less than 150 pieces each, Basic rates apply.
5/ Physically fill all possible 2-foot trays. Place remaining pieces in a 2-foot tray, except place them in a 1-foot tray if they do not exceed its capacity.

9. Standard Mail—Regular Subclass—Flats and Irregular Parcels

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation[1]	Min. Pc. Rate[2, 3]
5-Digit	Req.	10 pcs.	5-Digit (minimum 125 pcs. or 15 lbs.)	23.7¢
3-Digit	Req.	10 pcs.	3-Digit[4] (minimum 125 pcs. or 15 lbs.)	23.7¢
ADC	Req.	10 pcs.	ADC (minimum 125 pcs. or 15 lbs.)	30.5¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	30.5¢

1/ Palletization of flats permitted and preferred. Pallet destinations are different from sack destinations shown.
2/ Rate is based on sack level for sacked mail. For packages on pallets, rate is based on the package level.
3/ Destination discounts will also be available.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack. A sack containing less than minimum quantity to each of these areas is permitted, but such pieces are subject to Basic rate.

10. Standard Mail—Regular Subclass—Machinable Parcels

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation	Min. Pc. Rate[1]
5-Digit	Req. only if 3/5 rates claimed[2]	N/A	5-Digit (optional. at 10 lbs., except required for 3/5 rates, smaller volume not permitted[2])	23.7¢
Destination ASF	Req. only if DBMC rates claimed	N/A	Destination ASF (required at 10 lbs. for DBMC rate only; smaller volume not permitted)	23.7¢ if 5-digit sacks prepared; otherwise, 30.5¢
Destination BMC	Req.	N/A	Destination BMC (required at 10 lbs.; smaller volume not permitted)	30.5¢
Mixed BMC	Req.	N/A	Mixed BMC (no minimum)	30.5¢

1/ For pieces weighing more than 3.3071 oz., 3/5 rate is 9.5¢/pc. plus 68.7¢/lb.; Basic rate is 16.3¢/pc. plus 68.7¢/lb. Destination discounts will also be available.
2/ Sacks weighing less than 10 pounds may be prepared if machinable and irregular parcels are combined in same mailing. In such combined mailings, all possible 5-digit sacks must be prepared.

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9. Standard Mail—Regular Subclass—Flats and Irregular Parcels

Sort Level	*Opt./ Req.*	*Pkg. Level Min.*	*Sack Level and Sortation*[1]	*Min. Pc. Rate*[2,3]
5-Digit	Req.	10 pcs.	5-Digit (minimum 125 pcs. or 15 lbs.)	23.7¢
3-Digit	Req.	10 pcs.	3-Digit[4] (minimum 125 pcs. or 15 lbs.)	23.7¢
ADC	Req.	10 pcs.	ADC (minimum 125 pcs. or 15 lbs.)	30.5¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	30.5¢

1/ Palletization of flats permitted and preferred. Pallet destinations are different from sack destinations shown.
2/ Rate is based on sack level for sacked mail. For packages on pallets, rate is based on the package level.
3/ Destination discounts will also be available.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack. A sack containing less than minimum quantity to each of these areas is permitted, but such pieces are subject to Basic rate.

10. Standard Mail—Regular Subclass—Machinable Parcels

Sort Level	*Opt./ Req.*	*Pkg. Level Min.*	*Sack Level and Sortation*	*Min. Pc. Rate*[1]
5-Digit	Req. only if 3/5 rates claimed[2]	N/A	5-Digit (optional. at 10 lbs., except required for 3/5 rates, smaller volume not permitted[2])	23.7¢
Destination ASF	Req. only if DBMC rates claimed	N/A	Destination ASF (required at 10 lbs. for DBMC rate only; smaller volume not permitted)	23.7¢ if 5-digit sacks prepared; otherwise, 30.5¢
Destination BMC	Req.	N/A	Destination BMC (required at 10 lbs.; smaller volume not permitted)	30.5¢
Mixed BMC	Req.	N/A	Mixed BMC (no minimum)	30.5¢

1/ For pieces weighing more than 3.3071 oz., 3/5 rate is 9.5¢/pc. plus 68.7¢/lb.; Basic rate is 16.3¢/pc. plus 68.7¢/lb. Destination discounts will also be available.
2/ Sacks weighing less than 10 pounds may be prepared if machinable and irregular parcels are combined in same mailing. In such combined mailings, all possible 5-digit sacks must be prepared.

11. Standard Mail—Enhanced Carrier Route Subclass—Flats and Merchandise Samples Prepared With Detached Address Labels[1]

a. Saturation Walk Sequence

Sort Level	*Opt./ Req.*	*Pkg. Level Min.*	*Sack Level and Sortation*[2]	*Min. Per Pc. Rate*[3]
Carrier Route	Req.	90% total active residential deliveries or 75% total active all deliveries per route (100% if simplified address)	Carrier Route (minimum 125 pcs. or 15 lbs.)	13.5¢
			5-Digit Carrier Routes (no min.)	13.5¢

b. High Density Walk Sequence

Sort Level	*Opt./ Req.*	*Pkg. Level Min.*	*Sack Level and Sortation*[2]	*Min. Per Pc. Rate*[4]
Carrier Route	Req.	125 pcs./rt.	Carrier Route (minimum 125 pcs. or 15 lbs.)	14.8¢
			5-Digit Carrier Routes (no min.)	14.8¢

c. Basic Carrier Route Walk Sequence

Sort Level	*Opt./ Req.*	*Pkg. Level Min.*	*Sack Level and Sortation*[2]	*Min. Per Pc. Rate*[5]
Carrier Route	Req.	10 pcs./rt.	Carrier Route (minimum 125 pcs. or 15 lbs.)	15.5¢
			5-Digit Carrier Routes (no min.)	15.5¢

No Residual

1/ Maximum size for Enhanced Carrier Route rates is 14 inches long, 11.5 inches wide, and 0.75 inch thick, except that merchandise samples sent with detached address labels may exceed these dimensions.
2/ Palletization preferred for flats.
3/ For pieces weighing more than 3.2941 oz., rate is 3.0¢/pc. plus 51¢/lb. Destination entry discounts will also be available.
4/ For pieces weighing more than 3.2941 oz., rate is 4.3¢/pc. plus 51¢/lb. Destination entry discounts will also be available.
5/ For pieces weighing more than 3.2941 oz., rate is 5.0¢/pc. plus 51¢/lb. Destination entry discounts will also be available.

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12. Standard Mail—Enhanced Carrier Route Subclass—Letters

a. Saturation Walk Sequence

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Min. Per Pc. Rate[2]
Carrier Route	Req.	90% total active residential deliveries or 75% total active all deliveries per route (100% if simplified address)	Carrier Route (full trays; no overflow trays)	13.5¢
			5-Digit Carrier Routes (no min.)	13.5¢

b. High Density Walk Sequence

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation	Min. Per Pc. Rate[3]
Carrier Route	Req.	125 pcs./rt.	Carrier Route (full trays; no overflow trays)	14.8¢
			5-Digit Carrier Routes (no min.)	14.8¢

c. Basic Carrier Route Walk Sequence

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation	Min. Per Pc. Rate[4]
Carrier Route	Req.	10 pcs./rt.	Carrier Route (full trays; no overflow trays)	15.5¢
			5-Digit Carrier Routes (no min.)	15.5¢

No Residual -

1/ For each tray destination, fill all possible 2-foot trays before preparing 1-foot tray(s).
2/ For pieces weighing more than 3.2941 oz., rate is 3.0¢/pc. plus 51¢/lb. Destination entry discounts will also be available.
3/ For pieces weighing more than 3.2941 oz., rate is 4.3¢/pc. plus 51¢/lb. Destination entry discounts will also be available.
4/ For pieces weighing more than 3.2941 oz., rate is 5.0¢/pc. plus 51¢/lb. Destination entry discounts will also be available.

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13. Periodicals—Publications Service
Automation-Compatible (Barcoded) Letters[1]

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[2]	Per Pc. Rate[3]
Carrier Route[4]	Opt.	6 pcs./rt.	Carrier Route[4] (full; no overflow trays)	8.3¢
			5-Digit Carrier Routes (no minimum)	8.3¢
5-Digit	Req.	N/A	5-Digit (150-pc. min.; one less-than-full tray allowed)	14.7¢
3-Digit/Scheme	Req.	N/A	3-Digit/Scheme[5] (150-pc. min.; one less-than full tray allowed)	14.7¢
AADC	Req.	N/A	AADC (150-pc. min.; one less-than-full tray allowed, grouped by 3-digit/3-digit scheme)	14.7¢
Mixed AADC	Req.	N/A	Mixed AADC (no minimum; grouped by AADC; within AADC, subgrouped by 3-digit/3-digit scheme)	14.7¢

1/ 85% barcoding requirement applies to all portions of mailing. Carrier route portion must bear barcodes according to the 85% requirement.
2/ For each tray destination, fill all possible 2-foot trays before preparing 1-foot tray(s).
3/ DDU and SCF per piece discounts are also available. Zoned pound rates also apply.
4/ Carrier Route sortation and rates limited to 5-digit ZIP Codes where delivery point sequencing is not performed on delivery barcode sorters.
5/ All mail for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray without regard to 150-piece minimum.

14. Periodicals—Publications Service
Nonautomation-Compatible (Nonbarcoded) Letters

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[1]	Per Pc. Rate[2]
Firm	Opt.	2 copies		8.3¢ or 14.7¢, depending on further packaging and sacking
Carrier Route[3]	Opt.	6 pcs./rt.	Carrier Route[3] (full; no overflow trays)	8.3¢
			5-Digit Carrier Routes (no minimum)	8.3¢
5-Digit	Req.	6 pcs.	5-Digit (full; no overflow trays)	14.7¢
3-Digit	Req.	6 pcs.	3-Digit[4] (full; no overflow trays)	14.7¢
ADC	Req.	6 pcs.	ADC (full; no overflow trays)	14.7¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	14.7¢

1/ Fill all possible 2-foot trays before preparing a full 1-foot tray. Last or only mixed ADC tray may be less than full.
2/ DDU and SCF per piece discounts are also available. Zoned pound rates also apply.
3/ Carrier Route mail must be in line-of-travel or walk sequence.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray. A less-than-full tray to each such area is permitted.

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15. Periodicals—Publications Service—Flats[1]

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation	Per Pc. Rate[2]
Firm	Opt.	2 copies		8.3¢ or 14.7¢, depending on further packaging and sacking
Carrier Route[3]	Opt.	6 pcs./rt.	Carrier Route[3] (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. pkg.)	8.3¢
			5-Digit Carrier Routes (no minimum)	8.3¢
5-Digit	Req.	6 pcs.	5-Digit (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	14.7¢
3-Digit	Req.	6 pcs.	3-Digit [4] (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	14.7¢
ADC	Req.	6 pcs.	ADC (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	14.7¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	14.7¢

1/ Automation-compatible flats must meet 85% ZIP+4 or delivery point barcoding requirement. This requirement includes all portions of mailing. Carrier route portion counts as ZIP+4 or delivery point barcoded mail but is not required to bear barcodes.
2/ DDU and SCF per piece discounts are also available. Zoned pound rates also apply.
3/ Carrier Route mail must be in line-of-travel or walk sequence.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack.

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16. Periodicals—Regular Subclass—Nonbarcoded Letters

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation	Per Pc. Rate[1]
Firm	Opt.	2 copies		16.6¢[2], 21.7¢, or 27.2¢, depending on further packaging and sacking
Carrier Route[4]	Opt.	6 pcs./rt.	Carrier Route (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. pkg.)	16.6¢[2]
			5-Digit Carrier Routes (no minimum)	16.6¢[2]
5-Digit	Req.	6 pcs.	5-Digit (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	21.7¢[3]
3-Digit	Req.	6 pcs.	3-Digit[4] (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	21.7¢[3]
ADC	Req.	6 pcs.	ADC (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	27.2¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	27.2¢

1/ Less nonadvertising discount of 0.066¢ for each 1% of nonadvertising content. DDU or SCF discounts may also apply. Zoned pound rates also apply to advertising portion and a pound rate of 19.4¢ applies to nonadvertising portion.
2/ High Density and Saturation discounts may also apply.
3/ 3/5 rates apply only to pieces in 5-digit and 3-digit packages of six or more addressed pieces correctly sorted to 5-digit or 3-digit trays.
4/ All mail for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray.

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17. Periodicals—Regular Subclass—Barcoded Letters[1]

Sort Level	Opt./ Req.	Pkg. Level Min.	Tray Level and Sortation[2]	Per Pc. Rate[3,4]
5-Digit	Req.	10 pcs.	5-Digit (full trays; no overflow trays)	18.8¢
3-Digit	Req.	50 pcs.	3-Digit[5] (full trays; no overflow trays)	18.8¢
AADC	Req.	10 pcs.	AADC (full trays; no overflow trays)	18.8¢ or 22.6¢ (based on package level)
Mixed AADC	Req.	No min.	Mixed AADC (no minimum)	18.8¢ or 22.6¢ (based on package level)

1/ At least 85% of pieces must bear a delivery point barcode.
2/ Both 1-foot and 2-foot trays must be used. All possible 2-foot trays must be prepared for a tray level before preparing a 1-foot tray.
3/ Less nonadvertising discount of 0.066¢ for each 1% of nonadvertising content. DDU or SCF discounts may also apply. Zoned pound rates also apply to advertising portion and a pound rate of 19.4¢ applies to nonadvertising portion.
4/ Rates are package-based rates. A package of 10 pieces to a 5-digit ZIP Code or 50 pieces to a 3-digit ZIP Code receives 3/5-digit Barcoded rate, regardless of tray placement.
5/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit tray.

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18. Periodicals—Regular Subclass—Nonbarcoded Flats

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation	Per Pc. Rate[1]
Firm	Opt.	2 copies		16.6¢[2], 21.7¢, or 27.2¢, depending on further packaging and sacking
Carrier Route	Opt.	6 pcs./rt.	Carrier Route (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. pkg.)	16.6¢[2]
			5-Digit Carrier Route (no minimum)	16.6¢[2]
5-Digit	Req.	6 pcs.	5-Digit (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. package)	21.7¢[3]
3-Digit	Req.	6 pcs.	3-Digit[4] (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. package)	21.7¢[3]
ADC	Req.	6 pcs.	ADC (required at 24 pcs.; lesser quantities permitted; min. one 6-pc. package)	27.2¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	27.2¢

1/ Less nonadvertising discount of 0.066¢ for each 1% of nonadvertising content. DDU or SCF discounts may also apply. Zoned pound rates also apply to advertising portion and a pound rate of 19.4¢ applies to nonadvertising portion.
2/ High Density and Saturation discounts may also apply.
3/ 3/5 rates apply only to pieces in 5-digit and 3-digit packages of six or more addressed pieces that are correctly sorted to 5-digit, or 3-digit sacks.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack.

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19. Periodicals—Regular Subclass—Barcoded Flats[1]

Sort Level	Opt./ Req.	Pkg. Level Min.	Sack Level and Sortation	Per Pc. Rate[2,3]
5-Digit	Req.	6 pcs.	5-Digit (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	21.7¢
3-Digit	Req.	6 pcs.	3-Digit[4] (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	21.7¢
ADC	Req.	6 pcs.	ADC (required at 24 pcs.; lesser quantities permitted; minimum one 6-pc. package)	27.2¢
Mixed ADC	Req.	No min.	Mixed ADC (no minimum)	27.2¢

1/ At least 85% of pieces must bear a ZIP+4 or delivery point barcode.
2/ Less nonadvertising discount of 0.066¢ for each 1% of nonadvertising content. DDU or SCF discounts may also apply. Zoned pound rates also apply to advertising portion and a pound rate of 19.4¢ applies to nonadvertising portion.
3/ Rates are package-based rates. 3/5 rates apply to pieces in 5-digit and 3-digit packages, regardless of sack in which they are placed.
4/ All 5-digit and 3-digit packages remaining for a 3-digit ZIP Code served by SCF of entry post office must be placed in a 3-digit sack.

BILLING CODE 7710-12-C

D. Automation Carrier Route Rates—Ineligible Zip Codes

First-Class and Standard Mail (A) Automation Carrier Route and Publications Service Carrier Route lettersize mail may *not* be prepared to the 5-digit ZIP Code destinations listed below. This list will *not* appear in the DMM but this information will be available in the City/State file. Printed information may be published periodically in the *Postal Bulletin*.

[INFORMATION IN THIS TABLE IS TENTATIVE AND SUBJECT TO CHANGE BEFORE IMPLEMENTATION OF RATES AND STANDARDS FOR MC95-1]

3-Digit ZIP Code Prefix	5-Digit ZIP Codes
010	01013, 01014, 01020, 01021, 01030, 01056, 01089, 01090, 01095
011	01104, 01109, 01129, 01151
012	01201, 01226, 01240
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015	01520, 01550, 01581
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028	02806, 02809, 02852, 02854, 02886, 02888, 02889, 02893, 02895
029	02904-02911, 02915-02917, 02920, 02921
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E. Summary of DMM Changes

The DMM revisions shown below are based on the general proposals described in the two advance notices of proposed rulemaking published earlier this year by the Postal Service, on which comments have been received and considered accordingly. Revisions are described by module, based on the organization and content of DMM Issue 49 (September 1, 1995). This list is intended as an overview only, and should not be viewed by commenters as defining every revision that they may need to examine.

A (Addressing). Revisions in nomenclature are made throughout. A930 is revised to update the list of available AIS products, and A950 is revised to show the more frequent product cycle for address coding products.

C (Characteristics and Content). Revisions in nomenclature are made throughout. C100 is amended to reflect the proposed new size limits for pieces eligible for card rates. C300 and C400 are revised and merged into new C600 to recognize the merger of third- and fourth-class into Standard Mail. Terms used in various standards are defined in new sections added to C810, C820, and C840.

D (Deposit, Collection, and Delivery). Revisions in nomenclature are made throughout. D300 and D400 are revised and merged into new D600 to recognize the merger of third- and fourth-class into Standard Mail.

E (Eligibility). Revisions in nomenclature are made throughout. E100 is amended to reflect the reorganization of First-Class Mail (excluding Priority Mail) into the Retail and Automation subclasses (whose specific standards are detailed in E130 and E140, respectively). E200 is renamed to recognize the renaming of second-class mail as Periodicals. E210, E250, and E270 are revised minimally. E220 is added to present the standards for Publications Service. E230 is reorganized to present the presort standards for Regular and Publications Service in E231 and E232, respectively, and the standards retained for Preferred Periodicals in E239. E240 is similarly revised to present the automation standards for Regular publications in E241 and those brought forward from existing rules for Preferred publications in E249. (Standards for automation-compatible Publications Service mail are included in the basic eligibility criteria in E220; there is no separate automation rate for Publications Service.) E300 and E400 are revised and merged into new E600 to recognize the merger of third- and fourth-class into Standard Mail. E610 presents basic standards for all Standard Mail in E611, for former third-class mail, now called Standard Mail (A) in E612, and for former fourth-class mail, now called Standard Mail (B) in E613. E620 contains standards for single-piece rates: single-piece Standard Mail (A) (E621), parcel post (E622), bound printed matter (E623), Special Standard Mail (currently special fourth-class mail) (E624), and Library Mail (E625). E630 presents standards for bulk rates: Regular Basic and 3/5 (E631); Enhanced Carrier Route Basic, High Density, and Saturation (E632); basic and carrier route bulk bound printed matter (E633); 5–Digit and BMC Presorted Special Standard Mail (E634); and, consolidated but without substantive change from current standards, for all existing Nonprofit rates (E639). E640 contains standards for automation-based rates: Automation Carrier Route, 5-Digit, 3-Digit, 3/5 (for flats), and Basic (E641); and, also consolidated but essentially unchanged from current standards, for all existing Nonprofit rates (E649). E650 and E670 are revised minimally. To avoid an anomalous and confusing situation in which current weight limits for "heavy letter" barcoded mail would be applied in the context of proposed rules (under which different weights would actually apply), current DMM standards that are in place for the "heavy letter" test (59 FR 65967–71, December 22, 1994), have been revised for this rulemaking to reflect the DMM provisions that would become effective if the test changes are made permanent in the future. Use of these standards in this proposed rule does not constitute an explicit or implicit decision on the test or the acceptability of heavy letter mail under any circumstance; any announcement in that regard will be made separately.

F (Forwarding and Related Services). Revisions are confined to changes in nomenclature.

G (General Information) and I (Index Information). No revisions are made.

L (Labeling Lists). Revisions in nomenclature are made throughout. L003 is added to list 3-digit ZIP Code areas that are combined for scheme sortation (only to listed destinations) under specific new preparation standards. To reflect the wider use of the ADC network, current L101 is relocated and renumbered as L004. To reflect other revisions to distribution networks that have eliminated SDC, state, and mixed states preparation, L201–203, L701–704, L706, and L707 are deleted.

M (Mail Preparation and Sortation). Revisions in nomenclature are made throughout. Current M011 is renumbered as M012, and new M011 is added to consolidate basic definitions of terms used throughout other mail preparation instructions. M012 and M013 are also updated to include revised formats for optional endorsement lines and carrier route information lines and to allow the inclusion of rate markings in both. M020 is amended to provide more consistent package preparation standards for other-than-Nonprofit mail. M033 is revised to add consistent standards for tray preparation for letter- and flat-size mail and to offer enhanced information about sack and tray preparation. M040 is amended to incorporate revisions to pallet preparation standards set forth in a final rule expected to be published on December 20, 1995. M041 is revised to present general standards for pallets and their use. M045 reorganizes the standards in current M042, M043, and M044 as amended by the cited rulemaking, to present the revised and consolidated standards for palletized mail preparation. M050 is revised to include information about line-of-travel sequencing. M100 is reorganized, with the standards for Retail Presort located in new M130. Preparation standards for nonautomation Regular and Publications Service Periodicals are in new M210; existing standards for nonautomation Preferred Rate Periodicals are consolidated in M290. M300 and M400 are revised and merged into new M600 to recognize the merger of third- and fourth-class into Standard Mail. Regular Standard Mail (A) preparation is detailed in M610, Enhanced Carrier Route standards are in M620, and existing standards for Standard Mail (B) (current fourth-class mail) and for Nonprofit Standard Mail are contained in M630 and M690, respectively. Revised preparation standards for Automation First-Class, automation-compatible Publications Service and Barcoded rate Regular Periodicals, and Automation Standard Mail are contained in M810 (letter-size pieces) and M820 (flat-size pieces). M890 brings forward existing standards for Preferred Periodicals and Nonprofit Standard Mail. Throughout, the optional city preparation level has been eliminated (except for Preferred Periodicals); the SDC, state, and mixed states preparation levels have been replaced with ADC and mixed ADC levels; and increased citation to P012 has been made as that section is being developed as the definitive standard for basic documentation.

P (Postage and Payment Methods). Revisions in nomenclature are made throughout. P012 is amended to improve the definition of "standardized" documentation. P300 and P400 are revised and merged into new P600 to recognize the merger of third- and fourth-class into Standard Mail. P710 is amended to contain new abbreviations for use with manifest mailings.

R (Rates and Fees). Revisions in nomenclature are made throughout. R000 contains updated stamp and stamped stationery information. R100 and R200 are amended to reflect revised rates and rate structures. R300 and R400 are revised and merged into new R600 to recognize the merger of third- and fourth-class into Standard Mail and to show revised rates and rate structures.

S (Special Services). Revisions in nomenclature are made throughout with no other substantive changes.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as noted below:

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

A Addressing

A000 Basic Addressing

A010 General Information

[In 1.2d, replace "Presorted First-Class," "second-class," and "bulk third-class mail; fourth-class mail" with "Retail Presort First-Class," "Periodicals," and "bulk rate Standard Mail (A); Standard Mail (B)," respectively; delete the last sentence in 1.3; in 1.6 and 7.1, replace "First-, third-, and fourth-class mail" with "First-Class and Standard Mail"; in 1.6, replace "second-class" with "Periodicals"; in 4.3f and 7.0 (heading), replace "Second-[c]lass" with "Periodicals"; and in 4.3g, replace "Fourth-class mail" with "Standard Mail (B)."]

A040 Alternative Addressing Formats

[In 1.7, 2.2, 3.1, and 3.4, replace "second-class" with "Periodicals."]

A060 Detached Address Labels

[In 1.2, replace "[S]econd- or [T]hird-[c]lass" with "Periodicals or Standard Mail (A)"; in 1.3, replace "[T]hird-[C]lass" with "Standard Mail (A)"; in 1.4 (heading) and 5.2b, delete "[F]ourth-[C]lass"; in 5.2a, replace "Second-class" with "Periodicals"; in 5.2b, replace "[T]hird-class" with "Standard Mail (A)"; in 5.3, replace "third- or fourth-class" with "Standard Mail."]

* * * * *

A930 Other Services

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2.0 AIS PRODUCTS

Customers should use USPS Address Information System (AIS) products to obtain correct 5-digit ZIP Codes for the addresses on their mailing lists. These products generally are more economical than mailing list services. Customers with computerized address lists may obtain the City/State file, Five-Digit ZIP Code file, Line-of-Travel (LOT) information, Z4CHANGE file, ZIP Move file, Carrier Route Information System (CRIS), and ZIP+4 tapes. Customers may also use USPS directories and microfiche products to find correct 5-digit ZIP Codes for single and multi-ZIP Coded offices. Information about ordering and using these products is available by calling 1–800–238–3150.

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[In 3.1a, 4.2, 4.3, 4.4, and 4.6, replace "[Q]uarterly" with "[B]imonthly."]

* * * * *

A950 Coding Accuracy Support System (CASS)

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3.0 DATE OF ADDRESS MATCHING AND CODING

3.1 Updating Standards

Unless using Z4CHANGE, all automation and carrier route mailings bearing addresses coded by any AIS product must have been coded with current CASS-certified software and the current USPS database. Coding must have been performed within 90 days of the mailing date for all carrier route mailings; within 6 months for other Automation First-Class, Automation Standard Mail, and Publications Service mailings; within 1 year for other Nonprofit Standard Mail ZIP+4 and Barcoded rate and Regular Periodicals Barcoded rate mailings. All AIS products can be used immediately upon release. New product releases must be included in address matching systems no later than 45 days following the release date. The overlap in the product use dates allows mailers adequate time to install the new data files and test their systems. Mailers are expected to update their systems with the latest data files as soon as practical and need not wait until the "last permissible use" date to include the new information in their address matching systems. The "current USPS database" product cycle is defined by this matrix:

File release	Required use	Last permissible use
Use of the file released on	Must begin no later than:	And must end no later than:
February 15	April 1	May 31.
April 15	June 1	July 31.
June 15	August 1	September 30.
August 15	October 1	November 30
October 15	December 1	January 31.
December 15	February 1	March 31.

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5.0 DOCUMENTATION

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5.4 Providing Required Data

* * * * *

b. Name of the list processor using the CASS-certified software to match and code the address list, the date the address list was processed, the date of the USPS database used to code the address list, the address list name or identification number, the total number of address records on the list submitted for coding, the total number of address records successfully coded to the appropriate depth of code, and the percentage of total addresses submitted for coding that were successfully coded.

* * * * *

6.0 OBTAINING CASS CERTIFICATION

6.1 Testing Arrangements

[Replace "ZIP+4 or delivery point" with "carrier route, ZIP+4, or delivery point."]

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Characteristics

[In 1.1, replace "third-class" with "Standard Mail (A)"; in 1.7, replace "third-class mail" with "Standard Mail (A)"; in 3.8, replace "third-class" with "Standard Mail (A)"; no other change in text.]

* * * * *

C024 Other Restricted or Nonmailable Matter

[In 12.1, replace "First-, third-, or fourth-class" with "First-Class or Standard Mail"; no other change in text.]

* * * * *

C050 Mail Processing Categories

1.0 BASIC INFORMATION

[Replace current 1.1 and 1.2 with the following:]

All mail is assigned to one of the mail processing categories listed below, based on the physical dimensions of the mailpiece, regardless of the placement (orientation) of the delivery address on the mailpiece. Unless permitted by standard, any mailing at other than the single-piece First-Class or Standard Mail rates may not contain pieces from more than one processing category.

* * * * *

3.0 FLAT-SIZE MAIL

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3.2 Barcoded Flats

Automation-compatible flat-size mail is all mail meeting the dimensional criteria in C820.

* * * * *

C100 First-Class Mail

1.0 DIMENSIONS

[In 1.2, delete the parenthetical reference.]

* * * * *

2.0 CARDS CLAIMED AT CARD RATES

2.1 Postcard Dimensions

Each card (i.e., each postal card or postcard or each half of a double postal card or postcard) claimed at a card rate must be:

a. Rectangular.

b. Not less than 3½ inches high, 5 inches long, or 0.007 inch thick.

c. Not larger than 4–1/4 inches high, 6 inches long, or 0.016 inch thick.

* * * * *

2.8 Special Rules for Cards

Cards not mailed as Retail Presort First-Class Mail but with the characteristics noted in 2.6 or 2.7 must:

a. Be prepared in mailings of not less than 200 cards of identical size and weight.

b. Have an address that includes the correct ZIP Code or ZIP+4 code.

c. Have postage paid with permit imprints, meter stamps, or precanceled stamps.

d. Be presorted to the finest extent possible and trayed as required for Regular Basic and 3/5 rate Standard Mail.

* * * * *

C200 Periodicals

[In 1.1, 1.2, 1.3, 1.4, 1.4a, 1.4b, 1.4c, 1.6, 1.9, 1.10a, 1.10c, 2.1, 2.2, 2.3, 2.4, 2.5, 3.3, 3.7, 4.2, and 4.4, replace "[S]econd-[C]lass" with "Periodicals"; in 1.3, 1.3b, 1.3c, 1.3d, and 1.10c, replace "First- or [any] third-class" with "First-Class or [any] Standard Mail (A)"; in 1.3a, 1.3c, 1.3d, 1.8b, and 1.10c, replace "[T]hird-[C]lass" with "Standard Mail (A)"; in 2.2c, replace "First-, third-, or fourth-class" with "First-Class or Standard Mail"; in 2.4, replace "Fourth-[C]lass" with "Standard Mail (B)"; no other change in text.] [Delete current C300 and C400; no change to current C500.]

* * * * *

C600 Standard Mail

1.0 DIMENSIONS

1.1 Standard Mail (A)

These dimensional standards apply to Standard Mail (A):

a. Each piece must weigh less than 16 ounces. Lower limits apply to mail claimed at certain rates.

b. Within the standards for mailability in C010, there is no maximum size for Regular single-piece, Basic, and 3/5 rate Standard Mail (A).

c. Except for merchandise samples mailed with detached address labels (DALs), the maximum size for Enhanced Carrier Route Standard Mail is 11–3/4 inches high, 14 inches long, and 3/4 inch thick (see Exhibit 1.1c). Merchandise samples whose dimensions exceed these maximums may be sent at the carrier route rate if mailed using DALs, provided that the samples meet all other applicable standards and the DALs meet the standards in A060.

d. Minimum and maximum standards for size and weight might be different for pieces claimed at certain rates.

1.2 Standard Mail (B)

These dimensional standards apply to Standard Mail (B):

a. Each piece may not exceed 70 pounds, except matter at bound printed matter rates may not exceed 10 pounds.

b. The combined length and girth of a piece (i.e., the length of its longest side plus the distance around its thickest part) may not exceed 108 inches (see Exhibit 1.2b).

c. Two or more packages may be mailed as a single parcel, if they are about the same size or shape or if they are parts of one article, if they are securely wrapped or fastened together, and if they do not together exceed the weight or size limits.

d. Lower size or weight standards apply to mail claimed at certain rates, addressed to certain APOs and FPOs, and sent by the Department of State to U.S. Government personnel abroad.

e. Pieces might be subject to minimum weight or dimensions based on the standards for specific rates. [Redesignate current Exhibits [C300.]1.3 and [C400.]1.2 as Exhibits [C600.]1.1c and 1.2b, respectively.]

2.0 SURCHARGES

2.1 Nonstandard Mail

Single-piece rate Standard Mail (A) (other than a key or identification device) weighing 1 ounce or less is nonstandard and subject to the applicable surcharge if its thickness exceeds ¼ inch or if, based on the placement (orientation) of the address, its length exceeds 11-½ inches, its height exceeds 6-⅛ inches, or its length divided by its height is less than 1.3 or more than 2.5.

2.2 Nonmachinable Mail

Specific items mailed at the inter-BMC/ASF parcel post rates might be subject to a nonmachinable surcharge (as described in E600) unless the mailer paid the special delivery or special handling fee.

3.0 SEALING

Standard Mail is not sealed against postal inspection. Standard Mail may be prepared for automated processing but must allow easy examination.

C800 Automation-Compatible Mail

C810 Letters and Cards

1.0 BASIC STANDARDS

1.1 Standards

All pieces must meet the general and specific standards for mailability and their respective mail class. Pieces claimed at a card rate must also meet the standards in C100.

1.2 Definitions

Terms used in these standards are defined as follows:

a. A "barcoded mailing" is one at the Automation First-Class, Barcoded Regular and Preferred Periodicals, Publications Service Periodicals (for automation-compatible pieces only), Automation Standard Mail, or a barcoded Nonprofit Standard Mail rates.

b. An "automation rate mailing" or "mailing at an automation-based rate" is one at any of the rates in 1.2a or the ZIP+4 rates for Preferred Periodicals and Nonprofit Standard Mail.

c. "Barcoded [cards/letters/pieces]" refers to pieces in a barcoded mailing.

2.0 DIMENSIONS

[Renumber current 2.0 through 10.0 as 3.0 through 11.0, respectively; renumber current 1.2 and 1.3 as 2.1 and 2.2, respectively; consolidate current 1.4 and 1.5 into new 2.3; revise other text as follows:]

* * * * *

2.3 Weight

These weight limits apply to automation-compatible mail:

a. Pieces of upgradable Retail First-Class, preferred ZIP+4 rate Periodicals, upgradable Regular Standard Mail, or Nonprofit ZIP+4 rate Standard Mail must not exceed 2.5 ounces.

b. Pieces of Automation First-Class and Standard Mail, automation-compatible Publications Service and Barcoded rate Regular Periodicals mail, and Barcoded rate Nonprofit Standard Mail must not exceed 3 ounces, except that the maximum weight for pieces that meet additional barcoding standards in C840, are prepared in an envelope, and are part of a 100% delivery point barcoded mailing is 3.4383 ounces for Automation First-Class, Barcoded Regular or automation-compatible Publications Service Periodicals, and Nonprofit Standard Mail; and 3.2941 ounces for Automation Standard Mail.

3.0 PROHIBITIONS

3.1 Wraps and Closures

An automation-compatible mailpiece may not be polywrapped, polybagged, or shrinkwrapped; have clasps, string, buttons, or like materials as a closure device; or have protrusions that might impede or damage the mail or mail processing equipment.

* * * * *

[In 5.5, replace "second-class" with "Periodicals."]

* * * * *

C820 Flats

[Renumber current 2.0 through 6.0 as 3.0 through 7.0, respectively; renumber current 1.2 through 1.5 as 2.1 through 2.4, respectively; in renumbered 2.5b, 6.2, and 7.5, replace "second-class" with "Periodicals"; in renumbered 2.5c, replace "third-class" with "Standard Mail (A)"; revise other text as follows:]

1.0 BASIC STANDARDS

1.1 Standards

All pieces must meet the general and specific standards for mailability and the class of mail and rate claimed.

1.2 Definitions

Terms used in these standards are defined as follows:

a. A "barcoded mailing" is one at the Automation First-Class, Barcoded Regular and Preferred Periodicals, Publications Service Periodicals (for automation-compatible pieces only), Automation Standard Mail, or a barcoded Nonprofit Standard Mail rates.

b. An "automation rate mailing" or "mailing at an automation-based rate" is one at any of the rates in 1.2a or the ZIP+4 rates for Preferred Periodicals and Nonprofit Standard Mail.

c. "Barcoded [flats/pieces]" refers to pieces in a barcoded mailing.

* * * * *

C840 Barcoded Mailpieces

[Retitle 1.0, renumber current 1.1 through 1.5 as 1.2 through 1.6, and add new 1.1 as follows:]

1.0 DEFINITIONS OF TERMS AND BARCODE FORMATS

1.1 Terms

Terms used in these standards are defined as follows:

a. A "barcoded mailing" is one at the Automation First-Class, Barcoded Regular and Preferred Periodicals, Publications Service Periodicals (for automation-compatible pieces only), Automation Standard Mail, or a barcoded Nonprofit Standard Mail rates.

b. An "automation rate mailing" or "mailing at an automation-based rate" is one at any of the rates in 1.1a or the ZIP+4 rates for Preferred Periodicals and Nonprofit Standard Mail.

c. "Barcoded [cards/letters/flats/pieces]" refers to pieces in a barcoded mailing.

* * * * *

2.0 BARCODE LOCATION—LETTER-SIZE PIECES

2.1 Barcode Clear Zone

Unless it bears a DPBC in the address block, each automation-compatible Publications Service piece and each piece in a mailing at an automation-based rate must have a barcode clear zone. The barcode clear zone and all printing and material in it must meet the reflectance standards in 5.0. The barcode clear zone is a rectangular area in the lower right corner of the address side of cards and letter-size mailpieces defined by these boundaries:

a. Right: Right edge of the mailpiece.

b. Left: 4¾ inches from the right edge of the mailpiece.

c. Bottom: Bottom edge of the mailpiece.

d. Top: ⅝ inch from the bottom edge of the mailpiece.

2.2 General Standards

Barcode location is subject to these general standards:

a. ZIP+4 rate pieces may bear a DPBC within either the address block or the barcode clear zone in the lower right corner of the address side. Pieces may not bear a ZIP+4 barcode in the lower right corner. Subject to rate eligibility standards, pieces may bear a ZIP+4 barcode in the address block or a 5-digit barcode within either the address block or the barcode clear zone in the lower right corner of the address side.

b. Pieces in barcoded mailings, except those subject to 2.2c, may bear a DPBC (or, when allowed by standard, a 5-digit barcode) in either the address block or the barcode clear zone. Pieces may bear a ZIP+4 barcode (subject to rate eligibility standards) only in the address block unless the DPBC pieces in the

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mailing are barcoded in the barcode clear zone.

c. Pieces weighing more than 3 ounces, up to the maximum weight for barcoded pieces permitted by C810, must bear a DPBC in the address block.

2.3 Printed on Mailpiece

Except as noted in 8.2 for 5-digit barcodes, if the barcode is printed directly on the lower right corner of the piece, the entire barcode must be inside the barcode read area defined by these limits:

a. Horizontally, the leftmost bar must be between 3½ inches and 4¼ inches from the right edge of the mailpiece.

b. Vertically, the barcode must be positioned in the area between 3/16 inch and 7/16 inch from the bottom edge of the mailpiece; the bottom of the bars must be ¼ inch ±1/16 inch from the bottom edge of the mailpiece.

2.4 Printed on Inserts

If the barcode is printed on an insert to appear through a window in the lower right corner of an envelope:

a. The envelope and window must meet the physical standards in 7.0.

b. The entire barcode must be inside the barcode clear zone (but need not be completely inside the barcode read area).

c. When the insert showing through the window is moved to any of its limits within the envelope, the entire barcode must remain in the barcode clear zone, and a clear space must be maintained that is at least ⅛ inch between the barcode and the left and right edges of the window, at least ⅛ inch between the barcode and the top edge of the window, and at least 3/16 inch between the barcode and the bottom edge of the mailpiece.

2.5 Printed in Address Block

When the barcode is placed in the address block:

a. The barcode must be placed above the address line containing the recipient"s name; below the city, state, and ZIP Code line; above or below the keyline information; or above or below the optional endorsement line.

b. The printing of the barcode anywhere between the address line containing the recipient"s name and the city, state, and ZIP Code line is prohibited.

c. The minimum clearance between the barcode and any information line above or below it within the address block must be at least ⅛ inch, and the separation between the barcode and top line or bottom line of the address block must not exceed ⅛ inch.

d. If a window envelope is used, the clearance between the leftmost and rightmost bars and any printing or window edge must be at least ⅛ inch, and the clearance between the barcode and the top and bottom window edges must be at least ⅛ inch. These clearances must be maintained during the insert"s range of movement in the envelope. Address block windows on heavy letter mail (as defined in 2.2c) must be covered; such windows may be covered on other mail. Covers for address block windows are subject to 7.3.

e. If an address label is used, a clear space of at least ⅛ inch must be left between the barcode and the left and right edges of the address label, and the clearance between the barcode and the top and bottom edges of the address label must be at least ⅛ inch.

f. The rightmost bar must be at least ½ inch from the right edge of the mailpiece, and the leftmost bar must be less than 10½ inches from the right edge of the mailpiece and at least ½ inch from the left edge of the mailpiece; the top of each bar must be less than 4 inches from the bottom edge of the mailpiece; and the bottom line of the address block, including the barcode, must be at least ⅝ inch from the bottom of the mailpiece.

[Add new 3.0; renumber current 3.0 through 9.0 as 4.0 through 10.0, respectively, and revise as follows:]

3.0 BARCODE LOCATION—FLAT-SIZE MAIL

The barcode may be anywhere on the address side that is at least 1/8 inch from any edge of the mailpiece. That portion of the surface of the piece on which the barcode is printed must meet the reflectance standards in 5.0. The address side may bear only one POSTNET-format barcode (i.e., the correct barcode for the delivery address on the mailpiece). Other mailer-applied non-POSTNET barcodes may appear on the address side if their format is not intelligible or not confusing to automated postal equipment. Address block barcodes are subject to the standards in 2.5a through 2.5f.

* * * * *

5.0 REFLECTANCE

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5.4 Dark Fibers, Background Patterns

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c. The barcode clear zone on all nonbarcoded pieces in a letter-size barcoded mailing.

* * * * *

8.0 USE OF ZIP+4 OR 5-DIGIT BARCODES

8.1 Automation Pieces

Subject to the eligibility standards for the rate claimed, pieces may bear ZIP+4 or 5-digit barcodes if they meet the standards in 3.0 through 7.0, except that:

a. ZIP+4 barcodes may not appear in the lower right corner on pieces in Nonprofit Standard Mail or Preferred Periodicals ZIP+4 rate mailings or Nonprofit Standard Mail or Preferred Periodicals Barcoded rate mailings of pieces with address block barcodes.

b. Five-digit or ZIP+4 barcodes may not appear on Automation First-Class or Automation Standard Mail letter-size pieces, or, except as permitted by the 85% rule, on Barcoded rate or automation-compatible Publications Service Periodicals letter-size pieces.

c. Five-digit barcodes may not appear either on Automation First-Class or Automation Standard Mail flat-size pieces or on Barcoded rate or automation-compatible Publications Service Periodicals flat-size pieces except as permitted by the 85% rule.

* * * * *

D Deposit, Collection, and Delivery

D000 Basic Information

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D020 Plant Loads

[In 3.1, replace "second-, third-, and fourth-class mail" with "Periodicals and Standard Mail"; in 5.0, replace "Second-Class" with "Periodicals."]

* * * * *

D041 Customer Mail Receptacles

[In 2.10, replace "second-class" with "Periodicals."]

* * * * *

D072 Drop Shipment of Metered Mail

* * * * *

4.0 OPTION 2: DEPOSIT AT ANOTHER POST OFFICE

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4.4 Markings

The drop shipment endorsement placed in the ad plate area may include the marking required by the standards for the rate claimed if that marking is placed directly below the drop ship endorsement. The marking may also be provided separately, not necessarily by meter ad plate, directly below the meter stamp or imprint, if it meets the relevant size and legibility standards.

* * * * *

D100 First-Class Mail

[In 2.5, replace "carrier route First-Class, Presorted First-Class, ZIP+4, and Barcoded" with "First-Class Retail Presort or Automation"; in 3.4, replace "Presorted First-Class" with "First-Class Retail Presort rate."]

D200 Periodicals

D210 Basic Information

[In 1.0, 2.1, 2.2, 3.1, 3.4, 4.0, 4.1, 4.2, and 4.4a, replace "[S]econd-[C]lass" with "Periodicals"; in 2.1, replace "third- or fourth-class" with "Standard Mail."]

D230 Additional Entry

[In 1.1, replace "second-class" with "Periodicals"; in 4.5, replace "second- and third-class" and "third-class" with "Periodicals and Standard Mail (A)" and "Standard Mail (A)," respectively.] [Delete current D300 and D400; no change to D500.]

* * * * *

D600 Standard Mail

1.0 SERVICE OBJECTIVES

The USPS does not guarantee the delivery of Standard Mail within a specified time. Standard Mail might receive deferred service. Local postmasters can provide more information.

2.0 MAIL DEPOSIT

2.1 Single-Piece Rates

Single-piece rate parcel post, bound printed matter, Special Standard Mail, or Library mailpieces must be deposited at a time and place specified by the postmaster at the post office of mailing. Single-piece rate Standard Mail (A) bearing regular adhesive stamps may be placed into collection boxes, mailchutes, receiving boxes, or other places where mail is accepted. Mail with meter postage must be deposited in a location under the jurisdiction of the licensing post office, except as permitted in D072. Mail with permit imprints must be presented at the post office as specified in P040 or P700. Mail with precanceled stamps must be presented at the post office as specified in P023.

2.2 Bulk Rates

Bulk (presort) rate Standard Mail must be presented at a business mail entry unit of the post office where the postage permit or license is held and the annual bulk mailing fee is paid. Mailings must be deposited at the locations and times specified by the postmaster. Plant-loaded mailings must be presented as specified by the applicable standards and the plant load agreement. Metered bulk Standard Mail may be deposited at other than the licensing post office only as permitted under D072. Nonprofit Standard Mail must be deposited only at post offices where the USPS has approved a nonprofit authorization under the relevant standards.

2.3 Zoned Rates

Unless excepted by other standards, pieces paid at zoned rates must be presented for acceptance at the post office from which the applicable zoned rate postage is computed.

2.4 Separation of Mailings

Mailings are separated according to these conditions:

a. The same mailing may include pieces mailed at an Automation, Enhanced Carrier Route, Regular, or Nonprofit rate if permitted by standard.

b. Separate mailings at Automation, Enhanced Carrier Route, and Regular rates may be reported on the same mailing statement if:

(1) All pieces from each mailing reported on the statement are presented at the same time and are part of the same mailing job.

(2) Only qualifying carrier route pieces bear the applicable endorsement.

(3) If palletized, the mixed rate level standards in M045 are met.

c. Multiple, separate Nonprofit rate mailings may be reported on the same mailing statement under the conditions in 2.4b.

d. Nonprofit 3/5 rate and Nonprofit carrier route rate pieces may not be part of the same mailing, unless the mailer is authorized to combine mixed rate level mailings under M045.

* * * * *

E Eligibility

E000 Special Eligibility Standards

E010 Overseas Military Mail

[In 1.3, replace "Third- or fourth-class mail" with "Standard Mail"; in 1.4, replace "Second-[C]lass" with "Periodicals"; in 1.5, replace "fourth-class" with "Standard Mail (B)"; in 3.1, replace "second-, third-, or fourth-class" with "Periodicals or Standard Mail"; and in 3.3, replace "second-, third-, or fourth-class mail" with "Periodicals or Standard Mail"; no other change in text.]

* * * * *

E060 Official Mail (Penalty)

[Renumber Exhibit 13.4 as Exhibit 13.3; in 4.3, 5.4a, 6.1, 13.0 (heading), 13.1, 13.2, 13.3, renumbered Exhibit 13.3, 13.5, and 15.2b, replace "[S]econd-[c]lass" with "Periodicals"; delete the last sentence in 7.3; delete 9.6 and renumber 9.7 through 9.9 as 9.6 through 9.8, respectively; in 12.1, replace "single-piece third-class, and single-piece fourth-class (parcel post, special-fourth-class, and bound printed matter)" with "and single-piece rate Standard Mail (single-piece rate Standard Mail (A), parcel post, Special Standard Mail, or bound printed matter)"; in 12.8 and 12.9, replace "Third- or fourth-class" with "Standard Mail"; in 15.2a, replace "First-, third-, and fourth-class" with "First-Class and Standard Mail"; and in 15.2b, replace "second-class" with "Periodicals"; no other change in text.]

E070 Mixed Classes

[In 2.1, 2.2, 2.3, 3.3, and 3.4, replace "First- or [T]hird-class" with "First-Class or Standard Mail (A)"; in 2.1, replace "second-, third-, or fourth-class" with "Periodicals or Standard Mail (A) or (B)"; in 2.4, 2.5, 3.1, 3.2b, 3.5, 3.6, 4.2, and 5.0, replace "third-class" with "Standard Mail (A)"; in 3.0, 3.1, 3.2, 3.2a, 3.2c, and 3.2e, replace "second-class" with "Periodicals"; in 4.1, replace "with third- or fourth-class mail" with "in pieces of Standard Mail"; in 4.2, replace "fourth-class" with "Standard Mail (B)"; in 6.1, replace "special fourth-class" with "Special Standard Mail"; no other change in text.]

E100 First-Class Mail

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

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1.2 Written or Typewritten Matter

Matter wholly or partially in writing or typewriting must be mailed as First-Class Mail or Express Mail, except authorized additions to Periodicals or Standard Mail and written or typewritten matter in Library Mail and Special Standard Mail, as permitted by the corresponding standards.

* * * * *

[Delete current 4.0 and 5.0; renumber 6.0 and 7.0 as 4.0 and 5.0, respectively, and revise as follows:]

4.0 FEES

4.1 Presort Mailing Fee

A First-Class presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at Retail Presort First-Class, Automation First-Class, and/or Presorted Priority Mail rates. Payment of one fee allows a mailer to enter mail at all those rates.

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Persons or organizations paying this fee may enter mail of their clients as well as their own mail.

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5.0 DOCUMENTATION

A mailing statement, completed and signed by the mailer, using the correct USPS form or an approved facsimile, must be submitted with each mailing except for single-piece Retail First-Class or single-piece Priority Mail mailings in which the correct postage is affixed to each piece. Supporting documentation might be required by the standards for the rate claimed or the postage payment method used.

* * * * *

[Replace current E131 and E132 with new E130 as follows:]

E130 Retail Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces of Retail First-Class Mail must:

a. Meet the basic standards for First-Class Mail in E110.

b. Weigh 11 ounces or less.

c. Bear a delivery address.

d. Meet the postage payment standards in P013 and P100.

1.2 Barcodes

Any POSTNET barcode on a mailpiece in a Retail First-Class mailing must meet the standards in C840 and A950 and must be the correct barcode for the delivery address.

1.3 Nonstandard Surcharge

A nonstandard surcharge is assessed on each single-piece or Retail Presort First-Class rate piece weighing 1 ounce or less that exceeds the size limits in C100.

2.0 SINGLE-PIECE RATES

The single-piece Retail rates apply to any First-Class Mail weighing 11 ounces or less and not eligible for and claimed at the single-piece Retail card rate or at a Retail Presort or Automation First-Class rate. The single-piece Retail card rate applies to cards not eligible for and claimed at a Retail Presort or Automation First-Class rate.

3.0 PRESORT RATES

3.1 Standards

In addition to the standards in 1.0, all pieces in a Presort First-Class rate mailing must:

a. Be part of a single mailing of at least 500 pieces of Retail Presort First-Class Mail.

b. Be in the same processing category.

c. Bear a delivery address that includes the correct numeric ZIP Code or ZIP+4 code and that meets the standards for accuracy and maintenance in 3.2 and 3.3.

d. Be marked, presorted, and documented as specified in M130.

3.2 Address Quality

Effective 6 months from the date on which Classification Reform is implemented, or on January 1, 1997, whichever is sooner, addresses appearing on all pieces claimed at Retail Presort rates must have been updated within 6 months of the date of mailing by a USPS-approved address update tool (e.g., the "Address Correction Endorsement," ACS, or NCOA). Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 6-month period following its most recent update.

3.3 ZIP Code Accuracy

Effective 3 months from the date on which Classification Reform is implemented, 5-digit ZIP Codes included in addresses appearing on pieces claimed at Retail Presort rates must have been verified and corrected within 12 months of the date of mailing by a USPS-approved method. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 12-month period following its most recent update.

[Replace current E142, E144, E145, and E147 through E149 with new E140 as follows:]

E140 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in an Automation First-Class mailing must:

a. Meet all the basic standards for First-Class Mail in E110.

b. Be part of a single mailing of at least 500 pieces of Automation First-Class Mail.

c. Be in the same processing category and meet the applicable physical standards in C810 or C820.

d. Bear a delivery address that includes the correct numeric 5-digit ZIP Code or ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (DPBC).

e. Meet the address quality and coding standards in 1.2, 1.3 (if applicable), A800, and A950.

f. Be marked, presorted, and documented as specified in M810 or M820, as applicable.

g. Meet the postage payment standards in P013 and P100.

h. Bear an accurate barcode meeting the standards in C840, either the correct DPBC if a card or letter (on the piece or on an insert showing through a barcode window) or the correct ZIP+4 barcode or DPBC if a flat.

1.2 Address Quality

Effective 6 months from the date on which Classification Reform is implemented, or on January 1, 1997, whichever is sooner, addresses appearing on all pieces claimed at Automation rates must have been updated within 6 months of the date of mailing by a USPS-approved address update tool (e.g., the "Address Correction Endorsement," ACS, or NCOA). Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 6-month period following its most recent update.

1.3 Carrier Route Presort

Mailers must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information (see A930). Mailers must have updated carrier route information within 90 days of the mailing date. Carrier route rates for letter-size mail are available only for those 5-digit ZIP Code areas identified in the USPS AIS products used for address coding.

1.4 Enclosed Reply Envelopes and Cards

Effective January 1, 1997, all courtesy reply and business reply envelopes and cards provided to addressees as enclosures in Automation First-Class Mail must bear the correct facing identification mark (FIM) and delivery point barcode for the delivery address of the reply piece and must meet the automation compatibility standards in C810 or C820, as appropriate. Mailers must certify that this standard has been

met when the corresponding mail is presented to the USPS.

2.0 RATE APPLICATION

2.1 Letters and Cards

Automation First-Class rates apply to each piece that is correctly presorted under M810 into the corresponding qualifying groups:

a. Pieces in full carrier route trays, or in carrier route packages of 10 or more pieces each placed in 5-digit carrier routes trays, qualify for the Automation Carrier Route rate. (Preparation to qualify for the Carrier Route rate is optional and need not be performed for all carrier routes in a 5-digit area.)

b. Groups of 150 or more pieces in full or overflow 5-digit trays qualify for the Automation 5-Digit rate. (Preparation to qualify for the 5-Digit rate is optional.)

c. Groups of 150 or more pieces in full or overflow 3-digit or 3-digit scheme trays qualify for the Automation 3-Digit rate.

d. Pieces in full or overflow AADC trays and in all mixed AADC trays qualify for the Automation Basic rate.

2.2 Flats

Automation First-Class rates apply to each piece that is correctly presorted under M820 into the corresponding qualifying groups:

a. Pieces in 5-digit or 3-digit packages of 10 or more pieces each qualify for the Automation 3/5 rate.

b. Pieces in ADC or mixed ADC packages qualify for the Automation Basic rate.

E200 Periodicals

E210 Basic Standards

E211 Standards Applicable to All Periodicals Publications

[In 1.1, 1.2, 2.1, 3.0, 4.1, 5.1, 6.1, 6.2, 7.2, 7.3, 7.4, 7.5, 8.1, 8.2, 9.0, 11.1, and 12.0, replace "second-class" with "Periodicals." In 1.1, 4.1, 5.3, 7.4, 7.5, 10.2, and 13.1a, replace "second-class mail privileges" with "Periodicals mailing privileges." In 6.1 and 9.0, replace "First-, third-, or fourth-class rates" with "First-Class or Standard Mail rates." Revise other text as follows:]

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10.0 IDENTIFICATION

* * * * *

10.4 Bound Publication

In a bound publication (one securely bound by two or more staples, spiral binding, glue, stitching, or other permanent fastening), the identification statement must be shown conspicuously as described in 10.3 or on one of the last three editorial pages inside the back cover. If the publication is mailed with a permissible nonincidental enclosure paid with permit imprint, the identification statement must be located as specified in 10.3.

10.5 Identification Statement Content

The identification statement must contain:

* * * * *

g. The imprint "Periodicals Postage Paid at . . ." or, if mailed at two or more offices, "Periodicals Postage Paid at . . . and at additional mailing offices." A notice of pending application is shown instead if copies are mailed while an application is pending: "Application to Mail at Periodicals Postage Rates is Pending at. . . ."

* * * * *

13.0 FEES

13.1 Fee Required

* * * * *

e. Publications Service.

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14.0 BASIC RATE ELIGIBILITY

14.1 Regular Rates

Regular rates apply to all copies of an authorized Periodicals publication mailed by a publisher or news agent, except nonrequester and nonsubscriber copies under E215, unless the publication is separately authorized Publications Service rates or a preferred rate. Mailings are also subject to the standards that apply to rates or discounts claimed. Regular rates include a per piece charge, a zone-based charge for the weight of the advertising portion of the publication, and an unzoned charge for the weight of the nonadvertising portion. Each piece rate requires specific preparation.

14.2 Preferred Rates

Preferred rates include the in-county and special (nonprofit, classroom, and science-of-agriculture) rates. Requester publications are not eligible for preferred rates. Publications Service publications may qualify only for in-county rates, subject to E270. Copies of authorized Periodicals publications mailed at any preferred rate must meet the corresponding eligibility standards. Nonsubscriber copies mailed at preferred rates are subject to the standards in E215 and E270 and those applicable to other rates or discounts claimed. Preferred rates include a per piece charge, a zone-based charge for the weight of the advertising portion of the publication, and an unzoned charge for the weight of the nonadvertising portion, except that in-county rates apply without differentiation to both the advertising and nonadvertising portions. Each piece rate requires specific preparation.

14.3 Publications Service Rates

Publications Service rates are applicable to pieces eligible under E220. Publications Service rates include a per piece charge and a zone-based charge applied to the entire weight of the publication. The Publications Service rate requires specific preparation.

14.4 Discounts and Adjustments

Postage for Periodicals publications is reduced by any applicable discounts:

a. The nonadvertising adjustment applies to the outside-county piece rate charges for Regular and Preferred Periodicals publications and is computed as described in P013.

b. Presort discounts are available for Publications Service Periodicals, subject to E220, and for Regular and Preferred Periodicals, subject to E230.

c. Automation-based discounts are available for Regular and Preferred Periodicals, subject to E240.

d. Destination entry discounts are available for copies of any Periodicals publication entered by the publisher at specific USPS facilities, subject to E250.

14.5 Copies Mailed by Public

The applicable single-piece First-Class or Standard Mail rate is charged on copies of publications mailed by the general public (i.e., other than publishers or registered news agents) and on copies returned to publishers.

E212 Additional Standards for Qualification Categories

[In 1.1, 5.1, 6.1, and 6.2, replace "second-class" with "Periodicals." In 1.3, 2.1, 2.2, 2.3, 3.1, 5.1, and 5.2, replace "second-class mail privileges" with "Periodicals mailing privileges." In 6.5, replace "third- or fourth-class rates" with "Standard Mail rates."]

* * * * *

7.0 PUBLICATIONS SERVICE

Publications Service is available only to those publications authorized Periodicals mailing privileges as general or requester publications that meet the additional standards in E220.

E213 Periodicals Mailing Privileges

[In 2.1, 3.5, and 3.6, replace "second-class" with "Periodicals." In 1.1, 1.2, 1.3, 1.4, 1.5, 1.9, 2.1, 3.1, 3.4, 3.5, 4.0 (heading), 4.1, 4.2, and 4.3, replace "second-class mail privileges" with "Periodicals mailing privileges." In 2.1, replace "First-, third-, or fourth-class

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rates" with "First-Class or Standard Mail rates." In 2.2, replace "third- or fourth-class rates" with "Standard Mail rates." Do not revise the title of 39 CFR 954 shown in 3.7 and 4.3.]

1.0 ORIGINAL ENTRY APPLICATIONS

* * * * *

1.11 Publications Service

Application for Publications Service is in addition to an application for original entry and is subject to E220. Although a publication must be authorized original entry as a Periodicals publication to be eligible for Publications Service, application for both may be made concurrently.

2.0 MAILING WHILE APPLICATION PENDING

2.1 Before Approval

[Add to the end of the section:]

Pending Publications Service publications are charged the applicable Periodicals rate if previously authorized.

* * * * *

E214 Reentry

[In 1.1, 1.2, 1.3, 2.2, 3.1, 3.3, 3.6, and 3.10, replace "second-class" with "Periodicals." In 2.1, replace "second-class mail privileges" with "Periodicals mailing privileges." In 3.10, replace "third- or fourth-class postage" with "Standard Mail postage." Do not revise the title of 39 CFR 954 shown in 3.12.]

* * * * *

3.0 APPLICATIONS FOR REENTRY

* * * * *

3.9 During Appeal

During the appeal:

a. Copies of any issue of a publication denied reentry under 1.0 and found unqualified for Periodicals mailing privileges are accepted in a pending status at the applicable Standard Mail rates. For this standard, "pending status" begins when the appeal is filed and continues until the end of the appeal process.

b. Copies of a publication denied reentry under 2.0 are accepted at the currently applicable Periodicals rate.

c. The publisher must submit the applicable Periodicals and Standard Mail mailing statements with each mailing of the publication in a pending status. Failure to submit these statements is sufficient grounds to deny a postage refund under 3.12.

* * * * *

E215 Copies Not Paid or Requested by Addressee

[In 1.8, 2.1, 2.2, and 2.6, replace "second-class" with "Periodicals." In 1.6, replace "second-class mail privileges" with "Periodicals mailing privileges." In 2.6 and 2.7, replace "First-, third-, or fourth-class rate[s]" with "First-Class or Standard Mail rate[s]." In 2.7, replace "third- or fourth-class rates" with "Standard Mail rates."]

E216 Publisher Records

[Relocate current 3.0 to E231 and revise as shown below; renumber current 4.0 and 5.0 as 3.0 and 4.0, respectively; as renumbered, in 1.1, 2.1, 3.1, 3.4, 4.1, and 4.2, replace "second-class" with "Periodicals," and in 1.1, 2.2, 3.2, and 3.3, replace "second-class mail privileges" with "Periodicals mailing privileges."]

E217 Authorization for Special Rates

[In 1.3, 2.1, 2.2, 3.4, and 3.5, replace "second-class" with "Periodicals." In 1.2, 2.1, 2.2, replace "second-class mail privileges" with "Periodicals mailing privileges." In 2.2, replace "First-, third-, or fourth-class rates" with "First-Class or Standard Mail rates." In 2.2, replace "third- or fourth-class postage" with "Standard Mail postage." In 3.4, replace "third- or fourth-class rates" with "Standard Mail rates."]

1.0 APPLICATION

1.1 Basic Information

[Add to the end of the section:]

* * * Preferred rates (except in-county rates) are not available to Publications Service publications.

* * * * *

E220 Publications Service

1.0 BASIC INFORMATION

1.1 Availability

Publications Service is available to authorized Periodicals publications that meet the applicable standards in E211 through E216 (unless specifically excepted) and the additional standards in 2.0, regardless of the category of the publication's authorization for Periodicals mailing privileges. Only the Publications Service rates in R200 are available to Publications Service publications, *except that* in-county rates may be claimed for qualifying copies. The eligibility standards for Publications Service consider only copies mailed at Publications Service rates and exclude copies claimed at in-county rates, copies mailed to addressees at Express Mail, Priority Mail, First-Class Mail, or Standard Mail rates, and copies distributed outside the mail.

1.2 Application

Publishers must apply for Publications Service in addition to the category of authorization in which Periodicals mailing privileges are sought under E213. A separate application is required for Publications Service although it may be submitted at the same time as an application for Periodicals mailing privileges. Data on the application for original entry or reentry may be used to establish compliance with the further criteria prescribed for Publications Service; additional supporting documentation must be provided as necessary. Decisions on applications for Publications Service are made by the RCSC manager in whose service area the publication is authorized original entry. Appeals of adverse decisions may be made under G020. A publication whose application to mail at Publications Service rates is withdrawn by the publisher or denied by the USPS is ineligible to reapply for authorization for 1 year from the date of the publisher's letter of withdrawal or final denial notice from the USPS.

2.0 ELIGIBILITY

2.1 Standards

Each Publications Service publication must:

a. Contain at least 30% nonadvertising in each issue (advertising is defined in E211).

b. Have a minimum of 75% circulation to a legitimate list of requesters (for requester publications) or subscribers (for other publications). A legitimate list of subscribers meeting the standards applicable to general publications is required for all but requester publications, regardless of whether such a list is otherwise required by the standards applicable to the publication's category of authorization.

c. Have at least 90% of the copies of each issue presorted to 3-digit ZIP Code areas, subject to 2.3 and 2.4.

d. Bear a delivery address that includes the correct numeric ZIP+4 or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

e. Be marked, presorted, and documented as specified in M200, M810 or M820, as applicable, and P012.

f. Meet the postage payment standards in P013 and P200.

g. Be audited by a certified public accountant or national circulation audit service approved by the USPS to verify

accurate postage calculation and compliance with the applicable paid or requester circulation standards in E212 and 2.1b.

h. Use Address Change Service.

2.2 Automation-Compatible Mailpieces

Letter-size mailpieces meeting the automation compatibility standards in C810 must also meet the standards in 3.0. Flat-size mailpieces meeting the automation compatibility standards in C820 must also meet the standards in 4.0.

2.3 90% Standard

To count toward the 90% 3-digit presort standard in 2.1c, a copy must be one of 24 or more copies for the same 3-digit ZIP Code area that are prepared in firm, carrier route, 5-digit, or 3-digit packages of six or more copies each. Copies in firm packages count individually toward the 90% standard, but the firm package is considered a single piece for other presort and postage payment purposes. Firm packages may not be included in mailings of automation-compatible letter-size mailpieces.

2.4 Issue "Window"

At the time application for Publications Service is made, the publisher must define a time period or "window" that begins and ends at the same relative point in the production/distribution cycle of each issue. For administering the 90% standard in 2.1c and 2.3, all copies of any issue or edition of the publication mailed during a "window" are considered part of the distribution of the issue whose primary distribution is then occurring, and are included in the determination of its compliance with the 90% standard.

2.5 ZIP Code Accuracy

Except for automation-compatible pieces, effective 3 months from the date on which Classification Reform is implemented, 5-digit ZIP Codes included in addresses appearing on pieces claimed at Publications Service rates must have been verified and corrected within 12 months of the date of mailing by a USPS-approved method. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 12-month period following its most recent update.

3.0 ADDITIONAL STANDARDS FOR AUTOMATION-COMPATIBLE LETTER-SIZE PIECES

3.1 All Letter-Size Mailpieces

All letter-size Publications Service mailpieces that meet the physical standards in C810 must:

a. Meet the address quality and coding standards of A800 and A950.

b. Be presorted and documented as specified in M810.

c. Bear the correct DPBC meeting the barcode standards in C840, subject to 3.2.

3.2 85% Rule

The correct DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950, must appear on each piece in any mailing containing heavy letters (as defined in C810) and on at least 85% of all pieces in other letter-size mailings. Remaining pieces must have a barcode clear zone in the lower right corner meeting the reflectance standards in C840, meet the 5-digit barcode standards in C840 (if applicable), and not have a window in the lower right corner. Compliance with the 85% standard is based on all copies mailed during the production/mailing "window" defined in 2.4.

4.0 ADDITIONAL STANDARDS FOR AUTOMATION-COMPATIBLE FLAT-SIZE PIECES

4.1 All Flat-Size Mailpieces

All flat-size Publications Service mailpieces that meet the applicable standards in C820 must:

a. Meet the address quality and coding standards of A800 and A950.

b. Be presorted and documented as specified in M820.

c. Be presorted to carrier routes, or bear the correct DPBC, ZIP+4 barcode, or 5-digit barcode meeting the barcode standards in C840, subject to 4.2.

4.2 85% Rule

At least 85% of all pieces must either be presorted to carrier routes or bear the correct ZIP+4 barcode or DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. Remaining pieces must bear the correct 5-digit barcode meeting the applicable standards in C840. Compliance with the 85% standard is based on all copies mailed during the production/mailing "window" defined in 2.4.

5.0 NONCOMPLIANCE

A Publications Service publication is subject to the revocation or suspension provisions of E213 if it fails to meet the applicable basic standards for Periodicals mailing privileges in E211 through E216. A Publications Service publication that fails to meet the advertising standard in 2.1a or the density standard in 2.1c is subject to a surcharge of 40% of the total postage otherwise payable for the issue (as defined in 2.4). A Publications Service publication that fails to meet the circulation standards in 2.1b is subject to revocation of authorization to mail at Publications Service rates, as determined by the RCSC manager in whose service area the publication is authorized original entry. Appeals of surcharge assessments or revocation notices may be made under G020. A publication whose authorization to mail at Publications Service rates is ended, either voluntarily by the publisher or by the USPS through a final revocation, is ineligible to reapply for authorization for 1 year from the termination date of the previous authorization.

E230 Presort Rates

E231 Regular Periodicals

1.0 GENERAL INFORMATION

1.1 Standards

The standards for presort rates are in addition to the general standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M210, M810, or M820. Not all combinations of presort level, automation, and destination entry discounts are allowed.

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045. Individual pieces qualify for the presort level rate appropriate to the palletized package in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates remains dependent on the point of entry.

2.0 CARRIER ROUTE RATES

2.1 Carrier Route Information

Mailers must presort mail to carrier routes using the latest USPS Carrier Route Information System (CRIS) scheme (see A930). Mailers must have incorporated the CRIS changes in their mailings within 90 days before the date of mailing.

2.2 Eligibility

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M210. Pieces may not claim both a carrier route presort rate and a barcode discount. Carrier route presort

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need not be performed for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The basic carrier route rate applies to pieces in carrier route packages of six or more pieces each that are correctly sorted to carrier route or carrier routes trays (letter-size pieces) or sacks (flat-size pieces).

b. The high density and saturation rates apply to pieces that are eligible for the basic carrier route rate, are prepared in carrier walk sequence, and meet the applicable density standards in 5.0 for the rate claimed.

3.0 3/5 RATES

Subject to M210, 3/5 rates apply to:

a. Letter-size pieces in 5-digit or 3-digit packages of six or more pieces each, either correctly placed in 5-digit or 3-digit trays containing at least 24 pieces or in an overflow 3-digit tray.

b. Flat-size pieces in 5-digit or 3-digit packages of six or more pieces each, either correctly placed in 5-digit or 3-digit sacks or palletized under M045.

4.0 BASIC RATES

Basic rates apply to pieces not eligible for or claimed at either the carrier route or 3/5 rates.

5.0 WALK-SEQUENCE DISCOUNTS—REGULAR PERIODICALS

[Insert text of current E230.7.0 and 8.0, renumbered as 5.0 and 6.0, respectively; in renumbered 5.4b and 5.4d, replace "125-piece walk-sequence rate" with "high density/125-piece walk-sequence rate"; revise other text as follows:]

5.1 Eligibility

The 125-piece or saturation walk-sequence rates apply to each walk-sequenced piece in a carrier route mailing, eligible under 2.2 and prepared under M210, that also meets the corresponding addressing and density standards in 5.4. (For this standard, "carrier route" includes city carrier routes, rural routes, highway contract routes, and general delivery and post office box sections.)

* * * * *

E232 Publications Service Periodicals

1.0 GENERAL INFORMATION

1.1 Standards

The standards for presort rates are in addition to the general standards for Periodicals in E210, for Publications Service in E220, the standards for other rates or discounts claimed, and the applicable preparation standards in M210, M810, or M820. Not all combinations of presort level, automation, and destination entry discounts are allowed.

1.2 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045. Individual pieces qualify for the presort level rate appropriate to the palletized package in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates remains dependent on the point of entry.

2.0 CARRIER ROUTE RATES

2.1 Carrier Route Information

Mailers must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information (see A930). Mailers must have updated the carrier route information within 90 days before the mailing date. Carrier route rates for automation-compatible letter-size mail are available only for those 5-digit ZIP Code areas identified in the USPS AIS products used for address coding.

2.2 Automation-Compatible Letter-Size Pieces

Where available, Carrier Route rates apply to pieces in carrier route packages of six or more pieces each that are correctly sorted to full carrier route or any 5-digit carrier routes trays. Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M210 and M810. Carrier route presort need not be performed for all carrier routes in a 5-digit area.

2.3 Other Letter-Size Pieces

Carrier Route rates apply to pieces in carrier route packages of six or more pieces each that are correctly sorted to full carrier route or any 5-digit carrier routes trays. Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M210. Carrier route presort need not be performed for all carrier routes in a 5-digit area. Carrier Route rate mail must be prepared in carrier line-of-travel (LOT) sequence, using official LOT schemes prescribed by the USPS (see M050).

2.4 Flat-Size Pieces

Carrier Route rates apply to pieces in carrier route packages of six or more pieces each that are correctly sorted to carrier route sacks containing at least 24 pieces, or to any 5-digit carrier routes sacks. Preparation to qualify eligible pieces for Carrier Route rates is optional and is subject to the applicable standards in M210 or M820. Carrier route presort need not be performed for all carrier routes in a 5-digit area. Carrier Route rate mail must be prepared in carrier walk sequence or line-of-travel (LOT) sequence, using official LOT schemes prescribed by the USPS (see M050).

3.0 BASIC RATES

Basic rates apply to pieces correctly prepared under M210 and not claimed at Carrier Route rates.

E239 Preferred Periodicals

[Copy text of current E230; renumber current 6.0 as 1.4; renumber 7.0 as 6.0; delete current 8.0; revise the remainder as follows:]

1.0 GENERAL INFORMATION

1.1 Standards

The standards for presort rates are in addition to the general standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M290 or M890. Not all combinations of presort level, automation, and destination entry discounts are allowed.

1.2 Optional Preparation

At the mailer's option, Preferred Periodicals may be prepared under the standards for Regular Periodicals in M210, including presort. Under this option, Preferred Periodicals can claim Level I/K, Level H, or Level G/J rates, and may be combined (comailed) with Regular Periodicals in the same mailing, if all corresponding eligibility standards in E231 for Carrier Route, 3/5, and Basic, respectively, are met, except that pieces in 3-digit packages can earn the Level H rate only when prepared for the unique 3-digit ZIP Code destinations identified in L002, Column A. Presort of the combined mailing is based on the total combined volume of pieces.

1.3 Palletized Mail

A correctly prepared package is the equivalent of a sack when palletized under M045. Individual pieces qualify for the presort level rate appropriate to the palletized package in which they are placed, regardless of the destination of the pallet. Eligibility for destination entry or other zoned rates remains dependent on the point of entry.

1.4 Reporting Presort Level

Publishers must separately report copies at Levels G3 and G5, and Levels J1, J3, and J5, only when claiming a ZIP+4 or ZIP+4 Barcoded rate.

2.0 CARRIER ROUTE (LEVEL I/K) RATES

2.1 Rate Application

Level I/K rates apply as follows:

a. Level I1 or K1 rates apply to pieces in carrier route packages of six or more pieces each that are correctly sorted to carrier route or carrier routes trays or sacks.

b. Level I2 or K2 rates apply to pieces eligible for the Level I1 or K1 rates that are further prepared in carrier delivery walk sequence and in the density necessary to meet the additional standards in 6.0 for the 125-piece walk-sequence rate.

c. Level I3 or K3 rates apply to pieces eligible for the Level I1 or K1 rates that are further prepared in carrier delivery walk sequence and in the density necessary to meet the additional standards in 6.0 for the saturation walk-sequence rate.

2.2 Carrier Route Information

Mailers must presort mail to carrier routes using the latest USPS Carrier Route Information System (CRIS) scheme. Mailers must have incorporated the CRIS changes in their mailings within 90 days before the date of mailing (see A930).

3.0 3- AND 5-DIGIT (LEVEL H) RATES

3.1 H Rates

Level H rates apply to pieces in 5-digit, optional city, and unique 3-digit packages of six or more pieces each that are correctly sorted to 5-digit, optional city, or unique 3-digit sacks.

3.2 H5 Rates

Level H5 rates apply:

a. In tray-based automation-rate letter-size mailings, to pieces in 5-digit trays.

b. In package-based automation-rate letter-size mailings, to pieces in 5-digit packages of 10 or more pieces each placed in 5-digit, optional city, 3-digit, SCF, or AADC trays.

c. In ZIP+4 Barcoded rate flat-size mailings, to pieces in 5-digit packages of six or more pieces each placed in 5-digit, optional city, 3-digit, SCF, or ADC sacks or palletized under M045.

d. In other mailings, to pieces in 5-digit packages of six or more pieces each placed in 5-digit, optional city, or unique 3-digit sacks.

3.3 H3 Rates

Level H3 rates apply:

a. In tray-based automation-rate letter-size mailings, to pieces in optional city and unique 3-digit trays.

b. In package-based automation-rate letter-size mailings, to pieces in optional city and unique 3-digit packages of 50 or more pieces each placed in optional city, 3-digit, SCF, or AADC trays.

c. In ZIP+4 Barcoded rate flat-size mailings, to pieces in optional city and unique 3-digit packages of six or more pieces each placed in optional city, 3-digit, SCF, or ADC sacks or palletized under M045.

d. In other mailings, to pieces in optional city or unique 3-digit packages of six or more pieces each placed in optional city or unique 3-digit sacks.

4.0 BASIC (LEVEL G) RATES

Level G rates apply to pieces not eligible for or claimed at the rates in 2.0 or 3.0.

5.0 IN-COUNTY (LEVEL J) RATES

[In 5.2c and 5.3c, replace "SDC" with "ADC."]

6.0 WALK-SEQUENCE DISCOUNTS

[Insert text of current E230.7.0.]

E240 Automation Rates

E241 Regular Periodicals

1.0 BASIC STANDARDS FOR LETTER-SIZE PIECES

1.1 All Pieces

All pieces in a Barcoded rate letter-size mailing must:

a. Meet the basic standards for Periodicals and for the category of authorization.

b. Meet the physical standards in C810.

c. Bear a delivery address that includes the correct numeric ZIP+4 or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

d. Meet the address quality and coding standards of A800 and A950.

e. Be presorted and documented as specified in M810.

f. Meet the postage payment standards in P013 and P200.

g. Bear the correct DPBC meeting the barcode standards in C840, subject to 1.4.

1.2 Rate Application

Barcoded rates apply to each piece that meets the applicable standards in 1.3 and 1.4 and bears the correct DPBC meeting the barcode standards in C840. Subject to M810, 3/5 Barcoded rates apply to letter-size pieces in 5-digit packages of 10 or more pieces each, and in 3-digit packages of 50 or more pieces each, correctly placed in 5-digit, 3-digit, AADC, or mixed AADC trays. Basic Barcoded rates apply to other pieces correctly prepared under M810.

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2 but with a barcode window in the lower right corner, may be eligible for the Barcoded rate only if the correct DPBC appears through the window.

1.4 85% Rule

The correct DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950, must appear on each piece in any mailing containing heavy letters (as defined in C810) and on at least 85% of all pieces in other letter-size mailings. Remaining pieces must have a barcode clear zone in the lower right corner meeting the reflectance standards in C840, meet the applicable 5-digit or ZIP+4 barcode standards in C840, and not have a window in the lower right corner. Compliance with the 85% standard is based on each mailing.

1.5 Exclusions

Barcoded rate mailings may not include firm packages or pieces claimed at carrier route rates.

2.0 BASIC STANDARDS FOR FLAT-SIZE PIECES

2.1 All Pieces

All pieces in a Barcoded rate flat-size mailing must:

a. Meet the basic standards for Periodicals and for the category of authorization.

b. Meet the physical standards in C820.

c. Bear a delivery address that includes the correct numeric ZIP+4 or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

d. Meet the address quality and coding standards of A800 and A950.

e. Bear the correct 5-digit, ZIP+4, or DPBC, subject to C840.

f. Be marked, presorted, and documented as specified in M820.

g. Meet the postage payment standards in P013 and P200.

2.2 Rate Application

Barcoded rates apply to each piece that also bears the correct ZIP+4 or DPBC. Subject to M820, 3/5 Barcoded rates apply to flat-size pieces in 5-digit or 3-digit packages of six or more pieces each, either correctly placed in 5-digit, 3-digit, ADC, or mixed ADC sacks or palletized under M045. Basic Barcoded rates apply to other pieces correctly prepared under M820.

2.3 85% Rule

At least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct ZIP+4 or DPBC for the delivery address, as defined by the standards for address

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quality and coding accuracy in A800 and A950. Remaining pieces must bear the correct 5-digit barcode meeting the applicable standards in C840. Compliance with the 85% standard is based on all mailed copies of an issue, excluding those claimed at carrier route rates.

E249 Discounts for Preferred Periodicals

[Text of current E242, E244, and E245, renumber as E249.1.0, 2.0, and 3.0, respectively, with subsections redesignated accordingly; no change in text except to replace "second-class" with "Periodicals."]

1.0 ZIP+4 DISCOUNTS

1.1 All Pieces

All pieces in a ZIP+4 rate mailing must:

a. Meet the basic standards for Periodicals and for the category of authorization in E211 and E212, respectively.

b. Meet the physical standards in C810.

c. Bear a delivery address that includes the correct numeric ZIP+4 or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

d. Meet the address quality and coding standards of A800 and A950.

e. Meet the standards in C830 or, for pieces with the correct DPBC, the barcode standards in C840.

f. Be marked, presorted, and documented as specified in M891 or M892.

g. Meet the postage payment standards in P013 and P200.

1.2 Rate Application

ZIP+4 rates apply to each piece that also:

a. Is correctly presorted under M810 into the qualifying groups described in 1.7 and 1.8.

b. Has an address with the correct numeric ZIP+4 code or bears the correct DPBC.

1.3 Barcode Window

A mailpiece meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for any automation rate only if the correct DPBC appears through the window.

1.4 5-Digit Barcodes

ZIP+4 rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and 1.2 and the standards for 5-digit barcodes in C840. Such pieces qualify for ZIP+4 rates only if the barcode is printed on the piece and the address contains the correct numeric ZIP+4 code.

1.5 ZIP+4 Barcodes

ZIP+4 rate mailings may include pieces with correct ZIP+4 barcodes if the barcode is located in the address block and those pieces meet the standards in 1.1 and 1.2 and the standards for ZIP+4 barcodes in C840. Such pieces qualify for ZIP+4 rates only if, additionally, the address contains the correct numeric ZIP+4 code. Pieces that bear a ZIP+4 barcode in the lower right corner may not be included in a ZIP+4 rate mailing.

1.6 85% Rule

At least 85% of all pieces in a ZIP+4 rate mailing (regardless of presort or rate) must bear the correct numeric ZIP+4 code or DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. The 85% requirement applies to each mailing unless excepted by other standards.

1.7 Qualifying Tray-Based Presort

In tray-based presort mailings under M891:

a. In full or overflow 5-digit trays, ZIP+4 coded or DPBC pieces qualify for the Level H5/J5 ZIP+4 rates; other pieces qualify for the Level H5/J5 presort rates.

b. In full or overflow optional city and unique 3-digit trays, ZIP+4 coded or DPBC pieces qualify for the Level H3/J3 ZIP+4 rates; other pieces qualify for the Level H3/J3 presort rates.

c. In full or overflow nonunique 3-digit and SCF trays, ZIP+4 coded or DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates. One less-than-full SCF tray for the SCF serving the post office where the mailing is entered is permitted.

d. In AADC, mixed AADC, and working trays, ZIP+4 coded or DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

1.8 Qualifying Package-Based Presort

In package-based presort mailings under M892:

a. In 5-digit packages of 10 or more pieces each, ZIP+4 coded or DPBC pieces qualify for the Level H5/J5 ZIP+4 rates; other pieces qualify for the Level H5/J5 presort rates.

b. In optional city and unique 3-digit packages of 50 or more pieces each, ZIP+4 coded or DPBC pieces qualify for the Level H3/J3 ZIP+4 rates; other pieces qualify for the Level H3/J3 presort rates.

c. In nonunique 3-digit packages of 50 or more pieces each, ZIP+4 coded or DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

d. In the residual portion of the mailing, ZIP+4 coded or DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

2.0 BARCODED DISCOUNTS (LETTER-SIZE PIECES)

2.1 All Pieces

All pieces in a Barcoded rate letter-size mailing must:

a. Meet the basic standards for Periodicals and for the category of authorization in E211 and E212, respectively.

b. Meet the physical standards in C810.

c. Bear a delivery address that includes the correct numeric ZIP+4 or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

d. Meet the address quality and coding standards of A800 and A950.

e. Be marked, presorted, and documented as specified in M893, M894, or M895.

f. Meet the postage payment standards in P013 and P200.

g. Either bear the correct DPBC meeting the barcode standards in C840 or meet the applicable standards in 2.5.

2.2 Rate Application

Barcoded rates apply to each piece that also:

a. Is correctly presorted under M893, M894, or M895 into the qualifying groups described in 2.8, 2.9, and 2.10.

b. Bears the correct DPBC that meets the barcode standards in C840.

c. Meets the applicable standards in 2.3 through 2.7.

2.3 Optional Preparation

At the mailer's option, barcoded Preferred Periodicals may be prepared under the standards for Regular Periodicals in M810, including presort. Under this option, Preferred Periodicals can claim Level H or Level G/J rates, and may be combined (comailed) with Regular Periodicals in the same mailing, if all corresponding eligibility standards in E231 and E241 for 3/5 and Basic, respectively, are met, except that pieces in 3-digit packages could earn the Level H rate only when prepared for the unique 3-digit ZIP Code destinations identified in L002, Column A. Presort of the combined mailing is based on the total combined volume of pieces.

2.4 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 2.1 through 2.3 but with a barcode window in the lower right corner, may be eligible for an automation rate only if the correct DPBC appears through the window.

2.5 Pieces Without DPBCs

Subject to 1.5 and 1.6, Barcoded rate mailings may also include nonbarcoded, 5-digit barcoded, or ZIP+4 barcoded pieces if each such piece (regardless of rate) meets the standards in 2.1, has a barcode clear zone in the lower right corner meeting the reflectance standards in C840, meets the applicable 5-digit or ZIP+4 barcode standards in C840, and does not have a window in the lower right corner. Additionally, to qualify for a ZIP+4 rate, subject to 2.8, 2.9, and 2.10:

a. Nonbarcoded and 5-digit barcoded pieces must bear an address with the correct ZIP+4 code and meet the standards in C830.

b. ZIP+4 barcoded pieces must have the barcode in the address block, meet the standards in C830, and bear an address with the correct ZIP+4 code.

2.6 85% Rule

Subject to 2.7, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. The 85% requirement applies to each mailing unless excepted by other standards.

2.7 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M893.

b. In 5-digit packages in a package-based mailing under M894 or M895.

c. In any mailing containing heavy letters (as defined in C810).

2.8 Qualifying Tray-Based Presort

In tray-based presort mailings under M893:

a. Pieces in full or overflow 5-digit trays qualify for the Level H5/J5 Barcoded rates.

b. In full or overflow optional city and unique 3-digit trays, DPBC pieces qualify for the Level H3/J3 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level H3/J3 ZIP+4 rate; other pieces qualify for the Level H3/J3 presort rates.

c. In full or overflow nonunique 3-digit and SCF trays, DPBC pieces qualify for the Level G/J1 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates. One less-than-full SCF tray for the SCF serving the post office where the mailing is entered is permitted.

d. In AADC, mixed AADC, and working trays, DPBC pieces qualify for the Level G/J1 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

2.9 Qualifying Two-Tier Package-Based Presort

In two-tier package-based presort mailings under M894:

a. Pieces in 5-digit packages of 10 or more pieces each qualify for the Level H5/J5 Barcoded rates.

b. In optional city and unique 3-digit packages of 50 or more pieces each, DPBC pieces qualify for the Level H3/J3 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level H3/J3 ZIP+4 rates; other pieces qualify for the Level H3/J3 presort rates.

c. In nonunique 3-digit packages of 50 or more pieces each, DPBC pieces qualify for the Level G/J1 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

d. In residual trays, DPBC pieces qualify for the Level G/J1 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

2.10 Qualifying Three-Tier Package-Based Presort

In three-tier package-based presort mailings under M895:

a. Pieces in 5-digit packages of 10 or more pieces each in the 5-digit presort tier qualify for the Level H5/J5 Barcoded rates.

b. In optional city and unique 3-digit packages of 50 or more pieces each in the 3-digit tier, DPBC pieces qualify for the Level H3/J3 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level H3/J3 ZIP+4 rates; other pieces qualify for the Level H3/J3 presort rates.

c. In nonunique 3-digit packages of 50 or more pieces each in the 3-digit presort tier, DPBC pieces qualify for the Level G/J1 Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

d. In the residual presort tier, DPBC pieces qualify for the Level G/J1 Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Level G/J1 ZIP+4 rates; other pieces qualify for the Level G/J1 presort rates.

3.0 BARCODED DISCOUNTS (FLAT-SIZE PIECES)

3.1 All Pieces

All pieces in a Barcoded rate flat-size mailing must:

a. Meet the basic standards for Periodicals and for the category of authorization in E211 and E212, respectively.

b. Meet the physical standards in C820.

c. Bear a delivery address that includes the correct numeric ZIP+4 code, numeric 5-digit ZIP Code, or numeric equivalent to the delivery point barcode (DPBC).

d. Meet the address quality and coding standards of A800 and A950.

e. Have the correct 5-digit, ZIP+4, or DPBC, subject to C840, except for pieces in specific portions of mailings prepared under M897.

f. Be presorted and documented as specified in M897.

g. Meet the postage payment standards in P013 and P200.

3.2 Rate Application

Barcoded rates apply to each piece that also:

a. Is correctly presorted under M897 into the qualifying groups described in 3.6.

b. Bears the correct ZIP+4 or DPBC.

3.3 Optional Preparation

At the mailer's option, barcoded Preferred Periodicals may be prepared under the standards for Regular Periodicals in M820, including presort. Under this option, Preferred Periodicals can claim Level H or Level G/J rates, and may be combined (comailed) with Regular Periodicals in the same mailing, if all corresponding eligibility standards in E231 and E241 for 3/5 and Basic, respectively, are met, except that pieces in 3-digit packages could earn the Level H rate only when prepared for the unique 3-digit ZIP Code destinations identified in L002, Column A. Presort of the combined mailing is based on the total combined volume of pieces.

3.4 5-Digit Barcodes

Barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 3.1 through 3.3 and the standards for 5-digit barcodes in C840. Pieces with a 5-digit barcode could be eligible for a presort rate under 3.6.

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2.5 85% Rule

At least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct ZIP+4 or DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. The 85% requirement applies to each mailing unless excepted by other standards. Barcoded rate mailings not meeting the 85% rule must be prepared under corresponding standards in M697.

3.6 Qualifying Presort

Barcoded and presort rates apply as follows:

a. In 5-digit packages of six or more pieces each, ZIP+4 or DPBC pieces qualify for the Level H5/J5 Barcoded rates; 5-digit barcoded pieces (and nonbarcoded pieces where permitted) qualify for the Level H5/J5 presort rates.

b. In optional city or unique 3-digit packages of six or more pieces each, ZIP+4 or DPBC pieces qualify for the Level H3/J3 Barcoded rates; 5-digit barcoded pieces qualify for the Level H3/J3 presort rates.

c. In nonunique 3-digit and SCF packages, or in 5-digit, optional city, or unique 3-digit packages of fewer than six pieces, or in residual packages, ZIP+4 or DPBC pieces qualify for the Level G/J1 Barcoded rates; 5-digit barcoded pieces qualify for the Level G/J1 presort rates.

E250 Destination Entry

1.0 DSCF

1.1 Eligibility

Copies not eligible for in-county rates qualify for the destination SCF (DSCF) rates if:

a. For Publications Service publications, the copies are addressed for delivery in the service area of the SCF at which they are entered, and prepared in a 3-digit or finer sack or tray, or an SCF or finer pallet.

b. For other Periodicals publications, the copies are addressed for delivery in the same SCF service area as the entry post office, regardless of the type of package, pallet, sack, or tray in which they are prepared.

1.2 Rates

DSCF rates include a pound rate and a discount per piece. Pieces claimed at DSCF rates must also meet the standards for any automation or presort rate claimed and for the postage payment method used.

1.3 Authorized Entry

Publications must have an authorized entry at each post office where mail is deposited at DSCF rates. Only copies deposited according to the distribution plan authorized for that entry may be claimed at these rates. DSCF rate mail must be deposited at locations and times specified by the entry office postmaster.

1.4 Documentation

Subject to P012, the publisher must be able to show compliance with 1.1 through 1.3, e.g., by package, bundle, sack, tray, or pallet destination (as appropriate), and the number of pieces by presort level for each 5-digit ZIP Code destination eligible for DSCF rates.

2.0 DDU

2.1 Eligibility

The destination delivery unit (DDU) rate applies to pieces entered at the facility designated by the USPS where sequencing is performed for the carrier route (city carrier route, rural route, highway contract route, post office box section, or general delivery unit) serving the delivery address on the mailpiece. Copies claimed at DDU rates must be part of a carrier route package placed in a carrier route or 5-digit carrier routes sack or tray under M210, or correctly palletized under M045, and otherwise eligible for and claimed at a carrier route or Level I or K rate. Except for the standards applicable to preparing carrier route or walk-sequence rate mail, there is no additional minimum volume required for a DDU rate mailing.

2.2 Rates

DDU rates include a pound rate and a discount per piece. Pieces claimed at DDU rates must also meet the standards for any discount or rate claimed and postage payment method used. A mailing may contain copies claimed at DDU rates and other copies claimed at other rates if permitted by standard. No separation by rate is required.

2.3 Maximum Volume

Except under 2.4, the same mailer may not present for verification and acceptance more than four DDU rate mailings at the same destination postal facility (or another acting as its agent) in any 24-hour period. This limit may be waived if local conditions permit. A mailer may ask for such a waiver when scheduling deposit of the mailings. There is no maximum for plant-verified drop shipments. This standard does not apply to mailings presented to either the publication's authorized original entry post office or an authorized additional entry serving the place where the copies were prepared for mailing, if that entry post office is the destination postal facility at which the DDU rate copies must be deposited.

2.4 Authorized Entry

Publications must have an authorized entry at each post office where mail is entered at DDU rates. Only copies entered according to the distribution plan authorized for that entry may be claimed at these rates. DDU rate mail must be deposited at locations and times specified by the entry office postmaster.

2.5 Scheduling

Mailers may schedule deposit of DDU rate mailings at least 24 hours in advance by contacting the district office in whose service area the destination facility is located. Mailers must follow the scheduled deposit time provided. Mailers may request standing appointments for renewable 6-month periods by written application to the district office in whose service area the destination facility is located. Mixed loads of Periodicals and Standard Mail require advanced appointments for deposit.

2.6 Documentation

Subject to P012, the publisher must be able to show compliance with 2.1 through 2.5. If a carrier route rate is claimed, the publisher must show the number of copies and pieces for each carrier route. If a walk-sequence rate is claimed, the publisher must provide the documentation required by the corresponding standards.

E270 Preferred Rates

[In 1.1, 1.2c, 2.1, 5.1, 6.1, and 6.2, replace "second-class" with "Periodicals"; in 1.3, replace "second-class mailing privileges" with "Periodicals mailing privileges."]

1.0 IN-COUNTY RATES

* * * * *

1.6 DDU Rate

Subject to E250, the DDU piece rate applies to each piece claimed in the pound rate portion at the DDU rate.

2.0 NONPROFIT RATES—1BASIC INFORMATION

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2.4 Destination Entry Rates

Subject to E250, the DDU or DSCF piece rate applies to each piece claimed in the pound rate portion at the corresponding rate.

[Delete current 2.5.]

* * * * *

5.0 CLASSROOM RATES

* * * * *

5.5 Destination Entry Rates

Subject to E250, the DDU or DSCF piece rate applies to each piece claimed in the pound rate portion at the corresponding rate.

[Delete current 5.6.]

6.0 SCIENCE-OF-AGRICULTURE RATES

* * * * *

6.5 Destination Entry Rates

Subject to E250, the DDU or DSCF piece rate applies to each piece claimed in the pound rate portion at the corresponding rate.

[Delete current 6.6.]

[Delete current E300 and E400; no change to E500.]

* * * * *

E600 Standard Mail

E610 Basic Standards

E611 Standards Applicable to All Standard Mail

1.0 GENERAL INFORMATION

1.1 Definition

Standard Mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals mail (except as permitted or required by standard). Standard Mail includes matter formerly classified as third-class and fourth-class mail. Though combined in Standard Mail, matter from each former class remains subject to separate and specific classification, eligibility, and preparation standards. Matter formerly classified as third-class mail is referred to as Standard Mail (A); matter formerly classified as fourth-class mail is referred to as Standard Mail (B). Use of the unmodified term "Standard Mail" indicates that the reference applies to both former third-class and former fourth-class matter.

1.2 Not Sealed

Standard Mail is not sealed against postal inspection. Regardless of physical closure, the mailing of articles at Standard Mail rates is consent by the mailer to postal inspection of the contents.

1.3 Written Additions

Markings that have the character of personal correspondence require, with certain exceptions, additional postage at the First-Class rates. These written additions and enclosures do not require additional First-Class postage and may be placed on the wrapper, on a tag or label attached to the outside of a parcel, or inside a parcel, either loose or attached to an article:

a. Marks, numbers, names, or letters describing the contents.

b. Words or phrases such as "Please Do Not Open Until Christmas," "Happy Birthday, Mother."

c. Instructions and directions for the use of the item mailed.

d. A manuscript dedication or inscription not having the nature of personal correspondence.

e. Marks to call attention to words or passages in the text.

f. Corrections of typographical errors in printed matter.

g. Manuscripts accompanying related proof sheets and corrections of proof sheets including corrections of typographical and other errors, changes in the text, insertions of new text, marginal instructions to the printer, and corrective rewrites of parts.

h. Handstamped imprints, unless the added material is in itself personal or converts the original matter to a personal communication.

i. Matter mailable separately as Standard Mail (A) printed on the wrapper, envelope, tag, or label.

1.4 Invoice

An invoice, whether it also serves as a bill, may be enclosed or placed in an envelope (marked "Invoice Enclosed") attached to the outside of a Standard Mail mailpiece if it relates solely to the matter with which it is mailed. The invoice may show:

a. Names and addresses of the sender and addressee.

b. Names and quantities of the articles enclosed, descriptions of each (e.g., price, tax, style, stock number, size, and quality, and, if defective, nature of defects).

c. Order or file number, date of order, date and manner of shipment, shipping weight, postage paid, and initials or name of packer or checker.

1.5 Incidental First-Class Attachments and Enclosures

Incidental First-Class matter may be enclosed in or attached to Standard Mail (A) merchandise (including books but excluding merchandise samples) or any Standard Mail (B) mailpiece without payment of First-Class postage. An incidental First-Class attachment or enclosure must be matter that, if mailed separately, would require First-Class postage, is closely associated with but secondary to the host piece, and is prepared not to encumber postal processing. An incidental First-Class attachment or enclosure may be a bill for the product or publication, a statement of account for past products or publications, or a personal message or greeting included with a product, publication, or parcel. Postage at the Standard Mail rate applicable to the host piece is based on the combined weight of the host piece and the incidental First-Class attachment or enclosure.

1.6 Fees

The fee for manual or automated address correction service is charged per notice issued.

1.7 Addressing

Each piece of Standard Mail must bear a delivery address. Alternative address formats or detached address labels may be used, subject to A040 or A060, respectively.

1.8 Documentation

A mailing statement, completed and signed by the mailer, using the correct USPS form or an approved facsimile, must be submitted with each mailing except for single-piece rate mailings in which the correct postage is affixed to each piece. Supporting documentation might be required by the standards for the rate claimed or postage payment method used.

E612 Additional Standards Applicable to Standard Mail (A)

1.0 WEIGHT

Standard Mail (A) must weigh less than 16 ounces.

2.0 CONTENT

2.1 Circulars

Circulars, including printed letters that, according to internal evidence, are being sent in identical terms to more than one person, are Standard Mail (A). A circular does not lose its character as such when a date and the names of the addressee and sender are written therein, nor by the correction in writing of typographical errors.

2.2 Printed Matter

Printed matter weighing less than 16 ounces may be sent as Standard Mail (A). For this standard, printed matter means paper on which words, letters, characters, figures, or images, or any combination of them, not having the character of a bill or statement of account or of actual or personal correspondence, are reproduced by any process other than handwriting or typewriting.

2.3 Computer-Prepared Material

Computer-prepared material is considered printed matter. It is not

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considered to have the character of actual or personal correspondence merely because it contains:

a. Specific information about a product offered for sale or lease (e.g., size, color, price) or a service being offered (e.g., the name, address, and telephone number of a company representative).

b. Information relating the addressee directly to an advertised product or service.

c. Information such as the amount paid for a previous purchase, pledge, or donation, when associated with a sales promotion or solicitation for donations.

3.0 ENCLOSURES AND ATTACHMENTS

3.1 Nonincidental First-Class Enclosures

Letters or other pieces of nonincidental First-Class Mail, subject to postage at First-Class rates, may be enclosed with Standard Mail (A). Postage for the First-Class enclosure must be placed on the outside of the mailpiece. It may be affixed separately or added to the postage for the host piece. The mailer must place the endorsement "First-Class Mail Enclosed" on the mailpiece, below the postage and above the address.

3.2 Nonincidental First-Class Attachments

Letters or other pieces of nonincidental First-Class Mail may be placed in an envelope and securely attached to the address side of a Standard Mail (A) mailpiece or of the principal mailpiece, as applicable. Combination envelopes or containers with separate parts for the two classes of mail may be used. The names and addresses of the sender and addressee must be placed on both the principal mailpiece and the attachment. Alternatively, the sender's name and address must be placed on one part and the addressee's name and address on the other. If the mailpiece is a combination container with inseparable parts or compartments, the names and addresses may appear on only one part. The applicable Standard Mail (A) postage for the Standard Mail (A) matter must be prepaid and placed in the upper right corner of the address space. Postage at the applicable First-Class rate must be paid for and affixed to the First-Class attachment, unless other payment methods are permitted by standard.

3.3 Attachment of Other Standard Mail (A) Matter

The front cover page or the back cover page of a Standard Mail (A) mailpiece may bear an attachment that is other Standard Mail (A) matter if:

a. Each piece in the mailing bears the same attachment.

b. The material qualifies for and is mailed at bulk rates.

c. The pieces bearing the attachment are larger than 6 by 11 inches.

d. The attachment is secured so as not to interfere with processing or delivery. Folded or multipage attachments must be secured to prevent opening during handling.

e. The mailing is presorted to carrier routes.

3.4 Protective Covers

A protective cover (outsert) on a catalog or book must fully cover (to within 3/4 inch of each edge) the main body of the catalog or book, front and back, or the entire piece must be enclosed in a wrapper (a full sleeve or envelope).

4.0 BULK RATES

4.1 General Information

Bulk rates apply to mailings meeting the basic standards in E611 and the standards for presort, automation, and destination entry in E630, E640, and E650, respectively, as appropriate for the rate claimed. Nonprofit rates may be used only by organizations authorized by the USPS under E670. Bulk rate Standard Mail (A) may not use registry, insurance, special delivery, special handling, certified, return receipt for merchandise, and COD services. Not all processing categories qualify for every bulk rate.

4.2 Minimum Per Piece Rates

The minimum per piece rates (i.e., the minimum postage that must be paid for each piece) apply to Automation rate and Enhanced Carrier Route rate pieces weighing 0.2059 pound (3.2941 ounces) or less, Regular rate pieces weighing 0.2067 pound (3.3067 ounces) or less, and nonprofit rate pieces weighing 0.2149 pound (3.4383 ounces) or less. The base postage rate applies to pieces meeting minimum preparation standards (e.g., basic presort) and may be reduced if additional standards are met. For the minimum per piece rates, mail is generally categorized as either "letters" or "other than letters," based on the letter-size standard in C050 that disregards address placement. The exception is for Automation rates, which are applied to the "other than letters" category, based on the standards in C820. Address placement is also used to apply the aspect ratio standard for letter-size automation rates in C810.

4.3 Piece/Pound Rates

Pieces exceeding the weight limits specified in 4.2 are subject to a two-part piece/pound rate that includes a fixed charge per piece and a variable pound charge based on weight. The base postage rate applies to pieces meeting the minimum preparation standards (e.g., basic presort) and might be reduced if additional standards are met.

4.4 Net Postage

The net postage rate that must be paid is either the minimum per piece rate or the piece/pound rate, as reduced in either case by one or more discounts for which the piece might be eligible. The net postage rate is commonly designated by the name of the primary discount (e.g., carrier route rate, Barcoded rate, DBMC rate).

4.5 Minimum Bulk Rate

Postage is computed at the applicable rates on the entire bulk mailing to be mailed at one time. Except as noted in 4.6, the total postage paid on any bulk mailing may not be lower than the amount determined by multiplying the proper minimum per piece rate (less applicable discounts) by the total number of mailpieces. If the total postage computed at pound rates, after adding any adjustment for presort level, is less than the minimum postage charge, postage must be computed at the minimum per piece rate.

4.6 Exception

When the postage computed at the bulk Standard Mail (A) rates is higher than a Standard Mail (B) rate for which the matter and the mailing could qualify except for its weight, the Standard Mail (B) rate may be paid without adding needless weight. All other standards for bulk Standard Mail (A) apply.

4.7 Annual Fees

Bulk rate Standard Mail (A) is subject to an annual fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Other standards apply, based on how postage is paid:

a. When mailings are paid with meter or precanceled stamps, each mailer who enters mailings at the regular or nonprofit bulk rates must pay an annual bulk mailing fee at each post office of mailing. Persons or organizations paying this fee may enter mail of their clients as well as their own mail.

b. When a mailing is paid with a permit imprint, the mailer whose permit imprint is on the mailpiece must put that permit number on the mailing statement and must pay the annual bulk mailing fee for that permit. This fee is separate from the fee that must be paid when applying to use permit imprints.

4.8 Merging

Generally, mailers may merge similar bulk Standard Mail (A) matter prepared for mailing at the same time into a single mailing. Differences in text, address labels, and address lists or list key numbers do not prohibit the mailer from merging and presorting mailings. Pieces with different methods of postage payment may be combined in the same mailing only if authorized by the USPS. Pieces of nonidentical weight, if merged in the same mailing, must bear the correct postage when mailed, unless otherwise authorized by the USPS. Pieces at Nonprofit, Regular, Enhanced Carrier Route, and Automation rates must be prepared as separate mailings unless specifically excepted. Only Regular, Enhanced Carrier Route, and Automation may be reported on the same mailing statement and documentation.

4.9 Preparation

Each Nonprofit, Regular, Enhanced Carrier Route, or Automation rate mailing must be prepared under these general standards:

a. All pieces in a mailing must be of the same processing category, except that irregular and machinable parcels may be commingled in 5-digit sacks or on 5-digit pallets.

b. Each mailing must contain at least 200 pieces or 50 pounds of pieces. Other volume standards can also apply, based on the rate claimed.

c. All pieces in a bulk mailing must be marked and presorted together under the standards in M600 applicable to the rate claimed.

d. Each piece must bear the addressee's name and delivery address, including the correct ZIP Code or ZIP+4 code, unless an alternative address format is used subject to A040. Pieces in automation rate mailings, or pieces prepared with detached address labels, are subject to additional standards.

e. Postage must be paid under the standards in P600 with precanceled stamps, postage meter, or permit imprint.

f. Mailings must be documented under P012 and the standards for the rate claimed.

g. Each piece must meet the standards applicable to any other rate or discount claimed.

h. Any POSTNET barcode on a mailpiece must meet the standards in C840 and A950 and be the correct barcode for the delivery address.

i. Mailings must be deposited at a business mail entry unit of the post office where the postage permit or license is held and the annual bulk fee paid, unless deposit elsewhere is permitted by standard.

E613 Additional Standards Applicable to Standard Mail (B)

1.0 WEIGHT

Standard Mail (B) consists of mailable matter that (except Special or Library Mail) weighs 16 ounces or more.

2.0 ZONED RATES

2.1 Required Mailing Office

Zone-rated Standard Mail (i.e., parcel post and bound printed matter) must be mailed at the post office from which the zone rate postage was computed, except under 2.2 and 2.3.

2.2 Redirected Mailings

Mailers who present large volumes of zone-rated Standard Mail might be allowed or directed to deposit such mailings at another postal facility when processing or logistics make such an alternative desirable for the USPS, subject to these conditions:

a. Zoned postage need not be recomputed if both the original post office of mailing and the alternative facility to which the mailing is redirected use the same zone chart for computing zone-rated postage, based on the 3-digit prefix of their ZIP Codes.

b. Postage must be recomputed on pieces in mailings redirected to a postal facility that uses a different zone chart for computing zone-rated postage.

c. Postage for pieces claimed at the local zone rates must be recomputed at the applicable zone rate for the post office to which the mailing was redirected. Postage might also be recomputed for other pieces that were ineligible for the local zone rates but that could become eligible at the post office to which the mailing was redirected.

2.3 BMC Acceptance

Mailers may present zone-rated Standard Mail at a BMC for acceptance if:

a. Metered postage is paid through a postage meter licensed at the BMC parent post office, or permit imprint postage is paid through an advance deposit account at the BMC parent post office or another post office in the BMC service area, unless otherwise permitted by standard.

b. Zoned postage is computed from the BMC parent post office.

c. The BMC is authorized by Form 4410 to act as acceptance agent for the entry post office.

3.0 ADDRESSING

All Standard Mail (B) must bear the sender's return address and, except for single-piece rate parcel post, the address on each piece must include the correct ZIP Code or ZIP+4 code.

E620 Single-Piece and Nonpresort Bulk Standard Mail

E621 Single-Piece Standard Mail (A)

1.0 SINGLE-PIECE RATE

1.1 Rate Application

Single-piece rate Standard Mail (A) is Standard Mail (A) matter not prepared as required for a bulk rate. The single-piece rates are applied to each piece (or each item mailed under 1.2) based on its weight. If the computed single-piece Standard Mail (A) rate is higher than any Standard Mail (B) rate for which the mail could qualify except for weight, the lower Standard Mail (B) rate may be paid; all other standards for single-piece Standard Mail (A) apply.

1.2 Keys and Identification Devices

Keys and identification devices (identification cards or uncovered identification tags) may be mailed as single-piece Standard Mail (A) if they bear, contain, or have securely attached instructions to return to a name and complete address of a person, organization, or concern and a statement guaranteeing postage payment on delivery.

1.3 Nonstandard Surcharge

A nonstandard surcharge is assessed on each single-piece Standard Mail (A) mailpiece weighing 1 ounce or less (except for keys and identification devices) that exceeds the size limits in C600.

1.4 Preparation

Keys and identification devices must be prepared under 1.2. Each other single-piece rate Standard Mail (A) piece must have a delivery address and the endorsement "Standard Mail." No minimum quantity is required unless postage is paid with a permit imprint (in which case the mailing must contain 200 pieces or 50 pounds of pieces). There are no presort standards, but five or more metered letter-size pieces and any permit imprint pieces must be "faced" (so that the addresses face in one direction) and bundled, boxed, or packaged.

1.5 Postage Payment and Documentation

Except for keys and identification devices, full postage must be either affixed in adhesive stamps, precanceled

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stamps, or meter postage or paid with permit imprint. Documentation of postage is required for mailings paid with precanceled stamps, meter postage, or permit imprint if all pieces in the mailing are not of identical weight. A mailing statement is required only if postage is paid with a permit imprint.

1.8 Place of Mailing

Pieces paid with adhesive stamps may be deposited into collection boxes or other places where mail is accepted. Pieces paid with meter postage, precanceled stamps, or permit imprint must be taken to the post office where the license or permit is held, unless the USPS authorizes otherwise.

E622 Parcel Post

1.0 BASIC STANDARDS

1.1 Description

Any Standard Mail (B) matter may be mailed at parcel post rates. Parcel post rates are based on zones, on whether a parcel is mailed and delivered within a BMC or ASF service area (as shown below), and on the weight of the piece.

* * * * *

1.3 Enclosures

Parcel post may contain any printed matter mailable as Standard Mail (A), in addition to the enclosures and additions listed in E611.

[Delete current E412.1.4; insert text of current E412.2.0 through 4.0 as E622.2.0 through 4.0, respectively; in 3.1, replace "fourth-class" with "Standard Mail (B)"; no other change in text.]

E623 Bound Printed Matter

1.0 BASIC STANDARDS

1.1 Description

Bound printed matter is Standard Mail weighing at least 1 pound but not more than 10 pounds and meeting the standards in E611 and E613. Bound printed matter rates are based on zones and the weight of the piece.

1.2 Characteristics

Bound printed matter must:

a. Consist of advertising, promotional, directory, or editorial material or any combination of these.

b. Be securely bound by permanent fastenings such as staples, spiral binding, glue, or stitching. Looseleaf binders and similar fastenings are not considered permanent.

c. Consist of sheets of which at least 90% are imprinted by any process other than handwriting or typewriting with letters, characters, figures, or images, or any combination of these.

d. Not have the nature of personal correspondence.

e. Not be stationery, such as pads of blank printed forms.

1.3 Combining Pieces

A mailpiece containing two or more bound printed matter pieces, each weighing less than 1 pound but having a total weight of at least 1 pound, is mailable at the bound printed matter rates.

1.4 Enclosures

In addition to the additions and enclosures listed in E611 and E612, bound printed matter may contain:

a. Any printed matter mailable as Standard Mail (A).

b. A merchandise sample attached to a bound page or to a permissible loose enclosure, if the sample represents only an incidental portion of the bound printed matter piece and if the sample is not provided exclusively or primarily as a premium or an inducement promoting the sale of the bound printed matter piece. The sample may be identified as a "free gift" where it is clear that the sample is offered to the addressee to market the gift product or promote the sale of the bound printed matter.

[Delete current 1.5.]

E624 Special Standard Mail

1.0 BASIC STANDARDS

1.1 Qualification

Special Standard Mail is Standard Mail matter meeting the standards in E611, E613, and those below. Special Standard Mail rates are based on the weight of each piece without regard to zone.

1.2 Qualified Items

Only these articles may be mailed at the Special Standard Mail rates:

a. Books, including books issued to supplement other books of at least eight printed pages, consisting wholly of reading matter or scholarly bibliography, or reading matter with incidental blank spaces for notations and containing no advertising matter other than incidental announcements of books. Advertising includes paid advertising and the publishers' own advertising in display, classified, or editorial style.

b. 16-millimeter or narrower width films, which must be positive prints in final form for viewing, and catalogs of such films of 24 pages or more (at least 22 of which are printed). Films and film catalogs sent to or from commercial theaters do not qualify for the Special Standard Mail rate.

c. Printed music, whether in bound or sheet form.

d. Printed objective test materials and their accessories used by or in behalf of educational institutions to test ability, aptitude, achievement, interests, and other mental and personal qualities with or without answers, test scores, or identifying information recorded thereon in writing or by mark.

e. Sound recordings and guides or scripts prepared solely for use with such recordings. Video recordings and player piano rolls are classified as sound recordings.

f. Playscripts and manuscripts for books, periodicals, and music.

g. Printed educational reference charts designed to instruct or train individuals for improving or developing their capabilities. Each chart must be a single printed sheet of information designed for educational reference. The information on the chart, which may be printed on one or both sides of the sheet, must be conveyed primarily by graphs, diagrams, tables, or other nonnarrative matter. An educational reference chart is normally but not necessarily devoted to one subject. A chart on which the information is conveyed primarily by textual matter in a narrative form does not qualify as a printed educational reference chart for mailing at the Special Standard Mail rates even if it includes graphs, diagrams, or tables. Examples of qualifying charts include maps produced primarily for educational reference, tables of mathematical or scientific equations, noun declensions or verb conjugations used in the study of languages, periodic table of elements, botanical or zoological tables, and other tables used in the study of science.

h. Looseleaf pages and their binders consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students.

i. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

1.3 Loose Enclosures

In addition to the enclosures and additions listed in E611, any printed matter that is mailable as Standard Mail (A) may be included loose with any qualifying material mailed at the Special Standard Mail rates.

1.4 Enclosures in Books

Enclosures in books mailed at Special Standard Mail rates are subject to these additional standards:

a. Either one envelope or one addressed postcard may be bound into the pages of a book. If also serving as an order form, the envelope or card may be in addition to the order form permitted by 1.4b.

b. One order form may be bound into the pages of a book. If also serving as an envelope or postcard, the order form may be in addition to the envelope or card permitted by 1.4a.

c. Books may also contain announcements of books appearing as book pages. These announcements must be incidental, exclusively devoted to books and without extraneous advertising of book-related materials or services. Announcements may fully describe the conditions and methods of ordering books and may contain ordering instructions for use with a separate order form. No more than three of these announcements may contain as part of their format a single order form, which may also serve as a postcard. The order forms permitted with these announcements are in addition to, and not in place of, order forms that may be enclosed under 1.4a or 1.4b.

[Delete current 1.5.]

E625 Library Mail

1.0 BASIC STANDARDS

1.1 Qualification

Library Mail is Standard Mail matter that meets the standards in E611, E613, and those below. Library Mail rates are based on the weight of each piece without regard to zone.

1.2 Qualified Sender, Recipient, Content

Each piece must show in the address or return address the name of a school, college, university, public library, museum, or herbarium or the name of a nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans, or fraternal organization. For Library Mail standards, these nonprofit organizations are defined in E670. Only the articles described in 1.4 through 1.5 may be mailed at the Library Mail rate.

1.3 Preparation

When 1,000 or more pieces of identical weight are mailed at the Library Mail rates during a single day, the pieces must be prepared under M630.

1.4 Mailable Items Sent Between

The following items may be mailed at the Library Mail rate when sent between: (1) schools, colleges, universities, public libraries, museums, and herbariums and nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans, and fraternal organizations or associations; (2) any such institution, organization, or association, and an individual who has no financial interest in the sale, promotion, or distribution of the materials; or (3) any such institution, organization, or association and a publisher, if such institution, organization, or association has placed an order to buy such materials for delivery to itself:

a. Books, consisting wholly of reading matter, scholarly bibliography, or reading matter with incidental blank spaces for notations and containing no advertising except for incidental announcements of books.

b. Printed music, whether in bound or sheet form.

c. Bound volumes of academic theses, whether in typewritten or duplicated form.

d. Periodicals, whether bound or unbound.

e. Sound recordings.

f. Other library materials in printed, duplicated, or photographic form or in the form of unpublished manuscripts.

g. Museum materials, specimens, collections, teaching aids, printed matter, and interpretive materials for informing and furthering the educational work and interests of museums and herbariums.

1.5 Mailable Items Sent "To" or "From"

The following specific items may be mailed at the Library Mail rate when sent to or from schools, colleges, universities, public libraries, museums, and herbariums and to or from nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans, or fraternal organizations:

a. 16-millimeter or narrower width films, filmstrips, transparencies, slides, and microfilms. All must be positive prints in final form for viewing.

b. Sound recordings.

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretive materials intended for informing and furthering the educational work and interests of museums and herbariums.

d. Scientific or mathematical kits, instruments, or other devices.

e. Catalogs of the materials in 1.5a through 1.5d and guides or scripts prepared solely for use with such materials.

1.6 Enclosures in Books and Sound Recordings

Books and sound recordings mailed at the Library Mail rate may contain these enclosures as well as the additions and enclosures permitted under E611:

a. Either one envelope or one addressed postcard. If also serving as an order form, the envelope or card may be in addition to the order form permitted by 1.6b.

b. One order form. If also serving as an envelope or postcard, the order form may be in addition to the envelope or card permitted by 1.6a.

c. With books, announcements of books appearing in book pages or as loose enclosures. These announcements of books must be incidental and exclusively devoted to books. They may not contain extraneous advertising of book-related materials or services. Announcements may fully describe the conditions and methods of ordering books (such as by membership in book clubs) and may contain ordering instructions for use with the single order form permitted in 1.6b.

d. With sound recordings, announcements of sound recordings appearing on title labels, on protective sleeves, on the carton or wrapper, or on loose enclosures. These announcements of sound recordings must be incidental and exclusively devoted to sound recordings. They may not contain extraneous advertising of recording-related materials or services. Announcements may fully describe the conditions and methods of ordering sound recordings (such as by membership in sound recording clubs) and may contain ordering instructions for use with the single order form permitted in 1.6b.

1.7 Other Material

Material mailed at the Library Mail rate other than books and sound recordings may contain only those additions and enclosures permitted under E611.

[Delete current 1.8.]

E630 Presort Bulk Rates

E631 Regular Standard Mail

1.0 BASIC AND 3/5 RATES

Basic and 3/5 rates apply to Regular Standard Mail letters, flats, and machinable and irregular parcels, weighing less than 16 ounces, that are correctly prepared under M610. Basic rates apply to pieces that do not meet the standards for the 3/5 rates described below. Basic rate and 3/5 rate pieces may be prepared as part of the same mailing, subject to a single minimum volume standard. Pieces not presorted to qualify for the 3/5 rate must be paid at the basic rate and prepared accordingly. Pieces may qualify for the 3/5 rate if:

a. In quantities of 150 or more letter-size pieces for a single 3-digit area,

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prepared in 5-digit or 3-digit packages of 10 or more pieces each and placed in 5-digit or 3-digit trays.

b. In quantities of 150 or more upgradable letter-size pieces (as defined in M610) for a single 3-digit area and placed in 5-digit or 3-digit trays.

c. In a 5-digit or 3-digit package of 10 or more flat-size pieces and placed in a 5-digit or 3-digit sack containing at least 125 pieces or 15 pounds of pieces.

d. In a 5-digit or 3-digit package of 10 or more flat-size pieces and sorted to the appropriate level of pallet.

e. In a 5-digit, destination ASF (if required), or destination BMC sack containing at least 10 pounds of machinable parcels. (The 3/5 rates are available only if all possible 5-digit sacks are prepared.)

f. On a 5-digit, destination ASF (if required), or destination BMC pallet of machinable parcels. (The 3/5 rates are available only if all possible 5-digit pallets are prepared.)

g. In a 5-digit or 3-digit sack of irregular parcels.

2.0 ZIP CODE ACCURACY

Effective 3 months from the date on which Classification Reform is implemented, 5-digit ZIP Codes included in addresses appearing on pieces claimed at Regular Basic and ⅗ rates must have been verified and corrected within 12 months of the date of mailing, using a USPS-approved method. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rates to which the standard applies throughout the 12-month period following its most recent update.

E632 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

1.1 General

Enhanced Carrier Route rates apply to Enhanced Carrier Route Standard Mail letters, flats, and irregular parcels (including merchandise samples distributed using detached address labels), weighing less than 16 ounces, that are presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces and correctly prepared under M620 to carrier routes (city carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units). Enhanced Carrier Route rate flats may not be more than 11–3/4 inches wide, 14 inches long, or 3/4 inch thick. Merchandise samples with detached labels may exceed these dimensions if the labels meet the standards in A060.

1.2 Pieces at Different Rates

An Enhanced Carrier Route mailing may include pieces at more than one Enhanced Carrier Route rate, subject to a single minimum volume standard.

1.3 Carrier Route Information

Mailers must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information (see A930). Mailers must have updated the carrier route information within 90 days before the mailing date.

1.4 Sequencing

Basic Carrier Route rate mail must be prepared in carrier walk sequence or line-of-travel (LOT) sequence, using official LOT schemes prescribed by the USPS (see M050). High Density and Saturation rate mailings must be prepared in carrier walk sequence, using official schemes prescribed by the USPS.

1.5 Eligible Presort

Carrier Route rates apply to pieces as described below that are correctly presorted under M620. Basic Carrier Route rates apply unless pieces meet the additional standards in 1.6 and 1.7 to qualify for the High Density or Saturation rates. Pieces may qualify for the Carrier Route rates if:

a. In a carrier route package of 10 or more letter-size pieces placed in a full carrier route or any 5-digit carrier routes tray.

b. In a carrier route package of 10 or more flat-size pieces placed in a carrier route sack containing at least 125 pieces or 15 pounds of pieces, or in a 5-digit carrier routes sack.

c. In a carrier route package of 10 or more flat-size pieces correctly palletized under M045.

d. In a carrier route sack of irregular parcels containing 125 pieces or 15 pounds of pieces, in a carrier route carton(s) of merchandise samples prepared with detached address labels under A060 containing a total of 125 pieces or 15 pounds of pieces, or in a 5-digit carrier routes sack or carton. (Pieces must be in packages of 10 or more irregular parcels each if packaging is required under M610.)

1.6 Addressing—High Density and Saturation Mail

High Density and Saturation rate mail may be prepared with detached address labels, subject to A060, or with an alternative addressing format, subject to A040. High Density pieces must have a complete delivery address or an address in occupant or exceptional format. Saturation pieces addressed for delivery on a city carrier route must have a complete delivery address or an address in occupant or exceptional format, except that official mail from certain government entities may also use the simplified format. Saturation pieces for delivery on rural or highway contract routes, or through general delivery or a post office box, must have a complete delivery address or an alternative address format.

1.7 Density Standards—High Density and Saturation Mail

High Density and Saturation rate mailings are subject to these density standards:

a. There is no minimum volume per 5-digit ZIP Code delivery area. Pieces need not be sent to all carrier routes within a 5-digit delivery area.

b. For the High Density rate, at least 125 pieces must be prepared for each carrier route for which that discount is claimed, except that fewer pieces may be prepared and the High Density rate may be claimed for carrier routes of 124 or fewer possible deliveries if a piece is addressed to every possible delivery on the route. Multiple pieces per delivery address can count toward this density standard.

c. For the Saturation rate, pieces must be addressed either to 90% or more of the active residential addresses or 75% or more of the total number of active possible delivery addresses, whichever is less, on each carrier route receiving this mail, except that mail addressed in the simplified address format must meet the 100% coverage standard in A040. Multiple pieces per delivery address do not count toward this delivery standard. Sacks with fewer than 125 pieces and less than 15 pounds of pieces may be prepared to a carrier route when the Saturation rate is claimed for the contents and the applicable density standard is met.

E633 Bulk Bound Printed Matter

1.0 BASIC INFORMATION

1.1 Preparation

Bulk bound printed matter must meet the basic standards in E623 and the applicable preparation standards in M630. Mailings may contain nonidentical-weight pieces only if the correct postage is affixed to each piece or if the RCSC serving the office of mailing has authorized payment of postage by permit imprint. Each mailing must contain 300 or more pieces of bound printed matter. Insurance, special delivery, special handling, and COD services may be used, but selective use of these services for individual parcels must be approved by the RCSC.

1.2 Additional Standards for Carrier Route

Carrier route bulk bound printed matter is subject to these additional standards:

a. Each mailing must contain 300 or more pieces presorted under M630 into groups of at least 10 pieces, 20 pounds, or 1,000 cubic inches each for the same carrier route, rural route, highway contract route, post office box section, or general delivery unit.

b. Residual pieces (not sorted as described in 1.2a) do not count toward the minimum specified in 1.2a, are ineligible for the carrier route presort level rate, and must have postage paid at the appropriate bulk bound printed matter rate. Residual pieces may be included in a carrier route presort rate mailing and be endorsed "Carrier Route Presort" or "CAR–RT SORT." The number of residual pieces to any single 5-digit ZIP Code area may not exceed 5% of the total qualifying presorted carrier route pieces addressed to that 5-digit area. Residual pieces must be separated from the pieces that qualify for the carrier route rate and must be correctly prepared under M630.

c. Mailers must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information (see A930). Mailers must have updated the carrier route information within 90 days of the mailing date.

E634 Presorted Special Standard Mail

1.0 BASIC INFORMATION

The Presorted Special Standard Mail rates apply to Special Standard Mail rate matter mailed in minimum quantities at a place and time designated by the postmaster, subject to the preparation standards in M630. The size and content of each piece in the mailing does not need to be identical. Nonidentical pieces may be merged, presorted together, and presented as a single mailing either with postage paid with a permit imprint if authorized by the RCSC serving the post office of mailing, or with the correct postage affixed to each piece in the mailing.

2.0 PRESORT RATES

2.1 Mailing Fee

A mailing fee must be paid once each 12-month period at each office of mailing by or for any person who mails at the Presorted Special Standard Mail rates. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment.

2.2 One Presort Level

A Presorted Special Standard Mail rate mailing receives only one level of presort rate. The mailer may, however, divide a mailing into two or more mailings with separate mailing statements to use both levels of presort rates. Pieces that do not qualify for a presort rate must be presented for mailing under a separate mailing statement if postage is paid with a permit imprint.

2.3 Definitions

For this standard:

a. A "full sack" means either at least eight pieces or a quantity of pieces equaling at least 1,000 cubic inches of volume or weighing from 20 to 70 pounds.

b. A "substantially full sack" means either at least four pieces or a quantity of pieces equaling at least 1,000 cubic inches of volume or weighing from 20 to 70 pounds.

2.4 5-Digit Rate

To qualify for the Presorted Special Standard Mail 5-digit rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted either under M630 to full 5-digit sacks or under M045 to 5-digit pallets. These conditions also apply:

a. Mailings of at least 500 nonmachinable outside parcels may qualify for the Presorted Special Standard Mail 5-digit rate if prepared to preserve presort by 5-digit ZIP Code as prescribed by the mailing office postmaster. The postmaster may require up to a 24-hour notice before the mailing is presented.

b. Mailings prepared as palletized bundles must consist of 5-digit bundles each containing at least eight pieces, or a quantity of pieces equaling 1,000 cubic inches of volume or weighing 20 pounds. No bundle may exceed 40 pounds. If there is more than 20 pounds of mail to a 5-digit destination, mailers must prepare the minimum number of bundles that do not exceed 40 pounds each.

2.5 BMC Rate

To qualify for the Presorted Special Standard Mail BMC rate, a piece must be in a mailing of at least 500 sacked pieces receiving identical service, properly prepared and presorted either under M630 to full or substantially full bulk mail center (BMC) sacks or under M045 to BMC pallets. Mailings of at least 500 nonmachinable outside parcels may qualify for the Presorted Special Standard Mail BMC rate if prepared to preserve presort by BMC as prescribed by the mailing office postmaster. The postmaster may require up to a 24-hour notice before the mailing is presented.

E639 Nonprofit Standard Mail

[Text of current eligibility standards in E331 and E332 is retained and renumbered for nonprofit rates only as E639.1.0; text of current eligibility standards in E333 and E334 is retained and renumbered for nonprofit rates only as E639.2.0 and 3.0, respectively.]

1.0 BASIC AND 3/5 RATES

1.1 Qualifying Pieces

Basic and 3/5 rates apply to Nonprofit Standard Mail letters, flats, and machinable and irregular parcels, weighing less than 16 ounces, that are correctly prepared under M692. Basic rates apply to pieces that do not meet the standards for the 3/5 rates described below. Basic rate and 3/5 rate pieces may be prepared as part of the same mailing, subject to a single minimum volume standard. Pieces not presorted to qualify for the 3/5 rate must be paid at the basic rate and prepared accordingly. Pieces may qualify for the 3/5 rate if correctly prepared:

a. In 5-digit or 3-digit packages of 10 or more pieces each, placed in 5-digit or 3-digit sacks that contain at least 125 pieces or 15 pounds of pieces.

b. In 5-digit or 3-digit packages of 10 or more pieces each, placed in 5-digit or 3-digit trays.

c. In full or overflow 5-digit, 3-digit, or SCF trays, prepared under the standards for ZIP+4 tray-based mailings in M891.

d. In 5-digit packages of 10 or more pieces each, or 3-digit packages of 50 or more pieces each, prepared under the standards for ZIP+4 package-based mailings in M892.

e. In 5-digit, 3-digit, or SCF trays, prepared under the standards for letter-size ZIP+4 Barcoded tray-based mailings in M893.

f. In 5-digit packages of 10 or more pieces each, or 3-digit packages of 50 or more pieces each, prepared under the standards for letter-size ZIP+4 Barcoded

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package-based mailings in M894 and M895.

g. In 5-digit or 3-digit packages of 10 or more pieces each, prepared under the standards for flat-size 3/5 ZIP+4 Barcoded rate mailings in M897.

h. In a 5-digit or 3-digit package of 10 or more pieces palletized under M045.

i. In a 5-digit, destination ASF (if required), or destination BMC sack containing at least 10 pounds of machinable parcels. (The 3/5 rates are available only if all possible 5-digit sacks are prepared.)

j. On a 5-digit or destination BMC pallet of machinable parcels. (The 3/5 rates are available only if all possible 5-digit pallets are prepared.)

k. In a 5-digit or 3-digit sack of irregular parcels.

1.2 Optional Preparation

At the mailer's option, Nonprofit Standard Mail may be prepared under the standards for Regular Standard Mail in M610, including presort. Under this option, Nonprofit Standard Mail can claim Nonprofit Basic or 3/5 rates, and may be combined (comailed) with Regular Standard Mail in the same mailing, if all corresponding eligibility standards in E631 for Regular Basic and 3/5 rates, respectively, are met. Presort of the combined mailing is based on the total combined volume of pieces.

1.3 Carrier Route Pieces

A 3/5 rate mailing may not include pieces claimed at the carrier route presort or walk-sequence rates. The 3/5 rate pieces and carrier route presort or walk-sequence rate pieces may be reported on the same mailing statement only under D600.

2.0 CARRIER ROUTE RATES

2.1 General

All pieces in a carrier route rate mailing must be presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces prepared under M693 to carrier routes (city carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units). Pieces may not be more than 11¾ inches wide, 14 inches long, or ¾ inch thick. Merchandise samples with detached labels may exceed these dimensions if the labels meet the standards in A060.

2.2 Optional Preparation

At the mailer's option, carrier route Nonprofit Standard Mail may be prepared under the standards for Enhanced Carrier Route Standard Mail in M620, including presort. Under this option, Nonprofit Standard Mail can claim Nonprofit carrier route rates, and may be combined (comailed) with Enhanced Carrier Route Standard Mail in the same mailing, if all corresponding eligibility standards in E632 for Enhanced Carrier Route Basic Carrier Route rate are met. Presort of the combined mailing is based on the total combined volume of pieces.

2.3 Other Rates

A carrier route rate mailing may include pieces claimed at the basic rate if the entire mailing meets the standard in 3.1. The basic rate pieces must be prepared under M692, but they do not have to meet a separate 200-piece/50-pound minimum. A carrier route rate mailing may not include pieces claimed at the 3/5 rates. The 3/5 rate and carrier route rate pieces may be reported on the same mailing statement only under D600.

2.4 Required Listing

At the time of mailing, the mailer must give the post office a list of the number of qualifying pieces to each 5-digit ZIP Code area. After the first mailing, the postmaster may authorize the mailer to keep the records and submit them on request. The mailer must keep these records for 90 days after the mailing date, or until any action pending on the recalculation of postage is resolved to USPS satisfaction.

2.5 Carrier Route Information

Mailers must presort mail to carrier routes using the current USPS Carrier Route Information System (CRIS) scheme (see A930). Mailers must have incorporated CRIS changes in their mailings within 90 days before the date of mailing.

2.6 Qualifying Presort

Each qualifying piece must be correctly prepared under M693 as part of a group of 10 or more pieces in the same carrier route package that, in turn, is placed in a carrier route, 5-digit carrier routes, or 3-digit carrier routes tray or sack. To carrier route and 5-digit carrier routes destinations, trays must be full and sacks must contain at least 125 pieces or 15 pounds of pieces. Qualifying mail also includes:

a. Carrier route packages in a 5-digit carrier routes tray that is less than full, or in a 5-digit carrier routes sack that contains fewer than 125 pieces and less than 15 pounds of pieces if that 5-digit area does not have enough residential deliveries to meet the applicable full tray or 125-piece/15-pound sack minimum at a 90% saturation level.

b. The last tray or sack to a 3-digit ZIP Code destination. The last tray may be less than full and the last sack may contain fewer than 125 pieces and less than 15 pounds of pieces.

c. Carrier route packages correctly palletized under M045.

2.7 Residual

Residual pieces are those not presorted under M693 to qualify for carrier route rates. These pieces may be included in a carrier route rate mailing and may be marked "Carrier Route Presort," subject to these conditions:

a. Residual pieces do not count toward the minimum quantity for carrier route rates.

b. The number of residual pieces to any single 5-digit ZIP Code area may not exceed 5% of the total qualifying carrier route presort pieces addressed to that 5-digit ZIP Code area.

c. Residual pieces are not eligible for the carrier route rate and must have postage paid at the basic rate and must be prepared as specified in M693.

3.0 WALK-SEQUENCE RATES

3.1 General

All pieces in a walk-sequence rate mailing must be presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces correctly presorted to carrier routes (city carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units). Subject to compliance with these standards, the saturation walk-sequence rate may be claimed by pieces in both the "letters" and "other-than-letters" categories. The 125-piece walk-sequence rate may be claimed only by pieces in the "other-than-letters" category, as defined in E612.

3.2 Optional Preparation

At the mailer's option, carrier route Nonprofit Standard Mail may be prepared under the standards for Enhanced Carrier Route Standard Mail in M620, including presort. Under this option, Nonprofit Standard Mail can claim Nonprofit 125-piece walk-sequence or saturation walk-sequence rates, and may be combined (comailed) with Enhanced Carrier Route Standard Mail in the same mailing, if all corresponding eligibility standards in E632 for Enhanced Carrier Route High Density or Saturation rates are met. Presort of the combined mailing is based on the total combined volume of pieces.

3.3 Other Rates

A walk-sequence rate mailing may include pieces claimed at the carrier route and basic rates, but only the carrier route pieces count toward the standard in 3.1. The basic rate pieces

must be prepared as required for residual pieces under 1.0, but they do not have to meet a separate 200-piece/50-pound minimum. When presented to the USPS, the trays or sacks containing the walk-sequence rate pieces must be separated from other trays or sacks. Any effective separation method may be used. A walk-sequence rate mailing may not include pieces claimed at the 3/5 rate. The 3/5 rate and walk-sequence rate pieces may be reported on the same mailing statement only under D600.

3.4 Addressing

Walk-sequence rate mail must meet these addressing standards:

a. Mailings may be prepared with detached address labels, subject to A060.

b. Pieces prepared with an alternative addressing format must meet the applicable standards in A040.

c. For the 125-piece walk-sequence discount, each piece must have a complete delivery address or an address in occupant or exceptional format.

d. For the saturation walk-sequence discount, each piece addressed for delivery on a city carrier route must have a complete delivery address or an address in occupant or exceptional format, except that official mail from certain government entities may also use the simplified format. Pieces for delivery on rural or highway contract routes, or through general delivery or a post office box, must have a complete delivery address or an alternative address format.

3.5 Density Standards

Walk-sequence rate mailings are subject to these density standards:

a. There is no minimum volume per 5-digit ZIP Code delivery area. Walk-sequence mail need not be sent to all carrier routes within a 5-digit delivery area.

b. For the 125-piece walk-sequence discount, at least 125 walk-sequenced pieces must be prepared for each carrier route for which that discount is claimed, except that for carrier routes of 124 or fewer possible deliveries, the 125-piece walk-sequence discount may be claimed if a piece is addressed to every possible delivery on the route. Multiple pieces per delivery address can count toward this density standard.

c. For the saturation walk-sequence discount, pieces must be addressed either to 90% or more of the active residential addresses or 75% or more of the total number of active possible delivery addresses, whichever is less, on each carrier route receiving this mail, except that mail addressed in the simplified address format must meet the coverage standard in A040. Multiple pieces per delivery address do not count toward this density standard.

d. Sacks with fewer than 125 pieces and less than 15 pounds of pieces may be prepared to a carrier route when a walk-sequence discount is claimed for the contents and the applicable density standard in 3.5b or 3.5c is met.

E640 Automation-Based Rates

E641 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in an Automation Standard Mail mailing must:

a. Meet all the basic standards for Standard Mail in E611 and E612.

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of Standard Mail.

c. Be in the same processing category and meet the physical standards in C810 (letters and cards) or C820 (flats).

d. Bear an address that includes the correct numeric 5-digit ZIP Code or ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (DPBC).

e. Meet the address quality and coding standards in 1.2 (if applicable), A800, and A950.

f. Be marked, presorted, and documented as specified in M891 (letters and cards) or M892 (flats).

g. Meet the postage payment standards in P013 and P600.

h. Bear an accurate barcode, either the correct DPBC if a card or letter (on the piece or on an insert showing through a barcode window) or the correct ZIP+4 barcode or DPBC if a flat, that meets the barcode standards in C840. A letter-size mailpiece with a barcode window in the lower right corner must have the correct DPBC appearing through that window.

1.2 Carrier Route Information

Mailers must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information (see A930). Mailers must have updated the carrier route information within 90 days before the mailing date. Carrier route rates for letter-size mail are available only for those 5-digit ZIP Code areas identified in the USPS AIS products used for address coding.

1.3 Enclosed Reply Envelopes and Cards

Effective January 1, 1997, all courtesy reply and business reply envelopes and cards provided to addressees as enclosures in Automation Standard Mail must bear the correct facing identification mark (FIM) and delivery point barcode for the delivery address of the reply piece and must meet the automation compatibility standards in C810 or C820, as appropriate. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS.

2.0 RATE APPLICATION

2.1 Letters and Cards

Automation Standard Mail rates apply to each piece that is correctly presorted under M810 into the corresponding qualifying groups:

a. Pieces in full carrier route trays, or in carrier route packages of 10 or more pieces each placed in 5-digit carrier routes trays, qualify for the Automation Carrier Route rate. (Preparation to qualify for the Carrier Route rate is optional and need not be performed for all carrier routes in a 5-digit area.)

b. Groups of 150 or more pieces in 5-digit trays (and all pieces in one less-than-full overflow tray) qualify for the Automation 5–Digit rate. (Preparation to qualify for the 5–Digit rate is optional.)

c. Groups of 150 or more pieces in 3-digit or 3-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the Automation 3-Digit rate.

d. Pieces in full or overflow AADC trays and in all mixed AADC trays qualify for the Automation Basic rate.

2.2 Flats

Automation Standard Mail rates apply to each piece that is correctly presorted under M820 into the corresponding qualifying groups:

a. Pieces in 5-digit or 3-digit packages of 10 or more pieces each qualify for the Automation 3/5 rate.

b. Pieces in ADC or mixed ADC packages qualify for the Automation Basic rate.

E649 Nonprofit Automation Rates

[Text of current eligibility standards in E342, E344, and E345 is retained and renumbered for nonprofit rates only as E649.1.0, 2.0, and 3.0, respectively.]

1.0 ZIP+4 DISCOUNTS

1.1 All Pieces

All pieces in a Nonprofit Standard Mail ZIP+4 rate mailing must:

a. Meet the standards in E611 and E612.

b. Be presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces.

c. Meet the physical standards in C810.

d. Have an delivery address with the correct numeric ZIP+4 code or the

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correct numeric 5-digit ZIP Code. If prepared with a delivery point barcode (DPBC), it may also bear the numeric equivalent to the DPBC.

e. Meet the address quality and coding standards of A800 and A950.

f. Meet the standards in C830 or, for pieces with the correct DPBC, the barcode standards in C840.

g. Be marked, presorted, and documented as specified in M891 or M892.

h. Meet the postage payment standards in P013 and P600.

i. Separately qualify under the standard for any other discount claimed.

1.2 Rate Application

Nonprofit ZIP+4 rates apply to each piece that also:

a. Is correctly presorted under M891 or M892 into the corresponding qualifying groups described in 1.7 and 1.8.

b. Has an address with the correct numeric ZIP+4 code or bears the correct DPBC.

1.3 Barcode Window

A mailpiece meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for any Nonprofit automation rate only if the correct DPBC appears through the window.

1.4 5-Digit Barcodes

Nonprofit ZIP+4 rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and 1.2 and the standards for 5-digit barcodes in C840. Such pieces may qualify for the Nonprofit ZIP+4 rates only if the barcode is printed on the piece and the address contains the correct numeric ZIP+4 code.

1.5 ZIP+4 Barcodes

Nonprofit ZIP+4 rate mailings may include pieces with correct ZIP+4 barcodes if the barcode is located in the address block and those pieces meet the standards in 1.1 and 1.2 and the standards for ZIP+4 barcodes in C840. Such pieces may qualify for Nonprofit ZIP+4 rates only if, additionally, the address contains the correct numeric ZIP+4 code. Pieces that bear a ZIP+4 barcode in the lower right corner may not be included in a Nonprofit ZIP+4 rate mailing.

1.6 85% Rule

At least 85% of all pieces in a Nonprofit ZIP+4 rate mailing (regardless of presort or rate) must bear the correct numeric ZIP+4 code or DPBC for the delivery address, as defined by the address quality and coding standards in A800 and A950. The 85% requirement applies to each mailing unless excepted by other standards.

1.7 Qualifying Tray-Based Presort

In tray-based presort mailings under M891, ZIP+4 coded or DPBC pieces in full or overflow 5-digit, 3-digit, and SCF trays qualify for the Nonprofit 3/5 ZIP+4 rate; other pieces qualify for the Nonprofit 3/5 rate. One less-than-full SCF tray for the origin SCF is permitted. ZIP+4 coded or DPBC pieces in AADC, mixed AADC, or working residual trays qualify for the Nonprofit Basic ZIP+4 rate; other pieces qualify for the Nonprofit Basic rate.

1.8 Qualifying Package-Based Presort

In package-based presort mailings under M892, ZIP+4 coded or DPBC pieces in 5-digit packages of 10 or more pieces each, and 3-digit packages of 50 or more pieces each, qualify for the Nonprofit 3/5 ZIP+4 rate; other pieces in these packages qualify for the Nonprofit 3/5 rate. Residual ZIP+4 coded or DPBC pieces qualify for the Nonprofit Basic ZIP+4 rate; other pieces qualify for the Nonprofit Basic rate.

2.0 BARCODED DISCOUNTS (LETTER-SIZE PIECES)

2.1 All Pieces

All pieces in a Nonprofit Standard Mail Barcoded rate letter-size mailing must:

a. Meet the standards in E611 and E612.

b. Be presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces.

c. Meet the physical standards in C810.

d. Bear a delivery address that includes the correct numeric ZIP+4 code or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

e. Meet the address quality and coding standards of A800 and A950.

f. Be marked, presorted, and documented as specified in M893, M894, or M895.

g. Meet the postage payment standards in P013 and P600.

h. Separately qualify under the standard for any other discount claimed.

i. Either bear the correct DPBC meeting the barcode standards in C840 or meet the applicable standards in 2.5.

2.2 Rate Application

Nonprofit Barcoded rates apply to each piece that also:

a. Is correctly presorted under M893, M894, or M895 into the corresponding qualifying groups described in 2.8, 2.9, and 2.10.

b. Bears the correct DPBC that meets the barcode standards in C840.

c. Meets the applicable standards in 2.3 through 2.7.

2.3 Optional Preparation

At the mailer's option, barcoded Nonprofit Standard Mail may be prepared under the standards for Automation Standard Mail in M820, including presort. Under this option, barcoded Nonprofit Standard Mail can claim Nonprofit carrier route, 5-Digit Barcoded, 3-Digit Barcoded, and Basic Barcoded rates, and may be combined (comailed) with Automation Standard Mail in the same mailing, if all corresponding eligibility standards in E631 and E641 for Automation Carrier Route, 5-Digit, 3-Digit, and Basic rates, respectively, are met. Presort of the combined mailing is based on the total combined volume of pieces.

2.4 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 2.1 through 2.3 but with a barcode window in the lower right corner, may be eligible for any Nonprofit automation rate only if the correct DPBC appears through the window.

2.5 Pieces Without DPBCs

Subject to 2.5 and 2.6, Nonprofit Barcoded rate mailings may also include nonbarcoded, 5-digit barcoded, or ZIP+4 barcoded pieces if each such piece (regardless of rate) meets the standards in 2.1, has a barcode clear zone in the lower right corner meeting the reflectance standards in C840, meets the applicable 5-digit or ZIP+4 barcode standards in C840, and does not have a window in the lower right corner. Additionally, to qualify for a Nonprofit ZIP+4 rate, subject to 2.8, 2.9, and 2.10:

a. Nonbarcoded and 5-digit barcoded pieces must bear an address with the correct ZIP+4 code and meet the standards in C830.

b. ZIP+4 barcoded pieces must have the barcode in the address block, meet the standards in C830, and bear an address with the correct ZIP+4 code.

2.6 85% Rule

Subject to 2.7, at least 85% of all pieces in a Nonprofit Barcoded rate mailing (regardless of presort or rate) must bear the correct DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. The 85% requirement applies to each mailing unless excepted by other standards.

2.7 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M893.

b. In 5-digit packages in a package-based mailing under M894 or M895.

c. In any mailing containing heavy letters (as defined in C810).

2.8 Qualifying Tray-Based Presort

In tray-based presort mailings under M893:

a. Pieces in full or overflow 5-digit trays qualify for the 5-digit Nonprofit Barcoded rate.

b. In full or overflow 3-digit and SCF trays, DPBC pieces qualify for the 3-digit Nonprofit Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit 3/5 ZIP+4 rate; other pieces qualify for the Nonprofit 3/5 rate. One less-than-full SCF tray for the SCF serving the post office where the mailing is entered is permitted.

c. In AADC, mixed AADC, and working trays, DPBC pieces qualify for the Nonprofit Basic Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit Basic ZIP+4 rate; other pieces qualify for the Nonprofit Basic rates.

2.9 Qualifying Two-Tier Package-Based Presort

In two-tier package-based presort mailings under M894:

a. Pieces in 5-digit packages of 10 or more pieces each qualify for the Nonprofit 5-digit Barcoded rate.

b. In 3-digit packages of 50 or more pieces each, DPBC pieces qualify for the Nonprofit 3-digit Barcoded rates; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit 3/5 ZIP+4 rate; other pieces qualify for the Nonprofit 3/5 rate.

c. In the residual portion, DPBC pieces qualify for the Nonprofit Basic Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit Basic ZIP+4 rate; other pieces qualify for Nonprofit Basic rate.

2.10 Qualifying Three-Tier Package-Based Presort

In three-tier package-based presort mailings under M895:

a. Pieces in 5-digit packages of 10 or more pieces each in the 5-digit presort tier qualify for the Nonprofit 5-digit Barcoded rate.

b. In 3-digit packages of 50 or more pieces each in the 3-digit presort tier, DPBC pieces qualify for the Nonprofit 3-digit Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit 3/5 ZIP+4 rate; other pieces qualify for the Nonprofit 3/5 rate.

c. In the residual presort tier, DPBC pieces qualify for the Nonprofit Basic Barcoded rate; subject to 2.5, ZIP+4 coded non-DPBC pieces qualify for the Nonprofit Basic ZIP+4 rate; other pieces qualify for the Nonprofit Basic rate.

3.0 ZIP+4 BARCODED DISCOUNTS (FLAT-SIZE PIECES)

3.1 All Pieces

All pieces in a Nonprofit Standard Mail ZIP+4 Barcoded rate flat-size mailing must:

a. Meet the standards in E611 and E612.

b. Be presented at one post office as part of a single mailing of at least 200 pieces or 50 pounds of pieces.

c. Meet the physical standards in C820.

d. Bear a delivery address that includes the correct numeric ZIP+4 code or 5-digit ZIP Code (or, only if prepared with a delivery point barcode (DPBC), the numeric equivalent to the DPBC).

e. Meet the address quality and coding standards of A800 and A950.

f. Bear the correct 5-digit, ZIP+4, or DPBC, subject to C840, except for pieces in specific portions of mailings prepared under M897.

g. Be marked, presorted, and documented as specified in M897.

h. Meet the postage payment standards in P013 and P600.

i. Separately qualify under the standard for any other discount claimed.

3.2 Rate Application

Nonprofit ZIP+4 Barcoded rates apply to each piece that also:

a. Is correctly presorted under M897 into the qualifying groups described in 3.6.

b. Bears the correct ZIP+4 or DPBC.

3.3 Optional Preparation

At the mailer's option, barcoded Nonprofit Standard Mail may be prepared under the standards for Automation Standard Mail in M820, including presort. Under this option, barcoded Nonprofit Standard Mail can claim Nonprofit 3/5–Digit Barcoded and Basic Barcoded rates, and may be combined (comailed) with Automation Standard Mail in the same mailing, if all corresponding eligibility standards in E631 and E641 for Automation 3/5 and Basic rates, respectively, are met. Presort of the combined mailing is based on the total combined volume of pieces.

3.4 5–Digit Barcodes

Nonprofit ZIP+4 Barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 3.1 through 3.3 and the standards for 5-digit barcodes in C840. Pieces with a 5-digit barcode could be eligible for a presort rate under 3.6.

3.5 85% Rule

Generally, at least 85% of all pieces in a Nonprofit ZIP+4 Barcoded rate mailing (regardless of presort or rate) must bear the correct ZIP+4 or DPBC for the delivery address, as defined by the standards for address quality and coding accuracy in A800 and A950. Remaining pieces must bear the correct 5-digit barcode meeting the applicable standards in C840. The 85% requirement applies to each mailing unless excepted by other standards. Nonprofit ZIP+4 Barcoded rate mailings not meeting the 85% rule must be prepared under corresponding standards in M897.

3.6 Presort

In 5-digit or 3-digit packages of 10 or more pieces each, ZIP+4 or DPBC pieces can qualify for the Nonprofit 3/5 ZIP+4 Barcoded rate; 5-digit barcoded (and nonbarcoded pieces where permitted) pieces qualify for the Nonprofit 3/5 rate. In SCF packages of 10 or more pieces each, or in residual packages, ZIP+4 or DPBC pieces qualify for the Nonprofit Basic ZIP+4 Barcoded rate for flats; 5-digit barcoded pieces qualify for the Nonprofit Basic rate.

E650 Destination Entry Discounts

E651 Regular, Nonprofit, Enhanced Carrier Route, and Automation Standard Mail

[Text of current E350; in 1.4, replace "bulk third-class mail" with "bulk rate Standard Mail (A)"; in 3.9, replace "third-class mail" with "Standard Mail (A)"; revise 1.1 and 7.1 as shown below; in 5.3 and 6.2, delete "SDC"; no other change in text.]

1.0 BASIC STANDARDS

1.1 Rate Application

Regular, Nonprofit, Enhanced Carrier Route, and Automation Standard Mail meeting the basic standards in E611 and E612 may qualify for the destination BMC, SCF, or DDU entry rates if deposited at the correct destination postal facility, subject to the general standards below and the specific standards in 5.0, 6.0, and 7.0, respectively. Only one destination reduction may be claimed for each mailpiece.

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7.0 DELIVERY UNIT DISCOUNT

7.1 Definition

For this standard, "destination delivery unit (DDU)" refers to a facility designated by the USPS where sequencing is performed for the carrier route (city carrier route, rural route, highway contract route, post office box section, or general delivery unit) serving the delivery address on the mailpiece.

* * * * *

[Delete 7.3.]

E652 Parcel Post

[Text of current E450; in 1.4, replace "fourth-class" with "Standard Mail (B)"; no other change in text.]

E670 Nonprofit (Special) Bulk Rates

[Text of current E370; in 1.1, 1.3, 2.1, 3.1, 3.3, 4.1, 4.2, 5.1, 5.2, 5.3, 5.4, 5.4a, 5.4b, 5.4c, 5.4d(1), 5.6a, 5.6b, 5.6b(1), 5.6b(2), 5.6b(3), 5.6e, 5.8, 5.9, 5.10, 5.11, 5.12, 6.0, 7.1, 7.3, 8.1, 8.3, 9.1, 9.2, 9.3, 9.4, 11.1, and 11.4, replace "special bulk third-class rate[s]," "special bulk rate[s]," or "special rate[s]" with "Nonprofit Standard Mail rate[s]"; in 1.3, replace "for all bulk third-class mail in E311 and E312" with "in E611 and E612"; in 3.3, 5.4d(2), 5.11, 9.2, and 9.3b, replace "third-class" with "Standard Mail (A)"; in 5.8d, correct the reference from E211.11.0 to E211; in 5.10c, correct the reference from E370.5.0 to 5.0. No other change in text.]

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

[In 3.0d, replace "fourth-class" and "third-class" with "Standard Mail (B)" and "Standard Mail (A)," respectively; in Exhibit 4.2, 5.2, 5.2a, 5.2b, 5.2e, 5.2f, 5.2g, 6.1, and 7.2, replace "second-class" with "Periodicals"; in 4.6b, 5.2e, the table following 5.2g, 6.1, 7.1, and 8.1e, replace "third- or fourth-class" with "Standard Mail"; in 4.6d and 6.3, replace "fourth-class" with "Standard Mail (B)"; in 5.3, 5.3a, 5.3f, 5.3g, the table following 5.3g, 6.2, 8.1a, 8.1b, and 8.1e, replace "[T]hird-class" with "Standard Mail (A)"; in 5.4, 5.4b, 5.4c, 5.4d, and 5.4e, replace "[F]ourth-class" with "Standard Mail (B)"; in 7.1a and 7.2, replace "second-, third-, or fourth-class" with "Periodicals or Standard Mail"; in 7.4, replace "special fourth-class" with "Special Standard Mail"; in 8.1e, replace "third- and fourth-class" with "Standard Mail"; no other change in text.]

F020 Forwarding

[In 2.3, 2.4, and 2.6, replace "First-, second-, and fourth-class mail and all single-piece rate third-class mail" with "First-Class, Periodicals, Standard Mail (B), and single-piece rate Standard Mail (A)"; in 3.4, replace "Second-[C]lass" with "Periodicals"; in 3.5, replace "Third-[C]lass," "fourth-class," and "Special Fourth-Class" with "Standard Mail (A)," "Standard Mail (B)," and "Special Standard Mail," respectively; in 3.6, replace "[F]ourth-[C]lass" with "Standard Mail (B)"; no other change in text.]

F030 Address Correction, Address Change, and Return Services

[In 1.2 and 2.3, replace "[S]econd-[C]lass" with "Periodicals"; in 1.3, replace "third- and fourth-class" and "First-, third-, or fourth-class" with "Standard Mail" and "First-Class and Standard Mail," respectively; in 3.2d, replace "third-class" with "Standard Mail (A)"; in 3.2e, replace "fourth-class" with "Standard Mail (B)"; no other change in text.]

G GENERAL INFORMATION

[No change in Module G.]

L Labeling Lists

L000 General Use

L001 Optional Multi-ZIP Coded Post Offices

As permitted by the standards for the rate claimed, Preferred Periodicals mailings may be sorted to the following multicoded cities.

* * * * *

L002 3-Digit Destinations and SCFs

Instructions

[Revise the fourth paragraph and footnote 1 as follows:]

* * * * *

SCFs for which mailers may claim destination SCF Standard Mail (A) rates or SCF zone Periodicals rates are the SCFs serving a single 3-digit ZIP Code area marked with three bullets in Column A, and the SCFs serving more than one 3-digit ZIP Code area in Column B. Their respective service areas are listed in Column C. Pieces for ZIP Code areas not listed in Column C may not be claimed at SCF rates.

* * * * *

[1]=Mail destinating in 3-digit ZIP Code area 008 must be labeled as shown in L601 for Standard Mail machinable parcels and in L004 for all other mail.

* * * * *

L003 Combined 3-Digit ZIP Code Prefix Sortation

When permitted by the standards for specific rates, pieces for the 3-digit ZIP Code prefixes shown in column A may be combined in trays labeled to the corresponding destination shown in column B. Line 2 on tray labels must include "SCHEME" except as shown below.

Column A 3-Digit ZIP Code Prefix Combinations	Column B Label to
008–009	SAN JUAN PR 006
010, 011, 013.	SPRINGFIELD MA 010
014, 015, 017.	WORCESTER MA 015
018, 019, 055.	MIDDLESEX-ESSEX MA 018
020, 023, 024.	BROCKTON MA 023
021, 022	BOSTON MA 021
025, 026	BUZZARDS BAY MA 025
027, 028	PROVIDENCE RI 028
035, 036, 051–053, 059.	WHITE RIVER JCT VT 051 SCHEME B
037, 050	WHITE RIVER JCT VT 050 SCHEME C
038, 039	PORTSMOUTH NH 038
043, 045	PORTLAND ME 043
054, 056	BURLINGTON VT 054
057, 058	WHITE RIVER JCT VT 057 SCHEME A
068, 069	STAMFORD CT 068
074, 076	HACKENSACK NJ 076
077, 088	KILMER NJ 088
078, 079	WEST JERSEY NJ 078
080, 081	SOUTH JERSEY NJ 080 SCHEME A
082–084	SOUTH JERSEY NJ 082 SCHEME B
085–087	TRENTON NJ 085
110, 113, 114, 116.	QUEENS NY 110
120–123	ALBANY NY 120
124, 125, 127.	MID-HUDSON NY 125
130–132	SYRACUSE NY 130
133, 134	UTICA NY 133
137–139	BINGHAMTON NY 137
140–143	BUFFALO NY 140
155, 157	JOHNSTOWN PA 155
164, 165	ERIE PA 164
169, 177	WILLIAMSPORT PA 169
180, 181, 183.	LEHIGH VALLEY PA 180
191, 192	PHILADELPHIA PA 191
193, 194	SOUTHEASTERN PA 193
197–199	WILMINGTON DE 197
202–205	WASHINGTON DC 202
208, 209	SUBURBAN MD 208
210, 211, 219.	BALTIMORE MD 210
240, 241	ROANOKE VA 240
250–252	CHARLESTON WV 250
280, 281, 297.	CHARLOTTE NC 280 SCHEME A74
293, 296	GREENVILLE SC 296
300, 301	NORTH METRO GA 300

Column A 3-Digit ZIP Code Prefix Combinations	Column B Label to
303, 311, 398.	ATLANTA GA 303
310, 312	MACON GA 310
318, 319	COLUMBUS GA 318
334, 349	W PALM BEACH FL 334
335, 346	TAMPA FL 335
369, 393	JACKSON MS 393 SCHEME B
377–379	KNOXVILLE TN 377
390, 391	JACKSON MS 390 SCHEME A
400, 401, 471.	LOUISVILLE KY 400
410, 470	CINCINNATI OH 410 SCHEME A
430, 431, 433.	COLUMBUS OH 430 SCHEME A
434–436	TOLEDO OH 434
437, 438	COLUMBUS OH 437 SCHEME B
442, 443	AKRON OH 442
444, 445	YOUNGSTOWN OH 444
446, 447	CANTON OH 446
450, 451	CINCINNATI OH 450 SCHEME B
460–462	INDIANAPOLIS IN 460
463, 464	GARY IN 463
465, 466	SOUTH BEND IN 465
467, 468	FORT WAYNE IN 467
480, 483	ROYAL OAK MI 480
484, 485	FLINT MI 484
486, 487	SAGINAW MI 486
488, 489	LANSING MI 488
490, 491	KALAMAZOO MI 490
498, 499	IRON MOUNTAIN MI 498
500–502	DES MOINES IA 500 SCHEME A
503, 509	DES MOINES IA 503 SCHEME B
515, 516, 680.	OMAHA NE 680
522, 523	CEDAR RAPIDS IA 522
527, 528, 612.	ROCK ISLAND IL 612
535, 538	MADISON WI 535
540, 550	ST PAUL MN 550
541, 542	GREEN BAY WI 541
590–593, 595, 596, 821.	BILLINGS MT 590
600, 602	PALATINE IL 600
601, 603	CAROL STREAM IL 601
610, 611	ROCKFORD IL 610
615, 616	PEORIA IL 615
618, 619	CHAMPAIGN IL 618
620, 622, 630, 633.	ST LOUIS MO 630
654, 655	SPRINGFIELD MO 654 SCHEME A
656, 657	SPRINGFIELD MO 656 SCHEME B
670, 671	WICHITA KS 670
710, 711	SHREVEPORT LA 710 SCHEME A
713, 714	SHREVEPORT LA 713 SCHEME B
752, 753	DALLAS TX 752
786, 789	AUSTIN TX 786
808, 809	COLORADO SPRINGS CO 808
840–844	SALT LAKE UT 840
894, 895, 897.	RENO NV 894
873, 877, 878, 881, 883, 884.	ALBUQUERQUE NM 873
889–891	LAS VEGAS NV 890
902–905	INGLEWOOD CA 902
906–908	LONG BEACH CA 907
913, 914	VAN NUYS CA 913
917, 918	INDUSTRY CA 917
919–921	SAN DIEGO CA 920
923–925	SAN BERNARDINO CA 923
926, 927	SANTA ANA CA 926
940, 943, 944.	SAN FRANCISCO CA 940 SCHEME A
945, 948	OAKLAND CA 945 SCHEME A
946, 947	OAKLAND CA 946 SCHEME B
952, 953	STOCKTON CA 952
956, 957	SACRAMENTO CA 956
962–966	SAN FRANCISCO CA 962 SCHEME B
967–969	HONOLULU HI 967

L004 Area Distribution Centers (ADCs)

[Text of current L101 with no change except revise footnote 2 as follows:]

* * * * *

[2] For Periodicals and Standard Mail (A) mailings of barcoded flats.

* * * * *

[Delete current L201, L202, L203, L701, L702, L703, L704, L706, and L707.]

L600 Standard Mail

L601 BMCs—Machinable Parcels

[Insert current L705 with no change in text.]

L602 BMCs—DBMC Rates

[Insert current L708 with no change in text.]

L800 Automation Rate Mailings

* * * * *

L804 AADCs—Letter-Size Mailings

[Text of current L804 with no change except revise footnote 2 as follows:]

[2] For Periodicals and Standard Mail (A) mailings.

L805 BMC/ASF Entry—Residual Periodicals and Standard Mail (A)

[Insert current L805 with no change in text.]

L806 Non-BMC/ASF Entry—Residual Periodicals and Standard Mail (A)

[Insert current L806 with no change in text.]

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpiece Preparation

[Redesignate current M011 as M012, and add new M011 as follows:]

M011 General Preparation Standards

1.0 STANDARD PREPARATION TERMS AND DEFINITIONS

1.1 Presort

Presort is the process by which a mailer prepares mail so that it is sorted to at least the finest extent required by the standards for the rate claimed. Generally, presort is performed sequentially, from the lowest (finest) level to the highest level, to those destinations specified by standard and is completed at each level before the next level is prepared. Not all presort levels are applicable in all situations.

1.2 Presort Levels

Terms used for presort levels are defined as follows:

a. Firm: all pieces for delivery at the address shown on the top piece.

b. Carrier route: all pieces for delivery to the same city carrier route, rural route, highway contract route, post office box section, or general delivery unit.

c. 5-digit: the delivery address on all pieces includes the same 5-digit ZIP Code.

d. 3-digit: the ZIP Code in the delivery address on all pieces begins with the same three digits (see L002 (Column A) or L801 as applicable).

e. 3-digit/Scheme: the ZIP Code on the delivery address on all pieces begins with one of the 3-digit prefixes processed by the USPS as a single scheme (see L003) and that, subject to standard, may be presorted together as a single group.

f. Entry SCF 3-digit(s): regardless of the volume of mail, a separation is required for each 3-digit area in the SCF service area of the entry facility.

g. SCF: the separation includes pieces for two or more 3-digit areas served by the same SCF (see L002 (Column B) or L802 as applicable), except that, where required or permitted by standard, mail for only one 3-digit area may be correctly prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available.

h. ADC/AADC/SDC: all pieces are addressed for delivery in the service area of the same ADC, or AADC (see L004, L803, or L804 as applicable).

i. ASF/BMC: all pieces are addressed for delivery in the service area of the same ASF or BMC (see L601 or L602 as applicable).

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j. Mixed (BMC, AADC, etc.): the pieces are for more than one presort destination.

k. Where the terms are used, "residual" pieces/packages/sacks means material left over after completion of a presort sequence. Residual mail lacks the volume set by standard to require or allow package or bundle preparation to a particular destination, and usually does not qualify for a presort rate as a result. Residual mail is also referred to as "nonqualifying" or "working" mail.

1.3 Preparation Instructions

For purposes of preparing mail:

a. "Pieces" refers to individually addressed mailpieces. This definition also applies when "pieces" is used in eligibility standards. Quantities indicated for optional or required sortations always refer to pieces unless specifically excepted.

b. A "full" letter tray is one in which faced, upright pieces fill the tray to its capacity whenever practical, but never less than at least ¾ of its length. Each tray must be filled before filling of the next tray is begun, with the contents in multiple trays being relatively balanced. A tray with less mail can be prepared only if less-than-full or overflow trays are allowed by the standards for the rate claimed. Tray preparation is described in M033.

c. An "overflow" letter tray is one that is allowed by the standards for the rate claimed to be less than full and contain any quantity of pieces that could not be placed in full trays for the same destination.

d. A "full" flat tray is one that is physically full. A specific minimum volume is required (at least a single stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholds) before a tray is sufficiently filled to allow or require preparation to the corresponding presort destination. When standards require preparation of "full" trays, less-than-full trays that contain more than the minimum volume for preparation must be filled with additional available pieces, up to the reasonable capacity of the tray.

e. A "full" sack is defined in the standards for the class and rate claimed.

f. An "entry [origin] 3-digit" tray contains all mail (regardless of quantity) for a 3-digit ZIP Code area within the SCF service area of the facility at which a mailing is entered. If more than one 3-digit area is served, as indicated in L002, a separate tray must be prepared for each.

g. The "required at (quantity)" instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded (e.g., required at 10 pieces). Packages, bundles, and containers may contain more than the minimum quantity up to the applicable maximum physical size. Subject to applicable rate eligibility standards, smaller quantities may be prepared only if permitted. In some situations as specified by standard, required preparation might apply only if the mailer chooses to qualify for the corresponding rate.

h. The "optional at (quantity)" instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded. Packages, bundles, or containers may contain more than the minimum quantity up to the applicable maximum physical size. Smaller quantities may be prepared only if permitted by applicable rate eligibility standards. Standards for quantities with which preparation is optional are often followed standards for larger quantities with which preparation is required.

i. "Entry (facility)" (or "origin (facility)") refers to the USPS mail processing facility (e.g., BMC) that serves the post office at which the mail is entered by the mailer. If the post office where the mail is entered is not the one serving the mailer's location (e.g., for plant-verified drop shipment), the post office of entry determines the "entry" facility. "Entry SCF" includes both single- and multi-3-digit SCFs. "Entry BMC" includes subordinate ASFs unless otherwise specified.

j. "Smaller quantities not permitted" or "fewer pieces not permitted" disallows preparation of quantities of mail smaller than that stated as the minimum required. However, as a general exception, the last of more than one package, bundle, sack, or tray for a presort destination may have less than the otherwise applicable minimum. Other exceptions to minimum quantity criteria might be provided by the standards for the rate claimed.

k. A "package" is a group of addressed pieces secured together as a unit. The presort process considers the total number of pieces available for the particular presort destination and assembles them into groups meeting applicable volume and size standards. When the standards applicable to the rate claimed require securing the pieces in each group together, the result is a package. The term "package" does not correctly apply to unsecured groups of pieces, e.g., those prepared in trays and identified by separator cards. "Package" labels and other "package" identification methods may be used for unsecured groups of pieces as permitted by standard. Package preparation is described in M020.

l. A "bundle" is a group of packages secured together as a unit under the standards applicable to the rate claimed.

2.0 PRESORT ACCURACY VALIDATION AND EVALUATION (PAVE)

2.1 Basic Information

The Presort Accuracy, Validation, and Evaluation (PAVE) program is a process designed in cooperation with the mailing industry to evaluate presort software and determine its accuracy in sorting address files according to DMM standards. PAVE is available only to software and hardware manufacturers (i.e., companies that actually develop presort software or manufacture presorting equipment). PAVE certification does not guarantee acceptance of customer mail that was prepared using PAVE-validated hardware/software.

2.2 Process

PAVE evaluates the accuracy of presort products by providing test address files to vendors. Vendors process the test file(s) through their presort software or hardware and return the resulting mailing statement facsimile(s) and other presort documentation to the USPS National Customer Support Center (NCSC). The NCSC evaluates the answers. Each test file is evaluated for its accuracy of presort, compliance with current DMM standards, accuracy of sack/tray/pallet tag labels, and general acceptability of computer generated facsimiles of mailing statements and other presort documentation. If the answers are accurate the vendor"s presort product is validated for a 12-month period or until the end of the current annual period.

2.3 Participation

To obtain detailed information on participation in PAVE, presort product developers may request the PAVE Program Technical Guide from the NCSC by calling 1–800–331–5746, extension 651 or 454. Participants may use the PAVE order form, included in that guide, to order PAVE test files.

M012 Endorsements and Markings

[In 1.1a, replace "First-, third-, and fourth-class mail" with "First-Class or Standard Mail"; in 1.1b, replace "second-class" with "Periodicals"; revise other text as follows:]

* * * * *

2.0 METHOD

2.1 Required Marking

Unless otherwise directed or allowed by standard, the required marking must be printed or produced as part of, or immediately below or to the left of, the permit imprint, meter impression or stamp, or precanceled or adhesive stamp. Alternatively, the mailer may place markings in the address area on the line immediately above the address or, preferably, two lines above the address. If the marking is in the address area, no other information may appear on the line with the rate marking except carrier route information. Markings may also be included in the optional endorsement line (under M013) or carrier route information line (under M014).

* * * * *

2.3 Precanceled Stamps

If precanceled stamps bearing the words "Carrier Route Presort" are used, additional markings must be provided as required by the standards for the particular rate claimed.

* * * * *

M013 Optional Endorsement Lines

[In 1.1, delete the entries for optional SDC, state, and mixed states packages; in 1.2 and 2.1, replace "[T]hird-[C]lass" with "Standard Mail (A)"; in 2.6, delete "fourth-class"; revise other text as follows:]

1.0 USE

1.1 Basic Standards

Mailers may prepare mailings without applying pressure-sensitive package labels to the top piece of packages by using a specific optional endorsement line (OEL) above the address block or on the address label on the top piece of a package as shown below. Use of OELs on bundles is subject to the standards applicable to the rate claimed.

On FIRM PACKAGES use .....FIRM 12345
On CARRIER ROUTE PACKAGES (Nonprofit Standard Mail, Regular and Preferred Periodicals) use.....CAR-RT-SORT**C–001
On CARRIER ROUTE PACKAGES (Enhanced Carrier Route Standard Mail) use.....ECR**C–001
On CARRIER ROUTE PACKAGES (Automation First-Class and Automation Standard Mail) use AUTOCRRT**C–001
On 5–DIGIT PACKAGES use...5–DIGIT 12345
On OPTIONAL CITY PACKAGES use .....MIXED CITY 12345 (Use lowest 5-digit ZIP Code assigned to that city.)
On 3–DIGIT PACKAGES use.....3–DIGIT 771
On SCF PACKAGES use.....SCF 750 (Use correct 3-digit SCF code as shown in L002, Column B.)
On ADC PACKAGES use.....ALL FOR ADC
On MIXED ADC PACKAGES use.....MIXED ADC
On AADC PACKAGES use....ALL FOR AADC
On MIXED AADC PACKAGES use .....MIXED AADC
On RESIDUAL PACKAGES use .....WORKING

* * * * *

1.4 Rate Markings

At the mailer's option, the markings required by the standard for the class of mail and rate claimed may be included in the OEL if the OEL appears on each piece in the mailing and if it remains a single line with the basic information (required by 1.1) at the right end (e.g., on a carrier route package of Enhanced Carrier Route Saturation Standard Mail: * * * * ECRWSS**C–001; on a Nonprofit Standard Mail SCF package: * * * * NONPROFIT**SCF 750).

2.0 FORMAT

* * * * *

2.6 ZIP Code

Except for carrier route packages, ADC, AADC, mixed ADC, and mixed AADC packages and AADC and (as applicable) working residual packages, the optional endorsement line must include the appropriate ZIP Code information. Mixed ADC bundles of bound printed matter must have facing slips as specified in M630.

M014 Carrier Route Information Lines

1.0 BASIC INFORMATION

Packages made up to individual carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units may be prepared without facing slips if prepared with optional endorsement lines under M013 or with carrier route information lines under 2.0. These standards apply to Automation First-Class, carrier route and Level I/K Periodicals, Automation and Enhanced Carrier Route Standard Mail, and carrier route bound printed matter mailings. Carrier route information lines may be on all pieces in a carrier route mailing regardless of their presort level.

2.0 FORMAT AND CONTENT

2.1 Route Information

Carrier route information consisting of a descriptive prefix (or its abbreviation), plus a route number or numeric code, must be on the top line of the address, either alone or with other information (e.g., addressee, account data). Alternatively, the carrier route information may appear with the applicable carrier route endorsement on the line above or two lines above the address if the carrier route rate marking is in the address area when permitted by standard (see Exhibit 2.1).

**CARRIER ROUTE 011

RESIDENT
1300 WATERFORD DR
DISTRICT HEIGHTS MD 20747

**C 011

RESIDENT
1300 WATERFORD DR
ENDICOTT NY 13760

**RURAL ROUTE 005

RESIDENT
1602 COUNTRY LN
BURKE VA 22015

*R 15005

POSTAL CUSTOMER

**C 127

CAR-RT SORT
RESIDENT
2711 ORDWAY ST NW
WASHINGTON DC 20008

**C 011

AUTOCRRT
RESIDENT
1300 WATERFORD DR
DISTRICT HEIGHTS MD 20747

2.2 Descriptive Prefix

The descriptive prefix "carrier route," "rural route," "highway contract route," "post office box section," or "general delivery unit" must be spelled out or abbreviated as shown below:

Carrier Route.....C
General Delivery Unit.....G
Highway Contract Route.....H
Post Office Box Section.....B
Rural Route.....R

2.3 Route Code

These conditions apply to route codes:

a. The one-character descriptive prefix in 2.2 must be followed by a 3-digit route or post office box section number.

b. On Periodicals and Standard Mail pieces bearing a simplified address that does not include a ZIP Code, the descriptive prefix in 2.2 must be followed by a route code that begins with the last two digits of the 5-digit ZIP Code and is followed by the route code in 2.3a.

c. The descriptive prefix and route code required for simplified address mailings in 2.3b may also be used on mailings of any class that contain a ZIP Code in the address.

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2.4 Other Contents

Other elements of the carrier route information line include:

a. The carrier route information must be preceded by at least two asterisks (**) or other distinctive nonalphabetic or nonnumeric characters.

b. At least 10 spaces must be allowed for carrier route information if included with other information on the top line.

c. Carrier route information lines may also contain the markings required by standard for the class of mail and rate claimed if all the information remains on a single line with the basic information (required by 2.1) at the right end (e.g., on a carrier route package of Enhanced Carrier Route Saturation rate mail):

* * * * * * * ECRWSS**C–001

POSTAL CUSTOMER

M020 Packages and Bundles

1.0 BASIC STANDARDS

[Relocate current 1.1, 1.4, 1.5, and 1.7 to M011; renumber current 1.2, 1.3, and 1.6 as 1.1, 1.2, and 1.3, respectively; revise renumbered 1.3, and add new 1.4 as follows:]

* * * * *

1.3 Labeling

Unless excepted by standard, packages must be labeled using the pressure-sensitive package labels specified in the standards for the class and rate being prepared. On letter- and card-size mail, the label must be placed in the lower left corner of the top piece in the package. On flat-size mail, the label must be placed on the address side of the top piece in the package. Optional endorsement lines may be used in lieu of pressure-sensitive labels, subject to M013.

1.4 Palletization

Packages and bundles placed on pallets must be able to withstand normal transit and handling without breakage or injury to USPS employees. Heavy-gauge shrinkwrap over plastic banding, only shrinkwrap, or only banding material is acceptable if the package or bundle can stay together during normal processing. Packages and bundles placed on BMC and mixed BMC pallets must be shrinkwrapped and machinable on BMC parcel sorters; machinability is determined by the USPS. If used, banding material must be applied at least once around the length and once around the girth; wire and metal strapping are prohibited.

1.5 Exception

Fewer than the minimum number of pieces required by the standards for the rate claimed may be prepared as an individual package without loss of rate eligibility in that regard under either of these conditions:

a. A greater number of pieces would exceed the maximum physical size for a package *and* the total number of pieces for that presort destination meets the minimum volume standard (e.g., 30 pieces are available to meet a 10-piece minimum, but a package of 8 pieces is 6 inches thick).

b. The pieces constitute the "last package" for a presort destination *and* previously prepared packages met the applicable minimum volume standard (e.g., 505 pieces prepared in ten 50-piece packages and one 5-piece package).

2.0 ADDITIONAL STANDARDS—PREFERRED PERIODICALS AND NONPROFIT STANDARD MAIL (A)

2.1 Nonautomation Rate Mailings

Nonautomation rate mailings are subject to these additional standards:

a. The maximum thickness for packages of other than walk-sequence rate letter-size mail is 6 inches. The maximum thickness for packages of letter-size walk-sequence rate mail is 4 inches.

b. Packages of letter-size mail up to 1 inch thick must be secured with appropriate banding applied around the girth. Thicker packages must be secured with at least two bands, the first placed around the length and the second around the girth so that the second band crosses over the first.

c. When preparing mail bearing a simplified address, all pieces for the same post office must be tied in packages of 50 whenever possible. If packages of other quantities are produced, the actual number of pieces must be shown on the facing slip that must be attached to show distribution desired (e.g., rural route, city route, post office boxholder).

2.2 Automation Rate Mailings

Automation rate mailings are subject to these additional standards:

a. The maximum thickness for packages of letter-size mail is 6 inches.

b. Packages must be prepared for mailings consisting entirely of card-size pieces, and for mail placed in AADC trays (except for residual AADC trays) and in mixed AADC trays (package-based mailings) or overflow trays (tray-based mailings).

c. Packages must not be prepared in full trays in tray-based mailings of larger than card-size pieces except in residual AADC and mixed AADC trays and as permitted by standard for oversize pieces.

d. Packages must be secured with rubber bands, elastic strapping, flat plastic strapping, or string placed once around the girth (narrow dimension) on packages up to 1 inch thick. Thicker packages must be tied twice, with the first rubber band or elastic strap placed around the length and the second around the girth, crossing over the first. Additional ties may be used if none lies along the outer 1 inch of any package edge.

e. Elastic strapping must have a minimum strength of 15 pounds and a minimum of 150% elongation prior to break. Minimum tension, when applied to bundle, must be 50% breaking strength. Elastic strapping may not be used unless approved by USPS Engineering. A mailer wanting to have elastic strapping material tested for acceptability must provide 25 packages (five each: 6 inches, 4 inches, 2 inches, 1 inch, and 10 pieces) strapped with the tested material. The mailer must send the material with a letter of request at least 6 weeks before the planned date of mailing to USPS Engineering. The mailer is notified in writing by the USPS. If the USPS approves the material, that letter (showing a unique number) serves as evidence that the material meets USPS standards. A copy of the letter must be attached to each mailing statement provided for mailings that use the tested strapping material. The mailer must be able to show when requested that the strapping material on a mailing is the same as that tested.

f. Separator cards:

(1) May be used instead of packaging (except for card-size pieces) to identify groups of pieces in 3-digit and SCF trays in package-based mailings.

(2) May be prepared from any paper or card stock.

(3) Must be at least ¼ inch higher than the highest piece in the mailing.

(4) Must be placed in front of the corresponding groups of mail.

g. Except in package-based mailings under M895, if groups of presorted pieces are identified by separator cards, the required pressure-sensitive package label must be placed on the separator card or in the lower left-hand corner of the first piece behind it. Alternatively, the words "5-Digit" or "3-Digit," as appropriate for the group, may appear on the separator card. The pressure-sensitive label or the descriptive words (if placed on the separator card) must be at the top of each in a position that can be easily read when the card is in a tray.

h. In three-tier package-based Barcoded rate mailings under M895, pieces in AADC overflow trays must be secured into 5-digit packages in the 5-digit presort tier, and 3-digit packages in the 3-digit presort tier. These packages require no labeling.

i. In tray-based mailings, pieces in 5-digit overflow trays must be secured into and labeled as 5-digit packages. Pieces in 3-digit overflow trays and SCF overflow trays must be secured into and labeled as 3-digit packages.

3.0 ADDITIONAL STANDARDS—FIRST-CLASS MAIL AND OTHER PERIODICALS AND STANDARD MAIL (A)

3.1 Cards and Letter-Size Pieces

Cards and letter-size pieces are subject to these specific packaging standards:

a. The maximum thickness for packages of walk-sequence rate mail is 4 inches. The maximum thickness for other packages is 6 inches.

b. Card-size pieces must always be prepared in packages.

c. Packages must be prepared in all less-than-full trays, and for nonupgradable Retail First-Class and Regular Standard Mail, and for nonautomation-compatible Publications Service and other than Barcoded rate Regular Periodicals.

d. Separator cards may be used instead of packaging for carrier route groups in full Enhanced Carrier Route 5-digit carrier routes trays. Separator cards must be used instead of packaging for carrier route groups in full trays of Automation Carrier Route First-Class and Standard Mail, and in full trays of Barcoded rate Regular Periodicals. Separator cards must be prepared from paper or card stock, must be at least ¼ inch higher than the highest piece in the mailing, and must be placed in front of the corresponding groups of mail.

e. For card-size pieces and mail in less-than-full trays, packages of letter-size pieces of Automation First-Class and Automation Standard Mail, automation-compatible Publications Service and Barcoded rate Regular Periodicals, and upgradable Retail First-Class and Regular Standard Mail must be secured with rubber bands. Other packages of letter-size pieces must be secured with rubber bands, elastic strapping, flat plastic strapping, or string. (Elastic strapping must have a minimum strength of 15 pounds and a minimum of 150% elongation prior to breaking. Minimum tension, when applied to bundle, must be 50% breaking strength. Elastic strapping may not be used unless approved by USPS Engineering. If requested, the mailer must be able to show such approval for the strapping material used for a mailing.)

3.2 Flat-Size Pieces

Flat-size pieces are subject to these specific packaging standards:

a. Though not subject to a specific thickness limit, packages of flats must be secure and stable, and are subject to specific weight limits if palletized.

b. Flat-size pieces must always be prepared in packages unless excepted by standard.

3.3 All Pieces

All pieces are subject to these standards:

a. For mail prepared using a simplified address, all pieces for the same post office must be tied in packages of 50 when possible. If packages of other quantities are produced, the actual number of pieces must be shown on the facing slip that must be attached to show distribution desired (e.g., rural route, city route, post office boxholder).

b. One package containing fewer than the otherwise applicable minimum number of pieces may be prepared when it represents the last package for a presort destination to which other packages (each containing at least the minimum volume required) were previously prepared in the same mailing.

c. Packages up to 1 inch thick must be secured with appropriate banding placed once around the girth (narrow dimension). Thicker packages must be secured with at least two bands, the first placed around the length and the second around the girth so that the second band crosses over the first. Additional ties may be used if none lies along the outer 1 inch of any package edge.

* * * * *

[Delete current 5.0 and 6.0.]

M030 Container Preparation

M031 Labels

[In 1.7 and 4.13, replace "second-class" in the heading and text with "Periodicals" and replace "2C" with "PERIOD"; in 2.1a, replace "First-, third-, and fourth-class" with "First-Class and Standard Mail" and replace "second-class" with "Periodicals"; in 3.2a, replace "First- and third-class" with "First-Class and Standard Mail" and replace "second-class" with "Periodicals"; in 4.2, replace "second-class" with "Periodicals" and replace "third- or fourth-class" with "Standard Mail"; in 4.8, insert "(Preferred Periodicals only)" after "optional city," replace "second-class" with "Periodicals," and replace "third-class" with "Standard Mail"; in 4.14, replace "second-class" with "Periodicals"; in 5.0, replace "First- and third-class" with "First-Class and Standard Mail (A)," replace "second- or third-class" with "Periodicals or Standard Mail (A)," replace "First-, second-, and third-class" with "First-Class, Periodicals, and Standard Mail (A)," replace "third-class" with "Standard Mail (A)," and replace "[T]hird- and fourth-class" with "Standard Mail"; no other change in text.]

M032 Barcoded Container Labels

1.0 BARCODED TRAY LABELS

1.1 Standards

Barcoded tray labels are required for Automation First-Class, automation-compatible Publications Service Periodicals, and Automation Standard Mail mailings of letter-size pieces, and Automation First-Class mailings of flat-size pieces. Barcoded trays labels may be used on any other mailing. Mailer-produced barcoded tray labels must meet the standards below.

* * * * *

[In 1.2, replace "First- and third-class mail" with "First-Class and Standard Mail (A)" and replace "second-class" with "Periodicals."]

* * * * *

Exhibit 1.3c, Contents Identifier Codes

[Replace "2C" with "PERIOD"; replace "3C" with "STD A"; and replace "4C" with "STD B."]

* * * * *

2.0 BARCODED SACK LABELS

[Replace current 2.1 and 2.2 with new 2.1, below, and renumber current 2.3 through 2.5 as 2.2 through 2.4, respectively; in renumbered 2.2, replace "First-, third-, and fourth-class mail" with "First-Class and Standard Mail" and replace "second-class" with "Periodicals"; in renumbered 2.4e, change the reference from 2.5d to 2.4d; in renumbered 2.4f, replace "200 (2C)" with "200 (PERIOD)."]

2.1 Standards

Barcoded sack labels are required for Barcoded rate Regular and automation-compatible Publications Service Periodicals and Automation Standard Mail flat-size pieces prepared in sacks. Barcoded sack labels may be used for other Periodicals and Standard Mail prepared in sacks. Mailer-produced

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barcoded tray labels must meet the standards below.

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

1.1 Total Weight

The total weight of any tray or sack (mail plus tray or sack tare) must not exceed 70 pounds.

1.2 Equipment

Palletization of trays or sacks, or of packages of flats outside of sacks, is subject to M040. Preparation of bedloaded bundles of flats is subject to the standards for the class and rate claimed. Other mailings must be prepared in the container appropriate for the processing category and rate of the mail:

a. First-Class, Regular and Publications Service Periodicals, and Regular, Enhanced Carrier Route, and Automation Standard Mail (A) letter-size pieces (including cards) must be prepared in USPS letter trays with sleeves. Subject to equipment availability, 1- or 2-foot regular (MM) or 2-foot extended (EMM) letter trays must be used as appropriate for the size and volume of pieces. Letter trays may be used for other letter-size mail, subject to the applicable preparation standards.

b. First-Class flat-size pieces must be prepared in USPS flat trays with covers.

c. First-Class parcels weighing less than 11 ounces must be prepared in green USPS sacks.

d. Priority Mail must be prepared in orange USPS sacks.

e. Periodicals flat-size pieces, machinable and irregular parcels, and letter-size pieces not placed in trays at the mailer's option must be prepared in brown USPS sacks.

f. Standard Mail flat-size pieces, machinable and irregular parcels, and Nonprofit Standard Mail letter-size pieces not placed in trays at the mailer's option must be prepared in white canvas USPS sacks.

1.3 Tray Sizes

Standard tray sizes to be used in applying mail preparation standards are:

a. Letter trays: inside bottom length:

(1) 2-foot MM and EMM trays: 21 inches.

(2) 1-foot trays: 10½ inches.

b. Flat trays:

(1) Inside bottom dimensions: 14¾ inches long by 10¾ inches wide.

(2) Height: 8 inches to bottom of handhold, 11¼ to top of tray.

1.4 Presort

Presort, presort levels, and standard preparation terms are defined in M011, except for Preferred Periodicals and Nonprofit Standard Mail (A), which are covered in 3.0 and 4.0.

1.5 Sleeving and Strapping

Except under 1.6, each letter tray must be sleeved, and each flat tray must be covered by a lid, using USPS-provided sleeves or lids. All bedloaded letter trays must also be secured by a plastic strap placed tightly around the length of the tray without crushing the tray or sleeve. Flat trays must be secured by two straps placed tightly around the width of the tray (i.e., the shorter dimension).

1.6 Exception

Trays do not require sleeves/lids or strapping if their contents are emptied and processed in the facility where deposited and that facility's manager has given the mailer a written waiver of one or both requirements. Strapping is not required on trays placed on 5-digit, 3-digit, and SCF pallets.

[Renumber current 2.0 and 3.0 as 3.0 and 4.0, respectively, and revise as shown below. Insert new 2.0 as follows:]

2.0 FIRST-CLASS, REGULAR AND PUBLICATIONS SERVICE PERIODICALS, AND REGULAR, ENHANCED CARRIER ROUTE, AND AUTOMATION STANDARD MAIL

2.1 Letter Tray Preparation

Pieces must be prepared to result in the fewest practical number of packages (where required) and trays to contain the mail presorted to a destination. Letter tray preparation uses terms defined in M011 and is subject to these further standards:

a. Pieces must be "faced" with all addresses in the same direction and placed in trays to maintain their orientation.

b. Each tray must be filled before filling of the next tray is begun, with the contents in multiple trays being relatively balanced. A tray with less mail can be prepared only if allowed by the standards for the rate claimed, subject to 2.1c. Subject to equipment availability, 2-foot trays must be used whenever available with 1-foot trays used for lesser volume or as overflow trays under 2.1c.

c. Subject to the standards for the rate claimed, pieces left over after filling one or more trays for a presort destination are packaged and placed in a less-than-full "overflow" tray. Where permitted, preparation of overflow trays is required for required presort levels and optional for optional levels. Only one overflow tray per destination may be prepared in the same mailing. As a general exception, an overflow tray may be prepared where otherwise not allowed if the minimum number of pieces required by rate eligibility standards for the corresponding presort level is available but exceeds the capacity of a 2-foot tray (e.g., 150 pieces to a 5-digit destination are available to qualify for a 5-digit rate).

d. Subject to availability, standard MM trays are used for all letter-size mail, except that extended MM (EMM) trays must be used when available for letter-size mail more than 4½ inches high or 10½ inches long. When EMM trays are not available, pieces higher or wider than MM trays must be angled back and/or placed upright perpendicular to the length of the tray in row(s), as necessary, in a manner that preserves their orientation.

e. Each tray must bear the correct tray label.

f. Each tray must be sleeved and strapped under 1.4 and 1.5.

2.2 Flat Tray Preparation (First-Class Mail Only)

All flat tray preparation is subject to these standards:

a. Pieces must be "faced" with all addresses in the same direction and placed in trays to maintain their orientation.

b. Once the required minimum volume is reached, additional pieces must be placed in the same tray up to its capacity to minimize the number of trays used. When possible, pieces must be placed in two stacks to optimize tray use, but mail must not overfill the tray to inhibit adequate closure or covering of the contents. The total weight of a tray and its contents must not exceed 70 pounds.

c. Each tray must bear the correct tray label.

d. Each tray must be sleeved and strapped under 1.4 and 1.5.

2.3 Sack Preparation

All sack preparation is subject to these standards:

a. Each sack must bear the correct sack label.

b. The weight of a sack and its contents must not exceed 70 pounds.

3.0 NONAUTOMATION PREFERRED PERIODICALS AND NONPROFIT STANDARD MAIL

[Text of current 2.0.]

4.0 AUTOMATION RATE PREFERRED PERIODICALS AND NONPROFIT STANDARD MAIL

[Text of current 3.0.]

M040 Palletization

[M040 as shown below is revised based on a recently concluded separate rulemaking, and reorganized to consolidate and replace current M042, M043, M044, and M048 into new M045.]

M041 General Pallet Standards

1.0 PHYSICAL CHARACTERISTICS

1.1 Standards

All pallets presented to the USPS, whether USPS- or mailer-provided, must meet the standards in 1.2 through 1.4. Mail on such pallets must meet the standards applicable to the class and rate claimed.

1.2 Construction

Pallets must be made of high-quality material that can hold loads equal to a gross weight of 2,200 pounds. Pallets must measure 48 by 40 inches and must allow for four-way entry by fork trucks and two-way entry by pallet jacks.

1.3 Securing

Except for pallet boxes under 4.3, loaded pallets of mail must be secured either with at least two straps or bands or wrapped with stretchable or shrinkable plastic strong enough to retain the integrity of the pallets during transportation and handling.

1.4 Nonconforming Mailers

The USPS informs mailers or their agents who present palletized mailings, including plant-verified drop shipment (PVDS), when their pallets fail to meet basic pallet integrity and safety standards. After July 1, 1996, once notified and allowed to make changes to improve load integrity, if a mailer's methods, or those of the mailer's agent presenting PVDS mailings, do not work, the mailer is considered nonconforming. A nonconforming mailer is required to meet the specifications for nonconforming mailers for top-cap use, stacking of pallets, pallet box construction, and maximum height/tiers of trays in 2.0 through 4.0. After July 1, 1996, mailers will be suspended from the pallet program if their pallets continue to fail to meet the minimum load integrity levels.

2.0 TOP CAPS

2.1 Use

Top caps are used as follows:

a. Except under 2.1b and 2.1c, all pallets of sacks, letter mail trays, parcels, packages or bundles of mail, or pallet boxes must be top-capped if the pallets are double- or triple-stacked when presented to the USPS for acceptance.

b. The top pallet need not be top-capped if the strapping or banding securing the stacked pallets together neither damages the mail on the top pallet nor allows the stack to shift.

c. Lower pallet(s) containing either parcels or packages or bundles of mail, need not be top-capped if the top surface of each pallet load provides a sturdy, flat surface, parallel to the pallet base, that allows for safe and efficient stacking of pallets placed on top, preventing sliding of the top pallet(s), damage to pieces, and crushing of the load.

2.2 Construction

Any material may be used as a top cap if it provides a flat, level surface horizontal to the base pallet, protects the integrity of the mail below it while supporting a loaded pallet above it, and allows easy entry of a forklift to remove the upper pallet(s). Flimsy paper or fiberboard (e.g., the ends of paper rolls) or similar material is inadequate and may not be used as a top cap.

2.3 Securing

A top cap must be secured to the pallet horizontal to the plane of the base pallet, either by stretchwrap or by at least two crossed straps or bands, so that the cap stays in place to protect the mail and maintain the integrity of the pallet load.

2.4 Required Use by Nonconforming Mailers

Nonconforming mailers (see 1.4) must use top caps on all pallets of sacks, letter mail trays, parcels, or packages or bundles of mail, regardless of weight, or on pallets containing pallet boxes 60 inches or less in height. Top caps must be approximately 48 by 40 inches and meet one of these construction standards:

a. Five-wood boards, with uniform edges and nine-leg pallet contact for stacking.

b. Fiberboard box end style, with a minimum 3-inch side and wall material of at least double-wall corrugated fiberboard C and/or B flute.

c. Fiberboard honeycomb covered on both sides with heavy linerboard at least ½ inch thick.

d. Corrugated fiberboard C flute sheet covering the entire top of the load with standard pallet solid fiberboard corner edge protectors.

3.0 STACKING PALLETS

3.1 Double- or Triple-Stacking

Pallets may be double- or triple-stacked if:

a. The combined gross weight of the stacked pallets (pallets, caps, and mail) does not exceed 2,200 pounds.

b. The heaviest pallet is on the bottom and the lightest on top.

c. The pallets are secured together with at least two straps or bands of appropriate material to maintain their integrity during transportation and handling (pallets must not be secured together with stretchable or shrinkable plastic).

d. Each pallet is top-capped under 2.0.

e. The combined height of the stacked pallets and their loads does not exceed 84 inches.

3.2 Nonconforming Mailers

Nonconforming mailers (see 1.4) who stack pallets are subject to the conditions in 3.1, except that triple-stacking is allowed only for pallets of parcels and the combined height of any stacked pallets may not exceed 77 inches.

4.0 PALLET BOXES

4.1 Use

Mailers may use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard placed on pallets to hold sacks or parcels prepared under M045. Single-wall corrugated fiberboard may be used only for light loads (such as light-weight parcels) that do not require transportation by the USPS beyond the entry office. The boxes must protect the mail and maintain the integrity of the pallet loads throughout transportation, handling, and processing. The base of the boxes must measure approximately 40 by 48 inches.

4.2 Maximum Height

The combined height of the pallet, pallet box, and mail may not exceed 77 inches, except that until July 1, 1996, the combined height may not exceed 84 inches. The contents of the box may not extend above the top rim of the box.

4.3 Securing

Pallet boxes must be secured to pallets with strapping, banding, stretchable plastic, shrinkwrap, or other material that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if:

a. The pallet and its contents are transported by the USPS from the office where the mail is accepted to another postal facility where the contents will be distributed.

b. The weight of the mail in the box is not sufficient to hold the box in place on the pallet during transportation and processing, a pallet box must be secured to the pallet base.

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4.4 Nonconforming Mailers

Nonconforming mailers (see 1.4) may use pallet boxes only if constructed of triple-wall corrugated fiberboard (C and/or B flute material) with a maximum height of 77 inches.

5.0 PREPARATION

5.1 Presort

Pallet preparation and pallet sortation are subject to the specific standards in M045. Pallet sortation is intended to presort the palletized portion of a mailing to at least the finest extent required for the corresponding class of mail and method of preparation. Generally, pallet sortation is sequential from the lowest (finest) level to the highest, and must be completed at each required level before the next optional or required level is prepared. As applicable, presort levels and standard preparation terms for pallets are defined in M011 and M045. Mailers must prepare all required levels of pallets before any working pallet is prepared for a mailing or job.

5.2 Required Preparation

Pallets are prepared as follows:

a. A pallet must be prepared to a required level of sortation when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays.

b. Up to 10 percent of the total pallets in any mailing or job may be working pallets labeled to the BMC (Standard Mail) or ADC (Periodicals) serving the post office where mailings are accepted into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label working pallets to the post office or processing and distribution center serving the post office where mailings are entered. Working pallets contain all mail remaining after required and optional pallets are prepared.

5.3 Minimum Load

In a single mailing, the minimum load per pallet is 250 pounds of Periodicals or Standard Mail packages, parcels, and sacks (or three tiers/layers of letter trays of Periodicals or Standard Mail (A)), except that the processing and distribution manager of the facility where a mailing is entered may issue a written authorization to the mailer allowing preparation of 5- or 3-digit pallets containing less volume if the mail on those pallets is for that facility's service area.

5.4 Maximum Load

The maximum weight (mail and pallet) is 2,200 pounds. The maximum height of a single pallet (mail and pallet) is 77 inches for packages, bundles, parcels, sacks, or pallet boxes or 12 layers of letter trays.

5.5 Mail on Pallets

Pieces in trays, packages, bundles, and sacks must be prepared under the standards applicable to the class of mail and rate claimed. When two or more Periodicals or Standard Mail (A) mailings are placed together on pallets, the mailer must maintain records for each mailing as required by standard. Automation rate and upgradable letter-size pieces may not be placed on the same 5-digit pallet as pieces at other rates. Trays always may be placed on pallets "right-side-up" with heavier, more filled trays at the bottom of the load.

5.6 Sacked Mail

Mail that is not palletized must be prepared under the standards applicable to the rate claimed. For Periodicals, mailers must separately sack packages of each publication that are not palletized under M045 or that are excluded from palletization. Trays that are not palletized must be bedloaded. Sacks (including sacks of packages not placed on pallets) containing packages remaining after all pallets are prepared may be presented with the palletized mail (and reported on the same mailing statement) if separated from the palletized portion of the mailing.

5.7 Nonconforming Mailers

For nonconforming mailers (see 1.4) of letter-size mail in trays, the combined height of a pallet and its load must not exceed six layers of MM or EMM letter trays.

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS

6.1 General

Palletized mailings, including combined, copalletized, and mixed rate level mailings, must be prepared according to the standards applicable to the class of mail, subject to specific authorization by the RCSC serving the mailing post office when required.

6.2 Application

The mailer (or publisher or agent) must submit a written request to the RCSC serving the mailing post office to present the types of pallets described in 6.1. A separate request is required for each type of pallet at each location, but multiple, concurrent applications are acceptable. A mailer who cannot meet the minimum palletization standards without copalletizing, combining, or commingling mixed rate mailings might still qualify if the total copalletized, combined, or commingled mailing meets minimum pallet standards. The request must be received at least 30 days before the first mailing and include the names, addresses, and telephone numbers of the owner of the mail and of the firm or person preparing the mail; a description of the mailing (e.g., size, weight, class, rate, volume, mailing frequency, and postage payment method); the type of authorization requested; and a sample of the applicable documentation required in M045.

6.3 Periodicals Publications

To combine more than one Periodicals publication on pallets, the mailer must merge and presort copies of all the publications into common packages to achieve the finest level of presort for the mailing. To copalletize different Periodicals flat-size publications, the mailer must consolidate on pallets all independently presorted packages for each publication to achieve the finest level of presort for the mailing. Both combining and copalletizing publications must be supported by the documentation required in M045. Preferred Periodicals may not be combined with Regular or Publications Service Periodicals.

6.4 Standard Mail (A)

To combine mixed rate level Nonprofit Standard Mail (A) on pallets (i.e., 3/5 and Carrier Route), the mailer must be an authorized plant load mailer or an authorized plant-verified drop shipment (PVDS) mailer with on-site postal verification; must attach to the written request to the RCSC either a copy of an approved Form 3815 showing the mailer's authority to plant load or the USPS authorization for PVDS with on-site verification, as applicable; and must consolidate on pallets all independently prepared packages to achieve the finest level of presort for the mailing. To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently presorted packages from each mailing to achieve the finest level of presort for the mailing, and must present computer-generated listings at the time of mailing that include a summary list consolidating the copalletized multiple mailings and a list of the contents of each pallet by ZIP Code and presort level.

6.5 Cancellation

An authorization may be canceled by the USPS if the mailer does not meet the standards for pallets or the rates claimed or the mailer does not submit information on future mailings as requested by the RCSC. Mailers may appeal canceled authorizations under G020.

M045 Preparing Mail on Pallets

1.0 BASIC USES

Mailers may prepare these types of mail on pallets:

a. Letter-size mail in trays.
b. Packages or bundles not prepared in sacks.
c. Packages or parcels in sacks.
d. Machinable or irregular parcels.
e. Copalletized multiple flat-size mailings (subject to M041).
f. Combined mailings of machinable parcels (Standard Mail (A) and (B)) under M073.
g. Two or more Periodicals publications combined or copalletized (subject to M041).
h. Combined mailings of Nonprofit Standard Mail mixed rate levels (subject to M041).
i. Commingled zone-rated Standard Mail (subject to M630).

2.0 PACKAGES

2.1 Standards

Package presort and labeling must meet the applicable general standards in M010 through M030, except as noted below. The palletized portion of a mailing may not include packages sorted to foreign destinations.

2.2 Size—Periodicals

Package size: Six-piece minimum, 20-pound maximum, except that:

a. Firm packages may contain as few as two copies of a publication and do not have to be consolidated into bundles with other packages to the same 5-digit destination. A firm "package" may be one piece for presort (see M210 and M290).
b. All pieces for the same presort destination must be in one package if they weigh less than 10 pounds. Ten pounds or more of mail for a destination must be prepared in packages that weigh from 10 to 20 pounds each.
c. The last package to a presort destination may contain less than 10 pounds of mail.
d. All palletized packages of copalletized publications must contain at least six pieces.

2.3 Size—Standard Mail (A)

Package size: 10-piece minimum, 20-pound maximum, except that:

a. All pieces for the same presort destination must be in one package if they weigh less than 10 pounds. Ten pounds or more of mail for a destination must be prepared in packages that weigh from 10 to 20 pounds each.
b. The last package to a presort destination may contain less than 10 pounds of mail.

2.4 Size—Standard Mail (B)

Package size: 10-pound or 1,000-cubic-inch minimum (whichever occurs first), 40-pound maximum, except that:

a. All pieces for a presort destination must be in one package if they weigh less than 10 pounds. Ten pounds or more of mail for a destination must be prepared in packages that weigh from 10 to 40 pounds each.
b. The last package to a presort destination may contain less than 10 pounds of mail.
c. Packages must be prepared to carrier route sortations if the carrier route bulk bound printed matter rate is claimed. Mail at other rates must be sorted to 5- and 3-digit destinations.
d. Smaller size packages of any copies remaining may be prepared to the levels noted in 2.4c after all required volume or larger packages are prepared. These smaller packages must be properly labeled and placed on an appropriate level pallet.

2.5 Labels

When pressure-sensitive labels are used, a red Label D must appear on 5-digit packages if the copies in those packages show carrier route information.

2.6 Residual

After all required and optional packages are prepared, remaining copies may be made into a residual package, properly labeled and placed on an appropriate level pallet.

3.0 OPTIONAL BUNDLES—PERIODICALS AND STANDARD MAIL (A)

3.1 Standards

Bundle presort and labeling must meet the applicable general standards in M010 through M030, except as noted below. The palletized portion of a mailing may not include bundles sorted to foreign destinations.

3.2 Size

Bundle size: Two-package minimum, 20-pound maximum. Exception: For copalletized publications or products, bundles may contain 40 pounds of mail.

3.3 Sortation

Sortation is in the same sequence as sacks.

3.4 Labeling

Labeling of bundles is not required except for:

a. Bundles containing packages for levels of sortation finer than the bundle destination. These bundles must have a facing slip with Lines 1 and 2 prepared as required for sacks.
b. Bundles of Standard Mail (A) (other than carrier route and 5-digit bundles) placed on BMC pallets. These bundles containing packages for levels of sortation finer than the bundle destination must have a facing slip with Lines 1 and 2 prepared as required for sacks. The facing slip must completely cover the address and package label on the top piece in the bundle.

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays

Presort sequence and labeling:

a. 5-digit (required for packages, bundles, and sacks, optional for trays); use destination of contents for Line 1.
b. 3-digit (optional); use L002, Column A, for Line 1.
c. SCF (required); use L002, Column B, for Line 1.
d. As appropriate:
(1) Periodicals: ADC (required); use L004 for Line 1.
(2) Standard Mail: As appropriate, (a) Destination ASF (allowed and required only if DBMC rate is claimed for mail deposited at ASF); use L602 for Line 1; or (b) Destination BMC (required); use L601 (L602 if DBMC rate claimed) for Line 1.
e. As appropriate:
(1) Periodicals: Mixed ADC (optional); use L004 for Line 1, based on ZIP Code of entry office (in "Destination ZIP Codes" column) (label to plant serving entry post office if authorized by processing and distribution manager).
(2) Standard Mail: Mixed BMC (optional); use L601 for Line 1, based on ZIP Code of entry office (in "Destination ZIP Codes" column) (label to plant serving entry post office if authorized by processing and distribution manager).

4.2 Machinable Parcels—Standard Mail

Presort sequence and labeling:

a. 5-digit (optional, but required for Standard Mail (A) ⅗ rate and Standard Mail (B) only); use destination of parcels for Line 1.
b. ASF (allowed and required only if DBMC rate is claimed for mail deposited at ASF); use L602 for Line 1.

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c. Destination BMC (required); use L601 (L602 if DBMC rate claimed) for Line 1.

d. Mixed BMC (optional); use L601 for Line 1, based on ZIP Code of entry office (in "Destination ZIP Codes" column).

4.3 Presorted Special Standard Mail

a. 5-digit (5-digit rate only; required); use destination of pieces or packages for Line 1.

b. Destination BMC (BMC rate only; required); use L601 for Line 1.

4.4 Line 2

Line 2, class of mail (shown below, as appropriate), processing category and mail type (e.g., LTRS BC), and any processing code required by the applicable labeling list under 4.1 through 4.3:

a. Periodicals: PERIOD or NEWS (as appropriate).

b. Standard Mail (A): STD 3C.

c. Standard Mail (B): STD 4C.

5.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS OF LETTER-SIZE MAIL

5.1 Periodicals

When two or more letter-size publications are part of a combined mailing, the mailer must keep records for each mailing (publication) as required by standard. Preferred Periodicals may be combined with Regular or Publications Service Periodicals only as permitted by standard. Pieces claimed at delivery office rates do not require separation from pieces claimed at other rates.

5.2 Standard Mail (A)

Nonprofit mail may be included in the same mailing or palletized on the same pallet as other Standard Mail (A) only as permitted by standard. Automation rate and upgradable letter-size pieces may not be placed on the same 5-digit pallet as pieces at other rates. Pieces claimed at destination delivery unit (DDU) rates do not require separation from pieces claimed at other rates.

5.3 BMC Pallets

Packages and bundles placed on BMC pallets must be machinable on BMC parcel sorting equipment. Line 2 on pallet labels must reflect the processing category of the pieces. A BMC pallet may include pieces that are eligible for the DBMC rate and others that are ineligible if the mailer provides documentation showing the pieces that qualify for the DBMC rate.

5.4 Commingled Zones

Pieces of Standard Mail (B) for different zones may be commingled only under M630.

5.5 Securing Trays

Trays must be sleeved and strapped under M033, except that strapping is not required for trays on 5-digit, 3-digit, and SCF pallets, or on pallets whose loads are secured with stretchable or shrinkable plastic wrap

6.0 PALLETS OF SACKS

All sacks remaining after all pallets are prepared may be presented with the palletized mailing (on the same mailing statement), if the sacks are segregated from the palletized portion of the mailing.

7.0 PALLETS OF COPALLETIZED PERIODICALS OR STANDARD MAIL (A) FLAT-SIZE PIECES

7.1 Basic Standards

Copalletized flat-size mailings must meet the standards in M041 and in 1.0 through 5.0, and those below. Any combination of automation rate mailings and nonautomation rate mailings is subject to the restrictions in 5.0. Packages in a copalletized mailing qualify for the appropriate presort level rate, regardless of the pallet level on which they are placed.

7.2 Periodicals

Additional standards apply to Periodicals:

a. Preferred Periodicals may be combined with Regular or Publications Service Periodicals only as permitted by standard.

b. Documentation meeting the basic standard in P012 must be provided with each mailing. Before copalletizing, the mailer must obtain the written approval of the RCSC manager. Approval is based on the mailer's demonstrated ability to provide documentation meeting these standards:

(1) Documentation by package and by publication and edition showing the number of pieces and copies in each package and the per piece presort rate claimed for each piece in each package, or a listing by pallet showing (by presort level (rate) and destination) the number of copies and pieces of each publication and edition.

(2) Documentation showing the number of copies and pieces claimed at the intra-SCF rate.

(3) Documentation showing that packages of all publications and editions are presorted to the appropriate finest level pallet in the mailing.

(4) Documentation showing that 5-digit, optional 3-digit, SCF, and ADC pallets are prepared when the applicable minimum volume is developed in the copalletized mailing for these destinations.

(5) A listing showing the destination of pallets in the copalletized mailing.

(6) If the sacked portion of the mailing is presented with the copalletized portion, a report by sack showing the number of pieces (and copies) of each publication or edition at each presort level (rate).

7.3 Standard Mail (A)

Additional standards apply to Standard Mail (A):

a. Nonprofit Standard mailings may be copalletized with one another but not with mailings at other rates unless permitted by standard.

b. Nonidentical-weight pieces may be copalletized only if the correct postage is affixed to each piece or if otherwise authorized by the RCSC.

c. All pieces in mailings to be copalletized must be subject to the minimum per piece rate, or all subject to the per pound rate, unless otherwise authorized by the RCSC.

d. All pieces must have postage paid with permit imprint, or all pieces must have postage affixed.

e. When requested, the mailer must present pallets selected by USPS employees for verification.

f. At the time of mailing, the mailer must provide a computer-generated listing (in ZIP Code sequence and numbered to correspond to the pallets) that shows:

(1) Mailer"s name and location, owner of the mail, mailing segment, and entry post office.

(2) For each copalletized product, the number of pieces to each carrier route by 5-digit ZIP Code, to each 5- and 3-digit ZIP Code at the Basic and 3/5 rates, in total for these categories for each pallet and for the entire mailing. Barcoded rates must be identified, where applicable.

g. The number relating the computer-generated list to each pallet must be placed in the lower right corner of the pallet label in an easily read print size.

h. At the time of mailing, the mailer must show how packages and bundles are arranged on the pallets.

i. When preparing copalletized flat-size mailings of carrier route rate (e.g., Enhanced Carrier Route), automation rate (e.g., 3/5 Barcoded), and regular rate (e.g., Regular Basic) pieces, mailers must separately group the packages at each rate.

j. Pallets may be stretchwrapped or otherwise secured only after USPS verification.

k. When top caps are used, the mailer must write the tare weight of the top cap on the pallet label or in another prominent location.

7.4 Line 2

Line 2 on pallet labels for copalletized mailings: Class (PERIOD or NEWS, or STD, as applicable), FLTS, and contents (BC, and/or CR or ECR, and/or PRESORT, as applicable).

7.5 Mailing Statement

Separate mailing statements are required:

a. For Periodicals, a separate mailing statement is required for each publication and/or edition that is part of the copalletized mailing. Mailers must note on or in an attachment to the mailing statement the name and issue date of the publications with which each publication and/or edition was copalletized.

b. For Standard Mail (A), a separate mailing statement must be prepared for each mailing that is part of a single copalletized shipment, except that copalletized Regular, Enhanced Carrier Route, and Automation rate mailings produced as part of the same job may be reported on the same mailing statement.

8.0 MIXED RATE LEVELS ON PALLETS"NONPROFIT STANDARD MAIL (A)

8.1 Standards

Nonprofit mixed rate level mailings must meet the standards in 4.0 and those below.

8.2 Authorizations

Mailers must be authorized to commingle either Nonprofit Carrier Route, 3/5, and Basic rate mail on pallets or Nonprofit Carrier Route and Barcoded rate flats in packages. Mailers do not need authorization to commingle mixed rate level mailings when only mailings of barcoded flats are presorted on pallets. Nonidentical-weight pieces may be commingled only if the correct postage is affixed to each piece or if otherwise authorized by the RCSC.

8.3 Endorsements

Carrier route presort endorsements may appear only on pieces that qualify for that rate. Carrier route information, however, may appear on each piece in the mailing.

8.4 Documentation

At the time of mailing, the mailer must provide a computer-generated listing (in ZIP Code sequence and numbered to correspond to the pallets) that describes the contents of each pallet. The mailer must keep a copy of this listing for 90 days after the mailing is dispatched. When requested, the mailer must present pallets selected by USPS employees for verification by comparison with the listing. The listing must show:

a. Mailer"s name and location, owner of the mail, mailing segment, and entry post office.

b. Number of pieces to each carrier route by 5-digit ZIP Code, to each 5- and 3-digit ZIP Code at the Basic and 3/5 rates, in total for these categories for each pallet and for the entire mailing. Barcoded rates must be identified, where applicable.

8.5 Additional Pallet Standards

Pallets must meet these additional preparation standards:

a. The number relating the computer-generated list to each pallet must be placed in the lower right corner of the pallet label in an easily read print size.

b. At the time of mailing, the mailer must show how packages and bundles are arranged on the pallets.

c. When preparing copalletized Nonprofit Carrier Route and Barcoded rate mailings of flat-size pieces, mailers must separately group the packages at each rate.

d. Pallets may be stretchwrapped or otherwise secured only after USPS verification.

e. When top caps are used, the mailer must write the tare weight of the top cap on the pallet label or in another prominent location.

9.0 PALLETIZING MACHINABLE PARCELS

9.1 Standard Mail (A)

Pieces may be eligible for the 3/5 rate when prepared under 4.2a through 4.2c. This eligibility includes pieces correctly presorted under 4.2b and 4.2c to the service area of the *entry* ASF/BMC.

9.2 Standard Mail (B)

Mailers must sack by zone, using the applicable standards, any mail that cannot be placed on 5-digit or BMC pallets. Sacks containing mail remaining after all pallets are prepared may be presented with the palletized mailing (on the same mailing statement), if the sacks are segregated from the palletized portion of the mailing. Pieces for different zones may be commingled only under M630.

9.3 DBMC Rate

If applicable, a BMC pallet may include pieces that are eligible for the DBMC rate and others that are ineligible. The mailer must provide documentation showing the pieces that qualify for the DBMC rate.

9.4 Additional Standards

Pallets must meet these additional preparation standards:

a. Pallets may be stretchwrapped or otherwise secured only after USPS verification.

b. When top caps are used, the mailer must write the tare weight of the top cap on the pallet label or in another prominent location.

M050 Walk Sequence

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3.0 DELIVERY SEQUENCE INFORMATION

3.1 With Simplified Addressing

Walk-sequence rate pieces prepared with a simplified address must be based on delivery stop information obtained within 6 months before the date of mailing (or within 90 days before the date of mailing for Carrier Route Publications Service Periodicals or Enhanced Carrier Route Standard Mail), either from the Delivery Statistics File or from the postmaster.

3.2 Without Simplified Addressing

Walk-sequence rate pieces prepared with other than a simplified address must be sequenced using USPS data from one of the above sources, issued within 6 months before the date of mailing (or within 90 days before the date of mailing for Carrier Route Publications Service Periodicals or Enhanced Carrier Route Standard Mail):

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3.4 Line of Travel

Line-of-travel sequence is an option for mailers who prepare carrier route mailings other than high density/125-piece or saturation mailings. Line-of-travel sequencing is required for Basic Enhanced Carrier Route Standard Mail and for Carrier Route Publications Service Periodicals (except automation-compatible letter-size pieces). Line-of-travel sequence is not an exact walk sequence but a sequence of ZIP+4 codes arranged in the order that the route is served by a carrier. (First the ZIP+4 groups are sequenced, then the addresses within each are identified as being in ascending or descending order.) The USPS Line-of-Travel (LOT) product provides a list of the ZIP+4 codes each route serves, identifies the order in which they are delivered, and provides an indicator specifying whether the addresses in each must be sorted in ascending or descending order. LOT information must be updated at the same frequency as carrier route codes,

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i.e., within 90 days before the date of mailing.

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4.0 DOCUMENTATION

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4.2 High Density/125-Piece

For each carrier route to which 125-piece walk-sequence or high density rate mail is addressed, the mailer must document the total number of pieces to the route. If there are fewer than 125 pieces for a route, the documentation must also show the number of possible deliveries on the route.

* * * * *

M070 Mixed Classes

M071 Basic Information

[In 1.1, 1.2, and 1.3, replace "[T]hird-[C]lass" with "Standard Mail (A)"; in 1.2, replace "second-class" with "Periodicals"; in 1.2c, replace "First- or third-class" with "First-Class or Standard Mail (A)"; and in 1.3, replace "third- or fourth-class" with "Standard Mail"; no other change in text.]

M072 Express Mail and Priority Mail Drop Shipment

[In 2.1, replace "Presorted First-Class and carrier route presort" with "Retail Presort and Automation"; delete current 2.2 and renumber 2.3 as 2.2; in the heading of 3.0, replace "Second-Class" with "Periodicals"; in the title of 4.0, replace "Third-Class" with "Standard Mail (A)"; in the title of 5.0, replace "Fourth-Class" with "Standard Mail (B)"; no other change in text.]

M073 Combined Mailings of Standard Mail Machinable Parcels

1.0 BASIC STANDARDS

1.1 Description

Subject to authorization under 2.0, a mailer authorized plant load or plant-verified drop shipment privileges may prepare a combined mailing of Regular Standard Mail (A) and Standard Mail (B) machinable parcels that have been merged and presorted together in sacks (under 3.0) or on pallets (under M045) to achieve the finest level of presort. The combined mailing must meet the standards below and those that apply to the rates claimed. Each parcel in a combined mailing is subject to the applicable Standard Mail rate, based on the corresponding standards. Required volume for bulk or presort rates is based solely on the quantity of pieces eligible for each rate at the required presort level. Pieces claimed at other rates in the same sack or on the same pallet do not count.

1.2 Postage Payment

Postage for all pieces must be paid with permit imprint at the post office serving the mailer's plant under P710, P720, or P730. The applicable agreement must include procedures for combined mailings approved by the RCSC.

1.3 Documentation

Separate mailing statements must be prepared for the Standard Mail (A) and (B) pieces. Within each group, combined forms may be prepared where standards and the forms permit. All mailing statements must be provided at the time of mailing, accompanied by a computer-generated listing (in ZIP Code sequence and numbered to correspond to the sacks or pallets) that describes the contents of each sack or pallet. The mailer must keep a copy of this listing for 90 days after the mailing is dispatched. This listing must show the mailer's name and location, the name and owner of each product, and the entry post office. For each product, the listing must detail the number of pieces at each rate by 5-digit ZIP Code and totals for each pallet or sack and for the entire mailing. Additional documentation must be provided for all mailings of nonidentical-weight pieces or in which basic and 3/5 presort rate pieces are commingled and the mailer has not separated the sacks or pallets containing the pieces at the respective rates. Such documentation must be in one of these formats:

a. Segmented sequentially by level of sortation (e.g., 5-digit, destination BMC) and, within each, listing a unique number or Line 1 of each sack or pallet label. For each 5-digit or destination ASF/BMC entry, the number of pieces at each rate must be shown by 5-digit ZIP Code or 3-digit ZIP Code prefix, respectively. Destination ASF/BMC sacks or pallets must show a total number of pieces in the sack or on the pallet. The entries must be summarized for the whole mailing to show total pieces at each rate, total pieces, and total postage (and additional postage due, as applicable). The sacks or pallets do not have to be presented to the USPS in any particular order.

b. Segmented sequentially by level of sortation and, by 5-digit ZIP Code (for 5-digit sacks) or 3-digit ZIP Code prefix (for other sacks or pallets), the number of pieces at each rate must be listed. The entries must be totaled for the whole mailing to show total pieces at each rate, total pieces, and total postage (or additional postage due, as applicable). If different amounts of additional postage are due, the summary must further detail the number of pieces at each postage amount or at each amount of additional postage due. The sacks or pallets must be separated by level of sortation when presented for acceptance.

2.0 AUTHORIZATION

* * * * *

2.3 Term

An authorization to combine Standard Mail (A) and (B) machinable parcels expires at the same time as the applicable postage payment system authorization and may not be for more than 2 years. A mailer may terminate an authorization at any time by written notice to the postmaster of the office serving the mailer's location. The USPS may terminate an authorization, by written notice to the mailer explaining the reasons for termination, if it finds that the mailer does not meet the applicable standards.

3.0 SACK PREPARATION

3.1 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: optional, but required for Standard Mail (A) Regular and Nonprofit 3/5 rate eligibility (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. Destination ASF: allowed and required for DBMC rate only (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use L602 for Line 1.

c. Destination BMC: required (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use L602 if DBMC rate is claimed; otherwise, use L601 for Line 1.

d. Mixed BMC: required (no minimum); use L601 to show entry BMC for Line 1.

3.2 Line 2

Line 2:

a. 5-digit, ASF, and destination BMC sacks: STD 3C/4C MACH.

b. Mixed BMC sacks: STD 3C/4C MACH MIXED BMC.

c. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

M074 Plant Load Mailings

[In 3.3b and 3.3c, replace "SDC" with "ADC"; in 3.3 and 3.7b, replace "second-class" with "Periodicals"; and in 3.4 and 3.7c, replace "[T]hird- or [F]ourth-[C]lass [M]ail" with "Standard Mail"; no other change in text.]

M100 First-Class Mail

[Renumber current M101 as M120 with no change in text; replace current M102 and M103 with new M130 as follows:]

M120 Priority Mail

* * * * *

M130 Retail Presort

1.0 BASIC STANDARDS

1.1 All Pieces

All Retail Presort mailings are subject to these general standards:

a. Each mailing must meet the applicable standards in E130 and M010 through M030.

b. All pieces must be in the same processing category unless specifically excepted by standard.

c. All pieces must be presorted together and prepared under 2.0, 3.0, 4.0, or 5.0, as appropriate.

d. All pieces must be marked "Presort" and "First-Class."

e. Letter-size pieces (including cards) must be prepared in letter trays; flat-size pieces must be prepared in flat trays; parcels must be prepared in sacks.

1.2 Local Exception

Postmasters may authorize preparation of small volume mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

2.0 BASIC PREPARATION—LETTER-SIZE PIECES

2.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D, facing slip, or optional endorsement line (OEL); labeling optional.

b. 3-digit: required (10-piece minimum, fewer not permitted); green Label 3, facing slip, or OEL.

c. ADC: required (10-piece minimum, fewer not permitted); pink Label A, facing slip, or OEL.

d. Mixed ADC: required (no minimum); tan Label MS, facing slip, or OEL.

2.2 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: required (full trays); no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (full trays); no overflow; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); overflow allowed; use L002, Column A, for Line 1.

d. ADC: required (full trays); no overflow; use L004 for Line 1.

e. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range).

2.3 Line 2

Line 2: FCM LTRS NON-OCR and, as applicable:

a. Mixed ADC trays: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

3.0 OPTIONAL PREPARATION—UPGRADABLE LETTER-SIZE PIECES

3.1 Definition

Upgradable pieces are those that meet both the physical automation compatibility standards in C810 and the standards in C830 for an OCR clear zone, for reflectance, and for paper that can accept water-based ink. Addresses on upgradable pieces must be machine printed in a nonscript font. Upgradable pieces prepared under 3.0 are not packaged.

3.2 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: optional (full trays); no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (full trays); no overflow; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); overflow allowed; use L002, Column A, for Line 1.

d. AADC: required (full trays); no overflow; group pieces by 3-digit ZIP Code prefix; use L804 for Line 1.

e. Mixed AADC: required (no minimum); group pieces by AADC and, within each, by 3-digit ZIP Code prefix; for Line 1, use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range).

3.3 Line 2

Line 2: FCM LTRS OCR and, as applicable:

a. Mixed AADC trays: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

4.0 PREPARATION OF FLAT-SIZE PIECES

4.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D, facing slip, or optional endorsement line (OEL).

b. 3-digit: required (10-piece minimum, fewer not permitted); green Label 3, facing slip, or OEL.

c. ADC: required (10-piece minimum, fewer not permitted); pink Label A, facing slip, or OEL.

d. Mixed ADC: required (no minimum); tan Label MS, facing slip, or OEL.

4.2 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: required (full trays), no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (full trays), no overflow; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. ADC: required (full trays), no overflow; use L004 for Line 1.

e. Mixed ADC: required (no minimum); group pieces by 3-digit ZIP Code prefix; for Line 1, use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range).

4.3 Line 2

Line 2: FCM FLTS and, on mixed ADC trays, WKG.

5.0 PREPARATION OF PARCELS

5.1 Standards

First-Class parcels weighing 11 ounces or less, except Priority Mail, must be prepared under the standards below. All Priority Mail and any parcels weighing more than 11 ounces must be prepared under the applicable standards in M120.

5.2 Package Size, Presort, and Labeling

Packaging is not required for pieces ½ inch thick or larger if they are placed in a sack to the same destination as that to which they would otherwise have been packaged. Package size, presort sequence, and labeling:

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a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D, facing slip, or optional endorsement line (OEL).
b. 3-digit: required (10-piece minimum, fewer not permitted); green Label 3, facing slip, or OEL.
c. ADC: required (10-piece minimum, fewer not permitted); pink Label A, facing slip, or OEL.
d. Mixed ADC: required (no minimum); tan Label MS, facing slip, or OEL.

5.3 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:
a. 5-digit: required (10-pound minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 3-digit: required (10-pound minimum); use L002, Column A, for Line 1.
c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
d. ADC: required (10-pound minimum); use L004 for Line 1.
e. Mixed ADC: required (no minimum); use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range).

5.4 Line 2

Line 2: FCM IRREG and, on mixed ADC sacks, WKG.

6.0 DOCUMENTATION

Documentation meeting the standards in P012 must be submitted with each mailing statement.

M200 Periodicals

M210 Regular and Publications Service Periodicals

1.0 BASIC STANDARDS

1.1 General Preparation

All pieces in each Regular or Publications Service mailing must be in the same processing category and must be presorted together to the finest extent required. Automation-compatible Publications Service pieces and Barcoded rate Regular Periodicals must be prepared under M600; other pieces under 2.0 and 3.0, 4.0, 5.0, or 6.0, as appropriate. Letter-size pieces must be prepared in trays; flat-size pieces must be prepared in sacks. Palletization of trays, sacks, or packages is as permitted by M040. Postmasters may authorize preparation of small volume mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

1.2 Carrier Route and Walk-Sequence

Preparation for carrier route rates is optional and is subject to additional standards. Regular Periodicals for which a walk-sequence discount is claimed and Publications Service Periodicals optionally prepared in walk sequence must be prepared as a carrier route mailing under this section and the walk-sequencing standards in M050; pieces prepared with a simplified address must also meet the standards in A040.

1.3 Firm Packages

A "firm package" is two or more copies for the same address placed in one package. If each copy has a delivery address, each may be claimed as a separate piece for presort and on the mailing statement. The firm package may be claimed as one piece for presort and on the mailing statement. If the copies are unaddressed, the firm package is considered one piece. A firm package presorted and claimed as one piece must be accompanied by (but must be physically separate from) five other pieces packaged to the same destination to satisfy a six-piece package requirement when applicable, regardless of the number of copies in the firm package.

2.0 PACKAGE PREPARATION

2.1 General

Packaging preparation is subject to M020 and the specific standards below.

2.2 Carrier Route Packages

Mailers may choose to prepare carrier route packages at a higher level of route saturation (e.g., only if there are at least 15 pieces per route). Under this option, smaller packages of six or more pieces per carrier route not prepared for carrier route rates must be prepared for and paid at another applicable rate.

2.3 Regular Periodicals

In addition to labeling under 2.4b, each package of Regular Periodicals walk-sequence mail (or optionally prepared Publications Service walk sequence mail) must be labeled to show that the mail is walk sequenced. A facing slip with the phrase "HIGH DENSITY WALK-SEQUENCED CARRIER ROUTE MAIL" or "SATURATION WALK-SEQUENCED CARRIER ROUTE MAIL" (as applicable) may be placed on the top of each package of walk-sequence mail. It may be an address label with the required information placed on a sample mailpiece that is the top piece in the package, or a separate piece of paper affixed to the top of the package. If packages are prepared without facing slips, an optional endorsement line or carrier route information line must be placed on each piece in the package to provide the equivalent information.

2.4 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:
a. Firm: optional (two-piece minimum), blue Label F or optional endorsement line (OEL).
b. Carrier route: optional but required for rate eligibility (six-piece minimum, fewer not permitted); labeling required only if placed in a 5-digit carrier routes tray or sack (purple Label CR, facing slip, OEL, or CR information line).
c. 5-digit: required (six-piece minimum, fewer not permitted); red Label D or OEL.
d. 3-digit: required (six-piece minimum, fewer not permitted); green Label 3 or OEL.
e. ADC: required (six-piece minimum, fewer not permitted); pink Label A or OEL.
f. Mixed ADC: required (no minimum); tan Label MS or OEL.

3.0 SACK PREPARATION (FLATS)—REGULAR PERIODICALS

3.1 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:
a. Carrier route: required for rate eligibility at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 5-digit carrier routes (carrier route packages only): required for rate eligibility (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
c. 5-digit: required at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
d. 3-digit: required at 24 pieces, optional with one six-piece package minimum; use L002, Column A, for Line 1.
e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
f. ADC: required at 24 pieces, optional with one six-piece package minimum; use L004 for Line 1.
g. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

3.2 Line 2

Line 2: PERIOD or NEWS (as applicable), FLTS or IRREG (as applicable), and:
a. Basic Carrier Route sacks: route type and number.
b. High Density sacks: WSH, route type and number.
c. Saturation sacks: WSS, route type and number.
d. 5-digit carrier routes sacks: CR–RTS.
e. Mixed ADC sacks: WKG.
f. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

4.0 SACK PREPARATION (FLATS)—PUBLICATIONS SERVICE

4.1 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:
a. Carrier route: required for rate eligibility at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 5-digit carrier routes (carrier route packages only): required for rate eligibility (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
c. 5-digit: required at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
d. 3-digit: required at 24 pieces, optional with one six-piece package minimum; use L002, Column A, for Line 1.
e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
f. ADC: required at 24 pieces, optional with one six-piece package minimum; use L004 for Line 1.
g. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

4.2 Line 2

Line 2: PERIOD or NEWS (as applicable), FLTS or IRREG (as applicable), and:
a. Carrier Route sacks: LOT (or WSH or WSS if applicable), route type and number.
b. 5-digit carrier routes sacks: CR–RTS.
c. Mixed ADC sacks: WKG.
d. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

5.0 TRAY PREPARATION (LETTER-SIZE PIECES)—REGULAR PERIODICALS

5.1 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:
a. Carrier route: required for rate eligibility at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 5-digit carrier routes (carrier route packages only): required for rate eligibility (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
c. 5-digit: required at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
d. 3-digit: required at 24 pieces, optional with one six-piece package minimum; use L002, Column A, for Line 1.
e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
f. ADC: required at 24 pieces, optional with one six-piece package minimum; use L004 for Line 1.
g. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

5.2 Line 2

Line 2: PERIOD or NEWS (as applicable), LTRS and:
a. Basic Carrier Route trays: route type and number.
b. High Density trays: WSH, route type and number.
c. Saturation trays: WSS, route type and number.
d. 5-digit carrier routes trays: CR–RTS.
e. Mixed ADC trays: WKG.
f. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

6.0 TRAY PREPARATION (LETTER-SIZE PIECES)—PUBLICATIONS SERVICE

6.1 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:
a. Carrier route: optional, but required for rate eligibility if full tray; no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 5-digit carrier routes (carrier route packages only): required for rate eligibility (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
c. 5-digit: required (full trays); no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
d. 3-digit: required (full trays); no overflow; use L002, Column A, for Line 1.
e. Entry SCF 3-digit(s): required (no minimum); overflow allowed; use L002, Column A, for Line 1.
f. ADC: required (full trays); no overflow; use L004 for Line 1.
g. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

6.2 Line 2

Line 2: PERIOD or NEWS (as applicable), LTRS and:
a. Carrier route trays: LOT (or WSH or WSS if applicable), route type and number.
b. 5-digit carrier routes trays: CR–RTS.
c. Mixed ADC trays: WKG.
d. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

7.0 BEDLOADED BUNDLES (FLATS)

7.1. Authorization

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of flat-size Periodicals in bundles outside of sacks, subject to these standards:
a. This preparation must benefit the USPS. Generally, authorization is approved only when the number of bundles is not more than the number of sacks that would otherwise be used in a mailing.
b. The publisher or agent must submit an application for each publication, showing the name of the publication, the frequency of mailing, the post offices to which shipments are to be made, and the approximate numbers of copies and bundles to be deposited at each office.
c. The RCSC manager rules on the application and informs the applicant in writing. If an authorization is approved, the publisher or agent must be prepared to provide information similar to that required on the original application for future issues of the publication, if

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requested by the RCSC manager. Authorization is approved for a specific period, not to exceed 2 years.

d. Authorization to bundle instead of sack may be revoked when it is determined that the preparation method no longer benefits the USPS.

7.2 Package Preparation

Packages must be presorted and labeled under 2.0 and meet the applicable basic standards in M020 and these conditions:

a. Packages must contain at least six pieces but no more than 20 pounds of mail.

b. Firm packages may contain as few as two copies of a publication and do not have to be consolidated into bundles with other packages to the same 5-digit destination.

c. All pieces must be in one package if they weigh less than 10 pounds. Ten pounds or more of mail for a destination must be prepared in packages weighing from 10 to 20 pounds each.

d. The last package to a destination may contain less than 10 pounds of mail.

e. All palletized packages of copalletized publications must contain at least six pieces.

7.3 Bundle Preparation

Bundles must be presorted under 3.0 or 4.0 (as appropriate) and meet the applicable standards in M020 and these conditions:

a. Bundle size for all required presort levels: required (20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted).

b. Bundle size for all optional presort levels: optional (20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted).

c. Bundles other than carrier route and 5-digit bundles must be labeled with facing slips that have similar information to that required for sack labels. A facing slip is not required on carrier route bundles. Five-digit bundles must contain pieces with the correct optional endorsement line or have a red Label D.

7.4 Physical Characteristics

Bundles must be machinable on USPS sack-sorting equipment, unless they consist of publications for entry and delivery in the same SCF service area. Machinability can be improved by cross-strapping and using heavy-gauge shrinkwrap or stretchwrap on each bundle. Bundles entered and delivered in the same SCF service area must be securely bound to withstand normal handling without breakage or injury to USPS employees or damage to mechanized sorting systems. Binding material must be applied at least once around both the length and girth. Wire and metal strapping are prohibited.

8.0 COMBINING MULTIPLE PUBLICATIONS OR EDITIONS

8.1 Basic Information

A combined mailing is a mailing in which individually addressed copies of two or more Periodicals publications or editions are merged into a single mailstream, during production or after finished copies are produced, and all copies are presorted together to achieve the finest presort possible for the combined mailing. This process is also known as comailing. More than one publication, or edition of a publication, may be combined to meet the volume standard per tray, sack, or bundle, applicable to the presort rate claimed. Each piece must meet all applicable standards for the specific rate claimed. Nonprofit and classroom publications may be combined with Regular or Publications Service publications only as permitted by standard. Letter-size pieces of Regular and Publications Service mail may not be combined.

8.2 Mailing Statements

A separate mailing statement must be prepared for the postage computations for each publication or edition that is part of the combined mailing. The name and issue date of the publications with which each publication or edition was combined must be noted on, or attached to, the mailing statements. To report postage for firm packages for any combination not exclusively of Publications Service publications, the per piece postage computation (and nonadvertising adjustment, if applicable) for all copies included in firm packages must be on the mailing statement for the publication (having copies in those packages) that contains the higher (or highest) amount of advertising.

9.0 DOCUMENTATION

The publisher must be prepared to support information on mailing statements required with a Periodicals publication (e.g., the number of pieces or weight of copies addressed or sorted to specific destinations or zones, prepared at specific levels of presort, or prepared to qualify for a particular rate or discount). Except for mailings containing pieces at an automation rate, a destination entry rate, or a walk-sequence rate, the publisher may meet this standard at the time of mailing by separating sacks into groups based on the presort level for which their contents qualify. In other situations, the publisher must have available documentation meeting the standards in P012 that describes the mailing in sufficient detail to allow verification of the accompanying mailing's compliance with applicable preparation and eligibility standards.

M290 Preferred Periodicals

[Text of current M201, M202, M203, and M205; M201.1.0, M202.1.0, and M203.1.0 are combined into M290.1.0; the remainder of M201, M202, and M203, and all of M205, are redesignated as M290.2.0, 3.0, 4.0, and 5.0, respectively, with subsections renumbered accordingly; no changes in text except to use correct class and rate names.]

1.0 BASIC STANDARDS

1.1 Presort

All pieces in a Preferred Periodicals mailing must be presorted. All pieces must be in the same processing category unless specifically excepted by standard. Except for automation rate mailings, presort must at a minimum meet the standards in 2.0. Additional preparation might qualify pieces for other presort rates or discounts. Automation rate mailings must meet the presort standards in M800.

1.2 Single-Piece

Subject to the applicable presort standards, if presorting results in a single piece remaining that cannot be included in a package already prepared, that single piece may be sorted to a tray, sack, or pallet, as appropriate, without being prepared as a "package."

1.3 Loose Packing

District managers may authorize loose packing of faced, unpackaged flat-size mail if there are enough pieces to fill a No. 3 sack for the same 5-digit ZIP Code destination.

1.4 Firm Packages

A "firm package" is two or more copies for the same address placed in one package. If each copy has a delivery address, each may be claimed as a separate piece for presort and on the mailing statement. The firm package may be claimed as one piece for presort and on the mailing statement. If the copies are unaddressed, the firm package is considered one piece. A firm package presorted and claimed as one piece must be accompanied by (but must be physically separate from) five other pieces packaged to the same destination to satisfy a six-piece package requirement when applicable, regardless

of the number of copies in the firm package.

1.5 Nonpostal Containers

Postmasters may authorize preparation of small volume mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and are cost effective.

2.0 PREPARATION FOR LEVEL G/J RATES

2.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. Firm: optional with at least two pieces; blue Label F or optional endorsement line (OEL).

b. 5-digit: required at six pieces; smaller packages permitted; red Label D or OEL; labeling optional.

c. City: optional with at least six pieces; yellow label C or OEL.

d. 3-digit: required at six pieces; smaller packages permitted; green Label 3 or OEL.

e. SCF: optional at six pieces; smaller packages permitted; green Label 3 or OEL.

f. ADC: required with at least six pieces; pink Label A or OEL.

g. Mixed ADC: required with no minimum; tan Label MS or OEL.

2.2 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: required at four packages; fewer packages permitted; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. City: optional with no minimum except as required for rate eligibility; use lowest ZIP Code for destination from L001 for Line 1.

c. 3-digit: required at four packages; fewer packages permitted; use L002, Column A, for Line 1.

d. SCF: optional with no minimum; use L002, Column B, for Line 1.

e. ADC: required at four packages; fewer packages permitted; use L004 for Line 1.

f. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

2.3 Line 2

Line 2: PERIOD or NEWS (as applicable), processing category, and:

a. City sacks: CITY, right-justified under the ZIP Code on Line 1.

b. Mixed ADC sacks: WKG.

c. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

3.0 PREPARATION FOR LEVEL H RATES

3.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. Firm: optional with at least two pieces, subject to 1.5; blue Label F or optional endorsement line (OEL).

b. 5-digit: required at six pieces; smaller packages not permitted; red Label D or OEL; labeling optional.

c. City: optional with at least six pieces; yellow Label C or OEL.

d. Unique 3-digit: required at six pieces; smaller packages not permitted; green Label 3 or OEL.

3.2 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: required at four packages; fewer packages permitted; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. City: optional at one six-piece package, as required for rate eligibility; use lowest ZIP Code for destination from L001 for Line 1.

c. 3-digit: required at four packages; fewer packages permitted; use L002, Column A (cities identified with two bullets), for Line 1.

3.3 Line 2

Line 2: PERIOD or NEWS (as applicable) and processing category (and, on city sacks, CITY right-justified under the ZIP Code on Line 1).

4.0 PREPARATION FOR LEVEL I/K RATES

4.1 Carrier Route

"Carrier route" includes city carrier routes, rural routes, highway contract routes, post office box sections, and general delivery units.

4.2 Trays

Mailings of letter-size pieces may be prepared in letter trays rather than sacks, subject to 3.1. Rate eligibility remains subject to the applicable standards. Letter-size pieces prepared in trays must be packaged under 2.0, except that packages are not required when there is enough mail to fill a tray for the same carrier route.

4.3 Walk-Sequence Mail

Pieces for which a walk-sequence discount is claimed must be prepared as a carrier route mailing under this section and the walk-sequencing standards in M050. Pieces prepared with a simplified address must also meet the corresponding standards. Walk-sequence letter- and flat-size pieces must be prepared in packages. In addition to labeling under 4.4 and 4.5, each package of walk-sequence mail must be labeled to show that the mail is walk sequenced. A facing slip with the phrase "WALK-SEQUENCED CARRIER ROUTE MAIL" may be placed on the top of each package of walk-sequence mail. It may be an address label with the required information placed on a sample mailpiece that is the top piece in the package, or a separate piece of paper affixed to the top of the package. If packages are prepared without facing slips, "WS" must immediately precede the carrier route information on a carrier route information line on each piece in the package.

4.4 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. Firm: optional with at least two pieces, subject to 1.5; blue Label F or optional endorsement line (OEL).

b. Carrier route: required at six pieces, subject to 4.6; smaller packages not permitted; label under 4.5.

4.5 Package Labels

Carrier route packages labels are based on the level of sack in which placed:

a. No label is required if the package is placed in a correctly labeled carrier route sack.

b. Packages in 5-digit carrier routes sacks must have a facing slip unless the pieces in the package show a carrier route information line.

c. Optional endorsement lines may be used instead of carrier information lines or facing slips.

4.6 Higher Level

Mailers may choose to prepare carrier route packages at a higher level of route saturation than required in 4.4b (e.g., only when there are at least 15 pieces per route). Under this option, smaller packages (but with six or more pieces per carrier route) not prepared as required for carrier route rates must be claimed at another rate and prepared accordingly.

4.7 Tray or Sack Size, Presort, and Labeling

Tray presort is in the same sequence as for sacks; a tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces) fill a tray. Minimum volume per

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tray is the same as for a comparable sack. The information placed on tray labels is the same as on sack labels. Tray or sack size, presort sequence, and labeling:

a. Carrier route: optional at one six-piece package minimum, required for rate eligibility; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. Carrier routes: optional at minimum of one six-piece package each for two different routes in the same 5-digit ZIP Code area; required for rate eligibility; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

4.8 Line 2

Line 2: PERIOD or NEWS (as applicable), processing category, and:

a. Walk-sequence carrier route trays or sacks: WS, and route type and number.

b. Carrier route trays or sacks: route type and number.

c. 5-digit carrier routes trays or sacks: CARRIER ROUTES.

5.0 BEDLOADED BUNDLES (FLATS)

5.1. Authorization

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of flat-size Periodicals in bundles outside sacks, subject to these standards:

a. This preparation must benefit the USPS. Generally, authorization is approved only when the number of bundles is not more than the number of sacks that would otherwise be used in a mailing.

b. The publisher or agent must submit an application for each publication, showing the name of the publication; the frequency of mailing, the post offices to which shipments are to be made, and the approximate numbers of copies and bundles to be deposited at each office.

c. The RCSC manager rules on the application and informs the applicant in writing. If an authorization is approved, the publisher or agent must be prepared to provide information similar to that required on the original application for future issues of the publication, if requested by the RCSC manager. Authorization is approved for a specific period, not to exceed 2 years.

d. Authorization to bundle instead of sack may be revoked when it is determined that the preparation method no longer benefits the USPS.

5.2 Package Preparation

Packages must be presorted and labeled under 2.0 and meet the applicable basic standards in M020 and these conditions:

a. Packages must contain at least six pieces but no more than 20 pounds of mail.

b. Firm packages may contain as few as two copies of a publication and do not have to be consolidated into bundles with other packages to the same 5-digit destination.

c. All pieces must be in one package if they weigh less than 10 pounds. Ten pounds or more of mail for a destination must be prepared in packages weighing from 10 to 20 pounds each.

d. The last package to a destination may contain less than 10 pounds of mail.

e. All palletized packages of copalletized publications must contain at least six pieces.

5.3 Bundle Preparation

Bundles must be presorted under 3.0 and meet the applicable standards in M020 and these conditions:

a. Bundle size for all required presort levels: required (20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted).

b. Bundle size for all optional presort levels: optional (20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted).

c. Bundles other than carrier route and 5-digit bundles must be labeled with facing slips that have similar information to that required for sack labels. A facing slip is not required on carrier route bundles. Five-digit bundles must contain pieces with the correct optional endorsement line or have a red Label D.

5.4 Physical Characteristics

Bundles must be machinable on USPS sack-sorting equipment, unless they consist of publications for entry and delivery in the same SCF service area. Machinability can be improved by cross-strapping and using heavy-gauge shrinkwrap or stretchwrap on each bundle. Bundles entered and delivered in the same SCF service area must be securely bound to withstand normal handling without breakage or injury to USPS employees or damage to mechanized sorting systems. Binding material must be applied at least once around both the length and girth. Wire and metal strapping are prohibited.

6.0 COMBINING MULTIPLE PUBLICATIONS OR EDITIONS

6.1 Basic Information

A combined mailing is a mailing in which individually addressed copies of two or more Periodicals publications or editions are merged into a single mailstream, during production or after finished copies are produced, and all copies are presorted together to achieve the finest presort possible for the combined mailing. This process is also known as comailing. More than one publication, or edition of a publication, may be combined to meet the volume standard per tray, sack, or bundle, applicable to the presort rate claimed. Each piece must meet all applicable standards for the specific rate claimed. Nonprofit and classroom publications may be combined with Regular or Publications Service publications only as permitted by standard.

6.2 Mailing Statements

A separate mailing statement must be prepared for the postage computations for each publication or edition that is part of the combined mailing. The name and issue date of the publications with which each publication or edition was combined must be noted on, or attached to, the mailing statements. To report postage for firm packages, the per piece postage computation (and nonadvertising adjustment, if applicable) for all copies included in firm packages must be on the mailing statement for the publication (having copies in those packages) that contains the higher (or highest) amount of advertising.

7.0 DOCUMENTATION

The publisher must be prepared to support information on mailing statements required with a Periodicals publication (e.g., the number of pieces or weight of copies addressed or sorted to specific destinations or zones, prepared at specific levels of presort, or prepared to qualify for a particular rate or discount). Except for mailings containing pieces at an automation rate, a destination entry rate, or a walk-sequence rate, the publisher may meet this standard at the time of mailing by separating sacks into groups based on the presort level for which their contents qualify. In other situations, the publisher must have available documentation meeting the standards in P012 that describes the mailing in sufficient detail to allow verification of the accompanying mailing"s compliance with applicable preparation and eligibility standards.

[Delete current M300 and M400; no change to M500.]

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M600 Standard Mail

M610 Single-Piece and Regular Standard Mail (A)

1.0 SINGLE-PIECE RATES

Each piece must be legibly marked "Standard" or "STD." Unmarked pieces are treated as First-Class Mail and charged postage at the applicable First-Class rate.

2.0 BASIC STANDARDS"REGULAR RATES

2.1 All Mailings

All Regular (Basic and 3/5) rate mailings are subject to these general standards:

a. Each mailing must meet the applicable standards in E631 and M010 through M030.

b. All pieces must be in the same processing category unless specifically excepted by standard.

c. All pieces must be presorted together and prepared under M610, except under M045 for palletized mail.

d. Sortation determines rate eligibility; pieces not claimed at or not eligible for the 3/5 rate must be claimed at the Basic rate.

e. All pieces must be marked "STD" (or "Standard") and "Presort."

f. Subject to 2.2, letter-size pieces must be prepared in trays and, unless palletized, flat-size pieces must be prepared in sacks.

g. Postmasters may authorize preparation of small volume mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

2.2 Preparation Category

Pieces of Standard Mail (A) that, by size, could qualify for an Automation rate as either a letter or a flat, and that are prepared as palletized flats at Automation rates for flats or at Enhanced Carrier Route rates, may be prepared as palletized flats at Regular nonletter rates as well if the number of Regular nonletter rate pieces does not exceed 10% of the total number of pieces in the entire mailing job (regardless of rate).

2.3 Documentation

Documentation meeting the standards in P012 must be provided for all mailings paid by permit imprint, in which all pieces do not bear the correct postage, or in which pieces are of nonidentical weight.

3.0 BASIC PREPARATION"REGULAR RATE LETTER-SIZE PIECES

3.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D, facing slip, or optional endorsement line (OEL); labeling optional.

b. 3-digit: required (10-piece minimum, fewer not permitted); green Label 3, facing slip, or OEL.

c. ADC: required (10-piece minimum, fewer not permitted); pink Label A, facing slip, or OEL.

d. Mixed ADC: required (no minimum); tan Label MS, facing slip, or OEL.

3.2 3/5 Rate

Only mail eligible for the 3/5 rate (i.e., 150 or more pieces in total for the 3-digit area) can be prepared in 5- and 3-digit trays

3.3 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: optional (full trays), subject to 3.2; no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (no minimum), subject to 3.2; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); overflow allowed; use L002, Column A, for Line 1.

d. ADC: required (full trays); no overflow; use L004 for Line 1.

e. Mixed ADC: required (no minimum); for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

3.4 Line 2

Line 2: STD LTRS NON-OCR and, as applicable:

a. Mixed ADC trays: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

4.0 OPTIONAL PREPARATION—UPGRADABLE REGULAR RATE LETTER-SIZE PIECES

4.1 Definition

Upgradable pieces are those that meet both the physical automation compatibility standards in C810 and the standards in C830 for an OCR clear zone, for reflectance, and for paper that can accept water-based ink. Addresses on upgradable pieces must be machine printed in a nonscript font. Upgradable pieces prepared under 4.0 are not packaged.

4.2 3/5 Rate

Only mail eligible for the 3/5 rate (i.e., 150 or more pieces in total for the 3-digit area) can be prepared in 5- and 3-digit trays

4.3 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: optional (full trays), subject to 4.2; no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (no minimum), subject to 4.2; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); overflow allowed; use L002, Column A, for Line 1.

d. AADC: required (full trays); no overflow; group pieces by 3-digit ZIP Code prefix; use L804 for Line 1.

e. Mixed AADC: required (no minimum); group pieces by AADC and, within each, by 3-digit ZIP Code prefix; for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or L806, as appropriate.

4.4 Line 2

Line 2: STD LTRS OCR and, as applicable:

a. Mixed AADC trays: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

5.0 PREPARATION—REGULAR RATE FLAT-SIZE PIECES AND IRREGULAR PARCELS

5.1 Commingling Irregular Parcel Mailings

RCSCs may authorize the commingling of several permit imprint mailings of irregular parcels to achieve a finer presort, if adequate means are available to ensure that proper postage is paid. When authorizing commingling, RCSCs may waive minimum quantity standards for preparation of 5-digit and 3-digit packages if doing so results in a finer makeup of at least 50% of the mail.

5.2 Packaging Irregular Parcels

Irregular parcels are packaged under 5.3, except that:

a. Irregular parcels 1/2 inch or more thick need not be made up into packages, if the packages would be placed in a sack for same destination.

b. Items that are so large that 10 or fewer pieces fill a sack need not be packaged.

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c. Pieces in a 5-digit sack containing both machinable and irregular parcels need not be packaged. (Sacks containing both machinable and irregular parcels cannot be prepared to other presort levels.)

5.3 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D, facing slip, or optional endorsement line (OEL).

b. 3-digit: required (10-piece minimum, fewer not permitted); green Label 3, facing slip, or OEL.

c. ADC: required (10-piece minimum, fewer permitted); pink Label A, facing slip, or OEL.

d. Mixed ADC: required (no minimum); tan Label MS, facing slip, or OEL.

5.4 Loose Packing

District managers of customer services may authorize loose packing of unpackaged pieces to fill No. 3 sacks if no material in a sack would be more finely presorted if packaged. Pieces must be faced and packed to remain oriented in transit. The total weight of pieces placed in one sack must not exceed 70 pounds. Requests to loose-pack mail must be made through the post office of mailing.

5.5 When to Sack

A sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum, those that weigh more must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying mailing statement whether they applied the 125-piece ("PCS") or 15-pound ("WT") threshold or if the method in 5.5b ("BOTH") was used.

5.6 Drop Shipment

Mailers who use Priority Mail or Express Mail to drop ship Standard Mail (A) may prepare sacks containing fewer than 125 pieces or less than 15 pounds of mail.

5.7 Sack Size, Presort, and Labeling

Sack size (subject to 5.4 through 5.6), presort sequence, and labeling:

a. 5-digit: As applicable:

(1) Flats or irregular parcels: required (125 pieces/15 pounds minimum, smaller volume not permitted); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

(2) Commingled machinable and irregular parcels: required at 10 pounds, smaller volume permitted; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (125 pieces/15 pounds minimum, smaller volume not permitted); use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. ADC: required (125 pieces/15 pounds minimum, smaller volume not permitted); use L004 for Line 1.

e. Mixed ADC: required (no minimum) ; for Line 1, use MXD, followed by the entry ADC facility city/state/ZIP shown in L004.

5.8 Line 2

Line 2: STD and:

a. 5-digit sacks of machinable and irregular parcels: 3C MACH AND IRREG.

b. Sacks of commingled irregular parcels: 3C COMM IRREG.

c. All other sacks: FLTS or 3C IRREG (as appropriate).

d. Mixed ADC sacks: WKG.

e. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

6.0 REGULAR RATE MACHINABLE PARCELS

6.1 5-Digit Sacks

Five-digit sacks containing both machinable and irregular parcels must be prepared under 5.0. Each possible 5-digit sack must be prepared in any mailing including pieces claimed at the ⅗ rate. If each possible 5-digit sack is not prepared when there are 10 pounds or more of mail for that destination, the ⅗ rate may not be claimed for any part of the mailing.

6.2 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: optional at 10 pounds except under 6.1; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. Destination ASF: required for DBMC rate only (10 pounds minimum, smaller volume not permitted); use L602 for Line 1.

c. Destination BMC: required (10 pounds minimum, smaller volume not permitted); use L602 if DBMC rate is claimed; otherwise, use L601 for Line 1.

d. Mixed BMC: required (no minimum); use L601 to show entry BMC for Line 1.

6.3 Line 2

Line 2: STD 3C MACH and:

a. Mixed BMC sacks: MIXED BMC.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

7.0 BEDLOADED BUNDLES OF REGULAR RATE FLAT-SIZE PIECES

7.1 Authorization

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of Regular Standard Mail (A) in bundles outside mail sacks if this preparation benefits the USPS. Generally, authorization is approved only when the number of bundles is not more than the number of sacks that would otherwise be used in a mailing. The mailer or agent must submit an application for each product that states the name of the mailer, the frequency of mailing, the post offices to which shipments are to be made, and the approximate numbers of copies and of bundles to be deposited at each office. The RCSC manager rules on the application and informs the applicant in writing. If an authorization is approved, the publisher or agent must be prepared to provide information for future mailings, similar to that required in the original application if requested by the RCSC manager. Authorization is approved for a specific period, not to exceed 2 years. Authorizations to bundle instead of sack may be revoked when it is determined that the preparation method no longer benefits the USPS.

7.2 Documentation

Documentation must be provided under 2.3, applying those standards to bundles rather than sacks.

7.3 Package Preparation

Package size for all presort levels: two-piece minimum, 20-pound maximum. Presort sequence and labeling of packages are subject to 5.0.

7.4 Bundle Preparation

Bundle size for all presort levels: two packages/20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted. Presort sequence is subject to 5.0. Five-digit bundles must contain pieces with the correct optional endorsement line or have a red Label D. Other bundles must be labeled with facing slips that have similar information to that required for sack labels. Packages too large to be placed in a bundle do not require a facing slip.

7.5 Physical Characteristics

Bundles must be machinable by USPS sack-sorting equipment, unless they consist of pieces for entry and delivery in the same SCF service area. Machinability might be improved by cross-strapping and using heavy-gauge shrinkwrap or stretchwrap on each bundle. Bundles entered and delivered in the same SCF service area must be securely bound to withstand normal handling without breakage or injury to USPS employees or damage to mechanized sorting systems. Binding material must be applied at least once around both the length and girth. Wire and metal strapping are prohibited.

M620 Enhanced Carrier Route Standard Mail (A)

1.0 BASIC STANDARDS

1.1 All Mailings

All Enhanced Carrier Route rate mailings are subject to these general standards:

a. Each mailing must meet the applicable standards in E632 and M010 through M030.

b. All pieces must be in the same processing category.

c. All pieces must be presorted together and prepared under M620, unless palletized under M045.

d. Sortation determines rate eligibility; pieces not claimed at or not eligible for the High Density or Saturation rates must be claimed at the Basic Carrier Route rate.

e. Subject to M012, all pieces must be marked "STD" (or "Standard"), "ECR" (or "Enhanced Carrier Route"). In addition, Basic, High Density, and Saturation rate pieces must each be marked "LOT," "WSH," or "WSS," respectively, after the ECR marking (e.g., "ECRWSS"), in the correct optional endorsement line under M013, or in the correct carrier route information line under M014. Pieces not claimed at the corresponding rate must not bear the "LOT," "WSH," or "WSS" marking.

f. Subject to 1.2, letter-size pieces must be prepared in trays and, unless palletized, flat-size pieces must be prepared in sacks.

g. Postmasters may authorize preparation of small volume mailings in nonpostal containers if they consist primarily of packages for local ZIP Codes, do not exceed 20 pounds, and do not require postal transportation for processing.

1.2 Preparation Category

Pieces of Standard Mail (A) that, by size, could qualify for an Automation rate as either a letter or a flat, and that are prepared as palletized flats at Enhanced Carrier Route rates, may be prepared as palletized flats at Regular nonletter rates as well if the number of Regular nonletter rate pieces does not exceed 10% of the total number of pieces in the entire mailing job (regardless of rate).

1.3 High Density and Saturation Rates

Mailpieces for which the High Density or Saturation rate is claimed must be prepared as a carrier route mailing under this section and the walk-sequencing standards in M050. Pieces prepared with a simplified address must also meet the corresponding standards.

1.4 Documentation

Documentation is subject to the general standards in P012. At the time a mailing is submitted for presort and postage verification, the mailer must submit a list of the number of pieces qualifying for each Enhanced Carrier Route rate claimed by 5-digit ZIP Code and, within each, by carrier route. Additional documentation is required under M050 for the High Density and Saturation rates. After the first mailing, the postmaster may authorize the mailer to keep the records and submit them on request. The mailer must keep these records for 90 days after the mailing date, or until any action pending on the recalculation of postage is resolved to the USPS's satisfaction.

2.0 PACKAGE PREPARATION

2.1 General

Only carrier route packages are prepared. "Carrier route" includes city carrier routes, rural routes, highway contract routes, post office box sections, and general delivery units. Packages are not required in full carrier route trays.

2.2 Package Size and Labeling

Package size: carrier route; required (10-piece minimum, fewer not permitted). Carrier route package labels are based on the level of sack or tray in which placed:

a. No label is required if the package is placed in a correctly labeled carrier route tray or sack.

b. Packages in 5-digit carrier routes trays and sacks must have a facing slip unless the pieces in the package show a carrier route information line. Optional endorsement lines may be used instead of carrier information lines or facing slips.

2.3 Walk-Sequence Mail

A facing slip with the phrase "WALK-SEQUENCED CARRIER ROUTE MAIL" may be placed on the top of each package of walk-sequence mail. It may be an address label with the required information placed on a sample mailpiece that is the top piece in the package, or a separate piece of paper affixed to the top of the package. A facing slip does not satisfy the marking on each piece required by 1.1e.

3.0 TRAY PREPARATION"LETTER-SIZE PIECES

3.1 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. Carrier route: required full tray; no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 5-digit carrier routes: required (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

3.2 Line 2

Line 2: STD LTRS and:

a. Basic Carrier Route trays: ECRLOT, route type and number.

b. High Density trays: ECRWSH, route type and number.

c. Saturation trays: ECRWSS, route type and number.

d. 5-digit carrier routes trays: CR-RTS.

4.0 SACK PREPARATION—OTHER PIECES

4.1 When to Sack

A sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces

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weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum, those that weigh more must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying mailing statement whether they applied the 125-piece ("PCS") or 15-pound ("WT") threshold or if the method in 4.1b ("BOTH") was used.

4.2 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. Carrier route: required (125 pieces/15 pound minimum, smaller volume not permitted); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 5-digit carrier routes: required (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

4.3 Line 2

Line 2: STD, FLTS or 3C IRREG (as appropriate), and:

a. Basic Carrier Route sacks: ECRLOT, route type and number.

b. High Density sacks: ECRWSH, route type and number.

c. Saturation sacks: ECRWSS, route type and number.

d. 5-digit carrier routes sacks: CR-RTS.

5.0 RESIDUAL MAIL

Pieces not presorted under 2.0 and either 3.0 or 4.0 must be prepared as a separate mailing at Regular or Automation Standard Mail rates.

6.0 BEDLOADED BUNDLES

6.1 Authorization

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of Enhanced Carrier Route Standard Mail in bundles outside mail sacks if this preparation benefits the USPS. Generally, authorization is approved only when the number of bundles is not more than the number of sacks that would otherwise be used in a mailing. The mailer or agent must submit an application for each product that states the name of the mailer, the frequency of mailing, the post offices to which shipments are to be made, and the approximate numbers of copies and of bundles to be deposited at each office. The RCSC manager rules on the application and informs the applicant in writing. If an authorization is approved, the publisher or agent must be prepared to provide information for future mailings, similar to that required in the original application if requested by the RCSC manager. Authorization is approved for a specific period, not to exceed 2 years. Authorizations to bundle instead of sack may be revoked when it is determined that the preparation method no longer benefits the USPS.

6.2 Documentation

Documentation meeting the standards in P012 must be provided for all mailings paid with a permit imprint, in which all pieces do not bear the correct postage, or in which pieces are of nonidentical weight.

6.3 Package Preparation

Package size for all presort levels: two-piece minimum, 20-pound maximum. Presort sequence and labeling of packages are subject to 2.0.

6.4 Bundle Preparation

Bundle size for all presort levels: two packages/20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted. Presort sequence is subject to 4.0. Five-digit bundles must contain pieces with the correct optional endorsement line or have a red Label D. Packages too large to be placed in a bundle do not require a facing slip.

6.5 Physical Characteristics

Bundles must be machinable by USPS sack-sorting equipment, unless they consist of pieces for entry and delivery in the same SCF service area. Machinability might be improved by cross-strapping and using heavy-gauge shrinkwrap or stretchwrap on each bundle. Bundles entered and delivered in the same SCF service area must be securely bound to withstand normal handling without breakage or injury to USPS employees or damage to mechanized sorting systems. Binding material must be applied at least once around both the length and girth. Wire and metal strapping are prohibited.

M630 Standard Mail (B)

1.0 PARCEL POST

1.1 Marking

Pieces mailed at the single-piece parcel post rates do not require a marking. Each piece mailed at the bulk parcel post rates must be marked "Bulk Parcel Post" or "Bulk PP." Each piece mailed at the DBMC parcel post rates must be marked "DBMC Parcel Post" or "DBMC PP." If postage for the piece is paid with a permit imprint and the office of mailing is in a different 3-digit ZIP Code area from the post office in the return address, the 5-digit ZIP Code or the 3-digit ZIP Code prefix of the office of mailing must be included in the indicia or incorporated in the required marking (e.g., "DBMC PP 011" or "DBMC Parcel Post Mailed From 01101"). Pieces not clearly marked as required are treated as single-piece rate parcel post and subject to additional postage as necessary.

1.2 Separation

DBMC and bulk parcel post pieces must be separated by zones when presented unless either the correct postage is affixed to each piece or the mailing is prepared under 8.0. For mailings prepared in sacks, pieces for more than one zone may not be placed in the same sack, and sacks must be separated by zone when presented to the USPS.

2.0 BOUND PRINTED MATTER

2.1 Basic Standards

There are no presort, sacking, or labeling requirements for single-piece rate bound printed matter. All bulk rate bound printed matter must be prepared under the standards in 2.5 and 2.6, except for carrier route presort rate bound printed matter, machinable pieces, bedloaded bundles, and palletized pieces and bundles subject to 3.0, 6.0, 7.0, and M045, respectively.

2.2 Separation

Mailpieces must be separated by zones when presented unless either the correct postage is affixed to each piece or the mailing is prepared under 8.0. Pieces for more than one zone may not be placed in the same bundle or sack, and bundles and sacks must be separated by zone when presented.

2.3 Marking

Each piece claimed at single-piece bound printed matter rates must be marked "Bound Printed Matter." Each piece of bound printed matter claimed at bulk bound printed matter rates must be marked "Bound Printed Matter" and "Bulk Rate" or "Blk. Rt." Pieces not clearly marked as required are treated as single-piece rate parcel post and subject to additional postage as necessary.

2.4 Catalogs

In addition to marking under 2.3, catalogs must be marked "CATALOG RATE" or "CATALOG." For this standard, a "catalog" is bound printed matter consisting entirely of advertising. "Advertising" includes all material for the publication of which a valuable consideration is paid, accepted, or promised, which calls attention to something for getting people to buy it, seek it, sell it, or support it. Public service advertisements for which no consideration is paid are not advertising for postal purposes. Advertising includes:

a. Reading matter or other material, for the publication of which an advertising rate is charged.

b. Articles, items, and notices that are reading matter inserted by a custom or understanding that textual matter is to be inserted for the advertiser or the advertiser"s products in the publication where a display advertisement appears.

c. Material in a publication advertising its own services or issues, or any other business (or products or services) of its publisher, whether display advertising or editorial or reading matter.

2.5 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: required at 10 pieces/20 pounds/1,000 cubic inches; smaller volume permitted; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required at 10 pieces/20 pounds/1,000 cubic inches; smaller volume permitted; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. SCF: optional (10 pieces/20 pounds/1,000 cubic inches minimum; smaller volume not permitted); use L002, Column B, for Line 1.

e. ADC: optional (no minimum); use L004 for Line 1.

f. Mixed ADC: required (no minimum); for Line 1, use MXD followed by the entry ADC facility city/state/ZIP shown in L004.

2.6 Line 2

Line 2: STD 4C, FLATS or IRREG (as applicable), and:

a. Mixed ADC sacks: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

3.0 CARRIER ROUTE BOUND PRINTED MATTER

3.1 Preparation

Carrier route rate bound printed matter must be prepared under the standards in 3.5 through 3.8, unless prepared as machinable pieces, bedloaded bundles, or palletized under 6.0, 7.0, and M045, respectively.

3.2 Documentation

Documentation is subject to the general standards in P012. At the time a mailing is submitted for presort and postage verification, the mailer must submit a list of the number of qualifying and residual pieces for each by 5-digit ZIP Code and, within each, by carrier route. After the first mailing, the postmaster may authorize the mailer to keep the records and submit them on request. The mailer must keep these records for 90 days after the mailing date, or until any action pending on the recalculation of postage is resolved to the USPS"s satisfaction.

3.3 Marking

Each piece claimed at carrier route bulk bound printed matter rates must be marked "Bound Printed Matter Blk. Rt." and "Carrier Route Presort" or "CAR–RT SORT." In addition, catalogs must be marked "CATALOG RATE" or "CATALOG." Catalog is defined in 2.4. Residual pieces in a carrier route bulk bound printed matter mailing may have the "Carrier Route Presort" or "CAR–RT SORT" marking if the number of residual pieces to any single 5-digit ZIP Code area does not exceed 5% of the total qualifying carrier route rate pieces addressed to that 5-digit area. The residual pieces must be separated from the qualifying pieces when presented to the USPS. Pieces not clearly marked as required are treated as single-piece rate parcel post and subject to additional postage as necessary.

3.4 Package Preparation

"Carrier route" includes city carrier routes, rural routes, highway contract routes, post office box sections, and general delivery units. Packages must meet the applicable basic standards in M020.

3.5 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling: Carrier route; required (10 pieces/20 pounds/1,000 cubic inches minimum, smaller packages not permitted); facing slip required unless the pieces in the package show a carrier route information line.

3.6 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. Carrier route: optional (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use 5-digit destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 5-digit carrier routes: required (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

3.7 Line 2

Line 2: STD 4C, FLTS or IRREG (as applicable), and:

a. Carrier route sacks: route type and number.

b. 5-digit carrier routes sacks: CARRIER ROUTES.

3.8 Residual Pieces

Residual mail not presorted under 3.5 through 3.7 may be prepared in packages of fewer than 10 pieces each for individual carrier routes. Residual pieces must be sacked under 2.0. Residual pieces may be included in a carrier route presort rate mailing with the "Carrier Route Presort" or "CAR–RT SORT" marking if postage is paid at the applicable bulk bound printed matter rate. These pieces must be separated from the qualifying carrier route rate pieces when presented to the USPS. The number of residual pieces endorsed "Carrier Route Presort" or "CAR–RT SORT" addressed to any single 5-digit ZIP Code area must not exceed 5% of the total qualifying presorted carrier route pieces addressed to that 5-digit area.

4.0 SPECIAL STANDARD MAIL

4.1 Basic Standards

There are no presort, sacking, or labeling requirements for single-piece Special Standard Mail. Presorted Special Standard Mail matter must be prepared subject to 4.3 through 4.5, unless prepared as machinable pieces, bedloaded bundles, or palletized, subject to 6.0, 7.0, and M045, respectively. Mailings of nonmachinable (outside) pieces eligible for the presort rates must be prepared to preserve the required presort as instructed by the postmaster of the office of mailing.

4.2 Marking

Each piece claimed at Special Standard Mail single-piece rates must be marked "Special Standard Mail." Each piece claimed at Presorted Special

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Standard Mail rates must be marked "Presorted Special Standard Mail." Pieces not clearly marked as required are treated as single-piece parcel post and subject to additional postage as necessary.

4.3 Sack or Bundle Preparation (5-Digit Rate)

Sack or bundle size, presort sequence, and labeling: 5-digit (only); required (eight pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); 20-pound maximum for bundles; no label required on bundles; on sacks use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

4.4 Sack Preparation (BMC Rate)

Sack size, presort sequence, and labeling: destination BMC (only); required (four pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use L801 for Line 1.

4.5 Line 2

Line 2: STD 4C and processing category. As required by the labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

5.0 LIBRARY MAIL

5.1 Basic Standards

There are no presort, sacking, or labeling requirements for single-piece Library Mail, except that, if 1,000 or more identical-weight Library Mail pieces are mailed during a single day, they must be presorted and sacked under 2.0 unless prepared as machinable parcels or palletized subject to 6.0 or M045, respectively.

5.2 Marking

Each piece of Library Mail must be marked "Library Rate" or "Library Mail." Pieces not clearly marked as required are treated as single-piece parcel post and subject to additional postage as necessary.

6.0 MACHINABLE PARCELS

6.1 Basic Standards

All Standard Mail (B) machinable parcels must be prepared in sacks under 6.2 unless palletized under M045. Parcel post or bound printed matter pieces must be separated by zones when presented unless either the correct postage is affixed to each piece or the mailing is prepared under 8.0. Pieces for more than one zone may not be placed in the same bundle or sack, and bundles and sacks must be separated by zone when presented.

6.2 Sack Size, Presort, and Labeling

Sack size, presort sequence, and labeling:

a. 5-digit: required (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF; 10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted; use L602 for Line 1.

c. Destination BMC: required (10 pieces/20 pounds/1,000 cubic inches minimum, smaller volume not permitted); use L801 (L602 if DBMC rate claimed) for Line 1.

d. Mixed BMC: required (no minimum); use L601 to show entry BMC for Line 1.

6.3 Line 2

Line 2: STD 4C MACH and:

a. Mixed BMC sacks: MIXED BMC.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

7.0 BOUND PRINTED MATTER AS BEDLOADED BUNDLES

7.1 Authorization

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of bound printed matter meeting the applicable standards in 2.0 or 3.0 in bundles outside mail sacks if this preparation benefits the USPS. Generally, authorization is approved only when the number of bundles is not more than the number of sacks that would otherwise be used in a mailing. The mailer or agent must submit an application for each product that states the name of the mailer, the frequency of mailing, the post offices to which shipments are to be made, and the approximate numbers of copies and bundles to be deposited at each office. The RCSC manager rules on the application and informs the applicant in writing. If an authorization is approved, the publisher or agent must be prepared to provide information for future mailings, similar to that required on the original application, if requested by the RCSC manager. Authorization is approved for a specific period, not to exceed 2 years. Authorizations to bundle instead of sack can be revoked when it is determined that the preparation method no longer benefits the USPS.

7.2 Separation

Unless prepared under 8.0, pieces for more than one zone may not be placed in the same package or bundle, and packages and bundles must be separated by zone when presented to the USPS.

7.3 Package Preparation

Packages must meet the applicable basic standards in M020. Package size: two-piece minimum, 20-pound maximum. Presort sequence and labeling of packages are subject to 2.0 or 3.0, as applicable for the rate claimed.

7.4 Bundle Preparation

Bundles must meet the applicable basic standards in M020. Bundles must be machinable by USPS sack-sorting equipment, unless they consist of pieces for entry and delivery in the same SCF service area. Machinability can be improved by cross-strapping and using heavy-gauge shrinkwrap or stretchwrap on each bundle. Bundles entered and delivered in the same SCF service area must be securely bound to withstand normal handling without breakage or injury to USPS employees or damage to mechanized sorting systems. Binding material must be applied at least once around both the length and girth. Wire and metal strapping are prohibited.

7.5 Bundle Size, Presort, and Labeling

Bundle size, presort sequence, and labeling: For all presort levels: two packages/20 pounds/1,000 cubic inches minimum, 40 pounds maximum; smaller bundles not permitted. Presort sequence is same as sacks under 2.0 or 3.0, as applicable for the rate claimed. Bundles other than carrier route and 5-digit bundles must be labeled with facing slips that have similar information to that required for sack labels. A facing slip is not required on carrier route bundles. The 5-digit bundles must contain pieces with the correct optional endorsement line or have a red Label D. Packages too large to be placed in a bundle do not require a facing slip. Optional endorsement lines may be used instead of facing slips on other than mixed states bundles, subject to M013.

8.0 COMMINGLING ZONES

Zone-rated Standard Mail pieces need not be separated by zones when presented other than as individual pieces or with full correct postage affixed to each piece, subject to the applicable conditions of this section. Nonidentical-weight pieces not bearing the full correct postage may not be commingled unless authorized by the RCSC manager serving the office of mailing. These provisions also apply to bundles of bound printed matter regardless of whether the bundles are bedloaded, sacked, or palletized. The mail must be prepared and documented:

a. Under P710 or P730; or

b. Under all these conditions:

(1) A unique number is assigned to each sack/pallet in the mailing and printed on a separate line at the top of the sack/pallet label (above the Line 1 information on bound printed matter).

(2) For bound printed matter and all palletized mailings, Line 2 of the sack/pallet label for each sack/pallet that contains mail for more than one zone also shows "MIXED ZONES" and the zone numbers (e.g., "STD FLATS MIXED ZONES 2 & 3").

(3) A detailed list accompanies each mailing or mailing segment, sequenced numerically by the numbers assigned to sacks/pallets in the mailing, that shows the post office where the mail is to be entered (entry post office), a unique identifier for the mailing or mailing segment that also appears on the corresponding mailing statement(s), the name and address of the mailer, the permit number (if applicable), the date of mailing, individual line entries for each sack/pallet, and the total number of pieces to each zone and in the entire mailing or mailing segment. Line entries for sacks/pallets containing mail for only one zone must show the sack/pallet number, the level of sortation, the zone for which the mail is destined, and the total number of pieces for the sack/pallet. Entries for sacks/pallets containing mail for more than one zone must also show (by zone) the number of pieces to each 3-digit ZIP Code area and the total number of pieces for that zone for the sack/pallet. Mailings are not accepted if there are discrepancies between the information in the detailed listing or on the mailing statement and the results of USPS random verification of piece counts and postage.

M690 Nonprofit Standard Mail

M692 Basic and 3/5 Presort

[Text of current M302, except in 1.2 and 3.3, replace "bulk third-class" with "Nonprofit Standard Mail (A)"; delete 1.3 and 1.5, and renumber succeeding sections accordingly; in renumbered 1.8a and 2.1, delete "or optional city," delete 2.2c, 2.3c, 3.4b, 3.5b, and 3.6b and reletter succeeding sections accordingly; in 3.6, replace "3C" with "STD"; and in 3.6a and 3.6b, insert "3C" before "MACH." In 2.2f, 2.3f, 3.4e, 3.5e, and 3.5g, replace "SDC" with "ADC"; in 2.3f, replace "orange Label S" with "pink Label A"; in 3.5g, replace "L706 or L707, as applicable" with "use L004"; delete current 3.6d, redesignate 3.6e and 3.6f as 3.6d and 3.6e, respectively, and revise redesignated 3.6d to read "Mixed ADC sacks: WKG"; delete 2.2g, 2.3g, 3.4f, and 3.5f; redesignate 2.2h, 2.3h, 3.4g, and 3.5g as 2.2g, 2.3g, 3.4f, and 3.5f, respectively, and replace "Mixed states" with "Mixed ADC."]

M693 Carrier Route

[Text of current M303, except in 1.2 and 3.3, replace "bulk third-class" with "Nonprofit Standard Mail (A)"; delete 1.3 and 1.5, and renumber succeeding sections accordingly; and in 3.6, replace "3C" with "STD."]

M695 Machinable Parcels

[Text of current M305, except in 2.4, replace "3C" with "STD 3C."]

M696 Irregular Parcels

[Text of current M306, except in 1.5, replace "bulk third-class" with "Nonprofit Standard Mail (A)"; and in 3.0, replace "3C" with "STD 3C."]

M697 Bedloaded Bundles

[Text of current M307, except in 1.2, replace "third-class mail" with "Nonprofit Standard Mail (A)."]

M698 Combined Mailings of Nonprofit Standard Mail (A) and Standard Mail (B) Machinable Parcels

[Text of current M073. In 1.1, replace "third-class and fourth-class" with "Nonprofit Standard Mail (A) and Standard Mail (B)"; in 1.2, replace "third- or fourth-class" with "Nonprofit Standard Mail (A) or Standard Mail (B)" and delete "class or"; in 1.6 and 1.7, replace "class" with "category"; in 1.7, replace "third- and fourth-class" with "Nonprofit Standard Mail (A) and Standard Mail (B) pieces"; in 1.7, replace "third- and fourth-class" with "Nonprofit Standard Mail (A) and Standard Mail (B)"; and in 3.3, replace "3C/4C" with "STD 3C/4C."]

M800 Automation-Compatible Mail

[Move current M810–M820 contents to M890 and renumber and revise as shown below to apply only to Preferred Periodicals and Nonprofit Standard Mail (A). For Automation First-Class and Standard Mail (A) and Barcoded rate Regular and automation-compatible Publications Service Periodicals, add new M810 (replacing M814 through M816) and M820 (replacing M823), as follows; (M812, M813, M817, M818, M819, M825, and M827 are deleted for these subclasses).]

M810 Letter-Size Mail—(Except Preferred Periodicals and Nonprofit Standard Mail)

1.0 BASIC STANDARDS

1.1 Standards

Letter-size Automation First-Class, Barcoded rate Regular and automation-compatible Publications Service Periodicals, and Automation Standard Mail must be prepared under M810, subject to the basic eligibility standards applicable to the rate claimed. Presort, labeling, and package and tray preparation are subject to the general standards in M010 through M030. All pieces in a mailing must be in the same processing category and must be presorted together to the finest extent required. Firm packages may not be included in mailings prepared under M810.

1.2 Marking

First-Class pieces must be marked "First-Class." Standard Mail must be marked either "STD" or "Standard." In addition, Carrier Route rate pieces must be marked "AUTOCR," and pieces at other rates must be marked "AUTO." No markings are required on Periodicals pieces.

1.3 Grouping, Packaging, Labeling

Grouping, packaging, and labeling are not generally required, with these exceptions:

a. Pieces must be packaged to preserve orientation in overflow and less-than-full trays and in any mailing consisting entirely of card-size pieces.

b. Pieces must be grouped as specified below in 5-digit carrier routes, AADC, and mixed AADC trays, and for Regular Periodicals.

c. Package labels are required only for Regular Periodicals.

1.4 Heavy Letter Mail

Each tray of heavy letter mail (as defined in C810) must be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. Each pallet, general purpose mail container, or other equipment used to transport trays of heavy letter mail must be labeled "HEAVY LETTER MAIL," in letters not less than 1/2 inch high on white or light-colored stock not smaller than 8 by 11 inches, on two adjacent sides of the pallet or other equipment.

1.5 Mixed Rates

A single mailing (e.g., Automation First-Class) may include pieces prepared at all available rate levels (e.g., Carrier Route, 5–Digit, 3–Digit, and

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Basic); all may be reported on the same mailing statement and documentation. No other combinations are permitted.

1.6 Availability of Carrier Route Rates

Preparation of mail to qualify for Automation Carrier Route rates is optional for Automation First-Class and Standard Mail (A) and Publications Service pieces, subject to the availability limitations in E140, E232, and E641.

1.7 Scheme Sortation—Availability and Use

Scheme sortation is an option available for Automation First-Class, Automation Standard Mail (A), and Publications Service pieces only, and only for those ZIP Code prefix groups listed in L003. Scheme sortation may be performed for only selected available destinations and may include only pieces that could not be prepared in full 3-digit trays. Scheme trays are considered 3-digit separations for rate eligibility, subject to a single minimum volume and the applicable standards for the rate claimed.

2.0 PREPARATION—FIRST-CLASS AND STANDARD MAIL (A)

2.1 Packaging/Grouping

No packaging is required in full trays. Grouping is required for Carrier Route rate pieces and pieces in AADC and mixed AADC trays.

2.2 Grouping—Carrier Route Pieces

Grouping size, presort sequence, and labeling: carrier route (only); required (10-piece minimum; fewer not permitted); use OEL or carrier route information line. Group pieces by carrier route (using separator cards under M020, not packaging) in full 5-digit carrier routes trays.

2.3 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. Carrier route: optional, but required for rate eligibility (full trays); no overflow; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. 5-digit carrier routes (carrier route pieces only): optional, but required for rate eligibility (no minimum); overflow allowed; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

c. 5-digit: optional, but required for rate eligibility (150-piece minimum); overflow allowed; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

d. 3-digit/scheme: required (150-piece minimum); overflow allowed; for Line 1, use L002, Column A (3-digit trays), or L003 (scheme trays), as appropriate.

e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

f. AADC: required (150-piece minimum); overflow allowed; group pieces by 3-digit ZIP Code prefix; use L804 for Line 1.

g. Mixed AADC: required (no minimum); group by AADC and, within each, by 3-digit ZIP Code prefix; for Line 1, for First-Class Mail, use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range) or, for Standard Mail, use L805 (mail entered by the mailer at an ASF or BMC) or L806, as appropriate.

2.4 Line 2

Line 2: FCM or STD (as appropriate), LTRS BC, and:

a. Carrier route trays: route type and number.

b. 5-digit carrier routes trays: CR-RTS.

c. For scheme trays: SCHEME.

d. For mixed AADC trays: WKG.

3.0 PREPARATION—PUBLICATIONS SERVICE

3.1 Packaging/Grouping

No packaging is required in full trays. Grouping is required for Carrier Route rate pieces and pieces in AADC and mixed AADC trays.

3.2 Grouping—Carrier Route Pieces

Grouping size, presort sequence, and labeling: carrier route (only); required (six-piece minimum; fewer not permitted); no label required. Group pieces by carrier route (using separator cards under M020, not packaging) in full 5-digit carrier routes trays.

3.3 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. Carrier route: optional, but required for rate eligibility (full trays); no overflow; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. 5-digit carrier routes: optional, but required for rate eligibility (no minimum); overflow allowed; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

c. 5-digit: optional, but required for rate eligibility (150-piece minimum); overflow allowed; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

d. 3-digit/scheme: required (150-piece minimum); overflow allowed; for Line 1, use L002, Column A (3-digit trays), or L003 (scheme trays), as appropriate.

e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

f. AADC: required (150-piece minimum); overflow allowed; group pieces by 3-digit ZIP Code prefix; use L804 for Line 1.

g. Mixed AADC: required (no minimum); group pieces by AADC; for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or L806, as appropriate.

3.4 Line 2

Line 2: PERIOD or NEWS (as appropriate), LTRS BC, and:

a. Carrier route trays: route type and number.

b. 5-digit carrier routes trays: CR-RTS.

c. For scheme trays: SCHEME.

d. For mixed AADC trays: WKG.

4.0 PREPARATION—REGULAR PERIODICALS

4.1 Packaging/Grouping, Presort, and Labeling

Pieces are grouped with separator cards but not packaged in full trays. Grouping size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); red Label D or optional endorsement line (OEL).

b. 3-digit: required (50-piece minimum, fewer not permitted); green Label 3 or OEL.

c. AADC: required (10-piece minimum, fewer not permitted); pink Label A or OEL.

d. Mixed AADC: required (no minimum); tan Label MS or OEL.

4.2 Tray Size, Presort, and Labeling

Tray size, presort sequence, and labeling:

a. 5-digit: required (full trays); no overflow; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required (full trays); no overflow; for Line 1, use L002, Column A (3-digit trays), or L003 (scheme trays), as appropriate.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. AADC: required (full trays); no overflow; use L804 for Line 1.

e. Mixed AADC: required (no minimum); for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or L806, as appropriate.

4.3 Line 2

Line 2: PERIOD or NEWS (as appropriate), LTRS BC, and, on mixed AADC trays: WKG.

5.0 DOCUMENTATION

The mailer must be prepared to support information on mailing statements with documentation meeting the standards in P012 that describes the mailing in sufficient detail to allow verification of the accompanying mailing"s compliance with applicable preparation and eligibility standards. Combined mailings of Periodicals publications must also be documented under M210. A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing.

M820 Flat-Size Mail—(Except Preferred Periodicals and Nonprofit Standard Mail)

1.0 BASIC STANDARDS

1.1 Standards

Flat-size Automation First-Class, Barcoded rate Regular and automation-compatible Publications Service Periodicals, and Automation Standard Mail must be prepared under M820, subject to the basic eligibility standards applicable to the rate claimed. Presort, labeling, and package, sack, and tray preparation are subject to the general standards in M010 through M030. All pieces in a mailing must be in the same processing category and must be presorted together to the finest extent required.

1.2 Packages

All pieces must be prepared in packages. When the pieces for a presort destination must be prepared in more than one package or in packages each with fewer pieces than the minimum required (because of size or total number of pieces), rate eligibility is not affected if the total number of pieces for that destination exceeds the applicable minimum. Firm packages are allowed only in Publications Service mailings.

1.3 Standard Mail (A)

Pieces of Standard Mail (A) that, by size, could qualify for an Automation rate as either a letter or a flat, and that are prepared as palletized flats at Automation rates for flats or at Enhanced Carrier Route rates, may be prepared as palletized flats at Regular nonletter rates as well if the number of Regular nonletter rate pieces does not exceed 10% of the total number of pieces in the entire mailing job (regardless of rate).

1.4 Marking

First-Class pieces must be marked "First-Class" and "AUTO." Standard Mail must be marked either "STD" or "Standard" and "AUTO." No markings are required on Periodicals pieces.

1.5 Other Rates

A single mailing (e.g., Automation First-Class) may include pieces prepared at all available rate levels (e.g., 3/5 and Basic); all may be reported on the same mailing statement and documentation. Other combinations are permitted only when allowed by standard.

2.0 PREPARATION—FIRST-CLASS MAIL

2.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (10-piece minimum, fewer not permitted); use red Label D or optional endorsement line (OEL).

b. 3-digit: required (10-piece minimum, fewer not permitted); use green Label 3 or OEL.

c. ADC: required (10-piece minimum, fewer not permitted); use pink Label A or OEL.

d. Mixed ADC: required (no minimum); use tan Label MS or OEL.

2.2 Tray Preparation

Tray size, presort sequence, and labeling:

a. 5-digit: required full trays, no overflow; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required full trays, no overflow; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. ADC: required full trays, no overflow; use L004 for Line 1.

e. Mixed ADC: required (no minimum); use MXD, followed by the entry 3-digit facility city/state/ZIP shown in L002, Column A (use lowest ZIP in range) for Line 1.

2.3 Line 2

Line 2: FCM FLTS BC, and:

a. Mixed ADC sacks: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

3.0 PREPARATION—REGULAR PERIODICALS

3.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. 5-digit: required (six-piece minimum, fewer not permitted); use red Label D or optional endorsement line (OEL).

b. 3-digit: required (six-piece minimum, fewer not permitted); use green Label 3 or OEL.

c. ADC: required (six-piece minimum, fewer not permitted); use pink Label A or OEL.

d. Mixed ADC: required (no minimum); use tan Label MS or OEL.

3.2 Sack Preparation

Sack size, presort sequence, and labeling:

a. 5-digit: required at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required at 24 pieces, optional with one six-piece package minimum; use L002, Column A, for Line 1.

c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.

d. ADC: required at 24 pieces, optional with one six-piece package minimum; use L004 for Line 1.

e. Mixed ADC: required (no minimum); for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or use MXD, followed by the entry ADC facility city/state/ZIP shown in L004, as appropriate.

3.3 Line 2

Line 2: PERIOD or NEWS (as appropriate), FLTS BC, and:

a. Mixed ADC sacks: WKG.

b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

4.0 PREPARATION—PUBLICATIONS SERVICE

4.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:

a. Firm: optional (two-piece minimum); use blue Label F or optional endorsement line (OEL).

b. Carrier Route: optional (six-piece minimum, fewer not permitted); use purple Label CR or OEL.

c. 5-digit: required (six-piece minimum, fewer not permitted); use red Label D or OEL.

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d. 3-digit: required (six-piece minimum, fewer not permitted); use green Label 3 or OEL.
e. ADC: required (six-piece minimum, fewer not permitted); use pink Label A or OEL.
f. Mixed ADC: required (no minimum); use tan Label MS or OEL.

4.2 Sack Preparation

Sack size, presort sequence, and labeling:
a. Carrier route: required for rate eligibility at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 5-digit carrier routes: (carrier route packages only) required for rate eligibility (no minimum); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
c. 5-digit: required at 24 pieces, optional with one six-piece package minimum; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
d. 3-digit: required at 24 pieces, optional with one six-piece package minimum; use L002, Column A, for Line 1.
e. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
f. ADC: required at 24 pieces, optional with one six-piece package minimum; use L004 for Line 1.
g. Mixed ADC: required (no minimum); for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or use MXD, followed by the entry ADC facility city/state/ZIP shown in L004, as appropriate.

4.3 Line 2

Line 2: PERIOD or NEWS (as appropriate), FLTS, and:
a. Carrier Route sacks: LOT (or WSH or WSS if applicable), route type and number.
b. 5-digit carrier routes sacks: CR-RTS.
c. 5-digit, 3-digit, and ADC sacks: BC.
d. Mixed ADC sacks: BC WKG.
e. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

5.0 PREPARATION—STANDARD MAIL

5.1 Package Size, Presort, and Labeling

Package size, presort sequence, and labeling:
a. 5-digit: required (10-piece minimum, fewer not permitted); use red Label D or optional endorsement line (OEL).
b. 3-digit: required (10-piece minimum, fewer not permitted); use green Label 3 or OEL.
c. ADC: required (10-piece minimum, fewer not permitted); use pink Label A or OEL.
d. Mixed ADC: required (no minimum); use tan Label MS or OEL.

5.2 When to Sack

A sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:
a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum, those that weigh more must be prepared using the 15-pound minimum.
b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.
c. Mailers must note on the accompanying mailing statement whether they applied the 125-piece ("PCS") or 15-pound ("WT") threshold or if the method in 5.2b ("BOTH") was used.

5.3 Sack Preparation

Sack size, presort sequence, and labeling:
a. 5-digit: required (125-piece/15-pound minimum, smaller volume prohibited); use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.
b. 3-digit: required (125-piece/15-pound minimum, smaller volume prohibited); use L002, Column A, for Line 1.
c. Entry SCF 3-digit(s): required (no minimum); use L002, Column A, for Line 1.
d. ADC: required (125-piece/15-pound minimum, smaller volume prohibited); use L004 for Line 1.
e. Mixed ADC: required (no minimum); for Line 1, use L805 (mail entered by the mailer at an ASF or BMC) or use MXD, followed by the entry ADC facility city/state/ZIP shown in L004, as appropriate.

5.4 Line 2

Line 2: STD FLTS BC and:
a. Mixed ADC sacks: WKG.
b. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

6.0 DOCUMENTATION

The mailer must be prepared to support information on mailing statements with documentation meeting the standards in P012 that describes the mailing in sufficient detail to allow verification of the accompanying mailing's compliance with applicable preparation and eligibility standards. Combined mailings of Periodicals publications must also be documented under M210. A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing.

M890 Preferred Periodicals and Nonprofit Standard Mail

M891 ZIP+4 Presort—Tray-Based Letter-Size Mailings

[Text of current M812, revised to apply only to Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Preferred Periodicals and Nonprofit Standard Mail claimed at a ZIP+4 presort rate must be prepared as a tray-based mailing under 1.2 through 1.7, 2.0, 4.0, and 5.0, or as a package-based mailing under M892. Grouping, packaging, labeling, and traying are subject to M010 through M030.

1.2 Automated Sites

Mailings consisting entirely of pieces for the 3-digit areas listed in L801 ("automated sites") may be prepared under 3.0 rather than 2.0. Pieces for other ZIP Code areas must be prepared in a separate mailing.

1.3 Grouping

Grouping is required for pieces for the same 3-digit ZIP Code prefix in SCF trays and for pieces for the same AADC area in working trays. Grouping by ZIP Code is not required in 5-digit, city, or 3-digit trays.

1.4 Packaging

Packaging is required:
a. For mailings consisting entirely of pieces that qualify by size for First-Class

card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.
b. For mail in overflow AADC trays, in mixed AADC trays, and in a less-than-full working tray. Appropriate package labels are required in these trays.

1.5 No Packaging

Packaging may not be used for larger than card-size pieces, except that:
a. Mail in overflow trays must be packaged and labeled correctly as for the corresponding trays (mail in a less-than-full tray for the entry SCF must be sorted and labeled as 3-digit packages).
b. Mail in AADC trays may be packaged, and mail in mixed AADC trays must be packaged into AADC packages.

1.6 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation and may be marked "ZIP+4" or "5-digit ZIP+4" (as appropriate). No marking is required on Periodicals.

1.7 Carrier Route

ZIP+4 rate mail and carrier route presort (or walk-sequence) rate mail may not be included in the same mailing or reported on the same mailing statement.

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[In 2.2b and 2.3, replace "second-class" with "Periodicals"; no other change to 2.0 or 3.0. Revise succeeding sections as follows:]

4.0 RESIDUAL MAIL

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail. Residual Periodicals or Standard Mail must be prepared as follows:
a. All pieces must be sorted by AADC area using L804 (or, for automated site mailings, L803).
b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.
c. All AADC packages must be trayed in AADC or mixed AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.
d. Pieces in less-than-full AADC overflow trays and in all mixed AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.
e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING".
f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area (listed by numeric AADC code from the labeling list in L804 or, for automated site mailings, L803) the number of pieces eligible for each rate and the number of pieces with and without a ZIP+4 code.
g. Tray size:
(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.
(2) Mixed AADC: required full trays; one less-than-full tray permitted.
(3) Working: required full trays; one less-than-full tray permitted.
h. Residual presort sequence and Line 1 labeling:
(1) AADC (required); use L804 (or, for automated site mailings, L803) for Line 1.
(2) Mixed AADC (required); for Line 1 use MXD, followed by the applicable entry SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for mail entered by the mailer at an ASF or BMC.
(3) Working (required); for Line 1 use MXD, followed by the applicable entry SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for mail entered by the mailer at an ASF or BMC.
i. For Line 2: class (PERIOD or NEWS (as applicable), or STD), followed by:
(1) For AADC trays: AADC ZIP+4 PRESORT.
(2) For mixed AADC trays: ZIP+4 PRESORT PKGS.
(3) For working trays: ZIP+4 WORKING or ZIP+4 WKG.

5.0 DOCUMENTATION

5.1 Mailing Statement

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M891" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 3.0).

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5.4 Standards

Documentation must include residual pieces and meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M896. Combined mailings of Periodicals publications must also be documented under M210.

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5.6 ZIP Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (Periodicals only); by 3-digit ZIP Code for 3-digit and SCF trays; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed AADC, and working trays. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

5.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays; by lowest assigned 5-digit ZIP Code for city trays (Periodicals only); by 3-digit ZIP Code for 3-digit and SCF trays; by the 3-digit AADC code (preceded by "AADC") in L804 (or L803 for automated sites) for AADC, mixed AADC, and working trays.

5.8 Line Entries

Under either option, each entry must report ZIP+4 coded (including delivery point barcoded) and uncoded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:
a. In Periodicals mailings, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.
b. In Standard Mail, to separately report pieces at each destination entry rate.

5.9 Subtotals and Summaries

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:
a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of

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pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b. Each rate (or weight increment, combination of rate and discount, or other variable in 5.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. (For Periodicals mailings, postage rates and computed totals may be omitted.)

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount, and the net due, to yield the correct total postage.

M892 ZIP+4 Presort—Package-Based Letter-Size Mailings

[Text of current M813, revised to apply only to Barcoded Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Preferred Periodicals and Nonprofit Standard Mail claimed at a ZIP+4 presort rate must be prepared as a package-based mailing under 2.0, 3.0, 5.0, and 6.0, or as a tray-based mailing under M891. Grouping, packaging, labeling, and traying are subject to M010 through M030.

1.2 Automated Sites

Mailings consisting entirely of pieces for the 3-digit areas listed in L801 ("automated sites") may be prepared under 4.0 rather than 3.0. Pieces of Periodicals or Standard Mail for other ZIP Code areas must be prepared in a separate mailing.

* * * * *

1.4 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays if the contents are only residual AADC packages, and full working trays under 4.2 and 4.3.

* * * * *

1.6 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation, and may be marked "ZIP+4" or "5-digit ZIP+4" (as appropriate). No marking is required on Periodicals.

* * * * *

[In 2.1b, 2.2b, 3.2b, 3.3b, and 3.4b, replace "second-class" with "Periodicals"; no other change to 2.0, 3.0, or 4.0.]

5.0 RESIDUAL MAIL

5.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 4.0 are residual (nonqualifying) mail. Residual Periodicals and Standard Mail must be prepared under an option in 5.2 and 5.3. Residual mail from automated site mailings under 4.0 is subject to specific instructions where applicable. All residual mail must be presented under 5.6.

5.2 Options

Residual Periodicals and Standard Mail must be prepared under one of these options and in accordance with 5.3.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 (or L803 or automated site preparation) are placed in AADC trays and mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area in L804 (or L803 for automated site preparation) are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the entry SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 5.3.

5.3 Required Preparation

Subject to 5.1 and 5.2, residual mail must be prepared as follows:

* * * * *

d. Tray presort sequence and Line 1 labeling:

[In 5.3d(4) and 5.3d(5), delete "second- and third-class."]

e. Line 2: class (PERIOD or NEWS (as applicable), or STD), followed by:

(1) On 3-digit and SCF trays (option 5.2b only): ZIP+4 PRESORT.

(2) On AADC trays: AADC ZIP+4 PRESORT.

(3) On mixed AADC trays: ZIP+4 PRESORT PKGS.

(4) On working trays: ZIP+4 WORKING or ZIP+4 WKG.

[Delete current 5.4 and 5.5; renumber current 5.6 as 5.4, no change in text.]

6.0 DOCUMENTATION

6.1 Mailing Statement

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M892" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 4.0).

6.2 When Not Required

Documentation under 6.3 through 6.8 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either has postage affixed at the exact rate for which it qualifies; or is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

6.3 Standards

Documentation must include residual pieces and must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M896. Combined mailings of Periodicals publications must be documented under M210.

6.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 6.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 5.2 and 5.3) reported in a continuous sequential list under 6.6 within each tier listing. Under either option, data must be presented as shown in 6.7 and 6.8.

6.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP Code for 3-digit packages, and, for AADC packages and AADC groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804 (AADC entries must be preceded by "AADC").

6.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP Code for 3-digit packages, and, for AADC packages and AADC groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L803 (for automated site mailings) or L804. AADC entries must be preceded by the prefix "AADC." For Periodicals only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

6.7 Line Entries

Under either option, each entry must separately report ZIP+4 coded (including delivery point barcoded) and uncoded pieces by each rate for which specific numbers of pieces are eligible; and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In Periodicals mailings, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.

b. In Standard Mail, to separately report pieces at each destination entry rate.

6.8 Subtotals and Summaries

Each column of data must be subtotaled at the end of each segment of the report, and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b. Each rate (or weight increment, combination of rate and discount, or other variable in 6.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. (For Periodicals mailings, postage rates and computed totals may be omitted.)

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct total postage.

M893 Barcoded Tray-Based Letter-Size Mailings

[Text of current M814, revised to apply only to Barcoded Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Preferred Periodicals and Nonprofit Standard Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under 1.2 through 1.7, 2.0 through 4.0, or as a package-based mailing under M894 or M895. Grouping, packaging, labeling, and traying are subject to M010 through M030.

1.2 Grouping

Grouping is required for pieces for the same 3-digit ZIP Code prefix in SCF trays, and for pieces for the same AADC area in working trays under 3.0. Grouping by ZIP Code is not required in 5-digit, city, or 3-digit trays.

1.3 Packaging

Packaging is required:

a. For mailings consisting entirely of pieces that qualify by size for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For mail in overflow AADC trays, in mixed AADC trays, and in a less-than-full working tray. Appropriate package labels are required.

1.4 No Packaging

Packaging may not be used for larger than card-size pieces, except that:

a. Mail in overflow trays must be packaged and labeled correctly (as for the corresponding full trays).

b. Mail in a less-than-full tray for the entry SCF must be sorted and labeled as 3-digit packages.

c. Mail in AADC trays may be packaged and mail in mixed AADC trays must be packaged into AADC packages.

d. Mail in a less-than-full working tray under 3.0 must be packaged.

1.5 5–Digit Trays

Only pieces with correct DPBCs may be presorted to 5-digit trays. Other pieces for the same ZIP Code must be sorted to successive trays as appropriate. Preparation of 5-digit trays is required only for mail claimed at the 5-digit Barcoded rate.

1.6 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation and may be marked "Barcoded." No marking is required on Periodicals.

1.7 Carrier Route

Barcoded rate mail and carrier route presort (or walk-sequence) rate mail may not be included in the same mailing or reported on the same mailing statement.

1.8 Heavy Letter Mail

Each tray of heavy letter mail (as defined in C810) must be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. Each pallet, general purpose mail container, or other equipment used to transport trays of heavy letter mail must be labeled "HEAVY LETTER MAIL," in letters not less than 1/2 inch high on white or light-colored stock not smaller than 8 by 11 inches, on two adjacent sides of the pallet or other equipment.

[In 2.2b, replace "second-class" with "Periodicals"; no other change to 2.0.]

* * * * *

3.0 RESIDUAL MAIL

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail.

Residual Periodicals or Standard Mail must be prepared as follows:

a. All pieces must be sorted by AADC area, using L804.

b. Quantities of 10 or more pieces for an AADC area must be prepared as an AADC package (or, if possible, a full AADC tray). Packaging is not required in full AADC trays. AADC packages of fewer than 10 pieces are not permitted.

c. All AADC packages must be trayed in AADC or mixed AADC trays. Pieces remaining after preparing full AADC trays and AADC packages must be placed in separate working trays.

d. Pieces in less-than-full AADC overflow trays and in all mixed AADC trays must be packaged and labeled as AADC packages using a pink Label A or OEL. Separator cards are not permitted.

e. Pieces in working trays must be grouped by AADC area. Pieces in a less-than-full working tray must be prepared in working packages up to 6 inches thick making as few packages as possible without regard to AADC breaks. Separator cards are not permitted. Label packages in less-than-full working trays with either a facing slip marked "WORKING" or "WKG" or the optional endorsement line "WORKING."

f. A piece count listing must be provided for all residual pieces that shows by tray level and AADC area

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(listed by numeric AADC code from the labeling list in L804) the number of pieces eligible for each rate and the number of pieces with a DPBC, the number of pieces without a DPBC that qualify for ZIP+4 rates, and the number of other pieces.

g. Tray size:

(1) AADC: required full trays; one less-than-full overflow tray permitted per destination per mailing.

(2) Mixed AADC: required full trays; one less-than-full tray permitted.

(3) Working: required full trays; one less-than-full tray permitted.

h. Residual presort sequence and Line 1 labeling:

(1) AADC (required); use L804 for Line 1.

(2) Mixed AADC (required); for Line 1 use MXD, followed by the applicable entry SCF name, state, and SCF code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for mail entered by the mailer at an ASF or BMC.

(3) Working (required); for Line 1 use MXD, followed by the applicable entry SCF name, state, and ZIP Code from L002, Column A (facilities identified with three bullets), or Column B, except use L805 for mail entered by the mailer at an ASF or BMC.

i. For Line 2: class (PERIOD or NEWS (applicable), or STD), followed by:

(1) For AADC trays: LTRS AADC BARCODED.

(2) For mixed AADC trays: LTRS BARCODED PKGS.

(3) For working trays: LTRS BARCODED WKG.

4.0 DOCUMENTATION

4.1 Mailing Statement

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The mailing endorsement "M893" must be placed at the top, based on the documentation method used, and "ZIP Code Option"or "Tray Label Option."

* * * * *

4.4 Standards

Documentation must include residual pieces and meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M896. Combined mailings of Periodicals publications must also be documented under M210.

* * * * *

4.6 Zip Code Option

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for city trays (Periodicals only), by 3-digit ZIP Code for 3-digit and SCF trays, by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed AADC, and working trays. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

4.7 Tray Label Option

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray are reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray: by 5-digit ZIP Code for 5-digit trays, by lowest assigned 5-digit ZIP Code for city trays (Periodicals only, by 3-digit ZIP Code for 3-digit and SCF trays, by the 3-digit AADC code (preceded by "AADC") in L804 for AADC, mixed AADC, and working trays.

4.8 Line Entries

Under either option, each entry must report DPBC mail, correctly ZIP+4 coded non-DPBC mail (meeting the standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be subdivided further:

a. In Periodicals mailing, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.

b. In Standard Mail, to separately report pieces at each destination entry rate.

4.9 Subtotals and Summaries

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a DPBC, the number without, the total number of pieces in the mailing, and the percentage with DPBCs.

b. Each rate (or weight increment, combination of rate and discount, or other variable in 4.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. (For Periodicals mailings, postage rates and computed totals may be omitted.)

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct total postage.

M894 Barcoded Two-Tier Package—Based Letter-Size Mailings

[Text of current M815, revised to apply only to Barcoded Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Preferred Periodicals and Nonprofit Standard Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M893, as a two-tier package based mailing under 1.2 through 1.6, 2.0 through 5.0, or as a three-tier package-based mailing under M895. Grouping, packaging, labeling, and traying are subject to M010 through M030.

* * * * *

1.3 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays, full AADC trays if the contents are only residual AADC packages, and full working trays under 4.2 and 4.3.

[Delete current 1.4 and replace with the following:]

1.4 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation and may be marked "Barcoded." No marking is required on Periodicals.

* * * * *

[In 2.1b, 2.2b, 3.2b, 3.3b, and 3.4b, replace "second-class" with "Periodicals"; delete the parenthetical in 2.1c and 2.2c; no other change to 2.0 or 3.0.]

4.0 RESIDUAL MAIL

4.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 and 3.0 are residual (nonqualifying) mail. Residual Periodicals and Standard Mail must be prepared under an option in 4.2 and 4.3. All residual mail must be presented under 4.6.

4.2 Options

Residual Periodicals and Standard Mail must be prepared under one of these options and in accordance with 4.3.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the entry SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 4.3.

4.3 Required Preparation

Subject to 4.1 and 4.2, residual mail must be prepared as follows:

* * * * *

d. Tray presort sequence and Line 1 labeling:

[In 4.3d(4) and 4.3d(5), delete "second- and third-class."]

e. Line 2: class (PERIOD or NEWS (as applicable), or STD), followed by:

(1) On 3-digit and SCF trays (option 5.2b only); ZIP+4 PRESORT.

(2) On AADC trays: AADC ZIP+4 PRESORT.

(3) On mixed AADC trays: ZIP+4 PRESORT PKGS.

(4) On working trays: ZIP+4 WORKING or ZIP+4 WKG.

[Delete current 4.4 and 4.5; renumber current 4.6 as 4.4, no change in text.]

5.0 DOCUMENTATION

5.1 Mailing Statement

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M894" must be placed at the top.

5.2 Standards

Documentation must include residual pieces and must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M896. Combined mailings of Periodicals publications must be documented under M210.

5.3 When Not Required

Documentation under 5.4 through 5.8 is not required if each piece in the mailing is correctly delivery point barcoded and either has postage affixed at the exact rate for which it qualifies; or is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

5.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each tier must be further segmented by type of package/grouping (5-digit, 3-digit, AADC, as applicable) under 5.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 4.2 and 4.3) reported in a continuous sequential list under 5.6 within each tier listing. Under either option, data must be presented as shown in 5.7 and 5.8.

5.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by 5-digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP Code for 3-digit packages, and, for AADC packages and AADC groups (in working trays) under 5.2 and 5.3, by the applicable 3-digit AADC code in L804 (AADC entries must be preceded by "AADC").

5.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: 5-digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP Code for 3-digit packages, and, for AADC packages and AADC groups (in working trays) under 4.2 and 4.3, by the applicable 3-digit AADC code in L804. AADC entries must be preceded by the prefix "AADC." For Periodicals only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

5.7 Line Entries

Under either option, each entry must separately report DPBC pieces, correctly ZIP+4 coded non-DPBC pieces (meeting the standards in C830), and other pieces, by each rate for which specific numbers of pieces are eligible; and a cumulative total for the segment through that entry. As applicable, data on each line must be subdivided further.

a. In Periodicals mailings, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.

In Standard Mail, to separately report pieces at each destination entry rate.

5.8 Subtotals and Summaries

Each column of data must be subtotaled at the end of each segment of the report, and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a DPBC, the number without, the total number of pieces in the mailing, and the percentage with DPBCs.

b. Each rate (or weight increment, combination of rate and discount, or other variable in 5.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. (For Periodicals mailings, postage rates and computed totals may be omitted.)

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount, and the net due, to yield the correct total postage.

M895 Barcoded Three-Tier Package-Based Letter-Size Mailings [Text of current M816, revised to apply only to Barcoded Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Preferred Periodicals and Nonprofit Standards Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M893, as a two-tier package-based mailing under M894, or as a three-tier package-based mailing under 2.0 through 7.0. Grouping, packaging, labeling, and traying are subject to M010 through M030.

* * * * *

1.3 No Packaging

Packages or separator cards are not required for larger than card-size pieces in full 5-digit trays in the 5-digit tier; nor in the 3-digit tier in full city, full 3-digit, full SCF, and full AADC trays

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containing only residual AADC packages; nor in full working trays under 6.2 and 6.3.

* * * * *

1.5 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation, and may be "marked" Barcoded." No marking is required on Periodicals.

* * * * *

[In 4.1a, 4.2a, 5.2a, 5.3a, and 5.4b, replace "second-class" with "Periodicals"; delete the parenthetical "optional for . . . " in 4.1b and 4.2b; no other change to 2.0 through 5.0.]

6.0 RESIDUAL MAIL

6.1 Definition

Pieces remaining after packages and trays are prepared under 2.0 through 5.0 are residual (nonqualifying) mail. Residual Periodicals and Standard Mail must be prepared under an option in 6.2 and 6.3. All residual mail must be presented under 6.6.

6.2 Options

Residual Periodicals and Standard mail must be prepared under one of these options and in accordance with 6.3.

a. Separate AADC Preparation. Residual mail is trayed separately from qualifying mail. Groups of 10 or more residual pieces to an AADC area in L804 are placed in AADC trays and mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. Residual pieces in mixed AADC trays and in less-than-full AADC trays must be prepared and labeled as AADC packages. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

b. Intermixed SCF/AADC Preparation. Some residual mail is trayed with qualifying mail. Groups of 10 or more residual pieces to the same AADC area in L804 are packaged by AADC and placed in AADC trays (with qualifying mail) and in mixed AADC trays. AADC trays are required if there are enough pieces to fill a tray, but less-than-full AADC trays are permitted. AADC trays containing only residual AADC packages are allowed. Mixed AADC trays are limited to residual AADC packages. At the mailer's option, residual mail may be packaged by 3-digit ZIP Code and placed in SCF trays (remaining pieces sorted by AADC). A less-than-full tray for the entry SCF containing only residual packages is allowed. Remaining groups of fewer than 10 pieces to an AADC are placed in separate working trays. Packages and trays must be prepared under 6.3.

6.3 Required Preparation

Subject to 6.1 and 6.2, residual mail must be prepared as follows:

* * * * *

d. Tray presort sequence and Line 1 labeling:

[In 6.3d(4) and 6.3(5), delete "second- and third-class."]

e. Line 2: class (PERIOD, NEWS, or STD), followed by:

(1) On 3-digit and SCF trays (option 6.2b only): ZIP+4 PRESORT.

(2) ON AADC trays: AADC ZIP+4 PRESORT.

(3) On mixed AADC trays: ZIP+4 PRESORT PKGS.

(4) On working trays: ZIP+4 WORKING of ZIP+4WKG.

[Delete current 6.4 and 6.5; renumber current 6.6 as 6.4, no change in text.]

7.0 DOCUMENTATION

7.1 Mailing Statement

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M895" must be placed at the top.

7.2 Standards

Documentation must include residual pieces and must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M896. Combined mailings of Periodicals publications must be documented under M210.

7.3 When Not Required

Documentation under 7.4 through 7.8 is not required if each piece in the mailing is correctly delivery point barcoded and either has postage affixed at the exact rate for which it qualifies; or is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

7.4 Segmentation, Labeling

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each tier must be further segmented by type of package/grouping (5-digit, AADC, as applicable) under 7.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for residual mail under 6.2 and 6.3) reported in a continuous sequential list under 7.6 within each tier listing. Under either option, data must be presented as shown in 7.7 and 7.8.

7.5 Type of Package Option

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code: by digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP code for 3-digit packages, and, for AADC packages and AADC groups (in working trays), by the applicable 3-digit AADC code in L804 (AADC entries must by preceded by "AADC").

7.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code within each tier, regardless of package type: by 5-digit ZIP Code for 5-digit packages, by lowest assigned 5-digit ZIP Code for city packages (Periodicals only), by 3-digit ZIP Code for 3-digit packages, and, for AADC packages and AADC groups (in working trays) under 6.2 and 6.3, by the applicable 3-digit AADC code in L804. AADC entries must be preceded by the prefix "AADC." For Periodicals only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

7.7 Line Entries

Under either option, each entry must separately report DPBC pieces, correctly ZIP+4 coded non-DPBC pieces (meeting the standards in C830), and other pieces, by each rate for which specific numbers of pieces are eligible; and a cumulative total for the segment through that entry. As applicable, data on each line must be subdivided further.

a. In Periodicals mailings, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.

b. In Standard Mail, to separately report pieces at each destination entry rate.

7.8 Subtotals and Summaries

Each column of data must be subtotaled at the end of each segment of the report, and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a DPBC, the number without, the total number of pieces in the mailing, a and the percentage with DPBCs.

b. Each rate (or weight increment, combination of rate and discount, or other variable in 7.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. (For Periodicals mailings, postage rates and computed totals may be omitted.)

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount, and the net due, to yield the correct total postage.

M896 Elective Documentation for Letter-Size Mailings

[Text of current M817; in 1.1, 2.2, 2.4, 3.1c, and 4.8, replace "M812 through M816" with "M891 through M895"; in 1.2, 4.7b, and 4.7d, replace "M817," "M815," and "M812 or M814" with "M896," "M894," and "M891 or M893," respectively; no other change in text.]

[Delete current M818 and M819.]

M897 ZIP+4 Barcoded Flat-Size Mail

[Text of current M823, revised to apply only to Barcoded Preferred Periodicals publications and Nonprofit Standard Mail.]

1.0 BASIC STANDARDS

1.1 Standards

Flat-size Preferred Periodicals and Nonprofit Standard Mail claimed at a ZIP+4 Barcoded presort rate must be prepared as described below. Packaging, labeling, a and sacking are subject to M010 through M030.

* * * * *

1.5 Marking

Standard Mail must be marked "Nonprofit Organization" or the authorized abbreviation, and may be marked "Barcoded." No marking is required on Periodicals.

* * * * *

2.0 PACKAGE PREPARATION—MAILINGS SUBJECT TO 85% RULE

2.1 Package Size, Presort, and Labeling—Periodicals

Package size, presort sequence, and labeling for Periodicals:

a. 5-digit: required at six pieces; smaller packages permitted but do not qualify for Level H rates; use red Label D or optional endorsement line (OEL).

b. City: optional at six pieces; smaller packages permitted but do not qualify for Level H rates; use yellow Label C or OEL.

c. 3-digit: required at six pieces; smaller packages permitted but do not qualify for Level H rates; use green Label 3 or OEL.

d. SCF: required at six pieces; smaller packages permitted; use green Label 3 or OEL.

2.2 Package Size, Presort, and Labeling—Standard Mail

Package size, presort sequence, and labeling for Standard Mail:

a. 5-digit: required at 10 pieces; smaller packages prohibited; use red Label D or optional endorsement line (OEL).

b. 3-digit: required at 10 pieces; smaller packages prohibited; use green Label 3 or OEL.

c. SCF: required at 10 pieces; smaller packages prohibited; use green Label 3 or OEL.

3.0 PACKAGE PREPARATION—MAILINGS NOT SUBJECT TO 85% RULE

3.1 Package Size, Presort, and Labeling—Periodicals

Package size, presort sequence, and labeling for Periodicals:

a. 5-digit (ZIP+4 or DPBC pieces only; see 1.3): required at six pieces; smaller packages prohibited; use red Label D or optional endorsement line (OEL).

b. 5-digit (nonbarcoded pieces only; see 1.3): required at six pieces; smaller packages prohibited; use red Label D or OEL.

c. City: optional at six pieces; smaller packages permitted but do not qualify for Level H rates; use yellow Label C or OEL.

d. 3-digit: required at six pieces; smaller packages permitted but do not qualify for Level H rates; use green Label 3 or OEL.

e. SCF: required at six pieces; smaller packages permitted; use green Label 3 or OEL.

3.2 Package Size, Presort, and Labeling—Standard Mail

Package size, presort sequence, and labeling for Standard Mail:

a. 5-digit (ZIP+4 or DPBC pieces only; see 1.3): required at 10 pieces; smaller packages prohibited; use red Label D or optional endorsement line (OEL).

b. 5-digit (nonbarcoded pieces only; see 1.3): required at 10 pieces; smaller packages prohibited; use red Label D or OEL.

c. 3-digit: required at 10 pieces; smaller packages prohibited; use green Label 3 or OEL.

d. SCF: required at 10 pieces; smaller packages prohibited; use green Label 3 or OEL.

4.0 SACK PREPARATION—QUALIFYING MAIL

4.1 Sack Size, Presort, and Labeling—Periodicals

Sack size, presort sequence, and labeling for Periodicals:.

a. 5-digit: required with four packages; smaller volume permitted; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. City: optional with four packages; smaller volume permitted; use lowest ZIP Code for destination from L001 for Line 1.

c. 3-digit: required with four packages; smaller volume permitted; use L002, Column A, for Line 1.

d. SCF: required with four packages; smaller volume permitted; use L002, Column B, for Line 1.

e. ADC: required with no minimum.

4.2 When to Sack—Standard Mail

For Standard Mail, a sack must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

a. For identical-weight pieces, a single-piece weight of 1.92 ounces (0.12 pound) results in 125 pieces weighing 15 pounds. Identical-weight pieces weighing 1.92 ounces (0.12 pound) or less must be prepared using the 125-piece minimum, those that weigh more must be prepared using the 15-pound minimum.

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or sack by the actual piece count or mail weight for each sack, if documentation can be provided with the mailing that shows (specifically for each sack) the number of pieces and their total weight.

c. Mailers must note on the accompanying mailing statement whether they applied the 125-piece ("PCS") or 15-pound ("WT") threshold or if the method in 4.2b ("BOTH") was used.

4.3 Sack Size, Presort, and Labeling—Standard Mail

Sack size, presort sequence, and labeling Standard Mail, subject to 4.2:

a. 5-digit: required at 125 pieces/15 pounds; smaller volume prohibited; use 5-digit ZIP Code destination of packages for Line 1, preceded for military mail by the correct prefixes under M031.

b. 3-digit: required at 125 pieces/15 pounds; smaller volume prohibited; use L002, Column A, for Line 1.

c. SCF: required at 125 pieces/15 pounds; smaller volume prohibited; use L002, Column B, for Line 1

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d. ADC: required with no minimum; use L004 for Line 1

4.4 Line 2

Line 2: class of mail and FLATS BARCODED (and, on city sacks, CITY right-justified under the ZIP Code for Line 1).

5.0 RESIDUAL MAIL

[In 5.4a, delete "second- or third-class"; no other change in text in 5.0.]

6.0 DOCUMENTATION

[In 6.9c, replace "second-class" with Periodicals"; revise other text as follows:]

* * * * *

6.7 Line Entries

Under either option, the mailer must identify 5-digit, city, 3-digit, SCF and residual packages by the prefixes 5DG, 3DG, SCF, and WKG, respectively. Each entry must separately report ZIP+4 or DPBC pieces, and 5-digit barcoded or nonbarcoded pieces, by each rate for which specific numbers of pieces are eligible; and a cumulative total for the segment through that entry. As applicable, data on each line must be subdivided further in Periodicals mailings, to separately report in-county and outside-county pieces, and Level G/J1 and Level H/J3 rates.

6.8 Actual Piece Count

In Standard Mail for which the mailer used the actual piece count and weight of the mail to prepare sacks ("BOTH"), a separate listing must identify for each sack the total number of pieces it contains and their combined weight.

* * * * *

M898 Elective Documentation for Flat-Size Mailings

[Text of current M825; in 1.1, 2.2, 2.3, 3.1c, 3.4, and 4.5, replace "M823" with "M897"; in 1.2, replace "M825" with "M898"; no other change in text]

[Delete current M827.]

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

P011 Payment

[In 1.5 and 2.3, replace "third-class mail" with "Standard Mail (A)"; in 2.3, replace "fourth-class" with "Standard Mail (B)"; in 4.2 and 5.1, change the reference form "E370" to "E670"; in 5.0 and 5.1, replace "special [bulk] third-class" with "Nonprofit Standard Mail"; no other change in text]

P012 Documentation

1.0 PURPOSE AND BASIC STANDARDS

* * * * *

1.6 When Required

In addition to the correct mailing statement under 3.0, documentation is required for a First-Class or Standard Mail mailing in which all pieces are not of identical weight and full postage at the applicable rate is not affixed to each piece, for all mailings paid with permit imprint in which pieces at different rates are not separated when presented to the USPS. Documentation also must be submitted when specified by the standards for the rate claimed.

* * * * *

2.0 BASIC CONTENT AND FORMAT

[Renumber current 2.1 through 2.6 as 2.2 through 2.7, respectively, and add new 2.1 as follows:]

2.1 Standardized Documentation

Standardized documentation contains the elements described in 2.2 through 2.7, as applicable. Documentation produced by Presort Accuracy Verification and Evaluation (PAVE) or Manifest Analysis and Certification (MAC) software, appropriate for the accompanying class of mail and rate claimed, is considered standardized documentation for purposes of these standards.

2.2 Format and Content

Standardized documentation includes:* * *

* * * * *

3.0 MAILING STATEMENT

[Add to the end of the section:] * * * A facsimile mailing statement produced by Presort Accuracy Verification and Evaluation (PAVE) or Manifest Analysis and Certification (MAC) software, appropriate for the accompanying class of mail and rate claimed, is considered a USPS-approved form for purposes of these standards.

P013 Rate Application and Computation

1.0 BASIC STANDARDS

* * * * *

1.3 Determining Single-Piece Weight

To determine single-piece weight in any mailing at single-piece rates, in a bulk rate mailing at Standard Mail parcel post or Special Standard Mail rates, or in any bulk rate mailing of nonidentical-weight pieces (except at Periodicals rates), weight each piece individually. To determine single-piece weight in any other bulk or presort rate mailing (except at Periodicals rates), compute the average weight of a single piece by weighing a sample group of at least 10 randomly selected pieces and dividing the total sample weight by the number of pieces in the sample. Express all single-piece weights in decimal pounds rounded off to four decimal places.

1.4 Affixing Postage—Single-Piece Rate Mailings

In a postage-affixed single-piece rate Express Mail, First-Class, Priority Mail, or Standard Mail (A) mailing, or in any postage-affixed Standard Mail (B) mailing, the mailer must affix to each piece a value in adhesive stamps, precanceled stamps, or meter impressions equal to at least the postage required for the piece. (In a Standard Mail bound printed matter rate mailing, the postage affixed to each piece must be at least the sum of the applicable per pound charge based on the weight of the piece plus one unit of the applicable per piece charge.) Less than the correct amount of postage may be affixed only when allowed by standard or specific USPS authorization.

1.5 Affixing Postage—Other Than Single-Piece Rate Mailings

In a First-Class, Priority Mail, or Standard Mail postage-affixed mailing at other than a single-piece rate, the mailer must affix to each piece a value in precanceled stamps or meter impressions that equals at least the full amount of postage at the applicable rate; or

a. For First-Class and Priority Mail, the applicable postage at the lowest rate in the mailing (or a lesser amount if authorized under P760) if all additional postage in paid at the time of mailing.

b. For Standard Mail (A), the minimum per piece charge, with the pound rate charge paid with permit imprint under the applicable standards; or the applicable postage at the lowest rate in the mailing (or a lesser amount if authorized under P760) if all additional postage is paid at the time of mailing.

c. For Standard Mail bound printed matter, the postage affixed to each piece must be at least the sum of the applicable per pound charge plus one unit of the applicable per piece charge.

* * * * *

3.0 RATE APPLICATION—PERIODICALS

3.1 Rate Elements

Postage for all Periodicals includes a pound rate charge, a piece rate charge,

and any discounts and reductions for which the mail qualifies under the corresponding standards.

3.2 Applying Pound Rate

Pound rates are applied to the weight of the mailpieces in the mailing. Regular and preferred outside-county pound rates are based on the weight of the advertising portion of the mail sent to each postal zone (as computed from the office of entry) and the weight of the nonadvertising portion without regard to zone. In-county pound rates consist of a delivery office zone rate and a uniform (unzoned) rate for all other eligible mailpieces delivered within the county of publication. Publications Service pound rates are based on the weight of the mail sent to each postal zone (as computed from the office of entry) without regard to advertising content. The minimum pound rate charge for any zone or other group for which a per pound charge is computed is 1 unit (1 pound) of the pound rate charge. For example, three 2-ounce pieces for a zone are subject to the minimum 1-pound charge.

3.3 Computing Weight of Advertising Portion

Advertising content is a postage factor only for Regular and Preferred Periodicals. The pound rate charge is the sum of the charges for the computed weight of the advertising portion of copies to each zone, plus an additional flat (unzoned) charge for the total weight of the nonadvertising portion of all copies to all zones. For publications containing advertising, the minimum pound rate charge for any zone to which copies are mailed is 1 unit (pound) of the advertising pound rate charge. The minimum pound rate charge for the nonadvertising portion is that which applies to all weight not reported in the advertising (zoned) portion. (Authorized nonprofit rate publications with an advertising percentage that is 10% or less are considered 100% nonadvertising. When computing the pound rates and the nonadvertising adjustment, use "0" as the "advertising percentage." Authorized nonprofit rate publications claiming 0% advertising must pay the nonadvertising pound rate for the entire weight of all copies to all zones.)

* * * * *

4.0 RATE APPLICATION—STANDARD MAIL (A)

4.1 Single-Piece Rates

[In 4.1a, 4.1b, and 4.1c, replace "third-class" with "Standard Mail (A)" and revise the opening of the section as follows:]

Single-piece rate postage is based on the rate that applies to the weight (postage) increment of each piece. Single-piece rates are applied differently depending on weight: * * *

* * * * *

4.3 Bulk Rates

Bulk rates are based on the weight of the pieces and are applied differently to pieces weighing under or equal to a "break point" and those weighing more:

a. Pieces weighing 0.2059 pound (3.2941 ounces) or less (Automation or Enhanced Carrier Route rates), 0.2067 pound (3.3071 ounces) or less (Regular rates), or 0.2149 pound (3.4383 ounces) or less (Nonprofit rates), are subject to the minimum applicable rate per piece.

b. Pieces weighing more than 0.2059 pound (3.2941 ounces) (Automation or Enhanced Carrier Route rates), 0.2067 pound (3.3071 ounces) (Regular rates), or 0.2149 pound (3.4383 ounces) (Nonprofit rates), are subject to a per piece charge plus a per pound charge based on the weight of the piece.

5.0 RATE APPLICATION—STANDARD MAIL (B)

* * * * *

5.4 Special Standard Mail

The Special Standard Mail rate is charged per pound or fraction thereof; any fraction of a pound is considered a whole pound. (Rate application is identical for the single-piece and presort rates.) For example, if an item weighs 4.225 pounds, the weight (postage) increment is 5 pounds. The minimum postage rate per piece is that for a piece weighing 1 pound.

* * * * *

7.0 COMPUTING POSTAGE—PERIODICALS

* * * * *

7.4 Pound Rate

To compute the pound rate postage for Regular and Preferred outside-county copies, multiply the weight of the advertising and nonadvertising portions by the corresponding rates, add the unrounded results, and subtract any applicable discounts. To compute the pound rate postage for in-county and Publications Service copies, multiply their total weight by the corresponding rate per pound.

* * * * *

7.6 Nonadvertising Adjustment

To compute the nonadvertising adjustment (where applicable), subtract the advertising percentage from 100, multiply the remainder by the nonadvertising adjustment per piece, multiply the unrounded product by the number of pieces, and round off the product to four decimal places.

* * * * *

8.0 COMPUTING POSTAGE—STANDARD MAIL (A)

* * * * *

9.0 COMPUTING POSTAGE—STANDARD MAIL (B)

[In 9.1b and 9.3, replace "fourth-class" with "Standard Mail (B)"; in 9.4, replace "R400" with "R600"; combine current 9.5 and 9.6 and revise as follows:]

9.5 Permit Imprint

In a permit imprint mailing:

a. At other than bulk bound printed matter rates, for each weight increment multiply the number of pieces by the applicable rate per piece, rounding off each product to four decimal places. Add the products and round up the total postage to the nearest whole cent.

b. At bulk bound printed matter rates, for each zone multiply the total unrounded weight of the pieces by the applicable rate per pound (round off each product to four decimal places) and multiply the number of pieces by the applicable rate per piece without rounding. Add the pound and piece charges and round up the total postage to the nearest whole cent.

P014 Refunds and Exchanges

[In 2.3, replace "First-Class, third-class single-piece, and fourth-class mail" with "First-Class Mail, single-piece rate Standard Mail (A), or Standard Mail (B)"; in 4.1, replace "First-Class or bulk third-class" with "First-Class Mail or bulk rate Standard Mail (A)"; in 4.12, replace "Presorted First-Class, ZIP+4 Presort, or one of the Barcoded" with "Automation"; in 4.13, replace "[T]hird-[C]lass" with "Standard Mail (A)"; in 4.13c, replace "3/5 presort, basic ZIP+4, or one of the Barcoded minimum per-piece rates" with "Nonprofit 3/5 presort, Nonprofit Basic ZIP+4, or one of the Nonprofit Barcoded minimum per piece rates for Nonprofit Standard Mail, or an Automation minimum per piece rate for other Standard Mail (A)"; in 4.14d, replace "First- or third-class" with "First-Class or Standard Mail (A)," delete 4.14e, redesignate 4.14f as 4.14e and replace "third-class" with "Standard Class (A)"; delete 4.17c and redesignate 4.17d and 4.17e as 4.17c and 4.17d, respectively; in redesignated 4.17d, replace "in (b) (and (c) and (d), as applicable)" with "in (b) (and (c) if applicable)"; no other change in text.]

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P020 Postage Stamps and Stationery

P021 Stationery Bearing Postage

[In 1.1b, replace "special bulk third-class" with "Nonprofit Standard Mail"; in 2.5b, replace "Express, First-, or third-class mail" with "Express Mail, First-Class, or Standard Mail (A); in 2.5a, 2.5c, and 2.5d, replace "third-class," "THIRD-CLASS," and "third-class" with "Standard Mail (A)," "STANDARD MAIL," and "Standard Mail (A)," respectively; no other change in text.]

* * * * *

P023 Precanceled Stamps

[In 1.2, replace "third-class" with "Standard Mail (A)"; in 1.12, replace "Third-Class Mail" with "Standard Mail"; in 3.5a, replace "third-class mail" with "Standard Mail"; no other change in text.]

P030 Postage Meters and Meter Stamps

[In 1.4, replace "second-class" with "Periodicals"; in 1.5 and 1.5c, replace "special fourth-class" with "Special Standard Mail"; in 4.8 and 4.9, replace "third- or fourth-class" with "Standard Mail"; in 5.3a, replace "First- or third-class mail" with "First-Class or Standard Mail (A)"; no other change in text.]

P040 Permit Imprints

[In 2.5 and 3.5b, replace "bulk third-class mail" with "bulk rate Standard Mail (A)"; in 3.2, replace "[S]econd-[C]lass Mail" with "Periodicals"; in 3.3, replace "[T]hird- and [F]ourth [C]lass" with "Standard Mail"; in 3.5a, replace "third- or fourth-class" with "Standard Mail"; in Exhibit 4.1a, replace "Presorted," "ZIP+4 Presort," "Third-Class," "Bulk Rate," "Fourth-Class," and "Special Fourth-Class" with "Presort," "First-Class Mail Auto," "Standard Mail (A)," "Presort," "Standard Mail (B)," and "Special Standard Mail," respectively; in Exhibit 4.1b, replace "Presorted," "Third- and Fourth-Class," "Third-Class," "Bulk Rate," "Bulk Rate Car-Rt Sort," "Bulk Rate," "Third-Class," "Fourth-Class," and "Special Fourth-Class" with "Presort," "Standard Mail" "Standard Mail (A)," "Presort," "Enhanced Carrier Route," "Presort," "Standard Mail (A)," "Standard Mail (B)," and "Special Standard Mail," respectively; no other change in text.]

P070 Mixed Classes

[In 1.1, replace "second-, third-, or fourth-class" with "Periodicals or Standard Mail"; in 1.1, 1.2, 2.1, 2.2, 2.4, 2.5, 2.5d, 2.6, 2.6d, 2.7, 2.9, 2.9b, and 3.2, replace "First- or third class" with "First-Class or Standard Mail (A)"; in 1.3, 2.7, and 2.8, replace "third-class' with "Standard Mail (A)"; in 2.0, 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 2.9, 2.9a, and 4.2, replace "second-class" with "Periodicals"; in 3.0, replace "third- and fourth-class" with "Standard Mail"; in 5.0 and 5.4, replace "special fourth-class" with "Special Standard Mail"; no other change in text.]

P100 First-Class Mail

* * * * *

2.0 RETAIL SINGLE-PIECE RATES

[In 2.1, replace "regular" with "Retail."]

* * * * *

4.0 RETAIL PRESORT RATES

4.1 Payment Methods

Postage on mailings made at Retail Presort First-Class rates must be paid with meter stamps, permit imprints, or precanceled postage, subject to the corresponding standards. All pieces in a mailing must be paid with the same method unless otherwise permitted by standard or USPS authorization.

4.2 Postage Affixed, Generally

Unless permitted by other standards or authorized by the USPS, when precanceled postage or meter stamps are used, each piece must bear the correct postage at the Retail First-Class rate for which it qualifies.

[Delete current 4.3, 4.4, and 4.5, and renumber 4.6 as 4.3.]

* * * * *

5.0 AUTOMATION RATES

5.1 Payment Methods

Postage on mailings made at Automation rates must be paid with meter stamps, permit imprints, or precanceled postage, subject to the corresponding standards. All pieces in a mailing must be paid by the same method unless otherwise permitted by standard or USPS authorization. Permit imprints may be used for mailings of nonidentical-weight pieces only if authorized by the RCSC serving the mailing post office.

5.2 Postage Affixed, Generally

Unless permitted by other standards (e.g., 5.2c) or authorized by the USPS, when precanceled postage or meter stamps are used, only one payment method may be used in a mailing and each piece must bear the correct postage at the rate for which it qualified. In a metered or precanceled stamp mailing:

a. Each piece weighing more than 1 ounce must bear the correct amount of additional postage to pay for the additional ounces.

b. Flat-size pieces must bear enough postage to include the nonstandard surcharge if applicable.

c. Each piece may bear postage at the lowest rate applicable to pieces in the mailing if all additional postage is paid at the time of mailing by advance deposit account or by a meter strip affixed to the required mailing statement.

d. Documentation meeting the standards in P012 must be presented with the mailing statement to show the number of pieces at each rate and the computation of the additional postage due for pieces not bearing full postage at the applicable rate (i.e., the difference between what the pieces bear and the correct postage at the rate for which each qualifies).

* * * * *

P200 Periodicals

[In 1.3, 1.4, 1.9, 1.11, 1.12, 2.4, and 4.0, replace "second-class" with "Periodicals"; in 1.9, replace "third- or fourth-class" with "Standard Mail"; revise other sections as follows:]

* * * * *

2.0 MONTHLY MAILINGS STATEMENT

* * * * *

2.4 Waiving Advertising Rates

[Revise the first sentence to read:]

Instead of marking a copy of each issue to show the advertising and nonadvertising portions, the publisher may pay postage at the advertising zone rates on both portions of all issues or editions of a Periodicals publication (except a requester or Publications Service publication). * * *

[Delete current 3.0 (key rates were eliminated as of 11/1/95); redesignate 4.0 as 3.0; delete current P300 and P400 but incorporate text into new P600 as shown below; no change in P500.]

* * * * *

P600 Standard Mail

1.0 BASIC INFORMATION

1.1 Payment Method

Subject to the corresponding standards, postage for single-piece rate Standard Mail may be paid by any method; postage for bulk rate Standard Mail may be paid with meter or permit imprints. Postage for bulk rate Standard Mail (A) may also be paid with precanceled stamps. Postage-affixed pieces must bear the correct postage unless excepted by standard. A permit imprint may be used for mailings of nonidentical-weight pieces only if authorized by the RCSC serving the office of mailing. The mailer is responsible for proper payment of postage.

1.2 Mailing Statement

The mailer must submit a complete and signed mailing statement, as specified in P012, with every Standard Mail mailing for which postage is paid with a permit imprint or claimed at any bulk rate.

2.0 REGULAR, NONPROFIT, AND ENHANCED CARRIER ROUTE RATES

[Text of current P300.2.0, revised as follows:]

2.1 Identical-Weight Pieces

Bulk mailings of identical-weight pieces at 3/5 rates may have postage affixed at the respective rate to each piece in the mailing with additional postage for pieces subject to the basic presort rate paid either by an advance deposit account or with a meter strip affixed to the back of the accompanying mailing statement. The 3/5 presort rate pieces and carrier route presort or walk-sequence rate pieces may not be part of the same mailing nor (except under D600) reported on the same mailing statement.

* * * * *

3.0 AUTOMATION RATES

[Text of current P300.3.0, revised as follows:]

3.1 Method

[Revise the first sentence to read:]

Postage on mailings made at all Automation and Nonprofit ZIP+4 and Barcoded rates must be paid with meter stamps, permit imprints, or precanceled postage, under applicable standards.

* * *

* * * * *

Code	Rate category
	a. First-Class Mail
AC	AUTOMATION CARRIER ROUTE
AV	AUTOMATION 5-DIGIT [Letters]
AT	AUTOMATION 3-DIGIT [Letters]
AF	AUTOMATION 3/5 [Flats]
AB	AUTOMATION BASIC
RP	RETAIL PRESORT
	b. Standard Mail (A)
AC	AUTOMATION CARRIER ROUTE
AV	AUTOMATION 5-DIGIT [Letters]
AT	AUTOMATION 3-DIGIT [Letters]
AF	AUTOMATION 3/5 [Flats]
AB	AUTOMATION BASIC
RA	REGULAR 3/5
RB	REGULAR BASIC
EB	ENHANCED CARRIER ROUTE BASIC
EH	ENHANCED CARRIER ROUTE HIGH DENSITY
ES	ENHANCED CARRIER ROUTE SATURATION
ZB	NONPROFIT 5-DIGIT ZIP+4 BARCODED
TB	NONPROFIT 3-DIGIT ZIP+4 BARCODED
BB	NONPROFIT BASIC ZIP+4 BARCODED
ZP	NONPROFIT 3/5 ZIP+4
ZN	NONPROFIT BASIC ZIP+4
ST	NONPROFIT SATURATION WALK SEQUENCE
HD	NONPROFIT 125-PIECE WALK SEQUENCE
CP	NONPROFIT CARRIER ROUTE
FD	NONPROFIT 3/5 PRESORT
BA	NONPROFIT BASIC PRESORT
DB	DESTINATION BMC
DS	DESTINATION SCF
DD	DESTINATION DELIVERY UNIT

* * * * *

P700 Special Postage Payment Systems

P710 Manifest Mailing System (MMS)

[In 1.0, replace "second-class" with "Periodicals"; in 2.6 and 3.1, replace "First- or third-class" with "First-Class or Standard Mail (A)"; in Exhibit 3.1, replace "Third-Class" with "Standard Mail (A)"; combine and revise current 3.3 and 3.4 as shown below and renumber current 3.5 as 3.4; no other change in text.]

* * * * *

3.3 Rate Category Abbreviations—Letter-Size Mail

Keylines on letter-size First-Class Mail or bulk Standard Mail (A) must use only the rate category abbreviations in 3.3a or 3.3b, respectively. All mailpieces that qualify for more than one rate of postage must show each rate category abbreviation, separated by a "/" (slash) (e.g., ZP/DS).

P720 Optional Procedure (OP) Mailing System

[In 1.1, replace "First-, third-, and fourth-class" with "First-Class and Standard Mail"; no other change in text.]

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P750 Plant-Verified Drop Shipment (PVDS)

[In 1.1, 1.2b, 1.3a, 2.4, 2.6, 2.12a, and 5.1, replace "[S]econd-class" with "Periodicals"; in 1.2c, 2.5, and 2.11, replace "[T]hird- and [F]ourth-class"

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with "Standard Mail"; in 1.3b, 2.2e, and 2.5, replace "third- or fourth-class" with "Standard Mail"; in 2.7, 2.9, 2.12b, 5.2, and 6.0, replace [T]hird-[C]lass "with "Standard Mail (A)"; in 2.8, 2.12c, 5.3, 7.0, and 7.2, replace "[F]ourth-[C]lass" with "Standard Mail (B)"; no other change in text.]

P760 First-Class or Standard Mail Mailings With Different Postage Payment Methods

[In 1.1 and 4.1, replace "First- or third-class" with "First-Class or Standard Mail (A)"; in 3.1e, 3.2, and 3.3a, replace "third-class" with "Standard Mail (A)"; in 3.3a, replace "Presorted First-Class" with "Retail Presort First-Class"; in Exhibit 4.6, replace "First-Class and Third-Class ZIP+4 Barcoded," "ZIP+4 Barcoded," and "3rd" with "First-Class and Standard Mail Automation and Barcoded"; "Automation or Barcoded," and "STD," respectively; revise 2.0 as shown below; no other change in text.]

* * * * *

2.0 POSTAGE

2.1 Payment for Metered Pieces—First-Class

Metered pieces in a combined mailing must bear postage for the first ounce at an Automation rate for which the pieces are eligible and, if applicable, the full amount of postage due for additional ounces. Additional postage due for metered pieces in a combined mailing is deducted from the mailer's advance deposit account.

2.2 Payment for Metered Pieces—Standard Mail (A)

Metered pieces in a combined mailing must bear postage at an Automation rate (or, in combined Nonprofit mailings only, at a Nonprofit rate) for which the pieces are eligible. Additional postage due for metered pieces in a combined mailing is deducted from the mailer's advance deposit account.

2.3 Payment for Precanceled Pieces—First-Class

Pieces with precanceled stamps in a combined mailing must bear postage for the first ounce in any denomination of precanceled stamp permitted in an Automation rate mailing and the full applicable amount of postage due for additional ounces. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's advance deposit account.

2.4 Payment for Precanceled Pieces—Standard Mail (A)

Pieces with precanceled stamps in a combined mailing must bear postage in any denomination of precanceled stamp permitted in an Automation rate or Nonprofit Barcoded rate mailing. Nonprofit postage may appear only on pieces in a Nonprofit rate mailing that are eligible for and claimed at a Nonprofit rate. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's advance deposit account.

2.5 Permit Imprint—First-Class and Standard Mail (A)

Pieces in a combined mailing may bear the permit imprint of the mailer or the mailer's clients. Postage for the permit imprint part of a combined mailing must be paid by the advance deposit account maintained or combined mailings. Postage is deducted only from this account, regardless of the permit numbers or company permit imprints on pieces in a combined mailing.

R Rates and Fees

R000 Stamps and Stationery

1.0 PLAIN STAMPED ENVELOPES

Kind	Size[1]	Denomination or value	Each (less than 500)	500	1,000
		Quantity and price			
Regular	6¾	$0.32	$0.38	$168.20	$336.40
	10	0.32	0.38	172.00	344.00
Single	6¾	0.32	0.38	169.00	338.00
Window	10	0.32	0.38	173.00	346.00
Special	6¾	0.32	0.38	170.50	341.00
Regular[2]	10	0.32	0.38	175.00	350.00
Bulk Rate:					
Regular	10	0.10	.....	62.00	124.00
Nonprofit	6¾	0.05	.....	33.20	66.40
Regular	10	0.05	.....	37.00	74.00
Nonprofit	6¾	0.05	.....	34.00	68.00
Sngl. Wndw	10	0.05	.....	38.00	76.00

[1] Size 10 includes all intermediate sizes through 10.
[2] Envelopes with multicolor indicia such as a Love stamp or a hologram.

2.0 PERSONALIZED STAMPED ENVELOPES

Kind	Size[1]	Denomination or value	50	500	1,000
		Quantity and price			
Regular	6¾	$0.32	$19.00	$172.60	$345.20
	10	0.32	19.20	176.40	352.80
Single	6¾	0.32	19.10	173.40	346.80
Window	10	0.32	19.30	177.40	354.80
Special	6¾	0.32	19.00	174.90	349.80
Regular[2]	10	0.32	19.20	179.40	358.80
Bulk Rate:					
Regular	10	0.10	.....	66.40	132.80
Nonprofit	6¾	0.05	.....	37.60	75.20

Kind	Size[1]	Denomination or value	50	500	1,000
		Quantity and price			
Regular	10	0.05	.....	41.40	82.80
Nonprofit	6¾	0.05	.....	38.40	76.80
Sngl. Wndw	10	0.05	.....	42.40	84.80

[1] Size 10 includes all intermediate sizes through 10.
[2] Envelopes with multicolor indicia such as a Love stamp or a hologram.

3.0 POSTAL CARDS

Postal cards in sheets, per sheet—$8.40.

Denomination	Description
$0.21	Domestic regular or commemorative, cut single card.
0.21	Domestic regular, sheet of 40.
0.42	Domestic regular, double reply-paid card.

4.0 POSTAL STAMPS

Purpose	Form	Denomination
Regular Postage	Panes of up to 100	$0.01, .02, .03, .04, .05, .10, .20, .23, .25, .29, .30, .32, .35, .40, .45, .46, .50, .52, .55, .60, .75, .78, $1, $2, $3, $5, $10.75.
	Booklets	$0.20 ($2.00 booklet), $0.32 ($3.20 or $6.40 booklets).
	Coils of 100 $0.20, .23 (additional oz. postage), .32..	
	Coils of 500	$0.01, .02, .03, .04, .05, .10, .20, .23, .32, $1.
	Coils of 3,000, Coals of 10,000.	$0.01, .02, .03, .04, .05, .10, .20, .23, .32 $0.05, .32.
Precanceled Postage—Bulk Rate First-Class and Standard Mail (A).	Coil of 500, 3,000, and 10,000.	Various nondenominated; available only to permit holders.
Comemorative	Panes of up to 50	$0.32 or other denominations, including international rates, as announced.
	20-Stamp Booklets	$0.32 ($6.40. booklets).

R100 First-Class Mail

1.0 RETAIL SINGLE-PIECE RATES

1.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110:
Single—$0.21 each
Double—0.42 ($0.21 each part)

1.2 Letters, Flats, and Parcels

Letters, flats, and parcels (i.e., matter not eligible for card rates); surcharge might apply under 9.0:
First ounce or fraction of an ounce—$0.32
Each additional ounce or fraction of an ounce—0.23

2.0 RETAIL PRESORT RATES

2.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110: $0.190 each.

2.2 Letters, Flats, and Parcels

Letters, flats, and parcels (i.e., matter not eligible for card rates); surcharge might apply under 9.0:
First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)—$0.300
(For pieces weighing more than 2 ounces)—0.254
Each additional ounce or fraction of an ounce—0.230

3.0 AUTOMATION BASIC RATES

3.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110: $0.175 each.

3.2 Letter-Size Pieces

Letter-size pieces other than cards:
First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)—$0.270
(For pieces weighing more than 2 ounces)—0.224
Each additional ounce or fraction of an ounce—0.230

3.3 Flat-Size Pieces

Surcharges might apply under 9.0:
First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)—$0.290
(For pieces weighing more than 2 ounces)—0.244
Each additional ounce or fraction of an ounce—0.230

4.0 AUTOMATION 3–DIGIT RATES

4.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110: $0.155 each.

4.2 Letter-Size Pieces

Letter-size pieces other than cards:
First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)—$0.250
(For pieces weighing more than 2 ounces)—0.204
Each additional ounce or fraction of an ounce—0.230

5.0 AUTOMATION 5–DIGIT RATES

5.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110: $0.140 each.

5.2 Letter-Size Pieces

Letter-size pieces other than cards:
First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)—$0.235
(For pieces weighing more than 2 ounces)—0.189
Each additional ounce or fraction of an ounce—0.230

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6.0 AUTOMATION 3/5 RATES (FLAT-SIZE PIECES)

Surcharges might apply under 9.0:

First ounce or fraction of an ounce:

(For pieces weighing not more than 2 ounces)—$0.270

(For pieces weighing more than 2 ounces)—0.224

Each additional ounce or fraction of an ounce—0.230

7.0 AUTOMATION CARRIER ROUTE RATES

7.1 Cards

Single and double postal cards and postcards meeting the standards in C100 and E110: $0.137 each.

7.2 Letter-Size Pieces

Letter-size pieces other than cards:

First ounce or fraction of an ounce:

(For pieces weighing not more than 2 ounces)—$0.232

(For pieces weighing more than 2 ounces)—0.186

Each additional ounce or fraction of an ounce—0.230

	Retail		Automation					
	Single-piece	Presort	Basic (letters)	3-digit (letters)	5-digit (letters)	Carrier route (letters)	Basic (flats)	3/5 (flats)
Letters, flats, and parcels weight not over (ounces):								
1[1]	$0.32	$0.300	$0.270	$0.250	$0.235	$0.232	$0.290	$0.270
2	0.55	0.530	0.500	0.480	0.465	0.462	0.520	0.500
3	0.78	0.714	0.684	0.664	0.649	0.646	0.704	0.684
4	1.01	0.944	0.914	0.894	0.879	0.876	0.934	0.914
5	1.24	1.175	[3]	[3]	[3]	[3]	1.164	1.144
6	1.47	1.404	[3]	[3]	[3]	[3]	1.394	1.374
7	1.70	1.634	[3]	[3]	[3]	[3]	1.624	1.604
8	1.93	1.864	[3]	[3]	[3]	[3]	1.854	1.834
9	2.16	2.094	[3]	[3]	[3]	[3]	2.084	2.064
10	2.39	2.324	[3]	[3]	[3]	[3]	2.314	2.294
11	2.62	2.554	[3]	[3]	[3]	[3]	2.544	2.524
Postcards Postal Cards:								
Single	0.21	0.190	0.175	0.155	0.140	0.137	.....	.....
Double[2]	0.42	0.380						

[1] Surcharges might apply.

[2] Rates shown apply to each single or double postcard when originally mailed; reply half of double postcards must bear full postage at applicable rates when returned.

[3] Weight not to exceed 3.4383 oz.

Summary of First-Class Rates

[Renumber current 10.0 as 8.0; no change in text.]

9.0 NONSTANDARD SURCHARGE

Retail single-piece rate pieces, each $0.11.

Retail Presort and Automation rate pieces, each: $0.05.

[Renumber current 12.0 through 14.0 as 10.0 through 12.0; no change in text.]

R200 Periodicals

[Renumber current 1.0 through 7.0 as 2.0 through 8.0; insert new 1.0 and revise current text as shown below:]

1.0 PUBLICATIONS SERVICE RATES

1.1 Pound Rates

Pound rates, per pound or fraction:

Zone	Rate
Delivery Office	$0.108
SCF	0.129
1 & 2	0.150
3, 4 & 5	0.193
6, 7 & 8	0.311

1.2 Piece Rates

Per addressed piece:

Presort level	Rate
Basic	$0.147
Carrier Route	0.083

1.3 Delivery Office Zone Pieces

For each addressed piece claimed in the pound-rate portion at the delivery office zone rate, the discount is $0.021.

1.4 SCF Zone Pieces

For each addressed piece claimed in the pound-rate portion at the SCF zone rate, the discount is $0.011.

2.0 REGULAR RATES

2.1 Pound Rates

Pound rates are:

For the nonadvertising portion—$0.194 per pound or fraction.

For the advertising portion, per pound or fraction:

Zone	Rate
Delivery Office	$0.218
SCF	0.239
1 & 2	0.259
3	0.268
4	0.294
5	0.332
6	0.372
7	0.420
8	0.462

2.2 Piece Rates

Per addressed piece:

Presort level	Regular	Barcoded (letter-size)	Barcoded (flat-size)
Basic	$0.272	$0.226	$0.237
3/5	0.217	0.188	0.188
Carrier route	0.166		
High density	0.159		
Saturation	0.146		

2.3 Nonadvertising Adjustment

For each 1% of nonadvertising content, the nonadvertising adjustment is $0.00066 per piece.

2.4 Delivery Office Zone Pieces

For each addressed piece claimed in the pound-rate portion at the delivery office zone rate, the discount is $0.021.

2.5 SCF Zone Pieces

For each addressed piece claimed in the pound-rate portion at the SCF zone rate, the discount is $0.011.

* * * * *

6.0 SCIENCE-OF-AGRICULTURE RATES

6.1 Pound Rates

Pound rates are:

For the nonadvertising portion—$0.194 per pound or fraction.

For the advertising portion, per pound or fraction:

Zone	Rate
Delivery Office	$0.135
SCF	0.143
1&2	0.159
3	0.268
4	0.294
5	0.332
6	0.372
7	0.420
8	0.462

6.2 Piece Rates

Per addressed piece:

Presort level	Regular	Barcoded (letter-size)	Barcoded (Flat-Size)
Basic	$0.272	$0.226	$0.237
3/5	0.217	0.188	0.188
Carrier route	0.166		
High density	0.159		
Saturation	0.146		

6.3 Nonadvertising Adjustment

For each 1% of nonadvertising content, the nonadvertising adjustment is $0.00066 per piece,

6.4 Delivery Office Zone Pieces

For each addressed piece claimed in the pound-rate portion at the delviery office zone rate, the discount is $0.021.

6.5 SCF Zone Pieces

For each addressed piece claimed in the pound-rate portion at the SCF zone rate, the discount is $0.011.

7.0 APPLICATION FEES

Original entry"$305.00.

Publications Service entry—$305.00

News agent registry"$50.00.

Additional entry"$85.00.

Reentry"$50.00.

[Delete current R300 and R400, revise and redesignate text of current R300 and R400 as parts of new R600 as shown below; no changes in R500.]

R600 Standard Mail

1.0 REGULAR STANDARD MAIL SINGLE-PIECE RATES

Weight	Rate
Not exceeding 1 oz	$0.32
Over 1 oz., but not exceeding 2 oz	0.55
Over 2 oz., but not exceeding 3 oz	0.78
Over 3 oz., but not exceeding 4 oz	1.01
Over 4 oz., but not exceeding 5 oz	1.24
Over 5 oz., but not exceeding 6 oz	1.47
Over 6 oz., but not exceeding 7 oz	170
Over 7 oz., but not exceeding 8 oz	1.93
Over 8 oz., but not exceeding 9 oz	2.16
Over 9 oz., but not exceeding 10 oz	2.39
Over 10 oz., but not exceeding 11 oz	2.62
Over 11 oz., but not exceeding 13 oz	2.90
Over 13 oz., but not less than 16 oz	2.95

2.0 KEYS AND IDENTIFICATION DEVICES

Weight	Rate
Not exceeding 2 oz	$0.99
Over 2 oz., but not exceeding 4 oz	1.54
Over 4 oz., but not exceeding 6 oz	2.09
Over 6 oz., but not exceeding 8 oz	2.64
Over 8 oz., but not exceeding 10 oz	3.19
Over 10 oz., but not exceeding 12 oz	3.74
Over 12 oz., but not exceeding 14 oz	4.29
Over 14 oz., but less than 16 oz	4.84

3.0 REGULAR STANDARD MAIL BULK RATES

3.1 Letter-Size Minimum Per Piece Rates—Pieces 0.2067 lb. (3.3071 oz.) or less

Entry discount	Basic	3/5
None	$0.261	$0.219
BMC	0.248	0.206
SCF	0.244	0.202

3.2 Nonletter-Size Minimum Per Piece Rates—Pieces 0.2067 lb. (3.3071 oz.) or less

Entry discount	Basic	3/5
None	$0.305	$0.237
BMC	0.292	0.0224
SCF	0.288	0.220

3.3 Piece/Pound Rates—Pieces More Than 0.2067 lb. (3.3071 oz.)

	Basic	3/5
Per Piece Rates*	$0.163	$0.095
Per Pound Rates* (incl. entry discount if appl.):	plus:	plus:
None	$0.687	$0.687
BMC	0.626	0.626
SCF	0.606	0.606

*Each piece is subject to both a piece and a pound rate.

4.0 ENHANCED CARRIER ROUTE STANDARD MAIL BULK RATES

4.1 Minimum Per Pieces Rates—Pieces 0.2059 lb. (3.2941 oz.) or less

Entry discount	Basic	High density	Saturation
None	$0.155	$0.148	$0.135
BMC	0.142	0.135	0.122
SCF	0.137	0.130	0.177
Delivery Unit	0.132	0.125	0.112

4.2 Piece/Pound Rates—Pieces More Than 0.2059 lb. (3.2941 oz.)

	Basic	High density	Saturation
Per Piece Rates*	$0.050	$0.043	$0.030
Per Pound Rates* (incl. entry discount if appl.):	plus	plus	plus
None	0.510	0.510	0.510
BMC	0.446	0.446	0.446
SCF	0.425	0.425	0.425
Delivery Unit	0.399	0.399	0.399

*Each piece is subject to both a piece and a pound rate.

5.0 AUTOMATION STANDARD MAIL BULK RATES

5.1 Letter-Size Minimum Per Piece Rates—Pieces 0.2059 lb. (3.2941 oz.) or Less

Entry discount	Basic	3-Digit	5-Digit	Carrier route
None	$0.175	$0.168	$0.510	$0.141
BMC	0.162	0.155	0.137	0.128
SCF	0.158	0.151	0.133	0.124
Delivery Unit	.....	.....	.....	0.119

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5.2 Flat-Size Minimum Per Piece Rates—Pieces 0.2059 lb. (3.2941 oz.) or Less

Entry discount	Basic	3/5
None	$0.237	$0.190
BMC	0.224	0.177
SCF	0.220	0.173

5.3 Flat-Size Piece/Pound Rates—Pieces More Than 0.2059 lb. (3.2941 oz.)

	Basic	3/5
Per Piece Rates*	$0.132	$0.085
Per Pound Rates* incl. entry discount if appl.):	plus	plus
None	0.510	0.510
BMC	0.449	0.449
SCF	0.429	0.429

*Each piece is subject to both a piece and a pound rate.

6.0 NONPROFIT STANDARD MAIL BULK RATES

6.1 Letter-Size Minimum Per Piece Rates—Pieces 0.2149 lb. (3.4383 oz.) or Less

	Nonautomation rates				Automation rates				
Entry discount	Basic	3/5	Carrier route	Saturation W–S	Basic ZIP+4	3/5 ZIP+4	Basic barcoded	3-digit barcoded	5-digit barcoded
None	$0.124	$0.111	$0.086	$0.083	$0.117	$0.107	$0.106	$0.101	$0.093
BMC	0.112	0.099	0.074	0.071	0.105	0.095	0.094	0.089	0.081
SCF	0.106	0.093	0.068	0.065	0.099	0.089	0.088	0.083	0.075
Delivery Unit	.....	.....	0.063	0.060	.....	.....	.....	.....	.....

Note: See C810 for additional weight restrictions for automation rates.

6.2 Nonletter-Size Minimum Per Piece Rates—Pieces 0.2149 lb. (3.4383 oz.) or Less

	Nonautomation rates					Automation rates				
Entry discount	Basic	3/5	Carrier route	125–PC W–S	Saturation W–S	Basic ZIP+4	3/5 ZIP+4	Basic barcoded	3-digit barcoded	3/5-digit barcoded
None	$0.175	$0.161	$0.128	$0.126	$0.121	.....	.....	$0.149	.....	$0.143
BMC	0.163	0.149	0.116	0.114	0.109	.....	.....	0.137	.....	0.131
SCF	0.157	0.143	0.110	0.108	0.103	.....	.....	0.131	.....	0.125
Delivery Unit	.....	.....	0.105	0.103	0.098	.....	.....	.....	.....	.....

Note: Each piece is subject to both a piece and a pound rate. Automation rates are available only for automation-compatible flats (see C820).

6.3 Piece/Pound Rates—Pieces More Than 0.2149 lb. (3.4383 oz.)

	Nonautomation rates					Automation rates				
	Basic	3/5	Carrier route	125–PC W–S	Saturation W–S	Basic ZIP+4	3/5 ZIP+4	Basic barcoded	3-Digit barcoded	3/5-Digit barcoded
Per Piece Rates*	$0.074	$0.060	$0.027	$0.025	$0.020	.....	.....	$0.048	.....	$0.042
Per pound rates* (incl. entry discount if appl.):	plus	plus	plus	plus	plus	.....	.....	plus	.....	plus
None	0.470	0.470	0.470	0.470	0.470	.....	.....	0.470	.....	0.470
BMC	0.410	0.410	0.410	0.410	0.410	.....	.....	0.410	.....	0.410
SCF	0.386	0.386	0.386	0.386	0.386	.....	.....	0.386	.....	0.386
Delivery Unit	.....	.....	0.362	0.362	0.362	.....	.....	.....	.....	.....

*Each piece subject to both a piece and a pound rate. Automation rates are available only for automation-compatible flats (see C820).

7.0 PARCEL POST

[Insert text and rates from current R400.1.0 with no change.]

8.0 BOUND PRINTED MATTER

8.1 Single-Piece Rates

[Insert text and rates from current R400.2.0 with no change.]

8.2 Bulk Rates

[Insert text and rates from current R400.3.0 with no change.]

8.3 Bulk Rate Computed Postage Amount With Postage Affixed

[Insert text and rates from current R400.4.0 with no change.]

9.0 SPECIAL STANDARD MAIL RATES

[Insert text and rates from current R400.5.0 with no change.]

10.0 LIBRARY RATES

[Insert text and rates from current R400.6.0 with no change.]

11.0 FEES

11.1 Per 12–Month Period

a. Regular, Enhanced Carrier Route, Automation, and Nonprofit Bulk Rates—$85.00.

b. Parcel Post Destination BMC Rate—$85.00.

c. Presorted Special Standard Mail—$85.00.

11.2 Address Correction Service

Manual, per notice issued—$0.50.
Automated, per notice issued—$0.20.

11.3 Pickup

Parcel Post only, per occurrence—$4.95.

12.0 NONSTANDARD SURCHARGE

Applicable to Regular Single-Piece rate pieces only, each—$0.11.

S SPECIAL SERVICES

S000 Miscellaneous Services

* * * * *

S020 Money Orders and Other Services

[Retitle 1.0, 2.0, and 3.0 as "Issuing Money Orders," "Cashing Money Orders," and 'Use of the Federal Reserves System," respectively; add new 4.0, as shown below.]

4.0 NONPOSTAL SERVICES

4.1 Bird Stamps

Migratory-bird hunting and conservation stamps are required by federal law for the hunting of migratory birds, such as ducks and geese. As a convenience to the public, these stamps are sold at all post offices in CAGs A–J and (based on demand) at designated offices in CAGs K and L. These facilities act as agents of the federal government for this function. Blocks composed of two or more attached unused stamps, sold on consignment to any person but not resold, may be redeemed at any time on or before the last day of the stamp year. Stamps validated by signature or stamps that appear removed from a hunting license or identification card are not accepted.

[Redesignate current S030.2.0, 3.0, and 4.0 as S020.4.2, 4.3, and 4.4, respectively; no other changes in text; delete current S030.]

S070 Mixed Classes

[In 1.1, replace "third- or fourth-class mail" with "Standard Mail"; in 1.2, replace "third- and fourth-class mail" with "Standard Mail"; no other change in text.]

S500 Special Services for Express Mail

[In 3.0, replace "third- or fourth-class mail" with "Standard Mail"; no other change in text.]

* * * * *

S913 Insured Mail

[In 1.2a, replace "third- and fourth-class mail" with "Standard Mail"; in 1.2b, replace "third- or fourth-class mail," "Third-Class Mail," and "Fourth-Class Mail" with "Standard Mail," "Standard Mail (A)", and "Standard Mail (B)," respectively; no other change in text.]

S914 Certificate of Mailing

[In 1.2, replace "First-, third-, and fourth-class" with "First-Class and Standard Mail"; in 1.6, replace "third-class mail" with "Standard Mail (A)"; in 2.3, replace "First- and third-class" with "First-Class and Standard Mail (A)"; no other change in text.]

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S917 Return Receipt for Merchandise

[In 1.2, replace "third-class" and "special fourth-class" with "Standard Mail (A)" and "Special Standard Mail," respectively; in 1.3, replace "third-class" and "third-class and fourth-class" with "Standard Mail (A)" and "Standard Mail," respectively; no other change in text.]

S921 Collect on Delivery (COD) Mail

[In 1.2, replace "First-, third-, and fourth-class" with "First-Class and Standard Mail"; no other change in text.]

* * * * *

S923 Merchandise Return Service

[In 1.1, replace "third-class and fourth-class" and "special fourth-class" with "and Standard Mail" and "Special Standard Mail," respectively; in 1.7, replace "third-class, and fourth-class" with "and Standard Mail"; in 1.10, replace "single-piece third-class or fourth-class parcel post" with "Standard Mail single-piece Regular or parcel post"; in 1.11, replace "or third- or fourth-class" and "Special fourth-class" with "Standard Mail (A) or Standard Mail (B)" and "Special Standard Mail," respectively; in 3.2, replace "First-, third-, or fourth-class" with "First-Class or Standard Mail"; in 4.0, replace "third- or fourth-class," "Third-Class Mail," and "Fourth-Class Mail" with "Standard Mail," "Standard Mail (A)", and "Standard Mail (B)," respectively; in 4.7 and 5.6d, replace "third- or fourth-class" with "Standard Mail"; in 4.10, replace "third- and fourth-class" with "Standard Mail"; no other change in text.]

S930 Handling

[In 2.2, replace "third- and fourth-class mail" with "Standard Mail"; in 3.2, replace "both third-class mail and fourth-class mail" with "Standard Mail"; no other change in text.]

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Part III

Environmental Protection Agency

Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5400–1]

Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Policy Statement.

SUMMARY: The Environmental Protection Agency (EPA) today issues its final policy to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, and disclose and correct violations of environmental requirements. Incentives include eliminating or substantially reducing the gravity component of civil penalties and not recommending cases for criminal prosecution where specified conditions are met, to those who voluntarily self-disclose and promptly correct violations. The policy also restates EPA's long-standing practice of not requesting voluntary audit reports to trigger enforcement investigations. This policy was developed in close consultation with the U.S. Department of Justice, states, public interest groups and the regulated community, and will be applied uniformly by the Agency's enforcement programs.

DATES: This policy is effective January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Additional documentation relating to the development of this policy is contained in the environmental auditing public docket. Documents from the docket may be obtained by calling (202) 260–7548, requesting an index to docket #C–94–01, and faxing document requests to (202) 260–4400. Hours of operation are 8 a.m. to 5:30 p.m., Monday through Friday, except legal holidays. Additional contacts are Robert Fentress or Brian Riedel, at (202) 564–4187.

SUPPLEMENTARY INFORMATION:

I. Explanation of Policy

A. Introduction

The Environmental Protection Agency today issues its final policy to enhance protection of human health and the environment by encouraging regulated entities to discover voluntarily, disclose, correct and prevent violations of federal environmental law. Effective 30 days from today, where violations are found through voluntary environmental audits or efforts that reflect a regulated entity's due diligence, and are promptly disclosed and expeditiously corrected, EPA will not seek gravity-based (i.e., non-economic benefit) penalties and will generally not recommend criminal prosecution against the regulated entity. EPA will reduce gravity-based penalties by 75% for violations that are voluntarily discovered, and are promptly disclosed and corrected, even if not found through a formal audit or due diligence. Finally, the policy restates EPA's long-held policy and practice to refrain from routine requests for environmental audit reports.

The policy includes important safeguards to deter irresponsible behavior and protect the public and environment. For example, in addition to prompt disclosure and expeditious correction, the policy requires companies to act to prevent recurrence of the violation and to remedy any environmental harm which may have occurred. Repeated violations or those which result in actual harm or may present imminent and substantial endangerment are not eligible for relief under this policy, and companies will not be allowed to gain an economic advantage over their competitors by delaying their investment in compliance. Corporations remain criminally liable for violations that result from conscious disregard of their obligations under the law, and individuals are liable for criminal misconduct.

The issuance of this policy concludes EPA's eighteen-month public evaluation of the optimum way to encourage voluntary self-policing while preserving fair and effective enforcement. The incentives, conditions and exceptions announced today reflect thoughtful suggestions from the Department of Justice, state attorneys general and local prosecutors, state environmental agencies, the regulated community, and public interest organizations. EPA believes that it has found a balanced and responsible approach, and will conduct a study within three years to determine the effectiveness of this policy.

B. Public Process

One of the Environmental Protection Agency's most important responsibilities is ensuring compliance with federal laws that protect public health and safeguard the environment. Effective deterrence requires inspecting, bringing penalty actions and securing compliance and remediation of harm. But EPA realizes that achieving compliance also requires the cooperation of thousands of businesses and other regulated entities subject to these requirements. Accordingly, in May of 1994, the Administrator asked the Office of Enforcement and Compliance Assurance (OECA) to determine whether additional incentives were needed to encourage voluntary disclosure and correction of violations uncovered during environmental audits.

EPA began its evaluation with a two-day public meeting in July of 1994, in Washington, D.C., followed by a two-day meeting in San Francisco on January 19, 1995 with stakeholders from industry, trade groups, state environmental commissioners and attorneys general, district attorneys, public interest organizations and professional environmental auditors. The Agency also established and maintained a public docket of testimony presented at these meetings and all comment and correspondence submitted to EPA by outside parties on this issue.

In addition to considering opinion and information from stakeholders, the Agency examined other federal and state policies related to self-policing, self-disclosure and correction. The Agency also considered relevant surveys on auditing practices in the private sector. EPA completed the first stage of this effort with the announcement of an interim policy on April 3 of this year, which defined conditions under which EPA would reduce civil penalties and not recommend criminal prosecution for companies that audited, disclosed, and corrected violations.

Interested parties were asked to submit comment on the interim policy by June 30 of this year (60 FR 16875), and EPA received over 300 responses from a wide variety of private and public organizations. (Comments on the interim audit policy are contained in the Auditing Policy Docket, hereinafter, "Docket".) Further, the American Bar Association SONREEL Subcommittee hosted five days of dialogue with representatives from the regulated industry, states and public interest organizations in June and September of this year, which identified options for strengthening the interim policy. The changes to the interim policy announced today reflect insight gained through comments submitted to EPA, the ABA dialogue, and the Agency's practical experience implementing the interim policy.

C. Purpose

This policy is designed to encourage greater compliance with laws and regulations that protect human health and the environment. It promotes a higher standard of self-policing by waiving gravity-based penalties for violations that are promptly disclosed and corrected, and which were discovered through voluntary audits or compliance management systems that demonstrate due diligence. To further promote compliance, the policy reduces gravity-based penalties by 75% for any violation voluntarily discovered and promptly disclosed and corrected, even if not found through an audit or compliance management system.

EPA's enforcement program provides a strong incentive for responsible behavior by imposing stiff sanctions for noncompliance. Enforcement has contributed to the dramatic expansion of environmental auditing measured in numerous recent surveys. For example, more than 90% of the corporate respondents to a 1995 Price-Waterhouse survey who conduct audits said that one of the reasons they did so was to find and correct violations before they were found by government inspectors. (A copy of the Price-Waterhouse survey is contained in the Docket as document VIII–A–76.)

At the same time, because government resources are limited, maximum compliance cannot be achieved without active efforts by the regulated community to police themselves. More than half of the respondents to the same 1995 Price-Waterhouse survey said that they would expand environmental auditing in exchange for reduced penalties for violations discovered and corrected. While many companies already audit or have compliance management programs, EPA believes that the incentives offered in this policy will improve the frequency and quality of these self-monitoring efforts.

D. Incentives for Self-Policing

Section C of EPA's policy identifies the major incentives that EPA will provide to encourage self-policing, self-disclosure, and prompt self-correction. These include not seeking gravity-based civil penalties or reducing them by 75%, declining to recommend criminal prosecution for regulated entities that self-police, and refraining from routine requests for audits. (As noted in Section C of the policy, EPA has refrained from making routine requests for audit reports since issuance of its 1986 policy on environmental auditing.)

1. Eliminating Gravity-Based Penalties

Under Section C(1) of the policy, EPA will not seek gravity-based penalties for violations found through auditing that are promptly disclosed and corrected. Gravity-based penalties will also be waived for violations found through any documented procedure for self-policing, where the company can show that it has a compliance management program that meets the criteria for due diligence in Section B of the policy.

Gravity-based penalties (defined in Section B of the policy) generally reflect the seriousness of the violator's behavior. EPA has elected to waive such penalties for violations discovered through due diligence or environmental audits, recognizing that these voluntary efforts play a critical role in protecting human health and the environment by identifying, correcting and ultimately preventing violations. All of the conditions set forth in Section D, which include prompt disclosure and expeditious correction, must be satisfied for gravity-based penalties to be waived.

As in the interim policy, EPA reserves the right to collect any economic benefit that may have been realized as a result of noncompliance, even where companies meet all other conditions of the policy. Economic benefit may be waived, however, where the Agency determines that it is insignificant.

After considering public comment, EPA has decided to retain the discretion to recover economic benefit for two reasons. First, it provides an incentive to comply on time. Taxpayers expect to pay interest or a penalty fee if their tax payments are late; the same principle should apply to corporations that have delayed their investment in compliance. Second, it is fair because it protects responsible companies from being undercut by their noncomplying competitors, thereby preserving a level playing field. The concept of recovering economic benefit was supported in public comments by many stakeholders, including industry representatives (see, *e.g.*, Docket, II–F–39, II–F–28, and II–F–18).

2. 75% Reduction of Gravity

The policy appropriately limits the complete waiver of gravity-based civil penalties to companies that meet the higher standard of environmental auditing or systematic compliance management. However, to provide additional encouragement for the kind of self-policing that benefits the public, gravity-based penalties will be reduced by 75% for a violation that is voluntarily discovered, promptly disclosed and expeditiously corrected, even if it was not found through an environmental audit and the company cannot document due diligence. EPA expects that this will encourage companies to come forward and work with the Agency to resolve environmental problems and begin to develop an effective compliance management program.

Gravity-based penalties will be reduced 75% only where the company meets all conditions in Sections D(2) through D(9). EPA has eliminated language from the interim policy indicating that penalties may be reduced "up to" 75% where "most" conditions are met, because the Agency believes that all of the conditions in D(2) through D(9) are reasonable and essential to achieving compliance. This change also responds to requests for greater clarity and predictability.

3. No Recommendations for Criminal Prosecution

EPA has never recommended criminal prosecution of a regulated entity based on voluntary disclosure of violations discovered through audits and disclosed to the government before an investigation was already under way. Thus, EPA will not recommend criminal prosecution for a regulated entity that uncovers violations through environmental audits or due diligence, promptly discloses and expeditiously corrects those violations, and meets all other conditions of Section D of the policy.

This policy is limited to good actors, and therefore has important limitations. It will not apply, for example, where corporate officials are consciously involved in or willfully blind to violations, or conceal or condone noncompliance. Since the regulated entity must satisfy all of the conditions of Section D of the policy, violations that caused serious harm or which may pose imminent and substantial endangerment to human health or the environment are not covered by this policy. Finally, EPA reserves the right to recommend prosecution for the criminal conduct of any culpable individual.

Even where all of the conditions of this policy are not met, however, it is important to remember that EPA may decline to recommend prosecution of a company or individual for many other reasons under other Agency enforcement policies. For example, the Agency may decline to recommend prosecution where there is no significant harm or culpability and the individual or corporate defendant has cooperated fully.

Where a company has met the conditions for avoiding a recommendation for criminal prosecution under this policy, it will not face any civil liability for gravity-based penalties. That is because the same conditions for discovery, disclosure, and correction apply in both cases. This represents a clarification of the interim policy, not a substantive change.

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4. No Routine Requests for Audits

EPA is reaffirming its policy, in effect since 1986, to refrain from routine requests for audits. Eighteen months of public testimony and debate have produced no evidence that the Agency has deviated, or should deviate, from this policy.

If the Agency has independent evidence of a violation, it may seek information needed to establish the extent and nature of the problem and the degree of culpability. In general, however, an audit which results in prompt correction clearly will reduce liability, not expand it. Furthermore, a review of the criminal docket did not reveal a single criminal prosecution for violations discovered as a result of an audit self-disclosed to the government.

E. Conditions

Section D describes the nine conditions that a regulated entity must meet in order for the Agency not to seek (or to reduce) gravity-based penalties under the policy. As explained in the Summary above, regulated entities that meet all nine conditions will not face gravity-based civil penalties, and will generally not have to fear criminal prosecution. Where the regulated entity meets all of the conditions except the first (D(1)), EPA will reduce gravity-based penalties by 75%.

1. Discovery of the Violation Through an Environmental Audit or Due Diligence

Under Section D(1), the violation must have been discovered through either (a) an environmental audit that is systematic, objective, and periodic as defined in the 1986 audit policy, or (b) a documented, systematic procedure or practice which reflects the regulated entity's due diligence in preventing, detecting, and correcting violations. The interim policy provided full credit for any violation found through "voluntary self-evaluation," even if the evaluation did not constitute an audit. In order to receive full credit under the final policy, any self-evaluation that is not an audit must be part of a "due diligence" program. Both "environmental audit" and "due diligence" are defined in Section B of the policy.

Where the violation is discovered through a "systematic procedure or practice" which is not an audit, the regulated entity will be asked to document how its program reflects the criteria for due diligence as defined in Section B of the policy. These criteria, which are adapted from existing codes of practice such as the 1991 Criminal Sentencing Guidelines, were fully discussed during the ABA dialogue. The criteria are flexible enough to accommodate different types and sizes of businesses. The Agency recognizes that a variety of compliance management programs may develop under the due diligence criteria, and will use its review under this policy to determine whether basic criteria have been met.

Compliance management programs which train and motivate production staff to prevent, detect and correct violations on a daily basis are a valuable complement to periodic auditing. The policy is responsive to recommendations received during public comment and from the ABA dialogue to give compliance management efforts which meet the criteria for due diligence the same penalty reduction offered for environmental audits. (See, *e.g.*, II–F–39, II–E–18, and II–G–18 in the Docket.)

EPA may require as a condition of penalty mitigation that a description of the regulated entity's due diligence efforts be made publicly available. The Agency added this provision in response to suggestions from environmental groups, and believes that the availability of such information will allow the public to judge the adequacy of compliance management systems, lead to enhanced compliance, and foster greater public trust in the integrity of compliance management systems.

2. Voluntary Discovery and Prompt Disclosure

Under Section D(2) of the final policy, the violation must have been identified voluntarily, and not through a monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement. Section D(4) requires that disclosure of the violation be prompt and in writing. To avoid confusion and respond to state requests for greater clarity, disclosures under this policy should be made to EPA. The Agency will work closely with states in implementing the policy.

The requirement that discovery of the violation be voluntary is consistent with proposed federal and state bills which would reward those discoveries that the regulated entity can legitimately attribute to its own voluntary efforts.

The policy gives three specific examples of discovery that would not be voluntary, and therefore would not be eligible for penalty mitigation: emissions violations detected through a required continuous emissions monitor, violations of NPDES discharge limits found through prescribed monitoring, and violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement.

The final policy generally applies to any violation that is voluntarily discovered, regardless of whether the violation is required to be reported. This definition responds to comments pointing out that reporting requirements are extensive, and that excluding them from the policy's scope would severely limit the incentive for self-policing (see, *e.g.*, II–C–48 in the Docket).

The Agency wishes to emphasize that the integrity of federal environmental law depends upon timely and accurate reporting. The public relies on timely and accurate reports from the regulated community, not only to measure compliance but to evaluate health or environmental risk and gauge progress in reducing pollutant loadings. EPA expects the policy to encourage the kind of vigorous self-policing that will serve these objectives, and not to provide an excuse for delayed reporting. Where violations of reporting requirements are voluntarily discovered, they must be promptly reported (as discussed below). Where a failure to report results in imminent and substantial endangerment or serious harm, that violation is not covered under this policy (see Condition D(8)). The policy also requires the regulated entity to prevent recurrence of the violation, to ensure that noncompliance with reporting requirements is not repeated. EPA will closely scrutinize the effect of the policy in furthering the public interest in timely and accurate reports from the regulated community.

Under Section D(4), disclosure of the violation should be made within 10 days of its discovery, and in writing to EPA. Where a statute or regulation requires reporting be made in less than 10 days, disclosure should be made within the time limit established by law. Where reporting within ten days is not practical because the violation is complex and compliance cannot be determined within that period, the Agency may accept later disclosures if the circumstances do not present a serious threat and the regulated entity meets its burden of showing that the additional time was needed to determine compliance status.

This condition recognizes that it is critical for EPA to get timely reporting of violations in order that it might have clear notice of the violations and the opportunity to respond if necessary, as well as an accurate picture of a given facility's compliance record. Prompt disclosure is also evidence of the regulated entity's good faith in wanting to achieve or return to compliance as soon as possible.

In the final policy, the Agency has added the words, "or may have occurred," to the sentence, "The regulated entity fully discloses that a specific violation has occurred, or may have occurred * * *." This change, which was made in response to comments received, clarifies that where an entity has some doubt about the existence of a violation, the recommended course is for it to disclose and allow the regulatory authorities to make a definitive determination.

In general, the Freedom of Information Act will govern the Agency's release of disclosures made pursuant to this policy. EPA will, independently of FOIA, make publicly available any compliance agreements reached under the policy (see Section H of the policy), as well as descriptions of due diligence programs submitted under Section D.1 of the Policy. Any material claimed to be Confidential Business Information will be treated in accordance with EPA regulations at 40 C.F.R. Part 2.

3. Discovery and Disclosure Independent of Government or Third Party Plaintiff

Under Section D(3), in order to be "voluntary", the violation must be identified and disclosed by the regulated entity prior to: the commencement of a federal state or local agency inspection, investigation, or information request; notice of a citizen suit; legal complaint by a third party; the reporting of the violation to EPA by a "whistleblower" employee; and imminent discovery of the violation by a regulatory agency.

This condition means that regulated entities must have taken the initiative to find violations and promptly report them, rather than reacting to knowledge of a pending enforcement action or third-party complaint. This concept was reflected in the interim policy and in federal and state penalty immunity laws and did not prove controversial in the public comment process.

4. Correction and Remediation

Section D(5) ensures that, in order to receive the penalty mitigation benefits available under the policy, the regulated entity not only voluntarily discovers and promptly discloses a violation, but expeditiously corrects it, remedies any harm caused by that violation (including responding to any spill and carrying out any removal or remedial action required by law), and expeditiously certifies in writing to appropriate state, local and EPA authorities that violations have been corrected. It also enables EPA to ensure that the regulated entity will be publicly accountable for its commitments through binding written agreements, orders or consent decrees where necessary.

The final policy requires the violation to be corrected within 60 days, or that the regulated entity provide written notice where violations may take longer to correct. EPA recognizes that some violations can and should be corrected immediately, while others (*e.g.*, where capital expenditures are involved), may take longer than 60 days to correct. In all cases, the regulated entity will be expected to do its utmost to achieve or return to compliance as expeditiously as possible.

Where correction of the violation depends upon issuance of a permit which has been applied for but not issued by federal or state authorities, the Agency will, where appropriate, make reasonable efforts to secure timely review of the permit.

5. Prevent Recurrence

Under Section D(6), the regulated entity must agree to take steps to prevent a recurrence of the violation, including but not limited to improvements to its environmental auditing or due diligence efforts. The final policy makes clear that the preventive steps may include improvements to a regulated entity's environmental auditing or due diligence efforts to prevent recurrence of the violation.

In the interim policy, the Agency required that the entity implement appropriate measures to prevent a recurrence of the violation, a requirement that operates prospectively. However, a separate condition in the interim policy also required that the violation not indicate "a failure to take appropriate steps to avoid repeat or recurring violations"—a requirement that operates retrospectively. In the interest of both clarity and fairness, the Agency has decided for purposes of this condition to keep the focus prospective and thus to require only that steps be taken to prevent recurrence of the violation after it has been disclosed.

6. No Repeat Violations

In response to requests from commenters (*see, e.g.*, II–F–39 and II–G–18 in the Docket), EPA has established "bright lines" to determine when previous violations will bar a regulated entity from obtaining relief under this policy. These will help protect the public and responsible companies by ensuring that penalties are not waived for repeat offenders. Under condition D(7), the same or closely-related violation must not have occurred previously within the past three years at the same facility, or be part of a pattern of violations on the regulated entity's part over the past five years. This provides companies with a continuing incentive to prevent violations, without being unfair to regulated entities responsible for managing hundreds of facilities. It would be unreasonable to provide unlimited amnesty for repeated violations of the same requirement.

The term "violation" includes any violation subject to a federal or state civil judicial or administrative order, consent agreement, conviction or plea agreement. Recognizing that minor violations are sometimes settled without a formal action in court, the term also covers any act or omission for which the regulated entity has received a penalty reduction in the past. Together, these conditions identify situations in which the regulated community has had clear notice of its noncompliance and an opportunity to correct.

7. Other Violations Excluded

Section D(8) makes clear that penalty reductions are not available under this policy for violations that resulted in serious actual harm or which may have presented an imminent and substantial endangerment to public health or the environment. Such events indicate a serious failure (or absence) of a self-policing program, which should be designed to prevent such risks, and it would seriously undermine deterrence to waive penalties for such violations. These exceptions are responsive to suggestions from public interest organizations, as well as other commenters. (See, *e.g.*, II–F–39 and II–G–18 in the Docket.)

The final policy also excludes penalty reductions for violations of the specific terms of any order, consent agreement, or plea agreement. (See, II–E–60 in the Docket.) Once a consent agreement has been negotiated, there is little incentive to comply if there are no sanctions for violating its specific requirements. The exclusion in this section applies to violations of the terms of any response, removal or remedial action covered by a written agreement.

8. Cooperation

Under Section D(9), the regulated entity must cooperate as required by EPA and provide information necessary to determine the applicability of the policy. This condition is largely unchanged from the interim policy. In the final policy, however, the Agency has added that "cooperation" includes

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assistance in determining the facts of any related violations suggested by the disclosure, as well as of the disclosed violation itself. This was added to allow the agency to obtain information about any violations indicated by the disclosure, even where the violation is not initially identified by the regulated entity.

F. Opposition to Privilege

The Agency remains firmly opposed to the establishment of a statutory evidentiary privilege for environmental audits for the following reasons:

1. Privilege, by definition, invites secrecy, instead of the openness needed to build public trust in industry's ability to self-police. American law reflects the high value that the public places on fair access to the facts. The Supreme Court, for example, has said of privileges that, "[w]hatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." *United States* v. *Nixon*, 418 U.S. 683 (1974). Federal courts have unanimously refused to recognize a privilege for environmental audits in the context of government investigations. See, *e.g., United States* v. *Dexter*, 132 F.R.D. 8, 9–10 (D.Conn. 1990) (application of a privilege "would effectively impede [EPA's] ability to enforce the Clean Water Act, and would be contrary to stated public policy.")

2. Eighteen months have failed to produce any evidence that a privilege is needed. Public testimony on the interim policy confirmed that EPA rarely uses audit reports as evidence. Furthermore, surveys demonstrate that environmental auditing has expanded rapidly over the past decade without the stimulus of a privilege. Most recently, the 1995 Price Waterhouse survey found that those few large or mid-sized companies that do not audit generally do not perceive any need to; concern about confidentiality ranked as one of the least important factors in their decisions.

3. A privilege would invite defendants to claim as "audit" material almost any evidence the government needed to establish a violation or determine who was responsible. For example, most audit privilege bills under consideration in federal and state legislatures would arguably protect factual information—such as health studies or contaminated sediment data—and not just the conclusions of the auditors. While the government might have access to required monitoring data under the law, as some industry commenters have suggested, a privilege of that nature would cloak underlying facts needed to determine whether such data were accurate.

4. An audit privilege would breed litigation, as both parties struggled to determine what material fell within its scope. The problem is compounded by the lack of any clear national standard for audits. The "*in camera*" (i.e., non-public) proceedings used to resolve these disputes under some statutory schemes would result in a series of time-consuming, expensive mini-trials.

5. The Agency's policy eliminates the need for any privilege as against the government, by reducing civil penalties and criminal liability for those companies that audit, disclose and correct violations. The 1995 Price Waterhouse survey indicated that companies would expand their auditing programs in exchange for the kind of incentives that EPA provides in its policy.

6. Finally, audit privileges are strongly opposed by the law enforcement community, including the National District Attorneys Association, as well as by public interest groups. (See, *e.g.*, Docket, II–C–21, II–C–28, II–C–52, IV–G–10, II–C–25, II–C–33, II–C–52, II–C–48, and II–G–13 through II–G–24.)

G. Effect on States

The final policy reflects EPA's desire to develop fair and effective incentives for self-policing that will have practical value to states that share responsibility for enforcing federal environmental laws. To that end, the Agency has consulted closely with state officials in developing this policy, through a series of special meetings and conference calls in addition to the extensive opportunity for public comment. As a result, EPA believes its final policy is grounded in common-sense principles that should prove useful in the development of state programs and policies.

As always, states are encouraged to experiment with different approaches that do not jeopardize the fundamental national interest in assuring that violations of federal law do not threaten the public health or the environment, or make it profitable not to comply. The Agency remains opposed to state legislation that does not include these basic protections, and reserves its right to bring independent action against regulated entities for violations of federal law that threaten human health or the environment, reflect criminal conduct or repeated noncompliance, or allow one company to make a substantial profit at the expense of its law-abiding competitors. Where a state has obtained appropriate sanctions needed to deter such misconduct, there is no need for EPA action.

H. Scope of Policy

EPA has developed this document as a policy to guide settlement actions. EPA employees will be expected to follow this policy, and the Agency will take steps to assure national consistency in application. For example, the Agency will make public any compliance agreements reached under this policy, in order to provide the regulated community with fair notice of decisions and greater accountability to affected communities. Many in the regulated community recommended that the Agency convert the policy into a regulation because they felt it might ensure greater consistency and predictability. While EPA is taking steps to ensure consistency and predictability and believes that it will be successful, the Agency will consider this issue and will provide notice if it determines that a rulemaking is appropriate.

II. Statement of Policy: Incentives for Self-Policing

Discovery, Disclosure, Correction and Prevention

A. Purpose

This policy is designed to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental requirements.

B. Definitions

For purposes of this policy, the following definitions apply:

"Environmental Audit" has the definition given to it in EPA's 1986 audit policy on environmental auditing, i.e., "a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements."

"Due Diligence" encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

(a) Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits and other sources of authority for environmental requirements;

(b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(c) Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;

(d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

(e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(f) Procedures for the prompt and appropriate correction of any violations, and any necessary modifications to the regulated entity's program to prevent future violations.

"Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

"Gravity-based penalties" are that portion of a penalty over and above the economic benefit., i.e., the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from non-compliance. (For further discussion of this concept, see "A Framework for Statute-Specific Approaches to Penalty Assessments", #GM–22, 1980, U.S. EPA General Enforcement Policy Compendium).

"Regulated entity" means any entity, including a federal, state or municipal agency or facility, regulated under federal environmental laws.

C. Incentives for Self-Policing

1. No Gravity-Based Penalties

Where the regulated entity establishes that it satisfies all of the conditions of Section D of the policy, EPA will not seek gravity-based penalties for violations of federal environmental requirements.

2. Reduction of Gravity-Based Penalties by 75%

EPA will reduce gravity-based penalties for violations of federal environmental requirements by 75% so long as the regulated entity satisfies all of the conditions of Section D(2) through D(9) below.

3. No Criminal Recommendations

(a) EPA will not recommend to the Department of Justice or other prosecuting authority that criminal charges be brought against a regulated entity where EPA determines that all of the conditions in Section D are satisfied, so long as the violation does not demonstrate or involve:

(i) a prevalent management philosophy or practice that concealed or condoned environmental violations; or

(ii) high-level corporate officials' or managers' conscious involvement in, or willful blindness to, the violations.

(b) Whether or not EPA refers the regulated entity for criminal prosecution under this section, the Agency reserves the right to recommend prosecution for the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

4. No Routine Request for Audits

EPA will not request or use an environmental audit report to initiate a civil or criminal investigation of the entity. For example, EPA will not request an environmental audit report in routine inspections. If the Agency has independent reason to believe that a violation has occurred, however, EPA may seek any information relevant to identifying violations or determining liability or extent of harm.

D. Conditions

1. Systematic Discovery

The violation was discovered through:

(a) an environmental audit; or

(b) an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the Agency as to how it exercises due diligence to prevent, detect and correct violations according to the criteria for due diligence outlined in Section B. EPA may require as a condition of penalty mitigation that a description of the regulated entity's due diligence efforts be made publicly available.

2. Voluntary Discovery

The violation was identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, the policy does not apply to:

(a) emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit) where any such monitoring is required;

(b) violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring;

(c) violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement.

3. Prompt Disclosure

The regulated entity fully discloses a specific violation within 10 days (or such shorter period provided by law) after it has discovered that the violation has occurred, or may have occurred, in writing to EPA;

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

The violation must also be identified and disclosed by the regulated entity prior to:

(a) the commencement of a federal, state or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity;

(b) notice of a citizen suit;

(c) the filing of a complaint by a third party;

(d) the reporting of the violation to EPA (or other government agency) by a "whistleblower" employee, rather than by one authorized to speak on behalf of the regulated entity; or

(e) imminent discovery of the violation by a regulatory agency;

5. Correction and Remediation

The regulated entity corrects the violation within 60 days, certifies in writing that violations have been corrected, and takes appropriate measures as determined by EPA to remedy any environmental or human harm due to the violation. If more than 60 days will be needed to correct the violation(s), the regulated entity must so notify EPA in writing before the 60-day period has passed. Where appropriate, EPA may require that to satisfy conditions 5 and 6, a regulated entity enter into a publicly available written agreement, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required;

6. Prevent Recurrence

The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental auditing or due diligence efforts;

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7. No Repeat Violations

The specific violation (or closely related violation) has not occurred previously within the past three years at the same facility, or is not part of a pattern of federal, state or local violations by the facility's parent organization (if any), which have occurred within the past five years. For the purposes of this section, a violation is:

(a) any violation of federal, state or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

(b) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency.

8. Other Violations Excluded

The violation is not one which (i) resulted in serious actual harm, or may have presented an imminent and substantial endangerment to, human health or the environment, or (ii) violates the specific terms of any judicial or administrative order, or consent agreement.

9. Cooperation

The regulated entity cooperates as requested by EPA and provides such information as is necessary and requested by EPA to determine applicability of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in investigating the violation, any noncompliance problems related to the disclosure, and any environmental consequences related to the violations.

E. Economic Benefit

EPA will retain its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that do comply. EPA may forgive the entire penalty for violations which meet conditions 1 through 9 in section D and, in the Agency's opinion, do not merit any penalty due to the insignificant amount of any economic benefit.

F. Effect on State Law, Regulation or Policy

EPA will work closely with states to encourage their adoption of policies that reflect the incentives and conditions outlined in this policy. EPA remains firmly opposed to statutory environmental audit privileges that shield evidence of environmental violations and undermine the public's right to know, as well as to blanket immunities for violations that reflect criminal conduct, present serious threats or actual harm to health and the environment, allow noncomplying companies to gain an economic advantage over their competitors, or reflect a repeated failure to comply with federal law. EPA will work with states to address any provisions of state audit privilege or immunity laws that are inconsistent with this policy, and which may prevent a timely and appropriate response to significant environmental violations. The Agency reserves its right to take necessary actions to protect public health or the environment by enforcing against any violations of federal law.

G. Applicability

(1) This policy applies to the assessment of penalties for any violations under all of the federal environmental statutes that EPA administers, and supersedes any inconsistent provisions in media-specific penalty or enforcement policies and EPA's 1986 Environmental Auditing Policy Statement.

(2) To the extent that existing EPA enforcement policies are not inconsistent, they will continue to apply in conjunction with this policy. However, a regulated entity that has received penalty mitigation for satisfying specific conditions under this policy may not receive additional penalty mitigation for satisfying the same or similar conditions under other policies for the same violation(s), nor will this policy apply to violations which have received penalty mitigation under other policies.

(3) This policy sets forth factors for consideration that will guide the Agency in the exercise of its prosecutorial discretion. It states the Agency's views as to the proper allocation of its enforcement resources. The policy is not final agency action, and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

(4) This policy should be used whenever applicable in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing or at trial. The policy may be applied at EPA's discretion to the settlement of administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this policy.

H. Public Accountability

(1) Within 3 years of the effective date of this policy, EPA will complete a study of the effectiveness of the policy in encouraging:

(a) changes in compliance behavior within the regulated community, including improved compliance rates;

(b) prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;

(c) corporate compliance programs that are successful in preventing violations, improving environmental performance, and promoting public disclosure;

(d) consistency among state programs that provide incentives for voluntary compliance.

EPA will make the study available to the public.

(2) EPA will make publicly available the terms and conditions of any compliance agreement reached under this policy, including the nature of the violation, the remedy, and the schedule for returning to compliance.

I. Effective Date

This policy is effective January 22, 1996.

Dated: December 18, 1995.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

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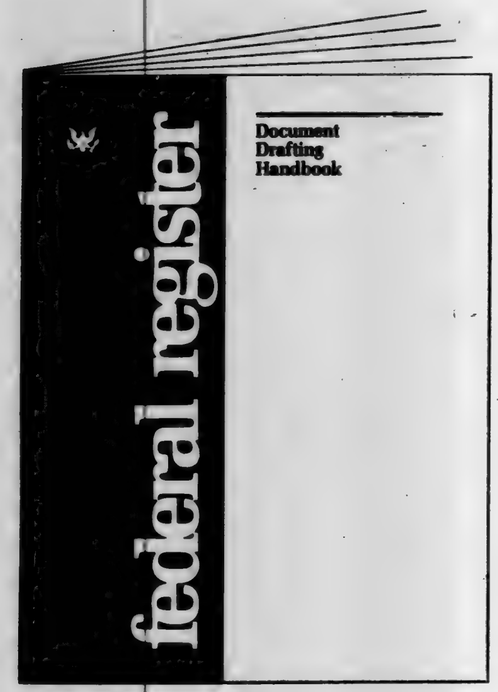
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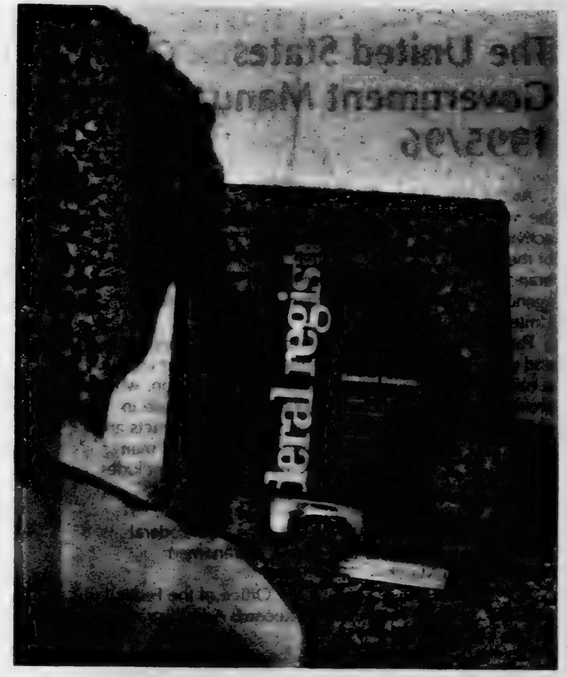
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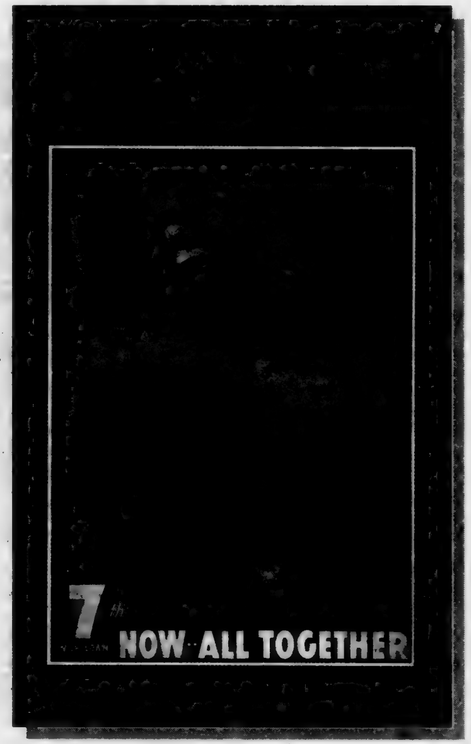
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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the **Federal Register** called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the **Federal Register** will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to change the names of the Rural Housing and Community Development Service and the Rural Business and Cooperative Development Service.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, DC 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On November 8, 1995, USDA published in the **Federal Register** (60 FR 56392–56465) a revision of the delegations of authority appearing in 7 CFR part 2 due to a reorganization of the department. The revised delegations effectuated the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103–354. The Act permits the Secretary to reorganize the Department of Agriculture. The Act authorized the establishment of subcabinet positions and the restructuring of agencies and offices of the Department of Agriculture. The Secretary established the Rural Housing and Community Development Service and the Rural Business and Cooperative Development Service. It has been determined that public confusion exists with regard to the two agency names, and that the names are long and cumbersome. Accordingly, the Secretary has determined to change the agency names from the Rural Housing and Community Development Service to the Rural Housing Service, and the Rural Business and Cooperative Development Service to the Rural Business-Cooperative Service. The functions and responsibilities of the two agencies will remain the same. Accordingly, 7 CFR part 2 is revised as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 is revised to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210; 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In subpart C, all references to:

(1) "Rural Housing and Community Development Service" are revised to read "Rural Housing Service";

(2) "Rural Business and Cooperative Development Service" are revised to read "Rural Business-Cooperative Service";

(3) "rural housing and community development" are revised to read "rural housing"; and

(4) "rural business and cooperative development" are revised to read "rural business-cooperative".

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. In subpart D, all references to:

(1) "Rural Housing and Community Development Service" are revised to read "Rural Housing Service"; and

(2) "Rural Business and Cooperative Development Service" are revised to read "Rural Business-Cooperative Service".

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

3. In subpart F, all references to:

(1) "Rural Housing and Community Development Service" are revised to read "Rural Housing Service"; and

(2) "Rural Business and Cooperative Development Service" are revised to read "Rural Business-Cooperative Service".

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

4. In subpart G, all references to:

(1) "Rural Housing and Community Development Service" are revised to read "Rural Housing Service"; and

(2) "Rural Business and Cooperative Development Service" are revised to read "Rural Business-Cooperative Service".

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

5. In subpart J, all references to:

(1) "Rural Housing and Community Development Service" are revised to read "Rural Housing Service"; and

(2) "Rural Business and Cooperative Development Service" are revised to read "Rural Business-Cooperative Service".

For subparts C and D:

Dated: December 15, 1995.

Dan Glickman,

Secretary of Agriculture.

For Subpart F:

Dated: December 19, 1995.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart G:

Dated: December 18, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

For Subpart J:

Dated: December 19, 1995.

James R. Lyons,

Under Secretary for Natural Resources and Environment

[FR Doc. 95–31267 Filed 12–22–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR 505, 506, 510, 512, 516, 543, 544, 545, 550, 552, 556, 563, 563b, 563c, 563d, 565, 566, 567, 571, 574, 575, 583, 584

[No. 95–200]

Technical Amendments; Loans to One Borrower

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its regulations to incorporate a number of technical and conforming amendments. The amendments include corrections to: Amendments adopted in 1994 that were not codified as OTS intended, cross-references that became outdated due to other regulatory amendments, regulations affected by legislation, regulations containing addresses, office titles, and other titles that are out of date, the table setting forth OMB control numbers assigned to regulations under the Paperwork Reduction Act, and regulations containing typographical errors.

This rulemaking also adopts as final the OTS's interim final rule regarding loans to one borrower (LTOB).

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: For Technical and Conforming Amendment information contact: Mary Gottlieb, Senior Paralegal, (202) 906–7135, Regulations & Legislation Division, Chief Counsel's Office. For Loans to One Borrower information contact: William J. Magrini, Project Manager, Supervision Policy, (202) 906–5744; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW.; Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Technical and Conforming Amendments

Sections 505.1 through 505.4 are being amended to reflect the reorganization and relocation of the Public Reference Room announced in the **Federal Register** on September 14, 1995.[1] The former Information Services Division is now part of the Dissemination Branch and is located at 1700 G Street, NW. on the lower level.

Part 506, concerning the control numbers assigned pursuant to the Paperwork Reduction Act, is being amended to reflect the Paperwork Reduction Act of 1995[2] and to generally update the regulation reference table.

Section 516.1 is being amended to correct the addresses of OTS's Regional Offices. The definition of "CAMEL Rating" found at § 516.3(c) is being amended to reflect the previous global change from the MACRO to the CAMEL rating system for examinations.[3] Section 516.3(c) still refers to the components of the obsolete MACRO system.

The model bylaws for stock associations in the appendix to part 552 are being amended to make them conform with the regulatory change that removed the annual independent audit requirement for small savings associations with composite CAMEL ratings of 1 or 2.[4] Institutions regulated under the Securities Exchange Act of 1934 ('34 Act) will still have to comply with § 552.10, which requires associations to send an annual report to stockholders containing financial statements that satisfy the requirements of Rule 14a-3 of the '34 Act. Rule 14a–3 allows an institution that does not have an annual audit to include unaudited financial statements in its annual report.

Sections 563b.2(a)(16) and 574.6(a)(4)–(a)(6) were inadvertently removed[5] and are being reinstated without revision.

This final rule also includes a number of non-substantive technical revisions correcting a variety of erroneous cross-references and eliminating obsolete terminology. The majority of the revisions concern the removal of the term "District Director" and "District Office." The OTS's field offices were converted from district to regional offices several years ago. The regulations have been reviewed to determine, in each individual case, whether references to "District Director" should refer instead to "Regional Director" or "OTS," and whether references to "District Office" should refer instead to "Regional Office" or "OTS."

Loans to One Borrower

On March 28, 1995, the OTS published an interim final rule with request for comment on LTOB.[6] That interim final rule reflected changes that the Office of the Comptroller of the Currency (OCC) had recently made to its lending limits regulation. Section 5(u) of the Home Owners' Loan Act requires that savings association lending limits conform to those applicable to national banks.[7]

The comment period for the interim final rule closed on April 27, 1995. The OTS received two comment letters: one from a savings bank and one from a national trade association. Both comment letters raised one issue—whether the removal of the term "monthly or quarterly" (used in describing the periodic reports in which LTOB limits must be computed) prevents savings associations from calculating their LTOB limits on a monthly basis.

The reference to "monthly or quarterly" was removed because the OTS no longer requires institutions to file monthly Thrift Financial Reports (TFRs). TFRs are now filed only at the end of each quarter. Thus, for compliance tracking purposes, an institution's LTOB limits are now normally computed on the basis of its unimpaired capital and unimpaired surplus at the end of each quarter. The purpose for the quarterly computation rule is to reduce the burden associated with frequent recomputation of LTOB limits. The OTS will not object if institutions choose to recompute their LTOB limits more frequently than quarterly, provided that adequate documentation is maintained.

Moreover, we also note that the LTOB rule expressly provides that if an association knows, or has reason to know, that its level of unimpaired capital and unimpaired surplus has changed significantly, either upward or downward, subsequent to a quarter-end computation, the institution must recompute its LTOB limits.[8]

Because the OTS has decided to make no substantive changes to its interim final rule, that rule is adopted as final today, with one technical correction. The words "general valuation" are being removed from the definition of "unimpaired capital and unimpaired surplus" at § 563.93(b)(11)(ii). In its present form, the definition specifies that an association's "general valuation allowances for loan and lease losses not included in supplementary capital under part 567 of this chapter" are to be added to the association's computation of unimpaired capital and unimpaired surplus.[9] The words "general valuation" were inadvertently included in the interim final rule. The words are extraneous.

[1] 60 FR 47801 (September 14, 1995).

[2] Pub. L. 104–13 (May 22, 1995).

[3] 59 FR 18474 (April 19, 1994).

[4] 59 FR 60300 (November 23, 1994).

[5] 59 FR 22725 (May 3, 1994); 59 FR 28468 (June 2, 1994).

[6] *See* 60 FR 15861 (March 28, 1995).

[7] 12 U.S.C. 1464 (u).

[8] *See* 12 CFR 563.93(f)(1).

[9] 60 FR at 15864.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[10] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it corrects a number of errors that have caused confusion and these corrections will aid the public in using OTS's regulations. Because the technical amendments in the final rule are not substantive, they will not detrimentally affect savings associations by becoming effective immediately; the LTOB rule is already effective.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[11] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[12] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations, or other small entities.

Executive Order 12866

The Acting Director has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 505

Freedom of information.

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 510

Administrative practice and procedure.

12 CFR Part 512

Administrative practice and procedure, Investigations.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Savings associations, Trusts and trustees.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563c

Accounting, Savings associations, Securities.

12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 583

Holding companies, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, for the reasons set out in the preamble and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision hereby amends chapter V, title 12 of the Code of Federal Regulations and adopts as final the interim rule amending 12 CFR 563.93 published at 60 FR 15861 on March 28, 1995, with one change, as set forth below:

Chapter V [Amended]

1. Chapter V of title 12 is amended by removing the headings for subchapters A through G; and by removing the term "subchapter" wherever it appears, and by adding in lieu thereof the word "chapter".

PART 505—FREEDOM OF INFORMATION ACT

2. The authority citation for part 505 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1462a, 1463, 1464.

§ 505.1 [Amended]

3. Section 505.1 is amended in paragraph (a) by removing the word "('Office')", and by adding in lieu

[10] 5 U.S.C. 553.

[11] Pub. L. No 103–325, 12 U.S.C. 4802.

[12] Pub. L. No 96–354, 5 U.S.C. 601.

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thereof the word "('OTS')", and by removing the words "the Office as", and adding in lieu thereof the words "the OTS as"; and in paragraph (b) by removing the word "Office" each place it appears, and by adding in lieu thereof the word "OTS".

4. Section 505.2 is revised to read as follows:

§ 505.2 Public reference room.

The OTS will make materials available for review on an ad hoc basis when necessary. Contact the Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or visit the Public Reference Room at 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days.

5. Section 505.3 is revised to read as follows:

§ 505.3 Requests for records.

Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the OTS will be made by the Manager, Dissemination Branch or by an official so designated. Requests may be mailed to: Freedom of Information Act Request, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or marked "FOIA" and delivered in person to the Public Reference Room, Dissemination Branch, Records Management and Information Policy Division, 1700 G Street, NW., Lower Level. Requests may also be sent by facsimile.

6. Section 505.4 is revised to read as follows:

§ 505.4 Administrative appeal of initial determination to deny records.

Appellate determinations under 31 CFR 1.5(h) with respect to records of the OTS will be made by the Executive Director for Administration or the Director, Records Management and Information Policy Division. Appeals by mail should be addressed to: Dissemination Branch, Records Management and Information Policy Division, 1700 G Street, NW., Washington, DC 20552. Appeals may be delivered personally to the Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Lower Level. Appeals may also be sent by facsimile.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

7. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

8. Section 506.1 is revised to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements contained in regulations of the Office of Thrift Supervision by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163, and is adopted in compliance with the requirements of 5 CFR 1320.8. Information collection requirements that are not mandated by statute must be assigned control numbers by OMB in order to be enforceable.

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
502.3	1550–0053
510	1550–0081
516.1(c)	1550–0056
Part 528	1550–0021
528.1a	1550–0011
533.1	1550–0011
543.1	1550–0016
543.2	1550–0005
543.9	1550–0007
544.2	1550–0017
544.5	1550–0018
545.36(d)	1550–0011
545.74	1550–0013
545.81	1550–0077
545.82	1550–0033
545.92	1550–0006
545.95	1550–0006
545.96(c)	1550–0011
545.121	1550–0047
545.131	1550–0011
546.2	1550–0016
546.4	1550–0066
550.2	1550–0037
550.14	1550–0037
552.2–1	1550–0005
552.2–6	1550–0007
552.4	1550–0017
552.5	1550–0018
552.6	1550–0025
552.7	1550–0025
552.10	1550–0019
552.11	1550–0011
552.13	1550–0016, 1550–0025
562.1(b)	1550–0011
563.1(b)	1550–0011
563.10	1550–0027
563.22	1550–0016, 1550–0025
563.34	1550–0011
563.37(c)	1550–0067
563.38	1550–0065
563.41(e)	1550–0011
563.42(e)	1550–0011
563.43 (f) through (h)	1550–0075
563.43(i)(3)	1550–0075
563.47(e)	1550–0011
563.48(c)	1550–0011
563.74	1550–0050
563.80	1550–0061
563.81	1550–0030
563.93(f)	1550–0011
563.99–563.101 (Subpart D), Appendix A	1550–0078
563.99e	1550–0011
563.132	1550–0033
563.134	1550–0059
563.170	1550–0011
563.170(c)	1550–0011, 1550–0083
563.172	1550–0011
563.173(e)	1550–0011
563.174(e)	1550–0011
563.174(f)	1550–0011
563.175(e)	1550–0011
563.175(f)	1550–0011
563.177	1550–0041
563.180	1550–0084
563.180(d)	1550–0003
563.181	1550–0032
563.183	1550–0032
Part 563b	1550–0014
563b.4	1550–0032
563b.20 through 563b.32	1550–0074
Part 563d	1550–0019
Part 563e	1550–0012
Part 563f	1550–0051
Part 563g	1550–0035
Part 564	1550–0011
566.4	1550–0011
Part 568	1550–0062
571.6	1650–0005
574	1550–0032
574.6	1550–0015
Part 575	1550–0071
584.2–1	1550–0063
584.2–2	1550–0063
584.9	1550–0063

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

8a. The authority citation for part 510 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 510.2 [Amended]

8b. Section 510.2 is amended in paragraph (a) by removing the phrase "subchapters A, B, C, D, E, F, and G of".

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

9. The authority citation for part 512 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813; 15 U.S.C. 78 *l*.

§ 512.4 [Amended]

10. Section 512.4 is amended by removing the phrase "Director or any Deputy Director of Enforcement", and by adding in lieu thereof the phrase "Deputy Chief Counsel for Enforcement or the appropriate Regional Counsel for Enforcement".

§ 512.5 [Amended]

11. Section 512.5 is amended in paragraph (a) by removing the phrase "Director or any Deputy Director of Enforcement", and by adding in lieu thereof the phrase "Deputy Chief Counsel for Enforcement or the appropriate Regional Counsel for Enforcement".

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

12. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 516.1 [Amended]

13. Section 516.1 is amended in paragraph (b)(1) by removing the word "17th" and by adding in lieu thereof the word "18th"; in paragraph (b)(2) by removing the number "30348–5217" and by adding in lieu thereof the number "30309"; in paragraph (b)(3) by removing the phrase "111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360", and by adding in lieu thereof the phrase "200 West Madison Street, Suite 1300, Chicago, Illinois 60606"; in paragraph (b)(4) by removing the phrase "P.O. Box 619027."; and in paragraph (b)(5) by removing the word "Center" and by adding in lieu thereof the word "Street".

14. Section 516.3 is amended by revising paragraph (c) to read as follows:

§ 516.3 Definitions.

* * * * *

(c) *CAMEL rating.* A savings association's CAMEL rating is its Capital, Assets, Management, Earnings, and Liquidity rating as of the most recent rating update (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing.

* * * * *

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

15. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

16. Section 543.8 is amended in paragraph (a) by removing the phrase "District Director or his or her designee", and by adding in lieu thereof the word "OTS"; and by adding a second sentence to read as follows:

§ 543.8 Conversion of State mutual charter to Federal charter.

(a) * * * Requests for such approval shall be filed in accordance with § 516.1(c) of this chapter.

§ 543.11 [Amended]

17. Section 543.11 is amended in paragraph (c)(1)(iii)(C) by removing the last sentence.

PART 544—CHARTER AND BYLAWS

18. The authority citation for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 544.3 [Amended]

19. Section 544.3 is amended in the petition by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

PART 545—OPERATIONS

20. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.74 [Amended]

21. Section 545.74 is amended in paragraph (c)(4)(iv) by removing the phrase "District Director or his or her designee", and by adding in lieu thereof the phrase "Regional Director"; and by removing the phrase "he or she has", and by adding in lieu thereof the phrase "there are".

§ 545.82 [Amended]

22. Section 545.82 is amended in paragraph (c)(1)(i) by removing the phrase "District Director", and by adding in lieu thereof the phrase "OTS", and by removing the phrase "of the parent Federal savings association"; in paragraph (c)(1)(ii) by removing the phrase "District Director", and by adding in lieu thereof the word "OTS", and by removing the phrase "the Federal savings association's"; and in paragraph (f)(2) by removing the phrase "its District Director", and by adding in lieu thereof the phrase "the OTS".

§ 545.121 [Amended]

23. Section 545.121 is amended in paragraph (c) concluding text by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director", and by removing the phrase "Director of the Office", and by adding in lieu thereof the word "OTS"; and in the third sentence of paragraph (e) by removing the phrase "it the person", and by adding in lieu thereof the phrase "if the person".

§ 545.131 [Amended]

24. Section 545.131 is amended in paragraph (b)(7) introductory text by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

PART 550—TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

25. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1735f–7.

§ 550.2 [Amended]

26. Section 550.2 is amended in paragraph (c) introductory text by removing the phrase "District Director's", and by adding in lieu thereof the phrase "Regional Director's"; and in paragraph (c) introductory text, and paragraphs (c)(1), (c)(4), (c)(5), (c)(7), (c)(9), and (d) by removing the phrase "District Director" each place it appears, and by adding in lieu thereof the phrase "Regional Director".

§ 550.3 [Amended]

27. Section 550.3 is amended by removing the phrase "or the District Director", and by adding in lieu thereof the phrase "Regional Director".

§ 550.10 [Amended]

28. Section 550.10 is amended in paragraph (b)(2) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

§ 550.13 [Amended]

29. Section 550.13(b) is amended by removing the phrase "shall also be filed with the District Director and that the Office may review such documents", and by adding in lieu thereof the phrase "shall also be filed in accordance with the filing instructions in § 516.1(c) of this chapter and that the OTS may review such documents".

§ 550.14 [Amended]

30. Section 550.14 is amended in paragraph (a) by removing the phrase "§ 500.32(c)(5)", and by adding in lieu thereof the phrase "§ 516.1(c)"; and in paragraphs (b) and (c) introductory text by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

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§ 550.15 [Amended]

31. Section 550.15 is amended in paragraph (a) by removing the phrase "parts 558 and 559 of this title", and by adding in lieu thereof the phrase "part 558 of this chapter".

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

32. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.5 [Amended]

33. Section 552.5 is amended in paragraph (a) by removing the phrase "552.6–3, and 552.6–4", and by adding in lieu thereof the phrase "and 552.6–3"; and in paragraph (b)(1)(ii) by removing the phrase "552.6–3 and 552.6–4", and by adding "and 552.6–3" in its place.

34. Article VIII of the appendix to part 552 is revised to read as follows:

Appendix to Part 552—Model Bylaws for Stock Associations

* * * * *

Article VIII—Fiscal Year

The fiscal year of the association shall end on the _____ of _____ of each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

* * * * *

PART 556—STATEMENTS OF POLICY

34a. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§ 556.5 [Amended]

34b. Section 556.5 is amended in paragraph (c)(4) by removing the phrases "of chapter C" and "of chapter D".

PART 563—OPERATIONS

35. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§ 563.9 [Amended]

36. Section 563.9 is amended in paragraph (f) by removing the phrase "Notwithstanding the provisions of § 571.25 of this chapter, a", and by adding in lieu thereof the word "A".

§ 563.93 [Amended]

37. Section 563.93 is amended in paragraph (b)(11)(ii) by removing the phrase "general valuation".

§ 563.134 [Amended]

38. Section 563.134 is amended in paragraphs (b)(5) and (c) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

§ 563.160 [Amended]

39. Section 563.160 is amended in paragraphs (c)(2) and (d)(1) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director"; and by removing paragraph (f).

§ 563.170 [Amended]

40. Section 563.170 is amended in paragraph (b)(1) by removing the phrase "District Director" each place it appears, and by adding in lieu thereof the phrase "Regional Director", and by removing the term "District" and by adding in lieu thereof the term "Region"; in paragraph (c)(3)(iii) by removing the phrase ", its District Director, or the", and by adding in lieu thereof the phrase "or its"; and in paragraph (e) by removing the phrases "District Director" and "District", and by adding in lieu thereof the phrases "Regional Director" and "Region", respectively.

§ 563.177 [Amended]

40a. Section 563.177 is amended in paragraphs (a) and (b) by removing the phrase "chapter II", and by adding in lieu thereof the phrase "subchapter II".

§ 563.183 [Amended]

41. Section 563.183 is amended in paragraph (c)(1) by removing the phrase "shall be by letter signed by the officer making the report with the original and two copies to the District Director or his or her designee", and by adding in lieu thereof the phrase "shall be done in accordance with § 516.1(c) of this chapter".

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

42. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

43. Section 563b.2 is amended by removing paragraph (a)(15), by redesignating paragraph (a)(16) as paragraph (a)(15) and by adding new paragraph (a)(16) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(16) *Employee.* The term *employee* does not include a director or officer.

* * * * *

§ 563b.3 [Amended]

44. Section 563b.3 is amended in the last sentence of paragraph (c)(8) by removing the phrase "§ 563b.10(c)", and by adding in lieu thereof the phrase "§ 563b.10".

§ 563b.3 [Amended]

44a. Section 563b.3 is amended in the charter provision of paragraph (c)(13) by removing the phrase "chapter D", and by adding in lieu thereof the phrase "Part 563b".

§ 563b.4 [Amended]

45. Section 563b.4 is amended by designating the concluding text of paragraph (b)(1)(i) as paragraph (b)(1)(ii); and by removing the phrase "Corporate and Securities" where it appears in newly designated paragraph (b)(1)(ii) and by adding in lieu thereof the phrase "Business Transactions".

§ 563b.8 [Amended]

46. Section 563b.8 is amended by removing the phrase "Corporate and Securities" where it appears in the first, second, and third sentences of paragraph (e)(1) and adding in lieu thereof the phrase "Business Transactions".

§ 563b.29 [Amended]

47. Section 563b.29 is amended in paragraph (b) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

PART 563c—ACCOUNTING REQUIREMENTS

48. The authority citation for part 563c is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

§ 563c.3 [Amended]

49. Section 563c.3 is amended by removing paragraph (b) and the paragraph designation for paragraph (a).

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

50. The authority citation for part 563d is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78w, 78d-1.

§ 563d.1 [Amended]

51. Section 563d.1 is amended by removing the phrase "Corporate and Securities", and by adding in lieu thereof the phrase "Business Transactions".

§ 563d.2 [Amended]

52. Section 563d.2 is amended by removing the phrase "Corporate and Securities" where it appears in the first, third, and fourth sentences, and by adding in lieu thereof the phrase "Business Transactions"; and by removing the word "District", and the phrases "District Office", "District Offices", and "District Director" where they appear, and by adding in lieu thereof the word "Region", and the phrases "Regional Office", "Regional Offices", and "Regional Director", respectively.

PART 565—PROMPT CORRECTIVE ACTION

53. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

§ 565.9 [Amended]

54. Section 565.9 is amended by removing the phrase "section 565.8" in paragraph (a) and by adding in lieu thereof the phrase "§ 565.7".

PART 566—LIQUIDITY

55. The authority citation for part 566 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

§ 566.2 [Amended]

56. Section 566.2 is amended in paragraph (c) by removing the phrase ", § 566.1, and § 566.3", and by adding in lieu thereof the phrase "and § 566.1".

PART 567—CAPITAL

57. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

58. Section 567.3 is amended by:

a. revising paragraph (a);

b. removing, in paragraph (b)(5), the phrase "§ 563.131 of this chapter or other Office regulations", and by adding in lieu thereof the phrase "other Office regulations or other guidance";

c. revising paragraph (d)(1);

d. removing, in paragraphs (d)(2) and (d)(3), the phrases "District Director" and "District Director's" each place they appear, and by adding in lieu thereof the phrases "OTS" and "OTS's", respectively;

e. revising the fourth and fifth sentences of paragraph (d)(3), and removing the third sentence of paragraph (d)(3); and

f. revising paragraph (d)(5). The revisions read as follows:

§ 567.3 Individual minimum capital requirements.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a savings association that varies from the requirement that would otherwise apply to the savings association under § 567.2 of this part. Pursuant to 12 U.S.C. 1464(s), the OTS may establish such individual minimum capital requirements for savings associations as it deems necessary or appropriate on a case-by-case basis in light of the particular circumstances of each savings association.

* * * * *

(d) *Procedures—*(1) *Notification.* When the OTS determines that a minimum capital requirement different from that set forth in § 567.2 of this part is necessary or appropriate for a particular savings association, it shall notify the savings association in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the savings association. The OTS shall forward the notifying letter to the appropriate state supervisor if a state-chartered savings association would be subject to an individual minimum capital requirement.

* * * * *

(3) * * * The OTS shall provide the savings association and the appropriate state supervisor (if a state-chartered savings association is involved) with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the savings association and setting forth the decision and the basis for that decision. Upon receipt of this decision by the savings association, the individual minimum capital requirement becomes effective and binding upon the savings association. * * *

* * * * *

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the savings association's capital adequacy or its ability to reach its required minimum capital level by the specified date, OTS may amend the individual minimum capital requirement or the savings association's schedule for such compliance. The OTS may decline to consider a savings association's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. Pending the OTS's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

59. Section 567.4 is amended by:

a. removing, in paragraph (a)(1) introductory text, the phrase ", after referral of an appropriate case by a District Director and based on a recommendation of the Office's Office of Enforcement developed in coordination with the Deputy Director for Regional Operations";

b. revising paragraph (a)(2) introductory text;

c. revising the second and fifth sentences in paragraph (a)(3)(i) introductory text;

d. removing, in paragraph (a)(3)(i) introductory text the word "Enforcement" each place it appears, and adding in lieu thereof the phrase "the Office"; and in paragraphs (a)(3)(i)(A) and (C), (a)(3)(ii), (a)(4), and (a)(5)(ii), by removing the words "of Enforcement" each place it appears;

e. removing, in paragraph (a)(4), the phrase ", based on a recommendation from the Office developed in coordination with the Deputy Director for Regional Operations,";

f. revising paragraph (a)(6); and

g. removing in paragraph (b)(1) the phrase "(such as an application under § 563.131 of this chapter, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.98(g) of this chapter)".

The revisions read as follows:

§ 567.4 Capital directives.

(a) * * *

(2) *Notice of intent to issue capital directive.* The OTS will determine whether to initiate the process of issuing a capital directive. The OTS will notify a savings association in writing by registered mail of its intention to issue a capital directive. If a state-chartered savings association is involved, the OTS will also notify and solicit comment from the appropriate state supervisor. The notice will state:

* * * * *

(3) *Response to notice of intent.* (i) * * * The response should also include any information that the savings association wishes the OTS to consider in deciding whether to issue a capital directive. * * * Such responses shall be submitted in accordance with § 516.1(c) of this chapter. * * *

* * * * *

(6) *Change in circumstances.* Upon a change in circumstances, a savings association may submit a request to the OTS to reconsider the terms of the capital directive or consider changes in the savings association's capital plan

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issued under a directive for the savings association to achieve its minimum capital requirement. If the OTS believes such a change is warranted, the OTS may modify the savings association's capital requirement or may refuse to make such modification if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

* * * * *

§ 567.10 [Amended]

60. Section 567.10 is amended in paragraphs (a)(3) introductory text and (c) by removing the phrase "its District Director" and by adding in lieu thereof the phrase "the Regional Director".

§ 567.13 [Amended]

61. Section 567.13 is amended in paragraph (c) by removing the phrase "by the District Director".

PART 571—STATEMENTS OF POLICY

62. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.6 [Amended]

63. Section 571.6 is amended in paragraphs (a)(2)(iv), (b)(3)(i), (d)(1), (d)(2), (d)(4)(ii), and (g) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director"; and by redesignating paragraph (b)(3)(i) as paragraph (b)(3).

§ 571.13 [Amended]

64. Section 571.13 is amended in the introductory text of paragraph (a) by removing the phrase "563.90 and"; and in paragraph (a)(1) by removing the phrase "or District Directors".

§ 571.20 [Amended]

65. Section 571.20 is amended in paragraph (a) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

66. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

§ 574.2 [Amended]

67. Section 574.2 is amended by removing and reserving paragraph (i).

§ 574.3 [Amended]

68. Section 574.3 is amended in paragraph (c)(2)(v) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

§ 574.4 [Amended]

69. Section 574.4 is amended in paragraph (c)(4)(ii) by removing the phrase "District Director or his or her designee", and by adding in lieu thereof the phrase "Regional Director"; and in paragraph (f)(2) by removing the phrase "§ 574.6(b)(3) of this part", and by adding in lieu thereof the phrase "§ 516.1(c) of this chapter".

70. Section 574.6 is amended by adding paragraphs (a)(4) through (a)(6); by removing in paragraph (c)(3)(ii)(D) the phrase "chapter II", and by adding in lieu thereof the phrase "subchapter II"; and by removing paragraph (c)(3)(iii) to read as follows:

§ 574.6 Procedural requirements.

(a) * * *

(4) *H-(e)3.* This application shall be used for all applications filed under § 574.3(a) of this part:

(i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of a savings association or uninsured institution or a savings and loan holding company; or

(ii) By any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more savings associations.

(5) *H-(e)4.* This information filing shall be used to claim that a reorganization is exempt from prior written approval of the OTS under § 574.3(c)(1)(ii) of this part.

(6) *Notice Form 1393, parts A and B.* This form shall be used for all notices filed under § 574.3(b) of this part regarding the acquisition of control of a savings association by any person or persons not constituting a company except as provided in paragraph (a)(3) of this section.

* * * * *

§ 574.7 [Amended]

71. Section 574.7 is amended in paragraphs (a)(2)(iii)(A) and (E) by removing the phrase "Senior Deputy Director for Supervision (Policy)", and by adding in lieu thereof the word "OTS"; in paragraphs (a)(2)(iii)(F)(*1*) through (*4*) by removing the phrase "District Director or his or her designee", and by adding in lieu thereof the word "OTS"; and in paragraph (c)(2) introductory text by removing the phrase "(a)(4), and".

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

72. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.2 [Amended]

72a. Section 575.2 is amended in paragraphs (i) and (p) by removing the phrase "of chapter F".

§ 575.10 [Amended]

73. Section 575.10 is amended in paragraphs (a)(1) and (a)(2)(iii) by removing the phrase "and 571.5".

§ 575.11 [Amended]

74. Section 575.11 is amended in paragraph (g) by removing the phrase "§§ 563.39 and 571.5", and by adding in lieu thereof the phrase "§ 563.39".

PART 583—DEFINITIONS

75. The authority citation for part 583 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 583.10 [Removed]

76. Section 583.10 is removed.

PART 584—REGULATED ACTIVITIES

77. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.1 [Amended]

78. Section 584.1 is amended in paragraph (b) by removing the phrase "District Director", and by adding in lieu thereof the phrase "Regional Director".

§ 584.2–2 [Amended]

79. Section 584.2–2 is amended in paragraph (b) by removing the third sentence; and in paragraph (c) by removing the phrase "the District Director or the Director of the Office, as the case may be,", and by adding in lieu thereof the phrase "the OTS".

Dated: December 11, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–30541 Filed 12–22–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 200, 217, 234, 241, 247, 248, 249, 250, 291, 298, 374a, 385, 399

RIN 2139–AA03

Technical Amendments; Organizational Change; Miscellaneous Editorial Changes; and Conforming Amendments

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Bureau of Transportation Statistics under delegated authority 49 CFR 1.71(a) amends the Secretary's regulations in order to reflect recent Departmental organizational changes, correct outdated organizational and statutory references, and eliminate obsolete provisions. It also makes editorial changes to correct addresses and make other technical corrections. This rule makes no substantive changes to current regulations.

EFFECTIVE DATE: This rule is effective on December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus; Regulations Division, Office of Airline Information, K–25, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Responsibility for the Department's aviation information program was transferred from the Administrator of the Research and Special Programs Administration (RSPA) to the Director of the Bureau of Transportation Statistics (BTS) in May 1995. Before RSPA, the function resided in the Civil Aeronautics Board (CAB) until the sunset of the latter. The office that has this responsibility is the Office of Airline Information (OAI). Before the transfer, this office was known as the Office of Airline Statistics (OAS) and, prior to a 1990 reorganization of RSPA, the Office of Aviation Information Management (OAIM). This rule reflects the transfer by revising those portions of the CFR that still refer to RSPA, CAB, OAS, and OAIM with respect to the aviation information program.

The rule also makes editorial changes throughout the 14 CFR chapter II to eliminate obsolete provisions, and to correct addresses, terminology, cross-references, and outdated titles of Department organizations and officials. These changes are necessitated in part by the revision and recodification of the Federal Aviation Act within subtitle VII of title 49 of the United States Code (Transportation) by action of Pubic Law 103–272, enacted July 5, 1994. 14 CFR 399.100 is being removed since it is redundant to 14 CFR part 241 section 19–7(d); the policy regarding release of international passenger origin and destination statistics remains unchanged.

Notice and Opportunity for Public Comment Unnecessary

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary. The amendments made in this document are ministerial, removing obsolete and redundant material and making minor technical and terminology changes. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements.

Federalism

The Bureau of Transportation Statistics has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Protection Act

The Bureau of Transportation Statistics has also analyzed the proposed amendments for the purpose of the National Environmental Protection Act. The amendments will not have any impact on the quality of the human environment.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 217

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 241

Air carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

14 CFR Part 247

Air carriers, Airports.

14 CFR Part 248

Air carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

14 CFR Part 249

Air carriers, Reporting and recordkeeping requirements, Truth in lending, Uniform System of Accounts.

14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

14 CFR Part 298

Air taxis, Reporting and recordkeeping requirements.

14 CFR Part 374a

Air carriers, Credit, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 385

Organization and functions (Government agencies).

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set out in the preamble, the Bureau of Transportation Statistics under delegated authority 49 CFR 1.71(a) amends the Secretarys' regulations in 14 CFR chapter II as set forth below.

PART 200—DEFINITIONS AND INSTRUCTIONS

1. The authority citation for part 200 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 415, 417, 461.

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2. In § 200.1, add new paragraph (h) to read as follows:

§ 200.1 Terms and definitions.

* * * * *

(h) *BTS* means the Bureau of Transportation Statistics, U.S. Department of Transportation.

PART 217—REPORTING TRAFFIC STATISTICS BY FOREIGN AIR CARRIERS IN CIVILIAN SCHEDULED, CHARTER, AND NONSCHEDULED SERVICES

3. The authority citation for part 217 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

§§ 217.3, 217.5, 217.6, 217.7, 217.9, 217.10 [Amended]

4. In the list below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add the term indicated in the right column:

Section	Remove	Add
217.3(a)	RSPA	BTS.
217.3(e)	Research and Special Programs Administration	Bureau of Transportation Statistics.
217.5(b)(1)	Office of Aviation Information Management	Office of Airline Information.
217.5(b)(1) and (3)	OAIM's	OAI's.
217.5(b)(1), (3), and (6)	OAIM	OAI.
217.6(a)	Office of Aviation Information Management	Office of Airline Information.
217.7	RSPA	BTS.
217.9(a)	Office of Aviation Information Management	Office of Airline Information.
217.10(b)	Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
217.10, appendix (a)(3)	Data Administration Division, DAI–20, Room 4125, Office of Aviation Information Management, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
217.10, appendix (f) (1) and (2)	OAIM	OAI.
217.10, appendix (f) (2)	RSPA	BTS.
217.10, appendix (g) (1) and (2)	OAIM	OAI.
217.10, appendix (g)(1)(i)	Office of Aviation Information Management	Office of Airline Information.
217.10, appendix (i)(2)	OAIM	OAI.

§ 217.10 [Amended]

5. In § 217.10, the appendix is amended by removing paragraph (h).

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

6. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 417.

§§ 234.2, 234.4, 234.5, 234.6, 234.8, 234.12 [Amended]

7. The Note preceding § 234.1 is revised to read as follows:

Note: The reporting requirements contained in this part have been approved by the Office of Management and Budget under control number 2138–0041.

8. In the list below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add the term indicated in the right column:

Section	Remove	Add
234.2 *"Reportable flight"*	Office of Airline Statistics	Office of Airline Information.
234.2 *"Reporting carrier"*	Section 401 of the Federal Aviation Act of 1958	49 U.S.C. 41102.
234.2 *"Reporting carrier"*	Office of Airline Statistics	Office of Airline Information.
234.4(a)	RSPA	BTS.
234.4(a)	Office of Airline Statistics	Office of Airline Information.
234.5	Office of Airline Statistics	Office of Airline Information.
234.6	Office of Airline Statistics	Office of Airline Information.
234.8(a)	Office of Airline Statistics	Office of Airline Information.
234.12	Administrator, Research and Special Programs Administration.	Director, Bureau of Transportation Statistics.

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR LARGE CERTIFICATED AIR CARRIERS

9. The authority citation for part 241 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

§§ 241.03, 04, 1–1, 1–2, 1–3, 1–4, 1–5, 1–6, 1–7, 1–8, 2.1, 2–4, 3, 6, 12, 17, 19–1, 19–5, 19–7, 21, 22, 23, 24, 25 [Amended]

10. In the list below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add the term indicated in the right column:

Section	Remove	Add
241 Sec. 03 *"Air carrier, charter"*	Section 401(d)(3) of the Federal Aviation Act of 1958, as amended.	49 U.S.C. 41102(a)(3).
241 Sec. 03 *"Air carrier, large certificated"*.	Section 401 of the Federal Aviation Act of 1958	49 U.S.C. 41102.
241 Sec. 03 *"Certificate of Public Convenience and Necessity"*.	Section 401, of the Act	49 U.S.C. 41102.
241 Sec. 03 *"Person controlling an air carrier"*.	Section 101 (32) of the Act	49 U.S.C. 40102.
241 Sec. 03, *"Section 418 cargo operations"*.	*Section 418*	*Section 41103.*
241 Sec. 03, *"Section 418 cargo operations"*.	Section 418 of the Act	49 U.S.C. 41103.
241 Sec. 03 *"Traffic, nonrevenue"*	Section 403(b) of the Federal Aviation Act	49 U.S.C. 41511(a).
241 Sec. 03 *"Traffic, nonrevenue"*	Part 223 of the Board's Economic Regulations	14 CFR part 223.
241 Sec. 03 *"Traffic, revenue"*	Section 403(b) of the Federal Aviation Act	49 U.S.C. 41511(a).
241 Sec. 03 *"Traffic, revenue"*	Part 223 of the Board's Economic Regulations	14 CFR part 223.
241 Sec. 04(b)	Office of Airline Statistics	Office of Airline Information.
241 Sec. 1–1	Board	BTS.
241 Sec. 1–1	Civil Aeronautics Board	BTS.
241 Sec. 1–1	407 and 416 of the Federal Aviation Act of 1958, as amended.	49 U.S.C. 41701 and 41708.
241 Sec. 1–2	Civil Aeronautics Board	BTS.
241 Sec. 1–3(a)	Civil Aeronautics Board	BTS.
241 Sec. 1–4(b)	Civil Aeronautics Board	BTS.
241 Sec. 1–4(b)	Board	BTS.
241 Sec. 1–5(c)	Civil Aeronautics Board	DOT.
241 Sec. 1–5(c)	Part 249 of the Economic Regulations of the Civil Aeronautics Board.	14 CFR part 249.
241 Sec. 1–6(a)	Civil Aeronautics Board	BTS.
241 Sec. 1–6(b)	Section 406 subsidy, interchange sales, and mutual aid assistance.	And interchange sales.
241 Sec. 1–7	Office of Aviation Information Management, DAI–1, Research and Special Programs Administration.	Office of Airline Information, K–25, Bureau of Transportation Statistics.
241 Sec. 1–8	Data Administration Division, DAI–20, Office of Aviation Information Management, Room 4125, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C., 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 2.1(a)	Office of Aviation Information Management (OAIM)	Office of Airline Information (OAI).
241 Sec. 2.1(b)	OAIM	OAI.
241 Sec. 2.1(c)	Office of Aviation Information Management/RSPA, DAI–1, U.S. Department of Transportation, Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 2–4(a)	Civil Aeronautics Board	BTS.
241 Sec. 2–4(d)	Civil Aeronautics Board	DOT.
241 Sec. 3, Note at end of Table	CAB	BTS.
241 Sec. 6, 1609	Civil Aeronautics Board	BTS.
241 Sec. 6, 1629, Note	RSPA	BTS.
241 Sec. 6, 1649	Civil Aeronautics Board	BTS.
241 Sec. 6, 1830(a) and (e)	Civil Aeronautics Board	DOT.
241 Sec. 6, 1830(c)	Board	DOT.
241 Sec. 6, 1890(g)	Civil Aeronautics Board	DOT.
241 Sec. 6, 1890(g)	Board	BTS.
241 Sec. 6, 1890(h)	Civil Aeronautics Board	BTS.
241 Sec. 6, 2130(b)	RSPA	BTS.
241 Sec. 12, 01(a)	Section 403(b) of the Federal Aviation Act	49 U.S.C. 41511(a).
241 Sec. 12, 01(a)	Part 223 of the Board's Economic Regulations	14 CFR part 223.
241 Sec. 12, 08	Section 419 of the Federal Aviation Act	49 U.S.C. 41733.
241 Sec. 12, 19(a)	Section 403(b) of the Federal Aviation Act	49 U.S.C. 41511(a).
241 Sec. 12, 19(a)	Part 223 of the Board's Economic Regulations	14 CFR part 223.
241 Sec. 12, 75.6	Civil Aeronautics Board	BTS.
241 Sec. 12, 77(b)	Civil Aeronautics Board	BTS.
241 Sec. 12, 78	Civil Aeronautics Board	BTS.
241 Sec. 12, 79(a)	Civil Aeronautics Board	BTS.
241 Sec. 17, 96	RSPA	BTS.
241 Sec. 19–1(a)	Section 418 of the Act	49 U.S.C. 41103.
241 Sec. 19–1(c)	OAIM	OAI.
241 Sec. 19–5(c)(2)	Office of Aviation Information Management (OAIM)	Office of Airline Information (OAI).
241 Sec. 19–5(c)(2)	OAIM's	OAI's.
241 Sec. 19–5(c)(6)	OAIM	OAI.
241 Sec. 19–5(c)(22)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7(a)	Research and Special Programs Administration (RSPA), Office of Aviation Information Management (OAIM).	Bureau of Transportation Statistics (BTS), Office of Airline Information (OAI).

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Section	Remove	Add
241 Sec. 19–7(a)	Office of Aviation Information Management, RSPA, Department of Transportation, DAI–1, 400 Seventh Street, SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 19–7(b)	RSPA	BTS.
241 Sec. 19–7(b) and (c)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, introductory text.	Robin A. Caldwell, Director, Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Room 4125, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 19–7, Appendix A, IV.C(2)	RSPA	BTS.
241 Sec. 19–7, Appendix A, IV.C(2)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, IV.E	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, V., footnotes 4 and 5.	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, V.C(2)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, VI.B	RSPA	BTS.
241 Sec. 19–7, Appendix A, VII.A	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, VIII.A(2)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, VIII.B	OAIM	OAI.
241 Sec. 19–7, Appendix A, IX., introductory text.	RSPA	BTS.
241 Sec. 19–7, Appendix A, IX.B	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 19–7, Appendix A, IX.B	OAIM	OAI.
241 Sec. 19–7, Appendix A, IX.C	RSPA	BTS.
241 Sec. 21(a), (b) and (d)	CAB	BTS.
241 Sec. 21(a)	Civil Aeronautics Board	BTS.
241 Sec. 21(e)	Office of Airline Statistics	Office of Airline Information.
241 Sec. 21(i)	Board's Comptroller	Office of Airline Information.
241 Sec. 21(k)	Board	BTS.
241 Sec. 22	CAB	BTS.
241 Sec. 22	Civil Aeronautics Board	BTS.
241 Sec. 22(a), Tables	RSPA	BTS.
241 Sec. 22(a), List of Schedules Table, footnotes (1) and (2).	$10	$20.
241 Sec. 22(a), List of Schedules Table, footnote (3).	Section 418	49 U.S.C. 41103.
241 Sec. 22(b), introductory text	CAB	BTS.
241 Sec. 22(b), introductory text	Civil Aeronautics Board	BTS.
241 Sec. 22(e)	*Manual of ADP Instructions, Outputs, Codes and Related Material*, which is available from the Board's Information Management Division.	Accounting and Reporting Directives, which are available from OAI.
241 Sec. 22, parenthetical phrase at the end.	3024–0013	2138–0013.
241 Sec. 23, Schedule A, (a)	RSPA	BTS.
241 Sec. 23, Schedule B–1.1, (b)	Board's Information Management Division	Office of Airline Information.
241 Sec. 23, Schedule B–43, (b)	No. 137	No. 178.
241 Sec. 23, Schedule B–43, (b)	Office of Airline Statistics	Office of Airline Information.
241 Sec. 24, Schedule P–1.1, (c)	Board's Information Management Division	Office of Airline Information.
241 Sec. 24, Schedule P–1.1, (i)	Section 419 of the Federal Aviation Act	49 U.S.C. 41733.
241 Sec. 24, Schedule P–1(a), (e)	Section 401 of the Act	49 U.S.C. 41102.
241 Sec. 24, Schedule P–2, title	*Notes to RSPA Form 41 Report*	*Notes to BTS Form 41 Report.*
241 Sec. 24, Schedule P–5.1, (e)	*Manual of ADP Instructions, Outputs, Codes and Related Material.*	Accounting and Reporting Directives.
241 Sec. 24, Schedule P–5.2, (c)	Manual of ADP Instructions, Outputs, Codes and Related Material.	Accounting and Reporting Directives.
241 Sec. 24, Schedule P–5.2, (c)	Board's Information Management Division	Office of Airline Information.
241 Sec. 24, Schedule P–5.2, (d)	Board	BTS.
241 Sec. 24, Schedule P–12a, (k), introductory text.	Board	BTS.
241 Sec. 24, Schedule P–12a, (k)(1)	Board	DOT.
241 Sec. 24, Schedule P–12a, (k)(3)	Board	BTS.
241 Sec. 24, parenthetical phrase at the end.	3024–0013	2138–0013.
241 Sec. 25, General Instructions, (b)	Office of Aviation Information Management, RSPA	Office of Airline Information, BTS.
241 Sec. 25, Schedule T–100(f), (a)	402 permits	Section 41302 permits.
241 Sec. 25, Schedule T–100(f), (b)	Office of Aviation Information Management, DAI–1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 25, Appendix, (a)	401	49 U.S.C. 41102.
241 Sec. 25, Appendix, (a)	Section 418 of the Act	49 U.S.C. 41103.
241 Sec. 25, Appendix, (a)	Office of Aviation Information Management (OAIM)	Office of Airline Information (OAI).
241 Sec. 25, Appendix, (c)(2)(ii)	OAIM	OAI.

Section	Remove	Add
241 Sec. 25, Appendix, (e)	Data Administration Division, DAI–20, Room 4125, Office of Aviation Information Management, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.	Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.
241 Sec. 25, Appendix, (m)	Office of Aviation Information Management	Office of Airline Information.
241 Sec. 25, Appendix, (m)	OAIM	OAI.
241 Sec. 25, Appendix, (n)	RSPA	BTS.
241 Sec. 25, parenthetical phrase at the end.	3024–0013	2138–0013.

§ 241.03 [Amended]

11. In Part 241 Sec. 03, remove the definition "Board" and add the following definition in appropriate alphabetical order to read as follows:

Section 03—Definitions for Purposes of This System of Accounts and Reports

* * * * *

BTS. The Bureau of Transportation Statistics.

* * * * *

§ 241.2–5 [Amended]

12. In Part 241 Sec. 2–4(c), remove the term "and Pan American" wherever it appears.

§ 241.22 [Amended]

13. In Part 241 Sec. 22(b)(3), remove the term "Board" where it appears seven times, and add, in place of the first, sixth, and seventh occurrences, the term "BTS", and add, in place of the second, third, fourth, and fifth occurrences, the term "DOT".

§ 241.25 [Amended]

14. In Part 241 Sec. 25, Schedule T–8, paragraph (a) is revised to read as follows:

Schedule T–8—Report of All-Cargo Operations

(a) This schedule shall be filed annually by all air carriers that conduct all-cargo operations under certificates issued under 49 U.S.C. 41103.

* * * * *

15. Part 241 Sec. 25, Schedule T–9 is removed.

PART 247—DIRECT AIRPORT-TO-AIRPORT MILEAGE RECORDS

16. The authority citation at the end of part 247 is revised to read as follows:

Authority: 49 U.S.C. chapter 401.

§ 247.1 [Amended]

17. In § 247.1, remove the term "Office of Airline Statistics" and add "Office of Airline Information" in its place, and remove the term "Research and Special Programs Administration" and add "Bureau of Transportation Statistics" in its place.

PART 248—SUBMISSION OF AUDIT REPORTS

18. The authority citation for part 248 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

§ 248.2 [Amended]

19. In § 248.2, remove the term "Board's Office of the Comptroller" and add "Office of Airline Information" in its place.

20. In the parenthetical phrase at the end of § 248.2, remove the term "3024–0004" and add "2138–0004" in its place.

§ 248.4 [Amended]

21. In § 248.4, remove the term "Board's Office of the Comptroller" and add "Office of Airline Information" in its place, and remove the term "CAB" and add "BTS" in its place.

§ 248.5 [Amended]

22. In § 248.5, remove the term "Board" and add "BTS" in its place.

PART 249—PRESERVATION OF AIR CARRIER RECORDS

23. The authority citation for part 249 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 413, 417.

24. In the Note preceding Subpart A of part 249, remove the term "3024–0006" and add "2138–0006" in its place.

§§ 249.1, 249.2, 249.3, 249.4, 249.7, 249.8, 249.9, 249.10, 249.20, 249.21, 249.30, 249.31 [Amended]

25. In the list below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add the term indicated in the right column:

Section	Remove	Add
249.1(a)	Section 101(3) of the Act	49 U.S.C. 40102.
249.2	*Board*	*DOT.*
249.2	Board	DOT.
249.2	Board's	DOT's.
249.2 *"Certificated air carrier"*	Civil Aeronautics Board	Department of Transportation.
249.2 *"Certificated air carrier"*	Section 401 of the Act	49 U.S.C. 41102.
249.2 *"Certificated air carrier"*	Section 418 of the Act	49 U.S.C. 41103.
249.3(a)	Chief, Data Requirements Division, Office of the Comptroller.	Director, Office of Airline Information.
249.3(b)	Board	DOT.
249.4(c)	Board	DOT.
249.7	Board	DOT.
249.7	Chief, Data Requirements Division, Office of the Comptroller.	Director, Office of Airline Information.
249.7(a)	Case arising under section 406 of the Act	Mail rate case.
249.8	Chief, Data Requirements Division, Office of the Comptroller.	Director, Office of Airline Information.
249.9	Board	DOT.

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Section	Remove	Add
249.10	Chief, Data Requirements Division, Office of the Comptroller.	Director, Office of Airline Information.
249.10	Chief's	Director's.
249.20, Schedule of Records	CAB	BTS.
249.21	Board	DOT.
249.30	Section 101 of the Federal Aviation Act of 1958	49 U.S.C. 40102.
249.30	Section 402 of the Act	49 U.S.C. 41302.
249.31	Board	DOT.

PART 250—OVERSALES

26. The authority citation for part 250 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

§ 250.10 [Amended]

27. In § 250.10, remove the term "RSPA" and add "BTS" in its place.

PART 291—CARGO OPERATIONS IN INTERSTATE AIR TRANSPORTATION

28. The authority citation for part 291 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 415, 417.

§ 291.42 [Amended]

29. In § 291.42(a)(2), remove the term "Data Administration Division, DAI–20, room 4125, Office of Airline Statistics, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001" and add "Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590" in its place.

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

30. The authority citation for part 298 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 417.

§ 298.60 [Amended]

31. In § 298.60, remove the term "RSPA" and add "BTS" in its place.

32. In § 298.60(a), remove the term "Research and Special Programs Administration" and add "Bureau of Transportation Statistics" in its place.

33. In § 298.60(b), remove the term "Office of Airline Statistics" and add "Office of Airline Information" in its place.

34. In § 298.60(c), remove the term "Data Administration Division; DAI–20, Room 4125; Office of Airline Statistics; Research and Special Programs Administration; Department of Transportation; 400 Seventh Street, SW.; Washington, D.C. 20590" and add "Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590" in its place.

35. In § 298.60(e), remove the term "366–9847" and add "368–9059" in its place.

§ 298.61 [Amended]

36. In § 298.61(a) and (g), remove the term "RSPA" and add "BTS" in its place.

37. In § 298.61(g), remove the term "Office of Airline Statistics" and add "Office of Airline Information" in its place.

§ 298.62 [Amended]

38. In § 298.62(a), remove the term "RSPA" and add "BTS" in its place.

§ 298.63 [Amended]

39. In § 298.63(a), remove the term "RSPA" and add "BTS" in its place.

40. In § 298.63(c), remove the term "*Manual of ADP Instructions, Outputs, Codes and Related Material*" and add "*Accounting and Reporting Directives*" in its place.

41. In § 298.63(c), remove the term "RSPA's Office of Airline Statistics" and add "BTS" Office of Airline Information" in its place.

§ 298.64 [Amended]

42. In § 298.64(a), remove the term "RSPA" and add "BTS" in its place.

43. In § 298.64(e), remove the term "RSPA's Office of Airline Statistics" and add "BTS" Office of Airline Information" in its place.

§ 298.65 [Amended]

44. In § 298.65(a), remove the term "RSPA" and add "BTS" in its place, and remove the term "RSPA's Office of Airline Statistics" and add "BTS" Office of Airline Information" in its place.

45. In § 298.65(b), remove the term "Office of Airline Statistics" and add "Office of Airline Information" in its place.

§ 298.66 [Amended]

46. In § 298.66, remove the term "Office of Airline Statistics" and add "Office of Airline Information" in its place.

PART 374a—EXTENSION OF CREDIT BY AIRLINES TO FEDERAL POLITICAL CANDIDATES

47. The authority citation for part 374a is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 415, 417.

§ 374a.6 [Amended]

48. In § 374a.6(a), remove the term "Board" and add "Bureau of Transportation Statistics" in its place.

49. In § 374a.6(b)(2), remove the term "Board's Bureau of Accounts and Statistics" and add "Office of Airline Information" in its place.

50. In § 374a.6(c), remove the term "Board's Bureau of Accounts and Statistics" and add "Office of Airline Information" in its place.

§ 374a.7 [Amended]

51. In § 374a.7(b), remove the term "Board" and add "DOT" in its place.

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

52. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 417.

§ 385.1 [Amended]

53. In § 385.1 "*Reviewing Official*", remove the term "the Administration of the Research, and Special Programs Administration" and add "the Director of the Bureau of Transportation Statistics" in its place.

§ 385.2 [Amended]

54. In § 385.2, remove the term "Administrator, Research and Special Programs Administration (RSPA)" and add "Director, Bureau of Transportation Statistics (BTS)" in its place.

§ 385.27 [Amended]

55. In the section heading for § 385.27, remove the term "Office of Aviation Information Management, Research and Special Programs Administration" and add "Office of Airline Information, Bureau of Transportation Statistics" in its place.

56. In the introductory text to § 385.27, remove the term "Office of Aviation Information Management, Research and Special Programs Administration (RSPA)" and add "Office of Airline Information, Bureau of Transportation Statistics (BTS)" in its place.

57. In § 385.27(d), remove the term "RSPA" and add "BTS" in its place.

58. In § 385.27(i), remove the term "RSPA" and add "BTS" in its place, and remove the term Administrator, RSPA" and add "Director, BTS" in its place.

59. In § 385.27(m), remove the term "and with the policy set forth in § 399.100 of this chapter".

PART 399—STATEMENTS OF GENERAL POLICY

60. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 415, 417, 419, 461.

§ 399.50 [Amended]

61. In § 399.50, remove the term "Board" and add "Bureau of Transportation Statistics" in its place, and remove the term "section 901(a) of the Act" and add "49 U.S.C. 46301" in its place.

§ 399.51 [Amended]

62. In § 399.51, remove the term "Board" and add "Bureau of Transportation Statistics" in its place.

§ 399.52 [Amended]

63. In § 399.52, remove the term "Board" and add "DOT" in its place.

§ 399.100 [Removed]

64. Section 399.100 is removed.

Issued in Washington, DC, on December 19, 1995.

T.R. Lakshmanan,

Director, Bureau of Transportation Statistics.

[FR Doc. 95–31188 Filed 12–22–95; 8:45 am]

BILLING CODE #910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8642]

RIN 1545–AR48; 1545–AR93

Recognition of Gain or Loss by Contributing Partner on Distribution of Contributed Property or Other Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the recognition of gain or loss on certain distributions of contributed property by a partnership under section 704(c)(1)(B) of the Internal Revenue Code of 1986 (Code). This document also contains final regulations relating to the recognition of gain on certain distributions to a contributing partner under section 737. The final regulations affect partnerships and their partners and are necessary to provide guidance for complying with the applicable tax law.

EFFECTIVE DATE: These regulations are effective for January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen J. Coleman, (202) 622- 3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Revenue Reconciliation Act of 1989 added section 704(c)(1)(B) and section 704(c)(2) to the Internal Revenue Code. Section 704(c)(1)(B) provides that, in the case of a distribution of contributed property to another partner within five years of its contribution, the contributing partner must recognize gain or loss in an amount equal to the gain or loss the partner would have been allocated under section 704(c)(1)(A) on a sale of the property by the partnership at its fair market value at the time of the distribution. Section 704(c)(2) provides an exception for distributions of certain like-kind property.

The Energy Policy Act of 1992 added section 737 to the Code. Section 737 requires a partner who contributes appreciated property to recognize gain on a subsequent distribution of other property to the contributing partner to the extent of the lesser of (i) the net precontribution gain on property contributed by the partner, or (ii) the excess of the value of the distributed property over the adjusted basis of the partner's interest in the partnership.

On January 9, 1995, a notice of proposed rulemaking (PS–76–92; PS–51–93) under section 704(c)(1)(B) and section 737 was published in the **Federal Register** (60 FR 2352). Written comments responding to this notice were received. No public hearing was held because no hearing was requested. After consideration of all comments received, the proposed regulations under section 704(c)(1)(B) and section 737 are adopted as revised by this Treasury decision.

Summary of Significant Comments and Revisions

The significant comments on the proposed regulations and the revisions made in the final regulations are discussed below.

A. Section 704(c)(1)(B)

Determination of Gain and Loss

The proposed regulations provide that section 704(c)(1)(B) applies only to a distribution that is properly characterized as a distribution to a partner acting in the capacity of a partner within the meaning of section 731 and section 737, and not to a transaction or distribution that is subject to provisions other than section 731(a) or section 737. Comments requested that the provision be clarified. The final regulations clarify that section 704(c)(1)(B) applies only to the extent that a transaction is a distribution under section 731. References to transactions and distributions not subject to section 704(c)(1)(B) have been deleted.

One commentator suggested certain clarifying revisions to the proposed regulations' definition of fair market value. The definition in the proposed regulations, however, is identical to the definition of fair market value in the 704(b) regulations, and distributed property should have the same fair market value for purposes of determining gain and loss under section 704(c)(1)(B) and determining capital account adjustments under section 704(b). The final regulations therefore adopt the definition in the proposed regulations without change.

The proposed regulations provide that the amount of gain or loss resulting from a distribution of partnership property is determined as if the distributed property had been sold by the partnership to the distributee partner. As a result, if built-in loss property is distributed to a partner that holds more than a 50 percent interest in partnership capital or profits, the built-in loss that otherwise would be recognized is disallowed under section 707(b)(1)(A). One commentator suggested that section 704(c)(1)(B) was intended to address disguised sales between partners and that, therefore, a loss should be disallowed on a distribution only if it would be disallowed on a direct sale between the partners. Section 704(c)(1)(B), however, respects the form of the transaction as between the partnership and a partner and does not recast the transaction as a disguised sale. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 406 (1989). The final regulations therefore adopt the proposed regulations without change.

Several of the provisions in the proposed regulations refer to distributions that are part of "the same plan or arrangement." Commentators requested clarification of this term. The reference to distributions that are part of the same plan or arrangement was

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intended to reflect the fact that distributions of multiple properties to one partner or distributions of different properties to more than one partner over a period of time may be treated as part of the same distribution under general principles of taxation, such as the step transaction doctrine. The final regulations remove the reference to "same plan or arrangement" and refers to distributions that are part of the same distribution. This change is made for simplification only and is not intended as a substantive change to the scope of a distribution for tax purposes. As under current law, distributions do not need to be contemporaneous to be part of the same distribution.

Several comments were received regarding the effect of a partnership termination under section 708(b)(1)(B). One comment suggested that it was not clear whether property that had previously been contributed to the partnership (and was therefore already subject to a five-year period) was subject to a new five- year period after the termination. The final regulations clarify that a new five-year period does not begin to the extent of any pre-termination gain or loss that would have been allocated to a contributing partner under section 704(c)(1)(A) on a sale of contributed property immediately before the termination.

The legislative history of section 704(c)(1)(B) indicates that a constructive termination does not change the application of section 704(c) to pre-contribution gain or loss on property contributed to the partnership before termination. One comment read this legislative history as possibly suggesting that a pro rata distribution is deemed to occur under section 708(b)(1)(B) for section 704(c)(1)(A) purposes, but a different distribution is deemed to occur for section 704(c)(1)(B) purposes. The comment expressed concern about the complexity of such a system. Section 704(c)(1)(B), however, does not require or impose such a "hybrid system." The amount of gain or loss under section 704(c)(1)(B) is determined by reference to the amount of gain or loss that would have been allocated to the partner under section 704(c)(1)(A) if the property had been sold. Thus, property of a partnership that terminates under section 708(b)(1)(B) is deemed to be distributed to the partners in the same manner for both sections.

Another comment suggested it was unclear whether section 704(c)(1)(B) could apply to property that had not been contributed by a partner to the partnership prior to the termination. The final regulations confirm that a new five-year period begins for all property that is deemed contributed to the new partnership after the termination (which would include property not actually contributed to the partnership), except to the extent that such built-in gain or loss would have been allocated to the contributing partner under section 704(c)(1)(A) on a sale of the contributed property immediately before the termination.

Commentators also requested guidance on the interaction of section 708(b)(1)(B) and section 704(c) in general. The IRS and Treasury recognize the need for additional guidance on this issue, but such guidance is beyond the scope of these regulations. The IRS and Treasury are considering a separate project involving the interaction of section 704(c) and section 708(b)(1)(B) and invite additional comments and suggestions regarding the project.

Exceptions

The proposed regulations provide that section 704(c)(1)(B) does not apply to property contributed to the partnership on or before October 3, 1989. One commentator requested an exception for property required to be contributed under a binding contract entered into on or before October 3, 1989. The statutory effective date provisions, however, do not contain a binding contract exception. Accordingly, the final regulations adopt the proposed regulations without change.

One commentator suggested an additional exception for distributions of an undivided interest in property. The final regulations provide that section 704(c)(1)(B) does not apply to such a distribution to the extent that the distributed interest does not exceed the undivided interest contributed by the distributee partner.

One commentator also requested an additional exception for distributions of fungible property because the partners may not be able to track the specific contributed property. The final regulations do not provide such an exception. Contributed property may be fungible from an economic perspective, but such property is generally not fungible for tax purposes because each contributed property will have its own individual tax basis.

The proposed regulations provide an exception for distributions of section 704(c) property to a noncontributing partner in liquidation of the partnership if the contributing partner receives an interest in the contributed property and the built-in gain or loss in that property is equal to or greater than the built-in gain or loss that would have otherwise been allocated to the contributing partner. One commentator suggested that the exception more clearly indicate the amount of built-in gain or loss that must be reflected in the property distributed to the contributing partner. The final regulations clarify that the amount of the built-in gain or loss must be equal to the gain or loss that would have been allocated to the contributing partner under section 704(c)(1)(A) if the contributed property had been sold immediately before the distribution.

One commentator also suggested expanding this exception to apply to the extent of the built-in gain or loss in the property distributed to the contributing partner. This comment is not adopted in the final regulations. The exception was intended to apply only in the limited situation in which a partnership liquidates and the value of the contributed property exceeds the contributing partner's capital account. In that situation, the portion of the contributed property in excess of the contributing partner's capital account would have to be distributed to another partner, thereby triggering section 704(c)(1)(B). The exception allows a partner to avoid section 704(c)(1)(B) in this situation, so long as the built-in gain or loss in the property distributed to the contributing partner is at least equal to the gain or loss that would have been allocated to the contributing partner under section 704(c)(1)(A) if the contributed property had been sold immediately before the distribution.

Special Rules

The proposed regulations provide a special rule under section 704(c)(2) for situations in which the partnership distributes like-kind property to a contributing partner within a specified period of the distribution of the property contributed by that partner. Under this rule, the gain or loss that otherwise would have been recognized on the distribution of the contributed property is reduced by the amount of the contributing partner's built-in gain or loss in the distributed like-kind property. One commentator criticized this rule as inconsistent with the statutory provision.

Section 704(c)(2) provides that "[u]nder regulations prescribed by the Secretary, * * * to the extent of the value of the [like-kind property distributed to the contributing partner, the calculation of the contributing partner's gain or loss attributable to the distribution of the contributed property] shall be [determined] as if the contributing partner had contributed to the partnership the [like-kind] property." This provision is generally intended to treat the contributing partner as if the partner had exchanged the contributed property for like-kind property in a nontaxable exchange outside of the partnership. This allows the contributing partner to avoid recognition of gain or loss under section 704(c)(1)(B) on the distribution of the contributed property to another partner because the contributing partner is treated as having contributed the like-kind property, not the property that is actually distributed to the other partner.

If the contributing partner, however, had engaged in a like- kind exchange outside of the partnership, the partner's built-in gain or loss in the like-kind property received would have been the same as the property that was surrendered. The rule in the proposed regulations reflects this result by limiting the application of section 704(c)(2) to the extent that the built-in gain or loss in the contributed property is not preserved in the like-kind property distributed to the contributing partner. The IRS and Treasury continue to believe that the regulations properly implement Congress' objective with respect to this provision. Therefore, the regulations are finalized without change.

One commentator also suggested a clarification of the interaction of the like-kind exception and the disguised sale rules of 707(a)(2)(B). The proposed regulations provide that the like-kind exception reduces any gain that would have otherwise been recognized under section 704(c)(1)(B). The proposed regulations also provide that section 704(c)(1)(B) applies only to a distribution to a partner within the meaning of section 731. There is no suggestion in section 704(c)(2) or the proposed regulations that the like-kind exception was intended as an exception to the disguised sale provisions. The final regulations confirm that the disguised sale provisions can apply to a distribution, even if the distribution would otherwise have qualified for the section 704(c)(2) like-kind exception.

Anti-Abuse Rule

Commentators made several suggestions for clarifying or modifying the anti-abuse rule in the proposed regulations. In particular, these commentators requested clarification of the relationship between this rule and the general partnership anti-abuse rule in Treas. Reg. section 1.701–2. The general anti-abuse regulation is a rule of general applicability that provides general principles to be applied in interpreting and applying all of the provisions of subchapter K. In certain situations, however, more specific anti-abuse rules are needed to carry out the purpose of a particular provision. The final regulations therefore adopt the rule in the proposed regulations without modification.

B. Section 737

Determination of Gain

The final regulations are clarified to provide that section 737 applies only to the extent that a transaction is a distribution under section 731. In accordance with section 737(d)(2), the final regulations also provide that section 737 does not apply to the extent that section 751(b) applies to the distribution.

Net Precontribution Gain

The proposed regulations provide that a distributee partner's net precontribution gain is determined without regard to the like-kind exception of section 704(c)(2) in situations in which the contributed property is not actually distributed to another partner. One commentator suggested deleting this provision as superfluous. The final regulations adopt the proposed regulations without change. This provision clarifies that section 737 does not contain a like-kind exception similar to the exception in section 704(c)(2). Section 737 applies even if the property received by the partner is of a like-kind with the contributed property.

Character of Gain

One commentator suggested that the proposed regulations fail to clarify whether there are two groups (ordinary and capital) for purposes of determining the character of a partner's net precontribution gain or whether there may be an additional section 1231 group or section 1245 and section 1250 groups. The final regulations adopt the proposed regulations without change.

The proposed regulations provide that character for purposes of a partner's net precontribution gain is determined as if the contributed property were sold to an unrelated third party. As a result, all of the provisions that are relevant in determining the character of gain or loss on a sale are relevant in determining the character of the net precontribution gain. For example, if the sale of property would have resulted in part capital gain and part ordinary income, the character of the net precontribution gain for that property is part ordinary and part capital. The same approach applies in determining the allocation of any adjustment to the partnership's basis in partnership property as a result of gain recognized by the distributee partner. A basis adjustment attributable to gain treated as capital gain under section 1231 would be allocated to the property that entered into the calculation of the amount of section 1231 gain.

One commentator also suggested that the proposed regulations do not clarify whether character is determined at the partnership or the partner level. This determination may be important in situations such as section 1231 where the character of the gain or loss may depend on the partner's particular tax circumstances. The final regulations clarify that the character of the gain or loss is determined at the partnership level for this purpose.

Exceptions

One commentator suggested adding an exception for certain divisive transactions in which the contributing partner continued to own an indirect interest in the contributed property. The final regulations add a new exception under which section 737 does not apply to a transfer of contributed property by a transferor partnership to a transferee partnership, followed by a distribution of an interest in the transferee partnership (and no other property) to the contributing partner in complete liquidation of the partner's interest.

This exception is added because the distributee partner has simply converted an interest in the transferor partnership into an interest in a transferee partnership that holds the same contributed section 704(c) property. The limitations on this exception ensure that the partner's basis in the transferee partnership attributable to the contributed property is the same as the partner's basis in the transferor partnership attributable to that property. This allows a partnership to engage in a divisive split-up transaction, while preventing any avoidance of section 737 that might occur as a result of the basis allocation rules for non-liquidating distributions.

The proposed regulations provide that section 737 does not apply to an incorporation of a partnership other than an incorporation involving an actual distribution of partnership property to the partners. One commentator suggested that this distinction between methods of incorporation creates an unnecessary trap for the unwary and may have a chilling effect on the conversion of partnerships into S corporations. The final regulations adopt the proposed regulations without change. The form of incorporation chosen by the partners is respected for Federal tax purposes and, as a result, the distribution of property in connection with the incorporation is treated as a distribution for purposes of section 737.

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One commentator suggested an additional exception for distributions of an undivided interest in property similar to that described with respect to the regulations under section 704(c)(1)(B). The final regulations provide a comparable rule under section 737.

Anti-Abuse Rule

Commentators made several suggestions regarding the anti-abuse rule in the proposed regulations. These suggestions are essentially the same as the comments regarding the anti-abuse rule in the section 704(c)(1)(B) regulations, and thus the comments are discussed above.

Effective Date

These regulations are effective for distributions by a partnership to a partner on or after January 9, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *

Section 1.704–4 also issued under 26 U.S.C. 704(c) * * *

Par. 2. Section 1.704–4 is added to read as follows:

§ 1.704–4 Distribution of contributed property.

(a) *Determination of gain and loss*—(1) *In general.* A partner that contributes section 704(c) property to a partnership must recognize gain or loss under section 704(c)(1)(B) and this section on the distribution of such property to another partner within five years of its contribution to the partnership in an amount equal to the gain or loss that would have been allocated to such partner under section 704(c)(1)(A) and § 1.704–3 if the distributed property had been sold by the partnership to the distributee partner for its fair market value at the time of the distribution. See § 1.704–3(a)(3)(i) for a definition of section 704(c) property.

(2) *Transactions to which section 704(c)(1)(B) applies.* Section 704(c)(1)(B) and this section apply only to the extent that a distribution by a partnership is a distribution to a partner acting in the capacity of a partner within the meaning of section 731.

(3) *Fair market value of property.* The fair market value of the distributed section 704(c) property is the price at which the property would change hands between a willing buyer and a willing seller at the time of the distribution, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. The fair market value that a partnership assigns to distributed section 704(c) property will be regarded as correct, provided that the value is reasonably agreed to among the partners in an arm's-length negotiation and the partners have sufficiently adverse interests.

(4) *Determination of five-year period*—(i) *General rule. The five-year period specified in paragraph (a)(1) of this section begins on and includes the date of contribution.*

(ii) *Section 708(b)(1)(B) terminations.* A termination of the partnership under section 708(b)(1)(B) begins a new five-year period for each partner with respect to the built-in gain and built-in loss property that the partner is deemed to recontribute to a new partnership following the termination, but only to the extent that the pre-termination built-in gain or loss, if any, on such property would not have been allocated to the contributing partner under section 704(c)(1)(A) and § 1.704–3 on a sale of the contributed property to an unrelated party immediately before the termination. See § 1.704–3(a)(3)(ii) for the definitions of built-in gain and built-in loss on section 704(c) property.

(5) *Examples.* The following examples illustrate the rules of this paragraph (a). Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example 1. Recognition of gain. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes $10,000 cash and Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $4,000. Thus, there is a built-in gain of $6,000 on Property A at the time of contribution. B contributes $10,000 cash and Property B, nondepreciable real property with a fair market value and adjusted tax basis of $10,000. C contributes $20,000 cash.

(ii) On December 31, 1998, Property A and Property B are distributed to C in complete liquidation of C's interest in the partnership.

(iii) A would have recognized $6,000 of gain under section 704(c)(1)(A) and § 1.704–3 on the sale of Property A at the time of the distribution ($10,000 fair market value less $4,000 adjusted tax basis). As a result, A must recognize $6,000 of gain on the distribution of Property A to C. B would not have recognized any gain or loss under section 704(c)(1)(A) and § 1.704–3 on the sale of Property B at the time of distribution because Property B was not section 704(c) property. As a result, B does not recognize any gain or loss on the distribution of Property B.

Example 2. Effect of post-contribution depreciation deductions. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, depreciable property with a fair market value of $30,000 and an adjusted tax basis of $20,000. Therefore, there is a built-in gain of $10,000 on Property A. B and C each contribute $30,000 cash. ABC uses the traditional method of making section 704(c) allocations described in § 1.704–3(b) with respect to Property A.

(ii) Property A is depreciated using the straight-line method over its remaining 10-year recovery period. The partnership has book depreciation of $3,000 per year (10 percent of the $30,000 book basis), and each partner is allocated $1,000 of book depreciation per year (one-third of the total annual book depreciation of $3,000). The partnership has a tax depreciation deduction of $2,000 per year (10 percent of the $20,000 tax basis in Property A). This $2,000 tax depreciation deduction is allocated equally between B and C, the noncontributing partners with respect to Property A.

(iii) At the end of the third year, the book value of Property A is $21,000 ($30,000 initial book value less $9,000 aggregate book depreciation) and the adjusted tax basis is $14,000 ($20,000 initial tax basis less $6,000 aggregate tax depreciation). A's remaining section 704(c)(1)(A) built-in gain with respect to Property A is $7,000 ($21,000 book value less $14,000 adjusted tax basis).

(iv) On December 31, 1997, Property A is distributed to B in complete liquidation of B's interest in the partnership. If Property A had been sold for its fair market value at the time of the distribution, A would have recognized $7,000 of gain under section 704(c)(1)(A) and § 1.704–3(b). Therefore, A recognizes $7,000 of gain on the distribution of Property A to B.

Example 3. Effect of remedial method. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A1, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $5,000, and Property A2, nondepreciable real property with a fair market value and adjusted tax basis of $10,000. B and C each contribute $20,000 cash. ABC uses the remedial method of making section 704(c) allocations described in § 1.704–3(d) with respect to Property A1.

(ii) On December 31, 1998, when the fair market value of Property A1 has decreased to $7,000, Property A1 is distributed to C in a current distribution. If Property A1 had been sold by the partnership at the time of the distribution, ABC would have recognized the $2,000 of remaining built-in gain under section 704(c)(1)(A) on the sale (fair market value of $7,000 less $5,000 adjusted tax basis). All of this gain would have been allocated to A. ABC would also have recognized a book loss of $3,000 ($10,000 original book value less $7,000 current fair market value of the property). Book loss in the amount of $2,000 would have been allocated equally between B and C. Under the remedial method, $2,000 of tax loss would also have been allocated equally to B and C to match their share of the book loss. As a result, $2,000 of gain would also have been allocated to A as an offsetting remedial allocation. A would have recognized $4,000 of total gain under section 704(c)(1)(A) on the sale of Property A1 ($2,000 of section 704(c) recognized gain plus $2,000 remedial gain). Therefore, A recognizes $4,000 of gain on the distribution of Property A1 to C under this section.

(b) *Character of gain or loss*—(1) *General rule.* Gain or loss recognized by the contributing partner under section 704(c)(1)(B) and this section has the same character as the gain or loss that would have resulted if the distributed property had been sold by the partnership to the distributee partner at the time of the distribution.

(2) *Example.* The following example illustrates the rule of this paragraph (b). Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example. Character of gain. (i) On January 1, 1995, A and B form partnership AB. A contributes $10,000 and Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $4,000, in exchange for a 25 percent interest in partnership capital and profits. B contributes $60,000 cash for a 75 percent interest in partnership capital and profits.

(ii) On December 31, 1998, Property A is distributed to B in a current distribution. Property A is used in a trade or business of B.

(iii) A would have recognized $6,000 of gain under section 704(c)(1)(A) on a sale of Property A at the time of the distribution (the difference between the fair market value ($10,000) and the adjusted tax basis ($4,000) of the property at that time). Because Property A is not a capital asset in the hands of Partner B and B holds more than 50 percent of partnership capital and profits, the character of the gain on a sale of Property A to B would have been ordinary income under section 707(b)(2). Therefore, the character of the gain to A on the distribution of Property A to B is ordinary income.

(c) *Exceptions*—(1) *Property contributed on or before October 3, 1989.* Section 704(c)(1)(B) and this section do not apply to property contributed to the partnership on or before October 3, 1989.

(2) *Certain liquidations.* Section 704(c)(1)(B) and this section do not apply to a distribution of an interest in section 704(c) property to a partner other than the contributing partner in a liquidation of the partnership if—

(i) The contributing partner receives an interest in the section 704(c) property contributed by that partner (and no other property); and

(ii) The built-in gain or loss in the interest distributed to the contributing partner, determined immediately after the distribution, is equal to or greater than the built-in gain or loss on the property that would have been allocated to the contributing partner under section 704(c)(1)(A) and § 1.704–3 on a sale of the contributed property to an unrelated party immediately before the distribution.

(3) *Section 708(b)(1)(B) termination.* Section 704(c)(1)(B) and this section do not apply to a deemed distribution of property caused by a termination of the partnership under section 708(b)(1)(B). See paragraph (a)(4)(ii) of this section for a special rule regarding a new five-year period for certain property deemed contributed to a new partnership following a termination of the partnership under section 708(b)(1)(B). See also § 1.737–2(a) for a similar rule in the context of section 737.

(4) *Complete transfer to another partnership.* Section 704(c)(1)(B) and this section do not apply to a transfer by a partnership (transferor partnership) of all of its assets and liabilities to a second partnership (transferee partnership) in an exchange described in section 721, followed by a distribution of the interest in the transferee partnership in liquidation of the transferor partnership as part of the same plan or arrangement. A subsequent distribution of section 704(c) property by the transferee partnership to a partner of the transferee partnership is subject to section 704(c)(1)(B) to the same extent that a distribution by the transferor partnership would have been subject to section 704(c)(1)(B). See § 1.737–2(b) for a similar rule in the context of section 737.

(5) *Incorporation of a partnership.* Section 704(c)(1)(B) and this section do not apply to an incorporation of a partnership by any method of incorporation (other than a method involving an actual distribution of partnership property to the partners followed by a contribution of that property to a corporation), provided that the partnership is liquidated as part of the incorporation transaction. See § 1.737–2(c) for a similar rule in the context of section 737.

(6) *Undivided interests.* Section 704(c)(1)(B) and this section do not apply to a distribution of an undivided interest in property to the extent that the undivided interest does not exceed the undivided interest, if any, contributed by the distributee partner in the same property. See § 1.737–2(d)(4) for the application of section 737 in a similar context. The portion of the undivided interest in property retained by the partnership after the distribution, if any, that is treated as contributed by the distributee partner, is reduced to the extent of the undivided interest distributed to the distributee partner.

(7) *Example.* The following example illustrates the rule of paragraph (c)(2) of this section. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example. (i) On January 1, 1995, A and B form partnership AB, as equal partners. A contributes Property A, nondepreciable real property with a fair market value and adjusted tax basis of $20,000. B contributes Property B, nondepreciable real property with a fair market value of $20,000 and an adjusted tax basis of $10,000. Property B therefore has a built-in gain of $10,000 at the time of contribution.

(ii) On December 31, 1998, the partnership liquidates when the fair market value of Property A has not changed, but the fair market value of Property B has increased to $40,000.

(iii) In the liquidation, A receives Property A and a 25 percent interest in Property B. This interest in Property B has a fair market

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value of $10,000 to A, reflecting the fact that A was entitled to 50 percent of the $20,000 post-contribution appreciation in Property B. The partnership distributes to B a 75 percent interest in Property B with a fair market value of $30,000. B's basis in this portion of Property B is $10,000 under section 732(b). As a result, B has a built-in gain of $20,000 in this portion of Property B immediately after the distribution ($30,000 fair market value less $10,000 adjusted tax basis). This built-in gain is greater than the $10,000 of built-in gain in Property B at the time of contribution to the partnership. B therefore does not recognize any gain on the distribution of a portion of Property B to A under this section.

(d) *Special rules*—(1) *Nonrecognition transactions.* Property received by the partnership in exchange for section 704(c) property in a nonrecognition transaction is treated as the section 704(c) property for purposes of section 704(c)(1)(B) and this section to the extent that the property received is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

(2) *Transfers of a partnership interest.* The transferee of all or a portion of the partnership interest of a contributing partner is treated as the contributing partner for purposes of section 704(c)(1)(B) and this section to the extent of the share of built-in gain or loss allocated to the transferee partner. See § 1.704–3(a)(7).

(3) *Distributions of like-kind property.* If section 704(c) property is distributed to a partner other than the contributing partner and like-kind property (within the meaning of section 1031) is distributed to the contributing partner no later than the earlier of (i) 180 days following the date of the distribution to the non-contributing partner, or (ii) the due date (determined with regard to extensions) of the contributing partner's income tax return for the taxable year of the distribution to the noncontributing partner, the amount of gain or loss, if any, that the contributing partner would otherwise have recognized under section 704(c)(1)(B) and this section is reduced by the amount of built-in gain or loss in the distributed like-kind property in the hands of the contributing partner immediately after the distribution. The contributing partner's basis in the distributed like-kind property is determined as if the like-kind property were distributed in an unrelated distribution prior to the distribution of any other property distributed as part of the same distribution and is determined without regard to the increase in the contributing partner's adjusted tax basis in the partnership interest under section 704(c)(1)(B) and this section. See § 1.707–3 for provisions treating the distribution of the like-kind property to the contributing partner as a disguised sale in certain situations.

(4) *Example.* The following example illustrates the rules of this paragraph (d). Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example. Distribution of like-kind property. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $20,000 and an adjusted tax basis of $10,000. B and C each contribute $20,000 cash. The partnership subsequently buys Property X, nondepreciable real property of a like-kind to Property A with a fair market value and adjusted tax basis of $8,000. The fair market value of Property X subsequently increases to $10,000.

(ii) On December 31, 1998, Property A is distributed to B in a current distribution. At the same time, Property X is distributed to A in a current distribution. The distribution of Property X does not result in the contribution of Property A being properly characterized as a disguised sale to the partnership under § 1.707–3. A's basis in Property X is $8,000 under section 732(a)(1). A therefore has $2,000 of built-in gain in Property X ($10,000 fair market value less $8,000 adjusted tax basis).

(iii) A would generally recognize $10,000 of gain under section 704(c)(1)(B) on the distribution of Property A, the difference between the fair market value ($20,000) of the property and its adjusted tax basis ($10,000). This gain is reduced, however, by the amount of the built-in gain of Property X in the hands of A. As a result, A recognizes only $8,000 of gain on the distribution of Property A to B under section 704(c)(1)(B) and this section.

(e) *Basis adjustments*—(1) *Contributing partner's basis in the partnership interest.* The basis of the contributing partner's interest in the partnership is increased by the amount of the gain, or decreased by the amount of the loss, recognized by the partner under section 704(c)(1)(B) and this section. This increase or decrease is taken into account in determining (i) the contributing partner's adjusted tax basis under section 732 for any property distributed to the partner in a distribution that is part of the same distribution as the distribution of the contributed property, other than like-kind property described in paragraph (d)(3) of this section (pertaining to the special rule for distributions of like-kind property), and (ii) the amount of the gain recognized by the contributing partner under section 731 or section 737, if any, on a distribution of money or property to the contributing partner that is part of the same distribution as the distribution of the contributed property. For a determination of basis in a distribution subject to section 737, see § 1.737–3(a).

(2) *Partnership's basis in partnership property.* The partnership's adjusted tax basis in the distributed section 704(c) property is increased or decreased immediately before the distribution by the amount of gain or loss recognized by the contributing partner under section 704(c)(1)(B) and this section. Any increase or decrease in basis is therefore taken into account in determining the distributee partner's adjusted tax basis in the distributed property under section 732. For a determination of basis in a distribution subject to section 737, see § 1.737–3(b).

(3) *Section 754 adjustments.* The basis adjustments to partnership property made pursuant to paragraph (e)(2) of this section are not elective and must be made regardless of whether the partnership has an election in effect under section 754. Any adjustments to the bases of partnership property (including the distributed section 704(c) property) under section 734(b) pursuant to a section 754 election must be made after (and must take into account) the adjustments to basis made under paragraph (e)(2) of this section. See § 1.737–3(c)(4) for a similar rule in the context of section 737.

(4) *Example.* The following example illustrates the rules of this paragraph (e). Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example. Basis adjustment. On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes $10,000 cash and Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $4,000. B and C each contribute $20,000 cash.

(ii) On December 31, 1998, Property A is distributed to B in a current distribution.

(iii) Under paragraph (a) of this section, A recognizes $6,000 of gain on the distribution of Property A because that is the amount of gain that would have been allocated to A under section 704(c)(1)(A) and § 1.704–3 on a sale of Property A for its fair market value at the time of the distribution (fair market value of Property A ($10,000) less its adjusted tax basis at the time of distribution ($4,000)). The adjusted tax basis of A's partnership interest is increased from $14,000 to $20,000 to reflect this gain. The partnership's adjusted tax basis in Property A is increased from $4,000 to $10,000 immediately prior to its distribution to B. B's adjusted tax basis in Property A is therefore $10,000 under section 732(a)(1).

(f) *Anti-abuse rule*—(1) *In general.* The rules of section 704(c)(1)(B) and this section must be applied in a manner consistent with the purpose of section 704(c)(1)(B). Accordingly, if a principal purpose of a transaction is to achieve a tax result that is inconsistent with the purpose of section 704(c)(1)(B), the Commissioner can recast the transaction for federal tax purposes as appropriate to achieve tax results that are consistent with the purpose of section 704(c)(1)(B) and this section. Whether a tax result is inconsistent with the purpose of section 704(c)(1)(B) and this section must be determined based on all the facts and circumstances. See § 1.737–4 for an anti-abuse rule and examples in the context of section 737.

(2) *Examples.* The following examples illustrate the anti-abuse rule of this paragraph (f). The examples set forth below do not delineate the boundaries of either permissible or impermissible types of transactions. Further, the addition of any facts or circumstances that are not specifically set forth in an example (or the deletion of any facts or circumstances) may alter the outcome of the transaction described in the example. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 704(c)(1)(B), and all partners are unrelated.

Example 1. Distribution in substance made within five-year period; results inconsistent with the purpose of section 704(c)(1)(B). (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $1,000. B and C each contributes $10,000 cash.

(ii) On December 31, 1998, the partners desire to distribute Property A to B in complete liquidation of B's interest in the partnership. If Property A were distributed at that time, however, A would recognize $9,000 of gain under section 704(c)(1)(B), the difference between the $10,000 fair market value and the $1,000 adjusted tax basis of Property A, because Property A was contributed to the partnership less than five years before December 31, 1998. On becoming aware of this potential gain recognition, and with a principal purpose of avoiding such gain, the partners amend the partnership agreement on December 31, 1998, and take any other steps necessary to provide that substantially all of the economic risks and benefits of Property A are borne by B as of December 31, 1998, and that substantially all of the economic risks and benefits of all other partnership property are borne by A and C. The partnership holds Property A until January 5, 2000, at which time it is distributed to B in complete liquidation of B's interest in the partnership.

(iii) The actual distribution of Property A occurred more than five years after the contribution of the property to the partnership. The steps taken by the partnership on December 31, 1998, however, are the functional equivalent of an actual distribution of Property A to B in complete liquidation of B's interest in the partnership as of that date. Section 704(c)(1)(B) requires recognition of gain when contributed section 704(c) property is in substance distributed to another partner within five years of its contribution to the partnership. Allowing a contributing partner to avoid section 704(c)(1)(B) through arrangements such as those in this *Example 1* that have the effect of a distribution of property within five years of the date of its contribution to the partnership would effectively undermine the purpose of section 704(c)(1)(B) and this section. As a result, the steps taken by the partnership on December 31, 1998, are treated as causing a distribution of Property A to B for purposes of section 704(c)(1)(B) on that date, and A recognizes gain of $9,000 under section 704(c)(1)(B) and this section at that time.

(iv) Alternatively, if on becoming aware of the potential gain recognition to A on a distribution of Property A on December 31, 1998, the partners had instead agreed that B would continue as a partner with no changes to the partnership agreement or to B's economic interest in partnership operations, the distribution of Property A to B on January 5, 2000, would not have been inconsistent with the purpose of section 704(c)(1)(B) and this section. In that situation, Property A would not have been distributed until after the expiration of the five-year period specified in section 704(c)(1)(B) and this section. Deferring the distribution of Property A until the end of the five-year period for a principal purpose of avoiding the recognition of gain under section 704(c)(1)(B) and this section is not inconsistent with the purpose of section 704(c)(1)(B). Therefore, A would not have recognized gain on the distribution of Property A in that case.

Example 2. Suspension of five-year period in manner consistent with the purpose of section 704(c)(1)(B). (i) A, B, and C form partnership ABC on January 1, 1995, to conduct bona fide business activities. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $1,000, in exchange for a 49.5 percent interest in partnership capital and profits. B contributes $10,000 in cash for a 49.5 percent interest in partnership capital and profits. C contributes cash for a 1 percent interest in partnership capital and profits. A and B are wholly owned subsidiaries of the same affiliated group and continue to control the management of Property A by virtue of their controlling interests in the partnership. The partnership is formed pursuant to a plan a principal purpose of which is to minimize the period of time that A would have to remain a partner with a potential acquiror of Property A.

(ii) On December 31, 1997, D is admitted as a partner to the partnership in exchange for $10,000 cash.

(iii) On January 5, 2000, Property A is distributed to D in complete liquidation of D's interest in the partnership.

(iv) The distribution of Property A to D occurred more than five years after the contribution of the property to the partnership. On these facts, however, a principal purpose of the transaction was to minimize the period of time that A would have to remain partners with a potential acquiror of Property A, and treating the five-year period of section 704(c)(1)(B) as running during a time when Property A was still effectively owned through the partnership by members of the contributing affiliated group of which A is a member is inconsistent with the purpose of section 704(c)(1)(B). Prior to the admission of D as a partner, the pooling of assets between A and B, on the one hand, and C, on the other hand, although sufficient to constitute ABC as a valid partnership for federal income tax purposes, is not a sufficient pooling of assets for purposes of running the five-year period with respect to the distribution of Property A to D. Allowing a contributing partner to avoid section 704(c)(1)(B) through arrangements such as those in this *Example 2* would have the effect of substantially nullifying the five-year requirement of section 704(c)(1)(B) and this section and elevating the form of the transaction over its substance. As a result, with respect to the distribution of Property A to D, the five-year period of section 704(c)(1)(B) is tolled until the admission of D as a partner on December 31, 1997. Therefore, the distribution of Property A occurred before the end of the five-year period of section 704(c)(1)(B), and A recognizes gain of $9,000 under section 704(c)(1)(B) on the distribution.

(g) *Effective date.* This section applies to distributions by a partnership to a partner on or after January 9, 1995.

Par. 3. Sections 1.737–1, 1.737–2, 1.737–3, 1.737–4, and 1.737–5 are added to read as follows:

§ 1.737–1 Recognition of precontribution gain.

(a) *Determination of gain*—(1) *In general.* A partner that receives a distribution of property (other than money) must recognize gain under section 737 and this section in an amount equal to the lesser of the excess distribution (as defined in paragraph (b) of this section) or the partner's net precontribution gain (as defined in paragraph (c) of this section). Gain recognized under section 737 and this section is in addition to any gain recognized under section 731.

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(2) *Transactions to which section 737 applies.* Section 737 and this section apply only to the extent that a distribution by a partnership is a distribution to a partner acting in the capacity of a partner within the meaning of section 731, except that section 737 and this section do not apply to the extent that section 751(b) applies to the distribution.

(b) *Excess distribution*—(1) *Definition.* The excess distribution is the amount (if any) by which the fair market value of the distributed property (other than money) exceeds the distributee partner's adjusted tax basis in the partner's partnership interest.

(2) *Fair market value of property.* The fair market value of the distributed property is the price at which the property would change hands between a willing buyer and a willing seller at the time of the distribution, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. The fair market value that a partnership assigns to distributed property will be regarded as correct, provided that the value is reasonably agreed to among the partners in an arm's-length negotiation and the partners have sufficiently adverse interests.

(3) *Distributee partner's adjusted tax basis*—(i) *General rule.* In determining the amount of the excess distribution, the distributee partner's adjusted tax basis in the partnership interest includes any basis adjustment resulting from the distribution that is subject to section 737 (for example, adjustments required under section 752) and from any other distribution or transaction that is part of the same distribution, except for—

(A) The increase required under section 737(c)(1) for the gain recognized by the partner under section 737; and

(B) The decrease required under section 733(2) for any property distributed to the partner other than property previously contributed to the partnership by the distributee partner. See § 1.704–4(a)(1) for a rule in the context of section 704(c)(1)(B). See also § 1.737–3(b)(2) for a special rule for determining a partner's adjusted tax basis in distributed property previously contributed by the partner to the partnership.

(ii) *Advances or drawings.* The distributee partner's adjusted tax basis in the partnership interest is determined as of the last day of the partnership's taxable year if the distribution to which section 737 applies is properly characterized as an advance or drawing against the partner's distributive share of income. See § 1.731–1(a)(1)(ii).

(c) *Net precontribution gain*—(1) *General rule.* The distributee partner's net precontribution gain is the net gain (if any) that would have been recognized by the distributee partner under section 704(c)(1)(B) and § 1.704–4 if all property that had been contributed to the partnership by the distributee partner within five years of the distribution and is held by the partnership immediately before the distribution had been distributed by the partnership to another partner other than a partner who owns, directly or indirectly, more than 50 percent of the capital or profits interest in the partnership. See § 1.704–4 for provisions determining a contributing partner's gain or loss under section 704(c)(1)(B) on an actual distribution of contributed section 704(c) property to another partner.

(2) *Special rules*—(i) *Property contributed on or before October 3, 1989.* Property contributed to the partnership on or before October 3, 1989, is not taken into account in determining a partner's net precontribution gain. See § 1.704–4(c)(1) for a similar rule in the context of section 704(c)(1)(B).

(ii) *Section 734(b)(1)(A) adjustments.* For distributions to a distributee partner of money by a partnership with a section 754 election in effect that are part of the same distribution as the distribution of property subject to section 737, for purposes of paragraph (a) and (c)(1) of this section the distributee partner's net precontribution gain is reduced by the basis adjustments (if any) made to section 704(c) property contributed by the distributee partner under section 734(b)(1)(A). See § 1.737–3(c)(4) for rules regarding basis adjustments for partnerships with a section 754 election in effect.

(iii) *Transfers of a partnership interest.* The transferee of all or a portion of a contributing partner's partnership interest succeeds to the transferor's net precontribution gain, if any, in an amount proportionate to the interest transferred. See § 1.704–3(a)(7) and § 1.704–4(d)(2) for similar provisions in the context of section 704(c)(1)(A) and section 704(c)(1)(B).

(iv) *Section 704(c)(1)(B) gain recognized in related distribution.* A distributee partner's net precontribution gain is determined after taking into account any gain or loss recognized by the partner under section 704(c)(1)(B) and § 1.704–4 (or that would have been recognized by the partner except for the like-kind exception in section 704(c)(2) and § 1.704–4(d)(3)) on an actual distribution to another partner of section 704(c) property contributed by the distributee partner that is part of the same distribution as the distribution to the distributee partner.

(v) *Section 704(c)(2) disregarded.* A distributee partner's net precontribution gain is determined without regard to the provisions of section 704(c)(2) and § 1.704–4(d)(3) in situations in which the property contributed by the distributee partner is not actually distributed to another partner in a distribution related to the section 737 distribution.

(d) *Character of gain.* The character of the gain recognized by the distributee partner under section 737 and this section is determined by, and is proportionate to, the character of the partner's net precontribution gain. For this purpose, all gains and losses on section 704(c) property taken into account in determining the partner's net precontribution gain are netted according to their character. Character is determined at the partnership level for this purpose, and any character with a net negative amount is disregarded. The character of the partner's gain under section 737 is the same as, and in proportion to, any character with a net positive amount. Character for this purpose is determined as if the section 704(c) property had been sold by the partnership to an unrelated third party at the time of the distribution and includes any item that would have been taken into account separately by the contributing partner under section 702(a) and § 1.702–1(a).

(e) *Examples.* The following examples illustrate the provisions of this section. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 737, and all partners are unrelated.

Example 1. Calculation of excess distribution and net precontribution gain. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, depreciable real property with a fair market value of $30,000 and an adjusted tax basis of $20,000. B contributes Property B, nondepreciable real property with a fair market value and adjusted tax basis of $30,000. C contributes $30,000 cash.

(ii) Property A has 10 years remaining on its cost recovery schedule and is depreciated using the straight-line method. The partnership uses the traditional method for allocating items under section 704(c) described in § 1.704–3(b)(1) for Property A. The partnership has book depreciation of $3,000 per year (10 percent of the $30,000 book basis in Property A) and each partner is allocated $1,000 of book depreciation per year (one-third of the total annual book depreciation of $3,000). The partnership also has tax depreciation of $2,000 per year (10 percent of the $20,000 adjusted tax basis in Property A). This $2,000 tax depreciation is allocated equally between B and C, the noncontributing partners with respect to Property A.

(iii) At the end of 1997, the book value of Property A is $21,000 ($30,000 initial book value less $9,000 aggregate book depreciation) and its adjusted tax basis is $14,000 ($20,000 initial tax basis less $6,000 aggregate tax depreciation).

(iv) On December 31, 1997, Property B is distributed to A in complete liquidation of A's partnership interest. The adjusted tax basis of A's partnership interest at that time is $20,000. The amount of the excess distribution is $10,000, the difference between the fair market value of the distributed Property B ($30,000) and A's adjusted tax basis in A's partnership interest ($20,000). A's net precontribution gain is $7,000, the difference between the book value of Property A ($21,000) and its adjusted tax basis at the time of the distribution ($14,000). A recognizes gain of $7,000 on the distribution, the lesser of the excess distribution and the net precontribution gain.

Example 2. Determination of distributee partner's basis. (i) On January 1, 1995, A, B, and C form general partnership ABC as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $4,000. B and C each contributes $10,000 cash.

(ii) The partnership purchases Property B, nondepreciable real property with a fair market value of $9,000, subject to a $9,000 nonrecourse liability. This nonrecourse liability is allocated equally among the partners under section 752, increasing A's adjusted tax basis in A's partnership interest from $4,000 to $7,000.

(iii) On December 31, 1998, A receives $2,000 cash and Property B, subject to the $9,000 liability, in a current distribution.

(iv) In determining the amount of the excess distribution, the adjusted tax basis of A's partnership interest is adjusted to take into account the distribution of money and the shift in liabilities. A's adjusted tax basis is therefore increased to $11,000 for this purpose ($7,000 initial adjusted tax basis, less $2,000 distribution of money, less $3,000 (decrease in A's share of the $9,000 partnership liability), plus $9,000 (increase in A's individual liabilities)). As a result of this basis adjustment, the adjusted tax basis of A's partnership interest ($11,000) is greater than the fair market value of the distributed property ($9,000) and therefore, there is no excess distribution. A recognizes no gain under section 737.

Example 3. Net precontribution gain reduced for gain recognized under section 704(c)(1)(B). (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Properties A1 and A2, nondepreciable real properties located in the United States each with a fair market value of $10,000 and an adjusted tax basis of $6,000. B contributes Property B, nondepreciable real property located outside the United States, with a fair market value and adjusted tax basis of $20,000. C contributes $20,000 cash.

(ii) On December 31, 1998, Property B is distributed to A in complete liquidation of A's interest and, as part of the same distribution, Property A1 is distributed to B in a current distribution.

(iii) A's net precontribution gain before the distribution is $8,000 ($20,000 fair market value of Properties A1 and A2 less $12,000 adjusted tax basis of such properties). A recognizes $4,000 of gain under section 704(c)(1)(B) and § 1.704–4 on the distribution of Property A1 to B ($10,000 fair market value of Property A1 less $6,000 adjusted tax basis of Property A1). This gain is taken into account in determining A's excess distribution and net precontribution gain. As a result, A's net precontribution gain is reduced from $8,000 to $4,000, and the adjusted tax basis in A's partnership interest is increased by $4,000 to $16,000.

(iv) A recognizes gain of $4,000 on the receipt of Property B under section 737, an amount equal to the lesser of the excess distribution of $4,000 ($20,000 fair market value of Property B less $16,000 adjusted tax basis of A's interest in the partnership) and A's remaining net precontribution gain of $4,000.

Example 4. Character of gain. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes the following nondepreciable property to the partnership:

	Fair market value	Adjusted tax basis
Property A1	$30,000	$20,000
Property A2	30,000	38,000
Property A3	10,000	9,000

(ii) The character of gain or loss on Property A1 and Property A2 is long-term, U.S.-source capital gain or loss. The character of gain on Property A3 is long-term, foreign-source capital gain. B contributes Property B, nondepreciable real property with a fair market value and adjusted tax basis of $70,000. C contributes $70,000 cash.

(iii) On December 31, 1998, Property B is distributed to A in complete liquidation of A's interest in the partnership. A recognizes $3,000 of gain under section 737, an amount equal to the excess distribution of $3,000 ($70,000 fair market value of Property B less $67,000 adjusted tax basis in A's partnership interest) and A's net precontribution gain of $3,000 ($70,000 aggregate fair market value of properties contributed by A less $67,000 aggregate adjusted tax basis of such properties).

(iv) In determining the character of A's gain, all gains and losses on property taken into account in determining A's net precontribution gain are netted according to their character and allocated to A's recognized gain under section 737 based on the relative proportions of the net positive amounts. U.S.-source and foreign-source gains must be netted separately because A would have been required to take such gains into account separately under section 702. As a result, A's net precontribution gain of $3,000 consists of $2,000 of net long-term, U.S.-source capital gain ($10,000 gain on Property A1 and $8,000 loss on Property A2) and $1,000 of net long-term, foreign-source capital gain ($1,000 gain on Property A3).

(v) The character of A's gain under paragraph (d) of this section is therefore $2,000 long-term, U.S.-source capital gain ($3,000 gain recognized under section 737 × $2,000 net long-term, U.S.-source capital gain/$3,000 total net precontribution gain) and $1,000 long-term, foreign-source capital gain ($3,000 gain recognized under section 737 × $1,000 net long-term, foreign-source capital gain/$3,000 total net precontribution gain).

§ 1.737–2 Exceptions and special rules.

(a) *Section 708(b)(1)(B) terminations.* Section 737 and this section do not apply to a deemed distribution of property caused by a termination of the partnership under section 708(b)(1)(B). See § 1.704–4(c)(3) for a similar rule in the context of section 704(c)(1)(B).

(b) *Transfers to another partnership*—(1) *Complete transfer.* Section 737 and this section do not apply to a transfer by a partnership (transferor partnership) of all of its assets and liabilities to a second partnership (transferee partnership) in an exchange described in section 721, followed by a distribution of the interest in the transferee partnership in liquidation of the transferor partnership as part of the same plan or arrangement. See § 1.704–4(c)(4) for a similar rule in the context of section 704(c)(1)(B).

(2) *Certain divisive transactions.* Section 737 and this section do not apply to a transfer by a partnership (transferor partnership) of all of the section 704(c) property contributed by a partner to a second partnership (transferee partnership) in an exchange described in section 721, followed by a distribution as part of the same plan or arrangement of an interest in the transferee partnership (and no other property) in complete liquidation of the interest of the partner that originally contributed the section 704(c) property to the transferor partnership.

(3) *Subsequent distributions.* A subsequent distribution of property by the transferee partnership to a partner of the transferee partnership that was formerly a partner of the transferor partnership is subject to section 737 to the same extent that a distribution from the transferor partnership would have been subject to section 737.

(c) *Incorporation of a partnership.* Section 737 and this section do not apply to an incorporation of a partnership by any method of incorporation (other than a method involving an actual distribution of

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partnership property to the partners followed by a contribution of that property to a corporation), provided that the partnership is liquidated as part of the incorporation transaction. See § 1.704–4(c)(5) for a similar rule in the context of section 704(c)(1)(B).

(d) *Distribution of previously contributed property—(1) General rule.* Any portion of the distributed property that consists of property previously contributed by the distributee partner (including property treated as contributed by the partner in connection with a termination of the partnership under section 708(b)(1)(B)) (*previously contributed property*) is not taken into account in determining the amount of the excess distribution or the partner's net precontribution gain. See § 1.737–3(b)(2) for a special rule for determining the basis of previously contributed property in the hands of a distributee partner who contributed the property to the partnership.

(2) *Limitation for distribution of previously contributed interest in an entity.* An interest in an entity previously contributed to the partnership is not treated as previously contributed property to the extent that the value of the interest is attributable to property contributed to the entity after the interest was contributed to the partnership. The preceding sentence does not apply to the extent that the property contributed to the entity was contributed to the partnership by the partner that also contributed the interest in the entity to the partnership.

(3) *Nonrecognition transactions.* Property received by the partnership in exchange for contributed section 704(c) property in a nonrecognition transaction is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the property received is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

(4) *Undivided interests.* The distribution of an undivided interest in property is treated as the distribution of previously contributed property to the extent that the undivided interest does not exceed the undivided interest, if any, contributed by the distributee partner in the same property. See § 1.704–4(c)(6) for the application of section 704(c)(1)(B) in a similar context. The portion of the undivided interest in property retained by the partnership after the distribution, if any, that is treated as contributed by the distributee partner, is reduced to the extent of the undivided interest distributed to the distributee partner.

(e) *Examples.* The following examples illustrate the rules of this section. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 737, and all partners are unrelated.

Example 1. Distribution of previously contributed property. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes the following nondepreciable real property to the partnership:

	Fair market value	Adjusted tax basis
Property A1	$20,000	$10,000
Property A2	10,000	6,000

(ii) A's total net precontribution gain on the contributed property is $14,000 ($10,000 on Property A1 plus $4,000 on Property A2). B contributes $10,000 cash and Property B, nondepreciable real property with a fair market value and adjusted tax basis of $20,000. C contributes $30,000 cash.

(iii) On December 31, 1998, Property A2 and Property B are distributed to A in complete liquidation of A's interest in the partnership. Property A2 was previously contributed by A and is therefore not taken into account in determining the amount of the excess distribution or A's net precontribution gain. The adjusted tax basis of Property A2 in the hands of A is also determined under section 732 as if that property were the only property distributed to A.

(iv) As a result of excluding Property A2 from these determinations, the amount of the excess distribution is $10,000 ($20,000 fair market value of distributed Property B less $10,000 adjusted tax basis in A's partnership interest). A's net precontribution gain is also $10,000 ($14,000 total net precontribution gain less $4,000 gain with respect to previously contributed Property A2). A therefore recognizes $10,000 of gain on the distribution, the lesser of the excess distribution and the net precontribution gain.

Example 2. Distribution of a previously contributed interest in an entity. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $5,000, and all of the stock of Corporation X with a fair market value and adjusted tax basis of $500. B contributes $500 cash and Property B, nondepreciable real property with a fair market value and adjusted tax basis of $10,000. Partner C contributes $10,500 cash. On December 31, 1996, ABC contributes Property B to Corporation X in a nonrecognition transaction under section 351.

(ii) On December 31, 1998, all of the stock of Corporation X is distributed to A in complete liquidation of A's interest in the partnership. The stock is treated as previously contributed property with respect to A only to the extent of the $500 fair market value of the Corporation X stock contributed by A. The fair market value of the distributed stock for purposes of determining the amount of the excess distribution is therefore $10,000 ($10,500 total fair market value of Corporation X stock less $500 portion treated as previously contributed property). The $500 fair market value and adjusted tax basis of the Corporation X stock is also not taken into account in determining the amount of the excess distribution and the net precontribution gain.

(iii) A recognizes $5,000 of gain under section 737, the amount of the excess distribution ($10,000 fair market value of distributed property less $5,000 adjusted tax basis in A's partnership interest) and A's net precontribution gain ($10,000 fair market value of Property A less $5,000 adjusted tax basis in Property A).

Example 3. Distribution of undivided interest in property. (i) On January 1, 1995, A and B form partnership AB as equal partners. A contributes $500 cash and an undivided one-half interest in Property X. B contributes $500 cash and an undivided one-half interest in Property X.

(ii) On December 31, 1998, an undivided one-half interest in Property X is distributed to A in a current distribution. The distribution of the undivided one-half interest in Property X is treated as a distribution of previously contributed property because A contributed an undivided one-half interest in Property X. As a result, A does not recognize any gain under section 737 on the distribution.

§ 1.737–3 Basis adjustments; Recovery rules.

(a) *Distributee partner's adjusted tax basis in the partnership interest.* The distributee partner's adjusted tax basis in the partnership interest is increased by the amount of gain recognized by the distributee partner under section 737 and this section. This increase is not taken into account in determining the amount of gain recognized by the partner under section 737(a)(1) and this section or in determining the amount of gain recognized by the partner under section 731(a) on the distribution of money in the same distribution or any related distribution. See § 1.704–4(e)(1) for a determination of the distributee partner's adjusted tax basis in a distribution subject to section 704(c)(1)(B).

(b) *Distributee partner's adjusted tax basis in distributed property—(1) In general.* The distributee partner's adjusted tax basis in the distributed property is determined under section 732 (a) or (b) as applicable. The increase in the distributee partner's adjusted tax basis in the partnership interest under paragraph (a) of this section is taken into account in determining the distributee partner's adjusted tax basis in the distributed property other than property previously contributed by the partner. See § 1.704–4(e)(2) for a determination of basis in a distribution subject to section 704(c)(1)(B).

(2) *Previously contributed property.* The distributee partner's adjusted tax basis in distributed property that the partner previously contributed to the partnership is determined as if it were distributed in a separate and independent distribution prior to the distribution that is subject to section 737 and § 1.737–1.

(c) *Partnership's adjusted tax basis in partnership property—(1) Increase in basis.* The partnership's adjusted tax basis in eligible property is increased by the amount of gain recognized by the distributee partner under section 737.

(2) *Eligible property.* Eligible property is property that—

(i) Entered into the calculation of the distributee partner's net precontribution gain;

(ii) Has an adjusted tax basis to the partnership less than the property's fair market value at the time of the distribution;

(iii) Would have the same character of gain on a sale by the partnership to an unrelated party as the character of any of the gain recognized by the distributee partner under section 737; and

(iv) Was not distributed to another partner in a distribution subject to section 704(c)(1)(B) and § 1.704–4 that was part of the same distribution as the distribution subject to section 737.

(3) *Method of adjustment.* For the purpose of allocating the basis increase under paragraph (c)(2) of this section among the eligible property, all eligible property of the same character is treated as a single group. Character for this purpose is determined in the same manner as the character of the recognized gain is determined under § 1.737–1(d). The basis increase is allocated among the separate groups of eligible property in proportion to the character of the gain recognized under section 737. The basis increase is then allocated among property within each group in the order in which the property was contributed to the partnership by the partner, starting with the property contributed first, in an amount equal to the difference between the property's fair market value and its adjusted tax basis to the partnership at the time of the distribution. For property that has the same character and was contributed in the same (or a related) transaction, the basis increase is allocated based on the respective amounts of unrealized appreciation in such properties at the time of the distribution.

(4) *Section 754 adjustments.* The basis adjustments to partnership property made pursuant to paragraph (c)(1) of this section are not elective and must be made regardless of whether the partnership has an election in effect under section 754. Any adjustments to the bases of partnership property (including eligible property as defined in paragraph (c)(2) of this section) under section 734(b) pursuant to a section 754 election (other than basis adjustments under section 734(b)(1)(A) described in the following sentence) must be made after (and must take into account) the adjustments to basis made under paragraph (a) and paragraph (c)(1) of this section. Basis adjustments under section 734(b)(1)(A) that are attributable to distributions of money to the distributee partner that are part of the same distribution as the distribution of property subject to section 737 are made before the adjustments to basis under paragraph (a) and paragraph (c)(1) of this section. See § 1.737–1(c)(2)(ii) for the effect, if any, of basis adjustments under section 734(b)(1)(A) on a partner's net precontribution gain. See also § 1.704–4(e)(3) for a similar rule regarding basis adjustments pursuant to a section 754 election in the context of section 704(c)(1)(B).

(d) *Recovery of increase to adjusted tax basis.* Any increase to the adjusted tax basis of partnership property under paragraph (c)(1) of this section is recovered using any applicable recovery period and depreciation (or other cost recovery) method (including first-year conventions) available to the partnership for newly purchased property (of the type adjusted) placed in service at the time of the distribution.

(e) *Examples.* The following examples illustrate the rules of this section. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 737, and all partners are unrelated.

(e) *Example 1. Partner's basis in distributed property.* (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $5,000. B contributes Property B, nondepreciable real property with a fair market value and adjusted tax basis of $10,000. C contributes $10,000 cash.

(ii) On December 31, 1998, Property B is distributed to A in complete liquidation of A's interest in the partnership. A recognizes $5,000 of gain under section 737, an amount equal to the excess distribution of $5,000 ($10,000 fair market value of Property B less $5,000 adjusted tax basis in A's partnership interest) and A's net precontribution gain of $5,000 ($10,000 fair market value of Property A less $5,000 adjusted tax basis of such property).

(iii) A's adjusted tax basis in A's partnership interest is increased by the $5,000 of gain recognized under section 737. This increase is taken into account in determining A's basis in the distributed property. Therefore, A's adjusted tax basis in distributed Property B is $10,000 under section 732(b).

Example 2. Partner's basis in distributed property in connection with gain recognized under section 704(c)(1)(B). (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes the following nondepreciable real property to the partnership:

	Fair market value	Adjusted tax basis
Property A1	$10,000	5,000
Property A2	10,000	2,000

(ii) B contributes $10,000 cash and Property B, nondepreciable real property, with a fair market value and adjusted tax basis of $10,000. C contributes $20,000 cash.

(iii) On December 31, 1998, Property B is distributed to A in a current distribution and Property A1 is distributed to B in a current distribution. A recognizes $5,000 of gain under section 704(c)(1)(B) and § 1.704–4 on the distribution of Property A1 to B, the difference between the fair market value of such property ($10,000) and the adjusted tax basis in distributed Property A1 ($5,000). The adjusted tax basis of A's partnership interest is increased by this $5,000 of gain under section 704(c)(1)(B) and § 1.704–4(e)(1).

(iv) The increase in the adjusted tax basis of A's partnership interest is taken into account in determining the amount of the excess distribution. As a result, there is no excess distribution because the fair market value of Property B ($10,000) is less than the adjusted tax basis of A's interest in the partnership at the time of distribution ($12,000). A therefore recognizes no gain under section 737 on the receipt of Property B. A's adjusted tax basis in Property B is $10,000 under section 732(a)(1). The adjusted tax basis of A's partnership interest is reduced from $12,000 to $2,000 under section 733. See *Example 3* of § 1.737–1(e).

Example 3. Partnership's basis in partnership property after a distribution with section 737 gain. (i) On January 31, 1995, A, B, and C form partnership ABC as equal partners. A contributes the following nondepreciable property to the partnership:

	Fair market value	Adjusted tax basis
Property A1	$1,000	5500
Property A2	4,000	1,500
Property A3	4,000	6,000
Property A4	6,000	4,000

(ii) The character of gain or loss on Properties A1, A2, and A3 is long-term, U.S.-

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source capital gain or loss. The character of gain on Property A4 is long-term, foreign-source capital gain. B contributes Property B, nondepreciable real property with a fair market value and adjusted tax basis of $15,000. C contributes $15,000 cash.

(iii) On December 31, 1998, Property B is distributed to A in complete liquidation of A's interest in the partnership. A recognizes gain of $3,000 under section 737, an amount equal to the excess distribution of $3,000 ($15,000 fair market value of Property B less $12,000 adjusted tax basis in A's partnership interest) and A's net precontribution gain of $3,000 ($15,000 aggregate fair market value of the property contributed by A less $12,000 aggregate adjusted tax basis of such property).

(iv) $2,000 of A's gain is long-term, foreign-source capital gain ($3,000 total gain under section 737 x $2,000 net long-term, foreign-source capital gain/$3,000 total net precontribution gain). $1,000 of A's gain is long-term, U.S.-source capital gain ($3,000 total gain under section 737 x $1,000 net long-term, U.S.-source capital gain/$3,000 total net precontribution gain).

(v) The partnership must increase the adjusted tax basis of the property contributed by A by $3,000. All property contributed by A is eligible property. Properties A1, A2, and A3 have the same character and are grouped into a single group for purposes of allocating this basis increase. Property A4 is in a separate character group.

(vi) $2,000 of the basis increase must be allocated to long-term, foreign-source capital assets because $2,000 of the gain recognized by A was long-term, foreign-source capital gain. The adjusted tax basis of Property A4 is therefore increased from $4,000 to $6,000. $1,000 of the increase must be allocated to Properties A1 and A2 because $1,000 of the gain recognized by A is long-term, U.S.-source capital gain. No basis increase is allocated to Property A3 because its fair market value is less than its adjusted tax basis. The $1,000 basis increase is allocated between Properties A1 and A2 based on the unrealized appreciation in each asset before such basis adjustment. As a result, the adjusted tax basis of Property A1 is increased by $167 ($1,000 x $500/$3,000) and the adjusted tax basis of Property A2 is increased by $833 ($1,000 x $2,500/3,000).

§ 1.737–4 Anti-abuse rule.

(a) *In general.* The rules of section 737 and §§ 1.737–1, 1.737–2, and 1.737–3 must be applied in a manner consistent with the purpose of section 737. Accordingly, if a principal purpose of a transaction is to achieve a tax result that is inconsistent with the purpose of section 737, the Commissioner can recast the transaction for federal tax purposes as appropriate to achieve tax results that are consistent with the purpose of section 737. Whether a tax result is inconsistent with the purpose of section 737 must be determined based on all the facts and circumstances. See § 1.704–4(f) for an anti-abuse rule and examples in the context of section 704(c)(1)(B). The anti-abuse rule and examples under section 704(c)(1)(B) and § 1.704–4(f) are relevant to section 737 and §§ 1.737–1, 1.737–2, and 1.737–3 to the extent that the net precontribution gain for purposes of section 737 is determined by reference to section 704(c)(1)(B).

(b) *Examples.* The following examples illustrate the rules of this section. The examples set forth below do not delineate the boundaries of either permissible or impermissible types of transactions. Further, the addition of any facts or circumstances that are not specifically set forth in an example (or the deletion of any facts or circumstances) may alter the outcome of the transaction described in the example. Unless otherwise specified, partnership income equals partnership expenses (other than depreciation deductions for contributed property) for each year of the partnership, the fair market value of partnership property does not change, all distributions by the partnership are subject to section 737, and all partners are unrelated.

Example 1. Increase in distributee partner's basis by temporary contribution; results inconsistent with the purpose of section 737. (i) On January 1, 1995, A, B, and C form partnership ABC as equal partners. A contributes Property A1, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $1,000. B contributes Property B, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $10,000. C contributes $10,000 cash.

(ii) On January 1, 1999, pursuant to a plan a principal purpose of which is to avoid gain under section 737, A transfers to the partnership Property A2, nondepreciable real property with a fair market value and adjusted tax basis of $9,000. A treats the transfer as a contribution to the partnership pursuant to section 721 and increases the adjusted tax basis of A's partnership interest from $1,000 to $10,000. On January 1, 1999, the partnership agreement is amended and all other necessary steps are taken so that substantially all of the economic risks and benefits of Property A2 are retained by A. On February 1, 1999, Property B is distributed to A in a current distribution. If the contribution of Property A2 is treated as a contribution to the partnership for purposes of section 737, there is no excess distribution because the fair market value of distributed Property B ($10,000) does not exceed the adjusted tax basis of A's interest in the partnership ($10,000), and therefore section 737 does not apply. A's adjusted tax basis in distributed Property B is $10,000 under section 732(a)(1) and the adjusted tax basis of A's partnership interest is reduced to zero under section 733.

(iii) On March 1, 2000, A receives Property A2 from the partnership in complete liquidation of A's interest in the partnership. A recognizes no gain on the distribution of Property A2 because the property was previously contributed property. See § 1.737–2(d).

(iv) Although A has treated the transfer of Property A2 as a contribution to the partnership that increased the adjusted tax basis of A's interest in the partnership, it would be inconsistent with the purpose of section 737 to recognize the transfer as a contribution to the partnership. Section 737 requires recognition of gain when the value of distributed property exceeds the distributee partner's adjusted tax basis in the partnership interest. Section 737 assumes that any contribution or other transaction that affects a partner's adjusted tax basis in the partnership interest is a contribution or transaction in substance and is not engaged in with a principal purpose of avoiding recognition of gain under section 737. Because the transfer of Property A2 to the partnership was not a contribution in substance and was made with a principal purpose of avoiding recognition of gain under section 737, the Commissioner can disregard the contribution of Property A2 for this purpose. As a result, A recognizes gain of $9,000 under section 737 on the receipt of Property B, an amount equal to the lesser of the excess distribution of $9,000 ($10,000 fair market value of distributed Property B less the $1,000 adjusted tax basis of A's partnership interest, determined without regard to the transitory contribution of Property A2) or A's net precontribution gain of $9,000 on Property A1.

Example 2. Increase in distributee partner's basis; section 752 liability shift; results consistent with the purpose of section 737. (i) On January 1, 1995, A and B form general partnership AB as equal partners. A contributes Property A, nondepreciable real property with a fair market value of $10,000 and an adjusted tax basis of $1,000. B contributes Property B, nondepreciable real property with a fair market value and adjusted tax basis of $10,000. The partnership also borrows $10,000 on a recourse basis and purchases Property C. The $10,000 liability is allocated equally between A and B under section 752, thereby increasing the adjusted tax basis in A's partnership interest to $6,000.

(ii) On December 31, 1998, the partners agree that A is to receive Property B in a current distribution. If A were to receive Property B at that time, A would recognize $4,000 of gain under section 737, an amount equal to the lesser of the excess distribution of $4,000 ($10,000 fair market value of Property B less $6,000 adjusted tax basis in A's partnership interest) or A's net precontribution gain of $9,000 ($10,000 fair market value of Property A less $1,000 adjusted tax basis of Property A).

(iii) With a principal purpose of avoiding such gain, A and B agree that A will be solely liable for the repayment of the $10,000 partnership liability and take the steps necessary so that the entire amount of the liability is allocated to A under section 752. The adjusted tax basis in A's partnership interest is thereby increased from $6,000 to $11,000 to reflect A's share of the $5,000 of liability previously allocated to B. As a result of this increase in A's adjusted tax basis, there is no excess distribution because the fair market value of distributed Property B ($10,000) is less than the adjusted tax basis of A's partnership interest. Recognizing A's increased adjusted tax basis as a result of the shift in liabilities is consistent with the purpose of section 737 and this section. Section 737 requires recognition of gain only when the value of the distributed property exceeds the distributee partner's adjusted tax basis in the partnership interest. The $10,000 recourse liability is a bona fide liability of the partnership that was undertaken for a substantial business purpose and A's and B's agreement that A will assume responsibility for repayment of that debt has substance. Therefore, the increase in A's adjusted tax basis in A's interest in the partnership due to the shift in partnership liabilities under section 752 is respected, and A recognizes no gain under section 737.

§ 1.737–5 Effective date.

Sections 1.737–1, 1.737–2, 1.737–3, and 1.737–4 apply to distributions by a partnership to a partner on or after January 9, 1995.

Dated: December 13, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30870 Filed 12–22–95; 8:45 am]

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26 CFR Parts 1 and 602

[TD 8638]

RIN 1545–AT44

Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations provide the public with guidance necessary to comply with the Tax Reform Act of 1984. These regulations amend the Income Tax Regulations with respect to certain transfers of stock or securities of domestic corporations by United States persons to foreign corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. This Treasury decision also removes certain of the existing temporary regulations regarding transfers by U.S. persons of stock or securities of both domestic and foreign corporations. This action is necessary to update the existing temporary regulations and to reflect certain of the changes announced by Notice 87–85 (1987–2 C.B. 395) (with respect to transfers of both domestic and foreign stock or securities) and by Notice 94–46 (1994–1 C.B. 356) (with respect to transfers of stock or securities of a domestic corporation). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. When finalized, the regulations under section 367(a) relating to the transfer of stock or securities will integrate the regulations herein with the 1991 proposed regulations relating to transfers of stock or securities (see Proposed Rule §§ 1.367(a)–3 and 1.367(a)–8, published at 56 FR 41993, August 26, 1991).

EFFECTIVE DATE: April 17, 1994. For further information, see the Applicability and Effective Dates section under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Applicability and Effective Dates

These regulations are generally applicable to transfers occurring after April 17, 1994, the effective date of Notice 94–46. However, the active trade or business requirement (described in § 1.367(a)–3T(c)(1)(iii) of the temporary regulations herein), which was not contained in Notice 94–46, is effective for transfers occurring January 25, 1996. Moreover, these regulations remove as "deadwood" paragraphs (c)(1) through (c)(4), (d), (e), (f), (g)(1)(iii) and (h)(1) of § 1.367(a)–3T of the existing temporary regulations with respect to transfers occurring after December 16, 1987, the effective date of Notice 87–85.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1478. Responses to this collection of information are required in order for U.S. shareholders that transfer stock or securities in section 367(a) exchanges to qualify for an exception to the general rule of taxation under section 367(a)(1).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On May 16, 1986, temporary and proposed regulations under sections 367 (a) and (d) and section 6038B were published in the **Federal Register** (51 FR 17936). These regulations were published to provide the public with guidance necessary to comply with changes made to the Internal Revenue Code by the Tax Reform Act of 1984. Included in the 1986 temporary regulations was § 1.367(a)–3T, concerning transfers of stock or securities of domestic or foreign corporations by U.S. persons to foreign corporations. Subsequently, the IRS and the Treasury Department issued Notice 87–85 (1987–2 C.B. 395), which set forth substantial changes to be made to § 1.367(a)–3T, effective with respect to transfers occurring after December 16, 1987. A further notice of proposed rulemaking, containing rules under section 367(a), as well as under section 367(b), was published in the **Federal Register** on August 26, 1991 (56 FR 41993). The 1991 proposed section 367(a) regulations were generally based upon the positions announced in Notice 87–85, but the regulations made certain modifications to Notice 87–85, particularly with respect to transfers of stock or securities of foreign corporations.

Most recently, the IRS and the Treasury Department issued Notice 94–46 (1994–1 C.B. 356), announcing modifications to the positions set forth in Notice 87–85 (and the 1991 proposed regulations) with respect to transfers of stock or securities of domestic corporations occurring after April 17, 1994. The temporary regulations set forth herein generally incorporate the modifications announced in Notice 94–46. The notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal**

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Register supplements and, where inconsistent with, supersedes, the 1991 proposed regulations with respect to transfers of domestic stock or securities occurring after April 17, 1994.

Notice 94–46 announced that the regulations under section 367(a) would be amended to deny nonrecognition treatment to the transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation if all U.S. transferors owned in the aggregate 50 percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the exchange. (Under the approach taken in Notice 87–85, transfers of domestic stock or securities occurring prior to April 18, 1994 (and after December 16, 1987) were generally denied nonrecognition treatment only in the case of a single U.S. transferor that owned more than 50 percent of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer or of a U.S. transferor that held at least 5 percent (but no more than 50 percent) of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer and that failed to enter into a gain recognition agreement.)

In Notice 94–46, the IRS and the Treasury Department invited comments on possible exceptions to the general rule set forth in the Notice, specifically with respect to cases where (i) a domestic corporation is acquired by a foreign corporation that is engaged in an active trade or business and that, prior to the transaction, is unrelated to the acquired corporation or its shareholders, or (ii) the transferee foreign corporation is a controlled foreign corporation (within the meaning of section 957) after the transfer. After consideration of the comments received, the IRS and the Treasury Department have concluded that no exceptions to the general rule are warranted.

In the Notice, the IRS and the Treasury Department also invited specific comment on whether special rules should be provided to determine the ownership of the transferee foreign corporation in cases where the corporation is publicly traded. As described below, in response to comments received, the "cross-ownership" rules of Notice 94-46 have been modified in a way that will ameliorate the burdens of identifying shareholders of publicly traded (or widely-held) corporations and that should reduce the impact of the general rule on business combinations involving unrelated U.S. and foreign corporations that are engaged in the active conduct of a trade or business.

Need for Temporary Regulations

The rules contained in this Treasury decision provide taxpayers with guidance necessary to comply with Notice 94-46, which was effective with respect to transfers of stock or securities of domestic corporations to foreign corporations occurring after April 17, 1994. The provisions of Notice 94–46 were made immediately effective to forestall certain tax-avoidance transfers by U.S. persons of the stock of U.S.-based multinationals to foreign corporations. Because of the Notice's immediate effective date, there is a need for implementing regulations on which both taxpayers and the Service may rely with respect to current transfers.

Based on these considerations, it is determined that immediate regulatory guidance will ensure the efficient administration of the tax laws and that it would be impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) or subject to the effective date limitation of section 553(d) of title 5 of the United States Code.

Explanation of Provisions

Section 367(a)(1) generally treats a transfer of property (including stock or securities) by a U.S. person to a foreign corporation in connection with an exchange described in section 332, 351, 354, 356 or 361 as a taxable exchange unless the transfer qualifies for an exception to this general rule. Temporary regulations published on May, 16, 1986 (TD 8087) provided exceptions in the case of certain transfers of stock or securities of domestic and foreign corporations (see § 1.367(a)-3T). Notice 87–85 announced modifications to those exceptions for transfers of domestic or foreign stock or securities occurring after December 16, 1987. Proposed regulations issued on August 26, 1991 largely incorporated the positions set forth in Notice 87–85, and expanded the application of section 367(a) with respect to certain transfers of stock or securities of foreign corporations. Notice 94–46 announced modifications to the exceptions originally announced in Notice 87–85, effective with respect to certain transfers of stock or securities of domestic corporations occurring after April 17, 1994.

Both the temporary regulations herein and the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register generally incorporate the positions taken in Notice 94–46, with modifications as described below. As indicated previously, Notice 94–46 did not modify the positions taken in Notice 87–85 governing the transfer of stock or securities of a foreign corporation. Until the 1991 proposed regulations are finalized, the positions originally announced in Notice 87–85 will continue to govern the availability of section 367(a) exceptions for transfers of stock or securities of foreign corporations.

In addition to implementing the positions announced in Notice 94–46, this Treasury decision removes those portions of § 1.367(a)–3T of the 1986 temporary regulations that Notice 87–85 announced would no longer be applicable with respect to stock transfers occurring after December 16, 1987. This includes removal of the exceptions in paragraphs (c) (1) through (4) (providing exceptions for certain transfers of domestic stock or securities); of paragraph (d) (providing exceptions for certain transfers of foreign stock or securities, including an exception for transfers to a foreign corporation organized in the same foreign country as the corporation the stock of which is being transferred); of paragraph (e) (involving exceptions where stock is an operating asset or where there is a consolidation of an integrated business); and of paragraph (f) (exceptions where U.S. transferors obtain a limited interest in the transferee foreign corporation).

The temporary regulations herein also incorporate (in paragraph (a)) the 1991 proposed regulations' restatement of the general rule applicable to outbound stock transfers (see Prop. Reg. § 1.367(a)–3(a)). This restatement revises the general rule contained in the 1986 temporary regulations to reflect changes to section 367 made by Congress after promulgation of those regulations. For example, the 1986 temporary regulations' statement of the general rule included transfers of stock or securities in section 332 liquidations as one of the transactions covered by section 367(a) (see § 1.367(a)–3T(a)). The restatement of the general rule in the temporary regulations herein removes the reference to section 332 because an outbound transfer of stock or securities pursuant to a section 332 liquidation is now covered by section 367(e)(2) and the regulations under § 1.367(e)–2T. Even though the temporary regulations under § 1.367(e)–2T have sunset (because they were promulgated as temporary regulations on January 12, 1990 (TD 8280) and were not finalized within three years of that date), the Service announced its

intention to follow the principles of those regulations in the preamble to the final regulations under section 367(e)(1) (see the preamble to the final section 367(e)(1) regulations in TD 8472, adopted January 15, 1993).

The revised statement of the general rule herein refers explicitly to transfers that may be indirect or constructive. Thus, transactions that are recharacterized as indirect or constructive stock transfers will be subject to the section 367(a) stock transfer regulations and will be taxable unless an exception applies.

The restatement of the general rule herein is not intended to change the 1986 temporary regulations' treatment of a case in which stock or securities of a foreign corporation are transferred pursuant to a reorganization described in section 368(a)(1)(B), including a transaction that is described in both section 368(a)(1)(B) and section 351. It is anticipated, however, that the final regulations issued with respect to an outbound transfer of foreign stock or securities will incorporate the principles of the 1991 proposed regulations, and thus, for example, a transaction described in both section 368(a)(1)(B) and section 351 will be subject to section 367(a).

Notice 87–85 and the 1991 Proposed Regulations

Under Notice 87–85 and the 1991 proposed regulations, a U.S. transferor of stock or securities that owns five percent or more of either the total voting power or the total value of the transferee foreign corporation immediately after the transfer generally is not subject to current taxation under section 367(a)(1) if that transferor enters into a gain recognition agreement (GRA). The term of the GRA is five years if all U.S. transferors, in the aggregate, own less than 50 percent of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer, or ten years if the U.S. transferors, in the aggregate, own 50 percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer. U.S. transferors that own an interest of less than 5 percent in the transferee foreign corporation immediately after the transfer are not taxable under section 367(a)(1) and are not required to enter into a GRA. If a single U.S. transferor transfers stock or securities of a domestic corporation and owns directly or by attribution more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer, gain is recognized on the exchange.

The determination whether (i) a U.S. transferor owns five percent or more of the transferee foreign corporation immediately after the transfer, (ii) U.S. transferors own in the aggregate 50 percent or more of the transferee foreign corporation (and, thus, whether a 10-year GRA is required), or (iii) a single U.S. transferor owns more than 50 percent of the transferee foreign corporation (and, thus, whether gain is recognized) takes into account both stock of the transferee foreign corporation received by the U.S. transferor(s) in the exchange and stock in the transferee foreign corporation owned by the U.S. transferor(s) independent of the exchange (referred to as cross-ownership).

Notice 87–85 and the 1991 proposed regulations presume that U.S. transferors own in the aggregate 50 percent or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer (and thus a ten-year GRA is required), unless U.S. transferors can demonstrate otherwise (referred to as the ownership presumption). The ownership presumption contained in both the Notice and the 1991 proposed regulations actually consists of two rebuttable presumptions, one relating to ownership of stock in the U.S. corporation the stock or securities of which are transferred (referred to as the U.S. target company) and the other relating to ownership of stock in the transferee foreign corporation.

Under the first presumption, all persons that exchange U.S. target company stock (or other property) for stock of the transferee foreign corporation in the exchange are presumed to be U.S. persons. Thus, if shareholders of the U.S. target company receive 50 percent or more of the stock of the transferee foreign corporation in the exchange, U.S. transferors are presumed to own 50 percent or more of the stock of the transferee foreign corporation immediately after the transfer. Even if application of this first presumption does not result in U.S. transferors being deemed to own at least 50 percent of the total voting power or the total value of the transferee foreign corporation immediately after the transfer, the second presumption may do so. The second presumption is that U.S. transferors also own stock of the transferee foreign corporation independent of the exchange in an amount sufficient to bring their total ownership immediately after the exchange up to 50 percent. This second component of the ownership presumption is referred to as the cross-ownership presumption.

Notice 94–46

Notice 94–46 modified the exceptions set forth in Notice 87–85 with respect to post-April 17, 1994 transfers of stock or securities of domestic corporations. The purpose of Notice 94–46 was to forestall outbound transfers that are structured to avoid or that lay a foundation for future avoidance of the Internal Revenue Code anti-deferral regimes by imposing a shareholder-level tax on such transfers. Notice 94–46 stated that regulations would provide that the transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation described in section 367(a) would be taxable if all U.S. transferors owned, in the aggregate, 50 percent or more of either the total voting power or the total value of the stock of the transferee corporation immediately after the exchange. All U.S. transferors, regardless of their level of ownership, would be subject to tax in such a case.

The rules of Notice 94–46 incorporated the ownership presumption of Notice 87–85. As a result of the cross- ownership aspect of that presumption, even if U.S. shareholders receive significantly less than 50 percent of the stock of a transferee foreign corporation in an exchange described in section 367(a), the transaction could still be taxable. If, for example, U.S. shareholders of a U.S. target company received 30 percent of the stock of a transferee foreign corporation in an exchange described in section 367(a)(1), those shareholders would be presumed to own independently at least an additional 20 percent of the stock of the transferee foreign corporation immediately after the transfer, with the result that the exchange would be taxable (unless the cross-ownership presumption were rebutted). Commentators argued that where a U.S. target company and a foreign acquirer were publicly traded or widely-held, taxpayers' ability to rebut the cross-ownership aspect of the ownership presumption was limited. As a result, Notice 94–46 potentially had the effect of forestalling acquisitions of U.S. public companies by larger foreign corporations in cases where they were unrelated and both engaged in the active conduct of a trade or business.

In response to comments received from taxpayers, and in particular with respect to the difficulties of rebutting the cross-ownership presumption, these temporary regulations modify positions taken in Notice 94–46 in two significant ways. First, the regulations shift the ownership threshold from "50 percent

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or more" to "more than 50 percent" so that a U.S. transferor may qualify for an exception to section 367(a) in cases where U.S. transferors, in the aggregate, receive exactly 50 percent of the stock of the transferee foreign corporation in the exchange. The relaxation of the ownership threshold was intended to give 50–50 joint ventures involving unrelated U.S. and foreign corporations that are engaged in active businesses the option of using a foreign transferee corporation. Where a foreign corporation is smaller than a U.S. corporation that it acquires, the transaction will still generally be taxable; it would not be taxable if the U.S. participant were the acquiring corporation in the transaction (or if another U.S. holding company were the acquiring corporation). Second, although the regulation retains the presumption that shareholders of the U.S. target company are U.S. persons, it does not, in general, retain the cross-ownership presumption and no longer, as a general matter, takes cross-ownership into account. The regulation counts cross-ownership only in the limited circumstance where U.S. officers, directors, and 5-percent or greater shareholders of the U.S. target company own, in the aggregate, more than 50 percent of the total voting power or the total value of the transferee foreign corporation immediately after the transfer (a control group case). In such a case, the exchange is taxable to all U.S. transferors. The regulation allows taxpayers to rely on Schedule 13–D or 13–G filings made under the Securities Exchange Act of 1934 (15 U.S.C. 78m) to identify 5-percent shareholders of public companies for this purpose.

Although cross-ownership does not count toward the 50 percent ownership threshold (unless the control group case applies), it is still relevant in determining whether a U.S. transferor owns five percent or more of the transferee foreign corporation under the rules originally announced in Notice 87–85. Moreover, cross-ownership continues to be relevant for determining whether a 5-year or 10-year GRA is required under the rules originally announced in 87–85, and, for these purposes, there continues to be a rebuttable presumption.

In addition to the two modifications described above that were made in response to comments received with respect to Notice 94–46, these regulations contain a new active trade or business requirement not contained in Notice 94–46, which taxpayers must meet in order to qualify for an exception to the general rule of taxation under section 367(a). The IRS and the Treasury Department added the active trade or business requirement to address abuse potential, in particular, in a case in which a U.S. target company is smaller than a foreign acquirer that was formed and capitalized with a view to enabling the smaller U.S. company to move offshore. The IRS and the Treasury Department believe that this type of transaction presents an inappropriate opportunity for avoiding the anti-deferral regime without payment of the tax envisioned by Notice 94–46. The IRS and the Treasury Department believe that an exception to taxation is proper only in cases where a combination of two active businesses is contemplated and that the opportunity for tax avoidance is ameliorated when such businesses have been conducted for a period of at least 36 months prior to the exchange. Under the requirement contained in the regulations, no exception to taxation is available unless either the transferee foreign corporation or an affiliate of that corporation was engaged in the active conduct of a trade or business for the entire 36-month period prior to the exchange, and unless such business is substantial in relation to the business conducted by the U.S. target company. For this purpose, an affiliate is generally defined by reference to the rules in section 1504(a) (without the exclusion of foreign corporations), and generally includes a parent, subsidiary or brother-sister corporation of the transferee foreign corporation.

To summarize, under the temporary regulations, a U.S. person that exchanges stock or securities in a U.S. corporation for stock of a foreign corporation in an exchange described in section 367(a) will be taxable in cases where:

(i) The 50 percent ownership threshold is exceeded;

(ii) The control group case applies;

(iii) The active trade or business requirement is not met; or

(iv) The exchanging U.S. shareholder owns five percent or more of the stock of the transferee foreign corporation and fails to enter into a GRA and/or satisfy the requirements of section 6038B.

The duration of the GRA in case (iv) is 5 years if the transferor can demonstrate that all U.S. transferors in the aggregate own less than 50 percent of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer or 10 years if U.S. transferors own exactly 50 percent (or more than 50 percent as a result of cross-ownership) of the transferee foreign corporation immediately after the transfer. In all cases other than those enumerated in (i) through (iv) above, a U.S. person that transfers stock or securities of a domestic corporation in exchange for stock of a transferee foreign corporation will not be taxable under section 367(a) if certain reporting requirements described in the regulations are met.

Final regulations under section 367(a) are expected to address the transfer of stock or securities of foreign corporations and other matters contained in the 1991 proposed regulations that are not addressed herein.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that this regulation does not have a significant impact on a substantial number of small entities. Thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and Recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.367(a)-3T is amended by revising paragraphs (a), (c), (d), (e), (f), (g)(1) and (h)(1) to read as follows:

§ 1.367(a)-3T Treatment of transfers of stock or securities to foreign corporations (temporary).

(a) *In general.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a). In general, a transfer of stock or securities by a U.S. person (directly, indirectly or constructively) to a foreign corporation that is described in section 351, 354 (pursuant to a reorganization described in section 368(a)(1)(B)) or section 361(a) or (b) is subject to section 367(a)(1) and, therefore, is treated as a taxable exchange, unless one of the exceptions set forth in paragraph (b), (c) or (d) of this section applies. For additional rules relating to an exchange involving a foreign corporation in connection with which there is a transfer of stock, see section 367(b) and the regulations under that section. For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section.

* * * * *

(c) *Transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations*—(1) *In general.* Except as provided in section 367(a)(5), a transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if the domestic corporation the stock or securities of which are transferred (referred to as the U.S. target company) complies with the reporting requirements in paragraph (c)(4) of this section and if each of the following four conditions is met:

(i) Fifty percent or less of both the total voting power and the total value of the stock of the transferee foreign corporation is received in the transaction, in the aggregate, by U.S. transferors (i.e., the amount of stock received does not exceed the 50 percent threshold).

(ii) No more than 50 percent of each of the total voting power and the total value of the stock of the transferee foreign corporation is owned, in the aggregate, immediately after the transfer by U.S. persons who are either officers or directors of the U.S. target company or who are five-percent target shareholders (as defined in paragraph (c)(6)(iii) of this section) (i.e., there is no control group). For purposes of this paragraph (c)(1)(ii), any stock of the transferee foreign corporation owned by U.S. persons immediately after the transfer will be taken into account, whether or not it was received in the exchange for stock or securities of the U.S. target company.

(iii) In the case of a transfer occurring after January 25, 1996, the transferee foreign corporation or an affiliate of the transferee foreign corporation has been engaged in the active conduct of a trade or business, within the meaning of § 1.367(a)-2T(b)(2) and (3), that is substantial in comparison to the trade or business of the U.S. target company, for the entire 36-month period immediately preceding the date of the transfer.

(iv) Either—

(A) The U.S. person is not a five-percent transferee shareholder (as defined in paragraph (c)(6)(ii) of this section); or

(B) The U.S. person is a five-percent transferee shareholder and enters into an agreement to recognize gain with respect to the U.S. target company stock or securities it exchanged in the form provided in paragraph (g) of this section, as modified by paragraph (c)(3) of this section (setting the duration of the gain recognition agreement).

(2) *Ownership Presumption.* For purposes of paragraph (c)(1) of this section, persons who transfer stock or securities of the U.S. target company or other property in exchange for stock of the transferee foreign corporation are presumed to be U.S. persons. This presumption may be rebutted in accordance with paragraph (c)(4)(ii) of this section.

(3) *Term of the gain recognition agreement.* If, immediately after the transfer described in section 367(a)(1), all U.S. transferors own in the aggregate less than fifty percent of both the total voting power and the total value of the stock of the transferee foreign corporation (counting both stock of the transferee foreign corporation owned as a result of the exchange as well as stock of the transferee foreign corporation owned independently by such U.S. transferors), the agreement to recognize gain shall be in the form specified in paragraph (g)(3) of this section. The term of the agreement shall be ten years, rather than the five years specified in paragraph (g)(3) of this section, the waiver described in paragraph (g)(4) of this section shall extend the period for assessment of tax for an additional five years, and the certification and waiver described in paragraph (g)(5) of this section must be filed for an additional five years if—

(i) The five-percent transferee shareholder cannot determine whether the condition in the preceding sentence is satisfied; or

(ii) Immediately after the transfer, all U.S. transferors own in the aggregate fifty percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation (counting both stock of the transferee foreign corporation owned as a result of the exchange, as well as stock of the transferee foreign corporation owned independently by such U.S. transferors).

(4) *Reporting requirements of U.S. target company.* (i) In order for a U.S. person that transfers stock or securities of a domestic corporation to qualify for the exception to the general rule under section 367(a)(1) provided by this paragraph (c), the U.S. target company must comply with the reporting requirements contained in this paragraph (c)(4). The U.S. target company must attach to its timely filed U.S. income tax return (or a subsequent, timely filed amended return) for the taxable year in which the transfer occurs a statement titled "Section 367(a)—Reporting of Cross-Border Transfer Under Reg. § 1.367(a)–3T(c)(4)," signed under penalties of perjury by an officer of the corporation, disclosing the following information—

(A) A description of the transaction in which a U.S. person or persons transferred stock or securities in the U.S. target company to the transferee foreign corporation in a transfer otherwise subject to section 367(a)(1);

(B) The amount (specified as to the percentage of the total voting power and the total value) of stock of the transferee foreign corporation received in the transaction, in the aggregate, by persons who transferred stock or securities of the U.S. target company or other property. For additional information that may be required to rebut the ownership presumption of paragraph (c)(2) of this section in cases where more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation is received in the transaction, in the aggregate, by persons who transferred stock or securities of the U.S. target company or other property, see paragraph (c)(4)(ii) of this section;

(C) The amount (if any) of transferee foreign corporation stock owned directly or indirectly (applying the attribution rules of sections 267(c)(1) and (5)) immediately after the exchange by the U.S. target company;

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(D) A statement that there is no control group within the meaning of paragraph (c)(1)(ii) of this section;

(E) A list of U.S. persons who are officers, directors or five-percent target shareholders and the percentage of the total voting power and the total value of the stock of the transferee foreign corporation owned by such persons both immediately before and immediately after the transaction; and

(F) A statement that the active trade or business test described in paragraph (c)(1)(iii) of this section is satisfied by the transferee foreign corporation or an affiliate and a description of such business.

(ii) To rebut the ownership presumption of paragraph (c)(2) of this section, the U.S. target company must obtain ownership statements (described in paragraph (c)(6)(i) of this section) from a sufficient number of persons that transfer U.S. target company stock or securities (or other property) in the transaction that are not U.S. persons to demonstrate that the 50 percent threshold is not exceeded. In addition, the U.S. target company must attach to its timely filed U.S. income tax return (or a subsequent, timely filed amended return) for the taxable year in which the transfer occurs a statement, titled "Section 367(a)—Compilation of Ownership Statements under Reg. § 1.367(a)– 3T(c)," signed under penalties of perjury by an officer of the corporation, disclosing the following information:

(A) The amount (specified as to the percentage of the total voting power and the total value) of stock of the transferee foreign corporation received, in the aggregate, by U.S. transferors;

(B) The amount (specified as to the percentage of total voting power and total value) of stock of the transferee foreign corporation received, in the aggregate, by foreign persons that filed ownership statements;

(C) A summary of the information tabulated from the ownership statements, including—

(*1*) The names of the persons that filed ownership statements stating that they are not U.S. persons;

(*2*) The countries of residence and citizenship of such persons; and

(*3*) The ownership of such persons (by voting power and by value) in the U.S. target company prior to the exchange and the amount of stock of the transferee foreign corporation (by voting power and value) received by such persons in the exchange.

(iii) For purposes of paragraph (c)(4), an income tax return (including an amended return) will be considered timely filed if it is filed prior to the time that the Internal Revenue Service discovers that the reporting requirements of this paragraph have not been satisfied.

(5) *Special Rules*—(i) *Treatment of partnerships.* For purposes of paragraph (c), if a partnership (whether domestic or foreign) owns or transfers stock or securities or other property in an exchange described in section 367(a), each partner in the partnership, and not the partnership itself, is treated as owning and as having transferred a proportionate share of the stock or securities or other property. See § 1.367(a)–1T(c)(3).

(ii) *Treatment of options.* For purposes of paragraph (c) of this section, one or more options (or an interest similar to an option) will be treated as exercised and thus will be counted as stock for purposes of determining whether the 50 percent threshold is exceeded or whether a control group exists if a principal purpose of the issuance or the acquisition of the option (or other interest) was the avoidance of the general rule contained in section 367(a).

(iii) *U.S. target has a vestigial ownership interest in transferee foreign corporation.* In cases where, immediately after the transfer, the U.S. target company owns, directly or indirectly (applying the attribution rules of sections 267(c) (1) and (5)) stock of the transferee foreign corporation, that stock will not in any way be taken into account (and, thus, will not be treated as outstanding) in determining whether the 50 percent threshold under paragraph (c)(1)(i) of this section is exceeded or whether a control group under paragraph (c)(1)(ii) of this section exists.

(iv) *Attribution rule.* The rules of section 958 shall apply for purposes of determining the ownership of stock, securities or other property under this paragraph (c).

(6) *Definitions*—(i) *Ownership statement.* An ownership statement is a statement, signed under penalties of perjury, stating—

(A) The identity and taxpayer identification number, if any, of the person making the statement;

(B) That the person making the statement is not a U.S. person (as defined in paragraph (c)(6)(iv) of this section);

(C) That the person making the statement is not related to any U.S. person to whom the stock or securities owned by the person making the statement are attributable under the rules of section 958, or, if stock or securities are so attributable, the identity and taxpayer identification number of the relevant U.S. person;

(D) The citizenship, permanent residence, home address, and U.S. address, if any, of the person making the statement; and

(E) The ownership such person has (by voting power and by value) in the U.S. target company prior to the exchange and the amount of stock of the transferee foreign corporation (by voting power and value) received by such person in the exchange.

(ii) *Five-percent transferee shareholder.* A five-percent transferee shareholder is a person that owns at least five percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer described in section 367(a)(1). For special rules involving cases in which stock is held by a partnership, see paragraph (c)(5)(i) of this section.

(iii) *Five-percent target shareholder.* A five-percent target shareholder is a person that owns at least five percent of either the total voting power or the total value of the stock of the U.S. target company immediately prior to the transfer described in section 367(a)(1). If the stock of the U.S. target company is described in Rule 13d–1(d) of Regulation 13D (17 CFR 240.13d–1(d)) (or any rule or regulation to generally the same effect), promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 USC 78m), the existence or absence of filings of Schedule 13–D or 13–G (or any similar schedules) may be relied upon for purposes of identifying five-percent target shareholders. For special rules involving cases in which U.S. target company stock is held by a partnership, see paragraph (c)(5)(i) of this section.

(iv) *U.S. Person.* For purposes of this section, a U.S. person is defined by reference to § 1.367(a)–1T(d)(1). For application of the rules of this section to stock or securities owned or transferred by a partnership that is a U.S. person, however, see paragraph (c)(5)(i) of this section.

(v) *U.S. Transferor.* A U.S. transferor is a U.S. person (as defined in paragraph (c)(6)(iv) of this section) who transfers directly, indirectly or constructively stock or securities of the U.S. target company or other property in exchange for stock of the transferee foreign corporation in an exchange described in section 367.

(vi) *Transferee foreign corporation.* A transferee foreign corporation is the foreign corporation whose stock is received in the exchange by U.S. persons.

(vii) *Affiliate.* An affiliate is a corporation that is a member of the same affiliated group (as defined in section 1504(a), without regard to section 1504(b)(3)) as the transferee foreign corporation.

(7) *Certain transfers in connection with performance of services.* Section 367(a)(1) shall not apply to a domestic corporation's transfer of its own stock or securities in connection with the performance of services, if the transfer is considered to be to a foreign corporation solely by reason of § 1.83–6(d)(1).

(8) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. Ownership presumption. (i) FC, a foreign corporation, issues 51 percent of its stock to the shareholders of S, a domestic corporation, in exchange for their S stock, in a transaction described in section 367(a)(1).

(ii) Under paragraph (c)(2) of this section, all shareholders of S who receive stock of FC in the exchange are presumed to be U.S. persons. Unless this ownership presumption is rebutted, the condition set forth in paragraph (c)(1)(i) of this section will not be satisfied, and the exception in paragraph (c)(1) of this section will not be available. As a result, all U.S. persons that transferred S stock will recognize gain on the exchange. To rebut the ownership presumption, S must comply with the reporting requirements contained in paragraph (c)(4)(ii) of this section, obtaining ownership statements (described in paragraph (c)(6)(i) of this section) from a sufficient number of non-U.S. persons who received FC stock in the exchange to demonstrate that the amount of FC stock received by U.S. persons in the exchange does not exceed 50 percent.

Example 2. Filing of Gain Recognition Agreement. (i) The facts are the same as in *Example 1*, except that FC issues only 40 percent of its stock to the shareholders of S in the exchange. FC satisfies the active trade or business test (described in paragraph (c)(1)(iii) of this section). A, a U.S. person, owns 10 percent of S's stock immediately before the transfer. All other shareholders of S own less than five percent of its stock. None of S's officers or directors owns any stock in FC immediately after the transfer. A will own 15 percent of the stock of FC immediately after the transfer, 4 percent received in the exchange, and the balance being stock in FC that A owned prior to and independent of the transaction. No S shareholder besides A owns five percent or more of FC immediately after the transfer. The reporting requirements under paragraph (c)(4)(i) of this section are satisfied.

(ii) The condition set forth in paragraph (c)(1)(i) of this section is satisfied because, even after application of the presumption in paragraph (c)(2) of this section, U.S. transferors could not receive more than 50 percent of FC's stock in the transaction. There is no control group because five-percent target shareholders and officers and directors of S do not, in the aggregate, own more than 50 percent of the stock of FC immediately after the transfer (A, the sole five-percent target shareholder, owns 15 percent of the stock of FC immediately after the transfer, and no officers or directors of S own any stock of FC immediately after the transfer). Therefore, the condition set forth in paragraph (c)(1)(ii) of this section is satisfied (and A's cross-ownership of FC stock is not taken into account). The facts assume that the condition set forth in paragraph (c)(1)(iii) of this section is satisfied. Thus, U.S. persons that are not five-percent transferee shareholders will not recognize gain on the exchange of S shares for FC shares. A, a five-percent transferee shareholder, will not be required to include in income any gain realized on the exchange in the year of the transfer if he files a gain recognition agreement (GRA) and complies with section 6038B. The duration of the GRA is five years if all U.S. transferors own in the aggregate less than 50 percent of the total voting power and the total value of FC immediately after the transfer, and ten years if this condition is not satisfied. If A lacks the information to determine whether he is eligible to file a five-year GRA (because the determination includes a cross-ownership inquiry for all U.S. transferors), he is required to file a ten-year GRA.

Example 3. Control Group. (i) The facts are the same as in *Example 2*, except that B, another U.S. person, is a 5- percent target shareholder, owning 25 percent of S's stock immediately before the transfer. B owns 40 percent of the stock of FC immediately after the transfer, 10 percent received in the exchange, and the balance being stock in FC that B owned prior to and independent of the transaction.

(ii) A control group exists because A and B, each a five-percent target shareholder within the meaning of paragraph (c)(6)(iii) of this section, together own more than 50 percent of FC immediately after the transfer (counting both stock received in the exchange and stock owned prior to and independent of the exchange). As a result, the condition set forth in paragraph (c)(1)(ii) of this section is not satisfied, and all U.S. persons (not merely A and B) who transferred S stock will recognize gain on the exchange.

Example 4. Partnerships. (i) The facts are the same as in *Example 3*, except that B is a partnership (domestic or foreign) that has five equal partners, only two of whom, X and Y, are U.S. persons. X and Y are treated as the owners and transferors of 5 percent each of the S stock owned and transferred by B and as owners of 8 percent each of the FC stock owned by B immediately after the transfer. Five-percent target shareholders thus own a total of 31 percent of the stock of FC immediately after the transfer (A's 15 percent, plus X's 8 percent, plus Y's 8 percent).

(ii) Because no control group exists, the condition in paragraph (c)(1)(ii) of this section is satisfied. The conditions in paragraphs (c)(1) (i) and (iii) of this section also are satisfied. Thus, U.S. persons that are not five- percent transferee shareholders will not recognize gain on the exchange of S shares for FC shares. A, X, and Y, each a five-percent transferee shareholder, will not be required to include in income in the year of the transfer any gain realized on the exchange if they file GRAs and comply with section 6038B. The duration of the GRA is five years if all U.S. transferors own in the aggregate less than 50 percent of the total voting power and the total value of FC immediately after the transfer, and ten years if this condition is not satisfied. If A, X, and Y lack the information to determine whether they are eligible to file five-year GRAs (because the determination includes a cross-ownership inquiry for all U.S. transferors), they are required to file ten-year GRAs.

(9) *Effective date.* This paragraph (c) applies to transfers occurring after April 17, 1994. However, paragraph (c)(1)(iii) of this section applies only to transfers occurring after January 25, 1996. For transfers occurring before December 17, 1987, see § 1.367(a)–3T(c) (1) through (4) as contained in 26 CFR Part 1 revised April 1, 1995.

(d) *Transfers of stock or securities of foreign corporations.* For guidance, see Notice 87–85 (1987–2 C.B. 395). See § 601.601(d)(2) of this chapter.

(e) [Reserved.] For transfers occurring before December 17, 1987, see § 1.367(a)–3T(e) as contained in 26 CFR Part 1 revised April 1, 1995.

(f) [Reserved.] For transfers occurring before December 17, 1987, see § 1.367(a)–3T(f) as contained in 26 CFR Part 1 revised April 1, 1995.

(g) *Transferor's agreement to recognize gain upon later disposition by transferee*—(1) *In general.* A transfer of stock or securities shall not be subject to section 367(a)(1) if—

(i) The transferor complies with the reporting requirements of section 6038B and any regulations thereunder; and

(ii) The transferor files a binding agreement to recognize gain upon the transferee corporation's later disposition of the transferred stock or securities, in

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accordance with the rules of this section.

* * * * *

(h) *Anti-abuse rules.*

(1) [Reserved.] For transfers occurring before December 17, 1987, see § 1.367(a)–3T(h)(1) as contained in 26 CFR Part 1 revised April 1, 1995.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by revising the entry in the table for "1.367(a)–3T" to read as follows:

"1.367(a)–3T	0026 1478".

Dated: December 13, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30829 Filed 12–22–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–94–85]

RIN 2115–AE47

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing regulations governing the operation of the Florida East Coast railroad bridge, at mile 38.0, at Port Mayaca, Florida, by removing the authorization for automatic operation and returning the draw to manual operation. This action should accommodate the needs of railroad traffic, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: January 25, 1996.

ADDRESSES: Documents in this preamble are available for inspection and copying at 909 SE 1st Ave, room 406 between 7 am and 4 pm Monday through Friday, except federal holidays. The telephone number is (305) 536–4103.

FOR FURTHER INFORMATION CONTACT:

Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LCDR Robert Wilkins, Project Counsel.

Regulatory History

On August 17, 1995 the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operations Regulations, Okeechobee Waterway, Florida in the **Federal Register** (FR 60 42827). No adverse comments were received. A public hearing was not requested and was not held.

Background and Purpose

The bridge is normally in the fully open position displaying flashing green lights to indicate that vessels may pass. When a train approaches the bridge, the lights go to flashing red and a horn sounds four blasts, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while all circuits are occupied. After the train has cleared, the draw opens and the lights return to flashing green. Because of declining usage of the rail line, the bridgeowner, Florida East Coast Railroad, has requested permission to operate the span manually.

Discussion of Comments and Changes

Three comments were received in response to the Notice of Proposed Rulemaking. The US Army Corps of Engineers stated the proposed rule change would not impact navigational interests using the waterway and, therefore, had no objection to the proposed change. The Florida State Historic Preservation Office indicated the proposed change would have no effect on any sites listed or eligible for listing in the National Register. The US National Marine Fisheries Service anticipates the change will have no impact to resources for which they have stewardship responsibility. No objections were received, therefore the final rule is unchanged from the Notice of Proposed Rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979 is unnecessary. We conclude this because only a few trains cross the bridge weekly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because only a few trains cross the bridge weekly, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.317 is amended by revising paragraph (f) to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(f) Florida East Coast Railroad bridge, mile 38.0, at Port Mayaca.

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge it will stop and a crewmember will observe the waterway for approaching vessels, which will be allowed to pass. Upon manual signal, the bridge lights will go to flashing red, and the horn will sound four blasts, pause, then repeat four blasts, then the draw will lower and lock, providing scanning equipment reveals nothing under the span.

(4) After the train has cleared, the draw will open, and the lights will return to flashing green.

* * * * *

Dated: December 11, 1995.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 95–31218 Filed 12–22–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–134–1–5769a; FRL–5316–9]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to Knox County Regulations for Appeals, Violations, Monitoring, Recording, and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on June 28, 1994. This submittal included revisions to the current regulations concerning appeals, judicial review, and violations of the air pollution regulations in Knox County. This submittal also included revisions which added requirements for enhanced monitoring compliance certification and enforcement. However, no action is being taken on these revisions at this time, due to the preliminary nature of the proposed federal requirements for enhanced monitoring and compliance assurance monitoring.

DATES: This final rule will be effective February 26, 1996, unless adverse or critical comments are received by January 25, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Karen Borel at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531

Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902.

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4197. Reference file TN134–01–6769.

SUPPLEMENTARY INFORMATION: On June 28, 1994, the State of Tennessee through the Tennessee Department of Environment and Conservation submitted a revision to the Knox County portion of its SIP incorporating changes to regulations for appeals, judicial review, violations, and monitoring, recording and reporting. The SIP revision consists of changes to sections 29.1.B, 29.3, 30.1.A, and 30.1.D, and the addition of section 26.6. EPA is not taking action on the addition of section 26.6 at this time, due to the preliminary nature of the proposed federal regulations for enhanced monitoring and compliance assurance monitoring. The revisions which are being approved are summarized as follows.

1. Section 29.1.B has been revised. This paragraph has been amended to change the phrase "citizen of Knox County" to the word "person" early in the first sentence, and to add the word "a" just prior to "public hearing" at the end of this paragraph.

2. Section 29.3 has been revised. This paragraph has been amended such that any ruling of the Air Pollution Control Board is now subject to judicial review in the State court, rather than in the Knox County Circuit Court.

3. Section 30.1.A has been revised. This paragraph now refers to "violations" rather than the singular "violation." It also calls for punishment of violations in accordance with Tennessee law, rather than the Tennessee Code Annotated.

4. Section 30.1.D has been deleted and replaced. The previous language described actual penalties for violations, such as fines or imprisonment. The replacement language states that civil penalties will be assessed as provided by Tennessee law.

Final Action

EPA is approving the aforementioned revisions contained in the State's June 28, 1994, submittal. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 26 1996, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 26, 1996.

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Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(132) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(132) Revisions to the Knox County Air Pollution Control Regulations submitted by the Tennessee Department of Environment and Conservation on June 28, 1994. These consist of revisions to appeals, judicial review, and violations of the air pollution regulations in Knox County.

(i) Incorporation by reference.

Knox County Air Pollution Control Regulations, Sections 29.1.B, 29.3, 30.1.A, and 30.1.D adopted May 25, 1994.

[FR Doc. 95–31036 Filed 12–22–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[ME26–1–7283a; FRL–5345–9]

Approval and Promulgation of Implementation Plans; Maine; NO_X Exemption Request for Northern Maine and NO_X Control Approval

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, in final, a limited exemption request from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties). These 9 counties, as with the rest of the State of Maine, are part of the Ozone Transport Region (OTR) as provided for in section 184(a) of the Clean Air Act. Section 182(f) in combination with section 184 (relating to ozone transport regions) of the Act requires States in the OTR, such as Maine, to adopt reasonably available control technology (RACT) rules for major stationary sources of nitrogen oxides (NO_X) and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X. This exemption request, submitted by the State of Maine on September 7, 1995, is based on a demonstration that NO_X emissions in this 9 county area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from these 9 counties beyond what the state regulation would provide for are not necessary for attainment in these areas currently in nonattainment, and, because they do not contribute to the ozone problem anywhere in the OTR are also not necessary for purposes of showing future attainment for any other area in the OTR. Thus, as provided for in section 182(f)(2), additional NO_X reductions in these areas would constitute excess reductions that can be waived under the Clean Air Act. EPA believes the State's demonstration is appropriate and meets the requirements of section 182(f)(2). Maine has requested that EPA combine its approval of this NO_X exemption with its approval of NO_X controls for existing sources in Northern Maine that were submitted to EPA on August 5, 1994 for purposes of meeting the Act's NO_X RACT requirements. Consequently, this action approves a full exemption from nonattainment NSR requirements for NO_X, but only a limited exemption from NO_X control measures for existing sources that would go beyond what the State regulations provide for.

DATES: This action will become effective February 26, 1996, unless notice is received by January 25, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Environmental Engineer, Air Quality Planning (ATS), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203. (617) 565–4874.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires States with areas designated and classified as moderate nonattainment and above for ozone, or in ozone transport regions, to impose the same control requirements for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and major modifications. Section 182(f) provides further that these requirements do not apply for areas inside an ozone transport region if EPA determines that reductions of NO_X from such areas would not contribute to net ozone benefits in the OTR. In addition, implementation of NO_X controls may be limited if EPA determines it is necessary to avoid achieving excess reductions. Also, NO_X-related general conformity provisions (see 58 FR 63214) would not apply in an area that is granted a section 182(f) exemption. For marginal and below ozone nonattainment areas such as those addressed by today's action, a section 182(f) exemption relieves the transportation conformity requirements of 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 for NO_X (see 60 FR 44795).

The counties that are the subject of this action, Piscataquis, Penobscot, Washington, and Aroostook counties and the northern portions of Oxford, Franklin, and Somerset counties, are designated attainment for the National Ambient Air Quality Standard (NAAQS) for ozone. The southern portions of Oxford, Franklin, and Somerset counties are presently designated nonattainment but have never recorded exceedances of the ozone NAAQS and are not classified under the Clean Air Act. The Hancock and Waldo County Area is classified as marginal nonattainment under the Clean Air Act but presently has air quality better than the NAAQS for ozone. However, each of the counties for which Maine is seeking an exemption is within the OTR. For areas within the OTR, the application of NO_X requirements under the Clean Air Act may be limited if it is shown that additional NO_X reductions are excess to attainment needs throughout the region. EPA believes, in the case of these counties at the northern extremity of the OTR, that NO_X requirements can be waived because the State has submitted an acceptable demonstration that additional reductions beyond what the State regulations provide for are not necessary for nonattainment areas in the State to attain, and because emissions from these areas are not contributing to the ozone nonattainment problem for any other area in the OTR, are also not necessary for purposes of showing future attainment anywhere in the OTR. Maine has made this showing through extensive air modeling trajectory analyses.

Scope of Exemptions

If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of NO_X are excess, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the following requirements (as applicable): the NO_X-related general conformity provisions, the NO_X-related transportation conformity provisions in 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 ("build/ no-build test"), NO_X RACT, and nonattainment area NSR for new sources and modifications that are major for NO_X. Additionally, NO_X emission reductions would not be required of an enhanced automobile inspection and maintenance (I/M) program. Because I/M is not required by the Act in Northern Maine, EPA's action on this request has no impact on I/M requirements.

Transportation Conformity

The transportation conformity rule, entitled "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," was published in the November 24, 1993 Federal Register (58 FR 62188). The rule was promulgated under section 176(c)(4) of the Act.

The transportation conformity rule requires emissions analysis of motor vehicle NO_X emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to state implementation plan requirements. This analysis must demonstrate that the NO_X emissions which would result from the transportation system if the proposed transportation plan and program were implemented are within the total allowable level of NO_X emissions from highway and transit motor vehicles as identified in a submitted or approved attainment demonstration or maintenance plan.

Until an attainment demonstration, fifteen-percent rate-of-progress plan (if applicable), or maintenance plan is approved by EPA, the emissions analysis of the transportation system must also satisfy the "build/no-build" test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

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The transportation conformity rules provide for an exemption from these so called "build/no build" requirements with respect to NO_X if the Administrator determines that additional reductions of NO_X would not contribute to attainment of the ozone NAAQS. However, all other NO_X provisions in the transportation conformity rule would apply, including the requirement for consistency with the NO_X motor vehicle emissions budget in a submitted control strategy state implementation plan, or an approved maintenance plan.

The areas addressed in today's action are not required to submit a control strategy implementation plan revision (i.e., an attainment demonstration or 15% RFP plan). Further, only a portion of these areas are required to satisfy the "build/ no-build test." A section 182(f) exemption would relieve this requirement for NO_X for these areas, but once any maintenance plan is approved by EPA, consistency with the NO_X budget would be required.

General Conformity

The general conformity rule, entitled "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," was published in the **Federal Register** on November 30, 1993 (58 FR 63214). The rule was promulgated under section 176(c)(4) of the Act. The general conformity rule provides for an exemption from NO_X requirements if the area has been exempted under section 182(f) of the Act.

II. Criteria for Evaluation of Section 182(f) Exemption Requests

The criteria established for the evaluation of an exemption request from the Section 182(f) requirements are set forth in 2 memoranda from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994 and February 8, 1995, both entitled "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria." Additional guidance is provided in a document entitled "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," dated December 1993, from EPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

III. State Submittal

On September 7, 1995, the State of Maine submitted an exemption request from the requirements contained in Section 182(f) of the Clean Air Act (Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties). This exemption request is based on a demonstration that nitrogen oxides (NO_X) emissions in this area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from these 9 counties, that is, NO_X reductions beyond what the state regulations contemplate providing for, as explained further below, are not necessary for nonattainment areas in the State to attain, and, are also not necessary for attainment purposes anywhere in the OTR. Under these circumstances, as section 182(f)(2) provides, such additional reductions may be waived as excess reductions. While Maine generally is requesting an exemption from applicable NO_X requirements for this 9 county area, it has requested a limited exemption from NO_X control measure requirements that apply for existing stationary sources in these areas. Maine has requested that EPA combine its approval of the exemption request with its approval of NO_X controls for existing stationary sources in the Northern Maine area previously submitted to EPA on August 5, 1994. In approving this NO_X exemption request, EPA considered the impact of the limited exemption from NO_X requirements for existing sources. EPA is approving this action because, under section 182(f)(2), EPA has determined that additional NO_X reductions from these areas would be excess.

IV. Analysis of State Submittal and Supporting Material

EPA has reviewed the material submitted by the State of Maine in support of this request. As mentioned above, these areas are presently monitoring attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. For ozone, an area is considered to be monitoring attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR Part 50.9, based on quality assured monitoring data from three complete consecutive calendar years. A violation of the ozone NAAQS occurs when the expected number exceedances per year (over a three year period) is greater than 1.0. An exceedance occurs when the daily maximum hourly ozone concentration equals or exceeds 0.125 parts per million (ppm). Only Hancock and Waldo Counties, which is a marginal nonattainment area, were classified under the Clean Air Act, as amended in 1990. This area has only measured a single exceedance of the standard since 1992.

Thus, the annual average expected exceedances in the latest three year period is less than 1.0 and the entire area is meeting the air quality standard for ozone. In order for the Hancock and Waldo Counties area to be redesignated to attainment, EPA will need to take action on a redesignation request, including a maintenance plan.

A more detailed summary of the ozone monitoring data for both areas is provided in the EPA technical support document prepared for this action.

V. Air Trajectory Analyses

Maine prepared trajectory analyses for each day when the ozone standard was exceeded in either New Hampshire or Maine. Additionally, Maine prepared detailed statistical trajectory analyses for many days based on ozone monitors just southwest of this 9 county area. Hundreds of data points were analyzed, and this effort will be described in more detail below.

Modeling

EPA has performed extensive air quality modeling throughout the Northeast for the past several years utilizing the regional oxidant model (ROM). This modeling domain covers virtually all of northern Maine. Essentially, all ROM analyses have shown no actual or predicted exceedances in this 9 county area, which is northeast of the remainder of the OTR. (It should be noted that exceedances were predicted in the coastal portions of Waldo, Hancock, and Washington Counties in 1987 and 1988, and, during this timeframe, exceedances were actually measured in Hancock and Waldo Counties forming the basis for their designation as marginal ozone nonattainment areas. No exceedances were measured in Washington County. However, since 1992, only Hancock County has measured a single exceedance of the standard. Given these analyses, and the direction of the ozone "plume," it is reasonable to expect negligible contribution from these areas to the overall ozone nonattainment situation in the OTR.)

However, ROM modeling analyses are not intended to actually predict attainment or nonattainment. EPA guidance requires more extensive modeling using photochemical grid modeling in most areas. While this more sophisticated modeling is technically not required anywhere in Maine, in concert with Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, extensive analyses are being performed utilizing the urban airshed model (UAM). The EPA UAM modeling guideline requires that modeling domains be sufficiently large to analyze the effects of ozone and ozone precursors throughout the entire area of concern. Based on extensive analyses, including ROM results, EPA agreed that the UAM modeling domain would not even cover the vast majority of this 9 county area (it does include a portion of Oxford county based simply on the geographical shape of the county and the size of the domain). Consequently, the UAM modeling does not reflect the effects of ozone and ozone precursors from the northern Maine area. On the other hand, the determination that the northern Maine area could be excluded from the modeling domain reflects the degree of certitude that ozone precursor reductions from this area would not play a significant role in the process of attaining the ozone standard in the OTR.

The "Back Trajectory Analyses" and the "Receptor Oriented Analyses" include the most substantive technical portion of the September 7, 1995 NO_X exemption request and are described below.

Back Trajectory Analyses

Trajectories are the path of an air mass over time; back trajectories trace the path of an air mass back in time to determine the origin of that air mass. The trajectory analyses, which use the HY-SPLIT trajectory model, show that for the ozone monitoring sites chosen, (Port Clyde, ME; Rye, NH; Bennington, VT; and Bridgeport, CT) the back trajectories do not pass over northern Maine and demonstrate that northern Maine cannot be a source region for ozone on days with elevated ozone levels. (Sites were chosen to represent a variety of locations throughout New England.) Trajectories were performed for every day that the monitor of interest exceeded 0.10 ppm (at 3:00 pm) between 1989 and 1993. Occasionally, some of these back trajectories (i.e., those based on Port Clyde monitored readings) pass over extreme western Maine, specifically Oxford County. Based on the small amount of emissions emitted from Oxford County, it is unlikely that Oxford County plays any measurable role in the ozone found in Port Clyde on days that Port Clyde exceeded 0.12 ppm.

Furthermore, EPA feels that the HY-SPLIT model, in this application in Maine, has a slight westerly bias in its back trajectory approach over what the true low-level/surface back trajectory is on days with high ozone potential. Given this, it is probable that Oxford County emissions do not even pass over Port Clyde on the days in question. This westerly bias is caused by HY-SPLIT's reliance on the Nested Grid Model (NGM) winds which are almost exclusively upper-air winds, not surface winds. The technical support for this effort describes this phenomenon in more detail, and can be found in the docket for this action. Nevertheless, the back trajectory work Maine has performed does show that a NO_X exemption for the 9 counties is justified.

Receptor Oriented Analyses

The receptor analyses, also part of Maine's technical support, is just a different way of looking at back trajectories from the HY–SPLIT model. The NO_X exemption request states: "Residence time analysis performed for these ozone monitoring sites involves taking a large number of individual back-trajectories from a site and examining the statistical relationship between the ozone monitored at the site and the location along each back-trajectory." The analysis goes on to state that although the technique has been shown to work with non-chemically reactive air pollutants, it may not perform as well with ozone. Nevertheless, the exemption request provides that: "the technique does indicate the primary directional biases from which regional scale air mass transport may be suspected."

The receptor oriented analysis also shows that the 9 county NO_X exemption area contributes much less "ozone" to southern and coastal Maine (Gardiner and Port Clyde) than do other areas to the west and south. First, Maine performed analyses which show the upwind locations of air masses 3–7 hours prior to ozone concentrations exceeding 0.040 ppm at either Gardiner or Port Clyde, Maine from 1989 to 1993. Next, they ran 25 hour back trajectories for every day in which an air mass passed over different portions of New England from 1989 to 1993. Analysis of these graphical depictions supports Maine's contention that these northern counties do not contribute to elevated ozone levels in Maine, or elsewhere in the OTR. These two types of meteorological analyses support Maine's exemption request essentially by demonstrating that emissions from these areas do not generally pass over any other part of the OTR on days when even moderate levels of ozone are measured.

VI. Maine's NO_X Rules

On August 5, 1994, the Maine Department of Environmental Protection (DEP) submitted to EPA, Chapter 138 of the Maine DEP's regulations, "Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides," for inclusion into the State Implementation Plan (SIP). On September 7, 1995, the Maine DEP submitted a request to the EPA to grant a limited exemption from the requirements of NO_X RACT for facilities located in the non-moderate areas of the State (these 9 counties). In its NO_X exemption request, Maine requested that EPA approve the appropriate portions of Chapter 138 in combination with approving the exemption. At this time, EPA's action on the NO_X control rule submittal is solely for the 9 county area. Thus, EPA is approving Chapter 138 only as it applies to the 9 county area in Maine.

Although EPA agrees that Chapter 138 sets enforcesable conditions which will achieve a level of NO_X control, EPA is not evaluating these standards set in Chapter 138 as to whether or not they represent RACT for all of the emission units located in these 9 counties. EPA is also not evaluating this rule in regard to the requirements for the remaining 7 counties in Maine. While EPA's preliminary analysis suggests that this level of control does not represent RACT for these 9 counties, EPA will be taking formal action on the rule as it pertains to the remaining 7 counties at a later date. Based on the analysis prepared as part of the limited exemption request, EPA has determined that NO_X reductions, beyond what is required by Chapter 138 for facilities in the non-moderate areas, are not necessary for purposes of showing future attainment in the Maine moderate nonattainment areas or any areas in the OTR. In EPA's NO_X Supplement to the General Preamble for implementing nonattainment requirements, EPA noted that states remain free to reduce NO_X emissions for a variety of reasons. 57 Fed. Reg. 55621, 55627 (Nov. 25, 1992). As long as EPA determines that these NO_X reductions are not counterproductive or will not delay ozone attainment, EPA will approve them into the SIP. There is no evidence that the NO_X reductions from Chapter 138 are counterproductive, and the conclusion of the demonstration supporting the exemption request is that additional NO_X reductions from this area are not necessary for purposes of attainment anywhere in the OTR. Therefore, although EPA is making no formal judgement as to whether this level of control is RACT, EPA believes that the controls required by Chapter 138 in the 9 non-moderate counties will strengthen the SIP.

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As stated above, the analysis contained in the State's limited exemption request assumes that reductions beyond those required by Chapter 138 in the non-moderate areas are not necessary for purposes of attainment for either the moderate nonattainment areas or other states in the OTR. Therefore, emission reductions achieved from units operating at rates below the limitations of Chapter 138 in this 9 county area cannot be considered creditable for the purpose of facilities complying with either New Source Review offsetting or NO_X RACT requirements at facilities located in the moderate nonattainment areas (see the TSD prepared for this action for additional details).

VII. New Source Review

EPA is not taking action on Maine's New Source Review rule in this rulemaking. However, in a separate action, EPA is proposing to approve revisions to Maine's New Source Review rules. These revisions include an exemption provision for major new sources or major modifications of NO_X. This provision states that lowest achievable emission rate (LAER) and offsets for NO_X shall not apply in those areas that have received an exemption from the EPA under Section 182(f) of the CAA.

VIII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is based on the demonstration that NO_X emissions in this area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. If future air quality analyses demonstrate that additional NO_X controls are necessary and the exemption should no longer apply, EPA will provide notice to the public in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X NSR and the NO_X-related general conformity provisions (see 58 FR 63214) would immediately be applicable. For the marginal and below ozone nonattainment areas addressed by today's action, rescinding this section 182(f) exemption would no longer relieve the transportation conformity requirements of 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 for NO_X (see 60 FR 44795). The requirement for NO_X RACT would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The EPA believes that the State may provide sources a reasonable time period after the EPA determination to actually meet the RACT emission limits. The EPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

IX. Miscellaneous Topics

Comments From Parties Interested in Previous NO_X Exemptions

An adverse comment letter has been previously submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on NO_X exemptions. The three environmental groups who submitted the generic comments requested that these comments be included in each EPA rulemaking action on NO_X exemption requests. While some of the comments are not entirely relevant to this action, we have responded to them in an effort to be complete. EPA is treating these comments as part of the administrative record for this action, and they may serve as the basis for a challenge to this final action without being resubmitted to the Agency in response to the proposed rule.

Comment

In the past, commenters argued that NO_X exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f). Because the NO_X exemption tests in sections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by section 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. The commenters also argue that even if the petition procedures of section 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in section 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

Response

Section 182(f) contains very few details regarding the administrative procedures for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering NO_X exemption requests under section 182(f), and instead believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on State Implementation Plans (SIPs). Additionally, section 182(f)(3) provides that "person[s]" [which section 302(e) of the Act defines to include States] may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X RACT and NSR rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations were not due until November 1993 or 1994 (and EPA may take 12 to 18 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstrations are called for in the CAA. For areas seeking redesignation to attainment of the ozone NAAQS, the CAA does not specify a deadline for submittal of maintenance demonstrations (in reality, EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the CAA envisions the submittal of and EPA action on NO_X exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations. It is important to note that none of these areas in Maine even needed to submit attainment demonstrations.

With respect to the comment that section 182(b)(1) is the appropriate authority for granting interim-period transportation conformity NO_X exemptions, EPA agrees with the commenters and has published an interim final rule that changes the transportation conformity rule's reference from section 182(f) to section 182(b)(1) as the correct authority under the Act for waiving the NO_X build/no-build and less-than-1990 emissions tests for certain areas. (see 60 FR 44795) However, EPA also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, EPA believes that the interim-reductions requirements of section 176(c)(3)(A)(iii), and hence the authority provided in section 182(b)(1) to grant relief from those interim-reduction requirements, apply only with respect to those areas that are subject to section 182(b)(1). EPA intends to continue to apply the transportation conformity rule's build/no-build and less-than-1990 emissions tests for purposes of implementing the requirements of section 176(c)(1), and EPA intends to continue to provide relief from those requirements under section 182(f). In addition, because general federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), EPA will also continue to offer relief under section 182(f)(3) from the applicable NO_X requirements of the general conformity rule.

In order to demonstrate conformity, transportation-related federal actions that are taken in ozone nonattainment areas not subject to section 182(b)(1) and, hence, not subject to section 176(c)(3)(A)(iii) must still be consistent with the criteria specified under section 176(c)(1). Specifically, these actions must not, with respect to any standard, cause or contribute to new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, such actions must comply with the relevant requirements and milestones contained in the applicable state implementation plan, such as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstrations, numerical emission limits, or prohibitions. EPA believes that the build/no-build and less-than-1990 emissions tests provide an appropriate basis for such areas to demonstrate compliance with the above criteria.

As noted earlier, EPA intends to continue to offer relief under section 182(f) from the interim NO_X requirements of the conformity rules that would apply under section 176(c)(1) for the areas not subject to section 182(b)(1) in the manner described above. EPA believes this approach is consistent both with the way NO_X requirements in ozone nonattainment areas are treated under the Act generally, and under section 182(f) in particular. The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for EPA to determine when NO_X requirements should not apply. There is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO_X emissions. Moreover, where EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even as to the conformity requirements of section 176(c)(1), EPA believes it is reasonable and appropriate, first, to offer relief from the applicable NO_X requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial and, second, to rely in doing so based on the exemption tests provided in section 182(f).

Comment

Commenters argue that waiver of NO_X control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

Response

These areas in Maine are generally considered downwind of the remainder of the United States. Maine's technical demonstration showed clearly that the waiver of these controls will not impede attainment or maintenance of the NAAQS for ozone standard anywhere.

Comment

Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity rules. The commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions; not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA, in actions on NO_X exemptions, to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

Response

EPA has recently addressed this issue through rulemaking and this rulemaking appropriately reflects EPA's position on this issue. (see 60 FR 57179)

Comment

Commenters argue that the Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counterproductive.

Response

EPA does not agree with this comment since it ignores the Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO_X in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such would not be beneficial or would be counterproductive. In describing these various ozone

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provisions, including section 182(f), the House Conference Committee Report states in the pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

As noted in response to an earlier comment, the command in section 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. While there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence," as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted by additional, current information.

In addition, the EPA believes, as described in EPA's December 1993 guidance, that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are "counter productive." If one of the tests is met (even if another test is failed or not applied), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Processing NO_X Exemptions

As stated above, section 182(f) contains very few details regarding the administrative procedure for EPA action on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

Although a section 182(f) petition may determine the applicability of SIP requirements pertaining to NO_X emission reductions and controls, this petition itself is not a SIP, nor must it be a revision to a SIP. Therefore, a petition is not required to undergo a public hearing, nor must a petition be submitted by a Governor of a State or his designee. This submission was made by the Maine Commissioner of the Department of Environmental Protection. A public hearing was not held on the September 7, 1995 NO_X exemption request.

X. Final Action

The EPA is approving the exemption request for the Northern Maine area from the Section 182(f) NO_X requirements based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable EPA guidance. This action exempts the Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo counties from the requirements to implement NO_X control measures for existing stationary sources (other than those controls specified herein), nonattainment area NSR for new sources and modifications that are major for NO_X, the NO_X-related general conformity provisions, and the NO_X-related transportation conformity provisions in 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 ("build/no-build test"). If EPA determines based on future air quality analyses that NO_X controls in these areas are necessary, rulemaking may be initiated which may mean that this NO_X exemption no longer applies. As stated before, the State of Maine requested only a limited exemption from NO_X control requirements for existing stationary sources. EPA is approving this level of control as strengthening the existing SIP.

XI. Procedural Background

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

XII. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's exemption does not create any new requirements, but allows suspension of the indicated requirements for the life of the exemption. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. This action also approves certain controls already in effect at the State level, and, as such, imposes no additional regulatory burden on these facilities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this NO_X waiver request and NO_X control revisions to its state implementation plan, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 4201–7671q.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 1, 1995.

Carol M. Browner,

Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(41) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 5, 1994 related to NO_X controls in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties.

(i) Incorporation by reference.

(A) A Letter from the Maine Department of Environmental Protection dated August 5, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 138 of the Maine DEP's regulations, "Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides" for sources only in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties (excepted portions include Sections 1.A.1. and 3.B.). This rule was effective August 3, 1994.

3. In § 52.1031, Table 52.1031 is amended by adding state citation 138 in numerical order to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1020	
138 ...	Reasonably Available Control Technology For Facilities That Emit Nitrogen Oxides.	8/3/94	December 26, 1995	60 FR	(c)(41)	Affects sources only in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties (excepted portions of rule include Sections 1.A.1. and 3.B.).

4. Section 52.1023 is amended by adding paragraph (c) to read as follows:

§ 52.1023 Control strategy: Ozone.

* * * * *

(c) *Approval.* EPA is approving an exemption request submitted by the Maine Department of Environmental Protection on September 7, 1995, for the Northern Maine area from the NO_X requirements contained in Section 182(f) of the Clean Air Act. This approval exempts Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties from the requirements to implement controls beyond those approved in § 52.1020(c)(41) for major sources of nitrogen oxides (NO_X), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X, and the applicable NO_X-related requirements of the general and transportation conformity provisions.

[FR Doc. 95–31034 Filed 12–22–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 677

[Docket No. 950822211–5291–02; I.D. 080395A]

RIN 0648–AD80

North Pacific Fisheries Research Plan; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NMFS issues a final rule to implement Amendment 1 to the North Pacific Fisheries Research Plan (Research Plan). Regulations implementing Amendment 1 delay full implementation of the Research Plan until 1997 and establish 1996 observer coverage requirements for the Research Plan fisheries. This delay is necessary to provide the North Pacific Fishery Management Council (Council) additional time to address certain issues presented by implementation of the Research Plan. Two technical amendments also are implemented to clarify provisions for refunding excess payments of 1995 Research Plan fee assessments and to clarify 1996 observer coverage requirements for groundfish vessels.

EFFECTIVE DATE: January 1, 1996.

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ADDRESSES: Copies of the Observer Plan may be obtained from the Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel.

Copies of the Research Plan as revised by Amendment 1, the environmental assessment/regulatory impact review prepared for the Research Plan, and the final report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). Since then, these regulations have been amended three times. The first regulatory amendment was published in the **Federal Register** on January 9, 1995 (60 FR 2344), to clarify 1995 observer coverage requirements and revise the definition of certain terms set out under § 677.2. A second regulatory amendment was published on July 5, 1995 (60 FR 34904), to require vessels and shoreside processors to facilitate transmission of observer data. The third regulatory amendment was published on August 16, 1995 (60 FR 42470), to revise 1995 observer coverage requirements for crab catcher vessels and exempt certain crab catcher vessels required to obtain observer coverage from paying 1995 Research Plan fees.

The Council requested that full implementation of the Research Plan be delayed for a 1-year period to provide additional time to reconsider certain elements of the Research Plan that were previously adopted by the Council. This Council action was developed during the Council's April and June 1995 meetings, as well as during a May 16, 1995, teleconference. The Council also expressed its intent to continue the fee collection program implemented for 1995 for the remainder of the year, so that adequate start-up funds may be collected for full implementation of the Research Plan in 1997.

A proposed rule to delay full implementation of the Research Plan was published in the **Federal Register** on September 11, 1995 (60 FR 47142). Comments on the proposed rule were invited through November 6, 1995. No written comments were received within the comment period. NMFS received oral comment on the proposed delay of the Research Plan during a September 18, 1995, public hearing by teleconference. The public hearing teleconference provided opportunity for public participation in Anchorage, AK, Juneau, AK, Seattle, WA, and Newport, OR. Members of the public participating in the public hearing either provided no comment or endorsed the proposed delay of the Research Plan.

Section 313(c)(3) of the Magnuson Act requires that, within 45 days of the close of the public comment period, NMFS, in consultation with the Council, analyze the public comment received and publish final regulations for implementing an amendment to the Research Plan. Consultation with the Council was initiated at the Council's September 1995 meeting. Oral comment received by NMFS and the Council indicated widespread industry support for the proposed delay of the Research Plan. NMFS received no further comment subsequent to the September Council meeting that would require further consultation with the Council.

NMFS has approved a 1-year delay of the full implementation of the Research Plan under section 313(c) of the Magnuson Act. Upon reviewing the Council's reasons for this delay and comments by the industry endorsing this action, NMFS has determined that this final rule is consistent with the Magnuson Act. The reasons for this delay are discussed further in the proposed rule (60 FR 47142, September 11, 1995).

Consistent with the Council's expressed intent, NMFS will continue to assess fees through early 1996 for fish harvested and retained in the Research Plan fisheries during 1995. Lacking future regulatory action to the contrary, collected funds will be held in an interest-bearing account and will be used to award contracts to provide observers under the Research Plan starting in 1997. Adequate start-up funds will be collected during 1995; as a result, Research Plan fees will not be assessed for fish caught in 1996.

The Council intends that 1996 observer coverage levels remain unchanged from 1995 levels. These observer coverage requirements for the groundfish and crab fisheries are set out at § 677.10(a). As in 1995, participants in the groundfish and crab Research Plan fisheries will be responsible for making their own arrangements and paying for required observer coverage.

The Council's intent to maintain 1995 observer coverage levels through 1996 applies to mothership processor vessel and shoreside processor observer coverage requirements set out in regulations implementing Amendment 35 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Final regulations implementing Amendment 35 are codified at 50 CFR 675.25(b) and are effective through December 31, 1995. In keeping with the Council's intent to maintain 1995 observer coverage levels in 1996, NMFS is extending the effective date of observer coverage requirements implemented under Amendment 35 through December 31, 1996, and including these requirements in the 1996 Research Plan observer coverage requirements at § 677.10(a).

NMFS notes that regulations at § 677.10(g) set out vessel safety requirements applicable in 1996 and beyond. No substantive changes to these requirements are implemented; however, the regulatory text is revised to clarify that these requirements apply to vessels required to carry observers in 1996 under § 677.10(a).

NMFS further notes that the following sections of the Observer Plan still will be in effect until full implementation of the Research Plan in 1997: (1) Standards of observer conduct; and (2) description, specifications, and work statement for certified domestic observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation. Copies of the Observer Plan dated May 1994 are available from NMFS (see **ADDRESSES**).

Technical Amendments

Two technical amendments are implemented to clarify NMFS's intent for the Research Plan in 1996. The first technical amendment is necessary to allow groundfish and crab processors that participate in the 1996 Research Plan fisheries to receive a refund for costs of 1995 observer coverage up to an amount equal to the sum of the fee assessments paid by the processor for retained catch during 1995. Section 677.6(d)(3)(ii)(C) authorizes NMFS to refund excess payments of 1995 Research Plan fee assessments to processors that do not intend to participate in the Research Plan fisheries during the first half of 1996. This provision assumes that a fee assessment program would be ongoing in 1996 and that processors participating in the 1996 Research Plan fisheries could be credited for any excess payments of their 1995 fee assessments on their 1996 bills. However, the final rule to delay full implementation of the Research Plan does not authorize a fee assessment program during 1996. As a result, regulatory language at § 677.6(d)(3)(ii)(C) must be removed so that all processors who are owed a refund from the 1995 fee assessment program can be issued a refund regardless of whether they participate in a Research Plan fishery during the first half of 1996 or not.

The second technical amendment is necessary to clarify 1996 observer coverage requirements for groundfish vessels that are set out at § 677.10(a)(1). Under the general provisions, a catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) length overall (LOA) but less than 125 ft (38.1 m) LOA that is used to participate for more than 3 fishing days in a directed fishery for groundfish during a calendar quarter must carry a NMFS-certified observer during at least 30 percent of its fishing days during that calendar quarter. This means that if a vessel equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA retrieves fishing gear and retains amounts of any groundfish species in excess of the maximum retainable bycatch amounts specified in §§ 672.20(g) or 675.20(h) during more than 3 days of a calendar quarter, that vessel must carry a NMFS-certified observer for at least 30 percent of all fishing days within that calendar quarter. A fishing day is defined at § 677.2 as "a 24–hour period, from 0001 Alaska local time (A.l.t.) through 2400 A.l.t., in which fishing gear is retrieved and groundfish, halibut, or king or Tanner crab are retained. Days during which a vessel only delivers unsorted codends to a processor are not "fishing days." This final rule does not change these general provisions.

In addition, § 677.10(a)(1)(i) contains specific requirements that provide that, in addition to the general provisions, a vessel must carry a NMFS-certified observer during at least one fishing trip during the calendar quarter for each of six separate groundfish categories in which the vessel participates. These six categories are defined at § 677.10(a)(1)(ii); the groundfish categories are: the pollock fishery, the Pacific cod fishery, the sablefish fishery, the rockfish fishery, the flatfish fishery, and the other species fishery. Under current regulations, participation in one of these fisheries is based on whether the retained catch in that fishery, during any fishing trip, constitutes the predominant catch of all of the groundfish categories retained by the vessel. These specific categories were developed to ensure more complete observer coverage of directed fishing operations for groundfish and were not intended to include fishing operations that retained only bycatch amounts of groundfish. This provision was intended to apply only to directed fishing operations for groundfish. Nonetheless, the actual language of the regulation, plus recent regulatory action, increased confusion concerning the meaning of this provision. It could be argued that the regulations implementing the individual fishing quota (IFQ) program for halibut inadvertently changed the requirements for observer coverage by increasing the probability that a person fishing for halibut would trigger a "fishing day" for groundfish. The IFQ regulations require IFQ card holders to retain all Pacific cod and rockfish, consistent with the maximum bycatch amounts specified for these species. All sablefish must be retained on board if a sablefish IFQ card holder is on board the vessel.

NMFS is implementing this technical amendment to § 677.10(a)(1)(ii) to clarify that the groundfish fishery categories subject to the separate observer coverage requirements apply only with respect to fishing operations that constitute "directed fishing" for groundfish as defined at §§ 672.2 and 675.2. This change is consistent with the original intent of the separate observer coverage requirement, past practice and the common understanding of the how the separate observer coverage requirements are supposed to be applied. It removes a possible unintended effect of the IFQ regulations. To the extent that this action has any substantive effect, it will relieve an unintended burden for additional observer coverage that otherwise might be imposed on fishermen participating in the IFQ program.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were summarized in the preamble to the proposed rule.

This final rule has been determined to be not significant for purposes of E.O. 12866.

A delay of full implementation of the Research Plan until 1997 results in a 1-year hiatus of the fee assessment program authorized under the Research Plan. As such, this final rule relieves a restriction and, pursuant to authority at 5 U.S.C. 553(d)(1), the requirement for a 30-day delay in effective date is inapplicable. However, NMFS has determined to make this rule effective on January 1, 1996, to coincide with the start of the 1996 fishing year.

One of the technical amendments implemented under this action clarifies NMFS' intent with respect to issuing refunds of excess payments of the 1995 Research Plan fee assessment. Without this amendment, processors participating in a Research Plan fishery during the first part of 1996 would not be eligible to receive a refund until 1997, when the Research Plan fee assessment program would be reinitiated and refund amounts could be credited against 1997 billed fees assessments.

The second technical amendment clarifies 1996 groundfish observer coverage requirements to exempt from observer coverage those vessels participating in a nongroundfish fishery and retaining bycatch amounts of groundfish. In that the first technical amendment ensures that an action that would have occurred under authority of a regulation issued through notice and comment rulemaking but for the delay in full implementation of the Research plan does in fact occur and that the second technical amendment simply clarifies NMFS intent in an existing regulation, good cause exists, pursuant to authority at 5 U.S.C. 553(b)(B), to waive prior notice and opportunity to comment on the technical amendments as such procedure is unnecessary. Because the technical amendments relieve restrictions, a delay in the effective date is not necessary under U.S.C. 553(d)(1).

List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated: December 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 677 is amended as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 677.6, paragraph (d)(3)(ii)(C) is removed, paragraph (b)(2) is redesignated as paragraph (b)(3), paragraph (d)(3)(ii)(D) is redesignated as paragraph (d)(3)(ii)(C), new paragraph (b)(2) is added, and the heading to newly redesignated paragraph (b)(3) is revised to read as follows:

§ 677.6 Research Plan fee.

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(b) * * *

(2) *Fee assessments during 1996.* Processors of Research Plan fisheries will not be assessed fees based on catch from Research Plan fisheries that is retained during the 1996 calendar year.

(3) *Fee assessments applicable after December 31, 1996.* * * *

* * * * *

3. In § 677.10, the headings for paragraphs (a) and (b), the introductory text to paragraph (g), and paragraphs (a)(1)(ii)(A) through (F) are revised, paragraphs (a)(1)(i)(C) through (a)(1)(i)(F) are redesignated as paragraphs (a)(1)(i)(D) through (a)(1)(i)(G), respectively, and paragraphs (a)(1)(i)(C) and (a)(2)(iii) are added to read as follows:

§ 677.10 General requirements.

(a) *Observer requirements applicable through December 31, 1996*—(1) * * * (i) * * *

(C) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15 under § 675.23(e) of this chapter, is required to have a second NMFS-certified observer aboard, in addition to the observer required under paragraphs (a)(1)(i)(A) and (B) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(ii) * * *

(A) *Pollock fishery.* Directed fishing for groundfish that results in a retained catch of pollock, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(B) *Pacific cod fishery.* Directed fishing for groundfish that results in a retained catch of Pacific cod, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(C) *Sablefish fishery.* Directed fishing for groundfish that results in a retained catch of sablefish, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(D) *Rockfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus*, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(E) *Flatfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(F) *Other species fishery.* Directed fishing for groundfish that results in a retained catch of groundfish, during any fishing trip, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (a)(1)(ii)(A) through (E) of this section.

* * * * *

(2) * * *

(iii) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15, under § 675.23(e) of this chapter, is required to have a NMFS-certified observer, in addition to the observer required under paragraphs (a)(2)(i) and (ii) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(b) *Observer requirements applicable after December 31, 1996*—(1) * * * (i) * * *

* * * * *

(g) *Vessel safety requirements applicable after December 31, 1995.* Any vessel that is required to carry observers under paragraph (a) or (b) of this section must have onboard either:

* * * * *

4. In § 677.11, paragraph (a)(4) is revised to read as follows:

§ 677.11 Annual Research Plan specifications.

(a) * * *

(4) *Observer coverage.* For the period January 1, 1996, through December 31, 1996, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1996, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

* * * * *

[FR Doc. 95–31181 Filed 12–22–95; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 247
Tuesday, December 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0909]

Membership of State Banking Institutions in the Federal Reserve System; Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing amendments to Regulation H pertaining to the recordkeeping and confirmation of certain securities transactions. The amendments would accommodate developments in the securities markets by adding certain yield-related confirmation disclosure requirements for transactions involving debt and asset-backed securities effected by State member banks for customers, and providing for three day settlement of those transactions. The proposed amendments also would clarify that State member banks that effect *de minimis* government securities brokerage transactions and are exempt from registration under Department of the Treasury regulations, also are exempt from Regulation H. Finally, the proposed amendments address the minimum recordkeeping requirements for State member banks exempt from the paragraph, and include several new definitions and various language edits.

DATES: Comments must be submitted on or before February 28, 1996.

ADDRESSES: Comments should refer to Docket No. R–0909, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8(a) of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Angela Desmond, Senior Counsel, or Susan Meyers, Senior Securities Analyst, (202) 452–2781. For users of Telecommunications Device for the Deaf (TTD), please contact Dorothea Thompson, (202/452–3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 208.8(k) of Regulation H, 12 CFR part 208, was adopted in 1979 to ensure that banks effecting securities transactions for customers conform to securities industry practices with respect to the maintenance of records, and the content and timing of confirmations and account statements.[1] Since that time, a number of market and regulatory changes have occurred that have relevance to these provisions. As a result, the Board has determined that the recordkeeping and notification requirements of Regulation H should be amended to ensure that procedures followed by State member banks continue to conform with SEC and Department of the Treasury regulations, and are consistent with principles of safe and sound banking practices. For purposes of organization, the contents of § 208.8(k) would be moved into a new § 208.24.

Comments are requested on the proposed amendments as described in more detail below. The proposed amendments are limited to new § 208.24 (current § 208.8(k)) of Regulation H and are not meant to obviate the need for the general review of the whole regulation scheduled for the latter part of 1996.[2] Accordingly, comments pertaining to other provisions of Regulation H should be withheld until notice of a general review is announced.

Summary of Proposed Amendments

The provisions of § 208.8(k) would be moved to a new section (§ 208.24) at the end of subpart A of Regulation H and paragraph (k) of § 208.8 would be reserved.

§ 208.24(a) Definitions.

The draft amendments would add definitions of: asset-backed security, completion of the transaction, crossing of buy and sell orders, debt security, government security and municipal security. In general, the new definitions are based on definitions contained in the Securities Exchange Act, 15 U.S.C. 78a *et seq.*, or in the SEC's confirmation rule 10b-10, 17 CFR 240.10b-10, and are necessary for applying the proposed confirmation disclosure and the three day settlement requirements. Finally, the term *dealer bank* in the definition of *customer* would be replaced with the term *municipal securities broker or dealer* to clarify that a bank acting as a municipal securities broker is not a customer for purposes of § 208.24 of Regulation H.

§ 208.24(b) Recordkeeping.

New language would be added to clarify that § 208.24 applies to government securities transactions effected for customers by State member banks and to municipal securities transactions effected by State member banks that are *not* registered as municipal securities dealers. The amendments also would relocate all confirmation recordkeeping requirements into this section. Explanatory language at the end of the section would be moved to the first paragraph to simplify the section.

§ 208.24(c) Content and Time of Notification.

The amendments would rename the section to clarify its subject matter. Substantively, the amendments would delete the old five business day requirement for confirmation delivery in former § 208.8 (k)(3) and (k)(4) and provide that confirmations be given or sent to customers "at or by completion of the transaction," defined as the payment and delivery of the securities in § 208.24(a).

In addition, the proposed amendments would require

[1] 44 FR 43258 (July 24, 1979).

[2] The OCC and the FDIC are considering similar amendments to their versions of the regulation, 12 CFR Part 12, 44 FR 43252 (July 24, 1979) and 12 CFR Part 344, 44 FR 43281 (July 24, 1979) respectively. Consideration of the amendments now will ensure continued consistency among the three regulations and obtain parity with securities industry practices.

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confirmations to: (i) contain a legend when the security is callable prior to maturity indicating that an early redemption could affect the yield stated on the confirmation and offering additional information on request (proposed § 208.24(c)(2)(viii); (ii) disclose the yield and/or resulting dollar price of transactions involving debt securities and asset-backed securities (proposed § 208.24(c)(2) (ix) and (x)); and, (iii) indicate when a debt security, other than a government security, is unrated by a nationally recognized statistical rating organization (proposed § 208.24(c)(2)(xi)). The proposed disclosures would conform bank confirmations with disclosures now required of broker dealers under SEC rule 10b–10. They also conform to longstanding practice in the municipal securities industry.

In proposing amendments to this section, the Board is mindful of the securities regulators' determinations that these confirmation disclosures constitute material information necessary to describe the securities or to identify the transaction. Comment is requested concerning the extent to which banks already are making the proposed confirmation disclosures to customers. Comment also is requested whether it would be preferable to incorporate SEC rules 10b–10, 17a–3 and 17a–4 by reference for State member banks to refer to, rather than specify discrete items of confirmation disclosure in the regulation. Finally, § 208.24 (c)(v)–(c)(vii) require State member banks to disclose in agency transactions the name of any broker dealer utilized, the amount of such broker dealer's commission, and the amount of commission or other remuneration being received by the bank. Some have argued that these requirements have an anticompetitive effect. Comment is requested whether this provision is inappropriately anticompetitive, and, if so, how a bank should disclose its remuneration and the remuneration going to other parties on agency transactions.

§ 208.24(d) Notification by agreement; alternative forms and times.

Section 208.24(d)(current section 208.8(k)(4)) would be renamed to indicate that it deals with alternative arrangements under which customers receive notifications of securities transactions effected by State member banks. Other than conforming language edits, a substantive change would be made to § 208.24(d)(v), pertaining to notifications of transactions in periodic plans, to require that notification be provided to customers "not less than every three months" rather than the current requirement of "as soon as possible after each transaction." This would conform the section with SEC rule 10b–10 (notifications required at least quarterly) while creating flexibility in scheduling notifications in periodic plans.

§ 208.24(e) Securities Trading Policies and Procedures.

A new § 208.24(e)(1)(iii) would be added to require State member banks to establish supervisory procedures and reporting lines for back office personnel that are seperate from those established to oversee personnel accepting orders and effecting transactions under § 208.24 (e)(1)(i) and (e)(1)(ii).

§ 208.24(f) Settlement of Securities Transactions.

Proposed § 208.24(f), on settlement of securities transactions, would require State member banks to provide for three day (T+3) settlement for securities transactions effected for customers unless the parties agree to a different settlement date at the time of the transaction. The requirement would apply to transactions in securities that fall under SEC rule 15c6–1, 17 CFR 240.15c6–1, for broker dealers.[3]

The Board requests comment whether the proposed section is needed for banks to meet T+3 settlement, where appropriate, of transactions effected for customers. Finally, if the Board determines to adopt the new section, comment is requested whether banks prefer that Regulation H incorporate SEC rule 15c6–1 by reference rather than the proposed language.

§ 208.24(g) Exceptions.

The exceptions previously found in current § 208.8(k)(6) would be contained in § 208.24(g). A new § 208.24(g)(2) would clarify that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption would not be available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer. Staff at the Bureau of Public Debt, which is the organization within the Department of the Treasury that is responsible for administering 17 CFR 404.4(a), on recordkeeping by government securities brokers and dealers that are financial institutions, has advised that they are considering amending this regulation to clarify any ambiguity with respect to the recordkeeping requirements for financial institutions that conduct government securities transactions resulting from the interplay of the regulation with the recordkeeping requirements of Regulation H.

§ 208.24(h) Safe and Sound Operations.

Finally, a new § 208.24(h), on safe and sound operations, would be added stating that principles of safety and soundness require a bank to maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information. This provision is consistent with the longstanding interpretation and would clarify what is expected of banks that qualify for an exception from § 208.24(h).

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

In accordance with § 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0196), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 208.8(k). This information is required to evidence compliance with the requirements of section 208.8(k) of Regulation H. The respondents are for-profit financial institutions. Records must be retained for three years.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0196.

[3] Exceptions or other relief, and changes in the standard settlement cycle adopted by the SEC under rule 15c6–1 also would apply to State member banks. MSRB rules require bank dealers to settle municipal securities transactions by T+3.

The proposed amendments would provide for only a minor addition in disclosure practices of state member banks, would not increase the banks' reporting requirements to the Federal Reserve, and would have a negligible effect on respondent burden. The estimated burden is 3 minutes per response. There are 1,214 respondents and the number of their recordkeeping and notification occurrences varies with the amount and type of securities transactions. The total annual recordkeeping and disclosure burden for these respondents is estimated to be 165,520 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,310,400.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, State member banks, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

For reasons set out in the preamble, the Board proposes to amend 12 CFR Part 208 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4101a, 4104b, 4106 and 4128.

§ 208.8 [Amended]

2. In § 208.8 paragraph (k) is removed and reserved.

3. A new § 208.24 is added at the end of subpart A to read as follows:

§ 208.24 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) *Definitions.* For purposes of this § 208.24:

Asset-backed security shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

Collective investment fund shall means funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:

(1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (Title 26).

Completion of the transaction effected by or through a state member bank shall mean:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the banks makes payment into the account of the customer.

Crossing of buy and sell orders shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.

Customer shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer bank or issuer of the securities which are the subject of the transactions.

Debt security as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

Exercise investment discretion with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

Government security shall mean:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (1), (2), or (3) of this definition other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated though an

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automated quotation system operated by a registered securities association.

Municipal security shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in § 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under § 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of § 103(c) of such Code (determined as if paragraphs (4)(A), (5) and (7) were not included in such § 103(c), paragraph (1) of such § 103(c) does not apply to such security.

Periodic plan (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means any written authorization for a State member bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

Security means any interest or instrument commonly known as a security, whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term security does not include:

(1) A deposit or share account in a federally or state insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; or

(8) U.S. Savings Bonds.

(b) *Recordkeeping.* Except as provided in paragraph (g) of this section, every State member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as a municipal securities dealers shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph rule in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

(1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(i) The account(s) for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or cancelled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) A copy of the written notification required by paragraphs (c) and (d) of this section.

(c) *Content and time of notification.* Every State member bank effecting a securities transaction for a customer at or before completion of the transaction shall give or send to such customer either of the following types of notifications:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) A written notification disclosing:

(i) The name of the bank;

(ii) The name of the customer;

(iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer, and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (c)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction;

(vii) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available on request;

(ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(A) The dollar price at which the transaction was effected; and

(B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(x) In the case of a transaction in a debt security effected on the basis of yield:

(A) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and

(B) The dollar price calculated from the yield at which the transaction was effected; and

(C) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided, however, that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(xi) In the case of a transaction in a debt security that is an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(xii) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(d) *Notification by agreement; alternative forms and times of notification.* A State member bank may elect to use the following alternative procedures if a transaction is effected for:

(1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capecity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:

(i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

(4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) A periodic plan, in which instance the bank shall give or send to the customer not less than every three months a written statement showing the funds and securities in the custody or possession of the bank, all service charges and commissions paid by the customer in connection with the transaction, and all other debits and credits of the customer's account involved in the transaction; provided that upon the written request of the customer the bank shall furnish the information described in paragraph (c) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section.

(e) Securities trading policies and procedures. Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (e)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (e)(1)(i) and (e)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer

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or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (e)(4), the term securities does not include government securities.

(f) *Settlement of securities transactions.* All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) Exceptions. (1) *De minimis Transactions.* The requirements of paragraphs (b)(2)(ii) through (b)(2)(iv) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;

(2) *Government Securities.* The recordkeeping requirements of paragraph (b) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a state member bank that has filed a written notice, or is required to file notice, with the Federal Reserve that it acts as a government securities broker or a government securities dealer;

(3) *Municipal Securities.* The municipal securities activities of a state member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(4) *Foreign Branches.* The requirements of this section shall not apply to the activities of foreign branches of a state member bank.

(h) *Safe and sound operations.* Every State member bank qualifying for an exemption under paragraph (g) of this section that conducts securities transactions for customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding their customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

By order of the Board of Governors of the Federal Reserve System, December, 19, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–31234 Filed 12–22–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–214–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas DC–9 and DC–9–80 series airplanes, and Model MD–88 airplanes. Among other things, this proposal would require repetitive leak checks of the lavatory drain system and repair, if necessary; would provide for the option of revising the FAA-approved maintenance program to include a schedule of leak checks; would require the installation of a cap on the flush/fill line; and would require replacement or modification of the vent system piping. This proposal is prompted by continuing reports of damage to engines and airframes, separation of engines from airplanes, and damage to property on the ground, caused by "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this proposed AD are intended to prevent such damage associated with the problems of "blue ice."

DATES: Comments must be received by March 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–214–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–214–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Over the past ten years, the FAA has received numerous reports of leakage of waste fluid from the lavatory service systems on in-service transport category airplanes. This leakage has resulted in the formation of "blue ice" on the fuselage. In some instances, the "blue ice" has subsequently dislodged from the fuselage and has been ingested into an engine. In several of these incidents, the ingestion of "blue ice" into an engine resulted in the loss of an engine fan blade, severe engine damage, and the in-flight shutdown of the engine. In two cases, the loads created by the "blue ice" being ingested into the engine resulted in the engine being physically torn from the airplane. Damage to an engine, or the separation of an engine from the airplane, could result in reduced controllability of the airplane.

The FAA also has received reports of at least three incidents of damage to the airframe of transport category airplanes caused by foreign objects and "blue ice," resulting from leakage of the forward toilet drain valve and flush/fill line, striking the airframe. One report was of a dent on the leading edge of the right horizontal stabilizer on a Boeing Model 737 series airplane that was caused by "blue ice" that had formed from leakage through a flush/fill line; in this case, the flush/fill cap was missing from the line at the forward service panel. Numerous operators have stated that leakage from the flush/fill line is a significant source of problems associated with "blue ice." Such damage caused by "blue ice" could adversely affect the integrity of the fuselage skin or surface structures.

Additionally, there have been numerous reports of "blue ice" dislodging from airplanes and striking houses, cars, buildings, and other occupied areas on the ground. Although there have been no reports of any person being struck by "blue ice," the FAA considers that the large number of reported cases of "blue ice" falling from the lavatory drain system is sufficient to support the conclusion that "blue ice" presents an unsafe condition to people on the ground. Demographic studies have shown that population density has increased around airports, and probably will continue to increase. These are populations that are at greatest risk of injury and damage due to "blue ice" dislodging from an airplane during the airplane's descent into the airport. Without actions to ensure that leaks from the lavatory drain systems are detected and corrected in a timely manner, "blue ice" incidents could go unchecked and eventually someone may be struck, perhaps fatally, by falling "blue ice."

Current Rules

In response to these incidents, the FAA has issued several AD's applicable to various transport category airplanes:

1. *AD 86–05–07, Amendment 39–5250 (51 FR 7767, March 6, 1986):* Issued on February 26, 1986, this AD required periodic leak checks of all Boeing Model 727 aircraft forward lavatory drain systems (both dump valve and drain valve) at intervals not to exceed 15 months, and corrective action, if necessary.

2. *AD 94–23–10, amendment 39–9073 (59 FR 59124, November 16, 1994):* Issued on November 9, 1994, this AD supersedes AD 86–05–07. It continues to require various leak checks of Boeing Model 727 series airplanes, but adds requirements for leak checks of other lavatory drain systems; provides for the option of revising the FAA-approved maintenance program to include a schedule of leak checks; requires the installation of a cap on the flush/fill line; and requires either a periodic leak check of the flush/fill line cap or replacement of the seals on both that cap and the toilet tank anti-siphon (check) valve.

3. *AD 89–11–03, amendment 39–6223 (54 FR 21933, May 22, 1989):* Issued on May 9, 1989, this AD is applicable to certain Boeing Model 737–300 and –400 airplanes. It requires repetitive leak checks of the forward lavatory service system at intervals of 200 hours time-in-service, and repair, if necessary. That AD also provided operators with an optional action in lieu of performing these periodic checks, which entails draining the system, locking the lavatory, and placarding the lavatory inoperative.

4. The FAA is planning to amend AD 89–11–03 to make it applicable to all Boeing Model 737 series airplanes, and to require additional inspections and other actions similar to those of AD 94–23–10.

5. The FAA is currently considering additional rulemaking to address the problems associated with "blue ice" on various other transport category airplanes, including those manufactured by Airbus, British Aerospace, Fokker, and Lockheed, as well as other models manufactured by McDonnell Douglas.

Description of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 38–47, dated April 17, 1992, which describes procedures for installing a lever lock rinse cap on lavatory service panels. The development of this installation was in response to reports that the quarter-turn caps, which are normally installed on the fill/rinse line at the lavatory service panel, are often removed by ground service personnel or are not properly re-installed and reseated after servicing. Installation of lever lock rinse caps in place of quarter-turn caps will inhibit the closing of the service panel doors when the cap is not properly closed; this will enable service personnel to recognize situations when the cap needs to be closed correctly. This, in turn, will minimize the possibility of leakage of lavatory waste liquids from the cap and the subsequent formation of "blue ice."

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994, which describes procedures for modifying and replacing the lavatory vent system piping. The development of this modification was in response to reports of "blue ice" build-up at the lavatory overboard vent on four Model DC–9 series airplanes. The ice build-up was attributed to lavatory waste tanks exceeding their capacity and overflowing through the overboard vent piping. This build-up of "blue ice" can break loose and damage either the nose cowl of engine No. 1 or the engine itself. The modified vent system piping minimizes the possibility of waste water siphoning overboard.

Description of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the FAA is proposing an AD that would require the following actions:

Paragraph (a) of the proposed AD would require repetitive leak checks of the lavatory dump valve, drain valve (either service panel or in-line drain valve), and lavatory vent system. The intervals for performing these leak checks would vary from 200 flight hours to 1,500 flight hours, depending upon what type of valve is installed at each location. The leak check of panel valves would be required to be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across the valve. If any leak is discovered during the leak checks, operators would be required either to repair the leak and retest it, or drain the lavatory system and placard it inoperative until repairs can be made.

In cases where the panel valve has an inner seal, in lieu of pressure testing, operators are provided with the option of performing a visual inspection for damage or wear of the outer cap seal

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and seal surface. Any damaged parts detected would be required to be repaired or replaced prior to further flight, or the lavatory drained and placarded inoperative until repairs can be made.

Additionally, the flush/fill line cap would be required to be leak checked. In lieu of this particular check, operators may elect to replace the seals on the toilet tank anti-siphon (check) valve and flush/fill line cap.

Paragraph (b) of this proposed AD would provide an optional procedure for complying with the rule, which would entail revising the FAA-approved maintenance program to incorporate a schedule to conduct leak checks of the lavatory drain systems. The maintenance program change would also require that procedures be provided for accomplishing the visual inspections to detect leakage, and for reporting leakage. Additionally, a training program must be provided to maintenance and servicing personnel, which would include information on "blue ice" awareness and the hazards of "blue ice."

Operators electing to comply with this option would be required to obtain approval from the Manager of the FAA's Los Angeles Aircraft Certification Office (ACO) for any revision to the leak check intervals. Requests for such revisions would be required to be accompanied by certain data when submitted to the ACO [through the appropriate FAA Principal Maintenance Inspector (PMI)] for approval. In paragraph (c) of the proposed rule, the FAA proposes a "data collection format" for these requests. Data submitted in accordance with the proposed format, if favorable to an increase in the leak check interval, will allow the FAA to justify increasing the leak check interval with assurance that the valves involved have the required reliability. The data provided also will be important in assisting the FAA in making future determinations of appropriate leak check intervals for new valves that have shown promising, but not conclusive, service data. For example, the FAA has previously approved extension of the leak check interval to 2,000 hours for one operator using PneuDraulics part number series 9527 valves on Boeing Model 737 series airplanes. Assuming that this operator successfully completes two cycles of 2,000-hour leak checks without finding leakage, the FAA may consider approving the extension of the 2,000-hour leak check interval to a 4,000-hour interval for this operator.

Paragraph (d) of the proposed AD also would require that all operators install a lever/lock cap on the flush/fill lines for all service panels. The cap must be either an FAA-approved cap or one installed in accordance with McDonnell Douglas Service Bulletin 38–47.

Paragraph (e) of the AD would require that leak checks of the lavatory vent system be conducted on certain airplanes at the same time as the leak checks of the dump valve and flush/fill line are conducted. If a leak is detected, the proposed rule would provide for several optional corrective actions that operators could accomplish.

Paragraph (e) would also require that, within 3 years, operators of certain airplanes either replace/modify the lavatory vent system piping in accordance with McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3; or install an FAA-approved modification that deactivates the vent system. Once either of these actions is accomplished, the periodic leak checks of the lavatory vent system may be discontinued.

Paragraph (f) of the proposed AD would require that, before an operator places an airplane subject to the AD into service, the operator must establish a schedule for accomplishment of the subject leak checks. This provision is intended to ensure that transferred airplanes are inspected in accordance with the AD on the same basis as if there were continuity in ownership, and that scheduling of the leak checks for each airplane is not delayed or postponed due to a transfer of ownership. Airplanes that have previously been subject to the AD would have to be checked in accordance with either the previous operator's or the new operator's schedule, whichever would result in the earlier accomplishment date for that leak check. Other airplanes would have to be inspected before an operator could begin operating them or in accordance with a schedule approved by the FAA PMI, but within a period not exceeding 200 flight hours.

Economic Impact

There are approximately 2,097 Model DC–9 and DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,191 airplanes of U.S. registry, and 47 U.S. operators, would be affected by this proposed AD.

1. *Leak checks.* It would take approximately 4 work hours per airplane lavatory drain to accomplish each leak check, at an average labor cost of $60 per work hour. There normally are 2 drains per airplane. Depending upon the type of valves installed and the flight utilization rate of the airplane, an airplane subject to this AD could be required to be inspected as few as 2 times per year or as many as 15 times per year. Based on these figures, the cost impact of the proposed leak check requirement on U.S. operators would be between $960 and $7,200 per airplane per year.

2. *Inspections.* Should an operator elect to perform the inspection of the service panel drain valve cap/door seal and seal mating surface, the inspection would take approximately 1 work hour to accomplish, at an average labor cost of $60 per work hour. Depending upon the type of valves installed and the flight utilization rate of the airplane, an airplane subject to this AD could be required to be inspected as few as 2 times per year or as many as 15 times per year. Based on these figures, the cost impact of the proposed inspection requirement on U.S. operators would be between $120 and $1,800 per airplane per year.

3. *Installation of cap on flush/fill line.* The proposed installation would take approximately 2 work hours to accomplish, at an average labor cost of $60 per work hour. The cost of required parts is estimated to be $275 per flush/fill line. There are normally 3 flush/fill lines per airplane. Based on these figures, the cost impact of the proposed installation requirement on U.S. operators would be $1,411,335, or $1,185 per airplane.

4. *Installation of lavatory vent system replacement/modification.* The portion of this installation that entails modification of the toilet assembly would require between 2 and 4 work hours per airplane to accomplish, depending on the brand of toilet involved. The average labor cost is estimated to be $60 per work hour. The cost of required parts is estimated to be between $83 and $2,121 per airplane. Based on these figures, the cost impact of this portion of the proposed installation on U.S. operators would be between $203 and $2,361 per airplane.

The portion of this installation that entails modification of lavatory vent lines would require between 15 and 52 work hours per airplane to accomplish, depending upon the configuration of the airplane, if certain other modifications have already been accomplished, and the modification option selected. The average labor cost is estimated to be $60 per work hour. The cost of required parts is estimated to be between $800 and $13,000 per airplane. Based on these figures, the cost impact of this portion of the proposed installation on U.S. operators would be between $1,500 and $16,120 per airplane.

The number of required work hours, as indicated above, is presented in this discussion as if the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

In addition to the costs discussed above, for those operators who elect to comply with proposed paragraph (b) of this AD action, the FAA estimates that it would take approximately 40 work hours per operator to incorporate the lavatory drain system leak check procedures into the maintenance programs, at an average labor cost of $60 per work hour. Based on these figures, the cost impact of the proposed maintenance revision requirement of this AD on U.S. operators is estimated to be $2,400 per operator.

The "cost impact" figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–214–AD.

Applicability: All Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; and Model MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of "blue ice" that has formed from leakage of the lavatory drain system and dislodged from the airplane, accomplish the following:

Note 2: The leak checks of the toilet dump valve and flush/fill line that are required by this AD may be performed by filling the toilet tank with water/rinsing fluid to a level at least 4 inches above the flapper in the bowl, and checking for leakage after a period of 5 minutes.

(a) Except as provided in paragraph (b) of this AD, accomplish the applicable procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD. If the individual waste drain system panel incorporates more than one type of valve, the inspection interval that applies to that panel is determined by the component with the longest inspection interval allowed. Each of the components must be inspected or tested at that time at each service panel location.

(1) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329: Within 1,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, accomplish the procedures specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel), and the in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across the valve.

(ii) Visually inspect the service panel drain valve outer cap seal and the inner seal (if the valve has an inner door/closure device with a second positive seal), and the seal mating surfaces, for wear or damage that may allow leakage.

(2) For each lavatory drain system that has a service panel drain valve installed, Shaw Aero Devices part number 10101000C–A (or

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higher dash number); or Shaw Aero Devices part number 10101000B–A (or higher dash number); or Shaw Aero Devices part number 10101B–577–1 or 10101B–577–2; or Pneudraulics part number series 9527: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(3) For each lavatory drain system that has a service panel drain valve installed, Shaw Aero Devices part number series 10101000C [except as specified in paragraph (a)(2) of this AD], or Shaw Aero Devices part number 10101000B [except as specified in paragraph (a)(2) of this AD]: Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the procedures specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD:

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(4) For other lavatory drain systems not addressed in paragraph (a)(1), (a)(2), or (a)(3) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the procedures specified in paragraphs (a)(4)(i) and (a)(4)(ii) of this AD:

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(5) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish the procedures specified in either paragraph (a)(5)(i) or (a)(5)(ii) of this AD:

(i) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(ii) Replace the seals on the toilet tank anti-siphon (check) valve and in the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve after changing the seals.

(6) As a result of the leak checks and inspections required by this paragraph, or if evidence of leakage is found at any other time, accomplish the requirements of either paragraph (a)(6)(i), (a)(6)(ii) or (a)(6)(iii) as applicable:

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the leak test. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 3: For purposes of this AD, "leakage" is defined as any visible leakage observed during a leak test; the presence of ice in the service panel; or horizontal fluid residue streaks or ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(6)(i) or (a)(6)(ii): Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within 180 days after the effective date of this AD, revise the FAA-approved maintenance program to include the requirements specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD:

(1) Replace the valve seals in accordance with the applicable schedule specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Any revision to this replacement schedule must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 52 months.

(ii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 18 months.

(2) Conduct periodic leak checks of the lavatory drain systems in accordance with the applicable schedule specified in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) of this AD. If the individual waste drain system incorporates more than one type of valve, the interval that applies to that system is determined by the component with the longest inspection interval allowed. Each of the components in that system must be inspected/tested at that time. Any revision to this leak check schedule must be approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve, Kaiser Electroprecision part number series 2651–329: Within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 24 months or 5,000 flight hours, whichever occurs later, accomplish the procedures specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this AD:

(A) Conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 PSID applied across the valve.

(B) Visually inspect the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door/closure device with a second positive seal) and seal mating surface for wear or damage that may cause leakage. Any worn or damaged seal must be replaced and any damaged seal mating surface must be repaired or replaced, prior to further flight, in accordance with the valve manufacturer's maintenance manual.

(ii) For each lavatory drain system that has a service panel drain valve installed, Shaw Aero Devices part number series 10101000C; or Shaw Aero Devices part number series 10101000B; or Pneudraulics part number series 9527: Within 1,000 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD:

(A) Conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Only the inner door/closure device of the service panel drain valve must be leak checked.

(B) Visually inspect the service panel drain valve outer cap/door seal and seal mating surface for wear or damage that may cause leakage.

(iii) For each lavatory drain system that has a lavatory drain system valve that incorporates only an outer cap seal (i.e., uses no inner flapper), or that incorporates an inner seal that is not an attached part of the valve (i.e., a "donut"): Within 200 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. Both the donut and the outer cap/door must be leak checked.

(iv) For each lavatory drain system that incorporates any other type of approved valve(s): Within 400 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 400 flight hours, accomplish the procedures specified in paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(B) of this AD:

(A) Conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. If the service panel drain valve has an inner door/closure device with a second positive seal, only the inner door must be leak checked.

(B) If the valve has an inner door/closure device with a second positive seal: Visually inspect the service panel drain valve outer door/cap seal and seal mating surface for wear or damage that may cause leakage.

(3) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this AD:

(i) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(ii) Replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve.

(4) Provide procedures for accomplishing visual inspections to detect leakage of the lavatory waste drain line and lavatory flush/fill line, at each waste service panel, to be conducted by maintenance personnel at intervals not to exceed 4 calendar days or 45 flight hours, whichever occurs later.

(5) Provide procedures for reporting leakage. These procedures shall provide that any "horizontal blue streak" findings must be reported to maintenance and that, prior to further flight, the leaking system shall either be repaired, or be drained and placarded inoperative.

(i) For systems incorporating an in-line drain valve, Kaiser Electroprecision part number series 2651–329: The reporting procedures must include provisions for reporting to maintenance any instances of abnormal operation of the valve handle for the in-line drain valve, as observed by service personnel during normal servicing.

(A) Additionally, for these systems, these provisions must include procedures for either: Prior to further flight, following the in-line drain valve manufacturer's recommended troubleshooting procedures and correction of the discrepancy; or prior to further flight, draining the lavatory system and placarding it inoperative until the correction of the discrepancy can be accomplished.

(B) If the drain system also includes an additional service panel drain valve, Shaw Aero Devices part number 10101000C-A (or higher dash number); or Shaw Aero Devices part number 10101000B-A (or higher dash number); or Shaw Aero Devices part number 10101B–577–1 or 10101B–577–2; or Pneudraulics part number series 9527:

Indications of abnormal operation of the valve handle for the in-line drain valve need not be addressed immediately if a leak check of the service panel drain valve indicates no leakage or other discrepancy. In these cases, repair of the in-line drain valve must be accomplished within 1,000 flight hours after the leak check of the additional service panel drain valve.

(6) Provide training programs for maintenance and servicing personnel that include information on "Blue Ice Awareness" and the hazards of "blue ice."

(7) As a result of the leak checks and inspections required by this paragraph, or if evidence of leakage is found at any other time, accomplish the requirements of either paragraph (b)(7)(i), (b)(7)(ii) or (b)(7)(iii), as applicable:

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the leak test. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them or any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 4: For purposes of this AD, "leakage" is defined as any visible leakage observed during a leak test; the presence of ice in the service panel; or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (b)(7)(i) or (b)(7)(ii): Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(c) For operators who elect to comply with paragraph (b) of this AD: Any revision to (i.e., extension of) the leak check intervals required by paragraph (b) of this AD must be approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Requests for such revisions must be submitted to the Manager of the Los Angeles ACO through the FAA Principal Maintenance Inspector (PMI), and must include the following information:

(1) The operator's name;

(2) A statement verifying that all known cases/indications of leakage or failed leak tests are included in the submitted material;

(3) The type of valve (make, model, manufacturer, vendor part number, and serial number);

(4) The period of time covered by the data;

(5) The current FAA leak check interval;

(6) Whether or not seals have been replaced between the seal replacement intervals required by this AD;

(7) Whether or not leakage has been detected between leak check intervals required by this AD, and the reason for leakage (i.e., worn seals, foreign materials on sealing surface, scratched or damaged sealing surface or valve, etc.); and

(8) Whether or not any leak check was conducted without first inspecting or cleaning the sealing surfaces, changing the seals, or repairing the valve. [If such activities have been accomplished prior to conducting the periodic leak check, that leak check shall be recorded as a "failure" for purposes of the data required for this request submission. The exception to this is the normally scheduled seal change in accordance with paragraph (b)(1) of this AD. Performing this scheduled seal change immediately prior to a leak check will not cause that leak check to be recorded as a failure.]

Note 5: Requests for approval of revised leak check intervals may be submitted in any format, provided that the data give the same level of detail specified in paragraph (c) of this AD.

Note 6: For the purposes of expediting resolution of requests for revisions to the leak check intervals, the FAA suggests that the requester summarize the raw data; group the data gathered from different airplanes (of the same model) and drain systems with the same kind of valve; and provide a recommendation from pertinent industry group(s) and/or the manufacturer specifying an appropriate revised leak check interval.

(d) For all airplanes: Within 5,000 flight hours after the effective date of this AD, install a lever/lock cap on the flush/fill lines at each lavatory service panel. The cap must be either an FAA-approved lever/lock cap, or a cap installed in accordance with McDonnell Douglas DC–9 Service Bulletin 38–47, dated April 17, 1992.

(e) For only those airplanes listed in McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994: Accomplish the procedures specified in paragraphs (e)(1) and (e)(2) of this AD:

(1) Conduct leak checks of the lavatory vent system at the same time as conducting the leak checks of the dump valve and flush/fill line required by this AD. If a leak is discovered, prior to further flight, accomplish the procedures specified in either paragraph (e)(1)(i), (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this AD:

(i) Repair the leak and retest. Or

(ii) Drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished. Or

(iii) Install an FAA-approved modification that deactivates the vent system. After accomplishment of this deactivation, the leak checks of the lavatory vent system may be discontinued. Or

(iv) Replace/modify the vent system in accordance with McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994. After accomplishment of this replacement/modification, the leak checks of the lavatory vent system may be discontinued.

(2) Within 3 years after the effective date of this AD: Either replace/modify the vent system in accordance with McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994; or install an FAA-approved modification that deactivates the vent system. Accomplishment of either of these actions constitutes terminating action for the leak checks of the lavatory vent system that are required by this AD.

(f) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak

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checks required by this AD shall be established in accordance with either paragraph (f)(1) or (f)(2) of this AD, as applicable. After each leak check has been performed once, each subsequent leak check must be performed in accordance with the new operator's schedule, in accordance with either paragraph (a) or (b) of this AD, as applicable.

(1) For airplanes previously maintained in accordance with this AD: The first leak check to be performed by the new operator must be accomplished in accordance with either the previous operator's schedule or the new operator's schedule, whichever would result in the earlier accomplishment date for that leak check.

(2) For airplanes that have not been previously maintained in accordance with this AD: The first leak check to be performed by the new operator must be accomplished prior to further flight; or in accordance with a schedule approved by the FAA PMI, but within a period not to exceed 200 flight hours.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 8: For any valve that is not eligible for the extended leak check intervals of this AD: To be eligible for the leak check interval specified in paragraph (a)(1), (a)(2), (b)(2)(i), or (b)(2)(ii), the service history data of the valve must be submitted to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, with a request for approval of an alternative method of compliance with this AD. The request should include an analysis of known failure modes for the valve, if it is an existing design, and known failure modes of similar valves. Additionally, the request should include an explanation of how design features will preclude these failure modes, results of qualification tests, and approximately 25,000 flight hours or 25,000 flight cycles of service history data, including a winter season, collected in accordance with the requirements of paragraph (c) of this AD or a similar program.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–31245 Filed 12–22–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 211

RIN 3220–AB10

Finality of Records of Compensation

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations pertaining to the finality of reports of compensation. The proposed regulations relate to corrections to records of compensation more than four years after the date on which the compensation was required to be reported to the Board.

DATES: Comments must be received on or before February 26, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality and reports of compensation are presently contained in Board Orders, which are not readily available to the public.

The proposed rule would amend part 211 of the Board's regulations (Creditable Railroad Compensation) by adding a new § 211.16 to this part. Under section 9 of the Railroad Retirement Act, the Board will not change an employee's record of reported compensation if the change is requested more than four years after the report of compensation is required to be filed under § 209.6 of the Board's regulations. Proposed § 211.16 explains when the Board will change a record of compensation beyond the four year period; for example, where the record is incorrect because of clerical error or fraud, where the compensation was posted to the wrong period or person, or where the compensation was originally reported to the Social Security Administration but the Board or a court has determined that it should have been reported to the Board. Changes to credit compensation and service after the four year period could be made only where taxes due under the Railroad Retirement Tax Act have been paid.

The Labor Member of the Board dissented from the action of the majority of the Board approving the proposed rule. The Labor Member's reasons for dissenting from this action are set out below.

Views of the Labor Member of the Board

The Labor Member feels that this proposed revision to part 211 presents a major change in the crediting of compensation and service, in that if the four year time limit for corrections to records of compensation has passed, no employee may be credited with service months or compensation unless the employee establishes that all employment taxes have been paid with respect to this service. The Labor Member acknowledges that in the current environment where the Internal Revenue Service has responsibility for assessing and collecting taxes under the Railroad Retirement Tax Act and the Board has the responsibility for crediting compensation and service, a lack of coordination is inevitable. He contends that this should in no way compel the Board to limit the granting of legitimate railroad retirement credits, but that the change proposed by the majority of the Board would do this.

The Labor Member feels that this change could also put an employee in a "catch 22" situation since there could be questions as to the employee's status under the Social Security Act for the period where the employer is found to be covered under the Railroad Retirement Act, but because no railroad retirement taxes had been paid, the employee would receive no railroad retirement credit. Conceivably, the employee would receive no credit under either Act. The Labor Member points out that currently there are many situations where the Board may correct a compensation record retroactively. There are cases where earnings were erroneously reported to the Social Security Administration by the employer and, subsequently, the Board rules that the employer is covered under the Railroad Retirement Act. The Board may correct a record of compensation where such correction is determined or approved by a court having jurisdiction to make such a decision, or as a result of a settlement entered into by the employer and the Internal Revenue Service.

The Labor Member does not endorse the change recommended by the majority of the Board. Instead, he feels that the Board should make a concerted effort to identify when an employer or employee is, in fact, covered under the Railroad Retirement Act and attempt to mitigate the consequences of decisions that retroact over several years. He submits that we are, in fact, doing this now with the assistance of our agency's Audit and Compliance Division which is successfully dedicating significant resources to this effort.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Parts 211

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 continues to read as follows:

Authority: 45 U.S.C. 231(f).

2. Part 211 is amended by adding a new § 211.16 to read as follows:

§ 211.16 Finality of records of compensation.

(a) *Time limit for corrections to records of compensation.* The Board's record of the compensation reported as paid to an employee for a given period shall be conclusive as to amount, or if no compensation was reported for such period, then as to the employee's having received no compensation for such period, unless the error in the amount of compensation or the failure to make return of the compensation is called to the attention of the Board within four years after the date on which the compensation was required to be reported to the Board as provided for in § 209.6 of this chapter.

(b) *Correction after 4 years.* Subject to paragraph (c) of this section, the Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section for one of the following reasons:

(1) Where the compensation was posted as the result of fraud;

(2) Where the compensation was posted for the wrong person or the wrong period;

(3) Where the earnings were erroneously reported to the Social Security Administration in the good faith belief by the employer or employee that such earnings were not covered under the Railroad Retirement Act and there is a final decision of the Board under part 259 of this chapter that such employer or employee was covered under the Railroad Retirement Act during the period in which the earnings were paid;

(4) Where a determination pertaining to the coverage under the Railroad Retirement Act of an individual, partnership, or company as an employer, is retroactive; and

(5) Where a record of compensation could not otherwise be corrected under this part and where in the judgment of the three-member Board that heads the Railroad Retirement Board failure to make a correction would be inequitable.

(c) *Limitation on crediting service.* No employee may be credited with service months or tier II compensation beyond the four year period referred to in paragraph (a) of this section unless the employee establishes to the satisfaction of the Board that all employment taxes imposed by sections 3201, 3211, and 3221 of title 26 of the Internal Revenue Code have been paid with respect to the compensation and service.

Dated: December 15, 1995.
By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–31064 Filed 12–22–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0009–95]

RIN 1545–AT42

Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations revising the rules under section 367(a) with respect to certain transfers of stock or securities of domestic corporations by United States persons pursuant to the corporate organization, reorganization or liquidation provisions of the Internal Revenue Code. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 25, 1996. Outlines of topics to be discussed at the public hearing scheduled for April 11, 1996, at 10 a.m. must be received by March 21, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL 0009–95), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL–0009–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Philip L. Tretiak at (202) 622–3860; concerning submissions and the hearing, Christina Vasquez at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 26, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in § 1.367(a)–3T(c)(4). This information is required by the IRS as a condition for a taxpayer to qualify for an exception to the general rule of taxation under section 367(a)(1). This information will be used to determine whether a taxpayer properly qualifies for a claimed exception. The respondents generally will be U.S. corporations, probably U.S. multinationals, that are acquired by foreign companies pursuant to nonrecognition exchanges or that engage in joint ventures with foreign companies. Responses to this collection of information by the relevant U.S. corporations are required in order for the shareholders of such corporations to

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qualify for an exception to the general rule under section 367(a)(1).

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 1,000 hours. The estimated annual burden per respondent varies from 1 hour to 20 hours, depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: Once.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 367(a). The temporary regulations contain rules relating to the transfer of stock or securities by a United States person to a foreign corporation in an exchange described in section 367(a).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations. Final regulations under section 367(a) regarding transfers of stock or securities will integrate the proposed regulations herein with the notice of proposed rulemaking published on August 26, 1991, in the **Federal Register** (56 FR 41993). Thus, the proposed regulations herein supplement and, where inconsistent with, supersede, the 1991 proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that this regulation does not have a significant impact on a substantial number of small entities. Thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Notice of Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 1996, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by March 25, 1996 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 21, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. New § 1.367–9 is added to read as follows:

§ 1.367(a)–9 Transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations.

[The text of this proposed section is the same as the text of paragraphs (a), (c), (d), (e), (f), (g)(1), and (h)(1) of § 1.367–3T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30828 Filed 12–22–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 87–087]

RIN 2115–AC84

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing its rulemaking to increase the time requirement for submitting permit applications to the Coast Guard for approval prior to the start of a regatta or marine parade event. Since the Notice of Proposed Rulemaking (NPRM) was published for this rulemaking, the Coast Guard has participated in the National Performance Review and has determined that a broader regulatory examination of the entire Regatta and marine Parade Permit process, including the issue of appropriate permit application submission times, was needed. Therefore, this single issue rulemaking project is being withdrawn and the permit application submission time issue will be included in the broader overall review and revision of the regatta and marine parade permit process regulations.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0979.

SUPPLEMENTARY INFORMATION: On February 4, 1988, the Coast Guard published an NPRM entitled Regattas and Marine Parades in the **Federal Register** (53 FR 3221). Interested persons were given until April 4, 1988, to submit comments. The Coast Guard received 45 letters commenting on the proposal.

Most of the 45 comments on the NPRM were submitted by event sponsors, which ranged from small sailing clubs and regional and national sailing or boating associations to a municipality and two commercial fireworks display sponsors. Most of the comments acknowledged or supported a need for some increase in the submission time for permit applications for some events, but objected to the proposed submission time of 90 days for

all marine events and suggested various submission times of 60 days or less. A few comments supported the proposed submission time of 90 days for larger events. Another comment suggested requiring a submission time of 105 days to allow for a full environmental impact analysis.

Many comments emphasized planning problems faced by sponsors due to short seasons, volunteer organization officials, long periods of inactivity prior to the boating season start-up events, and difficulty in getting firm, detailed information sooner than 30 days before an event.

The Coast Guard has determined that the best course of action at this point is to withdraw this single issue rulemaking and examine the issue of permit application submission times as part of a broader project to conduct a regulatory review of the entire regatta and marine parade permit process, [CGD 95–054] published elsewhere in this issue. Therefore, the Coast Guard is withdrawing the rulemaking [CGD 87–087] and merging its docket with [CGD 95–054].

Dated: December 18, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–31215 Filed 12–22–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades; Permit Application Procedures

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rule; request for comments.

SUMMARY: In keeping with the National Performance Review, the Coast Guard is examining its procedures for permitting regattas and marine parades in order to improve its service to event sponsors and affected navigation in the event area. In order to identify and consider the permitting procedures and application requirements which should be modified or removed, the Coast Guard is requesting comments from interested and affected individuals and entities early in the process. This regulatory review seeks to identify better ways to reduce permit application processing time and eliminate unnecessary paperwork without adversely affecting vessel safety in the event area.

DATES: Comments are requested by February 9, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–054), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. The Executive Secretary maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

The minutes of National Boating Safety Advisory Council (NBSAC) meetings at which regatta and marine parade permit application issues were discussed are available for examination in the docket.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0979. A copy of this notice may be obtained by calling the Coast Guard's toll-free Coast Guard Customer Infoline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this request for comments by submitting written data, views or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 95–054). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

Under 33 U.S.C. 1233, the Coast Guard has discretionary authority to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. Section 100.15 of Title 33, Code of Federal Regulations prescribes the requirements for regatta and marine parade (marine event) permit applications, including: (1) which events require a Coast Guard marine event permit; (2) limiting the validity of a marine event permit to not exceed one year; (3) the timeframe for submitting permit applications; and (4) information the sponsor must provide in an application package.

The Coast Guard reviews all regatta permit applications to determine whether or not a permit is required to hold the event. The Coast Guard checks the permit application package for completeness and contacts the applicant for missing or additional information. Permit applications are reviewed for extra or unusual hazards to the safety of life, such as an inherently hazardous competition; customary presence of commercial or pleasure craft in the area; any obstruction of a navigable channel; and accumulation of spectator craft. The Coast Guard addresses this extra or unusual hazard in a cooperative effort between the event sponsor and the issuing authority, e.g., a Coast Guard Group Commander, throughout the permit application review process. The Coast Guard issuing authority discusses the location and conduct of the event, consults with other affected commands, e.g., Captain of the Port or Vessel Traffic Service Center, assigns and directs safety patrol craft, in addition to sponsor provided safety patrol craft, as deemed necessary, establishes a safety patrol communication plan for use before, during and immediately after the event, and notifies local navigation of the event through the Local Notice to Mariners and often through local media sources, as well.

The Coast Guard may also need to contact Federal, State or local agency offices to determine if there are conflicting activities scheduled in the area. Not all events for which a permit application is submitted require Coast Guard approval. Those applications are returned to the sponsors with notification that the event does not require a permit. If a permit for a marine event is required, the Coast Guard must decide whether the permit should be issued or denied.

When necessary, the Coast Guard promulgates special local regulations in the **Federal Register** to ensure safety of life on navigable waters before, during, and after an approved marine event. These regulations may include restricted or other controlled movement of navigation through the event area. Before promulgating special local regulations, the Coast Guard must give the public notice and an opportunity to comment on the proposed regulations.

Applications for marine events which require a permit must also be reviewed and evaluated in accordance with Coast Guard procedures for complying with laws to protect the environment. Environmental review may require coordination with Federal, State, or local government environmental agencies to use their special expertise in determining whether the marine event

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has the potential for adverse environmental effects. Specific environmental documentation may be required in those cases where a potential for adverse effects exists.

Early Participation

The Coast Guard has consulted previously with the National Boating Safety Advisory Council (NBSAC) on regatta and marine parade permit procedures and their opinions and advice have been considered in the formulation of this notice. NBSAC conducted a regular periodic review of all then current recreational boating safety regulations at its May, 1986, meeting. At its November, 1986, meeting, NBSAC recommended only that the Coast Guard increase the permit application submission time from 30 days to 60 days. NBSAC conducted another regular periodic review of all then current recreational boating safety regulations at its May, 1992, meeting. At that meeting, NBSAC recommended increasing the permit application submission time, possibly with a two tier system. The minutes of NBSAC meetings at which regatta permit application submission times were discussed are available for examination in the docket, at the address under **ADDRESSES**.

The Coast Guard will continue to consult with NBSAC on regatta and marine parade permitting issues as the regulatory project develops.

In 1988, under Coast Guard docket 87–067; RIN: 2115–AC84, the Coast Guard proposed increasing the submission time for all marine events to 90 days prior to an event (53 FR 3221; February 4, 1988). The Coast Guard received 45 letters commenting on the proposal.

Most of the 45 comments on the proposal were submitted by event sponsors, which ranged from small sailing clubs and regional and national sailing or boating associations to a municipality and two commercial fireworks display sponsors. Most of the comments acknowledged or supported a need for some increase in the submission time for permit applications for some events, but objected to the proposed 90-day submission time for all events. A few comments supported the proposed submission time of 90 days for larger events. Another comment suggested requiring a submission time of 105 days to allow for a full environmental impact analysis.

Many comments emphasized planning problems faced by sponsors due to short seasons, volunteer organization officials, long periods of inactivity prior to the boating season start-up events, and difficulty in getting firm, detailed information sooner than 30 days before an event.

Some other suggestions included: delaying the final decision on a permit application until adequate information is submitted or starting a 60-day review once all needed information is submitted; requiring the applicant to accept more coordination responsibility to help the Coast Guard complete required procedures in less than 90 days; accepting applications up to 30 days late, if accompanied by a $250 late fee; and streamlining the process by using computer systems for data collection.

Since the Notice of Proposed Rulemaking (NPRM) was published for this rulemaking, the Coast Guard has participated in the National Performance Review and initiated a broader regulatory examination of the entire Regatta and Marine Parade Permit process, including appropriate permit application submission times. Therefore, the Coast Guard is withdrawing the single issue rulemaking project under docket number 87–087, published elsewhere in this issue, and merging that docket with this docket number 95–054. The permit application submission time issue will be included in the broader overall review and revision of the regatta and marine parade permit process regulations and evolve into a proposed rulemaking after consideration of the comments received.

Solicitation of Views

The Coast Guard strives to reach consensus among all stakeholders in waterways activities, across all modes of transportation. These stakeholders generally include, commercial and recreational navigation, marine event sponsors, participants and spectators, environmental interests, and local communities. These customers' needs define Coast Guard marine event permit program workloads and priorities, and customer satisfaction measures the program's success.

The Coast Guard solicits comments from all segments of the marine community, State and local authorities, National Boating Safety Advisory Council (NBSAC), and other interested persons on permit application requirements, including submitted information requirements, and economic, navigational safety, environmental protection, and other impacts of approving permits for marine events. The Coast Guard also requests suggested alternatives related to when a permit should be required, how frequently to submit permit applications for repetitive events, what time period before the start of an event should an application be submitted to enable the Coast Guard to conduct its analyses, coordination, consultation with other expert agencies and meet its responsibilities to ensure the safety of navigation and protection of the environment, prior to the start of the event. Persons submitting comments should do so as directed under *Request for Comments* above, and specify the area(s) of concern on which comments are being submitted, state what impacts may result from one or more alternatives identified, suggest other alternatives, and provide reasons to support the information provided on potential impact or suggested alternatives. The Coast Guard is particularly interested in receiving information, views, and data on the following questions and areas of concern:

1. Should the Coast Guard Permit Marine Events Located in Navigable Waters of the United States?

In 33 CFR 100.15(a), an application must be submitted to the Coast Guard when a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of life of the navigable waters of the United States. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of life include but are not limited to: An inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channel which may reasonably be expected to result, and the expected accumulation of spectator craft.

Should a Coast Guard permit be required for any marine events?

What kind of marine events should require a Coast Guard permit?

What circumstances related to a marine event should trigger the requirement to submit an application for Coast Guard approval of the event?

What kind of marine events should not require a Coast Guard permit?

What kind of marine events should the Coast Guard only act on as a coordinator or clearing house of information and advise local navigation of the event by Local Notice to Mariners?

2. Should the Coast Guard Continue to Limit the Effect of a Marine Event Permit to One Calendar Year?

Under 33 CFR 100.15(b), the Coast Guard is authorized to grant a permit for a series of events for a fixed period of time, not to exceed one year. Some events have been held several times during a year at the same location or locations; other events may be held annually at the same location.

Should the Coast Guard issue multi-year permits for marine events held regularly by a sponsor over several years during the same time period at the same location?

Should the Coast Guard implement fast-track renewals of annual permits for marine events held regularly by a sponsor over several years during the same time period at the same location?

3. How Early Should a Permit Application be Submitted to the Coast Guard Before the Start of a Marine Event?

Under 33 CFR 100.15(c), an application must be submitted no less than 30 days prior to the start of the proposed event. The Coast Guard is currently analyzing its business processes to determine whether and how much additional time before an event date is needed in order to complete processing applications for regattas and marine parades.

The Coast Guard is also considering whether to maintain one minimum time period for submitting all permit applications before the start of an event or establish two minimum time periods, a short time for most permit applications and a longer time for the small number of permit applications that require more time to process. Establishing two minimum time periods could strike a balance between the difficulty many sponsors face to submit detailed permit applications far in advance of a proposed event and the Coast Guard's need for some additional time to conduct necessary navigation safety reviews, to contact appropriate Federal, State and local agencies, to prepare appropriate environmental documents, and to promulgate required special local regulations. Permit applications for most marine events could be submitted a short time (e.g., 30, 45 or 60 days) before a proposed event and allow sufficient time for the Coast Guard to complete processing the permit application. However, permit applications for other marine events that require additional consultation, notification, or documentation should be submitted much earlier before the event (e.g., 60, 90, 105, 120 or more days) or the sponsor may have to cancel the event or postpone it until the Coast Guard completes its required procedures. Submitting permit applications earlier for events for which the Coast Guard must prepare an environmental assessment or promulgate special local regulations should allow sufficient time for the Coast Guard to complete consulting with environmental agencies and to provide notice and public comment on proposed safety regulations, without unreasonably burdening sponsoring organizations.

Should the Coast Guard retain a single minimum permit application submission time for all marine events?

Should the Coast Guard establish minimum permit application submission times for two or more categories of marine events?

What minimum permit application submission time(s) should the Coast Guard establish for what category(ies) of marine events?

4. What Information Should a Sponsor Provide in a Marine Event Permit Application?

Under 33 CFR 100.15(d), a permit application shall include the following details:

(1) Name and address of sponsoring organization.

(2) Name, address, and telephone of person or persons in charge of the event.

(3) Nature and purpose of the event.

(4) Information as to general public interest.

(5) Estimated number and types of watercraft participating in the event.

(6) Estimated number and types of spectator watercraft.

(7) Number of boats being furnished by sponsoring organizations to patrol event.

(8) A time schedule and description of events.

(9) A section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials, and spectator craft.

Section 100.15(d), last revised in 1963, does not address collection of any information related to potential adverse impacts that the event may have on the environment in the event area, or mitigation measures for those impacts. In an effort to avoid delaying scheduled marine events due to permit application processing, while still complying with its responsibilities under laws for protection of the environment, the Coast Guard has been accepting information voluntarily provided by event sponsors that address potential impacts the event may have on the environment, any Federal, State or local environmental agencies to sponsor may have contacted and any comments they may have had regarding the event, and other related environmental information.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Coast Guard has previously submitted the existing requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB approved them. The part number is part 100 and the corresponding OMB approval number is OMB Control Number 2115–0017. Any new information requirements proposed in a rulemaking project developed as a result of comments to this notice will also be submitted to OMB for review and approval.

What information currently required should not be required?

What information related to potential environmental impacts or mitigation of adverse impacts should be required?

What information should be initially submitted to allow the Coast Guard to begin processing the application?

What information should the sponsor be allowed to submit later in the process, but before a permit is issued?

5. What Economic Impacts May Result From Requiring Earlier Permit Application Submission Times or Additional Permit Application Information?

Currently, Coast Guard permit issuing officials rely on statements of coordination made by the sponsor, and when time permits provide notice to affected navigation interests by announcements in a Local Notice to Mariners and direct mailing or telephone contracts, and by publishing needed special local regulations in the **Federal Register**.

What economic impacts may occur due to longer processing time for the Coast Guard to hold public hearings on safety of life in the event area, provide notice to and receive input from affected navigation, and to consult with appropriate Federal, State and local government environmental agencies on potential adverse impacts the event may have on the environment?

What economic impacts are currently incurred in applying for a Coast Guard marine event permit?

6. Other Factor or Information

Is there any other information you feel may be helpful to assist the Coast Guard in processing permit applications for event sponsors in a timely manner while allowing adequate public notice to navigation and environmental interests, including holding public hearings for certain events; consulting with other Federal, State and local agencies; promulgating special local regulations to ensure vessel safety immediately before, during and after an event; and preparing needed environmental documentation, prior to the date of the event?

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What other alternatives regarding the permitting of regatta and marine parades to ensure the safety of life and protection of the environment should the Coast Guard consider?

What other factors or information should be considered in revising Coast Guard procedures for processing permit applications?

All comments received by the Coast Guard as a result of this notice will be summarized and provided to NBSAC members for their consideration and consultation. The Coast Guard will consider all relevant comments in the development of any regulatory project to revise its procedures for processing applications for approval of regattas and marine parades.

Dated: December 18, 1995.

Rudy K. Peschal,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95-31217 Filed 12-22-95; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD13-95-051]

RIN 2115-AE47

Drawbridge Operation Regulations; Chehalis River, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Washington Department of Transportation, the Coast Guard is considering an amendment to the regulations governing the operation of the Union Pacific railroad drawbridge and the U.S. Route 101 bridge over the Chehalis River at Aberdeen, Washington. The proposed rule would remove the portion of the existing regulations pertaining to the Union Pacific railroad drawbridge because that bridge is no longer in operation and will be removed. The proposed rule would also require one hour notice at all times for opening the drawspan of the U.S. Route 101 bridge for the passage of vessels. Finally, the proposed rule would change the special sound signal for requesting openings of the U.S. Route 101 bridge to the standard signal of one prolonged blast followed by one short blast.

DATES: Comments must be received on or before February 26, 1996.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington, 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220-7270).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD13-95-051) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, Thirteenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Austin Pratt, Project Officer, Thirteenth Coast Guard District Aids to Navigation and Waterfront Management Branch and Lieutenant Commander John C. Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Background and Purpose

At the request of the Washington Department of Transportation, the Coast Guard is considering an amendment to the regulations governing the operation of the Union Pacific railroad drawbridge and the U.S. Route 101 bridge over the Chehalis River at Aberdeen, Washington.

The proposed rule would remove the portion of the existing regulations pertaining to the Union Pacific railroad drawbridge because that bridge is no longer in operation and will be removed.

The proposed rule would also amend the current regulations pertaining to the U.S. Route 101 bridge to require one hour notice at all times when requesting an opening drawspan for the passage of a vessel.

Current regulations require the drawspan of the U.S. Route 101 bridge to be opened on signal from one hour before sunrise to one hour after sunset. The Washington State Department of Transportation operates four other drawbridges across the nearby Hoquiam and Wishkah Rivers. These other bridges are presently operated on a one-hour notice basis. In recent years, requests for openings at these bridges have decreased. If the proposed one hour notice for the U.S. Route 101 bridge over the Chehalis River at Aberdeen, Washington, were adopted in conformity with the regulations governing the other bridges in the area, the Washington Department of Transportation would be able to serve all five drawbridges with a single operator.

The U.S. Route 101 bridge over the Chehalis River at Aberdeen, Washington, opened 359 times for vessel transits in the year measured from October 1993 to October 1994. This average somewhat less than one opening per day. The number of openings for the nearby drawbridges on the Wishkah and Hoquiam Rivers averaged 0.23 per day for the same year. These figures indicate that a single operator, provided with one hour notice, could operate all five of these bridges without unreasonable delay.

Under the proposed rule, the weekday closed periods for accommodating commuter traffic on the roadway would remain unchanged, as would the exception for vessels of 5000 gross tons or more. Under the proposed rule, however, vessels of 5000 gross tons or more would be required to provided the proposed one hour notice when requesting an opening during the weekday closed periods.

Finally, under the proposed rule the special sound signal prescribed for requesting an opening at the U.S. Route 101 bridge would also be deleted in order to conform to the standard signal of one prolonged blast followed by one short blast as generally required by 33 CFR 117.15. A unique sound signal is no longer needed because the adjacent Union Pacific railroad drawbridge immediately downstream of the U.S. Route 101 bridge is no longer in operation and will be removed.

Discussion of Proposed Rule

The proposed rule would amend 33 CFR 117.1031 by removing paragraph (a) which pertains to the Union Pacific railroad drawbridge. The proposed rule would also remove the designation "(b)" from paragraph (b) pertaining to the U.S. Route 101 bridge and amend that paragraph to state that the draw shall be opened on signal if at least one hour notice is provided. No special sound signal other than the standard signal prescribed by § 117.15 would be required for requesting an opening of the U.S. Route 101 bridge. Retained would be the provision that the draw of the U.S. Route 101 bridge need not open for vessels of less than 5,000 gross tons from 7:15 a.m. to 8:15 a.m. and from 4:15 p.m. to 5:15 p.m. on weekdays, except for Federal holidays.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that vessel operators would not be unreasonably impeded or incur additional expense by a requirement to provide one hour notice for draw openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant effect on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under seciton 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a significant number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.1031 is revised to read as follows:

§ 117.1031 Chehalis River.

The draw of the U.S. Route 101 highway bridge, mile 0.1, at Aberdeen, Washington, shall open on signal if at least one hour notice is given to the Washington Department of Transportation by marine radio, telephone, or other suitable means, except that the draw need not open for vessels of less than 5,000 gross tons from 7:15 a.m. to 8:15 a.m. and from 4:15 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays.

Dated: December 15, 1995.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 95-31216 Filed 12-22-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-134-1-6766b; FRL-5317-1]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to Knox County Regulations for Appeals, Violations, Monitoring, Recording, and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of incorporating changes to regulations for appeals, judicial review, violations, and monitoring, recording and reporting in the Knox County portion of the Tennessee SIP. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by January 25, 1996.

ADDRESSES: Written comments on this action should be addressed to Karen Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4197. Reference file TN134–01–6789.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–31037 Filed 12–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ME39–1–7233b; FRL–5345–6]

Approval and Promulgation of Implementation Plans; Maine; NO_X Exemption Request for Northern Maine and NO_X Control Approval

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving, through direct final rulemaking procedures, a limited exemption request from the requirements contained in Section 182(f) of the Clean Air Act (Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties). These 9 counties, as with the rest of the State of Maine, are part of the Ozone Transport Region (OTR) as provided for in section 184(a) of the Clean Air Act. Section 182(f) in combination with section 184 (relating to ozone transport regions) of the Act requires States in the OTR, such as Maine, to adopt reasonably available control technology (RACT) rules for major stationary sources of nitrogen oxides (NO_X) and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_X. This exemption request, submitted by the State of Maine on September 7, 1995, is based on a demonstration that NO_X emissions in this 9 county area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO_X emissions from these 9 counties beyond what the State regulations would provide for are not necessary for attainment in these areas, and, because they do not contribute to the ozone problem anywhere in the OTR, are also not necessary for purposes of showing future attainment for any other area in the OTR. Thus, as provided for in section 182(f)(2), additional NO_X reductions in these areas would constitute excess reductions that can be waived under the Clean Air Act. Maine has requested that EPA combine its approval of this NO_X exemption with its approval of NO_X controls for existing sources in Northern Maine that were submitted to EPA on August 5, 1994 for purposes of meeting the Act's NO_X RACT requirements. Consequently, this action approves a full exemption from nonattainment NSR requirements for NO_X, but only a limited exemption from NO_X control measures for existing sources that would go beyond what the State regulations provide for.

In the Final Rules Section of this **Federal Register**, EPA is approving this exemption request and limited NO_X controls for this area as a direct final rule without prior proposal. A detailed rationale for the approval is set forth in the direct final rule. This direct final rule also includes EPA's response to several comments submitted by groups on past NO_X exemption requests. If no additional adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by January 25, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Environmental Engineer, Air Quality Planning (ATS), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203. (617) 565–4874.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 4201–7601q

Dated: December 1, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–31035 Filed 12–22–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 247
Tuesday, December 26, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension and Revision of Currently Approved Information Collection Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request a revision to a currently approved information collection under the Pub. L. 480, title I program based on a final rule published at 60 FR 62702 on December 7, 1995.

DATES: Comments on this notice must be received by February 26, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1033; telephone (202) 720–3664.

SUPPLEMENTARY INFORMATION:

Title: Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, P.L. 480.

OMB Number: 0551–0005.

Expiration Date of Approval: June 30, 1998.

Type of Request: Minor revision of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.* Suppliers of commodities and ocean transportation must retain records for three years and report payments to representatives of importing countries. Prospective commodity suppliers must provide information for the Department to determine eligibility. Commodity suppliers must report details of sales for price approval. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest.

Estimate of Burden: Public reporting burden for these collections of information in the regulations prior to this amendment was estimated at eight hours per response for suppliers of commodities and ocean transportation (records retention and reporting payments); three hours per response for prospective commodity suppliers; 15 minutes per response for commodity suppliers reporting sales; and 1¼ hours per response for shipping agents which are nominated by importing countries.

The changes contained in the final rule are expected to have a quantifiable increase on only one of these estimates. Suppliers of commodities and ocean transportation will be required to report any payment "delivered to" a representative of the importer or importing country as well as payments "to" such representatives. (§ 17.12). Suppliers submitted only four reports for FY 1994, with an estimated burden of 1 hour for a report which contained information on a payment and 15 minutes for a negative report. If the number of positive reports tripled as a result of this final rule, the total reporting burden would increase from 1¾ hours to 12 hours.

Little or no burden increase is expected for the other two modifications to information collection requirements contained in the final rule. Suppliers of ocean transportation will, if requested, have to furnish to CCC copies of related discharge contracts when they are financed by CCC. (§ 17.12.) Such contracts are available to the supplier as a routine part of the transaction, and CCC will request them only when necessary to clarify the terms of the contract. Shipping agents nominated by importing countries must slightly expand the programs and services referenced in their conflict of interest certification and must also certify that no kickbacks or illegal benefits were paid in connection with their selection. [§ 17.5(c) (7) and (8).] Given the widespread use of word processing, this should take only a few minutes to change in the master document which will then become a part of every subsequent submission by the agent.

Respondents: Suppliers of commodities and ocean transportation; prospective commodity suppliers; shipping agents.

Estimated Number of Respondents: 103.

Estimated Total Annual Burden on Respondents: 528 hours (existing); new burden estimate is 538¼ hours.

Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Connie B. Delaplane, Director, P.L. 480 Operations Division, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1033; telephone (202) 720–3664.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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Signed at Washington, D.C. on December 18, 1995.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–31226 Filed 12–22–95; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Cascades PIEC Advisory Committee will meet on January 23, 1996 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) Discussion with U.S. Fish and Wildlife Service about the process and standards for developing Habitat Conservation Plans; (2) review and discussion of the Snoqualmie Pass Adaptive Management Area Draft Environmental Impact Statement with members of the AMA team; (3) overview of the Wild Salmonid Policy recently released by the Washington Department of Fish and Wildlife; (4) update on issues related to Section 2001 of Public Law 103–327 (Rescission Bill); (5) report by the River Basin Study Group; (6) Access and Travel Management subcommittee report; (7) other topics as appropriate; and (8) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA. Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: December 19, 1995.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 95–31244 Filed 12–22–95; 8:45 am]

BILLING CODE 3410–11–M

Title to Forest Lieu Selection Lands

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the Agency's Nationally Significant lands List which identifies lands to be retained by the United States as part of the national Forest System; and the Final List Of Lands Quitclaimed By The United States in compliance with steps three and four of a 5-step procedure imposed by the Act of July 2, 1993. Following publication of this notice the Agency will file in the appropriate county office a disclaimer of interest for the parcels on the Final List Of Lands Quitclaimed By The United States.

EFFECTIVE DATE: This notice is effective December 26, 1995.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–1248.

SUPPLEMENTARY INFORMATION:

Background

Certain provisions of the Act of June 4, 1897 (16 U.S.C. 473–475; the Organic Administration Act), which provided for the management of the forest reserves of the United States, included a provision known as "forest lieu selection." Under that provision, persons who had patented public land, or a claimant to such land, which fell within a proclaimed forest reserve boundary in the western United States, were authorized to convey or relinquish their land or claim to such land ("base land") to the United States and to select an equal acreage of vacant public land open to settlement ("in-lieu land"). The forest reserves were renamed as national forests in 1905.

In 1905, Congress repealed the forest lieu selection authorization, but protected previously made contracts and claims. This protection preserved the rights of those persons who had relinquished their inholdings by providing a deed to the United States, but who had not yet realized or exercised their selection rights under the forest lieu selection provision of the Organic Administration Act. In legislation enacted in 1922 and 1930, Congress provided further opportunity to resolve remaining claims by authorizing reconveyance of the base lands back to the former owners or their heirs or assigns. Consequently, most of the claims for in-lieu land were resolved.

However, Congress became concerned about allegations of abuse of the provisions of the 1930 Act, which by the 1950's was leading to reconveyance of valuable national forest and national park lands. In 1960, legislation was enacted to provide for compensation to people who had not received appropriate relief under the prior acts. Section 4 of the 1960 Act repealed the 1930 Act and sought to close all unresolved claims under the 1897 Act. The legislation provided that any base lands for which payment was made, or any base lands for which payment might have been made but for which no demand was made, would become a part of appropriate national forest, national park, or other Federal area. However, no payments were made under the 1960 Act, continuing the unresolved title status of some of the base lands.

Thus, most of these base lands with questionable title have continued to be considered part of the national forests, although some have been continuously occupied by private parties since before 1960. Other base lands have been the subject of court decisions, raising further questions about the United States' claim of title.

In the mid-1980's, the Forest Service, pursuant to a request from Congress, compiled a list of grantors and base lands relinquished to the United States under the 1897 Act provision for which selection or other rights were not realized or exercised. This list was submitted to the 98th Congress and was used by it and subsequent Congresses for deliberations on legislation eventually enacted as the Act of July 2, 1993.

The 1993 Act was enacted to finally resolve the title status of the remaining base lands, using a 5-step procedure to either retain or quitclaim all right, title, and interest in and to the base lands. The first step in the 5-step procedure, which required the Secretary of Agriculture, acting through the Forest Service, to compile and publish an initial list of base lands in the **Federal Register**, was completed by the Agency on December 30, 1993 (58 FR 69321). Copies of relevant portions of the December 30, 1993, **Federal Register** were distributed to interested parties and appropriate federal, state, and county offices. The Secretary of the Interior, acting through the Bureau of Land Management, also published an initial list of base lands located on public lands administered by that Agency on December 30, 1993.

Step two, which provided a 180-day comment period ending July 2, 1994, allowed persons to submit information on parcels not included in the Initial List but believed to meet the conditions set forth in the Act for review and possible addition to the Initial List. Numerous comments were submitted by individuals or their representatives informing the Agency of their claim or interest in parcels already included on the Initial List and requesting the

Agency to provide them with a copy of future notices concerning the Act. Other comments identified specific lands and requested that they be added to the Initial List. The Agency determined that five such parcels met the conditions of the Act and were thereby added to the Initial List. The parcels added to the Initial list during the review period are Arizona 30 and 53, Idaho 5, New Mexico 23, and Oregon 2a. Specific details on Arizona 30 and New Mexico 23 are identified in this notice in TABLE 1, Nationally Significant Lands List, while the details on Arizona 53, Idaho 5, and Oregon 2a are identified in this notice in TABLE 2, Final List of Lands Quitclaimed By the United States.

During the public review and comment period the Agency identified numerous errors in the Initial List. These errors, which consisted primarily of typographical errors in legal descriptions and the placement of parcels in the incorrect meridian or county, have been corrected and are displayed as corrected in this notice. The information under the heading "DEED BOOK" and "VOL PAGE" was included in the Initial List to afford interested parties the opportunity to research county records on Parcel information. Since this information is no longer needed it is not included in this notice.

The Agency also identified several parcels or portions of parcels on the Initial List which did not meet the conditions of the Act and therefore do not appear on either the National Significant Lands List or the Final List of Lands Quitclaimed By the United States. Eliminated from the Initial List in their entirety are: California Parcel 96, which is a duplicate of California Parcel 95: Utah Parcel 16, which was never relinquished to the United States; Utah Parcel 17, which is a perfected lieu selection; and Wyoming Parcel 22, the status of which Congress previously addressed by Private Law 89–281 and the United States quitclaimed its interest by deed dated December 12, 1966. Eliminated in part from the Initial List are: a portion of Arizona Parcel 12 in section 29 due to a typographical error; the SWSW of section 8 of South Dakota Parcel 51 which was never relinquished to the United States , and the SWSW of section 8 of South Dakota Parcel 56, which is within the boundaries of the Mount Rushmore National Memorial and under the jurisdiction of the Department of the Interior.

Steps 3 and 4 require the compilation, publication, and distribution of a list of nationally significant lands to be retained by the United States and a final list of lands to be disclaimed by the United States. This notice, which contains Table 1, Nationally Significant Lands List, and Table 2, Final List of Lands Quitclaimed By The United States, completes the **Federal Register** publication requirements of the Act. Preparation of these tables has been coordinated with the Bureau of Land Management.

The tables present the information grouped by State, by meridian, and by county. The first column identifies the parcel of base land by an agency identifier (PARCEL ID NO.). The second column lists the names of the individual or entity that relinquished base lands to the United States under the 1897 Act (GRANTOR NAME). Columns 3 through 7 show the legal description of the base lands by Township (T), Range (R), section (sec.), and the legal subdivisions of the section. The standard procedure for identifying legal subdivisions has been modified for brevity. For example, the south one-half of the north one-half of a section is SN, the south one-half of the northeast one-quarter of the southwest one-quarter of a section is SNESW, the east one-half of the southeast one-quarter is ESE, and so fourth. Column 8 shows the acres, rounded to the nearest acre, associated with the legal description of the parcel.

Nationally Significant Lands List Title to Which is Confirmed in the United States

(Step 3)

TABLE 1, at the end of this notice, presents the list of lands removed from the Initial List and determined by the Agency to be nationally significant lands. This is the final identification of lands to be retained by the United States. In accordance with the provisions of SEC. 2(c)(2) of the Act, all right, title, and interest, in and to the lands identified in TABLE 1, Nationally Significant Lands List, and not previously vested in the United States, are vested and confirmed in the United States.

Anyone claiming that any lands identified in TABLE 1, Nationally Significant Lands List is a "taking" of property has one year from the date of this publication to file a petition in the United States Court of Federal Claims for monetary compensation under the Act.

Identification of nationally significant lands does not of itself entitle any party to compensation. The burden is on the claimant to prove a compensable taking claim.

Final List of Lands Quitclaimed by the United States

(Step 4)

TABLE 2, at the end of this notice, presents the Final List of Lands Quitclaimed By the United States in accordance with the provisions of SEC. 2(a) of the Act. Pursuant to the Act the United States quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the land described in TABLE 2, Final List of Lands Quitclaimed By the United States, effective on the date of this notice.

Issuance of Disclaimer of Interest

(Step 5)

The Agency will, within 6 months of the date of this notice, issue documents of disclaimer confirming the quitclaiming of all right, title, and interest of the United States in and to the base lands included in TABLE 2, Final List of Lands Quitclaimed By the United States, subject to valid existing rights, to the listed grantors, their heirs, devises, successors, and assigns. The documents of disclaimer will be recorded in appropriate county, Agency, and Bureau of Land Management records. These documents may further describe the lands quitclaimed where the legal descriptions listed in Table 2 are identified as a part or portion of an aliquot part.

The acceptance of benefits under the Act of July 2, 1993, (Pub. L. 103–48), or failure to seek benefits provided under this Act within the time allotted with respect to any base lands or other lands, will be considered a waiver of any claim against the United States with respect to those lands or to any revenues therefrom.

Dated: December 19, 1995.

David G. Unger,

Associate Chief.

BILLING CODE 3410–11–M

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TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Arizona		MERIDIAN: Gila and Salt River	
		Coconino County	
16	Santa Fe RR	T.20N., R. 1E., sec. 13, NWNE	40
17	Santa Fe RR	T.20N., R. 4E., sec. 21, Lot 9 (NESE)	40
20	Santa Fe RR	T.20N., R. 5E., sec. 25, SESW	40
21	Santa Fe RR	T.20N., R. 5E., sec. 31, Lot 2 (SWSW) & Lot 4 (SWNW)	74
22	Santa Fe RR	T.20N., R. 6E., sec. 21, SSE	80
23	Santa Fe RR	T.20N., R. 7E., sec. 1, SESE	40
24	Toombs, Oscar	T.20N., R. 7E., sec. 26, NENE	40
25	Toombs, Oscar	T.20N., R. 7E., sec. 26, NWNE	40
26	Toombs, Oscar	T.20N., R. 7E., sec. 34, SENE	40
30	Santa Fe RR	T.21N., R. 5E., sec. 13 NESE	40
35	Perrin, E.B.	T.23N., R. 4E., sec. 7, NWNE	40
33	Santa Fe RR	T.21N., R. 6E., sec. 7, NENE	40
36	Santa Fe RR	T.23N., R. 8E., sec. 25, NENE	40
37	Santa Fe RR	T.25N., R. 4E., sec. 27, NWNW	40
38	Santa Fe RR	T.27N., R. 4E., sec. 3, SWSE	40
40	Santa Fe RR	T.29N., R. 2E., sec. 29, NWNE	40
41	Santa Fe RR	T.16N., R. 8E., sec. 11, SE	160
42	Santa Fe RR	T.18N., R. 6E., sec. 31, Lot 6	36
43	Santa Fe RR	T.19N., R. 6E., sec. 7, SWSE	40
44	Santa Fe RR	T.19N., R. 7E., sec. 25, SSE	80
50	Santa Fe RR	T.20N., R. 5E., sec. 3, SESW	40
51	Santa Fe RR	T.20N., R. 5E., sec. 7, NE	160
52	Santa Fe RR	T.20N., R. 5E., sec. 13, NENW	40
		Yavapai County	
45	Sullivan, J.W.	T.14N., R. 3W., sec. 15, SESE (TR 38)	34
46	Santa Fe RR	T.15N., R. 6E., sec. 3, Lot 2	32
47	Santa Fe RR	T.18N., R. 4E., sec. 27, SE	160
STATE: California		MERIDIAN: Mt. Diablo	
		El Dorado County	
1	Hyde, F.A.	T.13N., R.16E., sec. 36, SWNW (Tr. 37)	38
2	Hyde, F.A.	T.13N., R.16E., sec. 36, NENE (Tr. 38) NWNE	59

TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: California		MERIDIAN: Mt. Diablo	
		Fresno County	
8	Collins, J.	T. 8S., R.25E., sec. 14, SENW NENE	80
11	Clarke, C.W.	T.10S., R.27E., sec. 36, SWNW	40
12	Collins, J.	T. 8S., R.25E., sec. 15, SENWSW ENENWSE	15
13	Collins, J.	T. 8S., R.25E., sec. 15, SSSENE	10
14	Clarke, C.W.	T.10S., R.27E., sec. 36, NWNW	40
15	Cowden, Thomas	T. 9S., R.29E., sec. 16, SENW	40
		Madera County	
4	Hyde, F.A.	T. 5S., R.24E., sec. 16, SESW	40
5	Willingham, CB	T. 6S., R.24E., sec. 5, NWSE	40
6	Hamilton, H.M.	T. 7S., R.22E., sec. 36, SWSE	40
7	Collins, Peter	T. 8S., R.23E., sec. 18, E/Lot 4 (part)	6
		Mono County	
17	Clarke, C.W.	T. 3N., R.24E., sec. 16, SE	160
18	Hyde, F.A.	T. 5N., R.23E., sec. 36, NS	160
		Tuolumne County	
3	Keil, Hugo D.	T. 6N., R.18E., sec. 16, SENW	40
		Tulare County	
16	Collins, Peter	T.17S., R.34E., sec. 36, NSE	80
18	Clarke, C.W.	T.20S., R.33E., sec. 16, SWNW	40
19	Hilton, Frank	T.20S., R.33E., sec. 8, WSW EESW	120
20	Hyde, F.A.	T.22S., R.33E., sec. 36, NENE	40
21	Hyde, F.A.	T.23S., R.33E., sec. 36, SWSE	40
		MERIDIAN: San Bernardino	
		Kern County	
23	Hyde, F.A.	T.25S., R.35E., sec. 16, NENW	40
24	Dimond, E.	T.28S., R.34E., sec. 16, NENE (Tr. 37)	40
25	Dimond, E.	T.28S., R.34E., sec. 16, ENW (TR.38)	80
26	Dimond, E.	T.28S., R.34E., sec. 16, SE (Tr. 39)	160

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TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: California (continued)			
		Los Angeles County	
64	Campbell, John	T. 3N., R. 8W., sec. 1, SESW SWSE (Total parcel acreage 70 acres--20 acres quitclaimed)	50
67	Eddy, John A.	T. 5N., R.16W., sec. 16, NSE	80
		Riverside County	
87	Swezy, Chas E.	T. 4S., R. 2E., sec. 13, WNE	80
88	Hood, William	T. 4S., R. 2E., sec. 7, SESW	40
89	Collins, Peter	T. 5S., R. 2E., sec. 5, NSW	80
90	Bemis, John M.	T. 6S., R. 2E., sec. 19, ENW	80
		Santa Barbara County	
44	Lyman, Richard	T. 7N., R.29W., sec. 7, NWNE	40
45	Hyde, F.A.	T. 9N., R.24W., sec. 16, SESW	40
46	Forrester, E.	T. 9N., R.29W., sec. 25, NWSW; Sec. 26 SESE	80
47	Clarke, C.W.	T. 8N., R.29W., sec. 36, N SW	480
48	Clarke, C.W.	T. 8N., R.28W., sec. 16, Lot 1	22
49	Hyde, F.A. &Co	T. 8N., R.25W., sec. 16, WNW	80
50	Clarke, C.W.	T. 7N., R.29W., sec. 22, NWSE	40
51	Clarke, C.W.	T. 7N., R.29W., sec. 22, NENE	40
52	Hyde, F.A.	T. 7N., R.27W., sec. 36, ESW SNW	160
53	SB/LA Water Co	T. 5N., R.25W., sec. 19, Lot 2	38
54	SB/LA Water Co.	T. 5N., R.25W., sec. 29, NWSW	40
55	Washburn, Jud	T. 5N., R.27W., sec. 1, Lot 1	25
56	Pettinger, H.	T. 5N., R.28W., sec. 7, Lots 5 & 6	67
57	Paul, George W.	T. 5N., R.29W., sec. 13, WNE	80
59	Holbrook, C.H.	T. 5N., R.31W., sec. 14, Lots 15 & 16	80
60	Kester, G.W.	T. 5N., R.31W., sec. 21, NWSW	40
61a	Washburn, Jed	T. 6N., R.28W., sec 24, Lots 1 & 2	61
61b	Washburn, Jed	T. 6N., R.27W., sec 13, Lots 7 & 8	60
95	Hyde, F.A.	T.11N., R.30W., sec. 36, NWNW	40

TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: California (continued)			
		San Bernardino County	
70	Burson, John	T. 1N., R. 7W., sec. 6, Lot 5	40
76	Selway, Robert	T.2N., R.7W., sec. 36, W	320
77	Campbell, J.F.	T.1S., R.1W., sec. 18, Lot 1	40
78	Clarke, C.W.	T.3N., R.6W., sec. 36, SWNW	28
84	Richards, J.	T.3N., R.6W., sec. 26, ESW SWSW (Total parcel acreage 120 acres--99 acres quitclaimed)	21
97	Doyle & McGonagle	T.1N., R.7W., sec. 2, ENE	80
		Ventura County	
28b	Hyde, F.A.	T.9N., R.23W., sec. 16, portions of Tr. 54 (formerly WNE SENE)	120
29	Hyde, F.A.	T.9N., R.23W., sec. 16, portions of Tr. 54 (formerly NENW SNW)	120
30	Hyde, F.A.	T.9N., R.24W., sec. 16, EE	160
33	Miller, Wm. T.	T.8N., R.23W., sec. 20, NWNE NENW	80
35	Hyde, F.A.	T.8N., R.24W., sec. 36, WNE NENW	120
37	Goslin, Wm. G.	T.6N., R.19W., sec. 16, NNW	80
38a	Hyde, F.A.	T.5N., R.19W., sec. 36, SENW	40
38b	Hyde, F.A.	T.5N., R.19W., sec. 36, SENE	40
39	Clarke, C.W.	T.5N., R.22W., sec. 16, ENE	80
40	McLeod, Gary	T.5N., R.24W., sec. 15, NSENE	20
41	Rice, Sarah	T.5N., R.23W., sec. 19, SWSE	40
42	Rapp, J.J.	T.5N., R.24W., sec. 23, SNSE; 24, SNSW	80
43	Morris, Daisy	T.4N., R.24W., sec. 14, NWSW	40
92	Clark, C.W.	T.8N., R.23W., sec. 36, NWNW	40
STATE: Colorado		MERIDIAN: 6th Principal	
		Custer County	
17	Locke, James T.	T.21S., R.70W., sec. 5, NESW	40
		Fremont County	
16	Locke, James T.	T.20S., R.70W., sec. 29, SESW	40
		Park County	
3	Sloan, R.E.	T. 8S., R.72W., sec. 31, SESW	40
5	Sloan, R.E.	T. 8S., R.73W., sec. 26, NSE	80

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TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Colorado (continued)			
		Park County (continued)	
6	Sloan, R.E.	T. 9S., R.72W., sec. 6, Lots 3,4,5	74
7	Holcomb, O.E.	T. 9S., R.74W., sec. 8, SESE	40
8	Holcomb, O.E.	T. 9S., R.74W., sec. 31, WNW SWNE SENW	131
12	Moses, W.E.	T.12S., R.72W., sec. 27, SWNE	40
9b	Wilson, A.C.	T.10S., R.73W., sec. 9, NNENENW	5
9c	Wilson, A.C.	T.10S., R.73W., sec. 9, SENWNE	10
9a	Wilson, A.C.	T.10S., R.73W., sec. 9, NENWNE NSENW	30
		Teller County	
14	Hedges, Z.T.	T.12S., R.68W., sec. 7, S/Lot 3	40
STATE: Idaho		MERIDIAN: Boise	
3	Richardson,G.B.	T.57N., R.5W., sec. 35, NSW	80
4	Kohrs, Conrad	T.58N., R.3W., sec. 21, SWSW	40
STATE: New Mexico		MERIDIAN: New Mexico Principal	
		Catron County	
4a	Black, Lewis C.	T. 5S., R.19W., sec. 5, SWNW	40
4b	Black, Lewis C.	T. 5S., R.19W., sec. 5, SENE	40
5	Black, Lewis C.	T. 5S., R.19W., sec. 32, SWNW	40
7	Sherman, J.H.	T.11S., R.12W., sec. 29, NWNW	40
14	Coffin, Mary	T. 6S., R.21W., sec. 2, SNESE	20
21	Plemmons, J.C.	T.12S., R.11W., sec. 29, SWSW	40
22	Ingles, T.& J.	T.12S., R.11W., sec. 29, SESW	40
		Grant County	
16	Watson, W.W.	T.14S., R.17W., sec. 25, SWNE SESE	80
		Lincoln County	
10	Moses, W.E. LS & R	T. 8S., R.16E., sec. 30, SESW	40
11	Jaffa, Joseph	T. 8S., R.17E., sec. 13, SSE; sec. 24, NNE	160
18	Moses, W.E.	T. 8S., R.14E., sec. 1, SENW	40
20	Seaberg, Hugo	T. 8S., R.17E., sec. 7, SENE	40

TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: New Mexico (continued)			
		San Miguel County	
2	Moses, W.E.	T.18N., R.14E., sec. 21, SENW	40
23	Moses, W.E.	T.19N., R.14E., sec. 32, NNWSE	20
STATE: Oregon		MERIDIAN: Willamette	
		Clackamas County	
1	Murphy, John T.	T. 1S., R. 5E., sec. 36, SSE SW	240
2	Strickland, M.C	T. 2S., R. 7E., sec. 10, NW	160
3	Henderson, M.F.	T. 2S., R. 7E., sec. 8, SENW	40
26	Hyde, F.A.	T. 3S., R. 7E., sec. 36, Fraction NNE	63
		Deschutes County	
9	Clarke, C.W.	T.19S., R. 9E., sec. 36, SESE	40
24	Clarke, C.W.	T.17S., R. 9E., sec. 16, SWNE NWSE SESE	120
		Hood River County	
23	Hyde, F.A.	T. 1S., R. 8E., sec. 36, SESE	40
		Jackson County	
14	Hyde, F.A.	T.32S., R. 4E., sec. 36, SNE	80
15	Kohrs, Conrad	T.35S., R. 4E., sec. 27, NSE	80
16	Kohrs, Conrad	T.37S., R. 4E., sec. 31, SWNW	40
17	English, J.T.	T.39S., R. 1E., sec. 29, SENE	40
18	English, J.T.	T.39S., R. 1E., sec. 31, ESW	80
		Klamath County	
11	Hyde, F.A.	T.23S., R. 7E., sec. 36, SESW	40
19	Hyde, F.A.	T.35S., R. 6E., sec. 16, SWNW	40
20	Clarke, C.W.	T.37S., R. 5E., sec. 36, SWSW	40
21	Hyde, F.A.	T.37S., R. 6E., sec. 16, SSE NW NSW SWSW	360
25	Hyde, F.A.	T.23S., R. 8E., sec. 16, SWSE	40
25	Hyde, F.A.	T.27S., R.6.5E., sec. 36, S	320
		Lane County	
6	Cal-Ore-Land Co	T.20S., R. 1E., sec. 11, NESE	40
7	Cal-Ore-Land Co	T.20S., R. 2E., sec. 29, ENE	80
22	Cal-Ore-Land Co	T.23S., R. 3E., sec. 21, Lot 3	25

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TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Oregon (continued) MERIDIAN: Willamette			
		Linn County	
5	Peterson, C.	T.10S., R. 5E., sec. 13, ENE SWNE SENW	160
		Wasco County	
4	Drake, A.M.	T. 2S., R.11E., sec. 12, WSW	80
STATE: South Dakota MERIDIAN: Black Hills			
		Lawrence County	
22	Blaine, J.E.	T. 6N., R. 2E., sec. 31, Lot 2	40
23	Weare, Henry G.	T. 6N., R. 2E., sec. 31, Lot 3,4 ESW	160
24	Smith, Frank D.	T. 5N., R. 4E., sec. 10, ENW SNE NESE	200
33	Price-Baker Co.	T. 2N., R. 6E., sec. 7, SNE NSE	160
		Meade County	
25	Christy, W.	T. 4N., R. 6E., sec. 19, Lot 4	35
26	Chaplin, C.H.	T. 3N., R. 6E., sec. 6, Lots 5,6,7; sec. 7, Lot 1	145
		Pennington County	
27	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 32, SESE	40
28	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 32, NSE NESW	120
29	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 29, ENE	80
30	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 29, SSE	80
31	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 21, SSE	80
32	Rumsey, J.D.C.	T. 2N., R. 6E., sec. 21, NE	160
35	Mathias, J.H.	T. 1N., R. 6E., sec. 31, NWSW (Lot 3)	40
36	Rapid City Lumber Company	T. 1N., R. 6E., sec. 11, WNW SENW NWSW	160
40	Ransom, A.F.	T. 1N., R. 4E., sec. 34, NESW SENW SWNE NWSE	160
43	Castle, W.R.	T. 1N., R. 4E., sec. 17, SWSW	40
44	Todd, William	T. 1N., R. 4E., sec. 29, SESE	40
47a	Hurlburt, Frank	T. 1S., R. 4E., sec. 9, SESE	40
47b	Hurlburt, Frank	T. 1S., R. 4E., sec. 10, Lots 3,4,5	89
50b	Bishop, A.L.	T. 1S., R. 5E., sec. 31, SNE	80
52	White, John	T. 1S., R. 5E., sec. 19, Lots 4,5 NESW NWSE	147
54	Tutty, John	T. 2S., R. 5E., sec. 1, Lot 1	40
55	Boland, A.C.	T. 2S., R. 6E., sec. 21, NWSE	40
59	Rumsey, J.D.	T. 2N., R. 6E., sec. 28, NWSW	40

TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Utah MERIDIAN: Salt Lake			
		Cache County	
14	Moses LS&R Co.	T.11N., R. 2E., sec. 15, SW	160
15	Moses LS&R Co.	T.11N., R. 2E., sec. 22, SW	160
		Sanpete County	
8	Gray, L.H.	T.15S., R. 5E., sec. 35, WNW	80
9	Badger, G.T.	T.15S., R. 5E., sec. 26, WSW	80
		Summit County	
1	Tevis, W.L.	T. 1S., R. 7E., sec. 32, NW; sec. 2, Lot 4	205
2	Zeigler, C.	T. 1S., R. 7E., sec. 36, NW	160
3	Zeigler, C.	T. 1S., R. 7E., sec. 36, NENE	40
4	Richardson, C.	T. 3S., R. 7E., sec. 17, NNW	80
		Sevier County	
11	Moses LS&R Co.	T.24S., R. 2E., sec. 10, ENE	80
12	Moses LS&R Co.	T.24S., R. 2E., sec. 15, NWSE	40
13	Hamilton, H.M.	T.25S., R. 3E., sec. 32, SENE	40
		Utah County	
5	Moses, W.E. LS&R Company	T.10S., R. 2E., sec. 16, NE ENW	240
6	Moses, W.E. LS&R Company	T.10S., R. 2E., sec. 2, NESE NSW SWSE	160
7	Moses, W.E. LS&R Company	T.10S., R. 2E., sec. 16, WSW	80
STATE: Washington MERIDIAN: Willamette			
		Snohomish County	
25	Peavy, Gary	T.30N., R. 9E., sec. 22, SWSW	40

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TABLE 1
NATIONALLY SIGNIFICANT LANDS LIST
(Final Identification Of Lands Retained By The United States)

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Wyoming		MERIDIAN: 6th Principal	
		Albany County	
18	Burrows, C.B.	T.15N., R.72W., sec. 1, S	320
19	Burrows, C.B.	T.15N., R.71W., sec. 31, ESW SE	240
20	Burrows, C.B.	T.15N., R.71W., sec. 7, Lot 2	34
21	Burrows, C.B.	T.15N., R.71W., sec. 19, NE ENW	240
		Carbon County	
16	Carbon Timber Company	T.17N., R.79W., sec. 3, NWNE NENW	88
		Sheridan County	
17	Collins, J.	T.56N., R.88W., sec. 30, NENE	40
		Sublette County	
16	Holmes, A.T.	T.38N., R.110W., sec. 30, SSE	80

TABLE 2

FINAL LIST OF LANDS QUITCLAIMED BY THE UNITED STATES

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Arizona		MERIDIAN: Gila and Salt River	
		Apache County	
12	Hartley, Roland	T.6N., R.29E., sec. 1, Lots 1 & 2	79
13	Clark, W.H.	T.7N., R.30E., sec.29, SWSW; sec. 32, NWNW	80
14	Hale, Howard	T.7N., R.27E., sec. 2, ESE	80
		Coconino County	
19	Boyce, C.E.	T.20N., R.4E., sec. 4, SWNE	40
28	Keys, C.D.	T.21N., R.3E., sec. 6, Lot 5	39
48	Pratt, James	T.16N., R.8E., sec.12, NSW	80
53	Coffin, Edger A.	T.20N., R.8E., sec.18, SESW	40
		Navajo County	
15	Ling, Reams	T.10N., R.21E., sec. 6, Lot 2	40
49	Aztec L & C	T.11N., R.18E., sec.35, SWSW	40
STATE: California		MERIDIAN: Mt. Diablo	
		Fresno County	
9	Ockenden, Wm.	T.10S., R.25E., sec.10, NSE SESE	120
10	Ockenden, Wm.	T.10S., R.25E., sec.11, SWSW	40
		MERIDIAN: San Bernardino	
		Los Angeles County	
62	Eddy, John A.	T.1N., R.8W., sec.18, SENW	40
63	Cook, E.J.	T.1N., R.9W., sec.15, NWSE SSE	120
64	Campbell, John	T.3N., R.8W., sec. 1, SESW SWSE (Total parcel acreage 70 acres--50 acres retained)	20
65	Campbell, John	T.3N., R.8W., sec.12, NWNE	40
66	Christey, Wm.	T.5N., R.15W., sec.30, Lot 2 & NENW	80
93	Elliott, T.	T.5N., T.15W., sec.30, Lot 3 SWNW	80
		San Bernardino County	
68	Schneider, F.	T.1N., R.1W., sec. 8, S/Lot 5, Lot 8	80
69	Cooper, A.W.	T.1N., R.6W., sec. 6, NESE	40
71	Hamilton, H.M.	T.2N., R.2W., sec.27, SSE	80
72	Vine, Emory	T.2N., R.6W., sec.24, SENE	40
73	Gosslin, Wm.	T.2N., R.4W., sec.21, NW	160

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TABLE 2

FINAL LIST OF LANDS QUITCLAIMED BY THE UNITED STATES

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION			ACRES
California:		San Bernardino County (continued)			
74	Hyde, F.A.	T.2N., R.3W.,	sec. 17,	NW	160
75	Holden, C.H.	T.2N., R.1E.,	sec. 24,	NW	160
79	Richards, J.	T.3N., R.6W.,	sec. 4,	NNE	80
80	Richards, J.	T.3N., R.6W.,	sec 7,	SSE	80
81	Richards, J.	T.3N., R.6W.,	sec.20,	SENE SE	200
82	Richards, J.	T.3N., R.6W.,	sec.21,	SWSW NSW WNW	200
83	Richards, J.	T.3N., R.6W.,	sec. 8,	SSE	80
84	Richards, J.	T.3N., R.6W.,	sec.26,	ESW SWSW	99
		(Total parcel acreage 120 acres--21 acres retained)			
85	Richards, J.	T.03N., R.6W.,	sec.26,	NWSW	40
		Ventura County			
28a	Hyde, F.A.	T.9N., R.23W.,	sec.16, Tr 49 (formerly NENE)		40
31a	Black, Lewis	T.8N., R.21W.,	sec.33,	NENW	40
31b	Black, Lewis	T.8N., R.21W.,	sec.33,	NWNW	40
32	Hinckley, A. M.	T.8N., R.21W.,	sec.33,	NNE	80
34	Holbrook, C.H.	T.8N., R.24W.,	sec.16,	NN	160
STATE: Colorado		MERIDIAN: 6th Principal			
		Jefferson County			
2	Holcomb, E.	T.8S., R.71W.,	sec.32,	NSENE NENE NNWNE	80
4	Moses, W.E.	T.8S., R.72W.,	sec. 1,	NENE	40
		Park County			
1	Wilson, Alfred	T.7S., R.74W.,	sec. 8,	NENENE	10
9a	Wilson, Alfred	T.10S., R.73W.,	sec. 9,	SWNWNE SWNWNWNE WNENW	43
10	Bullock, Jared	T.11S., R.73W.,	sec.10,	SNW (TR 39)	80
11	Moses, W.E.	T.12S., R.71W.,	sec.32,	NENESE	10
15	Moses, W.E. LS & R	T.13S., R.71W.,	sec.20,	SNE SENW NWSE	160
		El Paso County			
13	Armour, Edwin	T. 13S., R.68W.,	sec.17,	NWNE SENE	80

TABLE 2

FINAL LIST OF LANDS QUITCLAIMED BY THE UNITED STATES

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION			ACRES
STATE: Idaho		MERIDIAN: Boise			
		Bonner County			
2	No. Pacific RR	T.57N., R.5W.,	sec.31, SE		160
5	Miller, W. Clayton	T.58N., R.4W.,	sec.29, SE		160
6	No. Pacific RR	T.58N., R.5W.,	sec.35, SE		160
7	No. Pacific RR	T.58N., R.5W.,	sec.35, W		320
8	No. Pacific RR	T.58N., R.5W.,	sec.29, NSE SESE		120
9	No. Pacific RR	T.59N., R.5W.,	sec.35, NESW NWSE SESE		120
10	No. Pacific RR	T.60N., R.4W.,	sec.17, Lot 3		24
11	No. Pacific RR	T.61N., R.4W.,	sec.21, Lot 2		5
12	No. Pacific RR	T.62N., R.4W.,	sec. 9, Lot 7 & 8		53
STATE: New Mexico		MERIDIAN: New Mexico Principal			
		Catron County			
6	Porter, Henry M.	T.8S., R.15W.,	sec. 4, SSE SESW; sec. 9, NENW		120 40
13	Moses, W.E.	T.8S., R.19W.,	sec.15, NSW		80
14	Adair, Charles	T.6S., R.21W.,	sec. 2, NNESE		20
15	Jones, Flemming WA	T.7S., R.19W.,	sec.26, ENE		80
17	Miller, Ellis	T.10S.,R.15W.,	sec.34, NENE WNE NWSE		160
		Grant County			
9	G.O.S. Cattle Co.	T.14S., R.13W.,	sec.32, SWNW		40
		Lincoln County			
19	Ridgeway, Arnold	T.7S., R.12E.,	sec. 1, SESE; sec. 12, NENE		80
		San Miguel County			
1	Moses, W.E.	T.19N., R.14E.,	sec.26, NWNW WNENW		60
3	Barker, Squire L.	T.18N., R.14E.,	sec. 3, NEly 1/2 of SESE		16
12	Ehrlich, L.& Annie	T.18N., R.14E.,	sec.11, SNW ESW		160
23	Moses, W.E.	T.19N., R.14E.,	sec.20, SENWSE		10

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TABLE 2

FINAL LIST OF LANDS QUITCLAIMED BY THE UNITED STATES

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Oregon		MERIDIAN: Willamette	
		Clackamas County	
2a	Strickland, M.C.	T.3S., R.8.5E., sec.35, ENE ESE	160
		Deschutes County	
10	Clark, C.W.	T.22S., R.9E., sec.36, ESE SWSE SENE	160
		Klamath County	
12	Hyde, F.A.	T.23S., R.9E., sec.36, ESE	80
13	Hyde, F.A.	T.23S., R.9E., sec.36, SENW SW WSE NE	440
		Lane County	
8	Goslin, Wm. G.	T.20S., R.2E., sec.20, NENE	40
STATE: South Dakota		MERIDIAN: Black Hills	
		Custer County	
57	Hazeltine, Stillman	T.2S., R.6E., sec.24, SWSE SESW; 25, WNE	160
58	Wright, Wilbur F.	T.3S., R.4E., sec.33, NNE SENE NESE	160
		Pennington County	
34	Coonley, Hiram F.	T.1N., R.6E., sec.17, NWSW; 18, SWNE NSE	160
37	Morse, Corbin	T.1N., R.6E., sec.35, SWSE SESW	80
38	Christy, William	T.1N., R.6E., sec.13, SESE; 24, ENE NESE	160
39	McCaffrey, Frank	T.1N., R.4E., sec.29, SWSE; 32, WNE NWSE	160
41	Turner, George	T.1N., R.4E., sec.33, ESW SWSW	120
42	Turner, George	T.1S., R.4E., sec. 4, Lot 3	40
45	Pruett, James P.	T.1N., R.1E., sec.13, SWSW; 14, SESE; 24, NWNW	80 40
46	Simpson, Frank O.	T.1S., R.3E., sec.25, SWSW; 26, SSE SESW	160
47c	Hurlburt, Frank	T.1S., R.4E., sec. 9, Lot 8 (NESE)	40
48	White, Willison B.	T.1S., R.4E., sec.14, NE(less 15.43 acres)	135
49	Ostle, William	T.1S., R.5E., sec.33, Lots 3,4,7,8,9	96
50a	Bishop, Albert L.	T.1S., R.5E., sec.31, Lots 3 & 13	64
51	Weaver, Lucretia	T.1S., R.5E., sec.28, Lots 2,4,8, SWNW	107
53	Blight, Ephraim	T.1S., R.5E., sec.33, SENE; 34, Lot 1 NWNW	119
56	Roy, William	T.2S., R.6E., sec. 8, SESW	40

TABLE 2

FINAL LIST OF LANDS QUITCLAIMED BY THE UNITED STATES

PARCEL ID NO.	GRANTOR NAME	LEGAL DESCRIPTION	ACRES
STATE: Utah		MERIDIAN: Salt Lake	
		Sanpete County	
10	Ziegler, Charles	T.15S., R.5E., sec. 2, Lots 1,2,3,4, SNE NSE	320
STATE: Washington		MERIDIAN: Willamette	
		Clallam County	
22	Olsen, Carl	T.29N., R.3W., sec.21, SWSW	40
23	Peters, Wm. A.	T.30N., R.10W., sec.20, SWSE	40
24	Coffin, Mary E.	T.30N., R.11W., sec.26, Lot 3, SWNW	79

[FR Doc. 95-31214 Filed 12-22-95; 8:45 am]
BILLING CODE 3410-11-C

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Approval of Final Management Plan for the Rookery Bay National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of approval and availability of final management plan.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, has approved the revised final management plan for the Rookery Bay National Estuarine Research Reserve.

The Rookery Bay National Estuarine Research Reserve was designed in September 1978. Pursuant to section 315 of the Coastal Zone Management Act, 16 U.S.C. Section 1461, and implementing regulations, the Florida Department of Environmental Protection in conjunction with SRD staff has produced a five-year management plan that provides a course of action for managing the site from 1994 through 1998.

Copies of the document can be obtained from the Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, Florida 33962. (813) 775–8845.

FOR FURTHER INFORMATION CONTACT: Nathalie Peter, OCRM, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th Floor (N/ORM2), Silver Spring, Maryland 20910. (301) 713–3132, extension 119.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management Research Reserves.

Dated: December 20, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–31251 Filed 12–22–95; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Military Intelligence College; Closed Meetings

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows.

DATES: Thursday, 11 January 1996, 0900 to 1700; and Friday, 12 January 1996, 0830 to 1530.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: December 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–31243 Filed 12–22–95; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on International Arms Cooperation

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on International Arms Cooperation will meet in closed session on January 22–23, 1996 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop a generic model of international arms cooperation for the 21st century and also identify specific management actions that must be implemented to allow successful program execution on international efforts.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–31242 Filed 12–22–95; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Strategic Mobility

AGENCY: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Mobility will meet in closed session on January 9–10, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary for Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will engage in a broad review of strategic mobility under a range of scenarios. The review should include the joint and service processes for planning, executing, protecting, and sustaining force deployments. It should also include the resources and activities that provide command and control, communications and information systems in support of strategic mobility.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–31241 Filed 12–22–95; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Logistics Modernization

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Logistics Modernization will meet in closed session on January 9–10, and February 5–6 1996 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address the technologies that will affect the cost of ownership for current and future weapon systems. The Task Force should address the following questions: What logistics related technology opportunities are available to reduce costs while providing enhanced readiness, deployability and sustainment? What investment strategy is required to achieve the desired level of logistics cost reduction?

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: December 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FR Doc. 95–31240 Filed 12–22–95; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Privatization and Outsourcing

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Privatization and Outsourcing will meet in open session on January 16–17, 1996 at TASC, 1101 Wilson Boulvelard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Julia Vindasius at (703 695–7178 or Ms. Lois Lembo 358–9090 ext 6430.

Dated: December 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–31239 Filed 12–22–95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Notice of Public Meeting for Request for Expressions of Interest for Tritium Production

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: On December 6, 1995, the Department announced a formal Record of Decision implementing a dual-track strategy to assure a future tritium source. The Department's preferred strategy for acquiring new supplies of tritium is to pursue the two most promising production alternatives: (1) to purchase irradiation services from one or more existing Commercial Light Water Reactors (CLWRs), or purchase and convert a CLWR for tritium production; and (2) to design, build and test critical components of an Accelerator-Produced Tritium system to be used for tritium production.

On December 13, 1996, a Request for Expression of Interest was published in the **Federal Register** (60 FR 64104) concerning DOE's possible acquisition of one or more Commercial Light Water Reactors, or acquisition of irradiation services from CLWRs, for the production of tritium.

As indicated in the Request, the Department is announcing that it intends to host a public meeting to discuss issues related to this Request and to provide information for potentially interested parties.

DATES AND ADDRESSES: The meeting will be held on January 16, 1996, at 9:00 a.m. in room 1E–245 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C.

To update the preliminary schedule in the Appendix of the Request, initial expressions of interest should be submitted on or before January 29, 1996. Supplementary information regarding the expressions of interest should be submitted on or before February 26, 1996. Submissions should be directed to: Stephen M. Sohinki, Director, Office of Reconfiguration, DP–25, United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Tritium EOI, Telephone: (202) 586–0838.

A copy of the reports describing technical work accomplished, thus far, during the Tritium Target Development Project is available in the DOE Headquarters reading room at 1000 Independence Avenue, S.W., Washington, D.C.

A record of the meeting including answers to questions that, in DOEs judgement, are of general interest and applicability to all potential respondents will be mailed to all attendees as well as other parties requesting such information, and will be made available for review along with a full text copy of the Request, in the Public Reading Room at DOE headquarters in Washington, D.C., and on the Internet at http://web.fie.com/web/fed/doe/doeoor.htm or modem toll free 1–800–783–3349.

Issued in Washington, D.C. December 20, 1995.

Eldon W. Joersz,

Principal Deputy Assistant Secretary for Military Application, Defense Programs.

[FR Doc. 95–31246 Filed 12–22–95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP96–81–000]

Carnegie Interstate Pipeline Company; Notice of Petition for Approval of Exit Fee Stipulation

December 19, 1995.

Take notice that on December 13, 1995, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Carnegie Interstate Pipeline Company (CIPCO) filed a petition with the Commission for approval of a stipulation entered into by CIPCO and Texas Eastern Transmission Corporation (TETCO) on December 12, 1995.

CIPCO states that the stipulation provides for CIPCO to: (1) pay a negotiated exit fee to TETCO for the early termination of CIPCO's contract for firm transportation capacity on TETCO; (2) recover 100 percent of the exit fee from its customers through a direct bill; and (3) abandon its obligations under its contract with TETCO.

CIPCO states that the expeditious action on the petition will relieve CIPCO of the continued payment of reservation charges for its upstream capacity on TETCO, which are presently being collected through CIPCO's Transportation Cost Rate (TCR). CIPCO requests that its petition be disposed of under the shortened procedures in Rules 801 and 802 of the Commission's Rule of Practice and Procedure, 18 CFR 385.801–802.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

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385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before December 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31221 Filed 12–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–4–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

December 19, 1995.

Take notice that on December 8, 1995, Wyoming Interstate Company, Ltd. (WIC) filed updated standards for conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] to reflect certain updated information as well as a revision to Standard I, 18 CFR 161.3(i).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31222 Filed 12–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–595–001]

Texas Eastern Transmission Corporation; Notice of Amendment

December 19, 1995.

Take notice that on November 20, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310 filed in Docket No. CP95–595–001 pursuant to section 7(c) of the Natural Gas Act an amendment to its application for a certificate of public convenience and necessity filed June 30, 1995, in Docket No. CP95–595–000, requesting authority to replace a pipeline crossing of the Brazos River, in order to modify the route alignment of the crossing, all as more fully set forth in the amendment, which is on file with the Commission and open to public inspection.

In its application in Docket No. CP95–595–000, Texas Eastern proposed to construct and operate 1.56 miles of new 24-inch diameter mainline between Milepost (MP) 52.25 and MP 53.81 on its Mainline No. 11 where it crosses the Brazos River in Austin and Waller Counties, Texas. Texas Eastern filed its proposal because its existing main line crossings of the Brazo River—the 24-inch diameter Line No. 11 and 16-inch auxiliary line—were exposed to the forces of the river as the result of erosion of the river bed in the vicinity of Line No. 11. On October 6, 1995, the Commission staff recommended in its Environmental Assessment (EA) that Texas Eastern use a designated alternative route rather than Texas Eastern's proposed route, in order to reduce the alleged environmental impacts identified by the Commission staff.

Texas Eastern states that it proposes to modify the EA's recommended route and to tie back into Texas Eastern's existing line in as short a distance as is practical, in lieu of adopting the route recommended in the EA as "Alternative 2". Texas Eastern proposes to amend its application to lay pipeline in new right-of-way for a distance of approximately 1,300 feet, thereby connecting the directionally drilled river crossing of approximately 2,900 feet with the existing 24-inch Line No. 11. Texas Eastern states that compared to "Alternative 2", its proposed route will decrease new permanent right-of-way required, reduce the overall length of wetlands crossed, and decrease overall estimated project costs by approximately $1,000,000. Texas Eastern asserts that is proposed modifications will both facilitate an expeditious replacement of the river crossing and decrease environmental impacts associated with the construction activity.

Specifically, Texas Eastern now proposes to replace, construct and operate approximately 0.84 miles of 24-inch diameter Line No. 11 mainline crossing of the Brazos River in Austin and Waller Counties, Texas, to remove the existing 24-inch and 16-inch diameter pipeline segments exposed in the river, and to abandon, in place, the remainder of the existing pipeline which will be replaced. The pipeline segment to be replaced is between MP 52.25 and MP 52.98 on Line No. 11. Texas Eastern estimates that the project will cost $2,425,854. Texas Eastern states that the replacement segments will have a design delivery capacity equivalent to the facilities being replaced.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 29, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (128 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31223 Filed 12–22–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

[Docket No. MG96–3–000]

Colorado Interstate Gas Company; Notice of Filing

December 19, 1995.

Take notice that on December 8, 1995, Colorado Interstate Gas Company (CIG) filed updated standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] to reflect certain updated information as well as a revision to Standard I, 18 CFR 161.3(i).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31225 Filed 12–22–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

[Docket No. ER96–507–000, et al.]

Sierra Pacific Power Company, et al. Electric Rate and Corporate Regulation Filings

December 14, 1995.

Take notice that the following filings have been made with the Commission:

1. Sierra Pacific Power Company

[Docket No. ER96–507–000]

Take notice that on December 1, 1995, Sierra Pacific Power Company (Sierra), tendered for filing, pursuant to § 205 of the Federal Power Act and 18 CFR Part 35 *et seq.*, a certain annual energy charge adjustment (and displacement credit) under the Electric Service Agreement dated February 27, 1995 between Sierra and Truckee Donner Public Utility District (the District). Sierra requests waiver of the notice requirements and an effective date of January 1, 1996, as provided in the underlying agreement.

Sierra asserts that the filing has been served on the District and on the regulatory commissions of Nevada and California.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER96–508–000]

Take notice that on December 1, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Engelhard Power Marketing, Inc. FPL requests an effective date of December 4, 1995.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER96–509–000]

Take notice that on December 1, 1995, Arizona Public Service Company (APS), tendered for filing a revised Exhibit applicable under the Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) Wholesale Power Supply Agreement, APS-FERC Rate Schedule No. 58.

Current rate levels are unaffected, and no other change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on Wellton-Mohawk and the Arizona Corporation Commission.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER96–510–000]

Take notice that on December 1, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement with Public Utility District No. 1 of Douglas County under FERC Electric Tariff Volume No. 4 previously approved as unsigned service agreement.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota)

[Docket No. ER96–511–000]

Take notice that on December 1, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing a Termination Agreement for the Municipal Interconnection and Interchange Agreement between NSP and the City of Kenyon (City). Effective August 1, 1995, the City began taking electric services from the Central Minnesota Municipal Power Agency.

NSP requests that the Commission accept for filing this Agreement effective as of November 8, 1995, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that this filing be accepted as a supplement to Rate Schedule No. 480, the rate schedule for previously filed agreements between NSP and the City.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER96–512–000]

Take notice that on December 1, 1995, Arizona Public Service Company (APS) tendered for filing a revised Exhibit applicable under the Tohono O'Odham Utility Authority (TOUA) Transmission Agreement, APS-FERC Rate Schedule No. 161.

Current rate levels are unaffected, and no other change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

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7. Arizona Public Service Company

[Docket No. ER96–513–000]

Take notice that on December 1, 1995, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS-FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entities: Aquila Power Corporation, Citizens Lehman Power Sales, and Cenergy, Inc.

A copy of this filing has been served on the above listed entities and the Arizona Corporation Commission.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 95–31224 Filed 12–22–95; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed new system of records—"Vacancy Announcement Tracking System".

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the FDIC gives notice of the proposed establishment of a new system of records entitled "Vacancy Announcement Tracking System".

DATES: Comments on the establishment of the system must be submitted by February 5, 1996. The system will become effective February 20, 1996 unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Jerry L. Langley, Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, N.W., Washington, D.C. 20429, or hand-delivered to Room F–400 at 1776 F Street, N.W., Washington, D.C., Monday through Friday, between the hours of 8:30 a.m. and 5 p.m. [FAX number: (202) 898–3838; Internet E-mail: comments@fdic.gov].

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, Office of the Executive Secretary, FDIC, 550—17th Street, N.W., Washington, D.C. 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to establish a new system of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, entitled "Vacancy Announcement Tracking System". This computerized system of records will be used by the FDIC to track and manage the processing of individual applications for employment with the FDIC in response to advertised position vacancy announcements. The system will consist of integrated position vacancy announcement information, applicant personal data, and applicant qualification and processing information.

Accordingly, the Board of Directors of the FDIC proposes to establish the system to read as follows:

FDIC 30–64–0011

SYSTEM NAME:

Vacancy Announcement Tracking System.

SYSTEM LOCATION:

Personnel Services Branch, Division of Administration, FDIC, 550—17th Street, N.W., Washington, D.C. 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing applications for employment with the FDIC in response to advertised position vacancy announcements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position vacancy announcement information such as position title, series and grade level(s), office and duty location, opening and closing date of the announcement, and dates of referral and return of lists of qualified candidates; applicant personal data such as name, address, social security number, veterans' preference and federal competitive status; and applicant qualification and processing information such as qualifications, grade level eligibility, reason for ineligibility, referral status, and dates of notification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1104; 12 U.S.C. 1819.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in this system of records may be disclosed:

(1) To the U.S. Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the governmentwide personnel management, investigatory, adjudicatory, and appellate functions within their respective jurisdictions;

(2) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) To the appropriate federal, state or local agency or authority responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; and

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on computer network.

RETRIEVABILITY:

Indexed by name and social security number of individual applicant.

SAFEGUARDS:

The system's computerized databases are stored on an FDIC Local Area Network (LAN). The network file servers are located in a locked room in a secured area, with physical access limited to network administrators. The information is secured by network access rights in such a way that only authorized users are able to access the data.

RETENTION AND DISPOSAL:

Information is maintained on the computer network for two years and, if no longer needed, deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Recruitment and Placement Section, Personnel Services Branch, Division of Administration, FDIC, 550–17th Street, N.W., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Office of the Executive Secretary, FDIC, 550–17th Street, N.W., Washington, D.C. 20429.

RECORD ACCESS PROCEDURES:

Same as "Notification" procedure above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" procedure above.

RECORD SOURCE CATEGORIES:

Information originates from position vacancy announcements, applications for employment submitted by individuals, and applicant qualification and processing information generated within the agency.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By direction of the Board of Directors.

Dated at Washington, D.C., this 19th day of December, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31263 Filed 12–22–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Mercantile Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company also has given notice under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal to acquire the non-banking subsidiaries can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to merge its subsidiaries, Ameribanc, Inc., St. Louis, Missouri, with MidAmerican Corporation, Inc., Roeland Park, Kansas, and thereby indirectly acquire Mercantile Bank of Kansas, Overland Park, Kansas; Mercantile Bank of Lawrence, Lawrence, Kansas; Mercantile Bank of Topeka, Topeka, Kansas.

Applicant also proposes to acquire Mercantile Bank of Jackson County, Kansas City, Missouri, a *de novo* bank.

In connection with this application, Applicant also has applied to acquire MidAmerican Insurance Agency, Inc., Roeland Park, Kansas, and thereby engage in owning and operating an insurance agency which conducts grandfathered insurance agency activities, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y.

The proposed transaction is an internal reorganization. Ameribanc, Inc., and MidAmerican Corporation are both wholly-owned subsidiaries of Mercantile Bancorporation, Inc., Saint Louis, Missouri.

Board of Governors of the Federal Reserve System, December 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31231 Filed 12–22–95; 8:45 am]

BILLING CODE 6210–01–F

Pikeville National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 19, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Pikeville National Corporation, Pikeville, Kentucky; to acquire 100 percent of the voting shares of United Whitley Corp., Williamsburg, Kentucky, and thereby indirectly acquire Bank of Williamsburg, Williamsburg, Kentucky.

2. Whitaker Bank Corporation of Kentucky, Lexington, Kentucky; to acquire 100 percent of the voting shares of, and thereby merge with Mount Sterling National Holding Corporation, Mount Sterling, Kentucky, and thereby indirectly acquire Mount Sterling

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National Bank, Mount Sterling, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Tower Bancorp Holding Company, Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of WestBank Interim Bank, Westchester, Illinois (an entity formed to facilitate a merger with WestBank, Westchester, Illinois).

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Inter-Mountain Bancorp., Inc., Bozeman, Montana; to acquire 100 percent of the voting shares of First Security Bank of Belgrade, Belgrade, Montana, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National Bancshares, Inc., Edmond, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Edmond, Edmond, Oklahoma (in organization).

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Commerce Bancorp, Inc., Logan, Utah; to merge with Nubanc Corporation, dba First Commerce Bank, Logan, Utah. Comments on this application must be received by January 10, 1996.

Board of Governors of the Federal Reserve System, December 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31232 Filed 12–22–95; 8:45 am]

BILLING CODE 6210–01–F

Summit Bancorp; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Summit Bancorp, Akron, Ohio; to engage *de novo* through its subsidiary, Summit Banc Investments Corporation, Akron, Ohio, in providing portfolio and investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y; and in securities brokerage services, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31233 Filed 12–22–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Hearings on FTC Policy in Relation to the Changing Nature of Competition

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of time for comment on public hearings.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces that the time has been extended for submitting written comments for the hearings record on whether there have been broad-based changes in the contemporary competitive environment that require any adjustments in antitrust and consumer protection enforcement in order to keep pace with those changes. The period for submitting written comments is extended to Friday, January 26, 1995.

The Commission hearings address whether any accommodations in the law or enforcement policy are warranted in the following areas in light of any developments in global competition and innovation: (1) The measurements of market power; (2) the ability of firms to enter new markets; (3) treatment of efficiencies in merger and nonmerger areas; (4) treatment of efficiencies in innovation, particularly those resulting from collaboration; (5) failing firms or distressed industries; (6) the impact of antitrust and consumer protection law on small businesses; (7) the relationship of antitrust to intellectual property law; (8) foreclosure, access and efficiency issues related to networks and standards; (9) strategic conduct in the context of innovation-based competition; (10) cross-border consumer protection issues (such as standard setting, product labeling harmonization, and/or technology-related scams); and (11) agency institutional processes (such as quality of evidence and burden of proof; safe harbors; evidence gathering). The hearings are being transcribed and placed on the public record.

DATES: The hearings began on October 12, 1995. The final hearing date was December 13, 1995. Any interested person may submit written comments responsive to any of the topics addressed; such comments must be submitted for the record by January 26, 1995.

ADDRESSES: To facilitate efficient review of public comments, all comments should be submitted, if possible, in electronic and written form. Electronic submissions should be on either a 5 and ¼ or 3 and ½ inch computer disk, with a label on the disk stating the name of the commenter and the name of and version of the word processing program used to create the document. (Programs based on DOS are acceptable. Files from other operating systems should be submitted in ASCII text format.) Submissions should be captioned "Comments on Hearings on Global Competition and Innovation" and addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Susan DeSanti or Debra A. Valentine, Policy Planning, Federal Trade Commission, Sixth and Pennsylvania Avenue, N.W., Room 503, Washington, D.C. 20580; or by telephone (202) 326–2167 or (202) 326–2390. Electronic Mail Address: susan.desanti @ftc.gov, or debra.valentine @fte.gov. A detailed agenda for the hearings is available on the FTC Home Page (http://www.fte.gov), through various publications. and through Sula Miller at (202) 326–3190.

SUPPLEMENTARY INFORMATION: The hearings are to examine consumer protection and antitrust law enforcement in light of the above issues. The hearings record is expected to provide a basis for assessing what, if any, adjustments may be desirable. After the hearings, a report will be issued, which may indicate changes that may be adopted or recommended, areas for further study, or coordinated action by the Commission and the Department of Justice. The Commission has general authority under the FTC Act to interpret its substantive laws through guidelines, advisory opinions, and policy statements

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31207 Filed 12–22–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–030–06–1990–01)

Notice of Availability of Jackpot Mine Project Final Environmental Impact Statement (FEIS)

AGENCY: Bureau of Land Management.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Jackpot Mine Project Final Environmental Impact Statement which analyzes the environmental consequences of an underground uranium mine proposed for the southern side of Green Mountain, 14 miles southeast of Jeffrey City in Fremont County, Wyoming. The BLM preferred alternative for the FEIS is approval of the plan of operation for the underground mine, the proposed alternative, and disposal of mine waste rock at the Big Eagle Mine.

DATES: Comments on the FEIS should be postmarked no later than 30 days after the date that the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on December 22, 1995. All comments should be postmarked no later than January 22, 1996. All comments will be considered in the Record of Decision.

ADDRESSES: Comments on the FEIS should be sent to the Bureau of Land Management, Rawlins District Office, Attn: Larry Kmoch, P.O. Box 670, Rawlins, WY 82301.

SUPPLEMENTARY INFORMATION: The proposed project is to explore for and develop uranium reserves present in the Battle Springs Formation at depths of approximately 2,500 to 3,500 feet below the surface of Green Mountain. Project-required lands encompass a maximum of 515 acres within portions of Townships 24 through 28 North, Ranges 91 through 93 West. The proposed project entails the construction, operation, and reclamation of an underground uranium mine and associated facilities by the Green Mountain Mining Venture. A transportation corridor connecting the proposed mine with the Sweetwater Uranium Mill, approximately 27 miles to the south, would involve the construction of a new transportation route. A combination of the upgrading of existing roads, in the proposed action, and construction of new haul road segments, were the preferred access/haul roads.

Dated: December 12, 1995.

Alan R. Pierson,

State Director.

[FR Doc. 95–30894 Filed 12–22–95; 8:45 am]

BILLING CODE 4310–DS–F

[MT–960–1120–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Miles City District Resource Advisory Council will have an emergency meeting Wednesday, January 17, 1996 at 10:00 a.m. in the Miles City District Office Conference Room located at 111 Garryowen Road, just west of Miles City. The meeting is called primarily to discuss and review the proposed Montana/Dakotas Standards and Guidelines for Rangeland Health and is expected to last until 4:00 p.m.

The meeting is open to the public and the public comment period is set for 10:00 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 232–4331.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: December 14, 1995.

David D. Swogger,

Acting District Manager.

[FR Doc. 95–31208 Filed 12–22–95; 8:45 am]

BILLING CODE 4310–DN–P

[CA–010–06–1220]

Meeting of the Bakersfield Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Bakersfield Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (public law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Bakersfield District Resource Advisory Council will meet at Fort Ord/California State University, Monterey Bay.

DATES: January 18–19, 1996, 8:00 a.m. to 5:00 p.m. both days.

ADDRESS: Watershed Institute Building, B Street and Sixth Avenue, Fort Ord.

SUPPLEMENTARY INFORMATION: The Bakersfield Resource Advisory Council is a 12 member council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of public land resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet on Thursday, January 18 to discuss and tour rehabilitation efforts on those

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portions of Fort Ord that will come under BLM management. On Friday, January 19, the council will discuss grazing issues and have a briefing on the National Environmental Policy Act. The meeting is open to the public, but private transportation must be arranged in order to take part in the field trip on Fort Ord.

Anyone wishing to address the Council about any public land issue may do so during the public comment period beginning at 1 p.m., January 19, 1996 or at any time during the meeting at the discretion of the Council Chairman. Written comments may be submitted at the meeting, or to the address below. To reach the Watershed Institute Building, take the Fort Ord/CSUMB main entrance off Highway 1. Follow Lightfighter Drive to the signal light at North-South Drive. Go straight and as the street curves to the right, turn left onto Col. Durham Street. Turn left on Sixth Avenue, and then right on B Street. The Watershed Institute is on the right with parking in the rear of the building. From Reservation Road take the Imjin Gate which is opposite Fritsche Field. Take Imjin Road to the Eighth Street cut-off and turn left. Turn right on Sixth Avenue, then left on B Street.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: December 15, 1995.

Ron Fellows,

District Manager.

[FR Doc. 95–31209 Filed 12–22–95; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1420–00]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., December 13, 1995.

The supplemental plat, prepared to amend an old lot in section 18 and to correct the mineral survey number of Gem Knob Nos. 1 and 2 lodes, was accepted December 13, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 13, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–31211 Filed 12–22–95; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–7130–00–7660]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., December 14, 1995.

The supplemental plat of partially unsurveyed T. 48 N., R. 5 E., Boise Meridian, Idaho, prepared to create tracts 98 and 99 in unsurveyed sections 9 and 10 and tract 100 in unsurveyed sections 22 and 23, was accepted December 14, 1995.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 14, 1995.

Gary T. Oviatt,

Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 95–31210 Filed 12–22–95; 8:45 am]

BILLING CODE 4310–GG–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II Development Activity Proposal Draft Guidelines; Availability

AGENCY: United States Agency for International Development.

ACTION: Notice.

Pursuant to the Agricultural Trade and Development Act of 1990, notice is hereby given that the Fiscal Year 1997 (FY 97) Public Law 480 Title II Development Activity Proposal Draft Guidelines are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to review and comment on the draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523–0809. Contact person: Sheila Royston, (703) 841–2700.

The thirty day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: December 15, 1995.

H. Robert Kramer,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 95–31213 Filed 12–22–95; 8:45 am]

BILLING CODE 6116–01–M

Title II Results Report Draft Guidelines; Availability

AGENCY: United States Agency for International Development.

ACTION: Notice.

Pursuant to the Agricultural Trade and Development Act of 1990, notice is hereby given that the Fiscal Year 1995 (FY 95) Public Law 480, Title II Results Report Draft Guidelines are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to review and comment on the draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, DC 20523–0809. Contact person: Sheila Royston, (703) 841–2700.

The thirty day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: December 15, 1995.

H. Robert Kramer,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 95–31212 Filed 12–22–95; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32827]

Quincy Bay Terminal Co.—Renewal of Operation Exemption—Fore River Railroad Company, Inc.

Fore River Railroad Company, Inc. (Fore River) has agreed to a five year renewal of a license and operating agreement with Quincy Bay Terminal Co. (QBT), wherein QBT will continue to operate a 3.76-mile line of railroad between Quincy, MA, and an interchange with Consolidated Rail Corporation at East Braintree, MA. The current agreement is scheduled to expire on December 31, 1995.[1]

This notice is filed under 49 CFR 1180.2(d)(4). If the notice contains false

[1] The operation exemption was granted by Fore River to QBT under a notice of exemption in *Quincy Bay Terminal Co.—Operation Exemption—Fore River Railroad Corporation*, Finance Docket No. 31987 (ICC served Jan. 17, 1992).

or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any comments must be filed with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any pleading filed with the Commission should be sent to applicant's representative: Keith G. O'Brien, 1920 N St., NW., Suite 420, Washington, DC 20036.[2]

As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 15, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31173 Filed 12–22–95; 8:45 am]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company (Zion Nuclear Power Station, Unit Nos. 1 and 2)

Exemption

I

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Unit Nos. 1 and 2, at a steady-state reactor power level not in excess of 3250 megawatts thermal. The facilities are pressurized water reactors located at the licensee's site in Lake County, Illinois. The licenses provide, among other things, that the Zion Nuclear Power Station is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

[2] Legislation to sunset the Commission on December 31, 1996, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

II

Sections III.C and III.D.3 of 10 CFR part 50, appendix J, require that Type C local leak rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. These requirements are reflected in the Zion Technical Specifications (TS) as requirements to perform type C containment leak rate testing in accordance with 10 CFR part 50, appendix J, and approved exemptions.

III

The licensee has determined that certain containment isolation pathways have not been locally leak rate tested (type C tests) as required by appendix J to 10 CFR part 50. In a letter dated August 16, 1995, the licensee requested relief from the requirement to perform the type C containment leak rate tests of certain penetrations and valves in these pathways in accordance with the requirements of sections III.C and III.D of 10 CFR part 50, appendix J. On August 16, 1995 the staff authorized in writing, continued operation of the Zion units in a notice of enforcement discretion (NOED) until such time as the staff acted on the exemption requests. In a letter dated November 20, 1995, the staff granted the schedular exemptions requested in the licensee's letter of August 16, 1995, and granted schedular exemptions for the permanent exemption requests to allow time for additional staff review and until final staff action could be taken. In its letter of November 28, 1995, and supplemented on December 6, 1995, the licensee requested that certain schedular exemption requests be granted as permanent exemptions.

The licensee's letter of November 28, 1995, requested permanent exemptions for components in the following containment penetrations:

Units 1 and 2: P–70, Valve 1(2)SF8767, Refuel Cavity to Purification Pump; P–99, Valve 1(2)SF8787, Purification Pump to Refuel Cavity.

The licensee's letter of November 28, 1995, also requested that the following permanent exemption requests be changed to schedular exemption requests.

Units 1 and 2: P–77, 1(2)PP0101, 1(2)PP0102, 1(2)PP0103, 1(2)PP0104 (Penetration Pressurization to Containment Valve Stations); P–102, 1(2)AOV–RC8029 (Primary Water to the Pressurizer Relief Tank).

For unit 1, the penetrations would be tested during the refueling outage in the fall of 1995, and for unit 2, they would be tested during the next cold shutdown of sufficient duration, and subsequently thereafter as required. For P–77 and P–102, the staff's letter of November 20, 1995, granted schedular exemptions until December 31, 1995, at which time final action will be taken. This schedular exemption still applies for units 1 and 2.

The licensee's letter of November 28, 1995, also requested that for P–44, the permanent exemption request be changed to a schedular exemption request. In a letter dated December 6, 1995, the licensee withdrew the previous requests because it intends to test the penetration in accordance with the requirements of 10 CFR part 50, appendix J.

The licensee's request dated November 28, 1995, justified the proposed permanent exemptions for P–70 and P–99 on the following basis.

For P–70 and P–99, the tests were intended to be performed with air by installing a hole plug to allow a pressure source hookup while maintaining an adequate pressure boundary. During a walkdown of the test boundary, it was identified that the design of the piping for these penetrations does not allow draining of accumulated water in the line and, therefore, prevents a proper leak rate test with air per the requirements of 10 CFR part 50, appendix J. The piping configurations were not known to the licensee when the exemption request dated August 16, 1995, was submitted. For P–70, in addition to not being able to completely drain the line, the dose rates for the location where the hole plug would have to be installed are extremely high, on the order of 1–2 Rem/hour. For P–99, the piping configuration is such that the location of the test connection would pose a personnel safety issue since the connection is located on the side of the refueling cavity approximately 30 feet above the cavity floor. In its submittal dated November 28, 1995, the licensee, therefore, requested a permanent exemption to be allowed to perform the test with water. If the exemptions were approved, dewatering of the lines would not be necessary, and the isolation for the test boundaries would be by other means. The test would be performed by pressurizing the subject valve with water to approximately 100 psig (greater than Pa, which is 47 psig) and inspecting the valve for leakage. The acceptance criterion will be the same as the other tests which use water as a test medium, zero leakage.

The leakage pathways for P–70 and P–99 do not consist of through-valve

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leakage paths, but rather leakage paths out of containment isolation valves through valve diaphragms. The potential leakage paths are small or restrictive and are through cracks or tears in valve diaphragms. The leakage path for a significant leak to occur requires a sequence of events for which the probability of occurrence is low. The proposed test, with water as the test medium and with a zero leakage acceptance criterion, is conservative enough to provide reasonable assurance of no significant increase in risk to health and safety of the public when compared to testing with air. In addition, seismic support of the systems, missile protection, and, for P–70, the isolation valve seal water system all provide additional assurance that the risk of a significant leak is minimal.

To justify granting an exemption to the requirements of 10 CFR Part 50, Appendix J, a licensee must show that the requirements of 10 CFR 50.12(a)(1) are met. The licensee stated that its exemption requests meet the requirements of 10 CFR 50.12(a)(1), for the following reasons:

Criteria for Granting Exemptions are Met per 10 CFR 50.12(a)(1)

1. The requested exemptions and the activities which would be allowed thereunder are authorized by law.

If the criteria established in 10 CFR 50.12(a) are satisfied, as they are in this case, and if no other prohibition of law exists to preclude the activities which would be authorized by the requested exemption, and there is no such prohibition, the Commission is authorized by law to grant this exemption request.

2. The requested exemption will not present undue risk to the public.

As stated in 10 CFR 50, Appendix J, the purpose of primary containment leak rate testing is to assure that leakage through primary containment and systems and components penetrating primary containment shall not exceed the allowable leakage rate values as specified by the Technical Specifications or associated bases and to ensure that the proper maintenance and repairs are made during the service life of the containment and systems and components penetrating primary containment. The requested exemption is consistent with this intent for those penetrations in that alternate means of ensuring leakage remains acceptably low will be performed as proposed herein.

3. The requested exemption will not endanger the common defense and security.

The common defense and security are not in any way compromised by this exemption request.

In addition, the licensee must show that at least one of the special circumstances, as defined in 10 CFR 50.12(a)(2) is present. One of the special circumstances that a licensee may show to exist is that the application of the regulation in the particular circumstance is not necessary to achieve the underlying purposes of the rule. The purpose of the rule, as stated in Section I of 10 CFR 50, Appendix J, are to ensure that: (1) Leakage through the primary reactor containment and systems and components penetrating containment shall not exceed allowable values, and (2) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made. The staff has reviewed the licensee's proposal and has concluded that the proposed alternative tests will confirm the integrity of the subject pathways. Therefore, application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Sections III.C and III.D.3 of 10 CFR Part 50, Appendix J, require that Type C local leak rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years.

The licensee proposes exemptions to these sections which would provide relief from the requirement to perform the Type C containment leak rate tests of certain valves in accordance with the requirements of Sections III.C and III.D of 10 CFR Part 50, Appendix J.

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

Therefore the Commission hereby grants the following exemption:

The requirement of 10 CFR Part 50, Appendix J, to pressurize the valves in penetrations P–70 and P–89 with air or nitrogen is not necessary. Instead, the test pressure medium may be water.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these exemptions will not have a significant impact on the human environment (60 FR 63549).

Dated at Rockville, Maryland, this 11th day of December 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31254 Filed 12–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–395]

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Virgil C. Summer Nuclear Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would support the licensee's plan to implement the revised 10 CFR Part 20, "Standards for Protection Against Radiation." Also, the licensee proposed several editorial changes to improve the clarity of the Technical Specifications (TS). The majority of the licensee's proposal meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). However, one aspect of the licensee's proposal changes requirements with respect to use of a facility component located outside the restricted area as defined in 10 CFR Part 20. Specifically, requirements for use of the settling ponds will be changed by the proposed amendment.

The proposed action is in accordance with the licensee's application for amendment dated February 21, 1995, as revised on August 31, 1995, and December 4, 1995.

The Need for the Proposed Action

The proposed action is needed to update the license to incorporate the revised requirements of 10 CFR Part 20 (i.e., the need for the proposed action was created by a change in the regulatory requirements).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed revision to the radioactive material quantity in the settling ponds will not change the types and will conservatively lower the amount of effluents that can be released. Therefore, it will not cause an increase in individual or cumulative occupational radiation exposures. The new settling pond limit is based on that quantity which would not exceed the effluent concentrations of 10 CFR Part 20, Appendix B, Table 2, Column 2, at the nearest potable water supply if an uncontrolled release of settling pond inventory should occur. The effluent concentration limits in 10 CFR Part 20, Appendix B, Table 2, are more conservative than the current limits in the licensee's TS. Thus the change proposed by the licensee results in a net decrease in the maximum quantity of radioactive material permitted in the settling ponds.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on October 26, 1995 the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Bureau of Solid and Hazardous Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 21, 1995, as supplemented by letters dated August 31, 1995, and December 4, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Fairfield County Library, 300 Washington Street, Winnsboro, SC.

Dated at Rockville, Maryland, this 19th day of December 1995.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–31253 Filed 12–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245]

Northeast Utilities, Millstone Nuclear Power Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated January 8, 1995, by Mr. Anthony J. Ross. The Petition pertains to Millstone Nuclear Power Station, Unit 1.

In the Petition, the Petitioner raised concerns regarding the Millstone station site paging and site siren evacuation alarm system at Millstone Unit 1. The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) institute at least three sanctions against his department manager and institute sanctions against the Petitioner's coworker and maintenance first-line supervisor for engaging in deliberate misconduct in violation of 10 CFR 50.5. As grounds for this request, the Petitioner alleged that on numerous occasions since January 1994, his department manager had instructed the Petitioner's coworkers to shut off or turn down the volume on the site paging and site siren evacuation alarm system in the Unit 1 maintenance shop, and the Petitioner's first-line supervisor and coworker had complied with this request, in violation of Technical Specification 6.8.1 and NUREG–0654.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–95–23), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 19th day of December 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31255 Filed 12–22–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21605; File No. 812–9334]

New England Variable Life Insurance Company, et al.

December 18, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order of approval under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: New England Variable Life Insurance Company ("NEVLICO"), New England Variable Annuity Separate Account ("NEVLICO Account"), New England Mutual Life Insurance Company ("New England"), The New

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England Variable Account ("TNE Account") and New England Securities Corporation ("New England Securities").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 11(c).

SUMMARY OF APPLICATION: Applicants seek an order approving offers to owners of certain variable annuity contracts supported by the TNE Account (the "Old Contracts") to exchange the Old Contracts for certain variable annuity contracts supported by the NEVLICO Account (the "New Contracts").

FILING DATE: The application was filed on November 18, 1994 and amended on August 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 12, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 501 Boylston Street, Boston Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. NEVLICO, a stock life insurance company organized in 1960 under Delaware law, is a wholly-owned subsidiary of New England, a mutual life insurance company organized in Massachusetts in 1835.

2. The NEVLICO Account and the TNE Account ("Accounts"), separate accounts within the meaning of Section 2(a)(37) of the 1940 Act, are registered under the 1940 Act as unit investment trusts. The Accounts are divided into subaccounts each of which invests in a designated portfolio of the New England Zenith Fund or the Variable Insurance Products Fund. Sub-accounts may be added to or deleted from the Accounts from time to time.

3. New England Securities serves as the distributor and principal underwriter for the Old Contracts and will serve as distributor and principal underwriter for the New Contracts. New England Securities is a wholly-owned subsidiary of New England.

4. According to the Applicants, the Old Contracts and the New Contracts are similar. However, the New Contracts offer an enhanced death benefit, a more flexible systematic withdrawal feature, alternative annuity options and waivers of charges in certain situations. Fewer investment options are offered under the New Contracts.

5. Comparison of Contract Features:

a. Forms in Which Issued. Both the Old Contracts and the New Contracts are issuable as flexible and single purchase payment deferred variable annuity contracts.

b. Purchase Payments. The initial purchase payment for the Old Contracts must be at least $25 for a flexible payment contract and $5,000 for a single payment contract. Subsequent purchase payments must be at least $25. In three states, premium taxes are deducted from payments before investment under an Old Contract. The initial purchase payment for a New Contract must be at least $2,000 for certain tax-qualified contracts and $5,000 for all other contracts. Subsequent purchase payments must be $250 and no purchase payments may be made after a contract owner reaches age 86. No premium taxes are deducted from purchase payments before investment under a New Contract, however, such taxes will be deducted upon a full or partial surrender. Under both the Old and New Contracts, New England and NEVLICO reserve the right to limit purchase payments made in any year or in total under the Contracts.

c. Allocations and Transfers. Both the Old and New Contracts permit allocations to up to 10 accounts including one or more subaccounts and/or the Fixed Account. 17 subaccounts are available under the Old Contracts, whereas 12 are available under the New Contracts. Minimum transfer amounts are $25 under the Old Contracts and $100 under the New Contracts subject to a maximum of $5,000 under both contracts. Dollar cost averaging is permitted under both contracts.

d. Annuity Payments. Under the Old Contracts, the owner could select a maturity date at issue, subject to certain limits. The maturity date under the New Contracts is the date that the owner or annuitant reaches age 95 (or the maximum permitted under state law). Three annuity options are the same under both contracts. However, the Old Contracts offer three options not available under the New Contracts: life income, installment refund; investment; and specified amount of income and the New Contracts offer one annuity option not available under the Old Contracts, namely, income until the payee teaches 100. All options are available under the Old Contracts in fixed form, and all except investment and specified amount of income options are available in variable form. All options under the New Contracts are available in fixed and variable form. Under the New Contracts, the payee under the variable form of a life contingency payment option with a period certain may withdraw the commuted value of the remaining payments payable during the period certain.

e. Death Proceeds. Under the Old Contracts, the death benefit is the greater of the Contract value next determined after receipt of proof of death or election of payment form and the sum of all purchase payments less surrenders. Under the New Contracts, the death benefit is the Contract value next determined after receipt of proof of death or election of payment form and the guaranteed minimum death benefit. On the date of issue, the guaranteed minimum benefit is the initial purchase payment. On the seventh contract anniversary and every seven years thereafter until the owner's (or, if applicable, annuitant's) 76th birthday (if joint owners, the 71st birthday of the eldest owner), the guaranteed minimum is recalculated and becomes the greater of the Contract value on the date of the recalculation or the guaranteed minimum applicable just before the recalculation. Between recalculations, adjustments are made for interim purchase payments and surrenders.

f. Surrenders. After a partial surrender, the remaining Contract value must be at least $500 under an Old Contract and $1,000 under a New Contract. Otherwise, except for a deduction for premium taxes under a New Contract, the surrender rights and privileges are the same under he Old and New Contracts.

g. Systematic Withdrawals. Prior to annuitization, the owner of an Old Contract may withdraw a specified portion of Contract value periodically. The New Contracts permit withdrawal of either a fixed dollar amount or the investment gain under the contract, provided the withdrawal is at least $100.

6. Comparison of Contract Charges:

a. Administration Contract Charges. This fee is $30 under the Old Contracts; under the New Contracts, the fee is the lesser of $30 or 2% of the Contract value. Under the New Contracts, the fee is waived if Contract value is at least $50,000 at year end or if Contract value was $25,000 at the end of the prior year and purchase payments of at least $1,000 (net of surrenders) were made during the year.

b. Asset-Based Charges. The aggregate asset-based charges under both contracts is 1.35% which is composed of (1) an administrative services charge of .40% under the Old Contracts and .10% under the New Contracts and (2) a mortality and expense risk charge under the Old Contracts of .95% and 1.25% under the New Contracts.

c. Transfer Charge. A $10 charge is imposed under both Contracts on transfers in excess of 12 per year. The charge may be increased under the New Contracts and the number of free transfers may be reduced under both Contracts (to 4 under the Old Contracts and 0 under New Contracts).

d. Contingent Deferred Sales Charge. No sales charges are deducted from purchase payments under either the Old or New Contracts, but a contingent deffered sales charge ("CDSC") may apply to the following events (a) full or partial surrenders of Contract value, (b) the application of Contract exceeds to certain annuity options prior to the maturity date and, for new Contracts (c) the withdrawal of the commuted value of proceeds applied to an annuity option if no CDSC was deducted at annuitization and (d) in states where the maximum maturity age is less than 95, the maturity date, if a purchase payment was made less than seven years before the withdrawal.

Under the Old Contracts, a declining CDSC applies during the first ten Contract years, to withdrawals in excess of 10% of Contract value on the date of the first withdrawal in the Contract year. Under the New Contracts, a declining CDSC applies to the withdrawal of purchase payments invested less than seven years. There is a few withdrawal amount under the New Contracts equal to the greater of 10% of the Contract value at the beginning of the year, or the excess of Contract value over premiums subject to a CDSC on the withdrawal date. The CDSC under both the New and Old Contracts may not exceed 8% of the first $50,000 of purchase payments and 6.5% of payments exceeding $50,000.

CDSC UNDER THE OLD CONTRACTS

Contract year	Percent of contract value withdrawn (after) 10% free amount (percent)
1	6.5
2	6.0
3	5.5
4	5.0
5	4.5
6	4.0
7	3.5
8	3.0
9	2.0
10	1.0
11 and after	0

CDSC UNDER THE NEW CONTRACTS

Years purchase payment has been invested	Charge as percentage of purchase payment (percent)
1	7
2	6
3	5
4	4
5	3
6	2
7	1
Thereafter	0

7. The Exchange Offer:

a. Applicants propose to offer owners of Old Contracts the opportunity to exchange their contracts for New Contracts (the "Exchange Offer") by means of disclosure included in the prospectus for the New Contracts. The disclosure would note relevant differences between the Old and New Contracts and explain how the death benefit and CDSC would be calculated in New Contracts issued in exchange for Old Contracts. In particular, the disclosure will explain how an owner of an Old Contract contemplating an Exchange could minimize the applicable contingent deferred sales charge depending on whether the payment is made on or before the Exchange or after the Exchange is affected.

b. No purchase payment would be required in connection with an Exchange (except if necessary to meet the minimum initial premium requirement for the New Contracts). A pro rata portion of the annual administration contract charge would be deducted on the date the Exchange is effected (the "Exchange Date") because Contract years will thereafter be based on the Exchange Date rather than the issue date of the Old Contract. However, no sales charge would be deducted in connection with an Exchange nor would commissions be paid to New England Securities or any of its registered representatives. Applicants state that they believe that an Exchange would not result in adverse tax consequences to owners of Old Contracts.

c. According to the Application, the Contract value ("Exchange Value") of the Old Contracts (together with any additional payments submitted with an application for the New Contract) on the Exchange Date would be applied to the New Contract as the Contract value as of the Exchange Date. If a charge was deducted under the Old Contract for premium taxes, Applicants represent that a credit will be applied to the New Contract on the Exchange Date in an amount calculated to offset the premium tax charge, if any, that would apply to the Exchanged Value upon annuitization, surrender or payment of the Death Proceeds under the New Contract.

d. If the Exchange Value is allocated among Eligible Funds not available under the New Contracts, the owner would be required to reallocate the Exchanged Value to available eligible funds. Applicants represent that any such reallocation would not be counted toward the 12 free transfers permitted in the first New Contract year.

e. The Exchange Date would be the issue date of the new Contract for purposes of determining contract years and anniversaries after the Exchange Date and the maturity date would be set at age 95 of the older of the contract owner or annuitant or the maximum age allowable by law. A new minimum death benefit would be calculated for the New Contract equal to the greater of purchase payments made on the Old Contract (adjusted for withdrawals) or the Exchange Value. The guaranteed minimum death benefit would be recalculated on each seven-year anniversary of the Exchange Date.

f. Withdrawals after the Exchange Date would be governed by the terms of the New Contract for purposes of calculating any CDSC. Accordingly, the Exchange Value would be treated as the oldest purchase payment and would be withdrawn first, after the free withdrawal amount was calculated. However, withdrawals of Exchange Value will be subject to the CDSC percentage applicable under the Old Contracts taking into account the number of years the Old Contract had

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been in effect, rather than the CDSC under the New Contracts.

g. In most years the CDSC percentage under the Old Contracts will be slightly higher than for the New Contracts. Applicants submit that the sales charge schedule under the Old Contracts was designed to cover the costs associated with the original sale of those Contracts and, it is believed that, if the original sales schedule is not preserved for the Exchange Value, some owners might exchange contracts with the intent to then surrender the New Contract and incur a lower CDSC.

h. Because a CDSC is assessable under an Old Contract for the first ten contract years, the applicant of the Old Contract's CDSC schedule to the Exchange Value from an Old Contract outstanding less than three years would subject the Exchange Value to a CDSC for a longer period after the Exchange Date than a purchase payment made immediately after the Exchange Date. However, Applicants will waive any CDSC on Exchange Value that would otherwise be imposed more than seven years after the Exchange Date.[1]

i. Applicants submit that the application of the original CDSC schedule of the Old Contract to any purchase payments submitted with the application for the New Contract is to the advantage of owners of Old Contracts outstanding more than three full contract years before the Exchange Date because the CDSC rate under the Old Contracts is in most cases less, and never more than, the CDSC rate applicable to purchase payments made immediately after the Exchange Date. Whether there is a benefit from the application of the original CDSC to the Exchange Value of Old Contracts held less than three years, depends on whether there is a surrender during the first seven years. During the first few years of the seven year period the applicable CDSC rate under the Old Contracts is slightly lower than under the New Contracts, but the reverse is true during the later years of the seven year period. Applicants believe that the treatment of additional purchase payments submitted with an exchange application as part of Exchange Value results in the fairest treatment for the broadest class of owners of Old Contracts and that the waiver of any applicable CDSC more than seven years after the Exchange Date will minimize any inequity to owners of contracts outstanding less than three years of the Exchange Date. Also, Applicants undertake to include in the prospectus for the New Contracts, disclosure identifying the circumstances in which it would be advantageous or disadvantageous to submit a purchase payment with the application or immediately after the issuance of the New Contract.

[1] With respect to the CDSC waiver, Applicants state that they intend to rely on Rule 22d–1 under the 1940 Act and undertake to disclose the terms of the sales load variation in the prospectus for the New Contracts.

Applicants' Legal Analysis

1. Section 11(a) of the 1940 Act provides in relevant part that it shall be unlawful for any registered open-end management investment company ("fund") or its principal underwriter to make an offer to a shareholder of that fund or of another fund to exchange his security for a security in the same or another fund on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or the offer complies with the Commission's rules. Section 11(c) provides that the provisions of subsection (a) apply, irrespective of the basis of exchange, to any offer of exchange of a security of a fund for the securities of a unit investment trust and to any type of offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company. Therefore, prior Commission approval is required for exchange offers subject to Section 11(c) even if made on the basis of relative net asset values.

2. Rule 11a–2 under the 1940 Act, permits exchange offer without prior Commission approval by registered insurance company separate accounts and their principal underwriters to holders of variable contracts supported by separate accounts having the same or an affiliated insurance company depositor or sponsor provided, in essence, that the exchange is made on the basis of the relative net asset values of the securities to be exchanged (less administrative fees disclosed in the offering account's registration statement), and any sales loads imposed is calculated and deducted in accordance with the terms and conditions of Rule 11a–2. Paragraph (d)(1) of Rule 11a–2 provides that, where both the exchanged and acquired securities are subject to deferred sales loads, any deferred sales load imposed on the acquired security shall be calculated as if the holder of the acquired security had been the holder of that security from the date on which he became the holder of the exchanged security, and purchase payments made for the exchanged security had been made for the acquired security on the date on which they were made for the exchanged security. Applicants state that Rule 11a–2(d)(1), on its face, appears to require that any CDSC deducted on a surrender made after the exchange be deducted in accordance with the CDSC schedule of the acquired contract.

3. No CDSC would be imposed at the time of the exchange of an Old Contract for a New Contract. However, on surrender of the New Contract, the Exchanged Value would be subject to the CDSC provided for by the Old Contract rather than the CDSC provided for in the New Contract. Taking into account the rate at which the CDSC declines under each Contract, the CDSC rate applied to Exchange Value withdrawn more than two years after the Old Contract was issued, would be higher under the Old Contract's CDSC schedule than under the New Contract's CDSC schedule for the same number of years of investment. Therefore, Applicants submit that the Exchange Offer does not appear to comply with the terms of Rule 11a–2 and prior approval of the Exchange Offer by the Commission, pursuant to Section 11(c) of the 1940 Act, is required.

4. According to Applicants, the public policy underlying Section 11 may be inferred from Section 1(b)(1) of the 1940 Act, which states that the national public interest and the interests of investors are adversely affected when, among other things, investors exchange securities issued by investment companies without adequate, accurate and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies and financial responsibility of such companies and their management. Also, according to the legislative history of the 1940 Act, the purpose of Section 11(a) is to provide Commission review of the terms of certain exchange offers, to assure that an offer is not being proposed solely for the purpose of exacting additional selling charges and profits from investors by switching them from one security to another.

5. Applicants submit that the owners of the Old Contracts will receive adequate, accurate and explicit information, fairly presented, concerning the Exchange Offer in the prospectus for the New Contracts which will be given to any owner of an Old Contract considering the Exchange Offer.

6. Applicants assert that the Exchange Offer does not impose additional sales load but preserves the old sales charge schedule for Exchange Value. No sales charge would be deducted on the Exchange Date, and, for purposes of any CDSC applicable after the exchange, credit would be given for the time that the Old Contract was in effect.

7. Applicants submit that the history for Rule 11a–2 does not reflect any policy basis for the apparent requirement that the sales load schedule for the acquired security be applied to Contract values carried over from the exchanged security. Provisions of Rule 11a–2 relevant to exchanges of variable annuity contracts with front-end sales load structures effectively permit the deduction of an aggregate sales load based on the highest sales load rate applicable to either the exchanged security or acquired security. Applicants submit that there is no policy reason for permitting the highest sales load rate to apply in the context of contracts with a front-end sales load structure, but not contracts with a deferred sales load structure. Further, Applicants note that Rule 11a–3, which applies to exchange offers involving mutual fund shares, prohibits the deduction of a deferred sales load on an exchanged security at the time of exchange, but permits the deduction of that sales load when the acquired security is redeemed, provided that, among other things, credit is given for the time the acquired security was held. Thus, Applicants state that Rule 11a–3 would permit the CDSC deductions as contemplated in the Exchange Offer and cite examples 4 and 5 in the appendix to the Commission release adopting Rule 11a–3 (Inv. Co. Act Rel. No. 17097) in support of their view. Applicants submit that there is no policy reason for applying different rules to mutual fund exchange offers than are applied to separate account exchange offers.

Applicants' Conclusion

For the reasons set forth above, Applicants submit that the Exchange Offer complies with the general principals of Section 11(a) and Rules 11a–2 and 11a–3 and does not present any of the abuses that Section 11 was intended to prevent. Accordingly, Applicants request approval pursuant to Section 11(c) of the 1940 Act to the extent necessary to permit the Exchange Offer to be made to owners of the Old Contracts as described above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31220 Filed 12–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21608; 811–4646]

Shearson Lehman Series Fund

December 19, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Shearson Lehman Series Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 16, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Sarah A Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained or a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. Applicant has five portfolios: Money Market Portfolio, High Income Bond Portfolio, Government Securities Portfolio, Total Return Portfolio, and Appreciation Portfolio. On April 25, 1986, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on October 10, 1986, and the initial public offering commenced shortly thereafter.

2. On January 17, 1990, applicant's board of trustees approved a proposal (the "Plan") whereby applicant would be replaced with the IDS Life Series Fund, Inc. (the "Fund") as the investment vehicle for the single premium variable life insurance policies issued by IDS Life Insurance Company of New York and IDS Life Insurance Company. The Plan called for applicant's sole shareholder, IDS Life Variable Account for Shearson Lehman, to redeem all of its shares of applicant.[1]

3. On December 28, 1990, applicant's sole shareholder redeemed its shares of applicant and applicant distributed to its shareholder applicant's assets in kind. The distribution had a net asset value of $18,779,858. No redemption fee or sales charge was imposed in connection with the transaction. Applicant transferred all of its remaining assets and liabilities to the Fund.

4. In connection with its liquidation, applicant incurred minimal expenses, consisting of accounting, administrative, and legal expenses, all of which were paid by IDS Life Insurance Company of New York and IDS Life Insurance Company. At the time of its liquidation, applicant had amortized all but approximately $46,155 of its organizational expenses. This amount was absorbed by Shearson Lehman Brothers Inc., applicant's sponsor.

5. As of the date of this application, applicant has no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file the appropriate notice of termination required to terminate its existence as a Massachusetts business trust.

[1] Applicant received an order under section 26(b) of the Act that approved the substitution of shares of the Fund for applicant's shares and under section 17(b) exempting applicant from section 17(a) for certain affiliated transactions between applicant and the Fund. *See* Investment Company Act Release Nos. 17892 (Nov. 30, 1990) (notice) and 17922 (Dec. 18, 1990) (order).

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31237 Filed 12–23–95; 8:45 am]

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[Rel. No. IC–21603; No. 812–9958]

Safeco Life Insurance Company et al.

December 19, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Safeco Life Insurance Company ("Safeco"), Safeco Resource Variable Account B ("Account B"), Safeco Separate Account C ("Account C"), First Safeco National Life Insurance Company of New York ("First Safeco"), Safeco Resource Series Trust ("Trust"), Safeco Asset Management Company ("Asset Management").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(a)(2), 6e–2(b)(15), and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which Asset Management, or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter, or sponsor to be sold to and held by the separate accounts ("Separate Accounts") funding variable annuity and variable life insurance contracts ("Variable Contracts") issued by Safeco, First Safeco, or any existing or future affiliated or unaffiliated life insurance company ("Participating Insurance Companies") or to existing or future qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"). In addition, Applicants seek exemptive relief to permit the assets of separate accounts of Safeco and First Safeco to be derived from the sale of scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts.

FILING DATE: The application was filed on July 10, 1995, and was amended on November 20, 1995. Applicants have represented that they will file an amendment during the notice period to make the representations contained herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Bibb L. Strench, Esq., Safeco Asset Management Company, Safeco Plaza, Seattle, Washington 98185.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware business trust registered under the 1940 Act as an open-end management investment company.

2. The Trust currently consists of five separate series, each series representing an interest in a separate investment portfolio ("Portfolios"). The Board of Trust may establish additional series of shares at any time, each with its own investment objective and policies.

3. Asset Management serves as investment adviser to each Portfolio of the Trust, and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940. Asset Management is a Washington corporation and a wholly-owned subsidiary of Safeco.

4. Safeco, also a Washington corporation, is a holding company whose primary subsidiaries are engaged in the insurance and related financial services businesses. Safeco is a wholly-owned subsidiary of Safeco Corporation.

5. Account B and Account C are separate accounts of Safeco, and are registered with the Commission as unit investment trusts under the 1940 Act.

6. First Safeco is a New York stock life insurance company and is a wholly-owned subsidiary of Safeco Corporation.

7. The Portfolios currently are sold to Account B and Account C as investment vehicles for variable annuity contracts issued by Safeco. Applicants propose that the Portfolios serve as investment vehicles for various types of Variable Contracts. Portfolio shares will be offered to Separate Accounts of Participating Insurance Companies, including Safeco and First Safeco, which enter into participation agreements with the Trust. In addition, Applicants propose that the Trust offer and sell shares in its Portfolios directly to Qualified Plans.

8. Applicants state that each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. Applicants further state that the role of the Trust under this arrangement will consist of offering its shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in the application.

9. In addition, Applicants state that the Trust desires to avail itself of the opportunity to increase its asset base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Portfolios as the sole investment option under the Qualified Plan or as one of several investment options. Qualified Plan participants may or may not be given an investment choice among available alternatives depending on the Qualified Plan itself. Shares of any Portfolio sold to such Qualified Plans would be held by the trustee(s) of such Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). Asset Manager will not act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding, as defined below. In addition, Applicants seek exemption from Rule 6e–2(a)(2) to the extent necessary to permit the assets of the separate accounts of Safeco Life and First Safeco to be derived from the sale of both scheduled premium and flexible premium variable life insurance contracts.

Rule 6e–2: Mixed and Shared Funding

2. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account ("Underlying Fund") that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as "mixed funding."

4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to unaffiliated life insurance company separate accounts funding Variable Contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding." Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares of the Underlying Fund are offered exclusively to Separate Accounts of insurance companies, additional exemptive relief is necessary if the shares of the Trust also are to be sold to Qualified Plans.

Relief for Separate Accounts

5. Applicants also state that a separate account is eligible for the relief granted by Rule 6e–2(b)(15) only if it meets the conditions of Rule 6e–2(a)(2), which required the assets of the separate account to be derived solely from the sale of variable life insurance contracts and advances made by the life insurer in connection with the operation of such separate account. "Variable life insurance contracts" as defined by the Rule 6e–2(c)(1) includes "scheduled premium" variable life insurance contracts, but not "flexible premium" life insurance contracts. Consequently, a separate account that funds single premium and scheduled premium variable life insurance contracts and flexible premium life insurance contracts would not be deemed to have its assets derived solely from the sale of "variable life insurance contracts." Therefore, the relief granted by Rule 6e–2(b)(15) is not available for a separate account the assets of which are derived from the sale of both scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts. Accordingly, Applicants request exemptive relief in order that the separate accounts of Safeco, and First Safeco may be derived from the sale of both scheduled premium and flexible premium variable life insurance contracts.

Rule 6e–3(T)

6. Regarding the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. This exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the Underlying Fund of the separate account offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company . . . ." Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance Separate Account that owns shares of a management company that also offers its shares to Separate Accounts of unaffiliated life insurance companies. Moreover, because the relief afforded by Rule 6e–3(T) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Trust also are to be sold to Qualified Plans.

Sale to Qualified Plans

7. Applicants state that changes in the tax law have created the opportunity for the Portolios to increase their asset base through the sale of Portfolio shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code"), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio of the Trust. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. These diversification requirements are applied by taking into account the assets of the underlying fund if all the beneficial interests in the Underlying Fund are held by certain designated persons. On March 2, 1989, the Treasury Department issued regulations that adopted diversification requirements for underlying funds. Treas. Reg. § 1.817–5 (1989). These regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which permits trustee(s) of a qualified plan to hold shares of an investment company, the shares of which also are held by Separate Accounts of insurance companies, without adversely affecting the status of the investment company as an adequately diversified underlying investment vehicle for Variable Contracts issued through such segregated asset accounts. Treas. Reg. § 1.817–5(f)(3)(iii).

8. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations which made it possible for shares of an investment company to be held by the trustee(s) of qualified plans without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to Separate Accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the then current tax law.

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9. Moreover, Applicants assert that if the Trust were to sell its shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–3(b)(15) and 6e–3(T)(b)(15) relates to qualified plans or to underlying fund's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and which propose to have the relief continue in place that the Applicants are applying for the requested relief.

Grounds for Relief

10. Accordingly, Applicants seek an order under Section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

11. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

12. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance Companies that may utilize the Portfolios as the funding medium for Variable Contracts because of mixed and shared funding.

13. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Section 13(a), (15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its Variable Contract owners in certain limited circumstances.[1]

14. Voting instructions may be disregarded under subparagraphs (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the Underlying Fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the Underlying Fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

15. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e–3(T), an insurance company may disregard Variable Contract owners' voting instructions if the Variable Contract owners initiate any change in the Underlying Fund's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

16. Applicants further assert that the proposed sale of shares of the Trust to Qualified Plans does not impact of the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6–3(T)(15)(iii) permit an insurer to disregard Variable Contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust would be sold only to Qualified Plans for which such shares would be held by the trustee(s) of such plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions of such fiduciary made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the Qualified Plans is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustee(s) have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting to the participants in such Qualified Plans is not required under ERISA or the securities laws. Accordingly, applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material, irreconcilable conflicts with respect to voting is not present with Qualified Plans.

17. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants assert that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance Company offers its Variable Contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

[1] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

18. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard Variable Contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. If a Participating Insurance Company's decision to disregard Variable Contract owners' instructions represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Portfolio, to withdraw its investment in that Portfolio. No charge or penalty will be imposed as result of such withdrawal.

19. Applicants submit that mixed and shared funding should benefit Variable Contract owners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing Variable Contracts; and (c) encouraging more insurance companies to offer Variable Contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and tower charges.

20. Applicants state that there is no reason why the investment policies of the Portfolios with mixed funding would or should be materially different from what they would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Portfolios will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding.

21. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material, irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code where separate accounts are discussed. Section 817(h) of the Code imposes certain diversification standards on Underlying Funds of Variable Contracts. Treasury regulation 1.817–5(f)(3)(iii) specifically permits "qualified pension or retirement plans" and Separate Accounts to share the same Underlying Fund. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among Qualified Plan participants and Variable Contract owners if Qualified Plans and the Separate Accounts of Variable Contracts all invest in the same Underlying Fund.

22. Applicants assert that while there are differences in the manner in which distributions are taxed for Variable Contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Portfolios at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Variable Contract.

23. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the respective portfolios of the Trust. A Participating Insurance Company will solicit voting instructions in accordance with the "pass-through" voting requirement. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Portfolios of the Trust, although only the Separate Accounts are required to pass through their vote to Contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

24. Applicants argue that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a "senior security" as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or Variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Portfolio. They can only redeem such shares at their net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends. Applicants state that in absence of an exemption form Section 18(f), all shares of the Trust that will be sold to Separate Accounts or Qualified Plans will be of the same class of shares.

25. Applicants have determined that no conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact the insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another fund. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant-directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Portfolios and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

26. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and Variable Contract owners of the Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

27. Applicants assert that no policy reasons justify prohibiting a separate account funding scheduled and flexible variable life insurance contracts form relying on rule 6e–2. The interests of scheduled premium variable life Contract owners and flexible premium Variable Contract owners and the regulatory frameworks of rules 6e–2 and 6e–3(T) are sufficiently parallel that the

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use of the same separate account to fund both types of contracts should not prejudice the owners of any contracts.

28. Applicants also assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable life insurance market. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars. Applicants argue that use of Portfolios as common investment vehicles for Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the Trust's investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Making the Portfolios available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts and, accordingly, could result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also would benefit Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Furthermore, Applicants assert that the sale of shares of the Trust to Qualified Plans, in addition to Separate Accounts of Participating Insurance Companies, would result in an increased amount of assets available for investment by the Trust. This may benefit Variable Contract owners by promoting economies of scale, by permitting increase safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of the Trust ("Board") shall consist of persons who are not "interested persons" of the Trust as defined by section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any director(s), then the operation of this conditions shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Portfolios for the existence of any material irreconcilable conflict between the interests of the Variable Contract owners of all Separate Accounts investing in any of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including: (a) state insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Portfolio are being managed; (e) a difference among voting instructions given by Variable Contract owners; or (f) a decision by a Participating Insurance Company to disregard Variable Contract owners' voting instructions.

3. Participating Insurance Companies and Asset Manager (or any other investment manager of the Trust) and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of any underlying Portfolio of the Trust ("Participants") will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever Variable Contract owners' or Plan participants' voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in a Portfolio under their participation agreements, and those participation agreements shall provide that such responsibilities will be carried out with a view only to the interests of the Variable Contract owners or Plan participants.

4. If a majority of the Board, or a majority of the independent trustees of the Board ("Independent Trustees"), determine that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of Independent Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts or Plans, as appropriate, from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected Variable Contract owners or Plan participants and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, Variable Contract owners, or Plan participants) that votes in favor of such segregation, or offering to the affected Variable Contract owners or Plan participants, as appropriate the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard Variable Contract owners' or Plan participants' voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Portfolio, to withdraw its Separate Account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their participation agreements governing participation in the Portfolios and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners or Plan participants.

For purposes of this condition, a majority of Independent Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or Asset Manager be required to establish a new funding medium for any Variable Contract or Plan investment. No Participant shall be required by this condition to establish a new funding medium for any Variable Contract or Plan investment if an offer to do so has been declined by a vote of a majority of Variable Contract owners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from Variable Contract owners. Each Participating Insurance Company also will vote share of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their participation agreements.

7. The Trust will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust shall disclose in its Prospectus that: (a) its shares may be offered to insurance company Separate Accounts that fund Variable Contracts of Participating Insurance Companies that may or may not be affiliated with one another, and to Qualified Plans; (b) because of differences of tax treatment or other considerations, the interests of various Variable Contract owners and Qualified Plan participants might at some time be in conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 or Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provided exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and, in particular, the Trust will provide for meetings as required by applicable State law or the Act, including Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in that section) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participants shall, at least annually, submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participants under their participation agreements.

12. If a Qualified Plan becomes an owner of ten percent or more of the assets of a Portfolio, such Qualified Plan will execute a fund participation agreement with the Trust on the behalf of such Portfolio. A Qualified Plan shall execute an application containing an acknowledgement of this condition upon such Qualified Plan's initial purchase of the shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31238 Filed 12–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36601; File No. SR–PHLX–95–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Options Orders Eligible for Automatic Execution

December 18, 1995.

On August 21, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the maximum automatic execution ("AUTO-X") order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts.

Notice of the proposed rule change was published for comment in the **Federal Register** on September 26, 1995.[3] No comments were received on the proposal.[4]

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the AUTO-X feature of AUTOM.[5] The PHLX proposes to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36248 (September 19, 1995), 60 FR 49653.

[4] On December 13, 1995, the PHLX submitted a letter indicating that the Exchange's Automated Options Market ("AUTOM") system and AUTO-X have sufficient capacity to accommodate the proposed rule change. Specifically, the PHLX states that its equity and index option trading floor currently trades approximately 73,000 contracts per day; a small percentage of those orders are filled through AUTO-X. According to the PHLX, AUTOM currently is approximately 30% utilized during peak market activity and can easily support any additional volume associated with the proposal. *See* Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Commission, dated December 12, 1995 ("December 12 Letter").

[5] *See* Securities Exchange Act Release No. 32906 (September 15, 1993), 58 FR 49345 (September 22,

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increase the maximum AUTO-X order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts. Under the proposal, 50 contracts represents the maximum size of a permissible AUTO-X order, which is determined by the specialist in that option. Consistent with the PHLX's 10-up rule,[6] the minimum size of the Exchange's AUTO-X guarantee is 10 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1996,[7] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an online system that allows electronics delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

In 1990, AUTO–X was approved as part of the AUTOM pilot program.[8] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The PHLX believes that the proposal should improve the AUTOM system by offering the benefits of AUTO–X, including prompt and efficient automatic executions at the displayed price, to additional customer orders. The Exchange states that the proposed AUTO–X increase from a maximum of 25 to 50 contracts is in line with prior changes. For example, the PHLX notes that the Commission previously has approved other PHLX proposals to increase the maximum AUTO–X contract size limit.[9]

Further, the Exchange believes that it is appropriate to permit automatic executions of option orders up to 50 contracts for several reasons. First, the PHLX states that AUTO–X orders, although immediately reported with the best bid/offer as the execution price, may be subject to price improvement by the specialist, if a better bid/offer is available. For example, a superior Registered Options Trader ("ROT") bid/offer established immediately prior to the receipt of an AUTO–X order may not be disseminated in time to be matched with the AUTO–X order electronically but the superior bid/offer may be matched with the AUTO–X order through manual intervention by the specialist.[10]

Second, the PHLX notes that Exchange rules and policies contain safeguards designed to protect customers, as well as ROTs and specialists, in the event quotations are not up-to-date, not disseminating, or otherwise malfunctioning. For example, in extraordinary (fast) market conditions, quotations are disseminated with an "F" once the 10-up guarantee on screen markets is suspended pursuant to Option Floor Procedure Advice ("Advice") F–10, "Extraordinary Market Conditions (Fast Markets)."[11] In addition, Advice A–13, "Auto Execution Engagement/Disengagement Responsibility," allows a specialist to disengage AUTO–X in extraordinary circumstances, upon approval by two floor officials. The PHLX believes that these provisions serve to protect the integrity of AUTO–X by preventing inaccurate executions.

Third, the Exchange notes that specialists have the flexibility to establish the AUTO–X guarantee size for each option up to the maximum permissible size. In addition, the Exchange's "Wheel" for electronically assigning AUTO–X participation (although not yet operational) is voluntary for ROTs and will provide executions in 10-lot increments.[12] Thus, the PHLX believes that increasing the maximum AUTO–X order size up to 50 contracts does not raise financial visibility concerns because ROTs can choose whether to participate on the Wheel and because the Wheel assigns orders in 10-lot increments. With respect to the financial integrity of PHLX specialists and ROTs, the Exchange notes that it monitors compliance with PHLX Rules 703, "Financial Responsibility and Reporting," and 722, "Margin Accounts," on a regular basis.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interests, by extending the benefits of AUTO–X to a larger number of customer orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and 11A.[13] The Commission notes that the development and implementation to date of the AUTOM system has provided for more efficient handling and reporting of orders in PHLX equity and index options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission does not object at this time to extending the benefits available through the use of an automated system to larger-size customer options orders of up to 50 contracts.

Public customers may benefit from the proposal because public customer orders for up to 50 option contracts may be executed automatically and guaranteed by the specialist at the displayed market quote. In addition, public customers will have the benefit or receiving immediate executions and nearly instantaneous confirmations for orders of up to 50 contracts.[14] The increase in the AUTO–X feature for all equity and index options may also increase the depth and liquidity of the market for the options where the specialist chooses to fill orders to a depth of up to 50 contracts. The Commission notes, however, that AUTO–X currently, and as proposed, does not require an opportunity for price improvement on a systematic basis. The Commission expects the PHLX to examine the feasibility of modifying AUTO–X to provide a mechanism for price improvement on a systematic basis.[15]

The Commission also believes, based on representations by the Exchange,[16] that expanding the order eligibility size of AUTO–X for all equity and index options to 50 contracts will not expose the PHLX's options markets or equity markets to risk of failure or operational break-down. In particular, the Exchange represents that only a small percentage of total daily trades on the PHLX are filled through AUTO–X; in addition, the Exchange notes that, currently, AUTOM is approximately 30% utilized during peak market activity. The Exchange represents that AUTOM can easily support any volume associated with the proposal. In addition, since the AUTOM system is completely independent from the PHLX's Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact the other during periods of high volume.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PHLX–95–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

[FR Doc. 95–31219 Filed 12–22–95; 8:45 am]

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[6] See PHLX Rule 1033(a), "Size of Bid/Offer and 10-up Guarantee."

[7] See Securities Exchange Act Release No. 36582 (December 13, 1995) (order approving File No. SR–PHLX–95–78). See also Securities Exchange Act Release Nos. 28540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25363 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51183 (order approving File No. SR–PHLX–88–33, extending pilot progress through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27389 (January 9, 1990) 55 FR 1751 (order approving File No. SR–PHLX–89–53, extending pilot through June 30, 1990); 28025 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12060 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991);29817 (October 18, 1991), 56 FR 55436 (order approving File No. SR–PHLX–91–42, extending pilot through December 31, 1993); and 33405 (December 30, 1993), 59 FR 700 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994); 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–93–41, extending pilot through December 31, 1995); 29662 (September 9, 1991), 56 FR 46616 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991) (order approving File No. SR–PHLX–93–33, increasing AUTO–X for equity options to 20 contracts); 33405 (December 30, 1993), 59 FR 700 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994); 34620 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR–PHLX–94–40, codifying use of AUTOM for index options); 35801 (April 13, 1995), 60 FR 19616 (File No. SR–PHLX–95–18, codifying the use of AUTOM for certain order types); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR–PHLX–95–35, allowing broker-dealer USTOP 100 Index option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (order approving File No. SR–PHLX–95–33, limiting AUTO-X for National Over-the-Counter Index Options to series where the bid is $10 or less).

[8] See Securities Exchange Act Release No. 27509 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–PHLX–89–03). In 1991, the Commission approved a PHLX proposal to extend AUTO–X to all equity options. See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–PHLX–90–34).

[9] See, e.g., Securities Exchange Act Release No. 29637, *supra* note 7.

[10] But see note 14 and accompanying text regarding the provision of meaningful opportunity for price improvement.

[11] Under Advice F–10, when a fast market is in effect, displayed options quotes are not firm and the 10-up guarantee is not applicable, although specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with the 10-up rule.

[12] The Wheel is an automated mechanism for assigning specialists and ROTs, on a rotating basis, as contra-side participants for AUTO–X orders. Specialists must participate on the Wheel and ROTs may participate on the Wheel in assigned issues. On the Wheel, the specialist receives the first assignment of trades for the day in each respective option. Thereafter, the Wheel assigns trades to ROTs in an order standardized for that day on a random basis. Each 10 lot or order (whichever is smaller) constitutes an assignment. See Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (order approving File No. SR–PHLX–94–32).

[13] 15 U.S.C. 78f and 78k–1 (1988).

[14] As noted above, the PHLX's rules will not require a specialist to guarantee AUTO–X orders to a depth of 50 contracts. Instead, the proposal will allow specialists to establish an AUTO–X guarantee for each option up to the permissible size of 50 contracts, with a minimum guarantee of 10 contracts required.

[15] *Cf.* Securities Exchange Act Release Nos. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) (rule proposals and amendments to improve the handling and execution of customer orders); and 33694 (April 11, 1994), 59 FR 18429 (April 18, 1994) (order approving File No. SR–Amex–93–32, noting that limiting the automatic execution of orders for Hong Kong Index options to 50 contracts or less will ensure that larger orders are exposed to the floor for potential price improvement).

[16] See December 12, Letter, *Supra* note 4.

[17] 15 U.S.C. 78s(b)(2) (1982).

[18] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/15/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–936.
Date filed: December 15, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1873 dated December 1, 1995, Middle East-Africa Resolutions r-1—r19, Intended effective date: April 1, 1996, Necessary Government Action Date: no later than February 20, 1996.

Docket Number: OST–95–937.
Date filed: December 15, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0724 dated December 1, 1995, Africa-TC3 Resos, Intended effective date: April 1, 1996, Necessary Government Action Date: no later than February 15, 1996.

Docket Number: OST–95–938.
Date filed: December 15, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC12 Telex Mail Vote 765, Mexico-Germany and Mid Atlantic-Germany fares, r-1— 074aa r-2—074w, Intended effective date: January 20, 1996.

Paulette V. Twine,
Chief Documentary Services Division.

[FR Doc. 95–31249 Filed 12–22–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 15, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–922.
Date filed: December 11, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1996.
Description: Application of Rio Air Express, S.A. dba Skyjet Brazil, requests Amendment of its Foreign Air Carrier Permit to transport belly-cargo and mail in combination with its charter passenger service between Brazil and the United States.

Docket Number: OST–95–923.
Date filed: December 11, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1996.
Description: Application of Virgin Atlantic Airways Limited, pursuant to U.S.C. Section 40109 and Subpart Q of the Regulations, requests amendment of its Foreign Air Carrier Permit, to authorize the following air transportation, in addition to scheduled combination air transportation of passengers, cargo, and mail between London, England (Heathrow) and San Francisco, California, for which Virgin Atlantic initially sought an amendment to its foreign air carrier permit on January 11, 1994:

(1) scheduled combination air transportation of passengers, cargo, and mail between London, England (Heathrow) and Washington, DC (Dulles); and

(2) scheduled combination air transportation of passengers, cargo, and

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mail between Manchester, England and Orlando, Florida.

Docket Number: OST–95–931.
Date filed: December 15, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 12, 1996.
Description: Application of Continental Micronesia, Inc. pursuant to 49 U.S.C. Section 41102, applies for renewal of its Route 171 Guam/Saipan-Sapporo/Sendai authority for a five-year period.

Docket Number: OST–95–932.
Date filed: December 15, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 12, 1996.
Description: Application of Cayman Airways Limited, requests Amendment of its Foreign Air Carrier Permit so as to authorize CAL to serve an additional U.S. point, Orlando, Florida.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 95–31248 Filed 12–22–95; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0056.
Form Number: CF 19.
Type of Review: Extension.
Title: Protest.
Description: The CF 19 "Protest" form is used by an importer, filer, or any party at interest to petition the Customs Service, or protest, any action or charge, made by the port director on or against any decisions of the Customs Service, including the legality of all orders and findings entering into the same, as described in 19 U.S.C. 1514(a). The form provides a simple format which can be used by the filer to seek relief from those customs charges.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/Recordkeepers: 3,750.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 41,250 hours.
OMB Number: 1515–0091.
Form Number: None.
Type of Review: Extension.
Title: Importers of Merchandise Subject to Actual Use Provisions.
Description: This part of the regulation provides that certain items may be admitted duty free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 12,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 12,000 hours.
OMB Number: 1515–0106.
Form Number: None.
Type of Review: Extension.
Title: Special Form of Entry For Exhibition.
Description: This form of entry is needed to provide a means by which Customs may control the entry of materials for exhibits.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 35.
Estimated Burden Hours Per Respondent/Recordkeeper: 40 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,400 hours.
OMB Number: 1515–0109.
Form Number: None.
Type of Review: Extension.
Title: Proof of the Use for Rates of Duty Dependent on Actual Use.
Description: The declaration is needed to ensure Customs control over merchandise which is duty free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 700.
Estimated Burden Hours Per Respondent/Recordkeepers: 1 hour, 8 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 4,025 hours.
OMB Number: 1515–0120.
Form Number: None.
Type of Review: Revision.
Title: Commercial Invoices.
Description: The information on the commercial invoice is used for the proper assessment of customs duties. The invoice is attached to the CF 7501. The form is used to assure compliance with statutes and regulations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 350,000.
Estimated Burden Hours Per Respondent: 10 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 84,000 hours.
OMB Number: 1515–0148.
Form Number: CF 331.
Type of Review: Extension.
Title: Manufacturing drawback Entry and/or Certificate.
Description: The CF 331 serves as an entry, a certificate of manufacture and delivery, or a certificate of deliver (or combination) necessary in the filing of a claim for a drawback refund.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 3,500.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 124,998 hours.
OMB Number: 1515–0155.
Form Number: None.
Type of Review: Revision.
Title: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories.
Description: Individuals or companies desiring Customs approval to measure bulk products or analyze importations may apply to Customs by letter. This recognition is required of companies wishing to perform such work on imported merchandise.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeeper: 85.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 185 hours.
OMB Number: 1515–0158.
Form Number: CF 349.
Type of Review: Extension.
Title: Harbor Maintenance Fee.
Description: This collection of information will be used to certify that nonprofit organizations or cooperatives which own or finance cargo that this intended for use in humanitarian or developmental assistance overseas, are entitled to an exemption from the harbor maintenance fee.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 130.
Estimated Burden Hours Per Respondent/Recordkeeper: 25 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 389 hours.
OMB Number: 1515–0189.
Form Number: None.
Type of Review: Revision.
Title: Petroleum Refineries in Foreign Trade Subzones.
Description: This final rule amends Customs regulations by adding subpart 19 CFR 146.91–96 governing the operations of crude petroleum refineries.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 18.
Estimated Burden Hours Per Respondent/Recordkeeper: 738 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 37,440 hours.
OMB Number: 1515–0191.
Form Number: CF 5106.
Type of Review: Extension.
Title: Importer ID Input Record.
Description: The importers identification number CF 5106 is filed with the first formal entry on the first request for services. The service request will result in the issuance of a bill or refund check upon an adjustment of a cash collection.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: Other (change in name or address).
Estimated Total Reporting Burden: 100 hours.
Clearance Officer: Norman Waits, (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–31228 Filed 12–22–95; 8:45 am]
BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

December 7, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1422.
Regulation ID Number: FI–72–93 NPRM and Temporary.
Type of Review: Extension.
Title: Mark to Market for Dealers in Securities.

Federal Aviation Administration

Advisory Circulars: Small Airplanes Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Publication of Advisory Circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1995. The AC's listed below relate to Part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Ms. Terre Flynn, Standards Staff (ACE–110), Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed to update existing policy information for small airplane certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, General Services Section, M–45.3, Washington, DC 20590.

ADVISORY CIRCULARS PUBLISHED

AC No	Date	Title
23.1521.1B	3/2/95	Type Certification of Automobile Gasoline in Part 23 Airplanes With Reciprocating Engines.
23.1309–1B	7/28/95	Equipment, Systems, and Installations in Part 23 Airplanes.

In addition to the AC's listed above, Change 2 to FAA Report, FAA P–8110–2, Airship Design Criteria (ADC), was issued 2/8/95. This change adds the requirements for a fly-by-light control system. Civil Aeronautics Manual 3 (CAM 3), Existence of Design Standards for Acceptance Under Primary Category Rule, was issued 3/17/94. A copy of both of these publications may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri. on December 15, 1995.

Dwight A. Young,
Acting Manager, Small Airplane Directorate Aircraft Certification Office.
[FR Doc. 95–31250 Filed 12–22–95; 8:45 am]
BILLING CODE 4910–13–M

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Description: This information is required by the Internal Revenue Service to verify compliance with section 475 of the Internal Revenue Code. This information will be used to determine whether the amount of tax has been computed correctly. The likely recordkeepers are businesses and other for-profit institutions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 25,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–31229 Filed 12–22–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

December 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by December 22, 1995. To obtain a copy of this information collection, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–15.

Type of Review: Revision.

Title: 1996 Filing Season Written TeleFile Survey.

Description: This request is for a mail out/mail back survey to obtain more detailed information from taxpayers who use TeleFile than the automated survey can obtain.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,800.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 467 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–31230 Filed 12–22–95; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 247
Tuesday, December 26, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 65092, December 18, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, December 21, 1995.

CHANGES IN THE MEETING: The open meeting has been canceled, and the scheduled items were handled via notation voting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31312 Filed 12–21–95; 11:04 am]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 25, 1995 and January 1, 8 and 15, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Friday, January 5

10:00 a.m.

Briefing by NRC Staff on Industry Restructuring and Deregulation (Public Meeting) (Contact: Scott Newberry, 301–415–1183)

Week of January 8—Tentative

There are no meetings scheduled for the Week of January 8.

Week of January 15—Tentative

There are no meetings scheduled for the Week of January 15.

Note: the Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine ACt were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: December 20, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–31341 Filed 12–21–95; 2:02 pm]

BILLING CODE 7590–01–M

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federal register

Tuesday
December 26, 1995

Part II

Federal Communications Commission

Semiannual Report Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353; for the Period Beginning April 1, 1995 and Ending September 30, 1995; Summary Report; Notices

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FEDERAL COMMUNICATIONS COMMISSION

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353; for the Period Beginning April 1, 1995 and Ending September 30, 1995; Summary Report

Reimbursement/In-kind Payments in Excess of $250

Total Number of Sponsored Events: 86.

Total Number of Sponsoring Organizations: 76.

Total Number of Different Commissioners/Employees Attending: 82.

Total Amount of Reimbursement Received

	Check	In-kind
In excess of $250	$103,597.12	$42,437.98
Under $250 (Detail not included)	948.25	356.60
Total	104,545.37	42,794.58

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* ABA 48th Annual Winter Convention.
4. *Sponsor of Event:* Alabama Broadcasters Association—ABA.
5. *Sponsor Address:* 1316 Alford Avenue, Birmingham, AL 35226.
6. *Location of Event:* Montgomery, Alabama.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/03–05/95.
9. *Travel Dates:* 02/03–05/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$535.00	
2. Hotel Room	102.00	
3. Meals	71.50	
4. Telephone, Mileage & Taxi	35.51	
	744.01	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kelly Cameron.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* Seminar on Satellite Communications.
4. *Sponsor of Event:* AHCIET.
5. *Sponsor Address:* Calle La Pradera No. 510, y San Salvador, Casilla 17–1106942.
6. *Location of Event:* Lima, Peru.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/21–22/94.
9. *Travel Dates:* 07/20–24/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$1188.95	
2. Hotel Room		
3. Meals		
4. Parking, Mileage & Taxi		
	1188.95	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lynn Remly.
Government Position: Attorney, Office of Engineering & Technology.
3. *Event:* Successful Development Strategies For PCS Conference.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* 50 Broad Street, 19th Floor, New York, NY 10004.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 2/28–3/1/95.
9. *Travel Dates:* 02/27–28/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$195.00
2. Hotel Room		147.00
3. Meals	$49.50	
4. Taxi	50.00	
	99.50	343.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. Employee: Deborah Dupont.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* The State Role in Telecommunications Regulation.
4. *Sponsor of Event:* Albany Law School.
5. *Sponsor Address:* Government Law Center, Albany Law School, 80 New Scotland Avenue, Albany, NY 12208.
6. *Location of Event:* Albany, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/20–21/95.
9. *Travel Dates:* 04/20–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$276.00	
2. Hotel Room		$49.00
3. Meals	51.00	
4. Taxi	34.00	
	361.00	49.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Larry Atlas.
Government Position: Associate Bureau Chief, Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* Argus Business.
5. *Sponsor Address:* 214 Massachusetts Avenue NE., Suite 360, Washington, DC 20002.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/25–27/95.
9. *Travel Dates:* 04/24–26/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$299.00	
2. Hotel Room		$300.00
3. Meals	114.00	
4. Mileage & Taxi	98.00	
	511.00	300.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathyrn M. Garland
Government Position: Chief, Consumer Assistance Branch Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* Argus Business.
5. *Sponsor Address:* 214 Massachusetts Avenue NE., Suite 360, Washington, DC 20002.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/25–27/95.
9. *Travel Dates:* 04/24–28/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		
2. Hotel Room		$320.76
3. Meals		29.82
4. Telephone		
		350.58

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Comunications Commission.
2. *Employee:* Ralph A. Haller.
Government Position: Deputy Chief, Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* Argus Business.
5. *Sponsor Address:* 214 Massachusetts Avenue, N.E., Suite 360, Washington, D.C. 2002.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/25–27/95.
9. *Travel Dates:* 04/22–05/01/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$263.00	
2. Hotel Room	108.00	
3. Meals	161.50	
4. Parking & Mileage	51.40	
5. Car Rental	70.59	
	654.49	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* W. Riley Hollingsworth.
Government Position: Deputy Chief, Office of Operations—Gettysburg, PA, Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* Argus Business.
5. *Sponsor Address:* 214 Massachusetts Avenue, N.E., Suite 360, Washington, D.C. 20002.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/25/–27/95.
9. *Travel Dates:* 04/25–27/95.
10. (a)

Nature of benefit:	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$262.00	
2. Hotel Room		$224.64
3. Meals	114.00	
4. Parking, Mileage & Taxi	108.20	
	484.20	224.64

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert H. McNamara.
Government Position: Acting Chief, Private Radio Division, Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* Argus Business.
5. *Sponsor Address:* 214 Massachusetts Avenue, N.E., Suite 360, Washington, D.C. 20002.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/25–27/95.
9. *Travel Dates:* 04/ /95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$263.00	
2. Hotel Room		$200.00
3. Meals	95.00	
4. Mileage & Taxi	48.50	
	406.50	200.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary P. McNanus.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* Film Series "Women in the Public Sphere".
4. *Sponsor of Event:* Annenberg School for Communication, University of Pennsylvania.
5. *Sponsor Address:* 3620 Walnut Street, Philadelphia, PA 19104–6220.
6. *Location of Event:* Philadelphia, Pennsylvania.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/26/95.
9. *Travel Dates:* 01/26/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$104.00	
2. Hotel Room		
3. Meals	25.50	
4. Parking	10.00	
	139.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen Collins.
Government Position: Attorney, International Bureau.
3. *Event:* Telecommunications Management Education in the Czech Republic, Hungary & Poland.
4. *Sponsor of Event:* Business-Higher Education Forum.
5. *Sponsor Address:* One Dupont Circle, Suite 800, Washington, DC 20036.
6. *Location of Event:* Boulder, Colorado.
7. *Employee's Role:* Participate in Meeting.
8. *Dates of Event:* 10/18–19/94.
9. *Travel Dates:* 10/18–19/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$658.65	
2. Hotel Room		$119.41
3. Meals	76.00	
4. Parking & Taxi	65.00	
	799.65	119.41

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary E. Burns.
Government Position: Chief, Consumer Protection Division, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room		$320.92
3. Meals	85.50	
4. Taxi	21.50	
	448.00	320.92

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James Casserly.
Government Position: Senior Legal Advisor to Commissioner Susan Ness.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$317.00	
2. Hotel Room		$300.00
3. Meals		136.00
4. Taxi		
	317.00	436.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Advisor to Commissioner Andrew C. Barrett.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/30–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$317.00	
2. Hotel Room		$300.00
3. Meals		136.00
4. Taxi		
	317.00	436.00

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		$203.40
3. Meals	104.50	45.70
4. Taxi & Telephone	16.00	
	436.50	249.10

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room		$203.40
3. Meals	23.29	
4. Taxi & Telephone	93.00	
	508.29	203.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government Position: Chief, Economist, Office of Plans & Policy.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/30–12/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$356.00	
2. Hotel Room		$203.40

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	57.00	
4. Taxi	39.00	
	452.00	203.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff to Chairman Reed E. Hundt.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room		203.40
3. Meals	85.50	26.77
4. Mileage & Parking	35.50	
5. Telephone, Faxes & Movie		39.70
	513.00	269.87

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary P. McManus.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$356.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		$300.00
3. Meals		136.00
	356.00	436.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12–01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$317.00	
2. Hotel Room		$200.00
3. Meals		102.00
4. Taxi & Telephone		
	317.00	302.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen A. O'Connell.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/30–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$353.00	
2. Hotel Room		$142.00
3. Meals	85.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi, Parking & Mileage	25.00	
	463.50	142.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James W. Olson.
Government Position: Chief, Competition Division, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 12/29–12/04/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$395.00	
2. Hotel Room		$549.18
3. Meals	16.50	51.99
4. Taxi & Telephone	42.75	3.90
5. Car Rental	39.87	
	494.12	605.07

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ronald Parver.
Government Position: Chief, Technical Services Team, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$382.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		$203.40
3. Meals	104.50	
4. Taxi	74.00	
	570.50	203.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa B. Smith.
Government Position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$396.00	5
2. Hotel Room		305.10
3. Meals	114.00	
4. Taxi	20.00	
	530.00	305.10

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Merrill Spiegel.
Government Position: Special Assistant to Chairman Reed E. Hundt.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/30–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$392.00	
2. Hotel Room		171.45

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	123.50	
4. Taxi	90.00	
	605.50	171.45

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Melissa Waksman.
Government Position: Senior Attorney, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/02/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$79.00	
2. Hotel Room		$305.10
3. Meals		39.49
4. Telephone		19.17
	79.00	363.76

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John P. Wong.
Government Position: Deputy Chief, Technical Services Team, Cable Services Bureau.
3. *Event:* Western Cable Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anabeim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/30–12/02/94.
9. *Travel Dates:* 11/29–12/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$392.00	
2. Hotel Room		$305.10

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	142.50	
4. Mileage, & Parking	44.00	
	578.50	305.10

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert W. Spangler.
Government Position: Deputy Chief, Enforcement Division, Common Carrier Bureau.
3. *Event:* 1995 Winter Conference, "Protection for the 90s".
4. *Sponsor of Event:* Communication Fraud Control Association—CFCA.
5. *Sponsor Address:* 1990 M Street, NW., Suite 508, Washington, DC 20036.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/22–23/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$380.00	
2. Hotel Room	49.95	
3. Meals	45.00	
4. Telephone, Mileage & Taxi	34.25	
	509.20	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* Convergence '95 Conference.
4. *Sponsor of Event:* Chilton Communications.
5. *Sponsor Address:* 600 S. Cherry Street, Suite 400, Denver, CO 80222.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/19–21/95.
9. *Travel Dates:* 04/19–20/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$152.00	
2. Hotel Room	104.00	
3. Meals	57.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi	67.75	
	380.75	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Aileen A. Pisciotta.
Government Position: Chief, Planning & Negotiations Division, International Bureau.
3. *Event:* Tenth National & First Andean.
4. *Sponsor of Event:* Colombian Telecommunications Research Center—CINTEL.
5. *Sponsor Address:* Av. 9 No. 118–85, Santa Fe de Bogota, Columbia.
6. *Location of Event:* Cartagena, Columbia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/10–12/95
9. *Travel Dates:* 05/09–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$875.95
2. Hotel Room		327.12
3. Meals		200.00
		1403.07

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen B. Levitz.
Government Position: Deputy Chief, Common Carrier Bureau.
3. *Event:* Conference on "International Simple Resale".
4. *Sponsor of Event:* CommEd Limited.
5. *Sponsor Address:* Communications House, 137 Dulwich Road, London SE24 ONG.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/17–18/94.
9. *Travel Dates:* 11/15–20/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$561.35	
2. Hotel Room		$340.00

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	150.50	
4. Taxi & Telephone	90.93	
	802.78	340.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* Conference on "Access Networks".
4. *Sponsor of Event:* CommEd Limited.
5. *Sponsor Address:* Communications House, 137 Dulwich Road, London SE24 ONG.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/15–16/94.
9. *Travel Dates:* 12/13–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$1087.65
2. Hotel Room		441.00
3. Meals	50.65	258.00
4. Taxi	9.38	
	60.03	1786.65

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mark A. Corbitt.
Government Position: Director, Technology Policy, Office of Plans & Policy.
3. *Event:* Product Definition Summit.
4. *Sponsor of Event:* CMP Publishing—Electronic Engineering Times & OEM Magazine.
5. *Sponsor Address:* Attn: Irene McCarty, 600 Community Drive, Manhasset, NY 11030.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/21/95.
9. *Travel Dates:* 4/20–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$135.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		99.00
3. Meals	57.00	
4. Taxi	76.00	
	268.00	99.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Brian F. Fontes.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* CS First Boston.
4. *Sponsor of Event:* CS First Boston Corp.
5. *Sponsor Address:* 55 East 52nd Street, New York City, NY 10055.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/06/93.
9. *Travel Dates:* 12/05–06/93.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$142.00	
2. Hotel Room		$254.82
3. Meals	66.50	
4. Taxi & Parking	29.00	
	237.50	254.82

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Gregory J. Vogt.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* Annual Legislative Conference.
4. *Sponsor of Event:* Cable Television Association of New York.
5. *Sponsor Address:* 126 State Street, Third Floor, Albany, NY 12207.
6. *Location of Event:* Albany, New York.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/15/95.
9. *Travel Dates:* 05/15/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Airline Ticket	$276.00	
2. Hotel Room		
3. Meals	3.26	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Parking, Mileage & Taxi	26.20	
	305.46	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Peter F. Cowhey.
Government Position: Chief, Multilateral & Development Branch, International Bureau.
3. *Event:* Digital World Conference.
4. *Sponsor of Event:* Digital World.
5. *Sponsor Address:* 303 Vintage Park Drive, Foster City, CA 94404.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/04/95.
9. *Travel Dates:* 06/04–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$1369.38
2. Hotel Room		
3. Meals		1369.38

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Bruce A. Franca.
Government Position: Deputy Chief Engineer, Office of Engineering & Technology.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/06–09/95.
9. *Travel Dates:* 01/05–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$35.00	$494.50
2. Hotel Room		477.00
3. Meals	152.00	
4. Parking	27.00	
	214.00	971.50

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(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/06–09/95.
9. *Travel Dates:* 01/05–06/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$921.00	
2. Hotel Room		$172.72
3. Meals	66.50	
4. Taxi	20.00	
	1007.50	172.72

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/06–08/95.
9. *Travel Dates:* 01/06–08/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room		$148.00
3. Meals	38.00	
4. Taxi	17.00	
	364.00	148.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Saul Shapiro.
Government Position: Director, Technology Policy, Office of Plans & Policy.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Assist Chairman in preparing for Keynote Address.
8. *Dates of Event:* 01/06–08/95.
9. *Travel Dates:* 01/05–08/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$868.00	
2. Hotel Room		$222.00
3. Meals	6.18	
4. Telephone & Taxi	35.50	
	709.68	222.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas P. Stanley.
Government Position: Chief Engineer, Office of Plans & Policy.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/06–08/95.
9. *Travel Dates:* 01/05–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$	$554.00
2. Hotel Room		276.00
3. Meals	15.00	
4. Taxi	35.00	
	50.00	830.50

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* R. Alan Stillwell.
Government Position: Industry Economist, Office of Engineering & Technology.
3. *Event:* 1995 Winter International Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/06–08/95.
9. *Travel Dates:* 01/5–9/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$	$494.50
2. Hotel Room		636.00
3. Meals	190.00	
4. Mileage & Taxi	23.40	
	213.40	1130.50

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* 1995 FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FBCA.
5. *Sponsor Address:* 1722 Eye Street, N.W., Suite 300, Washington, DC 20006.
6. *Location of Event:* Hot Springs, Virginia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/19–21/95.
9. *Travel Dates:* 05/19–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$126.00	
2. Hotel Room		432.64
3. Meals		100.00
	126.00	532.64

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Advisor to Commissioner Andrew C. Barrett.
3. *Event:* 1995 FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FBCA.
5. *Sponsor Address:* 1722 Eye Street NW., Suite 300, Washington, DC 20006.
6. *Location of Event:* Hot Springs, Virginia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/19–21/95.
9. *Travel Dates:* 05/19–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$126.00	
2. Hotel Room		$216.00
3. Meals & Registration		100.00
	126.00	316.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Jane E. Mago.
Government Position: Senior Advisor to Commissioner Rachelle B. Chong.
3. *Event:* 1995 FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FBCA.
5. *Sponsor Address:* 1722 Eye Street NW., Suite 300, Washington, DC 20006.
6. *Location of Event:* Hot Springs, Virginia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/19–21/95.
9. *Travel Dates:* 05/19–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$120.00	
2. Hotel Room		$713.84
3. Meals		100.00
	120.00	813.84

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kenneth M. Ackerman.
Government Position: Chief, Accounting Systems Branch, Common Carrier Bureau.
3. *Event:* 1994 Annual Seminar.
4. *Sponsor of Event:* Frederick & Warinner.
5. *Sponsor Address:* 8400 West 110th Street, Suite 450, Overland Park, KS 66210.
6. *Location of Event:* Phoenix, Arizona.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/12–13/94.
9. *Travel Dates:* 12/11–13/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$325.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	364.16	
3. Meals	102.00	
4. Taxi, Mileage & Parking	64.00	
	855.16	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Scott B. Harris.
Government Position: Chief, International Bureau.
3. *Event:* Conference on Interconnection.
4. *Sponsor of Event:* Financial Times Business Enterprises Limited.
5. *Sponsor Address:* 102–108 Clerkenwell Road London EC1M 5SA.
6. *Location of Event:* London, England.
7. *Employee's Role:* Presentation at Conference.
8. *Dates of Event:* 02/08/95.
9. *Travel Dates:* 02/7–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$836.95	
2. Hotel Room		220.00
3. Meals	14.57	
4. Taxi	203.10	
	1054.62	220.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. *Event:* 61st Annual GAB Convention.
4. *Sponsor of Event:* Georgia Association of Broadcasters Inc.—GAB.
5. *Sponsor Address:* Attn: William G. Sanders, 8010 Roswell Road, Suite 260, Atlanta, GA 30350.
6. *Location of Event:* La Grange, Georgia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/16–18/95.
9. *Travel Dates:* 6/16–18/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$415.00	
2. Hotel Room		$200.00
3. Meals	71.50	
4. Car Rental & Parking	110.75	
	597.25	200.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mark A. Corbitt.
Government Position: Telecommunications Policy Analyst, Office of Plans & Policy.
3. *Event:* Second Annual HAA Management Conference.
4. *Sponsor of Event:* Home Automation Association—HAA.
5. *Sponsor Address:* 806 17th Street, N.W., Suite 200, Washington, D.C. 20006.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/29–30/95.
9. *Travel Dates:* 6/28–29/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$152.00	
2. Hotel Room		$104.00
3. Meals		
4. Taxi		
	152.00	104.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission
2. *Employee:* Jonathan V. Cohen.
Government Position: Attorney, Office of Plans & Policy.
3. *Event:* Winter Investor Conference.
4. *Sponsor of Event:* Hanifen, Imhoff Inc.
5. *Sponsor Address:* 1126 17th Street, Suite 1600, Denver, CO 80201.
6. *Location of Event:* Beaver Creek, Colorado.
7. *Employee's Role:* Presentation at Conference.
8. *Dates of Event:* 03/09/95.
9. *Travel Dates:* 03/08–11/95.
10. (a)

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$276.00	
2. Hotel Room		810.00
3. Meals	26.84	
4. Taxi	172.58	
	477.42	810.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert F. Cleveland.
Government Position: Physical Scientist, Office of Engineering & Technology.
3. *Event:* IBA Fall Meeting.
4. *Sponsor of Event:* International Bar Association—IBA.
5. *Sponsor Address:* Goldberg, Godles, Wiener & Wright Law Offices, International Bar Association, 1229 19th Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Participate in a session on mobile satellite systems.
8. *Dates of Event:* 10/10–14/93.
9. *Travel Dates:* 10/12–13/93.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$429.00	
2. Hotel Room	84.25	
3. Meals	59.50	
4. Taxi	56.00	
	628.75	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Byron F. Marchant.
Government Position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* IBA Fall Meeting.
4. *Sponsor of Event:* International Bar Association—IBA.
5. *Sponsor Address:* Golderg, Godles, Wiener & Wright Law Offices, International Bar Association, 1229 19th Street, NW., Washington, DC 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Participate in a session on mobile satellite systems.
8. *Dates of Event:* 10/10–14/93.
9. *Travel Dates: 10/11/93.*
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$429.00	
2. Hotel Room	83.25	
3. Meals	25.50	
4. Taxi	54.00	
	591.75	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* Broadcast Pioneers 1995.
4. *Sponsor of Event:* International Bar Association—IBA.
5. *Sponsor Address:* 11595 North Meridian Street, Suite 300, Carmel, IN 46032.
6. *Location of Event:* Indianapolis, Indiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/19/95.
9. *Travel Dates: 04/19–20/95.*
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Airline Ticket	$404.00	
2. Hotel Room		71.00
3. Meals		
	404.00	71.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government Position: Deputy Chief, Wireless, Telecommunications Bureau.
3. *Event:* Mobile Insights '95.
4. *Sponsor of Event:* International Data Corporation & Mobile Computing Insights Inc.
5. *Sponsor Address:* 20823 Stevens Creek Blvd., Suite 275, Cuperting, CA 95014.
6. *Location of Event:* Scottsdale, Arizona.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 01/29–02/01/95.
9. *Travel Dates:* 01/29–02/01/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$272.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		$300.00
3. Meals	119.00	
4. Taxi & Car Rental	112.61	
	503.61	300.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* Pan-Asian Telecommunications Summit 1994.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* 1804–5 Seaview Commercial Building, 21–24 Connaught Road West, Hong Kong.
6. *Location of Event:* Singapore, Japan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/05–07/94.
9. *Travel Dates:* 12/02–08/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$2546.95	
2. Hotel Room		$325.76
3. Meals	198.00	
4. Taxi, Fax & Telephone	149.97	
	2894.92	325.76

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* Personal Communications Services Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Bridgit Fitzgerald, Glen House, 200/208 Tottenham Court Road, London W1P 9LA.
6. *Location of Event:* Paris, France.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/23–25/95.
9. *Travel Dates:* 01/21–25/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$521.65

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		144.00
3. Meals	$34.81	
4. Taxi	84.09	
	118.90	665.65

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Advisor to Commissioner Andrew C. Barrett.
3. *Event:* Third Annual Conference on Communications, & Media Finance.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* 708 Third Avenue, 4th Floor, New York, NY 10017–4103.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/27–28/95.
9. *Travel Dates:* 02/26–27/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$138.00	
2. Hotel Room		$234.16
3. Meals		
4. Taxi		
	138.00	234.16

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Scott B. Harris.
Government Position: Chief, International Bureau.
3. *Event:* International Mobile Satellite Conference.
4. *Sponsor of Event:* Industry Canada.
5. *Sponsor Address:* Communications Research Centre, 3701 Carling Avenue, P.O. Box 11490, Station H, Ottawa, Ontario, K2H 8S2 Canada.
6. *Location of Event:* Ottawa, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/06/95.
9. *Travel Dates:* 06/06/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Airline Ticket	$425.74	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		139.20
3. Meals	39.75	
4. Taxi	58.40	
	523.89	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* A. Richard Metzger, Jr.
Government Position: Deputy Chief of Operations, Common Carrier Bureau.
3. *Event:* INGAA's Legal Committee.
4. *Sponsor of Event:* Interstate Natural Gas Association of America—INGAA.
5. *Sponsor Address:* 555 13th Street, NW., #300W, Washington, DC 20004.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/27/95.
9. *Travel Dates:* 03/26–27/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$398.00	
2. Hotel Room		122.00
3. Meals	52.00	
4. Taxi	71.75	
	521.75	122.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$284.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	222.00	
3. Meals	142.50	
4. Taxi	132.50	
	781.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room	206.97	
3. Meals	142.50	
4. Faxes, Telephone & Taxi	144.66	
	803.13	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lyndon Boozer.
Government Position: Legislative Affairs Specialist, Office of Legislative & Intergovernmental Affairs.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates: 01/21–23/95.*
10. (a)

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$316.00	
2. Hotel Room	138.00	
3. Meals	85.50	
4. Taxi	30.00	
	569.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Judith Harris.
Government Position: Director, Office of Legislative & Intergovernmental Affairs.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations, Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–23/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$314.00	
2. Hotel Room	137.98	
3. Meals	95.00	
4. Telephone & Taxi	28.75	
	575.73	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief Cable Services Bureau.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 1/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room	208.97	
3. Meals	152.00	
4. Taxi	41.00	
	708.97	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee: Michael L. Katz.*
Government Position: Chief Economist Office of Plans & Policy.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/22–24/95.
10.(a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$308.00	
2. Hotel Room	138.00	
3. Meals	95.00	
4. Taxi	42.00	
	583.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$284.00	
2. Hotel Room	206.97	
3. Meals	142.50	
4. Taxi	17.50	
	650.97	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Barbara A. Kreisman.
Government Position: Chief, Video Services Mass Media Bureau.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–24/95.
9. *Travel Dates:* 01/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$381.00	
2. Hotel Room	138.00	
3. Meals	104.50	
4. Taxi	64.00	
	687.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff..
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.

7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$308.00	
2. Hotel Room	138.00	
3. Meals	85.50	
4. Parking & Taxi	28.00	
5. Telephone	36.91	
	596.41	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Jane Mego.
Government Position: Senior Legal Advisor to Commissioner Rachelle Chong.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room	207.00	
3. Meals	133.00	
4. Parking & Taxi	57.00	
	706.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 1/22–24/95.
10. (a)

Nature of benefit	(c) Type and amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$888.00	
2. Hotel Room	137.98	
3. Meals	104.50	
4. Taxi	100.05	
5. Telephone & Faxes	30.75	
	$1261.28	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen O' Connell.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 1/22–25/95.
10. (a)

Nature of Benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$342.00	
2. Hotel Room	137.98	
3. Meals	77.00	
4. Telephone & Taxi	124.00	
	$680.98	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government Position: Commissioner.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executive—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–25/95.
10. (a)

Nature of benefit	(c) Type & Amount of Payment	
	Check	In-kind
1. Roundtrip Transportation	$310.00	
2. Hotel Room	251.52	
3. Meals	171.00	
4. Telephone & Taxi	74.02	
	836.54	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* David R. Siddall.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executive—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–24/95.
10. (a)

Nature of Benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$888.00	
2. Hotel Room	137.98	
3. Meals	104.50	
4. Taxi	88.80	
5. Telephone & Taxi	32.86	
	1,252.14	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa B. Smith.
Government Position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.

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6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–25/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$287.00	
2. Hotel Room	276.00	
3. Meals	171.00	
4. Telephone & Taxi	162.00	
	896.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Merrill Spiegel.
Government Position: Special Assistant to Chairman Reed E. Hundt.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/21–25/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$312.00	
2. Hotel Room	276.00	
3. Meals	180.00	
4. Telephone & Taxi	124.75	
	893.25	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Martin L. Stern.
Government Position: Deputy Chief, Competition Division Office of the General Counsel.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room	138.00	
3. Meals		
4. Taxi	47.00	
	$494.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$285.00	
2. Hotel Room	208.97	
3. Meals	142.50	
4. Parking, Mileage & Taxi	64.00	
5. Telephone	2.57	
	701.04	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Gregory Vogt.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* INTV/NATPE Joint Convention.
4. *Sponsor of Event:* Association of Independent Television Stations Inc.—INTV & National Association of Television Program Executives—NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street NW., Suite 300, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/22–26/95.
9. *Travel Dates:* 01/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$308.00	
2. Hotel Room	138.00	
3. Meals	85.50	
4. Telephone, Mileage & Taxi	37.00	
	568.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Advisor to Commissioner Andrew C. Barrett.
3. *Event:* 90th Annual Convention of ITA.
4. *Sponsor of Event:* Illinois Telephone Association—ITA.
5. *Sponsor Address:* P.O. Box 730, 300 East Monroe Street, Springfield, IL 62705.
6. *Location of Event:* Lake Geneva, Wisconsin.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 6/25–27/95.
9. *Travel Dates:* 6/25–26/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$227.00	
2. Hotel Room		135.63
3. Meals	66.50	11.22
4. Parking & Telephone	16.00	
5. Car Rental & Gas	90.30	4.50
	401.80	151.35

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas P. Stanley.
Government Position: Chief Engineer, Office of Plans & Policy.
3. *Event:* Commsphere 95.
4. *Sponsor of Event:* International Union for Radio Science.

5. *Sponsor Address:* Dr. Joseph Shapira, 23 Sweden Street, Haifa, Israel 34980.
6. *Location of Event:* Eilat, Israel.
7. *Employee's Role:* Participation in two Sessions.
8. *Dates of Event:* 01/22–27/95.
9. *Travel Dates:* 01/20–28/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$1390.95	
2. Hotel Room	820.00	
3. Meals	618.00	
	$2828.95	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* LAB's 1995 Annual Convention.
4. *Sponsor of Event:* Louisiana Association of Broadcasters—LAB.
5. *Sponsor Address:* 8762 Quarters Lake Road, Baton Rouge, LA 70809.
6. *Location of Event:* Baton Rouge, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/09–11/95.
9. *Travel Dates:* 02/09–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$1355.95	
2. Hotel Room		
3. Meals		
	1355.95	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government Position: Commissioner.
3. *Event:* KBA's Spring Convention.
4. *Sponsor of Event:* Kentucky Broadcasters Association—KBA.
5. *Sponsor Address:* Attn: J. T. Whitlock, WLBN/WLSK Station, Radio Station Road, P.O. Box 680, Lebanon, KY 40033.
6. *Location of Event:* Louisville, Kentucky.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/15–17/95.
9. *Travel Dates:* 05/15–16/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$216.00	
2. Hotel Room	162.00	
3. Meals	112.50	
4. Mileage & Taxi	33.00	
	$523.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Bruce A. Franca.
Government Position: Deputy Chief, Office of Engineering & Technology.
3. *Event:* Global Telecommunications Conference.
4. *Sponsor of Event:* Lehman Brothers Inc.
5. *Sponsor Address:* 3 World Financial Center New York, NY 10285.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/07/94.
9. *Travel Dates:* 12/07/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$399.00	
2. Hotel Room	60.00	
3. Meals	42.50	
4. Taxi	51.00	
	492.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas P. Stanley.
Government Position: Chief Engineer, Office Plans & Policy.
3. *Event:* KTIS '95.
4. *Sponsor of Event:* Korea Telecom.
5. *Sponsor Address:* 17, Woomyeon-dong, Seocho-gu, Seoul, 137–792, Korea.
6. *Location of Event:* Seoul, Korea.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/11–12/95.
9. *Travel Dates:* 07/08–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$490.09	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		
3. Meals	28.50	
4. Taxi, Mileage & Telephone	78.50	
	597.09	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement, Mass Media Bureau.
3. *Event:* Great Lake Boardcasting Conference.
4. *Sponsor of Event:* Michigan Association of Broadcasters—MAB.
5. *Sponsor Address:* 819 N. Washington Avenue, Lansing, MI 48906.
6. *Location of Event:* Lansing, Michigan.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/21/95.
9. *Travel Dates:* 02/20–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$562.00	
2. Hotel Room	54.00	
3. Meals	37.50	
4. Parking	10.00	
	683.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* MAB Convention.
4. *Sponsor of Event:* Mississippi, Association of Broadcasters—MAB.
5. *Sponsor Address:* 15 Northtown Drive, Suite A, Jackson, MS 39211.
6. *Location of Event:* Biloxi, Mississippi.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/15–18/95.
9. *Travel Dates:* 6/16–18/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$301.00	
2. Hotel Room	142.00	

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	90.00	
4. Taxi & Telephone	58.05	
	591.05	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. *Event:* 45th Annual MBA Convention.
4. *Sponsor of Event:* Minnesota Broadcasters Association—MBA.
5. *Sponsor Address:* 3517 Raleigh Avenue, P.O. Box 16030, St. Louis, MN 55416–0030.
6. *Location of Event:* Willmar, Minnesota.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/06–08/94.
9. *Travel Dates:* 10/7–8/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$418.00	
2. Hotel Room	40.00	
3. Meals		
4. Taxi & Telephone	15.00	
	473.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mark Nadel.
Government Position: Attorney Advisor, Common Carrier Bureau.
3. *Event:* Symposium on Universal Service Obligation.
4. *Sponsor of Event:* Mercury Communications.
5. *Sponsor Address:* St. Giles Court, 24 Castile Street, Cambridge, CB3 OAJ UK.
6. *Location of Event:* Cambridge, United Kingdom.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/12–13/94.
9. *Travel Dates:* 12/09–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$712.35	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	97.00	$247.50
3. Meals	217.75	82.61
4. Taxi, & Telephone	55.03	
	1082.13	330.11

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Donald H. Gips.
Government Position: Deputy Chief, Office of Plans & Policy.
3. *Event:* Worldwide Telecommunications Conference.
4. *Sponsor Event:* McKinsey & Co.
5. *Sponsor Address:* Attn: Peter Bisson, 55 East 52 Street, 18th Floor, New York, NY 10122.
6. *Location of Event:* Boca Raton, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/06/95.
9. *Travel Dates:* 06/04–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$462.00	
2. Hotel Room		$350.54
3. Meals		
4. Taxi,	36.00	
5. Movie & Telephone		37.27
	498.00	387.81

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee: Reed E. Hundt.*
Government Position: Chairman.
3. *Event:* Worldwide Telecommunications Conference.
4. *Sponsor of Event:* McKinsey & Co.
5. *Sponsor Address:* Attn: Peter Bisson, 55 East 52 Street, 18th Floor, New York, NY 10122.
6. *Location of Event:* Boca Raton, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/06/95.
9. *Travel Dates:* 04/06–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$401.00	
2. Hotel Room		$350.54
3. Meals		7.69
4. Telephone		.75
	401.00	358.98

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* Telecommunications in the Next Millennium.
4. *Sponsor of Event:* MFS Communications Company, Inc.
5. *Sponsor Address:* Government Affairs Office, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/25/95.
9. *Travel Dates:* 5/23–27/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Airline Ticket	$738.05	
2. Hotel Room		$870.00

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals		
4. Umbrella Rental		7.42
	401.00	357.96

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee: Karen F. Kornbluh.*
Government Position: Telecommunications Policy Analyst, Office of Plans & Policy.
3. *Event:* Worldwide Telecommunications Conference.
4. *Sponsor of Event:* McKinsey & Co.
5. *Sponsor Address:* Attn: Peter Bisson, 55 East 52 Street, 18th Floor, New York, NY 10122.
6. *Location of Event:* Boca Raton, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/06/95.
9. *Travel Dates:* 04/06–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	382.50	
4. Taxi	42.50	
	$1163.05	$870.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* Convergence/Interactive Television Conference.
4. *Sponsor of Event:* Multichannel CommPerspectives.
5. *Sponsor Address:* 600 S. Cherry Street, Suite 400, Denver, CO 80222.
6. *Location of Event:* Philadelphia, Pennsylvania.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/15–17/95.
9. *Travel Dates:* 02/15–17/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$104.00	
2. Hotel Room	107.35	
3. Meals	38.00	
4. Taxi	26.00	
	275.35	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Saul T. Shapiro.
Government Position: Director, Technology Policy Office of Plans & Policy.
3. *Event:* Convergence/Interactive Television Conference.
4. *Sponsor of Event:* Multichannel CommPerspectives.
5. *Sponsor Address:* 600 S. Cherry Street, Suite 400, Denver, CO 80222.
6. *Location of Event:* Philadelphia, Pennsylvania.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/15–17/95.
9. *Travel Dates:* 02/16/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$104.00	
2. Hotel Room	107.35	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	2.05	
4. Taxi	22.50	
	235.90	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Beverly G. Baker.
Government Position: Chief, Compliance & Information Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/10–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$454.00	
2. Hotel Room	207.36	
3. Meals	142.50	
4. Taxi & Telephone	43.75	
	877.61	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates: 04/11–13/95.*
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$268.00	
2. Hotel Room	207.36	
3. Meals	114.00	
4. Taxi & Fax	118.50	
	707.86	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lauren J. Belvin.
Government Position: Senior Legal Advisor to Commissioner James H. Quello.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/11–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$299.00	
2. Hotel Room	298.00	
3. Meals	180.50	
4. Taxi & Telephone	73.57	
	$849.07	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–14/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room	414.72	
3. Meals	256.50	
4. Taxi, Fax & Telephone	83.99	
	1055.21	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert F. Cleveland.
Government Position: Physical Scientist, Office of Engineering & Technology.

3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room	275.40	
3. Meals	142.50	
4. Taxi & Telephone	58.00	
	775.90	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Larry D. Eads.
Government Position: Chief, Audio Services Division, Mass Media Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/11–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room		$138.24
3. Meals	104.50	
4. Taxi & Mileage	47.80	
	590.54	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert D. Greenberg.
Government Position: Assistant Chief, FM Branch, Mass Media Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/10–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$344.00	
2. Hotel Room		$311.04
3. Meals	142.50	
4. Taxi & Telephone	57.50	
	544.00	311.04

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* William H. Hassinger.
Government Position: Assistant Chief, Engineering, Mass Media Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/10–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$264.00	
2. Hotel Room	222.00	
3. Meals	133.00	
4. Taxi & Mileage	60.80	
	579.80	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	

8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/10–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	138.24	
3. Meals	95.00	
4. Telephone	59.00	
	592.24	

(b) *Non-Fed Source:* Same as No. 4.
1. Agency: Federal Communications Commission.
2. Employee: Charles W. Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. Event: NAB's Annual Convention.
4. Sponsor of Event: National Association of Broadcasters—NAB.
5. Sponsor Address: 1771 N Street, N.W., Washington, D.C. 20036.
6. Location of Event: Las Vegas, Nevada.
7. Employee's Role: Speaker.
8. Dates of Event: 04/09-13/95.
9. Travel Dates: 04/08-13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$264.00	
2. Hotel Room	345.60	
3. Meals	218.50	
4. Taxi & Telephone	38.50	
	866.60	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard.
Government Position: General Counsel.
3. *Event:* NAB's Annual convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 2001 Pennsylvania Ave., N.W., 11th Floor, Washington, D.C. 20006.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09-13/95.
9. *Travel Dates:* 04/07-12/95
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room		

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals		
4. Taxi	47.50	
	347.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Barbara A. Kreisman.
Government Position: Chief, Video Services Division, Mass Media Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$299.00	
2. Hotel Room	207.36	
3. Meals	114.00	
4. Taxi & Telephone	185.21	
	805.57	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff to Chairman Reed E. Hundt.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room	138.24	
3. Meals	95.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi, Mileage & Parking	73.92	
	507.16	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Jane E. Mago.
Government Position: Senior Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room	276.48	
3. Meals	180.50	
4. Taxi	59.50	
	816.48	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John T. Nakahata.
Government Position: Attorney Advisor, for Chairman Reed E. Hundt.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room	69.12	
3. Meals	85.50	
4. Taxi & Telephone	138.84	
	634.46	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi, Copies & Telephone	71.86	
	605.10	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$270.00	
2. Hotel Room	124.24	
3. Meals	95.50	
4. Taxi & Telephone		
	489.74	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen O'Connell.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcaster—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/10–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room	69.12	
3. Meals	85.50	
4. Taxi & Telephone	138.84	
	634.46	

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(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government Position: Commissioner.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room	370.00	
3. Meals	218.50	
4. Taxi & Telephone	130.34	
	1018.84	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* David R. Siddall.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Sabrina Coleman, 2001 Pennsylvania Avenue, NW., 11th Floor, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–13/95.
10. (a)

Nature of benefit:	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip transportation	$400.00	
2. Hotel Room	$207.36	
3. Meals	123.50	
	730.86	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa B. Smith.
Government Position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Sabrina Coleman, 2001 Pennsylvania Avenue, N.W., 11th Floor, Washington, D.C. 20006.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/09–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$343.00	
2. Hotel Room	276.48	
3. Meals	171.00	
4. Taxi & Telephone	89.50	
	879.98	

(b). *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–14/95.
10. (a)

Nature of benefit	(c) Type & account of payment	
	Check	In-kind
1. Roundtrip Transportation	$308.00	
2. Hotel Room	414.72	
3. Meals	256.50	
4. Taxi, Mileage & Parking	47.00	
	1026.22	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee: Roy J. Stewart.*
Government Position: Chief, Mass Media Bureau.
3. *Event:* NAB's Annual Convention.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1717 N Street, N.W., Washington DC 20036
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/09–13/95.
9. *Travel Dates:* 04/08–12/95.
10.(a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$264.00	
2. Hotel Room	276.46	
3. Meals	180.00	
4. Mileage & Parking	57.00	
5. Telephone	4.41	
	$781.87	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2.*Employee: Andrew C. Barrett.*
Government Position: Commissioner.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/08–15/94.
10.(a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$21.00	
2. Hotel Room	202.92	
3. Meals	95.00	
4. Taxi, Mileage & Telephone	46.00	
	$364.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* David R. Siddall.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Participant in a Answer Service.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	304.38	
3. Meals	104.00	
4. Taxi, Mileage & Telephone	50.00	
	850.38	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas Power.
Government Position: Attorney Advisory, Policy & Rules Division, Cable Services Bureau.
3. *Event:* North Central Cable Show.
4. *Sponsor of Event:* North Central Cable Television Association—NCCTA.
5. *Sponsor Address:* 450 North Syndicate.
6. *Location of Event:* Minneapolis, Minnesota.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/27/95.
9. *Travel Dates:* 03/26–27/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$364.00	
2. Hotel Room		
3. Meals	59.50	
	423.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Anthony L. Williams.
Government Position: Director, Office of Small Business Activity.
3. *Event:* 8th Annual NAMIC/NCTA Urban Markets Seminar.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/22–23/94.
9. *Travel Dates:* 09/21–22/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$196.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	138.50	120.81
3. Meals	57.00	
4. Parking, Mileage & Taxi	48.00	
5. Telephone	10.71	
	450.21	120.81

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lauren J. Belvin.
Government Position: Senior Legal Advisor to Commissioner James H. Quello.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/06–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	278.00	
3. Meals	153.00	
4. Telephone & Taxi	95.47	
	$916.47	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary Ellen Burns.
Government Position: Chief, Consumer Protection Division, Cable Services Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$390.00	
2. Hotel Room	139.00	
3. Meals	76.50	
4. Telephone & Taxi	16.12	
	821.62	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/06–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$444.00	
2. Hotel Room	208.50	
3. Meals	127.50	
4. Taxi	97.00	
	877.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Advisor to Commissioner Andrew C. Barrett.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable television Assoication—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/06–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$417.00	

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	139.00	
3. Meals	85.00	
4. Fax, Telephone & Taxi	83.12	
	724.12	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	69.50	
3. Meals	59.50	
4. Telephone	20.29	
	539.29	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Johnson.
Government Position: Deputy Chief for Policy, Cable Services Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/07–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	139.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	119.00	
4. Telephone & Taxi	61.93	
	$709.93	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/07–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$469.00	
2. Hotel Room	208.50	
3. Meals	110.50	
4. Fax, Telephone & Taxi	45.60	
	833.60	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard.
Government Position: General Counsel.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	86.45	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals		
4. Fax & Taxi	24.50	
	500.95	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Gary M. Laden.
Government Position: Chief, Policy & Rules Division Cable Services Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/07–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	139.00	
3. Meals	59.50	
4. Taxi	10.95	
	599.45	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Jill M. Luckett.
Government Position: Special Advisor to Commissioner Rachelle B. Chong.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W. Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/06–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$444.00	
2. Hotel Room	278.00	
3. Meals	153.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Parking	26.00	
	901.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John T. Nakahata.
Government Position: Special Assistant to Chairman Reed H. Hundt.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	139.00	
3. Meals	85.00	
4. Copies & Telephone	66.20	
	680.20	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen O'Connell.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$440.00	
2. Hotel Room	139.00	
3. Meals	93.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi, Telephone & Fax	67.02	
	739.52	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government Position: Commissioner.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/06–07/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$390.00	
2. Hotel Room	139.00	
3. Meals	59.50	
4. Taxi	37.00	
	625.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa B. Smith.
Government Position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	139.00	
3. Meals	85.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi	108.10	
	722.10	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* R. Alan Stillwell.
Government Position: Industry Economist, Office of Engineering & Technology.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$390.00	
2. Hotel Room	208.50	
3. Meals	119.00	
4. Mileage, Telephone & Taxi	12.24	
	729.74	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Gregory J. Jogt.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/07–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	208.50	

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	119.00	
4. Mileage & Telephone	7.74	
	725.24	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen M.H. Wallman.
Government Position: Chief, Common Carrier Bureau.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/08–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$444.00	
2. Hotel Room	139.00	
3. Meals	85.00	
4. Fax & Taxi	81.20	
	749.20	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard K. Welch.
Government Position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* 44th Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Ave., NW., Washington, DC 20036.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/07–10/95.
9. *Travel Dates:* 05/07–10/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$444.00	
2. Hotel Room	208.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	119.00	
4. Fax, Mileage & Taxi	53.36	
	824.86	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Karen E. Watson.
Government Position: Director, Office of Public Affairs.
3. *Event:* 1994 Retirement & Benefits Forum.
4. *Sponsor of Event:* National Education Association—NEA.
5. *Sponsor Address:* 1201 16th Street, NW., Washington, DC 20036–3290.
6. *Location of Event:* Maui, Hawaii.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/12–16/94.
9. *Travel Dates:* 10/12–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$889.86	
2. Hotel Room		$603.72
3. Meals	123.09	
4. Taxi & Telephone	149.00	
	1161.95	603.72

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Greg J. Vogt.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* NECTA Annual Convention & Exhibition.
4. *Sponsor of Event:* New England Cable Television Association—NECTA.
5. *Sponsor Address:* 100 Grandview Road, Suite 201, Braintree, MA 02184.
6. *Location of Event:* Newport, Rhode Island.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/24–27/95.
9. *Travel Dates:* 07/24–26/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$198.00	
2. Hotel Room		$290.00
3. Meals	93.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Mileage & Taxi	27.20	100.00
	318.70	390.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert H. Ratcliffe.
Government Position: Assistant Chief for Law, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* Attn: Philip H. Roberts, 7 Centre Drive, Suite One, Jamesburg, NJ 08831.
6. *Location of Event:* Atlantic City, New Jersey.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/12–14/95.
9. *Travel Dates:* 06/12–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Airline Ticket	$64.00	
2. Hotel Room	96.32	
3. Meals	66.50	
4. Telephone	4.89	
	231.71	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* Attn: Philip H. Roberts, 7 Centre Drive, Suite One, Jamesburg, NJ 08831.
6. *Location of Event:* Atlantic City, New Jersey.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/12–14/95.
9. *Travel Dates:* 6/12–13/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Airline Ticket	$71.00	
2. Hotel Room	96.32	
3. Meals	66.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi & Mileage	18.00	
	251.82	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Barbara A. Kreisman.
Government Position: Chief, Video Services Division, Mass Media Bureau.
3. *Event:* New Mexico Broadcasters Convention.
4. *Sponsor of Event:* New Mexico Broadcasters Association—NMBA.
5. *Sponsor Address:* 790–9D Tramway Lane NE., Albuquerque, NM 87122.
6. *Location of Event:* Albuquerque, New Mexico.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/04–07/95.
9. *Travel Dates:* 5/04–06/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$353.00	
2. Hotel Room	120.00	
3. Meals	85.00	
4. Taxi & Telephone	26.43	
	584.43	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* New Mexico Broadcasters Annual Convention.
4. *Sponsor of Event:* New Mexico Broadcasters Association—NMBA.
5. *Sponsor Address:* 790–9D Tramway Lane NE., Albuquerque, NM 87122.
6. *Location of Event:* Albuquerque, New Mexico.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/04–07/95.
9. *Travel Dates:* 05/04–06/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$353.00	
2. Hotel Room	120.00	
3. Meals	85.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
4. Taxi	43.00	
	601.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* NTCA Annual Meeting.
4. *Sponsor of Event:* National Telephone Cooperative Association—NTCA.
5. *Sponsor Address:* 2626 Pennsylvania Avenue, NW., Washington, DC 20037–1695.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/08/95.
9. *Travel Dates:* 02/07–08/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room		
3. Meals	57.00	$36.24
4. Taxi & Telephone	35.00	13.91
	433.00	50.15

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* OAB's Spring Convention.
4. *Sponsor of Event:* Ohio Association of Broadcasters—OAB.
5. *Sponsor Address:* 88 East Broad Street, Suite 1780, Columbus, OH 43215.
6. *Location of Event:* Cleveland, Ohio.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/19–20/95.
9. *Travel Dates:* 04/19–20/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$198.00	
2. Hotel Room		$125.95
3. Meals	38.00	13.06
4. Taxi	55.00	
5. Telephone		.75
	291.00	139.76

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Kelly Cameron.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* Seminar of Interconnection.
4. *Sponsor of Event:* Organismo Supervisor de Inversion Privada en Telecommunicaciones—OSIPTEL.
5. *Sponsor Address:* Camino Real Torre, El Pilar Piso 13, San Isidro, Peru.
6. *Location of Event:* Lima, Peru.
7. *Employee's Role:* Lecturer.
8. *Dates of Event:* 09/01–02/94.
9. *Travel Dates:* 08/31–09/04/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$1205.00
2. Hotel Room		306.00
3. Meals	$231.00	
4. Parking, Mileage & Taxi	47.00	
	278.00	1511.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Donald K. Stockdale.
Government Position: Attorney Advisor, Policy Division, Common Carrier Bureau.
3. *Event:* Annual Summer Convention.
4. *Sponsor of Event:* Oklahoma Telephone Association.
5. *Sponsor Address:* 2200 Classen Boulevard, Suite 850, Oklahoma, OK 73106.
6. *Location of Event:* Lake Ozark, Missouri.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/11–14/95.
9. *Travel Dates:* 06/11–14/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$746.00
2. Hotel Room		67.47
3. Meals		97.40
		910.87

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ervin S. Duggan.
Government Position: Commissioner.

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3. *Event:* Symposium.
4. *Sponsor of Event:* Public Broadcasting Service—PBS.
5. *Sponsor Address:* 1320 Braddock Place, Alexandria, VA 22314.
6. *Location of Event:* Austin, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 11/04–05/93.
9. *Travel Dates:* 11/03–06/93.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$435.00	
2. Hotel Room		$288.00
3. Meals	97.50	
4. Taxi	31.50	
	564.00	288.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James W. Olson.
Government Position: Chief, Competition Division, Office General Counsel.
3. *Event:* PCCA's 50th Annual Convention.
4. *Sponsor of Event:* Power Communication Contractors Association—PCCA.
5. *Sponsor Address:* National Capital Office, 6301 Stevenson Avenue, Suite One, Alexandria, VA 22304.
6. *Location of Event:* Carlsbad, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/25–03/01/95.
9. *Travel Dates:* 02/25–03/01/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$267.00	
2. Hotel Room		$185.00
3. Meals	114.00	
4. Car Rental, Gas & Taxi	168.19	
5. Telephone	100.91	
	650.10	185.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* PICT Conference.
4. *Sponsor of Event:* Programme on Information & Communication Technologies—PICT.
5. *Sponsor Address:* Attn: Helen Foster, Program Administrator, Brunel University, Uxbridge Middlesex, UB8 3PH United Kingdom.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/10–12/95.
9. *Travel Dates:* 05/06–14/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$696.95
2. Hotel Room		612.00
3. Meals		360.00
4. Taxi, Parking & Mileage	$105.69	
	105.69	1668.95

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Steven C. Funkhouser.
Government Position: Public Utilities Specialist Common Carrier Bureau.
3. *Event:* Tariff Training for Pacific/Nevada Bell.
4. *Sponsor of Event:* Pacific Telesis Companies.
5. *Sponsor Address:* 1275 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20004.
6. *Location of Event:* San Francisco, California.
7. Employee's Role: Conduct a Seminar on Tariff Process.
8. *Dates of Event:* 11/02–05/94.
9. *Travel Dates:* 11/02–11/05/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$831.00	
2. Hotel Room		$244.16
3. Meals	76.00	
4. Taxi, Mileage & Telephone	82.63	
	789.63	244.16

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Judith A. Nitsche.
Government Position: Chief, Tariff Review Branch, Common Carrier Bureau.
3. *Event:* Tariff Training for Pacific/Nevada Bell.
4. *Sponsor of Event:* Pacific Telesis Companies.
5. *Sponsor Address:* 1275 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20004.
6. *Location of Event:* San Francisco, California.
7. Employee's Role: Conduct a Seminar on Tariff Process.
8. *Dates of Event:* 11/02–04/94.
9. *Travel Dates:* 11/02–11/05/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$631.00	
2. Hotel Room		$244.16
3. Meals	76.00	
4. Taxi & Telephone	108.50	
	815.50	244.16

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John Scott IV.
Government Position: Economist, Common Carrier Bureau.
3. *Event:* Tariff Training for Pacific/Nevada Bell.
4. *Sponsor of Event:* Pacific Telesis Companies.
5. *Sponsor Address:* 1275 Pennsylvania Avenue, N.W., Suite 400, Washington, D.C. 20004.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Conduct a Seminar on Tariff Process.
8. *Dates of Event:* 11/02–04/94.
9. *Travel Dates:* 11/02–11/04/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$831.00	
2. Hotel Room		$244.16
3. Meals	66.50	
4. Taxi, Mileage & Telephone	85.85	
	783.35	244.16

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government Position: Deputy Chief, Wireless Bureau.
3. *Event:* Forum "Wiring Society for the 21st Century".
4. *Sponsor of Event:* Scientific American.
5. *Sponsor Address:* 415 Madison Avenue New York, NY 10017.

6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/11/95.
9. *Travel Dates:* 04/09–12/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room		$500.00
3. Meals	133.00	
4. Parking, Mileage & Taxi	89.40	
	563.40	500.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* Emerging Technologies Conference.
4. *Sponsor of Event:* Society of Cable Television Engineers Inc.—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341–2401.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 01/05/95.
9. *Travel Dates:* 01/04–06/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$566.00	
2. Hotel Room		$264.00
3. Meals	75.00	
4. Parking, Mileage & Taxi	43.53	
	684.53	264.00

(b) *None-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Lance.
Government Position: Electronics Engineer, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '95.
4. *Sponsor of Event:* Society of Cable Television, Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons Exton, PA 19341.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/15–16/95.
9. *Travel Dates:* 06/13–17/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel		$380.00
3. Meals	180.50	
4. Taxi, Mileage & Fax	46.50	
	527.00	380.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Priya Shrinivasan.
Government Position: Electronics Engineer, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '95.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/15–16/95.
9. *Travel Dates:* 06/13–18/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room		$380.00
3. Meals	180.50	
4. Car Rental, Gas & Taxi	168.19	
5. Telephone	100.91	
	749.60	380.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Priscilla M. Wu.
Government Position: Electronics Engineer, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '95.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/15–16/95.
9. *Travel Dates:* 06/13–17/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$300.00	
2. Hotel Room		$380.00
3. Meals	180.50	
4. Taxi, Parking & Mileage	90.40	
	570.90	380.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Priscilla M. Wu.
Government Position: Electronics Engineer, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '95.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/15–16/95.
9. *Travel Dates:* 06/13–17/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Rountrip Transportation	$300.00	
2. Hotel Room		$380.00
3. Meals	160.50	
4. Taxi, Mileage & Telephone	53.72	
	534.22	380.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius P. Knapp.
Government Position: Chief, Equipment Authorization Division, Office of Engineering & Technology.
3. *Event:* EMC Conference '96.
4. *Sponsor of Event:* Singapore Institute of Standards & Industrial Research—SISIR.
5. *Sponsor Address:* EMC Centre, 1 Science Park Drive, Singapore 0511.
6. *Location of Event:* Singapore.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/25–26/95.
9. *Travel Dates:* 04/22–28/95.
10. (a)

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$1754.85	
2. Hotel Room		$574.20
3. Meals	389.00	144.00
4. Parking, Mileage & Taxi	63.40	
	2207.35	718.20

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert W. Spangler.
Government Position: Deputy Chief, Enforcement Division Common Carrier Bureau.
3. *Event:* TCA Conference & Exposition.
4. *Sponsor of Event:* Tele-Communications Association—TCA.
5. *Sponsor Address:* 701 North Haven Avenue, Suite 200, Ontario, CA 91764–4925.
6. *Location of Event:* San Diego, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/03–07/94.
9. *Travel Dates:* 10/04–06/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$315.00	
2. Hotel Room	156.00	
3. Meals	104.50	
4. Taxi & Mileage	28.25	
	603.75	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Cosentino.
Government Position: Attorney, Cable Services Bureau.
3. *Event:* 35th Annual Trade Show and Convention.
4. *Sponsor of Event:* Texas Cable TV Association—TCTVA.
5. *Sponsor Address:* P.O. Box 13518, Auston, Texas 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$303.00	
2. Hotel Room	77.90	
3. Meals	58.50	
4. Taxi & Parking	45.80	
	485.30	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John Merabito.
Government Position: Legal Assistant to Chief, Common Carrier Bureau.
3. *Event:* 35th Annual Trade Show and Convention.
4. *Sponsor of Event:* Texas Cable TV Association—TCTVA.
5. *Sponsor Address:* P.O. Box 13518, Austin, Texas 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/22–23/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$190.00	
2. Hotel Room		$234.60
3. Meals	59.50	
4. Taxi	59.00	
	308.50	234.60

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ronald Parver.
Government Position: Attorney, Cable Services Bureau.
3. *Event:* 35th Annual Trade Show and Convention.
4. *Sponsor of Event:* Texas Cable TV Association—TCTVA.
5. *Sponsor Address:* P.O. Box 13518, Austin, Texas 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/21–24/95.
10.(a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room	345.00	
3. Meals	127.50	
4. Telephone & Taxi	91.49	
	572.99	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Gregory J. Vogt.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* 35th Annual Trade Show and Convention.
4. *Sponsor of Event:* Texas Cable TV Association—TCTVA.
5. *Sponsor Address:* P.O. Box 13518, Austin, Texas 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/22–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$303.00	
2. Hotel Room	234.60	
3. Meals	5.95	
4. Taxi	61.00	
	604.55	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John Wong.
Government Position: Attorney, Cable Services Bureau.
3. *Event:* 35th Annual Trade Show and Convention.
4. *Sponsor of Event:* Texas Cable TV Association—TCTVA.
5. *Sponsor Address:* P.O. Box 13518, Austin, Texas 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/22–24/95.
9. *Travel Dates:* 02/21–24/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$309.00	
2. Hotel Room	345.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
3. Meals	127.50	
4. Parking, Mileage & Taxi	46.40	
5. Official Luggage	10.00	
	837.90	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James D. Schlichting.
Government Position: Chief, Policy & Program Planning Division, Common Carrier Bureau.
3. *Event:* Unbundling the Local Exchange Network Conference.
4. *Sponsor of Event:* TeleStrategies Inc.
5. *Sponsor Address:* 1355 Beverly Road, Suite 110, Mclean, VA 22101–3641.
6. *Location of Event:* Chicago, Illinios.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/21–22/95.
9. *Travel Dates:* 06/20–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$152.00	
2. Hotel Room		
3. Meals	31.50	$16.00
4. Taxi	60.00	
	243.50	16.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* TIA Global Information Infrastructure Summit.
4. *Sponsor of Event:* Telecommunications Industry Association—TIA.
5. *Sponsor Address:* 2500 Wilson Boulevard, Suite 300, Arlington, VA 22201.
6. *Location of Event:* Warsaw, Poland.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/09–11/95.
9. *Travel Dates:* 7/06–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$1707.35

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
2. Hotel Room		1660.99
3. Meals	$409.50	
4. Taxi	20.00	
	429.50	3368.34

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas P. Stanley.
Government Position: Chief Engineer, Office of Plans & Policy.
3. *Event:* ITU–R Task Group 8/1.
4. *Sponsor of Event:* Telecommunications Industry Association—TIA.
5. *Sponsor Address:* Mr. Eric Schimmel, 2500 Wilson Boulevard, Suite 300, Arlington, VA 22201.
6. *Location of Event:* San Diego, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/08/95.
9. *Travel Dates:* 02/05–08/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$132.00	
2. Hotel Room	234.57	
3. Meals	35.27	
4. Parking & Taxi	81.00	
5. Car Rental & Gas	79.08	
	561.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Leslia A. Wall.
Government Position: Chief, Sampling & Measurements Branch, Office of Engineering & Technology.
3. *Event:* Seminar entitled "An Overview of Regulations & Procedures in the Telecommunications Industry in Canada, United States & Mexico.
4. *Sponsor of Event:* Telecommunications Industry Association—TIA.
5. *Sponsor Address:* 2001 Pennsylvania Avenue, NW., Suite 800, Washington, DC 20006–1813.
6. *Location of Event:* Mexico City, Mexico.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/17–18/95.
9. *Travel Dates:* 01/16–19/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$422.45
2. Hotel Room	$466.50	
3. Meals	135.87	
4. Parking, Mileage & Taxi	65.98	
	668.35	422.45

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* International Conference on "Television Regulation."
4. *Sponsor of Event:* Istituto Di Diritto, Privato, Facolta Di Giurisprudenza, Universita Di Genova.
5. *Sponsor Address:* Universita Di Genova, VIA BALBI 22, 16126 Genova.
6. *Location of Event:* Genoa, Italy.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–08/95.
9. *Travel Dates:* 04/05–09/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$1382.00
2. Hotel Room		837.72
3. Meals		
4. Taxi, Mileage & Telephone		
		2139.72

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Donna N. Lampert.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* International Conference on the Convergence of Communications Technologies.
4. *Sponsor of Event:* Universite du Quebec a Montreal—UQAM.
5. *Sponsor Address:* Case postale 8888, succursale, Centre-Ville, Montreal (Quebec) Canada, H3C 3P8.
6. *Location of Event:* Montreal, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/29–10/01/94.
9. *Travel Dates:* 09/29–10/01/94.
10. (a)

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Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$887.67
2. Hotel Room		193.72
3. Meals	$205.00	
4. Taxi, Mileage & Taxi	133.35	
	338.35	881.39

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* SUPERCOM '95.
4. *Sponsor of Event:* United States Telephone Association—USTA & Telecommunications Industry Association—TIA.
5. *Sponsor Address:* 1401 H Street, NW., Suite 600, Washington, DC 20005.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/20–23/95.
9. *Travel Dates:* 03/20–21/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$284	
2. Hotel Room		$102.00
3. Meals	47.50	
4. Taxi	41.00	
	372.50	102.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* W. Riley Hollingsworth.
Government Position: Deputy Chief, Office of Operations—Gettysburg, PA, Wireless Telecommunications Bureau.
3. *Event:* 1995 Annual Conference & Exhibition.
4. *Sponsor of Event:* UTC Telecommunications Association.
5. *Sponsor Address:* 1140 Connecticut Avenue, NW., Suite 1140, Washington, DC 20036.
6. *Location of Event:* Minneapolis, Minnesota.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/31–8/04/95.
9. *Travel Dates:* 08/02–05/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$289.00	
2. Hotel Room		$339.00
3. Meals	93.50	
4. Parking, Taxi & Mileage	92.05	
5. Telephone & Tolls	4.40	
	478.95	339.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Renee Licht.
Government Position: Deputy Chief, Mass Media Bureau.
3. *Event:* VAB Annual Convention.
4. *Sponsor of Event:* Vermont Association of Broadcasters.
5. *Sponsor Address:* 15 West Patterson Street, Barre, VT 05641.
6. *Location of Event:* Stowe, Vermont.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–11/95.
9. *Travel Dates:* 06/09–11/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$493.00	
2. Hotel Room		$100.00
3. Meals		
	493.00	100.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government Position: Chief, Private Radio Bureau.
3. *Event:* WirelessWorld Conference & Exposition.
4. *Sponsor of Event:* WirelessWorld.
5. *Sponsor Address:* 9800 Metcalf Avenue, P.O. Box 12901, Overland Park, KS 66212–2215.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/03–05/94.
9. *Travel Dates:* 10/04–07/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$408.00	
2. Hotel Room		$150.00
3. Meals	52.50	
4. Taxi, Mileage & Telephone	28.51	
	489.01	150.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Evan R. Kwerel.
Government Position: Senior Economist, Office of Plans & Policy.
3. *Event:* Workshop on Rules for Spectrum Auctions.
4. *Sponsor of Event:* World Bank.
5. *Sponsor Address:* Attn: Sandra Vivas, 1818 H Street, N.W., Room G4031, Washington, D.C. 20433.
6. *Location of Event:* Mexico City, Mexico.
7. *Employee's Role:* Participant in Workshop.
8. *Dates of Event:* 06/12/95.
9. *Travel Dates:* 06/11–14/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$431.95
2. Hotel Room	$524.49	
3. Meals	45.15	
4. Taxi & Telephone	67.93	
	637.57	431.95

(b) *Non-Fed Source:* Same as No. 4.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30695 Filed 12–22–95; 8:45 am]

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Polymers--
Pyromellitic dianhydride; comments due by 1-2-96; published 12-1-95
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents
Brief statements on cigarette advertisements; findings; comments due by 1-2-96; published 12-1-95

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Royalty management:
Federal leases; natural gas valuation regulations; amendments; comments due by 1-5-96; published 11-6-95

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Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 1-4-96; published 12-5-95

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Federal Acquisition Regulation (FAR):

Contractor responsibility determinations; use of commercial sources of supplier information; comments due by 1-2-96; published 11-3-95
Correction; comments due by 1-2-96; published 12-7-95

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Credit unions:
Organization and operations--
Supervisory committee audits and verifications; comments due by 1-2-96; published 11-2-95

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International package consignment service implementation; comments due by 1-2-96; published 12-1-95

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Bell; comments due by 1-2-96; published 11-1-95
Boeing; comments due by 1-5-96; published 12-11-95
Eurocopter Deutschland GmbH; comments due by 1-2-96; published 11-2-95
Jetstream; comments due by 1-2-96; published 11-24-95
McDonnell Douglas; comments due by 1-2-96; published 11-3-95
Societe Nationale Industrielle Aerospatiale and Eurocopter France; comments due by 1-2-96; published 11-1-95
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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 21, 1995

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly, it is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-026-00001-8)	$6.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869-026-00002-6)	40.00	[1] Jan. 1, 1995
4	(869-026-00003-4)	5.50	Jan. 1, 1995
5 Parts:			
1-699	(869-026-00004-2)	23.00	Jan. 1, 1995
700-1199	(869-026-00005-1)	20.00	Jan. 1, 1995
1200-End, 6 (6 Reserved)	(869-026-00006-9)	23.00	Jan. 1, 1995
7 Parts:			
0-26	(869-026-00007-7)	21.00	Jan. 1, 1995
27-45	(869-026-00008-5)	14.00	Jan. 1, 1995
46-51	(869-026-00009-3)	21.00	Jan. 1, 1995
52	(869-026-00010-7)	30.00	Jan. 1, 1995
53-209	(869-026-00011-5)	25.00	Jan. 1, 1995
210-299	(869-026-00012-3)	34.00	Jan. 1, 1995
300-399	(869-026-00013-1)	16.00	Jan. 1, 1995
400-699	(869-026-00014-0)	21.00	Jan. 1, 1995
700-899	(869-026-00015-8)	23.00	Jan. 1, 1995
900-999	(869-026-00016-6)	32.00	Jan. 1, 1995
1000-1059	(869-026-00017-4)	23.00	Jan. 1, 1995
1060-1119	(869-026-00018-2)	15.00	Jan. 1, 1995
1120-1199	(869-026-00019-1)	12.00	Jan. 1, 1995
1200-1499	(869-026-00020-4)	32.00	Jan. 1, 1995
1500-1899	(869-026-00021-2)	35.00	Jan. 1, 1995
1900-1939	(869-026-00022-1)	16.00	Jan. 1, 1995
1940-1949	(869-026-00023-9)	30.00	Jan. 1, 1995
1950-1999	(869-026-00024-7)	40.00	Jan. 1, 1995
2000-End	(869-026-00025-5)	14.00	Jan. 1, 1995
8	(869-026-00026-3)	23.00	Jan. 1, 1995
9 Parts:			
1-199	(869-026-00027-1)	30.00	Jan. 1, 1995
200-End	(869-026-00028-0)	23.00	Jan. 1, 1995
10 Parts:			
0-50	(869-026-00029-8)	30.00	Jan. 1, 1995
51-199	(869-026-00030-1)	23.00	Jan. 1, 1995
200-399	(869-026-00031-0)	15.00	[4] Jan. 1, 1993
400-499	(869-026-00032-8)	21.00	Jan. 1, 1995
500-End	(869-026-00033-6)	39.00	Jan. 1, 1995
11	(869-026-00034-4)	14.00	Jan. 1, 1995
12 Parts:			
1-199	(869-026-00035-2)	12.00	Jan. 1, 1995
200-219	(869-026-00036-1)	16.00	Jan. 1, 1995
220-299	(869-026-00037-9)	28.00	Jan. 1, 1995
300-499	(869-026-00038-7)	23.00	Jan. 1, 1995
500-599	(869-026-00039-5)	19.00	Jan. 1, 1995
600-End	(869-026-00040-9)	35.00	Jan. 1, 1995
13	(869-026-00041-7)	32.00	Jan. 1, 1995
14 Parts:			
1-59	(869-026-00042-5)	33.00	Jan. 1, 1995
60-139	(869-026-00043-3)	27.00	Jan. 1, 1995
140-199	(869-026-00044-1)	13.00	Jan. 1, 1995
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1200-End	(869-026-00046-8)	16.00	Jan. 1, 1995
15 Parts:			
0-299	(869-026-00047-6)	15.00	Jan. 1, 1995
300-799	(869-026-00048-4)	26.00	Jan. 1, 1995
800-End	(869-026-00049-2)	21.00	Jan. 1, 1995
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0-149	(869-026-00050-6)	7.00	Jan. 1, 1995
150-999	(869-026-00051-4)	19.00	Jan. 1, 1995
1000-End	(869-026-00052-2)	25.00	Jan. 1, 1995
17 Parts:			
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240-End	(869-026-00056-5)	30.00	Apr. 1, 1995
18 Parts:			
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19 Parts:			
1-140	(869-026-00061-1)	25.00	Apr. 1, 1995
141-199	(869-026-00062-0)	21.00	Apr. 1, 1995
200-End	(869-026-00063-8)	12.00	Apr. 1, 1995
20 Parts:			
1-399	(869-026-00064-6)	20.00	Apr. 1, 1995
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21 Parts:			
1-99	(869-026-00067-1)	16.00	Apr. 1, 1995
100-169	(869-026-00068-9)	21.00	Apr. 1, 1995
170-199	(869-026-00069-7)	22.00	Apr. 1, 1995
200-299	(869-026-00070-1)	7.00	Apr. 1, 1995
300-499	(869-026-00071-9)	39.00	Apr. 1, 1995
500-599	(869-026-00072-7)	22.00	Apr. 1, 1995
600-799	(869-026-00073-5)	9.50	Apr. 1, 1995
800-1299	(869-026-00074-3)	23.00	Apr. 1, 1995
1300-End	(869-026-00075-1)	13.00	Apr. 1, 1995
22 Parts:			
1-299	(869-026-00076-0)	33.00	Apr. 1, 1995
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23	(869-026-00078-6)	22.00	Apr. 1, 1995
24 Parts:			
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200-219	(869-026-00080-8)	19.00	Apr. 1, 1995
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25	(869-026-00086-7)	32.00	Apr. 1, 1995
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§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501-1.640	(869-026-00093-0)	21.00	Apr. 1, 1995
§§ 1.641-1.850	(869-026-00094-8)	25.00	Apr. 1, 1995
§§ 1.851-1.907	(869-026-00095-6)	26.00	Apr. 1, 1995
§§ 1.908-1.1000	(869-026-00096-4)	27.00	Apr. 1, 1995
§§ 1.1001-1.1400	(869-026-00097-2)	25.00	Apr. 1, 1995
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40-49	(869-026-00101-4)	14.00	Apr. 1, 1995

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50-299	(869-026-00102-2)	14.00	Apr. 1, 1995
300-499	(869-026-00103-1)	24.00	Apr. 1, 1995
500-599	(869-026-00104-9)	6.00	[6] Apr. 1, 1990
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
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200-End	(869-026-00107-3)	13.00	[6] Apr. 1, 1994
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1-42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-99	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995
*1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
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200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
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200-End	(869-026-00123-5)	25.00	July 1, 1995
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191-399	(869-026-00125-1)	38.00	July 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995
630-699	(869-026-00127-8)	14.00	[5] July 1, 1991
700-799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1-124	(869-026-00130-8)	20.00	July 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1-299	(869-026-00133-2)	25.00	July 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
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200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
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18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
1-51	(869-026-00143-0)	40.00	July 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995
81-85	(869-022-00145-1)	23.00	July 1, 1994
86-99	(869-022-00146-9)	41.00	July 1, 1994
87-149	(869-026-00150-2)	41.00	July 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
700-789	(869-026-00157-0)	25.00	July 1, 1995
790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
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1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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9		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
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1-100	(869-026-00159-6)	9.50	July 1, 1995
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102-200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
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430-End	(869-022-00162-1)	36.00	Oct. 1, 1994
43 Parts:			
1-999	(869-022-00163-9)	23.00	Oct. 1, 1994
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4000-End	(869-022-00165-5)	14.00	Oct. 1, 1994
44	(869-022-00166-3)	27.00	Oct. 1, 1994
45 Parts:			
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200-499	(869-022-00168-0)	15.00	Oct. 1, 1994
500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-022-00170-1)	26.00	Oct. 1, 1994
46 Parts:			
1-40	(869-022-00171-0)	20.00	Oct. 1, 1994
41-69	(869-022-00172-8)	16.00	Oct. 1, 1994
70-89	(869-022-00173-6)	8.50	Oct. 1, 1994
90-139	(869-022-00174-4)	15.00	Oct. 1, 1994
140-155	(869-022-00175-2)	12.00	Oct. 1, 1994
156-165	(869-022-00176-1)	17.00	[7] Oct. 1, 1993
166-199	(869-022-00177-9)	17.00	Oct. 1, 1994
200-499	(869-022-00178-7)	21.00	Oct. 1, 1994
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47 Parts:			
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40-69	(869-022-00182-5)	14.00	Oct. 1, 1994
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80-End	(869-022-00184-1)	26.00	Oct. 1, 1994
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49 Parts:			
1-99	(869-022-00193-1)	24.00	Oct. 1, 1994
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178-199	(869-022-00195-7)	21.00	Oct. 1, 1994
200-399	(869-022-00196-5)	30.00	Oct. 1, 1994
400-999	(869-022-00197-3)	35.00	Oct. 1, 1994
*1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-022-00199-0)	15.00	Oct. 1, 1994
50 Parts:			
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600-End	(869-022-00202-3)	27.00	Oct. 1, 1994

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Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
Complete 1995 CFR set		883.00	1995
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

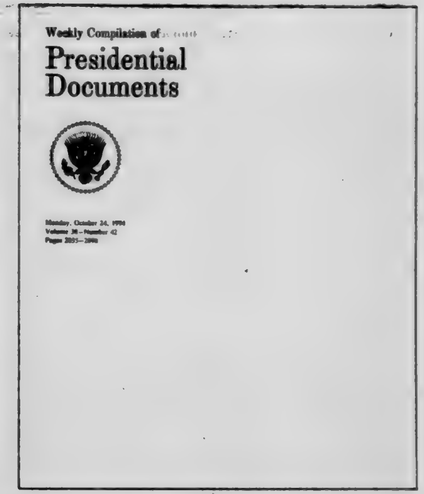
[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

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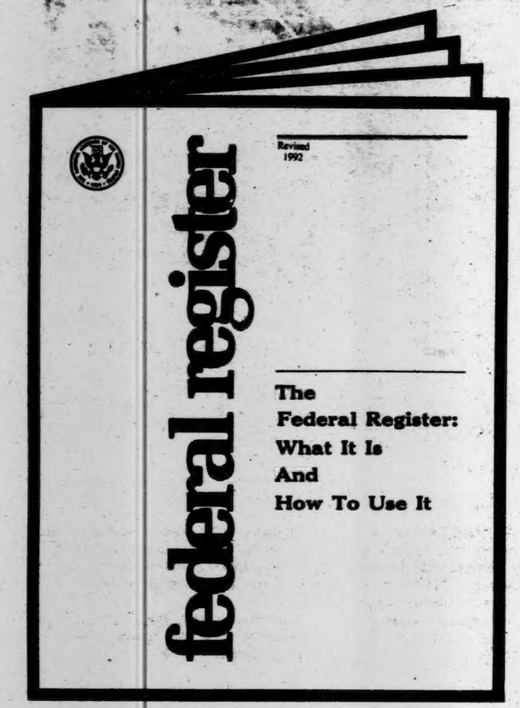
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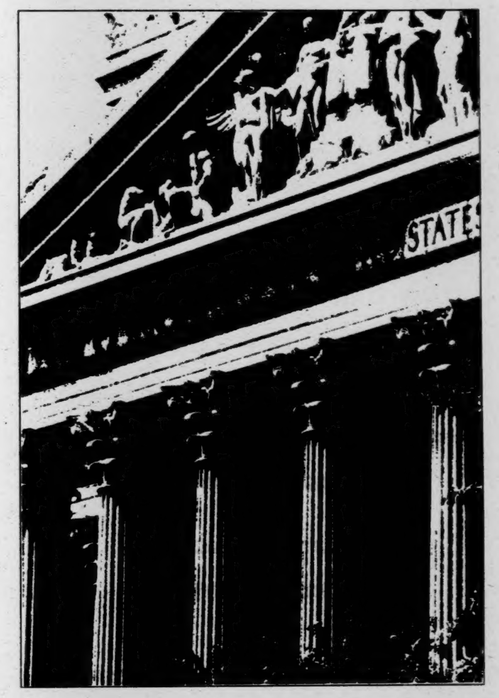
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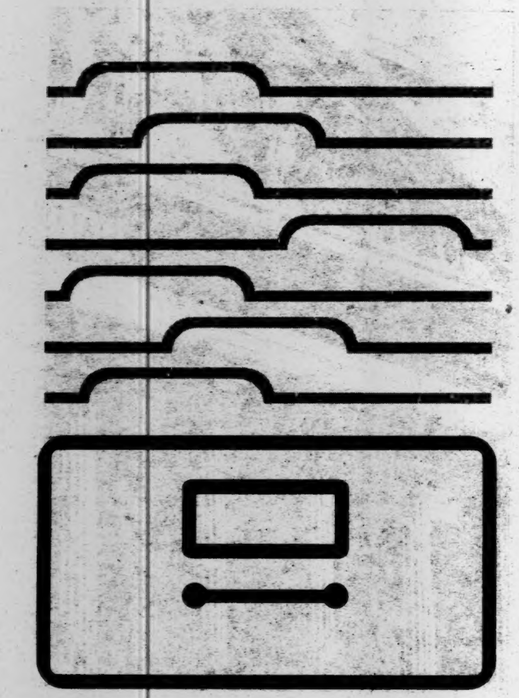
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